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Filing date: **03/27/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92057116
Party	Defendant Darryl D. Agler
Correspondence Address	LETICIA GUERRA McDonald Hopkins LLC 600 Superior Ave., E.Suite 2100 Cleveland, OH 44144 UNITED STATES llondono@mcdonaldhopkins.com, ip@mcdonaldhopkins.com
Submission	Motion to Suspend for Civil Action
Filer's Name	Leticia Guerra
Filer's e-mail	llondono@mcdonaldhopkins.com, ipmailbox@mcdonaldhopkins.com
Signature	/Leticia Guerra/
Date	03/27/2014
Attachments	Motion to Suspend Cancellation - Agler (4791236x7AB84).pdf(4128053 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re U.S. Trademark Registration No. 3,986,754
For the Mark: STRATOTONE
Registered on: June 28, 2011

WESTHEIMER CORPORATION)	
)	
)	
Petitioner,)	Cancellation No.: 92057116
)	
v.)	
)	
DARRYL D. AGLER)	
)	
)	
Registrant.)	

REGISTRANT’S MOTION TO SUSPEND PROCEEDINGS

Registrant, DARRYL D. AGLER, by and through his undersigned counsel and pursuant to 37 C.F.R. § 2.117 and TBMP 510.02(a) hereby requests that proceedings before this Board be suspended until final determination of a civil action now pending in the United States District Court for the Northern District of Indiana, and states:

1. Registrant has filed a civil action in the United States District Court for the Northern District of Illinois, *Darryl D. Agler v. Westheimer Corporation*, Case No. 1:14-cv-99. See Complaint, attached hereto as Exhibit A.

2. A central issue of the federal court case is whether Westheimer Corporation’s use of the mark STRATOTONE violates Registrant’s federal trademark rights under its registered STRATOTONE mark.

3. The outcome of the federal court case is likely to have a bearing on the case before the Board.

Accordingly, Registrant respectfully requests that proceedings before this Board be suspended until final determination of the civil action.

Dated: March 27, 2014

Respectfully submitted,

McDONALD HOPKINS LLC

By: /Leticia Guerra/
Leticia Guerra, Esq.
McDonald Hopkins LLC
600 Superior Avenue, E.,
Suite 2100
Cleveland, OH 44114
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ATTORNEY FOR REGISTRANT

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

DARRYL D. AGLER,)	
)	
Plaintiff,)	
)	Case No. 1:14-cv-99
v.)	
)	
WESTHEIMER CORPORATION,)	
)	
Defendant.)	

COMPLAINT

Plaintiff Darryl D. Agler ("Agler"), through his undersigned counsel, and for his Complaint against Defendant Westheimer Corporation ("Westheimer"), alleges as follows:

Nature of the Action

1. This is an action for trademark infringement, counterfeiting, unfair competition, and false designation of origin arising under the Lanham Act, 15 U.S.C. § 1051 *et seq.*, and the statutes and common law of the State of Indiana.

Jurisdiction and Venue

2. Jurisdiction over the parties and subject matter of this action is proper in this Court pursuant to 15 U.S.C. § 1121 (actions arising under the Lanham Act), 28 U.S.C. § 1331 (actions under the laws of the United States), 28 U.S.C. § 1332(a) (diversity of citizenship between the parties), and 28 U.S.C. § 1338(a) (actions arising under an Act of Congress relating to, among other things, trademarks). This Court has supplemental jurisdiction over the claims in this Complaint that arise under state statutory and common law pursuant to 28 U.S.C. § 1367(a).

3. This Court has personal jurisdiction over Westheimer because Westheimer does business in the State of Indiana.

4. Venue is properly founded in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (c) because Agler resides in this District, may be found in this District, and a substantial part of the events giving rise to the claims in this action occurred within this District.

Parties

5. Agler is an individual residing at 5506 Quail Canyon Circle, Fort Wayne, Indiana 46835 and does business as The Stratotone Guitar Co.

6. Upon information and belief, Westheimer is an entity organized and existing under the laws of the State of Illinois, with its principal place of business located at 3451 West Commercial Avenue, Northbrook, Illinois 60062.

Allegations Applicable to All Counts

7. The following factual allegations are set forth for purposes of all legal counts alleged in this Complaint, *infra*.

8. Agler custom-manufactures high-quality guitars and sells them across the United States of America. Each of Agler's guitars is painstakingly hand-crafted from the wood of a customer's choosing and features vintage hardware and pick-ups.

9. Agler currently accepts orders for his guitars on his website at <stratotoneguitar.com> (the "Site"). A printout of the Site is attached hereto as Exhibit A.

10. Agler also regularly showcases and sells his guitars at vintage guitar shows across the nation.

11. Agler's guitars generally retail from \$1250 and upward.

12. On March 7, 2006, Agler filed Application Ser. No. 78/831,179 (the "'179 Application") with the United States Patent and Trademark Office (the "PTO") for the mark STRATOTONE (the "STRATOTONE Mark") pursuant to 15 U.S.C. §1051(b). The

STRATOTONE Mark was identified in association with “musical instruments, namely, guitars” in International Class 15. A copy of the ‘179 Application is attached hereto as Exhibit B.

13. The ‘179 Application matured into U.S. Reg. No. 3,986,754 (“‘754 Registration”) on June 28, 2011. A copy of the ‘754 Registration is attached hereto as Exhibit C.

14. Since at least as early as January of 2007, Agler’s marketing and promotions in connection with his guitars have included the STRATOTONE Mark.

15. As pictured below, the STRATOTONE Mark also appears on what is commonly referred to as the “head” of Agler’s guitars.



16. At the National Association of Music Merchants (“NAMM”) show in 2010, Agler noticed Westheimer selling a mass-produced cheaper version of the same style of guitar under the STRATOTONE Mark at a much lower price point than Agler’s custom STRATOTONE

guitars, notwithstanding Agler's prior exclusive rights in the STRATOTONE Mark. Agler spoke to Westheimer personnel twice at the NAMM show, notifying them that Westheimer's products were infringing the STRATOTONE Mark. Agler was unable to sell any of his guitars at the 2010 NAMM show.

17. Since that time, Westheimer has flooded the market with lower quality, cheaper guitars that bear the STRATOTONE Mark. These inferior products retail between \$199.00 and \$399.00, and have destroyed the market for Agler's high-end STRATOTONE guitars.

18. On December 4, 2012 Westheimer filed Application Ser. No. 85/794,320 (the "'320 Application") for the STRATOTONE Mark for use in association with "guitars" in International Class 15 pursuant to 15 U.S.C. §1051(a). In the '320 Application, Westheimer represented to the PTO that it had been using the STRATOTONE Mark in commerce since "00/00/2009" and that the STRATOTONE Mark was currently in use. A copy of the '320 Application is attached hereto as Exhibit D.

19. On March 26, 2013, the PTO refused to register the '320 Application unless Westheimer submitted a claim of ownership with respect to Agler's '754 Registration. A copy of this refusal is attached hereto Exhibit E.

20. Westheimer could not provide the PTO with a claim of ownership for the '754 Registration because it did not own the '754 Registration.

21. On April 25, 2013, Westheimer filed a petition to cancel the '754 Registration (the "Cancellation Petition") with the Trademark Trial and Appeal Board. The Cancellation Petition is currently pending under cancellation proceeding no. 92057116.

22. Westheimer is currently using the STRATOTONE Mark in commerce in association with guitars. A copy of a brochure featuring Westheimer's unauthorized use of the STRATOTONE Mark in association with guitars is attached as Exhibit F.

**COUNT I: FEDERAL UNFAIR COMPETITION AND FALSE DESIGNATION OF
ORIGIN**

(15 U.S.C. § 1125(a))

23. Agler reincorporates and realleges paragraphs 1 through 22 as though fully set forth herein.

24. Westheimer's use in commerce of the STRATOTONE Mark has caused and will continue to cause consumers to believe, contrary to fact, that the guitars it provides are sponsored, licensed and/or otherwise approved by, or are in some way connected to or affiliated with Agler.

25. Westheimer's use in commerce of the STRATOTONE Mark already has and continues to cause mistake, deception, and consumer confusion.

26. Westheimer's use of the STRATOTONE Mark is likely to cause initial interest confusion among the general public.

27. Westheimer had actual and constructive knowledge of Agler's prior rights in the STRATOTONE Mark when it began using the STRATOTONE Mark in commerce.

28. Westheimer had actual and constructive knowledge of the previously-existing '179 Application for the STRATOTONE Mark when it began using the STRATOTONE Mark in commerce.

29. The foregoing actions of Westheimer constitute unfair competition and false designation of origin in violation of 15 U.S.C. § 1125(a), and, on information and belief, have been knowing, intentional, deliberate, willful, malicious, and in disregard of Agler's rights.

30. Westheimer has unfairly profited from the actions alleged.

31. By reason of foregoing knowing, intentional, deliberate, willful, and malicious actions, Agler has suffered damages in an amount as yet to be ascertained but which continues to accrue and accumulate.

32. Westheimer's activities have irreparably harmed and, if not enjoined, will continue to irreparably harm, the general public who has an interest in being free from confusion, mistake and deception.

33. By reason of Westheimer's acts, Agler's remedy at law is not adequate to compensate it for injuries inflicted by Westheimer. Accordingly, Agler is entitled to permanent injunctive relief pursuant to 15 U.S.C. § 1116.

34. By reason of Westheimer's knowing, intentional, deliberate, willful, and malicious acts and pursuant to 15 U.S.C. § 1117, Agler is entitled to (i) Westheimer's profits; (ii) damages (and to have those damages trebled); and (iii) the costs of this action.

35. This is an exceptional case making Agler eligible for an award of attorneys' fees under 15 U.S.C. § 1117.

COUNT II: FEDERAL TRADEMARK INFRINGEMENT

(15 U.S.C. § 1114)

36. Agler reincorporates and realleges paragraphs 1 through 35 as though fully set forth herein.

37. Westheimer's use in commerce of the STRATOTONE Mark already has and continues to cause mistake, deception, consumer confusion.

38. Westheimer's use of the STRATOTONE Mark is likely to cause initial interest confusion among the general public.

39. The above-described acts of Westheimer constitute trademark infringement in violation of 15 U.S.C. § 1114(1), and, on information and belief, have been knowing, intentional, deliberate, willful, malicious, and intended to cause confusion or mistake, or to deceive, and in disregard of Agler's rights.

40. Westheimer has unfairly profited from the infringing actions alleged.

41. By reason of Westheimer's knowing, intentional, deliberate, willful, and malicious acts, Agler has suffered damages in an amount as yet to be ascertained but which continues to accrue and accumulate.

42. Westheimer's willful and intentional activities have irreparably harmed and, if not enjoined, will continue to irreparably harm, Agler.

43. Westheimer's willful and intentional activities have irreparably harmed and, if not enjoined, will continue to irreparably harm, the general public who has an interest in being free from confusion, mistake and deception.

44. By reason of Westheimer's knowing, intentional, deliberate, willful, and malicious acts, Agler's remedy at law is not adequate to compensate him for the injuries inflicted by Westheimer. Accordingly, Agler is entitled to injunctive relief pursuant to 15 U.S.C. § 1116.

45. By reason of Westheimer's knowing, intentional, deliberate, willful, and malicious acts and pursuant to 15 U.S.C. § 1117, Agler is entitled to (i) Westheimer's profits; (ii) damages (and to have those damages trebled); and (iii) the costs of this action.

46. This is an exceptional case making Agler eligible for an award of attorneys' fees under 15 U.S.C. § 1117.

COUNT III: FEDERAL TRADEMARK COUNTERFEITING

(15 U.S.C. § 1114)

47. Agler reincorporates and realleges paragraphs 1 through 46 as though fully set forth herein.

48. Without authorization, Westheimer used and uses in commerce a spurious designation identical to the federally registered STRATOTONE Mark in connection with the sale, offering for sale, distribution, and advertising of guitars, which goods are covered by the '754 Registration.

49. Westheimer's unauthorized use of the federally registered STRATOTONE Mark in connection with guitars has and will continue to cause consumers to believe that Westheimer's guitars originate from or are otherwise controlled by Agler and/or that Westheimer has Agler's authorization to use the federally registered STRATOTONE Mark in connection with guitars.

50. Westheimer's unauthorized use of the federally registered STRATOTONE Mark in connection with guitars is likely to cause and has caused confusion, mistake, or deception, including as to the origin, connection or association of Agler with Westheimer's guitars.

51. Westheimer's use of the federally registered STRATOTONE Mark in connection with guitars as described in this Complaint constitutes counterfeiting within the meaning of Section 32 of the Lanham Act, 15 U.S.C. § 1114.

52. Westheimer's acts are knowing, intentional, deliberate, willful, and malicious.

53. By reason of the foregoing, Westheimer is liable to Agler for (a) statutory damages in an amount of up to \$2,000,000 for each counterfeited mark, as provided by 15 U.S.C. § 1117(c) of the Lanham Act, or, at Agler's election, an amount representing three (3) times Westheimer's illicit profits; and (b) reasonable attorneys' fees and pre-judgment interest pursuant to 15 U.S.C. § 1117(b).

**COUNT IV: COMMON LAW UNFAIR COMPETITION
AND TRADEMARK INFRINGEMENT**

54. Agler reincorporates and realleges paragraphs 1 through 53 as though fully set forth herein.

55. Westheimer's use in commerce of the STRATOTONE Mark in connection with guitars is likely to cause consumer confusion or mistake to deceive as to the source of Westheimer's goods.

56. Westheimer's conduct constitutes trademark infringement and unfair competition under the common law of the State of Indiana, entitling Agler to relief.

57. Westheimer has unfairly profited from the actions alleged herein.

58. By reason of Westheimer's knowing, intentional, deliberate, willful, and malicious actions described above, Agler has suffered damages in an amount as yet to be ascertained but which continues to accrue and accumulate and has suffered irreparable harm.

59. By reason of Westheimer's knowing, intentional, deliberate, willful, and malicious acts, Agler's remedy at law is not adequate to compensate him for the injuries inflicted by Westheimer. Accordingly, Agler is entitled to permanent injunctive relief.

COUNT V: UNJUST ENRICHMENT

60. Agler reincorporates and realleges paragraphs 1 through 59 as though fully set forth herein.

61. At the expense of and detriment to and without the prior express or implied authorization of Agler, Westheimer has been unjustly enriched through Westheimer's knowing, intentional, deliberate, willful, and malicious use of the STRATOTONE Mark.

62. By reason of Westheimer's actions described above, Agler has suffered damages in an amount as yet to be ascertained but which continues to accrue and accumulate and has suffered irreparable harm.

63. By reason of Westheimer's acts, Agler's remedy at law is not adequate to compensate him for the injuries inflicted by Westheimer. Accordingly, Agler is entitled to permanent injunctive relief.

COUNT VI: CONVERSION

(Ind. Code § 35-43-4-3)

64. Agler reincorporates and realleges paragraphs 1 through 63 as though fully set forth herein.

65. By engaging in the knowing, intentional, deliberate, willful, and malicious actions described above, Westheimer has exerted unauthorized control over the STRATOTONE Mark with the intent to deprive Agler of its benefit.

66. Westheimer has therefore committed conversion as defined under Ind. Code § 35-43-4-3.

67. Westheimer's conversion of the STRATOTONE Mark has proximately caused Agler to suffer damages in an amount as yet to be ascertained but which continues to accrue and accumulate and irreparable harm.

68. By reason of Westheimer's acts, Agler's remedy at law is not adequate to compensate him for the injuries inflicted by Westheimer. Accordingly, Agler is entitled to permanent injunctive relief.

COUNT VII: DECEPTION

(Ind. Code § 35-43-5-3(a)(6))

69. Agler reincorporates and realleges paragraphs 1 through 68 as though fully set forth herein.

70. By engaging in the knowing, intentional, deliberate, willful, and malicious actions described above, Westheimer has disseminated to the public information that Westheimer knows is false, misleading, or deceptive, with the intent to promote Westheimer's business and/or commercial interests.

71. Westheimer has therefore committed deception under I.C. § 35-43-5-3(a)(6).

72. Westheimer's deception has proximately caused Agler to suffer damages in an amount as yet to be ascertained but which continues to accrue and accumulate and irreparable harm.

73. By reason of Westheimer's acts, Agler's remedy at law is not adequate to compensate him for the injuries inflicted by Westheimer. Accordingly, Agler is entitled to permanent injunctive relief.

COUNT VIII: INDIANA CRIME VICTIM'S RELIEF ACT

74. Agler reincorporates and realleges paragraphs 1 through 73 as though fully set forth herein.

75. Under the Indiana Crime Victims' Act (I.C. § 35-24-3-1), a person that suffers pecuniary loss as a result of the violation of I.C. § 35-43 *et seq.*, may bring a civil action against the person who caused the loss for treble damages, costs of the action, and reasonable attorneys' fees.

76. Westheimer has violated Ind. Code. § 35-43 through knowing, intentional, deliberate, willful, and malicious commission of (i) conversion under Ind. Code § 35-43-4-3 and (ii) deception under Ind. Code. § 35-43-5-3.

77. Agler is the victim of Westheimer's knowing, intentional, deliberate, willful, and malicious criminal actions, and, as a result, has suffered actual pecuniary damages in an amount as yet to be ascertained but which continue to accrue and accumulate.

78. Agler is accordingly entitled to an award of those actual damages as well as statutory treble damages, corrective advertising damages, costs, and reasonable attorneys' fees.

DEMAND FOR JURY TRIAL

Agler hereby respectfully requests that all issues raised by this Complaint be tried by jury.

PRAYER FOR RELIEF

WHEREFORE, Darryl D. Agler, by counsel, hereby requests that this Court enter an order:

(a) enjoining Westheimer from (i) using the STRATOTONE Mark or any other name, word, mark, or designation confusingly similar to the STRATOTONE Mark in connection with guitars and similar products; (ii) applying for registration of the STRATOTONE Mark or any other name, word, mark, or designation confusingly similar to the STRATOTONE Mark in connection with guitars and similar products; and (iii) continuing to prosecute the '320

Application.

(b) requiring Westheimer to withdraw that Cancellation Petition with prejudice and allow the '320 Application to expire;

(c) requiring Westheimer to provide an accounting of all gains, profits, savings and advantages realized by it from the unauthorized use of the STRATOTONE Mark.

(d) requiring Westheimer to surrender any and all merchandise, design, plans, and marketing materials featuring the STRATOTONE Mark;

(e) awarding Agler all damages (including treble damages), costs, disbursements, expenses, and attorneys' fees owed to him pursuant to the Lanham Act and Indiana common and statutory law by reason of Westheimer's willful infringement, counterfeiting, and conversion of the STRATOTONE Mark in connection with guitars;

(f) declaring that this is an exceptional case under 15 U.S.C. § 1117 due to Westheimer's knowing, intentional, deliberate, willful, and malicious acts of trademark infringement and counterfeiting and awarding Agler his reasonable attorneys' fees; and

(g) all other just and proper relief to which Agler is entitled.

Respectfully submitted,

Dated: March 27, 2014

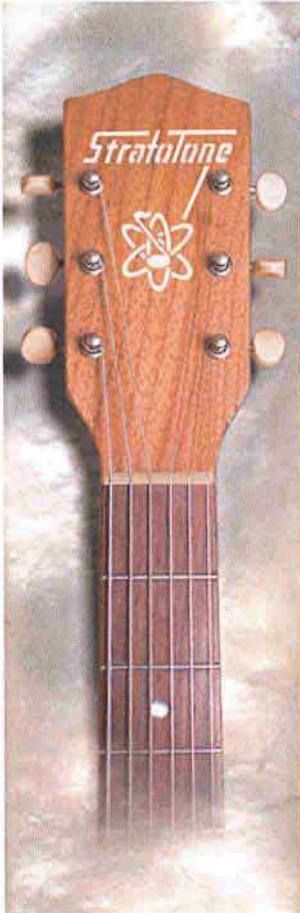
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amie.peelecarter@FaegreBD.com

Complaint

EXHIBIT A

Stratotone

The STRATOTONE Guitar Co. is offering "Old School, Hand-Built", neck-through construction "Stratotone" guitars. Made with **Vintage DeArmond Pickups** and **Vintage Stratotone Hardware**. Our guitars are hand-built in the USA with a chunky 1950's neck profile and your choice of wood. We can use Poplar like an original 1950's Stratotone, Mahogany, Curly Maple, or any wood of your choosing.



Contact Us for Pricing!

Stratotone Guitar Company is the owner and originator of the web site content. This site and the imaging therein was created by [RHSDesign](#). Information in this document is subject to change without notice. Comments, questions or problems regarding this web site's functionality should be directed to the [Webmaster](#).
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Complaint

EXHIBIT B

PTO Form 1478 (Rev. 6/2005)
 OMB No. 0651-0009 (Exp. xx/xx/xxxx)

Trademark/Service Mark Application, Principal Register

Serial Number: 78831179

Filing Date: 03/07/2006

The table below presents the data as entered.

Input Field	Entered
MARK SECTION	
MARK	<u>Stratotone</u>
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	Stratotone
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
OWNER SECTION	
NAME	Agler, Darryl D.
STREET	1910 Spy Run Avenue
CITY	Fort Wayne
STATE	Indiana
ZIP/POSTAL CODE	46805
COUNTRY	United States
PHONE	260/804-0424
FAX	260/492-4446
EMAIL	dagler2@comcast.net
AUTHORIZED EMAIL COMMUNICATION	Yes
LEGAL ENTITY SECTION	
TYPE	INDIVIDUAL
COUNTRY OF CITIZENSHIP	United States
GOODS AND/OR SERVICES SECTION	

DESCRIPTION	Musical Instrument (guitar)
FILING BASIS	Section 1(b)
SIGNATURE SECTION	
SIGNATURE	/darryl agler/
SIGNATORY NAME	Darryl Agler
SIGNATORY DATE	03/07/2006
SIGNATORY POSITION	Owner
PAYMENT SECTION	
NUMBER OF CLASSES	1
NUMBER OF CLASSES PAID	1
SUBTOTAL AMOUNT	325
TOTAL AMOUNT	325
PAYMENT METHOD	CC
CORRESPONDENCE SECTION	
NAME	Agler, Darryl D.
STREET	1910 Spy Run Avenue
CITY	Fort Wayne
STATE	Indiana
ZIP/POSTAL CODE	46805
COUNTRY	United States
EMAIL	dagler2@comcast.net
AUTHORIZED EMAIL COMMUNICATION	Yes
FILING INFORMATION	
SUBMIT DATE	Tue Mar 07 15:19:35 EST 2006
TEAS STAMP	USPTO/BAS-71127842-200603 07151935964648-78831179-2 001aee6ca2f15c1bc0f15e86a 9872c8-CC-139-20060307150 740730465

PTO Form 1478 (Rev 6/2005)
OMB No. 0651-0009 (Exp 03/31/2009)

Trademark/Service Mark Application, Principal Register

Serial Number: 78831179

Filing Date: 03/07/2006

To the Commissioner for Trademarks:

MARK: (Standard Characters, see mark)

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The literal element of the mark consists of Stratotone.

The applicant, Darryl D. Agler, a citizen of United States, residing at 1910 Spy Run Avenue, Fort Wayne, Indiana, United States, 46805, requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended.

Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. (15 U.S.C. Section 1051(b)).

International Class _____: Musical Instrument (guitar)

The USPTO is authorized to communicate with the applicant or its representative at the following email address: dagler2@comcast.net.

A fee payment in the amount of \$325 will be submitted with the application, representing payment for 1 class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /darryl agler/ Date: 03/07/2006
Signatory's Name: Darryl Agler
Signatory's Position: Owner

Mailing Address:
Agler, Darryl D.
1910 Spy Run Avenue
Fort Wayne, Indiana 46805

RAM Sale Number: 139
RAM Accounting Date: 03/08/2006

Serial Number: 78831179
Internet Transmission Date: Tue Mar 07 15:19:35 EST 2006
TEAS Stamp: USPTO/BAS-71127842-20060307151935964648-
78831179-2001aee6ca2f15c1bc0f15e86a9872c
8-CC-139-20060307150740730465

Stratotone

Complaint

EXHIBIT C

United States of America

United States Patent and Trademark Office

Stratotone

Reg. No. 3,986,754

AGLER, DARRYL D. (UNITED STATES INDIVIDUAL)

Registered June 28, 2011

1910 SPY RUN AVENUE
FORT WAYNE, IN 46805

Int. Cl.: 15

FOR: MUSICAL INSTRUMENTS, NAMELY, GUITARS, IN CLASS 15 (U.S. CLS. 2, 21 AND 36).

TRADEMARK

FIRST USE 1-0-2010; IN COMMERCE 1-0-2010.

PRINCIPAL REGISTER

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SN 78-831,179, FILED 3-7-2006.

BILL DAWE, EXAMINING ATTORNEY



David J. Kappas

Director of the United States Patent and Trademark Office

Complaint

EXHIBIT D

PTO Form 1479 (Rev 9/2006)
 OMB No. 0651-9009 (Exp 12/31/2014)

Trademark/Service Mark Application, Principal Register

Serial Number: 85794320

Filing Date: 12/04/2012

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	85794320
MARK INFORMATION	
*MARK	<u>STRATOTONE</u>
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	STRATOTONE
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
REGISTER	Principal
APPLICANT INFORMATION	
*OWNER OF MARK	Westheimer Corporation
*STREET	3451 West Commercial Avenue
*CITY	Northbrook
*STATE (Required for U.S. applicants)	Illinois
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants only)	60062
LEGAL ENTITY INFORMATION	
TYPE	corporation
STATE/COUNTRY OF INCORPORATION	Illinois
GOODS AND/OR SERVICES AND BASIS INFORMATION	
INTERNATIONAL CLASS	015
*IDENTIFICATION	Guitars

FILING BASIS	SECTION 1(a)
FIRST USE ANYWHERE DATE	At least as early as 00/00/2009
FIRST USE IN COMMERCE DATE	At least as early as 00/00/2009
SPECIMEN FILE NAME(S)	<u>\\TICRS\EXPORT16\IMAGEOUT</u> <u>16\857\943\85794320\xml1\ APP0003.JPG</u>
SPECIMEN DESCRIPTION	The specimen consists of a photographic image of Applicant's goods.
ATTORNEY INFORMATION	
NAME	Ronald S. Bienstock
STREET	411 Hackensack Ave.
CITY	Hackensack
STATE	New Jersey
COUNTRY	United States
ZIP/POSTAL CODE	07601
OTHER APPOINTED ATTORNEY	Tiffany Rex
CORRESPONDENCE INFORMATION	
NAME	Ronald S. Bienstock
STREET	411 Hackensack Ave.
CITY	Hackensack
STATE	New Jersey
COUNTRY	United States
ZIP/POSTAL CODE	07601
FEE INFORMATION	
NUMBER OF CLASSES	1
FEE PER CLASS	325
*TOTAL FEE DUE	325
*TOTAL FEE PAID	325
SIGNATURE INFORMATION	
SIGNATURE	/thesuit/
SIGNATORY'S NAME	Ronald S. Bienstock
SIGNATORY'S POSITION	Attorney of Record, NJ BAR

DATE SIGNED	12/04/2012
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PTO Form 1478 (Rev. 9/2008)
OMB No. 0851-0009 (Exp. 12/31/2014)

Trademark/Service Mark Application, Principal Register

Serial Number: 85794320

Filing Date: 12/04/2012

To the Commissioner for Trademarks:

MARK: STRATOTONE (Standard Characters, see mark)

The literal element of the mark consists of STRATOTONE.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, Westheimer Corporation, a corporation of Illinois, having an address of
3451 West Commercial Avenue
Northbrook, Illinois 60062
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class 015: Guitars

In International Class 015, the mark was first used by the applicant or the applicant's related company or licensee or predecessor in interest at least as early as 00/00/2009, and first used in commerce at least as early as 00/00/2009, and is now in use in such commerce. The applicant is submitting one(or more) specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) The specimen consists of a photographic image of Applicant's goods..

Specimen File 1

The applicant's current Attorney Information:

Ronald S. Bienstock and Tiffany Rex
411 Hackensack Ave.
Hackensack, New Jersey 07601
United States

The applicant's current Correspondence Information:

Ronald S. Bienstock
411 Hackensack Ave.
Hackensack, New Jersey 07601

A fee payment in the amount of \$325 has been submitted with the application, representing payment for 1

class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Declaration Signature

Signature: /thesuit/ Date: 12/04/2012
Signatory's Name: Ronald S. Bienstock
Signatory's Position: Attorney of Record, NJ BAR
RAM Sale Number: 3328
RAM Accounting Date: 12/05/2012

Serial Number: 85794320
Internet Transmission Date: Tue Dec 04 16:08:02 EST 2012
TEAS Stamp: USPTO/BAS-209.178.195.122-20121204160802
030313-85794320-490c4845df92f7565e6228c1
542f7f1b0ab-CC-3328-20121204155142045648

STRATOTONE



Complaint

EXHIBIT E

**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

U.S. APPLICATION SERIAL NO. 85794320

MARK: STRATOTONE

85794320

CORRESPONDENT ADDRESS:

RONALD S. BIENSTOCK
411 HACKENSACK AVE
HACKENSACK, NJ 07601-6328

CLICK HERE TO RESPOND TO THIS LETTER
http://www.uspto.gov/trademarks/teas/response_forms.jsp

APPLICANT: Westheimer Corporation

CORRESPONDENT'S REFERENCE/DOCKET NO :

N/A

CORRESPONDENT E-MAIL ADDRESS:

OFFICE ACTION

STRICT DEADLINE TO RESPOND TO THIS LETTER

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER **WITHIN 6 MONTHS** OF THE ISSUE/MAILING DATE BELOW.

ISSUE/MAILING DATE:

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issue(s) below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

The trademark examining attorney has searched the Office's database of registered and pending marks and has found no conflicting marks that would bar registration under Trademark Act Section 2(d). TMEP §704.02; *see* 15 U.S.C. §1052(d).

The applicant, however, must respond to the following additional requirement(s).

Applicant is encouraged to telephone the assigned trademark examining attorney to resolve the issues raised in this Office action.

Ownership of Prior Registration

An assignment is of record for Registration No. 3986754, therefore, applicant must submit for the application record a claim of ownership of this registration. See 37 C.F.R. §2.36; TMEP §812. See the attached copy of the registration. See TMEP §812.

Applicant may use the following format to claim ownership of the registration:

Applicant is the owner of U.S. Registration No. 3986754.

If applicant has questions about its application or needs assistance in responding to this Office action, please telephone the assigned trademark examining attorney directly at the number below.

/Regina C. Hines, Esq./
Regina.Hines@uspto.gov
Trademarks LO 114
571-272-9451
571-273-9451

TO RESPOND TO THIS LETTER: Go to http://www.uspto.gov/trademarks/teas/response_forms.jsp. Please wait 48-72 hours from the issue/ mailing date before using the Trademark Electronic Application System (TEAS), to allow for necessary system updates of the application. For *technical* assistance with online forms, e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned trademark examining attorney. **E-mail communications will not be accepted as responses to Office actions; therefore, do not respond to this Office action by e-mail.**

All informal e-mail communications relevant to this application will be placed in the official application record.

WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using the Trademark Status and Document Retrieval (TSDR) system at <http://tsdr.uspto.gov/>. Please keep a copy of the TSDR status screen. If the status shows no change for more than six months, contact the Trademark Assistance Center by e-mail at TrademarkAssistanceCenter@uspto.gov or call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS: Use the TEAS form at <http://www.uspto.gov/trademarks/teas/correspondence.jsp>.

Print: Mar 26, 2013

78831179

DESIGN MARK

Serial Number
78831179

Status
REGISTERED

Word Mark
STRATOTONE

Standard Character Mark
Yes

Registration Number
3986754

Date Registered
2011/06/28

Type of Mark
TRADEMARK

Register
PRINCIPAL

Mark Drawing Code
(4) STANDARD CHARACTER MARK

Owner
Agler, Darryl D. INDIVIDUAL UNITED STATES 1910 Spy Run Avenue Fort
Wayne INDIANA 46805

Goods/Services
Class Status -- ACTIVE. IC 015. US 002 021 036. G & S: Musical
Instruments, namely, guitars. First Use: 2010/01/00. First Use In
Commerce: 2010/01/00.

Filing Date
2006/03/07

Examining Attorney
DAWE, BILL

Attorney of Record
Gregory S. Cooper

Stratotone

Complaint

EXHIBIT F

Harmony

H49 "Jupiter-Stratotone"

BODY: Spruce Top/ Maple

NECK: Maple

FINGERBOARD: Rosewood

PICKUP: Harmony Gold Foil

CONTROLS: 2 Volume, 2 Tone , 1 Blend, 3-Way Selector

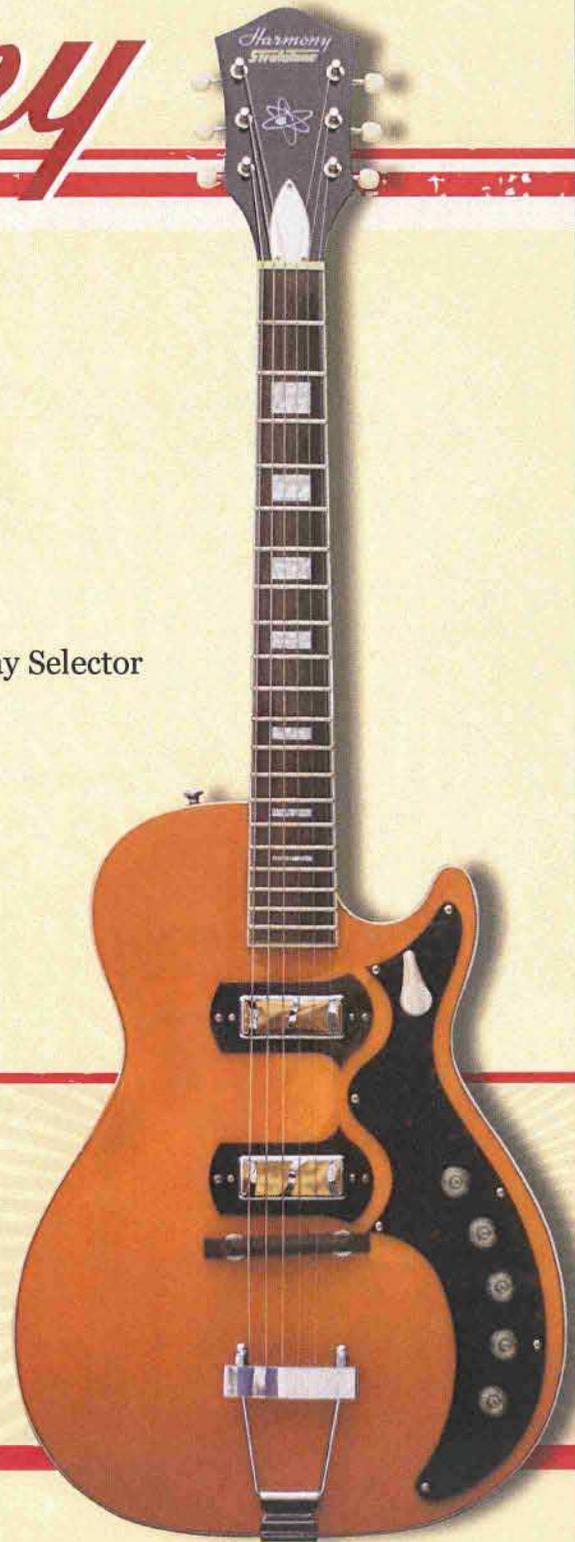
BRIDGE: Floating Adjustable Wood

FRETS & SCALE: 20F, 24 1/8

MACHINE HEAD: Kluson Tuners

HARDWARE: Chrome

COLOR: Natural



TO ORDER:

Westheimer Corporation

3451 Commercial Ave, Northbrook, IL 60062-1818 | 847.498.9850 | sales@westheimercorp.com

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Darryl D. Agler

(b) County of Residence of First Listed Plaintiff Allen (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Louis T. Perry, Faegre Baker Daniels LLP, 300 N. Meridian St., Suite 2700, Indianapolis, IN 46204 (317) 237-0300

DEFENDANTS

Westheimer Corporation

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Real Estate, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 15 USC 1051 et seq, Lanham Act. Brief description of cause: Complaint for trademark infringement

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: X Yes O No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 03/27/2014 SIGNATURE OF ATTORNEY OF RECORD /s/ Louis T. Perry

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.