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July 25, 2025

United States District Court
Southern District of New York
Attn.: Judge Colleen McMahon

I understand the parties' positions on the issue and will take them into account in rendering a decision. No additional filings are needed at this time.

Re: Todd C. Bank v. NFL Properties LLC
Case 1:25-cv-03981-CM

Dear Judge McMahon:

Colleen McMahon
7/29/2025

I, the plaintiff in the above-referenced matter, submitted a letter to the Court on July 11, 2025 (Doc. 35), requesting permission to submit a declaration and exhibit showing that my website, www.fairgamemerch.com (the "FGM Website"), is capable of accepting orders of the products at issue, *i.e.*, the FGM T-Shirts, as shown by a test order that I completed. As there has been no ruling on the request, I submit this letter in view of the possibility that the lack of a ruling was inadvertent. If that is not so, I apologize, but I hope the Court understands why I consider such an inadvertency to be possible, *i.e.*, because the Court has very quickly ruled on requests regarding other submissions.

I respectfully request that the Court consider my need to make the submission. I could have made it along with my opposition to the dismissal motion by Defendant, NFL Properties LLC ("NFLP"). However, I had not anticipated that NFLP would, in its reply, blatantly try to mislead the Court, and thus had not anticipated the need for the submission. That is, NFLP stated: "[t]he website's purchasing features do not work, as an attempt to buy a shirt from the password-protected 'Products' page returns an error message: 'We can't accept online orders right now.'" Def. Dismissal Reply Mem. (Doc. 31) at 4. Of course, this was not "an error message," as though I had tried to sell the FGM T-Shirts but could not figure out how to do so. Both prior to, and immediately following, the test order, the FGM Website's order-acceptance feature has been disabled per the very nature of this case. Indeed, the website's acceptance of orders, according to NFLP, "would thereby constitute trademark infringement, dilution, and/or unfair competition, and also will misappropriate the goodwill and reputation of the NFL and/or its Member Clubs," Compl., Exh. "D" at 1-2, in which event NFLP would "treat any unauthorized use of the NFL Marks . . . as intentional and willful, which would entitle NFLP to enhanced damages and reimbursement of its attorneys' fees." *Id.* at 2. Likewise, NFLP described the website as a "password-protected, non-functioning website." Def. Dismissal Reply Mem. (Doc. 31) at 2, but, the commercial pages of the site are password-protected because I do not currently have any need to make those pages publicly accessible and because I do not wish to have visitors to the site attempt to place an order only to be told that they may not do so. Of course, one can see, using the password "fgmprivateview," that the commercial pages of the website, which are linked at the bottom of the site's current home page, are functioning in all respects except that the site does not currently accept orders (and, in fact, NFLP's counsel would have had to use the password when attempting to place their order, and thus would have seen that the site is fully functioning except for its non-acceptance of orders).

Judge Colleen McMahon
July 25, 2025

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Thank you to the Court for its consideration.

Sincerely,

s/ *Todd C. Bank*

Todd C. Bank