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www.law360.com  
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

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# Newman's Own Hairbrush License Deal Barred By Conn. Court

By **Brian Steele**

Law360 (July 1, 2024, 4:21 PM EDT) -- Two daughters of late Hollywood actor and philanthropist Paul Newman have won a temporary injunction in Connecticut state court against the use of his image and likeness in connection with a Wet Brush brand hairbrush, barring the licensing of his publicity and intellectual property rights to any product that is not food.

Superior Court Judge Sheila A. Ozalis on Friday ruled in favor of Susan Kendall Newman, Elinor T. Newman and various nonprofit entities that sued their late father's Westport-based charity, Newman's Own Foundation, in November 2022 on claims that it had slashed the amount of money that the actor's children were allocated to donate of their own accord. The judge granted a January 2024 injunction application targeting the sale of a "Special Edition Wet Brush X Newman's Own Pro Detangler in Deep Blue" as a separate act that ran counter to Newman's wishes.

"The plaintiffs contend that without an injunction, Paul Newman's intent, and the purpose of the living trust, would be thwarted, and his legacy in the form of his publicity and IP rights would continue to be tarnished and denigrated in ways specifically contrary to his intentions and the purposes of the living trust, which cannot be remedied. This court agrees," Judge Ozalis wrote.

The lawsuit alleging breach of fiduciary duty claims that Newman's Own Foundation is required to allocate each of Newman's daughter's foundations \$400,000 per year for them to donate to charities according to rules that he established, but the organization had unilaterally cut the figure in half. A revised complaint filed in November 2023 seeks to fully enjoin a program called Newman's Deal that allowed for licensing of the actor's publicity and IP rights to products that are not food, which his daughters said was banned under a binding trust agreement.

The ongoing suit also demands \$3.2 million in damages "to be donated to charities in keeping with Paul Newman's wishes, imposition of a constructive trust" and "a declaratory judgment to require Newman's Own Foundation to comply with Paul Newman's instructions now and in the future."

Newman's Own Foundation started Newman's Deal in October 2022 to license the publicity and IP rights to companies that promised to donate their profits to charities that help children, according to the application for a temporary injunction. The Wet Brush hairbrush "appears to be the first product that defendant wrongfully authorized to use the publicity and IP rights" under the program, the application said.

In its Feb. 16 objection, the defendant said that it fielded 30 applications for Newman's Deal, awarded just one deal to GP Topco LLC d/b/a Beauty By Imagination for the hairbrush at issue, and stopped accepting applications. The foundation said that it has properly licensed the rights to non-food products for more than 15 years "without objection."

At a hearing on the injunction request, foundation chairman Michael Clayton testified that Beauty By Imagination provided \$10,000 under the deal, which called for the sale of up to 1,500 brushes at \$14.99 each, Judge Ozalis' order said. But he was not able to say where the money ended up or how much went to a children's charity.

The judge noted that the defense had argued it needed to

partner with non-food products because its revenues had decreased, but "evidence at the hearing demonstrated that money was generously spent at the Newman's entities on board member's and manager's compensation and travel."

According to Newman's Own Foundation's website, Newman started his acting career on Broadway in 1958 and won an Academy Award for best actor in the 1986 film "The Color of Money." He was also a race car driver and founded the food company Newman's Own Inc. in 1982, giving away the profits to "good causes," the operative complaint said.

Newman's Own Foundation launched in 2005. Since Newman's death in 2008, the foundation has suffered from "a long and consistent pattern of disregard, by those in control, of Mr. Newman's specific intentions and direction, coupled with mismanagement, scandal, and questionable practices," the plaintiffs claimed.

"While he attached his name, image and likeness to non-food products during his racing career, Paul Newman's intentions were particularly clear at or around the time of the creation of the trust agreement that he wanted his name, image and likeness affixed to food products only and he wanted his trustees to police and prevent the improper use of his publicity and IP rights," Judge Ozalis' order said.

Jennifer Millones, chief legal officer for Newman's Own Foundation, told Law360 in a statement Monday that the decision "only hurts children and the worthy organizations that support them."

"However, we recognize that this is just one step in the legal process, and we look forward to presenting our arguments on the core issues of this case," Millones added. "This case should never have been filed as it has no basis in law or facts. Paul Newman did not put his daughters in charge of Newman's Own Foundation, nor did he create the foundation as a vehicle to fund his daughters' chosen charities."

The foundation's funding "does not come from the personal family fortune of the Newman family, but from the millions of customers who purchase our products," Millones said in the statement. "As the sole legal and fiduciary stewards of Newman's Own Foundation, we deeply regret this attempt to disrupt and undermine Newman's Own Foundation and our mission to nourish and transform the lives of children who face adversity."

Counsel for the plaintiffs, Andrew L. Lee of Foley & Lardner LLP, told Law360 that, "As explained in the complaint, the Newman family felt shut out and disregarded by Newman's Own Foundation for years and felt powerless to take any action because they were threatened with disinheritance by the trustees" running Newman's Own Foundation, but filed suit when the organization cut funding for the charities identified by Newman's daughters.

"While the Newman's Own Foundation's funding may come from purchases of products, those products all bear Mr. Newman's name, image and likeness and the right to use that name, image and likeness in that way was and is based on and subject to the restrictions Paul Newman put in place, including funding for charities identified by his daughters and the limitation to non-food products," Lee said. "Newman's Own Foundation's claim to be honoring Paul Newman's legacy and wishes is directly contradicted by the court's ruling, after a full evidentiary hearing, that Newman's Own Foundation has been causing irreparable harm to Mr. Newman's publicity and IP rights, which are at the center of that legacy."

"The Newman plaintiffs' claims in this case are strong and supported by more than a decade of evidence about how Paul Newman actually wanted his name, image and likeness used, which is very different from how Newman's Own Foundation has been using it," Lee said.

The plaintiffs are represented by Brian S. Cohen of Lachtman Cohen & Belowich PC and Andrew L. Lee of Foley & Lardner LLP.

Newman's Own Foundation is represented by Joseph L. Clasen, Ian T. Clarke-Fisher and Trevor L. Bradley of Robinson & Cole LLP and John W. Cannavino of Cummings & Lockwood LLC.

The case is Newman, Susan Kendall et al. v. Newman's Own Foundation, case number FST-CV22-6058968-S, in the Stamford-Norwalk Judicial District of the Connecticut Superior Court.

--Editing by Patrick Reagan.

*Update: This article has been updated with statements from Newman's Own Foundation and plaintiffs' counsel.*

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