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

Proceeding	91231108
Party	Plaintiff Tea Kay Media LLC
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
TRADEMARK TRIAL AND APPEAL BOARD

Tea Kay Media LLC

Opposer,

v.

Theresa J. Meyer, DBA POLICETEES.com

Applicant.

Trademark Application

Mark: BLUE LIVES MATTER

Serial No. 86/827,146

Filed on: November 20, 2015

Published on: October 4, 2016

Opposition No. 91231108

USPTO
TTAB
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

AMENDED NOTICE OF OPPOSITION

TEA KAY MEDIA LLC, a Delaware Limited Liability Company, having a principal place of business at 217 Oak Lee Drive, Suite 10-601, Ranson, WV 25438 and a registered address at Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801, believes that it is being and will be damaged by Theresa J. Meyer, DBA PoliceTees (“Applicant or PoliceTees”) registration of the mark shown in Application 86827146 and hereby opposes the same in all international classes. As grounds for opposition, Tea Kay Media LLC alleges that, upon actual knowledge with respect to itself and its own acts, and upon information and belief of other matters:

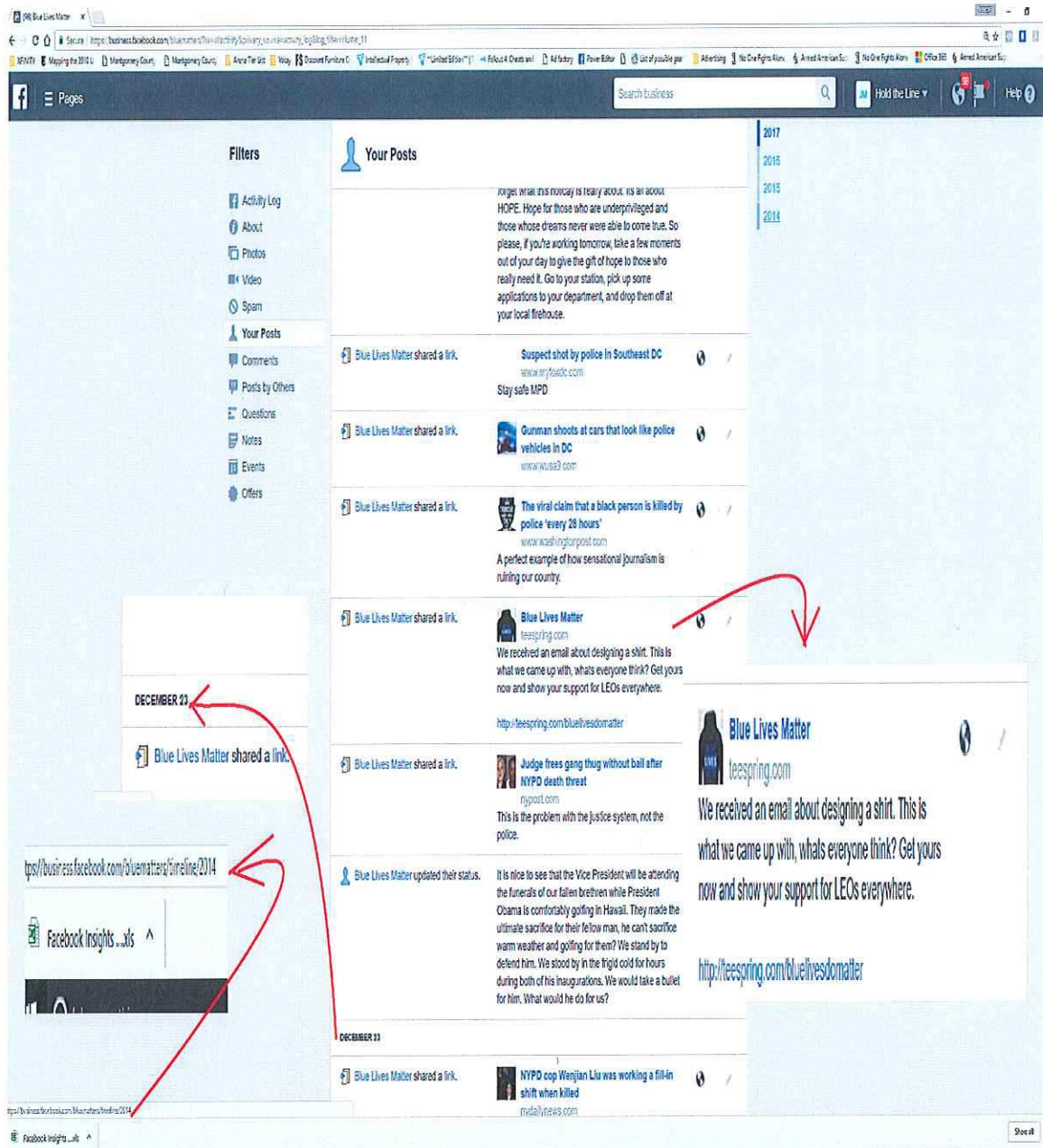
TEA KAY and the BLUE LIVES MATTER mark

1. TEA KAY MEDIA LLC, by and through its principles, predecessors and related companies (“Tea Kay” or “Opposer”) is one of the leading providers of web based non-downloadable articles in the field of news relating to law enforcement and pro-police reporting, having almost 1.5 million followers on Facebook.com.
2. Tea Kay principles consist of retired or active law enforcement persons, including Randy Sutton, Joe Murphy, and others.
3. Tea Kay was formerly operated under the business entity Hold The Line LLC that began operations December 21, 2014, and was registered as a business in 2015.
4. On June 3, 2016, Tea Kay Media LLC was formed, and received ownership of all assets, including all intellectual property rights previously held by Hold The Line LLC.
5. Shortly after the killings of officers Rafael Ramos and Wenjian Liu on December 20, 2014, Tea Kay by and through the efforts of its principles, predecessors and related companies, began promoting on-line and publishing pro-police articles through social media which helped start the social movement now famously known as “Blue Lives Matter”.

6. Tea Kay, by and through the efforts of its principles, predecessors and related companies, started advertising and selling T-shirts at the end of December 2014 having the “Blue” over “Lives” over “Matter” ornamentation on the front, and has been consistently selling the same ever since.

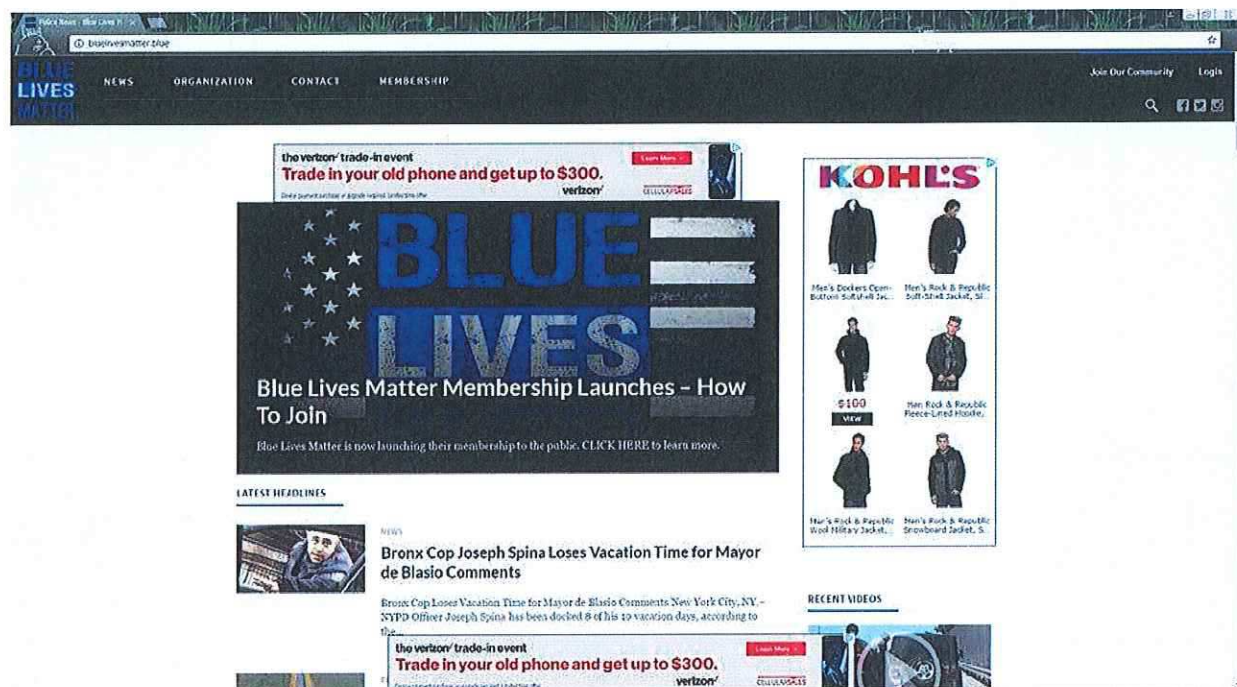


7. Tea Kay through its principles, predecessors, related companies, and licensees have continuously used the Blue Lives Matter word mark, and the “Blue” over “Lives” over “Matter” design mark in connection with advertising and pro-police published news articles since late December 2014.
8. Tea Kay now has a massive following on Facebook with over 1,491,625 page likes and an audience following Tea Kay’s page having 14,444,753 post engagements.
9. Tea Kay has continuously advertised and promoted the BLUE LIVES MATTER brand of pro-police news media, and the “Blue” over “Lives” over “Matter” design in connection with adorned or ornamented apparel since December 23, 2014.



December 23, 2014 Blue Lives Matter (Tea Kay's) Facebook
Demonstrating Screen Shot of Advertising- Blue Lives Matter Shirt

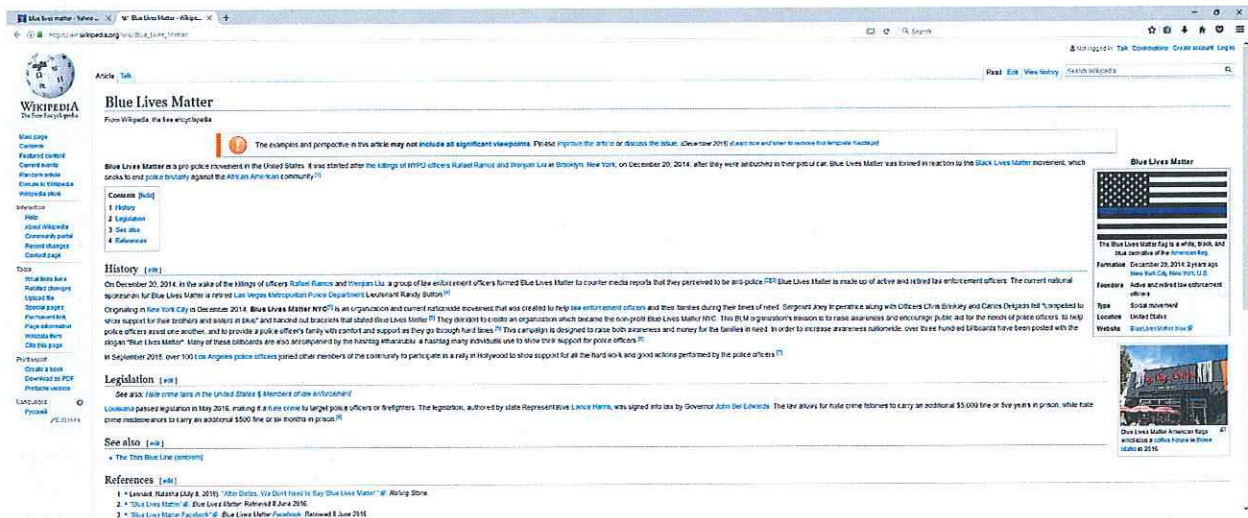
10. Tea Kay, through its authorized agent Joseph Murphy, filed on December 20, 2016 for the Blue Lives Matter word mark, application Serial No. 87275431 in International Class 041 for *Providing a website featuring non-downloadable articles in the field of news relating to law enforcement.*



Specimen of Use - Serial No. 87275431

BLUE LIVES MATTER -Pro-Police Social Movement

11. According to Wikipedia, Blue Lives Matter was started by law enforcement officers after the ambush killings of officers Rafael Ramos and Wenjian Liu to counter anti-police media reports. Blue Lives Matter is made up of active and retired law enforcement officers. The current national spokesman for Blue Lives Matter is retired Las Vegas Metropolitan Police Department Lieutenant Randy Sutton, a principle of Tea Kay.



12. On information and belief, from January 1, 2015 through Jan. 1, 2017, legislators in 14 states have introduced 32 "Blue Lives Matter" bills that would extend hate crime protections to police officers and other members of law enforcement.
13. On information and belief, other pro-police support organizations like the New York non-profit Blue Lives Matter NYC have operated under the name Blue Lives Matter from as early as January 2015.

14. On information and belief, Blue Lives Matter NYC like many other law enforcement support organization, sells various apparel and memorabilia having Blue Lives Matter ornamentation.

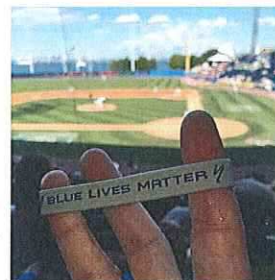


15. Since as early as December 2014, Blue Lives Matter has been used as a common reference in the web media and news reports as a pro-police movement to support law enforcement personnel.



The U.S. media was among several staged across the country to showcase non-unionized against police brutality.
By Deborah L. Brown on 1/17/2015
Demonstrations on every edge among "Blue Lives Matter" marched to the U.S. Capitol on Saturday in a show of support for police officers across the country who say they are not thanked enough for the danger they face in the line of duty.

January 17, 2015



Aaron Fischer (@aaronfischer)
Not insensitive at all, Staten Island Yankees
2:07 PM - 9 Aug 2015
45 35

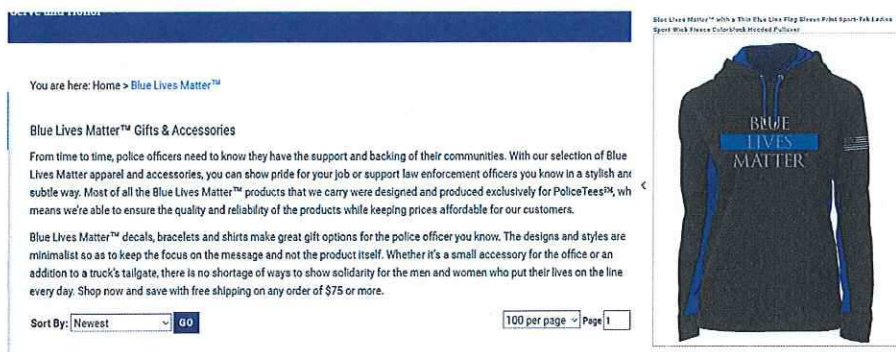
August 9, 2015

Applicant PoliceTees – T-Shirt/Apparel Retailer

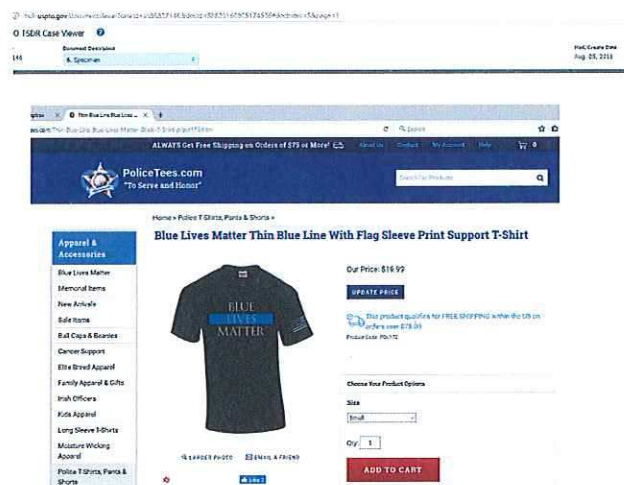
16. PoliceTees is in the business of selling on-line decorated T-Shirts, and other goods having pro-police ornamentation apparently aimed at appealing to supporters of law enforcement.



17. PoliceTees promotes and sells goods that are decorated with Blue Lives Matter as supporting the message of the social movement as shown by their promotional publications that confirm that Blue Lives Matter is a pro-police message, not a trademark, *"Blue Lives Matter™ decals, bracelets and shirts make great gift options for the police officer you know. The designs and styles are minimalist so as to keep the focus on the message and not the product itself."*



18. On November 20, 2015 Theresa J. Meyer claimed on behalf of PoliceTees exclusive right to use the Blue Lives Matter mark by filing U.S. Application Serial No. 86827145.
19. On information and belief, PoliceTees did not participate in the founding or creation of the Blue Lives Matter social movement, is not affiliated with Tea Kay or Blue Lives Matter NYC, and is not owned or operated by persons who have served or are currently serving in law enforcement.
20. Ms. Meyer claimed a first use in commerce date of 9/15/2015, which is over nine months after the Blue Lives Matter movement began.
21. PoliceTees' original specimen of use filed in support of its application was rejected as not meeting trademark specimen requirements, and a replacement specimen was not submitted until August 5, 2016 showing what appears as a photo image of a decorated sweatshirt having Blue Lives Matter decorating the front.



Specimen Submitted August 5, 2016 - Application Serial No. 86827145

22. On or about 3/17/2016, PoliceTees was sent an office action from the Examiner at the United States Patent and Trademark Office identifying a likelihood of confusion problem between the Blue Lives Matter (U.S. Application Serial No. 86827145) with an earlier filed and pending application for Police Lives Matter (U.S. Application Serial No. 86747421) indicating Blue and Police meant the same thing:

The filing date of pending U.S. Application Serial No. 86747421 precedes applicant's filing date. See attached referenced application. If the mark in the referenced application registers, applicant's mark may be refused registration under Trademark Act Section 2(d) because of a likelihood of confusion between the two marks. See 15 U.S.C. §1052(d); 37 C.F.R. §2.83; TMEP §§1208 et seq.

23. On or about August 5, 2016, Attorney Mary C. Bonnema, on behalf of PoliceTees, filed response to the Examiner's office action arguing against the likelihood of confusion by stating unequivocally that the terms BLUE and POLICE do not mean the same thing in the context of what the term "Blue" means in the mark Blue Lives Matter mark.

*Further, as evidenced by the attached dictionary definitions, the commercial impressions of the respective terms are very different as well. For example, **BLUE** can be a noun, adjective and verb that carries a wide array of meanings, such as the color of a clear sky, or sad/unhappy, or the color blue, or low in spirits, or of or relating to blues (a "blues" song) or "tending to support Democrats in a general election." See **Exhibit B** (Merriam-Webster Definition: "Blue"). In direct contrast, the term **POLICE** has very specific and relatively unvaried meanings. Using the same dictionary definition site, **POLICE** is described as to keep control and keep order by use of police, govern, or perform the functions of a police force. See **Exhibit C** (Merriam-Webster Definition: "Police"). More colloquially, it is used as a short hand for "police officer." **In any event, the terms BLUE and POLICE do not mean the same thing.** (Bold added)*

24. The USPTO Examiner accepted PoliceTees' office action response as true, and proceeded to publish the application for opposition relying on PoliceTees false statement that "Blue" in the context of the Blue Lives Matter did not mean police.
25. On November 16, 2016, the Police Lives Matter trademark application (U.S. Application Serial No. 86747421) was refused registration because the applied for mark did not operate as a source identifier, but instead was an informational slogan for supporting police.

Registration is refused because the applied-for mark **POLICE LIVES MATTER** merely conveys an informational social, political, religious, or similar kind of message; it does not function as a trademark or service mark to indicate the source of applicant's goods and to identify and distinguish them from others. Trademark Act Sections 1, 2, and 45, 15 U.S.C. §§1051-1053, 1127; *see In re Hulting*, 107 USPQ2d 1175, 1177 (TTAB 2013) (holding NO MORE RINOS!, a slogan meaning "No More Republicans In Name Only," not registrable for a variety of paper items, shirts, and novelty buttons because the mark would be perceived as a commonly used political slogan and not a trademark); *In re Eagle Crest, Inc.*, 96 USPQ2d 1227, 1229-31 (TTAB 2010) (holding ONCE A MARINE, ALWAYS A MARINE not registrable for clothing items because the mark would be perceived as an old and familiar Marine expression and not a trademark); *In re Volvo Cars of N. Am., Inc.*, 46 USPQ2d 1455, 1460-61 (TTAB 1998) (holding DRIVE SAFELY not registrable for automobiles and automobile parts because the mark would be perceived as a familiar safety admonition and not a trademark); TMEP §1202.04.

Applicant's Blue Lives Matter Mark
Count 1: Likelihood of Confusion
Under Section 2(d). 15 U.S.C. Sec. 1052(d).

26. Tea Kay repeats and realleges each and every allegation set forth above.
27. Tea Kay has senior use rights and priority based on its first use of Blue Lives Matter in commerce in connection with Tea Kay's services and products before the filing date of U.S. Application Serial No. 86827145.
28. Tea Kay has used Blue Lives Matter in commerce before any date of use in commerce that Applicant may establish in connection with Applicant's use of Blue Lives Matter.
29. Applicant's use of Blue Lives Matter having the terms stacked is confusingly similar in appearance, and overall commercial impression to Tea Kay's use and depiction of the same terms. As shown below, both parties use on garments is comprised of "Blue" over "Lives" over "Matter":



Applicant PoliceTees / Opposer Tea Kay

30. Applicant's products are identical and/or closely related to Tea Kay's promotions products, both having the same terms and visual layout on garments.

31. Applicant's use of the mark so resembles the use by Tea Kay, that the marked products advertised and sold by Applicant are likely to be confused with and/or misconstrued as being affiliated with the media services or products produced, advertised, offered, and/or sold by Tea Kay.
32. Accordingly, Applicant's Blue Lives Matter mark so resembles Tea Kay's prior use and pending trademark application as to be likely, when used in connection with Applicant's products, to cause confusion, or to cause misstate, or deceive under Section 2(d) of the Lanham Act.

Count 2: Dilution
15 U.S.C. Sec. 1125(c)(1)

33. Tea Kay repeats and realleges each and every allegation set forth above.
34. Tea Kay's use of Blue Lives Matter is famous and has become distinctive.
35. Tea Kay has engaged in extensive, nationwide advertising, promotion, and use of the Blue Lives Matter mark. Further, Tea Kay has a massive following of almost 1.5 Million likes on Facebook, and historic sales of apparel sold with Blue Lives Matter ornamentation, all before any date of first use that Applicant may establish.
36. Applicant PoliceTee's Blue Lives Matter mark, as shown in U.S. Application Serial No. 86827145, so closely resembles Tea Kay's use, as to be likely to cause dilution of the distinctive quality of the famous Tea Kay mark in violation of section 43(c) of 15 U.S.C. Sec. 1125(c).

Count 3: Fraud in the Procurement of its Registration

37. Tea Kay repeats and realleges each and every allegation set forth above.

38. On August 5, 2016 Attorney Mary C. Bonnema on behalf of PoliceTees and in response to a USPTO office action, presented a false representation to the United States Patent and Trademark office that, "...the terms BLUE and POLICE do not mean the same thing." in the context of the meaning of "Blue" in the Blue Lives Matter mark.

39. On or before the date PoliceTees filed its trademark application, or responded to office actions on the same, PoliceTees had the necessary information within its control to know that Blue Lives Matter was a message that meant support for police and law enforcement per their own advertisements published on their webpage.

From time to time, police officers need to know they have the support and backing of their communities. With our selection of Blue Lives Matter apparel and accessories, you can show pride for your job or support law enforcement officers you know in a stylish and subtle way. Most of all the Blue Lives Matter™ products that we carry were designed and produced exclusively for PoliceTeesSM, which means we're able to ensure the quality and reliability of the products while keeping prices affordable for our customers.

40. On or before the date PoliceTees filed its trademark application, or responded to office actions on the same, PoliceTees had the necessary information within its control to know that the term "Blue" actually meant police and law enforcement in the context of the Blue Lives Matter social movement.

41. On or before the date PoliceTees filed its trademark application, or responded to office actions on the same, PoliceTees had the necessary information within its control to know that Blue Lives Matter was a brand of pro-police media production service provided by Tea Kay, and/or that Blue Lives Matter was a national social movement in the United States before any alleged use in commerce by PoliceTees.

Count 4: Misrepresentation of the Source of Goods

42. Tea Kay repeats and realleges each and every allegation set forth above.
43. PoliceTees has used its mark in a manner calculated to trade on the wide support of the Blue Lives Matter social movement, and/or to trade on the good will and reputation of Tea Kay.

Count 5: Ornamentation

Sec. 1(a) of the Act, 15 U.S.C. §1051(a)

44. Tea Kay repeats and realleges each and every allegation set forth above.
45. PoliceTees last submitted specimen dated August 5, 2016 shows an online advertisements for a T-Shirt that is decorated or adorned with the terms Blue Lives Matter covering a large portion of the garment front.



46. PoliceTees' larger depiction of Blue Lives Matter as prominently displayed across the front of the garment presents as a purely decorative or ornamental feature of the goods, and does not operate as a source identifier or trademark of the goods.
47. PoliceTees provided no bona fide use of the Blue Lives Matter mark in commerce prior to the filing of the use-based application for its registration under Section 1(a)

of the Act, 15 U.S.C. §1051(a), nor will PoliceTees be able to establish such bona fide use.

48. On information and belief, PoliceTees has not used the Blue Lives Matter in commerce as a trademark, and instead has used Blue Lives Matter as ornamentation on garments to sell the same to Blue Lives Matter supporters.

WHEREFORE, Tea Kay believes that it is being damaged, and will be damaged, by the registration of Applicant's Blue Lives Matter mark as shown in U.S. Application Serial No. 86827145. PoliceTees knowingly misrepresented material facts to the United States Patent and Trademark Office during the prosecution of its application, specifically the meaning of "Blue" in the context of Blue Lives Matter. Finally, PoliceTees has failed to use Blue Lives Matter as a trademark in commerce, and instead improperly relies on a specimen of a T-Shirt mock up having Blue Lives Matter as decoration on the front in support of the social movement, not as used as a trademark. Accordingly, Tea Kay respectfully requests that the Notice of Opposition be sustained, and that registration to PoliceTees be refused on all grounds.

Respectfully submitted,
Robert J. Ireland
Dated: April 10, 2017

On this B Day of April, 2017



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Of Attorneys for Plaintiff
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CERTIFICATE OF SERVICE

I hereby certify that on the date referenced below a copy of the foregoing **Amended Notice of Opposition** was emailed to counsel at the following:

G. Thomas Williams
gtw@mcgarrybair.com
arj@mcgarrybair.com

On this 13 Day of April, 2017



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