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Filing date: **07/28/2017**

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

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| Proceeding | 92066320 |
| Party | Defendant Research Sports Nutrition, LLC |
| Correspondence Address | RESEARCH SPORTS NUTRITION LLC 2245 W UNIVERSITY DRIVE SUITE 5 TEMPE, AZ 85281 UNITED STATES Email: lori.bonnell@cox.net |
| Submission | Answer |
| Filer's Name | Robert Tauler, Esq. |
| Filer's email | rtauler@taulersmith.com, jlin@taulersmith.com, lstein@taulersmith.com |
| Signature | /Robert Tauler, Esq./ |
| Date | 07/28/2017 |
| Attachments | FINAL Answer to Cancellation Petition.pdf(83722 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

Date of Issue: February 5, 2013

Trademark: GERMAN CREATINEE

Owner: Research Sports Nutrition, LLC

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| Fitness Labs Nutrition Corporation, a California Corporation, Petitioner, v. Research Sports Nutrition, LLC, an Arizona Limited Liability Company Registrant. | Cancellation No.: 92066320 |
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REGISTRANT’S ANSWER TO PETITION TO CANCEL

The following is the Answer of Registrant Research Sports Nutrition, LLC, an Arizona Limited Liability Company (“Registrant”) to the Petition to Cancel filed on June 20, 2017 and assigned Cancellation No. 92066320. Registrant hereby responds, solely for the purpose of this proceeding, to each of the grounds set forth in the Petition to Cancel (“Petition”), as follows:

1. Registrant admits the allegations contained in Paragraph 1 of the Petition.
2. Registrant lacks the knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 2 of the Petition, and on that basis, denies
3. To the extent that the allegations in Paragraph 3 of the Petition constitute legal arguments or legal contentions, no answer is required. Registrant lacks the knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 3 that “Registrant has not used the mark set forth in the ‘987 Registration prior to the first use of the GERMAN CREATINEE trademark by Petitioner,” and that “Petition, at least by its use of

the GERMAN CREATINEE mark in interstate commerce, established common law trademark rights in the GERMAN CREATINEE name far in advance of the commencement of any use Registrant may have or may have had.”

4. Registrant admits that Exhibit C is a printout from the Arizona Corporation Commission eCorp database. To the extent that the term “founded” contained in Paragraph 4 constitutes a legal argument or contention, no answer is required. Registrant denies each and every remaining allegation contained in Paragraph 4 of the Petition.

5. Registrant lacks the knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 5 of the Petition, and on that basis, denies.

6. Registrant lacks the knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 6 of the Petition, and on that basis, denies.

7. Registrant lacks the knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 7 of the Petition, and on that basis, denies.

8. Registrant admits that the “goods covered by the ‘987 Registration include dietary and nutritional supplements containing German CREATINE.” Registrant lacks the knowledge or information sufficient to form a belief as to the truth or falsity of whether Petitioner promotes, markets, or sells “dietary and nutritional supplements,” on that basis, denies each and every remaining allegation contained in Paragraph 8.

9. Registrant lacks the knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 9 of the Petition, and on that basis, denies.

10. Registrant lacks the knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 10 of the Petition, and on that basis, denies.

11. Registrant lacks the knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 11 of the Petition, and on that basis, denies.

12. Registrant lacks the knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 12 of the Petition, and on that basis, denies.

REGISTRANT'S STATEMENTS

In addition, Registrant sets forth the following statements in support of its defenses.

1. Before Registrant applied to register the GERMAN CREATINE mark on August 29, 2011 ('987 Registration'), Registrant conducted due diligence in order to determine whether any prior use of the GERMAN CREATINE mark existed.

2. Registrant did not discover any prior use of the GERMAN CREATINE mark through the due diligence it conducted before August 29, 2011. Furthermore, Registrant alleges on information and belief that the Patent and Trademark Office was unable to discover any prior use of the GERMAN CREATINE mark in commerce for dietary and nutritional supplements during its review of Registrant's application.

3. Since the '987 Registration, Registrant's and its assignee have expended significant resources to market, sell, and distribute their products with the GERMAN CREATINE mark via multiple retail and distribution channels, and to have such products associated with Registrant's and its assignee's business.

4. On information and belief, Registrant alleges that search engine results for the mark GERMAN CREATINE identify the products of Registrant and its assignee due to Registrant's expenditure of significant resources to market, sell, and distribute their products with the GERMAN CREATINE mark via multiple retail and distribution channels.

5. On information and belief, Registrant alleges that the search engine results for the mark GERMAN CREATINE also create a strong association between their GERMAN CREATINE products and the business of Registrant and its assignee.

6. On information and belief, Registrant alleges that most, if not all, of consumer awareness of Petitioner's products derived from the efforts of Registrant and its assignee's efforts in marketing, selling, and distributing products of Registrant and its assignee with the GERMAN CREATINE mark via multiple retail and distribution channels.

7. To the extent that Petitioner actually began using the GERMAN CREATINE mark as early as December 2001, Petitioner's delay in applying to register the mark for almost 15 years after its purported first use is unreasonable and inexcusable.

8. On information and belief, Registrant alleges that Petitioner had actual knowledge, or at the very least, constructive knowledge since no later than February 5, 2013 of Registrant's use of the GERMAN CREATINE mark in commerce. Petitioner's delay in seeking to cancel the '987 Registration for at least 4 years after its actual or constructive knowledge of Registrant's use of the GERMAN CREATINE mark in commerce after approval by the USPTO is unreasonable and inexcusable

9. On information and belief, Registrant alleges that Petitioner had actual knowledge, or at the very least, constructive knowledge on August 29, 2011 of the '987 Registration. Petitioner's delay in seeking to cancel the '987 Registration for at least 5 years after its actual or constructive knowledge of the '987 Registration is unreasonable and inexcusable.

10. Should the Registrant lose the registration, Registrant and its assignee will be economically prejudiced due to its investment in and development of the GERMAN CREATINE

mark and the expenditure of significant resources to market, sell, and distribute their products with the GERMAN CREATINE mark via multiple retail and distribution channels, and to have their products with the GERMAN CREATINE mark associated and identified with the Registrant and assignee.

11. Thus, to the extent that Petitioner actually began using the GERMAN CREATINE mark as early as December 2001, the equitable doctrine of laches bars Petitioner's claim as it would be inequitable for Petitioner, who has provided no good faith basis as to its sixteen-year delay in attempting to register GERMAN CREATINE, to obtain ownership of the mark.

The Registrant hereby appoints Robert Tauler, a member of the Bar of California, and John L. Lin, a member of the Bar of California, at the firm of TAULER SMITH LLP, 626 Wilshire Blvd., Suite 510, Los Angeles, CA 90017 to act as attorneys in the matter of the cancellation identified above, to oppose said cancellation, to transact all business in the Patent and Trademark Office connected with the cancellation, and to sign its name to all papers which are herein after to be filed in connection therewith, and to receive all communications relating to the same.

WHEREFORE, Registrant requests dismissal of the Petition to Cancel and such other and further relief as may be just and proper.

Respectfully Submitted,



Date: 7/28/2017

Robert Tauler, Esq.
Cal. Bar No. 241964
Tauler Smith LLP
626 Wilshire Blvd., Ste. 510
Los Angeles, CA 90017
rtauler@taulersmith.com
310-590-3927