

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

Schiedmayer Celesta GmbH,

Cancellation No.: 92/061,215

Petitioner,

Reg. No. 3,340,759

v.

Mark: SCHIEDMAYER

Piano Factory Group, Inc. and
Sweet 16 Musical Properties, Inc.

Registration Date: November 20, 2007

Respondents.

DECLARATION OF GLENN TREIBITZ

The undersigned, Glenn Treibitz, hereby declares as follows:

I have been involved with piano fortes (pianos) since 1981 as a performing artist and in working in every facet of the piano business from sales and marketing to hands on rebuilding in a piano rebuilding shop. I have been involved in the sale and rental of approximately 50,000 pianos, including nearly all major piano brands being manufactured today and many historical brands no longer under manufacture. I have extensive experience in appraising pianos and I have owned numerous brands of pianos. I am often called upon by other piano owners, piano dealers, reporters and colleagues for information or advice about many aspects of all brands of pianos and regarding the piano industry in general.

I am currently the president of Respondent Sweet 16 Musical Properties Inc. of which Hollywood Piano is a DBA. As discussed in my Affidavit of August 26, 2016 filed in this proceeding on August 27, 2016, Sweet 16 Musical Properties Inc. acquired all of the assets of Respondent Piano Factory Group Inc. on or about the 17th of August 2006 and continued use of Piano Factory Group as a DBA.

The National Association of Musical Merchants (NAMM) has selected Hollywood Piano from 10,000 worldwide members as a Top 100 Dealer in 2012, 2015, 2017, and 2018.

In appraising and assessing pianos in my piano business activities, I use various authoritative references on piano provenance. Among these is *The Pierce Piano Atlas* which is recognized in the piano industry as the world's most authoritative publication on piano manufacturers, past and present and is used to establish and confirm piano identities. Exhibit 1, taken from the 12th edition of *The Pierce Piano Atlas* states that "Rud. Ibach Sohn owns Schiedmayer Piano GmbH."

Exhibit 2, taken from the 12th edition of *The Pierce Piano Atlas* states that Georg Schiedmayer's company, Schiedmayer Pianofortefabrik, changed its name to "Schiedmayer Pianos GmbH when George Schiedmayer sold this piano line to Rud. Ibach Sohn in 1980. Some Pianos have been made under license by various manufacturers including Kemble, in England, and Kawai, in Japan. The company, now named Schiedmayer Piano Co. was taken over by Musikhaus Thomann, Erlangen, Germany, in 2006."

On 6/25/2018 I conducted a search through the archived web pages of Musikhaus Thomann. I found an archived webpage from 2010 (available at https://web.archive.org/web/20100609212028/http://www.thomann.de:80/gb/cat_GF_pianos_PG_2.html, last visited 6/25/2018).

On the same day, I also found multiple archived webpages from 2009 (available at <https://web.archive.org/web/20090312115718/http://www.thomann.de:80/gb/pianos.html>, https://web.archive.org/web/20090722025008/http://www.thomann.de:80/gb/cat_GF_pianos_PG_2.html, https://web.archive.org/web/20090722025011/http://www.thomann.de:80/gb/cat_GF_pianos_PG_3.html, each last visited 6/25/2018).

Exhibits 5-8 are screenshots from the foregoing Musikhaus Thomann's archived webpages from 2009 and 2010. They show that as recently as 2010, Musikhaus Thomann was actively offering for sale in Europe various models of SCHIEDMAYER branded pianos.

In my practice, I have also encountered *The Encyclopedia of Keyboard Instruments* series. Within this series, I have reviewed the volume *Piano: An Encyclopedia*. Exhibit 3, taken from this volume, states “Georg Schiedmayer, who was the last of his family to build pianos, changed his focus to building celestas and glockenspiels and in 1980 sold the piano name, models, drawings, tools, and forms to the Rudolf Ibach Sohn firm. Schiedmayer is now a brand name of the Ibach company.”

Exhibit 4, also taken from *Piano: An Encyclopedia* from the *Encyclopedia of Keyboard Instruments*, states “[i]n the 1980s Ibach expanded by purchasing the venerable Schiedmayer piano division (est. in 1809) and the piano firm of Roth and Junius (est. in 1889), known for its affordable instruments for home and school. Both brand names are still in production under the auspices of Rudolf Ibach Sohn.”

On 6/25/2018, I came across a statement by Elianne Schiedmayer published to her company’s webpage (included as Exhibit 9). The statement is available at https://www.celestaschiedmayer.de/wp-content/uploads/2017/09/Stellungnahme_Elianne_Schiedmayer-SCHIEDMAYER-IBACH-KAWAI-THOMANN-dt..pdf, last visited 6/25/2018. I obtained a translation of the statement (available as Exhibit 10) from a certified translator (whose declaration is included as Exhibit 11). In the statement, Ms. Schiedmayer admits that for over 30 years (between 1983 and 2014), other companies operated under the belief they had rights to the registered “Schiedmayer S” logo which included the printed name “Schiedmayer” thereon.

Further, according to the statement, Ms. Schiedmayer admits that the authors/publishers of the following texts include information about the transfer of rights of the Schiedmayer trademark similar to the information found in *The Pierce Piano Atlas* and the *Encyclopedia of Keyboard Instruments*. These texts include:

- *Atlas der Pianonummern*, Edition Bochinsky
- *The Fortepiano Writing of Streicher, Dieudonné and the Schiedmayer*, Mellen Press 2008
- *The World Piano Bible, Das Klavier Lexicon*, Jens-Uwe Witter 2017

These texts, in addition to *The Pierce Piano Atlas* and the *Encyclopedia of Keyboard Instruments*, are all considered authoritative histories on the piano and piano manufacturers. All

of these authoritative histories teach that Georg Schiedmayer transferred rights to the Schiedmayer trademark in 1980 to Rud. Ibach & Sohn.

Further, according to Exhibit 10, Ms. Schiedmayer admits that in 1990 a company titled Schiedmayer Piano GmbH was founded. This company is admitted to have had no relationship to Schiedmayer Pianofortefabrik Stuttgart and Schiedmayer & Soehne GmbH & Co. KG. These companies co-existed and operated under the same SCHIEDMAYER name until 2003.

After August of 2002, I received a phone call from a person with a voice I recognized as female with a German accent who asked me why I had registered the domain www.schiedmayer.com. I believe that person was Elianne Schiedmayer. I have owned the domain www.schiedmayer.com since August of 2002.

In approximately 2001 I had noticed that Kawai was no longer selling pianos branded as “Schiedmayer” in the United States. It was my understanding at the time that Kawai had rights to apply the SCHIEDMAYER trademark to pianos they manufactured for Ibach. Because I believed that the SCHIEDMAYER mark had thus been abandoned in the United States by all parties for pianos, including Ibach, in 2002, I filed an intent-to-use trademark for SCHIEDMAYER with the United States Patent and Trademark Office for various types of pianos. The mark was registered November 20, 2007 and I personally signed the most recent renewal on September 28, 2017.

Due to data losses resulting both from migration of my record keeping software and due to losses suffered from computer system failure, at the present time I have produced all of the records that I have that specifically identify SCHIEDMAYER branded piano sales. I know that I sold additional SCHIEDMAYER branded pianos than even the records I have because the practice at Hollywood Piano was that when a SCHIEDMAYER branded piano was needed on the showroom floor, we often selected a quality piano from those in our warehouse that was a “no name” or unbranded piano manufactured by companies like American Sejung Corporation (ASC) and placed our SCHIEDMAYER brand nameplate on it. In our sales tracking system, however, the record for the unbranded piano was not always updated once the physical branding was completed and the piano actually sold. I also placed a number of SCHIEDMAYER branded

pianos into Hollywood Piano's piano rental pool. Accordingly, these are the approximate sales and rental figures by year to the best of my information and belief:

In the year 2007, I sold approximately 3 pianos bearing the SCHIEDMAYER mark

In the year 2008, I sold approximately 6 pianos bearing the SCHIEDMAYER mark.

In the year 2009, I sold approximately 3 pianos bearing the SCHIEDMAYER mark.

In the year 2010, I sold approximately 1 pianos bearing the SCHIEDMAYER mark.

In the year 2012, I sold approximately 2 pianos bearing the SCHIEDMAYER mark.

In the year 2014, I sold approximately 1 pianos with my SCHIEDMAYER mark.

In the year 2015, I sold approximately 1 pianos bearing the SCHIEDMAYER mark.

In the year 2016, I sold approximately 2 pianos with my SCHIEDMAYER mark.

In the year 2017, I sold approximately 10 pianos bearing the SCHIEDMAYER mark and rented approximately 1 pianos bearing the SCHIEDMAYER mark.

Thus far, in the year 2018, I have sold approximately 2 pianos bearing the SCHIEDMAYER mark and have rented approximately 1 pianos bearing the SCHIEDMAYER mark.

Thus, in total, I have sold approximately 29 SCHIEDMAYER pianos since the SCHIEDMAYER mark was registered and have rented approximately 9 pianos with my SCHIEDMAYER mark since registration of the mark.

Each of the sold pianos sold for anywhere between \$1,999 & \$6,999. Each of the rented pianos rented for anywhere between \$49 and \$199 per month. Thus, in total, there has been approximately \$137K in gross revenue from SCHIEDMAYER branded pianos.

At no time during periods of time where SCHIEDMAYER branded piano sales did not take place did I intend to discontinue further use of the SCHIEDMAYER trademark. Nor have I ever discontinued use of the SCHIEDMAYER trademark for pianos with no intent to resume use

of the mark. Indeed, over the past three years I have been working diligently (including traveling to China on multiple occasions) to evaluate Chinese piano manufacturers to make pianos suitable for sale under the SCHIEDMAYER brand line.

In addition to selling and renting SCHIEDMAYER branded pianos, I have and continue to actively advertise SCHIEDMAYER branded pianos both through placing them on the sales floor at our Hollywood Piano locations, putting them in the rental pool, advertising the brand name on the internet, and via sales flyers. The primary form of advertising the SCHIEDMAYER mark has been putting pianos branded with the SCHIEDMAYER mark on the sales floor and in the rental pool of Hollywood Piano.

Advertising on the internet has included using a DNS redirect to redirect visitors to the domain www.schiedmayer.com to the website for Hollywood Piano (www.hollywoodpiano.com). This redirect has been in place since 2002 meaning that any person who tries to visit www.schiedmayer.com using a web browser is immediately and automatically redirected to Hollywood Piano's site.

Exhibit 12 is an advertisement put out by Hollywood Piano for a Memorial Day piano sale at Hollywood Piano conducted in 2018. 300,000 copies of the printed flyer were distributed to consumers throughout California. As shown in Exhibit 12, one of the focal points of the advertisement is a photo of SCHIEDMAYER branded baby grand offered for sale. Further, SCHIEDMAYER upright pianos are also pictured and advertised. As shown by Exhibit 12, these pianos are valued at respectively \$12,785 and \$5,495 with the sale price being respectively \$6,998 and \$2,498.

I am very familiar with Helga and Kyril Kasimoff as they are fellow piano dealers in the Los Angeles area and personal friends of mine. I do not recall the specific sequence of events described in Ms. Kasimoff's affidavit or recall playing the SCHIEDMAYER branded celesta allegedly present on the sales floor that day nearly 13 years ago. However, if I had, I would not have thought there was any likely confusion to occur between purchasers of SCHEDMAYER branded celestas and my upcoming brand of SCHIEDMAYER branded pianos given the visual differences and unmistakable sound differences between the two instruments. I am aware that a celesta or celeste produces a bell-like tone and is used, for example, in playing the bell-like tones

in the “Dance of the Sugar Plum Fairy” in Tchaikovsky’s *Nutcracker*. This sound is immediately discernible from the sound a piano forte makes and they would not be confused with one another. At the time the alleged events occurred, this would have been nearly 3 years after I filed in the US to register SCHIEDMAYER for pianos.

Since adoption of the SCHIEDMAYER mark for pianos, I have never been approached or contacted by any individual who informed me that he or she believed there was an association or relationship between the celestas sold by Schiedmayer Celesta (the Petitioner) and my SCHIEDMAYER branded pianos.

Up to this point in this proceeding, I have been billed by my counsel and paid \$24,184.50 to defend this action against the attack against my registration for pianos by the Petitioner who, to my knowledge, has no US trademark registration of any kind and admits that it never has and has no intention of making pianos.

In the course of my business, I had my counsel file a trademark application for the mark VOSE & SONS as it had been abandoned by prior users of the mark (U.S. Application Ser. No. 78/157,550). The application was rejected as being primarily a surname despite the prior registrations granted by the USPTO for the mark and an *ex parte* appeal was taken but was unsuccessful. Following my intent-to-use application for the mark, another party, Wrightwood Enterprises, Inc. filed an application on the Supplemental Register for VOSE & SONS. Since I was unsuccessful on our appeal to the Board and had only an intent-to-use application, I lost that mark to Wrightwood Enterprises, Inc. It is my belief that Wrightwood Enterprises, Inc. had knowledge of my application and its status and strategically made their filing to ensure they were able to prevent my adoption of the mark after the *ex parte* appeal failed (i.e., “stole” the trademark from me). This is because I am unaware of any association between Wrightwood Enterprises, Inc. and any of the former users of the VOSE & SONS trademark.

In approximately 2007, Hollywood Piano was using an inventory management system produced and maintained by a company that went out of business. As a result, a large amount of data was not able to be migrated to our current FileMaker Pro system including documentation relating to pianos sold and rented under the SCHIEDMAYER mark. Also, computer system failures (hard drive failures) in approximately 2010 resulted in additional loss of data likely

including documents related to pianos sold and rented under the SCHIEDMAYER mark. These data losses occurred during the operation of the business and are an unfortunate consequence of the long period of time that has passed since I obtained the registration of the SCHIEDMAYER trademark.

I hereby swear under penalty of perjury that the foregoing is true to the best of my knowledge and belief.

FURTHER AFFIANT SAYETH NOT.

Date

Glenn Treibitz
President
Sweet 16 Musical Properties, Inc.