

David Levitt on What Michael Jordan's Lawsuits Can Teach us about the "Forgotten Defense" of Commercial Speech in Right to Publicity Cases

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Chicago-based Hinshaw & Culbertson LLP partner [David Levitt](#) recently published an article titled "Right of Publicity and Commercial Speech" in DRI's *For the Defense* magazine. In the article, Levitt looks at the "astounding paucity" of case law involving use of a commercial speech defense by a right of publicity defendant. Calling it the "forgotten defense," Levitt opines that there is "no rational explanation" for why defendants have not more often raised the "very viable and well-settled protections" available even to speech deemed "commercial."

Levitt begins his article with a review of two right to publicity cases that Hall of Fame basketball player Michael Jordan filed against two Chicago-area grocers for ads they had placed in *Sports Illustrated*. While one of the defendants unsuccessfully argued that their ad was non-commercial free speech, neither sought protection for the ad as protected commercial speech under the First Amendment. Levitt continues with a review of the "weak underpinnings" of the right to publicity and then discusses how the U.S. Supreme Court's four-part test for commercial speech protection in *Central Hudson* can serve as a viable defense in right to publicity cases.

Read the full article "[Right of Publicity and Commercial Speech](#)" (PDF)

"Right of Publicity and Commercial Speech" was published in DRI's *For the Defense* magazine, August 2017.

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David H. Levitt

Of Counsel

📞 312-704-3515

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