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October 24, 2025

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

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

Dear Judge McMahon:

I, the plaintiff in the above-referenced matter, respond herein to several parts of the Court's "Decision and Order Granting NFLP's Motion to Dismiss the Complaint; Denying NFLP's Motion for Costs; and Denying Bank's Motion for Sanctions" (the "Decision," Oct. 21, 2025; Doc. 47).

The Decision begins as follows: "Plaintiff Todd C. Bank, who purports to be an attorney and who is representing himself pro se, has sued NFL Properties LLC ('NFLP')" Decision ("D") at 1. My status as an attorney has never been in dispute in this litigation. Not only could you have looked up my status if you had had any doubt about it, but the Decision also states that, "[t]he court is familiar with Mr. Bank because he was disciplined in the past by the Second Circuit for inappropriate conduct," D.2, and thereupon cites, in a footnote, an article whose title described me as a "Lawyer," and, of course, referred to the fact that I am an attorney. Your description of me as one "who purports to be an attorney" clearly implies that you had some doubt of whether I am, in fact, an attorney, when, of course, you knew that I am. I wonder what you would think if I described you in a legal submission as one "who purports to be a judge." I imagine that you would take umbrage to that, no matter what opinion of mine had led me to call you that, and that you would say that doing so was grossly unprofessional. Indeed, it would be, and the same is true of what you wrote.

As with your "purport[ed] . . . attorney" comment, it is apparent that your reference to my disciplinary situation, which had nothing to do with any of the issues presented by the litigation before you (how could it have?), was meant to denigrate me for the sake of it. Speaking of that situation, I suspect that the discipline that I received (a public reprimand) due to what I said in court would have been harsher if, instead, I had said that the judge in question "purports to be a judge." Unlike me, of course, you, as nearly "the only check on [your] own behavior or misbehavior," Colleen McMahon, *The Monastic Life of a Federal District Judge*, 70 Mo. L. R. 989, 991 (2005), enjoy practical immunity for conduct for which I do not have such immunity. Given that, what else could I assume but that your attitude is that you have power and so you might as well abuse it?

The Decision states: "[h]e [that is, me] brings frivolous lawsuits for a living." D.3. However,

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you cite nothing to support this. Did you review my entire history as an attorney (“purport[ed]” or otherwise) and compare cases that, in your opinion, were frivolous to those that you thought were not frivolous? In the small number of instances in which a court found that I had brought a frivolous case, did you read any of the decisions or did you treat those findings as gospel? Did you read the briefs in any of those cases so that you could form your own, *i.e.*, independent, opinion? Isn’t it possible that you would have concluded that one or more of those cases were not frivolous? You surely know that lawyers love to quote derogatory comments that a court has made about their adversaries, so did you make your remark solely to hurt my career or reputation? Moreover, did your remark even bear on any of the legal issues in the case before you? I do not see how it could have, but perhaps you could tell me. If I had made any frivolous arguments in the case before you, or even if the case itself were frivolous, wouldn’t they be equally frivolous whether or not I had previously brought any frivolous cases?

The Decision states: “Bank does not assert that he intends to sell more than the thirty-three tee shirts he has already created[,] [and] [h]e does not pretend that he has any intention to create a profitable merchandising business,” D.9, and that, “NFLP fails to provide any authority in support of its assertion that, in order to establish a justiciable case or controversy, Bank must demonstrate a definite intent and apparent ability to create an ongoing, profitable business - something this court has little doubt he does not intend to do.” *Id.* Given your finding that I was not required to “demonstrate a definite intent and apparent ability to create an ongoing, profitable business,” and your apparent recognition of my candor with the Court, what was the point in adding “something this court has little doubt he does not intend to do”? Was it just to denigrate me because you do not like this case, as if it should matter whether a judge likes a case?

The Decision, still addressing the issue of justiciability, concludes: “[t]aken together, Bank’s actions demonstrate more than just a vague or general desire to use the Trademarks. By manufacturing the thirty-three tee shirts he intends to sell and creating the website over which to sell them, Bank has shown a definite intent and apparent ability to commence use of the NFL Trademarks in the United States market. There is, therefore, a justiciable controversy — even though this court has no doubt whatever that it was created for the sole purpose of allowing Bank to engage in annoyance litigation, and even though I am under no illusion that Bank plans to go into the tee shirt business in competition with the NFLP.” D.10.

What did you mean by “annoyance litigation”? What did you think I meant, on my law-practice website, in “describing [myself] as an ‘annoyance lawyer’”? D.3, n.1? My website, which the Decision cites (*see id.*), states (and has stated all throughout this litigation): “I represent plaintiffs in class actions that deal with what I call ‘annoyance’ law, which encompasses various types of cases, including: [] pre-recorded telephone calls (commonly referred to as ‘robocalls’) that violate the federal Telephone Consumer Protection Act[;] unpaid consumer rebates[; and] misleading e-mail spam that is illegal under the laws of various states.” Thus, it is perfectly obvious that I use the term “annoyance lawyer” as meaning a lawyer who deals with matters that people find to be annoying, as opposed to your false insinuation that, by “annoyance,” I was referring to “annoying” opposing parties or judges. Either you knew this and saw fit to entirely distort the matter, or you did not even

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spend the literally ten seconds or so to see what I meant by calling myself an “annoyance lawyer.” In any event, much as you evidently disliked this case, do you really believe that my sole purpose in bringing it, litigating it, and doing all of the things I did to ensure the presence of justiciability were done simply to annoy NFLP or this Court? Isn’t it possible that, like so many legal scholars, I was opposed to NFLP’s trademark-merchandise monopoly as a matter of principle and believed that the law supported my viewpoint? Isn’t that possible even though you say: “[w]ell, this court does not share Bank’s principles”? D.1 To be sure, it is not clear what this means, given that the context concerns the question of whether you should exercise discretion to hear, or abstain from hearing, the merits of the case (the latter of which you chose), although, if you were referring to the substance of the merits, which would have been inappropriate given your abstention, your disagreement with me should not have had any bearing on how you exercised your discretion; did it?

Given your finding that “[t]here is . . . a justiciable controversy,” D.10, why did you add that, “I am under no illusion that Bank plans to go into the tee shirt business in competition with the NFLP”? D.10. Your finding in my favor regarding justiciability made your speculation, which would have been irrelevant and inappropriate in any event, all the more so. If, for instance, you had speculated as to the opposite, *i.e.*, that I *did* “plan[] to go into the tee shirt business in competition with the NFLP,” wouldn’t your finding of justiciability have been the same? What else could I conclude other than that you were simply trying to negatively portray me just for the sake of it?

The Decision states: “the decision to abstain forces Bank either to put up or shut up - either he sells the shirts and get sued (in which case he can assert his functionality defense), or (as I suspect will happen) he slinks off into the sunset.” D.15. You evidently think that the phrase “put up or shut up” is worthy of the federal judiciary; I, however, think that it is not. The same is even more true of “slinks off into the sunset.” Moreover, you engage in irrelevant and snide speculation yet again; why does it matter that you think that I will not go ahead and sell my shirts? Denigration upon speculation is a fool’s game; it guarantees that you will often find yourself apologizing (or owing an apology). Would you apologize to me if I went ahead and sold the shirts? You should, of course, apologize for your speculation whether or not you turn out to be right.

The Decision states:

Bank seeks an order imposing sanctions on the NFLP under Federal Rule of Civil Procedure 11 for NFLP’s filing of its motion for costs. Bank alleges that the NFLP’s motion for costs is “based upon contentions that are neither warranted by existing law nor by any non-frivolous arguments for extending, modifying, or reversing existing law or for establishing new law,” and was “made to harass” Bank and “to encourage the court to be prejudiced against Bank based on considerations that have no relevance to whether the [motion for costs] should be granted.” Dkt. No. 38, at 1.

Absolutely not.

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D.19 (brackets in original). The Decision denies my motion because: “[i]t appears that NFLP moved for costs based on its good faith belief that Bank should have amended his complaint in *Bank I* rather than file it as a new action. Given the lack of clarity in this Circuit about whether events occurring after the filing of a complaint can cure a jurisdictional defect that existed at the time of initial filing, the court finds that this belief was objectively reasonable.” D.20. This clearly shows that the Court would have the reader believe that my motion was based on the mere fact that NFLP moved for costs, even though this is so clearly untrue, as my motion was based on a number of specific aspects of NFLP’s motion as thoroughly detailed in the motion’s memorandum of law, not a single point of which the Decision addresses. Thus, regardless of whether the denial of my motion was ultimately warranted, your explanation reads not as genuine, relevant legal analysis, but as propaganda. Thus, what else would I be expected to conclude other than that judicial bias was at work?

The Decision states: “[b]y bringing this action for a declaratory judgment, instead of acting on his asserted rights and beliefs and accepting whatever consequences follow therefrom, Bank has forced the NFLP to spend money needlessly, while wasting this court’s time. Judicial economy is not served by entertaining a lawsuit seeking a declaration that Bank has a defense to a claim of trademark infringement.” D.14-15. However, you did not acknowledge that a primary, if not *the* primary, purpose of seeking a declaratory judgment is to avoid the risk of being sued, including, *specifically*, in cases involving one’s wish to use another’s trademarks, even though you acknowledged, in the very next paragraph, that “reaching the merits on the question of the ‘functionality’ of the marks in connection with their use on tee shirts” would satisfy another, and also primary, purpose of declaratory-judgment actions, *i.e.*, it “would bring this matter to a definitive end,” D.15 (but you added that I should go ahead and sell the shirts in order to get sued so as to test my viewpoint on functionality). Thus, your assertion that I “forced the NFLP to spend money needlessly, while wasting this court’s time,” is so obviously untrue that I am left to believe that it was just your way of expressing irritation at my having brought the case because you knew that it was a legitimate case and simply did not want to rule against NFLP, which you would have felt compelled to do had you heard the merits, as “the law compels [judges] to do things that [they] would not do if [they] made the rules rather than interpreted and enforced them.” Colleen McMahon, *The Monastic Life of a Federal District Judge*, 70 Mo. L. R. 989, 993 (2005). Put another way: do you think that it would have been an abuse of your discretion if you had chosen to hear the merits, such that the Circuit Court would have reversed that decision if NFLP had brought an appeal? I certainly do not believe that the Circuit Court would have ruled that way, but such a ruling, or the belief that the Circuit Court would have made such a ruling, would have been required in order to legitimately find that I had “forced the NFLP to spend money needlessly, while wasting this court’s time.” I did not, and did not seek to, do either.

The Decision provides four “example[s]” of “the identifying [trade]mark[s] of . . . the NFL’s thirty-two Member Clubs,” D.2, wherein you discuss the identifying mark of “the New York Football Giants.” *Id.* The inclusion of the term “Football” in the team’s name comes from the time when Major League Baseball included the New York Giants, which ceased to be the case prior to the 1958 season. Thus, the description of the football team as the “New York Football Giants” is little used today, and when it is used, it is as a term of endearment. I thus imagine that the majority of people

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who use the term “New York Football Giants” are fans of that team. I do not know, of course, whether that includes you (and, unlike you, I will not engage in speculation, much less vituperatively). However, your use of the term does raise questions: are you a Giants fan (or a fan of another NFL team or the NFL in general), and, if so, were you therefore hoping not to issue the declaratory judgment that I sought?

You once wrote that a judge should be “humble” and “courageous,” *Monastic Life*, 70 Mo. L. R. at 991, yet levying your mean-spirited, unfounded, and irrelevant attacks while wearing a judge’s robe is easy, not “courageous,” as courage is not defined as acting in ways that you claimed a judge should not act, namely, acting upon “[y]our own worst instincts,” *id.* at 992, that is, the instincts to be “proud,” “arrogant,” and “unduly harsh,” *id.*, whose results you left in the Decision instead of “bring[ing] [y]oursel[f] up short when [you] catch [y]oursel[f] factoring inappropriate considerations into [y]our decision-making.” *Id.* You clearly acted upon what you claimed that judges should not act upon, *i.e.*, “prejudices,” *id.*, and, I believe, you would simply “lie to [y]oursel[f] if [you] refuse to admit it,” *id.*, rather than “be[ing] completely honest with [y]oursel[f] about why [you] are doing what [you] are doing.” *Id.* Perhaps that is to be expected after being “too often lionized rather than humanized” for 27 years, *id.* at 990, although I do not expect judges (of any tenure) to conduct themselves that way.

In *Bank I*, I expressed concern, with good reason, that you were biased against me (*see Bank I*, Doc. 16). Regrettably, I underestimated you, as your unbecoming comments show that I turned out to be more correct than I had imagined. Indeed, a juror who exhibited even a fraction of the bias that you have shown would be immediately removed.

I hope that you will acknowledge and correct your improprieties and answer the questions that I have posed, and, in so doing, “be completely honest with [your]self.” As you once asked, “[w]ho is going to keep a trial level judge intellectually honest, or make that judge question her own motives, if not the judge herself?” *Monastic Life*, 70 Mo. L. R. at 992.

Sincerely,

s/ Todd C. Bank

Todd C. Bank