

Living in a TRADEMARK

By Rebecca I. Allen

As the name of a community and a trademark owned by a large corporation, **Anthem** is unique. The odd status of the word poses special problems to many hometown businesses named for their location and to the developer who wants to protect its brand.

Use of the word “Anthem” in a business name could land some companies in court. In an effort to prevent unauthorized use of the trademarked Anthem name, Pulte has demanded some businesses using the word Anthem cease and desist. Some companies have complied while others maintain Pulte does not have the right to make the demands. A judge may have to make the final decision should Pulte take a case to court.

Many businesses that got a license and tax ID using the name Anthem hung their shingle only to discover Pulte, owner of Del Webb the creator of the community, believes using “Anthem” infringes on a registered trademark.

“The rationale is so that there is no confusion, association of the name ‘Anthem’ and the actual Del Webb community, with other businesses,” said Jacque Petroulakis, a Pulte spokesperson.

Rights Not Clear Local lawyers and business owners disagree whether Pulte has the right to dictate how companies use the word Anthem in a business name.

“They tell you they have the exclusive rights to use that word ‘Anthem’ in all contexts and to stop using the name, and in my opinion that’s not true. Pulte’s rights in the name are limited by the law,” said Craig

Boates, a lawyer in Anthem with the firm Boates & Crump.

Boates, cautioning that his comments here should not be taken as legal advice, believes that should a company opt to fight for the use of their name they would have a good chance of winning, of course this would depend upon the use of the person claiming the right to use the name.

“Nobody wants to fight them because they bully you. They are a big company with a lot of lawyers,” Boates said.

For more than three years Boates’ law firm has used the Web address www.anthemlaw.com, “They’ve (Pulte) never once said anything to me.”

John Panfil, owner of AnthemMotors.com located off I-17 at Deer Valley Road in Phoenix, sympathizes with both sides of the debate. He believes Pulte may have legitimate claim in some cases, “If someone opens Anthem Dry Cleaners, I don’t see a conflict,” he said.

“Anthem Home Inspection...this could be confusing with the (trademarked) name.”

Panfil said Pulte has not contacted him about the name of his 5-year-old business. His said the business name has nothing to do with the

community 14 miles to the north. “It was coincidental,” said Panfil, who said he chose the name because the sound of the many different engines his company works with is, to him, like an anthem, or “passionate song” as his dictionary defined the word.

Trademarks Within Categories Trademarks registered with the United States Patent and Trademark Office apply only in certain categories. Currently there are 157 registered uses of the word “Anthem.” QVC has a trademark of Anthem for bedding and Treehouse Foods,

(Continued on page 18)

“Nobody wants to fight them because they bully you. They are a big company with a lot of lawyers,”
—Craig Boates
Attorney,
Boates & Crump, PLLC

(Continued from page 17)

Inc. has a trademark for it with a non-dairy creamer.

Pulte's trademarks, dating back to 1998 and 2000, include the development of communities, golf and other community services. The company has three Anthem communities in Arizona and Colorado. In March Pulte applied for the use of the Anthem trademark for real estate brokerage services.

To date Pulte officials have not taken an Anthem business to court on this issue. But they may. Petroulakis said Pulte "aggressively protects" the trademark citing it is a valuable brand Pulte has created.

"When other entities use that name, just the association with the brand creates certain expectations," Petroulakis said. "That's why people don't want to run any risk of brand confusions."

Petroulakis declined to discuss how many companies had received notices from Pulte. Calls to Abby Moskovitz, a lawyer representing Pulte, with the firm Dobrusin & Thennisch in Detroit, to find out how Pulte chooses which company names are infringing on the trademark, were not returned by press time.

Some companies contacted by Pulte's lawyers changed their company name. In October Kim and Gary McGurin started a social club named Anthem Newcomers and Neighbors, after receiving notice from Pulte they changed the name to Newcomers and

Neighbors of Anthem.

"The organization is a service offered in a community and the original name may have caused people to think the club was sponsored by Del Webb," said Wayne Carroll, a patent and trademark attorney who lives in Anthem.

"When other entities use that name, just the association with the brand creates certain expectations."

**—Jacque Petroulakis
Pulte Spokesperson**

"If they (Pulte) can show there is a likely chance they would expand into that area they might be able to get a court to protect and stop someone from moving into that area (while using the trademarked name)."

Carroll said changing a name in a business' infancy may cost a couple thousand dollars, while trademark litigation can cost upwards of \$20,000. "Even though it's such a pain, often it's not worth fighting it."

Kathy Hill with Realty Executives, Inc. received notice in November that Pulte considered her website address www.homesinanthem.com an infringement on the trademark. Hill considered countering the claim until, Hill said, Pulte

also put pressure on Hill's employing broker. She opted to change the URL. Hill's not the only one, real estate companies using theanthemteam.com and estatesinanthem.com were also pressured to change their Web site addresses.

While some may expect Pulte to defend the trademark against use by real estate companies, many are confused by the other business categories the company is addressing.

Dr. Brian Dorfman changed his practice name from Anthem Center For Oral & Facial Surgery to The Center For Oral & Facial Surgery at Anthem after receiving a cease and desist letter.

Anthem Closet Works owner Shauntelle Henshaw found out about the trademark flap from another business owner after she had secured a business license, a federal tax ID number and bought stationary and other business-related items.

"I didn't think anything of it. I just wanted to promote our business here," Henshaw said. "It's the name of the city and we should all be able to enjoy it. It doesn't seem like a brand."

Henshaw opted to change the name to Closet Works of Anthem. "It would have been nice if I'd known before we spent any money on things with the name Anthem in them," she said.

Other companies with Anthem in their business name insist they have the right to use it. "I don't think they have

(Continued on page 24)

Hire My Husband!
Anthem's Own Handyman Service

Let my honey do your "honey-do" list

Moving In?
Moving Out?
Fixing Up?
Floor-to-ceiling specialists

Call
Thomas & Kirsten Robinson
(Anthem Residents)
623-760-6987
bonded, insured, license pending



**LEAVING YOUR JOB?
LET'S TALK.**

Doug DeMuth
Investment Representative

3655 W Anthem Way B-143
Anthem, AZ 85086
(623) 551-0523

www.edwardjones.com

Member SIPC

Edward Jones®
MAKING SENSE OF INVESTING

From Modest to Magnificent



Designed and built with pride
Uncompromising quality
Exceeding expectations

Saturn Pools
Your neighborhood pool builder

Negative edges, integrated spa, gas-powered fire pots. Designed and built by Saturn in Cave Creek.

Magnawrap
CEBEC
SOLID
100,000

623-869-9699
WWW.SATURNPOOLS.COM



SATURN
POOL COMPANY, INC.

(Continued from page 18)

authority to make me change the name of my LLC," said Dr. Bob Dykhuizen of Anthem Spinal Care, LLC.

Dykhuizen has not received notice from Pulte lawyers and if he should, he maintains that on the advice of his attorney, he will not change the name, "I've been told they don't have a legal argument, they just have a lot of money," he said.

Anthem College Online, a division of High-Tech Institute, is located about 17 miles south of Anthem on I-17.

"We have been contacted by Pulte/Del Webb's attorneys and it was dismissed," said Todd Rash, vice president of marketing at High-Tech

Institute. Rash cited Anthem Steel, and Anthem Blue Cross and Blue Shield, (owner of the URL www.anthem.com), as other companies successfully using the Anthem name. Attorneys representing Anthem College responded to Pulte's claim. Pulte, Rash said, backed down. "They [Pulte's attorneys] essentially said they are not entitled to exclusive use of 'Anthem.'"

Gene Palma, an attorney and director of business services with the Arizona Secretary of State's office, said he was "surprised" Pulte was going after businesses with the name Anthem. There are 263 corporations, LLCs and trade names registered using "Anthem" in the state

of Arizona.

"It'd be a tough case for them (Pulte) to make in front of a judge," Palma says. **io**

Contact Rebecca Allen at Rebecca@ioanthem.com

For More Information

Find out more about patents, copyrights and trademarks, and search trademarked names at the United States Trade and Patent Office Web site www.uspto.gov.

Search corporation and business name information on the Arizona Secretary of State's Web site: www.azsos.gov.

Smokin' Gifts

For the Veteran and the Novice Cigar Smoker

Many infrequent cigar smokers don't really know how to choose a cigar because they haven't been exposed to the huge supply that now exists. To complicate things, there are more cigar choices than ever. Here are some ideas to help pick that perfect cigar gift and keep the price manageable.



PHILL CHRISTIAN

Gift 1: A sampler pack is a terrific way to go for a new cigar smoker or one that you really don't know much about. There are small samplers—3 cigars in a reusable case—and larger 7- to 10-packs in lovely wooden boxes. These will run from \$25 to \$60 for top-flight cigars.

Gift 2: For the cigar smoker just getting started or maybe lacking the nice little accessories, go for a small humidor. It is really important to keep those little tobacco sticks moist and a humidor is the only way to go. A small, 25 to 50

cigar humidor complete with humidity gauge and humidifier, can be bought for less than \$50. For an additional \$30 or so you can stock it with a selection of fine cigars, a lighter, and cutter.

Gift 3: For the golf nut in your life, what better way to express your support than a travel humidor that clips onto their golf bag.

Many folks love to go golfing with a cigar in hand, but the course is a harsh environment for a fragile item like a cigar. A travel humidor that holds 5 or 6 cigars, lighter, and cutter makes a great gift and keeps the tab under \$50 with cigars and everything included.

Cheers... **io**



Phill Christian is a Sommelier certified by The Court of Master Sommeliers and is the owner of The Eccentric Gourmet, a fine wine and gourmet food store in Anthem. Send your questions and comments to phill@ioanthem.com.

dave 2B beautiful
2BU salon & day spa

4 men, women, children
reveal the beauty that's inside you

- ~ Massage Including Pregnancy and Deep Tissue
- ~ Up to 50% off Salon Products
- ~ Hair Services—Including Extensions!
- ~ Micro-Dermabrasion, Facials
- ~ Waxing

dave 2BU
salon - beauty supply - spa

623-516-22BU
at the Outlets at Anthem

OFFICIAL SALON AND DAY SPA
for winners of
the 2006 Outlets at Anthem

Model Search

Bring in this ad for a 20% off any massage!
For a full list of services, visit www.2busalon.com