IN THE UNTED STATES DISTRICT OF COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

UNITED SUPREME COUNCIL, 33 DEGREE OF THE ANCIENT AND ACCEPTED SCOTTISH RITE OF FREEMASONRY, PRINCE HALL AFFILIATION, SOUTHERN JURISDICTION OF THE UNITED STATES OF AMERICA, UNITED SUPREME COUNCIL 33 (THIRTY-THREE) OF THE ANCIENT AND ACCEPTED SCOTTISH RITE OF FREEMASONY (PRINCE HALL AFFILIATION) SOUTHERN JURISDICTION U.S., GRAND ORIENT AT WASHINGTON, DISTRICT OF COLUMBIA,	:	
Plaintiffs,	:	
v.	:	Case No. 1:16-cv-1103
UNITED SUPREME COUNCIL OF THE ANCIENT ACCEPTED SCOTTISH RITE FOR THE 33 DEGREE OF FREEMASONRY, SOUTHERN JURISDICTION, PRINCE HALL AFFILIATED, RALPH SLAUGHTER, JOSEPH A. WILLIAMS, MOST WORSHIPFUL PRINCE HALL GRAND LODGE OF VIRGINIA FREE AND ACCEPTED MASONS, INCORPORATED, ROGER C. BROWN AND MICHAEL A. PARRIS,	:	
Defendants.	:	

MEMORANDUM IN SUPPORT OF
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Date: January 27, 2018

Respectfully submitted,

/s/

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PRELIMINARY STATEMENT

Defendants United Supreme Council of the Ancient and Accepted Scottish Rite for the 33 Degree of Freemasonry, Southern Jurisdiction, Prince Hall Affiliated, Ralph Slaughter, Joseph A. Williams and Michael A. Parris (collectively referred to as "Defendants") respectfully move the Court to grant summary judgment in their favor on the claims asserted by Plaintiffs United Supreme Council, 33 Degree of the Ancient and Accepted Scottish Rite of Freemasonry, Prince Hall Affiliation, Southern Jurisdiction of the United States of America (sometimes referred to as "Plaintiff USC-SJ") and Supreme Council 33º (Thirty-Three) of the Ancient and Accepted Scottish Rite of Freemasonry (Prince Hall Affiliation) Southern Jurisdiction U.S.A., Grand Orient at Washington, District of Columbia ("Plaintiff Grand Orient") (sometimes collectively referred to as "Plaintiffs United Supreme Council"). The Amended Complaint in this case alleges a hodgepodge of claims. There are some six claims remaining, and not one has merit. The evidence does not support any conspiracy or tortious interference with contract. The evidence does not support any trademark infringement or unfair competition. The evidence does not even support that Plaintiffs have standing to bring this case. In the end, as discovery has confirmed, Defendants are entitled to summary judgment as a matter of law.

I. STATEMENT OF UNDISPUTED FACTS

Defendants

1. Defendant Ralph Slaughter, Ph. D. is a certified public accountant who serves as the Grand Master of the Most Worshipful Prince Hall Grand Lodge of Louisiana. (*See* Ex. 1: Slaughter, 7:6-9; *see* Ex. 2: Slaughter Ltr. dated Oct. 30, 2015.) Mr. Slaughter is a former member of the Plaintiffs' United Supreme Council, which is headquartered in Memphis, Tennessee ("USC-TN"). He currently serves as the Sovereign Grand Commander of the

Defendant New and Progressive Supreme Council of the District of Columbia (sometimes referred to as "New and Progressive Supreme Council" or "USC-DC").

2. Defendant Michael A. Parris ("Mr. Parris") is a retired Command Sergeant Major in the United States Army who holds a master's degree in business administration. (Ex. 3: Parris, 20:1-21.) He has been a Mason for "over 54 years," (*id.* at 21:4), and became a 33rd Degree Mason in 1963. (*Id.* at 21:19.) He formerly served as the Director of Defendant Most Worshipful Prince Hall Grand Lodge of Virginia, from 2007 until 2009. (*Id.* at 24:3, 24:18-19.) In that role, he was responsible for overseeing the assets of the Grand Lodge. (*Id.* at 24:8.) He is a former member of USC-TN.
3. Joseph A. Williams ("Mr. Williams") is a retired attorney of over forty years. He served as the "volunteer attorney general." (Ex: 4: Williams, 44:11-13.) In making the decision to become an incorporator of USC-DC, he "listened to the Grand Masters, and I accepted the Grand Master's opinion on these matters because [Grand Masters] are the conservators of Masonry." (*Id.* at 44:11-13.) He is a former member of USC-TN. (*Id.* at 23:5-6.)
4. Defendant New and Progressive United Supreme Council of DC was incorporated under the laws of the District of Columbia on October 14, 2015. (Ex. 5: USC-DC Certificate of Incorporation.) USC-DC was formed because members of USC-TN wanted to separate from USC-TN, on their own free will and accord, because of the misappropriation of funds at USC-TN. (Ex. 1: Slaughter, 160:11-17.)
5. Defendant Most Worshipful Prince Hall Grand Lodge of Virginia ("MWPHGL") is a Prince Hall fraternal organization dedicated to the practice of Masonry. It is the supreme Masonic authority in the Commonwealth of Virginia. (Ex. 6: Coleman, 17:6-8.) Defendant Roger Brown ("Mr. Brown") was the Grand Master from September of 2014 through

September of 2016. (Ex. 7: Brown, 22:25-23:4.) Pursuant to the Grand Lodge Constitution and rules, the Grand Master acts as the MWPHGL of Virginia when the Grand Lodge is not in session. (*Id.* at 23:5-10.)

Plaintiffs' United Supreme Council

6. USC-TN is governed by 45 Active voting members when in session. When the organization is not in session, it is governed by the Council of Administration consisting of 9 members. (Ex. 6: Coleman, 33:9-34:4; Ex. 8: Vaughn, 66:17-18; Ex. 9: Chambers Depo. Sept. 22, 2017 at 63:21-64:8.) Slaughter was a member of the Council of Administration. (Ex.10: Slaughter III, 132:10-11.)

7. In 2015, there was an internal dispute within Plaintiffs' United Supreme Council concerning the misappropriation of funds. (Ex. 6: Coleman, 62:4-7; Ex. 9: Chambers Depo. Sept. 8, 2017, 69:21-70:12, 71:5-14; Vaughn 168:11-17. In April of 2015, it was discovered that there were missing funds from Plaintiffs' organization. Ex. 6: Coleman, 76:14-16; *Id*. Coleman II, 24:13-20, Ex. 9: Chambers, 77:4-11, 118:3-8. In a May 28, 2015 letter to Plaintiffs' voting members, Slaughter detailed a summary of embezzled funds and questionable transactions that equaled $1,930,771.79. (Ex. 6: Coleman, 92:18—93:16; 95:14-21.)

8. The active members of USC-TN voted to absolve Vaughn for his actions through the October 2015 resolution, Mr. Slaughter decided to leave USC-TN. (Ex. 10: 33:6-34:7; Slaughter III, 124:3-16.)

9. There was a criminal referral with respect to the misappropriation of funds and criminal charges have been brought against Fred McWilliams, an employee under Vaughn's supervision. (*See* Ex 18: Padilla Criminal Referral; Ex. 6: Coleman, 96:2-14, 73:21-74:7.)

10. Concerns were also raised about Vaughn's use of a corporate credit card and his management of the organization. Vaughn was using his corporate credit card to draw his salary in cash at Casinos. (Ex. 8: Vaughn, 47:11-18, 48:4-10, 154:7-21, 159:7-12; Ex. 6: Coleman, 70:5-11.) Additionally, there were allegations that Vaughn was making personal purchases with his corporate credit card, but not reimbursing the Plaintiffs' organization. (Ex. 9: Chambers, 101:21-102:7.) In reviewing Vaughn's credit card transactions, it was determined that there were personal charges and other questionable charges that were paid for by Plaintiffs' United Supreme Council. (Ex. 11: Coleman II, 27:11-28:11.)
11. Because of the concerns over the misappropriation of funds, Slaughter, Williams, and Wilkins filed a derivative lawsuit in Tennessee on behalf of the Plaintiffs' United Supreme Council. (Ex. 1: Slaughter, 74:1-19; Ex. 19: Derivative Lawsuit.) As part of that lawsuit, the Court ordered court-monitored elections in the Plaintiffs' United Supreme Council annual meeting on October 10, 2015. (Ex. 4: Williams, 24:17-19.)
12. Vaughn and Slaughter were nominated for the position of Sovereign Grand Commander. Vaughn was elected to the position in a 21-18 vote. (Ex. 1: Slaughter, 73:1-5.) Slaughter was elected as Grand Chancellor Emeritus with full voting rights on any issue for life. (Ex. 12: Slaughter II, 35:6-9, 20-21.) Williams was re-elected as Grand Attorney, but he resigned this position after the election. (Ex. 4: Williams, 102:6-12.)
13. Following the elections, Plaintiffs' United Supreme Council adopted a Resolution on October 12, 2015 that purported to censure Vaughn for his failure to adhere to standard business practices in processing his salary not utilizing standard business practices in processing his salary. (Ex. 6: Coleman, 107:5-21; Ex. 8: Vaughn, 169:7-170:2.) Vaughn was also admonished for not adhering to standard business and management practices for

failing to ensure financial safeguards associated with the use of the corporate credit card, processing of vouchers, check requests, and criminal background checks. (Ex.8: Vaughn, 170:4-16.)

14. Plaintiffs' United Supreme Council left it to the discretion of the Deputy of the Orient – Parris - to communicate with the Consistories and its members about the misappropriation of funds and actions of the Plaintiffs' United Supreme Council. (Ex. 9: Chambers, 135:14-136-17, 137:8-138:10, 140:2-9, 141:7-20.)

New and Progressive United Supreme Council of DC

15. USC-DC was principally formed by some of the longest serving active members in Prince Hall Masonry. The "New and Progressive Supreme Council[,] . . . [consists of] lawyers, doctors, police officers, judges, federal officers, [and other] people who would not continue to associate with other organizations primarily because of the kind of conduct that had been alleged and in most cases, proven, [*i.e.* . . .] malfeasance, if not overt, actual embezzlement." (Ex. 4: Williams, 85:5-14.) "People did not want to be associated with an organization such as that." (*Id*. at 85:13-14; *see also* Ex. 21: Ltr. of Major Gen. (Ret.) Byron S. Bagby; Ex. 22: Ltr. of Judge Eric R. Meyers; Ex. 23: Affidavits of USC-DC Members; Ex. 24: Affidavits of Virginia Consistories.)
16. Mr. Slaughter selected the name for the organization. (Ex. 1: Slaughter, 160:18-21; Ex. 4: Williams, 25:19-26:1, 27:14-16.)
17. Mr. Parris did not have any role in incorporating or naming Defendant United Supreme Council. (Ex. 3: Parris, 87:2-10.)
18. Mr. Williams served the "sole role [in USC-DC of] practict[ing] . . . law under the Nonprofit Act." (Ex. 4: Williams, 44:3-5.) He was just returning "to Masonry, had [only]

been back since 2012." (*Id.* at 26:3-4.) He "joined Prince Hall Masons in 1976[,]" then "became a judge and no longer affiliated with them other than to pay his dues." (*Id.* at 63:5-9.) He did not have "the depth of knowledge to be the person who came up with the name." (*Id.* at 3-7. Williams "played no role whatsoever in the selection of the name," (*Id.* at 25:21 – 26:1, 45:20-21, 47:19-21), in part because "Masonic law and the law of corporations is different," and "the Grand Masters know the Masonic law." (*Id.* at 45:5-6.) Because of his lack of knowledge of Masonic law, Mr. Williams "had to rely upon information provided to him by those who have the history of these organizations and understand Masonic law." (*Id.* at 45:5-11.) He consulted and relied upon his own Grand Master from North Carolina, the Honorable Milton F. Toby Fitch and Mr. Slaughter who served as Grand Master of Louisiana. As an attorney of over forty years, he ensured that he did not take any action "to travel outside of the corporate veil." (*Id.* at 28:1-2; *id.* at 29:1-2). He did not play any role in seeking fraternal recognition from the Grand Lodge or withdrawing of granting or revoking of fraternal recognition in September of 2016. (*Id.* at 76:12-16.) He did not attend any meetings in Virginia, including the alleged November 2015 meeting alleged in the Amended Complaint. (*See* Exhibit 20: Affidavit of Mr. Williams.) He was "not actively involved in" USC-DC at that time. (Ex. 4: Williams, 76:17-19, 77:13-18.)

19. After the active members of USC-TN voted to absolve Vaughn for his actions through the October 2015 resolution, "it was [Mr. Williams] intention to not be involved in Masonry any further after the events that occurred out there in Tennessee, so I resigned. And I was made Grand Attorney emeritus." (*Id.* at 102:7-12.) While a member of USC-TN, Mr. Williams "discovered that the money [from USC-TN] should have gone to the foundation

and should have gone to charitable purposes." (*Id.* at 110:16-20.) However, USC-TN "squandered $2.3 million that should have gone to charitable purposes[.]" (*Id.* at 110:20.)

20. In keeping with the customs and traditions of starting a new organization, Mr. Slaughter sent a letter to Brown dated November 4, 2015, requesting that the MWPHGL of Virginia grant fraternal recognition to the New and Progressive Supreme Council of DC. (Ex. 1: Slaughter, 150:12-18, 151:6-10.) Mr. Slaughter wrote Mr. Brown "because the Supreme Councils need to have an affiliated relationship with the Grand Lodges. The Grand Lodges have the provision in their constitution where they can grant fraternal recognition to affiliated, concordant, adoptive bodies[.] Eastern Star, York Rite, Knights Temple, Royal Arch, Scottish Rite, which means the Lodge of Perfection Consistory.[.]" (Ex. 12: Slaughter II, 91:1-7.) "You generally have to have that recognition as a sign to the members that it's okay for me to affiliate with your organization. That is why the request was made. (*Id.* at 91:7-10.) Mr. Slaughter "didn't hardly know Roger Brown." *Id.* Slaughter, 91:10-11. Mr. Slaughter did not promise Brown anything in exchange for fraternal recognition, and Brown did not tell Mr. Slaughter that he would grant fraternal recognition before receiving this request. (*Id.* at 153:13-16, 156:5-9.) In addition to the MWPHGL of Virginia, Mr. Slaughter sought fraternal recognition from eight other Grand Lodges. (*Id*. at 155:10-19, 157:1:19.)

21. Defendant United Supreme Council was granted fraternal recognition by the Grand Lodge of Louisiana on October 30, 2015, by the Grand Lodge of North Carolina on November 22, 2015, by the Grand Lodge of the District of Columbia, by the Grand Lodge of Maryland on November 9, 2015, and by the Grand Lodge of Hawaii on November 30, 2015. (Ex. 6: Coleman, 123:10-20; Ex. 25: Letters of Fraternal Recognition.)

22. Mr. Parris requested to meet with Brown and officers of the MWPHGL of Virginia on November 21, 2015, to provide a briefing on the issues with Plaintiffs' United Supreme Council. Mr. Slaughter did not direct Mr. Parris to meet with Brown or the Grand Lodge, and did not know Mr. Parris was attending this meeting. (Ex. 3: Parris, 300:5-19; Ex. 7: Brown, 77:16-22; 78:9; Ex.12: Slaughter II, 164:1-11.)

23. Mr. Parris believed it was his responsibility as the Deputy of the Orient to update the MWPHGL of Virginia. The purpose of the meeting was to inform the Grand Lodge of what had occurred at the Plaintiffs' United Supreme Council annual meeting, to share the information that Mr. Parris had learned about the misappropriation of funds and mismanagement of Plaintiffs' organization, and to express Plaintiffs' members' concerns about the impact on the Orient of Virginia. (Ex. 3: Parris, 301:3-21, 303:1-304:14, 306:8-15; Ex. 7: Brown, 315:19-316:17, 317:12-23; 368:8-22; Ex. 13: Parris II, 16:7-10, 17:13-18:21; 34:1-9.) Mr. Parris did not discuss the idea of Plaintiffs' Virginia members joining Defendant United Supreme Council. (Ex. 3: Parris, 312:11-20.)

24. At the meeting, the MWPHGL of Virginia advised Mr. Parris to use caution on any action the Consistories might take, and to wait for the outcome of the derivative lawsuit filed in Tennessee. (Ex. 3: Parris, 34:1-35:3.) Brown did not make any promises to Mr. Parris, tell Mr. Parris his plan for addressing Defendant United Supreme Council, or tell Mr. Parris that he was going to grant fraternal recognition to Defendant United Supreme Council. (Ex. 13: Parris II, 148:19-149:10.)

25. On November 28, 2015, Mr. Parris called a special meeting of the Virginia Council of Deliberation to discuss the issues with Plaintiffs' United Supreme Council. The purpose of the meeting was to address the concerns expressed by membership about Plaintiffs'

organization. (Ex. 3: Parris, 106:8-15, 112:3-10, 114:17-21; Ex. 13: Parris II, 152:15-21.) The membership "overwhelmingly stated their dissatisfaction with being under Plaintiffs' organization" and wanted to separate or quit Masonry completely. (Ex. 3: Parris, 52:9-14, 117:6-118:6; Ex. 13: Parris II, 156:2-20. Mr. Slaughter and Mr. Williams did not attend the November 28, 2015 meeting. *Id.* Parris II, 152:12-14, Ex. 14: Williams II, 131:11-15; Ex. 3: Parris, 108:11-19; Ex. 1: Slaughter, 177:16-178:2.)

26. Brown attended the November 28, 2015 meeting as Grand Master of the MWPHGL of Virginia. Mr. Parris presided over the meeting. (Ex. 3: Parris, 115:21-9, 118:10-19; Ex. 7: Brown, 81:1-20; 82:6-11.) During the meeting, Plaintiffs' members tried to vote on recognizing Defendant United Supreme Council, but Mr. Parris did not permit a vote. Mr. Parris told the Council of Deliberation that there might be Consistory members who wanted to remain with the Plaintiffs' United Supreme Council. (Ex. 3: Parris, 128:7-18; Ex 13: Parris II, 156:21-157:14.) Brown asked Mr. Parris to have the Consistories vote on whether they wanted to remain with the Plaintiffs' organization or join the Defendant's organization so that Brown could get a consensus of what the members. (Ex. 7: Brown, 82:19-83-7; 84:5-8; Ex. 13: Parris II, 154:15-155:155:2.)

27. Brown did not state that he was going to grant fraternal recognition to the Defendant United Supreme Council, nor had he stated he would do so before the meeting. (*Id.* at 152:15-153:11, 157:15-19.)

28. On or around December 20, 2015, the members of the Virginia Consistories had voted to leave Plaintiffs' United Supreme Council and join Defendant United Supreme Council. (*Id.* at 158:19-159:10.)

29. On December 21, 2015, Mr. Parris sent Brown a letter requesting fraternal recognition be given to Defendant United Supreme Council. He attached the resolutions that the majority voted to request a Charter of membership with Defendant United Supreme Council. (Ex. 3: Parris, 251:9-18; Ex. 13: Parris II, 153:18-154:10.) Brown had not told Mr. Parris or Mr. Slaughter that he would extend fraternal recognition to defendant United Supreme Council as of December 21, 2015. (Ex. 12: Slaughter II, 166:6-18.) Brown did not take any action on the request, and instead received it as information. (Ex. 15: Brown II, 251:18-25, 253:1.)
30. Mr. Parris did not talk with Brown between November 28, 2015 and December 21, 2015 to request fraternal recognition for the Defendant United Supreme Council, and Brown did not tell Mr. Parris he was inclined to do so. (Ex. 3: Parris, 253:4-10, Ex. 13: Parris II, 155:3-14.)
31. The members of the Virginia Consistories asked Brown for fraternal recognition so there would be no difficulties for the members of Virginia, and "to give the Grand Lodge the courtesy and respect of what we were doing." (Ex. 3: Parris, 42:4-9.) However, recognition was not "absolute. Members were prepared to join defendants' organization with or without." (*Id.* at 149:8-12.) The members of Virginia "voted to be affiliated with" USC-DC. (Ex. 1: Slaughter Oct. 10, 2015 at 72:14-15.)
32. The members of the Virginia Consistories requested and received charters from the Defendant United Supreme Council on February 28, 2016, before Brown extended fraternal recognition. (Parris II, 107:8-21, 163:20-164:4, Coleman, 131:14-17; Slaughter II, 170:1-171:9.) The members of Virginia had decided that they were not going to wait on the Grand Lodge or Brown. They decided to get out from under Plaintiffs' United Supreme Council umbrella and join Defendant United Supreme Council "with or without" the Grand

Lodge recognition. (Ex. 13: Parris II, 164:13-165:1; Ex. 12: Slaughter II, 171:9-13.) The Defendant United Supreme Council agreed that members in Virginia could join the Defendant's organization without Brown granting fraternal recognition. (*Id*. at 171:14-172:1.)

33. On February 29, 2016, Mr. Parris sent a letter to Plaintiffs' United Supreme Council advising that the members of the Virginia Consistories had joined the Defendant United Supreme Council. At that time, Mr. Parris returned the Charters that were issued by Plaintiffs' United Supreme Council. (Ex. 6: Coleman, 128:13-129:11; 130:4-10.) Mr. Parris returned the Charters even though he did not know what Brown was going to do. (Ex. 13: Parris II, 161:12-19; Ex. 12: Slaughter II, 169:13-21.) The Members of the Virginia Consistories decided that they could not wait any longer for Brown to make a decision and decided to move forward without him. (Ex. 13: Parris II, 161:20-162:3.)

34. On March 1, 2016, Mr. Parris sent a letter to all members of the Virginia Consistories advising that the Consistories were under the authority of the Defendant United Supreme Council and that new Charters had been issued to all Consistories. (Ex. 13: Parris II, 162:9-163:12, 169:8-11; Ex. 6: Coleman, 132:5-21.)

35. Indeed, Mr. Parris began using letterhead of the Defendant United Supreme Council and instructed the Consistories to draft new by-laws before Brown extended fraternal recognition. (Ex. 13: Parris II, 120:3-12, 147:3-17, 148:12-15.)

36. After Plaintiffs' Virginia members had left Plaintiffs' organization and joined Defendant United Supreme Council that Brown issued a March 3, 2016 letter granting fraternal recognition to Defendant United Supreme Council. In doing so, Brown did not withdraw fraternal recognition from Plaintiffs' United Supreme Council. Prince Hall Masons in

Virginia were free to remain members of, or join, Plaintiffs' United Supreme Council. (Ex. 7: Brown, 365:10-367:11; Ex. 6: Coleman, 123:21-124:5.)

37. Brown decided to grant fraternal recognition to Defendant United Supreme Council because he thought it was in the best interest of the MWPHGL of Virginia, and to preserve the membership of the MWPHGL of Virginia. (Ex. 7: Brown, 376:13-22; Ex. 16: Cherry, 17:6-14; Ex. 15: Brown II, 200:9-12; 286:13-287:1, 319:6-19.) Brown wanted to keep the peace in Virginia and allow members a choice of whether they wanted to maintain their membership. (Ex. 7: Brown, 330:1-3.) Indeed, Mr. Parris sent a letter on May 11, 2016 to all members in Virginia advising them that they had the right to remain a member with Plaintiffs' United Supreme Council. (Ex. 13: Parris II, 149:14-150:1, 150:18-151:12.)

38. No member of Plaintiffs' organization was required to join the Defendant United Supreme Council, and each Mason has the right to belong to any Jurisdiction that they choose. If a situation exists in a Mason's Jurisdiction that he is opposed to, the Mason can join another Jurisdiction where the situation does not exist. Indeed, there are two active Consistories in Virginia with Virginia members that are loyal to Plaintiffs' organization. (Coleman, II at 49:1-2; Ex. 3: Parris, 191:4-8.) Members joined USC-DC on their own free will and accord. (*See* Ex.23: Affidavits of Members of USC-DC.)

Plaintiffs' Alleged Constitution

39. Portions of Plaintiffs' Constitution were copied verbatim from the Northern Jurisdiction's Constitution. (Ex. 6: Coleman, 155:3-156-2; Ex. 12: Slaughter II, 189:3-16.) Rituals used in Plaintiffs' meetings are the same as being used in the Northern Jurisdiction. Moreover, the Prince Hall Northern Jurisdiction opens and closes meetings with the same masonic rituals as plaintiffs' United Supreme Council. (Ex. 6: Coleman, 163, 7:19, Ex. 8: Vaughn,

182:21-183:14.) All of the Rituals can be purchased on the open market. (Ex: 1: Slaughter, at 46:4-9; Exhibit 22: Excerpts from Liturgy of the Ancient and Accepted Rite of Freemasonry, Part IV, Pike (reprinted 1944).)

40. The "mainstream" Masonic organization is the Caucasian Masonic organization. (*Id.* at 178:7-13.) The rituals used in the Mainstream United Supreme Council meetings are the same as used in Plaintiffs' meetings. The regalia and symbols are also the same. Additionally, the items within the chamber that are displayed during meetings are the same items displayed in mainstream masonic meetings. (*Id.* at 179:8-18, 180:5-11, 181:10-15, 182:4-19, 188:6-12.)

41. Plaintiffs' members must purchase their dress and regalia from commercial vendors. (Ex. 6: Coleman, 160:17-162:3.) Once they purchase the regalia, it is the members' property. (*Id.* at Coleman, 167:19-168:8; Ex. 9: Chambers, 64:22-65:7.)

42. The New and Progressive United Supreme Council of D.C. does not yet have a Constitution. The Constitution of USC-DC is in the development stages. (Ex. 4: Williams, 51:8-9), and the process of creating "a constitution takes a very long time, and this particular constitution will be significantly different than any constitution that is currently being used by any Prince Hall Supreme Council." (*Id.* at 51:15-21.) In the interim, the current Supreme Council is operating under the "traditions" that predominate Masonry generally. (*Id.* at 52:13-16.) The Constitution of the Mother Supreme Council of the World—*i.e.*, the Mainstream Masonic Constitution—serves as the guiding document for all Scottish Rite Supreme Councils because "the mother Supreme Council . . . was formed by an Act of Congress." (*Id.* at 56:2-7; Ex. 26: Excerpt of Mother Supreme Council Constitution.)

Plaintiffs' Corporate Status

43. Plaintiffs alleged that Plaintiff USC-SJ—the first named Plaintiff in this action—was incorporated under the laws of Tennessee. (Dkt. Doc. 44, ¶1.) Plaintiffs admit that this is untrue, and now claim to be a District of Columbia unincorporated association. (Dkt. 182 and 183.) The Court rejected Plaintiffs request to attempt to now change or add a new party. (Dkt. 214.)

44. Plaintiffs did not have an active corporation in the District of Columbia at the time that USC-DC registered itself as a corporation. (*See* Ex: 30: Corporation Revocation and Reinstatement Documents for 1920 United Supreme Council (File No. X00079); Ex. 31: Corporation Revocation and Reinstatement Documents for 1964 United Supreme Council (File No. 640261).)

45. Plaintiffs alleged corporations were not operating lawfully in the District of Columbia for decades, resulting in revocations of the corporate charter. (*See* Ex 32: Email dated June 21, 2010 from Richard C. Baker, Esq. to Mr. Slaughter with Legal Memorandum; Ex. 33: Corporate Reinstatement Documents filed in July 2010 for FY1988—FY2010.)

46. The property formerly owned by the revoked and defunct Plaintiff Grand Orient was sold in 2011 when the organization decided to relocate its headquarters. (*See* Ex. 38: Special Warranty Deed, dated June 30, 2011, of District of Columbia Property.) Plaintiffs did not reinstate their abandoned and revoked corporations until after Defendant USC-DC organized under the laws of the District of Columbia. (*See* Ex: 30: Corporation Revocation and Reinstatement Documents for 1920 United Supreme Council (File No. X00079); Ex. 31: Corporation Revocation and Reinstatement Documents for 1964 United Supreme Council (File No. 640261).)

47. Plaintiffs' corporations were revoked from at least 2012 through November 2, 2015. (*Id.*)

48. USC-DC organized under the laws of the District of Columbia on October 14, 2015. (Ex. 5: USC-DC Certificate of Incorporation.)

49. USC-TN incorporated a new nonprofit corporation in Tennessee called "United Supreme Council AASR SJ" on April 11, 2012. (Ex 37: Corporation Formation Documents of United Supreme Council AASR SJ.) Plaintiffs knew this—but chose to ignore it—at the time of filing this lawsuit. (*See, e.g.*, Ex. 19: Derivative Lawsuit (properly naming the corporate entity of USC-TN).) Notably, "United Supreme Council AASR SJ" corporation does not have the name "Prince Hall" in its name at all.

50. Plaintiffs did not file for any trademarks or trade names until after USC-DC established its headquarters in the District of Columbia. (*See* Ex: 5: USC-DC Certificate of Incorporation; Ex. 35: Trademark App. No. 86841790 filed Dec. 8, 2015 (Supreme Council); Ex. 36: Pending Trademark App. No. 86936462 filed Mar. 10, 2016 (Order of the Golden Circles).) The trademark applications at issue in this case involve an alleged corporation that is not the legal name and does not have the legal address of any party to this litigation. (*See id.*)

USC-DC and Generic Terminology in Scottish Rite Masonry

51. In the context of Scottish Rite Masonry, the terms "United Supreme Council Ancient Accepted Scottish Right" are generic. (*See* Ex. 1: Slaughter Depo. Sept. 28, 2017 at 154:20 – 155:1-8; 156:18-20; Ex. 27: Sample Masonic Names Registered in the District of Columbia) Prince Hall is the name of an early African-American mason whose name is also used by Grand Lodges who have granted fraternal recognition to USC-DC. (*See* Ex: Ex. 25: Letters of Fraternal Recognition.) Ex 28: Excerpt of Supreme Councils throughout

the World.) USC-DC was set up to make a geographic distinction between the *actual* headquarters of non-party USC-TN and Defendant USC-DC. (*Id* at 167:5-7; 168:4-6.)

52. Among other differences that are apparent to those in the Masonic community, USC-DC and USC-TN are identified and distinguished by the relevant Masonic community in that USC-DC's headquarters is in the District of Columbia name makes and the *actual* headquarters of non-party USC-TN and Defendant USC-DC. (*Id.* at 167:5-7; 168:4-6.) Moreover, as Mr. Slaughter has emphatically explained:

> [USC-DC is] not using the name of an alleged corrupt organization. The name of the corrupt organization, sir, is United Supreme Council AASRSJ, there's not Prince Hall Affiliation, there's no Southern Jurisdiction. We're not using their name. The parts that we use are the parts that are part of the ancient customs and traditions that [are required] to name a[n] Supreme Council [of the] Ancient Accepted Scottish Rite.

(Ex. 1: Slaughter, 211:15-21.) Furthermore, USC-DC holds itself out to members as the New and Progressive United Supreme Council, headquartered in the District of Columbia. *Id* Slaughter at 151:17-21. Indeed, "every document that [USC-DC] put out had the name New and Progressive Supreme Council." *Id.* 161:9-11. The USC-DC "is clear in making sure everybody kn[ows that it is a] New and Progressive Supreme Council." (*Id.* at 212:1-4; Ex. 4: Williams, 29:11-12.)

53. It was well known throughout the relevant masonic community that USC-DC was organized by those "who do not want to be associated with the misappropriation, embezzlement, theft, conversion of funds by top officials and associates of United Supreme Council of Tennessee." (Ex. 1: Slaughter at 151:17-21 – 152:1-2.) Moreover, because the process of becoming a "33rd Degree Mason" is similar to "having a Ph.D. in academia," the relevant consumer market is quite sophisticated and is highly unlikely to become confused about which organization they are joining. Indeed, "Scottish Rite Masons are a

group that . . . operate[s] amongst themselves. It is a 'secret organization, [so Scottish Right Masons] know the difference" between the names of the organizations. (Ex. 4: Williams, 83:5-7; 83:16-21.)

STANDARD OF REVIEW

Summary judgment is appropriate where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Verisign, Inc. v. XYZ.com, LLC*, No. 14-CV-01749, 2015 WL 7430016, at *2 (E.D. Va. Nov. 20, 2015), *aff'd*, 848 F.3d 292 (4th Cir. 2017). The moving party "bears the initial burden of pointing to the absence of a genuine issue of material fact." *Temkin v. Frederick Cnty. Comm'rs*, 945 F.2d 716, 718 (4th Cir. 1991). To survive a motion for summary judgment, the non-moving party must set forth specific facts showing that there is a genuine issue for trial. *Sylvia Dev. Corp. v. Calvert Cnty., Md.*, 48 F.3d 810, 817 (4th Cir. 1995). "[I]t is ultimately the nonmovant's burden to persuade [the court] that there is indeed a dispute of material fact. [The non-movant] must provide more than a scintilla of evidence—and not merely conclusory allegations or speculation—upon which a jury could properly find in its favor." *Design Res., Inc. v. Leather Indus. of Am.*, 789 F.3d 495, 500 (4th Cir. 2015) (internal citation omitted). A failure of proof on an essential element of the nonmovant's claim renders arguable disputes as to other elements immaterial as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986).

ARGUMENT

I. Plaintiffs Lack Standing and Capacity to Maintain this Lawsuit

Standing is an essential element of any federal case. U.S. CONST. ART. III, § 2, CL. 1; *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560, (1992)). "Absent standing, a party cannot invoke a court's jurisdiction." *Mgmt. Ass'n for Private Photogrammetric Surveyors v. United*

States, 492 F. Supp. 2d 540, 548 (E.D. Va. 2007). Because standing is an essential element of any federal case, Plaintiffs bear the burden of establishing standing "with the manner and degree of evidence required at successive stages of the litigation." *Lujan*, 504 U.S. at 561. Accordingly, to survive summary judgment on standing grounds, Plaintiffs must set forth specific evidentiary facts sufficient to prove their standing. *Id.* ("mere allegations" of standing are insufficient to avoid summary judgment) (citing Fed. R. Civ. P. 56(e)).

A. Plaintiff USC-SJ Lacks Constitutional Standing to Prosecute this Lawsuit Because it is Not a Natural or Legal Person

Plaintiffs must demonstrate that they have constitutional standing to appear before this court before it may exercise jurisdiction over their claims. *Defenders*, 504 U.S. at 560. To carry this burden, Plaintiffs must show (1) they have suffered an "injury in fact" to a legally protected interest and that injury is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision. *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 180-81 (2000); *Defenders*, 504 U.S. at 560.

Here, Plaintiff USC-SJ admits that it is not a Tennessee non-profit corporation as alleged in the Complaint and Amended Complaint. (*See* DKT 1 at ¶ 1; DKT 44 at ¶ 1.) Plaintiffs have otherwise failed to establish that Plaintiff USC-SJ is either a natural person or legal entity. Instead, Plaintiff USC-SJ has offered several separate variations of its alleged existence. (*See* Dkt. 182 at 2; Dkt.183-1 at 3; Dkt. 182 at 2; Dkt. 183-1 at 4.) The Court has rejected the Plaintiffs claims to reinvent itself to establish standing. (*See* Dkt. 215.) Accordingly, the summary judgment record indisputably shows that Plaintiff USC-SJ has no legal existence, lacks capacity to sue and has suffered no injury in fact that can be redressed by this lawsuit. As such, Plaintiff USC-SJ, and all

claims it asserts in this lawsuit, must be dismissed as a matter of law. *See, e.g.*, *Mgmt. Ass'n for Private Photogrammetric Surveyors v. United States*, 492 F. Supp. 2d 540, 549 (E.D. Va. 2007) (granting summary judgment where party failed to establish injury in fact); *Benn v. Seventh-Day Adventist Church*, 304 F. Supp. 2d 716, 721-722 (D. Md. 2004) (party to a lawsuit that is not cognizable legal entity cannot sue or be sued).

B. Plaintiff Grand Orient Lack Standing Because it was a Revoked District of Columbia Corporation until September 26, 2016

"[T]he capacity of a corporation to sue or be sued shall be determined by the law under which it was organized." Fed. R. Civ. P. 17(b); *see also United States v. Moore*, 698 F. Supp. 622, 624 (E.D. Va. 1988) ("The capacity of a corporation to sue or be sued is determined by its law of incorporation."). Plaintiff Grand Orient was incorporated in the District of Columbia and, its charter was revoked from at least 2012 until September 26, 2016. (*See* Exhibit 30: Corporation Revocation and Reinstatement Documents for 1920 United Supreme Council (File No. X00079)

District of Columbia law makes clear that, while Plaintiff Grand Orient's charter was revoked, it ceased to exist except for the limited purpose of winding up its affairs. D.C. Code § 29-106.02 (current version) §§ 29-301.85 and 29-301.86 (predecessor versions). While in a revoked state, "it could not suffer the injury it claims in this case," because it was not authorized to operate and, therefore, may not recover for any injuries suffered during this period. *Bourbeau v. Jonathan Woodner Co.*, 549 F. Supp. 2d 78, 84-86 (D.D.C. 2008) (citing *Equal Rights Center v. Horning Bros.*, Civil Action No. 05-7191, Order at 1-2 (D.C. Sup. Ct. Dec. 21, 2005) (Weisberg, J.); *Equal Rights Center v. Phifer Realty Inc.*, Civil Action No. 05-7190, Order at 1-2 (D.C. Sup. Ct. Dec. 21, 2005) (Weisberg, J.)).

In particular, "a corporation may not take advantage of its revoked status, either to enjoy a benefit derived from acts taken during the period of revocation or to avoid liability for corporate

debts incurred during that period." *Bourbeau*, 549 F. Supp. 2d at 86 (citation omitted); *see also* D.C. Code § 29-106.02; *Constantine Cannon LLP v. Mullen Mgmt. Co.*, 123 A.3d 968, 973 (D.C. 2015); *Community Credit Union Svcs., Inc. v. American Federal Express Svcs. Corp*., 534 A.2d 331, 335 (D.C. 1987); *Accurate Constr. Co. v. Washington*, 378 A.2d 681, 684 (D.C. 1977) (corporation's contract was void because the corporation lacked the capacity to contract after revocation because revocation renders articles of incorporation "void and all powers thereunder inoperative"); *id.* (the corporation was "deemed to have been dissolved" and it was required to "cease to carry on its business").

Here, Plaintiff Grand Orient's seeks to "enjoy a benefit" (namely, standing to sue) "derived from acts taken during the period of revocation, namely, allegedly registering a trademark and entering into membership contracts. Plaintiff Grand Orient's attempts to enjoy such benefits, however, is precisely what District of Columbia law forbids. Because Plaintiff Grand Orient's corporate charter was "void and all powers thereunder inoperative," during the period of its revocation, it has not suffered a cognizable injury providing standing to maintain this lawsuit. As such, its claims fail as a matter of law. *Id.*

Given the undisputed facts showing that its corporate charter was revoked and void from 2012 through September 26, 2016 (*i.e.*, well after this litigation was commenced on August 29, 2016), Plaintiff Grand Orient cannot establish that it had standing to sue at the time of filing. *Grupo Dataflux v. Atlas Global Group, L.P.*, 541 U.S. 567, 570-71 (2004) ("It has long been the case that "the jurisdiction of the Court depends upon the state of things at the time of the action brought. This time-of-filing rule is hornbook law (quite literally) taught to first-year law students in any basic course on federal civil procedure."). Defendants are therefore entitled to summary judgment

on all claims asserted by Plaintiff Grand Orient. *See Mgmt. Ass'n for Private Photogrammetric Surveyors*, 492 F. Supp. 2d at 549.

C. Plaintiffs Lack Prudential Standing to Assert Claims for Federal Trademark Infringement Under 15 U.S.C. § 1114(1)

The Lanham Act was intended "to make 'actionable the deceptive and misleading use of marks' and 'to protect persons engaged in . . . commerce against unfair competition.'" *Two Pesos, Inc. v. Taco Cabana, Inc.*, 505 U.S. 763, 767-68 (1992) (quoting 15 U.S.C. § 1127). Section 32(1) of the Act, 15 U.S.C. § 1114(1) – at issue here – protects only registered trademarks. It provides a cause of action against any person who "use[s] in commerce any . . . imitation of a *registered* mark . . . likely to cause confusion, or to cause mistake, or to deceive." *Id.* (emphasis added). This cause of action is available, however, only to "registrant[s]" of the trademarks at issue. In other words, only registrants—as statutorily defined—have "statutory standing to bring an action under Section 32(1). *See Allen v. Wright*, 468 U.S. 737, 751 (1984) (explaining that to have standing "a plaintiff's complaint [must] fall within the zone of interests protected by the law invoked").

Neither Plaintiff meets the express statutory requirements for standing to bring an infringement action under Section 32(1) of the Lanham Act. Section 32(1) provides that an infringer of a registered mark "shall be liable in a civil action *by the registrant* for the remedies hereinafter provided." 15 U.S.C. § 1114(1) (emphasis added). "Thus, it is clear on the face of the statute that plaintiff must be the 'registrant' of an already issued and outstanding registration. Only the federal 'registrant' has standing to sue for infringement of a federally registered mark." 6 J. Thomas McCarthy, *McCarthy on Trademarks & Unfair Competition* (hereinafter "*McCarthy on Trademarks*") § 32:3, at 32-15 (4th ed. 2011). The term "registrant" is defined in the Lanham Act to include only the registrant itself and "the legal representatives, predecessors, successors and assigns of such . . . registrant." 15 U.S.C. § 1127.

Moreover, only the *owner* of a mark may apply for its registration and become its registrant under Section 1 of the Lanham Act, which provides that "[t]he *owner* of a trademark used in commerce may request registration of its trademark." 15 U.S.C. § 1051(a) (emphasis added). Accordingly, "[t]he applicant must be the owner of the mark," and [a] person merely using the mark under license from the owner cannot be the valid applicant or registrant." 3 *McCarthy on Trademarks* § 19:53, at 19-157-58.

In light of the foregoing statutory provisions, the sole entity that has standing to sue for infringement of a register mark under Section 32(1) is the owner/registrant of the registered mark and a legal representative, predecessor, successor or assign of the owner/registrant of the registered mark at the time of the filing of the lawsuit. The record here is clear that neither of the Plaintiffs falls into any of these categories.

1. Neither Plaintiff is a "Person" or "Juristic Person" within the Meaning of the Lanham Act

The Lanham Act provides that both natural persons and "juristic persons' may serve as trademark applicants and registrants, and defines "juristic persons" may serve as trademark applicants and registrants, and defines "juristic persons" as "a firm, corporation, union, association, or other organization capable of suing and being sued in a court of law." 15 U.S.C. § 1127. As demonstrated above, Plaintiff USC-SJ—the first named Plaintiff in this lawsuit—is, by its own admission, neither a natural person or legal entity. Thus, it cannot sue or be sued in a court of law. *See, e.g., Benn,* 304 F. Supp. 2d at 721-722 (party to a lawsuit that is not cognizable legal entity cannot sue or be sued); *Pushkin v. Nat'l Academies Bd. on Sci. Educ.*, No. 10-1765, 2012 U.S. Dist. LEXIS 160509, 2012 WL 4889277, at *3 (D.D. C. Aug. 26, 2012 (dismissing complaint where "[p]laintiff . . . [did] not allege that the [defendant] was a corporation, a governmental department, or otherwise subject to suit").

Similarly, Plaintiff Grand Orient—the second named Plaintiff in this lawsuit—was, as demonstrated above, a revoked District of Columbia corporation from April 2012 until September 26, 2016. In other words, Plaintiff Grand Orient was a revoked entity at the time when the trademark applications at issue in this lawsuit were filed on December 8, 2015 and March 10, 2016. (*See* Ex. 35: Trademark App. No. 86841790 filed Dec. 8, 2015 (Supreme Council); Ex. 36: Pending Trademark App. No. 86936462 filed Mar. 10, 2016 (Order of the Golden Circles).) Because Plaintiff Grand Orient was not a legal entity with capacity to sue in a court of law, it was not a "juristic person" within the meaning of the Lanham Act at the time of filing of the trademark application at issue in this case. *See* 15 U.S.C. § 1127; *Bourbeau v. Jonathan Woodner Co.*, 549 F. Supp. 2d at 86 (revoked District of Columbia corporations are "void and all powers thereunder inoperative").

In sum, because neither Plaintiff was a natural or "juristic person[]" within the meaning of the Lanham Act on December 8, 2015, neither Plaintiff is an "owner" or "registrant" of the alleged trademark at issue in this case. Accordingly, Defendants are entitled to summary judgment as a matter of law on Plaintiffs' claims of trademark infringement. *See Fed. Treasury Enter. Sojuzplodoimport v. SPI Spirits Ltd.*, 726 F.3d 62 (2d Cir. 2013) (dismissing trademark infringement claims for failure to qualify as owner/registrant under the Lanham Act).

2. Plaintiffs Lack Standing Because the Alleged Owner/Registrant of the Trademark is Not a Party to this Case

Plaintiffs' trademark infringement claims fail for an additional, independent reason. The registrant on the first trademark at issue (Application No. 86841790) is "United Supreme Council, 33 (Thirty-Three) of the Ancient and Accepted Scottish Rite of Freemasonry Prince Hall Affiliation, Southern Jurisdiction, United States of America (DISTRICT OF COLUMBIA CORPORATION)." (*See* Ex. 35: Trademark App. No. 86841790 filed Dec. 8, 2015 (Supreme

Council).) This alleged corporation is located at 1924 14th Street, NW, Washington, DC 20009. (*Id.*.) The applicant on the second trademark at issue (Application No. 86936462) is "United Supreme Council, 33 Degree Ancient and Accepted Scottish Rite of Freemasonry Prince Hall Affiliation, Southern Jurisdiction, USA." (Ex. 36: Pending Trademark App. No. 86936462 filed Mar. 10, 2016 (Order of the Golden Circles).) This alleged corporation is located at 1924 14th Street, NW, Washington, DC 20009. (*Id*.)

However, as demonstrated above, there is no evidence in the record to establish that either of the corporations on the applications and the registration exists and, even if it does, it is not a party to this action. Plaintiffs initially alleged that both named plaintiffs have a principal place of business in Memphis, Tennessee. Plaintiffs now admit that Plaintiff USC-SJ—the first named plaintiff in this lawsuit—is not a legal entity at all.[1] Plaintiff Grand Orient—the second named party in this lawsuit—is a District of Columbia corporation, and Plaintiffs allege that it has principal place of business in Memphis, Tennessee. (*See* Dkt. 44; Exhibit 30: Corporation Revocation and Reinstatement Documents for 1920 United Supreme Council (File No. X00079).)[2] Its corporate address is not 1924 14th Street, NW, Washington, DC 20009. Accordingly, there are

[1] According to the Amended Complaint, it is an entity with its principal place of business located in Memphis, Tennessee. (*See* DKT 1 at ¶; DKT 44 at ¶ 1.) In the rejected Proposed Second Amended Complaint, Plaintiffs do not list an address for the alleged District of Columbia non-profit association. (*See* DKT 183-1 at 3, ¶ 1.) However, it is clear that Plaintiffs have no corporation located at this address. (*See* Ex. 38: Special Warranty Deed, dated June 30, 2011, for District of Columbia Property Sale; Ex. 30: Corporation Revocation and Reinstatement Documents for 1920 United Supreme Council (File No. X00079); Ex. 31: Corporation Revocation and Reinstatement Documents for 1964 United Supreme Council (File No. 640261). In any event, an operating division, or the like, that is merely an organization unit of a company, as Plaintiffs purported to allege in their rejected Proposed Second Amended Complaint, may not own or apply to register a mark. *See, e.g.*, *In re Cambridge Digital Sys.*, 1 USPQ2d 1659, 1660 n.1 (TTAB 1986) (application must be filed in the name of the company of which the division is a part). An attempt to obtain a trademark based upon a false address and false corporate identity would seem to constitute a fraud in the procurement of a trademark. *See* 15 U.S.C. § 1064(3) (providing for cancellation of trademark on ground that the "registration was obtained fraudulently"); *Torres v. Cantine Torresella S.r.l*, 808 F.2d 46, 48 (Fed. Cir. 1986) ("Fraud in procuring a trademark registration or renewal occurs when an applicant knowingly makes false, material representations of fact in connection with his application.")

[2] This business is not registered to do business in Tennessee.

no facts in the record showing Plaintiffs own the trademark at issue in this case. *See* 37 C.F.R. § 2.32(a)(4) (application must include true and accurate address of applicant); 37 C.F.R. § 2.71(d); *Huang v. Tzu Wei Chen Food Co.*, 849 F.2d 1458, 1459-60 (Fed. Cir. 1988) (application for registration void where owner incorporated between time of execution of application for registration and receipt of application from Patent and Trademark Office, and thus application was not owner of mark on filing date); *Holiday Inn v. Holiday Inns, Inc.*, 534 F.2d 312, 319, n.6 (1976) ("One must be the owner of a mark before it can be registered."); 15 U.S.C. § 1051 (only true owner may register a trademark) Defendants are therefore entitled to summary judgment as a matter of law on Plaintiffs' trademark infringement claim.

3. Plaintiffs Lack Prudential Standing Because They Did Not Hold a *Registered* Trademark at the Time of Filing the Complaint or Amended Complaint

Defendants are entitled to summary judgment on Plaintiffs' trademark infringement claim for the additional, independent reason that Plaintiffs lack prudential standing because they did not own a *registered* trademark at the time they filed this lawsuit. Section 32(1) of the Federal Trademark Act, 15 U.S.C. § 1114(1), establishes a cause of action for infringement solely of a federally registered mark, in providing that "[a]ny person who shall, without the consent of the *registrant* use in commerce any reproduction, counterfeit, copy or colorable imitation of a *registered mark* . . . shall be liable in a civil action by the registrant…." (Emphasis added); *see* 6 *McCarthy on Trademarks and Unfair Competition* §32:3 (4th ed. 2010) ("it is clear on the face of the statute that plaintiff must be the "registrant" of an already issued and outstanding registration" to bring a § 32 infringement claim).[3]

[3]*Tana v. Dantanna's*, 611 F.3d 767, 773 (11th Cir. 2010) ("Section 32(a) creates a cause of action for the infringement of a *registered* mark") (emphasis added); *Berni v. International Gourmet Restaurants, Inc.*, 838 F.2d 642, 645-646 (2d Cir. 1988) ("Section 32 of the Lanham Act, 15 U.S.C. § 1114(1), grants standing to assert a claim for trademark infringement solely to the 'registrant'"); *Whitney Information Network, Inc. v. Xcentric Ventures, LLC*, 2005 WL

Without a federal registration, a party cannot bring an infringement claim under Section 32 the Lanham Act. 15 U.S.C. § 1114(1). Here, the trademark applications at issue were filed on December 8, 2015 (Application No. 86841790) and March 10, 2016 (Application No. 86936462). At the time Plaintiffs filed their Amended Complaint on January 3, 2017, Plaintiffs allege that they "owned" a mere trademark application, not a *registration*. (DKT 44 at 5, ¶ (application no. 86841790); *id.* at 5, ¶ 7 (Application No. 86936462); *id.* at 61, ¶ 181(both applications)).[4] The trademark for Application No. 86841790 ("United Supreme Council Ancient & Accepted Scottish Rite of Freemasonry Prince Hall Affiliation Southern Jurisdiction") was registered on February 14, 2017. (*See* Exhibit 41: Trademark Certificate.) The application for "Order of the Golden Circles" is still pending. *See* Status of Trademark Application No. 86936462, *in* United States Patent and Trademark Office, Trademark Electronic Search System, *available at* tmsearch.uspto.gov. Accordingly, because Plaintiffs did not own a *registered* trademark at the time of filing suit, the claims must be dismissed for lack of standing under the Lanham Act and lack of subject matter jurisdiction under Article III. *Defenders*, 504 U.S. at 561 (plurality opinion) ("[S]tanding is to be determined as of the commencement of suit."); *Media Techs. Licensing, LLC*

1677256, *3 (M.D. Fla. 2005) ("An action cannot be raised under 15 U.S.C. § 1114 for an unregistered trademark"); *Fila Sport, S.p.A. v. Diadora America, Inc.*, 141 F.R.D. 74, 80 (N.D. Ill. 1991) (granting motion to dismiss trademark infringement claim in absence of federal trademark registration); *Herbert Products, Inc. v. S & H Industries, Inc.*, 1977 WL 23180, *3 (E.D.N.Y. 1977) ("registration is a procedural prerequisite to suit under 15 USC § 1114(1)"); *Gaia Techs., Inc. v. Reconversion Techs. Inc.*, 93 F.3d 774, 778, 39 USPQ2d 1826, 1830 (Fed. Cir. 1996) (holding that the plaintiff's patent and trademark infringement claims were required to be dismissed for lack of standing, because of its "inability to prove that it was the owner of the intellectual property at the time the suit was filed"), *as amended on rehearing on different grounds*, 104 F.3d 1296, 41 USPQ2d 1134 (Fed. Cir. 1996); *See* 3-11 *Gilson on Trademarks* § 11.03 (2010) ("The mere pendency of an application for federal trademark registration…is not sufficient for jurisdiction under Section 32"); *Hosid Products, Inc. v. Masbach, Inc.*, 108 F. Supp. 753, 755 (N.D.N.Y. 1952) (pleading federal applications insufficient). 4-57 Intellectual Property Counseling & Litigation § 57.02 (2017) ("The plaintiff must own a federal registration in the mark at the time the action is brought. Allegations of a pending application for federal registration of the mark are insufficient.") (citing *Marvel Prods v. Fantastics, Inc.*, 296 F. Supp. 783, 784 n. 1 (D. Conn. 1968) (Although the parties have [trademark] applications pending, neither plaintiff's nor defendant's mark has been registered under the Lanham Act, 15 U.S.C. § 1051 et seq. Jurisdiction, therefore, is based solely on diversity.") (citing *Hodgson v. Fifth Avenue Plastics, Inc.*, 94 F. Supp. 160 (S.D.N.Y. 1950)).

[4] As explained *supra*, Plaintiffs have failed to establish that they were even the *true owners* of these applications.

v. Upper Deck Co., 334 F.3d 1366, 1370 (Fed. Cir. 2003); *Newman-Green, Inc. v. Alfonzo-Larrain*, 490 U.S. 826, 830 (1989) ("The existence of federal jurisdiction ordinarily depends on the facts as they exist when the complaint is filed."). Defendants are therefore entitled to summary judgment on Plaintiffs trademark infringement claim (Count X). *See, e.g.*, *Carmon & Carmon Law Office & Globallaw, Inc.*, 452 F. Supp. 2d 1, 25 (D.D.C. 2006) (granting summary judgment against a party who sought recovery under Section 32 for infringement based on common-law rights and noting that "[a]bsent a complete and successful registration, [the party] is not a 'registrant' under the parameters of Section 32(1) and cannot bring a claim pursuant to that section . . ."); 6 *McCarthy on Trademarks and Unfair Competition* §32:3 (4th ed. 2010) ("it is clear on the face of the statute that plaintiff must be the "registrant" of an already issued and outstanding registration" to bring a § 32 infringement claim).[5]

II. Defendants are Entitled to Summary Judgment on Plaintiffs' Claim of Trademark Infringement

To begin, the trademark at issue for United Supreme Council Ancient & Accepted Scottish Rite of Freemasonry Prince Hall Affiliation Southern Jurisdiction" is not protectable because it is based upon generic terms, that are already in use by numerous other Masonic entities. Any use by Defendants is fair use, because Defendant USC-DC is simply using terms to describe itself that are generic in the Prince Hall Scottish Rite Masonic community. *See* 15 U.S.C. 1115(b)(5) (defining fair use as "a use, otherwise than as a mark, of . . . a term or device which is descriptive of and used fairly and in good faith only to describe the goods and services of such party[.]"); *Prestonettes v. Coty*, 264 U.S. 359, 368 (1924) ("When the mark is used in a way that does not deceive the public we see no such sanctity in the word as to prevent its being used to tell the

[5] *See Brookfield Communs., Inc. v. W. Coast Entm't Corp.*, 174 F.3d 1036, 1065(1999) (9th Cir. 1999) ("Whereas section 32 provides protection only to registered marks, section 43(a) protects against infringement of unregistered marks and trade dress as well as registered marks").

truth."); *see also Supreme Lodge of Knights of Pythias v. Improved Order Knights of Pythias*, 113 Mich. 133 (1897); *see* Exhibit 39: Expert Report of Gregory S. Parks, JD, Ph. D. at 18-22 (analyzing case law and Masonic naming structures.)

Plaintiffs claim of trademark infringement fails as a matter of law for additional reasons. In *Pizzeria Uno Corp. v. Temple*, 747 F.2d 1522, 1527 (4th Cir. 1984), as well as in *Perini Corp. v. Perini Constr., Inc.*, 915 F.2d 121, 127 (4th Cir. 1990), the Fourth Circuit identified factors that may be considered in evaluating a likelihood of confusion. Among these are "actual confusion," "the sophistication of the relevant consuming public," and "the defendant's intent in adopting the same or similar mark." *Pizzeria Uno Corp*., 747 at 1527; *Perini Corp.*, 915 F.2d at 127. Although similarity of the marks and services are included as potential factors, a narrow focus on those in this case would not take into proper account the context of freemasonry and the perfectly legitimate reasons why persons could have perceived a relationship between the two. Importantly, the Fourth Circuit has also emphasized that "[c]ertain factors may not be germane to every situation." *Sara Lee Corp. v. Kayser-Roth Corp.*, 81 F.3d 455, 463 (4th Cir. 1996). Thus, the factors "are not meant to be a 'rigid formula' for infringement," "are only a guide-a catalog of various considerations that may be relevant in determining the ultimate statutory question of likelihood of confusion" and "not all of the factors are of equal importance, nor are they always relevant in any given case." *Anheuser-Busch, Inc. v. L&L Wings, Inc*., 962 F.2d 316, 320 (4th Cir. 1992), *cert. denied*, 506 U.S. 872 (1992).

A showing of actual confusion "is often paramount" in the likelihood of confusion analysis. *Lyons Partnership, L.P. v. Morris Costumes, Inc*., 243 F.3d 789, 804 (4th Cir. 2001); *see also* J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition § 23:13 (4th ed. 2008) ("convincing evidence of significant actual confusion occurring under actual marketplace

conditions is the best evidence of a likelihood of confusion"). Here, the New and Progressive Supreme Council of DC is headquartered in a totally different location than the United Supreme Council of Tennessee. *Pinocchio's Pizza Inc. v. Sandra Inc.*, 1989 TTAB LEXIS 20, 11 U.S.P.Q. 2D (BNA) 1227, 1228 (T.T.A.B. 1989) (permitting concurrent use of "PINOCCHIO'S" as a service mark for restaurants in Maryland and "PINOCCHIOS" as a service mark for restaurants elsewhere in the country). Moreover, USC-TN and USC-DC use the same first and different last words in their respective names. "USC-DC does not simply delete irrelevant words or shift punctuations. It also reorganizes key words in its name to be distinguishable from the plaintiff." (*See* Exhibit 39: Expert Report of Gregory S. Parks, JD, Ph. D. at 23-24 (discussing social science on brand and name confusion).) Moreover, Defendant USC-DC and its individual members always hold themselves out as a separate, distinct, independent, and a co-equal (as opposed to inferior) entity. (*See id.* at 18-23 (discussing and distinguishing key elements relevant to Masonic community in determining distinctions between organizations, including *Supreme Lodge Knights of Pythias v. Improved Order Knights of Pythias*, 113 Mich. 133, 137 (Mich. 1897); *Grand Lodge, I.B. & P.O.O.E. of World v. Grand Lodge I.B. & P.O.O.E. of World*, 50 F.2d 860 (4th Cir. 1931); and *Grand Lodge Improved, B.P.O.E. of the World v. Eureka Lodge No. 5, Independent Elks*, 114 F.2d 46 (4th Cir. 1940)).

Finally, because the process of becoming a "33rd Degree Mason" is similar to "having a Ph.D. in academia," the relevant consumer market is quite sophisticated and is highly unlikely to become confused about which organization they are joining. (Williams Depo. at 83:5-7; 83:16-21.) Because there is no evidence of a likelihood of actual confusion between USC-TN and USC-DC, the Court should grant summary judgment for Defendants. *Radiance Foundation, Inc. v. N.A.A.C.P.*, 786 F.3d 316, 322 (4th Cir. 2015) (holding use of mark must generate confusion

among the consumers of the product or services). *See, e.g.,* CareFirst of Md., Inc. v. First Care, P.C., 434 F.3d 263 (4th Cir. 2006) (granting summary judgment in favor of defendant despite evidence of a survey regarding purporting to demonstrate actual confusion).

III. Defendants are Entitled to Summary Judgment on Plaintiffs' Claim of Copyright Infringement

To prove copyright infringement, the plaintiff must demonstrate that: (1) he owned the copyright to the work that was allegedly copied, and (2) the defendant copied "protected elements of the work." *Bouchat v. Balt. Ravens, Inc.*, 241 F.3d 350, 353 (4th Cir.2001). "An unlicensed use of the copyright is not an infringement unless it conflicts with one of the specific exclusive rights conferred by the copyright statute." *Sony Corporation of America v. Universal City Studios, Inc.*, 464 U.S. 417, 447 (1983). "[D]efendants cannot be liable for violating the . . . distribution right unless a 'distribution' actually occurred." *London-Sire Records, Inc. v. Doe*, 542 F. Supp. 2d 153, 169 (D. Mass. 2008) A distribution occurs when a work is transferred to the public "by sale or other transfer of ownership, or by rental, lease, or lending." 17 U.S.C. § 106(3); *Howell*, 554 F. Supp. 2d at 985 ("The scope of the term distribution is only defined within § 106(3) itself . . . ."); *Thomas*, 579 F. Supp. 2d at 1217 ("Congress explains the manners in which distribution can be effected: sale, transfer of ownership, rental, lease, or lending. The provision does not state that an offer to do any of these acts constitutes distribution. Nor does § 106(3) provide that making a work available for any of these activities constitutes distribution."); Patry on Copyright § 13:9 ("Perhaps because the statute lists the types of distribution covered, there is no definition of 'distribution.'").

Here, Plaintiffs have failed to demonstrate that Defendants have copied any creative elements of any work that Plaintiffs own. To the contrary, the record shows that Defendants do not have a constitution and that Plaintiffs' members had to purchase Plaintiffs' alleged copyrighted material, including the dress, regalia and Constitution from vendors. Once they purchase this

material, it became the members' property. At that point, the Plaintiffs' members had the right to use the material in their masonic craft even if they were no longer affiliated with Plaintiffs' organization without fear of a copyright violation. *See Kirtsaeng v. John Wiley & Sons, Inc.*, 568 U.S. 519(2013) (construing 17 U.S.C. § 109(a) (construing first sale doctrine to protect purchaser's freedom "to sell or otherwise dispose of . . . that copy")). As such, Plaintiffs' bald allegations of copyright infringement and secondary liability fail as a matter of law. *CoStar Grp., Inc. v. LoopNet, Inc*., 373 F.3d 544, 549 (4th Cir.2004) (secondary liability can only arise if there is proof of a direct underlying infringement).

IV. Defendants are Entitled to Summary Judgment on Plaintiffs' Claim of Unfair Competition

Plaintiffs' common law unfair competition claim under Virginia law fails for the reasons discussed above because they rise and fall within the Lanham Act claims. *See Lone Star Steakhouse & Saloon, Inc. v. Alpha of Va.*, 43 F.3d. 922, 930 n.10 (4th Cir. 1995) ("The test for trademark infringement and unfair competition under the Lanham Act is essentially the same as that for common law unfair competition under Virginia law.") In addition, there is no evidence that USC-DC caused any unfair competition with the revoked corporate names of Plaintiffs, or the names of non-party United Supreme Council AASR SJ of Memphis, Tennessee. Indeed, Plaintiffs revived their own revoked corporate names *after* USC-DC established its headquarters in the District of Columbia. USC-DC is not engaging in any practices that implicate Plaintiffs alleged "marks" or materials. USC-DC utilizes the constitution of the Mother Supreme Council as a guiding document while it prepares its own document, and the rituals of Scottish Rite Masonry are generic, available on the open market, and used by various other Scottish Rite masonic entities. (Ex. 4: Williams, 56:2-7; Ex. 26: Excerpt of Mother Supreme Council Constitution; Ex. 6: Coleman, 155:3-156-2; Ex. 12: Slaughter II, 189:3-16; Ex. 6: Coleman, 163, 7:19, Ex. 8: Vaughn,

182:21-183:14.) All of the Rituals can be purchased on the open market. (Ex: 1: Slaughter, at 46:4-9; Exhibit 22: Excerpts from Liturgy of the Ancient and Accepted Rite of Freemasonry, Part IV, Pike (reprinted 1944).) Accordingly, there is no factual or legal basis for claiming that See, e.g., *Radiance Foundation, Inc. v. N.A.A.C.P.*, 786 F.3d 316, 322 (4th Cir. 2015) (holding use of mark must generate confusion among the consumers of the product or services).

V. Defendants are Entitled to Summary Judgment on Plaintiffs' Claim of Tortious Interference with Contract

A party asserting a claim for tortious interference with contract must

> (1) demonstrate the existence of a business relationship or expectancy, with a probability of future economic benefit; (2) prove [the defendant's] knowledge of the relationship or expectancy; (3) show that it was reasonably certain that absent intentional misconduct, the claimant would have continued in the relationship or realized the expectancy; and (4) show that it suffered damages from the interference.

Commerce Funding Corp. v. Worldwide Security Servs. Corp., 249 F.3d 204, 213 (4th Cir. 2001). Interference with prospective economic advantage further requires that the defendant employed "improper methods." *Id*. at 214. Improper methods include "violations of statutes [or] regulations," and "violence, threats or intimidation." *Commerce Funding Corp. v. Worldwide Sec. Servs.*, 249 F.3d 204, 214 (4th Cir. 2001).

It is undisputed that Plaintiffs have no valid and enforceable contract with members or any of the Consistories in Virginia. (*See* Ex. 11: Coleman III, 182:7-9 (Plaintiffs admit that the alleged contract at issue between non-party USC-TN and their alleged members and Consistories is governed by Masonic law); *Id.* at 213:21-22 – 214:1-5 (admitting that Plaintiffs have no proof that any particular individual signed or took the Oath of Fealty).) Furthermore, Plaintiffs have failed to provide any evidence demonstrating that they had a reasonable probability of a continuing business relationship with any of the members who left the organization and joined USC-DC. Indeed, it is

undisputed that their members terminated their memberships because of alleged and sustained unethical and illegal conduct. (*See, e.g.* Ex. 4: Williams, 85:5-14 ("lawyers, doctors, police officers, judges, federal officers, [and other] people . . . would not continue to associate with [USC-TN] because of the kind of conduct that had been alleged and in most cases, proven, [*i.e.* . . .] malfeasance, if not overt, actual embezzlement."); Ex. 21: Ltr. of Major Gen. (Ret.) Byron S. Bagby; Ex. 22: Ltr. of Judge Eric R. Meyers; Ex. 23: Affidavits of USC-DC Members; Ex. 24: Affidavits of Virginia Consistories).) Because "[e]thical climate, or lack thereof, is an essential issue threatening organizational commitment[,]" and because, "real or perceived" beliefs about whether the organization is toxic can affect whether individuals dissociate from an organization, Plaintiffs' claims about an expectancy of a continuing membership is entirely speculative. (*See* Ex. 39: Expert Report of Gregory S. Parks, JD, Ph. D. at 10-15 (discussing social science evidence on why people leave organizations and unethical leadership, organizational commitment, and black fraternal organizations (collecting studies).)

Moreover, there is no evidence that any Defendant employed "improper methods"—or any methods—to interfere with any of Plaintiffs' alleged prospective business relationship. Plaintiffs claim is entirely speculative. Such speculative allegations may be sufficient to survive a motion to dismiss, but mere speculation is insufficient to survive a motion for summary judgment. Because Plaintiffs had neither an enforceable contract nor a reasonable expectation of entering into a contract, and because Defendants interfered with any alleged prospective business relationship of Plaintiffs, the Court should grant summary judgment in favor of Defendants. *Design Res.*, 789 at 500 (holding a non-movant "must provide more than a scintilla of evidence—and not merely conclusory allegations or speculation—upon which a jury could properly find in its favor" in order to survive a motion for summary judgment).

A. Plaintiffs' Alleged Contract is Unenforceable Because It Violates Established Law and Public Policy

Here, Plaintiffs claim that they have an absolute right to control and keep membership of Masons throughout a certain geographic region of the country. However, utilizing state action to compel a party to abide by an alleged contractual obligation, or punishing that party for having allegedly breached the contract, would violate the party's rights to First Amendment association. Accordingly, Plaintiffs' alleged contract providing an absolute right to control and keep membership of Masons, is unenforceable as a matter of law. *See, e.g.*, *Shelley v. Kraemer*, 334 U.S. 1 (1948) (striking down contractual obligation state action compelling party to enforce a contract that violates constitutional right); *Barrows v. Jackson*, 346 U.S. 249 (1953) (same); (*see also* Ex. 39: Expert Report of Gregory S. Parks, JD, Ph. D. at 9-10.).)

VI. Plaintiffs' Conspiracy Claim Fails for Lack of an Underlying Tort

As demonstrated above, Plaintiffs have failed to establish any cause of action on a tort claim. It's conclusory allegations of a conspiracy must therefore be rejected as a matter of law. *See McDonald's Corp. v. Turner-James*, 2005 U.S. Dist. LEXIS 42755, at *15-16 (E.D. Va. Nov. 29, 2005) (dismissing plaintiffs' tort claims and holding "'[w]ithout an underlying tort, there can be no cause of action for a conspiracy to commit the tort . . . .Dismissal of the substantive tort claims defeats the related claim for a civil conspiracy.'") (quoting 15A C.J.S. *Conspiracy*, § 8 2005)).[6]

[6] Plaintiffs have failed to offer plead conspiracy with any particularity, and likewise failed to offer any particular evidence of a conspiracy during discovery. These shortcomings mandate dismissal. *Firestone v. Wiley*, 485 F. Supp. 2d 694, 703-04 (E.D. Va. 2007) (Where, as here, there are only vague, conclusory allegations of conspiracy, the claim fails at the threshold.") (citation omitted). Moreover, any claim for an alleged conspiracy by Defendants is barred the intracorporate conspiracy doctrine, under which "a corporation cannot spire with its agents because the agents' acts are the corporation's own." *Painter's Mille Grille, LLC v. Brown*, 716 F.3d 342, 353 (4th Cir. 2013). *Barnes Foundation v. Tp. of Lower Merion*, 242 F.3d 151, 163 (3d Cir. 2001)(rejecting allegations of discriminatory conspiracy because "the First Amendment requires more than evidence of association to impose liability for conspiracy and, in fact, prohibits liability on that basis alone") (citing *NAACP v. Claiborne Hardware Co*., 458 U.S.

CONCLUSION

The undisputed evidence shows that Defendants are entitled to summary judgment because Plaintiffs lack standing to maintain this action. In addition, Defendants are entitled to summary judgment because the undisputed material facts show that Plaintiffs cannot sustain a claim for unfair competition, trademark infringement, copyright infringement, or tortious interference with contract. Defendants respectfully request that the Court enter summary judgment for Defendants on all claims and dismiss with prejudice Plaintiffs' Amended Complaint against Defendants.

Date: January 27, 2018

Respectfully submitted,

/s/_____

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886, 918-19 (1982); *see also, e.g., Elfbrandt v. Russell*, 384 U.S. 11, 17 (1966); *Gibson v. Florida Legislative Investigation Comm.*, 372 U.S. 539 (1963).

CERTIFICATE

I HEREBY CERTIFY that on January 27, 2018, a true and correct copy of the foregoing pleading was electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

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