



December 10, 2014

Chancellor Linda P.B. Katehi
University of California, Davis
Office of the Chancellor
Fifth Floor, Mrak Hall
One Shields Avenue
Davis, California 95616

Sent via U.S. Mail and Facsimile (530-752-2400)

Dear Chancellor Katehi:

FIRE previously wrote to the University of California, Davis (UC Davis) on October 31, 2014, regarding a section of the university's Violence Intervention & Prevention program, which violated students' freedom of conscience. We are pleased UC Davis removed the flawed segment of the program, and we publicly commended the university for doing so. However, we are disappointed to be writing you for the second time in as many months regarding a violation of students' fundamental rights.

We write to UC Davis today out of concern for freedom of expression arising from the UC Davis Center for Student Involvement's (CSI's) demand that a student organization deactivate its Facebook page solely due to the fact that the site's URL contains the initials "UCD," which it alleges violated the university's trademark policy. This demand violates the group's First Amendment rights and is an abuse of UC Davis and University of California system policies allowing for legitimate regulation of the university's trademarks. We call on UC Davis to immediately cease this encroachment on free expression.

The following is our understanding of the facts; please inform us if you believe we are in error.

The Ayn Rand Society at UC Davis (ARS), like other recognized student organizations at UC Davis, is listed on UC Davis's OrgSync directory. Among other information, ARS's OrgSync page contains a link to ARS's Facebook page, the URL of which is <https://www.facebook.com/groups/ucd.aroc/>.

In a November 26 email, CSI informed the group that “the name of [the] facebook page ‘Ayn Rand Society at UC Davis’ is indeed in compliance with [UC Davis’s] trademark policy, but the website domain URL is still in violation,” explicitly noting the “ucd.aroc” portion of the URL. CSI’s email warned that if ARS did not change the URL, the organization would “no longer remain in good standing and will not be eligible to apply for things like [Club Finance Council] or Beyond Tolerance grants for funding.”

ARS president Hong-Phuc Ho-Chung informed CSI that changing the URL for the group’s Facebook page might not be possible “because a former President already specified the URL.” The CSI representative replied, “I would suggest creating a new Facebook group, letting all of your members know of the new group, and then deleting the Facebook group in violation.” ARS declined to comply with CSI’s directive and on December 8 received an email notifying the group of sanctions imposed against it:

This email serves as notice that your organization is no longer in good standing with the Center for Student Involvement since the required changes to the organization’s Facebook page were not made. Ayn Rand Society at UC Davis’ profile has been disabled on OrgSync and the organization will not be able to access its Agency Account, make room reservation, or apply for on-campus grants like Club Finance Council and Beyond Tolerance until the changes are made. To restore Delta Chi’s¹ [sic] good standing with CSI, the URL for the organization’s Facebook must be changed. Currently, the URL is <https://www.facebook.com/groups/ucd.aroc/>. **The URL cannot use “ucd” or “ucdavis.” If you cannot change the URL you will need to create a new Facebook Group and delete the group that is in violation of the University’s trademark.**

[Emphasis added.]

UC Davis’s “Use of University Name and Trademarks” policy (the “UNT policy”), as posted on CSI’s website, specifies in part:

Student organization names must comply with University Name and Trademark policy. **All variances of names and visual representations of the University of California, Davis, are considered UC Davis trademarks.** The marks include any trademark, service mark, **name**, logo, insignia, seal, design, or other symbol or device associated with or referring to UC Davis. Also included are any word, phrase, or image that implies association with the University, such as “Cal Aggie” or “Go Ags!” The University owns these trademarks and must approve their use.

¹ To the extent that this demand has also been sent to Delta Chi, or any other student organization, FIRE reiterates its concerns with respect to each organization.

[Emphases added.]

The CSI website also warns of potential criminal penalties for violating the UNT policy:

Anyone violating the provisions of California Education Code 92000, which prohibit use of the University name without permission, **is guilty of a misdemeanor**. We urge groups to review all publicity materials used in any event they sponsor to insure accurate representation. Since individuals may be misled into thinking the University is associated with an event that uses its name, the University is exposed to potential liability should someone suffer damage or injury at the event. The University will seek indemnification from groups for any damages it may suffer as a result of unauthorized use of the University's name.

[Emphasis added.]

Section 92000 of the California Education Code in turn states:

(a) The name "University of California" is the property of the state. No person shall, without the permission of the Regents of the University of California, use this name, or any abbreviation of it or any name of which these words are a part, in any of the following ways:

(1) To designate any business, social, political, religious, or other organization, including, but not limited to, any corporation, firm, partnership, association, group, activity, or enterprise.

(2) To imply, indicate or otherwise suggest that any such organization, or any product or service of such organization is connected or affiliated with, or is endorsed, favored, or supported by, or is opposed by the University of California.

(3) To display, advertise, or announce this name publicly at, or in connection with, any meeting, assembly, or demonstration, or any propaganda, advertising, or promotional activity of any kind which has for its purpose or any part of its purpose the support, endorsement, advancement, opposition, or defeat of any strike, lockout, or boycott or of any political, religious, sociological, or economic movement, activity, or program.

UC Davis's demand that ARS abandon its long-established web presence, which would cause it to lose all of the content and followers it has created and accumulated, cannot stand. In demanding that ARS alter or else eliminate its Facebook page on grounds that it violates the UNT, and by extension threatening *criminal* penalties against ARS, UC Davis has violated the group's First Amendment rights. UC Davis may reasonably restrict the commercial use of its name and may intervene when there is a legitimate possibility of confusion between an official UC Davis website and a non-university website that speaks

about the university. UC Davis may not, however, categorically ban URLs or portions thereof containing the letters “UCD” or “UC Davis” simply because they contain an abbreviation of the name of the school. The vast majority of possible URLs, domain names, websites, usernames, and email addresses that might use such initials have no commercial purpose and do not tend to confuse or mislead readers into believing that they are officially sanctioned or endorsed by UC Davis.

Courts have repeatedly held that the First Amendment protects the use of trademarked names for non-commercial purposes with no substantial likelihood of confusion. *See Taubman Co. v. Webfeats*, 319 F.3d 770, 775 (6th Cir. 2003) (“[A]ny expression embodying the use of a mark not ‘in connection with the sale . . . or advertising of any goods or services,’ and not likely to cause confusion, is . . . necessarily protected by the First Amendment.”); *CPC Int’l, Inc. v. Skippy, Inc.*, 214 F.3d 456, 462 (4th Cir. 2000) (“It is important that trademarks not be ‘transformed from rights against unfair competition to rights to control language.’”). For example, in *Bally Total Fitness Holding Corp. v. Faber*, 29 F. Supp. 2d 1161 (C.D. Cal. 1998), a federal court ruled that Bally Total Fitness could not stop a man from operating a website called “Bally Sucks,” which included a modified Bally logo on the front page and used the term “ballysucks” in the URL of the website. In that case, Bally argued (among other things) that allowing a critic to use its mark was likely to cause confusion among those who were searching for its official website. The court found against Bally, ruling that there was no likelihood of consumer confusion and that “[a]pplying Bally’s argument would extend trademark protection to eclipse First Amendment rights. The courts . . . have rejected this approach by holding that trademark rights may be limited by First Amendment concerns.” 29 F. Supp. 2d at 1166, *citing L.L. Bean, Inc. v. Drake Publishers, Inc.*, 811 F.2d 26 (1st Cir. 1987), *cert denied*, 483 U.S. 1013 (1987).

The right to control the commercial use of the university name and to guard against legitimate confusion simply does not translate to wholesale ownership of the “UCD” and “UC Davis” monikers for URLs. UC Davis’s demand that ARS delete its current Facebook page due to the presence of the “UCD” initials is unconstitutional and without merit. The site is plainly noncommercial in its orientation, and a brief glimpse at the site makes it abundantly clear that ARS is not an arm of the university and speaks only for itself. Any misinterpretation of ARS’s Facebook page to assume sponsorship by UC Davis is not the problem of the organization or the liability of the university.

While UC Davis is not responsible for the existence of California Education Code 92000 (the constitutionality of which is a matter of considerable doubt), it is certainly responsible for any violations of First Amendment rights it carries out under color of protecting the University of California’s trademarks. We note that UC Davis is not nearly the first University of California System campus to attempt to unconstitutionally censor uses of its name in noncommercial contexts. The University of California, Santa Barbara and University of California, Los Angeles respectively sought to censor privately maintained

websites using the “UCSB”² and “UCLA”³ initials, while the University of California, Berkeley unconstitutionally prevented the recognition of a student publication simply for having the word “California” in its name.⁴ After FIRE wrote expressing these same concerns, each reversed its efforts toward unconstitutional censorship. While it is unfortunate that UC Davis followed in the paths of its peer institutions’ unconstitutional and overzealous use of their trademark policies as a tool for censorship, we hope UC Davis will again follow each of its peers in correcting its mistake.

FIRE asks that the University of California, Davis immediately restore the Ayn Rand Society’s status as an organization in good standing, in addition to restoring its profile on OrgSync and returning to it all of the privileges afforded to recognized organizations at UC Davis. Any sanctions against other student organizations based on similar reasoning should likewise be reversed. The university must additionally disavow such unconstitutional application of its trademark policy against student organizations in the future, especially the implications that organizations could face criminal penalties for such basic exercises of their First Amendment rights. We hope to achieve a speedy resolution to this case and look forward to again commending UC Davis for upholding its duties as a public university bound by the United States Constitution.

We request a response to this letter by December 23, 2014.

Sincerely,



Ari Z. Cohn

Program Officer, Legal and Public Advocacy

cc:

Adela de la Torre, Vice Chancellor for Student Affairs
Anne Myler, Director, Center for Student Involvement
Jaime Allen, Student Activities Coordinator

² Foundation for Individual Rights in Education, University of California, Santa Barbara: Attempt to Stop Website from Using Letters “UCSB,” *available at* <http://www.thefire.org/cases/university-of-california-santa-barbara-attempt-to-stop-website-from-using-letters-ucsb>.

³ Foundation for Individual Rights in Education, University of California at Los Angeles: Attempt to Stop Critical Website from Using Letters ‘UCLA,’ *available at* <http://www.thefire.org/cases/university-of-california-at-los-angeles-attempt-to-stop-critical-website-from-using-letters-ucla>.

⁴ Foundation for Individual Rights in Education, University of California at Berkeley: Ban on Word “California” in Organization Names, *available at* <http://www.thefire.org/cases/university-of-california-at-berkeley-ban-on-word-california-in-organization-names>.