

ESTTA Tracking number: **ESTTA754128**

Filing date: **06/23/2016**

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

Proceeding	92061215
Party	Defendant Piano Factory Group
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Submission	Motion to Dismiss - Rule 12(b)
Filer's Name	Adam R. Stephenson
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Date	06/23/2016
Attachments	Reply to Response Renewed Motion to Dismiss Stay Request.pdf(25519 bytes)

**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.

Registration Date: November 20, 2007

Respondent.

**RESPONDENT’S REPLY TO PETITIONER’S RESPONSE TO RESPONDENT’S
MOTION TO DISMISS, RESPONDENT’S MOTION TO DISMISS
PETITIONER’S SECOND AMENDED PETITION, AND RESPONDENT’S
REQUEST FOR STAY OF PROCEEDINGS**

Respondent Piano Factory Group, Inc. (“Respondent”) hereby submits its reply to Petitioner’s Schiedmayer Celesta GmbH (“Petitioner”) response to Respondent’s Motion to Dismiss, moves to dismiss Count I of Petitioner’s Second Amended Petition for Cancellation for failure to state a claim upon which relief may be granted, and requests a stay of these proceedings pending the resolution of Respondent’s Motion to Dismiss.

FACTS

Respondent filed its Motion to Dismiss Petitioner’s Amended Petition with the Board on May 31, 2016. On June 13, Petitioner filed its Response to the Motion to Dismiss along with a Second Amended Petition for Cancellation that modified only the wording of Count II that contained Petitioner’s Abandonment Claim. Petitioner’s Response stated as to Count I, Petitioner’s False Association claim, that “The appended amended Petition for Cancellation repeats Petitioner’s false association claims without

change.” On May 24, 2016, Respondent requested suspension of these proceedings pending consideration of Respondent’s Request for Reconsideration to the Board regarding the Board’s dismissal of Respondent’s fraud claim with prejudice. At the present time, no order suspending proceedings has been issued by the Board.

ARGUMENT

At the outset, the Respondent notes that under 37 CFR § 2.115, pleadings in a cancellation proceeding may be amended consistent with the guidelines of FRCP 15.

In the present case, Petitioner’s Count I, False Designation of Origin, in its Second Amended Petition has not been changed from the originally filed Amended Petition. Because of this, as set forth in Petitioner’s previous Motion to Dismiss Count I filed May 31st, 2016, which is incorporated entirely herein by reference, Petitioner’s Count I is legally defective for precisely the same reasons argued in the previous Motion to Dismiss. Accordingly, Respondent renews its Motion to Dismiss Count I on the same grounds as previously made in its May 31st Motion. Respondent similarly moves to Dismiss Count I of the Second Amended Petition to Cancel filed by Petitioner in its June 13, 2016 Response on the same grounds laid out in Respondent’s May 31 Motion to Dismiss Count I which has been incorporated by reference herein.

As to Count II of the Second Amended Petition to Cancel filed by Petitioner on June 13 in response to Respondent’s motion, Respondent does not now move to dismiss Count II in its amended form. However, if the Board does not enter the Second Amended Petition to Cancel filed by Petitioner, Respondent renews its May 31st Motion to Dismiss Count II of the Amended Petition to Cancel for the same reasons set forth in Respondent’s May 31st Motion, which has previously been incorporated by reference.

Stay of Proceedings Requested

As this paper is Respondent's Reply to Petitioner's Response to Respondent's May 31st Motion to dismiss, Respondent's Motion has been fully briefed to the Board. This is true because Petitioner made no changes in Count I in its Second Amended Petition to Cancel, so Respondent is now simply realleging its previously filed arguments with respect to Count I. Because Respondent is not moving to dismiss Count II of the Second Amended Petition to Cancel, no additional response from Petitioner is necessary. This is true even if the Board refuses to enter the Second Amended Complaint, because in that case, Respondent is realleging its previously filed arguments with respect to Count II of the Amended Petition to Cancel, which Petitioner has already had an opportunity to respond to.

In view of the foregoing, Respondent respectfully requests that the Board issue a stay of further proceedings in this case pending the resolution of Respondent's Motion to Dismiss. As Petitioner has already filed a request for stay of proceedings for consideration of its Request for Reconsideration, it would appear that both Respondent and Petitioner are in agreement that further proceedings should be stayed pending resolution of the outstanding matters, consistent with the current procedure and rules of the Board.

In view of the foregoing, the Respondent respectfully requests that Count I of Petitioner's Second Amended Petition for Cancellation be dismissed for failure to state a claim upon which relief may be granted; if needed, renews its request that Count II of Petitioner's Amended Petition for Cancellation be dismissed; and requests a stay of these proceedings pending the resolution of Respondent's Motion to Dismiss.

Dated: June 23, 2016

Respectfully submitted,

/s/ Adam R. Stephenson

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Group, Inc.

CERTIFICATE OF SERVICE

It is hereby certified that one (1) copy of the foregoing RESPONDENT'S REPLY TO PETITIONER'S RESPONSE TO RESPONDENT'S MOTION TO DISMISS, RESPONDENT'S MOTION TO DISMISS PETITIONER'S SECOND AMENDED PETITION, AND RESPONDENT'S REQUEST FOR STAY OF PROCEEDINGS is being sent via first class U.S. Mail to Petitioner Schiedmayer Celesta GmbH's attorney of record as follows:

Michael J. Striker
Striker, Striker & Stenby
103 East Neck Road
Huntington, NY 11743
striker@strikerlaw.com

Dated: June 23, 2015

_/s/ Adam Stephenson_____