

# Keep Tahoe Litigated may be future League bumper sticker

By Joann Eisenbrandt

“Keep Tahoe Blue.” Locals and tourists see it everywhere – attached to the wrinkled bumpers of aging Subarus and the shiny chrome of sleek BMWs. Even on poster-pocked telephone poles. It’s a call to environmental action, a bumper sticker, a domain name, and the registered trademark of the League to Save Lake Tahoe.



The League, a private nonprofit membership organization formed in the late 1950s, has, according to its website, “advocated for strong protection of the Tahoe basin’s natural resources and the restoration of its famed clear water ... the League established itself as the primary watchdog of the Tahoe basin.”

The watchdog is showing its teeth.

In July, Chris Minnes, former general manager of 968 Park Hotel near Stateline and a bodybuilding and fitness professional, opened a South Shore fitness and age-management business named Keep Tahoe Fit. In mid-July, the League sent him a letter stating the use of Keep Tahoe Fit as a business name, in his logo, as his domain name, and on a Facebook page constituted trademark infringement.

In that letter, Rochelle Alpert of Morgan, Lewis & Bockius LLP, the San Francisco legal firm which represents the League in trademark matters, states Minnes’ “use of the name, domain name and your copycat use of the KEEP TAHOE BLUE© design mark and bumper sticker for your logo constitutes plain intentional trademark infringement, dilution and unfair competition.” The letter demands that he, “stop all use of the name, domain name and logo immediately, and agree in writing not to use any

confusingly similar name, domain, name, mark or logo in the future.”

There is no dispute over whether the League “owns” the easily-recognized “Keep Tahoe Blue” trademark. They registered it with the U.S. Patent and Trademark Office years ago. The issue is whether Minnes has infringed on the rights given the League by that registration by using the words “Keep Tahoe Fit.”

Minnes believes he has not. “As you can see on my website, there are dozens of variations of Keep Tahoe Blue. It’s like Delta Faucet and Delta Airlines – they are such different businesses that an intelligent consumer isn’t going to confuse them. They also wouldn’t confuse Keep Tahoe Fit with Keep Tahoe Blue. And there’s such a precedent of people using that sticker.”

According to the U.S. Patent and Trademark Office, “A trademark is a word, name, symbol or device which is used in trade with goods to indicate the source of the goods and to distinguish them from the goods of others.” Businesses obtain trademarks through a slow, detailed process, proving to the Patent and Trademark Office their name and identifying marks are truly unique. A firm does not have to “trademark” its name to do business, but once it has, those specific characteristics are protected by law from “infringement” by others.

Trademark law is complex – and is outlined in pages of technical language in the Lanham Act, also known as the Trademark Act of 1946 (ch. 540, 60 Stat. 427 (15 U.S.C. 1051 et seq.)). Under that law, infringement occurs when another person, “shall, without the consent of the registrant– (a) use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive.” (15

U.S.C. § 1114).

The Berkman Center for Internet Society at Harvard University puts it into layman's terms: "The standard is 'likelihood of confusion.'" In other words, will someone mistakenly assume Keep Tahoe Fit is associated with or sponsored by the League? To determine this, the courts weigh a number of factors such as "the strength of the mark, the proximity of the goods, the similarity of the marks, evidence of actual confusion, the similarity of marketing channels, the degree of caution exercised by the typical consumer and the defendant's intent."

Minnes chose Keep Tahoe Fit because, "It has a great ring to it. No, I didn't expect a problem." Using Tahoe in the name reflects the fact that a connection to Tahoe is central to his business. "It's essentially a personal training business, but it is oriented to the Lake Tahoe resident, with sports-specific training and an understanding of how a Tahoe person thinks."

Minnes has not attempted to trademark Keep Tahoe Fit, citing the cost and lengthy process as reasons. He has not produced any business collateral for sale, such as shirts, bumper stickers or other logo products.

Minnes recently changed his original logo, replacing the image of the lake with a woman running.

"They seem to think they own the image of the lake," he said.

The League had also complained to Facebook about the Keep Tahoe Fit page. It was taken it down, but it was later reinstated.

As for the League's other demands, "I think they are wildly unfair. Why go after me after years of people using versions of the sticker, without going after everyone? I can't imagine someone who is supposed to be a steward of Lake Tahoe attacking local businesses. I have no money to hire an

attorney. If they want to go down that road, I'll let them deal with the negative PR."

Keep Tahoe Fit is only the latest in a veritable bumper crop of Keep Tahoe Blue permutations, among them: Keep Tahoe Local, Keep Tahoe Fed, Keep Tahoe Jew, Keep Tahoe Bomb, Keep Tahoe Culture, Keep Tahoe Seductive, Keep Tahoe Kind, Keep Tahoe Educated, Keep Tahoe Brew and Keep Tahoe Washo.

*Lake Tahoe News* contacted the League regarding the Keep Tahoe Fit dispute, but also wanted to know if it had undertaken past legal action against other businesses with "Keep Tahoe" in their business name or on promotional materials, what the guidelines were for taking action, and their reaction in general to the proliferation of "Keep Tahoe XXX" images. Their attorney's July 16 letter to Minnes indicated the League had, "successfully enforced its rights against other infringers" but gave no names or details.

Amanda Royal, communications coordinator for the League, told *LTN* neither she, nor any other League spokesperson could comment directly or answer any of our questions because it was "a legal matter."

The League later provided *LTN* with a written statement, which does include answers to some of those questions. In part it says, "We believe Keep Tahoe Blue® is the most recognized brand at Tahoe and must be safeguarded accordingly... We are particularly concerned about commercial uses because of how they mislead the public and potentially harm the integrity of our long-established brand... Third parties have always been reasonable, recognizing our rights and taking action to address our concerns. The League has made informal inquiries of others, as it did with Mr. Minnes, and others have complied with our reasonable requests. The US Trademark office has not authorized anyone to use our mark. Third-party sites have frequently taken down infringing content when requested to do so... We are not aware of any other entity currently attempting

to do business that is using our trademark as their sole business name and brand.”

*LTN* contacted a number of businesses using logos or business names which in some way include the words “Keep Tahoe.”

- Keep Tahoe Fed – Project MANA, an Incline Village nonprofit providing hunger relief programs on the North and West shores of Lake Tahoe and Truckee, has the image of their “Keep Tahoe Fed” bumper sticker on their website. George LeBard, current executive director, told *LTN*, “We checked with (the League) before we did it. And they cleared it.” LeBard noted they no longer sell that bumper sticker.

- Keep Tahoe Culture – Tahoe Arts and Mountain Culture, a website showcasing the Tahoe-Truckee region’s artistic culture has a bumper sticker “Keep Tahoe Culture” on its site. Creator and owner Becky Bell told *LTN*, “I was proactive. I went through the proper channels. I wrote a proposal (to the League) on my program, which is community-based. I changed my colors on purpose to be natural colors. I made sure it was different, because my website is different.”

- Keep Tahoe Local – Sells “Keep Tahoe Local” branded merchandise, including sweat shirts, T-shirts, tank tops, hats and car decals. *LTN* spoke briefly with owner Casey Eberhart, who declined to answer questions. Keep Tahoe Local attempted to trademark its logo (a sweat shirt with an image of the lake and the words “Keep Tahoe Local” next to it) with the U.S. Patent and Trademark office in 2006. The League contested the registration and it was denied. The application was marked as “abandoned” in October 2006 because Eberhart did not respond to the denial within six months. Merchandise continues to be sold on its site.

- Keep Tahoe Kind – Lake Tahoe Humane Society and SPCA. Nonprofit using the words “Keep Tahoe Kind” and a pawprint. According to Dawn Armstrong, executive director, “We did that

many, many years ago, around 1992. That's our signature; we have it all over, on our website, our letterhead, the bumper sticker. Before we did I called the League and talked to them about it. They said they appreciated that I had the courtesy to call them and they said it would be OK."

- Keep Tahoe Clean – The Clean Tahoe Program, a South Lake Tahoe and El Dorado County-funded litter and nuisance abatement nonprofit, uses an image of the lake and the words, "Keep Tahoe Clean" in many of its promotional materials. Ellen Nunes, program manager, told *LTN*, "Clean Tahoe has never been contacted by the League in any way regarding our use of those words."

- Keep Tahoe Green – Tahoe Hemp Company. Sells merchandise and bumper stickers bearing a logo with an image of the lake filled with hemp next to the slogan "Keep Tahoe Green." Owner Rick Krantz told *LTN*, "I've always displayed the League's stickers in the store next to mine. I'm sure they've seen them and know that. I give the donations (for League stickers) back to the League. I've had Keep Tahoe Green for 10 years. It's on my business card and everything." Asked if anyone from the League had expressed concerns regarding his slogan, Krantz replied, "No. No one has expressed concern."

- Keep Tahoe Seductive – Blue Turtle Seduction band. Sells "Keep Tahoe Seductive" Sticker. Web text describes it as, "Blue Bumper Sticker with the 'Keep Tahoe Seductive' design in Light Blue. This sticker mimicks (sic) the famous League to Save Lake Tahoe's 'Keep Tahoe Blue' sticker seen all over Tahoe and the country." No response received to inquiries prior to deadline.

- Keep Tahoe Washo – The Washoe Tribe of California and Nevada. According to the League's written statement, "We are open to talking to nonprofits about the use of our logo. 'Keep Tahoe Washoe' is an example of one that approached us and that we approved."

- Building Green to Keep Tahoe Blue – Advance Design & Construction, Incline Village. They attempted to trademark “Building Green to Keep Tahoe Blue,” but were denied by the U.S. Patent and Trademark Office due to the similarity with the League’s Keep Tahoe Blue trademark in April 2010. Owner Jeff Miller told *LTN*, “Two days after the denial, the League contacted me to say they didn’t want people to assume our two organizations were connected in any way. They didn’t want anybody to confuse their goals with my goals. I tried to explain that what I’m doing went along with their goals. (The firm is building a LEED-certified home in Incline.) I invited them to come and see the project and what it was I was trying to do and to look at our website. I spoke with their attorney, who was very pleasant. We agreed I could use ‘Building Green to Keep Tahoe Beautiful’ on the site.” (Miller is in the process of having references to “Building Green to Keep Tahoe Blue” removed.) “I was very surprised by the League’s reaction, but we’re abiding by it.”

- Keep Tahoe Real – Domain name of an action sports culture website featuring film, art and photography. No response to *LTN*’s inquiry before deadline.

These are just the tip of the trademark, so to speak, but they illustrate how complex the issue is. As of late Sept.2, the League had not filed a formal “trademark infringement” action against Keep Tahoe Fit. In the written statement, the League responded to Keep Tahoe Fit’s change of logo, “We only learned of his recent change on Aug. 31, but we remain concerned that his new logo trades off our long-established, iconic logo and that it remains a copy of the sticker that has long identified the League.”

Minnes told *LTN* Thursday afternoon that the League has again protested to Facebook that the Keep Tahoe Fit page is “abusive.” The logo has been removed, and replaced with a photo, but the page remains up. Minnes has contacted Facebook requesting that the logo be reinstated. He has not received

any additional communications from the League's attorney.