

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

ACOUSTIC SYSTEMS, INC.,  
Plaintiff,

V.

WENGER CORPORATION and  
STEVE BRIGHT,  
Defendants.

§  
§  
§  
§  
§  
§  
§  
§

A-97-CA-436SC

JURY QUESTIONS

## TABLE OF CONTENTS

|                        |  |    |
|------------------------|--|----|
| <b>SECTION A.</b>      | <b>ANTITRUST CLAIMS</b>  |    |
| <u>Question One:</u>   | Part A. ....   | 2  |
|                        | Part B. ....   | 3  |
|                        | Part C. ....   | 4  |
| <u>Question Two:</u>   | Part A. ....   | 5  |
|                        | Part B. ....   | 6  |
| <u>Question Three:</u> | .....  | 7  |
| <u>Question Four:</u>  | .....  | 8  |
| <u>Question Five:</u>  | .....  | 9  |
| <b>SECTION B.</b>      | <b>TORTIOUS INTERFERENCE WITH EXISTING CONTRACT</b>  |    |
| <u>Question One:</u>   | .....  | 10 |
| <u>Question Two:</u>   | .....  | 11 |
| <u>Question Three:</u> | .....  | 12 |
| <b>SECTION C.</b>      | <b>TORTIOUS INTERFERENCE WITH PROSPECTIVE CONTRACTS</b>  | 13 |
| <b>SECTION D.</b>      | <b>COMMERCIAL DEFAMATION AND UNFAIR COMPETITION AND FALSE DESCRIPTION UNDER THE LANHAM ACT</b>                   |    |
| <u>Question One:</u>   | .....  | 15 |
| <u>Question Two:</u>   | .....  | 16 |
| <u>Question Three:</u> | Part A. ....   | 17 |
|                        | Part B. ....   | 18 |
| <u>Question Four:</u>  | Part A. ....   | 19 |
|                        | Part B. ....   | 20 |
| <b>SECTION E.</b>      | <b>DAMAGES FOR TORTIOUS INTERFERENCE</b>   |    |
| <u>Question One:</u>   | .....  | 21 |
| <u>Question Two:</u>   | .....  | 22 |
| <b>SECTION F.</b>      | <b>DAMAGES ON COMMERCIAL DEFAMATION AND UNFAIR COMPETITION AND FALSE DESCRIPTION UNDER THE LANHAM ACT CLAIMS</b> |    |
| <u>Question One:</u>   | .....  | 25 |
| <u>Question Two:</u>   | .....  | 26 |
| <b>SECTION G.</b>      | <b>PUNITIVE DAMAGES</b>  |    |
| <u>Question One:</u>   | .....  | 27 |
| <u>Question Two:</u>   | .....  | 28 |
| <u>Question Three:</u> | .....  | 30 |

Question Four: ..... 31  
Question Five: ..... 32  
Question Six: ..... 33

SECTION A. ANTITRUST CLAIMS

Question One: UNLAWFUL MONOPOLIZATION

Part A. Relevant Market

Which of the following do you find from a preponderance of the evidence to be the relevant market?

(Place an "X" beside what you have found to be the relevant market.)

All music practice rooms, including standard construction and modular rooms; or

Modular music practice rooms only.

Please proceed to the next page.

**Question One: UNLAWFUL MONOPOLIZATION**

**Part B. Monopoly Power**

Do you find by a preponderance of the evidence that Wenger had monopoly power in the relevant market?

Answer "Yes" or "No."

YES

If you answered "Yes" to Part B. of Question One, please proceed to Part C. of Question One on the next page.

If you answered "No" to Part B. of Question One, please proceed to Question Two on page 5.

**Question One: UNLAWFUL MONOPOLIZATION**

**Part C. Willful Acquisition or Maintenance of Monopoly Power**

Do you find by a preponderance of the evidence that Wenger engaged in predatory or exclusionary acts or practices with the conscious object of furthering its dominance in the market?

Answer "Yes" or "No."

YES

**Please proceed to the next page.**

**Question Two: ATTEMPTED MONOPOLIZATION**

**Part A. Predatory or Exclusionary Conduct**

Do you find from a preponderance of the evidence that Wenger engaged in predatory or exclusionary conduct with the specific intent to achieve monopoly power in the relevant market that you have found in response to Question One, Part A on page 2?

Answer "Yes" or "No"

YES

**If you answered "Yes" to Part A. of Question Two, please proceed to Part B. of Question Two on the next page.**

**If you answered "No" to Part A. of Question Two, please proceed to Question Three on page 7.**

**Question Two:      ATTEMPTED MONOPOLIZATION**

**Part B.      Dangerous Probability of Success**

Do you find from a preponderance of the evidence that there was a dangerous probability that Wenger would achieve its goal of monopoly power in the relevant market?

Answer "Yes" or "No."

YES

**Please proceed to the next page.**

**Question Three: CONSPIRACY TO MONOPOLIZE**

Do you find from a preponderance of the evidence that Wenger and one or more third parties engaged in a contract, combination or conspiracy in an unlawful arrangement to restrain trade in the relevant market that you have found in response to Question One, Part A on page 2?

Answer "Yes" or "No."

NO

**Please proceed to the next page.**

**Question Four: CAUSATION**

If you answered "Yes" to Part C. of Question One and/or "Yes" to Part B. of Question Two, and/or "Yes" to Question Three, then answer the following question. Otherwise, do not answer the following question.

Do you find by a preponderance of the evidence that Wenger's conduct was a proximate cause of injury to Acoustic Systems in its business or property?

Answer "Yes" or "No"

NO

**If you answered "Yes" to Question Four, please proceed to Question Five.**

**If you answered "No" to Question Four, please proceed to Section B on page 10.**

**Question Five: DAMAGES ON UNLAWFUL MONOPOLIZATION,  
ATTEMPTED MONOPOLIZATION AND CONSPIRACY  
CLAIMS**

What do find to be a fair dollar calculation of the damages incurred by Acoustic Systems because of Wenger's monopolization, attempted monopolization or conspiracy?

Answer in dollars and cents, if any.

\$ 0

**Please proceed to Section B. on the next page.**

**SECTION B. TORTIOUS INTERFERENCE WITH EXISTING CONTRACT**

**Question One:** *and* Do you find by a preponderance of the evidence that a contract existed between Acoustic Systems Lyda Constructors (concerning the Sandra Day O'Connor High School project)?

Answer "Yes" or "No."

YES

If you answered "Yes" to Question One, proceed to Question Two on the next page.

If you answered "No" to Question One, proceed to Section C on page 13.

**Question Two:** Do you find by a preponderance of the evidence that Wenger and/or Steve Bright intentionally interfered with the contract between Acoustic Systems and Lyda Constructors (concerning the Sandra Day O'Connor High School project)?

Answer "Yes" or "No" as to each Defendant.

Wenger: YES

Steve Bright: NO

**If you answered "Yes" to Question Two, proceed to Question Three on the next page.**

**If you answered "No" to Question Two, proceed to Section C on page 13.**

**Question Three:** Do you find by a preponderance of the evidence that the tortious interference from Wenger and/or Steve Bright was the proximate cause of damages to Acoustic Systems?

Answer "Yes" or "No" as to each Defendant.

Wenger: YES

Steve Bright: N/A

**Please proceed to Section C. on the next page.**

**SECTION C. TORTIOUS INTERFERENCE WITH PROSPECTIVE CONTRACTS**

Do you find by a preponderance of the evidence that Wenger or Steve Bright acted unlawfully and intentionally prevented a contractual relationship from occurring between Acoustic Systems and a third party in connection with a project where Acoustic Systems had a reasonable probability of entering into a contractual relationship, such that Wenger's or Mr. Bright's conduct was a proximate cause of actual harm or damage to Acoustic Systems?

(Steve Bright was not involved in all the projects listed below.)

Answer "Yes" or "No" as to each Defendant in each of the listed projects, if an answer blank is provided:

|  | <u>Wenger</u> | <u>Steve Bright</u> |
|--|---------------|---------------------|
| 1. Trinity High School,<br>Hurst-Euless-Bedford, Texas | <u>NO</u>     | <u>NO</u>           |
| 2. Howard Blake High School,<br>Florida                | <u>NO</u>     | <u>NO</u>           |
| 3. Lemont High School,<br>Illinois                     | <u>NO</u>     | NOT APPLICABLE      |
| 4. Emory University,<br>Georgia                        | <u>NO</u>     | NOT APPLICABLE      |
| 5. Francis Scott Key High School,<br>Maryland          | <u>NO</u>     | NOT APPLICABLE      |
| 6. MacArthur High School,<br>San Antonio, Texas        | <u>NO</u>     | <u>NO</u>           |
| 7. McNeil High School,<br>Austin, Texas                | <u>NO</u>     | <u>NO</u>           |
| 8. Northeastern Illinois University,<br>Illinois       | <u>NO</u>     | NOT APPLICABLE      |

Please proceed to the next page.

- |     |   |           |                |
|-----|---|-----------|----------------|
| 9.  | Colt's Neck High School,<br>New Jersey        | <u>NO</u> | NOT APPLICABLE |
| 10. | Howard Payne University,<br>Brownwood, Texas  | <u>NO</u> | <u>NO</u>      |
| 11. | Judson High School,<br>San Antonio, Texas     | <u>NO</u> | <u>NO</u>      |
| 12. | Samuel Clemens High School,<br>Schertz, Texas | <u>NO</u> | <u>NO</u>      |
| 13. | Brenham High School,<br>Brenham, Texas        | <u>NO</u> | <u>NO</u>      |
| 14. | Grand Ledge High School,<br>Michigan          | <u>NO</u> | NOT APPLICABLE |
| 15. | Appomattox High School,<br>Virginia           | <u>NO</u> | NOT APPLICABLE |
| 16. | Buhler High School,<br>Kansas                 | <u>NO</u> | NOT APPLICABLE |
| 17. | Superstition Skyline High School,<br>Arizona  | <u>NO</u> | NOT APPLICABLE |
| 18. | Mansfield High School,<br>Mansfield, Texas    | <u>NO</u> | <u>NO</u>      |
| 19. | Edgewood High School,<br>San Antonio, Texas   | <u>NO</u> | <u>NO</u>      |
| 20. | Belle Chase High School,<br>Louisiana         | <u>NO</u> | <u>NO</u>      |
| 21. | Westark Community College,<br>Arkansas        | <u>NO</u> | <u>NO</u>      |

Please proceed to Section D. on the next page..

**SECTION D. COMMERCIAL DEFAMATION AND UNFAIR  
COMPETITION AND FALSE DESCRIPTION UNDER THE  
LANHAM ACT**

**Question One: COMMERCIAL DEFAMATION**

Do you find by a preponderance of the evidence that Wenger and/or Steve Bright published a false statement about Acoustic Systems' goods and services with malice reasonably understood by those who hear it to be defamatory that proximately caused Acoustic Systems' damages?

Answer "Yes" or "No" as to each Defendant.

Wenger: YES

Steve Bright: NO

**Please proceed to the next page.**

**Question Two: UNFAIR COMPETITION AND FALSE DESCRIPTION UNDER THE LANHAM ACT**

Do you find by a preponderance of the evidence that Wenger and/or Steve Bright made a false or misleading statement of fact in commercial advertising or promotion about Acoustic Systems' music practice room products that deceived or had the capacity to deceive a substantial segment of potential customers, that the deception was material in that it was likely to influence purchasing decisions and that Acoustic Systems was or is likely to have been injured as a result?

Answer "Yes" or "No" as to each Defendant.

Wenger:

YES

Steve Bright:

NO

**Please proceed to the next page.**



**Question Three:      BAD FAITH CLAIMS OF PATENT  
   COVERAGE/INFRINGEMENT UNDER THE LANHAM ACT**

**Part B:      Bad Faith**

Do you find by a preponderance of the evidence that Wenger and/or Steve Bright made the false statement in bad faith -- that is, that Wenger and/or Steve Bright knew that the statement was false or acted with reckless disregard as to its falsity?

Answer "Yes" or "No" as to each Defendant.

Wenger: \_\_\_\_\_

Steve Bright: \_\_\_\_\_

**Please proceed to the next page.**

**Question Four: WILLFUL VIOLATION OF THE LANHAM ACT**

**Part A: Willfulness**

If you have answered "Yes" to Question Two and/or "Yes" to Part B. of Question Three, then answer the following question. Otherwise, do not answer this question.

Do you find that Wenger and/or Steve Bright violated the Lanham Act willfully?

Answer "Yes" or "No" as to each Defendant.

Wenger: YES

Steve Bright: NO

**If you answered "Yes" to Part A. of Question Four, proceed to Part B. on the next page**

**If you answered "No" to Part A. of Question Four, proceed to Section E. on page 21.**

**Question Four: WILLFUL VIOLATION OF THE LANHAM ACT**

**Part B: Apportionment of Profits**

What percentage of Wenger's profits do you find to be attributable to a willful violation of the Lanham Act, if any, for the period of 1996-2000?

Answer in dollars and cents, if any.

\$ 29,049

**Please proceed to the next page.**

**SECTION E. DAMAGES FOR TORTIOUS INTERFERENCE**

**Question One: TORTIOUS INTERFERENCE WITH EXISTING CONTRACT**

If you found that Wenger and/or Steve Bright tortiously interfered with an existing contract between Acoustic Systems and Lyda Constructors (concerning the Sandra Day O'Connor High School project), answer the following question. Otherwise, proceed to Question Two on page 22.

What amount of money would adequately compensate Acoustic Systems for its damages resulting from Wenger and/or Steve Bright's tortious interference with the contract between Acoustic Systems and Lyda Constructors (concerning the Sandra Day O'Connor High School project)?

Answer in dollars and cents, if any.

\$ 11,925.30

**Please proceed to the next page.**

**Question Two:      TORTIOUS INTERFERENCE WITH PROSPECTIVE CONTRACTS**

If you found that Wenger and/or Steve Bright tortiously interfered with prospective contracts between Acoustic Systems and certain third parties, answer the following question. Otherwise, proceed to Section F. on page 25.

What amount of money would adequately compensate Acoustic Systems for its damages resulting from Wenger and/or Steve Bright's tortious interference with prospective contracts between Acoustic Systems and certain third parties?

Answer in dollars and cents, if any, as to each project to which you found Wenger and/or Steve Bright tortiously interfered.

1.      Trinity High School, Hurst-Euless-Bedford, Texas      \$   ϕ
  
2.      Howard Blake High School, Florida      \$
  
3.      Lemont High School, Illinois      \$
  
4.      Emory University, Georgia      \$
  
5.      Francis Scott Key High School, Maryland      \$
  
6.      MacArthur High School, San Antonio, Texas      \$
  
7.      McNeil High School, Austin, Texas      \$

**Please proceed to the next page.**

8. Northeastern Illinois University, Illinois \$ \_\_\_\_\_
9. Colt's Neck High School, New Jersey \$ \_\_\_\_\_
10. Howard Payne University, Brownwood, Texas \$ \_\_\_\_\_
11. Judson High School, San Antonio, Texas \$ \_\_\_\_\_
12. Samuel Clemens High School, Schertz, Texas \$ \_\_\_\_\_
13. Brenham High School, Brenham, Texas \$ \_\_\_\_\_
14. Grand Ledge High School, Michigan \$ \_\_\_\_\_
15. Appomattox High School, Virginia \$ \_\_\_\_\_
16. Buhler High School, Kansas \$ \_\_\_\_\_
17. Superstition Skyline High School, Arizona \$ \_\_\_\_\_
18. Mansfield High School, Mansfield, Texas \$ \_\_\_\_\_

**Please proceed to the next page.**

- 19. Edgewood High School, San Antonio, Texas \$ \_\_\_\_\_
  
- 20. Belle Chase High School, Louisiana \$ \_\_\_\_\_
  
- 21. Westark Community College, Arkansas \$ \_\_\_\_\_

**Please proceed to Section F. on the next page.**

**SECTION F. DAMAGES ON COMMERCIAL DEFAMATION AND UNFAIR COMPETITION AND FALSE DESCRIPTION UNDER THE LANHAM ACT CLAIMS**

**Question One: COMMERCIAL DEFAMATION**

If you found Wenger and/or Steve Bright liable for commercial defamation in Question One of Section D. on page 15, answer the following question. Otherwise, do not answer this question and proceed to Section G.

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Acoustic Systems for its damages, if any, proximately caused by Wenger and/ or Steve Bright's commercial defamation?

Answer in dollars and cents, if any.

\$ 25,000.00

**Please proceed to the next page.**

**Question Two: UNFAIR COMPETITION AND FALSE DESCRIPTION  
UNDER THE LANHAM ACT**

If you found Wenger and/or Steve Bright liable for Unfair Competition and False Description under the Lanham Act in Questions Two, Three and Four of Section D., answer the following question. Otherwise, do not answer this question and proceed to Section G.

**Question Two:** What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Acoustic Systems for its damages, if any, proximately caused by Wenger and/ or Steve Bright's unfair competition and false description under the Lanham Act?

Answer in dollars and cents, if any.

Unfair Competition: \$ \_\_\_\_\_

Bad Faith Statements: \$ \_\_\_\_\_

**Please proceed to Section G. on the next page.**

**SECTION G. PUNITIVE DAMAGES**

If you found that Wenger and/or Steve Bright maliciously interfered with an existing contract or prospective contracts between Acoustic Systems and certain third parties, or engaged in commercial defamation, answer the following questions. Otherwise, stop and return your verdict.

**Question One:** Do you find by clear and convincing evidence that Wenger and/or Steve Bright maliciously interfered with the contract between Acoustic Systems and Lyda Constructors (concerning the Sandra Day O'Connor High School project)?

Answer "Yes" or "No" as to each Defendant.

Wenger: NO

Steve Bright: NO

Please proceed to the next page.

**Question Two:** Do you find by clear and convincing evidence that Wenger and/or Steve Bright maliciously interfered with prospective contracts between Acoustic Systems and the following third parties?

(Steve Bright was not involved in all the projects listed below.)

Answer "Yes" or "No" as to each Defendant as to the following projects, if an answer blank is provided:

|  | <u>Wenger</u> | <u>Steve Bright</u> |
|--|---------------|---------------------|
| 1. Trinity High School,<br>Hurst-Euless-Bedford, Texas | <u>NO</u>     | <u>NO</u>           |
| 2. Howard Blake High School,<br>Florida                | <u>NO</u>     | <u>NO</u>           |
| 3. Lemont High School,<br>Illinois                     | <u>NO</u>     | NOT APPLICABLE      |
| 4. Emory University,<br>Georgia                        | <u>NO</u>     | NOT APPLICABLE      |
| 5. Francis Scott Key High School,<br>Maryland          | <u>NO</u>     | NOT APPLICABLE      |
| 6. MacArthur High School,<br>San Antonio, Texas        | <u>NO</u>     | <u>NO</u>           |
| 7. McNeil High School,<br>Austin, Texas                | <u>NO</u>     | <u>NO</u>           |
| 8. Northeastern Illinois University,<br>Illinois       | <u>NO</u>     | NOT APPLICABLE      |
| 9. Colt's Neck High School,<br>New Jersey              | <u>NO</u>     | NOT APPLICABLE      |
| 10. Howard Payne University,<br>Brownwood, Texas       | <u>NO</u>     | <u>NO</u>           |

Please proceed to the next page.

- |     |   |       |                |
|-----|---|-------|----------------|
| 11. | Judson High School,<br>San Antonio, Texas     | _____ | _____          |
| 12. | Samuel Clemens High School,<br>Schertz, Texas | _____ | _____          |
| 13. | Brenham High School,<br>Brenham, Texas        | _____ | _____          |
| 14. | Grand Ledge High School,<br>Michigan          | _____ | NOT APPLICABLE |
| 15. | Appomattox High School,<br>Virginia           | _____ | NOT APPLICABLE |
| 16. | Buhler High School,<br>Kansas                 | _____ | NOT APPLICABLE |
| 17. | Superstition Skyline High School,<br>Arizona  | _____ | NOT APPLICABLE |
| 18. | Mansfield High School,<br>Mansfield, Texas    | _____ | _____          |
| 19. | Edgewood High School,<br>San Antonio, Texas   | _____ | _____          |
| 20. | Belle Chase High School,<br>Louisiana         | _____ | _____          |
| 21. | Westark Community College,<br>Arkansas        | _____ | _____          |

**Please proceed to the next page.**

**Question Three:** Do you find by clear and convincing evidence that Wenger and/or Steve Bright published a false statement reasonably understood by those who hear it to be defamatory with malice?

Answer "Yes" or "No" as to each Defendant.

Wenger: NO

Steve Bright: NO

**If you answered either Question One, Two or Three "Yes," proceed to Questions Four, Five, and Six on pages 31, 32, and 33.**

**If you answered Questions One, Two, and Three "No," stop and return your verdict.**

**Question Four:** What amount of punitive damages, if any, should be awarded to Acoustic Systems for Wenger and/or Steve Bright's malicious interference with the contract between Acoustic Systems and Lyda Constructors (concerning the Sandra Day O'Connor High School project)?

Answer in dollars and cents, if any.

\$ \_\_\_\_\_

Please proceed to the next page.

**Question Five:** What amount of punitive damages, if any, should be awarded to Acoustic Systems for Wenger and/or Steve Bright's malicious interference with the prospective contracts between Acoustic Systems and the third parties with which you found Wenger and/or Steve Bright interfered?

Answer in dollars and cents, if any.

\$ \_\_\_\_\_

**Please proceed to the next page.**

**Question Six:** What amount of punitive damages, if any, should be awarded to Acoustic Systems for Wenger and/or Steve Bright's malicious publication of a false statement reasonably understood by those who heard it to be defamatory?

Answer in dollars and cents, if any.

\$ \_\_\_\_\_

**Stop and return your verdict.**

If the verdict is unanimous, the jury foreperson should complete the date, time, and signature line at the bottom of this page and notify the Court Security Officer, who will notify the Court that the jury has reached a decision.

We, the jury, have answered the above and foregoing questions as herein indicated, and return such answers in open court, and under the instructions of the Court, as our verdict in this cause.

Signed the \_\_\_\_\_ day of June, 2001, at \_\_\_\_\_ o'clock \_\_\_\_m.

\_\_\_\_\_  
FOREPERSON