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Soldier of Fortune Magazine Held Liable for Killer's Ad
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In a case that raised First Amendment issues, a Federal appeals court has upheld a ruling that Soldier of Fortune magazine was liable in the contract murder of an man whose killers were hired through a "sinister" and suggestive classified advertisement in the magazine.

The 2-to-1 ruling by a panel of the United States Court of Appeals for the 11th Circuit, published Monday, upheld a \$4.3 million damage award to the sons of the victim, Richard Braun of suburban Atlanta.

A spokesman for Soldier of Fortune, Alex McColl, said today, "We're disappointed and think that this decision is a hazard to the print media generally." He said the magazine, which is based in Boulder, Colo., and has a circulation of 90,000, had not decided whether to appeal the ruling further.

The case raised the question of whether commercial speech enjoys the nearly absolute First Amendment protections accorded noncommercial and political speech. It also highlighted what liability, if any, publishers have for harmful events that are linked to items in their classified ad columns.

No Fear of a 'Chill'

The appeals panel found that publishers were liable "for compensatory damages for negligently publishing a commercial advertisement where the ad on its face, and without the need for investigation, makes it apparent that there is a substantial danger of harm to the public."

The panel majority, Judges R. Lanier Anderson 3d and Joel F. Dubina, went on to say that requiring publishers to examine advertisements against such a standard did not amount to a significant burden that would "chill" protected commercial free speech or hurt a publication's

advertising revenues and thereby threaten its existence and noncommercial free speech.

Judge Jesse E. Eschbach dissented.

Michael I. Meyerson, a University of Baltimore Law School professor who is an expert in First Amendment cases, said the case might very well go to the Supreme Court because the judges' decision conflicted with one last year by appellate judges of the Fifth Circuit. That earlier case, in Texas, also involved a Soldier of Fortune advertisement that resulted in a contract killing but the judges there found that its language was too ambiguous to lead to the immediate conclusion that the person was advertising services as a contract killer.

Mr. Meyerson disputed Mr. McColl's suggestion that the 11th Circuit decision threatened commercial free speech by applying broadly to liability for everything advertised from used cars to dates. He said that most court decisions had long determined that publications were not the main guarantors of the truth of their advertisements.

The current decision does not change that, Mr. Meyerson said, but merely requires that a publication examine the language of an advertisement to determine whether it is a threat to the public.

Noting that in the last 10 years more than a half-dozen cases of contract murder have been linked to Soldier of Fortune, Mr. Meyerson said: "This decision says that a publication with this history of criminal activity linked to its advertisements has a duty to the public to try to make sure that such things don't occur. And all they have to do is just look at the language of the advertisement."

'All Jobs Considered'

The advertisement in question here was submitted in June 1985 by Michael Savage of Knoxville, Tenn. It read: "GUN FOR HIRE: 37-year-old professional mercenary desires jobs. Vietnam veteran. Discrete and very private. Body guard, courier, and other special skills. All jobs considered." It gave two telephone numbers and a mailing address.

Sometime in August 1985, Bruce Gastwirth and John H. Moore, business associates of Mr. Braun, responded to the advertisement. Later that month Mr. Moore, Mr. Savage and an associate of Mr. Savage, Sean T. Doutre, went to Mr. Braun's home, where Mr. Doutre shot Mr. Braun to death as he was pulling out of his driveway.

In 1989 Mr. Moore, Mr. Gastwirth, Mr. Savage and Mr. Doutre were convicted on Federal charges of conspiracy in the killing of Mr. Braun. Soon afterward, Mr. Braun's sons, Michael, now 23, and Ian, 26, brought the civil suit against Soldier of Fortune.

Testimony established that the advertisement brought Mr. Braun's killers and his business associates together, and a Federal jury awarded the brothers \$12.37 million. A judge reduced the amount to \$4.37 million, and the current ruling was in the magazine's appeal of that award.

The Brauns' lawyer, Steven Glassroth, said there had been two other civil suits against Soldier of Fortune for advertisements of allegedly illegal services. One of those cases was settled out of court, he said, and the other was the Texas one in which the Fifth Circuit ruled that the advertisement was too ambiguous on its face to constitute a threat.

The lawyer who represented Soldier of Fortune in its appeal here, Barrett Prettyman, said today that he had argued that the language of Mr. Savage's advertisement was similar to the one in the Texas case. That ad read: "EX-MARINES -- 67-69 'Nam vets. Ex-DI, weapons specialist-jungle warfare, pilot, M.E., high risk assignments, U.S. or overseas."

The 11th Circuit panel said, however, that

while the advertisement in the Texas case was "facially innocuous" and "ambiguous in its message," Mr. Savage's advertisement "clearly conveyed that he was ready, willing and able to use his gun to commit crimes."

"When the list of legitimate jobs -- i.e. body guard and courier -- is followed by 'other special skills' and 'all jobs considered,' the implication is clear that the advertiser would consider illegal jobs," the panel said. "The publisher could recognize the offer of criminal activity as readily as its readers obviously did."