

ESTTA Tracking number: **ESTTA703200**

Filing date: **10/20/2015**

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	Other Motions/Papers
Filer's Name	David Yan
Filer's e-mail	davidyanlawfirm@yahoo.com
Signature	/s/ David Yan
Date	10/20/2015
Attachments	Declaration of DAvid Yan in Opositin to Opposer's Motion to extend.pdf(14987 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  
ESBT EMPIRE STATE BUILDING, L.L.C., :                   Opposition No.: 91204122  
  :                   :  
  :                   :  
  :                   :  
  :                   :  
  :                   :  
  :                   :  
  :                   :  
  :                   :  
  :                   :  
  :                   :  
----- X

**DECLARATION OF DAVID YAN IN OPPOSITION TO THE OPPOSER’S MOTION  
TO EXTEND THE DEADLINE TO FILE OPPOSER’S REPLY TRIAL BRIEF**

*or in the alternative*

**APPLICANT’S CROSS MOTION TO EXTEND THE  
DEADLINE TO FILE THE APPLICANT’S BRIEF**

Upon the accompanying Declaration of David Yan, Esq., Applicant hereby opposes the Opposer’s Motion to extend the deadline to file Opposer’s Reply Trial Brief, or in the alternative, cross-moves the Board for an Order pursuant to Fed. R. Civ. P. 6(b)(1) and TBMP § 509.01 extending the October 20, 2015 deadline for Applicant to file his reply trial brief, if any by twelve days until and including November 16, 2015. Opposer has only shown his personal cause, not good cause, to have the Board to extend the Opposer’s deadline to file opposer’s reply trial brief.

If the Board intend to grant the Opposer's Motion to extend the deadline to file Opposer's Reply Trial Brief, Applicant will cross move the Board to extend the Applicant's deadline to file the Applicant's opposing trial brief until and include November 17, 2015, two business days after the Applicant's counsel completes a Jury trial in the U.S. District Court for the Southern District of New York on November 13, 2015. The Jury trial will start on November 2, 2015 and continue for 10 days until November 13, 2015. The Applicant's counsel is the lead counsel representing plaintiffs in the said Jury trial. There are pre-trial motions and preparations to be finished before the Jury trial.

When the Board re-set the briefing deadline, the Applicant's counsel was away from this office from October 17, 2015 to October 18, 2015 and traveled to Pompano Beach, Florida to represent his client in a detained hearing before the U.S. Immigration Court.

Therefore, Applicant's counsel has shown good cause such that the Board should grant the instant Applicant's motion to extend the deadline of the Applicant's opposition trial brief.

Dated: Flushing, New York  
October 20, 2015

Respectfully submitted,

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

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and complete copy of the foregoing *Applicant's Declaration and Cross-Motion* have been served on Opposer's Attorney of Record, Eric J. Shimanoff, Esq. Cowan Liebowitz, & Latman, P.C. by mailing said copy on October 20, 2015, via First Class Mail, postage prepaid to: Opposer's Attorney of Record, Eric J. Shimanoff, Esq., Cowan Liebowitz, & Latman, P.C., located at 1133 Avenue of the Americas, New York, NY 10036-6799, Tel.: (212) 790-9200.

/s/ David Yan/

\_\_\_\_\_

David Yan

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

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

----- X  
ESBT EMPIRE STATE BUILDING, L.L.C., :                   Opposition No.: 91204122  
  :                   :  
  :                   :  
  :                   :  
  :                   :  
  :                   :  
  :                   :  
  :                   :  
  :                   :  
  :                   :  
  :                   :  
  :                   :  
----- X

**DECLARATION OF DAVID YAN**

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

1. I am the attorney for Applicant in the above captioned matter. I submit this declaration in support of the Applicant’s cross motion for an Order pursuant to FRCP 6(b)(1) and TBMP § 509.01 extending the October 20, 2015 deadline for Applicant to file his opposing trial brief until and including November 17, 2015. No prior request for such an extension for the trial brief has been made by Applicant.
2. The Applicant’s counsel is a lead counsel representing more than 20 plaintiffs for a Jury trial starting November 2, 2015 for two weeks until November 13, 2015 in the U.S. District Court for the Southern District of New York. The Jury trial will start on November 2, 2015 and continue for 10 days until November 13, 2015. There are pre-trial motions and preparations to be finished before the Jury trial. The pre-trial conference is on October 23, 2015.

3. When the Board re-set the briefing deadline, the Applicant's counsel was away from this office from October 17, 2015 to October 18, 2015 and traveled to Pompano Beach, Florida to represent his client in a detained hearing before the U.S. Immigration Court.

4. Opposer's initial trial brief is meritless since the Opposer's trial brief completely rely upon a trade mark that Opposer has waived its opposition in its Notice of Opposition. The Opposer's Notice of Opposition does not contain the Opposer's mark relied upon by the Plaintiff/Opposer in its trial depositions and brief. Plaintiff/Opposer has thoroughly relied upon a mark in its trial depositions and brief that was not disclosed in its purported pretrial disclosures.

5. I therefore respectfully request the Board extend Applicant's deadline to file the Applicant's brief until and include Tuesday, November 17, 2015.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT. EXECUTED ON OCTOBER 20, 2015 AT NEW YORK, NEW YORK.

/s/ David Yan/  
David Yan, Esq.