

**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,	)	Referred to
individuals,	)	Hon. Jeffrey Cole
	)	U.S. Magistrate Judge
Defendants and Counterclaim	)	
Plaintiffs.	)	

**PLAINTIFF'S REPLY IN SUPPORT OF ITS  
MOTION FOR PRELIMINARY INJUNCTION**

## **I. INTRODUCTION**

Defendants' opposition to Plaintiff's motion for Preliminary Injunction is an attempt to distract the Court from the simplicity of this case: the Defendants' use of the PARK RIDGE TRAVEL FALCONS trademark in connection with a youth football program in the Park Ridge, Illinois community is creating confusion with Plaintiff's PARK RIDGE FALCONS mark, used in the same community in connection with the same services. The Defendants do not dispute that the Plaintiff used its mark years before the Defendants began using theirs, that both parties use their marks in connection with the provision of youth football programs in Park Ridge, Illinois, or that the concurrent use of these two names in the same community has caused confusion. Instead, the Defendants craft a vague narrative in which, despite the evidence to the contrary, they try to cast doubt on the ownership of the PARK RIDGE FALCONS mark. Conspicuously absent from the opposition is any hint of why the Defendants believe *they* are entitled to use this trademark.

This is not a case where two parties each claim a legitimate right to use a trademark. As set forth in the opening declarations, it is a case involving four individuals who decided they were entitled to use the Plaintiff's trademark after a disagreement about how Plaintiff runs its non-profit youth football program. The Defendants are, of course, free to run their own youth football program as they see fit. They are not entitled to do so using the Plaintiff's trademark.

The evidence submitted with the opening brief creates a strong case in favor of success on the merits, and that the Defendants' ongoing infringement has caused, and will continue to cause, confusion among the relevant consumers of the Park Ridge community. This type of confusion inherently causes irreparable harm, and Defendants have presented no evidence that they would be damaged if they were forced to pick a different name while this case is decided. Thus, Plaintiff's motion for preliminary injunction should be granted.

## **II. Argument**

### **A. Plaintiff has a Strong Likelihood of Success on the Merits**

The Defendants' arguments on the merits ignore nearly all of the evidence that Defendants'

activities violate the Lanham Act and instead attempt to manufacture evidentiary and factual disputes regarding Plaintiff's declarations. Each of these arguments is meritless.

**1. Plaintiff owns the PARK RIDGE FALCONS Mark**

Defendants' entire argument that Plaintiff is not the owner of the PARK RIDGE FALCONS trademark rests on the theory that Plaintiff did not operate the PARK RIDGE FALCONS team prior to 2015. This is false, unsupported by the evidence before the Court, and irrelevant to the issue of whether the Defendants have the ongoing right to use the mark.

Plaintiff has established ownership of the PARK RIDGE FALCONS trademark via a statement of use of the mark since 1967, signed under penalty of perjury by James Toulon, the President of the Board of Directors, a person in a position that is presumed to have a general knowledge of the affairs and history of the organization. *See* Declaration of James Toulon ("Toulon Decl."), ¶ 4. In opposition, Defendants submit two declarations, one from Jim Brander, a former coach of Plaintiff's Park Ridge Falcons team, and one from Defendant Purcell, a former coach and former Member of Plaintiff's Board of Directors from 2018-2020. These two declarations argue that Plaintiff was not the operator of the PARK RIDGE FALCONS team prior to 2015, but instead began operating it after a merger in 2015. *See* Purcell Decl., ¶¶ 3-7; Brander Decl., ¶¶10-15. Neither declaration (nor the brief) disputes that the PARK RIDGE FALCONS youth football program has existed for more than half a century, nor do they identify any other person or entity that operated the PARK RIDGE FALCONS program between 1967 and 2015. This is because they cannot do so. As the President of Plaintiff's Board of Directors established via his declaration, the Plaintiff has used the PARK RIDGE FALCONS mark in connection with its youth football program since 1967. Toulon Decl., ¶ 4. To the extent these declarations create a factual dispute, such a dispute should be resolved via an evidentiary hearing rather than by denying the motion. *Medeco Security Locks, Inc. v. Swiderek*, 680 F.2d 37, 38 (7<sup>th</sup> Cir 1981), *see also, Ty, Inc. v. GMA Accessories, Inc.*, 132 F.3d 1167, 1171 (7<sup>th</sup> Cir. 1997) ("If genuine issues of material fact are created by the response to a motion for a preliminary injunction,

an evidentiary hearing is indeed required.”)

Such a hearing is not necessary, however, because the Defendants do not dispute that the Plaintiff has used the PARK RIDGE FALCONS mark since at least 2015. Wrong as they may be regarding the length of Plaintiff’s use of the mark, use for five years is more than sufficient to establish ownership of a trademark. *See Hana Financial, Inc. v. Hana Bank*, 574 U.S. 418, 419 (2015) (“A party who first uses a mark in commerce is said to have priority over other users.”); *see also Life After Hate, Inc. v. Free Radicals Project, Inc.*, 410 F. Supp. 3d 891, 902-905 (N.D. Ill. 2019). Once again, Defendants have never claimed that *they* used the PARK RIDGE FALCONS trademark prior to 2020 and, indeed, they admit that they did not begin using the PARK RIDGE TRAVEL FALCONS mark until earlier this year. Purcell Decl., ¶ 8. There is, therefore, no dispute. The Plaintiff, as the prior user of the mark by years, has trademark rights superior to those of the Defendants. *Hana Financial*, 574 U.S. at 419.

## **2. Defendants Ignore Most of Plaintiff’s Likelihood of Confusion Evidence**

Defendants spend precious few pages of their brief addressing the likelihood of confusion factors, presumably because there can be little doubt that the Defendants’ use of the mark PARK RIDGE TRAVEL FALCONS in connection with a youth football program in the community of Park Ridge, Illinois is likely to create confusion with Plaintiff’s use of the mark PARK RIDGE FALCONS in connection with the same services in the same geographic region. Defendants do not directly respond to Plaintiff’s evidence and argument that (1) the Defendants are using photographs of Plaintiff’s 2019 team in Defendants’ social media with intent to mislead consumers to believe that the Defendants are running the same program (Opening Brief at 4-6); (2) that the PARK RIDGE FALCONS mark is inherently distinctive (*id.*, at 9); (3) that the Defendants have filed an application for Plaintiff’s identical PARK RIDGE FALCONS mark at the USPTO (*id.*, at 10); (4) that the Defendants’ addition of the word TRAVEL to the mark provides nothing more than a non-distinguishing descriptor (*id.*, at 10-11); (5) that the parties compete for the same consumers in the same area (youth football players in Park Ridge) (*id.*, at 11); and (6) that the

parties' advertising is often placed side-by-side in the community of Park Ridge (*id.*, at 6). Instead, Defendants argue that some, but not all, of the actual confusion evidence submitted by the Plaintiff is not reliable.

Evidence of actual confusion does not always exist in trademark disputes, but when it does, it is the most persuasive evidence of infringement. *International Kennel Club of Chicago, Inc. v. Mighty Star, Inc.*, 846 F.2d 1079, 1089 (7<sup>th</sup> Cir. 1988) (“[t]here can be no more positive or substantial proof of the likelihood of confusion than proof of actual confusion. Moreover, reason tells us that while very little proof of actual confusion would be necessary to prove the likelihood of confusion, an almost overwhelming amount of proof would be necessary to refute such proof.”) (citation omitted). Plaintiff's opening papers included evidence of numerous instances of actual confusion between the parties' two marks, including confusion by a sophisticated national youth football league, Pop Warner, (Norberg Decl., ¶ 7 & Ex. F), numerous inquiries to Plaintiff's Board of Directors by parents expressing confusion (Toulon Decl., ¶ 20; Colleran Decl., ¶6), and one instance in which one of the Defendants' coaches signed up for Defendants' program believing the Defendants' program to be the same as the Plaintiff's (Thillens Decl., ¶¶ 2-5). In response, the Defendants do not even attempt to dispute that this confusion is occurring, and instead focus on attacking the veracity of the declarations of Matt Colleran and Mel Thillens.

The Defendants' argument with respect to the Colleran Declaration makes little sense. Mr. Colleran's declaration attaches three items relevant to the likelihood of confusion analysis, only one of which is addressed by the Defendants: a communication from the Maine Eagles wrestling team to Mr. Colleran's wife expressing confusion between the two programs (Ex. A2). In response, Defendants submit the declaration of Defendant Purcell, who states that he believes Ms. Colleran to be a coach with the Maine Eagles team. Defendants do not explain what significance this fact has on the confusion expressed by the author of the e-mail. Indeed, it would make sense for someone who knows Ms. Colleran to reach out to her regarding such confusion, since her husband, Mr. Colleran, is one of Plaintiff's Board Members.

The Declaration of Mark Sroka does not change the fact that Mr. Sroka was actually confused between the two programs when he signed up as a coach for the Defendants' program. As an initial matter, the Defendants' claim that the Thillens Declaration is "rank hearsay" ignores that hearsay is admissible in preliminary injunction proceedings. *SEC v. Cherif*, 933 F.2d 403, 412 n8 (7<sup>th</sup> Cir. 1991) *see also*, *Federal Trade Commission v. Lifewatch Inc.*, 176 F.Supp.3d 757, 762 (N.D. Ill. 2016) ("Settled law holds that these relaxed evidentiary standards permit a district court to consider hearsay at the preliminary injunction stage."). More importantly, Mr. Sroka's declaration disputing Mr. Thillens' recitation of their conversation is, being generous, misleading. In his opening declaration, Mr. Thillens states that he had a conversation with Mark Sroka on June 22, 2020 in which Mr. Sroka, a coach for both the Plaintiffs and Defendants, expressed surprise that the Defendants' program was not associated with Plaintiff. Thillens Decl., ¶¶ 3-5. Mr. Sroka's declaration does not dispute that this conversation actually happened, but only states that it did not happen "on June 22, 2020." Sroka Decl., ¶¶ 4-6. Mr. Sroka limits his claim regarding this conversation to "June 22, 2020" because that date is a typographical error in Mr. Thillens' declaration. The June 22, 2020 date was the day before Plaintiff filed its motion for preliminary injunction, and its inclusion in Mr. Thillens' declaration was nothing more than a scrivener's error. Mr. Thillens has submitted a supplemental declaration to correct this error: the conversation between Messrs. Thillens and Sroka took place on May 27, 2020, not June 22, 2020. Supplemental Declaration of Mel Thillens, ¶ 2. To the extent Mr. Sroka wished to claim that he never had this conversation with Mr. Thillens, and never believed the Defendants' program to be part of Plaintiff's program, he could have said so in his declaration. The fact that he did not do so demonstrates that he cannot do so truthfully. Worse, the Defendants misleadingly omit Mr. Sroka's critical "June 22, 2020" qualification in their brief and instead include a partial quote from the declaration that Mr. Sroka "was fully aware and informed of the differences between the Park Ridge Travel Falcons program, and the Park Ridge Football program." Opposition Brief at 14. The omission of that critical "June 22, 2020" qualification from the Opposition brief is deceptive,

as it is used to support the Defendants' claim that "Mr. Thillens' statements (emphasis added) regarding Mr. Sroka are simply incorrect, based on the attached affidavit of Mr. Sroka *himself* (emphasis in original)." *Id.* Of course, the date qualifications mean that Mr. Sroka has not disputed the "statements" (plural) in the Thillens Declaration; they simply mean that Mr. Sroka disputes the June 22, 2020 date. The Defendants' attempt to use a typographical error and selective quoting that changes the meaning of an attached declaration to mislead the Court into believing that a conversation never happened when, in fact, it did, borders on violations of Rule 11 of the Federal Rules of Civil Procedure and a breach of the duty of candor to the Court (Illinois Rule of Professional Conduct 3.3).

**B. Plaintiff has Shown Irreparable Harm Even Absent a Presumption**

Defendants argue that this Court should discard the Seventh Circuit's presumption of irreparable harm that flows from a plaintiff's showing of a likelihood of confusion in trademark cases based on speculation as to what the Seventh Circuit might do if asked whether the Supreme Court's *eBay* patent decision should also be applied in trademark cases. Plaintiff disagrees. The presumption of irreparable harm in trademark cases has been the law of the Seventh Circuit for many decades, and Defendants do not argue that either the Supreme Court or the Seventh Circuit has overturned that law. It therefore remains binding precedent until such time as it is expressly overturned, and is regularly applied by most of the Courts in this District. *See, e.g., Life After Hate, Inc. v. Free Radicals Project, Inc.*, 410 F. Supp. 3d 891, 909 (N.D. Ill. 2019) (Judge Kendall applying presumption); *Redbox Automated Retail, LLC v. Xpress Retail LLC*, 310 F. Supp. 3d 949, 952 (N.D. Ill. 2018) (Judge Feinerman applying presumption); *Checker Car Club of Am., Inc. v. Fay*, 262 F. Supp. 3d 621, 629 (N.D. Ill. 2017) (Judge Bucklo applying presumption); *MetroPCS v. Devor*, 215 F. Supp. 3d 626, 639 (N.D. Ill. 2016) (Judge Shadur applying presumption); *Wm. Wrigley Jr. Co. v. Swerve IP, LLC*, 900 F. Supp. 2d 794, 803 (N.D. Ill. 2012) (Judge Leinenweber applying presumption); *Lettuce Entertain You Enterprises, Inc. v. Leila Sophia AR, LLC*, 703 F. Supp. 2d 777, 790 (N.D. Ill. 2010) (Judge Lefkow applying presumption.)

However, this Court need not rely on the presumption to find irreparable harm because the evidence submitted by Plaintiff establishes it. In *National Financial Partners Corp. v. Paycom Software, Inc.*, 2015 WL 3633987, at \*12-13 (No. 14-C-7424 N.D. Ill., June 10, 2015), one of the cases Defendants attach to their brief (Ex. B), Judge Kennelly found irreparable harm without using the presumption where (1) defendants' infringement impeded the identifying function of plaintiff's mark; (2) the marks were similar and the target audiences identical; and (3) plaintiff submitted evidence of actual confusion between the two marks. In finding irreparable harm, Judge Kennelly wrote "The Lanham Act is designed to redress 'the precise economic consequences of intangible harms, such as damage to reputation and loss of goodwill.' 'The most corrosive and irreparable harm attributable to trademark infringement is the inability of the victim to control the nature and quality of the defendant's goods.'" *Id.* at 12 (quoting *Abbot Labbs v. Mead Johnson & Co.*, 971 F.2d 6, 16 (7th Cir. 1992); and *Processed Plastic Co.*, 675 F.2d at 858.). This is consistent with Seventh Circuit jurisprudence. In the 2013 case *Kraft Foods Group Brands LLC v. Cracker Barrel Old Country Store Inc.*, 735 F.3d 735, 740 (7th Cir. 2013), Judge Posner emphasized the irreparable harm that loss of brand control can inflict before judgement in a trademark case: "as emphasized in the *Abbott Laboratories* and *Processed Plastic* opinions cited earlier, irreparable harm is especially likely in a trademark case because of the difficulty of quantifying the likely effect on a brand of a nontrivial period of consumer confusion (and the interval between the filing of a trademark infringement complaint and final judgment is sure not to be trivial)."

Here, as in the *National Financial* case cited by Defendants, the marks at issue are nearly identical, the geographic markets and consumers are identical, and there has been a great deal of actual confusion in the Park Ridge community. *See*, Opening Brief at 2-7. In addition, Plaintiff has submitted evidence that the Defendants are intentionally trying to create confusion by using photographs of Plaintiff's 2019 team in an effort to lead the public to believe that the Defendants' Falcons program is a continuation of Plaintiff's Falcons program. *Id.*, at 4-6.

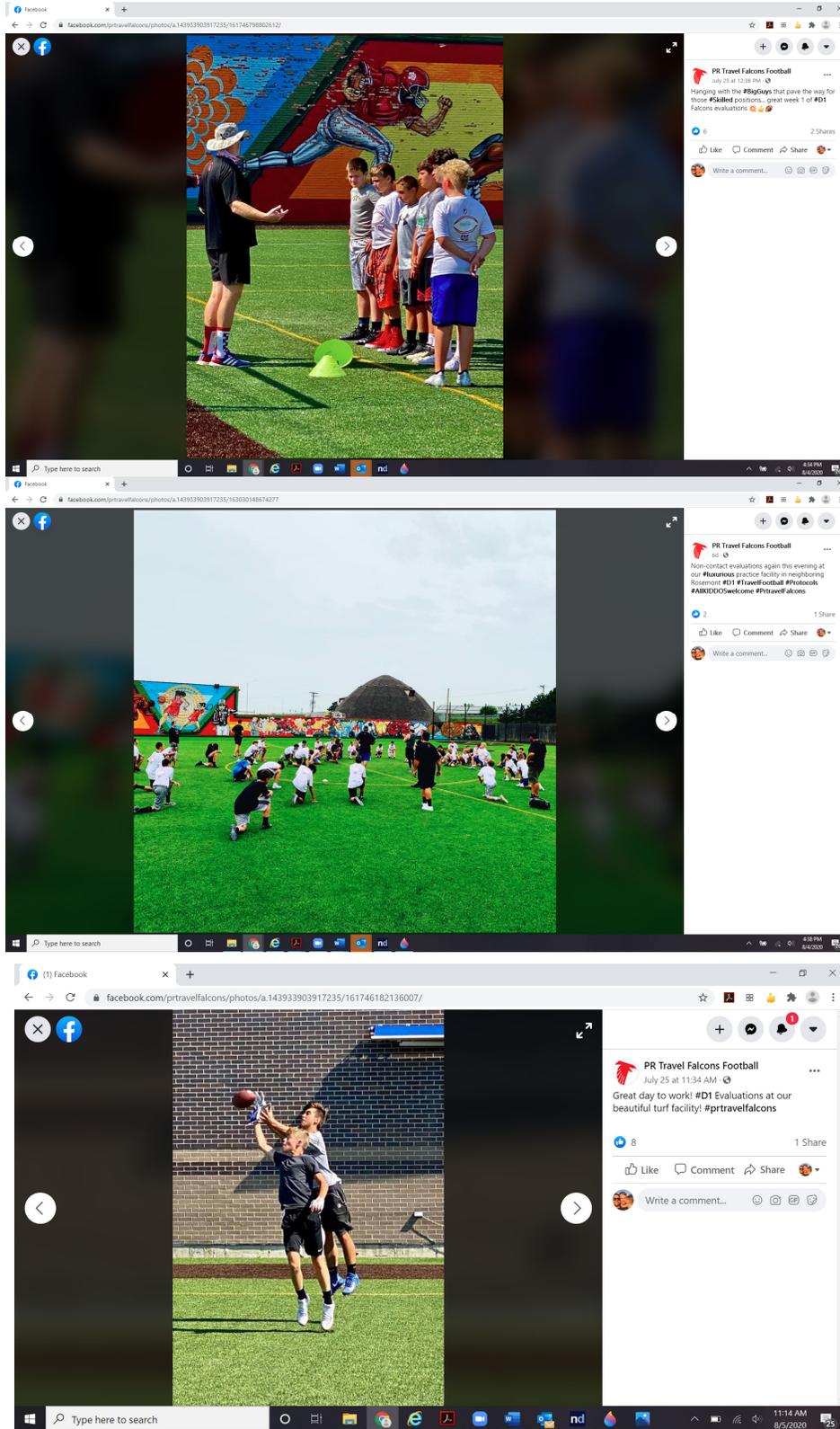
Defendants also implicitly argue that the damage done here is past damage, and that future

irreparable harm is unlikely. Opposition Brief at 7 (“If the ‘damage is done,’ past irreparable harm does not support a preliminary injunction.”). This ignores the ongoing irreparable harm Defendants are inflicting upon Plaintiff even since the filing of this motion. Events that have unfolded since the filing of Plaintiff’s motion show that Defendants intend to continue causing reputational damage to Plaintiff by engaging in activities under the PARK RIDGE TRAVEL FALCONS brand, over which Plaintiff has no control.

Significantly, on July 29, the State of Illinois issued guidance classifying football as a “high risk” activity and limiting football activities to no contact practices and trainings. <https://coronavirus.illinois.gov/sfc/servlet.shepherd/document/download/069t000000CyCndAAF> (last accessed August 5, 2020). The guidance further limits the play of out of state games to other, lower risk sports, such as archery and bowling. *Id.* Despite this clear prohibition on all games, including out-of-state play, Defendants’ website states that they currently intend to play the 2020 season at a field in Crown Point, Indiana in clear violation of Governor Pritzker’s directives related to the playing of sports during the pandemic. Supplemental Declaration of Jeffrey T. Norberg (“Norberg Supp. Decl.”), Ex. FF. This will inevitably lead to reputational damage to Plaintiff when consumers who believe the two programs are affiliated see that the Defendants’ team is not complying with state COVID-19 guidance. This is precisely the sort of reputational damage that a preliminary injunction is designed to prevent.

The Defendants’ recent posts to social media also show Defendants flaunting COVID-19

distancing guidelines at practices by failing to keep unmasked players six feet apart:



Supplemental Norberg Declaration, Ex. HH.

Plaintiff has also logged numerous additional instances of actual confusion since the motion was filed:

- On July 1, Plaintiff received a request for a refund from a parent because she “mistakenly signed [redacted] up for the wrong league.” Declaration of Katie Brania (“Brania Decl.”), Ex. AA.
- On July 9, Susan Jacob Donnelly left a comment on one of the Defendants’ Facebook photographs stating “Is this the original Park Ridge football or the new one they just started, I’m so confused.” Defendant Kilburg responded: “This is Coach Kilburg, happy to discuss with you at our 7/13 or 7/16 preview night at the Rosemont dome. Sign up at [info@prtravelfalcons.com](mailto:info@prtravelfalcons.com) for more information.” Norberg Supp. Decl., Ex. GG.
- On July 17, a parent wrote Plaintiff’s head coach, Roy Hoffman, stating “Hi Roy, We registered my son, [redacted] for falcons travel tackle football 7-8<sup>th</sup> grade. Registration #LFD 69279. Yesterday, we were at Preview session at the Rosemont Dome for the PR travel Falcons team coached by Jeff Kilburg. I’m confused at what league we registered for. Can you help.” Declaration of Roy Hoffman (“Hoffman Decl.”), Ex. CC.
- On July 18 Mr. Hoffman received an e-mail from a parent stating “Hello. I signed up my three kids for cheer, flag football and tackle. I believe I signed up my son [redacted] for the wrong Falcons teams. He was interested in pop warner falcons (I’m confused) with this, it’s my first year. Any way I can correct this?” Hoffman Decl., Ex. DD.
- On August 4 and 5 Plaintiff received a series of e-mails expressing confusion between the “Park Ridge travel program that will be playing games in Crown Point” and Plaintiff’s program. Brania Decl., Ex. BB.
- On August 5 Mr. Hoffman received an e-mail from a parent asking, “are you guys playing tackle in Crown Point this year?” Hoffman Decl., Ex. EE.

Since filing its motion, Plaintiff has also seen a significant decline in tackle football signups compared to last year. As of the date of this reply, Plaintiff's signups for tackle football are 84 players fewer than in the 2019 season: the 2019 season had 251 players and, so far, the 2020 season has 167 signups. Brania Decl., ¶ 4. Contrast that with the Defendants' statement in that they have had 60 signups for their program, and expect 20 more by the end of the signup window. Purcell Decl., ¶ 9.

### **C. This Motion was Timely Filed**

The Defendants' argument regarding Plaintiff's April 9 to June 23 delay in filing its motion for preliminary injunction ignores both the law and the reality of the national emergency this country currently faces. In the *National Financial* case cited by Defendants (Ex. B), Judge Kennelly discussed the standard for determining if a delay negated irreparable harm by quoting the Seventh Circuit as follows: “[w]hether the defendant has been lulled into a false sense of security or had acted in reliance on the plaintiff's delay influences whether we will find that a plaintiff's decision to delay in moving for a preliminary injunction is acceptable or not.” *National Financial Partners Corp.*, 2015 WL 3633987, at \*13 (quoting *Ty, Inc. v. Jones Group Inc.*, 237 F.3d at 903.). Defendants have presented no evidence that they have been lulled into a false sense of security or relied in any way on this minimal delay in seeking preliminary relief.

Defendants also ignore the events that took place between the April 9 filing of the Complaint and the June 23 motion for preliminary injunction. In Paragraph 12 of the Toulon Declaration, Plaintiff's President notes that “Park Ride Sports has had numerous discussions with the Defendants, both formal and informal, to try to convince and encourage them to use a different name.” This, on its own, excuses Plaintiff's minimal delay in bringing this motion. *See, e.g.*, *National Financial Partners Corp.*, 2015 WL 3633987, at \*13 (three-month delay in decision to file suit not unreasonable delay because plaintiff believed they could work out a solution without suing).

Defendants also ignore the national COVID-19 emergency that was occurring when Plaintiff filed its suit. In denying a motion for injunctive relief just ten days before Plaintiff filed

its complaint, Judge Seeger wrote: “Simply put, trademark infringement is an important consideration, but so is the strain that the result of the country is facing, too. It is important to keep in perspective the costs and benefits of forcing everyone to drop what they’re doing to stop the sale of knock-off unicorn products, in the midst of a pandemic.” *Art Ask Agency v. The Individuals, Corporations, Limited Liability Companies, Partnerships, and Unincorporated Associations Identified on Schedule A Hereto*, No. 20-cv-1666 Document #31 (N.D. Ill. filed March 30, 2020) (attached). At the time Plaintiff filed its complaint, the state of Illinois was under a stay-at-home order, and it was unclear when or whether signups, practices or any other events related to tackle football would be allowed to take place. Plaintiff filed its motion after the stay-at-home order was lifted and Defendants began signing up children for their program. Filing a motion for preliminary injunction any earlier, without attempting to first resolve the case informally, would have been a waste of both parties’ time and money and judicial resources.

**D. Defendants Claim of Harm if Injunctive Relief is Entered Further Supports Plaintiff’s Request for a Preliminary Injunction.**

Defendants’ claim of harm that would occur to them should a preliminary injunction be entered rests on a fundamental misunderstanding of the relief Plaintiff seeks. Plaintiff is not, as Defendants write, seeking “to stop Defendants from running a completely separate football league.” Opposition Brief at 2. The Defendants are free to run whatever sports program they want. They simply need to use a name that will not mislead the residents of Park Ridge and the surrounding communities.

Based on this misunderstanding, Defendants submit evidence of the money they have spent marketing their program, and the number of players who have signed up, closing with a claim that all this work will have been in vain if the Court requires them to use a non-confusing trademark. This is either an exaggeration or the Defendants are attributing all of the goodwill they have built in their program to the use of the FALCONS name. This cannot be what the Defendants intended to argue (because it is an express admission of liability), but it is a logical inference to be drawn from the evidence submitted by the Defendants.

Once again, the *National Financial* case, relied on by Defendants, provides helpful guidance for determining whether an order requiring Defendants to cease use of an infringing mark will be more harmful to Defendants than Plaintiffs. In that case, Judge Kennelly found that the Defendants' expenses of \$2.7 million in promoting an infringing brand did not outweigh the harm to Plaintiff of continued infringement, writing "[o]ne entering a field already occupied by another has a duty to select a trademark that will avoid confusion" and "[w]hen a defendant intentionally copies a mark, courts discount the defendant's expenditures in promoting the mark." *National Financial Partners Corp.*, 2015 WL 3633987, at \*14 (quoting *Ty, Inc.*, 237 F.3d at 903). This is precisely the situation here. The Defendants, all of whom were affiliated with Plaintiff earlier this year and therefore knew well of Plaintiff's use of PARK RIDGE FALCONS, decided to start a new organization using the nearly identical PARK RIDGE TRAVEL FALCONS trademark. The fact that Defendants have spent \$10,000-\$15,000 promoting their program is not relevant in light of this fact.

Moreover, the Defendants provide no evidence at all as to what they would be required to do if the Court ordered them to change the name. Obviously, the Defendants' social media presences and promotional signage would need to be changed, but the lack of evidence from the Defendants as to what would be required to change those accounts and signs can only lead to the conclusion that such changes would require minimal work and expenditures. And, while Defendants state that they have already signed up 60 individuals for their program, they provide no evidence as to what impact a name change will have on those signups.

In short, Defendants have failed to provide any evidence that they will be harmed by the entry of the injunction requested by the Plaintiff.

### III. CONCLUSION

For the foregoing reasons, and for the reasons set forth in Plaintiff's Opening Brief, Plaintiff respectfully requests that this Court preliminarily enjoin Defendants as reflected in Plaintiff's [Proposed] Order.

Dated: August 5, 2020

Respectfully submitted,

/s/ Jeffrey T. Norberg

Richard B. Biagi, Esq.  
Illinois Bar No. 6274572  
Jeffrey T. Norberg, Esq.  
Illinois Bar No. 6315012  
NEAL & MCDEVITT, LLC  
1776 Ash Street  
Northfield, Illinois 60093  
Telephone: (847) 441-9100  
Facsimile: (847) 441-0911

# **ATTACHMENT**

**UNITED STATES DISTRICT COURT  
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 6.3.2  
Eastern Division**

Art Ask Agency

Plaintiff,

v.

Case No.:  
1:20-cv-01666  
Honorable Steven  
C. Seeger

The Individuals, Corporations, Limited Liability  
Companies, Partnerships, and Unincorporated  
Associations Identified on Schedule A Hereto

Defendant.

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**NOTIFICATION OF DOCKET ENTRY**

This docket entry was made by the Clerk on Wednesday, March 18, 2020:

MINUTE entry before the Honorable Steven C. Seeger: Plaintiff's Ex Parte Motion for Entry of a Temporary Restraining Order (Dckt. No. [11]) is denied without prejudice. Injunctive relief is an "extraordinary remedy," and it is "not granted routinely." 11A Charles Alan Wright & Arthur Miller, Federal Practice and Procedure § 2942 (3d ed. 2019). "Perhaps the most significant single component in the judicial decision whether to exercise equity jurisdiction and grant permanent injunctive relief is the court's discretion." Id. It is a fact-specific inquiry, and "depends on the circumstances of each case." Id. Here, Plaintiff makes next to no showing that it will suffer irreparable harm unless this Court issues emergency relief. The gist of the motion is that Plaintiff will suffer harm from the sale (and the offer for sale) of counterfeit unicorn products on the internet. But Plaintiff gives this Court no information about the anticipated loss of sales. Not even an estimate. Plaintiff doesn't even tell this Court anything about its own sales, let alone anything about the volume of sales that it will lose without immediate Court action. Maybe the loss of sales is de minimis, or maybe not. But the point is that Plaintiff has made no such showing. A generic allegation of harm, without more, does not weigh heavily in the balance. On the flipside, one of the most important considerations before awarding equitable relief is the public interest. Here, Plaintiff proposes a bloated order that imposes extraordinary demands on third parties, including a wide array of technology companies and financial institutions. (Dckt. No. [30]) Plaintiff's proposed order would require immediate action, in a matter of days, from firms that have nothing to do with this case. In the meantime, the country is in the midst of a crisis from the coronavirus, and it is not a good time to put significant demands on innocent third parties. See generally General Order 20-0012 (as amended on March 17, 2020). All of them undoubtedly have (more) pressing matters on their plates right now. To put it bluntly, Plaintiff's proposed order seems insensitive to others in the current environment. Simply put, trademark infringement is an important consideration, but so is the strain that the rest of country is facing, too. It is important to keep in perspective the costs and benefits of forcing everyone to drop what they're doing to stop the sale of knock-off unicorn products, in the

midst of a pandemic. Without a showing of immediate, real-world harm, this Court cannot impose significant demands on third parties in the current environment. That said, this Court denies the motion without prejudice. Later, perhaps Plaintiff will make a better showing. But for now, Plaintiff has come up short (by a wide margin). As a reminder, the Court expects Plaintiff and its counsel to follow General Order 20-0012, including the admonition about emergency motions. Mailed notice. (jjr, )

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