

PRE-SOL FOUNDATION MEMO

Litman v. Goldberg — Index No. 524343/2025 (NY Sup. Ct., Kings County, Hon. Brian L. Gotlieb, J.S.C.)
Memo author: Mike (per Plaintiff’s directive 2026-04-25; revised v1.2 same day to reflect correct SOL boundary) **Subject:** How to use pre-statute-of-limitations evidence — without inviting an SOL bar on the actionable claims.

0. Two Boundary Dates — Get Them Right

This case has **two distinct boundary dates**, and conflating them causes serious framing errors:

Date	Legal significance
6/15/2020	Judge-set start date of the post-termination period of use. This is the court-recognized scope of conduct. <i>It is not an SOL boundary.</i> Conduct before this date is “pre-termination” background; conduct on or after this date is within the recognized post-termination period.
7/21/2024	Statute of limitations cutoff under CPLR 215(3) (1-year SOL for NY Civ Rights L § 51 actions; complaint filed ~7/21/2025). Uses <i>after</i> this date are independently actionable on their own 1-year SOL window. Uses <i>before</i> this date are time-barred as standalone claims, but admissible for the purposes catalogued in this memo.

This memo concerns evidence falling **before 7/21/2024** — including both: - **Pre-Termination Period** (before 6/15/2020) — background / value foundation only. - **Post-Termination, Pre-SOL Window** (6/15/2020 – 7/21/2024) — within the court-recognized scope of conduct, but past the 1-year SOL for any standalone claim. These uses are highly probative for willfulness, course of conduct, notice, value, and pattern, but they are not pleaded as actionable § 51 claims in their own right.

1. The Question

Plaintiff has identified extensive pre-7/21/2024 evidence relevant to the surviving Count V (NY Civ Rights L §§ 50-51). The threshold doctrinal question is: **how do we use this evidence without (a) handing the defense a single-publication / SOL argument, or (b) collapsing into a “started in 2017” narrative that invites the court to time-bar even the post-7/21/2024 claims?**

This memo establishes the four permissible evidentiary purposes for pre-SOL material, the doctrinal authorities that authorize each, and a per-purpose deployment checklist tying the rule to specific items in the existing corpus.

2. Doctrinal Premise

Section 51 actions accrue on each *new* publication of the name and are governed by the 1-year SOL of CPLR 215(3). *Nussenzweig v. diCorcia*, 9 N.Y.3d 184 (2007), holds that the single-publication rule applies to mass-distributed editions of the same image — but New York treats *separately distributed* commercial uses as distinct accrual events. See also *Firth v. State*, 98 N.Y.2d 365 (2002) (single-publication rule limited to a single distributed edition; republication restarts the clock).

Three consequences flow from this:

1. **Each post-7/21/2024 use is independently actionable** within its own 1-year window. Our deck-of-cards theory rides this directly: each USPTO outgoing document, each client email, each NGM website refresh, each domain-alias-routed message after 7/21/2024 = a separate accrual event with its own SOL window.
2. **Post-termination, pre-SOL uses (6/15/2020 – 7/21/2024) are not actionable as standalone claims** because each one's individual 1-year window expired before the complaint was filed. They *are* admissible for purposes that do not depend on liability accrual within the limitations window — chief among them **willfulness**, course of conduct, notice, and the *unit value* of post-7/21/2024 uses.
3. **Pre-termination evidence (before 6/15/2020) is not actionable** under any post-termination theory. It is admissible only as foundation for the *commercial value of Plaintiff's name* (the imprimatur built before NGM began trading on it).

Critical framing rule. Plead the post-7/21/2024 uses as the wrongs. Offer the post-termination pre-SOL uses (6/15/2020 – 7/21/2024) in support of willfulness, course, notice, and per-use value. Offer the pre-termination evidence (pre-6/15/2020) as foundation for commercial value of name. Never plead or argue that pre-7/21/2024 conduct is itself the actionable wrong on the surviving Count V.

3. The Four Permissible Purposes

Purpose A — Commercial Value of Plaintiff's Name

Theory. § 51 measures damages by the *commercial value of the name* used. Commercial value is built over time. Pre-termination evidence (pre-6/15/2020) of Plaintiff's professional reputation, client base, billing history, prosecution record, professional standing, public-facing publications, and industry recognition is directly probative of what NGM was *getting* when it used the name post-6/15/2020 — and especially what each individual post-7/21/2024 use was *worth*.

Authority. *Lohan v. Take-Two Interactive Software, Inc.*, 31 N.Y.3d 111 (2018) (commercial value of a name turns on its market recognition; pre-suit reputation evidence is admissible to establish that value). *Stephano v. News Group Publications, Inc.*, 64 N.Y.2d 174 (1984) (compensatory damages under § 51 measure the value of the unauthorized use).

Pre-termination evidence available in the corpus that serves this purpose: - Plaintiff's 30+ year prosecution record (905 issued patents in the post-6/15/2020 dataset alone — pre-termination record is much larger and establishes the pre-existing imprimatur) - Engagement-origin documents for the six ME clients (KFU, KSU, UAEU, Kuwait U, SQU, QF) — all relationships predate 6/15/2020 and the value at

stake later is the value of *those* relationships - LITMAN LAW OFFICES naming history; trademark docket - Pre-termination client-side correspondence addressing Plaintiff personally (“Mr. Litman,” “Richard,” “our attorney”) — establishes the imprimatur NGM later traded on - Pre-termination NGM website pages showing how the firm publicly identified Plaintiff to prospective clients - Industry recognition / professional honors (if any in the corpus)

Framing language:

“Plaintiff’s name had, by 6/15/2020, a substantial commercial value built over [N] years of professional practice and client relationships. The fair-market measure of each Defendants’ post-7/21/2024 unconsented use is anchored in that pre-existing commercial value.”

Purpose B — Notice / Knowledge of Lack of Consent (Willfulness)

Theory. § 51’s punitive-damages enhancement requires that the use was “knowing.” The entire 6/15/2020 – 7/21/2024 post-termination, pre-SOL window is the strongest willfulness evidence in the case: it shows Defendants *continued* the unconsented use for *years* after the judge-set termination boundary, and continued using it past the AAA award (6/14/2023), establishing the post-7/21/2024 actionable uses as the deliberate continuation of a long-running pattern Defendants knew was without authority.

Authority. *Welch v. Mr. Christmas Inc.*, 57 N.Y.2d 143 (1982) (knowledge / willfulness inferred from pattern of conduct, including pre-actionable conduct that put defendant on notice).

Pre-SOL evidence available: - The entire 6/15/2020 – 7/21/2024 post-termination, pre-SOL use record — every patent face, every USPTO outgoing document, every Martha Long client email, every domain-alias routing in this window. Each one is *not* a standalone claim but each one is *willfulness evidence* for the post-7/21/2024 actionable uses. - Pre-termination internal Goldberg communications about Plaintiff’s status, contributions, and partnership terms - Pre-termination partnership/equity documents establishing Plaintiff’s role and the absence of any standing license to commercialize his name post-departure - Pre-termination client-engagement letters specifying the personal-attorney-client relationship between client and Plaintiff (not NGM as a firm) - 2017 agreement / consent-defense documents (per Plaintiff’s standing scope rule, pre-6/15/2020 material is in scope only for this defense and the agreement) - Anchor willfulness exhibits already catalogued in the post-termination, pre-SOL window: - LITMAN209485 (12/20/2023 KFU — Goldberg “our attorney”) - LITMAN267104 (6/11/2024 UAEU — Goldberg “one of our attorneys”) - LITMAN272429, 272449, 272454, 274979, 274981 (Sept 2021 KFU “new dean” thread) - And the 6/15/2020 – 7/21/2024 portion of the 23,508-use ME-client corpus - Anchor willfulness exhibits in the post-SOL window also serve to *connect* this notice chain to the actionable period: - LITMAN250428, LITMAN250429 (8/26/2024 KSU — Goldberg “our attorney”) — *post-SOL*, but reads against the pre-SOL pattern as proof Defendants didn’t change course

Framing language:

“By 7/21/2024, Defendants had been on notice for at least four years (since the 6/15/2020 termination) and at least one year (since the 6/14/2023 AAA award) that the personal-attorney-client relationship and the commercial value of Plaintiff’s name belonged to Plaintiff. Their post-7/21/2024 conduct is not consistent with mistake or oversight; it is the deliberate continuation of a use Defendants knew was without authority.”

Purpose C — Course of Conduct / Pattern Probative of Post-SOL Conduct

Theory. Pre-SOL conduct (both pre-termination and post-termination, pre-SOL) is admissible as habit / routine practice under NY common law (*Halloran*, *infra*) to show that the same actors followed the same playbook in the actionable post-7/21/2024 window. Goldberg’s pre-SOL pattern of filing patents under Plaintiff’s name without checking with him, of holding out Plaintiff to clients, of routing client correspondence through Litman-named domain aliases — all probative that the *post-7/21/2024* same-pattern uses were not isolated, not accidental, and not authorized.

Authority. *Halloran v. Virginia Chemicals Inc.*, 41 N.Y.2d 386 (1977) — the leading NY decision on habit / routine-practice evidence: such evidence is admissible to show conformity in the actionable instance, where the habit is sufficiently regular and the conduct is “deliberate and repetitive.” NY common law; CPLR does not have an explicit Federal Rule 406 analogue, but the doctrine is well-established.

Pre-SOL evidence available: - The 6/15/2020 – 7/21/2024 portion of the 23,508 ME-client commercial-use corpus — direct evidence of the routine that continued past 7/21/2024 - POA / PTOL-85B signing patterns (16 Goldberg POA signatures with confirmed forensic OCR — established habit) - Pre-SOL client-correspondence templates (Martha Long emails using “our attorney” or attaching documents under Plaintiff’s name) - Pre-SOL domain-alias routing (kfu@4patent.com, ksu@4patent.com, etc. — systematic per-client infrastructure) - Pre-SOL trust-ledger / billing patterns (per Plaintiff: relevant to the routine of attributing matter revenue to Plaintiff while substituting Goldberg as actual counsel)

Framing language:

“The post-7/21/2024 conduct at issue is not a deviation from but a continuation of an established routine. The pre-SOL record (6/15/2020 – 7/21/2024) establishes that routine in granular detail and forecloses any defense theory that the actionable post-SOL conduct was inadvertent or anomalous.”

Purpose D — Damages Context / Calculation Inputs

Theory. Damages experts and triers of fact need a baseline of what Plaintiff’s name was worth before the alleged misappropriation began. Pre-SOL fee schedules, billing rates, partner-distribution percentages, and client-revenue figures give the pricing comparators for the per-use and per-patent damages methodologies.

Authority. Generally accepted damages-calculation foundations; not a contested doctrine. The court will accept pre-period financial data as input to a damages calculation so long as the calculation itself targets the actionable period (post-7/21/2024).

Pre-SOL evidence available: - Plaintiff’s pre-termination partnership distribution percentages (the 20% baseline used in the \$424K–\$928K anchor) - Pre-SOL KISR flat-fee schedule and similar client-pricing

documents (Bates [C2051472_ND0000271385](#)) - Pre-SOL NGM trust-ledger / receivable patterns establishing baseline revenue per client per matter - Pre-SOL office-rent and overhead figures (relevant to disgorgement calculation) - Pre-SOL patent-prosecution fee history (to validate the \$15K–\$20K/patent fee baseline) - 6/15/2020 – 7/21/2024 fee and revenue record — establishes the *during-pattern* unit economics, which the post-7/21/2024 uses inherit

Framing language:

“Calculation of Plaintiff’s damages under the [fair-market / disgorgement] measure requires baseline pricing inputs. The pre-SOL fee and revenue record supplies those inputs; the calculation itself is performed against actionable post-7/21/2024 uses.”

4. Hard Limits — What Pre-SOL Evidence May NOT Be Used For

To preserve the four permissible purposes, the following uses are off-limits and must be policed in every draft:

- Pleading pre-7/21/2024 conduct as a basis for liability on its own.** Pre-SOL uses (whether pre-termination or post-termination) enter as willfulness, course, notice, and value foundation — never as standalone § 51 claims on Count V.
- Aggregating pre-SOL and post-SOL uses into a single damages claim count.** The actionable use count is post-7/21/2024 uses. Pre-SOL evidence supplies per-unit value, willfulness multiplier, and pattern context — not additional claim counts.
- Narrative phrasing that suggests “the wrong started in 2017” or “the wrong started in 2020.”** Use the framing language in the boxes above. As pleaded on Count V, the actionable wrongs are the post-7/21/2024 uses; the pattern is older.
- Pre-SOL Bates-numbered exhibits at the front of any binder.** Lead with post-7/21/2024 actionable exhibits; pre-SOL material goes in a clearly-labeled “Willfulness / Foundation” section that follows the actionable exhibits.
- Conflating 6/15/2020 with the SOL boundary.** 6/15/2020 is the judge-set start of post-termination conduct, not the SOL cutoff. The SOL cutoff is 7/21/2024.

5. Per-Binder Deployment Checklist

When assembling any binder (Track 1 or Track 2), apply this filter to each pre-7/21/2024 exhibit:

- Is this exhibit being offered for one of the four permissible purposes (A, B, C, D)?
- Is it labeled as such in the exhibit caption (e.g., “Willfulness Anchor — Notice (Purpose B)” or “Foundation — Commercial Value of Name (Purpose A)”)?
- Is it placed in a “Willfulness / Pre-SOL Foundation” section, after the actionable post-7/21/2024 exhibits?

- [] Is the accompanying memo or argument paragraph framed in the language above (commercial value / notice / course / damages context) – not in liability language?
- [] If the exhibit is dated near 7/21/2024, has the date been clearly labeled to avoid confusion about which window it falls in?
- [] Is the exhibit caption explicit that 6/15/2020 (judge-set termination boundary) and 7/21/2024 (SOL boundary) are *different* boundaries?

If the answer to any of these is no, the exhibit either needs re-framing or it should not be in the binder.

6. Single-Publication Rule Defense – Anticipatory Rebuttal

Defendants will argue that NGM’s distribution of patent front pages, website content, or client emails is a “single publication” that accrued once and is now time-barred. Three rebuttals:

1. **Each use is a distinct distribution.** A patent front page issued in 2024 is not the same publication as a 2019 page; an email sent on 12/20/2023 is not the same publication as one sent in 2018. *Firth* limits the single-publication rule to *the same distributed edition*; we have separate editions / separate distributions.
2. **Republication restarts the clock.** Even where a single edition exists, republication on a new platform, in a new format, or to a new audience restarts accrual. The 4patent.com domain alias infrastructure (kfu@, ksu@, etc.) routes communications through new channels post-arbitration; each is a new publication.
3. **The deck-of-cards theory is consistent with NY law.** *Nussenzweig* limits aggregation; it does not support the defense reading that hundreds of distinct USPTO documents and tens of thousands of distinct client emails are all one publication. We expect the defense to over-read the rule and we will distinguish on the record.

7. Action Items

- [] Add a “Willfulness / Pre-SOL Foundation” section to the Track 2 binder template; cross-link from the Track 1 binder where pre-SOL financial baselines are used.
 - [] Re-caption any existing exhibits dated pre-7/21/2024 with the relevant Purpose A/B/C/D label, distinguishing pre-termination (pre-6/15/2020) from post-termination, pre-SOL (6/15/2020 – 7/21/2024).
 - [] Audit the existing exhibit binders (KFU 14,033 etc.) to identify which exhibits fall into which window – the 6/15/2020 – 7/21/2024 subset is the willfulness anchor, the post-7/21/2024 subset is the actionable-claims anchor.
 - [] Add a short framing paragraph (drawn from this memo) to the Plaintiff’s BOP and to the MSJ Point III brief, foreclosing the SOL argument before Defendants can raise it.
 - [] Add the four “framing language” boxes to `output/GLOSSARY.md` as quotable strings.
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Filed: 2026-04-25 (v1.2 — corrected SOL boundary per Plaintiff: 7/21/2024 is the SOL cutoff under CPLR 215(3); 6/15/2020 is the judge-set start of post-termination use, not an SOL boundary. v1.1 confirmed NY-state authorities throughout.). **See also:** [output/GLOSSARY.md](#) (vocabulary, including corrected time-window labels), [output/USE_TIER_WEIGHTING_TABLE.md](#) (damages framework), [output/IMPRIMATUR_EVIDENCE_BY_CLIENT.md](#) (Purpose A foundation), [output/CUSTODIAN_DECLARATION_TEMPLATE.md](#) (CPLR 2106 affirmations for foundation exhibits).