

ESTTA Tracking number: **ESTTA822219**

Filing date: **05/19/2017**

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

Proceeding	91231108
Party	Defendant Theresa J Meyer dba PoliceTees.com
Correspondence Address	G THOMAS WILLIAMS MCGARRY BAIR PC 45 OTTAWA AVE SW STE 700 GRAND RAPIDS, MI 49503 UNITED STATES trademarks@mcgarrybair.com, gtw@mcgarrybair.com, pleadings@mcgarrybair.com
Submission	Answer
Filer's Name	G. Thomas Williams
Filer's e-mail	pleadings@mcgarrybair.com
Signature	/G. Thomas Williams/
Date	05/19/2017
Attachments	G1123973.PDF(1270024 bytes)

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

In the matter of Application No. 86/827,146
Published on: October 4, 2016
For the mark: BLUE LIVES MATTER

Tea Kay Media LLC,
Opposer,

v.

THERESA J. MEYER, DBA
POLICETEES.COM
Applicant.

Opposition No. 91231108

**ANSWER TO NOTICE OF OPPOSITION
AND AFFIRMATIVE DEFENSES**

Applicant, Theresa J. Meyer, DBA PoliceTees.com, by and through her attorneys, McGarry Bair PC, hereby answers the Amended Notice of Opposition dated April 13, 2017, filed by Opposer Tea Kay Media (“Opposer”) as follows:

Applicant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth regarding Opposer’s address and location.

Opposer alleges that it will be damaged by the registration of Applicant’s Trademark Application Serial No. 86/827,146 for the mark BLUE LIVES MATTER for “Baseball caps; Baseball caps and hats; Button down shirts; Collared shirts; Golf shirts; Graphic T-shirts; Henley shirts; Hooded sweat shirts; Knitted caps; Long-sleeved shirts; Sweat shirts; T-shirts; Tee shirts; Wind shirts” in International Class 25. Applicant denies that Opposer will be damaged by registration of Applicant’s Trademark Application Serial No. 86/827,146 for the mark BLUE LIVES MATTER (the “BLUE LIVES MATTER Mark”).

Applicant now responds to each allegation of the Notice of Opposition below:

1. TEA KAY MEDIA LLC, by and through its principles [sic], 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.

Applicant's Answer: Applicant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 1 of the Amended Notice of Opposition and leaves Opposer to its proofs.

2. Tea Kay principles [sic] consist of retired or active law enforcement persons, including Randy Sutton, Joe Murphy, and others.

Applicant's Answer: Applicant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 2 of the Amended Notice of Opposition and leaves Opposer to its proofs.

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.

Applicant's Answer: Applicant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 3 of the Amended Notice of Opposition and leaves Opposer to its proofs.

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.

Applicant's Answer: Applicant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 4 of the Amended Notice of Opposition and leaves Opposer to its proofs.

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 [sic], 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".

Applicant's Answer: Applicant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 5 of the Amended Notice of Opposition and leaves Opposer to its proofs.

6. Tea Kay, by and through the efforts of its principles [sic], 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.



Applicant’s Answer: Applicant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 6 of the Amended Notice of Opposition and leaves Opposer to its proofs.

7. Tea Kay through its principles [sic], 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.

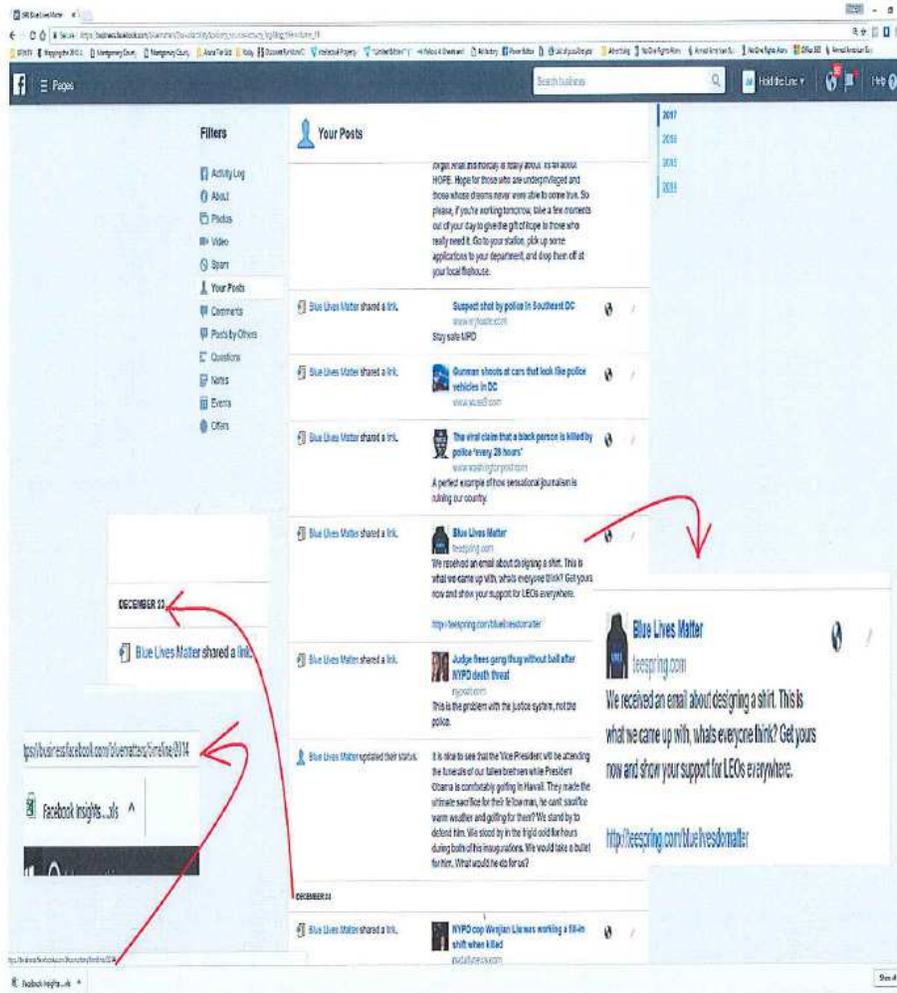
Applicant’s Answer: Applicant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 7 of the Amended Notice of Opposition and leaves Opposer to its proofs.

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.

Applicant’s Answer: Applicant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 8 of the Amended Notice of

Opposition and leaves Opposer to its proofs.

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.

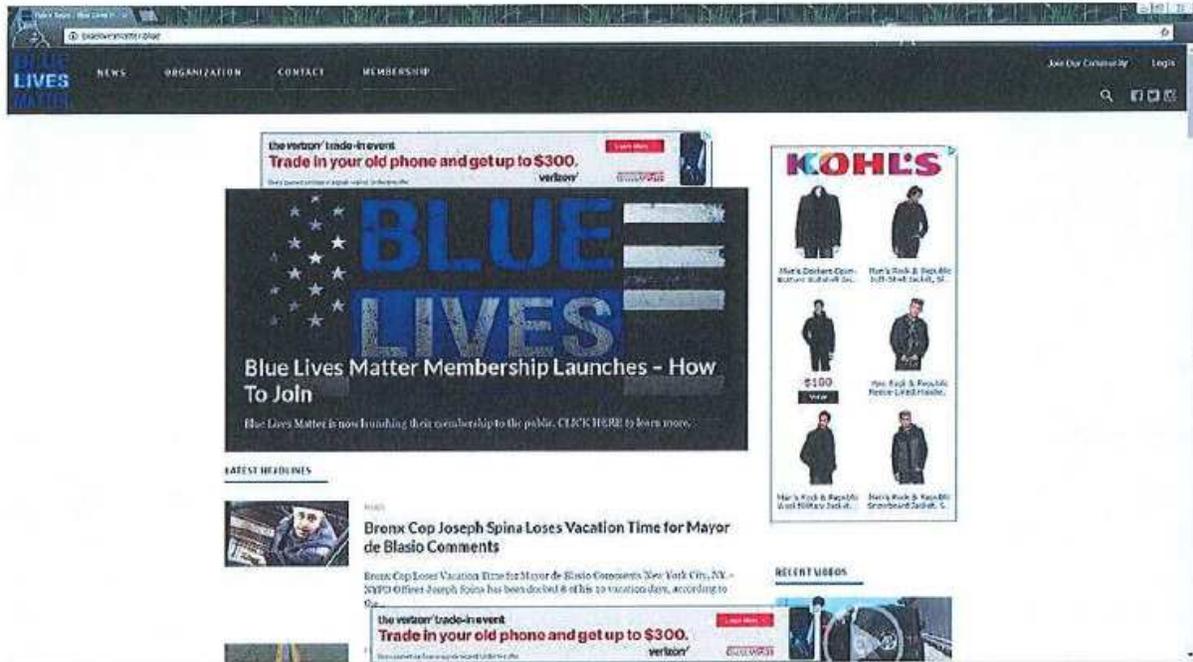


December 23, 2014 Blue Lives Matter (Tea Kay’s) Facebook Demonstrating Screen Shot of Advertising- Blue Lives Matter Shirt

Applicant’s Answer: Applicant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 9 of the Amended Notice of Opposition and leaves Opposer to its proofs.

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.*



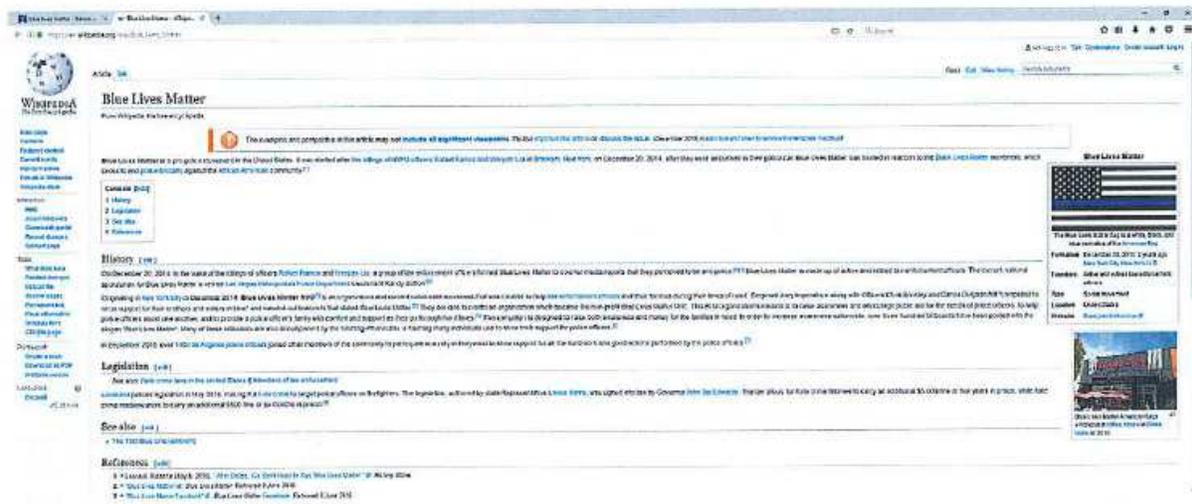
Specimen of Use - Serial No. 87275431

Applicant's Answer: Admitted that the U.S. Patent & Trademark Office database reflects the information contained in this allegation.

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.



Applicant’s Answer: Applicant objects to Paragraph 11 as compound and not in compliance with Rules 8(a) and 10(b) of the Federal Rules of Civil Procedure. Applicant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 11 of the Amended Notice of Opposition and leaves Opposer to its proofs.

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.

Applicant’s Answer: Applicant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 12 of the Amended Notice of Opposition and leaves Opposer to its proofs.

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.

Applicant’s Answer: Applicant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 13 of the Amended Notice of Opposition and leaves Opposer to its proofs.

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.



Applicant’s Answer: Applicant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 14 of the Amended Notice of Opposition and leaves Opposer to its proofs.

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.



January 17, 2015



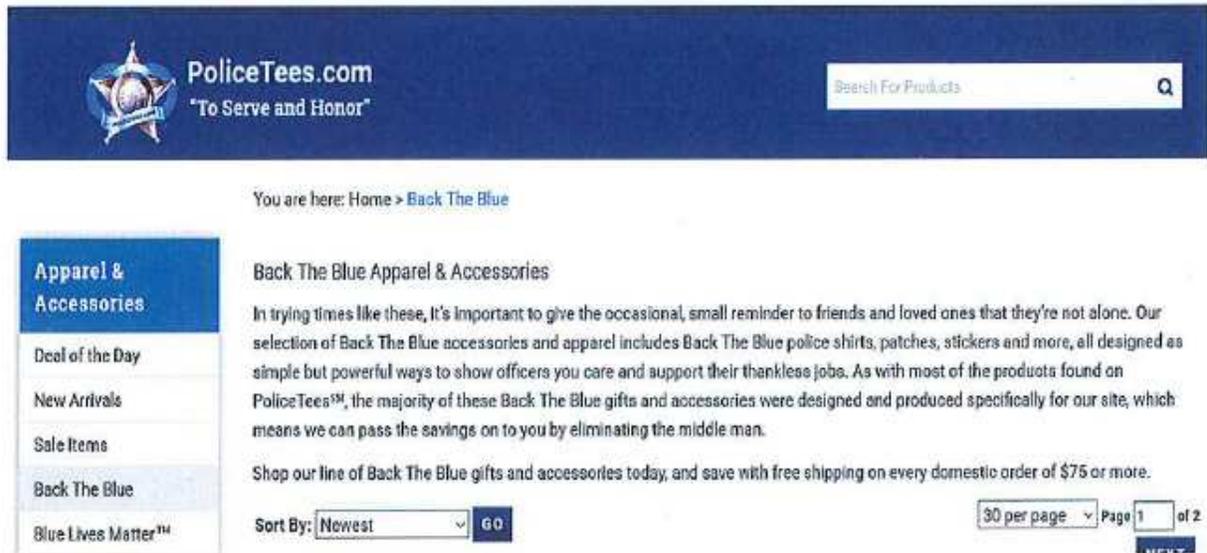
August 9, 2015

Applicant’s Answer: Applicant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 15 of the Amended Notice of

Opposition and leaves Opposer to its proofs.

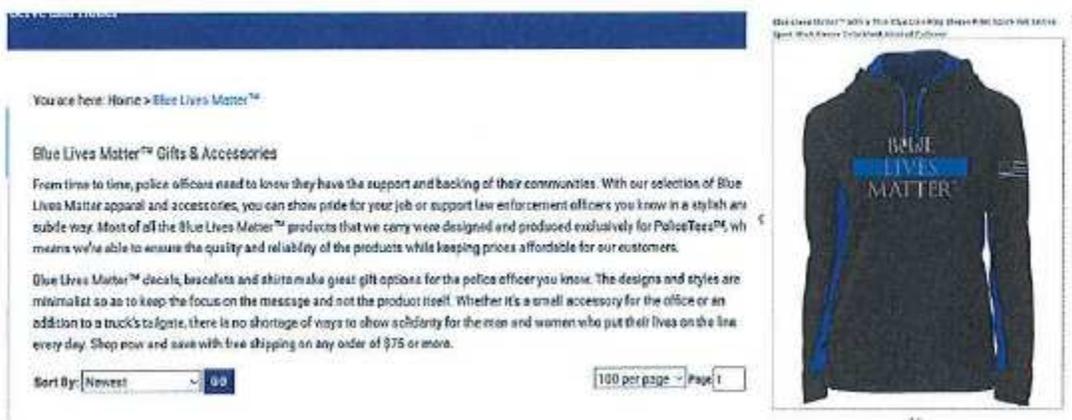
Applicant PoliceTees - T-Shirt/Apparel Retailer

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.



Applicant's Answer: Admitted.

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."*



Applicant's Answer: Applicant objects to Paragraph 17 as compound and not in

compliance with Rules 8(a) and 10(b) of the Federal Rules of Civil Procedure. Applicant admits it promotes and sells BLUE LIVES MATTER goods, but denies that BLUE LIVES MATTER is not a trademark. Further, Applicant affirmatively asserts it has been and continues to use BLUE LIVES MATTER as a trademark and leaves Opposer to its proofs.

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.

Applicant's Answer: Admitted, with the clarification that Applicant claimed the exclusive right to use the BLUE LIVES MATTER trademark for the goods identified in the stated application.

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.

Applicant's Answer: Admitted.

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.

Applicant's Answer: Applicant admits that its U.S. Application Serial No. 86827145 contains a first use in commerce date of 9/15/2015; however, Applicant states that this date was identified in error and that the actual earliest first use in commerce with any good identified in this application is December 29, 2014, not 9/15/2015. Applicant will be submitting a Motion to amend the date of first use and date of first use in commerce identified in its application.

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

Applicant's Answer: Admitted, with the clarification that the photo image is of a sweatshirt bearing Applicant's BLUE LIVES MATTER trademark, not mere decoration.

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.

Applicant's Answer: Applicant admits an Office Action was mailed in this application on 3/17/2016, but denies there was a likelihood of confusion between its application and Serial No. 86747421 and leaves Opposer to its proofs.

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)***

Applicant's Answer: Applicant admits a Response to the 3/17/2016 Office Action was filed on August 5, 2016. Applicant denies any negative implications drawn by Opposer in Allegation No. 23, and leaves Opposer to its proofs.

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.

Applicant's Answer: Applicant admits that its application was accepted for publication, but expressly denies that PoliceTees submitted a false statement and leaves Opposer to its proofs.

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, 1229-3 1 (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 Answer: Applicant admits that U.S. Application Serial No. 86747421 was refused registration on November 16, 2016, but denies that POLICE LIVES MATTER is not a source identifier and leaves Opposer to its proofs.

**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.

Applicant’s Answer: Applicant repeats each and every response to the allegations set forth above.

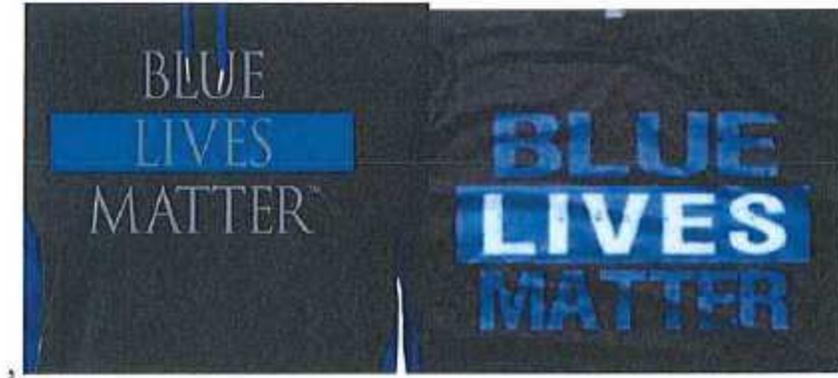
27. Tea Kay has senior use rights and priority based on its first use of Blue Lives Matter in commerce in connection with Tea Kay’s services and products before the filing date of U.S. Application Serial No. 86827145.

Applicant’s Answer: Denied.

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.

Applicant’s Answer: Denied.

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

Applicant's Answer: Denied.

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.

Applicant's Answer: Denied.

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.

Applicant's Answer: Denied.

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.

Applicant's Answer: Denied.

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

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

Applicant's Answer: Applicant repeats each and every response to the allegations set forth above.

34. Tea Kay's use of Blue Lives Matter is famous and has become distinctive.

Applicant's Answer: Denied.

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.

Applicant's Answer: Denied.

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).

Applicant's Answer: Denied.

Count 3: Fraud in the Procurement of its Registration

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

Applicant's Answer: Applicant repeats each and every response to the allegations 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.

Applicant's Answer: Denied.

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 PoliceTees™, which means we're able to ensure the quality and reliability of the products while keeping prices affordable for our customers.

Applicant's Answer: Denied.

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.

Applicant's Answer: Denied.

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.

Applicant's Answer: Denied.

Count 4: Misrepresentation of the Source of Goods

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

Applicant's Answer: Applicant repeats each and every response to the allegations 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.

Applicant's Answer: Denied.

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.

Applicant's Answer: Applicant repeats each and every response to the allegations set forth above.

45. PoliceTees last submitted specimen dated August 5, 2016 shows an online advertisement for a T-Shirt that is decorated or adorned with the terms Blue Lives Matter covering a large portion of the garment front.



Applicant's Answer: Admitted that Applicant submitted a specimen in support of use of its mark in its application but all negative implications and legal conclusions asserted by Opposer in this Allegation is denied, and Applicant leaves Opposer to its proofs.

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.

Applicant's Answer: Denied.

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.

Applicant's Answer: Denied.

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.

Applicant's Answer: Denied.

AFFIRMATIVE DEFENSES

1. Opposer's action is barred by the doctrines of acquiescence, abandonment, laches, and/or estoppel.
2. Opposer's action cannot be sustained because there is no likelihood of confusion in this case.
3. Opposer's action cannot be sustained because Opposer does not have priority to the subject mark in relevant territories or throughout the United States
4. Opposer's action cannot be sustained because Applicant has priority to the mark for Applicant's goods.
5. Opposer is estopped from asserting that a likelihood of confusion exists based on the respective marks.
6. Applicant reserves the right to add additional affirmative defenses as they may become known during the course of this proceeding.

PRAYER FOR RELIEF

WHEREFORE, Applicant respectfully requests that Opposer's Amended Notice of Opposition be dismissed in its entirety and that Application Serial No. 86/827,146 for the mark BLUE LIVES MATTER be permitted to proceed to registration.

Applicant respectfully requests that the Trademark Trial and Appeal Board direct all future correspondence in this matter to the undersigned attorneys of record.

Respectfully submitted,

Dated: May 19, 2017

By: /s/ G. Thomas Williams

G. Thomas Williams
Mary C. Bonnema
MCGARRY BAIR PC
*Counsel for Theresa J. Meyer DBA
PoliceTees.com*
45 Ottawa Ave. SW, Suite 700
Grand Rapids, MI 49503
Tel: (616) 742-3500

CERTIFICATE OF SERVICE

This is to certify that a true and complete copy of the foregoing *Applicant's Answer to Amended Notice of Opposition and Affirmative Defenses* was served by electronic mail Opposer's counsel at the following address:

Robert Ireland
rob@irelandpc.com

Dated: May 19, 2017

By: /s/ G. Thomas Williams

G. Thomas Williams
Mary C. Bonnema
MCGARRY BAIR PC
*Counsel for Theresa J. Meyer DBA
PoliceTees.com*
45 Ottawa Ave. SW, Suite 700
Grand Rapids, MI 49503
Tel: (616) 742-3500