

FILED

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**

2009 APR 20 P 2: 05

CLERK US DISTRICT COURT
ALEXANDRIA, VIRGINIA

_____)
MARRIAGE SAVERS, INC.)
9311 Harrington Drive)
Potomac, MD 20817,)
) **Plaintiff,**)
) **v.**)
) **LOVEPATH INTERNATIONAL, INC.**)
1559 West Harpeth Road)
Franklin, TN 37064,)
) **Defendant.**)
_____)

Civil Action No. 1:09cv421
LO/TCB
COMPLAINT

NATURE OF THE CASE

1. This is an action for trademark and trade name infringement, false designation of origin, cybersquatting, false advertising, and other acts of unfair competition arising under the statutes of the United States (Trademark Act of 1946, 15 U.S.C. §§ 1051 et. seq.) and the common law.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction of this action under Judicial Code, 28 U.S.C. § 1331 (Federal Question) and 28 U.S.C. §1338, as well as § 39 of the Trademark Act of 1946 granting federal question jurisdiction over trademark disputes. This Court also has supplemental jurisdiction pursuant to 28 U.S.C. §167.

3. This Court has personal jurisdiction over the parties because both defendants are engaged in nationwide sales of goods and services, because they operate commercially

interactive websites on the Internet through which they sell goods and services, and that, by conducting business in Virginia, they consented to its jurisdiction.

4. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2) and (c) in that a substantial part of the events or omissions giving rise to the claims occurred in and a substantial part of the property that is the subject of the action is situated in this judicial district.

THE PARTIES

5. Marriage Savers, Inc., (hereinafter “Marriage Savers”) is a non-profit corporation organized and existing under the laws of the State of Maryland with a business address at 9311 Harrington Drive, Potomac, Maryland.

6. Upon information and belief, LovePath International, Inc., is a for profit Tennessee corporation with a business address at 1559 West Harpeth Road, Franklin, Tennessee.

7. The Defendant is doing business, and has caused tortuous injury, in the Commonwealth of Virginia within this judicial district. The Defendant has sold products from its website “marriagesaver.com” to residents of the Commonwealth of Virginia.

MARRIAGE SAVERS’ RIGHTS IN THE MARRIAGE SAVERS MARKS

8. Marriage Savers is the owner of the trademark, service mark, and trade name MARRIAGE SAVERS (collectively, the “MARRIAGE SAVERS Mark”).

9. The United States Patent and Trademark Office has recognized Marriage Savers’ rights by issuing the following federal registrations for the MARRIAGE SAVERS mark:

<u>Reg. No.</u>	<u>Mark</u>	<u>Goods/Services</u>
2218482	MARRIAGE SAVERS	Printed materials and publications, namely, books, brochures, newsletters, pamphlets, workbooks, instruction manuals, and syndicated essays and columns, all in the field of marriage.

2220246	MARRIAGE SAVERS	Educational services, namely, conducting workshops and seminars to church leaders, clergy, and community residents, to train them in marriage counseling, strengthening and protecting marriages, preparing couples for marriage, and saving troubled marriages.
2218480	MARRIAGE SAVERS	Association services, namely, promoting the need for healthy marriages, for preparing couples for marriage, and for saving troubled marriages, rendered to churches and communities.

10. These registrations constitute prima facie or conclusive evidence of the validity and subsistence of the marks as well as Marriage Savers' ownership of, and exclusive right to use, the mark in commerce, without restriction or limitation, and they provide constructive notice of Marriage Savers' ownership pursuant to Sections 7, 22 and 33 of the Trademark Act of 1946, 15 U.S.C. §§ 1057, 1072 and 1115. Copies of these registrations are attached hereto as Exhibit A.

11. The MARRIAGE SAVERS registrations have attained incontestable status pursuant to 15 U.S.C. § 1065.

12. Marriage Savers uses its federally registered mark MARRIAGE SAVERS in connection with an Internet Web Site at the URLs "marriagesavers.org" and "marriagesavers.com" (the "Marriage Savers Web Site") that provides various goods and services offered in connection with the MARRIAGE SAVERS Mark. The MARRIAGE SAVERS Mark is used extensively at the Marriage Savers Web Site.

13. Long prior to the acts complained of herein, and at least as early as the early 1990's, Marriage Savers began using the MARRIAGE SAVERS Mark in connection with a wide

variety of products and services, including workshops, seminars, training events, books, brochures, newsletters, pamphlets, audio recordings, videos and DVDs, and online resources (the “MARRIAGE SAVERS Services”). Since that time, Marriage Savers has used its MARRIAGE SAVERS name and marks continuously and extensively in interstate commerce and in this judicial district, in connection with the advertising and sale of its services, and Marriage Savers continues to develop and expand the products and services offered under its MARRIAGE SAVERS Mark.

14. Marriage Savers has invested substantial sums of money in developing and marketing its services, including those offered under its MARRIAGE SAVERS Mark, which are offered to customers throughout the United States.

15. Each year, over a thousand individuals participate in Marriage Savers’ seminars and trainings and thousands more are exposed to the marks through advertising and promotion.

16. There are approximately 50,000 unique visitors to the Marriage Savers Website each year.

17. Joe Beam, the founder and President of Defendant has spoken at Marriage Savers’ conferences in the past and is well aware of the Marriage Savers Web Site, the MARRIAGE SAVERS Services, and the MARRIAGE SAVERS Mark.

DEFENDANT’S UNLAWFUL USE OF THE MARRIAGE SAVERS MARKS

18. Notwithstanding Marriage Savers’ prior use of, and rights in, the MARRIAGE SAVERS Mark, Defendant has adopted and used the name MARRIAGE SAVER and the domain name “MARRIAGESAVER.COM,” (the “MARRIAGE SAVER Domain Name”) in connection with the advertising, promotion and sale of goods and services (“Defendant’s

Services”) that are highly similar in nature to those offered by Marriage Savers under its MARRIAGE SAVERS Mark to residents of this judicial district and other states, without authorization from Marriage Savers.

19. The MARRIAGE SAVER Services are advertised, promoted and provided in interstate commerce via, inter alia, the Internet Web site at the MARRIAGE SAVER Domain Name, where consumers can obtain goods and services that are highly similar to those offered by Marriage Savers under its MARRIAGE SAVERS Mark, including without limitation, seminars, books, workbooks, brochures, instructional DVDs, and online resources.

20. The MARRIAGE SAVER Services are advertised and promoted to the same class of consumers to whom Marriage Savers advertises and promotes its MARRIAGE SAVERS Services.

21. The MARRIAGE SAVER Services are advertised and promoted through the same or similar marketing channels as Marriage Savers uses to advertise and promote its MARRIAGE SAVERS service, including via the Internet on the interactive and commercial MARRIAGE SAVER Web site.

22. To create the false impression that Defendants are affiliated with, sponsored by, approved by, or endorsed by Marriage Savers, Defendant uses the MARRIAGE SAVER Domain Name and service mark in interstate commerce to advertise and promote Defendant’s commercial Web site and services.

23. As used by Defendant, the MARRIAGE SAVER Domain Name is confusingly similar to the MARRIAGE SAVERS Mark, and such use is likely to cause confusion, mistake or deception among customers and prospective customers that visit Defendant’s Web site or use Defendant’s Services.

24. Defendant has contacted a number of Plaintiff's affiliates in an attempt to advertise and promote the Defendant's Services at Defendant's Web site using the MARRIAGE SAVER Domain Name.

25. Defendant had actual knowledge of Marriage Savers' MARRIAGE SAVERS Mark when Defendant adopted and began using the domain name MARRIAGESAVER.COM.

26. Plaintiff has, on several occasions, requested that Defendant cease and desist its use of the MARRIAGESAVER.COM domain name, and Defendant has repeatedly refused.

27. Defendant has used imitations of the MARRIAGE SAVERS Mark and MARRIAGE SAVERS Domain Name unlawfully, with a willful, deliberate and malicious intent to cause confusion among customers and prospective customers, to injure Marriage Savers and to trade off the goodwill of the MARRIAGE SAVERS Mark.

**COUNT I
TRADEMARK AND SERVICE MARK
INFRINGEMENT IN VIOLATION OF 15 U.S.C. § 1114(1)**

28. As a separate cause of action and ground for relief, Marriage Savers alleges that Defendant has engaged in Trademark and Service Mark Infringement in violation of 15 U.S.C. § 1114(1). Paragraphs 1 through 27 of this Complaint are incorporated by reference as a part of this count.

29. Defendant has used and/or is using the domain name MARRIAGESAVER.COM, and other imitations of the MARRIAGE SAVERS Mark in interstate commerce, in connection with the sale of goods and services, in a manner that creates a likelihood of confusion, mistake, or deception.

30. Defendant's conduct induces purchasers and others to believe, contrary to fact, that Defendant's products and services are rendered, sponsored, approved by, or connected with Marriage Savers.

31. Defendant's acts have damaged and/or impaired that part of Marriage Savers' goodwill symbolized by the federally registered MARRIAGE SAVERS Mark to Marriage Savers' immediate and irreparable damage.

32. Defendant had actual knowledge of Marriage Savers' rights in the MARRIAGE SAVERS Mark when Defendant engaged in the conduct complained of herein. Thus, Defendant has willfully, deliberately, and maliciously engaged in the aforesaid acts with intent to injure Marriage Savers and to deceive the public.

33. Defendant's use of imitations of the MARRIAGE SAVERS Marks in the manner alleged constitutes trademark and service mark infringement within the meaning of Section 32(1) of the Trademark Act of 1946, 15 U.S.C. § 1114(1)(a).

34. Defendant's acts of infringement have caused Marriage Savers irreparable injury and loss of reputation. Unless enjoined by this Court, Defendant will continue these acts of infringement to Marriage Savers' immediate and irreparable damage. Marriage Savers has been damaged in an amount to be proved at trial.

COUNT II
FALSE DESIGNATION OF ORIGIN AND
FALSE ADVERTISING UNDER 15 U.S.C. § 1125(a)

35. As a separate cause of action and ground for relief, Marriage Savers alleges that Defendant has engaged in acts constituting unfair competition, false designation of origin, and false representation or advertising in violation of Section 43(a) of the Trademark Act, 15 U.S.C.

§ 1125(a). Paragraphs 1 through 34 of this Complaint are incorporated by reference as part of this count.

36. By using imitations of MARRIAGE SAVERS Mark, Defendant has made and is making false or misleading representations that its services originate with or are endorsed by or are connected with Marriage Savers, in such a manner as to create a likelihood of confusion among prospective purchasers.

37. Defendant's use of the MARRIAGESAVER.COM domain name to advertise and offer to sell services constitutes use of a false designation of origin, and Defendant's express and/or implied representations that the sale of its products and services originate with or are endorsed by Marriage Savers, constitutes use of false descriptions or representations of fact, within the meaning of Section 43(a) of the Trademark Act of 1946, 15 U.S.C. § 1125(a).

38. Marriage Savers has been damaged by Defendant's conduct and Defendant's use of names and marks confusingly similar to those of Marriage Savers' constitutes unfair competition entitling Marriage Savers to remedies afforded pursuant to Section 43(a) of the Trademark Act of 1946, 15 U.S.C. § 1125(a).

39. Defendant's acts of false designation of origin and false advertising have caused Marriage Savers irreparable injury, loss of reputation, and pecuniary damages. Unless enjoined by this Court, Defendant will continue the acts of unfair competition complained of herein to Marriage Savers' immediate and irreparable damage.

**COUNT III
VIOLATION OF THE FEDERAL ANTICYBERSQUATTING
CONSUMER PROTECTION ACT, 15 U.S.C. § 1125(d)**

40. As a separate cause of action and ground for relief, Marriage Savers alleges that Defendant has engaged in cybersquatting in violation of Section 43(d) of the Trademark Act, 15

U.S.C. § 1125(d). Paragraphs 1 through 39 of this Complaint are incorporated by reference as a part of this count.

41. Defendant registered and is using the domain name MARRIAGESAVER.COM with a bad faith intent to profit from the registration and use of a domain name that is confusingly similar to the MARRIAGE SAVERS Mark and Marriage Savers' Web Site.

42. Defendant registered, trafficked in, used, and continues to use a domain name that is confusingly similar to Marriage Savers' MARRIAGE SAVERS Mark and Marriage Savers' Web Site.

43. The MARRIAGE SAVERS Mark was distinctive at the time that Defendant registered the MARRIAGESAVER.COM domain name.

44. Defendant's registration, use of, and trafficking in the MARRIAGESAVER.COM domain name has harmed and will continue to harm the goodwill represented by the MARRIAGE SAVERS Mark by creating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of Internet sites accessible under the MARRIAGESAVER.COM domain name.

45. Defendant's infringing conduct has caused substantial irreparable injury to the public and to Marriage Savers.

46. Unless enjoined by this Court, Defendant will continue to engage in cybersquatting to Marriage Savers' immediate and irreparable damage.

**COUNT IV
COMMON LAW UNFAIR COMPETITION**

47. As a separate cause of action and ground for relief, Marriage Savers alleges that Defendant has engaged in acts constituting unfair competition under the common law. Paragraphs 1 through 46 of this Complaint are incorporated by reference as a part of this count.

48. Defendant has used the MARRIAGESAVER.COM domain name and other imitations of the MARRIAGE SAVERS Mark, in advertising and offering to sell services over the Internet in an unlawful, unfair, deceptive, and fraudulent manner so as to create a likelihood of confusion among prospective purchasers exercising ordinary caution; which acts have damaged and/or impaired the goodwill symbolized by the MARRIAGE SAVERS Mark to Marriage Savers' immediate and irreparable damage.

49. The aforesaid acts of Defendant constitute unfair competition under the common law.

50. Defendant's acts of unfair competition have caused Marriage Savers irreparable injury, loss of reputation and pecuniary damages. Unless enjoined by this Court, Defendant will continue said acts of unfair competition to Marriage Savers' immediate and irreparable damage.

**COUNT VI
COMMON LAW INFRINGEMENT AND UNFAIR COMPETITION**

51. As a separate cause of action and ground for relief, Marriage Savers alleges that Defendant has engaged in acts constituting trademark and service mark infringement under the common law. Paragraphs 1 through 50 of this Complaint are incorporated by reference as a part of this count.

52. Defendant has used and/or is using imitations of the trade name Marriage Savers in connection with the advertising and offering to sell products and services over the Internet.

53. Defendant's actions are intended to deceive and mislead the public into believing, contrary to fact, that Defendant's products and services are rendered, sponsored, or otherwise approved by, or connected with Marriage Savers, and these actions by Defendant have damaged,

impaired, and diluted that part of Marriage Savers' goodwill symbolized by its trade names to Marriage Savers' irreparable injury.

54. Defendant's use of domain names and marks similar to the trade names owned by Marriage Savers in advertising and offering to sell products and services is likely to cause confusion, mistake, or deception as to the source or origin of Defendant's products and services. Said conduct constitutes infringement of Marriage Savers' trade names and trademarks under the common law.

55. Defendant's acts of infringement have caused Marriage Savers irreparable injury, loss of reputation, and pecuniary damages. Unless enjoined by this Court, Defendant will continue these acts of infringement and unfair competition, thereby deceiving the public and causing Marriage Savers immediate and irreparable damage.

COUNT VIII UNJUST ENRICHMENT

56. As a separate cause of action and ground for relief, Marriage Savers alleges that Defendant has and is engaged in acts resulting in the unjust enrichment of Defendants at Marriage Savers' expense. Paragraphs 1 through 55 of this Complaint are incorporated by reference as a part of this count.

57. The conduct of Defendant complained of herein has caused and will continue to cause Marriage Savers irreparable injury, loss of reputation and pecuniary damages.

58. Marriage Savers has created value and generated goodwill in its MARRIAGE SAVERS Mark.

59. Defendant has traded on this value and goodwill and on Marriage Savers' reputation through deceptive, unfair, and unlawful practices. As a result of Defendant's actions, Defendant has realized and generated economic and other benefits at Marriage Savers' expense.

60. Marriage Savers has not authorized, acquiesced in, or otherwise agreed to Defendant's actions complained of herein.

61. It would be inequitable, under these circumstances, for Defendant to retain the benefits accrued through the unlawful conduct complained of herein.

WHEREFORE, Marriage Savers prays for judgment against Defendant as follows:

(1) Pursuant to 15 U.S.C. § 1116, and the common law of this State, that Defendant and each of its agents, servants, employees, attorneys, assigns, and all others in privity or acting in concert with Defendant be permanently enjoined from:

- (a) Using the domain name MARRIAGESAVER.COM, alone or in combination with any other names, words, marks or designs, and any other name, domain name or mark that includes or is confusingly similar to MARRIAGE SAVERS, in the advertising or sale of any goods or services;
- (b) Using in any manner any service mark, trademark, trade name, domain name, trade dress, words, numbers, abbreviations, designs, colors, arrangements, collocations, or any combinations thereof which would imitate, resemble or suggest Marriage Savers' MARRIAGE SAVER Mark or domain names;
- (c) Otherwise infringing Marriage Savers' trademarks, service marks and trade names;
- (d) Unfairly competing with Marriage Savers, diluting the distinctiveness of Marriage Savers' MARRIAGE SAVERS Mark and trade name, and otherwise injuring Marriage Savers' business reputation in any manner;

- (e) Publishing or sending any e-mail or other messages, including via chat rooms and Internet bulletin boards, using the domain name MARRIAGESAVER.COM, MARRIAGE SAVER, or any domain name or mark confusingly similar thereto; and,
- (f) Using, registering, or reserving any domain name that includes or is confusingly similar to the MARRIAGE SAVERS Mark, including without limitation, MARRIAGESAVER.COM.

(2) Pursuant to 15 U.S.C. § 1118 and the common law of this Commonwealth, Defendant be directed to deliver up for destruction all promotional materials, handouts, advertisements, labels, signs, prints, packages, wrappers, photographs, videos, receptacles and all other materials in their possession or under their control that resemble or bear the names or marks MARRIAGE SAVER or MARRIAGE SAVERS, or any domain name or mark containing the terms MARRIAGE SAVER or MARRIAGE SAVERS, or any other reproduction, counterfeit, copy or colorable imitation of Marriage Savers' service marks and trade names and all plates, molds, matrices, and other means of making or duplicating the same.

(3) Pursuant to 15 U.S.C. § 1117 and the common law of this Commonwealth, Defendant account and pay to Marriage Savers damages in an amount sufficient to fairly compensate Marriage Savers for the injury it has sustained, plus all profits that are attributable to the infringing sale of goods or services under the name and mark complained of herein, and further that the amount of the monetary award granted herein be trebled in view of the willful and deliberate nature of Defendant's unlawful conduct.

(4) Pursuant to 15 U.S.C. § 1117, Marriage Savers be awarded statutory damages in an amount to be determined by the court.

(5) Marriage Savers be awarded punitive damages in an amount sufficient to deter Defendant from engaging in unlawful conduct in the future.

(6) Pursuant to 15 U.S.C. § 1117 and the common law of this Commonwealth, Defendant be ordered to pay to Marriage Savers the costs of this action and Marriage Savers' attorney fees.

(7) Pursuant to 15 U.S.C. § 1125(d), Defendant be ordered to transfer to Marriage Savers any domain names consisting of or incorporating MARRIAGE SAVER, including MARRIAGESAVER.COM, and any other domain names registered or controlled by Defendant that resemble or contain the name or mark MARRIAGE SAVERS.

(9) Marriage Savers be granted such other, further, different or additional relief as this Court deems equitable and proper.

MARRIAGE SAVERS, INC.

Date: April 20, 2009

By: 

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ND: 4845-7905-4595, v. 4

Int. Cl.: 16

Prior U.S. Cls.: 2, 5, 22, 23, 29, 37, 38 and 50

Reg. No. 2,218,482

United States Patent and Trademark Office

Registered Jan. 19, 1999

**TRADEMARK
PRINCIPAL REGISTER**

MARRIAGE SAVERS

**MARRIAGE SAVERS, INC. (MARYLAND NOT-
FOR-PROFIT CORPORATION)
9500 MICHAEL'S COURT
BETHESDA, MD 20817**

**FOR: PRINTED MATERIALS AND PUBLI-
CATIONS, NAMELY, BOOKS, BROCHURES,
NEWSLETTERS, PAMPHLETS, WORKBOOKS,
INSTRUCTION MANUALS, AND SYNDICAT-
ED ESSAYS AND COLUMNS, ALL IN THE**

**FIELD OF MARRIAGE, IN CLASS 16 (U.S. CLS.
2, 5, 22, 23, 29, 37, 38 AND 50).**

**FIRST USE 3-0-1993; IN COMMERCE
3-0-1993.**

SEC. 2(F).

SER. NO. 75-348,737, FILED 8-28-1997.

JENNIFER KRISP, EXAMINING ATTORNEY

EXHIBIT

A

Int. Cl.: 41

Prior U.S. Cls.: 100, 101 and 107

Reg. No. 2,220,246

United States Patent and Trademark Office

Registered Jan. 26, 1999

**SERVICE MARK
PRINCIPAL REGISTER**

MARRIAGE SAVERS

**MARRIAGE SAVERS, INC. (MARYLAND NOT-
FOR-PROFIT CORPORATION)
9500 MICHAEL'S COURT
BETHESDA, MD 20817**

**FOR: EDUCATIONAL SERVICES, NAMELY,
CONDUCTING WORKSHOPS AND SEMINARS
TO CHURCH LEADERS, CLERGY, AND COM-
MUNITY RESIDENTS, TO TRAIN THEM IN
MARRIAGE COUNSELING, STRENGTHENING
AND PROTECTING MARRIAGES, PREPAR-**

**ING COUPLES FOR MARRIAGE, AND
SAVING TROUBLED MARRIAGES, IN CLASS
41 (U.S. CLS. 100, 101 AND 107).**

**FIRST USE 3-0-1993; IN COMMERCE
3-0-1993.**

SEC. 2(F).

SER. NO. 75-348,738, FILED 8-28-1997.

JENNIFER KRISP, EXAMINING ATTORNEY

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

Reg. No. 2,218,480

United States Patent and Trademark Office

Registered Jan. 19, 1999

**SERVICE MARK
PRINCIPAL REGISTER**

MARRIAGE SAVERS

**MARRIAGE SAVERS, INC. (MARYLAND NOT-
FOR-PROFIT CORPORATION)
9500 MICHAEL'S COURT
BETHESDA, MD 20817**

**FOR: ASSOCIATION SERVICES, NAMELY,
PROMOTING THE NEED FOR HEALTHY
MARRIAGES, FOR PREPARING COUPLES
FOR MARRIAGE, AND FOR SAVING TROU-
BLED MARRIAGES. RENDERED TO**

**CHURCHES AND COMMUNITIES, IN CLASS 42
(U.S. CLS. 100 AND 101).**

**FIRST USE 3-0-1993; IN COMMERCE
3-0-1993.**

SEC. 2(F).

SER. NO. 75-348,592, FILED 8-28-1997.

JENNIFER KRISP, EXAMINING ATTORNEY