

What's in a Name? Influencer Trademark Name Disputes Provide Lessons for the New Year on Clarity in Agreements

January 7, 2021 – The TMCA

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Many industries were negatively impacted by the pandemic in 2020, but one industry that continues to grow is the influencer marketing industry. The influencer marketing model typically involves agreements between companies and influencers, where the influencer

creates content promoting companies' products for posts on social media and blog sites. Influencers have often built their brands, social media accounts, and blog sites under their own names, and companies want access to the loyal consumer fan base drawn to those names. However, as disputes shared on Instagram this year illustrate, it is not always clear as to which party owns the brand, social media accounts, or products bearing the influencer's name. Moving into the New Year, both companies and influencers can learn lessons on clarity in IP and social media agreements when engaging in influencer marketing.

Two weeks ago, popular wedding dress designer Hayley Paige Gutman (known as "Hayley Paige") posted on Instagram about a legal dispute arising from an employment agreement between her and bridal house JLM Couture, Inc., her former employer.

JLM recently filed suit against Hayley Paige in the Southern District of New York, asserting breach of contract, conversion, and trademark dilution, among other claims.

The complaint alleges that an employment agreement between JLM Couture and Hayley Paige provides that Hayley Paige granted JLM "the exclusive world-wide right and license to use her name 'Hayley', 'Paige', 'Hayley Paige Gutman', 'Hayley Gutman', 'Hayley Paige' or any derivative thereof (collectively the 'Designer's Name') in connection with the design, manufacture, marketing and/or sale of bridal clothing, bridal accessories and related bridal and wedding items, including and [sic] all good will associated therewith for the term of the Agreement, and for a period of two years thereafter". The complaint also alleges that Hayley Paige irrevocably sold, assigned, and transferred all right, title, and interest to JLM to register her name as a trademark. JLM alleges that Hayley Paige covenanted that she would have no right to use her name during the term of the employment agreement or any time after without JLM's consent. Based on these provisions, JLM alleges that it owns social media accounts bearing Hayley Paige's name.

The main social media account at issue – @misshayleypaige – features a mix of bridal and wedding-related content and personal images, and has more than 1 million followers. JLM alleges that the account was created as part of its marketing strategy, and thus the number of followers of the account is a direct result of JLM Couture's advertising expenditures. JLM argues that Hayley Paige's assistance in the collaborative maintenance of the account falls within the scope of her employment under the employment agreement.

The federal court for the Southern District of New York granted JLM's request for a temporary restraining order against Hayley Paige, prohibiting the designer from making any changes and postings to social media accounts bearing her name, including the @misshayleypaige Instagram, Pinterest, and TikTok accounts. The court also ordered Hayley Paige to deliver to JLM the login credentials for these social media accounts.

In two videos with over 2 million views combined posted on a separate account, Hayley Paige stated she has resigned from JLM Couture after a year and a half long legal battle to negotiate a new contract with JLM. Hayley Paige stated that she always considered the @misshayleypaige Instagram account to be her own since the account was opened,

and that the employment agreement makes no mention of social media accounts or management thereof. Hayley Paige stated that the @misshayleypaige Instagram account has always been used for her own personal photos, thoughtful quotes, and real relationships. In the meantime, Hayley Paige noted that she is no longer posting or engaging on the social media accounts bearing her name until the dispute is resolved in court.

While the dispute between Hayley Paige and JLM Couture focuses on the scope of an employment agreement and the use of an employee's name, companies and influencers can also learn from a business dispute involving the use of a vegan chef's name.

This past year, the winner of the television competition *Cupcake Wars* and vegan chef Chloe Coscarelli (known as "Chef Chloe") recently posted on Instagram that she won a legal dispute with her business partner, ESquared Hospitality LLC ("ESquared") in May. Chef Chloe rose to fame after she won the television competition *Cupcake Wars*, and has since authored cookbooks, made other television appearances, impacted the vegan culinary scene, and originated the concept for a fast casual vegan restaurant chain bearing her name – "by Chloe." Chef Chloe wholly owns California limited liability company Chef Chloe LLC.

Under her limited liability company, Chef Chloe filed a demand for arbitration against business partner ESquared, seeking a judgment declaring that Chef Chloe still owns 50% of the interests in "by Chloe" restaurants. Chef Chloe also sought a permanent injunction barring her business partner from selling any packaged food or beverages using the name "Chloe" or any variation thereof, including the trademark "by Chloe," for projects other than fast casual vegan restaurants.

The arbitration addressed terms of an operating agreement between Chef Chloe LLC and ESquared. One of the issues addressed in the arbitration was whether, under the operating agreement, the vegan restaurants had the unlimited right to expand their usage of the "by Chloe" trademark without obtaining consent from Chef Chloe because Chef Chloe LLC was terminated as a member. The arbitrator found that the operating agreement did not strip Chef Chloe of approval rights for future expansion of trademark usage as one of its penalties for termination as a member. The arbitrator stated that Chef Chloe must "abide by the deal that she made with the Company to continue to use her first name as the name of the fast casual vegan restaurant, but likewise [her business partner] must abide by the terms of the deal that it struck with Chef Chloe not to expand the use [of] the trademark beyond fast casual restaurants without getting her pre-approval." The arbitrator also awarded full, undiluted 50 % interest in the restaurant chain. Thus, Chef Chloe retains approval rights for the usage of her name, even though she does not actually own the mark.

Companies and influencers can also learn from a disagreement stemming from the control of an influencer's blog-turned-apparel brand bearing the influencer's name.

This past June, influencer Julia Berolzheimer posted on Instagram that she would no longer use the name of the blog-turned-content creation business she originated

following a disagreement with her business partner. Julia Berolzheimer is a successful influencer known all over the world with 1.4 million followers on Instagram. Julia began her brand, “Gal Meets Glam,” as a personal style blog. The blog was transformed into a content creation business, which then expanded into an apparel brand bearing the name of the blog – the Gal Meets Glam Collection. Despite the success of the brand, Julia Berolzheimer announced on her [blog](#) that the Gal Meets Glam Collection would be ending. Julia Berolzheimer stated that the decision to end the Gal Meets Glam Collection stemmed “from the lengthy disagreement between how we wanted to build Gal Meets Glam and how our business partner felt it should be run.” Julia informed her followers that her content would now fall under her own name, rather than the Gal Meets Glam name.

These three disputes about individual names being used as trademarks involve different kinds of agreements in varying circumstances, but there are general lessons companies and influencers can apply when engaging in influencer marketing in the New Year.

Agreements arising from influencer partnerships should clearly delineate social media accounts and blog sites, rather than extending intellectual property provisions in general broad terms to encompass these accounts. Ownership of the social media account (both during the term and after the expiration of the agreement), management of the social media account, the name of the account, and approval of content should be spelled out in the agreement and employment policies, where relevant. In this way, both the company and the influencer are clear as to the roles and expectations surrounding names functioning as trademarks for the New Year and beyond.