

COPYRIGHT CLAIMS OF COSMETIC COMPANY CONTINUE TO TRIAL

Hodgson Russ Intellectual Property Litigation Alert
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The copyright infringement and false association claims against a former Mary Kay, Inc. employee will proceed to trial in June 2023, a Texas court has ruled. The former employee served several key roles during her over forty-year employment with the company, including as an assistant to the cosmetics giant's founder Mary Kay Ash. The employee signed a non-disclosure agreement while employed by the company. When she left, she published a book allegedly using Mary Kay's copyrighted material and gave the impression the book was endorsed by the company. The book, *Pass it On: What I Learned from Mary Kay Ash*, featured a pink cover which the company claims is the signature color of the brand. In its October 2021 lawsuit, Mary Kay alleged that the book and the employee's actions after publication (including showing up at Mary Kay sales events) gave the misimpression that the company endorsed the publication.

The former employee asked the court to dismiss the remaining claims before trial, arguing that the material she used was covered by the "fair use" doctrine which permits use of copyrighted material in limited circumstances. Mary Kay also originally brought common law claims including breach of contract and misappropriation but dropped those claims before the most recent motion was briefed.

Mary Kay has been active in protecting its intellectual property including a 2020 lawsuit against Ultra Beauty for trademark infringement, claims against former employees and Ebay sellers for unfairly competing by selling the branded cosmetics without authorization, and a lawsuit against Michael Kors for violating a trademark coexistence agreement for the "MK" mark.

Hodgson Russ's intellectual property team helps clients protect their intellectual property rights by prosecuting and defending claims of ownership. Hodgson Russ can also help secure trademarks, copyrights, and other protections for businesses and individuals. For more information, please contact [Jodyann Galvin](#) (716-848-1520) or any member of our [Intellectual Property Litigation Practice](#).

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