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

Proceeding	91200832
Party	Plaintiff Briggs & Stratton Corporation and Kohler Co.
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Date	07/14/2015
Attachments	2015-07-14 Opposers' First Notice of Reliance with Exs A-F (REDACTED - PUBLIC).pdf(3751347 bytes)

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

BRIGGS & STRATTON CORPORATION)	
)	
Opposer,)	Opposition No. 91200832 (Parent)
vs.)	
)	
HONDA GIKEN KOGYO KABUSHIKI KAISHA,)	
)	
Applicant.)	
)	
KOHLER CO.)	
)	
Opposer,)	Opposition No. 91200146
vs.)	
)	
HONDA GIKEN KOGYO KABUSHIKI KAISHA,)	
)	
Applicant.)	
)	

United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, Virginia 22313-1451

OPPOSERS' FIRST NOTICE OF RELIANCE
(Redacted – Public Version)

Pursuant to 37 C.F.R. §§ 2.120 and 2.122, Opposers Briggs & Stratton Corporation (“Briggs”) and Kohler Co. (“Kohler”) (collectively, “Opposers”), by and through their attorneys, hereby submit their First Notice of Reliance. Opposers’ First Notice of Reliance includes the following attached materials:

1. Briggs' First Set of Requests for Admission and Applicant's responses thereto, including documents made part of those answers, pursuant to 37 C.F.R. §2.120(j)(3)(i) and TBMP 704.10, included as **Exhibit A**;

2. Briggs' Second Set of Requests for Admission and Applicant's responses thereto, including documents made part of those answers, pursuant to 37 C.F.R. §2.120(j)(3)(i) and TBMP 704.10, included as **Exhibit B**;

3. Applicant's responses to Briggs' Fourth Set of Requests for Admission, pursuant to 37 C.F.R. §2.120(j)(3)(i) and TBMP 704.10, included as **Exhibit C**;

4. Briggs' Fifth Set of Requests for Admission and Applicant's responses thereto, including documents made part of those answers, pursuant to 37 C.F.R. §2.120(j)(3)(i) and TBMP 704.10, included as **Exhibit D**;

5. Briggs' Sixth Set of Requests for Admission and Applicant's responses thereto, including documents made part of those answers, pursuant to 37 C.F.R. §2.120(j)(3)(i) and TBMP 704.10, included as **Exhibit E**; and

6. Applicant's Supplemental Responses to Briggs' Fifth Set of Requests for Production of Documents admitting that no documents exist, pursuant to TBMP 704.11(8), included as **Exhibit F**.

The attached exhibits are marked with sequential page numbers in the upper right corner in the form of [Exhibit Letter – Page Number]. For example, the first page of Exhibit C is "C1" and so forth. Where the upper right corner of a document does not allow for such marking, page numbers will be located along the right hand margin of the document. For briefing purposes, material within this Notice of Reliance will be identified as "O1NOR" (an acronym for

Opposers' First Notice of Reliance). For example, a reference to the first page of Exhibit C in the trial brief would be O1NOR C1.

Opposers intend to rely upon and hereby make of record the attached exhibits. Certain of the attached exhibits contain information that Applicant considers confidential pursuant to the Stipulated Protective Order entered into by the parties and approved by the Board. Accordingly, Opposers are simultaneously filing and serving an unredacted copy. Redactions are based on input from Applicant, and are not necessarily considered worthy of redaction by Opposers.

Respectfully Submitted,

Dated: July 14, 2015

By: /s/ Robert N. Phillips
Robert N. Phillips
Seth B. Herring
Reed Smith LLP
101 Second Street
San Francisco, CA 94105

Attorneys for Opposer Briggs & Stratton
Corporation

Dated: July 14, 2015

By: /s/ Kenneth Nowakowski
Kenneth Nowakowski
Elizabeth Townsend Bridge
Melinda Giftos
Whyte Hirschboeck Dudek S.C.
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Attorneys for Opposer Kohler Co.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing OPPOSERS' FIRST NOTICE OF RELIANCE (Redacted – Public Version) was served via first class mail, postage prepaid, this 14th day of July, 2015 upon:

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/s/ Deborah Kalahale

Deborah Kalahale

EXHIBIT A

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

BRIGGS & STRATTON CORPORATION and
KOHLER CO.,

Opposers,

vs.

HONDA GIKEN KOGYO KABUSHIKI
KAISHA,

Applicant.

Opposition No. 91200832
(parent)

Opposition No. 91200146

Application Serial No. 78924545

**OPPOSERS BRIGGS & STRATTON CORPORATION AND KOHLER CO.'S
FIRST SET OF REQUESTS FOR ADMISSION TO APPLICANT
HONDA GIKEN KOGYO KABUSHIKI KAISHA (1-176)**

Opposers Briggs & Stratton Corporation (“Briggs”) and Kohler Co. (“Kohler”) (collectively “Opposers”) hereby requests that Applicant Honda Giken Kogyo Kabushiki Kaisha (“Honda”) admit or deny the following statements within thirty (30) days of service of these Requests pursuant to Rules 26 and 36 of the Federal Rules of Civil Procedure and Section 407 *et seq.* of the Trademark Trial and Appeal Board Manual of Procedure, and in accordance with the Definitions and Instructions listed below.

DEFINITIONS

The following definitions shall apply to the document requests that follow:

- A. The terms “YOU” and “YOUR” mean Applicant Honda Giken Kogyo Kabushiki Kaisha (Honda Motor Co., Ltd.), a corporation organized under the laws of Japan, and its predecessors, successors and assigns, including any person or entity acting under its control, or on behalf, of any and all of its parents, subsidiaries, branches, entities, affiliates, departments, divisions, operating units, partners, joint ventures or related companies, and any employee, officer, director, principal, agent, sales representative or attorney who now serves, or at any relevant time served, it in such capacity.
- B. The term “Briggs” refers to Opposer Briggs & Stratton Corporation and its affiliated companies.
- C. The term “Kohler” refers to Opposer Kohler Co. and its affiliated companies.
- D. The term “ENGINE CONFIGURATION” means the configuration of an engine design described as follows in U.S. Application Serial No. 78/924,545: “The mark consists of the configuration of an engine with an overall cubic design, with a slanted fan

cover, the fuel tank located above the fan cover on the right, and the air cleaner located to the left of the fuel tank. The air cleaner cover features a cube shape with beveled top outside edges, and a belt-like area on the lower portion of the cover encompassing the entire circumference and the top of the belt-like area is aligned with a rib of the fuel tank. The carburetor cover features four ribs along its outside edge and a recessed area where control levers are located. The fuel tank is roughly rectangular. The engine features a beveling that runs around its top circumference.”

- E. The Kawasaki FE250D-DS09 is shown in Exhibit A.
- F. The Predator (212cc) OHV Horizontal Shaft Gas Engine is shown in Exhibit B.
- G. The Champion Model 61301 engine is shown in Exhibit C.
- H. The Champion Model 61151 engine is shown in Exhibit D.
- I. The Champion Model 66504 engine is shown in Exhibit E.
- J. The Champion Model 64001 engine is shown in Exhibit F.
- K. The Subaru Robin SP170 engine is shown in Exhibit G.
- L. The Subaru Robin SP210 engine is shown in Exhibit H.
- M. The Subaru Robin EX13 engine is shown in Exhibit I.
- N. The Subaru Robin EX17 engine is shown in Exhibit J.
- O. The Subaru Robin EX21 engine is shown in Exhibit K.
- P. The Subaru Robin EX27 engine is shown in Exhibit L.
- Q. The Subaru Robin EX35 engine is shown in Exhibit M.
- R. The Subaru Robin EX40 engine is shown in Exhibit N.
- S. The Kohler Command Pro CH270 engine is shown in Exhibit O.

- T. The Kohler Command Pro CH395 engine is shown in Exhibit P.
- U. The Kohler Command Pro CH440 engine is shown in Exhibit Q.
- V. The Tecumseh 5.5 HP engine is shown in Exhibit R.
- W. The Loncin Dewalt 270-R engine is shown in Exhibit S.
- X. The Loncin Dewalt 389-R engine is shown in Exhibit T.
- Y. The Lifan 6.5 HP engine is shown in Exhibit U.
- Z. The LCT CMXX 208 engine is shown in Exhibit V.
- AA. The LCT CMXX 291 engine is shown in Exhibit W.
- BB. The LCT CMXX 414 engine is shown in Exhibit X.
- CC. The LCT MAXX 208 engine is shown in Exhibit Y.
- DD. The LCT MAXX 291 engine is shown in Exhibit Z.
- EE. The LCT MAXX 414 engine is shown in Exhibit AA.
- FF. The Jiangdong Engine JF 168 and 200 are shown in Exhibit BB.
- GG. The Briggs & Stratton Vanguard 6.5 HP Single Cylinder engine is shown in Exhibit CC.
- HH. The Briggs & Stratton IntekPro 206 engine is shown in Exhibit DD.
- II. The Briggs & Stratton IntekPro 305 engine is shown in Exhibit EE.
- JJ. “Referring,” “relating”, and “regarding” include the following: pertaining to, making reference to, concerning, comprising, evidencing, alluding to, responding to, connected with, commenting on, with respect to, about, regarding, resulting from, embodying, explaining, supporting, discussing, showing, describing, reflecting, analyzing, constituting, setting forth, in respect of or having any logical or factual connection with the subject matter in question.

KK. The terms “person” and “persons” include natural persons and entities such as any individual or firm, association, organization, joint venture, trust, partnership, corporation, or other collective organization or entity.

LL. The singular includes the plural number and vice versa, any use of gender includes both genders and a verb tense includes all other verb tenses where the clear meaning is not distorted by addition of another tense or tenses.

MM. Whenever the conjunctive is used, it shall also be taken in the disjunctive, and vice versa.

INSTRUCTIONS

1. For each Request that YOU do not admit, YOUR answer shall specifically deny the matter or state in detail why YOU cannot truthfully admit or deny the matter.

2. YOU are required under Federal Rule of Civil Procedure 36(a)(4) to make a reasonable inquiry to obtain information known or reasonably obtainable by YOU sufficient to permit a fair and informed response to each Request.

3. If YOU object to any Request or portion thereof, state the grounds for YOUR objection in detail and answer all portions of the Request to which YOUR objection does not apply.

4. If in answering any Request, YOU claim ambiguity in either the Request, any applicable Definition, or any applicable Instruction, identify in YOUR response the language YOU consider ambiguous and state the interpretation YOU are using in responding.

5. When answering these Requests, YOU are requested to furnish all information available to YOU, or anyone acting on YOUR behalf. If YOU are unable to answer any of these Requests fully or completely after exercising due diligence to secure the requested information, or if YOU assert that such information is privileged, state this

fact, describe the nature of the efforts made to secure such information and the nature and basis for any privilege asserted, and answer each Request to the fullest extent possible, describing the nature of any information withheld.

6. These Requests shall be deemed continuing, requiring YOU to serve supplemental responses promptly in accordance with Federal Rule of Civil Procedure 26(e).

7. Unless otherwise stated, the geographic scope of each of the following Requests is limited to the United States of America.

REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1:

Admit that YOU have knowledge of use in commerce of at least one third party horizontal shaft gas engine with a cubic design.

REQUEST FOR ADMISSION NO. 2:

Admit that YOU have not asserted trade dress rights in the ENGINE CONFIGURATION against at least one third party commercial horizontal shaft gas engine with a cubic design.

REQUEST FOR ADMISSION NO. 3:

Admit that YOU have entered into at least one settlement agreement in which you agreed to not interfere with or object to a commercial horizontal shaft gas engine with a cubic design.

REQUEST FOR ADMISSION NO. 4:

Admit that YOU have knowledge of use in commerce of at least one third party commercial horizontal shaft gas engine with a slanted fan cover.

REQUEST FOR ADMISSION NO. 5:

Admit that YOU have not asserted trade dress rights in the ENGINE CONFIGURATION against at least one third party commercial horizontal gas shaft engine with a slanted fan cover.

REQUEST FOR ADMISSION NO. 6:

Admit that YOU have entered into at least one settlement agreement in which you agreed to not interfere with or object to a commercial horizontal gas shaft engine with a slanted fan cover.

REQUEST FOR ADMISSION NO. 7:

Admit that YOU have knowledge of use in commerce of at least one third party commercial horizontal gas shaft engine with the fuel tank located above the fan cover on the right.

REQUEST FOR ADMISSION NO. 8:

Admit that YOU have not asserted trade dress rights in the ENGINE CONFIGURATION against at least one third party commercial horizontal gas shaft engine with the fuel tank located above the fan cover on the right.

REQUEST FOR ADMISSION NO. 9:

Admit that YOU have entered into at least one settlement agreement in which you agreed to not interfere with or object to a commercial horizontal gas shaft engine with a fuel tank located above the fan cover on the right.

REQUEST FOR ADMISSION NO. 10:

Admit that YOU have knowledge of use in commerce of at least one third party commercial horizontal gas shaft engine with the air cleaner located to the left of the fuel tank.

REQUEST FOR ADMISSION NO. 11:

Admit that YOU have not asserted trade dress rights in the ENGINE CONFIGURATION against at least one third party commercial horizontal gas shaft engine with the air cleaner located to the left of the fuel tank.

REQUEST FOR ADMISSION NO. 12:

Admit that YOU have entered into at least one settlement agreement in which you agreed to not interfere with or object to a commercial horizontal gas shaft engine with an air cleaner located to the left of the fuel tank.

REQUEST FOR ADMISSION NO. 13:

Admit that YOU have knowledge of use in commerce of the Kawasaki Horizontal 8 HP OHV engine, Model FE250-DS09.

REQUEST FOR ADMISSION NO. 14:

Admit that the Kawasaki Horizontal 8 HP OHV engine, Model FE250-DS09, has a slanted fan cover.

REQUEST FOR ADMISSION NO. 15:

Admit that the Kawasaki Horizontal 8 HP OHV engine, Model FE250-DS09, has a fuel tank located above the fan cover on the right.

REQUEST FOR ADMISSION NO. 16:

Admit that YOU have never asserted trade dress rights in the ENGINE CONFIGURATION against the Kawasaki Horizontal 8 HP OHV engine, Model FE250-DS09.

REQUEST FOR ADMISSION NO. 17:

Admit that YOU have knowledge of use in commerce of the Predator (212 cc) OHV Horizontal Shaft Gas Engine.

REQUEST FOR ADMISSION NO. 18:

Admit that the Predator (212 cc) OHV Horizontal Shaft Gas Engine has a cubic design.

REQUEST FOR ADMISSION NO. 19:

Admit that the Predator (212 cc) OHV Horizontal Shaft Gas Engine has a slanted fan cover.

REQUEST FOR ADMISSION NO. 20:

Admit that the Predator (212 cc) OHV Horizontal Shaft Gas Engine has a fuel tank located above the fan cover on the right.

REQUEST FOR ADMISSION NO. 21:

Admit that the Predator (212 cc) OHV Horizontal Shaft Gas Engine has an air cleaner located to the left of the fuel tank.

REQUEST FOR ADMISSION NO. 22:

Admit that YOU have never asserted trade dress rights in the ENGINE CONFIGURATION against the Predator (212 cc) OHV Horizontal Shaft Gas Engine.

REQUEST FOR ADMISSION NO. 23:

Admit that YOU have knowledge of use in commerce of the Champion OHV Horizontal Replacement Engine Model 61301.

REQUEST FOR ADMISSION NO. 24:

Admit that the Champion OHV Horizontal Replacement Engine Model 61301 has a cubic design.

REQUEST FOR ADMISSION NO. 25:

Admit that the Champion OHV Horizontal Replacement Engine Model 61301 has a slanted fan cover.

REQUEST FOR ADMISSION NO. 26:

Admit that the Champion OHV Horizontal Replacement Engine Model 61301 has a fuel tank located above the fan cover on the right.

REQUEST FOR ADMISSION NO. 27:

Admit that the Champion OHV Horizontal Replacement Engine Model 61301 has an air cleaner located to the left of the fuel tank.

REQUEST FOR ADMISSION NO. 28:

Admit that YOU have never asserted trade dress rights in the ENGINE CONFIGURATION against the Champion OHV Horizontal Replacement Engine Model 61301.

REQUEST FOR ADMISSION NO. 29:

Admit that YOU have knowledge of use in commerce of the Champion OHV Horizontal Replacement Engine Model 61151.

REQUEST FOR ADMISSION NO. 30:

Admit that the Champion OHV Horizontal Replacement Engine Model 61151 has a cubic design.

REQUEST FOR ADMISSION NO. 31:

Admit that the Champion OHV Horizontal Replacement Engine Model 61151 has a slanted fan cover.

REQUEST FOR ADMISSION NO. 32:

Admit that the Champion OHV Horizontal Replacement Engine Model 61151 has a fuel tank located above the fan cover on the right.

REQUEST FOR ADMISSION NO. 33:

Admit that the Champion OHV Horizontal Replacement Engine Model 61151 has an air cleaner located to the left of the fuel tank.

REQUEST FOR ADMISSION NO. 34:

Admit that YOU have never asserted trade dress rights in the ENGINE CONFIGURATION against the Champion OHV Horizontal Replacement Engine Model 61151.

REQUEST FOR ADMISSION NO. 35:

Admit that YOU have knowledge of use in commerce of the Champion OHV Horizontal Replacement Engine Model 66504.

REQUEST FOR ADMISSION NO. 36:

Admit that the Champion OHV Horizontal Replacement Engine Model 66504 has a cubic design.

REQUEST FOR ADMISSION NO. 37:

Admit that the Champion OHV Horizontal Replacement Engine Model 66504 has a slanted fan cover.

REQUEST FOR ADMISSION NO. 38:

Admit that the Champion OHV Horizontal Replacement Engine Model 66504 has a fuel tank located above the fan cover on the right.

REQUEST FOR ADMISSION NO. 39:

Admit that the Champion OHV Horizontal Replacement Engine Model 66504 has an air cleaner located to the left of the fuel tank.

REQUEST FOR ADMISSION NO. 40:

Admit that YOU have never asserted trade dress rights in the ENGINE CONFIGURATION against the Champion OHV Horizontal Replacement Engine Model 66504.

REQUEST FOR ADMISSION NO. 41:

Admit that YOU have knowledge of use in commerce of the Champion OHV Horizontal Replacement Engine Model 64001.

REQUEST FOR ADMISSION NO. 42:

Admit that the Champion OHV Horizontal Replacement Engine Model 64001 has a cubic design.

REQUEST FOR ADMISSION NO. 43:

Admit that the Champion OHV Horizontal Replacement Engine Model 64001 has a slanted fan cover.

REQUEST FOR ADMISSION NO. 44:

Admit that the Champion OHV Horizontal Replacement Engine Model 64001 has a fuel tank located above the fan cover on the right.

REQUEST FOR ADMISSION NO. 45:

Admit that the Champion OHV Horizontal Replacement Engine Model 64001 has an air cleaner located to the left of the fuel tank.

REQUEST FOR ADMISSION NO. 46:

Admit that YOU have never asserted trade dress rights in the ENGINE CONFIGURATION against the Champion OHV Horizontal Replacement Engine Model 64001.

REQUEST FOR ADMISSION NO. 47:

Admit that YOU have knowledge of use in commerce of the Subaru Robin SP170.

REQUEST FOR ADMISSION NO. 48:

Admit that the Subaru Robin SP170 has a cubic design.

REQUEST FOR ADMISSION NO. 49:

Admit that the Subaru Robin SP170 has a fuel tank located above the fan cover on the right.

REQUEST FOR ADMISSION NO. 50:

Admit that the Subaru Robin SP170 has an air cleaner located to the left of the fuel tank.

REQUEST FOR ADMISSION NO. 51:

Admit that YOU have never asserted trade dress rights in the ENGINE CONFIGURATION against the Subaru Robin SP170.

REQUEST FOR ADMISSION NO. 52:

Admit that YOU have knowledge of use in commerce of the Subaru Robin SP210.

REQUEST FOR ADMISSION NO. 53:

Admit that the Subaru Robin SP210 has a cubic design.

REQUEST FOR ADMISSION NO. 54:

Admit that the Subaru Robin SP210 has a fuel tank located above the fan cover on the right.

REQUEST FOR ADMISSION NO. 55:

Admit that the Subaru Robin SP210 has an air cleaner located to the left of the fuel tank.

REQUEST FOR ADMISSION NO. 56:

Admit that YOU have never asserted trade dress rights in the ENGINE CONFIGURATION against the Subaru Robin SP210.

REQUEST FOR ADMISSION NO. 57:

Admit that YOU have knowledge of use in commerce of the Subaru Robin EX13.

REQUEST FOR ADMISSION NO. 58:

Admit that the Subaru Robin EX13 has a cubic design.

REQUEST FOR ADMISSION NO. 59:

Admit that the Subaru Robin EX13 has a fuel tank located above the fan cover on the right.

REQUEST FOR ADMISSION NO. 60:

Admit that the Subaru Robin EX13 has an air cleaner located to the left of the fuel tank.

REQUEST FOR ADMISSION NO. 61:

Admit that YOU have never asserted trade dress rights in the ENGINE CONFIGURATION against the Subaru Robin EX13.

REQUEST FOR ADMISSION NO. 62:

Admit that YOU have knowledge of use in commerce of the Subaru Robin EX17.

REQUEST FOR ADMISSION NO. 63:

Admit that the Subaru Robin EX17 has a cubic design.

REQUEST FOR ADMISSION NO. 64:

Admit that the Subaru Robin EX17 has a fuel tank located above the fan cover on the right.

REQUEST FOR ADMISSION NO. 65:

Admit that the Subaru Robin EX17 has an air cleaner located to the left of the fuel tank.

REQUEST FOR ADMISSION NO. 66:

Admit that YOU have never asserted trade dress rights in the ENGINE CONFIGURATION against the Subaru Robin EX17.

REQUEST FOR ADMISSION NO. 67:

Admit that YOU have knowledge of use in commerce of the Subaru Robin EX21.

REQUEST FOR ADMISSION NO. 68:

Admit that the Subaru Robin EX21 has a cubic design.

REQUEST FOR ADMISSION NO. 69:

Admit that the Subaru Robin EX21 has a fuel tank located above the fan cover on the right.

REQUEST FOR ADMISSION NO. 70:

Admit that the Subaru Robin EX21 has an air cleaner located to the left of the fuel tank.

REQUEST FOR ADMISSION NO. 71:

Admit that YOU have never asserted trade dress rights in the ENGINE CONFIGURATION against the Subaru Robin EX21.

REQUEST FOR ADMISSION NO. 72:

Admit that YOU have knowledge of use in commerce of the Subaru Robin EX27.

REQUEST FOR ADMISSION NO. 73:

Admit that the Subaru Robin EX27 has a cubic design.

REQUEST FOR ADMISSION NO. 74:

Admit that the Subaru Robin EX27 has a fuel tank located above the fan cover on the right.

REQUEST FOR ADMISSION NO. 75:

Admit that the Subaru Robin EX27 has an air cleaner located to the left of the fuel tank.

REQUEST FOR ADMISSION NO. 76:

Admit that YOU have never asserted trade dress rights in the ENGINE CONFIGURATION against the Subaru Robin EX27.

REQUEST FOR ADMISSION NO. 77:

Admit that YOU have knowledge of use in commerce of the Subaru Robin EX35.

REQUEST FOR ADMISSION NO. 78:

Admit that the Subaru Robin EX35 has a cubic design.

REQUEST FOR ADMISSION NO. 79:

Admit that the Subaru Robin EX35 has a fuel tank located above the fan cover on the right.

REQUEST FOR ADMISSION NO. 80:

Admit that YOU have never asserted trade dress rights in the ENGINE CONFIGURATION against the Subaru Robin EX35.

REQUEST FOR ADMISSION NO. 81:

Admit that YOU have knowledge of use in commerce of the Subaru Robin EX40.

REQUEST FOR ADMISSION NO. 82:

Admit that the Subaru Robin EX40 has a cubic design.

REQUEST FOR ADMISSION NO. 83:

Admit that the Subaru Robin EX40 has a fuel tank located above the fan cover on the right.

REQUEST FOR ADMISSION NO. 84:

Admit that YOU have never asserted trade dress rights in the ENGINE CONFIGURATION against the Subaru Robin EX40.

REQUEST FOR ADMISSION NO. 85:

Admit that YOU have knowledge of use in commerce of the Kohler Command Pro CH270.

REQUEST FOR ADMISSION NO. 86:

Admit that the Kohler Command Pro CH270 has a cubic design.

REQUEST FOR ADMISSION NO. 87:

Admit that the Kohler Command Pro CH270 has a slanted fan cover.

REQUEST FOR ADMISSION NO. 88:

Admit that the Kohler Command Pro CH270 has a fuel tank located above the fan cover on the right.

REQUEST FOR ADMISSION NO. 89:

Admit that the Kohler Command Pro CH270 has an air cleaner located to the left of the fuel tank.

REQUEST FOR ADMISSION NO. 90:

Admit that YOU have never asserted trade dress rights in the ENGINE CONFIGURATION against the Kohler Command Pro CH270.

REQUEST FOR ADMISSION NO. 91:

Admit that YOU have knowledge of use in commerce of the Kohler Command Pro CH395.

REQUEST FOR ADMISSION NO. 92:

Admit that the Kohler Command Pro CH395 has a cubic design.

REQUEST FOR ADMISSION NO. 93:

Admit that the Kohler Command Pro CH395 has a slanted fan cover.

REQUEST FOR ADMISSION NO. 94:

Admit that the Kohler Command Pro CH395 has a fuel tank located above the fan cover on the right.

REQUEST FOR ADMISSION NO. 95:

Admit that the Kohler Command Pro CH395 has an air cleaner located to the left of the fuel tank.

REQUEST FOR ADMISSION NO. 96:

Admit that YOU have never asserted trade dress rights in the ENGINE CONFIGURATION against the Kohler Command Pro CH395.

REQUEST FOR ADMISSION NO. 97:

Admit that YOU have knowledge of use in commerce of the Kohler Command Pro CH440.

REQUEST FOR ADMISSION NO. 98:

Admit that the Kohler Command Pro CH440 has a cubic design.

REQUEST FOR ADMISSION NO. 99:

Admit that the Kohler Command Pro CH440 has a slanted fan cover.

REQUEST FOR ADMISSION NO. 100:

Admit that the Kohler Command Pro CH440 has a fuel tank located above the fan cover on the right.

REQUEST FOR ADMISSION NO. 101:

Admit that the Kohler Command Pro CH440 has an air cleaner located to the left of the fuel tank.

REQUEST FOR ADMISSION NO. 102:

Admit that YOU have never asserted trade dress rights in the ENGINE CONFIGURATION against the Kohler Command Pro CH440.

REQUEST FOR ADMISSION NO. 103:

Admit that YOU have knowledge of use in commerce of the Tecumseh 5.5 HP engine.

REQUEST FOR ADMISSION NO. 104:

Admit that the Tecumseh 5.5 HP engine has a fuel tank located above the fan cover on the right.

REQUEST FOR ADMISSION NO. 105:

Admit that YOU have never asserted trade dress rights in the ENGINE CONFIGURATION against the Tecumseh 5.5 HP engine.

REQUEST FOR ADMISSION NO. 106:

Admit that YOU have knowledge of use in commerce of the Loncin Dewalt 389-R.

REQUEST FOR ADMISSION NO. 107:

Admit that the Loncin Dewalt 389-R has a cubic design.

REQUEST FOR ADMISSION NO. 108:

Admit that the Loncin Dewalt 389-R has a slanted fan cover.

REQUEST FOR ADMISSION NO. 109:

Admit that the Loncin Dewalt 389-R has a fuel tank located above the fan cover on the right.

REQUEST FOR ADMISSION NO. 110:

Admit that the Loncin Dewalt 389-R has an air cleaner located to the left of the fuel tank.

REQUEST FOR ADMISSION NO. 111:

Admit that YOU have never asserted trade dress rights in the ENGINE CONFIGURATION against the Loncin Dewalt 389-R.

REQUEST FOR ADMISSION NO. 112:

Admit that YOU have knowledge of use in commerce of the Loncin Dewalt 270-R.

REQUEST FOR ADMISSION NO. 113:

Admit that the Loncin Dewalt 270-R has a cubic design.

REQUEST FOR ADMISSION NO. 114:

Admit that the Loncin Dewalt 270-R has a slanted fan cover.

REQUEST FOR ADMISSION NO. 115:

Admit that the Loncin Dewalt 270-R has a fuel tank located above the fan cover on the right.

REQUEST FOR ADMISSION NO. 116:

Admit that the Loncin Dewalt 270-R has an air cleaner located to the left of the fuel tank.

REQUEST FOR ADMISSION NO. 117:

Admit that YOU have never asserted trade dress rights in the ENGINE CONFIGURATION against the Loncin Dewalt 270-R.

REQUEST FOR ADMISSION NO. 118:

Admit that YOU have knowledge of use in commerce of the Lifan Pro Series Engines 6.5 HP.

REQUEST FOR ADMISSION NO. 119:

Admit that the Lifan Pro Series Engines 6.5 HP has a cubic design.

REQUEST FOR ADMISSION NO. 120:

Admit that the Lifan Pro Series Engines 6.5 HP has a fuel tank located above the fan cover on the right.

REQUEST FOR ADMISSION NO. 121:

Admit that the Lifan Pro Series Engines 6.5 HP has an air cleaner located to the left of the fuel tank.

REQUEST FOR ADMISSION NO. 122:

Admit that YOU have never asserted trade dress rights in the ENGINE CONFIGURATION against the Lifan Pro Series Engines 6.5 HP.

REQUEST FOR ADMISSION NO. 123:

Admit that YOU have knowledge of use in commerce of the LCT Engine CMXX 208.

REQUEST FOR ADMISSION NO. 124:

Admit that the LCT Engine CMXX 208 has a slanted fan cover.

REQUEST FOR ADMISSION NO. 125:

Admit that the LCT Engine CMXX 208 has a fuel tank located above the fan cover on the right.

REQUEST FOR ADMISSION NO. 126:

Admit that YOU have never asserted trade dress rights in the ENGINE CONFIGURATION against the LCT Engine CMXX 208.

REQUEST FOR ADMISSION NO. 127:

Admit that YOU have knowledge of use in commerce of the LCT Engine CMXX 291.

REQUEST FOR ADMISSION NO. 128:

Admit that the LCT Engine CMXX 291 has a slanted fan cover.

REQUEST FOR ADMISSION NO. 129:

Admit that the LCT Engine CMXX 291 has a fuel tank located above the fan cover on the right.

REQUEST FOR ADMISSION NO. 130:

Admit that YOU have never asserted trade dress rights in the ENGINE CONFIGURATION against the LCT Engine CMXX 291.

REQUEST FOR ADMISSION NO. 131:

Admit that YOU have knowledge of use in commerce of the LCT Engine CMXX 414.

REQUEST FOR ADMISSION NO. 132:

Admit that the LCT Engine CMXX 414 has a slanted fan cover.

REQUEST FOR ADMISSION NO. 133:

Admit that the LCT Engine CMXX 414 has a fuel tank located above the fan cover on the right.

REQUEST FOR ADMISSION NO. 134:

Admit that YOU have never asserted trade dress rights in the ENGINE CONFIGURATION against the LCT Engine CMXX 414.

REQUEST FOR ADMISSION NO. 135:

Admit that YOU have knowledge of use in commerce of the LCT Engine MAXX 208.

REQUEST FOR ADMISSION NO. 136:

Admit that the LCT Engine MAXX 208 has a slanted fan cover.

REQUEST FOR ADMISSION NO. 137:

Admit that the LCT Engine MAXX 208 has a fuel tank located above the fan cover on the right.

REQUEST FOR ADMISSION NO. 138:

Admit that YOU have never asserted trade dress rights in the ENGINE CONFIGURATION against the LCT Engine MAXX 208.

REQUEST FOR ADMISSION NO. 139:

Admit that YOU have knowledge of use in commerce of the LCT Engine MAXX 291.

REQUEST FOR ADMISSION NO. 140:

Admit that the LCT Engine MAXX 291 has a slanted fan cover.

REQUEST FOR ADMISSION NO. 141:

Admit that the LCT Engine MAXX 291 has a fuel tank located above the fan cover on the right.

REQUEST FOR ADMISSION NO. 142:

Admit that YOU have never asserted trade dress rights in the ENGINE CONFIGURATION against the LCT Engine MAXX 291.

REQUEST FOR ADMISSION NO. 143:

Admit that YOU have knowledge of use in commerce of the LCT Engine MAXX 414.

REQUEST FOR ADMISSION NO. 144:

Admit that the LCT Engine MAXX 414 has a slanted fan cover.

REQUEST FOR ADMISSION NO. 145:

Admit that the LCT Engine MAXX 414 has a fuel tank located above the fan cover on the right.

REQUEST FOR ADMISSION NO. 146:

Admit that YOU have never asserted trade dress rights in the ENGINE CONFIGURATION against the LCT Engine MAXX 414.

REQUEST FOR ADMISSION NO. 147:

Admit that YOU have knowledge of use in commerce of the Jiangdong Engine JF 168.

REQUEST FOR ADMISSION NO. 148:

Admit that the Jiangdong Engine JF 168 has a cubic design.

REQUEST FOR ADMISSION NO. 149:

Admit that the Jiangdong Engine JF 168 has a slanted fan cover.

REQUEST FOR ADMISSION NO. 150:

Admit that the Jiangdong Engine JF 168 has a fuel tank located above the fan cover on the right.

REQUEST FOR ADMISSION NO. 151:

Admit that the Jiangdong Engine JF 168 has an air cleaner located to the left of the fuel tank.

REQUEST FOR ADMISSION NO. 152:

Admit that YOU have never asserted trade dress rights in the ENGINE CONFIGURATION against the Jiangdong Engine JF 168.

REQUEST FOR ADMISSION NO. 153:

Admit that YOU have knowledge of use in commerce of the Jiangdong Engine JF 200.

REQUEST FOR ADMISSION NO. 154:

Admit that the Jiangdong Engine JF 200 has a cubic design.

REQUEST FOR ADMISSION NO. 155:

Admit that the Jiangdong Engine JF 200 has a slanted fan cover.

REQUEST FOR ADMISSION NO. 156:

Admit that the Jiangdong Engine JF 200 has a fuel tank located above the fan cover on the right.

REQUEST FOR ADMISSION NO. 157:

Admit that the Jiangdong Engine JF 200 has an air cleaner located to the left of the fuel tank.

REQUEST FOR ADMISSION NO. 158:

Admit that YOU have never asserted trade dress rights in the ENGINE CONFIGURATION against the Jiangdong Engine JF 200.

REQUEST FOR ADMISSION NO. 159:

Admit that YOU have knowledge of use in commerce of the Briggs & Stratton Vanguard 6.5 HP Single Cylinder engine.

REQUEST FOR ADMISSION NO. 160:

Admit that the Briggs & Stratton Vanguard 5.5 HP Single Cylinder engine has a cubic design.

REQUEST FOR ADMISSION NO. 161:

Admit that the Briggs & Stratton Vanguard 5.5 HP Single Cylinder engine has a slanted fan cover.

REQUEST FOR ADMISSION NO. 162:

Admit that the Briggs & Stratton Vanguard 5.5 HP Single Cylinder engine has a fuel tank located above the fan cover on the right.

REQUEST FOR ADMISSION NO. 163:

Admit that the Briggs & Stratton Vanguard 5.5 HP Single Cylinder engine has an air cleaner located to the left of the fuel tank.

REQUEST FOR ADMISSION NO. 164:

Admit that YOU have never asserted trade dress rights in the ENGINE CONFIGURATION against the Briggs & Stratton Vanguard 5.5 HP Single Cylinder engine.

REQUEST FOR ADMISSION NO. 165:

Admit that YOU have knowledge of use in commerce of the Briggs & Stratton IntekPro 206 engine.

REQUEST FOR ADMISSION NO. 166:

Admit that the Briggs & Stratton IntekPro 206 engine has a cubic design.

REQUEST FOR ADMISSION NO. 167:

Admit that the Briggs & Stratton IntekPro 206 engine has a slanted fan cover.

REQUEST FOR ADMISSION NO. 168:

Admit that the Briggs & Stratton IntekPro 206 engine has a fuel tank located above the fan cover on the right.

REQUEST FOR ADMISSION NO. 169:

Admit that the Briggs & Stratton IntekPro 206 engine has an air cleaner located to the left of the fuel tank.

REQUEST FOR ADMISSION NO. 170:

Admit that YOU have never asserted trade dress rights in the ENGINE CONFIGURATION against the Briggs & Stratton IntekPro 206 engine.

REQUEST FOR ADMISSION NO. 171:

Admit that YOU have knowledge of use in commerce of the Briggs & Stratton IntekPro 305 engine.

REQUEST FOR ADMISSION NO. 172:

Admit that the Briggs & Stratton IntekPro 305 engine has a cubic design.

REQUEST FOR ADMISSION NO. 173:

Admit that the Briggs & Stratton IntekPro 305 engine has a slanted fan cover.

REQUEST FOR ADMISSION NO. 174:

Admit that the Briggs & Stratton IntekPro 305 engine has a fuel tank located above the fan cover on the right.

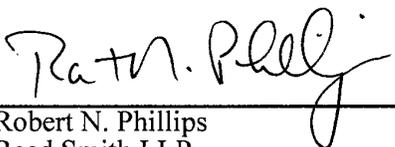
REQUEST FOR ADMISSION NO. 175:

Admit that the Briggs & Stratton IntekPro 305 engine has an air cleaner located to the left of the fuel tank.

REQUEST FOR ADMISSION NO. 176:

Admit that YOU have never asserted trade dress rights in the ENGINE CONFIGURATION against the Briggs & Stratton IntekPro 305 engine.

April 5, 2012

By: 
Robert N. Phillips
Reed Smith LLP

Seth B. Herring
Reed Smith LLP

Nina Habib Borders
Reed Smith LLP

Attorneys for Opposer
BRIGGS & STRATTON
CORPORATION

US_ACTIVE-108924152.1

CERTIFICATE OF SERVICE

In accordance with Rule 2.105(a) of the Trademark Rules of Practice, as amended, it is hereby certified that a true copy of the foregoing OPPOSERS' FIRST SET OF REQUESTS FOR ADMISSION was served on the following counsel of record for Applicant, by depositing same in the U.S. mail, first class postage prepaid, this 5th day of April, 2012:

Michael J. Bevilacqua, Esq.
Wilmer Cutler Pickering Hale and Dorr LLP
60 State Street
Boston, MA 02109-1800
Phone: (617) 526-6448
Fax: (617) 526-5000

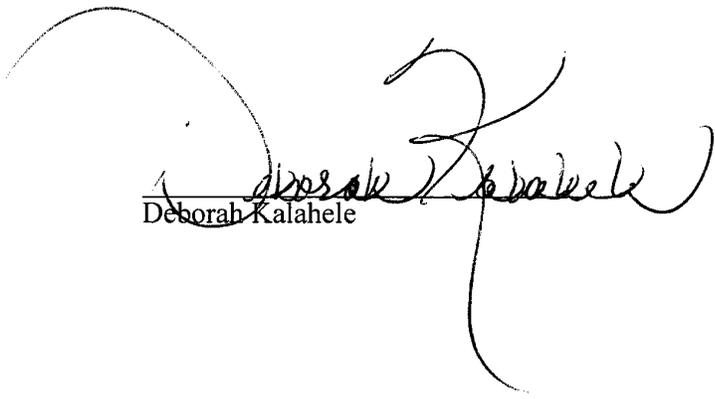

Deborah Kalahale

EXHIBIT A



EXHIBIT B



EXHIBIT C



EXHIBIT D



EXHIBIT E



EXHIBIT F



EXHIBIT G



EXHIBIT H



EXHIBIT I



EXHIBIT J



EXHIBIT K



EXHIBIT L



EXHIBIT M



EXHIBIT N



EXHIBIT O



EXHIBIT P



EXHIBIT Q



EXHIBIT R



EXHIBIT S



EXHIBIT T



EXHIBIT U



PRO SERIES PUMP PRO

3" Trash Water Pump
* shown with optional wheel kit

powered by **LIFAN**

EXHIBIT V



EXHIBIT W



EXHIBIT X



EXHIBIT Y



EXHIBIT Z



291cc MAXX™ Series

EXHIBIT AA



EXHIBIT BB



EXHIBIT CC



EXHIBIT DD



EXHIBIT EE



PAGES A-93 TO A-228
FILED UNDER SEAL

EXHIBIT B

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

BRIGGS & STRATTON CORPORATION
and KOHLER CO.,

Opposers,

Opposition No. 91200832 (parent)

v.

Opposition No. 91200146

HONDA GIKEN KOGYO KABUSHIKI
KAISHA,

Application Serial No. 78924545

Applicant.

**OPPOSERS BRIGGS & STRATTON CORPORATION'S AND KOHLER CO.'S
SECOND SET OF REQUESTS FOR ADMISSION TO
APPLICANT HONDA GIKEN KOGYO KABUSHIKI KAISHA (177-226)**

Opposers Briggs & Stratton Corporation (“Briggs”) and Kohler Co. (“Kohler”) (collectively “Opposers”) hereby requests that Applicant Honda Giken Kogyo Kabushiki Kaisha (“Honda”) admit or deny the following statements within thirty (30) days of service of these Requests pursuant to Rules 26 and 36 of the Federal Rules of Civil Procedure and Section 407 et seq. of the Trademark Trial and Appeal Board Manual of Procedure, and in accordance with the Definitions and Instructions listed below.

DEFINITIONS

The following definitions shall apply to the document requests that follow:

A. The terms “YOU” and “YOUR” mean Applicant Honda Giken Kogyo Kabushiki Kaisha (Honda Motor Co., Ltd.), a corporation organized under the laws of Japan, and its predecessors, successors and assigns, including any person or entity acting under its control, or on behalf, of any and all of its parents, subsidiaries, branches, entities, affiliates, departments, divisions, operating units, partners, joint ventures or related companies, and any employee,

officer, director, principal, agent, sales representative or attorney who now serves, or at any relevant time served, it in such capacity.

- B. The term “Briggs” refers to Opposer Briggs & Stratton Corporation and its affiliated companies.
- C. The term “Kohler” refers to Opposer Kohler Co. and its affiliated companies.
- D. The May 22, 2007 Settlement Agreement and Mutual Release between American Honda Motor Co., Inc. and Liquid Combustion Technology LLC. is shown in Exhibit A.
- E. The March 10, 2010 Settlement Agreement and Mutual Release between American Honda Motor Co., Inc. and Chongqing Dajiang Power Equipment Co., Ltd. is shown in Exhibit B.
- F. The October 6, 2009 Settlement Agreement and Mutual Release between American Honda Motor Co., Inc. and Champion Power Equipment, Inc. is shown in Exhibit C.
- G. The January 31, 2008 Settlement Agreement and Mutual Release between American Honda Motor Co., Inc. and Lifan Industry Co., Ltd, American Lifan Industry, Inc., Chongqing Lifan Industry Group Import & Export Co., Ltd., Chongqing Lifan Power Corporation, Ltd. , and the Lifan Affiliates is shown in Exhibit D.
- H. The November 14, 2007 Settlement Agreement and Mutual Release between American Honda Motor Co., Inc. and Jiangsu Jiangdong Group Co. LTD., American JD Group Co. LTD., and their affiliates, and Homier Distributing Co., LTD. is shown in Exhibit E.
- I. The Honda GX Series, as depicted on Honda’s website, (<http://engines.honda.com/models/series/gx>, last visited May 23, 2012) is shown in Exhibit F.
- J. “Referring,” “relating”, and “regarding” include the following: pertaining to, making reference to, concerning, comprising, evidencing, alluding to, responding to, connected

with, commenting on, with respect to, about, regarding, resulting from, embodying, explaining, supporting, discussing, showing, describing, reflecting, analyzing, constituting, setting forth, in respect of or having any logical or factual connection with the subject matter in question.

K. The terms “person” and “persons” include natural persons and entities such as any individual or firm, association, organization, joint venture, trust, partnership, corporation, or other collective organization or entity.

L. The singular includes the plural number and vice versa, any use of gender includes both genders and a verb tense includes all other verb tenses where the clear meaning is not distorted by addition of another tense or tenses.

M. Whenever the conjunctive is used, it shall also be taken in the disjunctive, and vice versa.

INSTRUCTIONS

1. For each Request that YOU do not admit, YOUR answer shall specifically deny the matter or state in detail why YOU cannot truthfully admit or deny the matter.

2. YOU are required under Federal Rule of Civil Procedure 36(a)(4) to make a reasonable inquiry to obtain information known or reasonably obtainable by YOU sufficient to permit a fair and informed response to each Request.

3. If YOU object to any Request or portion thereof, state the grounds for YOUR objection in detail and answer all portions of the Request to which YOUR objection does not apply.

4. If in answering any Request, YOU claim ambiguity in either the Request, any applicable Definition, or any applicable Instruction, identify in YOUR response the language YOU consider ambiguous and state the interpretation YOU are using in responding.

5. When answering these Requests, YOU are requested to furnish all information available to YOU, or anyone acting on YOUR behalf. If YOU are unable to answer any of these Requests fully or completely after exercising due diligence to secure the requested information, or if YOU assert that such information is privileged, state this fact, describe the nature of the efforts made to secure such information and the nature and basis for any privilege asserted, and answer each Request to the fullest extent possible, describing the nature of any information withheld.

6. These Requests shall be deemed continuing, requiring YOU to serve supplemental responses promptly in accordance with Federal Rule of Civil Procedure 26(e).

7. Unless otherwise stated, the geographic scope of each of the following Requests is limited to the United States of America.

REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 177:

Admit that the agreement in Exhibit A is a true and correct copy of the final May 22, 2007 Settlement Agreement and Mutual Release between American Honda Motor Co., Inc. and Liquid Combustion Technology LLC.

REQUEST FOR ADMISSION NO. 178

Admit that YOU have agreed that the horizontal shaft engine design depicted on Bates numbered page AHGXC000089 of Exhibit A does not infringe the GX Trade Dress, as defined in Exhibit A.

REQUEST FOR ADMISSION NO. 179:

Admit that YOU agreed not to oppose Liquid Combustion Technology LLC's use in the United States of the horizontal shaft engine design depicted on Bates numbered page AHGXC000089 of Exhibit A.

REQUEST FOR ADMISSION NO. 180:

Admit that the agreement in Exhibit B is a true and correct copy of the final March 10, 2010 Settlement Agreement and Mutual Release between American Honda Motor Co., Inc. and Chongqing Dajiang Power Equipment Co., Ltd.

REQUEST FOR ADMISSION NO. 181:

Admit that YOU have agreed that the horizontal shaft engine design depicted on page 13 of Exhibit B does not infringe the GX Trade Dress, as defined in Exhibit B.

REQUEST FOR ADMISSION NO. 182

Admit that YOU agreed not to oppose Chongqing Dajiang Power Equipment Co., Ltd.'s use in the United States of the horizontal shaft engine design depicted on page 13 of Exhibit B.

REQUEST FOR ADMISSION NO. 183

Admit that the agreement in Exhibit C is a true and correct copy of the final October 6, 2009 Settlement Agreement and Mutual Release between American Honda Motor Co., Inc. and Champion Power Equipment, Inc.

REQUEST FOR ADMISSION NO. 184

Admit that YOU have agreed that the horizontal shaft engine design depicted on page 13 of Exhibit C does not infringe the GX Trade Dress, as defined in Exhibit C.

REQUEST FOR ADMISSION NO. 185

Admit that YOU have agreed that the horizontal shaft engine design depicted on page 14 of Exhibit C does not infringe the GX Trade Dress, as defined in Exhibit C.

REQUEST FOR ADMISSION NO. 186

Admit that YOU agreed not to oppose Champion Power Equipment, Inc.'s use in the United States of the horizontal shaft engine design depicted on page 13 of Exhibit C.

REQUEST FOR ADMISSION NO. 187

Admit that YOU agreed not to oppose Champion Power Equipment, Inc.'s use in the United States of the horizontal shaft engine design depicted on page 14 of Exhibit C.

REQUEST FOR ADMISSION NO. 188:

Admit that the agreement in Exhibit D is a true and correct copy of the final January 31, 2008 Settlement Agreement and Mutual Release between American Honda Motor Co., Inc. and Lifan Industry Co., Ltd, American Lifan Industry, Inc., Chongqing Lifan Industry Group Import & Export Co., Ltd., Chongqing Lifan Power Corporation, Ltd. , and the Lifan Affiliates.

REQUEST FOR ADMISSION NO. 189

Admit that YOU agreed that YOU have no trade dress rights in the horizontal shaft engine design depicted on Bates numbered pages AHGXC000060-000063 of Exhibit D.

REQUEST FOR ADMISSION NO. 190

Admit that YOU agreed that YOU have no trade dress rights in the horizontal shaft engine design depicted on Bates numbered pages AHGXC000064-000067 of Exhibit D.

REQUEST FOR ADMISSION NO. 191:

Admit that YOU have agreed that the horizontal shaft engine design depicted on Bates numbered pages AHGXC000060-000063 of Exhibit D does not infringe the GX Engine Trade Dress, as defined in Exhibit D.

REQUEST FOR ADMISSION NO. 192:

Admit that YOU have agreed that the horizontal shaft engine design depicted on Bates numbered pages AHGXC000064-000067 of Exhibit D does not infringe the GX Engine Trade Dress, as defined by Exhibit D.

REQUEST FOR ADMISSION NO. 193

Admit that YOU have agreed not to oppose Lifan Industry Co., Ltd's use in the United States of the horizontal shaft engine design depicted on Bates numbered pages AHGXC000060-000063 of Exhibit D.

REQUEST FOR ADMISSION NO. 194

Admit that YOU have agreed not to oppose Lifan Industry Co., Ltd's use in the United States of the horizontal shaft engine design depicted on Bates numbered pages AHGXC000064-000067 of Exhibit D.

REQUEST FOR ADMISSION NO. 195

Admit that YOU have agreed not to oppose American Lifan Industry, Inc.'s use in the United States of the horizontal shaft engine design depicted on Bates numbered pages AHGXC000060-000063 of Exhibit D.

REQUEST FOR ADMISSION NO. 196

Admit that YOU have agreed not to oppose American Lifan Industry, Inc.'s use in the United States of the horizontal shaft engine design depicted on Bates numbered pages AHGXC000064-000067 of Exhibit D.

REQUEST FOR ADMISSION NO. 197

Admit that YOU have agreed not to oppose Chongqing Lifan Industry Group Import & Export Co., Ltd.'s use in the United States of the horizontal shaft engine design depicted on Bates numbered pages AHGXC000060-000063 of Exhibit D.

REQUEST FOR ADMISSION NO. 198

Admit that YOU have agreed not to oppose Chongqing Lifan Industry Group Import & Export Co., Ltd.'s use in the United States of the horizontal shaft engine design depicted on Bates numbered pages AHGXC000064-000067 of Exhibit D.

REQUEST FOR ADMISSION NO. 199

Admit that YOU have agreed not to oppose Chongqing Lifan Power Corporation, Ltd.'s use in the United States of the horizontal shaft engine design depicted on Bates numbered pages AHGXC000060-000063 of Exhibit D.

REQUEST FOR ADMISSION NO. 200

Admit that YOU have agreed not to oppose Chongqing Lifan Power Corporation, Ltd.'s use in the United States of the horizontal shaft engine design depicted on Bates numbered pages AHGXC000064-000067 of Exhibit D.

REQUEST FOR ADMISSION NO. 201

Admit that YOU have agreed not to oppose the Lifan Affiliates' use in the United States of the horizontal shaft engine design depicted on Bates numbered pages AHGXC000060-000063 of Exhibit D.

REQUEST FOR ADMISSION NO. 202

Admit that YOU have agreed not to oppose the Lifan Affiliates' use in the United States of the horizontal shaft engine design depicted on Bates numbered pages AHGXC000064-000067 of Exhibit D.

REQUEST FOR ADMISSION NO. 203

Admit that the agreement in Exhibit E is a true and correct copy of the final November 14, 2007 Settlement Agreement and Mutual Release between American Honda Motor Co., Inc.

and Jiangsu Jiandong Group Co. LTD., American JD Group Co. LTD., and their affiliates, and Homier Distributing Co., LTD.

REQUEST FOR ADMISSION NO. 204

Admit that YOU have agreed that the horizontal shaft engine design depicted on Bates numbered pages AHGXC000149-000151 of Exhibit E does not infringe or dilute the GX Engine Trade Dress, as defined by Exhibit E.

REQUEST FOR ADMISSION NO. 205

Admit that YOU have agreed that the horizontal shaft engine design depicted on Bates numbered pages AHGXC000158-000163 of Exhibit E does not infringe or dilute the GX Engine Trade Dress, as defined by Exhibit E.

REQUEST FOR ADMISSION NO. 206

Admit that YOU agreed not to oppose Jiangsu Jiandong Group Co., Ltd.'s use in the United States of the horizontal shaft engine design depicted on Bates numbered pages AHGXC000149-000151 of Exhibit E.

REQUEST FOR ADMISSION NO. 207

Admit that YOU agreed not to oppose Jiangsu Jiandong Group Co., Ltd.'s use in the United States of the horizontal shaft engine design depicted on Bates numbered pages AHGXC000158-000163 of Exhibit E.

REQUEST FOR ADMISSION NO. 208

Admit that YOU agreed not to oppose American JD Group Co., Ltd.'s use in the United States of the horizontal shaft engine design depicted on Bates numbered pages AHGXC000149-000151 of Exhibit E.

REQUEST FOR ADMISSION NO. 209

Admit that YOU agreed not to oppose American JD Group Co., Ltd.'s use in the United States of the horizontal shaft engine design depicted on Bates numbered pages AHGXC000158-000163 of Exhibit E.

REQUEST FOR ADMISSION NO. 210

Admit that YOU agreed not to oppose Homier Distributing Co., Ltd.'s use in the United States of the horizontal shaft engine design depicted on Bates numbered pages AHGXC000149-000151 of Exhibit E.

REQUEST FOR ADMISSION NO. 211

Admit that YOU agreed not to oppose Homier Distributing Co., Ltd.'s use in the United States of the horizontal shaft engine design depicted on Bates numbered pages AHGXC000158-000163 of Exhibit E.

REQUEST FOR ADMISSION NO. 212

Admit that YOU intend to stop selling horizontal shaft engines in the United States with the design depicted in the applied for U.S. Application Serial No. 78/924,545.

REQUEST FOR ADMISSION NO. 213

Admit that YOU are no longer selling horizontal shaft engines in the United States with the design depicted in the applied for U.S. Application Serial No. 78/924,545.

REQUEST FOR ADMISSION NO. 214

Admit that YOU intend to stop manufacturing horizontal shaft engines in the United States with the design depicted in the applied for U.S. Application Serial No. 78/924,545.

REQUEST FOR ADMISSION NO. 215

Admit that YOU are no longer manufacturing horizontal shaft engines in the United States with the design depicted in the applied for U.S. Application Serial No. 78/924,545.

REQUEST FOR ADMISSION NO. 216

Admit that YOU intend to stop marketing horizontal shaft engines in the United States with the design depicted in the applied for U.S. Application Serial No. 78/924,545.

REQUEST FOR ADMISSION NO. 217

Admit that YOU are no longer marketing horizontal shaft engines in the United States with the design depicted in the applied for U.S. Application Serial No. 78/924,545.

REQUEST FOR ADMISSION NO. 218

Admit that YOU no longer market horizontal shaft engines in the United States with the design depicted in the applied for U.S. Application Serial No. 78/924,545 on YOUR website.

REQUEST FOR ADMISSION NO. 219

Admit that the webpage of Exhibit F is a true and accurate representation of YOUR webpage at <http://engines.honda.com/models/series/gx>.

REQUEST FOR ADMISSION NO. 220

Admit that YOU currently offer for sale in the United States the horizontal shaft engines in the Honda GX Series as depicted in Exhibit F.

REQUEST FOR ADMISSION NO. 221

Admit that YOU currently promote in the United States the horizontal shaft engines in the Honda GX Series as depicted in Exhibit F on your website.

REQUEST FOR ADMISSION NO. 222

Admit that YOU currently promote in the United States the horizontal shaft engines in the Honda GX Series as depicted in Exhibit F in sales brochures.

REQUEST FOR ADMISSION NO. 223

Admit that the horizontal shaft engines in the Honda GX Series as depicted in Exhibit F do not have a carburetor cover featuring four ribs along its outside edge.

REQUEST FOR ADMISSION NO. 224

Admit that the horizontal shaft engines in the Honda GX Series as depicted in Exhibit F have a fuel tank design that differs from the design depicted in the applied for U.S. Application Serial No. 78/924,545.

REQUEST FOR ADMISSION NO. 225

Admit that the horizontal shaft engines in the Honda GX Series as depicted in Exhibit F have an air cleaner cover that differs from the design depicted in the applied for U.S. Application Serial No. 78/924,545.

REQUEST FOR ADMISSION NO. 226

Admit that the horizontal shaft engines in the Honda GX Series as depicted in Exhibit F have a fan cover that differs from the design depicted in the applied for U.S. Application Serial No. 78/924,545.

Dated this 25th day of May, 2012.

By:  _____

Donald A. Daugherty
Whyte Hirschboeck Dudek S.C.

Elisabeth Townsend Bridge
Whyte Hirschboeck Dudek S.C.

Christopher R. Walker
Whyte Hirschboeck Dudek S.C.

Attorneys for Opposer
Kohler Co.

CERTIFICATE OF SERVICE

In accordance with Rule 2.105(a) of the Trademark Rules of Practice, as amended, it is hereby certified that a true copy of the foregoing OPPOSERS' SECOND SET OF REQUESTS FOR ADMISSION was served on the following counsel of record for Applicant, by depositing same in the U.S. mail, first class postage prepaid, this 25th day of May, 2012:

Vinita Ferrera, Esq.
WilmerHale
60 State Street
Boston, MA 02109



Peter F. Sewell

PAGES B-15 TO B-52
FILED UNDER SEAL

EXHIBIT C

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

BRIGGS & STRATTON CORPORATION and
KOHLER CO.,

Opposers,

vs.

HONDA GIKEN KOGYO KABUSHIKI
KAISHA,

Applicant.

Opposition No. 91200832
(parent)

Opposition No. 91200146

Application Serial No. 78924545

**OPPOSERS BRIGGS & STRATTON CORPORATION AND KOHLER CO.'S
FOURTH SET OF REQUESTS FOR ADMISSION TO APPLICANT
HONDA GIKEN KOGYO KABUSHIKI KAISHA (229-256)**

Opposers Briggs & Stratton Corporation (“Briggs”) and Kohler Co. (“Kohler”) (collectively “Opposers”) hereby requests that Applicant Honda Giken Kogyo Kabushiki Kaisha (“Honda”) admit or deny the following statements within thirty (30) days of service of these Requests pursuant to Rules 26 and 36 of the Federal Rules of Civil Procedure and Section 407 *et seq.* of the Trademark Trial and Appeal Board Manual of Procedure, and in accordance with the Definitions and Instructions listed below.

DEFINITIONS

The following definitions shall apply to the document requests that follow:

A. The terms “YOU” and “YOUR” mean Applicant Honda Giken Kogyo Kabushiki Kaisha (Honda Motor Co., Ltd.), a corporation organized under the laws of Japan, and its predecessors, successors and assigns, including any person or entity acting under its control, or on behalf, of any and all of its parents, subsidiaries, branches, entities, affiliates, departments, divisions, operating units, partners, joint ventures or related companies, and any employee, officer, director, principal, agent, sales representative or attorney who now serves, or at any relevant time served, it in such capacity.

B. The term “Briggs” refers to Opposer Briggs & Stratton Corporation and its affiliated companies.

C. The term “Kohler” refers to Opposer Kohler Co. and its affiliated companies.

D. The term “ENGINE CONFIGURATION” means the configuration of an engine design described as follows in U.S. Application Serial No. 78/924,545: “The mark consists of the configuration of an engine with an overall cubic design, with a slanted fan

cover, the fuel tank located above the fan cover on the right, and the air cleaner cover located to the left of the fuel tank. The air cleaner cover features a cube shape with beveled top outside edges, and a belt-like area on the lower portion of the cover encompassing the entire circumference and the top of the belt-like area is aligned with a rib of the fuel tank. The carburetor cover features four ribs along its outside edge and a recessed area where control levers are located. The fuel tank is roughly rectangular. The engine features a beveling that runs around its top circumference.”

E. The redesigned Briggs 550 Series engine is shown in Exhibit A.

F. The redesigned Briggs 750 Series engine is shown in Exhibit B.

G. The Kohler SH265 engine is shown in Exhibit C.

H. “Referring,” “relating”, and “regarding” include the following: pertaining to, making reference to, concerning, comprising, evidencing, alluding to, responding to, connected with, commenting on, with respect to, about, regarding, resulting from, embodying, explaining, supporting, discussing, showing, describing, reflecting, analyzing, constituting, setting forth, in respect of or having any logical or factual connection with the subject matter in question.

I. The terms “person” and “persons” include natural persons and entities such as any individual or firm, association, organization, joint venture, trust, partnership, corporation, or other collective organization or entity.

J. The singular includes the plural number and vice versa, any use of gender includes both genders and a verb tense includes all other verb tenses where the clear meaning is not distorted by addition of another tense or tenses.

K. Whenever the conjunctive is used, it shall also be taken in the disjunctive, and vice versa.

INSTRUCTIONS

1. For each Request that YOU do not admit, YOUR answer shall specifically deny the matter or state in detail why YOU cannot truthfully admit or deny the matter.
2. YOU are required under Federal Rule of Civil Procedure 36(a)(4) to make a reasonable inquiry to obtain information known or reasonably obtainable by YOU sufficient to permit a fair and informed response to each Request.
3. If YOU object to any Request or portion thereof, state the grounds for YOUR objection in detail and answer all portions of the Request to which YOUR objection does not apply.
4. If in answering any Request, YOU claim ambiguity in the Request, any applicable Definition, or any applicable Instruction, identify in YOUR response the language YOU consider ambiguous and state the interpretation YOU are using in responding.
5. When answering these Requests, YOU are requested to furnish all information available to YOU, or anyone acting on YOUR behalf. If YOU are unable to answer any of these Requests fully or completely after exercising due diligence to secure the requested information, or if YOU assert that such information is privileged, state this fact, describe the nature of the efforts made to secure such information and the nature and basis for any privilege asserted, and answer each Request to the fullest extent possible, describing the nature of any information withheld.
6. These Requests shall be deemed continuing, requiring YOU to serve supplemental responses promptly in accordance with Federal Rule of Civil Procedure 26(e).

7. Unless otherwise stated, the geographic scope of each of the following Requests is limited to the United States of America.

REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 229:

Admit that YOU have knowledge of use in commerce of the redesigned Briggs 550 Series engine.

REQUEST FOR ADMISSION NO. 230:

Admit that the redesigned Briggs 550 Series engine has a cubic design.

REQUEST FOR ADMISSION NO. 231:

Admit that the redesigned Briggs 550 Series engine has a slanted fan cover.

REQUEST FOR ADMISSION NO. 232:

Admit that the redesigned Briggs 550 Series engine has a roughly rectangular fuel tank.

REQUEST FOR ADMISSION NO. 233:

Admit that the redesigned Briggs 550 Series engine has a fuel tank located above the fan cover.

REQUEST FOR ADMISSION NO. 234:

Admit that the redesigned Briggs 550 Series engine has an air cleaner cover with beveled top outside edges.

REQUEST FOR ADMISSION NO. 235:

Admit that the redesigned Briggs 550 Series engine has an air cleaner cover to the left of the fuel tank.

REQUEST FOR ADMISSION NO. 236:

Admit that the redesigned Briggs 550 Series engine has a carburetor cover with a recessed area where control levers are located.

REQUEST FOR ADMISSION NO. 237:

Admit that YOU have never asserted trade dress right in the ENGINE CONFIGURATION against the redesigned Briggs 550 Series engine.

REQUEST FOR ADMISSION NO. 238:

Admit that YOU have knowledge of use in commerce of the redesigned Briggs 750 Series engine.

REQUEST FOR ADMISSION NO. 239:

Admit that the redesigned Briggs 750 Series engine has a cubic design.

REQUEST FOR ADMISSION NO. 240:

Admit that the redesigned Briggs 750 Series engine has a slanted fan cover.

REQUEST FOR ADMISSION NO. 241:

Admit that the redesigned Briggs 750 Series engine has a roughly rectangular fuel tank.

REQUEST FOR ADMISSION NO. 242:

Admit that the redesigned Briggs 750 Series engine has a fuel tank located above the fan cover.

REQUEST FOR ADMISSION NO. 243:

Admit that the redesigned Briggs 750 Series engine has an air cleaner cover with a cube shape.

REQUEST FOR ADMISSION NO. 244:

Admit that the redesigned Briggs 750 Series engine has an air cleaner cover with beveled top outside edges.

REQUEST FOR ADMISSION NO. 245:

Admit that the redesigned Briggs 750 Series engine has an air cleaner cover located to the left of the fuel tank.

REQUEST FOR ADMISSION NO. 246:

Admit that the redesigned Briggs 750 Series engine has a carburetor cover with a recessed area where control levers are located.

REQUEST FOR ADMISSION NO. 247:

Admit that YOU have never asserted trade dress right in the ENGINE CONFIGURATION against the redesigned Briggs 750 Series engine.

REQUEST FOR ADMISSION NO. 248:

Admit that YOU have knowledge of use in commerce of the Kohler SH265 engine.

REQUEST FOR ADMISSION NO. 249:

Admit that the Kohler SH265 Series engine has a cubic design.

REQUEST FOR ADMISSION NO. 250:

Admit that the Kohler SH265 Series engine has a slanted fan cover.

REQUEST FOR ADMISSION NO. 251:

Admit that the Kohler SH265 Series engine has a roughly rectangular fuel tank.

REQUEST FOR ADMISSION NO. 252:

Admit that the Kohler SH265 Series engine has a fuel tank located above the fan cover.

REQUEST FOR ADMISSION NO. 253:

Admit that the Kohler SH265 Series engine has an air cleaner cover with beveled top outside edges.

REQUEST FOR ADMISSION NO. 254:

Admit that the Kohler SH265 Series engine has an air cleaner cover located to the left of the fuel tank.

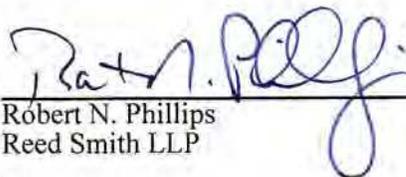
REQUEST FOR ADMISSION NO. 255:

Admit that the Kohler SH265 Series engine has a carburetor cover with a recessed area where control levers are located.

REQUEST FOR ADMISSION NO. 256:

Admit that YOU have never asserted trade dress rights in the ENGINE CONFIGURATION against the Kohler SH265 engine.

August 23, 2012

By: 
Robert N. Phillips
Reed Smith LLP

Seth B. Herring
Reed Smith LLP

Nina Habib Borders
Reed Smith LLP

Attorneys for Opposer
BRIGGS & STRATTON
CORPORATION

By: /s/ Donald Daugherty
Donald Daugherty
Whyte Hirschboeck Duek S.C.

Attorneys for Opposer
KOHLER CO.

CERTIFICATE OF SERVICE

In accordance with Rule 2.105(a) of the Trademark Rules of Practice, as amended, it is hereby certified that a true copy of the foregoing **OPPOSERS REDESIGNED BRIGGS & STRATTON CORPORATION AND KOHLER CO.'S FOURTH SET OF REQUESTS FOR ADMISSION TO APPLICANT HONDA GIKEN KOGYO KABUSHIKI KAISHA (229-256)** was served on the following counsel of record for Applicant, by depositing same in the U.S. mail, first class postage prepaid, this 23rd day of August, 2012:

Michael J. Bevilacqua, Esq.
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Deborah Kalahale

EXHIBIT A



BASCO0000214

EXHIBIT B



BASCO0000205

EXHIBIT C

APPENDIX A

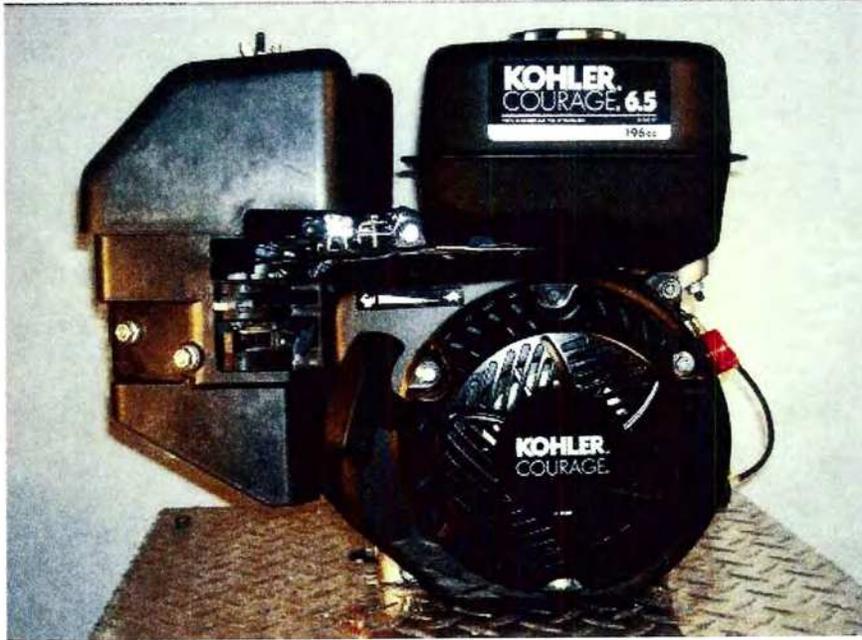


Fig. 1



Fig. 2

PAGES C-16 TO C-37
FILED UNDER SEAL

EXHIBIT D

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

BRIGGS & STRATTON CORPORATION and
KOHLER CO.,

Opposers,

vs.

HONDA GIKEN KOGYO KABUSHIKI
KAISHA,

Applicant.

Opposition No. 91200832
(parent)

Opposition No. 91200146

Application Serial No. 78924545

**OPPOSERS BRIGGS & STRATTON CORPORATION AND KOHLER CO.'S
FIFTH SET OF REQUESTS FOR ADMISSION TO APPLICANT
HONDA GIKEN KOGYO KABUSHIKI KAISHA (257 - 319)**

Opposers Briggs & Stratton Corporation (“Briggs”) and Kohler Co. (“Kohler”) (collectively “Opposers”) hereby requests that Applicant Honda Giken Kogyo Kabushiki Kaisha (“Honda”) admit or deny the following statements within thirty (30) days of service of these Requests pursuant to Rules 26 and 36 of the Federal Rules of Civil Procedure and Section 407 *et seq.* of the Trademark Trial and Appeal Board Manual of Procedure, and in accordance with the Definitions and Instructions listed below.

DEFINITIONS

The following definitions shall apply to the document requests that follow:

A. The terms “YOU” and “YOUR” mean Applicant Honda Giken Kogyo Kabushiki Kaisha (Honda Motor Co., Ltd.), a corporation organized under the laws of Japan, and its predecessors, successors and assigns, including any person or entity acting under its control, or on behalf, of any and all of its parents, subsidiaries, branches, entities, affiliates, departments, divisions, operating units, partners, joint ventures or related companies, and any employee, officer, director, principal, agent, sales representative or attorney who now serves, or at any relevant time served, it in such capacity.

B. The term “ENGINE CONFIGURATION” means the configuration of an engine design described as follows in U.S. Application Serial No. 78/924,545: “The mark consists of the configuration of an engine with an overall cubic design, with a slanted fan cover, the fuel tank located above the fan cover on the right, and the air cleaner cover located to the left of the fuel tank. The air cleaner cover cover features a cube shape with beveled top outside edges, and a belt-like area on the lower portion of the cover encompassing the entire circumference and the top of the belt-like area is aligned with a

rib of the fuel tank. The carburetor cover features four ribs along its outside edge and a recessed area where control levers are located. The fuel tank is roughly rectangular. The engine features a beveling that runs around its top circumference.”

E. The Generac pressure washer is shown in Exhibit A.

F. The V Power Equipment engine is shown in Exhibit B.

G. The Lifan engine is shown in Exhibit C.

H. The Jian Dong engine is shown in Exhibit D.

I. The Blue Max engine is shown in Exhibit E.

J. The All Power engine is shown in Exhibit F.

H. “Referring,” “relating”, and “regarding” include the following: pertaining to, making reference to, concerning, comprising, evidencing, alluding to, responding to, connected with, commenting on, with respect to, about, regarding, resulting from, embodying, explaining, supporting, discussing, showing, describing, reflecting, analyzing, constituting, setting forth, in respect of or having any logical or factual connection with the subject matter in question.

I. The terms “person” and “persons” include natural persons and entities such as any individual or firm, association, organization, joint venture, trust, partnership, corporation, or other collective organization or entity.

J. The singular includes the plural number and vice versa, any use of gender includes both genders and a verb tense includes all other verb tenses where the clear meaning is not distorted by addition of another tense or tenses.

K. Whenever the conjunctive is used, it shall also be taken in the disjunctive, and vice versa.

INSTRUCTIONS

1. For each Request that YOU do not admit, YOUR answer shall specifically deny the matter or state in detail why YOU cannot truthfully admit or deny the matter.
2. YOU are required under Federal Rule of Civil Procedure 36(a)(4) to make a reasonable inquiry to obtain information known or reasonably obtainable by YOU sufficient to permit a fair and informed response to each Request.
3. If YOU object to any Request or portion thereof, state the grounds for YOUR objection in detail and answer all portions of the Request to which YOUR objection does not apply.
4. If in answering any Request, YOU claim ambiguity in the Request, any applicable Definition, or any applicable Instruction, identify in YOUR response the language YOU consider ambiguous and state the interpretation YOU are using in responding.
5. When answering these Requests, YOU are requested to furnish all information available to YOU, or anyone acting on YOUR behalf. If YOU are unable to answer any of these Requests fully or completely after exercising due diligence to secure the requested information, or if YOU assert that such information is privileged, state this fact, describe the nature of the efforts made to secure such information and the nature and basis for any privilege asserted, and answer each Request to the fullest extent possible, describing the nature of any information withheld.
6. These Requests shall be deemed continuing, requiring YOU to serve supplemental responses promptly in accordance with Federal Rule of Civil Procedure 26(e).
7. Unless otherwise stated, the geographic scope of each of the following Requests is limited to the United States of America.

REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 257:

Admit that the Generac pressure washer is advertised at the following web pages:

<http://www.generac.com/all-products/pressure-washers#cat=82>

http://www.homedepot.com/p/Generac-2500-PSI-2-3-GPM-OHV-Engine-Axial-Cam-Pump-Gas-Powered-Pressure-Washer-6020/203407367?cm_mmc=shopping-googleads-pla-203407367&skwid=&kwd=&ci_sku=203407367&ci_kw=&ci_gpa=pla&ci_src=17588969

http://www.lowes.com/pd_378395-24212-6020_0?productId=3558802&cm_mmc=SCE_PLA-PressureWashers-3558802&CAWELAID=1143636430&kpid=3558802&CAGPSPN=pla

<http://www.walmart.com/ip/16565204?wmlspartner=wlp&adid=22222222700000000&wl0=&wl1=g&wl2=c&wl3=41833582510&wl4=&wl5=pla&wl6=19880599990&veh=sem>

REQUEST FOR ADMISSION NO. 258:

Admit that YOU have knowledge of use in commerce of the Generac pressure washer.

REQUEST FOR ADMISSION NO. 259:

Admit that the engine on the Generac pressure washer has a cubic design.

REQUEST FOR ADMISSION NO. 260:

Admit that the engine on the Generac pressure washer has a slanted fan cover.

REQUEST FOR ADMISSION NO. 261:

Admit that the engine on the Generac pressure washer has a roughly rectangular fuel tank.

REQUEST FOR ADMISSION NO. 262:

Admit that the engine on the Generac pressure washer has a fuel tank located above the fan cover.

REQUEST FOR ADMISSION NO. 263:

Admit that the engine on the Generac pressure washer has an air cleaner cover with beveled top outside edges.

REQUEST FOR ADMISSION NO. 264:

Admit that the engine on the Generac pressure washer has an air cleaner cover to the left of the fuel tank.

REQUEST FOR ADMISSION NO. 265:

Admit that the engine on the Generac pressure washer has a carburetor cover with a recessed area where control levers are located.

REQUEST FOR ADMISSION NO. 266:

Admit that YOU have never asserted trade dress right in the ENGINE CONFIGURATION against the engine on the Generac pressure washer.

REQUEST FOR ADMISSION NO. 267:

Admit that the V Power Equipment engine is advertised at the following web page:

<http://www.vpowerequipment.com/index.php/engines/5-5-7-hp-engines.html>

REQUEST FOR ADMISSION NO. 268:

Admit that YOU have knowledge of use in commerce of the V Power Equipment engine.

REQUEST FOR ADMISSION NO. 269:

Admit that the V Power Equipment engine has a cubic design.

REQUEST FOR ADMISSION NO. 270:

Admit that the V Power Equipment engine has a slanted fan cover.

REQUEST FOR ADMISSION NO. 271:

Admit that the V Power Equipment engine has a roughly rectangular fuel tank.

REQUEST FOR ADMISSION NO. 272:

Admit that the V Power Equipment engine has a fuel tank located above the fan cover.

REQUEST FOR ADMISSION NO. 273:

Admit that the V Power Equipment engine has an air cleaner cover with a cube shape.

REQUEST FOR ADMISSION NO. 274:

Admit that the V Power Equipment engine has an air cleaner cover with beveled top outside edges.

REQUEST FOR ADMISSION NO. 275:

Admit that the V Power Equipment engine has an air cleaner cover located to the left of the fuel tank.

REQUEST FOR ADMISSION NO. 276:

Admit that the V Power Equipment engine has a carburetor cover with a recessed area where control levers are located.

REQUEST FOR ADMISSION NO. 277:

Admit that YOU have never asserted trade dress right in the ENGINE CONFIGURATION against the V Power Equipment engine.

REQUEST FOR ADMISSION NO. 278:

Admit that the Lifan engine is advertised at the following web pages:

<http://www.lifanpowerusa.com/engines/6-5mhp/>

<http://www.brandnewengines.com/LF168F-2BQ.aspx>

REQUEST FOR ADMISSION NO. 279:

Admit that YOU have knowledge of use in commerce of the Lifan engine.

REQUEST FOR ADMISSION NO. 280:

Admit that the Lifan engine has a cubic design.

REQUEST FOR ADMISSION NO. 281:

Admit that the Lifan engine has a slanted fan cover.

REQUEST FOR ADMISSION NO. 282:

Admit that the Lifan engine has a roughly rectangular fuel tank.

REQUEST FOR ADMISSION NO. 283:

Admit that the Lifan engine has a fuel tank located above the fan cover.

REQUEST FOR ADMISSION NO. 284:

Admit that the Lifan engine has an air cleaner cover with beveled top outside edges.

REQUEST FOR ADMISSION NO. 285:

Admit that the Lifan engine has an air cleaner cover located to the left of the fuel tank.

REQUEST FOR ADMISSION NO. 286:

Admit that the Lifan engine has a carburetor cover with a recessed area where control levers are located.

REQUEST FOR ADMISSION NO. 287:

Admit that YOU have never asserted trade dress rights in the ENGINE CONFIGURATION against the Lifan engine.

REQUEST FOR ADMISSION NO. 288:

Admit that the Jian Dong engine is advertised at the following web pages:

<http://www.enginejd.com/index.en.html>

http://www.enginejd.com/list_2_60_68.html

<http://www.globalindustrial.com/p/motors/Motors-Gas-Engines/motors-gas-engine/13-hp-1-keyed-shaft-epa-engine-recoil-start?infoParam.campaignId=T9F&gclid=COi715vBx70CFbFaMgodjkoANg>

REQUEST FOR ADMISSION NO. 289:

Admit that YOU have knowledge of use in commerce of the Jian Dong engine.

REQUEST FOR ADMISSION NO. 290:

Admit that the Jian Dong engine has a cubic design.

REQUEST FOR ADMISSION NO. 291:

Admit that the Jian Dong engine has a slanted fan cover.

REQUEST FOR ADMISSION NO. 292:

Admit that the Jian Dong engine has a roughly rectangular fuel tank.

REQUEST FOR ADMISSION NO. 293:

Admit that the Jian Dong engine has a fuel tank located above the fan cover.

REQUEST FOR ADMISSION NO. 294:

Admit that the Jian Dong engine has an air cleaner cover with beveled top outside edges.

REQUEST FOR ADMISSION NO. 295:

Admit that the Jian Dong engine has an air cleaner cover located to the left of the fuel tank.

REQUEST FOR ADMISSION NO. 296:

Admit that the Jian Dong engine has a carburetor cover with a recessed area where control levers are located.

REQUEST FOR ADMISSION NO. 297:

Admit that YOU have never asserted trade dress rights in the ENGINE CONFIGURATION against the Jian Dong engine.

REQUEST FOR ADMISSION NO. 298:

Admit that Jian Dong submitted the design of the Jian Dong engine to YOU for review pursuant to YOUR settlement agreement with Jian Dong.

REQUEST FOR ADMISSION NO. 299:

Admit that YOU advised Jian Dong that the external appearance of the Jian Dong engine is acceptable to YOU.

REQUEST FOR ADMISSION NO. 300:

Admit that the Blue Max engine is advertised at the following web pages:

<http://www.homedepot.com/p/Blue-Max-13-HP-OHV-Horizontal-Shaft-Gasoline-Engine-6787/202342258>

<http://www.sears.com/blue-max-11hp-4-stroke-340-cc-gas/p-07191205000P?sid=IDx01192011x000001&kpid=07191205000&kispla=07191205000P&sid=IDx20131030xMPAPxCPA28>

<http://www.amazon.com/Blue-Max-GE65B-4-Stroke-Horizontal/dp/B001IDZ7XS>

REQUEST FOR ADMISSION NO. 301:

Admit that YOU have knowledge of use in commerce of the Blue Max engine.

REQUEST FOR ADMISSION NO. 302:

Admit that the Blue Max engine has a cubic design.

REQUEST FOR ADMISSION NO. 303:

Admit that the Blue Max engine has a slanted fan cover.

REQUEST FOR ADMISSION NO. 304:

Admit that the Blue Max engine has a roughly rectangular fuel tank.

REQUEST FOR ADMISSION NO. 305:

Admit that the Blue Max engine has a fuel tank located above the fan cover.

REQUEST FOR ADMISSION NO. 306:

Admit that the Blue Max engine has an air cleaner cover with beveled top outside edges.

REQUEST FOR ADMISSION NO. 307:

Admit that the Blue Max engine has an air cleaner cover located to the left of the fuel tank.

REQUEST FOR ADMISSION NO. 308:

Admit that the Blue Max engine has a carburetor cover with a recessed area where control levers are located.

REQUEST FOR ADMISSION NO. 309:

Admit that YOU have never asserted trade dress rights in the ENGINE CONFIGURATION against the Blue Max engine.

REQUEST FOR ADMISSION NO. 310:

Admit that the All Power engine is advertised at the following web page:

<http://www.allpoweramerica.com/#!/engines/c1mgl>.

REQUEST FOR ADMISSION NO. 311:

Admit that YOU have knowledge of use in commerce of the All Power engine.

REQUEST FOR ADMISSION NO. 312:

Admit that the All Power engine has a cubic design.

REQUEST FOR ADMISSION NO. 313:

Admit that the All Power engine has a slanted fan cover.

REQUEST FOR ADMISSION NO. 314:

Admit that the All Power engine has a roughly rectangular fuel tank.

REQUEST FOR ADMISSION NO. 315:

Admit that the All Power engine has a fuel tank located above the fan cover.

REQUEST FOR ADMISSION NO. 316:

Admit that the All Power engine has an air cleaner cover with beveled top outside edges.

REQUEST FOR ADMISSION NO. 317:

Admit that the All Power engine has an air cleaner cover located to the left of the fuel tank.

REQUEST FOR ADMISSION NO. 318:

Admit that the All Power engine has a carburetor cover with a recessed area where control levers are located.

REQUEST FOR ADMISSION NO. 319:

Admit that YOU have never asserted trade dress rights in the ENGINE CONFIGURATION against the All Power engine.

April 4, 2014

By: /s/ Robert N. Phillips
Robert N. Phillips
Reed Smith LLP

Seth B. Herring
Reed Smith LLP

Nina Habib Borders
Reed Smith LLP

Attorneys for Opposer
BRIGGS & STRATTON
CORPORATION

By: /s/ Donald Daugherty
Donald Daugherty
Whyte Hirschboeck Duek S.C.

Attorneys for Opposer
KOHLE R CO.

Exhibit A

Generac Pressure Washer



Exhibit B

V Power Equipment Engine



Exhibit C

Lifan Engine



Exhibit D
Jian Dong Engine



Exhibit E

Blue Max Engine



Exhibit F

All Power Engine



CERTIFICATE OF SERVICE

In accordance with Rule 2.105(a) of the Trademark Rules of Practice, as amended, it is hereby certified that a true copy of the foregoing **OPPOSERS REDESIGNED BRIGGS & STRATTON CORPORATION AND KOHLER CO.'S FIFTH SET OF REQUESTS FOR ADMISSION TO APPLICANT HONDA GIKEN KOGYO KABUSHIKI KAISHA (257-319)** was served on the following counsel of record for Applicant, by depositing same in the U.S. mail, first class postage prepaid, this 4th day of April, 2014:

Michael J. Bevilacqua, Esq.
Vinita Ferrera, Esq.
Silena Y. Paik, Esq.
Sarah R. Frazier, Esq.
Wilmer Cutler Pickering Hale and Dorr LLP
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Boston, MA 02109-1800
Phone: (617) 526-6448
Fax: (617) 526-5000

/s/ Deborah Kalahale
Deborah Kalahale

PAGES D-21 TO D-65
FILED UNDER SEAL

EXHIBIT E

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

BRIGGS & STRATTON CORPORATION and
KOHLER CO.,

Opposers,

vs.

HONDA GIKEN KOGYO KABUSHIKI
KAISHA,

Applicant.

Opposition No. 91200832
(parent)

Opposition No. 91200146

Application Serial No. 78924545

OPPOSERS BRIGGS & STRATTON CORPORATION AND KOHLER CO.'S
AMENDED SIXTH SET OF REQUESTS FOR ADMISSION TO APPLICANT
HONDA GIKEN KOGYO KABUSHIKI KAISHA (320 - 352)

Opposers Briggs & Stratton Corporation (“Briggs”) and Kohler Co. (“Kohler”) (collectively “Opposers”) hereby requests that Applicant Honda Giken Kogyo Kabushiki Kaisha (“Honda”) admit or deny the following statements within thirty (30) days of service of these Requests pursuant to Rules 26 and 36 of the Federal Rules of Civil Procedure and Section 407 *et seq.* of the Trademark Trial and Appeal Board Manual of Procedure, and in accordance with the Definitions and Instructions listed below.

DEFINITIONS

The following definitions shall apply to the document requests that follow:

- A. The terms “YOU” and “YOUR” mean Applicant Honda Giken Kogyo Kabushiki Kaisha (Honda Motor Co., Ltd.), a corporation organized under the laws of Japan, and all of its affiliates and subsidiaries, and all persons or entities acting on their behalf or under their control.
- B. “Referring,” “relating”, and “regarding” include the following: pertaining to, making reference to, concerning, comprising, evidencing, alluding to, responding to, connected with, commenting on, with respect to, about, regarding, resulting from, embodying, explaining, supporting, discussing, showing, describing, reflecting, analyzing, constituting, setting forth, in respect of or having any logical or factual connection with the subject matter in question.
- C. The terms “person” and “persons” include natural persons and entities such as any individual or firm, association, organization, joint venture, trust, partnership, corporation, or other collective organization or entity.

D.. The singular includes the plural number and vice versa, any use of gender includes both genders and a verb tense includes all other verb tenses where the clear meaning is not distorted by addition of another tense or tenses.

E. Whenever the conjunctive is used, it shall also be taken in the disjunctive, and vice versa.

INSTRUCTIONS

1. For each Request that YOU do not admit, YOUR answer shall specifically deny the matter or state in detail why YOU cannot truthfully admit or deny the matter.

2. YOU are required under Federal Rule of Civil Procedure 36(a)(4) to make a reasonable inquiry to obtain information known or reasonably obtainable by YOU sufficient to permit a fair and informed response to each Request.

3. If YOU object to any Request or portion thereof, state the grounds for YOUR objection in detail and answer all portions of the Request to which YOUR objection does not apply.

4. If in answering any Request, YOU claim ambiguity in the Request, any applicable Definition, or any applicable Instruction, identify in YOUR response the language YOU consider ambiguous and state the interpretation YOU are using in responding.

5. When answering these Requests, YOU are requested to furnish all information available to YOU, or anyone acting on YOUR behalf. If YOU are unable to answer any of these Requests fully or completely after exercising due diligence to secure the requested information, or if YOU assert that such information is privileged, state this fact, describe the nature of the efforts made to secure such information and the nature and basis for any privilege asserted, and answer each Request to the fullest extent possible, describing the nature of any information withheld.

6. These Requests shall be deemed continuing, requiring YOU to serve supplemental responses promptly in accordance with Federal Rule of Civil Procedure 26(e).

REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 320:

Admit that the document produced in this proceeding by YOU with Bates number(s) AHGXC002503 - AHGXC002514, an electronic version of which appears on the CD attached hereto as Exhibit 1, is a true and correct copy of a document kept by YOU in the ordinary course of business.

REQUEST FOR ADMISSION NO. 321:

Admit that the document produced in this proceeding by YOU with Bates number(s) AHGX0100191 - AHGXC0100192, an electronic version of which appears on the CD attached hereto as Exhibit 1, is a true and correct copy of a document kept by YOU in the ordinary course of business.

REQUEST FOR ADMISSION NO. 322:

Admit that the document produced in this proceeding by YOU with Bates number(s) AHGXC000648 - AHGXC000652, an electronic version of which appears on the CD attached hereto as Exhibit 1, is a true and correct copy of a document kept by YOU in the ordinary course of business.

REQUEST FOR ADMISSION NO. 323:

Admit that the document produced in this proceeding by YOU with Bates number(s) AHGX0097669, an electronic version of which appears on the CD attached hereto as Exhibit 1, is a true and correct copy of a document kept by YOU in the ordinary course of business.

REQUEST FOR ADMISSION NO. 324:

Admit that the document produced in this proceeding by YOU with Bates number(s) AHGXC002234 - AHGXC002247, an electronic version of which appears on the CD attached hereto as Exhibit 1, is a true and correct copy of a document kept by YOU in the ordinary course of business.

REQUEST FOR ADMISSION NO. 325:

Admit that the document produced in this proceeding by YOU with Bates number(s) AHGXC002254 - AHGXC002256, an electronic version of which appears on the CD attached hereto as Exhibit 1, is a true and correct copy of a document kept by YOU in the ordinary course of business.

REQUEST FOR ADMISSION NO. 326:

Admit that the document produced in this proceeding by YOU with Bates number(s) AHGXC002257 - AHGXC002259, an electronic version of which appears on the CD attached hereto as Exhibit 1, is a true and correct copy of a document kept by YOU in the ordinary course of business.

REQUEST FOR ADMISSION NO. 327:

Admit that the document produced in this proceeding by YOU with Bates number(s) AHGXC002260 - AHGXC002276, an electronic version of which appears on the CD attached hereto as Exhibit 1, is a true and correct copy of a document kept by YOU in the ordinary course of business.

REQUEST FOR ADMISSION NO. 328:

Admit that the document produced in this proceeding by YOU with Bates number(s) AHGXC002381 - AHGXC002382, an electronic version of which appears on the CD attached hereto as Exhibit 1, is a true and correct copy of a document kept by YOU in the ordinary course of business.

REQUEST FOR ADMISSION NO. 329:

Admit that the document produced in this proceeding by YOU with Bates number(s) AHGXC002386, an electronic version of which appears on the CD attached hereto as Exhibit 1, is a true and correct copy of a document kept by YOU in the ordinary course of business.

REQUEST FOR ADMISSION NO. 330:

Admit that the document produced in this proceeding by YOU with Bates number(s) AHGXC002407 - AHGXC002413, an electronic version of which appears on the CD attached hereto as Exhibit 1, is a true and correct copy of a document kept by YOU in the ordinary course of business.

REQUEST FOR ADMISSION NO. 331:

Admit that the document produced in this proceeding by YOU with Bates number(s) AHGX0099495, an electronic version of which appears on the CD attached hereto as Exhibit 1, is a true and correct copy of a document kept by YOU in the ordinary course of business.

REQUEST FOR ADMISSION NO. 332:

Admit that the document produced in this proceeding by YOU with Bates number(s) AHGX0057924 - AHGX0057951, an electronic version of which appears on the CD attached hereto as Exhibit 1, is an English translation of a true and correct copy of a document kept by YOU in the ordinary course of business.

REQUEST FOR ADMISSION NO. 333:

Admit that the document produced in this proceeding by YOU with Bates number(s) AHGX0063249 - AHGX0063296, an electronic version of which appears on the CD attached hereto as Exhibit 1, is a true and correct copy of a document kept by YOU in the ordinary course of business.

REQUEST FOR ADMISSION NO. 334:

Admit that the document produced in this proceeding by YOU with Bates number(s) AHGXC000102 - AHGXC000172, an electronic version of which appears on the CD attached hereto as Exhibit 1, is a true and correct copy of a document kept by YOU in the ordinary course of business.

REQUEST FOR ADMISSION NO. 335:

Admit that the document produced in this proceeding by YOU with Bates number(s) AHGX0002543 - AHGX0002557, an electronic version of which appears on the CD attached hereto as Exhibit 1, is a true and correct copy of a document kept by YOU in the ordinary course of business.

REQUEST FOR ADMISSION NO. 336:

Admit that the document produced in this proceeding by YOU with Bates number(s) AHGX0032839 - AHGX0032844, an electronic version of which appears on the CD attached hereto as Exhibit 1, is a true and correct copy of a document kept by YOU in the ordinary course of business.

REQUEST FOR ADMISSION NO. 337:

Admit that the document produced in this proceeding by YOU with Bates number(s) AHGX0035801 - AHGX0035809, an electronic version of which appears on the CD attached hereto as Exhibit 1, is a true and correct copy of a document kept by YOU in the ordinary course of business.

REQUEST FOR ADMISSION NO. 338:

Admit that the document produced in this proceeding by YOU with Bates number(s) AHGX0059476 - AHGX0059532, an electronic version of which appears on the CD attached hereto as Exhibit 1, is a true and correct copy of a document kept by YOU in the ordinary course of business.

REQUEST FOR ADMISSION NO. 339:

Admit that the document produced in this proceeding by YOU with Bates number(s) AHGX0080272 - AHGX0080275, an electronic version of which appears on the CD attached hereto as Exhibit 1, is a true and correct copy of a document kept by YOU in the ordinary course of business.

REQUEST FOR ADMISSION NO. 340:

Admit that the document produced in this proceeding by YOU with Bates number(s) AHGXC001199 - AHGXC001231, an electronic version of which appears on the CD attached hereto as Exhibit 1, is a true and correct copy of a document kept by YOU in the ordinary course of business.

REQUEST FOR ADMISSION NO. 341:

Admit that the document produced in this proceeding by YOU with Bates number(s) AHGX0052867 - AHGX0052883, an electronic version of which appears on the CD attached hereto as Exhibit 1, is a true and correct copy of a document kept by YOU in the ordinary course of business.

REQUEST FOR ADMISSION NO. 342:

Admit that the document produced in this proceeding by YOU with Bates number(s) AHGX0078720 - AHGX0078721, an electronic version of which appears on the CD attached hereto as Exhibit 1, is a true and correct copy of a document kept by YOU in the ordinary course of business.

REQUEST FOR ADMISSION NO. 343:

Admit that the document produced in this proceeding by YOU with Bates number(s) AHGX0009546 - AHGX0009547, an electronic version of which appears on the CD attached hereto as Exhibit 1, is a true and correct copy of a document kept by YOU in the ordinary course of business.

REQUEST FOR ADMISSION NO. 344:

Admit that the document produced in this proceeding by YOU with Bates number(s) AHGX0044077, an electronic version of which appears on the CD attached hereto as Exhibit 1, is a true and correct copy of a document kept by YOU in the ordinary course of business.

REQUEST FOR ADMISSION NO. 345:

Admit that the document produced in this proceeding by YOU with Bates number(s) AHGX0039079 - AHGX0039095, an electronic version of which appears on the CD attached hereto as Exhibit 1, is a true and correct copy of a document kept by YOU in the ordinary course of business.

REQUEST FOR ADMISSION NO. 346:

Admit that the document produced in this proceeding by YOU with Bates number(s) AHGX0059432 - AHGX0059451, an electronic version of which appears on the CD attached hereto as Exhibit 1, is a true and correct copy of a document kept by YOU in the ordinary course of business.

REQUEST FOR ADMISSION NO. 347:

Admit that the document produced in this proceeding by YOU with Bates numbers AHGX0052867 - AHGX0052883, an electronic version of which appears on the CD attached hereto as Exhibit 1, is an English language version of a request for a preliminary injunction made by authorized legal representatives of YOU to an Istanbul Commercial Court.

REQUEST FOR ADMISSION NO. 348:

Admit that the document produced in this proceeding by YOU with Bates numbers AHGXC002503 - AHGXC002514, an electronic version of which appears on the CD attached hereto as Exhibit 1, is a submission by Jiangdong to YOU of images of a

proposed redesign of an engine for review by YOU pursuant to the parties' settlement agreement.

REQUEST FOR ADMISSION NO. 349:

Admit that the document produced in this proceeding by YOU with Bates numbers AHGX0100191 - AHGX0100192, an electronic version of which appears on the CD attached hereto as Exhibit 1, is YOUR response to Jiangdong that the proposed redesign as depicted in the images provided by Jiangdong are acceptable to YOU and that YOU requested a first article inspection sample thereof.

REQUEST FOR ADMISSION NO. 350:

Admit that YOU received from Jiandong a sample of an engine pursuant to YOUR request under the parties' settlement agreement.

REQUEST FOR ADMISSION NO. 351:

Admit that YOU asserted no objections to the appearance of the engine sample received from Jiangdong pursuant to YOUR request under the parties' settlement agreement.

REQUEST FOR ADMISSION NO. 352:

Admit that the document attached hereto as Exhibit 2 is a true and correct copy of a decision of the Office for Harmonization in the Internal Market (Trademarks and Designs) ("OHIM") with respect to YOUR Community Trademark Application No 3365996.

REQUEST FOR ADMISSION NO. 353:

Admit that the December 16, 2005 decision of OHIM with respect to YOUR Community Trademark Application No 3365996 states, among other things, that

"It seems entirely logical that the various components of an engine should be 'in line' along the upper vertical plane and two of the horizontal planes. Such features have the desirable consequence that the engine fits more easily into a confined space."

June 11, 2014

By: /s/ Robert N. Phillips
Robert N. Phillips
Reed Smith LLP

Seth B. Herring
Reed Smith LLP

Attorneys for Opposer
BRIGGS & STRATTON
CORPORATION

/s/ Donald Daugherty
Donald Daugherty
Whyte Hirschboeck Duck S.C.

By: Attorneys for Opposer
KOHLER CO.

CERTIFICATE OF SERVICE

In accordance with Rule 2.105(a) of the Trademark Rules of Practice, as amended, it is hereby certified that a true copy of the foregoing OPPOSERS BRIGGS & STRATTON CORPORATION AND KOHLER CO.'S **AMENDED** SIXTH SET OF REQUESTS FOR ADMISSION TO APPLICANT HONDA GIKEN KOGYO KABUSHIKI KAISHA (320-353) was served on the following counsel of record for Applicant, by depositing same in the U.S. mail, first class postage prepaid, this 11th day of June, 2014:

Michael J. Bevilacqua
Vinita Ferrera
Silena Y. Paik
Sarah R. Frazier
Shira C. Hoffman
Wilmer Cutler Pickering Hale and Dorr LLP
60 State Street
Boston, MA 02109-1800
Phone: (617) 526-6448
Fax: (617) 526-5000

/s/ Deborah Kalahale
Deborah Kalahale

EXHIBIT 1

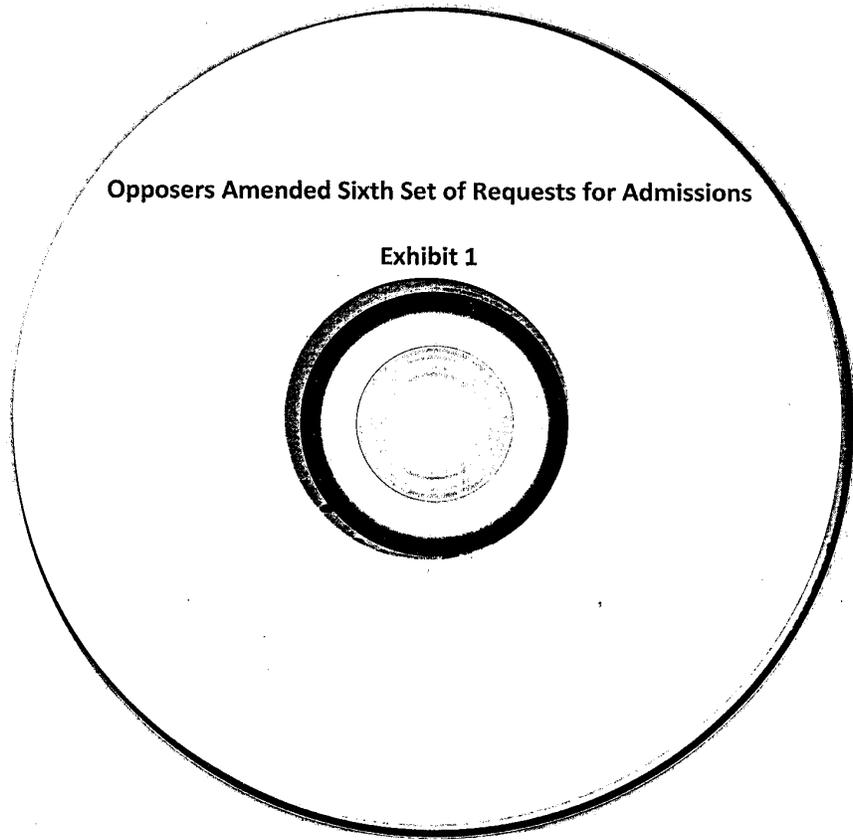


EXHIBIT 2

OFFICE FOR HARMONIZATION IN THE INTERNAL MARKET
(TRADE MARKS AND DESIGNS)

The Boards of Appeal

DECISION
of the Second Board of Appeal
of 16 December 2005

In Case R 942/2005-2

Honda Giken Kogyo Kabushiki Kaisha
(also trading as Honda Motor Co., Ltd.)
No. 1-1, Minami-aoyama 2-chome, Minato-ku
J-Tokyo 107-8556
Japan

Appellant

represented by HASELTINE LAKE, Redcliff Quay, 120 Redcliff Street,
Bristol BS1 6HU, United Kingdom

APPEAL relating to Community trade mark application No 3 365 996

THE SECOND BOARD OF APPEAL

composed of K. Sundström (Chairperson), D.T. Keeling (Rapporteur) and
M. Bra (Member)

Registrar: E. Gastinel

gives the following

Language of the case: English

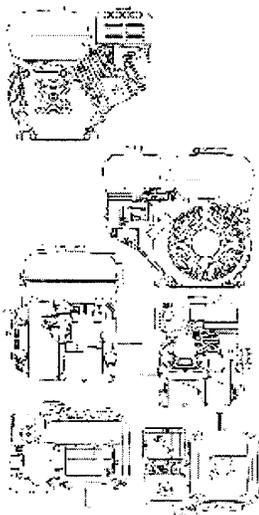
Decision

Summary of the facts

- 1 On 17 September 2003 the appellant filed an application to register a three-dimensional trade mark for the following goods:

Class 7 – Engines, except for land vehicles.

- 2 The mark was represented as follows:



- 3 By letter of 14 May 2004 the examiner informed the appellant that the trade mark was not eligible for registration because it did not comply with Article 7(1)(b) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark ('CTMR') (OJ EC 1994 No L 11, p. 1; OJ OHIM 1/95, p. 52). The examiner stated that:
 - The mark applied for is a simple representation consisting exclusively of a view of the goods, with no additional element that could be regarded as fanciful or arbitrary.
 - The public will not perceive such a banal representation of an engine as a trade mark.
 - A monopoly cannot be granted over such a shape because any undertaking should be free to use this shape for such products.
- 4 The examiner invited the appellant to submit observations within a period of two months. The time limit was extended until 14 November 2005.
- 5 Having received no observations from the appellant, the examiner refused the application by decision of 30 May 2005 ('the contested decision').

- 6 On 1 August 2005 the appellant filed a notice of appeal against the contested decision. The grounds of appeal were filed on 30 September 2005.
- 7 The appeal was submitted to the examiner for revision pursuant to Article 60 CTMR. It was remitted to the Boards of Appeal on 18 November 2005.

Grounds of appeal

- 8 The appellant points out that it submitted observations to the examiner on 15 November 2004 but referred by mistake to CTM Application No 3 365 954 (which is now the subject of Appeal No R 943/2005-2). The appellant considers that the examiner should have been able to work out that the observations related to CTM Application No 3 365 996. The appellant asks the Board in any event to take into account the grounds of appeal in Case R 943/2005-2, except in so far as these refer to the colours used in the trade mark at issue in the other appeal.

Reasons

- 9 The appeal complies with Articles 57, 58 and 59 CTMR and Rule 48 of Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark (OJ EC 1995 No L 303, p. 1; OJ OHIM 2-3/95, p. 258). It is therefore admissible.
- 10 Article 7 CTMR, bearing the title ‘absolute grounds for refusal’, provides in material part:
 - ‘1. The following shall not be registered:
...
(b) trade marks which are devoid of any distinctive character;
...
2. Paragraph 1 shall apply notwithstanding that the grounds of non-registrability obtain in only part of the Community.
3. Paragraph 1 (b), (c) and (d) shall not apply if the trade mark has become distinctive in relation to the goods or services for which registration is requested in consequence of the use which has been made of it.’
- 11 There is no doubt that the shape of a product can function as a trade mark. That is recognized by the clear wording of Articles 4 and 7(1)(e) CTMR. The Court of Justice and Court of First Instance have stated that the criteria for appraising the distinctiveness of a three-dimensional trade mark consisting of the shape of the product itself are no different from those applicable to other categories of

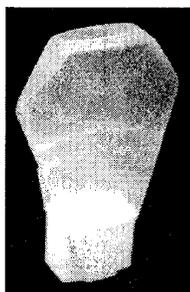
trade mark. The Courts have, however, also stated that when those criteria are applied account must be taken of the fact that the perception of the relevant section of the public is not necessarily the same in relation to a three-dimensional mark consisting of the shape of the product itself as it is in relation to a word mark or a figurative mark. The Courts have stated that, while the public is used to recognizing word marks or figurative marks instantly as signs identifying the product, this is not necessarily so when the sign is indistinguishable from the appearance of the product itself: see Case T-337/99 *Henkel KGaA v OHIM* [2001] ECR II-2597, at paragraphs 45 to 46, and Joined Cases C-456/01 P and C-457/01 P *Henkel KGaA v OHIM* [2004] ECR I-5089, at paragraph 38.

- 12 If the public's perception of three-dimensional marks is different from its perception of word and figurative marks, that would seem to imply that the criteria for assessing the distinctiveness of three-dimensional marks consisting of the shape of the product are not in fact the same as those applicable to other categories of trade marks. Here it must be borne in mind that the Courts have frequently stressed that the distinctiveness of a trade mark is to be assessed in relation to the perception of the trade mark by the relevant section of the public: see, for example, Joined Cases C-53/01, C-54/01 and C-55/01 *Linde AG, Winward Industries Inc. and Rado Uhren AG v Deutsches Patent- und Markenamt* [2003] ECR I-3161, at paragraph 41; Case T-337/99 *Henkel KGaA v OHIM* (cited above), at paragraph 47; Joined Cases T-324/01 and T-110/02 *Axion S.A. and Christian Belce v OHIM* [2003] ECR II-1897, at paragraph 30, and Case T-305/02 *Nestlé Waters France v OHIM* [2003] ECR II-5207, at paragraph 29.
- 13 A results-oriented analysis of the Courts' case law suggests that it is relatively difficult to establish the inherent distinctiveness of three-dimensional trade marks consisting of the appearance of the product. The Courts have generally upheld the decisions of the Boards of Appeal that have found such marks to be devoid of distinctive character: see Case T-337/99 *Henkel KGaA v OHIM* (cited above), Case T-129/00 *Procter & Gamble v OHIM* [2001] ECR II-2793, Case T-88/00 *Mag Instrument Inc. v OHIM* [2002] ECR II-467, Case T-63/01 *Procter & Gamble v OHIM* [2002] ECR II-5255, Case T-194/01 *Unilever NV v OHIM* [2003] ECR II-383, *Axion SA and Christian Belce v OHIM* (cited above), T-399/02 *Eurocermex SA v OHIM*, judgment of 29 April 2004, Joined Cases C-468/01 P to C-472/01 P *Procter & Gamble v OHIM* [2004] ECR I-5141, Case C-136/02 P *Mag Instrument Inc. v OHIM*, judgment of 7 October 2004, T-396/02 *August Storck v OHIM*, judgment of 10 November 2004, T-360/03 *Frischpack v OHIM*, judgment of 23 November 2004, and Case C-286/04 P *Eurocermex SA v OHIM*, judgment of 30 June 2005.

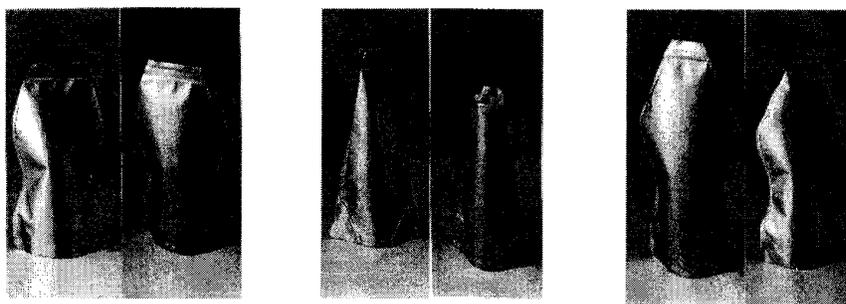
- 14 The only exceptions to the restrictive approach so far taken by the Court of First Instance are the aforesaid judgment in *Nestlé Waters France v OHIM* and the judgment of 24 November 2004 in Case T-393/02 *Henkel KGaA v OHIM*. In *Nestlé Water France* the Court held that the following shape was inherently distinctive as a trade mark for mineral water:



- 15 In the *Henkel* case the Court held that the following shape was inherently distinctive as a trade mark for 'soaps' and 'washing and bleaching agents for laundry' among other products:



- 16 The two judgments just cited may be contrasted with the judgment in Joined Cases T-146/02 to T-153/02 *Deutsche SiSi-Werke v OHIM* [2004] ECR II-447. There the Court held that a series of shapes, including the following three, were devoid of distinctive character for fruit juice and other beverages:



- 17 The three judgments cited in paragraphs 14 to 16 show that it is not always easy to determine whether a three-dimensional trade mark consisting of the shape of a product possesses inherent distinctive character. The case law of the Boards

of Appeal also highlights this difficulty. Like the Court of First Instance, the Boards have in general adopted a restrictive approach in their recent case law: see, for example, Case R 350/2001-2, Case R 838/2002-1, Case R 104/2001-4, Case R 676/1999-2, Case R 533/2002-2, Case R 179/2004-2 and Case R 493/2003-1. The decisions in which a more lenient approach has been taken are less numerous: see, for example, Case R 995/2002-4 and Case R 112/2004-1.

- 18 The Court of Justice has held that a three-dimensional trade mark consisting of the shape of a product possesses distinctive character if it departs significantly from the norms or customs of the relevant sector: see, for example, Case C-468/01 P to C-472/01 P *Procter & Gamble v OHIM* (cited above), at paragraph 37, and Case C-218/01 *Henkel KGaA* [2004] ECR I-1725, at paragraph 49. That again suggests that this particular category of trade marks is not subject to exactly the same criteria as word marks. In relation to the latter the Court has said that ‘any perceptible difference’ between the combination of words submitted for registration and the terms used in common parlance by the relevant class of consumers is sufficient to endow the combination with distinctive character: see Case C-383/99 P *Procter & Gamble v OHIM* (‘Baby-Dry’) [2001] ECR I-6251, at paragraph 40.
- 19 The question then is whether the shape depicted in paragraph 2 above departs significantly from the norms and customs of the relevant sector. In the Board’s opinion, there is nothing particularly unusual or striking about this shape. It looks like a perfectly normal engine. The features of shape referred to by the appellant in its grounds of appeal are (1) that the various components of the engine are presented in such a way that the upper surfaces are on one level and (2) the components are arranged so they are in effect ‘in line’ along the drive shaft and fan cover sides. The Board is unable to comprehend why these features of shape should be perceived as constitutive of a trade mark. On the contrary, it seems entirely logical that the various components of an engine should be ‘in line’ along the upper vertical plane and two of the horizontal planes. Such features have the desirable consequence that the engine fits more easily into a confined space.
- 20 In its grounds of appeal the appellant alluded to the possibility of distinctiveness acquired through use in accordance with Article 7(3) CTMR. It is appropriate to remit the case to the examiner for further consideration of that possibility.

Order

On those grounds,

THE BOARD

hereby:

- 1. Dismisses the appeal;**
- 2. Remits the case to the examiner for further prosecution.**

K. Sundström

D.T. Keeling

M. Bra

Registrar:

E. Gastinel

PAGES E-23 TO E-153
FILED UNDER SEAL

EXHIBIT F

PAGES F-1 TO F-21
FILED UNDER SEAL