

LEGAL

## Bridalwear battle over social media is cautionary tale for eponymous brands

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"What's in a name?"

For centuries, luxury goods and fashion houses have donned the names of their founders and adorned their merchandise with trademarks of the same.

Identifying a brand by personifying the public face behind it can be a desirable move. But a recent series of court decisions, once again, has shown that such a choice can lead to disastrous and costly results, particularly in the era of social media and influencer branding.

Designer Hayley Paige Gutman's battle against her former employer, JLM Couture Inc., in New York federal court, to maintain control of her social media accounts sheds light on the issues of social media branding and eponymous trademarks.

Luxury goods companies should heed the warning exemplified in this case.

Social media is an increasingly powerful tool in consumer marketing, but ownership of these accounts may be questioned or outright transferred if certain factors are met.

To date, there are very few cases that examine the issues around ownership of social media accounts. This case offers a road map of what factors should be considered in contractual arrangements involving social media, influencers and self-named brands.

### Background

Hayley Paige Gutman is one of the leading names in wedding fashion.

In addition to designing bridal dresses, the 31-year-old has starred in her own reality show on TLC, made appearances on *Say Yes to the Dress*, *The Today Show* and *Good Morning America*, and has captured the attention of millions of followers across social media.

Back in 2011, at the age of 25, the then still up-and-coming Hayley Paige signed an enticing employment agreement with JLM to design and market a line of bridal wear.

The young designer did not work with a lawyer to review the agreement, but in excited fashion, Hayley Paige signed a contract where JLM tasked her with developing the HAYLEY PAIGE brand for the company.

Various social media accounts were launched shortly thereafter, which evolved into highly successful tools for the designer now social media influencer and JLM.

In particular, the Instagram account, "@misshayleypaige," which has more than 1 million followers, included posts about both Hayley Paige's personal life and promotions of JLM's HAYLEY PAIGE brand. To date, HAYLEY PAIGE branded apparel has generated more than \$220 million in sales.

Ms. Gutman's employment contract also contained a non-compete provision, preventing Hayley Paige from competing, directly or indirectly, with JLM, and most notably, provisions giving JLM "exclusive world-wide right and license" to use the Hayley Paige name and transferring to JLM all rights to the HAYLEY PAIGE trademarks.

Eight years later, by 2019 during a new round of negotiations, the relationship turned sour when the parties disagreed about control over the social media accounts. Hayley Paige created a TikTok account and posted content that JLM believed did not align with the HAYLEY PAIGE brand.

When JLM reacted by requesting the TikTok account only contain JLM-approved content rather than personal, off-brand images, Hayley Paige responded by changing the password to the Instagram account so that JLM no longer had access.

#### Court battle

This sparked a lengthy and ongoing legal battle launched by JLM in the United States District Court for the Southern District of New York asserting breach of contract, trademark dilution, unfair competition, conversion of social media accounts, and trespass to chattels on social media accounts, among other claims.

JLM alleged that Hayley Paige (1) violated her non-compete provision by agreeing to appear at a bridal expo in her capacity as a designer independent of JLM; (2) breached the name-rights and trademarks provisions by using the Instagram account for third-party promotional deals; and (3) converted the social media account to her own use by locking JLM out of the Instagram account and refusing to cede control of it or the TikTok or Pinterest accounts.

Earlier this year, in January, the Second Circuit issued an opinion where it affirmed the district court's ruling granting JLM a preliminary injunction and ordering Hayley Paige not to compete with JLM, barring the designer from making use of her own name in commerce.

This case was remanded back to the district court to decide the issue of control over the social media accounts and, in July, the district court sided with JLM, granting its request to modify the preliminary injunction, ruling that Hayley Paige could not use the social media accounts for her personal or business interests until August 2027.

#### Court's analysis: Social media account ownership

In evaluating JLM's request to modify the preliminary injunction to gain control of the accounts and whether JLM was likely to succeed on its claims, the court addressed the issues of whether JLM owned the accounts, and whether Hayley Paige's actions in changing the password and cutting out JLM constituted "unauthorized dominion" over the account.

Even more simply put, the court needed to determine whether the social media accounts were Hayley Paige's personal accounts or JLM's business assets.

The court recognized a number of factors that, although not necessarily exclusive, identified the issues that are at the core of a proper social media account ownership inquiry: (1) whether the account handle reflects the business or entity name; (2) how the account describes itself; (3) whether the account was promoted on the entity's advertisements or publicity materials; (4) whether the account includes links to other internet platforms of the entity; (5) the purpose for which the account was used, including whether it was tied to promotional or mission-oriented activities of the entity; and (6) whether employees or members of the entity had access to the account and participated in its management.

Here, the court found that the accounts were held out as business accounts of the HAYLEY PAIGE brand used to

promote JLM's business. The accounts at issue were created shortly after the employment agreement was signed, Hayley Paige signed an acknowledgement form for trademark registration assigning the rights in her name to JLM, and use of the handle, @misshayleypaige, incorporating the designer's name, constituting use of a business name to identify the accounts.

Additionally, the accounts were regularly used to promote JLM's business, incorporated links through which followers could access further information on JLM's website, and the evidence showed that JLM's employees were involved in formulating the marketing strategy for the accounts and directly participated in the management of the accounts in support of JLM's business interests.

The court was not convinced by Hayley Paige's attempt to characterize the accounts as "personal":

Posts featuring JLM's designs, upcoming trunk shows, and promotional codes . . . can hardly be labeled "personal" content when they are inextricably tied to boosting JLM's sales, revenues, and brand visibility, and invited customer inquiries about JLM's products.

Moreover, many of the other posts Ms. Gutman classifies as personal, including items showcasing her fashion interests or events going on in her life including her engagement reflect the "kind of subtle marketing" social media is known for, promoting Ms. Gutman as a designer who can connect with brides who share her tastes and are experiencing the same life milestones.

As a result, the court concluded that JLM had established a clear likelihood of success in demonstrating that it owned the social media accounts or at least has the right to use and control the accounts vastly superior to any such right of Hayley Paige.

Eponymous brands: Where issues may begin

As the district court noted, this case presents a "novel question of ownership" of social media accounts.

With the rise of social media, marketing strategies have adapted to use these platforms and exploit the popularity of subtle influencer marketing. The question of ownership of these accounts can hinge on the choices made by the individual influencer and the brand.

Issues begin when a brand name is derived from an individual's name and safeguards are not created to ensure that control of the name stays in the intended hands.

Whether the intended hands are those of the individual or the business will depend on the contractual provisions agreed upon at the outset. This is a question that should be carefully considered by both parties before the pen meets the paper.

Once an individual's name is used as a brand name, trademark law protects the name from use by others that creates a likelihood of confusion. That could mean that the business is protected from imitators and competitors, but it could also mean that the individual is restricted from using his or her own name in other ventures, such as the case with Hayley Paige.

Together, JLM and Hayley Paige spent a decade building the HAYLEY PAIGE brand and the goodwill that consumers attach to it. If Hayley Paige now wishes to use her name in connection with a different business venture that competes with JLM, consumers could understandably be confused as to its source.

At the beginning of the relationship, JLM offered an unambiguous employment contract to Hayley Paige who accepted its terms in return for a salary, stream of royalties and JLM's investment of time and capital in the HAYLEY PAIGE brand.

That contract gave name-rights and trademark ownership of "Hayley Paige" to JLM and, so far, the courts have shown little sympathy to Ms. Gutman.

Takeaways

This decision highlights a few important considerations for brands and individuals seeking to use an individual's name and social media in commerce.

As stated at the top of the article, luxury goods and fashion houses have a particular tendency to identify their brands by personifying the public face behind it, so special care should be taken to examine any possible consequences.

For brands, this case may well serve as precedent for similar contractual relationships in the future.

Ownership of a social media account is a significant and potentially irreplaceable asset for brand marketing. If name-rights and trademarks have been transferred, a court will very likely uphold the contract's terms. From the brand's perspective, these provisions should be implemented wherever possible.

For individuals, the use of one's name and social media accounts for business purposes may well be a profitable way to increase a brand's success. However, over time such promotion may blur the line between the person and the brand to the person's detriment.

INDIVIDUALS NEED TO be careful at the outset of what rights are given away with regard to name, notwithstanding the disproportionate amount of leverage that the business party may have and the financial carrot that they may be dangling. These contracts will likely be enforced even in situations of lopsided bargaining power.

Provisions should be negotiated within the agreement that define social media account ownership, especially where the accounts are being used for business purposes.

Failure to take appropriate, preliminary action regarding social media and eponymous branding may lead to lengthy and damaging litigation, as is the case for Hayley Paige and JLM.

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