

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 3:10-cv-00747
)	
EBONY WOOD IN VARIOUS FORMS,)	Judge William J. Haynes
)	
Defendant.)	

CLAIMANT GIBSON GUITAR CORP.'S MOTION TO DISMISS

Claimant, Gibson Guitar Corp. (“Gibson”), respectfully moves the Court to dismiss with prejudice the Verified Complaint *in Rem* of Plaintiff, the United States of America (the “Government”), under Federal Rules of Civil Procedure 12(b)(6) and Supplemental Rule G(2)(f).

As explained in the concurrently filed memorandum of law, the Government claims that the property at issue is subject to forfeiture under the U.S. Lacey Act, 16 U.S.C. § 3371 et seq. As a matter of law, the Government cannot prevail under the Lacey Act unless the complaint contains sufficiently detailed facts that, if true, prove that each of the specific wood products at issue contains wood that was exported from a foreign country in violation of that foreign country’s law. The Government has pled no such facts. To the contrary, although the affidavit submitted by the Government sets forth some factual allegations about a shipment of ebony fingerboards from Madagascar, that same affidavit admits that the Madagascar Government authorized the exportation of

those fingerboards. Because the exportation was legal under Madagascar law, the Government has no claim as a matter of law.

Accordingly, Gibson requests that the Court dismiss this matter, order the return of the seized property, and award Gibson its reasonable attorney fees and other litigation costs under 28 U.S.C. 2465(b) and all other appropriate relief.

In support of its motion, Gibson files concurrently herewith a memorandum of law and exhibits.

Respectfully submitted,

s/ Tim Harvey

Steven A. Riley (BPR # 6258)

Tim Harvey (BPR # 021509)

W. Russell Taber, III (BPR # 24741)

Riley Warnock & Jacobson, PLC

1906 West End Avenue

Nashville, TN 37202

(615) 320-3700 – telephone

(615) 320- 3737 – facsimile

sriley@rwjplc.com

tharvey@rwjplc.com

rtaber@rwjplc.com

Attorneys for Gibson Guitar Corp.

CERTIFICATE OF SERVICE

I certify that, on October 14, 2010, a true and correct copy of the foregoing has been served upon the following Filing Users through the Court's Electronic Filing System:

Jerry E. Martin
United States Attorney for the
Middle District of Tennessee
110 Ninth Avenue South, Suite A-961
Nashville, Tennessee 37203-3870
jerry.martin2@usdoj.gov

Debra Teufel Phillips
United States Attorney for the
Middle District of Tennessee
110 Ninth Avenue South, Suite A-961
Nashville, Tennessee 37203-3870
deb.phillips@usdoj.gov

Attorneys for the United States of America

and

First Class International Mail, postage prepaid, to:

Hans Rudolf Schüler
Rechtsanwalt
Am Hünengrab 1
21521 Aumühle
Germany

Attorney for Theodor Nagel GMBH & Co KG

s/ Tim Harvey