

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

MICHAEL JORDAN and JUMP 23, INC.,)	
)	
)	
Plaintiffs,)	
)	
v.)	Case No.: 10-cv-00407
)	
DOMINICK’S FINER FOODS, LLC, and)	Judge Milton I. Shadur
)	
SAFEWAY INC.,)	Magistrate Judge Maria Valdez
)	
Defendants.)	

AMENDED COMPLAINT

Plaintiffs Michael Jordan and Jump 23, Inc., by their attorneys, for their amended complaint against Dominick’s Finer Foods, LLC and Safeway Inc., state as follows:

THE PARTIES

1. Plaintiff Michael Jordan is known throughout the world for his athletic skill and achievements as a professional basketball player and for his unique commercial appeal as an endorser of products and services.
2. Plaintiff Jump 23, Inc. (“Jump 23”) is an Illinois corporation and owns the trademark registration for the mark MICHAEL JORDAN.
3. Defendant Dominick’s Finer Foods, LLC (“Dominick’s”) is a Delaware limited liability company with its principal place of business in Oak Brook, Illinois, and conducts business in Cook County, Illinois.
4. Defendant Safeway Inc. (“Safeway”) is a Delaware Corporation with its principal place of business in Pleasanton, California. As of March 27, 2010, Safeway operated 1,712 stores in the United States, including its Dominick’s stores in Illinois.

NATURE OF THE CASE

5. This case arises out of the Defendants' unauthorized use of Jordan's identity and trademark in a nationally-distributed advertisement promoting Dominick's in general and their Rancher's Reserve steaks in particular. Jordan and Jump 23 bring these claims for violation of the right to publicity, trademark infringement, false designation of origin, false endorsement, dilution, deceptive business practices and unfair competition against Defendants to remedy the damage caused by Defendants' unauthorized advertisement.

FACTUAL BACKGROUND

6. Now retired from playing, Jordan is widely regarded as the greatest basketball player in history. He was named the National Basketball Association's Most Valuable Player five times and was an NBA All-Star fourteen times. His career scoring average still ranks as the NBA's best of all time. Jordan led the Chicago Bulls to six NBA championships. He was also a member of the 1984 and 1992 United States gold medal Olympic basketball teams. ESPN named Jordan the greatest North American athlete of the 20th century. He was inducted into the Basketball Hall of Fame in 2009.

7. Jordan has also had enormous success as an endorser of products and services in which businesses that wish to profit from an association with Jordan contract with him to use aspects of his world famous identity, including his name and persona, in their advertising and marketing materials. Jordan's persona includes, among other things, his number 23, his image and the colors and clothing associated with his basketball playing career.

8. By carefully controlling the nature and frequency of his product endorsements – rejecting far more requests to use his name and persona than he grants – Jordan has enhanced and maintained the value of his endorsements.

9. The majority of Jordan's income, and his income potential, is now derived from his ability to license his name and persona to commercial sponsors who wish to capitalize on his fame. As a business, the licensing of Jordan's identity is just as important to him now as his professional basketball playing career once was.

10. In 2009 the magazine *Sports Illustrated Presents* distributed a commemorative issue entitled *Jordan: Celebrating A Hall of Fame Career*.

11. On information and belief, the magazine was distributed nationwide.

12. The magazine included a full page Dominick's advertisement, a copy of which is attached to this Complaint as Exhibit A.

13. The Dominick's advertisement was authorized and created by Safeway and Dominick's.

14. Although the Dominick's advertisement congratulates Jordan on his induction into the Basketball Hall of Fame, it goes beyond that by appropriating Jordan's name and persona and infringing the registered MICHAEL JORDAN trademark in order to promote Dominick's goods and services.

15. In the advertisement, the name MICHAEL JORDAN and his number 23 are prominently featured at the top and center of the page on what appears to be a red Chicago Bulls jersey, with black numbers and letters outlined in white.

16. The Dominick's logo, which prominently appears twice in the advertisement, is red, just like the jersey in the advertisement. The numbers on the Dominick's coupon at the bottom of the page are black with a white background, just like the number 23 and the name Michael Jordan depicted on Jordan's jersey in the advertisement.

17. Below the name and number (and a basketball that appears in the middle of the number 23) is the statement, “YOU ARE A CUT ABOVE.” Immediately below the “cut above” statement is a photograph of a cut of steak, labeled as a RANCHER’S RESERVE tender angus steak.

18. At the bottom of the Dominick’s advertisement is a coupon for \$2.00 off a RANCHER’S RESERVE steak. RANCHER’S RESERVE is a registered trademark of Safeway.

19. Jordan has long been associated with two fine steak restaurants that bear his name, Michael Jordan’s The Steakhouse N.Y.C., located in New York City, and Michael Jordan’s Steakhouse, located at the Mohegan Sun Casino and Resort in Uncasville, Connecticut.

20. Jordan is also associated with a website that offers consumers the ability to purchase prime steaks at www.michaeljordansteaks.com.

21. The 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.

22. Jordan has never approved the use of his identity or endorsement in connection with grocery store goods and services.

23. Jordan would never permit Defendants to use his identity in connection with any of Defendants’ goods or services, especially not to sell steaks in direct conflict with his restaurants and website.

24. On May 19, 1988, Jordan was issued United States Trademark Registration Number 1,487,719 for the mark MICHAEL JORDAN for use in connection with “promoting the goods and/or services or others through the issuance of product endorsements.” The

trademark registration, now owned by Jordan's company Jump 23, Inc. ("Jump 23") and used by Jordan pursuant to a license, has been in continuous use since 1984 and is incontestable. A copy of the trademark registration with current status documents for MICHAEL JORDAN is attached to this Complaint as Exhibit B.

25. On March 12, 2002, Jump Higher, L.L.C., a company affiliated with Mr. Jordan, was issued United States Trademark Registration Number 2,547,960 for the mark 23 in connection with "bar, restaurant and catering services." The trademark registration, now owned by Jump 23 and used by Mr. Jordan, has been used continuously since at least 1999 and is incontestable. A copy of the trademark registration with current status documents for 23 is attached to this Complaint as Exhibit C.

26. Jump 23 is also the owner of two trademark registrations (U.S. Reg. Nos. 3,627,002 and 3,627,003) for the trademarks MICHAEL JORDAN 23 SPORTCAFE and MICHAEL JORDAN 23 SPORTCAFE and Design. Both trademarks are registered for use in connection with "restaurant, bar and catering services."

27. The MICHAEL JORDAN and 23 trademarks are, and at all relevant times were, strong, famous and distinctive marks. Jordan and Jump 23 have used the marks in interstate commerce throughout the United States for many years to promote a wide variety of goods and services.

28. Because of the public's widespread knowledge of and admiration for Jordan, goods and services associated with the MICHAEL JORDAN and 23 marks have come to be well and favorably known and have benefitted greatly from their association with the mark.

29. Apart from the value of the MICHAEL JORDAN and 23 marks, Jordan's name and persona have developed enormous commercial value and secondary meaning in promoting products as a result of the public's widespread knowledge and admiration of him.

30. Jordan and Jump 23 have been damaged by Defendants, whose unauthorized advertisement infringes the MICHAEL JORDAN trademark, infringes Jordan's right of publicity and falsely implies Jordan's endorsement of Dominick's goods and services. The advertisement, which equates Jordan with a cut of beef and includes a coupon for a discount off a Dominick's and Safeway branded steak, damages Jordan and Jump 23 by diminishing the value of the MICHAEL JORDAN trademark and reducing Jordan's endorsement value.

COUNT I

(JORDAN'S CLAIM FOR VIOLATION OF THE ILLINOIS RIGHT OF PUBLICITY ACT)

31. Jordan realleges and incorporates by reference paragraphs 1 through 30 of this Complaint.

32. Defendants' unauthorized use of Jordan's identity for commercial purposes is a violation of the Illinois Right of Publicity Act, 765 ILCS 1075/1-60.

33. Defendants' use of Jordan's identity was unauthorized because Defendants did not obtain Jordan's consent to use of his identity in connection with the advertisement. In fact, Defendants did not even request Jordan's consent.

34. Defendants' use of Jordan's identity was willful because they used Jordan's identity intentionally and with knowledge that its use was not authorized.

35. Jordan has been damaged by Defendants' unauthorized use of his identity.

WHEREFORE, Jordan requests that relief be granted in his favor and against Defendants, jointly and severally, for (a) damages sustained by Jordan, including Defendants' profits, in an

amount greater than \$5,000,000, (b) punitive damages, (c) attorneys' fees and costs, (d) a permanent injunction requiring Defendants to refrain from any use of Jordan's identity without prior authorization from Jordan, (e) an order requiring Defendants to place corrective advertising in future issues of *Sports Illustrated* magazine and (f) such other and further relief as the Court deems just and proper.

COUNT II

(JUMP 23'S CLAIMS FOR INFRINGEMENT OF THE TRADEMARK MICHAEL JORDAN)

36. Jump 23 realleges and incorporates by reference paragraphs 1 through 30 of this Complaint.

37. Defendants' unauthorized use of the MICHAEL JORDAN trademark in interstate commerce in connection with the sale, offering for sale, distribution and advertising of its goods and services was and is likely to cause confusion, mistake or deception in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114.

38. Jump 23 has been damaged by these acts.

39. This case is an exceptional case pursuant to 15 U.S.C. § 1117.

WHEREFORE, Jump 23 requests that relief be granted in its favor and against Defendants, jointly and severally, for (a) damages sustained by Jump 23, including Defendants' profits, in an amount greater than \$5,000,000, such damages to be trebled pursuant to 15 U.S.C. § 1117, (b) attorneys' fees and costs, (c) a permanent injunction requiring Defendants to refrain from any use of MICHAEL JORDAN or any confusingly similar trademark absent prior authorization from Jump 23, (d) an order requiring Defendants to place corrective advertising in future issues of *Sports Illustrated* magazine and (e) such other and further relief as the Court deems just and proper.

COUNT III

**(JORDAN'S AND JUMP 23'S CLAIMS FOR VIOLATION OF SECTION 43(a) OF THE
LANHAM ACT — FALSE DESIGNATION OF ORIGIN)**

40. Jordan and Jump 23 reallege and incorporate by reference paragraphs 1 through 30 of this Complaint.

41. Defendants' unauthorized use in interstate commerce of the mark MICHAEL JORDAN and Jordan's identity in connection with the advertisement of their goods and services is likely to cause confusion, mistake or deception as to the affiliation, connection or association of Defendants with Jordan or Jump 23 or as to the origin, sponsorship or approval of Defendants' goods and services by Jordan or Jump 23.

42. Jordan and Jump 23 have been damaged by these acts, all in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

43. This case is an exceptional case pursuant to 15 U.S.C. § 1117.

WHEREFORE, Jordan and Jump 23 request that relief be granted in their favor and against Defendants, jointly and severally, for (a) damages sustained by Jordan and Jump 23, including Defendants' profits, in an amount greater than \$5,000,000, such damages to be trebled pursuant to 15 U.S.C. § 1117, (b) attorneys' fees and costs, (c) a permanent injunction requiring Defendants to refrain from any use of MICHAEL JORDAN or any confusingly similar trademark without prior authorization from Jordan or Jump 23, (d) an order requiring Defendants to place corrective advertising in future issues of *Sports Illustrated* magazine and (e) such other and further relief as the Court deems just and proper.

COUNT IV

**(JORDAN'S CLAIM FOR VIOLATION OF SECTION 43(a) OF
THE LANHAM ACT — FALSE ENDORSEMENT)**

44. Jordan realleges and incorporates by reference paragraphs 1 through 30 of this Complaint.

45. Defendants' unauthorized use of Jordan's identity, including his name and persona, in its advertisement was a false or misleading representation of fact that falsely implies Jordan's endorsement of Defendants' goods and services.

46. Defendants' unauthorized use of Jordan's identity

(a) is likely to cause confusion, mistake or deception as to the affiliation, connection or association of Defendants with Jordan or as to the origin, sponsorship or approval of Defendants' goods and services by Jordan in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(A); or

(b) misrepresents the nature, characteristics, or qualities of Defendants' goods, services, or commercial activities in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B).

47. Jordan has been damaged by these acts.

48. This case is an exceptional case pursuant to 15 U.S.C. § 1117.

WHEREFORE, Jordan requests that relief be granted in his favor and against Defendants, jointly and severally, for (a) damages sustained by Jordan, including Defendants' profits, in an amount greater than \$5,000,000, such damages to be trebled pursuant to 15 U.S.C. § 1117, (b) attorneys' fees and costs, (c) a permanent injunction requiring Defendants to refrain from any use of Jordan's identity without prior authorization from Jordan, (d) an order requiring

Dominick's to place corrective advertising in future issues of *Sports Illustrated* magazine and (e) such other and further relief as the Court deems just and proper.

COUNT V

**(JORDAN'S AND JUMP 23'S CLAIMS FOR VIOLATION OF SECTION 43(c) OF
THE LANHAM ACT — DILUTION)**

49. Jordan and Jump 23 reallege and incorporate by reference paragraphs 1 through 30 of this Complaint.

50. The MICHAEL JORDAN mark is a famous mark within the meaning of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

51. Defendants' unauthorized use of the mark MICHAEL JORDAN in connection with the advertisement of its goods and services has caused or is likely to cause dilution by the blurring or tarnishment of the mark MICHAEL JORDAN.

52. Defendants willfully intended to trade on the recognition of the famous MICHAEL JORDAN mark.

53. Jordan and Jump 23 have been damaged by these acts.

54. This case is an exceptional case pursuant to 15 U.S.C. § 1117.

WHEREFORE, Jordan and Jump 23 request that relief be granted in their favor and against Defendants, jointly and severally, for (a) damages sustained by Jordan and Jump 23, including Defendants' profits, in an amount greater than \$5,000,000, such damages to be trebled pursuant to 15 U.S.C. § 1117, (b) attorneys' fees and costs, (c) a permanent injunction requiring Defendants to refrain from any use of MICHAEL JORDAN or any confusingly similar trademark without prior authorization from Jordan or Jump 23, (d) an order requiring Defendants to place corrective advertising in future issues of *Sports Illustrated* magazine and (e) such other and further relief as the Court deems just and proper.

COUNT VI

(JORDAN'S AND JUMP 23'S CLAIMS FOR VIOLATION OF ILLINOIS CONSUMER FRAUD AND DECEPTIVE TRADE PRACTICES ACT)

55. Jordan and Jump 23 reallege and incorporate by reference paragraphs 1 through 30 of this Complaint.

56. Defendants' acts constitute unfair methods of competition and unfair or deceptive acts or practices in violation of the Illinois Consumer Fraud and Deceptive Trade Practices Act, 815 ILCS 505/2 et seq., in that those acts created a likelihood of confusion or misunderstanding as to Jordan's or Jump 23's sponsorship or approval of Defendants goods or services, or created a likelihood of confusion as to Defendants' affiliation, connection or association with Jordan or Jump 23.

57. Defendants' conduct in violation of the Illinois Consumer Fraud and Deceptive Trade Practices Act was willful and outrageous, perpetrated by evil motive or with reckless indifference to the rights of others.

58. Jordan and Jump 23 have been damaged by these acts.

WHEREFORE, Jordan and Jump 23 request that relief be granted in their favor and against Defendants, jointly and severally, for (a) damages sustained by Jordan and Jump 23 in an amount greater than \$5,000,000, (b) punitive damages, (c) attorneys' fees and costs, (d) a permanent injunction requiring Defendants to refrain from any use of MICHAEL JORDAN or any confusingly similar trademark without prior authorization from Jordan or Jump 23, (e) an order requiring Defendants to place corrective advertising in future issues of *Sports Illustrated* magazine and (f) such other and further relief as the Court deems just and proper.

COUNT VII

**(JORDAN'S AND JUMP 23'S CLAIMS FOR COMMON LAW
UNFAIR COMPETITION)**

59. Jordan and Jump 23 reallege and reincorporate by reference paragraphs 1 through 28 of this Complaint.

60. Defendants acts constitute unfair competition under the common law of the State of Illinois.

61. Defendants' acts were willful and damaged Jordan and Jump 23.

WHEREFORE, Jordan and Jump 23 request that relief be granted in their favor and against Defendants, jointly and severally, for (a) damages sustained by Jordan and Jump 23 in an amount greater than \$5,000,000, (b) punitive damages, (c) attorneys' fees and costs, (d) a permanent injunction requiring Defendants to refrain from any use of MICHAEL JORDAN or any confusingly similar trademark without prior authorization from Jordan, (e) an order requiring Defendants to place corrective advertising in future issues of *Sports Illustrated* magazine and (f) such other and further relief as the Court deems just and proper.

JURY DEMAND

Jordan and Jump 23 hereby demand a trial by jury.

Dated: June 8, 2010

/s/ Frederick J. Sperling
Frederick J. Sperling
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CERTIFICATE OF SERVICE

I hereby certify that on June 8, 2010 I electronically filed the foregoing Amended Complaint with the Clerk of the Court using the CM/ECF system, which will cause an electronic copy to be served on counsel of record.

/s/ Clay A. Tillack