

A Winthrop & Weinstine blog dedicated to bridging the gap between legal & marketing types.

[Power & Balance or Plastic & Placebo](#)

Posted on March 28, 2011 by [Steve Baird](#)



Have you noticed the popularity of silicone and plastic wrist bands? Apparently very big business.

My fourteen year old son just bought another today for about \$30. He has informed me that [Power Balance](#) is the leading and most desired brand and there are many "cheaper imitations" out there.

I don't wear one, and have no plans to wear one, just so you know.

Of course, there are no shortage of [skeptics](#) about whether the wrist bands enhance performance or offer any tangible physiological benefit other than the [placebo effect](#). And you might consider me in that camp at the moment.

My twelve year old son told me he doesn't believe they do anything, but he then went on to point out his best performance in a recent baseball tournament (several hits with no errors) was obtained wearing one, so I guess you might say, truth be told, at least this younger son is on the fence.

I suppose, depending on what side of the fence he lands, I could take up a claim for him in the pending [class action lawsuit](#) filed against Power Balance earlier this year, described this way:



The Power Balance® products class action lawsuit centers around the fact that Power Balance marketed their products, which include wristbands, pendants and other Mylar Holograms, by purposefully misleading the public and falsely advertising and marketing the products as having, when worn close to the body, physiological benefits including, but not limited to, increased strength, balance and flexibility. In reality, the aforementioned products maintained absolutely no physiological benefits.

This [federal class action lawsuit](#) apparently followed on the heels of an Australian investigation of the company's same performance claims that resulted in the following corrective advertising statement down under:

"In our advertising we stated that Power Balance wristbands improved your strength, balance and flexibility. We admit that there is no credible scientific evidence that supports our claims and therefore we engaged in misleading conduct"

Ouch, that must have hurt. So, what can the fate of the "Performance Technology" tagline be?

One might also wonder what the fate of the company's very "techie" protection in Int'l Class 9 might be since it purports to cover: "[Apparatus for recording, transmission or reproduction of sound and images; Apparatus for transmitting and reproducing sound or images; Electronic database in the field of Holographic, Biomagnetic, Bioenergetics, Biofield Balancing recorded on computer media.](#)"

But, no worries, mate, even if the [POWER BALANCE](#) and [PERFORMANCE TECHNOLOGY](#) marks are found misleading or deceptive for some goods, seems like the coverage for mere "jewelry" in Int'l Class 14 ought to be safe, right?

What do you think?

Finally, for a johnny-come-lately, who apparently only sees upside in the litigious silicone wrist band market (or perhaps it truly believes it has built a better wrist band that can withstand this kind of marketing scrutiny), see below the jump.



Note the very technically-detailed identification of goods filed with the trademark application for the claimed [SPORT BALANCE REAL POWER](#) mark on March 14, 2011, less than two weeks ago (but more than two months after the Power Balance class action lawsuit was filed):



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"Bracelets and jewelry featuring electronic chips for attracting energy to the body wherein the electronic chips increase in power in the presence of electromagnetic fields, for the purpose of re-balancing the human energy field"

Might this applicant live to regret the product claims inherent in the claimed identification of goods?



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