

ESTTA Tracking number: **ESTTA928876**

Filing date: **10/16/2018**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

| | |
|------------------------|--|
| Proceeding | 92066320 |
| Party | Defendant Research Sports Nutrition, LLC and Nutrition Distribution, LLC |
| Correspondence Address | JOHN L LIN TAULER SMITH LLP 626 WILSHIRE BLVD STE 510 LOS ANGELES, CA 90017 UNITED STATES rtauler@taulersmith.com, jlin@taulersmith.com, lstein@taulersmith.com 310-590-3927 |
| Submission | Other Motions/Papers |
| Filer's Name | Robert Tauler |
| Filer's email | rtauler@taulersmith.com, lstein@taulersmith.com, jlin@taulersmith.com |
| Signature | /Robert Tauler/ |
| Date | 10/16/2018 |
| Attachments | 2018-10-16 Lin Decl ISO RSN Motion for Summary Judgment.pdf(1058174 bytes) |

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Trademark Registration No.: 4,286,987

Trademark: GERMAN CREATINE

Owner: Research Sports Nutrition, LLC; Nutrition Distribution LLC

| | |
|---|-----------------------------------|
| <p>Fitness Labs Nutrition Corporation, a California Corporation,</p> <p>Petitioner,</p> <p>v.</p> <p>Research Sports Nutrition, LLC, an Arizona Limited Liability Company And Nutrition Distribution, LLC, an Arizona Limited Liability Company</p> <p>Registrants.</p> | <p>Cancellation No.: 92066320</p> |
|---|-----------------------------------|

**DECLARATION OF JOHN L. LIN IN SUPPORT OF REGISTRANTS' OPPOSITION
TO PETITIONER'S MOTION FOR SUMMARY JUDGMENT AND REGISTRANTS'
CROSS-MOTION FOR SUMMARY JUDGMENT**

I, John L. Lin, declare as follows:

1. I am an attorney, duly licensed and authorized to practice law in the State of California. I am of counsel to the law firm of Tauler Smith LLP, counsel for Registrants Research Sports Nutrition, LLC and Nutrition Distribution, LLC. I have personal and first-hand knowledge of the following facts, and if called and sworn as a witness, I could and would testify competently thereto.

Reg. No. 4,286,987
Cancellation No. 92066320

2. Attached hereto as Exhibit A is a true and correct copy of documents Bates Labelled FL00305-FL00307 produced by Petitioner Fitness Labs to Registrant on or about July 30, 2018.

The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that all statements made of his own knowledge are true, and all statements made on information and belief are believed to be true.

Executed on this 16th day in October, 2018 in Los Angeles, California.



John L. Lin

EXHIBIT A

Fitness Labs German Creatine 2009

Creatine is ideal for athletes

May Promote Gains In:
Power • Strength • Muscle Size • Lean Muscle*

Short term supplementation of creatine monohydrate has been shown to significantly increase muscular performance. It may help athletes work out at a higher intensity during resistance exercise. A resulting greater training stimulus over time may result in enhanced physiologic adaptations. In the body, creatine helps to regenerate ADP (spent energy) back into ATP for increased energy output involving short, intense bursts of energy.*

Creatine is a natural substance that is synthesized in the body from three amino acids, arginine, glycine and methionine. It's also found naturally in certain foods.

*These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure, or prevent any disease.

WARNING: KEEP OUT OF REACH OF CHILDREN.
 If you are pregnant, lactating, using prescription medication or under medical supervision for any condition, consult your physician before taking this or any dietary supplement. Store in a cool, dry place.



6 54186 09473 7

**CREATINE
 (Creapure® brand from Germany)
 may promote gains in**

**POWER
 STRENGTH
 MUSCLE
 SIZE
 LEAN
 MUSCLE**

This statement has not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure, or prevent any disease.

**FITNESS
 LABS®**

Creapure®

**German
 Creatine**

Pure Creatine Monohydrate Powder

Dietary Supplement
NET WT 500 g (1 LB 1.63 OZ)

Directions: Stir 1 level, firmly packed scoop (5 grams) of powder into 8 ounces of water or high carbohydrate drink. Scoop enclosed. One scoop equals approximately 1 1/2 teaspoons.

When to use:
 ✓ **Loading Phase (day 1-5):** Take 1 scoop (5 grams) 3-5 times daily for the most immediate results. You may skip the loading phase and start the maintenance phase for a more gradual approach. It will take approximately three weeks to achieve the same muscle creatine saturation levels as loading.
 ✓ **Maintenance Phase (day 6+)** Take 1 scoop (5 grams) once daily. Drink plenty of water when supplementing with creatine.

Supplement Facts
 Serving Size 1 Scoop (5g)
 Servings Per Container 100

| Amount Per Serving | |
|----------------------|------|
| Creatine Monohydrate | 5 g* |

*Daily Value not established.
 Ingredients: Creatine monohydrate.

Distributed by:
 Fitness Labs® Nutrition Corporation
 P.O. Box 3896 • Torrance, CA 90510-3896
 To reorder, call: (800) 407-8222 or
 www.FitnessLabs.com Item No. 94-73
 Copyright ©2009 Fitness Labs. All rights reserved. #99

Creapure® Batch Number

No UV Area

U.S. Item #94-73
 09473
 09473
 Product Name: Fitness Labs, Creatine 500 gram, Item No. 94-73, Ver. 04

↑ No UV in white box above



Fitness Labs German Creatine 2015

Label size (3 1/2" x 12 1/2")

Creatine is ideal for athletes

May Promote Gains In:

Power • Strength • Muscle Size • Lean Muscle*

Short term supplementation of creatine monohydrate has been shown to significantly increase muscular performance. It may help athletes work out at a higher intensity during resistance exercise. The resulting greater training stimulus over time may result in enhanced physiologic adaptations.*

In the body, creatine helps to regenerate ADP (spent energy) back into ATP for increased energy output involving short, intense bursts of energy.*

Creatine is a natural substance that is synthesized in the body from three amino acids, arginine, glycine and methionine. It's also found naturally in certain foods.

WARNING: Keep out of reach of children. For healthy adults only. Do not use if pregnant, nursing or contemplating pregnancy. Consult a physician before use if taking medication, have a medical condition or before beginning any exercise or diet program. Store in a cool, dry place.

*THESE STATEMENTS HAVE NOT BEEN EVALUATED BY THE FOOD AND DRUG ADMINISTRATION. THIS PRODUCT IS NOT INTENDED TO DIAGNOSE, TREAT, CURE, OR PREVENT ANY DISEASE.



MAY PROMOTE GAINS IN
POWER*
STRENGTH*
MUSCLE SIZE*
LEAN MUSCLE*

FITNESS LABS®

German Creatine

Pure Creatine Monohydrate Powder

Creapure® German Creatine

NET WT 500 g (1.1 LB) Dietary Supplement

Directions: Stir 1 level, firmly packed scoop (5 grams of creatine monohydrate) into 8 ounces of water or high carbohydrate drink. Scoop enclosed. One scoop equals approximately 1 1/2 teaspoons.

Supplement Facts

Serving Size 1 Scoop (5.1g)
 Servings Per Container 98

| Amount Per Scoop | |
|----------------------|-------|
| Creatine Monohydrate | 5 g † |

† Daily Value not established.

Ingredients: Creatine monohydrate (Creapure® brand).

When to use:

✓ **Loading Phase (day 1-5):**

Take 1 scoop (5 grams) 3-5 times daily for the most immediate results. You may skip the loading phase and start the maintenance phase for a more gradual approach. It will take approximately three weeks to achieve the same muscle creatine saturation levels as loading.

✓ **Maintenance Phase (day 6+):**

Take 1 scoop (5 grams) once daily. Drink plenty of water when taking creatine.

Distributed by:

Fitness Labs® Nutrition Corporation
 P.O. Box 3039 • Torrance, CA 90510-3896
 To reorder, call: (800) 407-8222 or
 www.FitnessLabs.com Item No. 94-73
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Only 100% Pure Creapure® German Creatine is used

Each batch is HPLC[†] tested to guarantee potency and purity. This Creatine is manufactured in Germany under U.S. Patent No. 5,719,319.

This patented manufacturing process eliminates unwanted by-products often found in lesser quality creatines.

Contains no fillers, additives, colors, flavors, sugars or sweeteners.

Creapure is a registered trademark of Alchemie, Trostberg, GmbH.

[†]High Performance Liquid Chromatography.



Fitness Labs German Creatine 2018

Label size (3 1/2" x 12 1/2")

Creatine is ideal for athletes

May Promote Gains In:

Power* • Strength* • Muscle Size* • Lean Muscle*

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MAY PROMOTE GAINS IN
POWER*
STRENGTH*
MUSCLE SIZE*
LEAN MUSCLE*

FITNESS LABS[®]

German Creatine™

Pure Creatine Monohydrate Powder

Creapure® German Creatine

NET WT 500 g (1.1 LB) Dietary Supplement

98
SERVINGS

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Supplement Facts

Serving Size 1 Scoop (5.1g)

Servings Per Container 98

| Amount Per Scoop | |
|----------------------|-------|
| Creatine Monohydrate | 5 g † |

† Daily Value not established.

Ingredients: Creatine monohydrate.

When to use:

✓ **Loading Phase (day 1-5):**

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✓ **Maintenance Phase (day 6+):**

Take 1 scoop (5 grams) once daily. Drink plenty of water when taking creatine.

Distributed by:

Fitness Labs® Nutrition Corporation
 P.O. Box 3886 • Torrance, CA 90510-3886
 To reorder, call: (800) 407-8222 or
 www.FitnessLabs.com Item No. 94-73
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Only Pure Creapure® German Creatine is used

Each batch is HPLC[†] tested to guarantee potency and purity. This Creatine is manufactured in Germany under U.S. Patent No. 5,719,319. This patented manufacturing process eliminates unwanted by-products often found in lesser quality creatine. Contains no fillers, additives, colors, flavors, sugars or sweeteners. Creapure® is a registered trademark of Alchemi Teuberg GmbH. † High Performance Liquid Chromatography

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **DECLARATION OF JOHN L. LIN IN SUPPORT OF REGISTRANTS' OPPOSITION TO PETITIONER'S MOTION FOR SUMMARY JUDGMENT AND REGISTRANTS' CROSS-MOTION FOR SUMMARY JUDGMENT** has been served on Koppel Patrick Heybl & Philpott, counsel for Petitioner Fitness Labs Nutrition Corporation, by email on October 16, 2018, to:

cdonaldson@koppelip
kkooker@koppelip
larnold@koppelip

/Robert Tauler/
ROBERT TAULER, ESQ.
Attorney for Registrants