

# THE FEDERAL GOVERNMENT

## The bitter dispute over a Bernese invention

Felix Rohner and Sabina Schärer created a new instrument with the Hang. They have been fighting against plagiarism for years. Now the other side is fighting back.



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Sabina Schärer and Felix Rohner with their instruments. Photo:

Christian Pfander

Over Easter, we are republishing some of the most sensational articles from the last few months. This article first appeared on February 18, 2024.

The sheets of metal are in every corner, lying on racks, stacked in boxes. They hang on the wall, are clamped into the workbench, glow in the furnace at 300 degrees. And they are hammered.

Felix Rohner is surrounded by sheet metal in all its forms. For five decades, his life has revolved primarily around sheet metal.

But Rohner says: "Sheet metal is stupid."

He says this, having succeeded in creating a product that is loved by people all over the world: the Hang. An instrument, a sound box. A work of art?

That is the question that preoccupies not only him.

Rohner and Schärer run the Panart company. Their workshop is located on the banks of the Aare River in Bern's Engehalde district. Rohner's sons David and Basil also work in the company.

They invented the hang around 25 years ago. It consists of two shells and looks a little like a UFO. The upper shell has tone fields with different pitches. It is played with the hands, hence the name from the Bernese German dialect. The hang has a sound that is both earthy and spherical.



it today. Photo: Christian Pfander

You don't need to know much about music to play a hang. It always sounds harmonious.

The instrument conquered the world from Bern. Hang is the registered trademark of Panart. Internationally, imitations are known as handpans.

**Success around the world**

Over the past 15 years, a new branch of the music industry has grown up around the hang. Google lists more than 200 manufacturers from all continents. Music stores are profiting from it, as are workshop providers and festival organizers.

At the same time, a somewhat esoteric cult has emerged. On Spotify, you can find countless playlists under "Handpan Meditation." On YouTube, hundreds of thousands watch as players, often in the great outdoors, make their bowls sing. And in internet forums, players assure us that the instrument can change lives. If not the world.

The hang has long since slipped out of Rohner and Schärer's hands. And that hurts them. "People don't understand our art," he says. You can't just press a few notes into the metal.

For years, they have been fighting against companies and individuals who copy their invention more or less exactly and earn money from it. Now, the Bern Commercial Court is set to make a decision that could have far-reaching consequences.

"We don't want to stop anyone from making handpans," says Sabina Schärer. They certainly don't want to hurt small businesses. "But we say: be creative yourselves."

Just as they themselves have been, right from the very beginning.

### **Invention of an instrument**

It was 1976 when Felix Rohner first heard a steel band from the Caribbean playing at the city festival in Bern. Their instruments, steelpans, are made from the bottoms of oil drums. In Trinidad and Tobago, they are the national instrument. "They symbolize the peaceful development of a nation," says Rohner. "That inspired us."



Steel bands were quite popular in carnival circles: a band from Murten, 2002. Photo: Urs Baumann

Together with friends, he founded the Berner Oelgesellschaft, a steel band, and established Panart in 1993. The crew manufactured steelpans and continuously developed new manufacturing processes.

While Rohner's colleagues gradually left the company, Sabina Schärer joined in 1995.

At the end of 1999, the duo received the decisive impetus for the hang. Biel-based percussionist Reto Weber knocked on Panart's door to have his steel pan tuned.

He also owned several ghatams, clay pots from India that are tuned differently. He would have liked to have had a similar instrument that encompassed several tones. He expressed this wish during his visit to Bern.

"Felix and Sabina turned my idea into reality," he writes in a book, "by connecting a pang bowl tuned to several tones upside down with a second one." Based on this prototype, they then created the "original hang." His idea had been implemented "in a magnificent way."



A picture from the early days of Panart: Sabina Schärer and Felix Rohner.

Photo: Tomas Wüthrich

Weber says that to this day he has never seen or heard a handpan that can even come close to the hang in terms of sound.

### **Boom after the trade fair**

Initially, however, only experts were interested in the prototypes. In 2000, Panart received the Bavarian State Prize for Special Technical Achievement in Craftsmanship for the hang.

Public success came when Schärer and Rohner took part in the Musikmesse in Frankfurt in 2001. From 2005 onwards, demand increased sharply – until Panart could no longer satisfy it and no longer wanted to.

In 2006, sales in music stores were stopped. "Now, almost people from all over the world were unexpectedly showing up at the workshop every day," says Rohner. Others wrote letters – and received an invitation to Bern.



A look inside the workshop: Panart builds instruments in all shapes and sizes. Photo: Christian Pfander

Anyone who bought a Hang had to promise not to resell the instrument at inflated prices. Today, however, instruments are still being offered on eBay for CHF 10,000. At Panart, no instrument costs more than CHF 2,500.

Schärer and Rohner continued to expand their range of instruments. What they all have in common is that they are made of nitrogen-enriched sheet steel. At Panart, this material is called Pang. Years ago, the company offered licenses for its manufacture, but there was hardly any demand.

### **Fight against counterfeits**

But the Hang had caught on. The first copies appeared on the market in 2007, and their numbers grew steadily. "We immediately took action against detailed imitations," says Rohner.

Panart took legal action against a company in Spain for unfair competition for the first time in 2008, but without success. "They had simply copied the hang."

However, Rohner and Schärer then used another ruling as grounds to claim copyright. In 2017, the Federal Supreme Court had granted this protection to a bar stool designed by Max Bill. Copyright is valid for 70 years after the death of the creator.

Recently, the case of another well-known Bernese company made headlines headlines: the Münsingen-based furniture manufacturer USM sued a German company that reproduces and sells the USM Haller furniture system in exact detail offered it. USM is invoking copyright protection. [The case is pending.](#)

Panart also recently took action in Germany against companies that copy the Hang – with success.

### **Lawsuits against competitors**

In 2020, for example, the Hamburg Regional Court ruled that the design elements were not technically necessary, but rather an "aesthetically motivated decision by their creators." The Hang was a work of applied art.

But the other side fought back. A group called Handpan Community United (HCU) began raising money for a lawsuit against Panart. "We wanted to avoid having lots of small, fragmented lawsuits," says one of the co-founders, German David Kuckhermann. "Save the Handpan!" was the motto.



The workshop on the banks of the Aare: conquering the world

from Bern. Photo: Christian Pfander

The HCU justifies the campaign as follows: if Panart is granted copyright, it would become impossible to buy handpans in their current form. "In the worst case, this could also affect the right to

public performances through live concerts, videos, or workshops."

To prevent this, the best lawyers are needed—and 250,000 Swiss francs.

Panart is also sparing no expense in legal disputes.

disputes. In fact, the legal battle is costing Panart about the same amount.

This led to a two-day hearing at the Bern Commercial Court in September 2023.

The verdict is still pending. The court must now clarify whether the Hang is an intellectual achievement and an object of applied art.



The hearing at the Commercial Court presented an unusual picture. Photo: Panart

It is a lawsuit brought by one company against the rest of the world. Panart is facing 25 parties from Switzerland, Germany, and the Netherlands who have filed lawsuits in Bern.

These include not only companies such as Thomann from Germany, which has 1,500 employees and describes itself as Europe's largest music store, but also individuals such as Daniel Bernasconi from the canton of Appenzell Ausserrhoden.

### **Wrestling with details**

Bernasconi is one of those people who not only try to elicit ethereal sounds, but rather the meaning of life itself: "The sound of the handpan found me at a time when I

didn't know exactly which direction my life would take," he writes on his website.

He quit his job as a banker, embarked on a three-year trip around the world, and became an instrument maker after his return. His company is called Soma Sound Sculptures, and it offers handpans in countless different tunings.

Bernasconi was in regular contact with Panart, as Rohner confirms.

Rohner. In 2016, when Panart reached a settlement with another company, the Bern-based company wrote in a statement that the settlement had prompted Bernasconi to modify his own design so that it was "clearly different" from the hang.



Daniel Bernasconi: from banker to instrument maker. Photo:

zvg

Bernasconi says he was all the more astonished when he received a warning letter from Panart at the end of 2020. "Suddenly, my instruments were too similar and therefore plagiarized." He was asked to stop manufacturing and selling handpans within three months.

He joined the HCU and the lawsuit in Bern. "Otherwise, I would have had to shut down my business."

Felix Rohner simply says that Bernasconi's handpans still look similar to the hang to this day.

## **Protection for four elements**

But Bernasconi also remembers another earlier quote from Panart. In 2007, Rohner and Schärer wrote in a technical article that it was impossible for them to meet the growing demand

: "Further collaboration between art and

Science is necessary to ensure that there will be more slope builders in the future."

"This sentence," says Bernasconi, "was understood by many enthusiasts as a call to take up the hammer themselves." Now they find themselves in an unpleasant situation – in court. "We actually want to pay tribute to this incredible achievement."

### **Do you like handpan music?**

Yes, there's nothing more relaxing. But only if it comes from the original hang. No, that's much too sweet for me.

Felix Rohner says they set to work in the spirit of Trinidad's steelpan culture. "Every tuner in Trinidad is proud to present their own form of steelpans." Every year, an innovation award is presented.

The request in 2007 should also be understood in this sense. At that time, there were no other handpan builders. But now everyone was doing the same thing as them.

In the Bernese process, Panart now aims to protect the appearance of the Hang. Schärer and Rohner have identified four elements that are typical of the Hang and should therefore not be copied.



Sabina Schärer at work: Panart received the Bern Music Prize in 2020 for the hang. Photo:

Christian Pfander

These are the lens shape of the two bowls, the ring-shaped arrangement of the sound fields, the opening on the underside, and the dome on the top.

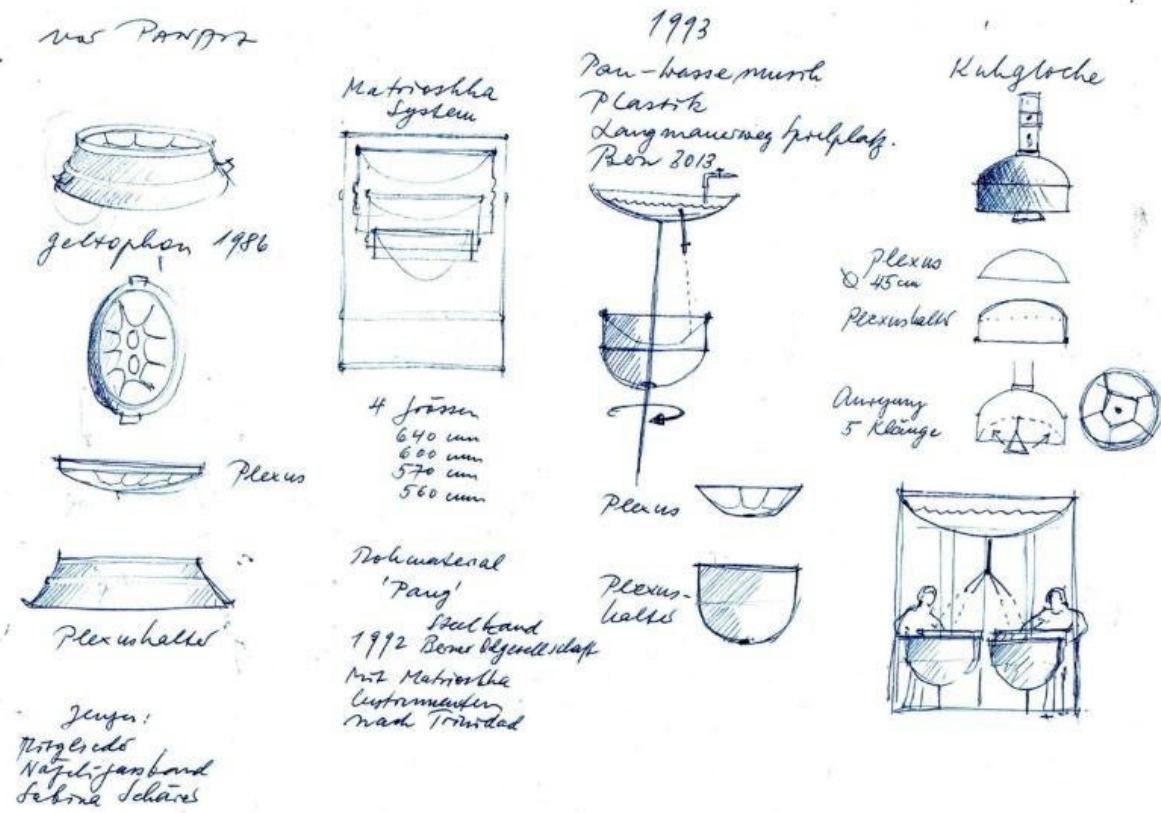
But the other side does not want to go along with this. Handpan maker Bernasconi says: "The hang is perfect just the way it is."

HCU co-founder David Kuckhermann puts it this way: "There's a reason why the violin looks like a violin." Namely, that its shape optimally supports the desired sound. The same is true of the hang. "And if builders always had to develop their own shapes first, the further development of musical instruments would no longer be possible."

### **Trivialization of perfection**

The plaintiffs do not dispute that Rohner and Schärer invented the hang. But as can be seen from the minutes of the proceedings and the pleas, in their view, the invention is not only perfect, but above all banal.

Rohner and Schärer have documented the development of the hang in detail. Their opposing lawyers analyzed every single step for the trial and always came to the same conclusion.



The development of the Hang: drawings by Panart. Photo:

Panart

The first prototype? "It came about spontaneously and by chance while tinkering around."

The resonance opening on the underside: "As banal as it is technically and functionally necessary."

The dome, which opens outwards: "Banal."

All four elements that Panart wants to protect are "technically necessary." An octagonal shape, for example, would result in a "worse or even different" instrument.

In other words, anyone who wanted to build such an instrument would have ended up with the Hang.

## Support from Trinidad

Panart vehemently opposes this "trivialization" of the hang. "We also want the history of the creation of the steelpan and the hang to be respected," says Sabina Schärer. "There's more to it than just a barrel that you hammer on a bit."

To prove this, Panart obtained an expert opinion from Trinidad in June 2020. It was written by the late Anthony Achong. He taught in a senior position in the physics department at the

University of the West Indies in Trinidad and was the author of a standard work on the physics of steel pans.

The only thing that matters for the sound is that the upper shell is clamped into a frame, wrote Achong. "The instrument could have any shape." The position and shape of the sound fields also have no influence.

Achong concluded that the shape of the hang had been chosen "for aesthetic reasons." This would support the version of the hang as a work of art and for copyright.

The central question for the court is whether there is any leeway in the design of the hang, says Cyrill Rigamonti, a law professor at the University of Bern who specializes in copyright law.



Calls for respect for the story of creation: Sabina Schärer. Photo:

Tamedia AG

Panart claims that the same sound can be produced with completely different shapes. "If that's true, it would be an indication of copyright protection." In Rigamonti's view, an independent expert opinion would be necessary to clarify this issue.

If, on the other hand, the inventors of the hang had found the perfect sound with their instrument, then that would be an achievement, but a technical one.

"That would then be a case for patent protection."

If Panart were granted copyright, this right would only apply in Switzerland. "However, such a ruling would certainly send a signal to the other parties," says Rigamonti.

### Attack on the brand

No decision has yet been made in the legal dispute between Panart and the 25 plaintiffs. The situation is unlikely to ease anytime soon, as the two sides remain irreconcilably opposed. The next legal battle is already underway.

It was initiated by Emanuel Eitle's company Handpan World in Munich. Eitle is one of the plaintiffs in the Bern trial.



Countless hammer blows are needed to produce a beautiful sound.

Photo: Christian Pfander

"Our lawyers have determined that, for various reasons, the Hang trademark enjoys no or at least questionable trademark protection," explains Eitle. Handpan World has therefore applied to the European Union Intellectual Property Office to have it deleted.

His company has been repeatedly warned in recent years, says Eitle. Panart is trying to "hinder us in our work and our activities related to the handpan." He has to defend himself against this.

Felix Rohner, on the other hand, speaks of harassment: "This is yet another attempt to rewrite history."

Sometimes he sounds as if he himself is uneasy about what they have created. "There's some kind of medicine in this sound," he says. "It has unfortunately numbed many people."