

## Request for Reconsideration after Final Action

**The table below presents the data as entered.**

Input Field	Entered
<b>SERIAL NUMBER</b>	76700741
<b>LAW OFFICE ASSIGNED</b>	LAW OFFICE 112
<b>MARK SECTION (current)</b>	
<b>STANDARD CHARACTERS</b>	NO
<b>USPTO-GENERATED IMAGE</b>	NO
<b>LITERAL ELEMENT</b>	ECO-FRESH
<b>COLOR(S) CLAIMED (If applicable)</b>	Color is not claimed as a feature of the mark.
<b>MARK SECTION (proposed)</b>	
<b>MARK FILE NAME</b>	<a href="file:///TICRS/EXPORT11/IMAGEOUT%2011/767/007/76700741/xml5/RFR0002.JPG">\\TICRS\EXPORT11\IMAGEOUT 11\767\007\76700741\xml5\RFR0002.JPG</a>
<b>STANDARD CHARACTERS</b>	NO
<b>USPTO-GENERATED IMAGE</b>	NO
<b>LITERAL ELEMENT</b>	ECO-FRESH
<b>COLOR MARK</b>	NO
<b>PIXEL COUNT ACCEPTABLE</b>	YES
<b>PIXEL COUNT</b>	642 x 278
<b>ARGUMENT(S)</b>	
Please see Applicant's arguments attached to this form.	
<b>EVIDENCE SECTION</b>	
<b>EVIDENCE FILE NAME(S)</b>	
<b>ORIGINAL PDF FILE</b>	<a href="file:///evi_63240199130-132538469_.229-1012_Response.PDF">evi_63240199130-132538469_.229-1012_Response.PDF</a>

<b>CONVERTED PDF FILE(S)</b> (3 pages)	<a href="\\TICRS\EXPORT11\IMAGEOUT11\767\007\76700741\xml5\RFR0003.JPG">\\TICRS\EXPORT11\IMAGEOUT11\767\007\76700741\xml5\RFR0003.JPG</a>
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<b>ORIGINAL PDF FILE</b>	<a href="#">evi_63240199130-132538469 . 229-1012 Declaration.PDF</a>
<b>CONVERTED PDF FILE(S)</b> (1 page)	<a href="\\TICRS\EXPORT11\IMAGEOUT11\767\007\76700741\xml5\RFR0006.JPG">\\TICRS\EXPORT11\IMAGEOUT11\767\007\76700741\xml5\RFR0006.JPG</a>
<b>ORIGINAL PDF FILE</b>	<a href="#">evi_63240199130-132538469 . 229-1012 Specimens.PDF</a>
<b>CONVERTED PDF FILE(S)</b> (4 pages)	<a href="\\TICRS\EXPORT11\IMAGEOUT11\767\007\76700741\xml5\RFR0007.JPG">\\TICRS\EXPORT11\IMAGEOUT11\767\007\76700741\xml5\RFR0007.JPG</a>
	<a href="\\TICRS\EXPORT11\IMAGEOUT11\767\007\76700741\xml5\RFR0008.JPG">\\TICRS\EXPORT11\IMAGEOUT11\767\007\76700741\xml5\RFR0008.JPG</a>
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	<a href="\\TICRS\EXPORT11\IMAGEOUT11\767\007\76700741\xml5\RFR0010.JPG">\\TICRS\EXPORT11\IMAGEOUT11\767\007\76700741\xml5\RFR0010.JPG</a>
<b>ORIGINAL PDF FILE</b>	<a href="#">evi_63240199130-132538469 . 229-1012 Drawing Page.PDF</a>
<b>CONVERTED PDF FILE(S)</b> (1 page)	<a href="\\TICRS\EXPORT11\IMAGEOUT11\767\007\76700741\xml5\RFR0011.JPG">\\TICRS\EXPORT11\IMAGEOUT11\767\007\76700741\xml5\RFR0011.JPG</a>
<b>DESCRIPTION OF EVIDENCE FILE</b>	Applicant's Response, Drawing Page, Specimens, and Declaration in Support.
<b>GOODS AND/OR SERVICES SECTION (003)(current)</b>	
<b>INTERNATIONAL CLASS</b>	003
<b>DESCRIPTION</b>	Carpet cleaner; shoe and foot powders for freshening
<b>FILING BASIS</b>	Section 1(a)
<b>FIRST USE ANYWHERE DATE</b>	At least as early as 08/10/1988
<b>FIRST USE IN COMMERCE DATE</b>	At least as early as 09/01/1988
<b>GOODS AND/OR SERVICES SECTION (003)(proposed)</b>	
<b>INTERNATIONAL CLASS</b>	003
<b>DESCRIPTION</b>	Carpet cleaner; shoe and foot powders for freshening
<b>FILING BASIS</b>	Section 1(a)
<b>FIRST USE ANYWHERE DATE</b>	At least as early as 08/10/1988

<b>FIRST USE IN COMMERCE DATE</b>	At least as early as 09/01/1988
<b>STATEMENT TYPE</b>	"The substitute (or new, if appropriate) specimen(s) was/were in use in commerce at least as early as the filing date of the application" [for an application based on Section 1(a), Use in Commerce] OR "The substitute (or new, if appropriate) specimen(s) was/were in use in commerce prior either to the filing of the Amendment to Allege Use or expiration of the filing deadline for filing a Statement of Use" [for an application based on Section 1(b) Intent-to-Use].
<b>SPECIMEN FILE NAME(S)</b>	
<b>ORIGINAL PDF FILE</b>	<a href="#">SPU0-63240199130-132538469_. 229-1012_Declaration.PDF</a>
<b>CONVERTED PDF FILE(S)</b> (1 page)	<a href="\\TICRS\EXPORT11\IMAGEOUT11\767\007\76700741\xml5\RFR0012.JPG">\\TICRS\EXPORT11\IMAGEOUT11\767\007\76700741\xml5\RFR0012.JPG</a>
<b>ORIGINAL PDF FILE</b>	<a href="#">SPU0-63240199130-132538469_. 229-1012_Specimens.PDF</a>
<b>CONVERTED PDF FILE(S)</b> (4 pages)	<a href="\\TICRS\EXPORT11\IMAGEOUT11\767\007\76700741\xml5\RFR0013.JPG">\\TICRS\EXPORT11\IMAGEOUT11\767\007\76700741\xml5\RFR0013.JPG</a>
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<b>SPECIMEN DESCRIPTION</b>	True copies of Applicant's product packaging with the mark used in connection therewith.
<b>GOODS AND/OR SERVICES SECTION (005)(current)</b>	
<b>INTERNATIONAL CLASS</b>	005
<b>DESCRIPTION</b>	
Carpet deodorizers; cat litter freshener; deodorizing packs for use for refrigerators, shoes, suitcases, and clothing drawers; leather cleaning deodorizing and preparation; wardrobe air fresheners	
<b>FILING BASIS</b>	Section 1(a)
<b>GOODS AND/OR SERVICES SECTION (005)(proposed)</b>	
<b>INTERNATIONAL CLASS</b>	005
<b>DESCRIPTION</b>	
Carpet deodorizers; cat litter freshener; deodorizing packs for use for refrigerators, shoes, suitcases, and clothing drawers; leather cleaning deodorizing and preparation; wardrobe air fresheners	
<b>FILING BASIS</b>	Section 1(a)
	"The substitute (or new, if appropriate) specimen(s) was/were in use in

STATEMENT TYPE	commerce at least as early as the filing date of the application" <i>[for an application based on Section 1(a), Use in Commerce]</i> OR "The substitute (or new, if appropriate) specimen(s) was/were in use in commerce prior either to the filing of the Amendment to Allege Use or expiration of the filing deadline for filing a Statement of Use" <i>[for an application based on Section 1(b) Intent-to-Use]</i> .
SPECIMEN FILE NAME(S)	
ORIGINAL PDF FILE	<a href="#">SPU1-63240199130-132538469 . 229-1012 Declaration.PDF</a>
CONVERTED PDF FILE(S) (1 page)	<a href="\\TICRS\EXPORT11\IMAGEOUT11\767\007\76700741\xml5\RFR0017.JPG">\\TICRS\EXPORT11\IMAGEOUT11\767\007\76700741\xml5\RFR0017.JPG</a>
ORIGINAL PDF FILE	<a href="#">SPU1-63240199130-132538469 . 229-1012 Specimens.PDF</a>
CONVERTED PDF FILE(S) (4 pages)	<a href="\\TICRS\EXPORT11\IMAGEOUT11\767\007\76700741\xml5\RFR0018.JPG">\\TICRS\EXPORT11\IMAGEOUT11\767\007\76700741\xml5\RFR0018.JPG</a>
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SPECIMEN DESCRIPTION	True copies of Applicant's product packaging with the mark used in connection therewith.
<b>GOODS AND/OR SERVICES SECTION (031)(current)</b>	
INTERNATIONAL CLASS	031
DESCRIPTION	Cat litter with odor absorbing granules
FILING BASIS	Section 1(a)
<b>GOODS AND/OR SERVICES SECTION (031)(proposed)</b>	
INTERNATIONAL CLASS	031
DESCRIPTION	Cat litter with odor absorbing granules
FILING BASIS	Section 1(a)
STATEMENT TYPE	"The substitute (or new, if appropriate) specimen(s) was/were in use in commerce at least as early as the filing date of the application" <i>[for an application based on Section 1(a), Use in Commerce]</i> OR "The substitute (or new, if appropriate) specimen(s) was/were in use in commerce prior either to the filing of the Amendment to Allege Use or expiration of the filing deadline for filing a Statement of Use" <i>[for an application based on Section 1(b) Intent-to-Use]</i> .
SPECIMEN FILE NAME(S)	
ORIGINAL PDF FILE	<a href="#">SPU2-63240199130-132538469 . 229-1012 Declaration.PDF</a>

CONVERTED PDF FILE(S) (1 page)	<a href="\\TICRS\EXPORT11\IMAGEOUT11\767\007\76700741\xml5\RFR0022.JPG">\\TICRS\EXPORT11\IMAGEOUT11\767\007\76700741\xml5\RFR0022.JPG</a>
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SPECIMEN DESCRIPTION	True copies of Applicant's product packaging with the mark used in connection therewith.
<b>GOODS AND/OR SERVICES SECTION (040)(current)</b>	
INTERNATIONAL CLASS	040
DESCRIPTION	Carpet deodorizing services
FILING BASIS	Section 1(a)
<b>GOODS AND/OR SERVICES SECTION (040)(proposed)</b>	
INTERNATIONAL CLASS	040
DESCRIPTION	Carpet deodorizing services
FILING BASIS	Section 1(a)
STATEMENT TYPE	<b>"The substitute (or new, if appropriate) specimen(s) was/were in use in commerce at least as early as the filing date of the application"</b> <i>[for an application based on Section 1(a), Use in Commerce]</i> OR <b>"The substitute (or new, if appropriate) specimen(s) was/were in use in commerce prior either to the filing of the Amendment to Allege Use or expiration of the filing deadline for filing a Statement of Use"</b> <i>[for an application based on Section 1(b) Intent-to-Use]</i> .
<b>SPECIMEN FILE NAME(S)</b>	
ORIGINAL PDF FILE	<a href="SPU3-63240199130-132538469_.229-1012_Declaration.PDF">SPU3-63240199130-132538469_.229-1012_Declaration.PDF</a>
CONVERTED PDF FILE(S) (1 page)	<a href="\\TICRS\EXPORT11\IMAGEOUT11\767\007\76700741\xml5\RFR0027.JPG">\\TICRS\EXPORT11\IMAGEOUT11\767\007\76700741\xml5\RFR0027.JPG</a>
ORIGINAL PDF FILE	<a href="SPU3-63240199130-132538469_.229-1012_Specimens.PDF">SPU3-63240199130-132538469_.229-1012_Specimens.PDF</a>
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	<a href="\\TICRS\EXPORT11\IMAGEOUT11\767\007\76700741\xml5\RFR0031.JPG">\\TICRS\EXPORT11\IMAGEOUT11\767\007\76700741\xml5\RFR0031.JPG</a>
<b>SPECIMEN DESCRIPTION</b>	True copies of Applicant's product packaging with the mark used in connection therewith.
<b>SIGNATURE SECTION</b>	
<b>DECLARATION SIGNATURE</b>	The filing Attorney has elected not to submit the signed declaration, believing no supporting declaration is required under the <i>Trademark Rules of Practice</i> .
<b>RESPONSE SIGNATURE</b>	/Steven D. Lustig for Barth X. deRosa/
<b>SIGNATORY'S NAME</b>	Steven D. Lustig for Barth X. deRosa
<b>SIGNATORY'S POSITION</b>	Attorney of record, DC bar member
<b>DATE SIGNED</b>	10/26/2011
<b>AUTHORIZED SIGNATORY</b>	YES
<b>CONCURRENT APPEAL NOTICE FILED</b>	NO
<b>FILING INFORMATION SECTION</b>	
<b>SUBMIT DATE</b>	Wed Oct 26 13:44:48 EDT 2011
<b>TEAS STAMP</b>	USPTO/RFR-63.240.199.130-20111026134448418470-76700741-480ed38483f6fb17c36e5d884e3f45ef2-N/A-N/A-20111026132538469850

## Request for Reconsideration after Final Action To the Commissioner for Trademarks:

Application serial no. **76700741** has been amended as follows:

### MARK

**Applicant proposes to amend the mark as follows:**

**Current:** ECO-FRESH (Stylized and/or with Design)

Color is not claimed as a feature of the mark.

**Proposed:** ECO-FRESH (Stylized and/or with Design, see [mark](#))

---

The applicant is not claiming color as a feature of the mark.

**ARGUMENT(S)**

**In response to the substantive refusal(s), please note the following:**

Please see Applicant's arguments attached to this form.

**EVIDENCE**

Evidence in the nature of Applicant's Response, Drawing Page, Specimens, and Declaration in Support has been attached.

**Original PDF file:**

[evi\\_63240199130-132538469\\_229-1012\\_Response.PDF](#)

**Converted PDF file(s)** (3 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

**Original PDF file:**

[evi\\_63240199130-132538469\\_229-1012\\_Declaration.PDF](#)

**Converted PDF file(s)** (1 page)

[Evidence-1](#)

**Original PDF file:**

[evi\\_63240199130-132538469\\_229-1012\\_Specimens.PDF](#)

**Converted PDF file(s)** (4 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

[Evidence-4](#)

**Original PDF file:**

[evi\\_63240199130-132538469\\_229-1012\\_Drawing\\_Page.PDF](#)

**Converted PDF file(s)** (1 page)

[Evidence-1](#)

**CLASSIFICATION AND LISTING OF GOODS/SERVICES**

**Applicant proposes to amend the following class of goods/services in the application:**

**Current:** Class 003 for Carpet cleaner; shoe and foot powders for freshening

Original Filing Basis:

**Filing Basis: Section 1(a), Use in Commerce:** The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 08/10/1988 and first used in commerce at least as early as 09/01/1988, and is now in use in such commerce.

**Proposed:** Class 003 for Carpet cleaner; shoe and foot powders for freshening

**Filing Basis: Section 1(a), Use in Commerce:** The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 08/10/1988 and first used in commerce at least as early as 09/01/1988, and is now in use in such commerce.

Applicant hereby submits a new specimen for Class 003. The specimen(s) submitted consists of True copies of Applicant's product packaging with the mark used in connection therewith..

**"The substitute (or new, if appropriate) specimen(s) was/were in use in commerce at least as early as the filing date of the application"** *[for an application based on Section 1(a), Use in Commerce]* OR **"The substitute (or new, if appropriate) specimen(s) was/were in use in commerce prior either to the filing of the Amendment to Allege Use or expiration of the filing deadline for filing a Statement of Use"** *[for an application based on Section 1(b) Intent-to-Use].*

**Original PDF file:**

[SPU0-63240199130-132538469 . 229-1012 Declaration.PDF](#)

**Converted PDF file(s)** (1 page)

[Specimen File1](#)

**Original PDF file:**

[SPU0-63240199130-132538469 . 229-1012 Specimens.PDF](#)

**Converted PDF file(s)** (4 pages)

[Specimen File1](#)

[Specimen File2](#)

[Specimen File3](#)

[Specimen File4](#)

**Applicant proposes to amend the following class of goods/services in the application:**

**Current:** Class 005 for Carpet deodorizers; cat litter freshener; deodorizing packs for use for refrigerators, shoes, suitcases, and clothing drawers; leather cleaning deodorizing and preparation; wardrobe air fresheners

Original Filing Basis:

The applicant, or the applicant's related company or licensee, is using the mark in commerce on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended, but has not provided the dates of use by the applicant, or the applicant's related company, licensee, or predecessor in interest, of the mark on or in connection with the identified goods and/or services.

**Proposed:** Class 005 for Carpet deodorizers; cat litter freshener; deodorizing packs for use for refrigerators, shoes, suitcases, and clothing drawers; leather cleaning deodorizing and preparation; wardrobe air fresheners

The applicant, or the applicant's related company or licensee, is using the mark in commerce on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended, but has not provided the dates of use by the applicant, or the applicant's related company, licensee, or predecessor in interest, of the mark on or in connection with the identified goods and/or services.

Applicant hereby submits a new specimen for Class 005. The specimen(s) submitted consists of True copies of Applicant's product packaging with the mark used in connection therewith..

**"The substitute (or new, if appropriate) specimen(s) was/were in use in commerce at least as early as the filing date of the application"** *[for an application based on Section 1(a), Use in Commerce]* OR **"The substitute (or new, if appropriate) specimen(s) was/were in use in commerce prior either to the filing of the Amendment to Allege Use or expiration of the filing deadline for filing a Statement of Use"** *[for an application based on Section 1(b) Intent-to-Use].*

**Original PDF file:**

[SPU1-63240199130-132538469 . 229-1012 Declaration.PDF](#)

**Converted PDF file(s)** (1 page)

[Specimen File1](#)

**Original PDF file:**

[SPU1-63240199130-132538469 . 229-1012\\_Specimens.PDF](#)

**Converted PDF file(s)** (4 pages)

[Specimen File1](#)

[Specimen File2](#)

[Specimen File3](#)

[Specimen File4](#)

**Applicant proposes to amend the following class of goods/services in the application:**

**Current:** Class 031 for Cat litter with odor absorbing granules

Original Filing Basis:

The applicant, or the applicant's related company or licensee, is using the mark in commerce on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended, but has not provided the dates of use by the applicant, or the applicant's related company, licensee, or predecessor in interest, of the mark on or in connection with the identified goods and/or services.

**Proposed:** Class 031 for Cat litter with odor absorbing granules

The applicant, or the applicant's related company or licensee, is using the mark in commerce on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended, but has not provided the dates of use by the applicant, or the applicant's related company, licensee, or predecessor in interest, of the mark on or in connection with the identified goods and/or services.

Applicant hereby submits a new specimen for Class 031. The specimen(s) submitted consists of True copies of Applicant's product packaging with the mark used in connection therewith..

**"The substitute (or new, if appropriate) specimen(s) was/were in use in commerce at least as early as the filing date of the application"***[for an application based on Section 1(a), Use in Commerce]* OR **"The substitute (or new, if appropriate) specimen(s) was/were in use in commerce prior either to the filing of the Amendment to Allege Use or expiration of the filing deadline for filing a Statement of Use"***[for an application based on Section 1(b) Intent-to-Use].*

**Original PDF file:**

[SPU2-63240199130-132538469 . 229-1012\\_Declaration.PDF](#)

**Converted PDF file(s)** (1 page)

[Specimen File1](#)

**Original PDF file:**

[SPU2-63240199130-132538469 . 229-1012\\_Specimens.PDF](#)

**Converted PDF file(s)** (4 pages)

[Specimen File1](#)

[Specimen File2](#)

[Specimen File3](#)

[Specimen File4](#)

**Applicant proposes to amend the following class of goods/services in the application:**

**Current:** Class 040 for Carpet deodorizing services

Original Filing Basis:

The applicant, or the applicant's related company or licensee, is using the mark in commerce on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended, but has not provided the dates of use by the applicant, or the applicant's related company, licensee, or predecessor in interest, of the mark on or in connection with the identified goods and/or services.

**Proposed:** Class 040 for Carpet deodorizing services

The applicant, or the applicant's related company or licensee, is using the mark in commerce on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended, but has not provided the dates of use by the applicant, or the applicant's related company, licensee, or predecessor in interest, of the mark on or in connection with the identified goods and/or services.

Applicant hereby submits a new specimen for Class 040. The specimen(s) submitted consists of True copies of Applicant's product packaging with the mark used in connection therewith..

**"The substitute (or new, if appropriate) specimen(s) was/were in use in commerce at least as early as the filing date of the application"** *[for an application based on Section 1(a), Use in Commerce]* OR **"The substitute (or new, if appropriate) specimen(s) was/were in use in commerce prior either to the filing of the Amendment to Allege Use or expiration of the filing deadline for filing a Statement of Use"**

*[for an application based on Section 1(b) Intent-to-Use].*

**Original PDF file:**

[SPU3-63240199130-132538469 . 229-1012 Declaration.PDF](#)

**Converted PDF file(s)** (1 page)

[Specimen File1](#)

**Original PDF file:**

[SPU3-63240199130-132538469 . 229-1012 Specimens.PDF](#)

**Converted PDF file(s)** (4 pages)

[Specimen File1](#)

[Specimen File2](#)

[Specimen File3](#)

[Specimen File4](#)

**SIGNATURE(S)**

**Declaration Signature**

I hereby elect to bypass the submission of a signed declaration, because I believe a declaration is not required by the rules of practice. I understand that the examining attorney could still, upon later review, require a signed declaration.

**Request for Reconsideration Signature**

Signature: /Steven D. Lustig for Barth X. deRosa/ Date: 10/26/2011

Signatory's Name: Steven D. Lustig for Barth X. deRosa

Signatory's Position: Attorney of record, DC bar member

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is not filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 76700741

Internet Transmission Date: Wed Oct 26 13:44:48 EDT 2011  
TEAS Stamp: USPTO/RFR-63.240.199.130-201110261344484  
18470-76700741-480ed38483f6fb17c36e5d884  
e3f45ef2-N/A-N/A-20111026132538469850

ēco-fresh

Docket No.: 229-1012

TRADEMARK LAW OFFICE: 112  
SERIAL NO.: 76/700,741  
MARK: ECO-FRESH

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

In re Trademark Application of:  
Michael Brandt Family Trust

Trademark Examiner: David E. Tooley, Jr.

Mark: ECO-FRESH

Filing Date: December 8, 2009

Serial No. 76/700,741

\* \* \*

Washington, DC  
October 26, 2011

**RESPONSE**

To the Honorable Commissioner of Patents and Trademarks  
P.O. Box 1451  
Alexandria, Virginia 22313-1451

Dear Sir:

In response to the Official Action dated April 28, 2011, Applicant responds as follows:

First, Applicant attaches herewith a new drawing showing the “-“ over the e to conform to the specimens of record.

Second, Applicant attaches herewith a new specimen for Class 31 in the event such specimens are not of record.

## REMARKS

Applicant still maintains that it is not within the Examiner's province to dictate to Applicant what constitutes and does not constitute a mark. By including the dash over the "e" the Examiner is requiring the Applicant to convert a block letter application into a special design registration. This is not what Applicant sought. The Examiner is reminded of the decision *In re Standard Underground Cable Co.*, 27 App. D.C. 320, 324 (D.C. Cir. 1906). This is, in fact, an old decision which to date has not yet been reversed or overturned. It is a decision that strikes true because in that decision the court said it was not within the Commissioner's power to dictate to an applicant what constitutes or does not constitute its mark. To interject such power within the examination process would prove to be unwise. It is a decision that is often overlooked by the U.S. Patent and Trademark Office and one that is overlooked because it obviously goes to the very heart of the power of authority of the Commissioner. But what remains true in *Standard Underground Cable*, remains true today. As stated:

We repeat that we do not think that Congress intended to confer upon the Commissioner of Patents authority to say to an applicant how much or how little of the embellishments appearing in connection with what may be called the essential feature of a trade mark form and actual part of the trade mark. Rather we do think that this right of selection and designation rests with the applicant. No general rule can possibly be applied, and where this is the case, it is unwise to attempt to exercise a power not expressly vested in an executive officer.

The proper forum for the decision of such questions is the courts where each case can be passed upon as it arises.

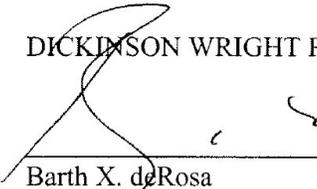
Additionally, the addition of the slash in the mark converts this mark from a block letter registration into a composite mark as well. It is within the Applicant's sole province to

determine what constitutes and does not constitute what part of a composite mark it seeks to register.

The above conformance is made for the purposes of minimizing costs and getting the application onto registration. In view thereof, it is respectfully submitted that this application is now in condition for registration.

Respectfully submitted,

DICKINSON WRIGHT PLLC



---

Barth X. deRosa  
Counsel for Applicant  
1875 Eye Street, N.W., Suite 1200  
Washington, D.C. 20006  
Telephone: (202) 457-0160  
Facsimile: (202) 659-1559

229-1012

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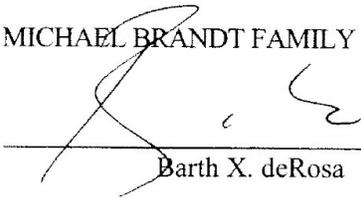
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MICHAEL BRANDT FAMILY TRUST

By:   
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Title: Attorney

Date: October 25, 2011

**100% Natural. No Fragrance.**

Eco-Fresh Carpet Deodorizer absorbs and neutralizes odors. Use wherever odors are present. For kitchen, bathrooms, pet areas, offices, vehicles, medical, veterinary and home health care use. All Natural, Non-Allergenic, Low-Toxicity.

**Kills Odors Caused By:**

**Mildew:** musty, stale odors  
**Pets:** houses, litter boxes, urine  
**Bathrooms:** clothes hampers  
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**Carpet Deodorizer  
and Freshener**

**Absorbs and Destroys Odors  
100% Natural Ingredients  
Freshens Carpets For Months!**

**Biodegradable  
Low Toxicity  
Non-Flammable  
Prevents Static Shock**

**MONEY BACK GUARANTEE**

Net Weight 1 lb  
MADE IN USA

*Class 1*

**Eliminates All Odors**  
**100% Natural Ingredients**  
**Non-Toxic, Non-Flammable**

Eco-Fresh Odor Eliminator + Cleaner kills and neutralizes odors instantly. Use wherever odors are present, kitchen, bathrooms, pet areas, offices, vehicles, etc. USDA Authorized. Non-Toxic.

**Great For Use On:**

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- Vehicles: carpets, seats, dash boards, trunks
- Air Conditioning Systems: filters, ducts, intakes
- Floors: add 2 oz to mop water

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[www.ecofreshusa.com](http://www.ecofreshusa.com)  
**1-877-26-FRESH**  
**Dallas, Texas U.S.A.**

**SHAKE BEFORE USE**



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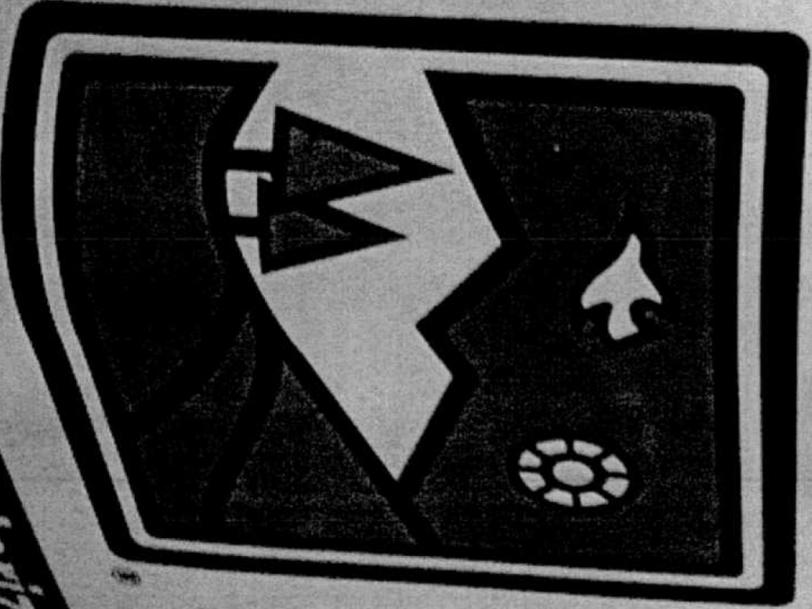
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**Safe On Fabrics**

**Eliminates All Odors**  
**MONEY BACK GUARANTEE**

**Net 8 FL. OZS (236 ml)**  
**MADE IN USA**

CL 3

**eco-fresh™**



**Carpet Deodorizer**

**Directions:**  
1. Sprinkle 1/2 cup of Eco-Fresh on the carpet.  
2. Allow to sit for 15 minutes.  
3. Vacuum the carpet.  
4. Repeat as needed.

CARPET  
TREATMENT

#1

cls 5

**ēco-fresh®**



**Odor-Free**

# Cat Litter

**Absorbs And Destroys Odors  
With 100% Natural Ingredients**



***Original  
Clumping Formula  
Low Dust!***

**Lasts Longer - Saves Money!**

**Net Weight 10 Lbs**

© 2011 EcoFresh Industries Inc.

class 31

**DRAWING PAGE**

APPLICANT: Michael Brandt Family Trust, a trust organized under the laws of Texas

ADDRESS: 3001 Wheelock Street, Suite A  
Dallas, Texas 75220

INTERNATIONAL CLASS(ES): 3, 5, 31 and 40

DATE OF FIRST USE  
FOR CLASSES 3, 5, 31 AND 40: August 10, 1988

DATE OF FIRST USE IN  
INTERSTATE FOR CLASSES  
3, 5, 31 AND 40: September 1, 1988

ēco-fresh

Attorneys: Barth X. deRosa, Esq.  
DICKINSON WRIGHT PLLC  
1875 Eye Street, N.W., Suite 1200  
Washington, D.C. 20006  
(202) 408-5955

229-1012

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Michael Brandt Family Trust

Mark: ECO-FRESH

Filing Date: December 8, 2009

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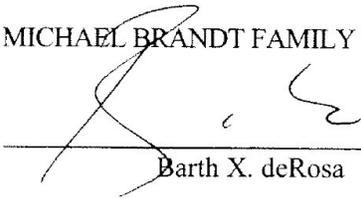
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By:   
Barth X. deRosa

Title: Attorney

Date: October 25, 2011

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100% Natural Ingredients  
Freshens Carpets For Months!**

**Biodegradable  
Low Toxicity  
Non-Flammable  
Prevents Static Shock**

**MONEY BACK GUARANTEE**

**Net Weight 1 lb  
MADE IN USA**

*Class 1*

**Eliminates All Odors**  
**100% Natural Ingredients**  
**Non-Toxic, Non-Flammable**

**Safe Effective and Non-Toxic**

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[www.ecofreshusa.com](http://www.ecofreshusa.com)  
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**SHAKE BEFORE USE**

**ALL NATURAL**  
**eco-fresh**



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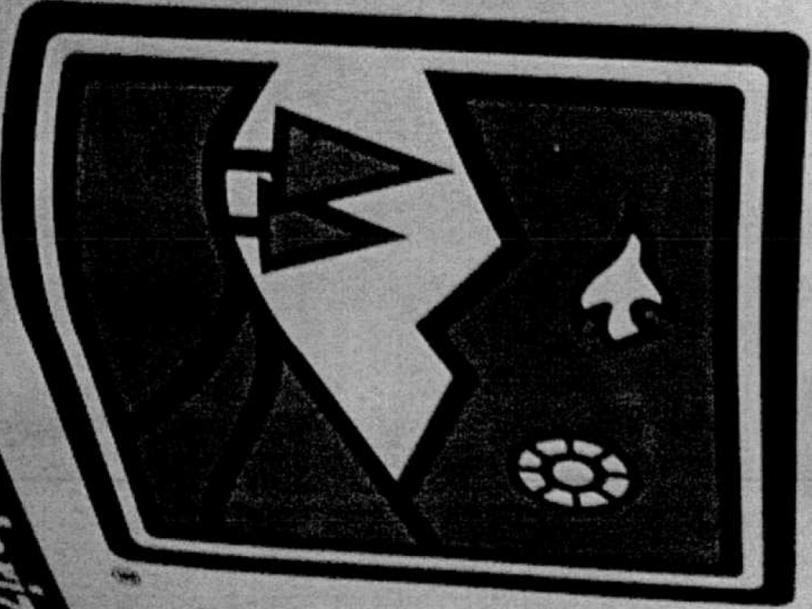
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CL 3

**eco-fresh™**



**Carpet Deodorizer**

**Directions:**  
Spray Eco-Fresh carpet deodorizer  
onto the carpet in the area of odor.  
Let dry for 24 hours.  
For best results, use a vacuum to  
remove dirt and debris from the  
carpet before spraying. For best  
results, use Eco-Fresh carpet  
deodorizer on a clean, dry carpet.  
For more information, visit  
www.ecofresh.com

CARPET  
TREATMENT

#1

cls 5

**ēco-fresh®**



**Odor-Free**

# Cat Litter

**Absorbs And Destroys Odors  
With 100% Natural Ingredients**



***Original  
Clumping Formula  
Low Dust!***

**Lasts Longer - Saves Money!**

**Net Weight 10 Lbs**

© 2011 EcoFresh Industries Inc.

class 31

229-1012

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Mark: ECO-FRESH

Filing Date: December 8, 2009

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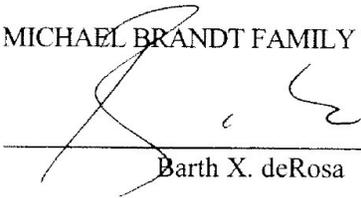
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MADE IN USA**

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CL 3



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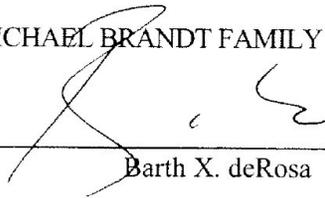
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**Odor Eliminator + Cleaner**

**Destroys Odors On Contact**  
**100% Natural Ingredients**  
**Cleans Surfaces**

**Biodegradable**  
**Non-Toxic**  
**Non-Flammable**  
**Safe On Fabrics**

**Eliminates All Odors**  
**MONEY BACK GUARANTEE**

**Net 8 FL. OZS (236 ml)**  
**MADE IN USA**

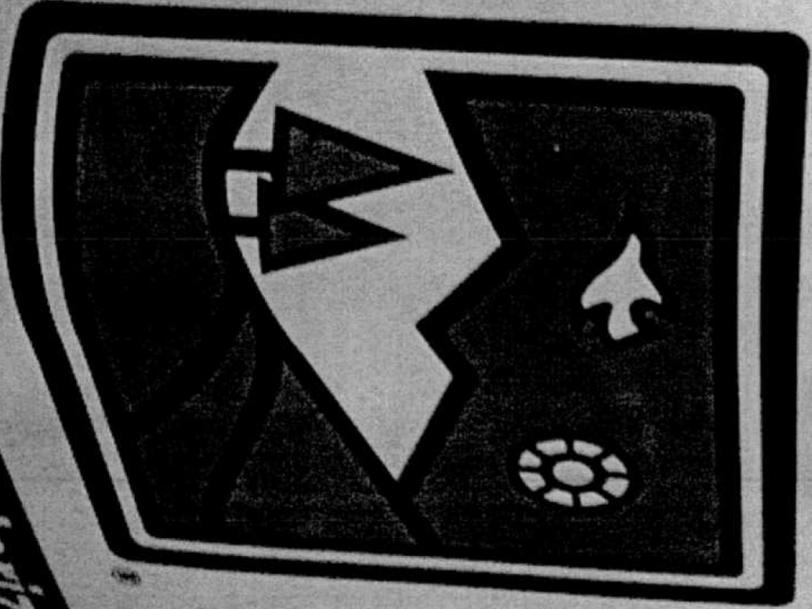
**GUARANTEE:** If for any reason you are not satisfied with this product simply return it to us for exchange or full refund.

Disposal: Empty containers can be placed in trash or taken to a recycling collection center.



CL 3

**eco-fresh™**



**Carpet Deodorizer**

**Directions:**  
Spray Eco-Fresh carpet deodorizer  
onto the carpet in the area of odor.  
Let dry for 24 hours.  
For best results, use a vacuum to  
remove dirt and debris from the  
carpet before spraying. For best  
results, use Eco-Fresh carpet  
deodorizer on a clean, dry carpet.  
For more information, visit  
www.ecofresh.com

CARPET  
TREATMENT

#1

cls 5

**ēco-fresh<sup>®</sup>**



**Odor-Free**

# Cat Litter

Absorbs And Destroys Odors  
With 100% Natural Ingredients



*Original  
Clumping Formula  
Low Dust!*

**Lasts Longer - Saves Money!**

**Net Weight 10 Lbs**

© 2011 EcoFresh Industries Inc.

class 31

229-1012

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Trademark Application of:  
Michael Brandt Family Trust

Mark: ECO-FRESH

Filing Date: December 8, 2009

Serial No. 76/700,741

\* \* \* \* \*  
DECLARATION

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any registration resulting therefrom, declares:

That he/she is \_\_\_\_\_ (**specify whether an officer, director or general partner**) of applicant and is properly authorized to execute this declaration on behalf of applicant; or

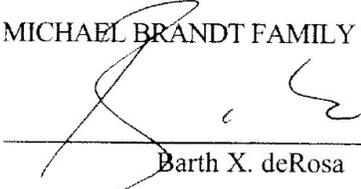
That he/she is a person with first hand knowledge of the facts and has actual or implied authority to act on behalf of applicant; or

That he/she is a person with legal authority to bind applicant; or

That he is an attorney as defined under 37 C.F.R. §10.1(a) who has an actual or implied written or verbal power of attorney from the applicant, to act on applicant's behalf;

1. that the substitute specimens submitted herewith show the mark in use in connection with the products and services in Classes 3, 5 and 31, and were in use in interstate commerce prior to the filing date of the application, and are still in use;
2. that all statements made if his/her own knowledge are true; and all statements made on information and belief are believed to be true.

MICHAEL BRANDT FAMILY TRUST

By:   
Barth X. deRosa

Title: Attorney

Date: October 25, 2011

**100% Natural. No Fragrance.**

Eco-Fresh Carpet Deodorizer absorbs and neutralizes odors. Use wherever odors are present. For kitchen, bathrooms, pet areas, offices, vehicles, medical, veterinary and home health care use. All Natural, Non-Allergenic, Low-Toxicity.

**Kills Odors Caused By:**

**Mildew:** musty, stale odors

**Pets:** houses, litter boxes, urine

**Bathrooms:** clothes hampers

**Health Care:** bed pans, urine, vomit

**Kitchen:** food, garbage, compactors

**Sour Clothing:** all clothes, closets, shoes, hampers

**Keeps Fleas Away:**

Eco-Fresh Carpet Deodorizer keeps fleas away from treated areas and makes carpet uninhabitable too!

**Directions For Use:**

Sprinkle Eco-Fresh Carpet Deodorizer liberally on carpeted areas. Treat 1 room at a time. Rake powder in carpet and allow to stand for 30 minutes. After 30 minutes, vacuum up visible powder residue. Wipe residue off furniture with damp cloth. Allow up to 24 hours for full effectiveness. Dispose of vacuum bag properly. Repeat treatment every 90 days or as needed, no more than 3 times in 12 months.

Use Eco-Fresh Carpet Spritzer for that Eco-Fresh Smell!

Questions, Comments or Concerns?

Call Toll Free 1-877-26-FRESH

EcoFresh Industries Inc.

Dallas, Texas U.S.A. [www.ecofreshusa.com](http://www.ecofreshusa.com)



**Just Sprinkle, Brush and Vacuum!**

**ēco-fresh®**

**Keeps  
Fleas  
Away!**



**Carpet Deodorizer  
and Freshener**

**Absorbs and Destroys Odors  
100% Natural Ingredients  
Freshens Carpets For Months!**

**Biodegradable  
Low Toxicity  
Non-Flammable  
Prevents Static Shock**

**MONEY BACK GUARANTEE**

**Net Weight 1 lb  
MADE IN USA**

*Class 1*

**Eliminates All Odors**  
**100% Natural Ingredients**  
**Non-Toxic, Non-Flammable**

**Safe Effective and Non-Toxic**

Eco-Fresh Odor Eliminator + Cleaner kills and neutralizes odors instantly. Use wherever odors are present, kitchen, bathrooms, pet areas, offices, vehicles, etc. USDA Authorized. Non-Toxic.

**Great For Use On:**

- Smoke: Tobacco, cooking, fire
- Mildew: musty and stale odors
- Pets: houses, litter boxes, carpets, toys
- Bathrooms: toilet, shower, clothes hampers
- Health Care: diaper pails, bed pans, excreta, urine, vomit
- Kitchen: food, garbage, compactor disposal, refrigerator, counter tops, cooking surfaces
- Clothing: all clothes, closets, shoes, hampers
- Offices: under desks, trash, file cabinets
- Vehicles: carpets, seats, dash boards, trunks
- Air Conditioning Systems: filters, ducts, intakes
- Floors: add 2 oz to mop water

**Directions For Use:**

Eco-Fresh Odor Eliminator + Cleaner may be sprayed into the air or lightly dampen surface to be treated. Avoid making puddles. For best effect leave spray on surface and do not wipe off. Avoid use on leather or sensitive fabrics and do not spray into eyes or mouth. In case of eye contact, flush well with water.

[www.ecofreshusa.com](http://www.ecofreshusa.com)  
**1-877-26-FRESH**  
**Dallas, Texas U.S.A.**

**SHAKE BEFORE USE**

**ALL NATURAL**  
**eco-fresh**



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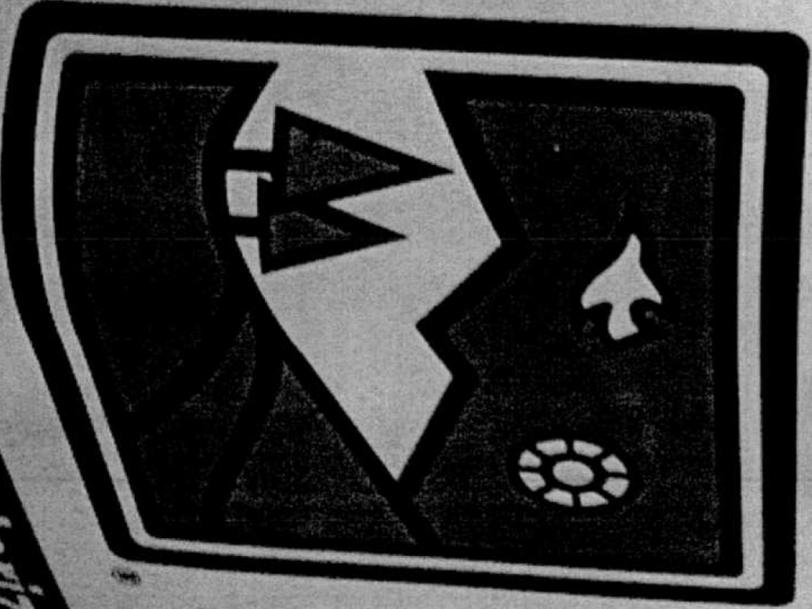
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CL 3

**eco-fresh™**



**Carpet Deodorizer**

**Directions:**  
Spray liberally on carpet.  
Allow to dry for 15-20 minutes.  
Vacuum as usual.

CARPET  
TREATMENT

#1

cls 5

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