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003

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

Taiyo Kogyo Co. Ltd. (Petitioner)

v.

Leynian Ltd. Co. (Registrant)

Cancellation No: 92041571

Reg. No. 2,569,302
Mark: TAIYO EDGE

Reg. No. 2,595,700
Mark: TAIYO EDGE (+ design)

**RESPONSE TO PETITIONER'S FIRST SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS AND THINGS**

In accordance with telephone approval from Petitioner's attorney, Diane Mason, Registrant provides these responses within a requested two week extension to answer, or by no later than June 6, 2003

GENERAL OBJECTIONS

1. Registrant objects to Petitioner's definitions, instructions or requests to the extent they seek to expand upon or exceed the scope of discovery authorized by the Federal Rules of Civil Procedure.
2. Registrant objects to the Request for Production of Documents and Things to the extent they seek privileged information, including, without limitation, information which was prepared, generated or received for or in anticipated of litigation, information which constitutes attorney work product, or information which is protected by the attorney-client privilege, or any other applicable privilege, rule of

confidentiality, immunity, protection or restriction that makes such information otherwise non-discoverable under the Federal Rules of Civil Procedure and the applicable case law interpreting those rules.

3. Registrant objects to the Petitioner's Request for Production of Documents and Things to the extent they require applicant to provide the same information more than once on the ground that such duplicative disclosure is unduly burdensome.
4. Registrant objects to the Petitioner's Request for Production of Documents and Things to the extent they call for information, the disclosure of which would be a breach of a duty or a violation of any agreement by Registrant to maintain the confidentiality of such information.
5. Registrant objects to the Petitioner's Request for Production of Documents and Things to the extent they seek information not in the possession, custody or control of Registrant.
6. Registrant's responses to Petitioner's Request for Production of Documents and Things are made without in any way waiving or intending to waive, but rather, to the contrary, preserving and intending to preserve:
 - a. All questions as to the competence, relevance, materiality, privilege and admissibility as evidence for any purpose of the responses provided by Registrant, or the subject matter thereof, in any aspect of this or any other action, arbitration, proceeding or investigation;
 - b. The right to object on any ground to the use of the responses provided by Registrant or the subject matter thereof, in any aspect of this or any other action, arbitration or proceeding;

- c. The right to object at any time to any other set of interrogatories or requests for production of documents and things;
- d. The right at any time to revise, supplement, correct, add to or clarify this response.

RESPONSES TO REQUESTS FOR DOCUMENTS AND THINGS

REQUEST NO. 1:

All documents setting forth or relating to Registrant's organizational structure, officers, directors, management and employees for the time period January 1, 2000 to the present.

Response:

Registrant objects to this request on the grounds that it seeks information that is neither relevant nor reasonably calculated to lead to discoverable evidence in this matter. Without waiving the foregoing objection, See Document Nos. 380-402 produced herewith.

REQUEST NO. 2:

All documents relating to or setting forth the relationship between Registrant and any companies that are parents, subsidiaries, divisions or affiliates of Registrant.

Response:

No such documents exist.

REQUEST NO. 3:

All documents relating to the reason or reasons for selecting the name or mark TAIYO EDGE.

Response:

No such documents exist.

REQUEST NO. 4:

All documents relating to the meaning or significance of the name or mark TAIYO EDGE.

Response:

No such documents exist

REQUEST NO. 5:

All documents relating to Registrant's first use anywhere of the name or mark TAIYO EDGE.

Response:

Registrant objects to this request as overly broad, unduly vague and ambiguous. Without waiving the foregoing objection, see Document Nos. 3 and 213-233 produced herewith.

REQUEST NO. 6:

All documents relating to Registrant's first use in commerce in the United States of the name or mark TAIYO EDGE.

Response:

Registrant objects to this request as overly broad, unduly vague and ambiguous.

Without waiving the foregoing objection, see Document Nos. 213-233 produced herewith.

REQUEST NO. 7:

All documents relating to Registrant's first use anywhere of any name or mark that includes TAIYO.

Response:

Except as used herein in Registrant's marks, no such documents exist for TAIYO. See document Nos. 2-4, 189-192 produced herewith.

REQUEST NO. 8:

All documents relating to Registrant's first use in commerce in the United States of any name or mark that includes TAIYO.

Response:

Except as used herein in Registrant's marks, no such documents exist for TAIYO. See document Nos. 2-4, 189-192 produced herewith.

REQUEST NO. 9:

All documents relating to the creation and design of the first advertising and/or promotional materials incorporating the name or mark TAIYO EDGE.

Response:

Registrant objects to this request as overly broad, unduly vague and ambiguous. Without waiving the foregoing objection, see Document Nos. 508-686 produced herewith.

REQUEST NO. 10:

All documents relating to the creation and design of the first advertising and/or promotional materials incorporating any name or mark that includes "TAIYO."

Response:

Except as used herein in Registrant's marks, no such documents exist for TAIYO. See Document Nos. 508-686 produced herewith.

REQUEST NO. 11

Samples of each advertising, catalog, promotional material, specification sheets, or other printed or graphic material bearing the name or mark TAIYO and/or TAIYO EDGE.

Response:

Except as used herein in Registrant's marks, no such documents exist for TAIYO. With respect to TAIYO EDGE, See Document Nos. 1-5, 193-261 produced herewith.

REQUEST NO. 12:

Samples of each label, packaging, container and other uses bearing the name or mark TAIYO and/or TAIYO EDGE. (Photographs clearly showing the marks may be substituted for bulky containers).

Response:

Except as used herein in Registrant's marks, no such documents exist for TAIYO.

With respect to TAIYO EDGE, See Document No. 2 produced herewith.

REQUEST NO. 13:

All documents relating to expenditures for publicity, promotion and/or advertising of the name or mark TAIYO and/or TAIYO EDGE.

Response:

Except as used herein in Registrant's marks, no such documents exist for TAIYO.

With respect to TAIYO EDGE, the number of documents relating to the requested expenditures is too voluminous to produce and will be made available to Petitioner at Registrant's place of business at a mutually agreeable and convenient time.

Notwithstanding the foregoing, see Document Nos. 403-414 produced herewith.

REQUEST NO. 14:

All documents relating to the marketing activities of Registrant under the name or mark TAIYO and/or TAIYO EDGE.

Response:

Except as used herein in Registrant's marks, no such documents exist for TAIYO.

With respect to TAIYO EDGE, the number of documents relating to the Registrant's marketing activities is too voluminous to produce and will be made available to Petitioner at Registrant's place of business at a mutually agreeable and convenient time. See Document Nos. 1-5, and 194-261 produced herewith.

REQUEST NO. 15:

All documents relating to the amount of sales, in units and dollars, of goods and/or services made under the name or mark TAIYO EDGE.

Response:

Registrant objects to this request as overly broad, unduly vague and ambiguous, in addition to be unduly burdensome. Furthermore, Registrant objects to this request on the grounds that the information sought is neither relevant nor reasonable calculated to lead to discovery of admissible evidence. Without waiving the benefit of the foregoing objection, all documents relating to amount of sales includes customer purchase orders, invoices, confirmation correspondence, bills of lading, packing lists and other correspondence and is too voluminous to produce herewith and, if required, will be made available to Petitioner for review at Registrant's place of business at a mutually agreeable date and time.

REQUEST NO. 16:

All documents relating to the amount of sales, in units and dollars, of goods and/or services made under any name or mark that incorporates "TAIYO."

Response:

Except as used herein in Registrant's marks, no such documents exist for TAIYO.

REQUEST NO. 17:

All documents relating to the creation, design, maintenance and content of the website taiyoedge.com.

Response:

Registrant objects to this request on the grounds that it is overly broad, unduly vague and ambiguous, and on the grounds that it seeks information which is neither relevant nor reasonably calculated to lead to discovery of admissible evidence. Without waiving the foregoing, See Document No. 1 produced herewith.

REQUEST NO. 18

A copy of each news release sent out by or on behalf of Registrant and/or Registrant's related companies which refers to the name or mark TAIYO and/or TAIYO EDGE.

Response:

Except as used herein in Registrant's marks, no such documents exist for TAIYO.
See Document (disc) Nos. 3 and 4 produced herewith.

REQUEST NO. 19:

A copy of each article, report, summary, commentary, or clipping from any magazine, newspaper, trade journal, or other publication which refers to the goods and/or service sold, offered and distributed by Registrant under the name TAIYO and/or TAIYO EDGE.

Response:

Except as used herein in Registrant's marks, no such documents exist for TAIYO.
With respect to TAIYO EDGE, See Document Nos. 193-212 produced herewith.

REQUEST NO. 20:

A copy or photograph or other facsimile of each sign, poster, brochure, flyer and/or other graphic display or material bearing the name or mark TAIYO and/or TAIYO EDGE.

Response:

Except as used herein in Registrant's marks, no such documents exist for TAIYO. With respect to TAIYO EDGE, See item Nos. 220-261 produced herewith.

REQUEST NO. 21:

All newsletters, forms, business cards, stationery, application forms, magazines, business reply mail forms, and other printed materials bearing the name or mark, TAIYO and/or TAIYO EDGE, which are used or distributed by Registrant and/or Registrant's related companies.

Response:

Except as used herein in Registrant's marks, no such documents exist for TAIYO. With respect to TAIYO EDGE, See Document Nos. 189-192 and 722-723 produced herewith.

REQUEST NO. 22:

A copy of each instruction booklet, manual, warranty agreement, promotional piece, return card, or other printed material that has been produced for distribution, or has actually been distributed, with goods and/or services bearing the name or mark TAIYO and/or TAIYO EDGE.

Response:

Except as used herein in Registrant's marks, no such documents exist for TAIYO. Registrant objects to this request on the grounds that it seeks information which is neither relevant nor reasonably calculated to lead to discovery of admissible evidence. Without waiving the foregoing, See item No. 2 produced herewith.

REQUEST NO. 23:

All documents relating to any Federal or State Trademark or Service Mark Applications or Registrations which are now or ever owned by registrant for any mark which includes TAIYO and/or TAIYO EDGE.

Response:

Except as used herein in Registrant's marks, no such documents exist for TAIYO. Registrant objects to this Request on the grounds that it seeks information which is the subject of attorney-client privilege or the work product doctrine. Without waiving the foregoing, the record of all U.S. Trademark Registrations and Applications is public information obtainable at the U.S. Trademark office.

REQUEST NO. 24:

All documents relating to the filing and prosecution of U.S. Registration No. 2,569,302 and U.S. Registration No. 2,595,700.

Response:

Registrant objects to this Request on the grounds that it seeks information which is the subject of attorney-client privilege or the work product doctrine. Without waiving the

foregoing, the record of all U.S. Trademark Registrations and Applications is public information obtainable at the U.S. Trademark office.

REQUEST NO. 25:

All documents relating to the following:

- a. Registrant obtaining permission or authorization from any State governmental agency to sell products or render services under the name TAIYO and/or TAIYO EDGE; and
- b. Registrant obtaining permission or authorization from any Federal Governmental Agency to sell products or render services under the name or mark TAIYO and/or TAIYO EDGE.

Response:

Except as used herein in Registrant's marks, no such documents exist for TAIYO.
See Documents 380-402 produced herewith.

REQUEST NO. 26:

All documents relating to any surveys or searches regarding the following:

- a. the mark shown in the drawing of U.S. Registration No. 2,569,302;
- b. the mark shown in the drawing of U.S. Registration No. 2,595,700;
- c. Any name or mark which consists of or includes TAIYO EDGE; and
- d. Any name or mark which consists of or includes "TAIYO."

Response:

No such documents exist.

REQUEST NO. 27:

All documents relating to any surveys, studies or investigations regarding the following:

- a. The significance of the name or mark TAIYO EDGE;
- b. The significance of any name or mark that incorporates “TAIYO”;
- c. Identification or association of the name or mark TAIYO EDGE with Registrant;
- d. Identification or association of any name or mark that incorporates TAIYO with Registrant;
- e. Identification of the name or mark TAIYO and/or TAIYO EDGE with Petitioner;
- f. The significance or meaning which the name or mark TAIYO and/or TAIYO EDGE has to customers or the public;
- g. The good will and/or customer recognition associated with the name or mark TAIYO and/or TAIYO EDGE as used by Registrant; and
- h. The descriptiveness and/or genericness of the name or mark TAIYO and/or TAIYO EDGE.

Response:

- a. No such documents exist;
- b. No such documents exist;
- c. No such documents exist
- d. No such documents exist;
- e. No such documents exist;

- f. No such documents exist for “TAIYO”. With respect to Registrant’s brand “TAIYO EDGE”, See Document Nos. 193-212 and 311, note document no. 209 represents an unsolicited cover placement of Registrant’s hovercraft vehicle by the catalog company;
- g. No such documents exist for “TAIYO”. With respect to Registrant’s brand “TAIYO EDGE”, See Document Nos. 193-212 and 311, note document no. 209 represents an unsolicited cover placement of Registrant’s hovercraft vehicle by the catalog company; and
- h. No such documents exist, however Registrant is aware that the Japanese word “TAIYO” translated to English means “sun” or “ocean”.

REQUEST NO. 28:

All documents relating to the goodwill Registrant has developed in the name or mark TAIYO EDGE.

Response:

Registrant objects to this Request on the ground that it is overly broad. Without waiving the foregoing, See Document Nos. 193-212 and 311 produced herewith, note document no. 209 represents an unsolicited cover placement of Registrant’s hovercraft vehicle by the catalog company.

REQUEST NO. 29:

All documents relating to the business relationship of Registrant with any individual or entity regarding goods and/or services sold, offered or distributed under the name or mark TAIYO and/or TAIYO EDGE.

Response:

Except as used herein in Registrant's marks, no such documents exist for TAIYO.

With respect to TAIYO EDGE, See Document Nos. 6-184, 187-191, 262-328, 415-767 produced herewith.

REQUEST NO. 30:

All documents relating to any assignments, licenses and/or other agreements regarding any name or mark that includes "TAIYO" and/or "TAIYO EDGE."

Response:

Except as used herein in Registrant's marks, no such documents exist for TAIYO.

With respect to TAIYO EDGE, Registrant objects to this request on the grounds that it is overly broad, unduly vague and ambiguous. Without waiving the benefit of the foregoing objection, any recorded assignments are public information obtainable at the U.S. Trademark office.

REQUEST NO. 31:

All documents relating to any authorization to use the name or mark "TAIYO" and/or TAIYO EDGE in connection with any goods and/or services, which Registrant may have ever provided.

Response:

Except as used herein in Registrant's marks, no such documents exist for TAIYO.

With respect to TAIYO EDGE, no such authorization documents exist, however See Document Nos. 155-156 produced herewith.

REQUEST NO. 32:

All documents relating to any authorization to use the name or mark "TAIYO" and/or "TAIYO EDGE" in connection with any goods and/or services, which Registrant may have ever received.

Response:

Except as used herein in Registrant's marks, no such documents exist for TAIYO.

With respect to TAIYO EDGE, no such documents exists for authorization received by Registrant.

REQUEST NO. 33:

All documents relating to the control of the nature and quality of any goods and/or services offered under the name or mark "TAIYO" and/or "TAIYO EDGE."

Response:

Except as used herein in Registrant's marks, no such documents exist for TAIYO.

See, Document Nos. 508-721 and 724-767 produced herewith.

REQUEST NO. 34:

All documents explaining, setting forth and/or relating to the “business relationship” between Petitioner and Registrant as referred to in Registrant’s Affirmative Defenses in its Answer.

Response:

See Document Nos. 6-379 produced herewith.

REQUEST NO. 35:

All documents relating to any disclosures allegedly communicated by Registrant to Petitioner regarding Registrant’s plans to register the name or mark TAIYO EDGE.

Response:

See Document Nos. 14, 17, 23, 36, 54, 85 and 87 produced herewith.

REQUEST NO. 36:

All documents relating to any approvals allegedly given by Petitioner to Registrant regarding Registrant’s plans to register the name or mark TAIYO EDGE.

Response:

See Document Nos. 14, 17, 23, 36, 54, 85 and 87 produced herewith.

REQUEST NO. 37:

All documents which support Registrant’s allegation in its Fourth Affirmative Defense that Petitioner has not continuously used the marks TAIYO KOGYO and/or TAIYO in the United States, and that Petitioner has not distributed a single toy product un

the United States under the brand name TAIYO KOGYO and/or TAIYO in at least the last fifteen years.

Response:

No such documents exist due to the fact that there has been no use.

REQUEST NO. 38:

All documents relating to any line of credit arranged and/or provided by Petitioner or Petitioner's management for Registrant's benefit.

Response:

See Document Nos. 329-379 produced herewith.

REQUEST NO. 39:

All communications between Petitioner and Registrant relating to goods and/or services sold, offered or distributed under the name or mark TAIYO and/or TAIYO EDGE.

Response:

Except as used herein in Registrant's marks, no such documents exist for TAIYO.

With respect to TAIYO EDGE, See Document Nos. 6-767 produced herewith.

REQUEST NO. 40:

All documents relating to any communication with Petitioner.

Response:

Registrant objects to this request on the grounds that it is overly broad, vague and beyond the scope of this proceeding.

REQUEST NO. 41:

All documents relating to the use of the name TAIYO and/or TAIYO EDGE by others not connected with this cancellation action.

Response:

With respect to TAIYO EDGE, no such documents or use exists.

With respect to TAIYO, See Document Nos. 185-186 produced herewith.

REQUEST NO. 42:

All documents relating to cease and desist letters, cancellation, oppositions or complaints sent by or received by Registrant pertaining or relating to the name or mark TAIYO and/or TAIYO EDGE.

Response:

Registrant objects to this Request on the grounds that it seeks information that is neither relevant nor reasonably calculated to lead to discovery of admissible evidence in this matter and/or is privileged under the attorney-client privilege or the work product doctrine. Without waiving the benefit of the foregoing objection, see Document Nos. 155-156 produced herewith.

REQUEST NO. 43:

All documents relating to any public confusion between Registrant and Petitioner including, but not limited to, any misdirected correspondence, email, or oral communication to Registrant which were intended for Petitioner.

Response:

Registrant objects to this Request on the grounds that it is overly broad, vague and ambiguous. Without waiving the foregoing, no such documents exists.

REQUEST NO. 44:

All documents relating to any persons, including but not limited to expert witnesses, whom Registrant has consulted, interviewed, retained or taken statements from with respect to giving evidence or opinions in this action by way of providing testimony through affidavits, declarations or trial testimony.

Response:

Registrant objects to this request on the grounds that any such documents are protected under the work product doctrine.

REQUEST NO. 45:

All reports prepared by any expert regarding any issues in this cancellation proceeding.

Response:

Registrant objects to this request on the grounds that any such documents are protected under the work product doctrine.

REQUEST NO. 46:

All documents identified in Registrant's responses to Petitioner's First Set of Interrogatories to Registrant.

Response:

Registrant objects to this Request on the grounds that it is overly broad, vague and ambiguous. Without waiving the foregoing, see all documents produced herewith.

REQUEST NO. 47:

All documents and things which Registrant intends to offer into evidence during the course of these proceedings.

Response:

See all documents produced herewith.

Neil Tilbor, CEO of Registrant, Leynian Ltd. Co., states that he has read the foregoing Response to Petitioner's Request for Production of Documents and Things and that they are true to the best of his knowledge and belief.

Dated: 6/5/03

By: Neil Tilbor
Neil Tilbor, CEO

As to objections,

KEUSEY, TUTUNJIAN & BITETTO, P.C.

Date: June 6, 2003

By: John G. Tutunjian
John G. Tutunjian
Attorneys for Registrant
14 Vanderventer Avenue, Suite 128
Port Washington, NY 11050
(516) 883-3868

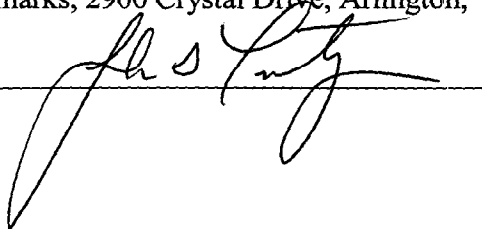
Express Mail Mailing Label:

Express Mail No. EV 214773411 US

Date of Deposit: June 6, 2003

I hereby certify that this correspondence, along with two copies, is being deposited with the United States Postal Service as "Express Mail Post Office Addressee" Service under 37 CFR 1.10 on the date indicated above and is address to: Box TTAB No Fee, Assistant Commissioner of Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513

By: _____

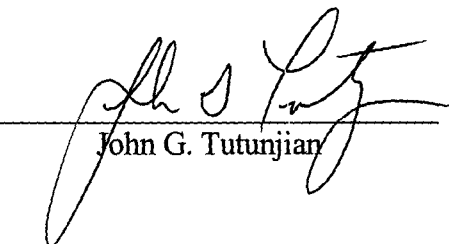
A handwritten signature in black ink, written over a horizontal line. The signature is cursive and appears to be "John S. Long".

CERTIFICATE OF SERVICE

I hereby declare under penalty of perjury that on Thursday, June 6, 2003 a true and accurate copy of the foregoing Response was served upon attorney for Petitioner, by depositing the same by first class mail, postage prepaid, addressed to the following:

Diane J. Mason, Esq.
Dorsey & Whitney, LLP
Four Embarcadero Center, Suite 3400
San Francisco, CA 94111-4187

Dated: June 6, 2003



John G. Tutunjian