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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 Primary Email: dkao@kaolawus.com Secondary Email(s): drhoads@rroadslegal.com 516-305-3717
Submission	Motion to Strike
Filer's Name	H. Danny Kao
Filer's email	dkao@kaolawus.com
Signature	/H. Danny Kao/
Date	03/30/2021
Attachments	Motion Judgment Strike.pdf(117618 bytes ) EXHIBIT A Declarations.pdf(72808 bytes ) EXHIBIT B Exhibits.pdf(175402 bytes ) EXHIBIT C 30b6 notice.pdf(569411 bytes )

IN THE UNITED STATES PATENT AND  
TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

Opposition No. 91238706  
Application Serial Nos. 87566170 and 87538374

March 30, 2021

Xiang Yin He Chang Tuan Inc.,  
Opposer

v.

Edison Chinese Chorus Inc.,  
Applicant

**OPPOSER’S MOTION FOR JUDGMENT AND OPPOSER’S  
ALTERNATIVE MOTION TO STRIKE APPLICANT’S TRIAL MATERIALS**

Opposer Xiang Yin He Chang Tuan Inc. (“Opposer” or “Plaintiff”) brings this motion for judgment in Opposer’s favor because of the prejudicial withholding by Applicant Edison Chinese Chorus Inc. (“Applicant” or “Defendant”) of 23 of its 44 Trial Exhibits (or portions thereof) and related discovery in descriptions and Trial Declarations until March 28, 2021, after the discovery period and Opposer’s Trial Period were long over on January 28, 2021.

In the alternative, if Opposer’s motion for judgment is not granted, then Opposer makes this motion based on the same operative facts to strike the Applicant’s Trial Declarations, Trial Exhibits, and Notice of Reliance (collectively “Trial Materials”). These Trial Materials suffer from a number of incurable procedural and substantive defects and they should be struck from the record.

These motions are compelled by the fact that Applicant has turned the orderly process of this action on its head by at the last minute and with extreme prejudice to Opposer, attempting to inject into this case a very large number of new issues and new exhibits from its files, including

from several new, never disclosed witnesses, that were never before provided to Opposer. Opposer brought this action because in 2017 Applicant attempted to steal Opposer's trademarks (two service marks) after Applicant learned that Opposer had not yet sought to register them (*supra*, p. 8, n.4). In response, Applicant has repeatedly sought delay and prejudice as the Opposer sought to discover and prove the facts of more than 20 years ago when the previous owner of the trademarks, Ms. Tan, created, controlled and licensed the trademarks. Applicant's attempt to rely on 23 new exhibits (or portions of exhibits) and new witnesses never provided before in discovery, effectively on the last day of Applicant's Trial Period, evidences bad faith, a failure to comply with discovery obligations, and extreme prejudice and unfairness to Opposer that cannot be cured.

### **I. OPPOSER'S MOTION FOR JUDGMENT**

Applicant produced 23 exhibits and information concerning them, including declaration evidence in six Trial Declarations, for the first time on March 28, 2021. These are ATE<sup>1</sup> 14 (Song Decl.), ATE 16 new translation (Fan and Yuejin Li Decl.), ATE 18 new translation (Fan and Yuejin Li Decl.), ATE 21 (Fan and Yuejin Li Decl.), ATE 22 (Fan Decl.), ATE 23 (Fan Decl.), ATE 24 (Fan Decl.), ATE 25 (Fan Decl.), ATE 26 (Fan Decl.), ATE 27 (Fan Decl.), ATE 28 (Fan Decl.), ATE 29 (Fan Decl.), ATE 30 (Fan Decl.), ATE 31 (Fan Decl.), ATE 32 (Fan Decl.), ATE 33 (Fan Decl.), ATE 34 (Fan Decl.), ATE 35 (Tang Decl.), ATE 36 (Tang Decl.), ATE 38 (Liu Decl.), ATE 40 (Fan and Yuejin Li Decl.), ATE 42 (Tang Decl.) and ATE 43 (May Declaration), which are presented and further described in Exhibit B submitted herewith. In addition to the six declarations with the new evidence, declarants Song, Liu, May, Lei, and Guo were not identified in any of Applicant's discovery disclosures or responses as having

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<sup>1</sup> ATE refers to Applicant Trial Exhibit. OPE refers to Opposer Trial Exhibit.

discoverable information and the remainder of the declarations' subject matter is relevant to and irredeemably tainted by the withheld information. Exhibit A submitted herewith.

These exhibits, their descriptions and related testimony were withheld from discovery. They were withheld from Opposer before it submitted its Trial Evidence. They were submitted in the evening before the last business day of Applicant's Trial Period. And Applicant represents on the first page of each of the exhibits that "[t]hey relate to the five claims in the Notice of Opposition," and that they are relevant and are admissible. Their materiality and the prejudice of their withholding is established by Applicant's own representations.

More specifically, this case concerns Applicant's theft of Opposer's trademarks in a war between two choirs that Applicant declared in 2017 and is fighting against Opposer. The Applicant's new exhibits and related declarations provide new information concerning key issues in the case, as Applicant either states or implies. This information includes critical issues such as Applicant's alleged use of, and establishing of rights in, the trademarks in issue (e.g., ATE 18, ATE 24-ATE 33); the alleged creation and development of rights in the trademarks in issue (e.g., ATE 14, ATE 16, ATE 23, ATE 43); and the alleged management and control of Applicant, performances and/or the trademarks in issue (e.g., ATE 14, ATE 16, ATE 21-ATE 23, ATE 34-ATE 36, ATE 38, ATE 40, ATE 42). As Applicant admits on the first page of each of the exhibits, all of these documents relate to each of Opposer's five claims in this proceeding.

In addition, Applicant is relying on nine exhibits that are written in the Chinese language for which no translation (or no complete or certified translation) was provided (viz., ATE 24, ATE 27-ATE 31, ATE 39, ATE 42, ATE 43). Exhibit B.

One specific allegation is especially egregious: Applicant alleged an October 4, 2004 first use of the trademarks in issue in its application for registration (OTE R; OTE S). Now, at trial,

without moving to amend its application for registration, Applicant is alleging a first use in 2001 (e.g., ATE 14-ATE 17, ATE 20, ATE 43), which is not permitted at this late stage of the proceeding. Applicant has attempted to significantly expand its defenses and responses to Opposer's case in chief with this new exhibit and declaration evidence.

The declarations provide no excuse for Applicant. For example, the Fan Declaration attempts to authenticate and support exhibits that are allegedly "In [his] files." That does not render the exhibits either authentic or admissible, as Mr. Fan lacks any personal knowledge of the critical events. Mr. Fan joined the Applicant only in 2011, more than ten years after the critical events in question (i.e., early 2001). Fan Trial Testimony (Opposer Trial Exhibit U) at 85 (line 24). Mr. Fan was the 30(b)(6) corporate witness for the deposition of Applicant and he is also its President. Thus, his testimony serves as admissions. Yet he did not provide these documents that were "[i]n [his] files" either before or after his deposition that were clearly related to topics in his deposition notice that he testified about. Exhibit C (aka OTE T) submitted herewith.<sup>2</sup>

Likewise, concerning the Song Declaration, Mr. Song joined the Applicant in the summer of 2017, after Mr. Bin Lv (aka Bin Lu) left Applicant and virtually all of the events in question happened. Fan Trial Testimony (Opposer Trial Exhibit U) at 85 (lines 10-21). Mr. Song lacks any personal knowledge of the events in issue. In fact, all 12 of the declarations, all obviously drafted by one person using the same language for each, are conclusory and not based on personal knowledge. Each declaration states that different events did not happen, such as Ms.

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<sup>2</sup> Opposer requested the withheld information in Applicant's 23 new Trial Exhibits and related declarations in discovery from Mr. Fan: Trademark use (ATE 18, 24-33; 30(b)(6) Topics 1, 2, 3, 4, 5, 7, 8, 14), trademark creation (ATE 14, 16, 23, 43; 30(b)(6) Topics 2, 3, 4, 5, 7), trademark/Applicant control (ATE 14, 16, 21-23, 34, 36, 38, 40, 42; 30(b)(6) Topics 4, 7, 8, 9-12, 15-19). Exhibit C submitted herewith.

Tang asserting her rights in the trademarks, or what Mr. Bin Lu did or did not do. Yet the declarants cannot know that. At best they can only state that they were unaware of such an event, not that it never happened.

It is remarkable that more than one half of Applicant's Trial Exhibits, and the Trial Declarations concerning them, were provided for the very first time in Applicant's case in chief. That is not how this proceeding is designed to be managed. Applicant does not state that the withheld exhibits and testimony are only being submitted now because of a new development in the case, nor does Applicant provide any other excuse. It can only be assumed that Applicant is withholding much more discovery, including documents that do not help Applicant. Allowing the Trial Exhibits and Trial Declarations into evidence would cause obvious and significant disruption and prejudice to Opposer, as Opposer had no opportunity to address them in either discovery or in Opposer's case in chief. Opposer took its positions in this action on the creation, use and control of the trademarks in issue without knowledge of this withheld evidence and therefore would be further prejudiced if they come into evidence. Thus, there is no way to cure the prejudice that has been caused to Opposer. There is simply no sufficient, just or fair way to deal with this large amount of withheld evidence in the form of trial exhibits and trial testimony at this late stage when so much has already happened. This proceeding has now been rendered irredeemably unfair and deficient by Applicant.

There is no valid question that Applicant had a duty to produce the documents it was relying on during the discovery period as Applicant itself has admitted their materiality. Opposer sought this discovery repeatedly in document requests, requests for admissions and interrogatories, but even if Opposer did not, Applicant was still under a duty to produce it during the discovery period or face the necessary consequences.

In light of the above, the only adequate remedy here is for judgment to be granted to Opposer and Applicant be denied any right to register the two marks in issue.

## **II. OPPOSER'S ALTERNATIVE MOTION TO STRIKE**

If judgment is not granted to Opposer, then Opposer respectfully requests that the Board strike the Trial Declarations, Trial Exhibits, and Notice of Reliance of Applicant.

### **A. Applicant's Trial Declarations Are Inadmissible And Should Be Stricken**

Applicant submitted 12 declarations of witnesses as its "Trial Declarations." Six of the declarations, including the Song, Fan, Yuejin Li, Tang, Liu and May declarations, explicitly provided new information and new Trial Exhibits that had been withheld by Applicant prior to March 28, 2021. Five declarants, namely Song, Liu, May, Lei, and Guo, also were not identified in any of Applicant's discovery responses (e.g., Initial Disclosure, interrogatory responses) as having discoverable information. Exhibit A submitted herewith summarizes this new evidence in the Trial Declarations while Exhibit B submitted herewith summarizes this new evidence in the Trial Exhibits.

This very large amount of substantive information that was withheld from Opposer but which was explicitly relied upon in six of the Trial Declarations taints the remaining six Trial Declarations because such a large amount of new information informed and otherwise influenced their testimony (e.g., all 12 declarations were obviously written by the same person who was aware of the 23 withheld exhibits), the extent of which is not knowable or discoverable at this point by Opposer. Therefore, all 12 declarations should be struck from the record.<sup>3</sup>

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<sup>3</sup> The 12 declarations that should be struck from the record are specifically the Trial Declarations of Cheng Song, Chia-Chi Tsui, Daping Fan, Jian Tang, Jianjun Liu, Mann May, Min Li, Qi Mo, Yabin Lei, Yanpinp Guo, Yu Liu, and Yuejin Li.

**B. Applicant's Trial Exhibits Are Inadmissible On Several Grounds And Should Be Stricken**

For the sake of convenience and clarity, submitted herewith as Exhibit B is a chart analyzing each of Applicant's 44 Trial Exhibits and its admissibility. The grounds for striking each of the exhibits fall into at least three categories.

**1. Each Of The 44 Trial Exhibits Relies On Inadmissible Trial Declarations**

Applicant's sole basis for the admissibility of each of Applicant's 44 Trial Exhibits was one or more of Applicant's Trial Declarations and, for some, Applicant's Notice of Reliance, which contained no substance. As set forth in Section II.A. above, these Trial Declarations all written by one person rely on withheld evidence, produced for the first time on March 28, 2021, and thus the declarations and their associated 44 exhibits should be struck from the record. Exhibit A hereto.

**2. 23 Of The Trial Exhibits Were Withheld From Opposer**

As set forth in Section I above, 23 of the Applicant's Trial Exhibits and/or information concerning them were withheld from Opposer until March 28, 2021, very late in the proceeding, after Opposer had set forth its positions from events that were more than 20 years ago. Exhibit B hereof. Applicant had no legitimate basis for withholding the Trial Exhibits and thus they are inadmissible as untimely. In addition, Applicant's discovery responses are demonstrably not reliable, as it must be acknowledged that withholding 23 exhibits, more than half of Applicant's total, evidences a party that did not act in good faith and did not comply with its discovery obligations, seeking to ambush its opponent.

**3. Each Of The 44 Trial Exhibits Was Not Supported Under 37 CFR 2.122**

Applicant was required by the rules to "indicate generally the relevance of the evidence and associate it with one or more issues in the proceeding." Consistent with its failure to comply



with its obligations in this proceeding, Applicant did not provide this information. Instead, for each of the 44 Trial Exhibits, Applicant made the same canned statement that lacked substance. Namely, Applicant identified the exhibit by name (e.g., “Opposer’s Replies to Applicant’s 1<sup>st</sup> Request for Documents”), sometimes made an assertion concerning its content (which were uniformly incorrect), and then merely stated that “They relate to the five claims in the Notice of Opposition” for each of the 44 Trial Exhibits. Such a word processing copy and paste exercise done 44 times did not comply with the rule. In addition, permitting Applicant to provide such information now, when more than one half of the exhibits and their contents and related declaration testimony were wrongfully withheld, and Opposer’s position already submitted, would be highly prejudicial and Applicant should not be given an opportunity to cure this defect.

In addition to the above, each of the 44 exhibits on its page 1 contains assertions by Applicant on their alleged meaning and import that are attorney arguments, hearsay, and not admissible evidence. The exhibits thus are composed incorrectly and confusingly and page 1 of each one of them should be struck from the record for this additional reason. Another issue with many of the exhibits is that they are incomplete or mixtures of documents, and thus no authentic or otherwise admissible, as set forth in Exhibit B submitted herewith.

**C. Applicant’s Notice Of Reliance Lacks Substance And Should Be Stricken**

Applicant’s single page Notice of Reliance lacks any substance and it should be stricken. It should also be struck from the record to avoid confusion because each of the Trial Exhibits it relies upon should also be struck from the record, leaving it with nothing to rely on and thus it should not remain in the record.

**III. CONCLUSION**

This proceeding has continued for several years with multiple motions to dismiss and summary judgment motions by the Applicant that have all been denied yet which all caused significant delay and prejudice to Opposer. The facts at issue here largely concern events in early 2001, more than 20 years ago, and the difficulty that length of time causes is compounded by time. Applicant filed its applications to register the marks in bad faith only after it discovered that Opposer had not yet done so. Fan Trial Testimony (Opposer Trial Exhibit U).<sup>4</sup> The use by Applicant of Opposer's trademarks for a different chorus is causing continued confusion. Given Applicant's delay of this action and Applicant's withholding of large amounts of evidence until March 28, 2021, as addressed above, Opposer respectfully requests that any relief that is granted here, including any opportunity for Applicant to cure, be granted with consideration of the case as a whole and the harm that has been done to Opposer.

Date: March 30, 2021

By: /H. Danny Kao/

H. Danny Kao, PhD, Esq.  
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)  
Attorneys for Opposer Xiang Yin He Chang Tuan Inc.

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<sup>4</sup> “A. Other people just ask who knows why they have the same name but people don't know. I ask Mr. Song to take a look if Mr. Lv [Opposer] really register file this. So they are sure, right? So Mr. Song check did Mr. Lv [Opposer] not register and so I say okay then we start, file the application for the mark.” Fan Trial Testimony at 52 (lines 17-24).

...  
“A. The people told me that no [sic] any registration license agreement for this name for any group, so that's why we start apply for that.” Fan Trial Testimony at 98 (lines 3-6).

Certificate of Service

I hereby certify that a true and complete copy of the foregoing OPPOSER'S MOTION FOR JUDGMENT ON THE MERITS AND OPPOSER'S ALTERNATIVE MOTION TO STRIKE APPLICANT'S TRIAL MATERIALS has been served on Cheng Q. Song, Counsel for the Applicant, by forwarding said copy on March 30, 2021, via email to chengqsong@gmail.com.

Signature: /s/H. Danny Kao

Date: March 30, 2021

# EXHIBIT A

For Opposer's Motion For Judgment  
and  
Opposer's Alternative Motion to Strike

**Withheld Evidence In Defendant's 12 Trial Declarations**

<b>Declarant</b>	<b>Identification Of Declarant In Applicant/ Defendant Discovery As Having Discoverable Information</b>	<b>Proffered Testimony Based On Wrongfully Withheld Exhibits And Subject Matter By ¶ No. (e.g., Reliance On And Relevance To Withheld Exhibits)</b>
Chia-Chi Tsui		<p>Alleged creation and first use of the trademarks and ownership of the trademarks in ¶ 3, 5 and 8 is the subject matter of withheld exhibits ATE 16, 23, 43</p> <p>Alleged use of the trademarks in performances and style of such, and ownership and control of the trademarks in ¶ 4 and 7 is the subject matter of withheld exhibits ATE 14, 16, 18, 21, 23-34, 36, 38, 40, 42</p> <p>Alleged type of music and use of Chinese songs in performances and use and control of the trademarks in ¶ 6 is the subject matter of withheld exhibits ATE 18, 21, 24-34</p> <p>There is no remaining subject matter in the declaration that is not related to and tainted by the withheld information</p>
Daping Fan		<p>Alleged creation and first use of the trademarks and ownership of the trademarks in ¶ 4 and 6 is the subject matter of withheld exhibits ATE 16, 23, 43</p> <p>Withheld ATE 16 (alleged creation and first use of the trademarks and ownership of the trademarks) in ¶ 5</p> <p>Alleged use of the trademarks in performances and style of such, and ownership and control of the trademarks in ¶ 7, 8, 10, 11 and 15 is the subject matter of withheld exhibits ATE 14, 16, 18, 21, 23-34, 36, 38, 40, 42</p>

		<p>Withheld ATE 18, 21, 25-34, 40 (alleged use of the trademarks in performances and ownership and control of the trademarks) in ¶ 9, 12, 17, 18, 19 and 20</p> <p>Withheld ATE 22 (alleged control of the trademarks and payments to Opposer’s Bin Lu) in ¶ 13</p> <p>Withheld ATE 23 (alleged creation of Applicant and ownership of the trademarks) in ¶ 14</p> <p>Withheld ATE 24 (alleged type of music and use of Chinese songs in performances and use and control of the trademarks) in ¶ 16</p> <p>There is no remaining subject matter in the declaration that is not related to and tainted by the withheld information</p>
Jian Tang		<p>Alleged creation and first use of the trademarks and ownership of the trademarks in ¶ 5-12, 14 and 18 is the subject matter of withheld exhibits ATE 16, 23, 43</p> <p>Withheld ATE 35 (alleged control of the trademarks and payments to Opposer’s Bin Lu) in ¶ 13</p> <p>Alleged use of the trademarks in performances and the style of such, and ownership and control of the trademarks in ¶ 15 is the subject matter of withheld exhibits ATE 14, 16, 18, 21, 23-34, 36, 38, 40, 42</p> <p>Withheld ATE 36 (alleged use of the trademarks in performances and ownership and control of the trademarks) in ¶ 16</p> <p>Withheld ATE 42 (alleged use of the trademarks in performances and ownership and control of the trademarks) in ¶ 17</p> <p>There is no remaining subject matter in the declaration that is not related to and tainted by the withheld information</p>
Jianjun Liu	No	<p>Alleged creation and first use of the trademarks and ownership of the trademarks in ¶ 3 and 4 is the subject matter of withheld exhibits ATE 16, 23, 43</p>

		<p>Alleged use of the trademarks in performances and the style of such, and ownership and control of the trademarks in ¶ 5 and 7 is the subject matter of withheld exhibits ATE 14, 16, 18, 21, 23-34, 36, 38, 40, 42</p> <p>Alleged control of the trademarks and payments to Opposer’s Bin Lu in ¶ 6 is the subject matter of withheld exhibit ATE 22, 35, 38</p> <p>There is no remaining subject matter in the declaration that is not related to and tainted by the withheld information</p>
Mann May	No	<p>Alleged creation and first use of the trademarks and ownership of the trademarks in ¶ 4-7 is the subject matter of withheld exhibit ATE 16, 23, 43</p> <p>Alleged use of the trademarks in performances and the style of such, and ownership and control of the trademarks in ¶ 7-12 is the subject matter of withheld exhibits ATE 14, 16, 18, 21, 23-34, 36, 38, 40, 42</p> <p>Withheld ATE 43 (alleged use of the trademarks in performances and ownership and control of the trademarks) in ¶ 12</p> <p>There is no remaining subject matter in the declaration that is not related to and tainted by the withheld information</p>
Min Li		<p>Alleged creation and first use of the trademarks and ownership of the trademarks in ¶ 4, 5 and 9 is the subject matter of withheld exhibit ATE 16, 23, 43</p> <p>Alleged use of the trademarks in performances and the style of such, and ownership and control of the trademarks in ¶ 6 and 8 is the subject matter of withheld exhibits ATE 14, 16, 18, 21, 23-34, 36, 38, 40, 42</p> <p>Alleged control of the trademarks and payments to Opposer’s Bin Lu in ¶ 7 is the subject matter of withheld exhibit ATE 22, 35, 38</p>

		There is no remaining subject matter in the declaration that is not related to and tainted by the withheld information
Qi Mo		<p>Alleged creation and first use of the trademarks and ownership of the trademarks in ¶ 4 and 7 is the subject matter of withheld exhibits ATE 16, 23, 43</p> <p>Alleged use of the trademarks in performances and the style of such, and ownership and control of the trademarks in ¶ 5 and 6 is the subject matter of withheld exhibits ATE 14, 16, 18, 21, 23-34, 36, 38, 40, 42</p> <p>There is no remaining subject matter in the declaration that is not related to and tainted by the withheld information</p>
Yabin Lei	No	<p>Alleged creation and first use of the trademarks and ownership of the trademarks in ¶ 6 is the subject matter of withheld exhibits ATE 16, 23, 43</p> <p>Alleged use of the trademarks in performances and the style of such, and ownership and control of the trademarks in ¶ 4 is the subject matter of withheld exhibits ATE 14, 16, 18, 21, 23-34, 36, 38, 40, 42</p> <p>Alleged control of the trademarks and payments to Opposer’s Bin Lu in ¶ 5 is the subject matter of withheld exhibit ATE 22, 35, 38</p> <p>There is no remaining subject matter in the declaration that is not related to and tainted by the withheld information</p>
Yanpinp Guo	No	<p>Alleged creation and first use of the trademarks and ownership of the trademarks in ¶ 4, 5, 7 and 8 is the subject matter of withheld exhibits ATE 16, 23, 43</p> <p>Alleged use of the trademarks in performances and the style of such, and ownership and control of the trademarks in ¶ 6-10 is the subject matter of withheld exhibits ATE 14, 16, 18, 21, 23-34, 36, 38, 40, 42</p> <p>There is no remaining subject matter in the declaration that is not related to and tainted by the withheld information</p>



Yu Liu		<p>Alleged creation and first use of the trademarks and ownership of the trademarks in ¶ 4 and 12 is the subject matter of withheld exhibits ATE 16, 23, 43</p> <p>Withheld ATE 38 (complaint: alleged use of the trademarks in performances and ownership and control of the trademarks, payments to Bin Lu) in ¶ 5-8</p> <p>Alleged control of the trademarks and ownership and payments to Opposer’s Bin Lu in ¶ 7, 10 and 13 is the subject matter of withheld exhibit ATE 22, 35, 38</p> <p>Alleged use of the trademarks in performances and the style of such, and ownership and control of the trademarks in ¶ 9 and 11 is the subject matter of withheld exhibits ATE 14, 16, 18, 21, 23-34, 36, 38, 40, 42</p> <p>There is no remaining subject matter in the declaration that is not related to and tainted by the withheld information</p>
Yuejin Li		<p>Alleged creation and first use of the trademarks and ownership of the trademarks in ¶ 5-8, 10-14, 18 and 19 is the subject matter of withheld exhibits ATE 16, 23, 43</p> <p>Withheld ATE 16 (alleged creation of the trademarks and ownership of the trademarks) in ¶ 7</p> <p>Alleged use of the trademarks in performances and the style of such, and ownership and control of the trademarks in ¶ 9, 17 is the subject matter of withheld exhibits ATE 14, 16, 18, 21, 23-34, 36, 38, 40, 42</p> <p>Withheld ATE 18 (alleged use of the trademarks in performances and ownership and control of the trademarks) in ¶ 14</p> <p>Alleged control of the trademarks and ownership and payments to Opposer’s Bin Lu in ¶ 15-16 is the subject matter of withheld exhibit ATE 22, 35, 38</p> <p>Withheld ATE 21 (alleged use of the trademarks in performances and ownership and control of the trademarks) in ¶ 19</p>

		<p>Withheld ATE 40 (alleged use of the trademarks in performances and ownership and control of the trademarks) in ¶ 20</p> <p>There is no remaining subject matter in the declaration that is not related to and tainted by the withheld information</p>
Cheng Song	No	<p>Withheld ATE 14 (alleged organization of Opposer and use and control of the trademarks) in ¶ 19</p> <p>The remainder of the Song declaration is interpretation (all incorrect) of documents and events to which he is not a competent witness and to which he has no personal knowledge (he joined Applicant in 2017 after the events in question (OTE U, p. 85, lines 10-21)) which is all inadmissible attorney argument and not evidence</p>

## EXHIBIT B

For Opposer's Motion For Judgment  
and  
Opposer's Alternative Motion to Strike

**Plaintiff's Response To Issues Concerning Defendant's 44 Trial Exhibits**

<b>I</b>	<b>II</b>	<b>III</b>	<b>IV</b>
<b>Defendant Applicant Trial Exhibit (ATE) No.</b>	<b>Brief Description From Defendant (and reference to Plaintiff's/Opposer's Trial Exhibits as applicable ("OTE"))</b>	<b>Defendant/Applicant Basis For The Admission Of The Exhibit As Evidence And Plaintiff's Response To The Basis</b>	<b>Summary Of Plaintiff's/Opposer's Position On The Exhibit</b>
ATE 1	Opposer's Replies to Applicant's 1 <sup>st</sup> Request for Documents	Defendant relies on Bin Lu trial testimony and the Decl. of Cheng Song (ATE 1, p.1)  Plaintiff objects: Mr. Lu (OTE Z) did not authenticate nor render ATE 1 admissible and the Decl. of Cheng Song is not admissible. <sup>1</sup> Defendant also failed to provide a substantive description of the relevance of the exhibit and an association of it with issues in the proceeding	Plaintiff objects to ATE 1 because there is no valid basis for admission of the exhibit as evidence asserted by Defendant (column III)
ATE 2	Opposer's Replies to Applicant's 3 <sup>rd</sup> Request for Documents	Defendant relies on Bin Lu trial testimony and the Decl. of Cheng Song (ATE 2, p.1).  Plaintiff objects: Mr. Lu (OTE Z) did not authenticate nor render ATE 2 admissible and the Decl. of Cheng Song is not admissible. Defendant also failed to provide a substantive description of the relevance of the exhibit and an association of it with issues in the proceeding	Plaintiff objects to ATE 2 because there is no valid basis for admission of the exhibit as evidence asserted by Defendant (column III)
ATE 3	Opposer's 1 <sup>st</sup> Notice of Opposition	Defendant relies on the Decl. of Cheng Song (ATE 3, p.1)	Plaintiff objects to ATE 3 because there is no valid basis for

<sup>1</sup> The admissibility of Applicant's Trial Declarations referred to in this table is addressed in the body of the motion submitted herewith.

		Plaintiff objects: The Decl. of Cheng Song is not admissible. Defendant also failed to provide a substantive description of the relevance of the exhibit and an association of it with issues in the proceeding	admission of the exhibit as evidence asserted by Defendant (column III)
ATE 4	Opposer's Amended Notice of Opposition and exhibits	Defendant relies on the Decl. of Cheng Song (ATE 4, p.1)  Plaintiff objects: The Decl. of Cheng Song is not admissible. Defendant also failed to provide a substantive description of the relevance of the exhibit and an association of it with issues in the proceeding	Plaintiff objects to ATE 4 because there is no valid basis for admission of the exhibit as evidence asserted by Defendant (column III)
ATE 5	Opposer's Motion to Amend Notice of Opposition  This exhibit is missing the attachments that are said to be included	Defendant relies on the Decl. of Cheng Song (ATE 5, p.1)  Plaintiff objects: The Decl. of Cheng Song is not admissible. Defendant also failed to provide a substantive description of the relevance of the exhibit and an association of it with issues in the proceeding  Note: Defendant stated that the attachments to the exhibit were also being relied upon but did not attach any exhibits. ATE 5, p. 1	Plaintiff objects to ATE 5 because there is no valid basis for admission of the exhibit as evidence asserted by Defendant (column III)
ATE 6	Ms. Qian Tan's Declaration	Defendant relies on the Decl. of Cheng Song (ATE 6, p.1)	Plaintiff objects to ATE 6 because there is no valid basis for admission of the

		Plaintiff objects: The Decl. of Cheng Song is not admissible. Defendant also failed to provide a substantive description of the relevance of the exhibit and an association of it with issues in the proceeding	exhibit as evidence asserted by Defendant (column III). However, this is an exhibit cited by Plaintiff (i.e., OTE D)
ATE 7	Opposer's Second Amended Notice of Opposition	Defendant relies on the Decl. of Cheng Song (ATE 7, p.1)  Plaintiff objects: The Decl. of Cheng Song is not admissible. Defendant also failed to provide a substantive description of the relevance of the exhibit and an association of it with issues in the proceeding	Plaintiff objects to ATE 7 because there is no valid basis for admission of the exhibit as evidence asserted by Defendant (column III)
ATE 8	Opposer's Third Amended Notice of Opposition	Defendant relies on the Decl. of Cheng Song (ATE 8, p.1).  Plaintiff objects: The Decl. of Cheng Song is not admissible. Defendant also failed to provide a description of the relevance of the exhibit and an association of it with issues in the proceeding	Plaintiff objects to ATE 8 because there is no valid basis for admission of the exhibit as evidence asserted by Defendant (column III)
ATE 9	Opposer's Opposition to Applicant's Motion for Judgment  The exhibit is missing the papers that comprised the motion, including declarations and exhibits	Defendant relies on the Decl. of Cheng Song (ATE 9, p.1)  Plaintiff objects: The Decl. of Cheng Song is not admissible. Defendant also failed to provide a substantive description of the relevance of the exhibit and an association of it with issues in the proceeding	Plaintiff objects to ATE 9 as submitted because there is no valid basis for admission of the exhibit as evidence asserted by Defendant (column III)

		In addition, Plaintiff objects to ATE 9 as submitted because it is incomplete and is missing the supporting documentation that is referred to in the document, including exhibits and declarations.	
ATE 10	<p>Opposer's Replies to Applicant's First Set of Interrogatories</p> <p>This interrogatory response was amended but not included in the exhibit</p>	<p>Defendant relies on the Decl. of Cheng Song and Applicant's Notice of Reliance (ATE 10, p.1)</p> <p>Plaintiff objects: The Decl. of Cheng Song is not admissible. Applicant's Notice of Reliance does not address ATE 10, and Defendant's assertion otherwise is not correct. Defendant also failed to provide a substantive description of the relevance of the exhibit and an association of it with issues in the proceeding</p> <p>In addition, Plaintiff objects to ATE 10 as submitted because it is incomplete and is missing the Plaintiff's amendment</p>	Plaintiff objects to ATE 10 because there is no valid basis for admission of the exhibit as evidence asserted by Defendant (column III)
ATE 11	<p>Opposer's Replies to Applicant's Third Set of Requests for Admissions</p> <p>These responses were amended but not included in the exhibit</p>	<p>Defendant relies on the Decl. of Cheng Song and Applicant's Notice of Reliance (ATE 11, p.1)</p> <p>Plaintiff objects: The Decl. of Cheng Song is not admissible. Applicant's Notice of Reliance does not address ATE 11, and Defendant's assertion</p>	Plaintiff objects to ATE 11 because there is no valid basis for admission of the exhibit as evidence asserted by Defendant (column III)

		<p>otherwise is not correct. Defendant also failed to provide a substantive description of the relevance of the exhibit and an association of it with issues in the proceeding</p> <p>In addition, Plaintiff objects to ATE 11 as submitted because it is incomplete and is missing the Plaintiff's amendment</p>	
ATE 12	<p>Opposer's Replies to Applicant's Fourth Set of Requests for Admissions</p> <p>These responses were amended but not included in the exhibit</p>	<p>Defendant relies on the Decl. of Cheng Song and Applicant's Notice of Reliance (ATE 12, p.1)</p> <p>Plaintiff objects: The Decl. of Cheng Song is not admissible. Applicant's Notice of Reliance does not address ATE 12, and Defendant's assertion otherwise is not correct. Defendant also failed to provide a substantive description of the relevance of the exhibit and an association of it with issues in the proceeding</p> <p>In addition, Plaintiff objects to ATE 12 as submitted because it is incomplete and is missing the Plaintiff's amendment</p>	<p>Plaintiff objects to ATE 12 because there is no valid basis for admission of the exhibit as evidence asserted by Defendant (column III)</p>
ATE 13	<p>Opposer's Pretrial Disclosures</p>	<p>Defendant relies on the Decl. of Cheng Song (ATE 13, p.1)</p> <p>Plaintiff objects: The Decl. of Cheng Song is not admissible. Defendant also</p>	<p>Plaintiff objects to ATE 13 as submitted because there is no valid basis for admission of the exhibit as evidence asserted by</p>



		<p>failed to provide a substantive description of the relevance of the exhibit and an association of it with issues in the proceeding</p> <p>Note: Applicant claims that this exhibit “disclosed for the first time, six Opposer’s witnesses who have knowledge...” (ATE 13, p. 1), which is not correct. These witnesses were discovered in the discovery deposition of Mr. Bin Lu and disclosed in Plaintiff’s First Amendment to Opposer’s Discovery Responses that were served on October 30, 2020, before the end of the discovery period, all of which is stated in ATE 13</p>	Defendant (column III)
ATE 14 <sup>2</sup>	Alleged copies of Opposer’s incorporation documents that were not provided during discovery in this action nor before March 28, 2021	<p>Defendant relies on the Decl. of Cheng Song and Applicant’s Notice of Reliance (ATE 14, p.1).</p> <p>Plaintiff objects: This document was not produced by either party in discovery. It was also not disclosed in Defendant’s pretrial disclosure. The Decl. of Cheng Song is not admissible. Applicant’s Notice of Reliance does not address ATE 14, and Defendant’s assertion otherwise is not correct. Defendant also failed to provide a substantive</p>	Plaintiff objects to ATE 14 because there is no valid basis for admission of the exhibit as evidence asserted by Defendant (column III).

<sup>2</sup> The red color type is used to identify the 23 exhibits with new information (e.g., the entire document was produced for the first time on March 28, 2021; a new translation was added).

		description of the relevance of the exhibit and an association of it with issues in the proceeding.	
ATE 15	Photo with new assertions concerning information on the Photo (ATE 15, p. 1). These new assertions concerning the information on the photo were not provided during discovery (Plaintiff has the original photo with none of the information on it, OTE E)	<p>Defendant relies on the Decl. of Daping Fan and the Decl. of Yuejin Li (ATE 15, p.1)</p> <p>Plaintiff objects: The assertions concerning the information on the Photo was not produced by either party in discovery. It was also not disclosed in Defendant’s pretrial disclosure. The Decl. of Daping Fan and the Decl. of Yuejin Li are not admissible. Defendant also failed to provide a substantive description of the relevance of the exhibit and an association of it with issues in the proceeding</p>	Plaintiff objects to ATE 15 because there is no valid basis for admission of the exhibit as evidence asserted by Defendant (column III)
ATE 16 with new translation	Alleged copy of a handwritten note and a new translation (ATE 16, p. 1). The translation is dated January 29, 2021 and it was not provided in discovery	<p>Defendant relies on the Decl. of Daping Fan and the Decl. of Yuejin Li (ATE 16, p.1)</p> <p>Plaintiff objects: The translation of the document was not produced by either party in discovery. The author of the document was not deposed concerning the exhibit. It was also not disclosed in Defendant’s pretrial disclosure. The Decl. of Daping Fan and the Decl. of Yuejin Li are not admissible. Defendant also failed to provide a substantive description of</p>	Plaintiff objects to ATE 16 because there is no valid basis for admission of the exhibit as evidence asserted by Defendant (column III)

		the relevance of the exhibit and an association of it with issues in the proceeding	
ATE 17	Alleged copy of a “symbolic” (i.e., fake) check and information concerning it (ATE 17, p. 1). The information concerning the fake check was not provided in discovery or at any time before March 28, 2021. This includes ATE 23, addressed	Defendant relies on the Decl. of Daping Fan and the Decl. of Yuejin Li (ATE 17, p.1)  Plaintiff objects: The information concerning the fake check was not produced by either party in discovery. It was also not disclosed in Defendant’s pretrial disclosure. The Decl. of Daping Fan and the Decl. of Yuejin Li are not admissible. Defendant also failed to provide a substantive description of the relevance of the exhibit and an association of it with issues in the proceeding	Plaintiff objects to ATE 17 because there is no valid basis for admission of the exhibit as evidence asserted by Defendant (column III)
ATE 18 with new translation	Alleged copy of a program brochure and a translation (ATE 18, p. 1). The translation is dated January 29, 2021, which is well after the close of discovery and after the close of Plaintiff’s trial testimony period	Defendant relies on the Decl. of Daping Fan and the Decl. of Yuejin Li (ATE 18, p.1).  Plaintiff objects: The translation was not produced by either party in discovery. It was also not disclosed in Defendant’s pretrial disclosure. The Decl. of Daping Fan and the Decl. of Yuejin Li are not admissible. Defendant also failed to provide a substantive description of the relevance of the exhibit and an association of it with issues in the proceeding.	Plaintiff objects to ATE 18 because there is no valid basis for admission of the exhibit as evidence asserted by Defendant (column III).
ATE 19	Alleged copies of “financial	Defendant relies on the Decl. of Daping Fan and the	Plaintiff objects to ATE 19 because

	statements/detailed income and expense reports” (ATE 19, p. 1)	Decl. of Yuejin Li (ATE 19, p.1)  Plaintiff objects: The Decl. of Daping Fan and the Decl. of Yuejin Li are not admissible. Defendant also failed to provide a substantive description of the relevance of the exhibit and an association of it with issues in the proceeding	there is no valid basis for admission of the exhibit as evidence asserted by Defendant (column III)
ATE 20	List of “Chorus Members as of Feb. 2001” (ATE 20, p. 1)  ATE 20 is the same as OTE F	Defendant relies on the Decl. of Daping Fan and the Decl. of Yuejin Li (ATE 20, p.1)  Plaintiff objects (except for as stated in column IV): The information concerning the document on ATE 20, p. 1 was not produced by either party in discovery. It was also not disclosed in Defendant’s pretrial disclosure. The Decl. of Daping Fan and the Decl. of Yuejin Li are not admissible. Defendant also failed to provide a substantive description of the relevance of the exhibit and an association of it with issues in the proceeding	No objection to OTE F, the second page of ATE 20 (Defendant’s use supports the admissibility of Plaintiff’s Trial Exhibit).  Plaintiff objects to the remainder of ATE 20 on page 1 because there is no valid basis for admission of the exhibit as evidence asserted by Defendant (column III)
ATE 21	Alleged email and “letter written to the members” (ATE 21, p. 1) and information concerning such, all of which was not provided during discovery in this action nor before March 28, 2021	Defendant relies on the Decl. of Daping Fan and the Decl. of Yuejin Li (ATE 21, p.1)  Plaintiff objects: The email, letter and the information concerning it were not produced by either party in discovery. They were also	Plaintiff objects to ATE 21 because there is no valid basis for admission of the exhibit as evidence asserted by Defendant (column III)

	Both the email and letter do not contain any dates.	not disclosed in Defendant's pretrial disclosure. The Decl. of Daping Fan and the Decl. of Yuejin Li are not admissible. Defendant also failed to provide a substantive description of the relevance of the exhibit and an association of it with issues in the proceeding	
ATE 22	Alleged "examples of email approvals..." (ATE 22, p. 1) and information concerning such, portions of which were not provided during discovery in this action nor before March 28, 2021 (e.g., the last page)	<p>Defendant relies on the Decl. of Daping Fan (ATE 22, p.1)</p> <p>Plaintiff objects: Certain of the "examples" and the information concerning them were not produced by either party in discovery. They were also not disclosed in Defendant's pretrial disclosure. The Decl. of Daping Fan is not admissible. Defendant also failed to provide a substantive description of the relevance of the exhibit and an association of it with issues in the proceeding</p>	Plaintiff objects to ATE 22 because there is no valid basis for admission of the exhibit as evidence asserted by Defendant (column III)
ATE 23	Alleged "email response" and information concerning such (ATE 23, p. 1), all of which was not provided during discovery in this action nor before March 28, 2021	<p>Defendant relies on the Decl. of Daping Fan (ATE 23, p.1)</p> <p>Plaintiff objects: The "email response" and the information concerning it was not produced by either party in discovery. They were also not disclosed in Defendant's pretrial disclosure. The Decl. of Daping Fan is not admissible. Defendant also failed to provide a substantive</p>	Plaintiff objects to ATE 23 because there is no valid basis for admission of the exhibit as evidence asserted by Defendant (column III)

		description of the relevance of the exhibit and an association of it with issues in the proceeding	
<b>ATE 24</b>	<p>Alleged “examples of Choirs of traditional Chinese folk songs [sic]” and information concerning such (ATE 24, p. 1), all of which was not provided during discovery in this action nor before March 28, 2021.</p> <p>No translation of the document is provided</p>	<p>Defendant relies on the Decl. of Daping Fan (ATE 24, p.1)</p> <p>Plaintiff objects: The “examples” and information concerning them were not produced by either party in discovery. No translation is provided. They were also not disclosed in Defendant’s pretrial disclosure. The Decl. of Daping Fan is not admissible. Defendant also failed to provide a substantive description of the relevance of the exhibit and an association of it with issues in the proceeding</p>	Plaintiff objects to ATE 24 because there is no valid basis for admission of the exhibit as evidence asserted by Defendant (column III)
<b>ATE 25</b>	<p>Alleged “examples of Applicant’s performance program brochures” and information concerning such (ATE 25, p. 1), all of which were not provided during discovery in this action nor before March 28, 2021</p>	<p>Defendant relies on the Decl. of Daping Fan (ATE 25, p.1)</p> <p>Plaintiff objects: The “examples” and the information concerning them were not produced by either party in discovery. They were also not disclosed in Defendant’s pretrial disclosure. The Decl. of Daping Fan is not admissible. Defendant also failed to provide a substantive description of the relevance of the exhibit and an association of it with issues in the proceeding</p>	Plaintiff objects to ATE 25 because there is no valid basis for admission of the exhibit as evidence asserted by Defendant (column III)

<p><b>ATE 26</b></p>	<p>Alleged “examples of Applicant’s performance program brochures” and information concerning such (ATE 26, p. 1), all of which was not provided during discovery in this action nor before March 28, 2021</p> <p>The exhibit appears to contain only one brochure</p>	<p>Defendant relies on the Decl. of Daping Fan (ATE 26, p.1)</p> <p>Plaintiff objects: The “examples” and the information concerning them were not produced by either party in discovery. They were also not disclosed in Defendant’s pretrial disclosure. The Decl. of Daping Fan is not admissible. Defendant also failed to provide a substantive description of the relevance of the exhibit and an association of it with issues in the proceeding</p>	<p>Plaintiff objects to ATE 26 because there is no valid basis for admission of the exhibit as evidence asserted by Defendant (column III)</p>
<p><b>ATE 27</b></p>	<p>Alleged “examples of Applicant’s performance program brochures” but which are actually third party news reports and information concerning such (ATE 27, p. 1), all of which was not provided during discovery in this action nor before March 28, 2021</p> <p>No translation is provided</p>	<p>Defendant relies on the Decl. of Daping Fan (ATE 27, p.1)</p> <p>Plaintiff objects: The “examples” are not brochures and the information concerning them were not produced by either party in discovery. No translation is provided. They were also not disclosed in Defendant’s pretrial disclosure. The Decl. of Daping Fan is not admissible. Defendant also failed to provide a substantive description of the relevance of the exhibit and an association of it with issues in the proceeding</p>	<p>Plaintiff objects to ATE 27 because there is no valid basis for admission of the exhibit as evidence asserted by Defendant (column III)</p>
<p><b>ATE 28</b></p>	<p>Alleged “examples of Applicant’s performance program brochures” but which are actually third</p>	<p>Defendant relies on the Decl. of Daping Fan (ATE 28, p.1)</p>	<p>Plaintiff objects to ATE 28 because there is no valid basis for admission</p>

	<p>party news reports and information concerning such (ATE 28, p. 1), all of which was not provided during discovery in this action nor before March 28, 2021</p> <p>No translation is provided</p>	<p>Plaintiff objects: The “examples” are not brochures and the information concerning them were not produced by either party in discovery. No translation is provided. They were also not disclosed in Defendant’s pretrial disclosure. The Decl. of Daping Fan is not admissible. Defendant also failed to provide a substantive description of the relevance of the exhibit and an association of it with issues in the proceeding</p>	<p>of the exhibit as evidence asserted by Defendant (column III)</p>
ATE 29	<p>Alleged “examples of Applicant’s performance program brochures” but which are actually third party news reports and information concerning such (ATE 29, p. 1), all of which was not provided during discovery in this action nor before March 28, 2021</p> <p>No translation is provided</p>	<p>Defendant relies on the Decl. of Daping Fan (ATE 29, p.1)</p> <p>Plaintiff objects: The “examples” are not brochures and the information concerning them were not produced by either party in discovery. No translation is provided. They were also not disclosed in Defendant’s pretrial disclosure. The Decl. of Daping Fan is not admissible. Defendant also failed to provide a substantive description of the relevance of the exhibit and an association of it with issues in the proceeding</p>	<p>Plaintiff objects to ATE 29 because there is no valid basis for admission of the exhibit as evidence asserted by Defendant (column III)</p>
ATE 30	<p>Alleged “examples of Applicant’s performance program brochures” but which are actually third party news reports and</p>	<p>Defendant relies on the Decl. of Daping Fan (ATE 30, p.1).</p>	<p>Plaintiff objects to ATE 30 because there is no valid basis for admission of the exhibit as</p>



	<p>information concerning such (ATE 30, p. 1), all of which was not provided during discovery in this action nor before March 28, 2021</p> <p>No translation is provided</p>	<p>Plaintiff objects: The “examples” are not brochures and the information concerning them were not produced by either party in discovery. No translation is provided. They were also not disclosed in Defendant’s pretrial disclosure. The Decl. of Daping Fan is not admissible. Defendant also failed to provide a substantive description of the relevance of the exhibit and an association of it with issues in the proceeding</p>	<p>evidence asserted by Defendant (column III)</p>
ATE 31	<p>Alleged “examples of Applicant’s performance program brochures” but which are actually third party news reports and information concerning such (ATE 31, p. 1), all of which was not provided during discovery in this action nor before March 28, 2021</p> <p>No translation is provided</p>	<p>Defendant relies on the Decl. of Daping Fan (ATE 31, p.1)</p> <p>Plaintiff objects: The “examples” are not brochures and the information concerning them were not produced by either party in discovery. No translation is provided. They were also not disclosed in Defendant’s pretrial disclosure. The Decl. of Daping Fan is not admissible. Defendant also failed to provide a substantive description of the relevance of the exhibit and an association of it with issues in the proceeding</p>	<p>Plaintiff objects to ATE 31 because there is no valid basis for admission of the exhibit as evidence asserted by Defendant (column III)</p>
ATE 32 (parts I and II)	<p>Alleged “examples of Applicant’s performance program brochures” and information concerning such (ATE 32, p. 1), all of which was not provided</p>	<p>Defendant relies on the Decl. of Daping Fan (ATE 32, p.1)</p> <p>Plaintiff objects: The “examples” and the</p>	<p>Plaintiff objects to ATE 32 because there is no valid basis for admission of the exhibit as evidence asserted by</p>

	during discovery in this action nor before March 28, 2021	information concerning them were not produced by either party in discovery. They were also not disclosed in Defendant’s pretrial disclosure. The Decl. of Daping Fan is not admissible. Defendant also failed to provide a substantive description of the relevance of the exhibit and an association of it with issues in the proceeding	Defendant (column III)
<b>ATE 33</b>	<p>Alleged “examples of Applicant’s performance program brochures” and information concerning such (ATE 33, p. 1), all of which was not provided during discovery in this action nor before March 28, 2021</p> <p>The exhibit appears to contain only one brochure</p>	<p>Defendant relies on the Decl. of Daping Fan (ATE 33, p.1)</p> <p>Plaintiff objects: The “examples” and the information concerning them were not produced by either party in discovery. They were also not disclosed in Defendant’s pretrial disclosure. The Decl. of Daping Fan is not admissible. Defendant also failed to provide a substantive description of the relevance of the exhibit and an association of it with issues in the proceeding</p>	Plaintiff objects to ATE 33 because there is no valid basis for admission of the exhibit as evidence asserted by Defendant (column III)
<b>ATE 34</b>	Alleged “email” concerning management and information concerning such (ATE 34, p. 1), all of which was not provided during discovery in this action nor before March 28, 2021	<p>Defendant relies on the Decl. of Daping Fan (ATE 34, p.1)</p> <p>Plaintiff objects: The “email” and the information concerning it were not produced by either party in discovery. They were also not disclosed in Defendant’s pretrial disclosure. The Decl. of Daping Fan is not</p>	Plaintiff objects to ATE 34 because there is no valid basis for admission of the exhibit as evidence asserted by Defendant (column III)

		admissible. Defendant also failed to provide a substantive description of the relevance of the exhibit and an association of it with issues in the proceeding	
ATE 35	Alleged “email” and table of unknown origin concerning management and information concerning such (ATE 35, p. 1), all of which was not provided during discovery in this action nor before March 28, 2021	<p>Defendant relies on the Decl. of Jian Tang (ATE 35, p.1)</p> <p>Plaintiff objects: The “email” and the information concerning it were not produced by either party in discovery. They were also not disclosed in Defendant’s pretrial disclosure. The Decl. of Jiang Tang is not admissible. Defendant also failed to provide a substantive description of the relevance of the exhibit and an association of it with issues in the proceeding</p>	Plaintiff objects to ATE 35 because there is no valid basis for admission of the exhibit as evidence asserted by Defendant (column III)
ATE 36	Alleged email concerning management and information concerning such (ATE 36, p. 1), all of which was not provided during discovery in this action nor before March 28, 2021	<p>Defendant relies on the Decl. of Jian Tang (ATE 36, p.1)</p> <p>Plaintiff objects: The “email” and the information concerning it were not produced by either party in discovery. They were also not disclosed in Defendant’s pretrial disclosure. The Decl. of Jiang Tang is not admissible. Defendant also failed to provide a substantive description of the relevance of the exhibit and an association of it with issues in the proceeding</p>	Plaintiff objects to ATE 36 because there is no valid basis for admission of the exhibit as evidence asserted by Defendant (column III)
ATE 37	Alleged financial documents and	Defendant relies on the Decl. of Min Li (ATE 37, p.1)	Plaintiff objects to ATE 37 because

	information concerning such (ATE 37, p. 1)	Plaintiff objects: The document set and the information concerning it were not disclosed in Defendant's pretrial disclosure. The Decl. of Min Li is not admissible. Defendant also failed to provide a substantive description of the relevance of the exhibit and an association of it with issues in the proceeding	there is no valid basis for admission of the exhibit as evidence asserted by Defendant (column III)
ATE 38	Alleged legal complaint and information concerning such (ATE 38, p. 1), all of which was not provided during discovery in this action nor before March 28, 2021	Defendant relies on the Decl. of Yu Liu (ATE 38, p.1)  Plaintiff objects: The complaint and the information concerning it were not produced by either party in discovery. They were also not disclosed in Defendant's pretrial disclosure. The Decl. of Yu Liu is not admissible. Defendant also failed to provide a substantive description of the relevance of the exhibit and an association of it with issues in the proceeding	Plaintiff objects to ATE 38 because there is no valid basis for admission of the exhibit as evidence asserted by Defendant (column III)
ATE 39	Partial copy of alleged meeting minutes and information concerning such (ATE 39, p. 1)  This exhibit is missing pages 1 and 2 of the original produced by Applicant  No certification from a translator is provided	Defendant relies on the Decl. of Yu Liu (ATE 39, p.1)  Plaintiff objects: The meeting minutes and the information concerning them are missing two pages and thus this is not an authentic or complete exhibit. No sufficient translation is provided. The partial exhibit was also not	Plaintiff objects to ATE 39 because there is no valid basis for admission of the exhibit as evidence asserted by Defendant (column III)

	with the asserted translation	disclosed in Defendant’s pretrial disclosure. The Decl. of Yu Liu is not admissible. Defendant also failed to provide a substantive description of the relevance of the exhibit and an association of it with issues in the proceeding	
ATE 40	<p>Alleged meeting minutes and information concerning such (ATE 40, p. 1), all of which was not provided during discovery in this action nor before March 28, 2021</p> <p>This is not a complete email. The authors, sender and date were cut off. This is also a mixture of different types of documents and is not authentic or complete</p>	<p>Defendant relies on the Decl. of Yuejin Li (ATE 40, p.1)</p> <p>Plaintiff objects: The meeting minutes and the information concerning them were not produced by either party in discovery. This is not a complete or authentic document. The exhibit was also not disclosed in Defendant’s pretrial disclosure. The Decl. of Yuejin Li is not admissible. Defendant also failed to provide a substantive description of the relevance of the exhibit and an association of it with issues in the proceeding</p>	Plaintiff objects to ATE 40 because there is no valid basis for admission of the exhibit as evidence asserted by Defendant (column III)
ATE 41	<p>Pleadings shared between the parties concerning discovery and trial</p> <p>This is a mixture of disparate documents and thus not admissible as an exhibit</p>	<p>Defendant relies on the Decl. of Cheng Song (ATE 41, p.1)</p> <p>Plaintiff objects: This is not a complete and authentic document but instead is a mixture of unrelated documents. The Decl. of Cheng Song is not admissible. Defendant also failed to provide a substantive description of the relevance of the exhibit</p>	Plaintiff objects to ATE 41 because there is no valid basis for admission of the exhibit as evidence asserted by Defendant (column III)

		and an association of it with issues in the proceeding	
<b>ATE 42</b>	<p>Alleged letter by Mr. Bin Lv and information concerning such (ATE 42, p. 1), all of which was not provided during discovery in this action nor before March 28, 2021</p> <p>The exhibit contains a typewritten addition and an incomplete translation dated February 4, 2021. The translation certification states that it “is a complete (except the past paragraph) and accurate English translation”</p>	<p>Defendant relies on the Decl. of Jian Tang (ATE 42, p.1)</p> <p>Plaintiff objects: The letter, the typewritten addition, the translation, and the information concerning it were not produced by either party in discovery. The translation is not complete. The typewritten addition is not part of the original. This was also not disclosed in Defendant’s pretrial disclosure. The Decl. of Jian Tang is not admissible. Defendant also failed to provide a substantive description of the relevance of the exhibit and an association of it with issues in the proceeding</p>	Plaintiff objects to ATE 42 because there is no valid basis for admission of the exhibit as evidence asserted by Defendant (column III)
<b>ATE 43</b>	<p>Alleged photo of a performance and information concerning such (ATE 43, p. 1), all of which was not provided during discovery in this action nor before March 28, 2021</p> <p>No translation is provided</p>	<p>Defendant relies on the Decl. of Mann May (ATE 43, p.1)</p> <p>Plaintiff objects: The letter and the information concerning it were not produced by either party in discovery. No translation is provided. It was also not disclosed in Defendant’s pretrial disclosure. The Decl. of Mann May is not admissible. Defendant also failed to provide a substantive description of the relevance of the exhibit and an association of it with issues in the proceeding</p>	Plaintiff objects to ATE 43 because there is no valid basis for admission of the exhibit as evidence asserted by Defendant (column III)

ATE 44	Email between counsel concerning service of expert report (ATE 44, p. 1)	<p>Defendant relies on the Decl. of Cheng Song (ATE 44, p.1)</p> <p>Plaintiff objects: The Decl. of Cheng Song is not admissible. Defendant also failed to provide a substantive description of the relevance of the exhibit and an association of it with issues in the proceeding</p>	Plaintiff objects to ATE 44 because there is no valid basis for admission of the exhibit as evidence asserted by Defendant (column III)
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## EXHIBIT C

For Opposer's Motion For Judgment  
and  
Opposer's Alternative Motion to Strike



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board

Opposition No. 91238706  
Application Serial Nos. 87566170 and 87538374

Xiang Yin He Chang Tuan Inc.  
Opposer

Vs.

Edison Chinese Chorus Inc.  
Applicant

**Opposer Trial Exhibit T**

IN THE UNITED STATES PATENT AND  
TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

Opposition No. 91238706  
Application Serial Nos. 87566170 and 87538374

September 30, 2020

Xiang Yin He Chang Tuan Inc.,  
Opposer

v.

Edison Chinese Chorus Inc.,  
Applicant

**OPPOSER XIANG YIN HE CHANG TUAN INC.'S  
NOTICE OF RULE 30(b)(6) DEPOSITION OF APPLICANT**

**PLEASE TAKE NOTICE**, that pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure (“FRCiv.P”), the Plaintiffs shall take the deposition upon oral examination of Edison Chinese Chorus Inc. (“Applicant”) through one or more officers, directors, agents or other representatives who shall be designed to testify on Applicant’s behalf regarding all information known or reasonably available to Applicant with respect to the subject matter identified in Exhibit A, using the specific Definitions and Instructions that are set forth therein.

This deposition shall commence on Tuesday, October 13, 2020 at 10:00 am at the offices of Kao & Associates, PC (address below), and shall be taken before a duly certified court reporter authorized to administer oaths. The deposition shall continue until complete as provided for by the FRCiv.P and all other applicable rules.

Date: September 30, 2020

Respectfully submitted,

s/ H. Danny Kao

Opposer’s Trial  
Exhibit T

By: H. Danny Kao, PhD, Esq.  
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)

Attorneys for Opposer Xiang Yin He Chang Tuan Inc.

## EXHIBIT A

### Definitions and Instructions

1. “Edison” means an entity known as Edison Chinese Chorus Inc. or Edison Chinese Chorus, Inc.
2. “Applicant” means Edison and the persons and/or entities that are identified in Application Serial Nos. 87566170 and 87538374 as “DBA, AKA, Formerly: AKA Xiang Yin Chorus or Xiang Yin He Chang Tuan” and “Composed of: Da Ping Fan, Citizenship: P.R. China; Ya Bin Lei, Citizenship: USA; Yu Liu, Citizenship: USA.” “Applicant” does not mean Opposer.
3. The term “Trademark Applications” means Application Serial Nos. 87566170 and 87538374 and the term “Trademark” is the subject matter of the Trademark Applications.
4. TMEP 404.06(b) states in part as follows: “The deponent at a Fed. R. Civ. P. 30(b)(6) deposition is the organization, and the organization speaks through the representative appearing at the deposition. A Fed. R. Civ. P. 30(b)(6) witness is responsible for providing all the relevant information known or reasonably available to the organization and his or her answers bind the organization. A party may notice a Fed. R. Civ. P. 30(b)(6) deposition of an organization without naming a specific person to be deposed, instead describing the information sought. The organization then must designate one or more individuals to testify on the organization’s behalf. ... When an organization is named as a deponent by a party seeking discovery, the subject matter of the deposition is to be described with reasonable particularity in the notice. An organization served with a Fed. R. Civ. P. 30(b)(6) notice of deposition has an obligation not only to pick and produce persons who have knowledge of the

subject matter identified in the notice but also to prepare those persons so that they can give complete, knowledgeable, and binding answers as to matters known or reasonably available to the organization. The organization may either produce as many deponents as are necessary to respond to the areas of inquiry in the notice if there is no witness with personal knowledge of all areas of inquiry, or alternatively, may produce a witness who reviews the organization's records to become familiar with the topics for the deposition so that he or she may give knowledgeable and binding answers for the organization. If more than one Fed. R. Civ. P. 30(b)(6) witness will be designated, those individuals should be identified and the areas on which each person will testify be described. Even if no current employees have knowledge of matters identified in the notice, an organization is not relieved of preparing a Fed. R. Civ. P. 30(b)(6) designee for deposition to the extent that such matters are reasonably available to the organization from past documents, past employees, or other sources."

5. TMEP 404.06(b) also states in part as follows: "If it becomes obvious during the course of a Fed. R. Civ. P. 30(b)(6) deposition that the organization's designee is deficient regarding his or her knowledge of matters reasonably known to the organization, the organization is obliged to provide a substitute and to prepare a designee to provide testimony in areas as to which its other representative was uninformed. A party may be subject to a motion to compel for failure to designate a person pursuant to Fed. R. Civ. P. 30(b)(6) or if such designated person fails to appear for deposition or fails to answer any question propounded in a discovery deposition. A party may be subject to sanctions for failure of a designated person to attend the Fed. R. Civ. P. 30(b)(6) discovery deposition if after being served with proper notice, the party informs the party seeking the deposition that no response

will be made. The production of an unprepared witness is tantamount to a failure to appear.”

6. Identify the witness(es) that is(are) designated to testify as Applicant’s Rule 30(b)(6) witness at least one week before the deposition.

### **Topics**

The deponent(s) shall be prepared to address the following topics on behalf of the Applicant:

1. The creation of the Trademark.
2. The meanings, if any, that are associated with the Trademark.
3. The name of the organization that was the first user of the Trademark.
4. Any transfer of rights concerning the Trademark to Applicant, including without limitation any oral transfer and/or written transfer.
5. The timing and people involved in the creation of Applicant.
6. The roles and/or involvement, if any, of Mr. Wen and Mr. Ben Lv with Applicant and when, how and why any such roles and/or involvement with Applicant ended.
7. The use of the Trademark in performances that were associated with Applicant and what the Trademark was used to designate with respect to those performances.
8. Any policing and/or quality control of the use of the Trademark by Applicant, including without limitation who did the policing and/or quality control and how did they do the policing and/or quality control.
9. The choice of musical selections to perform by Applicant in performances that were associated with the Trademark.
10. The artistic, choral and orchestral direction of the performances by Applicant with respect to any such performances that were associated with the Trademark.
11. The role of the musical director of Applicant since Applicant was created.
12. Any compensation of the musical and/or artistic director of Applicant since Applicant was created.
13. The role and/or involvement of Ms. Tan with respect to the Applicant and any performances by Applicant that were associated with the Trademark.

14. Applicant's knowledge of the use of the Trademark by Opposer.
15. The timing of, basis for, and reason for Applicant's decision to file the Trademark Applications.
16. The origin, content and meaning of AR-54, produced by Applicant, including without limitation: who proposed the anonymous motions referred to in AR-54; the origin, content and the meaning of the anonymous motions referred to in AR-54; who were the "chorus members [who] refused to attend because they [were] against the motions to be discussed in this meetings;" who were the chorus members who were asked to attend and who were not asked to attend the meeting; the origin and meaning of the proposal to "Establish a guidelines for the member behaviors, and establish a principle of mutual respect between the members, and between the members and the Music Director," and the origin and meaning of the proposal to "Make a practical procedure that can really realize a clause in the chorus Bylaws, which states that the Music Director should collect the member input on major artistic decisions."
17. The origin, content and meaning of AR-44, produced by Applicant, including without limitation: who proposed the motions set forth therein, who determined who AR-44 would be sent to, and who determined who AR-44 would not be sent to.
18. The meeting referred to in AR-54 and AR-44.
19. Any and all reasons written or stated orally by officers and/or members of the Applicant for the dismissal of the musical director referred to in AR-54 and AR-44.

Certificate of Service

I hereby certify that a true and complete copy of the foregoing NOTICE OF RULE 30(b)(6) DEPOSITION and EXHIBIT A has been served on Cheng Q. Song, Counsel for the Opposer, by forwarding said copy on September 30, 2020, via email to chengqsong@gmail.com and chengqsong@yahoo.com.

Signature: /s/H. Danny Kao

Date: September 30, 2020