

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

Big Canoe Property Owners  
Association, Inc.,

Plaintiff,

v.

Margot Weatherford,

Defendant.

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

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**Margot Weatherford's Response to Big Canoe Property  
Owners Association, Inc.'s Motion to Dismiss Her  
Counterclaim**

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The Court should deny Big Canoe Property Owners Association, Inc.'s motion because Margot Weatherford's declaratory counterclaim serves a legitimate and important purpose and dismissing it would accomplish nothing.<sup>1</sup>

The Property Owners Association asked the Court to dismiss

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<sup>1</sup> The Property Owners Association has not filed the Certificate of Interested Persons and Corporate Disclosure Statement required by Rule 7.1 of the Federal Rules of Civil Procedure and Local Rule 3.3. Because the Certificate of Interested Persons and Corporate Disclosure Statement serves as a basis for possible recusal, the Property Owners Association's motion is asking the Court to address the merits before determining whether it's appropriate for the Court to do so.

Weatherford’s counterclaim for declaratory judgment of non-infringement on the theory that the counterclaim is redundant. The Property Owners Association misunderstands the role of a declaratory counterclaim and its motion should be rejected.

The Property Owners Association moves under Rule 12(b)(1), which authorizes dismissal for lack of subject-matter jurisdiction. But that is the wrong rule. Subject-matter jurisdiction over Weatherford’s counterclaim is not in doubt—the counterclaim arises under federal trademark law and presents an actual controversy between the parties. The Property Owners Association’s real argument is not that the Court lacks power to hear the counterclaim but that the Court should exercise its discretion under the Declaratory Judgment Act to decline to do so. That is a discretionary judgment, not a jurisdictional one.

Rule 12(f) of the Federal Rules of Civil Procedure allows the Court to “strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.”<sup>2</sup> The Property Owners Association seeks “a drastic remedy to be resorted to only when required for the purposes of justice.”<sup>3</sup> “Rule 12(f) motions to strike are generally disfavored.”<sup>4</sup> Courts enjoy

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<sup>2</sup> FED. R. CIV. P. 12(f).

<sup>3</sup> *Manhattan Const. Co. v. McArthur Elec., Inc.*, No. 106-CV-1512-WSD,  
(continued...)

broad discretion in determining whether to grant or deny Rule 12(f) motions because of the practical difficulty of deciding cases without a factual record.<sup>5</sup> It is “the generally accepted view that a motion to strike for redundancy ought not to be granted in the absence of a clear showing of prejudice to the movant.”<sup>6</sup> The Property Owners Association does not argue that it would be prejudiced if the allegedly duplicative counterclaim remains. Motions like the one filed by the Property Owners Association are “often ... considered purely cosmetic or ‘time wasters.’”<sup>7</sup>

“Modern litigation is too protracted and expensive for the litigants and the court to expend time and effort pruning or polishing the pleadings in [the manner requested by the Property Owners Association].”<sup>8</sup>

Weatherford’s counterclaim seeks a declaration that her conduct does not infringe any of the trademark rights asserted by the Property Owners Association and does not violate federal or Georgia trademark law. That

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<sup>3</sup>(...continued)  
2007 WL 295535, at \*6 (N.D. Ga. Jan. 30, 2007).

<sup>4</sup> *Clark v. Atlanta Univ., Inc.*, 65 F.R.D. 414, 414 (N.D. Ga. 1974) (citing 2A Moore’s Federal Practice ¶ 12.21 (1968)).

<sup>5</sup> *Manhattan Const. Co.*, 2007 WL 295535, at \*6.

<sup>6</sup> 5C FED. PRAC. & PROC. CIV. § 1382 (3d ed.).

<sup>7</sup> *Manhattan Const. Co.*, 2007 WL 295535, at \*6.

<sup>8</sup> *Id.*

request for relief is not redundant of Weatherford’s denials or affirmative defenses. It seeks affirmative relief: a binding declaration concerning Weatherford’s right going forward to use the words “Big Canoe” descriptively to identify the geographic area in which she offers real-estate services.

The Property Owners Association alleges that Weatherford’s use of “Big Canoe” constitutes trademark infringement and unfair competition. Weatherford uses the term solely in a geographic and descriptive sense while conducting her business under the EXP REALTY brand. Her counterclaim simply asks the Court to resolve that controversy definitively by declaring that Weatherford’s conduct is lawful.<sup>9</sup>

There is nothing improper about pleading a declaratory counterclaim in these circumstances. The Declaratory Judgment Act gives federal courts discretion to determine whether declaratory relief should be entertained.<sup>10</sup> The existence of overlapping factual issues does not render a declaratory

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<sup>9</sup> See *Mount v. Am.’s Insured, LLC*, No. 6:22-CV-2051-PGB-EJK, 2023 WL 4455489, at \*4 (M.D. Fla. July 11, 2023) (stating that the “‘mere exoneration from infringement does not always meet the necessities of a wrongfully accused defendant’ because ‘in a patent or trademark infringement suit, finding the defendant innocent of infringement’ does not necessarily ‘determine issues of,’ for example, ‘title, validity, or the scope of the intellectual property claims,’ so ‘the Declaratory Judgment Act furnishes the defendant with the means of escape’”).

<sup>10</sup> See FED. R. CIV. P. 12(f) (providing that “[t]he court *may* strike ...” [emphasis added]).

claim redundant.<sup>11</sup> To the contrary, the purpose of declaratory relief is to allow a party whose conduct has been challenged to obtain a clear judicial determination of its rights.<sup>12</sup> Weatherford is therefore entitled to seek that determination here.

The Property Owners Association’s argument rests on the notion that the counterclaim should be dismissed because the same issues will be litigated through its infringement claims and Weatherford’s defenses. But that argument would eliminate declaratory counterclaims in nearly every intellectual-property case. If accepted, it would mean that declaratory counterclaims could almost never be pleaded in intellectual-property disputes

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<sup>11</sup> See *Mount*, 2023 WL 4455489, at \*4 (discussing why the “mere exoneration from infringement does not always meet the necessities of a wrongfully accused defendant”).

<sup>12</sup> See *id.*; see also Russell B. Hill, Jesse D. Mulholland, *Effective Use of the Declaratory Remedy in the Patent Context*, 13 TEX. INTELL. PROP. L.J. 43, 63 (2004) (“One advantage of responding with declaratory judgment counterclaims is gaining some degree of control over the timing and form of dismissal. Once a patent defendant has answered and counterclaimed, the patentee cannot dismiss the action without negotiating a dismissal of the counterclaims.”); cf. *ProCentury Ins. Co. v. Harbor House Club Condo. Ass’n, Inc.*, 652 F. Supp. 2d 552, 556–57 (D.N.J. 2009) (“In instances where the declaratory relief is based on contract interpretation, courts are reluctant to dismiss a counterclaim for declaratory relief as redundant even when it is a near ‘mirror image’ of the complaint, because a ‘ruling adverse to the plaintiff on plaintiff’s claim would merely result in a judgment that plaintiff was not entitled to the relief requested; although it might logically follow from that judgment that defendants’ interpretation of the contract was the correct one, defendants would not be entitled to a judgment to that effect unless they specifically requested one.”).

because the same factual issues will always overlap. Yet such counterclaims are routine<sup>13</sup> because they ensure that the defendant can obtain a final determination of non-infringement rather than merely defeat liability on the plaintiff's claims.<sup>14</sup>

That distinction matters here. Weatherford's counterclaim asks the Court to declare that her conduct does not infringe the Property Owners Association's alleged marks and that her descriptive use of the words "Big Canoe" is lawful. That declaration would provide clarity and finality regarding the parties' rights. The Property Owners Association's claims, by contrast, seek to impose liability and obtain injunctive relief. Even if the Court ultimately rejected the Property Owners Association's claims, that

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<sup>13</sup> See e.g., *Boigris v. EWC P&T, LLC*, 7 F.4th 1079 (11th Cir. 2021) (plaintiff brought action challenging decision by Trademark Trial and Appeal Board, defendant filed counterclaim seeking declaratory judgment affirming the TTAB decision); *Royal Palm Props., LLC v. Pink Palm Props., LLC*, 38 F.4th 1372, 1374 (11th Cir. 2022) (Royal Palm sued Pink Palm alleging violations of the Lanham Act, 15 U.S.C. § 1114; Pink Palm responded by filing five counterclaims, including one seeking a declaratory judgment of non-infringement and its non-infringement counterclaim proceeded to trial).

<sup>14</sup> See *Mount*, 2023 WL 4455489, at \*4 (discussing why the "mere exoneration from infringement does not always meet the necessities of a wrongfully accused defendant"); see also *Effective Use of the Declaratory Remedy in the Patent Context*, 13 TEX. INTELL. PROP. L.J. at 63 ("One advantage of responding with declaratory judgment counterclaims is gaining some degree of control over the timing and form of dismissal. Once a patent defendant has answered and counterclaimed, the patentee cannot dismiss the action without negotiating a dismissal of the counterclaims.").

would not necessarily provide the same affirmative declaration of Weatherford's rights that the counterclaim seeks.<sup>15</sup> The declaratory judgment that Weatherford seeks would eliminate the Property Owners Association's ability to hold its trademark registrations over her head as a continuing threat each time Weatherford markets her business helping people buy and sell real estate in Big Canoe, Georgia.

The counterclaim also serves an additional and important function. Without it, the Property Owners Association would retain the ability to attempt to avoid an unfavorable ruling by dismissing or narrowing its own claims at a strategic moment in the litigation. A declaratory counterclaim prevents that maneuver.<sup>16</sup> It ensures that the Court can resolve the parties'

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<sup>15</sup> See *Mount*, 2023 WL 4455489, at \*4 (discussing why the “mere exoneration from infringement does not always meet the necessities of a wrongfully accused defendant”); cf. *ProCentury Ins. Co.*, 652 F. Supp. 2d at 556–57 (“In instances where the declaratory relief is based on contract interpretation, courts are reluctant to dismiss a counterclaim for declaratory relief as redundant even when it is a near ‘mirror image’ of the complaint, because a ‘ruling adverse to the plaintiff on plaintiff's claim would merely result in a judgment that plaintiff was not entitled to the relief requested; although it might logically follow from that judgment that defendants’ interpretation of the contract was the correct one, defendants would not be entitled to a judgment to that effect unless they specifically requested one.”).

<sup>16</sup> See *Effective Use of the Declaratory Remedy in the Patent Context*, 13 TEX. INTELL. PROP. L.J. at 63 (“One advantage of responding with declaratory judgment counterclaims is gaining some degree of control over the timing and form of dismissal. Once a patent defendant has answered and counterclaimed, the patentee cannot dismiss the action without negotiating a  
(continued...)”)

dispute on the merits and determine whether Weatherford's conduct is lawful, regardless of whether the Property Owners Association later decides it no longer wishes to pursue its claims.<sup>17</sup> Weatherford is entitled to seek that determination now, rather than leave the question unresolved or subject to future litigation.

The Property Owners Association's motion would accomplish nothing useful, and there is no reason for the Court to exercise its discretion to grant it. Granting it would not narrow the issues, reduce discovery, simplify trial, or affect the evidence that will determine the outcome. The motion asks the Court to eliminate a counterclaim that harms no one and burdens nothing. In other words, the motion is a time waster.

The counterclaim serves a legitimate purpose: it seeks a definitive declaration that Weatherford's conduct does not violate the trademark rights asserted by the Property Owners Association. Because Weatherford's counterclaim serves a legitimate and important purpose—and because granting the motion would accomplish nothing—the Court should deny it.

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<sup>16</sup>(...continued)  
dismissal of the counterclaims.”).

<sup>17</sup> *See id.*

Respectfully submitted this 26th day of March 2026.

/s/ Marc B. Hershovitz

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