

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

AMERICAN SECURITY COUNCIL  
FOUNDATION,

Plaintiff,

-v.-

CENTER FOR SECURITY POLICY, *et al.*,

Defendants.

CIVIL NO: 1:12-cv-01486-RC

**ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS OF DEFENDANTS  
CENTER FOR SECURITY POLICY AND FRANK GAFFNEY TO COMPLAINT**

Defendants Center for Security Policy (“CSP”) and Frank Gaffney (collectively “Defendants”), by and through their undersigned counsel, hereby answer Plaintiff’s Complaint (“Complaint”), assert the following affirmative defenses, and counterclaim as follows.

**PARTIES**

1. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 1 of the Complaint, and on that basis deny such allegations.

2. Defendants admit the allegations set forth in paragraph 2 of the Complaint.

3. Defendants admit that Frank Gaffney is an individual and serves as president and chief executive officer of Defendant CSP, but deny that he is the principal of Defendant CSP.

**JURISDICTION AND VENUE**

4. Paragraph 4 sets forth legal conclusions to which no response is required. To the extent that an answer is required, Defendants admit that this Court has jurisdiction of the federal claims.

5. Paragraph 5 sets forth legal conclusions to which no response is required. To the

extent that an answer is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 5 of the Complaint, and on that basis deny such allegations.

6. Paragraph 6 sets forth legal conclusions to which no response is required. To the extent that an answer is required, Defendants admit that this Court has personal jurisdiction over the parties.

7. Paragraph 7 sets forth legal conclusions to which no response is required. To the extent that an answer is required, Defendants admit that the venue of this matter is properly before the Court in the District of Columbia.

#### **NATURE OF ACTION**

8. Paragraph 8 sets forth legal conclusions to which no response is required. To the extent that an answer is required, Defendants deny that Plaintiff has any legitimate grounds to prosecute this matter and further allege that Plaintiff's actions are undertaken in bad faith and in violation of Rule 11 of the Federal Rules of Civil Procedure (hereinafter "Rule 11").

#### **BACKGROUND**

9. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 9 of the Complaint, and on that basis deny such allegations.

10. Defendants deny the allegations set forth in paragraph 10 of the Complaint.

11. Defendants deny the allegations set forth in paragraph 11 of the Complaint.

12. Defendants deny the allegations set forth in paragraph 12 of the Complaint.

13. Defendants deny the allegations set forth in paragraph 13 of the Complaint.

### **GENERAL ALLEGATIONS**

14. Defendants admit the allegations set forth in paragraph 14 of the Complaint as those allegations refer to Defendant CSP. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 14 of the Complaint as those allegations refer to Plaintiff, and on that basis deny such allegations.

15. Defendants deny the allegations set forth in paragraph 15 of the Complaint.

16. Defendants admit that a letter identical to Exhibit 5 of the Complaint was received in or about May 2011. Beyond this, the allegations set forth in paragraph 16 of the Complaint refer to the contents of the letter, which speaks for itself. Defendants deny the allegations to the extent they imply the truth of the matter asserted in the letter.

17. Defendants admit that a letter identical to Exhibit 6 of the Complaint was received in or about November 2011. Beyond this, the allegations set forth in paragraph 17 of the Complaint refer to the contents of the letter, which speaks for itself. Defendants deny the allegations to the extent they imply the truth of the matter asserted in the letter.

18. Defendants deny the allegations set forth in paragraph 18 of the Complaint.

19. Defendants deny the allegations set forth in paragraph 19 of the Complaint.

20. Defendants deny the allegations set forth in paragraph 20 of the Complaint.

21. Defendants deny the allegations set forth in paragraph 21 of the Complaint to the extent they refer to the conduct of Defendants. Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 21 of the Complaint, and on that basis deny such allegations.

### **COUNT I: FEDERAL TRADEMARK INFRINGEMENT**

22. Defendants repeat and reassert the responses to the allegations set forth in the

previous paragraphs as if fully set forth herein.

23. Paragraph 23 sets forth legal conclusions to which no response is required. To the extent that an answer is required, Defendants deny that Plaintiff has any legitimate grounds to prosecute this matter and further allege that Plaintiff's actions are undertaken in bad faith and in violation of Rule 11.

24. Defendants deny the allegations set forth in paragraph 24 of the Complaint.

25. Defendants deny the allegations set forth in paragraph 25 of the Complaint.

26. Defendants deny the allegations set forth in paragraph 26 of the Complaint.

27. Defendants deny the allegations set forth in paragraph 27 of the Complaint.

28. Defendants deny the allegations set forth in paragraph 28 of the Complaint.

**COUNT II – FEDERAL FALSE DESIGNATION OF ORIGIN  
AND UNFAIR COMPETITION**

29. Defendants repeat and reassert the responses to the allegations set forth in the previous paragraphs as if fully set forth herein.

30. Paragraph 30 sets forth legal conclusions to which no response is required. To the extent that an answer is required, Defendants deny that Plaintiff has any legitimate grounds to prosecute this matter and further allege that Plaintiff's actions are undertaken in bad faith and in violation of Rule 11.

31. Defendants deny the allegations set forth in paragraph 31 of the Complaint.

32. Defendants deny the allegations set forth in paragraph 32 of the Complaint.

33. Defendants deny the allegations set forth in paragraph 33 of the Complaint.

34. Defendants deny the allegations set forth in paragraph 34 of the Complaint.

35. Defendants deny the allegations set forth in paragraph 35 of the Complaint.

**COUNT III – DISTRICT OF COLUMBIA TRADEMARK INFRINGEMENT**

36. Defendants repeat and reassert the responses to the allegations set forth in the previous paragraphs as if fully set forth herein.

37. Paragraph 37 sets forth legal conclusions to which no response is required. To the extent that an answer is required, Defendants deny that Plaintiff has any legitimate grounds to prosecute this matter and further allege that Plaintiff's actions are undertaken in bad faith and in violation of Rule 11.

38. Defendants deny the allegations set forth in paragraph 38 of the Complaint.

39. Defendants deny the allegations set forth in paragraph 39 of the Complaint.

40. Defendants deny the allegations set forth in paragraph 40 of the Complaint.

**COUNT IV – DISTRICT OF COLUMBIA UNFAIR COMPETITION**

41. Defendants repeat and reassert the responses to the allegations set forth in the previous paragraphs as if fully set forth herein.

42. Paragraph 42, including subparts (a)-(c), sets forth legal conclusions to which no response is required. To the extent that an answer is required, Defendants deny that Plaintiff has any legitimate grounds to prosecute this matter and further allege that Plaintiff's actions are undertaken in bad faith and in violation of Rule 11.

43. Defendants deny the allegations set forth in paragraph 43 of the Complaint.

**PRAYER FOR RELIEF**

44. Defendants deny that Plaintiff is entitled to any of the relief requested in the Prayer for Relief set forth in the Prayer for Relief paragraphs i-vi.

### AFFIRMATIVE DEFENSES

Defendants, while reserving the right to assert other defenses as discovery proceeds, and without assuming the burden of proof when the burden of proof rests on Plaintiff, assert the following separate and independent affirmative defenses in further opposition to Plaintiff's Complaint:

45. Plaintiff lacks standing to assert the claims set forth in the Complaint.

46. Plaintiff's Complaint fails to state a claim upon which relief can be granted.

47. Plaintiff has no valid trademark or protectable interest in the slogan PEACE THROUGH STRENGTH.

48. Plaintiff's alleged trademark registration as set forth in Exhibit 2 of the Complaint is invalid having been procured by fraud on the USPTO and because it does not meet the requirements of a trademark under federal law or under the laws of the District of Columbia.

49. Plaintiff was aware, or so recklessly disregarded the facts that it should have been aware, that at the time it applied for trademark registration, it did not have a protectable interest in the trademark because the slogan PEACE THROUGH STRENGTH was not proprietary to Plaintiff, Plaintiff's use in commerce was not the first or exclusive such use, nor had the slogan developed a secondary meaning, and as such was not protectable as Plaintiff's trademark. Thus, Plaintiff defrauded the USPTO during the trademark application and registration process to procure a trademark registration by purposefully misrepresenting material facts to the USPTO.

50. Plaintiff was aware, or so recklessly disregarded the facts that it should have been aware, of the use over decades (prior to Plaintiff's registration) by Defendants and by dozens of others of the slogan PEACE THROUGH STRENGTH in precisely the manner claimed by Plaintiff as a trademark and as such Plaintiff's claims are barred by the doctrine of laches,

waiver, acquiescence, and estoppel.

51. Plaintiff's claims are barred by the doctrine of unclean hands.

52. Defendants' use of the slogan PEACE THROUGH STRENGTH is legal and is fair use of the slogan coined and made famous by President Ronald Reagan.

53. Plaintiff's claims are barred because they expressly, impliedly, or constructively consented to all of the actions alleged in the Complaint.

WHEREFORE, Defendants respectfully pray that the Court:

A. Dismiss Plaintiff's Complaint with prejudice;

B. Award Defendants their costs in defending this action, including reasonable attorneys' fees; and

C. Grant Defendants such other and further relief as the Court may deem proper.

#### **JURY DEMAND**

54. Defendants hereby demand a trial by jury.

#### **COUNTERCLAIMS**

For their counterclaims under Federal Rules of Civil Procedure 7 and 8, Defendants bring the following counterclaims against Plaintiff based on the presently available information:

#### **JURISDICTION AND VENUE**

55. This Court has jurisdiction over Defendants' counterclaims pursuant to 28 U.S.C. §§ 1331 (federal question); 1338(a) (trademarks); 1338(b) (unfair competition with trademark); 1367 (supplemental jurisdiction); 2201 and 2202 (declaratory judgment); 15 U.S.C. § 1125(a) (false and misleading representations of fact); 16 U.S.C. § 1221 (original jurisdiction of federal courts), and common law unfair competition.

56. This Court has supplemental jurisdiction over Defendants' state law claims

pursuant to 28 U.S.C. § 1367.

57. Venue is proper in this district pursuant to 28 U.S.C. § 1392 because Plaintiff filed suit in this jurisdiction and/or because counterclaimant Defendant CSP has a principal office within this jurisdiction.

### **PARTIES**

58. Pursuant to the allegations in Plaintiff's Complaint at paragraph 1, Counterclaim Defendant (hereinafter "Plaintiff") is a non-profit corporation headquartered in the District of Columbia.

59. Counterclaimant Defendant CSP (hereinafter "CSP") is a non-profit corporation registered as such and doing business in the District of Columbia.

60. Counterclaimant Defendant Frank Gaffney (hereinafter "Gaffney") is the president and chief executive officer of CSP.

### **FACTUAL BACKGROUND**

61. President Ronald Reagan and his administration made famous the slogan PEACE THROUGH STRENGTH. This slogan was soon identified with government policies and public policy programs and platforms promoting regional and global peace through a policy of U.S. military and economic strength.

62. Politicians, political parties, think-tanks, the media, and a wide range of organizations and individuals who identified with President Reagan's PEACE THROUGH STRENGTH policy utilized this descriptive slogan in their public writings and programs to capture the full-breadth of this approach to national defense to highlight their own views, proposals, public policy, and educational programs.

63. This ubiquitous and quite public use of the slogan PEACE THROUGH



STRENGTH has been ongoing without interruption since the Reagan administration's use of that term to identify its own national defense policy.

64. Gaffney began his public service career in the 1970s, working as an aide in the office of Democratic Senator Henry M. Jackson, under Richard Perle. From August 1983 until November 1987, Gaffney held the position of Deputy Assistant Secretary of Defense for Nuclear Forces and Arms Control Policy in the Reagan Administration, again serving under Perle. In April 1987, Gaffney was nominated to the position of U.S. Assistant Secretary of Defense for International Security Policy. Gaffney served as the acting Assistant Secretary for seven months.

65. In 1988 Gaffney founded CSP. One of the central foci and themes of all of the work and public policy programs of CSP from inception to today, without interruption, has been the promotion of the policy PEACE THROUGH STRENGTH.

66. A Lexis-Nexis search with the terms <Frank Gaffney> and <PEACE THROUGH STRENGTH> will turn up no less than 113 citations dating back to 1988 and which illustrate the use by Gaffney and others of the slogan PEACE THROUGH STRENGTH as a descriptive phrase to promote policies, educational activities, public programs, and organizations.

67. A Lexis-Nexis search with the terms <Center for Security Policy> and <PEACE THROUGH STRENGTH> will turn up no less than 110 citations dating back to 1990 and which illustrate the use by CSP and others of the slogan PEACE THROUGH STRENGTH as a descriptive phrase to promote policies, educational activities, public programs, and organizations.

68. A Lexis-Nexis search of the terms <PEACE THROUGH STRENGTH> will turn up more than 3,000 citations and will thus require a more focused search.

69. The slogan PEACE THROUGH STRENGTH has been used to promote CSP's

and Gaffney's work for more than 24 years without interruption. Other national security specialists have also used this term during those 24 years in exactly the same way that Plaintiff contends it has a trademark in that slogan.

70. Plaintiff did not have a protectable or valid interest in any trademark of the slogan PEACE THROUGH STRENGTH when it applied for and received USPTO registration of trademark registration number 3,942,239 on April 5, 2011 ("the Trademark").

71. When Plaintiff applied for registration of the Trademark, it swore under oath the following:

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

72. Plaintiff knew, or should have known but for a reckless disregard of the publicly available facts, that the sworn statement above was materially false in that Plaintiff was not the owner of the Trademark and that others had the right to use the slogan PEACE THROUGH STRENGTH in the manner claimed as the Trademark by Plaintiff.

73. The public generally, and no cognizable segment of the public, has ever identified the slogan PEACE THROUGH STRENGTH with Plaintiff.

74. Plaintiff's assertion of a trademark in the slogan PEACE THROUGH STRENGTH has caused and will continue to cause CSP and Gaffney irreparable harm and damages.

75. A controversy exists between Plaintiff on the one hand and CSP and Gaffney on the other needing resolution by this Court to prevent further harm and damage to CSP and Gaffney.

#### **COUNT I—CANCELLATION OF TRADEMARK**

76. CSP and Gaffney hereby incorporate by reference and re-allege the subject matter in their responses to and averments of all previous paragraphs beginning at paragraph 1.

77. CSP and Gaffney ask this Court to cancel the Trademark, on the ground that the slogan PEACE THROUGH STRENGTH is a well-known descriptive phrase to identify a strong national defense, and, as asserted, has been in use either long before Plaintiff's use or continuous during Plaintiff's use, and has been in wide use in a continuous and quite public manner by CSP, Gaffney, and many others for more than 24 years.

78. CSP and Gaffney ask this Court to cancel the Trademark on the ground that the application for the Trademark was filed in bad faith and was insufficient to comply with the statutory requirements, which automatically renders the registration void.

79. CSP and Gaffney ask this Court to cancel the Trademark on the ground that Plaintiff filed the application based upon a false representation that besides Plaintiff “no other person, firm, corporation, or association has the right to use the mark in commerce.”

80. Plaintiff knew or should have known that such representation was false, that Plaintiff intended to induce approval of the application based on this representation, that the USPTO relied on this statement of exclusive use to grant the Trademark, and that CSP and Gaffney are harmed by the grant of the Trademark.

81. CSP and Gaffney ask the Court to cancel the Trademark on the ground that Plaintiff was not the originator of the slogan PEACE THROUGH STRENGTH and that this slogan was used by others in commerce before, or at least concurrent with, any use by Plaintiff.

82. CSP and Gaffney ask the Court to cancel the mark on the ground that Plaintiff committed fraud before the USPTO by seeking registration of a mark it knew was not original to Plaintiff and that had been used by others prior to, or concurrent with, Plaintiff’s use and does not serve as a source of origin for goods or services unique to Plaintiff.

83. CSP and Gaffney ask the Court to cancel the Trademark on the ground that the slogan PEACE THROUGH STRENGTH is a commonly used slogan to identify public policy programs promoting a strong national defense, and to the extent Plaintiff seeks to assert its Trademark against such use, it is committing trademark misuse and obtained the Trademark by fraud by failing to disclose this information to the USPTO when seeking the registration.

84. CSP and Gaffney ask the Court to cancel the Trademark on the ground that the slogan PEACE THROUGH STRENGTH is a descriptive slogan applying to any concept, position, policy, or program that advocates a strong national defense, and it has never gained a secondary meaning identified or associated by the public or by any cognizable segment of the

public with Plaintiff's goods or services or any other single source.

**COUNT II—DECLARATORY JUDGMENT OF NO INFRINGEMENT**

85. CSP and Gaffney hereby incorporate by reference and re-allege the subject matter in their responses to and averments of all previous paragraphs beginning at paragraph 1.

86. CSP and Gaffney ask for a declaratory judgment that there is no likelihood of confusion among consumers of goods and services relating to public policy and educational programs advocating a national defense posture of PEACE THROUGH STRENGTH between Plaintiff and Defendants.

87. By its Complaint, Plaintiff seeks to challenge the ability of CSP and Gaffney to use the slogan PEACE THROUGH STRENGTH to promote their work relating to a strong national defense on the ground that there exists a likelihood of confusion between Plaintiff's and Defendants' goods and services or is in violation of a valid Trademark for the use of the slogan PEACE THROUGH STRENGTH. Plaintiff's challenge reflects a clear threat to CSP and Gaffney's business. Thus, a controversy exists between the parties that requires resolution by this Court.

**COUNT III – FEDERAL FALSE DESIGNATION OF ORIGIN  
AND UNFAIR COMPETITION, COMMON LAW UNFAIR COMPETITION, &  
DISTRICT OF COLUMBIA UNFAIR COMPETITION**

88. CSP and Gaffney hereby incorporate by reference and re-allege the subject matter in their responses to and averments of all previous paragraphs beginning at paragraph 1.

89. This Count arises under § 43(a) of the Lanham Act (15 U.S.C. § 1125(a)), D.C. Code § 3904, and the common law.

90. CSP and Gaffney bring this counterclaim against Plaintiff to stop the assertion of baseless and invalid trademarks against Defendants in an attempt to disrupt and interfere with

CSP's and Gaffney's business. Plaintiff has through a scheme of fraudulent misrepresentation and improper use of the Trademark and the trademark process sought to obtain purported legal rights to assert in federal court and to stop CSP's and Gaffney's lawful use of the slogan PEACE THROUGH STRENGTH to describe policies and programs promoting a strong national defense.

91. Plaintiff knew, or should have known but for a reckless disregard for the public facts, that the PEACE THROUGH STRENGTH slogan is a well-known descriptive phrase used to identify a wide range of national defense policies and has no secondary meaning establishing a single source of any goods or services associated with the slogan PEACE THROUGH STRENGTH.

92. Plaintiff has misused its trademark by attempting to assert the Trademark which it did not properly apply for or obtain. The slogan, which is the subject of the Trademark, is a ubiquitous descriptive phrase used by a wide range of public figures, including the Republican Party, in precisely the manner Plaintiff seeks to protect by its fraudulently obtained Trademark. Such assertion of trademark infringement by Plaintiff against CSP and Gaffney is misuse and constitutes unfair competition.

93. CSP and Gaffney have been damaged and will continue to be damaged by the actions of Plaintiff, and CSP and Gaffney are entitled to their damages.

#### **JURY DEMAND**

94. CSP and Gaffney demand a trial by jury on all issues raised in Plaintiff's Complaint and all issues raised in CSP's and Gaffney's counterclaims that are so triable.

#### **PRAYER FOR RELIEF**

WHEREFORE, CSP and Gaffney pray for the following relief:

A. That the Complaint be dismissed with prejudice, this case be declared

“exceptional” under 15 U.S.C. § 1117(a), and Plaintiff be ordered to pay Defendants’ costs, charges, and disbursements, including reasonable attorneys’ fees, incurred in the defense of this action;

B. That the Trademark be declared invalid, unenforceable, and/or forfeited under federal, District of Columbia, and common laws;

C. That this Court cancel the Trademark;

D. That this Court grant a permanent injunction, enjoining Plaintiff, its officers, agents, employees, associates, and confederates from further asserting, contending, claiming, or alleging that the Trademark or any trademark arising from the slogan PEACE THROUGH STRENGTH has been or is now infringed by Defendants;

E. For a judgment that there is no reasonable likelihood of confusion between Plaintiff’s use of the slogan PEACE THROUGH STRENGTH and Defendants’ use of the same slogan to identify its own goods or services;

F. For a declaratory judgment that Plaintiff obtained the Trademark through bad faith and fraud;

G. Damages in favor of Defendants in an amount to be proved at trial;

H. Attorneys’ fees and costs; and

I. Any such other and further relief as the Court deems proper.

Respectfully submitted,

AMERICAN FREEDOM LAW CENTER

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Frank Gaffney*



**CERTIFICATE OF SERVICE**

I hereby certify that on December 9, 2012, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the Court's electronic filing system. Parties may access this filing through the Court's system. I further certify that a copy of the foregoing has been served by mail upon counsel for all parties for whom counsel has not yet entered an appearance electronically: none.

AMERICAN FREEDOM LAW CENTER

/s/ Robert J. Muise  
Robert J. Muise, Esq.