



# Lawsuits Say Protein Powders Lack Protein, Ripping Off Athletes



**Alex Morrell**, FORBES STAFF

*I cover the .1%: got my mind on their money and their money on my mind*

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A growing number of companies are accused of selling workout supplements spiked with cheap fillers that they're passing off as protein.

Bodybuilders, dieters, and athletes want the key macronutrient to help build or keep muscle, and have built protein sports supplements into a \$7 billion industry, according to Euromonitor. But companies including pharmacy giant CVS Health and MusclePharm, the \$110 million (sales) company that uses former Terminator Arnold Schwarzenegger in its advertising, may be selling products where the protein content falls far below what's on the label, according to a spate of lawsuits that have cropped up over the past eight months. "Arnold Schwarzenegger Series Iron Mass," for instance, contains half the protein stated on its label, according to third party testing in one lawsuit; Schwarzenegger is not named as a defendant in the complaint.

MusclePharm, which was sued in a California federal court in late January by Ram, Olson, Cereghino and Kopczynski, is only the most recent company under attack for allegedly misleading their customers about just how much protein their products contain.

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WHAT YOU WANT AND  
LESS OF WHAT YOU DON'T.

Advertisement for MusclePharm's Arnold Schwarzenegger Series Iron Mass. The lawsuit claims [ + ]

Many others are being taken to task in the wave of cases spearheaded mainly by Michigan law firm Barbat, Mansour and Suciu, which had products sold by an array of supplement companies tested by a third-party lab. Results showed some products' labels significantly overstated the protein content, slipping in amino acids and other substances and claiming them as protein on their labels.

"I believe it is a pretty simple, cut and dry issue: We allege in these lawsuits that these companies use misleading language on the label regarding the amount of actual protein in the products, and the consumers are the ones that pay. That's the bottom line," says Nick Suciu, the lead attorney for the plaintiffs on many of the lawsuits. "I began developing the cases because customers have been misled by this practice for years."



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But the accused supplement sellers say they're doing nothing wrong.

“We are confident that the allegations are without merit and MusclePharm will defend the lawsuit vigorously,” said Kalina Pagano, MusclePharm’s executive vice president and general counsel. CVS Health declined to comment on the pending litigation, but have filed a motion to dismiss the case. They and other companies contend the practice – called “protein spiking” or “amino spiking” in industry parlance -- comports with FDA rules.

The FDA, which declined to comment on specific lawsuits, denounced the practice.

“FDA requires that dietary supplements be labeled in a manner that is truthful and not misleading. With regard to the labeling of protein content, FDA’s expectation for proper nutrition labeling is that firms will evaluate the protein content from actual protein sources—not other nitrogen-containing ingredients such as individual amino acids—and label the products consistent with the results of such evaluations,” said FDA press officer Jennifer Dooren.

Dooren added that FDA regulations for dietary supplements specifically require that “protein shall not be declared on labels of products that, other than ingredients added solely for technological reasons, contain only individual amino acids.”

## **WHAT LAB TESTS REVEAL**

Workout supplements vary in price by brand, but 5 pound tubs or bags of protein-based products often retail for more than \$50 a tub. A supplement maker can buy wholesale whey protein concentrate – the most popular kind – for roughly \$5 - \$6 per pound.

But third-party tests, attached to some of the lawsuits, show some companies also fill the tubs with far cheaper free form amino acids like glycine, taurine or leucine as well as other substances like creatine monohydrate, and then portray them as grams of protein on the products' labels. Certain amino acids are considered the building blocks to protein but they are not protein by themselves, nor do they have the same benefits as complete proteins.

These filler substances can cost less than \$1 per pound, allowing companies to undercut competition with lower prices and dupe price-sensitive customers in the process.

The lab tests commissioned by Suciu's firm and others show the breakdown of what's really inside some of these supplements. Companies whose products were tested and subsequently sued include but are not limited to: Giant Sports, MusclePharm, CVS Health, 4 Dimension Nutrition, NBTY and Inner Armour.

For instance, test results showed "Giant Delicious Protein Blend" made by privately held Giant Sports contains only 12 grams of the 27 grams of "High Quality Protein" it advertises, only 44% of the stated amount. Instead, the powdered blend is loaded with leucine, isoleucine, valine, glycine, betaine, taurine and creatine monohydrate. Moreover, glycine is not included on the label nor the ingredient list, which would make it a misbranded product and illegal to sell according to Food and Drug Administration rules. None of these substances is harmful -- creatine monohydrate on its own is perhaps the most popular workout supplement behind protein -- but neither are they what customers are paying for.

Giant Sports declined requests for comment.

Similarly, a lab test of MusclePharm's "Arnold Schwarzenegger Series Iron Mass" revealed that just 19 of the promised 40 grams of protein were present, according to exhibits in the lawsuit. Prior to

the lab test results, MusclePharm denied over Twitter that it spiked its products.



MusclePharm said Monday that it stands by its product, claiming it is supported by third party independent laboratory testing.

“The test results show MusclePharm's commitment to provide products that deliver as advertised,” said Pagano.

The lab testing in a lawsuit against publicly traded convenience store and pharmacy chain CVS Health, which generates \$140 billion in annual sales, shows that its “Whey Protein Powder” contains 21.8 grams of protein, 16% less than the 26 grams claimed. The company filed a motion to dismiss the lawsuit, denying the allegations and claiming its labels meet FDA guidelines.

GNC, the industry retailing giant in sports supplement sales, isn't accused of skimping on the protein in its name-brand products. Instead, the \$2.6 billion (sales) company was named a defendant in a case against the much smaller 4 Dimension Nutrition for selling that company's “Whey Phase” product, which testing showed did not meet protein claims.

GNC has gone out of its way to [lambaste the practice of protein spiking](#).



## IS YOUR PROTEIN SCAMMING YOU?

You get exactly what you pay for with GNC Brand proteins, but that's not necessarily the case with other brands.

A recent class-action lawsuit is exposing what GNC has been saying for some time—many protein products on the market are taking part in a practice called “protein spiking” or “amino spiking” that is cheating their customers. Independent testing confirms that these protein supplements use added ingredients to spike their protein test results, making it appear that the products contain more protein than they actually do.

You can feel confident when you take home a GNC brand product because we guarantee that each and every one of our more than 300 GNC brand protein supplements contains the full amount of protein stated on the label and is **100% Real Protein with NO protein spiking. In fact, we GUARANTEE it!**

### GNC Guarantee

- Every GNC brand protein product contains **100% Real Protein** with no overstated protein values.
- GNC **never spikes protein amounts**, ever!
- GNC proudly stands behind the quality, potency and taste of GNC brand protein supplements – **Guaranteed!**

The case against 4 Dimension and GNC was voluntarily dismissed by the plaintiffs in February, indicating the parties likely reached an out-of-court agreement. Neither company provided comment.

NBTY was among the first companies sued -- back in July 2014 -- for allegedly underdosing its “Body Fortress Super Advanced Whey Protein,” which, according to the lab tests contained only 21.5 of the 30 grams promised.

The company filed a response to the complaint, denying that it “engaged in any false, fraudulent, unfair, deceptive or misleading practices.”

“We believe that the claims asserted in the lawsuit are unfounded and we intend to vigorously defend against them in court,” said Andrea Staub, spokeswoman for \$3.2 billion (sales) NBTY.

Connecticut-based Inner Armour has the most products under scrutiny. Tests of five of its products – “Mass Peak,” “NitroPeak,” “Casein Peak,” “Whey Protein,” and “Super Quad Protein” – came up well short on protein compared with its label claims. For instance, it’s “Mass Peak” product only contained 19 of the 50 grams claimed, and its “Whey Protein” only contained 9 of 24 grams claimed, the tests showed.

A class-action case was filed against Inner Armour by Suciú’s firm in a California Federal court in November and amended in February. Inner Armour filed a motion to dismiss the suit last week, denying the allegations and claiming its labels meet FDA guidelines.



Advertisement for Inner Armour's Mass Peak product, which lawsuits allege contains only 19 of [ + ]

"These products and their labels do not claim to be 100% Whey Protein products. Glutamine and BCAAs are not fillers, but constituents of proteins valued to enhance the product," the company replied to Forbes via email. "We believe our product labeling is compliant with applicable standards and is clear about the types of proteins included in our products."

## THE DEFENSE OF SPIKING

So how can companies get away with spiking their products with fillers? By taking an indirect measure of protein.

Protein content on food product labels is often measured by how much nitrogen shows up in the food. Free form amino acids, as well as substances like creatine monohydrate, show up containing nitrogen just like regular, complete protein. But the average, reasonable consumer won't know the difference or know how to

distinguish the two. If a label claims 100% protein and boasts 30 grams of protein, reasonable consumers won't likely assume that a chunk of that advertised protein is comprised of cheaper amino acids rather than the complete protein they're shopping for.

The FDA says actual protein is what counts, and loading up on nitrogen-rich ingredients to inflate protein claims doesn't meet their standards.

Many within the sports supplement business say the practice is blatantly misleading customers and giving the industry a bad name in the process.

"You're not getting what you're paying for. You're getting other things that have no biological benefit in relation to the intended purpose of what you're buying," says Anthony Almada, a nutritional and exercise biochemist with more than three decades of experience running and working with dietary supplement companies. He currently owns and runs California-based sports supplement maker Vitargo, which is not named or implicated in any of the protein spiking lawsuits.

## **A COMPETITIVE ADVANTAGE**

The rise of protein spiking -- which has been a quiet but well known problem within the industry for several years -- is in part explained by the surge in prices over the past five years, especially for whey protein, the most common and desired variety in workout supplements.

Benoit Turpin, VP sales and marketing at \$750 million (sales) protein manufacturer Milk Specialties, says the cost of the raw materials has roughly doubled in the past five years, though it has come down a bit from a high point in 2014.

When Dr. Jeff Golini, founder and CEO of supplement company All American Pharmaceutical, first began selling protein powders in the early 1990s, he could buy the wholesale product for less than \$2 per kilo. Prices naturally rose over time, but they've soared the past five years as protein demand increased and Golini, whose company does

more than \$60 million in annual sales, says raw whey protein concentrate now costs him \$10 to \$12 per kilo.

“When there was a market for protein in the athletic market, it became a commodity item. It was very affordable, and like any supply and demand it went up and up and up. Companies, to compensate, started to cut protein,” says Golini, whose company’s supplement line – EFX Sports -- hasn’t been named or implicated in any of the lawsuits.

These increased costs should affect companies similarly – unless they find a cheaper alternative. Some companies just began adding nitrogen rich substances that were cheaper by weight -- like glycine at roughly \$2 a kilo or maltodextrin at \$0.87 a kilo – and calling it protein on their labels, Golini says.

Customers lose out, but so do companies that accurately label their products and are left at a competitive disadvantage.

“The advantage goes to the person who’s most crafty to get around the requirements for meeting labeling claims,” says Almada.

Milk Specialties has turned away business from companies that spike their product, according to Turpin.

“We choose not to work on formulations that have been spiked. We’re staying pure to what we are,” says Turpin. “You would expect the product you purchase would have the integrity of what it says on the label.”

It is unknown how many companies overall are spiking their protein supplements -- Suciu’s firm, which consults with companies to improve their product marketing and labeling, is still testing products and may file more cases.

But those avoiding the practice acknowledge it does the supplement business no favors in the court of public perception.

“What’s happening right now is bad for the industry, because our industry overall is not like that. But there are dishonest people,”

says Golini. “No one wants to be involved with lawsuits, but I hope they help our industry. Because they’re going after blatant cheaters. For the other half of the industry like us, it may end up making a level playing field.”