

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

MICHAEL JORDAN and JUMP 23, INC.,)	
)	
Plaintiffs,)	
)	
v.)	
)	No. 10-00407
DOMINICK’S FINER FOODS, LLC,)	
)	
Defendant.)	

NOTICE OF REMOVAL OF A CIVIL ACTION

Defendant, Dominick’s Finer Foods, LLC (“Defendant”), hereby notifies this Court that this civil action has been removed from the Circuit Court of Cook County, Illinois, to the United States District Court for the Northern District of Illinois, Eastern Division, pursuant to 28 U.S.C. §§ 1331, 1332, 1338, 1367, 1441, and 1446. In support of this notice, Defendant states:

PROCEDURAL BACKGROUND

1. Plaintiffs Michael Jordan (“Jordan”) and Jump 23, Inc. (“Jump 23”; collectively, “Plaintiffs”), filed a Complaint in the Circuit Court of Cook County, Law Division, on December 21, 2009, against Defendant.
2. On December 22, 2009, Plaintiffs served Defendant with a copy of the Complaint and Summons. (A copy of the Summons and Complaint is attached as Exhibit A.)
3. In the Complaint, Plaintiffs allege seven counts: (I) violation of the Illinois Right of Publicity Act; (II) trademark infringement under 15 U.S.C. § 1114; (III) false designation of origin under 15 U.S.C. § 1125(a); (IV) false endorsement under 15 U.S.C. § 1125(a)(1)(A); (V) trademark dilution under 15 U.S.C. § 1125(c); (VI) violation of the Illinois Consumer Fraud and Deceptive Business Practices Act; and (VII) common-law unfair competition. Each of the

counts arise from a one-page tribute Defendant placed in an issue of *Sports Illustrated* magazine that commemorated Jordan's induction into the Basketball Hall of Fame. (See Ex. A, ¶¶ 9-16.)

4. This is a civil action in which the United States District Court has original jurisdiction under the provisions of 28 U.S.C. §§ 1331, 1332, 1338, and 1367.

5. Defendant timely files this Notice of Removal pursuant to 28 U.S.C. § 1446(b) within 30 days of being served with the Summons and Complaint.

FIRST BASIS FOR REMOVAL – FEDERAL QUESTION

6. Removal of this action is proper under 28 U.S.C. § 1441(a) because this Court has original jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338, and 1367.

7. Jurisdiction is proper as to Counts II, III, IV, and V pursuant to 28 U.S.C. § 1331 because those counts arise under the laws of the United States, and pursuant to 28 U.S.C. § 1338(a) and (b) because those counts arise under federal statutes regarding trademarks or are claims of unfair competition joined with substantial and related claims under the trademark laws. Jurisdiction is also proper as to Counts VI and VII pursuant to 28 U.S.C. § 1338(b) because those counts assert claims of unfair competition and are joined with substantial and related claims under the trademark laws. Finally, jurisdiction is proper as to Counts I, VI, and VII pursuant to 28 U.S.C. § 1367(a) because they are so related to claims within this Court's original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

SECOND BASIS FOR REMOVAL – DIVERSITY OF CITIZENSHIP

8. Additionally, jurisdiction is proper under 28 U.S.C. § 1332 because the matter in controversy exceeds \$75,000 and the action is between citizens of different states.

9. The matter in controversy exceeds \$75,000. Plaintiffs allege damages exceeding \$5,000,000 and additionally request trebled damages, attorneys' fees, and injunctive relief. (See, e.g., Ex. A at 6 (Wherefore Clause).)

10. On information and belief, Jordan is a citizen of either Florida or Illinois.

11. Jump 23 is an Illinois corporation (see Ex. A ¶ 2) that, on information and belief, has its principal place of business in Illinois.

12. Defendant is a Delaware LLC with a single member, Dominick's Supermarkets, Inc. Dominick's Supermarkets, Inc., is a Delaware corporation with its principal place of business in California. Therefore, pursuant to 28 U.S.C. § 1332(c)(1), Defendant is a citizen of Delaware and California.

13. Accordingly, this is a civil action between citizens of different States, and jurisdiction is proper pursuant to 28 U.S.C. § 1332(a)(1). Removal is proper under 28 U.S.C. § 1441(b) because none of the parties in interest properly joined and served as defendants is a citizen of Illinois, the State in which this action was brought.

ADDITIONAL REQUIREMENTS

14. Venue is proper in the Northern District of Illinois based on 28 U.S.C. § 1391(b)(1) and (c) because Plaintiffs allege that Defendant conducts business in the Northern District of Illinois. (See Ex. A ¶ 3.)

15. Defendant is serving this Notice of Removal on Plaintiff's counsel of record, Schiff Hardin LLP, via U.S. Mail addressed to its office located at 233 South Wacker Drive, Suite 6600, Chicago, IL 60606.

16. Defendant is also filing a copy of the Notice of Removal of a Civil Action in the Circuit Court of Cook County, Illinois.

WHEREFORE, Dominick's Finer Foods, LLC, notifies this Court that this cause has been removed from the Circuit Court of Cook County, Illinois, to the United States District Court for the Northern District of Illinois, pursuant to the provisions of 28 U.S.C. §§ 1331, 1332, 1338, 1367, 1441, and 1446.

Respectfully submitted,

DOMINICK'S FINER FOODS, LLC

Dated: January 20, 2010

By: /s/ Steven P. Mandell
One of its attorneys

Steven P. Mandell (ARDC #6183729)
Anne S. Jordan (ARDC #3126183)
Steven L. Baron (ARDC #6200868)
Jared D. Solovay (ARDC #6270647)
Shari R. Albrecht (ARDC #6288927)
Mandell Menkes LLC
333 W. Wacker Drive, Suite 300
Chicago, Illinois 60606
312-251-1000

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that he caused to be served and filed Defendants' *Notice of Removal of a Civil Action* electronically with the Clerk of the Court of Illinois, Northern District, Eastern Division, 219 South Dearborn Street, Chicago, Illinois, on January 20, 2010, and will cause to be served the same via U.S. mail on January 21, 2010, on:

Frederick J. Sperling
Sondra A. Hemeryck
Clay A. Tillack
Schiff Hardin LLP
233 S. Wacker Dr., Ste. 6600
Chicago, IL 60606

/s/ Steven P. Mandell

179416