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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
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Submission	Opposition/Response to Motion
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Date	02/18/2020
Attachments	Response to motion to substitute parties.pdf(14342 bytes )

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

In the Matter of Registration No. 4,286,987

Mark: GERMAN CREATINE

Owner: Research Sports Nutrition, LLC; Nutrition Distribution, LLC

Fitness Labs Nutrition Corporation, a  
California Corporation,

Petitioner,

v.

Research Sports Nutrition, LLC, an  
Arizona Limited Liability Company,  
and  
Nutrition Distribution, LLC, an Arizona  
Limited Liability Company,

Registrant.

Cancellation No.: 92066320

**RESPONSE TO MOTION TO SUBSTITUTE PARTIES**

Registrant opposes Petitioner's request that 2575 TCA, LLC be substituted as the Petitioner in this matter in place of Fitness Labs Nutrition Corporation. 2575 TCA, LLC may be joined as a party, but Fitness Labs Nutrition Corporation must also remain a party.

Pursuant to TBMP 512.01, if the mark in an application or registration that is the subject matter of an *inter partes* proceeding before the Board is assigned, together with the application or registration, the assignee may be joined as a party upon the filing with the Board of a copy of the assignment.

A substitution is only appropriate when the assignment occurred prior to the commencement of the proceeding, the assignor is no longer in existence, the opposing party raises no objections to substitution, or the discovery and testimony periods have

closed. *Id.* Otherwise, the assignee will be joined, rather than substituted, to facilitate discovery, or in this case, testimony. *Id. citing*, 37 C.F.R. § 2.113(c)(1), 37 C.F.R. § 2.113(d), 37 C.F.R. § 3.71(d), and 37 C.F.R. § 3.73(b); Fed. R. Civ. P. 17 and 25; *NSM Resources Corp. v. Microsoft Corp.*, 113 USPQ2d 1029, 1031 (TTAB 2014) (finding joinder rather than substitution appropriate where assignment of pleaded mark was executed one year after proceeding commenced and nothing in the record indicated petitioner or business connected with mark no longer in existence).

Accordingly, Registrant requests that the Board deny the request to substitute 2575 TCA, LLC in place of Fitness Labs Nutrition Corporation.

DATED this 18<sup>th</sup> day of February, 2020.

**Jaburg & Wilk, P.C.**

/s/Maria Crimi Speth  
Maria Crimi Speth  
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I hereby certify that a true and complete copy of the foregoing Substitution of Counsel has been served on Corey A. Donaldson and R. Glenn Schroeder by forwarding said copy on February 18, 2020, via email, to:

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/s/Maria Crimi Speth