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CBS fires back at Happy Days lawsuit

By **Scott Zamost**, CNN Special Investigations Unit
June 24, 2011 2:12 p.m. EDT

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Anson Williams, Don Most, Marion Ross and Erin Moran are suing for unpaid royalties.

STORY HIGHLIGHTS

- CBS files 15-page response to lawsuit by former Happy Days stars
- Network says the plaintiffs are reaching, and trying to create "a lucrative litigation windfall"
- Lawsuit centers on images used on slot machines
- The actors say they have been paid some money but not all the royalties they are owed

Editor's note: "Hollywood Hustle," a story about celebrity merchandising controversies, will be part of a CNN Presents hour on August 7 at 8 p.m. ET/PT.

Los Angeles, California (CNN) -- CBS says stars of the hit TV show "Happy Days," who are suing the company for unpaid merchandising revenue, don't have a case.

The company, which owns the iconic show, said in a 15-page response to the lawsuit filed in Los Angeles Superior Court, that the case is "a garden-variety breach of contract action, nothing more."

"However, rather than simply seek what they are purportedly owed under their contracts, plaintiffs are attempting to generate a lucrative litigation windfall by riddling their complaint with unsupported and overreaching causes of action" for fraud and breach of good faith.

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CBS said this was "all done in a transparent attempt to introduce the specter of punitive damages" in the case.

Four members of the cast -- Marion Ross, Don Most, Anson Williams and Erin Moran -- as well as the estate of Tom Bosley, sued CBS in April, claiming they have not been paid for what they're owed in connection with the worldwide sale of "Happy Days" merchandise. "Happy Days" was originally on the air from 1974 to 1984. Bosley died in October.

Under their contracts, the actors were supposed to receive 5% of net proceeds, or 2 1/2% if their images were used in a group.

In exclusive interviews with CNN earlier this year, the four cast members said they decided to move forward after discovering "Happy Days" slot machines were popping up in casinos around the country in 2008.

"When these slot machines came out, it was like Barnum and Bailey came to town," Williams told CNN. "We were bombarded with, oh look at these pictures, they'd be all over the country."

The actors said when they couldn't resolve their differences with CBS during mediation earlier this year, they decided to file suit.

CNN Money: 'Happy Days' actors claim fraud, money owed for merchandising

The lawsuit says the show "epitomizes what is best in America with the Cunningham family exemplifying the best of what a family can be. As will be proven at trial, defendants' actions epitomize what is worst in corporate America, exemplifying the worst business practices."

It claims that CBS "adopted a 'don't ask, don't pay' policy. If you don't ask, then we don't pay." The suit asks for \$10 million in damages.

However, CBS says there is no evidence of fraud, and the actors "offer no basis for their vague allegation that defendants did not intend to pay merchandising royalties to plaintiffs at the time the parties entered into the agreements."

"Instead, all plaintiffs can allege is that defendants ultimately failed to pay," which is "insufficient as a matter of law to show fraud."

The company disputed that it "concealed" its obligation to pay merchandising revenues. Instead, it said the actors "were simply ignorant of, or slept upon their own rights. That cannot serve as a basis for a fraud claim."

CBS said in a statement that the actors "are owed royalties from the merchandising of 'Happy Days' and have, in fact, been working with their representatives for some time to see that they are paid what they are due."

Neither Ron Howard, the Oscar-winning director who played Richie Cunningham, nor Henry Winkler, who played The Fonz, are part of the lawsuit.

Howard had no comment.

Winkler, who told CNN earlier this year that he supported the actors in their case, said he was paid for merchandising, including his image and voice on the slot machines. He would not say how much.

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OF HI-DEFINITION.

'Happy Days' cast members' lawsuit heading for trial

By **Scott Zamost**, CNN

updated 3:44 PM EDT, Tue June 5, 2012



"Happy Days" stars Anson Williams, Don Most, Marion Ross and Erin Moran are suing CBS for merchandise money.

STORY HIGHLIGHTS

(CNN) -- A judge on Tuesday refused to throw out a case filed by four cast members from the hit 1970s television show "Happy Days,"

A judge Tuesday denied a motion by CBS that would have ended the lawsuit

Four 'Happy Days' cast members are suing for money from merchandise

The lawsuit states the actors should have gotten between 2.5-5% of net proceeds

The case is scheduled to go to trial on July 17

who are suing to recover money from merchandise they claimed they have never received.

Los Angeles Superior Court Judge Elizabeth Allen White denied a motion by CBS for a summary judgment, which would have ended the lawsuit. CBS owns the show.

The key issue remaining in the case is whether the actors may be entitled to payments from the sale of "Happy Days" DVDs.

White ruled that that "defendants have not met their initial burden of showing that plaintiffs are not entitled to merchandising royalties for the use of their likeness on DVD sets sold to consumers."

"The Court emphasizes that it is not making a determination on the merits of (CBS') claim, which might be proven at trial, but only that defendants have not met their initial burden" for the purpose of ending the lawsuit, White wrote.

The ruling means the case, unless it is settled, would go to trial on July 17.

Four members of the cast, Marion Ross, Don Most, Anson Williams and Erin Moran, along with the widow of Tom Bosley, sued CBS in April 2011, claiming they have not been paid what they're owed for the worldwide sale of "Happy Days" merchandise. The series was on the air from 1974 to 1984. Bosley died in 2010.

Under their contracts, the actors were supposed to receive 5% of net proceeds, or 2.5% if their images were used in a group, the lawsuit states.

"It's a certain sense of vindication that they ruled in our favor," Most told CNN in a phone interview. "We feel obviously very pleased and happy with that ruling. It's just confirmation of what we've been claiming all along."

Asked if the cast would actually go to trial if necessary, Most said, "We didn't come this far to then all of a sudden stop. It was a big victory for us today, so we're prepared to go all the way."

In interviews with CNN last year, the actors claimed they were cut out of the merchandising bonanza from the show. Those products include comic books, T-shirts, scrapbooks, trading cards, games, lunch boxes, dolls, toy cars, magnets, greeting cards and DVDs where their images appear on the box covers.

The actors claim they never received revenue statements related to merchandising, and that CBS intentionally never intended to pay them anyway. A fraud claim had previously been dismissed by the court.

In asking the court to dismiss the case, CBS said it had paid the actors everything they were owed for merchandise and that sale of the DVDs are covered under the Screen Actors Guild agreement.

It said that agreement allows CBS to "reuse photography from 'Happy Days' to exploit the television series without making additional payments to the plaintiffs," CBS attorney Keri E. Campbell wrote in papers filed with the court. "It is undisputed that plaintiffs have received all of the residual payments for DVDs to which they are entitled."

While the actors claimed they had not been paid for all merchandise related to the show, the proceeds from the DVDs is the only remaining major issue in the case. Revenue from "Happy Days" slot machines featuring images of the actors was not as high as originally believed, plaintiffs attorney Jon Pfeiffer said. It was the actors' discovery of those slot machines several years ago that led to the lawsuit.

"The undisputed evidence shows, however, that CBS reported all revenue it received in connection with merchandise bearing the plaintiffs' name or likeness in the merchandising royalty statements provided to them and that there is no revenue that has not been reported to plaintiffs," Campbell wrote.

In court papers, Pfeiffer wrote that, in fact, all merchandising revenues have not been accurately accounted for and that, over the years, the actors did not receive financial statements related to the sale of "Happy Days" items.

Since the case was filed, Pfeiffer said CBS has sent the actors checks totaling about \$10,000 each for owed merchandising payments. The checks are being held by Pfeiffer's law firm pending the outcome of the case.

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Last year, in other papers filed with the court, CBS claimed the actors "are attempting to generate a lucrative litigation windfall by riddling their complaint with unsupported and overreaching causes of action" for fraud and breach of good faith. The company said this was "all done in a transparent attempt to introduce the specter of punitive damages" in the case.

CBS said the case was "a garden-variety breach of contract action, nothing more."

The actors accused CBS of "despicable conduct," saying "although defendants routinely rebrand their corporate images, they should not be permitted to rebrand the truth."

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Happy Days actors accuse CBS of 'despicable conduct'

By **Scott Zamost**, CNN Special Investigations Unit

July 12, 2011 12:47 p.m. EDT



Anson Williams, Don Most, Marion Ross and Erin Moran are suing CBS for \$10 million.

STORY HIGHLIGHTS

- "Happy Days" actors suing CBS over merchandising revenues
- Four members of cast from hit show say they haven't been paid their share
- CBS has no immediate comment on the latest court filing
- Since the lawsuit was filed, network has sent checks totaling \$43,403

Editor's note: "Hollywood Hustle," a story about celebrity merchandising controversies, will be part of a "CNN Presents" hour on August 7 at 8 p.m. ET/PT.

Los Angeles (CNN) -- Cast members of the hit television show "Happy Days," who are suing CBS, accused the company of "despicable conduct" for not paying them for merchandising revenues.

The comment was made in court papers filed by the actors' attorney in response to a claim by CBS that the case had no merit.

"In this lawsuit, plaintiffs seek their share of the money collected by defendants as a result of the use of the actors' names and likenesses in connection with merchandising," the document, filed by attorney Jon Pfeiffer in Los Angeles Superior Court, said. "Plaintiffs also want the jury to punish defendants for their despicable conduct."

Four members of the cast -- Marion Ross, Don Most, Anson Williams and Erin Moran -- along with the widow of Tom Bosley,

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sued CBS in April, claiming they have not been paid what they're owed for the worldwide sale of "Happy Days" merchandise. "Happy Days" was originally on the air from 1974 to 1984. Bosley died in October.

Williams: "Unfortunately, now 'Happy Days' also represents the worst of America."

Under their contracts, the actors were supposed to receive 5% of net proceeds, or 2½% if their images were used in a group.

In interviews with CNN earlier this year, the four cast members said they decided to move forward after discovering "Happy Days" slot machines were popping up in casinos around the country in 2008.

"This is one of the most heavily merchandised shows ever," Most said. "People loved 'Happy Days,' and it's been on everything from bedsheets to lunch boxes."

The suit asks for \$10 million in damages.

CNN Money: 'Happy Days' actors claim fraud, money owed for merchandising

The latest court filing follows a response by CBS to the suit last month. The company, which owns the show, said the actors are "attempting to generate a lucrative litigation windfall by riddling their complaint with unsupported and overreaching causes of action" for fraud and breach of good faith. CBS said this was "all done in a transparent attempt to introduce the specter of punitive damages" in the case.

CBS called the case "a garden-variety breach of contract action, nothing more."

But the actors fired back, saying "although defendants routinely rebrand their corporate images, they should not be permitted to rebrand the truth."

They pointed out that they have not "sought damages for speculative profits they had hoped to make on a risky business deal" or for a "windfall of money from conduct that did not harm them."

The company disputed that it "concealed" its obligation to pay merchandising revenues. Instead, it said the actors "were simply ignorant of, or slept upon their own rights."

That cannot serve as a basis for a fraud claim."

But, in the latest court filing, the actors said CBS "should not be rewarded for concealing the money they made and not paying the actors."

"It would place a tremendous burden on studios and production companies if every actor in the entertainment industry were required to call each company they ever worked for to inquire whether merchandising had occurred, and if so, whether any money is due," the court filing said.

"In order to remove that burden and standardize the process, the customary practice in the entertainment industry is to provide periodic statements to actors when money has been generated in connection with merchandise."

In 2002 and 2003, Moran contacted CBS about merchandising

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revenues but was told nothing was owed, the filing states. Since the lawsuit was filed, CBS has sent checks totaling \$43,403 in merchandising proceeds to the four actors and Bosley's widow, Patricia. Pfeiffer told CNN he was holding onto the checks because CBS could argue the case had been settled if they were cashed.

In a statement issued before the lawsuit was filed, CBS said it agreed that the actors "are owed royalties from the merchandising of 'Happy Days' and have, in fact, been working with their representatives for some time to see that they are paid what they are due."

The company did not immediately respond to a CNN request for further comment about the court filing.

The actors said CBS claimed it did not pay them for the "Happy Days" slot machine proceeds due "to oversight." However, the actors point out that Henry Winkler, who played The Fonz on the show, was paid for the use of his image on the slots. Neither Winkler nor Ron Howard, who played Richie Cunningham on the show, are part of the lawsuit.

In addition, from 2008 to January 2011, CBS issued news releases announcing licensing agreements with 14 companies that include gift items, clothing, glassware and bar accessories, the court filing said. But in revenue statements sent to Pfeiffer after the lawsuit was filed, CBS did not include any revenue from four of those companies.

Williams told CNN this week that the case is "like 'Happy Days' versus Goliath. Here's one show and we're putting one of the biggest corporations in the world on the line to do the right thing. I'm hoping this case gives visibility to not only help us, but to help thousands of other individuals in the entertainment business."

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