Subject: Re: 'scuse me (my take)
Posted by MQracing on Sun, 01 Jan 2006 16:20:20 GMT
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Hi Damir:The PRS case is interesting. Note that in the court of original jurisdiction the verdict was in favor of Gibson. The appellate court saw the issues differently and overturned the lower court's decision.When you say "...the picture tells more then the words..." I am guessing your referring to the shape of the guitar... which many people would associate with the famous Les Paul desgin originated by Gibson. But... as I pointed out above... a "similarity" in appearance is not likely to be decisive in these kinds of legal disputes... what the courts will do is to evaluate the whole context... in this case PRS never did trade off of Gibson's goodwill or namesake... never marketed their product as a clone and etc.shapes, textures, finishes are covered under different laws... some countries call them "design trademarks".... but... there is always the practical issue that in important contextually.... here is an example...and upright piano looks very similar to most upright pianos... same sort of rectangular footprint.... and the aspect ratios of LxWxD might be very similar amongst differing brands of upright pianos... and the finihes might be very similar... say a 'piano black'... but if you come to market with a "clone" or explicit "copycat" of a Yamaha piano and you use Yamaha's namesake and goodwill or make references that your knockoff is a copy of the Yamaha piano... I think the courts would view that strategy quite differently.another point you should consider... in your example of XYZ making and advertising clones of a Jensen guitar speaker... just because this activity occurrs in the marketplace does not mean that it is legal. In some cases the victim of the illicit cloning or marketing campaign may not be aware of the infringement. In other cases the victim may lack the resources to seek out a costly legal solution and instead rely on a campaign to make their consumers aware that the "look alikes" are not genuine products of theirs... there are many different strategies a company might take to combat piracy, fakes, copies, etc. You point out that you think there are other companies now "trading on" the goodwill or designs of PRS... and seem to indicate that this must be ok since it is not being abated judicially. But... again... in the same press announcement that you refer to by PRS announcing their "victory" over Gibson... the company states that it was very costly and hurt them financially. So... if others are ripping off PRS... maybe the shysters are aware that PRS is not (perhaps) going to be anxious to spend the money necessary to go after them... and they exploit that to their benefit. Doesn't make it right... rather, makes it even slimyer in my opinion.As a counterexample of a potential corporate stance... try some monkey business with Monster Cable or Bose and see how long or how far you get before they react. But the real question or real point here is.... not all of the legal issues (which I do find interesting) but the content, editorial and quality issues that ART as a forum\publisher must decide. Does ART want to become the net's home to pirated audio products? A home for copycats to hawk their wares? Does ART want to host and embrace the JBL knockoff example as posted above. Is this the vision of the Group Build forum? To give haven to every copycat artist or knockoff artists down the pike?