Macy's CEO to testify in fight over Martha Stewart

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Macy's Chairman, President and CEO Terry Lundgren is scheduled to testify in New York State Supreme Court on Monday in a trial that pits the department store chain against rival J.C. Penney Co. over a partnership with home diva Martha Stewart.

The trial focuses on whether Macy's has the exclusive right to sell Martha Stewart-branded products in such categories as cookware, bedding and bath.

Other key witnesses expected to take the stand this week include Martha Stewart and Penney's CEO Ron Johnson.

Macy's has argued in court documents that Martha Stewart Living breached a long-standing contract when it penned a deal with J.C. Penney in December 2011 to open Martha Stewart mini shops in most Penney stores beginning this spring.

Macy's renewed its 2006 pact in January 2012 but then sued Martha Stewart Living almost immediately, saying that it had exclusive rights on certain of its products until 2018. Macy's says it has invested heavily in the name and built the brand into the No. 1 business in the company's home area. In a separate suit, Macy's sued Penney, saying that it had no regard for Macy's agreement when Johnson "set out to steal the Martha Stewart home business away from Macy's."

The two suits were consolidated for the bench trial, over which Supreme State Court Judge Jeffrey Oing is presiding. The trial started last Wednesday and is expected to last for nearly three weeks,

Macy's lawyers outlined in documents that it later found that Penney "knowingly and purposely demanded and received confidential information" from Martha Stewart Living about the contract of Macy's and crafted a deal that was more lucrative than the Macy's agreement.

Penney has seized on what it considers a loophole in the agreement with Macy's. It's a provision that allows Martha Stewart to sell goods in categories like bedding in Martha Stewart Living stores. And because, according to Martha Stewart, the Macy's agreement doesn't say that goods under dispute can be sold only in "stand-alone" Martha Stewart stores, the mini shops in J.C. Penney stores do not fall under the exclusivity clause. Macy's disagrees.

Macy's, based in Cincinnati, has claimed in court documents substantial damages and said the maneuver by J.C. Penney "threatens to inflict incalculable further harm on Macy's. Billions of dollars of sales are involved." Macy's is also trying to stop Martha Stewart from providing designs to J.C. Penney even if it gets rid of the

Martha Stewart moniker.

Last summer, Macy's won a preliminary injunction against Martha Stewart Living that would prevent it from selling housewares and other exclusive products at J.C. Penney. Judge Oing did grant Penney permission to open Martha Stewart shops, as long as the items under the exclusive contract with Macy's are not sold in them.

J.C. Penney plans to open shops featuring designs from Martha Stewart on May 1, but Daphne Avila, a Penney spokeswoman, said that the products which include bedding and cookware have been stripped of the home maven's moniker and instead feature the label JCP Everyday.

According to a memo filed by J.C. Penney, Macy's rights to Martha Stewart aren't nearly as sweeping as it suggests. Under Macy's interpretation of the contract, according to J.C. Penney, Martha Stewart Living is "little more than an in-house designer for Macy's."

In court documents, Martha Stewart Living said it will prove that it was Macy's Inc. that breached the contract because it didn't "use commercially reasonable efforts to maximize net sales of Martha Stewart Collection products."

The stakes are high for both retailers as well as for Martha Stewart.

Martha Stewart Living is trying to fatten merchandising revenue as it struggles to offset declines in its broadcast and publishing business, a segment that accounts for more than 60 percent of its total business. And the deal with Martha Stewart is part of J.C. Penney's plan to reinvent the struggling department store under Johnson, who became CEO of the Plano, Texas, company in November 2011 after helping to create the look and feel Apple Inc.'s iconic stores.

Penney has struggled with mounting losses and sharp sales declines since early last year after shoppers were turned off by a new strategy that eliminated most sales in favor of lower prices every day.

J.C. Penney began adding shops featuring new hip brands last year and plans to overhaul the home department this spring with new names like Jonathan Adler and Michael Graves.

Martha Stewart, however, is at the center of the retailer's home products revamp.

As for Macy's, having another major department store sell Martha Stewart towels, pots and other merchandise could dilute its business.

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