
No. 10-57019

IN THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

WOWWEE IN USA INC.,

Appellant,

v.

GIBSON GUITAR CORP.,

Respondent.

District Court

Case No. CV10-8884 RGK (RZx)

On Appeal From the United States District Court
For the Central District of California
Honorable Judge R. Gary Klausner

DECLARATION OF ANDREA BATES IN SUPPORT OF
OPPOSITION TO MOTION FOR STAY PENDING APPEAL

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Attorneys for Respondent Gibson Guitar Corp.

DECLARATION OF ANDREA BATES

I, Andrea Bates, declare as follows:

1. I am a partner in the law firm of Bates & Bates, and counsel of record for Respondents Gibson Guitar Corp., in the above-captioned matter. I have knowledge of the following, and if called as a witness, I could and would testify competently to this declaration's contents.

2. Attached hereto as Exhibit 1 is a true and correct copy of Complaint for Infringement filed against WowWee, Dkt. No. 1.

3. Attached hereto as Exhibit 2 is a true and correct copy of Notice of Ex Parte Application, Dkt 4.

4. Attached hereto as Exhibit 3 is a true and correct copy of Ex Parte Application of Plaintiff for a Temporary Restraining Order and An Order to Show Cause, Dkt 5.

5. Attached hereto as Exhibit 4 is a true and correct copy of Declarations of Andrea Bates, Bruce Mitchell and Henry Juskiewicz in Support of the Ex Parte Application, Dkt 6.

6. Attached hereto as Exhibit 5 is a true and correct copy of Plaintiffs Reply In Support of the Preliminary Injunction, Dkt 40.

7. Attached hereto as Exhibit 6 is true and correct copy of Declaration of Andrea E Bates in Support of the Reply, Dkt 41.

8. Attached hereto as Exhibit 7 is true and correct copy of Declaration of Walter Carter in Support of the Reply, Dkt 42.

9. Attached hereto as Exhibit 8 is true and correct copy of Declaration of Edwin Wilson in Support of the Reply, Dkt 43.

10. Attached hereto as Exhibit 9 is true and correct copy of Declaration of Mike McGuire in Support of the Reply, Dkt 44.

11. Attached hereto as Exhibit 10 is true and correct copy of Declaration of Bruce Mitchell in Support of the Reply, Dkt 45.

12. Attached hereto as Exhibit 11 is true and correct copy of the Order, Dkt 58.

13. Attached hereto as Exhibit 12 is a comparison chart showing the Paper Jamz guitars next to the Gibson trademarks.

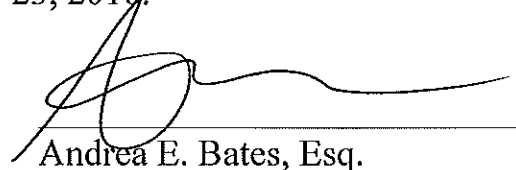
14. WowWee contents that its Paper Jamz guitars do not compete with Gibson licensed guitars, however, the Les Paul Pee Wee Rave Rig and the Flying Vee Wee Rave Rigs retail for around \$300 and include the guitar, an amp, strap, cord, and a gig bag.

15. While WowWee could make the weak argument that Paper Jamz guitars are not competitors with the Gibson Maestro because they do not have strings, this contention fails when compared to the Power Tour guitar, which also does not have strings. The Power Tour guitar can be purchased from WowWee's co-

defendant's Amazon.com and EBay and is a licensee of Gibson's Design Trademarks.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed in Atlanta Georgia on December 23, 2010.

A handwritten signature in black ink, consisting of a large, stylized initial 'A' followed by a long, horizontal, wavy line extending to the right.

Andrea E. Bates, Esq.
Declarant