

August 3, 2021

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By Mail and email [cathleen.rhodes@usn.salvationarmy.org](mailto:cathleen.rhodes@usn.salvationarmy.org)

Re: DoTheMostGood and Salvation Army

Dear Ms. Rhodes:

On behalf of DoTheMostGood (“DTMG”), we are responding to your June 1, 2021 letter to Executive Director Barbara Noveau. You demanded that DTMG abandon its name and web address by November 30, 2021, on the ground that the Salvation Army uses the slogan “Doing the Most Good” next to its red shield logo.

The Salvation Army has no right to make this demand. This letter outlines the factual and legal reasons why. In the event that the Salvation Army were to seek injunctive relief, we expect this letter to be attached as an exhibit to its pleadings, to state DTMG’s position pending further briefing.

The slogan “do [or doing] the most good” generically describes what any non-profit organization does. DTMG did not steal the phrase from the Salvation Army. It quoted Hillary Clinton’s 2016 DNC speech which in turn quoted John Wesley’s 1799 “Sermons on Several Occasions” – the same source quoted by Salvation Army co-founder Catherine Booth.

Aside from these common roots in the 18th Century English social gospel, there is nothing in DTMG’s publicity that resembles the Salvation Army’s. DTMG’s logo looks nothing like the Salvation Army’s red shield. DTMG does not operate second-hand stores, soup kitchens, or religious missions, nor does it solicit donations with red Christmas kettles. DTMG’s political activism is poles apart from the “religious, charitable” uses identified in the Salvation Army’s trademark registration. Indeed, the Salvation Army would lose its § 501(c)(3) tax exemption if it were ever to compete in DTMG’s political arena. The PTO’s TESS database shows hundreds of registered slogans using similar iterations of “Do More/Most Good” for uses closer to the Salvation Army’s than DTMG’s. Given the extreme weakness of this mark, a court would not allow the Salvation Army to claim either infringement or dilution outside the “religious, charitable” uses named in its registration.

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### Factual Background

#### - **Hillary Clinton's quote of John Wesley**

DTMG was founded in the aftermath of the 2016 election. It took its name from Hillary Clinton's slogan "Do the Most Good" in her Presidential campaign, and specifically her acceptance speech at the Democratic National Convention:

The lesson [my mother] passed on to me, years later, stuck with me: No one gets through life alone. We have to look out for each other and lift each other up. And she made sure I learned the words from our Methodist faith: Do all the good you can, for all the people you can, in all the ways you can as long as ever you can.

<https://www.politico.com/story/2016/07/full-text-hillary-clintons-dnc-speech-226410>. Secretary Clinton was quoting John Wesley's 1799 "Sermons on Several Occasions" ("Neither is love content with barely working no evil to our neighbour. It continually incites us to do good: do good in every possible kind, and in every possible degree to all men.") This is alternately attributed as "Do all the good you can, By all the means you can, In all the ways you can, In all the places you can, At all the times you can, To all the people you can, As long as ever you can."

The Clinton campaign condensed this to "Do the most good," and used this slogan widely in her 2016 campaign posters.



We are not aware that the Clinton campaign was granted, or needed, any permission for this slogan from the Salvation Army or the Methodist Church.

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- **The Booths' similar quote of John Wesley**

The Salvation Army publicizes that its slogan “Doing the Most Good” is taken from the same source. The line (attributed variously to Salvation Army co-founder Catherine Booth or her daughter Evangeline) is: “There is no reward equal to that of doing the most good to the most people in the most need.”

In 2015, the Salvation Army’s website explained that this slogan is not intended to claim a monopoly against other nonprofit organizations, but simply to invoke John Wesley’s doctrine of universal love:

For anyone who has worked with The Salvation Army in any capacity, at one point or another, you’ve probably heard our brand promise of Doing the Most Good®.

“How vain,” some might think and others may come to the conclusion that we are arrogant due to the use of “most.” How can one organization claim the title of being the most helpful? The fact is, this is all due to the misinterpretation of the word “most” as we are using it.

When we are using the word “most” in our promise of Doing the Most Good®, we are not comparing ourselves to other nonprofit organizations. We do not think we are the best, nor do we fight in a competitive way to do the most good relative to other organizations.

Rather, we strive to live out what the great Methodist minister John Wesley said: “Do all the good you can, by all the means you can, in all the ways you can, in all the places you can, at all the times you can, to all the people you can, as long as ever you can!”

Elizabeth Reid, “Addressing the ‘most’ in doing the most good” Jan 22, 2015  
<https://centralusa.salvationarmy.org/northern/news/addressing-the-most-in-doing-the-most-good-1/>

- **Widespread secular use of slogan**

Wesley’s Nonconformist doctrine – that people should not merely obey an abstract duty of goodness, but do the most good for the most people in the most need – had secular parallels. Just five years after Wesley broke with the Church of England in 1785, his contemporary Jeremy Bentham expressed the same idea in a

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more radical, political context. In *Introduction to the Principles of Morals and Legislation* (1789), Bentham echoed Wesley's doctrine: "it is the greatest happiness of the greatest number that is the measure of right and wrong." Like the Wesleyan Nonconformists, Bentham defined social good not as a matter of abstract duty, but as a measurable value to be maximized - not merely to act in a good way but to do the most good. "The History of Utilitarianism," *Stanford Encyclopedia of Philosophy* (2014). The slogan recurs throughout the history of English social reform movements, as in Charles Dickens' letters ("Do all the good you can and make as little fuss about it as possible.") When Catherine Booth said the Salvation Army's goal was "doing the most good to the most people in the most need," she was only repeating what John Wesley, Jeremy Bentham, Charles Dickens, and John Stuart Mill had been saying for over a century.

In the 20th Century, the term was a common one among social reformers. Horace Mann wrote: "We do ourselves the most good doing something for others." quoted in *Thoughts* (1901) by Jessie K. Freeman and Sarah S. B. Yule, p. 83, and in *Collected Writings of Russell H. Conwell* (1925), Vol. 1, p. 396. Labor organizer and Assistant Secretary of Labor Esther Peterson's motto was "Women's place is where they can do the most good." <https://www.betterworld.net/heroes/pages-p/peterson-esther-quotes.htm>.

The phrase "Do the Most Good" is now the unofficial slogan of the Effective Altruism movement. This is reflected in the title of the 2015 book *The Most Good You Can Do* (Yale University Press) by its leading exponent, Australian philosopher Peter Singer. Six months before the Salvation's Army's first use of the slogan in commerce on June 8, 2005, John Wiley & Sons published *Corporate Social Responsibility: Doing the Most Good for Your Company and Your Cause*, Nancy Lee and Philip Kotler (John Wiley & Sons, December 13, 2004) (ISBN 0-471-47611). We are not aware that the Salvation Army had, or needed, permission from John Wiley & Sons to copy the title of Lee and Kotler's book.

The public would not associate this common term as some exclusive source-identifier for the Salvation Army. This is reflected in hundreds of trademark registrations for similar iterations by nonprofit organizations. For example, Wal-Mart has a pending application for DO MORE GOOD, MORE OFTEN, based on its use in commerce for "Charitable services, namely, promoting public awareness of women-owned businesses, minority-owned business and small businesses; charitable services, namely, promoting public awareness of environmental sustainability issues." PTO Application No. 90321436.

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The PTO's TESS database shows over a hundred live registrations similar to the Salvation Army's slogan, many for charitable services closer to the Salvation Army's than DTMG's political work, and many of which predate the Salvation Army's 2005 first use. These include:

4267580 DO MORE GOOD Haven Creative Hub, LLC (Conducting workshops and seminars in the fields of advertising and branding for non-profit organizations and charitable organizations; on-line journals, namely, blogs featuring information in the fields of advertising and branding for non-profit organizations and charitable organizations.)

4599585 DOING GOOD, BETTER. Vision2Systems LLC (Providing on-line non-downloadable software for use in on-line monetary donations and volunteer hours to churches and non-profits by individuals and corporations and for connecting churches, non-profits and corporate social responsibility programs.)

6133903 DOING SERIOUS GOOD Giving Hope Corp. (Ground coffee beans for charitable nonprofit)

5781074 DOING GOOD. DONE RIGHT. Besa Community, Inc. (Downloadable computer software for the purpose of not-for-profit business management and tracking volunteer hours.)

5627756 DO GOOD FOREVER Do Good LLC (Retail store services featuring apparel, stickers and hats; Retail apparel stores.)

6151066 START DOING GOOD International WeLoveU Foundation (Graphic novels in the field of environmental issues, including Sustainable Development Goals.)

6403709 DOING GOOD Doing Good, Inc. (Downloadable podcasts in the field of promoting awareness of volunteers, voluntarism and volunteerism and to inspire voluntarism in others.)

5573554 DOING GOOD LOOKS GOOD ON YOU Helping Hand Partners Corp. (jewelry for charitable nonprofit)

5704658 DOING WELL BY DOING GOOD Vizsafe, Inc. (arranging, conducting and maintaining incentive reward programs to encourage the submission of verified safety reports in exchange for tokens, which are redeemable for products and services.)

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5644703 LIVE WELL BY DOING GOOD Valdes & Moreno, Inc. ( financial services in the field of stocks, corporate and municipal bonds, and other securities.)

5636942 DOING GOOD, WHILE DOING BUSINESS Rubia Group LLC (Marketing consulting)

5522322 DO WELL BY DOING GOOD Mueller, Mark (Legal services)

4964342 START DOING GOOD Summit Marketing, LLC (Advertising services, namely, developing promotional campaigns and promotional materials through print, audio, video, digital and online media, for charitable fundraising organizations)

4904143 APPLEBEE'S DOING GOOD IN OUR NEIGHBORHOODS Applebee's Restaurants LLC (Applebee's restaurant chain for "Charitable services, namely, promoting public awareness of community service and promotional services, namely, promoting the charities of others.")

6401937 DO GOOD. BE GREAT. Tower33 Digital, Inc. (Advertising and marketing services; business consulting and information services.)

6264006 BE GOOD. DO GOOD. FOR GOOD. Kona Ice Co. (Franchising, namely, offering business management assistance in the establishment and/or operation of businesses providing shaved ice products and related confections; Franchising, namely, providing consultation and assistance in business management, organization and promotion thereof to shaved ice and confections franchisees)

6129602 YOU CANNOT DO ALL THE GOOD THAT THE WORLD NEEDS BUT THE WORLD NEEDS ALL THE GOOD THAT YOU CAN DO, Shelley Orme (Educational and entertainment services, namely, providing motivational speaking services in the field of environmental sustainability, impact, conservation, preservation, and protection)

4551574 WAKE UP. DO GOOD. REPEAT The Ferguson Companies, LLC (Coffee shops)

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- **DMTG's logo and political activity compared to the Salvation Army's operations**

When the founders of DTMG adopted the Clinton campaign's slogan, color scheme and visual presentation in December 2016, they were not aware of the Salvation Army's slogan similarly derived from Wesley's sermon. Their operation is a spinoff from Hillary Clinton's Presidential campaign, not from a schism within the Methodist church or a splinter faction of the Salvation Army.



DMTG's logo reflects its origin in the Clinton campaign. The font, color scheme and visual impression is different from the Salvation Army's, as a side-by-side comparison shows:



In soliciting donations through the umbrella Action Network, DTMG prominently states its purpose as support for progressive political activism: “We sincerely appreciate your donation and commitment to our organization. Your donation will be used to fund our grassroots efforts to win elections for Democrats and to take other actions to uphold the inclusive, progressive values that we all stand for.” <https://www.dothemostgoodmoco.org/donate>. There is no religious component to DMTG's solicitation, and no claim to operate “religious, charitable” services. Consistent with federal tax law, DMTG notifies prospective donors that

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their contributions are not tax-deductible: “Any contribution to DoTheMostGood is not tax-deductible in any manner for Federal Income Tax purposes.”

The Salvation Army is likewise clear about the very different mission its donors are supporting: “The Salvation Army, an international movement, is an evangelical part of the universal Christian Church. Its message is based on the Bible. Its ministry is motivated by the love of God. Its mission is to preach the gospel of Jesus Christ and to meet human needs in His name without discrimination.” <https://www.salvationarmyusa.org/usn/ways-to-give/> Prospective donors are assured that their donations are charitable and tax-deductible: “The Salvation Army National Corporation is a 501(c)(3) tax-exempt organization and your donation is tax-deductible within the guidelines of U.S. law. To claim a donation as a deduction on your U.S. taxes, please keep your email donation receipt as your official record. We’ll send it to you upon successful completion of your donation.” <https://give.salvationarmyusa.org/give/164006/#!/donation/checkout>

- **Salvation Army’s self-laudatory use “Doing the Most Good” vs. DTMG’s call to action “DoTheMostGood”**

The Salvation Army does not use the phrase “Doing the Most Good” as the free-standing name of any affiliated campaign or entity. Salvation Army donors are not solicited to write checks to any entity named “Doing The Most Good” or “Doing-The-Most-Good.com” or “DTMG.” The phrase is not embedded in the Salvation Army’s actual logo – it is a self-laudatory slogan in plain text placed next to or under the older, more distinctive Salvation Army shield.

DTMG uses a different formulation. “DoTheMostGood” is not an adjectival phrase praising itself, but a call to action in the imperative tense expressing DTMG’s political activism, like its antecedent use in the Clinton campaign. Unlike the Salvation Army’s use, it presents the words without spaces, “DoTheMostGood,” or as an acronym: “DTMG.”

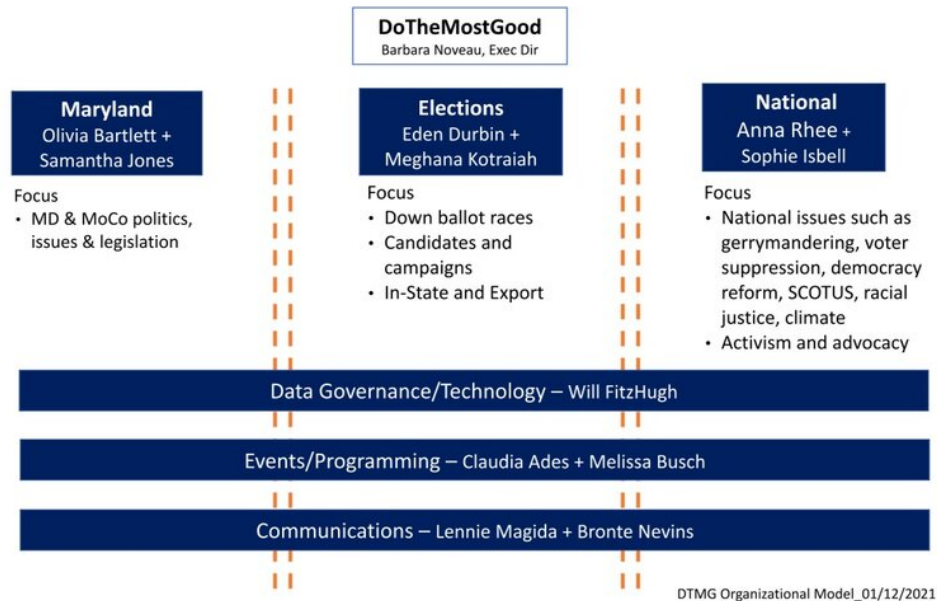
- **Lack of overlap of operations**

We are unaware of any instances of donors who contributed to DTMG’s campaign “to fund our grassroots efforts to win elections for Democrats” who were confused that they were actually donating to an “evangelical part of the universal Christian Church [whose] message is based on the Bible.” By all means, let us know if the Salvation Army has any evidence that anyone has ever contributed to DTMG in the mistaken belief that they were contributing to the Salvation Army. Otherwise, we view this claim of “confusion” as utterly implausible.



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DMTG and the Salvation Army serve different constituencies and engage in distinctly different ways of “doing good.” As you have acknowledged, DMTG is a political activist organization. Its “doing good” is to promote progressive candidates and legislation in Maryland and nationally, focusing on gerrymandering, voter



suppression, climate change and racial justice. DMTG does not provide charitable aid services like soup kitchens or prison or shelter ministries, nor does it raise money through used clothes stores, uniformed bands playing Christian music, nor bell-ringing Santas with red kettles.

The Salvation Army, by contrast, disclaims any political activism. It “is politically non-partisan . . . It will not promote or endorse specific candidates or political parties.” <https://www.salvationarmy.org/ihq/ipsstate>. Nor could it, if it wished to preserve its § 501(c)(3) tax-exempt status prominently featured in its solicitations for donations.

The Salvation Army’s trademark registration No. 3,162,341 identifies its slogan with religious services in a different PTO classification from the political activism of DTMG: “Religious and charitable services, namely job training programs . . . religious instruction services . . . nurseries, daycare centers, after-school daycare centers; daycare for the elderly and community centers for religious and social gatherings and meetings for seniors; providing temporary housing to needy people; religious and charitable services, namely providing food to needy people and members of the military; providing residential spiritual rehabilitation homes;

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operating retirement homes; providing disaster relief services in the nature of emergency shelter and temporary housing; conducting religious worship services; providing spiritual counseling; religious and charitable services, namely providing clothing to needy people; and ministerial counseling services in the field of spiritual and social rehabilitation.” The Salvation Army’s registration classifies its uses under PTO Classes 41 (Education and Entertainment Services) 43 (Restaurant and Hotel Services), and 45 (Personal, Legal and Social Services).

By contrast, the PTO classifies political activity under Class 35. According to the PTO, “[s]ervices related to politics are in Class 35 because the main purpose of political activity is the promotion of the interests of a particular group. The service of promoting the interests of a group is in Class 35 regardless of whether the group’s interests are commercial or non-commercial in nature.” The Salvation Army does not claim its mark for any Class 35 political uses.

### **Legal Significance**

The Salvation Army has in the past assured the public that “when we are using the word ‘most’ in our promise of Doing the Most Good®, we are not comparing ourselves to other nonprofit organizations. We do not think we are the best, nor do we fight in a competitive way to do the most good relative to other organizations.” This humility is laudable, but your current cease-and-desist demand seems to forget this wisdom.

If the Salvation Army is now trying to make John Wesley’s doctrine (quoted by Charles Dickens, Peter Singer and Hillary Clinton) into a private monopoly, the courts would reject the Salvation Army’s claim.

#### **1. “Do[ing] the most good” is a generic term for non-profits.**

Generic terms are invalid as trademarks. 3 J. McCarthy, Trademarks and Unfair Competition § 12: 1-19 (5th ed. 2019). A counterclaim for cancellation of a generic mark may be made at any time, even long after registration. 15 U.S.C. §§ 1064 and 1119.

“Doing good” is the most generic possible description of what any non-profit organization does, whether it is religious, charitable, or political. The term is not source-identifying, nor can it be monopolized to prevent any other “do-gooding” organization from using these words to describe itself. In this respect, “Doing the most good” for a charity is no different than “WE BUY HOUSES” for homebuying brokers, held generic in *Express Homebuyers USA, LLC v. WBH Marketing Inc.*, 323

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F.Supp.3d 784, 791 (E.D. Va. 2018), or “UNIVERSAL CHURCH” *see Universal Church, Inc. v. Toellner*, 752 Fed.Appx. 67, 69 (2d Cir. 2018). Nothing in the Lanham Act permits trademark registrants to monopolize common expressions, *see also Kaufman & Fisher Wish Company, Ltd. v. F.A.O. Schwarz*, 184 F.Supp.2d 311 (S.D.N.Y 2001) (doll manufacturer’s use of word “wish” and slogan “MAY ALL YOUR WISHES COME TRUE,” and promotion of charity tie-in were either generic or, at most, merely descriptive of angelic, “wishing” character, and thus were not infringed by competitor marketing similar doll.)

The Fourth Circuit explains that “when words are used in a context that suggests only their common meaning, they are generic and may not be appropriated as exclusive property. . . [trademark law] likewise protects for public use those commonly used words and phrases that the public has adopted, denying to any one competitor a right to corner those words and phrases by expropriating them from the public ‘linguistic commons.’” *America Online, Inc. v. AT & T Corp.*, 243 F.3d 812, 820-821 (4th Cir. 2001) (YOU HAVE MAIL is generic).

The presence of the word “most” does not change this. Self-laudatory works like “most,” “best,” or “plus” are simply too weak to be protectable. *See Plus Prods. v. Plus Discount Foods, Inc.*, 722 F.2d 999, 1005 (2d Cir.1983) (“[t]he term PLUS is an everyday word that indicates something added, and when applied to goods, it merely implies additional quantity or quality.... [The abundant] different uses of marks that include the word PLUS[ ] suggest[ ] a generic character.”); *Best Buy Warehouse v. Best Buy Co., Inc.*, 920 F.2d 536 (8th Cir. 1991); *Cyclone USA, Inc. v. LL&C Dealer Services, LLC*, 2007 WL 9662337 (C.D. Cal. 2007) (“allowing one supplier to control the use of the phrases ‘more power’ ‘more mileage,’ a combination of the two, or close substitutes therefor, would be contrary to public policy. One competitor will not be permitted to impoverish the language of commerce by preventing his fellows from fairly describing their own goods.”)

The Salvation Army’s slogan is similar to COMMUNITY FIRST BANK, held generic in *Community First Bank v. Community Banks*, 360 F.Supp.2d 716, 724-725 (D. Md. 2005). The Court noted that “community bank” was generic, and rejected the argument that the additional superlative “First” changed the generic nature of the phrase. “Plaintiff argues that the addition of the term ‘first’ to its name renders CFB’s marks protectable because the term was added to reflect [its] ‘customer-friendly orientation philosophy.’ Yet, the “customer-friendly” philosophy is in no way unique. Rather, that philosophy is endemic to the ‘genus or class’ of community banks which, by definition, cater to individuals in the community.” *Id.* Just as a Community Bank cannot claim protection for its generic name by claiming to be

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“First,” the Salvation Army cannot claim that its efforts to “do good” are distinctive because it seeks to do the “most” good.

The Federal Circuit explained why when it rejected Hoover’s claim for protection of NUMBER ONE IN FLOORCARE for vacuum cleaners. *Hoover Co. v. Royal Appliance Mfg. Co.*, 238 F.3d 1357, 1360 (Fed.Cir.2001): “[D]escriptive terms are in the public domain and should be free for use by all who can truthfully employ them to describe their goods. See *Estate of P.D. Beckwith, Inc. v. Comm’r of Patents*, 252 U.S. 538, 543–44 (1920). However unlikely, Hoover could fall from the number one ranking in one or more of the numerous categories (e.g., innovation, brand awareness, purchase intent, loyalty, market share), that it suggests render it ‘Number One in Floorcare.’ Because the ‘number one’ source in each category could change at any time, the laudatory phrase of ‘Number One’ does not necessarily indicate a single source. The new ‘number one’ source should be free to ‘truthfully employ’ the descriptive term ‘Number One’ to describe its goods as well.”

The generic nature of the slogan is even clearer here, where the Salvation Army does not use the phrase nominatively – that is, it does not set up any entity named “Doing the Most Good,” or “Doing The Most Good.com,” nor does it solicit donors to write checks to any entity under that name.

As a result, the Salvation Army cannot prevent progressive activists from saying their organizations also seek to do the most good.

**2. Even if the slogan were protectable, it would be an extremely weak descriptive mark that could not extend beyond its registered uses.**

Even where a term is not entirely generic, but merely descriptive, it will normally be so weak in its association with the producer that it cannot preclude another’s use for services different from those in its registration.

To determine if a likelihood of confusion exists, courts look to (1) the strength or distinctiveness of the plaintiff’s mark as actually used in the marketplace; (2) the similarity of the two marks to consumers; (3) the similarity of the goods or services that the marks identify; (4) the similarity of the facilities used by the markholders; (5) the similarity of advertising used by the markholders; (6) the defendant’s intent; and (7) actual confusion.

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- **strength of the Salvation Army's mark**

As we explain above, “doing the most good” is at most a weak mark. Even if it were held to be descriptive rather than generic (and therefore protectable on proof of secondary meaning), the massive third-party use of similar marks would narrowly restrict any trademark protection to the specific “religious, charitable” uses in Classes 41, 43 and 45 listed in the Salvation Army’s registration.

Even where a trademark is incontestable, the registration only gives it a presumption of distinctiveness that “extends only so far as the goods or services noted in the registration certificate.” *Savin Corp. v. Savin Group*, 391 F.3d 439, 457 (2d Cir. 2004). The Lanham Act provides that registration “shall be prima facie evidence of the validity of the registered mark and of the registration of the mark, of the registrant’s ownership of the mark, and of the registrant’s exclusive right to use the mark in commerce on or in connection with the goods or services specified in the certificate.” 15 U.S.C. § 1057(b) (emphasis added); *Mushroom Makers, Inc. v. R.G. Barry Corp.*, 580 F.2d 44, 48 (2d Cir.1978) (“even if a mark is registered, the presumption of an exclusive right to use it extends only so far as the goods or services noted in the registration certificate”). An incontestable mark does not allow a registrant to claim rights over a greater range of products than its registration would otherwise entitle it to claim. *Sunmark, Inc. v. Ocean Spray Cranberries, Inc.*, 64 F.3d 1055, 1058 (7th Cir. 1995) (candy manufacturer could not prevent Ocean Spray from using “Sweet-Tart” for cranberry juice: “[T]hat SweeTARTS is an incontestable mark for sugar candy does not make [plaintiff] the gatekeeper of these words for the whole food industry.”)

Political advocacy is not the same as religious charity for purposes of trademark law. For example, an environmentalist group that registered the trademark EARTH PROTECTORS for its political advocacy had no right to enjoin Disney from using the same name in a children’s TV show. *Davis v. Walt Disney Co.*, 430 F.3d 901, 904 (8th Cir. 2005). Even though the Disney TV show had an environmentalist theme, non-partisan children’s entertainment was a different economic use than partisan political activism. There was therefore no likelihood of confusion over the purely descriptive mark. “Doing the Most Good” is no different than “Earth Protectors” – a partisan political advocacy group is simply not the same economic service as a non-political religious mission.

The Fourth Circuit has repeatedly rejected trademark claims by owners of weak, descriptive marks where they sought to enjoin uses by others in different areas of commerce. *CareFirst of Maryland, Inc. v. First Care, P.C.*, 434 F.3d 263, 270 (4th Cir. 2006) (office’s use of name FIRST CARE was not likely to cause

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confusion with insurer's CAREFIRST mark); *U.S. Search, LLC v. U.S. Search.com Inc.*, 300 F.3d 517, 525 (4th Cir. 2002) (U.S. SEARCH for executive recruiting Services was not infringed by 1-800-U.S. SEARCH for computer search services); *Grayson O Co. v. Agadir Int'l LLC*, 856 F.3d 307, 314 (4th Cir. 2017) (HAIR SHIELD 450° PLUS not infringed by "F 450" in view of weakness of mark); *George & Co. LLC v. Imagination Entertainment Ltd.*, 575 F.3d 383, 396 (4th Cir. 2009) (same for LCR and LEFT CENTER RIGHT" for dice games) .

The widespread third-party use of similar iterations of "Do More/Most Good" by other nonprofits significantly reduces the likelihood of confusion. *CareFirst of Maryland*, 434 F.3d at 270; *see also Grayson O*, 856 F.3d at 315; *U.S. Search*, 300 F.3d at 525. "This is so because many third parties in the health care field have previously used in their own marks the text of the CareFirst mark. The frequency of prior use of [a mark's text] in other marks, particularly in the same field of merchandise or service, illustrates the mark's lack of conceptual strength. Here, the record undeniably reveals substantial third-party use of the words 'Care,' 'CareFirst,' 'First,' and 'First Care' in the health care industry. . . . If the CareFirst mark were truly a distinctive term, it is unlikely that so many other businesses in the health care industry would independently think of using the same mark or similar variants of it." *CareFirst of Maryland*, 434 F.3d at 270.

The Supreme Court recently stressed that, even where a business has a protectable descriptive mark, such a mark will not normally prevent others from using similar descriptive language. *Patent and Trademark Office v. Booking.com B. V.*, 140 S.Ct. 2298, 2307 (2020) ("In assessing the likelihood of confusion, courts consider the mark's distinctiveness: The weaker a mark, the fewer are the junior uses that will trigger a likelihood of consumer confusion. When a mark incorporates generic or highly descriptive components, consumers are less likely to think that other uses of the common element emanate from the mark's owner. Similarly, in a 'crowded' field of lookalike marks (e.g., hotel names including the word 'grand'), consumers may have learned to carefully pick out one mark from another.")

The weakness of the Salvation Army's slogan as a mark therefore limits the scope of protection at most to the specific "religious, charitable" uses listed in its certificate. Political advocacy is not close enough to those non-political uses to show likelihood of confusion.

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- **the similarity of the two marks to consumers**

The two marks are presented differently. DTMG has not used the font, color scheme, or visual impression of the Salvation Army logo. DTMG uses the imperative call to action “Do The Most Good” rather than the self-laudatory participle “Doing.” The Salvation Army does not use the slogan as an independent name, as in “Doing-The-Most-Good.com,” nor does it use the acronym “DTMG,” nor does it present the words without breaks as DTMG does in “DoTheMostGood.”



The Salvation Army would have a more legitimate concern if DTMG had copied its distinctive shield logo. But “Doing the Most Good” is not an embedded part of that logo – it is only a plain-text slogan placed next to its more distinctive red shield. This is the same as *CareFirst of Maryland*, 434 F.3d at 271, where the plaintiff’s slogan CARE FIRST was normally presented in plain text next to a distinctive Blue Cross/Blue Shield logo, while the defendant’s FIRST CARE was presented by itself. “CareFirst’s registered mark, accompanied by the Blue Cross Blue Shield language, is usually presented in a corporate logo with a distinctive type-face and a graphic of a blue cross and shield. . . . If one of two similar marks is commonly paired with other material, that pairing will serve to lessen any confusion that might otherwise be caused by the textual similarity between the two marks. This effect is most significant when, as here, the allegedly infringed mark, ‘CareFirst,’ has little independent strength. Because CareFirst’s registered mark is weak, consumers encountering ‘CareFirst BlueCross BlueShield,’ on the one hand, and ‘First Care,’ on the other, are more likely to focus on the differences between the two, particularly when the most salient difference—the addition of ‘BlueCross BlueShield’—is itself a prominent mark.” *CareFirst of Maryland*, 434 F.3d at 271. For the same reason, people encountering “The Salvation Army” in a red shield, with a plain-text descriptive slogan alongside, would likely focus on the differences to DTMG’s logo, which has no such association.

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DTMG's use of the acronym, which is not used by the Salvation Army, further weakens the case for confusion. *See George*, 575 F.3d at 396 (no confusion between LCR and LEFT CENTER RIGHT for dice games). The fact that DTMG, unlike the Salvation Army, presents the phrase without breaks between the words ("DoTheMostGood") is also significant to distinguish the uses. *See Grayson O*, 856 F.3d at 315 ("Grayson O's product label is "f450°," which has only a miniscule letter-space between the lowercase "f" and the "450" and includes a degree symbol. By comparison, Agadir's label reads "Hair Shield 450° Plus" with no "F" and three additional words. The text of Agadir's mark thus differs both from Grayson O's registered mark and from the mark Grayson O uses on its label. ")

It is possible that conservative donors to the Salvation Army may be angry that progressive Democrats have the temerity to quote John Wesley and to associate his 1799 sermon with liberal politics. This does not state a Lanham Act claim. For example, the Fourth Circuit rejected the NAACP's Lanham Act claim against an anti-abortion group who disseminated materials referring to it as the "National Association for the Abortion of Colored People." *Radiance Foundation, Inc. v. N.A.A.C.P.*, 786 F.3d 316, 328 (4th Cir. 2015). Even though many NAACP supporters were outraged at this association, the Fourth Circuit held that this did not state a claim for confusion of the source of the NAACP's services: "[T]rademark infringement is not designed to protect mark holders from consumer confusion about their positions on political or social issues... The NAACP is a renowned civil rights organization with numerous mechanisms for connecting with its membership and the public. Organizations of its size and stature possess megaphones all their own. 'Actual confusion' as to a nonprofit's mission, tenets, and beliefs is commonplace, but that does not transform the Lanham Act into an instrument for chilling or silencing the speech of those who disagree with or misunderstand a mark holder's positions or views." *Radiance Foundation*, 786 F.3d at 328.

Neither Catherine Booth nor the Salvation Army has any monopoly on Wesley's words or ideas. The Salvation Army acknowledged this in 2015: "When we are using the word "most" in our promise of Doing the Most Good®, we are not comparing ourselves to other nonprofit organizations. We do not think we are the best, nor do we fight in a competitive way to do the most good relative to other organizations." It should reaffirm that humility now.

- **similarity of services, facilities and advertising**

There is nothing about DTMG's political work that in any way resembles the Salvation Army's. Indeed, the Salvation Army would instantly lose its § 501(c)(3) tax exemption if it ever sought to operate in the same political sphere as DTMG. *See*



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*Branch Ministries v. Rossotti*, 211 F.3d 137, 142 (D.C. Cir. 2000), citing 26 U.S.C. § 501(c)(3). The Salvation Army cannot therefore argue that its “religious, charitable” work overlaps with political activism that it is legally disqualified from pursuing.

Nor does DTMG mimic any of the Salvation Army’s programs or promotional methods. DTMG does not use volunteers ringing bells over red kettles, nor does it sponsor marching bands, nor does it operate second-hand stores, soup kitchens or Christian ministries. DTMG prominently tells donors that any contributions for DTMG are for political activism, and that contributions to DTMG are therefore not tax-deductible. <https://www.dothemostgoodmoco.org/donate>. The Salvation Army is equally clear about the non-political nature of its mission and the tax-deductible nature of donations. <https://www.salvationarmyusa.org/usn/ways-to-give>.

- **the defendant’s intent**

The record is clear where DTMG got the inspiration for its name. When it was founded after the 2016 election, DTMG took its name and logo from Hillary Clinton’s “Do the Most Good” slogan and the colored-box motif on her campaign posters. Hillary Clinton used the slogan as a tribute to her own Methodist upbringing, quoting John Wesley. Obviously, neither Hillary Clinton nor DTMG were trying to palm themselves off as the Salvation Army.

- **actual confusion**

There is no plausible argument that any donors to DTMG have actually intended to contribute to the Salvation Army, or that they have misdirected their donations. Please let us know if you dispute that fact, with evidence.

In sum, the Salvation Army would not be able to show likelihood of confusion necessary to establish a Lanham Act infringement claim.

We note that state unfair competition law is coextensive with the Lanham Act. The test for common-law unfair competition is the same as the test for likelihood of confusion under federal trademark law. *See Scotch Whiskey Ass’n v. Majestic Distilling Co.*, 958 F.2d 594, 597 (4th Cir. 1992) (applying Maryland law); *Lone Star Steakhouse & Saloon v. Alpha of Virginia*, 43 F.3d 922, 930 n.10 (4th Cir. 1995) (same for Virginia law). The Salvation Army therefore has no state-law unfair competition claim that survives the rejection of its Lanham Act claims.

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- **no dilution**

Nor could the Salvation Army repackage its objection as a dilution claim. When a mark is merely descriptive, with massive third-party use of similar marks, it lacks the “distinctiveness” required by anti-dilution law, as the Fourth Circuit held in *CareFirst of Maryland*, 434 F.3d at 274. Even famous trademarks are not eligible for anti-dilution remedies, if the trademarks are purely descriptive. *TCPIP Holding Co. v. Harr Communication, Inc.*, 244 F.3d 88, 93-98 (2d Cir. 2001). While a famous descriptive mark like “American Airlines” or “Metropolitan Life” could support an infringement action against a direct competitor under 15 U.S.C. § 1114, American Airlines and Metropolitan Life would not be able to use anti-dilution law of § 1125(c) to enjoin “American” or “Metropolitan” by a user in a different segment of commerce. 244 F.3d at 96 & n.8. The same is true here. “Doing the Most Good” is not an arbitrary, unique mark like XEROX or KODAK. Its weakly descriptive character and the proliferation of other, similar “Doing Good” marks forecloses any dilution claim.

**3. Litigation would not serve the Salvation Army’s mission.**

As DTMG has stressed throughout its discussions with the Salvation Army, DTMG has no interest in appropriating the Salvation Army’s goodwill, nor in siphoning away donations intended for the Salvation Army. DTMG remains willing in good faith to work out a common-sense consent-and-coexistence agreement to safeguard both parties’ legitimate interests. We are open to proposals about disclaimers and presentation to further safeguard against any theoretical possibility of confusion. The parties could certainly agree formally to confine each other’s operations to their respective political and charitable uses.

Were the Salvation Army to litigate, however, it would not honor the credo of “doing all the good you can.” Nothing in the Lanham Act, much less the principles of Christianity, allows the Salvation Army to claim John Wesley’s doctrine of universal love as a private commercial monopoly.

First, for reasons we have outlined, the Salvation Army would not win relief. Second, DTMG would counterclaim for cancellation of the generic mark “Doing the most good” under 15 U.S.C. §§ 1064 and 1119. Third, DTMG would be entitled to recover its attorneys’ fees under 15 U.S.C. § 1117 and applicable anti-SLAPP law. Prevailing defendants may recover attorneys’ fees under § 1117 “where there is an unusual discrepancy in the merits of the positions taken by the parties, or there is otherwise the need to advance considerations of compensation and deterrence.” *Verisign, Inc. v. XYZ.COM LLC*, 891 F.3d 481, 488 (4th Cir. 2018). This does not

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require a showing of bad faith or that the suit was independently sanctionable under Rule 11. *Id.* Attempts to use the Lanham Act to suppress the political use of common descriptive words fit within this category. See *Eagle Forum v. Phyllis Schlafly's American Eagles*, 498 F.Supp.3d 1024, 1041 (S.D. Ill. 2020) (awarding prevailing defendant attorneys' fees in suit to enjoin use of "Our Eagle Leaders," and "my American Eagles" because of the marks' lack of distinctiveness and their multi-source use amongst other entities).

Fourth, litigation to enforce a monopoly on "do[ing] the most good" would certainly attract widespread public comment. We do not believe the Salvation Army's public image would benefit from the outrage that such a litigation posture would surely generate from Members of Congress, the *Washington Post*, or commentators like Rachel Maddow and John Oliver.

DTMG does not wish to be the Salvation Army's adversary. We should both follow Charles Dickens' take on Wesley's sermon: "Do all the good you can and make as little fuss about it as possible."

Please let us know how you wish to proceed.

Very truly yours,



Michael T. Anderson  
Arlus J. Stephens  
Mark Hanna

cc : Barbara Noveau  
Rep. Jamin Raskin (MD-8)