

the MUSIC & SOUND Retailer



Buzz

BREAKING NEWS

And the Bombs Keep Coming Guitar Center, Fender, NAMM Sued Again

Another class-action lawsuit, this one filed by lead plaintiff Walter Witherspoon, d.b.a. Racy Brothers Enterprises and Lil Walt Production, accuses Guitar Center, Fender, and NAMM of engaging in a "conspiracy to inflate and fix the prices of musical products."

Like the class-action lawsuit filed on Sept. 11, this lawsuit, filed Oct. 2, refers to the Federal Trade Commission (FTC) allegations put forth against the music instruments industry. NAMM settled with the FTC earlier this year. The FTC settlement does not admit any NAMM wrongdoing.

This lawsuit is different in that it accuses more defendants than the three we previously mentioned. Also accused of wrongdoing and named as defendants were Peavey, Roland, Gibson, Bain Capital, C.F. Martin, Korg, Yamaha, Tascam, and TEAC. According to the suit, the defendants "exchanged sensitive price information for musical products and agreed to adhere to minimum advertised pricing or minimum resale price maintenance agreements, which led to increased prices for consumers across the country.

This lawsuit is also different because it claims Guitar Center was involved in a "coordinated and collusive effort with manufacturers beginning in approximately 2001. In addition, this lawsuit does not

claim NAMM directly participated in any collusive efforts. However, the wrongdoings may have been discussed at NAMM shows. According to the lawsuit, "NAMM became the perfect conduit in which MAP pricing could be discussed...Defendants engaged in illegal behavior at NAMM and outside of the trade show."

As for allegations against Guitar Center, the lawsuit states: "Guitar Center frequently demanded and received preferential and discriminatory benefits, promotional allowances, financial incentives, discounts, pricing, and other favorable terms from the defendant manufacturers with respect to musical instruments and equipment sold at its retail stores or through its online companies and its catalogues...Guitar Center threatened retaliation if defendant manufacturers did not cooperate with Guitar Center."

The lawsuit defines the suing class as millions of people. The suit seeks compensatory, actual, treble, and punitive damages, as well as an injunction preventing any future alleged "intentional and malicious conduct."

The plaintiffs are represented by Barnow and Associates, P.C., Roberts Law Firm, and Harke & Clasby LLP.

For more information, see the November issue of *the Music & Sound Retailer*.

From the Editor

NAMM BASHING IS INSANE! ANYONE CAN SUE ANYONE FOR ALMOST ANYTHING!

As I'm sure you've seen in our e-mail blast or our cover story, Guitar Center, Fender, and NAMM have been sued for antitrust violations. According to the class-action lawsuit from a lead plaintiff named David Giambusso, the lead guitarist of a band named Ann Courtney & The Late Bloomers, the three entities allegedly price fixed, causing the prices he and others paid for guitars at Guitar Center to rise.

I want to give an exact quote that baffled me in the 20-page document. "Guitar Center has conspired with NAMM to control prices and exclude or destroy competition in the relevant markets and engaged in other acts with the specific interest to achieve monopoly power in the relevant product market."

Huh? NAMM is trying to control prices? Are they kidding? What benefit does it provide NAMM? Nowhere in the lawsuit or, for that matter, the FTC investigation do we find out why NAMM would want to price fix with Guitar Center, Fender (who's also named as a defendant in the lawsuit), or anybody else. That's because THERE'S NO REASON NAMM WOULD BE INVOLVED IN THESE ACTIVITIES. It makes no sense whatsoever. None.

NAMM has thousands of independent dealers as members. Why would it purposely want to hurt all of them as well as their customers? These claims are frivolous and ridiculous. And now NAMM probably has to spend a lot of money to defend itself? Here's an even "better" allegation put forth in the lawsuit: "During the class period (2005-2007), NAMM was the industry's vehicle to control prices in the United States fretted instrument product market."

Are they serious? NAMM is the "cause" of this? Come on. Give me a break. I attended the NAMM shows from 2005 to 2007. This was not going on. And, once again, I allude to the fact that doing such

a thing would not benefit NAMM or the music industry in any way. I spoke to NAMM CEO Joe Lamond at each of these shows. He is a man of honor and respect. I can say without a shadow of a doubt that neither he nor his staff would ever care to control prices in the U.S. fretted instrument market. It was never discussed and not even thought of.

Another question I keep asking myself is this: How would a consumer know if he/she paid more than he/she should have for a guitar? This seems strange. And here's another question I have pondered: Even if a consumer somehow knew they paid too much for a guitar due to price fixing, why wait two years to file a lawsuit?

This all smells rotten. Perhaps it's someone looking to capitalize on the claims the Federal Trade Commission alleged against the music products industry. NAMM settled with the FTC earlier this year. The FTC settlement does not admit to any NAMM wrongdoing. The FTC concluded that there was no adverse effect on pricing in the marketplace.

Folks, we are not selling alcohol, tobacco, or firearms. There's no proof, factual or alleged, that music provides any negative tendencies for end users. In fact, it's the contrary. Why go after this small industry and try to destroy it?

This lawsuit could clearly be "ambulance chasing." Is the ultimate goal really to punish the music products industry? I doubt it. It's sickening to see people or organizations try to tear apart our industry.

-Brian Berk