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

Ex Parte Appeal - Serial No.	97040503
Appellant	Enhanced Immune, LLC
Applied for mark	FAST ACTING IMMUNE BOOST
Correspondence address	JOHN L. ROGITZ ROGITZ & ASSOCIATES 4420 HOTEL CIRCLE COURT, SUITE 230 SAN DIEGO, CA 92108 UNITED STATES Primary email: john@rogitz.com Secondary email(s): noelle@rogitz.com 619-338-8075
Submission	Appeal brief
Attachments	1285-007.T Appeal Brief.pdf(676691 bytes)
Appealed class	Class 005. First Use: None First Use In Commerce: None All goods and services in the class are appealed, namely: Dietary supplements
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Date	01/02/2023

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of Enhanced Immune, LLC)	Law Office: 126
)	
Serial No.: 97/040,503)	Examining Attorney: Johnson
)	
Filed: September 22, 2021)	Attorney Docket No. 1285-007.T
)	
Mark: FAST ACTING IMMUNE BOOST)	January 2, 2023
)	2635 Camino del Rio South, Suite 211
)	San Diego, CA 92108

APPEAL BRIEF

Commissioner of Trademarks

Dear Sir:

This Appeal Brief is submitted in response to the final Office Action dated December 1, 2022 and further to Appellant's Notice of Appeal filed December 13, 2022.

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(1) NATURE AND STATUS OF PROCEEDINGS

This is an appeal by Enhanced Immune, LLC, hereafter “Appellant”, from a final refusal to register by the U.S. Patent and Trademark Office’s Examining Attorney. The Office has refused registration of the mark FAST ACTING IMMUNE BOOST on the ground that it is merely descriptive of Appellant’s goods (dietary supplements) under Section 2(e) of the Trademark Act, 15 U.S.C. § 1052(e)(1). This is Appellant’s Appeal Brief in response to the final refusal.

(2) STATEMENT OF FACTS

On September 22, 2021, Appellant filed an application with the Office to register the mark FAST ACTING IMMUNE BOOST for dietary supplements in International Class 5. On June 30, 2022, a first Office Action was issued. The first Office Action included a refusal of registration of the mark on the Principal Register on the basis of descriptiveness. Appellant filed a timely response addressing this issue, traversing the descriptiveness refusal. On December 1, 2022, a second Office Action was issued in which the refusal to register on the basis of mere descriptiveness was made final. Appellant filed a Notice of Appeal on December 13, 2022.

(3) ISSUE PRESENTED

This appeal is directed to the issue of whether the mark FAST ACTING IMMUNE BOOST is merely descriptive of Appellant’s goods.

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