

Request for Reconsideration after Final Action

The table below presents the data as entered.

| Input Field | Entered |
|---|---|
| SERIAL NUMBER | 88079973 |
| LAW OFFICE ASSIGNED | LAW OFFICE 120 |
| MARK SECTION | |
| MARK | https://tmng-al.uspto.gov/resting2/api/img/88079973/large |
| LITERAL ELEMENT | TANK TO TARGET |
| STANDARD CHARACTERS | YES |
| USPTO-GENERATED IMAGE | YES |
| MARK STATEMENT | The mark consists of standard characters, without claim to any particular font style, size or color. |
| OWNER SECTION (current) | |
| NAME | Wilbur-Ellis Company LLC |
| DBA/AKA/TA/Formerly | AKA Wilbur-Ellis |
| STREET | 345 California Street, 27th Floor |
| CITY | San Francisco |
| STATE | California |
| ZIP/POSTAL CODE | 94104 |
| COUNTRY/REGION/JURISDICTION/U.S. TERRITORY | United States |
| PHONE | 415-772-4000 |
| OWNER SECTION (proposed) | |
| NAME | Wilbur-Ellis Company LLC |
| DBA/AKA/TA/Formerly | AKA Wilbur-Ellis |
| STREET | 345 California Street, 27th Floor |
| CITY | San Francisco |
| STATE | California |
| ZIP/POSTAL CODE | 94104 |
| COUNTRY/REGION/JURISDICTION/U.S. TERRITORY | United States |
| PHONE | 415-772-4000 |
| EMAIL | trademarks@wilburellis.com |
| ADDITIONAL STATEMENTS SECTION | |
| MISCELLANEOUS STATEMENT | See attached for argument and evidence. |
| MISCELLANEOUS FILE NAME(S) | |

| | |
|--|---|
| ORIGINAL PDF FILE | mis-98210255182-20200226194953518439 . TANK TO TARGET RFR.pdf |
| CONVERTED PDF FILE(S) (4 pages) | \\TICRS\EXPORT18\IMAGEOUT18\880\799\88079973\xml1\RFR0002.JPG |
| | \\TICRS\EXPORT18\IMAGEOUT18\880\799\88079973\xml1\RFR0003.JPG |
| | \\TICRS\EXPORT18\IMAGEOUT18\880\799\88079973\xml1\RFR0004.JPG |
| | \\TICRS\EXPORT18\IMAGEOUT18\880\799\88079973\xml1\RFR0005.JPG |
| ORIGINAL PDF FILE | mis-98210255182-20200226194953518439 . RFR Exhibit A.pdf |
| CONVERTED PDF FILE(S) (1 page) | \\TICRS\EXPORT18\IMAGEOUT18\880\799\88079973\xml1\RFR0006.JPG |
| CORRESPONDENCE INFORMATION (current) | |
| NAME | RANDY TROXEL |
| PRIMARY EMAIL ADDRESS FOR CORRESPONDENCE | rtroxel@tmassoc.com |
| SECONDARY EMAIL ADDRESS(ES) (COURTESY COPIES) | NOT PROVIDED |
| DOCKET/REFERENCE NUMBER | 834-900-1225 |
| CORRESPONDENCE INFORMATION (proposed) | |
| NAME | Randy Troxel |
| PRIMARY EMAIL ADDRESS FOR CORRESPONDENCE | rtroxel@tmassoc.com |
| SECONDARY EMAIL ADDRESS(ES) (COURTESY COPIES) | NOT PROVIDED |
| DOCKET/REFERENCE NUMBER | 834-900-1225 |
| SIGNATURE SECTION | |
| RESPONSE SIGNATURE | //randytroxel// |
| SIGNATORY'S NAME | Randy Troxel |
| SIGNATORY'S POSITION | Attorney of record, California bar member |
| SIGNATORY'S PHONE NUMBER | 650-692-1700 |
| DATE SIGNED | 02/26/2020 |
| AUTHORIZED SIGNATORY | YES |
| CONCURRENT APPEAL NOTICE FILED | YES |
| FILING INFORMATION SECTION | |
| SUBMIT DATE | Wed Feb 26 19:55:52 ET 2020 |
| TEAS STAMP | USPTO/RFR-XX.XXX.XXX.XXX- 20200226195552659931-8807 9973-710f3a9332ec8d32134f 6abc32458ff8be13cab2a630b 5b7c01a2d177c44fc8c3-N/A- N/A-20200226194953518439 |

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PTO Form 1960 (Rev 10/2011)

OMB No. 0651-0050 (Exp 09/20/2020)

Request for Reconsideration after Final Action

To the Commissioner for Trademarks:

Application serial no. **88079973** TANK TO TARGET(Standard Characters, see <https://tmng-al.uspto.gov/resting2/api/img/88079973/large>) has been amended as follows:

Owner AND/OR ENTITY INFORMATION

Applicant proposes to amend the following:

Current: Wilbur-Ellis Company LLC, AKA Wilbur-Ellis, a limited liability company legally organized under the laws of California, having an address of

345 California Street, 27th Floor
San Francisco, California 94104
United States
415-772-4000

Proposed: Wilbur-Ellis Company LLC, AKA Wilbur-Ellis, a limited liability company legally organized under the laws of California, having an address of

345 California Street, 27th Floor
San Francisco, California 94104
United States
Email Address: trademarks@wilburellis.com
415-772-4000

Correspondence Information (current):

RANDY TROXEL
PRIMARY EMAIL FOR CORRESPONDENCE: rtroxel@tmassoc.com
SECONDARY EMAIL ADDRESS(ES) (COURTESY COPIES): NOT PROVIDED

The docket/reference number is 834-900-1225.

Correspondence Information (proposed):

Randy Troxel
PRIMARY EMAIL FOR CORRESPONDENCE: rtroxel@tmassoc.com
SECONDARY EMAIL ADDRESS(ES) (COURTESY COPIES): NOT PROVIDED

The docket/reference number is 834-900-1225.

Requirement for Email and Electronic Filing: I understand that a valid email address must be maintained by the owner/holder and the owner's/holder's attorney, if appointed, and that all official trademark correspondence must be submitted via the Trademark Electronic Application System (TEAS).

ADDITIONAL STATEMENTS

Miscellaneous Statement

See attached for argument and evidence.

Original PDF file:

[mis-98210255182-20200226194953518439 . TANK TO TARGET RFR.pdf](#)

Converted PDF file(s) (4 pages)

[Miscellaneous File1](#)

[Miscellaneous File2](#)

[Miscellaneous File3](#)

[Miscellaneous File4](#)

Original PDF file:

[mis-98210255182-20200226194953518439 . RFR Exhibit A.pdf](#)

Converted PDF file(s) (1 page)

[Miscellaneous File1](#)

SIGNATURE(S)

Request for Reconsideration Signature

Signature: //randytroxel// Date: 02/26/2020

Signatory's Name: Randy Troxel

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

Signatory's Phone Number: 650-692-1700

The signatory has confirmed that he/she is a U.S.-licensed attorney who is an active member in good standing of the bar of the highest court of a U.S. state (including the District of Columbia and any U.S. Commonwealth or territory); and he/she is currently the owner's/holder's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S.-licensed attorney not currently associated with his/her company/firm previously represented the owner/holder in this matter: the owner/holder has revoked their power of attorney by a signed revocation or substitute power of attorney with the USPTO; the USPTO has granted that attorney's withdrawal request; the owner/holder has filed a power of attorney appointing him/her in this matter; or the owner's/holder's appointed U.S.-licensed attorney 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.

Mailing Address: RANDY TROXEL
TRADEMARK-ASSOCIATES

611 GATEWAY BLVD FL 2
South San Francisco, California 94080

Mailing Address: Randy Troxel
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Serial Number: 88079973

Internet Transmission Date: Wed Feb 26 19:55:52 ET 2020

TEAS Stamp: USPTO/RFR-XX.XXX.XXX.XXX-202002261955526

59931-88079973-710f3a9332ec8d32134f6abc3

2458ff8be13cab2a630b5b7c01a2d177c44fc8c3

-N/A-N/A-20200226194953518439

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the matter of:

Application Ser. No: **88079973**
Filing date: Aug. 15, 2018
Mark: TANK TO TARGET
Law Office: 120
Examiner: Alexandra Liebl

Request For Reconsideration After Final Refusal

On Sept. 14, 2019, Applicant filed with its Response to Office Action to the specimen refusal dated Aug. 28, 2019, and submitted a substitute specimen in the form of a video on recorded disc.

On Oct. 18, 2019, a final refusal issued, because 1) “...*the advertisement submitted by the applicant discusses the use of various products in order to “target” the needs of the consumer,*” and 2) the examiner finds the specimen “*unclear ... whether the applied-for mark “TANK TO TARGET” refers to a specific good or formula used in the agricultural industry or an actual service rendered by the applicant.*” Applicant respectfully disagrees.

1. Applicant submits that the video specimen does far more than merely discuss “...*the use of various products in order to “target” the needs of the consumer.*” The video begins with the following statements:
 - a. “Decisions in agriculture are made every day and building an effective tank mix is complex.” [prompting the customer to seek applicant’s services for assistance with that process];
 - b. “TANK TO TARGET considers your intended target, specific delivery method, and in-tank chemistry” [advice which can stand on its own merit]. As this statement is spoken, the phrase TANK TO TARGET appears visually above what

is clearly farmland (rows of crops), further strengthening the association between the mark and the services.

- i. “Considers” = “to think carefully about, especially in order to make a decision; contemplate; reflect on” (dictionary.com);
- ii. “Your” = the prospective customer (citation omitted);
- iii. “Intended target” = the prospective customers application/crop (citation omitted).

Thus, while the video specimen might discuss “the use of various products in order to “target” the needs of the consumer”, more accurately, it discusses the fact that applicant’s representatives, as part of the process of providing services, think carefully about the prospective customer’s needs (i.e., intended application/crop, specific delivery method, and in-tank chemistry), thereby creating an association between the phrase TANK TO TARGET and the services rendered.

2. Response to the examiner’s statement that the specimen is “unclear ... whether the applied-for mark “TANK TO TARGET” refers to a specific good or formula used in the agricultural industry or an actual service rendered by the applicant.” As cited correctly by the examiner: *“To show a direct association, specimens showing the mark used in rendering the identified services need not explicitly refer to those services, but “there must be something which creates in the mind of the purchaser an association between the mark and the service activity.” In re WAY Media, Inc., 118 USPQ2d 1697, 1698 (TTAB 2016) (quoting In re Johnson Controls, Inc., 33 USPQ2d 1318, 1320 (TTAB 1994)).”*
 - a. In addition to paragraphs 1.a. and b., supra, the body of the video contains significant advice in the agricultural and horticultural contexts [stands on its own as advisory services];
 - b. It might be arguable whether specific services are referred to explicitly, but the video does conclude with the statement: “[c]onsult your Wilbur-Ellis representative to find out what works best for you.” An obvious reference to

services. The content of the video in its entirety clearly points to the rendering of agricultural and horticultural advice;

- c. Finally, the youtube.com web page where the video is available clearly includes the mark TANK TO TARGET (see Exhibit A, the initial specimen submitted).

See also,

- i. <https://www.youtube.com/watch?v=nADFQxRzDEM&t=37s>
- ii. https://www.youtube.com/watch?v=CIo3XsZR_yc&t=68s
- iii. https://www.youtube.com/watch?v=VQA_TlGsbic&t=30s
- iv. <https://www.youtube.com/watch?v=DRxCqKxjdZE&t=18s>

As cited by the examiner, “[a] specimen must show the mark used in a way that would create in the minds of potential consumers a sufficient nexus or direct association between the mark and the services being offered. *In re Universal Oil Prods. Co.*, 476 F.2d at 655, 177 USPQ2d at 457; TMEP §1301.04(f)(ii); see also *In re JobDiva, Inc.*, 843 F.3d at 942, 121 USPQ2d at 1126; *In re Adver. & Mktg. Dev., Inc.*, 821 F.2d at 620, 2 USPQ2d at 2014.”

Addressing the complexity of applying agricultural chemicals, the viewer/purchaser is provided within the video presentation itself significant agricultural and horticultural advice. Consultation is in itself a service. But furthermore, as the videos encourage, consultation in many cases will result in the applicant providing additional agricultural and horticultural services as well.

Considerable effort and expense have gone into promoting applicant’s TANK TO TARGET services. The mark is used in ways that unquestionably creates in the minds of potential consumers (those familiar with agribusiness), a sufficient nexus and direct association between the mark and the services being offered.

Applicant submits that all requirements have been met and requests the application to proceed promptly to registration.

Respectfully submitted,

TRADEMARK-ASSOCIATES

Dated: Feb. 26, 2020

By: //randytroxel//
Randy Troxel
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Please refer to Our File: 834-900-1225



Wilbur-Ellis - Tank to Target

76 views

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Wilbur-Ellis Company
Published on Jan 21, 2019

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Tank to Target considers your intended target, specific delivery method, and in-tank chemistries.
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Commenting publicly as Randy Trowel

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33K views
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- Wilbur-Ellis: Work Where EveryONE Matters**
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2:30
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