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Subject: U.S. Trademark Application Serial No. 88079973 - TANK TO TARGET - 834-900-1225 - SU -  
Request for Reconsideration Denied - Return to TTAB

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Attachment Information:

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Files: SNAG-0002.jpg, SNAG-0003.jpg, SNAG-0004.jpg, SNAG-0005.jpg, SNAG-0006.jpg, 88079973.doc

**United States Patent and Trademark Office (USPTO)**  
**Office Action (Official Letter) About Applicant's Trademark Application**

**U.S. Application Serial No.** 88079973

**Mark:** TANK TO TARGET

**Correspondence Address:**

Randy Troxel

TRADEMARK-ASSOCIATES

611 GATEWAY BLVD FL 2

South San Francisco, CA 94080

**Applicant:** Wilbur-Ellis Company LLC

**Reference/Docket No.** 834-900-1225

**Correspondence Email Address:**

rtroxel@tmassoc.com

**REQUEST FOR RECONSIDERATION**  
**AFTER FINAL ACTION**  
**DENIED**

**Issue date:** **March 19, 2020**

**Applicant's request for reconsideration is denied.** *See* 37 C.F.R. §2.63(b)(3). The trademark examining attorney has carefully reviewed applicant's request and determined the request did not resolve the outstanding issue. TMEP §§715.03(a)(ii)(B), 715.04(a).

On August 14, 2019 applicant submitted a Statement of Use with a specimen for consideration. The specimen consisted of a screenshot of a video on the third party website YouTube®. Within the screenshot there are two instances referencing the applied-for mark. First, “Wilbur-Ellis – Tank to Target” which is the title of the video, and second “Tank to Target considers your intended target, specific delivery method, and in-tank chemistries,” which is the description of the video. Neither of these instances makes any reference to the applied-for services, namely, “Agricultural advice; Horticultural services.” Further, a screenshot of a video on a third party website may not be capable of showing use in commerce of “Agricultural advice; Horticultural services” as it is unclear what the video is attempting to demonstrate

On September 18, 2019 applicant submitted a substitute specimen which consisted of an audio file submitted on a physical CD. This audio file consists of the audio associated with the YouTube® video in the original specimen. The substitute specimen remains unacceptable because it further uses marketing language in reference to a particular product and not the applied-for services. Specifically, the very first sentence in applicant’s advertisement discusses the importance of “building an effective tank mix” (emphasis added) first introducing applicant’s product. The advertisement goes on to state that “tank to target” considers various aspects of a customer’s needs. In this case, the needs of the customer are having an effective tank mix, which is the product being described in the advertisement. Applicant’s advertisement on the third party website YouTube® shows visuals of how applicant’s product works showing the product being poured into a tank and making contact with its intended target. *Please see attached photos of portions of applicant’s video advertisement.* The audio continues to state that “within the spray application, agitants are used to protect and enhance active ingredients...” and “spray like you mean it, with Wilbur-Ellis agitants to protect your investments from all sides... Consult your Wilbur-Ellis representative to find out what works best for you.”

Applicant argues that the wording in the advertisement represents the applied-for services of “Agricultural advice; Horticultural services” because the video shows that “applicant’s representatives, as part of the process of providing services, think carefully about the customer’s needs.” This argument is unpersuasive. As shown in the video, applicant is promoting a particular product consisting of a “tank mix” in the nature of a “spray application.” The fact that the product may be customized for individual consumers does not automatically mean the applicant is providing a separable service. Specifically, customers using one of applicant’s own consultants to assist them in choosing a particular spray agitant does not amount to a separable service provided by the applicant. Applicant’s specimens merely show advertising and promotional methods to sell a particular product.

Accordingly, the following refusal made final in the Office action dated October 18, 2019 are **maintained and continued**: Section 1 and 45 Refusal – Unacceptable Specimen

See TMEP §§715.03(a)(ii)(B), 715.04(a).

**If applicant has already filed an appeal** with the Trademark Trial and Appeal Board, the Board will be notified to resume the appeal. See TMEP §715.04(a).

**If applicant has not filed an appeal** and time remains in the six-month response period, applicant has the remainder of that time to (1) [file another request for reconsideration](#) that complies with and/or overcomes any outstanding final requirement(s) and/or refusal(s), and/or (2) [file a notice of appeal](#) to the Board. TMEP §715.03(a)(ii)(B). Filing a request for reconsideration does not stay or extend the time for filing an appeal. 37 C.F.R. §2.63(b)(3); see TMEP §715.03(c).

Alexandra Liebl

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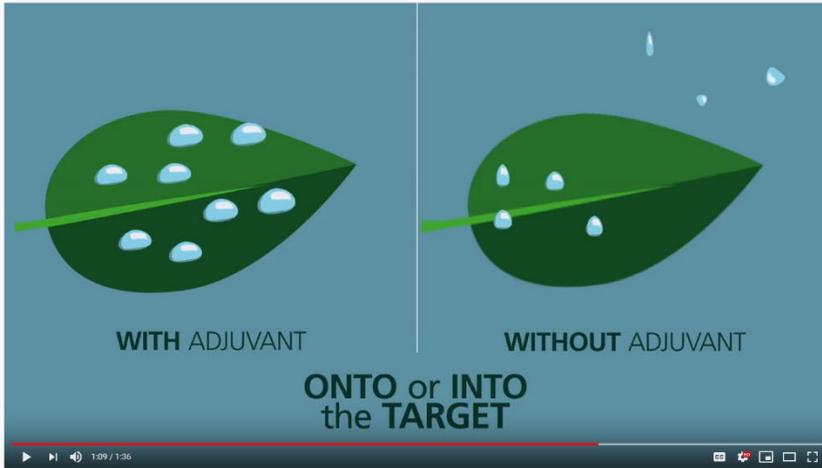
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