DOCKET NO: X08-FST-CV-22-6058968-S	:	SUPERIOR COURT
SUSAN KENDALL NEWMAN,	:	JUDICIAL DISTRICT OF
ELINOR T. NEWMAN, Et Al.,	:	STAMFORD
v.	:	COMPLEX LITIGATION
	:	DOCKET
NEWMAN'S OWN FOUNDATION	:	June 28, 2024

MEMORANDUM OF DECISION
TEMPORARY INJUNCITON (Docket No. 134.00)

I.

PROCEDURAL HISTORY

On November 15, 2022, the plaintiffs, Susan Kendall Newman ("Susan"), individually and as trustee of the Susan Newman Charitable Remainder Unitrust ("SN Unitrust"); Elinor T. Newman (Nell), individually and as trustee of the Elinor T. Newman Charitable Remainder Unitrust ("NN Unitrust"); SN Foundation, Inc. ("SN Foundation"); NN Foundation, Inc. ("NN Foundation"); and Cynthia R. Roland ("Cynthia"), as trustee of the Amended and Restated Newman Living Trust Number One ("Trust Agreement"), filed a three-count complaint against the defendant, Newman's Own Foundation ("NOF"). In this Application for Temporary Injunction, the plaintiffs seek an injunction enjoining: (a) the licensing of Paul Newman's Publicity and IP Rights to any non-food products in violation of Section 6 (F) of the Trust Agreement; and (b) any further advertising, promotion, or sale of the "Wet Brush" using or bearing the Publicity and IP Rights.

II.

FACTUAL BACKGROUND

The complaint alleges the following pertinent facts. Paul Newman ("Paul"), Susan and Nell's father, was a famous actor, film director, race car driver, entrepreneur and philanthropist.

(Compl. ¶¶ 12, 13, 18.) Paul wanted to instill in his five daughters the desire to consider charitable purposes. (Compl. ¶ 20.) In the 1980s, he began inviting each of his daughters to direct $25,000 of donations annually to charities of their choosing. Id.

In 1982, Paul founded Newman's Own, Inc., a food and beverage company that donated more than $50 million during its first decade of business. (Compl. ¶ 19.) In 1988, Paul founded The Hole in the Wall Gang Camp to give seriously ill children the chance to "raise a little hell" at summer camp, as well as other programs in Connecticut. (Compl. ¶ 20.) In 1993, Paul and Nell founded Newman Own's Organics, a snack and pet food company that paid royalties for the use of Paul's name, image and likeness, which royalties were donated to charity. Id.

In a letter dated April 27, 1998, Paul's attorney explained that Newman's Own, Inc. could avoid substantial taxes if a nonprofit company were to hold the right to license and receive royalties for the use of Paul's name, image and likeness, and the attorney recommended that he form a private foundation that could administer and dispose of the licenses and royalty fees for charitable purposes *in accordance with Paul's wishes*. (Compl. ¶¶ 21-22.) In 2005, Paul established NOF, which was the centerpiece of his plan for his philanthropic legacy. (Compl. ¶ 32.) NOF is a Connecticut based charitable foundation funded through profits and royalties from the sale of Newman's Own products and the licensing of Paul Newman's publicity rights.

Paul's plan was that NOF would be granted the rights to his name, image, likeness, signature, persona and related intellectual property in exchange for, among many other things, payments of royalties that NOF would use to implement Paul's directives and otherwise exercise its charitable mission. Paul's plan specifically called for NOF to make grants to foundations established in his daughters' names, including SN Foundation and NN Foundation, that would donate those grants to charities. (Compl. ¶ 35.) Throughout the years, beginning with the

February 3, 1998 family meeting, Paul explained and reiterated his plan that NOF would license his intellectual property rights in exchange for royalty fees to fund his "Philanthropic Plans for Daughters." (Compl. ¶ 37.)

In an October 2005 chart, Paul laid out his plans for his daughters' foundations, including that NOF would distribute $400,000 to each such foundation annually through the lifetime of the applicable daughter for them to donate to charities. (Compl. ¶ 36.) On June 15, 2006, Paul's accounting team provided a presentation that described the flow of "$$$" as going from NOF to the"[d]aughters' (5) [s]eparate [f]oundations" and then to "[c]haritable [g]rants and [g]ifts" and stated that "[i]t will be the policy, i.e. stated expectation, of NOF to make annual grants, presently totaling $400,000, to each daughter's foundation." (Emphasis omitted.) (Compl. ¶¶ 39-40.) In August 2007, Paul recorded his intentions on a video, stating that "[a]ll [his] children get a certain amount to be able to give away every year, and they will be giving away [Paul's] estate as well." (Compl. ¶ 41.)

On July 29, 2008, while Paul was ill, he appointed Robert Forrester ("Robert"), his advisor, and Brian Murphy ("Brian"), his business manager, as NOF's second and third members. (Compl. ¶¶ 23, 43, 45.) In addition, Robert and Brian were named as successor trustees, in the event of Paul's death or incapacitation, along with a third successor co-trustee to be appointed by his daughters. (Trust Agreement, § 5.) Less than two months later, Paul passed away on September 26, 2008. (Compl. ¶ 47.) Four days later on September 30, 2008, Robert informed Paul's daughters that he and Brian, through NOF's board, had decided to disregard Paul's plans for the daughters' foundations, replacing it with the Grant Recommendation Program. (Compl. ¶ 49.) Rather than providing $400,000 annually to each daughter's foundation, NOF would make donations directly, and NOF could unilaterally decide each year whether the

program would continue and if so, with what amount of funding. (Compl. ¶¶ 51-52.) Additionally, rather than empowering the daughters to remain actively engaged in philanthropy, the daughters would be merely making recommendations. (Compl. ¶ 53.) In the September 30, 2008 communication, Robert did not advise Paul's daughters that the Trust Agreement provided that upon Paul's death, there should be three successor co-trustees to the Living Trust, Robert, Brian and a third trustee to be immediately appointed by Paul's daughters. (Compl. ¶ 54.)

Although Paul's daughters raised concerns about Robert and Brian's plan and other departures from Paul's wishes, their threatened disinheritance if they objected made them feel without any choice other than to participate in Robert and Brian's Grant Recommendation Program, which at least donated funds to the charities that they identified. (Compl. ¶ 73.) In 2020, however, for the first time after approximately twelve years of funding of the daughters' charities at the $400,000 level, NOF unilaterally decided to reduce the funding by half. (Compl. ¶ 74.) In 2020 and 2021, only $200,000 were directed to charities identified by each of Paul's daughters, and NOF intended a similarly reduced amount of funding for 2022. Id.

The Trust Agreement at issue in this Application for Temporary Injunction is entitled "The Amended and Restated Newman Living Trust Number One" ("Trust Agreement") established by Paul as settlor and original trustee. Section 3.4 of the Trust Agreement provides in relevant part: "[u]pon my death, if the trust property includes (i) Publicity and IP Rights . . . the trustee shall distribute all such assets to Newman's Own Foundation." Section 3.4 of the Trust Agreement defines Publicity and IP Rights as "those intellectual property and related tangible or intangible property rights that at the time of my death are held in the trust or in which the trust has any interest relating to my name, signature, image (still and moving, photographed and drawn), voice, persona, performances, and various related trademarks and copyrights together

with the goodwill associated with any such rights, and including any applications or registrations for such rights, any rights of publicity, any rights to receive payments associated with such intellectual property rights and such rights of publicity, including royalties, profit participations or residuals, any rights to enforce and sue for past and future infringement or violation of such rights, and, to the extent transferable, any rights granted to me in connection with any license or other agreements to which I am a party." (Ex. A, App. Temporary Injunction.) Section 3.4 does not provide that such transfer is irrevocable. Section 6 (D)-(H) of the Trust Agreement provides for the management and control of such assets, even after Paul's death, and the restrictions to the use of such assets. The plaintiffs allege that the Trust Agreement "expressly grants to the various trustees appointed under its auspices important rights to police the use of Mr. Newman's 'Publicity and IP Rights.'" (Compl. ¶ 77.) Specifically, they refer to Section 6 (D) of the Trust Agreement that provides in relevant part that the trustee shall have the power "[t]o take any and all reasonable measures to . . . prevent uses of [Paul's] Publicity and IP Rights that [Paul] either explicitly did not approve during [his] lifetime or that are inconsistent with those uses [Paul] did explicitly approve regardless of whether they were disapproved during [his] lifetime."

The plaintiffs allege that although the Trust Agreement provides that Publicity and IP Rights be transferred to NOF after Paul's death, Section 6 (D) of such Trust Agreement clearly states that Paul intended to condition that transfer on NOF's use of Publicity and IP Rights only in ways that were not inconsistent with the uses that he explicitly approved during his lifetime. (Compl. ¶ 78.) Sections 6 (E)-(H) provide for further restrictions on the use of such Publicity and IP Rights and specifically set forth the powers of the trustees to manage, control, oppose, and prevent inappropriate usage and to protect such Publicity and IP Rights. The plaintiffs further allege that Section 6 (F) of the Trust Agreement provides for the trustee(s) to "take all

reasonable measures to prevent any and all uses of my Publicity and IP Rights on any product or in connection with the advertising or promotion of any product or service whatsoever except in connection with food products (i) of at least the quality of the current Newman's Own brand of products and (ii) authorized and/or licensed by No Limit, Newman's Own Foundation, Newman's Own, Inc. . . . provided, however, that such uses have been approved by No Limit, LLC (or its successor in interest) and/or Newman's Own Foundation and provided, further that such uses are consistent with the quality of uses made for my Publicity and IP Rights during my lifetime." (Ex. A, App. Temporary Injunction.) The plaintiffs allege that pursuant to Paul's direction in the Trust Agreement, the trustees, including Cynthia, Susan, and Nell have the power to prevent that inconsistent use.

"In October 2022, NOF announced a new program called "Newman's Deal" to commemorate the 40th anniversary of Newman's Own and invited non-food brands to apply to use Paul Newman's name, image, and likeness on limited-edition products so long as they agreed to give 100% of profits generated from those products to charities to help kids." (Def.'s Opp. Temp. Injunction pp. 1-2.) "Newman's Deal was implemented to collaborate with prospective brands to market Newman's Own origin story and unique business model in a new and compelling way to generate more money to help kids." Id. In NOF's press release about this program, it was "giving away Paul Newman's image to brands who want to use his iconic image to attract new customers," if the brands agree to donate their profits to charities to help children. (Ex. B to App. Temporary Injunction.) The "NewmansDeal.com" website states that the "[f]ood and beverage products cannot participate in this program. . . ." (Aff. Susan Newman ¶ 7.) The first product to use the Publicity and IP Right in connection with the "Newman's Deal" program was a company known as GP Topco LLC d/b/a Beauty by Imagination ("Beauty by

Imagination"), which announced the sale of a "Special Edition Wet Brush X Newman's Own Pro Detangler in Deep Blue" ("Wet Brush"). (Aff. Susan Newman ¶ 8.)

The Newmansdeal.com website set forth in their frequently asked question section in response to the question "How will Newman's Own decide which brands can participate in Newman's Deal?" that Newman's Own will review all application admissions and will invite brands to commit to the Newman's Deal licensing agreement based on several criteria including, but not limited to, creativity, brand fit, and mission fit. Final decisions are at the discretion of Newman's Own." (Aff. Susan Newman ¶ 9; Ex. 8, Temp. Injunction Hearing.)

The Wet Brush hair product is a non-food product and plaintiffs claim that such product violates the terms of Paragraph 6 (F) of the Trust Agreement. The plaintiffs also claim that in addition to not being a food product, the product does not adhere to the quality standards that Paul Newman specified in Paragraph 6 (F) of the Trust Agreement. The plaintiffs Susan and Nell Newman testified that Paul Newman was very particular as to what he used his image on and near the time of his death he did not want to use his image on non-food products. They also testified as to the irreparable harm to Paul Newman's legacy and Publicity and IP Rights from the sale of non-food products, such as the Wet Brush. The plaintiffs testified that this desire is clearly set forth in Paragraph 6 (F) of the Trust Agreement.

Defendant NOF contended at the Temporary Injunction hearing and in briefing that a halt on NOF's ability to license the Publicity and IP Rights to non-food products, even if temporary, would "have a critical impact *on NOF* and . . . the children that benefit from NOF's contributions." (Emphasis added.) (Def.'s Opp. Temp. Injunction p. 2.)

At the Temporary Injunction hearing, evidence was offered that Beauty by Imagination was the only company to engage in the Newman's Deal program. Michael Clayton ("Clayton"),

the chairman of the board of NOF, who is also the sole manager of No Limits, LLC, testified at the hearing that to the best of his recollection, the license agreement provided that Beauty by Imagination would sell a maximum of 1500 brushes at a $14.99 purchase price and the profits from such sales would go to a "charity helping kids." He testified that the license agreement provided for a $10,000 payment by Beauty by Imagination and that was the total sum he expected the Newman's entities to receive relating to the sale of this brush. He could not identify where the $10,000 proceeds was deposited and/or directed to after receipt, what entity the payment was made to, or what portion of the payment was used for administrative expenses and what portion went to a children's charity.

Clayton testified that a number of employees were commonly shared between all of the Newman's entities, including NOF, Newman's Own and No Limits, LLC, and the Newman's entities also shared financial resources. NOF brought no witness to the injunction hearing who was knowledgeable about how the financial and employee resources were shared between the companies. Clayton did testify that he was simultaneously the sole manager of No Limits, LLC, a wholly owned subsidiary of NOF, and the chairman of the board of NOF. He further testified that he was unaware of any limitations on what No Limits, LLC or any Newman's Own entity could license using Paul Newman's Publicity and IP Rights. He testified that NOF, No Limits, LLC and Newman's Own were actively involved in entertaining licensing opportunities for new non-food products and that this was due to declining revenues from the sale of food products. He testified that this was Paul Newman's wish to have his likeness and image on both food and non-food products and that during his lifetime Paul Newman licensed his name and image for non-food products. (2/21/24 Temporary Injunction Tr. 126.) Clayton admitted he never met Paul Newman and joined the board of NOF in 2013, five years after Paul Newman died.

Notwithstanding testimony with respect to declining revenues, 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. Clayton testified he worked with Brian Murphy and Robert Forrester on the NOF board and that he, Forrester and a Michael McGrath, another board member, traveled together round trip by business class to Australia to explore a barbacue sauce for NOF in or about 2016. (2/21/24 Temporary Injunction Hearing Tr. 139-140.) Robert Forester, an original trustee, member of NOF, board member of NOF and manager of No Limits, LLC was also compensated approximately $1 million dollars a year from one of the Newman's entities. (2/21/24 Temporary Injunction Tr. 133, 170.) [1]

The trustees and original members of NOF that could have testified at the injunction hearing as to Paul Newman's intent with respect to the licensing of his likeness and image on non-food products, Brian Murphy and Robert Forrester, were not present at the hearing. Brian Murphy was an original trustee of the Living Trust charged with protecting the Publicity and IP Rights of Paul Newman, an original member of NOF, and current member of the board of NOF. The Court was advised that Robert Murphy was not able to testify at hearing due to a ski trip on the West Coast. No continuance request was ever filed by the defendant NOF so that Brian Murphy could participate in the hearing, nor was a request made for his remote testimony. Robert Forrester, the other original trustee designated by Paul Newman, original member of NOF, and board member of NOF until 2019, was also not present. The evidence admitted at the hearing showed that Forrester left NOF in 2019 under dubious circumstances, both financial and otherwise.

[1]Robert Forrester was dismissed after allegations of sexual harassment. (2/21/24 Temporary Injunction Tr. 81, 161-162). After a complaint to the Attorney General's office, an investigation was opened and conducted into Robert Forrester's alleged self-dealing, payments and lobbying. Id., 81-82. After his dismissal Forrester remained a member of NOF and continued to serve on the NOF Board. Id., 170-173. After negotiations, Forrester left the NOF Board.

Defendant presented testimony at the hearing that NOF needed to sell non-food products as sales of Newman's Own food products had decreased. It brought no witness to the hearing who could testify as to the accuracy of that claim or how the proceeds of any sale of Wet Brush hair brush was distributed among the Newman's Own entities, including No Limits, LLC. Defendant's claim in opposition to this Application for Temporary Injunction that if this Application for Temporary Injunction is granted $500,000 in revenue would be taken away from kids in need, such as the Hole in the Wall Gang, was not credible.

The plaintiffs argue that the "Newman's Deal" program constitutes a breach of fiduciary duty and warrants imposition of a constructive trust and declaratory judgment in plaintiffs' favor. Plaintiffs also submit that a temporary injunction is warranted to protect against further derogation of the express limitation Paul Newman placed upon the use of his Publicity and IP Rights by preventing defendant from continuing to license those Publicity and IP Rights for non-food products.

III.

DISCUSSION

Under well established Connecticut law, in order to grant a preliminary injunction the Court must consider the following factors: (1) irreparable and imminent injury; (2) lack of an adequate remedy at law; (3) likelihood of success on the merits; and (4) whether a balancing of the equities favors granting the injunction. *Waterbury Teachers* Ass*n.* v. *Freedom of Information* Co*mmission,* 230 Conn. 441, 446, 645 A.2d 978 (1994). "For injunctions, it is essential to establish not only a violations of the rights of the moving party, but also that such a violation . . . is or will be attended with actual or serious damage." (Internal quotation marks omitted.) *Doublewal Corp.* v. *Toffolon*, 195 Conn. 384, 392, 488 A.2d 444 (1985). The power of the court, in sitting as a court of equity, to grant injunctive relief may be exercised only under

demanding circumstances. Restraining the actions of a party by injunction is an extraordinary power, and is always to be exercised with caution, and never without the utmost of satisfactory reasons apparent from the face of the record. It is a remedy that requires the exercise of discretion by the trial court in light of the totality of the relevant circumstances. Id. "[I]n exercising its discretion, the court . . . [must] consider and balance the injury complained of with that which will result from interference by injunction. . . . The relief granted must be compatible with the equities of the case." (Citations omitted; internal quotation marks omitted.) *Berin* v. *Olson*, 183 Conn. 337, 343, 439 A.2d 357 (1981); see also *Marquardt & Roche/Meditz & Hackett, Inc.* v. *Riverbend Executive Center, Inc.*, 74 Conn. App. 412, 421, 812 A.2d 175 (2003).

"Irreparable harm must be shown by the moving party to be imminent, not remote or speculative . . . and the alleged injury must be one incapable of being fully remedied by monetary damages." (Citation omitted.) *Reuters, Ltd.* v. *United Press International, Inc.*, 903 F.2d 904, 907 (2d Cir. 1990). Likelihood of success on the merits does not require that the party demonstrate that success is an absolute certainty, rather the party need only show that the probability of his prevailing is better than fifty percent. *Abdul Wali* v. *Coughlin*, 754 F.2d 1015, 1025 (2d Cir. 1985), overruled on other grounds, 482 U.S. 342, 107 S. Ct. 2400, 96 L. Ed. 2d 282 (1987).

A. Proper Party to Injunction Hearing

The plaintiffs' Application for Temporary Injunction seeks an order enjoining: "(a) the licensing of Paul Newman's Publicity and IP Rights to any non-food products in violation of Section 6 (F) of the Trust Agreement; and (b) any advertising, promotion, or sale of the 'Wet Brush' using or bearing the Publicity or IP Rights." (Pl.'s App. Temporary Injunction p. 14.)

In its opposition to this Application for Temporary Injunction, NOF first argues that it

should be denied as NOF no longer owns the Publicity or IP Rights, is not a licensor of the Publicity or IP Rights to Beauty by Imagination, and that this Temporary Injunction Application should be dismissed as they are not the proper party who entered into the license and plaintiffs failed to join the proper party. (Def.'s Opp. Temporary Injunction p. 14.) NOF argues that its wholly owned subsidiary No Limits, LLC is the holder of the Publicity and IP Rights, and therefore any request for an injunction must be asserted against that entity.

The Publicity and IP Rights relating to Paul Newman's image and likeness were assigned to No Limits, LLC in 2021. However, there was no credible evidence presented to this Court to support NOF's argument that it is not a party to the licensing agreement with Beauty by Imagination nor designated recipient in the license agreement of any of the licensing revenues. The evidence actually points to the contrary. First, NOF admitted in its Answer to plaintiff's Complaint in this action that *"Newman's Own Foundation . . . in a new program. . . called 'Newman's Deal' has begun licensing* Mr. Newman's name and image for use only in products that are not food products." (Emphasis added.) (Def.'s Answer ¶ 7.) Second, No Limits, LLC is a wholly owned subsidiary of NOF, which is managed directly and completely by NOF. NOF is a 99.9% member of No Limits, LLC and an entity called Salad King owns an .1% economic interest. (2/21/24 Temporary Injunction Tr. 141.) The current chairman of the board of NOF, Michael Clayton, is now the sole manager of No Limits, LLC.[2] (2/21/24 Temporary Injunction Tr. 88.) Prior to January 2024, Robert Murphy, a member of NOF and board member of NOF, was a manager of No Limits, LLC with Clayton and served as such since 2008. (2/21/24 Temporary Injunction Tr. 162-164.) Third, No Limits, LLC does not independently have any employees, but operates under a service agreement with NOI to share employees and expenses,

[2] Clayton testified that there is a second manager, John Franscotti, who was hired in January 2024 to manage non-food products, but such manager had not yet started working because of this proceeding. (2/21/24 Temporary Injunction Hearing Tr. 140-144.)

including but not limited to, chief legal counsel and a CFO. (2/21/24 Temporary Injunction Tr. 144, 160, 170-171.) NOI is owned 100% by NOF. (2/21/24 Temporary Injunction Hearing Tr. 90.) Michael Clayton testified that non-food revenues go through No Limits, LLC and then on to NOF. (2/21/24 Temporary Injunction Tr. 179.) NOF, not No Limits, LLC, put out the press release relating to the licensing of Paul Newman's Publicity and IP Rights in "Newman's Deal" and publicly stated that it, not No Limits, LLC, was carrying out this venture for the licensing of non-food products. Thus, it is clear that No Limits, LLC's revenues, finances and personnel are inextricably intertwined with NOI and NOF and NOF is a proper party to this injunction proceeding.

Interestingly, the most authoritative evidence, that actual license agreement, on the issue of whether NOF is a party to the licensing of the Publicity and IP Rights for the Wet Brush, was not offered by NOF, even though this Court raised the issue of what the terms of the actual license agreement were, who signed it, and what entity was actually paid the licensing fee during the course of the hearing. The easiest thing that NOF could have done to clarify this issue in its favor would have been to produce the actual license agreement or produce a witness fully knowledgeable about the terms of the license agreement. Michael Clayton testified as to some purported terms of the license agreement, but was not able to recount all of the key terms the Court inquired about at the hearing. (2/21/24 Temporary Injunction Tr. 164-172.) He did, however, testify that NOF was referenced in the license agreement. (2/21/24 Temporary Injunction Tr. 166.) The Court cannot find in NOF's favor on the terms of a licensing agreement NOF refuses to show the Court.

Based on the foregoing, NOF's motion to dismiss the Application for Temporary Injunction on this ground is denied.

B. Paul Newman's Intent to Restrict Publicity and IP Rights to Food Products and Trustee's Policing and Prevention Powers

In this case, the Publicity and IP Rights of Paul Newman were specifically referenced in numerous sections of the Trust Agreement. Section 3.4 of the Trust Agreement, entitled "Property Interests," states that upon Paul Newman's death, "if the trust property includes (i) Publicity and IP Rights . . . the trustee shall distribute all such assets to Newman's Own Foundation." The term "Publicity and IP Rights" was defined in the Trust Agreement as "those intellectual property and related tangible or intangible property rights that at the time of my death are held in trust or in which the trust has any interest relating to my name, signature, image (still and moving, photographed and drawn), voice, persona, performances, and various related trademarks, and copyrights together with the goodwill associated with any such rights and including any applications or registrations for such rights, any rights of publicity, any rights to receive payments associated with such intellectual property rights and such rights of publicity, including royalties, profit participations or residuals, any rights to enforce or sue for past or future infringement or violation of such rights, and, to the extent transferable, any rights granted to me in connection with any license or other agreements to which I am a party . . . ." There is no language in Section 3.4 that such transfer is irrevocable. The absence of any "irrevocable" language makes sense in light of the other provisions of the Trust Agreement which impose a number of restrictions on the use and licensing of these same Publicity and IP Rights and the power of trustees under the Trust Agreement to manage, control, and police the use of such assets before and after Paul's death.

Section 6 of the Trust Agreement, entitled "Administrative Powers," specifically sets forth the powers of the original trustee under the Trust Agreement, Paul, and the three successor trustees Robert, Brian and Cynthia. In five very detailed and specific paragraphs, Section 6,

paragraphs (D)-(H), further enumerates the powers that the trustees had relating to the management, control, preservation and protection of Publicity and IP Rights:

Section 6 (D) of the Trust Agreement provides for the Trustee(s) to "take any and all reasonable measures to (i) *manage and control the use* of my Publicity and IP Rights, (ii) license or otherwise give permission for approved uses of my Publicity and IP Rights, and (iii) *prevent uses of my Publicity and IP Rights that I either explicitly did not approve during my lifetime* or that are inconsistent with those uses I did explicitly approve regardless of whether there were disapproved during my lifetime" (Emphasis added).

Section 6 (E) of the Trust Agreement provides for the Trustee(s) to "*protect my Publicity and IP Rights including taking reasonable measures to decline and oppose any and all uses of my Publicity and IP Rights except as authorized in accordance with this Trust Agreement* or except as they were used in photoplays or other performances which I authorized during my lifetime and for advertising and promotion in connection with such photoplays or other performances; provided, however, that those photoplays or performances are performed or published in the same or substantially identical form as in their original release or other form which I authorized during my lifetime" (Emphasis added);

Section 6 (F) of the Trust Agreement provides for the trustee(s) to "*take all reasonable measures to prevent any and all uses of my Publicity and IP Rights on any product or in connection with the advertising or promotion of any product or service whatsoever except in connection with food products* (i) of at least the quality of the current Newman's Own brand of products and (ii) authorized and/or licensed by No Limit, Newman's Own Foundation, Newman's Own, Inc. . . . provided, however, that such uses have been approved by No Limit, LLC (or its successor in interest) and/or Newman's Own Foundation and provided, further that

such uses are consistent with the quality of uses made for my Publicity and IP Rights during my lifetime." (Emphasis added);

Section 6 (G) of the Trust Agreement provides for the trustee(s) to "*not authorize, and to employ all reasonable measures to oppose and prevent, any uses of my Publicity and IP Rights* in connection with the creation, enhancement or contribution to any virtual performance or reanimation of any performance by me by the use of any technique, technology or medium now in existence or which may be known or created in the future anywhere in the universe; provided, however, this power is not intended to prevent the use of any technique or method by which any performance of mine may be restored or otherwise preserved in its existing form." (Emphasis added and in original); and

Section 6 (H) of the Trust Agreement provides for the trustee(s) to "*appoint one or more advisors for the purpose of conserving and protecting my Publicity and IP Rights* including without limitation (i) residuals, (ii) shares or percentages in profits or other revenue from television programs, films or plays, (iii) royalties, (iv) ownership or interest in such Publicity and IP Rights, or (v) merchandising rights." (Emphasis added.)

The Assignment must be read in conjunction with the terms of the Trust Agreement because it references the Trust Agreement and was signed by Brian Murphy and Robert Forrester, who were acting as successor trustees of the Living Trust at the time the Assignment, was made less than two months after Paul's death. The plaintiffs argue that although NOF contends that the Assignment of Publicity and IP Rights to NOF was unconditional and irrevocable, the words "unconditional" and "irrevocable" appear nowhere in Section 3.4 of the Trust Agreement authorizing the transfer of these Publicity and IP Rights. The plaintiffs further contend that instead, section 6 (D)-(H) of the Trust Agreement provides for numerous

restrictions on the use of Publicity and IP Rights before and after Paul's death and empowers the successor trustees with powers to enforce such restrictions. Upon review of the Assignment and the Trust Agreement, this Court agrees with the plaintiffs.

Section 3.4 of the Trust Agreement provides that "[u]pon my death, if the trust property includes (i) Publicity and IP Rights . . . the trustee shall distribute all such assets to Newman's Own Foundation." The Trust Agreement does not provide that all of the Publicity and IP Rights shall be transferred unconditionally and irrevocably. In fact, the opposite is true. The Trust Agreement expressly grants to the three successor trustees to be appointed under its auspices important rights to police the use of Paul's Publicity and IP Rights even after they were transferred to NOF. The evidence is clear that these enforcement powers were to continue after Paul's death. Specifically, Section 6 (D) of the Trust Agreement provides in relevant part that the trustee shall have the power "[t]o take any and all reasonable measures to . . . prevent uses of [Paul's] Publicity and IP Rights that [Paul] either explicitly did not approve during [his] lifetime or that are inconsistent with those uses [Paul] did explicitly approve regardless of whether they were disapproved during [his] lifetime."

NOF alternatively argues that the successor trustees' power to police the use of Publicity and IP Rights was granted for management only so long as such rights were held by the Living Trust, and that the successor trustees ceased to have any power over these rights when they were transferred to NOF. The plaintiffs contend that the Trust Agreement does not state that the successor trustees' power was to lapse upon the transfer of Publicity and IP Rights and that Section 6 of the Trust Agreement contradicts this assertion by referring to periods of time after Paul's lifetime. This Court agrees with the plaintiffs that the obligations of the trustees with respect to the preservation and protection of Publicity and IP Rights continued after Paul's death

given the clear language of the Trust Agreement for the following reasons. First, there is no language in the Trust Agreement that the assignment of the Publicity and IP rights was irrevocable or unconditional. Second, there is no language in the Trust Agreement that the restrictions contained in Section 6 of the Trust Agreement and powers granted to the successor trustees to enforce such restrictions, ended upon Paul's death. Third, it would be logical that the restrictions set forth in the Trust Agreement and powers given to the successor trustees to enforce such restrictions, would continue after Paul's death. Otherwise, if such restrictions ended at Paul's death, then any party, including NOF, could have used Paul's Publicity and IP Rights in any way it wished after his death, including in a manner which clearly contradicted Paul's stated intentions in the Trust Agreement. It is very clear to this Court from the unambiguous language of the Trust Agreement that maintaining the integrity of these Publicity and IP Rights before and after his death, was of paramount importance to Paul Newman.

NOF further argues to this Court that the plaintiffs cannot prove that Paul Newman intended to restrict NOF's use of the Publicity and IP Rights and wanted the trustees to police and prevent any violation of the use of these rights. A simple reading of the Trust Agreement refutes that argument. Under the terms of the Trust Agreement, the trustees were given clear instructions and the power to protect, conserve, oppose and prevent illegitimate uses of the Publicity and IP Rights.

"If a [trust instrument] is unambiguous within its four corners, intent of the parties is a question of law . . . . Where the language of the [trust instrument] is clear and unambiguous, the [instrument] is to be given effect according to its terms. A court will not torture words to import ambiguity where the ordinary meaning leaves no room for ambiguity . . . . Similarly, any ambiguity in a [trust instrument] must emanate from the language used . . . rather than from one

party's subjective perception of the terms. . . . If, however, the trust instrument is an incomplete expression of the settlor's intention or if the meaning of the writing is ambiguous or otherwise uncertain, evidence of the circumstances and other indications of the transferor's intent are admissible to complete the terms of the writing or to clarify or ascertain its meaning." (Citation omitted; internal quotation marks omitted.) *Palozie* v. *Palozie*, 283 Conn. 538, 547, 927 A.2d 903 (2007). Accordingly, the "trustee(s)," as that term is used in Sections 5 and 6 of the Trust Agreement, retained a specific right to manage, control, preserve and protect the uses of Publicity and IP Rights and thus have a special interest standing in the present matter.

The Court also notes that the original Trustees and members of NOF, Brian Murphy and Robert Forrester, could have easily testified as to Paul Newman's intent with respect to the licensing of his name, likeness and image on non-food products, and protection of such rights. However, neither person was present at the Temporary Injunction hearing. Brian Murphy was an original Trustee of the Living Trust charged with protecting the Publicity and IP Rights of Paul Newman, an original member of NOF, and a member of the board of NOF since at least 2008. Michael Clayton testified that "Brian Murphy, who knew Paul Newman, who is an accountant. I call him an accountant to the stars, Paul Newman was one of his clients. I think he regards himself as a personal longtime friend of Paul Newman." (2/21/24 Temporary Injunction Hearing Tr. 96.) The excuse given for Murphy's absence at the hearing was that he was on a ski holiday on the West Coast and completely unavailable. No continuance request was ever filed by NOF so that Brian Murphy could participate in this important injunction hearing on the intent of Paul Newman, nor was a request ever made for his remote testimony.

Robert Forrester, the other original Trustee designated by Paul Newman, original member of NOF, board member of NOF from 2008 until 2019, and manager of No Limits, LLC

was also not present at the hearing. The Court finds that the testimony of Susan and Nell Newman at the temporary injunction hearing with respect to Paul Newman's intent to only use his image and likeness on food products to be credible and consistent with the terms of Section 6 (F).

Finally, even though NOF presented testimony through Michael Clayton at the hearing that it needed to license non-food products with Paul Newman's name, image and likeness because sales of Newman's Own food products had decreased and charities such as the Hole in the Wall Gang would receive less funding if it was not permitted to license non-food products, it brought no witness to the hearing who could verify the accuracy of any of these claims. Nor was there a witness at the hearing who could testify as to how the licensing fees from the sale of the Wet Brush were distributed among the Newman's entities, including No Limits, LLC and whether such fees went to administrative expenses or to charities directly.

Based on the foregoing, the Court finds that Paul Newman's intent with respect to licensing his name and image on non-food products is clearly set forth in Section 6 of the Trust Agreement. Paul Newman's intentions were particularly clear at or around the time of the creation of the Trust Agreement that he only wanted his name, image and likeness affixed to food products and he wanted his Trustees to police and prevent the improper use of his Publicity and IP rights. The Trust Agreement, Paragraph 6 (F) clearly sets forth that Paul Newman's name, image and likeness are not to be used on non-food products, and he did not want his name and image licensed on non-food products.

C. Irreparable and Imminent Harm

The plaintiffs must first demonstrate by a fair preponderance of the evidence that Paul Newman's Publicity and IP Rights will suffer irreparable harm without an injunction.

"Irreparable harm must be shown by the moving party to be imminent, not remote or speculative . . . and the alleged injury must be one incapable of being fully remedied by monetary damages." (Citation omitted.) *Reuters, Ltd.* v. *United Press International Inc.*, supra, 903 F.2d 907.

The plaintiffs offered evidence at the hearing that the centerpiece of Paul Newman's intent for his philanthropic legacy, as embodied in the Trust Agreement, was for his Publicity and IP Rights to be used to raise funds for charity through the sale of food products by NOF. (Ex. A, Trust Agreement ¶ 6 (F).) The plaintiffs established at the hearing by a fair preponderance of the evidence, Paul Newman's refusal to have his name, likeness or image or other Publicity Rights and IP Rights affixed to sheets, bottle opener necklaces, sneakers, or denim jackets. His desire to have his name, image and likeness attached to food products was evidenced by many food products with the Newman's Own label. 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. The Trust Agreement, Paragraph 6 (F) clearly sets forth that Paul Newman's name, image and likeness are not to be used on non-food products.

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. The licensing of the Wet Brush does not fall under the clear permitted uses for Paul Newman's name, likeness

or image in Paragraph 6 (F) of the Trust Agreement.[3]

Based on the foregoing, the Court finds that the plaintiffs have established by a fair preponderance of the evidence that the harm to Paul Newman's Publicity and IP Rights is not speculative or remote and is incapable of being fully remedied by monetary damages. They have also established that Paul Newman's Publicity and IP Rights will suffer irreparable harm without an injunction. Thus, the plaintiffs have established the first element necessary for a preliminary injunction precluding NOF, and its related entities, from licensing Paul Newman's name, image and likeness and Publicity and IP Rights on any non-food products.

D. Lack of an Adequate Remedy at Law

The plaintiffs must next establish by fair preponderance of the evidence that they have no adequate remedy at law to sufficiently remedy the Newman's Deal violation of Paragraph 6 (F) of the Trust Agreement. The plaintiffs argue that the Trust Agreement specifically empowers the plaintiffs to enjoin this violation by granting them the continuing power to "prevent any and all uses of my Publicity and IP Rights on any product or in connection with the advertising or promotion of any product or service whatsoever." The plaintiffs contend that there is no other way for them to exercise this right other than through injunctive relief and thus the plaintiffs are without an adequate remedy at law.

E. Likelihood of Success on the Merits

The plaintiffs must next establish by a fair preponderance of the evidence their likelihood of success on the merits. Likelihood of success on the merits does not require that the party demonstrate that success is an absolute certainty, rather the party need only show that the probability of his prevailing is better than fifty percent. *Abdul Wali* v. *Coughlin*, supra, 754 F.2d

[3]This Court does not take issue with the quality of the Wet Brush, but to the improper attachment of Paul Newman's name, likeness and image to such brush.

1025 (2d Cir. 1985).

The Court finds that the plaintiffs have proved by a fair preponderance of the evidence the likelihood of success on the merits of plaintiffs' claims regarding the Newman's Deal program given the clarity of the Paragraph 6 (F) of the Trust Agreement prohibiting the use of the Publicity and IP Rights on any non-food products and the fact that the Wet Brush is clearly a non-food product.

F. Balance of the Equities

The plaintiffs must next establish by a fair preponderance of the evidence that the balance of equities weighs in favor of granting plaintiffs' request for temporary injunction. The plaintiffs argue that the ongoing promotion and sale of a product bearing Paul Newman's name, image and likeness in ways that he specifically prohibited has a negative effect on, and derogates the value of, the Publicity and IP Rights. Plaintiffs contend that the fact that the Wet Brush may still be on the market does not change the analysis as the manufacturer is free to continue selling its brush, but should not do so with Paul Newman's name, image and likeness. This Court agrees with the plaintiffs.

This Court has also balanced the $10,000 paid by Beauty by Imagination for the prohibited use of Paul Newman's Publicity and IP Rights compared to the millions of dollars in licensing fees received through the proper use of Paul Newman's Publicity and IP Rights which were then donated to many charities. It is clear that a significantly greater monetary sum can be produced and utilized from the proper use of the Publicity and IP Rights.

Based on the foregoing, this Court finds that the plaintiffs have met their burden of proving by a fair preponderance of the evidence that the equities weigh in favor of granting the Temporary Injunction Application.

IV.

CONCLUSION

For the foregoing reasons, the plaintiffs' Application for Temporary Injunction is granted and the following is enjoined:

(a) the licensing of Paul Newman's Publicity and IP Rights to any non-food products in violation of Section 6 (F) of the Trust Agreement; and

(b) any advertising, promotion, or sale of the 'Wet Brush" using or bearing the Publicity or IP Rights.

BY THE COURT:

OZALIS, J.

Decision entered in accordance with the foregoing. 6/28/2024
J. Ozalis
All counsel notified