

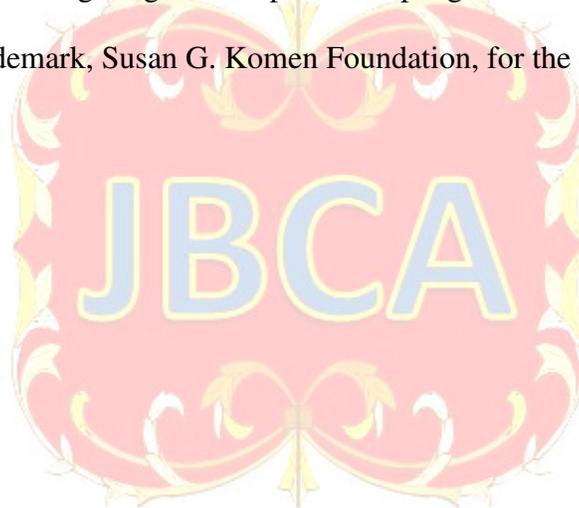
For the cure? Philanthropy meets intellectual property rights

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ABSTRACT

The Susan Komen for the Cure Organization is one of the most recognizable nonprofit corporations in the United States. The group organizes countless fundraisers across the country every year and has donated millions to fight cancer. The corporation has also claimed trademark ownership of its slogan, “for the cure.” Komen’s aggressive steps to protect this intellectual property have included threats of legal action against other cancer-fighting charities. The corporation’s actions in judiciously guarding its trademarks to the detriment of other charities raise ethical issues. This case study provides students the opportunity to consider the ethics and social responsibility implications of nonprofit conduct. This scenario requires students to consider the balance between legal rights with philanthropic goals.

Keywords- nonprofit, trademark, Susan G. Komen Foundation, for the cure, ethics



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INTRODUCTION

Few charitable logos are more recognizable than the pink ribbon of the Susan G. Komen for the Cure organization. The organization is a popular charitable cause at fundraisers across the country. Over the past decade tens of millions of Americans have donated time or treasure, “for the cure.” For cancer victims and their families the ribbon embodies an idea of hope for a better future.

The pink ribbon and phrase, “for the cure,” is not just a symbol of hope but an extremely valuable piece of intellectual property. Since 2007 the Komen organization’s efforts to protect its trademarks have put it at odds with other charities and have raised questions about the nexus between intellectual property rights and the philanthropic goals of charities like the Komen organization.

SUSAN G. KOMEN FOR THE CURE

Susan Goodman Komen died of breast cancer in 1980. As she lay dying, her younger sister Nancy Brinker pledged Susan that she would work to end breast cancer. Nancy set to work on her pledge, founding the Susan Komen Foundation, an organization dedicated to fighting this horrific disease.

This heroic and inspiring story launched on of the most successful charities of a generation. Since its inception, the Komen organization has engaged in education, research and community involvement. The Komen organization is a key part of the American charitable landscape. In 2015-16, the organization raised over \$258 million and donated about 18% of this sum to cancer research (Komen Financials, 2017). Over its lifetime, the company claims donations totaling \$2.9 billion in research, community health outreach, advocacy and programs in more than 60 countries (Komen, 2017).

The Susan G. Komen Foundation is one of the most recognizable nonprofits in the United States. They organize races and other events across the county and have a high-profile “pink” marketing campaign involving dozens of major corporate sponsors.

In 2007 the organization undertook an administrative change. The Susan Komen Foundation formally renamed itself, “Susan Komen for the cure.” With this change the nonprofit company formalized its ownership of both the pink ribbon image and the phrase, “for the cure.” What followed were aggressive steps to protect and control that intellectual property.

NONPROFIT CORPORATIONS

Traditional corporations exist as vehicles to generate profits for shareholders. In contrast, their nonprofit counterparts exist not to generate income but instead to provide some sort of public service or good that is, at least in theory, not adequately serviced by the market. Rather than shareholders, nonprofits nonprofit corporations exist to serve their communities or some sort of larger interest or mission.

In the United States there are at least 1.6 million nonprofits, employing about 10% of the workforce nationally and generating at least 5% of the nation’s gross domestic product. Nonprofits are typically exempt from most corporate taxes (Urban 2017). A smaller subset of nonprofits, including the Susan G. Komen Foundation, are public charities. Charities may seek

to qualify under the Internal Revenue Code as 501(c)3 tax exempt organizations. These organizations are able to offer donors tax deductions for their contributions.

The Komen organization is a nonprofit, public charity. Perhaps its greatest fundraising asset is its intellectual property. The organization's name change in 2007 included an addition of the phrase, "for the cure," to the corporation's legal name. The organization also claims trademarks over the phrase, "For the cure," as well as the pink ribbon runner emblem that is so recognizable to many (USPTO 2017).



TRADEMARK LAW

A trademark or service mark includes any word, name, symbol, device, or any combination, used or intended to be used to identify and distinguish the goods/services of one seller or provider from those of others, and to indicate the source of the goods/services.

In the case of Susan Komen, its trademark pink ribbon and "for the cure," distinguished it from the numerous other entities competing for cancer research funding. These trademarks are essentially the most valuable property owned by the corporation and accompany nearly every public activity.

Komen's ownership of this trademark extends to, "Charitable fundraising services, namely, raising money for breast cancer research and raising money for local community breast health awareness programs," (USPTO 2017).

Trademarks are a form of intellectual property that can last indefinitely, so long as the trademark remains in use by its holder. However, trademarks can be lost if not protected. History is littered with examples of previously-held, valuable trademarks that lost protection when their holders allowed the phrases to fall into common use by competitors. Noted products such as aspirin, elevators, and raisin bran were all at one time exclusive trademarks that were lost over time.

CEASE AND DESIST

By the time of the organization's change in 2007, the pink breast cancer ribbon and phrase, "for the cure," were widely recognized and associated with cancer research. In fact, the phrase, "for the cure," had become a popular rallying cry in the cancer community. Fearing that the increasingly widespread use of the phrase might cause the company to lose control of the slogan and image, the Komen foundation embarked on an aggressive campaign to protect its trademarks.

Throughout 2007 and 2008, dozens of reports surfaced of nonprofit cancer research nonprofits receiving cease and desist letters from Komen (Marks 2010). A cease and desist letter is a legal demand to stop doing something. The demand typically includes an implicit (or explicit) threat of litigation.

Komen's legal dragnet to protect its trademark stretched far and wide to a diverse array of over 100 nonprofits, including such notables as:

- Juggling for the Cure
- Blondes for the Cure
- Bark for the Cure
- Cupcakes for the Cure
- Kites for a Cure
- Par for the Cure
- Mush for the Cure
- Surfing for the Cure (Bassett 2010).

Komen did not allege that the above organizations were not legitimate charities or that the money they were raising was in fact contributed to cancer research or awareness. In fact, many of the smaller organizations operated with little or no overhead and passed a high percentage of their donations on to research. Instead, the sole motivation was protecting the trademark rights of Komen, particularly in use of the phrase, "for the cure," and a pink ribbon.

Komen's efforts to protect its intellectual property were successful. None of the smaller organizations had the financial resources to mount a court challenge to Komen's ownership of, "for the cure," or the then-ubiquitous pink ribbon. Most simply stopped their fundraisers rather than face litigation.

The experience of Mary Ann Tigh of Kites for a Cure, was typical of many. She reported receiving a cease and desist letter. The letter demanded her organization stop using the phrase "for a cure" and to never use the color pink in their materials. "We were certainly taken aback by it," she told HuffPost. "We have partners running these kite events around the country. What if one of them uses, say, magenta? Is that pink? I mean, where are we going with this? We just want to raise money for cancer (Bassett 2010)."

Critics of Komen claimed that the organization's aggressive approach ran contrary to its mission. By using the power of its trademarks against other organizations, Komen was in-fact, chilling fundraising for cancer research. In addition, every dollar used to mount the legal campaign was a dollar that didn't go to the organization's core mission of fighting cancer.

Komen countered that it had to protect its trademarks or risk losing ownership. Komen argued that its trademarks separated it from other charities and provided the public with important reassurance that their donations would be used responsibly. As Komen's counsel stated, "It's never our goal to shut down a nonprofit," he said, "and we try very hard to be reasonable, but it's still our obligation to make sure that our trademarks are used appropriately so there's no confusion in the marketplace over where people's money is going (Bassett 2010)."

CASE DISCUSSION QUESTIONS

1. What is the ethical dilemma presented in this case?
2. Should nonprofits obtain and protect their intellectual property like for-profit businesses?
3. Who are the stakeholders in the Susan G. Komen for the Cure Foundation and which interests should the foundation take into account when determining if and how to protect their intellectual property?
4. Is Komen's aggressive protection of intellectual property rights contrary to the organization's nonprofit mission?
5. How do common theories of ethical thought (teleological ethics, deontological ethics, humanism, etc.) apply to Komen's decision-making?



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