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SENT VIA FACSIMILE AND EMAIL: (952) 406-8565

Megan Tamte: megan@hotmamaonline.com

Hot Mama, CEO

4388 France Ave. South, Suite 200

Edina, MN 55410

Dear Ms. Tamte:

The American Civil Liberties Union Foundation of Colorado (“ACLU”) has learned of a racially discriminatory Theft Mitigation Policy (the “Policy”) currently enforced by your company, Hot Mama. The Policy directs employees at all of Hot Mama’s 40-plus stores, including the three locations here in Colorado, to “identify potential thieves.” With subtle and not-so-subtle references to race, the Policy encourages employees to target persons of color as “potential thieves,” and it instructs the employees to follow the “potential thieves” throughout the store in order to make them feel so uncomfortable that they will leave and never return. We are writing to demand that Hot Mama rescind its discriminatory policy and initiate company-wide training to ensure that Hot Mama employees stop relying on race or racial stereotypes when dealing with customers.

According to the Policy, to “identify potential thieves,” the first directive to Hot Mama employees is to look for “a customer that doesn’t look like the typical Hot Mama shopper.” *Hot Mama Theft Mitigation Policy*, Section 1a. The curious phrasing of this description of a “potential thief” suggests that it is a subtle coded encouragement of racial targeting. Who is and who is not a “typical Hot Mama shopper”? A review of Hot Mama’s website, which features an overwhelming proportion of white women modeling the clothing, suggests the answer. The price point of the clothing, along with the dearth of models of color on the website, suggests that Hot Mama regards its “typical Hot Mama shopper” as an upper-middle-class white female, and that it is persons of color who are more likely to be identified as “potential thieves” on the ground that they don’t “look like the typical Hot Mama shopper.”

The encouragement of racial targeting is confirmed by another provision of the Policy, which explicitly invokes race when describing how a “potential thief” might react when employees follow the Policy’s instruction to follow the targeted shoppers:

Shoplifters will try to make YOU feel uncomfortable. They may say: “**Are you following me because of my race?**” Please respond: “We like to give each customer one-on-one service.” Don’t worry about making them uncomfortable. That is your goal in this situation. The more uncomfortable they become, the quicker they leave . . . forever.

Hot Mama Theft Mitigation Policy, Section 3b (emphasis added and removed). Thus, this explicit reference to race makes it crystal clear just who the employees are instructed to target as “potential thieves.” Implicit in the language of the Policy is the notion that persons of color who shop at Hot Mama are potential thieves. The Policy then instructs employees to follow “potential thieves . . . everywhere in the store” in order to “make them feel uncomfortable.” *Hot Mama Theft Mitigation Policy*, Section 2. In order to protect the company’s assets, the Policy encourages Hot Mama employees to make shoppers of color feel so uncomfortable that they will leave and never return to the store, based on the unjustified and stereotyped assumption that people of color are likely to steal.

While the plain language of the Theft Mitigation Policy is enough to cause serious concern about Hot Mama’s treatment of shoppers of color, the ACLU has obtained additional information from a former Hot Mama manager. She reports that when challenged about the blatant racial component of the Policy, Hot Mama’s upper management explained that the Policy was necessary because stores in the Twin Cities area of Minnesota faced “problems with black gangs.” According to the former Hot Mama manager, the Regional Director in charge of the Colorado stores gave lip service to diversity issues, but in the end stated that Hot Mama, as a company, is too young to be bothered with worrying about issues related to diversity. To the contrary, Hot Mama has a clear obligation, pursuant to both federal and state law, to implement policies that do not target shoppers for harassment based on race.

Hot Mama’s Policy will lead – and very likely already has led – to Hot Mama employees taking actions that violate both Colorado and federal law prohibiting this type of discrimination in places of public accommodation, such as Hot Mama stores. Colorado law provides that it is a discriminatory practice for someone to directly, or indirectly, refuse or deny an individual the full and equal enjoyment of goods and services of a place of public accommodation because of that individual’s race or color. C.R.S. § 24-34-601(2). Federal law likewise prohibits discrimination based on race in “the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.” 42 U.S.C. § 1981; *see Miales v. McDonald's Rests. of Colo., Inc.*, 438 F. Supp. 2d 1297, 1300 (D. Colo. 2006). Not only is Hot Mama’s Policy plainly racially discriminatory, it undoubtedly creates an environment in which people of color will be followed, intimidated, and have their rights violated when attempting to shop at Hot Mama.

Because Hot Mama’s Theft Mitigation Policy is racially discriminatory and will inevitably lead to discrimination against shoppers of color in your stores, we demand that Hot Mama rescind its discriminatory policy and initiate company-wide training to ensure that Hot Mama employees no longer rely on race in dealing with customers. We request a response to this letter on or before **December 13, 2013**. If we do not hear from you by that date, we will

assume that Hot Mama intends to continue to enforce its racially discriminatory policy. Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "Sara R. Neel". The signature is written in a cursive, flowing style.

Sara Rich Neel
Staff Attorney, ACLU of Colorado