UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF NEW YORK

CAYUGA NATION, a federally recognized Indian Nation;

Plaintiff,

v.

AMERICAN WAGERING, INC. d/b/a CAESARS SPORTSBOOK,

Defendant.

Civil Action No.: 5:26-cv-01241-ECC-ML

MOTION TO DISMISS

Defendant AMERICAN WAGERING, INC. d/b/a CAESARS SPORTSBOOK ("Defendant" or "Caesars") by and through its counsel of record, the law firm of Brownstein Hyatt Farber Schreck, LLP, hereby moves to dismiss this action brought by Plaintiff CAYUGA NATION ("Plaintiff" or "The Nation"). This Motion to Dismiss is brought pursuant to Federal Rule of Civil Procedure 12(b)(6) and is based on the following Memorandum of Law, the papers and pleadings on file, and any oral argument this Court may allow.

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MEMORANDUM OF LAW

I. INTRODUCTION

This case arises from a dispute between Plaintiff Cayuga Nation (the "Nation") and a state-licensed sportsbook operator, Defendant Caesars Sportsbook ("Caesars"), over mobile sports betting in New York. The Nation alleges that Caesars accepted wagers from persons located within its Reservation boundaries and therefore engaged in unlawful gaming activity on Indian lands. The dispute exists at the intersection of two regulatory systems. On one hand, New York licenses and regulates mobile sports wagering throughout the State. On the other, federal law establishes a framework governing gaming on Indian lands and defines the circumstances under which tribes may conduct and regulate certain forms of gaming on their reservations. Under federal law, the Nation must enter into a Tribal-State gaming compact governing mobile sports betting if it wishes to regulate it.

The Complaint asks this Court to create a remedy that Congress chose not to provide. The Nation has not entered into such a compact, yet it seeks to recover damages from a private, state-licensed sportsbook operator. Federal law simply does not authorize such a claim. Faced with that obstacle, the Nation repackages its flawed theory under a series of different labels—including alleged violations of a tribal gaming ordinance, interference with tribal sovereignty, and false advertising. Regardless of the label attached, however, every claim depends on the same threshold proposition—that Caesars may be sued by the Nation for allegedly conducting Class III gaming on the Nation's Reservation despite the absence of a governing compact. That proposition is contrary to the text, structure, and purpose of the governing statutes and should be rejected.

More fundamentally, the Nation seeks to hold Caesars liable for participating in a mobile sports wagering system expressly authorized, licensed, and regulated by the State of New York on lands that Caesars could not reasonably have been expected to know were the Nation's Indian lands.[1] The Nation's novel theory of liability essentially turns on an unresolved disagreement concerning where a mobile wager is deemed to occur for purposes of federal and state gaming regulation. But that sovereign-to-sovereign dispute simply does not give rise to a private damages action against a regulated commercial operator that acted pursuant to New York's statutory framework. If the Nation believes New York's approach to mobile wagering is inconsistent with the Indian Gaming Regulatory Act ("IGRA"), its dispute lies with the governmental actors responsible for adopting and administering that framework—not with a private company that complied with it.

The Nation's allegations are particularly deficient because the conduct it challenges has already ceased. According to the Complaint itself, Caesars responded—in good faith as a voluntary accommodation—to the Nation's cease and desist letter by implementing geofencing measures that prevent mobile wagering within the area identified by the Nation. Yet despite obtaining the very relief it requested, the Nation now seeks retrospective declarations of wrongdoing, a sweeping accounting, disgorgement of revenues, lost profits, attorneys' fees, and other remedies untethered to any viable cause of action. Because the Nation lacks a cognizable cause of action and fails to plausibly allege facts supporting its theories of liability, the Complaint should be dismissed in its entirety with prejudice.

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[1] The Nation resides on lands that have been the subject of several longtime disputes with the State of New York. *See, e.g.*, *Cayuga Indian Nation of New York v. Seneca Cnty., New York*, 260 F. Supp. 3d 290, 311 (W.D.N.Y. 2017) (explaining that District Judges in the Second Circuit have agreed that the Buffalo Creek Treaty did not disestablish the Cayuga Reservation); *Cayuga Nation v. Tanner*, 6 F.4th 361, 380 (2d Cir. 2021); *Cayuga Indian Nation of New York v. Vill. of Union Springs*, 390 F. Supp. 2d 203, 205 (N.D.N.Y. 2005); *Cayuga Indian Nation of New York v. Pataki*, 413 F.3d 266 (2d Cir. 2005). The status of the lands is not at issue in the present case, but is important to the context of Plaintiff's claims and the conduct alleged in the Complaint. Importantly, the boundaries of the Nation's Reservation as alleged in the Complaint do not appear on any publicly available federal map of tribal trust lands or as a reservation. *See* Bureau of Indian Affairs Tract Viewer, Bureau of Indian Affairs, https://biamaps.geoplatform.gov/biatracts/ (last visited Aug. 11, 2026).

II. STATEMENT OF FACTS[2]

Caesars is a licensed gaming company that operates a mobile wagering platform in New York. This action concerns Caesars' operation of its mobile sports wagering platform in New York and wagering activity that the Nation alleges occurred within the boundaries of its Reservation which is located in Cayuga and Seneca counties within New York. Compl. ¶¶ 1–4, 35. Although the Nation has enacted a gaming ordinance regulating gaming activities on the Reservation, that ordinance establishes a Nation Class II Gaming Commission responsible for regulating the Nation's Class II gaming operations and is the only gaming ordinance approved by the chairperson of the National Indian Gaming Commission ("NIGC"). *Id.* ¶¶ 40–42. Class II gaming includes games such as bingo and non-banked card games, while Class III gaming includes sports betting. *Id.* ¶¶ 24–25. Importantly, the Nation has not entered into a Tribal-State compact authorizing Class III gaming on the Reservation. *Id.* ¶ 43.

Caesars operates a mobile sports wagering platform in New York and made sports betting available on lands that the Nation has indicated are within its Reservation from January 2022 through July 2025. *Id.* ¶¶ 2, 45. On June 20, 2025, the Nation sent Caesars a cease-and-desist notice directing it to discontinue gaming activity on the Reservation. *Id.* ¶ 46. In response, Caesars agreed to geofence its operations around the lands specified by the Nation. *Id.* ¶¶ 46–47. The Nation subsequently requested an accounting of gaming activity conducted within the Reservation by Caesars, including wagers accepted and revenues derived therefrom. *Id.* ¶ 48. Caesars thereafter confirmed that it had geofenced its operations around the area indicated but declined to provide the requested accounting. *Id.* ¶ 49. The Nation subsequently filed this action.

[2] The following facts are taken from the Complaint and are accepted as true solely for purposes of this Motion.

III. LEGAL STANDARD

Dismissal is appropriate under Rule 12(b)(6) where the complaint fails to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). A properly pled complaint must provide "[a] short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Mere "labels and conclusions" are insufficient; rather, a plaintiff must provide factual allegations sufficient "to raise a right to relief above the speculative level." *Id.* Thus, to survive a motion to dismiss under Rule 12(b)(6) for failure to state a claim, "a complaint must provide 'enough facts to state a claim to relief that is plausible on its face.'" *Mayor & City Council of Balt. v. Citigroup, Inc.*, 709 F.3d 129, 135 (2d Cir. 2013) (quoting *Twombly*, 550 U.S. at 570 (2007)). When the allegations in a complaint have not crossed the line from conceivable to plausible, the claim must be dismissed. *Twombly*, 550 U.S. at 570. At the motion to dismiss stage, the Court must accept as true all well-pled factual allegations in the complaint; however, legal conclusions are not entitled to the assumption of truth. *Ashcroft v. Iqbal*, 556 U.S. 662, 678–79 (2009).

IV. ARGUMENT

The Nation's Complaint fails to state any claim upon which relief can be granted. Every claim in the Complaint suffers from the same fundamental defect: the Nation seeks to impose liability on a private operator under various federal laws relating to Indian gaming, but those laws do not provide private rights of action. Specifically, neither the Indian Gaming Regulatory Act ("IGRA") nor 18 U.S.C. § 1166 ("Gambling in Indian country") provide a private right of action against Caesars based on the facts alleged in the Complaint. The Nation's own tribal law and sovereignty claims cannot circumvent those limitations. In addition, the Nation's Lanham Act claim fails to plead the essential elements of false advertising. Finally, the extraordinary remedies sought are independently unavailable. For each of these reasons, dismissal is warranted.

A. Count I Fails Because IGRA Does Not Provide the Nation a Private Right of Action Against a Private Operator.

The Nation's IGRA claim arises from its allegation that Caesars offered Class III sports wagering to persons located within the Nation's asserted Reservation even though no Tribal-State compact exists authorizing Class III gaming there. Compl. ¶¶ 43–45, 55–65. That theory apparently turns on IGRA's regulation of Class III gaming.

Congress enacted the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. 2701 et seq., in 1988 in light of the U.S. Supreme Court's decision in *California v. Cabazon*. *Ysleta Del Sur Pueblo v. Texas*, 596 U.S. 685, 692 (2022). *Cabazon* underscored tribes' inherent sovereign right to conduct gaming without state interference absent an abridgment of that right by Congress. *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 221 (1987). As a result of that decision, some states were concerned that tribal gaming would proliferate without meaningful state oversight and urged Congress to intervene.[3] As a compromise between tribal and state sovereign interests, Congress created IGRA, which provides for a three-tiered regulatory framework involving tribes, states, and the United States to oversee the conduct of Indian gaming enterprises on tribal lands. *See Seminole Tribe of Fla. v. Fla.*, 517 U.S. 44, 48 (1996). A major characteristic of IGRA is the increased regulatory burden it places on so-called Class III gaming, requiring federal approval of a Tribal-State Class III gaming compact, which is an agreement between a tribe and a state that governs the conduct and regulation of Class III gaming on Indian lands. *Id.* at 48–49.

[3] Following *Cabazon*, the Senate Committee on Indian Affairs observed that various state and federal officials sought additional regulation of tribal gaming "out of fear that Indian bingo and other gambling enterprises may become targets for infiltration by criminal elements" and noted that conflicts over state efforts to regulate tribal gaming were the very disputes that led to *Cabazon*. S. Rep. No. 100-446, at 2–3 (1988).

It is well established that "[t]he Indian Gaming Regulatory Act provides that an Indian tribe may conduct certain gaming activities only in conformance with a valid compact between the tribe and the State in which the gaming activities are located." *Seminole Tribe of Fla. v. Fla.*, 517 U.S. 44, 47 (1996) (citing 102 Stat. 2475, 25 U.S.C. § 2710(d)(1)(C)). Class III gaming includes "all forms of gaming that are not class I gaming or class II gaming," and includes slot machines and casino games. *Id.*; 25 U.S.C. § 2703(8). Pursuant to IGRA, tribes may conduct Class III gaming only when it is: (1) authorized by a tribal ordinance approved by the National Indian Gaming Commission; (2) conducted in a state that permits such gaming; and (3) "conducted in conformance with a Tribal-State compact entered into by the Indian tribe and the State under paragraph (3) that is in effect." 25 U.S.C. § 2710(d)(1). Any such compact becomes effective "only when notice of approval by the Secretary [of the Interior] of such compact has been published by the Secretary in the Federal Register." *Id.* § 2710(d)(3)(B).

The compact requirement is not incidental; it is central to IGRA's Class III gaming regime. Congress adopted the compacting process to "allow[] states to negotiate with tribes that are located within their borders regarding aspects of class III Indian gaming that might affect legitimate state interests." *Artichoke Joe's California Grand Casino v. Norton,* 353 F.3d 712, 716 (9th Cir. 2003); *see also* 25 U.S.C. § 2710(d)(3)(C). And "Congress concluded that the use of compacts between tribes and states is the best mechanism to assure that the interests of both sovereign entities are met" with respect to the regulation of casino gaming. *Mashantucket Pequot Tribe v. State of Conn.*, 913 F.2d 1024, 1030 (2d Cir. 1990). Consistent with that framework, IGRA's express enforcement provision authorizes only a limited civil cause of action to enjoin Class III gaming conducted on Indian lands "in violation of any Tribal-State compact . . . that is in effect." 25 U.S.C.

§ 2710(d)(7)(A)(ii). Thus, both IGRA's authorization of Class III gaming and its express enforcement mechanism depend on the existence of a relevant Tribal-State compact.

The Nation's own allegations place its claim outside the scope of that provision. Specifically, the Complaint plainly alleges that the Nation has not entered into a Tribal-State compact authorizing Class III gaming. Compl. ¶ 43. Consequently, there is no compact "in effect," no compact provision for Defendant to have violated, and no express cause of action under § 2710(d)(7)(A)(ii). Indeed, this court's recent opinion in *Cayuga Nation v. New York State Gaming Commission*, confirms as much. No. 5:24-CV-537 (BKS/TWD), 2025 WL 2161290 (N.D.N.Y. July 30, 2025). There, Chief Judge Sannes found that the Nation "does not have either an express or implied private right of action to proceed with its claims under IGRA." *Id.* at *4. To try to avoid that outcome, the Nation argued that the word "and" in § 2710(d)(7)(A)(ii) should be read as "or," such that a tribe could sue whenever it alleged Class III gaming on Indian lands, regardless of whether a compact existed. *Id.* at *3–4. The court rejected that argument, holding that the statute unambiguously requires both Class III gaming on Indian lands and a violation of a compact that is in effect. *Id.* Because the Nation admits that no such compact exists here, it cannot satisfy the statutory prerequisites for the private cause of action set forth in § 2710(d)(7)(A)(ii).

Further, as Judge Sannes rightly pointed out, IGRA likewise does not imply a private cause of action for the Nation's claims. In rejecting the Nation's implied-right theory, the court in *Cayuga v. New York State Gaming Commission* held that the Nation had identified no indication in IGRA's text, structure, or legislative history demonstrating that Congress intended to create a private right of action for alleged Class III gaming conducted on Indian lands in the absence of a compact. *Id.* at *3. The court further emphasized that, although IGRA expressly authorizes private litigation in certain circumstances, courts may not expand a comprehensive statutory scheme beyond the causes of action and remedies Congress chose to provide. *Id.* In determining that IGRA did not imply a private right of action, the court relied on multiple circuit decisions refusing to imply additional IGRA causes of action and found no authority supporting the Nation's position. *Id.* at *4. That the *Cayuga v. New York State Gaming Commission* case survived dismissal does not alter that conclusion because the court permitted the case to proceed on an entirely different theory. After finding no private right of action under IGRA, the court separately considered whether the Nation could pursue prospective equitable relief against New York State officials under the federal courts' traditional equitable authority to enjoin violations of federal law. *Id.* at *4–8. Relying on *Armstrong v. Exceptional Child Center, Inc.*, 575 U.S. 320 (2015), *Ex parte Young*, 209 U.S. 123 (1908), and related Second Circuit precedent, the court concluded only that a tribe may, in appropriate circumstances, seek prospective relief against state officials allegedly engaged in ongoing conduct preempted by federal law even when the underlying statute does not provide a private cause of action. *Id.*

Those circumstances are absent here. Caesars is not a state official, exercises no regulatory authority on behalf of New York, and is not alleged to be enforcing any law. Nor does the Nation seek the type of preemption-based relief at issue in *Cayuga v. New York State Gaming Commission*. Instead, it seeks declarations concerning past conduct, an accounting, disgorgement, lost profits, attorneys' fees, and other monetary relief from a private commercial operator. The equitable doctrine discussed in *Cayuga v. New York State Gaming Commission* provides no basis for such claims.

Moreover, while New York's mobile sports wagering framework cannot and does not definitively determine whether federal law was violated, it does confirm the good-faith way in which Caesars acted: as a private operator licensed and regulated by New York, following the published guidance supplied by its regulator. In publicly available FAQ materials, the New York State Gaming Commission advised mobile sports wagering applicants that wagers would be treated under New York law as occurring where the server is located, that no servers would be located on Indian lands, and that, by operation of the State's framework, no wagering activity would occur on Indian lands or within tribal exclusivity zones.[4] The Court may take judicial notice of the Commission's publicly available agency materials, not for the truth of any disputed federal-law conclusion, but as support for the fact that the State's own regulator publicly provided that guidance to licensed operators. *See* Fed. R. Evid. 201; *Wells Fargo Bank, N.A. v. Wrights Mill Holdings, LLC*, 127 F. Supp. 3d 156, 167 (S.D.N.Y. 2015) ("A court may take judicial notice of information publicly announced on a party's website, as long as the website's authenticity is not in dispute and it is capable of accurate and ready determination."). Again, if the Nation is correct that New York's framework is inconsistent with IGRA, then its dispute is with New York and its regulators, not with a private licensee that operated in good faith and within the State's announced regulatory parameters. Equity does not favor imposing retrospective disgorgement, accountings, or damages on a private operator for following the instructions of the state agency charged with regulating its license, especially where the defendant voluntarily geofenced the area identified.

B. Count I also Fails Because Neither IGRA nor 18 U.S.C. § 1166 Authorizes the Nation to Enforce Federal Criminal Gambling Laws Through a Civil Suit.

The Nation's reliance on 18 U.S.C. § 1166 does not cure the fundamental defect in Count I. Section 1166, titled "Gambling in Indian country," is a criminal enforcement provision that applies to gambling activity occurring in Indian country outside the categories of gaming

[4] *See* N.Y. State Gaming Comm'n, Request for Applications for Mobile Sports Wagering Platform Providers (July 9, 2021), https://gaming.ny.gov/system/files/documents/2024/08/rfa-mobile-sports-wagering-final-070921.pdf (last accessed July 29, 2026).

authorized by IGRA, including uncompacted Class III gaming. *See* 18 U.S.C. § 1166(c). Importantly, Congress expressly vested the United States with "exclusive jurisdiction" to prosecute violations of § 1166. 18 U.S.C. § 1166(d). Nothing in § 1166 authorizes a private civil action, but that is exactly how the Complaint attempts to deploy the statute. Federal courts have repeatedly rejected such efforts to transform criminal statutes into private enforcement mechanisms. As the Second Circuit has explained, "in our federal system crimes are always prosecuted by the Federal Government," not by private litigants. *Connecticut Action Now, Inc. v. Roberts Plating Co.*, 457 F.2d 81, 86–87 (2d Cir. 1972); *see also Hill v. Didio*, 191 F. App'x 13, 14–15 (2d Cir. 2006). Because § 1166 is a criminal statute and assigns enforcement authority exclusively to the United States, its alleged violation does not itself create a private civil cause of action. The Nation therefore cannot use § 1166 as a vehicle to obtain civil remedies that Congress never authorized.

To overcome that settled rule, the Nation must show that Congress intended not only to create a private right, but also a private remedy. *Gonzaga Univ. v. Doe*, 536 U.S. 273, 283 (2002). It cannot. Section 1166 contains no rights-creating language, no authorization for private lawsuits, and no indication that Congress intended tribes to pursue civil remedies against private parties. To the contrary, where Congress intends to authorize private enforcement, it knows how to do so expressly. Courts are "especially reluctant" to imply a private right of action when a statute explicitly provides a different remedy. *Karahalios v. Nat'l Fed'n of Fed. Emps., Local 1263*, 489 U.S. 527, 533 (1989). In such circumstances, courts must presume that Congress deliberately provided the remedies it considered appropriate and withheld those it did not. *Middlesex Cnty. Sewerage Auth. v. Nat'l Sea Clammers Ass'n*, 453 U.S. 1, 15 (1981).

That principle has special force here because Congress expressly created specific causes of action in certain portions of IGRA while omitting any corresponding private enforcement mechanism under § 1166. As the Ninth Circuit has observed, IGRA specifically authorizes suits by tribes in certain circumstances, including actions involving management contracts and compact-related disputes. *Hein v. Capitan Grande Band of Diegueno Mission Indians*, 201 F.3d 1256, 1260 (9th Cir. 2000). Indeed, the Supreme Court has declined to imply private remedies on the theory that they would advance a statute's purposes or benefit an intended class. *Transamerica Mortg. Advisors, Inc. v. Lewis*, 444 U.S. 11, 23–24 (1979); *Touche Ross & Co. v. Redington*, 442 U.S. 560, 575 (1979). The relevant inquiry is congressional intent, and nothing in § 1166 suggests that Congress intended tribes to serve as attorneys general enforcing federal gambling crimes. To the contrary, IGRA establishes a framework through which tribes may conduct, regulate, and enforce Class III gaming on Indian lands, but only upon satisfaction of the statutory prerequisites Congress imposed, including the adoption of an approved Class III gaming ordinance and the execution of a Tribal-State compact. The Nation alleges that it has not entered into a Tribal-State compact and therefore does not conduct or regulate Class III gaming under IGRA's Class III framework. Compl. ¶ 43. Having chosen not to pursue the compacting process that Congress established for tribal regulation of Class III gaming, the Nation cannot rely on § 1166 to create a private civil enforcement mechanism that Congress did not provide. The Eleventh Circuit's decision in *Alabama v. PCI Gaming Authority* is directly on point. There, Alabama sought to use § 1166 to enjoin gaming on Indian lands, but the court held that the statute provides neither an express nor an implied right of action. *Alabama v. PCI Gaming Auth.*, 801 F.3d 1278, 1296 (11th Cir. 2015). The court explained that § 1166's only express enforcement provision grants the United States exclusive jurisdiction over criminal prosecutions, confirming that Congress chose federal criminal enforcement rather than private civil litigation. *Id.* at 1297–98. The court likewise rejected any implied right of action, reasoning that IGRA's structure demonstrates that Congress knew how to create causes of action when it wished to do so. *Id.* at 1299–1300. The court further noted that the statute's legislative history and context reinforce that conclusion. *Id.*

In short, the Nation seeks to use § 1166 to do what Congress never authorized: privately enforce federal criminal laws through a civil action. But § 1166 assigns enforcement authority exclusively to the United States, creates no private right or remedy, and appears within a statutory scheme where Congress expressly provided causes of action elsewhere but not here. As *PCI Gaming Authority* recognized, that choice was deliberate. The Nation therefore cannot convert an alleged violation of a federal criminal statute into a claim for damages, disgorgement, an accounting, or any other form of civil relief.

C. Count II Fails Because IGRA Does Not Permit the Nation to Enforce Alleged Class III Gaming Violations Through Its Class II Gaming Ordinance.

Count II of the Nation's Complaint asserts claims against Caesars for alleged violations of the Nation's gaming ordinances. Count II fails for the same reasons as Count I: the Nation does not possess a right of action under IGRA's framework. In Count II, the Nation alleges that Caesars violated the Nation's Gaming Ordinance by offering and accepting mobile sports wagers on the Reservation without authorization from the Nation and without complying with the Nation's gaming laws. Compl. ¶¶ 66–74. According to the Complaint, Caesars' alleged operation of mobile sports wagering on Nation lands infringed the Nation's authority to regulate gaming within its Reservation and therefore violates the Nation's Gaming Ordinance. *Id.* Count II fails, however, because it seeks to use the Nation's Gaming Ordinance to create a cause of action that neither IGRA nor the ordinance itself authorizes.

As discussed above, the Nation lacks either an express or implied private right of action under IGRA for alleged Class III gaming conducted on Indian lands in the absence of a Tribal-State compact. *See Cayuga Nation*, 2025 WL 2161290, at *3; 25 U.S.C. § 2710(d)(1)(A)-(C). The Nation cannot cure the absence of a Tribal-State compact via its Class II Gaming Ordinance. Tribal gaming ordinances, including the Nation's Class II Ordinance, are regulatory instruments authorized and governed by IGRA. IGRA requires tribes seeking to conduct gaming activities on Indian lands to adopt gaming ordinances and submit those ordinances for federal approval. *See* 25 U.S.C. §§ 2710(b)(1)(B), (d)(1)(A). As noted previously, IGRA imposes different requirements for Class II and Class III gaming. *See* 25 U.S.C. §§ 2710(b), (d). As the Supreme Court has recognized, Class III gaming is "[t]he most heavily regulated of the three classes." *Seminole Tribe of Florida*, 517 U.S. at 48. NIGC regulations therefore distinguish between Class II and Class III gaming ordinances and, unlike for Class II ordinances, a tribe seeking approval of a Class III ordinance must also submit its approved Tribal-State compact or Class III secretarial procedures. 25 C.F.R. §§ 522.1, 522.2(d) (2026).

Here, the Nation admits that it does not possess an approved Class III gaming ordinance. Compl. ¶ 43. Indeed, without an approved Tribal-State compact, it could not satisfy regulatory requirements for approval of a Class III gaming ordinance. No gaming ordinance is effective without approval of the NIGC chairperson. *See* 25 U.S.C. §§ 2710(b)(1)(B), 2710(d)(1)(A)(iii). The Nation cannot unilaterally convert its approved Class II gaming ordinance—which does not discuss nor purport to regulate Class III gaming—into an approved Class III gaming ordinance governing sports wagering. Nor can the Nation expand the scope of its tribal regulatory authority beyond that conferred by its own ordinance as approved by the NIGC chairperson. Because the Nation's Gaming Ordinance regulates only Class II gaming, it cannot supply the authority, cause of action, or remedy the Nation seeks for alleged Class III sports wagering. Count II therefore fails as a matter of law and should be dismissed.

D. Count III Fails Because IGRA Preempts Any Common-Law Claim for Interference with Tribal Self-Governance.

In Count III, the Nation asserts a claim for interference with tribal sovereignty and self-governance based on the allegation that Caesars conducted Class III gaming on the Reservation without a Tribal-State compact and thereby deprived the Nation of its ability to determine whether, when, and under what conditions such gaming may occur on its lands. Compl. ¶¶ 75–77. Although framed as a common-law tort, Count III is fundamentally a gaming regulation claim governed by IGRA. As noted above, Congress enacted IGRA to establish a comprehensive federal framework for the regulation of gaming on Indian lands, and courts have recognized that IGRA preempts the field in that area. *See e.g.*, *Cayuga Nation v. Tanner*, 6 F. 4th 361, 377 (2d Cir. 2021); *Mashantucket Pequot Tribe v. Town of Ledyard*, 722 F.3d 457, 469–70 (2d Cir. 2013) (noting that IGRA "was intended to expressly preempt the field in the governance of gaming activity on Indian lands"); *Gaming Corp. of Am. v. Dorsey & Whitney*, 88 F.3d 536, 544 (8th Cir. 1996) (same); *Pueblo of Pojoaque v. New Mexico*, 863 F.3d 1226, 1235 (10th Cir. 2017) (same). Tribal sovereignty in the gaming context is bounded by Congress's plenary authority. While it is true that interference with tribal self-government can constitute a cognizable injury in certain circumstances (*see Prairie Band of Potawatomi Indians v. Pierce*, 253 F.3d 1234, 1242 (10th Cir. 2001)), the Nation's self-government injury depends entirely on authority over Class III gaming that IGRA does not permit the Nation to exercise absent a compact. Congress has "plenary authority to limit, modify or eliminate the powers of local self-government which tribes otherwise possess." *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 56–57 (1978). The Indian Commerce Clause provides that "Congress shall have Power . . . To regulate Commerce . . . with the Indian Tribes." U.S. Const.

art. I, § 8, cl. 3. Congress exercised that authority through IGRA. The stated purpose of IGRA is "to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments." 25 U.S.C.A. § 2702(1). And "IGRA both 'preempts the field in the governance of gaming activities on Indian lands" (S. Rep. No. 100–46, 100th Cong., 2d Sess., at 6, reprinted in 1988 U.S. Code Cong. & Admin. News, at 3071) and sets forth a mechanism by which states may exert some measure of control over gambling on Indian lands. *Dalton v. Pataki*, 11 A.D.3d 62, 67, 780 N.Y.S.2d 47, 53 (2004) (citing *Seminole Tribe of Fla.*, 517 U.S. at 58).

That conclusion does not diminish tribal sovereignty. Tribes retain those inherent sovereign powers that have not been withdrawn or limited by Congress. *See Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 788 (2014). Indeed, IGRA reflects Congress's intent to promote tribal self-government and economic development through gaming while simultaneously establishing a comprehensive federal framework governing Class III gaming on Indian lands. Here, the Nation states plainly that it has chosen not to enter into such a compact. Compl. ¶ 43. Having exercised that sovereign choice, the Nation cannot now claim that Caesars tortiously interfered with regulatory authority that IGRA does not permit it to exercise in the absence of a compact. The consequence of the Nation's decision not to compact is that Class III gaming remains subject to the federal enforcement mechanisms Congress provided, rather than a private civil suit by the Nation. Congress carefully specified when tribes may sue, when federal agencies may act, and what remedies are available for violations of IGRA. As discussed above, those remedies do not include the private damages action the Nation seeks to assert here. The Nation cannot avoid IGRA's statutory framework by repackaging its claim as one for interference with tribal self-governance. Because Count III depends entirely on the premise that Caesars engaged in Class III gaming in violation of IGRA and interfered with regulatory authority the Nation lacks absent a compact, the claim is foreclosed by IGRA's comprehensive statutory scheme. Count III fails as a matter of law and should be dismissed.

E. Count IV Fails Because the Complaint Does Not Plausibly Allege Any Element of a Lanham Act False-Advertising Claim.

In Count IV of its Complaint, the Nation asserts claims against Caesars for false advertising under the Lanham Act. There, the Nation alleges that Caesars made false and misleading statements about the legality of its mobile betting operations in New York. Compl. ¶ 80. The Lanham Act provides a statutory cause of action for trade disparagement when a party makes "false or misleading descriptions or false or misleading representations of fact made about one's own or another's goods or services" in "commercial advertising or promotion." *S.C. Johnson & Son, Inc. v. Clorox Co.*, 241 F.3d 232, 238 (2d Cir.2001) (internal quotation marks omitted). To state a Lanham Act false-advertising claim, a plaintiff must plead a false or misleading statement of fact in commercial advertising, actual or likely deception, materiality, interstate commerce, and injury proximately caused by the challenged statement. *Merck Eprova AG v. Gnosis S.p.A.*, 760 F.3d 247, 255 (2d Cir. 2014); *Church & Dwight Co. v. SPD Swiss Precision Diagnostics, GmbH*, 843 F.3d 48, 65 (2d Cir. 2016). "Falsity may be established by proving that (1) the advertising is literally false as a factual matter, or (2) although the advertisement is literally true, it is likely to deceive or confuse customers." *S.C. Johnson & Son*, 241 F.3d at 238. And in the Second Circuit, courts are "careful not to permit overextension of the Lanham Act to intrude on First Amendment values." *Groden v. Random House, Inc.*, 61 F.3d 1045, 1052 (2d Cir. 1995).

i. The Complaint Does Not Identify a False Statement of Fact.

The Nation's Lanham Act claim is not a false-advertising claim in any cognizable sense. Instead, it appears to be an effort to relitigate the same disputed IGRA theory under the label of consumer deception. Paragraphs 52 through 54 do not identify any false statement about Caesars' products or services. Instead, the Complaint alleges that Caesars "holds itself out as a fully compliant, law-abiding operator by repeatedly referencing the New York State Gaming Commission's regulatory framework," emphasizes that sports betting in New York is conducted under state oversight, and highlights responsible-gaming measures. Compl. ¶ 52. The Complaint further alleges that Caesars' advertising creates the impression that its platform is "legally available everywhere within the State" because it does not disclose the Nation's legal position. *Id.* ¶¶ 53–54. Those allegations do not identify a false statement of fact; they identify a disagreement about the legal consequences of Caesars' state-licensed operations.

The distinction is critical. A Lanham Act claim must be based on a false or misleading representation of fact, not a disputed legal conclusion. *See Roberto Coin, Inc. v. Goldstein*, No. 18-CV-4045(EK)(ST), 2021 WL 4502470, at *11 n.8 (E.D.N.Y. Sept. 30, 2021); *Coastal Abstract Serv., Inc. v. First Am. Title Ins. Co.*, 173 F.3d 725, 731–33 (9th Cir. 1999) (distinguishing actionable factual assertions from nonactionable legal opinions). The alleged falsity arises only if the Court first accepts the Nation's underlying legal theory, which conflicts with the stated position of the New York State Gaming Commission, Caesars' licensing authority. Thus, the Lanham Act claim depends entirely on resolving a question of federal Indian gaming law, not on identifying a demonstrably false factual statement in Caesars' advertising. To the extent the challenged statements convey Caesars' view that its operations are lawful under a complex and disputed regulatory framework, they are nonactionable legal opinions rather than verifiable false statements of fact.

Recent authority confirms that generalized statements about legality or availability are not literally false absent a clear and unambiguous ruling to the contrary. For example, the court in *Blue*

Lake Rancheria v. Kalshi Inc. rejected similar attempts to convert a gaming-law dispute into a Lanham Act claim, concluding at the preliminary injunction stage that the tribal plaintiffs had not identified a false or misleading advertisement and had not shown a likelihood of success on their Lanham Act theory. No. 3:25-cv-06162-JSC, 2025 WL 3141202, at *2–5 (N.D. Cal. Nov. 10, 2025). In *Blue Lake Rancheria*, tribes asserted that advertisements stating sports betting was "legal in all 50 states" were false because, in their view, the defendant's conduct violated federal gaming laws. *Id.* at *2. The court rejected that theory, holding that statements concerning the legality of conduct under a disputed regulatory framework were not literally false and were better understood as expressions of legal opinion. *Id.*; *see also Coastal Abstract*, 173 F.3d at 731 ("Absent a clear and unambiguous ruling from a court or agency of competent jurisdiction, statements by laypersons that purport to interpret the meaning of a statute or regulation are opinion statements, and not statements of fact.")

The same reasoning applies here. Paragraphs 53 and 54 do not allege that Caesars expressly stated that mobile sports wagering is lawful on all Indian lands or that IGRA does not apply on Reservation lands. Rather, the Complaint alleges that Caesars failed to disclose the Nation's competing legal interpretation of IGRA and New York law. Compl. ¶¶ 53–54. As in *Blue Lake Rancheria*, the alleged falsity depends entirely on accepting the Nation's interpretation of a disputed gaming law framework, not on identifying a demonstrably false statement of fact. *See* 2025 WL 3141202, at *2–5.

ii. The Complaint Does Not Plausibly Allege Deception or Confusion.

Nor does the Complaint adequately plead that "the advertisement, while not literally false, is nevertheless likely to mislead or confuse customers." *Tiffany (NJ) Inc. v. eBay, Inc.*, 600 F.3d 93, 112 (2d Cir. 2010). At the pleading stage, the plaintiff must allege that consumers or retailers were misled or confused by the challenged advertisement and "offer facts to support that claim."

See Kuklachev v. Gelfman, 600 F.Supp.2d 437, 470 (E.D.N.Y. 2009) (emphasis added); *see also Johnson & Johnson*, 960 F.2d at 298 (for an implied falsehood claim, plaintiff needs to "demonstrate that a statistically significant part of the commercial audience holds the false belief allegedly communicated by the challenged advertisement").

Here, the Complaint identifies no consumer who viewed Caesars' website statement, no consumer who believed Caesars could lawfully operate on Reservation lands because of the challenged statements, no survey evidence, and no factual basis from which the Court could infer that a substantial segment of consumers was deceived. Instead, the Complaint simply asserts that consumers may infer statewide legality because Caesars references New York's licensing regime and does not expressly discuss the Nation's legal position. Compl. ¶¶ 52–54. Such conclusory allegations are insufficient to plead deception under the Lanham Act. *See Reed Const. Data Inc. v. McGraw-Hill Companies, Inc.*, 49 F. Supp. 3d 385, 415 (S.D.N.Y. 2014), aff'd, 638 F. App'x 43 (2d Cir. 2016); *Lokai Holdings LLC v. Twin Tiger USA LLC*, 306 F. Supp. 3d 629, 639 (S.D.N.Y. 2018).

iii. The Complaint Does Not Plausibly Allege Materiality or a "Commercial Advertising or Promotion."

In addition to proving that the statement was false or misleading, a plaintiff must also allege that the statement was material such that it misrepresented an "inherent quality or characteristic of the product." *S.C. Johnson & Son*, 241 F.3d at 238 (internal quotation marks and citation omitted). The statement is not material unless it would influence the purchasing decision of the consumer. *See, e.g., Nat'l Basketball Ass'n v. Motorola, Inc.*, 105 F.3d 841, 855 (2d Cir. 1997); *Advanced Magnetic Closure, Inc. v. Rome Fastener Corp.*, No. 98 CV 7766, 2005 WL 1241896, at *12 (S.D.N.Y. May 24, 2005). There are no allegations that any consumer's wagering decision turned on the absence of a disclosure concerning the Nation's interpretation of the law. The Complaint merely assumes that consumers would behave differently if informed of the Nation's legal position. Because the challenged statements accurately describe Caesars' operation within New York's licensing framework and, at most, reflect a contested legal position regarding IGRA, Count IV fails to plead falsity, deception, or materiality.

The Complaint also fails to plausibly allege that the challenged statements constitute "commercial advertising or promotion" within the meaning of the Lanham Act. *See* 15 U.S.C. § 1125(a)(1)(B). To qualify, a statement must be "(1) commercial speech; (2) intended to influenc[e] consumers to buy defendant's goods or services; and (3) disseminated sufficiently to the relevant purchasing public." *Boule v. Hutton*, 328 F.3d 84, 90 (2d Cir. 2003). Commercial speech, in turn, is narrowly defined as "speech which does no more than propose a commercial transaction." *City of Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410, 422 (1993). The statements identified in Paragraphs 52 through 54 do not satisfy that standard. The Complaint does not challenge advertisements proposing a wagering transaction or communicating specific product attributes, pricing, promotions, or terms of service. Rather, it challenges Caesars' generalized statements concerning compliance with New York's regulatory framework, which are not representations "part of an organized campaign to penetrate the relevant market." *Fashion Boutique of Short Hills, Inc. v. Fendi USA, Inc.*, 314 F.3d 48, 57 (2d Cir. 2002).

iv. The Nation Has Not Pleaded a Cognizable Commercial Injury, nor can it Proceed as a Proxy for Consumers.

The Nation also fails to plead a non-speculative competitive injury. The Lanham Act protects commercial interests in sales and business reputation. *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 132–34 (2014). The required injury occurs only when "deception of consumers causes them to withhold trade from the plaintiff." *Id.* at 133. Here, the Nation alleges that Caesars offered Class III sports wagering but simultaneously admits that the Nation lacks a

Class III compact and therefore cannot lawfully offer the same product. The Complaint does not plausibly allege that any consumer saw Caesars' alleged legality statements, was misled by them, chose Caesars' sportsbook because of them, and then withheld business from the Nation's Class II gaming operations. That causal chain is entirely speculative.

Such conjectural allegations are insufficient to satisfy the Lanham Act's proximate-causation requirement. *See id.*; *Dependable Sales & Serv., Inc. v. TrueCar, Inc.*, 311 F. Supp. 3d 653, 659–61 (S.D.N.Y. 2018) (dismissing Lanham Act claim where alleged injury was too attenuated from challenged advertising); *Verisign, Inc. v. XYZ.COM LLC*, 848 F.3d 292, 300–01 (4th Cir. 2017) (affirming district court's exclusion of damages expert whose "fatal flaw" was to "assume[ ] rather than demonstrate[ ]" that plaintiff's every lost sale was due to defendant's false statements). And "[i]t is plaintiff's burden to demonstrate that false advertisements resulted in lost sales." *Dependable Sales & Serv.*, 311 F. Supp. 3d at 659. The Complaint pleads no facts showing that any purported misrepresentation diverted sales from the Nation, let alone caused a concrete commercial injury. Accordingly, the Nation lacks the type of non-speculative competitive harm required to proceed under the Lanham Act.

Nor may the Nation proceed in a *parens patriae* capacity or as a proxy for allegedly confused consumers. "A consumer who is hoodwinked into purchasing a disappointing product may well have an injury-in-fact cognizable under Article III, but he cannot invoke the protection of the Lanham Act—a conclusion reached by every Circuit to consider the question." *Lexmark Int'l, Inc.*, 572 U.S. at 132. The Lanham Act cause of action is for competitors and other plaintiffs with commercial injuries within the statute's zone of interests, not for consumers as such. *See id.*; *POM Wonderful LLC v. Coca-Cola Co.*, 573 U.S. 102, 107 (2014) ("Though in the end consumers also benefit from the Act's proper enforcement, the cause of action is for competitors, not consumers.") The Nation cannot satisfy those requirements by invoking generalized consumer confusion, sovereign interests, or public-law concerns. Those interests may be relevant to the Nation's sovereign dispute with New York, but they are not a substitute for a pleaded, non-speculative commercial injury proximately caused by Caesars' legality statement.

At bottom, Count IV is not a true false advertising claim. The Complaint identifies no false statement of fact, no plausible basis for consumer deception, no material omission affecting purchasing decisions, and no commercial advertising within the meaning of the Lanham Act. Instead, the alleged falsity depends entirely on the Nation's disputed interpretation of IGRA and New York's mobile sports wagering framework. The Nation likewise fails to plead a cognizable commercial injury proximately caused by the challenged statements, relying instead on speculative assertions of consumer confusion, lost revenues, and sovereign harm. Because the Complaint fails to satisfy multiple essential elements of a Lanham Act claim, Count IV should be dismissed in its entirety.

V. CONCLUSION

For all the foregoing reasons, the Complaint fails as a matter of law. The Nation lacks an express or implied cause of action under IGRA or 18 U.S.C. § 1166; its ordinance and sovereignty claims cannot supply remedies that Congress declined to create; and its Lanham Act claim does not plausibly allege a false statement, consumer deception, materiality, commercial injury, or statutory standing. Accordingly, Defendant respectfully requests that the Court dismiss the Complaint in its entirety and with prejudice, together with such other and further relief as the Court deems just and proper.

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