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

Proceeding	91213057
Party	Plaintiff Hybrid Athletics, LLC
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Attachments	Opposition.pdf(13359 bytes )

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

<b>HYBRID ATHLETICS, LLC,</b>	:	
	:	
<b>Opposer,</b>	:	<b>Opposition No. 91213057</b>
	:	
<b>v.</b>	:	
	:	
<b>HYLETE LLC,</b>	:	
	:	
<b>Applicant.</b>	:	

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**HYBRID ATHLETICS, LLC’S OPPOSITION TO APPLICANT’S EX-PARTE  
REQUEST FOR EXTENSION OF TIME TO OPPOSE HYBRID’S MOTION FOR  
SUMMARY JUDGMENT AND EXPEDITED DETERMINATION OF REQUEST**

Opposer Hybrid Athletics, LLC (“Hybrid”) hereby responds to Applicant’s Motion for Extension of Time and Expedited Determination of Request (“Applicant’s Motion”), dated March 25, 2015. Hybrid opposes the thirty (30) day extension of time to oppose Hybrid’s Motion for Summary Judgment (“Hybrid’s Motion”) and the expedited determination requested by Hylete (“Applicant”).

Unfortunately, Hybrid is not surprised by Applicant’s Motion. This request comes from a party who, as the record shows in Hybrid’s Motion for Summary Judgment (Doc. No. 18), Hybrid’s Opposition to Applicant’s Motion to Extend Discovery (Doc. No. 17), Hybrid’s Motion for Sanctions (Doc. No. 11), and Hybrid’s Motion to Compel (Doc. No. 8), has over and over again failed to participate in this action.

Hybrid is diligently, and in good faith, trying to resolve this matter in an efficient and timely manner. Hybrid’s Motion was filed in a timely fashion and Applicant has had, and still has, ample time to respond. Hybrid will be prejudiced should Applicant’s Motion be granted and therefore, Hybrid respectfully requests that it be denied.

## Argument

“A motion to extend must set forth with particularity the facts said to constitute good cause for the requested extension; mere conclusory allegations lacking in factual details are not sufficient. Moreover, a party moving to extend time must demonstrate that the requested extension of time is not necessitated by the party’s own lack of diligence or unreasonable delay in taking the required action during the time previously allotted therefor.”

TBMP § 509.01(a).

Applicant’s Motion is completely devoid of any facts that would constitute good cause for the requested extension. The motion lacks any statements that Applicant has been working diligently to prepare its opposition or any reasonable excuse as to why thirty (30) days is not and has not been enough time. A month’s time is more than adequate to respond to Hybrid’s Motion. Thirty (30) days is not an expedited amount of time; it is a standard deadline in which thousands of parties, in thousands of cases, have complied. Hybrid’s Motion was filed in accordance with its allotted time and Applicant should be made to comply with its deadline, as nothing in the record or in Applicant’s Motion demonstrates otherwise.

Applicant has consistently failed to meet deadlines and/or comply with the Board’s orders (as demonstrated in the record and in Hybrid’s documents referenced above). Applicant’s Motion is unreasonable due to its negligence in the past and inactivity throughout the case. Applicant has been on notice of Hybrid’s Motion since March 2, 2015 – twenty-four (24) days ago. Hybrid agrees with Applicant that this is an “important motion.” It deserves the fullest attention – attention that Applicant has not given. Applicant should not now be given an extension as it has not satisfied its burden.

Should the Board grant Applicant’s Motion, Hybrid will be prejudiced. Hybrid has complied with all deadlines set forth in this case. It has engaged in motion practice caused by

Applicant's failure to participate, i.e. during discovery and now its failure to dedicate time to respond to Hybrid's Motion, resulting in extra time, costs and legal fees. Applicant has caused substantial delays in this matter and its statement that it "does not seek an extension of time for purposes of delay," is just not credible upon reviewing Applicant's history of delay. Applicant has failed time and time again to prosecute this matter, repeatedly causing needless delay and unnecessary motion practice.

Each passing day that this case is not resolved, confusion in the market place between Hybrid's and Applicant's marks continues. Hybrid believes no extension should be granted for the reasons set forth above and that an extension is not even necessary because there is still ample time for Applicant to respond to Hybrid's Motion.

Conclusion

In view of the foregoing, Opposer respectfully requests that the Board deny Applicant's Motion for Extension of Time and Expedited Determination of Request, requiring Applicant to timely file their opposition brief on April 1, 2015.

March 27, 2015

HYBRID ATHLETICS, LLC

/s/ Wesley W. Whitmyer, Jr.

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**CERTIFICATE OF SERVICE**

This is to certify that a true copy of the foregoing was served by first class mail, postage prepaid on the Correspondent for the Applicant as follows:

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March 27, 2015  
Date

/s/ Carrie A. Steinberg  
Carrie A. Steinberg