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

| | |
|------------------------|---|
| Proceeding | 91213057 |
| Party | Defendant Hylete LLC |
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| Submission | Testimony For Defendant |
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| Date | 12/08/2015 |
| Attachments | Potter 10-29-15 Signed.pdf(2251262 bytes) |

1 APPEARANCES:

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21 ALSO PRESENT:

22 RON WILSON

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Garrett Potter
October 29, 2015

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Hybrid vs. Hylete
Thursday, October 29, 2015
Patricia Beck, CSR No. 12090

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Garrett Potter
October 29, 2015

1 SOLANA BEACH, CALIFORNIA

2 THURSDAY, OCTOBER 29, 2015, 9:00 a.m.

3
4 GARRETT POTTER,

5 having been administered an oath, was examined and
6 testified as follows:

7
8 MR. BEGAKIS: I'll start by having everybody
9 in the room identify themselves, and for any third
10 parties in attendance, explain the purpose for their
11 attendance.

12 MR. WILSON: Ron Wilson, CEO of Hylete.

13 MR. KOSMA: Michael Kosma from Whitmyer
14 IP Group on behalf of Hybrid Athletics. With me is
15 Sarah Munn, and she will be assisting me with the
16 exhibits I'm using, and also she will be observing the
17 deposition.

18 THE WITNESS: Garrett Potter, CFO of Hylete.

19
20 EXAMINATION

21 BY MR. BEGAKIS:

22 Q. Morning, Mr. Potter. I'm John Begakis, an
23 attorney from Tsircou Intellectual Property Law,
24 counsel for Hylete, Inc. This is a deposition in
25 which I will be asking you questions, and you must

1 answer them truthfully.

2 Although no judge is present, this is a
3 formal legal proceeding, just like testifying in
4 court. And you are under the same legal obligation to
5 tell the truth, the whole truth, and nothing but the
6 truth.

7 If you don't understand any of my questions,
8 please feel free to say so, and I will repeat or
9 rephrase them. Before this deposition testimony can
10 be used in court, you will have the opportunity to
11 read over it and correct any mistakes.

12 Do you understand this?

13 A. Yes.

14 (Exhibit 1 was marked for identification by
15 the court reporter.)

16 BY MR. BEGAKIS:

17 Q. Mr. Potter, I'm handing you what's being
18 marked as Exhibit 1. Do you recognize this document?

19 A. Yes.

20 Q. What is this document?

21 A. My notice of deposition.

22 Q. Is that the reason you're here this morning?

23 A. Yes.

24 Q. Mr. Potter, where do you live?

25 A. Address specifically?

1 Q. Sure.

2 A. 2682 Morning Terrace Glen, Escondido,
3 California.

4 Q. What is your current title at Hylete?

5 A. CFO, chief financial officer.

6 Q. What is your educational background?

7 A. I have a bachelor's degree in finance and a
8 master's degree in accounting.

9 Q. Where did you earn your bachelor's degree?

10 A. Both at San Diego State University.

11 Q. What is your employment background prior to
12 working for Hylete?

13 A. Immediately before working at Hylete I
14 worked for a private equity firm called Steelpoint
15 Capital where we invested in and managed investments
16 in consumer companies.

17 Q. What was your title at Steelpoint?

18 A. Managing director.

19 Q. What was your role in that position?

20 A. I did everything from source investments to
21 negotiate the terms and the transaction, and
22 ultimately oversight. And usually that meant sitting
23 on the board of directors.

24 Q. How many boards did you sit on?

25 A. I managed -- I oversaw I would say over

1 12 companies, and I sat on 8 boards.

2 Q. What were some of these 12 companies that
3 you worked with?

4 A. Mostly consumer companies. The biggest
5 names I think were Prana, P-r-a-n-a, which is a
6 hundred million dollar apparel brand, yoga apparel
7 brand, and Skills, which is a sporting goods company.
8 Actually, still on board at Skills.

9 Q. Prior to working at Steelpoint, where did
10 you work?

11 A. Prior to Steelpoint, I worked for an
12 investment banking firm called Shoreline Partners.

13 Q. What was your title at Shoreline?

14 A. I was a managing director when I left there
15 too, but oftentimes referred to as an M&A advisor,
16 mergers and acquisitions advisor.

17 Q. What was your role in that position?

18 A. So I basically represented companies, mostly
19 who were looking to either sell their company or buy
20 other companies, and then also represent companies
21 looking to raise money.

22 Q. Roughly how many companies did you represent
23 in this time?

24 A. Over 20.

25 Q. Prior to Shoreline Partners, where did you

1 work?

2 A. I worked as a financial analyst for an
3 aerospace and defense company called BAE Systems.

4 Q. What was your title there?

5 A. Financial analyst.

6 Q. With that title, what was your role?

7 A. I was there a while so I did a few things.
8 But I basically -- I had financial oversight of our
9 contracts with clients. And then at the tail end
10 there I was working with our corporate development
11 team on acquisitions.

12 Q. What years approximately were you at
13 BAE Systems?

14 A. I believe it was 2001 to 2006.

15 Q. And approximately what years were you at
16 Shoreline Partners?

17 A. 2006 to 2009.

18 Q. Approximately what years were you at
19 Steelpoint Capital?

20 A. 2009 to -- I got that wrong. So 2006 to
21 2011 was Shoreline, and then 2011 to I guess 6/15
22 would be Steelpoint.

23 Q. What, if any, experience did you have as a
24 CFO prior to joining Hylete?

25 A. So the main experience I had as CFO was two

1 companies while I was at Steelpoint where I needed to
2 step into an interim CFO position.

3 Q. What companies did you do this with?

4 A. So the first was called WildBrain
5 Entertainment, which basically is a production for
6 cartoon animation, and second -- you had a question?

7 Q. What year were you CFO of WildBrain?

8 A. So that was 2009.

9 Q. How long were you CFO?

10 A. Actually, 2010. And it was for about two to
11 three months.

12 Q. What other companies were you --

13 A. The second was a company called H2O Audio.

14 Q. What year were you interim CFO?

15 A. That was 2012.

16 Q. How long were you interim CFO?

17 A. About six months.

18 Q. When did you begin working at Hylete?

19 A. So I first got involved in Hylete when I was
20 at Steelpoint when we made our first investment, which
21 was in 2000 -- sorry. The years I have no idea, 2013.
22 And then I became an official employee last August,
23 August 2014.

24 Q. So when you began, you weren't full-time?

25 A. No. So when we made our first investment,

1 part of the investment terms were that Steelpoint
2 would advise -- basically provide CFO advisory
3 services to the company in exchange for equity
4 basically. And I was tasked with basically providing
5 those CFO advisory services.

6 Q. When did you become full-time CFO?

7 A. August of last year 2014.

8 Q. What is your role as CFO Hylete?

9 A. So a lot of things. But, you know,
10 basically to simplify it would be the accounting,
11 bookkeeping of the company, and basically reporting,
12 financial reporting to investors, sales tax reporting,
13 all that good stuff.

14 And then secondarily I manage all of our
15 investments. Which means both sourcing new investment
16 capital and managing our investor relations with
17 existing investors. And then the third part would be
18 managing our fulfillment operations and customer
19 service teams.

20 Q. You mentioned capital raises. When did
21 Hylete initially raise capital from Steelpoint?

22 A. 2013.

23 Q. And was this trademark dispute in existence
24 at that time?

25 MR. KOSMA: Objection. Assumes facts not in

1 evidence. Misstates -- well, misleading and hearsay.

2 THE WITNESS: So there's a bifurcation here.
3 Our initial investment was a debt investment, it was
4 convertible debt, meaning that it could be converted
5 into equity later, or we could choose to leave it as
6 debt that Hylete would owe back to Steelpoint.

7 So when that initial investment was made,
8 the opposition was not known. Subsequently, before we
9 made the decision to convert our debt into equity, it
10 was known.

11 BY MR. BEGAKIS:

12 Q. At that time, was the opposition considered
13 before deciding to convert?

14 A. Yes.

15 Q. What was the general conclusion about the
16 opposition?

17 A. We talked with our counsel which was
18 Procopio, was the name of the law firm. Based upon
19 those conversations, we decided that the case lacked
20 merit and wasn't a high risk.

21 MR. KOSMA: I'm going to object to the
22 question and answer as hearsay, speculative, and lacks
23 foundation.

24 BY MR. BEGAKIS:

25 Q. How many investment rallies have there been

1 since that initial debt to equity deal?

2 A. Three additional rounds.

3 Q. In each of those rounds, has this opposition
4 been considered?

5 A. It was disclosed in the documentation, yes.

6 Q. What was the general conclusion in each of
7 those rounds?

8 A. Well, we completed each of the rounds
9 successfully. We have over 50 investors that have
10 each signed documentation that included the disclosure
11 and agreed to invest.

12 MR. KOSMA: I'm going to object to the
13 question and answer again as hearsay, speculation.
14 None of the documents have been produced under the
15 TTAB order that would show this type of evidence.

16 BY MR. BEGAKIS:

17 Q. What is the financial status of Hylete
18 today?

19 A. Can be you more specific?

20 Q. Sure. What have Hylete's revenues been in
21 the last year?

22 A. So over the last 12 months the revenues are
23 5.5 million.

24 Q. Has Hylete made a profit or loss this year?

25 A. We've lost 1.8 million over the last

1 12 months.

2 Q. Why is the company operating at a loss?

3 A. Basically the reason we're raising capital
4 is because -- so we can invest for the growth in the
5 future of the company. So we are hiring people. We
6 are building our inventory. We're making investments
7 necessary to grow the company and to -- you know, into
8 a big company.

9 We hired -- our staff is over 20 people.
10 All that takes money, and it's all oftentimes in
11 advance of the revenue. The reason you raise money --
12 I know this from my experience, you raise capital
13 before the revenue comes with the hope of profit down
14 the road.

15 MR. KOSMA: I'm also going to object to this
16 line of questioning with regard to Hylete's revenue
17 and with regard to third-party attorney's opinions as
18 irrelevant.

19 BY MR. BEGAKIS:

20 Q. Mr. Potter, have you stated any third-party
21 attorney's opinions in this deposition today?

22 A. No, not that I'm aware of.

23 MR. KOSMA: Object to that as leading, and I
24 believe the law firm named Procopio was mentioned.

25 THE WITNESS: So I'll speak to it. You have

1 to ask me questions or can I just say?

2 I didn't say that Procopio -- I didn't say
3 Procopio is paying one way or the other. I just said
4 that we consulted with Procopio and made the decision
5 to invest.

6 BY MR. BEGAKIS:

7 Q. Mr. Potter, are you aware -- as CFO of
8 Hylete, are you aware of how much money has been spent
9 on filing enforcement of Hylete's intellectual
10 property?

11 A. 140,000.

12 Q. How much of that 140,000, if you know, has
13 been spent on defending this opposition?

14 MR. KOSMA: I'm going to object. Assumes
15 facts not in evidence. It misstates the witness's
16 testimony.

17 In response to your question, you asked
18 enforcement. Now you're asking defending. Does that
19 make sense?

20 BY MR. BEGAKIS:

21 Q. Let me rephrase the question, then. How
22 much money has Hylete spent on filing enforcement and
23 defense of intellectual property?

24 A. \$140,000.

25 Q. How much has been spent on defending this

1 matter?

2 A. I actually don't have the exact dollar
3 amount, but I would estimate between 75- to \$100,000.

4 MR. KOSMA: I'm going to object to this as
5 irrelevant.

6 MR. BEGAKIS: Take a five-minute break?

7 MR. KOSMA: Sure.

8 (Brief recess.)

9 MR. BEGAKIS: We have no further questions.

10 MR. KOSMA: I just want to put one last
11 objection to his last answer with regard to the
12 spending on the lawsuit. I just want to say it's
13 hearsay, and it lacks foundation.

14 MR. BEGAKIS: Just to put also on the record
15 something that I did not put on the record at the
16 beginning. As with all of these depositions in which
17 CrossFit counsel is present, we object to their
18 presence, to the extent that Hylete considers itself a
19 competitor of CrossFit and works with companies and
20 organizations that consider themselves competitors of
21 CrossFit. Other than that, we have no other
22 questions.

23 MR. KOSMA: Take a five-minute break?

24 MR. BEGAKIS: Sure.

25 (Recess taken.)

1 MR. BEGAKIS: I would like to clarify my
2 previous objection. To the extent that Hylete, Inc.,
3 itself does not consider itself a direct competitor of
4 CrossFit but works with companies and organizations
5 who do consider themselves competitors of CrossFit,
6 and to that extent we object to the attendance of a
7 CrossFit attorney.

8 (Exhibit 2 was marked for identification by
9 the court reporter.)

10
11 CROSS-EXAMINATION

12 BY MR. KOSMA:

13 Q. Mr. Potter, I'm going to hand you what's
14 been marked as Exhibit 2. Mr. Potter, do you
15 recognize this document?

16 A. Yes.

17 Q. What is this document?

18 A. It's one of our previous investor decs.

19 Q. Do you consider this a confidential
20 document?

21 A. No.

22 MR. BEGAKIS: Objection. Calls for
23 speculation.

24 BY MR. KOSMA:

25 Q. Does Hylete consider this a confidential

1 document?

2 A. No.

3 Q. You say this was a previous investor
4 overview. How many more have been made since this
5 time, since this one has been marked February 13th,
6 2014?

7 A. Can you re-ask the question one more time?

8 Q. This investor overview is marked
9 February 13, 2014.

10 A. Yes.

11 Q. You mentioned it's a previous --

12 A. Right.

13 Q. -- investor overview. Have there been more
14 made since then?

15 A. Yes.

16 Q. Do you know how many?

17 A. We raised capital in February of 2015, so
18 there's an updated version then. So at least one.
19 And then we raised additional capital in the middle of
20 2015, so there might have been an update then. These
21 aren't new decs each time, but there are changes.

22 MR. KOSMA: No further questions.

23 MR. BEGAKIS: I have none either.

24 (The deposition of GARRETT POTTER concluded
25 at 9:25 a.m.)

DEPOSITION ERRATA SHEET

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GARRETT POTTER

DATED

1 STATE OF CALIFORNIA)
2 COUNTY OF SAN DIEGO) ss.

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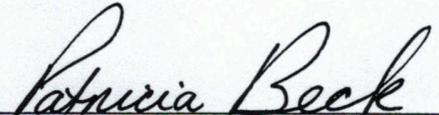
I, PATRICIA BECK, Certified Shorthand Reporter for the State of California, do hereby certify:

That prior to being examined, the witness named in the foregoing deposition was by me duly sworn to testify to the truth, the whole truth and nothing but the truth.

That said deposition was taken before me at the time and place therein set forth and was taken down by me in machine shorthand and thereafter was transcribed into typewriting under my direction and supervision, and I hereby certify the foregoing transcript is a full, true and correct transcript of my shorthand notes so taken.

I further certify that I am neither counsel for nor related to any party to said action nor in any way interested in the outcome thereof.

IN WITNESS WHEREOF, I have hereunto subscribed my name this November 13, 2015, at San Diego, California.


PATRICIA BECK
CSR NO. 12090

Garrett Potter
October 29, 2015

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Garrett Potter
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