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Filing date: **08/14/2014**

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	ERIC J SHIMANOFF COWAN LIEBOWITZ & LATMAN PC 1133 AVENUE OF THE AMERICAS NEW YORK, NY 10036 UNITED STATES ejs@cll.com, lmr@cll.com, wmb@cll.com, trademark@cll.com, fxm@cll.com, mlk@cll.com
Submission	Motion for Summary Judgment
Filer's Name	Eric J. Shimanoff
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Signature	/Eric J. Shimanoff/
Date	08/14/2014
Attachments	Opposer's Motion for Summary Judgment - with affirmation and exhibits - FILED.pdf(3527377 bytes )



mark at issue in United States commerce at the time he filed his intent-to-use application for registration, and Opposer is entitled to judgment as a matter of law.

In response to Opposer's discovery requests, Applicant admitted that he has failed to take any concrete steps regarding the exploitation of goods or services bearing or rendered in connection with Applicant's proposed mark in United States commerce, *and admits he has no present intention to do so*. Additionally, Applicant has no documents concerning, *inter alia*, specimens, labels, tags, packaging, advertising, marketing or promotional materials, expenditures, market research, surveys or channels of trade relating to Applicant's intended use of goods or services bearing or rendered in connection with his proposed mark.

The sole document produced by Applicant in support of his purported bona fide intent to use his mark consisted of three pages of handwritten notes in Chinese from a single meeting in China in 2010. But this document merely is a "*Plan to apply for a trademark*" and clearly states that *no plans* to market any products will occur *unless and until the trademark is approved*. This document does not show a bona fide intent to use a mark in United States commerce. As such, Opposer is entitled to summary judgment as a matter of law.<sup>2</sup>

## **MEMORANDUM IN SUPPORT OF MOTION**

### **STATEMENT OF UNDISPUTED FACTS**

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

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<sup>2</sup> Opposer further requests, pursuant to 37 C.F.R. § 2.127(d), that these proceedings be suspended pending the Board's consideration of this potentially dispositive motion and, pursuant to 37 C.F.R. § 2.121(a), that the parties' pretrial disclosure and testimony periods be reset in the event summary judgment is denied.



("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" ("Applicant's Goods") in International Class 32. Shimanoff Decl. ¶ 2 & Ex. H.

Opposer's original Notice of Opposition alleged that registration of Applicant's Mark was likely to result in confusion, would 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 original Notice of Opposition. *Id.* ¶ 3 & Ex. H. Opposer owns U.S. federal registrations for Opposer's Empire State Building Marks in International Classes 36 and 41, namely, Registration Nos. 2411972, 2413667, 2429297 and 2430828, which are all incontestable. *Id.* ¶ 3 & Ex. F. The constructive first use date of these registrations is May 1, 1931. *Id.*

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.* ¶ 4 and Ex. B. After being forced to file two separate motions—one to compel and the other for sanctions—based on Applicant's failure to

comply with both his discovery obligations and a Board Order compelling responses, Applicant finally served amended responses to Opposer's discovery requests on or about April 15, 2014, over one year after they originally were due. *Id.* ¶ 5 and Ex. C. While these responses still are incomplete and are in violation of the Board's most recent Order and the Federal Rules of Civil Procedure, they did reveal the following:

- (a) Neither Applicant nor any party authorized by Applicant has made use of Applicant's Mark in connection with Applicant's Goods in the United States. *Id.* Ex. C (Applicant's Amended Resp. to Opposer's Interrog. Nos. 1, 5 & 6; Applicant's Amended Resp. to Opposer's Doc. Req. No 6).
- (b) Applicant cannot identify any advertising, marketing or promotional materials that he has used or intends to use in connection with Applicant's Goods bearing or rendered in connection with Applicant's Mark. *Id.* (Applicant's Amended Resp. to Opposer's Interrog. Nos. 10 & 11).
- (c) Applicant has not marketed Applicant's Goods bearing or rendered in connection with Applicant's Mark in the United States and has no present intent to market such goods in the United States. *Id.* (Applicant's Amended Resp. to Opposer's Interrog. No. 13).
- (d) Applicant has no documents concerning: specimens; labels, tags or packaging; advertising, marketing, or promotional materials, including but not limited to brochures, catalogues, circulars, flyers, media plans or press kits; advertising and promotional expenditures; trade shows or conventions; licenses; websites; market research or surveys and channels of trade relating to Applicant's use or intended use of Applicant's Goods bearing or rendered in connection with Applicant's Mark. *Id.* (Applicant's Amended Resp. to Opposer's Interrogatories Nos. 10 & 11; Applicant's Amended Resp. to Opposer's Doc. Req. Nos. 1-3, 6-13, 18 & 20).

Additionally, in response to Opposer's specific interrogatory that Applicant state whether he "has any documentation . . . reflecting [his] bona fide intention, prior to January 8, 2011, to use Applicant's Mark in commerce in connection with each and every [of Applicant's Goods]," Applicant identified and produced *one document*, consisting of a three page handwritten note in Chinese from a single meeting that apparently took place in China in 2010, which Applicant refers to as a "business plan." *Id.* ¶ 6 & Exs. C (Applicant's Amended Resp. to Opposer's

Interrog. No. 16) & D. As discussed in detail below, this document, which states it is a “*Plan to apply for a trademark*” and sets forth no specific plan to market and sell Applicant’s Goods bearing or rendered in connection with Applicant’s Mark, does not show Applicant’s bona fide intent to use Applicant’s Mark in United States commerce.

On May 8, 2014, Opposer filed a motion to amend its Notice of Opposition to add an additional ground for opposition, namely, that Applicant lacked a bona fide intention to use Applicant’s Mark in United States commerce in connection with Applicant’s Goods at the time Applicant filed his Application, as confirmed by the fact that Applicant has no written document(s) that would sufficiently support such an intent. Shimanoff Decl. ¶ 7. A copy of Opposer’s Amended Notice of Opposition is attached as Ex. A to the Shimanoff Decl.

On June 28, 2014, the Board granted Opposer’s motion to amend and provided Applicant until August 6, 2014 to file an Answer. *Id.* ¶ 9. Applicant filed his Answer with the Board on August 7, 2014, one day after the deadline set by the Board. Applicant simultaneously filed a motion to extend his time to Answer by one day. Opposer did not oppose that motion. *Id.* ¶ 10 & Ex. E.

## **ARGUMENT**

### **OPPOSER’S MOTION FOR SUMMARY JUDGMENT SHOULD BE GRANTED**

Summary judgment is properly viewed “as a salutary method of disposition, and the Board does not hesitate to dispose of cases on summary judgment when appropriate.” T.B.M.P. § 528.01 (citing cases). An opposer is entitled to summary judgment where there is no genuine dispute as to any material fact and judgment is proper as a matter of law. *See Fed. R. Civ. P. 56*; A material fact is one that would affect the outcome of the case. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A material fact is in “genuine” dispute where a reasonable finder

of fact could find for the non-movant. *See id.*; *Opryland USA, Inc. v. The Great Am. Music Show, Inc.*, 23 U.S.P.Q.2d 1471, 1472 (Fed. Cir. 1992). When the moving party has adequately supported its motion for summary judgment, the burden shifts to the nonmoving party to demonstrate that a genuine dispute as to a material fact does exist, necessitating a trial. *See Venture Out Properties LLC v. Wynn Resorts Holdings LLC*, 81 U.S.P.Q.2d 1887, 1890 (T.T.A.B. 2007).

In order to prevail in an opposition proceeding, the opposer must establish standing and a valid ground for denying the registration sought. *See, e.g., Lipton Indus., Inc. v. Ralston Purina Co.*, 213 U.S.P.Q. 185, 187 (C.C.P.A. 1982). As set forth in detail below, Opposer has established both of these elements as a matter of law.

**A. Opposer Has Standing to Oppose Applicant's Mark**

Section 13 of the Trademark Act provides that an opposition to the registration of an applicant may be filed “by any person who believes that he would be damaged by the registration of a mark upon the principal register.” 15 U.S.C. § 1063. To satisfy the threshold inquiry of standing, a party need not prove that it has actually been damaged, but merely that it has a real interest in the matter and that the belief of damage is supported by a real and rational basis. *See American Speech-Language-Hearing Assoc. v. Nat'l Hearing Aid Society*, 224 U.S.P.Q. 798, 801 (T.T.A.B. 1984). *See also Lipton Indus.*, 213 U.S.P.Q. at 189 (“purpose in requiring standing is to prevent litigation where there is no real controversy between the parties” and Opposer is “no more than an intermeddler”).

Opposer has established standing because it has priority and has alleged that registration of the applicant's mark will result in a likelihood of confusion and false association under Sections 2(d) and 2(a), respectively, of the Trademark Act. *See Lipton Indus.*, 213 U.S.P.Q. at

189.<sup>3</sup> To establish priority, Opposer can rely on the constructive first use date in its U.S. federal registrations for Opposer's Empire State Building Marks in International Classes 36 and 41, namely, Registration Nos. 2411972, 2413667, 2429297 and 2430828, all of which are incontestable. *See, e.g., Larami Corp. v. Talk To Me Programs Inc.*, 36 U.S.P.Q.2d 1840, 1845 n.7 (T.T.A.B. 1995) (opposer may rely on constructive use provisions of Section 7(c) to establish its priority "if it owns a registration for the mark it is asserting under Section 2(d) or if it has filed an application for registration of that mark"). Opposer's constructive first use date of May 1, 1931, *see* Shimanoff Decl. Ex. F, long predates Applicant's filing date of January 7, 2011, *see* Shimanoff Decl. Ex. I, which is the earliest constructive first use date upon which Applicant can rely since he has not yet made use of Applicant's Mark in connection with any of Applicant's Goods. Shimanoff Decl. Ex. C (Applicant's Amended Resp. to Opposer's Interrog. Nos. 1, 5 & 6; Applicant's Amended Resp. to Opposer's Doc. Req. No 6).

**B. Applicant Lacked a Bona Fide Intent to Use Applicant's Mark in United States Commerce in Connection with Applicant's Goods at the Time He Filed His Application**

Pursuant to Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), at the time an applicant files an intent to use application, he must have a bona fide intent to use the mark in commerce in connection with the goods covered by the Application. The lack of such a bona fide intent is proper grounds for an opposition. *See Commodore Elecs. Ltd. v. CBM Kabushiki Kaisha*, 26 U.S.P.Q.2d 1503, 1507 (T.T.A.B. 1993); *Lane Ltd. v. Int'l Trading Co.*, 33 U.S.P.Q.2d 1351, 1355 (T.T.A.B. 1994).

It is settled that "the determination of whether an applicant has a bona fide intention to use the mark in commerce is to be a fair, objective determination based on all the

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<sup>3</sup> Indeed, Applicant himself admitted in his Application that his proposed mark contains a building intended to resemble the Empire State Building. Shimanoff Decl. ¶ 12 & Ex. I.

circumstances.” *Id.* at 1357. The absence of documentary evidence on the part of an applicant showing its intent to use a mark “is sufficient to prove that applicant lacks a bona fide intention to use its mark in commerce as required by Section 1(b).” *Commodore Electronics*, 26 U.S.P.Q.2d at 1507. An “applicant’s mere statement of subjective intention, without more, would be insufficient to establish applicant’s bona fide intention to use the mark in commerce.” *Lane Ltd.*, 33 U.S.P.Q.2d at 1355.

As explained by the Board in *Commodore Electronics*:

Absent other facts which adequately explain or outweigh the failure of an applicant to have any documents supportive of or bearing upon its claimed intent to use its mark in commerce, the absence of any documentary evidence on the part of an applicant regarding such intent is sufficient to prove that the applicant lacks a bona fide intention to use its mark in commerce as required by Section 1(b).

26 U.S.P.Q.2d at 1507.

Thus, in *Research In Motion Ltd. v. NBOR Corp.*, the Board found that “Opposer has met its burden of demonstrating applicant’s lack of a bona fide intent to use the mark by showing that applicant has no documentary evidence regarding such intent” and where Applicant admitted in its discovery responses that:

it has not offered any goods or services for sale under the involved mark; the mark has not been used and no plans have been made as to how the mark may be used; there is no projected date of first use in commerce; no channels of trade have been formulated or planned for the future; the classes of consumers and geographic areas of sales have not yet been determined; applicant has not undertaken any market studies, surveys, or focus groups; and no documents exist regarding plans for expansion and growth of the product and service lines under the mark.

92 U.S.P.Q.2d 1926, 1930 (T.T.A.B. 2009) (record citations omitted). *See also Honda Motor Co. v. Winkelmann*, 90 U.S.P.Q.2d 1660 (T.T.A.B. 2009) (granting summary judgment based on lack of bona fide intent to use where no documentary evidence supporting such intent was produced in discovery); *Boston Red Sox Baseball Club LP v. Sherman*, 88 U.S.P.Q.2d 1581

(T.T.A.B. 2008) (opposition sustained where applicant had not submitted evidence to refute claim of lack of bona fide intent to use based upon failure to provide documentary evidence of intent to use); *L.C. Licensing Inc. v. Berman*, 86 U.S.P.Q.2d 1883 (T.T.A.B. 2008) (applicant's mere response that he intended to use the mark at issue on shift knobs, without corroboration of any sort, whether documentary or otherwise, is not likely to provide credible evidence to establish a bona fide intention to use the mark).

Even an applicant's production of one or more documents will be insufficient to demonstrate a bona fide intent to use where the overall objective evidence contradicts or overshadows those scant documents, or the documents themselves do not show any concrete plans taken by the applicant in furtherance of marketing or distributing goods or services bearing or rendered in connection with the mark at issue. *See, e.g., Swatch AG (Swatch SA) (Swatch Ltd.) v. M. Z. Berger & Co.*, 108 U.S.P.Q.2d 1463, 1472 (T.T.A.B. 2013) ("Three internal emails forwarding pictures of three stylized versions of the IWATCH mark, as well as images of one clock and two apparently identical watches featuring the IWATCH mark" insufficient to show bona fide intent to use); *Lincoln Nat'l Corp. v. Anderson*, 110 U.S.P.Q.2d 1271, 1281 (T.T.A.B. 2014) ("we find that the documentary evidence of record [*inter alia*, applicant's website setting forth general intentions, unsolicited mailings to potential licensees and handwritten list of expenditures] provides no significant support for applicant's claim that he had a bona fide intent"); *SmithKline Beecham Corp. v. Omnisource DDS LLC*, 97 U.S.P.Q.2d 1300, 1304 (T.T.A.B. 2010) ("the minutes from applicant's annual meetings contain only vague references to research and development of products in the dental field for consumers and dental professionals, filing various trademark applications for unspecified products, and the creation of a business plan").

In response to Opposer's discovery requests, Applicant here admitted that he has failed to take any steps regarding the exploitation of Applicant's Goods bearing or rendered in connection with Applicant's Mark in the United States. To wit, Applicant has not marketed or made use of Applicant's Mark in connection with Applicant's Goods or any other goods and services, **and has no present intention to do so**. Shimanoff Decl. Ex. C (Applicant's Amended Resp. to Opposer's Interrog. Nos. 1, 5 & 6; Applicant's Amended Resp. to Opposer's Doc. Req. No 6). Additionally, Applicant has no documents concerning: specimens; labels, tags or packaging; advertising, marketing, or promotional materials, including but not limited to brochures, catalogues, circulars, flyers, media plans or press kits; advertising and promotional expenditures; trade shows or conventions; licenses; websites; market research or surveys or channels of trade relating to Applicant's use or intended use of Applicant's Goods bearing or rendered in connection with Applicant's Mark. *Id.* (Applicant's Amended Resp. to Opposer's Interrogatories Nos. 10, 11; Applicant's Amended Resp. to Opposer's Doc. Req. Nos. 1-3, 6-13, 18 & 20).

The sole document produced by Applicant in support of his purported bona fide intent to use his mark consisted of three pages of handwritten notes in Chinese from a single meeting **in China** four years ago in 2010. But this document does not show a bona fide intent to use the mark. Although it is entitled a "business plan," it goes on to clarify that it is a "**Plan to apply for a trademark** simultaneously in China and the United States (see which one can be approved). **If it is approved**, will plan to produce beer and related beverages in the United States and sell them in the China market." *Id.* Ex. D (emphasis added). The rest of the document merely states that Applicant **will need** to produce and market his goods. It does not contain any details about **how** such a plan will be implemented or the specific components thereof. Nor does it show that any steps actually were taken pursuant to this "plan."

A plan *to apply* for a trademark is *not* a plan to *use* that trademark in United States commerce. Indeed, the document itself states that any plans to market goods are wholly *contingent upon* and *will not occur* until after registration of the mark. This sole document is insufficient to counter the complete lack of any other evidence showing Applicant's purported intent to use and is exactly the type of evidence that the Board rejected as probative in *Lincoln Nat'l Corp.* and *SmithKline Beecham Corp.* Opposer has met its burden of showing that Applicant lacked a bona fide intention to use Applicant's Mark in connection with Applicant's Goods at the time that he filed his Application. Thus, Opposer is entitled to summary judgment.

### CONCLUSION

For the foregoing reasons, Opposer respectfully requests that the Board:

- (1) suspend the instant opposition proceedings pending its determination of the motion for summary judgment;
- (2) substitute ESRT Empire State Building, L.L.C. for Empire State Building Company L.L.C. as Opposer;
- (3) grant Opposer's motion for summary judgment that Applicant lacked a bona fide intention to use Applicant's Mark in connection with Applicant's Goods at the time that he filed his Application; and
- (4) enter final judgment in favor of Opposer, terminating these proceedings.

Dated: New York, New York  
August 14, 2014

Respectfully submitted,

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

By:           /Eric J. Shimanoff/            
William M. Borchard  
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Eric J. Shimanoff  
Lindsay M. Rodman

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

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Opposer's Motion for Summary Judgment, including the supporting Declaration of Eric J. Shimanoff, Esq. and the exhibits thereto, was mailed on August 14, 2014 via First Class Mail, postage prepaid, to counsel for Applicant as follows:

David Yan, Esq.  
Law Offices of David Yan  
136-20 38<sup>th</sup> Avenue, Suite 11E  
Flushing, New York 11354-4232

/Eric J. Shimanoff/  
Eric J. Shimanoff



(“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” (“Applicant’s Goods”) in International Class 32.

3. Opposer’s original Notice of Opposition alleged that registration of Applicant’s Mark was likely to result in confusion, would 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 original Notice of Opposition. A true and correct copy of the original Notice of Opposition is attached hereto as **Exhibit H**. Opposer owns U.S. federal registrations for Opposer’s Empire State Building Marks in International Classes 36 and 41, namely, Registration Nos. 2411972, 2413667, 2429297 and 2430828, which are all incontestable. The constructive first use date of these registrations is May 1, 1931. True and correct copies of the official TSDR records for these registrations are attached hereto as **Exhibit F**.

4. On February 19, 2013, Opposer served Applicant with Opposer’s First Set of Interrogatories and Request for Production of Documents and Things (“Opposer’s Discovery Requests”) by First Class Mail. A true and correct copy of Opposer’s Discovery Requests is attached hereto as **Exhibit B**.

5. After Opposer filed motions to compel and for sanctions, on or about April 15, 2014, over one year after they were originally due, Applicant served Applicant’s Amended Response to Opposer’s First Set of Interrogatories and Request for Production of Documents and

Things (“Applicant’s Discovery Responses”). A true and correct copy of Applicant’s Discovery Responses is attached hereto as **Exhibit C**.

6. In response to Opposer’s Interrogatory No. 16 that Applicant state whether he “has any documentation . . . reflecting [his] bona fide intention, prior to January 8, 2011, to use Applicant’s Mark in commerce in connection with each and every [of Applicant’s Goods],” Applicant identified and produced *only one document*, consisting of a three page handwritten note in Chinese from a single meeting that apparently took place in China in 2010, which Applicant refers to as a “business plan.” A true and correct copy of this document and a certified translation thereof are attached hereto as **Exhibit D**.

7. On May 8, 2014, Opposer filed a motion to amend its Notice of Opposition to add an additional ground for opposition, namely, that Applicant lacked a bona fide intention to use Applicant’s Mark in United States commerce in connection with Applicant’s Goods at the time Applicant filed his Application, as confirmed by the fact that Applicant has no written document(s) that would sufficiently support such an intent.

8. Attached hereto as **Exhibit A** is a true and correct copy of Opposer’s Amended Notice of Opposition, which sets forth as an additional ground for opposition that Applicant did not have a bona fide intent to use Applicant’s Mark in commerce in connection with Applicant’s Goods when it filed Application Serial No. 85/213,453.

9. On June 28, 2014, the Board granted Opposer’s motion to amend and provided Applicant until August 6, 2014 to file an Answer.

10. Applicant filed his Answer with the Board on August 7, 2014, one day after the deadline set by the Board. Applicant simultaneously filed a motion to extend his time to Answer

by one day. Opposer did not oppose that motion. A true and correct copy of Applicant's Answer to Opposer's Amended Notice of Opposition is attached hereto as **Exhibit E**.

11. Opposer Empire State Building Company L.L.C. no longer exists as a corporate entity. On October 7, 2013, well after the close of discovery on February 19, 2013, all rights in and title to Opposer's Empire State Building Marks (as defined below) were assigned to ESRT Empire State Building, L.L.C., as recorded in the Assignment Services Division of the USPTO. A true and correct copy of the assignment document as recorded in the Assignment Services Division of the USPTO is attached hereto as **Exhibit G**.

12. Applicant itself admitted in his Application that his proposed mark contains a building intended to resemble the Empire State Building. A true and correct copy of the official TSDR record for Applicant's Application is attached hereto as **Exhibit I**.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT. EXECUTED ON AUGUST 14, 2014 AT NEW YORK, NEW YORK.



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ERIC J. SHIMANOFF

## **EXHIBIT A**

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

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

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

**AMENDED NOTICE OF  
OPPOSITION**

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

Opposer, Empire State Building Company L.L.C. (“Opposer”),<sup>1</sup> a New York limited liability company with offices at c/o Malkin Holdings, 60 East 42<sup>nd</sup> Street, New York, New York 10165, believes that it will be damaged by registration of the following NYC BEER LAGER and Design mark:

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<sup>1</sup> Empire State Building Company L.L.C. no longer exists as a corporate entity. On October 7, 2013, well after the close of discovery on February 19, 2013, all rights and title in Opposer’s Empire State Building Marks (as defined below) were assigned to ESRT Empire State Building, L.L.C., as recorded in the Assignment Services Division of the USPTO, which assignee will be substituted in as Opposer.



(“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 ( “Applicant’s Goods”), as shown in intent to use Application Serial No. 85/213,453 (the “Application”), and having been granted extensions of time to oppose up to and including April 4, 2012, hereby opposes the same.

As grounds for opposition, it is alleged that:

1. Since long prior to January 8, 2011, Applicant’s filing date and constructive first use date, Opposer, its predecessors, and its affiliated and related entities, and/or licensees have used the word mark 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, without limitation, the following distinctive stylizations:



, alone or with other word, letter and/or

design elements (“Opposer’s Empire State Building Marks”), in connection with entertainment services, real estate services and a wide variety of goods and services, including, but not limited to, restaurant services and alcoholic beverages.

2. Opposer owns U.S. federal registrations for Opposer’s Empire State Building Marks in International Classes 36 and 41, namely, Registration Nos. 2411972, 2413667, 2429297 and 2430828, which are all incontestable.

3. Since long prior to January 8, 2011, Applicant’s constructive first use date, Opposer, its predecessors, and their affiliated and related entities, and/or licensees have promoted and advertised the sale and distribution of goods and services bearing or offered in connection with Opposer’s Empire State Building Marks, including, but not limited to, entertainment services, real estate services and a wide variety of goods and services, including, but not limited to, restaurant services and alcoholic beverages, and have offered such goods and rendered such services in commerce.

4. Opposer has built up highly valuable goodwill in Opposer’s Empire State Building Marks, and said goodwill has become closely and uniquely identified and associated with Opposer.

5. On January 8, 2011, Applicant filed the Application for Applicant's Mark for Applicant's Goods, based on an intent to use.

6. Upon information and belief, Applicant did not use Applicant's Mark in United States commerce for any of Applicant's Goods covered in the Application prior to its constructive first use date of January 8, 2011.

7. The description of Applicant's Mark in the Application indicates that "The mark consists of a building resembling the Empire State Building surrounded by three concentric circles." Moreover, the word elements of Applicant's Mark include only the descriptive or generic terms "NYC," "BEER," and "LAGER," which Applicant has disclaimed in the Application. Upon information and belief, Applicant intends to trade on the enormous good will of Opposer by using a design of the "Empire State Building" in combination with the geographic term "NYC," which is the abbreviation for New York City, in Applicant's Mark.

8. The dominant feature of Applicant's Mark is the image of the Empire State Building.

9. Upon information and belief, Applicant did not have a bona fide intent to use Applicant's Mark in commerce on the specified goods, namely, "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" when it filed Application Serial No. 85/213,453, as confirmed by the fact that Applicant has no written document(s) that would sufficiently support such an intent.

10. The goods covered by the Application are closely related to the goods offered and services rendered in connection with Opposer's Empire State Building Marks.

11. Applicant's Mark so resembles Opposer's Empire State Building Marks as to be likely, when used in connection with Applicant's Goods, to cause confusion, to cause mistake, and to deceive the trade and public, who are likely to believe that Applicant's Goods have their origin with Opposer and/or that such goods are approved, endorsed or sponsored by Opposer or associated in some way with Opposer. Opposer would thereby be injured by the granting to Applicant of a certificate of registration for Applicant's Mark.

12. Opposer's Empire State Building Marks are distinctive and famous and were so prior to January 8, 2011, Applicant's constructive first use date of Applicant's Mark for Applicant's Goods. Registration of Applicant's Mark will also injure Opposer by causing a likelihood of dilution by blurring of the distinctive quality of Opposer's Empire State Building Marks.

13. Applicant's Mark violates Section 2(a) of the Lanham Act in that it would falsely suggest a connection between Applicant and Opposer. More specifically, Applicant's Mark violates Section 2(a) of the Lanham Act because (a) Applicant's Mark contains as an important element of its mark a design of Opposer's famous Empire State Building previously used by Opposer; (b) Applicant's Mark would be recognized as being associated with the Empire State Building in that Applicant's Mark points uniquely and unmistakably to that building; (c) Opposer is not connected with the activities performed by Applicant under Applicant's Mark; and (4) Opposer's identity is of sufficient fame or reputation that a connection with Opposer would be presumed when Applicant's Mark is used with Applicant's Goods.

WHEREFORE, Opposer believes that it will be damaged by registration of Applicant's Mark and requests that the opposition be sustained and said registration be denied.

Please recognize as attorneys for Opposer in this proceeding William M. Borchard, Mary L. Kevlin, Eric J. Shimanoff and Lindsay R. Rodman (members of the bar of the State of New York) and the firm Cowan, Liebowitz & Latman, P.C., 1133 Avenue of the Americas, New York, New York 10036.

Please address all communications to Mary L. Kevlin, Esq. at the address listed below.

Dated: New York, New York  
May 8, 2014

Respectfully submitted,

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

By: /Lindsay M. Rodman/

William M. Borchard  
Mary L. Kevlin  
Eric J. Shimanoff  
Lindsay M. Rodman

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

**EXHIBIT B**

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

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

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

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

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

Pursuant to Rules 33 and 34 of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.120, Opposer Empire State Building Company L.L.C. (“Opposer”) requests that Applicant Michael Liang (“Applicant”) answer under oath the following interrogatories and produce the following documents and things for inspection and copying at the offices of Cowan, Liebowitz & Latman, P.C., 1133 Avenue of the Americas, New York, New York 10036 within 30 days after service hereof. These requests are deemed to be continuing, so as to require prompt production of additional documents and supplemental interrogatory answers should Applicant obtain

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.

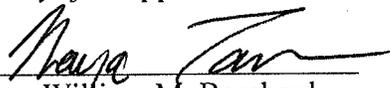
Request No. 23

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 38<sup>th</sup> Avenue, Suite 11E, Flushing, New York 11354 4232, United States.

Dated: New York, New York  
February 19, 2013

  
\_\_\_\_\_  
Maya L. Tarr

## **EXHIBIT C**



## **OBJECTIONS PURSUANT TO PRIVILEGE**

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.

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.

## **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:**

In December, 2010, Applicant first selected a mark containing Applicant's Mark for intended use in connection with 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.

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 has at least 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. Besides that, Applicant does not remember with specificity every individual, other than the design firm mentioned above, responsive to this request.

**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:**

The selection of Applicant's Mark is to attract customers who like metropolitan life style to consume the Applicant's goods and services. The building design in the Applicant's Mark is to 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:**

(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. The search shows that trademark registration serial number 1247058 contains a building design resembling of Empire State Building is allowed.

**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 has not made use any mark comprising or containing Applicant's Mark in the United States. Applicant has used a mark comprising Applicant's Mark in commerce in China.

**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.

**Response No. 6:**

- (a) Applicant has not used its products or services in the United States yet;
- (b) Not applicable in the United States;
- (c) Not applicable in the United States;
- (d) Not applicable in the United States;
- (e) Not applicable in the United States;
- (f) Not applicable in the United States;
- (g) Not applicable in the United States;
- (h) Not applicable in the United States.

**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:**

A similar Mark comprising Applicant's Mark has been used in China since May 20, 2011 and has been registered in China since May 21, 2013 (registration no. 9509666).

Applicant lacks knowledge or information sufficient to form a belief as to the fact whether any mark comprises or contains Applicant's Mark has been used in the United States.

Applicant intends to use a mark comprising or containing Applicant's Mark in goods or services in the United States once the Applicant's application for registration (Serial No. 85/213,453) is approved by the U.S. Patent and Trademark Office.

**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:**

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:**

No.

Applicant also lacks knowledge or information sufficient to form a belief as to the fact whether any mark comprises or contains Applicant's Mark in the United States.

**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 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:**

(a) 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 the United States in connection with Applicant's Products/Services and/or Applicant's Mark.

(b) 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:**

(a) 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) 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 has marketed the Applicant's Products/Services bearing or rendered in connection with Applicant's Mark to consumers located in or around China since May 20, 2011. The trademark has been registered in China with the China's Trademark Bureau on May 21, 2013 under the registration number of 9509666.

Applicant has not marketed the Applicant's Products/Services bearing or rendered in connection with Applicant's Mark anywhere in the United States. 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 the United States *once the registration of the Applicant's Mark is approved by the United States Trade and Patent Office.* Because the Applicant's goods and services are different from the Opposer's goods and services, Applicant will not market the Applicant's Products/Services bearing or rendered in connection with Applicant's Mark to consumers of Opposer's goods or services that Opposer registered with 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:**

(a) 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) Because the Applicant's goods and services are different from the Opposer's goods and services, Applicant will not use the Applicant's Mark in connection with the Opposer's goods or services that Opposer registered with the United States Trade and Patent Office.

**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:**

Never.

**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 had a business plan, reflecting Applicant's bona fide intention, 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 prior to or as of January 8, 2011.

**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:**

Trademark search in the website of United States Patent and Trademark Office, <<http://tess2.uspto.gov/bin/gate.exe?f-doc&state=4807:pk2843.2.1>>, for the trademark registration number 1247058. And trademark registration numbers 2411972, 2413667, 2429297, 2430828.

**DOCUMENT REQUESTS**

**SPECIFIC OBJECTIONS 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 does not have such specimens for use or intended use in the United States. Applicant will supplement the specimens that have been used in China if Opposer requests them.

**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 does not have such specimens for use or intended use in the United States. Applicant will supplement the specimens that have been used in China if Opposer requests them.

**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 does not have such specimens for use or intended use in the United States. Applicant will supplement the specimens that have been used in China if Opposer requests them.

**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 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.

**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 does not have such specimens for use or intended use in the United States.

Applicant will supplement the specimens that have been used in China if Opposer requests them.

**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 does not have such documents for the Applicant's Mark's use or intended use in the United States.

**Response No. 7:**

Applicant does not have such documents for the Applicant's Mark's use or intended use in the United States.

**Response No. 8:**

Applicant does not have such documents concerning the use or intended use in the United States. Applicant has not expended any money in advertizing and promoting Applicant's Mark and/or Applicant's Products/Services in the United States because the Applicant's Mark has not been approved for registration yet.

**Response No. 9:**

Applicant does not have such documents concerning the use or intended use in the United States. Applicant has not engaged in any trade show, convention, exposition or conference in the United States in connection with the Applicant's Mark and/or Applicant's Products/Services in the United States because the Applicant's Mark has not been approved for registration yet.

**Response No. 10:**

Applicant does not have such documents.

**Response No. 11:**

Applicant does not have such documents.

**Response No. 12:**

Applicant does not have such documents.

**Response No. 13:**

Applicant does not have such documents.

**Response No. 14:**

Applicant does not have any document at this time other than Trademark Application (Serial No. 85/213,453).

**Response No. 15:**

Applicant does not have such documents.

**Response No. 16:**

Applicant does not have such documents.

**Response No. 17:**

(a) Trademark search in the website of United States Patent and Trademark Office, <<http://tess2.uspto.gov/bin/gate.exe?f-doc&state=4807:pk2843.2.1>>, for the trademark registration number 1247058. And trademark registration numbers 2411972, 2413667, 2429297, 2430828.

(b) Applicant has not used the Applicant's Mark in the United States yet.

**Response No. 18:**

Applicant does not have such documents.

**Response No. 19:**

Applicant does not have such documents.

**Response No. 20:**

Applicant does not have such documents concerning the actual channels of trade for goods and services sold or rendered in the United States in connection with Applicant's Mark.

Although Applicant intends to sell goods or services in connection with Applicant's Mark in the United States,

**Response No. 21:**

Applicant objects to this Request on the grounds that 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.

**Response No. 22:**

Applicant objects to this Request on the grounds that 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.

**Response No. 23:**

If any document, or any information responsive to interrogatories, come to Applicant's attention after Applicant served the response, Applicant will provide such to Plaintiff as soon as the supplemental documents or information are discovered.

Furthermore, 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  
April 15, 2014

Law Offices of David Yan  
*Attorney for Applicant*

by: /David Yan/  
David Yan

A handwritten signature in black ink, appearing to read 'David Yan', written over a horizontal line.

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

## VERIFICATION

The undersigned Applicant, being duly affirm under the penalty of perjury, states (1) that undersigned, Applicant has read the Applicant's Amended Response to the Opposer's First Set of Interrogatories and Request for Production of Documents and Things; (2) that the contents of the Applicant's Amended Response to the Opposer's First Set of Interrogatories and Request for Production of Documents and Things are true to the undersigned Applicant's own knowledge except as to those matters which are alleged on information and belief and as to them the undersigned Applicant's believes them to true.

Dated: April 15, 2014



---

Michael Liang

**AFFIRMATION OF SERVICE**

I hereby certify that, on April 15, 2014, I caused a true and complete copy of the foregoing Applicant's Amended 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.

Dated: Flushing, New York  
April 15, 2014

\_\_\_\_\_  
David Yan



**EXHIBIT D**

# 商业计划

(会议记录)

2010年10月20日

地址: 中国杭州

参加人员:

Michael Liang, John Wang, Wang Qin

内容: 计划申请一个商标在中国美国同时  
申请(看一下哪一个能批准)  
如果批准, 将计划生产啤酒相关饮料  
在美国, 中国市场销售.

商标(Logo)的框价:

要以国际大都市的也标为设计: 如<sup>发</sup>美国  
曼彻斯特塔, 美国世贸大厦, 帝国大厦, 自由女神  
等标志为参照, 体现勇敢, 向上, 有理想  
和梦想的意义.

## 市场销售:

在中美两地, 请有经验的销售人员,  
必须在省市地区设代理, 总代理,  
以供管理参考.

## 生产地区:

可以找当地加工合作, 可降低成本,  
保证货源产品的新的品质保证.

## 分工负责:

Michael' 负责申请 Logo. 联系律师注册

John Wang. 负责设计网络宣传 和  
广告言语修改.

Wang Qin: 负责市场销售. 生产. 寻找  
中国市场的 相关合作人员.

利润分配

设. 60% 为 我们三人. 其它利润为投  
入股本. 为 40%.

也可以: 留 10% 为公司股. 保留..

商标文化:

可以中国的娃哈哈, 美国的哈特  
啤酒做参考.

附件:

此次会议. 做为三人的合作记录  
为协议起草而开会. 而确定. 三人同意  
合作. 如有其它事宜. 可以协商..

[handwritten text is indicated in italics]

*Business Plan*

*(Meeting Minutes)*

*October 20, 2010*

*Address: Hangzhou, China*

*Participants: Michael [Liang], John Wong, Wang Qin*

*Content:*

*Plan to apply for a trademark simultaneously in China and the United States (see which one can be approved)*

*If it is approved, will plan to produce beer and related beverages in the United States and sell them in the China market.*

*Framework of the trademark (logo):*

*Needs to use a landmark of an international metropolis as its design: for example, the Eiffel Tower in France, [or] the World Trade Center, the Empire State Building, [or] the Statue of Liberty in the United States. Use these landmarks as reference to show the significance of being brave, aspiring, and having ambitions and dreams.*

[handwritten text is indicated in italics]

*Marketing and sales:*

*Hire experienced salespeople in China and the United States; must set up agencies and general agency in provinces and cities so as to provide reference for management.*

*Production areas:*

*Can search for local processing factories for cooperation so as to reduce costs. Guarantee the freshness [and] quality of source products.*

*Division of labor:*

*Michael is responsible for applying for the logo, and contacting lawyers for registration*

*John Wong is responsible for design, online promotion, and linguistic revision of the ads.*

*Wang Qin is responsible for marketing, sales and production, and seeking relevant people to cooperate in the China market.*

[handwritten text is indicated in italics]

*Profit distribution:*

*Set 60% for the three of us, and the rest of the profit for investing shareholders at 40%.*

*Also possible: reserve 10% as company shares.*

*Logo culture:*

*Can use Wahaha of China and Halin beer of the United States as references.*

*Appendix:*

*This meeting records the cooperation among the three people. It is held for discussing and drafting an agreement. The three people agree to cooperate, and if there are any other matters, they can be negotiated.*



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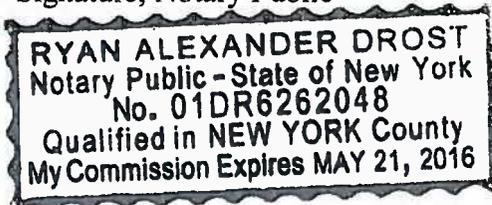
City of New York, State of New York, County of New York

I, Max Staffa, hereby affirm that the document "Meeting Minutes dated 20 October 2010" is, to the best of my knowledge and belief, a true and accurate translation from Chinese into English.

Max Staffa

Sworn to before me this  
7<sup>th</sup> of May, 2014

Signature, Notary Public



Stamp, Notary Public  
State of New York

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**EXHIBIT E**

ESTTA Tracking number: **ESTTA620046**

Filing date: **08/07/2014**

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	Answer
Filer's Name	David Yan
Filer's e-mail	davidyanlawfirm@yahoo.com
Signature	/David Yan/
Date	08/07/2014
Attachments	Answer to the Amended Notice of Opposition_Empire State Building Compan v Michael Liang.pdf(808738 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

----- 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 ANSWER TO AMENDED NOTICE OF OPPOSITION**

Applicant, MICHAEL LIANG, for his answer to the Amended Notice of Opposition filed by Empire State Building Company L.L.C. on May 8, 2014 against application for registration of the trademark of NYC BEER LAGER and Design mark:, Serial No. 85213453 filed January 8, 2011, and published in the Official Gazette of December 6, 2011, pleads and avers as follows:

1. Answering paragraph 1 of the Amended Notice of Opposition, Applicant denies the allegations and asserts that Opposer has failed to provide any information or to prove that Opposer, its predecessors, and its affiliated and related entities, and/or licensees have ever used word mark EMPIRE STATE BUILDING and various marks depicting the visual equivalent of

the so called Empire State Building in any “wide variety of goods and services, including, but not limited to, restaurant services and alcoholic beverages.”

2. Answering paragraph 2 of the Amended Notice of Opposition, Applicant admits the allegations thereof, except to the extent of “which are all incontestable” and otherwise pleaded herein.

3. Answering paragraph 3 of the Amended Notice of Opposition, Applicant denies the allegations and asserts that Opposer has failed to provide any information or to prove that “Opposer, its predecessors, and its affiliated and related entities, and/or licensees have ever promoted and advertised the sale and distribution of goods and services bearing or offered in connection with Opposer’s Empire State Building Marks, including, but not limited to, entertainment services, real estate services and a wide variety of goods and services, including, but not limited to, restaurant services and alcoholic beverages, and have offered such goods and rendered such services in commerce.”

4. Answering paragraph 4 of the Amended Notice of Opposition, Applicant denies the allegations and asserts that Opposer has failed to provide any information or to prove that the so called “goodwill in the Opposer’s Empire State Building Marks” were highly valuable and such “goodwill has become closely and uniquely identified and associated with Opposer”.

5. Answering paragraph 5 of the Amended Notice of Opposition, Applicant admits the allegations thereof except otherwise pleaded herein.

6. Answering paragraph 6 of the Amended Notice of Opposition, Applicant admits the allegations thereof except otherwise pleaded herein.

7. Answering paragraph 7 of the Amended Notice of Opposition, Applicant admits the allegations thereof except begging leave to refer to the original filing to the USPTO for an

interpretation of their true import and meaning. Applicant rejects the compound opposition No. 7. Applicant denies the allegations and asserts that Opposer has failed to provide any information or to prove, especially with respect to the so called “enormous goodwill of Opposer [in] Empire State Building”, that can support the Opposer’s allegations contained therein. Applicant denies the allegations contained therein of “the enormous good will of Opposer . . . of the ‘Empire State Building’” with respect to a wide variety of goods and services, including, but not limited to, restaurant services and alcoholic beverages offered in commerce.

8. Answering paragraph 8 of the Amended Notice of Opposition, Applicant denies the allegations.

9. Answering paragraph 9 of the Amended Notice of Opposition, Applicant denies the allegations. Applicant did have a bona fide intent to use Applicant’s Mark in commerce on the specified goods, namely, “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” when it filed Application Serial No. 85/213,453, as confirmed by the Applicant and his partners’ business plans that show the projected date of first use in commerce when “[the Mark] is approved” to sell the above named products in both the United States and in China, through the channels of trade *via* sales agencies in the provincial and local levels in both markets of the United States and China. The business plans reveal that Applicant would like to hire experienced salespersons to promote the sales. The business plans also reveal that partner John Wang would be responsible to design the promotion of their products in the

website. Therefore, the business plans are sufficiently detailed and have clear references to the elements to form the bona fide intent to use the mark under the totality of the circumstances.

10. Answering paragraph 10 of the Amended Notice of Opposition, Applicant denies the allegations and asserts that Opposer has failed to provide any information or to prove that Opposer has ever used the Opposer's Empire State Building Marks in commerce on the specified goods, namely, "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" or in the alternate, used the Opposer's Empire State Building Marks in commerce on a wide variety of goods and services, including, but not limited to, restaurant services and alcoholic beverages.

11. Answering paragraph 11 of the Amended Notice of Opposition, Applicant denies the allegations and asserts that Opposer has failed to provide any information or proof that can support the Opposer's allegations contained therein, especially with respect to "a wide variety of goods and services, including, but not limited to, restaurant services and alcoholic beverages".

12. Answering paragraph 12 of the Amended Notice of Opposition, Applicant denies the allegations and asserts that Opposer has failed to provide any information or proof that can support the Opposer's allegations contained therein, especially with respect to "a wide variety of goods and services, including, but not limited to, restaurant services and alcoholic beverages".

13. Answering paragraph 13 of the Amended Notice of Opposition, Applicant denies the allegations and asserts that Opposer has failed to provide any information or proof that can

support the Opposer's allegations contained therein, especially with respect to "a wide variety of goods and services, including, but not limited to, restaurant services and alcoholic beverages".

14. Applicant further affirmatively alleges that there is not any likelihood of confusion, mistake or deception because, *inter alia*, Applicant's mark and the pleaded marks of Opposer are not confusingly similar. There is not any similarity of the goods between Applicant and Opposer. The goods bearing the Applicant's marks are presumed to travel in all normal channels and to all prospective purchasers for the relevant goods described in its registration; namely, "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-alcoholized 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;" Alcoholic or non-alcoholic beverage, foods, restaurants, and/or processed food businesses. The goods bearing the pleaded marks of Opposers are presumed to travel in the limited channels to the consumers under its registration of Class 041 for "entertainment services, namely, providing observation decks in a skyscraper for purposes of sightseeing" and Class 036 for "Real Estate Services, namely, the Management and Leasing of Real Estate".

15. Applicant further affirmatively alleges that there is not any likelihood of confusion, mistake or deception because, *inter alia*, Applicant's mark and the pleaded marks of Opposer are not confusingly similar. The Applicant's design mark does not contain any pleaded word marks of Opposer. The Applicant's design mark does not contain any word of "Empire State Building". The Applicant's design mark does contain a drawing of a building in the portion of its design mark. The Applicant's drawing of the building in its design mark, however,

is different from the drawing of the pleaded marks of Opposer. Any similarity, *if at all*, between Applicant's design mark and the pleaded marks of Opposer is in the portion of the Opposer's alleged visual equivalent of the Empire State Building which, upon information and belief, has not been used, or registered by Opposer, its predecessors, and its affiliated and related entities, and/or licensees in the "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-alcoholized 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; Alcoholic or non-alcoholic beverage, foods, restaurants, and/or processed food businesses."

16. Applicant further affirmatively alleges that there is not any likelihood of confusion, mistake or deception because, *inter alia*, Applicant's mark and the pleaded marks of Opposer are not confusingly similar because the Opposer's word mark and design drawing mark of the Empire State Building does not have extensive public recognition and renown. Fame for purposes of likelihood of confusion is a matter of degree that varies along a spectrum from very strong to very weak. Opposer has the burden to prove that its mark is famous and has extensive public recognition and renown. It is well-established that fame alone is insufficient to establish likelihood of confusion. When considering the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression, the Applicant's design mark is not similar to the pleaded marks of Opposer. It is improper to dissect a mark. Even when the marks at issue are identical, or nearly identical, differences in connotation can outweigh visual and phonetic similarity.

17. Applicant further affirmatively alleges that the Opposer's word mark "Empire State Building" is or has become generic for inexpensive, convenient or easy but low quality or commercialized versions of items and therefore cannot have meaning as a trademark.

18. Applicant further affirmatively alleges that there is no likelihood of dilution of the Opposer's mark by tarnishment because the Opposer's marks are associated with inexpensive, convenient or easy but low quality or commercialized versions of items.

19. Applicant further affirmatively alleges that there is no likelihood of dilution of the Opposer's mark because dilution fame requires a more stringent showing and widespread recognition by the general public.

20. Applicant further affirmatively alleges that there is not any false association between the Applicant's marks and the pleaded marks of Opposer. The pleaded marks of Opposer do not have widespread recognition by the general population who will unmistakably associate the Applicant's mark with and uniquely point the Applicant's mark to Opposer. The pleaded marks of Opposer have not become a "household name". Opposer has failed to prove since the inception of commencing this Opposition when the general public encounter the Applicant's mark in almost any context, the general public associate the term, *at least initially*, with Opposer. Neither Applicant nor Applicant's predecessors, *if any*, in interest intended any association with Opposer's marks or any of them; and upon information and belief, ordinary prospective purchasers of the Applicant's products bearing the Applicant's mark do not associate the Applicant's mark and the pleaded marks of Opposer.

21. Applicant further affirmatively alleges that the Opposer's translation of the Applicant's business plan from Chinese to English is seriously fraud and misleading at least in the second paragraph of the business plan, which is annexed to Exhibit D of the Opposer's

Motions to Amend and to Suspend Pending Consideration of the Motion to Amend. The true, complete and accurate translation of the business plans from Chinese into English with respect to the second paragraph of the Business Plans shows that, "If [the Mark is] approved, [we] will plan to produce beer and related beverages, [and then] sell [them] in the markets of the United States and China". On the contrary, Opposer's translation, which states "If it is approved, will plan to produce beer and related beverages in the United States and sell them in the China market", deviates substantially from true and accurate meaning of business plans written in Chinese.

**WHEREFORE,** Applicant requests that the Amended Notice of Opposition be dismissed, and for such other and further relief as the Board deems just and proper.

Dated: Flushing, New York  
August 5, 2014

Respectively submitted,

MICHAEL LIANG (Applicant)

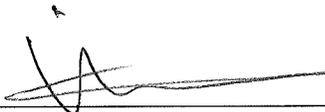
by: \_\_\_\_\_

  
David Yan  
Law Offices of David Yan  
Attorney for Applicant  
136-20 38<sup>th</sup> Avenue, Suite 11E  
Flushing, NY 11354  
Tel.: (718) 888-7788

**V E R I F I C A T I O N**

The undersigned Applicant, being duly affirm under the penalty of perjury, states (1) that undersigned Applicant has read the APPLICANT'S ANSWER TO AMENDED NOTICE OF OPPOSITION; (2) that the contents of the APPLICANT'S ANSWER TO AMENDED NOTICE OF OPPOSITION are true to the undersigned Applicant's own knowledge except as to those matters which are alleged on information and belief and as to them the undersigned Applicant's believes them to true.

Dated: Flushing, New York  
August 5, 2014

  
\_\_\_\_\_  
Michael Liang

**AFFIRMATION OF SERVICE**

I hereby certify that, on August 6, 2014, I caused a true and complete copy of the foregoing Applicant's Answer to Amended Notice of Opposition 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 10036.



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David Yan

## **EXHIBIT F**

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Mark:



US Serial Number: 75705772

Application Filing Date: May 13, 1999

US Registration Number: 2429297

Registration Date: Feb. 20, 2001

Register: Principal

Mark Type: Service Mark

Status: The registration has been renewed.

Status Date: Jun. 05, 2010

Publication Date: Nov. 28, 2000

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## Mark Information

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Mark Literal Elements: None

Standard Character Claim: No

Mark Drawing Type: 2 - AN ILLUSTRATION DRAWING WITHOUT ANY WORDS(S)/ LETTER(S)/NUMBER(S)

Description of Mark: The mark consists of the shape of the exterior of a skyscraper with a pointed, spindled top.

Lining and Stippling Statement: The lining shown in the drawing is a feature of the mark and is not intended to indicate color.

Acquired Distinctiveness Claim: In whole

Design Search Code(s): 07.03.01 - Skyscrapers

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## Goods and Services

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Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis (..) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks \*.\* identify additional (new) wording in the goods/services.

For: REAL ESTATE SERVICES, NAMELY THE MANAGEMENT AND LEASING OF REAL ESTATE

International Class(es): 036 - Primary Class

U.S Class(es): 100, 101, 102

Class Status: ACTIVE

Basis: 1(a)

First Use: May 01, 1931

Use in Commerce: May 01, 1931

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## Basis Information (Case Level)

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Filed Use: Yes

Currently Use: Yes

Amended Use: No

Filed ITU: No

Currently ITU: No

Amended ITU: No

Filed 44D: No

Currently 44D: No

Amended 44D: No

Filed 44E: No

Currently 44E: No

Amended 44E: No

Filed 66A: No

Currently 66A: No

Filed No Basis: No

Currently No Basis: No

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## Current Owner(s) Information

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**Owner Name:** ESRT EMPIRE STATE BUILDING, L.L.C.

**Owner Address:** ONE GRAND CENTRAL PLACE  
60 EAST 42ND STREET  
NEW YORK, NEW YORK 10165  
UNITED STATES

**Legal Entity Type:** LIMITED LIABILITY COMPANY

**State or Country Where Organized:** DELAWARE

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## Attorney/Correspondence Information

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### Attorney of Record

**Attorney Name:** William M. Borchard

**Docket Number:** 22690.000; W

### Correspondent

**Correspondent Name/Address:** William M. Borchard  
COWAN, LIEBOWITZ & LATMAN, P.C.  
1133 AVENUE OF THE AMERICAS  
NEW YORK, NEW YORK 10036-6799  
UNITED STATES

**Phone:** (212) 790-9200

**Fax:** (212) 575-0671

### Domestic Representative - Not Found

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## Prosecution History

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Date	Description	Proceeding Number
Nov. 06, 2013	ASSIGNMENT OF OWNERSHIP NOT UPDATED AUTOMATICALLY	
Oct. 30, 2013	ASSIGNMENT OF OWNERSHIP NOT UPDATED AUTOMATICALLY	
Oct. 23, 2013	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	
Jun. 05, 2010	REGISTERED AND RENEWED (FIRST RENEWAL - 10 YRS)	70131
Jun. 05, 2010	REGISTERED - SEC. 8 (10-YR) ACCEPTED/SEC. 9 GRANTED	
Jun. 04, 2010	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	70131
Jun. 02, 2010	TEAS SECTION 8 & 9 RECEIVED	
Nov. 30, 2006	CASE FILE IN TICRS	
Jul. 21, 2006	REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK.	65765
Jul. 17, 2006	ASSIGNED TO PARALEGAL	65765
Apr. 24, 2006	REGISTERED - SEC. 8 (6-YR) & SEC. 15 FILED	
Apr. 24, 2006	PAPER RECEIVED	
Feb. 20, 2001	REGISTERED-PRINCIPAL REGISTER	
Nov. 28, 2000	PUBLISHED FOR OPPOSITION	
Oct. 27, 2000	NOTICE OF PUBLICATION	
Sep. 28, 2000	APPROVED FOR PUB - PRINCIPAL REGISTER	
Sep. 28, 2000	ASSIGNED TO EXAMINER	76520
Aug. 08, 2000	EXAMINER'S AMENDMENT MAILED	
Apr. 13, 2000	ASSIGNED TO EXAMINER	76510
Feb. 28, 2000	CORRESPONDENCE RECEIVED IN LAW OFFICE	
Sep. 13, 1999	NON-FINAL ACTION MAILED	
Aug. 26, 1999	ASSIGNED TO EXAMINER	76510
Aug. 26, 1999	ASSIGNED TO EXAMINER	59899
Aug. 24, 1999	ASSIGNED TO EXAMINER	59899

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## Maintenance Filings or Post Registration Information

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**Affidavit of Continued Use:** Section 8 - Accepted

**Affidavit of Incontestability:** Section 15 - Accepted

**Renewal Date:** Feb. 20, 2011

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## TM Staff and Location Information

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TM Staff Information - None

File Location

Current Location: GENERIC WEB UPDATE

Date in Location: Jun. 05, 2010

## Assignment Abstract Of Title Information

### Summary

Total Assignments: 4

Registrant: EMPIRE STATE BUILDING COMPANY

### Assignment 1 of 4

Conveyance: CONVERSION

Reel/Frame: [2462/0478](#)

Pages: 4

Date Recorded: Feb. 26, 2002

Supporting Documents: [assignment-tm-2462-0478.pdf](#)

#### Assignor

Name: [EMPIRE STATE BUILDING COMPANY](#)

Execution Date: Dec. 17, 2001

Legal Entity Type: PARTNERSHIP

State or Country Where Organized: NEW YORK

#### Assignee

Name: [EMPIRE STATE BUILDING COMPANY LLC](#)

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country Where Organized: No Place Where Organized Found

Address: ATT: THOMAS N. KELTNER, JR.  
WEIN & MALKIN LLP 60 EAST 42ND STREET  
NEW YORK, NEW YORK 10165

#### Correspondent

Correspondent Name: COWAN, LIEBOWITZ & LATMAN, P.C.

Correspondent Address: ARTHUR J. GREENBAUM, ESQ.  
1133 AVENUE OF THE AMERICAS  
NEW YORK, NY 10036-6799

### Domestic Representative - Not Found

### Assignment 2 of 4

Conveyance: ASSIGNS THE ENTIRE INTEREST

Reel/Frame: [5127/0482](#)

Pages: 4

Date Recorded: Oct. 08, 2013

Supporting Documents: [assignment-tm-5127-0482.pdf](#)

#### Assignor

Name: [EMPIRE STATE BUILDING COMPANY L.L.C.](#)

Execution Date: Oct. 07, 2013

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country Where Organized: NEW YORK

#### Assignee

Name: [EMPIRE STATE REALTY OP, L.P.](#)

Legal Entity Type: LIMITED PARTNERSHIP

State or Country Where Organized: DELAWARE

Address: ONE GRAND CENTRAL PLACE  
60 EAST 42ND STREET  
NEW YORK, NEW YORK 10165

#### Correspondent

Correspondent Name: WILLIAM M. BORCHARD

Correspondent Address: 1133 AVENUE OF THE AMERICAS  
NEW YORK, NY 10036

### Domestic Representative - Not Found

### Assignment 3 of 4

Conveyance: ASSIGNS THE ENTIRE INTEREST

Reel/Frame: [5136/0116](#)

Pages: 4

Date Recorded: Oct. 23, 2013

Supporting Documents: [assignment-tm-5136-0116.pdf](#)

#### Assignor

Name: [EMPIRE STATE REALTY OP, L.P.](#)

Execution Date: Oct. 07, 2013

Legal Entity Type: LIMITED PARTNERSHIP

State or Country Where Organized: DELAWARE

**Assignee**

**Name:** [ESRT EMPIRE STATE BUILDING, L.L.C.](#)  
**Legal Entity Type:** LIMITED LIABILITY COMPANY **State or Country Where Organized:** DELAWARE  
**Address:** ONE GRAND CENTRAL PLACE  
60 EAST 42ND STREET  
NEW YORK, NEW YORK 10165

**Correspondent**

**Correspondent Name:** WILLIAM M. BORCHARD  
**Correspondent Address:** 1133 AVENUE OF THE AMERICAS  
NEW YORK, NY 10036

**Domestic Representative - Not Found****Assignment 4 of 4**

**Conveyance:** CORRECTIVE ASSIGNMENT TO CORRECT THE GENERAL PARTNER OF ASSIGNEE FROM A NEW YORK CORPORATION TO A MARYLAND CORPORATION PREVIOUSLY RECORDED ON REEL 005127 FRAME 0482. ASSIGNOR(S) HEREBY CONFIRMS THE ASSIGNMENT TO ASSIGNEE EMPIRE STATE REALTY OP, L.P., A DELAWARE LIMITED PARTNERSHIP.  
**Reel/Frame:** [5139/0027](#) **Pages:** 6  
**Date Recorded:** Oct. 23, 2013  
**Supporting Documents:** [assignment-tm-5139-0027.pdf](#)

**Assignor**

**Name:** [EMPIRE STATE BUILDING COMPANY L.L.C.](#) **Execution Date:** Oct. 07, 2013  
**Legal Entity Type:** LIMITED LIABILITY COMPANY **State or Country Where Organized:** NEW YORK

**Assignee**

**Name:** [EMPIRE STATE REALTY OP, L.P.](#)  
**Legal Entity Type:** LIMITED PARTNERSHIP **State or Country Where Organized:** DELAWARE  
**Address:** ONE GRAND CENTRAL PLACE  
60 EAST 42ND STREET  
NEW YORK, NEW YORK 10165

**Correspondent**

**Correspondent Name:** WILLIAM M. BORCHARD  
**Correspondent Address:** 1133 AVENUE OF THE AMERICAS  
NEW YORK, NY 10036

**Domestic Representative - Not Found****Proceedings****Summary**

**Number of Proceedings:** 3

**Type of Proceeding: Opposition**

**Proceeding Number:** [91208505](#) **Filing Date:** Dec 18, 2012  
**Status:** Terminated **Status Date:** Apr 08, 2013  
**Interlocutory Attorney:** ELIZABETH WINTER

**Defendant**

**Name:** Courtney Scott-Radovanovic  
**Correspondent Address:** ANTHONY A LOPRESTI  
LOPRESTI & ASSOCIATES PLLC  
30 BROAD ST FL 37  
NEW YORK NY , 10004-2947  
UNITED STATES  
**Correspondent e-mail:** [al@loprestilaw.com](mailto:al@loprestilaw.com)

**Associated marks**

Mark	Application Status	Serial Number	Registration Number
FROM NY WITH LOVE	Abandoned - After Inter-Partes Decision	<a href="#">85531538</a>	

**Plaintiff(s)**

**Name:** Empire State Building Company L.L.C.  
**Correspondent Address:** MAYA L TARR  
COWAN LIEBOWITZ & LATMAN PC  
1133 AVENUE OF THE AMERICAS  
NEW YORK NY , 10036  
UNITED STATES

Correspondent e-mail: [trademark@cll.com](mailto:trademark@cll.com) , [wmb@cll.com](mailto:wmb@cll.com) , [mxt@cll.com](mailto:mxt@cll.com)

**Associated marks**

Mark	Application Status	Serial Number	Registration Number
EMPIRE STATE BUILDING	Renewed	<a href="#">75705741</a>	<a href="#">2411972</a>
EMPIRE STATE BUILDING	Renewed	<a href="#">75705740</a>	<a href="#">2413667</a>
	Renewed	<a href="#">75705772</a>	<a href="#">2429297</a>
	Renewed	<a href="#">75705756</a>	<a href="#">2430828</a>

**Prosecution History**

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Dec 18, 2012	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Dec 18, 2012	Jan 27, 2013
3	PENDING, INSTITUTED	Dec 18, 2012	
4	NOTICE OF DEFAULT	Feb 20, 2013	
5	P'S MOTION FOR DEFAULT JUDGEMENT	Feb 20, 2013	
6	BD DECISION: SUSTAINED	Apr 08, 2013	
7	TERMINATED	Apr 08, 2013	

**Type of Proceeding: Opposition**

Proceeding Number: [91206241](#)

Filing Date: Jul 25, 2012

Status: Terminated

Status Date: Dec 10, 2012

Interlocutory Attorney: YONG OH (RICHARD) KIM

**Defendant**

Name: Empire Movers, LLC

Correspondent Address: FLORIN PETRUTA  
EMPIRE MOVERS LLC  
6736 80TH STREET  
MIDDLE VILLAGE NY , 11379-2925  
UNITED STATES

Correspondent e-mail: [office@goempiremovers.com](mailto:office@goempiremovers.com)

**Associated marks**

Mark	Application Status	Serial Number	Registration Number
EMPIRE MOVERS	Abandoned - After Inter-Partes Decision	<a href="#">85291507</a>	

**Plaintiff(s)**

Name: Empire State Building Company LLC

Correspondent Address: MAYA L TARR  
COWAN LIEBOWITZ & LATMAN PC  
1133 AVENUE OF THE AMERICAS  
NEW YORK NY , 10036  
UNITED STATES

Correspondent e-mail: [trademark@cll.com](mailto:trademark@cll.com) , [wmb@cll.com](mailto:wmb@cll.com) , [mxt@cll.com](mailto:mxt@cll.com)

**Associated marks**

Mark	Application Status	Serial Number	Registration Number
EMPIRE STATE BUILDING	Renewed	<a href="#">75705741</a>	<a href="#">2411972</a>
EMPIRE STATE BUILDING	Renewed	<a href="#">75705740</a>	<a href="#">2413667</a>
	Renewed	<a href="#">75705772</a>	<a href="#">2429297</a>
	Renewed	<a href="#">75705756</a>	<a href="#">2430828</a>

**Prosecution History**

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Jul 25, 2012	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Jul 25, 2012	Sep 03, 2012
3	PENDING, INSTITUTED	Jul 25, 2012	
4	P'S MOT TO SUSP PEND SETLMT NEGOTIATIONS	Jul 26, 2012	
5	SUSPENDED	Jul 31, 2012	

6	MOTION TO AMEND APPLICATION	Aug 07, 2012
7	BOARD'S ORDER TRIAL DATES ARE RESET	Oct 24, 2012
8	WITHDRAWAL OF APPLICATION	Dec 04, 2012
9	BOARD'S DECISION: SUSTAINED	Dec 10, 2012
10	TERMINATED	Dec 10, 2012

**Type of Proceeding: Opposition**

**Proceeding Number:** [91204122](#)

**Filing Date:** Mar 01, 2012

**Status:** Pending

**Status Date:** Mar 01, 2012

**Interlocutory Attorney:** MARY CATHERINE FAINT

**Defendant**

**Name:** Michael Liang

**Correspondent Address:** DAVID YAN  
LAW OFFICES OF DAVID YAN  
136-20 38TH AVENUE, SUITE 11E  
FLUSHING NY , 11354 4232  
UNITED STATES

**Correspondent e-mail:** [davidyanlawfirm@yahoo.com](mailto:davidyanlawfirm@yahoo.com)

**Associated marks**

Mark	Application Status	Serial Number	Registration Number
NYC BEER LAGER	Opposition Pending	<a href="#">85213453</a>	

**Plaintiff(s)**

**Name:** Empire State Building Company L.L.C.

**Correspondent Address:** ERIC J SHIMANOFF  
COWAN LIEBOWITZ & LATMAN PC  
1133 AVENUE OF THE AMERICAS  
NEW YORK NY , 10036  
UNITED STATES

**Correspondent e-mail:** [ejs@ccl.com](mailto:ejs@ccl.com) , [lmr@ccl.com](mailto:lmr@ccl.com) , [wmb@ccl.com](mailto:wmb@ccl.com) , [trademark@ccl.com](mailto:trademark@ccl.com) , [fxm@ccl.com](mailto:fxm@ccl.com) , [mlk@ccl.com](mailto:mlk@ccl.com)

**Associated marks**

Mark	Application Status	Serial Number	Registration Number
EMPIRE STATE BUILDING	Renewed	<a href="#">75705741</a>	<a href="#">2411972</a>
EMPIRE STATE BUILDING	Renewed	<a href="#">75705740</a>	<a href="#">2413667</a>
	Renewed	<a href="#">75705772</a>	<a href="#">2429297</a>
	Renewed	<a href="#">75705756</a>	<a href="#">2430828</a>

**Prosecution History**

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Mar 01, 2012	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Mar 01, 2012	Apr 10, 2012
3	PENDING, INSTITUTED	Mar 01, 2012	
4	D'S MOTION FOR AN EXTENSION OF TIME	Apr 10, 2012	
5	EXTENSION OF TIME GRANTED	May 10, 2012	
6	D'S MOTION FOR AN EXTENSION OF TIME	Jun 11, 2012	
7	ANSWER	Jun 12, 2012	
8	P'S MOT TO SUSP PEND SETLMT NEGOTIATIONS	Jun 20, 2012	
9	SUSPENDED	Jun 26, 2012	
10	P'S NOTICE OF WAIVER OF INITIAL DISCLOSURES	Sep 19, 2012	
11	BOARD'S ORDER	Oct 10, 2012	
12	STIP FOR EXT	Mar 27, 2013	
13	EXTENSION OF TIME GRANTED	Mar 27, 2013	
14	P MOT TO COMPEL DISCOVERY	Jun 06, 2013	
15	SUSP PEND DISP OF OUTSTNDNG MOT	Jun 24, 2013	
16	PROCEEDINGS RESUMED	Aug 06, 2013	
17	D'S RESPONSE TO P'S FIRST SET OF REQ FOR	Sep 06, 2013	

ADMISSIONS

18	D'S RESPONSE TO P'S FIRST SET OF INTERROGS AND REQ FOR PRODUCTION OF DOCS & THINGS	Sep 06, 2013
19	P MOT FOR SANCTIONS	Sep 11, 2013
20	SUSP PEND DISP OF OUTSTNDNG MOT	Sep 19, 2013
21	D MOT TO REOPEN DISCOVERY	Oct 08, 2013
22	P OPP/RESP TO MOTION	Oct 28, 2013
23	TRIAL DATES RESET	Mar 26, 2014
24	P MOT TO AMEND PLEADING/AMENDED PLEADING	May 08, 2014
25	SUSP PEND DISP OF OUTSTNDNG MOT	May 09, 2014
26	CORRECTION TO BD ORDER	May 09, 2014
27	CHANGE OF CORRESP ADDRESS	May 09, 2014
28	TRIAL DATES RESET	Jun 28, 2014
29	ANSWER	Aug 07, 2014
30	ANSWER	Aug 07, 2014
31	D MOT FOR EXT W/O CONSENT	Aug 07, 2014

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Mark:



US Serial Number: 75705756

Application Filing Date: May 13, 1999

US Registration Number: 2430828

Registration Date: Feb. 27, 2001

Register: Principal

Mark Type: Service Mark

Status: The registration has been renewed.

Status Date: Jun. 05, 2010

Publication Date: Dec. 05, 2000

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## Mark Information

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Mark Literal Elements: None

Standard Character Claim: No

Mark Drawing Type: 2 - AN ILLUSTRATION DRAWING WITHOUT ANY WORDS(S)/ LETTER(S)/NUMBER(S)

Description of Mark: The mark consists of the shape of the exterior of a skyscraper with a pointed, spindled top.

Lining and Stippling Statement: The lining shown in the drawing is a feature of the mark and is not intended to indicate color.

Acquired Distinctiveness Claim: In whole

Design Search Code(s): 07.03.01 - Skyscrapers

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## Goods and Services

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Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks \*...\* identify additional (new) wording in the goods/services.

For: ENTERTAINMENT SERVICES, NAMELY, PROVIDING OBSERVATION DECKS IN A SKYSCRAPER FOR PURPOSES OF SIGHTSEEING

International Class(es): 041 - Primary Class

U.S Class(es): 100, 101, 107

Class Status: ACTIVE

Basis: 1(a)

First Use: May 01, 1931

Use in Commerce: May 01, 1931

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## Basis Information (Case Level)

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Filed Use: Yes

Currently Use: Yes

Amended Use: No

Filed ITU: No

Currently ITU: No

Amended ITU: No

Filed 44D: No

Currently 44D: No

Amended 44D: No

Filed 44E: No

Currently 44E: No

Amended 44E: No

Filed 66A: No

Currently 66A: No

Filed No Basis: No

Currently No Basis: No

## Current Owner(s) Information

**Owner Name:** SRT EMPIRE STATE BUILDING, L.L.C.

**Owner Address:** ONE GRAND CENTRAL PLACE  
60 EAST 42ND STREET  
NEW YORK, NEW YORK 10165  
UNITED STATES

**Legal Entity Type:** LIMITED LIABILITY COMPANY

**State or Country Where Organized:** DELAWARE

## Attorney/Correspondence Information

### Attorney of Record

**Attorney Name:** William M. Borchard

**Docket Number:** 22690.000; W

### Correspondent

**Correspondent Name/Address:** William M. Borchard  
COWAN, LIEBOWITZ & LATMAN, P.C.  
1133 AVENUE OF THE AMERICAS  
NEW YORK, NEW YORK 10036-6799  
UNITED STATES

**Phone:** (212) 790-9200

**Fax:** (212) 575-0671

**Domestic Representative - Not Found**

## Prosecution History

Date	Description	Proceeding Number
Nov. 06, 2013	ASSIGNMENT OF OWNERSHIP NOT UPDATED AUTOMATICALLY	
Oct. 30, 2013	ASSIGNMENT OF OWNERSHIP NOT UPDATED AUTOMATICALLY	
Oct. 23, 2013	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	
Jun. 05, 2010	REGISTERED AND RENEWED (FIRST RENEWAL - 10 YRS)	70131
Jun. 05, 2010	REGISTERED - SEC. 8 (10-YR) ACCEPTED/SEC. 9 GRANTED	
Jun. 04, 2010	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	70131
Jun. 02, 2010	TEAS SECTION 8 & 9 RECEIVED	
Dec. 01, 2006	CASE FILE IN TICRS	
Jul. 28, 2006	REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK.	61619
Jul. 19, 2006	ASSIGNED TO PARALEGAL	61619
Apr. 24, 2006	REGISTERED - SEC. 8 (6-YR) & SEC. 15 FILED	
Apr. 24, 2006	PAPER RECEIVED	
Feb. 27, 2001	REGISTERED-PRINCIPAL REGISTER	
Dec. 05, 2000	PUBLISHED FOR OPPOSITION	
Nov. 03, 2000	NOTICE OF PUBLICATION	
Sep. 28, 2000	APPROVED FOR PUB - PRINCIPAL REGISTER	
Sep. 28, 2000	ASSIGNED TO EXAMINER	76520
Aug. 07, 2000	NON-FINAL ACTION MAILED	
Apr. 13, 2000	ASSIGNED TO EXAMINER	76510
Feb. 28, 2000	CORRESPONDENCE RECEIVED IN LAW OFFICE	
Sep. 13, 1999	NON-FINAL ACTION MAILED	
Aug. 26, 1999	ASSIGNED TO EXAMINER	76510
Aug. 26, 1999	ASSIGNED TO EXAMINER	59899
Aug. 24, 1999	ASSIGNED TO EXAMINER	59899

## Maintenance Filings or Post Registration Information

**Affidavit of Continued Use:** Section 8 - Accepted

**Affidavit of** Section 15 - Accepted

Incontestability:

Renewal Date: Feb. 27, 2011

## TM Staff and Location Information

TM Staff Information - None  
File Location

Current Location: GENERIC WEB UPDATE

Date in Location: Jun. 05, 2010

## Assignment Abstract Of Title Information

### Summary

Total Assignments: 4

Registrant: EMPIRE STATE BUILDING COMPANY

### Assignment 1 of 4

Conveyance: CONVERSION

Reel/Frame: [2462/0478](#)

Pages: 4

Date Recorded: Feb. 26, 2002

Supporting Documents: [assignment-tm-2462-0478.pdf](#)

### Assignor

Name: [EMPIRE STATE BUILDING COMPANY](#)

Execution Date: Dec. 17, 2001

Legal Entity Type: PARTNERSHIP

State or Country Where Organized: NEW YORK

### Assignee

Name: [EMPIRE STATE BUILDING COMPANY LLC](#)

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country Where Organized: No Place Where Organized Found

Address: ATT: THOMAS N. KELTNER, JR.  
WEIN & MALKIN LLP 60 EAST 42ND STREET  
NEW YORK, NEW YORK 10165

### Correspondent

Correspondent Name: COWAN, LIEBOWITZ & LATMAN, P.C.

Correspondent Address: ARTHUR J. GREENBAUM, ESQ.  
1133 AVENUE OF THE AMERICAS  
NEW YORK, NY 10036-6799

### Domestic Representative - Not Found

### Assignment 2 of 4

Conveyance: ASSIGNS THE ENTIRE INTEREST

Reel/Frame: [5127/0482](#)

Pages: 4

Date Recorded: Oct. 08, 2013

Supporting Documents: [assignment-tm-5127-0482.pdf](#)

### Assignor

Name: [EMPIRE STATE BUILDING COMPANY L.L.C.](#)

Execution Date: Oct. 07, 2013

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country Where Organized: NEW YORK

### Assignee

Name: [EMPIRE STATE REALTY OP, L.P.](#)

Legal Entity Type: LIMITED PARTNERSHIP

State or Country Where Organized: DELAWARE

Address: ONE GRAND CENTRAL PLACE  
60 EAST 42ND STREET  
NEW YORK, NEW YORK 10165

### Correspondent

Correspondent Name: WILLIAM M. BORCHARD

Correspondent Address: 1133 AVENUE OF THE AMERICAS  
NEW YORK, NY 10036

### Domestic Representative - Not Found

### Assignment 3 of 4

Conveyance: ASSIGNS THE ENTIRE INTEREST

Reel/Frame: [5136/0116](#)

Pages: 4

Date Recorded: Oct. 23, 2013

Supporting Documents: [assignment-tm-5136-0116.pdf](#)

**Assignor**

Name: [EMPIRE STATE REALTY OP, L.P.](#) Execution Date: Oct. 07, 2013  
 Legal Entity Type: LIMITED PARTNERSHIP State or Country Where Organized: DELAWARE

**Assignee**

Name: [ESRT EMPIRE STATE BUILDING, L.L.C.](#)  
 Legal Entity Type: LIMITED LIABILITY COMPANY State or Country Where Organized: DELAWARE  
 Address: ONE GRAND CENTRAL PLACE  
 60 EAST 42ND STREET  
 NEW YORK, NEW YORK 10165

**Correspondent**

Correspondent Name: WILLIAM M. BORCHARD  
 Correspondent Address: 1133 AVENUE OF THE AMERICAS  
 NEW YORK, NY 10036

**Domestic Representative - Not Found****Assignment 4 of 4**

Conveyance: CORRECTIVE ASSIGNMENT TO CORRECT THE GENERAL PARTNER OF ASSIGNEE FROM A NEW YORK CORPORATION TO A MARYLAND CORPORATION PREVIOUSLY RECORDED ON REEL 005127 FRAME 0482. ASSIGNOR(S) HEREBY CONFIRMS THE ASSIGNMENT TO ASSIGNEE EMPIRE STATE REALTY OP, L.P., A DELAWARE LIMITED PARTNERSHIP.  
 Reel/Frame: [5139/0027](#) Pages: 6  
 Date Recorded: Oct. 23, 2013  
 Supporting Documents: [assignment-tm-5139-0027.pdf](#)

**Assignor**

Name: [EMPIRE STATE BUILDING COMPANY L.L.C.](#) Execution Date: Oct. 07, 2013  
 Legal Entity Type: LIMITED LIABILITY COMPANY State or Country Where Organized: NEW YORK

**Assignee**

Name: [EMPIRE STATE REALTY OP, L.P.](#)  
 Legal Entity Type: LIMITED PARTNERSHIP State or Country Where Organized: DELAWARE  
 Address: ONE GRAND CENTRAL PLACE  
 60 EAST 42ND STREET  
 NEW YORK, NEW YORK 10165

**Correspondent**

Correspondent Name: WILLIAM M. BORCHARD  
 Correspondent Address: 1133 AVENUE OF THE AMERICAS  
 NEW YORK, NY 10036

**Domestic Representative - Not Found****Proceedings****Summary**

Number of Proceedings: 3

**Type of Proceeding: Opposition**

Proceeding Number: [91208505](#) Filing Date: Dec 18, 2012  
 Status: Terminated Status Date: Apr 08, 2013  
 Interlocutory Attorney: ELIZABETH WINTER

**Defendant**

Name: Courtney Scott-Radovanovic  
 Correspondent Address: ANTHONY A LOPRESTI  
 LOPRESTI & ASSOCIATES PLLC  
 30 BROAD ST FL 37  
 NEW YORK NY , 10004-2947  
 UNITED STATES  
 Correspondent e-mail: [al@loprestilaw.com](mailto:al@loprestilaw.com)

**Associated marks**

Mark	Application Status	Serial Number	Registration Number
FROM NY WITH LOVE	Abandoned - After Inter-Partes Decision	<a href="#">85531538</a>	

**Plaintiff(s)**

Name: Empire State Building Company L.L.C.

Correspondent Address: MAYA L TARR  
COWAN LIEBOWITZ & LATMAN PC  
1133 AVENUE OF THE AMERICAS  
NEW YORK NY , 10036  
UNITED STATES

Correspondent e-mail: [trademark@cll.com](mailto:trademark@cll.com) , [wmb@cll.com](mailto:wmb@cll.com) , [mxt@cll.com](mailto:mxt@cll.com)

Mark	Application Status	Serial Number	Registration Number
EMPIRE STATE BUILDING	Renewed	<a href="#">75705741</a>	<a href="#">2411972</a>
EMPIRE STATE BUILDING	Renewed	<a href="#">75705740</a>	<a href="#">2413667</a>
	Renewed	<a href="#">75705772</a>	<a href="#">2429297</a>
	Renewed	<a href="#">75705756</a>	<a href="#">2430828</a>

Prosecution History			
Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Dec 18, 2012	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Dec 18, 2012	Jan 27, 2013
3	PENDING, INSTITUTED	Dec 18, 2012	
4	NOTICE OF DEFAULT	Feb 20, 2013	
5	P'S MOTION FOR DEFAULT JUDGEMENT	Feb 20, 2013	
6	BD DECISION: SUSTAINED	Apr 08, 2013	
7	TERMINATED	Apr 08, 2013	

**Type of Proceeding: Opposition**

Proceeding Number: [91206241](#)

Filing Date: Jul 25, 2012

Status: Terminated

Status Date: Dec 10, 2012

Interlocutory Attorney: YONG OH (RICHARD) KIM

**Defendant**

Name: Empire Movers, LLC

Correspondent Address: FLORIN PETRUTA  
EMPIRE MOVERS LLC  
6736 80TH STREET  
MIDDLE VILLAGE NY , 11379-2925  
UNITED STATES

Correspondent e-mail: [office@goempiremovers.com](mailto:office@goempiremovers.com)

Mark	Application Status	Serial Number	Registration Number
EMPIRE MOVERS	Abandoned - After Inter-Partes Decision	<a href="#">85291507</a>	

**Plaintiff(s)**

Name: Empire State Building Company LLC

Correspondent Address: MAYA L TARR  
COWAN LIEBOWITZ & LATMAN PC  
1133 AVENUE OF THE AMERICAS  
NEW YORK NY , 10036  
UNITED STATES

Correspondent e-mail: [trademark@cll.com](mailto:trademark@cll.com) , [wmb@cll.com](mailto:wmb@cll.com) , [mxt@cll.com](mailto:mxt@cll.com)

Mark	Application Status	Serial Number	Registration Number
EMPIRE STATE BUILDING	Renewed	<a href="#">75705741</a>	<a href="#">2411972</a>
EMPIRE STATE BUILDING	Renewed	<a href="#">75705740</a>	<a href="#">2413667</a>
	Renewed	<a href="#">75705772</a>	<a href="#">2429297</a>
	Renewed	<a href="#">75705756</a>	<a href="#">2430828</a>

Prosecution History			
Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Jul 25, 2012	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Jul 25, 2012	Sep 03, 2012

3	PENDING, INSTITUTED	Jul 25, 2012
4	P'S MOT TO SUSP PEND SETLMT NEGOTIATIONS	Jul 26, 2012
5	SUSPENDED	Jul 31, 2012
6	MOTION TO AMEND APPLICATION	Aug 07, 2012
7	BOARD'S ORDER TRIAL DATES ARE RESET	Oct 24, 2012
8	WITHDRAWAL OF APPLICATION	Dec 04, 2012
9	BOARD'S DECISION: SUSTAINED	Dec 10, 2012
10	TERMINATED	Dec 10, 2012

**Type of Proceeding: Opposition**

Proceeding Number: [91204122](#)

Filing Date: Mar 01, 2012

Status: Pending

Status Date: Mar 01, 2012

Interlocutory Attorney: MARY CATHERINE FAINT

**Defendant**

Name: Michael Liang

Correspondent Address: DAVID YAN  
LAW OFFICES OF DAVID YAN  
136-20 38TH AVENUE, SUITE 11E  
FLUSHING NY , 11354 4232  
UNITED STATES

Correspondent e-mail: [davidyanlawfirm@yahoo.com](mailto:davidyanlawfirm@yahoo.com)

**Associated marks**

Mark	Application Status	Serial Number	Registration Number
NYC BEER LAGER	Opposition Pending	<a href="#">85213453</a>	

**Plaintiff(s)**

Name: Empire State Building Company L.L.C.

Correspondent Address: ERIC J SHIMANOFF  
COWAN LIEBOWITZ & LATMAN PC  
1133 AVENUE OF THE AMERICAS  
NEW YORK NY , 10036  
UNITED STATES

Correspondent e-mail: [ejs@ccl.com](mailto:ejs@ccl.com) , [lmr@ccl.com](mailto:lmr@ccl.com) , [wmb@ccl.com](mailto:wmb@ccl.com) , [trademark@ccl.com](mailto:trademark@ccl.com) , [fxm@ccl.com](mailto:fxm@ccl.com) , [mlk@ccl.com](mailto:mlk@ccl.com)

**Associated marks**

Mark	Application Status	Serial Number	Registration Number
EMPIRE STATE BUILDING	Renewed	<a href="#">75705741</a>	<a href="#">2411972</a>
EMPIRE STATE BUILDING	Renewed	<a href="#">75705740</a>	<a href="#">2413667</a>
	Renewed	<a href="#">75705772</a>	<a href="#">2429297</a>
	Renewed	<a href="#">75705756</a>	<a href="#">2430828</a>

**Prosecution History**

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Mar 01, 2012	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Mar 01, 2012	Apr 10, 2012
3	PENDING, INSTITUTED	Mar 01, 2012	
4	D'S MOTION FOR AN EXTENSION OF TIME	Apr 10, 2012	
5	EXTENSION OF TIME GRANTED	May 10, 2012	
6	D'S MOTION FOR AN EXTENSION OF TIME	Jun 11, 2012	
7	ANSWER	Jun 12, 2012	
8	P'S MOT TO SUSP PEND SETLMT NEGOTIATIONS	Jun 20, 2012	
9	SUSPENDED	Jun 26, 2012	
10	P'S NOTICE OF WAIVER OF INITIAL DISCLOSURES	Sep 19, 2012	
11	BOARD'S ORDER	Oct 10, 2012	
12	STIP FOR EXT	Mar 27, 2013	
13	EXTENSION OF TIME GRANTED	Mar 27, 2013	
14	P MOT TO COMPEL DISCOVERY	Jun 06, 2013	

15	SUSP PEND DISP OF OUTSTNDNG MOT	Jun 24, 2013
16	PROCEEDINGS RESUMED	Aug 06, 2013
17	D'S RESPONSE TO P'S FIRST SET OF REQ FOR ADMISSIONS	Sep 06, 2013
18	D'S RESPONSE TO P'S FIRST SET OF INTERROGS AND REQ FOR PRODUCTION OF DOCS & THINGS	Sep 06, 2013
19	P MOT FOR SANCTIONS	Sep 11, 2013
20	SUSP PEND DISP OF OUTSTNDNG MOT	Sep 19, 2013
21	D MOT TO REOPEN DISCOVERY	Oct 08, 2013
22	P OPP/RESP TO MOTION	Oct 28, 2013
23	TRIAL DATES RESET	Mar 26, 2014
24	P MOT TO AMEND PLEADING/AMENDED PLEADING	May 08, 2014
25	SUSP PEND DISP OF OUTSTNDNG MOT	May 09, 2014
26	CORRECTION TO BD ORDER	May 09, 2014
27	CHANGE OF CORRESP ADDRESS	May 09, 2014
28	TRIAL DATES RESET	Jun 28, 2014
29	ANSWER	Aug 07, 2014
30	ANSWER	Aug 07, 2014
31	D MOT FOR EXT W/O CONSENT	Aug 07, 2014



## Domestic Representative - Not Found

**Prosecution History**

Date	Description	Proceeding Number
Nov. 06, 2013	ASSIGNMENT OF OWNERSHIP NOT UPDATED AUTOMATICALLY	
Oct. 30, 2013	ASSIGNMENT OF OWNERSHIP NOT UPDATED AUTOMATICALLY	
Oct. 23, 2013	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	
Feb. 09, 2010	REGISTERED AND RENEWED (FIRST RENEWAL - 10 YRS)	68502
Feb. 09, 2010	REGISTERED - SEC. 8 (10-YR) ACCEPTED/SEC. 9 GRANTED	
Feb. 03, 2010	TEAS SECTION 8 & 9 RECEIVED	
Jul. 25, 2006	CASE FILE IN TICRS	
Jul. 20, 2006	REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK.	68502
Jul. 17, 2006	ASSIGNED TO PARALEGAL	68502
Apr. 24, 2006	REGISTERED - SEC. 8 (6-YR) & SEC. 15 FILED	
Apr. 24, 2006	PAPER RECEIVED	
Dec. 12, 2000	REGISTERED-PRINCIPAL REGISTER	
Sep. 19, 2000	PUBLISHED FOR OPPOSITION	
Aug. 18, 2000	NOTICE OF PUBLICATION	
May 09, 2000	ASSIGNED TO EXAMINER	76510
Apr. 20, 2000	APPROVED FOR PUB - PRINCIPAL REGISTER	
Feb. 28, 2000	CORRESPONDENCE RECEIVED IN LAW OFFICE	
Aug. 30, 1999	NON-FINAL ACTION MAILED	
Aug. 26, 1999	ASSIGNED TO EXAMINER	76510
Aug. 26, 1999	ASSIGNED TO EXAMINER	59899
Aug. 24, 1999	ASSIGNED TO EXAMINER	59899

**Maintenance Filings or Post Registration Information**

**Affidavit of Continued Use:** Section 8 - Accepted

**Affidavit of Incontestability:** Section 15 - Accepted

**Renewal Date:** Dec. 12, 2010

**TM Staff and Location Information**

TM Staff Information - None

File Location

**Current Location:** GENERIC WEB UPDATE

**Date in Location:** Feb. 09, 2010

**Assignment Abstract Of Title Information****Summary**

**Total Assignments:** 4

**Registrant:** EMPIRE STATE BUILDING COMPANY

**Assignment 1 of 4**

**Conveyance:** CONVERSION

**Reel/Frame:** [2462/0478](#)

**Pages:** 4

**Date Recorded:** Feb. 26, 2002

**Supporting Documents:** [assignment-tm-2462-0478.pdf](#)

**Assignor**

**Name:** [EMPIRE STATE BUILDING COMPANY](#)

**Execution Date:** Dec. 17, 2001

**Legal Entity Type:** PARTNERSHIP

**State or Country Where Organized:** NEW YORK

**Assignee**

Name: [EMPIRE STATE BUILDING COMPANY LLC](#)

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country Where Organized: No Place Where Organized Found

Address: ATT: THOMAS N. KELTNER, JR.  
WEIN & MALKIN LLP 60 EAST 42ND STREET  
NEW YORK, NEW YORK 10165

**Correspondent**

Correspondent Name: COWAN, LIEBOWITZ & LATMAN, P.C.

Correspondent Address: ARTHUR J. GREENBAUM, ESQ.  
1133 AVENUE OF THE AMERICAS  
NEW YORK, NY 10036-6799

**Domestic Representative - Not Found**

**Assignment 2 of 4**

Conveyance: ASSIGNS THE ENTIRE INTEREST

Reel/Frame: [5127/0482](#)

Pages: 4

Date Recorded: Oct. 08, 2013

Supporting Documents: [assignment-tm-5127-0482.pdf](#)

**Assignor**

Name: [EMPIRE STATE BUILDING COMPANY L.L.C.](#)

Execution Date: Oct. 07, 2013

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country Where Organized: NEW YORK

**Assignee**

Name: [EMPIRE STATE REALTY OP, L.P.](#)

Legal Entity Type: LIMITED PARTNERSHIP

State or Country Where Organized: DELAWARE

Address: ONE GRAND CENTRAL PLACE  
60 EAST 42ND STREET  
NEW YORK, NEW YORK 10165

**Correspondent**

Correspondent Name: WILLIAM M. BORCHARD

Correspondent Address: 1133 AVENUE OF THE AMERICAS  
NEW YORK, NY 10036

**Domestic Representative - Not Found**

**Assignment 3 of 4**

Conveyance: ASSIGNS THE ENTIRE INTEREST

Reel/Frame: [5136/0116](#)

Pages: 4

Date Recorded: Oct. 23, 2013

Supporting Documents: [assignment-tm-5136-0116.pdf](#)

**Assignor**

Name: [EMPIRE STATE REALTY OP, L.P.](#)

Execution Date: Oct. 07, 2013

Legal Entity Type: LIMITED PARTNERSHIP

State or Country Where Organized: DELAWARE

**Assignee**

Name: [ESRT EMPIRE STATE BUILDING, L.L.C.](#)

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country Where Organized: DELAWARE

Address: ONE GRAND CENTRAL PLACE  
60 EAST 42ND STREET  
NEW YORK, NEW YORK 10165

**Correspondent**

Correspondent Name: WILLIAM M. BORCHARD

Correspondent Address: 1133 AVENUE OF THE AMERICAS  
NEW YORK, NY 10036

**Domestic Representative - Not Found**

**Assignment 4 of 4**

Conveyance: CORRECTIVE ASSIGNMENT TO CORRECT THE GENERAL PARTNER OF ASSIGNEE FROM A NEW YORK CORPORATION TO A MARYLAND CORPORATION PREVIOUSLY RECORDED ON REEL 005127 FRAME 0482. ASSIGNOR(S) HEREBY CONFIRMS THE ASSIGNMENT TO ASSIGNEE EMPIRE STATE REALTY OP, L.P., A DELAWARE LIMITED PARTNERSHIP.

Reel/Frame: [5139/0027](#)

Pages: 6

Date Recorded: Oct. 23, 2013

Supporting Documents: [assignment-tm-5139-0027.pdf](#)

**Assignor**

Name: [EMPIRE STATE BUILDING COMPANY L.L.C.](#)  
Legal Entity Type: LIMITED LIABILITY COMPANY

Execution Date: Oct. 07, 2013  
State or Country Where Organized: NEW YORK

#### Assignee

Name: [EMPIRE STATE REALTY OP, L.P.](#)  
Legal Entity Type: LIMITED PARTNERSHIP

State or Country Where Organized: DELAWARE

Address: ONE GRAND CENTRAL PLACE  
60 EAST 42ND STREET  
NEW YORK, NEW YORK 10165

#### Correspondent

Correspondent Name: WILLIAM M. BORCHARD

Correspondent Address: 1133 AVENUE OF THE AMERICAS  
NEW YORK, NY 10036

#### Domestic Representative - Not Found

## Proceedings

#### Summary

Number of Proceedings: 3

#### Type of Proceeding: Opposition

Proceeding Number: [91208505](#)

Filing Date: Dec 18, 2012

Status: Terminated

Status Date: Apr 08, 2013

Interlocutory Attorney: ELIZABETH WINTER

#### Defendant

Name: Courtney Scott-Radovanovic

Correspondent Address: ANTHONY A LOPRESTI  
LOPRESTI & ASSOCIATES PLLC  
30 BROAD ST FL 37  
NEW YORK NY , 10004-2947  
UNITED STATES

Correspondent e-mail: [al@loprestilaw.com](mailto:al@loprestilaw.com)

#### Associated marks

Mark	Application Status	Serial Number	Registration Number
FROM NY WITH LOVE	Abandoned - After Inter-Partes Decision	<a href="#">85531538</a>	

#### Plaintiff(s)

Name: Empire State Building Company L.L.C.

Correspondent Address: MAYA L TARR  
COWAN LIEBOWITZ & LATMAN PC  
1133 AVENUE OF THE AMERICAS  
NEW YORK NY , 10036  
UNITED STATES

Correspondent e-mail: [trademark@cll.com](mailto:trademark@cll.com) , [wmb@cll.com](mailto:wmb@cll.com) , [mxt@cll.com](mailto:mxt@cll.com)

#### Associated marks

Mark	Application Status	Serial Number	Registration Number
EMPIRE STATE BUILDING	Renewed	<a href="#">75705741</a>	<a href="#">2411972</a>
EMPIRE STATE BUILDING	Renewed	<a href="#">75705740</a>	<a href="#">2413667</a>
	Renewed	<a href="#">75705772</a>	<a href="#">2429297</a>
	Renewed	<a href="#">75705756</a>	<a href="#">2430828</a>

#### Prosecution History

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Dec 18, 2012	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Dec 18, 2012	Jan 27, 2013
3	PENDING, INSTITUTED	Dec 18, 2012	
4	NOTICE OF DEFAULT	Feb 20, 2013	
5	P'S MOTION FOR DEFAULT JUDGEMENT	Feb 20, 2013	
6	BD DECISION: SUSTAINED	Apr 08, 2013	

**Type of Proceeding: Opposition**Proceeding Number: [91206241](#)

Filing Date: Jul 25, 2012

Status: Terminated

Status Date: Dec 10, 2012

Interlocutory Attorney: YONG OH (RICHARD) KIM

**Defendant**

Name: Empire Movers, LLC

Correspondent Address: FLORIN PETRUTA  
EMPIRE MOVERS LLC  
6736 80TH STREET  
MIDDLE VILLAGE NY , 11379-2925  
UNITED STATESCorrespondent e-mail: [office@goempiremovers.com](mailto:office@goempiremovers.com)**Associated marks**

Mark	Application Status	Serial Number	Registration Number
EMPIRE MOVERS	Abandoned - After Inter-Partes Decision	<a href="#">85291507</a>	

**Plaintiff(s)**

Name: Empire State Building Company LLC

Correspondent Address: MAYA L TARR  
COWAN LIEBOWITZ & LATMAN PC  
1133 AVENUE OF THE AMERICAS  
NEW YORK NY , 10036  
UNITED STATESCorrespondent e-mail: [trademark@cll.com](mailto:trademark@cll.com) , [wmb@cll.com](mailto:wmb@cll.com) , [mxt@cll.com](mailto:mxt@cll.com)**Associated marks**

Mark	Application Status	Serial Number	Registration Number
EMPIRE STATE BUILDING	Renewed	<a href="#">75705741</a>	<a href="#">2411972</a>
EMPIRE STATE BUILDING	Renewed	<a href="#">75705740</a>	<a href="#">2413667</a>
	Renewed	<a href="#">75705772</a>	<a href="#">2429297</a>
	Renewed	<a href="#">75705756</a>	<a href="#">2430828</a>

**Prosecution History**

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Jul 25, 2012	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Jul 25, 2012	Sep 03, 2012
3	PENDING, INSTITUTED	Jul 25, 2012	
4	P'S MOT TO SUSP PEND SETLMT NEGOTIATIONS	Jul 26, 2012	
5	SUSPENDED	Jul 31, 2012	
6	MOTION TO AMEND APPLICATION	Aug 07, 2012	
7	BOARD'S ORDER TRIAL DATES ARE RESET	Oct 24, 2012	
8	WITHDRAWAL OF APPLICATION	Dec 04, 2012	
9	BOARD'S DECISION: SUSTAINED	Dec 10, 2012	
10	TERMINATED	Dec 10, 2012	

**Type of Proceeding: Opposition**Proceeding Number: [91204122](#)

Filing Date: Mar 01, 2012

Status: Pending

Status Date: Mar 01, 2012

Interlocutory Attorney: MARY CATHERINE FAINT

**Defendant**

Name: Michael Liang

Correspondent Address: DAVID YAN  
LAW OFFICES OF DAVID YAN  
136-20 38TH AVENUE, SUITE 11E  
FLUSHING NY , 11354 4232  
UNITED STATESCorrespondent e-mail: [davidyanlawfirm@yahoo.com](mailto:davidyanlawfirm@yahoo.com)**Associated marks**

Serial	Registration
--------	--------------

Mark	Application Status	Number	Number
NYC BEER LAGER	Opposition Pending	<a href="#">85213453</a>	
<b>Plaintiff(s)</b>			

**Name:** Empire State Building Company L.L.C.

**Correspondent Address:** ERIC J SHIMANOFF  
COWAN LIEBOWITZ & LATMAN PC  
1133 AVENUE OF THE AMERICAS  
NEW YORK NY , 10036  
UNITED STATES

**Correspondent e-mail:** [ejs@cl.com](mailto:ejs@cl.com) , [lmr@cl.com](mailto:lmr@cl.com) , [wmb@cl.com](mailto:wmb@cl.com) , [trademark@cl.com](mailto:trademark@cl.com) , [fxm@cl.com](mailto:fxm@cl.com) , [mlk@cl.com](mailto:mlk@cl.com)

Associated marks			
Mark	Application Status	Serial Number	Registration Number
EMPIRE STATE BUILDING	Renewed	<a href="#">75705741</a>	<a href="#">2411972</a>
EMPIRE STATE BUILDING	Renewed	<a href="#">75705740</a>	<a href="#">2413667</a>
	Renewed	<a href="#">75705772</a>	<a href="#">2429297</a>
	Renewed	<a href="#">75705756</a>	<a href="#">2430828</a>

Prosecution History			
Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Mar 01, 2012	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Mar 01, 2012	Apr 10, 2012
3	PENDING, INSTITUTED	Mar 01, 2012	
4	D'S MOTION FOR AN EXTENSION OF TIME	Apr 10, 2012	
5	EXTENSION OF TIME GRANTED	May 10, 2012	
6	D'S MOTION FOR AN EXTENSION OF TIME	Jun 11, 2012	
7	ANSWER	Jun 12, 2012	
8	P'S MOT TO SUSP PEND SETLMT NEGOTIATIONS	Jun 20, 2012	
9	SUSPENDED	Jun 26, 2012	
10	P'S NOTICE OF WAIVER OF INITIAL DISCLOSURES	Sep 19, 2012	
11	BOARD'S ORDER	Oct 10, 2012	
12	STIP FOR EXT	Mar 27, 2013	
13	EXTENSION OF TIME GRANTED	Mar 27, 2013	
14	P MOT TO COMPEL DISCOVERY	Jun 06, 2013	
15	SUSP PEND DISP OF OUTSTNDNG MOT	Jun 24, 2013	
16	PROCEEDINGS RESUMED	Aug 06, 2013	
17	D'S RESPONSE TO P'S FIRST SET OF REQ FOR ADMISSIONS	Sep 06, 2013	
18	D'S RESPONSE TO P'S FIRST SET OF INTERROGS AND REQ FOR PRODUCTION OF DOCS & THINGS	Sep 06, 2013	
19	P MOT FOR SANCTIONS	Sep 11, 2013	
20	SUSP PEND DISP OF OUTSTNDNG MOT	Sep 19, 2013	
21	D MOT TO REOPEN DISCOVERY	Oct 08, 2013	
22	P OPP/RESP TO MOTION	Oct 28, 2013	
23	TRIAL DATES RESET	Mar 26, 2014	
24	P MOT TO AMEND PLEADING/AMENDED PLEADING	May 08, 2014	
25	SUSP PEND DISP OF OUTSTNDNG MOT	May 09, 2014	
26	CORRECTION TO BD ORDER	May 09, 2014	
27	CHANGE OF CORRESP ADDRESS	May 09, 2014	
28	TRIAL DATES RESET	Jun 28, 2014	
29	ANSWER	Aug 07, 2014	
30	ANSWER	Aug 07, 2014	
31	D MOT FOR EXT W/O CONSENT	Aug 07, 2014	



## Domestic Representative - Not Found

**Prosecution History**

Date	Description	Proceeding Number
Nov. 06, 2013	ASSIGNMENT OF OWNERSHIP NOT UPDATED AUTOMATICALLY	
Oct. 30, 2013	ASSIGNMENT OF OWNERSHIP NOT UPDATED AUTOMATICALLY	
Oct. 23, 2013	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	
Feb. 09, 2010	REGISTERED AND RENEWED (FIRST RENEWAL - 10 YRS)	68502
Feb. 09, 2010	REGISTERED - SEC. 8 (10-YR) ACCEPTED/SEC. 9 GRANTED	
Feb. 03, 2010	TEAS SECTION 8 & 9 RECEIVED	
Jul. 24, 2006	CASE FILE IN TICRS	
Jul. 17, 2006	REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK.	68502
Jul. 17, 2006	ASSIGNED TO PARALEGAL	68502
Apr. 24, 2006	REGISTERED - SEC. 8 (6-YR) & SEC. 15 FILED	
Apr. 24, 2006	PAPER RECEIVED	
Dec. 19, 2000	REGISTERED-PRINCIPAL REGISTER	
Sep. 26, 2000	PUBLISHED FOR OPPOSITION	
Aug. 25, 2000	NOTICE OF PUBLICATION	
May 09, 2000	ASSIGNED TO EXAMINER	76510
Apr. 20, 2000	APPROVED FOR PUB - PRINCIPAL REGISTER	
Feb. 28, 2000	CORRESPONDENCE RECEIVED IN LAW OFFICE	
Aug. 30, 1999	NON-FINAL ACTION MAILED	
Aug. 24, 1999	ASSIGNED TO EXAMINER	76510

**Maintenance Filings or Post Registration Information**

**Affidavit of Continued Use:** Section 8 - Accepted

**Affidavit of Incontestability:** Section 15 - Accepted

**Renewal Date:** Dec. 19, 2010

**TM Staff and Location Information**

## TM Staff Information - None

## File Location

**Current Location:** GENERIC WEB UPDATE

**Date in Location:** Feb. 09, 2010

**Assignment Abstract Of Title Information****Summary**

**Total Assignments:** 4

**Registrant:** EMPIRE STATE BUILDING COMPANY

**Assignment 1 of 4**

**Conveyance:** CONVERSION

**Reel/Frame:** [2462/0478](#)

**Pages:** 4

**Date Recorded:** Feb. 26, 2002

**Supporting Documents:** [assignment-tm-2462-0478.pdf](#)

**Assignor**

**Name:** [EMPIRE STATE BUILDING COMPANY](#)

**Execution Date:** Dec. 17, 2001

**Legal Entity Type:** PARTNERSHIP

**State or Country Where Organized:** NEW YORK

**Assignee**

**Name:** [EMPIRE STATE BUILDING COMPANY LLC](#)

**Legal Entity Type:** LIMITED LIABILITY COMPANY

**State or Country Where Organized:** No Place Where Organized Found

**Address:** ATT: THOMAS N. KELTNER, JR.  
WEIN & MALKIN LLP 60 EAST 42ND STREET  
NEW YORK, NEW YORK 10165

**Correspondent**

**Correspondent Name:** COWAN, LIEBOWITZ & LATMAN, P.C.  
**Correspondent Address:** ARTHUR J. GREENBAUM, ESQ.  
1133 AVENUE OF THE AMERICAS  
NEW YORK, NY 10036-6799

**Domestic Representative - Not Found**

**Assignment 2 of 4**

**Conveyance:** ASSIGNS THE ENTIRE INTEREST  
**Reel/Frame:** [5127/0482](#) **Pages:** 4  
**Date Recorded:** Oct. 08, 2013  
**Supporting Documents:** [assignment-tm-5127-0482.pdf](#)

**Assignor**

**Name:** [EMPIRE STATE BUILDING COMPANY L.L.C.](#) **Execution Date:** Oct. 07, 2013  
**Legal Entity Type:** LIMITED LIABILITY COMPANY **State or Country Where Organized:** NEW YORK

**Assignee**

**Name:** [EMPIRE STATE REALTY OP, L.P.](#)  
**Legal Entity Type:** LIMITED PARTNERSHIP **State or Country Where Organized:** DELAWARE  
**Address:** ONE GRAND CENTRAL PLACE  
60 EAST 42ND STREET  
NEW YORK, NEW YORK 10165

**Correspondent**

**Correspondent Name:** WILLIAM M. BORCHARD  
**Correspondent Address:** 1133 AVENUE OF THE AMERICAS  
NEW YORK, NY 10036

**Domestic Representative - Not Found**

**Assignment 3 of 4**

**Conveyance:** ASSIGNS THE ENTIRE INTEREST  
**Reel/Frame:** [5136/0116](#) **Pages:** 4  
**Date Recorded:** Oct. 23, 2013  
**Supporting Documents:** [assignment-tm-5136-0116.pdf](#)

**Assignor**

**Name:** [EMPIRE STATE REALTY OP, L.P.](#) **Execution Date:** Oct. 07, 2013  
**Legal Entity Type:** LIMITED PARTNERSHIP **State or Country Where Organized:** DELAWARE

**Assignee**

**Name:** [ESRT EMPIRE STATE BUILDING, L.L.C.](#)  
**Legal Entity Type:** LIMITED LIABILITY COMPANY **State or Country Where Organized:** DELAWARE  
**Address:** ONE GRAND CENTRAL PLACE  
60 EAST 42ND STREET  
NEW YORK, NEW YORK 10165

**Correspondent**

**Correspondent Name:** WILLIAM M. BORCHARD  
**Correspondent Address:** 1133 AVENUE OF THE AMERICAS  
NEW YORK, NY 10036

**Domestic Representative - Not Found**

**Assignment 4 of 4**

**Conveyance:** CORRECTIVE ASSIGNMENT TO CORRECT THE GENERAL PARTNER OF ASSIGNEE FROM A NEW YORK CORPORATION TO A MARYLAND CORPORATION PREVIOUSLY RECORDED ON REEL 005127 FRAME 0482. ASSIGNOR(S) HEREBY CONFIRMS THE ASSIGNMENT TO ASSIGNEE EMPIRE STATE REALTY OP, L.P., A DELAWARE LIMITED PARTNERSHIP.  
**Reel/Frame:** [5139/0027](#) **Pages:** 6  
**Date Recorded:** Oct. 23, 2013  
**Supporting Documents:** [assignment-tm-5139-0027.pdf](#)

**Assignor**

**Name:** [EMPIRE STATE BUILDING COMPANY L.L.C.](#) **Execution Date:** Oct. 07, 2013  
**Legal Entity Type:** LIMITED LIABILITY COMPANY **State or Country Where Organized:** NEW YORK

Organized:

**Assignee**

**Name:** [EMPIRE STATE REALTY OP, L.P.](#)  
**Legal Entity Type:** LIMITED PARTNERSHIP **State or Country Where Organized:** DELAWARE  
**Address:** ONE GRAND CENTRAL PLACE  
60 EAST 42ND STREET  
NEW YORK, NEW YORK 10165

**Correspondent**

**Correspondent Name:** WILLIAM M. BORCHARD  
**Correspondent Address:** 1133 AVENUE OF THE AMERICAS  
NEW YORK, NY 10036

**Domestic Representative - Not Found**

## Proceedings

**Summary**

**Number of Proceedings:** 3

**Type of Proceeding: Opposition**

**Proceeding Number:** [91208505](#) **Filing Date:** Dec 18, 2012  
**Status:** Terminated **Status Date:** Apr 08, 2013  
**Interlocutory Attorney:** ELIZABETH WINTER

**Defendant**

**Name:** Courtney Scott-Radovanovic  
**Correspondent Address:** ANTHONY A LOPRESTI  
LOPRESTI & ASSOCIATES PLLC  
30 BROAD ST FL 37  
NEW YORK NY , 10004-2947  
UNITED STATES  
**Correspondent e-mail:** [al@loprestilaw.com](mailto:al@loprestilaw.com)

**Associated marks**

Mark	Application Status	Serial Number	Registration Number
FROM NY WITH LOVE	Abandoned - After Inter-Partes Decision	<a href="#">85531538</a>	

**Plaintiff(s)**

**Name:** Empire State Building Company L.L.C.  
**Correspondent Address:** MAYA L TARR  
COWAN LIEBOWITZ & LATMAN PC  
1133 AVENUE OF THE AMERICAS  
NEW YORK NY , 10036  
UNITED STATES  
**Correspondent e-mail:** [trademark@cll.com](mailto:trademark@cll.com) , [wmb@cll.com](mailto:wmb@cll.com) , [mxt@cll.com](mailto:mxt@cll.com)

**Associated marks**

Mark	Application Status	Serial Number	Registration Number
EMPIRE STATE BUILDING	Renewed	<a href="#">75705741</a>	<a href="#">2411972</a>
EMPIRE STATE BUILDING	Renewed	<a href="#">75705740</a>	<a href="#">2413667</a>
	Renewed	<a href="#">75705772</a>	<a href="#">2429297</a>
	Renewed	<a href="#">75705756</a>	<a href="#">2430828</a>

**Prosecution History**

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Dec 18, 2012	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Dec 18, 2012	Jan 27, 2013
3	PENDING, INSTITUTED	Dec 18, 2012	
4	NOTICE OF DEFAULT	Feb 20, 2013	
5	P'S MOTION FOR DEFAULT JUDGEMENT	Feb 20, 2013	
6	BD DECISION: SUSTAINED	Apr 08, 2013	
7	TERMINATED	Apr 08, 2013	

**Type of Proceeding: Opposition**

Proceeding Number: [91206241](#)

Filing Date: Jul 25, 2012

Status: Terminated

Status Date: Dec 10, 2012

Interlocutory Attorney: YONG OH (RICHARD) KIM

**Defendant**

Name: Empire Movers, LLC

Correspondent Address: FLORIN PETRUTA  
EMPIRE MOVERS LLC  
6736 80TH STREET  
MIDDLE VILLAGE NY , 11379-2925  
UNITED STATES

Correspondent e-mail: [office@goempiremovers.com](mailto:office@goempiremovers.com)

**Associated marks**

Mark	Application Status	Serial Number	Registration Number
EMPIRE MOVERS	Abandoned - After Inter-Partes Decision	<a href="#">85291507</a>	

**Plaintiff(s)**

Name: Empire State Building Company LLC

Correspondent Address: MAYA L TARR  
COWAN LIEBOWITZ & LATMAN PC  
1133 AVENUE OF THE AMERICAS  
NEW YORK NY , 10036  
UNITED STATES

Correspondent e-mail: [trademark@ccl.com](mailto:trademark@ccl.com) , [wmb@ccl.com](mailto:wmb@ccl.com) , [mxt@ccl.com](mailto:mxt@ccl.com)

**Associated marks**

Mark	Application Status	Serial Number	Registration Number
EMPIRE STATE BUILDING	Renewed	<a href="#">75705741</a>	<a href="#">2411972</a>
EMPIRE STATE BUILDING	Renewed	<a href="#">75705740</a>	<a href="#">2413667</a>
	Renewed	<a href="#">75705772</a>	<a href="#">2429297</a>
	Renewed	<a href="#">75705756</a>	<a href="#">2430828</a>

**Prosecution History**

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Jul 25, 2012	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Jul 25, 2012	Sep 03, 2012
3	PENDING, INSTITUTED	Jul 25, 2012	
4	P'S MOT TO SUSP PEND SETLMT NEGOTIATIONS	Jul 26, 2012	
5	SUSPENDED	Jul 31, 2012	
6	MOTION TO AMEND APPLICATION	Aug 07, 2012	
7	BOARD'S ORDER TRIAL DATES ARE RESET	Oct 24, 2012	
8	WITHDRAWAL OF APPLICATION	Dec 04, 2012	
9	BOARD'S DECISION: SUSTAINED	Dec 10, 2012	
10	TERMINATED	Dec 10, 2012	

**Type of Proceeding: Opposition**

Proceeding Number: [91204122](#)

Filing Date: Mar 01, 2012

Status: Pending

Status Date: Mar 01, 2012

Interlocutory Attorney: MARY CATHERINE FAINT

**Defendant**

Name: Michael Liang

Correspondent Address: DAVID YAN  
LAW OFFICES OF DAVID YAN  
136-20 38TH AVENUE, SUITE 11E  
FLUSHING NY , 11354 4232  
UNITED STATES

Correspondent e-mail: [davidyanlawfirm@yahoo.com](mailto:davidyanlawfirm@yahoo.com)

**Associated marks**

Mark	Application Status	Serial Number	Registration Number
NYC BEER LAGER	Opposition Pending	<a href="#">85213453</a>	

**Plaintiff(s)**

**Name:** Empire State Building Company L.L.C.

**Correspondent Address:** ERIC J SHIMANOFF  
COWAN LIEBOWITZ & LATMAN PC  
1133 AVENUE OF THE AMERICAS  
NEW YORK NY , 10036  
UNITED STATES

**Correspondent e-mail:** [ejs@cll.com](mailto:ejs@cll.com) , [lmr@cll.com](mailto:lmr@cll.com) , [wmb@cll.com](mailto:wmb@cll.com) , [trademark@cll.com](mailto:trademark@cll.com) , [fxm@cll.com](mailto:fxm@cll.com) , [mlk@cll.com](mailto:mlk@cll.com)

**Associated marks**

Mark	Application Status	Serial Number	Registration Number
EMPIRE STATE BUILDING	Renewed	<a href="#">75705741</a>	<a href="#">2411972</a>
EMPIRE STATE BUILDING	Renewed	<a href="#">75705740</a>	<a href="#">2413667</a>
	Renewed	<a href="#">75705772</a>	<a href="#">2429297</a>
	Renewed	<a href="#">75705756</a>	<a href="#">2430828</a>

**Prosecution History**

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Mar 01, 2012	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Mar 01, 2012	Apr 10, 2012
3	PENDING, INSTITUTED	Mar 01, 2012	
4	D'S MOTION FOR AN EXTENSION OF TIME	Apr 10, 2012	
5	EXTENSION OF TIME GRANTED	May 10, 2012	
6	D'S MOTION FOR AN EXTENSION OF TIME	Jun 11, 2012	
7	ANSWER	Jun 12, 2012	
8	P'S MOT TO SUSP PEND SETLMT NEGOTIATIONS	Jun 20, 2012	
9	SUSPENDED	Jun 26, 2012	
10	P'S NOTICE OF WAIVER OF INITIAL DISCLOSURES	Sep 19, 2012	
11	BOARD'S ORDER	Oct 10, 2012	
12	STIP FOR EXT	Mar 27, 2013	
13	EXTENSION OF TIME GRANTED	Mar 27, 2013	
14	P MOT TO COMPEL DISCOVERY	Jun 06, 2013	
15	SUSP PEND DISP OF OUTSTNDNG MOT	Jun 24, 2013	
16	PROCEEDINGS RESUMED	Aug 06, 2013	
17	D'S RESPONSE TO P'S FIRST SET OF REQ FOR ADMISSIONS	Sep 06, 2013	
18	D'S RESPONSE TO P'S FIRST SET OF INTERROGS AND REQ FOR PRODUCTION OF DOCS & THINGS	Sep 06, 2013	
19	P MOT FOR SANCTIONS	Sep 11, 2013	
20	SUSP PEND DISP OF OUTSTNDNG MOT	Sep 19, 2013	
21	D MOT TO REOPEN DISCOVERY	Oct 08, 2013	
22	P OPP/RESP TO MOTION	Oct 28, 2013	
23	TRIAL DATES RESET	Mar 26, 2014	
24	P MOT TO AMEND PLEADING/AMENDED PLEADING	May 08, 2014	
25	SUSP PEND DISP OF OUTSTNDNG MOT	May 09, 2014	
26	CORRECTION TO BD ORDER	May 09, 2014	
27	CHANGE OF CORRESP ADDRESS	May 09, 2014	
28	TRIAL DATES RESET	Jun 28, 2014	
29	ANSWER	Aug 07, 2014	
30	ANSWER	Aug 07, 2014	
31	D MOT FOR EXT W/O CONSENT	Aug 07, 2014	

## **EXHIBIT G**

TRADEMARK ASSIGNMENT

Electronic Version v1.1  
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL

CONVEYING PARTY DATA

Name	Formerly	Execution Date	Entity Type
EMPIRE STATE REALTY OP, L.P.		10/07/2013	LIMITED PARTNERSHIP: DELAWARE

RECEIVING PARTY DATA

Name:	ESRT EMPIRE STATE BUILDING, L.L.C.
Street Address:	ONE GRAND CENTRAL PLACE
Internal Address:	60 EAST 42ND STREET
City:	NEW YORK
State/Country:	NEW YORK
Postal Code:	10165
Entity Type:	LIMITED LIABILITY COMPANY: DELAWARE

PROPERTY NUMBERS Total: 17

Property Type	Number	Word Mark
Registration Number:	2411972	EMPIRE STATE BUILDING
Registration Number:	2413667	EMPIRE STATE BUILDING
Registration Number:	2429297	
Registration Number:	2430828	
Registration Number:	3610613	THE WORLD'S MOST FAMOUS OFFICE BUILDING
Registration Number:	4026299	DARE TO DREAM
Serial Number:	85526325	EMPIRE STATE REALTY TRUST
Serial Number:	85526332	EMPIRE STATE REALTY GROUP
Serial Number:	85526341	EMPIRE STATE REALTY
Serial Number:	85526336	EMPIRE STATE REALTY OP
Serial Number:	85548304	EMPIRE STATE REALTY OBSERVATORY
Serial Number:	85548319	EMPIRE STATE REALTY HOLDINGS
Serial Number:	85548328	EMPIRE STATE REALTY CONSTRUCTION

OP \$440.00 2411972

Serial Number:	85548358	EMPIRE STATE CONSTRUCTION
Serial Number:	85893209	EMPIRE STATE REALTY TRUST
Serial Number:	85893230	
Serial Number:	86038634	EMPIREMOMENT

**CORRESPONDENCE DATA**

Fax Number: 2125750671  
*Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent via US Mail.*  
Phone: 212-790-9200  
Email: trademark@cll.com  
Correspondent Name: William M. Borchard  
Address Line 1: 1133 Avenue of the Americas  
Address Line 4: New York, NEW YORK 10036

ATTORNEY DOCKET NUMBER:	24078-005 WMB/FM
NAME OF SUBMITTER:	William M. Borchard
Signature:	/William M. Borchard/
Date:	10/23/2013

Total Attachments: 2  
source=ESRT EMPIRE STATE ASSIGNMENT#page1.tif  
source=ESRT EMPIRE STATE ASSIGNMENT#page2.tif

**SERVICE MARK ASSIGNMENT**

WHEREAS, **EMPIRE STATE REALTY OP, L.P.**, a Delaware limited partnership (of which the general partner is Empire State Realty Trust, Inc., a Maryland corporation), of One Grand Central Place, 60 East 42nd Street, New York, New York 10165 ("Assignor") has adopted, used and is using, or has applied to register, the marks shown on the attached schedule (the "Marks"),

and

WHEREAS, **ESRT EMPIRE STATE BUILDING, L.L.C.**, a Delaware limited liability company, of One Grand Central Place, 60 East 42nd Street, New York, New York 10165 ("Assignee") is succeeding to the business of Assignor to which the Marks pertain, which business is ongoing and existing, and is desirous of acquiring the Marks,

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor does hereby assign unto Assignee, all of Assignor's common law and statutory right, title and interest in and to each of the Marks, worldwide, together with the goodwill of the business symbolized by it, and any and all applications for it and registrations of it, including the applications and registrations identified in the schedule below, as well as the right to file and prosecute applications to register each of the Marks and the right to take legal actions against infringements occurring either before or after the date of this assignment and to collect and retain all monetary and other benefits derived from such actions.

**EMPIRE STATE REALTY OP, L.P.**

By \_\_\_\_\_

Name: Thomas N. Keltner, Jr.

Title: Authorized Signatory

Date: October **7**, 2013

**SCHEDULE TO SERVICE MARK ASSIGNMENT**  
**From**  
**EMPIRE STATE REALTY OP, L.P.**  
**To**  
**ESRT EMPIRE STATE BUILDING, L.L.C.**

	Mark	Application or Registration No.
1	EMPIRE STATE BUILDING	2411972
2	EMPIRE STATE BUILDING	2413667
3	Building Image	2429297
4	Building Image	2430828
5	THE WORLD'S MOST FAMOUS OFFICE BUILDING	3610613
6	DARE TO DREAM	4026299
7	EMPIRE STATE REALTY TRUST	85526325
8	EMPIRE STATE REALTY GROUP	85526332
9	EMPIRE STATE REALTY	85526341
10	EMPIRE STATE REALTY OP	85526336
11	EMPIRE STATE REALTY OBSERVATORY	85548304
12	EMPIRE STATE REALTY HOLDINGS	85548319
13	EMPIRE STATE REALTY CONSTRUCTION	85548328
14	EMPIRE STATE REALTY CONSTRUCTION	85548358
15	EMPIRE STATE REALTY TRUST & Silhouette Design	85893209
16	Silhouette Design	85893230
17	EMPIREMOMENT	86038634
	All common law marks used without registration by Assignor or a licensee	

24078/005/1429333.7

## **EXHIBIT H**

ESTTA Tracking number: **ESTTA459494**

Filing date: **03/01/2012**

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

**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

**Opposer Information**

Name	Empire State Building Company L.L.C.
Granted to Date of previous extension	04/04/2012
Address	c/o Malkin Holdings, LLC 60 East 42nd St New York, NY 10165 UNITED STATES

Attorney information	Maya L. Tarr Cowan, Liebowitz & Latman, P.C. 1133 Avenue of the Americas New York, NY 10036 UNITED STATES trademark@cll.com, wmb@cll.com, mxt@cll.com Phone:212-790-9200
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**Applicant Information**

Application No	85213453	Publication date	12/06/2011
Opposition Filing Date	03/01/2012	Opposition Period Ends	04/04/2012
Applicant	Liang, Michael 55-25 98th Place, Apt. 3C Corona, NY 11368 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 032. All goods and services in the class are opposed, namely: 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
---

**Grounds for Opposition**

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

**Marks Cited by Opposer as Basis for Opposition**

U.S. Registration	2411972	Application Date	05/13/1999
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No.			
Registration Date	12/12/2000	Foreign Priority Date	NONE
Word Mark	EMPIRE STATE BUILDING		
Design Mark	<b>EMPIRE STATE BUILDING</b>		
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 1931/05/01 First Use In Commerce: 1931/05/01 entertainment services, namely, providing observation decks in a skyscraper for purposes of sightseeing		

U.S. Registration No.	2413667	Application Date	05/13/1999
Registration Date	12/19/2000	Foreign Priority Date	NONE
Word Mark	EMPIRE STATE BUILDING		
Design Mark	<b>EMPIRE STATE BUILDING</b>		
Description of Mark	NONE		
Goods/Services	Class 036. First use: First Use: 1931/05/01 First Use In Commerce: 1931/05/01 REAL ESTATE SERVICES, NAMELY THE MANAGEMENT AND LEASING OF REAL ESTATE		

U.S. Registration No.	2429297	Application Date	05/13/1999
Registration Date	02/20/2001	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of	The mark consists of the shape of the exterior of a skyscraper with a pointed,		

Mark	spindled top.
Goods/Services	Class 036. First use: First Use: 1931/05/01 First Use In Commerce: 1931/05/01 REAL ESTATE SERVICES, NAMELY THE MANAGEMENT AND LEASING OF REAL ESTATE

U.S. Registration No.	2430828	Application Date	05/13/1999
Registration Date	02/27/2001	Foreign Priority Date	NONE

Word Mark	NONE
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Design Mark	
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Description of Mark	The mark consists of the shape of the exterior of a skyscraper with a pointed, spindled top.
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Goods/Services	Class 041. First use: First Use: 1931/05/01 First Use In Commerce: 1931/05/01 ENTERTAINMENT SERVICES, NAMELY, PROVIDING OBSERVATION DECKS IN A SKYSCRAPER FOR PURPOSES OF SIGHTSEEING
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Attachments	75705741#TMSN.gif ( 1 page )( bytes ) 75705740#TMSN.gif ( 1 page )( bytes ) 75705772#TMSN.gif ( 1 page )( bytes ) 75705756#TMSN.gif ( 1 page )( bytes ) NYC BEER LAGER NOO.pdf ( 6 pages )(69284 bytes )
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### 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.

Signature	/Maya L. Tarr/
Name	Maya L. Tarr
Date	03/01/2012



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 ( “Applicant’s Goods”), as shown in intent to use Application Serial No. 85/213,453 (the “Application”), and having been granted extensions of time to oppose up to and including April 4, 2012, hereby opposes the same.

As grounds for opposition, it is alleged that:

1. Since long prior to January 8, 2011, Applicant’s filing date and constructive first use date, Opposer, its predecessors, and its affiliated and related entities, and/or licensees have used the word mark 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, without limitation, the following distinctive stylizations:



, alone or with other word, letter and/or design elements (“Opposer’s Empire State Building Marks”), in connection with entertainment services, real estate services and a wide variety of goods and services, including, but not limited to, restaurant services and alcoholic beverages.

2. Opposer owns U.S. federal registrations for Opposer’s Empire State Building Marks in International Classes 36 and 41, namely, Registration Nos. 2411972, 2413667, 2429297 and 2430828, which are all incontestable.

3. Since long prior to January 8, 2011, Applicant's constructive first use date, Opposer, its predecessors, and their affiliated and related entities, and/or licensees have promoted and advertised the sale and distribution of goods and services bearing or offered in connection with Opposer's Empire State Building Marks, including, but not limited to, entertainment services, real estate services and a wide variety of goods and services, including, but not limited to, restaurant services and alcoholic beverages, and have offered such goods and rendered such services in commerce.

4. Opposer has built up highly valuable goodwill in Opposer's Empire State Building Marks, and said goodwill has become closely and uniquely identified and associated with Opposer.

5. On January 8, 2011, Applicant filed the Application for Applicant's Mark for Applicant's Goods, based on an intent to use.

6. Upon information and belief, Applicant did not use Applicant's Mark in United States commerce for any of Applicant's Goods covered in the Application prior to its constructive first use date of January 8, 2011.

7. The description of Applicant's Mark in the Application indicates that "The mark consists of a building resembling the Empire State Building surrounded by three concentric circles." Moreover, the word elements of Applicant's Mark include only the descriptive or generic terms "NYC," "BEER," and "LAGER," which Applicant has disclaimed in the Application. Upon information and belief, Applicant intends to trade on the enormous good will of Opposer by using a design of the "Empire State Building" in combination with the geographic term "NYC," which is the abbreviation for New York City, in Applicant's Mark.

8. The dominant feature of Applicant's Mark is the image of the Empire State Building.

9. The goods covered by the Application are closely related to the goods offered and services rendered in connection with Opposer's Empire State Building Marks.

10. Applicant's Mark so resembles Opposer's Empire State Building Marks as to be likely, when used in connection with Applicant's Goods, to cause confusion, to cause mistake, and to deceive the trade and public, who are likely to believe that Applicant's Goods have their origin with Opposer and/or that such goods are approved, endorsed or sponsored by Opposer or associated in some way with Opposer. Opposer would thereby be injured by the granting to Applicant of a certificate of registration for Applicant's Mark.

11. Opposer's Empire State Building Marks are distinctive and famous and were so prior to January 8, 2011, Applicant's constructive first use date of Applicant's Mark for Applicant's Goods. Registration of Applicant's Mark will also injure Opposer by causing a likelihood of dilution by blurring of the distinctive quality of Opposer's Empire State Building Marks.

12. Applicant's Mark violates Section 2(a) of the Lanham Act in that it would falsely suggest a connection between Applicant and Opposer. More specifically, Applicant's Mark violates Section 2(a) of the Lanham Act because (a) Applicant's Mark contains as an important element of its mark a design of Opposer's famous Empire State Building previously used by Opposer; (b) Applicant's Mark would be recognized as being associated with the Empire State Building in that Applicant's Mark points uniquely and unmistakably to that building; (c) Opposer is not connected with the activities performed by Applicant under Applicant's Mark;

and (4) Opposer's identity is of sufficient fame or reputation that a connection with Opposer would be presumed when Applicant's Mark is used with Applicant's Goods.

WHEREFORE, Opposer believes that it will be damaged by registration of Applicant's Mark and requests that the opposition be sustained and said registration be denied.

Please recognize as attorneys for Opposer in this proceeding William M. Borchard, Mary L. Kevlin, and Maya L. Tarr (members of the bar of the State of New York) and the firm Cowan, Liebowitz & Latman, P.C., 1133 Avenue of the Americas, New York, New York 10036.

Please address all communications to Mary L. Kevlin, Esq. at the address listed below.

Dated: New York, New York  
March 1, 2012

Respectfully submitted,

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

By: /Maya L. Tarr/

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 March 1, 2012, I caused a true and correct copy of the foregoing Notice of Opposition to be sent via First Class Mail, postage prepaid, to Applicant's Attorney of Record, David Yan, Esq., Law Offices of David Yan, 13620 38<sup>th</sup> Avenue Suite 11E, Flushing, New York 11354-4232.

/Maya L. Tarr/  
Maya L. Tarr

## **EXHIBIT I**

Generated on: This page was generated by TSDR on 2014-08-07 14:11:07 EDT

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

**Mark Literal Elements:** NYC BEER LAGER  
**Standard Character Claim:** No  
**Mark Drawing Type:** 3 - AN ILLUSTRATION DRAWING WHICH INCLUDES WORD(S)/ LETTER(S)/NUMBER(S)  
**Description of Mark:** The mark consists of a building resembling the Empire State Building surrounded by three concentric circles. The middle circle is wide and contains the wording "NYC BEER" in the interior. The circles are surrounded by a wreath with a wheat pattern. At the bottom is a banner with the term "LAGER" inside.  
**Color(s) Claimed:** Color is not claimed as a feature of the mark.  
**Disclaimer:** "NYC BEER" AND "LAGER"  
**Design Search Code(s):** 05.07.02 - Bundles, grain; Haystacks; Stalks (grain)  
05.15.02 - Laurel leaves or branches (borders or frames); Wreaths  
07.03.01 - Skyscrapers  
24.09.07 - Advertising, banners; Banners  
26.01.18 - Circles, three or more concentric; Concentric circles, three or more; Three or more concentric circles  
26.01.21 - Circles that are totally or partially shaded.

## Goods and Services

**Note:** The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks "\*" identify additional (new) wording in the goods/services.

**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

**International Class(es):** 032 - Primary Class  
**U.S Class(es):** 045, 046, 048  
**Class Status:** ACTIVE  
**Basis:** 1(b)

## Basis Information (Case Level)

<b>Filed Use:</b> No	<b>Currently Use:</b> No	<b>Amended Use:</b> No
<b>Filed ITU:</b> Yes	<b>Currently ITU:</b> Yes	<b>Amended ITU:</b> No
<b>Filed 44D:</b> No	<b>Currently 44D:</b> No	<b>Amended 44D:</b> No
<b>Filed 44E:</b> No	<b>Currently 44E:</b> No	<b>Amended 44E:</b> No
<b>Filed 66A:</b> No	<b>Currently 66A:</b> No	
<b>Filed No Basis:</b> No	<b>Currently No Basis:</b> No	

## Current Owner(s) Information

**Owner Name:** Liang, Michael  
**Owner Address:** 55-25 98th Place, Apt. 3C  
Corona, NEW YORK 11368  
UNITED STATES

**Legal Entity Type:** INDIVIDUAL

**Citizenship:** UNITED STATES

## Attorney/Correspondence Information

### Attorney of Record

**Attorney Name:** David Yan, Esq. **Docket Number:** 2011-006  
**Attorney Primary Email Address:** [davidyanlawfirm@yahoo.com](mailto:davidyanlawfirm@yahoo.com) **Attorney Email Authorized:** Yes

### Correspondent

**Correspondent Name/Address:** DAVID YAN  
LAW OFFICES OF DAVID YAN  
136-20 38TH AVENUE  
SUITE 11E  
FLUSHING, NEW YORK 11354 4232  
UNITED STATES  
**Phone:** (718) 888-7788 **Fax:** (718) 888-0870  
**Correspondent e-mail:** [davidyanlawfirm@yahoo.com](mailto:davidyanlawfirm@yahoo.com) **Correspondent e-mail Authorized:** Yes

### Domestic Representative - Not Found

## 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

### TM Staff Information

**TM Attorney:** WEBSTER, WILLIAM M

**Law Office Assigned:** LAW OFFICE 102

### File Location

**Current Location:** PUBLICATION AND ISSUE SECTION

**Date in Location:** Nov. 02, 2011

## Proceedings

**Summary**

Number of Proceedings: 2

**Type of Proceeding: Opposition**Proceeding Number: [91204122](#)

Filing Date: Mar 01, 2012

Status: Pending

Status Date: Mar 01, 2012

Interlocutory Attorney: MARY CATHERINE FAINT

**Defendant**

Name: Michael Liang

Correspondent Address: DAVID YAN  
LAW OFFICES OF DAVID YAN  
136-20 38TH AVENUE, SUITE 11E  
FLUSHING NY , 11354 4232  
UNITED STATESCorrespondent e-mail: [davidyanlawfirm@yahoo.com](mailto:davidyanlawfirm@yahoo.com)**Associated marks**

Mark	Application Status	Serial Number	Registration Number
NYC BEER LAGER	Opposition Pending	<a href="#">85213453</a>	

**Plaintiff(s)**

Name: Empire State Building Company L.L.C.

Correspondent Address: ERIC J SHIMANOFF  
COWAN LIEBOWITZ & LATMAN PC  
1133 AVENUE OF THE AMERICAS  
NEW YORK NY , 10036  
UNITED STATESCorrespondent e-mail: [ejs@cl.com](mailto:ejs@cl.com) , [lmr@cl.com](mailto:lmr@cl.com) , [wmb@cl.com](mailto:wmb@cl.com) , [trademark@cl.com](mailto:trademark@cl.com) , [fxm@cl.com](mailto:fxm@cl.com) , [mlk@cl.com](mailto:mlk@cl.com)**Associated marks**

Mark	Application Status	Serial Number	Registration Number
EMPIRE STATE BUILDING	Renewed	<a href="#">75705741</a>	<a href="#">2411972</a>
EMPIRE STATE BUILDING	Renewed	<a href="#">75705740</a>	<a href="#">2413667</a>
	Renewed	<a href="#">75705772</a>	<a href="#">2429297</a>
	Renewed	<a href="#">75705756</a>	<a href="#">2430828</a>

**Prosecution History**

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Mar 01, 2012	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Mar 01, 2012	Apr 10, 2012
3	PENDING, INSTITUTED	Mar 01, 2012	
4	D'S MOTION FOR AN EXTENSION OF TIME	Apr 10, 2012	
5	EXTENSION OF TIME GRANTED	May 10, 2012	
6	D'S MOTION FOR AN EXTENSION OF TIME	Jun 11, 2012	
7	ANSWER	Jun 12, 2012	
8	P'S MOT TO SUSP PEND SETLMT NEGOTIATIONS	Jun 20, 2012	
9	SUSPENDED	Jun 26, 2012	
10	P'S NOTICE OF WAIVER OF INITIAL DISCLOSURES	Sep 19, 2012	
11	BOARD'S ORDER	Oct 10, 2012	
12	STIP FOR EXT	Mar 27, 2013	
13	EXTENSION OF TIME GRANTED	Mar 27, 2013	
14	P MOT TO COMPEL DISCOVERY	Jun 06, 2013	
15	SUSP PEND DISP OF OUTSTNDNG MOT	Jun 24, 2013	
16	PROCEEDINGS RESUMED	Aug 06, 2013	
17	D'S RESPONSE TO P'S FIRST SET OF REQ FOR ADMISSIONS	Sep 06, 2013	
18	D'S RESPONSE TO P'S FIRST SET OF INTERROGS AND REQ FOR PRODUCTION OF DOCS & THINGS	Sep 06, 2013	
19	P MOT FOR SANCTIONS	Sep 11, 2013	

20	SUSP PEND DISP OF OUTSTNDNG MOT	Sep 19, 2013
21	D MOT TO REOPEN DISCOVERY	Oct 08, 2013
22	P OPP/RESP TO MOTION	Oct 28, 2013
23	TRIAL DATES RESET	Mar 26, 2014
24	P MOT TO AMEND PLEADING/AMENDED PLEADING	May 08, 2014
25	SUSP PEND DISP OF OUTSTNDNG MOT	May 09, 2014
26	CORRECTION TO BD ORDER	May 09, 2014
27	CHANGE OF CORRESP ADDRESS	May 09, 2014
28	TRIAL DATES RESET	Jun 28, 2014
29	ANSWER	Aug 07, 2014
30	ANSWER	Aug 07, 2014
31	D MOT FOR EXT W/O CONSENT	Aug 07, 2014

**Type of Proceeding: Extension of Time**

**Proceeding Number:** [85213453](#) **Filing Date:** Dec 07, 2011  
**Status:** Terminated **Status Date:** Apr 04, 2012

**Interlocutory Attorney:**

**Defendant**

**Name:** Liang, Michael

**Correspondent Address:** DAVID YAN, ESQ.  
LAW OFFICES OF DAVID YAN  
13620 38TH AVE STE 11E  
FLUSHING NY , 11354-4232  
UNITED STATES

**Associated marks**

Mark	Application Status	Serial Number	Registration Number
NYC BEER LAGER	Opposition Pending	<a href="#">85213453</a>	

**Potential Opposer(s)**

**Name:** Empire State Building Company L.L.C.

**Correspondent Address:** William M. Borchard  
Cowan, Liebowitz & Latman, P.C.  
1133 Avenue of the Americas  
New York NY , 10036  
UNITED STATES

**Correspondent e-mail:** [trademark@cfl.com](mailto:trademark@cfl.com) , [wmb@cfl.com](mailto:wmb@cfl.com)

**Associated marks**

Mark	Application Status	Serial Number	Registration Number
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**Prosecution History**

Entry Number	History Text	Date	Due Date
1	INCOMING - EXT TIME TO OPPOSE FILED	Dec 07, 2011	
2	EXTENSION OF TIME GRANTED	Dec 07, 2011	