

Argument in Support that Applicant's Mark Be Registered on the Principal Register

I. INTRODUCTION

Applicant's Mark has acquired distinctiveness under Section 2(f) of the Trademark Act, 15 U.S.C. § 1052(f). As set forth herein, the Applicant respectfully submits that the Applicant's Mark is entitled to registration on the Principal Register under Section 2(f) based on evidence establishing that: (1) for six years, since at least May 9, 2012, the Applicant has continuously and exclusively used "POLICE" in interstate commerce as the mark for and to identify the source and origin of Applicant's goods; (2) during that extensive period, Applicant has continuously, extensively, and exclusively used "POLICE" as a mark in all aspects of its marketing, promoting, advertising, and sale of those goods; and (3) Applicant's "POLICE" goods are used by businesses and individual consumers, in 43 states, such that consumers in the relevant industries recognize "POLICE" as a mark uniquely identifying the Applicant and its goods.

II. LEGAL ANALYSIS

"If the applicant establishes, to the satisfaction of the examining attorney, that the matter in question has acquired distinctiveness as a mark in relation to the named goods or services, then the mark is registrable on the Principal Register under 2(f) of the Trademark Act, 15 U.S.C. 1052(f)." (TMEP 1212). Applicant submits that "POLICE" serves to identify and distinguish Applicant's goods, and that Applicant's Mark is registrable on the Principal Register based on acquired distinctiveness through six years of use in significant and material promotion, all as confirmed by significant sales of services to customers who recognize "POLICE" functions as an important and distinctive mark pursuant to Section 2(f) of the Trademark Act (15 U.S.C. 1052(f)):

a [mark] may be registered on the Principal Register only upon proof of acquired distinctiveness or "secondary meaning," that is, proof that it has become distinctive as applied to the applicant's goods or services in commerce.

(TMEP § 1212, 15 U.S.C. § 1052(f)).

It is well settled that "an applicant need not conclusively establish distinctiveness, but need only establish a prima facie case in order to warrant publication of the mark for opposition." (*Yamaha Int'l C01p. v. Hoshino Gakki. Co.*, 840 F.2d 1572, 1576 (Fed. Cir. 1988) (quoting *In re Capital Formation Counselors*,

Inc., 219 U.S.P.Q. 916, 919 (T.T.A.B. 1983))). There are three types of evidence an applicant may use to establish acquired distinctiveness under § 2(f): (1) ownership of other registrations on the Principal Register for the same mark; (2) exclusive and continuous use of the mark for a period of five years; and (3) actual evidence of acquired distinctiveness. (37 C.F.R. § 2.41; TMEP §§ 1212, 1212.06). This argument will focus on the latter two types of evidence.

A. Applicant's Mark Is Entitled to Registration on the Principal Register Because the Mark Has Acquired Distinctiveness Through Substantially Exclusive and Continuous Use in Commerce for Six Years.

Proof of substantially exclusive and continuous use of a mark in commerce for at least five years before the date on which a claim of distinctiveness is made constitutes *prima facie* evidence that the mark has acquired distinctiveness as used in connection with an applicant's goods in commerce. (TMEP § 1212.05). A declaration signed by the applicant is an acceptable means of meeting this burden. (TMEP § 1212.05(d)). Applicant's claim of distinctiveness is supported by a Declaration signed by its owner, Vladimir Chouprinov (hereinafter the "Declaration") (a true and connect copy of which is attached as Exhibit 1), who has been with the company since 2008 when it was originally established, attesting to its substantially exclusive and continuous use of the "POLICE" mark in commerce since at least as early as May 9, 2012. (Declaration, ¶¶ 2-3).

For six years, Applicant has continuously used the "POLICE" mark in interstate commerce to identify the unique source and origin of its stun guns (the "Goods"). (Declaration, ¶ 3). Applicant respectfully submits that its substantially exclusive and continuous use for **six years, a year longer than that required** to establish a presumption of acquired distinctiveness is more than sufficient evidence of acquired distinctiveness to allow registration of Applicant's Marks under Section 2(f) of the Trademark Act. (15 U.S.C. § 1052(f); *see* Restatement Third, Unfair Competition § 13, comment e (Length of time of use is relevant to the issue of secondary meaning); Declaration, ¶ 3)).

B. Applicant's Mark Is Entitled to Registration on the Principal Register Because the "POLICE" Mark Has Acquired Distinctiveness Through Substantial Promotion, Advertising, and Sales, and Through Public Recognition of The Mark Uniquely Identifying Applicant's Goods.

Evidence establishing acquired distinctiveness or "secondary meaning" includes "evidence of the trademark owner's method of using the mark, supplemented by evidence of the effectiveness of such use to cause the purchasing public to identify the mark with the source of the product." (TMEP § 1212.06, *citing In re Owens-Corning Fiberglass Corp.*, 774 F.2d 1116, 1125 (Fed. Cir. 1985)). Courts and commentators have often distilled these requirements into "secondary meaning factors," including, (1) the length and manner of use by the applicant, (2) the exclusiveness of use, (3) the nature and extent of advertising and promotion of the mark, (4) the response of the public to that advertising (sales, number of accounts, articles and reports by others), and (5) anything else relevant to establishing or promoting a conscious connection in the public's mind between the mark and the particular services offered by the applicant. (37 C.F.R. § 2.41; *Henry I. Siegel Co. v. M & R International Mfg. Co. Inc.*, 4 U.S.P.Q.2D 1154 (T.T.A.B. 1987)). Not all of the factors need be proven. (*In re Steelbuilding.com*, 415 F.3d 1293, 1300 (Fed. Cir. 2005)). Applicant will demonstrate below, and through the attached Declaration and exhibits, substantial evidence in these evidentiary categories of acquired distinctiveness/secondary meaning of the "POLICE" mark.

1. Length and Manner of Use

Since at least May 9, 2012, Applicant has continuously and exclusively used the "POLICE" mark in all aspects of marketing, promoting, advertising, and providing its goods to businesses and consumers interested in purchasing stun guns. (Declaration, ¶¶ 3-4). Since May 2012, Applicant has offered stun guns ("Goods") under the "POLICE" mark. (Declaration, ¶¶ 3-4). Applicant respectfully submits that through six years of use, a year over the statutory requirement to support a *prima facie* case for secondary meaning, the "POLICE" mark has become distinctive. (Declaration, ¶ 3).

2. Exclusiveness of Use

The Applicant's use of the "POLICE" mark since 2012 has been exclusive. (Declaration, ¶ 3). A search of the records of the Patent and Trademark Office confirms that there are no other pending third-

party applications or existing third-party registrations for "POLICE" or other marks that are confusingly similar to the Applicant's Mark in International Class 013. (Declaration, Ex. A). Indeed, there is not one third-party registration or pending application. (Declaration, Ex. A). Accordingly, the Applicant met this second prong.

3. *Nature and Extent of Advertising, Marketing, and Promotion of the Mark*

POLICE is marketed, advertised, and sold on ebay, Amazon, and Facebook. (Declaration, ¶ 5; Exs. B, C, and D). The Applicant's POLICE marked products are available for sale and are "sponsored" on ebay and are available for sale on Amazon. (Declaration, ¶¶ 7-9; Exs. B & C). The product title and descriptions of Applicant's products on ebay and Amazon include information about Applicant's stun guns, including availability, purchase options, and product features. (Declaration, ¶ 8; Exs. B & C). POLICE marked goods are also marketed, advertised, and sold on the Applicant's own website, www.policemart.com. (Declaration, ¶ 7; Exhibit E). For one year from June 1, 2017 to May 30, 2018, Applicant had 65,000 users visit its website amounting to a total of 79,000 website sessions. (Declaration, ¶ 13; Exhibit F). This was an increase of 18.9% in users and 18.5% increase in website sessions. (Declaration, ¶ 13; Exhibit F). Applicant's website has been and is a prominent and important avenue through which Applicant advertises, markets, promotes, and provides information about the "POLICE" goods. (Declaration, ¶¶ 7, 15). The website includes information about Applicant's stun guns, including availability, purchase options, and product features. (Declaration, ¶ 8; Exhibit E). The Applicant's "POLICE" mark is prominently featured on its website and with every "POLICE" stun gun product on the website. (Declaration, ¶ 7; Exhibit E). In addition, Applicant has developed and maintains an email distribution list of approximately 150,000 email contacts. (Declaration, ¶ 12).

In 2016 Applicant spent approximately \$21,000, and in 2017, Applicant spent approximately another \$21,000 on the promotion, advertising, and marketing of its goods marked "POLICE." (Declaration, ¶ 10). On its Facebook Page, Applicant has thousands (almost 5,500 as of June 2018) of "likes." (Declaration, ¶ 14; Exhibit D).

Applicant sells its "POLICE" goods to both individual consumers and businesses throughout the United States and has sold and shipped its goods to consumers in 43 states in the United States with an annual revenue of approximately \$850,000. (Declaration, ¶¶ 16-17).

4. *Response of the Public to Advertising*

After commencing advertising, Applicant realized an increase in its daily sales volume. (Declaration, ¶ 11).

IV. CONCLUSION

Tens of thousands of dollars in advertising, tens of thousands of Internet views, hundreds of thousands of dollars in sales, all under the "POLICE" mark. Due to the longstanding and continuous use and promotion of the "POLICE" mark over a period of six years and significant associated sales and publicity, relevant business consumers have come to associate the "POLICE" mark exclusively with Applicant and with the Goods. Therefore, consumers have come to know and understand this mark to uniquely identify the source and origin of the Goods.

Applicant need only establish a *prima facie* case to warrant publication of Applicant's Mark for opposition, and the Applicant respectfully submits that it has met this burden. (*Yamaha*, 840 F.2d at 1576). Therefore, Applicant's Mark has acquired distinctiveness under Section 2(f) of the Trademark Act, 15 U.S.C. § 1052(f) and respectfully submits that the Applicant's Mark is entitled to registration on the Principal Register.

Should the Examining Attorney have any questions, she is encouraged to contact the undersigned at (404) 201-2520.

Sincerely,

_/David Lilenfeld/_____

DECLARATION OF VLADIMIR CHOUPRINOV

I, Vladimir Chouprinov, declare as follows:

1. My name is Vladimir Chouprinov. I am over the age of 18 and have personal knowledge of the facts stated in this Declaration.

2. I am the owner of Base Products Company LLC (“Applicant”) and have been since the company was originally established in 2008.

A. Overview and Length and Manner of Use of the “POLICE” Mark

3. For six years, since at least May 9, 2012, Applicant has continuously and exclusively used “POLICE” in interstate commerce as the mark for and to identify the source and origin of Applicant’s goods. As such, the “POLICE” mark has become distinctive of the goods through Applicant’s substantially exclusive and continuous use in commerce for over eight years immediately before the date of this statement. (Exhibit A).

4. Since at least as early as May 9, 2012, Applicant has continuously, extensively, and exclusively used “POLICE” as a mark in all aspects of its marketing, promoting, advertising, and sale of those goods, as described in more detail below. (Exhibits B, C, D, and E).

B. The “POLICE” Goods

5. Applicant is a leading provider of stun guns (“Goods”), and Applicant offers stun guns for sale under the “POLICE” mark. (Exhibits B, C, D, and E).

C. Nature and Extent of Advertising, Marketing, and Promotion of the Goods Under the “POLICE” Mark

6. Since at least May 9, 2012, the “POLICE” mark has been prominently featured in all marketing, promotional, advertising, informational, and sales materials and activities for the Goods. (Exhibit B, C, D, and E).

7. Applicant markets, advertises, and sells the Goods under the “POLICE” mark on eBay, Amazon, Facebook, as well as prominently on its own website, www.policemart.com, and with every “POLICE” stun gun product on the website. (Exhibit B, C, D, and E).

8. Applicant's Goods on its website, ebay, Amazon, and Facebook include descriptions and information about the product including availability, purchase options, and product features. (Exhibits B, C, D, and E).

9. Applicant's Goods under the "POLICE" mark are sponsored on ebay. (Exhibit B).

10. In 2016 Applicant spent approximately \$21,000, and in 2017, Applicant spent approximately another \$21,000 on the promotion, advertising, and marketing of its goods marked "POLICE."

11. After Applicant began its marketing and advertising, Applicant realized an increase in its daily sales volume.

12. Over the last eight years, Applicant has developed and maintained an email distribution list of approximately 150,000 email contacts.

13. For one year, from June 1, 2017 to May 30, 2018, Applicant had 65,000 users visit its website amounting to a total of 79,000 website sessions. This was an increase of 18.9% in users and 18.5% increase in website sessions. (Exhibit F).

14. Applicant also has a Facebook social media account where it prominently features the "POLICE" mark. Attached as Exhibit D is a screen capture of Applicant's Facebook social media account page. Applicant has thousands (almost 5,500 as of June 2018) of "likes" on its Facebook page. (Exhibit D).

15. Applicant's website has been and is a prominent and important avenue through which Applicant advertises, markets, promotes, and provides information about the "POLICE" goods. The website includes information about Applicant's stun guns, including availability, purchase options, and how the product works. The Applicant's "POLICE" mark is prominently features on its website and with every "POLICE" stun gun product on the website. (Exhibit E).

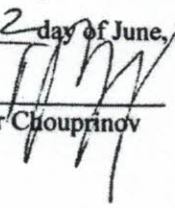
D. Applicant's Customers and Sales of the "POLICE" Goods

16. Applicant sells its "POLICE" goods to both individual consumers and businesses and has sold and shipped its goods to 43 states in the United States of America.

17. Applicant's annual revenue is about \$850,000.

I declare under penalty of perjury that the foregoing is true and correct.

This 22 day of June, 2018.



Vladimir Chouprinov

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- Jun. 19, 2018
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REASON FOR PUBLICATION

- Opposition
- Registrations
- Registrations Cancelled

CLASS NUMBERS

- International Class
- US Class

REGISTER

- Principal
- Supplemental

NUMBER OF CLASSES

- Multiple
- Single

MARK TYPE

- All
- Trademark
- Certification Mark
- Collective Membership Mark
- Collective Service Mark

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6 BILLION NEW IN BOX + LIFETIME WARRANTY + FREE CASE

Brand New

★★★★★ 25 product ratings

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POLICE

LIFETIME WARRANTY

Police BLACK RUNT 20 MV STUN GUN w/ LED Flashlight & Disable Pin 4.5 Milliamps

Brand New

★★★★★ 203 product ratings

\$12.26

Buy It Now Free Shipping 38 Sold

Guaranteed by Mon, Jun, 26



High Power Police Stun Gun 4.5 Milliamps at 990 Million Volt Taser Holster

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★★★★★ 8 product ratings

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Was \$14.76 Buy It Now Free Shipping Free Returns

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SPONSORED STUN GUN POLICE 1118 18 BV Metal Rechargeable With LED Flashlight

16 BILLION HEAVY DUTY + LIFETIME WARRANTY + NEW IN BOX

Brand New Police

★★★★★ 9 product ratings

\$37.99

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POLICE

LIFETIME WARRANTY

SPONSORED POLICE Stun Gun 1158 Metal Rechargeable With Tactical LED Flashlight + Case

17 BILLION + LIFETIME WARRANTY + FREE SHIPPING

Brand New Police

★★★★★ 13 product ratings

\$16.98

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POLICE

LIFETIME WARRANTY

Categories

- All, Everything Else, Personal Security, Stun Guns, Pepper Spray, Business & Industrial, Sporting Goods, Consumer Electronics, Toys & Hobbies, Clothing, Shoes & Accessories, Collectibles, Show More

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- Brand: Flashlight (5), Police (13), Stun Master (2), TASER (5), Unbranded (6), Vipertek (4)

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- Guaranteed Delivery: No Preference, 1 day shipping, 2 day shipping, 3 day shipping, 4 day shipping

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Metal POLICE Stun Gun 980 Million Volt Rechargeable LED Flashlight + Taser Case

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Police

Police Security TW10 - 15 Bil Heavy Duty Stun Gun - Rechargeable With LED Flashlight and Ear-Piercing Police Siren Alarm and Holster Case

★★★★☆ 31 customer reviews | 10 answered questions
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Price: \$21.99 **✓prime**
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- **CONVENIENT SIZE:** (6.5" x 2" x 1") 120dB Loud Police Siren Alarm: Self-defense experts say that a loud alarm is one of the best deterrents to attack. At the first sign of danger the alarm can be activated to summon help and scare off a potential attacker.
- **BRIGHT LED FLASHLIGHT:** The LED flashlight provides a convenient source of light whenever you need it and eliminates the need to carry a heavy, bulky flashlight. Stun Now Works with Light On.
- **INTERNAL RECHARGEABLE BATTERY:** No expensive batteries to buy! simply plugs into a standard wall outlet using the charging cord included.
- **DEEP FINGER GRIPS:** design fits right in your palm, which gives more control and ease at use
- **SAFETY SWITCH:** To prevent accidental discharge, two levels of safety have been built in. The safety switch must be in the on position and the Stun Activation Button must be pressed before the stun gun will operate. **LIFETIME WARRANTY**

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SELF DEFENCE PRODUCTS

		
STUN GUNS	TASER GUNS	PEPPER SPRAYS
		
FLASHLIGHT STUN GUNS	ACCESSORIES	STUN BATONS
		
LED FLASHLIGHTS	KNIVES, SWORDS & BLADES	HANDCUFFS
		
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Pink Stun Guns (19)

STUN GUNS

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FLASHLIGHT STUN GUNS

ACCESSORIES

STUN BATONS

LED FLASHLIGHTS

KNIVES, SWORDS &
BLADES

HANDCUFFS

EXPANDABLE STEEL
BATONS

TACTICAL BELTS

AIR GUNS

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STUN GUNS

POLICE 800 - MAX VOLTAGE
Mini Stun Gun - Rechargeable
With LED Flashlight, Black



\$14.99

ON SALE \$8.99

Comes in fully rubberized body for a non-slip grip, a built-in wall rechargeable battery.

View details

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★★★★★ 2 Review(s)

POLICE 800 - MAX VOLTAGE
Mini Stun Gun - Rechargeable
With LED Flashlight, Pink



\$14.99

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Comes in fully rubberized body for a non-slip grip, a built-in wall rechargeable battery.

View details

Qty: 1

★★★★★ 11 Review(s)

POLICE 800 - MAX VOLTAGE
Micro Stun Gun - Rechargeable
With LED Flashlight, Pink



\$16.99

ON SALE \$9.75

Super small and extremely powerful stun gun.

View details

Qty: 1

POLICE 1170 - MAX POWER
Stun Gun With LED Flashlight -
Rechargeable, Pink



\$11.99

Powerful Dual Light and
Powerful Stun Gun in one.

View details

Qty: 1

POLICE M12 - MAX VOLTAGE
Metal Mini Stun Gun -
Rechargeable With Bright LED
Flashlight - Case, Black



\$12.99

Type III Aluminum Aircraft Grade
Body

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★★★★★ 5 Review(s)

Police 305 - MAX VOLTAGE Stun
Gun - Rechargeable With Tactical
LED Flashlight With Safety Cap
and Case



\$12.99

Experience protection and
security in a convenient
flashlight size and function!

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POLICE M12 - MAX VOLTAGE
Metal Mini Stun Gun -
Rechargeable With Bright LED
Flashlight + Case, Pink



\$12.99

Built In 300-Lumen LED
Flashlight

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POLICE M12 - MAX VOLTAGE
Metal Mini Stun Gun -
Rechargeable With Bright LED
Flashlight, Purple



\$12.99

Free Holster / Case is included.

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Qty: 1

POLICE M12 - MAX VOLTAGE
Metal Mini Stun Gun -
Rechargeable With Bright LED
Flashlight, Gold



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POLICE 916 - Max Voltage Heavy

POLICE 916 - Max Voltage Heavy



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AIR GUNS

WHOLESALE OFFERS

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CAR SAFETY & SECURITY

ACCESS CONTROL

BULLETPROOF GEAR

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**POLICE 928 - MAX VOLTAGE HEAVY DUTY STUN GUN -
RECHARGEABLE WITH LED FLASHLIGHT + CASE, BLACK**



Buy Now

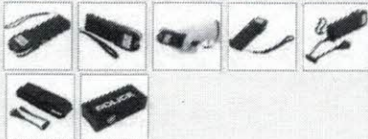
Quantity: 1 \$24.99 \$19.99

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PRODUCT DETAILS:

- **PROFESSIONAL DEFENSE EQUIPMENT:** Engineered to meet the demands of Police, Military and Security Professionals worldwide.
- **COMPACT SIZE:** 6.5" x 2" x 1".
- **RECHARGEABLE BATTERY:** Recharge cord included and simply plugs into a standard wall outlet to save you money on batteries.
- **DEEP FINGER INDENTATIONS & NON-SLIP RUBBER COATING:** Molds this unit to your hand for a firm and comfortable grip.
- **GRAB GUARD SAFE:** The plates on the sides also deliver a high voltage shock so the attacker will not be able to snatch it from you.
- **ULTRA-SHARP PRONGS:** Can be used to shatter a window if you are trapped in your vehicle after an accident.
- **LED LIGHT:** The bright LED flashlight provides a convenient source of light whenever you need it.
- **HOLSTER INCLUDED:** A durable holster is included for easy carrying.
- **LIFETIME WARRANTY**



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HOW DO YOU RATE THIS PRODUCT?

Price

○ ○ ○ ○ ○

LET US KNOW YOUR THOUGHTS *

Text input field for thoughts

WHAT'S MOST IMPORTANT TO KNOW **

Text input field for most important to know

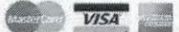
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↓6.9%

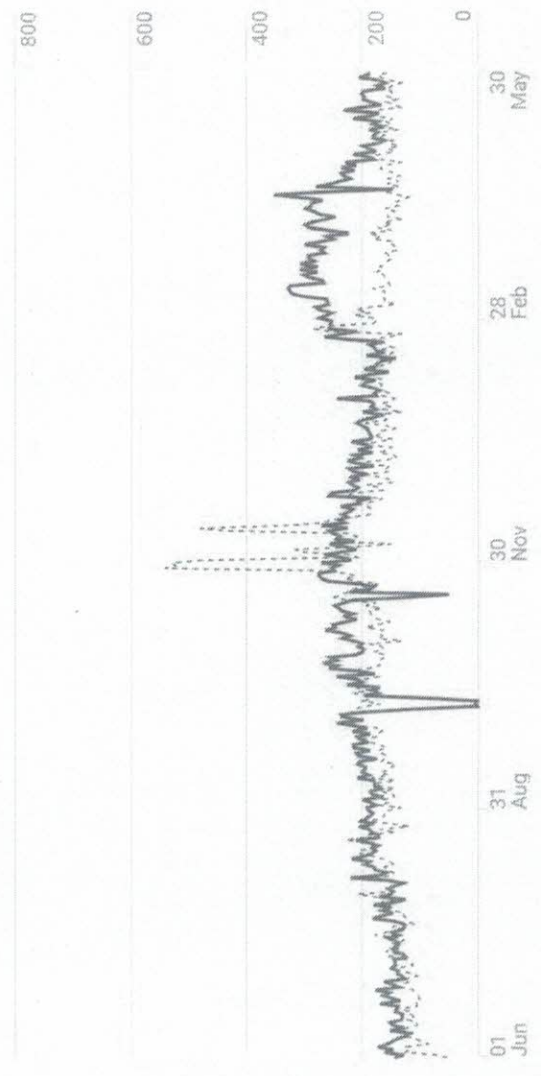
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