



From the Office of the
Chief Executive Officer

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April 6, 2016

VIA email and Fed Express Courier and First Class Mail

Laura Smith, Esq.
Legal Director
Truth in Advertising, Inc.
P.O. Box 927
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Madison, CT 06443
lsmith@truthinadvertising.org

RE: Your letter of April 5, 2016 and your website

Dear Ms. Smith:

This letter is to respond to yours of April 5, 2016, and to the Truth-in-Advertising website section about Kyäni, currently located at <https://www.truthinadvertising.org/what-you-should-know-about-kyani/>. Kyäni actively works to provide efficacious products and a great income opportunity for customers and Distributors. Our reputation is important to us, and we have dedicated compliance teams in the US, Europe, and Asia that do their best to police the claims being made by Distributors on the Internet and elsewhere.

However, as you know, the Internet is a big place, and it is difficult to root out every inappropriate claim being made by a Distributor. That is especially difficult in Kyäni's case because Distributors who have a great experience with the products often want to share that experience. Although Kyäni has robust policies against inappropriate claims which we try hard to enforce, despite our best efforts, Distributors may not understand those policies or the difference between correct and incorrect ways of describing their experiences. Part of the Kyäni compliance effort includes mandatory Distributor compliance training coupled with corporate working to ensure those improper claims are removed and appropriate actions taken with Distributors.

So I would like to thank you for bringing some instances to our attention in which Distributors may have gotten carried away in their enthusiasm for Kyäni and its products. I have provided the links in your report and website to our compliance team and they are working to see that these Distributors remove any claims or testimonials that we conclude are misleading or potentially problematic under the law. That process is well underway – with some compliance demands already sent to Distributors – and we expect to complete going through your lists in the next week. In addition, we have found that some of these links are to long-canceled Distributors. Of course that is not the end to our compliance efforts as the compliance team continues to search for and resolve issues.

There are some portions of your website, however, that simply get the facts wrong or mislead the public about what the facts are.

Native Alaskan Language Issue

When the founders of Kyäni started the company, they looked up words in native Alaskan languages, looking for a word that had a meaning related to the health and wellness products whose potential they had identified, had a nice look and feel, and could be trademarked. They chose “Kyäni” because it was a modified version of a word they believed meant, among other things, “strong medicine.” They did not ask a Tlingit or other Native Alaskan speaker how that speaker would say “strong medicine,” and have never claimed they did so, although they still believe that “strong medicine” is an adequate translation of “Kyäni” in one or more Native Alaskan languages. Regardless, this definition is something Kyäni stopped using in any corporate marketing materials as of December 2012 or before – over 3 years ago.

Scientific Advisory Board

Kyäni’s scientific advisory board is composed of professionals. The criticisms made about the board on the TINA website are not made by anyone comparably qualified so far so we can tell. For example, Dr. Qutab, along with every medical doctor or scientist, is entitled to have an informed opinion about dietary supplements and to believe and express the belief that the world would be better off with natural remedies rather than medicines if natural remedies could be used. One might disagree, but the validity of that opinion would depend on the knowledge of the person making it, and neither Dr. Qutab nor Kyäni has ever advocated Kyäni products as a replacement for medication.

Further, despite TINA’s implication otherwise, Kyäni has provided the public with extensive, peer-reviewed research on the ingredients in Kyäni’s products. This information is cited in detail in Kyäni’s white papers. Dr. Qutab’s statement refers only to the fact that Kyäni *itself* has not published peer-reviewed research. But the TINA website deliberately implies that none *exists*.

Your statement that Kyäni’s white papers “do not reliably support its claims” is also misleading, because you appear to be referring to claims made by third-party Distributors in violation of Kyäni’s policies and procedures, as though they are *Kyäni’s* claims. There is in fact substantial, peer-reviewed, and reliable scientific support for the claims actually made by Kyäni and for the materials in its white papers.

Recruiting Allegations

Kyäni has fully cooperated with the Swedish gaming board in its investigation. Based on what Kyäni has learned, the gaming board’s concerns are purely technical and do not materially affect anything Kyäni is doing. In fact, all that was required to satisfy the Swedish authorities was a modification to the enrollment process – which was implemented this week. With this modification, we fully expect the Swedish notification to be removed in the next few weeks. As for other recruiting-based

concerns, recruitment of new Distributors and customers is indisputably an important part of network marketing, and Kyäni is no exception. However, recruiting is important *only* because recruiting new Distributors and customers leads to *more sales* and therefore *more commissions*. It is *always* the sale of an actual product to an actual consumer that triggers commissions for Distributors and profits for Kyäni. Neither Kyäni nor any Kyäni Distributor has ever made a dime without the purchase by a consumer of a Kyäni product.

Eastern Europe Allegations

Kyäni has been very successful in Eastern Europe and fully cooperates with authorities there and throughout the world. Kyäni did the same with Hungarian authorities and was able to quickly resolve the matter with its Distributors. It was because of this cooperation that the matter was so easily resolved. And the Estonian situation was a simple matter of an ingredient approved in the U.S. not being approved in Europe. It has also been resolved. The formula was modified and the adjusted product is in market and fully complies with local and EU regulation. TINA's website is misleading to the extent that it implies otherwise.

"Lifestyle" Claims

As we have gone through some of the links you provided related to alleged income claims, we have found that in many cases the links are "lifestyle" videos or pictures that violate Kyäni policy because they lack the customary link to the publically available Kyäni Income Disclosure Statement. We are requesting the immediate remedy of those cases by the addition of the link to the disclosure statement in the post or video.

Income and Related Disclosures

Kyäni's income disclosure statement only addresses active Distributors because it would be misleading to include Distributors who are no longer with Kyäni. However, TINA sarcastically implies that Kyäni deliberately chose only top Distributors for the disclosure in an effort to deceive, when in fact Kyäni simply excluded inactive and cancelled Distributors because to include them would falsely imply that they continue to be associated with Kyäni. Your attempt to calculate the income of the "bottom 75%" contains no explanation of how you "estimated" the incomes of these Distributors, and is also false and misleading because it *only* includes inactive Distributors—none of whom is still with Kyäni—and thus implies that the *inactive* Distributors are somehow a better gauge of the Kyäni opportunity than those who remain active.

Kyäni's car bonus program is not false or misleading just because it takes work to achieve it. Many Kyäni Distributors participate in the car bonus program every month. And while Sapphire rank can take time for some, it is clearly an "early rank," which can be achieved in as little as three days. The median time to the rank of Sapphire is less than two months. All of these facts are clearly disclosed on the Kyäni Income Disclosure Statement. In fact, despite your claims otherwise, complete information is provided on the Kyäni Income Disclosure Statement. This includes a full definition of terms and full



information of ranks and earnings – from average / median / high / low earnings and time to achieve rank including longest / shortest / median and average. Kyäni hides nothing on its disclosure and provides complete information to understand the potential (or not) of Kyäni earnings.

Your website also inaccurately portrays that a potential Distributor is forced to purchase a high-priced starter pack. That is simply not true. There are several starter packs to choose from – including a forty dollar starter pack that allows a person to become a Distributor with full rights as a Distributor without any other commitments. In your comments you also imply that product purchases are a cost and hence a Distributor loses money unless they are a top rank. This ignores the fact that many people enroll with the sole purpose of consuming the products purchased at the lowest Distributor pricing. These people are consumers of a great product and are not “losers.”

Kyäni’s Distributor contractual relationships are similar to those of almost any company in the industry. Kyäni Distributors are paid, some highly paid, to share the Kyäni products and the Kyäni opportunity. Again, as stated previously, there are no commissions except on product sales. Both Kyäni and its Distributors benefit from clear rules and expectations going in. And Kyäni’s return policies for Distributors and customers are sufficiently clear for any average consumer to understand them.

Website Graphics

While you certainly have the right to make your allegations (even if some are misleading) and use representative pictures, it is not appropriate to take a registered trademark, in this case the Kyäni logo, and add something to it, in this case “INVESTIGATED.” In addition, the image you altered is the copyrighted property of Kyäni, used without proper permission. Please remove / alter that image. Additionally, I trust that you will now remove the comment at the bottom of your website allegations that states that Kyäni did not respond to your allegations. Indeed, the only reason you did not get a response to your March 28 letter by the time you requested it was that your letter of March 28 offered no specifics whatsoever. There is no way for Kyäni to take action to correct generalized allegations of misconduct by its Distributors with no further information.

In summary, I do thank you for the links that we had not already located in our compliance process. As I stated above, we are already addressing those on the list and will continue through the entire list. I will also update you as we go through those. Even though there may be some differences of opinion on specific compliance events, compliance is critical to Kyäni. If you would like to talk with me about any of the above responses, I would also be glad to do that.

Regards,



Michael Breshears
Kyäni CEO



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:

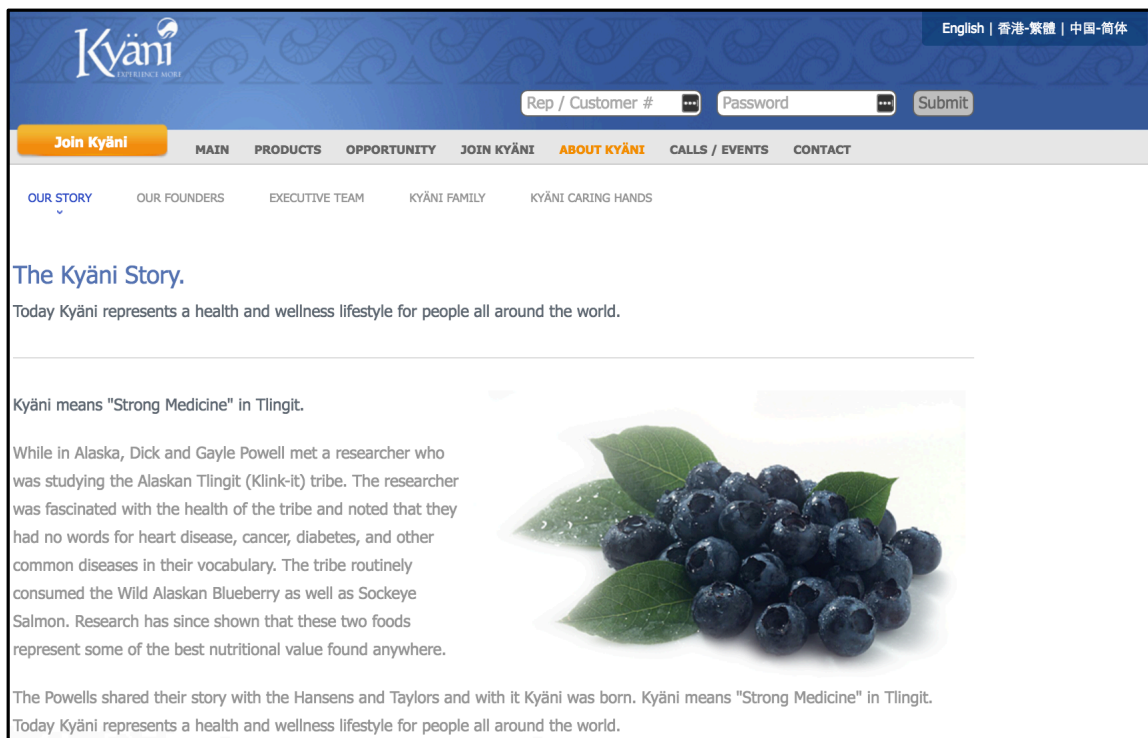
Thank you for your response to my March 28, 2016 letter, and understanding for the delay of this letter as I was out of the country last week.

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 style with a large initial "L" and a dot over the "i" in "Smith".

Laura Smith, Esq.
Legal Director
Truth in Advertising, Inc.
lsmith@truthinadvertising.org



August 1, 2016

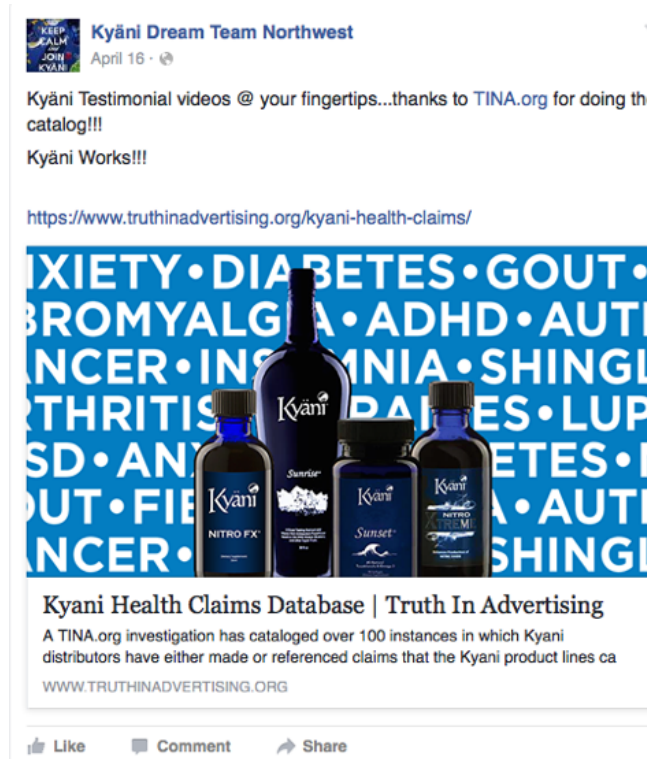
VIA EMAIL

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

Re: Continuous Deceptive Marketing by Kyäni Distributors

Dear Mr. Breshears:

It has come to my attention that Kyäni distributors are using TINA.org's database of inappropriate health claims made about Kyäni products as a marketing tool. For example, the Kyäni Dream Team Northwest Facebook page posted a link to TINA.org's database in April 2016 to apparently support the claim that "Kyäni works!!!"



Not only is the use of this database of deceptive health and disease-treatment claims illegal, but the timing is such that it was posted 10 days after you assured me in writing that Kyäni has “robust policies against inappropriate claims which [you] try hard to enforce” and that “compliance is key to Kyäni.” The post is still published today, almost four months later.

It is troublesome, to say the least, that Kyäni’s compliance procedures are apparently wholly unable to identify and eradicate obvious illegal and deceptive marketing claims made about its products. We trust you will address this matter immediately and make every effort to enhance your company’s procedures for ensuring that claims made and used by Kyäni distributors are truthful and in compliance with the law.

Sincerely,



Laura Smith, Esq.
Legal Director
Truth in Advertising, Inc.

Cc: Jessica Rich, Director, Bureau of Consumer Protection, FTC
Mary Engle, Associate Director, Division of Advertising Practices, FTC
Lois Greisman, Associate Director, Division of Marketing Practices, FTC
Idaho Attorney General Lawrence G. Wasden