

Michael Jordan's Right of Publicity Case Reinstated

Michael Jordan has scored again—this time at the Seventh Circuit Court of Appeals—but it's no slam dunk.

The appellate court found that a full-page spread by Jewel Food Stores, Inc., in a Sports Illustrated commemorative issue purporting to congratulate Jordan on being inducted into the Naismith Memorial Basketball Hall of Fame was commercial speech, reversing a trial court that threw out the case. The appellate court remanded the case to the trial court to continue with his right of publicity and trademark infringement case.

The Jewel ad featured a pair of sneakers and saluted Jordan for his induction into the Hall of Fame as “a fellow Chicagoan who was ‘just around the corner’ for so many years.” Prominent front and center was the Jewel-Osco logo. Jewel contended the ad merely congratulated Jordan for his achievement.

“To Jordan the ad was not a welcome celebratory gesture but a misappropriation of his identity for the supermarket chain’s commercial benefit,” the appellate court said. “The ad is plainly aimed at fostering goodwill for the Jewel brand among the targeted consumer group—‘fellow Chicagoans’ and fans of Michael Jordan—for the purpose of increasing patronage at Jewel-Osco stores.”

The trial court found the ad was fully protected noncommercial speech and entered judgment for Jewel.

“To say that the ad is noncommercial because it lacks an outright sales pitch is to artificially distinguish between product advertising and image advertising,” the court observed. “Classifying this kind of advertising as constitutionally immune noncommercial speech would permit advertisers to misappropriate the identity of athletes and other celebrities with impunity.”

Jewel did not pay for the advertisement, which appeared on the inside back cover of the commemorative issue. In lieu of payment, Jewel agreed to stock the magazines in all its stores. Jordan is seeking \$5 million in damages.

Michael Jordan v. Jewel Food Stores, Inc., et al., Seventh Cir. No. 12-1992, issued February 19, 2014.