



April 20, 2016

VIA EMAIL

Michael Breshears, Chief Executive Officer
Kyäni, Inc.
1070 Riverwalk Dr., Suite 350
Idaho Falls, ID 83402
[REDACTED]

Re: Response to your April 6, 2016 letter

Dear Mr. Breshears:

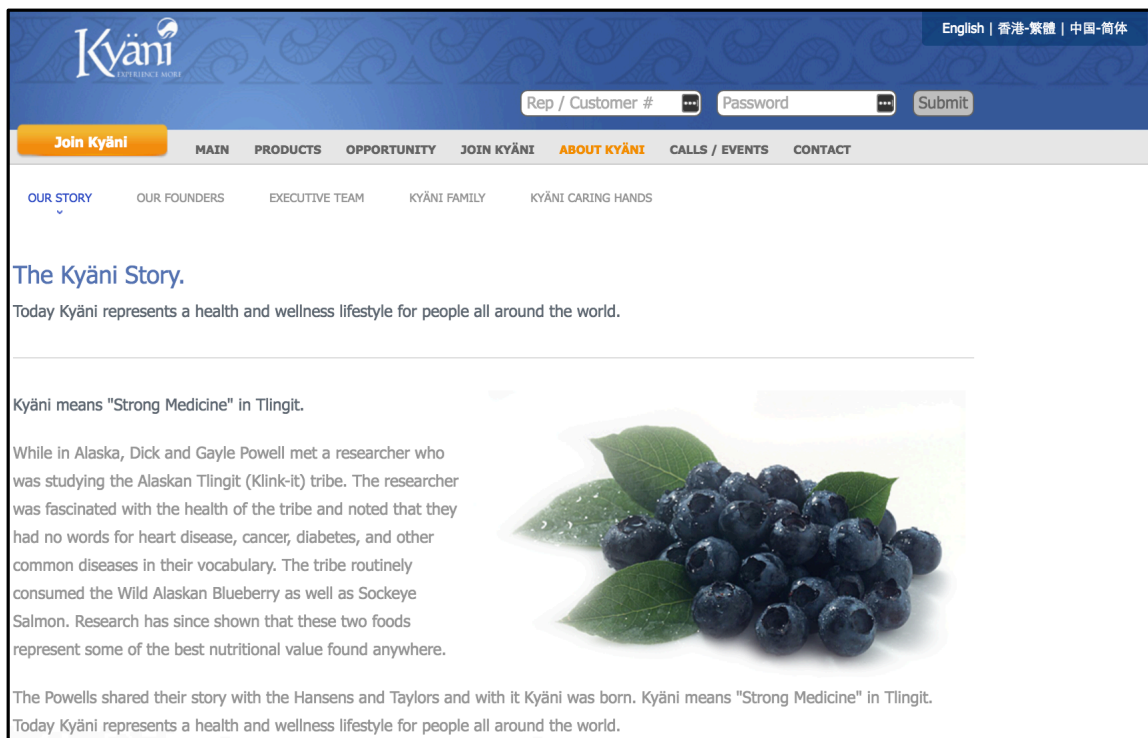
Thank you for your response to my March 28, 2016 letter, and understanding for the delay of this letter as I was out of the country last week.

With respect to the hundreds of deceptive health and income claims discovered during TINA.org's investigation, a point of clarification seems necessary. Specifically, the deceptive marketing claims were not limited to Kyäni distributors. Indeed, we have documented numerous examples of the company, as well as its Scientific Advisory Board, making inappropriate claims. I trust that you do not need guidance in finding company publications making such claims but by way of illustration, I offer you the following examples that were previously posted by the company on its social media accounts:



As for your assertion that Kyani has “robust policies against inappropriate claims which [you] try hard to enforce,” such a contention is belied by the multitude of inappropriate health and income claims that have been on the world wide web for years. Simply by Googling “Kyani” and “cancer,” or “diabetes,” or “ADHD,” or “migraines,” or any other disease of your choosing you will find a plethora of websites and social media posts and entries making false and deceptive claims. As for income claims, search terms such as “Kyani” and “millionaires” will provide your compliance department with a starting point for income representations that do not comply with FTC law. For these same reasons, your claim that Kyani could neither respond to our warning letter nor take action to correct the issues because we did not offer specifics is simply not credible. Moreover, despite the fact that TINA.org’s database of inappropriate Kyani health and income claims has now been published for well over a week, as of April 14, 2016, not a single item identified and listed in our databases had been taken down.

I was further surprised by your contention that Kyani stopped using the “strong medicine” definition of “Kyani” in 2012 because that simply is not true. (See below.) Given the fact that the word “kyani” does not mean “strong medicine” in Native Alaskan Tlingit, it is troubling, to say the least, that the company and its distributors continue to mislead consumers in this way.



See, e.g., Kyani Asia homepage, available at <https://asia.kyani.net/public/au/en/about/story> (screen shot above captured on April 20, 2016).

And while it is true that TINA.org does not have a medical professional on staff, I can assure you that we are experts when it comes to truth in advertising laws. And based on this expertise, we have documented multiple examples of your Scientific Advisory Board

members making inappropriate and unsubstantiated disease treatment and prevention claims about the Kyani products that run afoul of FTC and FDA laws for which the Kyani white papers will be of little value. *See, e.g.*, <https://www.truthinadvertising.org/wp-content/uploads/2016/03/BurkeADHD.mp4> (Dr. Thomas Burke claiming that Kyani Sunset can treat Attention Deficit Hyperactivity Disorder); <https://www.truthinadvertising.org/wp-content/uploads/2016/03/FrancomanoStrongMed.mp4> (Dr. Clair Francomano claiming that Kyani means “strong medicine” and implying that it can prevent heart disease, cancer, or diabetes); <https://www.truthinadvertising.org/wp-content/uploads/2016/04/QuatabKyani.mp4> (Dr. Abbas Quatab claiming that Kyani can prevent heart disease, stroke, diabetes, and cancer). *See also POM Wonderful, LLC v. FTC*, 777 F.3d 478 (D.C. Cir. 2015).

As for Kyani’s USA Income Disclosure Statement, it appears that we can agree that the Statement is perplexing as is evidenced by the confusion with regard to the difference between distributors, active distributors, inactive distributors, and customers. You explain in your letter that “inactive” distributors are those “who are no longer with Kyani,” and that is why Kyani did not include them in the statistics listed in the Statement. However, such a representation directly conflicts with the definitions in the Statement itself. The Statement defines an “active distributor” as “any distributor with a purchase within the last 12 months,” while “cancelled” distributors are defined as those “with no Purchases for 24 consecutive months,” which also means that there is a subset of distributors that are neither active nor cancelled, i.e., inactive distributors. *See* <https://usincome.kyani.net/>. Thus, the Income Disclosure Statement appears to inappropriately exclude a portion of distributors who are still with Kyani, but who may not have made a purchase in the last 23+ months. Moreover, contrary to your assertions that some people enroll simply to consume the product and therefore are not losing money, the Disclosure Statement specifically states that “[a]ctive distributors do not include customers.”

As for the Kyani car program being easy to achieve, Kyani’s own data demonstrates that between September 2014 and August 2015, less than 3% of all “active” Kyani distributors qualified for the car bonus, which means conversely that the vast majority of distributors, over 97%, are not finding it so easy to qualify for this bonus.

Finally, you state in your letter that TINA.org is wrongfully using Kyani’s trademarked logo without permission. Please rest assured that TINA.org takes the intellectual property rights of others seriously and has no intention of infringing Kyani’s trademarks. With that said, however, TINA.org’s use of the logo in question constitutes fair use protected by, among other things, the First Amendment of the U.S. Constitution. TINA.org is a nonprofit website that provides news and educational material to consumers and has used Kyani’s logo in connection with these activities. Furthermore, TINA.org’s use of the image is consistent with its fair use policy, which is available at <https://www.truthinadvertising.org/fair-use-policies/>.

If you have any questions or need further information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink that reads "L. Smith". The signature is written in a cursive, flowing style.

Laura Smith, Esq.
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