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

Proceeding	91186518
Party	Defendant Samantha Kelman
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Date	03/27/2009
Attachments	Kelman518.pdf (9 pages)(400267 bytes)

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

MARA T. SOFFERIN,

Opposer

v.

Proceeding No. 91186518
Application Serial No. 77259002

SAMANTHA KELMAN,

Applicant

ANSWER TO NOTICE OF OPPOSITION

Applicant, Samantha Kelman, hereby answers the Notice of Opposition as follows:

1. Answering paragraph 1, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegation and, therefore, denies same. Upon information and belief, Mara Sofferin is 20 years of age.
2. Answering paragraph 2, Applicant admits the allegations except that she is currently 21 years of age.
3. Answering paragraph 3, Applicant admits the allegations.
4. Answering paragraph 4, Applicant denies the allegations. Applicant and three friends agreed to participate in a fundraiser where Applicant designed and had shirts printed bearing the word mark "SAVE OUR WOMEN."
5. Answering paragraph 5, Applicant denies the allegations. Applicant designed the mark which is the subject of the Application.
6. Answering paragraph 6, Applicant denies the allegations. There was no partnership or joint venture. Applicant invited Mara Sofferin and others to participate in a

three-day walk for the Susan G. Komen Foundation. Applicant and the others were individually responsible for buying and selling shirts to raise funds for the event.

7. Answering paragraph 7, Applicant lacks knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, denies same.

8. Answering paragraph 8, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegation and, therefore, denies same.

9. Answering paragraph 9, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegation and, therefore, denies same.

10. Answering paragraph 10, Applicant denies the allegations. Applicant and Sofferin did participate in another fundraiser in 2007.

11. Answering paragraph 11, Applicant denies the allegations. Applicant designed and then redesigned the mark on her computer.

12. Answering paragraph 12, Applicant denies the allegations.

13. Answering paragraph 13, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegation and, therefore, denies same.

14. Answering paragraph 14, Applicant denies the allegations.

15. Answering paragraph 15, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegation and, therefore, denies same.

16. Answering paragraph 16, Applicant denies the allegations.

17. Answering paragraph 17, Applicant admits the allegations.

18. Answering paragraph 18, the content of the identified website speaks for itself. Applicant denies any remaining allegations.

19. Answering paragraph 19, the content of the identified website speaks for itself.

Applicant denies any remaining allegations.

20. Answering paragraph 20, the content of the identified website speaks for itself.

Applicant denies any remaining allegations.

21. Answering paragraph 21, Applicant denies the allegations.

22. Answering paragraph 22, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegation and, therefore, denies same.

23. Answering paragraph 23, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegation and, therefore, denies same.

24. Answering paragraph 24, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegation and, therefore, denies same.

25. Answering paragraph 25, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegation and, therefore, denies same.

26. Answering paragraph 26, Applicant denies the allegations.

27. Answering paragraph 27, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegation and, therefore, denies same.

28. Answering paragraph 28, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegation and, therefore, denies same.

29. Answering paragraph 29, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegation and, therefore, denies same.

30. Answering paragraph 30, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegation and, therefore, denies same.

31. Answering paragraph 31, Applicant denies the allegations. At a point in time, Applicant did begin including tags or business cards containing the mark with the sale and shipment of product.

32. Answering paragraph 32, Applicant denies the allegations. At a point in time, Applicant did begin including tags or business cards containing the mark with the sale and shipment of product.

33. Answering paragraph 33, Applicant denies the allegations.

34. Answering paragraph 34, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegation and, therefore, denies same.

35. Answering paragraph 35, Applicant denies the allegations.

36. Answering paragraph 36, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegation and, therefore, denies same.

37. Answering paragraph 37, Applicant admits the allegations.

38. Answering paragraph 38, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegation and, therefore, denies same.

39. Answering paragraph 39, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegation and, therefore, denies same.

40. Answering paragraph 40, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegation and, therefore, denies same.

41. Answering paragraph 41, Applicant denies the allegations.

42. Answering paragraph 42, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegation and, therefore, denies same.

43. Answering paragraph 43, Applicant admits that Sofferin, in her role as a sales representative, did have an inventory of shirts in her possession some of which she did provide to Applicant. Applicant denies any remaining allegations.

44. Answering paragraph 44, Applicant admits that Sofferin could not sell shirts out of her inventory so she sold them back to Applicant who already had sales for these shirts. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations and, therefore, denies same.

45. Answering paragraph 45, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegation and, therefore, denies same.

46. Answering paragraph 46, Applicant admits to rightfully filing an Application for Registration of the mark in her own name. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations and, therefore, denies same.

47. Answering paragraph 47, Applicant denies that the consent of Sofferin was required to file the trademark application since Applicant is the sole owner of the mark. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations and, therefore, denies same.

48. Answering paragraph 48, Applicant denies the allegations. Applicant is the sole owner of the mark.

49. Answering paragraph 49, Applicant denies the allegations.

50. Answering paragraph 50, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegation and, therefore, denies same.

51. Answering paragraph 51, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegation and, therefore, denies same.

52. Answering paragraph 52, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegation and, therefore, denies same.

53. Answering paragraph 53, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegation and, therefore, denies same.

54. Answering paragraph 54, Applicant admits that the USPTO issued an Office Action and rejected registration of the mark. Applicant's representative responded to the Office Action and the USPTO examiner agreed with Applicant's arguments since the mark was allowed for publication for opposition. Applicant denies any remaining allegations.

55. Answering paragraph 55, Applicant admits that her representative filed a response and submitted arguments in opposition to the rejection. Applicant denies any remaining allegations.

56. Answering paragraph 56, Applicant denies the allegations.

57. Answering paragraph 57, Applicant denies the allegations. Sofferin's use of the mark has been as a representative selling t-shirts.

58. Answering paragraph 58, Applicant denies the allegations.

59. Answering paragraph 59, Applicant denies the allegations.

60. Answering paragraph 60, Applicant denies the allegations.

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

61. Answering paragraph 61, Applicant incorporates by reference paragraphs 1 through 60 of this Answer to the Opposition as if fully set forth herein.

62. Answering paragraph 62, Applicant denies the allegations.

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

63. Answering paragraph 63, Applicant incorporates by reference paragraphs 1 through 62 of this Answer to the Opposition as if fully set forth herein.

64. Answering paragraph 64, the Application speaks for itself. Applicant denies any remaining allegations.

65. Answering paragraph 65, Applicant denies the allegations.

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

66. Answering paragraph 66, Applicant incorporates by reference paragraphs 1 through 65 of this Answer to the Opposition as if fully set forth herein.

67. Answering paragraph 67, Applicant denies the allegations.

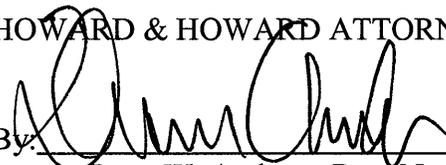
68. Answering paragraph 68, Applicant denies the allegations.

69. Answering paragraph 69, Applicant denies the allegations.

70. Answering paragraph 70, Applicant denies the allegations.

71. Answering paragraph 71, Applicant denies the allegations.

HOWARD & HOWARD ATTORNEYS PLLC

By: 

Dean W. Amburn, Reg. No. 46,517

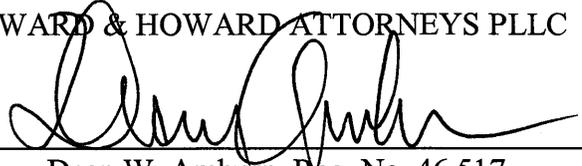
Attorneys for Samantha Kelman
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(248) 645-1483
(248) 645-1568 (facsimile)

Dated: March 27, 2009

AFFIRMATIVE DEFENSES

1. The Notice of Opposition is untimely.
2. The Notice of Opposition fails to state a claim upon which relief can be granted.
3. Opposer's claims are barred by the doctrines of estoppel and laches.
4. Opposer's allegations of a business joint venture or partnership upon which Sofferin claims joint ownership of the mark is illegal, unenforceable, void, and/or moot as both parties would have been minors at the time of formation of any purported business joint venture or partnership. Applicant voids any purported agreement made with Opposer while they were minors.
5. Opposer has waived any purported joint rights of ownership in the mark by allowing Applicant to continue using the mark.
6. Opposer's allegations of fraud should be dismissed for Opposer's failure to state with particularity the circumstances constituting the fraud as required pursuant to Fed. R. Civ. P. 9.
7. Opposer lacks standing by failing to show that Opposer will be damaged.
8. There is no likelihood of confusion.
9. Opposer acquiesced to Applicant's use of the mark.
10. Opposer acquiesced to Applicant's representation that she is the sole owner of the mark.
11. Applicant is the sole owner of all rights and interest in the mark.

HOWARD & HOWARD ATTORNEYS PLLC

By: 

Dean W. Amburn, Reg. No. 46,517

Attorneys for Samantha Kelman

450 West Fourth Street

Royal Oak, MI 48067-2557

(248) 645-1483

(248) 645-1568 (facsimile)

Dated: March 27, 2009

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of March, 2009, I mailed by first-class mail a copy of the Answer to Notice of Opposition and Affirmative Defenses to Lisa T. Sofferin, counsel for Opposer, Mara T. Sofferin, at the following address:

Lisa T. Sofferin
142 Haverford Lane
Williamsville, New York 14221


Nancy A. Stevens