

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. and)	Mark: SCHIEDMAYER
Sweet 16 Musical Properties, Inc.)	Registration Date: 11/20/2007
)	
Respondents.)	
_____)	

**PETITIONER'S NOTICE OF FILING DECLARATION
OF ELIANNE SCHIEDMAYER**

Petitioner hereby provides notice that it has today filed the Declaration of Elianne Schiedmayer, executed on May 23, 2017 and copies of the exhibits attached thereto.

Copies of the Declaration and Exhibits are also being provided counsel for Respondents with a copy of this Notice.

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 document was served upon Counsel for the Respondents at his email address of record:

adam@iptech.law

This 24th day of May, 2017.

Dated: 5/24/17



Michael Striker

DECLARATION

I, Elianne Schiedmayer, hereby declare as follows:

I am the Chief Executive Officer and owner of Schiedmayer Celesta GmbH, a Limited Liability Company, organized under the laws of the country of Germany, which is the Petitioner in U.S. Trademark Cancellation No. 92/061,215. I have personal knowledge of all the facts set forth below.

I make this Declaration in support of a Petition to Cancel U.S. Trademark Registration No. 3,340,759 for the trademark SCHIEDMAYER for pianos, namely, upright pianos, Grand pianos and digital pianos which issued on November 20, 2007. The existence of this Trademark Registration No. 3,340,759 has blocked the ability of Petitioner, Schiedmayer Celesta GmbH to obtain a U.S. trademark registration for the mark SCHIEDMAYER, to which it is rightfully entitled. The Schiedmayer name, with respect to musical keyboard instruments, dates back almost 300 years and the registration of my name by the Respondents, represents an improper appropriation of my trademark by a company, Sweet 16 Musical Properties, Inc., which does not even manufacture pianos or any musical keyboard instruments of any type.

The business of Schiedmayer Celesta GmbH is the manufacture and sale in the United States and elsewhere in the world of a keyboard musical instrument known as a Celesta. A Celesta is a musical keyboard instrument similar to a piano, but

differing mainly that upon a depression of a key of a keyboard of a Celesta, a metal plate is struck rather than a wire.

In this respect, a Celesta is basically a piano type instrument which generally resembles a piano and is played as a piano would be played. Attached hereto as Exhibit "A" is literature generally describing the Celesta product.

Authentic Schiedmayer musical keyboard instruments such as the Celesta, as well as prior thereto the piano, have an unparalleled and famous history dating back almost 300 years. The first Schiedmayer musical keyboard instrument was a clavichord manufactured by Balthasar Schiedmayer in 1735.

Since that time, the Schiedmayer family has continuously manufactured Schiedmayer musical keyboard instruments for sale in the United States and throughout the world.

The Schiedmayer Dynasty has always been family owned. My husband, Johann Georg Schiedmayer (1931-1992) inherited the company Schiedmayer & Soehne from his father Gustav Schiedmayer in 1957. Gustav Schiedmayer was the great-grandson of Lorenz Schiedmayer who founded the Schiedmayer company in Stuttgart in 1809. Lorenz Schiedmayer was the grandson of Balthasar Schiedmayer (1711-1781) who founded the Schiedmayer Keyboard Manufacturing Dynasty.

In 1853 the youngest sons of Lorenz Schiedmayer (Julius and Paul) founded the company, J+P Schiedmayer, world known for the production of Pianos as well as for Reed Organs and also for the production of the Celesta starting in 1890.

In 1969, Georg Schiedmayer took over as sole owner of the Schiedmayer Pianofortefabrik formerly Julius + Paul Schiedmayer world known for the production of the Celesta since 1890.

In the Seventies, the piano business became quite difficult in Germany. Therefore, in 1980 Georg Schiedmayer closed down the production of the Schiedmayer pianos in Stuttgart, renamed the company Schiedmayer & Soehne to Schiedmayer GmbH & Co. KG. I am the sole owner of this company, and have been since its inception.

In 1980, a joint venture company has been created with Rud. Ibach GmbH in order to have Schiedmayer pianos manufactured by the firm Ibach in Germany. Very soon this turned out to be impractical and Georg Schiedmayer has completely withdrawn from this commercial relationship.

I would like to point out that none of the Schiedmayer companies has ever been abandoned. No Schiedmayer company has ever been sold to Rud. Ibach GmbH and that a Schiedmayer company with the name Pianofortefabrik GmbH has never been registered.

In 1992, my husband, Georg Schiedmayer, died unexpectedly. I am the sole heiress. In 1995, I founded Schiedmayer Celestabau GmbH renamed in 2003 to Schiedmayer Celesta GmbH. The Schiedmayer Celesta is the only available Celesta in the world today which is constructed in accordance with the specifications of the inventor of the Celesta, Victor Mustel, as invented in 1886.

Attached hereto as Exhibit "B" is an article entitled "A History of the Piano and Celeste Building Dynasty."

This article is taken from a 2011 publication *Musikinstrument*. I am fully familiar with the contents of the article and I am fully aware that the contents of the article are true and correct. This article recites the famous history of the Schiedmayer musical instruments from 1735 to date, a period of almost 300 years, and currently being continued through my firm, Schiedmayer Celesta GmbH. The full history of Schiedmayer may be seen in this exhibit.

Attached as Exhibit "C" is an "Erbschein" together with a translation which is an official governmental document providing that I inherited all of the assets of my husband, Georg Schiedmayer, which would include the firms which he owned.

In the aforementioned Exhibit "B", the following text appears which I personally know to be true and correct.

“The company [Schiedmayer Celesta GmbH], was founded on the fortunate decision of Georg Schiedmayer in 1980, to specialize in the production of Celestas and Keyboard Glockenspiels with wooden resonators.

Schiedmayer instruments represent the finest quality in handcraft instruments.

Schiedmayer Celesta GmbH is today the only firm worldwide that builds Celestas according to the original construction and specifications of its inventor, Victor Mustal.

Worldwide, there is hardly an orchestra, opera house, theatre, music academy, recording studio or broadcasting studio where the Schiedmayer instruments cannot be heard.

Accordingly, the enterprise as developed has delivered instruments to such well-known and prestigious orchestras and halls as the Berlin Philharmonic Orchestra, the New York Philharmonic Orchestra, the Stuttgart Opera House, the London Symphony Orchestra, the Julliard School of Music, the Stuttgart State Academy for Music and the Vienna State Opera.”

I further personally know that the above statements were true and complete well prior to November 2007.

Attached hereto as Exhibit “D” is a true and complete website for Schiedmayer Celesta GmbH. This website existed in substantially the same form, well prior to November 20, 2007, and was easily available in the United States well prior to November 20, 2007.

For many years and long prior to November 20, 2007, the registration date of the trademark sought to be cancelled herein, Schiedmayer Celesta GmbH and its

predecessors in interest, have offered for sale and sold throughout the territory of the United States, Schiedmayer Celestas which are musical keyboard instruments bearing the Schiedmayer name. This represents a continuum of the sale of Schiedmayer musical keyboard instruments dating back to 1735.

Attached hereto as Exhibit "E" is a listing of purchasers of Schiedmayer Celestas bearing purchase dates prior to November 20, 2007, in the United States.

This listing has been taken from the books and records of Schiedmayer Celesta GmbH and is true and correct. Attached hereto as Exhibit "F" are representative invoices which I have been able to locate relating to sales of Schiedmayer Celestas in the United States prior to November 20, 2007.

There have been two distributors of Schiedmayer Celestas in the United States, The Percussion Source, a Division of West Music in Coralville, Iowa and Carroll Music, based in New York. Attached hereto as Exhibit "G" are a listing of sales by each of these companies indicating the date of the sale and the purchaser where known. In some instances, the sales have taken place but I am unable to ascertain exactly which company or orchestra purchased the Celesta.

Attached hereto as Exhibit "H" are three full page advertisements for Schiedmayer Celestas in the United States. The Kettles Company advertisement

Schiedmayer. The remaining two Carroll advertisements date back to May 1977. Also attached as part of Exhibit "H" are the extracts from the Percussion Source catalog which appeared well before 2007.

Attached hereto as Exhibit "I" are copies of advertisements appearing in Symphony Magazine for the Schiedmayer Celesta.

Since well prior to November 20, 2007, most orchestras in the United States and many individuals have purchased and are currently using at least one Schiedmayer Celesta.

Between 1851 and 1910, Schiedmayer Keyboard Musical Instruments won more than 20 gold awards, six silver awards and 10 bronze awards at world's fairs around the world.

In 1876, a Schiedmayer piano won a bronze award in Philadelphia. In 1897, a Schiedmayer piano won a silver award at the Chicago World Fair and in 1904, a grand prix was awarded in St. Louis at a world's fair.

I am aware that Schiedmayer musical keyboard instruments have been the subject of various books such as "Men Who Made Piano History", Dover Publications 1911. An extract therefrom reciting the Schiedmayer famous history is attached hereto as Exhibit "J".

For many years, and long prior to November 20, 2007, a Schiedmayer clavichord built in 1796 by Johann Christoph Georg Schiedmayer was and currently is on display in the permanent collection of the Boston Museum of Fine Arts in Boston, Massachusetts, the fourth largest museum in the United States. The clavichord is defined by Merriam Webster Dictionary as a musical instrument that is similar to a piano and was played mostly in the past before the piano was invented.

The Schiedmayer piano was favored by the famous composer and pianist Earl Hines. Attached hereto is as Exhibit "K" an extract from *The World of Earl Hines*, (1993) Da Capo Press reciting the use of the Schiedmayer piano by Earl Hines and how this piano was his favorite instrument.

My firm has been a member of the American Symphony Orchestra League since 1996 and we used to exhibit at the conventions of the American Symphony Orchestra League in several cities in the United States prior to 2007.

I am personally aware that the name Schiedmayer represents and has represented for centuries one of the great names in keyboard musical history dating back continuously for a period of almost 300 years.

Schiedmayer Celesta GmbH represents the continuum of a family history relating to the manufacture of great musical keyboard instruments for almost three consecutive centuries.

The Celesta instrument and the piano are closely related. The use of the Schiedmayer name upon a no name Chinese cheap piano represents a disparagement of the great Schiedmayer trademark and further represents the highly improper and inappropriate attempt to trade upon the great name and reputation of Schiedmayer.

I am personally aware that Glenn Treibitz who is the President of Piano Factory Group and Sweet 16 Musical Productions, Inc., registered the domain name Schiedmayer.com during approximately the year 2002.

This represents yet another act of bad faith by the Respondents which not only improperly appropriated the name of one of the great musical keyboard instrument manufactures in the world, but also improperly appropriated its domain name.

There is not now, nor has there ever been, any connection between Schiedmayer Celesta GmbH or any predecessor in interest and either Piano factory Group, Inc. or Sweet 16 Musical Properties, Inc.

I hereby declare that all statements made herein of my own knowledge are true and that all statements on information and belief are believed to be true; and

further that those statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of Petition to Cancel No. 92/061,215.

Dated: 05/23/2017


ELZANNE SCHIEDMAYER

CERTIFICATE OF SERVICE

It is hereby certified that a true and complete copy of the attached document was served upon Counsel for the Respondents at his email address of record:

adam@iptech.law

This 24th day of May, 2017.

Dated: 5/24/17



Michael Striker