

Carter's Clothing & Footwear vs Nike: Big Bully Business



Carter's Clothing & Footwear: 55 William Street, New Bedford (508-993-8221) and 288 Plymouth Avenue, Fall River (508-678-5333)

By Jenny Lee Paiva

I'm willing to bet that more than half of our readers felt the peril of the Market Basket saga. You may have had to drive out of the way and pay a heck of a lot more at big chain stores rather than getting "more for your dollar," as the family-owned supermarket boasts. We've certainly seen the consequences as consumers, with bare shelves and a legal battle lasting more than a month.

So what does this possibly have to do with Carters Clothing & Footwear vs Nike?

Well, it's about small business and big corporate bullies. It's about families and communities. Whether a consumer or a producer, it's about appreciating those who have invested time

and money into your product or cause. It's about a sense of localism; communities coming together in support of small business. Most importantly, it's about honoring the loyalty of those who have helped build a brand from the start.

By now, you may have heard that Carter's Clothing & Footwear, a longtime staple of South Coast economy, lost their account with the billion-dollar bully, Nike.

In March of 2013, Nike sent a letter stating they would no longer distribute their product to Carters as of June 30th, 2013, giving the Carter family just three months' notice. Nike demanded that Carters pay the full balance in advance, a stark contrast to a line of credit that the Carters were accustomed to and had always paid on time.



Carters has been serving the urban communities of Fall River and New Bedford, MA since 1947, with three generations of family owners.

The Carters contacted Nike immediately requesting a balance due but Nike would not respond or confirm a balance for future orders, and within a couple of weeks, Nike locked the Carters out of their online account. Heeding Nike's warning, the

Carters took the initiative of printing up and sifting through all Nike invoices, and in just ten days had the burden of advancing \$160,000 to Nike to ensure all orders were paid in full through September 30th.

Nike's actions were painfully shocking since the mom-and-pop clothing and footwear store maintained a good standing business account for over 30 years with Nike. Nike merchandise accounted for a sizable amount of Carters Clothing & Footwear business revenue.

Carters has been serving the urban communities of Fall River and New Bedford, MA since 1947, with three generations of family owners. Loyal customers appreciate shopping one of the largest sneaker selections in the area and praise Carter's staff for friendly customer service. Nike's drastic policy change has put this family-owned company in a financially tenuous spot, and thus, with respect to their reputation and promise to their customers, the Carter family demands answers.

I had the opportunity to sit down one-on-one with Kevin Carter, third generation store owner and manager, who shared with me details and family thoughts on their current legal battle with Nike. "We want answers, and our day in court," he said.

The Carter family wants to know Nike's motive behind terminating their account with no warning, after 30 loyal years. "At first, we thought it was a mistake. We immediately sent over emails and made phone calls, but no response." Kevin explained that Carters Clothing has evolved right along with Nike, before the big brand lost their loyalty to the small businesses roots that built its brand from the start.

Interestingly enough, Carters Clothing was not the only mom and pops shop that received a termination letter from Nike.



Carter's isn't just a clothing store!

According to Carter's attorney, Adrienne Catherine Beauregard-Rheaume, news reports out of New Jersey and Philadelphia have revealed that Nike sent several identical letters to numerous small businesses across the eastern seaboard of the United States. Reportedly, several mom and pop stores were facing closure due to their dropped Nike accounts.

"Though we haven't heard of any stores in the Midwest or West Coast having been effected, according to news reports overseas, Nike is now refusing to sell to small sports shops in the United Kingdom, limiting its distribution to the chain stores," said Beauregard.

Nike is arguing that these stores have to bring their fight to Oregon if they want to challenge Nike's actions and it is certainly concerning that Nike seems to have only focused their efforts thus far on retailers on the opposite side of the country and overseas.

But Nike claims it's all under contract, stating in their March 15th, 2013 termination letter, "By this letter, NIKE provides you with formal notice, effective June 30th, 2013 (the "Termination Date") that it is exercising the right to terminate your account(s)."

Since many mom and pop stores also built their business around the Nike brand, naturally, the insufficient amount of warning time Nike gave to find another product to replace their

merchandise was baffling.

CBS Eyewitness News conducted a closer investigation of Nike's actions, reporting the same unexpected termination letter was sent to small business owner Keith Sherman, manager of Real McCoy Sports in Olney Philadelphia. Sherman argues that Nike has forgotten its roots; "I mean, us, the hood...We built that, we built Nike. We helped that brand get up there and this is what we get in return?"

Is Nike targeting small businesses? On what legal terms?



Carter's doesn't have a chain feel and retains its "mom & pop" feel!

"We weren't the only small business being targeted. There are so many other businesses that we found out about right away," said Kevin Carter.

The Carter family's legal quest revealed at least ten more small businesses with dropped Nike accounts, including 23-year-old Shoe Plus Athletic Footwear of Princeton, Philadelphia, 44-year-old Index #1 of Queens, New York, and 50-year-old Alpha & Omega Shoe of Roxbury, MA.

As a result of this move by Nike, many long standing community stores were closed down for good. Family owners were forced to forfeit their hard earned businesses after years of loyalty to the Nike brand. In the event that Nike is targeting small businesses in favor of big retailers like Footlocker, the

question remains whether they can legally discontinue Carters account without proper warning.

“The legal fight is about whether Nike can pull the rug out from under the Carters after a 30 year relationship that gave rise to a contract through their course of dealing, among others,” said Beauregard.

Still in search of answers, and now under the legal guidance of attorney Philip N. Beauregard and Adrienne Beauregard, of the law firm Beauregard, Burke & Franco, the Carters filed a lawsuit against Nike on June 7th, just three months after receiving the original termination letter.

The lawsuit accused Nike of a breach in contract and unfair and deceptive trade practices, and asked that the Carter account be reinstated so that they can continue selling Nike products to their customers.

“The Carters have a very strong, local customer base that didn’t make that trek out to the big box stores on Route 6 for their sneakers, they came to downtown New Bedford and gave their business to this small family business that has been operating here for more than a half century,” said Beauregard.

When I asked Beauregard what she thought Nike’s motive was, she said her firm’s attempts to get a court to force Nike to reveal their motive have been stymied by a so called “contract clause” printed in 8 point font on the back of a merchandise purchase invoice.



Carter's has been serving the community

for decades.

Since Nike was such a big part of the Carters' business and they built their stores around the product, the question of Nike's motive to terminate their account still remains a perplexing mystery. "There is no way to know at this point what Nike's motive was, because it refuses to answer that question," she said.

Nike immediately responded to Carters lawsuit filing a motion to dismiss, claiming that according to this "implied contract clause," the case can only be heard in Oregon, where Nike's headquarters are located.

"It seems Nike is writing their own rules," said owner Kevin Carter. "We want to see the proof. Where's the agreement they claim that we signed and agreed to?"

Given the amount of small businesses terminated, along with alleged statements Nike made to stores in the United Kingdom, there's reason to believe that perhaps Nike has decided to only sell to big box stores.

"That kind of discrimination is not right, and it's not legal," said Beauregard.

News of the Carter vs Nike lawsuit made local headlines suggesting the Carter's legal battle with a major corporate brand like Nike was another case of David & Goliath, causing many loyal customer concerns.

For example, a Sport-Law online article written by Benjamin Haynes, proposed, "It's hard to imagine this small family operated store surviving without such a brand. It's safe to assume that Carters main reason for wanting to exercise its notice right is to allow the small business adequate time to pursue another contract."

However, Nike merchandise only accounts for a portion of

sales—not nearly enough for the hard working family to close up shop. Although many fellow small business owners seemed hopeless in pursuing a legal battle with the heavy weight Nike brand, the Carter family is fighting for fair business practices, demanding answers on behalf of all mom and pop stores.

Small businesses are the heart of their communities.

Carters Clothing & Footwear is a very well-known and respected store, contributing to the economic development of the Fall River and New Bedford communities, employing roughly 20 workers, from part time college students to long term friendly faces. Loyal customers appreciate the welcoming feeling of the mom-and-pop shop. Carter's sells award winning Townwear apparel, donating a portion of all sales to the Boys & Girls Club of Greater New Bedford, aimed at helping keep kids off the streets and in healthy peer groups.

In a 2014 letter from the US Small Business Administration, Seth A Goddall, New England Regional Administrator wrote; "Small businesses are the backbone of the Massachusetts economy. The Commonwealth's 607,000 small businesses employ more than 1.4 million workers and are the pulse of the state's downtowns and communities. Many of these businesses are owned and operated by your neighbors, friends, and families."

Nike's motive to terminate their long term, good standing account is still unknown. According to attorney Beauregard, if Nike can get away with cutting out the mom and pops shops, it won't just be the Carters that are affected, but consumers and all small business owners will suffer as well.

"All small businesses will become vulnerable to the distributors who decide it's better for their bottom line to only sell to big retailers. The landscape of business in America could, in our lifetime, be limited to the Wal-Marts and Targets of the world. I'm concerned for the consumer, and

I'm concerned for the small business owners who will be totally shut out of competition," she said.

Despite the legal fees and unanswered questions, the Carter family remains optimistic.



SUPPORT LOCAL!!!)

"For now, it's just a waiting game," Carter said.

It's no wonder the Carter family wants their voice to be heard. They deserve their day in court to defend the rights of fair business practices in the name of all mom-and-pop businesses who were bullied by Nike.

"Nike's insistence that the Carters bring suit in Oregon – while Nike itself has no problem using the courts of Massachusetts to sue retailers here when it feels it has been legally wronged – may very well rob the Carters of their day in court. Nike should have to answer for this behavior," said Beauregard.

Nike is a corporate giant, silently severing ties with the little guys who helped build their brand from the start. These are billion dollar businesses- bullies forcing families to forfeit their companies- crushing their family legacy.

What can be done to put an end to similar Carters Clothing and Market Basket cases?

Let's take a look at the positive side of the Market Basket

mayhem; employees and customers protested and refused to work, despite taking a chance on losing their primary income. They were holding onto hope for fair and just business practices. The demonstration proved one thing; we are better in numbers.

While there's a current trend of Cash Mobs, small business activists organizing community protests and boycotting big brands, there's something a little less drastic that you can do to help.

Keep on supporting your local businesses who support your community.

Shop local and get to know your neighbors and their families who live to provide goods and services that help stimulate the local economy.

Know that Carters Clothing won't be closing their doors. In fact, they've already refreshed current brands like Reebok, Fila, Champion, Timberland, Supra, New Balance and many more quality clothing and footwear merchandise. Both Fall River and New Bedford locations will continue to stay stocked with Carter's promise, "Clothes that fit your lifestyle."

"We are going to keep doing what we've done since 1947, focusing on customer service," said Carter.

In the meantime, Beauregard says her firm has been contacted directly by attorneys for four other retailers and lawmakers in Oregon have also reached out, concerned about what Nike is doing in their own back yard.

"I do hope that the other retailers who have been wronged here have the strength and resilience that the Carters have to fight to stay in business," she said.

There is no set court date for the appeal yet; briefs are due this fall and a hearing will be scheduled after the briefs are filed.

Carter's Clothing & Footwear

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