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

Proceeding	91204122
Party	Defendant Michael Liang
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Date	09/06/2013
Attachments	Response to the Opposer's First Set of Interrogatories and and Request for Production of Documents and Things.pdf(46371 bytes)

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

In re Application Serial No. 85/213,453
Filed: January 8, 2011
For Mark: NYC BEER LAGER and Design
Published in the Official Gazette: December 6, 2011

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: EMPIRE STATE BUILDING COMPANY L.L.C., :
: :
: Opposer, :
: :
: v. : Opposition No.: 91204122
: :
: MICHAEL LIANG, :
: :
: Applicant. :
: :
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Commissioner for Trademarks
Attn: Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

**APPLICANT’S RESPONSE
TO OPPOSER’S FIRST SET OF INTERROGATORIES
AND REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS**

Pursuant to Rule 33 and 34 of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.120, Applicant, MICHAEL LIANG (“Applicant”), by and through his undersigned attorney, hereby submit responses and objections to Opposer Empire State Building Company L.L.C. (“Opposer”)’s First Set of Interrogatories and Request for Production of Documents and Things:

GENERAL OBJECTIONS

The following General Objections are incorporated into each Specific Objection and Response below as if set forth in full responses to each individually numbered response. The

failure to specifically incorporate a General Objection shall not be construed as a waiver of the same.

1. Applicant objects to each and every Interrogatory herein to the extent that it seeks information or documents protected by any privilege or protection from discovery, including but not limited to the attorney-client privilege and the work-product doctrine. The inadvertent production of any material protected by the attorney-client privilege, the work-product doctrine or any other applicable privilege, immunity or protection from disclosure is not intended and should not be construed to constitute a waiver. Applicant reserves the right to assert all applicable privileges and protections from production.
2. Applicant objects to each and every Interrogatory to the extent that it seeks to impose requirements that are inconsistent with, or beyond those contemplated by, the Federal Rules of Civil Procedure and/or the Code of Federal Regulations.
3. Applicant objects to each and every Interrogatory to the extent that the definitions, instructions, or specific requests are vague, ambiguous, overly broad, and/or unduly burdensome.
4. Applicant objects to each and every Interrogatory to the extent that it seeks information that is a matter of public record or equally available to Opposer.
5. Applicant objects to each and every Interrogatory to the extent that it calls for an expert opinion on the ground that it violates the work-product doctrine.
6. Applicant objects to each and every Interrogatory to the extent that it seeks Applicant confidential and proprietary information, the disclosure of which will or may cause harm to Applicant.

7. Applicant objects to each and every Interrogatory as overly broad, unduly burdensome, and oppressive, insofar as it seeks information which is in the custody, possession, or control of Opposer or its agents, or is equally available to the public.
8. Applicant objects to each and every Interrogatory to the extent that it is overly broad, unduly burdensome, and oppressive, where the Interrogatory requests the identification of “all” documents when all relevant facts can be obtained from fewer than “all documents.”
9. Applicant objects to each and every Interrogatory to the extent that it is overly broad and unduly burdensome by requesting documents that are neither relevant to the claim or defense of any party nor reasonably calculated to lead to the discovery of admissible evidence.
10. Applicant objects to each and every Interrogatory to the extent that it is vague or ambiguous.
11. Applicant objects to each and every Interrogatory to the extent that it is overly broad, unduly burdensome, or oppressive.
12. Applicant objects to each and every Interrogatory to the extent that it requires Plaintiff to produce documents not within Applicant’s possession, custody, or control. Unless otherwise specified, Applicant will not produce any documents in the possession, custody, and control of any third party, including any agent or outside attorney of Applicant.
13. Applicant objects to each and every Interrogatory to the extent that it seeks information without any limitation to the time period relevant to this action.

14. In making these objections, Applicant does not in any way waive, or intend to waive, but rather intend to preserve and are preserving:
15. All objections as to competency, relevancy, materiality, and admissibility of any information that may be provided in response to the Interrogatory, or the subject matter thereof;
16. All rights to object on any ground to the use of any information that may be provided in response to the Interrogatory, or the subject matter thereof, in any subsequent proceedings, including the trial of this or any other matter; and
17. All rights to object on any ground to any request for further responses to the Interrogatory or any other document request.
18. Applicant's objections herein and the production of any documents by Applicant pursuant to any Interrogatory are not intended to waive or prejudice any objections or privileges Applicant may later assert, without limitation.
19. Applicant reserves the right to supplement, amend, correct, or clarify the responses and objections to the Interrogatory.

In addition to the General Objections set forth above, Applicant sets forth below Specific Objections to individual requests where appropriate, including objections that are not generally applicable to all of the requests. By setting forth such Specific Objections, Applicant does not intend to limit the General Objections set forth above. To the extent that Applicant responds to requests to which they object, such objections are not waived by a response.

The information provided herein is based upon, and is therefore limited by, the records and information in existence, presently collected and thus far discovered in the course of the preparation of these responses.

SPECIFIC OBJECTIONS AND RESPONSES

Interrogatory No. 1:

State the date when Applicant first selected any mark comprising or containing Applicant's Mark for use or intended use in connection with any goods or services.

Response No. 1:

Applicant objects to this Interrogatory on the ground that it is overly broad and unduly burdensome.

Subject to and without waiving any General Objection or Specific Objection, Applicant answers as follows: Applicant has not used any mark comprising or containing Applicant's Mark in connection with any goods or services. Once the Applicant's application for registration (Serial No. 85/213,453) is approved by the U.S. Patent and Trademark Office, Applicant intends to use a mark comprising or containing the Applicant's Mark in goods or services of Alcohol-free beers; Beer; Beer, ale and lager; Beer, ale and porter; Beer, ale, lager, stout and porter; Beer, ale, lager, stout, porter, shandy; Beers; Black beer; Brewed maltbased alcoholic beverage in the nature of a beer; Coffee-flavored beer; De-alcoholised beer; Extracts of hops for making beer; Flavored beers; Ginger beer; Hop extracts for manufacturing beer; Imitation beer; Malt beer; Malt extracts for making beer; Malt liquor; Non-alcoholic beer; Pale beer.

Interrogatory No. 2:

Identify all persons who or entities that participated in or were consulted in the design selection and/or adoption of any mark comprising or containing Applicant's Mark, including a description of the nature of each person's or entity's participation or consultation.

Response No. 2:

Applicant objects to this Interrogatory on the ground that it is overly broad and unduly burdensome.

Subject to and without waiving any General Objection or Specific Objection, Applicant answers as follows: Applicant does not remember with specificity every individual responsive to this request. Applicant has only retained a design firm, Sky Blue Web Design Studio, 15 7th Avenue South, New York, NY 10014, Attn.: Raymond Yu, Tel.: (917) 916-8802, to design the Applicant's Mark.

Interrogatory No. 3:

Describe in detail the reason(s) for the selection of Applicant's Mark, including, without limitation, the intended commercial impression created by the building design in Applicant's Mark.

Response No. 3:

Applicant objects to this Interrogatory on the ground that it is overly broad and unduly burdensome.

Subject to and without waiving any General Objection or Specific Objection, Applicant answers as follows: the building design in the Applicant's Mark represents the skyscrapers in New York City that would create the commercial impression of metropolitan life style.

Interrogatory No. 4:

Identify any trademark searches or other searches, opinions, investigations, analyses or studies related to the selection, design, and/or adoption of Applicant's Mark, including, without limitation, the persons involved, the date(s), and the data or results of those searches, opinions, investigations, analyses or studies.

Response No. 4:

Applicant objects to this Interrogatory on the ground that it is overly broad and unduly burdensome.

Subject to and without waiving any General Objection or Specific Objection, Applicant answers as follows:

(a) The design firm, Sky Blue Web Design Studio, will not disclose its work-product related confidential information and its work has no connection with the Applicant's intention to use this Applicant's Mark.

(b) Applicant searched the website of the U.S. Patent and Trademark Office shortly before Applicant submitted the application for registration on January 8, 2011.

Interrogatory No. 5:

State whether Applicant (or any person or entity authorized by Applicant) has made any use of any marks comprising or containing Applicant's Mark in the United States or in commerce as of the present date, and if so, identify each product or service on or in connection with which Applicant (or any person or entity authorized by Applicant) has made such use (hereinafter "Applicant's Products/Services").

Response No. 5:

Applicant objects to this Interrogatory on the ground that it is overly broad and unduly burdensome.

Subject to and without waiving any General Objection or Specific Objection, Applicant answers as follows: Applicant has not made use any mark comprising or containing Applicant's Mark in the United States or in commerce.

Interrogatory No. 6

For each of Applicant's Products/Services identified in response to Interrogatory No. 5 above, identify:

(a) The date of first use for each of Applicant's Products/Services;

- (b) The period of time during which each of Applicant's Products/Services was or is being distributed, offered for sale, sold or rendered;
- (c) The geographic area(s) in which each of Applicant's Products/Services was or is being distributed, offered for sale sold or rendered;
- (d) The annual volume of sales for each year to the present, both by dollar amount and unit amount, for each of Applicant's Products/Serives;
- (e) Any other revenues, including, without limitation, any licensing or sponsorship revenues that Applicant has received in connection with each of Applicant's Products/Services;
- (f) The range of retail and wholesale price for each of Applicant's Products/Services for each year to the present;
- (g) The channels of trade (e.g., types of retail stores, catalogs, mail order, on-line, promotional sales, private sales, establishments, etc.) through which each of Applicant's Products/Services was or is being distributed or sold to the ultimate purchaser, consumer or user; and
- (h) The type of customers to whom each of Applicant's Products/Services is or was marketed, distributed, offered for sale, sold or rendered.

Response No. 6:

Applicant objects to this Interrogatory on the ground that it is overly broad and unduly burdensome.

Subject to and without waiving any General Objection or Specific Objection, Applicant answers as follows:

- (a) Applicant has not used its products or services yet;

- (b) Not applicable;
- (c) Not applicable;
- (d) Not applicable;
- (e) Not applicable;
- (f) Not applicable;
- (g) Not applicable;
- (h) Not applicable.

Interrogatory No. 7:

State whether any mark comprising or containing Applicant's Mark has been used or is intended to be used in connection with any indicia, designs, stylizations, terms, imagery, marks, logos, themes, or references similar to, related to, or associated or affiliated with Opposer, and if so describe the details of each such use or intended use.

Response No. 7:

Applicant objects to this Interrogatory on the ground that it is overly broad and unduly burdensome.

Subject to and without waiving any General Objection or Specific Objection, Applicant answers as follows: Applicant lacks knowledge or information sufficient to form a belief as to the fact whether any mark comprises or contains Applicant's Mark.

Interrogatory No. 8:

Identify any persons or entities that have ever, either orally or in writing, authorized, licensed, assigned, granted, conveyed or otherwise transferred to Applicant the right to use any mark comprising or containing Applicant's Mark, and for each such person or entity, identify the date of and material terms under which such authorization, license, assignment, grant,

conveyance or other transfer was made, including, without limitation, the details of the grant of rights to use Applicant's Mark and the financial terms governing such transaction.

Response No. 8:

Applicant objects to this Interrogatory on the ground that it is overly broad and unduly burdensome.

Subject to and without waiving any General Objection or Specific Objection, Applicant answers as follows: No.

Interrogatory No. 9:

Identify any persons or entities Applicant has authorized, licensed, assigned, granted, conveyed or otherwise transferred the right to use any mark comprising or containing Applicant's Mark, and for each such person or entity, identify the date of and material terms under which such authorization, license, assignment, grant, conveyance or other transfer of right to use was made, including, without limitation, the details of the grant of rights to use Applicant's Mark and the financial terms governing such transaction.

Response No. 9:

Applicant objects to this Interrogatory on the ground that it is overly broad and unduly burdensome.

Subject to and without waiving any General Objection or Specific Objection, Applicant answers as follows: No. Applicant lacks knowledge or information sufficient to form a belief as to the fact whether any mark comprises or contains Applicant's Mark.

Interrogatory No. 10:

Identify each website, web auction, web hosting, web listing, web posting, web page or social media page, whether owned by Applicant or third parties, including its Internet address, on

or through which Applicant's Mark and/or Applicant's Products/Services have been, are currently being or are intended to be promoted, advertised, displayed, offered for sale, sold or otherwise distributed.

Response No. 10:

Applicant objects to this Interrogatory on the ground that it is overly broad and unduly burdensome.

Subject to and without waiving any General Objection or Specific Objection, Applicant answers as follows: Applicant lacks knowledge or information sufficient to form a belief as to the fact whether such website, web auction, web hosting, web listing, web posting, web page or social media page alleged by Opposer in the Interrogatory ever exists.

Interrogatory No. 11:

(a) Identify each kind of advertising, marketing and other promotional materials, including, without limitation, point-of-sale material, signs, circular, flyer, poster, sticker, sales sheet, leaflet, brochure, catalog, sign, price list, on-line or email advertisement, print advertisement, radio or television advertisement, service order list or other advertising material or promotional item that has been used or is intended to be used in connection with Applicant's Products/Services and/or Applicant's Mark.

(b) For each promotional material referred to in subparagraph (a) above, identify where the promotional material is advertised, posted, promoted, published or distributed (e.g. name the publication, the URL for the website, the retail store, etc.);

Response No. 11:

Applicant objects to this Interrogatory on the ground that it is overly broad and unduly burdensome.

(a) Subject to and without waiving any General Objection or Specific Objection, Applicant answers as follows: Applicant lacks knowledge or information sufficient to form a belief as to the fact whether any kind of advertising, marketing and other promotional materials, including, without limitation, point-of-sale material, signs, circular, flyer, poster, sticker, sales sheet, leaflet, brochure, catalog, sign, price list, on-line or email advertisement, print advertisement, radio or television advertisement, service order list or other advertising material or promotional item that has been used or is intended to be used in connection with Applicant's Products/Services and/or Applicant's Mark.

(b) Subject to and without waiving any General Objection or Specific Objection, Applicant answers as follows: Applicant lacks knowledge or information sufficient to form a belief as to the fact whether and where, for each promotional material referred to in Interrogatory No. 11 subparagraph (a) above, the promotional material is advertised, posted, promoted, published or distributed.

Interrogatory No. 12:

(a) Describe each instance where any person has by word or deed or otherwise, including, without limitation, by misdirected mail, e-mail, telephone calls, orders or inquiries, suggested or reflected a belief that Applicant is licensed, endorsed or sponsored by or is a sponsor of Opposer, or that the products or services sold, offered for sale, or otherwise distributed or intended to be sold, offered for sale, or otherwise distributed by Applicant under Applicant's Mark are licensed, endorsed or sponsored by or associated with or related in any way to Opposer, and/or Opposer's Empire State Building Marks; and

(b) Identify all persons knowledgeable about any such instances referred to in subparagraph (a) above and describe the nature of their knowledge.

Response No. 12:

Applicant objects to this Interrogatory on the ground that it is overly broad and unduly burdensome.

(a) Subject to and without waiving any General Objection or Specific Objection, Applicant answers as follows: Applicant lacks knowledge or information sufficient to form a belief as to the fact whether any person has by word or deed or otherwise, including, without limitation, by misdirected mail, e-mail, telephone calls, orders or inquiries, suggested or reflected a belief that Applicant is licensed, endorsed or sponsored by or is a sponsor of Opposer, or that the products or services sold, offered for sale, or otherwise distributed or intended to be sold, offered for sale, or otherwise distributed by Applicant under Applicant's Mark are licensed, endorsed or sponsored by or associated with or related in any way to Opposer, and/or Opposer's Empire State Building Marks.

(b) Subject to and without waiving any General Objection or Specific Objection, Applicant answers as follows: Applicant lacks knowledge or information sufficient to form a belief as to the fact whether any person is knowledgeable about any such instances referred to in Interrogatory No. 12 subparagraph (a) above and what is the nature of their knowledge.

Interrogatory No. 13:

State whether Applicant has marketed or intends to market Applicant's Products/Services bearing or rendered in connection with Applicant's Mark or is aware that such products will be marketed to consumers of Opposer's goods or services, or to consumers located in or around New York, New York and, if so, describe the means by which Applicant has marketed or intends to market Applicant's Products/Services or how such products will be marketed, to consumers of Opposer's goods or services, or to consumers located in or around New York, New York.

Response No. 13:

Applicant objects to this Interrogatory on the ground that it is overly broad and unduly burdensome.

Subject to and without waiving any General Objection or Specific Objection, Applicant answers as follows: Applicant has not marketed the Applicant's Products/Services bearing or rendered in connection with Applicant's Mark anywhere in the world. Applicant, however, intends to market the Applicant's Products/Services bearing or rendered in connection with Applicant's Mark to consumers located in or around China and the United States *once the registration of the Applicant's Mark is approved by the United States Trade and Patent Office*. Applicant does not know at this time how the Applicant's Products/Services bearing or rendered in connection with Applicant's Mark will be marketed, to consumers of Opposer's goods or services, or to consumers located in or around New York, New York after the registration of the Applicant's Mark is approved by the United States Trade and Patent Office.

Interrogatory No. 14:

State whether Applicant was aware of Opposer, Opposer's Empire State Building Marks, and/or goods or services marketed, manufactured, distributed, offered for sale, sold, licensed or rendered by Opposer or under license from Opposer in connection with Opposer's Empire State Building Marks prior to:

- (a) January 8, 2011, when Applicant filed Application Serial No. 85/213,453.
- (b) Any use by Applicant of Applicant's Mark in connection with any goods or services.

Response No. 14:

Applicant objects to this Interrogatory on the ground that it is overly broad and unduly burdensome.

(a) Subject to and without waiving any General Objection or Specific Objection, Applicant answers as follows: Applicant was not aware of Opposer, Opposer's Empire State Building Marks, and/or goods or services marketed, manufactured, distributed, offered for sale, sold, licensed or rendered by Opposer or under license from Opposer in connection with Opposer's Empire State Building Marks with respect to beverage, liquor, or food industries prior to January 8, 2011, when Applicant filed Application Serial No. 85/213,453. Applicant lacks knowledge or information sufficient to form a belief as to the existence of Opposer, Opposer's Empire State Building Marks, and/or goods or services marketed, manufactured, distributed, offered for sale, sold, licensed or rendered by Opposer or under license from Opposer in connection with Opposer's Empire State Building Marks outside the industries of beverage, liquor, or food industries prior to January 8, 2011, when Applicant filed Application Serial No. 85/213,453 that is intended to be used in the beverage, liquor or food industries.

(b) Not applicable.

Interrogatory No. 15:

State whether Applicant has ever sought a license or other right to use any marks, logos, designs, stylizations or slogans, including without limitation, Opposer's Empire State Building Marks, from Opposer.

Response No. 15:

Applicant objects to this Interrogatory on the ground that it is overly broad and unduly burdensome.

Subject to and without waiving any General Objection or Specific Objection, Applicant answers as follows: No.

Interrogatory No. 16:

State whether Applicant has any documentation, including without limitation, business plans, marketing plans, memos, correspondence or draft proposals of any kind, reflecting Applicant's bona fide intention, prior to or as of January 8, 2011, to use Applicant's Mark in commerce in connection with each and every good identified in International Class 32 in Application Serial No. 85/213,453.

Response No. 10:

Applicant objects to this Interrogatory on the ground that it is overly broad and unduly burdensome.

Applicant does not understand what "each and every good" in the above interrogatory means.

Interrogatory No. 17:

With respect to each response to Opposer's First Set of Requests for Admissions that is anything other than an unqualified admission, state the basis for the response, including, without limitation, all facts and documents upon which the response is based.

Response No. 17:

Applicant objects to this Interrogatory on the ground that it is overly broad and unduly burdensome.

DOCUMENT REQUESTS

SPECIFIC OJECTIONS AND RESPONSES

Request No. 1:

Specimens of each of Applicant's Products/Services bearing or displaying any mark comprising or containing Applicant's Mark including, without limitation, each different color combination and each different product design or stylization of products in which Applicant's Mark is used or intended to be used by Applicant and/or its licensees, sponsors or related or affiliated entities.

Response No. 1:

Applicant objects to this Request on the grounds that it is overly broad, unduly burdensome, seeks documents not in the Applicant's possession, seeks documents already in the Opposer' possession, and seeks information not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving any General Objection or Specific Objection, Applicant will produce responsive documents, if any, in their possession: None at this time.

Request No. 2:

Specimens of each label, hangtag, tag, product package, package insert, sticker, hologram, package material or other device which bears any mark comprising or containing Applicant's Mark, and which has been used or is intended to be used by Applicant and/or its licensees.

Response No. 2:

Applicant objects to this Request on the grounds that it is overly broad, unduly burdensome, seeks documents not in the Applicant's possession, seeks documents already in the Opposer' possession, and seeks information not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving any General Objection or Specific Objection, Applicant will produce responsive documents, if any, in their possession: None at this time.

Request No. 3:

Specimens of each point-of-sale material, circular, flyer, poster, sticker, sales sheet, leaflet, brochure, catalog, sign, price list, on-line or email advertisement, print advertisement, radio or television advertisement, service order list or other advertising material or promotional item which bears any mark comprising or containing Applicant's Mark, and which has been used or is intended to be used by Applicant and/or its licensees.

Response No. 3:

Applicant objects to this Request on the grounds that it is overly broad, unduly burdensome, seeks documents not in the Applicant's possession, seeks documents already in the Opposer's possession, and seeks information not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving any General Objection or Specific Objection, Applicant will produce responsive documents, if any, in their possession: None at this time.

Response No. 4:

All documents concerning Applicant's design, clearance, selection, and/or adoption of Applicant's Mark.

Response No. 4:

Applicant objects to this Request on the grounds that it is overly broad, unduly burdensome, seeks documents not in the Applicant's possession, seeks documents already in the Opposer's possession, and seeks information not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving any General Objection or Specific Objection, Applicant will produce responsive documents, if any, in their possession: None at this time.

Request No. 5:

Specimens of each point-of-sale material, circular, flyer, poster, sticker, sales sheet, leaflet, brochure, catalog, sign, price list, on-line or email advertisement, print advertisement, radio or television advertisement, service order list or other advertising material or promotional item which bears any mark comprising or containing Applicant's Mark, and which has been used or is intended to be used by Applicant and/or its licensees.

Response No. 5:

Applicant objects to this Request on the grounds that it is overly broad, unduly burdensome, seeks documents not in the Applicant's possession, seeks documents already in the Opposer's possession, and seeks information not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving any General Objection or Specific Objection, Applicant will produce responsive documents, if any, in their possession: None at this time.

Request No. 6:

Documents sufficient to identify: (a) the date of first use of Applicant's Mark; (b) the date of first use of Applicant's Mark in commerce; (c) the geographic area(s) of use of Applicant's Mark; (d) any and all customers, distributors or other persons or entities to which Applicant's Products/Services offered in connection with Applicant's Mark have been sold or distributed; (e) Applicant's Products/Services bearing, offered for sale, sold or otherwise distributed under Applicant's Mark; (f) all retail, wholesale, commercial, or charitable entities through which goods or services bearing or rendered in connection with Applicant's Mark have

been offered for sale, sold or otherwise distributed; (g) the channels of trade through which Applicant's Products/Services offered in connection with Applicant's Mark were or are being distributed or sold to the ultimate purchaser, consumer or user; (h) the annual volume of sales (in dollars and units) made under Applicant's Mark for each year from the date of first use to the present; and (i) the annual amount of revenue, including, without limitation, any licensing or sponsorship revenues that Applicant has received in connection with Applicant's Products/Services offered in connection with Applicant's Mark, for each year from the date of first use to the present.

Response No. 6:

Applicant objects to this Request on the grounds that it is overly broad, unduly burdensome, seeks documents not in the Applicant's possession, seeks documents already in the Opposer's possession, and seeks information not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving any General Objection or Specific Objection, Applicant will produce responsive documents, if any, in their possession: Not applicable.

Requests No. 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, and 23:

Responses No. 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, and 23:

Applicant objects to this Request on the grounds that it is overly broad, unduly burdensome, seeks documents not in the Applicant's possession, seeks documents already in the Opposer's possession, seeks information already responded, and seeks information not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving any General Objection or Specific Objection, Applicant will produce responsive documents, if any, in their possession: Not applicable and none.

There is not any confusion on the part of any member of the public between Opposer and Applicant and/or their respective marks and/or goods or services. For instance, U.S. Registration No. 1247058 with the work mark “NY” and the designed drawing that shows a “fanciful design of the **Empire State Building**” does not confuse any part of the member of the public where the owner of the U.S. Registration No. 1247058 Mark uses the Mark in the industries or areas in Skylines; Gravestones; Leaning Tower of Pisa; Space needle; Tombstones; Totem poles; Envelopes; Rectangles as carriers or rectangles as single or multiple lien borders and where Opposer uses its Empire State Building Marks in their registered areas of providing observation decks in a skyscraper for purposes of sightseeing and managing and leasing the real estate.

Dated: Flushing, New York
September 5, 2013

Law Offices of David Yan
Attorney for Applicant

by: /David Yan/
David Yan

136-20 38th Avenue, Suite 11E
Flushing, NY 11354
Tel.: (718) 888-7788

AFFIRMATION OF SERVICE

I hereby certify that, on September 6, 2013, I caused a true and complete copy of the foregoing Applicant's Response to the Opposer's First Set of Interrogatories and Request for Production of Documents and Things to be served by electronic mail in PDF Format to Opposer's counsel of record, William M. Borchard, Esquire of Cowan Liebowitz, & Latman, P.C., at his email address of at WMB@cll.com.

/David Yan/

David Yan

AFFIRMATION OF SERVICE

I hereby certify that, on September 6, 2013, I caused a true and complete copy of the foregoing Applicant's Response to the Opposer's First Set of Requests for Admissions and Applicant's Response to the Opposer's First Set of Interrogatories and Request for Production of Documents and Things to be sent by the U.S. Post First Class Mail, postage prepared, to the Opposer's Counsel of Record, William M. Borchard, Esquire, Cowan Liebowitz, & Latman, P.C., located at 1133 Avenue of the Americas, New York, NY 10278

/David Yan/

David Yan