

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

RICHARD C. LITMAN,

Plaintiff,

-vs-

NATH & ASSOCIATES, PLLC, d/b/a NATH,
GOLDBERG AND MEYER (“NGM”),

Defendant.

Index No.: Case No.: 1:25-cv-04048
(PKC)(PK)

**DEFENDANT’S MEMORANDUM OF LAW IN OPPOSITION TO
PLAINTIFF’S MOTION FOR PRELIMINARY INJUNCTION**

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PRELIMINARY STATEMENT

In 2017, Plaintiff Richard C. Litman (“Plaintiff”) entered into a written commercial agreement with Defendant, Nath & Associates, PLLC, d/b/a Nath, Goldberg and Meyer (“NGM”) to combine his law practice with NGM’s, which included a broad arbitration clause. From 2017 until June of 2020, Plaintiff worked as a Senior Counsel at NGM, but unfortunately, he suffered a disability that prevented him from continuing his employment with NGM. The parties agreed that Plaintiff would be entitled to a 20% share of NGM’s revenue from clients originated by Plaintiff for a period of five years from this date under their contract. And this agreement was confirmed by an arbitration award entered in 2023. While the revenue share was in place, NGM agreed at Plaintiff’s request to allow him to continue to be associated with the firm, including being listed as a Senior Counsel. Indeed, Plaintiff represented it was in both parties’ financial interest to do so, and those communications were even attached to his first two iterations of his complaint filed in this matter.

On June 15, 2025, the five-year revenue sharing portion set forth in the parties’ contract ended. As a result, NGM began transitioning away from Plaintiff. However, Plaintiff appears to be dissatisfied with NGM’s decision and has thus filed this Lanham Act complaint against NGM and a separate action in state court personally against Joshua B. Goldberg, Esq., Co-Managing Partner of NGM. Plaintiff now alleges that NGM’s use of his name on its website and in work performed for originated clients was unauthorized. He claims this use constitutes false endorsement and false advertising under the Lanham Act that requires this Court to enter a preliminary injunction against NGM based on this motion. But Plaintiff has failed to articulate sufficient grounds for entry of a preliminary injunction. Namely the motion fails because Plaintiff has not stated an irreparable competitive injury associated with NGM’s past association with him as a Senior Counsel, which Plaintiff licensed, and his dissatisfaction with the terms of his

employment transition is not grounds for a Lanham Act claim. Indeed, the Lanham Act is an inappropriate vehicle for Plaintiff to litigate his claims against NGM which are a creature solely of their contractual relationship and not arising from disassociated competition in the marketplace.

Specifically, this motion must be denied principally for the following numerous reasons: (1) Plaintiff has not stated an irreparable competitive injury and in fact has continued to refer clients to NGM during the pendency of this case; (2) Plaintiff based on his own allegations has known about NGM's alleged misuse of his name since at least the arbitration award entered in June of 2023 and this substantial years-long delay in pursuing an injunction precludes the relief he seeks; (3) the Lanham Act cannot be used where a person like Plaintiff has in fact provided license to use his name, but disagrees with the scope of the use; (4) NGM's use of Plaintiff's name in filings and communications with a particular client is not actionable commercial speech under the Lanham Act; (5) Plaintiff has not demonstrated sufficient broad consumer confusion resulting from NGM's alleged misuse of his name and the de minimis confusion referenced in the motion was caused by Plaintiff's failure to clarify his status with clients; (6) Plaintiff's false advertising claim is an improper attempt to circumvent the elements of a false endorsement claim because it involves alleged improper use of Plaintiff's name and not a misstatement to consumers made in an advertisement; and (7) Plaintiff's claims are all integrally connected and in fact would not exist but for his agreement with NGM, which includes a broad requirement that any causes of action be determined in arbitration.

At bottom, litigation in federal court under the Lanham Act is an inappropriate vehicle to determine Plaintiff's alleged issues with NGM's transition away from his involvement with the law firm. Accordingly, Plaintiff's motion for preliminary injunction should be denied.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

A. The Combination Agreement Between the Parties

On March 29, 2017, Plaintiff entered into a written contract to combine his law practice with NGM (the “Combination Agreement”).¹ (See Declaration of Joshua B. Goldberg, Esq. in Opposition to Plaintiff’s Motion for Preliminary Injunction (“Goldberg Dec.”) at Ex. A.) Pursuant to the Combination Agreement, Plaintiff was entitled to be paid compensation as a Senior Counsel at NGM based on the percentage of revenue generated by clients he originated either before or during his employment by NGM and based on a percentage of revenue from his time billed. (Id. at ¶5, 7.) The Combination Agreement provides that it can be terminated either by convenience or based on the death of Plaintiff or his disqualification to practice law. (Id. at ¶2.) The Agreement includes a broad arbitration provision that requires any claim of any kind arising out of or connected with the Agreement to be determined in arbitration. (Id. at ¶15.) On May 7, 2017, the Combination Agreement was amended to include a provision extending the period in which Plaintiff would be entitled to continue sharing in NGM’s revenue earned from his originated clients from three (3) years to five (5) years and transferring all stock ownership in Plaintiff’s prior law practice to NGM, including all title to all telephone numbers and website URLs used by the practice (the “Amended Combination Agreement”). (Id. at Ex. B.) All other terms of the Combination Agreement were left in full force and effect by the Amended Combination Agreement. (Id.)

¹ The Combination Agreement, Amended Combination Agreement and Arbitration Award are subject to a motion to file as restricted to parties’ eyes only. Accordingly, the documents are merely summarized herein and not quoted.

B. Plaintiff Suffers a Disability that Prevents him from Working as Senior Counsel at NGM

On or around June 15, 2020, Plaintiff suffered a disability that prevented him from continuing his employment with NGM as a Senior Counsel. (Id. at ¶11.) However, NGM agreed with Plaintiff that he would continue to be listed as a Senior Counsel at the firm because of the parties' agreement to share revenue from originated clients. (Id. at ¶12.) This agreement was memorialized in text messages with Plaintiff that were attached to his Complaint and Amended Complaint as an exhibit. (Id. at Ex. C.) The parties' practice was also to include Plaintiff along with NGM as counsel for any matters for originated clients, including within filings and client communications because of the revenue share which survived termination of the Combination Agreement. (Id. at ¶15.) Plaintiff's e-mail account at NGM remained active at Plaintiff's request. (Id. at ¶16.)

C. The Arbitration and Award

In or around the end of 2022, Plaintiff filed an arbitration demand asserting claims against NGM for failing to continue all payments set forth in the Combination Agreement. (Id. at ¶17.) NGM asserted in the arbitration that the parties had orally agreed that they would treat Plaintiff's disability as a termination for death under the Combination and Amended Combination Agreements entitling Plaintiff to a share of revenue from his originated clients for a period of five (5) years commencing from June 15, 2020. (Id. at ¶18.) On June 14, 2023, an arbitration award was entered finding that the parties had orally agreed upon termination for death of the Combination and Amended Combination Agreements due to Plaintiff's disability, thereby terminating the employment of Plaintiff entitling him to a share of revenue from his originated clients for a period of five (5) years commencing from June 15, 2020, but that NGM was not

entitled to offset disability payments made to Plaintiff from monies owed to Plaintiff by NGM. (Id. at Ex. D.)

D. NGM and Plaintiff's Post-Arbitration Relationship

Pursuant to the Arbitration Award, NGM is continuing to pay the revenue share as incoming revenue from billings up to and including June 15, 2025 are received, but the revenue share for billings occurring after June 15, 2025 has been terminated by NGM as permitted by the Award. (Id. at ¶21.) Plaintiff's biography no longer appears on NGM's website. (Id. at ¶22.) NGM has ceased listing Plaintiff as counsel on its communications with originated clients and in any filings. (Id. at ¶23.) NGM has no intention of including Plaintiff on its website or in its documents in the future and has no incentive to do so. (Id. at ¶24.) Plaintiff requested that his e-mail address with NGM remain active post-termination and for purposes of collecting documents for this lawsuit. (Id. at ¶25.) These requests are referenced in communications sent to NGM and NGM's counsel in this suit. (Id. at Ex. E.) NGM has agreed to keep Plaintiff's e-mail address active during the pendency of this lawsuit based on his request. (Id. at ¶28.) The e-mail address will be shut down once the litigation concludes. (Id. at ¶29.) Lastly, Plaintiff on three separate occasions since he filed this lawsuit has referred clients to NGM through its counsel. (Id. at Ex. F.)

E. Procedural History

On July 22, 2025, Plaintiff filed a Complaint against NGM in this action. The Complaint includes a single Lanham Act count along with state law claims including a claim for \$3,222,408.29 that NGM allegedly failed to pay Plaintiff pursuant to the Arbitration Award. On August 13, 2025, Plaintiff filed an Amended Complaint as a matter of right. The Amended Complaint includes a single Lanham Act count along with state law claims, seeking \$3,222,408.29

in damages, but removed the claim against NGM for failing to pay the revenue share under the Arbitration Award.

On September 29, 2025, Plaintiff filed a Second Amended Complaint with NGM's consent. The Second Amended Complaint includes four separate counts asserted under the Lanham Act but no longer includes state law claims. Plaintiff alleges that in June 2023, a binding arbitration award determined that Plaintiff's employment was deemed terminated effective June 15, 2020. Second Amended Complaint at ¶13. Plaintiff further alleges that in June 2020 through at least June 2025, Defendant continued to use Plaintiff's name in commerce to promote its IP legal services, including: (a) listing Plaintiff on Defendant's website as "Senior Counsel" or "Patent Attorney"; (b) listing Plaintiff as attorney of record, or as an attorney to receive official correspondence, on numerous USPTO patent and trademark filings, including applications and issued registrations, after June 15, 2020; and (c) referencing Plaintiff's professional reputation and prior clients in marketing and communications. Second Amended Complaint at ¶14.

As a result of the aforementioned alleged acts, Plaintiff asserts three claims for false endorsement, association and designation of origin under 15 U.S.C. § 1125(a)(1)(A) of the Lanham Act and a single count for false and misleading advertising under 15 U.S.C. § 1125(a)(1)(B) of the Lanham Act. By October 13, 2025, NGM intends to request a pre-motion conference under the Court's Practices and Procedures to discuss NGM's motion to dismiss the Second Amended Complaint pursuant to F.R.C.P. 12(b)(1) and 12(b)(6).

LEGAL ARGUMENT

POINT I

LEGAL STANDARD FOR A MOTION FOR PRELIMINARY INJUNCTION

A preliminary injunction “is one of the most drastic tools in the arsenal of judicial remedies,” Grand River Enter. Six Nations, Ltd. v. Pryor, 481 F.3d 60, 66 (2d Cir. 2007), and it “should not be granted unless the movant, by a clear showing, carries the burden of persuasion.” Mazurek v. Armstrong, 520 U.S. 968, 972 (1997) (emphasis omitted). “A party seeking a preliminary injunction must show (1) irreparable harm; (2) either a likelihood of success on the merits or both serious questions on the merits and a balance of hardships decidedly favoring the moving party; and (3) that a preliminary injunction is in the public interest.” N. Am. Soccer League, LLC v. U.S. Soccer Fed'n, Inc., 883 F.3d 32, 37 (2d Cir. 2018). “A showing of irreparable harm is the single most important prerequisite for the issuance of a preliminary injunction.” Faiveley Transp. Malmo AB v. Wabtec Corp., 559 F.3d 110, 118 (2d Cir. 2009) (internal quotation marks omitted).

POINT II

PLAINTIFF HAS NOT DEMONSTRATED AN IRREPARABLE INJURY

For a motion for a preliminary injunction to be granted, the plaintiff must establish that, absent an injunction, he would likely suffer “an injury that is neither remote nor speculative, but actual and imminent and one that cannot be remedied if a court waits until the end of trial to resolve the harm.” Freedom Holdings, Inc. v. Spitzer, 408 F.3d 112, 114 (2d Cir. 2005) (internal quotations omitted); see also JSG Trading Corp. v. Tray-Wrap, Inc., 917 F.2d 75, 79 (2d Cir. 1990) (“Likelihood sets, of course, a higher standard than ‘possibility.’”). Irreparable harm exists in a Lanham Act case “when the party seeking the injunction shows that it will lose control over the

reputation of its trademark pending trial,” because reputation is “not calculable nor precisely compensable.” Power Test Petroleum Distribs., Inc. v. Calcu Gas, Inc., 754 F.2d 91, 95 (2d Cir. 1985). Additionally, a plaintiff’s unreasonable delay in bringing the motion may “preclude the granting of preliminary injunctive relief, because the failure to act sooner undercuts the sense of urgency that ordinarily accompanies a motion for preliminary relief and suggests that there is, in fact, no irreparable injury.” Tough Traveler, Ltd. v. Outbound Prods., 60 F.3d 964, 968 (2d Cir. 1995) (internal quotations omitted).

A. Plaintiff Has Failed to Articulate an Actual Irreparable Injury

A plaintiff in a § 43(a) Lanham Act action need not be a direct competitor of the defendant, but there must be a “potential for a commercial or competitive injury.” Berni v. Int’l Gourmet Restaurants of Am., Inc., 838 F.2d 642, 648 (2d Cir. 1988). In order to be entitled to a preliminary injunction, a plaintiff “must do more than assert that confusion itself will irreparably injure them,” Atari Interactive, Inc. v. Printify, Inc., 714 F. Supp. 3d 225, 238 (S.D.N.Y. 2024), and “conclusory statements of loss of reputation and goodwill constitute an insufficient basis for a finding of irreparable harm.” Singas Famous Pizza Brands Corp. v. New York Adver. LLC, No. 10-cv-8976 (RJH), 2011 U.S. Dist. LEXIS 14524, at *6 (S.D.N.Y. Feb. 10, 2011), aff’d, 468 F. App’x 43 (2d Cir. 2012); see also Algood Casters, Ltd. v. Caster Concepts, Inc., No. 20-cv-4623 (LJL), 2020 U.S. Dist. LEXIS 162532, at *11 (S.D.N.Y. Sept. 4, 2020) (noting that the conclusory statements of the movant’s president are insufficient to establish irreparable harm). Moreover, a few instances of perceived and de minimis consumer confusion alleged by the plaintiff that could be dispelled upon further inquiry “is not equivalent to evidence of irreparable harm.” Engine Capital Mgmt., LP v. Engine No. 1 GP LLC, No. 21-cv-149 (VM), 2021 U.S. Dist. LEXIS 70374, at *34 (S.D.N.Y. Apr. 10, 2021); see also Two Hands IP LLC v. Two Hands Am., Inc., 563 F. Supp. 3d 290, 309

(S.D.N.Y. 2021). This is particularly true where there is no evidence of “detrimental effects from the purported confusion.” Id.

Plaintiff’s motion alleges that NGM’s misuse of his name, likeness and professional identity has caused him unidentified “reputational harm.” Such conclusory statements of loss of reputation or goodwill are an insufficient basis for the Court to find irreparable harm. Further, the handful of alleged instances where clients of NGM were allegedly unsure of whether Plaintiff still worked at the firm are not evidence of irreparable injury particularly because there is no evidence of detrimental effects to Plaintiff’s business related to this perceived confusion. In any event, the alleged confusion referenced in Plaintiff’s motion is not tethered to any commercial advertisement sent by NGM that would be covered by the Lanham Act. Based on the communications received from clients, the confusion is a product of Plaintiff failing to advise the client that he no longer is employed by NGM and not any commercial speech by NGM. This de minimis alleged confusion could be dispelled by further inquiry with Plaintiff and no specific detrimental effects from the purported confusion have been asserted.

Moreover, the inadequacy of Plaintiff’s allegations of irreparable injury in this motion are traceable to the Second Amended Complaint which does not allege a sufficient competitive injury to sustain a Lanham Act claim. Specifically, the Second Amended Complaint does not explain how Plaintiff is a competitor of NGM in light of the cessation of his employment at the firm resulting from his disability. Plaintiff has not described his actual new law practice since the termination, let alone a specific injury to that practice resulting from NGM’s alleged misuse of his name or likeness in its commercial speech. Indeed, since the filing of this lawsuit, Plaintiff has on three separate occasions referred clients to NGM through its counsel, which belies any assertion that Plaintiff is conducting himself as NGM’s competitor in the marketplace. One of these referrals

to NGM is referenced in the text messages attached as Exhibit B to Plaintiff's motion. See Exhibit B to Motion for Preliminary Injunction. Accordingly, the motion for preliminary injunction fails because there is no factual support for Plaintiff's conclusory claim of irreparable injury.

B. Plaintiff's Unreasonable Delay in Filing this Motion Requires its Denial

The Second Circuit has consistently held that any unjustified delay in filing a motion for preliminary injunction requires the finding of no irreparable injury. See, e.g., Weight Watchers Int'l, Inc. v. Luigino's, Inc., 423 F.3d 137, 144 (2d Cir. 2005) ("We have found delays of as little as ten weeks sufficient to defeat the presumption of irreparable harm that is essential to the issuance of a preliminary injunction."); Citibank, N.A. v. Citytrust, 756 F.2d 273, 276-77 (2d Cir. 1985) (finding that a ten-week delay rebutted a claim of irreparable injury). The length of delay is measured from the time the plaintiff originally learned of the alleged violation or is put on notice thereof and not from the filing of the complaint. Two Hands IP LLC, 563 F. Supp. 3d at 301 (citing Tough Traveler, 60 F.3d at 968).

The Second Amended Complaint alleges that NGM's use of "Plaintiff's name in commerce to promote its IP legal services" after the June 2023 Arbitration Award declared his employment at NGM to be terminated as of June 15, 2020 was improper under the Lanham Act. To that end, Plaintiff attached perceived instances of improper use to his Amended Complaint which are dated November 1, 2022 (Exhibit N), April 4, 2023 (Exhibit G), and April 23, 2024 (Exhibit H). Additionally, Plaintiff attached as Exhibit E to his Amended Complaint text messages dated January 30, 2023 between himself and Joshua Goldberg, Co-Managing Partner at NGM, discussing NGM's continued public promotion of Plaintiff as a Senior Counsel at the firm.²

² Plaintiff removed these exhibits from his Second Amended Complaint, but this does not eliminate their existence in the record for this matter, and they have been included with the Goldberg Dec. at Ex. C.

(Golberg Dec. at Ex. C.) Accordingly, based on Plaintiff's allegations, he was aware of NGM's alleged Lanham Act violations at the time the Arbitration Award issued on June 14, 2023, which is over two years and three months before he filed this motion for preliminary injunction on August 13, 2025.

Plaintiff's years-long delay in applying for injunctive relief in this case neutralizes any presumption that infringement alone will cause irreparable harm pending trial, and such delay alone justified denial of this motion for preliminary injunction. See Citibank, N.A., 756 F.2d at 276. The Second Amended Complaint asserts that NGM's alleged use of Plaintiff's name became wrongful under the Lanham Act at the time of the Award on June 14, 2023. If that was true, Plaintiff should have sought a preliminary injunction seeking to stop NGM's alleged use at the time of the Award. Indeed, a preliminary injunction should have been requested within the arbitration itself if Plaintiff believed NGM's use of his name that existed during the arbitration was wrongful. Accordingly, Plaintiff has failed to demonstrate the requisite irreparable harm required to grant this motion, which is "the single most important prerequisite for the issuance of a preliminary injunction." Faiveley Transp. Malmo AB, 559 F.3d at 118.

POINT III

PLAINTIFF CANNOT DEMONSTRATE A LIKELIHOOD OF SUCCESS OF THE MERITS

The Second Amended Complaint includes four counts for alleged violations of the Lanham Act. Counts I-III are all styled as false endorsement, association and designation of origin claims made under 15 U.S.C. § 1125(a)(1)(A). The Counts all allege that NGM's use of Plaintiff's name on its website, in filings with the USPTO, and on client communications caused consumer confusion which constitutes a claim for false endorsement, association or designation of origin. Count IV of the Second Amended Complaint is a false advertising claim under 15 U.S.C. §

1125(a)(1)(B) for NGM’s allegedly false and misleading statements “about Plaintiff-including website listings, USPTO patent and trademark filings, and client communications-that misrepresented the sponsorship, affiliation, and qualities of its IP legal services.”

A. Plaintiff Has Failed to State a Claim for False Endorsement, Association or Designation of Origin Under the Lanham Act

The elements of a “false endorsement” claim under the Lanham Act are “that the defendant (1) in commerce, (2) made a false or misleading representation of fact (3) in connection with goods or services (4) that is likely to cause consumer confusion as to the origin, sponsorship, or approval of the goods or services.” LMNOPI v. XYZ Films, LLC, 449 F. Supp. 3d 86, 94 (E.D.N.Y. 2020) (internal quotations omitted). “Significantly, however, a plaintiff states such a false endorsement claim only if the plaintiff did not, in fact, endorse the good or service at issue.” Ratermann v. Pierre Fabre USA, Inc., 651 F. Supp. 3d 657, 673 (S.D.N.Y. 2023). “Where a plaintiff did, in fact, grant their sponsorship or approval, a false endorsement claim under § 43(a) cannot succeed.” Id. (emphasis omitted).

Plaintiff entered into the Combination Agreement with NGM whereby he agreed to act as a Senior Counsel for the firm in exchange for compensation. As part of that arrangement, Plaintiff received a substantial portion of the revenue generated from the clients he originated. Plaintiff continues to receive these payments from NGM for the five years of billings associated with Plaintiff’s originated clients after the relationship terminated. He thus continues to profit from the services provided by NGM during the share period. And during this revenue share period Plaintiff specifically desired to be listed on NGM’s website as a Senior Counsel to facilitate the growth of NGM’s relationship with Plaintiff’s originated clients. (Goldberg Dec. at Ex. C.) NGM agreed to allow Plaintiff to remain on the NGM website at Plaintiff’s request. Accordingly, Plaintiff cannot sustain a Lanham Act claim because he agreed to an endorsement of NGM services and cannot

use the Lanham Act to litigate a contractual claim against NGM for allegedly exceeding the scope of the license he provided to NGM.

Plaintiff in the Second Amended Complaint attempts to convert alleged issues arising during the transition of his employment from NGM into a Lanham Act claim. However, the Lanham Act is not an appropriate vehicle to litigate claims between parties to a failed commercial relationship where one party continues to market the service. See, e.g., Christopher Norman Chocolates, Ltd. v. Schokinag Chocolates N. Am., Inc., 270 F. Supp. 2d 432, 436 (S.D.N.Y.2003); Abelman v. Polinex Plastic Prods. Canada, Ltd., No. 92-cv-4112 (JFK), 1992 U.S. Dist. LEXIS 12868, at *8 (S.D.N.Y. Aug. 26, 1992). And Plaintiff attempts to use the Lanham Act as a means to prosecute a claim based on a short delay in NGM transitioning away from Plaintiff's employment and involvement in the firm, *i.e.*, a short delay in removing Plaintiff from the website and in firm communications. Indeed, issues relating to employment transition as alleged by Plaintiff regularly occur in the marketplace, but federal litigation is not appropriate where an ex-employer allegedly fails to immediately remove an ex-employee from a website or from its letterhead. The Lanham Act was never intended to cover these types of de minimis contractual mistakes. Stratta v. George Duke Enters., No. 96-cv-2720 (SS), 1997 U.S. Dist. LEXIS 7399, at *12 (S.D.N.Y. May 22, 1997).

Further, Plaintiff fails to allege in the Second Amended Complaint that his name or likeness was used in commerce by NGM. Under the Lanham Act, a mark is deemed to be "used in commerce" if it is "used or displayed in the sale or advertising of services and the services are rendered in commerce." 15 U.S.C. § 1127. To state a § 43(a) claim, the allegedly false or misleading statement must be made in "commercial advertising or promotion." SourceOne Dental, Inc. v. Patterson Cos., 328 F. Supp. 3d 53, 61 (E.D.N.Y. 2018). To constitute "commercial

advertising or promotion,” a statement must be: “(1) commercial speech, (2) made for the purpose of influencing consumers to buy defendant’s goods or services, and (3) although representations less formal than those made as part of a classic advertising campaign may suffice, they must be disseminated sufficiently to the relevant purchasing public.” Gmurzynska v. Hutton, 355 F.3d 206, 210 (2d Cir. 2004) (internal quotations omitted).

Plaintiff alleges in the Second Amended Complaint three improper uses of his name and likeness by NGM: (1) listing Plaintiff as a Senior Counsel in an attorney biography on NGM’s website after June 15, 2020; (2) listing Plaintiff as attorney of record, or as an attorney to receive official correspondence, on USPTO patent and trademark filings after June 15, 2020; and (3) referencing Plaintiff in communications with clients. However, only Plaintiff’s biography on the NGM website is arguably commercial advertising or promotion as is required for purposes of Lanham Act claim asserted under Section 43(a).³ Documents filed and exchanged with the USPTO are legal documents pertaining to a particular client that has already retained NGM. Thus, they are not created to influence consumers to hire NGM and are not disseminated to the purchasing public for the purpose. And the same goes for NGM’s communications with a particular client like those attached to the motion for preliminary injunction, which are products of a confidential attorney-client relationship that is in direct conflict with a claim that such communications are statements circulated widely for commercial purposes. Accordingly, any Lanham Act claim by Plaintiff related to either USPTO filings or client communications is subject to dismissal because these documents are not used in commerce.

³ NGM does not concede that the attorney biography qualifies as commercial advertising or promotion, but for purposes of this motion, it is willing to allow that inference to be drawn in Plaintiff’s favor.

Additionally, Plaintiff has not demonstrated a likelihood of success on his Lanham Act claims because the motion and Second Amended Complaint do not demonstrate sufficient consumer confusion from the NGM's alleged misuses. Success on a Lanham Act § 43(a) claim "depends on whether there is any likelihood that an appreciable number of ordinarily prudent purchasers are likely to be misled, or indeed simply confused, as to the source of the goods in question." Becoming, Inc. v. Avon Prods., No. 01-cv-5863 (JSM), 2001 U.S. Dist. LEXIS 11929, at *18-19 (S.D.N.Y. Aug. 15, 2001). Within the motion for preliminary injunction, Plaintiff points to two instances of alleged client confusion to support his claim of consumer confusion broadly. In the first instance, an originated client sends Plaintiff an e-mail asking questions about his patent application because he seems to believe that Plaintiff was still working on his matter at NGM. In the second instance, an originated client sends Plaintiff a text message to discuss a new patent registration matter and Plaintiff refers that client to NGM, which causes the client to become confused as to why Plaintiff will not handle his matter directly.

However, neither of these perceived instances of consumer confusion relates to confusion allegedly caused by commercial speech by NGM. In the first alleged instance of alleged confusion, the client appears to be unaware that Plaintiff no longer works at NGM, which could have been dispelled by Plaintiff advising that he is no longer employed at the firm. The client does not reference a commercial statement by NGM as a source of confusion, and this appears to be a run-of-the-mill issue that regularly occurs when an attorney leaves a law firm. The solution in these situations is the attorney's advisement to the client that he left and not a Lanham Act claim. The perceived confusion in the second alleged instance was directly caused by Plaintiff advising the client that he was referring his matter to NGM and was not handling his matter personally. Again, no commercial speech by NGM is raised by the client as a source of confusion and any issue could

have been clarified by Plaintiff. Finally, the claimed misuses of Plaintiff's name and likeness in the motion for preliminary injunction and the Second Amended Complaint do not allege circumstances where a prudent client could be confused about NGM's services. A client that ultimately retains NGM to handle an intellectual property matter understands the retention is with the law firm whether or not Plaintiff works there and would not be confused about the legal services purchased. Accordingly, the motion does not adequately demonstrate sufficient consumer confusion for this Court to grant a preliminary injunction.

Lastly, Plaintiff has not demonstrated a likelihood of success on his Lanham Act claim because he has not described an adequate competitive injury caused by NGM's alleged uses of his name. A plaintiff in a § 43(a) action need not be a direct competitor of the defendant, but there must be a "potential for a commercial or competitive injury." Berni, 838 F.2d at 648. The alleged injury "must be a 'commercial' injury, and not a 'consumer' injury." Crab House of Douglaston, Inc. v. Newsday, Inc., 418 F. Supp. 2d 193, 213 (E.D.N.Y. 2006). "While the Act is intended to be construed broadly, a plaintiff must allege more than a 'mere subjective belief' about damages." Stratta, 1997 U.S. Dist. LEXIS 7399, at *11-12.

Plaintiff's motion for preliminary injunction and his Second Amended Complaint do not allege a competitive injury beyond a conclusory allegation that NGM is harming his reputation. Such blanket unsupported statements are insufficient to succeed on a motion for preliminary injunction or even to defeat of a motion to dismiss. Plaintiff has not explained how he is a competitor of NGM through a new legal practice that has been injured by a misuse of his name or likeness. In fact, for the vast majority of the period at issue, Plaintiff's financial interests were aligned with NGM's because he received 20% of NGM's revenue received from originated clients. And Plaintiff's conduct since this litigation has been inconsistent with that of a competitor because

he continues to refer clients to NGM. Lastly, Plaintiff's perceived harm to clients, *i.e.*, the consumers, is insufficient to demonstrate injury under the Lanham Act because it is not a competitive injury. Accordingly, because this motion is not supported with adequate facts demonstrating a competitive injury suffered by Plaintiff, it must be denied.

B. Plaintiff Has Failed to State a Claim for False Advertising Under the Lanham Act

The Second Amended Complaint also includes a false advertising claim under § 43(a)(1)(B) of the Lanham Act, which prohibits any person from, “in commercial advertising or promotion, misrepresent[ing] the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities.” 15 U.S.C. § 1125(a)(1)(B). “To prevail on a Lanham Act false advertising claim, a plaintiff must establish that the challenged message is (1) either literally or impliedly false, (2) material, (3) placed in interstate commerce, and (4) the cause of actual or likely injury to the plaintiff.” Church & Dwight Co. v. SPD Swiss Precision Diagnostics, GmBH, 843 F.3d 48, 65 (2d Cir. 2016) (citing Merck Eprova AG v. Gnosis S.p.A., 760 F.3d 247, 255-56 (2d Cir. 2014)). “To establish literal falsity, a plaintiff must show that the advertisement either makes an express statement that is false or a statement that is ‘false by necessary implication,’ meaning that the advertisement’s ‘words or images, considered in context, necessarily and unambiguously imply a false message.’” Id. (quoting Time Warner Cable, Inc. v. DIRECTV, Inc., 497 F.3d 144, 158 (2d Cir. 2007)). “A message can only be literally false if it is unambiguous.” Id.

However, for a false statement to be actionable under this part of the Lanham Act, it must refer to the “inherent quality or characteristic of defendants’ product.” Abernathy & Closther, Ltd. v. E & M Advert., Inc., 553 F. Supp. 834, 837 (E.D.N.Y. 1982). As a result, § 43(a)(1)(B) excludes claims based on “a false assertion of license” or “a false claim of authorship.” Agence France Presse v. Morel, 769 F. Supp. 2d 295, 307-08 (S.D.N.Y. 2011); see also Invista S.a.r.l. v. E.I. Du

Pont De Nemours & Co., No. 08-cv-7270 (BSJ), 2008 U.S. Dist. LEXIS 94009 at *7, 11 (S.D.N.Y. Oct. 30, 2008) (rejecting claim that “misrepresentations of [the defendant’s] freedom to use the [plaintiff’s] technology constitute false advertising”); Patterson v. Diggs, No. 18-cv-3142 (NSR), 2019 U.S. Dist. LEXIS 143869 at *22 (S.D.N.Y. Aug. 23, 2019) (holding that representations “giving the clear but false impression that Plaintiff licensed or otherwise authorized Defendants to reproduce, display, sell, and distribute Plaintiff’s work” did not constitute Lanham Act false advertising). In addition to being inconsistent with the statutory text, permitting false advertising claims based on licensing status would allow plaintiffs to circumvent the statute by “shoe-horning a claim into section 43(a)(1)(B) rather than 43(a)(1)(A).” Agence France Presse, 769 F. Supp. 2d at 308.

Even if Plaintiff is correct that NGM did not have license to place his name on its website or in documents, such “misrepresentations” do not concern “the nature, characteristics, qualities, or geographic origin” of NGM’s services. Id. (quoting 15 U.S.C. § 1125(a)(1)(B)). Indeed, none of the alleged statements by NGM concern the material attributes, type, quality or geographic origin of its legal services to clients. The statements relate to Plaintiff’s association with NGM pursuant to the Combination Agreement. There is no false advertising involved with Plaintiff’s allegations. Plaintiff is attempting to save his failed false endorsement claim by realleging it as a false advertising claim, which is impermissible under the law of this Circuit. Accordingly, Plaintiff cannot demonstrate a likelihood of success with regards to his false advertising claim asserted pursuant to 15 U.S.C. § 1125(a)(1)(B).

Moreover, as courts have routinely held, the Lanham Act does not impose an affirmative duty of disclosure. See, e.g., Clark Consulting, Inc. v. Fin. Solutions Partners, LLC, No. 05-cv-06296 (SAS), 2005 U.S. Dist. LEXIS 28642 at *15 (S.D.N.Y. Nov. 17, 2005) (“The [Lanham] Act

imposes no affirmative duty of disclosure . . . and a claim cannot be based on the failure to disclose a fact.”); McNeilab, Inc. v. Am. Home Prods. Corp., 501 F. Supp. 517, 532 (S.D.N.Y. 1980) (“[A] failure to inform consumers of something, even something that they should know, is not per se a misrepresentation actionable under section 43(a) of the Lanham Act.”). Plaintiff’s motion and Second Amended Complaint attempt to impose liability on NGM for failing to clarify with clients that he no longer works at the firm. But NGM does not have an obligation to disclose that fact under the Lanham Act, even if Plaintiff believes that certain clients may be confused regarding his status with the firm. The Lanham Act is an inappropriate means to litigate claims related to an employee’s transition after a cessation of employment. And the remedy for any confusion that may be occurring would be for Plaintiff to clearly describe his status within the legal marketplace. But NGM does not have an obligation to do so for purposes of this motion or lawsuit.

Finally, to state a § 43(a) claim, the allegedly false or misleading statement must be made in “commercial advertising or promotion.” SourceOne Dental, 328 F. Supp. 3d at 61; see also Romeo & Juliette Laser Hair Removal, Inc. v. Assara I LLC, No. 08-CV-442, 2016 U.S. Dist. LEXIS 24850, at *19 (S.D.N.Y. Feb. 29, 2016) (“[T]he Lanham Act does not prohibit false statements generally”) (internal quotations omitted)). And a plaintiff in a § 43(a) Lanham Act action need not be a direct competitor of the defendant, but there must be a “potential for a commercial or competitive injury.” Berni, 838 F.2d at 648. As stated above, statements in USPTO filings or in client communications are not made in commercial advertising or promotion. Additionally, as outlined above, Plaintiff has failed to articulate a competitive injury sufficient to sustain a Lanham Act claim under § 43(a).

C. Plaintiff’s Claims are Subject to Arbitration under the Combination Agreement

The Combination Agreement requires claims of “any kind” that are “connected” to the parties’ agreement to be determined in arbitration. (Goldberg Dec., Ex. A at ¶15). The Lanham

Act claims in the Second Amended Complaint all are connected to the parties' combination of law practices pursuant to the Combination Agreement and thus they are required to be determined in arbitration.

When determining arbitrability, a court first decides “whether, under ordinary principles of contract interpretation, a particular dispute is covered by the language to which the parties agreed.” Local Union 97, Int’l Brotherhood of Elec. Workers, AFL-CIO v. Niagara Mohawk Power Corp., 67 F.4th 107, 114 (2d Cir. 2023). “When performing this analysis, if the court determines that the allegations underlying the claims touch matters covered by the parties’ contracts, then those claims must be arbitrated, whatever the legal labels attached to them.” GPS Int’l Techs., Inc. v. Verizon Commc’ns, Inc., No. 24-cv-07758 (ALC), 2025 U.S. Dist. LEXIS 193993, at *19 (S.D.N.Y. Sep. 30, 2025) (internal quotations and alterations omitted). Indeed, the Second Circuit has recognized that “it has long been clear that statutory claims may be the subject of an arbitration agreement.” Ragone v. Atlantic Video, 595 F.3d 115, 125 (2d Cir. 2010) (internal quotations omitted). Further, it is “well established that . . . arbitrators may award injunctive relief.” Stone v. Theatrical Inv. Corp., 64 F. Supp. 3d 527, 541 (S.D.N.Y. 2014). Courts should also consider whether the factual allegations “are integrally linked to the contractual relation . . . or whether they somehow pertain to it.” Leadertex, Inc. v. Morganton Dyeing & Finishing Corp., 67 F.3d 20, 28 (2d Cir. 1995) (internal quotations omitted). If the court determines that the arbitration provision is broad as to its scope, then there is a presumption in favor of arbitrability. Local Union, 67 F.4th at 113-114.

Plaintiff’s Lanham Act claims are all connected to his former employment with NGM pursuant to the Combination Agreement because they relate to a continuation of his relationship with and transition from NGM under that agreement. Labeling the claims as those arising from the

Lanham Act is irrelevant for purposes of determining whether the claims are subject to arbitration. Plaintiff's name would not be associated with NGM if it were not for the Combination Agreement. Thus, Plaintiff's claims are integrally linked to the parties' contractual relationship despite being described as federal statutory claims. Accordingly, this motion and the Second Amended Complaint are subject to arbitration and the motion should be denied.

POINT IV

THE BALANCING OF THE EQUITIES FAVORS NGM

In determining whether the balance of the equities tips in the Plaintiff's favor and whether granting the preliminary injunction would be in the public interest, the Court "must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief." Winter v. NRDC, Inc., 555 U.S. 7, 24 (2008) (quoting Amoco Production Co. v. Vill. Of Gambell, 480 U.S. 531, 542 (1987)). "In exercising their sound discretion, courts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of injunction." Id. (quoting Weinberger v. Romero-Barcelo, 456 U.S. 305, 312 (1982)). Plaintiff has failed to articulate any concrete actionable injury related to the conduct alleged within this motion. Thus, the equities and public interest cannot favor Plaintiff.

In any event, NGM has ceased listing Plaintiff as counsel on its website, on its communications with originated clients, and in any filings. (Goldberg Dec. at ¶¶22-23). Further, NGM has no intention of including Plaintiff on its website or in its documents in the future and has no incentive to do so because the revenue share agreement has terminated. (Id. at ¶24.) "Although it is true that a voluntary cessation of illegal conduct does not itself render the issue of injunctive relief moot . . . it is some cognizable danger of recurrent violation, something more than the mere possibility which serves to keep the case alive." Robert Stigwood Grp. Ltd. v. Hurwitz, 462 F.2d 910, 913 (2d Cir. 1972) (internal citations and quotations omitted). Accordingly, it would

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

RICHARD C. LITMAN,

Case No.: 1:25-cv-04048-PKC-PK

Plaintiff,

-vs-

NATH & ASSOCIATES, PLLC, d/b/a NATH,
GOLDBERG AND MEYER ("NGM"),

**DECLARATION OF JOSHUA B.
GOLDBERG, ESQ. IN
OPPOSITION TO PLAINTIFF'S
MOTION FOR PRELIMINARY
INJUNCTION**

Defendant.

Pursuant to 28 U.S.C. § 1746, I, Joshua B. Goldberg, declare the following:

1. I am over the age of 18 and am the Co-Managing Partner of Defendant Nath & Associates, PLLC, d/b/a Nath, Goldberg and Meyer ("NGM").
2. This Declaration is submitted in opposition to Plaintiff, Richard C. Litman's ("Plaintiff") Motion for a Preliminary Injunction. I am fully familiar with the matters stated herein based on my role as Co-Managing Partner of NGM.
3. On March 29, 2017, Plaintiff entered into a written contract to combine his law practice with NGM (the "Combination Agreement").
4. Annexed hereto as Exhibit A is a true and correct copy of the March 29, 2017 Combination Agreement.
5. Pursuant to the Combination Agreement, Plaintiff was entitled to be paid compensation as a Senior Counsel at NGM based on the percentage of revenue generated by clients he originated either before or during his employment by NGM and based on a percentage of revenue from his time billed. Ex. A at ¶5, 7.
6. The Combination Agreement provides that it can be terminated either by convenience or based on the death of Plaintiff or his disqualification to practice law. *Id.* at ¶2.

7. The Agreement includes a broad arbitration provision that requires any claim of any kind arising out of or connected with the Agreement to be determined in arbitration. *Id.* at ¶15.

8. On May 7, 2017, the Combination Agreement was amended to include a provision extending the period in which Plaintiff would be entitled to continue sharing in NGM's revenue earned from originated clients from three (3) years to five (5) years and transferring all stock ownership in Plaintiff's prior law practice to NGM including all title to all telephone numbers and website URLs used by the practice (the "Amended Combination Agreement").

9. Annexed hereto as Exhibit B is a true and correct copy of the May 7, 2017 Amended Combination Agreement.

10. All other terms of the Combination Agreement were left in full force and effect by the Amended Combination Agreement.

11. On or around June 15, 2020, Plaintiff suffered a disability that prevented him from continuing his employment with NGM as a Senior Counsel.

12. However, NGM agreed with Plaintiff that he would continue to be listed as a Senior Counsel at the firm because of the parties' agreement to share revenue from originated clients.

13. This agreement was memorialized in text messages dated January 30, 2023 between me and Plaintiff that were attached to his Complaint and Amended Complaint as an exhibit.

14. Annexed hereto as Exhibit C is a true and correct copy of the January 30, 2023 text messages, which are highlighted for the Court's ease of reference.

15. The parties' practice was also to include Plaintiff along with NGM as counsel for any matters for originated clients, including within filings and client communications because of the revenue share which survived termination of the Combination Agreement.

16. Plaintiff's e-mail account at NGM also remained active at Plaintiff's request.

17. In or around the end of 2022, Plaintiff filed an arbitration demand asserting claims against NGM for failing to continue all payments set forth in the Combination Agreement.

18. NGM asserted in the arbitration that the parties had orally agreed that they would treat Plaintiff's disability as a termination for death under the Combination and Amended Combination Agreements entitling Plaintiff to a share of revenue from his originated clients for a period of five (5) years commencing from June 15, 2020.

19. On June 14, 2023, an arbitration award was entered finding that the parties had orally agreed upon a modification terminating the employment of Plaintiff entitling him to a share of revenue from his originated clients for a period of five (5) years commencing from June 15, 2020, but that NGM was not entitled to offset disability payments made to Plaintiff.

20. Annexed hereto as Exhibit D is a true and correct copy of the June 14, 2023 Arbitration Award.

21. Pursuant to the Arbitration Award, NGM is continuing to pay the revenue share as incoming revenue for billings up to and including June 15, 2025 are received, but the revenue share for billings occurring after June 15, 2025 has been terminated by NGM as permitted by the Award.

22. Plaintiff's biography no longer appears on NGM's website.

23. NGM has ceased listing Plaintiff as counsel on its communications with originated clients and in any filings.

24. NGM has no intention of including Plaintiff on its website or in its documents in the future and has no incentive to do so because the revenue share agreement has terminated.

25. Plaintiff requested that his e-mail account with NGM remain active post-termination and for purposes of collecting documents for his lawsuits filed against NGM and me personally in New York state court.

26. These requests are referenced in communications sent to NGM and NGM's counsel in this suit.

27. Annexed hereto as Exhibit E are e-mails from Plaintiff dated September 11, 2025 and October 7, 2025 wherein Plaintiff is requesting to keep his e-mail address at NGM active.

28. NGM has agreed to keep Plaintiff's e-mail address at the firm active during the pendency of this lawsuit based on his request to avoid any appearance that it is interfering with his ability to prosecute his claims.

29. The e-mail address will be shut down once the litigation concludes.

30. Plaintiff on three separate occasions since he filed this lawsuit has referred clients to NGM through its counsel.

31. Annexed hereto as Exhibit F are e-mails from Plaintiff dated August 16, 2025, September 8, 2025 and October 7, 2025 wherein Plaintiff is referring clients to NGM.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: October 8, 2025

By: 
Joshua B. Goldberg, Esq.

Exhibit A
Subject to
Motion to
Restrict to
Parties' Eyes
Only

Exhibit B
Subject to
Motion to
Restrict to
Parties' Eyes
Only

Exhibit C

Messages - Joshua Goldberg

First, I am okay with not deducting expenditures on e.g., labor, from the definition of Revenue. I do think anything that is a true pass through but which we didn't think of previously, like postage, reimbursed travel costs, etc. should not be included as Revenue.

And yes, let's get agreement on final figures for each quarter. Once we have some agreements between us, we can tackle the disability offset issue, date of termination, and whatever else remains. For your status, I still have the same issue I have had from the beginning, if you are on disability, what would be considered legal vs. fraud? I don't want ANY of us having to face a fraud issue.

I.e., can you be an ACTIVE Senior Counsel while on disability?

Nobody has given me a real answer on that question yet

1/30/23, 4:39 PM

There are laws which require reasonable accommodation of disabled persons. The definition of disability is broad in scope. There are other laws such as relating to Social Security disability benefits with a much narrower definition. Then there are insurance benefits which have their own definition of disability, varying by policy. Unfortunately, I have more than qualified for benefits under MetLife's definition. The law firm's public promotion of my Senior Counsel status is consistent with me not being dead or disqualified to practice law, and shows that my relationship with the law firm has not been terminated, but it has had no effect on the disability benefits.

With that all being true, I am fine with you being considered as "Senior Counsel". But, I do think we need to also figure out what a Tails policy will look like, as well as whatever else would be needed. I also think, if you are interested, it is possible for you to retain Senior Counsel status while we are in acknowledged final years of any agreement between us. But that is only if you would be interested in such an arrangement, if not then not.

1/30/23, 5:59 PM

Sounds like that could be workable. Remember: we share the common objective of growing the law firm's relationship with these clients.

Yes, I agree it is in our combined interests to grow these clients (and maybe others) for our mutual benefit

That's where you and I are trying to get to, in my mind

How do you want to approach reaching agreement on quarterly numbers from 2020-2022?

Exhibit D
Subject to
Motion to
Restrict to
Parties' Eyes
Only

Exhibit E

Matt Ramin

From: Richard Litman <rclitman@gmail.com>
Sent: Thursday, September 11, 2025 7:48 PM
To: Aaron H. Gould
Cc: Cherylyn Tanner; Matt Ramin; Leo J. Hurley, Jr.
Subject: Re: Litman v Goldberg (Kings County) and Litman v. Nath (EDNY)

 External email >

Aaron,

Thanks for the heads-up. I need to be more disciplined about tracking these deadlines myself. I took pride in managing the deadlines associated with my practice.

The service tech for Josh's outsourced vendor uploaded an archive of my email account to the firm's SharePoint. Now he won't respond to me, but I believe it's still accessible. That archive contains not only potential evidence but also personal material—such as my early genealogical research—as well as archives about professional contacts and experiences throughout my career.

I expect to have a streamlined Second Amended EDNY Complaint, limited to the Lanham Act counts, ready for you tomorrow. My main challenges are typing and navigating the pro se filing portal. I may file in person if permitted.

I understand that Judge Garaufis requires a conference before any motion for injunctive relief. I believe the second amended complaint I will send you with the Stipulation (unless not needed) will establish a strong foundation, and I would appreciate your guidance on how this process works with the Magistrate and her scheduling order.

Finally, I want to flag scheduling conflicts before year-end: Rosh Hashanah and Yom Kippur, as well as a pre-planned trip to Morocco in the latter half of November, and an Antarctica cruise in the second half of December. These trips are “bucket list” commitments. I would appreciate you taking these conflicts into account in scheduling.

Thanks again,

Richie

On Sep 11, 2025, at 17:51, Aaron H. Gould <agould@connellfoley.com> wrote:

Richard:

We have been advised that you should have full access to the e-mails and there is nothing more that can be done on NGM's end.

Matt Ramin

From: Richard L <rclitman@gmail.com>
Sent: Tuesday, October 7, 2025 2:08 PM
To: Aaron H. Gould
Cc: Leo J. Hurley, Jr.
Subject: Fwd: Litman v Goldberg — Email accounts - please let vendor know

 External email >

Aaron,

I sent this email below directly to Josh Goldberg to let the vendor know about this problem.

Richard

----- Forwarded message -----

From: Richard L <rclitman@gmail.com>
Date: Tue, Oct 7, 2025 at 13:57
Subject: Email accounts - please let vendor know
To: Joshua Goldberg <JGoldberg@nathlaw.com>

Josh,

The litman@4patent.com and rlitman@litmanlaw.com email accounts are not working now. This problem is in addition to the missing archive which James at the vendor said he saved on Sharepoint in case it was lost in doing what he was doing which he said could take 15 hours.

Please let the vendor know about the email issues. I would appreciate it.

Thanks.

Rich

Exhibit F
Subject to
Motion to
Restrict to
Parties' Eyes
Only
