

As grounds of opposition, it is alleged:

1. Opposer is the owner of the mark **SOMERS** and several other marks which are variations of the mark **SOMERS** or incorporate the mark **SOMERS**, including **SUZANNE SOMERS**, **SOMERS**, **SOMERSIZE**, **SUZANNE SOMERS COLLECTION**, and **SOMERSWEET**. Opposer's **SOMERS** family of marks including, but not limited to, the **SUZANNE SOMERS**, **SOMERS**, **SOMERSIZE**, **SUZANNE SOMERS COLLECTION**, and **SOMERSWEET** marks are hereinafter collectively referred to as the "SOMERS Marks."

2. Opposer is a marketing, manufacturing, promotion and licensing company and has the authority to use Ms. Suzanne Somers' name, image, likeness, celebrity, and endorsement.

3. Ms. Suzanne Somers is a well known actress, model, author, dietician and fitness trainer, and is a spokeswoman for various products and services under the mark **SUZANNE SOMERS**. Since at least as early as 1954, Ms. Somers has been appearing in television shows and motion pictures including, but not limited to, Three's Company, American Graffiti, Step By Step, The Suzanne Somers' Show, The Simpsons, and Say It Ain't So.

4. Ms. Somers has received numerous awards and honors including, but not limited to, People's Choice Award, Best Female Performer in a New TV Series, *Three's Company* (1978); Las Vegas Entertainer of the Year (1984); People's Choice Award, Best Female Performer in a New TV Series, *Step By Step* (1992); National Council on Alcoholism: Humanitarian Award (1992); and National Association of American Drug Counselors: President's Award (1993).

5. Opposer uses the Internet domain name <www.suzannesomers.com>. Since at least as early as July 15, 1997, Opposer has operated a website which prominently bears the **SUZANNE SOMERS**, **SOMERS**, **SOMERSIZE**, **SUZANNE SOMERS COLLECTION**, and **SOMERSWEET** marks, and through which Opposer offers for sale, markets, and distributes various consumer products including, but not limited to, books, videos, audio tapes, jewelry, jewelry boxes, furniture, food, candy and diet items, clothing, footwear, aprons, exercise products and equipment, cosmetics and skin care products, which website is located at the domain name <www.suzannesomers.com>.

6. Since at least as early as February 6, 1997, Opposer has been marketing, promoting and selling books, pre-recorded video and audio tapes featuring exercise programs and providing information on diet, nutrition, weight control, and exercise, and printed materials sold

as a unit therewith, ice cream makers, food and diet products, jewelry, apparel and exercise equipment and products under the mark **SOMERSIZE**.

7. Since at least as early as April 1991, Opposer has been marketing, promoting and selling jewelry under the mark **SUZANNE SOMERS COLLECTION**.

8. Since at least as early as May 2001, Opposer has been marketing, promoting and selling food and diet products under the mark **SOMERSWEET**.

9. Since at least as early as December 1992, Opposer has been marketing, promoting and selling food and diet products, books, videos, jewelry, clothing, hand bags, tote bags, accessories, footwear, and exercise equipment and products under the marks **SUZANNE SOMERS** and **SOMERS**.

10. Opposer has used its **SOMERS** Marks throughout the United States and such use has been continuous since at least as early as the dates of first use listed above. By reason of Opposer's widespread and continuous use of the **SOMERS** Marks, Opposer has common law rights in all of the **SOMERS** Marks throughout the United States. Opposer's **SOMERS** Marks are symbolic of extensive goodwill and recognition built up by Opposer through substantial time and effort in advertising and promotion.

11. Opposer, through a license with Ms. Somers, has used and currently uses Ms. Somers' name, image, likeness, celebrity, and endorsement since at least as early as the dates of first use listed above. By reason of Opposer's widespread and continuous use of Ms. Somers' name, image, likeness, celebrity, and endorsement, Opposer has rights of publicity in the name, image, likeness, celebrity and endorsement of Ms. Somers throughout the United States. Opposer's rights of publicity are representative of the extensive economic value built up by Opposer through substantial time and effort in advertising and promotion.

12. Opposer is the owner of U.S. Trademark Registration No. 2,279,616 for the mark **SOMERSIZE** for "pre-recorded video and audio tapes featuring exercise programs and providing information on diet, nutrition, weight control, and exercise, and printed materials sold as a unit therewith in Class 9." Opposer's Registration No. 2,279,616 is based on an application filed in the U.S. Patent and Trademark Office on December 22, 1995. Said registration issued on September 21, 1999. Opposer first used the mark shown in this registration on the identified goods at least as early as February 6, 1997.

13. Opposer is also the owner of U.S. Trademark Registration No. 2,268,387 for the mark **SUZANNE SOMERS COLLECTION** for “jewelry in Class 14.” Opposer’s Registration No. 2,268,387 is based on an application filed in the U.S. Patent and Trademark Office on December 1, 1997. Said registration issued on August 10, 1999. Opposer first used the mark shown in this registration on the identified services at least as early as April 1991.

14. Applicant’s ‘860 Application was filed May 14, 2001. Opposer’s Registrations recited in paragraphs 12 and 13, are based on applications filed in the U.S. Patent and Trademark Office prior to the filing date of Applicant’s application. Opposer’s Registrations recited in paragraphs 12 and 13 were issued by the U.S. Patent and Trademark Office prior to the filing date of Applicant’s application. Said Registrations are valid and subsisting. Further, Opposer’s common law rights in each of the SOMERS Marks predate the filing date of Applicant’s ‘860 Application. Therefore, Opposer’s rights in the marks **SUZANNE SOMERS, SOMERS, SOMERSIZE, SUZANNE SOMERS COLLECTION**, and **SOMERSWEET** predate and are superior to Applicant’s rights in the **SOMERSEASONS GREETINGS ASHLEY** and Design mark shown in the ‘860 Application.

15. Applicant’s mark **SOMERSEASONS GREETINGS ASHLEY** and Design is identical or confusingly similar to Opposer’s SOMERS Marks in that it incorporates identically Opposer’s mark **SOMERS**. Applicant seeks registration of its mark for consumer paper products in Class 16. Thus it is likely that Applicant will engage in offering the same types of consumer products on which Opposer uses its SOMERS Marks which are covered by Registration Nos. 2,279,616 and 2,268,387, and its common law rights.

16. Opposer relies on its Registration Nos. 2,279,616 and 2,268,387, and on its common law rights in each of the SOMERS Marks, as set forth above. In view of the similarity of Applicant’s **SOMERSEASONS GREETINGS ASHLEY** and Design mark and Opposer’s SOMERS Marks and the related nature of the respective goods and/or services, Opposer alleges that Applicant’s mark so resembles Opposer’s SOMERS Marks as to be likely to cause confusion or to cause mistake or to deceive, or to dilute Opposer’s marks in violation of Section 2(d), 43(a), and 43(c) of the Trademark Act.

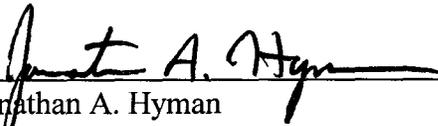
17. Opposer relies on the right of publicity of Ms. Somers as set forth above. In view of the similarity of Applicant’s **SOMERSEASONS GREETINGS ASHLEY** and Design mark and Opposer’s rights of publicity in the name, image, likeness, celebrity and endorsement of Ms.

Somers, Opposer alleges that Applicant's mark so resembles Ms. Somers' name, image, likeness, celebrity and endorsement as to be likely to falsely suggest a connection with Opposer in violation of Section 2(a) of the Trademark Act, and to be likely to identify a particular living individual in violation of Section 2(c) of the Trademark Act.

WHEREFORE, Opposer prays that Application Serial No. 76/255,860 be rejected and stricken, that no registration be issued thereon to Applicant, and this opposition be sustained in favor of Opposer.

Respectfully submitted,
KNOBBE, MARTENS, OLSON & BEAR, LLP

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