

Email to Adam Stephenson-

Re: Schiedmayer Petition

I am sending to you herewith our response to your First Set of Interrogatories.

I have not yet received your response to my Third Set of Document Requests. Please advise as to status.

On May 13, 2016 I emailed to you the proposed Confidentiality Agreement but have not received any response. I can not respond to your document request until such time as the agreement has been concluded, as certain documents are confidential. Please advise as to status.

I did file a request for suspension until your motion has been decided but it has not been acted upon and therefore we must proceed. I will need to take the depositions of your clients, and will send you a list of available dates shortly.

Regards,

Michael Striker

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

Schiedmayer Celesta GmbH,)
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)
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v)
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Piano Factory Group, Inc.,)
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Cancellation No. 92/061,215
Reg. No. 3,340,759
Mark: SCHIEDMAYER
Registration Date: 11/20/2007

**PETITIONER’S RESPONSE TO RESPONDENT’S
FIRST SET OF INTERROGATORIES**

Petitioner herewith responds to Respondent’s first set of Interrogatories as follows:

1. Has the Petitioner ever manufactured a piano forte?

Response to Interrogatory No. 1: No. Piano fortes were manufactured by Petitioner’s predecessors in interest.

2. Please describe Petitioner’s understanding of the legal basis that Ibach had to sell Schiedmayer branded piano fortes in the United States in 1984 and thereafter.

Response to Interrogatory No. 2: It is the understanding of the Petitioner that for a brief period of time a company by the name of Schiedmayer Pianos GmbH (Rud. Ibach) had permission to manufacture and sell SCHIEDMAYER marked pianos under the direction and control of Georg Schiedmayer – as a private person. The short

lived arrangement was quickly withdrawn. At all times, all trademarks, copyrights and logos were retained by the SCHIEDMAYER trademark and never been transferred to Schiedmayer Pianos GmbH (Rud. Ibach)

3. Please explain any relationship between Schiedmayer Pianos GmbH and Petitioner.

Response to Interrogatory No. 3: No relationship between both parties.

4. Please explain why Christian Ibach signed the declaration for the application of SCHIEDMAYER logo trademark on April 2, 1984 (the "1984 Application") seeking registration for "MUSICAL INSTRUMENTS, IN PARTICULAR PIANOS, CHIMES, CELESTES, AND KEYBOARD INSTRUMENTS."

Response to Interrogatory No. 4: Christian Ibach had no right to seek registration for CELESTES (Celesta) and no right to apply for or obtain any trademark for the SCHIEDMAYER logo. The said trademark application never issued as a registration.

5. Please explain Petitioner's understanding why the date of first use of the SCHIEDMAYER mark was represented to the USPTO in the 1984 Application as "at least as early as 1960" and not 1735, 1890 or 1860 as represented to the Board in the Cancellation Petition.

Response to Interrogatory No. 5: Unknown to Petitioner.

6. Does the Petitioner plan to manufacture any version of the piano forte?

Response to Interrogatory No. 6: Objected to. Petitioner's plans for the future are irrelevant to the subject cancellation proceeding.

7. Did an agent/person otherwise affiliated with Petitioner contact Glenn Treibitz via telephone during the pendency of the application that matured into the SCHIEDMAYER registration sought to be canceled to inquire about the application?

Response to Interrogatory No. 7: No.

8. If the answer to Interrogatory No. 7 is in the affirmative, please provide the name, address, and telephone number of that agent/otherwise affiliated person.

Response to Interrogatory No. 8: No answer required.

9. Under the agreement by which George Schiedmayer sold his interests in Schiedmayer Pianos GmbH in 1981, are there any conditions under which Georg Schiedmayer could continue to sell piano fortes in the United States using any form of the SCHIEDMAYER mark (logo or otherwise)?

Response to Interrogatory No. 9: Objected to as it assumes as facts any agreement between Georg Schiedmayer and Schiedmayer Pianos GmbH. Petitioner does not have further information.

10. If the answer to Interrogatory No. 9 is in the affirmative, please describe those conditions.

Response to Interrogatory No. 10: No answer required.

11. Is a celesta the same musical instrument as a piano forte?

Response to Interrogatory No. 11: Objected to as fact, material easily obtainable elsewhere by Respondent. A celesta is not the same musical instrument as a piano forte.

12. If the answer to Interrogatory No. 11 is no, please explain the differences between a celesta and a piano forte.

Response to Interrogatory No. 12: Objected to as fact information. A celesta creates sound by a hammer striking a metal plate, whereas in a piano forte the hammer strikes a wire string.

13. Please describe the sound of a celesta.

Response to Interrogatory No. 13: Objected to. The sound of a celesta is similar to the sound of a Glockenspiel, but with a much softer timbre.

14. Please describe the sound of a piano forte.

Response to Interrogatory No. 14: objected to the sound of a piano is common knowledge.

15. Does a celesta have a confusingly similar sound to the sound of a piano forte?

Response to Interrogatory No. 15: No.

16. Please explain any visually perceptible differences in appearance between a celesta and an upright piano forte.

Response to Interrogatory No. 16: A celesta is a musical keyboard instrument which is visually imperceptible from an upright piano forte.

17. Please explain any visually perceptible differences in appearance between a celesta and a grand piano forte.

Response to Interrogatory No. 17: The celesta looks like a small piano. The visually perceptible difference between a celesta and a grand piano forte is the same in appearance as between an upright piano and a grand piano.

18. Please explain the visually perceptible differences in appearance between a celesta and a digital piano forte.

Response to Interrogatory No. 18: Objected to in that the digital piano fortes may assume numerous different styles and shapes.

19. Please explain the basis for Petitioner's belief that a consumer, in view of the differences in sound and visual appearance between a celesta and an

upright piano forte, would be likely to assume that a SCHIEDMAYER branded celesta came from the same source as a SCHIEDMAYER branded upright piano forte.

Response to Interrogatory No. 19: A celesta is virtually perceptively identical to a piano. Both are musical keyboard instruments and the only difference relates to the fact that a celesta embodies a hammer which strikes a plate and a piano embodies a hammer which strikes a wire.

20. Please explain the basis for Petitioner's belief that a consumer, in view of the differences in sound and visual appearance between a celesta and a grand piano forte, would be likely to assume that a SCHIEDMAYER branded celesta came from the same source as a SCHIEDMAYER branded grand piano forte.

Response to Interrogatory No. 20: See answer to Interrogatory No. 19 above.

21. Please explain the basis for Petitioner's belief that a consumer, in view of the differences in sound and visual appearance between a celesta and a digital piano forte, would be likely to assume that a SCHIEDMAYER branded celesta came from the same source as a SCHIEDMAYER branded digital piano forte.

Response to Interrogatory No. 21: See answers to Interrogatories No. 19 and 20.

22. Explain the circumstances that explain why Petitioner failed to file an opposition within the Opposition period for the SCHIEDMAYER mark that began on June 22, 2004.

Response to Interrogatory No. 22: During the relevant time period, Petitioner was unaware that Respondent had filed a trademark application.

23. Explain the circumstances that explain why Petitioner delayed filing its cancellation action until April 1, 2015, nearly 11 years following the beginning of the publication period.

Response to Interrogatory No. 23: Petitioner first became aware of the existence of Respondent's trademark registration when it was cited against Petitioner in Petitioner's pending trademark application.

24. Explain the basis underlying Petitioner's belief that its cancellation action is not barred by laches.

Response to Interrogatory No. 24: Laches does not apply to the subject set of facts because Petitioner only recently became aware of Registrant's trademark registration and promptly sought to cancel same thereafter.

25. Explain why Petitioner delayed filing a U.S. trademark application for the mark SCHIEDMAYER until April 17, 2015.

Response to Interrogatory No. 25: See answers to Interrogatories No. 22, 23 and 24.

26. Please explain the basis for Petitioner's belief that Petitioner and Respondent cannot currently co-exist as they have for over a decade.

Response to Interrogatory No. 26: It is Petitioner's belief that Respondent has abandoned its usage of the trademark SCHIEDMAYER with respect to pianos or any other goods. However, if Respondent were to sell pianos under the trademark SCHIEDMAYER, confusion in the marketplace would occur in view of the similarity between Respondent's goods and the celesta product offered for sale by Petitioner.

27. Please disclose all facts regarding any incidents of which Petitioner is aware where consumers contacted Petitioner as a result of thinking Respondent's piano fortes were related to Petitioner's celestas.

Response to Interrogatory No. 27: Since Respondent has abandoned use of the trademark SCHIEDMAYER, no such information is available.

28. Has the Petitioner ever manufactured a piano forte in a country other than the United States?

Response to Interrogatory No. 28: Objected to as irrelevant. Petitioner does not currently manufacture piano fortes. Since 1735 every SCHIEDMAYER keyboard instrument (Grand Piano, upright Piano, Harmounium, Celesta's) were/are manufactured only in Germany.

29. Has the Petitioner ever had any of its products it sells under its SCHIEDMAYER mark manufactured by a third party?

Response to Interrogatory No. 29: No.

30. If the answer to Interrogatory No. 9 is in the affirmative, please provide the details regarding how Petitioner marked the product manufactured by the third party with the SCHIDMAYER mark?

Response to Interrogatory No. 30: No answer necessary.

31. Does the Petitioner believe that Ibach's use of Roth & Junius, Young Chang, Concorde, Kawai, Souter, and Seiler and Steinberger to physically manufacture pianos that were sold by Ibach as SCHIEDMAYER branded pianos in the United States constituted false designations of the origin of these pianos?

Response to Interrogatory No. 31: Objected to as calling for legal conclusions.

32. If the answer to Interrogatory No. 31 is in the affirmative, please explain the basis for Petitioner's conclusion.

Response to Interrogatory No. 32: No answer required.

33. If the answer to Interrogatory No. 31 is in the affirmative, please explain why Georg Schiedmayer sold his share in Schiedmayer Piano GmbH to Christian and Rolf Ibach.

Response to Interrogatory No. 33: No answer required.

34. If the answer to Interrogatory No. 31 is in the affirmative, please explain what actions over the next 30 years Petitioner took to protect the SCHIEDMAYER mark from being subjected to false designation of origin by any part, including Ibach.

Response to Interrogatory No. 34: No answer required.

35. Please explain why Petitioner did not file for a U.S. trademark application for the SCHIEDMAYER mark for keyboard instruments of any kind following the abandonment of the mark by Ibach around 2001-2002.

Response to Interrogatory No. 35: Objected to as irrelevant.

36. Does Petitioner believe that Ibach abandoned use of the SCHIEDMAYER trademark for piano fortes sometime between 2000-2002?

Response to Interrogatory No. 36: Ibach became insolvent and ceased manufacture of pianos.

37. If the answer to Interrogatory No. 36 is negative, then please describe the basis that authorized Petitioner to file its application for the mark SCHIEDMAYER on April 17, 2015, Application Serial No. 86/600,864 (the '864 application).

Response to Interrogatory No. 37: No answer required.

38. Please identify the names, addresses, and telephone numbers of all persons in addition to Ellianne Schiedmayer that have personal knowledge of the facts surrounding the filing of the '864 application.

Response to Interrogatory No. 38: The person who has the most knowledge of the facts surrounding the filing of '864 application is Ellianne Schiedmayer.

39. On April 17, 2015, Michael J. Striker, counsel for Petitioner, made the following declaration by signing the '864 application on behalf of Petitioner:

The signatory believes that: if the applicant is filing the application under 15 U.S.C. Section 1051(a), the applicant is the owner of the trademark/service mark sought to be registered; the applicant or applicant's related company or licensee is using the mark in commerce on or in connection with the goods/services in the application, and such use by the applicant's related company or licensee inures to the benefit of the applicant; the specimen(s) shows the mark or use on or in connection with the goods/services in the application; and/or if the applicant filed an application under 15 U.S.C. Section 1051(b), Section 1126(d), and/or Section 1126(e), the applicant is entitled to use the mark in commerce; the applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the goods/services in the application. The signatory believes that to the best of the signatory's knowledge and belief, no other person has the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion or mistake, or to deceive. The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements and the like may jeopardize the validity of the application or any registration resulting therefrom, declares that all statements made of his/her own

knowledge are true and all statements made on information and belief are believed to be true.

Please describe how Petitioner believes that Michael J. Striker will not be called as a witness in this proceeding, given that Mr. Striker's declaration on the '864 application represented to the USPTO that Petitioner's date of first use of the SCHIEDMAYER trademark for "keyboard musical instruments" was "at least as early as 00/00/1860."

Response to Interrogatory No. 39: Objected to as irrelevant. The '864 application is not involved in respect to the subject cancellation proceeding.

40. Given that it is reasonable to assume that counsel for Petitioner, Michael J. Striker, was not alive in 1860, please disclose all of the personally known facts in Michael J. Striker's possession that formed a basis for him to declare, under penalty of fine or imprisonment on April 17, 2015, that the date of first use of the SCHIEDMAYER mark in the United States was in 1860.

Response to Interrogatory No. 40: Objected to. See answer to Interrogatory No. 39.

41. Please explain why Petitioner, via the declaration of its counsel Michael J. Striker, believes its date of first use of the SCHIEDMAYER mark in the United States was in 1860 rather than 1960 as made in the application for the SCHIEDMAYER logo mark by Christian Ibach on April 2, 1984.

Response to Interrogatory No. 41: Petitioner has no idea why Christian Ibach indicated April 2, 1984 as use of the trademark SCHIEDMAYER.

42. Please provide all facts that support the Petitioner's declaration allegedly filed in the Prosecution History of record with the USPTO for the '864 application on January 7, 2016, that the mark SCHIDMAYER has become distinctive of the applied for goods and is therefore not primarily merely a surname.

Response to Interrogatory No. 42: Objected to as irrelevant. The '864 application is not involved in the subject cancellation proceeding.

43. Please explain the basis why Petitioner believes it has not abandoned the SCHIEDMAYER mark for piano fortes in the United States.

Response to Interrogatory No. 43: Petitioner does not offer for sale piano forte's in the United States. Petitioner offers for sale celesta's in the United States.

44. Please explain why Petitioner did not designate the United States in its International Application under the Madrid Protocol for the mark SCHIEDMAYER until April 2, 2015.

Response to Interrogatory No. 44: Objected to as irrelevant. A Madrid Protocol Application is not involved in the subject cancellation proceeding.

45. Please explain Petitioner's understanding as to why Schiedmayer Pianos GmbH, via its principal, Christian Ibach, filed to register the SCHIEDMAYER logo mark for "celestas" in 1984.

Response to Interrogatory No. 45: Petitioner does not know why Schiedmayer Pianos GmbH filed an application for the trademark SCHIEDMAYER for celestas in 1984. Petitioner is aware that the said trademark application never issued as a registration.

46. Please explain Petitioner's understanding as to why Schiedmayer Pianos GmbH, via its principal, Christina Ibach, filed to register the SCHIEDMAYER logo mark for "pianos" in 1984.

Response to Interrogatory No. 46: Objected to as calling for conjecture on part of the Petitioner.

47. Does Petitioner believe that the references to "pianos" and "celestas" in the application filed in 1984 by Schiedmayer Pianos GmbH are merely redundant references to the same musical instrument?

Response to Interrogatory No. 47: Applicant does not know what was meant in the 1984 trademark application and therefore objects to this interrogatory.


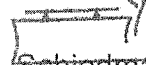
48. Please provide all information in Petitioner's possession as to why the application for the SCHIEDMAYER logo mark was withdrawn in 1986 during the opposition filed by Steinway and Sons.

Response to Interrogatory No. 48: Unknown to Petitioner.

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 patent issued thereon.

Dated:



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As to objections:


Michael J. Striker