UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TODD C. BANK,

Plaintiff,

v.

NFL PROPERTIES LLC,

Defendant.

Case No. 1:25-cv-03981-CM

DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR RULE 11 SANCTIONS

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INTRODUCTION

Bank's motion for sanctions does not identify any wrongdoing by NFLP or cite any legal authority supporting his positions. On the contrary, the motion highlights why NFLP brought its Rule 41(d) motion in the first place: Bank's continued pursuit of this frivolous and vexatious litigation. He even admits in his sanctions motion that he does not intend to become a genuine seller of NFL-branded merchandise—a requirement for declaratory judgment standing—and instead brought this case "as a matter of principle," further supporting dismissal and NFLP's Rule 41(d) motion. At bottom, Bank's motion is nothing more than an unauthorized sur-reply to NFLP's reply briefs, as demonstrated by Bank's failure to provide any basis for the sanctions he purportedly seeks. The motion should, therefore, be denied.

ARGUMENT

I. BANK'S MOTION IS BASELESS AND AN IMPROPER SUR-REPLY

Bank's motion is framed as one for sanctions under Rule 11, but, remarkably, he does not cite a single Rule 11 case. He does not state the legal standard for sanctions, never mind try to explain why NFLP's conduct allegedly meets it. Instead, he airs grievances and responds to arguments NFLP made in its reply briefs supporting its Rule 12(b) and Rule 41(d) motions. In other words, Bank uses his sanctions motion to file a sur-reply that the Court expressly denied him—making the motion itself sanctionable. *See* Order [ECF 34] ("Request to file sur-reply denied."); Sanctions Mot. [ECF 40] at 3 ("[T]he instant motion does, in effect, unavoidably constitute a part sur-reply . . .").

Bank's request for sanctions, in addition to being an improper sur-reply, is legally baseless. A court may award sanctions if a party has "violated Rule 11(b) by making 'false, misleading, improper, or frivolous representations to the court.'" *Trireme Energy Holdings, Inc. v. RWE*

Renewables Ams., LLC, No. 22-cv-07439, 2025 WL 1779016, at *3 (S.D.N.Y. Jun. 27, 2025) (internal citations omitted). "[T]he Rule 11 standard is 'purposefully high,' so sanctions will only be levied in 'extraordinary circumstances.'" *Id.* As demonstrated in its briefing, NFLP has made legitimate legal arguments in good faith throughout this proceeding. Bank's apparent disagreements with NFLP's position are not grounds for sanctions.

Glaringly, Bank fails to counter the cases NFLP cited that awarded Rule 41(d) costs where a plaintiff voluntarily dismissed a complaint and later refiled to correct blatant standing deficiencies, as Bank did here. He does not even address *ILC Dover LP v. FloodBarrier, Inc.*, No. 20-CIV-21350, 2020 WL 9935650, at *3 (S. D. Fla. July 15, 2020), where the plaintiff was ordered to pay the defendant's costs and attorneys' fees because, like Bank, the plaintiff filed "the instant lawsuit after bringing an action where it lacked Article III standing" —a telling omission. Nor does he distinguish the holding in *Loubier v. Mod. Acoustics*, 178 F.R.D. 17 (D. Conn. 1998), which awarded costs and attorneys' fees after the plaintiff, like Bank, voluntarily dismissed a complaint that lacked standing. Bank merely quibbles with insignificant details of that case. Given that Bank *admits that he lacked standing*, not only when he initially brought *Bank I*, but even when he amended his complaint after reviewing NFLP's motion to dismiss (*see* Opp. to Rule 41(d) Motion [ECF 36] at 2, 5, 6), these cases strongly support an award under Rule 41(d). Far from being sanctionable, NFLP's motion is meritorious and should be granted. It is Bank's sanctions motion that is frivolous.

This is hardly the first time that Bank has frivolously moved for sanctions. In fact, he seems to do so reflexively when an adversary seeks to hold him accountable for his vexatious tactics. For example, in *Bank v. Al Johnson's Swedish Rest. & Butik, Inc.*, 795 F. App'x 822, 826-27 (Fed. Cir. 2019), Bank filed a "frivolous" motion for sanctions against his opposing counsel

after the appellee (successfully) moved for an award of its costs and fees. Similarly, in *Bank v. CreditGuard of Am., Inc.*, No. 18-CV-1311, 2020 WL 1516107, at *4 (E.D.N.Y. Mar. 30, 2020), the court denied Bank's tit-for-tat motion for sanctions, explaining that he "merely puts forth arguments opposing Defendant's FRCP 11 motion rather than demonstrating how [Defendant's] legal contentions are not supported by existing law or were brought for an improper purpose."

Bank accuses NFLP of seeking to "prejudice" the Court against him by "calling attention to irrelevant matters." Sanctions Mot. [ECF 40] at 1. But NFLP's discussion of Bank's history of vexatious litigation is not sanctionable. *See, e.g.*, *Bank v. GoHealth, LLC*, No. 19-CV-5459, 2021 WL 2323282, at *14 (E.D.N.Y. Mar. 8, 2021) ("To the extent that Bank raises an issue regarding comments made by defendant relating to his prior cases, other courts have considered Bank's similar claims that the defendant was making 'defamatory misrepresentations' based on his litigation history and rejected those claims."); *Bank v. Caribbean Cruise Line, Inc.*, No. 11-CV-2744, 2013 WL 2285142, at *3, n.4 (E.D.N.Y. May 23, 2013) (denying Bank's request that the defendant be sanctioned for referencing his history of vexatious litigation).

As NFLP explained in its reply in support of its Rule 41(d) motion, Bank's prior actions in this case and others are relevant to the Court's Rule 41(d) analysis. NFLP's Rule 41(d) Reply [ECF 37] at 6. A core function of Rule 41(d) is to prevent vexatious litigation, which Bank concedes. Sanctions Mot. [ECF 40] at 6. Bank has engaged in a pattern of vexatious litigation against NFLP and numerous other defendants over the course of many years. *See* NFLP's Rule 41(d) Reply [ECF 37] at 6; NFLP's Motion to Dismiss [ECF 17] at 4-5. In *Bank I* alone, Bank filed an amended complaint that maintained insufficient standing allegations—which Bank now concedes were insufficient—after NFLP already notified him of his lack of standing. *See* NFLP's Rule 41(d) Reply [ECF 37] at 5. Bank's lengthy and repeated filings in *Bank II*, which continue

to this day, further support a conclusion of vexatiousness. *Id.* at 5-6. Even after filing his sanctions motion, Bank filed yet *another* letter notifying the Court of its supposed failure to timely respond to his improper earlier request to file an additional submission—a request that had only been pending for two weeks. *See* ECF 43.

NFLP has presented its arguments in its Rule 41(d) motion in good faith and with proper justification. There are no grounds for sanctions, nor does Bank offer any. *See McCabe v. Lifetime Ent. Servs., LLC*, 761 Fed. App'x 38, 42 (2d Cir. 2019) (denying request for sanctions, brought by a plaintiff represented by Bank, when the defendant's underlying motion was meritorious); *BAT LLC v. TD Bank, N.A.*, No. 15-CV-5839, 2024 WL 4485397, at *38 (E.D.N.Y. Mar. 30, 2024), *report and recommendation adopted*, 2024 WL 4297648 (E.D.N.Y. Sept. 26, 2024) (denying motion for sanctions, even where underlying motion was unsuccessful, because the "operative question" was whether plaintiff's arguments were frivolous).

II. BANK HAS NO STANDING TO BRING SUIT AS "A MATTER OF PRINCIPLE"

From the time he filed the first iteration of his complaint in *Bank I*, Bank never demonstrated a definite intent to become a legitimate retailer of NFL-branded merchandise and therefore lacked Article III standing. Now, he has explicitly acknowledged that his real grievance stems from a philosophical disagreement with fundamental tenets of trademark law that protect strong brands like the NFL and its teams. Bank admits, in his own words, that he "***brought this action as a matter of principle***." Sanctions Mot. [ECF 40] at 8 (emphasis added). Put differently, Bank's alleged desire to sell NFL merchandise is a sham; he is claiming to want to sell NFL merchandise only as a pretext to challenge trademark law with which he disagrees as a matter of principle, not because such law stands to injure him. Coupled with his minimal, superficial acts

to establish his faux t-shirt "business," this admission is dispositive of NFLP's pending motion to dismiss.

An academic disagreement with the law (in this case, trademark law) is insufficient to confer Article III standing. *See FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 381 (2024) ("Article III standing screens out plaintiffs who might have only a general legal, moral, ideological, or policy objection to a particular government action"); *Samuels v. Small Bus. Ass'n*, 2025 U.S. Dist. LEXIS 142154, at *20 (S.D.N.Y. July 24, 2025) ("The Supreme Court has repeatedly held that such a 'generalized grievance,' no matter how sincere, is insufficient to confer standing.") (citing *Hollingsworth v. Perry*, 570 U.S. 693, 706 (2013)). *See also Bank v. Wolfe*, No. 19-CV-441, 2020 WL 4748320, at *6 (E.D.N.Y. Aug. 17, 2020) (dismissing Bank's lawsuit against the Clerk of Court for the Second Circuit for lack of standing where he merely asserted a "generalized grievance" with the court's rules).

Nor can a plaintiff generate standing by manufacturing a supposed controversy where none exists. *See Zimmerman v. City of Aus., Tex.*, 881 F.3d 378, 394 (5th Cir. 2018) ("An injury sufficient to confer standing 'cannot be manufactured for the purpose of litigation.'…"); *Cepheid v. Roche Molecular Sys., Inc.*, No. C-12-4411, 2013 WL 184125, at *13 (N.D. Cal. Jan. 17, 2013) (declining to exercise jurisdiction over plaintiff's declaratory judgment claim because the plaintiff "took specific actions to attempt to manufacture a controversy over the [contested] patent"); *Castro v. N.H. Sec'y of State*, 701 F. Supp. 3d 176, 184 (D.N.H. 2023) ("This practice of manufacturing standing to pursue a cause through litigation is not supported by the law"). Bank's admission that he is suing as a matter of principle—not to resolve a genuine dispute or to further legitimate business efforts—further confirms these cases were brought for an improper purpose and were predicated on a false premise, thereby supporting NFLP's Rule 41(d) motion.

Bank's conduct here bears a striking resemblance to his conduct in *Bank v. Al Johnson's Swedish Restaurant*. In that action, Bank's objection to the "Goats on the Roof" mark was also made on principle: namely, his supposed belief that the mark was "demeaning to goats." 795 F. App'x. at 824. The Trademark Trial and Appeal Board determined that Bank "failed to plead a real interest in the cancellation proceedings" because he did not have a "direct and personal stake in the outcome of the opposition," and that any purported interest was predicated on a legal theory that had been previously stricken as unconstitutional. *Id.* at 825. Undeterred, he filed a "frivolous" appeal and, later, as noted, a "frivolous" motion for sanctions against his opposing counsel. *Id.* at 826-27. His appeal and sanctions motion were denied. *Id.* He even petitioned to the U.S. Supreme Court, despite being told at every prior juncture that his case was meritless. *Bank v. Al Johnson's Swedish Rest. & Butik, Inc.*, 141 S. Ct. 135 (2020) (*cert.* denied).

Just as in *Al Johnson's Swedish Restaurant* and the other cases in which Bank responded to a motion for fees by seeking sanctions, Bank's sanctions motion here is frivolous. His admission that he brought this action as "a matter of principle" confirms that NFLP's Rule 41(d) motion is meritorious. Bank's sanctions motion should, therefore, be denied.

CONCLUSION

NFLP respectfully requests that the Court deny Bank's motion for sanctions.

Dated: July 31, 2025

Respectfully submitted,

/s/ Craig B. Whitney

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CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 7.1(c) of the United States District Court for the Southern District of New York, I hereby certify that this opposition contains 1,846 words. In making this certification, I have relied on the word count feature of Microsoft Word, the computer program that I used to prepare this brief.

Dated: July 31, 2025

/s/ *Craig B. Whitney*
Craig B. Whitney