

ESTTA Tracking number: **ESTTA481500**

Filing date: **07/03/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Romney for President, Inc.
Granted to Date of previous extension	07/04/2012
Address	585 Commercial Street Boston, MA 02109 UNITED STATES

Attorney information	Charles F. Marshall, David W. Sar Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P. P.O. Box 26000 Greensboro, NC 27420 UNITED STATES cmarshall@brookspierce.com, dsar@brookspierce.com Phone:336-373-8850
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Applicant Information

Application No	85447381	Publication date	03/06/2012
Opposition Filing Date	07/03/2012	Opposition Period Ends	07/04/2012
Applicant	Armes, Chris P.O. Box 2511 Edgartown, MA 02539 UNITED STATES		

Goods/Services Affected by Opposition

Class 025. All goods and services in the class are opposed, namely: wristbands and hats
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Applicant Information

Application No	85452544	Publication date	03/06/2012
Opposition Filing Date	07/03/2012	Opposition Period Ends	
Applicant	Armes, Chris P.O. Box 2511 Edgartown, MA 02539 UNITED STATES		

Goods/Services Affected by Opposition

Class 025. All goods and services in the class are opposed, namely: shirts and hats
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Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
Other	Lack of Bona Fide Intent; and alternative grounds: Merely Informational, Descriptive, Failure to Function as a Mark and Ornamentation

Mark Cited by Opposer as Basis for Opposition

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	BELIEVE IN AMERICA		
Goods/Services	apparel including t-shirts, hats and hoodies, water bottles, pins, decals, bumper stickers, tote bags, pennants, yard signs		

Attachments	RFP.Armes.Notice of Opposition Final.pdf (17 pages)(584695 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/DavidWSar/
Name	David W. Sar
Date	07/03/2012

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Application Serial No. 85447381
For the Mark: BELIEVE IN AMERICA
Filed: October 14, 2011
Published for Opposition: March 6, 2012

In re Application Serial No. 85452544
For the Mark: BELIEVE IN AMERICA
Filed: October 20, 2011
Published for Opposition: March 6, 2012

-----)
ROMNEY FOR PRESIDENT, INC,)
)
Opposer,)
)
v.)
)
CHRIS ARMES,)
)
Applicant.)
-----)

Opposition No. _____

Commissioner for Trademarks
Attn: Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
Transmitted via ESTTA

CONSOLIDATED NOTICE OF OPPOSITION

The Applications at issue in this Opposition are a base attempt by an opportunist to capitalize on a phrase adopted by presidential candidate Mitt Romney. BELIEVE IN AMERICA is now widely associated with Governor Romney’s presidential campaign committee as both a campaign slogan and mark for campaign products. The Applications falsely suggest a connection between Applicant and Romney for President, Inc. (“RFP”), are confusingly similar to RFP’s previously used mark, and are otherwise unregistrable.

Taking a page from the worst tactics of “trademark trolls” and internet domain name “cyber squatters,” Applicant has sought to exploit the public support of Mitt Romney and RFP by attempting to register the marks and then contacting RFP with requests to “partner” with RFP on

the basis of the phrase BELIEVE IN AMERICA. If Applicant is permitted to distort the trademark registration process in this manner, there is no bar to him or any copycat applicant next attempting to exploit the public support of other elected officials and candidates, claiming, for example, the intended or actual use of the words “Hope” and “Change” and demanding payment from President Barack Obama and his presidential campaign.

Opposer RFP¹ believes it, Mitt Romney, and the American public will be damaged by the registration of the mark BELIEVE IN AMERICA as shown in Application Serial No. 85447381 for “wristbands and hats” in International Class 25 and Application Serial No. 85452544 for “shirts and hats” in International Class 25 (together, the “Applications”). Having been granted extensions of time to oppose the Applications up to and including July 4, 2012, RFP hereby opposes those Applications. As grounds for opposition, RFP alleges the following:

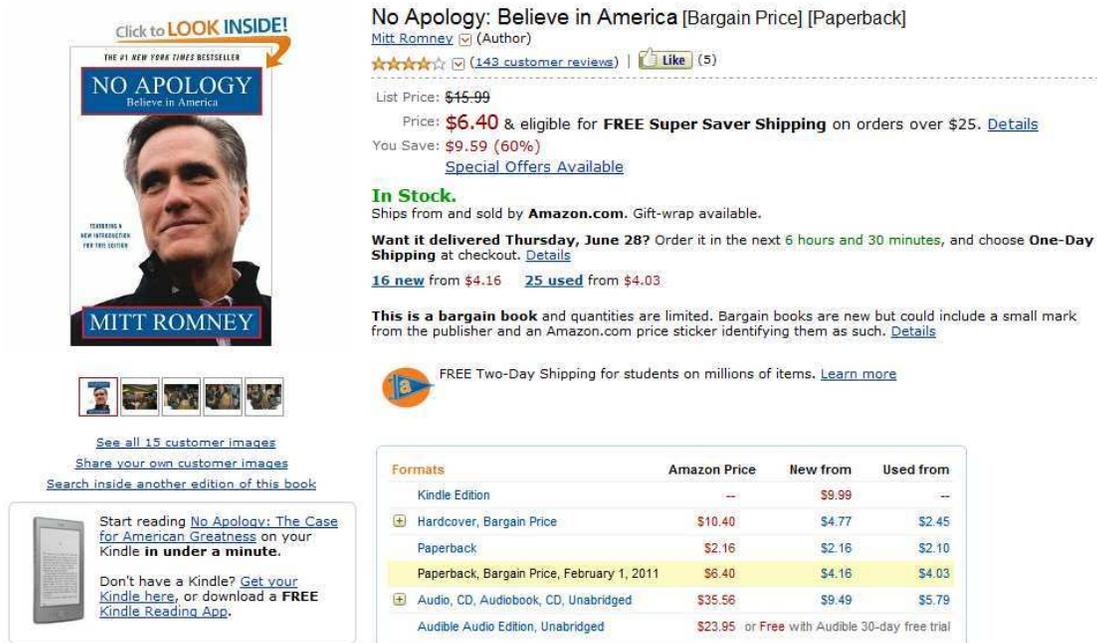
1. RFP is a Massachusetts nonprofit corporation located at 585 Commercial Street, Boston, Massachusetts 02109. It is the principal campaign committee supporting the presidential candidacy of Mitt Romney.
2. The Applications recite that Applicant is Chris Armes, a United States citizen with an address in Edgartown, Massachusetts.
3. BELIEVE IN AMERICA was a phrase widely and publicly used by Mitt Romney even prior to the commencement of his presidential campaign. It is currently closely associated with RFP and used by the campaign frequently.
4. Mitt Romney is a businessman and the presumptive nominee of the Republican Party for president of the United States in the 2012 election. He was the 70th Governor of Massachusetts, serving from 2003 to 2007.

¹ References to RFP include the relevant rights of the candidate RFP supports, Governor Mitt Romney.

5. On or about March 2, 2010, Governor Romney published a book entitled *No Apology: The Case for American Greatness*. It debuted at the top of the New York Times Best Seller list in March 2010. Governor Romney promoted this book in a multi-state book tour.

6. In October 2010, Governor Romney’s staff contacted his book publisher to begin preparations to add “Believe in America” as a subtitle to the paperback edition of the book.

7. In February 2011, the book was re-released in paperback as *No Apology: Believe in America*. An image of the book from Amazon.com appears below.



No Apology: Believe in America [Bargain Price] [Paperback]
 Mitt Romney (Author)
 (143 customer reviews) | Like (5)

List Price: ~~\$15.99~~
 Price: **\$6.40** & eligible for **FREE Super Saver Shipping** on orders over \$25. [Details](#)
 You Save: **\$9.59 (60%)**
[Special Offers Available](#)

In Stock.
 Ships from and sold by Amazon.com. Gift-wrap available.

Want it delivered Thursday, June 28? Order it in the next **6 hours and 30 minutes**, and choose **One-Day Shipping** at checkout. [Details](#)

16 new from \$4.16 **25 used** from \$4.03

This is a bargain book and quantities are limited. Bargain books are new but could include a small mark from the publisher and an Amazon.com price sticker identifying them as such. [Details](#)

 **FREE Two-Day Shipping** for students on millions of items. [Learn more](#)

Formats	Amazon Price	New from	Used from
Kindle Edition	--	\$9.99	--
Hardcover, Bargain Price	\$10.40	\$4.77	\$2.45
Paperback	\$2.16	\$2.16	\$2.10
Paperback, Bargain Price, February 1, 2011	\$6.40	\$4.16	\$4.03
Audio, CD, Audiobook, CD, Unabridged	\$35.58	\$9.49	\$5.79
Audible Audio Edition, Unabridged	\$23.95	or Free with Audible 30-day free trial	

Book Description

Publication Date: **February 1, 2011** | ISBN-10: **0312671733** | Edition: **First Edition**

8. Also in February 2011, prior to becoming a candidate for president, Governor Romney gave an address entitled *Believe in America* to the Conservative Political Action Conference (CPAC) in Washington, DC, an annual event attended by thousands of conservative activists and covered by a multitude of media outlets. In conjunction with this event, Governor Romney’s Twitter account asked attendees to use the hashtag “#BelieveInUSA” for any posts about the speech, and volunteers distributed stickers with the tagline BELIEVE IN AMERICA. An image of the sticker appears below.



9. On April 11, 2011, Governor Romney released a video entitled *Mitt Romney: Believe in America* announcing the exploration of a run for the presidency in the upcoming 2012 election. The video may be viewed at <http://youtu.be/tAcxwfkAddY>. The announcement was widely reported by the national media.

10. Also in April 2011, Romney for President Exploratory Committee, Inc. (the former name of RFP) produced and marketed a limited-edition silver bumper sticker featuring the phrase BELIEVE IN AMERICA. An image of the bumper sticker appears below.

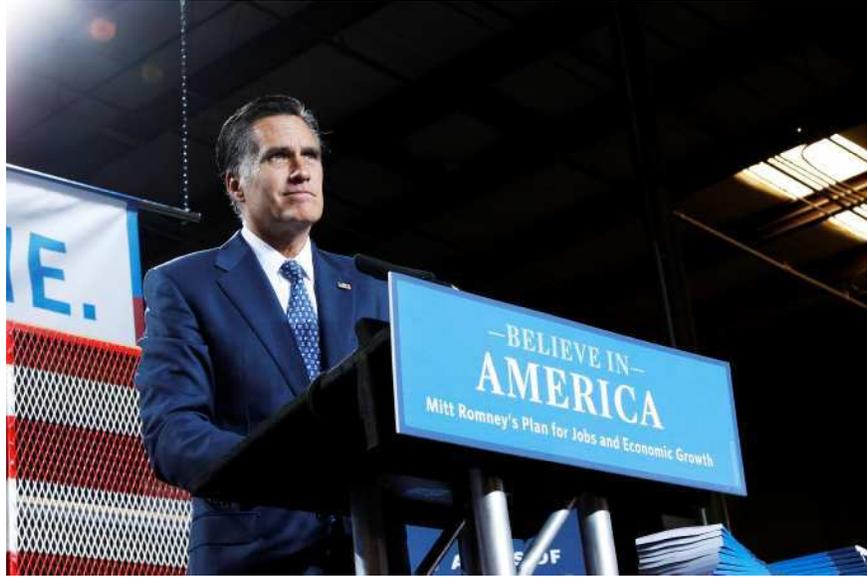


11. From April to June 2011, momentum gathered for a presidential run by Governor Romney, and he officially announced his candidacy on June 2, 2011. His announcement speech centered on the phrase “Believe in America,” and the slogan appeared on the banner that served as backdrop for the announcement event. A photograph of the event appears below.



12. Since the launch of Governor Romney's campaign for president, the phrase BELIEVE IN AMERICA has been a constant and well-known campaign slogan. As shown by the images below, the slogan often appears at campaign stops and on campaign signs, literature, backdrops, banners and buses.







13. Since at least the summer of 2011, and well before Applicant's filing of the Applications, RFP has used the mark BELIEVE IN AMERICA in connection with a wide variety

of products and services it sells, distributes, offers and provides. RFP has used the mark in commerce nationwide, including over the internet. Some of the BELIEVE IN AMERICA goods that RFP has sold or offered include, but are not limited to, t-shirts, hats, hoodies, water bottles, pins, decals, bumper stickers, tote bags, pennants, and yard signs. Examples of goods bearing the BELIEVE IN AMERICA mark that have been sold by RFP are depicted below.



 **Mitt Romney** shared a link.
July 16, 2011

Blue 'Believe in America' hats are now available. Get yours here
<http://mi.tt/MittHats>

	Believe in America Hat mi.tt Show your support by wearing an official Romney hat. Made proudly in the USA.
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Like · Comment · Share 👍 580 💬 296

 **Mitt Romney** shared a link.
July 12, 2011

If you're looking for a way to show your support, you can get your official 'Believe in America' bumper sticker. Just donate \$5
<http://mi.tt/MittBumperSticker>



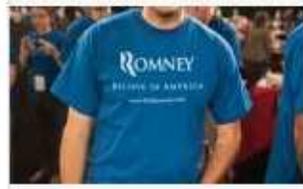
Believe in America Bumper Sticker
mi.tt

Show your support wherever you drive with an official Romney bumper sticker. Each bumper sticker measures 3" x 9" and is made proudly in the USA.

Like · Comment · Share 633 516

 **Mitt Romney** shared a link.
July 10, 2011

Official Romney 2012 "Believe in America" t-shirts are now available. Click here to get yours <http://mi.tt/nhUovR>



Believe In America T-Shirt
mi.tt

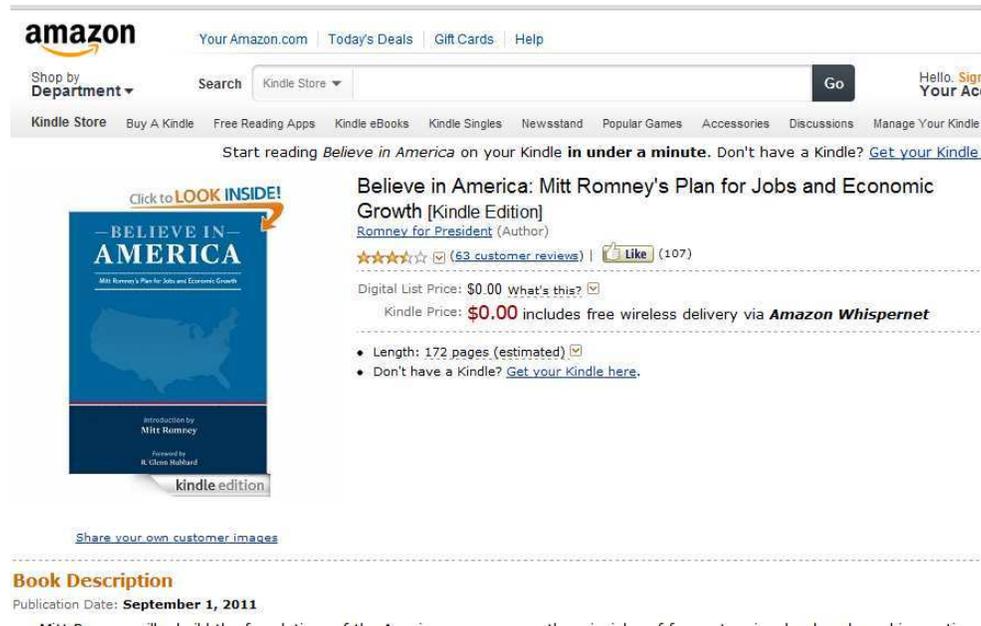
Show your support by wearing an official Romney shirt. Made proudly in the USA.

Like · Comment · Share 788 324



New! **Believe In America Hoodie** **\$50 | Get Yours Now >**

14. On or about September 1, 2011, RFP published a book entitled *Believe in America* outlining Governor Romney’s jobs and economic growth plan. An image of the book from Amazon.com appears below.



15. The phrase and mark BELIEVE IN AMERICA has acquired distinctiveness and secondary meaning because of its association with Governor Romney and RFP.

16. Upon information and belief, it was only after Applicant became aware of the BELIEVE IN AMERICA campaign slogan and/or RFP’s BELIEVE IN AMERICA mark that Applicant decided to file the Applications in hopes of “partnering” with the campaign, obtaining value through association with the campaign, and/or capitalizing upon a false association with the campaign.

17. On October 14, 2011, Applicant filed trademark application serial number 85447381 for BELIEVE IN AMERICA for “wristbands and hats” in International Class 25. On October 20, 2011, Applicant filed trademark application serial number 85452544 for BELIEVE IN AMERICA for “shirts and hats” in International Class 25. Applicant filed both applications under Section 1(b) of the Lanham Act claiming an “intent to use” as opposed to actual use of the mark.

18. Upon information and belief, Applicant did not use BELIEVE IN AMERICA as a mark for the goods identified in the Applications prior to their respective filing dates. Nor does he appear to be using it in any prominent way as of the date of this Consolidated Notice of Opposition.

19. Upon information and belief, Applicant did not have a bona fide good faith intention to use BELIEVE IN AMERICA as his own mark for the goods identified in the Applications.

20. Instead, upon information and belief, much like “trademark trolls” and internet domain name “cyber squatters,” Applicant seeks to use his Applications as leverage to extract money or other things of value from RFP.

21. Upon information and belief, on January 5, 2012, Applicant created a Florida LLC called “B.I.A. - Believe In America, LLC” to buttress his attempts to extract money from RFP. After filing his Applications and his LLC paperwork, but before using the mark, Applicant contacted RFP and other people and organizations Applicant believed to be affiliated with RFP on numerous occasions seeking to “partner” with RFP. Upon information and belief, these “partnerships” all involved payment by RFP to Applicant or his LLC.

22. RFP believes it, Mitt Romney, and the American public will be damaged if the Applications are allowed to become registrations.

FALSE SUGGESTION OF A CONNECTION
Section 2(a) of the Lanham Act

23. The allegations of paragraphs 1 to 22 are re-alleged and incorporated herein by reference.

24. Applicant’s BELIEVE IN AMERICA mark in the Applications would falsely suggest a connection with RFP and its political campaign, in violation of Section 2(a) of the United States Trademark Act of 1946 (the “Lanham Act”), and the public would assume the

goods offered under Applicant's mark are connected to RFP, to the damage and detriment of RFP, Mitt Romney, and the public.

25. As described above, the BELIEVE IN AMERICA slogan and mark are so closely tied to the Romney presidential campaign that they have become proxies for, or parts of, RFP's identity.

26. Applicant's BELIEVE IN AMERICA mark in the Applications is the same as, or a close approximation of, the name, identity, or well-known slogan RFP was already using as part of the presidential campaign before Applicant filed the Applications or otherwise claimed an intent to use the mark.

27. Applicant's BELIEVE IN AMERICA mark in the Applications would be recognized as a reference to RFP in that it points uniquely and unmistakably to RFP.

28. RFP has neither authorized nor licensed, and is not otherwise connected to, Applicant's goods recited in the Applications.

29. The fame and reputation of Governor Romney, RFP, and its slogan are of such a nature that connection with Governor Romney and RFP would be presumed if Applicant's mark becomes registered and/or used as a mark for the goods identified in the Applications.

30. The Applications should be denied due to violation of Section 2(a) of the Lanham Act, 15 U.S.C. § 1052(a).

LACK OF BONA FIDE INTENT
Section 1(b) of the Lanham Act

31. The allegations of paragraphs 1 to 30 are re-alleged and incorporated herein by reference.

32. Upon information and belief, Applicant does not have, and never had, a good faith, bona fide intention to use BELIEVE IN AMERICA as his trademark in connection with the goods identified in the Applications.

33. Opposer has not been able to locate any evidence that Applicant has used BELIEVE IN AMERICA as a mark in connection with the goods identified in the Applications.

34. As noted previously, Applicant has adopted the tactics of “trademark trolls” and internet domain name “cyber squatters,” attempting to “partner” with RFP after filing his Applications, which were crafted to exploit the public support of Mitt Romney and RFP.

35. Applicant’s actions, along with other evidence which may be adduced during discovery and presented during the trial of this Opposition, demonstrate his lack of bona fide intent to use BELIEVE IN AMERICA as his trademark.

36. The Applications should be denied due to violation of Section 1(b) of the Lanham Act, 15 U.S.C. § 1051(b).

LIKELIHOOD OF CONFUSION
Section 2(d) of the Lanham Act

37. The allegations of paragraphs 1 to 36 are re-alleged and incorporated by reference herein.

38. Applicant’s BELIEVE IN AMERICA mark in the Applications consists of or comprises a mark which so resembles the BELIEVE IN AMERICA mark previously used in the United States by RFP and not abandoned by RFP, as to be likely, when used on or in connection with the goods identified in the Application, to cause confusion, or to cause mistake, or to deceive. Applicant’s mark in the Applications should be denied registration under Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

39. RFP used its BELIEVE IN AMERICA mark and otherwise has had rights in such mark prior to the Applications’ respective filing dates.

40. RFP has built up valuable goodwill in the BELIEVE IN AMERICA mark as a result of the extensive use, sale and promotion of its goods and services bearing or offered in connection with RFP’s BELIEVE IN AMERICA mark. As a consequence of such activities,

among other factors, the mark has become identified and associated with RFP and its goods and services.

41. RFP's BELIEVE IN AMERICA mark has acquired distinctiveness and secondary meaning as a source indicator for RFP's goods and services, or in the alternative, is inherently distinctive when used in connection with RFP's goods and services.

42. The BELIEVE IN AMERICA mark for which registration is sought in the Applications is identical to RFP's BELIEVE IN AMERICA mark.

43. The goods covered by the Applications are closely related, or in some cases (e.g., t-shirts and hats) identical, to goods offered by RFP in connection with its BELIEVE IN AMERICA mark.

44. Upon information and belief, Applicant's actions and Applications for BELIEVE IN AMERICA demonstrate his improper intent to trade on RFP's goodwill in its BELIEVE IN AMERICA mark, or, in the alternative, to cause confusion, mistake, or deception with RFP's BELIEVE IN AMERICA mark.

45. Due to the substantial similarities between Applicant's BELIEVE IN AMERICA mark in the Applications and RFP's BELIEVE IN AMERICA mark, the similarities in and relatedness of the respective goods, the overlap in the respective channels of trade, and other factors, Applicant's BELIEVE IN AMERICA mark in the Applications is likely to be confused with and mistaken for RFP's BELIEVE IN AMERICA mark so as to cause confusion and lead to deception as to source, sponsorship or affiliation, in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

46. RFP has not authorized Applicant to file the Applications and opposes the attempt by Applicant to usurp the mark to serve his pecuniary interests and to prevent others from using it.

47. RFP has not abandoned its rights in the BELIEVE IN AMERICA mark, which mark has continuously been used in connection with merchandise, apparel including hats and t-shirts, signs, and stickers, since at least June 2011 and by Governor Romney for other public purposes since at least February 2011.

48. The Applications should be denied due to violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

**ALTERNATIVE GROUNDS: MERELY INFORMATIONAL, DESCRIPTIVE,
FAILURE TO FUNCTION AS A MARK AND ORNAMENTATION
Sections 1, 2, 3 and 45 of the Lanham Act**

49. The allegations of paragraphs 1 to 48 are re-alleged and incorporated herein by reference.

50. In the alternative to the grounds set forth above, Applicant's BELIEVE IN AMERICA mark in the Applications is merely informational matter, descriptive, ornamental, and/or fails to function as a mark; therefore, the Applications should not be registered under Sections 1, 2, 3 and 45 of the Lanham Act, 15 U.S.C. §§ 1051-1053 & 1127.

51. The Trademark Trial and Appeal Board previously has found phrases such as DRIVE SAFELY and THINK GREEN to be merely informational slogans. *See In re Volvo Cars of N. Am., Inc.*, 46 U.S.P.Q.2d 1455 (TTAB 1998) (DRIVE SAFELY); *In re Manco, Inc.*, 24 U.S.P.Q.2d 1938, 1942 (TTAB 1992) (THINK GREEN).

52. Applicant's attempt to register RFP's campaign slogan BELIEVE IN AMERICA is as outrageous as if someone attempted to register Obama for America's slogans of "Hope" and "Change."

53. The Applications are merely informational and/or descriptive of a belief or confidence in our nation, or a reference to the campaign slogan or RFP's mark.

54. Upon information and belief, Applicant's intended use of the phrase BELIEVE IN AMERICA does not and will not function as a mark and/or will be ornamental due to

Applicant's intention to use it prominently on the clothing as an admonition and ornamentation rather than as a mark or indicia of source.

55. Accordingly, the Applications should be denied registration under Sections 1, 2, 3 and 45 of the Lanham Act, 15 U.S.C. §§ 1051-1053 & 1127.

WHEREFORE, RFP believes it will be damaged by the registration of the marks sought to be registered in the Applications and requests that the opposition be sustained and said Applications/registrations be denied.

Please recognize as attorneys for RFP in this proceeding Charles F. Marshall, David W. Sar and the law firm Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P., P.O. Box 26000, Greensboro, NC 27420. All correspondence and communications should be directed to Charles F. Marshall and David W. Sar at the address listed below.

Respectfully submitted, this the 3rd day of July, 2012.

/CharlesFMarshall/

Charles F. Marshall
N.C. State Bar No. 23297

/DavidWSar/

David W. Sar
N.C. State Bar No. 23533

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*Attorney(s) for Opposer
Romney for President, Inc.*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date indicated below a copy of the foregoing document was served upon the following by depositing a copy thereof in the United States Mail, postage prepaid, and addressed as follows:

Christopher J. Hussin
Boardman & Clark LLP
P.O. Box 927
Madison, WI 53701-0927
Applicant's attorney of record in the Office

with an additional copy sent to:

Christopher J. Hussin
Lathrop & Clark LLP
P.O. Box 1507
Madison, WI 53701-1507
*The address of Applicant's attorney of record as reflected
by the Office's records.*

This is the 3rd day of July, 2012.

/DavidWSar/

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