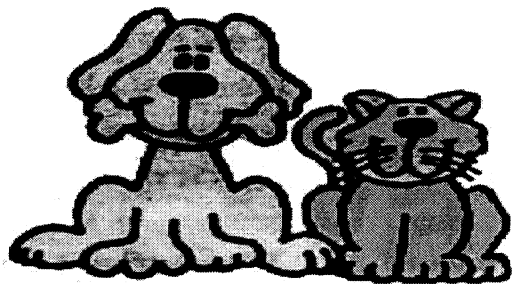
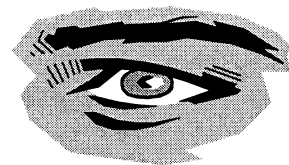


# Pet Watch



**Keeping An Eye On  
Laws Affecting  
You and Your Pets**

Mansfield, Tanick & Cohen, P.A.

Winter, 2003

## **AIRLINES' BREED BAN STIRS CONTROVERSY**

### **Dog owners protest prohibitions by American & Continental Airlines**

New policies implemented by airline carriers prohibiting specific breeds of dogs have aroused controversy among dog owners and their organizations.

Last summer, American Airlines enacted a sweeping prohibition on shipment of Rottweilers, Doberman Pinschers, and American Staffordshire terriers, and other types of "pit bulls." The breed ban followed a more narrow policy prohibiting specific breeds of dogs on Continental Airlines.

The American Airlines ban came about as a result of an incident in which a "pit bull" escaped from its carrying cage and chewed into some equipment, which did not cause property damage, without endangering the safety of the aircraft. In response, American Airlines adopted a policy prohibiting shipment of those specific types of dogs.

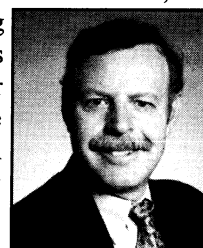
#### **Controversy Created**

The policy created a controversy and generated an examination of potential lawsuits to proposed consumer boycotts. The American Kennel Club (AKC) condemned the breed ban, as did the American Dog Owners Association (ADOA).

The ADOA issued a policy statement, drafted by its national counsel, **Marshall H. Tanick**, of the law firm of **MANSFIELD, TANICK & COHEN, P.A.** In correspondence

to Donald Carty, the Chairman and Chief Executive Officer of American Airlines, the ADOA urged repeal of the policy. In its letter, the ADOA stated that "[t]he prohibition has a particularly adverse impact upon the many Americans who travel, with their pets, to dog shows, throughout the country as well as those who take their dogs on visits to family members and friends, travel between their homes and other residences, and on vacations. . . [and] it may prohibit dog breeders from using the airline as a means

to transport dogs, thus hindering their ability to conduct their business." The letter was written after the organization by the Board of Directors unanimously passed a resolution at its annual meeting, in Baltimore, Maryland, last September opposing the breed ban. The organization also directed **Marshall H. Tanick** to send a letter to American Airlines asking for the ban to be set aside.



**Marshall H. Tanick** to send a letter to American Airlines asking for the ban to be set aside.

#### **Airline's Answer**

American Airlines answered the letter by reiterating that it intends to keep its policy in place. The airline wrote that it will adhere to the policy to maximize safety, which it described as "our number one priority." The airline also pointed out that the prohibition exempts Search and Rescue dogs, Service animals or puppies between 8-12 weeks old.

The response was not acceptable to the ADOA, which has been examining possible legal claims against American Airlines. The organization is also looking into possible consumer boycott by dog owners and other supporters.

The basis for the lawsuit would be statutes in various states, including Texas, where American Airlines is headquartered, which prohibits banning specific breeds of dogs. Similar laws exist in Minnesota and about a dozen other states.

These measures, however, generally only apply to governmental entities and not private parties like airline carriers. Additionally, Federal law permits airline carriers to enact

(continued on page 2)

### **PET WATCH FACT**

*Why The American Dog Owners Association Opposes Prohibition of Specific Dog Breeds on Airlines*

*"The basis of these [anti-ban] laws, and others like them, is the recognition that individual dogs, like people, cannot be classified as to their dangerousness solely on the basis of their appearance or other physical characteristics. This type of 'profiling' is wrong, whether for people or their pets. Rather, decision-making should be based upon the behavior of the individual dogs."*

**ADOA Resolution Against Airlines  
Breed Ban, September, 27, 2002**

### **Mansfield, Tanick & Cohen, P.A.**

West Suburban Office  
5775 Wayzata Blvd., #700  
St. Louis Park, MN 55416  
(952) 525-2200

Main Office  
220 Sixth Street So., #1700  
Minneapolis, MN 55402-4511  
(612) 339-4295

St. Paul Office  
1021 Bandana Blvd. East, #226  
St. Paul, MN 55108  
(651) 645-7746

policies prohibiting shipment of materials that are deemed "inimical to public safety," which presumably would form a resistance to any prospective litigation. Comparing the policy to "profiling," ADOA reiterated its concern for public safety in its letter, calling for the breed ban to be set aside. The organization stated: "The ADOA and its members share the desire to maximize safety of airline travel. They are particularly concerned about this matter because

of the frequency of air travel of their members, often accompanied by their dogs."

More information about the airlines breed bans and the position of the ADOA in opposition to the prohibitions can be accessed on the ADOA website <http://www.Adog.org>. Further information can be obtained by contacting the ADOA at 1654 Columbia Turnpike, Castleton, NY 12033, or by fax at (518) 477-4034, or by e-mail at [adoa@global2000.net](mailto:adoa@global2000.net).

### DIVORCE DEMONSTRATES DOG DILEMMAS

In Minnesota, as in most other states, dogs are considered "personal property."

The "personal property" doctrine usually comes into play when a dog owner seeks damages due to injury or destruction of a canine. In most states, including Minnesota, where dogs are considered "personal property," an owner is limited to recovering the medical costs for treating an injured dog or the replacement costs for acquiring a new one. They are not, however, generally entitled to recover damages for intangible losses such as emotional distress, and pain and suffering, resulting from injury or destruction of their pets.

#### Custody Case

The "personal property" principle has several twists. One of them arises when a dog-owning couple, go through a divorce. It is not uncommon for the owners to try to reach some type of agreement or, absent an agreement, for a court to order who gets possession of the dog. Custody of a dog, as an item of "personal property," generally is treated like any other division of property in a divorce.

But what about rights of the non-owner following the divorce? A recent ruling of the Pennsylvania Court of Appeals addressed this issue in a case entitled, *Desantis v. Prichard*, 2002 Pa. Super.

LEXIS 1513 (2002).

The splitting couple agreed that the wife could have the family's dog, Barney. They also stipulated that the husband would have visitation rights, similar to disposition of children in a divorce.

When the ex-husband sought to exercise his visitation rights as agreed to by the wife, the woman balked. The former husband therefore sued to enforce his visitation rights. But the appellate court threw out the visitation agreement altogether, reasoning that dogs are "personal property," the court refused to enforce the visitation compact.

#### Personal Property

The appellate court stated that, because dogs are "personal property," they cannot be the subject of a court-enforced visitation schedule. The court stated that a dog is not subject to a visitation schedule, because it is "personal property, like a table or a lamp."

Thus, while the parties can voluntarily reach any agreement they wish, if one of the parties refuses to abide by the agreement, the court, at least in Pennsylvania, will not force them to do so.

Treating a dog as "personal property" is hardly novel in the law. Equating a dog with an inanimate object, like a "lamp," illuminates how the "personal property" doctrine can affect dog owners.

### ROMP'S RESIDENCE

Marshall H. Tanick (left) of the law firm of MANSFIELD, TANICK & COHEN, P.A. recently joined members of R.O.M.P. (Responsible Owners of Mannerly Pets) at the organization's new residence in St. Paul, Minnesota. The non-profit organization provides consultative services to communities and other organizations regarding a variety of dog-related issues, including establishment and maintenance of off-leash recreational areas. The new facility is located at 1563 Como Avenue, slightly east of the State Fair Grounds.



Staff members of R.O.M.P. and *Cooper* the dog welcomed Mr. Tanick, whose law firm provides legal services to the organization, and to the facility. They are from left to right: **Barbara Heideman**, Executive Director; **Tina Sweeten**, Associate Director, and **Hilary McCooley**, a student marketing intern from nearby Hamline University. "It's a pleasure to be associated with such a fine organization," Mr. Tanick said. **Phillip J. Trobaugh**, another attorney with the law firm of MANSFIELD, TANICK & COHEN, P.A., is on the Advisory Board of the organization.

*PetWatch* is a complimentary service of the law firm of MANSFIELD, TANICK & COHEN, P.A., providing analysis and review of recent legal developments of interest and importance to pets and their owners. For further information, contact the law firm at (612) 339-4295, or by FAX at (612) 339-3161.

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Mansfield, Tanick & Cohen, P.A.  
1700 Pillsbury Center South  
220 South Sixth Street  
Minneapolis, MN 55402-4511