ESA/DSG SETTLEMENT

As many of our visitors to this site are aware, in 2011 ESA's Board of Directors voted to terminate the membership of the Deutche Suzuki Gesellschaft (DSG) in the ESA. Thereafter DSG brought a legal action in the German Courts to declare the termination to have been improper under German law. ESA undertook to defend its actions on various grounds including that ESA was formed and controlled by English law and that the case should be decided in the U.K. under British law. That litigation has now been settled by mutual agreement between ESA and DSG.

DSG has published reports about the litigation which ISA's Board believes to be inaccurate and we provide the following comments:

1. Status of Case: During a court conference in August 2015, the case was settled by agreement of the parties. There was no trial or court decision on the merits of DSG's claims.

2. Settlement Terms: The agreed settlement provided that "ESA would pay [and it has now paid] 10,000 Euros by September 30, 2015"; that DSG would drop its claim for 55-65,000 Euros; and that the legal dispute "shall be resolved as a result of the above". The settlement does not contain any admission of wrongdoing by ESA. In ISA's view these settlement terms mean that DSG gave up its legal right to challenge the propriety of the termination (regardless of how DSG may still feel about what occurred) in return for the agreed payment and for the termination of continuing legal expenses by both sides. Therefore the termination stands.

3. Brief History: A. After ESA terminated DSG's membership, DSG filed suit in the Bonn District Court claiming the termination was unlawful and seeking 65,000 Euros

as damages. In 2014 DSG claimed ESA failed to appear in the Bonn District Court proceeding and ESA sought a default judgment. In a decree issued June 2, 2014 by Judge Koranyi, the Court held that ESA was not in default and that DSG's complaint was not "coherent". The Court pointed out a series of legal issues the case raised and that "it could be necessary to obtain an expert's report …on the prerequisites for expulsion from a limited" company under British law as ESA had argued. It also held that DSG as the complainant "is responsible for coherently presenting a position with regard to damage …" and that this "has not been adequately presented up to now …". The court then listed numerous dubious claims for individual items of damages. (A copy of that Decree is attached).

B. Subsequently, on August 27, 2015, a panel of three judges from the Court held a status conference; it was not a trial or formal evidentiary hearing. The Court promptly initiated discussion of the "possibilities of an amicable settlement …" and "called for" one. The court raised the issue about whether the parties should consider "the extent to which comprehensive rules and regulations, also with regard to the future, would be possible". ESA's representative noted that ESA "sees no authority or entitlement to put comprehensive rules and regulations in place …". If that position was unacceptable to DSG it could have continued the litigation but it chose not to do so. The discussion then turned to a "single compensatory sum as settlement … taking into account the process risks". As is usual in settlement discussions the Court pointed out to both sides what the risk of not settling could possibly mean to them. It did not enter a "decision", nor did it rule that ESA had carried out any "illegal acts" as DSG has contended. To ESA it stated "there <u>could</u> be a very good chance … for [DSG] that its claims will be justified", but the Court did not describe why that might be the case under British law. To DSG it said: "the size of the compensatory sum would need to be reduced substantially …".

Contrary to DSG's contentions, no documents were considered at the hearing, nothing was "proved", and certainly nothing was decided by the Court about the merits of DSG's claims; nor was there any discussion, much less a decision, about the scope of ISA's trademarks. (ISA was not a party to this case.)

After further off the record discussions, the settlement described above was reached and the "legal dispute … resolved", i.e., DSG's legal claim was ended by the termination of the case in consideration of the cash payment. ESA was not required to accept DSG back as a member and, contrary to DSG's statements, ESA did not, and was not required to, admit its conduct was illegal.

4. DSG's Status: As a result of the settlement, DSG forfeited its legal claim that it is a member of ESA or that the termination was illegal. And, despite its view that it is an ESA member, DSG has failed to pay its dues for years while the litigation was pending and thereby forfeited its membership.

5. ISA's Trademark Rights: DSG's communications relating to the settlement refer to two decisions which it contends support its claim that the name SUZUKI may be freely used by anyone in the field of musical pedagogy. That discussion leaves out pertinent facts and is therefore misleading and wrong.

A. Office of Harmonization: That matter was not before a Court and was not a lawsuit. It was an administrative proceeding in the OHIM which is an agency for registration of trademarks in the EEC. ISA applied to register the trademark SUZUKI for a wide range of goods and services. The application was examined and allowed by OHIM. Under the rules of OHIM, allowed applications may be challenged by others. An organization named DUNHAM Industries, whose application to register a mark SUZUKI for broadly related goods and services

was refused registration based on ISA's earlier filed application, asked OHIM to deny ISA's application based on alleged non-use. DUNHAM did not claim ISA's mark was descriptive or generic. ISA submitted substantial evidence of its uses throughout Europe. The OHIM decided that ISA's description of some of the goods and services were too broad and encompassed goods or services ISA did not provide prior to 2011 (the date of DUNHAM'S filing). However, OHIM granted ISA's application for specific goods and services, like: Musical recording, electronic publications relating to children's education, printed musical instruction books; tutorials, courses, seminars and lessons relating to music. The decision thereby confirmed ISA's right to exclusive use of SUZUKI in the field of music pedagogy in Europe. A copy of Registration No. 013879549 is attached.

B. German Patent Court: This matter involved an appeal by DSG from the rejection by the German Trademark Office of DSG's application to register the mark SUZUKI for "The conduct of scientific investigations in the area of music education … the carrying out of scientific research …". This matter was not a "lawsuit"; neither ESA nor ISA were parties and so were not participants.

The DSG application did not involve the registrability of or right to use, the SUZUKI name for music books or music pedagogy. Obviously DSG filed its application for use of the name SUZUKI on services that neither it nor ISA provide because of ISA's existing trademark rights on music books and music pedagogy. The application was rejected as a result of an objection raised (by an unidentified party) on baseless and unsupported allegation that SUZUKI "lacked the necessary degree of distinctiveness and that its registration contravened the public's interest in keeping it in the public domain." There is no evidence in the record supporting that allegation and no evidence we have found that the Examiner knew of ISA's

rights or the worldwide renown of Dr. Suzuki or the Suzuki Method or that essentially any reference in the public press to Suzuki Method or Suzuki Teachers is not generic but refers to people trained by Dr. Suzuki, or teachers trained under the auspices of ISA. Indeed DSG's own attorney argued that "the examiner does not go beyond the superficial ascertainment that the term SUZUKI constitutes a descriptive reference to a method of teaching music …." However, DSG's response made no efforts to rebut that "superficial ascertainment" by identifying ISA's trademark registrations or any submission of any evidence showing ISA's exclusive use and promotion of that name throughout the world under Dr. Suzuki's authority.

Since ISA was not involved in that decision, it is not bound by the superficial ascertainment the Examiner or Appellate administrative body made. Moreover, the "superficial ascertainment" is contradicted by ISA's approximately 100 trademark registrations around the world.

6. Going Forward: Apparently DSG recently began to promote teacher training events in the United States and other countries of the world under the name International Suzuki Teachers Exchange. International Suzuki Association and Suzuki Method with Design are registered trademarks in the United States owned by ISA. ISA, as mentioned, owns other numerous trademark registrations in the U.S. and throughout the world — including in Germany and the EEC — for various marks based on the name SUZUKI for teacher training, music instruction books and other products and services. These include the marks INTERNATIONAL SUZUKI ASSOCIATION, SUZUKI METHOD, SUZUKI METHOD INTERNATIONAL.

The use of these marks, or similar names and marks, like International Suzuki Teachers Exchange, by non-members of ISA's family of Regional Members and trained teachers without authorization is likely to cause confusion in the minds of the public that such users are

somehow part of, authorized, sponsored or approved by the ISA. Such confusion is neither beneficial to the public nor fair to SUZUKI trained teachers. Furthermore, ISA does not permit anyone in the ISA community or otherwise to use the term "International" with "Suzuki" except to refer to ISA itself.

Dr. Suzuki assigned all rights to his name and trademarks all over the world to ISA and assigned it the sole "authority and responsibility to supervise and provide leadership for the propagation, development and continuation of the Suzuki Movement throughout the world". He also requested all national organizations to work together under ISA's guidance.

Accordingly, ISA intends to continue to be as diligent as it can to prevent unauthorized use of the Suzuki name and trademark to identify unauthorized publications, events, blogs, websites, etc., relating to music pedagogy and we ask you all to help in monitoring such activities. We do this to prevent material damage to the Suzuki family of teachers and avoid dilution of the Suzuki Method by untrained teachers around the world passing themselves off as "Suzuki" teachers. That certainly is not what Dr. Suzuki desired when he appointed ISA to carry on his work. ISA remains prepared to work with the members of DSG to do so on terms we hopefully can agree on.