

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION**

LOUISIANA COLLEGE d/b/a
“LOUISIANA CHRISTIAN UNIVERSITY”

NO. _____

VERSUS

JUDGE: _____

LUBBOCK CHRISTIAN UNIVERSITY

MAGISTRATE
JUDGE: _____

JURY TRIAL DEMANDED

COMPLAINT

NOW INTO COURT, comes plaintiff, LOUISIANA COLLEGE d/b/a “LOUISIANA CHRISTIAN UNIVERSITY” (“Plaintiff”), who files this Complaint against defendant, LUBBOCK CHRISTIAN UNIVERSITY (“Defendant”), and, by way of this Court’s federal question jurisdiction, petitions the Court and alleges as follows:

NATURE OF THE ACTION

1.

In this action, Plaintiff seeks a declaratory judgment pursuant to 28 U.S.C. 2201, declaring the rights and other legal relations of the parties arising out of the Defendants’ claims for alleged trademark infringement, pursuant to the Lanham Act, 15 U.S.C. 1125.

PARTIES

2.

Plaintiff is a Louisiana nonprofit corporation with its domicile address at 1140 College Dr., Pineville, Louisiana 71359, and may be served through its publicly identified agent for service of process, Dr. Rick Brewer, at 1140 College Dr., Pineville, Louisiana 71359. Although Plaintiff’s legal name is “Louisiana College,” it operates under its trade name, “Louisiana

Christian University," which has been registered with the Louisiana Secretary of State since November 1, 2021.

3.

Defendant is a Texas nonprofit corporation with its address located at 5601 19th St., Lubbock, Texas 79407, and may be served through its publicly identified agent for service of process, CT Corporation System, 3867 Plaza Tower Dr., Baton Rouge, Louisiana 70816.

JURISDICTION AND VENUE

4.

This action for declaratory relief seeks to resolve claims by Defendant that Plaintiff's use of the acronym "LCU" constitutes trademark infringement in violation of the Lanham Act, 15 U.S.C. 1125. Defendant bases its claims against Plaintiff upon Defendant's federally registered trademark "LCU" (registration number 6453034) (the "Mark"). Plaintiff seeks a declaratory judgment from this Court that its use of the acronym "LCU" does not infringe upon Defendant's Mark.

5.

This Court has jurisdiction of the subject matter of this action which raises questions of federal law pursuant to 15 U.S.C. § 1121, 28 U.S.C. 2201, 28 U.S.C. §§1331 and 1338.

6.

Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2) as this is the "judicial district in which a substantial part of the events or omissions giving rise to the claim occurred..." Plaintiff's actions which Defendant claims amount to trademark infringement have occurred and continue to occur primarily within this judicial district.

7.

In personam jurisdiction over the Defendant in this forum is appropriate because a substantial part of the events and actions giving rise to Defendant's claim for trademark infringement occur within the State of Louisiana; Plaintiff's activities, which Defendant alleges infringe its Mark, occur primarily in Pineville, Louisiana.

8.

Additionally, Defendant registered to do business in the State of Louisiana on January 22, 2016. It has a registered office in Louisiana at 3867 Plaza Tower Dr., Baton Rouge, Louisiana 70816 and a principal business establishment in Louisiana of 3867 Plaza Tower Dr., Baton Rouge, Louisiana 70816.

BACKGROUND ON PLAINTIFF

9.

Plaintiff is a private, Southern Baptist institution in Pineville, Louisiana. Upon information and belief, Pineville has an estimated population of approximately 15,000.

10.

Plaintiff was founded in 1906 and has a rich history and loyal alumni base. It has significant goodwill and a state-wide reputation as the only Baptist, four-year institution in the State of Louisiana.

11.

Although Plaintiff began as a strictly undergraduate institution, over the years it began to add graduate programs, and it received accreditation for its first graduate program in June of 2008.

12.

In recognition of the fact that it offered both undergraduate and graduate degrees, Plaintiff decided to change its name to reflect its university status. Accordingly, Plaintiff adopted the trade name "Louisiana Christian University" in 2021.

13.

Plaintiff registered "Louisiana Christian University" with the Louisiana Secretary of State on or about November 1, 2021, pursuant to La. R.S. § 51:214(A), which permits "any person who adopts and uses a mark or name in this state may file in the office of the secretary of state, on a form to be furnished by the secretary of state, an application for registration of that mark or name..." The statute defines "Person" to include a "private educational institution." La. R.S. § 51:211(E).

14.

At all times since November 1, 2021, Plaintiff has operated under the name "Louisiana Christian University" and has adopted the following logo:



15.

A common practice in higher education is for institutions, their students, faculty, administrators, and other constituents, and members of the public at large to refer to these

institutions by an acronym using the first letters of each word of their names. These acronyms are used for ease of reference and as a means of avoiding the constant burden of referring to the full-length, proper names of the institutions in casual conversation.

16.

Upon information and belief, this practice is widespread throughout the United States for virtually all institutions of higher education.

17.

Plaintiff is no exception in that students, faculty, administrators, and other constituents, and members of the public at large refer to Plaintiff as "LCU" as a means of shortening "Louisiana Christian University." Plaintiff's use of the acronym "LCU" rarely appears in isolation, but usually is accompanied by the full name "Louisiana Christian University."

18.

Upon information and belief, Defendant's athletic teams participate in the National Association of Intercollegiate Athletics (NAIA).

Background on Defendant

19.

Upon information and belief, Defendant is a private university in West Texas. Defendant is affiliated with the Churches of Christ denomination, and has adopted the following logo:



20.

Defendant is located in Lubbock, Texas, which, upon information and belief, has an estimated population in its metropolitan area of approximately 329,000.

21.

Upon information and belief, Defendant emphasizes its location within the City of Lubbock as an "awesome place to live" and uses its geographical location as a marketing tool to attract prospective students. According to Defendant's website: "When you come to LCU, you will be within 20 miles of 1,800 retail stores, 337 restaurants, 65 public parks, 34 movie theater screens, nine golf courses, and nine libraries, as well as the Preston Smith Lubbock International Airport." (<https://lcu.edu/about-us/why-lcu>).

22.

Upon information and belief, Defendant's athletic teams participate in the NCAA Division II.

Defendant's Claims of Trademark Infringement

23.

In December of 2022, Defendant's President, Dr. Scott McDowell, sent a letter to Dr Rick Brewer, the President of Plaintiff, stating: "It was brought to our attention recently that Louisiana Christian University has undergone a name change...to Louisiana Christian University....[W]e wish to inform your institution that your use of the 'LCU' acronym encroaches on our trademark protected property."

24.

On January 17, 2023, undersigned counsel, on behalf of Plaintiff, responded to Dr. McDowell's letter, denying that the use of the acronym "LCU" constitutes trademark infringement under the Lanham Act, 15 U.S.C. 1125, or any other law.

25.

On or about February 27, 2023, an attorney for Defendant responded to the 01/17/23 letter from undersigned counsel, once again insisting that Plaintiff's use of the acronym "LCU" infringed on the Mark and stating: "We are prepared to vigorously defend our intellectual property." The letter concluded by stating: "Lubbock Christian University will again request an amicable discussion between our institution[s] on this matter. But we are prepared to defend our right to our trademark if necessary."

26.

Over the course of the next few months, the Presidents for both institutions engaged in occasional informal conversations during which they attempted to amicably resolve the parties' dispute.

27.

Dr. McDowell sent another letter to Dr. Brewer proposing that Plaintiff "consider adopting the initials "LC," instead of our institution[']s trademark protected LCU brand." Given its substantial investment in its new name and branding and its belief its use of "LCU" does not infringe upon Defendant's Mark, Plaintiff declined to adopt this proposal.

28.

On July 7, 2023, the two Presidents participated in a telephone conversation. When the parties could not reach an amicable resolution, Dr. McDowell threatened to sue Plaintiff.

PLAINTIFF'S USE OF "LCU" DOES NOT INFRINGE UPON THE MARK

29.

"The Lanham Act makes liable '[a]ny person who...uses in commerce any word, term, name, symbol, or device,...which...is likely to cause confusion, or to cause mistake...as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person.'" (emphasis added) *Bd. of Regents of the Univ. of Houston Sys. on Behalf of the Univ. of Houston Sys. & Its Member Institutions v. Houston Coll. of L., Inc.*, 214 F. Supp. 3d 573, 582 (S.D. Tex. 2016). "Thus, the gravamen for any action of trademark infringement or common law unfair competition is whether the challenged mark is likely to cause confusion....The idea is that trademarks are 'distinguishing' features which lower consumer search costs and encourage higher quality production by discouraging free-riders." (emphasis added) *Union Nat. Bank of Texas, Laredo, Tex. v. Union Nat. Bank of Texas, Austin, Tex.*, 909 F.2d 839, 843–44 (5th Cir. 1990).

30.

In order to prevail on a claim for trademark infringement, Defendant would need to "show that [Plaintiff's] use of the mark creates a likelihood of confusion in the minds of potential customers as to the source, affiliation, or sponsorship of the product at issue." *Bd. of Supervisors for Louisiana State Univ. Agric. & Mech. Coll. v. Smack Apparel Co.*, 550 F.3d 465, 478 (5th Cir. 2008).

31.

In order to prevail on a claim of trademark infringement, it is insufficient for Defendant to simply point to Plaintiff's use of the acronym "LCU." Instead, Defendant must show there is a likelihood or probability that potential students of Defendant will confuse Plaintiff with Defendant simply by use of the acronym "LCU."

32.

Defendant's trademark application describes the Mark as follows:

The color(s) gray, blue, and white is/are claimed as a feature of the mark. The mark consists of the stylized acronym "LCU"; The letters "L" and "U" appear superimposed over the letter "C"; the letter "C" is larger in size than the letters "L" and "U"; the left sides of each part of the letters are white; the right side of each part of the letters are gray; the acronym "LCU" appears on a blue background; the blue background is contained by a thin gray line which appears outside the acronym.

33.

Plaintiff's use of the acronym "LCU" rarely appears in isolation, but usually is accompanied by the full name "Louisiana Christian University." When the acronym is used with a logo, Plaintiff employs the logo with the colors orange, blue, and white. In contrast to the Mark, the letters "L," "C," and "U" are roughly equal in size with "L" being slightly higher than "C," and "C" being slightly higher than "U." The sequence of the letters from left to right creates a step-down effect. The letters are bordered with the colors, orange and blue. The acronym "LCU" appears on a white background. Below "LCU" is the head of the school's mascot, a wildcat, which is colored in orange, blue, and white.

34.

The following is a side-by-side comparison of the two logos:



35.

In evaluating likelihood of confusion, the U.S. Fifth Circuit considers the following, non-exhaustive list of "digits of confusion":

- (1) the strength of the plaintiff's mark;
- (2) the similarity of design between the marks;
- (3) the similarity of the services;
- (4) the identity of retail outlets and purchasers;
- (5) the similarity of advertising media used;
- (6) the defendant's intent;
- (7) the evidence of actual confusion; and
- (8) the degree of care exercised by potential purchasers.

Bd. of Regents of the Univ. of Houston Sys. on Behalf of the Univ. of Houston Sys. & Its Member Institutions v. Houston Coll. of L., Inc., 214 F. Supp. 3d 573, 584 (S.D. Tex. 2016). "No single factor is dispositive, and a finding of a likelihood of confusion need not be supported by a majority of the factors." *Bd. of Supervisors for Louisiana State Univ. Agric. & Mech. Coll. v. Smack Apparel Co.*, 550 F.3d 465, 478 (5th Cir. 2008).

FACTOR 1: THE STRENGTH OF THE PLAINTIFF'S MARK

36.

Courts have usually classified marks similar to "LCU" in the higher education context as either "generic" or "descriptive," which are considered relatively lacking in conceptual strength. *See, e.g., id.; Bd. of Regents of the Univ. of Houston Sys. on Behalf of the Univ. of Houston Sys. & Its Member Institutions v. Houston Coll. of L., Inc.*, 214 F. Supp. 3d 573, 585 (S.D. Tex. 2016).

37.

Moreover, "[t]he Fifth Circuit has recognized...that extensive third-party use of a similar mark can be impressive evidence that there would be no likelihood of confusion. District courts must consider all third-party use of a mark—even if the use occurs outside of the plaintiff's particular industry—in determining whether the plaintiff's mark is strong or weak." *Houston Coll. of L., Inc.*, 214 F. Supp. 3d at 586.

38.

A search of the U.S. Patent and Trademark Office's database reveals an identical federally registered trademark "LCU" (registration number 4293972). In other words, at least one other person has a registered trademark identical to "LCU."

39.

Moreover, a simple search of the acronym "LCU" conducted on a common online search engine produced seventeen (17) instances of third-party usage, including:

Leominster Credit Union
Life Christian University
Lincoln Christian University
Lee County Utilities
Landing Craft Utility (used by U.S. Navy)

LCU Fund for Women's Education
Lifestyle Christian University
LCU Properties
LCU Modulo (product by Modulo One)
LCU Reporting Framework (used by Harvard Pilgrim HealthCare)
Laboratories Credit Union
Liquid Calibration Unit (used by Ionicon)
Leyden Credit Union
Lakeside Credit Union
LCU Report (used by IBM)
Lowland Credit Union
Lebanese Canadian University

40.

Notably, the list above includes four (4) universities who use the acronym "LCU." Perhaps even more relevant is the fact that three of those four universities using the acronym "LCU" have names that include an "L" word as the first word followed by "Christian University" (Life Christian University, Lincoln Christian University, and Lifestyle Christian University).

41.

Also relevant is the fact that there is a crowded field of higher education names that involve "_____ Christian University," including, but not limited to:

Abilene Christian University ("ACU")
Arizona Christian University ("ACU")
Colorado Christian University ("CCU")
Kentucky Christian University ("KCU")
Mid-Atlantic Christian University ("MACU")
Ohio Christian University ("OCU")
Oklahoma Christian University ("OC")
Southwestern Christian University ("SCU")
Texas Christian University ("TCU")

Upon information and belief, such extensive third-party use of identical or substantially similar marks significantly weakens the Mark.

FACTOR 2: THE SIMILARITY OF DESIGN BETWEEN THE MARKS

42.

"The second factor in the likelihood-of-confusion analysis requires the factfinder to compare the plaintiff's marks with the defendant's marks and measure their similarity." *Fla. Int'l Univ. Bd. of Trustees v. Fla. Nat'l Univ., Inc.*, 830 F.3d 1242, 1260-61 (11th Cir. 2016). "The Fifth Circuit uses a subjective eyeball test to determine whether two marks are similar. In other words, [t]he similarity of design is determined by considering the overall impression created by the mark as a whole rather than simply comparing individual features of the marks. In making this determination, courts consider the marks' appearance, sound, and meaning." (emphasis added; internal quotations omitted) *Bd. of Regents of the Univ. of Houston Sys. on Behalf of the Univ. of Houston Sys. & Its Member Institutions v. Houston Coll. of L., Inc.*, 214 F. Supp. 3d 573, 587 (S.D. Tex. 2016).

43.

A court "must not look just at the typewritten and aural similarity of the marks, but how they are presented in the marketplace." *New York State Elec. & Gas Corp. v. U.S. Gas & Elec., Inc.*, 697 F. Supp. 2d 415, 433 (W.D.N.Y. 2010). "The use of a mark in advertising; is highly probative of whether the mark creates a likelihood of confusion in relation to another mark....Evidence of the context in which a mark is used on labels, packages, or in advertising material directed to the goods is probative of the reaction of prospective purchasers to the mark....Courts consider marks in the context that a customer perceives them in the marketplace, which includes their presentation in advertisements." *T-Mobile US, Inc. v. AIO Wireless LLC*, 991 F. Supp. 2d 888, 921 (S.D. Tex. 2014).

44.

Upon information and belief, potential students of the two institutions are likely to associate the letter "L" with the words that they stand for in the parties' names ("Lubbock" and "Louisiana").

45.

Moreover, the two schools deploy the "LCU" marks in very different fashions in their advertising.

46.

Plaintiff's use of the acronym "LCU" rarely appears in isolation, but usually is accompanied by the full name "Louisiana Christian University." When the "LCU" acronym is used with the schools' logos, the two schools employ different color schemes, different arrangements of the three letters, different font styles and sizes, and the logo of Plaintiff appears with the head of the school's mascot, a wildcat, which is colored in orange, blue, and white.

47.

Based upon the manner in which the two schools employ "LCU," there is little likelihood of confusion between the two schools.

FACTOR 4: THE IDENTITY OF RETAIL OUTLETS AND PURCHASERS

48.

"Differences in the parties' customer bases can lessen the likelihood of confusion." *Bd. of Regents of the Univ. of Houston Sys. on Behalf of the Univ. of Houston Sys. & Its Member Institutions v. Houston Coll. of L., Inc.*, 214 F. Supp. 3d 573, 589 (S.D. Tex. 2016).

49.

The parties are approximately 656 miles apart with Defendant located in West Texas and Plaintiff located in Central Louisiana.

50.

Defendant is affiliated with the Churches of Christ, while Plaintiff is affiliated with the Louisiana Baptist Convention.

51.

Moreover, although Plaintiff has some students from outside the State of Louisiana, the great majority of its student population (approximately 90%) is comprised of Louisiana residents.

52.

Additionally, the two schools compete in different national athletic associations. Therefore, there is virtually no overlap between the two schools' customer bases.

FACTOR 5: THE SIMILARITY OF ADVERTISING MEDIA USED

53.

"Courts also consider the similarity between parties' marketing efforts: the greater the degree of overlap in the marketing approaches of the two entities, the greater the likelihood of confusion." *Bd. of Regents of the Univ. of Houston Sys. on Behalf of the Univ. of Houston Sys. &*

Its Member Institutions v. Houston Coll. of L., Inc., 214 F. Supp. 3d 573, 590 (S.D. Tex. 2016).

"The key question in assessing similarity of advertising media is whether the parties' ads are likely to reach the same audience." *Fla. Int'l Univ. Bd. of Trustees v. Fla. Nat'l Univ., Inc.*, 830 F.3d 1242, 1262-63 (11th Cir. 2016).

54.

Upon information and belief, the parties use different marketing channels and advertising media. Although both parties use the Internet, there is very little (if any) overlap in their audiences, as alleged above.

FACTOR 6: LOUISIANA CHRISTIAN UNIVERSITY'S INTENT

55.

A "junior user's knowledge or awareness of the senior user's trademark is insufficient to create an inference of intent. Instead, the proper inquiry is whether [the junior user] had the intent of deriving benefit from the reputation or goodwill of [the senior user]." *Bd. of Regents of the Univ. of Houston Sys. on Behalf of the Univ. of Houston Sys. & Its Member Institutions v. Houston Coll. of L., Inc.*, 214 F. Supp. 3d 573, 590 (S.D. Tex. 2016).

56.

There is no intention by Plaintiff of deriving benefit from the reputation or goodwill of Defendant. The two schools are located far apart geographically and have distinct heritages and affiliations. Plaintiff has significant goodwill and a state-wide reputation as the only Baptist, four-year institution in Louisiana. It would derive no benefit from associating itself with the reputation of Defendant, a non-Southern Baptist institution located in West Texas.

FACTOR 7: EVIDENCE OF ACTUAL CONFUSION

57.

"Evidence of confusion by actual or potential customers is, of course, the best evidence of a likelihood of confusion." *Fla. Int'l Univ. Bd. of Trustees v. Fla. Nat'l Univ., Inc.*, 830 F.3d 1242, 1264-65 (11th Cir. 2016).

58.

Plaintiff is aware of no instances of actual confusion, and, upon information and belief, none exists. Upon further information and belief, any student temporarily confused between the "LCUs" would almost certainly and instantly recognize her error due to the stark differences between the schools.

FACTOR 8: THE DEGREE OF CARE EXERCISED BY POTENTIAL PURCHASERS

59.

"The eighth digit is the degree of care exercised by purchasers. Where [services] are relatively inexpensive, a buyer may take less care in selecting [them], thereby increasing the risk of confusion. But if the items are expensive and the buyers are sophisticated, then confusion is less likely to occur." *Bd. of Regents of the Univ. of Houston Sys. on Behalf of the Univ. of Houston Sys. & Its Member Institutions v. Houston Coll. of L., Inc.*, 214 F. Supp. 3d 573, 597–98 (S.D. Tex. 2016). Furthermore, in the context of higher education, the plaintiff's burden is "higher than usual...because...potential college students are relatively sophisticated consumers who are unlikely to be easily or meaningfully confused by similar-sounding university names." *Fla. Int'l Univ. Bd. of Trustees v. Fla. Nat'l Univ., Inc.*, 830 F.3d 1242, 1265 (11th Cir. 2016).

60.

Upon information and belief, given the relatively high costs associated with higher education and the relative sophistication of potential college students, the customers of the two schools are unlikely to be easily or meaningfully confused between the two schools.

COUNT ONE

Claim for Declaratory Relief, 28 U.S.C. § 2201, et. seq.

61.

Plaintiff hereby incorporates by reference the allegations set forth in the preceding paragraphs as if they were fully rewritten herein.

62.

Under the Declaratory Judgment Act, 28 U.S.C. § 2201, *et. seq.*:

In a case of actual controversy within its jurisdiction . . . any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

28 U.S.C. § 2201(a). The Act also provides that “[f]urther necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.” *Id.* at § 2202.

63.

"The existence of another adequate remedy does not preclude a declaratory judgment that is otherwise appropriate. The court may order a speedy hearing of a declaratory-judgment action." F. R. C. P. Rule 57.

64.

In the instant matter, the parties dispute Defendant's claims that Plaintiff has infringed its Mark, pursuant to the Lanham Act, 15 U.S.C. 1125. Indeed, the Defendant has threatened litigation.

65.

Therefore, an actual controversy exists involving the Court's jurisdiction. Plaintiff, as an interested party, is entitled to a judgment from the Court declaring the rights and other legal relations of Plaintiff and Defendant as it pertains to Defendant's federally registered Mark and the Lanham Act, 15 U.S.C. 1125.

JURY DEMAND

66.

Plaintiff requests a trial by jury of all issues so triable herein.

PRAYER FOR RELIEF

WHEREFORE, plaintiff, LOUISIANA COLLEGE d/b/a "LOUISIANA CHRISTIAN UNIVERSITY," prays for judgment in its favor and against defendant, LUBBOCK CHRISTIAN UNIVERSITY, as follows:

1. A judgment of this Court declaring the rights and other legal relations of Plaintiff and Defendant as it pertains to Defendant's federally registered Mark and the Lanham Act, 15 U.S.C. 1125;
2. A judgment of this Court declaring Plaintiff's use of the acronym "LCU" does not infringe upon Defendant's Mark in violation of the Lanham Act;
3. A judgment awarding any and all necessary or proper relief based upon the declaratory judgment sought herein against any adverse party whose rights have been determined by such judgment; and
4. Such additional or alternative relief, at law or in equity, which the Court may deem to be just and proper.

CHADWICK, ODOM, & STOKES

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