

## From Kale to Doughnuts

### Vermont's Very Long, Sometimes Misleading, Often Confusing Tale of Eat More Kale

By James Lantz, April 22, 2018

(Updates at end of essay, March 2019 and June 2020)

*The following essay was sent to Kickstarter backers of a documentary in-progress about the Chick-fil-A vs Eat More Kale conflict. The author is the filmmaker and Bo Moore is the main subject of the film. As the film's main subject, Moore was granted a producer credit and potential compensation through profit-sharing; he has no ownership in the film, nor creative or editorial control.*

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Bo Moore in his studio in Montpelier, VT, 2012 (photo Ben Sarle)

**B**ack in 2011 when Chick-fil-A attacked a Vermont T-shirt artist over the phrase “Eat More Kale,” it was an aggressive tactic, legal overreach, and just plain dumb.

Following an initial outcry, the T-shirt artist named Bo Moore continued to make a public appeal for support for a legal battle against Chick-fil-A—an appeal that lasted years and generated hundreds of thousands of dollars.

A recent interview with Bo adds to mounting evidence that a surprising amount of that appeal was misleading.

Through a combination of salesmanship, stoking anger at Chick-fil-A, and some social media sleight of hand, ‘Bo the Eat More Kale guy’ had a simple goal: to make and sell as many Eat More Kale T-shirts as possible.

It worked beyond anything he ever dreamed.

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Six years ago, I began making a documentary about the Chick-fil-A vs Eat More Kale conflict. My film was funded on Kickstarter by nearly 2000 backers from all over the world. Since then I’ve filmed hundreds of hours of footage, interviewed some of the nation’s leading trademark scholars, and gathered reams of research.

Last year I filed a Freedom of Information Act (FOIA) lawsuit against the United States Patent and Trademark Office (USPTO) to gain access to information about Bo’s federal trademark application case—information that was being improperly withheld from our film.



**2009, Rock Art Brewery, Morrisville, VT**

The owners of Monster Energy Drink claim trademark infringement over Rock Art's Vermonster beer after Rock Art files to trademark "The Vermonster."

**2011, Eat More Kale, Montpelier, VT**

Chick-fil-A claims trademark infringement over Eat More Kale after Bo Muller-Moore files to trademark "Eat More Kale."

When it began, the Eat More Kale story was the most publicized case to date of a legal phenomenon that has become known as “trademark bullying.”

Vermont has played an important role in this subject starting with Rock Art Brewery’s Vermonster case in 2009.

Two years before the Eat More Kale case began and twenty-five miles north of Bo Moore’s studio, a small Morrisville, Vermont, brewery called Rock Art filed for a registered trademark for one of its beers called “The Vermonster,” then received a cease and desist letter from the billion dollar corporation that owns Monster Energy drinks.

The California-based beverage company claimed The Vermonster beer was infringing on Monster Energy’s trademark.

That story generated lots of attention. *NPR* described it as, “the internet went wild.” It caught the press’s attention, politician’s attention, and it also caught Bo’s attention.

At a 2014 speech at the Vermont Activism Celebration, Bo said that he’d been inspired to stand up to Chick-fil-A by Rock Art.

“It wound up being good for Rock Art Brewery when they fought it, when they made a fuss,” Bo told the gathered crowd. “It was kinda good for business, as it turned out. So as a businessman I thought, I would like a little of that.”

Some in the audience laughed.

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As the main subject of the documentary, Bo is a pony-tailed, forty-something father of two in Montpelier, Vermont. He sometimes describes himself as looking like a hobbit or a hippy, and a bit of a rascal who likes attention. He calls his T-shirt business a “hobby on steroids.”



Eat More Kale T-shirts (photo Ben Sarle)

In 2011, Bo applied for a registered trademark at the United States Patent and Trademark Office to protect his “exact design and exact phrase” for Eat More Kale from “copycat artists,” and to possibly be able to license it to a company like Whole Foods.



Atlanta-based Chick-fil-A's trademarked slogan (photo Chick-fil-A)

A short time later, Chick-fil-A, the fast-food chicken chain based in Atlanta, Georgia, sent Bo a cease and desist letter. The multi-billion dollar company claimed that the phrase Bo was attempting to trademark—Eat More Kale—was infringing on its trademarked Eat Mor Chikin slogan. Chick-fil-A sent a similar letter of protest to the USPTO.

Just prior to Thanksgiving 2011, Bo took to his ten-thousand fans on Facebook, called Chick-fil-A's threat a classic case of David versus Goliath, and vowed to fight back.

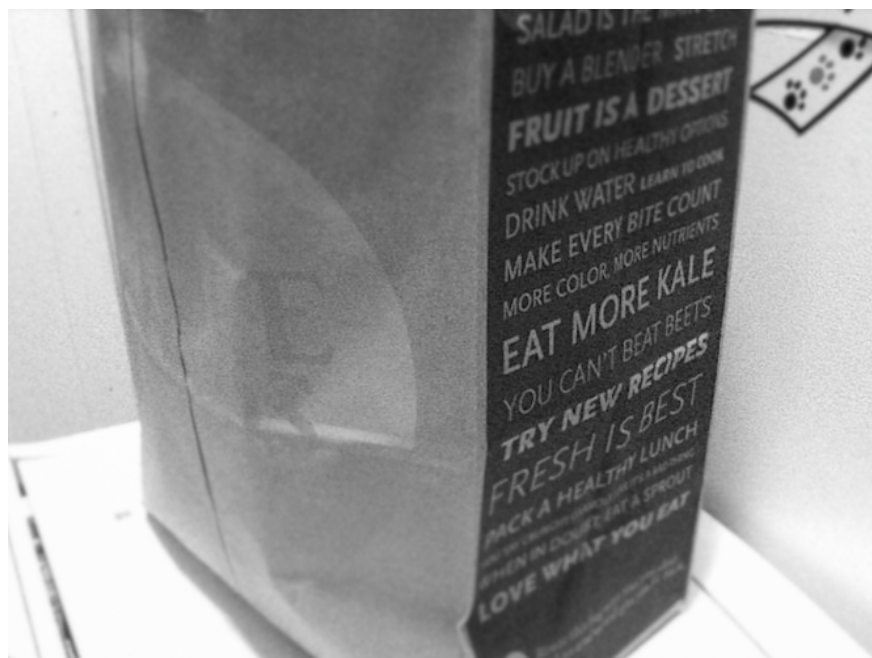
For Bo, the stakes were high. At the time of Chick-fil-A's cease and desist letter he had invested over a decade of his life building a business based on a three word phrase. With his eyes on the future, Bo said he was ready to grow his business. His role models were the two brothers who built a hundred-million dollar T-shirt company after trademarking another three word phrase, "Life is Good."

By trademarking Eat More Kale, Bo saw a similar opportunity.

"It's not unheard of that this could some day be something much bigger than it is," he told Vermont's largest daily newspaper.

When Chick-fil-A's letter arrived, Eat More Kale Facebook fans were apoplectic, "Waaaait! Whaaaaat?!?" "Unbelievable!" "So greedy," "Insane," they added.

Bo posted, "It's bullshit!!!" and asked them to "share, share, share!" the news.



Eight months prior to applying for a registered trademark at the USPTO, a Whole Foods bag posted on Eat More Kale's Facebook page prompted Bo Moore to contact a lawyer about trademarking the phrase. In January 2011, he posted this picture with the comment, "HMMMMMMMM?????"

Then, for the second time in two years, a Vermont trademark story involving a small business and a multi-billion dollar corporation went viral and turned into a social media frenzy.

Petitions were started, rock radio stations called, politicians asked Chick-fil-A to back off. Friends reached out to CNN and the Associated Press who picked up the story. More stories followed. The *Wall Street Journal*, *Forbes*, *USA Today*, *The New York Times*, and *The Atlantic* all ran stories of Bo, the T-shirt David from Vermont who vowed to take on one of the largest fast food Goliaths in America.

"Can't hold me down," Bo posted on Facebook. "Wish me luck and spend some \$ with me if you get a chance. Screw the fat cats."

CNN's Anderson Cooper spoke directly on-camera telling Bo to "Fight the good fight, T-shirt guy."

According to an online statement from Chick-fil-A the company didn't have any choice in the protection of their trademark. Since Bo had applied for a registered trademark for Eat More Kale, Chick-fil-A was "required to protect Eat Mor Chikin, our brand and trademark for 16 years."

Bo and many others saw something different and called Chick-fil-A's letter corporate bullying.

“They feel like they own the words, ‘Eat’ and ‘More,’” Bo said, “and the thing is ‘Mor’ isn’t even spelled correctly.”



CNN's Anderson Cooper reported the story in Dec 2011 (video CNN)

I interviewed numerous trademark scholars around the country who agreed.

Stanford Law Professor Mark Lemley said, “The idea that you can’t use Eat More Kale on a T-shirt because somebody else has registered Eat Mor Chikin is crazy.”

It was admirable of Bo to stand up to Chick-fil-A’s unreasonable demands and to do so in a very public way.

For a while this was our documentary’s story.

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But as it dragged on and on for years the Chick-fil-A vs Eat More Kale story morphed into something else.

For one thing, Chick-fil-A all but disappeared from the story.

Not long after sending their legal letters in 2011, the fast food giant virtually vanished from the Eat More Kale trademark conflict. From 2012 to 2015 Chick-fil-A did nothing to Bo or to Eat More Kale. They did not file an injunction or a lawsuit and Bo would not hear from them again.

Instead, it was the USPTO and Bo's pro bono legal team that began engaging in a slow motion volley of the Eat More Kale federal trademark application, back and forth, stretching into years an administrative process that, according to the USPTO's own website, normally takes a fraction of that time.



The United States Patent and Trademark Office in Alexandria, VA (photo USPTO)

At issue was whether the applied-for registered trademark for Eat More Kale was likely to cause confusion with Chick-fil-A's trademarked phrase Eat Mor Chikin. Then later, the USPTO added a new issue: whether the Eat More Kale phrase and design that Bo was trying to trademark was "ornamental" or not.

The USPTO states that its procedure regarding Chick-fil-A's letter of protest sent in 2011, was an informal process that allowed the trademark office's attorney to consider additional facts without causing a delay to Bo's application, completely independent of Chick-fil-A.

According to the USPTO it can't even confirm whether Chick-fil-A's letter had any bearing on a March 2012 decision to refuse the Eat More



Kale application.

The only fact that can be confirmed is that after 2011 Chick-fil-A itself was absent from the case.

Nevertheless, through social media and “a strong army behind me,” as he referred to his Facebook fans, Bo continued to imply—and sometimes explicitly state—that he was the victim of active years-long legal action from Chick-fil-A that threatened his family’s livelihood.

After the initial outcry in 2011, what moved the story forward and stalled it at the same time, was Bo’s sustained efforts to monetize his trademark conflict—specifically, the public’s goodwill toward him and its anger at Chick-fil-A.

In an on-camera interview in 2012, Bo said of Chick-fil-A, “If they’re gonna actively fight to shut my business down, in the meantime, if people are compelled to do business with me and a lot of business with me—what else could I do?”

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Among hundreds of Facebook posts to his now nearly 20,000 fans, Bo pushed the limits of hyperbole, inflated his conflict and implied a bigger legal fight with the chicken chain than what really existed. Blurring the lines between litigation from Chick-fil-A and an administrative process at the USPTO, Bo continued to beat the social media drums one, two, and three years after receiving the cease and desist letter.

In a follow-up interview with Georgetown Law trademark scholar Rebecca Tushnet, Professor Tushnet said the level of publicity that Bo generated to get his trademark was “overkill.”



Bo Moore from Eat More Kale Facebook page

Meanwhile, Bo continued to post on Facebook, “Chick-fil-A is still actively trying to SHUT MY BUSINESS DOWN,” “Chick-fil-A has NOT backed down from their CEASE and DESIST demand,” “Embattled in a Federal trademark battle with Chick-fil-A,” “Teams of lawyers are still battling it out” “I’m in a ‘battle’ with the billionaires at Chick-fil-A.”



“We support your fight,” a Facebook fan posted an Eat More Kale pie

He also appealed to fans to purchase T-shirts to help him in his “legal battle” to “help a David in a ‘David and Goliath’ story,” and to support him in his “cease and desist battle.”

Thousands of fans responded to Bo’s pleas. They sent money, letters, shared posts and emailed Chick-fil-A headquarters, officials at the USPTO, reached out to celebrities and the press. One Facebook fan sent Bo a picture of a homemade pie that had the words Eat More Kale baked into the crust. “We support your fight!” she posted.

But mostly, Eat More Kale fans bought T-shirts.

“Sales are better than I ever dreamed of” Bo said in an on-camera interview in 2013. “The opportunity that Chick-fil-A presented to me has turned out to be one of the greatest things that has ever happened to me.”

Yet even though his legal team was pro bono, more than three years after Chick-fil-A’s cease and desist letter, Bo was still appealing to fans to “donate money” “to fight this lawsuit.”

“My case has been at the USPTO for years now,” Bo posted. He then claimed in all caps, “It gets EXPENSIVE. Dig?”

In a recent interview when I suggested that Bo had sometimes misled his fans about the facts of his trademark application and Chick-fil-A’s letter, Bo disagreed and claimed “it was ignorance.” He added that he wasn’t a trademark expert, then went even further to say that he saw no difference between the USPTO and Chick-fil-A.

“I don’t recall thinking of them as two separate things,” Bo said of the two entities. “To me it just seemed like one force that was going to make a decision.”

But this is misleading.

Starting five years ago, Bo began recounting his Chick-fil-A vs Eat More Kale story in interviews and speeches at places like Tedx calling himself “*The Accidental Activist*.” He not only displayed a solid basic grasp of what was happening in his conflict, but in public statements he clearly identified the trademark application process at the USPTO as being

separate from Chick-fil-A's letter. In a 2013 interview he said, "Those are two different cases."

In the same interview, he also stated that Chick-fil-A's letter "had no teeth behind it."

**"I was told to cease and desist  
but that letter doesn't mean  
shit without a judge's order."**

**Bo Muller-Moore,  
On-camera interview  
July 7, 2013**

"I was told to cease and desist but that letter doesn't mean shit without a judge's order," Bo said.

Regardless, that letter proved profitable.

In numerous conversations and interviews, Bo reported bringing in hundreds of thousands of dollars in support from the public during his conflict with Chick-fil-A (Bo originally put the figure closer to a million dollars in T-shirt sales, a number he now walks back).

With the Eat More Kale story landing at the tail end of the great recession and during Occupy Wall Street, Bo recognized that his fans were funneling more than just support into their purchases of Eat More Kale T-shirts.

He called the timing of his story "a perfect storm" that produced "a tidal wave of anger." Bo said people were so pissed, "they wanted to shop with me to essentially give Chick-fil-A the finger."

"F\*ck Chick-fil-A," said one Facebook fan. "I'm going to buy a shirt."

“Buying my 3rd shirt,” posted another. “I’d buy 100 if I could. Keep fighting.”



Bo Moore, Montpelier VT, 2012 (image from documentary footage)

Among his hundreds of Facebook posts, Bo posted pictures of himself snarling at a Chick-fil-A sign, giving them the finger, petitions for Chick-fil-A to stop bullying him and Bob Marley’s song, *Get Up, Stand Up*, “stand up for your rights.”

Many Eat More Kale fans saw Bo as a long term victim—not only of a multi-billion dollar corporation, but of a legal process that was dragging on and on for years.

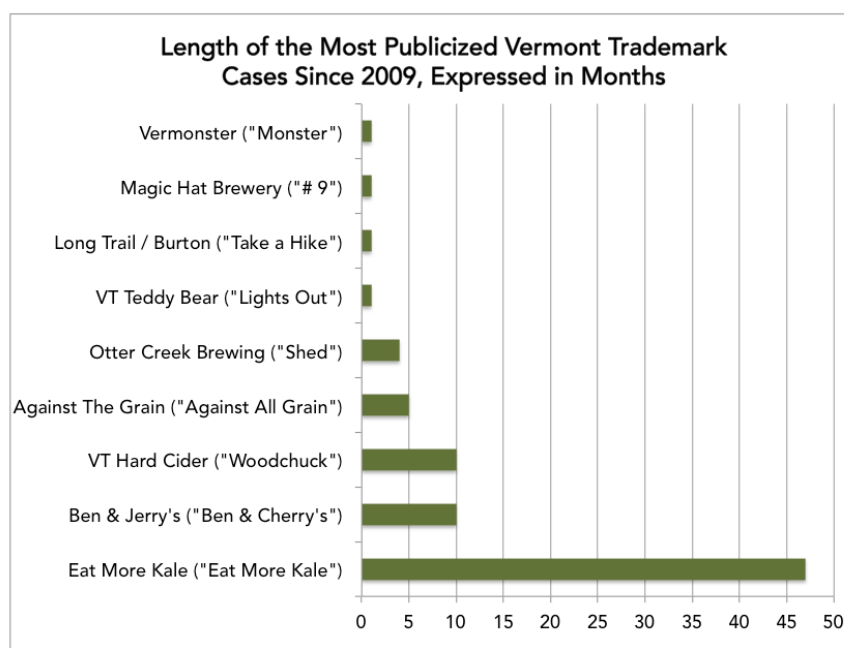
“Good grief!” an Eat More Kale fan wrote to Chick-fil-A. “What we see here is greed masquerading behind an imaginary threat.”

Another fan wrote to Bo, “They’re doing anything they can to bleed you.”

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More than anything else, the *time* that Bo’s federal trademark application was taking to progress through the administrative process at the USPTO—including the time Bo and his own legal team were consuming during that process—was a key factor in allowing Bo to extend and keep monetizing his conflict with Chick-fil-A for years.

In interviews and on social media, Bo sometimes lamented how long his case was taking. On Facebook he posted, “Justice is SLOW!” and “Many think the story is over, yet it drags on.”



*Note: all the above cases were lawsuits with the exception of Vermonster and Eat More Kale (Vermonster was a cease and desist letter; Eat More Kale was a cease and desist letter and federal trademark application). List does not include recent publicized Vermont cases (WhistlePig, 2017) that have not reported a settlement.*

However some evidence indicates that the progress of Bo’s federal trademark application was being intentionally slowed down—by both the USPTO *and* Bo’s own legal team.

This was an issue that Bo addressed early and often.

“I’m not actively rooting for the trademark office to take their time,” Bo said in 2013, “but I’m playing the cards that were dealt me—and I’m being dealt slow motion.”

Until recently, Bo was adamant that he didn’t have anything to do with the length of time his trademark application was taking. Even as his

own legal team waited the entire time they had to respond to trademark office deadlines (usually a window of six months) Bo complained about it.

Once, after his legal team made a filing with only hours to spare, Bo claimed to have asked his lawyers to “please speed their filings up.” Later Bo added, “I’m not looking to drag it out.”



Bo Moore at the USPTO in Alexandria, VA 2014 (photo Max Resnik)

Even as late as last year, Bo maintained that he had nothing to do with the timing of progress of his application. Responding to questions via email, he said, “I can say that I never told my lawyers or anyone how or when to file. Honestly, I was just a passenger in that car.”

However, this is not entirely true.

Bo recently said that while his Eat More Kale trademark application was pending at the USPTO, he sent an email to the Managing Attorney in charge of his case to tell him that “he could take as long as he wants” on his federal trademark application.

Bo downplays his note, framing it as a “sassy” email to remind the Managing Attorney overseeing his federal trademark application that a lot of people were watching the Eat More Kale story.

But in an on-camera interview just last month in Waterbury, Vermont, when I pressed Bo on this issue he went much further.

In a surprising reversal of his years-long claim, Bo angrily stated that he had also instructed his own legal team to “take the sweet time on the deadlines” on his federal trademark application so he could make and sell more T-shirts.

Comparing his conflict with Chick-fil-A to a game, Bo claimed that since he was being told by his lawyers and others that at the end of that game he would not be able to print and sell any more Eat More Kale T-shirts, he did everything he could “to make that f\*cking game last longer.”

Bo said this strategy had been established with his Vermont pro bono attorney, Daniel Richardson, “from the start.”



Daniel Richardson, Bo's pro bono Vermont attorney (photo Ben Sarle)



[To comment on this and other issues, I reached out to Daniel Richardson for an interview. However, prior to consenting, Dan wanted to set conditions for the interview that were unacceptable.]

When confronted with facts that Bo had been goosing sales of his T-shirts by conflating litigation from Chick-fil-A with an administrative process at the USPTO—a process that he and his own legal team were at least partially responsible for drawing out by “taking the sweet time” on deadlines, Bo defended himself.

“I can totally live with that,” he said. “I have no problems with that.”

“You’re telling your Facebook fans that you’re a victim of Chick-fil-A, but you’re elongating that process,” I said to Bo. “You’re making yourself more of a victim.”

“I’m being told that I get to play one game and when that game’s over, I don’t get to play the game anymore?!?” Bo said, “I’m going to do everything I can to make that f\*cking game last longer. ... Chick-fil-A still wanted to win the g\*ddamned case, and that’s what everybody said was gonna happen. That doesn’t make me not a victim.”

**“I was a pending victim. I was going to be if [Chick-fil-A] had their way. And they weren’t doing anything to make it not their way.”**

**Bo Muller-Moore,  
On-camera interview  
March 21, 2018**

“You said you were prepared for this to last ten years,” I said. “What it feels like is that you *wanted* it to last ten years, that you dragged it out as much as possible.”

“Because I thought I was gonna lose! You’re not f\*cking listening,” Bo said. “Everybody including my lawyer said, ‘One day, you don’t get to

make any more T-shirts.”

However, this last statment is not true—documentary footage shows that over the years, Bo was actually being told the opposite.

In a 2012 filmed conversation with Daniel Richardson, Bo listens as his attorney tells him that if the Eat More Kale trademark application fails, “...it doesn’t mean your business necessarily has to shut down.” In a 2013 interview Bo said, “Every intellectual property expert I’ve talked to said, ‘They [Chick-fil-A] don’t have a case.’ ... Not getting the trademark doesn’t mean I have to stop printing shirts.” In a 2014 speech Bo said, “For [Chick-fil-A] to force me to cease and desist, they have to take me to a federal court. ... Most experts are telling me that if they were going to, they would’ve by now.”

Nevertheless, in my last interview with Bo, he continued to press his claim. In one tense exchange he asked, “Tell me when am I not a victim of Chick-fil-A?”

Given Chick-fil-A’s actual absence during most of the time his story played out, Bo clarified how he was a victim.

“I was a pending victim,” he said. “I was going to be if [Chick-fil-A] had their way, and they weren’t doing anything to make it not their way.”

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A “wintry mix” was forecast in Montpelier two weeks before Christmas 2014, when Bo and then-Governor of Vermont, Peter Shumlin, stood on the Vermont statehouse steps and held a press conference.

“I’m so glad to stand here in front of you with some good news,” Bo told a small cheering crowd.



Bo Moore, Eat More Kale press conference Vermont statehouse, Dec 2014 (image from documentary footage)



Gov. Peter Shumlin, Eat More Kale press conference, Dec 2014 (image from documentary footage)

As a light snow fell and bright green Eat More Kale stickers were seemingly stuck everywhere—jackets, caps, kids, columns, and to the left and right of the Vermont state seal—Bo said, “I’m proud to announce that as of December 9th, I have been granted a trademark for my design, Eat More Kale.”

Again, this was not exactly true.

The USPTO would not issue Bo a registered trademark for Eat More Kale for another eight months, in August 2015.

Indeed, Bo's federal trademark application had cleared an important hurdle at the USPTO in December 2014 called the "Notice of Allowance." But with Bo and his legal team still required to file more paperwork in the administrative process (yet another six month deadline that he and his lawyers would consume) it was more than a technicality. The USPTO itself identifies the notice as "another step on the way to registration."

As one trademark scholar told me, the "Notice of Allowance doesn't mean shit until the USPTO issues a registered trademark."

Nevertheless, Governor Shumlin announced at the press conference that it was "an extraordinary victory" and added, "this is a huge moment."

The news would be written about in places like *Time Magazine*, *The Atlantic*, and *The Washington Post*. The headline in the *Post* read, "Eat More Kale guy wins Trademark battle with Chick-fil-A. Vermont rejoices, naturally."

Weeks earlier Bo had given his Facebook fans a heads-up of "BIG NEWS SOON!!!!!!," asking them to order early during the Christmas season. After the press conference he posted, "Consider SUPPORTING ME AND MY VICTORY OVER CHICK-FIL-A."

The cumulative effect of it all—press conference, Facebook posts, Governor, statehouse, media coverage and Christmas—boosted Bo's sales. Later he told his fans, "While I'd love to celebrate, I've got orders to fill!!!!!!!!!!!"

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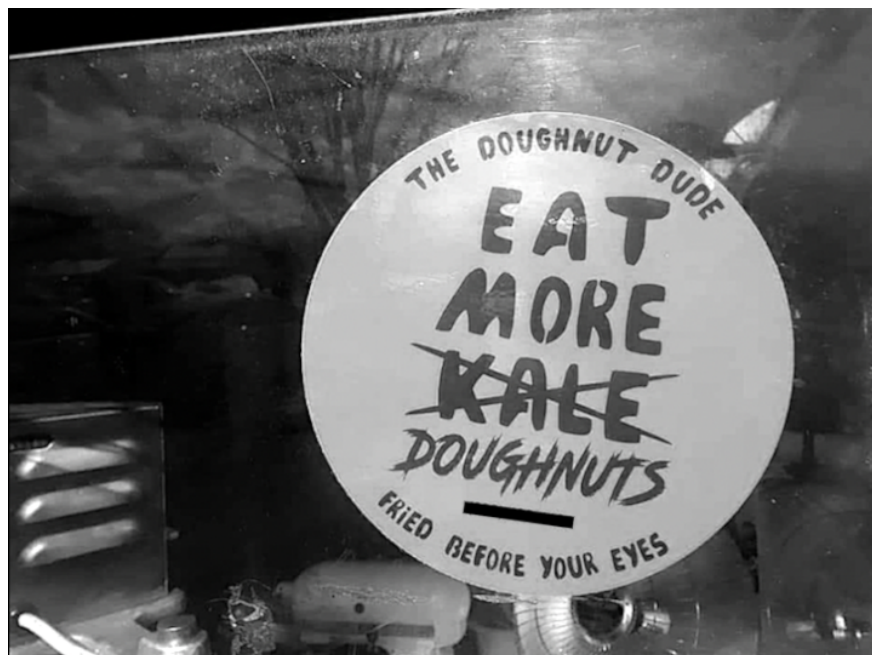
As a "pending victim," thousands of Vermonters and people across the country responded to Bo generously—some, at a greater cost than others.

"Just scratching by financially," posted one Facebook fan. Another wrote, "Just lost my job in December."

“Next time I get paid,” wrote a guy in a cap, “I’m buying two shirts.”

I filmed a Vermont kale farmer as he wrote a check for four-hundred dollars—a donation to Bo’s legal defense fund—even though in the farmer’s driveway sat his decades old car with a broken door that was duct-taped closed.

Supporters bought T-shirts, sent donations and contributed to a legal defense fund for Bo that had been set up by former Governor Shumlin. Called “Team Kale,” the governor’s fund generated over \$25,000 in donations. Bo periodically posted on Facebook and his website asking the public to donate to his legal defense fund.



A sticker for Bo Muller-Moore’s doughnut business posted on Facebook.

After the USPTO issued a registered trademark for Eat More Kale in 2015, Bo spent \$12,500 of that fund to pay for a divorce and a new doughnut business. At our interview last month in Waterbury, Bo defended his use of those funds for personal items as “what I needed to get by during the divorce.”

“I had great intentions and then life threw me a curve ball,” Bo said.

“And to anyone who’s been through a divorce they recognize that it can supercede all sorts of great expectations.”

“Just to be clear though,” I said to Bo, “this was at the end of four years when you had done pretty well financially, plus you told me about this when you’d just gotten back from a family vacation to Costa Rica.”

“Yes,” Bo said, “that I put on my credit card and sold an IRA in November to pay off.”

I asked Bo if anybody had advised him about those funds.

“Dan, my lawyer,” Bo said. “He said that that legal fund was mine to do with what I want. He literally said I could buy a bass boat if I so chose.”

Bo didn’t buy a bass boat. But with a mischievous smile he added, “Crossed my mind for a minute.”

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UPDATE: March 16, 2019. In a March 3, 2019 interview on *BBC Radio* and a program entitled, ‘**When Food Gets Famous: Who cashes in when a fruit or vegetable reaches celebrity status?**’ Bo was asked about the correlation between the publicity from his trademark case and the business he generated.

The following is an excerpt:

BBC INTERVIEWER: “There’s been some suggestion that your legal team deliberately went about things more slowly, even, to make the most of that publicity.”

BO MOORE: “Well there’s some truth to that, yes, ma’am. Every lawyer I talked to said, ‘You need to sell as many shirts as you can because this is going to end soon.’”

UPDATE: June 12, 2020. In a post to Eat More Kale fans, Bo announced that he was closing his doors and going out of business. Writing on the official Eat More Kale Facebook page, Bo posted, “Going Out of Bizness!!!! Eatmorekale.com will be history: losing my studio space, moving on ... THANK YOU ALL FOR ALL THE FUN, FUN, FUN!!!!”

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*James Lantz is an award-winning filmmaker and playwright in Burlington, VT. His Kickstarter-funded documentary about the Eat More Kale conflict has been in production since March 2012; he anticipates completing the film for festival submission in late 2020. You can find out more about him at [www.jameslantz.com](http://www.jameslantz.com).*