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

NBA Legend Jordan Shoots To Win \$5M Trademark Suit

By **Pete Brush**

Law360, New York (January 25, 2011) -- NBA great Michael Jordan has asked a federal judge for a ruling of summary judgment in his \$5 million suit accusing grocer Supervalu Inc. of using his image in a 2009 magazine ad without the retired superstar's permission.

Jordan moved for summary judgment Monday in the U.S. District Court for the Northern District of Illinois, telling Judge Gary Feinerman the undisputed facts demonstrated that the chain's use of a photo of Jordan's namesake basketball shoes in an issue of Sports Illustrated, along with one of its logos, was commercial use and therefore required his permission.

Jordan's amended complaint, lodged June 8, claimed Supervalu and its Jewel Food Stores Inc. subsidiary used the image in a commemorative issue of Sports Illustrated dedicated to Jordan's career to promote Supervalu's Jewel-Osco stores in Illinois.

The ad in question congratulated Jordan on his induction into the Naismith Memorial Basketball Hall of Fame but also included the stores' red and white logo with its "Good things are just around the corner" trademark.

"Defendants never received Jordan's permission to use his identity or to imply his endorsement in connection with the goods and services offered by defendants," the suit said.

Jordan's suit makes claims under the Lanham Act, Illinois' Right of Publicity Act and the state's Consumer Fraud and Deceptive Practices Act.

The defendants answered the suit on June 23 denying the allegations, claiming fair use and denying that the advertisement marked a commercial use of the image.

Supervalu also lodged a third-party complaint against Sports Illustrated publisher Time Inc. in June, accusing Time of approaching it without Jordan's permission and offering the ad space. Also named as a defendant in Supervalu's third-party suit is Vertis Inc. which designed the ad.

In July, Time and Vertis answered Supervalu's complaint. Time's answer said any liability to Jordan on the part of Supervalu was the chain's own fault and that Supervalu's suit caused Time "to be involved in litigation through no fault of Time's own." Vertis also denied all of Supervalu's allegations.

Representatives for the parties did not immediately return requests for comment Tuesday.

Jordan is represented by Frederick J. Sperling, Sondra A. Hemeryck and Clay A. Tillack of Schiff Hardin LLP.

Supervalu and Jewel Food are represented by David E. Morrison and Oscar L. Alcantara of Goldberg Kohn Ltd. and Anthony R. Zeuli of Merchant & Gould PC.

Time is represented by Elisa L. Miller and Elizabeth A. McNamara of Davis Wright Tremaine LLP and Mark E. Enright and Thadford A. Felton or Arnstein & Lehr LLP.

Vertis is represented by Sherry L. Rollo, Steven E. Feldman, William E. Corum and Patrick D. Kuehl Jr. of Husch Blackwell LLP.

The case is Jordan v. Jewel Food Stores, case number 1:10-cv-00340, in the U.S. District Court for the Northern District of Illinois.

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