

ESTTA Tracking number: **ESTTA640891**

Filing date: **11/24/2014**

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	Barclays Capital Inc.		
Entity	Corporation	Citizenship	Connecticut
Address	745 Seventh Avenue New York, NY 10019 UNITED STATES		

Attorney information	Eric J. Shimanoff, Esq. Cowan, Liebowitz & Latman, P.C., 1133 Av New York, NY 10036 UNITED STATES ejs@cll.com, mel@cll.com, trademark@cll.com, fxm@cll.com Phone:2127909200		
----------------------	--	--	--

**Applicant Information**

Application No	86298069	Publication date	10/28/2014
Opposition Filing Date	11/24/2014	Opposition Period Ends	11/27/2014
Applicant	Tiger Lily Ventures Ltd 145-157 St John Street London, EC1V4PW UNITED KINGDOM		

**Goods/Services Affected by Opposition**

Class 043. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Bar services; Restaurant services
--

**Grounds for Opposition**

Other	See attached pleading
-------	-----------------------

Attachments	LEHMAN BROTHERS NOO - 86298069 - bar and restaurant.pdf(78354 bytes )
-------------	---

**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	/Eric J. Shimanoff/
Name	Eric J. Shimanoff, Esq.

Date	11/24/2014
------	------------

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

In re Application Serial No. 86/298,069  
Filed: June 2, 2014  
For Mark: LEHMAN BROTHERS  
Published in the Official Gazette: October 28, 2014

-----	X	
	:	
BARCLAYS CAPITAL INC.,	:	Opposition No.
	:	
Opposer,	:	
	:	
v.	:	
	:	
TIGER LILY VENTURES LTD,	:	<b><u>NOTICE OF OPPOSITION</u></b>
	:	
Applicant.	:	
-----	X	

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

Opposer, Barclays Capital Inc., a Connecticut Corporation, with an address of 745 Seventh Avenue, New York, New York 10019 (“Opposer” or “Barclays”), believes that it will be damaged by registration of the standard character word mark LEHMAN BROTHERS as shown in Application Serial No. 86/298,069, and hereby opposes the same.

As grounds for opposition, it is alleged that:

**The History of Lehman Brothers**

1. Lehman Brothers Holdings Inc. (“LBHI”), its present and former subsidiaries and affiliates, and/or each of their predecessors, licensees, assignors and assigns (collectively, “Lehman Brothers”), began using names and marks containing or comprising “LEHMAN,”

including without limitation the mark LEHMAN BROTHERS (collectively, the “LEHMAN Marks”) in connection with a wide variety of financial and related services over 160 years ago.

2. Founded in 1850 as a general merchandising business, Lehman Brothers soon expanded into a commodities brokerage. By the late-1800s, the firm entered the securities sale and trading business and in 1887 became a member of the New York Stock Exchange.

3. Beginning about this same time, Lehman Brothers began offering financial advisory and underwriting services. For over 100 years, Lehman Brothers advised and helped capitalize numerous companies in various industries, including retail, entertainment, communications, energy, alcohol, computers, electronics, biotechnology and micro processing. Lehman Brothers advised and underwrote some of the largest private and public offerings of the 20<sup>th</sup> and early-21<sup>st</sup> centuries. By way of example, in the early-1930s, Lehman Brothers advised on and underwrote the initial public offering of Schenley Distillers, which at the time was the second largest distiller of whiskey in the United States.

4. Articles dating back as early as 1895 refer to Lehman Brothers as a “prominent” financial services firm. A February 17, 1897 article from *The New York Times* referred to Lehman Brothers as “one of the wealthiest and best-known firms in the trade.” An August 3, 1913 article in *The New York Times* referred to Lehman Brothers as “one of New York’s largest private banking firms.”

5. By 2008, Lehman Brothers had become the fourth largest investment bank in the United States. The firm provided a broad range of financial services, including without limitation investment banking, equity and fixed-income sales and trading, research, investment management, private equity and private banking services under the LEHMAN Marks. By 2008, Lehman Brothers had in excess of \$275 billion in assets under management, had net revenues of

approximately \$19.2 billion and had over 28,000 employees in offices worldwide, including its world-wide headquarters located in its flagship building at 745 Seventh Avenue in New York, New York.

6. Upon information and belief, prior to 2008, Lehman Brothers used the LEHMAN Marks, including the mark LEHMAN BROTHERS, in connection with sponsoring various sporting and educational events and also in connection with charitable services.

7. Upon information and belief, prior to 2008, Lehman Brothers had manufactured and distributed to its employees, clients and/or business associates various branded goods containing the LEHMAN Marks, including the mark LEHMAN BROTHERS. Upon information and belief, such goods included hats, tote bags, back packs, umbrellas, shirts, rain ponchos, jackets, shorts, pens, highlighters, coffee urns, calculators, cigar humidors, water pitchers, tea pots, bowls, mouse pads, luggage tags, storage containers, trays, paperweights, key chains, coffee mugs and water bottles. Upon information and belief, one such good was a cut crystal whiskey decanter etched with the mark LEHMAN BROTHERS. Upon information and belief, another such good was a wine gift set, containing a cork screw, knife and bottle opener, which set was presented in a case embossed with the mark LEHMAN BROTHERS. Upon information and belief, these branded goods regularly were seen by members of the consuming public and still are collected, sold and traded by members of the consuming public today.

8. Between 1850 and mid-2008, Lehman Brothers and its financial and other services offered under the LEHMAN Marks, including the mark LEHMAN BROTHERS, were the subject of significant unsolicited media attention. During this time period, tens of thousands of news articles about Lehman Brothers were published by various media organizations, including such prominent and widely-circulated publications as *The New York Times* and *The*

*Wall Street Journal*. These articles detail numerous financial and other services provided by Lehman Brothers during this time period under the LEHMAN Marks, including the mark LEHMAN BROTHERS. These services included investment banking, equity and fixed-income sales and trading, research, investment management, private equity, charitable, sponsorship and private banking services. Lehman Brothers also issued numerous press releases about its business and services offered in connection with the LEHMAN Marks, including the mark LEHMAN BROTHERS, during this time.

9. As a result of Lemman Brothers' long-term and exclusive use and promotion of the LEHMAN Marks, including the mark LEHMAN BROTHERS, in connection with a broad range of financial and other services and other branded goods, the LEHMAN Marks, including the mark LEHMAN BROTHERS, became closely and uniquely associated with Lehman Brothers as a single source of such services and goods, and by 2008 had become some of the most famous marks in the financial industry. Moreover, by 2008 the fame of the LEHMAN Marks, including the mark LEHMAN BROTHERS, stretched across all industries and the marks were household names.

**Lehman Brothers' Bankruptcy and Barclays' Purchase  
of Lehman Brothers' Assets and the LEHMAN Marks**

10. Like all the major financial firms who invested heavily in subprime mortgage backed securities, beginning in 2007, Lehman Brothers began experiencing financial difficulties. Unable to satisfy its financial obligations, LBHI filed for Chapter 11 bankruptcy protection on September 15, 2008. Several LBHI subsidiaries and affiliates, including its brokerage subsidiary Lehman Brothers Inc. ("LBI"), filed for bankruptcy protection later in 2008 and into 2009.

11. At the time Lehman Brothers filed for bankruptcy in 2008, it held approximately hundreds of billions of dollars' worth of assets. The Lehman Brothers bankruptcy was the largest bankruptcy in United States history.

12. Opposer, Barclays, is one of the world's oldest and leading providers of financial, banking and related services. Founded over 300 years ago, Barclays has been conducting business in the United States since at least as early as 1932. Barclays currently operates in over seventy countries and engages in a wide range of banking and financial services, including, but not limited to, commercial and corporate banking, retail banking, investment banking, private banking, cash management, credit and debit cards, mortgage banking, and real estate services.

13. Pursuant to an asset purchase agreement dated September 16, 2008 (the "APA"), Barclays purchased several of Lehman Brothers' businesses and other assets and Lehman Brothers assigned to Barclays all of Lehman Brothers' rights in the LEHMAN Marks, including the mark LEHMAN BROTHERS, and the goodwill associated therewith.

14. With the business, Barclays acquired ownership of Lehman Brothers' headquarters at 745 Seventh Avenue and approximately 9,000 employees. Barclays paid over \$1.3 billion to acquire Lehman Brothers' investment banking business and other assets, including its intellectual property.

15. Pursuant to the APA, Barclays granted Lehman Brothers a perpetual, worldwide, non-exclusive license to use the LEHMAN Marks, including the mark LEHMAN BROTHERS, for any of Lehman Brothers' then-existing goods and services and in connection with Lehman Brothers' retained and continuing businesses and operations. Under the APA, all goodwill arising from use of the LEHMAN Marks, including the mark LEHMAN BROTHERS, by Lehman Brothers inures to Barclays' benefit.

16. On September 20, 2008, Barclays and Lehman Brothers entered into a letter agreement (the “Letter”), which was intended to amend and clarify some provisions of the APA, including provisions concerning Lehman Brothers’ license of the LEHMAN Marks, including the mark LEHMAN BROTHERS. The Letter limits the term of the Lehman Brothers’ trademark license to two years for use in connection with certain Lehman businesses, namely, Lehman Brothers’ investment banking and capital markets businesses. The Letter explicitly states that the amendment does not alter the perpetual license granted to Lehman Brothers for its other businesses (such as its asset management, alternatives-private equity and corporate cash businesses) or its other continuing operations and businesses.

17. While the LEHMAN Marks, including the mark LEHMAN BROTHERS, had been the subject of significant long-term and wide-spread media coverage during Lehman Brothers’ first one-hundred and fifty-eight years of providing financial services, Lehman Brothers’ financial troubles in 2007 through 2008, which culminated in its filing for the largest bankruptcy in United States history and selling its core businesses to Barclays, only heightened Lehman Brothers’ and its LEHMAN Marks’ presence in the media. In and about September 2008, multiple stories appeared daily in nearly every major news outlet covering Lehman Brothers’ financial troubles and ultimate bankruptcy, as well as Barclays’ acquisition of Lehman Brothers’ investment banking business and other assets.

18. While the LEHMAN Marks, including the mark LEHMAN BROTHERS, had been household names prior to Lehman Brothers’ bankruptcy filing, Lehman Brothers’ financial troubles and bankruptcy filing made the LEHMAN Marks, including the mark LEHMAN BROTHERS, some of the most ubiquitous and well-known marks in 2008. During that year, thousands of news articles concerning Lehman Brothers and its services, financial difficulties



and bankruptcy appeared in such highly-regarded and widely-circulated media outlets such as *The New York Times*, *The Wall Street Journal*, *The Washington Post*, *The Los Angeles Times* and *The Chicago Tribune*. Many of these articles highlighted Barclays' purchase of Lehman Brothers' core businesses and other assets.

19. Not only were Lehman Brothers' financial troubles and bankruptcy filing widely covered in the media at the time they occurred, they consistently have been covered by the media since that time through and including today, as was Barclays' acquisition of Lehman Brothers' core businesses and other assets.

#### **Lehman Brothers' Continued Operations Since 2008**

20. Although Lehman Brothers sold most of its investment banking business assets to Barclays and filed for bankruptcy protection in 2008, Lehman Brothers has continued to operate as a going concern since that time. When it filed for bankruptcy, Lehman Brothers held billions of dollars in assets.

21. As with many companies that face solvency issues, Lehman Brothers did not cease to exist or halt operations during the time it was in bankruptcy, and the company continues to operate today.

22. Since 2008, Lehman Brothers has been heavily engaged in investing in, improving, maintaining, managing and selling its sizable assets, including billions of dollars' worth of commercial real estate properties. Lehman Brothers also has been engaging in trades pursuant to and settling its vast portfolio of derivative swap agreements, maintaining and defending numerous litigations and managing its bankruptcy plan, in addition to its general corporate operations. During this time, Lehman also has maintained and sold its interests in various commercial loans and private equity investments. The LEHMAN Marks, including the

mark LEHMAN BROTHERS, surround every aspect of these business dealings and financial transactions.

23. To conduct its business, Lehman Brothers has employed hundreds of employees since 2008 and LBHI maintains corporate headquarters on two floors of the Time & Life Building in midtown Manhattan. Each of these floors contains a reception area featuring prominent signage branded with the LEHMAN BROTHERS mark and logo. When members of the public telephone LBHI, the receptionist identifies the company as LEHMAN BROTHERS HOLDINGS. In the lobby of the Time & Life Building, the LEHMAN BROTHERS mark and logo appears on many, if not all, of the elevator bank security turnstiles.

24. In connection with its business and financial dealings, Lehman Brothers' employees utilize business cards and stationery that contain the LEHMAN BROTHERS mark and logo. They also utilize email addresses that end with the domain name @lehmanholdings.com and use the LEHMAN Marks, including the name and mark LEHMAN BROTHERS, in their email signature blocks. Some employees at Lehman Brothers wear uniforms branded with the LEHMAN BROTHERS mark. Lehman employees also carry and sometimes wear security identification badges branded with the LEHMAN BROTHERS mark and logo. When engaging in business dealings and financial transactions, Lehman Brothers employees represent themselves as such and frequently utilize the LEHMAN Marks, including the name and mark LEHMAN BROTHERS, in both written and oral communications, contracts and other business materials.

25. Lehman Brothers' stock currently is publicly traded over the counter in three classes.

26. Lehman Brothers' core investment banking business continues to operate under the BARCLAYS name and mark. However, Barclays references the LEHMAN BROTHERS name and mark in press releases and other promotional and marketing materials concerning its acquisition of Lehman Brothers' investment banking business, employees and other assets. Barclays also owns and manages the domain name lehman.com and the website located at www.lehman.com, as well as hundreds of other domain names containing or comprising "Lehman" or variations thereof.

27. Though a third party vendor, Lehman maintains websites located at the URLs <http://dm.epiq11.com/LBI/Project> (for LBI) and <http://dm.epiq11.com/LBH/Project> (for LBHI), which websites provide information about Lehman Brothers' business dealings, including without limitation the status of asset sales, derivative swap settlements, litigations, the bankruptcy proceedings and payments to creditors. These websites prominently and frequently utilize the LEHMAN Marks. The LEHMAN BROTHERS mark and logo appears prominently on the website for LBHI.

28. LBHI emerged from bankruptcy in 2012. LBI remains as a SIPA liquidating trust. Pursuant to approved bankruptcy plans, Lehman Brothers has made significant payments to its creditors, including full re-payment to over 110,000 individual retail brokerage customers.

29. Lehman Brothers' current business operations, financial transactions, litigations, derivative swap deals, asset management and sales, payments to creditors and bankruptcy plans frequently have been reported in the media since 2008. Thousands of articles concerning these topics have appeared in prominent and widely-circulated media publications such as *The Wall Street Journal*, *The New York Times*, *The Washington Post*, *The Los Angeles Times* and *The*

*Chicago Tribune*. Several of Lehman Brothers' activities have been reported directly to the public by Lehman Brothers through press releases and the firm's public bankruptcy filings.

30. After LBHI emerged from bankruptcy in 2012, numerous articles reported on the event and Lehman Brothers' continuing business, including that Lehman Brothers was managing and selling off billions of dollars' worth of assets, was consistently entering into significant business and financial transactions, including settling derivative swaps, was engaged in numerous litigations to recover funds for creditors and had offices in New York and hundreds of employees.

31. Recent articles have appeared in widely-disseminated, major publications such as *The New York Times*, *Bloomberg Businessweek* and *CNN Money* concerning Lehman Brothers' continuing business operations and financial dealings. One such recent article, entitled "Welcome to Lehman Brothers. We're Open for Business," reported that Lehman Brothers "is an operating company" that "still controls tens of billions in assets" and "its lawyers and traders will gladly take your business." Another recent article, entitled "Lehman Brothers, We Heard You Were Dead," touts that "Lehman Brothers is having a great year" and reports that Lehman Brothers' "trading floor . . . is filled with dozens of young people who stare at financial graphs on Bloomberg terminals and talk in the hallways about the deals they're working on." Another recent article stated in its title that "Lehman Brothers is still big." Less than two months ago, *The New York Times* published an article on the front page of its Business section entitled "Revisiting the Lehman Brothers Bailout That Never Was," which article chronicled Lehman Brothers' financial services, economic difficulties, ultimate bankruptcy and continued operations.

32. Numerous articles continue to report on Barclays' acquisition of Lehman Brothers' core investment banking businesses and assets, including in connection with legal disputes between Barclays and Lehman Brothers. And Barclays itself reinforces the connection between Barclays and Lehman Brothers in its own press releases and other media and by maintenance of the website at [www.lehman.com](http://www.lehman.com), which media references the LEHMAN Marks, including the mark LEHMAN BROTHERS.

**Lehman Brothers and the LEHMAN Marks Still Are Famous**

33. Lehman Brothers and the LEHMAN Marks, including the mark LEHMAN BROTHERS, still are a significant part of the public's collective consciousness. While the LEHMAN Marks, including the mark LEHMAN BROTHERS, had been household names prior to Lehman Brothers' bankruptcy filing, Lehman Brothers' financial troubles and bankruptcy filing made the LEHMAN Marks, including the mark LEHMAN BROTHERS, some of the most ubiquitous and well-known marks in the financial services industry. The LEHMAN Marks, including the mark LEHMAN BROTHERS, were some of the most famous marks of the 20<sup>th</sup> and early-21<sup>st</sup> centuries and continue to remain famous marks today.

34. Millions of webpages reference Lehman Brothers, many of which are devoted specifically to detailing Lehman Brothers and the firm's services, financial woes, bankruptcy and history. These webpages derive from popular websites such as those maintained by Wikipedia, Investopedia, Bloomberg and Harvard University. On LinkedIn, by way of example, over 50,000 employee pages list "Lehman Brothers" in their current or past employment history. A recent search of YouTube for "Lehman Brothers" yielded over 47,000 videos, which videos have been viewed by millions of Internet users.

35. Harvard Business School maintains the "Lehman Brothers Collection" as part of its permanent Contemporary Business Archives. The collection consists of company deal books

and business records. The deal books document many of Lehman Brothers' notable investment projects from the 1920s to the 1980s. The deal books often include agreements between the sellers and underwriters, prospectuses and other literature advertising the offer, United States Securities and Exchange Commission filings and correspondence. The Lehman Brothers business records cover the administrative operations of the firm from the late 19th century to the 2000s. Harvard describes the collection as "an important resource for the study of modern business history and provides scholars with a rare opportunity to access twentieth-century corporate records."

36. Lehman Brothers and its services, business dealings, financial troubles, bankruptcy and sale of its investment banking business and other assets to Barclays also have been the subject of several recent films and television shows, including: *Too Big to Fail* (HBO 2011); *The Case Against Lehman Brothers* (CBS 60 Minutes 2012); *The Last Days of Lehman Brothers* (BBC/CNBC 2010); *Margin Call* (Lionsgate 2011), which portrayed a fictionalized Wall Street firm based on and likened in the press to Lehman Brothers; and *Inside Job* (Sony Pictures Classics, 2010), which won an Academy Award for Best Documentary.

37. Lehman Brothers often has been mentioned in popular culture since 2008, including in film, television, print and the Internet.

38. Since 2008, numerous books have been written about Lehman Brothers and the firm's business dealings, financial troubles and bankruptcy, including: *Lehman Brothers' Dance with Delusion: Wrestling Wall Street* by Stanley J. Dziedzic Jr. (2010); *The Devil's Casino: Friendship, Betrayal, and the High Stakes Games Played Inside Lehman Brothers* by Vicky Ward (2011); *Uncontrolled Risk: Lessons of Lehman Brothers and How Systemic Risk Can Still Bring Down the World Financial System* by Mark Williams (2010); *The Last of the Imperious*

*Rich: Lehman Brothers, 1844-2008* by Peter Chapman (2012); *Street Freak: Money and Madness at Lehman Brothers* by Jared Dillian (2011); *Lehman Brothers: Politics, Law & Business* by iMinds (2010); *Gorillas, markets and the search for economic values - Rethinking Lehman Brothers and the Global Financial Crises. A Nyenrode Perspective* by Edgar Karssing, Bob Hoogenboom and Marcel Pheijffer (2013); *A Colossal Failure of Common Sense: The Inside Story of the Collapse of Lehman Brothers* by Lawrence G. McDonald and Patrick Robinson (2010); and *The Murder of Lehman Brothers, An Insider's Look at the Global Meltdown* by Joseph Tibman (2009).

39. Based on Lehman Brothers' exclusive, long term and wide-spread use and promotion of the LEHMAN Marks, including the mark LEHMAN BROTHERS, in connection with a wide variety of financial and related services, as well as other goods and services, and the unsolicited widespread media coverage by widely-distributed major publications of the firm's activities—including without limitation the firm's pre-bankruptcy business dealings, operations and services for over one-hundred and fifty years, financial troubles in 2007-2008, bankruptcy in 2008 and continued post-bankruptcy operations and financial dealings—the LEHMAN Marks, including the mark LEHMAN BROTHERS, are well-known to consumers as indicating a unique source of financial services and other goods and services.

40. Although Lehman Brothers sold its core investment banking businesses and other assets to Barclays and filed for bankruptcy protection in or about 2008, Lehman Brothers still is a going concern, engaged in numerous financial transactions and business dealings, including without limitation investing in, managing and selling off assets; enforcing, collecting and settling debts and outstanding obligations (including derivative swaps); prosecuting and defending

numerous litigations; managing the bankruptcy proceedings and plans; and general business and corporate operations.

41. Consumer recognition of the LEHMAN Marks, including the mark LEHMAN BROTHERS, is just as strong today as it was at the time of the Lehman Brothers bankruptcy, when the firm was one of the largest financial institutions in the world.

42. As owner of the LEHMAN Marks, including the mark LEHMAN BROTHERS, by assignment pursuant to the APA, all the goodwill associated with and public recognition of the LEHMAN Marks—including the goodwill and public recognition derived from the continued business and financial dealings of Lehman Brothers, as Barclays' licensee—inures to the benefit of Barclays.

43. Moreover, consumers independently recognize the connection between the LEHMAN Marks, including the mark LEHMAN BROTHERS, and Barclays, as shown by the numerous third party media articles in highly-circulated major publications noting the connection, as well as Barclays' own efforts to support the connection, including in its press releases and marketing materials and its maintenance of the [www.lehman.com](http://www.lehman.com) website.

44. Barclays is the owner of U.S. Application Ser. No. 86/081,143 for the mark LEHMAN BROTHERS for “Securities brokerage services; investment consulting services; investment banking services; merchant banking services; financial and investment management services; financial planning and investment advisory services; financial research services; administration and valuation of financial investments; financial sponsorship of sporting, charitable and educational events; providing consultancy, information and advisory services relating to all the foregoing” in International Class 36, which application was filed on October 2,



2013, on an intent-to-use basis under Trademark Act Section 1(b) and was published for opposition on September 30, 2014.

45. Barclays retains its trademark rights in the LEHMAN Marks, including the mark LEHMAN BROTHERS.

**The Board Should Refuse to Register Applicant's  
Application for the LEHMAN BROTHERS Mark**

46. On June 2, 2014, Applicant Tiger Lily Ventures Ltd (hereinafter "Applicant") filed Application Ser. No. 86/298,069 (the "Application") for the mark LEHMAN BROTHERS ("Applicant's LEHMAN BROTHERS Mark") on an intent-to-use basis under Trademark Act Section 1(b) for "Bar services; Restaurant services" in International Class 43. Upon information and belief, Applicant did not use Applicant's LEHMAN BROTHERS Mark for the services covered by the Application in United States commerce prior to its constructive first use date of June 2, 2014. Upon information and belief, Applicant has not yet used Applicant's LEHMAN BROTHERS Mark for the services covered by the Application in United States commerce.

47. Applicant's proposed services in the Application are services that consumers would perceive as being related to, similar to or an extension of the goods and services that have been, could be and are used, offered in connection or associated by consumers with Opposer's LEHMAN Marks, including the mark LEHMAN BROTHERS.

48. Applicant's LEHMAN BROTHERS Mark should be refused registration under Trademark Act Section 2(d). More specifically, Applicant's LEHMAN BROTHERS Mark so resembles Opposer's LEHMAN Marks, including the mark LEHMAN BROTHERS (to which it is identical), as to be likely, when used in connection with Applicant's intended services, to cause confusion, to cause mistake, and to deceive the trade and public, who are likely to believe that Applicant's services have their origin with Opposer and/or that such services are approved,

endorsed or sponsored by Opposer or associated in some way with Opposer. Opposer thereby would be injured by the grant to Applicant of registration for Applicant's LEHMAN BROTHERS Mark.

49. Applicant's LEHMAN BROTHERS Mark should be refused registration under Trademark Act Section 13(a). More specifically, Opposer's LEHMAN Marks, including the mark LEHMAN BROTHERS, are distinctive and famous and were so prior to Applicant's constructive first use date of June 2, 2014. Registration of Applicant's LEHMAN BROTHERS Mark will injure Opposer by diluting the distinctive quality of Opposer's LEHMAN Marks, including the mark LEHMAN BROTHERS.

50. Applicant's LEHMAN BROTHERS Mark should be refused registration under Trademark Act Section 2(a) in that the mark would falsely suggest a connection between Applicant, on the one hand, and Opposer and/or Lehman Brothers, on the other hand. More specifically, registration of Applicant's LEHMAN BROTHERS Mark would violate Trademark Act Section 2(a) because: (a) Applicant's LEHMAN BROTHERS Mark is identical to the name or identity previously used by Lehman Brothers, namely, the famous LEHMAN BROTHERS name and mark; (b) Applicant's LEHMAN BROTHERS Mark would be recognized as being associated with Opposer and/or Lehman Brothers in that Applicant's LEHMAN BROTHERS Mark points uniquely and unmistakably to Opposer and/or Lehman Brothers; (c) Opposer and Lehman Brothers are not connected with the activities intended to be performed by Applicant under Applicant's LEHMAN BROTHERS Mark; and (d) the fame and reputation of Lehman Brothers and Opposer's LEHMAN BROTHERS Mark is such that, when Applicant's LEHMAN BROTHERS Mark is used with Applicant's proposed services, a connection with Opposer and/or Lehman Brothers would be presumed. Indeed, Lehman Brothers and Opposer's

LEHMAN BROTHERS Marks are so famous that they unmistakably would point to Lehman Brothers and/or Opposer regardless of the goods and services offered in connection with the mark.

51. On March 6, 2013, a party named “Tiger Lily Venture Ltd” filed Application Ser. No. 85/868,892 (the “‘892 Application”) for the mark LEHMAN BROTHERS on an intent-to-use basis under Trademark Act Section 1(b) for “Beer” in International Class 32 and “Spirits” in International Class 33. Upon information and belief, “Tiger Lily Venture Ltd” is Applicant. The Application and the ‘892 Application both list the same owner address and were filed by the same attorney. The names of the owners in the applications differ only by one letter: Venture(s). Upon information and belief, Applicant’s name is misspelled either in the Application or the ‘892 Application.

52. During the examination of the ‘892 Application, the Examining Attorney issued two office actions refusing to register the application based on a false suggestion of connection under Trademark Act Section 2(a). As noted by the Examining Attorney in her June 17, 2013 Office Action:

In this case, the applied-for mark ‘LEHMAN BROTHERS’ appears in the identical spelling as the mark ‘Lehman Brothers’ used by the investment firm. Therefore, the applied-for mark would be uniquely and unmistakably recognized by consumers to refer to the former investment firm. Although the investment firm did not distribute or produce beer or spirits, the institution associated with the ‘Lehman Brothers’ name is so famous that a connection to the firm would be presumed if the applicant were to use the mark in connection with its goods . . . . [T]he fact that Lehman Brothers has declared bankruptcy does not diminish the connection drawn to the investment firm in this case because Section 2(a) . . . protects, inter alia, ‘persons, living or dead.’

53. Moreover, upon information and belief, Applicant intended its LEHMAN BROTHERS mark to create an association with Lehman Brothers and/or Opposer and Opposer’s LEHMAN BROTHERS Mark. Applicant admitted in its response to the Examining Attorney’s

June 17, 2013 Office Action refusing to register the '892 Application that: "The term [LEHMAN BROTHERS] when used in connection with beer and whisky is designed to evoke the feelings with and parody of the bankruptcy with which Lehman Brothers has become synonymous."

54. Applicant's LEHMAN BROTHERS Mark should be refused registration under Trademark Act Section 1(b) because, upon information and belief, at the time Applicant filed its Applications, Applicant did not have a bona fide intent to use Applicant's LEHMAN BROTHERS Mark in commerce on or in connection with the services specified in the Application. Upon information and belief, Applicant has no written document(s) that would sufficiently support such an intent. Upon information and belief, Applicant filed the Application solely in order to see whether such Application would mature to allowance and whether Opposer and/or Lehman Brothers would oppose or otherwise object to Applicant's Application. Upon information and belief, Applicant does not currently intend to use Applicant's LEHMAN BROTHERS Mark in U.S. commerce on or in connection with the services specified in the Application. Upon information and belief, Applicant filed the Application merely to reserve rights in a mark.

WHEREFORE, Opposer believes that it will be damaged by registration of Applicant's LEHMAN BROTHERS Mark as set forth in the Application and requests that this opposition be sustained and said registrations be denied.

Please recognize as attorneys for Opposer in this proceeding Eric J. Shimanoff and Maryann Licciardi (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.

The filing fee of US\$300 is enclosed with this Notice of Opposition and any additional fees or deficiencies deemed to be due and owing in connection with this opposition may be charged to Deposit Account No. 03-3415 and any overpayment may be credited thereto.

Please address all communications to Eric J. Shimanoff, Esq. at the address listed below.

Date: New York, New York  
November 24, 2014

Respectfully submitted,

COWAN, LIEBOWITZ & LATMAN, P.C.

By:           /Eric J. Shimanoff/          

Eric J. Shimanoff, Esq.

Maryann Licciardi, Esq.

1133 Avenue of the Americas

New York, NY 10036

Tel: (212) 790-9200

Attorneys for Opposer

