

Was Missguided Misguided? Kim Kardashian West Obtains \$2.7 Million Judgment in Right of Publicity and Trademark Suit

The Bottom Line

- *A celebrity's most valuable asset is likely their name and likeness. As the Kardashian case illustrates, many celebrities are being targeted by third parties who use their names and images without their permission when promoting products or services.*
- *There are a number of steps that celebrities can take to stop the unauthorized commercial use of their name and likeness, such as submitting website and social media takedown notices, sending cease and desist letters and, of course, filing lawsuits.*

A federal district court in California has awarded a \$2.7-million default judgment to Kim Kardashian West in her lawsuit against a fast fashion online retailer that allegedly used her persona and likeness to sell its clothing, in part by repeatedly tagging her on Instagram and linking to the retailer's e-commerce site.

Kardashian West's suit is an example of celebrities taking action to combat the improper online use of their identities.

Kim Kardashian West's Suit

Kardashian West and her loan out company Kimsaprincess, Inc. (together, Kardashian) filed a lawsuit in California against Missguided USA (Finance) Inc. and Missguided Limited (together, Missguided), accusing them of misappropriating her persona as part of its marketing and sales strategy to sell clothing online. According to Kardashian's complaint, Missguided "systematically uses the names and images of Kardashian" to "advertise and spark interest in its website and clothing."

In particular, Kardashian asserted, Missguided's website and social media pages, including Instagram, were "riddled with images of and references to Kardashian" intended to promote its website and drive sales of clothing purportedly "inspired by" Kardashian. Kardashian contended that Missguided's use of her name and likeness was "so pervasive" that consumers had begun to erroneously believe that she was affiliated with Missguided and was working with it to "knock off the clothing" that fashion designers had created for her.

Kardashian's complaint asserted violations of her right of publicity, false designation of origin and trademark infringement. She sought monetary damages, attorneys' fees and costs, and an injunction barring Missguided from using her name, images, likeness, persona and trademarks.

The Decision

The district court granted a default judgment to Kardashian, and awarded her \$2.7 million in damages (which it calculated at \$300,000 per each of nine unauthorized Instagram posts by Missguided) and \$59,600 in attorneys' fees (which it calculated according to a court rule establishing a schedule for attorneys' fees in cases involving default judgments).

In addition, the court permanently enjoined Missguided from using Kardashian West's trademarks in connection with the sale, marketing or distribution of its products.

Courses of Action

When pre-litigation efforts, such as sending cease-and-desist letters and submitting takedown notices to social media platforms that host false advertisements, are unsuccessful or not sufficient to stop the infringing conduct, instituting a lawsuit may also bring results, as illustrated by the Kardashian suit.

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