

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK**

KATHLEEN BORRONE
377 Branch Avenue
Little Silver, NJ 07739

Plaintiff

v.

WORLD TRIATHLON CORP.

Serve on:

National Corporate Research, Ltd.
10 East 40th Street
10th Floor
New York, NY 10016

and

USA TRIATHLON

Serve on:

Francis B. Gilbert
1365 Garden of the Gods Road
Suite 250
Colorado Springs, CO 80907
Defendants

COMPLAINT

JURY TRIAL DEMANDED

PRELIMINARY STATEMENT

1. Plaintiff KATHLEEN BORRONE (“Borrone”) is a competitive triathlete who is deaf and blind. Borrone has successfully competed in triathlons including the American Triple T in Southern Ohio; the Ironman 70.3 in Syracuse, New York; and most recently the Ironman Lake Placid, New York. Because she cannot see or hear, Borrone needs a guide who is not only able to keep up with the rigors of an Ironman race which consists of a 2.4 mile open water swim, a 112 mile bike ride, and 26.2 mile marathon run, but she also needs that guide to be able to

communicate throughout the grueling race using tactile sign language that she is able to understand. Although Defendants World Triathlon Corporation and USA Triathlon (“Defendants”) permit blind individuals to use a guide to assist in navigating the course, Defendants will not permit Borrone to use the guide with whom she has trained and with whom she can communicate. Defendants’ policies result in the exclusion of Borrone from the Ironman Lake Placid and other Ironman events because there are no other signing guides available who are both able to complete Ironman events with her and communicate effectively with her. Defendants’ conduct violates Title III of the Americans with Disabilities Act, 42 U.S.C. §§ 12181, *et seq.*, section 504 of the Rehabilitation Act, and the New York State Human Rights Law, N.Y. Exec. Law § 290 *et seq.* Defendants further violate these statutes by refusing to provide qualified sign language interpreters to ensure that Borrone can participate effectively in required meetings for all triathlon events that cover, *inter alia*, course instructions and safety rules. Borrone brings this Complaint to compel Defendants to cease unlawful discriminatory practices and implement policies and procedures that will ensure effective communication, full and equal access, and an equal opportunity to participate in and benefit from Defendants’ events that are open to the public. Borrone seeks declaratory and injunctive relief as well as compensatory damages and reasonable attorneys’ fees, and costs.

JURISDICTION

2. This Court has original jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1343, and 1367.

3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because (i) Defendants have sufficient contacts with this District to subject it to personal jurisdiction at the time this action is commenced, including owning, organizing, and sanctioning Ironman events

taking place in this District; and (ii) the acts and omissions giving rise to this Complaint occurred and will continue to occur at such Ironman events within this District.

PARTIES

4. Kathleen Borrone resides at 377 Branch Avenue, Little Silver, New Jersey 00739. Borrone is deaf-blind and substantially limited in the major life activities of hearing, speaking, seeing, and navigating independently.

5. Defendant World Triathlon Corporation maintains its headquarters at 2701 North Rocky Point Drive, Suite 1250, Tampa, FL 33607. Defendant World Triathlon Corporation owns, operates, manages, and/or facilitates Ironman events including but not limited to Ironman triathlon and half-triathlon events in New York. Defendant's agent for service is National Corporation Research, Ltd., 10 East 40th Street, 10th Floor, New York, NY 10016.

6. Defendant USA Triathlon maintains its headquarters at 5825 Delmonico Drive, Suite 200, Colorado Springs, CO 80919. Defendant USA Triathlon sanctions, operates, manages, and/or facilitates Ironman events including but not limited to Ironman triathlon and half-triathlon events in New York. Defendant's agent for service is Francis B. Gilbert, 1365 Garden of the Gods Road, Suite 250, Colorado Springs, CO 80907.

FACTUAL ALLEGATIONS

7. For athletes around the world, Ironman events represent the pinnacle of the triathlon experience. Ironman is an iconic North American triathlon that requires years of preparation in order to compete in a grueling endurance race that includes a 2.4-mile open-water swim, a 112-mile bike ride, and 26.2-mile marathon run.

8. The Ironman triathlon in Lake Placid, New York, is the second oldest Ironman in continental North America and is one of the most popular triathlon events in the sport.

9. Defendant World Triathlon Corporation owns, operates, manages, and/or facilitates Ironman triathlon events.

10. Defendant World Triathlon Corporation has oversight of the rules and policies governing Ironman triathlon events.

11. Defendant USA Triathlon sanctions, operates, manages, and/or facilitates Ironman triathlon events.

12. Defendant USA Triathlon has oversight of the rules and policies governing Ironman triathlon events.

13. Ironman triathlon events have a “Physically Challenged” (PC) division for individuals, including individuals with limited sight.

14. In the PC division, individuals who are blind or who have limited eyesight may use guides to help them navigate courses.

15. Kathleen Borrone has been a competitive athlete since she was a child. In recent years, she began training to compete in triathlons. She completed Ironman events in the past, including a half Ironman triathlon in Syracuse, New York and the Ironman triathlon in Lake Placid, New York.

16. Borrone intends to compete in future Ironman events including but not limited to the July 2017 Ironman triathlon in Lake Placid, New York.

17. Borrone is deaf-blind and substantially limited in the major life activities of hearing, speaking, seeing, and navigating independently.

18. Borrone communicates through the use of sign language.

19. Borrone's visual impairment means that she is often not able to see clearly enough to understand sign language based on vision alone. In such circumstances, she must rely on a particular variety of sign language called tactile sign language to communicate.

20. Tactile sign language requires the deaf-blind person to place her hands on the hands of the other person who is signing. The deaf-blind person relies on the feeling of the movements of the hands to understand the other person.

21. In order to compete in triathlon events, Borrone uses a guide who has trained with her to help her navigate triathlon courses.

22. The guide must be able to complete triathlon events at Borrone's pace.

23. The guide must also be able to communicate with Borrone using sign language, including tactile sign language.

24. In or about the year 2008, Borrone identified and began training with guide, James Armstrong. Armstrong is able both to complete the Ironman triathlons at Borrone's pace and to communicate with her using tactile sign language.

25. Borrone is not aware of any other guide who can perform the necessary functions that Armstrong performs. Specifically, Armstrong is the only individual Borrone knows who is both capable of communicating with her in tactile sign language and completing triathlon events.

26. During the swim portion of the triathlon, Armstrong swims near Borrone and alerts her when she needs to correct course.

27. During the biking portion, Borrone and the guide ride a two-seated bicycle. The guide sits in the front and navigates the course.

28. During the running portion, the guide runs alongside Borrone and alerts her when she needs to make turns and when there are unexpected obstacles such as potholes or mud.

29. The guide must be able to maintain very close proximity to Borrone at all times during these events because communication can occur only through physical touch.

30. In 2015 and 2016, Borrone successfully completed Ironman courses using James Armstrong as a guide.

31. However, in 2016, Defendants informed Borrone that Ironman policies require that individuals who are blind must use a guide who is the same gender as the individual competing in Ironman events.

32. Defendants explained that the reason for this policy is that individuals competing in triathlon events must change clothes between events in tents that are separated by gender.

33. Borrone, however, does not use the guide during the changing of clothes. Instead, she uses a female volunteer who assists her in the changing tents. After changing her clothes, she meets her guide outside the tent to pursue the next leg of the triathlon event. Her male guide never enters the female changing tents.

34. Notwithstanding its stated policy, Defendants made a limited exception and permitted Borrone to use Armstrong as a guide for two events in June-July 2016.

35. Defendants stated that they would make limited exceptions for these two events only but would not allow Borrone to compete with her guide in future events.

36. Defendants have stated unequivocally that in 2017 and beyond they will not permit Borrone to use her male guide.

37. Defendants' policy will exclude Borrone from future events because there are no other individuals qualified to serve as guides who can communicate with her in tactile sign language and guide her through triathlon courses.

38. Borrone plans to participate in future Ironman triathlon, and is training to compete in the Ironman Lake Placid, New York, in July 2017, but is barred from doing so for as long as Defendants' policy remains in place.

39. Defendants have also refused to provide qualified sign language interpreters to ensure effective communication with Borrone during required meetings that all triathletes must attend that cover, *inter alia*, course information and safety information.

40. As a result of Defendants' refusal to provide qualified sign language interpreters, Borrone is not able to understand all of the information that is provided to other triathletes competing in the Ironman events.

41. On July 20, 2016, the National Association of the Deaf sent a letter to the Defendants on behalf of Borrone requesting that Defendants modify their policies to enable Borrone to compete in Ironman events. This letter is attached as Exhibit A.

42. NAD requested a response to this letter by August 1, 2016.

43. Defendants did not respond to this letter of the National Association of the Deaf.

44. On August 1, 2016, the National Association of the Deaf sent a second letter to the Defendants on behalf of Borrone again requesting that Defendants modify their policies to enable Borrone to compete in Ironman events. This letter is attached as Exhibit B.

45. In the second letter, NAD requested a response to this letter by August 31, 2016.

46. Defendants did not respond to this letter of the National association of the Deaf.

47. As a result of Defendants' policies and refusal to provide qualified sign language interpreters, Borrone has suffered embarrassment, humiliation, frustration, and is not able to pursue and compete in her chosen sport.

48. Defendants are recipients of federal financial assistance because they directly or indirectly receive funding from, *inter alia*, the Department of Veteran Affairs.

COUNT I: TITLE III OF THE AMERICANS WITH DISABILITIES ACT

49. Borrone repeats and realleges all paragraphs in support of this claim.

50. Borrone is substantially limited in the major life activities of hearing, speaking, seeing, and navigating independently, and is therefore an individual with a disability within the meaning of the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12102(2).

51. Defendants own, lease, and/or operate a place of public accommodation as defined under Title III of the ADA, 42 U.S.C. § 12181(7)(F).

52. Title III of the ADA prohibits discrimination on the basis of disability in “the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any places of public accommodations . . .” 42 U.S.C. § 12182(a).

53. Pursuant to Title III of the ADA and its implementing regulations, a public accommodation cannot deny participation or offer an unequal or separate benefit to individuals with disabilities. A public accommodation is required to administer its programs and activities in the most integrated setting appropriate to meet the needs of qualified individuals with disabilities. 42 U.S.C. § 12182(b)(1)(A) and (B); 28 C.F.R. §§ 36.202; 36.203.

54. Pursuant to Title III of the ADA and its implementing regulations, a public accommodation must make reasonable modifications to its policies, practices, or procedures, when necessary to ensure full and equal access for people with disabilities. 42 U.S.C. § 12182(b)(2)(A)(ii); 28 C.F.R. § 36.302(a).

55. Pursuant to Title III of the ADA and its implementing regulations, a public accommodation shall furnish appropriate auxiliary aids and services to ensure effective

communication with individual with disabilities. 42 U.S.C. § 12182(b)(2)(A)(iii); 28 C.F.R. § 36.303(b)(1).

56. Defendants have and continue to discriminate against Borrone on the basis of disability by denying her full and equal participation in the services, programs, and benefits the Defendants offers to other individuals, and by refusing to provide auxiliary aids and services or reasonably modify its policies, practices, or procedures, in violation of Title III of the ADA.

COUNT II: SECTION 504 OF THE REHABILITATION ACT

57. Borrone repeats and realleges all paragraphs in support of this claim.

58. Borrone is substantially limited in the major life activities of hearing, speaking, seeing, and navigating independently, and is therefore an individual with a disability within the meaning of the Rehabilitation Act.

59. Borrone is a qualified individual with a disability.

60. Defendants are recipients of federal financial assistance.

61. Section 504 of the Rehabilitation Act states that no qualified individual with a disability shall “be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance”

62. Defendants have and continue to intentionally discriminate against Borrone solely on the basis of disability by denying her meaningful participation in the services, programs, and benefits the Defendants offer to other individuals, and by refusing to provide auxiliary aids and services or reasonably modify its policies, practices, or procedures, in violation of section 504 of the Rehabilitation Act.

**COUNT III: VIOLATION OF NEW YORK STATE HUMAN RIGHTS LAW
(DISABILITY DISCRIMINATION CLAIM)**

63. Borrone repeats and realleges all paragraphs in support of this claim.

64. Borrone is a qualified individual with a disability.

65. Defendants are a place of public accommodation.

66. New York Executive Law § 296(2) prohibits places of public accommodation from refusing, withholding from, or denying a person its accommodations, advantages, facilities or privileges thereof because the person has a disability.

67. Defendants have and continue to discriminate against Borrone on the basis of disability by denying her equal participation in the services, programs, and benefits the Defendants offer to other individuals, and by refusing to provide auxiliary aids and services or reasonably modify its policies, practices, or procedures, in violation of the New York Human Rights Law.

68. As a result of Defendants' policy, Borrone has suffered embarrassment, humiliation, frustration, and is not able to pursue her chosen sport.

COUNT IV: VIOLATION OF NEW YORK STATE HUMAN RIGHTS LAW
(SEX DISCRIMINATION CLAIM)

69. Borrone repeats and realleges all paragraphs in support of this claim.

70. Borrone is a qualified individual.

71. Defendants are a place of public accommodation.

72. New York Executive Law § 296(2) prohibits places of public accommodation from refusing, withholding from, or denying a person its accommodations, advantages, facilities or privileges thereof on the basis of sex or gender.

73. Defendants have and continue to discriminate against Borrone on the basis of sex or gender in violation of the New York Human Rights Law by refusing to permit her to compete in Ironman events because she is female and the guide she needs to use is male.

74. As a result of Defendants' policy, Borrone has suffered embarrassment, humiliation, frustration, and is not able to pursue her chosen sport.

RELIEF

WHEREFORE, Plaintiff Kathleen Borrone respectfully requests that this Court provide the following relief:

- (a) Issue a declaration that Defendants' policies, procedures, and practices have subjected Plaintiff to discrimination in violation of Title III of the Americans with Disabilities Act, section 504 of the Rehabilitation Act, and the New York State Human Rights Law;
- (b) Enjoin Defendants from implementing or enforcing any policy, procedure, or practice that denies individuals who are deaf-blind, such as Borrone, full and equal enjoyment and meaningful access to and an equal opportunity to participate in and benefit from Defendants' programs, activities, and services regardless of disability, sex or gender identity;
- (c) Order Defendants to develop and comply with written policies, procedures, and practices to ensure that Defendants do not discriminate in the future against Borrone and other similarly situated individuals who are deaf-blind and that Defendants allow guides without regard to sex or gender identity;
- (d) Order Defendants to provide qualified sign language interpreters to ensure effective communication with Borrone during Ironman events;
- (e) Order Defendants to train all representatives and employees about Borrone's rights and the rights of individuals who are deaf-blind, as well as provide training on Defendants' policies and procedures;

- (f) Order Defendants to list on their website the Defendants' procedures and policies for complying with the Americans with Disabilities Act, section 504 of the Rehabilitation Act, and the New York State Human Rights Law;
- (g) Award compensatory damages to Borrone pursuant to section 504 of the Rehabilitation Act and the New York State Human Rights Law;
- (h) Award reasonable costs and attorneys' fees;
- (i) Award any and all other relief that this Court finds necessary and appropriate.

Respectfully submitted,

/s/Michael Steven Stein

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Attorneys for Plaintiff

Date: December 19, 2016

JURY DEMAND

Plaintiff Kathleen Borrone, through her undersigned attorneys, hereby demands a trial by jury on all issues so triable pursuant to Federal Rule of Civil Procedure 38.

/s/ Michael Steven Stein

Michael Steven Stein