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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
Correspondence Address	MICHAEL J STRIKER COLLARD & ROE PC 1077 NORTHERN BLVD ROSLYN, NY 11576 UNITED STATES striker@collardroe.com, sbellus@collardroe.com 516-365-9802
Submission	Testimony For Plaintiff
Filer's Name	MICHAEL J. STRIKER
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Signature	/Michael J. Striker/
Date	10/09/2018
Attachments	ELIANNE SCHIEDMAYER REBUTTAL DECLARATION.pdf(498710 bytes)

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USPTO BACKGROUND

FEDERAL GOVERNMENT

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

**NOTICE OF FILING OF REBUTTAL DECLARATION
OF ELIANNE SCHIEDMAYER**

This will confirm that the Rebuttal Declaration of Elianne Schiedmayer was today filed and served in the captioned proceeding.

Respectfully submitted,

/Michael J. Striker/

Michael J. Striker
Attorney for Petitioner
Reg. No.: 27233
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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 ⁹ day of October, 2018.

/Michael J. Striker/

Michael J. Striker

DECLARATION

The undersigned, Elianne Schiedmayer, herewith makes the following Declaration based upon her best personal knowledge and belief:

I am, and have been at all times, President, Chief Operating Officer and owner of Schiedmayer Celeste GmbH. I am the sole owner of Schiedmayer & Soehne GmbH founded in 1809 by Johann Lorenz Schiedmayer in Stuttgart, Germany.

I am personally familiar with the fact that the Schiedmayer family has been producing keyboard instruments for almost 300 years. Schiedmayer was founded in 1735 and has consistently sold and offered for sale throughout the world, including the United States, high quality pianos and musical keyboard instruments under the trademark Schiedmayer.

My husband, Johann Georg Schiedmayer, inherited the company Schiedmayer and Soehne from his father Gustav Schiedmayer in 1957. Rud. Ibach & Sohn never had any connection whatsoever with this company.

During approximately June 1980, my husband, Georg Schiedmayer, entered into an arrangement with a company called Rud. Ibach & Sohn, regarding the production of Schiedmayer pianos. I am unable to locate any copy of any written agreement, but I am generally familiar with the arrangement that was made.

Rud. Ibach & Sohn, under the terms of the agreement, was to manufacture or have manufactured pianos bearing the Schiedmayer trademark, in a cooperation with my husband, Georg Schiedmayer.

However, the trademark SCHIEDMAYER was never sold, licensed, assigned or in any way transferred to Rud. Ibach & Sohn.

I am personally aware that from almost the start of the joint venture between Georg Schiedmayer and Rud. Ibach & Sohn, there were disagreements, the result of which was that my husband, Georg Schiedmayer, ended his collaboration with Rud. Ibach & Sohn shortly thereafter.

This notwithstanding, at some time in the 1990's, Rud. Ibach & Sohn nevertheless started a cooperation with the Kawai Company and some pianos were manufactured by Kawai under a false SCHIEDMAYER trademark. These sales continued for a short period of time and were then discontinued. Kawai never obtained any right or license or assignment of any type of the SCHIEDMAYER trademark which was at all times retained and never licensed, assigned or otherwise transferred.

During this time period referred to above, Schiedmayer Celesta's were being manufactured and sold throughout the world, including the United States, by Schiedmayer Celesta GmbH. The celestas having been built first in 1890 by Schiedmayer Pianofortefabrik which also manufactured pianos and harmoniums.

I inherited this company as well as the Schiedmayer & Soehne GmbH & Co. KG from my husband and I founded Schiedmayer Celesta GmbH in 1995.

Therefore, there was never any interruption of the sale of Schiedmayer musical keyboard instruments from the year 1735 to date.

Attached hereto as Exhibit "A" is a copy of a handwritten entry for the sale of a Celesta on September 5, 1938 to a company located in Pittsburgh, Pennsylvania.

Attached as Exhibit "B" is a translation thereof. This represents the earliest date upon which I can locate the sale of a Schiedmayer marked Celesta in commerce in the United States, however, I am aware that Celesta's continued to be sold thereafter in the United States on a continuous basis.

I herewith state that I had no knowledge whatsoever of any trademark registration owned by any other party, including, with particularity, U.S. Registration No. 3,340,759 until such time as I cause to be filed a U.S. trademark application for my trademark SCHIEDMAYER and the said conflicting registration No. 3,340,759 was raised by the United States Patent and Trademark Office as a bar.

Promptly thereafter, I authorized the institution of a Petition for Cancellation of the conflicting registration.

In the year 2002, I attempted to register the domain name Schiedmayer and learned for the first time that a conflicting domain name had already been registered.

In August of 2002 I telephoned a person whom I believed to be Glenn Treibitz in order to complain that my name had been improperly appropriated as a domain name and that I was entitled to it. I introduced myself as Elianne Schiedmayer, owner of Schiedmayer Celesta GmbH. There is no question therefore that after my telephone call in August 2002, Glenn Treibitz was fully aware of the manufacture and sale of the Celesta, which is defacto a piano, in the United States.

Finally, let me state in my own words, the following:

I am a Schiedmayer. I am proud to be a Schiedmayer and I am particularly proud to be the current holder of the Schiedmayer name which has represented the highest degree of excellence and musical keyboard instruments, including pianos and celestas for almost 300 years. The 9th consecutive Schiedmayer generation, Knut Schiedmayer is currently our managing director.

The sale of cheap 'no name' pianos manufactured in China and Indonesia under the great name Schiedmayer diminishes and violates the fame and reputation of my name and the name of my company and one of the great names in musical keyboard instruments having been first manufactured and continuously sold around the world since 1735.

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 the application or any trademark issued thereon.

Dated: 9/11/2018


ELIANNE SCHIEDMAYER

EXHIBIT "A"

EXHIBIT "B"

517	5. September 1938	1-Klangcelesta 5 Oktaven A=880	German
		für Symphonie Orchester	
		eilig !	
		Volkswein Brothers Inc.	
		Pittsburg USA	
517	Sept. 5th 1938	1-Klangcelesta 5 octaves A=880	English
		for Symphony Orchestra	
		urgent !	
		Volkswein Brothers Inc.	
		Pittsburgh USA	
<i>Schiedmayer Pianofortefabrik, Stuttgart_March 1930 - December 1946</i>			

August 7, 2018

DECLARATION

The undersigned, Dana Scruggs, having an office at 8902 Otis Avenue, Suite 225A, Indianapolis, Indiana 46216, hereby states that she is well acquainted with both the English and German languages and that the attached is a true translation to the best of her knowledge and ability of the German document.

The undersigned further declares that the above statement is true; and further, that this statement was 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 the application or document or any patent resulting therefrom.

A handwritten signature in cursive script that reads "Dana Scruggs". The signature is written in black ink and is positioned above a horizontal line.

Dana Scruggs