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Thursday, July 24, 2003

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Ohio man wins Kellogg battle
Cereal company sued businessman for Toucan Sam trademark infringement

By Jenny Rode
The Enquirer

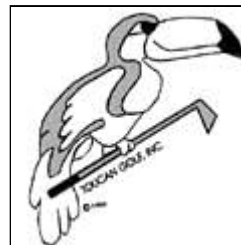
An Ohio businessman has won a nine-year legal battle against Kellogg Co., but he is crying foul over tactics used by the company and its lawyers.



Kellogg's Toucan Sam

Peter Boyko, owner of Toucan Golf Inc. in Mansfield, Ohio, was sued by the Battle Creek-based food company in 1994 for trademark infringement against Toucan Sam.

Boyko's company, Toucan Golf, uses a toucan bird for its logo and to promote a set of golf clubs called "Toucan Gold."



Boyko's Toucan Golf logo

Kellogg's Toucan Sam was introduced in 1963 as the colorful cartoon spokescharacter for Froot Loops cereal.

Boyko was contacted by Washington, D.C.-based lawyers representing Kellogg, and after that things turned nasty, he said.

"They said 'If you don't give up now, we will put you out of business. Kellogg's has deep pockets,'" Boyko said. "They came in here and took

pictures of my employees, asked for my income tax returns ... they intimidated you. They went through every drawer."

He said lawyers representing Kellogg told him they had "friends" and connections in federal trademark offices and that Boyko never would win the case. Boyko said he informed Kellogg about how its lawyers were operating but was ignored.

"The lawyers and Kellogg know we didn't infringe on their trademark," Boyko added. "I imagine they spent a quarter of a million dollars trying to put us out of business. They took nine years of my life and a whole lot of money out of my pocket. It was really humiliating. They've been beating someone up for nine years, and in a way, there's no punishment for them."

Boyko said he potentially lost millions of dollars in sales by not being able to market the Toucan Gold golf clubs over the past nine years.

Kellogg spokeswoman Celeste Clark said the company does not comment on litigation.

The Battle Creek company was persistent in its case. After it lost before the U.S. Trademark Trial and Appeal board, the company appealed to the Federal District Court for the Western district of Michigan. When it lost that case, it appealed to the U.S. Court of Appeals for the Sixth Circuit.

Wednesday, the Sixth Circuit court ruled that Toucan Golf could register "Toucan Gold" as a trademark for its golf club product, and for the third time, Boyko won.

District Judge Wendell A. Miles issued an opinion Wednesday on the case, writing that consumers would not confuse Toucan Gold or Toucan Golf with Toucan Sam.

"Furthermore, Kellogg has not presented any evidence that (Toucan Golf's) use of its marks actually dilutes the fame or distinctiveness of any of Kellogg's marks," Miles wrote in the decision.

The judge also wrote that although Kellogg has challenged smaller entities "even where it is likely that no trademark infringement claim exists ... many of Kellogg's claims against smaller companies may border on excessive and arguably warrant sanctions," but sanctions would be inappropriate in this case, Miles wrote.

Mark Rossman, an attorney with Mantese and Associates P.C. in Troy, represented Toucan Golf in the third case and said Kellogg's appeal was frivolous, outrageous and lacked merit.

"All (Boyko) wanted was to be able to do business without being harassed by this cereal mogul," he said. "Fortunately, now he's going to be able to do that."

Rossmann's firm is involved in another Kellogg case. Mantese and Associates represents Ridley Bagels, which is suing Kellogg for millions of dollars it alleges it lost when Kellogg pulled out a joint venture with Ridley in the United Kingdom. The case is pending.

Jenny Rode covers business. She can be reached at 966-0690 or jrode@battlecr.gannett.com

Originally published Thursday, July 24, 2003

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