

ESTTA Tracking number: **ESTTA369693**

Filing date: **09/22/2010**

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	AmyKremer
Granted to Date of previous extension	09/22/2010
Address	4308 North Smoke Bridge Court Roswell, GA 30075 UNITED STATES
Attorney information	Christina Loza Loza & Loza, LLP 305 North Second Avenue,#127 Upland, CA 91786 UNITED STATES tina@lozaip.com Phone:949-705-6777

Applicant Information

Application No	77777712	Publication date	05/25/2010
Opposition Filing Date	09/22/2010	Opposition Period Ends	09/22/2010
Applicant	Tea Party Patriots, Inc. Ste. 620-322 1025 Rose Creek Dr. Woodstock, GA 30189 UNITED STATES		

Goods/Services Affected by Opposition

Class 035. First Use: 2009/03/06 First Use In Commerce: 2009/03/06 All goods and services in the class are opposed, namely: Association services, namely, a grassroots organization that promotes public awareness and participation regarding policy and legislative issues and leadership positions at community, local, state, and national levels; providing information in the field of governmental affairs, namely, information about limited government
Class 036. First Use: 2009/03/06 First Use In Commerce: 2009/03/06 All goods and services in the class are opposed, namely: Providing information about government fiscal issues with a focus on fiscal responsibility and free markets
Class 041. First Use: 2009/03/06 First Use In Commerce: 2009/03/06 All goods and services in the class are opposed, namely: Special Events Planning; Arranging and conducting special events

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Other	Applicant not Rightful Owner; Mark has Lost Significance as to Source

Mark Cited by Opposer as Basis for Opposition

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	TEA PARTY PATRIOTS		
Goods/Services	(1) Association services, namely, a grassroots organization that promotes public awareness and participation regarding policy and legislative issues and leadership positions at community, local, state, and national levels; providing information in the field of governmental affairs, namely, information about limited government in International Class (IC) 035; (2) Providing information about government fiscal issues with a focus on fiscal responsibility and free markets in International Class 036; and (3) Special events planning; arranging and conducting special events in International Class 041.		

Related Proceedings	Tea Party Patriots, Inc. v. Amy Kremer, Civil Action No. 09-1-10603-99, Superior Court of Cobb County, Georgia
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Attachments	TPP-402 Notice of Opposition.pdf (6 pages)(37492 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	/Christina S. Loza/
Name	Christina Loza
Date	09/22/2010

promotes public awareness and participation regarding policy and legislative issues and leadership positions at community, local, state, and national levels; providing information in the field of governmental affairs, namely, information about limited government in International Class (IC) 035; (2) Providing information about government fiscal issues with a focus on fiscal responsibility and free markets in International Class 036; and (3) Special events planning; arranging and conducting special events in International Class 041.

2. The Applicant's application was filed on July 9, 2009 stating a date of first use in March 2009 and was published for opposition in the Official Gazette on May 25, 2010.

3. Opposer, Amy Kremer, is a tea party activist who has been extremely active in the Tea Party Movement and is currently the Chairman of the Tea Party Express and has been instrumental in working with candidates to get them on the ballot during this election season. She has been featured on The View, CNN, and many other media outlets as an expert in this area.

Prior Use: Opposer's Use in Commerce Predates Applicant's

4. Applicant, Tea Party Patriots, Inc. was not a legal entity until June 2009 and as early as March 2009, Ms. Kremer was an original founder of the Tea Party Patriots. In fact, on March 10, 2009, Ms. Kremer purchased the domain name <teapartypatriots.org> and began making use of this mark at least as early as this time. Ms. Kremer began blogging about various election issues in October 2008 and began actively writing about her activities in regards to the Tea Party Movement in as early as February 2009. From Ms. Kremer's first use of the mark until September 2009, Ms. Kremer allowed Applicant to use the mark until she was removed from the Board of Tea Party Patriots, Inc.

5. At this time, Applicant and Opposer are currently engaged in litigation before the Georgia Superior Court.

6. Ms. Kremer used the mark TEA PARTY PATRIOTS in March 2009, three full months prior to the existence of the entity, Tea Party Patriots, Inc., and any use by that entity or any other person. Ms. Kremer has the first documented use of the mark TEA PARTY PATRIOTS.

7. There are also third parties that have prior use to the Applicant's mark. Notably, Applicant recently lost a domain name dispute before the National Arbitration Forum against the owner of TEAPARTYPATRIOTS.COM, *Tea Party Patriots, Inc. v. Hoyt Enters., LLC*, FA 1326333 (Nat. Arb. Forum July 9, 2010). In that case, the Panel held that Hoyt used the disputed domain names to promote and broadcast its radio show **before Applicant had established rights** in the TEA PARTY PATRIOTS mark, and therefore had rights and legitimate interests in the domain names. Accordingly, Hoyt has prior use. There are third parties who have prior use of the mark.

8. Applicant is not the first user of this mark. Prior use by others is a ground for opposition of Applicant's mark pursuant to Section 2(d) of the Lanham Act which indicates that a mark cannot have been previously used by another in connection with goods or services in a way which may cause confusion to consumers.

Applicant's Mark is Confusingly Similar to Opposer's Mark

9. Ms. Kremer used the mark TEA PARTY PATRIOTS in commerce in connection with association services, namely, a grassroots organization that promotes public awareness and participation regarding policy and legislative issues and leadership positions at community, local,

state, and national levels; providing information in the field of governmental affairs, namely, information about limited government, providing information about government fiscal issues with a focus on fiscal responsibility and free markets, special events planning and arranging and conducting special events.

10. Applicant filed the mark TEA PARTY PATRIOTS in connection with identical services.

11. The Applicant's mark is identical to Opposer's mark as to be likely, when applied to the services provided by the Applicant, to cause confusion. The registration sought by the Applicant should be refused because it is likely to cause confusion amongst consumers.

Applicant is Not the Rightful Owner of the Mark

12. Tea Party Patriots, Inc. does not itself use the mark in commerce in connection with the services set forth above.

13. Applicant does not itself perform the services set forth above. Rather, there are dozens of grass roots associations in every state that are apparent "members" of the Tea Party Patriots. Those regional members have their own leadership and are the ones who organize events, provide information, and promote public awareness. They also identify themselves by region, for example, California Tea Party Patriots or Atlanta Tea Party Patriots.

14. The Applicant does not exercise any control over the use of the mark or the services provided in connection with the use of the mark in its many forms by its many member associations. For example, many of these affiliate organizations do not use the words TEA PARTY PATRIOTS in their organization name even though they are listed as a group within the TEA PARTY PATRIOTS – for example, 13th Colony Patriots or Blue Ridge Tea Party.

15. Accordingly, pursuant to *Anheuser-Busch Inc. v. The Florists Association of Greater Cleveland Inc.*, 29 USPQ2d 1146 (TTAB 1993), “use by the members could not and does not inure to the benefit of applicant itself.” Applicant is not the rightful owner of the mark and thus is not entitled to registration.

Applicant’s Conduct Has Caused Mark to Lose Significance

16. Assuming arguendo that Applicant is the entity that *uses* the mark in commerce, Applicant exercises no control over the use of the TEA PARTY PATRIOTS trademark.

17. There are numerous domain names that incorporate the mark TEA PARTY PATRIOTS that resolve at various websites.

18. Applicant recently lost a domain name dispute before the National Arbitration Forum against the owner of TEAPARTYPATRIOTS.COM. In that case, the Panel went on to find that the parties worked cooperatively in promoting each other until Applicant established its own radio show and assumed that Hoyt would give Applicant exclusive control over use of the TEA PARTY PATRIOTS mark. Finding that Respondent had rights and legitimate interests in the domain names, as well as finding a lack of bad faith registration and use, the Panel declined to transfer the disputed domain names to Complainant. *Tea Party Patriots, Inc. v. Hoyt Enters., LLC*, FA 1326333 (Nat. Arb. Forum July 9, 2010).

19. Applicant was held not to have exclusive control of the mark. The Lanham Act clearly states, a trademark (or service mark) is “a mark used in the sale or advertising of services to identify the services of **one person and distinguish them from the services of others.**” 15 U.S.C.A. § 1127. Applicant is not the *one person* who uses the mark TEA PARTY PATRIOTS

in commerce.

20. Applicant undergoes no steps to ensure that users of the mark are using the mark in a consistent fashion or that there is a standard quality that is associated with the service.

21. Allowing numerous third parties to use the mark TEA PARTY PATRIOTS without any control is “inherently deceptive and constitutes abandonment of all rights in the trademark...” *McCarthy on Trademarks*, § 18:48; see also *Barcamerica Intern. USA Trust v. Tyfield Importers, Inc.*, 289 F.3d 589, 62 U.S.P.Q.2d 1673, 52 Fed. R. Serv. 3d 415 (9th Cir. 2002).

22. Applicant has forfeited its rights to the mark due to its failure to police and its inability to make the mark TEA PARTY PATRIOTS the genuine, exclusive, single source of goods. Accordingly the mark has lost its significance as a single source and is not entitled to registration.

WHEREFORE, Opposer deems that it is and will be damaged by the registration of Serial No. 77/777,712 and opposes the registration for the TEA PARTY PATRIOTS as it relates to services in International Classes 035, 036, and 041 and prays that Applicant’s mark may not be allowed to register.

Dated: September 22, 2010

Respectfully submitted,

Loza & Loza, L.L.P.

/Christina S. Loza/

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