

Response to partial likelihood of confusion refusal under §2(D)

The examiner takes issue with the portions of Applicant’s description reproduced below, alleging that there is a likelihood of confusion between those goods and that of US Registration Nos. 5651581 and 5537055 for X-PURE.

No.	Original Description	Revised Description
1	Gelatin and collagen, modified gelatin and collagen for medical or veterinary use;	Gelatin and collagen, modified gelatin and collagen for medical or veterinary use <u>as an extracellular matrix in contact with human or animal cells</u>
2	gelatin or collagen for parenteral formulations	gelatin or collagen for <u>stabilizing</u> parenteral formulations

The ‘581 registration is registered for “dietary and nutritional supplements,” and the ‘055 registration is registered for “mineral supplements; vitamins, dietary supplements; nutritional supplements.” The specimens for the ‘581 and ‘055 registrations and the website through which the products are sold (<https://xpurenutrition.com/>) make clear that the dietary supplements of the ‘581 and ‘055 registrations are orally consumed and target the demographic of fitness enthusiasts / body builders.

In contrast, Applicant’s goods are sold to hospitals and are used in medical procedures by medical professionals. This is a very different class of consumers, both in terms of sophistication and channels of trade, than fitness enthusiasts and body builders.

As amended in this response, items (1) and (2) would not be confused with the dietary supplements at issue in the ‘581 and ‘055 registrations.

Regarding item (1) above, dietary supplements are not used as an extracellular matrix. Regarding item (2) above, dietary supplements are not used for stabilizing parenteral formulations or anything else. Additionally, parenteral formulations are by definition different than enterally consumed items, such as dietary supplements.

Accordingly, for all of these reasons, Applicant submits that there is no likelihood of confusion between Applicant’s goods and those of the ‘581 and ‘055 registrations.