



November 7, 2018

Michael Beck
Administrative Vice Chancellor
2211 Murphy Hall, Box 951405
Los Angeles, CA 90095

Re: October 31, 2018 Cease and Desist Letter to Students for Justice in Palestine

Dear Administrative Vice Chancellor Beck:

We write on behalf of National Students for Justice in Palestine and Students for Justice in Palestine at UCLA (collectively "SJP") in response to your October 31, 2018 cease and desist letter. Your assertion that the organizations' poster and other materials for their upcoming conference violate the University's trademark on its name and the Bruin Bear fails as a matter of fact and law.

The use of the name UCLA merely indicates the location of the conference and the artist's depiction of a California grizzly bear in no way resembles any image trademarked by the University. Simply put, the University of California cannot claim exclusive rights to the image or concept of a bear. California Education Code Section 92000 on which you rely for your trademark assertion is both content-based because the University is attempting to apply it to SJP's non-commercial speech and substantially overbroad. Your attempts to stifle SJP also seem motivated entirely by opposition to its political viewpoint. Your attempts to chill SJP's speech violate the First Amendment. We strongly urge you to reverse course.

Students for Justice in Palestine's November Conference and Poster

Students for Justice in Palestine at UCLA (SJP at UCLA) is a registered student organization that received approval to host a national student conference on campus. National Students for Justice in Palestine (NSJP) is an independent, volunteer-run organization of students and recent alumni whose main function is to support an annual national conference, in partnership with campus SJP organizations.¹ NSJP's national conference brings together students from different schools to attend skill-building and political development workshops, meet with fellow organizers, and learn about other social justice movements, as well as the history of the movement for Palestinian rights. SJP at UCLA and NSJP are independent from each other but work together to host the conference.

¹ Affidavit of Irene Lucia Delaney ¶ 3 available at, https://static1.squarespace.com/static/548748b1e4b083fc03ebf70e/t/5be1cdc32b6a28f015ef2284/1541524932168/NSJP_Affidavit.pdf.

NSJP, SJP at UCLA, and all SJP organizations work towards freedom, justice, and equality for the Palestinian people. They also recognize the interconnectedness of all movements for freedom, justice and equality and actively oppose homophobia, misogyny, racism, antisemitism, Islamophobia, classism, colonialism, ableism, bigotry and discrimination in any other form.

This year's conference, the theme of which is "radical hope," will take place November 16-18th at UCLA. A critical goal of the conference is to sustain and build regional momentum on the West Coast, which has historically been a pillar of advocacy for Palestinian rights.

Because of the conference's emphasis on West Coast advocacy efforts, and because past conferences have featured a regional specific design,² the student artist created a poster that reflected California's critical role in the movement and location of the conference. The poster depicts a California grizzly bear in a sitting position, wearing a keffiyeh, a symbol of Palestinian solidarity, gazing up at a kite, a symbol of freedom and liberation, bearing the colors and design of the Palestinian flag flying alongside three doves, the near universal symbol for peace. To indicate to attendees the conference location, the poster says UCLA 2018.

SJP's Poster Does Not Infringe on Any Valid Trademark of the University of California

Your letter asserts that the poster "inaccurately state[s], suggest[s], or impl[ies] that the University sponsors, supports, endorses or affiliates with" the conference, citing California Education Code Section 92000. Truthfully indicating the event location, however, does none of these things. It is indisputable that the conference is taking place at UCLA in 2018. The existing materials, therefore, already comply with your demand that use of "UCLA" be limited to indicating the location of the conference.

Likewise, contrary to the assertions in your cease and desist letter, the bear on the poster is not the Bruin Bear, but a general California grizzly, the official state animal of California since 1953, and which adorns the state flag of California. Cal. Gov. Sections 420, 425. California grizzly bears have been associated with the state of California since the 1840s, predating the existence of the University of California. The bear on the poster was neither modeled after nor inspired by any existing bear image and our search revealed no logo, emblem, or image of the Bruin Bear that the bear on the poster resembles. There is no credible claim that the bear on the poster risks confusion with the Bruin Bear. The University of California can have no trademark on bears as a general matter, particularly one with a long history of affiliation with the state of California.

Furthermore, Section 92000, by its own language, does not even apply to NSJP's depiction of a bear. The statute only prohibits "use [of "the University of California"], or any abbreviation of it or any name of which these words are a part." Cal. Ed. Code Section 92000. Nor does UCLA Policy 110, also cited in your letter, cover the depiction of a bear on NSJP's poster. The only

² For example, the logo for the NSJP 2017 Conference, hosted at the University of Houston, featured the Texas state flower, the Texas Bluebonnet. See, National Students for Justice in Palestine, "2017 National Students for Justice in Palestine Conference," n.d. <https://www.nationalsjp.org/2017-national.html>. The logo for the 2013 Conference, hosted at Stanford University, featured the California Poppy. See, NSJP, "2013 National Students for Justice in Palestine Conference," n.d. <https://www.nationalsjp.org/2013-national.html>.

relevant portion of Policy 110 is the claimed right to illustrations of the campus mascot. Again, the bear in the poster is in no way identifiable as a Bruin Bear.

Education Code Section 92000 Is Unconstitutional on its Face and as Applied to SJP

Even assuming for the sake of argument that the grizzly bear on SJP's poster bore some slight resemblance to the Bruin Bear, the University's claims that the poster violates its trademark would still fail. Although UCLA may reasonably restrict the commercial use of its name and prevent or correct legitimate confusion, it may not prevent any use of the name UCLA or its associated imagery consistent with the First Amendment.

"The First Amendment may offer little protection for a competitor who labels its commercial good with a confusingly similar mark, but trademark rights do not entitle the owner to quash an unauthorized use of the mark by another who is communicating ideas or expressing points of view." *Bosley Med. Inst., Inc. v. Kremer*, 403 F.3d 672, 677 (9th Cir. 2005); *accord Taubman Co. v. Webfeats*, 319 F.3d 770, 774 (6th Cir. 2003) ("The Lanham Act [prohibiting infringement of federally recognized trademarks] is constitutional because it only regulates commercial speech, which is entitled to reduced protections under the First Amendment.") (citing *Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n of New York*, 447 U.S. 557, 563 (1980)). Application of Section 92000 to SJP's poster is, therefore, unconstitutional.

As a content-based restriction on speech, your application of Section 92000 will be subjected to the highest level of scrutiny by the courts. Regulations on the use of a name or symbol have been held to be content-based restrictions. *See, e.g., Lighthawk, The Envtl. Air Force v. F. Dale Robertson*, 812 F. Supp. 1095, 1098 (W.D. Wash. 1993) (limitation on use of "character or name" of "Smokey Bear" impermissibly content-based as applied to non-commercial speech); *Texas v. Johnson*, 491 U.S. 397, 411–12 (1989) (restriction on burning the American flag). As Justice Harlan cautioned in the pivotal case *Cohen v. California*, "we cannot indulge the facile assumption that one can forbid particular words without also running a substantial risk of suppressing ideas in the process." 403 U.S. 15, 26 (1971).

In addition, your demand that SJP "obtain prior permission from UCLA for any [] promotional materials" is an impermissible prior restraint on speech. As the Supreme Court has remarked, "Any prior restraint on expression comes to this Court with a 'heavy presumption' against its constitutional validity." The government, therefore, bears a heavy burden to justify any requirement to obtain the government's permission before engaging in speech. *NAACP Western Region v. City of Richmond*, 743 F.2d 1346, 1355 (9th Cir. 1984).

Most troublingly, the University's motivation for silencing SJP seems to be opposition to the group's viewpoint and/or perceived viewpoint. Quite simply, "restrictions based on viewpoint are prohibited." *Pleasant Grove City, Utah v. Summum*, 555 U.S. 460, 469 (2009). Your cease and desist letter evidences such discrimination when it takes specific issue with the poster's depiction of a kite with the design of the Palestinian flag, "which some may interpret as an intention to endorse violence against Israel." The letter continues, saying that the University would not "permit use of its name in a manner that could imply endorsement of violence." Your emphasis on how "some" might perceive symbols of Palestinian freedom indicates that the real reason for the University's

unconstitutional censorship of SJP is the group's support for Palestinian rights. Your sensationalist mischaracterization of SJP's viewpoint is further evidence of viewpoint discrimination.

This conclusion is bolstered by the University's handling of past conference materials. For example, the Student Labor Organizing Conference advertised its conference with a sign that prominently featured the abbreviation "UCLA" in font size larger than that on the rest of the sign – which your October 31 letter orders SJP to cease and desist from doing.³ To our knowledge, the Student Labor Organizing Conference was not threatened as SJP is.

Viewpoint discrimination against supporters of Palestinian rights at UCLA is not new. Several such incidents at UCLA are detailed in a 2015 report by Palestine Legal and the Center for Constitutional Rights.⁴ These include incidents in which, for example: the university investigated a professor for posting links with information about the boycott of Israel to his course website; and a student government official conditioned funding for an event on the requirement that organizers maintain "zero connection" with anyone who supports divestment of companies doing business with Israel.⁵ On at least one other previous occasion UCLA incorrectly warned SJP that its slogan "We the Optimists Divest" violated trademark law.⁶

UCLA's attempt to prevent SJP from using the slogan "We the Optimists Divest" highlights another constitutional problem with the University's enforcement of Education Code Section 92000: the statute is substantially overbroad. Laws are unconstitutionally overbroad where they "reach[] a substantial amount of constitutionally protected conduct." *Vill. of Hoffman Estates v. The Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 494 (1982). Section 92000 no doubt reaches a breathtaking amount of constitutionally protected conduct, as evidenced by its application to "We the Optimists Divest." And the law goes even further: seemingly banning the mere mention or display of UCLA's name (or tagline) in any political context, including calls for institutional reform or the exposure of corruption within the University. "[S]peech on public issues occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection." *Connick v. Myers*, 461 U.S. 138, 145 (1983). This suppression of speech on a poster announcing a non-commercial event violates the First Amendment. *See, e.g., Lighthawk*, 812 F. Supp. at 1101-04 (striking down Forest Service restriction on use of Smokey the Bear image on a political advertisement criticizing Forest Service policies).

The University's invocation of Section 92000 and Policy 110 in its letter will be subject to the highest level of scrutiny by the courts as a content and viewpoint based restriction on speech, a

³ See, Student Labor Organizing Conference, Facebook Event Page, <https://www.facebook.com/events/2127305233969274/>.

⁴ See PALESTINE LEGAL & THE CENTER FOR CONSTITUTIONAL RIGHTS, THE PALESTINE EXCEPTION TO FREE SPEECH 72 (2015) ("Palestine Exception") at 90-93, <https://static1.squarespace.com/static/548748b1e4b083fc03ebf70e/t/560c2e0ae4b083d9c363801d/1443638794172/Palestine+Exception+Report+Final.pdf>.

⁵ Letter from ACLU of Southern California, Palestine Legal, and the Center for Constitutional Rights, to UCLA Chancellor Gene Block, November 18, 2015, <http://static1.squarespace.com/static/548748b1e4b083fc03ebf70e/t/564cc262e4b0411c3eeb65d6/1447871074489/Letter+PL+CCRU+to+UCLA+Re+Viewpoint+Discrimination.pdf>.

⁶ Palestine Legal interview with SJP at UCLA alumni [names withheld], November, 2018; Palestine Legal interview with SJP at UCLA representatives [names withheld], November, 2014.

prior restraint, and an overbroad suppression of First Amendment protected speech. The stated interest in ensuring that people do not believe that the University endorses SJP's speech fails to justify its censorship. Indeed, courts routinely reject efforts by public schools and universities to restrict student expression based on the argument that people may confuse permitting such speech as official endorsement of the speaker's message. See, e.g., *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 841 (1995) (concern that a student organization's expression might be "attributed to the University is not a plausible fear"); *Rumsfeld v. Forum for Acad. & Inst. Rights, Inc.*, 547 U.S. 47, 64–65 (2006) (rejecting a law school's limitation on military recruiters' use of its resources in order to prevent the possibility that the law school "could be viewed as sending the message that they see nothing wrong with the military's policies"); *Gerlich v. Leath*, 861 F.3d 697, 705–07 (8th Cir. 2017) (prohibiting public university from imposing viewpoint-based restrictions on student use of its trademarked name in club materials).

If the University wishes to distance itself from the viewpoints expressed by SJP at the conference it may, of course, do so, but it goes significantly too far and violates the Constitution when it seeks to stifle protected expression through ill-supported assertions of trademark infringement.

Because SJP wants to forge a strong working relationship with the UCLA administration, however, in the spirit of cooperation, it has removed the word "UCLA" from its poster. SJP is also willing to ensure that all further mentions of the word "UCLA" in conference materials will either include the word "at" or will otherwise clearly indicate that the term is used only to reference the location of the conference. In return, we expect that you will enact policies and practices to ensure that the University's trademark cannot be used to silence non-commercial, First Amendment protected speech.

Because of the approaching conference date and the need for event organizers to finalize materials in advance of the event, please let us know by COB Friday, November 9, 2018 how you intend to handle this matter. If you have any questions, please feel free to contact Brendan Hamme at the ACLU of Southern California at BHamme@aclusocal.org or 714-450-3963. We look forward to hearing from you.

Regards,

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