

COMMONWEALTH OF KENTUCKY  
FAYETTE CIRCUIT COURT  
CIVIL BRANCH  
DIVISION 3

CASE NO.

14-CF-504474

ATTEST, VINCENT RIGGS, CLERK  
DEC - 8 2014  
FAYETTE CIRCUIT CLERK  
BY \_\_\_\_\_ DEPUTY

HANDS ON ORIGINALS, INC.

PLAINTIFF-APPELLANT

v.

LEXINGTON-FAYETTE URBAN COUNTY  
HUMAN RIGHTS COMMISSION

DEFENDANT-APPELLEE

Serve: D. Anthony Everett  
Chairman  
Lexington-Fayette Urban County Human Rights Commission  
342 Waller Avenue, Suite 1A  
Lexington, Kentucky 40504

Raymond Sexton  
Executive Director  
Lexington-Fayette Urban County Human Rights Commission  
342 Waller Avenue, Suite 1A  
Lexington, Kentucky 40504

and

AARON BAKER FOR GAY AND LESBIAN  
SERVICES ORGANIZATION

DEFENDANT-APPELLEE

Serve: Aaron Baker  
Former President  
Gay and Lesbian Services Organization  
389 Waller Avenue, Suite 100  
Lexington, Kentucky 40504

Paul Brown  
President  
Gay and Lesbian Services Organization  
389 Waller Avenue, Suite 100  
Lexington, Kentucky 40504

---

COMPLAINT AND NOTICE OF APPEAL

---

Comes Plaintiff-Appellant Hands On Originals, Inc. (HOO) and for its complaint and notice of appeal states as follows:

### INTRODUCTION

1. Pursuant to KRS 344.240 and Lexington-Fayette Urban County Human Rights Commission Rule 2.130(1), HOO brings this action as an appeal from the November 19, 2014 Order of the Lexington-Fayette Urban County Human Rights Commission (the Commission), which adopted the hearing examiner's recommended order, in the Commission case captioned *Aaron Baker for Gay and Lesbian Services Organization et al. v. Hands On Originals, Inc.*, HRC No. 03-12-3135. The Commission's Order is attached as Exhibit A, and the hearing examiner's recommended order is attached as Exhibit B. The Commission's Order concludes that HOO violated the Lexington-Fayette Urban County Government's (LFUCG) public-accommodations ordinance—Code of Ordinances, Lexington-Fayette Urban County Government Section 2-33—and requires HOO to print promotional materials expressing and otherwise supporting messages that its owners do not want to convey.

2. Blaine Adamson, the Managing Owner of HOO, strives to operate his promotional printing company consistently with his religious convictions. While HOO produces materials for people of all races, religions, and sexual orientations, Mr. Adamson cannot in good conscience authorize HOO to print shirts and other promotional items that convey or otherwise support messages that are inconsistent with his sincerely held beliefs. HOO thus regularly declines to print expressive materials because of the messages that they display.

3. Represented in this action by its former President Aaron Baker, Gay and Lesbian Services Organization (GLSO) is an advocacy group that expresses views about human sexuality, including messages that promote sexual relationships and sexual activity outside of marriages between a man and a woman. The GLSO filed a complaint with the Commission alleging that HOO

violated the public-accommodations ordinance when HOO declined to produce message-bearing shirts promoting the GLSO's advocacy event known as the 2012 Lexington Pride Festival. Agreeing with the GLSO's argument, the Commission issued an Order that requires HOO to print expressive materials that promote advocacy events for ideological groups like the GLSO.

4. But that Order squarely conflicts with the First Amendment to the United States Constitution. "At the heart of the First Amendment lies the principle that *each person*"—including for-profit businesses and their owners—"should decide for [themselves] the ideas and beliefs deserving of expression[.]" *Agency for Int'l Dev. v. Alliance for Open Soc'y Int'l, Inc.*, 133 S. Ct. 2321, 2327 (2013) (quotation marks omitted) (emphasis added). The Commission, therefore, cannot apply the public-accommodations ordinance to require HOO to print expressive materials for an advocacy group. Yet the Commission's Order impermissibly empowers groups like the GLSO (backed by the coercive force of the public-accommodations ordinance) to determine for business owners like Mr. Adamson "the ideas and beliefs deserving of expression." The First Amendment cannot tolerate such intrusions into our most cherished expressive freedoms.

5. In addition to contravening the First Amendment in this and other ways, the Commission's Order produces manifest injustice. Even though the GLSO easily found another printer, which created the Pride Festival shirts *free of charge*, and even though many other local and national businesses remain ready and willing to print those shirts for the GLSO, the Commission's Order demeans and ostracizes business owners like Mr. Adamson who reasonably decline to convey messages that conflict with their sincerest beliefs, whether religious, political, or otherwise. The Commission's Order threatens to force those individuals to give up their livelihood simply because they cannot in good conscience promote messages that they consider objectionable. That, in turn, jeopardizes the stability of their families and the financial well-being of their employees. To rectify

this profound injustice, and for the other reasons explained herein, this Court should reverse the Commission's Order.

### **PARTIES**

6. Plaintiff-Appellant Hands On Originals, Inc. is a promotional printing company that is located in Fayette County. Its address is 990 West New Circle Road, Lexington, Kentucky 40511.

7. Defendant-Appellee Lexington-Fayette Urban County Human Rights Commission is a government entity charged with enforcing the LFUCG's public-accommodations ordinance—Code of Ordinances, Lexington-Fayette Urban County Government Section 2-33—which prohibits business owners within Fayette County from discriminating based on, among other things, the sexual orientation of a complaining party. State statutes KRS 344.300 through KRS 344.320 authorize the creation of local government bodies like the Commission, and exercising that authority, the Lexington-Fayette Urban County Council created the Commission in Code of Ordinances, Lexington-Fayette Urban County Government Section 2-26 through Section 2-33. The Commission's address is 342 Waller Avenue, Suite 1A, Lexington, Kentucky 40504. It is a proper party to this action pursuant to KRS 13B.140(1).

8. Defendant-Appellee Gay and Lesbian Services Organization, which is represented in this action by its former President Aaron Baker, is a group that advocates views about human sexuality and regularly speaks in favor of sexual relationships and sexual activity outside of a marriage between one man and one woman. Its address is 389 Waller Avenue, Suite 100, Lexington, Kentucky 40504. It is a proper party to this action pursuant to KRS 13B.140(1).

### **JURISDICTION AND VENUE**

9. This Court has jurisdiction pursuant to KRS 344.240 and Lexington-Fayette Urban County Human Rights Commission Rule 2.130(1).

10. Venue is proper in this Court pursuant to KRS 344.240(1) and KRS 13B.140(1) because HOO is located, and the events that are the subject of this case occurred, in Fayette County.

**FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

11. HOO's primary business enterprise is printing promotional materials, which include but are not limited to shirts, hats, bags, blankets, cups, bottles, and mugs.

12. HOO's work is expressive and artistic. The company employs five full-time graphic-design artists. Even when the customer provides already-produced art or designs, HOO's graphic-design artists need to finalize the art so that HOO can print it.

13. HOO's Managing Owner, Blaine Adamson, and his co-owners are Christians who believe that the Holy Bible is the inspired Word of God and that they should strive to live consistently with its teachings. Among other things, Mr. Adamson believes that sexual relationships and sexual activity should occur only within the confines of a marriage between a man and a woman.

14. HOO has a Christian Outfitters division, which creates promotional materials for Christian groups, events, camps, and youth groups. This division accounts for over 70% of HOO's revenue. The purpose of the Christian Outfitters division is to produce materials that communicate meaningful Christian messages and that ultimately promote Jesus Christ and His Church.

15. Mr. Adamson cannot in good conscience authorize HOO to print shirts and other promotional items that convey or otherwise support messages that are inconsistent with his beliefs. Thus, on many occasions, including at least thirteen times between January 1, 2010, and January 1, 2013, HOO has declined to print expressive materials because of the messages that they display or otherwise support. These materials include, for example, shirts promoting a strip club, pens promoting a sexually explicit video, and shirts containing a violence-related message.

16. When HOO declines an order because the message conveyed by the requested material is inconsistent with Mr. Adamson's convictions, HOO has a longstanding practice of offering to connect the inquiring individual to another company that will fill the order for the same price that HOO would have charged.

17. While HOO declines some orders because of the messages conveyed by the requested materials, it has never declined to work with anyone because of their race, sex, sexual orientation, or other legally protected characteristic. Of particular relevance in this case, HOO regularly provides its services to individuals who identify as gay or lesbian. And HOO currently employs or has previously employed at least six individuals who identify as gay or lesbian.

18. The GLSO is an advocacy group. Through its various programs and publications, it speaks in favor of sexual relationships and sexual activity outside of a marriage between a man and a woman, and its publications express support for legal changes such as redefining marriage and enacting laws like the public-accommodations ordinance at issue in this case.

19. The GLSO's members and its constituents come from all walks of life and identify with diverse sexual orientations. Of particular note, Aaron Baker, the GLSO's named representative in this case, is married to a person of the opposite sex and does not identify as gay.

20. Since approximately 2007, the GLSO has hosted the Lexington Pride Festival every year. The Festival is an advocacy event that communicates messages that encourage people to be proud about and to celebrate sexual relationships and sexual activity outside of a marriage between a man and a woman.

21. GLSO-approved performers at the Lexington Pride Festival have expressed profanity and crass sexual messages from the stage. For example, attendees at the 2011 Pride Festival told the GLSO that one performing drag queen made comments about sex, "blow jobs," and strapping on

“dildos,” and that it was especially offensive that children were exposed to this kind of sexually explicit language. Because of this experience, LFUCG representatives had reservations about allowing the GLSO to host the 2012 Pride Festival at the same downtown location.

22. GLSO-approved vendors at the Lexington Pride Festival have distributed or advertised sexually explicit or suggestive materials. At the 2012 Pride Festival, for instance, Hustler sold a plush bear that contained the phrase “I heart pussy” and raffled off bags that included lubricants, dildos, and other sex-related items.

23. The Lexington Pride Festival raises money for the GLSO’s other expressive programming.

24. The GLSO orders and sells shirts for the Lexington Pride Festival in order to promote the Festival and raise money for the GLSO.

25. The logo on the shirt for the 2012 Lexington Pride Festival depicted a large number “5” filled with rainbow colors and the words “Lexington Pride Festival.” The GLSO has repeatedly conceded that this logo communicated the message that people should be proud about engaging in sexual relationships other than marriages between a man and a woman.

26. In February 2012, a GLSO representative named Brad Shepherd exchanged emails with HOO Sales Representative Kaleb Carter about the prospect of HOO’s printing the shirts for the 2012 Pride Festival.

27. In March 2012, a different GLSO representative named Don Lowe called HOO on the phone to try to negotiate a lower price. After Mr. Lowe and HOO’s Managing Owner Blaine Adamson exchanged a few phone messages, the two men finally spoke to each other. Mr. Adamson asked Mr. Lowe what he was calling about, and Mr. Lowe told Mr. Adamson that he needed shirts for the Pride Festival, that Mr. Adamson had given him the best quote, and that he would like to

place an order. Unaware of the GLSO's prior communications with HOO Sales Representative Kaleb Carter, Mr. Adamson told Mr. Lowe that he did not recall giving a quote on the order.

28. Mr. Adamson asked Mr. Lowe to tell him about the Pride Festival. Mr. Lowe indicated that it was a gay-pride festival that would be in downtown Lexington. Mr. Adamson then asked Mr. Lowe what would be printed on the shirt. Mr. Lowe gave Mr. Adamson a detailed description of the front of the shirt, explaining that the shirt would contain a large number "5" with the colors of the rainbow in dots inside and the wording "Lexington Pride Festival."

29. Mr. Adamson was aware of the type of activities that generally occur at gay-pride festivals—including the display of signs and other communications promoting romantic relationships and sexual activity outside of marriages between a man and a woman, the wearing of sexually suggestive outfits and costumes, and the distribution of sex-related items such as condoms and lubricants. Mr. Adamson also understood that groups that organize gay-pride festivals communicate messages supporting sexual relationships or sexual activity outside of a marriage between a man and a woman.

30. Based on his conversation with Mr. Lowe, Mr. Adamson concluded that producing the requested shirts would require HOO to print a message—the words "Lexington Pride Festival" with a rainbow-colored "5" logo—conveying that people should take pride in sexual relationships or sexual activity outside of a marriage between one man and one woman. He sincerely believes that he would disobey God if he were to knowingly authorize HOO to print materials communicating that message.

31. Mr. Adamson told Mr. Lowe that HOO could not print the Pride Festival shirts because the shirt did not reflect HOO's values and HOO did not want to support the Festival in that



way. Mr. Adamson nevertheless offered to connect Mr. Lowe to another business that would print the shirts for the same price that HOO would have charged. Mr. Lowe declined that offer.

32. Another printing company named Cincy Apparel provided the shirts for the 2012 Lexington Pride Festival and the printing for those shirts free of charge to the GLSO. That saved the GLSO approximately \$3,000 in costs. In addition, many other printers, both local and national, were and are willing to produce shirts for the Pride Festival. Indeed, the GLSO itself has acknowledged that, at the time these events occurred, it was contacted by nearly a dozen printing companies, both local and national, all of whom said that they would be happy to print shirts for the Pride Festival.

33. On March 28, 2012, the GLSO filed with the Commission a complaint against HOO, alleging that HOO engaged in discrimination based on sexual orientation in violation of the public-accommodations ordinance when it declined to print shirts promoting the Pride Festival. Around that same time, the GLSO publicized information about the facts that gave rise to the filing of its complaint, and a Facebook group was created that encouraged people to boycott HOO.

34. After the GLSO filed its complaint in this case and publicized the relevant facts, several of HOO's large customers stopped doing business with HOO.

35. On November 13, 2012, after the Commission investigated the GLSO's complaint, the Commission issued a Determination of Probable Cause and Charge of Discrimination against HOO.

36. The parties then conducted discovery and filed cross-motions for summary judgment. On October 6, 2014, the hearing examiner assigned to this case issued his recommended "Order Granting Summary Judgment Motion of Complainants; Order Denying Summary Judgment Motion of Respondent." A copy of that recommended order is attached as Exhibit B. Despite the hearing examiner's correct acknowledgement, first, that HOO "acts as a speaker" when it "prints a

promotional item” for its customers and, second, that “this act of speaking is constitutionally protected,” Exhibit B at 13-14, he erroneously held that this “application of [the public-accommodations] ordinance does not violate [HOO’s] right to free speech” and “does not compel it to speak,” *id.* at 16. The hearing examiner next concluded that HOO’s decision not to print shirts promoting the Pride Festival “constitutes unlawful discrimination against the members of the GLSO on the basis of sexual orientation and sexual identity in violation of [the public-accommodations ordinance].” *Id.* Then he recommended that the Commission enter an order that “permanently enjoined [HOO] from discriminating against individuals because of their actual or imputed sexual orientation or gender identity,” and that required HOO “to participate in diversity training to be conducted by the . . . Commission within twelve (12) months of the issuance of [its] Order.” *Id.*

37. On October 16, 2014, HOO timely filed its objections to the hearing officer’s recommended order.

38. On November 19, 2014, the Commission issued its “Order Adopting Recommended Summary Judgment [sic] of the Presiding Hearing Examiner.” A copy of that Order is attached as Exhibit A. That Order explained that “the Commission adopts the Recommended Order the same as it [sic] fully set forth herein.” That Order also provided that “[a]ny person aggrieved by [it] shall note of Commission Rule 2.130 and file any appeal to the Fayette Circuit Court within thirty (30) days of the entry of this Order.” Through this Complaint and Notice of Appeal, HOO initiates that appeal.

#### **GROUND FOR APPEAL**

39. The Commission’s Order should be reversed because it is in violation of constitutional and statutory provisions, in excess of the Commission’s authority, without support of substantial evidence on the whole record, arbitrary, capricious, and characterized by abuse of discretion, and otherwise deficient as provided by law.

### **Freedom of Expression under the Federal and State Constitutions**

40. The Commission's Order violates HOO's and its owners' freedom of expression, which include their rights, as a for-profit business and as individuals, to be free from government action that forces them to convey or promote messages that they deem objectionable. These rights are protected under the First Amendment to the United States Constitution and Sections 1 and 8 of the Kentucky Constitution.

41. Despite the Commission's correct acknowledgement that HOO's printing of "a promotional item" like a shirt for its customers is an "act of speaking [that] is constitutionally protected," Exhibit B at 14, it erroneously held that this "application of [the public-accommodations] ordinance does not violate [HOO's] right to free speech" and "does not compel it to speak," *id.* at 16. This conclusion is wrong as a matter of law. Because HOO is a constitutionally protected speaker, as the Commission correctly observed, the Commission cannot apply the public-accommodations ordinance to force HOO to print messages that its owners do not want to convey. Yet that is precisely what the Commission's Order does: it orders HOO to print message-bearing shirts promoting the Pride Festival—and, by extension, message-bearing shirts promoting other ideological group's advocacy events—notwithstanding the conscience-based objections of HOO and its owners. The Commission's Order thus violates HOO's and its owners' constitutionally protected freedom of expression.

### **Free Exercise of Religion under KRS 446.350**

42. The Commission's Order violates HOO's and its owners' free exercise of religion protected under KRS 446.350, which provides that "[t]he right to act or refuse to act in a manner motivated by a sincerely held religious belief may not be substantially burdened unless the government proves by clear and convincing evidence that it has a compelling governmental interest

in infringing the specific act or refusal to act and has used the least restrictive means to further that interest.” KRS 446.350.

43. HOO’s decision not to print (but instead to offer to refer to another company the GLSO’s request for) shirts promoting the Pride Festival was indisputably motivated by its and its owners’ sincerely held religious beliefs.

44. The Commission’s Order substantially burdens HOO’s and its owners’ religiously motivated decision not to print (but instead to offer to refer to another company the GLSO’s request to print) materials that express and otherwise support messages in conflict with HOO’s and its owners’ religious beliefs. A substantial burden exists because, among other things, the Commission’s Order directly compels, or at least places significant pressure on, HOO and its owners to violate their sincerely held religious beliefs by printing message-bearing materials that they cannot in good conscience create. That substantial burden is exacerbated by the Commission’s mandate that HOO must attend “diversity training.” The only conceivable purpose for this diversity training is for the Commission to attempt to change HOO’s religiously motivated views and actions as they pertain to this case; such training will undoubtedly include instruction about human sexuality that conflicts with HOO’s and its owners’ religious beliefs. The prospect of enduring such government-imposed-indoctrination efforts heightens the substantial burden on HOO’s and its owners’ free exercise of religion. The Commission thus erred as a matter of law in baldly stating, without explanation, that its Order does not “substantially burden[] [HOO’s] freedom of religion.” Exhibit B at 10.

45. The Commission has not proven by clear and convincing evidence that it has a compelling government interest in forcing a printer like HOO to create message-bearing items that promote the advocacy event of an ideological group. The Commission concluded, again without explanation, that “the Commission has presented clear and convincing evidence that [the public-

accommodations] [o]rdinance addresses a compelling interest of Lexington-Fayette County government in safeguarding specified classes of individuals from the . . . effects of being denied equal access to public accommodations.” Exhibit B at 10. This conclusion is flawed as a matter of law because the compelling-interest analysis required by KRS 446.350 “look[s] beyond broadly formulated interests justifying the general applicability of government mandates” and determines whether strict scrutiny “is satisfied through application of the challenged law to . . . *the particular claimant* whose sincere exercise of religion is being substantially burdened.” *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 430-31 (2006) (internal quotation marks omitted) (emphasis added). Thus, the relevant government interest is not, as the Commission would have it, the general interest “in safeguarding specified classes of individuals from the . . . effects of being denied equal access to public accommodations,” Exhibit B at 10, but the particular interest in forcing a printer like HOO to create message-bearing materials that promote an ideological group’s advocacy event. That particular government interest is not a compelling interest of the highest order.

46. The Commission has not proven by clear and convincing evidence that it used the least-restrictive means to further its asserted government interest. The Commission’s Order nowhere asserted that the Commission satisfied the least-restrictive-means requirement. Its failure to reach that conclusion—a conclusion that is statutorily required before rejecting HOO’s claims under KRS 446.350—constitutes legal error and an abuse of discretion.

#### **Free Exercise of Religion under the Federal and State Constitutions**

47. The Commission’s Order violates HOO’s and its owners’ free exercise of religion protected under the First Amendment to the United States Constitution and Sections 1 and 5 of the Kentucky Constitution.

48. HOO's and its owners' free-exercise claim presents a hybrid of rights because the Commission's Order infringes not only HOO's and its owners' free exercise of religion, but also their freedom of expression (as discussed above).

49. In dismissing HOO's and its owners' free-exercise claim under the United States and Kentucky Constitutions, the Commission's Order ignored that HOO and its owners presented a hybrid-rights argument. The Commission's failure to address HOO's and its owners' constitutional arguments constitutes legal error and an abuse of discretion.

### **The GLSO Lacks Standing**

50. The Commission's Order exceeds the Commission's authority because the GLSO lacks standing to bring its claim under the public-accommodations ordinance. That ordinance, when read in conjunction with incorporated state statute KRS 344.120, permits claims only by an *individual* who has been denied the full and equal enjoyment of the goods and services of a public accommodation. But the GLSO is an entity, not an individual, and thus is ineligible to file a complaint under the public-accommodations ordinance.

51. The Commission's Order erroneously concluded that the GLSO has standing to pursue its claim by invoking KRS 344.010(1)'s definition of the word "[p]erson." *See* Exhibit B at 7. But that definition does not determine who may assert a violation of the public-accommodations ordinance. That ordinance, when read in conjunction with incorporated state law KRS 344.120, provides that "it is an unlawful practice for a *person* to deny an *individual* the full and equal enjoyment of the goods, services, . . . and accommodations of a place of public accommodation . . . on the ground of" that individual's sexual orientation. KRS 344.120 (emphasis added). As this language illustrates, the word "person" defines who *may be sued* for violating the public-accommodations ordinance, but the word "individual"—a narrower term than "person"—governs

who *may file suit* alleging a violation of that ordinance. The Commission thus erred in concluding that the GLSO has standing, and as a result, the Commission lacked authority to issue its Order against HOO.

### **HOO Did Not Violate the Public-Accommodations Ordinance**

52. The Commission's Order exceeds the Commission's authority and misconstrues governing law because HOO did not violate the public-accommodations ordinance. That ordinance prohibits a public accommodation from denying an individual the full and equal enjoyment of its goods and services on the ground of the individual's sexual orientation. But HOO's decision not to print (but instead to refer to another company the GLSO's request for) shirts promoting the Pride Festival was not made on the ground of, or on the basis of, anyone's sexual orientation.

53. The Commission's Order concluded that HOO's decision not to print shirts promoting the Pride Festival "constitutes unlawful discrimination against the members of the GLSO on the basis of sexual orientation and sexual identity in violation of [the public-accommodations] [o]rdinance." Exhibit B at 16. In reaching this conclusion, the Commission rejected the critical distinction between, on the one hand, *unlawfully* declining to print materials because of a protected characteristic of the customer and, on the other hand, *lawfully* declining to print materials because of the message that those materials advocate. Prior to its final decision, however, the Commission had openly affirmed this important distinction. Indeed, its Executive Director Raymond Sexton had publicly stated, and confirmed under oath, that if a company does not approve of the message, that is a valid nondiscriminatory reason to refuse the work.

### **The Remedies Exceed the Commission's Authority**

54. The Commission's Order concluded that HOO's decision not to print shirts promoting the Pride Festival "constitutes unlawful discrimination against the members of the GLSO on the

basis of sexual orientation,” and mandated that HOO “is permanently enjoined from discriminating against individuals because of their actual or imputed sexual orientation or gender identity.” Exhibit B at 16. This Order thus requires HOO to print message-bearing materials that promote an advocacy event (like the Lexington Pride Festival) for an ideological group (like the GLSO). But because, as the Commission admits, HOO acts as a “constitutionally protected” “speaker” “when [it] prints a promotional item” for its customers, *see id.* at 13-14, this Order violates HOO’s and its owners’ freedom of expression and thus exceeds the Commission’s authority.

55. The Commission’s Order “permanently enjoin[s] [HOO] from discriminating against individuals because of their . . . gender identity.” Exhibit B at 16. This case, however, does not involve a claim of discrimination based on gender identity. Thus, the Commission exceeded its authority by including the “gender identity” language in its injunction.

56. The Commission’s Order directs HOO “to participate in diversity training to be conducted by the . . . Commission within twelve (12) months of the issuance of th[e] Order.” Exhibit B at 16. Yet KRS 344.230(3), which sets forth the types of remedies that the Commission may order, does not include anything remotely resembling the Commission’s directive that HOO must “participate in diversity training.” The Commission thus exceeded its authority by issuing that relief. Moreover, as the Commission’s attorney has admitted in the Commission’s Response to HOO’s Opposition to the Hearing Examiner’s October 6, 2014 Ruling, a copy of which is attached as Exhibit C, “the Commission [did] not request[]” at any point during this case “diversity training as a remedy,” and the Commission does not believe “that diversity training would be helpful in this situation.” Exhibit C at ¶ 13. Therefore, because no party requested that relief during the adjudicative stage below, and because the Commission does not think that that relief would be effective, the Commission exceeded its authority by issuing it. And finally, the Commission’s own attorney has



acknowledged that additional constitutional problems arise because of the Commission's directive that HOO must participate in diversity training. In her own words, she stated that "to be frank, the Commission anticipates that the requirement that HOO be compelled to attend diversity training may create a whole new realm of constitutional arguments pertaining to freedom [of] expression and the free exercise of religion." *Id.* The only conceivable purpose for diversity training is to change HOO's religiously motivated views and actions as they pertain to this case. But such government-imposed-indoctrination efforts violate HOO's and its owners' freedom-of-expression and free-exercise rights, for those vital legal protections, at their heart, exist to protect the freedom of the mind from government interference or coercion. That mandated diversity training exacerbates the already-existing constitutional violations reinforces that the Commission exceeded its authority when it ordered that remedy.

#### **The Commission's Recitation of Facts Lacks Substantial Evidence**

57. The Commission's recitation of the facts is without support of substantial evidence on the whole record, arbitrary, capricious, and characterized by abuse of discretion.

58. The Commission's Order excludes many undisputed facts that are material to HOO's claims and defenses. HOO included those material facts in the "Statement of Undisputed Material Facts" in its Memorandum in Support of Motion for Summary Judgment filed with the Commission. The Commission erred as a matter of law by ignoring those relevant facts. And the omission of those facts is without support of substantial evidence on the whole record, arbitrary, capricious, and characterized by abuse of discretion.

59. The Commission's recitation of the following facts, in particular, is without support of substantial evidence on the whole record, arbitrary, capricious, and characterized by abuse of discretion:

a. The Commission's Order states that HOO "has declined thirteen orders over a period of the two years preceding the filing of its Motion for Summary Judgment, on the basis that [HOO] believed the designs to be offensive or otherwise inappropriate." Exhibit B at 3. Instead, the evidence shows that at least thirteen times between January 1, 2010, and January 1, 2013, HOO declined to print expressive materials because of the messages that they display or otherwise support.

b. The Commission's Order states that GLSO representative Don "Lowe initially spoke to Mr. Kaleb Carter, an employee of [HOO]." Exhibit B at 3. During the investigation, however, Mr. Carter told the Commission that he never talked to Mr. Lowe.

c. The Commission's Order states that Mr. "Carter viewed the submitted design [for the 2012 Pride Festival shirt], did not find the design objectionable in any way, and advised [Brad] Shepherd 'this should work fine.' Mr. Carter then gave Mr. Shepherd a written quote via email." Exhibit B at 3. But the evidence shows that Mr. Carter sent Mr. Shepherd a written quote *before* he viewed the design for the Pride Festival shirt. And when the Commission's investigator asked Mr. Carter if the shirt design was "offensive in any way," Mr. Carter stated: "[N]ow that I know what it's about, I would say the message is not good."

d. The Commission's Order states that "[o]n or about March 8, 2012, Mr. Lowe contacted [HOO] by phone to discuss the tender of a deposit for the shirts and to determine if a lower price could be negotiated." Exhibit B at 4. Yet the evidence does not indicate that Mr. Lowe called HOO "to discuss the tender of a deposit for the shirts."

e. The Commission's Order states that during the phone conversation between Mr. Adamson and Mr. Lowe, "Mr. Adamson informed Mr. Lowe that his is a Christian

organization and that they would not print the t-shirts because their religious convictions would not allow them to print t-shirts for an event that encouraged people to be proud of their same-sex behavior.” Exhibit B at 4. The evidence, however, establishes that Mr. Adamson told Mr. Lowe that HOO could not print shirts promoting the Pride Festival because the shirts did not reflect the values of HOO and HOO did not want to support the Festival in that way.

f. The Commission’s Order states that during the phone conversation between Mr. Adamson and Mr. Lowe, “Mr. Adamson offered to give Mr. Lowe the name of another company that would honor the initial price quote of Mr. Carter on behalf of [HOO] and print the t-shirts.” Exhibit B at 4. Yet the evidence establishes that Mr. Adamson did more than offer to give Mr. Lowe the name of another company. Mr. Adamson said that he wouldn’t leave Mr. Lowe hanging, and so he offered to directly connect Mr. Lowe to another business that would print the shirts for the same price that HOO would have charged.

g. The Commission’s Order states that the Commission, in its Determination of Probable Cause and Charge of Discrimination, previously asserted that HOO “has printed t-shirts which could be interpreted as crude or in conflict with a person’s Christian beliefs. These include a t-shirt with the phrase ‘Size Does Matter,’ a design depicting a man poking his nipple, a t-shirt with a picture of a horse from behind with the words ‘Nice Mass,’ a t-shirt with a picture of a naked woman bent over with the words ‘liquor in the front, poker in the rear,’ and a t-shirt with the phrase ‘Fuck You’ readable when read upside down.” Exhibit B at 7-8. But the Commission did not present this argument in the summary-judgment motion that it filed below, and thus the argument was waived. Moreover, the Commission did not submit any evidence in support of its summary-judgment motion that establishes

those alleged facts. In fact, the evidence that was submitted either disputes that HOO printed or approved the printing of the offensive shirts mentioned above (e.g., the shirt with a picture of a naked woman and the shirt with the phrase “F%\*# You”) or shows that the shirts do not express messages in conflict with Mr. Adamson’s religious beliefs. Therefore, the Commission egregiously erred by reciting as facts those unsupported allegations and thereby needlessly impugning HOO’s reputation.

60. Although the specific facts mentioned above are without support of substantial evidence on the whole record, arbitrary, capricious, and characterized by abuse of discretion, the Commission followed the appropriate procedure when it resolved this case through the parties’ cross-motions for summary judgment because none of the parties raised any genuine issue of material fact.

#### **PRAYER FOR RELIEF**

WHEREFORE, pursuant to KRS 344.240 and Lexington-Fayette Urban County Human Rights Commission Rule 2.130(1), HOO prays that the Court do the following:

- A. Review the Commission’s Order as provided in KRS 344.240 and Lexington-Fayette Urban County Human Rights Commission Rule 2.130(1);
- B. Order the Commission within 20 days of the filing of this Complaint and Notice of Appeal to transmit to this Court as provided in KRS 13B.140(3) the original or a certified copy of the official record of the proceedings before the Commission, including but not limited to the parties’ cross-motions for summary judgment, all evidence and other documents submitted in support of those cross-motions, and transcripts of all the depositions taken in this case;
- C. Set a briefing schedule to facilitate this Court’s review of the Commission’s Order;

D. Stay the Commission's Order pending the completion of judicial review as provided in KRS 13B.140(4)(c);

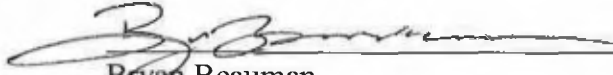
E. Enter judgment vacating and reversing the Commission's Order;

F. Declare that the GLSO lacks standing to pursue its claim under the public-accommodations ordinance, that HOO's decision not to print (but instead to refer to another company the GLSO's request for) shirts promoting the Pride Festival did not violate the public-accommodations ordinance, and that the Commission's application of the public-accommodations ordinance to HOO under these circumstances violates HOO's and its owners' freedom of expression protected under the United States and Kentucky Constitutions, free exercise of religion protected under KRS 446.350, and free exercise of religion protected under the United States and Kentucky Constitutions;

G. Declare that HOO's actions in offering to refer, rather than itself printing, orders for expressive materials that convey messages that its owners deem objectionable are protected under the United States and Kentucky Constitutions;

H. Provide HOO's attorneys' fees and costs and all other relief in law or equity to which HOO may be entitled.

Respectfully submitted,



Bryan Beauman  
STURGILL, TURNER, BARKER & MOLONEY, PLLC  
333 West Vine Street, Suite 1400  
Lexington, Kentucky 40507  
Telephone No: (859) 255-8581  
Facsimile No: (859) 231-0851  
bbeauman@sturgillturner.com

&

James A. Campbell\*  
Byron J. Babione\*  
Kenneth J. Connelly\*  
ALLIANCE DEFENDING FREEDOM  
15100 North 90th Street  
Scottsdale, Arizona 85260  
Telephone No: (480) 444-0020  
Facsimile No: (480) 444-0028  
jcampbell@alliancedefendingfreedom.org  
bbabione@alliancedefendingfreedom.org  
kconnelly@alliancedefendingfreedom.org

*\*Pro hac vice motion forthcoming*

COUNSEL FOR HANDS ON ORIGINALS, INC.