

A yellow right-angled triangle pointing towards the top-left corner.

BLOGS
Antitrust

Ninth Circuit Affirms Dismissal of Class Action Conspiracy Case

The United States Court of Appeals for the Ninth Circuit recently affirmed a ruling in favor of the largest U.S. retail dealer of musical instruments and guitars, dismissing a class action brought by purchasers of guitars on the grounds that the plaintiffs did not plead sufficient facts to prove an antitrust conspiracy. *In re Musical Instruments & Equip. Antitrust Litig.*, 798 F.3d 1186 (9th Cir. Aug. 25, 2015). The class action plaintiffs alleged that the defendant, Guitar Center, Inc., along with manufacturers Fender, Yamaha, Gibson, Hoshino, and Kaman, engaged in a “hub and spoke” conspiracy through which the retailer and manufacturers agreed to implement minimum advertised price policies fixing the minimum price at which any retailer could advertise the guitars, constituting “vertical” agreements to restrain trade. The plaintiffs also alleged that the manufacturers agreed among themselves to adopt these policies, constituting a “horizontal” agreement in violation of federal and state antitrust laws.

Although they lacked direct evidence of horizontal agreements among the guitar manufacturers, the plaintiffs argued that the court should infer the manufacturers engaged in illegal behavior because of their parallel conduct in adopting the minimum advertised price policies, in conjunction with several “plus factors.” These factors included the manufacturers’ common motive, their action against their own selfinterest, the simultaneous adoption of minimum advertised price policies by multiple manufacturers, the FTC’s prior investigation of the agreements, the manufacturers’ attendance at the National Association of Music Merchants meetings, and the rise of average retail prices for guitars. The court analyzed each of these “plus factors” in turn and found that the plaintiffs’ evidence could just as easily suggest rational (and legal) business behavior by the manufacturers and did not necessarily result from a conspiracy. Because this evidence only showed a possibility of a conspiracy, rather than the “plausibility” necessary to survive a motion to dismiss, the Ninth Circuit affirmed the trial court’s dismissal of the case.

Related People

Maisa Frank

Partner

Washington, D.C.

202.295.2209

maisa.frank@lathropgpm.com