

## Request for Reconsideration after Final Action

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

Input Field	Entered
<b>SERIAL NUMBER</b>	86368111
<b>LAW OFFICE ASSIGNED</b>	LAW OFFICE 111
<b>MARK SECTION (no change)</b>	
<b>EVIDENCE SECTION</b>	
<b>EVIDENCE FILE NAME(S)</b>	
<b>ORIGINAL PDF FILE</b>	<a href="#">evi_10817011634-20150529114036387946_.airbrush_root_touch-up_spray_-_Google_Search.pdf</a>
<b>CONVERTED PDF FILE(S) (2 pages)</b>	<a href="#">\\TICRS\EXPORT16\IMAGEOUT16\863\681\86368111\xml10\RFR0002.JPG</a>
	<a href="#">\\TICRS\EXPORT16\IMAGEOUT16\863\681\86368111\xml10\RFR0003.JPG</a>
<b>ORIGINAL PDF FILE</b>	<a href="#">evi_10817011634-20150529114036387946_.airbrush_root_touch-up_spray_-_Google_Searchp2.pdf</a>
<b>CONVERTED PDF FILE(S) (2 pages)</b>	<a href="#">\\TICRS\EXPORT16\IMAGEOUT16\863\681\86368111\xml10\RFR0004.JPG</a>
	<a href="#">\\TICRS\EXPORT16\IMAGEOUT16\863\681\86368111\xml10\RFR0005.JPG</a>
<b>DESCRIPTION OF EVIDENCE FILE</b>	Two pages of a Google Search for "airbrush root" are attached. The Google Search shows that the term "Airbrush Root Touchup Spray" is not generic in any way, as the term is associated solely with applicant's product.
<b>ADDITIONAL STATEMENTS SECTION</b>	
<b>SUPPLEMENTAL REGISTER</b>	The applicant seeks registration of the mark on the Supplemental Register (i.e., a change of the words 'Principal Register' to 'Supplemental Register').
	The applicant has amended the application to request that the mark be registered on the Supplemental Register. The Examining Attorney has indicated that the term appears to be generic and therefore incapable of functioning as a source-identifier. The applicant respectfully requests reconsideration of the Examining Attorney's conclusion of possible genericness. In particular, it is submitted that the term "Airbrush Root Touchup Spray" is simply not known or used as a term in the field of hair care except as

<b>MISCELLANEOUS STATEMENT</b>	<p>the name of the applicant's product. Indeed, the the applicant has provided Google search results which show that the term appears to be solely associated with Applicant's product. In fact, the Applicant could have provided page after page of the Google search (the undersigned searched at least 10 pages of results), and no other result other than the Applicant's product will appear - even for the broader search term "Airbrush Root". It is respectfully submitted that genericness must be shown by clear evidence (see, e.g., In re Aloe Bioscience, LLC., Serial No. 85531266 (May 12, 2015 (non-precedential). Here, the term "Airbrush" at most merely describes a feature or characteristic of the goods (hair color preparations), and is not alone or together with the arguably generic term "Root TouchUp Spray" generic. In light of the above, registration on the Supplemental Register is earnestly requested.</p>
<b>SIGNATURE SECTION</b>	
<b>RESPONSE SIGNATURE</b>	/David P. Gordon/
<b>SIGNATORY'S NAME</b>	David P. Gordon
<b>SIGNATORY'S POSITION</b>	attorney of record, NY and CT bar member
<b>SIGNATORY'S PHONE NUMBER</b>	203-323-1800
<b>DATE SIGNED</b>	05/29/2015
<b>AUTHORIZED SIGNATORY</b>	YES
<b>CONCURRENT APPEAL NOTICE FILED</b>	YES
<b>FILING INFORMATION SECTION</b>	
<b>SUBMIT DATE</b>	Fri May 29 12:23:58 EDT 2015
<b>TEAS STAMP</b>	USPTO/RFR-108.170.116.34- 20150529122358903407-8636 8111-5303834a0fbfdeea36d8 4ce3f245cb6d7ad4376146275 f13d146de4462d88ec6-N/A-N /A-20150529114036387946

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

Application serial no. **86368111** has been amended as follows:

### **EVIDENCE**

Evidence in the nature of Two pages of a Google Search for "airbrush root" are attached. The Google Search shows that the term "Airbrush Root Touchup Spray" is not generic in any way, as the term is associated solely with applicant's product. has been attached.

#### **Original PDF file:**

[evi\\_10817011634-20150529114036387946 . airbrush root touch-up spray - Google Search.pdf](#)

**Converted PDF file(s)** ( 2 pages)

[Evidence-1](#)

[Evidence-2](#)

#### **Original PDF file:**

[evi\\_10817011634-20150529114036387946 . airbrush root touch-up spray - Google Searchp2.pdf](#)

**Converted PDF file(s)** ( 2 pages)

[Evidence-1](#)

[Evidence-2](#)

### **ADDITIONAL STATEMENTS**

#### **Supplemental Register**

The applicant seeks registration of the mark on the Supplemental Register (i.e., a change of the words 'Principal Register' to 'Supplemental Register').

#### **Miscellaneous Statement**

The applicant has amended the application to request that the mark be registered on the Supplemental Register. The Examining Attorney has indicated that the term appears to be generic and therefore incapable of functioning as a source-identifier. The applicant respectfully requests reconsideration of the Examining Attorney's conclusion of possible genericness. In particular, it is submitted that the term "Airbrush Root Touchup Spray" is simply not known or used as a term in the field of hair care except as the name of the applicant's product. Indeed, the the applicant has provided Google search results which show that the term appears to be solely associated with Applicant's product. In fact, the Applicant could have provided page after page of the Google search (the undersigned searched at least 10 pages of results), and no other result other than the Applicant's product will appear - even for the broader search term "Airbrush Root". It is respectfully submitted that genericness must be shown by clear evidence (see, e.g., In re Aloe Bioscience, LLC., Serial No. 85531266 (May 12, 2015 (non-precedential). Here, the term "Airbrush" at most merely describes a feature or characteristic of the goods (hair color preparations), and is not alone or together with the arguably generic term "Root TouchUp Spray" generic. In light of the above, registration on the Supplemental Register is earnestly requested.

### **SIGNATURE(S)**

#### **Request for Reconsideration Signature**

Signature: /David P. Gordon/ Date: 05/29/2015

Signatory's Name: David P. Gordon

Signatory's Position: attorney of record, NY and CT bar member

Signatory's Phone Number: 203-323-1800

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 filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 86368111

Internet Transmission Date: Fri May 29 12:23:58 EDT 2015

TEAS Stamp: USPTO/RFR-108.170.116.34-201505291223589

03407-86368111-5303834a0fbfdeea36d84ce3f

245cb6d7ad4376146275f13d146de4462d88ec6-

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[www.madison-reed.com/Root-Touch-Up](http://www.madison-reed.com/Root-Touch-Up)  
 Complete & Discreet Coverage in a Water & Pillow Resistant Formula

**Airbrush Root Touch-Up Spray**  
[www.bigelowchemists.com/](http://www.bigelowchemists.com/)  
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 Experience Ready-to-Use & Reusable Multiple Touch Up Haircolor System!

**Color Wow Root Cover Up - colorwowhair.com**  
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 Winner of 29 Beauty Industry Awards Instantly Cover Grey or Dark Roots!

Showing results for airbrush root touch-up spray  
Search instead for "airbrush root"

**Airbrush Root Touch-Up Sprays - Oribe**  
[www.oribe.com/index.php/products/view/4750](http://www.oribe.com/index.php/products/view/4750)  
 Instantly cover greys and roots or revive highlights between appointments. Microfine pigments blend seamlessly with your natural shade when—and ...

**Oribe Airbrush Root Touch-Up Spray | Birchbox**  
[www.birchbox.com/shop/oribe-airbrush-root-touch-up-spray](http://www.birchbox.com/shop/oribe-airbrush-root-touch-up-spray)  
 ★★★★★ Rating: 5 - 1 review - \$29.00  
 Apr 18, 2015 - This ultrafine mist instantly conceals mismatched roots and gray hair. Shop Oribe at Birchbox!

**Oribe Airbrush Root Touch-Up Spray, Red, 1 oz.**  
[www.neimanmarcus.com/...Airbrush-Root-Touch-Up-Sp...](http://www.neimanmarcus.com/...Airbrush-Root-Touch-Up-Sp...)  
 Free shipping, even faster for InCircle on Oribe Airbrush Root Touch-Up Spray, Red, 1 oz. at Neiman Marcus. Shop the latest selection of top designer fashion at ...

**Oribe Airbrush Root Touch Up Spray Blonde 0.7 oz**  
[www.amazon.com/...Airbrush-Touch-Spray.../B00UY...](http://www.amazon.com/...Airbrush-Touch-Spray.../B00UY...)  
 For those with a colorful secret. Quick-drying powder formula applies easily and absorbs dirt and oil to refresh hair; Instantly covers greys and roots. Pigments ...

**Hair Root Touch Up Spray**  
[www.amazon.com/beauty](http://www.amazon.com/beauty)  
 4.5 ★★★★★ rating for amazon.com  
 Find Thousands of Beauty Products  
 Discover Amazon's Beauty Store

**Cheap Spray Root Touch Up**  
[spray-root-touch-up.best-deal.com/](http://spray-root-touch-up.best-deal.com/)  
 Get top Spray Root Touch Up & save.  
 BEST-DEAL.com - the search expert!

**Airbrush Depot**  
[www.tcpglobal.com/AirbrushDepot](http://www.tcpglobal.com/AirbrushDepot)  
 World's Top Supplier of Airbrushes, Compressors & Accessories. Buy Now!

**Airbrush Root Touch Up Spray**  
[us.spacenk.com/](http://us.spacenk.com/)  
 4.4 ★★★★★ rating for us.spacenk.com  
 Discover The Ultimate Beauty Sale!  
 Hurry, Limited Stock Available.

**Hair Root Touch Up on eBay**  
[www.ebay.com/hair-care](http://www.ebay.com/hair-care)  
 Big savings on Hair Root Touch Up.  
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Images for airbrush root touch-up spray Report images



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**NEW Oribe Airbrush Root Touch-up Spray Demo - YouTube**



[www.youtube.com/watch?v=gwTJqLX3Oao](http://www.youtube.com/watch?v=gwTJqLX3Oao)  
Mar 4, 2015 - Uploaded by Festoon Salon  
NEW Oribe Airbrush Root Touch-up Spray now available! Watch as Festoon Salon Owner and Stylist, Melissa ...

**The Best Products for Hiding Roots | Byrdie.com**

[www.byrdie.com/best-products-for-root-touch-ups](http://www.byrdie.com/best-products-for-root-touch-ups)  
Mar 4, 2015 - Oribe Airbrush Root Touch-Up Spray (\$29). This purse-size spray doubles as root cover-up and dry shampoo, thanks to oil-absorbing rice ...

**Oribe Launches Airbrush Root Touch-Up Spray | Modern ...**

[www.modernsalon.com/.../oribe-launches-airbrush-root-touch-spray](http://www.modernsalon.com/.../oribe-launches-airbrush-root-touch-spray)  
Jan 28, 2015 - Retouched Help keep your color clients looking their best even when they stretch appointments with Oribe's Airbrush Root Touch-Up Spray.

**How to Hide Your Roots Between Appointments**

[beautycoach.com/how-to-hide-your-roots-between-appointments/](http://beautycoach.com/how-to-hide-your-roots-between-appointments/)  
Mar 16, 2015 - More recently, one of my all-time favorite hair lines launched their own version of a root spray: the Oribe Airbrush Root Touch Up Spray (\$29).

**Oribe Airbrush Root Touch-Up Spray Is One Hella Awesome ...**

[www.makeupandbeautyblog.com/.../oribe-airbrush-root-touch-up-spray-...](http://www.makeupandbeautyblog.com/.../oribe-airbrush-root-touch-up-spray-...)  
May 5, 2015 - Two of the new Oribe Airbrush Root Touch-Up Sprays, \$29 each MIND BLOWN. That's all I have to say about Oribe's new Airbrush Root ...

Searches related to airbrush root touch-up spray

- my secret correctives root touch-up spray
- root touch up spray ulta
- my secret root touch up spray
- root touch up spray cvs
- root touch up spray boots
- hair root touch up spray
- temporary root touch up spray
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**Root Touch Up Compact - madison-reed.com**

Ad [www.madison-reed.com/Root-Touch-Up](http://www.madison-reed.com/Root-Touch-Up)  
Complete & Discreet Coverage in a Water & Pillow Resistant Formula

**Oribe - Airbrush Root Touch-Up Spray - Red**

Ad [www.bigelowchemists.com/](http://www.bigelowchemists.com/) (212) 533-2700  
We Are The Oldest Apothecary in USA Free Shipping Over \$49. Shop Now!  
Trustworthy since 1838 · C.O.Bigelow Official · 170 items under \$25  
Almond Collection - Lavender & Peppermint - Free Shipping \$49+ Orders

**Airbrush Root Touch Up Spray | Oribe Restricted\_items**

[us.spacenk.com/airbrush-root-touch-up-spray/MUS300024948.html](http://us.spacenk.com/airbrush-root-touch-up-spray/MUS300024948.html)  
May 18, 2015 - Instantly covers roots and grays or revives highlights. Microfine pigments fragranced with our signature scent, seamlessly deliver airbrush.

**Oribe Hair Care - COMING SOON: Airbrush Root Touch-Up...**

<https://www.facebook.com/oribehaircare/posts/855825614481025:0>  
COMING SOON: Airbrush Root Touch-Up Sprays instantly cover greys and roots or revive highlights. Microfine pigments, fragranced with our signature scent, ...

**The new Airbrush Root Touch Up Spray... - Bangs Hair Salon**

[https://www.facebook.com/permalink.php?story\\_fbid...id...](https://www.facebook.com/permalink.php?story_fbid...id...)  
The new Airbrush Root Touch Up Spray from Oribe Hair Care!! Yeah, they are that good.

**Oribe Airbrush Root Touch-Up Spray - CUT**

[www.cuthairdressing.com/.../for-those-with-something-to-hide-oribe-air...](http://www.cuthairdressing.com/.../for-those-with-something-to-hide-oribe-air...)  
Mar 5, 2015 - If you color or highlight your hair we have a new product that can't be ignored: Oribe Airbrush Root Touch-Up Spray. This exciting product will ...

**Rank & Style | Oribe Airbrush Root Touch-Up Spray**

[www.rankandstyle.com](http://www.rankandstyle.com) › Gifts / Themes › Themed Lists  
Rank & Style features Top Ten lists for women's fashion and beauty products. Visit our themed lists now.

**Oribe - Airbrush Root Touch-Up Spray - Blonde**

[www.ronrobinson.com/...Oribe-Airbrush-Root-Touch-Up.../127255.htm](http://www.ronrobinson.com/...Oribe-Airbrush-Root-Touch-Up.../127255.htm)  
Oribe - Airbrush Root Touch-Up Spray - Blonde is an airbrush root touchup spray to help revive roots or highlights between appointments.

**Oribe | Airbrush Root Touch-Up Spray - Light Brown, 30ml ...**  
[www.net-a-porter.com/cr/en/product/591270](http://www.net-a-porter.com/cr/en/product/591270) Net-a-Porter  
 Perfect between coloring appointments and housed in a slim bottle, Oribe's spray not only camouflages regrowth and gray strands, but is infused with Rice ...

**Oribe Airbrush Root Touch-Up Spray - Glamvie**  
[www.glamvie.com/oribe-airbrush-root-touch-up-spray/](http://www.glamvie.com/oribe-airbrush-root-touch-up-spray/)  
 Mar 18, 2015 - Looking for something to refresh your highlights and cover grays between salon appointments, well the Oribe Airbrush Root Touch-Up Spray is ...

**Festoon Salon on Twitter: "NEW Oribe Airbrush Root Touch ...**  
<https://twitter.com/festoonsalon/status/571465712205737985>  
 Feb 27, 2015 - NEW Oribe Airbrush Root Touch-up Spray now available! Watch as Melissa demonstrates how it instantly covers greys. <http://fb.me/> ...

**April: Oribe Airbrush Root Touch-Up Spray - StyleBistro**  
[www.stylebistro.com/.../April+Oribe+Airbrush+Root+Touch+Up+Spray](http://www.stylebistro.com/.../April+Oribe+Airbrush+Root+Touch+Up+Spray)  
 April: Oribe Airbrush Root Touch-Up Spray - For those times you can't make it to the salon in time for a quick touchup, Oribe has you covered with its new ...

**Root Touch Up - Experience Ready-to-Use & Reusable**  
 Ad [www.lorealparisusa.com/Mousse-Absolue](http://www.lorealparisusa.com/Mousse-Absolue)  
 Multiple Touch Up Haircolor System!

**Color Wow Root Cover Up**  
 Ad [www.colorwowhair.com/](http://www.colorwowhair.com/)  
 Winner of 29 Beauty Industry Awards Instantly Cover Grey or Dark Roots!

**Guiry's - Airbrush**  
 Ad [www.guirys.com/Airbrush](http://www.guirys.com/Airbrush)  
 Airbrush Supplies at Guiry's. \$5 Flat Shipping + Free Over \$50.  
 Where color comes from - 7 convenient locations - Locally owned since 1899  
 Paint Supplies - Contact Us - Current Specials - Art Supplies

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