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McDonald's Gets Anti-SLAPP Win In Allen's $100M Fraud Suit

By **Craig Clough**

Law360 (February 5, 2024, 9:00 PM EST) -- A McDonald's attorney on Monday praised a judge's order ending, on free speech grounds, Byron Allen's $100 million lawsuit alleging the fast food giant lied in pledges to spend more advertising money on Black-owned media, calling it a quick end to his "baseless claims of racism."

Los Angeles Superior Court Judge Mel Red Recana issued a minute order Friday that made final a written tentative order he'd issued earlier in the day just ahead of a hearing on McDonald's USA LLC's anti-SLAPP motion, which sought to strike the suit under a California law that can quickly end a suit if a court finds it infringes on the defendant's First Amendment right to free speech.

Attorneys for Allen's companies urged the judge at the hearing to reconsider the tentative decision, but Judge Recana made it final later in the day, giving a win to McDonald's.

"This win represents full vindication for McDonald's," attorney John Hueston of Hueston Hennigan LLP told Law360 in an email Monday. "By rejecting Allen's effort to convert McDonald's good faith [diversity, equity and inclusion] initiative into a personal money grab, and finding that his claim against McDonald's lacked even 'minimal merit,' the court has brought a quick end to Allen's baseless claims of racism."

Louis R. "Skop" Miller of Miller Barondess LLP, who represents the plaintiffs, said in a statement Monday that "we disagree with the decision. The California legislature enacted a law, Civil Code [Section] 1711, prohibiting companies from making false statements to the public. This lawsuit seeks to uphold that law. We're going to appeal this decision. It in no way affects Allen Media's lawsuit pending in federal court for racial discrimination in contracting for advertising. That lawsuit against McDonald's is alive and well — and is headed for trial."

The suit, filed last May by Weather Group LLC and Entertainment Studios Networks Inc., consisted of one claim for fraud-false promise and alleged McDonald's promised in 2021 to spend 2% of its annual $1 billion ad budget on Black-owned media, with further increases planned.

Allen's companies planned for the advertising boost, but no such increase to Black-owned media occurred, according to the complaint. They said they would know if McDonald's was honoring its ad pledge because the Allen Media Group conglomerate includes 90% of all Black-owned media companies in the country.

Judge Recana's tentative decision was not publicly available at the time of Friday's hearing, and was issued to the parties just ahead of the proceedings.

California's anti-SLAPP statute allows a defendant to quickly end a lawsuit by showing the conduct is protected as free speech. Courts analyze two prongs in conducting an anti-SLAPP analysis: whether the allegations involve protected activity, and whether the plaintiffs have a probability of prevailing on the merits.

The judge's order quoted the California Supreme Court's 2016 Baral v. Schnitt ruling as finding claims with "minimal merit may proceed."

Allen's companies argued in their opposition to the motion, and during Friday's hearing, that McDonald's' 2021 press release announcing the intention to increase spending on Black-owned media is a commercial speech exception to the anti-SLAPP statute, which generally does not protect speech meant to sell goods or services.

Judge Recana's order rejected the argument, saying the press release makes no mention of McDonald's goods or services.

"The press release also does not connect defendant's stated commitment to increase advertising dollars to diverse-owned companies with defendant's own products or services," the judge wrote.

In a prong-two analysis, the judge agreed with the company that "this action was filed before 2024 and this year [has] just begun and has not passed. It is unclear how [the] plaintiffs can make a prima facie showing of [the] defendant's nonperformance when its deadline period has not even passed."

The judge also said the press release states an intention to increase spending not just with Black-owned media companies, but also with production houses and content creators.

On Friday, Hueston argued McDonald's is right on pace to meet its 5% goal. He also said it's not true that Allen's companies represent 90% of all Black-owned media in the United States, and that McDonald's is focusing significant advertising dollars on content creators and production houses.

"Plaintiffs provide no evidence establishing that defendant promised specific percentages to apportion its advertising dollars between these three categories," the judge wrote. "Here, plaintiffs are media companies, not production houses or content creators."

The judge also held, among other things, that Allen's companies failed to demonstrate they reasonably relied on the press release or any statements by McDonald's.

"The press release does not describe any benchmarks, guarantees, or processes for [the] plaintiffs to rely upon and to reasonably expect [the] defendant rejected them in bad faith," the judge wrote. "Accordingly, the court finds plaintiffs fail to make a prima facie showing of the element of reasonable reliance."

The lawsuit is not the only one from Allen to target McDonald's over racial issues in advertising: his companies have an ongoing $10 billion lawsuit in California federal court accusing the chain of discriminating against Black-owned media companies by spending significantly more money advertising with white-owned companies.

In 2021, Charter Communications Inc. reached an undisclosed settlement with Allen's Entertainment Studios over claims the telecom blocks Black-owned companies' access to cable airwaves.

Comcast Corp. reached its own undisclosed settlement with Entertainment Studios in 2020 over similar claims that the company would have carried its channels "but for" racial bias.

Allen's companies are represented by Louis R. Miller and David W. Schecter of Miller Barondess LLP.

McDonald's is represented by John Hueston, Moez M. Kaba, Michael H. Todisco and Karen L. Ding of Hueston Hennigan LLP.

The case is Weather Group LLC et al. v. McDonald's USA LLC, case number 23STCV10045, in the Superior Court of the State of California, County of Los Angeles.

--Editing by Caitlin Wolper.
