



## Alleged trademark infringer remains hog-tied after appeal

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### UNITED STATES OF AMERICA

Legal updates: case law analysis and intelligence

- This appeal arose from a dispute over a programme called 'The Trial Lawyers College' after the college's board of directors split into two groups
- The district court denied the Spence Group's request for a stay and granted the Sloan Group's request for a preliminary injunction
- The 10th Circuit found that it lacked jurisdiction to review the stay denial, but reversed in part the grant of a preliminary injunction

In [\*The Trial Lawyers College v Gerry Spence Trial Lawyers College at Thunderhead Ranch\*](#) (Case No 20-8038, 27 January 2022) (Bacharach, Briscoe, Murphy, JJ), the US Court of Appeals for the 10th Circuit has dismissed an appeal against a district court order denying a stay of a federal action for lack of jurisdiction under 28 USC § 1291, and reversed in part the district court's grant of a preliminary injunction.

### Background

The dispute between the parties arose out of a programme called 'The Trial Lawyers College' at Thunderhead Ranch in Wyoming. The college's board of directors split into two factions known as the 'Spence Group' and the 'Sloan Group'. After the split, the two groups sued each other. The Spence Group sued in state court for dissolution of the college and a declaratory judgment regarding control of the board of directors. The Sloan Group sued in federal court claiming trademark infringement under the Lanham Act.

Both groups sought relief in the federal case. The Spence Group filed a motion to stay the federal court proceedings in light of the state court proceedings, and the Sloan Group requested a preliminary injunction. The district court denied the Spence Group's stay and granted the Sloan Group's request for a preliminary injunction. The Spence Group appealed both rulings.

## 10th Circuit decision

The 10th Circuit found that it lacked jurisdiction to review the district court's stay denial. First, the state court resolved the dispute concerning board control, rendering part of the requested stay moot. Second, the court determined that it lacked jurisdiction over the remaining motion for stay because it was not a final order. The court explained that it needed to decide the appealability of the ruling based on the category of order rather than the particular facts of the case. The court found that there was no unsettled issue of unique urgency or importance that warranted the court exercising jurisdiction over the denial of the stay. Specifically, the court explained that piecemeal litigation was unlikely because the state court already decided the issue of board control, and the Spence Group did not identify an unsettled issue of unique urgency.

The 10th Circuit did exercise jurisdiction over the district court's grant of a preliminary injunction. The Spence Group challenged the district court's finding of irreparable harm, the order to remove sculptures bearing the college's name, restrictions on what the Spence Group could say and the consideration of evidence presented after the hearing ended. The court reviewed the district court's findings under an 'abuse of discretion' standard. The court found that the district court did not abuse its discretion by finding irreparable harm, considering evidence after the hearing and enjoining the Spence Group from using words associated with the college. The court explained that the district court reasonably found irreparable harm based on the college's efforts to protect its name, logo and trademarks, as well as evidence of likely confusion among customers of the college based on the Spence Group's use of those trademarks.

As for the sculptures, the court found that the district court abused its discretion by ordering their removal. The court explained that preliminary injunctions are typically "prohibitory", meaning they prohibit a defendant from doing something, as opposed to affirmative, which requires a defendant to act in a certain manner. The court determined that there were other more prohibitory measures the district court could have ordered instead of the mandatory removal of the sculptures, such as prohibiting training while the sculptures remained visible to customers.

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