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

Proceeding	86506207
Applicant	Gulf Coast Pharmacy, Inc.
Applied for Mark	E
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Applicant Gulf Coast Pharmacy appeals from the examining attorney's final refusal to register Applicant's trademark



for "dietary and nutritional supplements"

on the grounds that it will deceive consumers into believing that the product contains Vitamin E.

There is simply no evidence that consumers will believe that Applicant's design mark is a designation for Vitamin E. Apart from the evidence that shows Vitamin E products on which appear the letter "E" in very common fonts and without any stylization, the only evidence is one



single product, shown here:

(copied from

Office Action dated July 27, 2015). However, the trademark “derma e” is not probative of the use of the letter “E” by itself to refer to Vitamin E. In any event, “e” as it appears in this mark is neither unusual nor stylized, but instead appears in simple italicized lower case font. In sum, there is no evidence that Applicant’s mark would deceive any consumers of its goods. The mark is a stylized “E” with an arrow design and an accent aigu, on a blue circular design. None of the evidence of how an “E” appears on Vitamin E products comes close to this degree of stylization, nor would it reasonably do so, since producers of such products would want to be sure that consumers understand unambiguously that the product contains Vitamin E. Applicant’s mark would simply be seen as a logo (and in fact it is associated with its “Elan” mark that uses an identical “E”).

Respectfully Submitted,

Gene Bolmarcich, Esq.

Attorney for Applicant