

**By email to ralf@ayasainstruments.com
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Ayasa Instruments B.V.
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Zurich, 21 September 2020

Copyright protection of the Hang sculpture

Dear Mr. van den Bor

We are writing to you on behalf of our client PANArt Hangbau AG, Switzerland.

Our client informed us about your email of 16 September 2020 and we take note that you are willing to avoid legal proceedings. Our client would also be willing to discuss an out-of-court settlement. However, this would need to reflect the legal situation about the Hang®, which we will point out in the following.

Our client is owner of the worldwide copyrights on the Hang® sculpture, which – as you know – was designed by Sabina Schärer and Felix Rohner in the year 2000 as a sound sculpture.



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The individuals identified as attorneys at law are admitted to the relevant Swiss or EU bar.

The design of the Hang® sculpture represents the artistic-philosophical concept of the authors to create a harmonic shape as a social sculpture, which allows its owner to express himself spontaneously with sounds created with the hands only and without any musical guidelines.

The form of the Hang® was designed by the authors after intensive studies and attempts and is characterized by the following elements:

- a lenticular basic shape, consisting of two synclastic spherical segments,
- a central dome (*Ding*),
- an opposing resonance hole (*Gu*) and
- the note fields arranged in a circle on the upper bowl segment.

Before the Hang®, there was neither a sculpture, nor an instrument that was even similar in design to the creation of the authors. There is neither any technical requirement for any of these elements, since similar sounds can also be produced by completely different designs, which is demonstrated by several other works of our client. This has also been confirmed by two different expert opinions, inter alia of Prof. Achong, who you might know as one of the few technical experts for Steelpans in the world (expert opinion attached for your reference).

After the recent clarifications of the European Court of Justice concerning the copyright protection of works of applied art, there can be no doubt that the Hang sculpture is protected by copyright. According to these clarifications, the only criterion for the assessment of copyright protection of a work is "*whether, through that choice of the shape of the product, its author has expressed his creative ability in an original manner by making free and creative choices and has designed the product in such a way that it reflects his personality*" (ECJ C-833/18, 11 June 2020 – Brompton, N 34).

Taking into account these considerations and the referred expert opinion of Prof. Achong, which is completely in line with another German music and sound expert, Dr. Steppat, copyright protection of the *Hang* has been confirmed by all courts that had to decide about this question, namely by the Regional Court of Berlin, the Regional Court of Düsseldorf and the Regional Court of Hamburg; by the latter after conducting an extensive oral hearing (cf. attached court decisions; not yet legally binding).

Taking into account the harmonized definition of a copyrighted work of the European Court of Justice, this assessment applies in all EU member states including the Netherlands (summarized in ECJ C-683/17 – Cofemel and C-833/18 – Brompton Bicycle).

We take note that you are offering on your website ayasainstruments.com worldwide shipping of a broad range of "handpans", which comprise all characteristic elements of the Hang® and thus are to be considered copyright infringements.

Besides that, you are offering "*handpan shells*" to "*makers around the world*" and present yourself as the "*world leading manufacturer*":

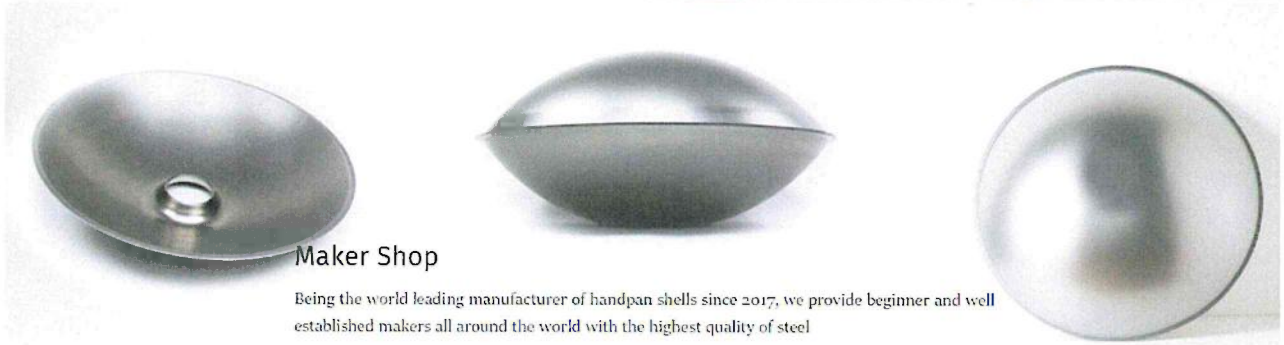
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Available Now

See which Ayasa handpans are available for immediate purchase



Maker Shop

Being the world leading manufacturer of handpan shells since 2017, we provide beginner and well established makers all around the world with the highest quality of steel

<https://ayasainstruments.com/>

With these offers, you are wilfully inciting the production of unauthorized copies of the Hang® by others and thus you are contributing to respective copyright infringements.

Consequently, our client is entitled to claims for cease and desist, for information about past infringements and for damages concerning your marketing of crafted "handpans" as well as concerning raw shells.

Please note that our client is not willing to accept any continued infringements and commercial exploitation of its copyrights, which is not necessary at all to produce feasible instruments. Our client has always informed the public to welcome and favour others to design new creative shapes of sound sculptures. However, until now our client has not seen much creativity in the "handpan community", which is supported by your business to stuck in the mere copying of the Hang's shape.

Our client would thus not hesitate to enforce its rights also in the Netherlands and we already assigned our colleagues in the Netherlands to discuss respective actions.

Taking into account your proactive approach, our client would be willing to discuss with you the conditions of an out-of-court settlement. However, please note that our client will not accept to discuss about the existence of copyright protection of the Hang® in general. If you decide to dispute the existence of copyright protection of the Hang®, our client would prefer to take immediate legal action before a Dutch court.

If you are willing to avoid such legal proceedings and are rather willing to meet for settlement talks in Switzerland, which might include a discussion how your handpans might differ from the Hang® design, we suggest that you stop any continued marketing on your website ayasainstruments.com with immediate effect and send us proposals for a meeting this or next week, which could take place in our office in Zurich.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'S. Schröter', is positioned below the text 'Yours sincerely'.

Dr. Stefan Schröter
Attorney at Law

Attachments

Regional Court Berlin of 29.4.2020
Regional Court Dusseldorf of 11.8.2020
Regional Court Hamburg of 20.8.2020
Expert opinion Prof. Achong