

How Muhammad Ali's Ex-Photog Won \$2.7M From Brand Co.

By **Ivan Moreno**

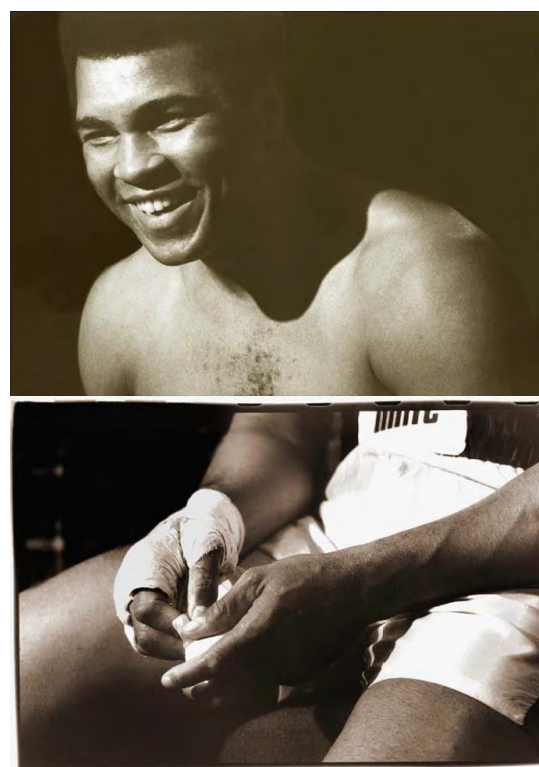
Law360 (October 17, 2024, 9:02 PM EDT) -- When Muhammad Ali's former personal photographer brought a copyright suit against a powerful brand management company, his attorneys faced a daunting challenge at trial: How can they convince jurors that Authentic Brands Group was liable for willful infringement?

Business emails, testimony from employees and compelling courtroom moments all helped propel a narrative that ABG knew at some point it no longer had licensing rights to use Michael Gaffney's photos but continued to do so without permission, acknowledgment or payment — contrary to what the company had said during the case — Gaffney's attorneys told Law360 weeks after the Sept. 23 verdict in favor of their client.

Gaffney's trial in Manhattan federal court against ABG, which acquired Ali's name likeness rights when it bought Muhammad Ali Enterprises in 2013, shows how jurors are likely to respond when faced with such contradictions, according to his attorneys.

"We showed, by the defendant's own documents, their egregious conduct," said one of Gaffney's attorneys, Robert E. Allen, a partner at Glaser Weil Fink Howard Jordan & Shapiro, referring to an email exchange presented to jurors that showed ABG employees knew it no longer had rights to Gaffney's copyrighted photos.

Gaffney signed a contract with Muhammad Ali Enterprises in 2011 to license some of his pictures for products and advertising. The contract expired on Jan. 31, 2015, when he and ABG failed to agree to a new deal, according to the lawsuit he filed in Manhattan federal court in 2018. Muhammad Ali Enterprises was named in the suit as a subsidiary of ABG, which also partially owns the name and likeness rights of Elvis Presley and Marilyn Monroe.



Michael Gaffney took a series of photos of Muhammad Ali while he was the legendary boxer's personal photographer in 1978 and 1979. The top image was widely used as Ali's obituary photo. The second shows Ali taping his hands before his 1977 bout against Earnie Shavers. These images were included in a set of 23 photos shown to jurors in a copyright infringement case brought by Gaffney against Authentic Brands Group. (Photographs by Michael Gaffney. Court documents.)

"There was one instance where there was a use by one of [ABG's] licensees of Mr. Gaffney's photos, and ABG said, 'Well, we don't have the rights to Mr. Gaffney's photos anymore. They shouldn't be doing this, and we need to tell them to stop,'" Allen recalled, paraphrasing the email.

Instead, an ABG employee suggested that the licensee pay more money to use one of the photos Gaffney took while traveling with the three-time heavyweight champion in 1977 and 1978, according to an email exchange.

"Can you please reach out to the licensee and tell them to stop using the image and that they will be charged for items that they are not authorized to sell?" read a 2017 email from an ABG manager shown in court.

Allen said Gaffney's lawyers also had testimony from current and former employees who acknowledged that ABG no longer had the right to use his client's copyrighted photos when the contract expired, but they never told Gaffney the photos were still being licensed to third parties to use on products and advertising.

It was among the evidence that Manhattan federal jurors considered before concluding ABG and Muhammad Ali Enterprises were liable on 23 counts of direct, vicarious and contributory infringement on Sept. 23, finding that the defendants acted with reckless disregard of Gaffney's copyrighted works and that their conduct was willful.

The jury awarded Gaffney \$1.65 million in statutory damages — the maximum allowed — and another \$750,000 in infringer's profits and \$362,000 in actual damages. ABG filed separate motions with the court Tuesday to try to reduce the damages.

ABG, through its counsel, did not respond to a request for comment Thursday.

The Photographs

Gaffney's attorneys said they wanted jurors to know the story behind the photographs so they could understand the value of rare snapshots of one of the most beloved athletes in American sports during the twilight of his career.

"They're not just him in the ring hitting somebody or being hit by somebody. It's much more personal," Allen said.

One of the trial's highlights was Gaffney's time on the stand as he told jurors about meeting and earning Ali's trust. He worked as chief photographer at the Daily Record in New Jersey and also freelanced, so he pitched an agency he worked with the idea to photograph Ali in Deer Lake, Pennsylvania, while he prepared for a fight in 1977.

After an early morning taking pictures of Ali running at the bottom of a mountain, Gaffney accepted a challenge from the champ. Driving in a car with Ali up the mountain to where the training camp was, Ali mentioned to Gaffney that no one had been able to run up a particular hill to his camp, Gaffney remembers telling jurors.

"I was in the backseat with his brother Rahaman and another trainer, and then Ali said it again, 'No man alive has run up my mountain.' By that time, we were at the bottom of the hill," Gaffney told Law360.

Gaffney said he had running clothes on, so he gave it a try.

"I get out of the car, and Ali rolls down the window and says, 'Mike, don't hurt yourself because nobody's made it up the hill, and it's no shame if you can't make it all the way up,'" he said.

It wasn't easy, but Gaffney said he managed to make it to the top of the hill, and when his freelance assignment was up, Ali asked him to be his personal photographer.

"I told that story to the jury, and I think they understood that this was just a human story," he said. "Another instance that I thought was instrumental was when we played a tape recording of Ali's endorsement that we were going to work on a book together."

Although that project never materialized, Gaffney said he thinks "the jury understood that this was a relationship, that Ali was fully endorsing me."

"And I think [jurors] had respect for Muhammad Ali and for what he represented," he continued. "Also they had respect for the work that I was able to accomplish because Ali gave me this gift."

Among the photos in Gaffney's collection were ones of the champ visiting a hospital in Bogotá, Colombia, and another of Ali smiling slightly while covering his right eye after losing the heavyweight title to Leon Spinks in their first fight in February 1978. One close-up portrait of a smiling Ali was used in newspapers and other publications as his official obituary photo when he died in 2016. The photo was on a billboard of the arena where the funeral was held, according to Gaffney's attorneys, but he was not credited.

ABG used that photo after Ali's death on all of its social media sites and distributed it to all of its partners, Gaffney's attorneys said.

"This is a rare collection that was used and abused for commercial purposes," he said. "On social media, [the photo] linked back to their store where they sold merchandise."

Royalty Payments

Gaffney's attorneys said the defendants argued that because they continued to pay him royalties through when he sued in 2018, ABG committed no infringement. Gaffney's attorneys disagreed, saying that was contrary to law.

Still, Allen said ABG produced no evidence that it had made royalty payments for any of the uses Gaffney said were infringing. Gaffney said he received some royalty payments for a few hundred dollars each from 2015 to 2018, but he was not provided with an accounting of what pictures were being used or for what purposes or products. Part of the original contract was that Gaffney had to approve how his pictures were used in advertising and products, his attorneys said.

Some of the royalty payments were withheld for years, according to Gaffney's attorneys, a fact that came up during trial. While his attorneys said ABG could not license his photos for new uses after the contract expired, the branding company and its partners could still sell excess product inventory that preceded the end of the deal.

"After Michael filed his lawsuit, ABG stopped paying Michael all royalties, and they owed him royalties every quarter," said Jason Linger of Glaser Weil, another of Gaffney's attorneys. "So from the time he filed the lawsuit until two days before trial, they never said anything about these missing royalties. In fact, they represented to the judge that all royalties had been paid."

At the start of the trial, however, ABG offered Gaffney a \$400 check from one of its licensees that had not made a payment for years. The licensee had been making hundreds of posters from Gaffney's photos, according to his attorneys.

"They offered for us to receive the check in front of the judge, and Robert [Allen] rejected it," Gaffney said. "That was really a telltale for the basis of our complaint. It was kind of an outrageous moment."

Linger said it was one piece of evidence that underscored how "irresponsible and reckless" ABG was with Gaffney's photos.

"One of their finance people testified that when a deal is over, they have to remove all of the photographs from the system, and he said that should have happened here, and it didn't," Linger said. "They kept Mr. Gaffney's photographs in their database, and all [of] their employees could access them. All of their licensees had access to a software where they could get access to the photographs."

ABG's post-verdict motions this week are for judgment as a matter of law on the willful infringement finding, and another over whether ABG's profits from Gaffney's photos were accurately calculated. ABG said it is "undisputed evidence" that its alleged copyright infringement earned it less than \$5,000 in gross revenue from the sale of products bearing his photos.

Gaffney's attorneys believe they are on solid ground on both motions from ABG.

"There's Second Circuit precedent that says a jury's determination of willful copyright infringement is basically untouchable," Linger said. He also said Gaffney's attorneys only tallied revenue generated from specific licenses that used his photos.

Gaffney said this was the first time he has faced copyright infringement.

"When you're a photographer, the photographs that you're making, this is your work," he said. "This is how you feed your family. These works need to be protected — for all photographers."

Gaffney is represented by Robert E. Allen, Jason Linger and Lawrence M. Hadley of Glaser Weil Fink Howard Jordan & Shapiro LLP, and Jack Spinella of Spinella Law Group LLC.

The defendants are represented by Edmund J. Ferdinand, Jessica S. Rutherford, Kevin A. Fritz and Kathleen Moore of Meister Seelig & Fein PLLC.

The case is Gaffney v. Muhammad Ali Enterprises LLC et al., case number 1:18-cv-08770, in the U.S. District Court for the Southern District of New York.

--Editing by Adam LoBelia.