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

Proceeding	92059235
Party	Plaintiff Nite lze, Inc.
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Date	01/15/2015
Attachments	92059235FirstSetofInterrogatoryRequests.pdf(53329 bytes) 92059235FirstSetofRequestsforAdmission.pdf(49173 bytes)

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

In the Matter of Trademark Registration No. 4179235
Mark: NITEYE

NITE IZE, INC.,)	
)	
Petitioner,)	Cancellation No. 92059235
)	
v.)	
)	
ZHANGWEI MO,)	
)	
Respondent.)	

PETITIONER’S FIRST SET OF INTERROGATORY REQUESTS

Petitioner Nite Ize, Inc. (“Petitioner” or “Nite Ize”), through undersigned counsel, submits the following interrogatories to be answered by Respondent Mo, Zhangwei (“Respondent”) pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.120.

INSTRUCTIONS

1. Pursuant to Rule 33 of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.120, Respondent must respond fully and completely to the following interrogatories requests for admission, in writing and under oath, within thirty (30) days of service hereof.

2. When answering each interrogatory, furnish all available information in your possession, the possession of your attorneys and representatives, or any other person acting on your behalf. If any of the information or documents requested herein is not in the possession of Defendant, but is known or believed to be in the possession of another person, business, organization or entity, identify that person, business, organization or entity. If you are unable to provide all of the information requested in any request, answer to the extent possible, specify the reason for your inability to answer the remainder, and state whatever information and knowledge you have regarding the unanswered portion. When an Interrogatory does not specifically request a fact, but

such additional fact is necessary to make the interrogatory response comprehensible, complete, and not misleading, the interrogatory should be deemed to include a specific request for that fact. Each interrogatory is to be construed independently and not by reference to any other interrogatory for the purpose of limitation.

3. Pursuant to Rule 26(e) of the Colorado Rules of Civil Procedure these interrogatories are continuing, and to the extent that the answers may be enlarged, diminished, or otherwise modified by information acquired by you subsequent to the service of the answers hereto, you are requested to promptly serve supplemental answers reflecting such changes.

DEFINITIONS

For the purposes of these interrogatories, the following definitions shall apply:

4. The term “you” and “your” shall refer to Respondent, MO, ZHANGWEI, and any person acting on their behalf.

5. Use of the singular form of any word includes the plural form of that word and vice versa.

6. The conjunctives “and” and “or” shall be construed both conjunctively and disjunctively and each shall include the other to encompass the broadest possible response.

7. The phrase “NITEYE Mark” or “NITEYE” refers to the mark more fully described in Registration No. 4,179,235.

8. The phrase “NITE IZE Mark” or “NITE IZE” refers to the mark more fully described in Registration Nos. 1,620,077 and 2,237,945.

9. The term “Product” includes any good currently or previously sold or advertised by you, any good currently or previously sold or advertised under the NITEYE brand, any good currently or previously using the NITEYE mark, any good currently or previously listed on the website www.niteyelight.com/product/, and any good, whether currently sold to the public or otherwise, described in Registration No. 4,179,235.

10. The term “documents” means documents, electronically stored information, and tangible things, to the broadest extent defined and interpreted by the Federal Rules of Civil Procedure, including Rule 34 and applicable authority.

11. The term “identify,” when used with respect to a person, means to state that person’s full name, last known address, and last known telephone number. When the term “identify” is used with respect to a natural person, the term also means to provide the person’s employment or business affiliation during the relevant time period as well as the person’s last known employment.

12. The term “identify,” when used with respect to a document, means to provide the type of document (i.e., letter, memorandum, report, e-mail), author, date, addressee, other recipients, file number and/or identifying symbol, name and address of its custodian, and present location of the document.

INTERROGATORIES

INTERROGATORY NO. 1: For each interrogatory, state the name, business address and telephone number, personal address and telephone number, and job title and relationship to you, of each person who prepared or assisted in the preparation of your answer.

INTERROGATORY NO. 2: Identify and describe the involvement of all persons known to you who took part in or were responsible for either the creation of the NITEYE Mark and/or its earliest use in commerce.

INTERROGATORY NO. 3: Identify and describe all facts and documents relating or referring to either the creation of the NITEYE Mark or its earliest selection for use.

INTERROGATORY NO. 4: Identify in detail each and every Product with which you have used the NITEYE Mark, and as to each such Product, state in detail the manner of such use (actual sales, advertisements, etc.), and the annual sales revenues in United States dollars for each of the past four (4) calendar years.

INTERROGATORY NO. 5: Identify in detail each and every Product with which Respondent is currently using the NITEYE Mark, and as to each such Product, state in detail the manner of such use (actual sales, advertisements, etc.), and the annual sales revenues in United States dollars for each of the past four (4) calendar years.

INTERROGATORY NO. 6: For each and every Product with which you have used or are using the NITEYE Mark, state the date of first use of each mark with that Product, and state the date of first use of each mark with that Product in-commerce.

INTERROGATORY NO. 7: State the date(s) on which you first became aware of Petitioner’s use of, or applications or registrations for, the NITE IZE Mark.

INTERROGATORY NO. 8: If you have ever received any misdirected mail, electronic mail, telephone calls, orders, inquiries or complaints, which were or may have been intended for Petitioner: (a) identify the communication or incident; (b) identify all persons having knowledge of the communication or incident; and (c) identify and produce all documents referring or relating to such communication or incident.

INTERROGATORY NO. 9: Describe in detail your standard for clearance of proposed trademarks, and indicate whether this procedure was used in clearance of the NITEYE Mark.

INTERROGATORY NO. 10: Identify each owner or person having or having had any right to use the NITEYE Mark.

INTERROGATORY NO. 11: Identify all of the channels of trade in which you have sold, sell, and/or intend to sell your Products in connection with the NITEYE Mark.

INTERROGATORY NO. 12: Identify all of your former and current licensees, distributors, dealers or representatives who sell or who will sell Products bearing the NITEYE Mark, or offer products under the NITEYE Mark, either on their own behalf or on your behalf in the United States under a license or some other agreement and for each person, state their relationship to you and provide a copy of their license, agreement, contract, or other authorization.

INTERROGATORY NO. 13: Explain the justification for the contents of your “Niteye declaration,” dated April 19, 2014, located on your website at www.niteye.com/article/?type=detail&id=21 including your justification for the statement “All Niteye brand product are authorized by the designer who own all the patent and copyright of Jetbeam flashlight products.”

INTERROGATORY NO. 13: Explain why you created the “Niteye declaration,” dated April 19, 2014, located at www.niteye.com/article/?type=detail&id=21 including an explanation of any pending, past, or threatened legal action which caused you to create the Niteye declaration.

INTERROGATORY NO. 14: Identify and describe each lawsuit in which you have been a party by describing the named parties to the lawsuit, the subject matter and nature of the claims in the lawsuit, and the court(s) and case numbers in which the lawsuit was filed, pending and/or resolved.

INTERROGATORY NO. 15: Identify each person that created the image(s) submitted to the United States Patent Trademark Office as a specimen of the NITEYE Mark’s use in-commerce.

INTERROGATORY NO. 16: Identify in detail the instances in which the Product(s) depicted in the image(s) submitted to the United States Patent Trademark Office as specimens of the NITEYE Mark's use in-commerce, were in fact used in commerce, including any instance of such Product's sale or advertisement.

Dated January 15, 2015

Respectfully submitted,
SQUIRE PATTON BOGGS (US) LLP

By:



Robert P. Ziemian
SQUIRE PATTON BOGGS LLP
2550 M Street, NW
Washington DC 20037
Telephone: 303-894-6330
Fax: 303-894-9239

Attorneys for Petitioner

CERTIFICATE OF SERVICE

The undersigned certifies that on this 15th day of January, 2015, a copy of the foregoing **PETITIONER'S FIRST SET OF INTERROGATORY REQUESTS** was served by e-mail and by first class mail to the following:

P. Jay Hines
Muncy, Geissler, Olds & Lowe P.C.
4000 Legato Road, Suite 310
Fairfax, Virginia 22033
E-mail: jh@mg-ip.com

/Theresa Cope/

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

In the Matter of Trademark Registration No. 4179235
Mark: NITEYE

_____)	
NITE IZE, INC.,)	
)	
Petitioner,)	Cancellation No. 92059235
)	
v.)	
)	
ZHANGWEI MO,)	
)	
Respondent.)	
_____)	

PETITIONER'S FIRST SET OF REQUESTS FOR ADMISSION

Petitioner Nite Ize, Inc. ("Petitioner" or "Nite Ize"), through undersigned counsel, submits the following requests for admission to be answered by Respondent Mo, Zhangwei ("Respondent") pursuant to Rules 26 and 36 of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.120.

INSTRUCTIONS

1. Pursuant to Rule 36 of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.120, Respondent must respond fully and completely to the following requests for admission, in writing and under oath, within thirty (30) days of service hereof.

2. Each matter for which an admission is requested is separately set forth. Those matters are admitted without the necessity of a court order, unless, within thirty (30) days after service of these requests, Respondent serves upon Petitioner, through counsel, a written answer or objection addressed to the matter, and signed by Respondent or its attorney. Any such answer must specifically deny the matter or set forth in detail the reason that the Respondent cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that Respondent qualify its answer or deny only a part of the matter in which an admission is admitted, it shall specify so much of it as is true and qualify or deny the remainder.

3. Respondent may not give lack of information or knowledge as a reason for the failure to admit or deny unless it states that it has made reasonable inquiry and that the information known or easily obtainable by it is insufficient to enable it to admit or deny. Any matters admitted in the attached requests for admission are conclusively established as to Respondent.

DEFINITIONS

For the purposes of these requests for admission, the following definitions shall apply:

4. The term “you” and “your” shall refer to Respondent, MO, ZHANGWEI, and any person acting on their behalf.

5. Use of the singular form of any word includes the plural form of that word and vice versa.

6. The conjunctives “and” and “or” shall be construed both conjunctively and disjunctively and each shall include the other to encompass the broadest possible response.

7. The phrase “NITEYE Mark” or “NITEYE” refers to the mark more fully described in Registration No. 4,179,235.

8. The phrase “NITE IZE Mark” or “NITE IZE” refers to the mark more fully described in Registration Nos. 1,620,077 and 2,237,945.

9. The term “Product” includes any good currently or previously sold or advertised by you, any good currently or previously sold or advertised under the NITEYE brand, any good currently or previously using the NITEYE Mark, any good currently or previously listed on the website www.niteyelight.com/product/, and any good, whether currently sold to the public or otherwise, described in Registration No. 4,179,235.

REQUESTS FOR ADMISSION

Request for Admission 1: Admit that Registration No. 4,179,235 does not contain any restrictions on either the channels of trade through which your Products are or will be sold or the prospective purchasers of your Products.

Request for Admission 2: Admit that the goods set forth in the registration of the NITEYE Mark, Registration No. 4,179,235, are related to those goods covered by

Respondent's registrations for the NITE IZE Mark, including Registration No. 1,620,077 and Registration No. 2,237,945.

Request for Admission 3: Admit that at least one of the Products you sell is similar to a product sold by Nite Ize.

Request for Admission 4: Admit that LED flashlights and flashlight accessories are product-types that are similar to the product-types of LED flashlights and tactical lights.

Request for Admission 5: Admit that you sell at least one of your Products on the Internet, including through a website or online retailer.

Request for Admission 6: Admit that at least one of your Products is sold by or through the online website Amazon.com (www.amazon.com).

Request for Admission 7: Admit that the following Products described in your registration for NITEYE, Registration No. 4,179,235, have never been sold to the public: Aquarium lights, Diving lights, Landscape lighting installations, Overhead lamps, table, floor and street lamps.

Request for Admission 8: Admit that you do not intend to sell the following Products described in your registration for NITEYE, Registration No. 4,179,235, to the public: Aquarium lights, Diving lights, Landscape lighting installations, Overhead lamps, table, floor and street lamps.

Request for Admission 9: Admit that the term "Night Ize" is commonly pronounced "Night Eyes."

Request for Admission 10: Admit that the term "NITEYE" is commonly pronounced "Night Eye."

Request for Admission 11: Admit that the possessive and plural form of the term "NITEYE" is commonly pronounced "Night Eyes."

Request for Admission 12: Admit that the NITEYE Mark is confusingly similar to the NITE IZE Mark.

Request for Admission 13: Admit that the prospective purchasers of your Products include cyclists, bikers, and outdoor recreationists.

Request for Admission 14: Admit that the specimen submitted for registration to show use of the NITEYE Mark in commerce at the United States Patent Trademark Office is a picture of a Jet-1 MK flashlight.

Request for Admission 15: Admit that the Jet-1 MK flashlight was not in production in 2010.

Request for Admission 16: Admit that the product that the specimen submitted for registration to show use of the NITEYE Mark in commerce at the United States Patent Trademark Office is an image of was never sold in-commerce in the United States in association with the NITEYE Mark.

Request for Admission 17: Admit that the specimen submitted for registration to show use of the NITEYE Mark in commerce at the United States Patent Trademark Office is fraudulent, photoshopped, or otherwise modified image, modified to have the NITEYE Mark displayed on the flashlight shown in the image.

Dated January 15, 2015

Respectfully submitted,
SQUIRE PATTON BOGGS (US) LLP

By:



Robert P. Ziemian
2550 M Street, NW
Washington DC 20037
Telephone: 303-894-6330
Fax: 303-894-9239

Attorneys for Petitioner

CERTIFICATE OF SERVICE

The undersigned certifies that on this 15th day of January 2015, a copy of the foregoing **PETITIONER'S FIRST SET OF REQUESTS FOR ADMISSION** was served by e-mail and by first class mail to the following:

P. Jay Hines
Muncy, Geissler, Olds & Lowe P.C.
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Fairfax, Virginia 22033
E-mail: jh@mg-ip.com

/Theresa Cope/