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Snowball machine maker loses suit

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A New Orleans snowball machine manufacturer Wednesday failed to get a federal judge to stop a competitor from selling machines that look like the ones it makes.

U.S. District Judge Patrick E. Carr said that though an ice-shaving machine made by Eisen-

mann Products Co. is virtually identical to one made by Sno-Wizard Manufacturing Inc., any confusion in the buying public's mind is lessened by other factors, including that each machine has its maker's name stamped on the door.

Carr made that finding in tossing out a suit Sno-Wizard filed last year against Eisenmann Products and its owner, Mrs. William J. Eisenmann, as well as the distributor of the Eisenmann machine, Craig E. Collier Enterprises, and its owner, Craig E. Collier.

Sno-Wizard owner Ronald Sciortino, who bought the business from its founder, George Orotolano, in 1981, said the company will appeal Carr's decision.

Sno-Wizard had wanted Carr to halt sales of the Eisenmann machine and make the suit's defendants pay Sno-Wizard damages because, it said, the competitor's machine was confusingly similar to its own.

But Carr decided Sno-Wizard

is entitled to neither.

He said that most people entering the snowball business in New Orleans have relatives in the business, have worked at snowball stands and are familiar with Eisenmann as a snowball extracts supplier.

"These persons are aware of both the Sno-Wizard and Eisenmann names, and their knowledge, coupled with the identifying language on each door, mitigates the potential for confusion," said Carr.

Carr also said that the prices of each machine are high enough so that it is unlikely a person would buy one without making inquiries. "Confusion is more likely when a product is inexpensive or an impulse buy," he said.

"Without any likelihood of confusion, potential customers are not misled, and no damages or profits are lost," the judge said.

Eisenmann and Collier copied the Sno-Wizard machine after learning that there was no patent pending on the Sno-Wizard model, Carr said.

"They never intended to mislead anyone into believing that they were selling Sno-Wizard machines," he said.

Carr, who tried the suit without a jury several months ago, said in his findings of fact that every Sno-Wizard machine made since 1942 had been labeled "patent pending," though a patent application was rejected that year.

Sciortino said Wednesday that after he took over the company, another patent application was made and is still pending.

Carr said in his ruling that Sno-Wizard's sales have "increased dramatically in the past few years."

But Sciortino said his company's sales have been "below projections" because of sales by competitors, including Eisenmann Products.