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## METRO

# 'Yellow cab' is found generic

No exclusive claim to name, jury says.

By Denny Walsh  
BEE STAFF WRITER

A jury in federal court found Thursday that "yellow cab" is not a legally protectable service mark but simply a generic name that may be used by more than one taxi company in Sacramento County.

It took the six-member jury less than half a day to decide that "yellow cab" has become generic through its widespread use in marketplaces across the country and that Yellow Cab Co. of Sacramento has no legal basis to keep other taxi firms from using the name.

In 2002, the Sacramento firm, which operates 97 taxis, sued Michael Steiner and his Yellow Cab of Elk Grove, a one-taxi operation when it began in 2001, alleging a trademark violation under federal law.

Andrea Miller, an attorney for Yellow Cab Co. of Sacramento, told the jury Wednesday in her closing argument that "the name is at least descriptive."

A descriptive mark can receive trademark protection if it has acquired distinctiveness by establishing itself as peculiarly recognizable in a defined marketplace.

Her client's name is legally protectable because it has a "secondary meaning in the community," Miller argued.

If the name can reliably be associated with the Sacramento company, she said, it is a service mark that protects the consumer and also the reputation and good will of the service mark holder.

Miller asked the jury to award her client revenue it has allegedly lost to the Elk Grove operation, which she estimated to be \$3,000 a month.

But Steiner's lawyer, Jeffrey Kravitz, scoffed at the notion that any company has an exclusive legal claim on "yellow cab," insisting "nobody owns the name."

"Some lawsuits are just silly," Kravitz told the jury Wednesday in his closing argument. "This is one of them. This name is used all over the place."

U.S. District Judge Frank C. Damrell Jr. threw the lawsuit out in May 2003 by granting Yellow Cab of Elk Grove's motion for summary judgment.

Damrell ruled that "yellow cab" is a generic term and, even if it is descriptive, Yellow Cab Co. of Sacramento "failed to show secondary meaning and is therefore not entitled to trademark protection."

But, in August 2005, a three-judge panel of the 9th U.S. Circuit Court of Appeals reversed Damrell's decision and sent the case back to him for trial.

The appellate panel noted that Yellow Cab Co. of Sacramento submitted to Damrell declarations detailing its history, customer confusion concerning the two companies, advertising data and other evidence designed to demonstrate "yellow cab" is a descriptive mark in Sacramento County with meaningful recognition in its community.

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The Bee's Denny Walsh can be reached at (916) 321-1189 or [dwalsh@sacbee.com](mailto:dwalsh@sacbee.com).