

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

Schiedmayer Celesta GmbH,)
)
 Petitioner,)
)
 v)
)
 Piano Factory Group, Inc.,)
)
 Respondent.)
_____)

Cancellation No. 92/061,215
Reg. No. 3,340,759
Mark: SCHIEDMAYER
Registration Date: 11/20/2007

**PETITIONER'S MOTION TO STRIKE RESPONDENT'S ANSWER TO PETITION AND
FOR DEFAULT JUDGMENT**

June 8, 2015

Petitioner, Schiedmayer Celesta GmbH ("Petitioner"), hereby petitions for an Order striking Respondent's Answer to the Petition for Cancellation and for Default Judgement.

FACTS

Since 1735, Petitioner and its predecessors in interest, have manufactured and sold keyboard instruments representing some of the most coveted and respected keyboard instruments in the world. Since 1890, Petitioner has manufactured and offered for sale the Celesta piano, which is a piano keyboard instrument having four or five octaves. Since 1860, Schiedmayer pianos have been offered for sale and sold in the United States.

Antone

Respondent, Piano Factory Group, Inc., is a store in California offering pianos for sale. Piano Factory Group, Inc. does not manufacture pianos and has no association whatsoever with Petitioner. Unbeknownst to Petitioner, on November 20, 2007, Respondent caused to be registered the Schiedmayer trademark, Registration No. 3,340,759. This registration was fraudulently obtained as Respondent has no connection whatsoever with the Schiedmayer trademark and has never manufactured a Schiedmayer product. The registration by Respondent of the Schiedmayer trademark represents an unlawful and fraudulent taking of Petitioner's valued property.

Promptly after ascertaining that Respondent had unlawfully and fraudulently registered its valued trademark, Petitioner instituted this Cancellation Petition. On April 7, 2015, the Trademark Trial & Appeal Board acknowledged receipt of the Petition for Cancellation and issued a communication indicating that Respondent must file and serve an Answer within 40 days of the mailing date of the Order, April 7, 2015.

Therefore, the term for filing of an Answer expired on May 17, 2015.

On May 29, 2015, Respondent caused to be filed an Answer to the Petition for Cancellation. Since the Answer was filed 12 days after the expiration of the term for filing of an Answer, it is prima facie null and void.

ARGUMENT


Once the term for responding to a Petition for Cancellation has expired, it is improper to simply file a late answer assuming that it will be acceptable. On the contrary, it is incumbent upon the Respondent to show good cause why the Answer was not timely filed.

On the one hand, Petitioner does concede that the TTAB does prefer that controversies be settled on the merits. On the other hand, unless the respondent can support a verified fact pattern excusing such a long delay, the TTAB will not hesitate to enter a Default Judgment. See 37 CFR § 2.106(a): "If no answer is filed within the time set, the Opposition [Cancellation] may be decided as in case of default." See also *DeLorme Publishing Co. v. Eartha's Inc.*, 60 USPQ 2d 1222, 1224 (TTAB 2000).

SUMMARY

In view of all of the above, Petitioner requests that Respondent's Answer to the Petition for Cancellation be set aside and a Notice of Default entered, unless Respondent is able to show good cause why the Answer was not timely filed.

Respectfully submitted,


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CERTIFICATE OF SERVICE

It is hereby certified that a true and complete copy of the attached Motion was served upon counsel for the Respondent at the following address, via First Class mail, postage prepaid and via email:

Adam R. Stephenson
40 W. Baseline Road
Suite 101
Tempe, AZ 85283
adam@patentproblempro.com

this 8 day of June, 2015.

Dated: JUNE 8 2015



MICHAEL J. STRIKER