

The Jordan Rules

By Reg P. Wydeven

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Last week I wrote about how Michael Jordan used an American flag to cover up the Reebok logo on his tracksuit during the gold medal ceremony of the 1992 Olympics. Jordan was fiercely loyal to his Nike contract and committed to his brand. Well, more than 20 years have gone by and Jordan's meticulous control over his image is as strong as ever.

In 2009, Jordan was inducted into the Basketball Hall of Fame. Disappointingly, my idol's acceptance speech was not very gracious and humble, but instead sounded more like a roast as he insulted former coaches, teammates, peers, executives and even his own sons. The 23-minute diatribe was practically devoid of thank yous. When he did thank the Hall, it was sarcastic. He said, "Thank you, Hall of Fame, for raising ticket prices."

Knowing it would be a standing-room-only event, the Hall felt it could increase the cost of admission. Famous for not wanting anyone to profit off of him, Jordan was purportedly upset for not getting a share of the ticket sales. That's why it's not surprising that Jordan sued a local Chicago business for congratulating him for being inducted into the Hall.

Grocery chain Jewel-Osco ran a newspaper ad entitled "A Shoe In!" and featured a picture of basketball shoes with the number 23 on them. It further read "Michael Jordan's elevation to the Basketball Hall of Fame was never in doubt! Jewel-Osco salutes #23 on his many accomplishments as we honor a fellow Chicagoan who was 'just around the corner' for so many years." Finally, the ad included Jewel's logo and slogan, "Good things are just around the corner."

In response to the ad, Jordan sued the grocer for \$5 million alleging the company violated his trademarks and publicity rights. The trial judge ruled in favor of Jewel-Osco, citing First Amendment protection. The ultimate competitor, Jordan appealed this decision to the 7th U.S. Circuit Court of Appeals.

The appellate court, however, reversed the trial judge's decision. The appellate court determined that the ad was commercial in nature, and is, therefore, subject to reduced First Amendment protection. Instead of free speech, the court ruled that "Jewel's ad had an unmistakable commercial function: enhancing the Jewel-Osco brand in the minds of consumers."

The ruling read that for Jordan, "the ad was not a welcome celebratory gesture but a misappropriation of his identity for the supermarket chain's commercial benefit." The court held that failing to reverse the trial court "would have sweeping and troublesome implications for athletes, actors, celebrities and other trademark holders seeking to protect the use of their identities or marks."

The case will now go back to the trial court. Jordan's lawyers indicated that after deducting attorney fees, any recovery will be donated to charity. Likewise, Jordan will also donate any damages he receives in another suit against supermarket chain Dominick's for running a similar congratulatory ad.

Thankfully, because this article is an informative piece about a newsworthy topic, it is afforded First Amendment protection as freedom of the press, so I shouldn't get sued.

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