

**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.

**RESPONDENT’S MOTION TO STRIKE PETITIONER’S TESTIMONIAL
EVIDENCE**

Respondents Piano Factory Group, Inc. and Sweet 16 Musical Properties, Inc. (“Respondents”) hereby submit their motion to strike the testimony and translations of expert witness Dana Scruggs along with the “Erbschein” foreign document, filed May 24, 2017.

FACTS

Petitioner filed the Declaration of Elianne Schiedmayer and copies of associated Exhibits on May 24, 2017. Included in the Exhibits accompanied with the Declaration were Exhibit C and Exhibit F. Exhibit C includes a German public document, an English translation of the document, and a Declaration from the translator, Dana Scruggs, dated April 6, 2017. Exhibit C was not accompanied with a final certification. Exhibit F includes German invoices relating to the sales of Schiedmayer celestas, an English translation of terms used in the invoices, and a Declaration from the Translator, Dana Scruggs, dated May 16, 2017.

This is the first instance Respondent has been made aware of the existence of Dana Scruggs. She was not disclosed in the Petitioner's Pre-Trial Disclosures dated April 19, 2017. Further, neither Petitioner's Expert Witness Disclosure dated February 3, 2017, or the Petitioner's Initial Disclosures dated November 25, 2017, disclosed the existence of or a plan to use the translator Dana Scruggs.

ARGUMENT

Motion to Strike Dana Scruggs as a Witness and her Translations of Exhibits C and F:

As the Board knows, “[p]retrial disclosures are governed by 37 CRF 2.121(e) and Fed. R. Civ. P. 26(a)(3),” 702.01 TBMP. Rule 26(A)(3)(a) of the Federal Rules of Civil Procedure states that a party must promptly file the name and, if not previously provided, the address and telephone number of each witness.

A translator is likely considered an expert witness as it is probable that the accuracy of the document translation may be disputed and the translator may end up as a witness at trial. Further, Rule 604 of the Federal Rules of Evidence, which the TTAB generally follows, states that “interpreters must be qualified and must give an oath or affirmation to make a true translation.”

Under these results, Dana Scruggs would be considered an expert witness as it is likely that she would have to testify concerning the accuracy of her translations as Respondent has not stipulated to the fact that Dana Scruggs is qualified as a translator nor been consulted in her selection. Dana Scruggs, the translator of Exhibits C and F, was

not disclosed to Respondent in the Petitioner's pretrial disclosures, initial disclosures, or disclosure of expert testimony.

Because expert witness Dana Scruggs was not disclosed to Respondent in pretrial disclosures, Respondent requests that Dana Scruggs be stricken as a witness. Respondent also requests that Exhibits C and F be stricken as they are the product of testimony from stricken witness Dana Scruggs.

Motion to Strike Exhibit C as an Improperly Authenticated Foreign Document:

Section 704.07 of the TBMP requires that the authenticity of an official record or copy be established under the Federal Rules of Evidence. Rule 902(3) of the Federal Rules of Evidence states that in order for a foreign public document to be authenticated, “[t]he document must be accompanied by a final certification that certifies the genuineness of the signature and official position of the signer or attester-or of any foreign official whose certificate of genuineness relates to the signature or attestation or is in a chain of certificates of genuineness relating to the signature or attestation.”

The German public document “Erbschein” in Exhibit C is not accompanied with any kind of final certification. There appears to be some stamp on the document, but the stamp alone is not a statement by any individual described in Rule 902(3). Indeed, all that accompanies the foreign document in Exhibit C is a translation and a Declaration from an improper witness that should be stricken.

Because Exhibit C is not properly authenticated, Respondent requests that it be stricken from the record in this case.

In view of the foregoing, the Respondent respectfully requests that Dana Scruggs be stricken as a witness and that Exhibits C and F be stricken as translations from Dana Scruggs. Respondent also respectfully requests that Exhibit C be stricken as an improperly authenticated foreign document.

Dated: June 8, 2017

Respectfully submitted,

/s/ Adam R. Stephenson
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CERTIFICATE OF SERVICE

It is hereby certified that one (1) copy of the foregoing RESPONDENT'S MOTION TO STRIKE is being sent via email to Petitioner Schiedmayer Celesta GmbH's attorney of record at the designated email below:

Michael J. Striker
Striker, Striker & Stenby
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Huntington, NY 11743
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Dated: 6/8/2017

_____/s/ Adam Stephenson_____