

MALICE IN DALLAS

Moshe Miller

"Let's settle this with a fair fight." It's a phrase you might expect to hear pass between schoolyard bullies, wrangling cowboys or medieval knights. In January 1992, though, it was a challenge leveled by one CEO of a multi-million-dollar corporation to another!

At issue was a seemingly mundane trademark dispute. Branding is everything these days, and when one company hits on a winning slogan that is then taken by someone else, the only recourse is in a court of justice. At least, that's what everyone thought until CEO Kurt Herwald of Stevens Aviation in South Carolina challenged CEO Herb Kelleher of Dallas-based Southwest Airlines to a best two-out-of-three, no-holds-barred duel at the Dallas Sportatorium in front of thousands of cheering spectators....

Read about the unlikely match of muscle—mixed with a generous helping of good humor—that captured national attention and even garnered praise from President George H. W. Bush.

Isn't this shocking? Outrageous!" exclaimed the lawyer who was sitting on the other side of the desk, one of Stevens Aviation's legal advisors.

CEO Kurt Herwald stared at the advertisement that had just been placed in front of him.

The ad was for Southwest Airlines, a company that operated flights in Texas and some neighboring states. The humorous ad, typical for Southwest, read, "We'd Like To Match Their New Fares, But We'd Have To Raise Ours. Southwest Airlines—Just Plane Smart."

Herwald leaned back in his chair as the implications sank in. The Southwest slogan, "Just Plane Smart," utilized the same pun as his own company, Stevens, whose tagline was "Plane Smart." Of course, the companies were different. Southwest was a passenger airline service and Stevens was an airplane maintenance, refurbishment and sales company. Southwest was a Fortune 500 company and the most profitable (although not the largest) US airline company, whereas Stevens was a comparatively puny company doing about \$28 million in business a year.

Still, the similarity of the slogans represented a potential trademark infringement, and Stevens had it first.

"My advice is to pursue legal action against Southwest immediately," continued the attorney. Herwald looked at his face. He saw dollar signs in the man's eyes.

Herwald didn't like lawyers.

"I'll consult with my team. We'll let you know how we want to approach this," Herwald told him.

After the lawyer left, Herwald gave the issue some thought. He recalled that Southwest Airlines was headed by an iconoclastic CEO named Herb Kelleher. Kelleher was originally trained as a lawyer. When he moved to Texas, he got together with businessman Rollin King one day at a restaurant and, on a cocktail napkin, sketched out the idea for a new airline company. The strategy was to take a completely different approach from existing companies and initially offer only in-state flights—between Dallas, Houston



Southwest Airlines' snappy advertisement that featured the logo "Just Plane Smart." The only problem was that Stevens Aviation thought of it first....

and San Antonio—to avoid restrictive federal regulations. The model was successful. In addition, Southwest's "corporate culture" was infused with Kelleher's natural fun-loving and wacky personality.

Secretly, Kurt Herwald worshipped Herb Kelleher. Herwald was a young CEO, only 38, and had been leading the company for three years. He was inspired by 61-year-old Kelleher's success and sought to model aspects of his style of company management.

He knew that others in the company would want to sue, but he was interested in pursuing other options. He called in the executive vice president, Stephen Townes, to discuss the matter.

After deliberating for a time, Townes broke out in a broad grin. "I think I know the perfect solution! Let's settle this like real men...."

Conflict Resolution, Texas-style

Herwald and Townes cooked up a scheme that resulted in the following official letter to Kelleher, dated January 2, 1992:

Dear Mr. Kelleher:

We LOVE your new ads that use the clever, creative, effective "Plane Smart" theme! We can testify to its effectiveness since we've been using it in our own ads for a long time. In the true fun-loving spirit on which Southwest Airlines was founded, we challenge you to a duel to see who gets to keep "Plane Smart"—big ol' Southwest or little bitty Stevens. (Please—no lawyers!) We trust that you accept this challenge in the spirit intended.... No litigiousness implied at all. We challenge you to a sleeves-up, best-two-out-of-three arm-wrestling match between you and our chairman, at high noon on Monday, January 27, 1992....

Respectfully,
Stephen D. Townes
Executive Vice-President
Stevens Aviation

P.S. Our chairman is a burly 38-year-old former weight lifter who can bench press a King Air—or something like that....

The idea was win-win brilliant. Why engage in a costly legal battle when the companies could stage an exciting, fun, good old fashioned arm-wrestling match? The two had heard that Southwest's CEO was "kind of crazy." Now they would see if the rumors were true. It was up to Kelleher to make the next move.

World's Weirdest Airline

From the start, Southwest was destined to be, well, different. Co-founder Herb Kelleher was smart, but also fun-loving and somewhat eccentric, with a nutty sense of humor that he infused into the very heart of the way the company does business. The clearest example of this is Southwest's ticker symbol on the New York Stock Exchange—LUV—named after Southwest's primary base of operations, Dallas Love Field.

The company grew quickly throughout the 1970s and 1980s, grabbing the public's attention with humorous and quirky ad slogans such as, "Love Is Still Our Field," "The

Somebody Else Up There Who Loves You," "Southwest... From The Heart," and "Without A Heart It's Just A Machine."

They engaged in pricing and advertising wars with other airlines, while trying to make them "fun" at the same time. In 1973, the now-defunct Braniff Airlines lowered its rate from Dallas to Houston to just \$13. At the time, this was Southwest's only profitable route, and they charged \$26. Southwest responded with a deal: Customers could choose to match Braniff's fare and pay just \$13, or they could pay the full fare and get a free bottle of premium liquor. The scheme paid off. Many business people elected to pay the full fare, which they could write off on their taxes as a business expense while still getting to keep the free booze. Due to



Kurt Herwald in 2014.



Stevens Aviation's hangar at its headquarters in South Carolina.



A Stevens facility in Dayton, Ohio.