

The Seventh Circuit Affirms a Pleading Error to the Tune of \$5 Million

Despite winning a trademark infringement lawsuit, the Seventh Circuit held the plaintiff was not entitled to almost \$5 million in additional damages because it incorrectly included the main defendant's corporate divisions as separate parties.

In *Barrington Music Products, Inc. v. Music & Arts Center, et al.*, Barrington alleged Guitar Center infringed its "Vento" trademark by selling instruments under the moniker "Ventus." (Ventus is Latin for wind, and Vento is Italian for the same word.) Barrington also asserted trademark infringement claims against other Guitar Center-owned stores, but named them as separate defendants. While the total amount of Ventus sales was nearly \$5 million, the jury found only Guitar Center store sales infringing and awarded Barrington just \$3,228. Barrington moved to amend the judgment to include the other sales in the damages award under Rule 59(e), but the district court denied its motion.

On appeal, the Seventh Circuit was tasked with reviewing whether the district court abused its discretion by not finding a reasonable basis in the record to support the inclusion of the extra damages. In a succinct opinion, it found Barrington's naming of each Guitar Center division as a separate defendant an error that "persisted throughout the case and resulted in a verdict form that listed each defendant separately." For that reason, the jury was required to determine whether *each* separate defendant violated Barrington's trademark. Because it found only Guitar Center infringed and awarded Barrington the precise amount of its sales, the Seventh Circuit held the judgment was rationally supported by the evidence.

The Seventh Circuit's \$5 million exercise in civil procedure included the lesson that "Rule 59(e) does not provide a vehicle for a party to undo its own procedural failures, and it certainly does not allow a party to introduce new evidence or advance arguments that could and should have been presented."