

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

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Schiedmayer Celesta GmbH,

Cancellation No.: 92/061,215

Petitioner,

Reg. No. 3,340,759

v.

Mark: SCHIEDMAYER

Piano Factory Group, Inc.

Registration Date: November 20, 2007

Respondent.

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**RESPONDENT'S FIRST SET OF INTERROGATORIES**

**February 3, 2016**

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and Trademark Rules of Practice 2.116 and 2.120, 37 CFR § 2.116 and 2.120, Respondent herewith requests that the Petitioner answer under oath the following Interrogatories within 30 days after service thereof. These requests are deemed to be continuing so as to require prompt supplemental interrogatory answers should Petitioner obtain additional responsive information between the time the answers are served and the time of the final hearing of this Cancellation Proceeding.

**INTERROGATORY NO. 1:**

Has the Petitioner ever manufactured a piano forte?

INTERROGATORY NO. 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.

INTERROGATORY NO. 3:

Please explain any relationship between SCHIEDMAYER PIANOS, GmbH and Petitioner.

INTERROGATORY NO. 4:

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

INTERROGATORY NO. 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.

INTERROGATORY NO. 6:

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

INTERROGATORY NO. 7:

Did an agent/person otherwise affiliated with of 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?

INTERROGATORY 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.

INTERROGATORY NO. 9:

Under the agreement by which Georg 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)?

INTERROGATORY NO. 10:

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

INTERROGATORY NO. 11:

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

INTERROGATORY NO. 12:

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

INTERROGATORY NO. 13:

Please describe the sound of a celesta.

INTERROGATORY NO. 14:

Please describe the sound of a piano forte.

INTERROGATORY NO. 15:

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

INTERROGATORY NO. 16:

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

INTERROGATORY NO. 17:

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

INTERROGATORY NO. 18:

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

INTERROGATORY NO. 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.

INTERROGATORY NO. 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.

INTERROGATORY NO. 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.

INTERROGATORY NO. 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.

INTERROGATORY NO. 23:

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

INTERROGATORY NO. 24:

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

INTERROGATORY NO. 25:

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

INTERROGATORY NO. 26:

Please explain the basis for Petitioner's belief that Petitioner and respondent cannot currently coexist as they have for over a decade.

INTERROGATORY NO. 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.

INTERROGATORY NO. 28:

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

INTERROGATORY NO. 29:

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

INTERROGATORY NO. 30:

If the answer to Interrogatory No. 29 is in the affirmative, please provide the details regarding how Petitioner marked the product manufactured by the third party with the SCHIEDMAYER mark.

INTERROGATORY NO. 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 those pianos?

INTERROGATORY NO. 32:

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

INTERROGATORY NO. 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.

INTERROGATORY NO. 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 party, including Ibach.

INTERROGATORY NO. 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.

INTERROGATORY NO. 36:

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



INTERROGATORY NO. 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. 86600864 (the '864 application).

INTERROGATORY NO. 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.

INTERROGATORY NO. 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 the 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 as used 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."

INTERROGATORY NO. 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.

INTERROGATORY NO. 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.

INTERROGATORY NO. 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 SCHIEDMAYER has become distinctive of the applied for goods and is therefore not primarily merely a surname.

INTERROGATORY NO. 43:

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

INTERROGATORY NO. 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.

INTERROGATORY NO. 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 "celestes" in 1984.

INTERROGATORY NO. 46:

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

INTERROGATORY NO. 47:

Does Petitioner believe that the references to "pianos" and "celestes" in the application filed in 1984 by SCHIEDMAYER PIANOS, GmbH are merely redundant references to the same musical instrument?

INTERROGATORY NO. 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.

Respectfully Submitted,

Dated: February 3, 2016

/s/ Adam R. Stephenson

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## CERTIFICATE OF SERVICE

It is hereby certified that one (1) copy of the foregoing RESPONDENT'S FIRST SET OF INTERROGATORIES is being sent via email and U.S. Mail to Petitioner Schiedmayer Celesta GmbH's attorney of record as follows:

Michael J. Striker  
Striker, Striker & Stenby  
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Dated: February 3, 2016

/s/ Adam R. Stephenson  
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