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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	Motion to Extend
Filer's Name	David Yan
Filer's e-mail	davidyanlawfirm@yahoo.com
Signature	/s/ David Yan
Date	10/20/2015
Attachments	Motion of Applicant to extend Applicant's deadline_10-20-2015.pdf(14446 bytes )

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

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

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ESBT EMPIRE STATE BUILDING, L.L.C., :                   Opposition No.: 91204122  
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**APPLICANT’S CROSS MOTION TO EXTEND THE  
DEADLINE TO FILE THE APPLICANT’S BRIEF**

Upon the accompanying Declaration of David Yan, Esq., Applicant hereby 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, by twenty-eight days until and including 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. As demonstrated in the attached Yan Declaration, Applicant has shown good cause such that the Board should grant the instant motion to accommodate the Jury Trial schedule of the Applicant’s counsel. *See Societa Per Azioni Chianti Ruffino Esportazione Vinicola Toscana v. Colli Spolentini Spoletoducali SCRL*, 59 U.S.P.Q.2d 1383, 1384 (T.T.A.B. 2001).

**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 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 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/

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David Yan



spent tones amount of the time in working with the opposing counsel, a one-thousand attorney firm, to submit Joint Proposed Pretrial Order, Joint Proposed Jury Instructions, and Joint Proposed Jury Verdict Form, which have consumed most of time for the past month.

3. The pre-trial conference is on October 23, 2015. Before the pre-trial conference, the Applicant's counsel has to submit all motions *in limine* in connection with the Jury trial.

4. When the U.S. District Court for the Southern District of New York set the Jury trial schedule in the past September, the schedule overlaps the Board's briefing schedule. I, however, have no way to request the SDNY to re-set the Jury trial schedule because the SDNY could not find another block of time to accommodate a 10-day Jury trial in the near future.

5. Furthermore, 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.

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

7. 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.