

July 4, 2005

He Says He Owns the Word 'Stealth' (Actually, He Claims 'Chutzpah,' Too)

By COLIN MOYNIHAN

Can a man own a word? And can he sue to keep other people from using it?

Over the last few years, Leo Stoller has written dozens of letters to companies and organizations and individuals stating that he owns the trademark to "stealth." He has threatened to sue people who have used the word without his permission. In some cases, he has offered to drop objections in exchange for thousands of dollars. And in a few of those instances, people or companies have paid up.

"If a trademark owner doesn't go up to the plate each day and police his mark, he will be overrun by third-party infringers," Mr. Stoller, a 59-year-old entrepreneur, said in a telephone interview from his office in Chicago. "We sue a lot of companies."

Mr. Stoller owns and runs a company called Rentamark.com, which offers, among other things, advice on sending cease-and-desist letters and Mr. Stoller's services as an expert witness in trademark trials. Through Rentamark, Mr. Stoller offers licensing agreements for other words he says he owns and controls, such as bootlegger, hoax and chutzpah, and sells t-shirts and other merchandise through what the Web site calls its "stealth mall."

He is currently in a legal dispute with [Sony's](http://Sony.com) Columbia Pictures unit over a film that opens late this month. It is about elite Navy pilots and titled - what else? - "Stealth."

Mr. Stoller said he first registered "stealth" as a trademark in 1985 to cover an array of sporting goods. But in recent years, "stealth" has become widely used in marketing and branding circles to bestow a sense of the subliminal or the subversive or to convey an aura of lurking power.

Companies including the retailer Kmart and the consumer electronics maker JVC have stumbled into Mr. Stoller's territory and have removed "stealth" from their Web sites after hearing from him. Another electronics maker, Panasonic, omitted the word from a product called the "stealth wired remote zoom/pause control" after receiving one of Mr. Stoller's letters.

"If you can solve problems without going to court you're better off," said Russell J. Rotter, a lawyer for Panasonic, a division of Matsushita.

The best-known stealth brand may be the military's B2 stealth bomber, whose main contractor, Northrop Grumman, has fought Mr. Stoller to something of standoff. In 2001, the company paid Mr. Stoller \$10 and agreed to abandon its trademark applications to use "stealth bomber" in spinoff products like model airplanes and video games. In return, Mr. Stoller agreed not to oppose Northrop's use of "stealth" in aircraft or defense equipment.

"We resolved it in a way that achieved our business purposes without in any way agreeing that Mr. Stoller's assertions were correct," said Tom Henson, a Northrop Grumman spokesman.

Trademark owners can obtain the right to use a word for commercial purposes and then to prevent others from seeking to use the same word for similar commercial purposes. For instance, the Delta Faucet Company, which has trademarked "Delta," could prevent another faucet company from adopting the name. But it cannot object to

Delta Airlines because the two companies' products are not likely to be confused with one another.

A search of United States Patent and Trademark Office records found that Mr. Stoller and companies that share a Chicago post office box with him - Central Mfg., [Stealth Industries](#), and S. Industries - hold at least two dozen registered trademarks for "stealth," covering such diverse products and services as crossbows, pool cues and insurance consultations.

Mr. Stoller said that he also held and administered as many as two dozen other "stealth" trademarks, and insisted that his close association with the word gave him special rights.

"We're entitled to own it with all goods and services," he said. "We were there first."

Some companies do recognize his rights to some uses of the word. Easton Sports of Van Nuys, Calif., for example, makes "stealth" baseball and softball bats under a licensing royalty agreement with Mr. Stoller. But while intellectual property lawyers say that Mr. Stoller is free to send cease-and-desist letters, this does not mean he has complete control over "stealth."

"It's based on a misunderstanding of how trademark law works," said Mark A. Lemley, a professor at Stanford Law School. "Trademark law doesn't give you exclusive rights in words, only the right to prevent consumer confusion. He's not in a position to claim that his mark is unique or famous. It's a common English word that's already been used in many contexts as a trademark by others."

Mr. Stoller has taken his claims to federal court - with unusual frequency, in at least one judge's view. In one case in 1999, United States District Judge Joan B. Gottschall in Chicago noted in a decision against Mr. Stoller and S. Industries that the company had appeared before the court 33 times from 1995 to 1997.

Another judge from the same district made a similar point a few months later in another decision against Mr. Stoller.

"The late great Sixties rock-and-roll legend Jimi Hendrix once sang 'Are You Experienced?' " Judge Blanche M. Manning wrote. "After losing several prior federal trademark actions before other judges in the Northern District of Illinois, plaintiffs and Stoller could answer Jimi's question in the affirmative."

For all his time in federal courtrooms - Mr. Stoller says his companies have been in court 60 times - there is no record within the Lexis database of a federal court decision on "stealth" in his favor. But in 2003, the U.S. Trademark Trial and Appeal Board refused to allow an air conditioner company called York International to use "stealth" because Mr. Stoller had previously sold air conditioners with that name.

Mr. Stoller has sometimes been on the receiving end of lawsuits. In 1997, the watch maker Timex, which held a trademark for "stealth" watches, successfully sued him in federal court in Connecticut for trademark infringement. Mr. Stoller sold watches with that name after Stealth Industries, a company then run by his brother, Christopher Stoller, agreed in 1991 not to use the term with watches in return for \$20,000 from Timex. (According to the judge's written opinion in that case, Leo Stoller was ousted from the company in a family dispute in 1990, but returned to take over in 1994.) A federal judge rejected Mr. Stoller's claim that the agreement made by his brother was invalid.

In 2002, the Illinois attorney general sued Leo Stoller after he used a Web site to solicit donations illegally on behalf of victims of the destruction of the World Trade Center. Mr. Stoller had sought donations for more than 20 legitimate charities without their permission and without registering with the attorney general's office, a requirement in Illinois. Mr. Stoller paid a \$2,000 fine and was barred from soliciting for charities in that state.

Web sites appear to be Mr. Stoller's primary targets now, since search engines make it easy to find "stealth."

In December 2003, Cramer-Krasselt, an advertising agency in Chicago, received a letter from Mr. Stoller

objecting to a Web site it set up as an office joke called stealthdisco.com, which showed clips of employees dancing silently for a moment or two near the desks of unsuspecting colleagues.

The agency's office manager, Kathleen Maybaum, wrote to Mr. Stoller, "While we believe your accusation to be completely without merit, please be advised that we have discontinued all use of this word." She said that the decision was based on advice from lawyers who said it would not be worthwhile to spend money on a case to defend stealthdisco.com. In addition, Ms. Maybaum said, the company paid Mr. Stoller "a few thousand dollars to go away."

Last August, the InterActivist Network, a group formed to give free technology training, received a letter from Mr. Stoller about its e-mail address, stealthisemail.com. Apparently, Mr. Stoller read their e-mail address as "Stealth is e-mail," and informed the group they were using a trademark he owned.

The members wrote back: "We do not believe that our use of the term 'Steal this e-mail' as tribute to Abbie Hoffman (as well as the defunct Lower East Side pirate radio station 'Steal This Radio') is in any way an infringement on your alleged ownership of the word 'stealth.' "

Eric Goldhagen, a member of the InterActivist Network, said that members of his group planned to talk to lawyers and others who have received letters from Mr. Stoller to discuss ways to deal with his "stealth" claims. "The fact that somebody, just by claiming to own a word, can intimidate large companies and powerful law firms shows the damage, to an extent, is already done," he said. "If people like Stoller are allowed to get away with this unchallenged, there could be ripple effects to every form of public mass media."

In the movie realm, Mr. Stoller says that he sent a cease-and-desist letter to Sony in March, objecting to Columbia Pictures' plan to open its Navy film under the title "Stealth." The next month Columbia asked the federal court in Chicago to rule that using the word as a movie title did not violate copyright law.

Mr. Stoller, who has filed a counterclaim, says he will not back down. "I will police and protect the stealth mark against all," he said.