

Is Mail Order Retailing A Crime?

Since the advent of Parcel Post, mail order retailing has been a hotly debated subject in the music industry. Local retailers have long accused mail order merchants of skimming the market without offering any service, and of failing to expend any effort to cultivate demand for music. The mail order merchants defend their operations arguing that most local merchants are complacent and offer little in the way of true service and that mail order merchants fill an important need because there are many consumers who prefer to shop by mail.

A recent landmark decision by the U.S. Supreme Court adds a new twist to this ongoing debate. In the case of *O.S.C. Corp. vs. Apple Computer, Inc.*, the High Court ruled that Apple had the right to prohibit its dealers from engaging in the mail order sales of its computer products. In issuing its judgment, the Court reasoned that since face-to-face sales presentations are vital to the sale of computer products and active mail order retailing tends to discourage retailers from engaging in these activities, Apple was justified in imposing a mail order prohibition. However, the Court added that while Apple could prohibit mail order sales, it could not force dealers to adhere to a specific price or limit a dealer's sales territory in a way that would limit competition. In short, the Apple judgment states that manufacturers are justified in prohibiting mail order sales if doing so does not reduce price competition and if such actions do not represent conspiracy to injure mail order merchants.

How this judgment will affect the music industry remains to be seen. One thing is for certain, though:

Those retailers hoping for the demise of mail order competition will be disappointed.

The Apple case has no bearing whatsoever in those instances where the primary complaint against a mail order retailer is price. In the realm of band instruments or acoustic guitars, where price is the primary issue, it is not clear that the Apple case would allow a manufacturer to eliminate mail order retailers altogether. However, in the area of highly technical and complex products like synthesizers, pro-sound equipment, and recording equipment, manufacturers could conceivably invoke the Apple case to terminate mail order outlets. Using the case of Apple Computer, a synthesizer manufacturer could argue that mail order sales are detrimental to its business because the end user does not get the necessary product training.

Given the fact that our society remains reasonably free, the distribution of musical products will ultimately be determined by the market and not the courts.

Manufacturers and retailers basically have the same objective: to sell as much as possible as profitably as possible. As long as mail order retailers enable manufacturers to achieve this goal, they will remain in the distribution channel. What the court decision does is give the manufacturers more discretion in adjusting their distribution policy (which might include terminating mail order retailers) to maximize their sales.

Brian T. Majeski
Editor

Getting Electronics In The Schools

For years, manufacturers and retailers have attempted to expand school music programs to include more than band and orchestral instruments. Piano manufacturers, through various associations, have attempted to institute basic keyboard training in the schools. Similarly, in the seventies, the industry attempted to introduce guitar programs into the school systems. However, to date, these efforts to expand the public school music curriculum have met with limited success.

In this issue, music educator Jerry Lopatin offers some unique and important insights as to how electronic musical products can enhance any school mu-

sic program. Whether it's exposing children to the marvels of new musical technologies, or producing recordings of traditional ensembles, he offers a wealth of suggestions that the industry would do well to embrace. In the face of budget cuts and declining enrollments, it is vital for school music programs to engage as many students as possible. Lopatin's suggestions could assist educators in attracting a larger student population and generate additional sales opportunities for the astute dealer.

Paul A. Majeski
Publisher