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Fla. Jury Awards $8.3M In Spat Over Sale Of Pro Player Brand

By **Carolina Bolado**

Law360 (July 31, 2024, 10:03 PM EDT) -- A Florida jury has awarded Perry Ellis $8.3 million after finding that United Legwear Co. purposely depressed the value of Perry Ellis' Pro Player brand under a licensing agreement to avoid paying fair market value when it purchased the brand later.

On Friday, after a 10-day trial, a jury in Miami found in favor of Perry Ellis International Inc. and PEI Licensing LLC, and said United Legwear and its subsidiary ULC IP Holdings LLC breached their duties under a 2015 licensing agreement by working to covertly depress the Pro Player brand's value before its option to buy came up in late 2020.

The jurors found that the fair market value of the brand on the date it was sold, Dec. 31, 2020, was $13.3 million, or $8.3 million more than the $5 million ULC paid for it.

Pro Player, an athletic brand that was once emblazoned on the stadium where the Miami Dolphins play, was licensed by ULC beginning in 2015. ULC had considered buying the brand for $10 million at the time, but opted instead for a licensing agreement with an option to buy the brand at the end of the licensing term on Dec. 31, 2020, according to the complaint.

The purchase option set the purchase price at the greater of $5 million or 35% of the fair market value of the brand as of Dec. 31, 2020. The licensing agreement required ULC to "use commercially reasonable efforts to maximize the economic benefits" to Perry Ellis, according to the complaint.

But in the suit, filed in September 2022, Perry Ellis said ULC "secretly did the opposite" and never disclosed the efforts to artificially decrease the value of the Pro Player brand. Perry Ellis said the efforts were not uncovered until discovery in this lawsuit.

Perry Ellis said ULC generated just enough sales to off-price mid-tier retailers — which includes stores like TJ Maxx, Ross, Burlington, DD's Discounts and Dick's Sporting Goods — to make the minimum royalty payments under the licensing agreement.

The plummeting sales led to discussions between the companies and an amendment to the licensing agreement that required ULC to pay more in guaranteed minimum royalties and modified the sale provision to make the purchase price $5 million and the difference between $5 million and the fair market value of the brand.

After the sale of the brand for $5 million in December 2020, Perry Ellis tried to exercise its contractual right for an appraisal of the fair market value of the brand, but the companies could not agree on the scope of the appraisal, which led to the lawsuit.

At trial, United Legwear and ULC argued that they had no liability because the brand was worth less than the $5 million they had paid for it, but the jurors disagreed. They found that ULC had breached the implied covenant of good faith and fair dealing under the purchase agreement by concealing information during the appraisal process and by managing the brand to depress its value. They also found that United Legwear controlled ULC and used it for fraudulent purposes.

Perry Ellis' attorney Albert Lichy told Law360 that his clients had a strong case and a legal team that worked well together.

"We all had each other's back, and I truly believe that when you have the facts on your side, and you have the team together, it usually translates to a very good result and that's what happened in the case," Lichy said.

An attorney for United Legwear and ULC did not respond to a request for comment.

Perry Ellis and PEI are represented by Albert D. Lichy and Ezra S. Greenberg of Stearns Weaver Miller Alhadeff & Sitterson PA.

United Legwear and ULC are represented by Richard Rivera, Carly Hazelip, John McCarthy and Steven E. Brust of Smith Gambrell & Russell LLP.

The case is PEI Licensing LLC et al. v. ULC IP Holdings LLC et al., case number 2022-019171-CA-01, in the Eleventh Judicial Circuit Court of Florida.

--Editing by Kelly Duncan.