

ESTTA Tracking number: **ESTTA759960**

Filing date: **07/22/2016**

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

Proceeding	92061215
Party	Plaintiff Schiedmayer Celesta GMBH
Correspondence Address	MICHAEL J STRIKER STRIKER STRIKER & STENBY 103 EAST NECK RD HUNTINGTON, NY 11743 UNITED STATES striker@strikerlaw.com
Submission	Motion for Summary Judgment
Filer's Name	Michael J. Striker
Filer's e-mail	striker@strikerlaw.com
Signature	/Michael J. Striker/
Date	07/22/2016
Attachments	SKMBT_42116072214130.pdf(532803 bytes)

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

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

PETITIONER'S MOTION FOR SUMMARY JUDGMENT

Petitioner hereby moves for an Order granting Petitioner Summary Judgment and cancelling U.S. Trademark Registration No. 3,340,759. There can be no genuine issue of material fact as to the following:

The basis of this Motion is that the Respondent, Piano Factory Group, Inc. is a suspended corporation, having been suspended since 2008 by the Franchise Tax Board of the Office of the Secretary of State of the State of California. Therefore, the filing of a Declaration of use in April 2014 must be considered as a nullity, rendering the Registration as invalid.

A suspended corporation, being a juristic nullity, also cannot do business of any kind and cannot maintain a Trademark Registration. Accordingly, the subject

registration must be cancelled. A suspended corporation also cannot defend a legal proceeding.

FACTS

Petitioner caused to be filed the subject Petition for Cancellation of Registration No. 3,340,759 on April 1, 2015. Currently certain discovery Motions are pending.

However, all of said Motion practice on behalf of Respondent must be considered to be a nullity because it has recently been ascertained that the Respondent, Piano Factory Group, Inc., at all times relevant hereto, was a suspended corporation, having been suspended by the Franchise Tax Board of the State of California, for failure to pay taxes or to file tax returns since at least the year 2008. A suspended corporation cannot defend itself in a legal matter, or conduct business of any kind.

ARGUMENT

Respondent, Piano Factory Group, Inc., is a suspended corporation and has been a suspended corporation since at least the year 2008.

Attached hereto as Exhibit "A" is a copy of a Business Search result from a computer search taken from the Business Search engine of the Secretary of State of the State of California. A supporting Declaration is further attached as Exhibit "B".

It is clear that the Piano Factory Group, Inc. mentioned in the State of California Business Search is the same entity as the Respondent herein, since the name of the Corporation is identical. Also, the indicated Agent for Service of Process is mentioned as Cheryl Fox who is the same person designated as the vice-president of the Respondent who caused to be filed the Declaration of Use in Reg. No. 3,340,759 sought to be cancelled.

It is noted that Piano Factory Group, Inc. filed as a corporate entity on March 17, 1994, and its current status is suspended since 2008 by the FTB, which is the acronym for the Franchise Tax Board for the State of California.

Further attached hereto as Exhibit "C" is a copy of an email, partially redacted, from Attorney Melissa C. Marsh, who conducted a search at the Office of the Secretary of State of the State of California regarding Piano Factory Group, Inc., the Respondent herein.

The Marsh email states that Piano Factory Group, Inc. has not paid taxes or filed a Statement of Information since January 2006 and has been suspended since 2008.

Marsh further indicates that the entity has been suspended by the Franchise Tax Board of the State of California due to its failure to file needed returns and pay taxes.

The search also indicates that the State of California suspended the Piano Factory Group, Inc. since September 2008, and tax returns have not been filed for the years 2008-2015. The last Statement of Information was filed 10 years ago in 2006.

A suspended corporation is a legal nullity which cannot do business of any kind. Accordingly, the Declaration of Use filed on April 18, 2014 at a time when the corporation was suspended, must be considered void as it was filed by a legal nullity.

The Piano Factory Group, Inc. has been designated a suspended corporation since 2008 pursuant to California Revenue and Taxation Code Section 23301-23305(e), which states in part at Section 23305 "...the corporate powers, rights and privileges of a domestic taxpayer may be suspended, and the exercise of the corporate powers, rights and privileges of a foreign tax payer in this state may be forfeited, if a taxpayer fails to file a tax return required by this part."

A suspended corporation cannot do business of any kind:

"An organization cannot legally transact business, defend or initiate an action in court, protect assessments or file a claim for refund of paid amounts when we or SOS [Secretary of State] suspend it. It also loses the right to use its name."

- State of California Franchise Tax Board Suspended Exempts Entities. See: Exhibit "D"

"In California, both the Secretary of State's office and the Franchise Tax Board have the authority to suspend a California corporation. The Franchise Tax Board has the authority to suspend a corporation based upon the failure to pay the minimum tax of \$800.00 per year or the failure to pay any taxes that are owed. In addition, a corporation may be suspended for the failure to file tax returns.

The impact of a corporation being placed in a suspended status is substantial. **When a corporation is suspended, it has lost all rights and privileges as a corporation and cannot legally operate... moreover, a suspended corporation cannot sue or defend any action in Court.**"

- California Litigation Attorney Blog, Michael G. Krebs. (emphasis supplied)

"A suspended California corporation loses its rights to exercise its power, privileges and rights. A suspended corporation cannot bring a lawsuit. It cannot defend itself against a lawsuit."

- You Have a Suspended California Corporation Now What, March 14, 2013.

A suspended corporation cannot own a trademark registration. A suspended corporation cannot file a Declaration of Use under Sections 8 and 15. A suspended corporation cannot conduct business of any kind, **and cannot defend itself in this Petition for Cancellation.**

Accordingly, a Declaration of Use filed by a suspended corporation must be considered a nullity because the corporation itself is not permitted to conduct any business. Respondent filed its Declaration of Use under Sections 8 and 15 on April 18, 2014, when it was a suspended corporation. Accordingly, the Declaration of Use must be considered as a nullity, thereby rendering the Registration as invalid.

It is correct that a suspended corporation may be reinstated upon the payment of back taxes and penalties and fees. However, this is prospective only and would not rectify the cancellation of the subject registration.

This is because the Declaration of Use was filed on behalf of a suspended corporation, Piano Factory Group, Inc. These activities must be considered to be a nullity because the suspended corporation cannot conduct business of any kind, and certainly cannot maintain a trademark registration or file a Declaration of Use.

Additionally, Piano Factory Group, Inc., a suspended corporation, is a legal nullity and cannot defend this Petition for Cancellation.

In view of all of the above, it is believed that the subject registration must be cancelled because it is being maintained by a suspended corporation which is a legal nullity. Additionally, the registration must be cancelled because Piano Factory Group, Inc., a legal nullity, cannot legally defend this litigation.

Finally, the registration sought to be cancelled is invalid because the Declaration of Use under Sections 8 and 15 was filed at a time when the subject corporation was a legal nullity.

The Piano Factory Group, Inc. was a suspended, nullity Corporation during the time it filed a Declaration of Use, and during the entire lifetime of this Petition

to Cancel. Accordingly, all Motions and other documents filed on behalf of Piano Factory Group, Inc. in this Petition to Cancel are equally a nullity and should not be considered. Motions and other documents filed on behalf of a non-existent, suspended corporation are a nullity and a sham and should not be considered.

In view of all of the above, favorable consideration of the Motion for Summary Judgement and Cancellation of U. S. Registration No. 3,340,759 is requested.

Respectfully submitted,



Michael J. Striker
Attorney for Petitioner
Reg. No.: 27233
103 East Neck Road
Huntington, New York 11743

CERTIFICATE OF SERVICE

It is hereby certified that a true and complete copy of the attached Motion for Summary Judgment was served upon counsel for the Respondent, via first class mail, at his address of record:

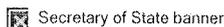
Adam R. Stephenson LTD
40 W. Baseline Rd. Ste. 101
Tempe, AZ.
85283

This 22nd day of July, 2016



Michael J. Striker

EXHIBIT A



[Secretary of State Main Website](#)

[Business Programs](#)

[Notary & Authentications](#)

[Elections](#)

[Campaign & Lobbying](#)

Business Entities (BE)

Online Services

- [E-File Statements of Information for Corporations](#)
- [Business Search](#)
- [Processing Times](#)
- [Disclosure Search](#)

Main Page

Service Options

Name Availability

Forms, Samples & Fees

Statements of Information
(annual/biennial reports)

Filing Tips

Information Requests
(certificates, copies & status reports)

Service of Process

FAQs

Contact Information

Resources

- [Business Resources](#)
- [Tax Information](#)
- [Starting A Business](#)

Customer Alerts

- [Business Identity Theft](#)
- [Misleading Business Solicitations](#)

Business Search - Results

Data is updated to the California Business Search on Wednesday and Saturday mornings. Results reflect work processed through Tuesday, July 19, 2016. Please refer to [Processing Times](#) for the received dates of filings currently being processed. The data provided is not a complete or certified record of an entity.

- *Select an entity name below to view additional information.* Results are listed alphabetically in ascending order by entity name.
- For information on checking or reserving a name, refer to [Name Availability](#).
- For information on ordering certificates, copies of documents and/or status reports or to request a more extensive search, refer to [Information Requests](#).
- For help with searching an entity name, refer to [Search Tips](#).
- For descriptions of the various fields and status types, refer to [Field Descriptions and Status Definitions](#).

Results of search for " PIANO FACTORY GROUP, INC. " returned 1 entity record.

Entity Number	Date Filed	Status	Entity Name	Agent for Service of Process
C1740917	03/17/1994	FTB SUSPENDED	PIANO FACTORY GROUP, INC.	CHERYL FOX

[Modify Search](#) [New Search](#)

[Privacy Statement](#) | [Free Document Readers](#)

Copyright © 2016 California Secretary of State

EXHIBIT B

EXHIBIT C

Subject: FW: Suspended Status of PIANO FACTORY GROUP, INC. (C1740917)
From: Melissa Marsh Attorney (legalcorner@aol.com)
To: striker@strikerlaw.com;
Cc: legalcorner@aol.com;
Date: Tuesday, July 19, 2016 5:49 PM

Michael:

PIANO FACTORY GROUP, INC. (C1740917) has not filed a statement of information since January 2006 (it is due annually). The entity has been suspended by the Franchise Tax Board due to its failure to file needed returns. Once the FTB has issued a suspension, the Secretary of State typically will not order a dual suspension.

Date of Suspension: September 2008

What State Tax Returns are Needed: 2007-2015

Last Statement of Information filed: 2006

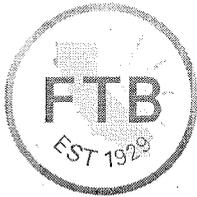
As always, please do not hesitate to call me at 323-655-1002 with any questions, or concerns.

Very truly yours,

Melissa C. Marsh

Melissa C. Marsh, Esq.

EXHIBIT D



STATE OF CALIFORNIA
Franchise Tax Board

Suspended Exempt Entities

FTB or California Secretary of State can suspend an exempt organization for a number of reasons. Suspension affects an organization's tax-exempt status. It also affects its ability to enforce contracts.

A suspended organization can get back into good standing and regain its tax-exempt status.

Suspension causes and tax-exempt effects

There are three primary ways an organization may become suspended:

- Failure to file a Statement of Information with California Secretary of State's (SOS) office.
- Failure to pay an amount due.
- Failure to file any past due returns with us.

An organization cannot legally transact business, defend, or initiate an action in court, protest assessments, or file a claim for refund of paid amounts when we or SOS suspend it. It also loses the right to use its name.

An organization remains suspended by SOS until it meets all revivor requirements.

To verify an organization's current status with us or SOS, go to kepler.sos.ca.gov. The website only lists organizations that incorporated or qualified with SOS.