

Precedent-Setting Intellectual Property Win Receives Widespread Media Coverage

January 23, 2024 Joseph Lawlor, Tiffany Cooke, Richard Rochford, Michael Lambert

PRACTICES Intellectual Property, Litigation, Trademark Litigation, Intellectual Property Litigation, Appellate

Haynes Boone Partners [Joe Lawlor](#), [Tiffany Cooke](#), [Richard Rochford](#) and Associate [Michael Lambert](#) represented social media influencer Hayley Paige Gutman, a wedding dress designer known for her appearances on TLC's "Say Yes to the Dress" with well over 1 million followers on Pinterest and Instagram. Her former employer, JLM Couture, Inc., attempted to claim ownership of her accounts and her name.

The court [sided with Haynes Boone's argument](#) that ownership should be determined "like any other form of property," by first determining who owned the account at the moment of its creation and then evaluating whether that owner sold or transferred the account.

The decision received widespread media coverage, and the team earned Runner-Up honors in *The AmLaw Litigation Daily* for Litigators of the Week alongside fellow Haynes Boone Partner [Laura Prather](#), who [received a win from the Fifth Circuit](#).

Excerpts of the coverage of this case are below.

The AmLaw Litigation Daily:

Partners Joe Lawlor, Tiffany Cooke, Richard Rochford and associate Michael Lambert got a ruling from the Second Circuit this week in a case they're handling for wedding dress designer Hayley Paige Gutman, known for her appearances on the reality TV show "Say Yes to the Dress," brought by her former employer, JLM Couture Inc. The appellate court partially vacated a preliminary injunction forcing Gutman to hand over accounts she created on Instagram and Pinterest while employed at JLM, rejecting the six-factor test that the district court adopted to determine ownership of social media accounts. The Second Circuit remanded the case on the ownership question holding that the accounts should be treated "like any other form of property" and part of the inquiry should include "determining the original owner."

To read more of *The AmLaw Litigation Daily's* coverage, click [here](#).

Bloomberg Law:

The decision averted a "problematic test" that would have created more disputes, said Haynes Boone partner Joseph Lawlor, who represents Gutman in the case.

The district court's test "could have created a situation where if I was running a Mario Brothers fan account under those factors the account would probably belong to Nintendo," Lawlor said.

To read more of Bloomberg Law's coverage, click [here](#).

The Fashion Law:

Reflecting on the Second Circuit's opinion, Haynes Boone's Joe Lawlor, one of the attorneys representing Gutman, said, "Influencers and brands have been working under a cloud of uncertainty, because prior to today, no federal circuit court had provided a framework for determining competing claims to social media account ownership." He stated that this is a particularly "vital decision and victory for the future of similar cases, which are certain to be prevalent in an age of increasing use of influencer and digital marketing."

To read more of the *The Fashion Law's* coverage, click [here](#).

Law360:

"Influencers and brands have been working under a cloud of uncertainty, because prior to today, no federal circuit court had provided a framework for determining competing claims to social media account ownership," he said.

In Wednesday's opinion, the Second Circuit ruled that social media account ownership should be determined like any form of property, Lawlor said, which is by looking at who was the owner at creation and if they sold or transferred the account.

"The court rejected the multi-factor test that could have resulted in 'transfer by surprise' and been harmful to influencers, since such a test would 'complicate contractual arrangements under which an account owner might agree to advertise another's goods on his or her platform,'" Lawlor said. "Here, Ms. Gutman created her accounts using her own personal information, so the Second Circuit properly vacated the preliminary injunction that had temporarily given control of Ms. Gutman's highly valuable Instagram and Pinterest accounts, @misshayleypaige, to her former employer."

To read more of the *Law360's* coverage, click [here](#).

Reuters:

"We have set a productive precedent in the Second Circuit to shield young creatives from facing what I have endured — a monumental achievement," Gutman said in a statement.

To read more of *Reuters'* coverage, click [here](#).

Above The Law:

Because social media account creation does not share the core attributes of the fashion design process, those accounts are outside of the purview of the "any other works" language and, thus, JLM has not proven ownership via contract.

To read more of *Above The Law's* coverage, click [here](#).