

Supervalu beats Michael Jordan over ad

Premium content from Minneapolis / St. Paul Business Journal by Jim Hammerand, Staff reporter

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A judge has thrown out a trademark lawsuit filed by [Michael Jordan](#) against [Supervalu Inc.](#), ruling that an advertisement congratulating the basketball great on his Hall of Fame inclusion was noncommercial speech under the First Amendment.

Jordan sued Eden Prairie-based Supervalu and subsidiary Jewel Food Stores Inc., which operates about 175 [Jewel-Osco](#) grocery stores in the Chicago area, when the ad appeared in a 2009 issue of [Sports Illustrated](#) commemorating his induction. He demanded damages of at least \$5 million, saying the ad's unauthorized use of his name and number in conjunction with Jewel's logo and slogan diminished his endorsement earning power.

Despite finding that the ad was economically motivated, Illinois U.S. District Judge [Gary Feinerman](#) said it was not commercial speech. Rather, he called it "a tribute by an established Chicago business to Chicago's most accomplished athlete," and deserving of First Amendment protection because Jewel did not propose a specific business transaction or pay for the page (Sports Illustrated publisher [Time Inc.](#) traded the ad for space on Jewel's shelves). Feinerman wrote that consumers who saw Jewel's ad in the magazine also would have seen a rival chain's ad honoring Jordan with a \$2-off steak coupon and concluded that Jordan endorsed neither grocer. (Jordan also sued the rival, Dominick's; that case is pending.)

Jordan will appeal the ruling, said attorney [Frederick Sperling](#) of Chicago-based Schiff Hardin.

“Jewel’s witnesses admitted that Jewel used [Michael Jordan](#)’s identity in its ad to promote its goods and services. That is an admission that the ad was commercial speech,” he said.

Supervalu was pleased with the ruling, spokesman [Mike Siemienas](#) said in a statement. “We continue to believe that we acted appropriately, and that we will prevail in this matter.”

The [U.S. Supreme Court](#) has held that the Constitution protects corporate commercial speech, or offering to sell or provide a good or service, at a lower level than noncommercial speech.

“Simply because you are speaking to make money doesn’t turn the speech into commercial speech,” said [Jane Kirtley](#), a professor of First Amendment law at the [University of Minnesota](#) .

If Jordan appeals, a ruling by the Seventh Circuit Court of Appeals in Chicago could decide the case in about six to 10 months.

Supervalu was represented by [Anthony Zeuli](#) of Minneapolis-based law firm [Merchant & Gould](#) .

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