

ESTTA Tracking number: **ESTTA1045899**

Filing date: **03/30/2020**

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

Proceeding	91238706
Party	Plaintiff Xiang Yin He Chang Tuan Inc.
Correspondence Address	H DANY KAO KAO & ASSOCIATES PC 38-08 UNION STREET SUITE 12E FLUSHING, NY 11354 UNITED STATES dkao@kaolawus.com 516-305-3717
Submission	Motion to Extend
Filer's Name	H. Danny Kao
Filer's email	dkao@kaolawus.com
Signature	/H. Danny Kao/
Date	03/30/2020
Attachments	Opposer motion to extend time to respond to Applicant request for admission.pdf(94831 bytes )

IN THE UNITED STATES PATENT AND  
TRADEMARK OFFICE  
Before the Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451  
Opposition No. 91238706  
Application Serial Nos. 87566170 and 87538374

Xiang Yin He Chang Tuan Inc.  
Opposer

v.

Edison Chinese Chorus Inc.  
Applicant

**Opposer's Motion To Extend Time  
To Respond To Applicant's Set Set Of Requests For Admissions/Interrogatories**

Comes now the Opposer, Xiang Yin He Chang Tuan Inc. ("Opposer" or "Xiang Yin"), by counsel, H. Danny Kao, to hereby submit the following motion.

**INTRODUCTION**

Applicant is contending that Opposer failed to timely serve its responses to Applicant's second set of discovery requests, consisting of requests for admissions and interrogatories, and therefore, Applicant argues, the Applicant's requests for admissions must all be deemed admitted and Applicant's motion to dismiss granted. Applicant also inexplicably filed a motion to compel responses to its second set of discovery requests. Applicant's second set of requests were served just before Applicant's motion for summary judgment was filed and the proceedings suspended. Applicant's motion was denied and the suspension of the proceeding was removed. Opposer responded to these discovery requests today, March 30, 2020, when it was reminded of them.

Applicant has not alleged and cannot allege any valid claim of prejudice or harm that was caused by Opposer's response date. Applicant never abandoned the opposition or stopped working on it, as Applicant alleges. Opposer explains its reasoning for filing its responses on March 30, 2020 and seeks any extension of time required to make them timely.

### **FACTS**

Opposer believes that these facts cannot be disputed by the Applicant with any valid argument.

1. Applicant served its second set of requests for admission and interrogatories on Opposer by email on June 19, 2019.
2. Applicant filed a motion for summary judgment on June 26, 2019, to which Applicant responded.
3. The proceeding was otherwise suspended on July 2, 2019 by order of the Board because of the Applicant's summary judgment motion. This necessarily included and did include a suspension of Opposer's response to Applicant's second set of requests for admission and interrogatories.
4. The proceeding was resumed on January 29, 2020 with the denial of Applicant's summary judgment motion.
5. The Applicant did not re-serve its second sets of requests for admission and interrogatories or remind or otherwise inform Applicant about them and Opposer inadvertently forgot they had ever been served.
6. The Opposer contacted Applicant on February 4, 2020 by email to discuss responses to outstanding discovery issues (i.e., Applicant's responses and depositions) and whether any settlement discussions might be fruitful since Applicant's summary judgment motion had

been denied. Applicant never responded to Opposer's email, worked out a discovery schedule, or discussed any possible settlement.

7. Applicant served responses to Opposer's discovery requests on February 14, 2020, refusing to respond to virtually all of the requests.
8. Applicant served a third set of discovery requests on February 26, 2020. Opposer did not realize that the second set had been served even after Applicant served this third set and Applicant again never contacted Opposer about the second set. Opposer timely responded to this third set of requests for admissions, interrogatories and document requests from Applicant on March 26, 2020.
9. Today, March 30, 2020, Applicant filed a motion to compel responses to its second set of discovery requests.
10. Opposer was reminded about Applicant's second set of requests for admission and interrogatories today, on March 30, 2020, when it received Applicant's motion to compel responses to it and Applicant's motion to dismiss filed today, based on them.
11. Opposer served its responses to Applicant's second set of requests for admission and interrogatories on Applicant, by an email, today, on March 30, 2020. Given the uncertainties from the suspension of the proceedings, Opposer is not sure whether its responses are late or even the actual due date for the responses.
12. Applicant has not alleged any valid claim of prejudice caused by Opposer's response date and Opposer is not aware of any. Applicant has claimed that when Opposer did not file its responses on February 21, 2020, when Applicant unilaterally deemed Opposer's responses due, Applicant claims it had had thought Opposer abandoned its opposition and Applicant stopped working on the opposition (Applicant's motion to dismiss, p. 4, just before section 3

of the argument). That is false. On February 26, 2020, Applicant served its third set of discovery requests (document requests, interrogatories, requests for admissions) on Opposer, thus, Applicant could not have believed Opposer abandoned its opposition and Applicant did not stop working on the opposition. Opposer timely responded to those requests on March 26, 2020 again confirming it had not abandoned the opposition.

13. Today, March 30, 2020, Applicant served its fourth set of requests for admission and interrogatories, even though it has filed a motion to dismiss the action on this same date.

14. This is the second time Opposer has filed a motion for extension of time. Opposer inadvertently served its responses to Applicant's first set of discovery requests three days late, believing them to have been timely served, and Applicant filed a motion for summary judgment in response (which was denied). Opposer filed a motion to extend time to respond to those requests on August 7, 2019 (which we understand was granted).

### **ARGUMENT**

Based on the above facts, Opposer requests that the Board determine that Opposer's responses to Applicant's second set of requests for admissions and interrogatories were timely served or served late by the standard of excusable neglect and that the due date be extended to March 30, 2020, the date Opposer served its responses. Opposer's responses were served on the date when Opposer was reminded about them, in good faith, and without causing, or intending to cause, prejudice or delay. Any error in serving the responses or calculating the due date was by innocent mistake.

## **CONCLUSION**

For the foregoing reasons, Opposer respectfully requests that the due date for its responses to Applicant's second set of requests for admission and interrogatories be set or extended to the date they were served, March 30, 2020.

Respectfully submitted,

By: /s/ H. Danny Kao

H. Danny Kao, PhD, JD

KAO & ASSOCIATES, PC

38-08 Union Street, Ste 12E Flushing, NY 11354

Tel: (516) 305-3717 Fax: (888) 315-4262 [dkao@kaolawus.com](mailto:dkao@kaolawus.com)

Attorney for the Opposer

Dated: March 30, 2020

## **Certificate of Service**

I hereby certify that a true and complete copy of the foregoing motion has been served on Cheng Q. Song, Counsel for the Applicant, by forwarding said copy on March 30, 2020, via email and electronic docket filing in this opposition to [chengqsong@gmail.com](mailto:chengqsong@gmail.com).

Signature: /s/H. Danny Kao

Date: March 30, 2020