

December 20, 2018

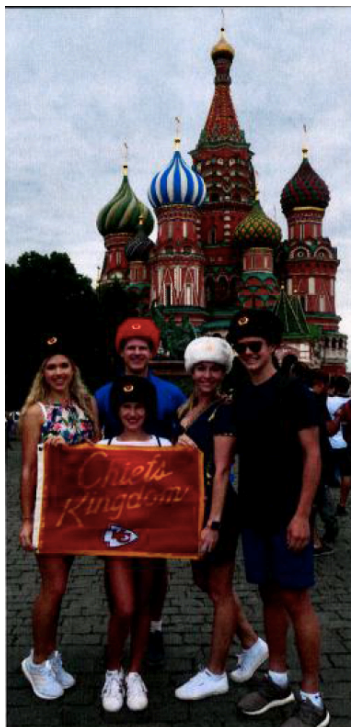
Megan J. Brennan
Postmaster General and Chief Executive Officer
United States Postal Service
475 L'Enfant Plaza, SW
Room 4012
Washington, DC 20260

Dear Postmaster Brennan,

First Liberty Institute represents Tavia Hunt on this matter. Please direct any correspondence on this matter to the undersigned.

We write to request that you immediately rescind an unconstitutional United States Postal Service (“USPS”) regulation that bans *any* depiction of religious content on customized postage.¹

Mrs. Hunt’s efforts to send out this year’s Christmas cards to her friends and family featuring a customized postage stamp of her family in front of St. Basil’s Cathedral have been stymied by the USPS because of its confusing, onerous, and unconstitutional regulations. The customized postage stamp repeatedly denied is the following image:



¹ <https://www.federalregister.gov/d/2017-27241/p-32>

Unconstitutionality of USPS's Ban on Religious Viewpoints and Content

Zazzle and Stamps.com are USPS-approved licensed third-party vendors who sell customized postage stamps. On November 28, 2018, Mrs. Hunt placed an order with Zazzle (to be fulfilled through Stamps.com) to purchase a customized postage stamp featuring the photograph depicted above. On December 3, both Zazzle and Stamps.com cancelled Mrs. Hunt's order, stating that the Hunt family photo violates the aforementioned USPS regulation banning *any* depiction of religious content on customized postage, including, evidently, an image containing the UNESCO World Heritage site St. Basil's Cathedral.²

The Hunt family are devoted Christians who desire to share their religious identity with others via customized postage stamps during the Christmas season. But as a result of the USPS regulation at issue, they are unable to do so purely because they depict the Hunt family posing in front of a historic cathedral and landmark.

Less than one week before Christmas, Mrs. Hunt still has not received her stamps. After accepting her order, Zazzle informed Mrs. Hunt that her order was cancelled. The stated reason for the cancellation was because of the picture's "religious" nature. Specifically, Zazzle noted "the prominence of St. Basil's Cathedral on [*sic*] the background." However, to resolve Zazzle's concern, Zazzle indicated that Mrs. Hunt's order would likely be approved if the photo were cropped to make the cathedral "less obvious." Zazzle sent Mrs. Hunt the following cropped version of her family photo as an example of a photo that would likely be consistent with USPS guidelines:



After several rounds of correspondence, including numerous approvals and cancellations, Stamps.com finally indicated that it would approve her stamps and asked Mrs. Hunt to resubmit her order through Zazzle. When she attempted to order the stamps shortly thereafter, Zazzle had completely withdrawn from offering custom stamps due to the onerous USPS regulations.³ As a

² <https://photo.stamps.com/Store/conditions/crPopup.jsp>.

³ https://forum.zazzle.com/news/zazzle_custom_postage_update.

result, Mrs. Hunt has been unable to obtain the customized stamps she has repeatedly attempted to order.

Sadly, the tremendous frustration experienced by Mrs. Hunt and Zazzle and Stamps.com's inability to fulfill her order or provide necessary clarity is ultimately a problem of USPS's creation. Although an image of St. Basil's Cathedral, which was secularized and converted into a museum decades ago, does not meet the definition of "religious" under the USPS regulations, the regulation as written is nevertheless overly broad. Both Stamps.com and Zazzle submitted public comments against the breadth of the religious restriction when it was published in the Federal Register, but the offending provision was not changed.⁴

Zazzle and Stamps.com each rejected Mrs. Hunt's order due to their understanding that "all religious content is forbidden" under USPS's customized stamp regulations. Notably, both companies face suspension or termination from the Customized Postage Program if they are found in violation of the USPS's guidelines.⁵ And the confusing and onerous nature of USPS's regulations led Zazzle suspend (for the second time) its offering of custom stamps.

If the USPS determines Mrs. Hunt's stamps were properly rejected under its regulations, the regulations raise serious First Amendment concerns. The USPS Customized Postage Program's total censorship on even incidentally religious images is unreasonable given that the USPS directly markets stamps to the public containing religious acknowledgements, such as nativities and menorahs. For these reasons, we ask that the USPS immediately rescind its unconstitutional regulation and provide immediate clarification to Zazzle and Stamps.com indicating that the custom stamps requested by Mrs. Hunt are not prohibited by USPS regulations so that Mrs. Hunt may receive her stamps as ordered.

Factual Background

Mrs. Hunt attempts to order customized stamps for her Christmas cards.

On November 22, Mrs. Hunt received a personalized email from Zazzle indicating that Zazzle partnered with Stamps.com to offer "create-your-own postage through our site." Mrs. Hunt's design would be "subject to review," but the e-mail explained that Zazzle "would be delighted to work with [her] to expedite this through that process." On November 28, she submitted her order for customized postage featuring a photo of her family taken while visiting Moscow's Red Square during the 2018 World Cup.

⁴See Bill McAlister, "Stamps.com, Zazzle lodge complaints against proposed USPS rules for computer-generated stamps," Linn's Stamp News, Feb. 21, 2017, available at <https://www.linns.com/news/us-stamps-postal-history/2017/february/stampscom-zazzle-complaints-usps-rules-computer-stamps.html>; see also 82 Fed. Reg. 600117.

⁵ 39 C.F.R. § 501.21(c)(7).

Zazzle cancels Mrs. Hunt's Order due to the presence of St. Basil's Cathedral.

On December 3, Zazzle emailed Mrs. Hunt to inform her it had cancelled her order because the stamps “are in conflict with our content guidelines.”

Order Cancellation Notice

We're unable to process your order.

Hello Tavia Hunt,

Thank you for your recent order: 131651682548970304.

Unfortunately, we are unable to process your order. The designs are in conflict with our content guidelines.

Mrs. Hunt immediately emailed Zazzle for clarification to “make sure [she didn't] choose another photo with the same issue.” Mrs. Hunt also followed up via phone, and a Zazzle representative indicated Zazzle cancelled her order due to the presence of St. Basil's Cathedral in the background. A follow up email later that day provided the content guidelines from Zazzle's website.

Zazzle approves Mrs. Hunt's photo for printing.

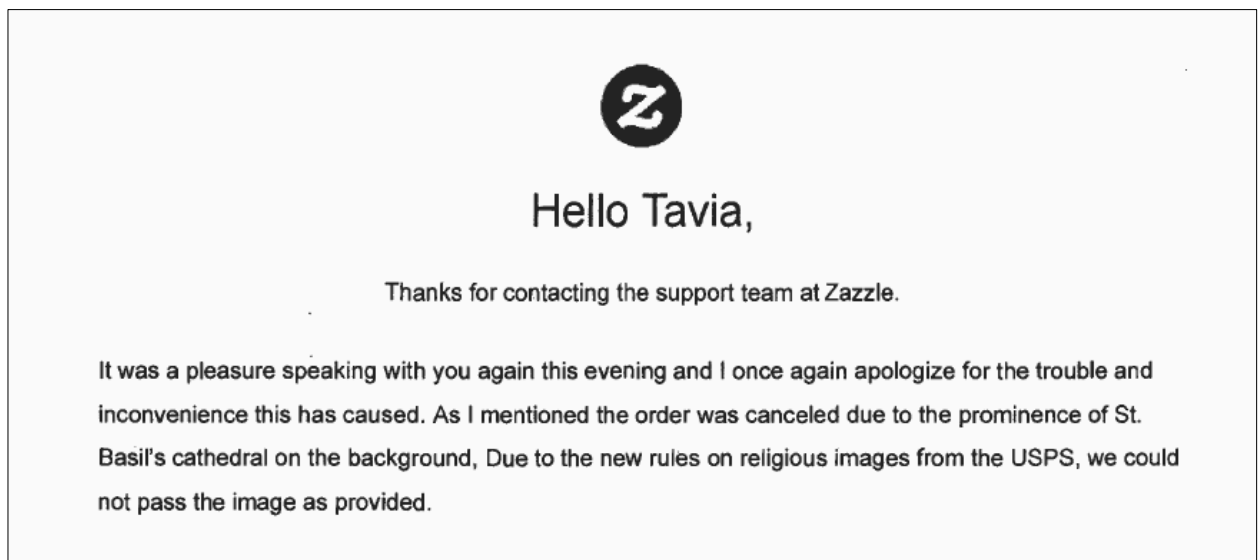
On December 4, Mrs. Hunt emailed Zazzle about her concerns about the rejection, including that the rejection “appears to be an attempted ban on religion.” Mrs. Hunt followed up with Zazzle via phone, and its representative explained that he understood her position and that she should resubmit her order. On December 4, Mrs. Hunt resubmitted her order and received an email confirmation that her “Zazzle reorder has been approved and will be shipped to [her] as soon as possible.”

Zazzle's raises copyright concerns that Mrs. Hunt quickly addresses.

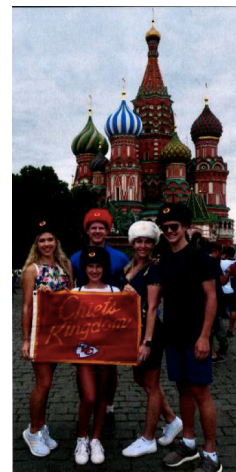
Mrs. Hunt attempted to track her order, learned that it had again been cancelled, and contacted Zazzle customer service. The Zazzle representative suggested that Mrs. Hunt contact Stamps.com directly as Stamps.com was responsible for content decisions. Mrs. Hunt followed his instructions and called Stamps.com. Its representative indicated that the problem stemmed from copyright concerns due to the presence of the Kansas City Chiefs' logo. Mrs. Hunt explained that her family owned the rights to the trademark, and the Stamps.com representative indicated that she should submit a copyright affirmation form. On the same day, Zazzle sent Mrs. Hunt an email providing the form and asking her to fax it to Stamps.com “to ensure a replacement order is processed as needed.”

Zazzle again cancels Mrs. Hunt's order despite its previous approvals.

After submitting the copyright authorization paperwork, Zazzle called Mrs. Hunt and explained that the order was cancelled because of the presence of St. Basil's Cathedral. In a subsequent email, Zazzle confirmed that the rejection was "due to the prominence of St. Basil's Cathedral on [sic] the background," but the order would be approved if "the image is cropped so that the cathedral is not obvious."



Zazzle attached a proposed photo that was tightly cropped to remove any identifiable features of St. Basil's Cathedral.



Stamps.com approves the order and asks Mrs. Hunt to resubmit through Zazzle.

On December 11, the day after the third rejection, Mrs. Hunt spoke with representatives of Stamps.com over the phone. In a subsequent email, Stamps.com indicated to Mrs. Hunt's assistant

Ashleigh that under USPS regulations “all religious content is forbidden no matter the intent or faith.”

Dear Ashleigh,

Thank you for contacting the Stamps.com Customer Relations Team.

I just spoke with Tavia regarding the order that was placed with Zazzle. A member of our management team will be calling her within the hour to discuss further.

In the meantime, I wanted to provide additional information. Stamps.com is a PC Postage Vendor licensed and approved by the USPS since 1999, and therefore we are required to adhere to USPS guidelines. Per USPS, all religious content is forbidden no matter the intent or faith.

Mrs. Hunt continued to speak with Zazzle and Stamps.com by phone in an attempt to resolve the issue. Following these calls, a representative of Stamps.com emailed Mrs. Hunt later that day to inform her that a review of her photo “was escalated to senior members of our team and the decision to reject the image has been reversed.” The email invited Mrs. Hunt to “re-submit the image to Zazzle so we can print it for you.”

Zazzle refuses to print Mrs. Hunt’s stamps due to suspension of its offerings.

Mrs. Hunt attempted to resubmit her order on December 16, 2018 through Zazzle. However, when she attempted to resubmit, the Zazzle order page indicated that the customized stamps were “sold out” despite being custom-made. After further inquiry, Zazzle informed her via email that its “offering of Photostamps by Stamps.com is on pause at the moment. There are multiple variables involving federal guidelines for custom postage that still require more understanding before we go forward.”

Exasperated and frustrated by an on-again-off-again process made necessary by the overly broad regulation of the USPS, that consumed nearly three weeks—and being no closer to actually getting her Christmas cards to her friends and family—Mrs. Hunt was left with no choice but to seek clarification directly from the USPS as to why her custom stamp could not be processed by Zazzle and Stamps.com.

Legal Analysis of the USPS Regulation

A photo’s inclusion of a secular cultural icon such as St. Basil’s Cathedral cannot plausibly be prohibited under a regulation for “religious” depictions.

Simply put, the regulation should not apply to Mrs. Hunt’s photo. The photograph at issue cannot be fairly characterized as having any “religious” depictions and the rejection of this image shows how overly broad the regulation is construed. St. Basil’s Cathedral was secularized when

it was seized and secularized by the soviet government in 1929 and is now a part of the State Historical Museum.⁶ Located in Moscow's Red Square, it is recognized worldwide for its cultural, historical, and architectural significance. As the United Nations Educational, Scientific, and Cultural Organization ("UNESCO") recognizes, the building not only "has become the symbol of the city [of Moscow], but also of the whole country."⁷ St. Basil's is only nominally a cathedral and is recognized more for its cultural, historical, and architectural significance than for any religious significance.

Both Courts and the USPS have recognized similar distinctions. Numerous courts have rejected challenges to arguably religious symbols imbued with historical significance. See *Weinbaum v. City of Las Cruces*, 541 F.3d 1017, 1035 (10th Cir. 2008); *Murray v. City of Austin*, 947 F.2d 147, 158 (5th Cir. 1991). Indeed, the Tenth Circuit held that despite the presence of three crosses, a city seal was "a secular symbol, which could be, and was, understood to be secular." *Weinbaum*, 541 F.3d at 1035. When the USPS received similar criticism for a stamp depicting Mother Teresa, a spokesman for the USPS indicated that "Mother Teresa is not being honored because of her religion, she's being honored for her work with the poor and her acts of humanitarian relief."⁸ Just as in those cases, Mrs. Hunt wanted a picture of St. Basil's because it is "one of the most famous and photographed buildings in the world." See Exhibit H. Because the same considerations apply here, the USPS should inform Stamps.com and Zazzle that Mrs. Hunt's picture does not violate USPS regulations so they can fill her order in time for Christmas.

If the USPS determines that Mrs. Hunt's photo was properly rejected under its regulations, the regulation raises serious First Amendment concerns.

If the USPS determines that Mrs. Hunt's picture violates the criteria against religious depictions, then the regulations as construed are hostile toward religious expression. The USPS's own discussion of its regulations acknowledges that customized stamps are a forum for private speech.⁹ Under USPS regulations, customized stamps may contain "incidental" depictions of "alcohol, tobacco, gambling, or firearms and other restrictions," but not "any depiction" that could be construed as religious, placing "religious" content in the same category as "violent or sexual content" and "subject matter prohibited for display under U.S. law."¹⁰

The regulation promotes unconstitutional viewpoint discrimination. Images can be approved if they are of a "less obvious" religious nature, but the Supreme Court has held that otherwise permissible speech cannot be prohibited due to its perceived religious character. See *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 111-12 (2001) (explaining that the exclusion of religious speech from a limited public forum was "impermissible viewpoint discrimination"); cf. *U.S. Postal Serv. v. Council of Greenburgh Civic Ass'n*, 453 U.S. 114, 126 (1981) ("[The postal

⁶ <http://architectuul.com/architecture/saint-basil-s-cathedral>

⁷ Technical assistance for the restoration of Saint Basil's Basilica, Moscow, Russian Federation, UNESCO, <https://whc.unesco.org/en/activities/781/>.

⁸ <https://www.foxnews.com/story/atheist-group-blasts-postal-service-for-mother-teresa-stamp>

⁹ 82 Fed. Reg. 600117 (citing *Matal v. Tam*, 137 S. Ct. 1744 (2017) and noting that relevant free speech considerations fall under a limited public forum analysis).

¹⁰ 39 C.F.R. § 501.21(b)(2).

power] may not of course be exercised by Congress in a manner which abridges the freedom of speech or of the press protected by the First Amendment to the Constitution.”).

Moreover, the regulations are not supported by their proposed justifications to protect the USPS “against dilution, false attribution, appearances of endorsement, and other potential impacts.”¹¹ Indeed, the USPS currently issues and markets stamps including, for example, nativity scenes, menorahs, depictions of “Madonna and Child,” and Diwali lamps under its own name. Moreover, the USPS disassociates its products from the customized postage products.¹² The USPS’s absolute ban on private religious acknowledgements on postage is unreasonable in light of its practice of selling stamps acknowledging religion directly to the public.

Mrs. Hunt considers these stamps to be an essential aspect of her Christmastime message for friends and family and is withholding sending the cards until this issue is resolved. For these reasons, we ask that the USPS contact its approved vendors Stamps.com and Zazzle no later than **12:00pm Central Time, Friday, December 21, 2018**, to clarify that Mrs. Hunt’s image does not violate USPS guidelines from customized postage. If you insist that Mrs. Hunt’s photo contains “religious content” in violation of the USPS guidelines, then the guidelines raise significant First Amendment concerns and we will consider appropriate legal remedies to vindicate Mrs. Hunt’s constitutional rights.

Sincerely,



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First Liberty Institute

CC: Thomas J. Marshall
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¹¹ 82 Fed. Reg. 600117.

¹² See, e.g., 39 C.F.R. § 501.21(c)(4).

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