

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION**

Big Canoe Property Owners
Association, Inc.,

Plaintiff,

v.

Margot Weatherford and eXp Realty,
LLC,

Defendants.

Case No. 2:26-cv-00014-RWS

**Margot Weatherford's Answer, Defenses, and
Counterclaim**

Margot Weatherford files this, her Answer, Defenses, and Counterclaim,
and shows the Court as follows:

First Defense

The Complaint fails to state a claim for which relief can be granted.

Second Defense

The Complaint should be dismissed for failure to join a party that is
required to be joined under Rule 19 of the Federal Rules of Civil Procedure.

Third Defense

Weatherford pleads the defense of fair use and incorporates the
allegations set forth below in her counterclaim.

Fourth Defense

Weatherford pleads the defense of laches.

Fifth Defense

Responding to the specific allegations in the Complaint, Weatherford states the following:

1.

Admitted.

2.

Admitted.

3.

Weatherford is without sufficient knowledge or information to admit or deny the allegations in this paragraph and, thus, denies the allegations.

4.

Admitted that the Complaint alleges as stated.

5.

Admitted.

6.

Admitted.

7.

Weatherford admits that she is a resident of and transacts business in the State of Georgia. Weatherford also admits, based on information and

belief, that eXp Realty transacts business in the State of Georgia. All other allegations in this paragraph of the Complaint are denied.

8.

Denied.

9.

Weatherford admits that venue for the claims asserted against her is proper in this Court.

All other allegations in this paragraph of the Complaint are denied.

10.

Denied.

11.

Weatherford is without sufficient knowledge or information to admit or deny the allegations in this paragraph and, thus, denies the allegations.

12.

Because the Property Owners Association made “Big Canoe” a defined term in its Complaint that means the Property Owners Association “and/or its predecessor(s) in interest,” the allegations are so vague and ambiguous that Weatherford is unable to frame a proper response.

Answering to the best of her ability, Weatherford admits that Big Canoe Company, LLC, filed an application with the United States Patent and Trademark Office to register the mark BIG CANOE on August 4, 2006; the

USPTO issued a registration as a result of that application on May 8, 2007, Registration Number 3,239,861; and Exhibit A attached to the Complaint is a copy of USPTO Trademark Registration Number 3,239,861.

13.

Weatherford is without sufficient knowledge or information to admit or deny the allegations in this paragraph and, thus, denies the allegations.

14.

Because the Property Owners Association made “Big Canoe” a defined term in its Complaint that means the Property Owners Association “and/or its predecessor(s) in interest,” the allegations are so vague and ambiguous that Weatherford is unable to frame a proper response.

Answering to the best of her ability, Weatherford admits that Big Canoe Company, LLC, filed an application with the United States Patent and Trademark Office to register the mark BIG CANOE REALTY on August 4, 2006; the USPTO issued a registration as a result of that application on March 27, 2007, Registration Number 3,223,127; and Exhibit B attached to the Complaint is a copy of USPTO Trademark Registration Number 3,223,127.

15.

Because the Property Owners Association made “Big Canoe” a defined term in its Complaint that means the Property Owners Association “and/or

its predecessor(s) in interest,” the allegations are so vague and ambiguous that Weatherford is unable to frame a proper response.

Weatherford is also without sufficient knowledge or information to either admit or deny the allegations in this paragraph and, thus, denies the allegations.

16.

Because the Property Owners Association made “Big Canoe” a defined term in its Complaint that means the Property Owners Association “and/or its predecessor(s) in interest,” the allegations are so vague and ambiguous that Weatherford is unable to frame a proper response.

Answering to the best of her ability, Weatherford admits that Big Canoe Company, LLC, filed an application with the United States Patent and Trademark Office to register the mark BIG CANOE BROKERAGE on May 21, 2025; the USPTO issued a registration as a result of that application on December 30, 2025, Registration Number 8,085,858; and Exhibit C attached to the Complaint is a copy of USPTO Trademark Registration Number 8,085,858.

17.

Weatherford is without sufficient knowledge or information to admit or deny the allegations in this paragraph and, thus, denies the allegations.

18.

Weatherford denies the allegations of this paragraph. To the extent this paragraph refers to any use of certain marks by the Property Owners Association in connection with “real-estate services, namely real-estate brokerage and management,” such allegations are denied. Weatherford lacks sufficient knowledge or information to admit or deny any allegations concerning the conduct of unidentified predecessors in interest.

19.

Weatherford is without sufficient knowledge or information to admit or deny the allegations in this paragraph and, thus, denies the allegations.

20.

Denied.

21.

Denied.

22.

Denied.

Weatherford denies that she engaged in any impermissible or infringing use of anyone’s marks.

23.

Weatherford admits that attached to the Complaint as Exhibit D (ECF No. 1-4) is a letter dated April 22, 2024, that an attorney purporting to

represent Big Canoe Brokerage, LLC, sent to Weatherford.

All other allegations in this paragraph of the Complaint are denied.

24.

Denied.

25.

Weatherford denies the allegations of this paragraph and denies that she used “Big Canoe” as a mark or engaged in any impermissible or infringing use of anyone’s mark.

26.

Weatherford admits that she created a Facebook page and signage for her real-estate business, but denies that she used “Big Canoe” as a mark or engaged in any impermissible or infringing use of anyone’s mark. All remaining allegations are denied.

27.

Weatherford admits that attached to the Complaint as Exhibit E (ECF No. 1-5) is a letter dated January 21, 2025, that an attorney purporting to represent Big Canoe Brokerage, LLC, sent to Weatherford.

All other allegations in this paragraph of the Complaint are denied.

28.

Weatherford is without sufficient information to either admit or deny the allegations in this paragraph.

Weatherford states that the mark she uses to promote her business is EXP REALTY, that she has never used “Big Canoe” as a source identifier, and that she uses “Big Canoe” to describe the geographic location where her services are offered, and, as a result, she has not infringed on anyone’s marks.

To the extent that a further response may be necessary, Weatherford denies the allegations in this paragraph.

29.

Denied.

30.

Denied.

31.

Weatherford admits that attached to the Complaint as Exhibit F (ECF No. 1-6) is a letter dated November 24, 2025, that an attorney purporting to represent Big Canoe Property Owners Association, Inc., sent to Weatherford.

All other allegations in this paragraph of the Complaint are denied.

32.

Weatherford admits that she did not provide a written response to the letter dated November 24, 2025, attached to the Complaint as Exhibit F (ECF No. 1-6). All remaining allegations in this paragraph of the Complaint are denied.

33.

Weatherford is without sufficient information to either admit or deny the allegations in this paragraph and, thus, denies the allegations.

34.

Denied.

Weatherford states that the mark she uses to promote her business is EXP REALTY, that she has never used “Big Canoe” as a source identifier, and that she uses “Big Canoe” to describe the geographic location where her services are offered, and, as a result, she has not infringed on anyone’s marks.

35.

Denied.

Weatherford states that the mark she uses to promote her business is EXP REALTY, that she has never used “Big Canoe” as a source identifier, and that she uses “Big Canoe” to describe the geographic location where her services are offered.

36.

Denied.

Weatherford denies that permission was required and denies any infringement.

37.

Denied.

Weatherford states that the mark she uses to promote her business is EXP REALTY, that she has never used “Big Canoe” as a source identifier, and that she uses “Big Canoe” to describe the geographic location where her services are offered, and, as a result, she has not infringed on anyone’s marks.

38.

Denied.

39.

Denied.

40.

Denied.

41.

Denied.

42.

Because the Property Owners Association made “Big Canoe” a defined term in its Complaint that means the Property Owners Association “and/or its predecessor(s) in interest,” the allegations are so vague and ambiguous that Weatherford is unable to frame a proper response.

To the extent that a further response may be necessary, Weatherford denies the allegations in this paragraph.

43.

Denied.

44.

Denied.

Weatherford denies that she offers any “infringing services.” Trademark law regulates the use of marks in commerce, not the offering of services.

45.

Denied.

46.

Denied.

47.

Denied.

48.

Denied.

49.

Denied.

Weatherford denies that she engaged in any wrongful conduct and denies that Property Owners Association is entitled to attorney’s fees or costs.

50.

It is not necessary to either admit or deny the allegations in this paragraph as they have been addressed above, and they are incorporated here by reference.

51.

Denied.

52.

Denied.

53.

Denied.

54.

Denied.

55.

Denied.

56.

Denied.

57.

Denied.

58.

Denied.

59.

It is not necessary to either admit or deny the allegations in this paragraph as they have been addressed above, and they are incorporated here by reference.

60.

Denied.

61.

Denied.

62.

Denied.

63.

Denied.

64.

Denied.

65.

Denied.

66.

Denied.

67.

It is not necessary to either admit or deny the allegations in this paragraph as they have been addressed above, and they are incorporated here by reference.

68.

Denied.

69.

Denied.

70.

Denied.

71.

Denied.

72.

Denied.

73.

It is not necessary to either admit or deny the allegations in this paragraph as they have been addressed above, and they are incorporated here by reference.

74.

Denied.

75.

Denied.

76.

Denied.

77.

Denied.

78.

Denied.

79.

Denied.

80.

Denied.

81.

Denied.

82.

It is not necessary to either admit or deny the allegations in this paragraph as they have been addressed above, and they are incorporated here by reference.

83.

Denied.

84.

Denied.

85.

Denied.

86.

Denied.

87.

It is not necessary to either admit or deny the allegations in this paragraph as they have been addressed above, and they are incorporated here by reference.

88.

Denied.

89.

Denied.

90.

Denied.

91.

Denied.

92.

Denied.

93.

No response required.

94.

Any allegations in the Complaint not specifically addressed above are denied.

WHEREFORE, Weatherford respectfully requests:

(a) that judgment be entered in her favor on all Counts of the

Complaint;

- (b) that the Court award Weatherford her costs and attorney's fees as permitted by law; and
- (c) that the Court grant such other relief as is just and proper.

Counterclaim

Margot Weatherford asserts the following counterclaims against Big Canoe Property Owners Association, Inc.:

Nature of the Action

1.

This is an action for declaratory relief arising from the Property Owner's Association's assertion that Weatherford's use of the term "Big Canoe" in connection with her real estate services violates the Property Owners Association's alleged trademark rights.

2.

Weatherford seeks a declaration that her conduct does not infringe any federally registered or alleged common-law trademark rights and therefore does not violate federal or state trademark law.

Parties

3.

Weatherford is an individual residing in the State of Georgia.

4.

Big Canoe Property Owners Association, Inc., is a Georgia corporation with a principal place of business in Pickens County, Georgia.

Jurisdiction and Venue

5.

This Court has subject-matter jurisdiction over these counterclaims under 28 U.S.C. §§ 1331 and 1338 because they arise under the Lanham Act, 15 U.S.C. §§ 1114 and 1125(a).

6.

This Court has supplemental jurisdiction over related state-law issues under 28 U.S.C. § 1367.

7.

This Court has authority to grant declaratory relief under 28 U.S.C. §§ 2201 and 2202.

8.

Venue is proper because the Property Owners Association initiated this action in this District and the counterclaims arise from the same transactions and occurrences alleged in the Complaint.

Statement of Facts

9.

Weatherford is a licensed real-estate agent and an independent

contractor affiliated with the nationally recognized real-estate brokerage eXp Realty and uses the trademark EXP REALTY under a license granted to her by eXp Realty, LLC.

10.

Weatherford conducts her real-estate business under the licensed house mark EXP REALTY, a brand that appears prominently on her signage, advertising, and marketing materials.

11.

Weatherford has never operated a business called “Big Canoe Realty,” “Big Canoe Brokerage,” or any similar name.

12.

Weatherford uses the words “Big Canoe” solely to describe the geographic area in Pickens County, Georgia, where she offers real estate services.

13.

Weatherford does not use “Big Canoe” as a trademark, trade name, or source identifier.

14.

Weatherford does not use the Property Owners Association’s logos, stylized designs, slogans, trade dress, or other proprietary branding elements.

15.

Weatherford does not state or imply that her services are sponsored by,

affiliated with, endorsed by, or connected to the Property Owners Association.

16.

The term “Big Canoe” is widely and extensively used by residents, businesses, real-estate professionals, community organizations, and service providers to refer to the geographic area itself.

17.

The Property Owners Association and its predecessors in interest have not maintained substantially exclusive use of the term in connection with real-estate-related services and have not consistently policed third-party use.

18.

Through longstanding tolerance of widespread geographic use, the Property Owners Association and its predecessors in interest have contributed to the circumstances under which “Big Canoe” functions among the consuming public primarily as the name of a place rather than as a distinctive source identifier.

19.

Consumers encountering Weatherford’s signage, advertising, or communications understand that EXP REALTY is the indicator of the source of services and that “Big Canoe” describes location.

20.

There is no evidence of actual consumer confusion.

21.

Weatherford has at all times acted in complete good faith and has never attempted to trade upon the Property Owners Association's goodwill to cause confusion or to suggest sponsorship, affiliation, or endorsement.

22.

The Property Owners Association nevertheless contends that Weatherford's conduct infringes its federally registered marks, infringes alleged common-law marks, constitutes false designation of origin under 15 U.S.C. § 1125(a), and violates the Georgia Deceptive Trade Practices Act.

23.

An actual and justiciable controversy therefore exists concerning Weatherford's right to use the term "Big Canoe" descriptively or in a non-trademark fashion in connection with her services.

Declaratory Judgment of Non-infringement

24.

The Property Owners Association claims for federal trademark infringement, false designation of origin, common-law trademark infringement, and violation of the Georgia Deceptive Trade Practices Act are premised on the allegation that Weatherford has used "Big Canoe" as a source identifier in a manner likely to cause confusion as to the origin, sponsorship, or affiliation of her services.

25.

Weatherford's real estate services are offered exclusively under the EXP REALTY house mark, which appears prominently on her signage, advertising, and marketing materials and clearly conveys the source of her services.

26.

Weatherford has not used "Big Canoe" as a trademark.

27.

When Weatherford uses the words "Big Canoe," she does so only to describe the geographic area in which she works; the term is used in its ordinary geographic sense and not to identify or distinguish her services from those of any other provider.

28.

Nothing in Weatherford's advertising or communications suggests that the Property Owners Association sponsors, endorses, or is affiliated with her services.

29.

Because Weatherford's use of "Big Canoe" does not function as a mark and does not perform a source-identifying role, the conduct alleged in the Complaint does not constitute trademark use within the meaning of the Lanham Act or Georgia law.

30.

Weatherford's use of the term is descriptive and geographically referential; she uses the name of the community in order to inform prospective clients where she offers services, and she has done so at all times in complete good faith.

31.

Neither the Lanham Act nor state law prohibits Weatherford's good-faith fair use of "Big Canoe" to describe the location of her services.

32.

Even apart from the absence of trademark use and Weatherford's fair use defense, the Property Owners Association cannot establish that Weatherford's conduct is likely to cause confusion.

33.

Consumers encountering Weatherford's signage or advertising see the dominant EXP REALTY house mark and understand that EXP REALTY is the indicator of the source of the services offered.

34.

The term "Big Canoe" is also widely used by residents, businesses, and real-estate professionals to refer to the geographic area itself, and the Property Owners Association and its predecessors in interest have not maintained substantially exclusive use of the term in connection with real-

estate-related services.

35.

The descriptive nature of the term, the widespread third-party use, the prominence of the EXP REALTY house mark, the absence of any representation or affiliation with the Property Owners Association, and the lack of any evidence of actual confusion all confirm that consumers are not likely to believe that Weatherford's services originate with or sponsored with the Property Owners Association.

36.

Accordingly, Weatherford's conduct does not infringe any registered or alleged common-law trademark rights of the Property Owners Association, does not constitute false designation of origin under 15 U.S.C. § 1125(a), and does not violate the Georgia Deceptive Trade Practices Act.

37.

A declaratory judgment is necessary to resolve this dispute and to clarify Weatherford's right to describe the area in which she offers services.

WHEREFORE, Weatherford respectfully requests that the Court enter judgment in her favor and:

- (a) declare that Weatherford's use of the term "Big Canoe" as alleged in the Complaint does not infringe any registered or alleged common-law trademark rights asserted by the Property Owners

Association;

- (b) declare that Weatherford's conduct does not constitute false designation of origin under 15 U.S.C. § 1125(a) and does not violate the Georgia Deceptive Trade Practices Act;
- (c) declare that Weatherford's use of "Big Canoe" to describe the geographic area in which she offers services is lawful fair use;
- (d) deny the Property Owners Association all requested injunctive relief, damages, and attorney's fees;
- (e) award Weatherford her costs and attorney's fees as permitted by law; and
- (f) grant Weatherford such other and further relief as the Court deems just and proper.

Respectfully submitted this 20th day of February 2026.

/s/ Marc B. Hershovitz
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