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via e-mail only

To whom it may concern

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Munich, 26 May 2026

Our sign (please always indicate): FENMC.0002/RDI

Copyright protection of the Fender “Stratocaster” body shape

Dear Sirs or Madams,

We revert to our previous correspondence in the above-referenced matter in which we are acting on behalf of Fender Musical Instruments Corporation, (hereinafter “**Fender**” or “**our client**”).

As you will recall, we sent you a letter dated 11 May 2026 in which we addressed a copyright matter under German and EU law. We have sent essentially the same letter to all manufacturers and relevant retailers who sell what we believe are copies of the “Fender Stratocaster” in Germany and in the EU.

These letters have triggered a substantial echo, not only from its addressees and their lawyers, but also from the media and on social media. From these reactions, we took that apparently there have been a lot of misunderstandings about the nature and the scope of the matter.

We would like to take the opportunity of this letter to answer the comments which have been made in our 11 May 2026 letter which we hope will clarify many aspects and will help to avoid further or continued misconceptions.

In particular, we would like to make it clear to everyone that Fender does not object to double cutaway or two horned electric guitar bodies, but only to such electric guitar bodies which are close copies of the design of the iconic “Fender Stratocaster.” Everybody is welcome and will

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be able to continue making and selling double cutaway and/or two horned electric guitars, as long as they are designed sufficiently different from the “Fender Stratocaster,” as we will explain further hereinafter.

For this purpose, we are sharing here, attached to this letter **(i)** a full copy of the judgment of the Court of Düsseldorf of 22 December 2025, together with our English translation of it, as well as **(ii)** a copy of a letter of a US lawyer Ronald S. Bienstock of the law firm Fox Rothschild which he sent to us in reply to our letter of 11 May 2026 on behalf of a number of the addressees of our letter. We are sharing this letter of Mr. Bienstock because we think it shows how many misconceptions are out there, which we would like to clarify with this letter:

1. We are asserting claims based on *German and EU copyright law*. Our action to the Court of Düsseldorf, as well as the judgment of the Court of Düsseldorf, is based *only* on German and EU copyright law.

Many people argue that Fender tried to protect the shape of the “Stratocaster” body already in the US in the past and was not successful. However, this related to *trademark* protection of the body of the Stratocaster. Copyright protection and trademark protection are two entirely different legal concepts. Copyright protects works of art, including “works of applied art,” which can also be utilitarian objects like an electric guitar. Strictly speaking, trademark law and copyright law have nothing to do with one another.

2. German and EU copyright law is also different from the copyright laws of other jurisdictions, *e.g.* from US copyright law.

While Mr. Bienstock’s letter makes numerous explanations on US copyright law, he is not qualified in German and EU copyright law. Mr. Bienstock is only licensed to practice law in New Jersey and New York, and his letter demonstrates a lack of knowledge of German and EU copyright law. There are many references in Mr. Bienstock’s letter to concepts of US law which simply do not apply under German and EU law.

3. The starting point of this entire matter was the case against a Chinese importer of copies of the “Fender Stratocaster” into Germany. On behalf of Fender, we filed the

copyright infringement action to the Court of Düsseldorf and informed the defendant Yiwu via all available channels about the fact that the action had been filed. Yiwu did not defend against the action. The Court of Düsseldorf therefore issued the attached default judgment against Yiwu on 22 December 2025.

Now it is true that this is only a default judgment in which the defendant did not present its factual and legal arguments. However, the rules of German civil procedure have it that a court only issues a default judgment if it believes that the claims are well-founded on the basis of the assumption that all the facts asserted by the plaintiff are true.

We took great care in making sure that all our factual representations in our action were accurate. In particular, we performed in-depth research of the history of the creation of the “Fender Stratocaster” guitar and how other guitars and electric guitars looked at the time of the creation of the Stratocaster.

The Court of Düsseldorf then formed its view on whether the “Stratocaster” qualifies as a “work of applied art” under the circumstances put forward by us in our action. The panel which handed down this judgment, Civil Chamber 14c of the Court of Düsseldorf, is probably the most experienced panel in questions of “works of applied art” in Germany at the moment, and arguably also in all of Europe. They also issued the judgment after the most recent judgment of the European Court of Justice on the subject, the “Mio/konektra” case (CJEU, judgment of 4 December 2025, Case C-580/23) applied the standards of the CJEU and cited the CJEU judgment on many occasions.

It is true that the Court of Düsseldorf formed its view only based on our factual assertions, but as we explained above, these consisted essentially of an account of how the previously existing guitars and electric guitars were designed at the time of the creation of the “Stratocaster” in 1954, and who contributed to the creation of the “Stratocaster” and to which extent.

We believe that it is very unlikely that this set of facts will turn out to be inaccurate, because

- it is widely documented how other guitars and electric guitars were designed in 1954, and there is absolutely no historical evidence that someone else had already created an electric guitar highly similar to the “Stratocaster” before 1954; and
- it is also well documented how the “Stratocaster” was created and who made which contribution to it. We had also explained that in our action to the Court of Düsseldorf; plus
- Leo Fender designed the “Stratocaster,” but even assuming, for the sake of argument, that there were other legally relevant contributors to the design, then Leo Fender would at least have been a “joint author” of the copyrighted work of applied art “Fender Stratocaster,” which would give him and his legal successors essentially the same rights under German and EU law like a “sole author” has them – in particular the cease and desist claims

Therefore, all the arguments raised by Mr. Bienstock in his letter are beside the point under the copyright laws of Germany and the EU.

4. Essentially the same is true for the “chain of title.” We have explained the “chain of title” to the Court of Düsseldorf, who was satisfied that this was sufficient proof that Fender is the owner of the copyright exploitation rights to the “Fender Stratocaster.” If they were contested in further contentious judicial proceedings, we are positive that the ruling will stand that Fender is the owner of the relevant copyright exploitation rights to the body shape of the “Fender Stratocaster.” Who else should be the owner of these rights?
5. Once it is accepted that a German and European copyright subsists in the “Stratocaster” the question of infringement was not too difficult to analyse in the “Yiwu” judgment. Yiwu sold more or less identical copies of the “Stratocaster.” as can be taken from the attached judgment of the Court of Düsseldorf.

If the copy of the “Stratocaster” sold by Yiwu constitutes a copyright infringement under German and European law, then all other guitars which are equally similar to the “Stratocaster” as the one sold by Yiwu most likely also constitute copyright

infringement. We have reviewed the body shapes of the relevant guitars of all manufacturers and retailers who received a letter from us on 11 May 2026, and our finding was that they all offered for sale in Germany guitars with a body shape essentially as similar to the “Fender Stratocaster” as the guitar sold by Yiwu.

6. As already noted above, this does not mean that any and all double cutaway or two horned electric guitar bodies fall within the scope of the copyright to the “Stratocaster” body shape. There are many other electric guitars in the market that are double cutaway and/or have two horns, but which look distinctively different from the “Stratocaster.” Our client does not have any problems with these guitars.
7. This leaves the aspect of acquiescence (*laches*, *estoppel*, *forfeiture etc.*) that some have raised. Again, we would like to note that our claims are based on German and EU copyright which means that this aspect must be assessed under German and EU law.

In that context, we would like to note only a few aspects in relation to the German rules on *Verwirkung* (which is probably the closest equivalent to the US law concepts mentioned above):

- First of all, Fender in the Düsseldorf judgment relied on case-law of the European Court of Justice which is very new, in case of the “Mio/konektra” judgment only a few weeks before the Court of Düsseldorf handed down its judgment. Before that, it was very unclear what the standards were for ascertaining copyright for works of applied art under EU copyright law.
- Besides that, the concept of “*Verwirkung*” also requires that it would not be fair to expect that the defendant changes its behavior. In the cases at hand, all that is required and expected from all third-party manufacturers of the “Stratocaster” clones is that they change the design of their electric guitars sufficiently so that they do not look like more or less exact copies of the “Stratocaster” anymore. We think that this should be acceptable for everyone, as it should not impair the quality of their instruments, but would only require relatively minor design changes.

Given that everyone (even Mr. Bienstock) seems to agree that the “Fender Stratocaster” is an iconic piece of industry design, we think that it should be an acceptable concession.

Finally, German law does not know a Verwirkung “*erga omnes*”, *i.e.*, with effect towards every third party. Every manufacturer or seller of copies of the “Stratocaster” would have to argue this defense for themselves, which could then only lead to a situation where some third parties can still produce and sell “Stratocaster” clones, and others cannot. We do not think that this would increase the fairness of the competition.

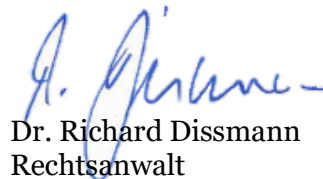
We hope that this will clarify some of the aspects which we have found to be widely misunderstood after our first communication of 11 May 2026. We would also like to note that many of the addressees of that initial communication have reached out to us in the meantime, often via their German lawyers, and have entered into reasonable settlement discussions on the premise that they will discontinue making and/or selling the “Stratocaster” clones. This proves that there is not a unanimous refusal from all third parties, but indeed also a great deal of understanding for our client, which however of course is not covered in the media, on social media and in the discussions between the various makers.

For everyone who has not already requested and obtained an extension of the deadline to revert to us, we are extending this deadline to reach out to us with a view to discussing an amicable settlement of our client’s claims until

Monday, 8 June 2026.

We believe that it should be possible to come to a reasonable resolution of the matter with everyone, the basis of which would only have to be that they stop copying a product of a competitor, which should normally be perceived as a fair request.

With kind regards



Dr. Richard Dissmann
Rechtsanwalt



Landgericht Düsseldorf

IM NAMEN DES VOLKES

Versäumnisurteil

In dem Rechtsstreit

Fender Musical Instruments Corporation Inc., 17600 N. Perimeter Drive, Scottsdale,
Arizona 85255, Vereinigte Staaten von Amerika,

Klägerin,

Prozessbevollmächtigte:

Postulationsfähige Rechtsanwälte
der Bird & Bird LLP,
Maximiliansplatz 22, 80333 München,

gegen

Yiwu Philharmonic Musical Instruments Co., Ltd, gesetzlich vertreten von Bai Xiaolui,
Volksrepublik China, ohne bekannte Zustelladresse,

Beklagte,

hat die 14 c. Zivilkammer des Landgerichts Düsseldorf
im schriftlichen Vorverfahren gemäß Paragraph 331 Absatz 3 Zivilprozessordnung
am 22.12.2025

durch die Vorsitzende Richterin am Landgericht Brückner-Hofmann,
die Richterin am Landgericht Doktor von Thannhausen und
den Richter am Landgericht Doktor Fleckenstein

für Recht erkannt:

I.

Die Beklagte wird verurteilt, es bei Meidung eines für jeden Fall der Zuwiderhandlung vom Gericht festzusetzenden Ordnungsgeldes und für den Fall, dass dieses nicht beigetrieben werden kann, einer Ordnungshaft bis zu sechs Monaten (Ordnungsgeld im Einzelfall höchstens EUR 250.000,00, Ordnungshaft insgesamt höchstens zwei Jahre),

zu unterlassen,

im Gebiet der Bundesrepublik Deutschland elektrische Gitarren zu vertreiben, wenn deren Korpus wie nachstehend wiedergegeben gestaltet ist:



und



und





II.

Die Beklagte trägt die Kosten des Verfahrens.

III.

Das Urteil ist vorläufig vollstreckbar.

IV.

Die Einspruchsfrist wird auf einen Monat bestimmt.

Tatbestand

Die Klägerin nimmt die Beklagte wegen des Vertriebs von elektrischen Gitarren auf Unterlassung in Anspruch.

Die Klägerin ist ein Unternehmen mit Sitz in den Vereinigten Staaten von Amerika, das auf die Herstellung von Musikinstrumenten spezialisiert ist. Hierzu gehört auch die elektrische Gitarre „Stratocaster“, die Clarence Leonidas Fender („Leo Fender“) im Jahre 1954 geschaffen hat. Nach seinem Modellentwurf – eine Abbildung des Prototyps von 1954 und dem heute vertriebenen Modell sind nachfolgend eingeblendet – werden die elektrischen Gitarren auch heute nahezu baugleich hergestellt und vertrieben.



1954 Prototyp



2025 Stratocaster

Die Klägerin ist seit 1985 Inhaberin der urheberrechtlichen Verwertungsrechte an der „Stratocaster“. Leo Fender verstarb im Jahr 1991.

Die Beklagte ist ein chinesisches Unternehmen, das auf der Online-Einzelhandelsplattform „AliExpress“ – zugänglich unter <https://de.aliexpress.com/> – unter anderem elektrische Gitarren, wie im Tenor unter Ziffer I. abgebildet (auch) für den Versand nach Deutschland anbietet. Unter dem dort von der Beklagten verwendeten Namen „SHUFFLE Musical Instruments Store“ bot sie – jedenfalls im Frühjahr 2025 – die streitgegenständliche elektrische Gitarre unter der Bezeichnung „IRIN 22 Bünde ST E-Gitarre 39 Zoll 6 Saiten Ahorn Korpus Hals E-Gitarre mit notwendigem Gitarrenzubehör und Teilen“ wie folgt auf „AliExpress“ an:

The screenshot shows the AliExpress product page for the IRIN 22 Bünde ST E-Gitarre. The main product image shows the guitar and its case. The price is 61,69€, which is 40% off the original price of 102,82€. The page includes a search bar, navigation links, and a detailed product description. The product is listed by SHUFFLE Musical Inst. and has 363 reviews. The page also shows shipping options, a 'Jetzt kaufen' button, and a 'In den Warenkorb' button.

Verkauf von SHUFFLE Musical Instrum... (Händler) >

Liefert nach **Deutschland**

AliExpress-Verpflichtung

- 📦 Versand: 50,83€** > Lieferung: Jun 04 - 12
- 🚚 Expresslieferung** >
 - ✓ 1.00€ Coupon-Code für die vespätere Lieferung
 - ✓ Geld zurück bei defektem geliefertem Artikel
 - ✓ Geld zurück bei verlorenem Paket
 - ✓ Geld zurück bei Nichtlieferung in 40 Tagen
- 🔄 Rückgabe- und Erstattungsrichtlinie** >
- 🔒 Sicherheit und Datenschutz** >
 - Sichere Zahlungen: Wir geben keine Ihrer persönl...
 - Persönliche Angaben schützen: Wir schützen Ihre P...

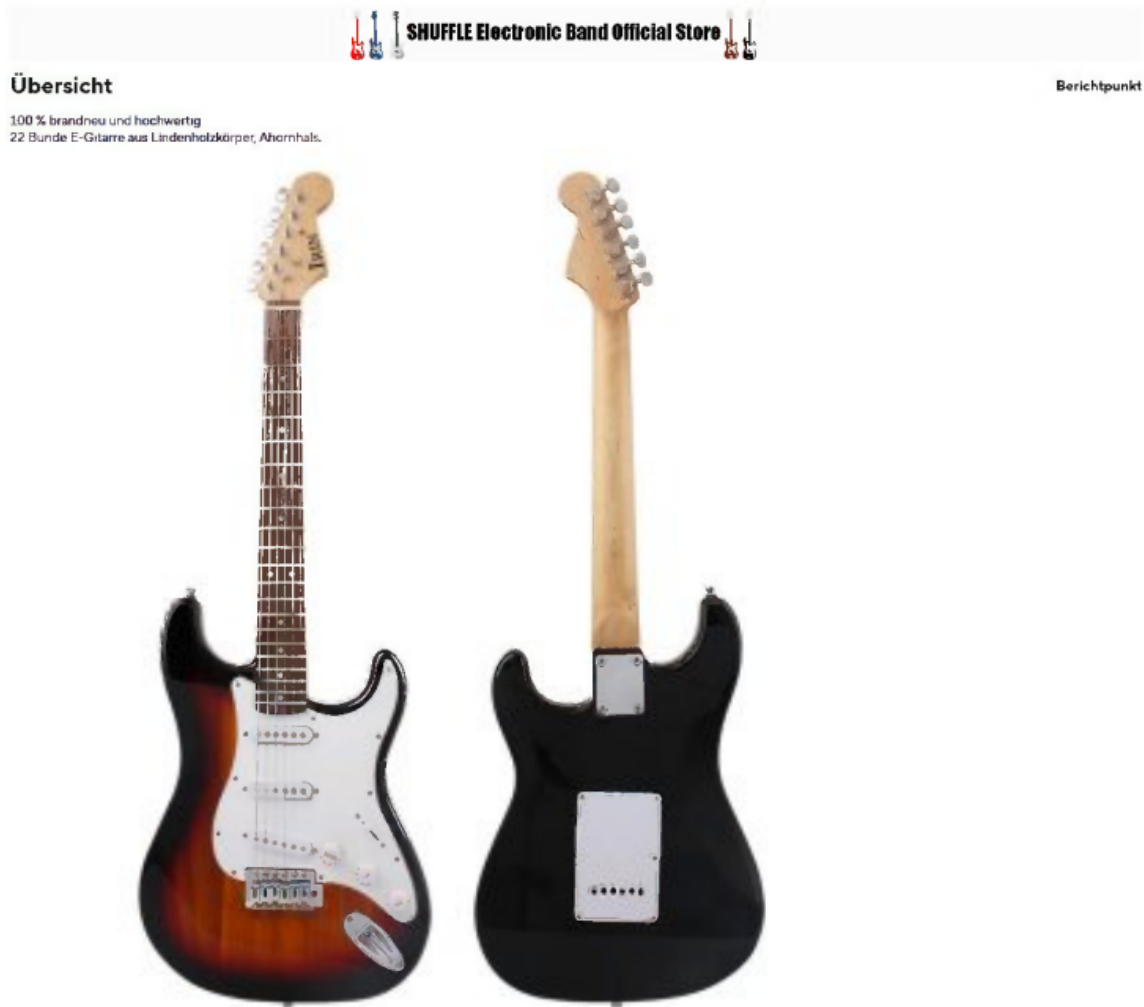
Menge **1** +
994 verfügbar

Jetzt kaufen

In den Warenkorb

🔗 Teilen ❤️ 3

Überprüfung



Die Klägerin ließ im April 2025 einen Testkauf durchführen. Die elektrische Gitarre wurde am 27.05.2025 an eine Lieferadresse in Meerbusch geliefert.

Die Klägerin beantragt,

im Wege des Versäumnisurteils zu erkennen wie geschehen.

Die Beklagte hat innerhalb der ihr im schriftlichen Vorverfahren gesetzten Frist die Verteidigung nicht angezeigt und nicht auf die Klage erwidert.

Wegen des weiteren Sachstandes wird auf die Klageschrift sowie die tatsächlichen Feststellungen in den nachfolgenden Entscheidungsgründen Bezug genommen.

Entscheidungsgründe

I.

Auf Antrag der Klägerin war die Beklagte gemäß Paragraph 331 Absatz 3 Zivilprozessordnung (ZPO) im Wege des Versäumnisurteils zu verurteilen, weil sie entgegen Paragraph 276 Absatz 1 Satz 1, Absatz 2 ZPO trotz ordnungsgemäßer Zustellung der Klageschrift und unter Hinweis auf die Rechtsfolge des Paragraph 331 Absatz 3 ZPO nicht rechtzeitig angezeigt hat, sich gegen die Klage verteidigen zu wollen.

Das Vorbringen der Klägerin ist gemäß Paragraph 331 Absatz 1 ZPO als zugestanden anzunehmen. Nach dem Sachvortrag der Klägerin ist die Klage zulässig und begründet.

II.

Die Klage ist zulässig.

Die internationale Zuständigkeit deutscher Gerichte ist gegeben. Die Antragsgegnerin hat ihren Sitz außerhalb der Europäischen Union, so dass gemäß Artikel 1 Absatz 1, Satz 1, Artikel 6 Absatz 1 der Verordnung (EU) Nr. 1215/2012 des Europäischen Parlaments und des Rates vom 12. Dezember 2012 über die gerichtliche Zuständigkeit und die Anerkennung und Vollstreckung von Entscheidungen in Zivil- und Handelssachen (Brüssel-Ia-VO) auf das nationale Recht des angerufenen Gerichts und damit auf die Vorschriften der deutschen Zivilprozessordnung (im Folgenden: ZPO) abzustellen ist. Die Vorschriften der deutschen Zivilprozessordnung über die örtliche Zuständigkeit regeln damit mittelbar auch die Abgrenzung zwischen der Zuständigkeit deutscher und ausländischer Gerichte (Bundesgerichtshof, Urteil vom 05.05.2011, IX ZR 176/10, Randnummer 7 – Rückzahlung der Lizenzgebühr). Damit folgen die internationale Zuständigkeit des Landgerichts Düsseldorf für die in der Volksrepublik China ansässige Beklagte aus Paragraph 32 ZPO.

Nach dieser Vorschrift ist für Klagen aus unerlaubten Handlungen – wie hier ein Verstoß gegen das Urheberrecht – das Gericht zuständig, in dessen Bezirk die Handlung begangen ist. Mit dem hiervon erfassten Begehungsort ist sowohl der Handlungs- als auch der Erfolgsort, das heißt der Ort, an dem das schädigende Ereignis eingetreten ist, gemeint. Maßgebend ist im Urheberrecht der Ort, an dem in das Verwertungsrecht eingegriffen wird (vergleiche Reber, in: BeckOK Urheberrecht, 48. Edition, Stand: 01.12.2025, Paragraph 105 Randnummer 3).

Die Beklagte ist auf dem deutschen Markt tätig. Sie vertreibt (unter anderem) die hier angegriffene elektrische Gitarre über die Webseite <https://de.aliexpress.com/> auch

bestimmungsgemäß an in der Bundesrepublik Deutschland ansässige Kunden und damit auch an Kunden im Bezirk des Oberlandesgerichts Düsseldorf, wie der Testkauf mit Lieferung nach Meerbusch zeigt.

Die sachliche Zuständigkeit des Landgerichts Düsseldorf folgt aus Paragraphen 104 Satz 1, 105 Absatz 1 Urhebergesetz (im Folgenden: UrhG), 23, 71 Gerichtsverfassungsgesetz in Verbindung mit Paragraph 26 Absatz 1 Nummer 1 Justizzuständigkeitsverordnung Nordrhein-Westfalen.

III.

Der Klägerin steht der geltend gemachte Anspruch auf Unterlassung des im Tenor unter Ziffer I. wiedergegebenen, rechtsverletzenden Verhaltens gemäß Paragraph 97 Absatz 1 Satz 1 UrhG in Verbindung mit Paragraph 2 Absatz 1 Nummer 4, Paragraphen 15 fortfolgende UrhG zu.

1.

Gegenstand der Klage ist allein die Verletzung urheberrechtlicher Verwertungsrechte, für die die Klägerin im Inland Schutz beansprucht, so dass im Streitfall deutsches Urheberrecht anzuwenden ist (vergleiche Bundesgerichtshof, Urteil vom 26.02.2014, I ZR 49/13, GRUR 2014, 559 Randnummer 12 – Tarzan).

a.

Der urheberrechtliche Schutz ausländischer Staatsangehöriger für ihre im Geltungsbereich dieses Gesetzes erschienenen Werke richtet sich nach Paragraph 121 UrhG.

Da Leo Fender US-amerikanischer Staatsangehöriger war und die „Stratocaster“ bereits 1954 in den Vereinigten Staaten von Amerika erschienen ist, richtet sich ihr urheberrechtlicher Schutz nicht nach Paragraph 121 Absatz 1 UrhG. Denn das Urheberrechtsgesetz trat erst 1965 in Kraft, sodass ein Erscheinen der „Stratocaster“ innerhalb von 30 Tagen nach ihrem Erscheinen in den Vereinigten Staaten von Amerika im Geltungsbereich des Urheberrechtsgesetzes ausgeschlossen ist.

Ihr urheberrechtlicher Schutz richtet sich vielmehr nach Paragraph 121 Absatz 4 Satz 1 UrhG nach den bestehenden Staatsverträgen. Anzuwenden ist hier das Übereinkommen zwischen dem Deutschen Reich und den Vereinigten Staaten von Amerika über den gegenseitigen Schutz der Urheberrechte vom 15.01.1892. Nach diesem Übereinkommen besteht für die „Stratocaster“ in Deutschland urheberrechtlicher Schutz.

Nach Art. 1 dieses Übereinkommens sollen die Bürger der Vereinigten Staaten von Amerika im Deutschen Reich den Schutz des Urheberrechts bezüglich der Werke der Literatur und Kunst sowie den Schutz der Fotografien gegen unbefugte Nachbildung auf derselben Grundlage genießen, wie solcher den Reichsangehörigen gesetzlich

zusteht. Umfang sowie Dauer des urheberrechtlichen Schutzes richten sich danach ausschließlich nach inländischem Recht; nicht hingegen kommt es darauf an, ob und gegebenenfalls wie lange das fragliche Werk in den Vereinigten Staaten noch geschützt ist (vergleiche Bundesgerichtshof, Urteil vom 26.02.2014, I ZR 49/13, GRUR 2014, 559 Randnummer 17 – Tarzan). Zum Zeitpunkt der Veröffentlichung der „Stratocaster“ im Jahre 1954 waren Werke in Deutschland nach dem Gesetz betreffend das Urheberrecht an Werken der bildenden Künste und der Photographie in der Fassung vom 09.01.1907 (im Folgenden: KUG 1907) geschützt, wobei die Schutzdauer nach Paragraph 25 dieses Gesetzes – seit Inkrafttreten des Gesetzes zur Verlängerung der Schutzfristen im Urheberrecht vom 13.12.1934 (RGBl. II 1395) – 50 Jahre nach dem Tod des Urhebers betrug.

Nach diesen Vorschriften besteht für die „Stratocaster“ in Deutschland urheberrechtlicher Schutz jedenfalls bis 2041. Etwas Anderes gilt auch nicht aufgrund der dem Übereinkommen von 1892 zeitlich nachfolgenden Staatsverträge zwischen den Vereinigten Staaten von Amerika und der Bundesrepublik Deutschland (Welturheberrechtsabkommen, Revidierte Berner Übereinkunft, TRIPS-Übereinkommen und WIPO-Urheberrechtsvertrag), die den durch das Übereinkommen von 1892 begründeten urheberrechtlichen Schutz hier im Ergebnis unberührt lassen (vergleiche hierzu ausführlich Bundesgerichtshof, Urteil vom 26.02.2014, I ZR 49/13, GRUR 2014, 559, Randnummern 19 fortfolgende – Tarzan).

b.

Die Klägerin ist zudem aktivlegitimiert. Sie hat dargelegt, dass sie im Jahr 1985 sämtliche Rechte am geistigen Eigentum (unter anderem) des Korpus der „Stratocaster“ im Wege der Gesamtrechtsnachfolge von der „Columbia Broadcasting System, Inc.“ erworben hat, die ihrerseits zuvor die Rechte von der ursprünglichen Rechteinhaberin „Fender Electric Instruments Company Inc.“ erworben hatte, deren Angestellter Leo Fender im Zeitpunkt der Schöpfung war. Sie ist damit als ausschließliche Lizenznehmerin Inhaberin des ausschließlichen Nutzungsrechts im Sinne des Paragraph 31 Absatz 3 UrhG.

2.

Der von Leo Fender geschaffene Korpus der „Stratocaster“ – nur hierfür begehrt die Klägerin urheberrechtlichen Schutz – stellt sowohl nach der zum Zeitpunkt der erstmaligen Gestaltung der elektrischen Gitarre vorherrschenden Anschauung im Jahre 1954 nach dem zu diesem Zeitpunkt geltenden Paragraph 2 KUG 1907 als auch unter Berücksichtigung der aktuellen Entwicklungen, die auf die vom Europäischen Gerichtshof etablierte Harmonisierung des Urheberrechts in der Europäischen Union zurückgehen (Urteil vom 04.12.2025, C-580/23, C-795/23, GRUR-RS 2025, 33141, mit weiteren Nachweisen – Mio u. a. konektra) sowie der Rechtsprechung des Bundesgerichtshofs (Urteil vom 20.02.2025, I ZR 16/24, GRUR-RS 2025, 4384, mit weiteren Nachweisen – Birkenstocksandale) ein urheberrechtlich geschütztes Werk

der angewandten Kunst im Sinne von Paragraph 2 Absatz 1 Nummer 4 und Absatz 2 UrhG dar.

a.

Gemäß Paragraph 129 Absatz 1 Satz 1 UrhG sind die Vorschriften dieses Gesetzes auch auf die vor seinem Inkrafttreten geschaffenen Werke anzuwenden, es sei denn, dass sie zu diesem Zeitpunkt urheberrechtlich nicht geschützt sind, oder dass in diesem Gesetz sonst etwas anderes bestimmt ist. Werke, die bei Inkrafttreten des Urheberrechtsgesetzes urheberrechtlich nicht geschützt waren, genießen danach auch dann keinen Schutz, wenn sie den aktuellen Anforderungen des Urheberrechtsgesetzes an ein urheberrechtlich geschütztes Werk entsprechen (vergleiche Bundesgerichtshof, Urteil vom 16.05.2013, I ZR 28/12, GRUR 2014, 65, Rn. 31 – Beuys-Aktion). Bis zum Inkrafttreten des Urheberrechtsgesetzes geschaffene Werke der bildenden Künste genossen gemäß Paragraph 1 KUG 1907 urheberrechtlichen Schutz, wobei als solche gemäß Paragraph 2 Absatz 1 KUG 1907 auch Erzeugnisse des Kunstgewerbes (der angewandten Kunst) galten, wenn im Einzelfall bei einem geschmackvoll gestalteten Gebrauchsgegenstand die Anforderungen, die an ein Kunstwerk zu stellen sind, erfüllt waren (vergleiche Landgericht Düsseldorf, Urteil vom 14.07.2020, 14c O 57/19, GRUR-RS 2020, 34825 Randnummer 112 mit weiteren Nachweisen). Dass diese Anforderungen im Streitfall erfüllt sind, belegen die folgenden Ausführungen zur aktuellen Rechtslage.

b.

Nach ständiger Rechtsprechung des Europäischen Gerichtshofs hat der urheberrechtliche Begriff „Werk“ – als autonomer Begriff des Unionsrechts ist dieser einheitlich auszulegen und anzuwenden – zwei Tatbestandsmerkmale: Zum einen muss es sich bei dem betreffenden Gegenstand um ein Original in dem Sinne handeln, dass er eine eigene geistige Schöpfung seines Urhebers darstellt. Hiervon kann ausgegangen werden, wenn der Gegenstand die Persönlichkeit seines Urhebers widerspiegelt, indem er dessen freie kreative Entscheidungen zum Ausdruck bringt. Zum anderen ist die Einstufung als „Werk“ Elementen vorbehalten, die eine solche Schöpfung zum Ausdruck bringen, wobei dies einen mit hinreichender Genauigkeit und Objektivität identifizierbaren Gegenstand voraussetzt (vergleiche zum Vorstehenden: Europäischer Gerichtshof, Urteil vom 04.12.2025, C-580/23, C-795/23, GRUR-RS 2025, 33141 Randnummer 48 fortfolgende – Mio u. a. konektra; Urteil vom 12.09.2019, C-683/17, GRUR 2019, 1185 Randnummer 29 bis 32, – Cofemel mit weiteren Nachweisen).

Der Bundesgerichtshof setzt in ständiger Rechtsprechung für den urheberrechtlichen Schutz von „Werken“ voraus, dass diese eine Schöpfung individueller Prägung darstellen, deren ästhetischer Gehalt einen solchen Grad erreicht hat, dass nach Auffassung der für Kunst empfänglichen und mit Kunstanschauungen einigermaßen vertrauten Kreise von einer „künstlerischen“ Leistung gesprochen werden kann (Bundesgerichtshof, Urteil vom 20.02.2025, I ZR 17/24, GRUR-RS 2025, 4384

Randnummer 18 – Birkenstocksandale; Urteil vom 09.11.2023, I ZR 203/22, GRUR 2024, 386 Randnummer 24 – E2; Urteil vom 15.12.2022, I ZR 173/21, GRUR 2023, 571 Randnummer 13 – Vitrinenleuchte, jeweils mit weiteren Nachweisen), wobei mit künstlerischer Leistung nicht mehr und nicht weniger als eine schöpferische, kreative, originelle, die individuelle Persönlichkeit ihres Urhebers widerspiegelnde Leistung auf dem Gebiet der Kunst gemeint ist (dies klarstellend: Bundesgerichtshof, Urteil vom 20.02.2025, I ZR 17/24, GRUR-RS 2025, 4384 Randnummer 23 – Birkenstocksandale und insoweit im Ergebnis übereinstimmend mit der Rechtsprechung des Europäischen Gerichtshofs). Insoweit kommt es auch nicht darauf an, dass der europäische Gerichtshof in seiner jüngsten Entscheidung zwar davon ausgeht, dass Raum für die Ausübung künstlerischer Freiheit erforderlich ist, indes darauf hinweist, dass eine eigene ästhetische oder künstlerisch markante visuelle Wirkung, die ein Gegenstand hat, als solche nicht genügt, um ihm urheberrechtlichen Schutz zu verleihen (Europäischer Gerichtshof, Urteil vom 04.12.2025, C-580/23, C-795/23, GRUR-RS 2025, 33141 Randnummer 49 und 67 folgende – Mio u. a. konektra). Denn auch der Bundesgerichtshof setzt – ungeachtet der Frage, ob er an der Terminologie der „künstlerischen“ Leistung künftig festhalten wird – voraus, dass sich die individuelle Persönlichkeit ihres Urhebers widerspiegelt.

Unter Berücksichtigung dieser Grundsätze erweist sich der von Leo Fender geschaffene Korpus der „Stratocaster“ als eine herausragende geistige Schöpfung, die seine Persönlichkeit widerspiegelt. Die Gestaltung als Körper ohne Kanten verleiht der „Stratocaster“ weiche Rundungen, die die Assoziation an einen weiblichen Rumpf bestehend aus Hüfte, Taille und Armen wecken. Gleichzeitig ist die linke Seite gestreckt, sodass die „S-Linien“ der beiden Seiten nicht parallel, sondern die Radien ihrer jeweiligen Rundungen ungleichmäßig verlaufen. Außerdem ist das linke Horn – erinnernd an einen Arm – gestreckter als das rechte, sodass der Eindruck erweckt wird, es greife nach etwas Entferntem. Hierdurch wird nicht lediglich eine asymmetrische Form erzeugt; vielmehr wird der Eindruck erweckt, die „Stratocaster“ beuge sich – wie eine zur Seite geneigte Tänzerin – leicht nach rechts. Der Eindruck des in einer Streckbewegung befindlichen Korpus wird durch seine dreidimensionale Gestaltung mit einer Abflachung der vorderen linken Seite – anmutend wie ein nach hinten gekipptes Becken – sowie einer, im Vergleich zur rechten Seite, schmalere linken Rückseite weiter betont. Das Schlagbrett hebt schließlich diese charakteristische individuelle Gestalt weiter hervor, indem es auf der rechten, der oberen und der unteren Seite sowie auf der linken Seite die Kurven des Korpus versetzt übernimmt und damit – zusammen mit der Anordnung der Kabelauslassung parallel zum rechten unteren Ausläufer des Schlagbretts – unterstreicht. Eine solche futuristische, elegante und zeitlose Gestaltung des Korpus einer Gitarre mit dem die asymmetrisch geschwungene Form noch hervorhebenden Griffbrett stellte im Zeitpunkt von Konzeption und Erscheinen der „Stratocaster“ etwas grundlegend Neues dar. Im damaligen Formenschatz war – wie von der Klägerin dargelegt – Derartiges nicht

angelegt; lediglich die eigenen Vorgängermodelle des „Broadcaster“ (später „Telecaster“) und des „Precision Bass“ von Leo Fender lassen die Elemente der asymmetrischen Grundform mit einem diesen angepassten Schlagbrett erahnen, die in der „Stratocoaster“ zu der beschriebenen schlanken, weich geschwungenen und eleganten Form weiterentwickelt wurde. Vor diesem Hintergrund handelt es sich bei dem von Leo Fender geschaffenen Korpus der „Stratocaster“ um eine überragende, freie kreative Leistung, die Persönlichkeit seines Urhebers deutlich widerspiegelt und somit ein urheberrechtliches Werk darstellt.

3.

Die Klägerin hat durch Vorlage von Screenshots des Angebots der Beklagten auf der Online-Plattform <https://de.aliexpress.com/> und dem Nachweis eines Testkaufs dargelegt, dass die Beklagte die im Tenor unter Ziffer I. eingeblendeten Ausführungsform der elektrischen Gitarre in der Bundesrepublik Deutschland vertreibt.

4.

Die von der Beklagten vertriebene elektrische Gitarre verletzt die ausschließlichen Nutzungsrechte der Klägerin an der „Stratocaster“, da sie eine Vervielfältigung gemäß Paragraph 16 Absatz 1 UrhG darstellt.

Eine Verletzung des Urheberrechts gemäß Paragraph 97 UrhG liegt nicht nur bei einer identischen widerrechtlichen Nachbildung eines Werks vor. Aus der Bestimmung des Paragraphen 23 Absatz 1 Satz 1 UrhG, nach der Bearbeitungen oder andere Umgestaltungen eines Werks nur mit Zustimmung des Urhebers veröffentlicht oder verwertet werden dürfen, ergibt sich, dass der Schutz des Veröffentlichungsrechts im Sinne von Paragraph 12 UrhG und der Verwertungsrechte gemäß Paragraph 15 fortfolgende UrhG sich – bis zu einer gewissen Grenze – auch auf vom Original abweichende Gestaltungen erstreckt (vergleiche hierzu Bundesgerichtshof, Urteil vom 15.12.2022, I ZR 173/21, GRUR 2023, 571 Rn. 27 – Vitrinenleuchte).

Bei der Prüfung, ob eine Veränderung eines Werks das Urheberrecht verletzt, ist zu berücksichtigen, dass jede Bearbeitung oder andere Umgestaltung im Sinne des Paragraphen 23 Absatz 1 Satz 1 UrhG, soweit sie körperlich festgelegt ist, zugleich eine Vervielfältigung im Sinne des Paragraphen 16 UrhG darstellt. Zu den Vervielfältigungen zählen nach der Rechtsprechung des Bundesgerichtshofs nicht nur Nachbildungen, die mit dem Original identisch sind; vom Vervielfältigungsrecht des Urhebers werden vielmehr auch – sogar in einem weiteren Abstand vom Original liegende – Werkumgestaltungen umfasst.

Der Bundesgerichtshof stellt darauf ab, welche objektiven Merkmale die schöpferische Eigentümlichkeit des benutzten Werks bestimmen. Sodann ermittelt er durch Vergleich der einander gegenüberstehenden Gestaltungen, ob und gegebenenfalls in welchem Umfang in der neuen Gestaltung eigenschöpferische Züge des älteren Werks übernommen worden sind und deswegen ein übereinstimmender Gesamteindruck besteht oder ob die den Urheberrechtsschutz des älteren Werks begründenden Elemente im

Rahmen der Gesamtschau in der neuen Gestaltung verblässen, also nicht wiederzuerkennen sind. Dabei hat der Bundesgerichtshof in seiner bisherigen Rechtsprechung betont, dass maßgebend für die Verletzungsprüfung ein Vergleich des jeweiligen Gesamteindrucks der Gestaltungen ist, in dessen Rahmen sämtliche übernommenen schöpferischen Züge in einer Gesamtschau zu berücksichtigen sind (vergleiche zum Vorstehenden: Bundesgerichtshof, Urteil vom 15.12.2022, I ZR 173/21, GRUR 2023, 571 Randnummer 29 – Vitrinenleuchte). An der Diktion des „Gesamteindrucks“ wird nicht festzuhalten sein, weil der europäische Gerichtshof in seiner jüngsten Entscheidung den Vergleich des Gesamteindrucks als nicht erheblich bezeichnet, da dieses Kriterium den Schutz von Geschmacksmustern betreffe. Er verweist darauf, dass die Nutzung eines Werks eine Verletzung darstellen kann, wenn sie nur einen vergleichsweise kleinen Teil des Werks betrifft, und stellt allein darauf ab, ob kreative Elemente des geschützten Werks, die die Persönlichkeit des Urhebers widerspiegeln, wiedererkennbar in den als verletzend beanstandeten Gegenstand übernommen worden sind; auch hänge der Umfang des Schutzes des urheberrechtlichen Werks nicht vom Grad der schöpferischen Freiheit des Urheberrechts und der Gestaltungshöhe ab (vergleiche zum Vorstehenden: Europäischer Gerichtshof, Urteil vom 04.12.2025, C-580/23, C-795/23, GRUR-RS 2025, 33141 Randnummer 85 fortfolgende – Mio u. a. konektra). Allerdings werden die freien und kreativen Entscheidungen häufig gerade in der Kombination von Elementen liegen und wird erst die Kombination der Elemente die Persönlichkeit des Urhebers widerspiegeln. In diesen Konstellationen dürfte die Gesamtschau dieser Elemente, an der der Bundesgerichtshof bisher den Gesamteindruck festmachte, ihre Bedeutung behalten.

Nach diesen Maßstäben handelt es sich bei der angegriffenen elektrischen Gitarre um eine Vervielfältigung der „Stratocaster“, da sie deren schöpferischen Elemente nahezu identisch übernimmt, wie aus nachfolgender Gegenüberstellung ersichtlich:



Fender Stratocaster

Gitarre der Beklagten



Fender Stratocaster

Gitarre der Beklagten

Die angegriffene elektrische Gitarre benutzt dieselben Formelemente, in denen die kreative Gestaltungskraft der „Stratocaster“ zum Ausdruck kommt und die die Persönlichkeit des Urhebers Leo Fender widerspiegeln, und kombiniert sie in derselben Weise. So übernimmt sie die äußere Korpusform, die Form und konkrete Anbringung des Schlagbretts und die Form und Position der Kabelauslassung in identischer Weise. Dabei stimmen nicht lediglich die Proportionen überein. Vielmehr weist die angegriffene elektrische Gitarre dieselben Maße wie die „Stratocaster“ auf und übernimmt sogar die Abflachung an deren linken Rückseite in nahezu identischer Breite. Allein die Anbringung des Labels „Fender“ auf dem Schlagbrett fehlt bei der angegriffenen elektrischen Gitarre, was jedoch für die Frage, ob es sich um eine Vervielfältigung im Sinne des Paragraphen 16 Absatz 1 UrhG handelt, ebenso irrelevant ist wie die Farbstellung, auf die es für den Urheberrechtsschutz nicht ankommt.

5.

Die Beklagte verwertet die unzulässige Bearbeitung, indem sie die angegriffene Gitarre auf dem Internetmarktplatz <https://de.aliexpress.com/> anbietet und hierzulande auch in den Verkehr bringt.

6.

Die Verletzungshandlung indiziert die für den Unterlassungsanspruch erforderliche Wiederholungsgefahr (vergleiche hierzu Bundesgerichtshof, Urteil vom 18.09.2014, I ZR 76/13, GRUR 2015, 258), die nach ständiger Rechtsprechung nur durch eine – hier nicht vorliegende – strafbewehrte Unterlassungserklärung beseitigt werden kann (Bundesgerichtshof, Urteil vom 03.04.2014, I ZB 42/11, Randnummer 12).

7.

Die Ordnungsmittellandrohung hat ihre Grundlage in Paragraph 890 Absatz 2 ZPO.

IV.

Die Kostenentscheidung folgt aus Paragraph 91 Absatz 1 ZPO, die Entscheidung über die vorläufige Vollstreckbarkeit aus Paragraph 708 Nummer 2 ZPO. Die angemessene Festsetzung der Einspruchsfrist beruht auf Paragraph 339 Absatz 2 Satz 1 ZPO.

Streitwert:

Der Streitwert wird unter Berücksichtigung sämtlicher Umstände auf die angemessene Höhe von EUR 100.000,00 festgesetzt.

Rechtsbehelfsbelehrung:

Gegen das Versäumnisurteil ist der Einspruch statthaft. Dieser muss innerhalb einer Notfrist von einem Monat bei dem Landgericht Düsseldorf, Werdener Straße 1, 40227 Düsseldorf, eingehen. Die Frist beginnt mit der Zustellung dieses Urteils. Diese Frist kann nicht verlängert werden.

Der Einspruch kann nur durch eine in Deutschland zugelassene Rechtsanwältin oder einen in Deutschland zugelassenen Rechtsanwalt eingelegt werden.

Der Einspruch muss die Bezeichnung des angefochtenen Urteils (Datum des Urteils, Geschäftsnummer und Parteien) sowie die Erklärung enthalten, dass Einspruch eingelegt wird. Er ist zu unterzeichnen und zu begründen, insbesondere sind Angriffs- und Verteidigungsmittel vorzutragen. Nur die Frist zur Begründung des Einspruchs kann auf Antrag verlängert werden, wenn dadurch der Rechtsstreit nicht verzögert wird oder, wenn wichtige Gründe für die Verlängerung vorgetragen werden. Dieser Antrag muss ebenfalls innerhalb der Einspruchsfrist bei Gericht eingehen. Wenn der Einspruch nicht oder nicht rechtzeitig begründet wird, kann allein deshalb der Prozess verloren werden. Die Gerichtssprache ist deutsch.

Gegen die Streitwertfestsetzung ist die Beschwerde an das Landgericht Düsseldorf statthaft, wenn der Wert des Beschwerdegegenstandes EUR 200,00 übersteigt oder das Landgericht die Beschwerde zugelassen hat. Die Beschwerde ist spätestens innerhalb von sechs Monaten, nachdem die Entscheidung in der Hauptsache Rechtskraft erlangt oder das Verfahren sich anderweitig erledigt hat, bei dem Landgericht Düsseldorf, Werdener Straße 1, 40227 Düsseldorf, schriftlich in deutscher Sprache oder zur Niederschrift des Urkundsbeamten der Geschäftsstelle einzulegen. Die Beschwerde kann auch zur Niederschrift der Geschäftsstelle eines jeden

Amtsgerichtes abgegeben werden. Ist der Streitwert später als einen Monat vor Ablauf dieser Frist festgesetzt worden, so kann die Beschwerde noch innerhalb eines Monats nach Zustellung oder formloser Mitteilung des Festsetzungsbeschlusses eingelegt werden.

Hinweis zum elektronischen Rechtsverkehr:

Die Einlegung ist auch durch Übertragung eines elektronischen Dokuments an die elektronische Poststelle des Gerichts möglich. Das elektronische Dokument muss für die Bearbeitung durch das Gericht geeignet und mit einer qualifizierten elektronischen Signatur der verantwortenden Person versehen sein oder von der verantwortenden Person signiert und auf einem sicheren Übermittlungsweg gemäß Paragraph 130a ZPO nach näherer Maßgabe der Verordnung über die technischen Rahmenbedingungen des elektronischen Rechtsverkehrs und über das besondere elektronische Behördenpostfach (Bundesgesetzblatt 2017 I, Seite 3803) eingereicht werden. Weitere Informationen erhalten Sie auf der Internetseite www.justiz.de.

Brückner-Hofmann

Doktor von Thannhausen

Doktor Fleckenstein



Düsseldorf Regional
Court IN THE NAME OF
THE PEOPLE
Default Judgment

In the legal dispute

Fender Musical Instruments Corporation Inc., 17600 N. Perimeter Drive,
Scottsdale, Arizona 85255, United States of America,

Plaintiff,

Legal Representatives:

Attorneys of record at Bird &
Bird LLP,
Maximiliansplatz 22, 80333 Munich,

v.

Yiwu Philharmonic Musical Instruments Co., Ltd., legally represented by Bai
Xiaolui, People's Republic of China, with no known address for service,

Defendant,

the 14th Civil Chamber of the Regional Court of Düsseldorf
in the written preliminary proceedings pursuant to Section 331(3) of the Code of
Civil Procedure on December 22, 2025
through Presiding Judge Brückner-Hofmann of the Regional Court,
Judge Dr. von Thannhausen of the Regional Court, and
Regional Court Judge Dr. Fleckenstein, ruled as

follows:

I.

The defendant is ordered, on pain of a fine to be determined by the court for each instance of noncompliance and, in the event that such fine cannot be collected, imprisonment for up to six months (the fine not to exceed EUR 250,000.00 in any single case, and the total term of imprisonment not to exceed two years),

to refrain from

distributing electric guitars within the territory of the Federal Republic of Germany if their body is designed as shown below:



and



and



and



II.

The defendant shall bear the costs of the proceedings.

III.

The judgment is provisionally enforceable.

IV.

The period for filing an objection is set at one month.

Facts

The plaintiff is seeking an injunction against the defendant for the distribution of electric guitars.

The plaintiff is a company based in the United States of America that specializes in the manufacture of musical instruments. This includes the “Stratocaster” electric guitar, which Clarence Leonidas Fender (“Leo Fender”) created in 1954. Based on his design—an illustration of the 1954 prototype and the model currently on the market are shown below—the electric guitars are still manufactured and sold today with virtually identical construction.



1954 Prototyp

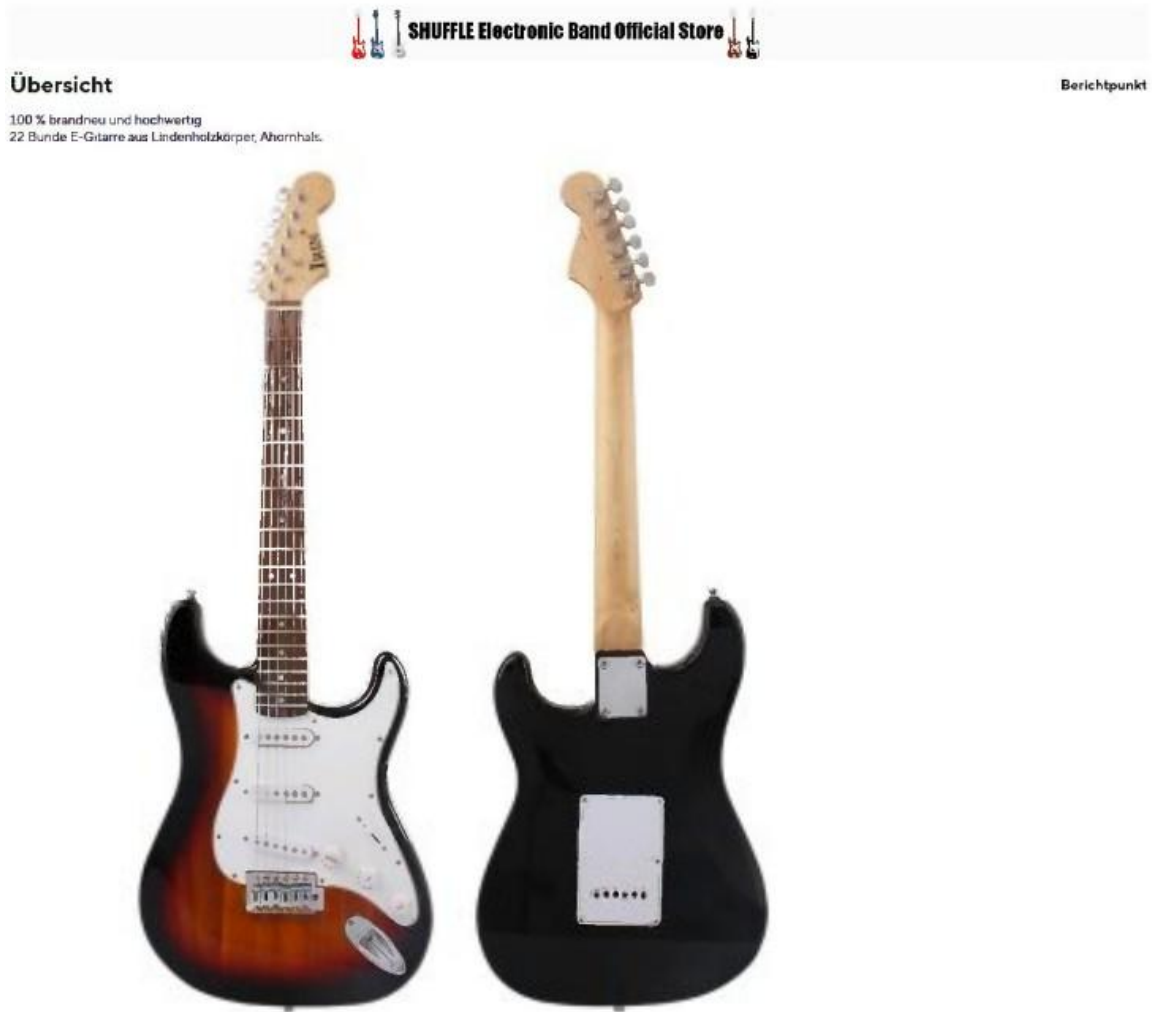


2025 Stratocaster

The plaintiff has held the copyright exploitation rights to the “Stratocaster.” Leo Fender passed away in 1991.

The defendant is a Chinese company that offers, among other things, electric guitars such as those depicted in the operative part under Section I—including for shipment to Germany—on the online retail platform “AliExpress,” accessible at <https://de.aliexpress.com/>. Under the name “SHUFFLE Musical Instruments Store,” it offered—at least in the spring of 2025—the electric guitar at issue under the designation “IRIN 22 Frets ST Electric Guitar 39 Inches 6 Strings Maple Body Neck Electric Guitar with Necessary Guitar Accessories and Parts” on “AliExpress” as follows:

The screenshot shows the AliExpress product page for an IRIN electric guitar. The main product image displays the guitar and its accessories, including a black gig bag with the IRIN logo, a guitar cable, and a strap. The price is listed as 61,69€, with a 40% discount from the original price of 102,82€. The product is described as an "IRIN 22 Frets ST E-Gitarre 39 Zoll 6 Saiten Ahorn Korpus Hals E-Gitarre mit notwendigem Gitarrenzubehör und Teilen". The seller is identified as "SHUFFLE Musical Inst." with a rating of 4.8 and 393 sales. The page also features a sidebar with navigation options like "Kundenbewertungen", "Spezifikationen", and "Übersicht". At the bottom, there is a "Überprüfung" section. On the right side, a shopping cart summary is visible, showing the item name, delivery location (Deutschland), shipping cost (50,83€), and a "Jetzt kaufen" button.



The plaintiff had a test purchase made in April 2025. The electric guitar was delivered on May 27, 2025, to a delivery address in Meerbusch.

The defendant did not file a defense within the time limit set for it in the written preliminary proceedings and did not respond to the complaint.

For further details of the case, reference is made to the complaint and the findings of fact in the following grounds for the decision.

Grounds for the Decision

I.

At the plaintiff's request, the defendant was to be ordered to pay by default judgment pursuant to Section 331(3) of the Code of Civil Procedure (ZPO) because, contrary to Section 276(1), first sentence, (2) ZPO, failed to notify the court in a timely manner of its intention to defend against the complaint, despite proper service of the complaint and notice of the legal consequence under Section 331(3) ZPO.

The plaintiff's submissions are to be deemed admitted pursuant to Section 331(1) of the Code of Civil Procedure (ZPO). Based on the plaintiff's statement of facts, the action is admissible and well-founded.

II.

The action is admissible.

The international jurisdiction of German courts is established. The defendant is domiciled outside the European Union, so that pursuant to Article 1(1), first sentence, and Article 6(1) of Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of December 12, 2012, on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I Regulation), reference must be made to the national law of the court seised and thus to the provisions of the German Code of Civil Procedure (hereinafter: ZPO). The provisions of the German Code of Civil Procedure governing territorial jurisdiction thus also indirectly govern the demarcation between the jurisdiction of German and foreign courts (Federal Court of Justice, judgment of May 5, 2011, IX ZR 176/10, para. 7 – Repayment of the License Fee). Thus, the international jurisdiction of the Regional Court of Düsseldorf over the defendant domiciled in the People's Republic of China derives from Section 32 ZPO.

According to this provision, for actions arising from tortious acts—such as a copyright infringement in this case—the court with jurisdiction is the one in whose district the act was committed. The “place of commission” covered by this provision refers to both the place of the act and the place of the result, that is, the place where the harmful event occurred. In copyright law, the decisive factor is the place where the right of exploitation is infringed (see Reber, in: BeckOK Urheberrecht, 48th edition, as of December 1, 2025, Section 105, margin note 3).

The defendant operates on the German market. It sells (among other things) the electric guitar at issue here via the website <https://de.aliexpress.com/>, including to customers residing in the Federal Republic of Germany, and thus also to customers within the jurisdiction of the Higher Regional Court of Düsseldorf, as demonstrated by the test purchase with delivery to Meerbusch.

The subject-matter jurisdiction of the Regional Court of Düsseldorf derives from Sections 104, sentence 1, and 105(1) of the Copyright Act (hereinafter: UrhG), Sections 23 and 71 of the Courts Constitution Act in conjunction with Section 26(1)(1) of the North Rhine-Westphalia Judicial Jurisdiction Ordinance.

III.

The plaintiff is entitled to the asserted claim for an injunction against the infringing conduct set forth in the operative part under Item I, pursuant to Section 97(1), first sentence, of the UrhG in conjunction with Section 2(1)(4) and Sections 15 et seq. of the UrhG.

1.

The subject matter of the action is solely the infringement of copyright exploitation rights for which the plaintiff claims protection in Germany, so that German copyright law is applicable in the present case (see Federal Court of Justice, judgment of February 26, 2014, I ZR 49/13, GRUR 2014, 559, para. 12 – Tarzan).

a.

Copyright protection for foreign nationals with respect to their works published within the scope of this Act is governed by Section 121 of the Copyright Act.

Since Leo Fender was a U.S. citizen and the “Stratocaster” had already appeared in the United States of America in 1954, its copyright protection is not governed by Section 121(1) of the Copyright Act. This is because the Copyright Act did not enter into force until 1965, meaning that the “Stratocaster” within 30 days of its release in the United States of America is excluded from the scope of the Copyright Act.

Rather, its copyright protection is governed by Section 121(4), Sentence 1 of the German Copyright Act (UrhG) in accordance with existing international treaties. The agreement applicable here is the Convention between the German Empire and the United States of America on the Reciprocal Protection of Copyright of January 15, 1892. Under this convention, the “Stratocaster” enjoys copyright protection in Germany.

Pursuant to Article 1 of this agreement, citizens of the United States of America shall enjoy copyright protection in the German Empire with respect to literary and artistic works, as well as protection of photographs against unauthorized reproduction, on the same basis as that granted by law to nationals of the Empire

. The scope and duration of copyright protection are determined exclusively by domestic law; it does not, however, depend on whether and, if so, for how long the work in question is still protected in the United States (see Federal Court of Justice, judgment of February 26, 2014, I ZR 49/13, GRUR 2014, 559, para. 17 – Tarzan). At the time of the publication of the “Stratocaster” in 1954, works in Germany were protected under the Law Concerning Copyright in Works of Fine Art and Photography in the version of January 9, 1907 (hereinafter: KUG 1907), whereby the term of protection under Section 25 of this Act—since the entry into force of the Act on the Extension of Terms of Protection in Copyright Law of December 13, 1934 (RGBl. II 1395)—was 50 years after the death of the author.

Under these provisions, the “Stratocaster” is protected by copyright in Germany at least until 2041. Nor does anything to the contrary apply on the basis of the international treaties between the United States of America and the Federal Republic of Germany that followed the 1892 Convention (Universal Copyright Convention, Revised Berne Convention, TRIPS Agreement, and WIPO Copyright Treaty), which ultimately leave the copyright protection established by the 1892 Convention unaffected here (see, for a detailed discussion, Federal Court of Justice, judgment of Feb. 26, 2014, I ZR 49/13, GRUR 2014, 559, paras. 19 et seq. – Tarzan).

b.

The plaintiff also has standing to sue. It has demonstrated that in 1985 it acquired all intellectual property rights (among other things) to the body of the “Stratocaster” by way of universal succession from “Columbia Broadcasting System, Inc.,” which in turn had previously acquired the rights from the original rights holder, “Fender Electric Instruments Company Inc.,” of which Leo Fender was an employee at the time of creation. As the exclusive licensee, it is thus the holder of the exclusive right of use within the meaning of Section 31(3) of the German Copyright Act (UrhG).

2.

The body of the “Stratocaster” created by Leo Fender—for which the plaintiff seeks copyright protection—constitutes a work of authorship both according to the prevailing view at the time of the electric guitar’s initial design in 1954 under Section 2 of the Austrian Copyright Act (KUG) of 1907, as well as in light of current developments, which stem from the harmonization of copyright law in the European Union established by the European Court of Justice (Judgment of Dec. 4, 2025, C-580/23, C-795/23, GRUR-RS 2025, 33141, with further references – Mio et al. v. konektra) as well as the case law of the Federal Court of Justice (judgment of February 20, 2025, I ZR 16/24, GRUR-RS 2025, 4384, with further references – Birkenstocksandale), a work protected by copyright

of applied art within the meaning of Section 2(1)(4) and (2) of the German Copyright Act (UrhG).

a.

Pursuant to Section 129(1), first sentence, of the UrhG, the provisions of this Act also apply to works created prior to its entry into force, unless they were not protected by copyright at that time or unless this Act provides otherwise. Works that were not protected by copyright at the time the Copyright Act came into force do not enjoy protection under it even if they meet the current requirements of the Copyright Act for a copyright-protected work (see Federal Court of Justice, judgment of May 16, 2013, I ZR 28/12, GRUR 2014, 65, para. 31 – Beuys-Aktion). Works of fine art created prior to the entry into force of the Copyright Act enjoyed copyright, whereby, pursuant to Section 2(1) of the KUG 1907, products of the decorative arts (applied arts) were also considered as such if, in individual cases, a tastefully designed utilitarian object met the requirements applicable to a work of art (see Regional Court of Düsseldorf, judgment of July 14, 2020, 14c O 57/19, GRUR-RS 2020, 34825, para. 112, with further references). The following discussion of the current legal situation demonstrates that these requirements are met in the present case.

b.

According to the settled case law of the European Court of Justice, the copyright term “work”—as an autonomous concept of Union law, it must be interpreted and applied uniformly—has two constituent elements: First, the object in question must be an original in the sense that it constitutes an independent intellectual creation of its author. This can be assumed if the object reflects the personality of its author by expressing the author’s free creative decisions. Second, classification as a “work” is reserved for elements that express such a creation, which requires an object that can be identified with sufficient precision and objectivity (see, on the foregoing: European Court of Justice, judgment of Dec. 4, 2025, C-580/23, C-795/23, GRUR-RS 2025, 33141, para. 48 et seq. – Mio et al. v. konektra; Judgment of September 12, 2019, C-683/17, GRUR 2019, 1185, paras. 29–32, – Cofemel with further references).

In its established case law, the Federal Court of Justice requires, for the copyright protection of “works,” that these constitute a creation of individual character whose aesthetic content has reached such a level that, in the opinion of circles receptive to art and reasonably familiar with artistic views, one can speak of an “artistic” achievement (Federal Court of Justice, judgment of Feb. 20, 2025, I ZR 17/24, GRUR-RS 2025, 4384

para. 18 – Birkenstock sandal; judgment of Nov. 9, 2023, I ZR 203/22, GRUR 2024, 386 para. 24 – E2; judgment of Dec. 15, 2022, I ZR 173/21, GRUR 2023, 571, para. 13 – display case light, each with further evidence), whereby “artistic achievement” means nothing more and nothing less than a creative, original achievement in the field of art that reflects the individual personality of its creator (clarifying this: Federal Court of Justice, judgment of February 20, 2025, I ZR 17/24, GRUR-RS 2025, 4384, para. 23 – Birkenstock sandal, and in this respect consistent in its conclusion with the case law of the European Court of Justice). In this regard, it is also irrelevant that, while the European Court of Justice assumes in its most recent decision that room for the exercise of artistic freedom is necessary, it nevertheless points out that a distinct aesthetic or artistically striking visual effect possessed by an object is not, in and of itself, sufficient to confer copyright protection upon it (European Court of Justice, judgment of Dec. 4, 2025, C-580/23, C-795/23, GRUR-RS 2025, 33141, paras. 49 and 67 et seq. – Mio et al. v. konektra). For the Federal Court of Justice, too, will in future—regardless of whether it adheres to the terminology of “artistic” work – that the individual personality of its creator is reflected.

Taking these principles into account, the body of the “Stratocaster” created by Leo Fender proves to be an outstanding intellectual creation that reflects his personality. The design as a body without edges gives the “Stratocaster” soft curves that evoke associations with a female torso consisting of hips, waist, and arms. At the same time, the left side is elongated, so that the “S-curves” of the two sides are not parallel, but rather the radii of their respective curves run unevenly. Furthermore, the left horn—reminiscent of an arm—is more elongated than the right, creating the impression that it is reaching for something distant. This does not merely create an asymmetrical form; rather, it gives the impression that the “Stratocaster” is leaning slightly to the right—like a dancer tilted to one side. The impression of the body in a stretching motion is further emphasized by its three-dimensional design, featuring a flattening of the front left side—resembling a backward-tilted pelvis—as well as a left rear side that is narrower than the right. Finally, the pickguard further highlights this characteristic, distinctive shape by adopting the curves of the body in a staggered pattern on the right, top, and bottom sides as well as on the left side, thereby—together with the placement of the cable outlet parallel to the lower right edge of the pickguard—emphasizing them. Such a futuristic, elegant, and timeless design of a guitar body, with a fretboard that further accentuates the asymmetrically curved shape, represented something fundamentally new at the time of the “Stratocaster’s” conception and release. As the plaintiff has argued, nothing of the sort existed in the design repertoire of the time.

designed; only Leo Fender's own earlier models—the "Broadcaster" (later "Telecaster") and the "Precision Bass"—hint at the elements of the asymmetrical basic shape with a pickguard adapted to it, which were further developed in the "Stratocaster" into the slender, gently curved, and elegant form described above. Against this backdrop, the "Stratocaster" body created by Leo Fender constitutes an outstanding, independent creative achievement that clearly reflects the personality of its creator and thus constitutes a copyrighted work.

3.

The plaintiff has demonstrated, by submitting screenshots of the defendant's offer on the online platform <https://de.aliexpress.com/> and providing evidence of a test purchase, that the defendant distributes the embodiment of the electric guitar described in the operative part under Section I in the Federal Republic of Germany.

4.

The electric guitar distributed by the defendant infringes the plaintiff's exclusive rights of use in the "Stratocaster," as it constitutes a reproduction pursuant to Section 16(1) of the German Copyright Act (UrhG).

A copyright infringement under Section 97 of the German Copyright Act (UrhG) does not require an identical unlawful reproduction of a work. It follows from the provision of Section 23(1), first sentence, of the UrhG, according to which adaptations or other alterations of a work may be published or exploited only with the author's consent, that the protection of the right of publication within the meaning of Section 12 of the UrhG and the exploitation rights pursuant to Section 15 extend—to a certain extent—to adaptations that deviate from the original (see Federal Court of Justice, judgment of Dec. 15, 2022, I ZR 173/21, GRUR 2023, 571, para. 27 – Vitrienenleuchte).

When determining whether a modification of a work infringes copyright, it must be taken into account that any adaptation or other alteration within the meaning of Section 23(1), first sentence, of the UrhG, insofar as it is physically fixed, also constitutes a reproduction within the meaning of Section 16 of the UrhG. According to the case law of the Federal Court of Justice, reproductions include not only copies that are identical to the original; rather, the author's reproduction right also encompasses adaptations of the work—even those that are more distant from the original.

The Federal Court of Justice focuses on which objective characteristics determine the creative distinctiveness of the work used. It then determines, by comparing the two designs, whether and, if so, to what extent distinctive creative features of the earlier work have been incorporated into the new design, resulting in a corresponding overall impression, or whether the elements justifying copyright

protection of the earlier work fade into the background in the new design when viewed as a whole, i.e., are no longer recognizable. In this regard, the Federal Court of Justice has emphasized in its previous case law that a comparison of the respective overall impression of the designs is decisive for the infringement assessment, within the framework of which all adopted creative features must be taken into account in an overall view (see, on the foregoing: Federal Court of Justice, judgment of Dec. 15, 2022, I ZR 173/21, GRUR 2023, 571, para. 29 – Vitrienenleuchte). The term “overall impression” will not be applicable, because the European Court of Justice, in its most recent decision, described the comparison of the overall impression as irrelevant, since this criterion concerns the protection of designs. It points out that the use of a work may constitute an infringement even if it concerns only a comparatively small part of the work, and focuses solely on whether creative elements of the protected work that reflect the author’s personality have been recognizably incorporated into the object alleged to be infringing; furthermore, the scope of protection of the copyrighted work does not depend on the degree of creative freedom or the level of artistic merit (cf. the foregoing: European Court of Justice, judgment of Dec. 4, 2025, C-580/23, C-795/23, GRUR-RS 2025, 33141, para. 85 et seq. – Mio et al. v. konektra). However, free and creative decisions will often lie precisely in the combination of elements, and it is only the combination of elements that will reflect the author’s personality. In such cases, the overall assessment of these elements—on which the Federal Court of Justice has hitherto based its determination of the overall impression—is likely to retain its significance.

According to these standards, the contested electric guitar constitutes a reproduction of the “Stratocaster,” as it adopts its creative elements almost identically, as can be seen from the following comparison:



Fender Stratocaster

Gitarre der Beklagten



Fender Stratocaster

Gitarre der Beklagten

The contested electric guitar uses the same design elements that express the creative ingenuity of the “Stratocaster” and reflect the personality of the creator, Leo Fender, and combines them in the same manner. Thus, it adopts the external body shape, the shape and specific placement of the pickguard, and the shape and position of the cable outlet in an identical manner. In doing so, it is not merely the proportions that correspond. Rather, the electric guitar in question has the same dimensions as the “Stratocaster” and even adopts the flattening on its left rear side in nearly identical width. The only thing missing from the electric guitar in question is the “Fender” label on the pickguard; however, this is just as irrelevant to the question of whether it constitutes a reproduction within the meaning of Section 16(1) of the German Copyright Act (UrhG) as the color scheme, which is not relevant for copyright protection.

5.

The defendant exploits the unauthorized adaptation by offering the contested guitar on the online marketplace <https://de.aliexpress.com/> and also by placing it on the market in this country.

6.

The act of infringement indicates the risk of repetition required for the claim for injunctive relief (see Federal Court of Justice, judgment of September 18, 2014, I ZR 76/13, GRUR 2015, 258), which, according to established case law, can only be eliminated by a cease-and-desist declaration subject to a penalty—which is not present here (Federal Court of Justice, judgment of April 3, 2014, I ZB 42/11, para. 12).

7.

The threat of coercive measures is based on Section 890(2) of the Code of Civil Procedure (ZPO).

IV.

The decision on costs is based on Section 91(1) of the German Code of Civil Procedure (ZPO), and the decision on provisional enforceability on Section 708(2) of the German Code of Civil Procedure (ZPO). The appropriate setting of the objection period is based on Section 339(2), first sentence, of the German Code of Civil Procedure (ZPO).

Value of the claim:

Taking all circumstances into account, the value in dispute is set at the appropriate amount of EUR 100,000.00.

Notice of Appeal:

An objection to the default judgment is admissible. It must be received by the Regional Court of Düsseldorf, Werdener Straße 1, 40227 Düsseldorf, within a strict one-month deadline. The deadline begins upon service of this judgment. This deadline cannot be extended.

The appeal may only be filed by an attorney licensed to practice in Germany.

The appeal must include the identification of the judgment being challenged (date of the judgment, case number, and parties) as well as a statement that an appeal is being filed. It must be signed and supported by a statement of grounds; in particular, the grounds for the appeal and the defense must be set forth. Only the deadline for providing grounds for the appeal may be extended upon request if this does not delay the legal proceedings or if important reasons for the extension are presented. This request must also be received by the court within the appeal period. If the appeal is not substantiated or is not substantiated in a timely manner, the case may be lost for that reason alone. The language of the court is German.

An appeal against the determination of the value in dispute may be filed with the Regional Court of Düsseldorf if the value of the subject matter of the appeal exceeds EUR 200.00 or if the Regional Court has permitted the appeal. The appeal must be filed in writing in German or recorded by the court clerk at the

Düsseldorf Regional Court, Werdener Straße 1, 40227 Düsseldorf, no later than six months after the decision on the merits has become final or the proceedings have otherwise been concluded. The appeal may also be recorded by the court clerk of any local court. If the value in dispute was determined less than one month before the expiration of this period, the appeal may still be filed within one month of service or informal notification of the determination order.

Note on electronic legal proceedings:

The appeal may also be filed by transmitting an electronic document to the court's electronic mailroom. The electronic document must be suitable for processing by the court and bear a qualified electronic signature of the responsible person, or be signed by the responsible person and submitted via a secure transmission channel in accordance with Section 130a of the Code of Civil Procedure (ZPO), as further specified in the Ordinance on the Technical Framework Conditions for Electronic Legal Transactions and on the Special Electronic Government Mailbox (Federal Law Gazette 2017 I, page 3803). Further information is available on the website www.justiz.de.

Brückner-Hofmann

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May 21, 2026

CONFIDENTIAL CORRESPONDENCE
DISCUSSION PURSUANT TO
Fed. R. Evid. 408

Confidential & without prejudice.

VIA EMAIL: (Richard.Dissmann@twobirds.com)

Dr. Richard Dissmann
Dr. Laura Jones
Bird & Bird LLP
Maximiliansplatz 22
80333 Munchen
Germany

Re: Fender Musical Instruments Corp. / Schecter Guitar Research, Inc. //
Alleged Copyright Infringement of “Stratocaster” body shape | Our File
No. 391424.01902

Dr. Dissmann and Dr. Jones:

Please be advised that we represent Schecter Guitar Research, Inc. (“Our Client”) with respect to the above-mentioned matter, therefore your letter dated May 11, 2026 (“Your Letter”) to Our Client has been forwarded to us. In examining Your Letter, you state you represent Fender Musical Instruments Corporation, a U.S. company, (“FMIC,” or “Your Client”) and Your Letter concerns “...products which infringe the copyright of [y]our client’s Fender Stratocaster guitar.” Your Letter demands that Our Client “stop manufacturing, selling, marketing, or producing” allegedly infringing products apparently throughout the world, despite the fact that the purported rights upon which your demand is based stem from a default ruling by a Dusseldorf Regional Court, which has no extra-territorial effect. Your Client’s demands are misplaced for numerous

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reasons. After Our Client's consultation with, and in conjunction with European legal counsel, we respond to Your Letter as follows.

I. FMIC Misrepresents an Entry of Default as Binding Precedent

Your Letter quotes from a decision in a matter before a Regional court in Dusseldorf versus a Chinese company which went undefended and resulted in an entry of default ("Default Case"). The facts presented by Your Client in the Default Case is merely a fictitious rendering of the history of the Fender brand and the Stratocaster guitar (or "Strat"). That history has been altered, bent, and made to fit a particular narrative that was told to the Regional court in Dusseldorf. We understand that the failure of the defendant to appear allows the court under section 331(3) of the German Code of Civil Procedure, *Zivilprozessordnung* (ZPO), to accept Your Client's submissions as admitted by that defendant. However, we can find nothing under German law that automatically converts this default ruling into an *erga omnes* declaration of "validity," or required acceptance, such that it is binding on non-parties. With all of the revelatory and overwhelming evidence that contravenes Your Client's position, we are quite sure that a different outcome would occur with a fully developed record.

The Regional court's entry of default was premised on the paucity of information Your Client provided, misrepresenting that Leo Fender alone created the body shape of the Stratocaster. Collaboration defeats Fender's claim that the Strat was "a creation of individual character." Further to this, Your Letter claims that "Fender holds all rights in the Stratocaster body shape, including the right of reproduction, distribution, and communication to the public," as "confirmed by the Court of Dusseldorf in the judgment." We are concerned that Your Client appears to have widely held out to the public, as well as to Our Client, that this "judgment" is binding precedent upon any party other than the single absent defendant in that case, as we are unaware of any jurisdiction that would enforce any rights purportedly "confirmed" by an undefended case.

We also must note that Your Letter was sent to the general info email address for Our Client, info@schecterguitars.com. We hope that this was simply due to a lack of effort to find a specific person with the company to contact, rather than intentionally sending Your Letter to a general mailbox with the understanding that Our Client may not respond timely to your "cease and desist" letter, much like the defendant in the Default Case. This correspondence is merely a non-exhaustive set of the actual facts and the overwhelming contrary evidence to Your Client's position in this matter.

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II. *FMIC's Material Misrepresentations and Omissions as to the History of the Stratocaster Design*

An initial issue is establishing when Your Client, via its alleged predecessors, began making solid body guitars, given the backdating provided in the narrative submitted to the court. Though Fender (Fender Electronic Instrument Company, or "FEIC," at the time) made a handful of lap steel guitars in 1946, it was not until 1950 with the Esquire (with a body shape later known as the Telecaster) that FEIC's first mass produced solid-body guitar entered the stream of commerce.

Leo Fender founded FEIC and never actually owned, worked for, nor was employed by Your Client. In 1954, Leo Fender did not, on his own, invent and design an electric guitar called the Stratocaster through a "lengthy creative process," as described in the Default Case. However, to meet the criteria for EU copyright standards of making "personal creative choices" and the "creation of the individual character," Your Client *must* tell the invented story that Leo Fender was the sole author of the purported creative "work." It is widely known that there were at least four additional collaborators in the design of the Stratocaster body shape, all of whom were essential in the design of the body shape of the Strat and were involved in its developmental process.¹ This collaboration is well-documented, as is Leo Fender's infamous attention to function, manufacturability, and repairability, but *not* aesthetic design.² FMIC's own Justin Norvell, President, Americas, has even acknowledged Leo Fender's now infamous quote, "[i]f I have \$100 to make a product, I'll spend \$99 making it work and \$1 making it pretty."³ Despite the narrative spun in the Default Case, Leo Fender was a technician who admired function and ease of manufacturing; he was not an *artist*, as Your Client wants him to be, nor was he the sole "author" of the Strat body shape, as Your Client wants him to be. Instead, Fred Tavares, Bill Carson, Rex Gallion, and George Fullerton, among others such as Jimmy Bryant, are all considered to have made meaningful contributions to the body shape we now refer to as the Stratocaster body shape, highlighting the functional nature of the utilitarian article. In fact, Fender's own website describes the Stratocaster as a "collaborative work of a remarkable group

¹ Carson, Bill. *Bill Carson My Life and Times With Fender Musical Instruments*. Vintage Guitar Books 1998, pgs. 15-22

² Leo Fender was notoriously focused on function over looks, Leo, himself, stating "my main interest was in the utility aspects of an item – that was the main thing. Appearance came next. That gets turned around sometimes." *Guitar Player*, May 1978; See also Bacon, Tony. *The Fender Electric Guitar Book*. Backbeat Books 2007, pgs. 22-24.

³ Building One with Tomer Cohen, "Building Fender With Justin Norvell: Iconic Guitars, The Art of Restraint, And Learning To Play Faster With AI." January 27, 2026 at 12:50 (<https://open.spotify.com/episode/0bBZUgk1JMueC8yIGb9tZE?si=u0DHmyglTueQ7gOMP8Injg>)

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of designers and musicians,”⁴ rather than by the individual efforts of Leo Fender. This collaboration is well documented by Your Client and many others.⁵ In fact, FMIC’s current website acknowledges that Freddy Tavares “sketched out [the] body shape” of the Stratocaster, and Rex Gallion “suggest[ed] the guitar’s comfortable contours.” (See n. 4.) The claim that Leo Fender solely invented the dimensions and contours of the Strat body shape relies on significant omissions of a key facts.

There are many copyright authorship issues that have arisen out of the Default Case, following Fender’s incomplete representations to the court, that Leo Fender was the sole “author” of the Stratocaster body shape. The Stratocaster body is the result of the efforts of the collective and collaborative efforts of several co-designers and cannot represent one author’s “free and creative choices,” or the “individual personality of its creator.” The facts do not fit the necessary narrative to achieve Your Client’s goal of obtaining a copyright for a portion of a guitar in any jurisdiction. Moreover, since Your Client has relied on the inception date, or first sale, of the Strat in the US in 1954, as a pre-1976 U.S. Copyright Act work, Leo Fender or FEIC would have been required to affix a copyright notice upon the body shape. Such a notice has never been affixed to the Stratocaster or included in any associated literature or advertising, from the first date of manufacture, to present by FMIC or any of its alleged predecessors. Yet, those facts are not discussed in in Your Letter and were also omitted from the materials submitted to the court in the Default Case.

III. FMIC’s Lack of Continuity of Ownership of Intellectual Property

Leo Fender was an owner, with others, of his first company, FEIC.⁶ There is no evidence that Leo Fender ever assigned ownership of the purported copyright to the Strat body shape to FEIC. Given the co-designers listed above, Fender has no evidence that these designers assigned

⁴ Owens, Jeff, The History of the Fender Stratocaster: The 1950s. (<https://www.fender.com/articles/behind-the-scenes/the-history-of-the-fender-stratocaster-the-1950s>)

⁵ Fullerton, George. *Guitars from George & Leo, How Leo Fender and I Built G&L Guitars*. Hal Leonard 2005; Bacon, Tony. *Electric Guitars Design and Invention*. Backbeat Books 2017; Smith, Richard. *Fender, The Sound Heard ‘Round the World*. Garfish Publishing 1995; Bacon, Tony. *The Fender Electric Guitar Book*. Backbeat Books 2007; Balmer, Paul. *The Fender Stratocaster Handbook*. Voyageur Press 2007; Bacon, Tony. *50 Years of Fender*. Backbeat Books 2000; Bacon, Tony. *The Ultimate Guitar Book*. Knopf 1991; Lister, Jonathan. *Electric Guitars an illustrated history*. Quantum Publishing 2010; Bacon, Tony and Dave Hunter. *Totally Guitar The Definitive Guide*. Outline Press 2004; Moseley, Willie. *Stellas & Stratocasters*. Vintage Guitar Books 1994; Wheeler, Tom. *The Stratocaster Chronicles Celebrating 50 Years of the Fender Strat*. Hal Leonard 2004; Day, Paul and Dave Hunter, *Interactive Fender Bible*. Outline Press 2007.

⁶ See, Articles of Incorporation, Exhibit D.

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the purported copyright to the “work.” This is believed to be the case because no such copyright was ever created and no such assignment ever took place. Leo Fender never sold Stratocaster guitars as an individual, rather they were sold by and through FEIC and/or Fender Sales, Inc. We have also not seen any evidence that any intellectual property interest in the purported copyright was transferred by Mr. Fender to the acquiring entity Columbia Records Distribution Corp. (“CBS”), when Mr. Fender sold FEIC in 1965.⁷ For your contentions as to transfer of ownership of copyright to survive, the rights holders would have had to license those rights to FEIC, and those rights would then have been transferred in turn to Columbia Records Distribution Corp., as opposed to the inaccurate information provided to the court that Columbia Broadcasting System, Inc. held rights “by way of universal succession,” and finally to FMIC in 1985.⁸ If our understanding that such documentation does not exist is incorrect, please provide for our review all such copyright license agreements demonstrating a complete continuity of ownership of intellectual property. The Regional court took FMIC at its word that it allegedly owns intellectual property rights in the Strat body shape but also was misled by the lack of provable chain of title of any ownership of the alleged rights in the Strat body shape.

It is known that Mr. Fender had a lengthy non-compete agreement with CBS post-sale. When Mr. Fender returned to guitar manufacturing with his next guitar company in 1974, Music Man,⁹ he continued to make guitars that were Stratocaster shaped (e.g. [Cutlass Collection | Ernie Ball Music Man](#)). In fact, his next company in 1979, G&L,¹⁰ manufactured exact Stratocaster shaped guitars (e.g. [Guitars Legacy | Product categories | G&L Musical Instruments](#)). If all intellectual property rights were, in fact, transferred by Mr. Fender to Columbia Records Distribution Corp., then it is clear that CBS would have waived any and all exclusive rights of sole ownership of the copyright in the Stratocaster body shape when Leo Fender made the exact same guitar at his next two companies, Music Man and G&L. In fact, G&L continued to make Stratocaster shaped guitars until it ceased operations in 2025, and Ernie Ball/Music Man currently continues to make Stratocaster shaped guitars today.

Regardless of whether Your Client *ever* gained intellectual property rights to the Strat body shape, it certainly cannot now claim after the reproduction, distribution, and communication to the public by hundreds of guitar companies by their use of that same body shape for over 70 years

⁷ Reckert, Clare M., New York Times, January 5, 1965, Page 54. *See* Exhibit A.

⁸ FEIC was sold to Columbia Records Distribution Corp (a New York corporation) on 12/22/1964, although the date is often cited as 1/4/1965 for \$13M, and was later sold by Columbia Broadcasting System, Inc. to the current alleged owner of the copyright, FMIC. *See* Footnote 7.

⁹ Bacon, Tony and Paul Day. *The Fender Book A complete history of Fender electric guitars*. Balafon 1998, pp. 44.

¹⁰ *Id.*

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that any exclusivity can be had as to the alleged “applied art” of the Strat body shape. Your Client has forfeited its claims of ownership of any intellectual property rights via express abandonment, acquiescence, and passivity. As to the 70-plus years of inaction as to third-party manufacturer’s usage of the Strat body – estoppel and laches will undoubtedly apply.

IV. The Stratocaster Shape Is Not Protectable Under Copyright Law

Under United States copyright law, copyright protection covers original works of authorship expressed in affixed tangible medium (17 U.S.C. § 102), but such protection does not extend to “useful articles” (17 U.S.C. § 113(b)). The term “useful articles” is defined as “article[s] having an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information” and as including “article[s] that [are] typically part of a useful article.” 17 U.S.C. § 101. While there is a limited exception that allows for protection of pictorial, graphic, or sculptural features of a useful article’s design if those features “can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article,” the dimensions and contours cited as elements of the design of the Strat body shape *cannot* be separated from the useful article itself – a guitar. *Star Athletica, L.L.C. v. Varsity Brands, Inc.*, 580 U.S. 405, 409 (2017) (*citing* 17 U.S.C. § 101). The U.S. Supreme Court specifically identified a guitar as a useful article and drew a clear distinction between the shape of the guitar (a part of the useful article), and the artwork applied to the guitar, such as an image painted on or applied to the body: “[C]onsider, for example, a design etched or painted on the surface of a guitar. If that entire design is imaginatively removed from the guitar’s surface and placed on an album cover, it would still resemble the shape of a guitar. But the image on the cover does not “replicate” the guitar as a useful article. Rather, the design is a two-dimensional work of art that corresponds to the shape of the useful article” *Id.* at 418. Similarly in Japan, the Supreme Court has addressed that mass-produced utilitarian goods can only be protected where its shape is conceived as a creative expression of thoughts or emotions, *independent of the components derived from its utilitarian function*.¹¹ Thus, U.S. and Japanese courts, among others, are clear that the body shape of a guitar derived by its functional aspects is *not* protectable via copyright. Given the functional, utilitarian and commercial aspects of the Stratocaster shape, the decision of the Dusseldorf Regional Court is also clearly inconsistent with precedent in Germany. See, e.g., *German Federal Supreme Court, 20 February 2025, Case No. I ZR 16/24 – Birkenstocksandale*.

¹¹ *In re Stokke AS et al.*, Supreme Court of Japan, Judgment of April 24, 2026, Case No. 2025 (Ju) No. 356.

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V. FMIC and its Predecessors Have Failed to Obtain Intellectual Property Rights in the Stratocaster Body Shape

In 1952 FEIC filed for a design patent to protect the initial shape of the Precision Bass (“P-bass”)(U.S. Des. 169,062 or the “’062 Patent”). That design patent would have expired in 1967, and that shape would have moved into the public domain as of that date. It should also be noted that FEIC never sought to enforce its rights in the initial P-bass ‘062 Patent, despite several other manufacturers copying it during the early 1960s. To compound this release into the public domain, FEIC filed, in 1959, another design patent (U.S. Des. 187,001 or the “’001 Patent”) the shape of which was already the precursor to the Strat as the first form of the P-Bass from the ‘062 Patent, which was in commerce as early as 1951. But with ‘001 Patent, FEIC has fully disclosed, for public domain usage as of the patent’s expiration in 1973, the contours and curves of the Strat and the updated P-bass. These are the very same curves that Your Client now seeks to enforce as a copyright some 53 years after the expiration of such patents. The remarkably “artistic” language describing the Strat body shape in the Default Case is clearly verbiage crafted by counsel specifically framed for the court, rather than language attributable to any of the designers of the “work.” This verbiage even specifically mentions the pickguard as emphasizing the shape of the guitar. Neither FEIC nor any of its alleged successors have ever filed to own any intellectual property protection for the pickguard in any jurisdiction.

Although alluded to in Your Letter, but clearly not discussed is the fact that from 1954 until 1964 Fender guitars were hand sanded and thus wide variations existed as to the guitar’s dimensions, contours, and curves. It is well-documented that Strat bodies vary greatly, even from year-to-year, and by the 1970s were often made with significantly fewer defined contours, with less depth, and many were just flat (or slab) bodies. It is difficult to comprehend how the specific shape and contours can be of such artistic value, while the very company peddling this narrative has so notoriously *failed* to maintain the exact curves and contours of the first Strats sold in 1954. Your Client cannot enforce a copyright in the Strat body shape when the dimensions and contours of the Strat body shape have been inconsistent over time. No one in the worldwide music instrument (“MI”) industry can rely on a moving target as a benchmark.

The first application by FMIC seeking *any* intellectual property protection specifically for the Strat body shape was not until 2003. However, as Your Client is well aware, and what Your Client failed to disclose to the German court under any standard of truthfulness, is the prior adjudication declaring the Strat body shape generic in the largest guitar market in the world, the U.S., in the precedential 2009 United States Patent and Trademark Office, Trademark Trials and Appeals Board (“TTAB”) decision (the “TTAB decision”). That TTAB decision informed Your



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Client, as well as all other guitar manufacturers and distributors, that the Strat (along with the Telecaster and the P-Bass) body shape could not act as a source identifier for any one company because of the (as of 2009) 50-plus year rampant third-party usage. As you may know, Our Client was one of the opposers of FMIC's trademark applications in that TTAB case, and as such Your Client is well aware, via Our Client's testimony in that case, of the manufacturing history of Our Client of Strat style guitars. The evidence of third-party use of the Strat body shape before the TTAB decision was overwhelming and has only expanded even further since. That decision has been substantially relied upon for over 17 years by the worldwide guitar market.

If FMIC is to be granted copyright protection on the basis that Leo Fender, a U.S. citizen, was the sole author who (according to the regional court's decision) granted exclusive rights to the body design to CBS via FEIC, both U.S. entities, any decision under U.S. law pertaining to the set of facts around the Strat body shape, namely that the body shape is generic, should also be reflected in any analysis applied in Germany. While we can acknowledge German courts are not subject to the precedent of U.S. courts, the fact remains that Fender has attempted to claim exclusive rights to the Strat body shape and failed in one, arguably more appropriate, forum, and made no representation to the court of the adverse TTAB decision. The facts cannot apply in a vacuum in a German courtroom solely based on an uncontested filing by FMIC – the court must and will look at what U.S. courts have said about the same exact issue, 17 years ago, which is that the Strat body shape has already been adjudicated as generic. We are certain that any court would agree, if provided all relevant facts, that FMIC cannot be granted a copyright in a guitar body design that Your Client can use to prevent the sale of competitor guitars with the same body shape, when that body shape has already been judged to be generic, and numerous other parties have made and sold guitars with that body shape throughout the world for several decades. If a court held otherwise, it would be condoning unfair competition.

The TTAB noted that FMIC had advertised worldwide that the Strat body was the most copied guitar shape in the world. Those advertisements bore Your Letter's admissions that Your Client's Stratocaster has "been copied before," which, as we know is a more than massive understatement. The Strat, as Your Client in its own advertising has claimed and is quite well documented, is the most copied guitar in the history of the electric guitar. Even as early as the 1960's, FEIC not only *admitted the widespread copying of the Strat shape but* tried to capitalize on it by publicizing its Strat style model as "The Most Imitated Guitar in the World."¹² Even Fender's own expert witness in the TTAB case testified to the fact that each advertisement pointed to the "shameless copies [of the Strat bodies] that had started to flood the market in the early

¹² See Exhibit B.

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1960's.”¹³ Additionally, Your Client has literally advertised that consumers can buy “copies” and then perhaps “buy the real thing.” These are not merely admissions; these ads show that Your Client knew of the third-party manufacturers and thoroughly waived all their rights as to any claims against them for such “copies.” In fact, the overwhelming third-party usage of the Strat body shape for over sixty years is exactly why Your Client must now, in a final fit of desperation, seek to reclaim its long-lost rights to its self-proclaimed “most recognizable design[] in the history of music.”¹⁴

VI. Third Parties Have Created the Marketplace For Strat Shaped Guitars Since the 1960s

Within a few years after the introduction of the Stratocaster, by the late 1950's, third parties began to use the Strat body shape and sell guitars (“Competitive Guitars”) in the U.S. and Europe (and throughout the rest of the world). Some of the first companies to manufacture and sell Competitive Guitars in the Strat style were Carvin Musical Instruments and EKO Guitars in 1959, Watkins Guitar in 1961, Kent in 1962, Futurama, German companies Hagstrom and Hofner in 1963, Silvertone in 1964, and Burns Guitars and Magnatone in 1965. From the mid-1960's through the 1970's, FMIC's alleged predecessors' indifference to the demands of the marketplace opened the door for third parties to enter the electric guitar market, selling their Competitive Guitars. By way of example only, The Charvel Guitar Company (prior to acquisition by FMIC), DiMarzio Musical Instrument Pickups, Inc., and Mighty Mite, which manufactured and sold guitar and/or bass bodies in the Strat shape, were prominent companies in the 1970's along with other companies that produced and sold complete Competitive Guitars such as Hoshino U.S.A., which manufactured the Ibanez brand, Music Man, Inc. (at Leo Fender's direction), Electra Guitars, Hohner, Inc., Hondo, Aria Pro II, and Ampeg.

In the 1980's, a growing number of third parties continued to develop and expand their manufacturing, marketing, and sale of Competitive Guitars. In addition to the third parties that were manufacturing Competitive Guitars in the 1970's, by way of example only, companies such as Tokai Guitar Company, C.G. Conn, Ltd., Gibson (which also manufactured the “Epiphone” brand, and later the “Valley Arts” brand), Jackson (prior to acquisition by FMIC), Casio, Hamer

¹³ In the 1980's, CBS and subsequently FMIC ran various advertisements acknowledging the increasing number of Competitive Guitars flooding the market. By way of example, a *Guitar Player*, August 1986, ad states: “Nothing can compare to the genius of an original. Because even the best copies are only imitations. The same is true in music. Eric Clapton and the Fender Stratocaster are probably the *most imitated guitarist and guitar in the world.*” (Emphasis Added). See Exhibit C.

¹⁴ <https://www.guitarworld.com/music-industry/fender-legal-ruling-protect-stratocaster-body-design>

(which later also produced guitars and basses under other brand names such as “Slammer”), St. Blue's Guitars, G&L Guitars (again, at the direction of Leo Fender), Yamaha Corporation, as well as hundreds of other companies also made Competitive Guitars through the 1980's. Another significant entry into the market was one of FMIC's biggest competitors at the time, in the early 1980's, Kramer, which started making and selling Competitive Guitars in the U.S. and was eventually selling a comparable number of Strat shaped guitars to FMIC. Use of the Strat shape in Competitive Guitars continued to rapidly expand through the 1990's by other guitar makers such as Zion, Don Grosh Custom Guitars, Dean Guitars, Chandler, Rustler Guitars, and Samick, among many others. More companies offering replacements bodies continued to enter the market as well, such as MusiKraft, Inc. and Allparts. Some other third parties that continued to manufacture and sell Competitive Guitars in the 1990s and early 2000s included, without limitation, Chapin Guitars, AXL Guitars, Austin Instruments, 17th Street Guitars, Tyler Guitars, and Floyd Rose Guitars. This number has continued to expand to the present day.

This unopposed market use of the Strat body shape by hundreds of third parties over the past seventy (70) years to the present day demonstrates that FMIC has no basis for claiming that it is, or has the right to be, the exclusive manufacturer of guitars in the Strat body shape. Indeed, the Strat shape has long been an industry standard as a platform for thousands of variations.

This widespread sale of the Strat shape by third parties was extensively publicized in major consumer and trade magazines around the world, such as Guitar Magazine, Musical Merchandise Review (MMR), Music Trades, International Musician & Recording World (IM&RW), Guitar Player, Vintage Guitar, Premier Guitar, Guitar World, Guitarist, and Young Guitar. Such publications simultaneously contained advertisements of Strat shaped guitars manufactured by Fender and many other third parties. In addition to the rapid growth of the guitar industry throughout the decades, representatives from FMIC and various third parties continue to regularly attend and display their Competitive Guitars at NAMM and European tradeshows. The presence of such third parties at these tradeshows showing and selling Competitive Guitars was unimpeded for over six decades.

In addition to advertising and promoting the Strat shaped Competitive Guitars in the same channels of trade, third parties have sold and continue to sell Competitive Guitars through the same retail outlets that Your Client uses. Many third parties manufacturing Competitive Guitars sell through major retail outlets such as the Guitar Center, Sweetwater, Musicians Friend, Thomann, Andertons, American Musical Supply (AMS), as well as hundreds of other stores and websites in the US and the EU. It is standard practice for the various retail outlets and/or dealers to advertise and display Your Client's guitars right next third parties' Competitive Guitars.

Competitive Guitars were ubiquitously displayed on television, in movies, on the internet and were being played by some of the most influential musicians of all time, such as Eddie Van Halen, who played a Charvel Strat style guitar and later a Kramer Strat style guitar. Thus, the Strat shape grew in popularity among the general buying public. The history of the Stratocaster is one that cannot be explained away or repurposed – it is one of massive worldwide third-party adoption by hundreds of companies with clear legal history of genericness and abandonment of all intellectual property protection.

In 1990, FMIC introduced its catalog entitled “Fender Frontline,” which consists of FMIC’s products, including guitars in the Strat shape, among other information including photographs and articles of Fender’s endorsees. Fender Frontline was written and produced by and under the supervision of Your Client for more than twenty years. Following the lead of its alleged predecessors, FMIC has run articles and advertisements in Fender Frontline also acknowledging the use of the Body Shapes by hundreds of other manufacturers with the slogan “*Why Buy A Copy When You Can Afford An Original?*” FMIC never mentioned any of the Body Shapes as having any trademark protection in the masthead of its Fender Frontline catalog until 2004, one year after filing its ill-fated trademark applications in the U.S.

VII. FMIC Failed to Police its Intellectual Property Rights, Rendering the Stratocaster Body Shape Unprotectable

As discussed at length, there was rampant worldwide unimpeded third-party manufacturing advertising and sale of Competitive Guitars. Other than acknowledge and acquiesce, FMIC and its alleged corporate predecessors completely failed to act as to any of these Competitive Guitars.

During this same time period, Asian imports/exports of guitars boomed; Japanese manufacturers such as Ibanez, Tokai, Fernandez Guitars and Aria were shipping huge quantities of guitars and basses using the Strat shape. To compete with these lower-cost imports, Fender’s alleged corporate predecessors began outsourcing manufacturing to the Japanese manufacturer, Fujigen Gakki. The same factory was simultaneously producing and shipping electric guitars bearing the Strat shape for FMIC and FMIC’s competitors.

Beginning in the late 1980’s, FMIC instituted limited trademark enforcement efforts, only policing FMIC’s registered marks (the wordmark FENDER, the model names, and headstock shapes). Furthermore, prior to filing the 2003 trademark application for the Strat body shape, FMIC and its alleged corporate predecessors never placed any notice on the instruments or the product packaging claiming the Body Shapes as common-law trademarks or copyrights. It is



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apparent that FMIC, and its alleged corporate predecessors, understood the importance of registering and protecting some intellectual property rights, as to its wordmarks and headstocks only, but not the Strat body shape.

Many different entities have used, and continue to use, the Strat shape in connection with their electric guitars. Such usage by third parties has been continuous and widespread. These Competitive Guitars have been, and continue to be, widely distributed throughout the world, across all channels of trade and at all price points in full view of FMIC. Significantly, prior to the filing of the 2003 trademark applications (the subject of the TTAB case), the facts demonstrate that FMIC and its alleged corporate predecessors have treated the Strat shape as if it resided in the public domain. After more than half a century of competitive usage by hundreds of manufacturers, the production and sale of innumerable Competitive Guitars in the Strat shape have generated actual sub-genuses of guitars and bass guitars in the mind of the consuming public. The exclusion of the events and clear adjudication of the Strat body shape as generic is perhaps the most egregious omission Your Client has failed to supply to the Regional court.

When FMIC sought U.S. trademark protection for the Strat (and Tele and P-Bass) body shape in 2003, the trademark application was met with an opposition group of seventeen companies that opposed the registration of such body shape as a trademark. That opposition group was ultimately successful in its opposition (*See Spector v. FMIC, TTAB Opp. No 91161403*), and the TTAB rendered a precedential decision on March 25, 2009. That decision was not appealed and has become law in the US. The TTAB decision and opinion are attached hereto. FMIC has abided by that legal decision since 2009 and acted accordingly, making no claim to trademark or any other intellectual property ownership of the Strat body shape worldwide. Although within the time of the TTAB decision there were many companies selling Strat style bodies and guitars, that number has increased worldwide, as the result of the impact of the TTAB case became more widely understood. With decades of rampant third-party usage of the Strat body shape the Stratocaster was generic long before the beginning of the TTAB case in 2003 – by 2009 it was quite clear that the TTAB decision made that case the exemplar of genericness. FMIC has not since sought protection for their body shapes in any other jurisdictions, as it knows that litigation will bring in the holding of the TTAB case, along with the overwhelming evidence of genericism of the Stratocaster body shape.

Enforcing copyright protection for the Strat body shape by reliance of default is a vaporous measure. Granting copyright protection retroactively to a mass-produced generic guitar body shape after 71 years would render superfluous the trademark law that states that such guitar bodies must act as a source indicator for the manufacturer. Instead, a regional court that has been misled

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by the selective misrepresentations by FMIC, with glaring omissions of material facts, would effectively allow enforcement of the design of a utilitarian article by using copyright rights, thereby confusing worldwide popularity of a generic shape with the exclusive rights of a single individual, Leo Fender. Leo Fender, who operated two third-party companies making Competitive Guitars, had ceased to be a part of the very company that seeks to enforce those rights over 61 years after Mr. Fender sold that company.

As has been demonstrated by massive evidence made available to you with this correspondence,¹⁵ third parties have relied upon the free and unfettered use of the Strat shape to manufacture and sell Competitive Guitars in the market for more than seventy years; they have built businesses upon them, employed thousands of people to make them, spent millions of dollars to advertise and sell them, and in many cases, built entire businesses in reliance upon their ability to continue to do so. As a simple matter of equity and public policy, FMIC, more than seventy years *ex post facto of the introduction of the Strat shape* cannot be given the authority to monopolize the Strat shape to the exclusion of these many manufacturers and distributors of Competitive Guitars by a claim of a default. Thankfully, for the massive number of consumers who have bought and will continue to buy these Competitive Guitars, the law prevents FMIC from monopolizing this shape that has been used by numerous parties for more than 70 years.

VIII. The Dimensions and Contours of Our Client's Guitars

In Your Letter you claim that Our Client's guitars are nearly identical to Your Client's guitar body shape. However, as Your Letter makes clear, Your Client's "contours and curves" are vital to Your Client's claim of a "timeless design" that fits with the "artistic" achievement necessary to establish copyright rights in Germany, and thus each of those dimensions are important. Further, Your Letter also makes clear that Your Client's claim of copyright is NOT in the guitar as a whole, but just the guitar body. What is clear to the reader of Your Letter is that counsel itself cannot tell the difference between the "Chinese copy" guitar from the regional court case and Your Client's guitars. The photos provided for reference in Your Letter as the "Fender 'Stratocaster' body" are actually the defendant's guitar from the regional court case. This clearly shows that the Strat body is ubiquitous and generic, and incapable of intellectual property protection. As the substantial similarity standard still must be applied to the alleged copyright, we must document the differences of Our Client's products referenced in Your Letter. In comparison, and direct contrast to Our Client's guitars, there are stark and clear differences. In Your Letter, you depict the "Schecter Nick Johnston 10th An HSS" as a guitar that is "nearly identical" to Your

¹⁵ A link to a folder containing thousands of pages showing widespread third-party use of Fender's body shapes pre-2010 is being provided herewith.

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Client's guitars. The "nearly identical" claim is not applicable to the Schecter body shape shown in Your Letter. Our Client's guitar has a wide sweeping radius curve in the back of the guitar, along with a carved heel joint where the neck meets the body, creating an angle where the heel plate attaches. Our Client's guitar also features a cutaway (scoop) behind the upper bout – a feature prominent in the photographs included in Your Letter. Additionally, the "HSS" in the model name, and in the MI industry, indicates a humbucker, single coil, single coil configuration of pickup placement and positioning. Is it Your Clients intent to expand the alleged copyright claims to features of the guitar? Clearly the Schecter guitar features, including, but not limited to, the knob placement and jack placement, differentiates Our Client's guitars from Your Client's in commerce. We do not see a direct measurement analysis of the guitars in Your Letter, despite the purported significance of each and every curve thought of by the authors in the design of the Strat body. Indeed, if such an analysis were performed, it would be unequivocally demonstrated that Our Client's guitars significantly differ from the photos of the guitar body in Your Letter. Additionally, Our Client's instruments are marked with their own marks, finishes, and features, and in no manner infringe on any rights of Your Client.

IX. Ethical Concerns

Aside from the extensive historical inaccuracies in the narrative placed by FMIC before the Court in Düsseldorf and parroted in Your Letter, as discussed at length herein, many of the contentions raised in Your Letter raise serious legal ethics questions.

Your Letter makes threatening reference to "incriminated acts" allegedly committed by Our Client. The reference to such criminal acts is made in connection with your attempt to exact both alleged monetary damages to FMIC in addition to purported legal fees to you, all of which is to be made payable directly to your law firm, Bird & Bird, LLP. It is well-settled that in most jurisdictions throughout the United States, that an attorney's threat to the use of the criminal justice system to effectuate a result in a civil matter, which appears to have been done in Your Letter, is a serious ethical breach that cannot be condoned. Further compounding this ethical infraction herein, is the fact that Your Letter seeks *direct payment to you*. This attempt to coerce Our Client to pay money *directly to you* or otherwise face referral to criminal authorities by you or your client for Our Client's purported criminal acts, appears to be the precise unethical *quid pro quo* that our system of legal ethics strictly proscribes.

Moreover, it is well-settled that in negotiations with unrepresented adverse parties, some degree of "puffery" is tolerable, but an attorney may not engage in blatant misrepresentations. It is believed that this is another ethical infraction that is thematically and pervasively woven throughout Your Letter. It is believed that Your Letter careens far beyond permissible "puffery"

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in its representation to Our Client that “Fender holds all rights in the ‘Stratocaster’ body shape, including the rights of reproduction, distribution, and communication to the public. This was also confirmed by the Court of Düsseldorf in the judgment referenced above.” In keeping this analysis tethered to reality, it should be noted that the Court in Düsseldorf has only entered a default which has yet to even be reduced to a final judgment and is not binding on Our Client or anyone else, other than perhaps the defendant in the Default Case. The adoption by the Court in Düsseldorf of Fender’s factual and legal contentions was procedurally done rather than substantively decided, simply because there was no defense interposed. For reasons that are, or should be well-known to you, the contention that the “decision” in the Default Case represents precedent that binds Our Client, as you assert in Your Letter, is believed to be a blatant falsehood done by design to instill resolution by fear and panic, and is clearly not just negotiation “puffery.” In reality, the default decision entered in the Default Case involves legal and factual contentions that, for many reasons, are far from “final,” and are easily contestable on the merits, and in any case and do not bind, and will not bind Our Client.

Another example of what appears to be a clear misrepresentation, is the falsehood that the Court of Düsseldorf can bind the extraterritorial actions of Our Client – a United States corporation – in its manufacturing, sales and marketing efforts that take place in the United States or anywhere outside of Germany. Indeed, Your Letter, without limitation, demands that Our Client destroy *all* of its allegedly infringing products, without regards to where its manufacturing, sales and marketing efforts have and are taking place. For reasons that are, or should be well-known to you, this legal contention fails for a myriad of reasons, not the least of which are elementary legal principles which need not be recited herein. Once again, this appears to be a misrepresentation designed to elicit fear and panic to induce a resolution, rather than mere negotiation “puffery.”

Thus, to the extent any negotiation misrepresentations have been made to Our Client in Your Letter, same are violative of legal ethics rules.

X. Conclusion

As we have stated above, this is not an exhaustive recitation of the facts nor the applicable law but should act as a stern reminder of the vast amount of applicable information that is available to the MI industry as a whole. We hereby demand that you withdraw the entirety of your claims as stated in Your Letter. Our client has every right to continue to sell its guitars with Strat-style guitar bodies, whenever and wherever it so chooses, as does the entire MI industry on a worldwide basis. Efforts by Your Client to bully competitors based on misrepresentations and overstatements are anti-competitive. If Your Client continues to pursue these matters, Our Client will, of course, seek all available remedies, including all attorneys’ fees and costs.



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Nothing contained in this letter should be considered as a waiver of any rights and claims of Our Client. Further, nothing herein should be construed as an adoptive admission of Our Client. Our Client hereby reserves all such rights and remedies under both law and equity.

Sincerely,

A handwritten signature in blue ink, appearing to read "R. Bienstock", with a long, sweeping horizontal stroke extending to the right.

Ronald S. Bienstock

RSB/kez

Enc.

Cc: Schecter Guitar Research (via email)
Zachary Klein, Esq. (via email)
Mark Hanna, Esq. (via email)

EXHIBIT A

5/19/26, 5:40 PM

C.B.S. ACQUIRES GUITAR CONCERN; Purchases Fender Co. for \$13 Million in Cash Deal - The New York Times

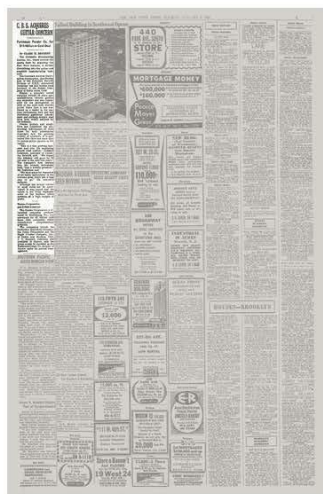
The New York Times

<https://www.nytimes.com/1965/01/05/archives/cbs-acquires-guitar-concern-purchases-fender-co-for-13-million-in.html>

C.B.S. ACQUIRES GUITAR CONCERN; Purchases Fender Co. for \$13 Million in Cash Deal

By Clare M. Reckert

Jan. 5, 1965



See the article in its original context from
January 5, 1965, Section BUSINESS FINANCIAL, Page 54 [Buy Reprints](#)

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The Columbia Broadcasting System, Inc., which entered the sports field by acquiring the New York Yankees, is further diversifying into the guitar and amplifier manufacturing business.

The Columbia Records Distribution Corporation, distributing arm of the Columbia Records Division of C.B.S., announced yesterday the \$13 million cash purchase of the Fender Company of Santa Anna, Calif.

Fender, a privately owned company formed 19 years ago, manufactures electric guitars and amplifiers and was responsible for the development in 1946 of the solid body electric guitar. Since then it has continued as a leader in the musical instruments field and has introduced significant innovations and striking designs that have been widely adopted by the industry.

Fender guitars and amplifiers are considered the outstanding instruments of their types by both professional musicians and the growing number of amateurs. It is estimated that there are more than 15 million guitar players in the nation.

"This is a fast growing business tied into the expanding leisure time market," Goddard Lieberman, president of Columbia Records, said. "We expect this industry will grow by 23 per cent in the next two years."

The company's first venture into the musical instrument field, "has a terrific potential," Mr. Lieberman said.

"We have plans for expansion of all kinds, particularly in the overseas area, which has a long way to go," the executive declared.

Although the annual volume of sales could not be ascertained, it was stated that the figure is not truly representative of the business which operates at a high margin of profit.

Harsco Corporation and & Ohio Concerns



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5/19/26, 5:40 PM

C.B.S. ACQUIRES GUITAR CONCERN; Purchases Fender Co. for \$13 Million in Cash Deal - The New York Times

The Harsco Corporation, a diversified industrial producer based in Harrisburg, Pa., has purchased for \$7 million cash three Ohio companies which manufacture complementary products.

The companies include the Perfection Steel Body Company, the Cobey Corporation and the Eagle Crusher Company, Inc., of Galion and Bucyrus, Ohio.

J. T. Simpson, chairman and president of Harsco, said the group would be operated as the Perfection-Cobey Co. division of Harsco under its present management.

EXHIBIT B

**THE MOST IMITATED GUITARS
IN THE WORLD**

*often
copied
but
never
equalled*

Design, component parts and workmanship of Fender Fine Electric Instruments remain unmatched by any other instruments. Fender Engineering has led and will continue to lead the field. For the original and genuine... choose Fender.

Fender
SALES, INC.

**THESE ARE THE FEATURES THAT
HAVE MADE FENDER FAMOUS**



This modern head design has been the identifying mark of Fender Guitars since their inception. Distinctive and attractive on the hand-stead, yet functional with its ease of tuning and straight string pull.



All Fender Tremolo units have been awarded patents for design and engineering including the Tremolo Arm which is moveable in or out of playing position. The Tremolo units in the Jaguar, Jazzmaster and Bass VI work in conjunction with the "Floating Bridge" and feature a "Frem-isk" which stops the tremolo block permitting strings to be changed simultaneously or individually and also prevents detuning of the strings should one break during a performance. Patent Numbers 2,972,923 - 2,741,146.



Fender "Micro-adjustable" bridges are completely adjustable on all Guitars and Bases. All models are fully adjustable for string length and height. In addition, on some models, the entire bridge as well as each individual string may be adjusted for height by the master bridge adjustment screws on either side of the bridge. Patent Number 2,972,923 and Patents Pending.



The contoured body design with the "Dif-Set" waist is another Fender First. This unique design is distinguished in comfort and is accomplished by curving and relieving the guitar body so that it snugs into the body of the player. Also, the front of the guitar is dressed away, providing a firm comfortable arm rest. Patent Numbers 2,560,900 - Des. 187,061; 186,826; 160,062; 164,227.



Patented pickups are designed and built by the Fender Company for each instrument. Pickups are wound for maximum wide-range tone benefits and reflect many hours of testing by the Fender Engineers. Fender tonal qualities remain unmatched by any other guitar in their field. Patent Numbers 2,508,204 - 2,976,755 and Patents Pending.



Another Fender First is a special string mute carelessly invented on the bridge of the Jaguar and Bass VI. The "Fender Mute" is easily switched from open to muted position, thus providing rapid playing style changes. With the "Mute" it is no longer necessary to remove the bridge cover to dampen the strings for the special effects used by many guitarists. Patent Pending.



Necks of all Fender Guitars and Bases are "Tass-rod" reinforced and may be adjusted should it become necessary to do so. These slender necks are of natural blond hard maple with rosewood fingerboards. Another feature making Fender preferred by musicians throughout the world.

EXHIBIT C

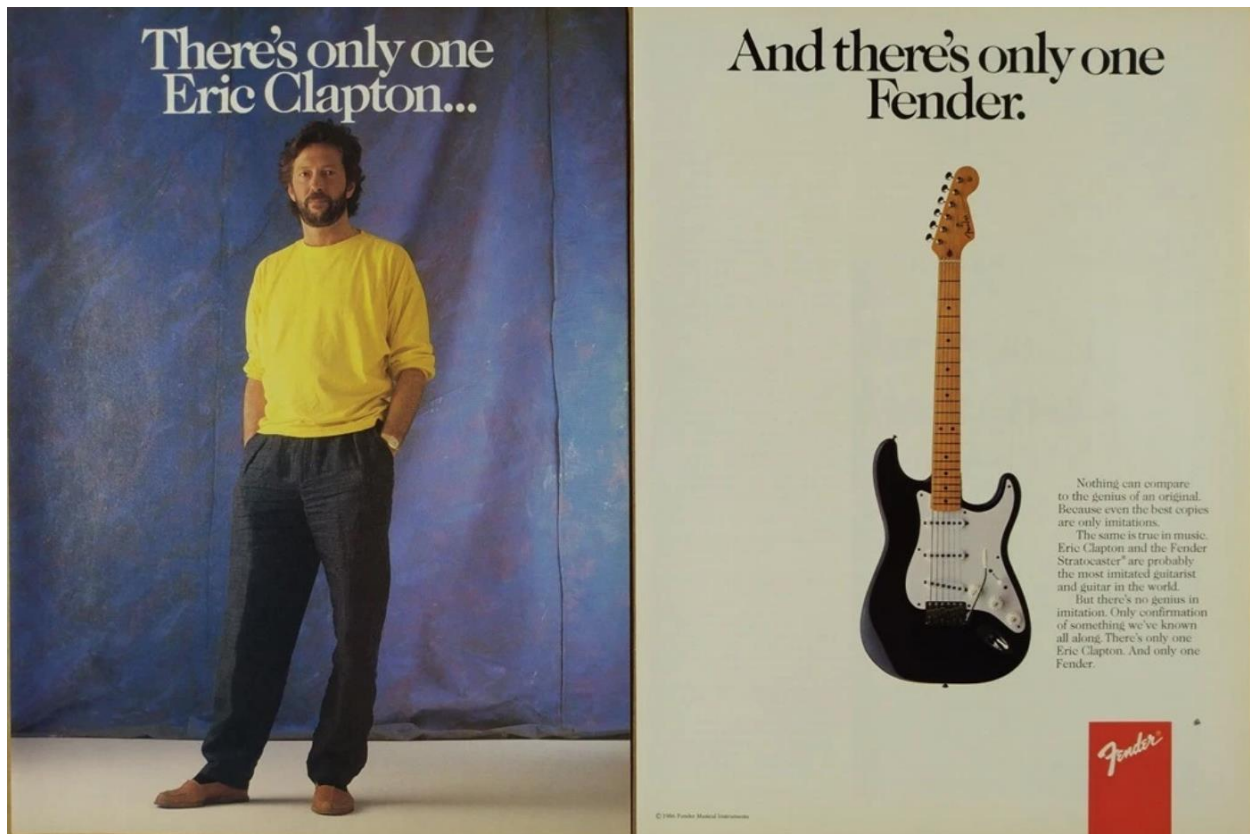


EXHIBIT D

<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p> <p>29</p> <p>30</p> <p>31</p> <p>32</p>	<p>Restriction of right to amend articles</p> <p>Yes</p> <p><input checked="" type="checkbox"/></p>	<p>ARTICLES OF INCORPORATION OF FENDER ELECTRIC INSTRUMENT COMPANY, INC.</p> <p>KNOW ALL MEN BY THESE PRESENTS:</p> <p>That we, the undersigned, citizens and residents of the State of California, have this day voluntarily associated ourselves together for the purpose of forming a corporation under the laws of the State of California, and we do hereby certify and state:</p> <p>ARTICLE I</p> <p>The name of this corporation is <u>FENDER ELECTRIC INSTRUMENT COMPANY, INC.</u></p> <p>ARTICLE II</p> <p>That the primary business in which this corporation in- tends initially to engage in is the manufacture, sale and dis- tribution of all types of electrical musical instruments.</p> <p>In addition to the primary business, the general purposes for which this corporation is formed are as follows:</p> <p>a. To manufacture, construct, repair, own, buy, lease from others, or otherwise deal in, acquire, sell, convey, trans- fer, lease to others, and otherwise dispose, mortgage, or otherwise encumber, all types of electrical musical instruments, parts, devices, appliances, engines, motors, machinery, and things used in the manufacture, construction, repair of electri- cal musical instruments.</p> <p>b. To manufacture, buy, sell, and generally deal in machinery and equipment of all kinds, and such mechanical devices and engineering appliances as are generally manufactured,</p>	<p>258641</p> <p>FILED In the Office of the Secretary of State of the State of California DEC 6 - 1951 FRANK M. JORDAN, Secretary of State <i>Ally A. Blyden</i> Deputy</p>
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LLOYD S. VERRY
ATTORNEY AT LAW
1915 QUINCY AVE. BLDG.
PHOENIX 1900
FULLERTON, CALIF.

1 bought, sold, and dealt in by manufacturers and dealers in
2 electrical musical instruments of all kinds, and such other
3 products as this corporation may be engaged in manufacturing
4 from time to time.

5 c. To own, maintain, conduct and operate a general
6 manufacturing plant for the manufacturing, keeping and repairing
7 of all types of electrical musical instruments, and such other
8 kinds of instruments or products as this corporation may be engaged
9 in manufacturing.

10 d. To purchase, lease from others, and otherwise acquire,
11 sell, convey, transfer, lease to others, and otherwise dispose
12 of, mortgage, or otherwise encumber, real or personal property,
13 of all kinds and descriptions.

14 e. To acquire, hold and sell the shares of other corpora-
15 tions, and negotiate for the sale, hypothecation, or disposal of
16 the same; to borrow and lend money in connection with the fore-
17 going purposes, with or without security therefore; to execute
18 notes, bonds and all other obligations for money borrowed, property
19 purchased, or otherwise acquired by this corporation, labor done,
20 or service performed for this corporation, or any lawful purposes,
21 and to secure the payment of the principal and interest of said
22 notes, bonds, or other obligations by mortgage, pledge, hypothe-
23 cation, deed of trust, or otherwise, of any or all property owned
24 or which may be acquired by this corporation; and generally to
25 transact and carry on any other business, and to exercise any
26 other powers which may be necessary, proper, or convenient to be
27 carried on or exercised in connection with any of the foregoing
28 purposes or incident thereto.

29 f. To enter into, make, perform and carry out contracts
30 of every sort and kind, which may be necessary or convenient
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May 21, 2026

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1 for the business of this corporation, with any person, firm,
2 corporation, private, public or municipal, body politic, and
3 state territory or municipality of the United States or any
4 foreign government, colony or body politic.

5 g. To adopt, apply for, obtain, register, purchase,
6 lease or otherwise acquire, and to maintain, protect, hold, use,
7 own, exercise, develop, operate and introduce, and to sell,
8 grant licenses or other rights in respect of, assign or otherwise
9 dispose of or turn to account any trade-marks, trade names,
10 patents, patent rights, copyrights, and distinctive marks and
11 rights, analogous thereto, and inventions, improvements, pro-
12 cesses, formulas and the like, including such thereof as may be
13 covered by, used in connection with, or secured or received
14 under, letters patent of the United States of America or else-
15 where, or otherwise, which may be deemed capable of use in
16 connection with the business of this corporation, and to acquire,
17 use, exercise or otherwise turn to account licenses in respect
18 of any such trade-marks, trade names, patents, patent rights,
19 copyrights, inventions, improvements, processes, formulas and
20 the like.

21 h. To acquire all or any part of the good will, right,
22 assets and business of any person, firm, association or corpora-
23 tion heretofore or hereafter engaged in any business, in whole
24 or in part, and to hold, utilize and in any manner dispose of,
25 the whole or any part of the rights and assets so acquired, and
26 to conduct in any lawful manner the whole or any part of the
27 business thus acquired.

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30 ARTICLE III

31 The County in the State of California where the principal
32 offices for the transaction of the business of this corporation
is to be located is Orange County.

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ARTICLE IV

This corporation should be authorized to issue only one class of shares of stock, and the total number of shares which this corporation shall have authority to issue is Twenty Thousand (20,000) shares, and the aggregate par value of all of said shares is Two Hundred Thousand (\$200,000) dollars, and the par value of each share is Ten (\$10) dollars.

ARTICLE V

The number of directors of this corporation shall be three (3), and the names and addresses of the persons that are appointed to act as the first directors and to serve until the election and qualification of their successors are as follows:

- CLARENCE LEO FENDER - - 609B West Commonwealth Avenue,
Fullerton, California
- ESTHER MARIE FENDER - - 609B West Commonwealth Avenue,
Fullerton, California
- LLOYD S. VERRY - - - - 1066 North Grand View Avenue,
Fullerton, California

ARTICLE VI

The directors of this corporation are hereby granted power and authority to levy and collect from time to time, as in their discretion they may deem advisable, assessments upon all of the shares of stock of this corporation at any time issued and outstanding, and shall have and enjoy all the rights and privileges with reference to such assessments as are fixed, provided and established by law in respect to corporations, the directors of which have such power of assessment, provided, however, neither any assessment nor the levy thereof shall create any personal liability whatsoever of any share holder of this corporation.

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IN WITNESS WHEREOF, we have hereunto set our signatures
this 5th day of December, 1951.

Clarence Leo Fender
Esther Marie Fender
Lloyd S. Verry

State of California }
County of Orange } ss.

On this 5 day of December, 1951.
before me, Elmer R. Guy, a Notary Public in
and for said County and State, personally appeared Clarence Leo
Fender, Esther Marie Fender, and Lloyd S. Verry, known to me
to be the persons whose names are subscribed to the within
Instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed
my official seal the day and year in this certificate above
written.

[Signature]
Notary Public in and for the
said County and State