

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION**

OAKWOOD UNIVERSITY, INC.)	
)	
Plaintiff,)	
)	
v.)	Case No.
)	
OAKWOOD UNIVERSITY ALUMNI ASSOCIATION)	5:18-cv-00870-MHH
)	
Defendants.)	
)	

MOTION FOR PRELIMINARY INJUNCTION

Pursuant to Rule 65 of the Federal Rules of Civil Procedure and 15 U.S.C. § 1116, Plaintiff Oakwood University, Inc. (the “University”) respectfully requests this Court to issue a preliminary injunction against the entity going by the name Oakwood University Alumni Association (the “Former Association” or “Defendant”), prohibiting it from its unauthorized use of the University’s name and trademarks and from holding itself out to be raising funds for the University. In support of this Motion, the University states as follows:

INTRODUCTION

In the world of academia, some groups, including alumni associations, exist to serve and raise funds for their academic institution. The fundamental premise in this relationship – which is reflected in all-important accreditation standards –

is that the fundraising entity must accept the direction and control of the academic institution. Putting aside for the moment the Defendant's recent vitriolic behavior, this case arises from the simple fact that the Defendant refuses to submit itself to the direction and control of fundraising conducted for the University. After multiple acts of defiance, the University's Board voted to cut ties with the group, and instructed it to stop using the University's name and trademarks and cease any involvement in fundraising efforts in the University's name or on its behalf. The Former Association refuses to acknowledge these repeated requests and continues its wrongful behavior, which grows worse and more damaging with the passage of time. Unfortunately, the University must resort to this Court to stop the Defendant's damaging behavior.

As discussed in more detail below, the University is entitled to an Order issuing a preliminary injunction against the Former Association because: (1) the Former Association is infringing the University's trademarks; (2) the University will succeed on its claims arising from this conduct by the Former Association; (3) irreparable harm will continue unless the Former Association is stopped; and (4) no other factors prevent issuance of a preliminary injunction.

BACKGROUND

THE UNIVERSITY AND ITS RELATIONSHIP WITH THE FORMER ASSOCIATION

1. Founded in 1896, the University is a private, historically-black, accredited institution. (Verified Compl. at ¶ 7.) It is affiliated with the Seventh-day Adventist Church. (*Id.*) The University’s mission is “to transform students through biblically-based education for service to God and humanity.” (*Id.*) The University enjoys a prominent reputation, and its Alumni have a deep connection to their alma mater. (*Id.* at ¶ 8.)

2. In 2007, the University changed its name from “Oakwood College” to “Oakwood University.” (Verified Compl. at ¶ 9).

3. On August 6, 2008, the University filed U.S. Trademark Application Serial No. 77/540,675 for the OAKWOOD UNIVERSITY mark with the United States Patent & Trademark Office (the “Oakwood Mark”). The application sought protection of the Oakwood Mark in connection with “Educational Services” (“Oakwood Services”) and, *inter alia*, related goods and products such as “loose leaf binders, notebooks, paper report covers, note paper, pens, pencils, bookmarks, stickers, decals, postcards, notepad holders, pocket calendars, weekly calendars; stationery, ... [and] magazines featuring general interest topics pertaining to a university, its students, and community” (“Oakwood Goods”). (Verified Compl. at ¶ 10.)

4. The educational activities of a non-profit educational institution, such as the University, inherently encompass charitable services. Thus, the Oakwood Mark registration logically extends to the University's use of the Oakwood Mark in fundraising activities that are necessary to support its education and entertainment activities.

5. On January 1, 2008, eight months before filing its trademark application, the University began displaying the Oakwood Mark in connection with the Oakwood Services and Oakwood Goods on its campus, through its website, and in selected retail stores. (*Id.* at ¶ 11.)

6. On January 20, 2009, the distinctiveness of the Oakwood Mark was acknowledged by the USPTO when it issued a trademark registration on the principal register for OAKWOOD UNIVERSITY in connection with the Oakwood Services and Oakwood Goods, U.S. Registration No. 3,601,698. (*Id.* at ¶ 12 and Ex. A.)

7. U.S. Registration No. 3,601,698 is valid and subsisting in law, was duly and legally issued, is *prima facie* evidence of the validity of the mark registered, and constitutes constructive notice of the University's ownership of the Oakwood Mark in accordance with Sections 7(b) and 22 of the Federal Lanham Act, 15 U.S.C. §§ 1115(a), 1057(b), and 1072. Further, on March 12, 2015, the USPTO issued a Notice of Acceptance under Section 8 of the Trademark Act, 15

U.S.C. §1058(a)(1) and Section 15 of the Trademark Act, 15 U.S.C. §1065 for U.S. Registration No. 3,601,698. Accordingly, the University's rights to U.S. Registration No. 3,601,698 are "Incontestable" under Section 15 of the Trademark Act, 15 U.S.C. §1065.

8. As described below, in the ten years since the University first adopted and used the Oakwood Mark, consumer recognition of the mark has grown substantially. As a by-product of its mission and reputation, the name "Oakwood University" has become synonymous with a quality, Seventh-day Adventist-based educational experience.

9. Since January 1, 2008, the Oakwood Mark and the University's other marks¹ (the "Ancillary Marks," and collectively, with the Oakwood Mark, the "Marks") have been used to identify the University's services and to distinguish them from the services of other educational institutions. For example, the University prominently displays and uses these Marks on school buildings, letterhead, correspondence, bills, direct mailings, and school and Alumni newsletters. (Verified Compl. at ¶ 16.)

¹ The University also owns U.S. Trademark Registration Nos. 3,591,212, 4,352,439 and 4,954,242. The University also owns various pending federal trademark applications, including Serial Nos. 87/737,208, 87/737,193, and 87/828,018, which identify various goods and services. (See Verified Compl. at ¶ 15 and Ex. B.) The University has certain common law rights in these and other unregistered marks.

10. The University is a tax-exempt institution and accepts contributions from numerous donors each year. (Verified Compl. at ¶ 17.) The University regularly employs the Oakwood Mark as well as the Ancillary Marks in its efforts to raise money to further the University's mission. (*Id.*) The University's Alumni represent a significant segment of the University's donor base. (*Id.*)

11. The University's predecessor played a role in establishing an Alumni association whose purpose, among other things, was to solicit funds for Oakwood and organize Alumni activities for the school's Alumni. (Verified Compl. at ¶ 18). More recently, after the institution changed its name to Oakwood University, this Alumni association organized as an unincorporated association known as the "Oakwood University Alumni Association" (referred to herein as the "Former Association"). (*Id.*) It did so with the University's knowledge and approval and with the University's participation. (*Id.*)

12. From the beginning, cooperation between the University and the Former Association was integral to the Former Association's founding and mission. Indeed, according to its founding documents, the Former Association always intended to maintain an intimate and continuous involvement with the University when conducting its fundraising activities on behalf of the University.

(Verified Compl. at ¶ 19.) For example, the Former Association’s mission is set forth in the Former Association’s bylaws (the “Bylaws”):²

Article II – Purpose

The Oakwood University Alumni Association Bylaws are organized to set forth the laws, procedures, and regulations for the fiscal operation of the Association. The Association is organized as an unincorporated non-profit to support the education institution, Oakwood University, located in Huntsville, Alabama. The Association is organized and operated exclusively for charitable purposes within the meaning of the Internal Revenue Code §501(c)(3). No provisions herein shall be deemed to permit the Association to engage in nonexempt activities.

(Verified Compl. at ¶ 20 and Ex. C.) Article III of the Bylaws also expressly commits the Former’s Association’s membership to “support the University through benevolent giving, scholarships, and recruitment providing financial support to students and the University through campaigns of the Association.” (*Id.*) The Bylaws further require the Former Association’s president to “communicate continuously with the University officials and the Association Officers and Elected Officials in order to achieve maximum planning and coordination between the

² Recently, the University requested the Former Association’s formation and governance documents, and received a document labeled “Bylaws of Oakwood University Alumni Association” but marked as “OUAA Bylaws PROPOSED_April 2014.” A true and correct copy of the “Bylaws” received by Oakwood is attached to the Verified Complaint as **Exhibit C**. Given the document is marked “PROPOSED,” the University cannot confirm that this document was officially adopted or otherwise implemented by the Former Association. Nevertheless, the proposed terms of the Bylaws indicate that the Former Association intended the University to play a prominent role in its activities.

Association and the University.” (Verified Compl. at ¶ 22 and Ex. C.) The president of Oakwood University also has ex-officio membership on the Former Association’s Board of Directors. (Verified Compl. at ¶ 21, Ex. C.)

13. Following its formation, the Former Association began conducting Alumni association activities consistent with the University’s direction. (Verified Compl. at ¶ 23.) From time to time, the Former Association sought, and the University provided, guidance regarding the Former Association’s activities. (*Id.*)

14. From its inception until early 2018, the Former Association generally accepted the University’s direction on fundraising matters. (Verified Compl. at ¶ 24.) For example, the Former Association regularly consulted and coordinated with University administration in planning and organizing its Alumni Weekend events, held annually during the Easter holiday. (*Id.*) Alumni Weekend is the largest Alumni event of the year. (*Id.*) The University historically helped secure venues for the weekend’s events, provided security and traffic control through the Oakwood Police Department, paid some of the bills incurred by the association, and offered other organizational, administrative and logistical support. (*Id.*) Examples include that, for many years, University Administration personnel collected, counted and provided security for donations received during Alumni Weekend, all in cooperation with the Former Association. (*See id.*)

15. During this period of cooperation, the University allowed the Former Association to use – and Former Association did use – certain of the University’s trademarks, service marks, trade dress and other branding materials. (Verified Compl. at ¶ 25). This included use of the Marks and the name “Oakwood University” for various purposes, including in the Former Association’s name. (Verified Compl. at ¶ 25.)

16. The Former Association understood that its use of the Marks was subject to the University’s approval and control.

17. The resulting relationship between the parties created an implied license for the Former Association to use the University’s intellectual property as part of its fundraising efforts.

**DISPUTE BETWEEN THE UNIVERSITY AND
THE FORMER ASSOCIATION’S LEADERSHIP**

18. The University is subject to the Southern Association of Colleges and Schools – Commission on Colleges (“SACS”) accreditation standards. Section 5.3 of the SACS standards requires the University to exercise sufficient direction and control over the fundraising activities of “institution-related entities,” which are entities organized separate from the University, but whose purpose is to raise funds to support the University and its programs. (SACS, Section 5.3). The Former Association was – before its disassociation – and wrongly claims still to be just this sort of entity. (Verified Compl. at ¶ 26.)

19. Failure to comply with the SACS accreditation standards can result in loss of accreditation, which would be devastating to the University. (Verified Compl. at ¶ 27.) If unaccredited, the University and its students would lose access to federal student loans and grants through Title IV, Historically Black College and University (HBCU) funding through Title III, and grants, scholarships, and annual distributions through the United Negro College Fund (UNCF). (*Id.*) Loss of accreditation also would negatively impact its academic standing, the transferability of academic credits to other accredited institutions, and the value of degrees awarded by the University. (*Id.*)

20. Through the years, the University complied with these standards through the University Administration's direct involvement in the Former Association's fund-raising activities. (Verified Compl. at ¶ 28; *see* SACS 5.3.) And, through the years, the Former Association's leadership worked in concert with the University's Administration to accomplish their fund-raising goals. (*Id.*)

21. Unfortunately, the Former Association's behavior and cooperation changed for the worse in recent months. (*Id.* at 29.) During this time, the Former Association's activities have been authorized, approved, and implemented by its national officers:

- a. Cynthia Powell-Hicks ("Powell-Hicks"), the Former Association's President;

- b. Desmond Pierre-Louis (“Pierre Louis”), the Former Association’s General Vice President;
- c. Eleanor Palmer (“Palmer”), the Former Association’s Vice President of Development;
- d. Randal Leonard (“Leonard”), the Former Association’s Treasurer;
- e. Tammy Woodfork (“Woodfork”), the Former Association’s Assistant Treasurer;
- f. Patricia McBean Pates (“Pates”), the Former Association’s Secretary;
- g. Harry Swinton, Jr. (“Swinton”), the Former Association’s Assistant Secretary;
- h. Donald L. Bedney II (“Bedney”), the Former Association’s Chaplain;
- i. Jayson S. Brown (“Brown”), the Former Association’s Sergeant-at-Arms; and
- j. Anthony J. Aubrey, Jr. (“Aubrey”), the Former Association’s Parliamentarian.

(Verified Compl. at ¶ 3.) The national officers are collectively referenced as the “National Officers.”

22. On or about February 22, 2018, a group of donors raised questions with the University about the Former Association's allocation of significant, restricted donations they made to the Former Association. (Verified Compl. at ¶ 31.) Specifically, the donors requested that the Former Association forward their full \$100,000 donation to the University to commence the anticipated building project. (*Id.*) However, only a portion of the donation was tendered to the University for the designated purpose at the time of the donors' request. (*Id.*) Instead, the Former Association's Treasurer informed the donors that the Former Association's Officers had spent a significant portion of the donation contrary to the donors' intent. (*Id.*) The donors confirmed this discrepancy in communications with the University. (*See* Verified Compl. at ¶ 31.)

23. On February 23, 2018, the University learned through a third-party that the Former Association had lost its tax-exempt status with the IRS due to its failure to file three (3) years of IRS Form 990 information returns. (Verified Compl. at ¶ 32.)

24. Given the gravity of these concerns, and the negative public relations impact those issues could have on fund-raising efforts and SACS compliance, the University's Board of Director's (the "Board") convened on March 8, 2018. (Verified Compl. at ¶ 33.) At this meeting, the Board empaneled a Task Force to address the issues with the Former Association. (*Id.*) On March 13, 2018, the

Board (through the task force's report) requested certain financial information and assurances from the Former Association, particularly relating to its intended fundraising and the Alumni Weekend scheduled for later that month. (Verified Compl. at ¶ 34 and Ex. D.) The Former Association refused and/or failed to comply with the Board's requests. (See Verified Compl. at ¶¶ 33-43 and Ex. E and F.)

25. In the weeks leading up to Alumni Weekend, the University tried repeatedly to reach an understanding with the Former Association on how to handle these volatile issues that, if handled appropriately, would allow the parties to have a mutually beneficial and productive Alumni Weekend. (See *id.*) However, the Former Association ignored the University's efforts. (See *id.*)

26. In the meantime, the Former Association, in coordination with its National Officers, made multiple defamatory oral and written statements about the University and its Administration to Alumni, donors and members of the public having relationships with the University. For example, Defendant published a letter to its website, dated March 21, 2018, addressed to Dr. Daniel R. Jackson, Chair of the Oakwood University Board of Trustees (the "Website Letter"). (Verified Compl. at ¶ 39 and Ex. G.) In the Website Letter, the Former Association through its counsel accuses the University of "unlawful intermeddling and interference with the activities of [the Former Association]" and makes other

false, adversarial and misleading statements. (*Id.*) The Former Association also made clear in the Website Letter that it did not feel obligated in any way to comply with the University's direction or to allow the University to participate in its fund-raising efforts on the University's behalf. (*Id.*)

27. On March 28, 2018, after being rebuffed again and again, and having learned of the Former Association's plans to have an unidentified, third-party charity accept donations during Alumni Weekend, the University's Board, through counsel, gave the group straightforward directives. (Verified Compl. at ¶ 42 and Ex. F.) In this message, the Board advised the Former Association not to use the unknown third-party to accept donations raised through the use of the University's name. (Verified Compl. at ¶ 43 and Ex. F.) Rather, the Board asked that donations collected be made payable to Oakwood University (whose tax exempt status is not in question), which would be held for use on behalf of the Alumni Association. (*Id.*) The Former Association rejected these requests, too, insisting on using the unaffiliated third-party. (*Id.* at ¶¶ 43-44.)

28. With thousands of Alumni scheduled to arrive for Alumni Weekend the next day, the Board decided to wait until after the weekend to decide what to do about the Former Association's defiant behavior on a going-forward basis. (Verified Compl. at ¶ 45.) The Board felt compelled, however, to issue a statement to its Alumni about the status of the situation. (*Id.* at ¶ 45 and Ex. H.)

29. During Alumni Weekend, the Former Association and its officers orchestrated a misinformation campaign. (Verified Compl. at ¶ 46.) This included making repeated false and misleading representations of the facts. (*Id.*) At the April 1, 2018 annual meeting of the Former Association, conducted during the weekend, its representatives made a number of false, defamatory and misleading statements, including, for example, stating that the University intercepted the notice of revocation of the association's 501(c)(3) status and did not forward it to the Association in a timely manner. (Verified Compl. at ¶ 47.)

30. Further, on or about April 3, 2018, the Former Association released a document including a timeline (the "Timeline") riddled with false, misleading and defamatory statements about the University. Therein, Defendant falsely accused the University of acts such as organizing an "OUAA takeover Taskforce" and sending, through its attorney, a "10 pm e-mail threatening consequences if demands weren't met in 12 hours". (Verified Compl. at ¶ 48 and Ex. I.) The Former Association made the Timeline generally available to the public, Alumni and donors by publishing it on its website. (*Id.*) These statements were intended to interfere with the University's relationship with its Alumni.

31. The Former Association not only rejected the Board's directions concerning fundraising during Alumni Weekend but also refused to allow the University to have its normal involvement during the weekend's festivities. (*See*

Verified Compl. at ¶ 49.) For example, the Former Association refused to allow University officials to count the contributions (as it had historically done for the past 20 years or so), and hired the Huntsville Police Department to provide security for the donations received, rather than using the Oakwood Police Department for free (as it historically had). (*Id.*)

DISASSOCIATION AND REVOCATION OF PERMISSION TO USE MARKS

32. The Board's next scheduled meeting after Alumni Weekend took place on April 16, 2018. (Verified Compl. at ¶ 50.) In executive session, the Board considered the Former Association's repeated refusals to accept the University's control over fundraising activities, as mandated by SACS, during Alumni Weekend, and other donor concerns and related matters. (*Id.*) After careful and painstaking consideration of several options for the future of the structural relationship between the University and its Alumni, the Board unanimously voted to break ties with and disassociate the University from the Former Association. (*Id.*) At the same time, the Board voted to revoke the Former Association's permission to use the University's name and trademarks, or to be involved in fundraising through use of the University's name and/or on behalf of the University. (Verified Compl. at ¶ 51.)

33. After the April 16, 2018 Board meeting, the University sent Defendant, through counsel,³ a cease and desist letter regarding the Defendant's use of the Marks and cessation of fundraising in the University's name. (Verified Compl. at ¶ 52 and Ex. J.) In it, the University demanded that Defendant cease "using the University's name or registered marks in any form or media whatsoever, including its website or other communications." (*Id.*) The University also requested that Defendant stop representing to the public or the University's Alumni that it raises funds for the University. (*See id.*) The University further notified the Former Association that its Board had voted to develop a new Alumni organization in order to maximize the Alumni's impact on the University. (*See id.*)

34. The Former Association refused to comply with, or even respond to, this cease and desist letter. (Verified Compl. at ¶ 53.)

35. Instead, the Former Association, in a public display of defiance, released additional defamatory statements about the University and its Administration. (Verified Compl. at ¶ 54.) For example, in response to a Facebook Live video livestreamed by the University on April 19, 2018, one or more representatives of the Former Association posted misleading, false and disparaging comments about the University, the Administration and the Board. (*Id.*)

³ At a previous Board meeting, the President of the Former Association made it clear that she would not speak with any member of the Administration about any issue, but instructed the University to communicate with the Former Association through counsel.

36. Due to the Former Association's disparaging behavior and the now very public dispute, the University received questions regarding the status of the relationship between the parties. (Verified Compl. at ¶ 55 and Ex. K.) In hopes of alleviating some Alumni concerns, the University published "Frequently Asked Questions Concerning OUAA" on its website on or about April 22, 2018 (the "University FAQs"). (*Id.*) There, the University addressed, among other things, the decision to disassociate from the Former Association, whether the Former Association is sanctioned by the University, and the procedures for donating money to the University going forward. (*Id.*)

37. The University sent the Former Association a second cease and desist letter, dated May 14, 2018, extending the deadline for the Former Association to comply with these requests until Thursday, May 17, 2018. (*See* Verified Compl. at ¶ 56 and Ex. L.) The University listed its demands and what the Former Association needed to do to demonstrate compliance with those demands. (*Id.*) For example, the University notified the Former Association that:

"1) The Former Association and its representatives must accept the Board's decision that the group has been disassociated from the University and all University fundraising efforts (i.e., the Former Association must cease and desist from all fundraising and solicitation efforts on behalf of the University, and make that clear to the public).

2) The Former Association and its representatives must cease and desist from using the University's name, Oakwood College's name, and any confusingly similar variants thereof

(including the University's initials) for any reason or in any form or media, including in the group's name or on the group's website and/or letterhead.

3) Similarly, the Former Association and its representatives must immediately cease and desist from using, in any form or media whatsoever, including on its website or other communications, any and all trade or service marks of the University, whether registered or unregistered, including the marks identified in U.S. Trademark Registration Nos. 3,601,698, 3,591,212 and 4,352,439, and any pending applications, among other trade and service marks.

4) The Former Association and its representatives must immediately cease all such use, and further must withdraw or cancel the name reservation filed March 19, 2018 for "Oakwood University Alumni Association" that is currently pending in the office of the Alabama Secretary of State.

5) The Former Association and its representatives must immediately cease and desist from attempts to plan or organize alumni fundraising events, including Oakwood University's Alumni Weekend and inserting representatives into Aeolian activities, or other alumni fundraising events. The University's Office of Advancement and Development, working in harmony with University alumni, is now charged with the execution of those duties."

(*Id.*) The second letter repeated the University's withdrawal of permission to use its name and Marks, and demanded that the Former Association immediately cease doing so. (*Id.*)

38. Once again, the Former Association failed or refused to comply. (Verified Compl. at ¶ 57.)

39. Instead, the Former Association chose to further defame the University (the institution its stated purpose is to serve). (Verified Compl. at ¶¶ 58-59 and Ex. M.) On May 17, 2018, the Former Association’s Officers and Board of Directors issued a “response” to the University’s FAQs regarding the Former Association (the “Response to FAQs”). (*Id.* at ¶ 58 and Ex. M.) The Former Association also made the Response to FAQs general available to the public by publishing it on its website. (*Id.*)

40. The Response to FAQs is full of false, disparaging and/or defamatory statements about the University and the dispute over Alumni operations, including the following:

- a. “The viable, sustainable future of Oakwood University is currently at great risk! Enrollment has dramatically declined over the past eight years; there has been significant brain drain as highly skilled professionals have been forced into retirement, or have left the University; confidence in OU’s leadership is at an unprecedented low”
- b. “If OU fundraising is successfully meeting its targets, why is OU investing so much time, resources, and toxic energy in this hostile attempt to takeover OUAA?”
- c. “OUAA does not use the name or trademarks of Oakwood University. OUAA has its own registered name and trademark.”

(*Id.* at ¶ 59 and Ex. M.)

41. The Former Association also inaccurately portrays recent relations between the University and the Former Association in the Response to FAQs. For

example, the Former Association states that the Board or Administration personnel acted “without asking questions” or “initiating dialogue,” but turns a blind eye to the University’s repeated attempts to reason with the Former Association. (*See* Verified Comp. at ¶ 60 and Ex. E, Ex. F, and Ex. M.)

42. In the Response to FAQs, the Former Association also made the false and potentially damaging statement that: “The OU Board is out of compliance with its accreditation standards which require it to develop MOUs (Memorandums of Agreement) with all independent organizations affiliated with the OU mission and purpose.” (Verified Compl. at ¶ 61 and Ex. M.)⁴

DEFENDANT’S CONTINUED INFRINGEMENT

43. Defendant is no longer authorized or licensed in any way by the University to seek contributions from Alumni, donors or the public on the University’s behalf, or to use or exploit the Marks. (Verified Compl. at ¶ 62.)
Despite the University’s clear notice of disassociation from the Former Association

⁴ On top of being a damaging statement to be throwing around against the institution you exist to serve, this statement shows that the Former Association lacks a fundamental understanding of SACS’s requirements. SACS does not mandate “MOUs” be used. SACS does not force the University to enter into understandings with defiant, untrustworthy groups. Neither is an MOU a “cure all” to problems caused by a disobedient fundraising group. Rather, SACS mandates that the university *control* fundraising conducted in its name by institution-related entities. By refusing to allow a fundraising group to reject its direction and control in fundraising, the University was actually discharging its obligations under SACS. In fact, the behavior demonstrated by the Former Association, if tolerated by the University, would present SACS problems even if an MOU was in place between the organizations. In other words, an MOU is “not worth the paper it’s printed on” if the fundraising organization flaunts all attempts by the University to control its fundraising efforts.

and multiple notices of infringement, the Former Association has continued to represent that it is authorized to contact Alumni and solicit donations for the University, and otherwise willfully infringe and dilute the Oakwood Mark by using it without permission. (*Id.*)

44. For example, the Former Association continues to operate www.oakwoodalumni.org in which its services are marketed under the name “Oakwood University Alumni Association”. (Verified Compl. at ¶ 63 and Ex. N). The Former Association also uses and displays various examples of the University’s Marks on its website, such as marks associated with the University’s world-famous choral group, The Aeolians. (*Id.*) The Former Association still uses the “Oakwood University Alumni Association” name in correspondence and solicitations, thus confusing recipients of said communications. (*Id.*)

45. In the midst of the dispute outlined herein and without authorization, Powell-Hicks filed a name reservation with the Alabama Secretary of State for “Oakwood University Alumni Association.” (Verified Compl. at ¶ 64.)

46. Further, despite being disassociated from the University, and no longer recognized as an “institution-related entity” under SACS Standard 5.3, group’s website continues to state that it “is organized to connect and engage Oakwood alumni, students and friends of the University and promote the welfare of Oakwood University.” (Verified Compl. at ¶ 65 and Ex. N.) These services,

among others, when advertised using the Mark, create consumer confusion in the marketplace as to the University's involvement with and approval of the Former Association's activities. (Verified Compl. at ¶ 65.)

47. Such confusion is exacerbated when the Former Association issues statements that mischaracterize the University's actions with respect to the Former Association and does so while utilizing the University's Marks. (Verified Compl. at ¶ 66.) As one example, the Defendant's reckless, false and defamatory "Response to FAQs" is still available for download by any third party at the Former Association's website. (*Id.*) In addition, Defendant has released a "Membership Vote of No Confidence" which includes disparaging remarks about the University's President. (Verified Compl. at 66 and Ex. O.) Making such statements while utilizing the University's Marks serves to bolster the credibility of the Former Association, while sowing confusion as to the University's relationship to the Former Association.

48. Defendant's actions are causing, and unless restrained, will continue to cause, damage and immediate irreparable harm to the University that cannot be adequately compensated with money damages, including, but not limited to: (a) the loss of opportunities with the University's relationship with its Alumni, students, donors, vendors and other members of the public with which it does business; (b) the loss of the ability to control the use of the Oakwood Mark in fundraising,

causing confusion in the source of such fundraising and causing potential accreditation problems; (c) the certainty of confusion among the consuming public as to the University's affiliation with, approval of and/or sponsorship of the Former Association and the Former Association's goods and services, arising directly from Defendant's unauthorized use of at least the Oakwood Mark; and (d) the actual and/or imminently threatened loss to the University's valuable goodwill and reputation with the consuming public. (Verified Compl. at ¶¶ 67-69.)

ARGUMENT

Pursuant to Rule 65 of the Federal Rules of Civil Procedure, the University asks this Court to enter an order enjoining the Defendant, its officers, agents, servants, employees, and attorneys, as well as all other persons who are in active concert or participation with the Former Association and its officers, agents, servants, employees (namely the National Officers), and attorneys from using the Oakwood Mark.⁵

The University has a clear right to immediate injunctive relief from the Defendant's unauthorized use of the University's Oakwood Mark, and other of its Marks, including its name, Oakwood College's name, and any confusingly similar variants thereof. By its very nature, trademark infringement causes irreparable harm. *See Tally-Ho, Inc. v. Coast Cmty. Coll. Dist.*, 889 F.2d 1018, 1029 (11th

⁵ The University moves for the relief requested herein without prejudice to or waiver of its rights with respect to its Marks besides the Oakwood Mark.

Cir. 1989). Accordingly, injunctive relief is appropriate as there is no adequate remedy at law. The Eleventh Circuit has noted that “in ordinary trademark infringement actions . . . complete injunctions against the infringing party are the order of the day. The reason is simple: the public deserves not to be led astray by the use of inevitably confusing marks” *Angel Flight of Ga., Inc. v. Angel Flight Am., Inc.*, 522 F.3d 1200, 1209 (11th Cir. 2008) (internal quotation omitted) (internal citation omitted). Trademark infringement, thus, harms not only the rightful owner of the trademark but the public at large as well. *See Kason Indus., Inc. v. Component Hardware Group, Inc.*, 120F.3d 1199, 1207 (11th Cir. 1997).

This court may grant a preliminary injunction if “the movant has established: (1) a substantial likelihood of success on the merits; (2) that irreparable injury will be suffered if the relief is not granted; (3) that the threatened injury outweighs the harm the relief would inflict on the non-movant; and (4) that entry of the relief would serve the public interest.” Fed. R. Civ. P. 65; *Schiavo ex rel. Schindler v. Schiavo*, 403 F.3d 1223, 1225-26 (11th Cir. 2005). *See also Davidoff & CIE, S.A. v. PLD Intern. Corp.*, 263 F.3d 1297, 1300 (11th Cir. 2001) (reciting such factors as applicable to a trademark infringement claim). The University has established each of these four factors and is entitled to injunctive relief to protect its reputation and goodwill.

**THE UNIVERSITY’S SUCCESS ON ITS TRADEMARK
INFRINGEMENT CLAIMS IS A VIRTUAL CERTAINTY**

The facts set forth above demonstrate that the Defendant has engaged in trademark infringement of at least the Oakwood Mark in violation of both Alabama and federal law. Section 32(a) of the Lanham Act, 15 U.S.C. §1114(1)(a), provides a vehicle by which an owner of a federally registered trademark may protect its trademark registration. Under § 32(a) of the Lanham Act, liability for trademark infringement occurs when a person “use[s] in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark which is likely to cause confusion, or to cause mistake, or to deceive.” *Frehling Enters., Inc. v. Int’l Select Group, Inc.*, 192 F.3d 1330, 1335 (11th Cir. 1999); *see also* 15 U.S.C. § 1114(1)(a). “Thus, to prevail, a plaintiff must demonstrate (1) that its mark has priority and (2) that the defendant’s mark is likely to cause consumer confusion.”⁶ *Id.* This same standard applies to claims of infringement under

⁶ The Eleventh Circuit and courts within it also have stated this standard with more discrete subparts, expressly listing as one or more numbered elements the statutory requirement that the infringing mark be used “in commerce.” For example, “[t]hus, to prevail on a trademark infringement claim a plaintiff must demonstrate that (1) its mark has priority, (2) defendant used its mark in commerce, and (3) defendant’s mark is likely to cause consumer confusion.” *PetMed Express*, 336 F. Supp. 2d at 1217 (citing *Int’l Cosmetics Exch., Inc. v. Gapardis Health & Beauty, Inc.*, 303 F.3d 1242 (11th Cir. 2002) and *Frehling Enters., Inc. v. Int’l Select Group, Inc.*, 192 F.3d 1330 (11th Cir. 1999)). Similarly, “[t]o prevail on a claim of trademark infringement in this case, plaintiffs must establish: (1) that they possess a valid mark, (2) that the defendants used the mark, (3) that the defendants’ use of the mark occurred ‘in commerce,’ (4) that the defendants used the mark ‘in connection with the sale ... or advertising of any goods,’ and (5) that the defendants used the mark in a manner likely to confuse consumers.” *N. Am.*

Alabama law. *Way Int'l v. Church of the Way Int'l*, No. 7:15-CV-370-RDP, 2017 WL 432466, at *9 (N.D. Ala. Feb. 1, 2017) (“The test for the state-law infringement claim under Alabama common law is same as it is under the Lanham Act.”)

Both of these elements are present here. Indeed, in similar circumstances, Courts have repeatedly acknowledged that an alumni association may not utilize the marks of the associated educational institution without permission. *See Villanova Univ. v. Villanova Alumni Educational Foundation, Inc.*, 123 F. Supp. 2d 293, 312 (E.D. Pa. 2000) (preliminarily enjoining defendant alumni association’s use of university marks); *The Alumni Association of New Jersey Institute of Technology v. The Newer Jersey Institute of Technology*, 2014 WL 917051 (N.J. Super. Feb. 28, 2014) (permanently enjoining defendant alumni association’s use of university marks); *see also Potomac Conference of Seventh-Day Adventists v. Takoma Academy Alumni Association, Inc.*, 2 F. Supp. 3d 758, (D. Md. 2014) (denying association’s motion to dismiss finding that educational institution had properly pled that alumni group’s use of the institution’s marks constituted trademark infringement). Unless the Court enjoins the Former

Med. Corp. v. Axiom Worldwide, Inc., 522 F.3d 1211, 1218 (11th Cir. 2008). Regardless of how they are stated, each of these elements are satisfied in this case.

Association and its Officers from continuing to use the University's Marks, the University will be irreparably harmed.

1. The Oakwood Mark is valid and has priority.

There can be no dispute that the University's Oakwood Mark is valid. Nor can there be any dispute that the University has acquired statutory and common law rights in its Oakwood Mark. The University owns U.S. Trademark Registration No. 3,601,698 for "Oakwood University" for use in connection with various goods and services, including "[e]ducational services, namely, providing courses of instruction on the college and university levels; entertainment services, namely, live music concerts; entertainment in the nature of presenting live musical groups, plays, and music and poetry recitals, and art exhibitions." The right to use the "Oakwood University" Mark in conjunction with educational and entertainment services necessarily extends to use of the Mark in conjunction with fundraising to support those services. *Villanova University v. Villanova Alumni Educational Foundation, Inc.*, 123 F. Supp. 2d 293, 302 (E.D. Pa. 2000) ("[T]he educational activities of a non-profit educational institution inherently encompass charitable services. Thus, the registration certificate logically extends to the University's use of these marks in fundraising activities that are necessary to support its education and entertainment activities."). The certificate of registration constitutes prima facie evidence of the validity of the registered mark . . . and of

the owner's exclusive right to use the registered mark in commerce." 15 U.S.C. § 1057(b). Further, on March 12, 2015, the USPTO issued a Notice of Acceptance under Section 8 of the Trademark Act, 15 U.S.C. §1058(a)(1) and Section 15 of the Trademark Act, 15 U.S.C. §1065 for U.S. Registration No. 3,601,698, meaning that the University's rights to the mark that is the subject of this registration are "Incontestable" under Section 15 of the Trademark Act, 15 U.S.C. §1065. (*See* Verified Compl., ¶¶ 12-13, Ex. A.)

2. Use of "Oakwood University Alumni Association" is likely to cause confusion in the marketplace.

The only remaining question for proving a federal trademark infringement claim is whether the Defendant's use of the name "Oakwood University" is likely to cause confusion. In assessing whether there exists a likelihood of consumer confusion, the Court considers: (1) the type of mark; (2) the similarity of the mark; (3) the similarity of the products the marks represent; (4) the similarity of the parties' retail outlets, or trade channels, and customers; (5) the similarity of advertising media; (6) defendant's intent; and (7) actual confusion. *Frehling Enters., Inc.*, 192 F.3d at 1335. Of these, the type of mark and actual confusion are most important, but evidence of actual confusion is not a prerequisite to establishing a likelihood of confusion. *Id.* at 1335, 1340.

Where the copying of a mark is intentional, as is the case here, a rebuttable presumption of likelihood of confusion is created. *Bauer Lamp Co. v. Shaffer*, 941

F.2d 1165, 1172 (11th Cir. 1991). Thus, the “deliberate adoption of a similar mark may lead to an inference of intent to pass off goods as those of another which in turn supports a finding of likelihood of confusion.” *Beer Nuts v. Clover Club Foods Co.*, 805 F.2d 920 (10th Cir. 1986). Since Defendant, with knowledge of the University’s exclusive ownership of the Mark, adopted and made use of the Mark, likelihood of confusion is presumed until rebutted. Defendant cannot rebut this evidence.

Notwithstanding this presumption, the evidence discussed above weighs in favor of finding a likelihood of confusion exists. The Mark is widely recognized and highly regarded locally, nationally and, indeed, around the world. The Former Association continues to use a name “Oakwood University Alumni Association” in commerce in concert with its activities, a mark that is not merely similar to the University’s Oakwood Mark, but includes the Oakwood Mark in its entirety.

Defendant’s intent to continue its use is shown by its continued use of the domain name “oakwoodalumni.org,” as well as the name reservation for “Oakwood University Alumni Association” with the Alabama Secretary of State.⁷

(See Verified Compl., ¶¶ 63-64); *Planetary Motion, Inc. v. Techsplosion, Inc.*, 261 F.3d 1188, 1204-05 (11th Cir. 2001) (holding that an injunction prohibiting

⁷ Despite the Former Association’s incredibly false statement that, “OUAA does not use the name or trademarks of Oakwood University” (see Verified Compl. at ¶ 59 and M), the Former Association continues to use, among other things, its name “Oakwood University Alumni Association.”

trademark infringement defendant from using the name “Coolmail” or any similar mark in connection with e-mail or other Internet-related services, in connection with software, as part of its domain name of its website, was neither vague nor overbroad). Likelihood of consumer confusion from the Former Association’s use of the Oakwood Mark is clear. *Cf. Villanova Univ.*, 123 F. Supp. 2d at 306 (finding likelihood of confusion where alumni group used university’s marks to engage in university-related fundraising).

**WITHOUT INJUNCTIVE RELIEF, THE UNIVERSITY
WILL CONTINUE TO SUFFER IRREPARABLE INJURY**

The Eleventh Circuit “extend[s] a presumption of irreparable harm once a plaintiff establishes a likelihood of success on the merits of a trademark infringement claim.” *N. Am. Med. Corp. v. Axiom Worldwide, Inc.*, 522 F.3d 1211, 1227 (11th Cir. 2008); *see also Tally-Ho, Inc. v. Coast Cmty. Coll. Dist.*, 889 F.2d 1018, 1029 (11th Cir. 1989) (citing and quoting *Processed Plastic Co. v. Warner Communications*, 675 F.2d 852, 858 (7th Cir.1982)) (“It is generally recognized in trademark infringement cases that (1) there is not adequate remedy at law to redress infringement and (2) infringement by its nature causes irreparable harm.”); *Potomac Conf. Corp. of Seventh-Day Adventists*, 2014 WL 857947 (D. Md. Mar. 4, 2014) (quoting *Prosperity Sys., Inc. v. Ali*, No. CCB-10-2024, 2010 WL 5174939, at *5 (D. Md. Dec. 15, 2010)) (“Generally, the finding of irreparable harm is automatic in a trademark infringement case where the trademark holder

has demonstrated lawful use and the likelihood of consumer confusion.”). The presumption of irreparable injury applies here because the University can establish its lawful use – and Defendant’s infringement of – its trademark.

Even absent the application of such a presumption, unless the Court enjoins Defendant’s impermissible use of the Oakwood Mark, the University will suffer immediate and irreparable injury that cannot be adequately compensated with money damages, including, but not limited to: (a) the loss of the ability to control the use of the Oakwood Mark in commerce, including the type, style and quality of the goods and services to which it is attached; (b) the certainty of confusion among the consuming public as to the University’s affiliation with, approval of and/or sponsorship of the Former Association’s goods and services, arising directly from Defendant’s unauthorized use of the Oakwood Mark; and (c) the actual and/or imminent threatened loss to the University’s valuable goodwill and reputation with the consuming public.

Further, the Former Association is aware that the University has disassociated the Former Association, yet the Former Association continues to solicit donations from Alumni donors and conduct various activities directed toward them, as though nothing has changed. Indeed, the Former Association continues to call itself the “Oakwood University Alumni Association,” thereby trading on the University’s goodwill by incorporating the “Oakwood University”

Mark in its name. In doing so, the Former Association continues to falsely suggest to Alumni, students, donors, and the public at large that its actions are approved and supported by the University. It also continues to cause confusion over the source of the University's fundraising and cause potential accreditation problems under SACS Standard 5.3.

The University has no adequate remedy at law for this injury because the harm it will suffer as a result of the Defendant's exploitation of the University's Oakwood Mark is incapable of exact proof. An award of money damages simply cannot redress the University's loss of (a) control over its trademarks and the inevitable consumer confusion; (b) the attendant harm to the University's good will and reputation, and (c) the University's loss of control over the fund-raising activities and the potentially damaging ramifications of losing its SACS accreditation.⁸

⁸ Damage to business reputation and relationships are precisely the types of harm that are irreparable because the damage is difficult, if not possible, to determine and/or quantify. *See e.g., Ferrellgas Partners, L.P. v. Barrow*, 143 F. App'x 180, 190-91 (11th Cir. 2005) (“[G]rounds for irreparable injury include loss of control of reputation, loss of trade, and loss of goodwill. Irreparable injury can also be based upon the possibility of confusion.”) (quoting *Pappan Enters., Inc. v. Hardee's Food Sys., Inc.*, 143 F.3d 800, 805 (3d Cir.1998)); *BellSouth Telecomm., Inc. v. MCIMetro Access Transmission Serv., LLC*, 425 F.3d 964, 970 (11th Cir. 2005) (stating that the “loss of customers and goodwill is an irreparable injury”); *Unisource Worldwide, Inc. v. S. Cent. Ala. Supply, LLC*, 199 F. Supp. 2d 1194, 1211-12 (M.D. Ala. 2001) (noting that the plaintiff's loss of customers constituted an irreparable injury); *J.E. Hanger, Inc. v. Scussel*, 937 F. Supp. 1546, 1556 (M.D. Ala. 1996) (finding that the plaintiff's loss of good will and loss of customers constituted an irreparable injury).

THE BALANCE OF THE HARMS WEIGHS IN THE UNIVERSITY’S FAVOR

The harm caused by the Defendant as a result of its infringement of the University’s Mark far exceeds any alleged harm caused as a result of any injunctive relief entered against Defendant and in favor of the University.

There will be no substantial hardship on the Former Association because of the requested Order. The Former Association, despite any injunctive relief prohibiting use of the Oakwood Mark, would still be able to continue providing Alumni services under a different, non-infringing name, provided any new arrangement agrees to recognize and comply with SACS accreditation standard 5.3. Conversely, the University would be at risk of significant harm if injunctive relief is not granted, including, but not limited to, the potential loss of SACS accreditation as well as harm to its goodwill and reputation. Under similar circumstances, the court in *Potomac Conference Corp. of Seventh-Day Adventists* determined that the balance of the equities tipped in favor of the plaintiff, stating that “a preliminary injunction [requested by the plaintiff] barring use of the marks at issue still allows Defendant [alumni association] to fundraise and host events for students and alumni.” *Potomac Conference Corp. of Seventh-Day Adventists*, 2014 WL 857947 at *21; *see also Villanova University*, 123 F. Supp. 2d at 311 (finding infringing alumni association “can hardly claim to be harmed” by order barring continued use of university’s marks and entering preliminary injunction).

Ultimately, any inconvenience caused to the Defendant from any injunctive relief would be minor in comparison to the harm suffered by the University if injunctive relief is not granted. *See Id.* (Noting that “Defendant [alumni association] may suffer some inconvenience from issuance of an injunction” but that such inconvenience “would not be greater than the hardship suffered by [Villanova] University through the continued loss of control over its name, marks and goodwill” particularly where the inconvenience was the “result of defendant’s own conduct.”).

THE ISSUANCE OF AN INJUNCTION WILL SERVE THE PUBLIC INTEREST

As demonstrated by Alabama Code § 8-12-16 and the Lanham Act, infringement of the Oakwood Mark by the Defendant is against the public policy of the State of Alabama and of the United States. A preliminary injunction issued in the University’s favor will actually serve the public interest because it will minimize confusion in the marketplace. *See Kason Indus., Inc. v. Component Hardware Group, Inc.*, 120 F.3d 1199, 1207 (11th Cir. 1997) (noting a strong public interest in preventing deception of consumers in the marketplace). Eliminating such confusion is “paramount.” *TracFone Wireless, Inc. v. Washington*, 978 F. Supp. 2d 1225, 1234 (M.D. Fla. 2013). Indeed, trademark infringement not only negatively impacts the right of the “trademark owner to control his products’ reputation” but also “the right of the public to be free of

confusion.” *Id.* at 1234-35. “[T]he public interest would be served by the issuance of a preliminary injunction which prevents further consumer confusion.” *Id.* at 1235.

THE UNIVERSITY SHOULD NOT BE REQUIRED TO POST BOND

Should the Court decide the University should post a bond in conjunction with the requested relief, the University, of course, will comply. However, the University contends no bond is called for in this case, and the Court has the discretion to require no bond at all. *BellSouth Telecomms., Inc. v. MCI Metro Access Transmission Servs., LLC*, 425 F.3d 964, 971 (11th Cir. 2005). A bond should not be required here. The University has shown a high probability of succeeding on the merits of its claims. Moreover, the evidence demonstrates that Defendant’s infringement is willful and that they have no legitimate interest in their continued use of the University’s Oakwood Mark. Accordingly, although the University stands ready and willing to post security as the Court may order, it requests that the Court require no bond or require only a nominal amount.

Additional grounds in support of this Motion are more fully set forth in the Verified Complaint.

REQUEST FOR RELIEF

Defendant has adopted and continued to use the University’s Marks as its own despite the University’s clear attempts to disassociate and to revoke the

Former Association's permission to use the Marks. Further, Defendant continues to fund-raise in the University's name, causing confusion amongst the University's Alumni and constituency. Defendant's actions constitute trademark infringement and continue to undermine the value and goodwill associated the University's Marks and reputation. Defendant's actions merit an immediate injunction until the merits of this case can be heard.

For the foregoing reasons, the University respectfully requests that this Court set and conduct a Preliminary Injunction hearing within approximately 30 days of service of the Verified Complaint, or at the Court's earliest other opportunity, and enter an order and judgment temporarily and permanently enjoining Defendant and the Former Association's agents, officers, servants, employees (namely, its National Officers), attorneys, and all other persons who are in active concert or participation with the Defendant from:

- (a) using the Oakwood Mark or any colorable imitations thereof;
- (b) using the Ancillary Marks or any colorable imitations thereof;
- (c) using any trademark that imitates or is confusingly similar to or in any way similar to the Oakwood Mark or that is likely to cause confusion, mistake, deception or public misunderstanding as to the origin of the Former Association's goods and services or their connection to the University;

- (d) using any trademark that imitates or is confusingly similar to or in any way similar to the Ancillary Marks or that is likely to cause confusion, mistake, deception or public misunderstanding as to the origin of the Former Association's goods and services or their connection to the University;
- (e) passing off or inducing or enabling others to sell or pass off any goods or services that are not authorized by the University as goods or services sponsored or endorsed by, associated or affiliated with the University;
- (f) registering, trafficking in or using any state or federal trademark that incorporates the Oakwood Mark or any colorable imitations thereof;
- (g) registering, trafficking in or using any state or federal trademark that incorporates the Ancillary Marks or any colorable imitations thereof;
- (h) diluting the distinctive quality of the Oakwood Mark;
- (i) diluting the distinctive quality of the Ancillary Marks;
- (j) displaying goods or services incorporating the Oakwood Mark in connection with any advertisement or promotion including, without limitation, over the Internet;

- (k) displaying goods or services incorporating the Ancillary Marks in connection with any advertisement or promotion including, without limitation, over the Internet;
- (l) displaying, offering for sale and selling goods or services incorporating the Oakwood Mark;
- (m) displaying, offering for sale and selling goods or services incorporating the Ancillary Marks;
- (n) otherwise using any trademark that includes the term “Oakwood University,” whether alone or in combination with other text, words, letters or numbers;
- (o) further tortious interference with the University’s protectable business interest with vendors, Alumni, students, donors and Board members;
- (p) all fundraising and solicitation efforts in the name of or on behalf of the University in any manner;
- (q) making any statement or taking any other action that suggests Defendant or its activities are affiliated with, approved by, sponsored by, or in any way authorized by the University;
- (r) planning or organizing Alumni fundraising events, including the University’s Alumni Weekend;

- (s) having representatives solicit funds or membership at University events, such as Aeolian concerts; and
- (t) engaging in activities, including fundraising or membership solicitation, for the benefit of the Former Association at Oakwood University events, including Aeolian concerts.

The University requests that the Court's preliminary injunction order specifically state that the persons bound by such order include the Former Association's National Officers (*i.e.*, Cynthia Powell-Hicks, Desmond Pierre-Louis, Eleanor Palmer, Randal Leonard, Tammy Woodfork, Patricia McBean Pates, Harry Swinton, Jr., Donald L. Bedney II, Jayson S. Brown, and Anthony J. Aubrey, Jr.).

Respectfully submitted this 6th day of June, 2018.

/s/ David B. Block
One of the attorneys for Plaintiff
Oakwood University, Inc.

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CERTIFICATE OF SERVICE

I hereby certify that on this the 6th day of June, 2018, I have caused the clerk of the Court to serve a copy of the foregoing upon the following via U.S.

Mail, postage prepaid:

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