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Letters

Correction & Amplification

I am writing in regard to an article in the February 25th issue of *The Music Trades*.

The article highlights the San Francisco Opera Piano Sale. The sale is an annual event orchestrated by R. Kassman, an not Kawai, which only provides instruments for this event. Further, your article fails to mention that Russell Kassman, the owner of R. Kassman, developed this program, which is the model for similar promotions used by other manufacturers. In fact, Kawai had very little to do with it.

The article did a wonderful job in promoting a very San Francisco event but left out the people who work very hard to ensure a standard of excellence for the San Francisco Opera and Ballet: R. Kassman Pianos. It would be appreciated if a correction could be published and credit could be given where it is due.

Robert Kirsch
R. Kassman Pianos
425 Hayes St.
San Francisco, CA 94102

Sell To Or Sell Through?

I just finished Bob Popyk's article in the February issue on manufacturer practices at trade shows. It was EXCELLENT. Please keep up the good and positive input. The industry needs it.

Sam Lesante
Moratto & Lesante
R.D.2
Hazelton, PA 18201

In his February column, Bob Popyk lambasted manufacturers who load dealers

up with merchandise but provide no marketing assistance to stimulate sell-through.

Steinway vs. Yamaha

I have read many Steinway press releases concerning the litigation between Steinway and my firm, Hendricks Music Company. All are inaccurate in the fact that they imply that the dealer agreement between Hendricks and Steinway specified that we could not represent any other concert and artist programs.

In my opinion, this text was carefully worded to support Steinway's action by implying that Hendricks Music was in violation of something specific contained in the dealer agreement. The Steinway dealer agreement that was in force at the time of the hearing *did not* include any reference to exclusivity concert and artist activities. It was only after we had been terminated and had filed suit that Steinway revised its dealer agreement to include paragraph #12, which states, "Steinway & Sons Concert & Artist Program shall be the only program of its type represented by the dealer."

As it now stands, Steinway & Sons is telling the industry that we're not complying with our dealer agreement when, in fact we were. The agreement we signed did not include paragraph #12. In all respects, Hendricks Music was an exemplary dealer, according to the agreements we had signed in 1980 and in subsequent years.

Please understand that our dispute with Steinway was not contractual. The Dealer Agreement affords Steinway the right to cancel any dealer without reason. Please note that in Steinway dealer agreements prior to 1987, there is nothing

(Continued on p. 14)

THE MUSIC TRADES[®]

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MULTIPLE CHOICE QUIZ:

Q.

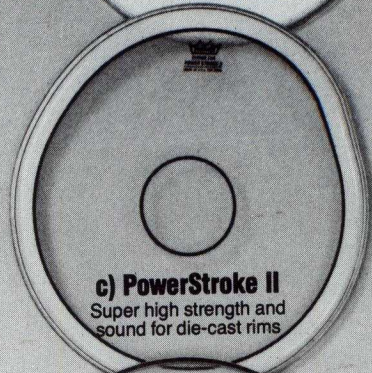
Which of these Remo marching heads were played by more drum lines in 1988 than any other heads in their class?



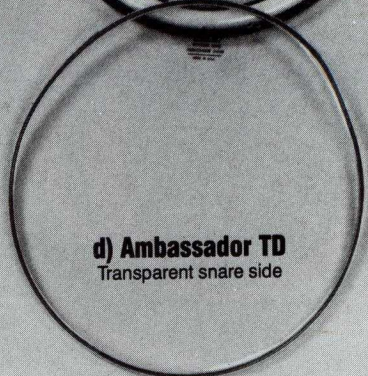
a) Falams K-Series
High performance, high strength fabric laminate system



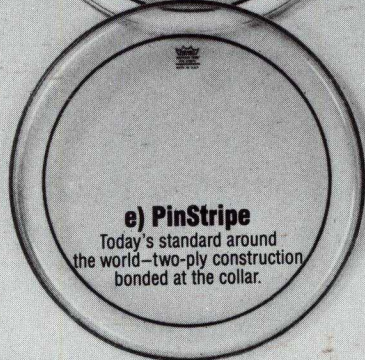
b) PowerStroke I
Original super high strength with neoprene ring for thin counterhoops



c) PowerStroke II
Super high strength and sound for die-cast rims



d) Ambassador TD
Transparent snare side



e) PinStripe
Today's standard around the world—two-ply construction bonded at the collar.

A.

All of the above.

If you're marching in competition in '89
...go to the Heads of the Class!

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DIFFERENCE!**

REMO, Inc. 12804 Raymer St.
North Hollywood, CA 91605

See Us At NAMM Exhibit 5020

(Continued from p. 4)

ing clearly written that prohibits a dealer from participating in any other Concert & Artist program.

Edward A. Hendricks
President
Hendricks Music
421 Maple Ave.

Downers Grove, IL 60515

Hendricks refers to litigation that is largely a by-product of the rivalry between Steinway & Sons and Yamaha on the concert stage. Hendricks was a long-standing Steinway dealer until he was terminated in September 1987. Steinway terminated him because of his participation in the Yamaha Piano Division's concert and artist program. Hendricks retaliated by filing suit; however, Steinway prevailed in the courtroom. Hendricks is also a former Steinway & Sons vice-president of sales and marketing.

A New Trend In Piano Advertising?

It's good to see by the enclosed (reprinted below) that the truth-in-advertising laws are being followed to the letter in Hampton, New Hampshire.

I wonder how some of our fellow retail associates might describe the same instrument.

Paul E. Murphy Jr.
M. Steinert & Sons
162 Boylston St.
Boston, MA 02116

The Hampton Union

Upright Piano


Structure poor, strings dead, hammers moth eaten, sounding board destroyed. Not in restorable condition. Best Offer. Call Lamprey River Elementary School

Ever since John Jacob Astor advertised some "slightly water-damaged harpsichords at greatly reduced prices" in 1796, keyboard merchants have relied on "charitable" product assessments in their advertising. (i.e. "Good Used Pianos From \$299.") The attached ad is nothing, if not precedent setting.

Extend the NAMM Show an Extra Day

We feel that the NAMM Winter Market should be extended by an additional day.

(Continued on p. 22)



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THE WALL STREET JOURNAL.

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★ ★ ★

EASTERN EDITION

FRIDAY, NOVEMBER 11, 1988

CHICAGO, ILLINOIS

Steinway Rates Win In Great Piano War With Yamaha Corp.

By Max Cox

Staff Reporter of THE WALL STREET JOURNAL

CHICAGO—On the legal front of the Great Piano War, Steinway & Sons is the winner.

The maker of fine pianos, which dominates the concert scene, was challenged last year when aggressive Japanese giant Yamaha Corp. went after that market. Yamaha started a service similar to that of Steinway, providing its own concert grands to pianists giving concerts around the country. When Steinway's dealer in Chicago, Hendricks Music Co., agreed last year to provide Yamahas to artists who requested them, Steinway terminated its arrangement with the dealer. In December, the dealer's owner, Ed Hendricks, sued Steinway on antitrust grounds.

Late last week, U.S. District Judge William T. Hart ruled in favor of Steinway, dismissing the lawsuit.

Bruce Stevens, president of Steinway, said, "We are overjoyed with the decision. They were off-base . . . I think all the dealers came to realize this wasn't a manufacturer against a dealer. (Mr. Hendricks) was supported by this giant corporation."

But Mr. Hendricks still believes "that the judge is wrong," said his lawyer, James Gardner of Neal, Gerber, Eisenberg & Lurie in Chicago. Mr. Hendricks hasn't decided yet whether to appeal, Mr. Gardner said. "Steinway makes it appear that this litigation was underwritten by Yamaha and that isn't true. Hendricks is paying significantly more of the legal costs," Mr. Gardner added.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

HENDRICKS MUSIC COMPANY, INC.,
an Illinois corporation,

Plaintiff,

v.

STEINWAY, INC., d/b/a
Steinway & Sons, a Delaware
corporation,

Defendant.

No. 87 C 10582

MEMORANDUM OPINION AND ORDER

This antitrust case began in December, 1987 when Hendricks Music Company, Inc. ("Hendricks") filed its 32 page complaint against Steinway, Inc. ("Steinway"). Since then, the dispute has been thoroughly considered before a magistrate and this court. Steinway now moves for summary judgment. For the reasons indicated below, the motion is granted.

The facts in this case have been set out in the court's prior decision, which includes the magistrate's report. Hendricks Music Co. v. Steinway, Inc., 689 F. Supp. 1501 (N.D. Ill. 1988). Briefly, the dispute is this: Hendricks sells pianos. At the time the complaint was filed, it sold Steinway pianos, and in fact was Steinway's only Chicago-area dealer. The dealer agreement between Hendricks and Steinway required that Hendricks participate in Steinway's concert and artist program ("C&A"). The details of this program are described in the earlier opinion. 689 F. Supp. at 1519-27.

Hendricks also sells Yamaha pianos. When Hendricks agreed to handle Yamaha's C&A program, Steinway tried to terminate Hendricks' dealer agreement. Hendricks sued, alleging that Steinway's conduct under the dealer agreement violated Section 3 of the Clayton Act, and Section 1 of the Sherman Act. 15 U.S.C. §§ 14, 1. Hendricks also alleged monopolization and attempted monopolization in violation of Section 2 of the Sherman Act. 15 U.S.C. § 2.

Along with its complaint, Hendricks moved for a preliminary injunction. The motion was referred to Magistrate Gotschall, who conducted a six-day hearing in January, 1988. Her 73 page report, detailed and extensive, concluded that Hendricks was unlikely to succeed on the merits. The magistrate recommended that this court deny Hendricks' motion. Hendricks then filed lengthy exceptions, which this court considered de novo, as required by 28 U.S.C. § 636.

In its exceptions to this court, Hendricks did not dispute the principal factual findings. Rather, Hendricks took issue with the legal conclusions drawn from those facts. Hendricks designated its earlier brief to the magistrate as its brief to this court, believing it provided "[t]he correct analysis and legal authorities." However, Hendricks fared no better in this court than it did before the magistrate. After considering the same facts and the same legal arguments, the magistrate's report was adopted in its entirety. It was "extremely doubtful" that Hendricks could prove any violation of the antitrust laws, and

Hendricks enjoyed only a "very low likelihood" of success on the merits. Hendricks Music Co. v. Steinway, Inc., 689 F. Supp. 1501, 1513-14 (N.D. Ill. 1988). The magistrate's report was attached as an appendix to that decision.

Steinway now moves for summary judgment. The record then is the record now. The parties remain in substantial agreement on the facts. No new facts have been presented; no new legal issues have been raised. Since the facts and the law have not changed, neither have Hendricks' chances. In June, its "very low likelihood of success" led the court to deny injunctive relief. Now, the issue is whether those same prospects, on the same facts, warrant summary judgment.

B. Summary Judgment

It is true that the standard for summary judgment is not the same as the test for preliminary injunctive relief. A party, though unlikely to succeed on the merits, may still raise a genuine issue of material fact. In this case, however, the facts are not substantially in dispute. The parties take issue only with the legal conclusions drawn from those facts, and at that level, Steinway has twice prevailed. On this record, the recent decisions on the test for summary judgment in antitrust cases are particularly relevant.

In Matsushita Electric Industrial Co. v. Zenith Radio Corp., 475 U.S. 574 (1986), the court considered summary judgment in the context of an enormously complex antitrust case. In an

opinion running over 200 pages, the district court entered summary judgment against the plaintiffs. In an opinion nearly 70 pages long, the Third Circuit reversed. A five-member majority of the court then overturned the Court of Appeals and, in the process, seemed to adopt a new evidentiary standard for summary judgment.

According to the Court, once the movant satisfies the requirements of Rule 56(c), the opponent "must do more than simply show that there is some metaphysical doubt as to the material facts." One way to identify whether "doubt" is merely "metaphysical" is this: "Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no 'genuine issue for trial.'" 475 U.S. at 586-87.

The significance of this language was not lost on the dissent, which took the majority to task for what appeared to be a more relaxed summary judgment standard. Id. at 599-601. Nor did this standard escape the attention of the Seventh Circuit. In Collins v. Associated Pathologists, Ltd., 844 F.2d 473 (7th Cir.), cert. denied, 57 U.S.L.W. 3233 (1988), the court restated the summary judgment standard announced in Matsushita as "like a trial motion for a directed verdict.... The trial court still cannot resolve factual disputes that could go to a jury at trial, but weak factual claims can be weeded out through summary judgment motions." Id. at 476. The mere existence of a triable issue, by itself, will not defeat a summary judgment motion. Rather, "the triable issue must be evaluated in its factual context", and if

the issue would not survive a trial motion for directed verdict, then neither will it survive a pretrial motion for summary judgment. Id.

Given Matsushita and Collins, the conclusion that Hendricks enjoys a "very low likelihood" of success becomes critical, since it provides evidence of what a rational trier of fact would find. Hendricks had the opportunity to challenge that conclusion, 28 U.S.C. § 1292, but elected not to. Now, Hendricks lists 16 questions which it designates "genuine issues of material fact." But each of these issues merely restates contentions raised before the magistrate and this court. Hendricks offers no reason why the prior rulings should be abandoned, and the court can perceive none. See United States v. City of Chicago, No. 87-1973, slip op. at 6 (7th Cir. August 3, 1988).

The first two issues concern the relevant product market. Hendricks claims the proper market is the market for concert grand pianos. But both the magistrate and this court addressed that question in detail and decided the proper market is the market for all acoustic pianos. Determination of the relevant product market may be a question of fact, Fishman v. Estate of Wirtz, 807 F.2d 520, 531 (7th Cir. 1986), but that alone does not make it a genuine issue for which a trial is required. In this case, it is not.

Issues three and four concern Steinway's tactics, leading to Hendricks' termination, allegedly undertaken to preserve Steinway's dominance in the concert grand piano market. But since

that is the wrong market, these are non-issues. Furthermore, even if the putative market for concert grand pianos is at issue, both the magistrate and this court concluded that Hendricks failed to show that Steinway's conduct was monopolistic or anticompetitive. 689 F. Supp. at 1508; 1542-46. Issues eleven and twelve likewise attack Steinway's conduct in terminating Hendricks and so also fail.

Issues thirteen through sixteen focus respectively on whether there is a market for the provision of concert services, whether Steinway has a monopoly share of that market, and whether its tactics in maintaining that share are anticompetitive. Both the magistrate and this court concluded there is no such distinct market and Steinway's conduct, as noted above, is not anticompetitive.

Issues five through ten, the remaining issues, all involve Steinway's C&A program. All have been considered and rejected twice. Hendricks presents no new argument, and none appears available.

As Collins explained, "The use of summary judgment is not only permitted but encouraged in certain circumstances, including antitrust cases...." 844 F.2d at 475. Where the facts are not in dispute, and where the same legal arguments have been amply developed, twice considered, and twice rejected, summary judgment is appropriate.

Hendricks has also sued under Section 60-3(4) of the Illinois Antitrust Act. As the Seventh Circuit recognized in

Collins, Illinois antitrust law should be interpreted consistently with federal law. 844 F.2d at 480-81. Therefore, summary judgment on this claim is granted as well.

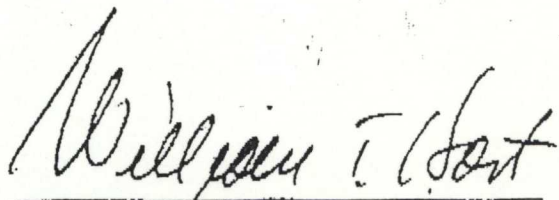
Hendricks' final count is breach of contract. Hendricks alleges that Steinway breached its implied duty of good faith and fair dealing when it terminated Hendricks. On the contrary, Steinway terminated Hendricks for "perfectly legitimate, and, in fact, pro-competitive" reasons. 689 F. Supp. at 1514. A manufacturer has the right to expect that their dealers will give undivided loyalty to the manufacturer's products. When Steinway terminated Hendricks, it was not done in bad faith; it was done because Hendricks had "closely aligned itself with Yamaha...." Id. This is not breach of contract.

IT IS THEREFORE ORDERED that:

(1) Defendant's motion for summary judgment is granted.

(2) The Clerk of the Court is directed to enter a judgment on the merits in favor of defendant and against plaintiff dismissing this case with costs to defendant.

ENTER:


UNITED STATES DISTRICT JUDGE

Dated: NOVEMBER 4, 1988

Henry Z. Steinway
109 West 57
New York, New York 10019

SOMMER

Dear Harry -

Your Texas visit sounds great. Mingling with the elite like Bunker Hunt! Pretty impressive to meet someone who owes that much money.

Billy Beaseley sold Whittle to a Real Estate developer, so that explains why that one failed. Bill as you know is a certified big tycoon at age about 40. Now running something called Lone Star Technology in Dallas.

The Hendricks story is that Yamaha financed him to open up in Minneapolis against Schmitt Music, and then insisted that he handle their brand new Concert service, patterned after ours. Of course, one can't handle two concert services, so we gave Ed a choice. I think he chose Yamaha because of the big involvement in Minneapolis.

Anyway, I'm told Steinway won just recently, subject to an appeal. Don't know whether Ed will have the \$ to go the whole legal route. Yamaha financed him to the tune of \$50 000 in the law suit. Can you imagine that ? I hope all their dealers sue them.

Don't know when you are going on the trip to Europe - but just wanted you to know you would be welcome at Steinway. Actually the harbor is the most interesting part, if there is time take the little boat around the harbor which shows you all the docks and ship yards, etc. And you can ask my favourite question Where were the submarine pens ? which always gets a big laugh and no answer. Just like you can't find a single German who was a Nazi.

We are off May 28 for two weeks, and after that to Vermont for most of the summer. Should you ever get up our way - perhaps to relive your mis-spent youth at camp - come see us. 802 422 3384. Town of Killington, near Rutland.



3 May 1988

April 22nd, 1988

Dear Henry,

We have just returned from a GCA junket to Dallas, (non tax-deductible). It's the first time I've been there since the opening of the Whittle store twenty-five years ago. What a change - Dallas is a city of glass with almost nothing left of the old town.

As is my wont, I examined the Yellow Pages to see who the piano dealers were. To my surprise, I saw there was no Whittle Music anymore and that Tyson was the Steinway dealer; if there was a Söhmer dealer, he wasn't making it known. There was a Newman Piano Co. listed, and I assume that George Newman was still in the business.

We had an interesting time not the least of which was a barbeque that Bunker Hunt gave for the group at his ranch. Bunker and his brothers owe the banks $1\frac{1}{2}$ billion. If he was worried, he didn't show it; perhaps, that's because he and his brothers are counter-suing the banks for an equal amount. The financial high-jinks of these heavy hitters is something I'll never understand.

I was appalled to hear that Hendricks was suing Steinway. One of the statements of the judge in the famous Kahn vs. Sohmer case was that a manufacturer could choose whom he wished to sell his product and Binder's lawyer did not dispute that. Binder told McCormick that when the judge ruled our acknowledgments were not contracts he knew he had lost the case. I think Woody has the entire transcript of the trial in case it might be useful.

Your trip sounds great. On one of our tours we sailed the Rhine from St. Goar to Rudesheim - only about 48 miles, but I was amazed at the beauty of the river, the current, and the great amount of river traffic. The Rhine is where the Lorelei hung out.

Our cruise on the Vistafjord starts in Southampton, but I doubt whether we'll have time to do much sight-seeing, besides, all the German I know is "Ein biere,

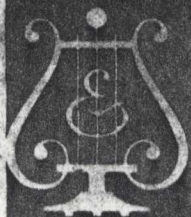
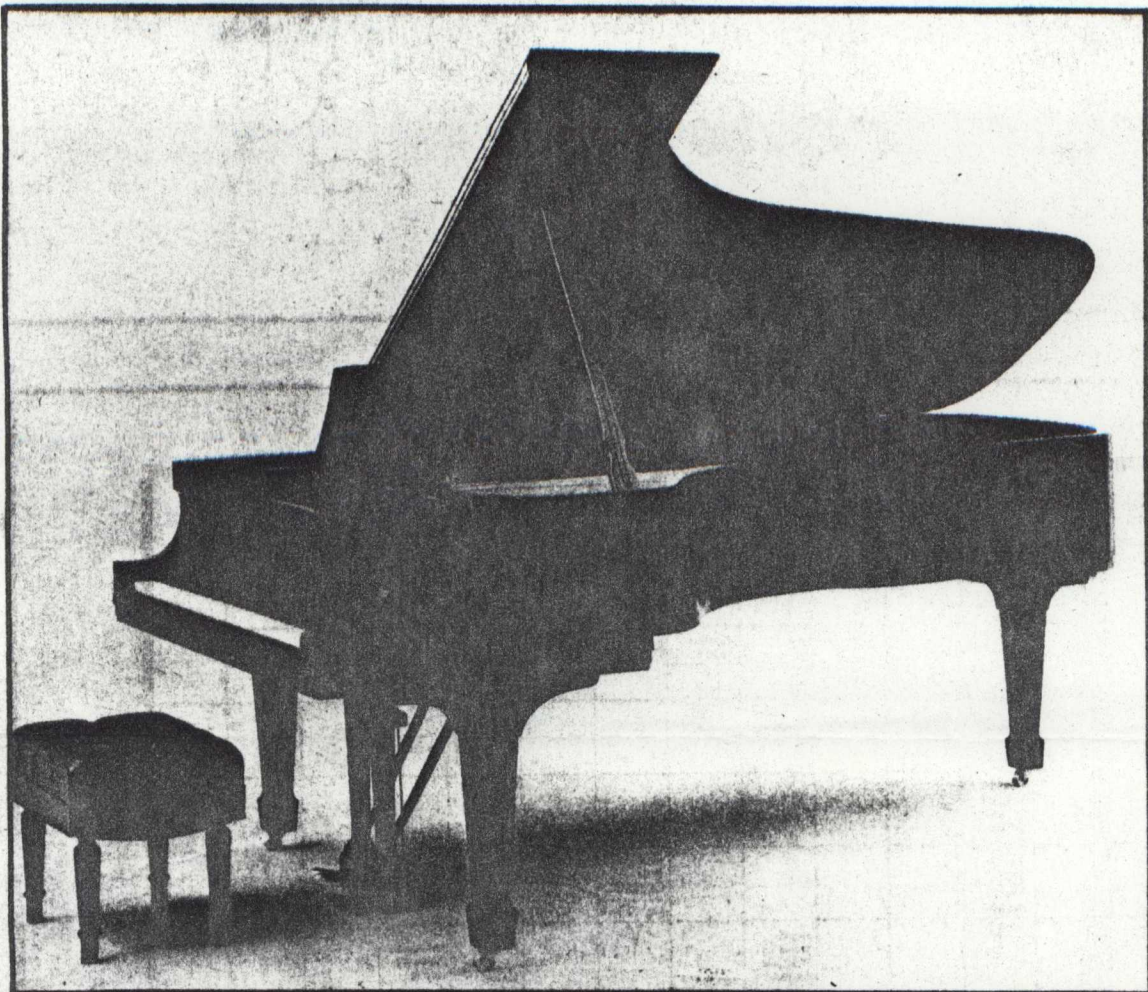
Keep in touch,

Henry



Heinrich Engelhardt Steinweg gründete in New York Steinway & Sons

**Zur 133jährigen
Firmengeschichte**



Steinway, das steht im vorliegenden Fall für La Scala, Metropolitan Opera und die internationalen Konzerthäuser: vorrangig Hamburg, Frankfurt/Main, New York, Chicago, San Francisco und Fort Worth in Texas. Der Klavierbauer John Steinway aus Plymouth in Massachusetts (unser Bild) benutzte die Auslieferung von 60 Steinway-Klavieren im Hendrick Service Center, 421 Maple Avenue in Downers Grove zu einem Telefongespräch mit der Amerika Woche.

Der Urenkel von Heinrich Engelhardt Steinweg, ein deutscher Einwanderer, der 1853 mit dem Klavierbau auf der Stadtinsel Manhattan begann, kann beweisen: Bisher wurden insgesamt 495 000 Klaviere und Konzertflügel verkauft. Hauptabnehmer sind nach wie vor die Vereinigten Staaten von Amerika mit jährlich ca. 3000 Musikinstrumenten. New York steht an erster Stelle, gefolgt vom Bundesstaat Illinois und der Stadt San Francisco.

Seine Filiale in Hamburg (500 Beschäftigte) versorgt den europäischen Markt bis nach Rußland, wo der junge amerikanische Klavierspieler van Clyburn vor Jahren für eine Wertsensation sorgte. Er gewann in Moskau den alle vier Jahre stattfindenden Tschaikowsky-Wettbewerb auf einem Steinway-Konzertflügel. In Fort Worth fördert der Klavier-Virtuose mit einer ähnlichen Veranstaltung den Profi-Nachwuchs.

Aber nicht nur die großen Namen der internationalen Kon-

zertsäle, wie zum Beispiel Wladimir Horowitz oder Rudolf Serkin, bestimmen das Arbeitsprogramm bei Steinway & Sons in New York und in Hamburg. Wie Ralph C. Nordmark, Geschäftsführer der Hendricks Music Company, 3446 W. Peterson Ave., in Chicago erklärte, sind zahlreiche Kirchengemeinden Steinway-Kunden. Nicht zu vergessen, das kleine Heer privater Haushaltungen, die Steinway's wie Kleinode hegen und pflegen.

Ed Hendricks one with

S&S when Cushing retired

See Employee file Green #2

HENRY Z. STEINWAY
109 WEST 57th STREET
NEW YORK, N.Y. 10019

Dear Paul and Jerome

I just had a wild thought about Miami which is probably no good, but I thought I would pass it on.

ED HENDRICKS as you probably know was a very effective manager for Lyon & Healy and knew how to do the C&A thing and work it effectively.

I don't know how old he is now, but I thought maybe the idea of liquidating his Chicago store and moving to Florida to finish up his years might appeal to him.

Yours -



10 March 00

I Think the exhibit in Washington is
just great - hope you and Link and NAMM are
satisfied.



music company, inc.

421 maple avenue downers grove, IL 60515 312•969•5082

December 12, 1989

Mr. Henry Steinway
Steinway & Sons
Steinway Place
Long Island City, N.Y. 11105

Dear Henry:

Frank sent me a note asking me to identify the lady in the enclosed picture. That we can do.

Her name is Florence Hendrickson; address is 410 N. Birghton, Arlington Heights, Illinois, 60004. She was one of our invited guests at our Grand Opening celebration of the Palatine store, (1983). Howard Cushing introduced her to John and me. During that conversation, she mentioned that she was affiliated with the Arlington Heights Library, and that she was thinking of purchasing a Steinway piano for a room she had donated to the library. John volunteered to attend the dedication if and when the piano was purchased.

A committee was formed to raise funds for the purchase of the Steinway, and Hendricks Music became very involved with this project. We presented several fund raising programs in our store, which helped to ignite community interest in the project. Finally, Mrs. Hendrickson made up the balance required and we delivered the piano. The photo was taken at the dedication of the piano in the Hendrickson Room. A copy of the program is attached which lists John as the guest of honor.

John's continued assistance and support of Hendricks Music contributed to the success we enjoyed as a Steinway dealer. It goes without saying that, although there was little professional contact, it was always very important to me to know that John was a very good friend who we, and all the people he touched, will miss.

Seasons Greetings to you and your family.

Sincerely,
HENDRICKS MUSIC CO., INC.

Edward A. Hendricks, President

EAH:kw
xc: Frank Mazurco

Steinway, Yamaha Tangle Over Concert & Artist Program

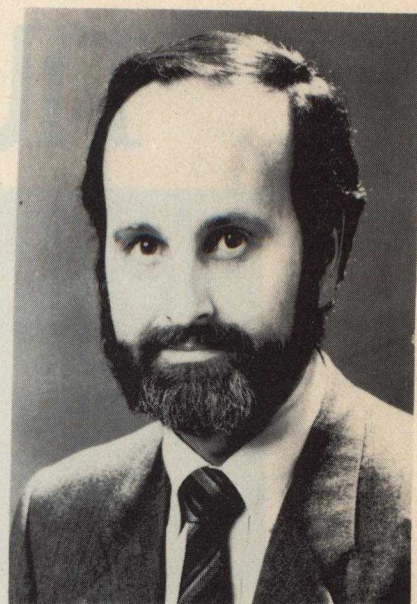
Termination of Hendricks Music spurs lawsuit



Bruce Stevens, president of Steinway & Sons: dealer agreement requires exclusive support of Steinway C&A.



Ed Hendricks, president of Hendricks Music Co., Downers Grove, IL: Steinway termination prompts litigation.



Terry Lewis, general manager of the Yamaha Piano Division: a call for "equal representation" of piano lines.

The typically subdued and courtly world of concert grand piano marketing in the United States has been jolted in recent months as august Steinway & Sons and aggressive Yamaha find themselves center-stage in a tug-of-war over competing "concert & artist" (C&A) programs. In the middle of the imbroglio is Hendricks Music Company, the Chicago-area keyboard dealership that sought to represent both Steinway's established C&A program and fledgling Yamaha C&A effort.

Hendricks Music, which has four stores in Chicago and its suburbs and recently opened three units in Minneapolis, has carried Yamaha pianos since 1974 and had been a Steinway's Chicago dealer and dealer-representative of the Steinway Concert & Artists Program since 1979. At Winter NAMM International Market in January, 1987, company president Ed Hendricks was approached by Yamaha about participating in the Yamaha Concert & Artists Program, a brand-new effort to supply Yamaha concert grands for concert activities in his area. Hendricks agreed "on a handshake" at the Anaheim show.

The concept of a concert & artist

program is not an exclusive Steinway strategy, Baldwin and Bosendorfer having offered such services on a more limited scope for many years. However, the idea of one of its dealers representing both Steinway C&A and the similarly-styled Yamaha service did not sit well with Steinway. On the other hand, the company was not anxious to part ways with the successful Hendricks Music dealership, its sole retail distribution outlet for the greater Chicago market, the nation's third-largest.

"We worked with Hendricks Music over a period of approximately 10 months, trying to talk this thing through, trying to work something out," recalls Bruce Stevens, president of Steinway & Sons and president of parent company, Steinway Musical Properties. "But we couldn't get together." In November of last year, Steinway terminated Hendricks Music's Steinway franchise for refusing to abide by the Steinway dealer provision requiring it to promote only Steinway pianos in concert and artistic activities.

Antitrust Violation Alleged

Ed Hendricks, who says his company was averaging a gross profit of

"more than \$750,000 annually" retailing Steinway instruments, didn't take the termination lightly. The dealer responded to the termination with a lawsuit charging Steinway with violations of antitrust laws. Hendricks also filed a motion for a preliminary injunction to enable Hendricks Music to continue as a Steinway dealer pending the outcome of the suit. Testimony was taken by a magistrate of the U.S. District Court in Chicago and in June 1988, with Hendricks' motion for a preliminary injunction denied by Judge William T. Hart.

Round One to Steinway, but the case itself continues with the outcome — and even the time frame of the outcome — up in the air at this writing.

In the Hendricks vs. Steinway suit, Hendricks Music cites sections of two antitrust laws it alleges Steinway violated. The dealership charges the termination constituted an "exclusive dealing agreement" in violation of Section 3 of the Clayton Act, as well as a monopolization on violation of Section 2 of the Sherman Act.

With regard to the June denial of the motion for a preliminary injunction, the court failed to find evidence

showing monopoly on the part of Steinway. A memorandum opinion dated June 24 noted Steinway accounts for only 1.75 percent of U.S. piano unit sales and "at least 48 percent of concert grand sales."

In his summation based on the magistrate's memorandum, Judge Hart states:

"But that (Steinway) does not wish to give this free ride to Yamaha, in dealerships 'spear-heading' Yamaha's attack on Steinway's reputation for classical concert preeminence, is a legitimate procompetitive response. A Steinway dealer can easily argue the special superiority of the Steinway even though he sells Yamaha pianos and despite the existence of a Yamaha C&A program and a roster of Yamaha artists. But if that dealer is providing C&A services for those Yamaha artists and promoting Yamaha C&A pianos for use at major public events, it is difficult to see how he or she can argue Steinway's superiority with any persuasiveness."

'Loyalty'

Although the Chicago case reads *Hendricks vs. Steinway, Yamaha Music Corp. USA* is anything but a disinterested party. It has been widely rumored that Yamaha has bankrolled *Hendricks Music's* legal effort, but this is only partly true, according to Ed Hendricks. "Yamaha gave me \$50,000," reveals Hendricks, "and I'm grateful for this. But in the course of this suit to date, that money has turned out to be more like a down payment because the costs have already exceeded \$200,000. More than the money, I'm grateful for Yamaha's loyalty to our company."

"Loyalty" is a word open to much interpretation. Steinway President Bruce Stevens, in an interview with *MMR*, sees dealer-supplier loyalty as the linchpin for the piano maker's success in the marketplace. "We do not have multiple distribution," he comments. "We have one dealer in Chicago, one in Boston, one in Los Angeles, and so on. This kind of arrangement is a special one that calls for mutual obligation and responsibility on both sides. Since the dealer represents our entire line for the entire market, there must be a mutual sense of trust, confidence, and loyalty."

Commenting on the suit's claim of monopoly powers on the part of his company, the Steinway executive comments: "When you look at the numbers, this notion almost borders on the laughable. We sell about 1.7 percent of all units sold in this country, and even in grands, we sell only about 5 percent of the total in dollars . . . versus Yamaha, the largest manufacturer of pianos in the entire world."

Stevens, who announced the appointment of The Beautiful Sound, Chicago, as its new Chicago dealership at a dealer breakfast meeting during NAIMM Expo, added that Steinway attorneys had filed for a dismissal of the *Hendricks Music* charges.

While the *Hendricks* case is still pending and will be decided on the specific antitrust charges laid out in the suit, both Yamaha and Steinway have engaged in a little rattling sabre that foreshadow implications beyond Chicago. In an August press release, Steinway attorney John T. Cusack stated, "All piano dealers who feel inclined to sue Steinway should keep this result (the *Hendricks*' injunction denial) in mind, and consult with their counsel before they try to engage in any sham litigation." For its part, Yamaha Piano Division, in an Aug. 8 press statement by General Manager Terry Lewis, observed, "Unwillingness on the part of any supplier to accept equal representation, however, may force dealers to choose between Yamaha and other lines in the future."

'Equal Representation'

In a phone interview, Lewis amplified on these remarks, saying, "Nothing in our dealer agreement requires our dealers to support Yamaha above and beyond other lines. It simply states we would appreciate what we call 'equal representation.'" Referring to the injunction denial memorandum, he added: "We really found it too arbitrary to say a dealer can have a certain brand on the floor, advertise it, promote it in various ways, but he can't have a concert and artist program for that line."

Did Yamaha expect Steinway's hardball approach in the *Hendricks Music* situation? "We weren't surprised there was a reaction," continues Lewis. "But we were somewhat surprised by the intensity of their reaction; that is, to put a total

relationship with a valued dealer on the line."

Clearly, Steinway has demonstrated the high value in places on its concert & artist activities. "We consider the program to be extremely, extremely important," states Steinway's Stevens. "Ultimately, the acceptance of our pianos by artists, reflected in the success of the concert and artist program, is the final judge as to how well we are meeting our goal of making the finest pianos in the world. So we have a very specific dealer agreement with regard to exclusive support by the dealer of Steinway C&A. We can't control what Yamaha does, but what we can do is control our own destiny."

Calling the Yamaha program "almost a mirror image" of Steinway's, Stevens adds, "There may be some solace in flattery, but the similarities are something we aren't too pleased with. However, it is not our intention to keep anybody's concert and artist program out of any market — we're not at war with Yamaha. The magistrate found it inconsistent for a single dealership to represent two product lines with virtually identical programs. We agree with this opinion and believe it can't be done with integrity and honesty."

'Miscalculation'

"I've been selling both Yamaha and Steinway side by side for years with neither being a detriment to the other," remarks dealer Hendricks. "I believe Steinway's reaction to Yamaha's program was a miscalculation on their part. A lot of dealers have the Yamaha CF-III (Yamaha's concert grand model) and they aren't going to stop selling them. When confronted with an ultimatum, these dealers are going to take Yamaha's side because Yamaha has a complete line. A dealer cannot get along selling only Steinway pianos alone."

"By terminating strong, solid-citizen-type dealerships like ours with the financial and other wherewithal, the whole Steinway distribution structure is weakened," Hendricks continues. "I think Steinway may come to realize they can't cancel everyone."

Given that the entire brouhaha has been fought over concert & artist programs, Hendricks takes a rather lukewarm view of the marketing strategy. "Both companies are exaggerating the importance and influence of this

kind of activity on the market as a whole," he states. "It's very specialized and specific and can even have a downside if the artist or piano involved gets bad reviews. To me, they're fighting over a bone with no meat on it."

Neither Steinway nor Yamaha would agree with Hendricks' tepid assessment of C&A activity. For Steinway, the service has been a central theme of its marketing for decades, helping the maker amass a glittering roster of world-famous "Steinway Artists." From the days of the Steinway family ownership, through the CBS era, and to present ownership, the company's strong emphasis on C&A has not wavered.

In the case of Yamaha, concert and artist activity is an outgrowth of its progression in piano manufacturing and marketing since the first Yamaha keyboards were sold in the U.S. in 1960. Product improvements culminated in 1982-83 with the development of the CF-III concert grand piano. Armed with the CF-III and already having the endorsement of some top caliber pianists (most notably, Andre Watts), Yamaha felt ready

to enter the C&A arena. As General Manager Lewis notes, "Anybody can decide to start, say, a consumer advertising campaign or to hold a selection sale . . . but you can't just say you are going to have a concert and artist department unless you have obtained the support of the concert community and the artists and have a true concert-quality instrument."

Lewis says Yamaha currently has approximately 90 concert instruments placed in its "concert reserve" and expects that number to expand to close to 200 pianos by 1990-91.

Also prompting Yamaha's C&A push is the pressure felt from the plethora of Far East competing piano lines to hit the U.S. in recent years, especially Korean pianos. "Naturally, we are concerned about all the pianos being offered as 'just as good as the Yamaha but 30 percent cheaper,'" says Lewis. "While Yamaha has become increasingly well-known and regarded in the concert and artist community in recent years, we must also be aware of the entry-level piano purchaser who is making a critical buying decision. As this consumer goes from store to store and sees

those seas of shiny pianos, our concert and artist involvement will give our dealers a way to quickly and convincingly communicate the Yamaha quality difference, to differentiate our models from those of competitors."

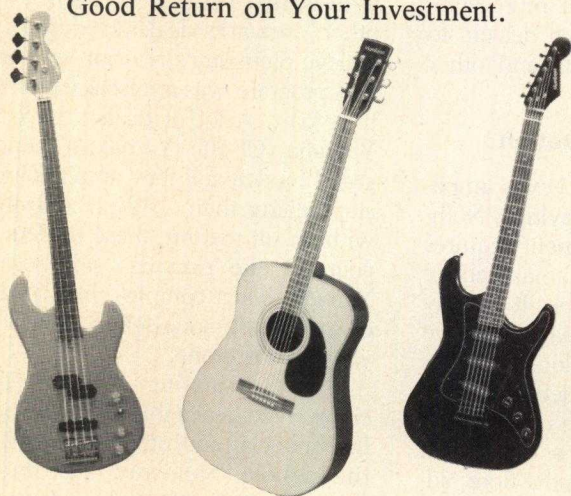
In conclusion, Lewis states: "Yamaha would like to focus on our primary business: marketing pianos and expanding the marketplace. Steinway is not our 'enemy' after all. All piano makers should be focusing efforts on our true competition, which is the great demand for the consumer's discretionary dollars. If, instead, we concentrate on each other as competitors, this industry becomes a battle for market share and we merely gain at each other's expense."

Sounding a similar tone, Stevens of Steinway comments, "We're not at war with Yamaha. Our goal is to continue to make the finest pianos in the world and do everything we can to make them even better."

Despite losing the opening court engagement, Ed Hendricks remains optimistic. "We have a good chance to win," he remarks, "although I doubt Hendricks Music will be a Steinway dealership again."

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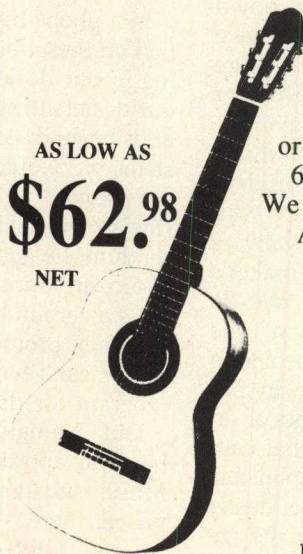
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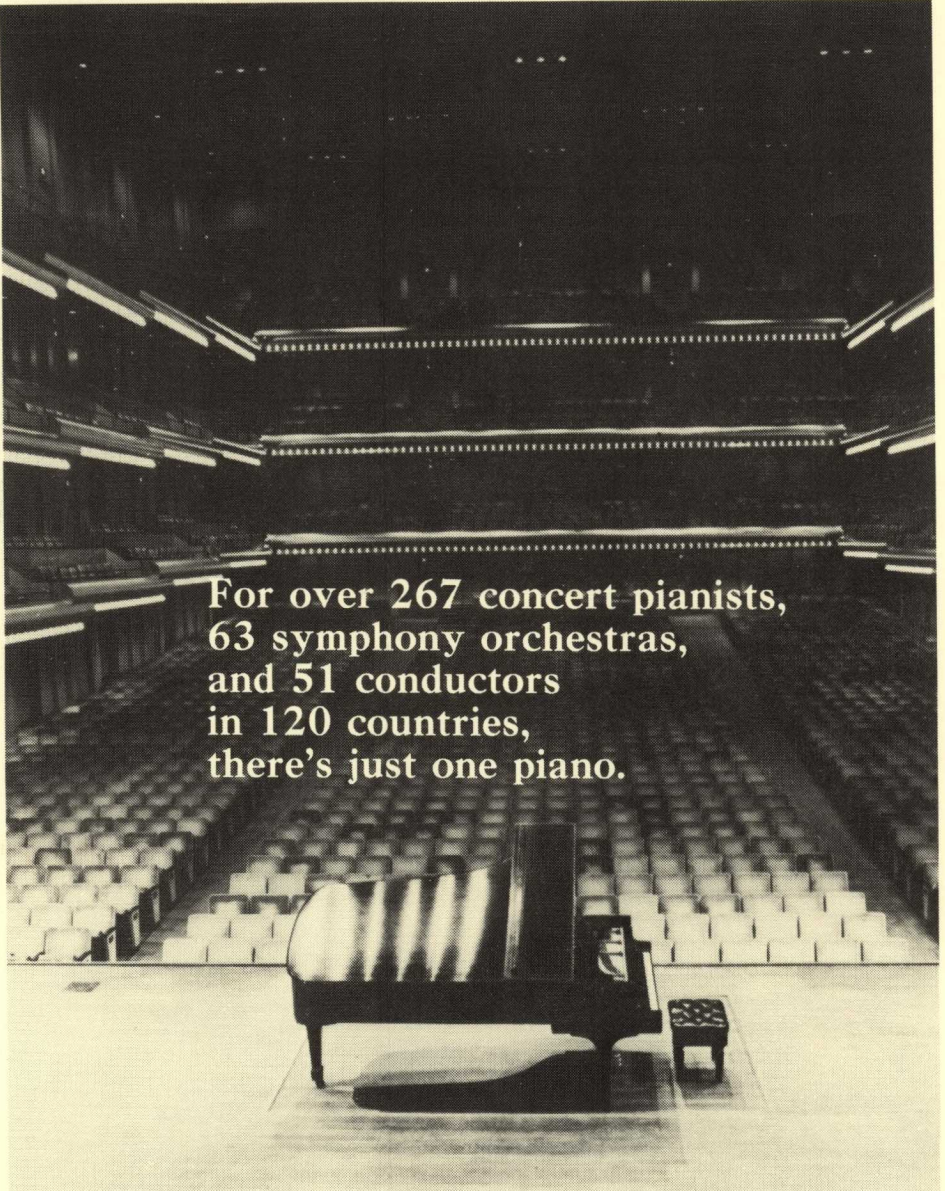
CIRCLE 58 ON READER INQUIRY CARD

MUSICAL MERCHANDISE REVIEW/OCTOBER 1988

STEINWAY NEWS Spring 1980



Steinway's newly appointed Chicago representative, Edward A. Hendricks, President of Hendricks Music Company, Inc., recently visited Steinway Hall. From left to right are: Mr. Henry Z. Steinway, Chairman of Steinway & Sons; Mr. Hendricks; Miss Catherine Bielefeldt, Director of Steinway Hall, New York; Mr. Peter M. Perez, President; and Mr. John H. Steinway, Senior Vice President.



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Honorary Members:
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Mrs. C.A. Hendrickson
Senator Virginia Macdonald

PROGRAM

WELCOME Mrs. C.A. Hendrickson
Piano Purchase Fund Committee. Mr. Boyd White
Honored Guest Mr. John H.Steinway
Library Executive Director. Mr. Frank Dempsey
President of the Library Board Mrs. Bowen Tucker
Introduction of Artist Mrs. Boyd White

Andante Spianato e Grande Polonaise
Op.22 Chopin
Kimberly Schmidt, Pianist

Hence I Hasten from Deborah Handel
Neopolitan (Mattinata) Leoncavillo
Soliloquy (Carousel).Rogers & Hammerstein

Darrell Rowader, Tenor
Jerome Pugsley, Accompanist

Hendricks Music Company Mr. Edward Hendricks
Concluding remarks Catherine Bielefeldt

****Reception Follows****

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We regret that space does not permit us to list all the donors, however, we would like to express our appreciation to each of you who contributed & helped to make this project a success.

Steinway Fluegel an der Weltspitze

John H. Steinway besuchte Chicago Heftiger Beifall fuer Shirley Anne Seguin

Downers Grove, IL. [K.S.]-Wenn man ueber die Fruechte deutsch-amerikanischer Kulturentwicklung spricht, dann steht der Name Steinway in der vordersten Reihe. Was dem Autoliebhaber "Rolls-Royce" bedeutet, das ist fuer den Musikkennner der "Steinway" Fluegel.

Am vergangenen Freitag hatten Musikliebhaber und Zeitungsleute Gelegenheit, im Hauptgeschaef der Hendricks Music Co. in Downers Grove John H. Steinway kennenzulernen und ausgiebig mit ihm zu plaudern, und dies, wenn gewuenscht, in gutem Deutsch. Deutsch zaehlt auch bei der

Fuehrungsmannschaft der Hendricks Company nicht zu den Fremdsprachen. Selbst wenn es Edward A. Hendricks, dem Chef der Steinway Vertretung in unserem Raum, etwas schwer von den Lippen kommt, spricht es der Firmenrepraesentant Ralph C. Nordmark fast ohne Akzent.

John H. Steinway wurde in Plymouth geboren, sein Familiennamen geht auf das deutsche Steinweg zurueck. Das H., der Beginn des Mittelnamens, brachte ein Vorfahre seiner Mutter mit, er hiess John Howland und kam einst mit der Mayflower nach Amerika.

Heinrich Engelhard Steinweg baute seine ersten Pianos 1836 in Deutsch-

land. Zu Beginn der zweiten Haelfte im vorigen Jahrhundert kam er mit seinen Kenntnissen und fuenf Soehnen nach New York. In einem gemieteten Lagerhaus an der Walker Street, unweit des heutigen Holland Tunnels, begannen die in der Zwischenzeit von Steinweg zu Steinways gewordenen Klavierbauer mit ihrer Arbeit. Doch verdankt die Welt den Steinways nicht nur das beste Piano.

Den Kindern in ihrer Nachbarschaft gaben die Steinways Musikunterricht und lehrten sie Deutsch. Da gab es bald eine "Steinway Transit Company", einen "Steinway Auto Body Shop", eine "Steinway Electrical Co." und sogar einen Steinway Brieftaubenclub. Auf dem spaeter gekauften Farmgelaende entstand unter der Leitung von William Steinway eine Gemeinde von ueberwiegend aus Deutschland stammenden Handwerkern und Geschaeftsleuten.

In der Politik neigte William Steinway zu den Demokraten, war ein



Bild Oben: John H. Steinway, Vorsitzender von Steinway & Sons. Rechte Reihe von oben links: Edward A. Hendricks, Praesident der Hendricks Music Co., Musikberater Ralph C. Nordmark; John H. Steinway und Vizepraesidentin Catherine C. Bleefeldt. Konzert-Pianistin Shirly Anne Seguin; Shirly Anne Seguin, Ralph C. Nordmark und John H. Steinway.

Neuer Rekord-Ueberschuss im Aussenhandel

Fuer den Ueberschuss im deutschen Aussenhandele zeichnet sich fuer 1986 ein neuer Rekord ab. Wie das Statistische Bundesamt am 27.11. mitteilte, erreichte der Ueberschuss in den ersten zehn Monaten dieses Jahres bereits 90,3 Milliarden DM. Im gesamten Vorjahr betrug der Ueberschuss im deutschen Warenhandel 73,3 Milliarden DM. Die deutschen Exporte gingen in der Berichtszeit um 1,9 Prozent auf 439,5 Milliarden DM zurueck. Weil die Ausfuhrpreise gleichzeitig um drei Prozent niedriger waren, ergibt sich real ein Exportplus von gut einem Prozent. Im gleichen Zeitraum gingen die Importe wegen der rueckklaeufigen Oelpreise um ein Zehntel auf 349,1 Milliarden DM zurueck. Bei gleichzeitig um 16 Prozent



lebenslanger Freund zu Grover Cleveland, brachte ein Faehrenunternehmen und eine Strassenbahn in seine Gegend, ebenso die "Daimler Motor Company", aus der spaeter "Mercedes-Benz" wurde. Offiziell hiess die Gegend in der die Steinways lebten Long Island City - wie heute noch. Bei der Post und den Bewohnern hiess sie "Steinway Village". Weltweit blieb der Name "Steinway" als Hersteller der besten Pianos erhalten.

Steinway Fluegel werden auch heute nur in Handarbeit in New York und Hamburg hergestellt und ueber 600 selbstaendige Haendler vertrieben. Die Preise liegen zwischen 5,990 und 43,800 Dollar. In einem Piano befinden sich zweifeltausend Einzelteile. Von den zweihunderttausend Pianos die jaehrlich in den U.S.A. verkauft werden hat Steinway einen Marktanteil von weniger als fuenf Prozent. Nicht Quantitaet

zaehlt beim weltbesten Pianohersteller, sondern Qualitaet. Und dies seit der Schreiner Heinrich Engelhard Steinweg in seiner Kueche in Seesen im Harz sein erstes Piano baute, das heute im Metropolitan Museum of Art in New York City steht.

Der Abend im Hendrick Musikgeschaeft war recht angenehm und aufschlussreich. Den Hoehepunkt schuf eine Besucherin die nur schnell einmal einen Konzertfluegel ausprobieren wollte. Mit ihrem Spiel lockte sie aus allen Raeumen die Gaeste an, die ihr aufmerksam zuhoerten, begeistert von ihrer Kunstfertigkeit und der Klangfuelle des Instruments.

Es war die New Yorker Konzertpianistin Shirley Anne Seguin. Sie lebt seit einigen Monaten in Chicago und gibt hin und wieder Gastspiele. Ihre Musikkarriere fuehrte die Franko-Kanadiere fuer eine laengere Zeit nach Paris.

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