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August 24, 2016

VIA EMAIL

To: [REDACTED]

By Email: [REDACTED]

Re: Trademark Search Report & Opinion for: “AMERICAN INDEPENDENCE T-SHIRT CO.”

In summary, I believe there *is* enough distinctiveness in “American Independence T-shirt Co.” with or without the use of the American flag in “American” such that the USPTO would allow registration in one or more areas of desired commerce (T-Shirts). The precise area of commerce identified under the mark will be subject to the examiner’s perceptiveness over the below competitive and non-competitive marks.

Trademark Search

A trademark search was performed for “American Independence” with the following characteristics:

- 1. United States – Federal only**
- 2. Goods/Services: T-Shirts**
- 3. General Word Search and Image Search**

[REDACTED]

Legal Standard

Requirements for Federal Trademark Protection; to be protected as a trademark at the federal level, a designation must be:

- Distinctive (see *Distinctiveness*).
- Used in interstate commerce (see *Use in Commerce*).

Distinctiveness

Distinctiveness is the ability of a designation to identify a single source of goods or services. Distinctiveness may be either:

- Inherent (see *Inherent Distinctiveness*).
- Acquired (see *Acquired Distinctiveness*).

Inherent Distinctiveness

A mark is inherently distinctive if it is immediately capable of identifying a source of origin for a good or service.

Inherent distinctiveness is generally analyzed along a spectrum of distinctiveness ranging from generic terms, which are not protectable under any circumstances, to highly distinctive fanciful marks, which have the broadest scope of inherent protection.

Acquired Distinctiveness

Some terms that are not inherently distinctive may acquire distinctiveness, and be capable of protection as a trademark, through use and promotion over time. For example, terms that describe a product attribute or characteristic may be protectable if acquired distinctiveness, also known as secondary meaning, is achieved. Under the Lanham Act, a mark that has been in substantially continuous and exclusive use for five years is entitled to a presumption of acquired distinctiveness (*15 U.S.C. § 1052(f)*).

Use in Commerce

In the US, trademark rights at the federal level arise through use of a protectable mark in interstate commerce in connection with goods or services.



At the state level, trademark rights arise through use of the mark in commerce within the state.

Search Opinion

There is no United States federally registered trademark with all of the words in the specific order: “American Independence T-Shirt Company” currently in use in any classification. This means that it would likely be possible for the basic word mark American Independence T-shirt Co. to be registered. As T-shirt is a generic term for a type of clothing, American is an adjective relating to the country, and Co. is a generic term for company we would likely have to disclaim the use of T-shirt, American, and Co. separately but this should not prevent successful registration of the mark. This is generally good news; however, there will likely be an issue raised by the examiner with respect to trademarking the use of the American flag. Section 2b of the Trademark Act ([15 U.S.C. §1052\(b\)](#)) bars the registration of marks that consist or comprise of the flag of any country. According to the trademark manual, “registration must be refused under §2(b) if the design sought to be registered includes a true representation of the flag of the United States, any state, municipality, or foreign nation, or is a simulation thereof. A refusal must be issued if the design would be perceived by the public as a flag, regardless of whether other matter appears with or on the flag.” It does however also say that registration should not be refused if “the flag design is used to form a letter, number, or design”. They might allow registration of your mark using the flag, but they also may not. A more stylized symbol that looks less like a flag and more like an E would likely be easy to register. However, as the basic word mark, American Independence T-Shirt Co., without any design is likely registerable I would recommend registering this mark. Not only does it sidestep the issues with registering the American flag, it is a stronger mark. This mark would cover **any** design including the words American Independence T-Shirt Co.

However, besides gaining rights through registration companies can gain common law rights through use. These rights are much narrower and harder to defend. They exist only where customers have grown to associate the name with the product. By comparison registered trademarks have rights across the entire country from the time of registration



regardless of customer recognition. There does seem to be a few companies that may have common law trademark rights that could interfere with enforcement of your rights but are unlikely to block registration. They may require argument and differentiation in front of the patent office however after the initial filing.

From the initial consultation, we identified three international trademark classifications which cover these types of goods (25, 35, 40), see Search Methodology below for details.

The USPTO adjudges trademarks not only on their direct word-for-word or literal distinctiveness, but requires that the trademark not be confusingly similar to other marks that are in the same industry. The main point of the USPTO's effort here is to protect the end customers to enable them to be able to make sound business decisions about certain brands, and can trust that by recognizing a logo, tradename or emblem, that the product or service is linked to one source. As well as discussed above common law trademark rights need to be considered.



Common Law Marks

American T-Shirt Company



Based in Hawaii but with a website at <http://www.americant-shirt.com> accessible throughout the U.S. American T-Shirt Company may have some nationwide common law rights. The amount would depend on consumer recognition of the brand. However, this should not prevent the registration of the mark including the American flag since the word independence is included in your mark, you shorten company to co. and you use an American flag for the E in American. The inclusion of an extra word changes both the visual and aural aspects of the mark and would differentiate it in the mind of the consumer. The inclusion of the American flag for the E, though opening us up to the issues discussed previously, certainly changes the visual nature of the mark and adds to distinctiveness and lack of potential consumer confusion. Your mark would also lack the star, Hawaii Based, and Est 1977. This further distinguishes your mark.

The word mark without the American flag replacing the E is closer but should still be allowable for several reasons: (1) since this is an unregistered common law mark it only has rights based on consumer recognition. These are likely tiny and centered in Hawaii. (2) Your mark still adds the word independent, shortens company to co., and lack the star, Hawaii Based, and EST. 1977.

The above mark should not prevent the registration of the word mark American Independence T-Shirt Co., and would certainly not prevent the registration of your image mark.



All American T-Shirt Co.



All American T-Shirt Co. is based in Greer S.C. but again with a website that can be accessed throughout the world (<http://allamericantshirt.com/>) All American T-Shirt Co. will have trademark rights based on consumer recognition. This mark however should not prevent the registration of either your image or word mark. Your mark (1) does not include the word all, (2) includes the word independence, (3) would not include the stylized triangular American flag, and (4) the image mark would include an E in the word American. Including the font used in the image mark would further distinguish the mark.

Neither the word mark nor the image mark are likely to be refused registration based on this common law mark.





Despite including the TM symbol on their website (www.greatamericantshirtfactory.com) the Great American T-Shirt Factory seems to not have a registered trademark. They may be incorrectly using the symbol, basing their use on common law rights, or be in the process of registering a trademark. They seem to have been in business since 1987 so the latter is unlikely. Either way this mark should not prevent the registration of either your word or image mark. The word mark would (1) not include the word great or factory, (2) include the word independence and the abbreviation co., and (3) would not include the stylized American flag. The image mark would, along with all the differences above, replace the E in American with the flag and include a distinguishing font.

The above common law mark should not prevent the registration of either your word or image mark.



Great American T-Shirt Co.



Much like the Great American T-Shirt Factory, the Great American T-Shirt Company should not prevent the registration of either of your potential marks. The word mark would (1) not include the word great or the word company, (2) include the word independence and the abbreviation co., and (3) would not include the stylized American flag. The image mark would, along with all the differences above, replaces the E in American with the flag and includes a distinguishing font.

For these reasons the above common law mark should not prevent registration of either your word or image mark.



Registered Marks

Tru American T-Shirt Co.

Tru American T-Shirt Co.

Besides being a dead trademark no longer used by the owner in commerce, which means the owner would have to revive the mark before your mark is registered, Tru American T-Shirt Co. is not confusable with your mark and arguably doesn't cover the same goods as your mark would. Tru American T-Shirt Co. (1) lacks the word independence, and (2) adds the word Tru. Your image mark would replace the e in American with an American flag and would add a distinguishing font. As well, Tru American T-Shirt Co was registered in international class 25 which covers the retail selling of T-Shirts. Arguably your activity is better covered by classifications 35 and 42 since you are allowing consumers to design their own T-shirts which you then produce and send to them.

Even if the owner is able to successfully revive this trademark it should not prevent the registration of either your image or word mark.



Made in America Tees



Made in America Tees is a live mark but it is distinguishable from both your word and image mark. Your word mark: (1) does not include the words Made or In, (2) Uses T-Shirt rather than Tees, and (3) includes the words Independence and the abbreviation Co. Your image mark adds to the distinctiveness by replacing the E in American with an American flag and using a distinguishing font.

Made in America Tees should not prevent the registration of either your word or image mark.

Regards,

A handwritten signature in black ink, appearing to read "J.D. Houvener".

J.D. Houvener
Patent Attorney
jd@boldip.com
USPTO Reg. # 72087



Search Methodology

The below sections outline a summary of what was researched to come up with the closest marks and with the conclusions in the opinion above.

Section I describes the three classifications identified and associated with your desired area of business. These classifications were used to scour the TESS and other online database search engines to narrow our results to those specific areas of commerce.

Section II focused on words specific to your proposed mark primarily focusing on “American”, “Independence”, “T-Shirt”, “Company” and conjugates thereof.

Section III focused on secondary and beyond words related specifically to “American”, “Independence” “T-Shirt” and conjugates thereof.



Section I – Search Classifications

International Classes Identified and Searched:

- 1) Class 25: Clothing, footwear, headgear
- 2) Class 35: Advertising; business management; business administration; office functions.
- 3) Class 40: Treatment of materials.



Section II – Similar Word Searching

Conjugates: Independent; T Shirt; Tee Shirt; America; Amerika; American; dependent; dependence;

Cumulative General Results (Section I) – 10,000 hits combined; Most Relevant Results Listed:

Word Mark	MADE IN AMERICA TEES
Goods and Services	IC 025. US 022 039. G & S: T-shirts IC 035. US 100 101 102. G & S: On-line retail store services featuring clothing
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	01.01.10 - Stars, three or more; Three or more stars 01.01.13 - Stars - multiple stars with five points 24.09.05 - American flags; Flags, American
Serial Number	87070661
Filing Date	June 14, 2016
Current Basis	1B
Original Filing Basis	1B
Owner	(APPLICANT) Daniel J. Stubbs INDIVIDUAL UNITED STATES 225 Winding Meadows Dr. Flat Rock NORTH CAROLINA 28731
Attorney of Record	Robert Merting
Description of Mark	The color(s) red, white, and blue is/are claimed as a feature of the mark. The mark consists of a stylized rendition of the upper canton and field of an American Flag over the words "Made in America Tees".
Type of Mark	TRADEMARK. SERVICE MARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE
Word Mark	TRU AMERICAN T-SHIRT CO.
Goods and Services	(ABANDONED) IC 025. US 022 039. G & S: Short-sleeved or long-sleeved t-shirts
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	78851509
Filing Date	March 31, 2006
Current Basis	1B
Original Filing Basis	1B
Owner	(APPLICANT) Buckwell, Jeffrey David SOLE PROPRIETORSHIP CALIFORNIA 4802 Hermanson Circle Huntington Beach CALIFORNIA 92649
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	DEAD
Abandonment Date	March 21, 2007



Word Mark	AMERICA'S MOST COMFORTABLE T-SHIRT
Goods and Services	(ABANDONED) IC 025. US 022 039. G & S: Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms; Athletic shirts; Business wear, namely, suits, jackets, trousers, blazers, blouses, shirts, skirts, dresses and footwear; Graphic T-shirts; Knit shirts; Long-sleeved shirts; Open-necked shirts; Pique shirts; Polo shirts; Short-sleeved or long-sleeved t-shirts; Short-sleeved shirts; Sport shirts; Sports shirts; Sports shirts with short sleeves; T-shirts; T-shirts for Men; Tee shirts; Tops for Mens; Wearable garments and clothing, namely, shirts. FIRST USE: 20150114. FIRST USE IN COMMERCE: 20150214
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	86609988
Filing Date	April 25, 2015
Current Basis	1A
Original Filing Basis	1A
Date Amended to Current Register	August 6, 2015
Owner	(APPLICANT) Kumar, Shivneel DBA California Dreams LLC LIMITED LIABILITY COMPANY WASHINGTON 24532 108th Place South East Kent WASHINGTON 98030
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE T-SHIRT APART FROM THE MARK AS SHOWN
Type of Mark	TRADEMARK
Register	SUPPLEMENTAL
Live/Dead Indicator	DEAD
Abandonment Date	February 9, 2016
Word Mark	PRO TEES INC. AMERICA'S T-SHIRT SOURCE



Goods and Services (ABANDONED) IC 025. US 022 039. G & S: T-shirts, sweatshirts, shirts, golf shirts, sweatpants, shorts and caps. FIRST USE: 19930101. FIRST USE IN COMMERCE: 19930101

Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Search Code 01.01.03 - Star - a single star with five points
24.09.01 - Flags, rectangular or square, excluding American flag or checkered flag
24.09.25 - Bunting (flags); Flags, signal; Other flags
26.13.13 - Quadrilateral (two quadrilaterals); Two quadrilaterals
26.13.21 - Quadrilaterals that are completely or partially shaded

Serial Number 74588817

Filing Date October 3, 1994

Current Basis 1A

Original Filing Basis 1A

Owner (APPLICANT) PRO-TEES, Inc. composed of Russell Martin, a U.S. citizen and Al Livnat, a citizen of Israel CORPORATION GEORGIA 3277 Roswell Road, Ste 448 Atlanta GEORGIA 30305

Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "TEES", "INC." APART FROM THE MARK AS SHOWN

Type of Mark TRADEMARK

Register PRINCIPAL-2(F)-IN PART

Live/Dead Indicator DEAD

Abandonment Date May 28, 1996

Distinctiveness Limitation Statement as to "AMERICA'S T-SHIRT SOURCE"



Section III – Second/Tertiary Word Search with Context

Search Strings: Us Independent; Us Indpendence; United States independence; United States Independent; USA Independent; USA Independence; US T-Shirt; US T Shirt; US Tee Shirt; United States T-Shirt; United States T Shirt; United States Tee Shirt; USA T-Shirt; USA T Shirt; USA Tee Shirt; Independence T-Shirt; Independence T Shirt; Independence Tee Shirt; Independent T-Shirt; Independent T Shirt; Independent Tee Shirt;
Combed search with only results for IC's 025, 035, 040,
Cumulative General Results (Section II) – 3000 hits; no new relevant hits:

