

ESTTA Tracking number: **ESTTA558896**

Filing date: **09/11/2013**

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

Proceeding	91204122
Party	Plaintiff Empire State Building Company L.L.C.
Correspondence Address	MAYA L TARR COWAN LIEBOWITZ LATMAN PC 1133 AVENUE OF THE AMERICAS NEW YORK, NY 10036 UNITED STATES mxt@cll.com, wmb@cll.com, trademark@cll.com, fxm@cll.com, mlk@cll.com
Submission	Motion for Sanctions
Filer's Name	Maya L. Tarr
Filer's e-mail	mxt@cll.com, wmb@cll.com, trademark@cll.com, fxm@cll.com, mlk@cll.com, ejs@cll.com
Signature	/Maya L. Tarr/
Date	09/11/2013
Attachments	Opposer's motion for sanctions and to suspend.pdf(1784016 bytes)

MEMORANDUM IN SUPPORT OF MOTION

INTRODUCTION

Despite receiving a generous extension of time from Opposer, Applicant wholly failed to respond to Opposer's document requests, interrogatories and requests for admission, which were duly served during the discovery period. Upon Opposer's unopposed motion, the Board issued an order compelling Applicant to respond to Opposer's document requests and interrogatories, without objection on the merits, no later than September 5, 2013. As noted in Opposer's motion to compel, Opposer's requests for admission were deemed admitted by operation of law for failure to respond, and no motion to compel responses thereto was necessary or, indeed, permitted under the Board's rules.

Just as Applicant failed to comply with his obligations under the discovery rules, Applicant now has failed to comply with the Board's order compelling timely responses without objection. Despite the strict deadline set forth in the Board's order, Applicant's counsel mailed to Opposer's counsel copies of Applicant's responses to Opposer's document requests and interrogatories *after the expiration* of the deadline. Moreover, despite the Board's explicit order that such responses were to be served *without objection on the merits*, each and every one of Applicant's responses objected to Opposer's discovery requests on several grounds other than privilege, including overbreadth and undue burden. Not only do these impermissible merit objections make it unclear what, if any, information and documents Applicant is withholding from disclosure, but several interrogatory responses rely *solely* on these objections as a basis to refuse to disclose *any* information, including information about Applicant's own *bona fide* intent to use his mark. These improper objections thus have seriously prejudiced Opposer's ability to prosecute this opposition. Applicant also failed to produce any documents in response to Opposer's document requests and took the position that he had *absolutely no documents*

responsive to Opposer's requests, which wholly undermines Applicant's representation to the Trademark Office that he had a *bona fide* intent to use his mark. Moreover, Applicant did not sign or verify his untimely and improper interrogatory responses, making it impossible to determine whether he was even aware of these responses at the time they were served by Applicant's counsel, and wholly calling into question the veracity and accuracy of the responses.

About the same time Applicant's counsel served Applicant's untimely and improper responses to Opposer's interrogatories and document requests, Applicant's counsel also purported to serve Applicant's responses to Opposer's requests for admission. However, this belated response is ineffective since Opposer's requests for admission already were deemed admitted by operation of law by Applicant's failure to respond the requests months prior.

As set forth in greater detail herein, Applicant consistently has failed to comply with his discovery obligations such that sanctions are warranted in the form of the entry of judgment in favor of Opposer. The Board also should confirm that Opposer's requests for admission have been deemed admitted by operation of law. Finally, the opposition proceedings should be suspended pending the resolution of this potentially dispositive motion.

STATEMENT OF FACTS

The facts upon which this motion is based are set forth in detail in the accompanying declaration of William M. Borchard ("Borchard Decl.") and are reiterated herein for the Board's convenience.

The Instant Opposition Proceeding

Opposer initiated this opposition proceeding by filing a Notice of Opposition on March 1, 2012, against Application Serial No. 85/213,453 filed by Applicant seeking to register on an intent-to-use basis the mark NYC BEER LAGER and Design shown below:



(“Applicant’s Mark”) for “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 malt-based 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; Porter” in International Class 32. Borchard Decl. ¶ 2. The Notice of Opposition alleged that registration of Applicant’s Mark was likely to result in confusion, falsely suggest a connection between Applicant and Opposer, and/or cause a likelihood of dilution by blurring of the distinctive quality of Opposer’s Empire State Building Marks, as defined in Paragraph 1 of the Notice of Opposition. *Id.* ¶ 3.

Applicant’s Failure to Comply with His Discovery Obligations

On September 19, 2012, the parties filed a consented Motion to Waive Initial Disclosures, which was noted by the Board on October 10, 2012. *Id.* ¶ 4 and Ex. A.

Thereafter, on February 19, 2013, Opposer served Applicant with Opposer's First Set of Interrogatories and Request for Production of Documents and Things and Opposer's First Set of Requests for Admissions by first class mail. *Id.* ¶ 5 and Ex. B. Applicant's responses to Opposer's discovery requests were due on March 26, 2013. *Id.*

On March 19, 2013, Applicant's counsel called Opposer's counsel to request an extension of Applicant's deadline to respond to Opposer's discovery requests. *Id.* ¶ 6. Opposer's counsel and Applicant's counsel had a brief telephone conversation, but Applicant's counsel had to go before they finished their conversation. *Id.* After being unable to reach Applicant's counsel again by phone, Opposer's counsel sent Applicant's counsel an email on March 21, 2013 indicating that Opposer would consent to a 60 day extension of Applicant's deadline to respond to Opposer's discovery requests on condition that all other dates would be extended for 90 days and putting forth a settlement proposal. *Id.* ¶ 7 and Ex. C (redacting confidential settlement matter).

On March 26, 2013, after not receiving a response from Applicant's counsel, Opposer's counsel sent an email to Applicant's counsel indicating that, in light of the fact that Applicant's counsel had not responded to Opposer's counsel's March 21, 2013 email, Opposer's counsel believed that Applicant's counsel had accepted Opposer's consent to a 60 day extension of Applicant's deadline to respond to Opposer's discovery requests on condition that all other dates would be extended for 90 days, and that Opposer's counsel would prepare a motion to consent to extend the deadlines if he did not hear otherwise from Applicant's counsel. *Id.* ¶ 8 and Ex. D.

On March 27, 2013, Opposer's counsel prepared and filed a Motion for an Extension of Answer or Discovery or Trial Periods With Consent to extend Applicant's deadline to respond to

Opposer's discovery requests by 60 days and to extend all other dates by 90 days, which was granted the same day. *Id.* ¶ 9 and Ex. E.

On the morning of June 3, 2013, having not yet received Applicant's responses to Opposer's discovery requests, which were due by the generously extended deadline of May 25, 2013, Opposer's counsel called and left a message for Applicant's counsel requesting that Applicant's counsel contact Opposer's counsel. *Id.* ¶ 10. Later on June 3, 2013, having still not received a response from Applicant's counsel, Opposer's counsel emailed Applicant's counsel advising that, if he did not hear from him by 5:00 p.m. on Wednesday, June 5, 2013, he intended to file motion to compel Applicant's responses to Opposer's interrogatories and document requests. *Id.* ¶ 11 and Ex. F.

Applicant's Failure to Comply with the Board's Order Compelling Discovery Responses

On June 6, 2013, having received no response from Applicant, Opposer filed a motion seeking an order compelling Applicant to respond to Opposer's interrogatories and document requests. *Id.* ¶ 12. On August 6, 2013, the Board granted Opposer's motion and ordered Applicant to provide responses to Opposer's interrogatories and document requests within 30 days. *Id.* ¶ 13 & Exh. G. The Board further ordered that any such responses must be made "*without objection on the merits.*" *Id.*

Applicant did not respond to Opposer's interrogatories and document requests within thirty days of the Board's order. *Id.* ¶ 14. Instead, after the deadline, on September 6, 2013, Applicant's counsel sent to Opposer's counsel via first class mail purported responses to Opposer's interrogatories and document requests. *Id.* ¶ 15 & Exh. H.

Despite the Board's explicit order that such responses should be served *without objection on the merits*, each and every one of Applicant's responses objects to Opposer's discovery requests on several grounds other than privilege, including overbreadth and undue burden. *Id.* ¶ 16 & Exh. H. These objections also are set forth in Applicant's "general objections" to Opposer's discovery requests, each of which is reincorporated into each individual request therein. *Id.* ¶ 17 & Exh. H.

With respect to interrogatories numbered 1 through 15, Applicant asserts objections on the merits and then purports to respond to each interrogatory "subject to and without waiving" these objections. *Id.* ¶ 18 & Exh. H. However, it is wholly unclear what information, if any, has been withheld on the basis of these improperly raised objections. *Id.* With respect to interrogatories numbered 16 and 17, which, *inter alia*, seek information about Applicant's *bona fide* intent to use Applicant's Mark (and thus could form the basis of an amended claim to oppose for lack of *bona fide* intent), Applicant provides *no substantive response* and relies wholly on his improperly asserted objections on the merits. *Id.* ¶ 19 & Exh. H.

Applicant's responses to Opposer's interrogatories are further deficient since they were *not signed* by Applicant. Nor were they answered under oath. Instead, they were e-signed (not personally) by Applicant's counsel as /David Yan/ without any oath. *Id.* Exh. H. Thus, it is impossible to determine whether Applicant provided the answers to the interrogatories, or even saw them prior to service. Indeed, the veracity of each response is entirely suspect.

Applicant also asserts the same improper objections on the merits in response to Opposer's document requests as it did in response to Opposer's interrogatories. Applicant then baldly asserts that it has *no documents* responsive to Opposer's requests, including those requests that seek documents concerning Applicant's *bona fide* intent to use his mark. *Id.* ¶ 20 &

Exh. H. Just as with Applicant's improper responses to Opposer's interrogatories, it is wholly unclear what documents, if any, have been withheld on the basis of these improperly raised objections. Moreover, Applicant's position that it has no documents responsive to Opposer's requests wholly undermines Applicant's prior representation to the Trademark Office that he had a *bona fide* intent to use the subject mark. *Id.* ¶ 20.

Applicant's Untimely Responses to Opposer's Requests for Admission

As noted above, Applicant did not respond to Opposer's requests for admission by their original due date of March 26, 2013. Nor did Applicant respond to the requests for admission by May 25, 2013, the extended due date per agreement of the parties. Months later, on August 5, 2013, Applicant's counsel served on Opposer's counsel via email a purported response to Opposer's requests for admission. *Id.* ¶ 21 & Exh. I. Neither Opposer nor its counsel have consented to accept service via email. *Id.* ¶ 22. Applicant's counsel also served on Opposer's counsel a copy of Applicant's purported responses to the requests for admission via first class mail on September 6, 2013. *Id.* ¶ 23.

In his response, Applicant denies many of Opposer's requests for admission and makes qualified admissions regarding others. *Id.* ¶ 24 & Exh. I. Applicant also makes numerous general and specific objections on the merits to Opposer's requests for admission. *Id.* Indeed, Applicant does not provide substantive responses to requests numbered 3(a) and 6, instead resting *solely* on his objections. *Id.*¹

¹ Applicant also provides responses that wholly contradict earlier representations he made to the Trademark Office. For example, Applicant *denies* request number 8, which states: "Admit that Applicant intended the building design in Applicant's Mark to resemble the Empire State Building." *Id.* ¶ 25 & Exh. I. However, in his initial application, Applicant *explicitly represented* that Applicant's Mark "consists

ARGUMENT

OPPOSER’S MOTION FOR SANCTIONS SHOULD BE GRANTED

Pursuant to 37 C.F.R. § 2.120(g), “[i]f a party fails to comply with an order of the Trademark Trial and Appeal Board relating to disclosure or discovery . . . , the Board may make any appropriate order, including those provided in Rule 37(b)(2) of the Federal Rules of Civil Procedure.” *See also* T.B.M.P. § 527.01(a). “The sanctions which may be entered by the Board include, inter alia, striking all or part of the pleadings of the disobedient party; refusing to allow the disobedient party to support or oppose designated claims or defenses; prohibiting the disobedient party from introducing designated matters in evidence; and entering judgment against the disobedient party.” *Id.* Default judgment “may be justified where no less drastic remedy would be effective and there is a strong showing of willful evasion.” *Id.* “The motion for sanctions for failure to comply with an order of the Board lies only when the Board has entered an order relating to discovery (i.e., an order compelling discovery or a protective order) and the order has been violated.” *Id.* “Unlike a motion to compel discovery, there is no requirement to make a good faith effort to resolve the parties’ dispute prior to filing a motion for discovery sanctions.” *Id.*

In *Baron Philippe de Rothschild S.A. v. Styl-Rite Optical Mfg. Co.*, the applicant failed to timely respond to the opposer’s discovery requests, including document demands and a notice of deposition. 55 U.S.P.Q.2d 1848, 1850 (T.T.A.B. 2000). The Board then granted the opposer’s motion to compel, allowing the applicant thirty days to correct its deficiencies. *Id.* Contrary to the Board’s order, *after* the expiration of the thirty day period, the applicant produced *incomplete* responses to the discovery demands. The applicant had no excusable justification for

of . . . several layers of full circles. The building inside the inner circle *resembles the Empire State Building.*” *Id.* ¶ 26 & Exh. J (emphasis added).

the failure. Finding that the “applicant and its counsel have engaged in a pattern of dilatory tactics, have purposely avoided applicant's discovery responsibilities in this case, and have willfully failed to comply with the Board's January 6, 1999 order,” the Board granted the opposer’s motion for sanctions in the nature of entry of judgment against the applicant. *Id.* at 1854. *See also Unicut Corp. v. Unicut, Inc.*, 222 U.S.P.Q. 341 (T.T.A.B. 1984) (entering judgment in favor of petitioner based on registrant’s failure to comply with order compelling responses to discovery without justification); *Caterpillar Tractor Co. v. Catfish Anglers Together, Inc.*, 194 U.S.P.Q. 99 (T.T.A.B. 1976) (entering judgment in favor of opposer based on applicant’s failure to comply with order compelling responses to discovery without justification); *MHW Ltd. v. Simex, Aussenhandelsgesellschaft Savelsberg KG*, 59 U.S.P.Q.2d 1477 (T.T.A.B. 2000) (entering judgment in favor of applicant based on opposers’ failure to comply with order compelling responses to discovery without justification).

Similarly here, Applicant has proceeded through this opposition with utter disregard for the rules of discovery and the Board’s specific order compelling discovery. Instead of complying with the Board’s order compelling discovery responses, Applicant ignored his specific deadline and submitted untimely written responses laden with objections on the merits, despite the Board’s clear directive that any such objections would not be permitted. And Applicant has failed to produce one single document in response to Opposer’s requests.

Additionally, Applicant’s interrogatory responses are wholly defective since they were not signed by Applicant himself, as required by Fed. R. Civ. P. 33(b) (“The interrogatories must be answered . . . by the party to whom they are directed . . . The person who makes the answers must sign them”). *See also* T.B.M.P. § 405.04(c). Nor were they signed under oath as required by Fed. R. Civ. P. 33(b) (“Each interrogatory must, to the extent it is not objected to, be

answered separately and fully in writing under oath”). *See also* T.B.M.P. § 405.04(b). Instead, they were signed electronically – not personally – by Applicant’s counsel without any oath. These actions were wholly improper; an attorney may sign as “agent” only on behalf of a business or governmental entity, not an individual such as Applicant. *See* Fed. R. Civ. P. 33(b); T.B.M.P. § 405.04(c); *Hindmon v. Natl.-Ben Franklin Life Ins. Corp.*, 677 F.2d 617, 619 (7th Cir. 1982) (interrogatory answers signed by attorney and not party violated “the clear mandate of Federal Rule of Civil Procedure 33(a)”). As held by the court in *Villareal v. El Chile, Inc.*,

Requiring a party to sign interrogatory responses under oath serves the critical purpose of ensuring that the responding party attests to the truth of the responses. An attorney’s communication, e-mail or otherwise, does not do that, even assuming, *arguendo*, that the attorney’s statements provide information responsive to the interrogatory.

266 F.R.D. 207, 211 (N.D. Ill. 2010) (internal citation omitted).

Opposer has been prejudiced by Applicant’s improper responses submitted in violation of the Board’s order. Applicant’s objections on the merits make it unclear what, if any, information and documents Applicant is withholding from disclosure. And several interrogatory responses rely *solely* on objections as a basis to refuse to disclose *any* information, including information about Applicant’s own *bona fide* intent to use his mark. Not only have these improper objections prejudiced Opposer’s ability to prosecute its current claims, but they also have made it difficult for Opposer to determine whether it has grounds to amend its notice of opposition to add claims that Applicant lacked a *bona fide* intent to use his mark. Moreover, Applicant’s failure to sign his interrogatory responses under oath make it wholly impossible to confirm that the answers provided therein were provided, or even seen, by Applicant. Indeed, the veracity of the responses is entirely suspect and unverifiable at this time.

At no time has Applicant provided any excuse, let alone one that constitutes “excusable neglect,” for his consistent failure to comply with the discovery rules and/or the Board’s order.

Indeed, Applicant's counsel generally has been unresponsive to communications from Opposer's counsel and did not even oppose Opposer's motion to compel.

Applicant's significant failure to comply with the Board's order compelling proper discovery responses without objection, which motion originally was necessitated by Applicant's wanton disregard for the Board's discovery rules, provides sufficient basis for the Board to enter sanctions judgment against Applicant in the form of judgment in favor of Opposer.

**THE BOARD SHOULD CONFIRM THAT OPPOSER'S
REQUESTS FOR ADMISSION HAVE BEEN DEEMED ADMITTED**

As noted above, Applicant did not respond to Opposer's requests for admission by their original due date of March 26, 2013 or extended due date of by May 25, 2013. By failing to timely respond to Opposer's requests for admission, each and every request therein was deemed admitted by operation of law on May 26, 2013. *See* 37 C.F.R. § 2.120(a)(3); T.B.M.P. §§ 407.03(a), 407.04; Fed. R. Civ. P. 36(a)(3). *See also Fram Trak Industries v. Wiretracks LLC*, 77 U.S.P.Q.2d 2000, 2005 (T.T.A.B. 2006) (requests for admissions deemed admitted by respondent's failure to respond to petitioner's requests for admissions).

While Applicant purported to serve responses to these requests *months later*, he did not seek leave of the Board to withdraw the prior admissions or demonstrate "excusable neglect" in any way. Thus, these responses are improper and should be given no force or effect. *See* T.B.M.P. §§ 407.03(a), 407.04, 525; Fed. R. Civ. P. 6(b)(1)(B); *Hobie Designs Inc. v. Fred Hayman Beverly Hills Inc.*, 14 U.S.P.Q.2d 2064, 2064 n. 1 (T.T.A.B. 1990) (to the extent applicant by its motion sought to be relieved of untimeliness of its response, motion was not well taken because reasons for failing to timely respond did not constitute excusable neglect). To the

extent Applicant seeks to assert otherwise, the Board should confirm that Opposer's requests for admission have been deemed admitted by operation of law.

**THE BOARD SHOULD SUSPEND THE OPPOSITION PENDING
RESOLUTION OF THIS POTENTIALLY DISPOSITIVE MOTION**

Pursuant to 37 C.F.R. § 2.127(d), “[w]hen any party files a . . . motion which is potentially dispositive of a proceeding, the case will be suspended by the Trademark Trial and Appeal Board with respect to all matters not germane to the motion and no party should file any paper which is not germane to the motion except as otherwise specified in the Board's suspension order.” *See also* T.B.M.P. § 510.03(a). Because Opposer's motion for sanctions seeks entry of judgment against Applicant, the motion potentially is dispositive of the instant opposition. As such, the Board should suspend the instant opposition pending resolution of the motion for sanctions. *See, e.g., Elec. Indus. Ass'n. v. Potega*, 50 U.S.P.Q.2d 1775, 1776 n.4 (T.T.A.B. 1999) (proceedings suspended pending disposition of motion for discovery sanctions which included request for entry of judgment).²

CONCLUSION

For the foregoing reasons, Opposer respectfully requests that the Board issue an order: (1) granting sanctions against Applicant in the form of the entry of judgment in favor of Opposer; (2) confirming that Opposer's requests for admission are deemed admitted by

² If the Board grants sanctions against Applicant in a form *other* than judgment in favor of Opposer, and the opposition proceeding continues, Opposer requests that all pretrial disclosure, trial and other periods and deadlines be reset once the Board decides the motion.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on September 11, 2013, I caused a true and correct copy of the foregoing Opposer's Motion for Sanctions of Entry of Judgment and to Suspend and supporting Declaration of William M. Borchard with exhibits to be sent via First Class Mail, postage prepaid, to Applicant's Attorney of Record, David Yan, Esq., Law Offices of David Yan, 136-20 38th Avenue, Suite 11E, Flushing, New York 11354-4232.

/Maya L. Tarr/
Maya L. Tarr



("Applicant's Mark") for "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 malt-based 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; Porter" in International Class 32.

3. The Notice of Opposition alleged that registration of Applicant's Mark was likely to result in confusion, falsely suggest a connection between Applicant and Opposer, and/or cause a likelihood of dilution by blurring of the distinctive quality of Opposer's Empire State Building Marks, as defined in Paragraph 1 of the Notice of Opposition.

4. On September 19, 2012, the parties filed a consented Motion to Waive Initial Disclosures, which was noted by the Board on October 10, 2012. True and correct copies of Opposer's Notice of Waiver of Initial Disclosures and the Board's order noting the waiving of initial disclosures are attached hereto as Exhibit A.

5. On February 19, 2013, Opposer served Applicant with Opposer's First Set of Interrogatories and Request for Production of Documents and Things and Opposer's First Set of Requests for Admission ("Opposer's Discovery Requests") by First Class Mail. True and correct copies of Opposer's Discovery Requests are attached hereto as Exhibit B. Applicant's responses to Opposer's Discovery Requests were due on March 26, 2013.

6. On March 19, 2013, Applicant's counsel called me to request an extension of Applicant's deadline to respond to Opposer's Discovery Requests. I had a brief telephone conversation with Applicant's counsel, but Applicant's counsel had to go before we finished our conversation.

7. After being unable to reach Applicant's counsel again by phone, I sent Applicant's counsel an email on March 21, 2013 indicating that Opposer would consent to a 60 day extension of Applicant's deadline to respond to Opposer's Discovery Requests on condition that all other dates would be extended for 90 days and putting forth a settlement proposal. A true and correct copy of that email is attached hereto as Exhibit C.

8. On March 26, 2013, after not receiving a response from Applicant's counsel, I sent an email to Applicant's counsel indicating that, in light of the fact that Applicant's counsel had not responded to my March 21, 2013 email, I believed that Applicant's counsel had accepted Opposer's consent to a 60 day extension of Applicant's deadline to respond to Opposer's Discovery Requests on condition that all other dates would be extended for 90 days, and that I would prepare a motion to consent to extend the deadlines if I did not hear otherwise from Applicant's counsel. A true and correct copy of that email is attached hereto as Exhibit D.

9. On March 27, 2013, my colleague Maya L. Tarr prepared and filed a Motion for an Extension of Answer or Discovery or Trial Periods With Consent to extend Applicant's deadline to respond to Opposer's Discovery Requests by 60 days and to extend all other dates by 90 days, which was granted the same day. A true and correct copy of the Motion for an Extension of Answer or Discovery or Trial Periods With Consent to extend Applicant's deadline to respond to Opposer's Discovery Requests and the Board's order granting the motion are attached hereto as Exhibit E.

10. On the morning of June 3, 2013, having not yet received Applicant's responses to Opposer's Discovery Requests, which were due by the extended deadline of May 25, 2013, I called and left a message for Applicant's counsel requesting that Applicant's counsel contact me.

11. Later on June 3, 2013, having still not heard anything from Applicant's counsel, I emailed Applicant's counsel advising that, if I did not hear from him by 5:00 p.m. on Wednesday, June 5, 2013, I would file a motion to compel Applicant's responses to Opposer's interrogatories and document demands. A true and correct copy of that email is attached hereto as Exhibit F.

12. On June 6, 2013, having received no response from Applicant, my firm filed a motion seeking an order compelling Applicant to respond to Opposer's interrogatories and document requests.

13. On August 6, 2013, the Board granted Opposer's motion and ordered Applicant to provide responses to Opposer's interrogatories and document requests within 30 days. A true and correct copy of the Board's order is attached hereto as Exhibit G. The Board further ordered that any such responses must be made "*without objection on the merits.*" See Exh. G hereto (emphasis added).

14. Applicant did not respond to Opposer's interrogatories and document requests within thirty days of the Board's order.

15. Instead, after the deadline, on September 6, 2013, Applicant's counsel sent to me via first class mail Applicant's purported responses to Opposer's interrogatories and document requests. A true and correct copy of Applicant's untimely responses to Opposer's interrogatories and document requests is attached hereto as Exhibit H.

16. Despite the Board's explicit order that such responses should be served *without objection on the merits*, each and every one of Applicant's responses objects to Opposer's discovery requests on several grounds other than privilege, including overbreadth and undue burden. *See* Exh. H hereto.

17. These objections also are set forth in Applicant's "general objections" to Opposer's discovery requests, each of which is reincorporated into each individual request therein. *See* Exh. H hereto.

18. With respect to interrogatories numbered 1 through 15, Applicant asserts objections on the merits and then purports to respond to each interrogatory "subject to and without waiving" these objections. *See* Exh. H hereto. However, it is wholly unclear what information, if any, has been withheld on the basis of these improperly raised objections.

19. With respect to interrogatories numbered 16 and 17, which, *inter alia*, seek information about Applicant's *bona fide* intent to use Applicant's Mark (and thus could form the basis of an amended claim to oppose for lack of *bona fide* intent), Applicant provides *no substantive response* and relies wholly on his improperly asserted objections on the merits. *See* Exh. H hereto.

20. Applicant also asserts the same improper objections on the merits in response to Opposer's document requests and then baldly asserts that it has *no documents* responsive to Opposer's requests, including those requests that seek documents concerning Applicant's *bona fide* intent to use his mark. *See* Exh. H hereto. Just as with Applicant's improper responses to Opposer's interrogatories, it is wholly unclear what documents, if any, have been withheld on the basis of these improperly raised objections. Moreover, Applicant's position that it has no

documents responsive to Opposer's requests wholly undermines Applicant's prior representation to the Trademark Office that he had a *bona fide* intent to use the subject mark.

21. As noted above, Applicant did not respond to Opposer's requests for admission by their original due date of March 26, 2013. Nor did Applicant respond to the requests for admission by May 25, 2013, the extended due date per agreement of the parties. Months later, on August 5, 2013, Applicant's counsel served on me via email a purported response to Opposer's requests for admission. A true and correct copy of Applicant's untimely responses to Opposer's requests to admit are attached hereto as Exhibit I.

22. Neither Opposer, I nor anyone at my firm has consented to accept service via email.

23. Applicant's counsel also served on me a copy of Applicant's purported responses to the requests for admission via first class mail on September 6, 2013.

24. In his response, Applicant denies many of Opposer's requests for admission and makes qualified admissions regarding others. *See* Exhibit I hereto. Applicant also makes numerous general and specific objections on the merits to Opposer's requests for admission. *See id.* Indeed, Applicant does not provide substantive responses to requests numbered 3(a) and 6, instead resting *solely* on his objections. *See id.*

25. Applicant also provides responses that wholly contradict earlier representations he made to the Trademark Office. For example, Applicant *denies* request number 8, which states: "Admit that Applicant intended the building design in Applicant's Mark to resemble the Empire State Building." *See* Exhibit I hereto.

26. However, in his initial application to register Applicant's Mark, Applicant *explicitly represented* that Applicant's Mark "consists of . . . several layers of full circles. The

Ref. No. 22690.013

building inside the inner circle *resembles the Empire State Building*" (emphasis added). A true and correct copy of the USPTO's records of Applicant's initial application to register Applicant's Mark is attached hereto as Exhibit J.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT, EXECUTED ON SEPTEMBER 11, 2013 AT NEW YORK, NEW YORK.



WILLIAM M. BORCHARD

EXHIBIT A

ESTTA Tracking number: **ESTTA495217**

Filing date: **09/19/2012**

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

Proceeding	91204122
Party	Plaintiff Empire State Building Company L.L.C.
Correspondence Address	MAYA L TARR COWAN LIEBOWITZ LATMAN PC 1133 AVENUE OF THE AMERICAS NEW YORK, NY 10036 UNITED STATES trademark@cfl.com, wmb@cfl.com, mxt@cfl.com
Submission	Other Motions/Papers
Filer's Name	Maya L. Tarr
Filer's e-mail	mxt@cfl.com, trademark@cfl.com, wmb@cfl.com
Signature	/Maya L. Tarr/
Date	09/19/2012
Attachments	Notice of Waiver of Initial Disclosures.pdf (2 pages)(10199 bytes)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on September 19, 2012, I caused a true and correct copy of the foregoing Notice of Waiver of Initial Disclosures to be served via First Class Mail, postage prepaid, to Applicant's Attorney of Record, David Yan, Esq., Law Offices of David Yan, 136-20 38th Avenue, Suite 11E, Flushing, New York 11354-4232.

/Maya L. Tarr/
Maya L. Tarr

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

AM

Mailed: October 10, 2012

Opposition No. 91204122

Empire State Building Company
L.L.C.

v.

Michael Liang

**M. Catherine Faint,
Interlocutory Attorney:**

Opposer's notice to waive the requirement of initial disclosures, with applicant's consent, filed September 19, 2012 is noted.

Trial dates remain as set as indicated in the Board's order dated June 26, 2012 and copied below.

Expert Disclosures Due	1/17/2013
Discovery Closes	2/16/2013
Plaintiff's Pretrial Disclosures	4/2/2013
Plaintiff's 30-day Trial Period Ends	5/17/2013
Defendant's Pretrial Disclosures	6/1/2013
Defendant's 30-day Trial Period Ends	7/16/2013
Plaintiff's Rebuttal Disclosures	7/31/2013
Plaintiff's 15-day Rebuttal Period Ends	8/30/2013

Opposition No. 91204122

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

EXHIBIT B

additional responsive information or documents between the time the answers are served and the time of the final hearing of this opposition proceeding.

DEFINITIONS AND INSTRUCTIONS

A. The term “Applicant” means Michael Liang, and any entities or businesses which he owns or controls, any persons, businesses or entities with which he is directly connected, and all employees, agents and/or representatives thereof.

B. The term “Opposer” means Opposer Empire State Building Company L.L.C., and all parent, subsidiary, related, predecessor and/or successor entities, divisions, employees, agents and/or representatives thereof.

C. The term “Opposer’s Empire State Building Marks” shall refer to marks used, registered and/or applied to be registered by Opposer consisting of or incorporating the words EMPIRE STATE or EMPIRE STATE BUILDING, and various marks depicting the visual equivalent of the world-renowned Empire State Building, which is located in New York City, including, but not limited to, the marks set forth in paragraphs 1 and 2 of the Notice of Opposition in this proceeding.

D. The term “Applicant’s Mark” shall refer to the mark NYC BEER LAGER and



Design as depicted here: , as applied-for in Application Serial No. 85/213,453 and any other marks used, registered and/or applied to be registered by Applicant consisting of or incorporating a building design similar to the design in Applicant’s Mark, alone or with other word, letter and/or design elements.

E. The term “commerce” means commerce subject to regulation by Congress, as defined in 15 U.S.C. §1127.

F. As used herein, the terms “entity” and “person” include natural persons, governmental entities, organizations, corporations, partnerships, associations, joint ventures and any other individual or group of individuals that has the purpose of conducting or, in fact, conducts business.

G. The term “document” shall be given the broadest possible scope under Fed. R. Civ. P. 34 and includes, but is not limited to, all writings, correspondence, memoranda, handwritten notes, drafts, invoices, contracts, purchase orders, letters, checks, receipts, books, pamphlets, flyers, advertisements, web pages, publications, stickers, posters, catalogs, labels, product packaging, product containers, displays, photographs, slides, videotapes, films, artwork, drawings, sketches, illustrative materials, layouts, tear sheets, magnetic recording tapes, microfilms, computer printouts, e-mail, work sheets, and files from any personal computer, notebook or laptop computer, file server, minicomputer, mainframe computer or any other storage means by which information is retained in retrievable form, including files that are still on any storage media, but that are identified as “erased but recoverable,” and all other materials, whether printed, typewritten, handwritten, recorded or reproduced by a mechanical or electronic process.

H. The term “identify” when used in connection with a natural person or persons requires Applicant to state the person’s full name and last known business and residential addresses, telephone number and e-mail address.

I. The term “identify” when used in connection with a document requires

Applicant to:

(i) Furnish the name or title, date and general description (e.g., letter, memorandum, etc.) of the document, the name and address of the person from whom the document originated, the name and address of the persons to whom the document was addressed or delivered, and the names and addresses of all persons to whom copies of the document were sent; and

(ii) State whether Applicant is in possession of the original of the document or a copy thereof and, if Applicant is not in possession of the original or a copy, furnish the name and address of the custodian of the original or a copy; and

(iii) Furnish a general description of the subject matter to which the document(s) pertains.

J. The term “identify” when used in connection with a company, organization or other business entity requires Applicant to state the name, address, and phone number of the company, organization or other business entity.

K. The term “concerning” means referring to, relating to, embodying, connected with, commenting on, responding to, showing, describing, analyzing or constituting.

L. The singular and plural forms are used herein interchangeably, as are the masculine and feminine forms and the present and past tenses, and such terms should be construed as necessary to bring within the scope of the interrogatory/document request all documents and information which might otherwise be construed to be outside its scope.

M. The terms “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the interrogatory/document request all documents and

information which might otherwise be construed to be outside its scope.

N. If any information or document called for in any interrogatory or request is withheld in whole or in part by reason of a claim of attorney-client privilege or any other claim of immunity from discovery, then, at the time the information or document is to be produced, a list is to be furnished identifying any such information or document withheld together with the following information: date and title of the document; name and job title of each author, writer or sender of the document; name and job title of each recipient, addressee or other person to whom the original or any copy of the document was sent or furnished; if Applicant contends that an author or recipient of the document is an attorney for purposes of claiming privilege or immunity from discovery, identify the State Bar of which he or she was a member at the time of the communication in question; the general subject matter of the information or document withheld; the basis for the claim of privilege or immunity from discovery; and the interrogatory or request to which the information or document is responsive.

O. In the event that any document called for by this request has been destroyed, lost, discarded or otherwise disposed of, identify any such document as completely as possible, including, without limitation, the date of disposal, manner of disposal, reason for disposal, person authorizing the disposal and person disposing of the document.

P. Documents shall be produced as they are kept in the ordinary course of business or shall be organized and labeled to correspond to the document request to which they are responsive.

Q. To the extent the information or documents are sought concerning Applicant's use or intended use of Applicant's Mark, the interrogatories and requests are referring to use or

intended use in the United States or in commerce.

INTERROGATORIES

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.

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.

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.

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.

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").

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/Services;
- (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.

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.

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.

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.

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.

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.).

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.

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.

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.

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.

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.

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.

DOCUMENT REQUESTS

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.

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.

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.

Request No. 4

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

Request No. 5

All documents concerning any trademark searches or other searches, opinions, investigations, analyses or studies conducted or reviewed by or on behalf of Applicant concerning Applicant's Mark.

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.

Request No. 7

All documents concerning the advertising, marketing or promotion of Applicant's Products/Services offered for sale or otherwise distributed or intended to be offered for sale or otherwise distributed under Applicant's Mark, including, without limitation, any media plans, public relations materials, press kits and correspondence with advertising agencies, public relations firms, media planners, graphic designers, web site designers or any other such entities in the advertising and promotional field.

Request No. 8

Documents sufficient to identify the amount of money expended by Applicant in advertising and promoting Applicant's Mark and/or Applicant's Products/Services.

Request No. 9

All documents concerning each trade show, convention, exposition or conference at which Applicant's Products/Services bearing Applicant's Mark have been displayed, advertised, promoted, offered for sale or sold.

Request No. 10

All documents concerning any authorization, license, assignment, grant, conveyance or other transfer of the right to use (or proposed authorization, license, assignment, grant, conveyance or other transfer of the right to use) Applicant's Mark from any third party to Applicant, or to sell Applicant's Products/Services bearing Applicant's Mark.

Request No. 11

All documents concerning any authorization, license, assignment, grant, conveyance or other transfer of the right to use (or proposed authorization, license, assignment, grant,

conveyance or other transfer of the right to use) any of Opposer's Empire State Building Marks from Opposer to Applicant.

Request No. 12

All documents concerning Applicant's authorization, license, assignment, grant, conveyance or other transfer of rights (or proposed authorization, license, assignment, grant, conveyance or other transfer of rights) in Applicant's Mark from or on behalf of Applicant to any third party, including, but not limited to, all license agreements.

Request No. 13

Documents sufficient to 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 has been, is currently being or is intended to be promoted, advertised, displayed, offered for sale, sold or otherwise distributed.

Request No. 14

All documents concerning the use or intended use of Applicant's Mark in connection with any indicia, designs, stylizations, terms, imagery, marks, logos, themes, or references similar to, related to, or associated or affiliated with Opposer, or its trademarks, logos, designs, or stylizations, including without limitation, Opposer's Empire State Building Marks.

Request No. 15

Apart from the current opposition, all documents concerning any objections, claims, demands or actions lodged or filed against the use or proposed use or registration of Applicant's Mark, including, without limitation, cease and desist letters, complaints and/or Notices of Opposition.

Request No. 16

All documents concerning Opposer, Opposer's Empire State Building Marks, or any goods or services marketed, manufactured, distributed, offered for sale, sold, licensed or rendered by Opposer.

Request No. 17

All documents concerning Applicant's knowledge of Opposer, Opposer's Empire State Building Marks, and/or any 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.

Request No. 18

All documents concerning any market research, focus groups, surveys or other investigation made or commissioned by or on behalf of Applicant concerning Applicant's Mark, Applicant's Products/Services, Opposer's Empire State Building Marks or any goods or services advertised, promoted, offered for sale, sold, licensed or rendered by Opposer.

Request No. 19

All documents reflecting or indicating 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, including, without limitation, documents referring to or evidencing misdirected mail, e-mails, telephone calls, orders or inquiries suggesting or reflecting a belief by any person 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

Ref. No. 22690.013

otherwise distributed, by Applicant under Applicant's Mark are licensed, endorsed or sponsored by or associated or related in any way with or to Opposer, and/or Opposer's goods and services.

Request No. 20

All documents concerning the actual or intended channels of trade for goods or services sold or rendered or intended to be sold or rendered in connection with Applicant's Mark.

Request No. 21

All documents concerning any designs, logos, renditions, stylizations, (including, without limitation, font styles) or formats of or for Applicant's Mark, including without limitation any drafts or proposed versions of same.

Request No. 22

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

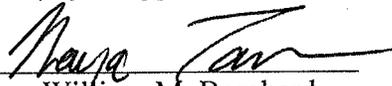
Request No. 23

All documents identified or otherwise referred to by Applicant in answering Opposer's First Set of Interrogatories above and Opposer's First Set of Requests for Admission.

Dated: New York, New York
February 19, 2013

Respectfully submitted,

COWAN, LIEBOWITZ & LATMAN, P.C.
Attorneys for Opposer

By: 
William M. Borchard
Mary L. Kevlin
Maya L. Tarr

1133 Avenue of the Americas
New York, New York 10036
212-790-9200

CERTIFICATE OF SERVICE

I hereby certify that, on February 19, 2013, I caused a true and complete copy of the foregoing *Opposer's First Set of Interrogatories and Request for Production of Documents and Things to Applicant* to be served by First Class Mail to Applicant's Attorney and Correspondent of Record, David Yan, Law Offices of David Yan, 136-20 38th Avenue, Suite 11E, Flushing, New York 11354 4232, United States.

Dated: New York, New York
February 19, 2013



Maya L. Tarr

REQUESTS FOR ADMISSIONS

Request No. 1

Admit that Opposer's Empire State Building Marks are famous.

Request No. 2

Admit that Opposer's Empire State Building Marks were famous 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.

Request No. 3

Admit that Opposer's Empire State Building Marks are closely identified and associated with Opposer's goods and services.

Request No. 4

Admit that Applicant was aware of 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.

Request No. 5

Admit that Applicant was aware of 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:

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

Request No. 6

Admit that Applicant's services covered by Application No. 85/213,453 are marketed or intended to be marketed to consumers of Opposer's goods and/or services.

Request No. 7

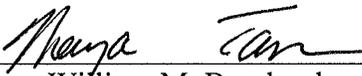
Admit that Applicant has no connection with Opposer and has no authorization from Opposer to use the building design in Applicant's Mark.

Request No. 8

Admit that Applicant intended the building design in Applicant's Mark to resemble the Empire State Building.

Dated: New York, New York
February 19, 2013

COWAN, LIEBOWITZ & LATMAN, P.C.
Attorneys for Opposer

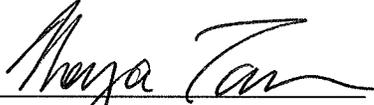
By: 
William M. Borchard
Mary L. Kevlin
Maya L. Tarr

1133 Avenue of the Americas
New York, New York 10036
212-790-9200

CERTIFICATE OF SERVICE

I hereby certify that, on February 19, 2013, I caused a true and complete copy of the foregoing *Opposer's First Set of Requests for Admissions* to be served by First Class Mail to Applicant's Attorney and Correspondent of Record, David Yan, Law Offices of David Yan, 136-20 38th Avenue, Suite 11E, Flushing, New York 11354 4232, United States.

Dated: New York, New York
February 19, 2013



Maya L. Tarr

EXHIBIT C

Tarr, Maya

From: Borchard, William M.
Sent: Thursday, March 21, 2013 12:45 PM
To: 'David Yan'
Cc: Kevlin, Mary; Tarr, Maya
Subject: NYC BEER Logo Opposition No. 91204122 (CLL Ref. 22890.013)

FOR SETTLEMENT PURPOSES ONLY -- FRE 408

Dear David,

You telephoned me on March 19, 2013 to request an extension of the Applicant's deadline to respond to Opposer's First Set of discovery requests.

We had a very brief phone conversation about fifteen minutes later, but you had to go so we did not finish our conversation. I called you again yesterday, but you were not available.

1. Extension Request

Regarding your extension request, Opposer will consent to a 60 day extension of Applicant's deadline to respond to Opposer's First Set of discovery requests on condition that all other dates are extended for 90 days. This will give us an opportunity to continue to explore settlement and will avoid putting Applicant and Opposer under undo time pressure should settlement not be possible.

Please let me know whether or not this is acceptable. If so, we will prepare and submit the Motion on Consent to the TTAB.

2. Settlement

I look forward to hearing from you.

Bill

William M. Borchard, Esq.

Cowan, Liebowitz & Latman, P.C.

1133 Avenue of the Americas

New York, New York 10036

t: (212) 790-9290 | f: (212) 575-0671

www.cll.com | wmb@cll.com | [My Profile](#)

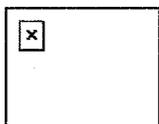


EXHIBIT D

Tarr, Maya

From: Borchard, William M.
Sent: Tuesday, March 26, 2013 3:38 PM
To: 'David Yan'
Cc: Kevlin, Mary; Tarr, Maya
Subject: NYC BEER Logo Opposition No. 91204122 (CLL Ref. 22890.013)

Dear David,

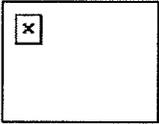
Since I have not heard from you in reply to my email of March 21, 2013, I believe that you have accepted our client's consent to a 60 day extension of Applicant's deadline to respond to Opposer's First Set of discovery requests on condition that all other dates are extended for 90 days.

We will prepare and submit the Motion on Consent tomorrow if we do not hear otherwise from you.

We also look forward to hearing from you about the settlement proposal we made in that email.

Bill

William M. Borchard, Esq.
Cowan, Liebowitz & Latman, P.C.
1133 Avenue of the Americas
New York, New York 10036
t: (212) 790-9290 | f: (212) 575-0671
www.cll.com | wmb@cll.com | [My Profile](#)



From: Borchard, William M.
Sent: Thursday, March 21, 2013 12:45 PM
To: 'David Yan'
Cc: Kevlin, Mary; Tarr, Maya
Subject: NYC BEER Logo Opposition No. 91204122 (CLL Ref. 22890.013)

FOR SETTLEMENT PURPOSES ONLY -- FRE 408

Dear David,

You telephoned me on March 19, 2013 to request an extension of the Applicant's deadline to respond to Opposer's First Set of discovery requests.

We had a very brief phone conversation about fifteen minutes later, but you had to go so we did not finish our conversation. I called you again yesterday, but you were not available.

1. Extension Request

Regarding your extension request, Opposer will consent to a 60 day extension of Applicant's deadline to respond to Opposer's First Set of discovery requests on condition that all other dates are extended for 90 days.

This will give us an opportunity to continue to explore settlement and will avoid putting Applicant and Opposer under undo time pressure should settlement not be possible.

Please let me know whether or not this is acceptable. If so, we will prepare and submit the Motion on Consent to the TTAB.

2. Settlement

I look forward to hearing from you.

Bill

William M. Borchard, Esq.
Cowan, Liebowitz & Latman, P.C.
1133 Avenue of the Americas
New York, New York 10036
t: (212) 790-9290 | f: (212) 575-0671
www.cll.com | wmb@cll.com | [My Profile](#)

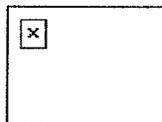


EXHIBIT E

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

Proceeding.	91204122
Applicant	Plaintiff Empire State Building Company L.L.C.
Other Party	Defendant Michael Liang

Motion for an Extension of Answer or Discovery or Trial Periods With Consent

The Close of Plaintiff's Trial Period is currently set to close on 05/17/2013. Empire State Building Company L.L.C. requests that such date be extended for 90 days, or until 08/15/2013, and that all subsequent dates be reset accordingly.

Time to Answer :	CLOSED
Deadline for Discovery Conference :	CLOSED
Discovery Opens :	CLOSED
Initial Disclosures Due :	CLOSED
Expert Disclosure Due :	CLOSED
Discovery Closes :	CLOSED
Plaintiff's Pretrial Disclosures :	07/01/2013
Plaintiff's 30-day Trial Period Ends :	08/15/2013
Defendant's Pretrial Disclosures :	08/30/2013
Defendant's 30-day Trial Period Ends :	10/14/2013
Plaintiff's Rebuttal Disclosures :	10/29/2013
Plaintiff's 15-day Rebuttal Period Ends :	11/28/2013

The grounds for this request are as follows:

- *Parties are engaged in settlement discussions*
- *Opposer has consented to a 60 day extension of Applicant's deadline to respond to Opposer's First Set of discovery requests, until May 25, 2013. Opposer also requests, upon consent from Applicant, that all other dates be extended for an additional 90 days.*

Empire State Building Company L.L.C. has secured the express consent of all other parties to this proceeding for the extension and resetting of dates requested herein.

Empire State Building Company L.L.C. has provided an e-mail address herewith for itself and for the opposing party so that any order on this motion may be issued electronically by the Board.

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Respectfully submitted,

/Maya L. Tarr/

Maya L. Tarr

mxt@cil.com, wmb@cil.com, trademark@cil.com, fxm@cil.com, mlk@cil.com
davidyanlawfirm@yahoo.com

03/27/2013

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

March 27, 2013

PROCEEDING NO. 91204122
Empire State Building Company
L.L.C.

v.

Michael Liang

MOTION TO EXTEND GRANTED

By the Board:

Empire State Building Company L.L.C.'s consent motion to extend, filed Mar 27, 2013, is granted. Dates are reset as set out in the motion.

.oOo.

EXHIBIT F

Tarr, Maya

From: Borchard, William M.
Sent: Monday, June 03, 2013 11:29 AM
To: 'David Yan'
Cc: Kevlin, Mary; Tarr, Maya; Mantovani, Fran
Subject: Empire State Building Company L.L.C. v. Michael Liang (NYC BEER Logo) Opposition No. 91204122 (CLL Ref. 22690.013)

Dear David,

I tried to reach you by telephone this morning and left a message that I had called with the person who answered the telephone.

We have not received your client's responses to our discovery requests, and believe you did not send them by the extended deadline of May 25, 2013. Accordingly, your client has waived any objections he might have had to our Interrogatories, Document Requests or Requests for Admissions, and the Admissions are deemed admitted.

If we do not hear from you by Wednesday, June 5th by 5:00 p.m., we will need to file a Motion to Compel as we will be pushing up against our client's deadlines.

William M. Borchard, Esq.

Cowan, Liebowitz & Latman, P.C.
1133 Avenue of the Americas
New York, New York 10036
t: (212) 790-9290 | f: (212) 575-0671
www.cll.com | wmb@ccl.com | [My Profile](#)

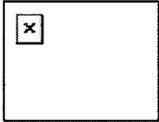


EXHIBIT G

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

Mailed: August 6, 2013

Opposition No. 91204122

Empire State Building Company
L.L.C.

v.

Michael Liang

**M. Catherine Faint,
Interlocutory Attorney:**

This case now comes up on opposer's motion, filed June 6, 2013, to compel applicant to answer opposer's first set of interrogatories and first set of document requests, served February 19, 2013. Applicant has failed to file a brief in response to opposer's motion. See Trademark Rule 2.127(a).¹

In view of the circumstances set forth in opposer's motion to compel, and because applicant has not responded to the motion, opposer's motion to compel discovery responses is granted. See Trademark Rule 2.120(e).

Applicant is allowed until **THIRTY DAYS** from the mailing date of this order in which to respond to opposer's first set of interrogatories and first set of document requests, without objection on the merits, failing which a motion for sanctions

will be entertained by the Board.² See Trademark Rule 2.120(g)(1).

Proceedings are resumed, and dates are reset below.

Discovery Closes	CLOSED
Plaintiff's Pretrial Disclosures Due	9/20/2013
Plaintiff's 30-day Trial Period Ends	11/4/2013
Defendant's Pretrial Disclosures Due	11/19/2013
Defendant's 30-day Trial Period Ends	1/3/2014
Plaintiff's Rebuttal Disclosures Due	1/18/2014
Plaintiff's 15-day Rebuttal Period Ends	2/17/2014

In each instance, a copy of the transcript of testimony, together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

¹ Trademark Rule 2.127(a) reads, in relevant part, as follows: "When a party fails to file a brief in response to a motion, the Board may treat the motion as conceded."

² Objections going to the merits of a discovery request include those which challenge the request as overly broad, unduly vague and ambiguous, burdensome and oppressive, as seeking non-discoverable information on expert witnesses, or as not calculated to lead to the discovery of admissible evidence. In contrast, claims that information sought by a discovery request is trade secret, business-sensitive or otherwise confidential, is subject to attorney-client or a like privilege, or comprises attorney work product, goes not to the merits of the request but to a characteristic or attribute of the responsive information. The Board generally is not inclined to hold a party to have waived the right to make these claims, although such claims must be made expressly. *No Fear v. Rule*, 54 USPQ2d 1551, 1554 (TTAB 2000).

EXHIBIT H

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

----- X
: EMPIRE STATE BUILDING COMPANY L.L.C., :
: :
: Opposer, :
: :
: v. : Opposition No.: 91204122
: :
: MICHAEL LIANG, :
: :
: Applicant. :
: :
----- X

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'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. 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'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. 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

REQUESTS FOR ADMISSIONS

Request No. 1

Admit that Opposer's Empire State Building Marks are famous.

Request No. 2

Admit that Opposer's Empire State Building Marks were famous 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.

Request No. 3

Admit that Opposer's Empire State Building Marks are closely identified and associated with Opposer's goods and services.

Request No. 4

Admit that Applicant was aware of 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.

Request No. 5

Admit that Applicant was aware of 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:

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

Request No. 6

Admit that Applicant's services covered by Application No. 85/213,453 are marketed or intended to be marketed to consumers of Opposer's goods and/or services.

Request No. 7

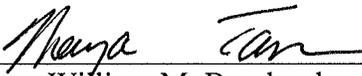
Admit that Applicant has no connection with Opposer and has no authorization from Opposer to use the building design in Applicant's Mark.

Request No. 8

Admit that Applicant intended the building design in Applicant's Mark to resemble the Empire State Building.

Dated: New York, New York
February 19, 2013

COWAN, LIEBOWITZ & LATMAN, P.C.
Attorneys for Opposer

By: 
William M. Borchard
Mary L. Kevlin
Maya L. Tarr

1133 Avenue of the Americas
New York, New York 10036
212-790-9200

CERTIFICATE OF SERVICE

I hereby certify that, on February 19, 2013, I caused a true and complete copy of the foregoing *Opposer's First Set of Requests for Admissions* to be served by First Class Mail to Applicant's Attorney and Correspondent of Record, David Yan, Law Offices of David Yan, 136-20 38th Avenue, Suite 11E, Flushing, New York 11354 4232, United States.

Dated: New York, New York
February 19, 2013



Maya L. Tarr

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

EXHIBIT I

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

----- X
:
EMPIRE STATE BUILDING COMPANY L.L.C., :
:
 Opposer, :
:
 v. : Opposition No.: 91204122
:
MICHAEL LIANG, :
:
 Applicant. :
:
----- X

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 REQUESTS FOR ADMISSIONS**

Pursuant to Rule 36 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 Requests for Admissions:

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 Request for Admissions 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 Request for Admissions 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 Request for Admissions 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 Request for Admissions 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 Request for Admissions 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 Request for Admissions 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 Request for Admissions 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 Request for Admissions to the extent that it is overly broad, unduly burdensome, and oppressive, where the Request for Admissions 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 Request for Admissions 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 Request for Admissions to the extent that it is vague or ambiguous.
11. Applicant objects to each and every Request for Admissions to the extent that it is overly broad, unduly burdensome, or oppressive.
12. Applicant objects to each and every Request for Admissions 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 Request for Admissions 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 Request for Admissions, 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 Request for Admissions, or the subject matter thereof, in any subsequent proceedings, including the trial of this or any other matter.
17. All rights to object on any ground to any request for further responses to the Request for Admissions or any other document request.
18. Applicant's objections herein and the production of any documents by Applicant pursuant to any Request for Admissions 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 Request for Admissions.

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 OJECTIONS AND RESPONSES
TO DEFENDANTS' REQUESTS FOR ADMISSION**

Request No. 1:

Admit that Opposer's Empire State Building Marks are famous.

Response No. 1:

Applicant objects to this Request for Admissions 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) Deny that Opposer's Empire State Building Marks are famous in general.
- (b) Noticed from the Opposer's "Notice of Opposition", Applicant admits that the word mark and design mark of "Empire State Building" is the registered mark on December 12, 2000 with the U.S. Patent and Trademark Office under the U.S. Registration No. 2411972 for the goods/services of "Class 041 . . . entertainment services, namely providing observation decks in a skyscraper for purposes of sightseeing."
- (c) Noticed from the Opposer's "Notice of Opposition", Applicant admits that the word mark and design mark of "Empire State Building" is the registered mark on December 19, 2000 with the U.S. Patent and Trademark Office under the U.S. Registration No. 2413667 for the

goods/services of “Class 036 . . . Real estate services, namely the management and leasing of real estate.”

(d) Noticed from the Opposer’s “Notice of Opposition”, Applicant admits that the design mark containing a logo of skyscraper of a building so unique to its own drawing and without any reference to any words or typed drawing of “Empire State Building” is the registered mark on February 20, 2001 with the U.S. Patent and Trademark Office under the U.S. Registration No. 2429297 for the goods/services of “Class 036 . . . Real estate services, namely the management and leasing of real estate.”

(e) Noticed from the Opposer’s “Notice of Opposition”, Applicant admits that the design mark containing a logo of skyscraper of a building so unique to its own drawing and without any reference to any words or typed drawing of “Empire State Building” is the registered mark on February 27, 2001 with the U.S. Patent and Trademark Office under the U.S. Registration No. 2430828 for the goods/services of “Class 041 . . . entertainment services, namely providing observation decks in a skyscraper for purposes of sightseeing.”

(f) Deny that the Opposer’s Empire State Building Marks are famous for the goods/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; Porter
Intent to Use: The applicant has a bona fide intention to use or use through the applicant’s related company or licensee the mark in commerce on or in connection with the identified goods and/or services.

(g) Deny that Opposer's Empire State Building Marks are famous at least in the area of skylines, gravestones, leaning tower of pisa, space needle, tombstones, totem poles, envelopes, rectangles as carriers or rectangles as single or multiple line borders where New York Envelope Corp. is the Registrant of the word mark, "NY" with the designed drawing of a logo that shows a fanciful design of the **Empire State Building** surrounded by smaller buildings and envelopes and the letters "N" and "Y" in a rectangle, which has a U.S. Registration No. 1247058.

Request No. 2:

Admit that Opposer's Empire State Building Marks were famous 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. 2:

Applicant objects to this Request for Admissions 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) Deny in general and same qualified response as Response No. 1.
- (b) Not applicable and same qualified response as Response No. 1.

Request No. 3:

Admit that Opposer's Empire State Building Marks are closely identified and associated with Opposer's goods and services.

Response No. 3:

Applicant objects to this Request for Admissions 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 does not understand the Opposer's Request for Admissions because the term "Opposer's goods and services" is vague and not defined anywhere by Opposer.
- (b) Applicant admits to the extent that Opposer's Empire State Building Marks are identified and associated with goods and services in the Opposer's self-serving statements in the U.S. Registration No. 2411972, 2413667, 2429297, and 2430828.

Request No. 4:

Admit that Applicant was aware of Opposer's Empire State Building Marks prior to:

- (a) January 8, 2011, when Applicant filed Application Serial No. 85/212,453.
- (b) Any use by Applicant of Applicant's Mark in connection with any goods or services.

Response No. 4:

Applicant objects to this Request for Admissions 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) Admit.

- (b) This Request is not applicable because Applicant has not used the Applicant's Mark pending the final approval and registration of the Applicant's Mark.

Request No. 5:

Admit that Applicant was aware of 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:

- (c) January 8, 2011, when Applicant filed Application Serial No. 85/212,453.
- (d) Any use by Applicant of Applicant's Mark in connection with any goods or services.

Response No. 5:

Applicant objects to this Request for Admissions 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:

- (c) Deny, except for admitting that Applicant is aware of the sightseeing services in the observation decks in the Empire State Building.
- (d) This Request is not applicable because Applicant has not used the Applicant's Mark pending the final approval and registration of the Applicant's Mark.

Request No. 6:

Admit that Applicant's services covered by Application No. 85/213,453 are marketed or intended to be marketed to consumers of Opposer's goods and/or services.

Response No. 6:

Applicant objects to this Request for Admissions 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 understand the Opposer's Request for Admissions because the term "Opposer's goods and services" is vague and not defined anywhere by Opposer. Applicant does not understand the Opposer's Request for Admissions because Applicant does not know who are consumers of Opposer's goods and services.

Request No. 7:

Admit that Applicant has no connection with Opposer and has no authorization from Opposer to use the building design in Applicant's Mark.

Response No. 7:

Applicant objects to this Request for Admissions 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) Admit that Applicant has no connection with Opposer.
- (b) Admit that Applicant has no authorization from Opposer to use its building design registered in the U.S. Patent and Trademark Office. Applicant, however, has not used the Opposer's the building design registered in the U.S. Patent and Trademark Office in the Applicant's Mark.

Request No. 8:

Admit that Applicant intended the building design in Applicant's Mark to resemble the Empire State Building.

Response No. 8:

Applicant objects to this Request for Admissions 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) Admit.
- (b) The building design in Applicant's Mark is not the Empire State Building.

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 5, 2013, I caused a true and complete copy of the foregoing Applicant's Response to the Opposer's First Set of Requests for Admissions 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@c11.com.

/David Yan/

David Yan

EXHIBIT J

Trademark/Service Mark Application, Principal Register

TEAS Plus Application

Serial Number: 85213453

Filing Date: 01/08/2011

*NOTE: Data fields with the * are mandatory under TEAS Plus. The wording "(if applicable)" appears where the field is only mandatory under the facts of the particular application.*

The table below presents the data as entered.

Input Field	Entered
TEAS Plus	YES
MARK INFORMATION	
*MARK	\\TICRS\EXPORT11\IMAGEOUT11\852\134\85213453\xml1\FTK0002.JPG
*SPECIAL FORM	YES
USPTO-GENERATED IMAGE	NO
LITERAL ELEMENT	NYC Beer Lager
*COLOR MARK	NO
*COLOR(S) CLAIMED (If applicable)	
*DESCRIPTION OF THE MARK (and Color Location, if applicable)	The mark consists of There are several layers of full circles. The building inside the inner circle resembles the Empire State Building. The middle layer contains NYC and Beer. The wheat pattern evokes that beer is brewed with a proportion of wheat.
PIXEL COUNT ACCEPTABLE	YES
PIXEL COUNT	480 x 480
REGISTER	Principal
APPLICANT INFORMATION	
*OWNER OF MARK	Michael Liang
*STREET	

*STREET	55-25 98th Place, Apt. 3C
*CITY	Corona
*STATE (Required for U.S. applicants)	New York
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants only)	11368
PHONE	2129660100
EMAIL ADDRESS	davidyanlawfirm@yahoo.com
LEGAL ENTITY INFORMATION	
*TYPE	INDIVIDUAL
* COUNTRY OF CITIZENSHIP	United States
GOODS AND/OR SERVICES AND BASIS INFORMATION	
*INTERNATIONAL CLASS	032
IDENTIFICATION	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 malt-based 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; Porter
*FILING BASIS	SECTION 1(b)
ADDITIONAL STATEMENTS SECTION	
*TRANSLATION (if applicable)	
*TRANSLITERATION (if applicable)	
*CLAIMED PRIOR REGISTRATION (if applicable)	
* CONSENT (NAME/LIKENESS) (if applicable)	
* CONCURRENT USE CLAIM (if applicable)	
DISCLAIMER	No claim is made to the exclusive right to use NYC, Beer, and Lager apart from the mark as

	shown.
STIPPLING AS A FEATURE OF THE MARK	The stippling is a feature of the mark and does not indicate color.
SIGNIFICANCE OF MARK	Lager appearing in the mark means or signifies beer in the relevant trade or industry or as applied to the goods/services listed in the application.
STIPPLING FOR SHADING	The stippling is for shading purposes only.
ATTORNEY INFORMATION	
NAME	David Yan, Esq.
ATTORNEY DOCKET NUMBER	2011-006
FIRM NAME	Law Offices of David Yan
STREET	136-20, 38th Avenue, Suite 11E
CITY	Flushing
STATE	New York
COUNTRY	United States
ZIP/POSTAL CODE	11354
PHONE	(718) 888-7788
FAX	(718) 888-0870
EMAIL ADDRESS	davidyanlawfirm@yahoo.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
CORRESPONDENCE INFORMATION	
*NAME	David Yan, Esq.
FIRM NAME	Law Offices of David Yan
*STREET	136-20, 38th Avenue, Suite 11E
*CITY	Flushing
*STATE (Required for U.S. applicants)	New York
*COUNTRY	United States
*ZIP/POSTAL CODE	11354
PHONE	(718) 888-7788
FAX	(718) 888-0870
*EMAIL ADDRESS	davidyanlawfirm@yahoo.com

* AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
FEE INFORMATION	
NUMBER OF CLASSES	1
FEE PER CLASS	275
* TOTAL FEE PAID	275
SIGNATURE INFORMATION	
* SIGNATURE	/David Yan/
* SIGNATORY'S NAME	David Yan
* SIGNATORY'S POSITION	Attorney
* DATE SIGNED	01/08/2011

Trademark/Service Mark Application, Principal Register

TEAS Plus Application

Serial Number: 85213453

Filing Date: 01/08/2011

To the Commissioner for Trademarks:

MARK: NYC Beer Lager (stylized and/or with design, see [mark](#))

The literal element of the mark consists of NYC Beer Lager.

The applicant is not claiming color as a feature of the mark. The mark consists of There are several layers of full circles. The building inside the inner circle resembles the Empire State Building. The middle layer contains NYC and Beer. The wheat pattern evokes that beer is brewed with a proportion of wheat.

The applicant, Michael Liang, a citizen of United States, having an address of

55-25 98th Place, Apt. 3C

Corona, New York 11368

United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

For specific filing basis information for each item, you must view the display within the Input Table.

International Class 032: 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 malt-based 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; Porter

Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. (15 U.S.C. Section 1051(b)).

No claim is made to the exclusive right to use NYC, Beer, and Lager apart from the mark as shown.

The stippling is a feature of the mark and does not indicate color.

Lager appearing in the mark means or signifies beer in the relevant trade or industry or as applied to the goods/services listed in the application.

The stippling is for shading purposes only.

The applicant's current Attorney Information:

David Yan, Esq. of Law Offices of David Yan
136-20, 38th Avenue, Suite 11E
Flushing, New York 11354
United States

The attorney docket/reference number is 2011-006.

The docket/reference number is 2011-006.

The applicant's current Correspondence Information:

David Yan, Esq.
Law Offices of David Yan
136-20, 38th Avenue, Suite 11E
Flushing, New York 11354
(718) 888-7788(phone)
(718) 888-0870(fax)
davidyanlawfirm@yahoo.com (authorized)

A fee payment in the amount of \$275 has been submitted with the application, representing payment for 1 class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /David Yan/ Date Signed: 01/08/2011

Signatory's Name: David Yan

Signatory's Position: Attorney

RAM Sale Number: 6163

RAM Accounting Date: 01/10/2011

Serial Number: 85213453

Internet Transmission Date: Sat Jan 08 13:16:22 EST 2011

TEAS Stamp: USPTO/FTK-173.52.162.100-201101081316226

97414-85213453-4701fbf530506a5df867ca44c

25211a2-CC-6163-20110108130817463109

