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Caterpillar settles local lawsuit

by Paul Ivica
Staff Writer

What looks like a Cat, runs like a Cat and sounds like a Cat?

A front-end loader assembled in Turkey from skid-packs consisting of mostly Caterpillar parts and adorned with Caterpillar decals, said the president of a Jacksonville-based dealer in used heavy equipment.

What looks, sounds and runs like a Cat must be a Cat, thought Ed Kostenski, president and founder of Nationwide Equipment, which has locations on the Northside and at Regency.

Caterpillar Inc. didn't agree, though, and sued Nationwide in a case that was settled last month.

Kostenski had agreed to buy 16 of the Turkish-assembled front-end loaders for \$100,000 each in July 1994 and had five shipped from Turkey to the United States in August 1994 after he sold them to a client in Richmond, Va.

The machines were available to him because Caterpillar had terminated its agreement with its distributor in Turkey, Cukurova, thus freeing the distributor from its obligation not to sell them outside Turkey. Cukurova had been Caterpillar's distributor in Turkey for 47 years.

Kostenski said he'd planned to buy all 80 of the loaders Cukurova had remaining out of the 2,000 it had assembled from skid-packs shipped from France and Belgium.

But Caterpillar sued him and his

Richmond customer on Sept. 14, 1994, alleging trademark infringement and unfair competition.

The lawsuit scotched the sale to the Richmond customer, even though a federal judge in Richmond denied Caterpillar's request for an injunction or other forms of relief and Caterpillar quietly withdrew the lawsuit against the customer two weeks later.

"When we found out that a sale of one of these machines to one of our customers came with a free lawsuit from Caterpillar, we canceled the rest of the purchase from Cukurova," Kostenski said last week after finalizing a settlement with Caterpillar on its lawsuit and a cross-complaint he filed under the Layman Act alleging that Caterpillar tortuously interfered with his contractual agreement.

"Caterpillar said its intent was these machines were not intended for the American market, but there's no law in the U.S. I know of that prevents us from doing that," Kostenski said.

U.S. District Judge Harvey E. Schlesinger agreed. Kostenski's attorney, Robert W. McIntyre of Cleveland, said it was unusual that a company that initiated a trademark infringement action would end up paying out in the settlement.

McIntyre said Kostenski retained his firm, McIntyre Kahn & Kruse, because he has been involved in numerous legal battles against Caterpillar.

Neither McIntyre nor Kostenski



Nationwide Equipment President Ed Kostenski settled a legal battle with Caterpillar Inc. Caterpillar had sued for copyright infringement but ended up paying Kostenski \$199,500. (photo by Diane Uhley)

would disclose the amount Caterpillar agreed to pay, but *The Financial News & Daily Record* has learned the amount was \$199,500.

Kostenski's local attorney, Charles P. Pillans III of the Jacksonville firm Bedell Dittmar DeVault & Pillans, said the settlement ended more than a year of rather acrimonious litigation.

A Caterpillar spokesman in Peoria declined to comment on the case except to say that the settlement and accompanying news release speak for themselves.

Kostenski, 33, started brokering used equipment and founded the business in 1983 after he was laid

off from a construction sales company in Jacksonville. Nationwide, something of a used-car lot for heavy equipment, now carries about \$1 million in inventory and had sales of \$17 million in 1995.

Kostenski said he "got a good legal education" as a result of the Caterpillar lawsuit.

"We weren't fighting for money; we were fighting for our name," he said. "When someone says we were impostors, I was going to fight on the principal and stand up against this corporation."

He said he spent about \$350,000 on attorneys' fees and others expenses related to the case.

Other terms of the settlement include an acknowledgment by Nationwide that the machines cannot be sold as genuine Caterpillar front-end loaders and are not backed by a Caterpillar warranty.

Kostenski must inform potential buyers that despite the Cat markings, the machines were assembled in Turkey from skid-packs and not by Caterpillar, whose international headquarters are in Peoria, Ill.

Though the machines still have the Cat logos, he can't call them Cats. "We don't even have a name for them," he said of the orphan machines.

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