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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

How Avenatti May Have Crossed The Line Into Extortion

By **Andrew Strickler**

Law360 (March 26, 2019, 9:52 PM EDT) -- A day after being accused of trying to extort Nike, attorney and President Donald Trump antagonist Michael Avenatti was on the offensive Tuesday with allegations of corruption on the part of the company, but those counterpunches likely won't help him dodge federal charges that he went beyond hardball advocacy.

According to prosecutors, Avenatti pressed Nike to pay him millions of dollars as an "internal investigator" in addition to the much smaller figure he demanded from the sports gear giant for his youth basketball coach client.

The lack of nexus between his client's alleged injury at Nike's hands and Avenatti's demand for eight-figure fees as an investigator puts the allegations well beyond the realm of aggressive posturing and into the parameters of federal extortion statutes, said criminal defense attorney Jeremy Saland of Crotty Saland PC.

"Being a blowhard is not illegal, but whether what he's claiming Nike did is fact or fiction doesn't justify trying to enrich himself with a job that doesn't help remedy a wrong suffered by a client," Saland said.

On Monday, federal officials in New York **arrested Avenatti**, charging the pugnacious Los Angeles lawyer with threatening Nike with a stock-price-sinking press conference about recruitment misconduct if it didn't pay up.

Avenatti, who purported to be representing the coach of a youth basketball team once sponsored by Nike, demanded \$1.5 million for the client, who had recently seen Nike drop its support, according to the charges. Separately, Avenatti and another attorney — an unnamed co-conspirator since identified as celebrity defense attorney Mark Geragos — also demanded Nike hire them to conduct an "internal investigation" related to amateur player recruiting.

The cost: at least \$12 million and as much as \$25 million. Prosecutors said Avenatti was also recorded at a March 21 meeting with Nike lawyers at Boies Schiller Flexner LLP offering to end the entire matter, with no bad publicity for Nike, for \$22.5 million.

If the company didn't agree, Avenatti threatened an immediate press conference amid the NCAA basketball tournament about Nike making payments to youth players and their families, prosecutors said, an event he promised would snowball into more bad press and people coming forward with claims of recruiting malfeasance.

In a recorded phone call, Avenatti told Nike attorneys that if the company tried to negotiate a cap on the investigation fees, he would go public and "take a billion dollars off your client's market cap," according to the complaint. At a March 21 meeting in New York, Avenatti allegedly continued to wield threats and press for the investigator role, at one point asking Nike attorneys if they'd ever had "the balls of a client in [their] hands."

"Michael Avenatti may be the best lawyer in the world, according to Michael Avenatti, but there are appropriate courses of conduct to address an alleged wrongdoing, and I don't see how a demand of,

'Give me a job and pay me \$12 million,' is ever going to make the client whole," Saland said.

Adam Felsenstein, a white collar defense specialist at Gallet Dreyer & Berkey LLP, called the prosecutor's narrative "very extortive," particularly on the allegation regarding Avenatti's demand to be hired directly by the company. If that element of the charges is well-founded, it would effectively leave Avenatti without a "cloak of legitimacy" that he was acting solely to resolve a dispute on behalf of his client.

The complaint "doesn't even refer to anticipated litigation. It's just, 'I'm going to reveal embarrassing information unless you pay me.' And once you start asking for money for yourself like that, you trend into extortion," Felsenstein said.

Barry Temkin of Mound Cotton Wollan & Greengrass LLP similarly characterized the alleged scheme as "brazen," and voiced doubt Avenatti would be able to argue that he could pressure Nike to hire him as an investigator and stay within the legal lines.

"He's going to them with a demand that they hire him even as he's threatening them with this press conference, which is screwed up on a lot of levels," he said. "It's ambulance chasing, which is unethical. It's a conflict of interest, and who would want to hire someone to do an internal investigation who is also shaking them down?"

Avenatti was arrested Monday just after he announced via Twitter an impending press conference about a "major high school/college basketball scandal" and criminal conduct "at the highest levels of Nike."

In an unrelated action, federal officials in California **charged Avenatti** on Monday with defrauding a client out of a \$1.6 million settlement and lying to a Mississippi bank to secure loans for his firm and a coffee business.

Avenatti was released in New York later in the day after posting a \$300,000 bond. He is due in court on the California case on Monday. He did not respond to multiple requests for comment Tuesday. A message seeking comment from Geragos was also not returned.

Avenatti shot to national prominence last year representing Stormy Daniels, the porn actress who took \$130,000 from Trump lawyer Michael Cohen to stay quiet about her affair with the future president and then **sued to void the deal**.

The brash lawyer seemed to relish needling Trump and others on countless cable news appearances and on Twitter. He also faced mounting legal troubles in the form of a \$10 million judgment stemming from the breakup of his old firm, Eagan Avenatti LLP, and accusations from former partners that **he hid millions in assets**. Avenatti also **split with Daniels** in recent weeks.

Daniels said Monday she was "saddened but not shocked" by news of Avenatti's arrest, and that he had dealt with her "extremely dishonestly."

Despite the recent setbacks, Avenatti was back on Twitter less than 24 hours after his arrest, saying Nike had made payments to the mother of Phoenix Suns player DeAndre Ayton while he was a college player and to University of Oregon center Bol Bol.

"A lot of people at Nike will have to account for their criminal conduct, starting with Carlton DeBose & moving higher up. The diversion charade they orchestrated against me will be exposed," he tweeted. DeBose is the head of Nike's youth basketball division.

A Nike spokesperson on Tuesday referred to a company statement that it has been cooperating with a government investigation into NCAA basketball for more than a year, and would not "be extorted or hide information" relevant to that probe.

The case is U.S. v. Avenatti, case number 19-mj-2927, in the U.S. District Court for the Southern District of New York.

--Editing by Breda Lund and Jill Coffey.

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