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Fool's Gold

Attorneys bringing class-action lawsuits against the musical products industry, be forewarned — you're wasting your time

Attorneys who specialize in class-action lawsuits are setting their sights on the musical products industry. Their charge? That NAMM, Guitar Center and a host of manufacturers have conspired to fix retail prices on musical instruments and stamp out fellow industry competition.

At press time, 10 separate suits had been filed. Beyond NAMM and GC, Fender, Korg, Peavey, Gibson, Tascam, Teac and more have been named as defendants. Guaranteed, anyone with a good brand name and a bank account (and maybe just a pulse) will be dragged into this matter. If it sounds like an expensive legal mess, rest assured, it is. Who knows when this suit will actually take shape — it could be years. In the meantime, legal fees that would be better used to develop and market new products will pile up.



That's why retailers should care. While this will take resources away from GC and its sister companies — Musicians Friend, Music & Arts and The Woodwind & The Brasswind — it will also take resources away from your key suppliers. It might result in less co-op advertising money. It might mean higher prices down the road. It might result in delays in innovation and new products, the lifeblood of the industry. It might result in the loss of a few key vendors. Only time, and money, will tell.

A Closer Look

And for what? For a case that should be dismissed. In my view, the attorneys bringing the suit should have taken a closer look at what has happened in the marketplace before leaping in. During the past decade, prices of musical instruments have been falling, not rising. Offshore manufacturing; big-box retail competition; and new, aggressive Internet retailers have forced prices and margins down on musical products — to a degree that only the shrewdest businessmen in the industry can survive.

As we all know by now, in the early 2000s, the Federal Trade Commission (FTC) launched an investigation into minimum advertised price (MAP) policies in the industry.

The federal agency swooped in and subpoenaed the records of NAMM and a variety of large suppliers seeking evidence that the industry set out to fix prices through the use of MAP policies.

At the same time, when the bottom fell out of prices, retailers and suppliers alike were scrambling for answers. NAMM, being a trade organization, tried to help, providing a forum for its members to discuss the deflationary challenges. And the term MAP would come up, of course. The FTC told NAMM that those discussions had to stop, that MAP couldn't be discussed at industry gatherings. The commission put out a press release saying NAMM and these companies were in the wrong, but no fines were levied.

All NAMM and the other companies could do was say "sorry" because you can't take on the federal government in these cases. Sadly, that's a no-win situation. It was a non-event that cost this industry some \$20 million in legal fees when everyone was just trying to survive through an amazingly difficult time of change.

Why NAMM is Innocent

So, where are we today? First, attorneys bringing the suit allege that NAMM and suppliers are conspiring with GC to reduce competition and keep prices artificially high. They are basing their cases on the FTC's findings. That's a foolish argument. NAMM hopes, prays and encourages entrepreneurs to get into music retailing. If there are more retailers attending NAMM shows, suppliers follow suit, which increases revenue for the organization to reinvest back into the marketplace.

It's pretty simple math. And the reverse is pretty simple, too. An industry where GC has a retail stranglehold means there's no real need for a NAMM show. NAMM would wither away.

Why Suppliers Are Innocent

Have musical instrument suppliers conspired with GC to keep prices high? Anyone who has competed for a day against GC knows that ain't true. During the course of the last 20 years, I've spoken with scores of manufacturers who have done business with GC. They love GC's large orders. They admire the chain for its aggressiveness and business acumen, but they are scared to death of doing too much business with GC. Why? Because GC has driven the price of musical instruments down. GC buyers are tough negotiators. They make suppliers say "ouch."

Suppliers need more people to go into music retail because they know it's not healthy for them to do half of their business or more with one retailer, in this case GC. That's just common sense.

Why GC is Innocent

Finally, there's GC itself. All GC has done is help drive waste out of the supply chain and the retail landscape, in part by negotiating the lowest prices possible and passing those savings on to customers, in part by creating the industry's most efficient retail distribution model. GC is the Wal-Mart of the musical products industry. That is not a slam on GC. It is praise. GC has changed music retail as we know it.

Now, GC and all of these other companies still have to defend their good names in court. If you're a retailer rooting against GC or a vendor you don't like too much, don't root too hard. GC might be your biggest and toughest competitor, but you could be next. All it takes is an attorney who finds someone who shopped in your store and felt he or she paid too much. It's that ridiculously simple.

What You Can Do Now

If you think all of this is as insane as I do, drop a letter to your elected officials in Washington, D.C. Encourage them to put the pedal to the metal on tort reform. If the laws were changed to force attorneys to pay defendants' legal fees if the defendants win a class-action suit, it might make these class-action-happy legal eagles think twice about which cases have real merit and which ones are frivolous. There are truly legitimate and necessary class-action suits in our courts today. This just isn't one of them.

If this case isn't dismissed, I, for one, will be re-evaluating how much I want to be an entrepreneur in America. I'm not sure that I want to go through the rest of my career with one eye on the future and one looking out for litigators. **MI**