

**Angel Seller, LLC v Fossil Group, Inc.**

2023 NY Slip Op 33223(U)

September 18, 2023

Supreme Court, New York County

Docket Number: Index No. 157534/2022

Judge: Mary V. Rosado

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. MARY V. ROSADO PART 33M**

*Justice*

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ANGEL SELLER, LLC,

Plaintiff,

- v -

FOSSIL GROUP, INC., FOSSIL PARTNERS, L.P.,  
MICHAEL KORS, L.L.C.

Defendant.

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INDEX NO. 157534/2022

MOTION DATE 02/17/2023

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20

were read on this motion to/for DISMISS.

Upon the foregoing documents, Defendants Fossil Group, Inc. (“Fossil Group”), Fossil Group Partners, L.P. (“Fossil Partners”), and Michael Kors, L.L.C.’s (“MK”) (collectively “Defendants”) motion for an Order dismissing Plaintiff Angel Seller, LLC’s (“Plaintiff”) Complaint (NYSCEF Doc. 1) or, in the alternative, staying this action pursuant to CPLR 2201 pending resolution of the federal action captioned *Fossil Group, Inc. et al. v Angel Seller LLC, et al.*, Case No. 20-cv-02441 (the “EDNY Action”) which is currently pending in the U.S. District Court for the Eastern District of New York, is granted in part.

**I. Background and Procedural History**

Defendants are designers and distributors of watches, including those sold under the Michael Kors trademark (NYSCEF Docs. 16 at p. 7, 19 at p. 8). Plaintiff is in the business of acquiring and re-selling consumer products for profit through various channels, including Amazon storefront (NYSCEF Doc. 1 at ¶¶12-13). Plaintiff contends that Defendants have engaged in a coordinated effort to prevent Plaintiff from reselling genuine Michael Kors

products on Amazon by making knowingly false allegations of intellectual property infringement, causing Amazon to suspend or terminate its relationship with Plaintiff (NYSCEF Doc. 19 at p. 9). Plaintiff commenced this action against Defendants by filing a Summons and Complaint (NYSCEF Doc. 1) on September 2, 2022, alleging a single cause of action against Defendants for “Tortious Interference with Contract and Prospective Business Advantage.”

On February 17, 2023, Defendants filed the instant motion (Mot. Seq. 1) requesting an Order, (1) dismissing Plaintiff’s Complaint pursuant to CPLR 3211(a)(4) based on the pendency of a parallel federal court litigation between parties to this action; (2) dismissing Plaintiff’s Complaint pursuant to CPLR 3211(a)(7); or (3) staying this action pursuant to CPLR 2201 pending resolution of the EDNY Action (NYSCEF Doc. 7). In support of their motion, Defendants submitted an Affirmation (NYSCEF Doc. 8) and Memorandum of Law (NYSCEF Doc. 16). Plaintiff filed a Memorandum of Law in Opposition dated March 24, 2023 (NYSCEF Doc. 19)<sup>1</sup>, and Defendants filed a Memorandum of Law in Reply dated April 17, 2023 (NYSCEF Doc. 20).

## **II. Discussion**

The Court finds that because the parties and causes of action in the present case and the EDNY Action are not the same, Defendants’ motion to dismiss Plaintiff’s Complaint is denied. However, because there are substantial overlapping issues and common questions of law and fact between the action at bar and the EDNY Action, and the determination of the EDNY Action may dispose of or limit issues which are involved in this case, the Court finds that a stay of this case pending the resolution of the EDNY Action is warranted.

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<sup>1</sup> While Plaintiff’s Memorandum of Law in Opposition (NYSCEF Doc. 19) inartfully requests leave to amend the Complaint, Plaintiff’s request is denied as Plaintiff failed to file a cross-motion.

CPLR 2201 states that “[e]xcept where otherwise prescribed by law, the court in which an action is pending may grant a stay of proceedings in a proper case, upon such terms as may be just.” It is well settled that a stay may be issued to “avoid duplication of effort and waste of judicial resources” (*Asher v Abbott Labs.* 307 AD2d 211 [1st Dept 2003]). The Appellate Division, First Department has held that on a “motion for dismissal or a stay of the present proceeding based upon [a] prior pending action” the request for dismissal of the proceeding “must be rejected” when “the parties and the causes in the two proceedings are not the same” (*Four Star Stage Lighting, Inc. v Merrick* 56 AD2d 767, 768 [1st Dept 1977]). However, where “a prompt trial of the prior action may well resolve many of the issues in the present proceeding, [the] branches of the motions [may] be granted to the extent of staying [the] proceeding until the final determination of the prior proceeding” (*Merrick* at 768). The Appellate Division, First Department has further held that a stay is warranted even in the absence of complete identity of the parties where “there [are] overlapping issues and common questions of law and fact...and the determination of the prior action may dispose of or limit issues which are involved in the subsequent action” (*Belopolsky v. Renew Data Corp.*, 41 A.D.3d 322, 322-23 [1st Dept 2007], *see also Buzzell v Mills* 32 AD2d 897 [1st Dept 1969]).

Plaintiff, Fossil Group, and MK have been litigating the EDNY Action in the Eastern District of New York Since June 2, 2020 (NYSCEF Doc. 16 at p. 9). The EDNY Action alleges counterfeiting, trademark infringement and trademark dilution, unfair competition and deceptive business practices against Plaintiff, arising out of Plaintiff’s sales of the same watches that are at issue in this action (NYSCEF Doc. 16 at p. 9). Although the tortious interference claim in this case and the defamation counterclaim in the EDNY Action have different elements, both claims arise out of the same purported wrong: Defendants’ reports to Amazon that Plaintiff was selling

counterfeit watches produced by Defendants on Amazon. If the watches sold by Plaintiff are found to be counterfeit or Defendants' reports are found to be justified in the EDNY Action, then Plaintiff's claims of tortious interference in this case must fail as well. Further, Plaintiff, Fossil Group and MK are involved in both the case at bar and the pending EDNY Action. The present action includes only a single additional defendant that is not among the counterclaim-defendants in the EDNY Action, namely Fossil Partners. Given the substantial overlap between the EDNY Action and the action at bar, a stay of this action is warranted to avoid the risk of inconsistent ruling and waste of judicial resources.

Accordingly, it is hereby,

ORDERED that Defendants Fossil Group, Inc., Fossil Group Partners, L.P., and Michael Kors, L.L.C.'s motion is granted to the extent of staying further proceedings in this action pending resolution of the federal action captioned *Fossil Group, Inc., et al. v Angel Seller LLC, et al.*, Case No. 20-cv-02441, currently pending before the U.S. District Court for the Eastern District of New York, except for an application to vacate or modify said stay; and it is further

ORDERED that either party may make an application to vacate or modify this stay upon the final determination of the action known as *Fossil Group, Inc., et al. v. Angel Seller LLC, et al.*, Case No. 20-cv-02441, pending before the U.S. District Court for the Eastern District of New York; and it is further

ORDERED that the movant is directed to serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office within ten days from entry and the Clerk shall mark this matter stayed as herein provided; and it is further

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ORDERED that such service upon the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website)]; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment accordingly.

This constitutes the Decision and Order of the Court.

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| <u>9/18/2023</u><br>DATE |  | <u>Mary V Rosado JSC</u><br>HON. MARY V. ROSADO, J.S.C.                            |
| CHECK ONE:               | <input type="checkbox"/> CASE DISPOSED                           | <input checked="" type="checkbox"/> NON-FINAL DISPOSITION                          |
|                          | <input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED | <input checked="" type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER |
| APPLICATION:             | <input type="checkbox"/> SETTLE ORDER                            | <input type="checkbox"/> SUBMIT ORDER  |
| CHECK IF APPROPRIATE:    | <input type="checkbox"/> INCLUDES TRANSFER/REASSIGN              | <input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE  |