UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TODD C. BANK, *Plaintiff*, -against- NFL PROPERTIES LLC, *Defendant*.	1:25-cv-03981-CM

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF MOTION TO RECONSIDER CERTAIN RULINGS OF THE *DECISION AND ORDER GRANTING DEFENDANT'S MOTION TO DISMISS THE COMPLAINT; DENYING DEFENDANT'S MOTION FOR COSTS; AND DENYING PLAINTIFF'S MOTION FOR SANCTIONS*, DATED OCTOBER 20, 2025

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BACKGROUND

Plaintiff, Todd C. Bank ("Bank"), who commenced this declaratory-judgment action on May 12, 2025, seeks a judgment declaring that his prospective sale, without the approval of Defendant, NFL Properties LLC ("NFLP"), of 33 t-shirts, each of which bears a trademarked symbol of a National Football League ("NFL") team or the NFL, would not violate certain provisions of the Lanham Act, 15 U.S.C. §§ 1051 - 1141, *i.e.*, Sections 1114(1)(a), 1114(1)(b), 1125(a)(1)(A), and 1125(c). *See* Compl. (Doc. 1), Prayer for Relief, ¶ (a). Bank's legal theory is that the trademarks are functional and that Bank is therefore free to use them commercially. *See* Compl., *passim*.

On October 21, 2025, the Court issued a *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," Doc. 47), wherein the Court: (i) found that the action is justiciable; (ii) declined to exercise jurisdiction over the action; (iii) denied NFLP's motion for costs incurred by NFLP in litigating a previous matter between the parties that Bank had voluntarily withdrawn; and (iv) denied Bank's motion for sanctions against NFLP. Bank moves for reconsideration, and vacature, of the second and fourth parts of the Decision.

ARGUMENT

POINT I

THE DECISION'S DECLINATION OF JURISDICTION WAS A CLEAR ABUSE OF DISCRETION AS REFLECTED BY THE FACT THAT IT WAS BASED UPON 180-DEGREE OUT-OF-CONTEXT QUOTATIONS FROM THE CASE LAW, AND BECAUSE EVERY FACTOR THAT IS TO GUIDE THE QUESTION OF DECLARATORY-JUDGMENT DISCRETIONARY JURISDICTION INDISPUTABLY FAVORS ITS EXERCISE

The Decision states that, "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," Decision ("D") at 9, but 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.* The Decision concludes its discussion of justiciability as follows: "[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 . . . ." D.10.

The Court, notwithstanding its finding of justiciability, declined to exercise jurisdiction over the action, reasoning as follows:

> By filing his complaint asserting only the anticipatory defense of functionality, Bank is "depriv[ing] [NFLP] of [its] traditional choice of forum and timing[,]" [quoting *Starr Indem. & Liab. Co. v. Exist, Inc.*, No. 23-cv-786, 2023 WL 4029821, *7 (S.D.N.Y. June 14, 2023), *aff'd*, 2024 WL 503729 (2d Cir. No. 23-912, Feb. 9, 2024)][.]
>
> If Mr. Bank really wants to test the functionality of the NFL Trademarks, then he should go active on his web page and offer his tee shirts for sale. If he does, the NFLP will undoubtedly sue him for trademark infringement. At that point, he can then assert his affirmative defense of functionality, and a court can and will decide that issue. I can see no reason to offer Bank any comfort that he will not be sued if he decides to sell shirts bearing allegedly infringing marks. He should be sued. That is the proper way of dealing with trademark disputes - not by dealing in hypotheticals, but by creating actual instances of purported infringement (or, from Bank's perspective, non-infringement).
>
> By bringing this action for a declaratory judgment, instead of acting on his asserted rights and beliefs and accepting whatever consequences flow 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.

Although the Decision then recognizes that, "reaching the merits on the question of the 'functionality' of the marks in connection with their use on tee shirts would bring this matter to a definitive end," D.15, it adds: "so, I suspect, will a decision to abstain. For 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." *Id.*

The Decision does not acknowledge the black-letter principle that, with respect to a plaintiff who seeks a judgment declaring that his desired activity would not violate the defendant's trademark rights, "[the] declaratory judgment plaintiff need not 'bet the farm, so to speak,' by actually infringing [on] the mark in question prior to filing suit." *Saleh v. Sulka Trading Ltd.*, 957 F.3d 348, 356 (2d Cir. 2020), quoting *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 129 (2007). Only an unduly "restrictive view" of the Declaratory Judgment Act, 28 U.S.C. §§ 2201 - 2202 ("DJA"), would force a plaintiff in Bank's position to "subject [him]self to considerable liability for a violation of the Lanham Act before [his] right to even engage in [the desired] line of commerce could be adjudicated [in a declaratory-judgment action]." *Starter Corp. v. Converse, Inc.*, 84 F. 3d 592, 596 (2d Cir. 1996). *Accord*, *Gelmart Indus., Inc. v. Eveready Battery Co.*, 120 F. Supp. 3d 327, 331 (S.D.N.Y. 2014). Indeed, "[t]he dilemma posed by . . . putting the challenger to the choice between abandoning his [claimed] rights [to use another's intellectual property] or risking prosecution . . . is 'a dilemma that it was the very purpose of the Declaratory Judgment Act to ameliorate.'" *MedImmune*, 549 U.S. at 129, quoting *Abbott Labs. v. Gardner*, 387 U.S. 136, 152 (1967).

The Decision's quotations, from the case law, of the principles that are the bases of the Court's declination, *i.e.*, the principles against using a declaratory-judgment action to engage in forum-shopping and against using such an action to litigate an anticipated defense to an action that the defendant might bring, *see* D.13-14, are taken 180 degrees out of context and, accordingly, that case law, far from weighing against the exercise of jurisdiction in the present case, emphatically favors it.

In *Starr Indem. & Liab. Co. v. Exist, Inc.*, No. 23-cv-786, 2023 WL 4029821 (S.D.N.Y. June 14, 2023), *aff'd*, 2024 WL 503729 (2d Cir. No. 23-912, Feb. 9, 2024) (cited at D.13-14), in which the insurance-company plaintiff "sought a declaratory judgment that there was no coverage," *id.* at *3, of "two sets of claims made by [the defendant] under [its insurance] [p]olicy," *id.* at *1, the court declined jurisdiction due to the situation's having been the *exact opposite* of that in the present case; namely, the requested declaratory judgment concerned acts that had *already occurred* and was therefore not prospective: "[t]he declaratory relief that [the] [p]laintiff seeks is a declaration that [the] [p]laintiff is not liable on *already accrued* claims." *Id.* at *5 (emphasis added, as are all others herein). Indeed, the court was emphatic in relying upon the backward-looking, rather than prospective, nature of the case:

> [A]nticipatory judgments of non-liability are appropriate under the DJA where they would adjudicate claims asserting unaccrued or undefined rights or obligations arising under contractual relations such as insurance and intellectual property. In that circumstance, the declaratory judgment plaintiff faced with a threat regarding the exercise of his rights in the future can obtain an opinion as to the lawfulness of his ways *without first engaging in the conduct that his adversary claims violates its rights*. . . . On the other hand, where the purported use of the DJA seeks a declaration of non-liability to preemptively defeat actions grounded on tort claims involving rights *already accrued by reason of alleged wrongful conduct*, various courts have held that that application is not a warranted purpose of the DJA. In that instance, a declaratory judgment *serves no forward-looking purpose*. It is simply a mechanism to avoid the more natural plaintiff's choice of forum.

Id. at *4 (additional citations and quotation marks omitted). *See also id.* at *5 ("where the declaratory judgment action seeks solely to determine whether the insurer is liable for losses *already accrued* and there is *no threat of future damages*, the action ceases to have a forward-looking function impacting *intended future conduct*").

Not only does the reasoning of *Starr* favor Bank, but the court *specifically contrasted* the situation before it with the type of situation at issue here:

> [The] [p]laintiff is also *not forced to incur any "additional harm" by waiting for [the] [d]efendant to initiate suit*. *See* [*AmSouth Bank v. Dale*, 386 F.3d 763, 786 (6th Cir. 2004)] ("[T]he threat of suit, however immediate, is not by itself sufficient for the invocation of the federal power to issue a declaratory judgment." (citation omitted)). *Even if [the] [d]efendant were to wait years to initiate suit, [the] [p]laintiff will be in no different position than it is today*. It will *either have to pay out the money for the two claims to [the] [d]efendant or it will not have to*. [The] [p]laintiff does not allege that it would incur *any further potential costs in the interim*. *This case is therefore distinct from, for example, a case involving a party who wants to "embark on a marketing campaign" but who has "been threatened with suit over trademark infringement." Id. In that case, a declaratory judgment action serves a useful purpose as it allows the party to "go to court under the Declaratory Judgment Act and seek a judgment that it is not infringing that trademark, thereby allowing it to proceed without the fear of incurring further loss." Id.* Here, however, [the] [p]laintiff seeks an adjudication that its *past exercise* of what it believes are its rights—not to pay on the claims—has given rise to no legal consequences. Thus, "this suit is not necessary to clarify and settle the legal relations or afford relief from uncertainty, insecurity and controversy" *going forward*.

Id. at *6 (additional citations and quotation marks omitted). It was in this context (again, the opposite of the present one) that the court observed that, "use of the Declaratory Judgment Act to assert an anticipatory defense is improper because it 'deprives the plaintiff of his traditional choice of forum and timing, and it provokes a disorderly race to the courthouse.'" D.13, quoting *Starr*, 2023 WL 4029821 at *7. Thus, *Starr* summarized its ruling as follows:

> In sum, the declaratory judgment that [the] [p]laintiff] seeks is *based entirely on* [ ] *past acts*, and [the] [p]laintiff] fails to articulate the need for *prospective* relief. *[The] [p]laintiff essentially seeks to use the present declaratory relief action to assert affirmative defenses*. '[T]he anticipation of defenses is not ordinarily a proper use of the declaratory judgment procedure, as [i]t deprives the plaintiff of his traditional choice of forum and timing, and it provokes a disorderly race to the courthouse.

Starr, 2023 WL 4029821 at *7 (additional citations and quotation marks omitted).

As *Starr* shows: "[i]mportantly, *affirmative defenses* to *expected future litigation* may be raised in an action for declaratory judgment. . . . '[C]ourts *regularly* consider the merits of affirmative

defenses raised by declaratory plaintiffs.'" *Westcode, Inc. v. Mitsubishi Electric Corp.*, 171 F. Supp. 3d 43, 48 (N.D.N.Y. 2016), citing *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500, 508 (1959), and quoting *BASF Corp v. Symington*, 50 F.3d 555, 558 (8th Cir. 1995). As observed in *Classic Liquor Importers, Ltd. v. Spirits Int'l B.V.*, 151 F. Supp. 3d 451 (S.D.N.Y. 2015):

> The Second Circuit has explained that "[d]eclaratory judgment actions are *particularly useful in resolving trademark disputes*, in order to promptly resolve controversies where the alleged owner of a trademark right *threatens to sue for infringement*," and, as such "the finding of an actual controversy should be determined with some liberality" in such a case. *Starter Corp. v. Converse, Inc.*, 84 F.3d 592, 596 (2d Cir.1996). "A more restrictive view," the Court of Appeals has explained, could require a party "to go to substantial expense in the manufacture, marketing, and sale of its [product], *and subject itself to considerable liability for a violation of the Lanham Act before its right to even engage in this line of commerce could be adjudicated*." *Id.*

Id. at 455.

In *John Wiley & Sons, Inc. v. Visuals Unlimited, Inc.*, No. 11-cv-5453, 2011 WL 5245192 (S.D.N.Y. Nov. 2, 2011) (McMahon, *J.*) (cited at D.14), the plaintiff was "seeking a declaratory judgment that it is not liable to [the defendant] for copyright infringement or fraud relating to 'all of the photographs licensed by [the defendant] to [the plaintiff] over the entire course of the parties' dealings.'" *Id.* at *2. The court, just as in *Starr*, dismissed the action because the situation was the *opposite* of that of the present case; namely: "the relief [that the plaintiff] seeks is not an appropriate use of the DJA. . . . [The plaintiff] seeks a declaration of non-liability for allegedly intentional acts that *occurred in the past* . . . . [The plaintiff] does not seek a *prospective determination* of its rights and responsibilities ... but rather a finding that it is not liable for damages alleged to *have already accrued*." *Id.* at *4 (citation and quotation marks omitted). The court further explained why declaratory-judgment actions are inefficacious in situations that are the opposite of Bank's situation:

> The main purpose of the DJA is to "*avoid accrual of avoidable damages* to one not certain of his rights and to afford him

> an early adjudication *without waiting until his adversary should see fit to begin suit*, *after damage has accrued*. It is designed to settle legal rights and remove uncertainty and insecurity from legal relationships *without awaiting a violation* of the rights or a disturbance of the relationships. Accordingly, the DJA is not intended to be used by parties who seek a declaration of non-liability to preemptively defeat tort claims *already accrued by past wrongful conduct*. The reason for this rule is clear: declaratory relief is *intended to operate prospectively*. There is no basis for declaratory relief where *only past acts* are involved[.]

Id. (citation and quotation marks omitted).

Where *past*, rather than *prospective*, acts are at issue, the principle against declaratory-judgment actions' being used "in an attempt to get [the declaratory-judgment plaintiff's] choice of forum by filing first," *id.* at *8 (citation and quotation marks omitted), is applicable, but that, of course, is not the case here. Moreover, *Wiley*, in response to "[the plaintiff's] argu[ment] that [the defendant] fail[ed] to demonstrate that forum shopping was the sole basis for the lawsuit, and that [the plaintiff] effectively filed in its home forum," *id.* at *8, stated: "[c]ontrary to [the *defendant*]'s strained arguments, the Court acknowledges that Hoboken, New Jersey [(the plaintiff's principal place of business, *see id.* at *1)], is right across the river from the federal courthouse in Manhattan, and is closer to [the plaintiff] as the crow flies than the federal courthouse in Newark, New Jersey. [The plaintiff] can hardly be accused of forum shopping by filing in this court when it is a New York corporation, has an office in New York, and has headquarters located less than five miles from this Court." *Id.* at *8, n.1. Here, Bank did not merely file his action in his home district, *i.e.*, the Eastern District of New York, which would have put him on par with the plaintiff in *Wiley*; rather, and further belying the notion that Bank had engaged in forum-shopping, Bank brought this action in *NFLP*'s home district. *See* Compl., ¶¶ 12, 15, 16. Of course, unlike in *Wiley*, there was no other lawsuit against whose prospect Bank could have been seeking to win a race against NFLP to the courthouse, for, again, the present action does not concern prior acts but only prospective ones. Thus, the

"tak[ing] [of] a dim view of declaratory plaintiffs who file their suits mere days or weeks before the coercive suits filed by a 'natural plaintiff' and who seem to have done so for the purpose of acquiring a favorable forum," *id.* at *7 (citation and quotation marks omitted), is inapplicable here even aside from the fact that the forum that Bank chose showed the very opposite of forum-shopping.

In *Morgan Drexen, Inc. v. Consumer Fin. Prot. Bureau*, 785 F.3d 684 (DC. Cir. 2015) (cited at D.14), the court, yet again, was confronted with a declaratory-judgment action that concerned past conduct; indeed, shortly after the action was commenced, the defendant brought an enforcement action based upon that conduct. *See id.* at 687. Upon the latter's commencement, the declaratory-judgment plaintiff "no longer faced the dilemma of whether to change its behavior or risk continued violation of the law in order to get a hearing." *Id.* The present case would have been analogous to *Morgan Drexen* if Bank had started selling his t-shirts before, or even after, he commenced his action and NFLP thereupon sued Bank; but, of course, neither of these events have occurred. Indeed, *Morgan Drexen*, in the same paragraph that the Decision quotes, explained: "[b]ecause the [defendant] has filed an enforcement action that promises to resolve the legality of [the plaintiff]'s [past] conduct, this is not a situation in which a declaratory plaintiff will suffer injury unless legal relations are clarified; [the plaintiff] does not currently act at its peril." *Id.* at 698 (altered; citation and quotation marks omitted).

The court also found that, "the district court's findings that '[the plaintiff] was aware of the likelihood of a[n] enforcement action' when it filed the complaint and that it had engaged in procedural fencing are supported by the record and not clearly erroneous." *Id.* Again, Bank could not have been aware of a likelihood of being sued by NFLP for selling Bank's t-shirts, for he had not been selling them. Indeed, whereas "[t]he [defendant in *Morgan Drexen* had] notified [the plaintiff] . . . that it was considering an enforcement action," *id.*, NFLP, by contrast, "advised Bank that, *should* his client [identified at the time as John Doe, *see* D.3] engage in the unauthorized use of the Trademarks,

'such use *will* constitute trademark infringement, dilution, and/or unfair competition, and also *will* misappropriate the goodwill and reputation of the NFL and/or its Member Clubs,'" D.3-4, quoting Compl., Exh. "D" at 1, and "further stated that NFLP *would* treat any unauthorized use of the Trademarks 'as intentional and willful, which *would* entitle NFLP to enhanced damages and reimbursement of its attorneys' fees.'" *Id.* at 4, quoting Compl., Exh. "D" at 12.

Given that the Decision recognizes that there was "a 'genuine threat' that the declaratory defendant [(*i.e.*, NFLP)] will bring the future suit—or would do so, but for the declaratory plaintiff's decision to test his defense first," *Wells v. Johnson*, 150 F.4th 289, 302 (4th Cir. 2025), quoting *MedImmune*, *supra*, 549 U.S. at 129, this action is the epitome of a declaratory-judgment action: "[t]he *paradigm case* for a declaratory judgment action is a *defensive suit* brought by the party who *would be the defendant in a hypothetical future case*. The point of these actions is to *test the declaratory plaintiff's defense ahead of time*." *Id.*, citing *Pub. Serv. Comm'n of Utah v. Wycoff Co.*, 344 U.S. 237, 248 (1952), and *Medtronic, Inc. v. Mirowski Fam. Ventures, LLC*, 571 U.S. 191, 197 (2014).

In *Veoh Networks, Inc. v. UMG Recordings, Inc.*, 522 F. Supp. 2d 1265 (S.D. Calif. 2007) (cited at D.15), the requested declaratory judgment, yet again, concerned past conduct; indeed, the complaint "alleged[] . . . . [that] [the] [d]efendant [had] accused [the] [p]laintiff[] . . . of massively infringing [on the] [d]efendant's copyrights," *id.* at 1268, and, the defendant, shortly after the action was commenced, "filed a complaint alleging copyright infringement against [the] [p]laintiff in [another] District." *Id.* The court, having dismissed the action for lack of subject-matter jurisdiction "because [the] [p]laintiff does not reference any specific copyright, even by way of example, [such that] the relief requested would necessarily take the form of an advisory opinion," *id.* at 1269, explained with respect to its alternative basis of dismissal, *i.e.*, its declination of jurisdiction: "[b]ecause [the] . . . action, jurisdictionally and on the merits, is so ill-defined, the Court suspects its

use is more a bargaining chip than a sincere prayer for relief," *id.* at 1271, and: "[t]here is no risk that [the] [p]laintiff will lose [its] chance to litigate the [legal question that the declaratory-judgment action concerns]. Indeed, in response to the specific infringement claims pending in the [other District], the [law governing that question] can be readily applied with the facts necessary to render a conclusive judgment." *Id.* at 1272. All three of the bases for the dismissal, *i.e.*, that the requested declaratory judgment concerned past conduct, that the defendant had brought a separate action based upon those past acts and that the legal question that the declaratory-judgment action concerned could be addressed in that separate action, and that the complaint was too poorly defined to create subject-matter jurisdiction or, alternatively, to warrant the use of the court's discretion to hear the case, arose from the *exact opposite* of the situation in the present case.

As the Second Circuit observed: "[t]he DJA, above all else, finds its justification in principles of speed, economy and effectiveness. By allowing us to define core legal relationships and responsibilities *well before a fully formed legal case is presented*—indeed, *before* a coercive suit *might even be possible*—we ensure a more rapid resolution of such disputes, we refine and narrow the issues to be litigated in an eventual coercive suit, and, by providing an alternate dispute resolution method, we may even keep some full-blown lawsuits from occurring. *All this saves the parties (and the courts) time, effort, and money*." *Garanti Finansal Kiralama A.S. v. Aqua Marine & Trading Inc.*, 697 F.3d 59, 70 (2d Cir. 2012). Thus, the Decision, which is wrong regarding anticipatory defenses, is just as clearly wrong in stating: "[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.

In *United States v. Doherty*, 786 F.2d 491 (2d Cir. 1986), the court explained:

> Essentially, a declaratory relief action brings an issue before the court that *otherwise might need to await a coercive action* brought by the declaratory relief *defendant*; the *fundamental purpose* of the DJA is to *avoid accrual of avoidable damages to one not certain of his rights* and to afford him an early adjudication *without waiting until his adversary should see fit to begin suit, after damage has accrued*; the *primary purpose* of the DJA is to have a declaration of rights *not already determined*, not to determine whether rights already adjudicated were adjudicated properly; the declaratory judgment procedure creates a means by which rights and obligations may be adjudicated in cases involving an actual controversy that has *not reached the stage at which either party may seek a coercive remedy*, or in which the party entitled to such a remedy fails to sue for it; the declaratory judgment procedure enables a party who is *challenged, threatened or endangered in the enjoyment of what he claims to be his rights*, to initiate the proceedings against his tormentor and *remove the cloud by an authoritative determination of the plaintiff's legal right, privilege and immunity and the defendant's absence of right, and disability*.

Id. at 499-500 (citation and quotation marks omitted). *See also Bacardi USA, Inc. v. Young's Market Co.*, 273 F. Supp. 3d 1120 (S.D. Fla. 2016) ("agree[ing] with many others in finding that declaratory actions which merely assert anticipatory defenses to *past events* are a perversion of the Declaratory Judgment Act," *id.* at 1132, citing, *inter alia*, *Wiley*, *supra*, 2011 WL 5245192 at *5); *Adirondack Cookie Co. Inc. v. Monaco Baking Co.*, 871 F. Supp. 2d 86 (N.D.N.Y. 2012) (in which "[the] [p]laintiff commenced th[e] action seeking a declaration that [the] [d]efendant did not suffer a competitive injury due to [the] [p]laintiff's actions," *id.* at 94, and in which the court observed that, "'numerous courts have refused to grant declaratory relief to a party who has come to court only to assert an anticipatory defense,'" *id.* at 95, quoting *Veoh, supra*, 522 F. Supp. 2d at 1271).

Finally, significantly, and related to the foregoing, each of the "six factors that 'should inform a district court's exercise of [declaratory-judgment] discretion,'" D.12, quoting *Admiral Ins. Co. v. Niagara Transformer Corp.*, 57 F.4th 85, 99-100 (2d Cir. 2023), indisputably weighs in favor of the exercise of jurisdiction in the present action. *See* D.12 (listing the six factors). Moreover, "[t]he two

principal criteria guiding the policy in favor of rendering declaratory judgments[,] [which] are [the first two of the six factors, *i.e.*,] (1) when the judgment will serve a useful purpose in clarifying and settling the legal relations in issue, and (2) when it will terminate and afford relief from the uncertainty, insecurity, and controversy giving rise to the proceeding," *Admiral*, 57 F.4th at 96 (citation and quotation marks omitted), are indisputably present; that is, according to the Decision's own finding, *i.e.*, that, "reaching the merits on the question of the 'functionality' of the marks in connection with their use on tee shirts would bring this matter to a definitive end." D.15. Indeed, "[i]t follows as a general corollary to this rule that if *either* of these objectives can be achieved[,] the action *should* be entertained and *the failure to do is error*." *Id.* (citation and quotation marks omitted).

POINT II

THE DECISION'S DENIAL OF PLAINTIFF'S MOTION FOR SANCTIONS DID NOT ADDRESS ANY OF THE REASONS FOR THAT MOTION, WHICH SHOW THAT THE MOTION SHOULD HAVE BEEN GRANTED

The Decision denies Bank's motion for sanctions, stating: "[i]t appears that NFLP moved for costs based on its good faith belief that Bank should have amended his complaint in *Bank I* [(*i.e.*, No. 1:24-cv-08814-CM]) 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. However, Bank's motion was not based on the mere fact that NFLP moved for costs, but, rather, 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, which the Court should therefore now do, and which clearly show that Bank's motion should have been granted.

CONCLUSION

Plaintiff respectfully requests that this Court: (i) grant Plaintiff's motion; and (ii) grant, to Plaintiff, all additional lawful and proper relief.

Dated: November 3, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH LOCAL CIVIL RULE 7.1(c)

I hereby certify that this memorandum of law contains 4,358 words.

Dated: November 3, 2025

s/ Todd C. Bank
Todd C. Bank

CERTIFICATE OF SERVICE

I hereby certify that on November 3, 2025, a true and accurate copy of the foregoing is being filed electronically via the Court's electronic-filing (ECF) system. Notice of this filing will be sent to all parties by operation of the Court's ECF system and copies will be mailed to those parties, if any, who are not served via the Court's ECF system.

Dated: November 3, 2025

s/ Todd C. Bank
Todd C. Bank