

**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 REPLY IN SUPPORT OF RESPONDENT’S CROSS MOTION
TO STRIKE TESTIMONY OF ELIANNE SCHIEDMAYER**

Respondents Piano Factory Group, Inc. and Sweet 16 Musical Properties, Inc. (“Respondent”) hereby submit their reply in support of its cross-motion to strike the entirety of the testimony of Elianne Schiedmayer, which was submitted by declaration, including all exhibits.

FACTS

Petitioner filed its Reply in support of Petitioner’s Motion to Strike Respondent’s Notice to take Cross Examination Testimony of Elianne Schiedmayer and responded to Respondent’s cross-motion to strike Ms. Schiedmayer’s declaration testimony on October 10, 2017. In the document Petitioner filed, Petitioner alleged that Respondent’s motion to strike should be denied because of Respondent’s alleged unclean hands.

ARGUMENT

Regarding Respondent's Notice to Take Deposition by Written Questions:

Respondent is not filing an amended Notice to Take Deposition by Written Questions. Petitioner goes to great lengths to emphasize that Elianne Schiedmayer is and has been at all times ready, willing, and happy to be cross examined, but this is only after Petitioner was compelled by Respondent's cross-motion to strike to acknowledge that Respondent has an absolute legal right to cross examine. Prior to that time, Petitioner's counsel filed two separate motions to strike Respondent's notice, raising legal issues in the second motion about the notice (after failing in the first) that could and should have been raised in the first motion.

Petitioner continues to insist that the only way for Ms. Schiedmayer to provide her testimony is before the US Consulate in Frankfurt. Respondent does not believe that is true—the Exhibit filed with Respondent's cross-motion to strike indicates she could testify before a German judge. Exhibit 1 filed herewith from the international court reporting firm (Opus) referred to by Petitioner's counsel in its reply indicates that German nationals are free to travel to legally provide testimony in other nearby countries where the German restrictions on testimony do not exist.

Respondent takes issue with Petitioner insisting that the deposition testimony be taken using what arguably is the most expensive path. Cross examination before a German judge costs nothing with respect to fees as the German courts perform the service free of charge. Conducting the deposition in Belgium would mean that Respondent would not have to pay the U.S. Consulate's fees, which begin at \$1000+ per day plus the staff fees (several thousands of dollars in the end) plus the fees of the court reporter.

Basically, Petitioner is willing to provide testimony using the most expensive option possible.

It seems evident from the contentious history of this case, Petitioner's multiple motions on this issue, and its cooperation only through compulsion that it would do Respondent little good to attempt to enter into the rule-prescribed back and forth process needed to assemble the final set of written questions that would ultimately be presented to Ms. Schiedmayer. Respondent has no idea how many more objections, motions to strike, etc. that Petitioner is prepared to raise and file with the Board during the process of preparing the questions. Attempting to move forward with the questions will only further consume Respondent's resources and continue to leave this case suspended and stalled until the time of the deposition finally arrives, months from now.

In view of the pattern of behavior of Petitioner's counsel, Respondent leaves it to the Board to determine the admissibility of Ms. Schiedmayer's testimony on this record in the absence of cross examination testimony. Respondent has tried. Respondent has already spent thousands of dollars coming up with the initial set of questions and dealing with Petitioner's motions on this issue to date.

Given Petitioner's insistence on the most expensive route possible and the legal costs of the task dealing with the expected continuing determined opposition from Petitioner's counsel during the process of coming up with the written questions, Respondent believes it a better use of its and the Board's resources to focus on preparing its own testimony and moving this case to a decision.

Unclean Hands:

Respondent wishes to respond to Petitioner's allegation that Respondent's motion should be denied because of unclean hands because Respondent did not take Petitioner's counsel up on the offer to orally examine Ms. Schiedmayer during three brief periods in three different US states (while she was extremely busy). Firstly, as the Board's order of August 16, 2017 correctly points out, once Respondent had served its notice to take testimony via written questions, Petitioner had 20 days to file a motion with the Board showing good cause as to obtain an order that the testimony deposition be taken by oral examination. Basically, Petitioner cannot send the undersigned an email notifying him of Ms. Schiedmayer's schedule and then think that the Board would approve of Respondent taking oral testimony. No—Petitioner is required to file a motion with the Board itself asking permission and showing good cause before Respondent could be compelled, by Board order to proceed with taking deposition testimony via oral proceedings.

Respondent is not required to change its decision to take deposition testimony via written questions simply because Petitioner sent an email and failing to get approval from the Board.

Given these facts, it is plainly impossible for Respondent to be coming to the Board with unclean hands when it is obvious that it is Petitioner's fault that oral examination of Ms. Schiedmayer did not take place because of failure to follow the proper procedures. Petitioner's unclean hands argument should simply be disregarded.

Dated: October 25, 2017

Respectfully submitted,

/s/ Adam R. Stephenson
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Attorney for Respondents

CERTIFICATE OF SERVICE

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

Michael J. Striker
Collard & Roe, P.C.
1077 Northern Blvd
Roslyn, NY 11576
striker@collardroe.com

Dated: 10/25/2017

_____/s/ Adam Stephenson_____