

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

CERTAIN STRINGED MUSICAL
INSTRUMENTS AND COMPONENTS
THEREOF (II)

Inv. No. 337-TA-708

**ORDER NO. 13: INITIAL DETERMINATION GRANTING JOINT MOTION TO
TERMINATE INVESTIGATION AS TO RESPONDENTS FLOYD ROSE GUITARS,
FLOYD ROSE MARKETING, INC., DAVITT & HANSER MUSIC CO. D/B/A/ HHI,
AND PING WELL INDUSTRIES BASED ON A CONSENT ORDER**

(June 4, 2010)

On May 24, 2010, Complainant Geoffrey McCabe (“Complainant”) and Respondents Floyd Rose Guitars, Floyd Rose Marketing, Inc., Davitt & Hanser Music Co., d/b/a HHI, and Ping Well Industrial Co., Ltd. (collectively, “Respondents”) filed a joint motion (708-008) to terminate the Investigation based on a consent order stipulation.¹ On June 3, 2010, the Commission Investigative Staff (“Staff”) filed a response in support of the joint motion.

In accordance with Commission Rule 210.21(c)(1)(ii), the parties entered into a “Consent Order Stipulation” and a proposed “Consent Order,” both attached hereto as Exhibit A. Commission Rule 210.21(c)(3) sets forth certain requirements for the contents of a consent order stipulation. 19 C.F.R. § 210.21(c)(3). The Consent Order Stipulation submitted by the parties complies with the requirements of Commission Rule 210.21(c)(3). (*See* Staff Resp. at 2-3.)

Specifically, Respondents agree that upon entry of the Consent Order:

Respondents shall not, except under consent or license from Complainant or his assignees, sell for importation, import into the United States or sell in the United States after importation, or knowingly aid, abet, encourage, participate in, or induce the sale

¹ According to the joint motion, the remaining Respondents do not oppose said motion. (*See* Joint Mot. at 2.)

for importation into the United States or sale in the United States after importation, of the accused stringed musical instruments and components thereof, including without limitation fulcrum tremolos marketed under the brand name Floyd Rose SpeedLoader fulcrum tremolos, and guitars with Floyd Rose SpeedLoader tremolos including but not limited to those guitars equipped and marketed under the brand names Floyd Rose Discovery Series and Floyd Rose Redmond Series guitars, that are alleged to infringe one or more of the following: Claim 1 of Complainant's U.S. Patent No. 5,986,191 ("the '191 Patent"); Claim 8 of Complainant's U.S. Patent No. 6,175,066 ("the '066 Patent"); and Claims 29 and 31 of Complainant's U.S. Patent No. 7,470,841 ("the '841 Patent").

(See Proposed Consent Order ¶ 1.) Pursuant to Commission Rule 210.21(c)(3)(i)(A),

Respondents also agree to:

- (1) admit that the Commission has *in rem* jurisdiction over the accused stringed musical instruments and components thereof, *in personam* jurisdiction over Respondents, and subject matter jurisdiction in this Investigation (see Consent Order Stip. ¶ 1);
- (2) expressly waive all rights to seek judicial review or otherwise challenge or contest the validity of the Consent Order (*id.* at ¶ 2);
- (3) cooperate with and not seek to impede by litigation or other means the Commission's efforts to gather information under Subpart I of Part 210 of Title 19 of the Code of Federal Regulations (*id.* at ¶ 3); and
- (4) the enforcement, modification and revocation of the Consent Order being carried out pursuant to Subpart I of Part 210 of Title 19 of the Code of Federal Regulations (*id.* at ¶ 4).

Because this is an intellectual property-based investigation and in accordance with Commission Rule 210.21(c)(3)(i)(B), the Consent Order Stipulation also states that:

- (1) the Consent Order shall not apply with respect to any claim of an intellectual property right that has expired or been found or adjudicated invalid or unenforceable by the Commission or a court or agency of competent jurisdiction, provided that such finding or judgment has become final and nonreviewable (*id.* at ¶ 5); and

- (2) Respondents will not seek to challenge the validity of claim 1 of the '191 Patent, claim 8 of the '066 Patent, and claims 29 and 31 of the '841 Patent in any administrative or judicial proceeding to enforce the Consent Order (*id.* at ¶ 6).

In addition to the provisions required by Commission Rule 210.21(c)(3), the Consent Order Stipulation contains an additional provision, namely that the signing of the Consent Order Stipulation is for settlement purposes only and does not constitute an admission by Respondents that an unfair act has been committed. (*Id.* at ¶ 7.) This is permitted by Commission Rule 210.21(c)(3)(i)(C), which provides that a consent order stipulation may contain a statement that it is for settlement purposes and does not constitute an admission that an unfair act has been committed.


In any initial determination terminating an investigation by settlement agreement or consent order, the administrative law judge is directed to consider and make appropriate findings regarding the effect of the proposed settlement on the public health and welfare, competitive conditions in the United States economy, production of like or directly competitive articles in the United States, and United States consumers. 19 C.F.R. § 210.50(c)(2)(ii); *see also* 19 C.F.R. § 210.50(b)(2). In their motion, the parties assert that termination of this Investigation is “in the interest of the public and administrative economy.” (Joint Mot. at 2.) Staff does not dispute this representation, stating that “it is not aware of any public interest concerns militating against termination of the investigation as to the consenting Respondents based on the Consent Order Stipulation.” (Staff Resp. at 3.) In addition, Staff asserts that the public interest generally favors settlement to avoid needless litigation and to conserve public and private resources. (*Id.* at 4.) The undersigned agrees that termination of this Investigation does not impose any undue burdens on the public health and welfare, competitive conditions in the United States economy,

production of like or directly competitive articles in the United States, or United States consumers.

Accordingly, the undersigned finds that the parties have complied with the requirements of Commission Rule 210.21(c) and it is the undersigned's Initial Determination that the joint motion (708-008) to terminate this Investigation with respect to Respondents Floyd Rose Guitars, Floyd Rose Marketing, Inc., Davitt & Hanser Music Co., d/b/a HHI, and Ping Well Industrial Co., Ltd. based on a consent order be granted. This Initial Determination, along with supporting documentation, is hereby certified to the Commission.

Pursuant to 19 C.F.R. § 210.42(h), this Initial Determination shall become the determination of the Commission unless a party files a petition for review of the Initial Determination pursuant to 19 C.F.R. § 210.43(a), or the Commission, pursuant to 19 C.F.R. § 210.44, orders, on its own motion, a review of the Initial Determination or certain issues herein.

SO ORDERED.



Charles E. Bullock
Administrative Law Judge

EXHIBIT A

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC 20436

Before The Honorable Charles E. Bullock
Administrative Law Judge

IN THE MATTER OF

CERTAIN STRINGED MUSICAL
INSTRUMENTS AND COMPONENTS
THEREOF

Investigation No. 337-TA-708

**CONSENT ORDER STIPULATION BY RESPONDENTS
FLOYD ROSE GUITARS, FLOYD ROSE MARKETING,
INC., DAVITT & HANSER MUSIC CO., D/B/A HHI,
AND PING WELL INDUSTRIAL CO., LTD.**

WHEREAS, the U.S. International Trade Commission ("Commission" or "ITC") on March 29, 2010 (75 Fed. Reg. 63), instituted this Investigation under Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337) based upon the allegations contained in the complaint filed by Complainant Geoffrey Lee McCabe ("Complainant"), which allege violations of Section 337 in the importation into the United States, the sale for importation and the sale within the United States after importation of certain stringed musical instruments and components thereof by Respondents Floyd Rose Guitars, Floyd Rose Marketing, Inc., Davitt & Hanser Music Co., d/b/a HHI, and Ping Well Industrial Co., Ltd. (collectively "Respondents") that are alleged to infringe one or more of: claims 1-3, 5 and 6 of Complainants' U.S. Patent No. 5,965,831 ("the '831 Patent"); claims 1-3, 6 and 14 of Complainants' U.S. Patent No. 5,986,191 ("the '191 Patent"); claims 1-5, 8, 9 and 11 of Complainants' U.S. Patent No. 6,175,066 ("the '066 Patent"); claims 1, 14-18, 20-22, and 24 of Complainants' U.S. Patent No. 6,891,094 ("the '094 Patent"); and claims 6, 8-11, 27, 29 and 31 of Complainants' U.S. Patent No. 7,470,841 ("the '841 Patent").

WHEREAS, Respondents are willing to accept entry of the Consent Order submitted concurrently herewith by the Commission and agrees to all waivers and other provisions as required by 19 C.F.R. § 210.21; and

WHEREAS, Respondents agree to all terms set forth in the Consent Order.

IT IS HEREBY STIPULATED by Complainant and Respondents as follows:

1. The Commission has *in rem* jurisdiction over the accused stringed musical instruments and components thereof that are the subject of the complaint in this Investigation, the Commission has *in personam* jurisdiction over Respondents for purposes of this Stipulation and proposed Consent Order, and the Commission has subject matter jurisdiction in this Investigation.

2. Respondents expressly waive all rights to seek judicial review or otherwise challenge or contest the validity of the Consent Order.

3. Respondents will cooperate with and will not seek to impede by litigation or other means the Commission's efforts to gather information under Subpart I of the Commission's Rules of Practice and Procedure, 19 C.F.R. Subchapter C, Part 210.

4. The enforcement, modification and revocation of the Consent Order will be carried out pursuant to Subpart I of the Commission's Rules of Practice and Procedure, 19 C.F.R. Subchapter C, Part 210.

5. The Consent Order shall not apply with respect to any claim of an intellectual property right that has expired or been found or adjudicated invalid or unenforceable by the Commission or a court or agency of competent jurisdiction, provided that such finding or judgment has become final and nonreviewable.

6. Respondents will not seek to challenge the validity of claim 1 of the '191 Patent, claim 8 of the '066 Patent and claims 29 and 31 of the '841 Patent in any administrative or judicial proceeding to enforce the Consent Order.

7. The signing of this Consent Order Stipulation and the Consent Order is for settlement purposes only and does not constitute an admission by Respondents that an unfair act has been committed.

IT IS SO STIPULATED.

Dated: May 24, 2010

Geoffrey McCabe / with
GEOFFREY L. McCABE
permission

FLOYD ROSE MARKETING INC.

FLOYD ROSE GUITARS

PING WELL INDUSTRIAL CO., LTD

DAVITT & HANSER MUSIC CO., d/b/a HHI

MUSIC701310

6. Respondents will not seek to challenge the validity of claim 1 of the '191 Patent, claim 8 of the '066 Patent and claims 29 and 31 of the '841 Patent in any administrative or judicial proceeding to enforce the Consent Order.

7. The signing of this Consent Order Stipulation and the Consent Order is for settlement purposes only and does not constitute an admission by Respondents that an unfair act has been committed.

IT IS SO STIPULATED.

Dated: May 21, 2010

GEOFFREY L. McCABE



FLOYD ROSE MARKETING INC.



FLOYD ROSE GUITARS

PING WELL INDUSTRIAL CO., LTD

DAVITT & HANSER MUSIC CO., d/b/a.HHI

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Dated: May 21, 2010

GEOFFREY L. McCABE

FLOYD ROSE MARKETING INC.

FLOYD ROSE GUITARS



PING WELL INDUSTRIAL CO., LTD

DAVITT & HANSER MUSIC CO., d/b/a HHI

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6. Respondents will not seek to challenge the validity of claim 1 of the '191 Patent, claim 8 of the '066 Patent and claims 29 and 31 of the '841 Patent in any administrative or judicial proceeding to enforce the Consent Order.

7. The signing of this Consent Order Stipulation and the Consent Order is for settlement purposes only and does not constitute an admission by Respondents that an unfair act has been committed.

IT IS SO STIPULATED.

Dated: May 21, 2010

GEOFFREY L. McCABE

FLOYD ROSE MARKETING INC.

FLOYD ROSE GUITARS

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DAVITT & HANSER MUSIC CO., d/b/a HHI

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**UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC 20436**

**Before The Honorable Charles E. Bullock
Administrative Law Judge**

IN THE MATTER OF

CERTAIN STRINGED MUSICAL
INSTRUMENTS AND COMPONENTS
THEREOF

Investigation No. 337-TA-708

PROPOSED CONSENT ORDER

The U.S. International Trade Commission ("Commission" or "ITC") on March 29, 2010 (75 Fed. Reg. 63), instituted this Investigation under Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337) based upon the allegations contained in the complaint filed by Complainant Geoffrey Lee McCabe ("Complainant"), which allege violations of Section 337 in the importation into the United States, the sale for importation and the sale within the United States after importation of certain stringed musical instruments and components thereof by Respondents Floyd Rose Guitars, Floyd Rose Marketing, Inc., Davitt & Hanser Music Co., d/b/a HHI, and Ping Well Industrial Co., Ltd. (collectively "Respondents") that are alleged to infringe one or more of: claims 1-3, 5 and 6 of Complainants' U.S. Patent No. 5,965,831 ("the '831 Patent"); claims 1-3, 6 and 14 of Complainants' U.S. Patent No. 5,986,191 ("the '191 Patent"); claims 1-5, 8, 9 and 11 of Complainants' U.S. Patent No. 6,175,066 ("the '066 Patent"); claims 1, 14-18, 20-22, and 24 of Complainants' U.S. Patent No. 6,891,094 ("the '094 Patent"); and claims 6, 8-11, 27, 29 and 31 of Complainants' U.S. Patent No. 7,470,841 ("the '841 Patent").

Respondents have executed a Consent Order Stipulation in which they agree to the entry of this Consent Order and to all waivers and other provisions as required by Commission Rule of

Practice and Procedure 210.21(c) (19 C.F.R. § 210.21(c)). Respondents have filed a Motion for Termination of the Investigation based upon a Consent Order.

IT IS HEREBY ORDERED THAT:

1. Upon entry of this Consent Order, Respondents shall not, except under consent or license from Complainant or his assignees, sell for importation, import into the United States or sell in the United States after importation, or knowingly aid, abet, encourage, participate in, or induce the sale for importation, importation into the United States or sale in the United States after importation, of the accused stringed musical instruments and components thereof, including without limitation fulcrum tremolos marketed under the brand name Floyd Rose SpeedLoader fulcrum tremolos, and guitars with Floyd Rose SpeedLoader tremolos including but not limited to those guitars so equipped and marketed under the brand names Floyd Rose Discovery Series and Floyd Rose Redmond Series guitars, that are alleged to infringe one or more of the following: Claim 1 of Complainant's U.S. Patent No. 5,986,191 ("the '191 Patent"); Claim 8 of Complainant's U.S. Patent No. 6,175,066 ("the '066 Patent"); and Claims 29 and 31 of Complainant's U.S. Patent No. 7,470,841 ("the '841 Patent").

2. This Consent Order shall be applicable to and binding upon Respondents, their officers, directors, agents, servants, employees, and all persons, firms, successors, assigns, or corporations acting or claiming to act on their behalf or under their direction or authority.

3. Respondents shall be precluded from seeking judicial review or otherwise challenging or contesting the validity of this Consent Order.

4. Respondents shall cooperate with and shall not seek to impede by litigation or other means the Commission's efforts to gather information under Subpart I of the Commission's Rules of Practice and Procedure, 19 C.F.R. Part 210.

5. Respondents shall not seek to challenge and are precluded from making any challenges to the validity of claim 1 of the '191 Patent, claim 8 of the '066 Patent and claims 29 and 31 of the '841 Patent in any administrative or judicial proceeding to enforce the Consent Order.

6. If any claim of the asserted patents is held invalid or unenforceable by a court or agency of competent jurisdiction, in a final decision, no longer subject to appeal, this order shall become null and void as to any such invalid or unenforceable claims.

7. The entry of this Consent Order does not constitute a determination as to violation of 19 U.S.C. § 1337 by Respondents.

8. This Investigation is hereby terminated with respect to Respondents Floyd Rose Guitars, Floyd Rose Marketing, Inc., Davitt & Hanser Music Co., d/b/a HHI, and Ping Well Industrial Co., Ltd. These Respondents are hereby dismissed as named respondents in this Investigation provided, however, that enforcement, modification, or revocation of this Consent Order shall be carried out pursuant to 19 C.F.R. § 210.76 of the Commission's Rules of Practice and Procedure. In determining whether Respondents are in violation of this Consent Order, the Commission may infer facts adverse to Respondents if they fail to provide adequate or timely information. The Commission may impose upon any person who violates this Consent Order a penalty of not more than the greater of \$100,000 or twice the domestic value of any articles entered or sold for each day on which the Consent Order is violated. The Commission's assessment of any such penalty shall have the force of a judgment and liability for payment of such penalty shall accrue upon administrative assessment by the Commission.

Dated: _____

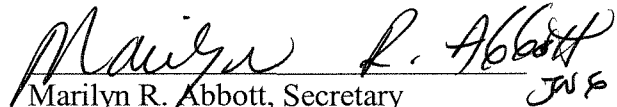
BY ORDER OF THE COMMISSION

**IN THE MATTER OF CERTAIN STRINGED MUSICAL
INSTRUMENTS AND COMPONENTS THEREOF**

337-TA-708

CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached **ORDER NO 13: INITIAL DETERMINATION** has been served upon, **Jeffrey T. Hsu, Esq.**, Commission Investigative Attorney, and the following parties via first class mail and air mail where necessary on June 4, **2010.**


Marilyn R. Abbott, Secretary *JWF*
U.S. International Trade Commission
500 E Street, S.W., Room 112A
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**FOR RESPONDENTS FLOYD ROSE GUITARS;
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**IN THE MATTER OF CERTAIN STRINGED MUSICAL
INSTRUMENTS AND COMPONENTS THEREOF**

337-TA-708

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