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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92061215
Party	Plaintiff Schiedmayer Celesta GMBH
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Submission	Motion to Amend Pleading/Amended Pleading
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UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL & APPEAL BOARD

Schiedmayer Celesta GmbH,)	
)	
Petitioner,)	
)	
v)	Cancellation No. 92/061,215
)	Reg. No.: 3,340,759
Piano Factory Group, Inc.,)	
Sweet 16 Musical Properties, Inc.)	Mark: SCHIEDMAYER
)	Registration Date: 11/20/2007
Respondents.)	
_____)	

MOTION TO AMEND PETITION FOR CANCELLATION

January 3, 2017

Petitioner herewith moves for an Order entering Petitioner’s proposed Amended Petition for Cancellation as attached hereto. The Amended Petition seeks to add an additional claim of Abandonment at Paragraphs 20 to 25. The Amended Petition also adds Sweet 16 Musical Properties, Inc. as an additional Respondent, as provided for in the Board Decision of December 21, 2016.

The basis for this Motion is found at Footnote 27 of the Board Decision of December 21, 2016 which states the following:

“If Petitioner wishes to pursue its claim beyond this Motion for Summary Judgment

Petitioner must, within **10 days** of the issuance of this Order, file a Motion to Amend its Petition to Cancel to properly plead such a claim.”

Permission to file such a claim was granted in a telephone conversation having taken place on December 22, 2017 with Interlocutory Attorney Benjamin Okeke. In the conversation granting permission to file the subject Motion, Interlocutory Attorney Okeke suggested that the Petitioner first seek to obtain the consent of Counsel for the Respondents to the entry of the Motion. This would serve to substantially expedite prosecution.

Therefore, on December 23, 2016 the undersigned both faxed and mailed a copy of the proposed Amended Petition for Cancellation to Adam R. Stephenson, Counsel for the Respondents, with the request that Mr. Stephenson consent to entry of the Amended Petition for Cancellation. No response was received from Mr. Stephenson, and therefore this Motion is required.

The basis of the additional claim to be added to the Petition for Cancellation is an additional claim of abandonment of the registration because the owner of the subject Registration, Sweet 16 Musical Properties, Inc. never filed a Declaration of Use.

More specifically, Respondent has admitted that on or about August 17, 2006, all of the assets of Piano Factory Group, Inc. were assigned to Sweet 16 Musical Properties, Inc.

Therefore, as of August 17, 2006, the subject registration sought to be cancelled herein, No. 3,340,759 was no longer owned by Piano Factory Group, Inc.

On April 18, 2014, on a date when, by Respondent's own admission, the subject registration was owned by Sweet 16 Musical Properties, Inc., a Declaration of Use was filed with respect to the subject registration in the name of Piano Factory Group, Inc. a corporation of California.

Piano Factory Group, Inc. was insolvent, did not legally exist and did not own the registration at the time it signed the Declaration of Use, but rather it was owned by a third party, Sweet 16 Musical Properties, Inc., which never signed a Declaration of Use. In fact, Sweet 16 Musical Properties, Inc. did not even sign the required Statement of Use during prosecution of the application, it having been signed by Piano Factory Group, Inc. at a time when it was insolvent and did not own the application.

Since Sweet 16 Musical Properties, Inc. (The sole owner of the Registration) never signed either a Statement of Use or a Declaration of Use, the subject registration became abandoned and should be deemed abandoned at this time.

The above facts were not available at the time of filing of the Petition for Cancellation or the Amended Petition for Cancellation. These factors only became known to the Petitioner when Respondent responded to Petitioner's Motion for Summary

Judgment. Since Respondent did not timely record the assignment of the Registration, this transfer of ownership was unknown to Petitioner until such time as Respondent caused to be filed an Affidavit of the owner of Sweet 16 Musical Properties, Inc.

In any event, it is Black Letter that leave to amend should be freely given and, indeed, at note 27 to the Decision of December 21, 2016, Petitioner was given a 10-day term within which to file an amended Complaint.

Finally, it is noted that this Motion is timely. The 10 day term was a Saturday and January 2, 2017 was a Patent Office Holiday. This Motion is being filed on January 3, 2017.

For the reasons given above, it is believed that the attached Amended Petition for Cancellation should be entered.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael J. Striker", with a long horizontal flourish extending to the right.

Michael J. Striker
Attorney for Petitioner

103 East Neck Road
Huntington, New York 11743

631 549 4700

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL & APPEAL BOARD

Schiedmayer Celesta GmbH,)
)
 Petitioner,)
)
v)
)
Piano Factory Group, Inc. and,)
Sweet 16 Musical Properties, Inc.)
)
 Respondents.)
_____)

Cancellation No. 92/061,215
Reg. No.: 3,340,759
Mark: SCHIEDMAYER
Registration Date: 11/20/2007

**AMENDED PETITION FOR CANCELLATION OF
U.S. TRADEMARK REGISTRATION NO. 3,340,759**

January 3, 2017

Petitioner herewith files this Amended Petition for Cancellation:

Petitioner, Schiedmayer Celesta GmbH (Schiedmayer), herewith petitions to cancel U.S. Trademark Registration No. 3,340,759 for the mark SCHIEDMAYER owned by Piano Factory Group, Inc. (Piano Factory) and registered on November 20, 2007, and assigned to Sweet 16 Musical Properties, Inc. (Sweet 16).

In support of this Petition, Schiedmayer hereby alleges as follows:

1. Schiedmayer Celesta GmbH is a limited liability company organized under the laws of the Country of Germany and having offices in Wendlingen, Germany.

Schiedmayer Celesta GmbH is the successor in interest to the trademark SCHIEDMAYER dating to its origin in the year 1735. Schiedmayer Celesta GmbH is owned and operated by Elianne Schiedmayer, successor to the Schiedmayer name and trademark dating back to its origin in 1735.

2. Upon information and belief, Sweet 16, is a California corporation having offices in Burbank, California.

3. Upon information and belief, Piano Factory and Sweet 16, the Respondents herein, are engaged in the business of offering for sale pianos.

4. For many years, and long prior to any use or registration or filing of the trademark Schiedmayer by Piano Factory or Sweet 16, Schiedmayer and its predecessors in interest have manufactured and sold Schiedmayer keyboard instruments, representing some of the most coveted and respected keyboard musical instruments in the world.

5. For many years and long prior to any use or registration by Piano Factory or Sweet 16, Schiedmayer has manufactured and offered for sale the Celeste piano, which is a piano keyboard instrument having four or five octaves and in which a plate is struck rather than a wire to create sound.

6. Schiedmayer keyboard musical instruments represent the highest degree of quality and reputation. Schiedmayer keyboard musical instruments have been sold and are used by numerous symphonies and orchestras throughout the United States, by way of the following examples:

Boston Symphony, Washington National Symphony, San Francisco Symphony, New York Philharmonic Orchestra, Florida Philharmonic Orchestra, St. Louis Symphony Orchestra, Chicago Symphony Orchestra, Memphis Orchestra, Philadelphia Orchestra and several others.

7. Schiedmayer and its predecessors in interest currently and long prior to any use or registration by Piano Factory or Sweet 16, offer for sale and has sold within the United States, Schiedmayer marked keyboard instruments. Among recent purchasers are the following:

Chicago Symphony Orchestra, Detroit Symphony Orchestra, New York Philharmonic, Cleveland Orchestra, New York University, Pittsburgh Orchestra, Paul Simon Arkansas Symphony Orchestra, Cincinnati Symphony and Pops Orchestra.

8. Piano Factory and Sweet 16 have never had any relationship whatsoever with Schiedmayer.

COUNT 1 – FALSE ASSOCIATION

Petitioner herewith repeats and realleges paragraphs 1-8 above as fully as set forth herein. Petitioner further states that it is a 'person' within the meaning of Sec. 2(a) of the Act, Lanham Act Sec. 45, 15 U.S.C. Sec. 1127.

9. Long prior to any use or registration by Respondents, the trademark SCHIEDMAYER has been known throughout the world as being associated with the finest musical keyboard instruments ever produced.

10. Petitioner and through its predecessors in interest, owns the exclusive reputation for the mark SCHIEDMAYER.

11. Petitioner herewith states that Respondents mark sought to be cancelled herein is the same as Petitioner's previously used name or identity.

12. Petitioner further states that the mark SCHIEDMAYER would be recognized as such, in that it points uniquely and unmistakably to the Petitioner.

13. Petitioner is not connected with the goods allegedly sold or the activities performed by the Respondents under the mark SCHIEDMAYER.

14. Petitioner's trademark SCHIEDMAYER is of sufficient fame and reputation that when Respondents mark is used on its goods or services, a connection with Petitioner will be presumed.

15. All of the factors alleged above also existed at the time of registration of the trademark registration sought to be cancelled.

16. In view of the false association set forth above, Petitioner is being damaged because its right to exclusive use and registration of a mark which points uniquely to the Petitioner is being put in jeopardy, due to the registration of the mark sought to be cancelled herein.

COUNT III – ABANDONMENT

Petitioner herewith repeats and realleges paragraphs 1-8 above as fully as set forth herein.

17. Upon information and belief, Respondents have not used, sold or offered for sale or transported in commerce any of the products set forth in the trademark registration sought to be cancelled herein under the trademark SCHIEDMAYER for at least the past 10 years.

18. Respondents have abandoned the trademark SCHIEDMAYER and in view thereof, the subject trademark registration should be cancelled in all respects.

19. Respondents have abandoned the trademark SCHIEDMAYER in view of its non-use, and lack of any sales, offers for sale or transport in commerce of the trademark SCHIEDMAYER upon any of the goods set forth in the trademark registration sought to be cancelled herein, for at least the past 10 years and with no intent to establish use of the mark.

20. Petitioner is damaged by the maintenance of a trademark registration for the mark SCHIEDMAYER, which in fact has become abandoned. Petitioner is further damaged because the said trademark registration is being cited against Petitioner and its pending trademark application for the mark SCHIEDMAYER.

COUNT III – ABANDONMENT-FAILURE TO FILE DECLARATION OF USE

Petitioner herewith repeats and realleges paragraphs 1-8 above as fully as set forth herein.

21. The trademark registration sought to be cancelled herein, No. 3,340,759, required the filing of a Declaration of Use by November 20, 2013.

22. On or about August 17, 2006, all of the assets of Respondent, Piano Factory Group, Inc. were assigned for the benefit of creditors to Equitable Transitions, Inc. The said assignment included an assignment in gross of the trademark registration at issue herein.

23. On August 17, 2006, all of the assets of Piano Factory Group, Inc. held by Equitable Transitions, Inc. and including the trademark registration at issue herein, were sold through a Bill of Sale to Sweet 16 Musical Properties, Inc. Accordingly, as of August 17, 2006, the subject registration was owned by Sweet 16 Musical Properties, Inc.

24. On April 18, 2014, a Declaration of Use was filed with respect to the subject registration in the name of Piano Factory Group, a corporation of California, notwithstanding the fact that on April 18, 2014 Piano Factory Group, Inc., a corporation of California, at that time was insolvent, did not exist and did not own the subject registration as it had previously been assigned to Sweet 16 Musical Properties, Inc.

25. Sweet 16 Musical Properties, Inc. never signed any Declaration of Use for the subject registration. In view thereof, the subject registration has become abandoned because no Declaration of Use was filed by the owner of the registration within the required term. In view thereof, the registration is to be considered as abandoned since no Declaration of Use was properly filed in the name of the owner. Sweet 16 Musical Properties, Inc. also failed to sign any Statement of Use during prosecution of the application leading to Registration No. 3,340,759, it having been signed by Piano Factory Group, Inc. when it did not own the application and was insolvent.

In view of all of the above, this Petition to Cancel should be granted in all respects and Registration No. 3,340,759 should be cancelled from the Register.

Respectfully submitted,



Michael J. Striker
Attorney for Petitioner
Reg. No.: 27233
103 East Neck Road
Huntington, New York 11743

CERTIFICATE OF SERVICE

It is hereby certified that a true and complete copy of the attached Motion to Amend and Amended Petition was served upon Counsel for Respondents via First Class Mail at his address of record:

Adam R. Stephenson LTD
40 Baseline Rd. Ste 101
Tempe AZ 85283

This 3rd day of January, 2017

A handwritten signature in black ink, consisting of several stylized, overlapping strokes, positioned above a horizontal line.

Michael Striker