

## *Fair Music and False Advertising*

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CD Baby, an online music seller, purports to offer "the most free-range, organic, grass-fed independent music in the world." It also claims that when you buy music from its store, "you're buying directly from the artist." Music-subscription service Magnatune makes similar claims, describing itself as "a pioneer in the fair trade music movement." The company emphasizes that "[b]ecause we aren't evil, fully 50% of your membership goes straight to the musicians (not to lawyers or labels)." Both CD Baby and Magnatune's advertising suggests that consumers should care about how musicians are treated and favor sellers who compensate artists "fairly" or "better" than certain commercial counterparts. In this article, I argue that "fair music" advertising is an example of "process" advertising that scholars have recognized in messaging by sellers of food and durable goods, like coffee, clothes, and makeup. Such advertising appeals to what these scholars term "process preferences" - consumer preferences favoring products made or distributed using certain processes, even though those processes do not tangibly affect the resulting product. Recognizing fair-music claims as process advertising is important because such advertising falls within the scope of federal and state laws prohibiting false and misleading statements. I argue that under existing advertising laws, music sellers who make fair-music claims can be required to produce evidence substantiating claims that they treat musicians fairly or more favorably than competing sellers. This article has three parts. Part I introduces consumer process preferences for fair musician compensation and identifies various fair-music claims made by music sellers CD Baby, Magnatune, and Bandcamp. Part II discusses how fair-music claims can be enforced under existing federal and state advertising laws, specifically the Federal Trade Commission Act, the Lanham Act, and state UDAP laws. Part III discusses some potential legal challenges to enforcing fair-music claims and concludes that false advertising suits nevertheless offer a novel tool for government agencies, consumers, and competitors to ensure that music sellers pay musicians as claimed. Policing fair-made music claims through advertising law therefore could augment existing protections of musicians under copyright and contract law, which some scholars have criticized as inadequate for ensuring that a sufficient portion of music revenues reaches artists. These thoughts are my own and not the opinions of the Federal Trade Commission, individual commissioners, or staff.

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