



### On the law

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## Court shows colors on trademarks

You can get trademark protection for a slogan, a symbol or even a shape—such as a star or an arch.

But you can't trademark just a color, according to a recent decision by the federal appeals court in Chicago.

The ruling was a setback for Deerfield-based NutraSweet Co. in its dispute with two other firms over the color of those little packets of sugar substitute found on restaurant tables.

Lawyers for NutraSweet brought legal action in federal court here against The Stadt Corp. and Cumberland Packing Corp., New York-based distributors of a sugar substitute called Sweet One, contending that it is packaged in a confusingly similar—though not identical—shade of pastel blue to that used by NutraSweet for its Equal.

Lawyers say companies traditionally have not been able to claim trademark protection for color, absent some accompanying symbol or design. For example, McDonald's Corp. can block other companies from using golden arches, but it can't stop them from simply using yellow.

"The law has said that you can't trademark a color alone in any industry in which there is more than one competitor," said Martin Raskin, a lawyer at Steinberg & Raskin in New York, which represented Stadt and Cumberland Packing along with lawyer Henry S. Kaplan, of Chicago's Dressler, Goldsmith, Shore, Sutker & Minamow.

NutraSweet was attempting to extend a 1985 ruling by the Washington, D.C.-based U.S. Court of Appeals for the federal circuit that effectively allowed Owens-Corning Fiberglas Corp. to trademark the color pink for its insulation.

But the appeals court here disagreed with the notion and relied instead on 40-year-old precedent to rule against NutraSweet.

"This does not mean that NutraSweet is without protection if a competitor tries to pass off its goods as those of NutraSweet," wrote Wisconsin Senior District Judge John Reynolds, temporarily assigned to the appeals court. "NutraSweet's overall trade-dress may be protected; but it may not protect the mere color of its packet."

Stanley Adelman, of Chicago's Rudnick & Wolfe, which represented NutraSweet in the trademark dispute, said the company hasn't decided whether to appeal but noted there now appears to be a conflict among the federal appeals courts that may have to be resolved by the U.S. Supreme Court.

### Prosecutors pan appeal

In another controversy before the federal appeals court here, prosecutors contend that a three-judge panel made crucial errors when it reversed the convictions and ordered new trials for sports agents **Norby Walters** and **Lloyd Bloom**.

The court's legal conclusions resulted from "three critical factual inaccuracies," prosecutors argue in asking the panel to take another look at its decision.

Walters and Bloom were convicted last year on charges they compromised the eligibility of college football players by offering them thousands of dollars to sign contracts in violation of National Collegiate Athletic Association rules. The convictions were tossed out in September, when an appeals court panel, led by Chief Judge William Bauer, ruled that Walters and Bloom had been denied a fair trial.

The U.S. attorney's office argues in its petition for a rehearing that the appeals court was incorrect, for example, when it said **Bloom** and Walters were not convicted of any **extortion**-related charges. The jury returned a special verdict convicting both of alleged extortion in connection with racketeering charges, the petition says.

● An election follow-up: The ouster of two influential Cook County Circuit Court judges in last week's judicial retention election has sparked speculation among Daley Center pundits about likely successors.

**Donald P. O'Connell**, now presiding judge of the court's 1st Municipal District, is seen as a possible replacement for **P.A. Sorrentino** as presiding judge of the Law Division and chairman of the committee of judges that nominates candidates for associate judge.

**Benjamin Mackoff**, presiding judge of the Divorce Division, and **Richard Curry**, a Chancery judge and a cousin of Mayor **Richard M. Daley**, have been mentioned as possible successors to the ousted **David Shields** as presiding judge of Chancery Division. Shields and Sorrentino were two of the judges who failed to receive the 60 percent "yes" vote needed to win retention.

● **William Johnson** and **William Geiser** of Johnson & Bell won a victory when an Ohio judge cleared Chicago-based client Union Tank Car of liability in connection with a suit brought after leaking phosphorus from a 1986 train derailed near Miamisburg, Ohio, caused the evacuation of 30,000 people. Just days earlier, the railroad, CSX Transportation, agreed to settle for \$16 million.

## Hughes to close plant in Des Plaines, idle 150

Hughes Aircraft Co. said Monday that it will close its optical equipment manufacturing plant in Des Plaines. The shutdown, in phases over the next year, will eliminate 150 jobs.

The company, a subsidiary of General Motors Corp., cited the declining U.S. defense market and the high cost of operating the Des Plaines plant for the closing. The 238,000-square-foot building at 2000 W. Wolf Rd. is twice as large as the company needs, company officials said.

Hughes officials also criticized the high cost of electricity in the Chicago area, which it said is among the highest in the nation.

Hughes bought the building in 1982 in hopes of rapidly expanding its optical device manufacturing business in this area. The division makes sub-assemblies for military imaging equipment used in tanks, missiles and night-vision devices.

A Hughes spokesman in Los Angeles said the company will transfer manufacturing processes and equipment, along with ongoing programs, to other Hughes plants, but he wouldn't disclose where.

Hughes employs 68,500 nationwide.

# Stalled USX talks cast pall over steel industry

By Stephen Franklin

As they mulled the failed talks between the United Steelworkers and USX Corp., steel industry experts Monday forecast a dangerous road ahead.

But it wasn't clear who faces the most danger: the union, the steelmaker or the already shaky steel industry.

Three weeks of negotiations ended over the weekend with no resumption planned and union officials loudly complaining that USX was acting arrogantly, making an offer "full of pitfalls, quicksand and loopholes."

The company, which has taken a low-key stance, refused to comment.

By failing to reach an agreement in the negotiations, which it had sought well ahead of the Feb. 1 expiration of its contract with the steelworkers, most analysts said USX initially could suffer the most as it loses strike-jittery customers.

"There will be hedge-buying across the board, but it will be toward their [USX's] competitors," predicted Walter Carter, a steel analyst for DRI

McGraw-Hill, an economic forecasting firm in Lexington, Mass.

Buyers fearful of a strike against the nation's largest steelmaker by USW's 18,000 workers will drive up sales industrywide in the next few months, Carter said. But the sales will fade once the contract or labor dispute, if any, is settled, he added.

If USX is hit by a strike, its market would dry up almost immediately because other steelmakers can handle the demand, said Charles Bradford, a steel analyst at UBS Securities in New York.

"Clearly the customers don't need USX," he said. "They could be out of business and nobody would even blink."

The more difficult question is whether, as one steel industry veteran in Pittsburgh remarked, "it's a matter of posturing or a problem."

Many experts are unsure whether the two sides are strikebound or just following a traditional negotiating script.

"It's the old American rule of you don't have to bargain until you see the whites of their eyes," said a New York analyst who asked not to be named.

He disagreed with others who saw the threat of a strike and troubled labor relations as damaging to USX and its ability to find buyers for its steel division, which it recently decided to make into a separate unit.

Although the company has not talked of selling off the division, most analysts say it has given all of the signs of planning to get out of the steel business in part or whole.

"If you are going to buy a company," asked the analyst, "do you buy one with a favorable contract, or one where the company gave everything away to the union?"

To be sure, analysts agreed, there is good reason to expect hard-nosed bargaining as the company and the USW square off in the last contract outstanding among major U.S. steel producers.

The last round of talks led to a six-month work stoppage, major concessions from the workers, and a refusal by USX to be tied to an industrywide pattern in wages, benefits or contract timing.

"The company took a strike the last

time, and I don't think they were bluffing that they don't want a pattern agreement," said John E. Jacobson, a steel analyst with AUS Consultants of suburban Philadelphia.

Analysts say the company still seems intent on avoiding an industry-wide pattern that would take away the cost advantage it currently holds over its competitors.

At the same time, analysts say union leaders are under pressure from their members to get back their concessions and more from USX, which has had better profits in the last two years than most other steelmakers.

USX said it would restore the \$1.50 an hour in wages lost since 1982, but stopped there.

Still, several experts say that the union and company must be concerned about stumbling into a costly strike.

After two years of growth, steel shipments began to slow in 1990 and showed no growth for the first nine months of this year compared with the same period last year, the American Iron and Steel Institute said Monday.

## Clone of 386 chip is demonstrated

From Chicago Tribune wires

LAS VEGAS—Several competitors are trying to break Intel Corp.'s lucrative monopoly over a microprocessor that increasingly is the chip of choice for IBM personal computers and clones.

One of the would-be interlopers, Advanced Micro Devices Inc., began giving private demonstrations Monday of its 386 workalike on the first day of the huge Comdex computer show here.

"There are no compatibility problems with it—it works," said AMD spokesman David Frink, as the company demonstrated the fact by removing Intel's chips from several personal computers and replacing them with its own. He said about 20 computer-makers are testing the chip or have already evaluated it.

Intel's 80386 microprocessor has been a runaway success, bringing in about a billion dollars a year in revenue and some of the highest profit margins the semiconductor industry has seen, said Michael Slater, editor of the newsletter Microprocessor Report.

But Intel, one of the world's largest semiconductor companies, is not sitting still while competitors try to chip away at it. It is involved in a thicket of legal conflicts with AMD, with which it once enjoyed a cooperative relationship.

Intel has filed two lawsuits—one contending AMD has no right to use the 386 chip's microcode, or instructions, and the second charging that AMD would infringe on Intel's trademark if it uses the name "386" to market its chip.

On Friday, a federal judge denied Intel's request for an injunction to block AMD from using the 386 name. But it was unclear whether the ruling would give computer-makers who use the AMD chip the



Delegates jam the entryway to the Comdex computer trade show in Las Vegas, which opened Monday to an overflow crowd of up to 125,000. The show features the latest in computing.

right to call them 386 machines.

The microcode suit stems from a 1976 agreement in which Intel granted AMD rights to the patents and microcode for Intel microprocessors. Intel now claims AMD may only copy the microcode for its own use, not to sell chips containing it.

AMD says it used a process called reverse engineering to devise a chip that mimics the 386 but uses different circuitry. In fact, AMD says, its chip is better because it uses less power.

AMD also is involved in another legal battle with Intel that could result in AMD gaining rights to make a carbon copy of the 386 chip. That dispute, now in arbitration, stems from a 1982 technology-sharing

agreement between the two companies. Intel claims AMD reneged on the agreement. AMD says it met the terms of the pact and should be given access to the 386 chip, as well as \$500 million in damages.

An arbitrator ruled last month that Intel did not act in good faith in the dispute, but he delayed deciding whether AMD should gain rights to the 386 chip until another phase of the proceeding, which is scheduled to start this week.

Intel's 386 chip, introduced in 1985, is becoming the favored microprocessor for International Business Machines Corp. personal computers and clones. It is faster than the 286 chip it succeeded, but not as costly as Intel's top-of-the-line 486.

## Ford S&L looks to grow in area

By Michael Arndt  
Chicago Tribune

SAN FRANCISCO—First Nationwide Financial Corp. is bullish on Chicago.

The parent company of the nation's fifth-biggest thrift wants to more than double its holdings and open more branches in the Chicago market over the next few years, primarily through acquisitions, Chairman Robert Lackovic said Monday.

Its principal aim is buying its way into Chicago's growing western suburbs.

"I think the Midwest is one of our brightest spots," Lackovic said in an interview before the start of the S&L industry's annual convention in San Francisco, where First Nationwide has its headquarters. The Chicago market looks particularly promising because it isn't dominated by one or two institutions, he added.

But First Nationwide's enthusiasm doesn't extend to Talman Federal Savings & Loan or any of the other Chicago-area thrifts on the auction block.

Talman, which has been for sale since a Chicago banker withdrew a purchase offer last summer, would be too big for San Francisco-based First Nationwide to swallow right now, Lackovic said.

Chicago-based Talman, of course, isn't the only institution available; the government's Resolution Trust Corp. has a catalog of failed S&Ls to select from. Indeed, the thrift-liquidating agency tagged Horizon Savings Bank of Wilmette for sale just 10 days ago.

But Lackovic said none of those S&Ls seems worth buying. "Maybe healthy ones would be smarter to buy down the road," he said.

Still, Lackovic said First Nationwide needs to get bigger in the Chicago market, and the best way of doing that is through acquisitions.

It's a course First Nationwide has pursued since Ford Motor Co. bought the savings bank in 1985. Among other deals, the savings bank bought Uptown Federal Savings and Pathway Financial Services in 1988. Uptown since was merged into First Nationwide.

Together, the two institutions have 35 branches and \$1.8 billion in deposits, or 10 percent of the \$17.7 billion that was on deposit throughout First Nationwide at the end of 1989.

Lackovic noted, though, that neither thrift has operations in Chicago's western suburbs. Also, he said the two S&Ls represent only 2 percent of the deposits in Chicago-area lending institutions. He said First Nationwide believes it must have at least 5 percent to be viable.

"You aren't going to make it unless you have 5 percent of the market," he said. "We need more branches, and we may buy more."

Recently, there have been questions about whether First Nationwide itself would make it. The savings bank set aside \$115 million two weeks ago to cover expected losses from bad loans, largely due to faltering real estate markets in New York, Florida and California. The charge resulted in a quarterly loss of \$44.6 million—not good news for Ford at a time when the auto business is itself faltering.

First Nationwide also pulled out of Kentucky and Hawaii and is postponing indefinitely moving into Pennsylvania, Maryland and Virginia, states where it already had received regulatory approval to operate.

Moreover, Lackovic said S&Ls should expect to earn profits of only 8 to 12 percent in the years ahead, given tougher regulations and weakening real estate markets. He said such returns, down from 15 percent or better, would make it hard to attract investors.

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