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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	Other Motions/Papers
Filer's Name	Adam R. Stephenson
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Signature	/Adam Stephenson/
Date	07/30/2016
Attachments	Reply to Response to Petition to Disqualify Counsel.pdf(28555 bytes) SKMBT_42116071914530--Exhibit A to Pet Reply.pdf(474210 bytes) SKMBT_42116010713190--Exhibit B to Pet Reply.pdf(22388 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 RESPONSE TO PETITIONER'S OPPOSITION TO
RESPONDENT'S PETITION TO DISQUALIFY PETITIONER'S COUNSEL
MICHAEL J. STRIKER OF STRIKER, STRIKER, AND STENBY**

Respondent Piano Factory Group, Inc. ("Respondent") hereby makes its response to Petitioner's Opposition to Respondent's Petition pursuant to TBMP 513.02 and 37 C.F.R. §11.19(c) to disqualify Michael J. Striker and his firm Striker, Striker, and Stenby as representatives of Petitioner Schiedmayer Celesta GmbH ("Petitioner") in the current cancellation proceeding. This response is made to briefly correct the facts asserted by Petitioner in its Reply.

FACTS

This proceeding began with Petitioner filed the Petition to Cancel the Registration at issue on April 1, 2015. Petitioner filed its two trademark applications with the USPTO for the mark SCHIEDMAYER on April 17, 2015 (Section 1A) and April 2, 2015 (Section 66A).

Petitioner sent the letter filed with this Reply as Exhibit A regarding Petitioner's counsel's repeated desire to have Respondent arrange the deposition of Cheryl Fox, formerly vice President of Piano Factory Group via email to Respondent. Petitioner sent

the letter filed with this Reply as Exhibit B after Petitioner had initially served its discovery responses on Petitioner.

At the present time, no order suspending proceedings has been issued by the Board.

ARGUMENT

At the outset, Respondent writes to indicate that the question of whether Petitioner's counsel should be allowed to continue to represent Petitioner has nothing to do with Respondent's legal status as a company. It is everything to do with Petitioner's actions in this matter which have taken place independent of any legal status of Respondent. Respondent is preparing its response to Petitioner's motion in due course, and so Respondent does not wish the Board to be baited by Petitioner's attempt to conflate these two issues.

Respondent also writes very briefly to correct the impression left by Petitioner's reply that Petitioner had filed its U.S. trademark applications first, and THEN filed the present action. This is not true, and the second time that Petitioner has stated this—first in its discovery statements to Respondent and now directly to the Board. The Board can take judicial notice of the filing date of this present action. The Cancellation Petition was filed over two weeks before the US 1(a) application and the day before the 66(a) application.

Accordingly, Petitioner's counsel, Michael J. Striker, signed the declaration on the 1(a) application AFTER having filed this action. Mr. Striker signed the declaration of the 1(a) application, knowing that this action had been filed, BY HIM, and also knowing, that, under the rules, the respondent to the petition had the right to seek

evidence from any party who possessed relevant evidence. That would include any party who signed a declaration for an application for the identical mark filed by the Petitioner. Petitioner's counsel cites to the Board as authority for the proposition that Respondent's petition is not well founded the Board's decision in *INTS Its is Not the Same GmbH v. Disidual Clothing, LLC* (March 28, 2015). Petitioner's counsel, however, failed to indicate in citing this decision that this decision is designated a non-precedential decision of the Board, and so does not compel any particular resolution or analysis.

Petitioner's counsel also is presently insisting that Respondent produce Cheryl Fox at its headquarters for the taking of her deposition. The only reason the undersigned can surmise that her deposition is being sought by Mr. Striker is that she was the person who signed the declaration for the renewal of the registration in 2014. The Respondent in its verified responses to discovery has stated repeatedly to Mr. Striker that the person with the best information regarding the use of the mark and the circumstances surrounding the renewal is Glenn Treibitz, and that he is available for a deposition. Cheryl and Glenn are brother and sister and had a significant falling out at which time Cheryl was no longer associated with Piano Factory Group. The undersigned is unaware that Glenn or Cheryl are communicating and has no contact information for her and has explained this to Mr. Striker. Everything relevant to the renewal of 2014 could be and will be available to the Petitioner through Glenn Treibitz, as averred by Respondent. Yet the letter in Exhibit A shows Mr. Striker yet insists on Respondent's counsel producing her as his witness, knowing that Respondent's counsel is not in communication with her.

Why this insistence? It is because Mr. Striker wishes to talk to her because she signed the declaration. This insistence comes even when Respondent has stated, like

Mr. Striker, that his client already has a representative who can answer all the questions needed and who is available for deposition.

It seems unfair to allow Mr. Striker to avoid being called as a witness in this proceeding, as a signor of a relevant declaration of an application related to this proceeding, while allowing him to require Respondent's counsel to have to produce Cheryl Fox, with whom the undersigned has had no communication with, **merely because she signed the declaration.**

It is widely known in practice before the Office that signing the declaration for an in-use trademark application or statement of use is not recommended because of the later evidentiary issues, such as being called to testify, that it raises. Mr. Striker is a very experienced practitioner, and certainly was aware of this issue when he signed the 1(a) declaration AFTER filing the present Petition to Cancel.

It is apparent from the correspondence sent to Respondent's counsel from Petitioner's counsel in Exhibit B that Mr. Striker is aware of the circumstances under which an attorney could potentially be made to testify in a proceeding before the Board (this under the Federal Rules of Evidence). Indeed, Mr. Striker threatened the undersigned in no uncertain terms that he would proceed with requesting the undersigned's deposition should newly verified copies of the responses to the discovery requests not be sent over, which was done.

Exhibit B shows Mr. Striker has no problem pulling the punch of seeking to depose the other party's lawyer if he can. Mr. Striker knows that if that is the case, the other party's lawyer may have to withdraw. What Petitioner's counsel does not like about Respondent's petition is that he is having someone do to him what he would

happily have done to them. In the world of litigation, one can expect that basic fairness means being subject to the same rules you wish to apply to others. Mr. Striker cannot complain about being treated the same way he would treat others. The undersigned is not lazy. He simply wants the same thing Mr. Striker wants—an additional corroborating witness.

Given Mr. Striker's stated positions in correspondence to Respondent's attorney and the fact that he himself desires testimony from a party who signed a declaration, it seems that in fairness, the Board should consider him a witness. Since he has information regarding other application related to this proceeding, and signed the 1(a) application declaration, he should be required to testify. If he has to testify, it is in his client's best interest that he be disqualified from representing the Petitioner in this proceeding. In view of the foregoing, the Respondent respectfully requests that Michael J. Striker and his firm, Striker, Striker, and Stenby be disqualified as counsel for Petitioner. Respondent also respectfully requests immediate suspension of the proceedings in this case.

Dated: July 30, 2016

Respectfully submitted,
/s/ Adam R. Stephenson
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CERTIFICATE OF SERVICE

It is hereby certified that one (1) copy of the foregoing RESPONDENT'S PETITION TO DISQUALIFY PETITIONER'S COUNSEL MICHAEL J. STRIKER OF STRIKER, STRIKER, AND STENBY 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: July 30, 2015

/s/ Adam Stephenson

Exhibit A

Adam-

Referring to your email of July 14, please hold August 25 for the deposition of Glenn Treibitz and also Cheryl Fox.

I am aware that Cheryl Fox remains as vice president of Piano Factory Group. She is the Sister of Glenn Treibitz and therefore can be easily contacted.

If the Board does not suspend proceedings by Monday, July 25, 2016, I will send out notices for the taking of the depositions.

Michael

January 7, 2016

Hi Adam-

I note that you have signed the responses to our discovery requests.

I assume therefore that you are testifying as an agent for your client. In view thereof I am entitled to proceed with the taking of your deposition and this may also result in your disqualification as attorney for the Respondent.

Therefore, unless I promptly receive from you responses to my discovery, verified with the signature of an officer of the respondent, I will proceed accordingly.

Michael Striker