

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

App. Ser. No.: 87291524

Examining Attorney: Marcie R. Frum Milone

Trademark: PLENITY

Law Office: 116

Applicant: Gelesis, Inc.

Action Dated: August 27, 2019

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**RESPONSE TO OFFICE ACTION**

Applicant offers a weight management aide under the PLENITY mark. Specifically, the PLENITY capsules are taken with water before lunch or dinner. The PLENITY product then absorbs the water and mixes with the food, making that customer feel sated and helping that person eat less. *See* Plenity website, [www.plenity.com](http://www.plenity.com). Though Applicant's PLENITY product is sold in capsule form, it is classified by the U.S. Food and Drug Administration as an "ingested, transient, space occupying device for weight management and/or weight loss."

On July 30, 2019, Applicant filed a Statement of Use using an image of the packaging of Applicant's PLENITY product as a specimen. The Office accepted the specimen for Class 5 goods, but refused the specimen for Class 10 because the image does not show the PLENITY mark used on connection with "medical devices for delaying gastric emptying, improving glycemic control, appetite suppression and weight management."

When determining the proper classification of a product, the Office may consider the "general remarks, class numbers, class headings, and explanatory notes for each international class." TMEP § 1401.05(a). Applicant agrees with the Office that the specimen shows use of the PLENITY mark on Class 5 goods in part because Applicant's "weight management aid capsules" are substances adopted for medical use. *See* TMEP § 1401.02 (Class Heading International Class 5). However, the specimen also supports use of the PLENITY mark for Class

10 because Applicant's products are medical articles generally used for treatment of persons. *See id.* (Class 10 Explanatory Note: "Class 10 includes . . . medical . . . articles generally used for the . . . treatment . . . of persons"). A product that has a plurality of uses or aspects may be classified in multiple classes. *See* TMEP § 1401.05(c). Here, Applicant's PLENITY product has a plurality of aspects; it is a substance adopted for medical use *and* a medical article used to treat persons. The subject specimen, therefore, shows use of the PLENITY mark on the relevant goods in Classes 5 and 10. Applicant respectfully asks that the Office withdraw the refusal and approve the specimen for both classes.