

EXECUTIVE SUMMARY

Item Name: **Ratification of Authorization to Initiate Litigation Against John Doe aka “asu_covid.parties” an individual, and Facebook, Inc., a Delaware corporation, for direct and contributory federal trademark infringement and related issues and to extend such authorization to the board on behalf of itself and all universities under the board’s governance for similar actions**

Action Item

Requested Action: Pursuant to ABOR Policy 1-109, (1) Arizona State University requests that the board ratify the prior authorization to initiate litigation against John Doe aka “asu_covid.parties” an individual, and Facebook, Inc., a Delaware corporation for direct and contributory federal trademark infringement, false designation of origin and false advertising under Lanham Act Section 43(a), State Trademark Dilution under Arizona Revised Statutes Section 44-1448.01, and unfair competition and (2) the board office requests that such authorization be extended to the board on behalf of itself and all universities under the governance of the board for similar actions.

Background/History of Previous Board Action

- An Instagram account “asu_covid.parties” (“asu_covid.parties”) used the federally registered trademarks of ASU and ASU’s school colors trade dress to promote a so-called “Hoax-19” Covid party, claiming that Covid-19 is a “big fat hoax,” and spreading dangerous misinformation about Covid-19 just as students were returning to campus to begin classes.
- ASU filed a trademark infringement report with Instagram requesting that Instagram remove or alter the offending account but Instagram refused, despite the fact the infringement was contrary to its own terms, policies and community guidelines.
- Because of the serious public health issues involved, ASU filed litigation seeking expedited discovery, a temporary restraining order, preliminary injunction and permanent injunction to enjoin “asu_covid.parties” from using ASU’s trademarks and trade dress and to enjoin Facebook from continuing to provide the Instagram service to the “asu_covid.parties” account owner.

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- Pursuant to ABOR Policy 1-109(B) "Initiation of Litigation," ASU sought and received approval to initiate the litigation from board counsel, following her consultation with the board chair. That policy provides that the approval is subject to ratification by the board at its next meeting.
- After ASU filed its litigation, Facebook removed the "asu_covid.parties" account and similar "covid.parties" accounts.
- John Doe aka "asu_covid.parties" filed an answer that was replete with obscenities and inflammatory comments. The judge assigned to the litigation struck the answer because of such obscenities and inflammatory language and ordered that John Doe refile an appropriate answer. In addition the judge is requiring a reasoned motion for permission for John Doe to proceed under a pseudonym.
- The University of Arizona has observed similar postings using its name and colors and those accounts have also been removed.
- The board is requested to ratify the authorization granted to ASU and to extend the authorization to the board on behalf of itself and all the universities under its jurisdiction to litigate these and similar actions to protect the rights and interests of the board, the universities under the board's governance and their respective students and employees.

Recommendation to the Board:

It is recommended that the board ratify the authorization to ASU to initiate litigation and to extend the authorization to the board on behalf of itself and all universities under the board's governance to litigate these and similar actions to protect and enforce the rights and interests of the board, the universities and their students and employees.