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

Proceeding	91210563
Party	Defendant Kingsley Ventures Corporation
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Signature	/Amy J. Everhart/
Date	11/27/2013
Attachments	Answer to Notice of Opp. Serial 85730110 BRITANNICA Oppos. 91210563.pdf(617732 bytes )

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

In the matter of Application Serial No. 85540559, 85671115, 85671118, 85659514 and 85730110 for the marks BRITANNICA, BRITANNIC, BRITANNIA, BRITANNICA CAPITAL and BRITANNICA.

Gregory A. Lewis,	(	
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	(	
Opposer,	(	Opposition No.: 91207552
	(	Opposition No.: 91209887
v.	(	Opposition No.: 91210104
	(	Opposition No.: 91210136
Kingsley Ventures Corporation,	(	Opposition No.: 91210563
	(	
Applicant	(	
	(	

**ANSWER TO NOTICE OF OPPOSITION WITH AFFIRMATIVE DEFENSES AS  
TO SERIAL NUMBER 85730110 FOR THE MARK BRITANNICA  
(OPPOSITION NO. 91210563)**

Applicant, Kingsley Ventures Corporation, hereby submits its Answer to the Notice of Opposition filed by Opposer, Gregory A. Lewis, as follows, with the numbered Paragraphs corresponding to the numbers of Paragraphs of Notice of Opposition under headings used in Notice of Opposition:

1. Lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 1 of the Notice of Opposition, and therefore denies same.
2. Lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 2 of the Notice of Opposition, and therefore denies same.

3. Lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 3 of the Notice of Opposition, and therefore denies same.
4. Lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 4 of the Notice of Opposition, and therefore denies same.
5. Denies that Applicant was not operating under the name BRITANNICA CAPITAL PARTNERS LLC in the United States after December 19, 2011. Lacks knowledge or information sufficient to form a belief as to the remaining allegations of Paragraph 5 of the Notice of Opposition, and therefore denies same.
6. Lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 6 of the Notice of Opposition, and therefore denies same.
7. Lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 7 of the Notice of Opposition, and therefore denies same.
8. Lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 8 of the Notice of Opposition, and therefore denies same.
9. Lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 9 of the Notice of Opposition, and therefore denies same.
10. Lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 10 of the Notice of Opposition, and therefore denies same.
11. Lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 11 of the Notice of Opposition, and therefore denies same.
12. Denies the allegations of Paragraph 12 of the Notice of Opposition.
13. Denies the allegations of Paragraph 13 of the Notice of Opposition.

14. Denies that Applicant cannot have provided the services identified in its instant application, but lacks knowledge or information sufficient to form a belief as to the remaining allegations of Paragraph 14 of the Notice of Opposition.
15. Denies the allegations of Paragraph 15 of the Notice of Opposition.
16. Denies the allegations of Paragraph 16 of the Notice of Opposition.
17. Admits that Applicant filed the present application for registration on September 16, 2012 and claimed a first use date at least as early as June 1, 2004 and first use in commerce date at least as early as June 1, 2004. Denies all remaining allegations in Paragraph 17 of the Notice of Opposition.
18. Admits the Applicant is the owner of trademark application serial no. 85540559. Denies all remaining allegations in Paragraph 18 of the Notice of Opposition.
19. Admits that the present application and the USPTO trademark application serial number 85/540559 include the word "BRITANNICA." Denies all remaining allegations in Paragraph 19 of the Notice of Opposition.
20. Admits that Applicant filed trademark application serial number 85/540559 for registration on February 12, 2012 and claimed a first use date at least as early as February 9, 2012 and first use in commerce date at least as early as February 12, 2012. Denies all remaining allegations in Paragraph 20 of the Notice of Opposition.
21. Admits that the present application and the USPTO trademark application serial number 85/540559 include the word "BRITANNICA." Denies all remaining allegations in Paragraph 21 of the Notice of Opposition.

22. Admits that Applicant registered the domain name britannicacapital.com, where it advertises and promotes its services, but denies all other allegations contained in Paragraph 22 of the Notice of Opposition.
23. Admits that Applicant advertises and promotes its services on its website. Denies all remaining allegations of Paragraph 23 of the Notice of Opposition.
24. Admits the allegations of Paragraph 24 of the Notice of Opposition.
25. Admits that Opposer's attorney responded to the Applicant's attorney and requested certain information, but denies all remaining allegations contained in Paragraph 25 of the Notice of Opposition.
26. Denies the allegations of Paragraph 26 of the Notice of Opposition.
27. Admits that Applicant provided Opposer with evidence of first use, but denies all remaining allegations in Paragraph 27 of the Notice of Opposition.
28. Denies the allegations of Paragraph 28 of the Notice of Opposition.
29. Lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 29 of the Notice of Opposition.
30. Denies the allegations of Paragraph 30 of the Notice of Opposition.
31. Lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 31 of the Notice of Opposition, except admits that Opposer has no rights to use any mark that is likely to cause confusion as to source, sponsorship, or affiliation with Applicant's BRITANNICA mark.
32. Denies the allegations of Paragraph 32 of the Notice of Opposition.
33. Admits the allegations of Paragraph 33 of the Notice of Opposition.
34. Denies the allegations of Paragraph 34 of the Notice of Opposition.

35. Denies the allegations of Paragraph 35 of the Notice of Opposition.
36. Denies the allegations of Paragraph 36 of the Notice of Opposition, except admits that Opposer has no rights to use any mark that is likely to cause confusion as to source, sponsorship, or affiliation with Applicant's BRITANNICA mark.
37. Denies the allegations of Paragraph 37 of the Notice of Opposition.
38. Denies the allegations of Paragraph 38 of the Notice of Opposition.
39. Denies the allegations of Paragraph 39 of the Notice of Opposition.
40. Denies the allegations of Paragraph 40 of the Notice of Opposition.
41. Admits that Applicant's specimens are Applicant's genuine marketing materials, but denies all remaining allegations contained in Paragraph 41 of the Notice of Opposition.
42. Denies the allegations of Paragraph 42 of the Notice of Opposition.
43. Denies the allegations of Paragraph 43 of the Notice of Opposition.
44. Admits that Applicant's specimens are Applicant's genuine marketing materials, but denies all remaining allegations of Paragraph 44 of the Notice of Opposition.
45. Denies the allegations of Paragraph 45 of the Notice of Opposition.
46. Denies the allegations of Paragraph 46 of the Notice of Opposition.
47. Denies the allegations of Paragraph 47 of the Notice of Opposition.
48. Denies the allegations of Paragraph 48 of the Notice of Opposition.
49. Denies the allegations of Paragraph 49 of the Notice of Opposition.
50. Denies the allegations in Paragraph 50 of the Notice of Opposition.

51. Admits that the mark contains the wording "BRITANNICA", and a design of an animal. Denies all remaining allegations in Paragraph 51 of the Notice of Opposition.
52. Admits that the mark contains the wording "BRITANNICA", and the design of "a lion-like animal with a spear-shaped tail with a flame coming from its mouth." Denies all remaining allegations in Paragraph 52 of the Notice of Opposition.
53. Admits that the specimen contains the wording "BRITANNICA" and the design of a lion-like animal with a spear-shaped tail with a flame coming from its mouth. Denies all remaining allegations in Paragraph 53 of the Notice of Opposition.
54. Denies the allegations in Paragraph 54 of the Notice of Opposition.
55. Denies the allegations in Paragraph 55 of the Notice of Opposition.
56. Denies the allegations in Paragraph 56 of the Notice of Opposition.
57. Denies the allegations in Paragraph 57 of the Notice of Opposition.
58. Denies the allegations in Paragraph 58 of the Notice of Opposition.

## **FIRST AFFIRMATIVE DEFENSE**

### **Fraudulent Conduct, Unclean Hands and Equitable Estoppel**

Applicant repeats and re-alleges each of the foregoing paragraphs (including from the motion to dismiss the second amended notices of opposition) as though fully set forth herein. Opposer has filed a trademark application with what appear to be misappropriated specimens.

- 1) One of the specimens appears to have been misappropriated from the Bespoke Investment Group with a description "Chart given to clients explaining different funds

available to clients/investors under the mark.” The Bespoke Investment Group Chart is shown below:

**BESPOKE** www.BespokeInvest.com

Opposer’s apparently misappropriated specimen is below:

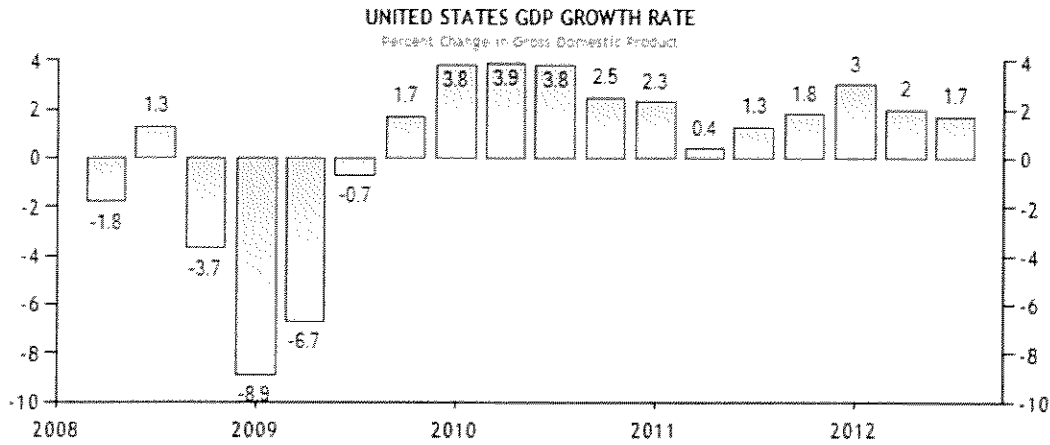
**BRITANNICA CAPITAL INVEST SECTORS**

2) Another specimen that Opposer falsely attributes to himself and he has intentionally misled the USPTO to believe that he has been distributing to his alleged clients “explaining

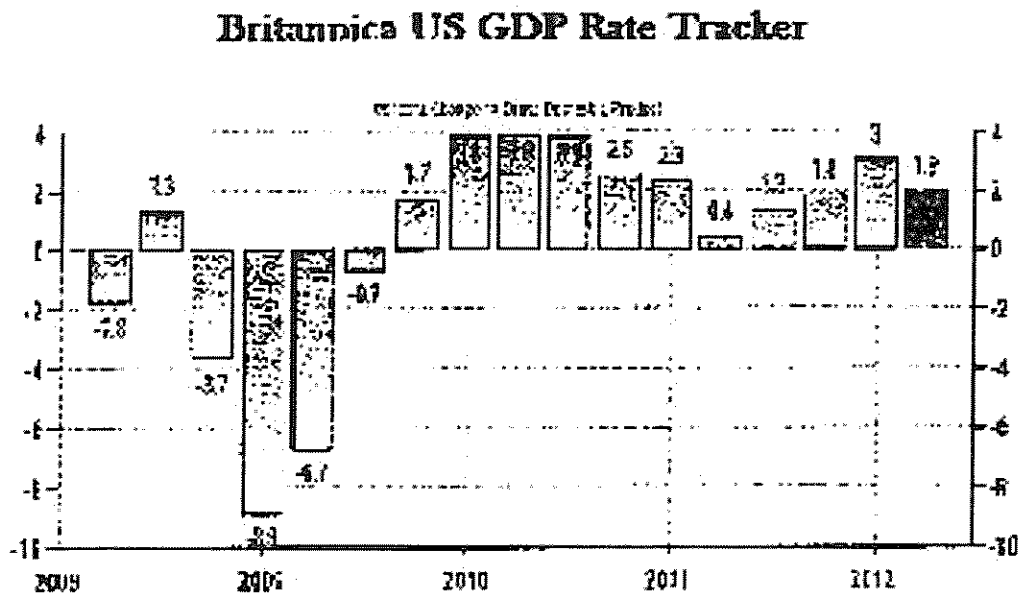


macroeconomic trends” is apparently misappropriated from a famous macroeconomic data website, “Trading Economics.”

The Trading Economic Graph is shown below:

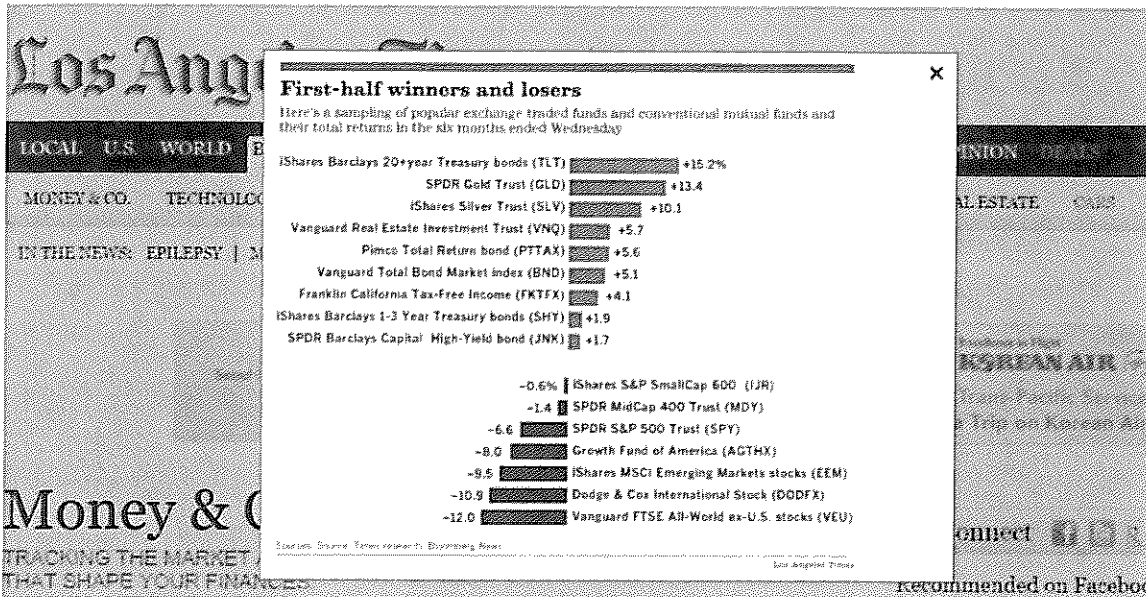


Opposer’s specimen that appears to be a misappropriated copy of the graph above is shown below:



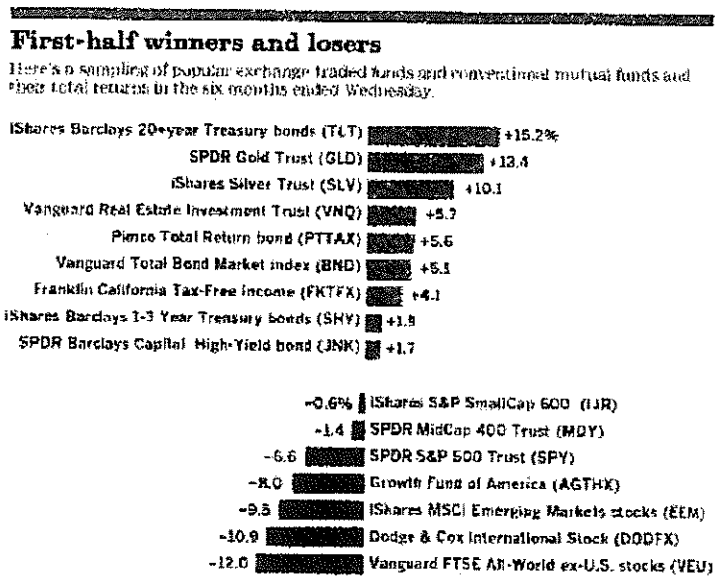
3) Opposer apparently misappropriated another specimen from the *Los Angeles Times*:

The *Los Angeles Times*' original Table is below:



Opposer's specimen including the apparently misappropriated graph is shown below:

**BRITANNICA ETF TRACKER**



The submission of willfully plagiarized, fabricated and fraudulent specimens with willfully false statements intended to deceive and intended to misappropriate Applicant's rights in its mark is material because Opposer's trademark application would not be allowed without such submission. Opposer committed fraud in support of his involved application. Opposer has unclean hands. Opposer's trademark application is fraudulent and Opposition should be equitably estopped. Applicant is entitled to relief.

## **SECOND AFFIRMATIVE DEFENSE**

### **Fraudulent Conduct, Unclean Hands and Equitable Estoppel**

Applicant repeats and re-alleges each of the foregoing paragraphs (including from the motion to dismiss the second amended notices of opposition) as though fully set forth herein. It can evidently be established that (1) there was in fact another use of the same or a confusingly similar mark at the time the oath was signed by Opposer on July 18, 2012, because Applicant had filed for one of its marks in February and a second one in June; (2) the other user (in this case, the Applicant) had legal rights superior to Opposer; (Opposer had no prior use and no use analogous to trademark use as discussed above and therefore Applicant's rights were superior); (3) Opposer knew that the other user, namely Applicant, had rights in the mark superior to Opposer's (and this is evident from an email Opposer had sent the Applicant in or around May 2012 inquiring about one of Applicant's website under the mark), and either believed that a likelihood of confusion would result from Applicant's use of its mark or had no reasonable basis for believing otherwise; and (4) Opposer, in failing to disclose these facts to the U.S. Patent and

Trademark Office, intended to procure a registration to which it was not entitled. Opposer has therefore committed fraud in support of his involved application. Opposer has unclean hands. Opposer's trademark application is fraudulent and Opposition should be equitably estopped. Therefore, Applicant is entitled to relief.

### **THIRD AFFIRMATIVE DEFENSE**

#### **Fraudulent Conduct, Unclean Hands and Equitable Estoppel**

Applicant repeats and re-alleges each of the foregoing paragraphs as though fully set forth herein. Opposer filed for an "In Use" trademark application of the mark based upon the false and fraudulent declaration that Opposer was providing the services listed under his mark in commerce. Opposer is not providing any of these services in commerce as admitted in Paragraph 5 and Paragraph 11 of the Notice of Opposition. More recently, after (and due to) Applicant's repeated protests, defense memoranda and other communications, Opposer has finally changed the filing basis from 1(a) to 1(b) for every single service listed in his trademark application serial number 85680188 (but only after Applicant exposed Opposer and his attorney's fraud through motions for sanctions), essentially admitting that Opposer had made willfully false statements before the USPTO about prior use, and Opposer at most has an intent to use the mark in the future. Opposer has made no use of the mark for any service to date. Opposer knowingly, and with reckless disregard for the truth, made false assertions with a willful intention to deceive, in filing trademark application no. 85680188, in order to usurp and misappropriate Applicant's rights in the mark to himself. These fraudulent acts and this fraudulent application form the very basis of the current opposition. Therefore, Opposition should

be equitably estopped. Opposer also has unclean hands. Therefore, Applicant is entitled to relief.

#### **FOURTH DEFENSE**

##### **Opposer has failed to state a claim against Applicant upon which relief may be granted**

Applicant repeats and re-alleges each of the foregoing paragraphs (including from the motion) as though fully set forth herein. Opposer fails to allege any sales under the mark to anyone, anywhere, for any goods or services, at any time. To the contrary, Opposer alleges absence of sales by Opposer to date. Opposer has failed to allege any analogous use by him. Opposer has conceded absence of all public awareness activities under the mark by him. Opposer has alleged that he has no marketable product. Opposer has also failed to allege an exact date of first use anywhere. Opposer fails to allege any activities that would grant him priority rights in the mark BRITANNICA. Opposer's pleading is insufficient, redundant, immaterial, impertinent and/or scandalous. Opposer has failed to properly allege harm. Therefore, Opposer has failed to state a claim upon which relief may be granted. Therefore, Applicant is entitled to relief.

#### **FIFTH AFFIRMATIVE DEFENSE**

##### **Lack of Standing**

Applicant repeats and re-alleges each of the foregoing paragraphs (including from the motion) as though fully set forth herein. Opposer has no standing because the trademark application he uses to try to allege standing is evidently fraudulent and cannot be used to gain standing. Opposer has failed to allege an exact date of first use or analogous use. Opposer has no standing because Opposer lacks priority and fails to allege any activities

in the pleading that could grant him any priority rights. Opposer has no standing because Opposer has not alleged facts to support a claim that he is a competitor of Applicant. Applicant's successful registration of his mark cannot damage a fraudulent application for a fictitious set of services that the Opposer has not sold and does not even offer. Opposer can have no real interest, nor any reasonable basis for his belief of damage. Therefore, Opposer lacks standing and Applicant is entitled to relief.

### **SIXTH AFFIRMATIVE DEFENSE**

#### **Bad faith and unclean hands**

Opposer's attorney of record had and has knowledge and belief that, since the date of Opposer's application for the subject mark and the filing of his petition, Opposer has not made bona fide use in commerce or bona fide use of the subject mark in the ordinary course of trade, or use analogous to trademark use that might bestow any alleged seniority rights. Opposer's attorney of record has not seen proof that, since the filing of Opposer's application for the subject mark, Opposer has made bona fide use in commerce of the subject mark in the ordinary course of trade, and not "token use" made merely to try to reserve a right in the subject mark, because Opposer's attorney of record prepared and submitted with the TTAB the Notice of Opposition that alleges, *inter alia*, lack of use in commerce by Opposer and lack of all sales, anywhere, by Opposer. Opposer, with legal assistance from his attorney of record, has acted in bad faith and with unclean hands in both his fraudulent trademark filing and Notice of Opposition. Opposer's attorney of record has supported a fraudulent filing by Opposer with an evidently misappropriated specimen from the Internet, and an application that falsely alleges use in commerce when

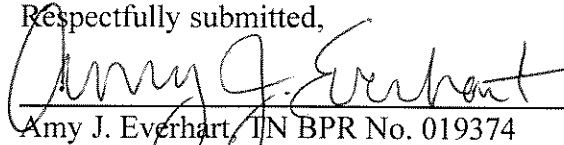
there is no use, and assisted and continues to assist Opposer in infringing and tortious conduct against Applicant. Opposer's attorney of record has represented Opposer and his trademarks and services marks since at least September 2012. Opposer and his attorney of record therefore have acted in bad faith and have unclean hands, and Applicant is entitled to relief.

### SEVENTH AFFIRMATIVE DEFENSE

#### **Bad faith, fraud, deception, mischief, negligence, and unclean hands**

Applicant repeats and re-alleges each of the foregoing paragraphs (including from the motion) as though fully set forth herein. Opposer fraudulently filed a use-in-commerce based trademark application for a fictitious list of services when he knew he had no use and he knew Applicant had been using the mark in commerce. Opposer intentionally and willfully tried to deceive the USPTO and Applicant. Opposer has recently had to file a material amendment from 1(a) to 1(b) for all of its alleged services because Opposer has never had any use. Opposer also apparently misappropriated a specimen from the internet and attempted to willfully and intentionally deceive the USPTO, the TTAB and the public.

Respectfully submitted,



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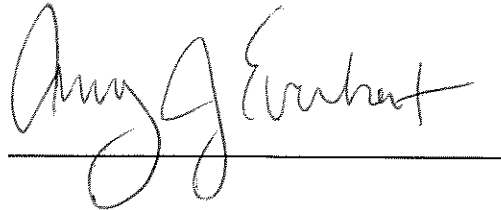
[maria@everhartlawfirm.com](mailto:maria@everhartlawfirm.com)

Attorneys for Applicant,  
Kingsley Ventures Corporation

**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing document was served on all counsel of record below via U.S. mail on this 27th day of November, 2013.

JEFFREY SONNABEND  
SONNABENDLAW  
600 PROSPECT AVENUE  
BROOKLYN, NY 11215  
UNITED STATES



A handwritten signature in cursive script, reading "Amy J. Everhart", is written over a solid horizontal line.