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

Proceeding	92062714
Party	Defendant Zheng Cai DBA Tai Chi Green Tea Inc
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Attachments	Response_to_Cancellation_Appeal_by_Tai Chi.pdf(485334 bytes)

**In the United States Patent and Trademark Office Before
the Trademark Trial and Appeal Board**

**Response to the Petition to Cancel Mark Tai Chi Green Tea & Yin-Yang
Symbol (Reg. NO. 4,114,136) by Diamond Hong, Inc
& H &C Trading Co. Inc (Reg. No. 3,966,518)**

**Tai Chi Green Tea Inc
Registrant of Reg. NO. 4,114,136 (Cancellation No. 92062714)
Cai, Zheng**

V.

**Diamond Hong, Inc & H &C Trading Co. Inc.
Registrant Of Reg. No. 3,966,518**

Dear Examination Attorney and Trial and Appeal Board,

We got the letter from the petitioner that stated our trademark may cause confusion with theirs. We believe we do not need to respond and the Trial and Appeal Board will reject their request, but still we cannot help to say something.

1. The Petitioner intentionally made a copy of our trademark in black and white to deceive the examination attorney and the appeal board to believe that our trademarks bears similarity to theirs and will possibly cause “confusion” with theirs. In fact, our trade mark is green and white. Green color is the most significant part of our trademark since our product is green tea. No one with normal eyesight could simply tell the sharp and striking difference between our mark and theirs.



2. The petitioner claimed that “the words Wu Dang meaning a form of martial arts ” . This is misleading, deceptive and fraudulent in the attempt to deceive the Trial and Appeal Board to believe “the similarity” of our mark and theirs. Anyone in China know that Wu Dang refers to Wu Dang Mountain, which is a located in Hubei province, where our tea is selected. And Wu Dang Mountain is famous for its Taoism temple. Though Wu Dang mountain, like Shaolin Mountain and some other big mountains, has its own martial arts style (Just like different areas have different styles of cusines), which is called “Wu Dang Chuan” (Wu Dang Boxing or Wu Dang Fist) (**Exhibit 1: What Wu Dang Means.** https://en.wikipedia.org/wiki/Wudang_Mountains), Wu Dang always refer to Wu Dang Mountain, just like Beijing refers to Beijing City, the capital of China, not Beijing Duck, though Beijing Duck is associated with Beijing. To say “the words Wu Dang meaning a form of martial arts”, just like saying “Beijing meaning a kind of roasted duck”.

The words “Wu Dang” is a registered trademark of ours (**Exhibit 2: Wu Dang** , Reg. No. 3,921,201, Feb. 15, 2011. Available <http://tmsearch.uspto.gov/bin/jumpto?f=doc&state=4802:z761mj.11.2>)

3. The petition says our products will cause confusion with theirs due to “ the identical nature of the tea goods offered under the marks” . In fact, they sell “Herbal teas, Herbal food Beverages”, and we only sell “Green Tea, tea bags”, though we are in the same class “30”, “Herbal teas” and “green Tea, tea” are totally different products. Herbal teas and green tea (woolong tea, black tea) are mutually exclusive. To say “herbal teas” have the “identical nature” as “green tea, tea” is misleading, deceptive and fraudulent.

- A. According to the USA Tea Association, green tea, oolong tea, black tea are all comes from one single plant *Camellia Sinensis*, herbal teas could come from any plants but *Camellia Sinesis*. (**Exhibit 3: Definition of tea and herbal teas from USA Tea Association**, <http://www.teausa.com/10017/about-tea>)

“All tea comes from the *Camellia sinensis* plant, a warm-weather evergreen.

How the fresh leaves of the tea plant are processed and their level of contact with oxygen determine resulting types of tea. During oxidation, tea leaves undergo natural chemical reactions that result in distinctive color and taste characteristics. **Green tea** is not oxidized at all—the leaves are steamed, rolled and dried while **black tea** is allowed to oxidize for two to four hours. Oolong tea falls somewhere between green and black teas, in that the leaves are only partially oxidized.

Herbal teas do not come from *Camellia sinensis*, but are an infusion of leaves, roots, bark, seeds or flowers of other plants. They lack many of the unique characteristics of tea and are not linked with the research on the potential health benefits of traditional teas.”

- B. In Harvard Law School’s Digital Access Scholarship at Harvard Law School, it has the same definition about tea and herbal tea (The article titled “The Regulation of Tea and Its Health-Related Claims in the Wake of Developing Scientific Evidence: Food, Drug, or Dietary Supplement” <https://dash.harvard.edu/bitstream/handle/1/8852111/Pirina.pdf?sequence=1>, Page 9, “Tea Production and Types of Tea” . See **Exhibit 4**)

“All tea is a product of the *Camellia sinensis* plant and is usually divided into three main groups: Green, Oolong, and Black.[12] Herbal Teas are made from a variety of plants and leaves other than *Camellia sinensis*, and although they are referred to as “tea” they are technically only herbal infusions.[13] “Herbal teas are not actually tea because they are not made from the *Camellia sinensis* plant, but instead are infusions of other plants in hot or boiling water. P.

- C. Wikid dictionary has similar definition about tea (<https://en.wikipedia.org/wiki/Tea>) :

“**Tea** is an aromatic beverage commonly prepared by pouring hot or boiling water over cured leaves of the *Camellia sinensis*, an **evergreen shrub** native to **Asia**.”^[3]

The phrase [herbal tea](#) usually refers to infusions of fruit or herbs made without the tea plant, such as steepings of [rosehip](#), [chamomile](#), or [rooibos](#). These are also known as *tisanes* or *herbal infusions* to distinguish them from "tea" as it is commonly construed.

Tea is the most popular drink second only to water in the world. Whenever we simply say tea, we are referring to green tea, black tea or wulong tea or its derived forms. For instance, when we say that tea ignited the Independence Movement of United States (Boston Tea Party) – the “tea” is the processed leaves from *Camellia Sinensis*. When we say “tea culture” we mean that the culture that values tea and consuming tea (not “herbal tea”). When people talk about tea ceremony, we are talking about a ceremony that serving and drinking tea (green tea, black tea or its kind), not “herbal tea”. In all, whenever people just talk about tea, we mean the leaves from the tiny ever-green bush – *Camellia Sinensis*. Herbal tea could come from any plants other than *Camellia Sinensis*.

Green tea (woolong tea, black tea) is generally recognized as safe (GRAS), FDA does not require any further labeling for green tea (woolong tea, black tea), everyone knows that green tea, black tea, wulong tea come from a single source: *Camellia Sinensis* (or called *Thea Sinensis*). But herbal teas are different, some herbal teas may cause health problems and “can be extremely dangerous and in some cases can be fatal if misused” (**Exhibit 5**). And FDA’s regulation has eliminated any possibility that people will confuse “herbal teas” with tea (green tea, wulong tea, black tea) , FDA requires that herbal teas must be clearly labeled with the herb names in front of the three letters “tea” :

“The FDA allows these herbal products to call themselves “tea” as long as they include the name of the plant before the word “tea” to **distinguish** themselves from traditional tea or flavored tea.”

(<https://dash.harvard.edu/bitstream/handle/1/8852111/Pirina.pdf?sequence=1>, Page 9. Note 13. Also see **Exhibit 4**).

That means, say, if the “herbal tea” is made from **rosehip**, the manufacturer must name it “rosehip tea”, if it is made of chrysanthemum, it must be labeled as “Chrysanthemum Tea”. Any name of herbal tea must have the plant in front of it to differentiate it from the tea (green tea, wulong tea, black tea, white tea). Otherwise, it could not be put in the market. No one will confuse **rosehip tea**, Chrysanthemum Tea with green tea.

Herbal teas are not Generally Recognized Safe because “herbal teas can be extremely dangerous and in some cases can be fatal if misused (**Exhibit 5 P. 33**.

<https://dash.harvard.edu/bitstream/handle/1/8852111/Pirina.pdf?sequence=1>.” No

sellers are allowed to confuse herbal teas with green tea or tea (woolong tea, black tea, white tea). FDA simply prohibit it. **It is illegal to disguise herbal teas as green tea. Green tea (tea) is considered generally recognized as safe (GRAS), thus it is categorized as food in the US. Sine it is food, in many states (like in Michigan state) where food is free of sale tax, green tea is free of sale tax, and all across the country, customers can buy green tea with food stamps since it is food, but herbal teas were categorized as “supplement” or even drugs, there is a sale tax on it and you cannot buy it with food stamps across the US.**

As said above, we sell green tea, a totally different product from the petitioner’s “herbal teas”, no one could possibly confuse green tea with herbal teas. It is simply illegal for the sellers of herbal teas to confuse herbal teas with green tea (woolong tea, black tea) in the market. Thus to claim that our product green tea will cause confusion with their “tea products” “tea goods”, which are herbal teas as shown on their registered mark, is misleading, deceptive and even fraudulent in the attempt to confuse the examination attorney and the Trial and Appeal Board.

4. The petitioner says that we should not be allowed to have Yin-Yang design in our mark for the registrant (Reg.No 3,966,518) has already partially adopted the Tai Chi Graph (Taiji Tu) or Yin-yang symbol in their mark. They sound like that they created the Tai Chi Graph (yin-yang symbol) and thus has the exclusive right to it, just like one’s mark has a circle in it and because of that none should be allowed to use any shape similar to a circle for they owns the exclusive right of all shapes similar to a circle, or since they have a human in their design so that none should be allowed to have a human in their mark!



What we should know is that Tai Chi Grahp (taiji tu), the yin-yang symbol is the logo of Taoism religion and it has been created for hundreds of years. It is not the registrant’s invention or creation.

We adopted Tai Chi Graph which represents “extreme ultimate” “extremely superior” and means the absolute harmony of Yin and Yang (negative and positive), and changed the black part of it to be green to symbolize our product green tea, and the white part symbolizes water. The whole design means “the Top Green Tea helps keeping the balance of the body”.

Our mark is so uniquely designed to incorporating Tai Chi Graph and our goods green tea into one. Anyone with a glance at our trademark will be impressed and know what goods we are providing. Our mark with the design so sharply distinguishes itself from any marks ever registered, including the registrant's.



We first used this design no later than June 8, 2005 and we registered this design (**Exhibit 6:** The Registered Mark of Our Design. Reg. NO. 3,958,979. Registered May 10, 2011. Online: <http://tmsearch.uspto.gov/bin/showfield?f=doc&state=4802:z761mj.7.2>)

5. The petitioner still tries to deceive the Trial and Appeal Board that their definition of Tai Chi (Taiji) is authoritative and expect that till now none in the appeal board would possibly know the true meaning of Tai Chi , to keep the word “Tai Chi (Taiji)”, a descriptive word, to be registrable, so they could have exclusive usage of the word “Tai Chi (taiji)”.

First of all, we must know that Tai Chi, Taiji, 太极, 太極 are all meaning the same. The original word is the Chinese word “太極”.

Anyone who has basic knowledge of Chinese language will know that “Tai Chi” is an adjective in the first place and simply means “the supreme ultimate”, “the very top”, “the extremely superior” and etc.

Tai Chi is also an abbreviation of “Tai Chi Chuan” (in Chinese 太极拳 Taiji Chuan) , a kind of martial arts form or boxing. “Tai Chi Chuan” means “the extremely superior boxing” in Chinese (Chuan 拳, means ‘boxing’). “Tai Chi Chuan” (in Chinese 太极拳) only existed for a few hundred years. But the wording “Tai Chi” has been existed in Chinese language for several thousand years. Its meaning will not be changed over time and geography. One thousand years ago, now, in the future, in Britain, in the United States, in Canada or in any other places around the world, it will have the same meaning, which means “supreme ultimate”, “extremely superior” “very top”, “incomparable” and so on in the first place.

If we really want to know a foreign word's meaning, we need to go to an authoritative source to seek for it. If we look into a small dictionary like a collegiate dictionary, we would

not even find the words “Tai Chi”; even so, we could not come to the conclusion that the words “Tai Chi” are created by the registrant.

Oxford English Dictionary is an authoritative dictionary in English world. The following is an excerpt from Oxford English Dictionary online (**Exhibit 7: Definition of Tai Chi in Oxford English Dictionary**). Now to access OED online you need to subscribe to it, we kept a copy of the printout of the definition obtained in 2007):

“T’ai Chi

Also Tai Chi, t’ai chi, etc. [**ad.** Chinese taiji, f. *tai* extreme+*ji* limit]

1. In Taoism and Neo-Confucianism, the Supreme Ultimate (see quota. 1955). Also, the symbol which represents this.”

2. In full T’ai Chi Ch’uan, a Chinese martial art, believed to have been devised by a Taoist priest in the Ung dynasty (960-1279), promoting meditative as well as physical proficiency.

”

Even a casual search online about Tai Chi (Taiji), we will find some clear definition of it ([https://en.wikipedia.org/wiki/Taiji_\(philosophy\)](https://en.wikipedia.org/wiki/Taiji_(philosophy)) **Exhibit 8: Definition of Tai Chi (Taiji) from Wikd**):

Taiji (太極) is a **compound** of *tai* 太 "great; grand; supreme; extreme; very; too" (a superlative variant of *da* 大 "big; large; great; very") and *ji* 極 "pole; roof ridge; highest/utmost point; extreme; earth's pole; reach the end; attain; exhaust". In analogy with the figurative meanings of English *pole*, Chinese *ji* 極 "ridgepole" can mean "**geographical pole**; direction" (e.g., *siji* 四極 "four corners of the earth; world's end"), "**magnetic pole**" (*Beiji* 北極 "North Pole" or *yinji* 陰極 "negative pole; cathode"), or "**celestial pole**" (*baji* 八極 "farthest points of the universe; remotest place"). Combining the two words, 太極 means "the source, the beginning of the world".

Common English translations of the cosmological *Taiji* are the "Supreme Ultimate" (Le Blanc 1985, Zhang and Ryden 2002) or "Great Ultimate" (Chen 1989, Robinet 2008); but other versions are the "Supreme Pole" (Needham and Ronan 1978), "Great Absolute", or "Supreme Polarity" (Adler 1999).

Obviously, now Americans know the meaning of Tai Chi. In the USPTO's database, several people are trying to register marks that includes the two words "Tai Chi":

Serial # 78921905 (Tai Chi) and # 76193753 (Tai Chi Scoot) and Serial Number 75355998 (Golden Tai Chi) (All the following Trademarks could be located from USPTO data base).

Example A (Exhibit 9:

<http://tmsearch.uspto.gov/bin/showfield?f=doc&state=4802:z761mj.8.1>)

Serial # 78921905. Tai Chi

Word Mark **Tai Chi**

Translations The foreign wording in the mark translates into English as **Grand Ultimate or Supreme Ultimate.**

Example B. (<http://tmsearch.uspto.gov/bin/showfield?f=doc&state=4802:z761mj.9.1>)

Serial # 76193753 Tai Chi Scoot

Word Mark **Tai Chi Scoot**

Translations The English transliteration and translation of the Chinese characters appearing in the mark are as follows: **"tai" is "highest, greatest, remotest, too, over, extremely, very" and "chi" is "the utmost point, extreme, pole".**

Example C

<http://tmsearch.uspto.gov/bin/showfield?f=doc&state=4802:z761mj.10.1>

Serial Number 75355998

Word Mark Golden **Tai Chi**

Translations The English translation of **"Tai Chi" in the mark is "supreme ultimate"**

Thus the registration of Tai Chi (Reg. Nos 2449,580 and 3,966,518) were mistakes due to the petitioners' deceptive, misleading and fraudulent definition of the word "Tai Chi" and the then examination attorney's lack of knowledge of Chinese language and culture. The mistakes should be corrected at the time when American people get to know more and more about Chinese language and culture. Therefore, USPTO should revoke or cancel the registration of "Tai Chi" (Reg. Nos 2449,580 and 3,966,518) due to the petitioner's continuous attempt to deceive the examining attorney and the trial and appeal board by tailoring the meaning of Tai Chi to suit their need to make "Tai Chi", a descriptive word, registerable. Instead, they may be allowed to register "Tai Chi Chuan" as what they meant to show on their mark.

As illustrated above, our mark is so sharply different from the petitioner's in terms of general impression, goods, wording and design, there is no any confusion existed between our marks and

theirs. The petitioner is having an argument for the argument's sake. It is wasting their time, our time and the examination attorneys' and the Trial and Appeal board's precious time. All their statements claiming that our mark, wording, design, products will cause confusion with theirs are misleading, deceptive, and fraudulent. We believe the Trial and Appeal Board will make a swift decision to deny their appeal.

Respectfully submitted

By _____
Zheng Cai

Owner of Wu Dang Tai Chi Green Tea, Reg. NO. 4,114,136.

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Exhibits:

- Exhibit 1: What Wu Dang Means;
- Exhibit 2: Our Registered Mark "Wu Dang". Reg. No. 3,921,201;
- Exhibit 3: Definition of tea and herbal teas from USA Tea Association
- Exhibit 4: Definition of Tea and Herbal Teas from DASH at Harvard Law School;
- Exhibit 5: Herbal teas can be extremely dangerous;
- Exhibit 6: The Registered Mark of Our Design. Reg. NO. 3,958,979;
- Exhibit 7: Definition of Tai Chi in Oxford English Dictionary;
- Exhibit 8: Definition of Tai Chi from Wikid;
- Exhibit 9: Definition of Tai Chi from USPTO database.

Notes:

1. A Hard Copy of the Exhibits with the response will be sent to USPTO and the Petitioner via US Post Service while an electronic version of the response will be filed via USPTO's webpage without the exhibits)

2. All the above exhibits could be accessed online except Exhibit 7. To access Oxford English Dictionary online requires a subscription.

Certificate of Service

I hereby certify that a copy of the foregoing RESPONSE TO CANCELLATION was served on:

Kenneth Cang Li
Law Offices of Kenneth Cang Li
1745 Broadway, 17th Floor,
New York, NY 10019 United States

By placing same with the U. S. Postal Service, Via first class mail, postage pre-paid, this 30th Day of December, 2015

Certificate of Electronic Service

It is hereby certified that the foregoing RESPONSE TO CANCELLATION was served electronically at <http://esta.uspto.gov> on this 30th day of December, 2015

By _____

Name : Zheng Cai