

*A Winthrop & Weinstine blog dedicated to bridging the gap between legal & marketing types.*

## [Get Your Paper Jamz Guitars While You Can](#)

Posted on November 26, 2010 by [Dan Kelly](#)

[Gibson Guitar Corp.](#) sued a number of companies last week, alleging infringement of its guitar body shapes. The principal target of its ire appears to be [WowWee Group Ltd.](#), who makes a line of toy instruments called "[Paper Jamz](#)." These instruments are sold through numerous well-known retailers like [Wal-Mart](#) and [Target](#), many of whom Gibson also sued. (Suing retailers being a topic for a whole 'nother discussion someday.)

Trademark geeks may recall the last installment in the getting-to-be long-running history of securing trademark rights in guitar body shapes, which was [Fender Music's](#) effort to register the shapes of its [Stratocaster](#), [Telecaster](#), and [Precision Bass](#) instruments. Numerous companies opposed those applications, and the Trademark Trial and Appeal Board sustained the oppositions (PDF [here](#)), because Fender could not prove distinctiveness--it had not policed the marketplace for similarly-shaped instruments very well at all and could not prove that the shapes of its guitar bodies distinguished them from other guitar makers (despite many competitors openly suggesting that their models were Fender look-alikes).

For that matter, one of Gibson's previous suits also did not have a happy ending, when it sued [Paul Reed Smith Guitars](#) for infringement of the shape of its [Les Paul](#) guitar (Reg. No. [1,782,606](#)). The [U.S. Sixth Circuit Court of Appeals](#) ultimately decided that there was no infringement (PDF [here](#)). Perhaps the Gibson v. WowWee case will succeed where previous efforts have not, if nothing else, on the "try, try again" theory.

[Although others may disagree](#), I do think that rights in guitar configurations can eventually succeed. In the area of product configurations, it is important to find the relevant consumers. I whiled away many hours in my youth ogling electric guitars, and I had no trouble connecting the six guitars in the Paper Jamz lineup with their "real" counterparts. Distinguishing product configurations is like bird watching. To the uninitiated, birds are birds, cars are cars, and guitars are guitars. Ask anyone who has some familiarity in each category, though, and you'll quickly learn to distinguish a nuthatch from a finch, a Ford from a Chevy, and a Gibson from a Fender. This isn't to say that every product has a protectable configuration, just that almost everything is distinguishable if you pay close enough attention.

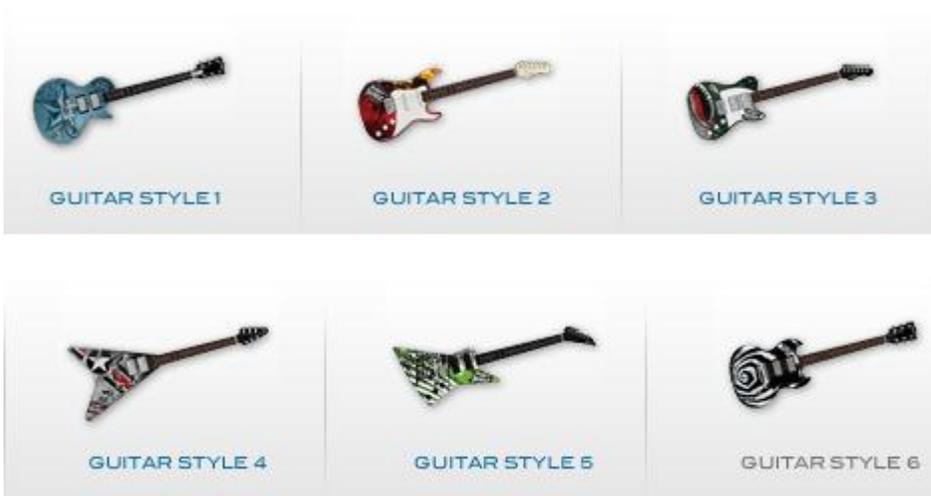


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Now, for your holiday quiz. Can you identify "genuine" guitars mimicked by the six Paper Jamz guitars pictured below? Answers below the jump.



Answers:

1. Guitar Style 1 = [Gibson Les Paul](#)
2. Guitar Style 2 = [Fender Stratocaster](#)
3. Guitar Style 3 = [Fender Telecaster](#)
4. Guitar Style 4 = [Gibson Flying V](#)
5. Guitar Style 5 = [Gibson Explorer](#)
6. Guitar Style 6 = [Gibson SG](#)

Of course, I'm waiting to see the battle royale between Fender's [Jaguar](#) and Gibson's [Firebird X](#). There *are* differences!



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