

Hedge Fund Alert

THE WEEKLY UPDATE ON FUND MANAGEMENT INTELLIGENCE

Hedge Fund Operator Prevails Over French Media Conglomerate in Row Over Name 'Elle'

Elle Kaplan: 1; "Old White" men: 0.

That's the score in Kaplan's effort to win the right to use the name of her fledgling hedge fund firm, **Elle Capital**, after the French owner of the Elle fashion brand claimed the use of its name would confuse consumers in the investment sector, an area in which the fashion brand doesn't operate. That owner, **Hachette Filipacchi Press**, on Nov. 14 withdrew its opposition to a trademark application filed by Kaplan. The **U.S. Patent and Trademark Office** is now expected to award her the trademark in coming months.

In an interview, Kaplan said she's eager to begin marketing her firm, an effort held up by the trademark conflict. But she called the recent experience "infuriating."

"I started my own company in part because I really didn't want to be bullied by the powers that be, which in finance are old White men," she said. "And here I started a hedge fund and, from a fashion magazine that encourages all kinds of dysfunction and insecurity in women, from eating disorders to the need to spend on things that are not necessary, I have a group of old White men saying I can't use this name.

"Why?" she continued. "Because they don't feel like it. They don't do anything in finance, but they don't feel like it. And they hire a law firm owned by White men to run up my legal bills."

Kaplan, the rare woman to own a quantitative hedge fund operation or serve as chief investment officer of one, said Hachette didn't settle the case or provide an explanation about why it decided to withdraw its opposition to her trademark claim. But because of the way Hachette withdrew its opposition, it can't legally reassert its claim in the future, said **Beth Alter**, an intellectual-property lawyer with **Seward & Kissel**. The law firm isn't involved in Kaplan's case.

Hachette's move came on the eve of a trial over Kaplan's application before the **U.S. Trademark Trial and Appeal Board**. Had the case proceeded, it would have involved months more of filings and oral or written witness depositions. It might also have involved a hearing next August before a panel of lawyers, who would have issued a final decision.

Hachette opposed Elle Capital's application, originally filed

in December 2019, in February 2021, at which point it began to pursue a trial before the Trial and Appeal Board. After some delay and a variety of motions, Hachette and Kaplan completed the document discovery process on Oct. 10. The trial process was set to begin on Nov. 24.

Kaplan formally launched Elle Capital in December 2020 and began trading her hedge fund the next month. The fund, combining behavioral finance with quantitative analysis, ran just \$5 million as of this July. Kaplan placed fundraising on pause as the trademark fight played out.

Howard Morgan, an early executive at leading quantitative hedge fund manager **Renaissance Technologies**, is a member of Elle Capital's board.

In its filings, Hachette argued that the hedge fund's use of the name Elle would blur the fashion brand's distinctive quality and cause confusion because potential customers of the Elle brand and the hedge fund overlap.

Hachette did say it "has used" Elle trademarks in connection with credit cards, though it didn't specify in which countries. In 2001, the U.S. patent office expanded the Elle trademark to include banking services, credit card and debit card services, health insurance underwriting and financial planning. The patent office canceled that trademark claim, however, in 2008, saying Hachette hadn't proved it was using the trademark, as required by U.S. law.

Hachette is the publishing division of **Lagardere**, a €2.7 billion (\$2.8 billion) conglomerate that trades on the Euronext Paris exchange and that owns the rights to the Elle fashion brand. In the U.S., the magazine is published by **Hearst**, which bought it in 2011 and pays Hachette royalties for the use of the name.

Hachette's trademark lawyer and a representative of Lagardere did not respond to requests for comment.

Alter, the Seward & Kissel lawyer, said it's hard to know why Hachette withdrew its opposition.

"Who knows what was really going on there," she said. "Maybe for some reason Hachette Filipacchi thought they did not have a good case, or maybe they thought it was too time-consuming or expensive. Were they acting with what looked like no basis? It's hard to say without knowing more about the case."

In addition to Elle Capital, Kaplan owns wealth-management firm **LexION Capital**, which she founded in 2010. The operation had \$79 million of gross assets at yearend, according to its latest **SEC** registration. ■