

Score one in favor of the power to sue

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“The Power to Know.” It’s a good slogan: compact, direct and remarkably durable – so much so that two Tar Heel companies used it last year in promotional campaigns. Only one had the rights to it.

SAS Institute Inc., the billion-dollar Cary-based software giant that employs 8,000 worldwide, launched its “The Power to Know” ad campaign last summer. A Raleigh marketing consultant came up with the slogan. The words seemed to mesh perfectly with how SAS envisions what it does, which is help companies manage and understand their data systems.

The slogan also explains what Robert Penny’s Charlotte-based consulting business does. He started The Penny Group in 1993 to help companies understand customers. Penny started using the slogan, which he says he got from a Charlotte marketing consultant, in 1994. In 1998, he applied for “The Power to Know” as a service mark, which the U.S. Patent and Trademark Office granted in March 2000.

When Penny picked up his *Wall Street Journal* last summer and spotted a SAS ad with the slogan, he reached a SAS lawyer. They said, ‘Oh yes, we know all about you.’ That told me they knew that what they were doing was wrong – that they didn’t go into this unaware that I had the phrase and that I registered it.” SAS won’t comment on its dealings with Penny or the slogan.

Penny decided he needed to talk to a lawyer of his own. The first one he called counseled him to be careful, that SAS could squash him. But the Charlotte office of Alston & Bird LLP advised him to sue – or SAS might sue him. In October, he filed suit in U.S. District Court in Charlotte, demanding that SAS give up the slogan and pay him damages. He wasn’t squashed, and a settlement was reached by December. “Confronted with a lawsuit, SAS became reasonable,” Penny says. SAS acknowledges it now licenses the slogan from Penny, who also still uses it. How much he got in the deal was not disclosed. Seems the power to know is reserved – exclusively – for those who need to know.

The Penny Group helps organizations understand, anticipate, and more effectively respond to the needs and expectations of their clients. The Penny Group’s current clients include Bank of America, SunTrust, Wells Fargo, FedEx, Wachovia, and Printpack.

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