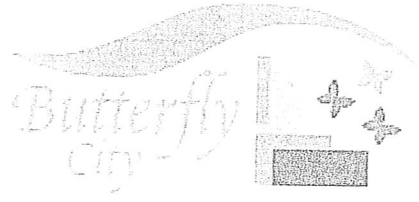


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Citizen Comment

5/3/12

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The ten recommendations are on the next two pages.

LINE ITEM	Butterfly City Requirements
1.	Take political action by elected municipal officials to designate butterflies as a subject for protection and promotion.
2.	Identify at least one butterfly site or event, which is intended to attract tourists, as well as area residents.
3.	Involve, as appropriate, specific City departments to create and maintain butterfly and other garden habitats.
4.	Foster creation and maintenance of butterfly and other forms of gardens in cooperation with public and private agencies.

5. Urge individuals, businesses, professionals, associations, organizations, fraternities, sororities, associations, garden clubs, and others to promote the community as a Butterfly City
6. Provide means to register such actions and to reward those taking them. A Butterfly City offers the certified symbol for display by private participants. A Butterfly City also will authorize distribution of the logo and education materials about Lepidoptera as appropriate
7. Work with media to let the community know about local and seasonal distribution of butterflies and other Lepidoptera and the appropriate plant life to sustain each stage of insect life

ANNEX VIII

Butterfly City Requirements (cont'd)

8. Increase knowledge about and enjoyment of butterflies in segments of the local population which have not been oriented to those benefits in the past. Children, especially, should be included
9. Educate people about the steps to be taken to limit harm to the Lepidoptera species when measures are used to eliminate mosquitoes and other insect pests
10. Officially approve and proclaim a Butterfly Day or Days each year

February 14, 2012

Gabe Hillel, Esquire
Post Office Box 140119
Gainesville, FL 32614

Dear Mr. Hillel:

On January 3, 2012, Communications Manager Bob Woods and I met with you to discuss your position regarding the status of City of Gainesville efforts to implement adopted BEP criteria as a Butterfly City. We also discussed your request to take possession of the Butterfly City logo sign located in the lobby area of City Hall. It is my hope that the meeting will result in further cooperative effort between the City and the Butterfly Education Project (BEP). Subsequent to our meeting, I have taken the following actions:

I have directed Mr. Woods to provide assistance to the BEP so that an appropriate request is submitted to commemorate recognition of Gainesville as the First Butterfly City in the form of a proclamation to coincide with University of Florida ButterflyFest activities each year. He will work with BEP to help publicize city and other local programs and activities that involve Lepidoptera species within the city of Gainesville. Mr. Woods will also incorporate information about Lepidoptera into the Florida City Government Day activities held in association with the School Board of Alachua County annually in October.

Additionally, the City Communications Office maintains a normal rotation of butterfly images on the City web site's main page. With the consent of the BEP, the city remains willing to display the Butterfly City logo on its website and use it as appropriate on its other communication channels.

The City Communications Office will develop a City of Gainesville "Butterfly City" webpage to assist with the distribution of appropriate public education and information materials about butterfly activities in or near the city of Gainesville. The Communications Office will work with the BEP to develop appropriate content contributions from the BEP for the Gainesville "Butterfly City" web page, including recognition of private participants in or near the City of Gainesville as identified by the BEP.

The City Commission has issued clear policy direction regarding city mosquito control efforts. That direction is codified in the City of Gainesville Municode Section 16-75 (a) and (b) and our practice is consistent with the cited section of code. The Mosquito Control webpage reflects approved policy direction and is not subject to change.

I
2013



Office of the City Attorney

Phone: 334-5011/Fax 334-2229
Box 46

TO: Russ Blackburn, City Manager
FROM: Marion Radson, City Attorney
SUBJECT: "Butterfly City" Trademark

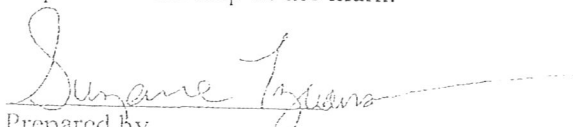
DATE: February 7, 2012

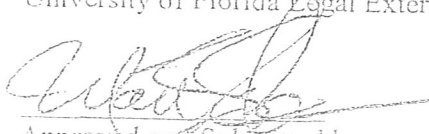
You asked whether the "Butterfly City" logo may be trademarked by the City of Gainesville. To answer your question in short, no, the City of Gainesville cannot trademark the "Butterfly City" logo. The logo was not authored by the City of Gainesville, and therefore a trademark would be unavailable to the City.

A main objective of trademark law is to indicate ownership and permit the trademark owner to control the product's reputation. *G. Heileman Brewing Co., Inc. v. Anheuser-Busch, Inc.*, 873 F.2d 985, 997 (7th Cir. 1989). According to information provided by Mr. Bob Woods, Communications and Marketing Manager, an ad-hoc citizens' group (the Butterfly Education Project) created the Butterfly City logo. On information, they currently retain ownership and control over the logo. Therefore, the City of Gainesville does not possess the right to trademark it.

Under the Lanham Act, the Act regulating trademarks, such a certification mark (a mark bestowing certification of a standard onto a non-owner) may be registered by the group that owns it, but not by a user of the mark. 15 U.S.C.A. § 1054 (West). As the City of Gainesville is merely a user of the mark, the City may not register or exert ownership over the mark.

However, if the creator of the logo grants ownership and control of the mark to the City of Gainesville, a trademark would be possible. A "trademark" includes any symbol, phrase or any particular combination of symbols and words that are adopted and used by an entity or person in commerce. As a unique combination of the butterfly image and the phrase "Butterfly City", the City of Gainesville would qualify for trademark protection for the logo, in the event it acquires ownership of the mark.


Prepared by
Suzanne Tzuanos
University of Florida Legal Extern


Approved and Submitted by
Marion Radson
City Attorney

CC: Bob Woods, Communications and Marketing Manager

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1 of 3

In response to my request the City Attorney's Office has provided a legal opinion as to whether the City may trademark the "Butterfly City logo". Simply stated, a trademark would be unavailable to the city because the logo was not authored by the City of Gainesville. I am providing a copy of the City Attorney's Memo on this subject, dated February 7, 2012, for your information.

The City of Gainesville is proud of its certification by the BEP as the first "Butterfly City" and is committed to work diligently to maintain that designation. However in this difficult fiscal environment, the reality is that local government can no longer afford do all that can and should be done, with taxpayer dollars alone. In response, volunteer programs are assuming greater responsibility for providing quality of life services to the community. It is my hope that the BEP will help the city achieve a balance between its needs and its limited resources by increasing BEP local volunteerism in an effort to help Gainesville maintain "Butterfly City" certification.

If after review of this correspondence, the BEP wishes to reclaim the Butterfly City sign located in the City Hall Lobby, please contact Communications Manager Bob Woods to coordinate the return of the sign to the BEP.

Sincerely,



Russ Blackburn
City Manager

Cc: Bob Woods, Communications Manager

I

3 of 3



Office of the City Attorney

Phone: 334-5011/Fax 334-2229
Box 46

TO: Russ Blackburn, City Manager
FROM: Marion Radson, City Attorney
SUBJECT: "Butterfly City" Trademark

DATE: February 7, 2012

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Prepared by
Suzanne Tzuanos
University of Florida Legal Extern

Approved and Submitted by
Marion Radson
City Attorney

CC: Bob Woods, Communications and Marketing Manager

J
1 of 3

IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT
IN AND FOR ALACHUA COUNTY, FLORIDA

ERIN FRIEDBERG,
Plaintiff

vs.

CITY OF GAINESVILLE, FLORIDA
Defendant,

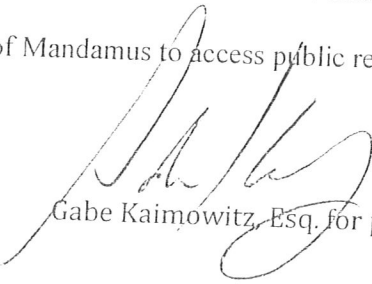
and

BUTTERFLY EDUCATION PROJECT, LLC¹
Intervenor (Proposed)

CASE NO. 2012 CA 360
Division K—Hon. Victor L. Hulslander

MOTION/LEGAL AUTHORITY FOR IMMEDIATE HEARING

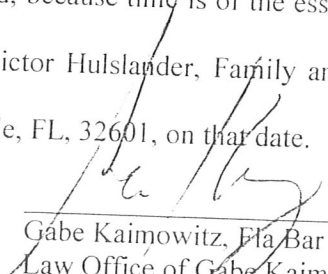
The Butterfly Education Project, LLC, proposed intervenor, relies on an appeals court ruling on March 14, 2012, (see attached), to ask this Court to set an immediate hearing during the week of May 7, 2012, to consider the Petitions for Writs of Mandamus to access public records wrongfully withheld by the Defendant City of Gainesville, Florida.


Gabe Kaimowitz, Esq. for proposed Intervenor

¹ The Butterfly Education Project, LLC, is the real party of interest here. As Gabriel Hillel, the undersigned attorney made a Request for the Butterfly Education Project, for public records, from the City of Gainesville, at a public meeting, and later in writing on or about Feb. 16, 2012. Such a corporation is a "person" in its own right, *Citizens United v. Fed. Election Comm'n.* 130 S. Ct. 876 (2010) and must be regarded separately for purposes relevant here from any individual, even if it is a one person corporation, *Nelson v. Adams U.S.A.*, 529 U.S. 460, 120 S.Ct. 1579, 146 L.Ed.2d 530 (2000); *cf. Krupski v. Crociere*, 130 S.Ct. 2485, 177 L.Ed.2d 48 (2010). The Nelson case has been recognized in Florida courts, *GB Holdings, Inc. v. Steinhauer*, 862 So.2d 97 (Fla. 4th DCA 2003)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by UPS delivery upon Joseph C. Shoemaker, Esq. Bogin, Munns, & Munns, PA. 628 South 14th St., Leesburg, FL 34748, Attorneys for Plaintiff, on the 3rd day of May 2012. A true and correct copy of the foregoing has been hand-delivered (or mailed on that date), to Elizabeth Waratuke, Esq., 200 E. University Ave., Rm. 425, Gainesville, FL 32627, and, because time is of the essence, also by hand-delivery, (or by UPS mail) to Judge Victor Hulslander, Family and Civil Justice Center, 201 E. University Ave., Gainesville, FL, 32601, on that date.



Gabe Kaimowitz, Fla Bar 0633836
Law Office of Gabe Kaimowitz
P.O. Box 140119, Gainesville, FL 32614
(352) 375-2670 gabrielhillel@gmail.com

Dated: May 3, 2012