

Launch A Class Action In Four Easy Steps

Everybody has read about abuses of the justice system. The lady driving a car who spills hot coffee on her legs and secures a \$2 million award from McDonalds. The never-ending asbestos class action that to date has bankrupted over two dozen companies, including Fortune 500 members like W.R. Grace and Johns Manville, produced over \$1 billion in payments to lawyers, and has yet to make meaningful disbursements to the allegedly injured parties. Now the plaintiff's bar has put the music industry in its crosshairs. As we report elsewhere in this issue, to date ten class action suits charging illegal price fixing have been filed against NAMM, Guitar Center, Fender, and several other suppliers. However absurd, unfair, or abusive class actions appear from the pages of a newspaper, when you get a close up look in your own industry, they look even worse.

Thanks to the wonders of modern technology, filing a class action suit has never been cheaper or easier. Here's the four-step formula that lawyers are using to extort our small and innocent industry. Step one: Find somebody, somewhere, who claims to have paid too much for a guitar and who's willing to stand as the plaintiff for the entire "class of guitar buyers." Step two: Download the recent Federal Trade Commission report on the music industry, and pull out a few quotes that include the words "serious concerns," "illegal pricing agreements," "or potential collusion," but be sure to exclude any mention of the report's final paragraphs, which clearly state that the FTC found no evidence of price fixing, conspiracy, or any other industry wrongdoing. Step three: Fire up your Lexis Nexis database to dig up a few quotes from *The Music Trades* where some dealers make the outrageous admissions that they prefer to stock products that generate good gross margins, that going to NAMM shows is important, and that MAP policies are generally a good idea. Step four: Cut and paste the inflammatory quotes amidst allegations of the industry conspiracy to jack up prices (be sure to include the bit about "unnamed conspiracy members" so you can go after others at a later date), demand a lot of money, and then deliver it to the courthouse. Voilà! You have a class action.

Having read through the complaints, which are replete with typos, sloppy misquotes, and numerous other glaring errors, we figure that they take about two to three hours to churn out. Maybe even less. Wexler & Wallace filed the first suit on September 11, and the nine suits that have been

filed subsequently were almost exact copies. Apparently, the other lawyers figured it was easier to copy someone else's complaint than bother to actually read the FTC complaint, let alone look for evidence of harm. (In many instances, they even copied the same mistakes.)

Unfortunately for NAMM, Guitar Center, Fender, and all the other companies on the receiving end, the cost of responding to these bogus complaints is enormous. We estimated that complying with the Federal Trade Commission investigation cost the industry over \$12 million. The tab for responding to these class actions could be even higher. And that's assuming no one receives an adverse judgment. The lawyers are well aware of this and



hope that industry players will pony up a settlement just to make them go away. They have absolutely no risk. If the case is dismissed, all they lose is a few hours of paralegal time. Any settlement represents a rich return. Everyone should have such a slick business model: no risk, large potential rewards.

There is something deeply wrong about a group of opportunistic lawyers shaking down an entire industry without producing any victims, let alone evidence of wrongdoing. It brings to mind the lawyer hating Charles Dickens's comment, "the law is an ass!" However, I doubt even he could imagine a case as groundless as the one the industry is now facing.

The entire industry has a stake in this case, because every dollar that flows to lawyers is a dollar diverted from marketing and R&D, not to mention year-end bonuses or any other legitimate business expense. We urge everyone to write their legislators in support of tort reform. Specifically, some version of the British system, where the loser in a lawsuit pays the winner's legal fees. We suspect that if there was a significant penalty for losing these kind of class actions, there would be a lot fewer of them.

Make your voice heard. Find your senators on www.senate.gov, and your representative on www.house.gov and ask them to do something. If a harmless industry like ours is a target, then nothing is safe.

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