

1 (Proceedings had not herein transcribed.)

2 (In open court in the hearing of the jury.)

3 THE COURT: Call your next witness.

4 MR. SPERLING: Your Honor, as our final witness, we
5 call Michael Jordan.

6 THE COURT: Please raise your right hand.

7 (Witness duly sworn and takes the stand.)

8 THE COURT: You're under oath. Have a seat. Counsel,
9 proceed.

10 MICHAEL JORDAN, PLAINTIFF HEREIN, SWORN

11 DIRECT EXAMINATION

12 BY MR. SPERLING:

13 Q Good morning, Mr. Jordan.

14 A Good morning.

15 Q Why did you bring this case?

16 A To protect my likeness, my image, something that I value
17 very preciousy.

18 Q I'm sorry, I didn't hear you. Could you say that again?

19 A That I value very preciousy.

20 Q You've been sitting here these days and hearing a lot of
21 people talk about agreements for the use of your identity.

22 Do you remember the first time you entered into an
23 agreement for the use of your identity?

24 A Sure.

25 Q When was that?

Jordan - Direct by Sperling

1 A It was 1984. I signed with Nike before I signed with the
2 Chicago Bulls.

3 Q So you entered into an agreement for the use of your
4 identity before you began your professional basketball playing
5 career?

6 A Yes.

7 Q So let's go back in time a little bit. Were you always a
8 great basketball player?

9 A No. I mean, obviously we start very early participating in
10 sports, and then you just work hard to get as good as you can
11 in whatever sport you participate in. I think for whatever
12 reason, basketball became my passion.

13 My skill set probably attributed to playing basketball
14 far greater than at that time, which I still love baseball.
15 Basketball kind of won over baseball. So it was just one of
16 those things where I just started working hard to be the best
17 basketball player I could be.

18 Q So I'd like to take you back to your high school years.
19 What was your first year of high school?

20 A Today -- back in those days, it was 10th grade. Today it's
21 probably the 9th grade, if I'm not mistaken.

22 Q Did you try out for the basketball team in 10th grade?

23 A I tried out for the varsity. I didn't make the varsity
24 team. Back in those days, you go look at your name on the
25 board. If your name is on the board, then you made the team.

Jordan - Direct by Sperling

1 If your name is not, then you're not, you didn't make the team.

2 Fortunately, I had the opportunity to play junior
3 varsity team. It was one of those things that I was very
4 disappointed obviously, and my mother just kept reiterating
5 just keep working hard and good things will happen.

6 Q So you didn't make the team in 10th grade. Did you make
7 any special efforts after you didn't make the team to improve
8 your skills?

9 A Yeah, I did. Actually, you know, the same year that I
10 didn't make the team, the same coach in all honesty, once the
11 season was over, used to pick me up at 7:00 o'clock in the
12 morning to go work on my skills to enable me to make the team
13 the next year.

14 And that was at that time I was playing baseball, so I
15 would get up at 7:00 to play basketball and finish the day out
16 playing baseball.

17 Q How did that work out? Did you make the team the next
18 year?

19 A I made the team.

20 Q It worked out okay since then?

21 A I'm not complaining.

22 (Laughter.)

23 BY MR. SPERLING:

24 Q So after you became a professional, did you have to
25 continue to work hard to become the best you could be?

Jordan - Direct by Sperling

1 A Yes. Obviously when I first got to Chicago, I was the
2 third pick. I'm pretty sure everybody knew that. And then I
3 considered myself the lowest on the totem pole when I first got
4 here, and I had to work my way up.

5 And I worked my way all the way to the top. You know,
6 in 1989 we played the Pistons, who were our nemesis. And at
7 that time they used to beat us pretty good physically, and I
8 think that was the first year I physically started to change my
9 body and start to physically get stronger so I can administer
10 some of that punishment that I was taking.

11 Q Would you actually work out and have training sessions on
12 the same day that you played a professional basketball game?

13 A I worked out and trained every day that I had a uniform on,
14 game days as well as off days, because I wanted to stay ahead
15 of my opponent. That's how I viewed it. Once you get to the
16 top, you want to remain at the top. That means you have to
17 work extra hard.

18 Q Why did you work so hard?

19 A Because I wanted to be the best basketball player I could
20 be.

21 Q So let me focus on agreements for the use of your identity.

22 Do agreements for the use of your identity always
23 require you to perform services?

24 A No.

25 Q Can you give me an example?

Jordan - Direct by Sperling

1 A The fragrance deal, I don't have to do anything.

2 Q You don't have to perform any services?

3 A No.

4 Q Were you involved in the decision not to go forward with
5 the Decibels deal?

6 A Yes.

7 MR. SPERLING: I'd like you and the members of the
8 jury to look at Plaintiffs' Trial Exhibit 13, which is in
9 evidence.

10 May I approach the witness, your Honor?

11 THE COURT: Yes, you may.

12 (Exhibit tendered to the witness.)

13 THE WITNESS: Thank you. Don't look.

14 (The witness put glasses on.)

15 (Laughter.)

16 BY MR. SPERLING:

17 Q Mr. Jordan, I'd like you to look through the proposed
18 Decibels deal and let the members of the jury know if this
19 proposed deal required you to do anything.

20 A There was no mandatory participation at all.

21 Q No appearances?

22 A No.

23 Q No filming of commercials?

24 A No.

25 Q No days promoting the product?

Jordan - Direct by Sperling

1 A No.

2 Q You were being offered a deal for nearly \$80 million at a
3 minimum that didn't require you to do a single thing?

4 A Yes.

5 Q Have you ever agreed to do a one-time, one-page ad?

6 A No.

7 Q What was your reaction to the Dominick's ad when you saw
8 it?

9 A I felt it was --

10 MR. MANDELL: Objection, your Honor.

11 THE COURT: Rephrase your question, Counsel.

12 MR. SPERLING: Do you remember when you first saw the
13 Dominick's ad?

14 THE WITNESS: Yes.

15 BY MR. SPERLING:

16 Q When you saw it, did you have an opinion as to whether it
17 was consistent with the use of your identity that you and your
18 advisers had agreed upon?

19 A It was not consistent, and I felt like it was a misuse of
20 my likeness, my name.

21 Q Would you have entered into an agreement for the Dominick's
22 ad if you'd been asked?

23 A No.

24 Q Is there a minimum value that you and your advisers expect
25 to receive before entering into a contractual relationship for

Jordan - Cross by Mandell

1 the use of your identity to promote a company and its products?

2 A Well, I mean, it's a decision that the Court's going to
3 have to decide on, but I didn't do deals for anything less than
4 \$10 million in excess.

5 Q And before you decide to enter into an agreement or not to
6 enter into a proposal for a significant agreement, do you talk
7 with Curtis Polk or Estee Portnoy or both of them together?

8 A I have the final say-so with everything that involves my
9 name and my likeness. I confer with them. They are my
10 advisers. Not just them, my parents, my mother, other people.
11 And there's no decision that happens without my final approval.

12 MR. SPERLING: Thank you, Mr. Jordan. No further
13 questions?

14 THE COURT: Cross-examination.

15 CROSS-EXAMINATION

16 BY MR. MANDELL:

17 Q Good morning, Mr. Jordan.

18 A Good morning.

19 Q Isn't it correct that you're not qualified to compare the
20 usage that Nike, Hanes and Gatorade and Upper Deck made of you
21 and your identity under your endorsements agreements with them
22 with the usage that Dominick's made of your name and number in
23 this ad?

24 A Am I not qualified?

25 Q Right.

Jordan - Cross by Mandell

1 A I'm very much qualified.

2 Q I'm sorry, I didn't hear you.

3 A I'm very much qualified to determine what my likeness is
4 and how I view my likeness, how I present my likeness, my
5 persona, things of that nature.

6 Q My question is --

7 (Video recording played in open court.)

8 THE COURT: Wait, wait, wait, Counsel. Wait, wait,
9 wait. Sidebar.

10 (Sidebar proceedings outside the hearing of the jury and
11 the public.)

12 BY MR. MANDELL:

13 Q My question is isn't it true that you're not qualified to
14 compare the usage that Nike, Hanes, Gatorade and Upper Deck
15 made of you and your identity under your endorsement agreements
16 with them with the usage that Dominick's made in the ad?

17 A Define qualified in a sense.

18 Q Do you not understand what the word "qualified" means? Are
19 you competent? Can you compare the usage?

20 A I understand the word "qualified." I don't understand how
21 it's meant in terms of comparison of these deals in terms of my
22 control of my likeness and the things that I have -- that I can
23 either enter into or not enter into.

24 Q I'm just asking you if you consider yourself qualified to
25 compare the usage of your identity in the Nike, Hanes, Gatorade

Jordan - Cross by Mandell

1 and Upper Deck ads with the usage in the Dominick's ad?

2 A I do feel that I'm qualified to determine how my likeness,
3 my name, my persona is used in any ad.

4 Q Okay. Well, isn't it true that you're not qualified to say
5 whether the usage you granted Hanes exceeds the usage of a
6 one-page ad in a magazine?

7 A I am qualified to say that I did grant Hanes the usage of
8 my likeness and my persona to utilize in their commercials, and
9 I didn't do that for the Dominick's ad.

10 Q My question to you is you're not qualified to say whether
11 the usage you granted Hanes exceeds the usage of a one-page ad
12 in a magazine?

13 A I didn't grant Dominick's any rights.

14 MR. MANDELL: Counsel, page 152, line 13 through 21.

15 MS. HEMERYCK: I'm sorry, did you say page 152, line
16 13 through 21?

17 MR. MANDELL: Correct. May I, your Honor?

18 THE COURT: Hold on. Hold on. Counsel is still
19 trying to find it, I believe. Are you there, Counsel?

20 MR. SPERLING: No objection.

21 THE COURT: Go ahead, Counsel.

22 (Video recording played in open court.)

23 BY MR. MANDELL:

24 Q You were under oath. That was your deposition that I took,
25 right?

Jordan - Cross by Mandell

1 A True.

2 Q And you were under oath?

3 A Yes.

4 Q And you knew that it was being videotaped for this very
5 purpose, right?

6 A Yes.

7 Q Were you telling the truth at the time?

8 A Yes.

9 Q Okay. Now, isn't it true that you're not qualified to
10 answer whether your obligations in the Gatorade contract are
11 greater than your obligations in connection with a one-page
12 congratulatory ad in a magazine?

13 A I am qualified. Same answer.

14 MR. MANDELL: Page 161, line 12 through 19.

15 MR. SPERLING: That's fine. No objection.

16 THE COURT: Line 12 through what, Counsel?

17 MR. MANDELL: Line 12 through 19.

18 THE COURT: Thank you, sir.

19 (Video recording played in open court.)

20 BY MR. MANDELL:

21 Q Do you remember being asked that question and giving that
22 answer, Mr. Jordan?

23 A True.

24 Q Were you telling the truth at the time?

25 A Yes.

Jordan - Cross by Mandell

1 MR. MANDELL: Your Honor, as we said, we are intending
2 to play clips of Mr. Jordan's videotaped deposition in our
3 case-in-chief, so I have no more questions at this time.

4 THE COURT: Okay. Ladies and gentlemen, this is the
5 portion where you get to submit questions, if you want. I've
6 instructed you what the procedure is.

7 If you would like to ask a question, go ahead, write
8 it down. And if not, just pass down a blank piece of paper and
9 the courtroom security officer will collect them.

10 (Pause in proceedings.)

11 THE COURT: All right. Ladies and gentlemen, we're
12 going to take a short break. Until the trial is over, you are
13 not to discuss the case with anyone, including your fellow
14 jurors, members of your family, people involved in the trial or
15 anyone else, and you should not discuss the case in person or
16 online in any way.

17 If anyone approaches you and tries to talk to you
18 about the case, do not tell your fellow jurors, but advise me
19 about it immediately. Do not read or listen to any news
20 reports of the trial and do not investigate it on your own.

21 Finally, remember to keep an open mind until all the
22 evidence has been received and you have heard the views of your
23 fellow jurors.

24 This will be a short break, and I'm hoping to continue
25 with the trial and maybe take a lunch break around 1:00 just

Jordan - Cross by Mandell

1 for planning purposes. All rise for the jury.

2 (Jury exits courtroom at 11:49 a.m.)

3 THE COURT: Mr. Jordan, you can step down, if you
4 wish. I'm not going to require him to leave because he's a
5 party, and I'll afford the same courtesy to your corporate
6 representative. I'm assuming there's no objection.

7 MR. ROSENFELD: No objection.

8 THE COURT: Let me sort through the notes. Give me
9 one moment.

10 For the record, there are only three that have any
11 writing on them, and two of them say "no question," so I'm
12 going to discard those with the blank ones, which leave us with
13 only one question, and I believe this is jury note 23 for the
14 purposes of the record.

15 (Laughter)

16 MS. HEMERYCK: How did you manage that, Judge?

17 THE COURT: Yes, it is. It's juror note 23, and it is
18 for Mr. Jordan. And it reads as follows: "Why would you have
19 never entered into an agreement with Dominick's even if they
20 asked?"

21 Any objection to that question? I'll give it to the
22 parties to take a look at it.

23 MR. SPERLING: No objection.

24 (Document tendered to counsel.)

25 THE COURT: Any objection to the defense asking that

Jordan - Cross by Mandell

1 question?

2 MR. ROSENFELD: Your Honor, we would have an objection
3 to that question because while on its face, I think the
4 question isn't necessarily improper, I think that the response
5 to it necessarily will bring in other aspects that would be
6 excludable under 401 and 403, namely tarnishment, false
7 endorsement and other issues that the Court had expressly
8 advised the jury to exclude or to not consider in this case.

9 MR. SPERLING: Your Honor, it is my expectation,
10 having conferred with Mr. Jordan about the importance of not
11 injecting those issues into the trial, that his answer will not
12 inject those issues.

13 THE COURT: And I'm assuming counsel's advised the
14 witness of the Court's preliminary rulings and interim rulings,
15 and indeed Mr. Jordan's been present throughout the trial with
16 respect to the Court's rulings regarding what the issues are in
17 this case.

18 He's entitled to answer the question, I believe. I
19 believe it's relevant and survives a 403 balancing test. If
20 his answer fails -- if the responsive answer fails a 403
21 balancing test, I will sustain your objection and strike the
22 answer and instruct the jury.

23 But I don't believe this question necessitates an
24 inadmissible answer. So in light of that, I'll overrule the
25 objection and give the question in its current form.

Jordan - Cross by Mandell

1 All right. Is there anything else we need to do
2 before we bring out the jury?

3 MR. SPERLING: No, your Honor.

4 THE COURT: And after the plaintiff, I understand
5 we'll have redirect and then recross, depending if they believe
6 they need it.

7 And then at that point, you will be resting; is that
8 correct?

9 MR. SPERLING: Correct.

10 THE COURT: Okay.

11 MR. ROSENFELD: Your Honor, I do bring out one other
12 point in addition to the points that we brought out earlier. I
13 just raise again Defendants' Motion in Limine No. 14, which was
14 granted by consent of the parties which says that there is to
15 be no evidence of Mr. Jordan's emotional distress including his
16 reaction to or disappointment with defendants' use of his
17 identity.

18 So I would expect that in answering this question,
19 there would be no expression of disappointment or reaction with
20 respect to Dominick's use.

21 THE COURT: Any emotional damages are not on the
22 table. No punitive damages are on the table. Again, if his
23 answer to the question fails a 403 balancing test, I will
24 sustain a timely objection, if one is made, and instruct the
25 jury to disregard.

Jordan - Jury questions propounded by the Court

1 MR. ROSENFELD: Thank you, your Honor.

2 THE COURT: All right. Bring out the jury.

3 Counsel, if we go to plaintiff resting in fairly short
4 order, I'd like to continue with the evidence and go through
5 one.

6 And I will just reserve any appropriate motions and
7 we'll take them outside the presence of the jury. That way, we
8 can stay on track.

9 MR. SPERLING: Good. Thank you, Judge.

10 MR. ROSENFELD: You know, for the record, as you might
11 expect, we do intend to make a motion for a directed verdict.
12 So I just -- I just want to make sure that that is preserved
13 and not waived after plaintiff rests.

14 THE COURT: Yeah, it will be preserved, and we'll
15 argue it outside the presence of the jury.

16 MR. ROSENFELD: Thank you, your Honor.

17 (Jury enters courtroom at 11:57 a.m.)

18 JURY QUESTIONS

19 BY THE COURT:

20 Q Good morning. Please sit down. Mr. Jordan, I have a
21 question for you. Why would you have never entered into an
22 agreement with Dominick's even if they asked?

23 A It didn't fit the strategy that we operated on in terms of
24 signing and evaluating deals.

25 THE COURT: Counsel, redirect.

Jordan - Redirect by Sperling

1 REDIRECT EXAMINATION

2 BY MR. SPERLING:

3 Q Mr. Jordan, I'd like to return to the attempted impeachment
4 of your testimony, and let's look at the question that you were
5 actually asked.

6 MR. MANDELL: Objection, your Honor. Characterizing
7 impeachment.

8 THE COURT: He hasn't finished his question yet. Wait
9 till he finishes the question. Counsel, ask your question.

10 BY MR. SPERLING:

11 Q So I'm reading from the transcript the question that was
12 shown as the proposed impeachment. "Would you agree that the
13 usage you granted Hanes exceeds the usage of a one-page ad in a
14 magazine?"

15 Was that question specifically about this one-page ad
16 in this magazine?

17 A I wouldn't do it in any magazine.

18 Q But I'm asking you here the question that says a one-page
19 ad in a magazine, were you being asked specifically about this
20 one-page ad in this magazine?

21 A I didn't specify. It did not specify which ad they were
22 talking about.

23 Q When they talked about a one-page ad in a magazine, did
24 they tell you what was going to be in the ad?

25 A No.

Jordan - Redirect by Sperling

1 Q Did they tell you what, if anything, you'd have to do?

2 A Not at all.

3 Q Did they provide you any details?

4 A No.

5 Q All the other contracts that defense counsel talked about
6 with you, were you asked before they used your identity whether
7 they could use your identity?

8 A Yes.

9 Q In every one of those cases, did you give your permission?

10 A Yes. I have approval rights in all my deals.

11 Q Did Dominick's or Safeway ever ask you or your advisers if
12 they could use your identity?

13 A No.

14 MR. SPERLING: Thank you.

15 THE COURT: Recross examination?

16 MR. MANDELL: Nothing further, your Honor.

17 THE COURT: Thank you, sir. You may step down.

18 (Witness excused.)

19 (Proceedings had not herein transcribed.)

20 C E R T I F I C A T E

21 I certify that the foregoing is a correct transcript of the
22 excerpt of proceedings in the above-entitled matter.

23

24 /s/ LISA H. BREITER
LISA H. BREITER, CSR, RMR, CRR
25 Official Court Reporter

August 18, 2015