PUBLIC CITIZEN LITIGATION GROUP
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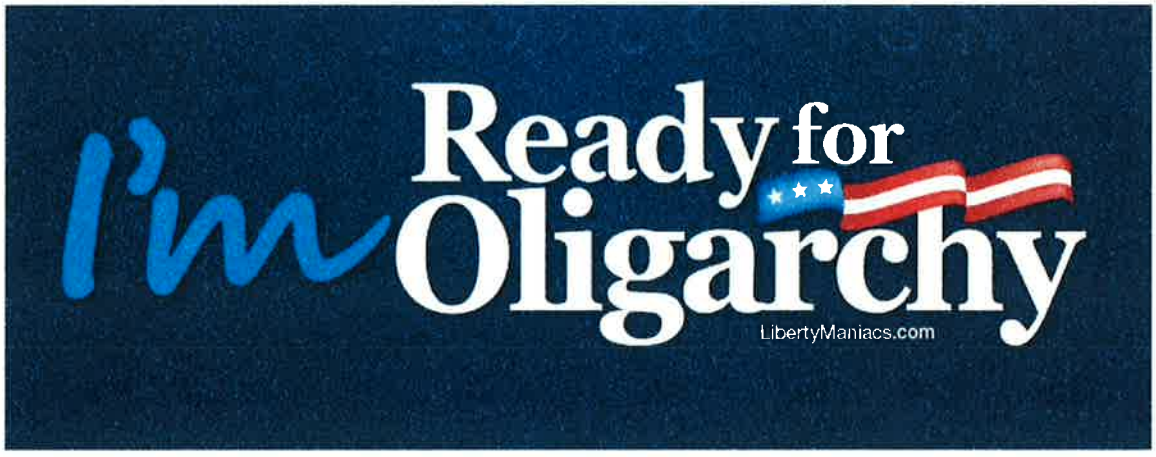
June 9, 2014

Jim Lamb, Esquire
Sandler Reiff Lamb Rosenstein & Birkenstock, P.C.
Suite 300
1025 Vermont Avenue, NW
Washington, D.C. 20005

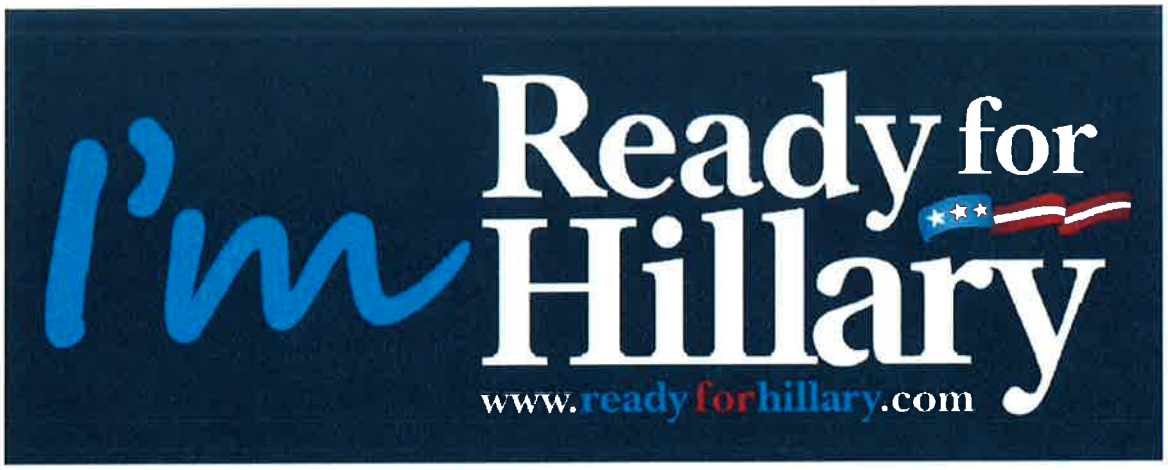
Dear Mr. Lamb:

I represent Dan McCall, the proprietor of LibertyManiacs.com, where he sells expressive products of various kinds, including parodies of politicians and government agencies. He was most recently in the news when the National Security Agency and the Department of Homeland Security had the poor judgment to demand that his parodies of their official seals be removed from the web site of Zazzle, where he sells his materials on a print-to-order basis, on the theory that they violated various federal statutes protecting those seals against misuse. We brought an action for a declaratory judgment that the federal statutes were not violated and that, in any event, the First Amendment protects the right to make fun of the government. The government quickly conceded, agreeing to retract the takedown letters with a commitment not to invoke the statutes to demand removal of parodies, and to pay McCall's litigation costs.

It has come to our attention that Ready for Hillary has sent takedown letters to both Zazzle and CafePress, complaining that the following design violates its intellectual property rights:



Although neither company has thus far disclosed the takedown letter it received (Zazzle has given the nonsensical explanation the letter contains "confidential" information), I assume that the demand is based on the similarity between McCall's design and the following image promoting Hillary Clinton's presidential candidacy.



The communications from Zazzle and CafePress do not reveal whether your client's claims are based on copyright or trademark; Ready for Hillary could have threatened these companies with either to take advantage of the fact that, although 47 U.S.C. § 230 generally gives providers of interactive web sites statutory immunity for content provided by another, the immunity does not apply to intellectual property claims. However, the difference does not matter, because in either case McCall's use is plainly parody. McCall uses the "I'm Ready for" words and design derisively, replacing the word "Hillary" with the word "oligarchy." This is a reference, in part, to the recent discussion of the increasing tendency of American politics to reflect rule by oligarchy, rather than by true democracy, as reflected in a recent paper by Martin Gilens and Benjamin Page, *Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens.*[1] The parody refers more specifically to the prospect that the 2016 presidential election may be a contest between a member of the Clinton family and a member of the Bush family. Nobody could possibly look at McCall's design and think that it is sponsored by your committee or, indeed, by its candidate, so there is no actionable likelihood of confusion. Moreover, even assuming that you had a registered copyright in the Ready for Hillary design, McCall's product represents non-commercial commentary on the copyright holder and cannot possibly interfere with sale of the copyrighted work.

Moreover, critical speech directed at a candidate for president is squarely protected by the First Amendment, hence any application of trademark law to quash such uses is highly suspect.

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[1] Available at http://www.princeton.edu/~mgilens/Gilens%20homepage%20materials/Gilens%20and%20Page/Gilens%20and%20Page%202014-Testing%20Theories%203-7-14.pdf.

Although McCall's products are sold, their contents are noncommercial speech, which qualifies for full First Amendment protection. *Ayres v. Chicago*, 125 F.3d 1010, 1014 (7th Cir. 1997); *see also Mattel, Inc. v. Walking Mountain Prods.*, 353 F.3d 792, 812 (9th Cir. 2003); *Smith v. Wal-Mart Stores*, 537 F. Supp.2d 1302, 1340-1341 (N.D. Ga. 2008). The First Amendment protection for non-commercial speech extends to bar trademark claims. *E.S.S. Entertainment 2000 v. Rock Star Videos*, 547 F.3d 1095, 1099-1101 (9th Cir. 2008); *Cardtoons, L.C. v. Major League Baseball Players Ass'n*, 95 F.3d 959, 968-976 (10th Cir. 2003); *CPC Intern. v. Skippy Inc.*, 214 F.3d 456, 462-463 (4th Cir. 2000); *L.L. Bean v. Drake Publishers*, 811 F.2d 26, 33 (1st Cir. 1987).

The staff of Ready for Hillary should know better than to send frivolous takedown demands like these. We would, however, prefer to resolve this controversy without litigation. We are, therefore, giving Ready for Hillary three days to retract its takedown demand. Absent a retraction, we will file an action for a declaratory judgment of non-infringement, seeking damages for lost sales and an award of attorney fees for the issuance of a frivolous takedowns.

Sincerely yours,

Paul Alan Levy