

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

Park Ridge Sports, Inc.,)	
An Illinois Not for Profit Corporation,)	
)	
Plaintiff and Counterclaim)	
Defendant,)	
)	
v.)	CIVIL ACTION NO.: 20-cv-2244
)	
Park Ridge Travel Falcons,)	Hon. Ronald A. Guzman
an Illinois Not For Profit Corporation, and)	U.S. District Court Judge
Timothy Walbert, James Purcell,)	
Jeffery Kilburg and Lou Karnezis,)	
individuals,)	
)	
Defendants and Counterclaim)	
Plaintiffs.)	

**PLAINTIFF’S MEMORANDUM OF LAW IN SUPPORT OF ITS
MOTION FOR PRELIMINARY INJUNCTION**

I. INTRODUCTION

Plaintiff Park Ridge Sports, Inc. (“Park Ridge Sports”) has for more than half a century operated a highly successful youth football program under the PARK RIDGE FALCONS trademark. Earlier this year, Plaintiff’s Board of Directors made an organizational change with which a minority of Plaintiff’s Board of Directors disagreed. Rather than work within Plaintiff’s new organizational structure, three of these Board Members and one of Plaintiff’s League Directors, decided to convert Plaintiff’s trademark, and start a competing program under the nearly identical name PARK RIDGE TRAVEL FALCONS. Then, in a move that can only be characterized as outrageous, Defendants actually demanded that Plaintiff cease using its own PARK RIDGE FALCONS trademark.

This is not a close case. Plaintiff has used its PARK RIDGE FALCONS mark in connection with its youth football program for decades, and the Park Ridge community has for this entire time associated the PARK RIDGE FALCONS mark with Plaintiff. Defendants are using a virtually identical mark – PARK RIDGE TRAVEL FALCONS – to provide the same youth football services to the very same community. Not only is this likely to cause confusion, it has actually caused a great deal of confusion within the community. It is axiomatic that, in such situations, the prior user has the right to continue to use its mark, to the exclusion of the newcomer. This policy exists not only to protect the owner of the intellectual property, but also the public at large.

Unfortunately, Plaintiff’s numerous requests that Defendants cease using Plaintiff’s trademark have been ignored. Worse, the Defendants have recently begun an escalating campaign of disinformation via their website, social media, and a Springfield, Illinois-based Public Relations and lobbying firm, to mislead consumers into believing that their new PARK RIDGE TRAVEL FALCONS branded program is the same program that Plaintiff has offered for decades and that, in some ridiculous perversion of the facts, Plaintiff is actually the wrongdoer. This has led to countless instances of actual confusion among the residents of Park Ridge as they try to discern which Falcons team is the one that they have known for so long.

Both Plaintiff and Defendants are currently in the process of registering players for the 2020

football season. Unless enjoined, the Defendants' escalating campaign of willfully spreading disinformation will continue to confuse Park Ridge parents and athletes, damage Plaintiff's reputation within Park Ridge and the entire youth football community and threaten Plaintiff's longstanding partnership and contractual relationship with the Park Ridge Park District. Simply put, this represents an existential threat to Plaintiff's non-profit program. Plaintiff therefore respectfully requests that this Court preliminary enjoin the Defendants' use of the PARK RIDGE TRAVEL FALCONS trademark, and prohibit Defendants from making further statements leading consumers to believe that they operate the Falcons program that the Park Ridge community has come to associate with Plaintiff.

II. RELEVANT FACTS

A. Plaintiff's Park Ridge Falcons Youth Football Program

Plaintiff is a not for profit Illinois corporation whose mission is to provide "a safe, positive, and nourishing environment where our student athletes and coaches are afforded the opportunity to develop strength of character, build self-esteem, and realize personal development." Declaration of James Toulon ("Toulon Decl."), ¶ 3. Since the Fall of 1967, Plaintiff has furthered this mission by offering the community of Park Ridge, Illinois a variety of youth sports programs including both tackle and flag football and cheerleading. *Id.* While Plaintiff's programs have been subject to changes over Plaintiff's long history, Plaintiff has continuously operated a youth tackle football program under the trade name and service mark PARK RIDGE FALCONS. *Id.*, ¶ 4. In 2019, Plaintiff fielded thirteen teams within two leagues, all under the name PARK RIDGE FALCONS. *Id.*, ¶ 5.

Over the years, Plaintiff's Park Ridge Falcons youth football program has become an important and well-known part of the Park Ridge Community. *Id.* The Park Ridge Falcons team serves as a feeder to the football programs of several local area high schools, with many of Plaintiff's youth athletes finding future success at the high school and college levels. *Id.*

Plaintiff is also widely supported by the community of Park Ridge and the well-known and highly successful Maine South High School football program. *Id.*, ¶ 6. In 2019, Plaintiff served over 1,000 student athletes and approximately 1,000 families with nearly 200 volunteers

committing over 20,000 annual volunteer hours. *Id.*, ¶ 7. All of Plaintiff's operating revenues come from registration fees or donations from the community. *Id.* Plaintiff would not exist without this community support. *Id.*

The natural result of this is that the community of Park Ridge, and the teams that play against the Park Ridge Falcons, have come to associate the PARK RIDGE FALCONS trademark with Plaintiff and its long and storied history. The PARK RIDGE FALCONS trademark, and the goodwill it represents, constitutes one of Plaintiff's most valuable assets. *Id.*, ¶ 8.

B. Defendants Launch PARK RIDGE TRAVEL FALCONS.

Across the nation, parental interest in youth tackle football has waned over the past several years, and many community tackle football programs have seen declines in participation in favor of flag football programs. *Id.*, ¶ 9. Plaintiff's programs have not been exempted from this trend and, earlier this year, Plaintiff made the operational decision to combine two of its PARK RIDGE FALCONS youth football program leagues into a single league. *Id.* As a result of this decision, the PARK RIDGE FALCONS league previously directed by Defendant Kilburg was combined with a larger PARK RIDGE FALCONS league. *Id.*

Plaintiff's decision to combine these leagues was not unanimous.¹ Three members of the Board of Directors, Defendants and Counterclaim Plaintiffs Purcell, Walbert and Karnezis, along with one of the coaches for one of Plaintiff's 2019 PARK RIDGE FALCONS teams, Defendant Kilburg, (collectively, the "Individual Defendant") strongly disagreed with and advocated against this decision. *Id.*, ¶ 10. Rather than continue to work on Plaintiff's behalf, the Individual Defendants formed another non-profit corporation, Defendant Park Ridge Travel Falcons, purchased a website, www.prtravelfalcons.com, and filed three federal trademark applications for registration of the marks PARK RIDGE FALCONS, PARK RIDGE TRAVEL FALCONS and PR TRAVEL FALCONS, United States Serial Nos. 88/850,739, 88/850,719, and 88/850,573. Dkt. No. 19 at ¶¶ 27, 31-34.

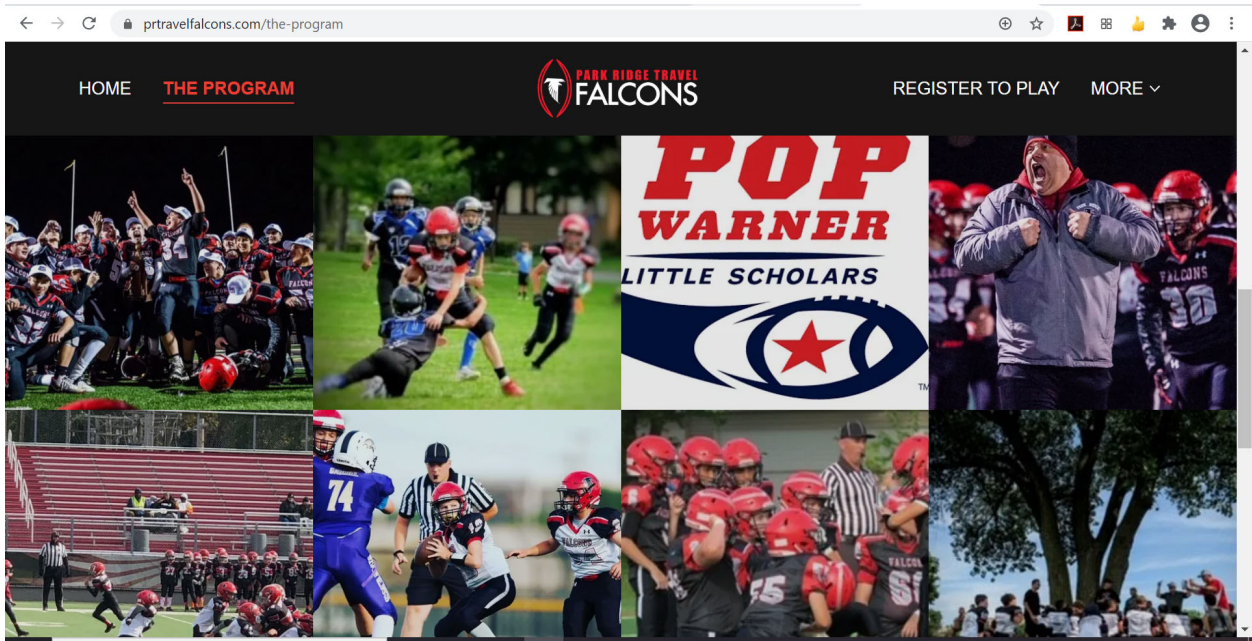
¹ The decision of Plaintiff's Board of Directors was 8-4 in favor of combining the leagues. Toulon Decl., ¶ 10.

Defendants Purcell, Walbert and Karnezis then resigned from Plaintiff’s Board of Directors and, together with Defendant Kilburg, pushed forward with offering the PARK RIDGE TRAVEL FALCONS branded youth football program to the Park Ridge community. Toulon Decl., ¶ 10.

C. Defendants’ Intentional Efforts to Confuse the Park Ridge Community

As one would expect, the operation of two youth football programs under the marks PARK RIDGE FALCONS and PARK RIDGE TRAVEL FALCONS has created a great deal of confusion in the Park Ridge community. To avoid this, Plaintiff has worked hard to try to convince and encourage the Defendants to use a different name for their team. Toulon Decl., ¶ 11. These efforts have, to date, been unsuccessful, and to protect its program, Plaintiff filed this action.

Since filing, both football programs have opened registration for the 2020 season. *Id.*, ¶ 13. The opening of signups coincided with an escalating campaign by Defendants to intentionally mislead the Park Ridge community into believing that program they operate is the same program that Plaintiff has operated for the last half century. For example, Plaintiff’s website (www.prfalcons.com) is replete with photographs of Plaintiff’s program from prior years. The following graphic appears on the page at the url: <https://prtravelfalcons.com/the-program>:



Declaration of Jeffrey T. Norberg (“Norberg Decl.”), Ex. A. Of the eight images displayed on this

page, all but the “Pop Warner”² image show youth participating in Plaintiff’s Park Ridge Falcons program in past years and not Defendants’ Park Ridge Travel Falcons program. Toulon Decl. ¶ 14. All of the football uniforms worn in the photographs are Plaintiff’s uniforms. *Id.*

Defendants’ website is not the only evidence that Defendants are intentionally causing confusion in the Park Ridge community. Defendants also operate a Facebook page on which they regularly post photographs of Plaintiff’s Park Ridge Falcons from previous football seasons along with captions that lead readers to the conclusion that Defendants’ offering is a continuation of Plaintiff’s long-running program. Norberg Decl., Exs. B-D; Toulon Decl. ¶¶ 15-17. On June 3, Defendants posted a photograph of Plaintiff’s Park Ridge Falcons team, along with the message:

As D1³ Director of Park Ridge Football for the last few seasons (not D2 house league) I would like to celebrate a few facts from last year’s successful D1 Park Ridge Travel Football season:

11u had a successful and fun season & beat the UYFL National Champs (Leyden Bears) in the regular season. Congrats to the players, coaches, and parents!! **See you this Fall as we transition into Pop Warner!** Pop Warner has expressed that teams will be playing this Fall! Register now!! – feeling proud.

Norberg Decl., Ex. B (emphasis added). The use of photographs of Plaintiff’s team with the word “transition,” despite having yet to operate any team, is telling: Defendants intend the Park Ridge community to believe that they are now the operators of Plaintiff’s Park Ridge Falcons program.

Defendants are also using sponsored advertisements to mislead the Park Ridge Community. In an Instagram sponsored advertisement, Defendants tie their brand-new Park Ridge Travel Falcons program with Plaintiff’s pre-existing program by congratulating Plaintiff’s 2019 Falcons team and stating: “Let’s try to do (sic) again this year in Pop Warner!!” Declaration of Matthew Colleran (“Colleran Decl.”), Ex. A1. Once again, the Defendants’ choice of words was

² “Pop Warner” is a reference to a particular national youth football league – see, www.popwarner.com. Plaintiff previously participated in the Pop Warner Program for several seasons. Toulon Decl., ¶ 16.

³ The pejorative terms D1 and D2 have been used by some youth football programs as code words to refer to teams that are considered “elite” and others that generally consist of athletes that are unable to compete at the “elite” level. Indeed, Defendants appear to use these terms to convey an air of superiority to parents, athletes and other program directors. Toulon Decl., ¶ 15.

no accident. Plaintiff is not currently affiliated with Pop Warner, but Defendants' program is. It is, of course, not possible for Defendants to repeat a 2019 victory when the Defendants have not yet operated a football program. The unquestionable implication is that Plaintiff's 2019 PARK RIDGE FALCONS travel football program and Defendants' 2020 Park Ridge Travel Falcons program are part of the same tackle football program, when, in fact, they are not.

Defendants have also used yard signs depicting the infringing trademarks, same color scheme and a similar look-and-feel, in order to mislead the Park Ridge community. *See* Toulon Decl., Ex. 1. Plaintiff uses yard signs placed in various locations around Park Ridge to advertise its Park Ridge Falcons program. *Id.*, ¶ 18. Because Plaintiff is an official affiliate of the Park Ridge Park District, Plaintiff is the only youth football program permitted to place these signs in certain parks owned and maintained by the Park Ridge Park District. *Id.*, ¶ 18-19. Since the opening of registration, Defendants have placed numerous signs for their Park Ridge Travel Falcons program in the same locations, and in some instances, in front of, Plaintiff's signs. *Id.*, ¶ 18. Defendants have even placed signs near Plaintiff's signs in Park Ridge Park District parks, even though Defendants are not legally permitted to do so or to use any of the Park Ridge Park District facilities.



Id., Ex. 1. This battle of the signs has only increased confusion in the Park Ridge community and is

the subject of a recent article in the Park Ridge-Herald Advocate. *Id.*, ¶ 21 & Ex. 2.

The result of Defendants' actions has been numerous instances of actual confusion, including:

- Pop Warner Chicagoland, an affiliate of Defendants but not Plaintiff, previously linked to the Plaintiff's website rather than the Defendants' website. Norberg Decl., ¶ 7 & Ex. F.
- Plaintiff's Board of Directors have received numerous inquiries from parents in the Park Ridge community as to whether they are signing their children up for the correct Falcons program. Toulon Decl., ¶ 20; Colleran Decl., ¶ 6.
- A former coach for Plaintiff's program unknowingly signed on to Defendant's program thinking that he was signing on to Plaintiff's program as a coach. Declaration of Mel Thillens ("Thillens Decl."), ¶¶ 2-5.

Plaintiff anticipates that this confusion will only increase as the two programs continue to register youth athletes to their competing programs in and around the Park Ridge community.

III. ARGUMENT

A preliminary injunction is necessary in this case to put an end to Defendants' ongoing efforts to sow actual confusion between the parties' marks. This is not a close case nor have Defendants proffered any plausible defense. There can be no dispute that Plaintiff owns rights in the PARK RIDGE FALCONS mark when used in connection with a youth football program in this region. There can also be no dispute that the Defendants' use of the nearly identical PARK RIDGE TRAVEL FALCONS mark in connection with the same services to the same community creates actual confusion. This confusion is precisely the Defendants' intent. Plaintiff has survived and thrived on its longstanding relationship with the Park Ridge community and the Park Ridge Park District. Defendants' ongoing efforts to create confusion represent a threat to this relationship, and therefore an existential threat to Plaintiff. The destruction of those relationships, and the survival of Plaintiff, cannot be adequately measured with an award of damages. A preliminary injunction is therefore appropriate.

A. Legal Standard

This Court may issue a Preliminary Injunction to protect the rights of the parties pending a trial on the merits. 15 U.S.C. §1116(a) specifically authorizes injunctions in trademark cases. To obtain an injunction, a plaintiff must show that it has: (1) a reasonable likelihood of success on the merits; (2) no adequate remedy at law; (3) it will suffer irreparable harm, which absent injunctive relief, outweighs any irreparable harm to respondent if injunction is granted; and (4) the injunction will not harm the public interest. *Goodman. v. Ill. Dep't of Fin. & Prof'l Regulation*, 430 F.3d 432, 437 (7th Cir. 2005). These factors are considered using a sliding scale approach, whereby “the more likely the plaintiff will succeed on the merits, the less the balance of irreparable harms need favor the plaintiff’s position.” *Ty, Inc. v. Jones Group, Inc.*, 237 F.3d 891, 895 (7th Cir. 2001). This case meets all of these requirements.

1. Park Ridge Sports Will Succeed on the Merits of Its Claim

Under the sliding scale approach, a party seeking a preliminary injunction must demonstrate “that it has a ‘better than negligible’ chance of success on the merits of at least one of its claims.” *Girl Scouts of Manitou Council, Inc. v. Girl Scouts of U.S.A.*, 549 F.3d 1079, 1096 (7th Cir. 2008). “This is admittedly a low requirement and is simply a threshold question.” *Id.* To prevail on a trademark infringement claim, plaintiff must show that (1) it has protectable rights in its mark; and (2) defendant’s use of the mark is likely to cause confusion among consumers. *CAE, Inc. v. Clean Air Engineering, Inc.*, 267 F.3d 660, 673-74 (7th Cir. 2001); *Eli Lilly & Co. v. Natural Answers, Inc.*, 233 F.3d 456, 461 (7th Cir. 2000). As discussed in greater detail, below, Plaintiff more than meets this burden.

a. Plaintiff Owns Trademark Rights in the PARK RIDGE FALCONS Mark

“Rights in a trademark are determined by the date of the mark’s first use in commerce. A party who first uses a mark in commerce is said to have priority over other users.” *Hana Financial, Inc. v. Hana Bank*, 574 U.S. 418, 419 (2015). Plaintiff owns common-law trademark rights in its PARK RIDGE FALCONS word mark by virtue of more than 50 years of continuous and exclusive use of the mark in commerce. A party seeking to show that it owns protectable rights in a mark must show (1) that the mark has been used in commerce; and (2) that the mark is either inherently distinctive or that it has acquired secondary meaning. *See, generally, Life After Hate, Inc. v. Free Radicals*

Project, Inc., 410 F. Supp. 3d 891, 902-905 (N.D. Ill. 2019). Here, Plaintiff has established that it has used the PARK RIDGE FALCONS mark in commerce for more than 50 years by operating a program that competed both within Illinois and in various other states. Toulon Decl., ¶ 4.

Plaintiff's PARK RIDGE FALCONS mark is also inherently distinctive. "A term for which trademark protection is claimed will fit somewhere in the spectrum which ranges through (1) generic or common descriptive and (2) merely descriptive to (3) suggestive and (4) arbitrary or fanciful." *Miller Brewing Co. v. G. Heileman Brewing Co.*, 561 F.2d 75, 79 (7th Cir. 1977). Whereas, generic or common terms are not protectable and merely descriptive terms can only be protectable by proving the mark has acquired distinctiveness, a suggestive or fanciful mark is inherently distinctive. *Id.* Plaintiff's PARK RIDGE FALCONS mark is arbitrary because it does not describe or convey the nature of the services of organizing and conducting a youth football program. An arbitrary mark enjoys full trademark protection without proving secondary meaning. *Id.* Even if secondary meaning was required, Plaintiff's extensive use of PARK RIDGE FALCONS Mark in connection with organizing and conducting youth sports programs over 52 years is evidence sufficient to demonstrate a "better than negligible chance" that the PARK RIDGE FALCONS mark has become distinctive of the Plaintiff's services. *See generally, Int'l Kennel Club of Chicago, Inc. v. Mighty Star, Inc.*, 846 F.2d 1079, 1084 – 1088 (7th Cir. 1988) (At the preliminary injunction stage, a plaintiff need only demonstrate that it has a better than negligible chance of establishing trademark rights, including whether plaintiff's mark has acquired secondary meaning.) Plaintiff has submitted evidence of its youth football program's success, student athlete's high school and collegiate success, and has continually published information about its program in annual park district program circulations, all of which result in free publicity throughout the programs existence. Toulon Decl., Exs. 3-4. Defendants' adoption of and use of Plaintiff's team's history of success in its recent marketing efforts and direct consumer evidence of confusion are further evidence of secondary meaning. *See, e.g., Int'l Kennel Club of Chicago, Inc. v. Mighty Star, Inc.*, 846 F.2d at 1084. ("[T]he club's half-century use of the name, combined with their advertising, substantial free publicity, and wide-ranging activities in

support of dog groups, clearly renders the plaintiff’s chances of establishing that the International Kennel Club name has acquired secondary meaning better than negligible.”).

Defendants do not seriously dispute that the Plaintiff owns rights in the PARK RIDGE FALCONS word mark. Instead, Defendants have issued blanket denials and misleadingly imply that the Park Ridge Falcons operated as a separate entity prior to 2015. This is false. Plaintiff has operated the Park Ridge Falcons youth tackle team since Plaintiff’s inception in 1967. Toulon Decl., ¶ 4. During the course of Plaintiff’s history, Plaintiff has made a number of organizational changes, but it has always operated a team under the PARK RIDGE FALCONS mark. *Id.* The rights in the trademark therefore inure to Plaintiff. *See Life After Hate*, 410 F. Supp. 3d at 905.

b. Defendants’ use of the PARK RIDGE TRAVEL FALCONS Mark Infringes Plaintiff’s PARK RIDGE FALCONS Mark

Once a Plaintiff has established that it owns rights in a mark, the next question is whether the Defendants’ use of its mark creates a likelihood of confusion. Courts in this Circuit analyze seven factors in determining likelihood of confusion: (1) the similarity between the marks in appearance and suggestion; (2) the similarity of the products; (3) the area and manner of concurrent use; (4) the degree and care likely to be exercised by consumers; (5) the strength of the plaintiff’s mark; (6) any actual confusion; and (7) the intent of the defendant to “pass off” its product as that of another. *AutoZone, Inc. v. Strick*, 543 F.3d 923, 929 (7th Cir. 2008). The consideration of these factors requires equitable balancing, and no single factor is dispositive, and the Seventh Circuit has held that the similarity of the marks, actual confusion, and the defendant’s intent are particularly important. *See CAE, Inc. v. Clean Air Engineering, Inc.*, 267 F.3d at 678. Each of these factors weighs heavily in favor of Plaintiff.

On the first factor, the marks are nearly identical: PARK RIDGE FALCONS and PARK RIDGE TRAVEL FALCONS. The “travel” portion of Defendants’ mark is descriptive and conveys only information regarding the nature of Defendants’ services – i.e., that they offer a “travel” program, which by its definition plays teams from other communities.⁴ Both Plaintiff and Defendants offer

⁴ On June 19, 2020, Defendant Park Ridge Travel Falcons agreed to disclaim the “Travel” portion of its application to register PARK RIDGE TRAVEL FALCONS. Norberg Decl., Ex. G.

travel youth football under their respective marks. Defendants have filed a trademark application for the word mark PARK RIDGE FALCONS – Plaintiff’s exact mark – and at least one third-party refers to the Defendants’ program on its web site as the PARK RIDGE FALCONS. Norberg Decl. ¶ 6 & Ex. E. There is no meaningful difference between the parties’ marks, and this factor strongly favors Plaintiff.

Regarding the second factor, both parties offer identical services: youth football programs. Defendants have attempted to distinguish their offering from Plaintiff’s by arguing that they offer a “travel” program whereas Plaintiff only offers a “house” program, but this is false. Plaintiff is still offering a travel youth football program under the PARK RIDGE FALCONS name, just as it has for the last 52 years. Toulon Decl., ¶ 4. Even if this were not the case, this factor would still favor Plaintiff, as the parties are still offering youth football programs under their respective marks.

The geographic area of use is also identical. Plaintiff provides its services to the community of Park Ridge, Illinois. *Id.*, ¶ 3. Defendants also offer their services to the community of Park Ridge, Illinois. In fact, the Pop Warner web site lists the field location for Defendant’s tackle football program as Maine South High School, the very same field where Plaintiff’s team has played for years. Norberg Decl. F; Toulon Decl., ¶ 6. Thus, the universes of relevant consumers for the two trademarks are identical.

Regarding intent, the Defendants have demonstrated via their actions that they intend the community to believe that their program is a continuation of Plaintiff’s program. As their social media posts make clear, Defendants intend to associate the PARK RIDGE TRAVEL FALCONS brand with the goodwill that Plaintiff has spent decades developing. This factor strongly favors Plaintiff.

Plaintiff’s PARK RIDGE FALCONS is also a strong mark. Mark strength is measured by both the inherent nature of the mark and other factors such as length of time in which the party used the mark and the number of other third-parties using identical or virtually identical marks. *See generally, CAE, Inc. v. Clean Air Engineering, Inc.*, 267 F.3d at 684-685. Plaintiff’s mark is an arbitrary mark, and therefore inherently strong. *See*, Section III.A.1.(a), above. Plaintiff’s

longstanding use of the mark also demonstrates its strength. As discussed above, the PARK RIDGE FALCONS mark has been used by Plaintiff in connection with organized youth programs for over 52 years, has been recognized as one of the top youth football programs in the State of Illinois, won several youth football league championships, and attracted thousands of volunteers, coaches, athletes from the area. Toulon Decl. ¶¶ 5-8. Given this, Plaintiff's mark is a strong mark, entitled to a broad scope of protection. *See, Reed-Union Corp. v. Turtle Wax, Inc.*, 869 F. Supp. 1304, 1307 (N.D. Ill. 1994).

The factor involving the degree of care exercised by consumers in making their purchasing decision also favors Plaintiff. The degree of care factor is considered by examining the sophistication of the typical consumers of the product or service at issue and considering whether the product or service is a type for which consumers take great care in making a purchase decision. *See, CAE, Inc. v. Clean Air Engineering, Inc.*, 267 F.3d at 682-683. The consumers in question can only be defined broadly: the community of Park Ridge, the surrounding communities, and other regional sports programs and leagues who are likely to interact with the Park Ridge Falcons. Because Plaintiff offers its services to the entire community of Park Ridge and the immediately surrounding areas, the level of sophistication with respect to choosing an appropriate program will vary widely. Many players from prior years are likely to sign up for Plaintiff's program in 2020 (Toulon Decl., ¶ 5), and it is likely that these returning players will not distinguish between Plaintiff's and Defendants' programs should Defendants send them a solicitation to "continue" with the Park Ridge Travel Falcons. The direct overlap of services offered make it more likely that even informed and sophisticated consumers will mistakenly attribute the parties' youth football programs to a common source. *See, CAE, Inc. v. Clean Air Engineering, Inc.*, 267 F.3d at 683. This factor also favors Plaintiff.

Next, the actual confusion factor also favors Plaintiff. As discussed in greater detail above, Defendants' partner Pop Warner demonstrated confusion between the two programs, one of Defendants' coaches believed he had signed up to coach Plaintiff's Falcons team, and Plaintiff's Board of Directors is fielding regular inquiries from confused parents asking which program is which.

Finally, "if the marketing and business presence of the senior mark is nearly ubiquitous in the

geographic area where the junior mark competes, a trier of fact can easily conclude that the creator of a strikingly similar junior mark intended to confuse.” *AutoZone, Inc. v. Strick*, 543 F.3d at 934. It is obvious from the similarity of the marks, identical services, and marketing techniques previously mentioned (including the side by side placement of yard signs throughout the Park Ridge community) that Defendants intention to confuse the public and “palm off” their youth football program as that of Plaintiff’s. Thus, this seventh factor also favors a finding of a likelihood of confusion.

In sum, all of the likelihood of confusion factors heavily favor Plaintiff and Plaintiff has a great deal more than a negligible chance of succeeding on the merits of its trademark claim.

2. Defendants’ Ongoing Efforts to Sow Confusion Create Irreparable Harm

In the Seventh Circuit, the law presumes irreparable harm for violations of the Lanham Act. *Abbott Labs. v. Mead Johnson & Co.*, 971 F.2d 6, 16 (7th Cir. 1992); *Life After Hate*, 410 F. Supp. 3d at 909-10. Even if this were not the case, Plaintiff’s evidence establishes that it will be irreparably harmed.

To determine whether irreparable harm exists, Courts examine the nature of the alleged injury, if the harm a plaintiff would suffer is greater than the harm that the preliminary injunction would inflict on the defendants, and the plaintiff’s likelihood of success on the merits. *Judge v. Quinn*, 612 F.3d 537, 546 (7th Cir. 2010). The Defendants’ conversion of the name and goodwill of Plaintiff’s program represents an existential threat to Plaintiff. Plaintiff is a non-profit corporation and depends on the goodwill it has built within the community. This goodwill is more than just donations and player fees; it is the years of volunteerism and community support that Plaintiff enjoys. The Defendants’ tactic of misleading the community into believing that they are now the operators of Plaintiff’s program places this goodwill in jeopardy, as Plaintiff has no control over the quality and safety of the Defendants’ program. This cannot be undone with a monetary damages award, and unless enjoined, Defendants’ ongoing activities represent a threat to all of Plaintiff’s programs, not just the tackle football program.

The parties are also currently in the middle of signups for the 2020 football season, and, due to the COVID-19 pandemic, both programs have yet to hold any formal practices or other related

activities. That is likely to change in July: Defendants posted a video on their Facebook page on June 19 in which Defendant Kilburg states that they have plans in place to play in Southern Wisconsin or Northwest Indiana should practices not be allowed by Illinois. *See* <https://www.facebook.com/prtravelfalcons/videos/268745450875664> (last accessed June 23, 2020). Defendants are in a better position to change their name now, before any additional confused members of the Park Ridge community make a final commitment to a team, than Defendants will be once practices begin.

Finally, the last factor in the irreparable harm analysis, Plaintiff's likelihood of success on the merits, weighs strongly in favor of Plaintiff. Defendants cannot complain that they are being prohibited from using a trademark that they never owned in the first place.

3. The Balance of Hardships to the Parties and Public Interest Factors Favor Plaintiff

Here, the harm to the Plaintiff if the Defendants are allowed to continue infringing is incalculable. By contrast, Plaintiff has established that Defendants are violating its federal, state and common law trademark rights. "There is no harm to the [D]efendant to being enjoined from violating the law, and the public interest is served by eliminating potential consumer confusion." *Light v. Zhangyali*, No. 15 CV 5918, 2016 WL 4429758, at *4 (N.D. Ill. Aug. 22, 2016).

The public interest factor also weighs in favor of Plaintiff. The chief purpose of the Lanham Act is to protect consumers from brand confusion in the marketplace. *Desmond v. Chicago Boxed Beef Distributors, Inc.*, 921 F. Supp. 2d 872, 881 (N.D. Ill. 2013). As discussed above, Defendants' actions have caused precisely the type of harm the Lanham Act was designed to prevent.

IV. CONCLUSION

Plaintiff is not seeking to have the Defendants' program shut down. Rather, Plaintiff is simply asking that Defendants use a name that does not mislead the public into believing that they are operating the program that Plaintiff has operated for 53 years. Plaintiff therefore respectfully requests that this Court preliminarily enjoin Defendants from using the PARK RIDGE TRAVEL FALCONS trademark, and making any further misleading statements regarding Defendants' program, as reflected in the attached Proposed Order.

Dated: June 23, 2020

Respectfully submitted,

/s/ Jeffrey T. Norberg

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