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BIENSTOCK & MICHAEL, P.C. WINS LANDMARK TRADEMARK RULING AGAINST FENDER MUSICAL INSTRUMENTS CORPORATION

On March 25, 2009, the United States Trademark Trial and Appeal Board overwhelmingly ruled in favor of a large group of guitar manufacturers and retailers by denying Fender Musical Instruments Corporation's ("FMIC") applications for federal trademark registrations of the two-dimensional body shape outlines used on its Stratocaster, Telecaster and Precision Bass electric guitars and basses. At the end of a five-year proceeding (Stuart Spector Designs, Ltd., et al. v. Fender Musical Instruments Corp., Consolidated Opposition No. 91161403), Bienstock & Michael, P.C. successfully represented all of the companies who opposed FMIC's applications. The Board affirmed the opposers' position that they, and the entire guitar industry, would be substantially harmed if these registrations were issued, as this would grant FMIC a monopoly to three of the most common guitar shapes used and promoted by the industry as a whole for almost fifty years.

In a 75-page precedent-setting decision, the Board ruled that the body shapes were generic and that consumers do not solely associate these shapes with FMIC. All three applications were denied.

Ronald S. Bienstock, senior partner at Bienstock & Michael, P.C., who also argued the case at the oral hearing at the United States Patent and Trademark Office in Alexandria, VA, said, "This is an important victory, not only for our clients, but for the guitar industry as a whole. The TTAB has prevented FMIC from gaining a monopoly on these body shapes that have been used by hundreds of manufacturers for half a century. This ruling affirms what our clients, and everyone else in the industry, have known all along: these body shapes are generic and belong to everyone." Bienstock added, "This decision has a broad impact on any trademark case where a company is attempting to recapture a trademark that it introduced some time ago, but neglected to police or protect it in any way while other companies used, marketed and promoted it."

This dispute began in 2003 when FMIC filed three applications with the USPTO seeking trademark registration for the two-dimensional body shapes it uses on its Stratocaster, Telecaster and Precision Bass. In 2004, a group of large and small guitar manufacturers and retailers, in a "David v. Goliath" action, formally opposed the applications filed by musical instrument giant FMIC. These manufacturers included Indoor Storm, Ltd., Jim Triggs Guitars, JS Technologies, Inc., Lakland Musical Instruments, LLC, Levinson Musical Products, Ltd., Michael Tobias Design, Peavey Electronics Corporation, Raise Praise, Inc. d/b/a Tom Anderson Guitarworks, Sadowsky Guitars Ltd., Saga Musical Instruments, Schecter Guitar Research, Inc., Stuart Spector Designs, Ltd., The ESP Guitar Company, Tradition Guitars, Inc., U.S. Music Corp., Warmoth Guitar Products, Inc. and WD Music Products, Inc. Bienstock and Michael, P.C. was unanimously chosen to represent all of the opposers in this proceeding.

After five years of hard-fought litigation, which included over twenty thousand pages of evidence demonstrating countless companies who have manufactured, marketed and sold guitars that use the body shapes, the TTAB concluded, “The evidence overwhelmingly demonstrates that these configurations are so common in the industry that they cannot identify source. In fact, in the case of the [Stratocaster] body outline, this configuration is so common that it is depicted as a generic electric guitar in a dictionary.” The entire decision can be read at:

<http://ttabvue.uspto.gov/ttabvue/v?pno=91161403&pty=OPP&eno=246>.

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