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Bass-playing lawyer defeats guitar giant

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Ron Bienstock is a lawyer and a rock musician who combined those two parts of his life to gain what is perhaps the biggest legal victory of his career.



CARMINE GALASS / STAFF PHOTOGRAPHER: RONALD S. BIENSTOCK, OF BIENSTOCK & MICHAEL, P.C. A LAWYER AND MUSICIAN, IN HIS HACKENSACK OFFICE. HE'S PLAYING A BASS GUITAR MADE BY AND GIVEN TO HIM BY THE FAMOUS GUITAR DESIGNER, MICHAEL TOBIAS, FOR BIENSTOCK

Ronald S. Bienstock sits in the Hackensack office of Bienstock & Michael PC. The Fender trademark case dragged on for six years.

The 50-something attorney from Fair Lawn, who fills his nights and weekends with the passions of a 20-something musician, took on one of the music industry's biggest players and won, persuading the U.S. Trademark and Appeal Board to deny a bid by Fender Musical Instruments Corp., or FMIC, to monopolize guitar designs.

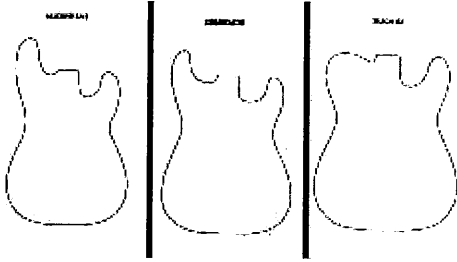
The hotly contested case stretched on for six years, but in the end, the trademark board ruled that the body shapes that Fender attempted to register as trademarks were generic, and open to use by all guitar and bass manufacturers.

In question were the two-dimensional body shape outlines used on Fender's Stratocaster, Telecaster and Precision Bass instruments.

ONLINE

Music Esq.

Through his Hackensack law firm, Bienstock & Michael PC, Bienstock represented 18 manufacturers and retailers who opposed the Fender bid.



From left to right: The Precision Bass, the Stratocaster and the Telecaster.

After an administrative process that resulted in 37 depositions and generated more than 20,000 pages of testimony, the commission supported Bienstock and his clients in a 75-page decision.

"The evidence overwhelmingly demonstrates that these configurations are so common in the industry that they cannot identify source," it said.

It pointed out that the body outline of the Stratocaster "is so common that it is depicted as a generic electric guitar ... for the word 'guitar' " in the 1987 edition of Random House Dictionary of the English Language.

"Based upon consideration of all the evidence in the record, we find that [Bienstock's clients] have made a prima facie case that [Fender's] evidence of acquired distinctiveness is inadequate and that [Fender] has failed to establish that the configurations ... have acquired distinctiveness within the meaning of [the law]."

Bienstock, 52, called the ruling an "unequivocal, powerful statement" by the board. "There's no any way it could be misconstrued. It was not a close call."

Fender said it was "disappointed" with the trademark board's ruling, and might appeal.

"FMIC continues to believe that the extensive evidence it submitted during the course of this lengthy case was more than sufficient to establish that consumers associate FMIC being the source of these designs and thus are entitled to registration," the company said in an e-mailed statement.

"FMIC is reviewing the decision and is evaluating its alternatives, including, but not limited to appealing the decision."

It said the trademark board's opinion applies only to Fender's U.S. applications "and does not preclude FMIC from claiming or potentially obtaining such rights in the EU or other countries."

The legal victory brought no monetary award, but the financial implications are significant for the industry, he said.


"We seldom get a case like this, so large in its scope," said Bienstock, whose firm specializes in entertainment and intellectual property law.

Music is a business Bienstock knows well and loves.

He has been a performer since age 16, playing extensively with major recording artists while in high school, Hobart College, and the California Western School of Law and as he began his law career.

And he still plays the bass "all the time." He's in two bands — The Suits, "sort of a second-career adult rock band" that has been together since 1988, and The Blue East Jazz Ensemble — doing "a fair amount of travel around the country when our respective wives will let us go."

Over the years, he and The Suits have appeared on television, including "Late Night With Conan O'Brien" and CNBC, and with a range of top talent such as Billy Joel, Curtis Mayfield, The Doobie Brothers, Foreigner and the Animals.

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What are these?

Day in Pictures