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Thursday, February 21, 2008

- » Home
- » News
- Local News
- Archives
- News Tips
- Sports
- Prep Sports
- CSU Zone
- Obituaries
- Nation/World
- Celebrations
- Opinion
- Business
- Lifestyles
- Outdoors
- Blogs
- Photo Galleries
- Discussion Forums
- Columnists
- Special Reports
- Ski and Snow Report
- Travel
- Technology
- Weather
- » RSS Feeds
- » Entertainment
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Vail Associates lose trademark case to former Fort Collins resident

BY PAT FERRIER
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Lawyers for Vail Associates have vowed to ask the 10th Circuit Court of Appeals for a full hearing after losing a trademark infringement case to a former Fort Collins resident.

Eric A. Hanson, a Colorado State University graduate, successfully defended himself in a lawsuit brought by Vail Associates and won the right to continue using 1-800-SKI-VAIL to market vacation packages.

In the early 1990s, Hanson started Vend-Tel-Co, a company that used 24 toll-free telephone numbers to promote vacation packages to resort areas such as Vail, Aspen and Steamboat.

After Hanson registered the 1-800-SKI-VAIL trademark, that billion-dollar corporation Vail Associates sent a cease-and-desist letter to Hanson that stated: "You will not use the expression ski or any similar expression together with the word Vail as part of your 800 number advertising or merchandising," according to court records.

When Hanson refused to comply, Vail Associates sued for trademark infringement in federal District Court.

Hanson and Vend-Tel-Co won, and Vail Associates appealed to the 10th Circuit Court of Appeals in Denver.

In a 2-1 ruling, the appeals court upheld the lower court decision. Judges Briscoe and Baldock ruled for Vend-Tel-Co; Judge Tymkovich wrote the dissenting opinion.

Vail Associates attorney Glenn K. Beaton of Gibson, Dunn & Crutcher LLP of Denver, told the Coloradoan Wednesday he will file a request today for reconsideration, asking the case be heard by all 11 appellate judges.

"We think the dissent got it right," Beaton said, "and we will invite the entire court to hear our arguments."

In his dissent, Judge Tymkovich said, "In this context, the word ski did not simply mean the activity of gliding over snow. It sets aside a perception that Vend-Tel-Co's services are generically associated with the geographic area of Vail and directly links VTS' business in the consumer's mind to the Vail resort.

"Because only one ski resort exists in Vail, a consumer calling VTC can have only one thing in mind: skiing at the Vail resort."

In its ruling, the majority said the words ski and Vail were terms that members of the commercial public have a right to use.

"Vail Associates failed to prove the ordinary consumer, looking for winter recreation in and around the town of Vail, associates the word Vail exclusively, if at all, with Vail Associates or its ski area," the judges wrote. "Rather, the ordinary consumer sees Vail as a place to ski, as a ski destination, without associating it with any particular entity or service provider."

The court said Vail Associates' lack of evidence led it to believe that its real concern was more about disconnecting the phone line to "limit competition by squelching a conduit to provide easy, free and readily available access to that competition through the use of a vanity or alphanumeric phone number."

Hanson, who has moved to Coeur d' Alene, Idaho, to operate a pellet manufacturing business, called the court's ruling a victory for the little guy.

Now, he said, he can get back to the ski-travel business.

"It's awful nice to win and be vindicated," he said. "We will finally be able to get down to being in the business."

Hanson said Vail Associates has long used trademark lawsuits to stop small business they thought might be infringing on their business.

"When they came up against us, I think they thought it would be easy to bully us," Hanson said.

Hanson's attorney, Luke Santangelo of Fort Collins, said small businesses often are intimidated by major corporations because of

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the cost involved in litigation.

"But Eric has a strong sense of principle, and I respect him for having the determination to stand by his principles," said Santangelo, who plans to go back to federal district court to ask the court to award attorneys fees.

STORYCHAT 

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