

**IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA**

THE PENNSYLVANIA STATE
UNIVERSITY,

Plaintiff,

v.

VINTAGE BRAND, LLC;
SPORTSWEAR, INC., dba PREP
SPORTSWEAR; and CHAD
HARTVIGSON,

Defendants.

Case No. 4:21-cv-01091-MWB
Hon. Matthew W. Brann

JURY TRIAL DEMANDED

Brief in Support of Penn State's Motion for Attorneys' Fees

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
I. BACKGROUND	1
II. ARGUMENT.....	1
A. Penn State Is Entitled To Recover Its Reasonable Attorneys’ Fees Because This Case Is “Exceptional” Under The Lanham Act.....	1
i. Defendants’ Bad Faith Renders This Case Exceptional.....	3
a. Defendants’ Alteration Of Key Evidence Of Infringement	3
b. Defendants’ Willful Infringement	5
ii. Defendants’ Litigation Conduct Renders This Case Exceptional	6
a. Mr. Hartvigson’s Plain Disregard For His Own “Rules” For Copying Images From Memorabilia.....	6
b. VB And Mr. Hartvigson’s Misrepresentations And Discovery Stone-Walling Regarding Infringing Merchandise Bearing The Pozniak Lion Logo.....	9
c. Mr. Hartvigson’s Refusal To Answer Questions About His Own Company	12
d. Defendants’ Eleventh-Hour Decision Not To Pursue Defenses And Counterclaims	13
iii. The Need To Deter Defendants’ Willful Infringement Renders This Case Exceptional.....	15
III. CONCLUSION.....	17

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Arizona Board of Regents et al. v. Sportswear, Inc. and Vintage Brand, LLC</i> , Case No. 2:21-cv-135 (E.D. Wash.).....	4
<i>Baylor University v. Vintage Brand, LLC, Sportswear, Inc., and Chad Hartvigson</i> , Case No. 6:21-cv-409 (W.D. Tex.).....	5
<i>Benihana of Tokyo, LLC v. Benihana, Inc.</i> , No. 14 Civ. 224 (PAE), 2018 WL 3574864 (S.D.N.Y. July 25, 2018).....	16
<i>Board of Trustees of the University of Illinois v. Vintage Brand, LLC and Sportswear, Inc.</i> , Case No. 1:21-cv-6546 (N.D. Ill.).....	5
<i>Decus, Inc. v. Heenan</i> , No. 2:16-cv-5849, 2018 WL 1082842 (E.D. Pa. Feb. 27, 2018).....	5, 6
<i>Fair Wind Sailing, Inc. v. Dempster</i> , 764 F.3d 303 (3d Cir. 2014).....	2, 4, 6
<i>G6 Hospitality Franchising LLC v. Hi Hotel Grp., LLC</i> , 171 F. Supp. 3d 340 (M.D. Pa. Mar. 22, 2016).....	5
<i>G6 Hospitality Franchising LLC v. Hi Hotel Grp., LLC</i> 670 Fed. Appx. 759 (3d Cir. 2016).....	6
<i>Gentex Corp. v. Sutter</i> , 827 F. Supp. 2d 384 (M.D. Pa. 2011).....	10
<i>Octane Fitness, LLC v. ICON Health & Fitness, Inc.</i> , 572 U.S. 545 (2014).....	2, 16
<i>Parks, LLC v. Tyson Foods, Inc.</i> , No. 5:15-cv-946, 2017 WL 3534993 (E.D. Pa. Aug. 17, 2017).....	13, 14

Sabinsa Corp. v. Creative Compounds, LLC,
No. 2:04-cv-4239, 2011 WL 3236096 (D.N.J. July 27, 2011).....16

Spin Master Ltd. v. Alan Yuan’s Store,
325 F. Supp. 3d 413 (S.D.N.Y. 2018)16

Sweet St. Desserts, Inc. v. Better Bakery, LLC,
No. 5:12-cv-6115, 2017 WL 6311664 (E.D. Pa. Dec. 11, 2017).....4

*University of Georgia Athletic Association, Inc. et al. v. Vintage
Brand, LLC, Sportswear, Inc., and Chad Hartvigson*,
Case No. 1:24-cv-3640 (N.D. Ga.)4

World Entm’t Inc. v. Brown,
487 Fed. Appx. 758 (3d Cir. 2012).....16

Statutes

15 U.S.C. § 11171

15 U.S.C. § 1117(a)1

Lanham Act.....1, 2, 17

Other Authorities

Fed. R. Civ. P. Rule 5(b)(2)(E).....19

Fed. R. Civ. P. Rule 541

Pursuant to 15 U.S.C. § 1117, Rule 54 of the Federal Rules of Civil Procedure, and the Court’s inherent equitable authority, Plaintiff The Pennsylvania State University (“Penn State”) respectfully moves for entry of an order finding this case exceptional and awarding Penn State its attorneys’ fees incurred in this lawsuit.¹

I. BACKGROUND

Penn State filed its Complaint on June 21, 2021. *See* Dkt. 1. The Court presided over a jury trial from November 12-19, 2024. Following presentation of the parties’ respective evidence, the jury deliberated and returned a verdict, finding that Defendants Vintage Brand, LLC (“VB”), Sportswear Inc. d/b/a Prep Sportswear (“Sportswear”), and Chad Hartvigson (collectively, “Defendants”) were each liable for willfully infringing numerous Penn State trademarks. *See* Dkt. 335 (Verdict Form). The Court entered a Judgment consistent with the jury’s verdict on November 19, 2024. *See* Dkt. 336. Penn State is therefore the prevailing party.

II. ARGUMENT

A. Penn State Is Entitled To Recover Its Reasonable Attorneys’ Fees Because This Case Is “Exceptional” Under The Lanham Act

Section 1117 of the Lanham Act expressly provides for recovery of reasonable attorneys’ fees by the prevailing party in “exceptional cases.” *See* 15 U.S.C. §

¹ Should the Court agree and find this case exceptional under the Lanham Act, Penn State will promptly submit evidence of its reasonable and necessary attorneys’ fees pursuant to the Court’s order.

1117(a) (“The court in exceptional cases may award reasonable attorney fees to the prevailing party.”). The Third Circuit applies the flexible criteria set forth in *Octane Fitness* when evaluating whether a case is “exceptional” under the Lanham Act. See *Fair Wind Sailing, Inc. v. Dempster*, 764 F.3d 303, 315 (3d Cir. 2014) (adopting the “exceptional case” standard set forth in *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 572 U.S. 545 (2014)). The “exceptional” standard “demands a simple discretionary inquiry; it imposes no specific evidentiary burden.” *Octane Fitness*, 572 U.S. at 554.

“There is no precise rule or formula for making these determinations.” *Id.* The Supreme Court has, however, instructed that a case can be “exceptional” when it “stands out from others with respect to the substantive strength of a party’s litigating position (considering both the governing law and the facts of the case) or the unreasonable manner in which the case was litigated,” and courts may take into account “considerations of compensation and deterrence.” *Id.* Ultimately, “[w]hether litigation positions or litigation tactics are ‘exceptional’ enough to merit attorneys’ fees must be determined by district courts in the case-by-case exercise of their discretion, considering the totality of the circumstances.” *Fair Wind Sailing*, 764 F.3d at 315 (internal quotes omitted). “The losing party’s blameworthiness may well play a role in a district court’s analysis of the ‘exceptionality’ of a case,” but culpability is not a requirement to award attorneys’ fees. *Id.*

i. Defendants’ Bad Faith Renders This Case Exceptional

From Mr. Hartvigson’s bad-faith selection and use of Penn State’s trademarks for Defendants’ products to Defendants’ alteration and attempted concealment of evidence during discovery and leading up to trial, Defendants’ bad faith is plain and justifies a finding that this case is exceptional.

a. Defendants’ Alteration Of Key Evidence Of Infringement

While this lawsuit was pending, and prior to producing sample products to Penn State, Mr. Hartvigson altered key evidence in a transparent effort to conceal Defendants’ bad-faith infringement. Prior to this lawsuit, one of the many Penn State trademarks selected by Mr. Hartvigson to copy and reproduce on infringing products was the “S Lion Logo” (reproduced, at left, below). The S Lion Logo selected by Mr. Hartvigson included a “TM” symbol in the bottom right corner of the image, signifying Penn State’s use of the logo as a trademark. Despite originally copying the logo as-is, TM symbol and all (reproduced, at right, below), Mr. Hartvigson and VB altered the copied image to remove the “TM” symbol during the pendency of this litigation. *See* Tr. Transcript (Nov. 18, 2024) at 62:20-65:18.



It was only then, after altering the image that was actually applied to the infringing goods to remove the TM symbol, that Defendants produced to Penn State samples of the infringing products (bearing the altered image). *See id.* These sanitized versions of Defendants’ products had, of course, never actually been offered for sale.

Mr. Hartvigson’s alteration of evidence of Defendants’ infringement is inexcusable and, even standing alone, justifies a finding that this case is exceptional. *See, e.g., Sweet St. Desserts, Inc. v. Better Bakery, LLC*, No. 5:12-cv-6115, 2017 WL 6311664, at *3 (E.D. Pa. Dec. 11, 2017) (“This court has found a case to be exceptional where there was direct evidence of misconduct occurring during discovery.”). Having been sued on many occasions,² Defendants are well aware of

² By way of example, Defendants have been involved in the following trademark-related lawsuits: *Arizona Board of Regents et al. v. Sportswear, Inc. and Vintage Brand, LLC*, Case No. 2:21-cv-135 (E.D. Wash.); *University of Georgia Athletic Association, Inc. et al. v. Vintage Brand, LLC, Sportswear, Inc., and Chad*

the rules regarding spoliation. Moreover, removing the TM symbol from the products to be shown at trial was a clear attempt to mislead the jury as to the nature and appearance of the products Defendants actually sold, all of which bore the TM symbol.

b. *Defendants' Willful Infringement*

There can be no legitimate dispute that Defendants, and Mr. Hartvigson in particular, were well aware of Penn State and its trademarks when selecting and copying the images used on the infringing products. The jury's determination that Defendants willfully infringed Penn State's trademarks should therefore come as no surprise. *See generally* Dkt. 335. While not itself dispositive of the issue, Defendants' willful infringement further supports a finding that this case is exceptional. *See, e.g., Decus, Inc. v. Heenan*, No. 2:16-cv-5849, 2018 WL 1082842, at *3 (E.D. Pa. Feb. 27, 2018) (noting that a jury's willful infringement determination can play a role in the district court's analysis of the exceptionality of a case); *Hospitality Franchising LLC v. Hi Hotel Grp., LLC*, 171 F. Supp. 3d 340, 349 G6 (M.D. Pa. Mar. 22, 2016) ("The jury's conclusion that [Defendants] 'intentionally or willfully' infringed [Plaintiff's] trademarks further supports the

Hartvigson, Case No. 1:24-cv-3640 (N.D. Ga.); *Board of Trustees of the University of Illinois v. Vintage Brand, LLC and Sportswear, Inc.*, Case No. 1:21-cv-6546 (N.D. Ill.); and *Baylor University v. Vintage Brand, LLC, Sportswear, Inc., and Chad Hartvigson*, Case No. 6:21-cv-409 (W.D. Tex.).

finding that this case is ‘exceptional.’”).³ This is especially so here, as Defendants continued to infringe despite receiving a pre-suit cease and desist demand from Penn State. *See, e.g., Decus*, 2018 WL 1082842, at *3 (noting that a defendant’s continued trademark infringement after receipt of a cease and desist letter is a factor to consider when evaluating the exceptionality of a case). The jury’s finding that Defendants were willful infringers is indicative of bad faith, and supports an award of attorneys fees here.

ii. Defendants’ Litigation Conduct Renders This Case Exceptional

Defendants’ overall litigation conduct in this action unnecessarily increased Penn State’s expenses and constitutes a second, independent basis to find this case exceptional. *See Fair Wind Sailing*, 764 F.3d at 315 (citations omitted).

a. *Mr. Hartvigson’s Plain Disregard For His Own “Rules” For Copying Images From Memorabilia*

Throughout this lawsuit, and even at trial, Mr. Hartvigson insisted that the designs on Defendants’ infringing products were selected based on four alleged “rules”:

- The image copied onto the products is from pre-1989 memorabilia;
- There is no copyright symbol on the copied image;

³ A portion of the Court’s decision was vacated and remanded on appeal, 670 Fed. Appx. 759 (3d Cir. 2016), but the exceptional case finding was left intact.

- The copied image is not currently used with educational services or athletics by the college from which it originated; and
- The copied image is “unique.”

These “rules” were first proclaimed in response to Penn State’s interrogatories. *See* Ex. A (VB’s Response to Penn State’s First Set of Interrogatories) at 6-7 (Interrogatory No. 3) (summarizing the “rules” and noting the “Chad Hartvigson is responsible for the acquisition of Vintage Brand’s collection of memorabilia and the selection of such artwork.”). The “rules” were reiterated in a sworn declaration submitted by Mr. Hartvigson in support of VB’s motion for summary judgment. *See* Dkt. 116-2, ¶ 15. And Mr. Hartvigson even testified regarding these “rules” during the trial in this lawsuit. *See* Tr. Transcript (Nov. 18, 2024) at 37:5-38:9, 44:7-9, 46:18-22, 49:16-18.

Yet, despite repeatedly claiming to strictly follow these “rules” when selecting images to copy for VB’s products, trial testimony in this case revealed that Mr. Hartvigson followed *none* of his “rules” when it comes to copying the images used on the infringing merchandise. *See, e.g.*, Tr. Transcript (Nov. 18, 2024) at 39:11-43:13 (testimony regarding an image copied and applied to infringing goods from, at the earliest, 2012); *id.* at 46:10-17 (testimony regarding use of the Pozniak lion despite knowing it was used with a copyright notice); *id.* at 46:18-49:15 (testimony admitting that none of the Penn State trademarks selected by Mr. Hartvigson satisfy

the “rule” that they not be used with educational services or athletics); *id.* at 51:9-55:24 (testimony regarding widespread and decades-long use of various Penn State trademarks selected by Mr. Hartvigson to be used on infringing products).

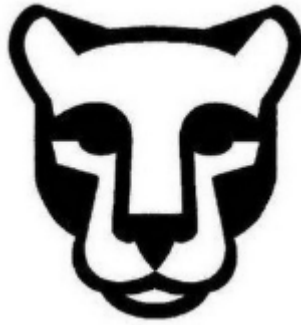
As shown at trial, Mr. Hartvigson even went so far as to repeatedly claim that one of the images he used came from “historic” memorabilia from the 1950’s, when in fact the purported memorabilia was a recently created sticker. *See* Tr. Transcript (Nov. 15, 2024) at 119:17-122:23, 149:4-25, 161:19-162:23; Tr. Transcript (Nov. 18, 2024) at 39:11-43:3. This blatant falsehood was made under oath in open court, and even offered in counsel’s opening. When confronted, Mr. Hartvigson argued (without any basis) that the “image” was “old” even if the item itself was not. *See* Tr. Transcript (Nov. 18, 2024) at 39:11-43:3. This of course was a total reversal of his prior testimony (and his counsel’s opening presentation) that the items in Mr. Hartvigson’s collection were genuine historical memorabilia, carefully dated through historical research, that Mr. Hartvigson was preserving. *See* Tr. Transcript (Nov. 15, 2024) at 114:8-115:22. Notably, on cross examination, Mr. Hartvigson did not claim to have been unaware that the item he was presenting as a historic collectible was no such thing. *See* Tr. Transcript (Nov. 18, 2024) at 39:11-43:3. Claiming falsely under oath that an item is genuine and historic (and relying on that claim as a defense to willful trademark infringement) is serious litigation misconduct.

Defendants' reliance on these "rules" as an attempted shield from liability during discovery and dispositive motion practice, despite not actually following these rules with respect to the images relevant to this case, needlessly complicated the lawsuit and caused Penn State to expend unnecessary resources litigating (and disproving) ultimately irrelevant claims.⁴ The evidence adduced at trial showed that these "rules" were a sham. Defendants' advancement of this defense was unreasonable and renders this case exceptional.

b. *VB And Mr. Hartvigson's Misrepresentations And Discovery Stone-Walling Regarding Infringing Merchandise Bearing The Pozniak Lion Logo*

From Penn State's pre-suit cease and desist demand all the way through trial, Penn State has always asserted that Defendants' use of the Pozniak Lion Logo (reproduced below) constituted trademark infringement. And the jury agreed. *See generally* Dkt. 335. Despite the undeniable relevance of infringing goods bearing the Pozniak Lion Logo, Defendants needlessly complicated discovery through misrepresentations and omissions about the Pozniak Lion, requiring Penn State to expend unnecessary resources all the way through trial.

⁴ This failure to follow self-proclaimed "rules" for selecting images for use on products is also illustrative of Mr. Hartvigson's bad-faith selection and use of Penn State's trademarks on Defendants' infringing goods.



In discovery for use at trial, Penn State sought exemplary samples of the infringing merchandise—including a sample of infringing merchandise bearing the Pozniak Lion Logo. Despite Penn State’s requests, Defendants never produced such a sample, instead making the dubious claim that they were unable to reproduce the merchandise. This is so, according to Defendants, because after receiving Penn State’s pre-suit cease and desist letter, they permanently deleted all images in their possession of the Pozniak Lion. Even if this were true, this would constitute intentional spoliation. *See Gentex Corp. v. Sutter*, 827 F. Supp. 2d 384, 390 (M.D. Pa. 2011) (“Spoliation is defined as ‘[t]he intentional destruction, mutilation, alteration, or concealment of evidence.’”) (citation omitted). Yet, external evidence indicates that Defendants were perfectly capable of providing discovery on the Pozniak Lion (and samples of the relevant merchandise)—Google search results continued to display images of the infringing merchandise and links to the VB website featuring merchandise with the Pozniak Lion after this lawsuit was filed. *See Ex. B* (webpage capture of Google search results showing infringing goods bearing the Pozniak Lion). As such, Defendants’ claimed inability to provide a

sample of the infringing merchandise bearing the Pozniak Lion Logo is plainly a misrepresentation and resulted in unnecessary additional litigation expenses to Penn State.

Further complicating the issue, when asked for information regarding sales of the infringing products, VB provided an interrogatory response that conspicuously omitted any information regarding products bearing the Pozniak Lion Logo. When pressed for disclosure of this notably absent information, Defendants represented that they had sold just two items bearing the Pozniak Lion Logo. *See* Ex. C (Letter from Defendants' Counsel Dated Oct. 27, 2022) at 6-7. Yet, Penn State's subsequent investigation of the matter revealed this representation to be patently inaccurate (and to have significantly understated the relevant sales). *See* Plaintiff's Trial Ex. 30 (SPORTSWEAR_PSU_000001) (showing over 50 sales of merchandise bearing the infringing Pozniak Lion Logo, reflected by the "6268" product ID); *see also* Dkt. 313-1 (Depo. of Sportswear) at 12:14-13:23 (explaining that product ID 6268 corresponds to products bearing the infringing Pozniak Lion Logo). The motivation for Defendants to obfuscate with respect to the Pozniak Lion is clear—Defendants claimed to respect copyright law, and their own memorabilia showed that the Pozniak Lion was used with a copyright symbol. *See* Tr. Transcript (Nov. 18, 2024) at 44:7-46:17.

All told, Defendants' misrepresentation regarding the scope of sales of merchandise bearing the Pozniak Lion Logo and their refusal to produce a sample of such merchandise needlessly hampered Penn State's ability to prepare its case. This resulted in unnecessary additional expenditures of time and resources, including having to prove Defendants' infringement of the Pozniak Lion through alternate evidence at trial.

c. *Mr. Hartvigson's Refusal To Answer Questions About His Own Company*

In yet another example of Defendants needlessly obstructing Penn State's ability to prepare its case, Mr. Hartvigson—at the direction of his counsel—disclaimed knowledge and refused to answer questions regarding his own company and its operations. This directly led to the termination of his deposition as the corporate representative of Sportswear. Subsequently, Penn State sought the Court's intervention and, after fully considering the issues, the Court agreed with Penn State and Ordered that Mr. Hartvigson sit for another deposition, at the offices of Penn State's outside counsel. Thus, while Penn State ultimately was able to depose Mr. Hartvigson as corporate representative for Sportswear, doing so required unnecessary disputes—both between the parties and before the Court—that needlessly increased Penn State's litigation expenses.

d. *Defendants' Eleventh-Hour Decision Not To Pursue Defenses And Counterclaims*

Throughout this litigation, Defendants advanced an antitrust-based affirmative defense and a counterclaim seeking cancellation of Penn State's University Seal trademarks. *See* Dkt. 25 (VB's Answer) at 31, 34-37; Dkt. 76 (Hartvigson's Answer to Second Amended Complaint) at 42; Dkt. 77 (Sportswear's Answer to Second Amended Complaint) at 57. Defendants entirely failed to develop any evidence to support these theories throughout discovery but continued to assert them through summary judgment. Despite advancing these claims for several years during the litigation, Defendants did not raise these claims to the jury or elicit any evidence to support them at trial. Defendants' eleventh-hour decision not to prosecute these affirmative defenses and counterclaim needlessly increased Penn State's litigation and trial preparation expenses.

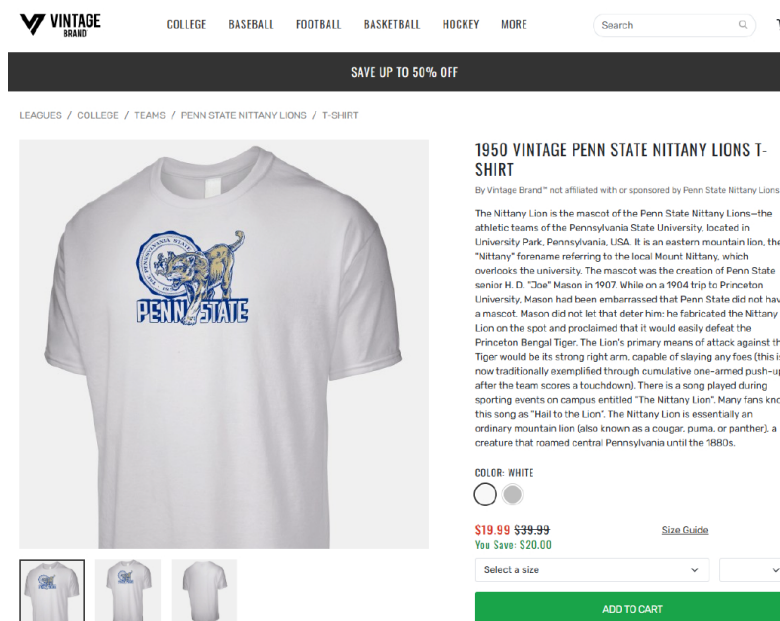
Indeed, the antitrust-based affirmative defense (asserted by each Defendant) was the subject of a motion *in limine* filed by Penn State. *See* Dkts. 235, 236. Rather than withdrawing this defense, Defendants fought Penn State's motion, plainly signaling an intention of advancing the defense at trial. *See* Dkt. 246. Yet, after the Court denied Penn State's motion, and on the eve of trial, Defendants informed the Court and Penn State—for the first time—that they would no longer be pursuing this affirmative defense. This is precisely the type of bad faith dispute that is “the hallmark of a case that has been litigated in an unreasonable manner.” *See Parks*,

LLC v. Tyson Foods, Inc., No. 5:15-cv-946, 2017 WL 3534993, at *1 (E.D. Pa. Aug. 17, 2017) (citation omitted).

Similarly, VB advanced a counterclaim seeking cancellation of Penn State's University Seal trademarks on the basis that they have "as [their] primary feature the Coat of Arms of the Commonwealth of Pennsylvania." *See* Dkt. 72 at 47. At summary judgment, the Court made clear to Defendants that to prevail on this Counterclaim, they must put on evidence as to whether consumers perceive the University Seal as a government insignia. *See* Dkt. 194 at 91-93. Despite advancing this counterclaim for over two years with no indication that it would be withdrawn, VB presented no argument and elicited no such evidence to support this counterclaim at trial. Penn State was therefore forced to expend resources preparing a rebuttal case with respect to the University Seal that proved totally unnecessary when Defendants failed to prosecute their own claim. Moreover, after effectively abandoning this counterclaim, VB stated in chambers that the Court should take judicial notice of two previously-undisclosed exhibits showing the Seal of the State of Pennsylvania and demanded that this Counterclaim be included on the verdict form and in the jury instructions. This too is illustrative of the wasteful litigation engaged in by Defendants. *See Parks*, 2017 WL 3534993, at *1.

iii. The Need To Deter Defendants' Willful Infringement Renders This Case Exceptional

Despite Defendants' testimony at trial that it had removed all Penn State products from the Vintage Brand website, and despite the jury finding Defendants' conduct constitutes willful infringement, infringing Penn State merchandise remains available on the Vintage Brand website. This is yet another, independent reason to find this case exceptional. Indeed, as of November 27, 2024, the VB website continued to offer numerous shirts, sweaters, hats, mugs, and other memorabilia bearing already-adjudicated infringing trademarks owned by Penn State. As just one example, the following t-shirt—bearing both the PENN STATE wordmark and Penn State's University Seal trademark—remained available for sale on the VB website:⁵



⁵ See Ex. D (webpage capture of the Vintage Brand website offering for sale a t-shirt bearing Penn State trademarks).

VB and Mr. Hartvigson's disregard for Penn State's rights and the judicial process makes this case exceptional. *See, e.g., World Entm't Inc. v. Brown*, 487 Fed. Appx. 758, 763 (3d Cir. 2012) (overruling a challenge to an award of attorneys' fees where defendant continued to infringe after a cease and desist letter and the district court's entry of a default judgment); *see also Benihana of Tokyo, LLC v. Benihana, Inc.*, No. 14 Civ. 224 (PAE), 2018 WL 3574864, at *11 (S.D.N.Y. July 25, 2018) (finding that ongoing infringement was evidence favoring an "exceptional case" finding under the *Octane Fitness* standard). Simply put, Defendants have failed to cease offering infringing merchandise—despite Penn State's cease and desist letter, years of litigation, their own representations in open court, and a jury verdict finding willful infringement. Defendants' persistent infringing conduct confirms that this case is exceptional and that an award of attorneys' fees is necessary to deter their ongoing infringement. *See Sabinsa Corp. v. Creative Compounds, LLC*, No. 2:04-cv-4239, 2011 WL 3236096, at *10 (D.N.J. July 27, 2011) (contrasting cases where adoption of an infringing mark was intentional—such that attorneys' fees were justified as a deterrent—with cases in which adoption of the mark was innocent—and thus a deterrent was not warranted); *Spin Master Ltd. v. Alan Yuan's Store*, 325 F. Supp. 3d 413, 427 (S.D.N.Y. 2018) (finding attorneys' fees appropriate to deter willful infringement).

III. CONCLUSION

Defendants are serial infringers who spent years profiting off of the hard-earned reputations of educational institutions of all sizes—including Penn State. In this case, Defendants have been found liable for willfully infringing Penn State’s trademarks. Defendants’ willful infringement, particularly when paired with their bad faith selection and adoption of Penn State’s trademarks for use on the infringing products and their unreasonable litigation conduct, justifies a finding that this case is exceptional under the Lanham Act. As such, Penn State respectfully requests that the Court find this case exceptional and award Penn State its attorneys’ fees.

Dated: December 3, 2024

Respectfully submitted,

McGUIREWOODS LLP

By: /s/ Lucy Jewett Wheatley

Lucy Jewett Wheatley (*Pro Hac Vice*)

David Finkelson (*Pro Hac Vice*)

Claire Hagan Eller (*Pro Hac Vice*)

800 East Canal Street

Richmond, VA 23219

Tel: (804) 775-4320

Fax: (804) 698-2130

Email: lwheatley@mcguirewoods.com

Email: dfinkelson@mcguirewoods.com

Email: celler@mcguirewoods.com

Kyle S. Smith (*Pro Hac Vice*)

501 Fayetteville St., Ste. 500

Raleigh, NC 27601

Tel: 919-835-5966

Fax: 919-755-6607

Email: ksmith@mcguirewoods.com

Jessica S. Maupin (*Pro Hac Vice*)

2601 Olive Street, Ste. 2100

Dallas, TX 75201

Tel: 214-932-6400

Fax: 214-932-6499

Email: jmaupin@mcguirewoods.com

Courtney S. Schorr

Pa. I.D. No. 317370

Tower Two Sixty – Suite 1800

260 Forbes Avenue

Pittsburgh, PA 15222

Tel: 412-667-6000

E-mail: cschorr@mcguirewoods.com

*Attorneys for The Pennsylvania State
University*

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing Motion for Attorneys' Fees with the Clerk of the Court using the CM/ECF system on December 3, 2024, which constitutes service on Defendants pursuant to Fed. R. Civ. P. 5(b)(2)(E):

Jodi S. Wilenzik, Esquire
PA Supreme Court I.D. No. 89205
Marc H. Perry, Esquire
PA Supreme Court I.D. 6810
POST & SCHELL, P.C.
Three Logan Square
1717 Arch Street, 24th Floor
Philadelphia, PA 19103
jwilenzik@postschell.com
mperry@postschell.com

Leslie Vander Griend, Esquire (Pro Hac Vice)
John Fetters, Esquire (Pro Hac Vice)
Bradford J. Axel (Pro Hac Vice)
Joshua D. Harms (Pro Hac Vice)
Valerie A. Walker (Pro Hac Vice)
Theresa H. Wang (Pro Hac Vice)
STOKES LAWRENCE, P.S.
1420 Fifth Avenue, Suite 3000
Seattle, WA 98101
Leslie.VanderGriend@stokeslaw.com
John.Fetters@stokeslaw.com
josh.harms@stokeslaw.com
valerie.walker@stokeslaw.com
bj@stokeslaw.com
Theresa.wang@stokeslaw.com

Mark P. McKenna (Pro Hac Vice)
Christopher Jon Sprigman (Pro Hac Vice)
LEX LUMINA, PLLC
745 Fifth Avenue, Suite 500
New York, NY 10151

mark@lex-lumina.com
chris@lex-lumina.com

By: /s/ Lucy Jewett Wheatley
Lucy Jewett Wheatley (*Pro Hac Vice*)
McGuireWoods LLP
800 East Canal Street
Richmond, VA 23219
Tel: (804) 775-1368
Fax: (804) 698-2130
Email: lwheatley@mcguirewoods.com

*Attorney for The Pennsylvania State
University*