

IN THE UNITED STATES DISTRICT COURT
FOR THE 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

**BIG CANOE PROPERTY OWNERS' ASSOCIATION, INC.'S MOTION TO
DISMISS MARGOT WEATHERFORD'S COUNTERCLAIM**

Big Canoe Property Owners Association, Inc. (“Big Canoe”) moves to dismiss Defendant Margot Weatherford’s (“Weatherford”) Counterclaim pursuant to Federal Rule of Civil Procedure 12(b)(1) and submits to the Court that Weatherford’s single counterclaim for declaratory judgment of noninfringement should be dismissed as follows:

I. INTRODUCTION

The Court should decline to hear Weatherford’s declaratory judgment counterclaim. Weatherford’s counterclaim for declaratory judgment of non-infringement is a mirror-image of Weatherford’s denials and defenses. The claim will be fully resolved upon adjudication of Big Canoe’s claims for federal and state

trademark infringement. Accordingly, the Court should dismiss the claim as redundant.

II. PROCEDURAL AND FACTUAL BACKGROUND

On January 16, 2026, Big Canoe filed its Complaint (Dkt. 1) alleging the following causes of action:

- Count I: Infringement of Federal Registered Mark (15 U.S.C. § 1114);
- Count II: Infringement of Trademark, False Designation of Origin and Unfair Competition under the Lanham Act (15 U.S.C. § 1125);
- Count III: Common Law Trademark Infringement under Georgia Law and Under O.C.G.A. § 23-2-55;
- Count IV: Unfair Competition and Deceptive Trade Practices Based on Georgia Law;
- Count V: Injunctive Relief;
- Count VI: Attorney's Fees and Prejudgment Interest.

See generally Dkt. 1.

On February 20, 2026, Weatherford filed her Answer and Counterclaim (Dkt. 8). In its Answer, Weatherford denied liability and asserted numerous defenses. (Dkt. 8). Among her defenses, Weatherford asserted the following:

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

Dkt. 8 at pg. 1, Third Defense.

In addition to her defenses, Weatherford filed a mirror-image declaratory judgment counterclaim for non-infringement of Big Canoe's trademark. In her Counterclaim, Weatherford alleged that she "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." Dkt. 8 at Counterclaim, ¶ 2. In support of her declaratory judgment counterclaim, Weatherford alleges that she uses the words 'Big Canoe' solely to describe the geographic area in Pickens County, Georgia where she offers real estate services." *Id.* at ¶ 12; *see also* ¶ 27. Weatherford further alleges that she "does not use 'Big Canoe' as a trademark, trade name, or source identifier." *Id.* at ¶ 13 *see also* ¶ 28. Among other allegations, Weatherford claims that "[n]either the Lanham Act nor state law prohibits Weatherford's good faith fair use of 'Big Canoe' to describe the location of her services." *Id.* at ¶ 31. Weatherford also alleges that "[e]ven apart from the absence of trademark use and Weatherford's fair use defense [Plaintiff Big Canoe] cannot establish that Weatherford's conduct is likely to cause confusion." *Id.* at ¶ 33. In addition, Weatherford alleges that "[t]he 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. *Id.* at ¶ 35.

III. ARGUMENT AND CITATION TO AUTHORITIES

A. The Court Should Dismiss Weatherford's Single Count Declaratory Judgment Counterclaim

1. Legal Standard: Declaratory Judgment Jurisdiction

The Declaratory Judgment Act provides, in relevant part:

In a case of actual controversy within its jurisdiction, ... any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.

28 U.S.C. § 2201(a) (emphasis added). The Declaratory Judgment Act is procedural rather than substantive: “[i]t only gives the federal courts competence to make a declaration of rights; it does not impose a duty to do so.” *Brain Pharma, LLC v. Woodbolt Dist., LLC*, No. 12-60141, 2012 WL 12845116 at *1 (S.D. Fla. July 23, 2012). Thus, even if there is declaratory judgment jurisdiction, the Court can, in its discretion, refuse to hear the claim. *Knights Armament Co. v. Optical Sys. Tech.*, 568 F. Supp. 2d 1369, 1374 (M.D. Fla. 2008) (citing *MedImmune*, 549 U.S. 118. “Numerous courts have used their discretion to dismiss or strike redundant counterclaims asserted under the Declaratory Judgment Act.” *Mount v. America's Insured, LLC*, No. 6:22-cv-2051, 2023 WL 4455489 at *4 (M.D. Fla. July 11, 2023) (collecting cases). In determining whether to dismiss a redundant declaratory

judgment counterclaim, the Court must determine whether the counterclaim serves a useful purpose. *See e.g., id.; Medmarc Cas. Ins. Co. v. Pineiro & Byrd PLLC*, 783 F. Supp. 2d 1214, 1216–17 (S.D. Fla. 2011); *Gratke v. Andersen Windows, Inc.*, No. 10-963, 2010 WL 5439763, *2 (D. Minn. 2010).

2. Legal Standard for Trademark Infringement and Fair Use

“Proof of ‘likelihood of confusion’ is the sine qua non in actions for 15 U.S.C. § 1114 trademark infringement....” *Fila U.S.A., Inc. v. Kim*, 884 F. Supp. 491, 494 (S.D. Fla. 1995). The same is true for unfair competition under 15 U.S.C. § 1125. *See e.g., Board of Regents of the University System of Georgia v. Buzas Baseball, Inc.*, 176 F. Supp. 1338, 1350 (N.D. G.A. 2001).

Big Canoe’s state law claims are also grounded in the likelihood of confusion analysis. *See e.g., Optimum Techs., Inc. v. Home Depot U.S.A., Inc.*, 217 F. App’x 899, 902 n. 4 (11th Cir. 2007) (“[T]his Court has noted that a trademark infringement claim under Georgia law is reviewed under the same standards as a claim under the Lanham Act.”); *Univ. of Georgia Athletic Ass’n v. Laite*, 756 F.2d 1535, 1539 (11th Cir. 1985) (“[T]he standards governing most of the claims under Georgia law are similar, if not identical, to those under the Lanham Act.”).

To support her fair use defense, Weatherford must prove that her use is “(1) other than as a mark, (2) in a descriptive sense, and (3) in good faith.” *Bradford v. Compile Inc.*, No. 1:22-cv-02954-LLM, 2023 WL 6370914, *7 (N.D. Ga. April 7,

2023) (quoting *International Stamp Art, Inc. v. U.S. Postal Service*, 456 F.3d 1270, 1274 (11th Cir. 2006)).

3. Weatherford’s declaratory judgment counterclaim is redundant of Big Canoe’s infringement claims and Weatherford’s Third Defense.

Weatherford’s declaratory judgment claim for non-infringement is based on her fair use defense and a claim that there is no likelihood of confusion. (Dkt. 8 at Counterclaim, ¶¶ 24, 31, 35-36. This is exactly the type of mirror-image request for declaratory relief that courts have consistently held to lack the requisite useful purpose due to redundancy. *See .e.g., Sarkis’ Cafe, Inc. v. Sarks in the Park, LLC*, 55 F. Supp. 3d 1034, 1038 (N.D. Ill. 2014) (dismissing trademark non-infringement counterclaim because “once the Court rules on the merits of Count II of the Complaint, the question of whether Defendant infringed upon Plaintiff’s marks will be resolved in its entirety”); *see also Interscope Records v. Duty*, 2006 WL 988086, at *3 (D. Az. Apr. 14, 2006) (dismissing declaratory judgment claim in copyright action because “[t]he issue of copyright infringement will be decided by this court regardless of the declaratory judgment claim”). The issue of likelihood of confusion will be fully resolved upon adjudication of Big Canoe’s infringement and fair use claims (Counts I-IV). The issue of fair use will be fully resolved upon adjudication of Weatherford’s Third Defense, which claims fair use. Thus, Weatherford merely asks that the Court determine the exact same issues presented

in Big Canoe’s claims and her Third Defense: whether Weatherford’s admitted use of the term BIG CANOE infringes Big Canoe’s trademark rights by creating a likelihood of confusion or whether her use is a fair use under the federal and state trademark laws. *See e.g.*, Dkt. 8, Third Defense and Counterclaim, Prayer for Relief.

Indeed, by incorporating the allegations of her Counterclaim into her Third Defense, Weatherford admits that her Third Defense and Counterclaim are redundant and overlapping. Therefore, Weatherford’s assertion that a declaratory judgment “is necessary to resolve the dispute and clarify Weatherford’s rights” is misplaced. Rather, resolution of Big Canoe’s claims and Weatherford’s Third Defense will fully resolve the dispute and resolve all issues raised in Weatherford’s Counterclaim. Therefore, the Court should dismiss the Counterclaim. *See e.g.*, *Mount*, 2023 WL 445589 at * 4 (dismissing counterclaim for declaratory judgment of non-infringement because it “would not serve a useful purpose and is merely duplicative and redundant of” Plaintiff’s claim for trademark infringement); *Miracle 7 v. Halo Couture, LLC*, No. 13-61643, 2014 WL 11696708 at *3 (S.D. Fla. Jan. 17, 2014) (same); *Sarkis’ Cafe, Inc. v. Sarks in the Park, LLC*, 55 F. Supp. 3d 1034, 1038 (N.D. Ill. 2014) (dismissing trademark non-infringement counterclaim because “once the Court rules on the merits of Count II of the Complaint, the question of whether Defendant infringed upon Plaintiff’s marks will be resolved in its entirety”); *Josie Maran Cosmetics, LLC v. Shefa Group, LLC*, 624 F. Supp. 3d 281, 288-89

(E.D.N.Y. 2022) (“where there is a cause of action dealing with intellectual property infringement, and the declaratory judgment counterclaim is limited to intellectual property non-infringement, it is dismissed.” (collecting cases)); *Continuum Group LLC v. 666 Performance LLC*, No. 24-civ-5834, 2025 WL 1489255 *2 (S.D.N.Y. May 23, 2025) (dismissing duplicative counterclaim for non-infringement).

IV. CONCLUSION

Big Canoe requests that the Court decline to hear Weatherford’s redundant counterclaim because resolution of Big Canoe’s claims and Weatherford’s Third Affirmative Defense will fully resolve all issues raised in the counterclaim.

Respectfully submitted, March 13, 2026.

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing pleading complies with the font and point selections approved by the Court in Local Rule 5.1C. This pleading has been prepared in Times New Roman 14-point font.

Respectfully submitted this 13th day of March, 2026

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