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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
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Date	12/19/2016
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**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 Notice of Opposition dated November, 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.

Applicant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth regarding Opposer’s ownership and rights to Hold The Line LLC.

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. Trademark Act §2(d), 15 U.S.C. § 1052(d): Likelihood to cause Confusion, Mistake, or to Deceive: The mark applied for by Theresa J. Meyer, DBA PoliceTees.com (“PoliceTees”), “Blue Lives Matter”, is exactly and/or nearly exact as the same mark used by TEA KAY MEDIA LLC. See **Exhibit A**. It is the same in sound, appearance, meaning, commercial impression, goods, and services.

- a. Tea Kay Media LLC, a Delaware LLC, providing services and goods, began as Hold The Line LLC, using the mark on December 21, 2014, with its first commercial sale of the mark on December 24, 2014. See **Exhibit B and C**. Hold The Line began using the Blue Lives Matter logo on December 21, 2014, in direct response to the “Black Lives Matter” articles being widely reported and used.
- b. Hold The Line LLC was first to use the term “Blue Lives Matter” in said logo form, and many were using and reporting nationally on the term and its usage. Also, the term “Blue” was first for years and has been in widespread use to define the police and law enforcement community. For example, movies like *Blue Thunder* and *The Thin Blue Line*, along with TV series like *Blue Bloods*, have clearly made the term “Blue” a word of common usage.
- c. The term “Lives Matter” is a vague and generally used concept from the inception of the English translation of human principles. Hold The Line LLC advertised its use of “Blue Lives Matter” on December 21, 2014, and had its first commercial sale on December 24, 2014, but it does not seek to monopolize a term used by many to benefit a group it seeks to defend and provide a platform to support an idea; a common right, a common goal, a common use of a common phrase.
- d. What is clear, PoliceTees intentionally seeks to deceive the USPTO by claiming it began discussing the term “Blue Lives Matter” in the beginning of 2014, a clear deception since the phrase/usage did not begin until after “Black Lives

Matter” was used widely, near the end of 2014. PoliceTees doesn't claim to have used the term commercially until the Spring of 2015, months after many already used it.

- e. Many groups were using the term/phrase “Blue Lives Matter” in articles and in commerce, selling t-shirts, with the same logo, prior to PoliceTees, a fact that must have been intentionally withheld from the USPTO through an improper search of the term/phrase prior to PoliceTee's trademark application.
- f. PoliceTees deceptive conduct, along with their lack of a good faith search to determine the usage of the term they seek to Trademark clearly should preclude any attempt they make to trademark “Blue Lives Matter”.
- g. The trademark sought by PoliceTees could deceive others who would mistake their logo/mark for the logo/mark of Tea Kay Media LLC.

Applicant’s Answer: Applicant objects to Paragraph 1 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 1 of the Notice of Opposition and leaves Opposer to its proofs.

2. Trademark Act §2(e): Merely Descriptive and Deceptively Misdescriptive:
The term “Blue Lives Matter” is merely descriptive of a belief held by many civilians and law enforcement individuals toward the law enforcement community, i.e., the police (blue lives). The deceptive nature of the “Blue Lives Matter” usage in this case is that the public is deceived by PoliceTees into believing it is a police-type organization, a group established by police for the purpose of supporting police causes.

- a. Several groups, perhaps many, like TEA KAY MEDIA LLC, were founded by law enforcement members and its purpose is to promote and support the law enforcement community, like Blue Lives Matter NYC. PoliceTees is not founded by law enforcement officials and its purpose is merely to make a few

dollars selling t-shirts to unsuspecting good-intentioned citizens.

- b. TEA KAY MEDIA LLC does a service to the general public by providing an information resource and platform for law enforcement individuals and the community to read, review, and comment; its sale of t-shirts, using the Blue Lives Matter logo, is a fund-raising source but a source used to facilitate the continuation of the website and news reporting, not merely to make money.
- c. The good-intentioned purchasing of “Blue Lives Matter” products from PoliceTees by an unsuspecting general public does a disservice to society, much the same as the donations made to aid Haiti and its citizens but none of the money made it to the intended recipients.

Applicant’s Answer: Applicant objects to Paragraph 2 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 2 of the Notice of Opposition and leaves Opposer to its proofs.

3. Tea Kay Media LLC, formerly Hold The Line LLC, holds a common law trademark superior to any claim of PoliceTees, as do many. Hold The Line LLC first advertised its logo, Blue Lives Matter, on Facebook, December 21, 2014, and its first sale of a t-shirt with that logo was three days later, December 24, 2014. The t-shirts were sold on www.teespring.com. See **Exhibit B to C**.

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 Notice of Opposition and leaves Opposer to its proofs. In further answer, Applicant states that it first used its BLUE LIVES MATTER Mark on January 10, 2014.

4. Tea Kay Media LLC will be damaged, an economic loss, by the granting of the “Blue Lives Matter” logo, a logo Hold The Line originated in form for its own t-shirt sales, to PoliceTees. PoliceTees could attempt to deny Tea Kay Media LLC the use of the

mark.

Applicant's Answer: Denied.

5. Tea Kay Media LLC uses its logo, a logo that PoliceTees virtually copied, to raise funds to support the operation of its informational publication it provides to the general public for free, and which provides a valuable platform for the law enforcement community to voice its opinions and for others to comment. See **Exhibit D**.

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 Notice of Opposition and leaves Opposer to its proofs.

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.

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 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: December 19, 2016

By: /s/ G. Thomas Williams

G. Thomas Williams
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CERTIFICATE OF SERVICE

This is to certify that a true and complete copy of the foregoing *Applicant's Answer and Affirmative Defenses* was served by first-class mail, postage prepaid on Opposer's counsel at the following address:

Daniel J. Mazaheri
2201 New Holland Pike
Lancaster, PA 17601

Dated: December 19, 2016

By: /s/ G. Thomas Williams

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