

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF PENNSYLVANIA

F.N.B. CORPORATION, a Florida Corporation,

Plaintiff,

v.

METROPOLITAN NATIONAL BANK, a New York Corporation,

Defendant.

CASE NO.

COMPLAINT

TM Reg. # 2,273,860  
2,275,671  
2,954,012

Plaintiff F.N.B. Corporation ("FNB") alleges the claims set forth herein against Defendant Metropolitan National Bank ("MNB"):

NATURE OF THE ACTION

1. Plaintiff FNB brings this action to prevent MNB from using FNB's trademarked "Metropolitan" and "Metropolitan National Bank." The marks used by MNB are confusingly similar and are, in fact, virtually indistinguishable from FNB's marks.

2. FNB asserts claims against MNB for infringing upon FNB's federally registered trademarks, described more fully herein, by causing a likelihood of confusion in violation of Sections 32 and 43(a) of the Lanham Act, and 15 U.S.C. §§ 1114(a) and 1125(a).

3. FNB seeks to enjoin MNB from continuing to improperly expropriate FNB's marks, as well as any other words that are confusingly similar to FNB's marks. FNB also seeks damages, including treble damages for MNB's willful infringement, lost profits and payment of FNB's reasonable attorneys' fees.

**PARTIES**

4. Plaintiff F.N.B. Corporation (“FNB”) is a Florida corporation with its principal place of business at One F.N.B. Boulevard, Hermitage, PA 16148. FNB is a publicly-traded bank holding company formed in 1974 and listed on the New York Stock Exchange (“NYSE”). It has four business segments: Community Banking, Wealth Management, Insurance, and Consumer Finance.

5. FNB is one of the largest banking corporations in the United States. Through its subsidiaries, FNB provides a range of financial services to consumers and small to medium-sized businesses in its market areas. As of December 31, 2007, FNB had 155 Community Banking offices and 54 Consumer Finance offices.

6. On information and belief, Defendant Metropolitan National Bank (“MNB”) is a New York corporation with its principal place of business at 99 Park Avenue, New York, NY 10016. MNB provides financial services including, *inter alia*, banking services to consumers, institutions and businesses.

**FNB’S OWNERSHIP OF THE METROPOLITAN NATIONAL BANK AND RELATED TRADEMARKS**

7. FNB is the owner of “Metropolitan,” “Metropolitan National Bank” and related marks (collectively, the “Metropolitan Marks”) as listed below:

Mark	Registration Number	Date Registered	Date of First Use	Service/s
METROPOLITAN NATIONAL BANK	2,273,860 <sup>1</sup>	08/31/99	12/29/97	Banking Services

<sup>1</sup> This trademark has achieved the status of *incontestable* under federal law.

Mark	Registration Number	Date Registered	Date of First Use	Service/s
	2,275,671 <sup>2</sup>	09/07/99	12/29/97	Banking Services
METROPOLITAN	2,954,012	05/24/05	05/25/22	Banking Services

8. FNB has been continuously using the above-listed marks in its commercial operations as a bank since at least 1997; most recently in February 2007. Furthermore, FNB has spent millions of dollars promoting its Metropolitan Marks as part of FNB's commercial activities and branding strategy.

#### MNB'S INFRINGEMENT OF FNB'S TRADEMARKS

9. Despite FNB's registration of the Metropolitan Marks and its continued use of the Metropolitan Marks in its commercial activities, MNB has been using confusingly similar marks -- including "Metropolitan National Bank" -- to offer some of the same consumer banking services offered by FNB.

10. Notably, MNB was previously a party to similar litigation involving its infringement upon several "Met"-related trademarks. In *MetLife, Inc. v. Metropolitan National Bank*, 388 F.Supp.2d 223 (S.D.N.Y. 2005), the court noted that:

*the similarity between the parties' marks is such that it strains credulity to believe that neither MNB nor the firm it hired to redesign its logo were not consciously influenced by the MetLife logo. This is particularly true in light of the PTO's initial concerns about the similarity between the first MetBank logo and the MetLife mark.*

*Id.* at 234 (emphasis added).

<sup>2</sup> This trademark has achieved the status of *incontestable* under federal law.

11. MNB's infringement of the Metropolitan Marks has irreparably harmed FNB's goodwill and diluted its Metropolitan Marks. MNB's continued infringement has caused further damage to FNB in an amount not yet determined.

#### JURISDICTION AND VENUE

12. This is an action for damages and injunctive relief based upon trademark infringement and unfair competition arising under Title 15 of the United States Code.

13. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1338 and 15 U.S.C. § 1121. Venue is proper in this District pursuant to 28 U.S.C. § 1391.

14. This Court has jurisdiction over MNB because MNB has committed acts of unfair competition and trademark infringement during the course of its business on a nationwide scale and in this District.

#### CLAIM I

##### **Trademark Infringement**

15. FNB realleges and incorporates herein each of the allegations set forth above.

16. FNB is the owner of the Metropolitan Marks as used to identify and promote its financial goods and services.

17. On information and belief, MNB has used and continues to use "Metropolitan National Bank," a mark confusingly similar and virtually indistinguishable to the Metropolitan Marks used by FNB, to identify and promote its banking services in interstate commerce without FNB's consent.

18. MNB's unauthorized use of "Metropolitan National Bank" is causing and will continue to cause public confusion as to the source of MNB's services, and sponsorship and/or affiliation of MNB with FNB.

19. MNB's use of "Metropolitan National Bank" is an unauthorized use of a mark which falls within the family of FNB's Metropolitan Marks and constitutes trademark infringement.

20. MNB's wrongful acts have proximately caused and will continue to cause FNB injury, including, but not limited to lost profits, dilution of its goodwill, and injury to its reputation.

21. As a consequence of these wrongful acts, FNB has suffered monetary damages in an amount not yet determined, and FNB will continue to suffer irreparable harm in the future unless and until MNB's infringing activities are enjoined by this Court.

## **CLAIM II**

### **Unfair Competition Under 15 U.S.C. § 1125(a)**

22. FNB realleges and incorporates herein each of the allegations set forth above.

23. MNB's use of "Metropolitan National Bank" is likely to cause confusion and mistake, to deceive consumers as to the affiliation, connection or association of MNB with FNB, and to falsely designate or represent the origin of MNB's services.

24. Such use constitutes unfair competition under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

25. MNB's wrongful acts have proximately caused and will continue to cause FNB injury, including, but not limited to lost profits, dilution of its goodwill, and injury to its reputation.

26. As a consequence of these wrongful acts, FNB has suffered monetary damages in an amount not yet determined and FNB will continue to suffer irreparable harm in the future unless and until MNB's infringing activities are enjoined by this Court.

**PRAYER FOR RELIEF**

27. Wherefore, FNB prays for judgment and relief as follows:

a. A temporary, preliminary and permanent injunction directing and restraining MNB, its officers, agents, servants, employees, attorneys, parents, subsidiaries, and other affiliated persons and/or entities, from:

(i) using in any manner the "Metropolitan National Bank" mark, and/or any term confusingly similar thereto;

(ii) using in any manner the "Metropolitan National Bank" mark alone or in combination with any other word, design, or term confusingly similar thereto;

(iii) committing any acts calculated to cause consumers to believe that any products or services sold, licensed, or offered by Defendant are sponsored by, approved by, connected with, supported by, guaranteed by, sold by, or offered by FNB or are under the control and/or supervision of FNB; or

(iv) unfairly competing with FNB in any manner.

b. An order requiring Defendant to delete all references to the "Metropolitan National Bank" mark as well as any other Metropolitan Marks of confusingly similar variations thereof, alone or in combination with any other words or designs, from any written or electronic materials in its possession, custody, or control, from any advertising materials or marketing presentations, and from its Internet website;

c. An order requiring Defendant, within thirty (30) days after entry of judgment, to file with this Court and serve upon FNB a written report, under oath,

setting forth in detail the manner in which Defendant has complied with the preceding paragraph;

- d. Damages in an amount to be determined at trial;
- e. An order that Defendant's trademark infringement and unfair competition was willful;
- f. Treble damages pursuant to 15 U.S.C. § 1117;
- g. An award of costs and attorneys' fees as permitted by law, including pursuant to 15 U.S.C. § 1117;
- h. An award of pre-judgment interest; and
- i. Such other and further relief the Court deems just and proper.

**JURY DEMAND**

FNB demands a jury trial on all issues triable to a jury in this matter.

Respectfully submitted,

/s/ Jon Hogue

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Timothy Murray  
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*Counsel for F.N.B. Corporation*

Dated: September 10, 2008

CIVIL COVER SHEET

JS 44 (Rev. 11/04)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS** F.N.B. Corporation, a Florida Corporation

**(b) County of Residence of First Listed** Mercer, PA  
(EXCEPT IN U.S. PLAINTIFF CASES)

**(c) Attorneys** Jon Hogue, Timothy Murray  
Murray, Hogue & Lannis, 3400 Gulf Tower, Pittsburgh, PA (412) 263-5630  
(Firm Name, Address, and Telephone Number)

**DEFENDANTS** Metropolitan National Bank, a New York Corporation

**County of Residence of First Listed Defendant** New York  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys \_\_\_\_\_  
Attorneys (If Known) \_\_\_\_\_

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant

4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

<b>CONTRACT</b>	<b>TORTS</b>	<b>FORFEITURE/PENALTY</b>	<b>BANKRUPTCY</b>	<b>OTHER STATUTES</b>	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 238 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input checked="" type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 FICA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIW C/DIWW (405(a)) <input type="checkbox"/> 864 SSI/ Title XVI <input type="checkbox"/> 865 RSI (405(a)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 US-Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Arbitration <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat. TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fed Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<b>PRISONER PETITIONS</b>			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Easements <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 449 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

**V. ORIGIN** (Place an "X" in One Box Only)

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from another district (specify) \_\_\_\_\_

6 Multidistrict Litigation

7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 15 U.S.C. Sections 1125(e), 1117

Brief description of cause: Trademark infringement and unfair competition

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ 75,000+

CHECK YES only if demanded in complaint: **JURY DEMAND:**  Yes  No

**VIII. RELATED CASE(S) IF ANY** (See instructions): \_\_\_\_\_

JUDGE \_\_\_\_\_

DOCKET NUMBER \_\_\_\_\_

DATE September 10, 2008

SIGNATURE OF ATTORNEY OF RECORD /s/ Jon Hogue

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFF \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

JS 44AREVISED OCTOBER, 1993

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

THIS CASE DESIGNATION SHEET MUST BE COMPLETED

PART A

This case belongs on the  Erie  Johnstown  Pittsburgh) calendar.

1. ERIE CALENDAR - If cause of action arose in the counties of Crawford, Elk, Erie, Forest, McKean, Venang or Warren, OR any plaintiff or defendant resides in one of said counties.

2. JOHNSTOWN CALENDAR - If cause of action arose in the counties of Bedford, Blair, Cambria, Clearfield or Somerset OR any plaintiff or defendant resides in one of said counties.

3. Complete if on ERIE CALENDAR: I certify that the cause of action arose in \_\_\_\_\_ County and that the \_\_\_\_\_ resides in \_\_\_\_\_ County.

4. Complete if on JOHNSTOWN CALENDAR: I certify that the cause of action arose in \_\_\_\_\_ County and that the \_\_\_\_\_ resides in \_\_\_\_\_ County.

PART B (You are to check ONE of the following)

1.  This case is related to Number \_\_\_\_\_ Judge \_\_\_\_\_

2.  This case is not related to a pending or terminated case.

DEFINITIONS OF RELATED CASES:

CIVIL: Civil cases are deemed related when a case filed relates to property included in another suit or involves the same issues of fact or it grows out of the same transactions as another suit or involves the validity or infringement of a patent involved in another suit

EMINENT DOMAIN: Cases in contiguous closely located groups and in common ownership groups which will lend themselves to consolidation for trial shall be deemed related.

HABEAS CORPUS & CIVIL RIGHTS: All habeas corpus petitions filed by the same individual shall be deemed related. All pro se Civil Rights actions by the same individual shall be deemed related.

PART C

1. CIVIL CATEGORY (Place x in only applicable category).

- 1.  Antitrust and Securities Act Cases
- 2.  Labor-Management Relations
- 3.  Habeas Corpus
- 4.  Civil Rights
- 5.  Patent, Copyright, and Trademark
- 6.  Eminent Domain
- 7.  All other federal question cases
- 8.  All personal and property damage tort cases, including maritime, FELA, Jones Act, Motor vehicle, products liability, assault, defamation, malicious prosecution, and false arrest
- 9.  Insurance indemnity, contract and other diversity cases.
- 10.  Government Collection Cases (shall include HEW Student Loans (Education), VA Overpayment, Overpayment of Social Security, Enlistment Overpayment (Army, Navy, etc.), HUD Loans, GAO Loans (Misc. Types), Mortgage Foreclosures, S.BA. Loans, Civil Penalties and Coal Mine Penalty and Reclamation Fees.)

I certify that to the best of my knowledge the entries on this Case Designation Sheet are true and correct

DATE September 10, 2008 ATTORNEY ATTORNEY AT LAW s/ Jon Hogua

NOTE: ALL SECTIONS OF BOTH SIDES MUST BE COMPLETED BEFORE CASE CAN BE PROCESSED.