

You Could Be A Criminal And Not Even Know It

Thanks to its relatively small size, the music products industry has been able to fly “under the radar” of the government regulatory apparatus for the better part of the past century. While the alphabet soup of state agencies—FTC, FDA, FCC, DOJ, ICC, ITC (to name just a few)—applied themselves to reining in railroads, telecom, pharmaceuticals, banking, and all those other major industries, music products was pretty much left alone. This blissful isolation from the state was rudely interrupted last year when the Federal Trade Commission launched an investigation into minimum advertised pricing policies. After a costly and painful investigation, the Feds concluded that the industry did nothing wrong, and many felt we could go back to our previous “under the radar” status. Unfortunately that’s proving to have been wishful thinking. Whether it’s the result of a changing political climate, an economic slowdown, or just chance, the humble music industry is increasingly finding itself in the regulatory crosshairs.

The latest assault on the industry comes in the form of a 2008 amendment to the Lacey Act, innocuously titled “Section 8204. Prevention of Illegal Logging Practices.” The Lacey Act was first signed into law in 1900 by President William McKinley to prevent poachers from transporting game across state lines. Through numerous amendments, it has been continuously expanded to the point where it now represents a serious challenge to the guitar industry.

The Illegal Logging Practices amendment makes it a federal crime to import, export, transport, sell, receive, acquire, or purchase any product that may contain wood that has been illegally harvested in either the U.S. or a foreign country. Woods that are of “concern” under the Lacey Act include big leaf mahogany and rosewood, two of the staple raw materials for guitar makers around the globe. Neither of these woods has been banned outright; however, supplies can’t come from Madagascar or Brazil; certain sub-species, like Brazilian rosewood are illegal; and the harvesting process must be in accordance with a welter of international environmental regulations. Next year, with each product, guitar makers will be required to declare the types of wood used, where it came from, and that it was harvested properly. Failure to declare or submission of an incorrect declaration is a federal offense punishable by jail time and hefty fines. Enforcement falls to the U.S. Department of Agriculture, the Animal and Plant Health Inspection Service, the Customs and Border Protection, the U.S. Trade Representative, the Justice Department, the U.S. Fish and Wildlife Service.

The authors of the act are dimly aware that complying with these regulations presents a daunting challenge. They note, “Users may need to develop detailed tracking systems, including country of harvest, which may not be the country of origin, to accurately complete the declaration” or face serious

criminal and civil penalties. The major hurdle to preparing accurate declarations is the simple fact that wood doesn’t come stamped with serial numbers and country of origin, and that even experts can’t always determine the species or origin by examining cut boards. Thus, the potential for an incorrect, inaccurate, or incomplete declaration is enormous.

The industry got a preview of what enforcement of this act



looks like last month when FBI agents and representatives from Fish and Game raided the Gibson plant in Nashville looking for “illegal” wood. Guitar makers are not above enjoying the misfortune of their competitors, but in this case, everyone I talked to expressed sympathy for Gibson. As one put it, “It’s impossible to be 100% certain of where your wood comes from, and if Gibson is a target, so is every other guitar maker.” We suspect that retailers could be at risk as

well.

Neither of the two New Jersey Senators or my Representative were aware of the new provisions of the Lacey Act or the hardships they present for our industry, and I suspect the same could be said for most the rest of Congress. Which is why you need to contact legislators and ask for relief. Ideally, we’d like to see Section 8204 repealed completely, but that’s unlikely to happen. Barring that, there should at least be an exclusion for products produced before the law was passed in July of 2008 and an “innocent owner” exception, which would protect someone who bought an instrument in good faith not knowing it was produced with “illegal” materials, from criminal prosecution.

Why is the legislature making it harder for instrument makers and anyone else who works with wood? The stated reason is “protecting the environment.” The subtext is more revealing. The amendment to the Lacey Act was buried in a nearly 2,000-page farm bill, with no one in Congress proudly stepping forward to claim authorship. According to informed speculation, though, it was the work of several Oregon law makers who were hoping to protect the U.S. timber industry, currently struggling after the housing bust, from import competition. U.S. wood doesn’t need a declaration.

Next time Congress wants to pass a law like this, we suggest they first repeal the law of unintended consequences. In the meantime, make your voice heard, or the next time you sell something with wood, you might be committing a federal offense. NAMM has been active in lobbying for relief from the Lacey Act, but absent the support of the industry at large, their pleas don’t command much attention in Washington.

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