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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
Correspondence Address	MICHAEL J KOSMA WHITMYER IP GROUP LLC 600 SUMMER STREET STAMFORD, CT 06901 UNITED STATES mkosma@whipgroup.com, litigation@whipgroup.com
Submission	Testimony For Plaintiff
Filer's Name	Michael J. Kosma
Filer's e-mail	mkosma@whipgroup.com, litigation@whipgroup.com
Signature	/Michael J. Kosma/
Date	03/04/2016
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**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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**OPPOSER'S NOTICE OF FILING JENTGEN REBUTTAL TRIAL TESTIMONY**

PLEASE TAKE NOTICE THAT pursuant to Trademark Rule 2.123(h) and 2.125(c),  
Opposer files herewith the following:

- 1) A true copy of the transcript of the rebuttal testimony deposition of Ian Jentgen, taken on January 21, 2016, and all exhibits thereto.

Respectfully submitted,

HYBRID ATHLETICS, LLC

March 4, 2016

/s/ Michael J. Kosma  
Michael J. Kosma  
Christina L. Winsor  
Whitmyer IP Group LLC  
600 Summer Street  
Stamford, CT 06901  
Tel. (203) 703-0800  
Facsimile (203) 703-0801  
Email: [litigation@whipgroup.com](mailto:litigation@whipgroup.com)  
mkosma@whipgroup.com

*ATTORNEYS FOR OPPOSER*

**CERTIFICATE OF SERVICE**

This is to certify that a true copy of the foregoing OPPOSER’S NOTICE OF FILING JENTGEN REBUTTAL TRIAL TESTIMONY was served by first class mail, postage prepaid on the Correspondent for the Applicant at the below address. This is to further certify that a true copy of the testimony deposition, taken on January 21, 2016, of Ian Jentgen and all exhibits thereto were served upon Correspondent for the Applicant via FedEx overnight delivery on February 10, 2016.

Kyriacos Tsircou  
Tsircou Law, P.C.  
515 S. Flower Street, Floor 36  
Los Angeles, CA 90071-2221

March 4, 2016  
Date

/s/ Joan M. Burnett  
Joan M. Burnett

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

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HYBRID ATHLETICS, LLC,

Opposer,

Opposition No.

-against-

91213057

HYLETE LLC,

Applicant.

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DEPOSITION of IAN JENTGEN

January 21, 2016

Stamford, Connecticut

12:00 p.m.

Reported by:

Joseph Danyo V

Job no: 15691

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DEPOSITION of IAN JENTGEN, the Witness in  
the above-entitled action, held at the above time  
and place, taken before Joseph Danyo V, a  
Shorthand Reporter and Notary Public of the State  
of New York, pursuant to stipulations between  
Counsel.

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APPEARANCES:

WHITMYER IP GROUP

Attorneys for Opposer

600 Summer Street

Stamford, Connecticut 06901

BY: CHRISTINA L. WINSOR, ESQ.  
cwinsor@whipgroup.com

-and-

MICHAEL J. KOSMA, ESQ.  
mkosma@whipgroup.com

TSIRCOU INTELLECTUAL PROPERTY LAW

Attorneys for Applicant

515 S. Flower Street, 36th Floor

Los Angeles, California 90071

BY: JOHN M. BEGAKIS, ESQ.  
johnbegakis@tsircoulaw.com

\* \* \*

1 I. Jentgen

2 I A N J E N T G E N,

3 called as a witness, having been duly  
4 sworn by a Notary Public, was examined and  
5 testified as follows:

6 MS. WINSOR: So I'll start by asking  
7 everyone in the room to identify  
8 themselves, and their connections in the  
9 case.

10 Go ahead.

11 MR. BEGAKIS: John Begakis, counsel  
12 for Hylete, Inc.

13 THE WITNESS: Ian Jentgen. This is  
14 for my rebuttal notice.

15 MR. KOSMA: Michael Kosma. I'm with  
16 the Whitmyer IP Group here, representing  
17 Hybrid Athletics.

18 MS. WINSOR: And Christina Winsor,  
19 Whitmyer IP Group, representing Hybrid  
20 Athletics.

21 EXAMINATION BY

22 MS. WINSOR:

23 Q. Good afternoon, Mr. Jentgen.

24 A. Good afternoon.

25 Q. As you know, this is a deposition in

1 I. Jentgen  
2 which I will ask you questions, and you must  
3 answer them truthfully. Although, no judge is  
4 present, this is a formal legal proceeding, just  
5 like testifying in court, and you are under the  
6 same legal obligation to tell the truth, the  
7 whole truth and nothing but the truth.

8 If you do not understand any of my  
9 questions, please feel free to say so, and I will  
10 repeat or rephrase it. Before the deposition can  
11 be used in this proceeding, you'll have the  
12 opportunity to read it over and make any  
13 corrections.

14 Do you understand?

15 A. Yes.

16 MS. WINSOR: Okay. I'd like to mark  
17 this document as Jentgen Exhibit 8.

18 (Whereupon, Jentgen Exhibit 8,  
19 document consisting of a notice of  
20 rebuttal was hereby marked for  
21 identification, as of this date.)

22 Q. Mr. Jentgen, I've handed you a  
23 document marked Exhibit 8.

24 Do you recognize this document?

25 A. Yes. It's the notice of rebuttal.

1 I. Jentgen

2 Q. Great. And is this why you're here  
3 today?

4 A. Correct.

5 Q. Okay. Have you reviewed Mr. Ron  
6 Wilson's deposition transcript?

7 A. Yes. I did.

8 Q. And do you recall reviewing any  
9 specific sections of that deposition?

10 A. Yes. There were some specific pages  
11 in the deposition that were called out.

12 Q. Okay. Do you remember what those  
13 sections included?

14 MR. BEGAKIS: Objection. Leading the  
15 witness.

16 A. The sections included -- it seemed to  
17 be like there was a back and forth or --

18 MR. BEGAKIS: Objection. Calls for  
19 speculation.

20 A. -- concern over, there was a concern  
21 over the branding, whether it's the confusion of  
22 the branding, the Hylete H and the Hybrid H, or  
23 if it's the shorts that were both sold by Hybrid  
24 Athletics, and then sold by Hylete.

25 Q. Okay.

1 I. Jentgen

2 A. So that was the discrepancy that was  
3 evident in the deposition that I read.

4 Q. What was his opinion on that?

5 MR. BEGAKIS: Objection. Leading.

6 A. His opinion was that there was more  
7 of a discrepancy resulting in the similarity of  
8 the shorts, as opposed to the actual marks.

9 Q. Okay. And do you agree with him?

10 A. No --

11 MR. BEGAKIS: Objection.

12 Speculation.

13 A. -- I don't agree with him at all.

14 It's pretty evident in terms of my  
15 situation and in all my experiences, that the  
16 shorts are an example of where the branding  
17 exists, and there's a discrepancy, but the shorts  
18 are not the issue. It's always the branding on  
19 the shorts that is referenced.

20 When I'm dealing with a friend or a  
21 client or someone attending a seminar, there was  
22 always the issue over the Hylete H versus the  
23 Hybrid H, and just sometimes the branding was  
24 evidenced in the shorts, but at oftentimes, it  
25 was evidenced in other parts of apparel or pieces

1 I. Jentgen

2 of apparel, such as shirts.

3 Q. Okay. Great. And do you recall any  
4 instances --

5 A. Yes.

6 Q. -- where you can--

7 MR. BEGAKIS: Objection. Calls for  
8 -- strike that.

9 A. There are several instances, where I  
10 think in my original testimony I spoke on a few.

11 One of the major events where the  
12 inconsistencies or the discrepancies were, we'd  
13 ask somebody who will identify the Hylete H and  
14 thinking it was a Hybrid H was the CrossFit  
15 regional events.

16 It's an event where we have a booth  
17 set up, and there are oftentimes people who have  
18 either been connected with the Hybrid community  
19 by attending our gym.

20 It's a Northeast Region, so we're out  
21 doing seminars in the Northeast Region. We're  
22 selling apparel in the Northeast Region, so  
23 people are going to see our apparel, and that  
24 just happened to be the region that I'm at, but  
25 there's instances where a total stranger comes up

1 I. Jentgen  
2 and they see that I'm wearing a Hybrid Athletic  
3 shirt with an H on it, and then points to an  
4 Hylete H on a shorts, in that instance, and they  
5 point directly to the H. And I think that's  
6 where it's important to note that they weren't  
7 just pointing at the shorts. It's pointing  
8 directly at the H on the Hylete shorts, and that  
9 mark.

10 Q. Okay.

11 A. And referencing my shirt, and seeing  
12 that in their mind, it's clear from my  
13 perspective that there's a connection, but then  
14 we had to have the open conversation that it's  
15 clear as day that we're not affiliated with  
16 Hylete, and so that was actually a presumption  
17 and error on their part.

18 MR. BEGAKIS: Objection.

19 Speculation. Lacks foundation.

20 A. So that's one instance. There was  
21 another instance where it's been just going  
22 through my normal day as coaching classes at  
23 Hybrid Athletics.

24 We had a drop-in from Philadelphia.

25 He looks at our eight-foot Hybrid Athletics H

1 I. Jentgen

2 that's on the wall, and then looks down at his  
3 shirt, and he said, did you guys rip them off  
4 with the logo?

5 And I had to tell him that actually  
6 we preceded them, and it's quite the opposite way  
7 around.

8 MR. BEGAKIS: Objection. Hearsay.

9 Calls for speculation. Lacks foundation.

10 Q. So in any instances like this, people  
11 were always clear to associate the mark?

12 MR. BEGAKIS: Objection. Leading the  
13 witness.

14 A. Yes. The marks were always what was  
15 in question, and so I mean in reading Ron's  
16 testimony, versus what I had said, it just so  
17 happened that, oftentimes, it was evidenced in  
18 the shorts, but that never meant it was exclusive  
19 to the shorts. It happened with the shirts.  
20 It's about the similarity in the marks, and I  
21 mean from ten feet away, they look the same, so  
22 -- and if somebody is passing by, and they see  
23 Hybrid Athletics shorts that are being worn by a  
24 member of our staff at a seminar, if they're on  
25 Rob in a magazine, if they're on an athlete

1 I. Jentgen

2 competing at regionals, and you're getting that  
3 snapshot of the logo, and then you're looking at  
4 the Hylete H logo, they -- that's where the  
5 confusion is. It's in the brand.

6 Q. Okay. And for these shorts, they  
7 were co-branded with --

8 MR. BEGAKIS: Objection. Leading the  
9 witness.

10 Q. Were they co-branded?

11 A. The shorts -- the Hybrid Athletic  
12 shorts?

13 Q. Um-hum.

14 A. Yes, yes.

15 Q. Okay. With what other --

16 A. JACO.

17 Q. Okay.

18 A. So they were JACO co-branded shorts.

19 Q. Okay. Are you aware that JACO sold  
20 shorts without co-branding?

21 A. Yes.

22 Q. Okay. So people could purchase  
23 shorts from JACO?

24 MR. BEGAKIS: Objection. Leading.

25 A. It's possible.

1 I. Jentgen

2 Q. Okay.

3 A. Yes.

4 MR. BEGAKIS: Speculation.

5 Q. So if people liked the JACO shorts,  
6 and, as you said, it's possible they could have  
7 purchased them directly from JACO?

8 MR. BEGAKIS: Objection. Leading.  
9 Calls for speculation.

10 Q. In your opinion, why would a customer  
11 of Hybrid purchase the Hybrid shorts?

12 A. As opposed to the JACO shorts?

13 Q. Um-hum.

14 A. They would purchase our shorts,  
15 because it's carrying the Hybrid Athletics mark,  
16 and in doing so, you're supporting the Hybrid  
17 brand. Hybrid is a brand that's different than  
18 JACO. I mean it's everything stands for our  
19 affiliate, our seminars, our athletes.

20 So the people that are in our  
21 community, our style of training, so it's in  
22 support of, and identifying with that Hybrid  
23 Athletics brand.

24 So that's why you would purchase the  
25 Hybrid Athletics shorts, as opposed to the JACO

1 I. Jentgen

2 shorts --

3 Q. Okay.

4 A. -- that aren't branded with a Hybrid  
5 Athletics H.

6 Q. Okay. Thank you.

7 And is there any reason why people  
8 would have reason to think you were representing  
9 JACO?

10 MR. BEGAKIS: Objection. Leading.  
11 Calls for speculation.

12 A. No. I can't imagine why they would  
13 think -- like in terms of wearing the shorts, no.

14 MR. BEGAKIS: Objection. Lacks  
15 foundation.

16 Q. Okay.

17 MR. WINSOR: I have no more  
18 questions.

19 MR. BEGAKIS: I have a few. Want to  
20 give me ten minutes?

21 MS. WINSOR: Go ahead.

22 (Whereupon, a short recess was  
23 taken.)

24 MR. BEGAKIS: We're back on the  
25 record.

1 I. Jentgen

2 EXAMINATION BY

3 MR. BEGAKIS:

4 Q. Good morning, Mr. Jentgen.

5 A. Good morning.

6 Q. I just have a couple of additional  
7 questions for you.

8 A. Okay.

9 Q. So you mentioned in your initial  
10 deposition that you have experience in the social  
11 media marketing?

12 A. Yes.

13 Q. You handle a lot of social media  
14 marketing for Hybrid Athletics?

15 A. Yes.

16 Q. You're specifically familiar with  
17 marketing through Facebook?

18 A. Yes.

19 Q. In fact, you talked at length at your  
20 deposition about marketing through Facebook, and  
21 how that algorithm has changed.

22 A. Yes. I mean it's impacted the  
23 business, whether it's been Hybrid, or even my  
24 career previously as a consultant, so I mean when  
25 I was working with the agency.

1 I. Jentgen

2 Q. Are you familiar, either with your  
3 experience working with the agency or working  
4 with Hybrid Athletics, are you experienced in  
5 boosting posts?

6 A. Yes.

7 Q. So you know how to boost a post?

8 A. Yes.

9 Q. And what goes into targeting people  
10 through those boosted posts?

11 A. Yes.

12 Q. Or, rather, not targeting people but  
13 targeting interests; correct?

14 A. Well, you -- I would rephrase it to  
15 say you target people based on their interests,  
16 so because you're, in the end game, you're  
17 targeting people you're not targeting interests.  
18 You're targeting people on Facebook, because  
19 Facebook users are people.

20 Q. So if you were boosting a post, and  
21 you wanted to target me, could you put in my  
22 name?

23 A. No.

24 Q. If you were marketing something  
25 through Facebook, and you wanted to target me and

1 I. Jentgen

2 the rest of my firm, could you put in any of our  
3 names?

4 A. No. Not using -- no.

5 Q. So how would you target me then, if  
6 you couldn't target me through my name?

7 A. You could target-- the best way to  
8 target you would be to target your firm, it might  
9 be to your interest, so you can target people  
10 based on their likes, so if you -- as an employee  
11 of your firm, it's reasonable to say that you  
12 would target them, based on that like, but that's  
13 not a --

14 Q. My interest in a litigation or my  
15 interest in -- if you're targeting something, or  
16 let's keep it to athletics.

17 If you were targeting somebody in  
18 athletics, you wouldn't be able to target me  
19 specifically by my name, but you would be able to  
20 target the fact that I like basketball.

21 Is that an accurate statement?

22 MR. WINSOR: Objection. Ambiguous.

23 A. You can target people if they like  
24 basketball. If that is a like of theirs on  
25 Facebook, you can target them because of that

1 I. Jentgen

2 like, and you can add in other likes and there  
3 are other features as well, in terms of  
4 targeting.

5 Q. But to be clear, you can't target me  
6 based on my name; correct?

7 A. Not using any -- not using the  
8 Facebook's infrastructure or anything that I've  
9 been exposed to, in terms of boosting, and I --  
10 yes. Not by me, no.

11 MR. BEGAKIS: Okay. I want introduce  
12 into evidence what's being marked as  
13 Jentgen Exhibit 9, I guess. We started on  
14 8.

15 THE WITNESS: Not to say -- yes.

16 (Whereupon, Jentgen Exhibit 9,  
17 document was hereby marked for  
18 identification, as of this date.)

19 Q. Mr. Jentgen, could you read --

20 A. Do you want me to read the whole  
21 thing?

22 Q. No. I'm going to direct you.

23 A. Oh, okay. All right.

24 Q. If you can read the beginning of the  
25 sentence that starts on the end of line 10, and

1 I. Jentgen  
2 read through to the end of that sentence on line  
3 14.

4 Please. Read that for me.

5 A. Yes.

6 "I was being targeted by Hylete, so I  
7 don't know through what interests.  
8 Presumably, CrossFit, and it could even be  
9 actually they targeted me, because I liked  
10 the Hybrid Athletics page."

11 Q. What did you mean by that?

12 A. What I meant by that is the way in  
13 which they targeted me could have been the fact  
14 that I liked Hybrid Athletics, or it could have  
15 been that I liked CrossFit, or it could have been  
16 both.

17 Q. But it wasn't that they were  
18 targeting you, specifically, based on your name?

19 A. No. Not based on my name, but based  
20 on my interests. You can't target -- using, if  
21 you're operating, I couldn't say I'm going to  
22 type in "Ian Jentgen" on the back of Facebook's,  
23 in terms of boosting posts, but in terms of  
24 targeting, I still receive targeted ads from  
25 Hylete now.

1 I. Jentgen

2 So it's been something that's never  
3 -- in Facebook, you can say, look, I don't want  
4 to see this ad anymore, and you can turn it off.  
5 But Instagram, to my own knowledge, I haven't  
6 figured out or I haven't really explored it, so  
7 --

8 Q. Okay.

9 You mentioned this morning in  
10 clarifying your previous deposition about the  
11 Hybrid Athletics brand and the logo, that it's  
12 always an issue of Hylete or the Hylete H and the  
13 Hybrid H, and the shorts are not the issue; is  
14 that correct?

15 A. Correct, yes. I said that the shorts  
16 came into play only because that was where the  
17 logo was placed.

18 So it was always recognition of the  
19 logo in both instances, and the shorts just  
20 happened to be the instance where the branding  
21 was represented.

22 MR. BEGAKIS: Introducing into  
23 evidence what's being marked as Jentgen  
24 Exhibit 10.

25 (Whereupon, Jentgen Exhibit 10,

1 I. Jentgen  
2 document was hereby marked for  
3 identification, as of this date.)

4 Q. All right.

5 I'll direct you to please read lines,  
6 starting with the question on line 3 through the  
7 question and the answer down to the end of the  
8 answer on line 18.

9 Please read that.

10 A. Okay.

11 "Question: And how would those  
12 shorts compare to the Hylete shorts?

13 "Answer: The material is,  
14 essentially, the same. The color in terms  
15 of the material is the same, I think. If  
16 you look at them, the cut is similar. The  
17 athletic cuts are just above the knee.  
18 Not too baggy. Not too short. A little  
19 bit more formfitting, but I think the real  
20 direct correlation is in the material. I  
21 think it's got to be the same blend.

22 "I haven't looked at a tag to analyze  
23 what percentage is nylon and what  
24 percentage is anything else, but I have to  
25 think that they are the same. It appears

1 I. Jentgen

2 to be the same. It has the same shine, so  
3 the black shorts are very similar.

4 "Question: What about" -- is that  
5 it, "What about the logo placement"?

6 Q. No. That's it.

7 So my only question is, if you stated  
8 under oath in this testimony that you think the  
9 real direct correlation is in the material, then  
10 why are you saying today that the shorts are not  
11 the issue?

12 A. Well, I think the shorts -- it was  
13 never the shorts being exclusive of the branding.  
14 So the shorts are similar, yes, but the instance  
15 is always -- when I have an interaction with  
16 somebody who has had the confusion, they're  
17 looking at my shirt, because that's the most  
18 oftentimes the thing that they identify with, or  
19 it's the mark on the wall that's the Hybrid  
20 Athletics H, so that's what they're seeing, the  
21 branding, and then the shorts are no doubt  
22 similar, but they're pointing to the H on the  
23 shorts.

24 Q. Okay. I just have one final exhibit,  
25 but before that, we just talked about your

1 I. Jentgen

2 experience with branding.

3 I believe you mentioned in your  
4 initial testimony, that you handle, what is it,  
5 the Hybrid brand standards?

6 A. Yes. So, of course, yes.

7 Q. Would you say that you're good at  
8 describing the Hybrid Athletics H, in what it is  
9 as a brand?

10 A. In terms of describing what the brand  
11 is, or like the aesthetics of the actual like  
12 architecture of the H?

13 Q. The aesthetics of the architecture of  
14 the H.

15 A. Yes. I mean --

16 Q. All right.

17 MR. BEGAKIS: Introducing into  
18 evidence what's being marked as Jentgen  
19 Exhibit 11.

20 (Whereupon, Jentgen Exhibit 11,  
21 document was hereby marked for  
22 identification, as of this date.)

23 Q. So if you're saying that you're good  
24 at describing the aesthetics of the logo of the  
25 Hybrid Athletics logo, then I would ask, if you

1 I. Jentgen

2 could please describe to me in as much detail as  
3 possible, how these two logos look similar.

4 A. Well, I would start with they're both  
5 the character H, and that's very apparent. The  
6 contours, they're both using round edges. I mean  
7 you can see with the H, that is present. On the  
8 Hybrid Athletics side, there's rounding through  
9 that, and that rounding is evidenced in the  
10 Hylete H as well.

11 Q. In what part of the Hylete H is that  
12 rounding evidenced?

13 A. I mean you can see that there's, it's  
14 more significant in the inner part of the Hylete  
15 H, but even looking at the top of the Hylete H,  
16 you can see there's roundness there. As it comes  
17 to the point there's roundness, similar to how it  
18 is in the Hybrid H. The roundness is apparent on  
19 the inside and the outside on both logos.

20 Q. So your description of the  
21 similarities is that they're both H's and they  
22 both have roundness?

23 A. The size, I mean are we looking at  
24 just this example, or just in general?

25 Q. We're comparing the marks.

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I. Jentgen

A. Comparing the marks?

Q. Yes.

A. Just on the -- yes. So the roundness.

Q. And the fact that it's an H?

A. The size -- yes. The fact that it's an H. The fact that it's black. The fact that -- yes, I mean --

Q. Okay.

MR. BEGAKIS: Okay. I have no further questions.

MR. KOSMA: We'll take a quick break and then probably we're done.

THE WITNESS: All right. Thank you very much.

(Time noted: 12:39 p.m.)

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STATE OF NEW YORK.)

: ss.

COUNTY OF \_\_\_\_\_)

I, IAN JENTGEN, the witness herein, having read the foregoing testimony of the pages of this deposition, do hereby certify it to be a true and correct transcript, subject to corrections, if any, shown on the attached page.

\_\_\_\_\_

IAN JENTGEN

Sworn and Subscribed  
this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Notary Public

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C E R T I F I C A T E

STATE OF NEW YORK )

: SS.

COUNTY OF NEW YORK )

I, JOSEPH DANYO V, a Shorthand Reporter  
and Notary Public within and for the State of New  
York, do hereby certify:

That IAN JENTGEN, the witness whose  
deposition is hereinbefore set forth, was sworn  
and that such deposition is a true record of  
the testimony given by such witness.

I further certify that I am not related to  
any of the parties to this action by blood or  
marriage; and that I am in no way interested in  
the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my  
hand this 4th day February of 2016.

  
JOSEPH DANYO V

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DIRECTIONS: (None)

RULINGS: (None)

TO BE FURNISHED: (None)

REQUESTS: (None)

MOTIONS: (None)

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\*\*\* ERRATA SHEET \*\*\*  
TRANSPERFECT DEPOSITION SERVICES  
216 E. 45th Street, Suite #903  
NEW YORK, NEW YORK 10017  
(212) 400-8845

CASE: HYBRID ATHLETICS, LLC, v. HYLETE LLC  
DATE: JANUARY 21, 2016  
WITNESS: IAN JENTGEN REF: 15691

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19	_____	_____	_____

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IAN JENTGEN

Subscribed and sworn to before me

this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_

Notary Public

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

HYBRID ATHLETICS, LLC, :  
 :  
 Opposer, : Opposition No. 91213057  
 :  
 v. :  
 :  
 HYLETE LLC, :  
 :  
 Applicant. :



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**OPPOSER'S NOTICE OF REBUTTAL TRIAL DEPOSITION**

PLEASE TAKE NOTICE THAT pursuant to Trademark Rule 2.123 and Federal Rule of Civil Procedure 30, Opposer Hybrid Athletics, LLC. ("Opposer"), by its attorneys, will take the rebuttal trial deposition by oral examination of Ian Jentgen, Hybrid Athletics, LLC, 7 Hyde Street, Stamford, CT 06907, to be held at the offices of Whitmyer IP Group, LLC, 600 Summer Street, Stamford, CT 06901, on January 21, 2016, commencing at 10:00 a.m. The deposition will be taken before a notary public or other officer duly authorized to administer oaths, and will be recorded by stenographic means. The deposition will continue from day to day until completed.

All counsel of record are invited to attend the deposition and examine the deponent in accordance with applicable rules.

HYBRID ATHLETICS, LLC

January 13, 2016

/s/ Michael J. Kosma

Wesley W. Whitmyer, Jr.

Michael J. Kosma

Whitmyer IP Group LLC

600 Summer Street

Stamford, CT 06901

Tel. (203) 703-0800

Facsimile (203) 703-0801

Email: [litigation@whipgroup.com](mailto:litigation@whipgroup.com)

[mkosma@whipgroup.com](mailto:mkosma@whipgroup.com)

*ATTORNEYS FOR OPPOSER*

**CERTIFICATE OF SERVICE**

This is to certify that a true copy of the foregoing OPPOSER'S NOTICE OF REBUTTAL TRIAL DEPOSITION was served by electronic mail and first class mail, postage prepaid on the Correspondent for the Applicant as follows:

Kyriacos Tsircou  
Tsircou Law, P.C.  
515 S. Flower Street, Floor 36  
Los Angeles, CA 90071-2221  
kyri@tsircoulaw.com

January 13, 2016  
Date

/s/ Joan M. Burnett  
Joan M. Burnett

1 I. Jentgen

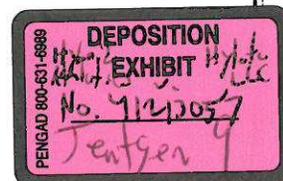
2 to Hybrid Athletics.

3 If you looked at our shorts, like if  
4 you looked at the metrics and analytics on our  
5 website before we switched over from Blue  
6 Commerce to Bigcommerce Hybrid Athletics shorts  
7 were one of the things that were most oftentimes  
8 searched. JACO was oftentimes unable to fulfill  
9 our orders and keep those in stock. I think we  
10 were, even me personally, I would sign in. I was  
11 being targeted by Hylete, so I don't know through  
12 what interests, presumably CrossFit, and it could  
13 even be actually they targeted me, because I  
14 liked Hybrid Athletics' page. I don't know, but  
15 I'm seeing their ads constantly. I just say turn  
16 off their ad. And I would see that constantly.

17 Q. You said their ad. Who?

18 A. So I would see a sponsored post by  
19 Hylete on my Facebook page. So on my Facebook  
20 feed, I would see a sponsored ad by Hylete on my  
21 Facebook page.

22 So there is detrimental effect from  
23 the confusion, but then, if you take that a step  
24 further, Hylete has oftentimes all of their ads  
25 are heavily discounting the products, so buy two



1 I. Jentgen

2 the same, so.

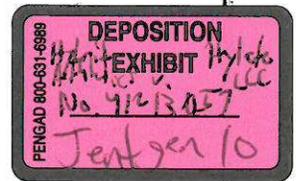
3 Q. And how would those shorts compare to  
4 the Hylete shorts?

5 A. The material is essentially the same.  
6 The color in terms of the material is the same I  
7 think. If you look at them, the cut is similar,  
8 the athletic cut, so just above the knee, not too  
9 baggy, not too short, a little bit more  
10 formfitting, but I think the real direct  
11 correlation is in that material. I think it's  
12 got to be the same blend.

13 I haven't looked at a tag to analyze  
14 what percentage is nylon and what percentage is  
15 anything else, but I have to think that they are  
16 the same. It appears to be the same. It has the  
17 same shine. So the black shorts are very  
18 similar.

19 Q. What about the logo placement?

20 A. The logo placement is the same. So  
21 with it on that, the left kind of thigh region at  
22 the lower end, and then the drawstring as well  
23 was always colored, and it matched the H. So  
24 this is another, it's kind of unique to the  
25 shorts, but the drawstring for the JACO shorts



DEPOSITION  
EXHIBIT  
No. 4/2/3057  
Jentzen

PENGAD 800-631-6869

