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Filing date: **10/08/2013**

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

Proceeding	91204122
Party	Defendant Michael Liang
Correspondence Address	DAVID YAN LAW OFFICES OF DAVID YAN 136-20 38TH AVENUE, SUITE 11E FLUSHING, NY 11354 4232 UNITED STATES davidyanlawfirm@yahoo.com
Submission	Motion to Reopen
Filer's Name	David Yan
Filer's e-mail	davidyanlawfirm@yahoo.com
Signature	/David Yan/
Date	10/08/2013
Attachments	Applicant's Motion to Reopen Discovery Period (Opposition No 91204122).pdf(4740878 bytes)

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

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

EMPIRE STATE BUILDING COMPANY L.L.C., Opposer,	Opposition No.: 91204122
v.	**MOTION TO REOPEN DISCOVERY PERIOD**
MICHAEL LIANG, Applicant.	

Commissioner for Trademarks
Attn: Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

PLEASE TAKE NOTICE THAT, upon the annexed Declaration of David Yan, and the exhibits thereto, and the memorandum of law set forth herein, Applicant hereby moves, pursuant to 37 C.F.R. § 2.116(a), T.B.M.P. § 509.01(b) and Fed. R. Civ. P. 6(b), for an order granting the Motion to Reopen Time in favor of Applicant.

MEMORANDUM IN SUPPORT OF MOTION

INTRODUCTION

On January 8, 2011, Applicant, Michael Liang, filed application to request registration of a trademark under the serial number of 85213453 (hereinafter referred to as the "Mark"). The

TEAS Plus Application of the Mark is annexed hereto as Exhibit A. The Mark has the literal element, consisting of NYC Beer Lager, and the drawing, consisting several layers of full circles.

On December 6, 2011, the Mark was published in official Gazette for opposition. A copy of the print out of the State Search SN 85213453 is annexed hereto as Exhibit B.

On December 7, 2011, Opposer filed Extension of Time to Oppose.

After almost three months, Opposer filed opposition on March 1, 2012.

On June 20, 2012, Opposer moved for an order suspending the proceedings for a period of sixty (60) days until August 19, 2012. Opposer's reason was for the parties to engage in settlement discussions. Actually, Applicant's counsel learned that Opposer's counsels were out of the office for the summer break.

On June 26, 2012, the Board granted the Opposer's motion to suspend proceedings and reset the schedule of discovery to be resumed on August 20, 2012.

The proceedings was resumed on August 20, 2012. However, on the eve of the initial disclosure due on September 19, 2012, Opposer moved to waive the requirement of initial disclosures. The Board noted the motion on October 10, 2012.

Since the end of June, 2012, matters that are extraordinary, unusual and personal to the Applicant's counsel and his family have happened. The Applicant's counsel is a sole practitioner. Due to the personal matters happened to the Applicant's counsel and his family, the Applicant's counsel had difficulties to follow Opposer's due day and the Board's orders regarding the schedules of the proceedings. The Applicant's counsel called Opposer's counsel to request the consent to the Applicant's intention to suspend proceedings due to the extraordinary and unusual personal matters happened. Opposer's counsel rejected the request of the Applicant's counsel for the consent to the Applicant's intention to suspend proceedings. On the

contrary, Opposer's counsel told Applicant's counsel that he would not consent to the suspension motion unless Applicant would agree to some sort of settlements of removing the building logo inside the inner circle of the drawing of the Mark and deleting the description that refers to "Empire State Building." Applicant's counsel told Opposer's counsel that he could not make such decisions and would have to speak to Applicant regarding the said settlement. After Applicant's counsel spoke to Applicant, Applicant rejected the proposed settlement. When Applicant's counsel related the Applicant's decision to Opposer's counsel, Opposer's counsel declined to give the consent to the Applicant's intention to suspend proceedings due to personal matters happened to Applicant and his family.

Instead to suspend the proceedings, Opposer moved for extending 60 days until May 25, 2013 to allow Applicant to respond to the Opposer's First Set of discovery requests.

Due to the extraordinary and unusual personal matters happened to the Applicant's counsel, Applicant's counsel was still not able to follow the Board's new scheduling order.

On June 6, 2013, Opposer moved to compel Applicant to respond to Opposer's First Set of Interrogatories and Request for Production of Documents and Things.

On August 6, 2013, the Board mailed the Order, granting the Opposer's motion to compel discovery response and Applicant was 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.

After Applicant's counsel made every effort to overcome difficulties due to the extraordinary and unusual personal matters happened to him and his family, Applicant's counsel responded and emailed on September 5, 2013 to the Opposer's Counsel the Applicant's Response to Opposer's First Set of Requests for Admissions and responded and emailed on

September 6, 2013 to the Opposer's Counsel the Applicant's Response to Opposer's First Set of Interrogatories and Request for Production of Documents and Things. On September 6, 2013, Applicant's counsel sent the Opposer's Counsel *via U.S. Post First Class Letter* the Applicant's Response to Opposer's First Set of Requests for Admissions and the Applicant's Response to Opposer's First Set of Interrogatories and Request for Production of Documents and Things.

On September 11, 2013, Opposer filed its Motion for Sanctions of Entry of Judgment and to Suspend.

As set forth in detail herein, Applicant, *via his counsel,* submits to the Board that the Opposer's Motion for Sanctions of Entry of Judgment and to Suspend is without any merit under the totality of circumstances.

STATEMENT OF FACTS

The facts upon which this motion is based are set forth in detail in the accompanying declaration of David Yan ("Yan Decl.") and are reiterated herein for the Board's convenience. The facts that contain highly personal and confidential information to the Applicant's counsel and his family will be redacted herein and submitted under seal for the Board's eye only.

The Instant Opposition Proceeding

Opposer filed Notice of Opposition on March 1, 2012 against the Applicant's request for registration of the Mark with the Serial No. 85/213,453. The Applicant's Mark is NYC BEER LAGER with the drawing shown below:

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 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" in International Class 32.

Opposer's Notice of Opposition alleged that registration of the 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.

Throughout the Opposer's pleadings and motion practices, Opposer has failed to disclose that a trademark with the U.S. Registration No. 1247058 consisting the word mark "NY" and the designed drawing that shows a "fanciful design of the **Empire State Building"** has already existed and 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.

The Excusable Neglect of the Scheduling Order of the Applicant's Counsel

On June 20, 2012, Opposer moved for an order suspending the proceedings for a period of sixty (60) days until August 19, 2012. On June 26, 2012, the Board granted the Opposer's

motion to suspend proceedings and reset the schedule of discovery to be resumed on August 20, 2012.

Extraordinary and unusual personal matters, however, have happened to Applicant's counsel and his family since then.

[Highly personal and confidential information regarding the personal matters happened to Applicant's counsel is redacted herein and submitted under seal *via U.S. Post First Class Letter* to the Board for the Board's eye only.]

Applicant's counsel informed Opposer's counsel that Applicant's counsel could not meet the due of the Opposer's discovery requests and follow the Board's scheduling order due to the personal matters happened to Applicant and the Applicant's family. Applicant's counsel told Opposer's counsel that the instant case proceeding was not a live or die matter and requested the proceeding be suspended. Opposer's counsel, however, rejected the Applicant's counsel's request.

Applicant's counsel has established that his failure to act in a timely manner was the result of excusable neglect. Because the discovery period had closed in this case, Applicant's motion is one to reopen the discovery period. *See Luster Products, Inc. v. John M. Van Zandt d/b/a Vanza USA,* ___ 99USPQ2d ____ (TTAB 2012); *Vital Pharmaceuticals Inc. v. Kronholm,* 99 USPQ2d 1708, 1710 n.10 (TTAB 2011). In this case, Applicant must establish that his failure to act in a timely manner was the result of excusable neglect. *See Luster Products, supra; Vital Pharmaceuticals supra.* The Supreme Court held that the determination of whether a party's neglect is excusable is:

> At bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission. These include . . . [1] the danger of prejudice to the [nonmovant], [2] the length of the delay and its potential impact on judicial proceedings, [3] the

> reason for the delay, including whether it was within the reasonable control of the movant, and [4] whether the movant acted in good faith.

Pioneer Inv. Servs. Co. v. Brunswick Assocs. L.P., 507 U.S. 380, 395 (1993). "In subsequent applications of this test, several courts have stated that the third *Pioneer* factor, namely the reason for the delay and whether it was within the reasonable control of the movant, might be considered the most important factor in a particular case." *Luster Products, supra* at ___; *Pumpkin, Ltd. v. The Seed Corps,* 43 USPQ2d 1582, 1586 n. 7 (TTAB 1997) and cases cited therein.

With respect to the third *Pioneer* factor, the personal matters happened to Applicant and the Applicant's family are without reasonable control of the Applicant's counsel, the movant. Therefore, the facts herein weigh strongly in favor of a finding of excusable neglect.

With regard to the first *Pioneer* factor, there is no evidence of significant prejudice to Opposer. The "prejudice to the nonmovant" contemplated under the first *Pioneer* factor must be more than the mere inconvenience and delay caused by the movant's previous failure to take timely action, and more than the nonmovant's loss of any tactical advantage which it otherwise would enjoy as a result of the movant's delay or omission. Rather, "prejudice to the nonmovant" is prejudice to the nonmovant's ability to litigate the case, e.g., where the movant's delay has resulted in a loss or unavailability of evidence or witnesses which otherwise would have been available to the nonmovant. *See Pumpkin Ltd., supra,* at 1587 (citing *Pratt v. Philbrook,* 109 F.3d 18 (1st Cir. 1997)); *Paolo's Associates Ltd., Partnership v. Bodo,* 21 USPQ2d 1899, 1904 (Comm'r 1990).

With regard to the second *Pioneer* factor, the length of the delay is not significant and is caused by both Opposer and Applicant. First of all, it was the Opposer who first moved on June

20, 2012 for an order suspending the proceedings for a period of sixty (60) days until August 19, 2012. The suspension Opposer's reason was not only for the parties to engage in settlement discussions. Secondly, Applicant's counsel has already responded to the Opposer's First Set of Requests for Admissions and the Applicant's Response to Opposer's First Set of Interrogatories and Request for Production of Documents and Things. If this case is going to be decided on merits, Opposer's disclosure or its response to the request for disclosure will be important to the Board's decision on the merits, especially in light of the fact that a trademark with the U.S. Registration No. 1247058 consisting the word mark "NY" and the designed drawing that shows a "fanciful design of the **Empire State Building"** has already existed and does not confuse any part of the member of the public.

With regard to the fourth *Pioneer* factor, there is no evidence of bad faith on the part of Applicant.

CONCLUSION

For the foregoing reasons, Applicant, *via the Applicant's counsel,* submits to the Board that Applicant's failure to timely act before the close of the discovery period was the result from excusable neglect under the totality of the circumstances, and respectfully requests that the Board issue an order (1) granting Applicant's motion to reopen the discovery period; and (2) granting Applicant such further and other relief as the Board deems just and proper.

Dated: Flushing, New York
October 7, 2013

Respectfully submitted,

/David Yan/

David Yan, Esq.
Attorney for Applicant / Defendant
136-20 38th Avenue, Suite 11E
Flushing, New York 11354
Telephone: (718) 888-7788

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on October 8, 2013, I caused a true and correct copy of the foregoing Applicant's Motion to Reopen Discovery Period and supporting Declaration of David Yan (redacted any and all highly personal and confidential information to the Applicant's counsel) with exhibits to be sent via U.S. Post First Class Mail, postage prepaid, to Opposer's Attorney 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

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

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

Commissioner for Trademarks
Attn: Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

DECLARATION OF DAVID YAN
IN SUPPORT OF APPLICANT'S MOTION TO REOPEN DISCOVERY PERIOD

DAVID YAN, pursuant to 28 U.S.C. § 1746, declares:

1. I am an attorney for Applicant. I submit this declaration in support of Applicant's Motion to Reopen Discovery Period. I submit this declaration based on my personal knowledge and/or review of my office's records, and if called as a witness, I would testify competently as to the matters contained herein.

2. On January 8, 2011, on behalf of Applicant, Michael Liang, I submitted application to request registration of a trademark under the serial number of 85213453

(hereinafter referred to as the "Mark"). The Applicant's Mark is NYC BEER LAGER with the drawing shown below:

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 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" in International Class 32.

3. On December 6, 2011, the Mark was published in official Gazette for opposition. A copy of the print out of the State Search SN 85213453 is annexed hereto as Exhibit B.

4. On December 7, 2011, Opposer filed Extension of Time to Oppose.

5. After almost three months, Opposer filed opposition on March 1, 2012, alleging that registration of the 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.

6. Opposer and its counsel, however, has failed to disclose in its pleadings that a trademark with the U.S. Registration No. 1247058 consisting the word mark "NY" and the designed drawing that shows a "fanciful design of the **Empire State Building**" has already

existed and does not confuse any part of the member of the public. A copy of the printout of the trademark with the U.S. Registration No. 1247058 is annexed hereto as Exhibit C.

7. On June 20, 2012, Opposer moved for an order suspending the proceedings for a period of sixty (60) days until August 19, 2012. Opposer's reason was for the parties to engage in settlement discussions. Actually, Applicant's counsel learned that Opposer's counsels were out of the office for the summer break.

8. On June 26, 2012, the Board granted the Opposer's motion to suspend proceedings and reset the schedule of discovery to be resumed on August 20, 2012. The proceedings was resumed on August 20, 2012. However, on the eve of the initial disclosure due on September 19, 2012, Opposer moved to waive the requirement of initial disclosures. The Board noted the motion on October 10, 2012.

9. Since the end of June, 2012, matters that were extraordinary and unusual have happened to the Applicant's counsel and his family.

10. [Highly personal and confidential information regarding the personal matters happened to Applicant's counsel is redacted herein and submitted under seal *via U.S. Post First Class Letter* to the Board for the Board's eye only.]

11. On September 19, 2012, the eve of the due date of the Opposer's initial disclosure, Opposer filed a Motion to Waive Initial Disclosure, which was noted by the Board on October 10, 2012. Applicant's counsel consented to the Opposer's Motion to Waive Initial Disclosure with the belief that Opposer would engage in the meaningful traditional discovery processes. Applicant has not been able to serve Opposer the Applicant's First Set of Interrogatories and Request for Production of Documents and Things and Applicant's First Set of Requests for Admission ("Applicant's Discovery Requests") due to the close of the discovery

period. So far, Opposer has not disclosed any documents or things regarding the fame of Opposer's pleaded marks and the opposer's respective trade channels and any material fact regarding whether the term of the Applicant's Mark points uniquely and unmistakably to Opposer and whether Opposer's identity is of sufficient reputation that when Applicant's Mark is used on its goods and services, a connection with Opposer would be presumed.

12. 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 U.S. Post First Class Mail.

13. The Applicant's counsel is a sole practitioner. Due to the extraordinary and unusual matters happened to Applicant's counsel and his family, the Applicant's counsel was not able to meet the Opposer's Discovery Requests due day on March 26, 2013.

14. On March 19, 2013, Applicant's counsel called Mr. William M. Borchard, the Opposer's counsel regarding the possible suspension of the proceedings due to the extraordinary and unusual matters happened to Applicant's counsel and his family. Applicant's counsel told Mr. William M. Borchard that the personal matters were serious and the instant case was not a matter of live or die and hoped Mr. William M. Borchard would agree to temporarily suspend the proceedings. Opposer's counsel, Mr. William M. Borchard, rejected the request of the Applicant's counsel for the consent to the Applicant's intention to suspend proceedings. On the contrary, Mr. William M. Borchard told Applicant's counsel that he would not consent to the suspension motion unless Applicant would agree to some sort of settlements of removing the building logo inside the inner circle of the drawing of the Mark and deleting the description that refers to "Empire State Building." Applicant's counsel told Opposer's counsel that he could not make such decisions and would have to speak to Applicant regarding the said settlement. After

Applicant's counsel spoke to Applicant, Applicant rejected the proposed settlement. When Applicant's counsel related the Applicant's decision to Opposer's counsel, Opposer's counsel declined to give the consent to the Applicant's intention to suspend proceedings due to the extraordinary and unusual matters happened to Applicant's counsel and his family.

15. Knowing that any further conversation regarding the suspension of the proceedings with Opposer's counsel would be futile, Applicant's counsel gave up any further conversation with Opposer's counsel regarding the request for suspension of the proceedings and for extra time.

16. Instead to suspend the proceedings, Opposer moved for extending 60 days until May 25, 2013 to allow Applicant to respond to the Opposer's First Set of discovery requests. Due to the personal matters happened to the Applicant's counsel, Applicant's counsel was still not able to follow the Board's new scheduling order.

17. Due to the extraordinary and unusual personal matters happened to Applicant's counsel and his family, Applicant's counsel had difficulties to follow the Board's orders regarding the schedules of the proceedings.

18. On June 6, 2013, Opposer moved to compel Applicant to respond to Opposer's First Set of Interrogatories and Request for Production of Documents and Things.

19. On August 6, 2013, the Board mailed the Order, granting the Opposer's motion to compel discovery response and Applicant was 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.

20. After Applicant's counsel made every effort to overcome difficulties due to the personal matters happened to him and his family, Applicant's counsel responded and emailed on

September 5, 2013 to the Opposer's Counsel the Applicant's Response to Opposer's First Set of Requests for Admissions and responded and emailed on September 6, 2013 to the Opposer's Counsel the Applicant's Response to Opposer's First Set of Interrogatories and Request for Production of Documents and Things. On September 6, 2013, Applicant's counsel sent the Opposer's Counsel *via U.S. Post First Class Letter* the Applicant's Response to Opposer's First Set of Requests for Admissions and the Applicant's Response to Opposer's First Set of Interrogatories and Request for Production of Documents and Things. Copies of the foregoing mentioned Responses are annexed hereto as Exhibit D.

21. On September 11, 2013, Opposer filed its Motion for Sanctions of Entry of Judgment and to Suspend. I submit to the Board that this Opposer's Motion is totally inappropriate and without any merit under the totality of circumstances.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT, EXECUTED ON OCTOBER 8, 2013 AT FLUSHING, NEW YORK.

/David Yan/
David Yan

EXHIBIT A

Trademark Electronic Application System (TEAS) filing receipt

MARK: NYC Beer Lager (stylized and/or with design, mark_17352162100-130817463_._nyc-beer-black-white-1_resized.jpg)

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.

We have received your application and assigned serial number '85213453' to your submission. The summary of the application data, *bottom below*, serves as your official filing receipt.

In approximately 3 months, an assigned examining attorney will review your application to determine if all legal requirements are met. Currently, your mark is **not** registered and is considered a "pending" application. The overall process from the time of initial filing to registration or final refusal can take 13-18 months or even longer, depending on many factors; *e.g.*, the correctness of the original filing and the type of application filed. It is **CRITICAL** that you check the status of your application **at least every 3 - 4 months** and promptly contact the Office if a letter (an "Office action") or notice has issued for your application that you did not receive or do not understand. To check the status, please use http://tarr.uspto.gov. Do **not** submit status requests to TEAS@uspto.gov. Failure to respond timely to any Office action or notice may result in the abandonment of your application, requiring you to pay an additional fee to have your application revived even if you did not receive the Office action or notice.

Please view all incoming and outgoing correspondence at http://portal.uspto.gov/external/portal/tow. If your status check reveals an issued Office action or notice that you did not receive, immediately view the action/notice through the USPTO website. The USPTO does not extend filing deadlines due to a failure to receive USPTO mailings/e-mailings. You must ensure that you update your record if your mail and/or e-mail address changes, using the form available at http://www.uspto.gov/teas/eTEASpageE.htm.

If you discover an error in the application data, you may file a Voluntary Amendment, at http://www.uspto.gov/teas/eTEASpageB2.htm. Do **not** submit any proposed amendment to TEAS@uspto.gov, because the technical support team may not make any data changes. **NOTE:** You must wait approximately 7-10 days to submit any Voluntary Amendment, to permit initial upload of your serial number into the USPTO database. The acceptability of any Voluntary Amendment will only be determined once regular examination begins, since the assigned examining attorney must decide whether the change proposed in the amendment is permissible. **Not all errors may be corrected;***e.g.*, if you submitted the wrong mark, if the proposed correction would be considered a material alteration to your original filing, it will not be accepted, and your only recourse would be to file a new application (with **no** refund for your original filing).

Since your application filing has already been assigned a serial number, please do **not** contact TEAS@uspto.gov to request cancellation. The USPTO will only cancel the filing and refund your fee if upon review we determine that the application did not meet minimum filing requirements. **The fee is a**

processing fee that the USPTO does not refund, even if your mark does not proceed to registration. NOTE: The only "exception" to the above is if you inadvertently file duplicate applications specifically because of a *technical glitch* and not merely a misunderstanding or mistake; *i.e.,* if you believe that the first filing did not go through because no confirmation was received and then immediately file again, only to discover later that both filings were successful, then the technical support team at TEAS@uspto.gov can mis-assign and refund one of the filings.

WARNING: You may receive unsolicited communications from companies requesting fees for trademark related services, such as monitoring and document filing. Although solicitations from these companies frequently display customer-specific information, including USPTO serial number or registration number and owner name, companies who offer these services are not affiliated or associated with the USPTO or any other federal agency. The USPTO does not provide trademark monitoring or any similar services. For general information on filing and maintenance requirements for trademark applications and registrations, including fees required by law, please consult the USPTO website.

APPLICATION DATA: Trademark/Service Mark Application, Principal Register TEAS Plus Application

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:

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 hereby appoints David Yan, Esq. of Law Offices of David Yan
136-20, 38th Avenue, Suite 11E

Flushing, New York 11354
United States
to submit this application on behalf of the applicant. The attorney docket/reference number is 2011-006.
The docket/reference number is 2011-006.

Correspondence Information: David Yan, Esq.

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 will be 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.

Declaration Signature

Signature: /David Yan/ Date: 01/08/2011
Signatory's Name: David Yan
Signatory's Position: Attorney

Thank you,

The TEAS support team
Sat Jan 08 13:16:22 EST 2011
STAMP: USPTO/FTK-173.52.162.100-20110108131622697414-85213453-4701fbf530506a5df867ca44c25211a2-CC-6163-20110108130817463109

NYC
BEER
LAGER

EXHIBIT B

All Trademark documents should now be available to members of the public using Trademark Status and Document Retrieval (TSDR). Thanks to all who reported difficulties viewing and downloading documents. Your reports were a great help to the office in diagnosing and solving the problem. If you continue to have issues with TSDR please e-mail TSDR@uspto.gov.

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Mark: NYC BEER LAGER

US Serial Number: 85213453

Application Filing Date: Jan. 08, 2011

Filed as TEAS Plus: Yes

Currently TEAS Plus: Yes

Register: Principal

Mark Type: Trademark

Status: An opposition after publication is pending at the Trademark Trial and Appeal Board. For further information, see TTABVUE on the Trademark Trial and Appeal Board web page.

Status Date: Mar. 01, 2012

Publication Date: Dec. 06, 2011

Mark Information

Goods and Services

Basis Information (Case Level)

Current Owner(s) Information

Attorney/Correspondence Information

Prosecution History

Date	Description	Proceeding Number
Mar. 01, 2012	OPPOSITION INSTITUTED NO. 999999	204122
Dec. 07, 2011	EXTENSION OF TIME TO OPPOSE RECEIVED	
Dec. 06, 2011	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Dec. 06, 2011	PUBLISHED FOR OPPOSITION	
Nov. 16, 2011	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Nov. 02, 2011	LAW OFFICE PUBLICATION REVIEW COMPLETED	68171
Nov. 01, 2011	APPROVED FOR PUB - PRINCIPAL REGISTER	
Oct. 19, 2011	TEAS/EMAIL CORRESPONDENCE ENTERED	68171
Oct. 19, 2011	CORRESPONDENCE RECEIVED IN LAW OFFICE	68171
Oct. 13, 2011	ASSIGNED TO LIE	68171
Oct. 02, 2011	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Oct. 02, 2011	PETITION TO REVIVE-GRANTED	88889
Oct. 02, 2011	TEAS PETITION TO REVIVE RECEIVED	
Jun. 06, 2011	LETTER OF PROTEST ACCEPTED	
Mar. 30, 2011	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325

Mar. 30, 2011	NON-FINAL ACTION E-MAILED	6325
Mar. 30, 2011	NON-FINAL ACTION WRITTEN	76855
Mar. 29, 2011	ASSIGNED TO EXAMINER	76855
Jan. 13, 2011	NOTICE OF DESIGN SEARCH CODE MAILED	
Jan. 12, 2011	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Jan. 12, 2011	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

Assignment Abstract Of Title Information - Click to Load

Proceedings

Summary

Party type	Proceeding type

Number of Proceedings: 2

Type of Proceeding: Opposition

Type of Proceeding: Extension of Time

EXHIBIT C

United States Patent and Trademark Office

Home | Site Index | Search | FAQ | Glossary | Guides | Contacts | eBusiness | eBiz alerts | News | Help

Trademarks > Trademark Electronic Search System (TESS)

TESS was last updated on Tue Oct 8 03:20:34 EDT 2013

TESS Home | New User | Structured | Free Form | Browse Dict | SEARCH OG | Bottom | HELP

Logout Please logout when you are done to release system resources allocated for you.

Record 1 out of 1

TSDR | ASSIGN Status | TTAB Status *(Use the "Back" button of the Internet Browser to return to TESS)*

Word Mark	NY
Goods and Services	IC 016. US 037. G & S: Envelopes. FIRST USE: 19680327. FIRST USE IN COMMERCE: 19680327
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	06.07.01 - Skylines 07.09.25 - Gravestones; Leaning Tower of Pisa; Space needle; Tombstones; Totem poles 20.03.03 - Envelopes 26.11.01 - Rectangles as carriers or rectangles as single or multiple line borders
Serial Number	73381231
Filing Date	August 23, 1982
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	May 10, 1983
Registration Number	**1247058**
Registration Date	August 2, 1983
Owner	(REGISTRANT) New York Envelope Corp. CORPORATION NEW YORK 29-10 Hunterspoint Ave. Long Island City NEW YORK 11101 (LAST LISTED OWNER) NE OPCO, INC. CORPORATION DELAWARE 3211 INTERNET BOULEVARD, SUITE 200 FRISCO TEXAS 75034
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	MARK N MUTTERPERL

Disclaimer	No claim is made to the exclusive right to use the illustration of the goods, envelopes, or the geographic abbreviation "NY", apart from the mark as shown.
Description of Mark	The mark shows a fanciful design of the Empire State Building surrounded by smaller buildings and envelopes and the letters "N" and "Y" in a rectangle.
Type of Mark	TRADEMARK
Register	PRINCIPAL
Affidavit Text	SECT 8 (6-YR). SECTION 8(10-YR) 20031112.
Renewal	1ST RENEWAL 20031112
Live/Dead Indicator	LIVE

EXHIBIT D

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

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

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 adverting 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 adverting material or promotional item that has been used or is intended to be used in connection with Applicant's Products/Services and/or Applicant's Mark.

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

Interrogatory No. 12:

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

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

Response No. 12:

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

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

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

Interrogatory No. 13:

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

Response No. 13:

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

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

Interrogatory No. 14:

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

(a) January 8, 2011, when Applicant filed Application Serial No. 85/213,453.

(b) Any use by Applicant of Applicant's Mark in connection with any goods or services.

Response No. 14:

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

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

(b) Not applicable.

Interrogatory No. 15:

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

Response No. 15:

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

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

Interrogatory No. 16:

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

Response No. 10:

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

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

Interrogatory No. 17:

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

Response No. 17:

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

DOCUMENT REQUESTS

SPECIFIC OJECTIONS AND RESPONSES

Request No. 1:

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

Response No. 1:

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

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

Request No. 2:

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

Response No. 2:

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

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

Request No. 3:

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

Response No. 3:

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

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

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

Dated: Flushing, New York
September 5, 2013

Law Offices of David Yan
Attorney for Applicant

by: /David Yan/
David Yan

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

AFFIRMATION OF SERVICE

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

/David Yan/
David Yan

AFFIRMATION OF SERVICE

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

/David Yan/
David Yan

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

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

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 any where 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@cll.com.

/David Yan/
David Yan