

Cannabis Branding and Free Speech Considerations

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by Sarah Robertson



A recent out-of-court settlement following an 8th Circuit [decision](#) in *Gerlich v. Leath* highlights some of the unique legal issues that surround the branding of products in the cannabis space.

In 2012, two students at Iowa State University

(ISU), Paul Gerlich and Erin Furleigh, secured approval from ISU's trademark licensing office to use the ISU school mascot, "Cy the Cardinal," and other identifying marks and logos of the school on t-shirts that the students planned to print and sell. The students were the leaders of the ISU chapter of the National Organization for the Reform of Marijuana Laws (NORML), an advocacy group that promotes the legalization of marijuana for responsible use by adults. The ISU chapter of NORML was an officially-recognized student group and the t-shirts were designed to raise awareness of NORML. The t-shirts displayed the school mascot as part of the NORML acronym, along with a marijuana leaf and the slogan "Freedom is NORML at ISU." The students started selling their shirts and placed a re-order. But the school revoked its trademark licensing approval after a front page article in a local newspaper about the school's approval of the t-shirts prompted an angry reaction from state lawmakers and public officials. The Trademark Office of the school also swiftly rewrote its trademark guidelines to ban the use of school logos on shirts that promote dangerous, illegal, or unhealthy products and

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illegal drugs.

After subsequent versions of their t-shirts did not receive ISU approval, Gerlich and Furleigh sued four ISU administrators, including the then-president and director of trademark licensing, in the federal district court for the Southern District of Iowa on First Amendment and other grounds, claiming that the administrators took specific action at the students and subjected the students to scrutiny that wasn't placed on other student groups. The district court ruled that the administrators at ISU ran afoul of the First Amendment because their trademark decisions violated the students' right to free speech. On appeal, the 8th Circuit agreed and confirmed that denying the students access to the school's trademarks – such as Cy the Cardinal mascot - as members of NORML discriminated against them based on their pro-cannabis viewpoint. The 8th Circuit maintained its holding after a rare grant of rehearing.

Last month, the State of Iowa agreed to pay \$150K to Gerlich and Furleigh and \$193K in legal bills to the two firms representing them in order to settle the students' claims. The settlement deal covers damages and legal fees at the appellate level, but further payments may still have to be made for the trial phase of the case.

Because ISU is a state university, the case involved complex issues of viewpoint discrimination under First Amendment case precedent that might not apply in a private context. However, the case illustrates that, along with the complex and uncertain regulatory scheme currently governing the commercialization of cannabis in the U.S., other considerations such as trademark policies that take into account free speech considerations may come into play in a trademark licensing context when state action is involved.