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

Ex parte appeal no.	88732121
Appellant	Mark Leitgeb
Applied for mark	PROCELLER8
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Attachments	PROCELLER8 Appeal Brief.pdf(223807 bytes)
Appealed class	Class 005. All goods and services in the class are appealed, namely: Dietary supplements; Herbal supplements; Mineral supplements; Nutritional supplements; Protein supplements; Vitamin supplements; Weight management supplements;all the foregoing excluding anti-inflammatories and sold exclusively through network marketing
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Serial No.: 88/732,121
Mark: PROCELLER8
Applicant: Mark Leitgeb
Examining Attorney: Carl A Korschak
Law Office 126

**EX PARTE APPEAL
APPLICANT'S BRIEF**

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Applicant Mark Leitgeb (“Applicant”) appeals the Examiner’s refusal to register the standard character mark PROCELLER8 (“Applicant’s Mark”) for use in connection with “Dietary supplements; Herbal supplements; Mineral supplements; Nutritional supplements; Protein supplements; Vitamin supplements; Weight management supplements; all the foregoing excluding anti-inflammatories and sold exclusively through network marketing,” as amended, in International Class 5 (“Applicant’s Goods”).

The Examiner’s refusal is based on a perceived likelihood of confusion with the following marks owned by Vomaris Innovations, Inc. (“Registrant”):

PROCELLERA (Reg. No. 4,444,012) and PROCELLERA HELIX (Reg. No. 4,851,446)¹ (together, the “Cited Marks”)² for “Adhesive bandages; Adhesive for bandages for skin wounds; Analgesics; Anesthetics for non-surgical use; Anti-dermo-infectives; Anti-infectives; Anti-inflammatories; Antibacterial substances for medical purposes; Antimicrobial coatings to treat the growth of mold, mildew,

¹ The initial deadline to maintain the PROCELLERA HELIX registration was November 10, 2021. Registrant did not file submit a maintenance filing before that date and has not submitted a maintenance filing as of the filing of this Appeal Brief. The grace period deadline for Registrant to maintain the registration is May 10, 2022.

² The Examiner also cited the registration for PROCELLERA HELIX POST-OP (Reg. No. 4,727,806) as grounds for refusal. That registration was cancelled due to Registrant’s failure to file a declaration under Section 8. As such, it’s no longer an obstacle to registration.

bacteria and fungus on various surfaces; Antimicrobials for dermatologic use; Antivirals; Bandages for dressings; Bandages for skin wounds; Burn dressings; Dermatologicals; Dressings for wounds, burns and surgery; Surgical bandages; Surgical dressings; Topical analgesics; Wound dressings; Anti-inflammatory and antipyretic preparations for the treatment of wounds and skin disorders; Athletes' foot preparations; Bacteriostats for medicinal, dental and veterinary use; Preparation for the relief of pain for the treatment of wounds and skin disorders; Topical preparations for destroying parasites; Self adhesive dressings; Veterinary preparations, namely, pain relief medication for the treatment of wounds and skin disorders” in International Class 5 (“Registrant’s Goods”).

In refusing Applicant’s Mark, the Examiner focused on the shared letter-string “PROCELLER” in isolation, failing to properly consider the differences between Applicant’s Mark and the Cited Marks. When Applicant’s Mark and the Cited Marks are compared in their entirety, the differences are more than sufficient to prevent consumer confusion. Furthermore, Applicant’s Goods are entirely distinct from Registrant’s Goods. Additionally, Applicant and Registrant target discrete subsets of customers through distinct market channels further eliminating any likelihood of confusion. Finally, there is no evidence of confusion between Applicant’s Mark and the Cited Marks. Accordingly, Applicant’s Mark is entitled to registration on the Principal Register.

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