

**Lisa T. Sofferin, Atty.**  
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September 12, 2008

VIA USPO OVERNIGHT DELIVERY  
Office of the Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

Re: Notice of Opposition - Application Serial No. 77259002  
Opposer: Mara T. Sofferin

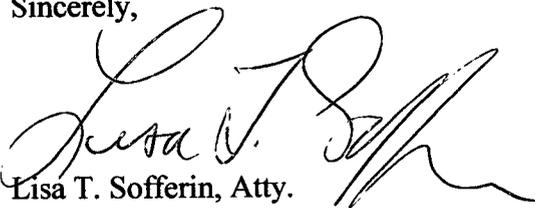
Dear Commissioner,

The undersigned is counsel for Mara T. Sofferin. Enclosed you will find three original Notices of Opposition and a check in the amount of \$300 for the filing fee.

Please be advised that communications will be accepted by email at ardsleylaw@aol.com.

Thank you.

Sincerely,

  
Lisa T. Sofferin, Atty.

encl.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

\_\_\_\_\_  
MARA T. SOFFERIN,

Opposer

**NOTICE OF OPPOSITION**

Application Serial No. 77259002

Filed: August 20, 2007

Published: May 20, 2008

v.

SAMANTHA KELMAN,

Applicant  
\_\_\_\_\_

Opposer Mara T. Sofferin hereby opposes the Application on the ground that she will be damaged by the registration of the mark and on the further grounds of consumer confusion and fraud.

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**FACTS**

1. Opposer Mara Sofferin ("Sofferin") is an individual 19 years of age residing at 142 Haverford Lane, Williamsville, New York, 14221.

2. Applicant Samantha Kelman ("Kelman") is an individual 20 years of age residing at 30968 Perry's Crossing, Farmington Hills, Michigan, 48331.

3. Sofferin and Kelman have been acquainted since in or about 1995.

4. In or about early September 2005, Sofferin and Kelman formed a partnership or other joint venture to sell T-shirts with the standard word mark "Save Our Women" along with a pink ribbon commonly associated with breast cancer.

5. Sofferin designed and conceived of the Save Our Women standard word mark which is the subject of Application No. 77258307 which is concurrently being opposed.

6. The initial purpose of the partnership or other joint venture was to fund their participation in the Susan G. Komen 3-day walk in Phoenix, Arizona which took place in October, 2005.



09-15-2008

7. The T-shirts with the Save Our Women mark were purchased by Sofferin in Michigan, shipped to Sofferin in New York and sold by Sofferin in New York, Florida and elsewhere in the Fall 2005 in order to raise the funds needed for her to participate in the 3-day walk.

8. The shirts were paid for by Sofferin, in full, from the proceeds of her individual sales of such products.

9. Thus, the first use in commerce of the Save Our Women standard word mark by Sofferin was in the Fall 2005.

10. As a result of the success of the sales of the Save Our Women T-shirts, Sofferin and Kelman agreed that the sale of Save Our Women products should be developed into a viable business.

11. Sofferin and Kelman further agreed that the Save Our Women mark would be redesigned and that the mark would be screened on T-shirts, tank tops and sweatshirts manufactured by American Apparel. The selection of the American Apparel brand was based, in large part, on the name recognition associated with the brand among university and college students.

12. Sofferin and Kelman collaborated on the re-design of the mark. Ultimately, Sofferin and Kelman agreed upon a mark where the letter "A" was replaced with the pink ribbon associated with breast cancer, as it appears in this Application.

13. In October, 2006, Sofferin facilitated the initial purchase for she and Kelman of the American Apparel products with the redesigned Save Our Women mark through MarkIt Promotions located in Alabama for resale in the United States, Canada and elsewhere.

14. In or about late 2006 or early 2007, Sofferin added the symbol "TM" to the redesigned Save Our Women mark to communicate to the world her common law ownership rights in and to the mark.

15. In or about August 2006, it was further agreed between Sofferin and Kelman that a website would be set-up so that the Save Our Women products could be sold on-line.

16. Sofferin and Kelman retained a mutual friend associated with Hooplah Media Group to design and host the website. The domain [www.saveourwomenshirts.com](http://www.saveourwomenshirts.com) was selected as the domain for their on-line business.

17. In or about October, 2006, the [www.saveourwomenshirts.com](http://www.saveourwomenshirts.com) website went live (hereinafter referred to as "the Website").

18. From October, 2006 until September 30, 2007 when Kelman changed the content of the Website without Sofferin's knowledge or consent, the text of the "About Us" page of the Website read as follows:

### **"About Us**

**Save Our Women was founded by two ordinary young women in September 2005 as a small fashionable fundraiser in Detroit, Los Angeles and Buffalo. However, these two young women asked themselves, why keep things small?" (Emphasis added.)**

19. The phrase "two ordinary young women" in the citation above refers to Sofferin and Kelman.

20. The phrase "two young women" in the citation above refers to Sofferin and Kelman.

21. Save Our Women was founded by Sofferin and Kelman.

22. In an email from Hooplah Media Group dated June 6, 2007, directed to, *inter alia*, Sofferin ([roxxygrl88@aol.com](mailto:roxxygrl88@aol.com)) and Kelman ([sbkelman@umich.edu](mailto:sbkelman@umich.edu)), Hooplah Media Group confirmed that the Website domain [www.saveourwomenshirts.com](http://www.saveourwomenshirts.com) is jointly owned by Sofferin and Kelman.

23. The June 6, 2007 email from Hooplah also states that Hooplah "has covered the cost of the domain name, hosting, and ALL design and development costs, as our donation to Sam

**[Kelman] and Mara [Sofferin]**” (emphasis added).

24. The June 6, 2007 email from Hooplah continues on page 2 with “Moving Forward” and states: “I have discussed with **both Sam [Kelman] and Mara [Sofferin]** the opportunity to expand the website and grow the business via the online sales channel . . . The system will allow **Sam [Kelman] and Mara [Sofferin]** to . . . track orders much easier, integrate with credit card processing . . . (emphasis added)”.

25. The images that appeared on the original Website on the “Shop Online” pages, and which still appear on the Website, are among the images that are attached to the original Application submitted by Kelman.

26. In the Fall, 2006, Sofferin and Kelman agreed to the distribution of the responsibilities for their Save Our Women business and the Website.

27. While Kelman was delegated the responsibility of managing the Website sales, Sofferin was delegated, *inter alia*, the development and management of a Facebook page for Save Our Women.

28. In the Fall of 2006, Sofferin created the Save Our Women group on Facebook.

29. By August 2007 there were approximately 1500 members in the Save Our Women group on Facebook, comprised of, *inter alia*, college and university students located in the United States, Canada and elsewhere.

30. The electronic records of the Administrator of Facebook will establish that Sofferin is and always has been the administrator of the Save Our Women Facebook group developed in or about October 2006.

31. The marketing and promotion of the Save Our Women business and the Save Our Women products was also establish by using point of sale displays which accompanied the sale and shipment of the Save Our Women products.

32. Such point of sale displays commenced being used by Sofferin and Kelman in October 2006 and were used and/or shipped with products sold by Sofferin and Kelman through their Website and as well as individual sales made by Sofferin.

33. Sofferin and Kelman collaborated on the content and appearance of the point of sale displays.

34. In addition to marketing Save Our Women and the Website through Facebook, Sofferin's sales, marketing and promotional efforts have resulted in, to this date, individual and group sales throughout the United States, Canada and elsewhere.

35. Inasmuch as it was anticipated that the business of Save Our Women would grow and that money would be collected from sales from the Website, Kelman set up Save Our Women LLC in Michigan in November, 2006 following which she opened a Save Our Women bank account in Michigan.

36. Sofferin filed an assumed name statement in the Erie County Clerk's office in Buffalo, New York stating that she was doing business as Save Our Women and opened a Save Our Women bank account in Buffalo, New York.

37. In June, 2007, Sofferin and Kelman traveled together to Israel.

38. The trip to Israel was one of numerous concurrent organized trips from the United States involving thousands of people between the ages of 19 and 26 which is the demographic market targeted by Sofferin and Kelman for the Save Our Women products.

39. Sofferin determined that there would be potential business opportunities to market Save Our Women products with the Save Our Women mark on such trip.

40. Thus, Sofferin designed and printed business cards which included the Save Our Women mark, the names of both Sofferin and Kelman and the Website domain.

41. Kelman was presented with the Save Our Women business card which Sofferin

designed and printed.

42. Sofferin handed out numerous Save Our Women business cards on such trip resulting in sales in the United States.

43. In June 26, 2007, an inventory of Save Our Women shirts which Sofferin had in New York was provided to Kelman so that Kelman's sales of Save Our Women shirts in Michigan could be filled from such inventory.

44. At the request of Kelman, on June 27, 2007, 15 shirts with the Save Our Women mark were shipped to Kelman from Sofferin's inventory to fulfill sales made by Kelman. The inventory and the shipment of shirts are memorialized in a number of emails from June of 2007 as well as an invoice which was issued by Sofferin to Kelman for the 15 shirts sold and shipped to Kelman on June 27, 2007.

45. Kelman issued a check to Sofferin from the Save Our Women bank account in Michigan for payment of the invoice for the 15 shirts sold to Kelman in June 2007 less \$50 for the cost of two Save Our Women sweatshirts which Sofferin had sold from Kelman's inventory in August, 2007. Such check was accompanied by a handwritten note from Kelman, mailed in an envelope addressed to "Save Our Women" at Sofferin's address.

46. In September, 2007, Sofferin fortuitously learned that, without her knowledge or consent, Kelman caused this Application for the Save Our Women mark to be filed with the United States Patent and Trademark Office ("USPTO") in Kelman's own name without denominating Sofferin as a co-applicant or co-owner.

47. Sofferin **never** consented to the filing of the Application by Kelman and would never have consented to the registration of the mark solely in the name of Kelman.

48. The filing of the Application by Kelman is just one act of a concerted effort by Kelman to usurp, dominate and control the Save Our Women business and the Save Our Women

marks.

49. In a further effort to usurp, dominate and control the Save Our Women business and marks, on or about September 30, 2007 Kelman redesigned the original Website to eliminate any reference to Sofferin on the "About Us" page and elsewhere on the Website and otherwise interfered with Sofferin's use of and access to the Website.

50. Notwithstanding Kelman's efforts to usurp, dominate and control the Save Our Women business and marks, Sofferin continued, and still continues to this date, to sell, market and promote the Save Our Women business and products.

51. As a result of Kelman's conduct, as set forth above, in January, 2008, Sofferin launched a new website with the domain [www.saveourwomenonline.com](http://www.saveourwomenonline.com).

52. The domain was added to the Facebook group page concurrent with the launch of the new website.

53. From the date that the [www.saveourwomenonline.com](http://www.saveourwomenonline.com) website went live in January, 2008 to this date, the products sold, marketed and promoted by Sofferin on the [www.saveourwomenonline.com](http://www.saveourwomenonline.com) website have included the identical T-shirts, tank tops and sweatshirts bearing the Save Our Women mark which she has sold, marketed and promoted separately and in concert with Kelman, as well as additional products bearing the Save Our Women mark.

54. On November 26, 2007, the USPTO refused the registration of the mark upon the original Application because the mark is decorative or ornamental.

55. On April 4, 2008, Kelman filed a response and amended the Application to limit the registration of the mark to point of sale display that is attached to T-shirts, tank tops and sweatshirts or shipped with such products.

56. The foregoing facts establish that Sofferin is a co-owner of the common law Save Our Women marks and the mark which is the subject of the original Application for registration and the Amended Application.

57. The foregoing facts establish that Sofferin has used the marks in commerce in concert with Kelman commencing in the Fall of 2005.

58. The foregoing facts establish that Kelman does not have exclusive, or even a senior right, to the use or ownership of the marks.

59. The foregoing facts also establish that when Kelman filed the Application in August, 2007 and amended Application in April, 2008, that her certification that "no other person . . . has the right to use the mark" was knowingly false.

60. Sofferin has repeatedly made demand upon Kelman for, *inter alia*, written affirmation that Sofferin is the co-owner of the Save Our Women business and the Save Our Women marks and, further, that Kelman either withdraw the Application or amend the Application to reflect Sofferin as a co-owner and co-applicant. Kelman has failed and refused to do so.

**FIRST GROUND OF OBJECTION  
(Consumer Confusion)**

61. Sofferin incorporates herein by this reference Paragraphs 1 through 60 of this Opposition as if fully set forth herein.

62. The registration of the Save Our Women mark will cause consumer confusion because, *inter alia*, Sofferin is the co-founder and co-owner of the Save Our Women business, is the co-owner of the common law Save Our Women marks and the mark which is the subject of this Application, is the co-owner of the domain [www.saveourwomenshirts.com](http://www.saveourwomenshirts.com), owns and operates [www.saveourwomenonline.com](http://www.saveourwomenonline.com), and has actively sold, marketed and promoted the Save Our Women business and products bearing the Save Our Women marks since 2005.

**SECOND GROUND OF OBJECTION**  
**(Fraud)**

63. Sofferin incorporates herein by this reference Paragraphs 1 through 60 of this Opposition as if fully set forth herein.

64. The Application filed by Kelman in August, 2007 and the amended Application which was filed in April , 2008, each certify that "no other person . . . has the right to use the mark".

65. Such certification is contrary to the facts and is a willful and deliberate attempt to mislead the Patent and Trademark Office, and not mere error or based on inadvertence or mistake.

**THIRD GROUND OF OBJECTION**  
**(Harm to Opposer if Mark is Registered)**

66. Sofferin incorporates herein by this reference Paragraphs 1 through 60 of this Opposition as if fully set forth herein.

67. The registration of the Save Our Women mark will cause harm to Sofferin because, *inter alia*, Sofferin is the co-founder and co-owner of the Save Our Women business, is the co-owner of the common law Save Our Women marks and the mark which is the subject of this Application, is the co-owner of the domain [www.saveourwomenshirts.com](http://www.saveourwomenshirts.com), owns and operates [www.saveourwomenonline.com](http://www.saveourwomenonline.com), and has actively sold, marketed and promoted the Save Our Women business and products bearing the Save Our Women mark since 2005.

68. The Save Our Women business and Website is inextricably intertwined with the ownership of the Save Our Women marks.

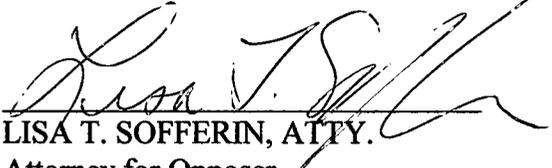
69. The Save Our Women marks are assets of the partnership and/or other business venture of Sofferin and Kelman conducted under the name Save Our Women.

70. Sofferin will be harmed if the USPTO grants the registration of the mark as it will, *inter alia*, leave unresolved Sofferin's interest in the mark, continued use of the common law mark, the ownership of the Save Our Women business and the ownership of the Website which are inextricably intertwined with the use and ownership of the mark.

71. Rights in and to the Save Our Women marks should be resolved in a civil action and not before the USPTO.

**WHEREFORE**, it is respectfully requested that the Application for registration be denied.

DATE: September 12, 2008

  
LISA T. SOFFERIN, ATTY.  
Attorney for Opposer  
Mara T. Sofferin  
142 Haverford Lane  
Williamsville, New York 14221  
(716) 572-4733

## CERTIFICATE OF SERVICE AND MAILING

On September 12, 2008, Opposer caused to be served by First Class Mail the within Notice of Opposition upon Dean W. Amburn, Esq., Howard & Howard, 39400 Woodward Ave., Suite 101, Bloomfield Hills, Michigan, 48304, attorney for Applicant Samantha Kelman, and caused the same to be transmitted to the Commissioner of Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451 along with the required filing fee on that same date by the United States Post Office by overnight delivery.

DATE: September 12, 2008



LISA T. SOFFERIN, ATTY  
Attorney for Opposer  
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