

# The Music Trades

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*Class Action Suit Filed Against NAMM, GC & Fender*

MONTHS AFTER THE FTC CAME UP EMPTY-HANDED in its investigation into alleged industry price fixing, a civil suit has been filed making similar allegations. Guitar Center, Fender Musical Instruments, and NAMM stand accused in a class action suit of working in concert to "artificially inflate" the price of guitars and deprive consumers of choice. David Giambusso, a Brooklyn resident who bought an instrument from Guitar Center in September 2007, says he paid too much, and the suit seeks \$5 million in damages for him and everyone else who purchased a fretted instrument or accessory between January 1, 2005, and December 31, 2007. Giambusso is represented by Mark Tamblyn of Wexler & Wallace. A lead attorney for the full class of plaintiffs has yet to be announced.

Although Guitar Center, Fender, and NAMM are the only parties named in the suit, the complaint alleges that other "unnamed" enterprises were likely to have participated in the conspiracy. Lawyers say they will uncover these other parties through the discovery process and take appropriate action.

In an error-filled complaint, filed in Sacramento, California on September 11, 2009, attorneys paint a picture of three immensely powerful entities--NAMM, Guitar Center, and Fender--working closely together to force up prices and exclude low-priced products from the marketplace. Fender, as the "largest guitar company" in the United States, is said to have used its market clout in unspecified ways to prevent potential competitors from "competing effectively against the defendants." Guitar Center, by virtue of its size and national reach, is said to have achieved near "monopoly power," which it has used to keep lower-priced products out of the marketplace. NAMM, which includes most of the industry's suppliers and retailers as members, stands accused of urging its membership to raise prices to fatten the bottom lines at Fender and Guitar Center. To bolster this claim, the complaint cites the recently concluded FTC investigation, which expressed concern that certain NAMM-sponsored meetings could encourage price fixing.

As proof of this alleged conspiracy, lawyers cite average selling prices from *The Music Trades* Industry Census. However, the numbers cited bear no relation to the actual published data. The complaint states, "According to *The Music Trades* Annual Census of the Music Industry, published in 2009, in 2006 the average price of a guitar was \$309, by 2007 the average price was \$350, and by 2008 the average price was \$372." The actual numbers published in *The Music Trades* show no such increases. We reported that the average selling price of a guitar in 2006 was \$372; it increased to \$389 in 2007 and then retreated to \$375 in 2008.

In other notable errors, the complaint references 80,000-square-foot Guitar Center stores stocking 4,500 SKUs, when the company reports store sizes of between 15,000 and 25,000 square feet, and an average 11,000 SKU count. The complaint also claims that Best Buy is opening 91,250-square-foot music stores, when the actual size is approximately 2,000 square feet.

Click here to read the entire complaint: <http://www.musictrades.com/complaint.PDF>