



February 25, 2022

Via USPS Certified Mail

Mr. Charles W. Herbster
6332 S. 118th Street
Omaha, NE 68137

RE: Campaign Advertisements

Dear Mr. Herbster:

The University of Nebraska (the “University”) is a public body corporate formed by the constitution and statutes of the state of Nebraska. It is a governmental entity for purposes of political accountability and disclosure laws in the state of Nebraska. And it is a tax-exempt entity under Section 501(c)(3) of the US Internal Revenue Code. As such, the University is prohibited from participating or intervening in political campaigns and endorsing candidates for public office.

As the only public university in the State of Nebraska, the University works hard to remain politically neutral while encouraging and respecting diverse viewpoints. The ability to remain officially neutral in matters of political campaigns has allowed the University to maintain positive and fruitful relationships with office holders at the local, state, and national level.

Essential to its ability to remain neutral on matters of a political nature, it has been the University’s request that any and all political candidates and office holders refrain from using any marks associated with the University in any manner. These requests have included not wearing University-branded apparel in advertisements or during interviews, posing with University students, including student athletes, and not using University marks in political campaigns. Historically, this request has been respected by politicians at all levels of Nebraska politics and has allowed the University to maintain positive and collegial relationships with elected officials in Nebraska.

The University has recently become aware of advertisements on behalf of your campaign that include the use of University marks. There is also a recent ad challenging Jim Pillen’s stance on critical race theory, which specifically mentions the University of Nebraska-Lincoln’s Office of Diversity and Inclusion and has been released on television. In addition to the requirement that the University remain neutral in the matter of politics, the University also has a right and obligation to prohibit unauthorized uses of its marks.

The University is the owner of its name, logos, slogans, and other proprietary rights (hereinafter, “Marks”). Notably, the University is the owner of the following federal trademarks and service marks: No. 2,614,766 for the mark UNIVERSITY OF NEBRASKA, No. 2,546,398 for the mark HUSKERS, No.



Office of the General Counsel

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2,081,713 for the mark HUSKERS (stylized), No. 3,207,798 for the mark N HUSKERS, and No. 2,735,215 for the mark N and helmet design.

The University owns all rights, title, and interest in and to its Marks. It has worked extensively to develop the goodwill and strength of the institution and to become a leader and a world class provider in educational, athletic, and incidental services. The University retains the right to maintain the quality control of its Marks by approving the use of the Marks in all advertising and promotional materials and licensing vendors to use or sell the Marks in authorized settings. This right extends to political campaign advertisements.

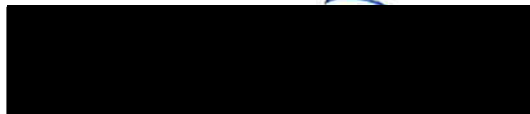
The use of University Marks in campaign advertisements is problematic to the University for a number of reasons. The public may erroneously believe that the use of Marks in your political campaign acts as an endorsement of your candidacy, in violation of state and federal law, and could jeopardize the tax-exempt status of the University. It also could be seen as unfair competition and dilution of the University Marks under the Lanham Act.

Additionally, the critical race theory advertisement includes the official University image of Dr. Marco Barker, Vice Chancellor for Diversity and Inclusion at the University of Nebraska-Lincoln. The University retains the copyright to all official images of its employees, including Dr. Barker's image. As such, use of the image in your campaign advertisement violates the University's copyright and may be a violation of federal law. Dr. Barker also retains rights within the State of Nebraska to privacy, including rights related to the exploitation of his name, image, and likeness under Neb. Rev. Stat. § 20-202 and potentially placing him before the public in a false light under to Neb. Rev. Stat. § 20-204. Notwithstanding this letter, Dr. Barker retains the ability to pursue his personal rights under Nebraska law.

In light of these potential consequences, the University respectfully asks that you remove all University Marks from your campaign advertisements in all mediums, including social media and online, and that you refrain from using University Marks and University copyrighted images during your campaign activities.

We look forward to your cooperation in this matter. If you have questions regarding any aspect of this matter, please contact me at (402) 472-1201.

Sincerely,



Stacia L. Palser
Vice President and General Counsel