

Voluntary Amendment

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	86132188
LAW OFFICE ASSIGNED	LAW OFFICE 107
MARK SECTION (no change)	
GOODS AND/OR SERVICES SECTION (current)	
INTERNATIONAL CLASS	003
DESCRIPTION	Cosmetic tanning preparations; Cosmetics
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 09/30/2013
FIRST USE IN COMMERCE DATE	At least as early as 09/30/2013
GOODS AND/OR SERVICES SECTION (proposed)	
INTERNATIONAL CLASS	003
DESCRIPTION	Cosmetic tanning preparations; Cosmetics
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 09/30/2013
FIRST USE IN COMMERCE DATE	At least as early as 09/30/2013
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	SPU0-10418711254-114603267_Ins-TAN-taneous - Olive Undertone TM specimentpdf.pdf
CONVERTED PDF FILE(S) (1 page)	\\TICRS\EXPORT16\IMAGEOUT16\861\321\86132188\xml7\PRA0002.JPG
SPECIMEN DESCRIPTION	Webpage from commercially interactive website showing product packages displaying the mark
SIGNATURE SECTION	
ORIGINAL PDF FILE	HS_10418711254-114603267_DECLARATION_OF_DISTINCTIVENESSv2-VicePres.pdf
CONVERTED PDF FILE(S) (2 pages)	\\TICRS\EXPORT16\IMAGEOUT16\861\321\86132188\xml7\PRA0003.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\861\321\86132188\xml7\PRA0004.JPG
SIGNATORY'S NAME	/Mark Enochson/
SIGNATORY'S POSITION	Vice-President
SIGNATORY'S PHONE NUMBER	972-403-9840
RESPONSE SIGNATURE	/Theodore F. Shiells/
SIGNATORY'S NAME	Theodore F. Shiells
SIGNATORY'S POSITION	Attorney for applicant, Texas bar member
SIGNATORY'S PHONE NUMBER	214-979-7312
DATE SIGNED	04/09/2015
AUTHORIZED SIGNATORY	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Thu Apr 09 12:04:27 EDT 2015
TEAS STAMP	USPTO/PRA-104.187.112.54-20150409120427930312-86132188-530a1248c87cb89acbd887219b286e1329cd7f6b9354b3f1f22179467ea43b-N/A-N/A-20150409114603267949

Voluntary Amendment

To the Commissioner for Trademarks:

Application serial no. **86132188** has been amended as follows:

CLASSIFICATION AND LISTING OF GOODS/SERVICES

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

Current: Class 003 for Cosmetic tanning preparations; Cosmetics

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 09/30/2013 and first used in commerce at least as early as 09/30/2013 , and is now in use in such commerce.

Proposed: Class 003 for Cosmetic tanning preparations; Cosmetics

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 09/30/2013 and first used in commerce at least as early as 09/30/2013 , and is now in use in such commerce.

Applicant hereby submits one(or more) specimen(s) for Class 003 . The specimen(s) submitted consists of Webpage from commercially interactive website showing product packages displaying the mark .

" 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:

[SPU0-10418711254-114603267 . Ins-TAN-taneous - Olive Undertone TM_specimentpdf.pdf](#)

Converted PDF file(s) (1 page)

[Specimen File1](#)

SIGNATURE(S)

Declaration Signature

Original PDF file:

[HS_10418711254-114603267 . DECLARATION OF DISTINCTIVENESSv2-VicePres.pdf](#)

Converted PDF file(s) (2 pages)

[Signature File1](#)

[Signature File2](#)

Signatory's Name: /Mark Enochson/

Signatory's Position: Vice-President

Signatory's Phone Number: 972-403-9840

Voluntary Amendment Signature

Signature: /Theodore F. Shiells/ Date: 04/09/2015
Signatory's Name: Theodore F. Shiells
Signatory's Position: Attorney for applicant, Texas bar member

Signatory's Phone Number: 214-979-7312

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.

Serial Number: 86132188
Internet Transmission Date: Thu Apr 09 12:04:27 EDT 2015
TEAS Stamp: USPTO/PRA-104.187.112.54-201504091204279
30312-86132188-530a1248c87cb89acbd887219
b286e1329cd7f6b9354b3f1f22179467ea43b-N/
A-N/A-20150409114603267949



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106.00

SPECIAL PRICE: \$85.00

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XEN-TAN.COM IS POWERED BY BIG BUDDY MEDIA AND MAGENTO.

Ser. No.: 86/132,188
Filed: December 1, 2014
For: OLIVE UNDERTONE
Date: April 8, 2015

DECLARATION OF MARK ENOCHSON

Mark Enochson, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, hereby declares:

1. I am Vice-President of Applicant Xen Products and Marketing, Inc., and am authorized to execute this Declaration on behalf of the Applicant. I have personal knowledge of the facts stated in this Declaration except where indicated as being made upon information and belief, in which case the stated facts are believed to be true.

2. On information and belief, Applicant's mark OLIVE UNDERTONE sought to be registered has become distinctive, as used on or in connection with the Applicant's goods in commerce, and that there has been substantially exclusive and continuous use of this mark by the Applicant in commerce for at least the five years before the date of application.

3. Exhibits E-1 and E-2 are each the same webpage from the Archive.org, "Wayback" machine, dated April 20, 2008, which shows Applicant's use of the OLIVE UNDERTONE mark in commerce on Applicant's commercially interactive website at least as early as that date. This webpage also shows a "shopping cart" link, demonstrating that products sold under the mark could be purchased on the website. Exhibit E-1 is a print showing the date code 20080420... from the archive.com website at the bottom. Exhibit E-2 is a screen print of

the same webpage, showing that, as displayed on the webpage, "**olive undertone**" is actually printed in bold letters.

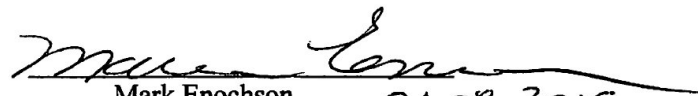
5. Exhibit F is a specimen showing Applicant's current use of the OLIVE UNDERTONE™ mark on one of its products, in commerce on Applicant's commercially interactive website. This webpage also shows a "store" link, demonstrating that products sold under the mark can be purchased on the website. Applicant's use of the mark has been substantially continuous since at least as early as April 20, 2008, to the present.

6. Exhibit A is a print of a search conducted on "google.com" on September 16, 2014. Of the nine entries, five use "olive" in the sense of a skin type one is born with (which descriptive use is not disputed). All the remaining entries, which refer to cosmetic tanning products, use the term "OLIVE UNDERTONE" only in connection with Applicant's products.

7. I have a good knowledge of the relevant market for cosmetic tanning preparations. I am unaware of any other use of OLIVE UNDERTONE by another entity in the United States on or in connection with the sale of cosmetic tanning preparations since at least as early as April 20, 2008.

The undersigned further states that all statements made herein based his own knowledge are true and that all Statements made on information and belief are believed to be true.

Date: April 8, 2015


Mark Enochson 04.08.2015

Generated on: This page was generated by TSDR on 2015-04-16 08:38:01 EDT

Mark: OLIVE UNDERTONE

OLIVE UNDERTONE

US Serial Number: 86132188

Application Filing Date: Dec. 01, 2013

Filed as TEAS Plus: Yes

Currently TEAS Plus: Yes

Register: Principal

Mark Type: Trademark

Status: An appeal of a final refusal to register the mark is pending before the Trademark Trial and Appeal Board. For further information, see TTABVue on the Trademark Trial and Appeal Board web page.

Status Date: Apr. 09, 2015

Mark Information

Mark Literal Elements: OLIVE UNDERTONE

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Related Properties Information

International Registration Number: 1215053

International Application(s) /Registration(s) Based on this Property: A0043001/1215053

Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *.* identify additional (new) wording in the goods/services.

For: Cosmetic tanning preparations; Cosmetics

International Class(es): 003 - Primary Class

U.S Class(es): 001, 004, 006, 050, 051, 052

Class Status: ACTIVE

Basis: 1(a)

First Use: Sep. 30, 2013

Use in Commerce: Sep. 30, 2013

Basis Information (Case Level)

Filed Use: Yes

Currently Use: Yes

Amended Use: No

Filed ITU: No

Currently ITU: No

Amended ITU: No

Filed 44D: No

Currently 44D: No

Amended 44D: No

Filed 44E: No

Currently 44E: No

Amended 44E: No

Filed 66A: No

Currently 66A: No

Filed No Basis: No

Currently No Basis: No

Current Owner(s) Information

Owner Name: Xen Products and Marketing, Inc.

Owner Address: 5108 Sky Lake Dr.
Plano, TEXAS 75093
UNITED STATES

Legal Entity Type: CORPORATION

State or Country Where Organized: TEXAS

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Theodore F. Shiells **Docket Number:** XEN 8243000
Attorney Primary Email Address: fshiells@shiellslaw.com **Attorney Email Authorized:** Yes

Correspondent

Correspondent Name/Address: THEODORE F SHIELLS
SHIELLS LAW FIRM PC
1201 MAIN STREET
SUITE 2470
DALLAS, TEXAS 75202-3902
UNITED STATES
Phone: 214-979-7312 **Fax:** 214-979-7301
Correspondent e-mail: fshiells@shiellslaw.com admin@shiellslaw.com docket@blackhillsip.com **Correspondent e-mail Authorized:** Yes

Domestic Representative - Not Found**Prosecution History**

Date	Description	Proceeding Number
Apr. 13, 2015	ASSIGNED TO LIE	66213
Apr. 08, 2015	TEAS REQUEST FOR RECONSIDERATION RECEIVED	
Apr. 09, 2015	TEAS VOLUNTARY AMENDMENT RECEIVED	
Apr. 09, 2015	EX PARTE APPEAL-INSTITUTED	132188
Apr. 09, 2015	JURISDICTION RESTORED TO EXAMINING ATTORNEY	132188
Apr. 09, 2015	EXPARTE APPEAL RECEIVED AT TTAB	
Oct. 08, 2014	NOTIFICATION OF FINAL REFUSAL EMAILED	
Oct. 08, 2014	FINAL REFUSAL E-MAILED	
Oct. 08, 2014	FINAL REFUSAL WRITTEN	76079
Sep. 18, 2014	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Sep. 17, 2014	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Sep. 17, 2014	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Mar. 17, 2014	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Mar. 17, 2014	NON-FINAL ACTION E-MAILED	6325
Mar. 17, 2014	NON-FINAL ACTION WRITTEN	76079
Mar. 13, 2014	ASSIGNED TO EXAMINER	76079
Dec. 12, 2013	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Dec. 04, 2013	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information**TM Staff Information**

TM Attorney: ENGEL, MICHAEL L **Law Office Assigned:** LAW OFFICE 107

File Location

Current Location: TMEG LAW OFFICE 107 - EXAMINING ATTORNEY ASSIGNED **Date in Location:** Oct. 08, 2014

Proceedings**Summary**

Number of Proceedings: 1

Type of Proceeding: Exparte Appeal

Proceeding Number: [86132188](#) **Filing Date:** Apr 08, 2015
Status: Pending **Status Date:** Apr 08, 2015

Interlocutory Attorney:

Plaintiff(s)

Name: Xen Products and Marketing, Inc.

Correspondent Address: THEODORE F SHIELLS
SHIELLS LAW FIRM PC
1201 MAIN STREET, SUITE 2470

DALLAS TX , 75202-3902
UNITED STATES

Correspondent e-mail: tfshiells@shiellsllaw.com

Associated marks			
Mark	Application Status	Serial Number	Registration Number

OLIVE UNDERTONE	Ex Parte Appeal Pending	86132188	
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Prosecution History			
Entry Number	History Text	Date	Due Date

1	APPEAL TO BOARD	Apr 08, 2015	
2	APPEAL ACKNOWLEDGED; CASE REMANDED	Apr 09, 2015	
3	INSTITUTED	Apr 09, 2015	