



Letter from Woodstock
Rolf Diamant

What's In a Name? A Lot More than Money

IT HAS BEEN AN UNEVEN BEGINNING for the centennial of the National Park Service (NPS). The year started with a “find your adventure” Rose Bowl parade that was reported to be all about the 2016 centennial, but wasn’t. Then there was the distressing news coming out of eastern Oregon about the occupation of the Malheur National Wildlife Refuge. As much as we might choose not to think about it, it could have just as well have been a national park headquarters that was seized—John Day Fossil Beds National Monument is only a few hours away. And lest we dismiss the occupiers as an isolated fringe group of armed extremists, many, more mainstream, conservative think tanks, commentators, and legislators unfortunately echo their rhetoric advocating local takeover of federal public lands. We don’t have to look further than the pages of *The George Wright Forum*, where invited centennial essayist Holly Fretwell of the Property and Environment Research Center recently called for the franchising of some national parks.¹

Another unwelcome distraction from the 2016 centennial has come from Yosemite National Park and an unusual tug of war over trademarks associated with a new concessions contract and the disgruntled outgoing concessioner, Delaware North Corporation (DNC). I’ll focus much of this 13th Letter from Woodstock on one particularly disquieting consequence—the unfortunate renaming of many of Yosemite’s most iconic places. This story starts with a dispute between DNC and NPS over the monetary value of DNC’s “intangible property” that includes customer databases, website names, and, most importantly, trademarks. DNC began quietly building up its cache of Yosemite trademarks, registered with the United

The George Wright Forum, vol. 33, no. 1, pp. 10–14 (2016).

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States Patent and Trade Office (USPTO) including those of iconic hotels and recreation areas (many listed on the National Register for Historic Places) such as “The Ahwahnee,” “Wawona,” “Yosemite Lodge,” “Badger Pass,” and “Curry Village.” Though there are concession-operated visitor facilities at all these places, the locations are part of the national park and owned by the United States. It can only be inferred that all this trademarking activity was intended to discourage competition for a concessions contract worth an estimated \$2 billion.

Having failed at this stratagem—a new 15-year concessions contract has been awarded to a rival concession company, Aramark—DNC was determined at least to make NPS and Aramark pay dearly, suing NPS and asking approximately \$44 million from Aramark for continued use of these trademarked names. (Curiously, DNC was still trying to register Yosemite trademarks as late as last September, three months after the new concessions contract had been awarded.) NPS, on the other hand, pegs the worth of the trademarks at only \$1.6 million, a small fraction of the asking amount. Responding to DNC’s lawsuit, NPS argues that the value of each name is overwhelmingly associated with Yosemite National Park rather than a concession and has petitioned USPTO to reverse itself and cancel the trademarks. Furthermore, according to NPS, DNC’s “improper and wildly inflated valuation” of the trademarks demonstrates a lack of “good faith and fair dealing”—and constitutes a material breach of DNC’s original contract—therefore voiding any requirement for the new concessioner to acquire DNC’s trademarks.

As this issue moves towards adjudication in the US Court of Federal Claims, it has also become a *cause célèbre* in the court of public opinion. People have been howling with indignation that these well-known Yosemite place names are not held in the public domain and are quite possibly at risk of being permanently lost. An opinion piece in the *Washington Post* calls the trademarks “a weird kind of ‘cultural appropriation.’”² Much of this popular condemnation, including on-line petitions, has so far been directed at DNC.

Legal arguments aside, this does, however, beg the question: why did previous concession agreements not specifically address this thorny question of intellectual property and establish an intentional process for retiring or transferring these trademarks to the government? This point has commentators on intellectual property issues scratching their heads. “The National Park Service would be well served exercising some basic due diligence from time to time,” suggests David Lizerbram, “like any large entity should, and monitor the USPTO for filings related to their valuable brand names.”³ (Interestingly, there was due diligence at Great Smoky Mountains National Park, where NPS trademarked the name of the iconic LeConte Lodge five years ago and now licenses the mark to its concessioner.) “By failing to restrict the concessioner’s right to file for registration or even outline an intellectual property approval process in its contracts with vendors,” Rachel Schwartz and Carla Sereny conclude that Yosemite Park “effectively buried its head in the sand and engendered the current trademark dispute.”⁴

“This could only happen,” sums up columnist Jeff Jardine, writing in the *Modesto Bee*, “because the park service got sloppy and failed to secure name ownership when it had the chance.”⁵

Dan Rogers, however, in a post entitled “Selling Yosemite,” suggests there is another injured party in this dispute—the most important party of all—the public. “Regardless of whether the National Park Service is to blame for entering a contract that failed to protect Yosemite’s intellectual property or Delaware North is guilty of corporate greed,” writes Rogers, “for anyone whose breath has been taken away by El Capitan or felt the mist of Nevada Falls on a hot summer day, their heart is breaking. . . .”⁶ Public heartbreak was further exacerbated when NPS made the startling announcement that all the contested names would be renamed. This decision was purportedly made “to ensure a smooth transition for Yosemite visitors” when Aramark took over, rebuffing an offer by DNC for continued free use of the trademarks pending resolution of the case in court. To add insult to injury, the new names are for the most part distressingly lame. When asked who came up with the names, Yosemite park spokesperson Scott Gediman admits in an interview with the *Fresno Bee*, “it was the attorneys, mostly.”

In his commentary, Dan Rogers questions “the short-term benefit of renaming *The Ahwahnee* the ‘Majestic Yosemite Hotel’ or in booking summer reservations at the ‘Big Trees Lodge’ instead of the *Wawona* hotel.” In Rogers’s view, “the rebranding feels cheap, as if a treasure is being converted into a theme park.” According to environmental author Kenneth Brower, son of David Brower, several long time Yosemite observers have even suggested that this might be intentional. In their view, writes Brower in a National Geographic essay, “conversion of the lyrical ‘Ahwahnee’ into the comically portentous ‘Majestic Yosemite Hotel’ can only be calculated to offend.”⁷ Whether or not this is the case, the renaming appears to be an attempt by NPS and its lawyers to embarrass DNC, undermine the value of the trademarks and maneuver their way around a painfully difficult contractual problem, in part of their own making. The renaming, however, may have deeper and more lasting costs than just putting up new signs. Regardless of intent, the changes are profoundly disconcerting. When these names change, writes Dan Rogers “so too does our perception of the Valley itself. The innocence and hope that Yosemite represents, that so many have worked so hard to preserve, is lost forever.”

This letter is difficult for me to write, as I believe that overall the NPS concessions program is highly professional, well managed and has made great strides in recent years encouraging park concessioners to more closely align their practices and services with NPS environmental goals. Instead of celebrating this accomplishment as part of the centennial, we find ourselves distracted by this unexpected custody battle. In the long run a reasonable agreement may yet be reached. I have a sinking feeling, however, that government lawyers, NPS, and Aramark ultimately may be content to live with these unfortunate new names if they have to, and are preparing the public to begrudgingly accept that outcome as well. One indication of this will be whether Yosemite National Park actually trademarks its new nomenclature. Perhaps, by the time this column comes out, or in the foreseeable future, this all may be a moot point if there is indeed a favorable judgment or a settlement is reached that restores the cherished historic names.

We can only hope.

I WANT TO CONCLUDE THIS LETTER ON A MORE UPBEAT CENTENNIAL-RELATED NOTE, looking to an event much closer to home. The Vermont House of Representatives recently designated a day to honor the National Park Service centennial and invited NPS representatives and their partners from across the state to be recognized on the floor of the statehouse. Many Americans may not associate a small northeastern state like Vermont with an active NPS presence. The House resolution celebrates not only the centennial and the state’s two national parks, Marsh-Billings-Rockefeller National Historical Park and Appalachian National Scenic Trail—but also recognizes NPS assistance with the Lake Champlain National Heritage Partnership, Missisquoi and Trout National Wild and Scenic Rivers, and more than 60 RTCA⁸ community based recreation projects. The resolution also cites Vermont’s 18 national historic landmarks, 12 national natural landmarks, 800 National Register properties, tens of millions of dollars in Land and Water Conservation Fund and Historic Preservation Fund grants awarded Vermont cities and towns and hundreds of millions of dollars in private historic preservation investments through the Historic Preservation Tax Credit Program—all administered by NPS.

Addressing colleagues on the floor of the House, Representative Alison Clarkson pointed out “Park Service programs reach into every corner of our state, helping preserve and protect natural and cultural resources and recreational opportunities for all Vermonters.” Clarkson further noted that the statehouse itself is one of Vermont’s earliest national historic landmarks, “so all of us have a hand in the preservation mission of the National Park Service.”

The resolution was adopted by unanimous consent, and NPS representatives and partners seated behind the House Speaker’s podium were asked to rise for a sustained standing ovation by legislators.

No single event could have better illustrated the often elusive promise of “One NPS.”⁹ This is exactly what I had in mind when I said in a previous letter that the national park

The National Park Service centennial was recognized recently in the Vermont House of Representatives. Photos courtesy of NPS.



system will truly function as a system, “when we recognize it, promote it, and use it to its full potential.”¹⁰



Endnotes

1. Holly Fretwell, “The NPS Franchise: A Better Way to Protect Our Heritage,” *The George Wright Forum*, vol. 32, no. 2 (2015), pp. 114–122.
2. Online at <https://www.washingtonpost.com/news/volokh-conspiracy/wp/2016/02/01/a-sad-little-trademark-tale-with-a-dash-of-cultural-appropriation-thrown-in-for-good-measure/>.
3. Online at <http://lizerbramlaw.com/2016/01/26/about-the-national-park-service-yosemite-lawsuit/>.
4. Online at <http://www.insidecounsel.com/2016/03/09/the-battle-for-yosemite-national-parks-marks-lesso>.
5. Online at <http://www.modbee.com/news/local/news-columns-blogs/jeff-jardine/article55364745.html>.
6. Online at <http://www.yosemiteip.com/blog/?author=5115997be4b0b8b2ffe1d5e4>.
7. Online at <http://news.nationalgeographic.com/2016/01/160125-yosemite-names-ah-wahnee-wawona-national-park/>.
8. Projects were undertaken in partnership with NPS’s Rivers, Trails, and Conservation Assistance (RTCA) Program.
9. The “One NPS” principle focuses on engaging the entire NPS in coordinated conservation, education, economic, and recreation efforts. See the NPS Urban Agenda, online at <http://www.nps.gov/subjects/urban/activate-one-nps.htm>.
10. Rolf Diamant, “When Will We Really Have a System of National Parks?,” *The George Wright Forum*, vol. 31, no. 3 (2014), pp. 236–239.