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

Proceeding	92061215
Party	Plaintiff SCHIEDMAYER CELESTA GMBH
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Submission	Motion for Default Judgment
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Attachments	92061215.pdf(356877 bytes )

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

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

**PETITIONER’S MEMORANDUM IN REPLY TO RESPONDENT’S  
OPPOSITION TO MOTION TO STRIKE ANSWER  
AND FOR DEFAULT JUDGMENT**

Petitioner, Schiedmayer Celesta GmbH, herewith responds to Respondent’s reply as follows:

**RESPONDENT HAS FAILED TO ESTABLISH GOOD CAUSE**

As set forth in TBMP § 312.02:

“Good cause why default judgment should not be entered against a Defendant, for failure to file a timely answer to the Complaint, is usually found when the Defendant shows that (1) the delay in filing an answer was not the result of willful conduct or gross neglect on the part of the Defendant.”

The sole statement supporting the lengthy delay in filing of an Answer is as follows:

“...Respondent was working to secure counsel for this proceeding...”.

-Respondent's reply, page 2 bridging to page 3.

This hearsay statement is unsupported by any Declaration or Affidavit. It is also gross neglect.

Any party which is unable to secure counsel within a period of 50 days is prima facie grossly neglectful. In addition, the hearsay statement is totally unsupported by any evidence whatsoever. It was simply taken out of thin air.

The assertion by Counsel for Respondent, Adam R. Stephenson, that Respondent needed 50 days to locate him, truly strains credibility when one considers the fact that Adam R. Stephenson is the same attorney who appears as Attorney of Record in the Registration sought to be cancelled herein.

Are we really being asked to believe that Respondent needed 50 days to contact its own attorney? If Respondent had any real interest in this proceeding, it would have contacted Mr. Stephenson in 15 minutes, not 50 days.

Since Counsels' allegations regarding good cause represent unverified hearsay, we do not know where the truth lies. But we can say with certainty that needing 50 days to contact your own attorney is nothing short of gross neglect, and that Counsels' assertions in this respect are at best difficult to believe. Plainly, good cause has not been shown.

Petitioner recognizes that the bar for establishing good cause is low. However, it is still a bar and an unsupported hearsay statement that Respondent required 50 days to find an attorney is first of all unbelievable and second of all constitutes gross neglect. At the very least, it was incumbent upon Respondent to support this hearsay statement with verified proofs submitted by the Respondent itself. This has not been done and good cause has clearly not been shown.

#### RESPONDENT HAS FAILED TO SHOW A MERITORIOUS DEFENSE

Respondent's Counsel avers that Respondent manufactures and sells Schiedmayer pianos. Again, this hearsay statement is totally unsupported with any proof including a Declaration or Affidavit. This statement also appears to be untrue. An examination of the website of pianofactory.com indicates that Respondent offers for sale pianos, manufactured by others. It nowhere mentions the manufacture and sale of a piano. Additionally, although the website lists 13 piano brands being offered for sale, nowhere in the website is Shiedmayer ever mentioned.

The sole "meritorious" defense which counsel for Respondent has set forth, is that while the registration sought to be cancelled relates to pianos, Petitioner manufactures a Celesta. One need look no further than the exhibits to Respondent's reply to conclude that a Celesta is defacto a piano and dejure a keyboard musical instrument in the piano family.

The only difference between the dictionary definition of a piano and a Celesta is that in a piano a wire is struck, whereas in a Celesta a plate is struck.

This in no way obviates likelihood of confusion. Any consumer seeing a Shiedmayer Celesta and a Shiedmayer piano will conclude that they emanate from the same source.

By way of example, Petitioner attaches hereto an advertisement for the Yamaha celesta. The text therein includes the following:

“Yamaha’s Grand Series Celesta...”

“The pianist who sits at its keyboard will immediately feel at home...”

“The key size, touch, action and height, as well as the pedals position, all match the Yamaha Concert Grand Piano...”

“The Grand Series Celesta features full length piano keys...”

“In addition, the damper pedal is situated slightly right of center-exactly where the piano player would expect.”

“The keyboard height, equal to that of a piano...”

“Whether it is an excellent tone, piano like feel or practical design...”

It is noted that Yamaha manufactures both pianos and celestas.

Just as a digital piano remains a piano even though it produces a tone electronically, so is a Celesta defacto a piano and the mere fact that the hammer strikes a plate instead of a wire is irrelevant.

In any event likelihood of confusion will exist even if the goods involved

are not identical. The respective goods need only be "...related in some manner and/or if the circumstances surrounding their marketing be such that they give rise to the mistaken belief that they emanate from the same source."

- Coach Servs., Inc. v. Triumph Learning LLC, 668 F.3d 1356 1369, 101 USPQ2d 1713

Obviously , the identical trademark used upon highly similar musical keyboard instruments is going to cause confusion.

In view of the above, it is clear that Respondent has not shown any meritorious defense in this case.

#### REQUEST FOR STAY OF PROCEEDINGS

It is believed that a Motion to Strike automatically stays all proceedings pending its determination. Petitioner therefore requests that all proceedings be stayed until Petitioner's Motion to Strike is determined.

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 the attached Memorandum in Reply was served upon counsel for Respondent via First Class Mail, postage prepaid, at the following address:

Adam R. Stephenson, Ltd.  
40 W. Baseline Road, Suite 101  
Tempe, AZ 85283

This 23<sup>rd</sup> day of June, 2015.



MICHAEL J. STRIKER

Home > Concert Percussion > Mallet Percussion > Bells & Glockenspiels > Yamaha CEL53C 53 Note Celesta W/Cover



## Yamaha CEL53C 53 Note Celesta W/Cover

Brand: Yamaha

[Read reviews](#) | [Write a review](#)

**\$15,499.00**

MSRP - \$28,470.00

Item: #213939

Temporarily Out of Stock - Reserve Now!

Flat Rate Shipping for \$200.00

Notify me when available.

Yamaha's Grand Series Celesta reflects over a century of Yamaha keyboard experience perfected into the distinctive celesta. The Grand Series Celesta is an ideal choice for collegiate and professional musicians.

The pianist who sits at its keyboard will immediately feel at home. The key size, touch, action, and height, as well as the pedal's position, all match a Yamaha concert grand piano, making the transition to this specialized instrument virtually effortless. The Grand Series Celesta features full-length piano keys of Ivorite and unstained ebony to provide the keyboardist with a familiar, natural feel. In addition, the damper pedal is situated slightly right of center- exactly where the piano player would expect.

The Grand Series Celesta delivers pure, "heavenly" tones as it was originally intended. Special high-carbon tempered steel plates deliver vibrant tones throughout the entire range. The unique resonator configuration allows each key to have its own resonator, maximizing resonance and tone projection throughout the ensemble.

The Grand Series Celesta offers a practical and convenient design. The keyboard height, equal to that of a piano, has a narrow keyslip leading to a more comfortable posture and hand positioning. The music rest is ideally positioned to permit clear visibility of the score and the conductor simultaneously. Rugged handles and double-wheel locking casters ensure both easy mobility and stability during performance. A folding cover protects and preserves the keys. In addition, the cabinet featuring an oak veneer, has a mahogany finish and metal grills display a fashionable blend of classic and modern styling.

Whether it is an excellent tone, piano-like feel or practical design, the Yamaha Grand Series Celestas are a great choice for collegiate and professional musicians seeking a celesta that stands above the rest.

### Reviews

No reviews available.

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### Conversation

#### Additional Resources



##### What Are The Differences Between Rosewood, Padouk, and Synthetic Mallet Bars?

Posted on January 31, 2013



##### Keyboard Mallet Bar Width

Posted on May 13, 2013



##### Concert Drum Shell Types And Characteristics

Posted on September 26, 2014

