

## **PETITION TO CANCEL THE TRADEMARK REGISTRATION OF STUDENTS FOR LIFE, AMERICA**

The anti-abortion organization, **The Center For Bio-Ethical Reform (CBR)**, has received disturbing reports from pro-life student groups that a national organization whose corporate name is **Students For Life of America (SFLA)** has begun threatening them with baseless lawsuits for alleged trademark infringement.

**CBR** consequently undertook an inquiry which has conclusively determined that **SFLA** is attempting to force pro-life students to stop using the phrase “students for life,” or, in the alternative, sign over total operational control of their organizations to **SFLA**. The “licensing” agreement pursuant to which **SFLA** would “permit” continued use of the term “students for life” is problematic, not least, because large numbers of student pro-life student groups have used this term extensively for decades before **SFLA** even existed.

**SFLA** is an influential, well-funded corporation whose coercive attempt to dictate the direction of student activism victimizes students whom the pro-life movement should instead be empowering. These students are the future of our movement and they should be mentored respectfully, not bullied disgracefully.

**CBR** is therefore partnering with **Purdue Students For Life** and our attorneys at the **American Freedom Law Center (AFLC)**, to file a petition to cancel **SFLA’s** trademark registration of the phrase “students for life,” with the Trademark Trial and Appeal Board (TTAB) of the U.S. Patent and Trademark Office (USPTO), (15 United States Code, Section 1067).

Trademark Attorney and **AFLC** Senior Counsel David Yerushalmi will be lead counsel on our behalf in this matter, along with Senior Counsel Robert Muise. Both represented us in our victory in *Northland Family Planning Clinic v. Center For Bio-Ethical Reform, Inc.* In that latter case, **CBR** was sued for copyright infringement by a chain of Michigan abortion clinics after we produced a video mocking the infomercial they had developed to deceptively market their abortion services.

Messrs. Yerushalmi and Muise soundly bested the seven attorneys (employed by one of the world’s largest intellectual property law firms) who represented the Plaintiff abortionists. **CBR’s** win was so decisive that the presiding federal judge granted our Motion For Summary Judgment without even permitting the abortionist’s case to proceed to trial. The judge’s opinion can be read (and our mocking video viewed) on our website at [abortionNO.org](http://abortionNO.org).

Our trademark cancellation petition will allege, among other defects, that the **SFLA** trademark registration was improperly obtained in light of the existence of widespread and well known prior and contemporaneous users of the term “students for life” (such as, for instance, **Students For Life of Michigan**). **SFLA’s** registration also involved an undeniable ulterior motive which is not among the proper statutory purposes which trademark registrations are intended

to serve. **SFLA** registration of the term “students for life” is further invalid because the term, by itself, is merely “descriptive” and wholly “generic.”

It must be emphasized that this trademark cancellation petition will target only **SFLA’s** illegitimate ownership claims regarding the phrase “students for life.” We will file no challenge to **SFLA’s** registration of the trademarked terms “**Students For Life Of America** or **SFLA**. Nor will we seek to cancel its registration of trade and service marks which depict paired candles, or any other marks properly obtained.

**CBR** is herein soliciting co-petitioners to join us in this administrative action. This is not a lawsuit. No one is suing **SFLA**. It is an initiative to protect students from a lawsuit. This is merely an administrative petition to a federal agency.

No party petitioner will be responsible for attorney fees or associated costs (**AFLC** will bear those expenses). Because the **TTAB** has no authority to order losing parties to reimburse the costs incurred by prevailing parties, this administrative appeal can cost parties petitioner nothing – win or lose.

Co-petitioners (student groups, etc.) also reserve the unconditional right to withdraw as parties at any time after adding their names to this petition, and they may do so for any reason. **CBR** will immediately comply with any and all withdrawal requests.

#### **A. PRIOR USE GROUNDS FOR CANCELLATION OF SFLA TRADEMARK REGISTRATION:**

The Trademark Act requires trademark registration applicants to sign a declaration (PTO Form 1478) affirming that “The signatory believes that to the best of the signatory’s knowledge and belief, no other person has the right to use the mark in commerce, either in the identical form or in ... near resemblance ....” It strains credulity to imagine that **SFLA**, when signing this declaration, assumedly with advice of counsel, was unaware that more than 30 other parties were widely known to have been using the mark “students for life” for decades before the time of **SFLA’s** first use in commerce (2006).

**SFLA** should also have known that more than 40 other parties had been using the term by the time **SFLA** registered this mark (2015). And those prior users are merely the ones our researchers have documented to this point, by name and date of first use in commerce. More are likely to be identified as our research continues. These discrepancies constitute a statutory ground for cancelling a registrant’s trademark registration, in whole or in part.

Noted author and trademark counsel Keith Barritt observes that “Under common law, trademark rights within a certain territory are based on priority of use within that territory. Sometimes a federal registrant is not the first user of a mark in a territory, and that an unregistered prior user may have superior rights ....” At a minimum, prior users of the mark “students for life” are unquestionably entitled to concurrent use rights, along with **SFLA**.

## **B. IMPROPER ULTERIOR MOTIVE GROUNDS FOR CANCELLATION OF SFLA TRADEMARK REGISTRATION:**

A second statutory ground pursuant to which a trademark registration may be cancelled is a registration motivated by an improper ulterior motive. A legitimate purpose for trademark registration is to accord the registrant the degree of “distinctiveness” in the marketplace required to minimize the likelihood of “confusion” in the minds of consumers who might otherwise mistake one provider of goods or services with another.

**SFLA**, however, purposely trademarked a name well known to be in widespread use among campus pro-life organizations. **SFLA** then set about threatening student “prior users” with financially ruinous trademark infringement lawsuits if they refused to sign draconian “licensing” agreements -- which agreements effectively surrendered to **SFLA** operational control of “licensed” campus pro-life organizations. This improper ulterior registration motive is prima facie evidence of an invalid registration intent.

These SFLA “licensing” agreements are essentially hostile takeover attempts masquerading as intellectual property documents. They go far beyond conventional prohibitions against the usual trademark concerns. They have little to do with the kinds of errors or omissions which might diminish or tarnish a brand. They seek to exploit an enormous disparity in bargaining power as a means of imposing on students **SFLA’s** peculiar strategic vision -- without the inconvenience of dialogue, debate or negotiation. This sort of strong-arming breaches **SFLA’s** fiduciary responsibility to students who in good faith have placed their trust in **SFLA**.

### **COERSIVE “LICENSING” AGREEMENT TERMS:**

In addition to requiring the maintenance of detailed transaction logs, the agreements accord **SFLA** the right to conduct highly intrusive audits of student organizations. The agreements also demand that the text of all student publications be submitted to **SFLA** for prior approval. These terms thereby grant **SFLA** the power to prescribe and prohibit pro-life projects on hundreds of college campuses. Projects which cannot be discussed, cannot be conducted.

The agreements further warn regarding these audits that “If **SFLA** finds any deficiencies and notifies you of these deficiencies, your group must take prompt action to correct them.” What does the term “deficiency” mean? Whatever **SFLA** wants it to mean. One version of this agreement empowers **SFLA** to force students to appear before an arbitrator of **SFLA’s** own choosing. A second version impliedly authorizes **SFLA** to drag students directly into court.

As noted above, should disputes arise between SFLA and any student group, these “licensing” agreements would also confer upon **SFLA** exclusive control over the selection of arbitrators and mediators. **SFLA** also unilaterally dictates the choice dispute resolution rules. **SFLA** selects the jurisdictions in which disputes will be adjudicated, and the controlling law by which they are decided. **SFLA** also requires students to give up their right to seek judicial resolution of any arbitrated outcome. The agreements even impose the impossible burden of requiring students

to indemnify **SFLA** for attorney fees and costs should SFLA accuse them of violating the terms of the agreement.

**SFLA** may additionally modify or terminate these agreements at will, but students have no concomitant right of termination unless they agree to turn over to **SFLA** their ownership interest in any portion of the name of their organization which includes the phrase “students for life.”

#### **STUDENTS FOR LIFE OF AMERICA’S LIKELY ULTERIOR MOTIVE EXPLAINED:**

Arguably the most alarming example of a prohibited class of projects include any deemed by **SFLA** to be “uncompassionate.” This is a highly pejorative, dog-whistle term, universally understood in the pro-life movement to refer to the public display of abortion photos. In a May 18, 2016 letter to student organizations, **SFLA** admits that abortion photo displays are a primary issue of concern in this clause of the agreement. When students asked that the “licensing” agreement be revised to explicitly remove abortion photos from inclusion in the prohibited “uncompassionate” category, **SFLA** reportedly declined their request. **SFLA’s** assurances to the contrary notwithstanding in this regard are meaningless, as the “licensing” agreements specifically limit controlling terms to those appearing in writing within the agreements themselves. One can only guess what else **SFLA** might arbitrarily decide to prohibit.

**SFLA** claims official, organizational neutrality concerning the public display of abortion photos on college campuses. In that regard they also deny that the organization “actively” opposes such imagery, or “publicly” opposes it. These, however, are transparently misleading representations. In actuality, Kristan Hawkins, **SFLA** president, both publicly and privately condemns abortion photos and does so unambiguously: In a July 29, 2015 *Cosmopolitan* magazine interview, she said, “Sadly ... [abortion photos have] only seen marginal success, as the messenger was always attacked and dismissed.” In a March 25, 2016 Townhall.com post titled “New Strategies For A New Pro-Life Generation,” Ms. Hawkins denounced such imagery as a strategy that “... just doesn’t cut it anymore.” She also asserted that “It’s time to start rethinking the strategy of the pro-life movement ... especially the use of graphic images.”

In this same post she additionally asks rhetorically whether abortion imagery made the **Center For Medical Progress (CMP)** undercover Planned Parenthood videos “the powerful force that they are?” Her very strange answer is “no.” One wonders if, even now, she is aware that it was the **CBR** abortion imagery in one of these videos which inspired Republican presidential candidate Carly Fiorina to fiercely condemn abortion in a nationally televised primary campaign debate.

In a February 15, 2016 email message from Ms. Hawkins on the topic of **CBR ALL BLACK LIVES MATTER** abortion photo displays (which was forwarded to **CBR** by a third party), the **SFLA** president said “I do not think that ... [**CBR**] coming onto the [Purdue] campus the way ... [**CBR**] did with ... [abortion photos] in Missouri will be helpful ....” She added that “We have a real issue with the way ... [**CBR**] forced itself onto the campus without the pro-life student group’s

permission.” She also complained that as a consequence of **CBR’s** campus visit, Missouri students were compelled to endure persecution despite attempting to distance themselves from our exhibit.

In a related email message (dated December 7, 2015) to **CBR** from a member of that University of Missouri student pro-life group, we learned that **SFLA** was telling students that Kristan Hawkins opposed **CBR** abortion photos on their campus. The student said “[SFLA] told me more than once that ... Students For Life Of America told ... [CBR] that it was not a good idea to come and tried to discourage it.”

These same Missouri students said in a social media post that “The images presented by ... [CBR] can be offensive, thus, we do not believe their methods of getting the pro-life perspective across are helpful or conducive to rational dialogue.” This complaint was followed (in the aforementioned student email message) with an expression of fear that an earlier **CBR** abortion photo display “made our group look bad...” and noted that the 2012 CBR abortion photo display at Missouri “caused the person who was ... [then] serving as vice president to quit because he didn’t agree with it.” The pro-life student group publicly condemned the CBR abortion photo display because they explained that they didn’t want to be blamed for it.

The United States Patent and Trademark Office does not govern the use to which trademarks are put once registered, but the agency does have the power to consider or reconsider the propriety of a registrant’s “intent” in registering a mark. That intent must reflect a good faith attempt to serve a proper trademark purpose. Inaccurately claiming exclusive ownership of a widely used term as a means of forcibly gaining control of student activism is not a proper “intent” by any reasonable standard.

### **C. INADEQUATE “DISTINCTIVENESS” AS A GROUND FOR CANCELLATION OF SFLA TRADEMARK REGISTRATION:**

A third statutory ground by which a trademark registrations may be cancelled involves a term of art known as “distinctiveness.” A trademark may be cancelled if it is merely “descriptive” of a class of good or services, as opposed to being “inherently distinctive.” It is also possible, that over time, a term which begins its usage as merely descriptive can acquire the requisite distinctiveness by virtue of constant usage.

The term “students for life” is clearly not “distinctive,” because it simply “describes” a general category of goods and services, and not a unique good, service or seller. Nor can a merely descriptive term “acquire distinctiveness” unless the use of that term, according to the relevant Code provision, is characterized by “... a substantially exclusive and continuous use thereof as a mark by the applicant.”

Trademark attorney Keith Barritt adds that “Long and continuous use alone is insufficient to show acquired distinctiveness where use is not substantially exclusive.” In the case of **SFLA**, use

of the phrase “students for life” was incontestably not exclusive since scores of other users had been employing the term by 2015.

On a related note, neither can merely “generic” terms (such as “students for life”) be trademarked. The International Trademark Association also notes that trademarks are not possible if they involve common terms “that are the accepted and recognized description of a class of goods or services.”

#### **CONCLUSION:**

*The Washington Post*, February 29, 2016, published a story headlined “These college students took on one of America’s top trademark bullies – and won.” The article described Monster Beverage, the energy drink giant, as pursuing a “scorched-earth” business strategy designed to bully into submission even the smallest enterprise daring to use the word “monster” in any form. The story notes that faced with “fiercely worded cease-and-desist” letters of the sort regularly fired-off by Monster Beverage, “most small businesses quickly turn and run for fear of going bankrupt in court.” One of Monster’s hapless victims, however, finally received *pro-bono* (no fee) legal assistance in fighting back. This defendant was determined to not become “another case of an underdog being taken advantage of.” He won, and jubilantly declared “I have beaten the monster!” **Students For Life Of America** is arguably the trademark monster of the pro-life movement.

This dispute is not merely some personal, petty squabble. It is about the future direction of pro-life activism in America. The US is, by far, the most influential nation in the global abortion wars. Today’s pro-life college students are tomorrow’s professional pro-life activists. What they learn now will influence their sense of what is possible and effective and appropriate going forward.

**SFLA** has every right to urge pro-life students to surrender their First Amendment rights. **SFLA** has every right to urge pro-life students to yield to the oppressive political correctness which is poisoning the academy. **SFLA** has every right to urge pro-life students to help Planned Parenthood hide the horror of abortion. **SFLA** has every right urge pro-life students to cravenly run from conflict and the persecution which conflict invites.

But in doing so, **SFLA** must rely solely on the power of persuasion, not coercion. It may not properly steamroll students by misusing US trademark law. **CBR** fights pro-abortion bullies every day, and we are no less determined to protect students from bullies who are pro-life.

#### **DISCLAIMER/CONTACT:**

This letter is signed by me, Gregg Cunningham, in my capacity as Executive Director of the **Center For Bio-Ethical Reform**. As such, I am solely responsible for its content. Please contact me ASAP if you and/or your organization are willing to join CBR as co-petitioners in filing this administrative action to partially cancel **SFLA’s** trademark registration. I can be reached at [cbr@cbrinfo.org](mailto:cbr@cbrinfo.org), or by calling 949-493-3535. This is a landline phone which does not receive

text messages. Calls expressing willingness to join us must be followed by confirming email messages.