

ASHLEY DAVIS

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PLEG235 Portfolio Project

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Predictive Memo

Memo

To: Lisa Howard, Attorney

From: Ashley Davis , Paralegal

Date:

Re: SLB-Removal to Federal Court- Predictive Memo

### **Facts:**

Eight months ago, our client Christine Donnelly reached out, concerned about a potential trademark infringement lawsuit that she has been threatened with. Mrs. Donnelly owns Sweet Lorraine's Bakery (SLB), a family-owned business located in Charlotte, North Carolina, that specializes in French and Italian-inspired pastries, cakes, cookies and artisan breads. They run one physical store location and have a website for informational purposes, but no online business operations. Advertising primarily occurs through the bakery's website, Facebook page, **Twitter** account, and word of mouth.

The client received an email from Greg Sawyer who along with his wife, runs Sweet Lorraine's Café and Bar in Detroit, specializing in American fare and featuring some baked goods. Sweet Lorraine's Café and Bar has a website through which they sell salad dressings and apparel items nationally. The Sawyers also own "Sweet Lorraine's Mac n' Cheez Kitchen," establishments with two locations in Detroit suburbs. They are looking into extending that franchise into North Carolina, no location has been determined.

Mr. Sawyer has contacted SLB regarding their usage of the name "Sweet Lorraine's," He claims that SLB's use of the name infringes upon his **trademark** for restaurants, catering, and baking services. Mr. Sawyer has threatened legal action against SLB if they do not change their business name. They own a trademark for the phrase "Sweet Lorraine's" for restaurants, catering, and baking services across the United States, verified by the United States Patent and Trademark Office. We recommended that the client not change the name of her business and to stand firm. Two months ago, she received an email from Attorney Marsha Jabber, the attorney for the Sawyers, and attached was a Summons and Complaint against SLB filed in Wayne County Circuit Court in Michigan. The client nor any of the employees of SLB was served the summons personally, as no attempt was made at legitimate service of process. The attorney for Mr. Sawyer has wrongly filed this lawsuit in the Michigan State Court and not the federal district court.

### **Question Presented:**

- 1.What is our burden on a motion to remove to federal court? (What must we prove?)
- 2.Can we meet our burden of proof, is so how? (will we be successful and why?)

### **Short Answer?**

- 1.We must prove the existence of subject matter jurisdiction.
2. Yes, Federal courts have jurisdiction over trademark claims.

### **Analysis:**

The Lanham Act is a federal law that governs the registration and protection of trademarks. It grants jurisdiction to federal courts over claims related to trademarks, rather than state courts. Under 28 U.S.C.S. § 1441, defendants have the right to remove any **civil action** from a state court to a federal court if the case involves the US Constitution or a federal **statute**, and if there is diversity jurisdiction, meaning the plaintiff and **defendant** are from different states and the amount in controversy is at least \$75,000. the Lanham Act and the removal provisions under 28 U.S.C.S. § 1441 is highly relevant to our case involving Sweet Lorraine's Bakery, LLC (SLB) and Sweet Lorraine's Systems, LLC. Given that the dispute involves allegations of trademark infringement, the Lanham Act is likely to be a central legal basis for our case. In our case, where Sweet Lorraine's Bakery, LLC (SLB) and Sweet Lorraine's Systems, LLC are in different states (North Carolina and Michigan, respectively), and the potential financial stakes exceed \$75,000, diversity jurisdiction is a relevant factor supporting our motion to remove. The Lanham Act's federal nature and the removal provisions under 28 U.S.C.S. § 1441 align with our strategy to aggressively defend SLB's, providing the federal legal framework for **trademark** claims, and the removal provisions reinforce our ability to move the case to a federal court.

To remove a **civil action** under U.S.C. Code §1446, a filing must be made within 30 days of receiving a complaint. The federal court requires the submission of documents that include a brief statement explaining the grounds for removal, along with copies of all process, pleadings, and orders served to the **defendant**. Additionally, a copy of the notice must be filed with the state court and all other parties involved must be notified of the removal. The removal of a **civil action** under 28 U.S.C. Code §1446 is relevant to our case involving Sweet Lorraine's Bakery, LLC (SLB) and Sweet Lorraine's Systems, LLC. The process outlined aligns with our strategy to move the case from the Michigan State court to the Federal Court.

In the case of Passalacqua Corp V. Restaurant Management II, Passalacqua Corp was known as "Mario's" in Detroit, Michigan. Restaurant Management II operates under the trade name "East Side Mario's" an Italian Restaurant franchise. Mario's claimed that the presence of a similar name— specifically, "East Side Mario's" caused confusion among consumers and adversely affected its business and reputation. The **defendant** removed the case to federal court, contending that federal trademark law applies, particularly highlighting the registration of "East Side Mario's" as a service mark with the United States Patent and Trademark Office in 1989. The case established that federal district courts have the original jurisdiction in trademark infringement cases affecting the removal of cases to federal court. *Passalacqua Corp. v. Rest. Mgmt. II*, 885 F. Supp. 154 (E.D. Mich. 1995)

The legal case of Gully v. First Nat. Ban provides insights into the principles governing the removal of cases from state court to federal court based on federal question jurisdiction. In this case, StateTax Collector Gully sued the First National Bank in Meridian to recover state taxes owed by an insolvent national bank. The case was initially in state court but moved to federal court. However, the Supreme

Court ruled that federal jurisdiction was not called for because the dispute did not involve essential elements under the Constitution or U.S. laws. As a result, the Court reversed the dismissal of the lawsuit and instructed it to be remanded to the state court. The key criterion was the absence of a federal right or immunity as an essential element in the cause of action. To remove a case from state court to federal court, the defendant must prove that the action "arises under" the Constitution or laws of the United States. The general approach for deciding whether a claim falls under federal law involves examining the plaintiff's complaint through the "well-pleaded complaint" rule, as established in *Gully v. First Nat'l Bank*. According to this rule, the court assesses whether the federal question is presented in the face of the Plaintiff's complaint, rather than arising as a defense or counterclaim. The "well-pleaded complaint" rule is relevant to our case strategy for Sweet Lorraine's Bakery, LLC, where we are seeking removal to federal court based on the federal nature of trademark law, specifically the Lanham Act. In the Sweet Lorraine's Bakery, LLC case, the federal question arises from the trademark dispute, and we aim to demonstrate that this federal question is inherent in SLB's business practices as outlined in the complaint. Like *Gully*, our argument for removal is centered on the fact that the federal question (trademark Infringement under the Lanham Act) is evident on the face of the complaint. This aligns with the "well-pleaded complaint" rule and supports our contention that federal jurisdiction is appropriate.

In our case, we are considering diversity of citizenship as one of the arguments for removal. This case emphasizes the importance of meeting the criteria for diversity jurisdiction when seeking removal. *GM Co. v. Dinatale* provides insights into the principles of diversity jurisdiction, the importance of assessing authority at the time of removal, and the impact of the next events on jurisdictional determinations. These considerations are relevant as we formulate our arguments for removal in the Sweet Lorraine's Bakery LLC case.

### **Conclusion**

The lawsuit filed against Sweet Lorraine's Bakery, LLC (SLB) for trademark infringement has similarities to the *Gully v. First National Bank* case, where federal authority played a crucial role. *Gully* established that for removal to federal court, a federal right or immunity is needed. SLB's argument for removal is based on the principles of *Gully*, asserting that trademark law, particularly the Lanham Act, is a federal issue that justifies removal. The "well-pleaded complaint" rule from *Gully* guides SLB's argument for federal jurisdiction, which focuses on the plaintiff's complaint's presence of a federal question. The importance of meeting criteria, such as diversity jurisdiction at the time of removal, is highlighted in *GM Co. v. Dinatale*. These precedents provide valuable insights and strategies for SLB as they try to move the case to federal court while addressing the jurisdictional elements of the trademark dispute.

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Request for Inspection

## REQUEST FOR INSPECTION

4. Financial records reflecting any damages claimed by Sweet Lorraine's Systems, LLC.
5. Marketing materials, advertisements, or promotional items related to the trademark in dispute.
6. Any emails, letters, memos, or other communications involving Christine Donnelly in relation to SLB, its trademarks, or the subject matter of this litigation
7. Financial statements, accounting records, and other financial documents related to SLB's business activities.
8. Copies of any and all statements made by Christine Donnelly, whether written or recorded, pertaining to Sweet Lorraine's Bakery, LLC (SLB)
9. Calculation of the damages claimed in each category. Additionally, documents and evidence used for these calculations, including materials related to the extent of their injuries.
10. All the names, contact number, address and statements of the witnesses that may have discoverable information the plaintiff plans on using.

Respectfully submitted,  
Lisa Howard, 552121  
Lhoward@hmls.com  
Howard and Mills Law Firm  
Attorney for Defendant  
Sweet Loraine's Bakery, LLC



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Attorney Affidavit

# ATTORNEY AFFIDAVIT

6. The basis for removal is diversity jurisdiction pursuant to 28 U.S.C. § 1332.
7. Defendant denies all claims in complaint.
8. The calculation of attorney fees and legal basis for awarding attorney fees, if any are as follows:
9. The total amount is no more than 15% of the total principal and interest. I declare under penalty of perjury that the foregoing is true and correct, to the best of my knowledge, information, and belief.

I declare under penalty of perjury that the foregoing is true and correct, to the best of my knowledge, information, and belief.

Respectfully submitted,  
Lisa Howard, 552121  
Lhoward@hmills.com  
Howard and Mills Law Firm  
Attorney for Defendant  
Sweet Loraine's Bakery, LLC

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Answer to Complaint

ANSWER TO COMPLAINT

Michigan when the Defendant opened her doors. The Defendant was not aware of the trademark of “Sweet Lorraine’s.” The Defendant was also not aware of any advertising from the Plaintiff’s business.

- The Defendant denies the allegations that were in paragraphs 14 and 15. The Defendant has only been operating for 8 months now, in the state of North Carolina.

The Defendant admits the allegations that are in paragraph 16. The Defendant was not aware of the name “Sweet Lorraine’s” that is in the state of Michigan.

- The Defendant denies the allegations that are in paragraphs 17, 18, and 19. The Plaintiff directly contacted the Defendant. The Plaintiff’s attorney emailed the complaint to the Defendant. The Defendant does not sell any products on her online website or through **social media**. The Defendant was also not aware at the time of “Sweet Lorraine’s” in the state of Michigan. The Plaintiff does not operate in the state of North Carolina. The Defendant is an established business so there will be no confusion.
- The Defendant lacks enough information to form a belief on the allegations that are set forth in paragraphs 20, 20, and 22. The Defendant was not aware of the Plaintiff’s business at the time.

## **DEFENDANT’S ANSWER TO PLAINTIFF’S FIRST CAUSE OF ACTION**

### **TRADEMARK INFRINGEMENT – 15 U.S.C. § 1114**

The Plaintiff did not supply sufficient evidence to support a cause of action as per 15 U.S.C. § 1114. The Plaintiff’s business is not a well-known or famous name, and the people in North Carolina, where the Defendant’s business is located, have no knowledge of the Plaintiff’s business. Moreover, as the Plaintiff’s business location is over 600 miles away from the Defendant’s business, there is no sign of any confusion between the two. Additionally, the

ANSWER TO COMPLAINT

Defendant and the Plaintiff are not competitors, and there is no evidence to suggest that the Defendant has suffered any damage. And the Defendant has not violated 15 U.S.C. § 1114.

**DEFENDANT'S ANSWER TO PLAINTIFF'S SECOND CAUSE OF ACTION –  
FEDERAL TRADEMARK DILUTION – 15 U.S.C. § 1125 (C)**

The plaintiff's claim under 15 U.S.C. § 1125 (c) cannot be sustained because they did not show that their mark is famous, distinctive, inherently, or through acquired distinctiveness.

Additionally, they failed to show that the defendant's use of their own name is likely to cause dilution by blurring or tarnishment of the plaintiff's famous mark. Furthermore, under 15 U.S.C. § 1125 (C) (2) (A) i, ii, and iii, the plaintiff could not prove that their mark is indeed famous. The fact that the plaintiff's mark is not even known within the State of North Carolina further weakens their case.

**DEFENDANT'S ANSWER TO PLAINTIFF'S THIRD CAUSE OF  
ACTION-FALSE DESIGNATION OF ORIGIN**

the plaintiff failed in stating a valid legal claim under 15 U.S.C. § 1125(a), as the defendant did not use any false designation of origin. The defendant set up their own business and reputation without any wrongful conduct, and there is no sign that the customers of both businesses would be confused.

Therefore, it appears that the plaintiff did not suffer any damages in this situation.

**DEFENDANT'S ANSWER TO PLAINTIFF'S STATE OF MICHIGAN COMMON  
LAW GROUNDS**

The Defendant's business is solely located in North Carolina and has never engaged in any business activities in Michigan. The State of Michigan lacks personal authority over the Defendant, Michigan's common law is not relevant to this case.

**WHEREFORE**, I, Lisa Howard, on behalf of the Defendant pray the court to levy sanctions against the Attorney of the petitioner and exclusion of this document piece of evidence from the trial in accordance with the above-mentioned Federal Rules of Civil Procedures.

Respectfully submitted,  
Lisa Howard, 552121  
Lhoward@hmills.com  
Howard and Mills Law Firm  
Attorney for Defendant  
Sweet Loraine's Bakery, LLC



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Trial Brief to Exclude Evidence

## TRIAL BRIEF TO EXCLUDE EVIDENCE

phrase "Sweet Lorraine's" for all restaurants, catering, and baking services in the United States. The trademark has been confirmed with The United States Patent and Trademark Office (USPTO). He threatened legal action against our client unless she changes the name of her business or ceases the use of the trademark phrase. Sweet Lorraine's Bakery, LLC ("SLB") is a family-owned business located in Charlotte, North Carolina. They specialize in French and Italian-inspired pastries, cakes, cookies, and artisan breads. SLB operates a store location and has a website, Facebook page, and Twitter account for advertising purposes only. Mr. Sawyer and his wife are also venturing into franchising macaroni and cheese establishments called "Sweet Lorraine's Mac n' Cheez Kitchen." They currently have two locations in Detroit suburbs and have received interest from an individual in North Carolina about extending their franchise into the state. The client reached out wanting advice on whether they should change the name of the business or stand firm, we recommended that she not change the name, and to stand firm. Two months later, she received an email from Marsha Jabber an attorney for Sawyer's, with a Summons and Complaint against SLB that was filed in Wayne County Circuit Court in the state of Michigan. It appears that counsel for Mr. Sawyer has wrongly filed the lawsuit in Michigan State Court, not in federal district court. Mrs. Donnelly nor any employees of the client was personally served with the Summons and Complaint.

## **ARGUMENT**

According to USCS Fed Rules of Civ Proc Rule 26(a)(1)(A)(ii) , the plaintiff was compelled to disclose the statement of Christine Donnelly. Additionally, per USCS Fed Rules of Civ Proc Rule 34 (b)(2)(A), the plaintiff had thirty days to reveal the statement, despite having it in their possession for several months. However, the plaintiff did not disclose the statement until one

TRIAL BRIEF TO EXCLUDE EVIDENCE

week before the trial, which is considered a violation of their duty to disclose. USCS Fed Rules of Civ Proc Rule 37(C) (1) holds: “Failure to Disclose or Supplement. If a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless ....” There is justification for the plaintiff’s action and the plaintiff’s failure to abide by the rules of discovery is not harmless. The statement should be excluded. USCS Federal Rules of Civil Procedure Rule 34 (a)(4) , any evasive or incomplete disclosure, answer, or response should be treated as a failure to disclose, answer, or respond. The plaintiff’s behavior of waiting until just one week before the trial to turn over the defendant’s statements is considered evasive and an incomplete disclosure. This kind of tactic is not in compliance with the Rules of Discovery and could be considered a failure to disclose. The plaintiff’s intention to use the statement to surprise the defendant during the trial is improper and unfair. USCS Federal Rules of Civil Procedure Rule 37(C)(1), if a party does not provide required information or identify a witness as per Rule 26(a) or (e), the party cannot use that information or witness to supply evidence at a hearing, motion, or trial, unless the failure was justified or harmless. In this case, the plaintiff’s failure to abide by the rules of discovery is not harmless, and their sole intention seems to be attacking the defendant. Therefore, there is justification for the defendant’s action, and the statement should be excluded.

## **CONCLUSION**

**WHEREFORE**, for good cause shown, the Defendant requests that all statements made by Debbie Dyer, that the Plaintiff did not disclose, be excluded from trial.

Respectfully submitted,  
Lisa Howard, 552121  
Lhoward@hmills.com  
Howard and Mills Law Firm  
Attorney for Defendant  
Sweet Loraine's Bakery, LLC

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Notice of Removal of Civil Action

NOTICE OF REMOVAL OF CIVIL ACTION

Pursuant to 28 U.S.C. §§ 1441 and 1446, SLB respectfully requests the removal of this case to the United States District Court for the Eastern District of Michigan. The federal nature of the Lanham Act's claims and the diversity of citizenship between the parties provide a sound basis for removal.

Respectfully submitted,  
Lisa Howard, 552121  
Lhoward@hmls.com  
Howard and Mills Law Firm  
Attorney for Defendant  
Sweet Loraine's Bakery, LLC



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Supporting Brief

The defendant, Sweet Lorraine's Bakery, located in Charlotte, North Carolina, received an email from Mr. Greg Sawyer, owner of Sweet Lorraine's Café and Bar in Detroit, Michigan. Mr. Sawyer claimed a potential trademark infringement with the phrase "Sweet Lorraine's.", he threatened legal action unless our client changed the name of her business or ceased the use of the trademark phrase. Sweet Lorraine's Bakery, LLC. After advising against changing the name, the client received an email from Mr. Sawyer's attorney, Marsha Jabber, with a summons and

SUPPORT OF MOTION

complaint filed in Wayne County Circuit Court in Michigan. The lawsuit was mistakenly filed in state court instead of federal district court.

## Argument

- Federal Jurisdiction:

Under U.S.C.S. § 1441, defendants have the power to move a civil case from a state court to a federal court if the case involves the US Constitution or a federal statute. In our case involving Sweet Lorraine's Bakery, LLC (SLB) and Sweet Lorraine's Systems, LLC, the Lanham Act, a federal law governing trademark, and the removal provisions under 28 U.S.C.S. § 1441 are highly relevant. In our situation, the Lanham Act is the federal statute at play, reinforcing our legal grounds for removal.

The Lanham Act provides federal jurisdiction over trademark-related matters. It grants federal courts the authority to resolve claims involving trademarks, trade dress, false advertising, and unfair competition. claims arising under federal law, specifically, trademark infringement claims governed. The Lanham Act is the federal statute at play, reinforcing our legal grounds for removal.

- Diversity of Citizenship

The Passalacqua Corp v. Restaurant Management II clearly establishes that federal district courts have original jurisdiction in such cases, the defendant successfully removed the case to federal court, emphasizing the federal nature of trademark law. This supports the

argument that federal courts have jurisdiction over trademark disputes, reinforcing the removal to Federal court.

For diversity jurisdiction to apply, there must be complete diversity of citizenship among the parties. This means that no plaintiff should be a citizen of the same state as any defendant. In our case, where Sweet Lorraine's Bakery, LLC (SLB) and Sweet Lorraine's Systems, LLC are in different states (North Carolina and Michigan), and the potential financial stakes exceed \$75,000, diversity jurisdiction is a relevant factor supporting our motion to remove.

The diversity jurisdiction criteria set forth in 28 U.S.C.S. § 1441 are met in our case, as SLB and Sweet Lorraine's Systems, LLC are in different states and the financial stakes exceed \$75,000. Considering these factors, we believe that transferring the case to a federal court is the most appropriate course of action, and we urge you to support our motion for transfer.

The ruling in *Gully v. First Nat. Bank* by the Supreme Court carries significant weight in deciding the jurisdiction of a federal court. This ruling emphasizes that a plaintiff's cause of action must involve a federal right or immunity for federal jurisdiction to be warranted. In our case, the plaintiff's claims are based on the Lanham Act, which is a federal law that governs trademarks. This makes it the federal right that justifies the removal of the case to a federal court.

The motion to remove the case of Sweet Lorraine's Systems, LLC (Plaintiff) v. Sweet Lorraine's Bakery, LLC (Defendant) from state to federal court is built on a strong foundation of legal principles and strategic considerations. By relying on established legal precedents, such as *Passalacqua Corp V. Restaurant Management II*, we highlight the federal nature of trademark disputes and the appropriateness of federal courts for their resolution. The case law we cite

SUPPORT OF MOTION

establishes federal district courts' original jurisdiction in trademark infringement cases, making a strong case for seeking a federal forum. This argument is further reinforced by the federal framework established by the Lanham Act, which governs trademarks at the federal level. Moreover, the diversity of citizenship analysis supports our argument for removal, as the parties involved are from different states, meeting the criteria for diversity jurisdiction. The success of Passalacqua Corp in removing a similar case from federal court further strengthens the validity of this legal strategy.

Respectfully submitted,  
Lisa Howard, 552121  
Lhoward@hmill.com  
Howard and Mills Law Firm  
Attorney for Defendant  
Sweet Loraine's Bakery, LLC

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Portfolio Reflection

Ashley Davis  
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PLEG 235 Portfolio Project Reflection

The portfolio project that I spent the semester working on was one that I enjoyed very much. It gave me the information and knowledge that I needed to be able to professionally write important legal documents such as intra-office memos, client letters, and contracts. Seeing how I will start in the paralegal field, these documents are used often in the legal world making them imperative to know. This project gave me the opportunity to compel each one of these legal documents piece by piece and receive constructive feedback to make them even better. This course was one that I would absolutely recommend to almost any student looking to become a paralegal.

I will use the knowledge I have gained from this course in my future career by making sure that I am always following my legal ethics and responsibilities as a paralegal and one day as a supervising attorney. I am very grateful for being able to get the opportunity to take this course and will apply the information now and in my future.