

1 UNITED STATES PATENT AND TRADEMARK OFFICE
2 BEFORE THE TRADEMARK TRIAL & APPEAL BOARD
3

4 Schiedmayer Celesta GmbH;)
5)
6 Petitioner,)
7)
8 vs.)
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7 PIANO FACTORY GROUP, INC., and)
8 Sweet 16 Musical Properties,)
9 Respondent.)

14 DEPOSITION OF GLENN TREIBITZ
15 TUESDAY, JULY 24, 2018

24 REPORTED BY: Karen S. Ostrom
25 CSR No. 10341, RPR

25 Job No: 145198

1 Deposition of GLENN TREIBITZ, taken on behalf of
2 Petitioner, commencing at 12:51 p.m., on Tuesday,
3 July 24, 2018, at 323 South Front Street, Burbank,
4 California, 91502, before Karen S. Ostrom, CSR No. 10341,
5 RPR, pursuant to Notice.
6
7

8 APPEARANCES:
9

10 FOR PETITIONER:

11 COLLARD & ROE

12 BY: MICHAEL STRIKER, ESQUIRE

13 1077 Northern Boulevard

14 Roslyn, New York 11576

15 FOR RESPONDENT:

16 INTELLECTUAL PROPERTY TECHNOLOGY LAW

17 GROUP

18 BY: ADAM STEPHENSON, ESQUIRE

19 8350 East Raintree Drive

20 Scottsdale, Arizona 85260
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25

I N D E X

WITNESS	EXAMINATION BY	PAGE
GLENN TREIBITZ		
	MR. STRIKER	4, 50
	MR. STEPHENSON	43

EXHIBITS

-None-

QUESTIONS INSTRUCTED NOT TO ANSWER

-None-

1 BURBANK, CALIFORNIA; TUESDAY, JULY 24, 2018

2 12:51 P.M.

3 -000-

4
5 GLENN TREIBITZ,

6 called as a witness, having been duly
7 administered the oath, was examined and
8 testified as follows:

9
10 EXAMINATION

11 BY MR. STRIKER:

12 Q. State your full name for the record, please.

13 A. Glenn Treibitz.

14 Q. You are the president of Sweet 16 Musical
15 Properties, Inc.; is that correct?

16 A. Yes.

17 Q. And would it be correct to say that Sweet 16
18 Musical Properties, Inc., which is one of the defendants
19 in this proceeding, does business at Hollywood Piano --
20 as Hollywood Piano?

21 A. Yes.

22 Q. It's correct that this deposition is being taken
23 in your facility, Hollywood Piano, in Burbank,
24 California; is that correct?

25 A. Yes.

Q. Do you participate in the offering for sale of pianos at Hollywood Piano?

A. Yes.

Q. What are your overall responsibilities as president of Hollywood Piano?

A. Running the company.

Q. So you are familiar then, when a piano is sold, as to the transactions which are involved?

A. No. I don't get into the day-to-day minutia.

Q. You don't know --

A. No.

Q. -- how a piano is sold?

A. I mean, on specific pianos. I know in general.

Q. In general, let's discuss in general, if somebody comes in to Hollywood Piano, decides they want to buy a piano, this happens quite frequently; correct?

A. Uh-huh.

Q. Yes?

A. Yes.

Q. You have to answer yes so the court reporter can understand that.

A. Right.

Q. Is this will happen with you, they may come to you on the floor and say we want to buy a piano; correct?

A. Yes.

1 Q. Let's say they want to put some money down on
2 the piano and then pay the rest later, this happens from
3 time to time; correct?

4 A. Yes.

5 Q. Or they may want to pay everything at once;
6 correct?

7 A. Yes.

8 Q. So what do you do then? The down payment is
9 made. How does that work? Do you issue a receipt for it
10 or what?

11 A. It's on the contract.

12 Q. There is a contract you prepare?

13 A. Yes.

14 Q. And is that signed by you or somebody on behalf
15 of Hollywood Piano?

16 A. Yes.

17 Q. Is it signed by the purchaser?

18 MR. STEPHENSON: Objection. Compound question.

19 If you want to just ask the question again.

20 MR. STRIKER: I think the witness understands
21 the question.

22 Q. Do you understand the question? Is it signed by
23 you?

24 A. If I'm the salesperson.

25 Q. Then the answer is yes?

A. Yes.

Q. If you are the salesperson, you will sign it.
Is it signed by the purchaser?

A. Yes.

Q. And what does the contract specify? You don't understand the question?

A. No.

Q. What are the terms of the contract?

A. It's different on every contract.

Q. Give me an example of what you would typically have in a contract.

A. Are you talking about a purchase contract or a finance contract?

Q. I'm talking now about a purchase contract.

A. There would be the purchase price and how it was being paid for.

Q. And it would describe the piano; correct?

A. It would name what the piano was.

Q. Okay. You mentioned financing. Do you do financing as well?

A. Yes.

Q. So if you do financing, is there a separate contract for that?

A. Yes.

Q. What does the finance contract generally

1 indicate?

2 A. The finance terms.

3 Q. And it describes the piano?

4 A. Yes.

5 Q. Now, eventually you deliver the piano; correct?

6 A. Yes.

7 Q. So are there any documents involved with the
8 delivery of the piano?

9 A. A delivery slip.

10 Q. Do you give the purchaser a delivery slip?

11 A. The moving company.

12 Q. You give the moving company a delivery slip, and
13 you notify the purchaser of when the piano is going to
14 be --

15 A. That's done at the time of purchase.

16 Q. Okay. Does the purchaser typically get any kind
17 of guarantee or warranty?

18 A. Yes.

19 Q. Does Hollywood Piano then guarantee the piano
20 or --

21 A. Yes.

22 Q. Is there a typical form of a Hollywood Piano
23 guarantee?

24 A. It's written on the sales agreement.

25 Q. And Hollywood Piano then guarantees the piano;

1 correct?

2 A. Yes.

3 Q. And --

4 A. Warranties the piano.

5 Q. Warranties the piano?

6 A. Yes. Not guarantee.

7 Q. Okay. For what term does Hollywood Piano
8 typically warranty the piano, and what does Hollywood
9 Piano typically warrant?

10 A. It could be any length of terms from a year to
11 20 years. It covers parts and labor and potential
12 defects.

13 Q. And there is a Hollywood Piano warranty?

14 A. That's on top of the manufacturer's, if there is
15 one.

16 Q. There may not be a manufacturer's warranty;
17 correct?

18 A. Yes.

19 Q. But still a Hollywood Piano warranty; correct?

20 A. Yes.

21 Q. Now, these documents, copies of these documents
22 that are issued in connection with the sale of a piano,
23 do you maintain these in a file?

24 A. Sometimes, yes.

25 Q. What do you do with the file? Where do you keep

1 it?

2 A. It depends on the room that's available.

3 Q. Do you keep it in different places?

4 A. Yes.

5 Q. Where do you keep it?

6 A. Some are kept here, some are kept in our
7 Pasadena location, some are kept in -- have been kept in
8 storage facilities.

9 Q. So you keep these files. Do you put any
10 information into a computer?

11 A. No.

12 Q. Okay. Do you consider yourself an expert with
13 regard to pianos in general?

14 A. Yes.

15 Q. You have indicated in your trial affidavit that
16 you have been involved in the sale of approximately
17 50,000 pianos; correct?

18 A. Correct.

19 Q. When you say involved, what do you mean?

20 A. I have overseen companies that have sold that
21 many pianos over the years.

22 Q. That doesn't mean you were directly involved
23 with 50,000 pianos?

24 A. Well, I'm ultimately involved because I'm the
25 person who owns the company.

1 Q. So you are familiar with those sales generally;
2 is that right?

3 A. Generally.

4 Q. Okay. You have indicated that many of these
5 sales were historical brands no longer under manufacture;
6 correct?

7 A. Yes.

8 Q. And you consider yourself an expert. Do you
9 consider yourself an expert on historical brands that are
10 no longer under manufacture?

11 A. No.

12 Q. You consider yourself an expert in pianos but
13 not an expert on historical brands no longer under
14 manufacture; is that your testimony?

15 A. I have limited knowledge of historical brands.
16 If I have to, for an appraisal, I'll do research on one.

17 Q. You have done research on historical pianos; is
18 that correct?

19 A. Yes.

20 Q. As an expert and as a person with a lot of
21 experience with the sale of pianos, would you agree with
22 me that historically German pianos have a good
23 reputation?

24 A. Yes.

25 Q. Would you agree with me that historically German

1 pianos -- historically German pianos tend to be rather
2 expensive in resale?

3 A. Some.

4 Q. Okay. Can you expand on that at all with regard
5 to the good reputation of German historically known
6 pianos? Do you have any further information in that
7 respect that would indicate why you believe German pianos
8 have a good reputation?

9 MR. STEPHENSON: Objection. Calls for
10 speculation.

11 MR. STRIKER: Well, he's an expert.

12 Q. Go ahead. You can answer the question.

13 A. Some German pianos are valuable; some are not.
14 There is a handful of names that have some value to them.
15 That's like saying every German car is valuable. We know
16 that a Volkswagen is a lot different than a
17 Mercedes-Benz.

18 Q. Okay. In your trial affidavit you discuss a
19 visit that took place sometime ago to a piano store
20 operated by a Helga Kasimoff. Do you remember that?

21 A. I didn't remember until it was brought to my
22 attention, but, yes, I remember it.

23 Q. When you discuss the visit to the offices of or
24 the store of Helga Kasimoff -- strike that.

25 Helga Kasimoff in her affidavit made certain

allegations that you had, during your visit, helped carry a Schiedmayer Celesta out of the back of the store, and that you, together with the people you were with, participated in playing the Schiedmayer Celesta. Do you remember that?

A. No.

Q. You don't remember anything?

A. Nothing.

Q. Do you have any memory problems?

A. I don't remember moving an instrument in Helga Kasimoff's store.

Q. That's not what I asked you. I asked you whether you have some problems with your memory.

A. Occasionally.

Q. You do? When do you have problems with your memory?

A. When I try to remember what I ate for dinner the prior day or something like that.

Q. You can't remember that?

A. Sometimes not.

Q. So you have some memory problems; is that correct?

A. I think we all do at certain times.

Q. That's not what I asked you. I asked you whether you have some memory problems; is that correct?

1 A. I would say that occasionally I won't remember
2 something.

3 Q. So --

4 A. Especially something that might have been
5 13 years ago.

6 Q. So because of these memory problems, for some
7 reason you can't remember what happened when you visited
8 that store; correct?

9 A. I don't like the characterization of the
10 question. I was in a place 13 years ago, and I don't
11 remember the details. I went there for a specific
12 reason.

13 Q. What was the reason?

14 A. To introduce Helga to some folks who sell a
15 similar piano in China, and they wanted to meet the
16 Los Angeles representative of Bluthner.

17 Q. You are not denying anything that transpired
18 during that meeting that Helga Kasimoff alleged, are you?

19 A. Yes.

20 Q. Are you not denying it? You can't remember it.

21 A. I'm denying that I moved a piano or Celesta.

22 Q. You just told me you don't remember.

23 A. I don't remember moving it.

24 Q. There is a photograph of you standing right next
25 to the Celesta. You don't remember that?

A. No.

Q. Are you denying that took place?

A. I don't remember the photograph.

Q. You are not denying it?

A. If I'm standing next to it, no.

Q. Okay. In your trial affidavit you refer to data losses resulting both from migration of recordkeeping and losses suffered from computer system failure. When you refer to losses of data resulting from migration, what do you mean?

A. We had a company that went out of business who was handling at the time four locations.

Q. What does migration mean?

A. Well, we couldn't migrate so we could only migrate what we could get our hands on so we don't have a full picture.

Q. So you're saying that the data losses, when you talk about migration, you are also talking about computer system failure; is that correct?

A. There were some failures, but the main issue was a company that went belly up that had all of our data.

Q. But they didn't have your files, did they?

A. They had our files. Everything was on their server.

Q. You told me you kept your files in different

places.

A. You are talking about the physical files?

Q. Correct.

A. We're not talking about physical files. We're talking data here so you are confusing the two.

Q. I'm not confusing anything.

A. Yes. You are because --

Q. Don't interrupt me. I'm asking you questions. All right. Just give me the answer. I'm talking about the physical documents; correct? You had those documents?

A. Yes.

Q. Okay. That's what I'm asking you. It had nothing to do with a computer failure. You still had the documents; correct?

A. Yes.

Q. Okay. I believe we discussed this somewhat in our discovery deposition, but on four separate occasions, and I believe you understood it at that time, we, as plaintiff, served upon you four different requests for production of documents, the first one in 2015, '16, and '17. Each of those requests for production of documents requested, in whole or in part, documents relating to Schiedmayer. I never received any single one of those documents that you just described take place with respect

1 to every sale of a piano, contracts, guarantees,
2 receipts, et cetera.

3 MR. STEPHENSON: Objection.

4 BY MR. STRIKER:

5 Q. Why not?

6 MR. STEPHENSON: Is this a question or --

7 MR. STRIKER: I just said why not.

8 THE WITNESS: Why not what?

9 BY MR. STRIKER:

10 Q. Why didn't I receive any of those documents?

11 A. Because they are not organized.

12 Q. What does that mean, not organized?

13 A. They are just in boxes, and many of them get
14 thrown out. You know, it's not like we keep these things
15 forever. We're talking about something that goes back to
16 2002.

17 Q. No, we're not.

18 A. Yes, you are.

19 Q. I asked you for documents in 2015 for the five
20 years previous thereto, and you did not produce one
21 document and I'd like to know why not?

22 A. Poor recordkeeping.

23 Q. Don't you have a requirement by the Internal
24 Revenue Service to maintain documents for a period of
25 three years, and isn't it a felony if you don't keep

those documents for a period of three years? Do you understand that?

MR. STRIKER: Objection. Calls for a legal conclusion.

BY MR. STRIKER:

Q. You can answer the question.

MR. STEPHENSON: Not if it's going to incriminate him.

BY MR. STRIKER:

Q. You can answer the question. Do you know or not?

A. No.

Q. You don't know that you have to keep those documents?

A. We keep the overall general numbers. We don't necessarily keep individual documents.

Q. Are you aware that under California state law you are required for five years to maintain your documents? Are you aware of that?

MR. STEPHENSON: Objection. Calls for -- objection.

MR. STRIKER: Either he's aware of it or not.

MR. STEPHENSON: What documents?

MR. STRIKER: Any documents relating to the sale of pianos. I did not get one single, solitary shred of

1 evidence regarding the sale of Schiedmayer pianos for a
2 period of five years, not once, even though I asked on
3 four different occasions for those documents, and I'd
4 like to know why not. Just because they are in boxes
5 somewhere is not an answer.

6 Q. I'd like to know why you didn't search for those
7 documents or produced a single one?

8 MR. STEPHENSON: Asked and answered.

9 Harassment.

10 BY MR. STRIKER:

11 Q. In 2015, exactly when I asked you for documents,
12 you had sold allegedly, according to your affidavit, one
13 piano in 2015, one piano in 2014, two pianos in 2012.
14 Those are months after I made that request and you don't
15 have a single document? You couldn't find a single
16 document for those sales?

17 A. I answered.

18 Q. Well, the answer was, no, you couldn't find it?

19 A. I answered.

20 Q. Okay. Can you estimate about how many pianos
21 Hollywood Piano typically sells in a year?

22 A. No, I can't.

23 Q. No idea?

24 A. I don't have a number.

25 Q. Okay. But you have indicated that you have been

1 involved with the sale of 50,000 pianos --

2 A. Yes.

3 Q. -- in your career?

4 A. Over 40 years.

5 Q. Well, in your discovery deposition you indicated
6 you had been selling pianos for a period of 30 years.

7 Does that sound about right?

8 A. Well, actually I started at 10 years old but,
9 yeah, professionally.

10 Q. 30 years?

11 A. Yes.

12 Q. So 50,000 pianos, 30 years, you have been
13 involved with the sale of approximately 1,700 pianos a
14 year; correct?

15 A. Uh-huh.

16 Q. You have to answer yes or no.

17 A. Yes.

18 Q. And that would apply also to the time that you
19 have worked as president of Hollywood Piano; correct?

20 A. Yes.

21 Q. Okay. In your affidavit you talk about -- you
22 list approximate pianos sold for a period of each year
23 for 10 years, and you indicate that this is to the best
24 of your information and belief.

25 A. Uh-huh.

1 Q. Do you remember that?

2 A. Yes.

3 Q. What information are you referring to?

4 A. Just when I'm able to discern from the sheets
5 that we gave you, some of those sheets that showed some
6 printouts of Schiedmayer.

7 Q. Well, they don't have anything remotely
8 indicating the information you have in your affidavit.
9 So is that the extent of it?

10 A. Combination of no-name pianos which we put the
11 Schiedmayer brand on.

12 Q. We'll get to that.

13 So that was the extent of your information?

14 A. Yes.

15 Q. The information that --

16 A. A combination of no-name pianos and what we
17 could piece together.

18 Q. So no-name pianos then are purchased for sale as
19 Schiedmayer pianos; correct?

20 A. Yes. Among others.

21 Q. Among others; correct? But you didn't produce
22 any of those documents either even though they relate to
23 Schiedmayer. Why not? Why didn't you produce the
24 documents relating to the sale -- the purchase of no-name
25 pianos that are intended to be used as -- sold as

1 Schiedmayer pianos?

2 A. I thought we did.

3 Q. Well, you did not. Why not?

4 A. No reason.

5 Q. Okay. You indicate in your affidavit, just for
6 instance, that in the year 2008 you sold approximately
7 six pianos bearing the Schiedmayer mark. Where did you
8 get that information from?

9 A. Discerning it from the no-name pianos that we
10 purchased that year.

11 Q. So you have a record of the no-name pianos which
12 you purchased in 2008?

13 A. Yeah. We have a general recollection. I mean,
14 some of them were from the existing documents, and some
15 of them was just best information we were able to put
16 together.

17 Q. So would it be correct that this list of sales
18 of Schiedmayer pianos was discerned from no-name pianos
19 that you purchased with the purpose of affixing a
20 Schiedmayer label on them; is that correct?

21 A. This list?

22 Q. Yes.

23 A. I can't say this list, no.

24 Q. Well, how did you get the information?

25 A. Well, you are asking about the whole list.

1 Q. Yeah.

2 A. Well, the whole list doesn't fit your question.

3 Q. You indicated you placed a number of Schiedmayer
4 branded pianos in Hollywood Piano's rental pool; correct?

5 A. Yes.

6 Q. Now, if you rent a piano, you need a contract
7 with the person who is renting the piano; correct?

8 A. That's true.

9 Q. And you need to keep track of the payments;
10 correct?

11 A. Uh-huh.

12 Q. Is the answer yes or no? Please answer yes or
13 no and not with a hum.

14 A. Yes.

15 Q. Okay. Why didn't you?

16 A. But I don't stand still for any kind of
17 attitude.

18 Q. There's no attitude.

19 A. There is attitude. You just can't help
20 yourself.

21 Q. If I ask you several times --

22 THE REPORTER: I can't get you both at the same
23 time so argue one at a time, please.

24 THE WITNESS: We are not arguing.

25 MR. STEPHENSON: I think he knows because we've

1 asked that three times now. I think he's got the point.

2 MR. STRIKER: He kept answering, hum, and I
3 don't think it's proper so answer yes or no.

4 Q. Why didn't you produce the rental agreements?

5 A. No answer.

6 Q. Do you understand, sir, that you are under legal
7 obligation to produce such documents, and that there can
8 be sanctions for not producing documents when they are
9 dully requested? Do you understand that, sir?

10 A. I asked our people to see what they can come up
11 with, and we produced what we had available.

12 Q. Well, you had these rental agreements available.
13 You must have.

14 MR. STEPHENSON: Objection. That's not a
15 question. That's a statement.

16 MR. STRIKER: That's correct.

17 Q. But you did have these rental agreements
18 available, didn't you?

19 A. Possibly.

20 Q. You must have had them, didn't you, because
21 otherwise you couldn't collect the money; isn't that
22 correct?

23 MR. STEPHENSON: Objection. That was a
24 statement.

25 ///

1 BY MR. STRIKER:

2 Q. Isn't it correct, sir, you must have had the
3 agreements?

4 A. Possibly.

5 Q. What does that mean? Possibly the answer is yes
6 or no. Either you must have had the agreements because
7 you --

8 A. At one time, yes.

9 Q. But the agreements called for the collection of
10 money that they were contracts, were they not?

11 A. Yes.

12 Q. You must have had a record of them and you
13 didn't produce them, and I'd like to know why not?

14 A. I don't know why, but we produced what we could
15 find.

16 Q. Why couldn't you find the rental agreements?

17 A. I don't have the answer to that.

18 Q. Well, think about it. Do you have no answer at
19 all because this is important stuff? You have documents,
20 sir, that I requested four times for and never got them.

21 MR. STEPHENSON: Objection. Harassment.

22 BY MR. STRIKER:

23 Q. And I'd like to know why not.

24 MR. STEPHENSON: Objection. Harassment. It's
25 been asked and answered four times now.

1 MR. STRIKER: Not with regard to rental
2 agreements.

3 THE WITNESS: Yeah. I did answer.

4 BY MR. STRIKER:

5 Q. These pianos that are mentioned in your
6 affidavit as pianos which you have sold under the
7 Schiedmayer trademark, what is the origin of these
8 pianos?

9 A. China.

10 Q. So the source of these pianos is China; correct?

11 A. Correct.

12 Q. Would it be correct then that you purchased
13 no-name pianos from -- that are manufactured in China and
14 then affix the Schiedmayer label thereto?

15 A. Yes.

16 Q. And sell them as a Schiedmayer piano?

17 A. Yes.

18 Q. Okay. You registered another trademark,
19 Shoninger; is that correct?

20 A. Yes.

21 Q. Do you do -- do you offer for sale the Shoninger
22 piano?

23 A. Yes.

24 Q. Where do you get the Shoninger pianos?

25 A. The same place.

1 Q. China?

2 A. Yes.

3 Q. Do you order these no-name pianos from China in
4 bulk?

5 A. No.

6 Q. You order them individually?

7 A. Yes.

8 Q. Is it correct that they are called no-name
9 pianos because they are delivered without any name on
10 them?

11 A. Yes.

12 Q. So all of the Schiedmayer pianos that you have
13 ever sold were purchased as no-name pianos from China;
14 correct?

15 A. Yes.

16 Q. And that would include the pianos that were
17 photographed and used as specimens in connection with the
18 trademark application?

19 A. Yes.

20 Q. Good. Would it be correct then that you
21 respectively, Hollywood Piano, affixed the Schiedmayer
22 label to the no-name piano?

23 A. Yes.

24 Q. Would it be correct then in some instances this
25 was a Schiedmayer plaque or plates that you had made up

1 in a trophy store --

2 A. Yes.

3 Q. -- and stuck onto the piano?

4 A. Yes.

5 Q. But in other instances, would it be correct that
6 you took a label that you purchased?

7 A. Could be a decal or a plate.

8 Q. Where did you get the decals?

9 A. From decal makers.

10 Q. There are decal makers that make decals of piano
11 brands; is that correct?

12 A. Yes.

13 Q. Okay. What about the name Hollywood, did you
14 ever place the name Hollywood on a no-name piano?

15 A. Yes, we have.

16 Q. So you sell a Hollywood brand piano as well?

17 A. Yes.

18 Q. So you order no-name pianos from China, and then
19 you decide, I'm going to sell it as a Shoninger or
20 Schiedmayer or Hollywood Piano, you just place the label
21 on the piano; is that correct?

22 A. Yes.

23 Q. And you have done this with the Shoninger
24 trademark as well; correct, sir?

25 A. Yes.

1 Q. Okay. You attached to your trial affidavit in
2 Exhibit 12 which represents a promotional -- well, you
3 tell me, what does that represent?

4 A. It's our Memorial Day tent sale.

5 MR. STEPHENSON: Let the record reflect that I'm
6 showing him a copy of Exhibit 12 from his affidavit.

7 BY MR. STRIKER:

8 Q. I don't believe that it's the entire --

9 A. This is the front only.

10 Q. -- the entire exhibit. I believe it's two
11 pages.

12 MR. STEPHENSON: Here are both sides.

13 BY MR. STRIKER:

14 Q. Would it be correct that -- well, you describe
15 what this is for me, please.

16 A. This is an ad for Memorial Day sale.

17 Q. How is it distributed?

18 A. By mail and through newspaper.

19 Q. It appears as a part of the newspaper or is it
20 inserted in the newspaper?

21 A. It's inserted and it's also an ad.

22 Q. So it's both?

23 A. Both.

24 Q. Would it be correct that this Exhibit 12 is for
25 a sale that is to take place during Memorial Day weekend

1 of 2018?

2 A. Yes.

3 Q. This represents the only promotional material
4 that I have received regarding Schiedmayer pianos. Was
5 there prior promotional material that I never received?

6 A. Possibly. I'm not sure.

7 Q. All right. In the material you have a
8 Schiedmayer baby grand piano, and I take it it was
9 manufactured in China; is that correct?

10 A. Yes.

11 Q. It was a no-name piano; is that correct?

12 A. Yes.

13 Q. And you placed the Schiedmayer label on it?

14 A. Yes.

15 Q. You say valued at \$12,785. Where did that
16 figure come from?

17 A. Comparative pianos that are like this piano.

18 Q. You have another Schiedmayer piano in the same
19 ad; correct, sir?

20 A. Yes.

21 Q. This one I can't read on my copy what you are
22 selling it for. Can you tell me what it is?

23 A. It's 2,498.

24 Q. Now, the Schiedmayer baby grand piano, do you
25 recall about how much you paid for that no-name piano?

1 A. About 42 or \$4,300.

2 Q. What do you do, just ask for the piano, say send
3 me a certain no-name piano; is that correct?

4 A. Yes.

5 Q. Are all of your Schiedmayer branded pianos then
6 stencil pianos?

7 A. Yes.

8 Q. Sir, I have located some information on the
9 internet. I don't know whether it's true or not, but you
10 are an expert so I'm going to paraphrase that information
11 to you.

12 MR. STEPHENSON: Objection. This was not
13 provided prior to this deposition.

14 MR. STRIKER: There's nothing to provide. This
15 is preparation for a deposition. I never asked for this.

16 MR. STEPHENSON: You are reading from a printed
17 publication. You are supposed to give us a copy. Are
18 you going to put it into evidence?

19 MR. STRIKER: I don't know. I'm going to read
20 it.

21 MR. STEPHENSON: He can't identify it or lay a
22 foundation for it if you don't give us a copy.

23 MR. STRIKER: I'm simply reading it.

24 MR. STEPHENSON: I'm going to object to the
25 entire line of questioning as calls for speculation.

1 MR. STRIKER: I'm just asking an expert whether
2 he agrees with certain statements that were made or not.
3 That's all I'm asking.

4 MR. STEPHENSON: Made by who?

5 MR. STRIKER: I'm going to say, and I'm going to
6 ask whether he agrees or not. I want to know what his
7 expert opinion is. That's all.

8 MR. STEPHENSON: Let the record reflect that I
9 make a continuing objection to this entire line of
10 questioning on the basis of calls for speculation, and I
11 object to the fact of it's being used as it has not been
12 provided.

13 MR. STRIKER: There's no obligation to provide
14 evidence to be used in cross-examination.

15 MR. STEPHENSON: If it's going to be admissible
16 in evidence, it needs to be admissible in evidence.

17 MR. STRIKER: What's admissible is what I'm
18 reading and what the witness answers. I'm not going to
19 argue with you. I'm going to proceed. You have noted
20 your objection for the record.

21 MR. STEPHENSON: That's fine.

22 MR. STRIKER: I'm going to proceed.

23 Q. I'm going to represent to you that these are
24 statements made in articles on the internet, and I'm
25 asking you simply whether you agree or you don't agree.

1 I don't need an explanation. I just want to know, you
2 are an expert, do you agree or not. This one is from
3 Britania Pianos. Have you ever heard of Britania Pianos?

4 A. No.

5 Q. For many decades, many pianos manufacturers have
6 made pianos that are of inferior quality. Do you agree
7 with that?

8 A. Can you repeat that?

9 Q. For many decades, many piano manufacturers have
10 designed and made pianos that are of inferior quality.
11 Do you agree with that?

12 A. No.

13 Q. These instruments were designed to be sold to
14 retailers and would have a variety of names stenciled on
15 the front of the piano. Do you agree with that?

16 A. No.

17 Q. A classic example of stencil pianos is when
18 manufacturers produce a cheap-end piano that has a German
19 sounding name. Do you agree with that?

20 A. Yes.

21 Q. Then they gave an example, Schiedmayer, sounds
22 like Schiedmayer and Soehne, S-O-E-H-N-E. Do you agree
23 with that?

24 A. Do I agree with what?

25 Q. Whether -- strike the question. I'll withdraw

1 that question.

2 The article goes on to say the following and I'd
3 like to know whether you agree with it:

4 Many stencil pianos are made in China. Do you
5 agree?

6 A. Yes.

7 Q. And many buyers are deceived into believing that
8 these pianos are produced in famous geographical
9 locations that are recognized for their production of
10 quality instruments, most notably Germany. Do you agree
11 with that?

12 A. Sometimes unscrupulous dealers --

13 MR. STEPHENSON: That's it. Yes or no to that
14 question.

15 THE WITNESS: Okay.

16 MR. STEPHENSON: So what's your answer?

17 THE WITNESS: Yes.

18 BY MR. STRIKER:

19 Q. I have another article from Jacob's Music. Have
20 you heard of Jacob's Music?

21 A. Yes.

22 Q. Manufacturers of questionable quality pianos
23 acquire the names of respected pianos that are out of
24 business. Do you agree with that?

25 A. Can you repeat the question?

1 Q. Manufacturers of questionable quality pianos
2 acquire the names of respected pianos that are long out
3 of business. Do you agree with that?

4 A. No.

5 Q. And put only labels on the pianos to induce
6 naive purchasers into purchasing their products from
7 dealers who are unable to acquire instruments of foremost
8 merit. Do you agree with that?

9 A. No.

10 Q. Most of these pianos are made in Asia. Do you
11 agree?

12 A. No.

13 Q. Similar and equally misleading is the practice
14 by which a piano dealer puts a name on the pianos and
15 represents they are either the manufacturer or designer
16 of the instrument when neither is the truth in order to
17 mislead prospective purchasers. Do you agree with that?

18 A. No.

19 Q. Have you heard of Robert Estrin?

20 A. Yes.

21 Q. Who is he?

22 A. He's a guy who has a piano store in Orange
23 County.

24 Q. I'm going to read you a short extract.

25 A. Jacob's Music Store has a piano store in

1 Philadelphia so it's piano dealer bias here.

2 Q. I'm going to read you a brief reference from a
3 video that he has transcribed here called, "The Top 5
4 Piano Scams, Piano Buyers Beware," and I want to know
5 whether you agree with this or not.

6 MR. STEPHENSON: I would object to this line of
7 questioning for relevance. Continuing objection on the
8 record to that.

9 MR. STRIKER: Okay.

10 THE WITNESS: You are paraphrasing a video?

11 BY MR. STRIKER:

12 Q. No. He's transcribed the video, and I'm reading
13 from that. I just have a question here.

14 A. Okay.

15 Q. He talks about what other scams are in the
16 industry. He says, the time this becomes really
17 deceptive is if somebody tries to present a piano and
18 tells people it is a German piano. Do you agree with
19 that?

20 A. No.

21 Q. By not quite getting to the fact it's a Chinese
22 piano -- I should finish that -- by saying that the
23 German piano has German strings. Do you agree with that?

24 A. Can you repeat that?

25 MR. STEPHENSON: Can you repeat that?

1 BY MR. STRIKER:

2 Q. Yes. The time it becomes really deceptive if
3 somebody tries to present that a piano is something of a
4 German piano by not getting to the fact that it's a
5 Chinese piano by saying that it has, among other things,
6 German strings.

7 A. No.

8 Q. You don't agree with that?

9 A. No.

10 Q. Okay. One more. This is from The Complete
11 Idiots Guide to Buying a Piano. Have you heard of The
12 Idiot's Guide?

13 A. Written by former employees of mine.

14 Q. Some manufactures have built generic lower
15 quality pianos for retailers with a variety of names
16 stenciled on the front. Do you agree?

17 A. Yes.

18 Q. The names are usually chosen because they sound
19 German even though the piano may be made in China. Do
20 you agree?

21 A. Yes.

22 Q. Unfortunately, many customers are hoodwinked
23 into paying top dollar for lesser quality instruments and
24 are deliberately led to believe the product comes from
25 Germany. Do you agree with that?

1 A. No.

2 Q. Unsuspecting customers see that name on a piano
3 and assume they are getting great value when, in fact,
4 the actual instrument may not be at the level of quality
5 that the name implies. Do you agree with that?

6 A. No.

7 Q. Let's go back to your advertisement that's
8 Exhibit 12. You are selling a relatively cheap no-name
9 Chinese piano as a Schiedmayer piano, are you not?

10 A. Yes.

11 Q. And people who are asked to spend upwards of
12 \$7,000 for a piano are going to want to know the
13 background of the piano that they are buying; would you
14 agree with that?

15 A. Yes.

16 Q. So if they look on the internet or Amazon or You
17 Tube, they will see the history of the Schiedmayer piano,
18 will they not?

19 A. The history, yes, of the Schiedmayer piano
20 company, not necessarily the Schiedmayer piano.

21 Q. And they are going to believe there is some
22 association with this piano and the Schiedmayer
23 historical pianos that were manufactured for some almost
24 300 years; correct?

25 A. No.

1 Q. Why not? It says Schiedmayer right there is the
2 brand name.

3 A. Nowhere is it implied in anything we put out
4 there that there is any connection to that company, and
5 we clearly tell people the country of origin of pianos we
6 sell.

7 Q. It doesn't say that in this ad, does it?

8 A. You can't put that in an ad.

9 Q. Why not? Why can't you say that was made in
10 China?

11 A. It's not done.

12 Q. Why not?

13 A. It's not done.

14 Q. What you did say, sir, is it has German strings,
15 didn't you?

16 A. Yes.

17 Q. A Chinese piano has German strings?

18 A. Yes.

19 Q. Aren't you using German strings to imply that
20 this is a German piano?

21 A. No.

22 Q. Didn't you select the Schiedmayer name because
23 it sounds German?

24 A. No.

25 Q. Will you agree with me that the name Schiedmayer

1 sounds German?

2 A. Yes.

3 Q. Why did you select the name?

4 A. Because I had sold some under the Kawai thing.
5 Kawai abandoned it, and I saw it wasn't taken and so I
6 trademarked it.

7 Q. What I'm getting at here it seems to me that in
8 this ad anybody looking at it will think this is an
9 authentic Schiedmayer piano and that this has been
10 manifested by indicating that it has German strings.
11 When do you tell the purchaser that it, in fact, is a
12 Chinese piano?

13 A. When they are looking at it.

14 Q. When they are looking at it?

15 A. Uh-huh.

16 Q. I told you once already my son went into your
17 store and was told --

18 MR. STEPHENSON: Objection. Objection.

19 MR. STRIKER: You can object, but I'm asking the
20 question and then you can object to it.

21 Q. -- and was told by you it was a German piano.
22 Do you remember that?

23 A. No.

24 MR. STEPHENSON: Objection. That evidence is
25 obtained using illegal means.

1 MR. STRIKER: Nothing illegal having somebody
2 come in and question somebody in the store.

3 MR. STEPHENSON: It is in the state of
4 California as I wrote to you in a letter, and I told you
5 not to bring that up.

6 MR. STRIKER: This is a federal matter and there
7 is nothing wrong with me questioning the witness.

8 MR. STEPHENSON: Do you want me to call the
9 cops?

10 MR. STRIKER: Stop it already.

11 MR. STEPHENSON: Because that's what we said we
12 would do.

13 BY MR. STRIKER:

14 Q. You didn't produce any documents between
15 yourself and any purchaser of the 29 or 30 Schiedmayer
16 pianos you allegedly sold, not one shred of documents did
17 you sell -- did you produce in this case because those
18 documents would indicate that you were passing this off
19 as an authentic Schiedmayer piano; isn't that correct?

20 A. No.

21 Q. Then why didn't you produce the documents?

22 A. We've answered that already.

23 MR. STEPHENSON: It's been asked and answered.

24 BY MR. STRIKER:

25 Q. You previously testified in this proceeding

1 right now that it's your opinion that historically the
2 Germans made good pianos; correct?

3 A. Some.

4 Q. So wouldn't it be logical to attempt to pass off
5 a cheap no-name Chinese piano as a good German piano?

6 MR. STEPHENSON: Objection. Calls for
7 speculation.

8 THE WITNESS: No.

9 MR. STRIKER: Okay. I have no further
10 questions. I just have a statement for the record, and
11 that is that I believe it is manifestly obvious that
12 there has been a deliberate withholding of evidence
13 regarding the sales of Schiedmayer pianos to customers,
14 and for that reason I move the Trademark Board to issue
15 an order that for any period of time that I requested
16 documentation and none was forthcoming, that the board
17 deem that no sales during that period of time has taken
18 place. That is the sanction that I'm requiring for the
19 failure, the abject failure to submit any documents
20 whatsoever in this proceeding.

21 I have no further questions.

22 MR. STEPHENSON: I would move that that order be
23 quashed and we have an opportunity to respond if the TTAB
24 decides to act on that motion or a motion.

25 I do have few questions for Mr. Treibitz.

EXAMINATION

1
2 BY MR. STEPHENSON:

3 Q. Just as a follow-up, isn't it true that in your
4 business documents get destroyed in the regular course of
5 business?

6 A. Yes, it is.

7 Q. Isn't it true that would include paper documents
8 as well as electronic document?

9 A. Yes.

10 Q. Do you have a standard document retention policy
11 in your business?

12 A. No.

13 Q. So the time that something gets destroyed in
14 your business, you would actually have no knowledge
15 yourself personally?

16 A. Yes.

17 Q. Do you destroy documents in your business?

18 A. Personally?

19 Q. Uh-huh.

20 A. No.

21 Q. Who does destroy documents in your business?

22 A. Could be our janitorial person, Andreas.

23 Q. Isn't it true that that would basically happen
24 whenever that person felt like they wanted to take out
25 the trash?

1 A. Or they needed more room or something.

2 Q. Exactly. Would you also regard -- would you
3 regard any memory problems -- alleged memory problems
4 that you have had as being not uncommon compared to other
5 people?

6 A. Would you repeat the question?

7 Q. So would you -- do you regard any memory
8 problems that you have as not being uncommon compared to
9 the memory problems of others you are familiar with?

10 A. It's the same as what everybody goes through.

11 Q. Is there also a possibility that documents have
12 not been produced because of the data losses from hard
13 drive crashes?

14 A. Yes.

15 Q. So the fact that documents don't exist is not
16 just because of migration?

17 A. It's data loss, migration issues and the fact
18 that company that was handling four of our locations went
19 belly up with our data.

20 Q. What kinds of records do you wind up
21 computerizing? You talked about paper records and
22 computerized records. What kind of records do you
23 typically computerize?

24 A. We have been very poor at computerizing
25 everything. We have been operating in the dark ages too

1 long, and we keep looking for ways to modernize that.
2 Things are kept in Quick Books, things are kept in a
3 database, and we have to streamline it.

4 Q. Over this period of time from 2007 up to the
5 present, has there been a consistent increasing amount of
6 computerization or has it been here and there?

7 A. It's been here or there unfortunately.

8 Q. When no-name pianos come in, are they entered
9 into your system as no-name pianos?

10 A. Yes, they are.

11 Q. Are they always marked as to what they were
12 labeled with when sold?

13 A. Unfortunately not.

14 Q. Is that one of the reasons why you wouldn't have
15 physical records of Schiedmayer sales?

16 A. Yes.

17 Q. What entities signed agreements with your
18 customers, what legal entity? Would it be in the name of
19 Hollywood Piano?

20 A. It would be under the Hollywood Piano DBA.

21 Q. Okay. Is part of the way that you came up with
22 the numbers for the sales also relying on your own
23 personal memory?

24 A. Yes.

25 Q. So it wasn't just based on documents, it wasn't

1 just based on records, it was also based on your memory?

2 A. Yes.

3 Q. Was it also based on asking your staff what they
4 could remember?

5 A. Some. And also the folks that we buy the
6 no-name stuff for if they had any recollection.

7 Q. Okay. For how many of the years of those 10
8 years were the quantities where you just had to estimate
9 them versus having more precise numbers? Was it the
10 entire period or was it the last -- was the last year
11 more precise, that kind of thing?

12 A. I don't remember truthfully.

13 Q. Okay. You are certainly sold one or more
14 Schiedmayer brand pianos in each year of the affidavits?

15 A. I think there was one year we didn't sell from
16 memory.

17 Q. Was that the year 2011?

18 A. I believe so, yes.

19 Q. What was the name of the company who made your
20 previous inventory program?

21 A. Easy Office Network.

22 Q. What was the software product called?

23 A. It was their own, Easy Office Network Solutions.

24 Q. What happened when they went out of business to
25 you?

1 A. Well, all of our data was on their server and we
2 lost all of it.

3 Q. Okay. So the 2015 meeting with Helga Kasimoff,
4 your testimony is that you were present there?

5 A. Yes.

6 Q. Your testimony is that you don't remember moving
7 the Schiedmayer Celesta?

8 A. No.

9 Q. Who was the person who -- who is the other
10 person who is in the photograph with you there, the
11 Chinese gentleman? Do you remember his name?

12 A. I think it was Jeffrey Fung.

13 Q. What was he here for? Do you remember what he
14 was here in the States for?

15 A. He is the Bluthner representative for Guangzhou,
16 China, and he wanted to meet in Los Angeles, but we were
17 also talking about him potentially doing some private
18 label for our company.

19 Q. Okay. Isn't it true that your only belief that
20 you were present at that meeting is because of the
21 existence of that photograph?

22 A. Yes.

23 Q. And isn't it true that you don't remember
24 anything about the meeting other than the fact that that
25 photograph exists?

1 A. Until the photograph came up, I didn't remember
2 the meeting.

3 Q. Okay. How do you assess the quality of a piano
4 instrument?

5 A. By its fit and finish, touch and tone, what the
6 preparation is of the piano. That's an important part of
7 it.

8 Q. By preparation you mean how they --

9 A. Tuning, setting up, all of that sort of thing.

10 Q. Is it true that in your experience various piano
11 brands have different processes they use for preparation,
12 for finishing, et cetera?

13 A. Yes.

14 Q. Isn't it true that they all disagree on what
15 constitutes a high-quality instrument?

16 A. Yes.

17 Q. Isn't it true that dealers disagree on what
18 constitutes a high-quality instrument?

19 A. Yes. As presented by Mr. Striker's testimony
20 from two piano dealers.

21 Q. So isn't it true then that assessing piano
22 quality is an art and not necessarily a science?

23 A. I would say it's art with some science in there
24 too.

25 Q. Okay. Isn't it true there is a wide -- you can

1 get a wide variety of people's impression of the same
2 instrument?

3 A. That's true.

4 Q. Isn't it true that instruments vary widely even
5 from the same manufacturers?

6 A. Oh, god, yeah.

7 Q. But isn't it true the manufacturer will sell
8 them for the same price even though they may vary widely?

9 A. Sure.

10 Q. Isn't it true that professional musicians can
11 assess the quality of the instruments they like?

12 A. Subjectively.

13 MR. STRIKER: I just have to object to this.
14 This is your witness, and you are just leading him on.
15 You have no right to lead your own witness on. I can do
16 that on cross-examination, but on direct you can't lead a
17 witness and you've been doing that consistently since you
18 started and I object.

19 MR. STEPHENSON: Objection noted.

20 Q. How have you assessed the quality of the pianos
21 that have been -- that you have sold under the
22 Schiedmayer brand?

23 A. We assess them with very good quality. I mean,
24 our company is known for selling high-quality pianos.

25 Q. Okay. Would it be -- would it be fair to say

1 you used the same standards you use with the rest of the
2 pianos?

3 A. Absolutely.

4 MR. STEPHENSON: At this point I have no further
5 questions.

6 MR. STRIKER: Just a couple of re-cross things
7 very briefly.

8

9 FURTHER EXAMINATION

10 BY MR. STRIKER:

11 Q. You have talked on redirect about these data
12 losses and you mentioned the name --

13 MR. STEPHENSON: Just a question. Do we do
14 re-cross if this is the federal rules because there isn't
15 re-cross in federal court?

16 MR. STRIKER: I'm going to ask the questions. I
17 think I'm entitled to and I'm going to.

18 MR. STEPHENSON: Okay.

19 MR. STRIKER: There are only a couple of
20 questions.

21 Q. You mentioned the name of the company that went
22 out of business; correct, sir?

23 A. Yes.

24 Q. During our discovery deposition of you, you
25 couldn't remember the name of the company. How is it you

1 remember it now?

2 A. I don't know.

3 Q. You talked with respect to data loss. Your
4 affidavit refers to data loss in 2007 and 2010 so that
5 would have nothing to do with the requests that we filed
6 for documents thereafter, would it?

7 A. The data loss?

8 Q. Yes. There was no data loss after 2010, was
9 there?

10 A. I'm not sure.

11 Q. Well, you don't say so in your affidavit. You
12 say only 2010. So the whole issue of data loss --

13 A. In general --

14 Q. Let me finish what I'm saying.

15 The whole issue of data loss does not apply in
16 this case, does it, not after 2010?

17 A. We've not been very good at our computer stuff.

18 Q. Lastly, just so I understand it, with regard to
19 the selection of these no-name pianos and your house
20 brands, do I understand it then correctly that you
21 would -- if you needed a Shoninger piano, you would go to
22 your Chinese no-name inventory and put a Shoninger label
23 on it; correct?

24 A. Yes.

25 Q. That now becomes a Shoninger piano; correct?

1 A. Yes.

2 Q. Or you could go to the same piano and put
3 Hollywood on it; isn't that correct?

4 A. Yes.

5 Q. Or Schiedmayer; is that correct?

6 A. Yes.

7 MR. STRIKER: No further questions.

8 Can we close this deposition?

9 MR. STEPHENSON: I'm okay with that.

10 (Whereupon, the deposition of GLENN
11 TREIBITZ was concluded at 1:54 p.m.)

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PENALTY OF PERJURY CERTIFICATE

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I hereby declare I am the witness in the
within matter, that I have read the foregoing transcript
and know the contents thereof; that I declare that the
same is true to my knowledge, except as to the matters
which are therein stated upon my information or belief,
and as to those matters, I believe them to be true.

I declare being aware of the penalties of
perjury, that the foregoing answers are true and correct.

Executed on the _____ day of
_____, 2018, at _____,
California.

GLENN TREIBITZ

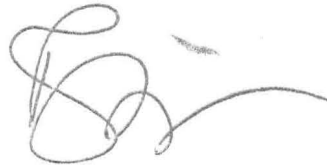
1 I, KAREN S. OSTROM, CSR No. 10341, RPR, do
2 hereby certify:

3 That the foregoing deposition testimony of
4 GLENN TREIBITZ was taken before me at the time and place
5 herein set forth, at which time the witness was placed
6 under oath and was sworn by me to tell the truth, the
7 whole truth and nothing but the truth;

8 That the testimony of the witness and all
9 objections made by counsel at the time of the examination
10 were recorded stenographically by me and were thereafter
11 transcribed under my direction and supervision, and that
12 the foregoing pages contain a full, true and accurate
13 record of all proceedings and testimony to the best of my
14 skill and ability.

15 I further certify that I am neither counsel
16 for any party to said action, nor am I related to any
17 party to said action, nor am I in any way financially
18 interested in the outcome thereof.

19
20 IN WITNESS WHEREOF, I have subscribed my name
21 this 3rd day of August, 2018.

22 

23
24 _____
25 KAREN S. OSTROM, C.S.R. NO. 10341, RPR

