

1-800-SKI VAIL Validated by The Court of Appeals in Trademark Lawsuit Against Vail Ski Area

Small Business schusses past big conglomerate

DENVER, Colo. – Feb. 15 (SEND2PRESS NEWSWIRE) – On February, 7th 2008, a small business from Fort Collins, Colorado won in the Court of Appeals against skiing giant Vail Associates, Inc. (VA) over the right to use 1-800-SKI VAIL. In the appeal, the Tenth Circuit Court affirmed that Vail Associates could not use its registered trademark VAIL to prevent Eric Hanson from using his registered trademark, 1-800-SKI VAIL(R).

The small business arranges vacation packages and well-priced condo, hotel, and resort reservations at a variety of ski area locations through dozens of 1-800-SKI phone numbers. The toll free vanity numbers range from 1-800-SKI ASPEN to 1-800-SKI SNOW for his company www.Skiusa.com.

The affirmation is part of a 13 plus year trademark battle and has established that Vail Associates word mark "VAIL" is "weak" and "it is a term that the members of the commercial public have a right to use." Vail Associates first became aware of the business in 1995, but it was not until 2001 – when the 1-800-SKI VAIL trademark became registered – that Vail Associates felt threatened by the business and filed suit to try to stop the use of 1-800-SKI VAIL telephone number. Vail Associates started their (unsuccessful) lawsuit against 1-800-SKI VAIL in the federal district court. This resulted in a Judgment filed January 3, 2005 where Judge Matsch sided with the owners of 1-800-SKI VAIL on all counts. Vail Associates subsequently ran a second campaign appealing to the 10th Circuit Court – one step below the U.S. Supreme Court. This Court observed that Vail Associates "offered not one shred of evidence" of a likelihood of confusion.

Commenting on testimony by one of Vail Associates' witnesses, the Court noted that the witness "felt coerced into signing [an] Affidavit" and found that contrary to what Vail Associates was trying to prove, their own witness showed that "most people can't identify a specific company with the purchase of their ski vacations products. They are familiar with places to ski as a place, not a company." The Court even characterized VA as a company "who no more wanted to talk about the record evidence than a hog wants to talk about bacon..." Thus, the Court affirmed that there was neither actual confusion nor a likelihood of confusion by 1-800-SKI VAIL. The Court rejected the claims against 1-800-SKI VAIL also because "a term that is as geographically descriptive as VAIL is a weak term."

The Court noted that "VA's concern is really about disconnecting an alphanumeric phone line which provides easy access to VA's actual service competitors." The Court also commented that "VA's claim appears more about limiting access to its competition." Mr. Hanson's 1-800-SKI VAIL trademark

registration still stands as the valid U.S. Patent and Trademark Registration No. 2,458,894.

After trouncing Vail Associates for a second time, Mr. Hanson stated: "VA has been highly successful over the years in acquiring valuable assets through their bull dog tactics. The tactics and implementation of their financial war chest was all about eliminating commercial business's right to use the term 'Vail.' Their monopolistic desires came at the expense of the Vail Colorado community and intentionally stifled competition. As an example; through their legal tactics they were able (to) limit our effectiveness for over 13 years! This affirmation and its impact on the community's ability to use the term 'Vail' is huge, it feels awesome to take the big dog down! It takes real resolve to fight this type of battle on moral principle, but now we can get down to business and give the consumer what they deserve, the best value in accommodations by calling 1-800 SKI VAIL, any one of our many other 1-800-SKI numbers or use our website www.skiusa.com."

Vend-Tel-Co and Mr. Hanson were represented by the trademark and patent firm of Santangelo Law Offices, P.C. and the trial firm of Thomas R. French, both in Fort Collins, Colorado. Vail Associates was represented in the matter by the Denver branch of the international law firm of Gibson, Dunn, & Crutcher, LLP.

Editors note: The lawsuit is captioned: "Vail Associates, Inc., and Vail Trademarks, Inc. vs. Vend-Tel-Co., Ltd. and Eric A. Hanson." Case No. 05-1058 in the United States Court of Appeals Tenth Circuit, affirming the United States District Court for the District of Colorado Judge Richard P. Matsch dismissal of all Vail Associates claims.

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