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

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

HYBRID ATHLETICS, LLC,

Opposer,

v.

HYLETE, INC.,

Applicant.

Opposition No.: 91213057

Application Serial No.: 85/837,045

Mark:



APPLICANT HYTELE'S TRIAL BRIEF

TABLE OF CONTENTS

I. INTRODUCTION 4

II. DESCRIPTION OF THE RECORD..... 5

A. Opposer’s Evidentiary Record 5

B. Applicant’s Evidentiary Record..... 6

III. STATEMENT OF THE ISSUE..... 7

IV. STATEMENT OF THE FACTS 7

**A. Applicant’s Development Of Its Stylized Logo, And Growth As A Premier Fitness
Apparel Company 7**

B. Applicant’s Team Captain Commission Program 8

C. Opposer’s Failed Business Model..... 10

**D. The Crowded Field of Letter Marks And The Lack Of Actual Confusion Between
Applicant’s Stylized Logo and Opposer’s Letter Mark 11**

V. ARGUMENTS..... 14

A. Statement Of Law 14

B. Applicant’s Highly Stylized Mark Is Dissimilar To Opposer’s Letter Mark 15

C. Opposer’s Letter Mark Is Not Strong Or Well Known 18

D. Applicant’s Goods Do Not Compete With Opposer’s Goods 19

E. Applicant’s Goods And Opposer’s Goods Travel In Different Channels Of Trade.. 20

F. Consumers Of Applicant’s Goods Do Not Buy On Impulse 21

G. Opposer’s Purported Evidence Of Confusion Is Insufficient..... 22

VI. CONCLUSION..... 31

TABLE OF AUTHORITIES

Cases

AMF Inc. v. Sleekcraft Boats, 599 F.2d 341, 204 U.S.P.Q. 808 (9th Cir. 1979)..... 19

Application of Ferrero, 479 F.2d 1395, 1397, 178 U.S.P.Q. 167 (C.C.P.A. 1973) 23

Banff, Ltd. v. Federated Dept. Stores, Inc., 841 F.2d 486, 492, 6 U.S.P.Q.2d 1187, 1192 (2d Cir. 1988)..... 21

Diamond Alkali Co. v. Dundee Cement Co., 343 F.2d 781 (C.C.P.A. 1965)..... 15, 16

Duluth News-Tribune, a Div. of Nw. Publications, Inc. v. Mesabi Pub. Co., 84 F.3d 1093 (8th Cir. 1996)..... 22

Fossil Inc. v. Fossil Group, 49 U.S.P.Q.2d 1451, 1457, 1998 WL 962201 (T.T.A.B. 1998)..... 18

Georgia-Pacific Corp. v. General Paper Corp., 196 U.S.P.Q. 762, 1977 WL 22615 (T.T.A.B. 1977)..... 15

GoTo.com, Inc. v. Walt Disney Co., 202 F.3d 1199, 1207, 53 U.S.P.Q.2d 1652 (9th Cir. 2000) 18

Hurst Performance, Inc. v. Hendrickson Mfg. Co., 199 U.S.P.Q. 48 (T.T.A.B. 1978)..... 15

In re Bongrain International (American) Corp., 894 F.2d 1316, 1318, 13 U.S.P.Q.2d 1727 (Fed. Cir. 1990)..... 18

In re Buty-Wave Products, Co., 198 U.S.P.Q. 104, 1978 WL 21194 (T.T.A.B. 1978)..... 15

In re E.I. Du Pont de Nemours & Co., 177 U.S.P.Q. 563, 567 (C.C.P.A. 1973) 14

In re SL&E Training Stable, Inc. 88 U.S.P.Q.2d 1216 (T.T.A.B. 2008)..... 14

J.T. Colby & Co., Inc. v. Apple Inc., 2013 WL 1903883 (S.D. N.Y. 2013) 20

Jockey Intern., Inc. v. Burkard, 185 U.S.P.Q. 201, 1975 WL 21128 (S.D. Cal. 1975)..... 19

Kate Spade LLC v. Saturdays Surf LLC, 950 F.Supp.2d 639, 646 (S.D. N.Y. 2013) 20

Lahoti v. Vericheck, Inc., 636 F.3d 501, 508, 97 U.S.P.Q.2d 1878 (9th Cir. 2011)..... 18

New Look Party Ltd. v. Louise Paris Ltd., 2012 WL 251976 (S.D. N.Y. 2012)..... 20

Nike, Inc. v. WNBA Enterprises, LLC., 85 U.S.P.Q.2d 1187, WL 763166 at *11 (P.T.O. Mar. 13, 2007)..... 16, 18

Nutri/System, Inc. v. Con-Stan Industries, Inc., 809 F.2d 601, 606, 1 U.S.P.Q. 1809 (9th Cir. 1987)..... 22

One Industries, LLC v. Jim O’Neal Distributing, Inc., 578 F.3d 1154, 1164, 92 U.S.P.Q.2d 1065 (9th Cir. 2009)..... 18

Research in Motion Ltd. v. Defining Presence Mktg. Group, Inc., 102 U.S.P.Q.2d 1187, 1192 (T.T.A.B. 2012) 14

Scott Paper Co. v. Scott’s Liquid Gold, Inc., 589 F.2d 1225, 1231 (3rd Cir. 1978)..... 22

See Plough, Inc. v. Kreis Laboratories, 314 F.2d 635, 638 (9th Cir. 1963)..... 15

Star Industries, Inc. v. Bacardi & Co. Ltd., 412 F.3d 373, 75 U.S.P.Q.2d 1098 (2d Cir. 2005).. 21

Textron, Inc. v. Maquinas Agricolas “Jacto” S.A., 215 U.S.P.Q. 162, 1982 WL 52056 (T.T.A.B. 1982)..... 15

Therma-Scan, Inc. v. Thermoscan, Inc., 295 F.3d 623, 635, 63 U.S.P.Q.2d 1659 (6th Cir. 2002) 22

Statutes and Rules

15 U.S.C. § 1052(d)..... 15

37 C.F.R. § 2.122..... 6

37 C.F.R. § 2.128(a)(1)..... 5

Lanham Act, 15, U.S.C. § 1125(a) 8

TBMP § 801..... 5

Applicant Hylete, Inc. (“Applicant” or “Hylete”), by and through its counsel of record Tsircou Law, P.C., hereby submits to the Trademark Trial and Appeals Board (the “Board”) its Trial Brief pursuant to 37 C.F.R. § 2.128(a)(1), TBMP § 801, and in response to the opposition filed by Hybrid Athletics, LLC (“Opposer” or “Hybrid”) challenging Hylete’s registration of the  logo.

I. INTRODUCTION

This entire opposition proceeding is focused on one issue. Whether the following marks are confusingly similar:



When the Board performs its analysis, it will find two distinct letter “H” marks that already co-exist with one hundred and thirty five (135) other “H” marks registered to International Class 25, thirty-three (33) of which are specifically used in connection with athletic-related clothing. In addition, it will find an evidentiary record that fails to establish any confusion directly related to purported similarities between the marks.

Opposer has tried to distract the Board from this singular issue with discussions of Rob Orlando’s claimed popularity in the world of CrossFit, Opposer’s other fitness equipment and gym ventures, and a handful of instances where Opposer’s friends, colleagues and fans noticed

similarities between Applicant and Opposer's names and products, or inquired about the relationship between Applicant and Opposer. However, the singular focus of this proceeding is on the two marks above, and under this focus no likelihood of confusion between the two exists.

II. DESCRIPTION OF THE RECORD

Pursuant to 37 C.F.R. § 2.122, the record includes the pleadings in this proceeding, the file history of Applicant's application for registration of its stylized logo, and Opposer's pleaded registered "H" mark. Responses to Opposer's Objections to Applicant's Testimony, Applicant's Objections to Opposer's Testimony, and all Exhibits are attached hereto as Appendix A and Appendix B.

The following additional evidence was offered during the testimony periods:

A. Opposer's Evidentiary Record

1. July 29, 2015 Testimony Deposition of Ian Jentgen ("Jentgen"), pp. 1-147, with Exhibits 1 – 7, submitted to the Board on September 11, 2015 (TTABVue #29).
2. August 5, 2015 Testimony Deposition of Matt Tuthill ("Tuthill"), pp. 1-61, with Exhibits 1 – 9, submitted to the Board on October 15, 2015 (TTABVue #30).
3. August 4, 2015 Testimony Deposition of Dale Saran ("Saran"), pp. 1-112, with Exhibits 1 – 10, submitted to the Board on October 15, 2015 (TTABVue #31).
4. September 4, 2015 Testimony Deposition of Jason Leydon ("Leydon"), pp. 1-33, with Exhibits 1 – 7, submitted to the Board on November 13, 2015 (TTABVue #32).
5. September 9, 2015 Testimony Deposition of David Castro ("Castro"), pp. 1-65, with Exhibits 1 – 8, submitted to the Board on November 13, 2015 (TTABVue #33).
6. July 29, 2015 Testimony Deposition of Syncere Martinez ("Martinez"), pp. 1-113, with Exhibits 1 – 9, submitted to the Board on January 13, 2015 (TTABVue #42).

7. September 3, 2015 Redacted Testimony Deposition of Robert Orlando (“Orlando”), pp. 1-183, with Exhibits 1-63, submitted to the Board on February 26, 2016 (TTABVue #49-54) (Orlando Dep. Parts 1-6)(unredacted version of Robert Orlando’s September 3, 2015 Testimony submitted to the Board on February 26, 2016 (TTABVue#55-58).

8. January 21, 2016 Rebuttal Testimony Deposition of Ian Jentgen (“Jentgen Rebuttal”), pp. 1-32, with Exhibits 8-11, submitted to the Board on March 4, 2016 (TTABVue #59).

B. Applicant’s Evidentiary Record

1. October 27, 2015 Testimony Deposition of Abbe Guddal (“Guddal”), pp. 1-32, with Exhibits A-E, submitted to the Board on December 8, 2015 (TTABVue #34).

2. October 27, 2015 Testimony Deposition of James Wardlow (“Wardlow.”), pp. 1- 53, with Exhibits A-L, submitted to the Board on December 8, 2015 (TTABVue #35).

3. Wardlow Dep. Exhibits N-Q, submitted to the Board on December 8, 2015 (TTABVue #36).

4. October 29, 2015 Testimony Deposition of Ron Wilson (“Wilson”), pp. 1-175, submitted to the Board on December 8, 2015 (TTABVue #37).

5. October 29, 2015 Testimony Deposition of Garrett Potter (“Potter”), pp. 1-20, submitted to the Board on December 8, 2015 (TTABVue #38).

6. October 28, 2015 Testimony Deposition of Jennifer Null (“Null”), pp. 1-65, with Exhibits 1-13, submitted to the Board on December 8, 2015 (TTABVue #39).

7. October 28, 2015 Testimony Deposition of Matt Paulson (“Paulson”), pp. 1-85, submitted to the Board on December 8, 2015 (TTABVue #40).

III. STATEMENT OF THE ISSUE

As set forth above, the singular issue being presented before the Board in this opposition proceeding is whether Applicant's stylized logo is so similar to Opposer's "H" mark that when used in connection with Applicant's goods, it is likely to cause confusion, cause mistake, or deceive pursuant to Section 43(a) of the Lanham Act, 15, U.S.C. § 1125(a).

IV. STATEMENT OF THE FACTS

A. Applicant's Development Of Its Stylized Logo, And Growth As A Premier Fitness Apparel Company

Applicant's Chief Executive Officer, Ron Wilson, designed the first iteration of Applicant's stylized logo by hand in March of 2012. (Wilson 85:11-12; 92:5-7.) He had set out to create the ultimate functional fitness apparel line the everyday, functional fitness athlete, who cross-trains in a variety of athletic pursuits and displays an infinite capacity to take on new challenges. (Wilson 92:8-97:11; Exhibit 19.) Thus, Mr. Wilson designed the logo to pay homage to this athlete, by incorporating clean lines, sharp edges, a weapon-like feel, and extensively embodying the infinity symbol. (Wilson 93:18-24; 94:6-17; 95:14-21.)

After finalizing the design of its stylized logo, Applicant used the majority of its initial investment capital to produce its first run of apparel products bearing the mark. (Wilson 100:9-15; 105:3-106:23; Paulson 32:19-22; 34:17-22.) Applicant's goal was to take this first run of products to the 2012 CrossFit Games, as well as enter into strategic partnerships with athletes, trainers, fitness magazines, and even fitness equipment companies like TRX. (See Wilson 105:3-106:23; Paulson 32:22-25; Paulson 33:14-20; Paulson 38:24.)

Matt Paulson came on as Applicant's co-founder and Chief Integration Officer in March 2012. (Paulson 6:17-18; 31:18-20.) Mr. Paulson had developed strong relationships with between 50 and 75 strategic partners while working for his previous employer. (Paulson 33:14-20; Paulson 38:24.) Thus, Mr. Paulson's primary job in the early days of Applicant was to reach out to as many potential strategic partners as possible, and try to engage them to become brand ambassadors under Applicant's "Team Captain Commission Program." (Paulson 32:22-25; 33:1-6; 34:24-25.)

Since taking its first products to market in 2012, Applicant has become a premier, functional fitness apparel company, [REDACTED]. (Potter 13:22-23.) [REDACTED]

[REDACTED]. (Potter 12:2-6; 13:2 & 9.) [REDACTED] [REDACTED] which resides at <www.hylete.com>. (Wardlow 15:9-10.) Applicant's Facebook and Instagram pages have over 150,000 and 21,000 "followers," respectively. (Wardlow 18:4-5; 23: 6-8; 26:24-25; 27:1-17.) Applicant understands the extremely important role social media marketing plays in operating a successful, direct-to-consumer, e-commerce business, and thus expends considerable resources advertising over social media, primarily via "boosted" Facebook posts. (Wardlow 18:4-5; 23: 6-8; 26:24-25; 27:1-17.)

Today, the everyday functional fitness athlete looks to Applicant for the latest designs, styles and technology associated with premium fitness apparel, and Applicant continues to meet, and even exceed, the needs and expectations of these customers.

B. Applicant's Team Captain Commission Program

Rob Orlando was one of the approximately 50 potential strategic partners that Mr. Paulson reached out to when Applicant was taking its first run of products to the 2012 CrossFit

Games, and engaging athletes to join its Team Captain Commission Program. (Paulson 33:6-10 (“[Mr. Orlando] was just another number to us. He was just one more person that we could bring on...to leverage...and build the brand as quickly as possible).)

Under Applicant’s Team Captain Commission Program, athletes like Mr. Orlando were encouraged to promote Applicant’s goods by receiving 20% of the sale of any products purchased by customers who used a unique discount code specifically associated with the athlete. (Paulson 35:7-16.) Applicant also gave some of the strategic partner athletes under the program the ability to purchase apparel that was co-branded with both Applicant’s stylized logo and their own respective logo. (Paulson 37:3-6; Paulson 37:24-25 (exhibit 5); Paulson 39:22-25 (exhibit 6); and Paulson 41:4-8 (exhibit 7).) Applicant reached out to Mr. Orlando in early April to offer him the opportunity to join the Team Captain Commission Program, as well as receive apparel that was co-branded with Applicant’s stylized logo and Opposer’s “H” mark. (Paulson 35:23-25; Paulson 41:12-14.)

On April 23, 2013, Applicant emailed Mr. Orlando the terms of the Team Captain Commission Program, and a copy of the brand book that Applicant was sending to all of its potential strategic partner athletes. (Paulson 41:12-14; 42:3-15; 75:1-2.) A few days later, Mr. Orlando texted Mr. Paulson and expressed concern that “[t]he font...is identical” and “Hybrid Athletics is the long version of [Hylete].” (Paulson 42:16-22; 79:15-19.) Mr. Paulson responded via text message, and acknowledged that “Hylete is a condensed [version of] ‘Hybrid Athlete’.” (Paulson 42:23-25; 43:1-2; 79:20-23.) Mr. Paulson followed up via text message, and offered to remove “Hylete,” but not the stylized logo, from any co-branded products manufactured by Applicant for Opposer. (See Paulson 81:5-11.) Mr. Orlando did not respond. (Paulson 43:5-8; 44:13-17.)

Opposer did not contact Applicant again until Mr. Orlando emailed Mr. Paulson nearly a year later on March 11, 2013, and claimed that he had received “hundreds of emails” of purported instances of confusion, which evidence Mr. Orlando has never provided to Applicant. (Paulson 43:5-8; 44:13-17.)

C. Opposer’s Failed Business Model

Opposer’s business model was chiefly built around Mr. Orlando’s personal notoriety and success in the world of CrossFit. Opposer is not a clothing designer, as such. Rather, Opposer simply places its logo on clothing designed by others, including certain athletic shorts designed by Mr. Wilson prior to the formation of Applicant. (Wilson 38:15-24, 53:4-20, 55:24-59:14; Null 28:7-9; Jentgen 48:20-25, 104:16-21.)

However, as Mr. Orlando grew older, he became less relevant in the world of CrossFit. (See Wardlow 33:6-12; (exhibit I); Castro 28:3-4; 51:18-21.) Mr. Orlando has not competed in a CrossFit competition since he was disqualified during the first event of the 2011 CrossFit Games. (Null 17:19-23.) CrossFit has also eliminated from its competition “programming” most of the heavy, strongman-style exercises that Mr. Orlando, as a “CrossFit strongman expert,” was known for, which has caused fewer Crossfit athletes to look to Mr. Orlando for instruction and advice. (Null 16:16-25; 17:1-2; 17:3-6; 20:6-13.) Mr. Orlando’s brand has therefore faded, and, not surprisingly, Opposer’s direct-to-consumer apparel business has seen a significant decline since 2012. (Orlando 54:17-19; 126:2-127:7; 159:16-20.)

Moreover, Opposer has demonstrated an unwillingness to dedicate effort and resources to its apparel business. (Orlando 160:25-163:16.) For example, Opposer operates a low-cost, generic “out-of-the-box” e-commerce site, and does not expend any resources on social media marketing. (Wardlow 28:14-16; Jentgin 6:13-19; 120:21-25; 121:1-8; 123:6-11 (“Q: So is it

possible that [Opposer's] decline in sales is not a result of confusion, but a result of [Applicant] paying for sponsored advertising and [Opposer] not? A: Possible.”); Wardlow 25:12-26:23.) As a result, Opposer's e-commerce site had only 500 visitors from April 2015 to September 2015 (Applicant's site had 30,000), and fewer potential customers are searching for Opposer on Google. (Wardlow 28:24-25; 29:8-14 (exhibit g); Wardlow 30:24-25; 31:1-23 (exhibit h).)

Opposer's apparel business is also secondary to Opposer's operation of its gym and equipment businesses. Opposer's part-time Director of Marketing, Ian Jentgin, who has demonstrated little understanding of how social media marketing functions at its most basic level, is also the head trainer in Opposer's gym. (Orlando 162:24-163:2; Jentgin [Rebuttal] 17:5-18:10.) In Opposer's best year of sales, Opposer's apparel business only comprised 15-20% of Opposer's total revenue. (Orlando 161:6-162:5.)

Opposer didn't even seek protection for its “H” mark until February 21, 2014, which is after Opposer had already decided that Applicant was to blame for Opposer's decline and commenced this action. (Notice of Opposition, para. 4, Ex. A (TTABVue #1).)

Thus, there are several bases for Opposer's business failings, but none of those reasons are related to Applicant's mark.

D. The Crowded Field of Letter Marks And The Lack Of Actual Confusion Between Applicant's Stylized Logo and Opposer's Letter Mark

Numerous letter marks peacefully coexist within this category of goods. Specifically, the marks at issue in this matter co-exist with one hundred and thirty five (135) other “H” marks registered to International Class 25, thirty-three (33) of which are specifically used in connection with athletic-related clothing. (Exhibits G, H) Thus, customers may comment, and, since debuting its stylized logo, Applicant has heard such comments regarding other existing marks

and images, e.g., the Under Armor  logo. (Wilson 100:2-6; 17-19; 101:23-25; 102:1-3; Paulson 44:24-25; 45:1-13 (exhibit 8); and Null 45:18-22.) Some of those other stylized “H” marks that Applicant and Opposer co-exist with include:

Mark	Registration Number	Owner	Goods
	4696658	Hyper Wear, Inc	Athletic apparel, namely, shirts, hats and caps
	4214598	Virginia Investment Partnership	Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms
	4447164	University of Hawaii CORPORATION HAWAII Collegiate Licensing Office	clothing, namely, t-shirts, tank tops, sports shirts...
	4867725	VIKONIKA, LLC	Apparel, namely, shirts, t-shirts, sweaters, coats, headwear, pants, shorts; athletic apparel, namely, shirts, t-shirts, sweaters, coats, pants, shorts, hats and caps, athletic uniforms
	4499105	Houston Astros, LLC	Clothing, namely, headwear, shirts, sweaters, vests, bottoms, athletic uniforms...
	4080612	The Honour Society, LLC	Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps...

	3339689	HEELING SPORTS LIMITED	footwear, namely, athletic shoes [, t-shirts and caps
	3904490	Heeling Sports Limited Heeling Management Corp.	footwear, namely, Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms; Board shorts; Fabric belts; Hats; Leather belts; Wearable garments and clothing, namely, shirts shoes, t-shirts and caps
	3956053	Heard Design LLC	Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms; Board shorts; Fabric belts; Hats; Leather belts; Wearable garments and clothing, namely, shirts
	4900689	Heroine Sport LLC	Full line of athletic clothing

Yet, Mr. Wilson, Mr. Paulson and Ms. Null have collectively attended hundreds of CrossFit and other athletic events on behalf of Applicant, and have not experienced one instance of customer confusion between Applicant’s stylized logo and Opposer’s “H” mark. (Wilson 99:18-100:4; 101:18-102:3; Paulson 57:8-17; 77:17-25; 78:1-24; Null 38:15-25.) Moreover, not one purchaser, out of approximately 35,000 who took an exit survey after buying Applicant’s goods, indicated that Opposer or Opposer’s logo influenced their decision to purchase Applicant’s products. (Wardlow 37:8-22; 42:7-15; (exhibit L).)

V. ARGUMENTS

A. Statement Of Law

Under Section 2(d) of the Lanham Act, registration is only refused if the trademark at issue “so resembles a mark registered in the Patent and Trademark Office...as to be likely, when used on or in connection with the goods of the applicant, to cause confusion, or to cause mistake, or to deceive...” (15 U.S.C. § 1052(d).) The Board’s likelihood of confusion analysis “is based upon [an] analysis of all the probative facts in evidence that are relevant to the factors bearing on this issue.” (*Research in Motion Ltd. v. Defining Presence Mktg. Group, Inc.*, 102 U.S.P.Q.2d 1187, 1192 (T.T.A.B. 2012). In testing for likelihood of confusion, the following applicable factors, among others, must be considered: (1) the similarity or dissimilarity of the marks in their entirety as to appearance, sound, connotation and commercial impression; (2) the similarity or dissimilarity and nature of the goods or services as described in an application or registration or in connection with which a prior mark is in use; (3) the similarity or dissimilarity of established, likely-to-continue trade channels; (4) the conditions under which and buyers to whom sales are made, i.e. “impulsive” vs. careful, sophisticated purchasing; (5) the fame of the prior mark (sales, advertising, length of use); (6) the number and nature of similar marks in use on similar goods; (7) the nature and extent of any actual confusion; (8) the extent of potential confusion, i.e., whether *de minimis* or substantial; and (9) any other established fact probative to the effect of use. (*In re E.I. Du Pont de Nemours & Co.*, 177 U.S.P.Q. 563, 567 (C.C.P.A. 1973).) The two key considerations within this multi-factor test are (1) the similarities or dissimilarities between the marks; and (2) the similarities or dissimilarities between the goods. (*In re SL&E Training Stable, Inc.* 88 U.S.P.Q.2d 1216 (T.T.A.B. 2008).)

Here, the facts presented sufficiently establish that no likelihood of confusion could exist between Applicant's stylized logo and Opposer's "H" mark.

B. Applicant's Highly Stylized Mark Is Dissimilar To Opposer's Letter Mark

Although the likelihood of confusion analysis depends on many factors, the one essential question is whether there existed similarity of sight, sound and meaning. (*See Plough, Inc. v. Kreis Laboratories*, 314 F.2d 635, 638 (9th Cir. 1963))

For design marks and stylized letter marks incapable of being pronounced or of conveying any inherent meaning, however, the similarity or dissimilarity in appearance is the most significant determination. (*Diamond Alkali Co. v. Dundee Cement Co.*, 343 F.2d 781, 783 (C.C.P.A. 1965); *Textron, Inc. v. Maquinas Agricolas "Jacto" S.A.*, 215 U.S.P.Q. 162, 1982 WL 52056 (T.T.A.B. 1982) ("when letter marks are presented in a highly stylized form, so that they are essentially design marks incapable of being pronounced or conveying any inherent meaning, then differences in the lettering style and design may be sufficient to prevent a likelihood of confusion. In these cases similarity of appearance is usually controlling and the decision will turn primarily on the basis of the visual similarity of the marks.") Highly stylized, highly contrasting letter design marks tends to obviate a finding of likelihood of confusion. (*Textron, Inc. v. Maquinas Agricolas "Jacto" S.A.*, 215 U.S.P.Q. 162, 1982 WL 52056 (T.T.A.B. 1982); *see e.g. In re Buty-Wave Products, Co.*, 198 U.S.P.Q. 104, 1978 WL 21194 (T.T.A.B. 1978); *Hurst Performance, Inc. v. Hendrickson Mfg. Co.*, 199 U.S.P.Q. 48 (T.T.A.B. 1978); and *Georgia-Pacific Corp. v. General Paper Corp.*, 196 U.S.P.Q. 762, 1977 WL 22615 (T.T.A.B. 1977).)

Notably, the *Diamond* case involved a likelihood of confusion analysis between the following marks:

	
applicant's mark	opposer's mark

(*Diamond*, 343 F.2d at 782.)

The Court considered the applicant's  mark to be a stylized letter "D" because it asserted the same in its application and included a specimen that displayed the mark as a replacement for the letter "D" in applicant's name ("Dundee"). (*Diamond*, 343 F.2d at 783.) On the other hand, the Court considered opposer's mark to be "an arbitrary symbol capable of many different interpretations," including a stylized letter "D," despite the fact that opposer asserted in its registration that the mark was a stylized letter "D." (*Id.*; *Nike, Inc. v. WNBA Enterprises, LLC.*, 85 U.S.P.Q.2d 1187, WL 763166 at *11 (P.T.O. Mar. 13, 2007) When the court considered the features of each stylized letter mark, it concluded that the marks were sufficiently dissimilar and there was no likelihood of confusion. (*Diamond*, 343 F.2d. at 784.)

The Board should apply the analysis used in the *Diamond* case, because the arbitrary design and stylization of Applicant's  logo "virtually overwhelms" the underlying letter and makes it capable of many different interpretations. (*See Nike, Inc.*, WL 763166, at *12)

Just as in the *Diamond* case, Opposer asserts that its  mark is a stylized letter "H," and use its "H" mark as a replacement for the actual letter on one of its t-shirt products, which displays the following: "A.  .A.P. – As Heavy As Possible." On the other hand, Applicant

asserts in its application that its  logo is a stylized letter “H,” but Applicant never uses the stylized logo as a replacement for the letter “H” in Hylete and often uses the stylized logo alongside the name Hylete to clearly indicate that the stylized logo possesses independent distinction and importance. Additionally, the imbalance between the bottom portion and the top portion, the significant curves, the incorporation of circles and the infinity symbol, and the overall sharp weapon-like feel establish that Applicant’s stylized logo bears little resemblance to an “H” and consists of an arbitrary design capable of many different interpretations.

When applying the analysis set forth in the *Diamond* case, the Board should find that the highly stylized nature of Applicant’s logo, and the highly contrasting nature of the two marks, obviates any likelihood of confusion.

Applicant’s highly stylized logo is light, airy, and sharp overall. Applicant’s mark is generally circular, incorporating a large circle at the top and small circle at the bottom, and drawing many visual similarities to an infinity symbol or figure eight. The design provides for a narrow, rounded base that bears little resemblance to a typical letter “H.” Applicant’s mark is also solid, with no disconnected lines or borders, and displays sharp edges and points.

In contrast, Opposer’s “H” mark is heavy, thick, and bulky overall. Opposer’s mark is generally boxy, incorporating straight lines throughout. The design provides for a wide, flat base consistent with a typical letter “H.” Opposer’s mark is also comprised of three disconnected parts: (1) the line creating the top border of the “H,” (2) the line creating the bottom border of the “H,” and (3) the inner “H” itself, which in many ways resembles a lifting apparatus that Opposer sells as part of its equipment line called a “yolk.” (Castro 30:25-31:3; 43:21-25; 46:9-17.)

Thus, Applicant’s stylized logo is highly contrasting with Opposer’s “H” mark, and there is no likelihood of confusion.

C. Opposer's Letter Mark Is Not Strong Or Well Known

The strength of a mark determines the degree of protection it will be accorded. (*McGregor-Doniger Inc. v. Drizzle Inc.*, 599 F.2d 1126, 1131 (2d Cir. 1979). A mark's strength depends on both its conceptual strength as an inherently distinctive arbitrary or fanciful mark, and on its commercial strength as a mark that is distinctive in the eyes of the purchasing public. (*See Id*; *GoTo.com, Inc. v. Walt Disney Co.*, 202 F.3d 1199, 1207, 53 U.S.P.Q.2d 1652 (9th Cir. 2000); *One Industries, LLC v. Jim O'Neal Distributing, Inc.*, 578 F.3d 1154, 1164, 92 U.S.P.Q.2d 1065 (9th Cir. 2009); *Fortune Dynamic, Inc. v. Victoria Secret Stores Brand Management, Inc.*, 618 F.3d 1025, 1032, 96 U.S.P.Q.2d 1585 (9th Cir. 2010); *Lahoti v. Vericheck, Inc.*, 636 F.3d 501, 508, 97 U.S.P.Q.2d 1878 (9th Cir. 2011).)

A party that is relying solely on evidence of sales and advertising figures to establish that its mark is famous must place such figures in context of the sales figures of other competing companies. (*Fossil Inc. v. Fossil Group*, 49 U.S.P.Q.2d 1451, 1457, 1998 WL 962201 (T.T.A.B. 1998); (*Nike, Inc.*, WL 763166, at *9) (finding that opposer's evidence of 20 years of sales and sales figures in the hundreds of millions of dollars was insufficient when presented without any meaningful context as to opposer's market share).) Further, sales figures alone may simply indicate popularity of a product, and all of the factors that would contribute to a product's popularity, without actually indicating recognition of the mark as applied to such products. (*In re Bongrain International (American) Corp.*, 894 F.2d 1316, 1318, 13 U.S.P.Q.2d 1727 (Fed. Cir. 1990); *see also Nike, Inc.*, WL 763166, at *10.)

First, Opposer's "H" mark is not sufficiently famous or strong because it lacks conceptual strength as a distinctive mark. The USPTO has approved one hundred and thirty five (135) other stylized "H" marks for registration on the Principal Register in International Class 25, and thirty-

three (33) of those marks are specifically used in connection with athletic-related clothing. Thus, many different stylized “H” marks are capable of co-existing in the market, and Opposer cannot claim an exclusive to a stylized “H” mark in connection with such goods.

Second, Opposer’s “H” mark is not sufficiently famous or strong because it lacks commercial strength as a distinctive mark. The multiplicity of stylized “H” marks registered to the Principal Register in connection with clothing and athletic related goods demonstrates that Opposer’s “H” mark is not distinctive, and thus not capable of denoting source to consumers. Opposer tries to establish distinctiveness by proffering evidence regarding the popularity and presence of Opposer’s gym, training services and fitness equipment bearing the “H” mark, as well as evidence regarding Mr. Orlando’s personal notoriety, contributions to fitness magazines and his appearances on various websites. However, none of this evidence establishes commercial recognition of Opposer’s “H” mark as applied to its apparel products. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

D. Applicant’s Goods Do Not Compete With Opposer’s Goods

Where good are directly competitive, the degree of similarity required to prove likelihood of confusion is less than in the case of noncompeting goods. (*Jockey Intern., Inc. v. Burkard*, 185 U.S.P.Q. 201, 1975 WL 21128 (S.D. Cal. 1975); *AMF Inc. v. Sleekcraft Boats*, 599 F.2d 341, 204 U.S.P.Q. 808 (9th Cir. 1979).) However, goods that appeal to separate sub-markets are not competitive, even if there is some overlap in potential customers. (*Sleekcraft*, 599 F.2d at 348.) When goods are not directly competitive, they can only be deemed related upon the conclusion of a likelihood of confusion analysis. (*See Id.*)

Here, Applicant's goods appeal to a separate sub-market of the fitness community, and therefore are not competitive with Opposer's goods. Opposer admits time and again in its Trial Brief that Opposer serves the CrossFit and Strongman communities with its apparel products. (Trial Brief of Opposer Hybrid Athletics, LLC TTABVue #60 at pg. 10, 15-19.) Applicant, on the other hand, serves the cross training, "hybrid" athlete who engages in many different types functional fitness-style training. While Applicant has sold, and does continue to sell, to some athletes who exhibit some interest in the sport of CrossFit, Applicant has not attended or sold apparel at a CrossFit event since 2013. (Saran 70:12-15.) Thus, Applicant serves a separate sub-market of the fitness industry, although some of its customers interested in the sport of CrossFit may overlap with the sub-market of the fitness community that Opposer specifically serves.

E. Applicant's Goods And Opposer's Goods Travel In Different Channels Of Trade

Courts are less likely to find that no likelihood of confusion exists where the channels of trade are different. (*New Look Party Ltd. v. Louise Paris Ltd.*, 2012 WL 251976 (S.D. N.Y. 2012) (finding the fact that plaintiff only sold its clothing products online, even though defendant sold its similar clothing products online and in stores, "weigh[ed] heavily" against a finding of likelihood of confusion); *J.T. Colby & Co., Inc. v. Apple Inc.*, 2013 WL 1903883 (S.D. N.Y. 2013) (determining that the parties sold their products in different channels of trade where the defendant's product was only available to consumers via Apple's online App store, and the plaintiff's product was available in brick and mortar stores and on third party websites like amazon.com).) Further, a finding that the relevant products are sold in different channels of trade is more likely where both parties have websites devoted solely to the sale of their respective products. (*Kate Spade LLC v. Saturdays Surf LLC*, 950 F.Supp.2d 639, 646 (S.D. N.Y. 2013).)

Here, Applicant sells its apparel goods in different channels of trade than Opposer. Applicant operates a direct-to-consumer apparel business, and sells its goods primarily via its e-commerce website, which is devoted solely to the sale of Applicant's goods. Applicant does not sell its goods in retail stores, or via e-commerce websites that carry and sell goods of multiple apparel brands. As mentioned previously, Applicant has also ceased any and all sales of its goods at CrossFit events as of 2013. On the other hand, Opposer sells its goods at Opposer's gym, CrossFit events, training seminars, and – to a lesser extent – its own e-commerce website, which is devoted solely to the sale of Opposer's goods. (Trial Brief of Opposer Hybrid Athletics, LLC TTABVue #60 at pg. 15-19.) This cognizable difference in the respective channels of trade of each party should weigh heavily in favor of Applicant.

F. Consumers Of Applicant's Goods Do Not Buy On Impulse

If goods and services are relatively expensive, more care is taken and buyers are less likely to be confused as to source or affiliation. (*McGregor-Doniger Inc.*, 599 F.2d at 1131.) Absent survey evidence or expert testimony, the level of customer care and sophistication can be proven by inference based on the nature of the product or its price. (*Star Industries, Inc. v. Bacardi & Co. Ltd.*, 412 F.3d 373, 75 U.S.P.Q.2d 1098 (2d Cir. 2005).) Additionally, purchasers of apparel products can be considered sophisticated relative to purchasers of less expensive, lower quality apparel products. (*Banff, Ltd. v. Federated Dept. Stores, Inc.*, 841 F.2d 486, 492, 6 U.S.P.Q.2d 1187, 1192 (2d Cir. 1988) (the sophistication of the relative purchasers did not mitigate against a likelihood of the confusion finding where the marks were identical).)

Here, the relatively high price of both Applicant and Opposer's apparel products tends to indicate that consumers of such goods do not purchase the goods on impulse. An average crew-neck tri-blend t-shirt bearing Applicant's stylized logo sells on Applicant's e-commerce website

for \$35.00, while the average comparable crew-neck t-shirt bearing the Under Armour  logo sells for \$24.95. This substantial price differential is indicative of the relatively high price of Applicant's apparel products across the board. Opposer does not provide any support for its hollow, fact-less statement that both parties' goods "are relatively inexpensive," and conveniently shifts the focus of its arguments to the equally unsupported claim that the presence of "numerous vendors," "large crowds," and "a lot of commotion" at CrossFit events causes purchasers to make fast decisions "in the excitement of the event." Such contentions are not grounded in fact or supported by case law, and Applicant's Trial Brief clearly establishes that Applicant and Opposer's goods are relatively expensive and not purchased on impulse.

G. Opposer's Purported Evidence Of Confusion Is Insufficient

"When determining whether there exists a likelihood of confusion, weight is given to the number and extent of instances of actual confusion." (*Duluth News-Tribune, a Div. of Nw. Publications, Inc. v. Mesabi Pub. Co.*, 84 F.3d 1093, 1098 (8th Cir. 1996)(internal citation omitted). A few isolated instances of consumer confusion are not sufficient to establish a likelihood of confusion, particularly where the marks at issue are used in connection with goods that are sold in high volume. (*Nutri/System, Inc. v. Con-Stan Industries, Inc.*, 809 F.2d 601, 606, 1 U.S.P.Q. 1809 (9th Cir. 1987) (internal citations omitted); *Duluth News-Tribune*, 84 F.3d at 1098 (stating that even several isolated incidents of actual confusion that occur initially upon the creation of a potentially confusing mark are insufficient to establish a genuine issue of material fact as to the likelihood of confusion); *Scott Paper Co. v. Scott's Liquid Gold, Inc.*, 589 F.2d 1225, 1231 (3rd Cir. 1978) (holding that nineteen misdirected letters in four years were insufficient to establish likelihood of confusion); *Therma-Scan, Inc. v. Thermoscan, Inc.*, 295 F.3d 623, 635, 63 U.S.P.Q.2d 1659 (6th Cir. 2002) (finding that six misdirected e-mail messages

as evidence of confusion defendant sold over 3 million medical thermometers during a 3 ½ year period).) Further, purported evidence of confusion must be carefully scrutinized so that the actual cause of the confusion is ascertained, and the evidence being presented is not simply evidence of unsubstantiated inquiries regarding two marks. (*Application of Ferrero*, 479 F.2d 1395, 1397, 178 U.S.P.Q. 167 (C.C.P.A. 1973) (stating that the very fact that one mark calls another mark to mind may indicate that the mind is distinguishing between, rather than being confused by, two marks).)

Opposer sets forth documented evidence of seven (7) customer interactions that fail to definitively establish the source of any actual confusion, and/or are merely unsubstantiated inquiries concerning an affiliation between Applicant and Opposer's. Those seven instances are as follows:

1. An individual named Miki Carey supposedly purchased Applicant's goods, wore them to a seminar that Mr. Orlando attended, and after a conversation with Mr. Orlando in person stated in a follow-up email: "Your conversation was actually helpful in knowing the difference between the logos/brands. It was very confusing at first, I completely thought they were one in the same." (Orlando 132:20-133:15; Ex. 40.) Yet, Applicant has no purchase record from any individual named Miki Carey, and Opposer has failed to submit any sworn statement, or other supporting evidence, from this individual that would establish that such a mistaken purchase took place.
2. March 10, 2013 – An individual named Jessie Clay wrote: "you should investigate HYLETE...***unless they r a brand of Hybrid*** they chicken hawked your logo...heads up." (Orlando 129:10-23; Exs. 2 ¶49, 39 (emphasis added).) This evidence is nothing more than an unsubstantiated inquiry from Mr. Clay as to a potential affiliation between

Applicant and Opposer. There is no demonstration of actual confusion of the marks leading to the mistaken purchase of Applicant's goods.

3. July 28, 2013 – An individual named Yusuke wrote the following in an email: “At the games, I see a lot of people wearing Hylete clothing and posting on Facebook. Does it have anything to do with Hybrid Athletics? The logo looks a lot like Hybrid and *the name is very similar so was just wondering*. (Orlando 130:19-131:19, Exs. 2 ¶¶49, 39 (emphasis added).) If any confusion actually existed with this individual, it is impossible from this evidence to determine whether such confusion definitively stemmed from the marks, or from some other source such as similarities in the parties' respective names. Further, this evidence presents an unsubstantiated inquiry as to a potential affiliation between Applicant and Opposer. There is no demonstration of actual confusion of the marks leading to the mistaken purchase of Applicant's goods.
4. December 5, 2013 – An individual named Drake Rodriguez wrote on Opposer's Facebook page: “How do [you] feel about *Hylete athletics*, basically copying your logo and name?” (Orlando 133:19-134:10; Ex. 41 (emphasis added).) If any confusion actually existed with this individual, it is impossible from this evidence to determine whether such confusion definitively stemmed from the marks, or from some other source such as similarities in the parties' respective names. Particularly in light of the fact that Mr. Rodriguez confusingly combines Applicant and Opposer's names, and refers to Applicant as “Hylete athletics.” Further, this evidence presents an unsubstantiated inquiry as to a potential affiliation between Applicant and Opposer. There is no demonstration of actual confusion of the marks leading to the mistaken purchase of Applicant's goods.

5. January 21, 2014 – An individual named Eric Lester wrote on Mr. Orlando’s personal Facebook page: “*Is ‘Hylete’ associated with Hybrid Athletics? Their name and logo is more than a little similar* but I can’t find anything on their site to indicate it.” (Orlando 136:20-137:17; Ex. 43 (emphasis added).) If any confusion actually existed with this individual, it is impossible from this evidence to determine whether such confusion definitively stemmed from the marks, or from some other source such as similarities in the parties’ respective names. Further, this evidence presents an unsubstantiated inquiry as to a potential affiliation between Applicant and Opposer. There is no demonstration of actual confusion of the marks leading to the mistaken purchase of Applicant’s goods, and the evidence that Mr. Lester intentionally went to Applicant’s website, knowing it was Applicant’s website, to learn more proves that.
6. February 26, 2014 – An individual named Zach Even-Esh wrote to Opposer: “I chatted with a Hylete rep in Miami. I thought they were your apparel line. *I know I saw you working with them before. Just checking to see if this is legit.* Don’t hesitate to reach out.” (Orlando 137:23-138:25 (emphasis added); Ex. 44.) If any confusion actually existed with this individual, it is impossible from this evidence to determine whether such confusion definitively stemmed from the marks, or from some other source such as Mr. Even-Esh’s prior knowledge of Mr. Orlando and Applicant. Further, this evidence presents an unsubstantiated inquiry as to a potential affiliation between Applicant and Opposer. There is no demonstration of actual confusion of the marks leading to the mistaken purchase of Applicant’s goods, and the evidence that Mr. Even-Esh was “just checking to see” proves that.

7. November 6, 2014 – An individual named Daniel Voros wrote in an email to Opposer: “did you know a copy of your brand means that you succeed...*Here it is: <http://www.hylete.com>.*” (Orlando 140:15-145:5 (emphasis added); Ex. 46.) It is impossible to determine from this evidence whether this individual experienced any actual confusion. Further, this evidence presents an unsubstantiated inquiry as to a potential affiliation between Applicant and Opposer. There is no demonstration of actual confusion of the marks leading to the mistaken purchase of Applicant’s goods, and the evidence that Mr. Voros knows Applicant’s website is different from Opposer’s website definitively proves that.

Aside from the above insufficient documented evidence of seven (7) customer interactions, Applicant sets forth the deposition testimony of five (5) of Mr. Orlando’s friends and colleagues, which also fail to definitively establish the source of any actual confusion, and/or are merely unsubstantiated inquiries concerning Applicant and Opposer’s respective marks.

1. Matt Tuthill – Mr. Tuthill testified that he first saw Applicant with a booth at the 2013 Mr. Olympia competition, but didn’t email Mr. Orlando until later when he saw Applicant’s increasing presence on social media. Mr. Tuthill stated: “I remember seeing [Applicant’s stylized logo] and actually thinking that Rob Orlando had gotten himself a booth at the Olympia, *but it did look slightly different, so I actually was very curious about it*. I didn’t ask him about it until I started seeing it -- I saw it popping up in a couple social media feeds, things like that, took a screen grab and sent it to him...” (Tuthill 26:4-30:5 (emphasis added); Exs. 7-9.) This testimony is notable for two reasons. First, Mr. Tuthill’s testimony is emblematic of the overwhelming majority of evidence that Opposer has put forth in this case: mere unsubstantiated inquiries as to a

potential affiliation between Applicant and Opposer. Mr. Tuthill never mistakenly purchased Applicant's goods as a result of confusion between the marks. (Tuthill 46:20-23.) Second, Mr. Tuthill's testimony indicates that he contacted Mr. Orlando once upon learning of Applicant's existence, even though Opposer cites Mr. Tuthill's testimony twice in an attempt to manufacture "numerous messages, emails, and social media posts" and cause the Board to believe that more instances of confusion exist than actually do. (Trial Brief of Opposer Hybrid Athletics, LLC TTABVue #60 at pg. 27.) It should also be noted that Mr. Tuthill has motivation to help Mr. Orlando in this matter. Mr. Tuthill works for *Muscle & Fitness* Magazine, which was positively affected by the added viewership that Mr. Orlando, as the first CrossFit contributor, brought to the magazine. (Tuthill 41:25.) Mr. Tuthill also works closely enough with Mr. Orlando that he feels a sense of professional loyalty to Mr. Orlando, admitting that he dearly wishes the magazine would pay Mr. Orlando on time. (Tuthill 43:18-19.)

2. Jason Leydon – Mr. Leydon testified that when he received Applicant's shorts co-branded with Mr. Leydon's own gym logo, as part of Applicant's Team Captain Commissioner Program, he thought the two marks looked similar. (Leydon 22:22-23:8.) Yet Mr. Leydon's testimony does not establish that he mistakenly purchased Applicant's goods as the result of purported confusion between the marks. At best, Mr. Leydon's testimony establishes that he called Opposer's mark to mind when seeing Applicant's. It should also be noted that Mr. Leydon is Mr. Orlando's friend, and the two have known each other since 2008. (Leydon 14:13-21.)
3. Syncere Martinez – Mr. Martinez testified that when he became aware of Applicant, he emailed Mr. Orlando as follows: "Rob something has to be done about Hylete! *It's a*

blatant rip off of the hybrid Athletics brand! Not sure what can be done about the “H” *and the term hybrid Athlete is something you have created* in the CrossFit Community...the fact that they are flooding the Community with their Brand over yours is disrespectful in my opinion.” (Orlando 134:15-136:16; Ex. 42; Martinez 65:2-66:6; 68:7-76:17; 93:17-94:24; Ex. 6-8 (emphasis added).) If any confusion actually existed here, it is impossible from this evidence to determine whether such confusion definitively stemmed from the marks, or from some other source such as similarities in the parties’ respective names. (Martinez 66:2-6 “Q: Why would you – why do you mention Rob? A: Because its an H, and it has the word Hylete, but it could easily at first glance say Hybrid”; 69:10- “[T]he only thing that I’ve ever seen that was “Hy” whether it was Hylete or Hybrid was Rob....*The H is not that stunning. It’s the fact for me that it says Hylete and all we used to talk was Hybrid athletes...So it just – I just thought this was something he was getting into, maybe didn’t take my advice to stay with the H. Maybe he decided to upgrade*”) (emphasis added).) It should also be noted that Mr. Martinez has motivation to help Opposer in this matter. Mr. Martinez and Mr. Orlando have been friends since 2009, and Mr. Martinez was intimately involved with Mr. Orlando’s development of the “H” mark, admitting that he encouraged Mr. Orlando to “stick with” the “H” mark instead of develop something new. (Martinez 28:21-29:20; 38:25-39:7; 87:22-88:5.) Mr. Martinez even stated that he wanted to see Opposer’s brand succeed. (See Martinez 88:17-89:12.)

4. Ian Jentgin – Mr. Jentgin testified that he saw Applicant when Applicant had a booth right next to Opposer at the 2013 CrossFit Boston Regionals, and he was therefore confused. Yet Mr. Jentgin goes on to say that at least some of his confusion stemmed

from the fact that both Applicant and Opposer sold similar short styles, both of which Mr. Wilson designed. (Jentgin 92:9-12; Wilson 166:23-167:3 “I just find it ironic that I designed...has come back and now is being once again thrown in my face. That’s because I designed it, someone else is upset that it looks like their shorts.”) If any confusion actually existed here, it is impossible from this evidence to determine whether such confusion definitively stemmed from the marks, or from some other source such as similarities in the parties’ respective short styles. Mr. Jentgin focuses so much on confusion stemming from similar short styles, in fact, that the majority of Mr. Jentgin’s rebuttal Trial Testimony consisted of Mr. Jentgin walking back on such previous statements under oath. (Jentgin rebuttal 21:7-13.) Mr. Jentgin’s conflicting statements made under oath are also important, to the extent that Opposer would have the Board believe – from Mr. Jentgin’s testimony alone – that he witnessed other instances of customer confusion. It should also be noted that Mr. Jentgin has motivation to help Opposer, as Mr. Jentgin is Opposer’s head trainer and Director of Marketing.

5. Dale Saran – Mr. Saran testified that he saw Applicant’s booth next to Opposer’s booth at the 2013 CrossFit Boston Regionals, and told Mr. Orlando that he thought Applicant was selling Opposer’s new apparel line. (Saran 68:13-15.) As with the overwhelming majority of Opposer’s submitted evidence, Mr. Saran’s testimony merely presents an unsubstantiated inquiry as to a potential affiliation between Applicant and Opposer. There is no demonstration of actual confusion of the marks leading to the mistaken purchase of Applicant’s goods. At several points, Mr. Saran’s testimony under oath also contradicts proven facts, and such inconsistencies under oath are important to the extent that the Board intends to rely on Mr. Saran’s statements of purported confusion. For

example, in Mr. Saran's recounting of the 2013 CrossFit Boston Regionals, he states that Applicant's booth was "much larger than the normal sort of booth" and was roughly four times the size of a normal booth. (Saran 68:7-11.) In reality, Applicant had a standard 10x10-sized booth at the 2013 CrossFit Boston Regionals, the exact same size as Opposer's. (Paulson 50:4; 52:18-19; 52:24-25; 53:2-54:17, Exs. 9-11.) It should also be noted that Mr. Saran is an employee of CrossFit, and CrossFit has demonstrated an interest in Opposer's potential success in this matter. Mr. Saran stated that "Rob was very much like family at CrossFit," and CrossFit voluntarily had its own attorney attend every single Trial Deposition taken by Applicant. (Null 6:8-7:19; Wilson 8:8-16; Potter 5:8-17; Paulson 6:8-24; Saran 71:4-5.)

6. Dave Castro – Mr. Castro testified that he saw Applicant at one of the CrossFit regional events in 2013, and thought that Applicant's stylized logo looked like Opposer's "H" mark with "a few tweaks." (Castro 39:1-25.) Mr. Castro's testimony merely presents an unsubstantiated inquiry as to a potential affiliation between Applicant and Opposer. There is no demonstration of actual confusion of the marks leading to the mistaken purchase of Applicant's goods. More importantly, Mr. Castro goes on to testify that he has traveled all over the United States, Canada, Australia, Europe, and South America to CrossFit events and seminars, and to thousands of CrossFit gyms, and has not witnessed a single instance of customer confusion other than his own testimony regarding the 2013 CrossFit regional event. (Castro: 11:7-9; 12:23.)

After Opposer's presentation of the evidence above, which is far from sufficient to support Opposer's claim that it possesses "numerous messages, emails, and social media posts" indicating confusion, Opposer is left with Mr. Orlando's own self-serving, inconsistent testimony

of either “hundreds” or “thousands” of instances that happen either “every day” or “quite frequently” – none of which Opposer can prove with any documented evidence. (Orlando 166:7-168:15.) When pressed to explain why Opposer cannot provide additional documented evidence to support its claims, Mr. Orlando contends that he “never thought it would get to this point.” (Orlando 167:4-8.) Yet, the implication from this claim – that somehow Mr. Orlando lacked the foresight to save documented evidence from the “hundreds” or “thousands” of instances of confusion that he claims to have experienced – is at best questionable given that Opposer has presented evidence in its Trial Brief from as far back as March 10, 2013.

VI. CONCLUSION

Based on the foregoing, no likelihood of confusion exists between Applicant’s stylized logo and Opposer’s “H” mark. Applicant’s highly stylized logo is significantly different in appearance, and is thus highly contrasting with Opposer’s “H” mark. Opposer’s “H” mark lacks conceptual and commercial distinction, and is used in connection with goods that do not directly compete with Applicant’s and exist in different direct-to-consumer trade channels. Both Applicant and Opposer’s apparel goods are also relatively expensive, which means that purchasers exercise care when deciding whether to purchase such goods. Most importantly, Opposer has not presented any documented evidence of actual customer confusion directly stemming from purported similarities between the marks. While there are certainly reasons for Opposer’s admitted decline in apparel sales, this decline is unrelated to Applicant’s stylized logo. Rather, it is attributable to Opposer’s unwillingness to dedicate effort and resources into operating and promoting its apparel company.

Accordingly, there is no confusion between Applicant's stylized logo and Opposer's "H" mark.

Dated: April 21, 2016

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

HYBRID ATHLETICS, LLC,

Opposer,

v.

HYLETE, INC.,

Applicant.

Opposition No.: 91213057

Application Serial No.: 85/837,045

Mark:



APPLICANT'S RESPONSE TO OPPOSER'S STATEMENT OF OBJECTIONS TO

APPLICANT'S TESTIMONY EVIDENCE

Applicant Hylete, Inc. ("Applicant" or "Hylete"), hereby objects to Opposer Hybrid Athletics, LLC's ("Opposer" or "Hybrid") Statement of Objections. First, Applicant objects to Opposer's request for the Board to strike certain testimony and exhibits contained in the trial depositions of Abbe Guddal, James Wardlow, Ron Wilson, Garret Potter, Jennfer Null, and Matt Paulson (collectively, the "Trial Depositions") because such proffered testimony and exhibits are outside the scope of the Board's November 18, 2014 Sanction Order (the "Order"), and their later production is substantially justified. Second, Applicant objects to Opposer's other contentions concerning Applicant's production of evidence, for the reasons set forth below.

I. STATEMENT OF FACTS

On March 4, 2014, Opposer served its First Set of Interrogatories and First Set of Requests for Production of Documents (collectively, the "Requests") on Applicant. True and correct copies of the Requests are attached hereto as Exhibits "A" and "B" and incorporated

herein by this reference. Applicant provided responses to the Requests on April 2, 2014 (collectively, the “Responses”), and specifically withheld information and documents regarding Applicant’s financials (current sales, profits and loss statements, and supporting documents) on the basis that such information and documents are confidential. True and correct copies of the Responses are attached hereto as Exhibits “C” and “D” and incorporated herein by this reference.

On May 21, 2014, Opposer filed a motion to compel additional responses to Document Request Nos. 1-26 and Interrogatory Nos. 1-4, 6-10, 12-16 and 20-21, contending that such responses were incomplete and improper to the extent that Applicant objected to each as “seek[ing] information that is confidential, privacy protected, and/or trade secrets.” Applicant was unfamiliar with the Trademark Trial and Appeal Board’s (the “Board”) standardized protective governing the production of confidential information, which was applicable to all Board proceedings. Opposer’s Motion was granted and Applicant served additional responses and responsive documents (the “Supplemental Responses”), but Applicant continued to withhold financial information because of its misunderstanding of the Board’s standardized protective order. True and correct copies of the Supplemental Responses are attached hereto as Exhibits “E” and “F” and incorporated herein by this reference.

As such, the Board issued an order on November 18, 2014 (the “Order”), acknowledging Applicant’s misunderstanding of the function of the Board’s standardized protective order, but advising Applicant that “it cannot submit at trial or rely on as evidence at trial, any information or documents that were the subject of Opposer’s discovery requests, but which were not served on Opposer prior to the filing of Opposer’s motion for sanctions.” (Sanction Order TTABVue #15 at pg. 4.) The Board also reminded Applicant that “Applicant should promptly supplement its responses” if Applicant found information or materials responsive to Opposer’s previously

served discovery. (*Id* at pg. 5.) Moreover, the Board clarified in footnote 2 to the Order that “[o]nly information and materials provided to Opposer following the Board’s July 4, 2014 order and this order, which were previously and inappropriately withheld, are subject to the estoppel sanction.” (*Id* at pg. 5 FN2.)

Applicant therefore contends that nearly all of the testimony and exhibits proffered during Applicant’s Trial Depositions are not subject to the Board’s Order. Further, any testimony or exhibits that are subject to the Order constitute either testimony or exhibits already made known to Opposer, or exhibits that are not necessary to provide support to testimony made from the witness’ own personal knowledge.

II. ARGUMENT

a. Nearly All Of The Testimony And Exhibits Proffered During Applicant’s Trial Depositions Are Not Subject To The Sanction Order Because Such Testimony And Exhibits Were Not Withheld Prior To Opposer’s Filing Of Its Motion To Compel And Applicant’s Inability To Later Disclose The Same Was Substantially Justified

Certainly, a party has a duty to timely supplement discovery responses if that party learns in some material respect that the responses were incomplete, incorrect, or additional information has been made known. (FRCP 26(e)(1)(A).) However, even where a party had a duty to disclose prior to the end of the discovery period and didn’t, the following five factors are weighed to determine whether the nondisclosure of evidence is substantially justified or harmless: “(1) the surprise to the party against whom the witness was to have testified; (2) the ability of the party to cure that surprise; (3) the extent to which allowing the testimony would disrupt the trial; (4) the explanation for the party’s failure to name the witness before trial; and

(5) the importance of the testimony.” (FRCP Rule 37(c)(1); *Southern States Rack And Fixture, Inc. v. Sherwin-Williams Co.*, 318 F.3d 592, 596 (4th Cir. 2003) (internal citations omitted); *Rambus, Inc. v. Infineon Technologies AG*, 145 F.Supp.2d 721, 726 (E.D.Va. 2001); *Burlington Ins. Co. v. Shipp*, 215 F.3d 1317, 2000 WL 620307, at *4 (4th Cir. May 15, 2000).)

First, nearly all of the testimony and exhibits contained in the Trial Depositions constitute information and documents that were not withheld prior to the filing of Opposer’s motion for sanctions. As set forth in the chart below, the majority of testimony and exhibits presented in Applicant’s Trial Depositions relate to (1) Applicant’s creation of its stylized logo, (2) Applicant’s early attempts to form a brand ambassador relationship with Mr. Orlando, (3) Applicant’s company growth and increased presence on social media, and (4) Applicant’s lack of evidence demonstrating customer confusion between the marks. Even the limited amount of evidence specifically relating to financials proffered during Trial Depositions reflects Applicant’s current financials, not those maintained prior to Opposer’s filing of its Motion for Sanctions.

Second, disclosure of all of the testimony and exhibits contained in the Trial Depositions is substantially justified and harmless to the extent any of it should have been disclosed previously to supplement initial discovery responses. Testimony and exhibits regarding (1) Applicant’s creation of its stylized logo, (2) Applicant’s early attempts to form a brand ambassador relationship with Mr. Orlando, (3) Applicant’s company growth and increased presence on social media, (4) Applicant’s lack of evidence demonstrating customer confusion between the marks, and (5) Applicant’s current financials, are extremely important to Applicant’s case in chief and its rebuttal of Opposer’s contention that Applicant knew about Opposer’s stylized logo before Applicant created its “H” mark. A majority of the testimony and

exhibits concerning such issues that was proffered during the Trial Depositions should not be a surprise to Opposer either, particularly any evidence of Applicant's early involvement with Opposer's principal Mr. Orlando, and any evidence of Applicant's general growth and expanding social media presence. Further, the nature of these Board proceedings, whereby Opposer had an opportunity to rebut any contentions made during Applicant's Trial Testimony period, significantly mitigates any unintentional disruption of trial proceedings that Applicant caused by submitting the above testimony and exhibits.

b. Even If Certain Testimony And Exhibits Proffered During Applicant's Trial Depositions Are Subject To The Sanction Order, Some Testimony And Exhibits Were Already Made Known To Opposer And Other Testimony Is Made From Personal Knowledge Without Reliance On Exhibits

A party's duty to supplement discovery responses with later-discovered information does not apply to information that has "been made known to the other parties during the discovery process or in writing." (FRCP Rule 26(e)(1)(A).) Additionally, a witness may testify to a matter that he or she has personal knowledge of, without the need for counsel to introduce into evidence supporting documentation. (FRE Rule 602.)

Here, a significant portion of the testimony and exhibits contained in the Trial Depositions constitute information and documents that have already been made known to Opposer either prior to, or during, the commencement of this proceeding. As set forth in the chart below, the testimony and exhibits presented in the Trial Depositions related to Applicant's early attempts to form a brand ambassador relationship with Mr. Orlando constitutes information that has been made known to Opposer from before the inception of this dispute. Testimony and exhibits related to Applicant's company growth and increased presence on social media

constitutes information that has been made known to Opposer from discovery responses that Applicant propounded upon Opposer. Additionally, the chart below will establish in greater detail each and every instance of testimony evidence that was submitted from the witness' personal knowledge, even if the exhibits submitted along side such testimony are barred pursuant to the Order.

III. CONCLUSION

Based on the foregoing reasons, and Applicant's contentions set forth in the chart below that Opposer's additional objections to each piece of proffered evidence are not applicable, the testimony and exhibits submitted during Applicants Trial Depositions should be admitted.

Response to Objections to Abbe Guddal's October 27, 2015 Testimony & Exhibits

1/2

Exhibits	Exhibit/Testimony Description	Testimony Citations (Page:Line)	Response to Objections					
			Not Subject to Sanction Order (TTABVue #15)	Production Substantially Justified	Evidence Already Made Known	Testimony is Personal Knowledge	Relevant	
A	Hylete's Customer Service Manager (CRM) and the testimony connected therewith.	8:17-15:11	The documents and testimony connected therewith were not withheld prior to the time that Opposer filed its Motion for Sanctions.	Late production of such documents and testimony is substantially justified because (1) such evidence is important to establish the amount of effort that Applicant has dedicated to establishing itself as a premium fitness apparel company; and (2) Applicant did not believe such documents and testimony would be important to its case until after Opposer presented its Trial Testimony.			Even if Exhibit A is covered under the Sanction Order, Ms. Guddal has personal knowledge of her testimony connected therewith because Ms. Guddal is the brand experience manager for Applicant, and is in charge of all customer service for Applicant.	Relevant to establishing the well-funded, premium nature of Applicant's direct-to-consumer apparel business.
B	List of examples of Hylete customer	15:15-25:19	The documents and testimony	Late production of such			Even if Exhibit B is covered under the	Relevant to establishing the well-funded,

	feedback and the testimony connected therewith.		connected therewith were not withheld prior to the time that Opposer filed its Motion for Sanctions.	documents and testimony is substantially justified because (1) such evidence is important to establish the amount of effort that Applicant has dedicated to establishing itself as a premium fitness apparel company; and (2) Applicant did not believe such documents and testimony would be important to its case until after Opposer presented its Trial Testimony.		Sanction Order, Ms. Guddal has personal knowledge of her testimony connected therewith because Ms. Guddal is the brand experience manager for Applicant, and is in charge of all customer service for Applicant. Additionally, she collected each of the individual reviews contained in such evidence.	premium nature of Applicant's direct-to-consumer apparel business.
	Testimony connected with Ex C, a black and white photocopy of the Opposer's and Hylete's logos.	25:23-27:8					Relevant to establishing lack of confusing similarity between the marks.
D	Four logos: Under Armor, Opposer's, Hylete's and Hurley and the testimony	27:13-30:8	The documents and testimony connected therewith were not	Late production of such documents and testimony is	Such evidence has been made known to Opposer prior to the commencement of this	Even if Exhibit D is covered under the Sanction Order, Ms. Guddal has personal	Relevant to establishing crowded space for "H" marks in IC25.

	connected therewith.		withheld prior to the time that Opposer filed its Motion for Sanctions.	substantially justified because (1) such evidence is important to establish a crowded space of "H" marks in IC25; (2) such evidence should not be a surprise to Opposer given that it is a print out of four apparel logos that are well known; and (3) Applicant did not believe such documents and testimony would be important to its case until after Opposer presented its Trial Testimony.	litigation given that such marks are all in existence in the athletic apparel industry.	knowledge of her testimony connected therewith to the extent that Ms. Guddal has personally seen each of the marks presented on the document.	
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Response to Objections to Abbe Guddal's October 27, 2015 Testimony & Exhibits

2/2

Exhibits	Exhibit/Testimony Description	Testimony Citations (Page:Line)	Response to Objections					Miscellaneous
			Material	Not Hearsay	Has Foundation	Not Speculation	Contains Personal Knowledge	
A	Hylete's Customer Service Manager (CRM) and the testimony connected therewith.	8:17-15:11	Such relevant evidence is material because the prejudice derived from knowledge of Applicant's CRM system is outweighed by the importance of establishing the well-funded premium nature of Applicant's direct-to-consumer apparel business.	Evidence not offered for its truth. Evidence offered to establish that no instances of logo confusion exist.				
B	List of examples of Hylete customer feedback and the testimony connected	15:15-25:19	Such relevant evidence is material	Evidence not offered for its truth. Evidence	Foundation has been established to the extent		Testimony based on Ms. Guddal's personal knowledge as the person for	The witness testified that the document was made in preparation of a board meeting. (Guddal 15:25-16:4.)

	therewith.		because any minimal prejudice derived from information about positive customer feedback is outweighed by the importance in establishing the premium nature of Applicant's direct-to-consumer apparel business.	offered to establish that no instances of logo confusion exist.	that: (1) Ms. Guddal is the brand experience manager and presides over all customer feedback; (2) the subject evidence is relevant and material to the matter because it goes towards establishing that Applicant is a premium provider of fitness apparel; and (3) the evidence is not subject to the Sanction Order; and (4) the evidence was prepared by Ms. Guddal as part of a previous board meeting, not in anticipation		Applicant in charge of customer feedback, and the person who collected and compiled the feedback presented as evidence.	
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	Testimony connected with Ex C, a black and white photocopy of the Opposer's and Hylete's logos.	25:23-27:8	Such relevant evidence is material because any minimal prejudice derived from testimony concerning the differences in such marks is significantly outweighed by the importance in establishing that there is no similarity between such marks.		for litigation.			
D	Four logos: Under Armor, Opposer's, Hylete's and Hurley and the testimony connected therewith.	27:13-30:8	Such relevant evidence is material because any minimal prejudice derived from	Evidence not offered for its truth. Evidence offered to establish a crowded space for "H" marks in				

			testimony concerning the existence of multiple "H" marks in the fitness world is significantly outweighed by the importance in establishing the crowded space for "H" marks in IC25 such marks.	IC25.				
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Response to Objections to James Wardlow's October 27, 2015 Testimony & Exhibits

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Exhibits	Exhibit/Testimony Description	Testimony Citations (Page:Line)	Response to Objections				
			Not Subject to Sanction Order (TTABVue #15)	Production Substantially Justified	Evidence Already Made Known	Testimony is Personal Knowledge	Relevant
B	Color photocopy of screenshot of Hylete's website page and the testimony connected therewith	13:19-16:6	The documents and testimony connected therewith were not withheld prior to the time that Opposer filed its Motion for Sanctions.	Late production of such documents and testimony is substantially justified because (1) such evidence is important to establish the amount of effort and resources that Applicant puts into its apparel company, as well as the extent to which Applicant has become a premium direct-to-consumer apparel business; (2) there is no surprise to Opposer given that such evidence is a simple screen shot of	Such evidence and testimony has already been made known to Opposer before the start of this action by virtue of the fact that Opposer has known about Applicant for some time prior to the dispute.	Even if Exhibit B is covered under the Sanction Order, Mr. Wardlow has personal knowledge of his testimony connected therewith because Mr. Wardlow is the director of marketing and manages all of Applicant's e-commerce operations.	Relevant to establishing the well-funded, premium nature of Applicant's direct-to-consumer apparel business.

				Applicant's website that is available online at any time; and (3) Applicant did not believe such documents and testimony would be important to its case until after Opposer presented its Trial Testimony.			
C-D	Screenshots of Hylete's social media pages (Facebook and Instagram respectively) and testimony connected therewith.	16:7-24:23	The documents and testimony connected therewith were not withheld prior to the time that Opposer filed its Motion for Sanctions.	Late production of such documents and testimony is substantially justified because (1) such evidence is important to establish the effort and resources that Applicant dedicates to the marketing of its apparel business; (2) there is no surprise to Opposer given that such evidence is a simple screen shot of	Such evidence and testimony has already been made known to Opposer before the commencement of this action by virtue of the fact that Opposer has been aware of Applicant for some time prior to the dispute. Opposer was also made aware of such evidence during this matter through discovery. (Hylete0002-0070)	Even if Exhibits C and D are covered under the Sanction Order, Mr. Wardlow has personal knowledge of his testimony connected therewith because Mr. Wardlow is the director of marketing for Applicant.	Relevant to establishing growth Applicant as a company, and the effectiveness of its social media marketing.

				Applicant's own social media pages that can be searched and viewed at any time; and (3) Applicant did not believe such documents and testimony would be important to its case until after Opposer presented its Trial Testimony.			
E	Portion of Ian Jentgen's Testimony Deposition and the testimony connected therewith.	24:24-27:22					
F	Hybrid Athletics website and the testimony connected therewith.	27:23-28:16	The documents and testimony connected therewith were not withheld prior to the time that Opposer filed its Motion for Sanctions.	Late production of such documents and testimony is substantially justified because (1) such evidence is important to establish the lack of effort and resources that Opposer dedicates to operating its	Such evidence and testimony has already been made known to Opposer before the commencement of this action because the evidence of Opposer's own website.	Even if Exhibit F is covered under the Sanction Order, Mr. Wardlow has personal knowledge of his testimony connected therewith because Mr. Wardlow has been the e-commerce manager and/or director of marketing for several different companies and can speak to the different e-commerce	Relevant to establishing Opposer's lack of effort and resources devoted to its direct-to-consumer apparel business, which is one of the reasons for company's decline, not because of purported similarities between the marks.

				<p>apparel company, which Applicant believes is a reason for Opposer's decline in sales, not as the result of any customer confusion with Applicant's mark; (2) there is no surprise to Opposer given that such evidence is a simple screenshot of Opposer's own website; and (3) Applicant did not believe such documents and testimony would be important to its case until after Opposer presented its Trial Testimony.</p>		<p>systems that exist.</p>	
G	<p>Comparison of web traffic from similarweb.com between Opposer's and Hylete's websites and the testimony connected</p>	28:20-30:16	<p>The documents and testimony connected therewith were not withheld prior to the time that Opposer filed its</p>	<p>Late production of such documents and testimony is substantially justified because (1) such</p>	<p>Such evidence and testimony has already been made known to Opposer before the commencement of this action by virtue of the fact that such</p>	<p>Even if Exhibit G is covered under the Sanction Order, Mr. Wardlow has personal knowledge of his testimony connected therewith</p>	<p>Relevant to establishing Opposer's lack of effort and resources devoted to social media marketing and its direct-to-consumer apparel business, which are two</p>

	therewith.		Motion for Sanctions.	evidence is important to establish the lack of effort and resources that Opposer dedicates to operating and marketing its apparel company, which Applicant believes is a reason for Opposer's decline in sales, not as the result of any customer confusion with Applicant's mark; (2) there is no surprise to Opposer given that such evidence is publicly available information about Opposer's own web traffic, which Opposer should already know; and (3) Applicant did not believe such documents and testimony would	evidence comprises, in part, Opposer's own web traffic.	because Mr. Wardlow searched for and obtained the results embodied in such evidence, and reviewed the same based on his experience analyzing web traffic as Applicant's e-commerce director and director of marketing.	of the reason's for company's decline, not because of purported similarities between the marks.
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				be important to its case until after Opposer presented its Trial Testimony.			
H-I	Google Trends screenshots and the testimony connected therewith.	30:20-32:15; 32:19- 33:14	The documents and testimony connected therewith were not withheld prior to the time that Opposer filed its Motion for Sanctions.	Late production of such documents and testimony is substantially justified because (1) such evidence is important to establish the lack of effort and resources that Opposer dedicates to operating and marketing its apparel company, which Applicant believes is a reason for Opposer's decline in sales, not as the result of any customer confusion with Applicant's mark; (2) there is no surprise to Opposer given that such	Such evidence and testimony has already been made known to Opposer before the commencement of this action by virtue of the fact that such evidence comprises, in part, information regarding the analytics of Opposer's own name as a Google search term.	Even if Exhibits H and I are covered under the Sanction Order, Mr. Wardlow has personal knowledge of his testimony connected therewith because Mr. Wardlow searched for and obtained the results embodied in such evidence, and analyzed the same based on his experience analyzing marketing trends, search trends, and key word trends as a Director of Marketing for Applicant.	Relevant to establishing Opposer's lack of effort and resources devoted to social media marketing and its direct-to-consumer apparel business, which are two of the reasons for company's decline, not because of purported similarities between the marks.

				evidence is publicly available information about the popularity of certain search terms related to Applicant and Opposer, which Opposer should already know; and (3) Applicant did not believe such documents and testimony would be important to its case until after Opposer presented its Trial Testimony.			
	Testimony connected with Ex J, a black and white photocopy of the Opposer's and Hylete's logos.	34:2-35:20					Relevant to establishing lack of confusing similarity between the marks.
K	Four logos: Under Armor, Opposer's, Hylete's and Hurley and the testimony connected therewith.	35:24-36:20	The documents and testimony connected therewith were not withheld prior to the time that Opposer filed its Motion for	Late production of such documents and testimony is substantially justified because: (1) it is important to	Such evidence has been made known to Opposer prior to the commencement of this litigation given that such marks are all in existence in the athletic apparel	Even if Exhibit K is covered under the Sanction Order, Mr. Wardlow has personal knowledge of his testimony connected therewith to the extent that Mr.	Relevant to establishing crowded space for "H" marks in IC25.

			Sanctions.	establish a crowded space of "H" marks in IC25; (2) such evidence should not be a surprise to Opposer given that it is a print out of four apparel logos that are well known; and (3) Applicant did not believe such documents and testimony would be important to its case until after Opposer presented its Trial Testimony.	industry.	Wardlow has personally seen each of the marks presented on the document.	
L-M	Exit survey presented to consumers after a purchase from hylete.com and the testimony connected therewith.	37:4-42:24	The documents and testimony connected therewith were not withheld prior to the time that Opposer filed its Motion for Sanctions.	Late production of such documents and testimony is substantially justified because: (1) it is important to establish that no likelihood of confusion exists between Applicant and Opposer's marks; and (2) Applicant		Even if Exhibits L and M are covered under the Sanction Order, Mr. Wardlow has personal knowledge of his testimony connected therewith to the extent that Mr. Wardlow is the director of marketing and e-commerce for Applicant and can speak directly to the questions presented in the exit survey, the	Relevant to establishing lack of evidence of customer confusion between the marks.

				did not believe such documents and testimony would be important to its case until after Opposer presented its Trial Testimony.		reasons for such questions, and the purpose of generally having such an exit survey.	
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Response to Objections to James Wardlow's October 27, 2015 Testimony & Exhibits

2/2

Exhibits	Exhibit/Testimony Description	Testimony Citations (Page:Line)	Response to Objections					
			Material	Not Hearsay	Has Foundation	Not Speculation	Contains Personal Knowledge	Miscellaneous
B	Color photocopy of screenshot of Hylete's website page and the testimony connected therewith	13:19-16:6	Such relevant evidence is material because any minimal prejudice in a screen shot of Applicant's website, and the testimony about how the website operates, is significantly outweighed by the importance of establishing that Applicant has put a substantial amount of effort and resources into operating	Evidence of screenshot of Applicant's website not offered for its truth. Evidence offered to establish Applicant's general size and social media reach. Testimony connected therewith are in-court statements offered for their truth.	Foundation has been established to the extent that: (1) Mr. Wardlow is the director of marketing and e-commerce for Applicant and can therefore directly speak to the evidence; (2) the evidence is relevant and material because it goes towards establishing that Applicant has put a substantial amount of effort and resources into marketing and operating its apparel company;			

			its apparel business.		and; (3) the evidence is not subject to the Sanction Order; and (4) Mr. Wardlow has established that such evidence is a screen shot of Applicant's website.			
C-D	Screenshots of Hylete's social media pages (Facebook and Instagram respectively) and testimony connected therewith.	16:7-24:23		Evidence of screen shots of Applicant's social media pages not offered for its truth. Evidence offered to establish Applicant's general size and social media reach. Testimony connected therewith are in-court statements offered for their truth.	Foundation can be established to the extent that: (1) Mr. Wardlow is the director of marketing and e-commerce for Applicant and can directly speak to evidence concerning Applicant's social media marketing; (2) the evidence is relevant and material to the case	Evidence is not Mr. Wardlow's guess as to what is contained on the exhibits, or his explanation of the exhibits. Mr. Wardlow has actual knowledge of the inner workings of Applicant's social media		

					because it helps establish the effort and resources that Applicant dedicates to the marketing of its apparel business; (3) the evidence is not subject to the Sanction Order; and (4) it is established that this evidence is a screenshot.	marketing and social media pages.		
E	Portion of Ian Jentgen's Testimony Deposition and the testimony connected therewith.	24:24-27:22		Evidence of Ian Jentgen's testimony not offered for its truth. Evidence offered to establish Mr. Jentgen's lack of knowledge regarding social media advertising. Testimony connected	Foundation is established to the extent that: (1) Mr. Wardlow's experience as the director of marketing and e-commerce allows him to directly speak to evidence concerning Mr. Jentgen's testimony on	Evidence is not Mr. Wardlow's guess as to what Mr. Jentgen said, it is Mr. Wardlow's recitation of what Mr. Jentgen said, and Mr. Wardlow's actual		

				therewith are in-court statements offered for their truth.	how social media marketing functions; (2) the evidence relevant and material because it helps establish Applicant's position that Opposer's decline in sales is a result of Opposer's lack of effort and resources dedicated toward marketing, not as a result of customer confusion with Applicant's mark; (3) the evidence is not subject to the Sanction Order; and (4) it is established that the evidence is a	knowledge of the inaccuracies of such statements given his extensive experience with social media marketing.		
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					portion of Mr. Jentgin's testimony, which was already produced by Opposer.			
F	Hybrid Athletics website and the testimony connected therewith.	27:23-28:16	Such relevant evidence is material because any minimal prejudice derived from exhibit and testimony concerning the basic nature of Opposer's apparel business is significantly outweighed by the importance in establishing that the lack of resources that Opposer has	Evidence of Opposer's website not offered for its truth. Evidence offered to establish the lack of resources Opposer dedicates to its apparel company. Testimony connected therewith are in-court statements offered for their truth.		Evidence is not Mr. Wardlow's guess as to what the exhibit displays or what Mr. Wardlow testifies concerning Opposer's website. Mr. Wardlow's testimony regarding Opposer's website displayed on the exhibit is from Mr. Wardlow's extensive knowledge of e-commerce platforms.		Testimony regarding the details of Opposer's website is not a statement of opinion, but rather a statement of fact based on Mr. Wardlow's extensive experience as Applicant's director of e-commerce.

			dedicated to its apparel company, which Applicant believes is a reason for Opposer's decline in sales, not as a result of any confusion with Applicant's mark.					
G	Comparison of web traffic from similarweb.com between Opposer's and Hylete's websites and the testimony connected therewith.	28:20-30:16	Such relevant evidence is material because any minimal prejudice derived from the knowledge of each parties' respective web traffic is substantially outweighed by the	Evidence of web traffic not offered for its truth, only to establish the broad presence of Applicant as an apparel company in contrast to the limited presence of Opposer. Testimony connected therewith are in-court	Foundation is established to the extent that: (1) Mr. Wardlow's experience as director of marketing and e-commerce for Applicant allows him to directly speak to evidence concerning Applicant's web traffic, and the web traffic of a	Evidence is not Mr. Wardlow's guess as to each party's web traffic. Evidence is an exhibit actually displaying such traffic, and Mr. Wardlow's testimony of what		The document has been properly authenticated as a screen shot of search results of web traffic of hylete.com and hybridathleticsapparel.com from similarweb.com.

			<p>importance in establishing the lack of effort and resources that Opposer dedicates to operating and marketing its apparel company, which Applicant believes is a reason for Opposer's decline in sales, not as a result of any confusion with Applicant's mark.</p>	<p>statements offered for their truth.</p>	<p>competitor; (2) the evidence is relevant and material because it helps establish the lack of effort and resources that Opposer dedicates to operating and marketing its apparel company, which Applicant believes is a reasons for Opposer's decline in sales, not as a result of any customer confusion with Applicant's mark; (3) the evidence is not covered by the Sanction Order; and (4) it is established</p>	<p>the exhibit displays in actual numbers.</p>	
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					that the evidence is a publicly available comparison of web traffic between hylete.com and hybridathletic sapparel.com from similarweb.com.			
H-I	Google Trends screenshots and the testimony connected therewith.	30:20-32:15; 32:19- 33:14	Such relevant evidence is material because any minimal prejudiced derived from the knowledge of how the various key words are trending is substantially outweighed by the importance of establishing the lack of	Evidence of Google trends not offered for its truth, only to establish the broad presence of Applicant as an apparel company in contrast to the limited presence of Opposer, and the decline in popularity of Mr. Orlando. Testimony connected	Foundation is established to the extent that: (1) Mr. Wardlow's experience as director of marketing and e-commerce for Applicant allows him to directly speak to evidence concerning Google key word trends; (2) the evidence is relevant and material because it	Evidence is not Mr. Wardlow's guess as to how much or how little each of the respective key words are trending. Evidence consists of actual exhibits displaying such trends,		

		<p>effort and resources that Opposer dedicates to operating and marketing its apparel company, which Applicant believes is a reason for Opposer's decline in sales, not as the result of any customer confusion with Applicant. As well as the importance in establishing that the growing presence of Applicant versus the declining presence of Opposer</p>	<p>therewith are in-court statements offered for their truth.</p>	<p>helps establish the lack of effort and resources that Opposer dedicates to operating and marketing its apparel company, which Applicant believes is a reasons for Opposer's decline in sales, not as a result of any customer confusion with Applicant's mark; (3) the evidence is not covered by the Sanction Order; and (4) it is established that the evidence is a screenshot of publicly available google</p>	<p>and Mr. Wardlow's testimony concerning what those trends are based on actual data.</p>	
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			and Opposer's principal Mr. Orlando.		keyword trend information evaluating the keyword trends of "hylete" versus "hybrid athletics" as well as the keyword trends of "hylete" versus "Rob Orlando."			
	Testimony connected with Ex J, a black and white photocopy of the Opposer's and Hylete's logos.	34:2-35:20	Such relevant evidence is material because any minimal prejudice derived from testimony concerning the differences in such marks is significantly outweighed by the importance in					

			establishing that there is no similarity between such marks.					
K	Four logos: Under Armor, Opposer's, Hylete's and Hurley and the testimony connected therewith.	35:24-36:20	Such relevant evidence is also material because any minimal prejudice in information related to multiple "H" marks in the fitness industry is substantially outweighed by the significant importance in establishing a crowded space for "H" marks in IC25.					
L-M	Exit survey presented to consumers after a	37:4-42:24	Such relevant evidence is					

	<p>purchase from hylete.com and the testimony connected therewith.</p>		<p>also material because any minimal prejudice derived from seeing Applicant's customer exit survey responses is substantially outweighed by the significant importance in establishing that Applicant possesses absolutely zero instances of actual customer confusion.</p>					
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Response to Objections to Ron Wilson's October 29, 2015 Testimony & Exhibits

1/2

Exhibits	Exhibit/Testimony Description	Testimony Citations (Page:Line)	Response to Objections		Evidence Already Made Known	Testimony is Personal Knowledge	Relevant
2-12	US Patents for Apparatus and Method for Making an ear warmer and ear warmer frame, eyeglasses, and hand covering and the testimony connected therewith.	21:19-36:9	Exhibits 2-12, and the testimony connected therewith were not withheld prior to Opposer filing its Motion for Sanctions.	Production Substantially Justified		Even if Exhibits 2-12 are covered under the Sanction Order, Mr. Wilson testifies to the information contained therein from his own personal knowledge as an inventor on each of the patents evidenced.	Relevant to establish that Applicant's CEO develops apparel technology, which is one factor that makes Applicant a provider of premier fitness apparel technology.

				Trial Testimony.			
13	Jaco Vida LLC webpage and the testimony connected therewith	36:14-52:15	The document and testimony connected therewith were not withheld prior to Opposer filing its Motion for Sanctions.	Late production of such documents and testimony is substantially justified because: (1) the documents and testimony are important to establish where Applicant's CEO was prior to founding Applicant; and (2) Applicant did not believe such documents and testimony would be important to its case until after Opposer presented its Trial Testimony.		Even if Exhibit 13 is covered under the Sanction Order, Mr. Wilson testifies to the information contained therein from his personal knowledge as the one who went online to procure such entity formation information. (Wilson 36:20-22.)	Evidence is relevant to establish the facts and circumstances leading up to Mr. Wilson's independent creation of Applicant's mark, which is important to Applicant's denial of Opposer's contention that Applicant had intimate knowledge of Opposer's mark when Applicant designed its mark.
14-17 & 23	US Patents for shorts, waistband, lower-body garment, and undergarment with protective cup and the testimony connected therewith.	52:19-86:16; 102:19-110:4.	The documents and testimony connected therewith were not withheld prior to the time that Opposer filed its Motion for Sanctions.	Late production of such documents and testimony is substantially justified because (1) the documents and testimony are important to establish that		Even if Exhibits 14-17 and 23 are covered under the Sanction Order, Mr. Wilson testifies to the information connected therewith from his own personal knowledge as an inventor on each of the patents	Evidence is relevant to establish that Applicant's CEO designed a similar short style that Opposer sold, which is one of the reasons why customers may have been confused between products sold by Applicant and Opposer.

				Applicant's CEO designed a similar short style that Opposer sold, which is one of the reasons why customers may have been confused between product sold by Applicant and Opposer; and (2) Applicant did not believe such documents and testimony would be important to its case until after Opposer presented its Trial Testimony.		evidenced.	
	Testimony surrounding the start up of Hylete.	86:17-90:13					Relevant to establishing that Applicant independently created its mark, and to establish that Applicant has grown into a premier fitness apparel company.
18	Testimony connected to Ex 18 regarding the application for registration of the	90:14-91:17		Late production of testimony regarding registration of Hylete	Such evidence and testimony has already been made known to Opposer from the outset of this action	Even if Exhibit 18 is covered under the Sanction Order Mr. Wilson has personal knowledge of coming	Relevant to establishing the development of Applicant's brand, which included the mark at issue. Also relevant to

	Hylete Trademark.			Trademark substantially justified because: (1) the testimony is important to establish when Applicant was formed and the facts and circumstances surrounding Applicant's independent creation of Applicant's mark; and (2) Applicant did not believe such documents and testimony would be important to its case until after Opposer presented its Trial Testimony.	because Opposer is aware that Applicant – under its name Hylete – exists. Opposer was also made aware of such evidence from nearly all of the discovery produced concerning Applicant, namely Applicant's pitch book. (HYLETE0002-0001-HYLETE0002-0029)	up with, researching availability, and eventually registering the Hylete mark. (CITE.)	establishing that some similarity existed between similar names for Applicant and Opposer.
19-20	Picture of drawings of Hylete icons and Wikipedia Search for Eurostile type font and the testimony connected therewith	91:21-98:19	The documents and testimony connected therewith were not withheld prior to the time that Opposer filed its Motion for Sanctions.	Late production of such documents and testimony is substantially justified because: (1) evidence of Applicant's development of Applicant's mark is extremely	Such evidence and testimony has already been made known to Opposer from Applicant's response to Interrogatory No. 8, wherein Applicant stated that Ron Wilson designed the mark between March 17 and March 20, 2012.	Even if the document concerning the drawing of the Hylete Mark is covered under the Sanction Order, Mr. Wilson has personal knowledge of the testimony surrounding such documentation given	

				<p>important to establishing that Applicant independently created its mark; (3) evidence of other companies using the euro-style font is important to establishing that confusion could have derived from a source other than the marks; (4) evidence of Applicant's development of its mark is not a surprise to Opposer given that Opposer new Applicant developed its mark some how; (5) evidence of different brands using euro-style font style is not a surprise to Opposer; and (6) Applicant did not believe such documents and testimony would</p>	<p>Opposer has also been made aware of such evidence concerning the euro-style font from before the outside of this litigation given that euro-style font is in common use.</p>	<p>that Mr. Wilson designed the mark himself. (CITE.) Mr. Wilson also has personal knowledge of the information contained in the document regarding the euro-style font because he searched for the information himself. (CITE.)</p>	
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				be important to its case until after Opposer presented its Trial Testimony.			
21	Under Armor font and the testimony connected therewith.	98:23-100:24	The documents and testimony connected therewith were not withheld prior to the time that Opposer filed its Motion for Sanctions.	Late production of such documents and testimony is substantially justified because: (1) evidence of other brands using euro-style font is important to establishing that confusion could have been derived from a source other than the marks; (2) evidence of Under Armour using euro-style font is not a surprise to Opposer; and (3) Applicant did not believe such documents and testimony would be important to its case until after Opposer presented its Trial Testimony.	Opposer has been made aware of such evidence from before the outset of this matter given that euro-style font is a common font and Under Armour's logo using such font is well known.	Even if Exhibit 21 is covered under the Sanction Order, Mr. Wilson has personal knowledge of the Under Armour font because he searched for the information himself and is well aware of Under Armour due to its prevalence as a brand.	Relevant to establishing that many companies use similar fonts, which Applicant believes is yet another source of possible confusion.

22	Batman logos and the testimony connected therewith.	101:3-102:15	The documents and testimony connected therewith were not withheld prior to the time that Opposer filed its Motion for Sanctions.	Late production of such documents and testimony is substantially justified because: (1) evidence that customers can see a resemblance between Applicant's mark and other logos or images without being confused is extremely important; and (2) Applicant did not believe such documents and testimony would be important to its case until after Opposer presented its Trial Testimony.		Even if Exhibit 22 is covered under the Sanction Order, Mr. Wilson has personal knowledge of the testimony surrounding the exhibit because he personally heard from a customer that Applicant's mark looks like the Batman logo.	Relevant to establishing a lack of distinctiveness with any stylized "H" mark.
24	Men's Health, the best fitness gear internet search and the testimony connected therewith.	110:11-111:8	The documents and testimony connected therewith were not withheld prior to the time that Opposer filed its Motion for Sanctions.	Late production of such documents and testimony is substantially justified because: (1) it is important to establish that	Opposer has been made aware of such evidence since before the start of this action because Opposer has admitted to having a booth next to Applicant at the 2013 CrossFit Boston	Even if Exhibit 24 is covered by the Sanction Order, Mr. Wilson has personal knowledge of the testimony surrounding it because the document is evidence	Relevant to establishing that Applicant is a provider of premium fitness apparel technology.

				Applicant is a provider of premium fitness apparel technology; (2) it is even more important to establish that the existence of similar short styles between Applicant and Opposer could cause confusion that is derived from a source other than the marks; (3) Opposer actually sold a similar short style and so Opposer should not be surprised by positive reviews; and (4) Applicant did not believe such documents and testimony would be important to its case until after Opposer presented its Trial Testimony.	regionals, where Opposer sold the particular short-style that is the subject of the evidence at issue here.	of a review of Applicant's own product.	
25	Hylete Facebook	111:12-	The documents	Late production	Opposer has been	Even if Exhibit 25 is	

	page and the testimony connected therewith.	112:9	and testimony connected therewith were not withheld prior to the time that Opposer filed its Motion for Sanctions.	of such documents and testimony is substantially justified because: (1) it is important to establish that Applicant is a provider of premium fitness apparel technology; (2) it is even more important to establish that the existence of similar short styles between Applicant and Opposer could cause confusion that is derived from a source other than the marks; (3) Opposer actually sold a similar short style and so Opposer should not be surprised by positive reviews; and (4) Applicant did not believe such documents	made aware of such evidence since before the start of this action because Opposer has admitted to having a booth next to Applicant at the 2013 CrossFit Boston regionals, where Opposer sold the particular short-style that is the subject of the evidence at issue here.	covered by the Sanction Order, Mr. Wilson has personal knowledge of the testimony surrounding it because the document is evidence of a review of Applicant's own product.	
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				and testimony would be important to its case until after Opposer presented its Trial Testimony.			
26-29	Board.crossfit.com webpages, blog from Wodville, reviews of co-branded Hylete Onnit Cross-Training shorts 2.0 and the testimony connected therewith.	112:13-117:23	The documents and testimony connected therewith were not withheld prior to the time that Opposer filed its Motion for Sanctions.	Late production of such documents and testimony is substantially justified because: (1) it is important to establish that Applicant is a provider of premium fitness apparel technology; (2) it is even more important to establish that the existence of similar short styles between Applicant and Opposer could cause confusion that is derived from a source other than the marks; (3) Opposer actually sold a similar	Opposer has been made aware of such evidence since before the start of this action because Opposer has admitted to having a booth next to Applicant at the 2013 CrossFit Boston regionals, where Opposer sold the particular short-style that is the subject of the evidence at issue here.	Even if Exhibits 26-29 are covered by the Sanction Order, Mr. Wilson has personal knowledge of the testimony surrounding such documents because the documents are evidence of reviews of Applicant's own product.	Relevant to establishing that Applicant is a provider of premier fitness apparel technology.

				short style and so Opposer should not be surprised by positive reviews; and (4) Applicant did not believe such documents and testimony would be important to its case until after Opposer presented its Trial Testimony.			
	Testimony connected to Ex 30 regarding pages 101 through 111 of Ian Jentgen's deposition transcript.	120:11-130:2					
31-36	Way back Machine webpage of hybridathletics.net, YouTube videos of Robert Orlando, Picture of Robert Orlando, Screenshot of Instagram image of Robert Orlando on the cover of Muscle & Performance Magazine the testimony connected	130:6-135-24	The documents and testimony connected therewith were not withheld prior to the time that Opposer filed its Motion for Sanctions.	Late production of such documents and testimony is substantially justified because: (1) such evidence is extremely important to establishing that Opposer was selling a very similar short	Such evidence consists of screenshots of Opposer's own website and youtube page. There is no question that Opposer has been made aware of this from before the start of this action.	Even if Exhibits 31-36 are covered by the Sanction Order, Mr. Wilson has personal knowledge of his testimony surrounding such documents because Mr. Wilson personally searched for and found such documents.	Relevant to establish that Opposer obtained and sold short styles similar to Applicant, which Applicant contends is a source of any confusion, not as the result of Applicant's mark.

	therewith.			style to Applicant, which would have resulted in confusion derived from a source other than Applicant's mark; (2) such evidence is not a surprise to Opposer at all, given that such evidence consists of screenshots from Opposer's own website and youtube page; and (3) Applicant did not believe such documents and testimony would be important to its case until after Opposer presented its Trial Testimony.			
	Testimony connected to Ex 37 regarding page 69 of Syncere Martinez' deposition transcript.	136:2-138-20					
38-49	• Hybrid Athlete	139:1-	The documents	Late production	Opposer has been	Even if Exhibits 38-	Relevant to establish

	<p>Web Page</p> <ul style="list-style-type: none"> • Hybrid Athlete Web Page • Rogue Web page • Hybrid Athletic Performance Facebook page • Hybrid Athletic Performance webpage • Hybrig Athletics Facebook page • Hybrid Athletics, Ltd. Facebook page • Hybrid Athletics Community Facebook page • Hybrid Athletic Club Facebook page • Athletic Hybrid Fitness Facebook page • Hybrid Athletics Facebook page • Copy/image of the Hybrid Athlete Book and the testimony connected therewith. 	148:16	<p>and testimony connected therewith were not withheld prior to the time that Opposer filed its Motion for Sanctions.</p>	<p>of such documents and testimony is substantially justified because: (1) such evidence of other hybrid athlete names is important to establish a crowded space for such names and that customer confusion could have resulted from sources other than Applicant's mark; (2) evidence of other hybrid athlete names should not be a surprise to Opposer given that it also has a similar name; and (3) Applicant did not believe such documents and testimony would be important to its case until after Opposer</p>	<p>made aware of such evidence since before the start of this action because such information relates to other gyms or companies using the same name as Opposer.</p>	<p>49 are covered under the Sanction Order, Mr. Wilson has personal knowledge of the testimony surrounding such documents to the extent that Mr. Wilson personal searched for and obtained the documents.</p>	<p>crowded space for "hybrid athletic" names, which Applicant believes contributed to any confusion.</p>
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50	Rogue Fitness web page and the testimony connected therewith.	148:20-149:19	The documents and testimony connected therewith were not withheld prior to the time that Opposer filed its Motion for Sanctions.	presented its Trial Testimony.	Such evidence consists of screenshots of Mr. Orlando featured on another website. There is no question that Opposer has been made aware of this from before the start of this action.	Even if Exhibit 50 is covered under the Sanction Order, Mr. Wilson has personal knowledge of the testimony surrounding this document because Mr. Wilson personally searched for and obtained the document.	
				Late production of such documents and testimony is substantially justified because: (1) such evidence is important to establish that Opposer did not dedicate substantial effort to promoting its apparel company, which Applicant believes is a source of Opposer's declining sales, not as a result of any confusion with Applicant's mark; (2) such evidence should not be of any surprise to Opposer because it is a screenshot of Opposer's CEO when he was featured on another website;			

				and (3) Applicant did not believe such documents and testimony would be important to its case until after Opposer presented its Trial Testimony.			
	Testimony connected to Ex 51, Wilson comparing the Hybrid and Hylete H logos.	149:23-154:20					Relevant to establishing lack of confusing similarity between marks.
52-53	Hybrid Athletics Apparel Webpages and the testimony connected therewith.	154:24-156:10	The documents and testimony connected therewith were not withheld prior to the time that Opposer filed its Motion for Sanctions.	Late production of such documents and testimony is substantially justified because: (1) such evidence is important to establish that Opposer's apparel company was not Opposer's top priority and was not the company that Opposer dedicate as much effort or resources to, as	Such evidence consists of screenshots of Opposer's own website. There is no question that Opposer has been made aware of this from before the start of this action.	Even if Exhibits 52-53 are covered under the Sanction Order, Mr. Wilson has personal knowledge of the testimony surrounding such documents because Mr. Wilson personally searched for and obtained such documents.	

				opposed to its equipment company, which Applicant believes is a source of Opposer's declining sales, not as a result of any confusion with Applicant's mark; (2) such evidence should not be a surprise to Opposer because it is a screen shot of Opposer's own website; and (3) Applicant did not believe such documents and testimony would be important to its case until after Opposer presented its Trial Testimony.			
54	Hylete.com screenshot and the testimony connected therewith.	156:14 - 157:3	The documents and testimony connected therewith were not withheld prior to the time that Opposer filed its Motion for	Late production of such documents and testimony is substantially justified because: (1) such evidence is	Opposer has been made aware of this evidence since it first learned of Applicant's existence given that this evidence is a simple screen shot of Opposer's website.	Even if Exhibit 54 is covered under the Sanction Order, Mr. Wilson has personal knowledge of the testimony surrounding the document given that	

			Sanctions.	important to establish that both marks travel in different channels of trade given that both marks are sold in connection with goods that can be found at two separate ecommerce websites; (2) such evidence should not be a surprise to Opposer because it is just a screen shot of Applicant's website, which is readily accessible at any time; and (3) Applicant did not believe such documents and testimony would be important to its case until after Opposer presented its Trial Testimony.		it is a screenshot of Mr. Wilson's company's own website.	
55	Hybrid Athletics Facebook page and	157:7-20	The documents and testimony	Late production of such	Such evidence consists of screenshots of	Even if Exhibit 55 is covered under the	Relevant to establish the lack of effort and focus

	<p>the testimony connected therewith.</p>		<p>connected therewith were not withheld prior to the time that Opposer filed its Motion for Sanctions.</p>	<p>documents and testimony is substantially justified because: (1) such evidence is important to establish that Opposer's apparel company was not Opposer's top priority and was not the company that Opposer dedicate as much effort or resources to, as opposed to its gym, which Applicant believes is a source of Opposer's declining sales, not as a result of any confusion with Applicant's mark; (2) such evidence should not be a surprise to Opposer because it is a screen shot of Opposer's own facebook page;</p>	<p>Opposer's own facebook page. There is no question that Opposer has been made aware of this from before the start of this action. Additionally, Opposer was made aware of such evidence via document production from Applicant. (Hylete0002-0070)</p>	<p>Sanction Order, Mr. Wilson has personal knowledge of the testimony surrounding the document because Mr. Wilson personally searched for and obtained the document.</p>	<p>that Opposer has dedicated to its apparel company, and that in reality its gym and equipment company are of greater focus to Opposer, which Applicant believes is one reason for Opposer's decline in sales, not as a result of Applicant's similar mark.</p>
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				and (3) Applicant did not believe such documents and testimony would be important to its case until after Opposer presented its Trial Testimony.			
56	Hylete Athletics Facebook page and the testimony connected therewith.	157:24 - 158:17	The documents and testimony connected therewith were not withheld prior to the time that Opposer filed its Motion for Sanctions.	Late production of such documents and testimony is substantially justified because: (1) such evidence is important to establish Applicant's presence as a premium fitness apparel company; (2) such evidence should not be a surprise to Opposer given that it is a screenshot of Applicant's facebook page on any given day and is readily available to	Opposer has been made aware of this evidence since it first learned of Applicant's existence given that this evidence is a simple screen shot of Opposer's facebook page. Additionally, Opposer was made aware of such evidence via document production from Applicant. (Hylete0002-0070)	Even if Exhibit 56 is covered under the Sanction Order, Mr. Wilson has personal knowledge of the testimony surrounding the document to the extent that Mr. Wilson personal searched for and obtained the document.	

				Opposer with a facebook search; and (3) Applicant did not believe such documents and testimony would be important to its case until after Opposer presented its Trial Testimony.			
57	Picture of Hammerhead Kettle bell and the testimony connected therewith.	158:21-159:12	The documents and testimony connected therewith were not withheld prior to the time that Opposer filed its Motion for Sanctions.	Late production of such documents and testimony is substantially justified because: (1) such evidence is important to establish a crowded space for "H" marks in IC25; (2) such evidence should not be a surprise to Opposer given that it is a picture of another fitness brand in the Crossfit space whom Opposer should already be aware of	Opposer has been made aware of this evidence since it first learned of Applicant's existence given that this evidence is a simple screen shot related to another fitness company that is popular in the CrossFit space.	Even if Exhibit 57 is covered under the Sanction Order, Mr. Wilson has personal knowledge of the testimony connected therewith to the extent that Mr. Wilson personally searched for and obtained the document.	

				through its business; and (3) Applicant did not believe such documents and testimony would be important to its case until after Opposer presented its Trial Testimony.			
	Testimony regarding Hybrid's and Mr. Orlando's intellectual property rights.	160:13-161:10					
	Testimony connected to Ex 59 regarding pages 12 and pages 40-41 of Dave Castro's deposition transcript.	161:14-164:11					
60	Google image search for H on apparel and the testimony connected therewith.	164:15-168:3	The documents and testimony connected therewith were not withheld prior to the time that Opposer filed its Motion for Sanctions.	Late production of such documents and testimony is substantially justified because: (1) such evidence is important to establish a crowded space	Opposer has been made aware of this evidence since it first learned of Applicant's existence given that this evidence is a simple screen shot of google search results for other commonly known "H" marks.	Even if Exhibit 60 is covered under the Sanction Order, Mr. Wilson has personal knowledge of the testimony connected therewith to the extent that Mr. Wilson personally searched for and obtained the	Relevant to establishing crowded space for "H" marks in IC25.

				for "H" marks in IC25; (2) such evidence should not be a surprise to Applicant given that it is a screen shot of a basic search on google; and (3) Applicant did not believe such documents and testimony would be important to its case until after Opposer presented its Trial Testimony.		document.	
61	Four logos: Under Armor, Opposer's, Hylete's and Hurley and the testimony connected therewith.	168:7-170:25	The documents and testimony connected therewith were not withheld prior to the time that Opposer filed its Motion for Sanctions.	Late production of such documents and testimony is substantially justified because: (1) it is important to establish a crowded space of "H" marks in IC25; (2) such evidence should not be a surprise to Opposer given that it is a print out of four apparel logos	Such evidence has been made known to Opposer prior to the commencement of this litigation given that such marks are all in existence in the athletic apparel industry.	Even if Exhibit 61 is covered under the Sanction Order, Mr. Wilson has personal knowledge of the testimony connected therewith to the extent that Mr. Wilson has personally seen each of the marks presented on the document.	Relevant to establishing crowded space for "H" marks in IC25.

				that are well known; and (3) Applicant did not believe such documents and testimony would be important to its case until after Opposer presented its Trial Testimony.			
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Response to Objections to Ron Wilson's October 29, 2015 Testimony & Exhibits

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Exhibits	Exhibit/Testimony Description	Testimony Citations (Page:Line)	Response to Objections					
			Material	Not Hearsay	Has Foundation	Not Speculation	Contains Personal Knowledge	Miscellaneous
2-12	US Patents for Apparatus and Method for Making an ear warmer and ear warmer frame, eyeglasses, and hand covering and the testimony connected therewith.	21:19-36:9	Such relevant evidence is material because any minimal prejudice derived from knowing about previous products Mr. Wilson has invented is outweighed by the importance in establishing that Applicant's CEO develops apparel technology, which is one factor that makes Applicant a	Evidence of U.S. Patents offered for its truth. Evidence offered to establish that Applicant's CEO develops apparel technology, which is one factor that makes Applicant a provider of premier fitness apparel technology. Testimony connected therewith were in court statements offered for their truth.	Evidence has foundation because Mr. Wilson testified to having an engineering degree from Virginia Tech (Wilson 10:21-24), and to working in the field of engineering for several years (Wilson 15:24-17:13), and to having been an inventor on the patents submitted here (Wilson 21:9-11.)			

			provider of premier fitness apparel technology.					
13	Jaco Vida LLC webpage and the testimony connected therewith	36:14-52:15	Such relevant evidence is also material because any minimal prejudiced derived from knowing that Mr. Wilson founded Jaco Vida, LLC is outweighed by the importance in establishing the origin of the short style that Opposer sold, which customers have expressed confusion about when	Evidence not offered for its truth. Evidence offered to lay foundation for Applicant's CEO's experience developing brands. Testimony connected therewith are in-court statements offered for their truth.	Evidence has foundation because Mr. Wilson testified to starting Jaco Vida, LLC and coming up with the name of the company. (Wilson 34:14-36:8.)	Evidence is not Mr. Wilson's guess as to when Jaco Vida, LLC was formed. Evidence consists of an exhibit accurately displaying when Jaco Vida, LLC was created, and Mr. Wilson's testimony based on Mr. Wilson's personal knowledge of all facts and circumstances surrounding the		

			<p>compared to Applicant's new similar short style, which Applicant believes is a reason for any confusion, not as a result of Applicant's mark.</p>			<p>company's creation having created Jaco Vida, LLC.</p>		
<p>14-17 & 23</p>	<p>US Patents for shorts, waistband, lower-body garment, and undergarment with protective cup and the testimony connected therewith.</p>	<p>52:19-86:16; 102:19-110:4.</p>	<p>Such relevant evidence is also material because any minimal prejudice derived from knowledge about Opposer's patented apparel technology is outweighed by the importance in</p>					

			<p>establishing that Applicant develops apparel technology, which is one factor that makes Applicant a provider of premier fitness apparel technology.</p>					
	<p>Testimony surrounding the start up of Hylete.</p>	86:17-90:13	<p>Such relevant evidence is also material because any minimal prejudice that is derived from learning about how Mr. Wilson founded Applicant is substantially outweighed by the significant</p>					

			importance in establishing how Applicant developed its mark, and that it did not have any knowledge of Opposer's mark when doing so.					
18	Testimony connected to Ex 18 regarding the application for registration of the Hylete Trademark.	90:14-91:17						
19-20	Picture of drawings of Hylete icons and Wikipedia Search for Eurostile type font and the testimony connected therewith	91:21-98:19						The entire document embodying preliminary mock-ups of Applicant's mark has been produced, which is evidenced by Mr. Wilson's testimony wherein he testifies to producing said document in its entirety to his brother to review as a way to help Mr. Wilson decide on which version of the mark he would proceed with. (Wilson 96:18-97:6.)
21	Under Armor font and the testimony connected therewith.	98:23-100:24	Such relevant evidence is also	Evidence not offered for its truth. Evidence	Foundation established to the extent that: (1) Mr.	Evidence is not Mr. Wilson's guess as to		

			<p>material because any minimal prejudice derived from knowledge of the particular font style Under Armour uses is outweighed by the importance in establishing that euro style font is used by man brands, and Applicant's position that Applicant and Opposer's use of euro style font is part of the reason for any consumer confusion,</p>	<p>offered to establish many companies use similar fonts, which Applicant believes is yet another source of possible confusion. Testimony therewith are in-court statements offered for their truth.</p>	<p>Wilson has sufficient experience working with, and developing, brands to be able to directly speak to the use of a particular font in a particular logo; (2) the evidence of other brands using the euro-style font is important to establishing that any customer confusion could have been derived from a source other than Applicant's mark; (3) the evidence is not covered by the Sanction Order; and (4) it is</p>	<p>what font is displayed. The evidence consists of an exhibit actually displaying the logo and euro-style font, and Mr. Wilson's testimony describing what font is displayed.</p>	
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			not as a result of confusion with Applicant's mark.		established that it is a print out of the results of a publicly available Wikipedia search concerning the font "euro-style."			
22	Batman logos and the testimony connected therewith.	101:3-102:15	Such relevant evidence is also material because any minimal prejudice in knowledge about other symbols is outweighed by the importance in establishing that stylized letter marks are not distinct and often can look like other marks	Evidence not offered for its truth, but to establish that similarity can exist between Applicant's mark and other marks without the existence of customer confusion.				

			without being confusingly similar.					
24	Men's Health, the best fitness gear internet search and the testimony connected therewith.	110:11-111:8	Such relevant evidence is also material because any minimal prejudice derived from information concerning the popularity of Applicant's shorts is outweighed by the importance of establishing that Applicant premier provider of premium fitness apparel technology.					
25	Hylete Facebook page and the	111:12-						

	testimony connected therewith.	112:9						
26-29	Board.crossfit.com webpages, blog from Wodville, reviews of co-branded Hylete Onnit Cross-Training shorts 2.0 and the testimony connected therewith.	112:13-117:23	Such relevant evidence is also material because any minimal prejudice derived from the knowledge of positive reviews about Applicant's products is outweighed by the importance in establishing that Applicant is a premier provider of premium fitness apparel technology.					
	Testimony connected to Ex 30 regarding pages 101 through 111 of Ian	120:11-130:2		Evidence not offered for its truth, but to establish	Evidence has foundation to the extent that: (1) Mr.	Evidence is not Mr. Wilson's guess as to	Testimony based on Mr. Wilson's personal knowledge, having read the deposition	Mr. Wilson reviewed the entirety of Mr. Jentgin's testimony multiple times, as his testimony indicates. As such, Mr. Wilson's testimony related

	Jentgen's deposition transcript.			that if confusion exists, it exists for reasons other than confusion with Applicant's mark.	Wilson has read Mr. Jentgen's testimony and can directly speak to what it says; (2) such testimony is relevant to establish any confusion that existed was derived from similar short styles sold by Applicant and Opposer, not as a result of Applicant's mark being similar; (3) the evidence is not subject to the Sanction Order; and (4) it is established that the evidence is a portion of Mr. Jentgen's testimony from his Trial Deposition,	what Mr. Jentgen said. The evidence consists of Mr. Jentgen's actual testimony displayed in the exhibit and read word for word by Mr. Wilson, and Mr. Wilson's testimony about where the actual confusion was coming from based on Mr. Jentgen's actual testimony.	transcript and developed an opinion as to the importance of such transcript testimony.	to Mr. Jentgen's previous testimony is not a misstatement. Additionally, Mr. Wilson recites Mr. Jentgen's testimony from the transcript generated at Mr. Jentgen's Trial Deposition, thus, such recitation of Mr. Jentgen's testimony is not a misstatement.
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					which was previously taken by Opposer.			
31-36	Way back Machine webpage of hybridathletics.net, YouTube videos of Robert Orlando, Picture of Robert Orlando, Screenshot of Instagram image of Robert Orlando on the cover of Muscle & Performance Magazine the testimony connected therewith.	130:6-135-24	Such relevant evidence is also material because any minimal prejudice derived from knowledge about certain clothing that Mr. Orlando has worn in different online videos and posts is significantly outweighed by the importance of establishing that Opposer was selling a very similar		Foundation is established to the extent that: (1) Mr. Wilson obtained and reviewed such evidence and can therefore directly speak to it; (2) the evidence is relevant and material because it establishes that Opposer was selling a similar short style, which Applicant believe is the source of any potential customer confusion, not as a result of Applicant's mark; (3) the evidence is not covered	Evidence is not Mr. Wilson's guess as to what the exhibits displays. The evidence consists of print outs of actual websites and youtube pages and actually displays the apparel that Mr. Orlando wore on such occasions. The evidence also consists of Mr. Wilson's testimony	Mr. Wilson has personal knowledge of such exhibits and the testimony surrounding the same because Mr. Wilson personally searched for and obtained such exhibits prior to their presentation. Additionally, Mr. Wilson reviewed them, and his testimony is based on his personal knowledge simply of what such exhibits display.	

			short style to Applicant, which would have resulted in confusion derived from a source other than Applicant's mark.		by the Sanction Order; and (4) it is established that the evidence is a screenshot of the Internet Archive, which is displaying the publicly available image of hybridathletics.net from September 2, 2011.	as to exactly what apparel Mr. Orlando was wearing in each image based on what each image actually displayed and on Mr. Orlando's intimate knowledge of such apparel having designed the same prior to forming Hylete.		
	Testimony connected to Ex 37 regarding page 69 of Syncere Martinez' deposition transcript.	136:2-138-20				Evidence is not based on Mr. Wilson's guess as to what Mr. Martinez said. The evidence is	Mr. Wilson has personal knowledge of such testimony because Mr. Wilson read Mr. Martinez' deposition transcript several times, as Mr. Wilson states in his deposition. Mr. Wilson is simply	

					<p>Mr. Wilson's testimony about what Mr. Martinez actually said under oath, and which was introduced as to evidence. The evidence is also Mr. Wilson's testimony as someone with actual knowledge of Opposer and Applicant's respective names, regarding what Mr. Martinez actually said about the similarity between such</p>	<p>testifying from personal knowledge to what he has read in Mr. Martinez' transcript.</p>	
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38-49	<ul style="list-style-type: none"> • Hybrid Athlete Web Page • Hybrid Athlete Web Page • Rogue Web page • Hybrid Athletic Performance Facebook page • Hybrid Athletic Performance webpage • Hybrig Athletics Facebook page • Hybrid Athletics, Ltd. Facebook page • Hybrid Athletics Community Facebook page • Hybrid Athletic Club Facebook page • Athletic Hybrid Fitness Facebook page • Hybrid Athletics Facebook page • Copy/image of the Hybrid Athlete Book and the testimony connected therewith. 	139:1-148:16		Evidence not offered for its truth. Evidence offered to establish crowded space for "hybrid athletic" names, which Applicant believes contributed to any confusion. Testimony connected therewith are in-person statements offered for their truth.	Foundation is established to the extent that: (1) Mr. Wilson personal obtained and reviewed each document; (2) all of the evidence is relevant and material to support Applicant's contention that any customer confusion is the result of Opposer's use of a common name, not as a result of Applicant's mark; (3) the documents are not covered by the Sanction Order; and (4) it is made clear that each	names. Evidence is not Mr. Wilson's guess as to what the exhibits present. The evidence consists of exhibits displaying actual screen shots of actual webpages, where a name containing the word "Hybrid" is displayed. The evidence also contains Mr. Wilson's testimony that, simply, such names containing	Mr. Wilson has personal knowledge of such exhibits and the testimony surrounding the same because Mr. Wilson personally searched for and obtained such exhibits prior to their presentation. Additionally, Mr. Wilson reviewed them, and his testimony is based on his personal knowledge simply of what such exhibits display.	
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					document is a print out of a screenshot displaying a use of the term "hybrid athlete" or "hybrid athletics."	the word "Hybrid" exist based on the presented exhibit.		
50	Rogue Fitness web page and the testimony connected therewith.	148:20-149:19		Evidence not offered for its truth. Evidence offered to establish that Opposer focused less on his apparel company than on his equipment company. Testimony connected therewith are in-court statements offered for their truth.		Evidence is not Mr. Wilson's guess as to what the exhibit actually displays. The evidence consists of a print out of the Rogue fitness webpage actually displaying an image of Mr. Orlando wearing certain apparel, and Mr. Wilson's testimony	Mr. Wilson has personal knowledge of the exhibit and the testimony surrounding the same because Mr. Wilson personally searched for and obtained the exhibit prior to its presentation. Additionally, Mr. Wilson reviewed it, and his testimony is based on his personal knowledge simply of what the exhibit displays.	

						as to what the image displays concerning the apparel Mr. Orlando is actually wearing in the submitted evidence.		
	Testimony connected to Ex 51, Wilson comparing the Hybrid and Hylete H logos.	149:23-154:20				Evidence is not Mr. Wilson's guess as to whether such marks look similar and how they do or do not look similar. The evidence is Mr. Wilson's testimony, based on the marks actually displayed on the		

						exhibit, as to what about the appearance of each mark differentiates the them.		
52-53	Hybrid Athletics Apparel Webpages and the testimony connected therewith.	154:24-156:10		Evidence not offered for its truth. Evidence offered to establish that Opposer focuses less on its apparel business than on its equipment business. Testimony connected therewith made by the witness in-court and offered for its truth.	Foundation is established to the extent that: (1) Mr. Wilson has obtained and reviewed both documents; (2) the evidence is relevant and material to support Applicant's contention that Opposer's apparel company is not a top priority to Opposer, which Applicant believes is the source of			The exhibits have been properly authenticated as the witness explains that each document is a screenshot of Applicant's website located at hybridathleticsapparel.com.

					Opposer's declining sales, not as a result of any confusion with Applicant's mark; (3) the evidence is not subject to the Sanction Order; and (4) it is established that the evidence consists of print outs of screen shots of Opposer's webpage located at hybridathleticappare.com.			
54	Hylete.com screenshot and the testimony connected therewith.	156:14 - 157:3				Evidence is not Mr. Wilson's guess as to what the screenshot of Applicant's website looks like, or how it is different		

						than Opposer's website. Evidence is Mr. Wilson's actual testimony based on an actual image actually displayed as an exhibit.		
55	Hybrid Athletics Facebook page and the testimony connected therewith.	157:7-20						
56	Hylete Athletics Facebook page and the testimony connected therewith.	157:24 - 158:17					Mr. Wilson has personal knowledge of such evidence because Mr. Wilson is Chief Executive Officer for Applicant and testified to being involved in all aspects of Applicant's business, and as such, is knowledge on what Applicant's facebook page contains.	The document has been properly authenticated as the witness sets forth that the exhibit is a screen shot of Applicant's facebook page from the day prior to his testimony.
57	Picture of Hammerhead Kettle	158:21-						

	bell and the testimony connected therewith.	159:12						
	Testimony regarding Hybrid's and Mr. Orlando's intellectual property rights.	160:13-161:10			Foundation is established to the extent that: (1) Mr. Wilson has personally searched for and reviewed the trademarks owned by Opposer; (2) the evidence is relevant and material to establish that Opposer's focus has not been on its apparel company and it only registered its mark in IC25 after it learned about Applicant; (3) the evidence is not covered by the Sanction	Evidence is not Mr. Wilson's guess as to what intellectual property rights Opposer owns, or doesn't own. The evidence is Mr. Wilson's testimony that as to when Opposer registered its mark, and the fact that Opposer hasn't registered a mark in IC28.	Testimony based on Mr. Wilson's personal knowledge having searched for and reviewed on the USPTO database all of Opposer's trademark registrations.	Mr. Wilson testifies to searching the USPTO database and reviewing the registered trademarks of Opposer. There is no assumption of fact because Mr. Wilson simply testifies to what trademarks Opposer has and doesn't have.

					Order; and (4) it is established that the testimony comes from Mr. Wilson's review of documentary evidence concerning Opposer's mark in IC25, as well as his review of the all other trademarks owned by Opposer.			
	Testimony connected to Ex 59 regarding pages 12 and pages 40-41 of Dave Castro's deposition transcript.	161:14-164:11				Evidence is not Mr. Wilson's guess as to what Mr. Castro stated under oath. The evidence is Mr. Wilson's recitation of Mr. Castro's actual testimony,	Testimony based on Mr. Wilson's personal knowledge, having read the deposition transcript and developed an opinion as to the importance of such transcript testimony.	

						and Mr. Wilson's testimony concerning the importance of what Mr. Castro actually said.		
60	Google image search for H on apparel and the testimony connected therewith.	164:15-168:3				Evidence is not Mr. Wilson's guess as to what the exhibit displays. The evidence consists of a screen shot of what Mr. Wilson actually found when searching for "H" marks on google, and his testimony concerning what he actually	Testimony based on Mr. Wilson's personal knowledge having performed the Google image search himself.	

						found.		
61	Four logos: Under Armor, Opposer's, Hylete's and Hurley and the testimony connected therewith.	168:7-170:25	Such relevant evidence is material because any minimal prejudice derived from the review of four separate "H" marks is substantially outweighed by the importance in establishing a crowded field of "H" marks in IC25.					

Jennifer Null Response To Objections Table #1/2

Exhibits	Exhibit/Testimony Description	Testimony Citations (Page:Line)	Response to Objections				
			Not Subject to Sanction Order (TTABVue #15)	Production Substantially Justified	Evidence Already Made Known	Testimony is Personal Knowledge	Relevant
	Testimony connected to Ex 2, Null comparing the Hybrid and Hylete H logos	39:24-42:5					Relevant to establishing lack of confusing similarity between marks.
3-7	Documents regarding communications with Al Kavadlo, Becca Day, Robb Wolf, Chris Elmore and Danny Nichols and the testimony connected therewith.	42:7-52:5	The documents and testimony connected therewith were not withheld prior to the time that Opposer filed its Motion for Sanctions.	Late production of such documents and testimony is substantially justified because (1) such evidence is important to establish the lack of consumer confusion between the marks; and (2) Applicant did not believe such documents and testimony would be important to its case until after Opposer presented its Trial Testimony.		Even if such documents are included under the Sanction Order, Ms. Null has personal knowledge of her testimony made in connection there with because she obtained the responses embodied in the exhibits.	Relevant to establishing a lack of consumer confusion between the marks.

8	Screenshot of Robert Orlando CrossFit videos and the testimony connected therewith.	52.6-54:13	The documents and testimony connected therewith were not withheld prior to the time that Opposer filed its Motion for Sanctions.	Late production of such documents and testimony is substantially justified because: (1) such evidence is important to establish that Opposer's apparel company was not Opposer's top priority, which Applicant believes is a source of Opposer's declining sales, not as a result of any confusion with Applicant's mark; (2) such evidence should not be a surprise to Opposer because it is a screen shot of Opposer's own youtube videos; and (3) Applicant did not believe such documents and testimony would be	Such evidence consists of screenshots of Opposer's own youtube page. There is no question that Opposer has been made aware of this from before the start of this action.	Even if Exhibit 8 is covered under the Sanction Order, Ms. Null has personal knowledge of the testimony surrounding such evidence because Ms. Null personally reviewed the exhibit beforehand.	Relevant to establish that Opposer's apparel company is not its primary focus, Applicant believes is a reason for Opposer's decline in sales, not as a result in any confusion with Applicant's mark.
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				important to its case until after Opposer presented its Trial Testimony.			
9	Image of an atlas stone that says Hammerhead Fitness and the testimony connected therewith.	54:14-55:23	The documents and testimony connected therewith were not withheld prior to the time that Opposer filed its Motion for Sanctions.	Late production of such documents and testimony is substantially justified because (1) such evidence is important to establish a crowded space of "H" marks in IC25; (2) such evidence should not be a surprise to Opposer given that it is evidence about a competitor to Opposer in the Crossfit market; and (3) Applicant did not believe such documents and testimony would be important to its case until after Opposer presented its Trial Testimony.	Such evidence has been made known to Opposer prior to the commencement of this litigation given that it is evidence of a competitor to Opposer in the CrossFit market.	Even if such evidence is covered under the Sanction Order, Ms. Null has personal knowledge of her testimony connected therewith to the extent that Ms. Null has personally reviewed such evidence prior to giving testimony concerning the same.	Relevant to establishing crowded space for "H" marks in IC25.

10-12	Images of advertisements from a company called Hyperwear and the testimony connected therewith.	55:24-58:2	The documents and testimony connected therewith were not withheld prior to the time that Opposer filed its Motion for Sanctions.	Late production of such documents and testimony is substantially justified because (1) such evidence is important to establish a crowded space of "H" marks in IC25; (2) such evidence should not be a surprise to Opposer given that it is evidence about a competitor to Opposer in the Crossfit market; and (3) Applicant did not believe such documents and testimony would be important to its case until after Opposer presented its Trial Testimony.	Such evidence has been made known to Opposer prior to the commencement of this litigation given that it is evidence of a competitor to Opposer in the CrossFit market.	Even if such evidence is covered under the Sanction Order, Ms. Null has personal knowledge of her testimony connected therewith to the extent that Ms. Null has personally reviewed such evidence prior to giving testimony concerning the same.	Relevant to establishing crowded space for "H" marks in IC25.
13	Four logos: Under Armor, Opposer's, Hylete's and Hurley and the testimony	58:4- 61:14	The documents and testimony connected therewith were not withheld prior to	Late production of such documents and testimony is substantially	Such evidence has been made known to Opposer prior to the commencement of this litigation given that	Even if such evidence is covered under the Sanction Order, Ms. Null has personal knowledge of her	Relevant to establishing crowded space for "H" marks in IC25.

	connected therewith.		the time that Opposer filed its Motion for Sanctions.	justified because (1) such evidence is important to establish a crowded space of "H" marks in IC25; (2) such evidence should not be a surprise to Opposer given that it is a print out of four apparel logos that are well known; and (3) Applicant did not believe such documents and testimony would be important to its case until after Opposer presented its Trial Testimony.	such marks are all in existence in the athletic apparel industry.	testimony connected therewith to the extent that Ms. Null has personally seen each of the marks presented on the document.	
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Jennifer Null Response To Objections Table #2/2

Exhibits	Exhibit/Testimony Description	Testimony Citations (Page:Line)	Response to Objections				
			Material	Not Hearsay	Has Foundation	Not Speculation	Contains Personal Knowledge
	Testimony connected to Ex 2, Null comparing the Hybrid and Hylete H logos	13:19-16:6				Evidence is not Ms. Null's guess as to the differences between the two marks. The evidence consists of Ms. Null's testimony regarding the visual differences actually displayed in the two marks that were presented on the exhibit.	
3-7	Documents regarding communications with Al Kavadlo, Becca Day, Robb Wolf, Chris Elmore and Danny Nichols	42:7-52:5		Evidence not relied upon for its truth, but to establish a lack of consumer	Foundation is established to the extent that: (1) Ms. Null personally contacted	Evidence is not Ms. Null's guess as to what each of the individual'	(1) The probative value of such evidence in establishing lack of consumer confusion outweighs any prejudicial nature in the evidence. (2) Exhibit is a print out of the original document generated. (3) Any other objections

	and the testimony connected therewith.			confusion between the marks.	each individual and explained to them that she would send them questions, as well as a document showing both marks side by side; (2) the evidence is relevant and material to Applicant's position that the marks are not confusingly similar; (3) the evidence is not subject to the Sanction Order; and (4) it is established who each person is, their importance to the fitness community, how the questions	s stated in their responses to Applicant's questionnaire. The evidence consists of the actual answers from each individual, and Ms. Null's testimony regarding what each individual actually said.		purportedly made are not proper objections.
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					were provided to them, how their answers were delivered, and whether they were compensated to provide such information.			
8	Screenshot of Robert Orlando CrossFit videos and the testimony connected therewith.	52:6-54:13		Evidence not relied upon for its truth, but to establish the lack of effort that Opposer dedicates to its apparel business.	Foundation is established to the extent that: (1) Ms. Null personally reviewed the evidence before it was presented; (2) the evidence is relevant and material to establishing that Opposer's apparel company is not Opposer's top priority, which Applicant believes is a	Evidence is not a guess as to what Mr. Orlando is wearing in the exhibit. The evidence consists of the actual exhibit displaying what Mr. Orlando actually wore on that day, and Ms. Null's testimony concerning what Mr. Orlando	Witness has personal knowledge of the evidence as the witness personally reviewed the exhibit and is testifying as to what she is viewing from the exhibit.	

					source of Opposer's declining sales, not as a result of any confusion with Applicant's mark; (3) the evidence is not covered by the Sanction Order; and (4) it is established that it is a screenshot of Opposer's youtube page, with both particular videos identified.	was actually wearing.		
9	Image of an atlas stone that says Hammerhead Fitness and the testimony connected therewith.	54:14-55:23		Evidence not offered for its truth. Evidence offered to establish crowded space of "H" marks in IC25. Testimony connected	Foundation is established to the extent that: (1) Ms. Null personally reviewed the evidence before it was presented; (2) the evidence is relevant	Evidence is not Ms. Null's guess as to what the exhibit displays. The evidence consists of the exhibit actually		

				therewith is made by witness in court and offered for its truth.	and material to establishing a crowded market of "H" marks; (3) the evidence is not covered by the Sanction Order; and (4) it is established that it is a picture of an atlas stone sold by one of Opposer's competitors.	displaying an image of a competitor of Opposer and the product this competitor sells, as well as Ms. Null's testimony as to what she is actually viewing on the exhibit.		
10-12	Images of advertisements from a company called Hyperwear and the testimony connected therewith.	55:24-58:2		Evidence not offered for its truth. Evidence offered to establish crowded space of "H" marks in IC25. Testimony connected therewith is made by witness in court and offered for	Foundation is established to the extent that: (1) Ms. Null personally reviewed the evidence before it was presented; (2) the evidence is relevant and material to establishing a crowded market of "H"	Evidence is not Ms. Null's guess as to what the exhibit displays. The evidence consists of the exhibit actually displaying an image of a competitor of Opposer		

				its truth.	marks; (3) the evidence is not covered by the Sanction Order; and (4) it is established that it is a picture of an kettle bells sold by one of Opposer's competitors.	and the product this competitor sells, as well as Ms. Null's testimony as to what she is actually viewing on the exhibit.		
13	Four logos: Under Armor, Opposer's, Hylete's and Hurley and the testimony connected therewith.	58:4-61:4	Such relevant evidence is material because any minimal prejudice derived from the review of four separate "H" marks is substantially outweighed by the importance in establishing a crowded	Evidence not offered for its truth. Evidence offered to establish crowded space of "H" marks in IC25. Testimony connected therewith is made by witness in court and offered for its truth.	Foundation is established to the extent that: (1) Ms. Null's 15 years of experience in fitness combined with having visited over 200 gyms allows her to directly speak on whether she has seen the compared logos in use as fitness apparel; (2) this evidence is relevant	Evidence is not Ms. Null's guess as to what similar "H" logos she has seen worn by crossfit athletes. The evidence is Ms. Null's testimony as to what brands she has actually seen in her 15 years of experience		

			field of "H" marks in IC25.		and material to Applicant's position that there exists a crowded space for "H" marks in IC25; and (3) the evidence is not covered by the Sanction Order.	visiting over 200 events and many gyms.		
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Response to Objections to Garret Potter's October 29, 2015 Testimony & Exhibits

#1/2

Exhibits	Exhibit/Testimony Description	Testimony Citations (Page:Line)	Response to Objections					
			Not Subject to Sanction Order (TTABVue #15)	Production Substantially Justified	Evidence Already Made Known	Testimony is Personal Knowledge	Relevant	
	Testimony presented regarding legal advice obtained by Hylete regarding this opposition proceeding and connection to investor relations.	12:7-23; 14:15-15:5		Late production of such documents and testimony is substantially justified because (1) such evidence is important to establish Opposer's lack of basis for bringing this action; and (2) Applicant did not believe such documents and testimony would be important to its case until after Opposer presented its Trial Testimony.			Even if such evidence is covered under the Sanction Order, Mr. Potter has personal knowledge of his testimony connected therewith to the extent that Mr. Potter is the Chief Financial Officer for Applicant, and is in charge of managing investor relations and reporting to investors.	Relevant to establish Opposer's lack of basis for bringing TTAB action.
	Testimony presented regarding Hylete's revenue and money spent on enforcement of the	13:17-14:14; 15:7- 16:5						Relevant to establish Applicant's size as a company, the amount of resources it contributes to its apparel business, and the amount of

	Hylete mark.						resources Applicant has spent to defend a TTAB action that lacks basis.
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Response to Objections to Garret Potter's October 29, 2015 Testimony & Exhibits

#2/2

Exhibits	Exhibit/Testimony Description	Testimony Citations (Page:Line)	Response to Objections				
			Material	Not Hearsay	Has Foundation	Not Speculation	Contains Personal Knowledge
	Testimony presented regarding legal advice obtained by Hylete regarding this opposition proceeding and connection to investor relations.	12:7-23; 14:15-15:5	Such relevant evidence is also material because any minimal prejudice derived from the knowledge of a separate legal opinion concerning this dispute is outweighed by the importance in establishing that Opposer lacks basis to bring this action.	Evidence not offered for its truth. Evidence offered to establish Opposer's lack of basis for bringing TTAB action.	Foundation established to the extent that: (1) Mr. Potter is Applicant's Chief Financial Officer and handles all investor reporting; (2) the evidence is relevant and material to Applicant's position that Opposer lacks basis to bring this action; (3) the evidence is not covered by the Sanction Order; and (4) it is established that evidence came from a conversation	Evidence is not Mr. Potter's guess as to the opinion that Applicant's attorneys gave concerning the lack of basis for Opposer bringing such action. The evidence is Mr. Potter's actual testimony as to what the attorneys actual told him in his role as Chief Financial	

					that Applicant' had with its attorneys who were evaluating the investment in Applicant.	Officer and the one in charge of reporting to investors.		
	Testimony presented regarding Hylete's revenue and money spent on enforcement of the Hylete mark.	13:17-14:14; 15:7- 16:5		Evidence not offered for its truth. Evidence offered to establish Applicant's size as a company, the amount of resources it contributes to its apparel business, and the amount of resources Applicant has spent to defend a TTAB action that lacks basis.	Foundation is established to the extent that: (1) Mr. Potter is Chief Financial Officer of Applicant and has personal knowledge of all of Applicant's expenses; (2) the evidence is relevant and material to establishing the size of Applicant from a revenue standpoint, and establishing the amount of resources that Applicant	Evidence is not Mr. Potter's guess as what Applicant has spent on IP enforcement. The evidence is Mr. Potters testimony as to what was actual spent based on Mr. Potter's intimate knowledge of Applicant's costs, as its Chief Financial Officer.		

					has spent to defend an action that lacks basis; (3) the evidence is not covered by the Sanction Order; and (4) it is established that the testimony comes from Mr. Potter's knowledge of what Applicant spends on IP enforcement.			
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Response to Objections to Matt Paulson's October 28, 2015 Testimony & Exhibits

#1/2

Exhibits	Exhibit/Testimony Description	Testimony Citations (Page:Line)	Response to Objections				
			Not Subject to Sanction Order (TTABVue #15)	Production Substantially Justified	Evidence Already Made Known	Testimony is Personal Knowledge	Relevant
2	Term sheet between JACO Athletics and Robert Orlando and Hybrid Athletics and the testimony connected therewith.	18:1-24:4	The documents and testimony connected therewith were not withheld prior to the time that Opposer filed its Motion for Sanctions.	Late production of such documents and testimony is substantially justified because (1) such evidence is important to establish Opposer's use of its mark in connection with short styles that were very similar to Applicant's short styles, which Applicant believes is the basis for consumer confusion, not as a result of similarities between the marks; (2) there is no surprise to Opposer given	Such evidence and testimony has already been made known to Opposer before the commencement of this litigation given that the actual evidence was given to Opposer's principal Mr. Orlando.	Even if Exhibit 2 is covered under the Sanction Order, Mr. Paulson has personal knowledge of his testimony connected therewith because Mr. Paulson was involved in the strategic partner program at JACO and was in charge of engaging Mr. Orlando.	Relevant to establish previous relationship between Applicant and Rob Orlando.

				that Opposer's principal received the term sheet; and (3) Applicant did not believe such documents and testimony would be important to its case until after Opposer presented its Trial Testimony.			
	Testimony connected to Ex 3 regarding pages 99-101 of Robert Orlando's deposition transcript.	24:5-28:2					Relevant to establish how Opposer originally obtained and sold similar short styles as Applicant, which Applicant believes is the reason for any confusion, not that Applicant's mark is confusingly similar.
4	Document regarding Hylete commission program and the testimony connected therewith.	34:6-37:6	The documents and testimony connected therewith were not withheld prior to the time that Opposer filed its Motion for Sanctions.	Late production of such documents and testimony is substantially justified because (1) such evidence is important to establish Applicant's prior relationship with Opposer; (2)	Such evidence and testimony has already been made known to Opposer before the commencement of this action because Opposer's principal received the evidence himself. Additionally, Opposer was made aware of such evidence in discovery via the production of	Even if Exhibit 4 is covered under the Sanction Order, Mr. Paulson has personal knowledge of his testimony connected therewith because he was in charge of Hylete's commission program and specifically reaching out to Mr. Orlando.	Relevant to establishing previous relationship between Applicant and Rob Orlando.

				there is no surprise to Opposer given that Opposer's principal received the document; and (3) Applicant did not believe such documents and testimony would be important to its case until after Opposer presented its Trial Testimony.	documents by Opposer. (Hylete001-001, Hylete001-002, Hylete001-026, Hylete001-027, and Hylete001-028)		
5-7	Mock-ups for Josh Henkin, Chad Waterbury and Nick Tuminello with co-branded merchandise and the testimony connected therewith.	37:7-41:11	The documents and testimony connected therewith were not withheld prior to the time that Opposer filed its Motion for Sanctions.	Late production of such documents and testimony is substantially justified because (1) such evidence is important to establish Applicant's prior relationship with Opposer; (2) there is no surprise to Opposer given that Opposer's principal received essentially the	Such evidence and testimony has already been made known to Opposer during discovery because Opposer produced a brand book which set forth all of the details of its strategic partner/co-branding/"powered by Hylete" strategy. (HYLETE002- 0015 - HYLETE002-0018.)	Even if Exhibits 5 through 7 are covered under the Sanction Order, Mr. Paulson has personal knowledge of his testimony made in connection therewith because it was Mr. Paulson's job to coordinate with potential brand partners, including the ones who are the subjects of the exhibits here, and Mr. Paulson had professional relationships with such individuals.	Relevant to establishing previous relationship between Applicant and Rob Orlando.

				same document related to him; and (3) Applicant did not believe such documents and testimony would be important to its case until after Opposer presented its Trial Testimony.			
9-10	Emails to and from Matt Paulson from Jason Ackerman and the email attachment dated May 5, 2013 and the testimony connected therewith.	47:10-51:6	The documents and testimony connected therewith were not withheld prior to the time that Opposer filed its Motion for Sanctions.	Late production of such documents and testimony is substantially justified because (1) such evidence is important to establish inconsistencies in Dale Saran's testimony; (2) such evidence is not a surprise to Opposer given that Opposer was the late entry booth and was the one placed next to Applicant; and (3) Applicant did not believe such	Such evidence and testimony has already been made known to Opposer prior to the commencement of this litigation by virtue of the fact that Opposer was also a participant in the same CrossFit event and likely had substantially the same communications, and received substantially the same vendor contract.	Even if Exhibits 9 and 10 are covered under the Sanction Order, Mr. Paulson has personal knowledge of his testimony connected therewith because Mr. Paulson was in charge with coordinating with Jason Ackerman to set up the booth, and was in charge of setting up the Hylete booth at the event.	Relevant to establish inconsistencies in Dale Saran's testimony, which testimony is materially relied upon by Opposer in its Trial Brief.

				documents and testimony would be important to its case until after Opposer presented its Trial Testimony.			
11	Hylete vendor contract with CrossFit of a booth at 2013 Regionals and CrossFit Games and the testimony connected therewith.	52:1-53:4	The documents and testimony connected therewith were not withheld prior to the time that Opposer filed its Motion for Sanctions.	Late production of such documents and testimony is substantially justified because (1) such evidence is important to establish inconsistencies in the testimony of Dale Saran; (2) there is little surprise to Opposer given that Opposer received essentially the same vendor contract for Opposer's own vendor booth at the same event; and (3) Applicant did not believe such documents and testimony would		Even if Exhibit 11 is covered under the Sanction Order, Mr. Paulson's testimony presented therewith is based upon his personal knowledge as the person in charge of coordinating with CrossFit regarding the event, and obtaining the booth pursuant to the vendor contract.	Relevant to establish inconsistencies in Dale Saran's testimony, which testimony is materially relied upon by Opposer in its Trial Brief.

				be important to its case until after Opposer presented its Trial Testimony.			
	Testimony connected to Ex 12 regarding pages 68 of Dale Saran's deposition transcript.	53:5-55:11					Relevant to establish inconsistencies in Dale Saran's testimony, which testimony is materially relied upon by Opposer in its Trial Brief.
	Testimony connected to Ex 13 comparing the Hybrid and Hylete logos.	55:12-57:3					Relevant to establishing lack of confusing similarity between marks.
14-17	Document regarding communications with Drew Manning, Mike Fantigrassi, BJ Gaddour, and Andy McDermott and the testimony connected therewith.	59:10-71:10; 73:3-9	The documents and testimony connected therewith were not withheld prior to the time that Opposer filed its Motion for Sanctions.	Late production of such documents and testimony is substantially justified because (1) such evidence is important to establish no instances of actual confusion derived from the marks; and (2) Applicant did not believe such documents and testimony would		Even if Exhibits 14 through 17 are covered under the Sanction Order, Mr. Paulson's testimony connected therewith is based upon Mr. Paulson's personal knowledge having taken and collected the responses, as well as any testimony in which Mr. Paulson simply discusses the response results presented in the documents themselves.	Relevant to establishing lack of consumer confusion between the marks.

				be important to its case until after Opposer presented its Trial Testimony.			
18	Four logos: Under Armor, Opposer's, Hylete's and Hurley and the testimony connected therewith.	71:19-72:24	The documents and testimony connected therewith were not withheld prior to the time that Opposer filed its Motion for Sanctions.	Late production of such documents and testimony is substantially justified because (1) such evidence is important to establish a crowded space of "H" marks in IC25; (2) such evidence should not be a surprise to Opposer given that it is a print out of four apparel logos that are well known; and (3) Applicant did not believe such documents and testimony would be important to its case until after Opposer presented its Trial Testimony.	Such evidence has been made known to Opposer prior to the commencement of this litigation given that such marks are all in existence in the athletic apparel industry.	Even if Exhibit 18 is covered under the Sanction Order, Mr. Paulson has personal knowledge of his testimony connected therewith to the extent that Mr. Paulson has personally seen each of the marks presented on the document.	Relevant to establishing crowded space for "H" marks in IC25.

Response to Objections to Matt Paulson's October 28, 2015 Testimony & Exhibits

#2/2

Exhibits	Exhibit/Testimony Description	Testimony Citations (Page:Line)	Response to Objections					
			Material	Not Hearsay	Has Foundation	Not Speculation	Contains Personal Knowledge	Miscellaneous
2	Term sheet between JACO Athletics and Robert Orlando and Hybrid Athletics and the testimony connected therewith.	18:1-24:4		Evidence not offered for its truth. Evidence offered to establish previous relationship between Applicant and Rob Orlando. Testimony connected therewith is made by witness in court and offered for its truth.		Evidence is not Mr. Paulson's guess as to what the term sheet actually said. The evidence consists of an exhibit actually displaying information concerning the booth arrangements, and the sized booth that Applicant would receive, as well as Mr. Paulson's testimony as to what these documents actually	Testimony based on Mr. Paulson's personal knowledge as the person for Applicant that had professional relationship with Mr. Orlando prior to the formation of Applicant, the person for Applicant who was in charge of engaging strategic partners, and the person for Applicant that reached out to Mr. Orlando to propose the terms of the strategic partnership.	

						say based on Mr. Paulson's personal knowledge as the person for Applicant who actually coordinated all booth arrangements therein.		
	Testimony connected to Ex 3 regarding pages 99-101 of Robert Orlando's deposition transcript.	24:5-28:2	Such relevant evidence is also material because any minimal prejudice derived from the knowledge that Mr. Paulson was Mr. Orlando's point of contact at Jaco is outweighed by the importance	Evidence not offered for its truth. Such evidence is offered to establish the relationship how Opposer obtained and sold a particular short style that was very similar to Applicant's shorts, which Applicant			Testimony based on Mr. Paulson's personal knowledge having been the person who interfaced with Mr. Orlando at Jaco.	

			in establishing how Opposer obtained and sold a similar short style as Applicant, which Applicant believes is a reason for any confusion as opposed as a result of confusion with Applicant's mark.	believes is the reason for any possible confusion, not as a result of confusion with Applicant's mark.				
4	Document regarding Hylete commission program and the testimony connected therewith.	34:6-37:6						
5-7	Mock-ups for Josh Henkin, Chad Waterbury and Nick Tuminello with co-branded merchandise and the testimony connected	37:7-41:11						

	therewith.							
9-10	Emails to and from Matt Paulson from Jason Ackerman and the email attachment dated May 5, 2013 and the testimony connected therewith.	47:10-51:6	Such relevant evidence is also material because any minimal prejudice derived from the knowledge of Mr. Paulson's coordination of Applicant's booth at the subject event is substantially outweighed by the importance of establishing inconsistencies in Mr. Saran's testimony under oath.	Evidence not offered for its truth. Evidence offered to discredit the testimony of Dale Saran. Testimony connected therewith is made by witness in court and offered for its truth.				
11	Hylete vendor contract with CrossFit of a booth	52:1-53:4						

	at 2013 Regionals and CrossFit Games and the testimony connected therewith.							
	Testimony connected to Ex 12 regarding pages 68 of Dale Saran's deposition transcript.	53:5-55:11		Evidence not offered for its truth. Evidence offered to discredit the testimony of Dale Saran. Testimony connected therewith is made by witness in court and offered for its truth.	Foundation is established to the extent that: (1) Mr. Paulson handled all communications and procurement of the vender booth at the Crossfit Boston Regionals and can therefore speak directly to statements made by Mr. Saran that directly contradict fact; (2) the evidence is relevant and material to establishing inconsistencies in Mr. Saran's testimony; (3) the evidence			To the extent this is a proper objection, the entire testimony of Mr. Saran is available as Trial Testimony and thus the document has been admitted into evidence in its complete form.

					is not covered by the Sanction Order; and (4) it is established that the evidence is derived from Mr. Saran's testimony from his Trial Deposition, which Opposer took.			
	Testimony connected to Ex 13 comparing the Hybrid and Hylete logos.	55:12-57:3						
14-17	Document regarding communications with Drew Manning, Mike Fantigrassi, BJ Gaddour, and Andy McDermott and the testimony connected therewith.	59:10-71:10; 73:3-9	Such relevant evidence is also material because any minimal prejudice derived from the responses provided by each individual is	Evidence is not being entered for its truth, but simply to establish that no evidence of consumer confusion exists.	Foundation is established to the extent that: (1) Mr. Paulson personally contacted each individual and explained to them that he would send them questions, as well as a			(1) The probative value of such evidence in establishing lack of consumer confusion outweighs any prejudicial nature in the evidence. (2) Exhibit is a print out of the original document generated. (3) Any other objections purportedly made are not proper objections.

			substantialy outweighed by the importance of establishing that each of these individuals experiences absolutely no confusion between the two marks.		document showing both marks side by side; (2) the evidence is relevant and material to Applicant's position that the marks are not confusingly similar; (3) the evidence is not subject to the Sanction Order; and (4) it is established who each person is, their importance to the fitness community, how the questions were provided to them, how their answers were delivered, and whether they were			
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					compensated to provide such information.			
18	Four logos: Under Armor, Opposer's, Hylete's and Hurley and the testimony connected therewith.	71:19-72:24	Such relevant evidence is material because any minimal prejudice derived from the review of four separate "H" marks is substantially outweighed by the importance in establishing a crowded field of "H" marks in IC25.					

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

HYBRID ATHLETICS, LLC,

Opposer,

v.

HYLETE, INC.,

Applicant.

Opposition No.: 91213057

Application Serial No.: 85/837,045

Mark:



APPLICANT’S STATEMENT OF OBJECTIONS TO OPPOSER’S TESTIMONY

EVIDENCE

Applicant, Hylete, Inc. (“Applicant” or “Hylete”), hereby moves the Trademark Trial and Appeals Board (the “Board”) to strike certain testimony and exhibits contained in Opposer, Hybrid Athletics, LLC’s (“Opposer” or “Hybrid”) Testimony Depositions of David Castro, Ian Jentgin, Jason Leydon, Syncere Martinez, Rob Orlando, Dale Saran, and Matt Tuthill (collectively, the “Trial Depositions”). Applicant hereby repeats all of its objections stated at the time of Opposer’s Trial Depositions and specifically set forth in the chart below. Applicant requests that all evidence that is inadmissible as hearsay, or that is inadmissible because it is irrelevant or immaterial, or because it lacks foundation, be stricken from the record herein.

Trial Brief Objections

Exhibit/Testimony Description	Trial Brief Citation	Objections					
		Irrelevant	Hearsay	Immaterial	Lacks Foundation	Lacks Personal Knowledge	Speculation
“[I]f somebody said they didn’t know who Rob Orlando is and they were in the CrossFit Community, I’d wonder if they’d been in prison or on a deserted island,”	Trial Brief: pg. 9 Testimony: (Saran 46:9-12)	X	X	X		X	X
“Mr. Saran would rank Mr. Orlando’s trademark in the top 10 most recognizable marks and would have ranked it even higher back in 2011 at the peak of Mr. Orlando’s athletic competition years.”	Trial Brief: pg. 10 Testimony: (Saran 77:16-79:8; Exs. 2, 4)			X	X		X
“The methods of this training are designed to have universal scalability which has led to its vastly growing and dedicated user base, along with large corporate sponsors investing millions into	Trial Brief: pg. 10 Testimony: (Orlando 5:17-18, Ex. 2 ¶1); see also (Castro 15:10-17:6)	X			X	X	X

Exhibit/Testimony Description	Trial Brief Citation	Objections					
		Irrelevant	Hearsay	Immaterial	Lacks Foundation	Lacks Personal Knowledge	Speculation
the sport.”							
Mr. Castro’s opinion on how well-known Mr. Orlando’s  trademark was between 2008 and 2012,	(Castro 34:8-21)				X	X	X
“These videos not only caught the attention of CrossFit Inc., but of many hundreds of thousands of people that viewed them worldwide.”	Trial Brief: pg. 13	X	X	X	X	X	X
(Orlando 74:20-75:16; Exs. 18, 19, 20, 21, 23)(stating “...people recognize it and come to me and say that video is – it’s the most insane thing that I’ve ever seen or it’s the reason I got into CrossFit...”)	Testimony: (Orlando 74:20-75:16; Exs. 18, 19, 20, 21, 23)	X	X		X		
Many of Mr. Orlando’s	Testimony:	X	X		X		

Exhibit/Testimony Description	Trial Brief Citation	Objections					
		Irrelevant	Hearsay	Immaterial	Lacks Foundation	Lacks Personal Knowledge	Speculation
videos started and/or ended with the  trademark.	(Orlando 71:3-7)						
The videos really helped Mr. Orlando build his personal following and as a result, his brand.	Testimony: (Orlando 82:14-83:20; Exs. 18-23); (Jentgen 52:11- 54:8)	X	X		X		X
Mr. Orlando's early video posts on the CrossFit website and YouTube are significant because these were the only online platforms featuring and advertising CrossFit before other social media sites such as Facebook, Twitter and Instagram were created.	Trial Brief: pg 13	X			X	X	X
Consumers came to recognize and support Mr. Orlando as a competitor and his Hybrid Athletics brand and Opposer's merchandise sales were	Trail Brief: pg. 13 Testimony: (Orlando 72:4-18, 150:12-156:11; Exs.		X	X	X	X	X

Exhibit/Testimony Description	Trial Brief Citation	Objections					
		Irrelevant	Hearsay	Immaterial	Lacks Foundation	Lacks Personal Knowledge	Speculation
on the rise.	17-18; 55, 56) (Jentgen 33:21-34:15, 75:3-77:20)						
“that [the  trademark] is probably one of the most recognizable logos I think in the CrossFit world.”	Trial Brief: pg. 15 Testimony: (Leydon 17:10-18:16)		X	X	X	X	X
“...So you can go to a lot of CrossFit Gyms, drop in, and there’s decent chance that they might have some stones...and so, yeah, I’d say – yeah, the dude’s [Mr. Orlando’s] stones are rolling around a lot of CrossFit gyms around the world.”	Trial Brief: pg. 16 Testimony: (Saran 45:8-17)	X	X	X	X		X
Doing Level 1’s, doing CrossFit running endurance seminars, through all those years, this [, the  trademark,] I think was probably the most distinguishable logo in	Trial Brief: pg. 16 Testimony: (Leydon 18:2-16, 19:14-23)	X		X	X	X	X

Exhibit/Testimony Description	Trial Brief Citation	Objections					
		Irrelevant	Hearsay	Immaterial	Lacks Foundation	Lacks Personal Knowledge	Speculation
CrossFit.”							
This means that practically every time someone in a CrossFit gym in the U.S. picks up an atlas stone, it has a huge trademark molded right into the stone itself.	Trial Brief: pg. 17	X		X	X	X	X
And these stones can be huge, 150 pound stones and up to 18 inches in diameter and can come in a set of 8– something visually hard to avoid.	Trial Brief: 17 (Orlando 62:11-63:15, Exs. 10, 13-15); (Jentgen 44:10-21)	X			X	X	X
Because of his popularity, he received a lot of attention from consumers and fans and as a result sold a lot of inventory.	Trial Brief: pg. 17 Testimony: (Orlando 51:7-53:10)	X	X		X		X
For example, Opposer’s Facebook page, featuring the  trademark and	Trial Brief: pg. 18 Testimony: (Orlando Ex 2	X	X	X			

Exhibit/Testimony Description	Trial Brief Citation	Objections					
		Irrelevant	Hearsay	Immaterial	Lacks Foundation	Lacks Personal Knowledge	Speculation
maintained since December 2011, surpasses eight thousand (8,000) "likes" to date. Mr. Orlando's Facebook page, maintained since November 2011, featuring apparel, fitness equipment and gym services bearing the  trademark surpasses thirty thousand (30,000) "likes".	¶¶33-35).						
Also, between Opposer's YouTube Channels, with thousands of subscribers, and third party videos, including those featured on CrossFit's YouTube Channel featuring the  trademark, these videos have been viewed well over 2 million times.	Trial Brief: pg. 18 Testimony: (Orlando Ex 2 ¶¶36-38), (Orlando 28:3-10; Ex 2 ¶38)	X	X	X		X	
He would be wearing	Trial Brief: pg. 19	X	X	X	X	X	X

Exhibit/Testimony Description	Trial Brief Citation	Objections					
		Irrelevant	Hearsay	Immaterial	Lacks Foundation	Lacks Personal Knowledge	Speculation
his Hybrid shirt, which I could argue was one of the most popular shirts during that period because Progenics... [and] Rogue [weren't] doing many shirts, and Reebok wasn't even involved with us.	Testimony: (Castro 30:2-21; Ex 1)						
He continues to make the  trademark relevant and well-known by wearing his branded merchandise at these Seminars.	Trial Brief: pg. 20 Testimony: (Castro 27:19-28:4, 31:10-22)		X		X	X	X
Each of these attendees are exposed to the  trademark and many purchase, if they do not already own,  trademark apparel.	Trial Brief: pg. 20 Testimony: (Orlando 96:16-98:15)	X	X		X	X	X

Exhibit/Testimony Description	Trial Brief Citation	Objections					
		Irrelevant	Hearsay	Immaterial	Lacks Foundation	Lacks Personal Knowledge	Speculation
He's a fixture in the [CrossFit] community."	Trial Brief: pg. 21 Testimony: (Saran 44:8-17)	X	X	X	X	X	X
Mr. Orlando is "well known in the CrossFit circles,"	Trial Brief: pg. 21 Testimony: (Tuthill 15:12-18:9)	X	X	X	X	X	X
Being a writer for such a popular magazine has given Mr. Orlando and his  famous brand further notoriety and recognition.	Trial Brief: pg. 22 Testimony: (Orlando 91:11-92:4)	X	X	X	X		X
In 2010, JACO clothing company sponsored Mr. Orlando due to his notoriety as a CrossFit athlete.	Trial Brief: pg. 22	X		X	X	X	X
Despite JACO not being able to fulfill Mr. Orlando's orders for shorts on multiple occasions, Mr. Orlando had a nice working relationship with Mr.	Trial Brief: pg. 23 Testimony: (Orlando 103:22-104:2); see also	X					X

Exhibit/Testimony Description	Trial Brief Citation	Objections					
		Irrelevant	Hearsay	Immaterial	Lacks Foundation	Lacks Personal Knowledge	Speculation
Paulson and Ms. Null.	(Paulson 26:20-23, 27:1-2)						
In a March 11, 2013 email, Mr. Paulson even admitted that they were experiencing consumer confusion and stating, "...with any new logo, people associate that logo with something they have already seen or are familiar with until that new logo takes a life of its own. Our logo is no different, I won't lie, in the beginning we had a few people say it looks like your logo..."	Trial Brief: pg. 24 Testimony: (Orlando 121:4-122:18, Ex. 37)		X		X	X	X
Ian Jentgen, Opposer's head trainer has even received selected advertisements from Applicant on his Facebook page, stating the page was "sponsored by Applicant."	Trial Brief: pg. 25-26 Testimony: (Jentgen 97:18 - 102:2)	X	X	X	X	X	X

Exhibit/Testimony Description	Trial Brief Citation	Objections					
		Irrelevant	Hearsay	Immaterial	Lacks Foundation	Lacks Personal Knowledge	Speculation
Applicant obviously saw the value that Mr. Orlando and the Hybrid Athletics brand could add to its growth and therefore wanted to sign Opposer as a Hylete strategic partner	Trail Brief: pg. 26 Testimony: (Paulson 33:14-34:5)	X	X	X	X	X	X
"[a] guy comes into [Hybrid Athletics] gym for his tenth or twelfth visit...I was just at my attorney's dealing with that Hylete stuff, and he says, well, what's going on there?...that's your apparel...and [Mr. Orlando] was like 'no. they have nothing to do with me.' That is one example of thousands, thousands that happen to me, and every time it happens, its like a kick in the gut...I'm at the games. I'm at the regionals, I'm at a vendor booth. I'm walking through an airport and somebody walks up to me and	Trial Brief: pg. 27 Testimony: (Orlando 124:7-125:25)		X	X	X	X	X

Exhibit/Testimony Description	Trial Brief Citation	Objections					
		Irrelevant	Hearsay	Immaterial	Lacks Foundation	Lacks Personal Knowledge	Speculation
says, ‘hey, dude, I just picked up your new shirt’ and they have got the Hylete shirt on...its not just one-offs...this stuff happens everyday...”							
Due to the endless comments Mr. Orlando receives and instances where he witnessed consumers purchasing Hylete clothing thinking it is Opposer’s, “[t]he consumer has been led to believe that Hylete is an extension of Hybrid Athletics. The logos are similar enough that its direct and immediate confusion, and I see it on a daily basis.”	Trial Brief: pg. 27 Testimony: (Orlando 129:21-130:13)		X		X	X	X
Confusion is witnessed everywhere by Mr. Orlando and Opposer’s representatives, including on social	Trial Brief: pg 27		X		X	X	X

Exhibit/Testimony Description	Trial Brief Citation	Objections					
		Irrelevant	Hearsay	Immaterial	Lacks Foundation	Lacks Personal Knowledge	Speculation
media.							
For instance, on Instagram, consumers have used hashtags in the following manner, "at Hybrid athletics at Train Hylete."	Trial Brief: pg. 27 Testimony: (Jentgen 93:4-97:17; 100:7-104:9) see also (Leydon 23:24-24:14)	X	X	X		X	X
Alleged consumer confusion emails	Trial Brief: pg. 28-31		X	X		X	X
He said, 'He asked if we had an affiliation with Rob Orlando.' ...So once he told me that he asked that question I didn't even think to say, 'what did you say?' I went right up to Dave and said, 'Dave, just so you know, we have nothing to do with Rob Orlando.'	Trial Brief: pg. 31 Testimony: (Null 38:15-39:6)		X		X	X	X
One of Opposer's fans, Drake Rodriguez,	Trial Brief: pg. 29	X	X			X	X

Exhibit/Testimony Description	Trial Brief Citation	Objections					
		Irrelevant	Hearsay	Immaterial	Lacks Foundation	Lacks Personal Knowledge	Speculation
posted the following on Opposer's Facebook fan page, "How do [you] feel about Hylete athletics, basically copying your logo and name?"	Testimony: (Orlando 133:19-134:10, Ex 41)						
Mr. Lester writes back, "Thanks Rob. So this is just more confusion."	Trial Brief: pg. 29 Testimony: (Orlando 137:16-17; Ex 43)	X	X	X		X	X
"did you know a copy of your brand means that you succeed . . . Here it is: http://www.hylete.com ."	Trial Brief: pg. 30 Testimony: (Orlando 140:15-141:5, Ex. 46)	X	X	X		X	X
Mr. Saran explained that within the CrossFit community, the Hybrid "H" has been around a while and it was a well-known and rather distinct logo, as it did not look like any other	Trial Brief: pg. 31 Testimony: (Saran 74:17-23)		X		X	X	X

Exhibit/Testimony Description	Trial Brief Citation	Objections					
		Irrelevant	Hearsay	Immaterial	Lacks Foundation	Lacks Personal Knowledge	Speculation
mark anyone else was using.							
The people at the Hylete booth told Mr. Castro that "this isn't Rob Orlando's...this is a different company."	Trial Brief: pg. 31 Testimony: (Castro 38:11-24)	X	X		X		
As a result of Hylete's entrance into the market, Opposer's clothing sales have been greatly affected.	Trial Brief: pg. 32 Testimony: (Jentgen 102:3-21, 142:6-143:16)	X	X	X	X	X	X
Mr. Orlando has expressed his concern with the presence of Hylete and the  logo, "If they can do this to my apparel business, if they decide to start getting into the equipment business...where they start making stone mold and start slapping their H inside some stone molds, they could	Trial Brief: pg. 32 Testimony: (Orlando 127:3-129:6)	X		X			X

Exhibit/Testimony Description	Trial Brief Citation	Objections					
		Irrelevant	Hearsay	Immaterial	Lacks Foundation	Lacks Personal Knowledge	Speculation
potentially crush me.”							
Opposer has been harmed due to Applicant leading purchasers to Hylete’s products as opposed to Hybrid Athletics.	Trial Brief: pg. 32 Testimony: (Jengten 97:18-100:6)				X	X	X
Opposer’s  trademark, is a very strong, bold, distinctive mark.	Trial Brief: pg. 36				X	X	X
Prior to Applicant’s first use in commerce of its  logo, and to Opposer’s knowledge, there were no other marks similar to Opposer’s in the marketplace and Applicant has not introduced any evidence to the contrary	Trial Brief: pg. 36 Testimony: (Saran 74:17-23); (Orlando 157:16-158:11); (Martinez 90:2-91:17)		X		X	X	X

Exhibit/Testimony Description	Trial Brief Citation	Objections					
		Irrelevant	Hearsay	Immaterial	Lacks Foundation	Lacks Personal Knowledge	Speculation
The two marks at issue are both representations of the letter "H," however, the confusion lies in the nature and stylized design of the Hs as well as in what each H represents, i.e. "Hybrid Athletics" Tversus "Hylete," a.k.a. "Hybrid Athlete."	Trial Brief: pg. 36	X		X			
This is not simply a matter of if there are other "H" marks in the general marketplace.	Trial Brief: pg. 36	X		X	X		X
The  trademark is very well-known and famous within the world of health and fitness, especially within the arena of CrossFit, in which millions of people world-wide participate	Trial Brief: pg. 37		X		X	X	X
Opposer has made millions over the last eight years, marketing, promoting, offering for	Trial Brief: pg. 36	X		X	X		

Exhibit/Testimony Description	Trial Brief Citation	Objections					
		Irrelevant	Hearsay	Immaterial	Lacks Foundation	Lacks Personal Knowledge	Speculation
sale and selling goods and services branded with the  trademark.							
Mr. Orlando has traveled to hundreds of gyms, fitness competitions, and training seminars marketing his brand as a star athlete, a gym owner, and in his capacity as a CrossFit Strongman seminar instructor. Mr. Orlando was a top competitive athlete early in his career, which assisted in quickly creating the basis of his well-known brand, along with his heavy online marketing.	Trial Brief: pg. 37	X		X			
Millions of fans and consumers have had access to and have viewed Opposer's marketing and promotions.	Trial Brief: pg. 38		X		X	X	X
"I would think pretty	Trial Brief: pg.	X		X	X	X	X

Exhibit/Testimony Description	Trial Brief Citation	Objections					
		Irrelevant	Hearsay	Immaterial	Lacks Foundation	Lacks Personal Knowledge	Speculation
much every gym sells clothing.”	42 Testimony: (Leydon 13:24-25)						
Therefore, the same consumers that see Applicant's  logo in connection with Applicant's goods mistakenly think that Applicant's goods originate from Opposer, that Applicant is an extension of the Hybrid Athletics brand, or that Applicant is in some way associated with Opposer.	Trial Brief: 42				X		X
(Mr. Orlando and Mr. Jengten testifying to consumers pointing the Hylete "H" and excitedly saying they supported Opposer's brand)	Trial Brief: pg. 45	X	X		X	X	X
Opposer believes that Hylete has greatly caused harm to Opposer	Trial Brief: pg. 49			X	X	X	X

Exhibit/Testimony Description	Trial Brief Citation	Objections					
		Irrelevant	Hearsay	Immaterial	Lacks Foundation	Lacks Personal Knowledge	Speculation
by misleading consumers to purchase Hylete's products as opposed to Hybrid Athletics'.	Testimony: (Jengten 97:18-100:6)						

Exhibit A

In the following Requests:

(A) “And” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the Interrogatories any information which might otherwise be construed to be outside of their scope.

(B) “Applicant” or “Hylete” refers to Hylete LLC and each of its predecessors, successors, subsidiaries and affiliates.

(C) “Communication” shall mean or refer to all documents, inquiries, discussions, conversations, negotiations, agreements, understandings, meetings, telephone conversations, letters, facsimiles, notes, telegrams, advertisements, or other forms of verbal exchange, whether oral or written.

(D) “Concerning” means relating to, referring to, describing, evidencing or constituting.

(E) “Date” means the day, month, and year.

(F) “Document” means all matter that is written, typed, printed, reproduced, or recorded (including graphic, aural, mechanical or electronic records), referring or relating, directly or indirectly, in whole or in part, to the matter that is the subject of the particular discovery request or interrogatory, including, but not limited to, originals and copies of letters, notes, notebooks, minutes, memoranda of telephone calls, correspondence, drafts, messages, telegrams, periodicals, brochures, leaflets, bonds, files, records, reports, working papers, routing slips, diaries, calendars, appointment books, log books, time sheets, budgets, estimates, studies, checks, statements, receipts, returns, books, interoffice and intraoffice communications, notations of any sort of conversations, bulletins, computer printouts, e-mail, teletypes, telefaxes, photographs, charts, graphs, microfiche, video tapes, motion pictures, tapes, cassettes, disks,

recordings, computer-stored data, worksheets, contracts, agreements, bids, offers, proposals, quotations, tables, compilations, tabulations, tallies, diagrams, drawings, maps, illustrations or statistical analysis, by whomever prepared now or formerly in Applicant's actual or constructive possession, custody or control. If a document has been prepared in several copies, or if additional copies are made that are not identical, or are no longer identical by reason of subsequent notation or other modification of any kind whatsoever, including but not limited to, notations on the backs of pages thereto, each non-identical copy is a separate document and must be produced.

(G) "Hylete Mark" means the trademark "" alone as well as in combination with other terms or symbols, whether used in a trademark or service mark sense, or used as a trade name, company name, or in any other way.

(H) "Hybrid Mark" means the trademark "" alone as well as in combination with other terms or symbols, whether used in a trademark or service mark sense, or used as a trade name, company name, or in any other way.

(I) "Opposer" or "Hybrid" refers to Hybrid Athletics, LLC.

(J) "Oral communication" means any utterance heard by any person, whether heard in person, by telephone or in any other manner.

(K) The word "person" or "persons" shall mean an individual, corporation, proprietorship, partnership, association or any other entity.

(L) If privilege against provision of information or production of a document is claimed, identify the specific basis therefor, provide a complete specification and description of every fact upon which the claim of privilege is based, and state for each piece of information or document:

- a. its date;
- b. its author(s);
- c. its addressees and/or distributes:
- d. its general type (*e.g.*, letter, memo, report, invoice, etc.) and the general type of its subject matter;
- e. its present location (including title, index number and location of the actual file in which it is stored);
- f. the identity of the present custodian of the document or other person responsible for its filing; and
- g. the identity of person(s) who can authenticate or identify the document.

(M) The use of the singular form of any word includes the plural and vice versa.

(N) "You" or "Your" means Applicant and each of its predecessors, successors, subsidiaries and affiliates.

Requests for Production

REQUEST NO. 1:

All documents that refer to or support any allegations made in Hylete's Answer to Notice of Opposition.

REQUEST NO. 2:

All documents used, identified, relied upon or referred to by Hylete when answering Opposer's First Set of Interrogatories or any discovery requests propounded by Opposer.

REQUEST NO. 3:

Documents sufficient to show the date of first use of the Hylete Mark.

REQUEST NO. 4:

Documents sufficient to show Hylete's continuous bona fide use in commerce of the Hylete Mark from the date of first use to the present.

REQUEST NO. 5:

All documents concerning Hylete's past, current, or planned future use of the Hylete Mark within the U.S.

REQUEST NO. 6:

All communications concerning the use, or planned future use, of the Hylete Mark by any third party within the U.S.

REQUEST NO. 7:

All documents concerning the use of the Hylete Mark in the U.S. in connection with the sale or advertising of a product and/or service.

REQUEST NO. 8:

Documents sufficient to show the target market of products and/or services sold or offered for sale in connection with the Hylete Mark within the U.S.

REQUEST NO. 9:

Documents sufficient to show the target market of products and/or services planned to be sold or offered for sale in the future in connection with the Hylete Mark within the U.S.

REQUEST NO. 10:

Documents sufficient to identify the geographic location of users of products and/or services offered under the Hylete Mark in the U.S.

REQUEST NO. 11:

All marketing plans, forecasts, projections and documents concerning Hylete's marketing and sales plans for products and/or services sold, to be sold, advertised, or to be advertised, bearing or associated with the Hylete Mark.

REQUEST NO. 12:

Documents sufficient to identify the channels of trade through which Hylete offers or plans to offer each product and/or service sold, to be sold, advertised, or to be advertised, bearing the Hylete Mark within the U.S.

REQUEST NO. 13:

All documents concerning any instances of actual confusion, mistake, deception or association of any kind between the Hybrid Mark and the Hylete Mark, including but not limited to, any consumer surveys.

REQUEST NO. 14:

All documents concerning any survey Hylete has conducted or plans to conduct concerning Opposer and its trademark(s) or the Hybrid Mark.

REQUEST NO. 15:

All documents exchanged between Hybrid and Hylete.

REQUEST NO. 16:

All documents exchanged between and among Hylete, its distributors and sales personnel that relate to Hybrid or the Hybrid Mark.

REQUEST NO. 17:

All documents relating to any civil or U.S. Patent and Trademark Office proceedings, or threatened proceeding, in the U.S. between Hylete and third parties, involving use of the Hylete Mark.

REQUEST NO. 18:

All documents relating to any written or oral agreements by which Hylete and any third parties settled a dispute in respect of the use of the Hylete Mark.

REQUEST NO. 19:

All documents that Hylete will or may offer as exhibits at trial.

REQUEST NO. 20:

All documents identified or referred to in Hylete's Initial Disclosures.

REQUEST NO. 21:

All documents showing the Hylete Mark used on each item listed in the identification of goods for its U.S. Trademark Serial No. 85837045.

REQUEST NO. 22:

All agreements between Hylete and any manufacture for the production of goods bearing the Hylete Mark.

REQUEST NO. 23:

Documents sufficient to identify all suppliers, agents and importers of goods bearing the Hylete Mark including, but not limited to, bills of lading, invoices, contracts and purchase orders.

REQUEST NO. 24:

Documents sufficient to identify all venues where Hylete has sold, offered for sale or displayed goods bearing the Hylete Mark including, but not limited to, gyms (e.g. CrossFit Affiliates), stores, events and athletic competitions.

REQUEST NO. 25:

Documents sufficient to identify each seller, re-seller, retailer, distributor and wholesaler of goods bearing the Hylete Mark.

REQUEST NO. 26:

Documents sufficient to identify all customers who have purchased goods bearing the Hylete Mark.

Date: March 4, 2014



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Attorneys for Opposer

Exhibit B

(C) “Communication” shall mean or refer to all documents, inquiries, discussions, conversations, negotiations, agreements, understandings, meetings, telephone conversations, letters, facsimiles, notes, telegrams, advertisements, or other forms of verbal exchange, whether oral or written.

(D) “Concerning” means relating to, referring to, describing, evidencing or constituting.

(E) “Date” means the day, month, and year.

(F) “Document” means all matter that is written, typed, printed, reproduced, or recorded (including graphic, aural, mechanical or electronic records), referring or relating, directly or indirectly, in whole or in part, to the matter that is the subject of the particular discovery request or interrogatory, including, but not limited to, originals and copies of letters, notes, notebooks, minutes, memoranda of telephone calls, correspondence, drafts, messages, telegrams, periodicals, brochures, leaflets, bonds, files, records, reports, working papers, routing slips, diaries, calendars, appointment books, log books, time sheets, budgets, estimates, studies, checks, statements, receipts, returns, books, interoffice and intraoffice communications, notations of any sort of conversations, bulletins, computer printouts, e-mail, teletypes, telefaxes, photographs, charts, graphs, microfiche, video tapes, motion pictures, tapes, cassettes, disks, recordings, computer-stored data, worksheets, contracts, agreements, bids, offers, proposals, quotations, tables, compilations, tabulations, tallies, diagrams, drawings, maps, illustrations or statistical analysis, by whomever prepared now or formerly in Applicant’s actual or constructive possession, custody or control. If a document has been prepared in several copies, or if additional copies are made that are not identical, or are no longer identical by reason of subsequent notation or other modification of any kind whatsoever, including but not limited to,

notations on the backs of pages thereto, each non-identical copy is a separate document and must be produced.

(G) “Hylete Mark” means the trademark “” alone as well as in combination with other terms or symbols, whether used in a trademark or service mark sense, or used as a trade name, company name, or in any other way.

(H) “Hybrid Mark” means the trademark “” alone as well as in combination with other terms or symbols, whether used in a trademark or service mark sense, or used as a trade name, company name, or in any other way.

(I) “Opposer” or “Hybrid” refers to Hybrid Athletics LLC.

(J) "Oral communication" means any utterance heard by any person, whether heard in person, by telephone or in any other manner.

(K) The word "person" or "persons" shall mean an individual, corporation, proprietorship, partnership, association or any other entity.

(L) Where identification of a person is required, such identification shall, without limitation, include:

- a. the person's full name;
- b. whether it is an individual, corporation, proprietorship, association or other entity;
- c. business address; and
- d. if an individual, his home address or if not known, his last known address, and his present employer and position.

(M) Where identification or description of an act or event is required, such identification or description shall, without limitation, include:

- a. date or dates of occurrence;
- b. place or places of occurrence;
- c. identification of each person present and the name of the organization each represented or was connected with; and
- d. what was said and/or done by each such person.

(N) Where identification of a document is required, such identification should be sufficient for the characterization of the document in a request for production of documents under Rule 34 of the Federal Rules of Civil Procedure and shall, without limitation, include:

- a. the identity of the author;
- b. the date of the document;
- c. the general nature of the document, i.e. whether it is a letter, memorandum, pamphlet, report, advertising matter, advertising proofs, etc.;
- d. the identity of all recipients of copies of the document;
- e. the identity of the person now having possession of the original document and the location of the original;
- f. the identity of each person now having possession of a copy of the document and the location of each such copy; and
- g. for each document which defendant contends is privileged or otherwise excludable from discovery, the basis for such claim of privilege or other grounds of exclusion;

(O) Where identification of an oral communication is required, such identification shall, without limitation, include:

- a. the identity of the person or persons making the oral communication;
- b. the identity of any persons hearing such oral communication;
- c. the date of such oral communication; and
- d. what was said by all persons participating in said oral communication.

(P) If privilege against provision of information or production of a document is claimed, identify the specific basis therefore, provide a complete specification and description of every fact upon which the claim of privilege is based, and state for each piece of information or document:

- a. its date;
- b. its author(s);
- c. its addressees and/or distributes;
- d. its general type (*e.g.*, letter, memo, report, invoice, etc.) and the general type of its subject matter;
- e. its present location (including title, index number and location of the actual file in which it is stored);
- f. the identity of the present custodian of the document or other person responsible for its filing; and
- g. the identity of person(s) who can authenticate or identify the document.

(Q) The use of the singular form of any word includes the plural and vice versa.

(R) "You" or "Your" means Applicant and each of its predecessors, successors, subsidiaries and affiliates.

INTERROGATORIES

INTERROGATORY NO. 1:

Identify all persons who participated in any way in the preparation of the responses to Hybrid's interrogatories and state specifically, with reference to interrogatory numbers, the area of participation of each such person.

INTERROGATORY NO. 2:

With respect to the April 9, 2012 first date of use alleged by Applicant in its U.S. Trademark Serial No. 85837045 for the Hylete Mark, identify all documents upon which Applicant relies to establish that date.

INTERROGATORY NO. 3:

State and describe any known incidents wherein a person was confused, mistaken, or deceived as to the source of products sold by Hylete or any business conducted by Hylete under the Hylete Mark, believing that Opposer's business and Hylete's business were related in some way, and identify all documents related to each incident or purported incident.

INTERROGATORY NO. 4:

State whether you have received any inquiries or communications as to whether products sold by Hylete are associated with, sponsored by, or in any manner connected with Hybrid and/or the Hybrid Mark, or whether you are aware of any other incidents of actual confusion, mistake or deception arising from the use of the Hylete Mark. Identify and describe all relevant facts and circumstances surrounding each incident and identify all documents relating thereto.

INTERROGATORY NO. 5:

State the facts and circumstances under which you first became aware of Opposer's use of the Hybrid Mark, including the date on which it first became aware of Opposer's use of the Hybrid Mark, and identify each document relating to such facts and circumstances.

INTERROGATORY NO. 6:

State whether, after Hylete became aware of Opposer's use of the Hybrid Mark, anyone affiliated with Hylete questioned the propriety of Hylete's use of the Hylete mark, and identify the parties involved in such matters, each document that evidences such matters, and any person who has knowledge about such matters.

INTERROGATORY NO. 7:

Identify and fully describe the channels of trade and/or the potential channels of trade, including all distributors, agents, or retail outlets, through which Hylete's goods and/or services bearing the Hylete Mark are currently sold, offered, or distributed and/or intended to be sold, offered, or distributed.

INTERROGATORY NO. 8:

Fully describe the facts surrounding the selection of the Hylete Mark.

INTERROGATORY NO. 9:

Identify all products and/or services sold or intended to be sold by Hylete in the United States in connection with the Hylete Mark and identify all documents related thereto.

INTERROGATORY NO. 10:

Describe all methods in which goods bearing the Hylete Mark are, or are intended to be, advertised, promoted, marketed or otherwise brought to the attention of customers and potential customers.

INTERROGATORY NO. 11:

With respect to the products and services identified in response to Interrogatory No. 9, provide the date(s) that the Hylete Mark was first used in interstate commerce as defined by the Lanham Act (15 U.S.C.S. §§ 1051 et seq.).

INTERROGATORY NO. 12:

With respect to the products and services identified in response to Interrogatory No. 9, provide the geographical scope of such former or current use of the Hylete Mark within the U.S.

INTERROGATORY NO. 13:

With respect to the products and services identified in response to Interrogatory No. 9, identify the dates during which you have continuously used the Hylete Mark, or if such use(s) has (have) not been continuous, state with particularity the dates and reason for any period that the Hylete Mark has not been used by you.

INTERROGATORY NO. 14:

Describe fully any advertising conducted by any person of the Hylete Mark within the U.S. including, but without limitation, the nature of such advertising, the geographic scope of such advertising, and the amount of money spent for such advertising on a yearly basis.

INTERROGATORY NO. 15:

State the names and addresses of each Hylete customer and the inclusive dates each such person has been a customer.

INTERROGATORY NO. 16:

Identify all facts and documents which support Hylete's first affirmative defense that the "Notice of Opposition, and each paragraph thereof, taken individually or collectively, fails to state claims upon which relief can be granted."

INTERROGATORY NO. 17:

Identify all facts and documents which support Hylete's second affirmative defense that "Opposer has abandoned any and all rights to the alleged mark in this Opposition."

INTERROGATORY NO. 18:

Identify all facts and documents which support Hylete's third affirmative defense that "Opposer's alleged mark is not protectable as sought in this Opposition."

INTERROGATORY NO. 19:

Identify all facts and documents which support Hylete's fourth affirmative that "Opposer's alleged rights in its mark, if any, are narrow and not subject to wide protection due to dilutive third party use of similar marks for similar goods and services."

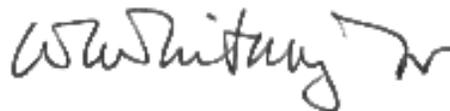
INTERROGATORY NO. 20:

Identify all facts and documents which support Hylete's fifth affirmative defense that "Opposer does not have standing to oppose registration of Applicant's application."

INTERROGATORY NO. 21:

Identify all manufacturers of goods using the Hylete Mark.

Date: March 4, 2014



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Attorneys for Opposer

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing **HYBRID ATHLETICS'**
FIRST SET OF INTERROGATORIES TO APPLICANT was served by 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

3/14/2014
Date

Jessica L. White
Jessica L. White

Exhibit C

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

HYBRID ATHLETICS, LLC,

Opposer,

v.

HYLETE, LLC,

Applicant.

Opposition No.: 91213057

Application Serial No.: 85/837,045

APPLICANT HYLETE'S
OBJECTIONS AND RESPONSES
TO OPPOSER'S FIRST SET OF
INTERROGATORIES

PROPOUNDING PARTY: Opposer, Hybrid Athletics, LLC

RESPONDING PARTY: Applicant, Hylete LLC

SET NO.: One

Applicant Hylete, LLC (“APPLICANT”) responds to Opposer Hybrid Athletics, LLC (“OPPOSER” or “PROPOUNDING PARTY”) Interrogatories, Set One as follows:

PRELIMINARY STATEMENT AND GENERAL OBJECTIONS

1. The following Preliminary Statement and General Objections are incorporated into APPLICANT’s responses to each Interrogatory as if APPLICANT separately so objected and/or stated in response to each Interrogatory.

2. Investigation and discovery by APPLICANT is continuing and is not complete. As discovery proceeds, witnesses, documents, facts, and evidence may be discovered that were not presently known, but upon which APPLICANT may rely in support of its contentions in this action. The responses contained herein shall not preclude APPLICANT from introducing evidence based on such new and/or additional information.

3. Facts and evidence now known may be imperfectly understood, or the relevance or consequences of such facts and evidence may be imperfectly understood, and, accordingly, such facts and evidence may, in good faith, not have been analyzed for purposes of the following responses. APPLICANT reserves the right to refer to, conduct discovery with reference to, or offer into evidence at trial any and all such witnesses, facts, and evidence, notwithstanding these responses. APPLICANT expressly reserves the right to rely at any time, including trial, on information omitted from these responses as a result of mistake, error, oversight, inadvertence, or subsequent discovery.

4. APPLICANT objects to these Interrogatories to the extent that they seek information that is not in the possession, custody or control of APPLICANT or is in the custody or control of a person or entity that is not a party to this

litigation, or is in the joint custody and control of APPLICANT and PROPOUNDING PARTY, or is equally or more readily accessible to PROPOUNDING PARTY and its counselor is contained in public records.

5. APPLICANT objects to these Interrogatories and accompanying definitions to the extent they require the production or identification of documents, writings, records or publications in the possession of third parties or in the public domain, because such information is equally available to PROPOUNDING PARTY.

6. APPLICANT objects to these Interrogatories to the extent that they seek information which requires legal interpretation and/or a legal conclusion.

7. APPLICANT objects to these Interrogatories to the extent that they seek privileged information, including, without limitation, information protected by the attorney-client privilege, the attorney work-product doctrine, or any applicable common law, statutory or constitutional privileges. To the extent that these Interrogatories seek such privileged or protected information, APPLICANT will not provide such information. Moreover, even if APPLICANT inadvertently provides information protected from disclosure by the foregoing privileges or protections, APPLICANT does not waive its right to assert those privileges and/or objections to disclosure.

8. Nothing herein should be construed as an admission by APPLICANT with respect to the admissibility or relevance of any fact or document, or as an admission that APPLICANT agrees with the characterization of such fact or document(s) by APPLICANT. Responses to any Interrogatory are subject to all objections as to competence, relevance, materiality, propriety and admissibility, as well as to any and all other objections on any grounds that would require the exclusion of any statement therein if the response were introduced in

court, all of which objections and grounds are expressly reserved and may be interposed at any time of any motion or trial.

9. APPLICANT objects to the INSTRUCTIONS on the grounds they seek to impose obligations on it beyond those provided for by the Code of Civil Procedure.

10. These responses are made without prejudice to APPLICANT's right to produce evidence or contentions, or to add, modify, or to otherwise change or amend the responses herein based upon information hereafter obtained or evaluated, including, but not limited to, information and documents produced by APPLICANT and other witnesses and/or any developments in the law.

**APPLICANT'S OBJECTIONS AND RESPONSES TO
OPPOSER'S FIRST SET OF INTERROGATORIES**

INTERROGATORY NO. 1:

Identify all persons who participated in any way in the preparation of the responses to Hybrid's interrogatories and state specifically, with reference to interrogatory numbers, the area of participation of each such person.

RESPONSE TO INTERROGATORY NO. 1:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT responds as follows: Ron Wilson; Matt Paulson; and Jennifer Null.

INTERROGATORY NO. 2:

With respect to the April 9, 2012 first date of use alleged by Applicant in its U.S. Trademark Serial No. 85837045 for the Hylete Mark, identify all documents upon which Applicant relies to establish that date.

RESPONSE TO INTERROGATORY NO. 2:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks expert opinions and/or legal conclusions; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT responds as follows:

Applicant's date of first use is at least as early as April 9, 2012. A zazzle.com web order placed on April 9, 2012. Pursuant to Fed. R. Civ. P. 33(d), Applicant directs Opposer to documents bearing bates nos. HYLETE 001-0133.

INTERROGATORY NO. 3:

State and describe any known incidents wherein a person was confused, mistaken, or deceived as to the source of products sold by Hylete or any business conducted by Hylete under the Hylete Mark, believing that Opposer's business and Hylete's business were related in some way, and identify all documents related to each incident or purported incident.

RESPONSE TO INTERROGATORY NO. 3:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT responds as follows:

Prior to Opposer's Objections and Responses to Applicant's First Set of Interrogatories, wherein a Facebook posting was provided, Applicant was unaware of any incidents wherein a person was confused, mistaken, or deceived as to the source of products sold by Hylete or any business conducted by Hylete under the Hylete mark.

INTERROGATORY NO. 4:

State whether you have received any inquiries or communications as to whether products sold by Hylete are associated with, sponsored by, or in any manner connected with Hybrid and/or the Hybrid Mark, or whether you are aware of any other incidents of actual confusion, mistake or deception arising from the use of the Hylete Mark. Identify and describe all relevant facts and circumstances surrounding each incident and identify all documents relating thereto.

RESPONSE TO INTERROGATORY NO. 4:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; protected by the attorney-client privilege and/or work-product doctrine; seeks expert opinions and/or legal conclusions; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT responds as follows:

Prior to Opposer's Objections and Responses to Applicant's First Set of Interrogatories, wherein a Facebook posting was provided, Applicant was unaware of any incidents wherein a person was confused, mistaken, or deceived as to the source of products sold by Hylete or any business conducted by Hylete under the Hylete mark.

INTERROGATORY NO. 5:

State the facts and circumstances under which you first became aware of Opposer's use of the Hybrid Mark, including the date on which it first became aware of Opposer's use of the Hybrid Mark, and identify each document relating to such facts and circumstances.

RESPONSE TO INTERROGATORY NO. 5:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; seeks expert opinions and/or legal conclusions.

Subject to and without waiving the objections above, APPLICANT responds as follows:

Matt Paulson and Jennifer Null were aware of Opposer's mark in 2011. There is no documentation relating to such facts and circumstances.

INTERROGATORY NO. 6:

State whether, after Hylete became aware of Opposer's use of the Hybrid Mark, anyone affiliated with Hylete questioned the propriety of Hylete's use of the Hylete mark, and identify the parties involved in such matters, each document

that evidences such matters, and any person who has knowledge about such matters.

RESPONSE TO INTERROGATORY NO. 6:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT responds as follows:

No one affiliated with Applicant questioned the propriety of Hylete's use of the Hylete mark.

INTERROGATORY NO. 7:

Identify and fully describe the channels of trade and/or the potential channels of trade, including all distributors, agents, or retail outlets, through which Hylete's goods and/or services bearing the Hylete Mark are currently sold, offered, or distributed and/or intended to be sold, offered, or distributed.

RESPONSE TO INTERROGATORY NO. 7:

APPLICANT objects to this request to the extent it is: vague and ambiguous; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT responds as follows:

Applicant's items are sold primarily through web sales via website www.hylete.com. In addition, items are also sold through approximately 150 gyms that carry co-branded merchandise.

INTERROGATORY NO. 8:

Fully describe the facts surrounding the selection of the Hylete Mark.

RESPONSE TO INTERROGATORY NO. 8:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT responds as follows:

Ron Wilson designed the mark on the days of March 17 – March 20, 2012. Given that the Applicant's company name is Hylete, Applicant sought to design the mark to have a shield like appearance and contain a stylized "H".

INTERROGATORY NO. 9:

Identify all products and/or services sold or intended to be sold by Hylete in the United States in connection with the Hylete Mark and identify all documents related thereto.

RESPONSE TO INTERROGATORY NO. 9:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the

discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT responds as follows:

Hylete products and/or services sold can be seen on Applicant's website www.hylete.com. Hylete currently sells or intends to manufacture and sell men's and women's performance apparel including but not limited to: shirts, pants, socks, base layer, compression tops/bottoms, and tights. In addition, Hylete manufactures and sells a convertible backpack, a drawstring bag, and sells or intends to manufacture and sell equipment bags, messenger bags, duffle bags, and toiletry bags.

INTERROGATORY NO. 10:

Describe all methods in which goods bearing the Hylete Mark are, or are intended to be, advertised, promoted, marketed or otherwise brought to the attention of customers and potential customers.

RESPONSE TO INTERROGATORY NO. 10:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT responds as follows:

Applicant advertises, markets, and promotes its products through events and social media.

INTERROGATORY NO. 11:

With respect to the products and services identified in response to Interrogatory No. 9, provide the date(s) that the Hylete Mark was first used in interstate commerce as defined by the Lanham Act (15 U.S.C.S. §§ 1051 et seq.).

RESPONSE TO INTERROGATORY NO. 11:

APPLICANT objects to this request to the extent it is vague and ambiguous.

Subject to and without waiving the objections above, APPLICANT responds as follows: at least as early as July 7, 2012.

INTERROGATORY NO. 12:

With respect to the products and services identified in response to Interrogatory No. 9, provide the geographical scope of such former or current use of the Hylete Mark within the U.S.

RESPONSE TO INTERROGATORY NO. 12:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT responds as follows:

Applicant's current use of the Hylete mark extends throughout the entire United States.

INTERROGATORY NO. 13:

With respect to the products and services identified in response to Interrogatory No. 9, identify the dates during which you have continuously used the Hylete Mark, or if such use(s) has (have) not been continuous, state with particularity the dates and reason for any period that the Hylete Mark has not been used by you.

RESPONSE TO INTERROGATORY NO. 13:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT responds as follows:

Applicant has continuously used the Hylete mark from at least as early as July 7, 2012 to present day.

INTERROGATORY NO. 14:

Describe fully any advertising conducted by any person of the Hylete Mark within the U.S. including, but without limitation, the nature of such advertising, the geographic scope of such advertising, and the amount of money spent for such advertising on a yearly basis.

RESPONSE TO INTERROGATORY NO. 14:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT responds as follows:

Applicant has conducted advertising and marketing nationwide through events and social media.

INTERROGATORY NO. 15:

State the names and addresses of each Hylete customer and the inclusive dates each such person has been a customer.

RESPONSE TO INTERROGATORY NO. 15:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

INTERROGATORY NO. 16:

Identify all facts and documents which support Hylete's first affirmative defense that the "Notice of Opposition, and each paragraph thereof, taken individually or collectively, fails to state claims upon which relief can be granted."

RESPONSE TO INTERROGATORY NO. 16:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT directs Opposer to provided documents.

INTERROGATORY NO. 17:

Identify all facts and documents which support Hylete's second affirmative defense that "Opposer has abandoned any and all rights to the alleged mark in this Opposition."

RESPONSE TO INTERROGATORY NO. 17:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible.

Subject to and without waiving the objections above, APPLICANT directs Opposer to provided documents.

INTERROGATORY NO. 18:

Identify all facts and documents which support Hylete's third affirmative defense that "Opposer's alleged mark is not protectable as sought in this Opposition."

RESPONSE TO INTERROGATORY NO. 18:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence.

INTERROGATORY NO. 19:

Identify all facts and documents which support Hylete's fourth affirmative that "Opposer's alleged rights in its mark, if any, are narrow and not subject to wide protection due to dilutive third party use of similar marks for similar goods and services."

RESPONSE TO INTERROGATORY NO. 19:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible.

Subject to and without waiving the objections above, APPLICANT responds as follows:

Applicant has provided all information it is currently knowledgeable of and in its current possession.

INTERROGATORY NO. 20:

Identify all facts and documents which support Hylete's fifth affirmative defense that "Opposer does not have standing to oppose registration of Applicant's application."

RESPONSE TO INTERROGATORY NO. 20:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT responds as follows:

Subject to and without waiving the objections above, APPLICANT directs Opposer to provided documents.

INTERROGATORY NO. 21:

Identify all manufacturers of goods using the Hylete Mark.

RESPONSE TO INTERROGATORY NO. 21:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; seeks information that is confidential, privacy protected, and/or trade secrets.

DATE: April 2, 2014

By /kyri tsircou/
Kyriacos Tsircou
Attorney for Applicant HYLETE, LLC

Exhibit D

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

HYBRID ATHLETICS, LLC,	Opposition No.: 91213057
Opposer,	Application Serial No.: 85/837,045
v.	
HYLETE, LLC,	APPLICANT HYLETE'S OBJECTIONS AND RESPONSES TO OPPOSER'S FIRST SET OF REQUEST FOR PRODUCTION
Applicant.	

PROPOUNDING PARTY: Opposer, Hybrid Athletics, LLC

RESPONDING PARTY: Applicant, Hylete LLC

SET NO.: One

Applicant Hylete, LLC (“APPLICANT”) responds to Opposer Hybrid Athletics, LLC (“OPPOSER” or “PROPOUNDING PARTY”) Request for Production, Set One as follows:

PRELIMINARY STATEMENT AND GENERAL OBJECTIONS

GENERAL OBJECTIONS

1. APPLICANT objects to each request to the extent that it may be construed as calling for information subject to any claim of privilege, including, but not limited to, the attorney/client privilege and/or the attorney work product doctrine, including information prepared in anticipation of litigation, or for trial, by or on behalf of responding party, or its representatives, or relating to mental impressions, conclusions, opinions or legal terms of responding party’s counsel.. Pursuant thereto, APPLICANT and their counsel hereby claim these privileges and object to any such applicable request on this basis.

2. Investigation and discovery by APPLICANT is continuing and is not complete. As discovery proceeds, witnesses, documents, facts, and evidence may be discovered that were not presently known, but upon which APPLICANT may rely in support of its contentions in this action. The responses contained herein shall not preclude APPLICANT from introducing evidence based on such new and/or additional information.

3. APPLICANT objects to each request to the extent that it may be construed as calling for information neither relevant to the subject matter of this action nor likely to lead to the discovery of admissible evidence.

4. APPLICANT objects to each request to the extent that the burden, expense, or intrusiveness of that discovery clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence.

5. APPLICANT objects to each request to the extent that the

discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive.

6. APPLICANT objects to each request to the extent that it is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, and the importance of the issues at stake in the litigation.

7. APPLICANT objects to each request to the extent that it may be construed as calling for information already in OPPOSER's possession, custody, or control on the grounds that such request is unduly burdensome and oppressive, and otherwise exceeds the bounds of permissible discovery.

8. APPLICANT objects to each request to the extent that it seeks documents, the production of which would violate any constitutional, statutory or common law privacy interest of APPLICANT (the "Privacy Objection").

9. APPLICANT objects to the instructed form of production of certain documents such as photographs, videotapes, or other or other image-recording devices and visual media. APPLICANT will provide the responsive, non-privileged documents in CD-Rom, DVD-Rom, or other appropriate electronic media.

10. APPLICANT objects to the demand for production of originals. APPLICANT will provide true and accurate copies of the responsive, non-privileged documents in CD-Rom, DVD-Rom, or other appropriate electronic or fixed media.

11. Each of these general objections are incorporated into each of the responses set forth below, each response is made without waiver of any of these general objections.

**APPLICANT'S OBJECTIONS AND RESPONSES TO
OPPOSER'S FIRST SET OF REQUEST FOR PRODUCTION**

REQUEST NO. 1:

All documents that refer to or support any allegations made in Hylete's Answer to Notice of Opposition.

RESPONSE TO REQUEST NO. 1:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

REQUEST NO. 2:

All documents used, identified, relied upon or referred to by Hylete when answering Opposer's First Set of Interrogatories or any discovery requests propounded by Opposer.

RESPONSE TO REQUEST NO. 2:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

REQUEST NO. 3:

Documents sufficient to show the date of first use of the Hylete Mark.

RESPONSE TO REQUEST NO. 3:

APPLICANT objects to this request to the extent it is: vague and ambiguous; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

REQUEST NO. 4:

Documents sufficient to show Hylete's continuous bona fide use in commerce of the Hylete Mark from the date of first use to the present.

RESPONSE TO REQUEST NO. 4:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

REQUEST NO. 5:

All documents concerning Hylete's past, current, or planned future use of the Hylete Mark within the U.S.

RESPONSE TO REQUEST NO. 5:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

REQUEST NO. 6:

All communications concerning the use, or planned future use, of the Hylete Mark by any third party within the U.S.

RESPONSE TO REQUEST NO. 6:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

REQUEST NO. 7:

All documents concerning the use of the Hylete Mark in the U.S. in connection with the sale or advertising of a product and/or service.

RESPONSE TO REQUEST NO. 7:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

REQUEST NO. 8:

Documents sufficient to show the target market of products and/or services sold or offered for sale in connection with the Hylete Mark within the U.S.

RESPONSE TO REQUEST NO. 8:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

REQUEST NO. 9:

Documents sufficient to show the target market of products and/or services planned to be sold or offered for sale in the future in connection with the Hylete Mark within the U.S.

RESPONSE TO REQUEST NO. 9:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

REQUEST NO. 10:

Documents sufficient to identify the geographic location of users of products and/or services offered under the Hylete Mark in the U.S.

RESPONSE TO REQUEST NO. 10:

APPLICANT objects to this request to the extent it is: vague and ambiguous; seeks information that is not relevant nor likely to lead to the

discovery of admissible evidence; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

REQUEST NO. 11:

All marketing plans, forecasts, projections and documents concerning Hylete's marketing and sales plans for products and/or services sold, to be sold, advertised, or to be advertised, bearing or associated with the Hylete Mark.

RESPONSE TO REQUEST NO. 11:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

REQUEST NO. 12:

Documents sufficient to identify the channels of trade through which Hylete offers or plans to offer each product and/or service sold, to be sold, advertised, or to be advertised, bearing the Hylete Mark within the U.S.

RESPONSE TO REQUEST NO. 12:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

REQUEST NO. 13:

All documents concerning any instances of actual confusion, mistake, deception or association of any kind between the Hybrid Mark and the Hylete Mark, including but not limited to, any consumer surveys.

RESPONSE TO REQUEST NO. 13:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

REQUEST NO. 14:

All documents concerning any survey Hylete has conducted or plans to conduct concerning Opposer and its trademark(s) or the Hybrid Mark.

RESPONSE TO REQUEST NO. 14:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

REQUEST NO. 15:

All documents exchanged between Hybrid and Hylete.

RESPONSE TO REQUEST NO. 15:

APPLICANT objects to this request to the extent it is: vague and ambiguous; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

REQUEST NO. 16:

All documents exchanged between and among Hylete, its distributors and sales personnel that relate to Hybrid or the Hybrid Mark.

RESPONSE TO REQUEST NO. 16:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

REQUEST NO. 17:

All documents relating to any civil or U.S. Patent and Trademark Office proceedings, or threatened proceeding, in the U.S. between Hylete and third parties, involving use of the Hylete Mark.

RESPONSE TO REQUEST NO. 17:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

REQUEST NO. 18:

All documents relating to any written or oral agreements by which Hylete and any third parties settled a dispute in respect of the use of the Hylete Mark.

RESPONSE TO REQUEST NO. 18:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

REQUEST NO. 19:

All documents that Hylete will or may offer as exhibits at trial.

RESPONSE TO REQUEST NO. 19:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

REQUEST NO. 20:

All documents identified or referred to in Hylete's Initial Disclosures.

RESPONSE TO REQUEST NO. 20:

APPLICANT objects to this request to the extent it is: vague and ambiguous; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

REQUEST NO. 21:

All documents showing the Hylete Mark used on each item listed in the identification of goods for its U.S. Trademark Serial No. 85/837,045.

RESPONSE TO REQUEST NO. 21:

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

REQUEST NO. 22:

All agreements between Hylete and any manufacture for the production of goods bearing the Hylete Mark.

RESPONSE TO REQUEST NO. 22:

APPLICANT objects to this request to the extent it is: vague and ambiguous; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

REQUEST NO. 23:

Documents sufficient to identify all suppliers, agents and importers of goods bearing the Hylete Mark including, but not limited to, bills of lading, invoices, contracts and purchase orders.

RESPONSE TO REQUEST NO. 23:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

REQUEST NO. 24:

Documents sufficient to identify all venues where Hylete has sold, offered for sale or displayed goods bearing the Hylete Mark including, but not limited to, gyms (e.g. CrossFit Affiliates), stores, events and athletic competitions.

RESPONSE TO REQUEST NO. 24:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

REQUEST NO. 25:

Documents sufficient to identify each seller, re-seller, retailer, distributor and wholesaler of goods bearing the Hylete Mark.

RESPONSE TO REQUEST NO. 25:

APPLICANT objects to this request to the extent it is: vague and ambiguous; seeks information that is not relevant nor likely to lead to the

discovery of admissible evidence; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

REQUEST NO. 26:

Documents sufficient to identify all customers who have purchased goods bearing the Hylete Mark.

RESPONSE TO REQUEST NO. 26:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

DATE: APRIL 2, 2014

By /kyri tsircou/
Kyriacos Tsircou
Attorney for Applicant HYLETE, LLC

CERTIFICATE OF SERVICE

I hereby certify that on April 2, 2014, I have sent a copy of APPLICANT HYTELE’S OBJECTIONS AND RESPONSES TO OPPOSER’S FIRST SET OF REQUEST FOR PRODUCTION Pursuant to Fed. R. Civ. P. 26(a)(1) to the foregoing, by electronic mail and U.S. Mail, First Class pre-paid postage, to:

Wesley W. Whitmyer
St. Onge, Steward Johnston & Reens LLC
986 Bedford Street
Stamford, CT 06905
Tel. (203) 324-6155 Facsimile (203) 327-1096
Email:litigation@ssjr.com

/kyri tsircou/

Kyriacos Tsircou, Esq.

----- Forwarded message -----

From: **Matt Paulson** <mpaulson@hylete.com>
Date: Mon, Mar 11, 2013 at 10:56 AM
Subject: Re: Matt--this is the 100th person to send an email like this
To: Robert Orlando <conanrules1@gmail.com>

Hey Rob,

Hope you're doing well!

With any new logo, people associate that logo with something they have already seen or are familiar with until that new logo takes a life of its own. Our logo is no different. I won't lie, in the beginning we had a few people say it looks like your logo. We also had people tell us it looks like our old JACO logo. If you look at our FB page, you'll see many people comment that it reminds them of Under Armour. In fact, the Under Armour comment has been received the most because that is the brand more people are familiar with. The list could continue with the number of logos that we are compared to- Honda, Hurley, Hyperlite, Spyder, etc. If you put all these logos in a line, you could pick out similarities and dissimilarities; however, they are all individually distinctive.

If you haven't already, put our two 'H's next to each other- Is there a common H element? Sure. Other than that, it's completely different. Ours is round, yours square. The peaks and valleys totally different, etc.

Again, I'm sorry you feel like we 'knocked off' your logo. It couldn't be further from the truth. I'm sure at this point a relationship between HYLETE and HA is off the table. However, I hope we can remain friends.

In regards to an email I sent late last year, the offer is still out there. A European magazine would like to do an article/interview with you. Let me know if you want me to connect you.

Best Regards,

Matt

On Mon, Mar 11, 2013 at 10:28 AM, Rob Orlando <conanrules1@gmail.com> wrote:
Matt--

Thought you might like to see this. His email is one of a hundred I've gotten...and literally thousands of people have asked if you guys are an off shoot of Hybrid Athletics.

[Options](#)

[Jesse ClayRob Orlando](#)

23 hours ago near Lenexa, KS

• You should investigate HYLETE...unless they r a branch of Hybrid they chicken hawked your logo...heads up.

[Like](#)

0



First Email from Matt to Rob:

----- Forwarded message -----

From: **Matt Paulson** <mpaulson@hylete.com>
Date: Mon, Apr 23, 2012 at 12:52 PM
Subject: Catalog
To: Robert Orlando <conanrules1@gmail.com>

Generated on: This page was generated by TSDR on 2014-03-27 15:14:09 EDT

Mark: H



US Serial Number: 85837045

Application Filing Date: Jan. 30, 2013

Register: Principal

Mark Type: Trademark

Status: An opposition after publication is pending at the Trademark Trial and Appeal Board. For further information, see TTABVue on the Trademark Trial and Appeal Board web page.

Status Date: Oct. 18, 2013

Publication Date: Jun. 18, 2013

Mark Information

Mark Literal Elements: H

Standard Character Claim: No

Mark Drawing Type: 3 - AN ILLUSTRATION DRAWING WHICH INCLUDES WORD(S)/ LETTER(S)/NUMBER(S)

Description of Mark: The mark consists of stylized "H".

Color(s) Claimed: Color is not claimed as a feature of the mark.

Design Search Code(s): 26.01.02 - Circles, plain single line; Plain single line circles
26.01.13 - Circles, two (not concentric); Two circles

Related Properties Information

International Registration
Number:

International Application(s)
/Registration(s) Based on
this Property: A0041441

Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis (()) identify any goods/services not claimed in a Section 15 affidavit of
- Asterisks *..* identify additional (new) wording in the goods/services.

For: Athletic apparel, namely, shirts, pants, shorts, jackets, footwear, hats and caps

International Class(es): 025 - Primary Class

U.S Class(es): 022, 039

Class Status: ACTIVE

Basis: 1(a)

First Use: Apr. 09, 2012

Use in Commerce: Apr. 09, 2012

Basis Information (Case Level)

Filed Use: Yes

Currently Use: Yes

Amended Use: No

Filed ITU: No

Currently ITU: No

Amended ITU: No

Filed 44D: No

Currently 44D: No

Amended 44D: No

Filed 44E: No

Currently 44E: No

Amended 44E: No

Filed 66A: No

Currently 66A: No

Filed No Basis: No

Currently No Basis: No

Current Owner(s) Information

HYLETE001-0035

Owner Name: Hylete LLC
Owner Address: 135 S. Sierra Ave., Unit 20
Solana Beach, CALIFORNIA 92075
UNITED STATES
Legal Entity Type: LIMITED LIABILITY COMPANY
State or Country Where Organized: CALIFORNIA

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Kyriacos Tsircou
Attorney Primary Email Address: kyri@tsircoulaw.com
Docket Number: HYL-00486
Attorney Email Authorized: Yes

Correspondent

Correspondent Name/Address: KYRIACOS TSIRCOU
TSIRCOU LAW PC
515 S FLOWER ST
FL 36
LOS ANGELES, CALIFORNIA 90071 2221
UNITED STATES
Phone: 323-660-9916
Fax: 323-660-9917
Correspondent e-mail: kyri@tsircoulaw.com
Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Oct. 18, 2013	OPPOSITION INSTITUTED NO. 999999	213057
Jul. 09, 2013	EXTENSION OF TIME TO OPPOSE RECEIVED	
Jun. 18, 2013	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Jun. 18, 2013	PUBLISHED FOR OPPOSITION	
May 29, 2013	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
May 13, 2013	APPROVED FOR PUB - PRINCIPAL REGISTER	
May 13, 2013	ASSIGNED TO EXAMINER	82426
Feb. 07, 2013	NOTICE OF DESIGN SEARCH CODE AND PSEUDO MARK E-MAILED	
Feb. 06, 2013	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Feb. 02, 2013	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information

TM Attorney: GLASSER, CARYN
Law Office Assigned: LAW OFFICE 108

File Location

Current Location: PUBLICATION AND ISSUE SECTION
Date in Location: May 14, 2013

Proceedings

Summary

Number of Proceedings: 2

Type of Proceeding: Opposition

Proceeding Number: [91213057](#)
Status: Pending
Filing Date: Oct 16, 2013
Status Date: Oct 18, 2013
Interlocutory Attorney: ELIZABETH WINTER

Defendant

Name: Hylete LLC
Correspondent Address: KYRIACOS TSIRCOU
TSIRCOU LAW PC
515 S FLOWER ST , FL 36
LOS ANGELES CA , 90071 2221
UNITED STATES

Correspondent e-mail: kyri@tsircoulaw.com

Mark	Application Status	Serial Number	Registration Number
------	--------------------	---------------	---------------------

H Opposition Pending [85837045](#)

Plaintiff(s)

Name: Hybird Athletics, LLC

Correspondent Address: WESLEY W WHITMYER JR
ST ONGE STEWARD JOHNSTON & REENS LLC
986 BEDFORD STREET
STAMFORD CT , 06905 5619
UNITED STATES

Correspondent e-mail: gmartino@ssjr.com , litigation@ssjr.com

Mark	Application Status	Serial Number	Registration Number
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H Registered [86000809](#) [4480850](#)

HYBRID ATHLETICS Non-Final Action - Mailed [86000800](#)

Prosecution History

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Oct 16, 2013	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Oct 18, 2013	Nov 27, 2013
3	PENDING, INSTITUTED	Oct 18, 2013	
4	ANSWER	Nov 12, 2013	
5	D MOT TO COMPEL DISCOVERY	Feb 04, 2014	
6	DEF'S REQUEST TO REMOVE INADVERTENT FILING	Feb 07, 2014	
7	BOARD'S COMMUNICATION	Feb 14, 2014	

Type of Proceeding: Extension of Time

Proceeding Number: [85837045](#) Filing Date: Jul 09, 2013

Status: Terminated Status Date: Oct 18, 2013

Interlocutory Attorney:

Defendant

Name: Hylete LLC

Correspondent Address: KYRIACOS TSIRCOU
TSIRCOU LAW, P.C.
515 S FLOWER ST FL 36
LOS ANGELES CA , 90071-2221
UNITED STATES

Mark	Application Status	Serial Number	Registration Number
------	--------------------	---------------	---------------------

H Opposition Pending [85837045](#)

Potential Opposer(s)

Name: RobertOrlando

Correspondent Address: Wesley W. Whitmyer, Jr.
St. Onge Steward Johnston & Reens, LLC
986 Bedford Street
Stamford CT , 06905-5619
UNITED STATES

Correspondent e-mail: gmartino@ssjr.com

Mark	Application Status	Serial Number	Registration Number
------	--------------------	---------------	---------------------

Prosecution History

Entry Number	History Text	Date	Due Date
1	INCOMING - EXT TIME TO OPPOSE FILED	Jul 09, 2013	
2	EXTENSION OF TIME GRANTED	Jul 09, 2013	

From: TMOOfficialNotices@USPTO.GOV
Sent: Tuesday, June 18, 2013 00:41 AM
To: kyri@tsircoulaw.com
Subject: HYL-00486 Official USPTO Notification: TMOG Publication Confirmation for Serial Number 85837045

TRADEMARK OFFICIAL GAZETTE PUBLICATION CONFIRMATION

U.S. Serial Number: 85-837,045
Mark: H(STYLIZED/DESIGN)
International Class(es): 025
Applicant: Hylete LLC
Docket/Reference Number: HYL-00486

The mark identified above has been published in the Trademark Official Gazette (TMOG) on Jun 18, 2013.

To View the Mark in the TMOG:

1. Click on the following link or paste the URL into an internet browser:
http://www.uspto.gov/web/trademarks/tmog/20130618_OG.pdf#page=00000741
2. Locate your mark on the displayed page.

If the TMOG PDF file does not open to the page containing your mark (you must have an Adobe Reader installed on your workstation), click on the following link or paste the URL into an internet browser to review the Frequently Asked Questions about the Trademark Official Gazette: http://www.uspto.gov/trademarks/resources/tm_og_faqs.jsp.

On the publication date or shortly thereafter, the applicant should carefully review the information that appears in the TMOG for accuracy. If any information is incorrect due to USPTO error, the applicant should immediately email the requested correction to TMPostPubQuery@uspto.gov. For applicant corrections or amendments after publication, please file a post publication amendment using the form available at <http://teasroa.uspto.gov/ppa/>. For general information about this notice, please contact the Trademark Assistance Center at 1-800-786-9199.

Significance of Publication for Opposition:

Any party who believes it will be damaged by the registration of the mark may file a notice of opposition (or extension of time therefor) with the Trademark Trial and Appeal Board. If no party files an opposition or extension request within thirty (30) days after the publication date, then eleven (11) weeks after the publication date a certificate of registration should issue.

To view this notice and other documents for this application on-line, go to Trademark Status and Document Retrieval at <http://tsdr.uspto.gov/>, enter the United States application serial number and select the button labeled "Documents." NOTE: This notice will only be available on-line the next business day after receipt of this e-mail.



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451
www.uspto.gov

May 29, 2013

NOTICE OF PUBLICATION

- | | |
|--------------------------------------|------------------------------------|
| 1. Serial No.:
85-837,045 | 2. Mark:
H
(STYLIZED/DESIGN) |
| 3. International Class(es):
25 | |
| 4. Publication Date:
Jun 18, 2013 | 5. Applicant:
Hylete LLC |

The mark of the application identified appears to be entitled to registration. The mark will, in accordance with Section 12(a) of the Trademark Act of 1946, as amended, be published in the *Official Gazette* on the date indicated above for the purpose of opposition by any person who believes he will be damaged by the registration of the mark. If no opposition is filed within the time specified by Section 13(a) of the Statute or by rules 2.101 or 2.102 of the Trademark Rules, the Commissioner of Patents and Trademarks may issue a certificate of registration.

Copies of the trademark portion of the *Official Gazette* containing the publication of the mark may be obtained from:

The Superintendent of Documents
U.S. Government Printing Office
PO Box 371954
Pittsburgh, PA 15250-7954
Phone: 202-512-1800

By direction of the Commissioner.

Email Address(es):

kyri@tsircoulaw.com

HYLETE001-0039

From: TMOOfficialNotices@USPTO.GOV
Sent: Wednesday, May 29, 2013 03:34 AM
To: kyri@tsircoulaw.com
Subject: HYL-00486 Official USPTO Notification: Issuance of Notice of Publication for Serial Number 85837045

NOTIFICATION OF "NOTICE OF PUBLICATION"

Your trademark application (Serial No. 85837045) is scheduled to publish in the *Official Gazette* on Jun 18, 2013. To preview the Notice of Publication, go to <http://tdr.uspto.gov/search.action?sn=85837045>. If you have difficulty accessing the Notice of Publication, contact TDR@uspto.gov.

PLEASE NOTE:

1. The Notice of Publication may not be immediately available but will be viewable within 24 hours of this e-mail notification.
2. You will receive a second e-mail on the actual "Publication Date," which will include a link to the issue of the *Official Gazette* in which the mark has published.

Do NOT hit "Reply" to this e-mail notification. If you have any questions about the content of the Notice of Publication, contact TMPostPubQuery@uspto.gov.

HYLETE001:0040

Trademark Snap Shot Publication Stylesheet
(Table presents the data on Publication Approval)

OVERVIEW

SERIAL NUMBER	85837045	FILING DATE	01/30/2013
REG NUMBER	0000000	REG DATE	N/A
REGISTER	PRINCIPAL	MARK TYPE	TRADEMARK
INTL REG #	N/A	INTL REG DATE	N/A
TM ATTORNEY	GLASSER, CARYN	L.O. ASSIGNED	108

PUB INFORMATION

RUN DATE	05/14/2013
PUB DATE	N/A
STATUS	680-APPROVED FOR PUBLICATON
STATUS DATE	05/13/2013
LITERAL MARK ELEMENT	H

DATE ABANDONED	N/A	DATE CANCELLED	N/A
SECTION 2F	NO	SECTION 2F IN PART	NO
SECTION 8	NO	SECTION 8 IN PART	NO
SECTION 15	NO	REPub 12C	N/A
RENEWAL FILED	NO	RENEWAL DATE	N/A
DATE AMEND REG	N/A		

FILING BASIS

FILED BASIS		CURRENT BASIS		AMENDED BASIS	
1 (a)	YES	1 (a)	YES	1 (a)	NO
1 (b)	NO	1 (b)	NO	1 (b)	NO
44D	NO	44D	NO	44D	NO
44E	NO	44E	NO	44E	NO
66A	NO	66A	NO		
NO BASIS	NO	NO BASIS	NO		

MARK DATA

STANDARD CHARACTER MARK	NO
LITERAL MARK ELEMENT	H

MARK DRAWING CODE	3-AN ILLUSTRATION DRAWING WHICH INCLUDES WORD(S)/LETTER(S)/NUMBER(S)
COLOR DRAWING FLAG	NO

CURRENT OWNER INFORMATION

PARTY TYPE	10-ORIGINAL APPLICANT
NAME	Hylete LLC
ADDRESS	135 S. Sierra Ave., Unit 20 Solana Beach, CA 92075
ENTITY	16-LTD LIAB CO
CITIZENSHIP	California

GOODS AND SERVICES

INTERNATIONAL CLASS	025
DESCRIPTION TEXT	Athletic apparel, namely, shirts, pants, shorts, jackets, footwear, hats and caps

GOODS AND SERVICES CLASSIFICATION

INTERNATIONAL CLASS	025	FIRST USE DATE	04/09/2012	FIRST USE IN COMMERCE DATE	04/09/2012	CLASS STATUS	6-ACTIVE
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MISCELLANEOUS INFORMATION/STATEMENTS

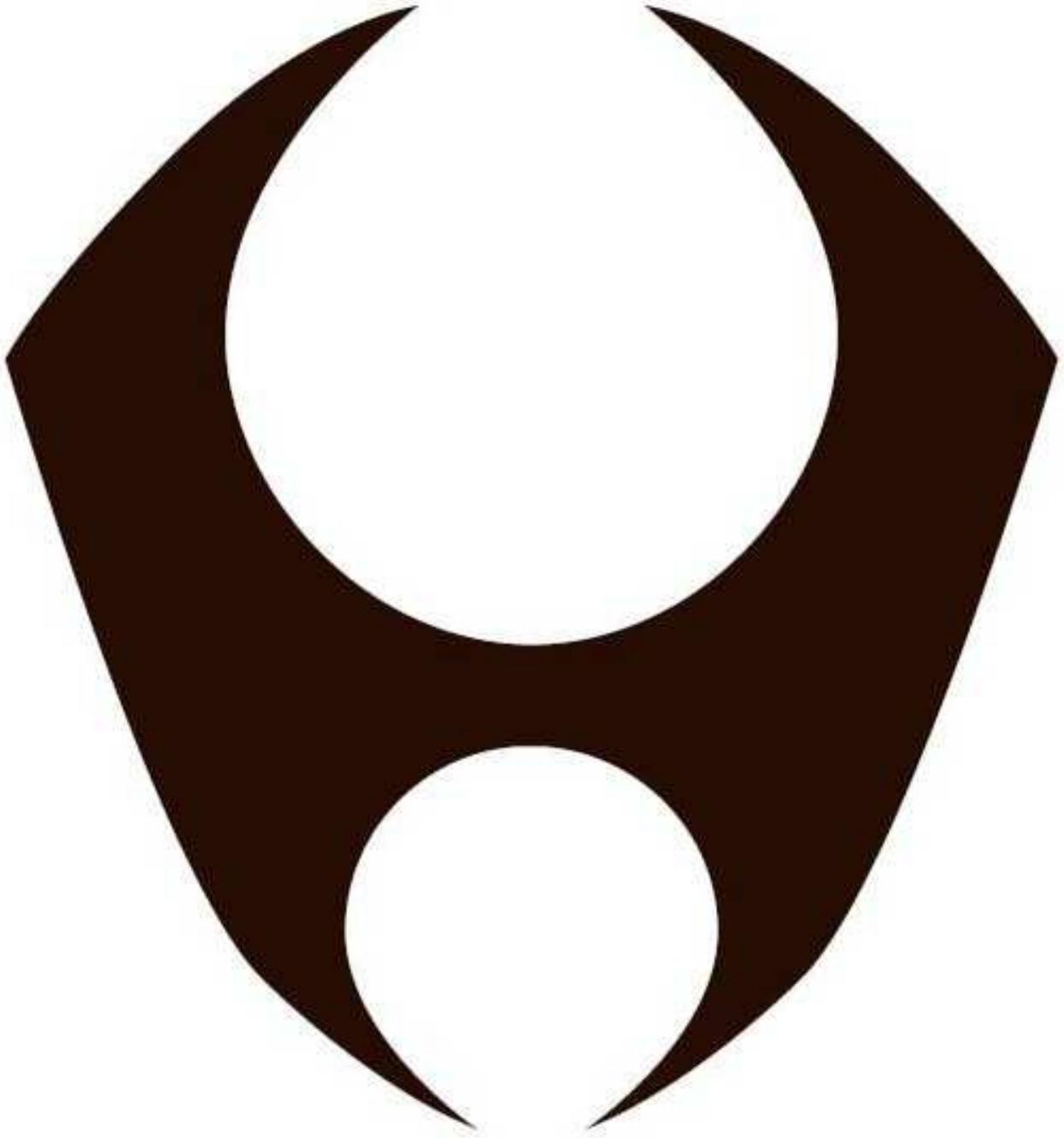
CHANGE IN REGISTRATION	NO
COLORS CLAIMED STATEMENT	Color is not claimed as a feature of the mark.
DESCRIPTION OF MARK	The mark consists of stylized H.
PSEUDO MARK	HYLETE; HIGH ATHLETE

PROSECUTION HISTORY

DATE	ENT CD	ENT TYPE	DESCRIPTION	ENT NUM
05/13/2013	CNSA	O	APPROVED FOR PUB - PRINCIPAL REGISTER	005
05/13/2013	DOCK	D	ASSIGNED TO EXAMINER	004
02/07/2013	MDSM	E	NOTICE OF DESIGN SEARCH CODE AND PSEUDO MARK E-MAILED	003
02/06/2013	NWOS	I	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	002
02/02/2013	NWAP	I	NEW APPLICATION ENTERED IN TRAM	001

CURRENT CORRESPONDENCE INFORMATION

ATTORNEY	Kyriacos Tsircou
CORRESPONDENCE ADDRESS	KYRIACOS TSIRCOU TSIRCOU LAW, P.C. 515 S FLOWER ST FL 36 LOS ANGELES, CA 90071-2221
DOMESTIC REPRESENTATIVE	NONE



*** User:cglasser ***

#	Total Marks	Dead Marks	Live Viewed Docs	Live Viewed Images	Status/ Search Duration	Search
01	5004	N/A	0	0	0:01	"h" [bi,ti]not dead [ld]
02	1707	0	1707	1641	0:01	1 and "025"[cc]

Session started 5/13/2013 4:39:33 PM

Session finished 5/13/2013 4:47:34 PM

Total search duration 0 minutes 2 seconds

Session duration 8 minutes 1 seconds

Default NEAR limit=1ADJ limit=1

Sent to TICRS as Serial Number: 85837045

*** User:cglasser ***

#	Total Marks	Dead Marks	Live Viewed Docs	Live Viewed Images	Status/ Search Duration	Search
01	22964	N/A	0	0	0:01	260102[dc]not dead [ld]
02	5451	N/A	0	0	0:01	260113[dc]not dead [ld]
03	1312	0	2	1312	0:01	1 and 2

Session started 5/13/2013 4:29:33 PM

Session finished 5/13/2013 4:39:13 PM

Total search duration 0 minutes 3 seconds

Session duration 9 minutes 40 seconds

Default NEAR limit=1ADJ limit=1

Sent to TICRS as Serial Number: 85837045

From: TMDesignCodeComments
Sent: Thursday, February 7, 2013 00:19 AM
To: kyri@tsircoulaw.com
Subject: Notice of Design Search Code and Pseudo Mark for Serial Number: 85837045

Docket/Reference Number: HYL-00486

The USPTO may assign design search codes and/or pseudo marks, as appropriate, to new applications and renewed registrations to assist in searching the USPTO database for conflicting marks. They have no legal significance and will not appear on the registration certificate.

DESIGN SEARCH CODES are numerical codes assigned to figurative, non-textual elements found in marks. For example, if your mark contains the design of a flower, design search code 05.05 would be assigned to your application. Design search codes are described on Internet Web page <http://www.uspto.gov/tmdb/dscm/index.html>.

A PSEUDO MARK may be assigned to marks that include words, numbers, compound words, symbols, or acronyms that can have alternative spellings or meanings. For example, if the mark comprises the words 'YOU ARE' surrounded by a design of a box, the pseudo mark field in the USPTO database would display the mark as 'YOU ARE SQUARE'. A mark filed as 'URGR8' would receive a pseudo mark of 'YOU ARE GREAT'.

Response to this notice is not required; however, to suggest additions or changes to the design search code(s) or pseudo mark assigned to your mark, please e-mail TMDesignCodeComments@USPTO.GOV. You **must** reference your application serial number within your request. The USPTO will review the proposal and update the record, if appropriate. For questions, please call 1-800-786-9199 to speak to a Customer Service representative.

The USPTO will not send any further response to your e-mail. Check TESS in approximately two weeks to see if the requested changes have been entered. Requests deemed unnecessary or inappropriate will not be entered.

To view this notice and other documents for this application on-line, go to <http://tdr.uspto.gov/search.action?sn=85837045>.
NOTE: This notice will only be available on-line the next business day after receipt of this e-mail.

Design search codes and pseudo marks assigned to the referenced serial number are listed below.

DESIGN SEARCH CODES:

26.01.02 - Circles, plain single line
26.01.02 - Plain single line circles
26.01.13 - Circles, two (not concentric)
26.01.13 - Two circles

PSEUDO MARK:

HYLETE; HIGH ATHLETE

HYLETE001:0047

Trademark/Service Mark Application, Principal Register

Serial Number: 85837045

Filing Date: 01/30/2013

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	85837045
MARK INFORMATION	
*MARK	\\TICRS\EXPORT16\IMAGEOUT16\858370\85837045\xml1\ APP0002.JPG
SPECIAL FORM	YES
USPTO-GENERATED IMAGE	NO
LITERAL ELEMENT	H
COLOR MARK	NO
*DESCRIPTION OF THE MARK (and Color Location, if applicable)	The mark consists of stylized H.
PIXEL COUNT ACCEPTABLE	YES
PIXEL COUNT	542 x 548
REGISTER	Principal
APPLICANT INFORMATION	
*OWNER OF MARK	Hylete LLC
*STREET	135 S. Sierra Ave., Unit 20
*CITY	Solana Beach
*STATE (Required for U.S. applicants)	California
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants only)	92075
WEBSITE ADDRESS	www.hylete.com
LEGAL ENTITY INFORMATION	
TYPE	limited liability company

STATE/COUNTRY WHERE LEGALLY ORGANIZED	California
GOODS AND/OR SERVICES AND BASIS INFORMATION	
INTERNATIONAL CLASS	025
*IDENTIFICATION	Athletic apparel, namely, shirts, pants, shorts, jackets, footwear, hats and caps
FILING BASIS	SECTION 1(a)
FIRST USE ANYWHERE DATE	At least as early as 04/09/2012
FIRST USE IN COMMERCE DATE	At least as early as 04/09/2012
SPECIMEN FILE NAME(S)	\\TICRS\EXPORT16\IMAGEOUT16\858\370\85837045\xml1\ APP0003.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\858\370\85837045\xml1\ APP0004.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\858\370\85837045\xml1\ APP0005.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\858\370\85837045\xml1\ APP0006.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\858\370\85837045\xml1\ APP0007.JPG
SPECIMEN DESCRIPTION	screenshots of website
ATTORNEY INFORMATION	
NAME	Kyriacos Tsircou
ATTORNEY DOCKET NUMBER	HYL-00486
FIRM NAME	Tsircou Law, P.C.
STREET	515 S. Flower Street, 36th Floor
CITY	Los Angeles
STATE	California
COUNTRY	United States
ZIP/POSTAL CODE	90071
PHONE	323-660-9916
FAX	323-660-9917
EMAIL ADDRESS	kyri@tsircoulaw.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes

CORRESPONDENCE INFORMATION	
NAME	Kyriacos Tsircou
FIRM NAME	Tsircou Law, P.C.
STREET	515 S. Flower Street, 36th Floor
CITY	Los Angeles
STATE	California
COUNTRY	United States
ZIP/POSTAL CODE	90071
PHONE	323-660-9916
FAX	323-660-9917
EMAIL ADDRESS	kyri@tsircoulaw.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
FEE INFORMATION	
NUMBER OF CLASSES	1
FEE PER CLASS	325
*TOTAL FEE DUE	325
*TOTAL FEE PAID	325
SIGNATURE INFORMATION	
SIGNATURE	/Ronald L. Wilson, II/
SIGNATORY'S NAME	Ronald L. Wilson, II
SIGNATORY'S POSITION	President
DATE SIGNED	01/30/2013

Trademark/Service Mark Application, Principal Register

Serial Number: 85837045

Filing Date: 01/30/2013

To the Commissioner for Trademarks:

MARK: H (stylized and/or with design, see [mark](#))

The literal element of the mark consists of H.

The applicant is not claiming color as a feature of the mark. The mark consists of stylized H.

The applicant, Hylete LLC, a limited liability company legally organized under the laws of California, having an address of

135 S. Sierra Ave., Unit 20
Solana Beach, California 92075
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class 025: Athletic apparel, namely, shirts, pants, shorts, jackets, footwear, hats and caps

In International Class 025, the mark was first used by the applicant or the applicant's related company or licensee or predecessor in interest at least as early as 04/09/2012, and first used in commerce at least as early as 04/09/2012, and is now in use in such commerce. The applicant is submitting one(or more) specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) screenshots of website.

[Specimen File1](#)

[Specimen File2](#)

[Specimen File3](#)

[Specimen File4](#)

[Specimen File5](#)

For informational purposes only, applicant's website address is: www.hylete.com

The applicant's current Attorney Information:

Kyriacos Tsircou of Tsircou Law, P.C.
515 S. Flower Street, 36th Floor
Los Angeles, California 90071
United States

The attorney docket/reference number is HYL-00486.

The applicant's current Correspondence Information:

Kyriacos Tsircou
Tsircou Law, P.C.
515 S. Flower Street, 36th Floor
Los Angeles, California 90071
323-660-9916(phone)
323-660-9917(fax)
kyri@tsircoulaw.com (authorized)

A fee payment in the amount of \$325 has been submitted with the application, representing payment for 1 class(es).

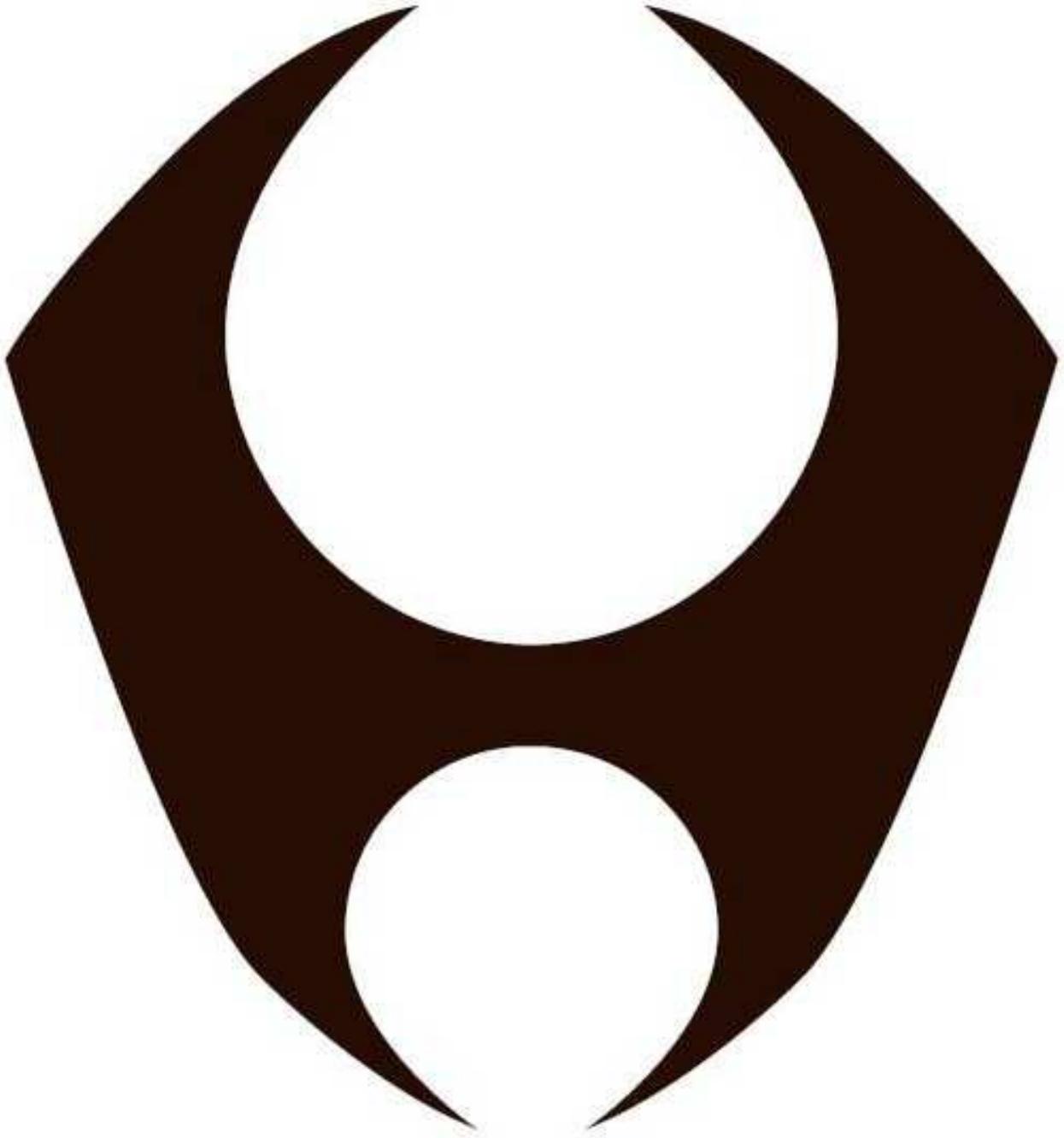
Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Declaration Signature

Signature: /Ronald L. Wilson, II/ Date: 01/30/2013
Signatory's Name: Ronald L. Wilson, II
Signatory's Position: President
RAM Sale Number: 10405
RAM Accounting Date: 01/31/2013

Serial Number: 85837045
Internet Transmission Date: Wed Jan 30 21:11:27 EST 2013
TEAS Stamp: USPTO/BAS-8.31.247.18-201301302111271732
72-85837045-49067d4f388a3ce45d16d8fa324c
5ab5c36-CC-10405-20130130145433423383





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men's

Shop By

Category

- Tees (24)
- Tanks (1)
- Shorts (9)
- Base Layer (4)
- Jackets & Hoodies (9)
- Socks (8)
- Gift Cards (4)

Color

- Black/Cobalt Blue (5)
- Black/Gun Metal (9)
- Black/Military Green (2)
- Black/Neon Green (9)
- Black/Shocking Red (4)
- Black/Stealth Black (1)
- Black/USA (1)
- Gray/Black (1)
- Gray/Cobalt Blue (1)
- Gray/Neon Green (2)
- Gray/Shocking Red (1)
- Gun Metal/Shocking Red (1)
- Heather Gray/Cobalt Blue (2)
- Heather Gray/Shocking Pink (1)
- Indigo/Black (1)
- Indigo/Cobalt Blue (1)
- Indigo/Neon Green (2)
- Slate/Black (2)
- Slate/Cobalt Blue (5)
- Slate/Neon Green (4)
- Slate/Shocking Red (6)



Items 1-15 of 61

Page: 1 2 3 4 5

View as:

Show 15 per page

Sort By Position



[train. compete. live. 1.0 tee \(Slate/Neon Green\)](#)

\$30.00

ADD TO CART

[Add to Wishlist](#)



[train. compete. live. 1.0 tee \(Slate/Cobalt Blue\)](#)

\$30.00

ADD TO CART

[Add to Wishlist](#)



[train. compete. live. 1.0 tee \(Slate/Shocking Red\)](#)

\$30.00

ADD TO CART

[Add to Wishlist](#)

home / men's

men's



Shop By

Currently Shopping by:

Category: Gift Cards

Price

\$0.00 - \$99.99 (2)

\$100.00 - \$199.99 (1)

\$200.00 and above (1)

[Clearance](#)

4 Item(s)

View as:

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Sort By Position

[Clear All](#)



[\\$25 HYLETE gift card](#)

\$25.00

[ADD TO CART](#)

[Add to Wishlist](#)



[\\$50 HYLETE gift card](#)

\$50.00

[ADD TO CART](#)

[Add to Wishlist](#)



[\\$100 HYLETE gift card](#)

\$100.00

[ADD TO CART](#)

[Add to Wishlist](#)

home / men's / shorts

shorts

Shop By

Price

\$60.00 and above (9)

Color

Black/Cobalt Blue (1)

Black/Gun Metal (1)

Black/Neon Green (3)

Black/USA (1)

Gray/Black (1)

Gray/Cobalt Blue (1)

Gray/Neon Green (2)

Gray/Shocking Red (1)

Bottom Style

Shorts (9)

train. compete. live.

train (4)

compete (5)

[Clearance](#)



0 Item(s)

View as:

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Sort By Position



[cross-training short 1.0 \(Black/Shocking Red\)](#)

\$60.00

[ADD TO CART](#)

[Add to Wishlist](#)



[cross-training short 1.0 \(Black/Neon Green\)](#)

\$60.00

[ADD TO CART](#)

[Add to Wishlist](#)



jackets & hoodies

Shop By

Price

\$0.00 - \$99.99 (4)

\$100.00 and above (5)

Color

Black/Cobalt Blue (3)

Black/Gun Metal (2)

Black/Neon Green (2)

Black/Shocking Red (3)

Black/Stealth Black (1)

Top Style

Hoodie (4)

Jacket (5)

Sleeve Style

Long Sleeve (9)

train. compete. live.

train (5)

compete (4)

Clearance



9 Item(s)

View as:

Show 15 per page

Sort By Position



[cross-training performance jacket 1.0 \(Black/Gunmetal\)](#)

\$100.00

ADD TO CART

[Add to Wishlist](#)



[cross-training performance jacket 1.0 \(Black/Neon Green\)](#)

\$100.00

ADD TO CART

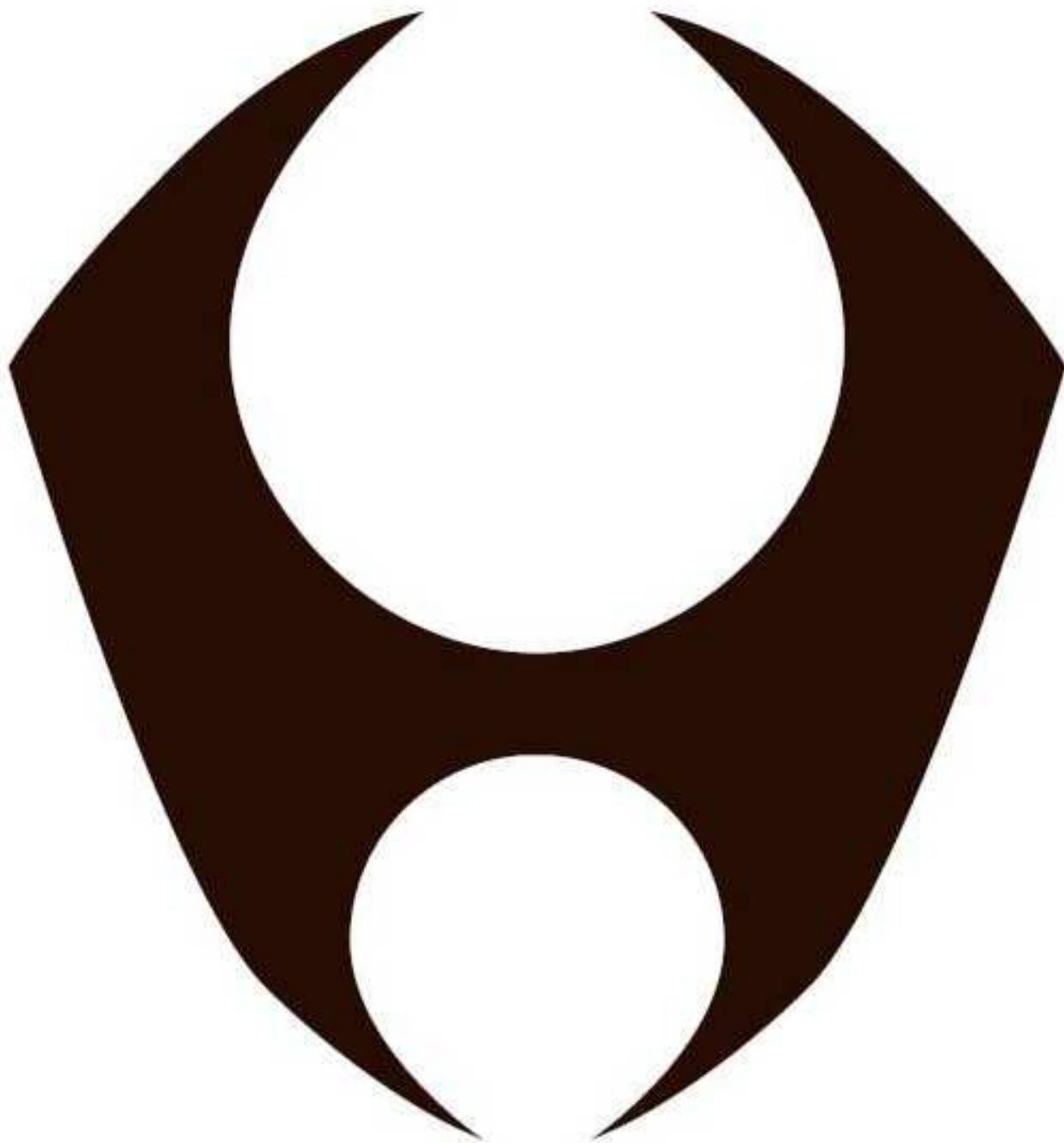
[Add to Wishlist](#)



[cross-training performance jacket 1.0 \(Black/Shocking Red\)](#)

\$100.00

ADD TO CART





\$3.99 Shipping
Continental United States - Ground shipping

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Shop By

Category

- Tees (24)
- Tanks (1)
- Shorts (9)
- Base Layer (4)
- Jackets & Hoodies (9)
- Socks (8)
- Gift Cards (4)

Color

- Black/Cobalt Blue (5)
- Black/Gun Metal (9)
- Black/Military Green (2)
- Black/Neon Green (9)
- Black/Shocking Red (4)
- Black/Stealth Black (1)
- Black/USA (1)
- Gray/Black (1)
- Gray/Cobalt Blue (1)
- Gray/Neon Green (2)
- Gray/Shocking Red (1)
- Gun Metal/Shocking Red (1)
- Heather Gray/Cobalt Blue (2)
- Heather Gray/Shocking Pink (1)
- Indigo/Black (1)
- Indigo/Cobalt Blue (1)
- Indigo/Neon Green (2)
- Slate/Black (2)
- Slate/Cobalt Blue (5)
- Slate/Neon Green (4)
- Slate/Shocking Red (6)



Items 1-15 of 61

Page: 1 2 3 4 5

View as:

Show 15 per page

Sort By Position



[train. compete. live. 1.0 tee \(Slate/Neon Green\)](#)

\$30.00

ADD TO CART

[Add to Wishlist](#)



[train. compete. live. 1.0 tee \(Slate/Cobalt Blue\)](#)

\$30.00

ADD TO CART

[Add to Wishlist](#)



[train. compete. live. 1.0 tee \(Slate/Shocking Red\)](#)

\$30.00

ADD TO CART

[Add to Wishlist](#)

home / men's

men's



Shop By

Currently Shopping by:

Category: Gift Cards

Price

\$0.00 - \$99.99 (2)

\$100.00 - \$199.99 (1)

\$200.00 and above (1)

[Clearance](#)

4 Item(s)

View as:

Show 15 per page

Sort By Position

[Clear All](#)



[\\$25 HYLETE gift card](#)

\$25.00

[ADD TO CART](#)

[Add to Wishlist](#)



[\\$50 HYLETE gift card](#)

\$50.00

[ADD TO CART](#)

[Add to Wishlist](#)



[\\$100 HYLETE gift card](#)

\$100.00

[ADD TO CART](#)

[Add to Wishlist](#)

home / men's / shorts

shorts

Shop By

Price

\$60.00 and above (9)

Color

Black/Cobalt Blue (1)

Black/Gun Metal (1)

Black/Neon Green (3)

Black/USA (1)

Gray/Black (1)

Gray/Cobalt Blue (1)

Gray/Neon Green (2)

Gray/Shocking Red (1)

Bottom Style

Shorts (9)

train. compete. live.

train (4)

compete (5)

[Clearance](#)



0 Item(s)

View as:

Show 15 per page

Sort By Position



[cross-training short 1.0 \(Black/Shocking Red\)](#)

\$60.00

ADD TO CART

[Add to Wishlist](#)



[cross-training short 1.0 \(Black/Neon Green\)](#)

\$60.00

ADD TO CART

[Add to Wishlist](#)



jackets & hoodies

Shop By

Price

\$0.00 - \$99.99 (4)

\$100.00 and above (5)

Color

Black/Cobalt Blue (3)

Black/Gun Metal (2)

Black/Neon Green (2)

Black/Shocking Red (3)

Black/Stealth Black (1)

Top Style

Hoodie (4)

Jacket (5)

Sleeve Style

Long Sleeve (9)

train. compete. live.

train (5)

compete (4)

[Clearance](#)

9 Item(s)

View as:  

Show 15 per page

Sort By Position  



[cross-training performance jacket 1.0 \(Black/Gunmetal\)](#)

\$100.00

ADD TO CART

[Add to Wishlist](#)



[cross-training performance jacket 1.0 \(Black/Neon Green\)](#)

\$100.00

ADD TO CART

[Add to Wishlist](#)



[cross-training performance jacket 1.0 \(Black/Shocking Red\)](#)

\$100.00

ADD TO CART



Side - 1



NOTICE OF ABANDONMENT
MAILING DATE: Dec 19, 2011

The trademark application identified below was abandoned in full because a response to the Office Action mailed on May 16, 2011 was not received within the 6-month response period.

If the delay in filing a response was unintentional, you may file a petition to revive the application with a fee. If the abandonment of this application was due to USPTO error, you may file a request for reinstatement. Please note that a petition to revive or request for reinstatement **must be received within two months from the mailing date of this notice.**

For additional information, go to <http://www.uspto.gov/teas/petinfo.htm>. If you are unable to get the information you need from the website, call the Trademark Assistance Center at 1-800-786-9199.

SERIAL NUMBER: 85095039
MARK: H
OWNER: ROBERT ORLANDO

Side - 2

UNITED STATES PATENT AND TRADEMARK OFFICE
COMMISSIONER FOR TRADEMARKS
P.O. BOX 1451
ALEXANDRIA, VA 22313-1451

FIRST-CLASS
MAIL
U.S POSTAGE
PAID

ROBERT ORLANDO
ROBERT ORLANDO
7 HYDE ST LOWR LEVEL
STAMFORD , CT 06907-2108

HYLETE001-0065

Trademark Snap Shot Amendment & Mail Processing Stylesheet
(Table presents the data on Amendment & Mail Processing Complete)

OVERVIEW

SERIAL NUMBER	85095039	FILING DATE	07/28/2010
REG NUMBER	0000000	REG DATE	N/A
REGISTER	PRINCIPAL	MARK TYPE	SERVICE MARK
INTL REG #	N/A	INTL REG DATE	N/A
TM ATTORNEY	VANSTON, KATHLEEN MARY	L.O. ASSIGNED	107

PUB INFORMATION

RUN DATE	05/18/2011		
PUB DATE	N/A		
STATUS	641-NON-FINAL ACTION - MAILED		
STATUS DATE	05/16/2011		
LITERAL MARK ELEMENT	H		
DATE ABANDONED	N/A	DATE CANCELLED	N/A
SECTION 2F	NO	SECTION 2F IN PART	NO
SECTION 8	NO	SECTION 8 IN PART	NO
SECTION 15	NO	REPub 12C	N/A
RENEWAL FILED	NO	RENEWAL DATE	N/A
DATE AMEND REG	N/A		

FILING BASIS

FILED BASIS		CURRENT BASIS		AMENDED BASIS	
1 (a)	YES	1 (a)	YES	1 (a)	NO
1 (b)	NO	1 (b)	NO	1 (b)	NO
44D	NO	44D	NO	44D	NO
44E	NO	44E	NO	44E	NO
66A	NO	66A	NO		
NO BASIS	NO	NO BASIS	NO		

MARK DATA

STANDARD CHARACTER MARK	NO
LITERAL MARK ELEMENT	H

MARK DRAWING CODE	5-AN ILLUSTRATION DRAWING WITH WORD(S)/LETTER(S)/NUMBER(S) IN STYLIZED FORM
COLOR DRAWING FLAG	YES

CURRENT OWNER INFORMATION

PARTY TYPE	10-ORIGINAL APPLICANT
NAME	ROBERT ORLANDO
ADDRESS	7 HYDE STREET, LOWER LEVEL STAMFORD, CT 06907
ENTITY	16-LTD LIAB CO
CITIZENSHIP	Connecticut
DBA/AKA	DBA HYBRID ATHLETICS, LLC

GOODS AND SERVICES

INTERNATIONAL CLASS	041
DESCRIPTION TEXT	Shirts, athletic equipment, athletic training, and atheltic programming

GOODS AND SERVICES CLASSIFICATION

INTERNATIONAL CLASS	041	FIRST USE DATE	08/01/2008	FIRST USE IN COMMERCE DATE	03/30/2010	CLASS STATUS	6-ACTIVE
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MISCELLANEOUS INFORMATION/STATEMENTS

CHANGE IN REGISTRATION	NO
COLORS CLAIMED STATEMENT	The color(s) pantone 123c, black, and grey is/are claimed as a feature of the mark.
DESCRIPTION OF MARK	The letter "H" is grey with pantone 123c outlining it. The letter "H" is on top of a black background.
PSEUDO MARK	HYBRID

PROSECUTION HISTORY

DATE	ENT CD	ENT TYPE	DESCRIPTION	ENT NUM
05/17/2011	DMCC	I	DATA MODIFICATION COMPLETED	015
05/16/2011	ALIE	A	ASSIGNED TO LIE	014
05/16/2011	GNRN	O	NOTIFICATION OF NON-FINAL ACTION E-MAILED	013
05/16/2011	GNRT	O	NON-FINAL ACTION E-MAILED	012
05/16/2011	CNRT	R	NON-FINAL ACTION WRITTEN	011

04/27/2011	TCCA	I	TEAS CHANGE OF CORRESPONDENCE RECEIVED	010
04/27/2011	TEME	I	TEAS/EMAIL CORRESPONDENCE ENTERED	009
04/27/2011	CRFA	I	CORRESPONDENCE RECEIVED IN LAW OFFICE	008
04/27/2011	TROA	I	TEAS RESPONSE TO OFFICE ACTION RECEIVED	007
11/16/2010	GNRN	O	NOTIFICATION OF NON-FINAL ACTION E-MAILED	006
11/16/2010	GNRT	F	NON-FINAL ACTION E-MAILED	005
11/16/2010	CNRT	R	NON-FINAL ACTION WRITTEN	004
11/10/2010	DOCK	D	ASSIGNED TO EXAMINER	003
08/03/2010	MPMK	O	NOTICE OF PSEUDO MARK MAILED	002
08/02/2010	NWOS	I	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	001

CURRENT CORRESPONDENCE INFORMATION

ATTORNEY	NONE
CORRESPONDENCE ADDRESS	ROBERT ORLANDO ROBERT ORLANDO 7 HYDE ST LOWR LEVEL STAMFORD CT 06907-2108
DOMESTIC REPRESENTATIVE	NONE



HYBRID ATHLETICS

To: ROBERT ORLANDO (conanrules1@gmail.com)
Subject: U.S. TRADEMARK APPLICATION NO. 85095039 - H - N/A
Sent: 5/16/2011 9:41:37 AM
Sent As: ECOM107@USPTO.GOV
Attachments:

**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

APPLICATION SERIAL NO. 85095039

MARK: H

85095039

CORRESPONDENT ADDRESS:

ROBERT ORLANDO
ROBERT ORLANDO
7 HYDE ST LOWR LEVEL
STAMFORD CT 06907-2108

CLICK HERE TO RESPOND TO THIS LETTER:
http://www.uspto.gov/trademarks/teas/response_forms.jsp

APPLICANT: ROBERT ORLANDO

**CORRESPONDENT'S REFERENCE/DOCKET
NO:**

N/A

CORRESPONDENT E-MAIL ADDRESS:

conanrules1@gmail.com

OFFICE ACTION

STRICT DEADLINE TO RESPOND TO THIS LETTER

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER **WITHIN 6 MONTHS** OF THE ISSUE/MAILING DATE BELOW.

ISSUE/MAILING DATE: **5/16/2011**

This Office action is in response to applicant's communication filed on April 27, 2011.

SECTION 2(d) REFUSAL – LIKELIHOOD OF CONFUSION

The refusal under Section 2(d) of the Trademark Act is CONTINUED for the reasons stated in the first office action. Applicant did not address this refusal.

SECTIONS 1,2, 45 REFUSAL – MERELY ORNAMENTAL

The refusal to register under Sections 1,2 and 45 of the Trademark Act because the mark as used on the specimen of record is merely ornamental is CONTINUED. The substitute specimen is not acceptable and the originally submitted specimen demonstrates a merely ornamental use of the mark.

ENTITY

The requirement that applicant amend the entity portion of the application is CONTINUED.

The name of an individual person appears in the section of the application intended for the trademark owner's name, but the entity type is set forth as a limited liability company. Applicant must clarify this inconsistency. TMEP §803.03.

If applicant is an individual, applicant should simply request that the entity be amended to "individual" and must indicate his/her country of citizenship for the record. 15 U.S.C. §1051(a)(2); 37 C.F.R. §2.32(a)(3)(i); TMEP §§803.02(a), 803.03(a), 803.04. Alternatively, if applicant is a limited liability company, applicant must set forth its correct name and U.S. state or foreign country of incorporation or organization. TMEP §§803.03(h), 803.04; *see* 37 C.F.R. §2.32(a)(2), (a)(3)(ii).

If, in response to the above request, applicant provides information indicating that it is not the owner of the mark, registration may be refused under Trademark Act Section 1, 15 U.S.C. §1051, because the application was void as filed. Only the owner of a mark may apply to register the mark. TMEP §§803.01, 803.06, 1201.02(b).

GOODS AND SERVICES

The requirement that applicant amend the identification of goods and services is CONTINUED. Applicant did not address this requirement in its response.

The identification of goods is indefinite and must be clarified. *See* TMEP §1402.01. Applicant may adopt the following identification, if accurate: "Shirts," in Class 25; "Athletic equipment, namely, [specify items]," in Class 28.

The identification of services is indefinite and must be clarified. *See* TMEP §1402.01. Applicant may adopt the following identification, if accurate: "Athletic training services," in Class 41.

"Athletic programming" is indefinite and the examining attorney needs more information before proposing an acceptable alternative. It is unclear whether applicant is referring to some sort of training program, television series featuring athletic content, or something else entirely.

An applicant may amend an identification of goods and services only to clarify or limit the goods and services; adding to or broadening the scope of the goods and/or services is not permitted. 37 C.F.R. §2.71(a); *see* TMEP §§1402.06 *et seq.*, 1402.07 *et seq.*

For assistance with identifying and classifying goods and/or services in trademark applications, please see the online searchable *Manual of Acceptable Identifications of Goods and Services* at <http://tess2.uspto.gov/netahtml/tidm.html>. *See* TMEP §1402.04.

MULTIPLE – CLASS APPLICATION REQUIREMENTS

The requirement that applicant comply with the multiclass application requirements is CONTINUED in the event that applicant adds additional classes to the application.

For an application with more than one international class, called a "multiple-class application," an applicant must meet all of the requirements below for those international classes based on use in

commerce:

- (1) LIST GOODS AND/OR SERVICES BY INTERNATIONAL CLASS: Applicant must list the goods and/or services by international class;
- (2) PROVIDE FEES FOR ALL INTERNATIONAL CLASSES: Applicant must submit an application filing fee for each international class of goods and/or services not covered by the fee(s) already paid (confirm current fee information at <http://www.uspto.gov>, click on “View Fee Schedule” under the column titled “Trademarks”); and
- (3) SUBMIT REQUIRED STATEMENTS AND EVIDENCE: For each international class of goods and/or services, applicant must also submit the following:
 - (a) DATES OF USE: Dates of first use of the mark anywhere and dates of first use of the mark in commerce, or a statement that the dates of use in the initial application apply to that class. The dates of use, both anywhere and in commerce, must be at least as early as the filing date of the application.;
 - (b) SPECIMEN: One specimen showing the mark in use in commerce for each international class of goods and/or services. Applicant must have used the specimen in commerce at least as early as the filing date of the application. If a single specimen supports multiple international classes, applicant should indicate which classes the specimen supports. Examples of specimens for goods are tags, labels, instruction manuals, containers, photographs that show the mark on the actual goods or packaging, or displays associated with the goods at their point of sale. *See* TMEP §§904.03 *et seq.* Examples of specimens for services are signs, photographs, brochures, website printouts, or advertisements that show the mark used in the actual sale or advertising of the services. *See* TMEP §§1301.04 *et seq.*;
 - (c) STATEMENT: The following statement: “**The specimen was in use in commerce on or in connection with the goods and/or services listed in the application at least as early as the filing date of the application.**”; and
 - (d) VERIFICATION: Applicant must verify the statements in 3(a) and 3(c) (above) in an affidavit or signed declaration under 37 C.F.R. §2.20. Verification is not required where (1) the dates of use for the added class are stated to be the same as the dates of use specified in the initial application, and (2) the original specimens are acceptable for the added class(es).

See 15 U.S.C. §§1051(a), 1112, 1127; 37 C.F.R. §§2.32(a)(5), 2.34(a)(1), 2.56(a), 2.71(c), 2.86(a), 2.193(e)(1); TMEP §§1403.01, 1403.02(c).

With respect to the specimen requirement in 3(b) above in which a specimen is required for each international class of goods and/or services, the specimen(s) of record is not acceptable for any International Classes.

DESCRIPTION OF MARK REQUIRED

The requirement that applicant submit a color claim and color location statement that agrees with the

drawing of record is CONTINUED.

Applicant has submitted a color drawing, but has not specified the colors claimed as a feature of the mark or provided a mark description that identifies the literal and design elements and specifies where all the colors appear in those elements. Applications for marks depicted in color must include a complete list of all the colors claimed as a feature of the mark and a mark description of the literal and design elements that specifies where all the colors appear in those elements. 37 C.F.R. §§2.37, 2.52(b)(1); *see* TMEP §§807.07(a) *et seq.*

If black, white and/or gray are not being claimed as a color feature of the mark, applicant must state that the colors black, white and/or gray represent background, outlining, shading and/or transparent areas and are not part of the mark. TMEP §807.07(d). Generic color names must be used in the color claim and mark description, e.g., magenta, yellow, turquoise. TMEP §807.07(a)(i)-(a)(ii).

Therefore, applicant must provide a color claim and a mark description specifying where all the colors appear in the mark. The following color claim and mark description are suggested, if accurate:

Color claim: “**The colors gray, black and orange are claimed as a feature of the mark.**”; and

Mark description: The mark consists of a stylized letter “H” in gray with black and orange outlining. The black background represents transparent area and is not part of the mark.

SUBSTITUTE DRAWING

Applicant has requested that the drawing of the mark be amended. The original drawing shows the mark as a stylized letter H; the amended drawing shows the mark as a stylized letter H with the addition of “HYBRID ATHLETICS.”

An amendment to a mark will not be accepted if the change would materially alter the mark in the initial application. 37 C.F.R. §2.72; *In re Who? Vision Sys., Inc.*, 57 USPQ2d 1211 (TTAB 2000) (holding proposed amendment of TACILESENSE to TACTILESENSE to be material alteration); *In re CTB Inc.*, 52 USPQ2d 1471 (TTAB 1999) (holding proposed amendment of TURBO and design to typed word TURBO to be material alteration); TMEP §807.14.

For example, if republication of the amended mark would be necessary in order to provide proper notice of the mark to third parties for opposition purposes, then the mark has been materially altered and the amendment is not permitted. *In re Who? Vision Sys. Inc.*, 57 USPQ2d at 1218. “The modified mark must contain what is the essence of the original mark, and the new form must create the impression of being essentially the same mark.” *In re Hacot-Columbier*, 105 F.3d 616, 620, 41 USPQ2d 1523, 1526 (Fed. Cir. 1997) (quoting *Visa Int’l Serv. Ass’n v. Life Code Sys., Inc.*, 220 USPQ 740, 743 (TTAB 1983)); *see In re Nationwide Indus. Inc.*, 6 USPQ2d 1882, 1885 (TTAB 1988); TMEP §807.14.

The Office determines whether a proposed amendment materially alters a mark by comparing the proposed amended mark with the mark in the drawing filed with the original application. TMEP §807.14(d).

In the present case, the proposed amendment to the mark is refused because it would result in a material alteration of the mark depicted in the original application. TMEP §807.17; *see* 37 C.F.R. §2.72. Specifically, the proposed amendment would materially alter the mark in the initial application because it adds the terms “HYBRID ATHLETICS.”

Accordingly, the proposed amendment will not be entered and thus, the previously acceptable drawing of the mark will remain operative. TMEP §807.17. Applicant must respond by arguing in favor of the proposed amendment and/or requesting that the proposed amended drawing be withdrawn. *See* TMEP §§714.05(a), 807.17.

If applicant responds using the Trademark Electronic Application System (TEAS) response to Office action form, applicant may request withdrawal of the proposed amended drawing by (1) answering “yes” to the TEAS response form wizard question for making a “miscellaneous statement;” (2) checking the box for “miscellaneous statement;” and (3) inserting in the free form text field wording indicating applicant’s request to withdraw the amended drawing, for example: “ Applicant requests withdrawal of the proposed amended drawing submitted on April 27, 2011.”

SPECIMEN REQUIRED

The specimen is not acceptable because it is merely a photocopy of the drawing or a picture or rendering of the applied-for mark; it does not show the applied-for mark in actual use in commerce on the goods. Moreover, it does not show the mark in the drawing originally filed with the application. *See* 37 C.F.R. §2.56(c); TMEP §904.04(a). Trademark Act Section 45 requires use of the mark “on the goods or their containers or the displays associated therewith or on the tags or labels affixed thereto.” 15 U.S.C. §1127; *see* 37 C.F.R. §2.56(b)(1); TMEP §904.03.

An application based on Section 1(a) must include a specimen showing the applied-for mark in use in commerce for each class of goods. Trademark Act Sections 1 and 45, 15 U.S.C. §§1051, 1127; 37 C.F.R. §§2.34(a)(1)(iv), 2.56(a); TMEP §§904, 904.07(a).

Therefore, applicant must submit the following:

- (1) A substitute specimen showing the mark in use in commerce for each class of goods specified in the application; and
- (2) The following statement, verified with an affidavit or signed declaration under 37 C.F.R. §2.20: “ **The substitute specimen was in use in commerce at least as early as the filing date of the application.**” 37 C.F.R. §2.59(a); TMEP §904.05; *see* 37 C.F.R. §2.193(e)(1). If submitting a substitute specimen requires an amendment to the dates of use, applicant must also verify the amended dates. 37 C.F.R. §2.71(c); TMEP §904.05.

Examples of specimens for goods are tags, labels, instruction manuals, containers, photographs that show the mark on the actual goods or packaging, or displays associated with the actual goods at their point of sale. *See* TMEP §§904.03 *et seq.*

If applicant cannot satisfy the above requirements, applicant may amend the application from a use in commerce basis under Section 1(a) to an intent to use basis under Section 1(b), for which no specimen is required. *See* TMEP §806.03(c). However, if applicant amends the basis to Section 1(b), registration will not be granted until applicant later amends the application back to use in commerce by filing an acceptable allegation of use with a proper specimen. *See* 15 U.S.C. §1051(c), (d); 37 C.F.R. §§2.76, 2.88; TMEP §1103.

To amend to Section 1(b), applicant must submit the following statement, verified with an affidavit or

signed declaration under 37 C.F.R. §2.20: “ **Applicant has had a bona fide intention to use the mark in commerce on or in connection with the goods listed in the application as of the filing date of the application.**” 37 C.F.R. §2.34(a)(2); TMEP §806.01(b); *see* 15 U.S.C. §1051(b); 37 C.F.R. §§2.35(b)(1), 2.193(e)(1).

Pending receipt of a proper response, registration is refused because the specimen does not show the applied-for mark in use in commerce as a trademark. Trademark Act Sections 1 and 45, 15 U.S.C. §§1051, 1127; 37 C.F.R. §§2.34(a)(1)(iv), 2.56(a); TMEP §§904, 904.07(a).

DECLARATION

The following is a properly worded “declaration” under 37 C.F.R. §2.20. This declaration must be personally signed and dated by a person authorized under 37 C.F.R. §2.193(e)(1). TMEP §804.01(b).

The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true.

(Signature)

(Print or Type Name and Position)

(Date)

Applicant may submit a declaration online using the Trademark Electronic Application System (TEAS) response to Office action form at <http://www.uspto.gov/teas/eTEASpageD.htm>. When in the initial screen of the TEAS response form wizard, answer “yes” to the wizard question relating to submitting a “signed declaration,” and follow the instructions within the form for signing. *See* 37 C.F.R. §§2.20, 2.33(a)-(b)(1), 2.193(a), (c)-(d), (e)(1); TMEP §§611.01(c), 804.01(b).

/Kathleen M. Vanston/
Examining Attorney

Law Office 107
(571) 272-9235
kathy.vanston@uspto.gov [for informal inquiries]

TO RESPOND TO THIS LETTER: Go to http://www.uspto.gov/trademarks/teas/response_forms.jsp. Please wait 48-72 hours from the issue/ mailing date before using TEAS, to allow for necessary system updates of the application. For *technical* assistance with online forms, e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned trademark examining attorney. **E-mail communications will not be accepted as responses to Office actions; therefore, do not respond to this Office action by e-mail.**

All informal e-mail communications relevant to this application will be placed in the official application record.

WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using Trademark Applications and Registrations Retrieval (TARR) at <http://tarr.uspto.gov/>. Please keep a copy of the complete TARR screen. If TARR shows no change for more than six months, call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS: Use the TEAS form at <http://www.uspto.gov/teas/eTEASpageE.htm>.

To: ROBERT ORLANDO (conanrules1@gmail.com)
Subject: U.S. TRADEMARK APPLICATION NO. 85095039 - H - N/A
Sent: 5/16/2011 9:41:40 AM
Sent As: ECOM107@USPTO.GOV
Attachments:

**IMPORTANT NOTICE REGARDING YOUR TRADEMARK
APPLICATION**

Your trademark application (Serial No. 85095039) has been reviewed. The examining attorney assigned by the United States Patent and Trademark Office (“USPTO”) has written a letter (an “Office Action”) on 5/16/2011 to which you must respond. Please follow these steps:

1. Read the Office letter by clicking on this [link](#) **OR** go to <http://tportal.uspto.gov/external/portal/tow> and enter your serial number to [access](#) the Office letter.

PLEASE NOTE: The Office letter may not be immediately available but will be viewable within 24 hours of this e-mail notification.

2. Respond within 6 months, calculated from **5/16/2011** (*or sooner if specified in the Office letter*), using the Trademark Electronic Application System [Response to Office Action form](#). If you have difficulty using the USPTO website, contact TDR@uspto.gov.

3. Contact the examining attorney who reviewed your application with any questions about the content of the office letter:

/Kathleen M. Vanston/
Examining Attorney
Law Office 107
(571) 272-9235
kathy.vanston@uspto.gov [for informal inquiries]

WARNING

Failure to file any required response by the applicable deadline will result in the [ABANDONMENT](#) of your application.

Do NOT hit “Reply” to this e-mail notification, or otherwise attempt to e-mail your response, as the USPTO does NOT accept e-mailed responses. Instead, please use the Trademark Electronic Application System [Response to Office Action form](#).

Trademark Snap Shot Amendment & Mail Processing Stylesheet
(Table presents the data on Amendment & Mail Processing Complete)

OVERVIEW

SERIAL NUMBER	85095039	FILING DATE	07/28/2010
REG NUMBER	0000000	REG DATE	N/A
REGISTER	PRINCIPAL	MARK TYPE	SERVICE MARK
INTL REG #	N/A	INTL REG DATE	N/A
TM ATTORNEY	VANSTON, KATHLEEN MARY	L.O. ASSIGNED	107

PUB INFORMATION

RUN DATE	04/28/2011		
PUB DATE	N/A		
STATUS	661-RESPONSE AFTER NON-FINAL-ACTION-ENTERED		
STATUS DATE	04/27/2011		
LITERAL MARK ELEMENT	H		
DATE ABANDONED	N/A	DATE CANCELLED	N/A
SECTION 2F	NO	SECTION 2F IN PART	NO
SECTION 8	NO	SECTION 8 IN PART	NO
SECTION 15	NO	REPUB 12C	N/A
RENEWAL FILED	NO	RENEWAL DATE	N/A
DATE AMEND REG	N/A		

FILING BASIS

FILED BASIS		CURRENT BASIS		AMENDED BASIS	
1 (a)	YES	1 (a)	YES	1 (a)	NO
1 (b)	NO	1 (b)	NO	1 (b)	NO
44D	NO	44D	NO	44D	NO
44E	NO	44E	NO	44E	NO
66A	NO	66A	NO		
NO BASIS	NO	NO BASIS	NO		

MARK DATA

STANDARD CHARACTER MARK	NO
LITERAL MARK ELEMENT	H

MARK DRAWING CODE	5-AN ILLUSTRATION DRAWING WITH WORD(S)/LETTER(S)/NUMBER(S) IN STYLIZED FORM
COLOR DRAWING FLAG	YES

CURRENT OWNER INFORMATION

PARTY TYPE	10-ORIGINAL APPLICANT
NAME	ROBERT ORLANDO
ADDRESS	7 HYDE STREET, LOWER LEVEL STAMFORD, CT 06907
ENTITY	16-LTD LIAB CO
CITIZENSHIP	Connecticut
DBA/AKA	DBA HYBRID ATHLETICS, LLC

GOODS AND SERVICES

INTERNATIONAL CLASS	041
DESCRIPTION TEXT	Shirts, athletic equipment, athletic training, and atheltic programming

GOODS AND SERVICES CLASSIFICATION

INTERNATIONAL CLASS	041	FIRST USE DATE	08/01/2008	FIRST USE IN COMMERCE DATE	03/30/2010	CLASS STATUS	6-ACTIVE
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MISCELLANEOUS INFORMATION/STATEMENTS

CHANGE IN REGISTRATION	NO
COLORS CLAIMED STATEMENT	The color(s) pantone 123c, black, and grey is/are claimed as a feature of the mark.
DESCRIPTION OF MARK	The mark consists of The letter "H" is grey with pantone 123c outlining it. The letter "H" is on top of a black background.
PSEUDO MARK	HYBRID

PROSECUTION HISTORY

DATE	ENT CD	ENT TYPE	DESCRIPTION	ENT NUM
04/27/2011	TEME	I	TEAS/EMAIL CORRESPONDENCE ENTERED	009
04/27/2011	CRFA	I	CORRESPONDENCE RECEIVED IN LAW OFFICE	008
04/27/2011	TROA	I	TEAS RESPONSE TO OFFICE ACTION RECEIVED	007
11/16/2010	GNRN	O	NOTIFICATION OF NON-FINAL ACTION E-MAILED	006
11/16/2010	GNRT	F	NON-FINAL ACTION E-MAILED	005

11/16/2010	CNRT	R	NON-FINAL ACTION WRITTEN	004
11/10/2010	DOCK	D	ASSIGNED TO EXAMINER	003
08/03/2010	MPMK	O	NOTICE OF PSEUDO MARK MAILED	002
08/02/2010	NWOS	I	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	001

CURRENT CORRESPONDENCE INFORMATION

ATTORNEY	NONE
CORRESPONDENCE ADDRESS	ROBERT ORLANDO ROBERT ORLANDO 7 HYDE ST LOWR LEVEL STAMFORD, CT 06907-2108
DOMESTIC REPRESENTATIVE	NONE



HYBRID ATHLETICS



HYBRID ATHLETICS

Change Of Correspondence Address

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	85095039
LAW OFFICE ASSIGNED	LAW OFFICE 107
MARK SECTION	
MARK	H (stylized and/or with design)
NEW CORRESPONDENCE ADDRESS	
NEW ADDRESS	
SIGNATURE SECTION	
SIGNATURE	/Robert Orlando/
SIGNATORY NAME	Robert Orlando
SIGNATORY DATE	04/27/2011
SIGNATORY POSITION	Owner
SIGNATURE	/Robert Orlando/
SIGNATORY NAME	Robert Orlando
SIGNATORY DATE	04/27/2011
SIGNATORY POSITION	Owner
AUTHORIZED SIGNATORY	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Wed Apr 27 15:22:52 EDT 2011
TEAS STAMP	USPTO/ROA-68.198.59.243-2 0110427152252376323-85095 039-4801d5e2133df44cc7187 ba83361f9c1c-N/A-N/A-2011 0427150621478480



HYBRID ATHLETICS

Response to Office Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	85095039
LAW OFFICE ASSIGNED	LAW OFFICE 107
MARK SECTION (current)	
STANDARD CHARACTERS	NO
USPTO-GENERATED IMAGE	NO
LITERAL ELEMENT	H
COLOR(S) CLAIMED (If applicable)	The color(s) pantone 123c, black, and grey is/are claimed as a feature of the mark.
DESCRIPTION OF THE MARK (and Color Location, if applicable)	The mark consists of The letter "H" is grey with pantone 123c outlining it. The letter "H" is on top of a black background.
MARK SECTION (proposed)	
MARK FILE NAME	\TICRS\EXPORT11\IMAGEOUT 11\850\950\85095039\xml5\ROA0002.JPG
STANDARD CHARACTERS	NO
USPTO-GENERATED IMAGE	NO
LITERAL ELEMENT	H
COLOR MARK	YES
COLOR(S) CLAIMED (If applicable)	The color(s) pantone 123c, black, and grey is/are claimed as a feature of the mark.
DESCRIPTION OF THE MARK (and Color Location, if applicable)	The mark consists of The letter "H" is grey with pantone 123c outlining it. The letter "H" is on top of a black background.
PIXEL COUNT	YES

ACCEPTABLE	
PIXEL COUNT	900 x 723
EVIDENCE SECTION	
EVIDENCE FILE NAME(S)	
ORIGINAL PDF FILE	evi_6819859243-150621478_ . HybridVectorLogo.pdf
CONVERTED PDF FILE(S) (1 page)	\\TICRS\EXPORT11\IMAGEOUT11\850\950\85095039\xml5\ROA0003.JPG
GOODS AND/OR SERVICES SECTION (current)	
INTERNATIONAL CLASS	041
DESCRIPTION	
Shirts, athletic equipment, athletic training, and atheltic programming	
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 08/01/2008
FIRST USE IN COMMERCE DATE	At least as early as 03/30/2010
GOODS AND/OR SERVICES SECTION (proposed)	
INTERNATIONAL CLASS	041
DESCRIPTION	
Shirts, athletic equipment, athletic training, and atheltic programming	
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 08/01/2008
FIRST USE IN COMMERCE DATE	At least as early as 03/30/2010
STATEMENT TYPE	"The substitute (or new, if appropriate) specimen(s) was/were in use in commerce at least as early as the filing date of the application" [for an application based on Section 1(a), Use in Commerce] OR "The substitute (or new, if appropriate) specimen(s) was/were in use in commerce prior either to the filing of the Amendment to Allege Use or expiration of the filing deadline for filing a Statement of Use" [for an application based on Section 1(b) Intent-to-Use].
SPECIMEN FILE NAME(S)	
ORIGINAL PDF FILE	SPU0-6819859243-150621478_ . HybridVectorLogo.pdf
CONVERTED PDF	

FILE(S) (1 page)	\\TICRS\EXPORT11\IMAGEOUT11\850\950\85095039\xml5\ROA0004.JPG
CORRESPONDENCE SECTION	
ORIGINAL ADDRESS	ROBERT ORLANDO ROBERT ORLANDO 7 HYDE ST LOWR LEVEL STAMFORD, CT 06907-2108
NEW CORRESPONDENCE SECTION	
NAME	ROBERT ORLANDO
FIRM NAME	ROBERT ORLANDO
STREET	7 HYDE ST LOWR LEVEL
CITY	STAMFORD
STATE	Connecticut
ZIP/POSTAL CODE	06907-2108
COUNTRY	United States
PHONE	203 3888751
EMAIL	conanrules1@gmail.com
AUTHORIZED EMAIL COMMUNICATION	Yes
SIGNATURE SECTION	
DECLARATION SIGNATURE	/Robert Orlando/
SIGNATORY'S NAME	Robert Orlando
SIGNATORY'S POSITION	Owner
DATE SIGNED	04/27/2011
RESPONSE SIGNATURE	/Robert Orlando/
SIGNATORY'S NAME	Robert Orlando
SIGNATORY'S POSITION	Owner
DATE SIGNED	04/27/2011
AUTHORIZED SIGNATORY	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Wed Apr 27 15:22:52 EDT 2011

TEAS STAMP

USPTO/ROA-68.198.59.243-2
0110427152252376323-85095
039-4801d5e2133df44cc7187
ba83361f9c1c-N/A-N/A-2011
0427150621478480

PTO Form 1957 (Rev 9/2005)
OMB No. 0651-0050 (Exp. 04/30/2011)

Response to Office Action

To the Commissioner for Trademarks:

Application serial no. **85095039** has been amended as follows:

MARK

Applicant proposes to amend the mark as follows:

Current: H (Stylized and/or with Design)

The color(s) pantone 123c, black, and grey is/are claimed as a feature of the mark.

The mark consists of The letter "H" is grey with pantone 123c outlining it. The letter "H" is on top of a black background.

Proposed: H (Stylized and/or with Design, see [mark](#))

The color(s) pantone 123c, black, and grey is/are claimed as a feature of the mark.

The mark consists of The letter "H" is grey with pantone 123c outlining it. The letter "H" is on top of a black background.

EVIDENCE

Original PDF file:

[evi_6819859243-150621478_.HybridVectorLogo.pdf](#)

Converted PDF file(s) (1 page)

[Evidence-1](#)

CLASSIFICATION AND LISTING OF GOODS/SERVICES

Applicant proposes to amend the following class of goods/services in the application:

Current: Class 041 for Shirts, athletic equipment, athletic training, and atheltic programming

Original Filing Basis:

Filing Basis: Section 1(a), Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 08/01/2008 and first used in commerce at least as early as 03/30/2010, and is now in use in such commerce.

Proposed: Class 041 for Shirts, athletic equipment, athletic training, and athletic programming

Filing Basis: Section 1(a), Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 08/01/2008 and first used in commerce at least as early as 03/30/2010, and is now in use in such commerce.

Applicant hereby submits a new specimen for Class 041.

"The substitute (or new, if appropriate) specimen(s) was/were in use in commerce at least as early as the filing date of the application" [for an application based on Section 1(a), Use in Commerce] OR "The substitute (or new, if appropriate) specimen(s) was/were in use in commerce prior either to the filing of the Amendment to Allege Use or expiration of the filing deadline for filing a Statement of Use" [for an application based on Section 1(b) Intent-to-Use].

Original PDF file:

[SPU0-6819859243-150621478 . HybridVectorLogo.pdf](#)

Converted PDF file(s) (1 page)

[Specimen File1](#)

CORRESPONDENCE ADDRESS CHANGE

Applicant proposes to amend the following:

Current:

ROBERT ORLANDO

ROBERT ORLANDO

7 HYDE ST LOWR LEVEL

STAMFORD, CT 06907-2108

Proposed:

ROBERT ORLANDO of ROBERT ORLANDO, having an address of
7 HYDE ST LOWR LEVEL STAMFORD, Connecticut 06907-2108

United States

conanrules1@gmail.com

203 3888751

SIGNATURE(S)

Declaration Signature

If the applicant is seeking registration under Section 1(b) and/or Section 44 of the Trademark Act, the applicant has had a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. 37 C.F.R. Secs. 2.34(a)(2)(i); 2.34 (a)(3)(i); and 2.34(a)(4)(ii); and/or the applicant has had a bona fide intention to exercise legitimate control over the use of the mark in commerce by its members. 37 C.F.R. Sec. 2.44. If the applicant is seeking registration under Section 1(a) of the Trademark Act, the mark was in use in commerce on or in connection with the goods and/or services listed in the application as of the application filing date or as of the date of any submitted allegation of use. 37 C.F.R. Secs. 2.34(a)(1)(i); and/or the applicant has exercised legitimate control over the use of the mark in commerce by its members. 37 C.F.R. Sec. 2.44. The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be

registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; that if the original application was submitted unsigned, that all statements in the original application and this submission made of the declaration signer's knowledge are true; and all statements in the original application and this submission made on information and belief are believed to be true.

Signature: /Robert Orlando/ Date: 04/27/2011
Signatory's Name: Robert Orlando
Signatory's Position: Owner

Response Signature

Signature: /Robert Orlando/ Date: 04/27/2011
Signatory's Name: Robert Orlando
Signatory's Position: Owner

The signatory has confirmed that he/she is not represented by either an authorized attorney or Canadian attorney/agent, and that he/she is either (1) the applicant or (2) a person(s) with legal authority to bind the applicant; and if an authorized U.S. attorney or Canadian attorney/agent previously represented him/her in this matter, either he/she has filed a signed revocation of power of attorney with the USPTO or the USPTO has granted the request of his/her prior representative to withdraw.

Mailing Address: ROBERT ORLANDO
ROBERT ORLANDO
7 HYDE ST LOWR LEVEL
STAMFORD, Connecticut 06907-2108

Serial Number: 85095039
Internet Transmission Date: Wed Apr 27 15:22:52 EDT 2011
TEAS Stamp: USPTO/ROA-68.198.59.243-2011042715225237
6323-85095039-4801d5e2133df44cc7187ba833
61f9c1c-N/A-N/A-20110427150621478480



HYBRID ATHLETICS



HYBRID ATHLETICS



HYBRID ATHLETICS



HYBRID ATHLETICS

To: ROBERT ORLANDO (conanrules1@aol.com)
Subject: U.S. TRADEMARK APPLICATION NO. 85095039 - H - N/A
Sent: 11/16/2010 7:21:22 AM
Sent As: ECOM107@USPTO.GOV
Attachments: [Attachment - 1](#)
[Attachment - 2](#)
[Attachment - 3](#)

**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

APPLICATION SERIAL NO. 85095039

MARK: H

85095039

CORRESPONDENT ADDRESS:

ROBERT ORLANDO
ROBERT ORLANDO
7 HYDE ST LOWR LEVEL
STAMFORD, CT 06907-2108

CLICK HERE TO RESPOND TO THIS LETTER:
<http://www.uspto.gov/teas/eTEASpageD.htm>

APPLICANT: ROBERT ORLANDO

**CORRESPONDENT'S REFERENCE/DOCKET
NO:**

N/A

CORRESPONDENT E-MAIL ADDRESS:
conanrules1@aol.com

OFFICE ACTION

STRICT DEADLINE TO RESPOND TO THIS LETTER

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER **WITHIN 6 MONTHS** OF THE ISSUE/MAILING DATE BELOW.

ISSUE/MAILING DATE: 11/16/2010

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issue(s) below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

SECTION 2(d) REFUSAL – LIKELIHOOD OF CONFUSION

Registration of the applied-for mark is refused because of a likelihood of confusion with the mark in U.S. Registration No. 3656042. Trademark Act Section 2(d), 15 U.S.C. §1052(d); *see* TMEP §§1207.01 *et seq.* See the enclosed registration.

Regarding the issue of likelihood of confusion, all circumstances surrounding the sale of the goods and services are considered. *See In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973). These circumstances include the marketing channels, the identity of the prospective purchasers, and the degree of similarity between the marks and between the goods and services. *See Indus. Nucleonics Corp. v. Hinde*, 475 F.2d 1197, 177 USPQ 386 (C.C.P.A. 1973); TMEP §1207.01. In comparing the marks, similarity in any one of the elements of sound, appearance or meaning may be sufficient to find a likelihood of confusion. *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988); *In re Lamson Oil Co.*, 6 USPQ2d 1041, 1043 (TTAB 1987); *see* TMEP §1207.01(b). In comparing the goods and/or services, it is necessary to show that they are related in some manner. *See On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 1086, 56 USPQ2d 1471, 1475 (Fed. Cir. 2000); TMEP §1207.01(a)(vi).

Registrant is using a stylized letter H. Applicant intends to use a stylized letter H. The stylized letters of registrant and applicant are highly similar in appearance and create highly similar commercial impressions.

If the goods and services of the respective parties are “similar in kind and/or closely related,” the degree of similarity between the marks required to support a finding of likelihood of confusion is not as great as would be required with diverse goods and services. *In re J.M. Originals Inc.*, 6 USPQ2d 1393, 1394 (TTAB 1987); *see Shen Mfg. Co. v. Ritz Hotel Ltd.*, 393 F.3d 1238, 1242, 73 USPQ2d 1350, 1354 (Fed. Cir. 2004); TMEP §1207.01(b).

Both registrant and applicant are using their marks in connection with athletic apparel. The degree of similarity between the marks, therefore, is not as great as would be required to support a likelihood of confusion if the goods were different. The marks are similar and the goods are identical. Confusion, therefore, is likely.

Applicant should note the following additional ground for refusal.

SECTIONS 1, 2 AND 45 REFUSAL – MERELY ORNAMENTAL

Registration is refused because the applied-for mark, as used on the specimen of record, is merely a decorative or ornamental feature of the goods; it does not function as a trademark to identify and distinguish applicant’s goods from those of others and to indicate the source of applicant’s goods. Trademark Act Sections 1, 2 and 45, 15 U.S.C. §§1051-1052, 1127; *see* TMEP §§904.07(b), 1202.03 *et seq.*; *see, e.g., In re Pro-Line Corp.*, 28 USPQ2d 1141 (TTAB 1993) (holding the wording BLACKER THE COLLEGE SWEETER THE KNOWLEDGE to be a primarily ornamental slogan that is not likely to be perceived as source indicator for t-shirts); *In re Villeroy & Boch S.A.R.L.*, 5 USPQ2d 1451 (TTAB 1987) (holding floral pattern design of morning glories and leaves for tableware nondistinctive and merely a decorative pattern with no trademark significance); *cf. In re Owens-Corning Fiberglas Corp.*, 774 F.2d 1116, 227 USPQ 417 (Fed. Cir. 1985).

When evaluating a mark that appears to be ornamental, “the size, location, dominance and significance of the alleged mark as applied to the goods” are all relevant factors in determining whether it is inherently distinctive. *E.g., In re Pro-Line Corp.*, 28 USPQ2d 1141, 1142 (TTAB 1993); *In re Dimitri’s Inc.*, 9

USPQ2d 1666, 1667 (TTAB 1988); *In re Astro-Gods Inc.*, 223 USPQ 621, 623 (TTAB 1984); TMEP §1202.03(a).

Although there is no prescribed method or place for affixation of a mark to goods, the location of a mark on the goods “is part of the environment in which the [mark] is perceived by the public and . . . may influence how the [mark] is perceived.” *In re Tilcon Warren Inc.*, 221 USPQ 86, 88 (TTAB 1984); *see In re Paramount Pictures Corp.*, 213 USPQ 1111, 1115 (TTAB 1982). Thus, where consumers have been conditioned to recognize trademarks in a certain location, as on the breast area of a shirt, ornamental matter placed in a different location is less likely to be perceived as an indicator of source. *See* TMEP §1202.03(a), (b).

Where, as in this case, the mark is emblazoned across the front of the shirt, prospective consumers are likely to see it as ornamental as opposed to an indicator of source.

- **Response to ornamental refusal**

-

Applicant may respond to the stated ornamental refusal by satisfying one of the following, as appropriate:

(1) Claiming **acquired distinctiveness** under Trademark Act Section 2(f) by submitting **evidence** that the applied-for mark has become distinctive of applicant’s goods in commerce. Trademark Act Section 2(f), 15 U.S.C. §1052(f). Evidence may consist of examples of advertising and promotional materials that specifically promote, as a trademark, the mark for which registration is sought; dollar figures for advertising devoted to such promotion; dealer and consumer statements of recognition of the applied-for mark as a trademark; and any other evidence that establishes recognition of the applied-for mark as a trademark for the goods. *See* 37 C.F.R. §2.41(a); TMEP §§1202.03(d), 1212.06 *et seq.*;

(2) Submitting evidence that the applied-for mark is an **indicator of secondary source** or sponsorship for the identified goods. *Univ. Book Store v. Univ. of Wis. Bd. of Regents*, 33 USPQ2d 1385, 1405 (TTAB 1994); *In re Olin Corp.*, 181 USPQ 182, 182 (TTAB 1973). That is, applicant may submit evidence showing that the applied-for mark would be recognized as a trademark through applicant’s use of the mark with goods and/or services other than those being refused as ornamental. *In re The Original Red Plate Co.*, 223 USPQ 836, 837 (TTAB 1984). Applicant must establish that, as a result of this use in connection with other goods and/or services, the public would recognize applicant as the secondary source of, or sponsor for, the identified goods. *See* TMEP §1202.03(c).;

(3) Amending the application to seek registration on the **Supplemental Register**. Trademark Act Section 23, 15 U.S.C. §1091; *see* 37 C.F.R. §§2.47, 2.75(a); TMEP §§801.02(b), 816.; or

(4) Submitting a **substitute specimen** that shows non-ornamental trademark use, and the following statement, verified with an affidavit or signed declaration under 37 C.F.R. §2.20: “**The substitute specimen was in use in commerce at least as early as the filing date of the application.**” 37 C.F.R. §2.59(a); TMEP §904.05; *see* 37 C.F.R. §2.193(e)(1). If submitting a substitute specimen requires amendment to the dates of use, applicant must also verify the amended dates. 37 C.F.R. §2.71(c); TMEP §904.05.

If applicant cannot satisfy one of the above, applicant may amend the application from a use in commerce

basis under Trademark Act Section 1(a) to an intent to use basis under Section 1(b), and the refusal will be withdrawn. *See* TMEP §806.03(c). However, if applicant amends the basis to Section 1(b), registration will not be granted until applicant later amends the application back to use in commerce by filing an acceptable allegation of use with a proper specimen. *See* 15 U.S.C. §1051(c), (d); 37 C.F.R. §§2.76, 2.88; TMEP §1103. If the same specimen is submitted with an allegation of use, the same refusal will issue.

To amend to Section 1(b), applicant must submit the following statement, verified with an affidavit or signed declaration under 37 C.F.R. §2.20: “ **Applicant has had a bona fide intention to use the mark in commerce on or in connection with the goods or services listed in the application as of the filing date of the application.**” 37 C.F.R. §2.34(a)(2); TMEP §806.01(b); *see* 15 U.S.C. §1051(b); 37 C.F.R. §§2.35(b)(1), 2.193(e)(1).

Applicant should note the following additional ground for refusal.

DRAWING AND SPECIMEN

The mark on the specimen disagrees with the mark on the drawing. In this case, the specimen submitted with the application shows a black letter H outlined in yellow. However, the drawing shows a gray letter H outlined in black and orange.

An application based on Trademark Act Section 1(a) must include a specimen showing the applied-for mark in use in commerce for each class of goods and/or services. Trademark Act Sections 1 and 45, 15 U.S.C. §§1051, 1127; 37 C.F.R. §§2.34(a)(1)(iv), 2.56(a); TMEP §§904, 904.07(a). The mark on the drawing must be a substantially exact representation of the mark on the specimen. 37 C.F.R. §2.51(a); TMEP §807.12(a); *see* 37 C.F.R. §2.72(a)(1). In addition, the drawing of the mark can be amended only if the amendment does not materially alter the mark as originally filed. 37 C.F.R. §2.72(a)(2); *see* TMEP §§807.12(a), 807.14 *et seq.*

Therefore, applicant must submit one of the following:

- (1) A new color drawing of the mark that agrees with the colors of the mark on the specimen and does not materially alter the original mark. *See* 37 C.F.R. §2.72(a)(2); TMEP §§807.07(d)(i), 807.12(a), 807.14 *et seq.* Amending the drawing to agree with the specimen would not be considered a material alteration of the mark in this case. However, applicant must also provide a statement listing all the colors that are claimed as a feature of the mark and a statement describing the literal and design elements of the mark that specifies where all the colors appear in those elements. *See* 37 C.F.R. §§2.37, 2.52(b)(1); TMEP §807.07(d)(i). If black, white and/or gray are not being claimed as a color feature of the mark, applicant must state that the colors black, white and/or gray represent background, outlining, shading and/or transparent areas and are not part of the mark. TMEP §807.07(d). Generic color names must be used in the color claim and mark description, e.g., magenta, yellow, turquoise. TMEP §807.07(a)(i)-(a)(ii).;
- (2) A new black and white drawing of the mark, with a statement authorizing the deletion of any color claim or color description. Deleting color, however, must not materially alter the original mark. *See* TMEP §807.07(a)(i), (d)(i). Amending the drawing to delete color would not be considered a material alteration of the mark in this case.; or
- (3) A substitute specimen showing use in commerce of the mark in the colors depicted on the drawing, and the following statement, verified with an affidavit or signed declaration under 37

C.F.R. §2.20: **“The substitute specimen was in use in commerce at least as early as the filing date of the application.”** See 37 C.F.R. §§2.59(a), 2.193(e)(1); TMEP §§807.07(d)(i), 904.02(c)(ii). If submitting a substitute specimen requires an amendment to the dates of use, applicant must also verify the amended dates. 37 C.F.R. §2.71(c); TMEP §904.05.

If applicant cannot satisfy one of the above requirements, applicant may amend the application from a use in commerce basis under Trademark Act Section 1(a) to an intent to use basis under Section 1(b), for which no specimen is required. See TMEP §806.03(c). However, if applicant amends the basis to Section 1(b), registration will not be granted until applicant later amends the application back to use in commerce by filing an acceptable allegation of use with a proper specimen. See 15 U.S.C. §1051(c)-(d); 37 C.F.R. §§2.76, 2.88; TMEP §1103.

To amend to Section 1(b), applicant must submit the following statement, verified with an affidavit or signed declaration under 37 C.F.R. §2.20: **“Applicant has had a bona fide intention to use the mark in commerce on or in connection with the goods and/or services listed in the application as of the filing date of the application.”** 37 C.F.R. §2.34(a)(2); TMEP §806.01(b); see 15 U.S.C. §1051(b); 37 C.F.R. §§2.35(b)(1), 2.193(e)(1).

Pending receipt of a proper response, registration is refused because the specimen does not show the applied-for mark in use in commerce as a trademark and/or service mark. Trademark Act Sections 1 and 45, 15 U.S.C. §§1051, 1127; 37 C.F.R. §§2.34(a)(1)(iv), 2.56(a); TMEP §§904, 904.07(a).

Although applicant’s mark has been refused registration, applicant may respond to the refusal(s) by submitting evidence and arguments in support of registration.

Applicant must respond to the requirement(s) set forth below.

ENTITY

The name of an individual person appears in the section of the application intended for the trademark owner’s name, but the entity type is set forth as a limited liability company. Applicant must clarify this inconsistency. TMEP §803.03.

If applicant is an individual, applicant should simply request that the entity be amended to “individual” and must indicate his/her country of citizenship for the record. 15 U.S.C. §1051(a)(2); 37 C.F.R. §2.32(a)(3)(i); TMEP §§803.02(a), 803.03(a), 803.04. Alternatively, if applicant is a limited liability company, applicant must set forth its correct name and U.S. state or foreign country of incorporation or organization. TMEP §§803.03(h), 803.04; see 37 C.F.R. §2.32(a)(2), (a)(3)(ii).

If, in response to the above request, applicant provides information indicating that it is not the owner of the mark, registration may be refused under Trademark Act Section 1, 15 U.S.C. §1051, because the application was void as filed. Only the owner of a mark may apply to register the mark. TMEP §§803.01, 803.06, 1201.02(b).

IDENTIFICATION OF GOODS AND SERVICES

The identification of goods is indefinite and must be clarified. See TMEP §1402.01. Applicant may adopt the following identification, if accurate: “Shirts,” in Class 25;

“Athletic equipment, namely, [specify items],” in Class 28.

The identification of services is indefinite and must be clarified. *See* TMEP §1402.01. Applicant may adopt the following identification, if accurate: “Athletic training services,” in Class 41.

“Athletic programming” is indefinite and the examining attorney needs more information before proposing an acceptable alternative. It is unclear whether applicant is referring to some sort of training program, television series featuring athletic content, or something else entirely.

An applicant may amend an identification of goods and services only to clarify or limit the goods and services; adding to or broadening the scope of the goods and/or services is not permitted. 37 C.F.R. §2.71(a); *see* TMEP §§1402.06 *et seq.*, 1402.07 *et seq.*

MULTIPLE – CLASS APPLICATION REQUIREMENTS

For an application with more than one international class, called a “multiple-class application,” an applicant must meet all of the requirements below for those international classes based on use in commerce:

- (1) **LIST GOODS AND/OR SERVICES BY INTERNATIONAL CLASS:** Applicant must list the goods/services by international class;
- (2) **PROVIDE FEES FOR ALL INTERNATIONAL CLASSES:** Applicant must submit an application filing fee for each international class of goods and/or services not covered by the fee(s) already paid (confirm current fee information at <http://www.uspto.gov>, click on “View Fee Schedule” under the column titled “Trademarks”); and
- (3) **SUBMIT REQUIRED STATEMENTS AND EVIDENCE:** For each international class of goods and/or services, applicant must also submit the following:
 - (a) **DATES OF USE:** Dates of first use of the mark anywhere and dates of first use of the mark in commerce, or a statement that the dates of use in the initial application apply to that class. The dates of use, both anywhere and in commerce, must be at least as early as the filing date of the application.;
 - (b) **SPECIMEN:** One specimen showing the mark in use in commerce for each international class of goods and/or services. Applicant must have used the specimen in commerce at least as early as the filing date of the application. If a single specimen supports multiple international classes, applicant should indicate which classes the specimen supports. Examples of specimens for goods are tags, labels, instruction manuals, containers, photographs that show the mark on the actual goods or packaging, or displays associated with the goods at their point of sale. *See* TMEP §§904.03 *et seq.* Examples of specimens for services are signs, photographs, brochures, website printouts, or advertisements that show the mark used in the actual sale or advertising of the services. *See* TMEP §§1301.04 *et seq.*;
 - (c) **STATEMENT:** The following statement: “**The specimen was in use in commerce on or in connection with the goods and/or services listed in the application at least as early as the filing date of the application.**”; and

(d) VERIFICATION: Applicant must verify the statements in 3(a) and 3(c) (above) in an affidavit or signed declaration under 37 C.F.R. §2.20. Verification is not required where (1) the dates of use for the added class are stated to be the same as the dates of use specified in the initial application, and (2) the original specimens are acceptable for the added class(es).

See 15 U.S.C. §§1051(a), 1112, 1127; 37 C.F.R. §§2.32(a)(5), 2.34(a)(1), 2.56(a), 2.71(c), 2.86(a), 2.193(e)(1); TMEP §§1403.01, 1403.02(c).

With respect to the specimen requirement in 3(b) above in which a specimen is required for each international class of goods and/or services, the specimen(s) of record is acceptable for International Class 25 only. Applicant must submit additional specimens if different international classes are added to the application.

DESCRIPTION OF MARK REQUIRED

NOTE THIS MARK DESCRIPTION SUGGESTED BELOW IS BASED UPON THE DRAWING OF THE MARK AS INITIALLY FILED. IF APPLICANT SENDS IN A NEW COLOR DRAWING, APPLICANT SHOULD MODIFY THE MARK DESCRIPTION TO REFLECT THAT.

Applicant has submitted a color drawing, but has not specified all of the colors claimed as a feature of the mark or provided an accurate mark description that identifies the literal and design elements and specifies where all the colors appear in those elements. Applications for marks depicted in color must include a complete list of all the colors claimed as a feature of the mark and a mark description of the literal and design elements that specifies where all the colors appear in those elements. 37 C.F.R. §§2.37, 2.52(b)(1); see TMEP §§807.07(a) *et seq.*

If black, white and/or gray are not being claimed as a color feature of the mark, applicant must state that the colors black, white and/or gray represent background, outlining, shading and/or transparent areas and are not part of the mark. TMEP §807.07(d). Generic color names must be used in the color claim and mark description, e.g., magenta, yellow, turquoise. TMEP §807.07(a)(i)-(a)(ii).

Therefore, applicant must provide a color claim and a mark description specifying where all the colors appear in the mark. The following color claim and mark description are suggested, if accurate:

Color claim: “**The colors grey, black and orange are claimed as a feature of the mark.**”; and

Mark description: “**The mark consists of a stylized letter H in gray and outlined in black and orange. The black background is transparent area and is not part of the mark.**”

DRAWING REQUIREMENTS [IF NEW DRAWING SUBMITTED]

A special form drawing must comply with the following requirements:

- (1) Depict the mark in black and white, unless the mark is in color. If color is a feature of the mark, applicant must depict the mark in color, and provide both a statement identifying the colors claimed and a statement describing where the colors appear in the mark.

(2) Depict the mark using a pen or a process that will provide high definition when copied. A photolithographic, printer's proof copy, or other high quality reproduction of the mark may be used. All lines must be clean, sharp and solid, and must not be fine or crowded.; and

(3) Depict the mark no larger than 3.15 inches (8 cm) high by 3.15 inches (8 cm) wide.

37 C.F.R. §§2.52(b), (b)(1), 2.54(b), (d)-(e); *see* TMEP §§807.04(a), 807.06(a), 807.07(a) *et seq.*

For marks not depicted in color, the mark itself should be depicted in black on a white background. 37 C.F.R. §2.52(b).

Further, the Office prefers that the drawing be on a separate sheet of non-shiny, white paper that is 8 to 8.5 inches wide and 11 to 11.69 inches long (20.3 to 21.6 cm wide and 27.9 to 29.7 cm long). One of the shorter sides of the sheet should be the top edge and include the caption "DRAWING PAGE." 37 C.F.R. §2.54(a)-(c); TMEP §807.06(a).

The Office strictly enforces the drawing requirements.

Special form drawings submitted electronically via the Trademark Electronic Application System (TEAS) must be attached as a digitized image file. The requirements for an electronically submitted special form drawing are as follows:

(1) The mark should appear in black on a white background, unless the mark is in color. If color is a feature of the mark, applicant must depict the mark in color, and provide both a statement identifying the colors claimed and a statement describing where the colors appear in the mark.;

(2) All lines in the image must be clean, sharp and solid, and not fine or crowded, and produce a high-quality image when copied.; and

(3) The digitized mark image must be in jpg format, formatted at no less than 300 dots per inch and no more than 350 dots per inch.

37 C.F.R. §§2.52(b), (b)(1), 2.53(b)-(c); TMEP §§807.04(a), 807.05(b)-(c), 807.07(a)(i)-(a)(ii).

In addition to the above, the Office recommends that the digitized image of the mark have a length and width of no smaller than 250 pixels and no larger than 944 pixels.

DECLARATION

The following is a properly worded "declaration" under 37 C.F.R. §2.20. This declaration must be personally signed and dated by a person authorized under 37 C.F.R. §2.193(e)(1). TMEP §804.01(b).

The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true; and all statements made on

information and belief are believed to be true.

(Signature)

(Print or Type Name and Position)

(Date)

/Kathleen M. Vanston/
Examining Attorney
Law Office 107
(571) 272-9235
kathy.vanston@uspto.gov [for informal inquiries]

TO RESPOND TO THIS LETTER: Use the Trademark Electronic Application System (TEAS) response form at <http://teasroa.uspto.gov/roa/>. Please wait 48-72 hours from the issue/ mailing date before using TEAS, to allow for necessary system updates of the application. For *technical* assistance with online forms, e-mail TEAS@uspto.gov.

WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using Trademark Applications and Registrations Retrieval (TARR) at <http://tarr.uspto.gov/>. Please keep a copy of the complete TARR screen. If TARR shows no change for more than six months, call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS: Use the TEAS form at <http://www.uspto.gov/teas/eTEASpageE.htm>.

DESIGN MARK

Serial Number

76685526

Status

REGISTERED

Word Mark

H

Standard Character Mark

No

Registration Number

3656042

Date Registered

2009/07/14

Type of Mark

TRADEMARK

Register

SUPPLEMENTAL

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

Owner

CLYMER, BRETT T. INDIVIDUAL UNITED STATES 28443 Ficus Court Murrieta CALIFORNIA 92563

Goods/Services

Class Status -- ACTIVE. IC 025. US 022 039. G & S: Clothing, namely, surfing hats, surfing jackets, surfing shirts, surfing button-ups, surfing pants, surfing shorts, surfing board shorts, surfing socks, surfing shoes, and surfing sandals, for surfing enthusiasts; skateboarding hats, skateboarding jackets, skateboarding shirts, skateboarding button-ups, skateboarding pants, skateboarding shorts, skateboarding board shorts, skateboarding socks, skateboarding shoes, and skateboarding sandals, for skateboarding enthusiasts; and snowboarding hats, snowboarding jackets, snowboarding shirts, snowboarding button-ups, snowboarding pants, snowboarding shorts, snowboarding board shorts, snowboarding socks, snowboarding shoes, and snowboarding sandals, for snowboarding enthusiasts. First Use: 2009/04/15. First Use In Commerce: 2009/04/15.

Colors Claimed

Color is not claimed as a feature of the mark.

Print: Nov 15, 2010

76685526

Filing Date

2008/01/04

Amended Register Date

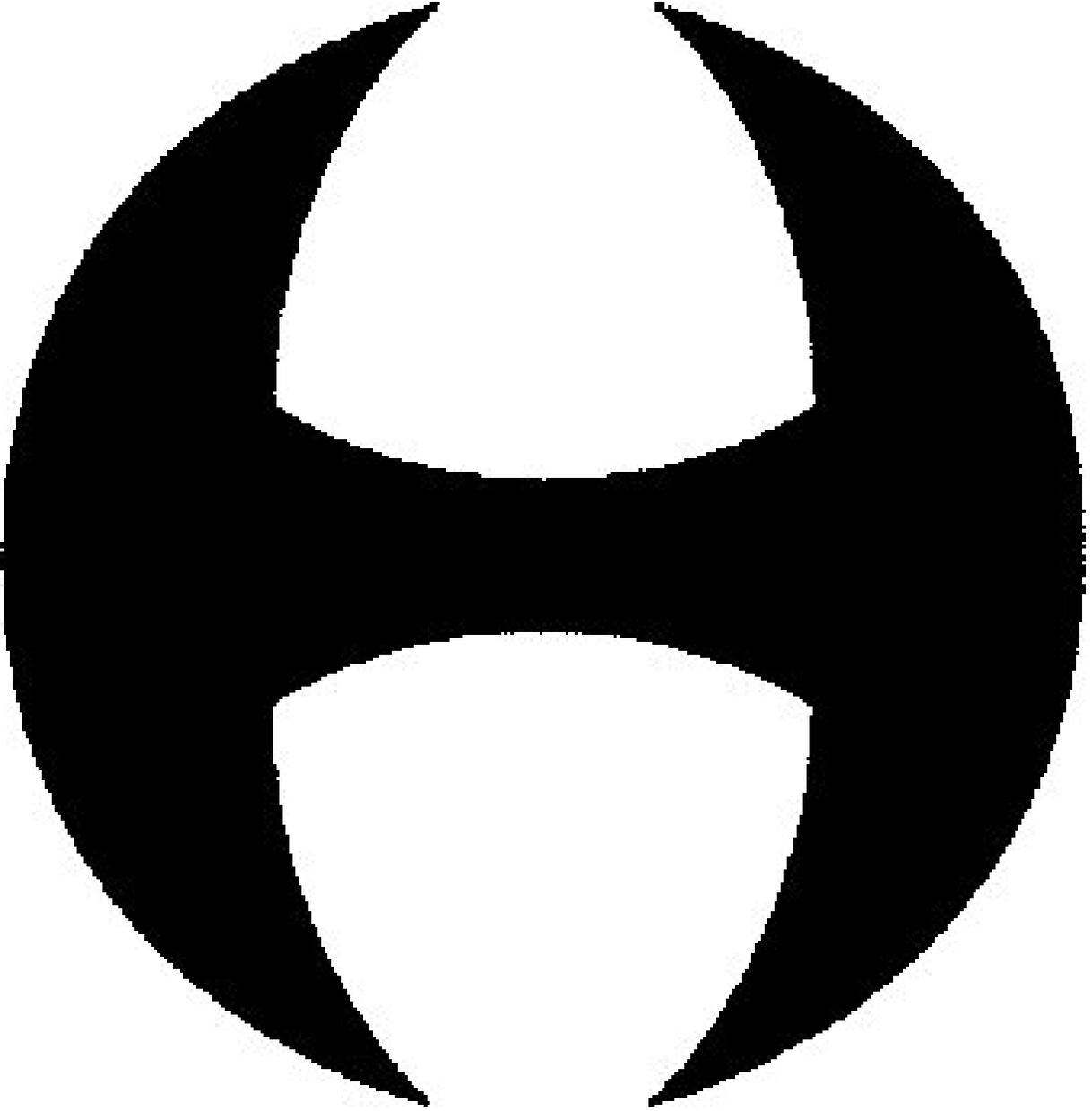
2009/05/27

Examining Attorney

LEE, JANET

Attorney of Record

Loyal M. Hanson



To: ROBERT ORLANDO (conanrules1@aol.com)
Subject: U.S. TRADEMARK APPLICATION NO. 85095039 - H - N/A
Sent: 11/16/2010 7:21:24 AM
Sent As: ECOM107@USPTO.GOV
Attachments:

**IMPORTANT NOTICE REGARDING YOUR TRADEMARK
APPLICATION**

Your trademark application (Serial No. 85095039) has been reviewed. The examining attorney assigned by the United States Patent and Trademark Office (“USPTO”) has written a letter (an “Office Action”) on **11/16/2010 to which you must respond. Please follow these steps:**

1. Read the Office letter by clicking on this [link](#) **OR** go to <http://tportal.uspto.gov/external/portal/tow> and enter your serial number to [access](#) the Office letter.

PLEASE NOTE: The Office letter may not be immediately available but will be viewable within 24 hours of this e-mail notification.

2. Respond within 6 months, calculated from **11/16/2010** (*or sooner if specified in the Office letter*), using the Trademark Electronic Application System [Response to Office Action form](#). If you have difficulty using the USPTO website, contact TDR@uspto.gov.

3. Contact the examining attorney who reviewed your application with any questions about the content of the office letter:

/Kathleen M. Vanston/
Examining Attorney
Law Office 107
(571) 272-9235
kathy.vanston@uspto.gov [for informal inquiries]

WARNING

Failure to file any required response by the applicable deadline will result in the [ABANDONMENT](#) of your application.

Do NOT hit “Reply” to this e-mail notification, or otherwise attempt to e-mail your response, as the USPTO does NOT accept e-mailed responses. Instead, please use the Trademark Electronic Application System [Response to Office Action form](#).

*** User:kvanston ***

#	Total Marks	Dead Marks	Live Viewed Docs	Live Viewed Images	Status/ Search Duration	Search
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02	4104	N/A	0	0	0:04	1 not dead[ld]
03	2172	N/A	0	0	0:04	2 and "028"[cc]
04	942	0	5	879	0:06	3 and ("025"[ic] or "028"[ic] or "041"[ic] or "200"[ic] or "A"[ic] or "b"[ic])
05	1638	N/A	0	0	0:02	h[fm]
06	712	N/A	0	0	0:03	5 not dead[ld]
07	382	0	6	380	0:05	6 and "028"[cc]

Session started 11/15/2010 10:37:41 AM

Session finished 11/15/2010 10:58:02 AM

Total search duration 0 minutes 26 seconds

Session duration 20 minutes 21 seconds

Default NEAR limit=1ADJ limit=1

Sent to TICRS as Serial Number: 85095039

From: TMDesignCodeComments
Sent: Tuesday, August 3, 2010 00:14 AM
To: conanrules1@aol.com
Subject: Notice of Pseudo Mark for Serial Number: 85095039

**ATTORNEY REFERENCE
NUMBER:**

The USPTO may assign pseudo marks, as appropriate, to new applications to assist in searching the USPTO database for conflicting marks. They have no legal significance and will not appear on the registration certificate.

A PSEUDO MARK may be assigned to marks that include words, numbers, compound words, symbols, or acronyms that can have alternative spellings or meanings. For example, if the mark comprises the words 'YOU ARE' surrounded by a design of a box, the pseudo mark field in the USPTO database would display the mark as 'YOU ARE SQUARE'. A mark filed as 'URGR8' would receive a pseudo mark of 'YOU ARE GREAT'.

Response to this notice is not required; however, to suggest additions or changes to the pseudo mark assigned to your mark, please e-mail TMDesignCodeComments@USPTO.GOV. You **must** reference your application serial number within your request. The USPTO will review the proposal and update the record, if appropriate. For questions, please call 1-800-786-9199 to speak to a Customer Service representative.

The USPTO will not send any further response to your e-mail. Check TESS in approximately two weeks to see if the requested changes have been entered. Requests deemed unnecessary or inappropriate will not be entered.

Pseudo marks assigned to the referenced serial number are listed below.

PSEUDO MARK:

HYBRID

Trademark/Service Mark Application, Principal Register

Serial Number: 85095039

Filing Date: 07/28/2010

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	85095039
MARK INFORMATION	
*MARK	\\TICRS\EXPORT11\IMAGEOUT11\850\950\85095039\xml1\APP0002.JPG
SPECIAL FORM	YES
USPTO-GENERATED IMAGE	NO
LITERAL ELEMENT	H
COLOR MARK	YES
COLOR(S) CLAIMED (If applicable)	The color(s) pantone 123c, black, and grey is/are claimed as a feature of the mark.
*DESCRIPTION OF THE MARK (and Color Location, if applicable)	The mark consists of The letter "H" is grey with pantone 123c outlining it. The letter "H" is on top of a black background.
PIXEL COUNT ACCEPTABLE	YES
PIXEL COUNT	537 x 320
REGISTER	Principal
APPLICANT INFORMATION	
*OWNER OF MARK	ROBERT ORLANDO
DBA/AKA/TA/Formerly	DBA HYBRID ATHLETICS, LLC
*STREET	7 HYDE STREET, LOWER LEVEL
*CITY	STAMFORD
*STATE (Required for U.S. applicants)	Connecticut
*COUNTRY	United States
*ZIP/POSTAL CODE	06907

(Required for U.S. applicants only)	
PHONE	(203) 388-8751
FAX	n/a
EMAIL ADDRESS	conanrules1@aol.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
LEGAL ENTITY INFORMATION	
TYPE	limited liability company
STATE/COUNTRY WHERE LEGALLY ORGANIZED	Connecticut
GOODS AND/OR SERVICES AND BASIS INFORMATION	
INTERNATIONAL CLASS	
*IDENTIFICATION	Shirts, athletic equipment, athletic training, and atheltic programming.
FILING BASIS	SECTION 1(a)
FIRST USE ANYWHERE DATE	At least as early as 08/01/2008
FIRST USE IN COMMERCE DATE	At least as early as 03/30/2010
SPECIMEN FILE NAME(S)	\\TICRS\EXPORT11\IMAGEOUT11\850\950\85095039\xml1\ APP0003.JPG
SPECIMEN DESCRIPTION	the letter h grey and pantone 123c with the company name, Hybrid Athletics, LLC.
CORRESPONDENCE INFORMATION	
NAME	ROBERT ORLANDO
FIRM NAME	ROBERT ORLANDO
STREET	7 HYDE STREET, LOWER LEVEL
CITY	STAMFORD
STATE	Connecticut
COUNTRY	United States
ZIP/POSTAL CODE	06907
PHONE	(203) 388-8751
FAX	n/a
EMAIL ADDRESS	conanrules1@aol.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes

FEE INFORMATION	
NUMBER OF CLASSES	1
FEE PER CLASS	325
*TOTAL FEE DUE	325
*TOTAL FEE PAID	325
SIGNATURE INFORMATION	
SIGNATURE	/Robert Orlando/
SIGNATORY'S NAME	Robert Orlando
SIGNATORY'S POSITION	Owner
DATE SIGNED	07/28/2010

Trademark/Service Mark Application, Principal Register

Serial Number: 85095039

Filing Date: 07/28/2010

To the Commissioner for Trademarks:

MARK: H (stylized and/or with design, see [mark](#))

The literal element of the mark consists of H.

The color(s) pantone 123c, black, and grey is/are claimed as a feature of the mark. The mark consists of The letter "H" is grey with pantone 123c outlining it. The letter "H" is on top of a black background.

The applicant, ROBERT ORLANDO, DBA HYBRID ATHLETICS, LLC, a limited liability company legally organized under the laws of Connecticut, having an address of

7 HYDE STREET, LOWER LEVEL
STAMFORD, Connecticut 06907
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class _____: Shirts, athletic equipment, athletic training, and atheltic programming.

In International Class _____, the mark was first used at least as early as 08/01/2008, and first used in commerce at least as early as 03/30/2010, and is now in use in such commerce. The applicant is submitting one specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) the letter h grey and pantone 123c with the company name, Hybrid Athletics, LLC..

[Specimen File 1](#)

The applicant's current Correspondence Information:

ROBERT ORLANDO
ROBERT ORLANDO
7 HYDE STREET, LOWER LEVEL
STAMFORD, Connecticut 06907
(203) 388-8751(phone)
n/a(fax)
conanrules1@aol.com (authorized)

A fee payment in the amount of \$325 has been submitted with the application, representing payment for 1 class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /Robert Orlando/ Date Signed: 07/28/2010

Signatory's Name: Robert Orlando

Signatory's Position: Owner

RAM Sale Number: 2568

RAM Accounting Date: 07/29/2010

Serial Number: 85095039

Internet Transmission Date: Wed Jul 28 16:21:02 EDT 2010

TEAS Stamp: USPTO/BAS-68.198.57.184-2010072816210223

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HYBRID ATHLETICS







HYBRID ATHLETICS



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Trademarks > Trademark Electronic Search System(Tess)

TESS was last updated on Tue Nov 5 03:10:38 EST 2013

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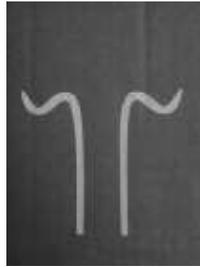
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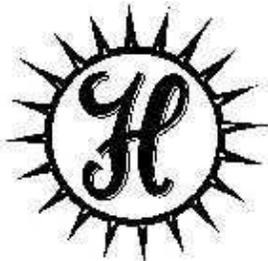
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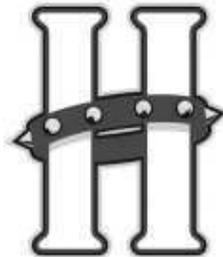
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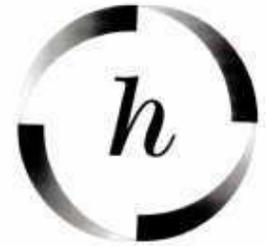
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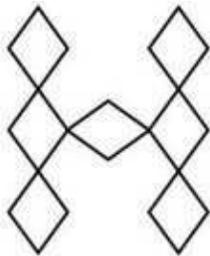
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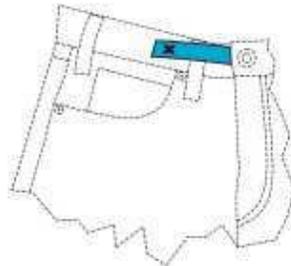
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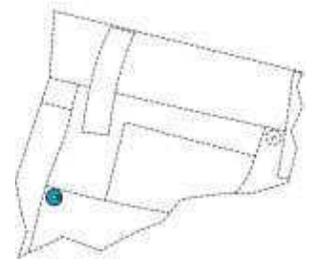
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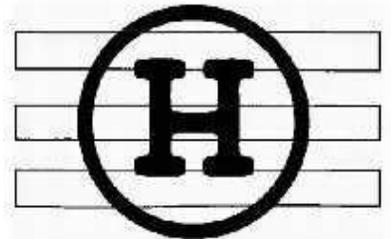
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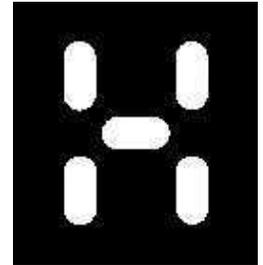
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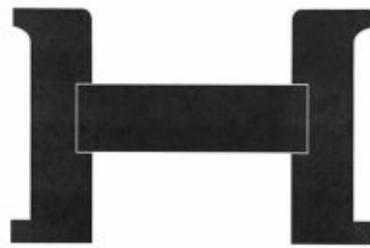
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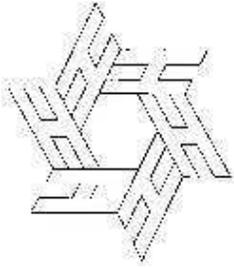
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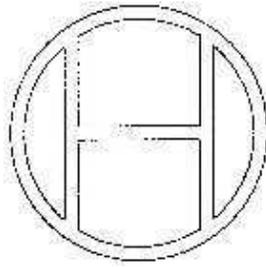
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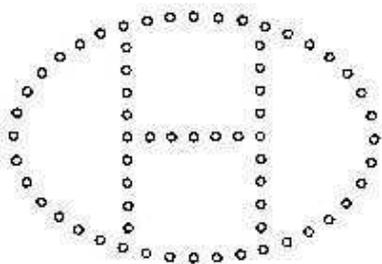
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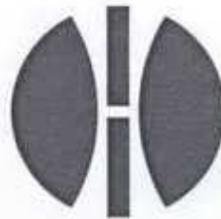
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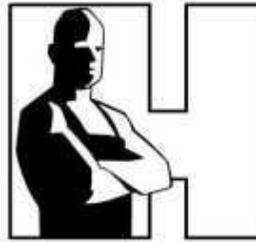
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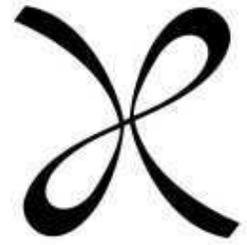
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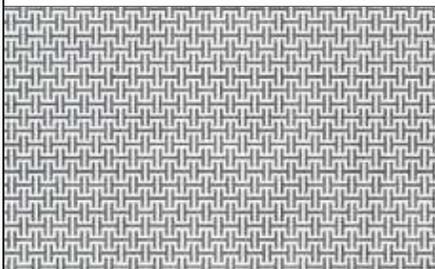
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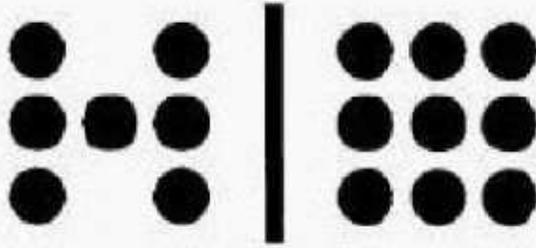
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77432342



77412424



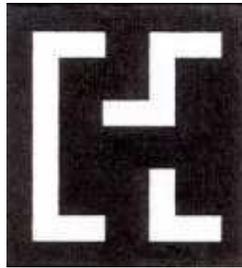
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77303091



77294550



77293896



77290328



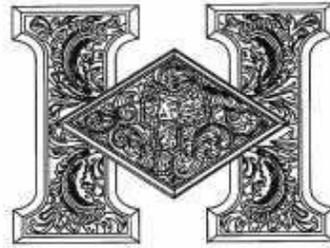
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77224281



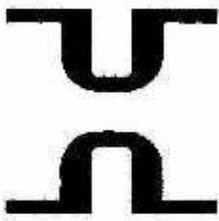
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76655966



76557131



76656649



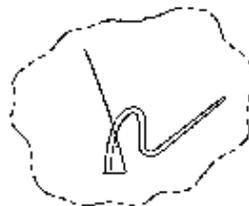
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76661183



76708181



76617317



76006799



76685526



76662251



76537255



76070654



75936229



75936242



75980166

Order Summary

Member Account

- [Account Settings](#)
- [Order History](#)
- [Address Book](#)
- [Payment Methods](#)
- [Comments](#)
- [Not for me](#)
- [Member Profile](#)
 - [Basic Information](#)
 - [Interests](#)
 - [Social Networking](#)
 - [Stores](#)
 - [Manage Profile](#)

Seller Account

- [Earnings](#)
- [Payment Settings](#)

My Lists

- [All Lists](#)
- [Public](#)
 - [Wishlist](#)

My Likes

- [All My Likes](#)
- [Products \(0\)](#)
- [Stores \(0\)](#)
- [Wishlists \(0\)](#)

Zazzle

Order: 131-11541544-4157470 (placed: 4/9/2012 10:42:31 AM)

Billing Address:

Ronald Wilson
135 S. Sierra Ave
Unit 20
Solana Beach
CA
92075

United States

Subtotal:	\$49.90
Shipping:	\$14.99
Tax:	\$4.12
Order Total:	\$69.01
Paypal:	\$69.01
ron2wilson@yahoo.com	

[View Order Status](#)

Shipments:

Items	Shipping
 <p>HYLETE plus Icon Logo 2012 04 09, from Basic American Apparel T-Shirt, Heather Grey, Adult L</p>	<p>Shipping Method: Premium - With Tracking \$14.99 2-3 Business Days After Manufacturing</p> <p>Address Line 1 Ronald L Wilson II 135 S. Sierra Ave Unit 20 Solana Beach CA 92075 United States</p>
 <p>HYLETE plus Icon Logo 2012 04 09, from Basic American Apparel T-Shirt, Heather Grey, Adult XL</p>	

----- Forwarded message -----

From: **Matt Paulson** <mpaulson@hylete.com>

Date: Mon, Apr 23, 2012 at 12:52 PM

Subject: Catalog

To: Robert Orlando <conanrules1@gmail.com>

Hey Rob,

Great speaking with you! I attached another catalog for you to review that includes a lot of different shirts styles/colors/ etc. Hylete will not move forward with all of these but this will give you a good idea of the offering. Let me know which ones you want to see mock-ups on.

Thanks Rob! Matt

--

Matt Paulson | Chief Integration Officer | [858-225-7185](tel:858-225-7185) | ex 102

HYLETE 

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HYLETE

Women's Logo Crew





HYLETE

Women's Stacked Logo Crew





HYLETE

Women's Logo Crew





HYLETE

Women's Logo Tank



HYLETE001-0005



HYLETE

Women's Burnout Logo Tank



HYLETE001-0006



HYLETE

Women's Burnout Fade Logo Tank



HYLETE001-0007



HYLETE

Women's Deep V



HYLETE001-0008



HYLETE

Women's Burnout Deep V



HYLETE001-0009



HYLETE

Women's Logo Scoop



HYLETE001-0010



HYLETE

Women's Logo Hoodie



HYLETE001-0011



HYLETE

Women's Pocket Logo Hoodie



HYLETE001-0012



HYLETE

Men's In Line Logo Tank



HYLETE001-0013



HYLETE

Men's Stacked Logo Tank



HYLETE001-0014



HYLETE

Men's Logo Crew



HYLETE001-0015



HYLETE

Men's Stacked Logo Crew



HYLETE001-0016



HYLETE

Men's Side Logo Crew



HYLETE001-0017



HYLETE

Men's Logo V Neck



HYLETE001-0018



HYLETE

Men's Logo V Neck



HYLETE001-0019



HYLETE

Men's Polo



HYLETE001-0020



HYLETE

Men's Logo Thermal



HYLETE001-0021



HYLETE

Men's Hylete Thermal



HYLETE001-0022



HYLETE

Men's Logo Hoodie



HYLETE001-0023



HYLETE

Men's Logo Hoodie



HYLETE001-0024



HYLETE

Men's Logo Hoodie



HYLETE001-0025

----- Forwarded message -----

From: **Matt Paulson** <mpaulson@hylete.com>

Date: Fri, Apr 27, 2012 at 10:30 AM

Subject: More Mock-Ups

To: Robert Orlando <conanrules1@gmail.com>

Hey Rob,

Hope you're doing well! I attached some more mock-ups for you. Please review and let me know what you think. If you are concerned about the font, we can remove the font and just put the icon similar to the women's tank attached.

I also sent a sample of the tri-blend performance fabric we will be offering for the majority of our shirts. We can also do some cotton-poly performance blends and cotton if desired.

Give me a call when you are free so we can catch up.

Thanks, Matt

--

Matt Paulson | Chief Integration Officer | [858-225-7185](tel:858-225-7185) | ex 102

HYLETE 

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HYLETTE

Hybrid Athletics Black Tank



Front



Back

- 4300 C
- 1893 C





HYLETTE

Hybrid Athletics Black Tank



- 4300 C
- 1893 C



----- Forwarded message -----

From: Matt Paulson <mpaulson@hylete.com>

Date: Fri, May 11, 2012 at 10:01 AM

Subject: Update

To: Robert Orlando <conanrules1@gmail.com>

Hey Rob,

I think you may be still in Australia. Hope you're trip is going well! Just want to give you a brief update... Go to: shop.hylete.com for images of the website. This will give you an idea of the direction we are taking. There's still a lot to be done but we want to have it ready within the next couple of weeks.

Let me know when you are back in town so we can catch up.

Thanks, Matt

--

Matt Paulson | Chief Integration Officer | [858-225-7185](tel:858-225-7185) | ex 102

HYLETE 

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----- Forwarded message -----

From: **Matt Paulson** <mpaulson@hylete.com>

Date: Tue, Oct 30, 2012 at 10:12 AM

Subject: Europe Magazine

To: Robert Orlando <conanrules1@gmail.com>

Hey Rob,

How are you? I sent you a text but I'm not sure if you have the same phone number.

I was contacted yesterday by a guy in Europe who has a magazine. He asked if I would introduce you two so he could contact you directly for something magazine related- article, interview.. not sure exactly. Would you mind if introduced you two?

Hope all is well!

—

Matt Paulson | Chief Integration Officer | [858-225-7185](tel:858-225-7185) | ex 102

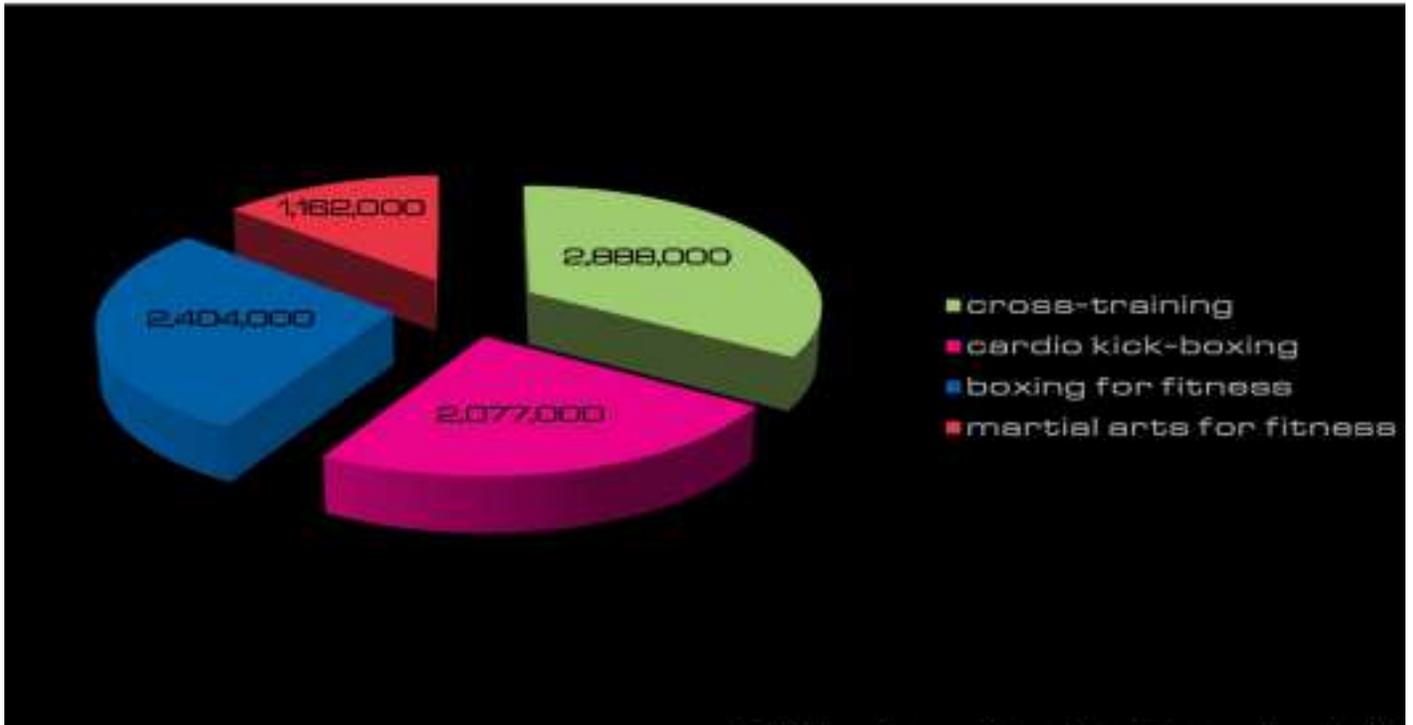
HYLETE 

train. compete. live.



hybrid training market

8,531,00 core participants



1. 2012 Sports Fitness and Leisure Activities Participation Report (SCMA)

2. core participant=50+ times/year

market opportunity

page 4

June 12, 2013

File Number: HYL-00190

VIA E-MAIL: dale@crossfit.com

Dale Saran, Esq.
CrossFit, Inc.
1250 Connecticut Avenue, N.W.
Suite 200
Washington, D.C. 20036

Re: Hybrid Athletics adv. Hylete LLC

Dear Mr. Saran:

We represent Hylete LLC in intellectual property matters. Hylete is the avid supporter of the CrossFit community and is scheduled to exhibit at the upcoming CrossFit games, pursuant to a signed exhibitor's agreement with CrossFit.

Hylete was recently contacted by Mr. Steve Weiss of CrossFit that a company identified as Hybrid Athletics is attempting to interfere with our business relationship, through allegations of trademark infringement. In light of these allegations, CrossFit has offered to terminate the signed exhibitor's agreement with Hylete.

Hylete strongly values its relationship with CrossFit and desires to keep the regionals and finals booths, as set forth in the exhibitor agreement. As such, I have been asked to investigate this matter. As discussed below, I find these allegations to be without merit.

I first note that it is unclear what, if any, trademarks rights are secured by Hybrid Athletics. We have conducted a review of trademark filings with the U.S. Patent and Trademark Office (USPTO) filed by Hybrid Athletics. Based on our review, we found that Hybrid Athletics has failed to secure any federal registration for any trademarks.

More particularly, Hybrid Athletics filed for trademark registration under TM Serial No. 85/095,039. The USPTO refused registration of the Hybrid Athletics logo. The application has been abandoned since December 19, 2011. *See*, attached.

Moreover, Hybrid Athletics has failed contact Hylete at all, let alone, identify any trademark rights it possesses or substantiate any claims of infringement.

Rather, Hybrid Athletics is now attempting to assert rights that it failed to secure through federal registration. In short, Hybrid Athletics is asking your company to enforce rights it *failed* to secure through the USPTO.

515 S. Flower Street, 36th Floor
Los Angeles, CA 90071

TEL 323.660.9916

FAX 323.660.9917

WWW.TSIRCOULAW.COM EMAIL kyri@tsircoulaw.com

HYLETE001-0032

In contrast to Hybrid Athletics dubious trademark claims, Hylete has successfully secured substantial rights through federal registration of its HYLETE mark, U.S. Reg. No. 4,318,646 (I.C. 025, for athletic apparel...). Hylete’s logo has also been approved for registration by the USPTO (U.S. TM App. No. 85/837,045).

U.S. Reg. No./ U.S. TM App. No.	Mark	USPTO Status (Int’l Class, Goods)
4,318,646	HYLETE	Registered (IC 25, Athletic apparel, namely, shirts, pants...)
85/837,045		Approved for Registration (IC 25, Athletic apparel, namely, shirts, pants...)

I further note that Hylete has invested substantial time and resources in preparation for the upcoming CrossFit games, in reliance upon the signed exhibitor’s agreement, as such would suffer substantial harm if it were not allowed to exhibit.

Hylete intends to communicate directly with Hybrid Athletics on this matter, requiring that they cease interfering with Hylete’s valued business relations in this manner. See, e.g., *Grooms v. Legge*, 2009 WL 962067 (S.D. Cal. Apr. 8, 2009) (Tortious interference with business relationship found where defendant’s conduct inhibited plaintiff from participating in a trade show.)

We are hopeful that will alleviate any concerns CrossFit might have on this matter. Accordingly, Hylete respectfully requests that CrossFit honors the signed exhibitor’s agreement with Hylete.

Hylete looks forward to a long and mutually beneficial relationship with CrossFit. Please do not hesitate to contact me if you have any questions.

Sincerely,



Kyriacos Tsircou

Attachment:

U.S. TM Serial No. 85/095,039 to Hybrid Athletics LLC – Abandoned as of Dec. 19, 2011

Filed Mark(s):



(Original)



(As amended)

Status Summary:

Word Mark	H
Goods and Services	(ABANDONED) IC 041. US 100 101 107. G & S: Shirts, athletic equipment, athletic training, and athletic programming. FIRST USE: 20080801. FIRST USE IN COMMERCE: 20100330
Mark Drawing Code	(5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM
Serial Number	85095039
Filing Date	July 28, 2010
Current Basis	1A
Original Filing Basis	1A
Owner	(APPLICANT) ROBERT ORLANDO DBA HYBRID ATHLETICS, LLC LIMITED LIABILITY COMPANY CONNECTICUT 7 HYDE STREET, LOWER LEVEL STAMFORD CONNECTICUT 06907
Description of Mark	The color(s) pantone 123c, black, and grey is/are claimed as a feature of the mark. The letter "H" is grey with pantone 123c outlining it. The letter "H" is on top of a black background.
Type of Mark	SERVICE MARK
Register	PRINCIPAL
Live/Dead Indicator	DEAD
Abandonment Date	November 17, 2011

<http://tess2.uspto.gov/bin/showfield?f=doc&state=4806:rgr7e5.2.1>

	NOTICE OF ABANDONMENT MAILING DATE: Dec 19, 2011
<p>The trademark application identified below was abandoned in full because a response to the Office Action mailed on May 15, 2011 was not received within the 6-month response period.</p> <p>If the delay in filing a response was unintentional, you may file a petition to revive the application with a fee. If the abandonment of this application was due to USPTO error, you may file a request for reinstatement. Please note that a petition to revive or request for reinstatement must be received within two months from the mailing date of this notice.</p> <p>For additional information, go to http://www.uspto.gov/teas/petinfo.htm. If you are unable to get the information you need from the website, call the Trademark Assistance Center at 1-800-785-9199.</p>	
SERIAL NUMBER: 85095039 MARK: H OWNER: ROBERT ORLANDO	

Exhibit E

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

HYBRID ATHLETICS, LLC,	Opposition No.: 91213057
Opposer,	Application Serial No.: 85/837,045
v.	
HYLETE, LLC,	APPLICANT HYLETE'S OBJECTIONS AND RESPONSES TO OPPOSER'S FIRST SET OF REQUEST FOR PRODUCTION
Applicant.	

PROPOUNDING PARTY: Opposer, Hybrid Athletics, LLC

RESPONDING PARTY: Applicant, Hylete LLC

SET NO.: Two

Applicant Hylete, LLC (“APPLICANT”) responds to Opposer Hybrid Athletics, LLC (“OPPOSER” or “PROPOUNDING PARTY”) Request for Production, Set One as follows:

PRELIMINARY STATEMENT AND GENERAL OBJECTIONS

GENERAL OBJECTIONS

1. APPLICANT objects to each request to the extent that it may be construed as calling for information subject to any claim of privilege, including, but not limited to, the attorney/client privilege and/or the attorney work product doctrine, including information prepared in anticipation of litigation, or for trial, by or on behalf of responding party, or its representatives, or relating to mental impressions, conclusions, opinions or legal terms of responding party’s counsel.. Pursuant thereto, APPLICANT and their counsel hereby claim these privileges and object to any such applicable request on this basis.

2. Investigation and discovery by APPLICANT is continuing and is not complete. As discovery proceeds, witnesses, documents, facts, and evidence may be discovered that were not presently known, but upon which APPLICANT may rely in support of its contentions in this action. The responses contained herein shall not preclude APPLICANT from introducing evidence based on such new and/or additional information.

3. APPLICANT objects to each request to the extent that it may be construed as calling for information neither relevant to the subject matter of this action nor likely to lead to the discovery of admissible evidence.

4. APPLICANT objects to each request to the extent that the burden, expense, or intrusiveness of that discovery clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence.

5. APPLICANT objects to each request to the extent that the

discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive.

6. APPLICANT objects to each request to the extent that it is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, and the importance of the issues at stake in the litigation.

7. APPLICANT objects to each request to the extent that it may be construed as calling for information already in OPPOSER's possession, custody, or control on the grounds that such request is unduly burdensome and oppressive, and otherwise exceeds the bounds of permissible discovery.

8. APPLICANT objects to each request to the extent that it seeks documents, the production of which would violate any constitutional, statutory or common law privacy interest of APPLICANT (the "Privacy Objection").

9. APPLICANT objects to the instructed form of production of certain documents such as photographs, videotapes, or other or other image-recording devices and visual media. APPLICANT will provide the responsive, non-privileged documents in CD-Rom, DVD-Rom, or other appropriate electronic media.

10. APPLICANT objects to the demand for production of originals. APPLICANT will provide true and accurate copies of the responsive, non-privileged documents in CD-Rom, DVD-Rom, or other appropriate electronic or fixed media.

11. Each of these general objections are incorporated into each of the responses set forth below, each response is made without waiver of any of these general objections.

**APPLICANT'S OBJECTIONS AND RESPONSES TO
OPPOSER'S FIRST SET OF REQUEST FOR PRODUCTION**

REQUEST NO. 1:

All documents that refer to or support any allegations made in Hylete's Answer to Notice of Opposition.

RESPONSE TO REQUEST NO. 1:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

REQUEST NO. 2:

All documents used, identified, relied upon or referred to by Hylete when answering Opposer's First Set of Interrogatories or any discovery requests propounded by Opposer.

RESPONSE TO REQUEST NO. 2:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible.

Subject to and without waiving the objections above, APPLICANT will provide any responsive documents not protected by the attorney-client privilege and/or work-product doctrine to the extent they exist and can be located after a reasonable search.

REQUEST NO. 3:

Documents sufficient to show the date of first use of the Hylete Mark.

RESPONSE TO REQUEST NO. 3:

APPLICANT objects to this request to the extent it is: vague and ambiguous; protected by the attorney-client privilege and/or work-product doctrine.

Subject to and without waiving the objections above, APPLICANT will provide any responsive documents not protected by the attorney-client privilege and/or work-product doctrine, to the extent they exist and can be located after a reasonable search.

REQUEST NO. 4:

Documents sufficient to show Hylete's continuous bona fide use in commerce of the Hylete Mark from the date of first use to the present.

RESPONSE TO REQUEST NO. 4:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence.

Subject to and without waiving the objections above, APPLICANT will provide any responsive documents not protected by the attorney-client privilege and/or work-product doctrine, to the extent they exist and can be located after a reasonable search.

REQUEST NO. 5:

All documents concerning Hylete's past, current, or planned future use of the Hylete Mark within the U.S.

RESPONSE TO REQUEST NO. 5:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine.

Subject to and without waiving the objections above, APPLICANT will provide any responsive documents not protected by the attorney-client privilege and/or work-product doctrine, to the extent they exist and can be located after a reasonable search.

REQUEST NO. 6:

All communications concerning the use, or planned future use, of the Hylete Mark by any third party within the U.S.

RESPONSE TO REQUEST NO. 6:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine.

Subject to and without waiving the objections above, APPLICANT will provide any responsive documents not protected by the attorney-client privilege and/or work-product doctrine, to the extent they exist and can be located after a reasonable search.

REQUEST NO. 7:

All documents concerning the use of the Hylete Mark in the U.S. in connection with the sale or advertising of a product and/or service.

RESPONSE TO REQUEST NO. 7:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant.

Subject to and without waiving the objections above, APPLICANT will provide any responsive documents not protected by the attorney-client privilege and/or work-product doctrine, to the extent they exist and can be located after a reasonable search.

REQUEST NO. 8:

Documents sufficient to show the target market of products and/or services sold or offered for sale in connection with the Hylete Mark within the U.S.

RESPONSE TO REQUEST NO. 8:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence.

Subject to and without waiving the objections above, APPLICANT will provide any responsive documents not protected by the attorney-client privilege and/or work-product doctrine, to the extent they exist and can be located after a reasonable search.

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REQUEST NO. 9:

Documents sufficient to show the target market of products and/or services planned to be sold or offered for sale in the future in connection with the Hylete Mark within the U.S.

RESPONSE TO REQUEST NO. 9:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine.

Subject to and without waiving the objections above, APPLICANT will provide any responsive documents not protected by the attorney-client privilege and/or work-product doctrine, to the extent they exist and can be located after a reasonable search..

REQUEST NO. 10:

Documents sufficient to identify the geographic location of users of products and/or services offered under the Hylete Mark in the U.S.

RESPONSE TO REQUEST NO. 10:

APPLICANT objects to this request to the extent it is: vague and ambiguous; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence.

Subject to and without waiving the objections above, APPLICANT will provide any responsive documents not protected by the attorney-client privilege

and/or work-product doctrine, to the extent they exist and can be located after a reasonable search.

REQUEST NO. 11:

All marketing plans, forecasts, projections and documents concerning Hylete's marketing and sales plans for products and/or services sold, to be sold, advertised, or to be advertised, bearing or associated with the Hylete Mark.

RESPONSE TO REQUEST NO. 11:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence.

Subject to and without waiving the objections above, APPLICANT will provide any responsive documents not protected by the attorney-client privilege and/or work-product doctrine, to the extent they exist and can be located after a reasonable search.

REQUEST NO. 12:

Documents sufficient to identify the channels of trade through which Hylete offers or plans to offer each product and/or service sold, to be sold, advertised, or to be advertised, bearing the Hylete Mark within the U.S.

RESPONSE TO REQUEST NO. 12:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the

discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine.

Subject to and without waiving the objections above, APPLICANT will provide any responsive documents not protected by the attorney-client privilege and/or work-product doctrine, to the extent they exist and can be located after a reasonable search.

REQUEST NO. 13:

All documents concerning any instances of actual confusion, mistake, deception or association of any kind between the Hybrid Mark and the Hylete Mark, including but not limited to, any consumer surveys.

RESPONSE TO REQUEST NO. 13:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine.

Subject to and without waiving the objections above, APPLICANT will provide any responsive documents not protected by the attorney-client privilege and/or work-product doctrine, to the extent they exist and can be located after a reasonable search.

REQUEST NO. 14:

All documents concerning any survey Hylete has conducted or plans to conduct concerning Opposer and its trademark(s) or the Hybrid Mark.

///

///

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RESPONSE TO REQUEST NO. 14:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine.

Subject to and without waiving the objections above, APPLICANT will provide any responsive documents not protected by the attorney-client privilege and/or work-product doctrine, to the extent they exist and can be located after a reasonable search.

REQUEST NO. 15:

All documents exchanged between Hybrid and Hylete.

RESPONSE TO REQUEST NO. 15:

APPLICANT objects to this request to the extent it is: vague and ambiguous; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence.

Subject to and without waiving the objections above, APPLICANT will provide any responsive documents not protected by the attorney-client privilege and/or work-product doctrine, to the extent they exist and can be located after a reasonable search.

REQUEST NO. 16:

All documents exchanged between and among Hylete, its distributors and sales personnel that relate to Hybrid or the Hybrid Mark.

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RESPONSE TO REQUEST NO. 16:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine.

Subject to and without waiving the objections above, APPLICANT will provide any responsive documents not protected by the attorney-client privilege and/or work-product doctrine, to the extent they exist and can be located after a reasonable search.

REQUEST NO. 17:

All documents relating to any civil or U.S. Patent and Trademark Office proceedings, or threatened proceeding, in the U.S. between Hylete and third parties, involving use of the Hylete Mark.

RESPONSE TO REQUEST NO. 17:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine.

Subject to and without waiving the objections above, APPLICANT will provide any responsive documents not protected by the attorney-client privilege and/or work-product doctrine, to the extent they exist and can be located after a reasonable search.

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REQUEST NO. 18:

All documents relating to any written or oral agreements by which Hylete and any third parties settled a dispute in respect of the use of the Hylete Mark.

RESPONSE TO REQUEST NO. 18:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine.

Subject to and without waiving the objections above, APPLICANT will provide any responsive documents not protected by the attorney-client privilege and/or work-product doctrine, to the extent they exist and can be located after a reasonable search.

REQUEST NO. 19:

All documents that Hylete will or may offer as exhibits at trial.

RESPONSE TO REQUEST NO. 19:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence.

Subject to and without waiving the objections above, APPLICANT will provide any responsive documents not protected by the attorney-client privilege and/or work-product doctrine, to the extent they exist and can be located after a reasonable search.

///

///

REQUEST NO. 20:

All documents identified or referred to in Hylete's Initial Disclosures.

RESPONSE TO REQUEST NO. 20:

APPLICANT objects to this request to the extent it is: vague and ambiguous; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine.

Subject to and without waiving the objections above, APPLICANT will provide any responsive documents not protected by the attorney-client privilege and/or work-product doctrine, to the extent they exist and can be located after a reasonable search.

REQUEST NO. 21:

All documents showing the Hylete Mark used on each item listed in the identification of goods for its U.S. Trademark Serial No. 85/837,045.

RESPONSE TO REQUEST NO. 21:

Subject to and without waiving the objections above, APPLICANT will provide any responsive documents not protected by the attorney-client privilege and/or work-product doctrine, to the extent they exist and can be located after a reasonable search.

REQUEST NO. 22:

All agreements between Hylete and any manufacture for the production of goods bearing the Hylete Mark.

RESPONSE TO REQUEST NO. 22:

APPLICANT objects to this request to the extent it is: vague and ambiguous; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine.

Subject to and without waiving the objections above, APPLICANT will provide any responsive documents not protected by the attorney-client privilege and/or work-product doctrine, to the extent they exist and can be located after a reasonable search.

REQUEST NO. 23:

Documents sufficient to identify all suppliers, agents and importers of goods bearing the Hylete Mark including, but not limited to, bills of lading, invoices, contracts and purchase orders.

RESPONSE TO REQUEST NO. 23:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine.

Subject to and without waiving the objections above, APPLICANT will provide any responsive documents not protected by the attorney-client privilege and/or work-product doctrine, to the extent they exist and can be located after a reasonable search.

///

REQUEST NO. 24:

Documents sufficient to identify all venues where Hylete has sold, offered for sale or displayed goods bearing the Hylete Mark including, but not limited to, gyms (e.g. CrossFit Affiliates), stores, events and athletic competitions.

RESPONSE TO REQUEST NO. 24:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence.

Subject to and without waiving the objections above, APPLICANT will provide any responsive documents not protected by the attorney-client privilege and/or work-product doctrine, to the extent they exist and can be located after a reasonable search.

REQUEST NO. 25:

Documents sufficient to identify each seller, re-seller, retailer, distributor and wholesaler of goods bearing the Hylete Mark.

RESPONSE TO REQUEST NO. 25:

APPLICANT objects to this request to the extent it is: vague and ambiguous; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence.

Subject to and without waiving the objections above, APPLICANT will provide any responsive documents not protected by the attorney-client privilege and/or work-product doctrine, to the extent they exist and can be located after a reasonable search.

REQUEST NO. 26:

Documents sufficient to identify all customers who have purchased goods bearing the Hylete Mark.

RESPONSE TO REQUEST NO. 26:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine.

Subject to and without waiving the objections above, APPLICANT will provide any responsive documents not protected by the attorney-client privilege and/or work-product doctrine, to the extent they exist and can be located after a reasonable search.

DATE: December 31, 2014

By _____/kyri tsircou/
Kyriacos Tsircou
Attorney for Applicant HYLETE, LLC

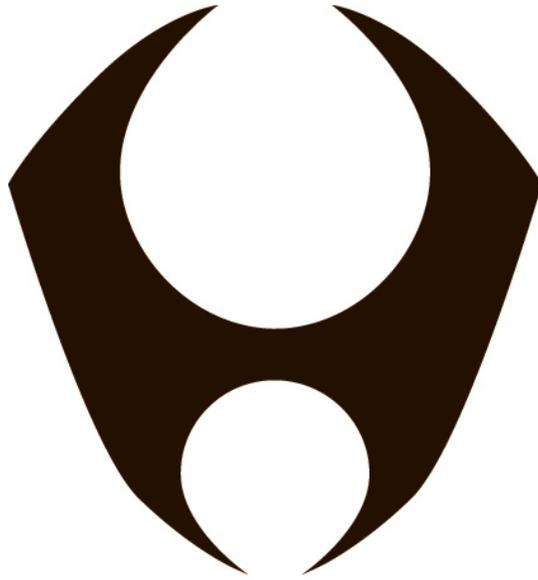
CERTIFICATE OF SERVICE

I hereby certify that on December 31, 2014, I have sent a copy of APPLICANT HYTELE'S OBJECTIONS AND RESPONSES TO OPPOSER'S FIRST SET OF REQUEST FOR PRODUCTION Pursuant to Fed. R. Civ. P. 26(a)(1) to the foregoing, by electronic mail and U.S. Mail, First Class pre-paid postage, to:

Wesley W. Whitmyer
St. Onge, Steward Johnston & Reens LLC
986 Bedford Street
Stamford, CT 06905
Tel. (203) 324-6155 Facsimile (203) 327-1096
Email:litigation@ssjr.com

/kyri tsircou/

Kyriacos Tsircou, Esq.



HYLETE

investor overview
February 13th, 2014

This Confidential Investor Presentation has been prepared for discussion purposes only. It is being delivered on a confidential basis to specified parties solely to assist them in deciding whether to proceed with their investigation of HYLETE, Inc. ("HYLETE" or the "Company") in accordance with procedures established by the Company. This Investor Presentation does not purport to contain all of the information that may be required or relevant to a recipient's evaluation of any transaction and recipients will be responsible for conducting their own investigations and analysis.

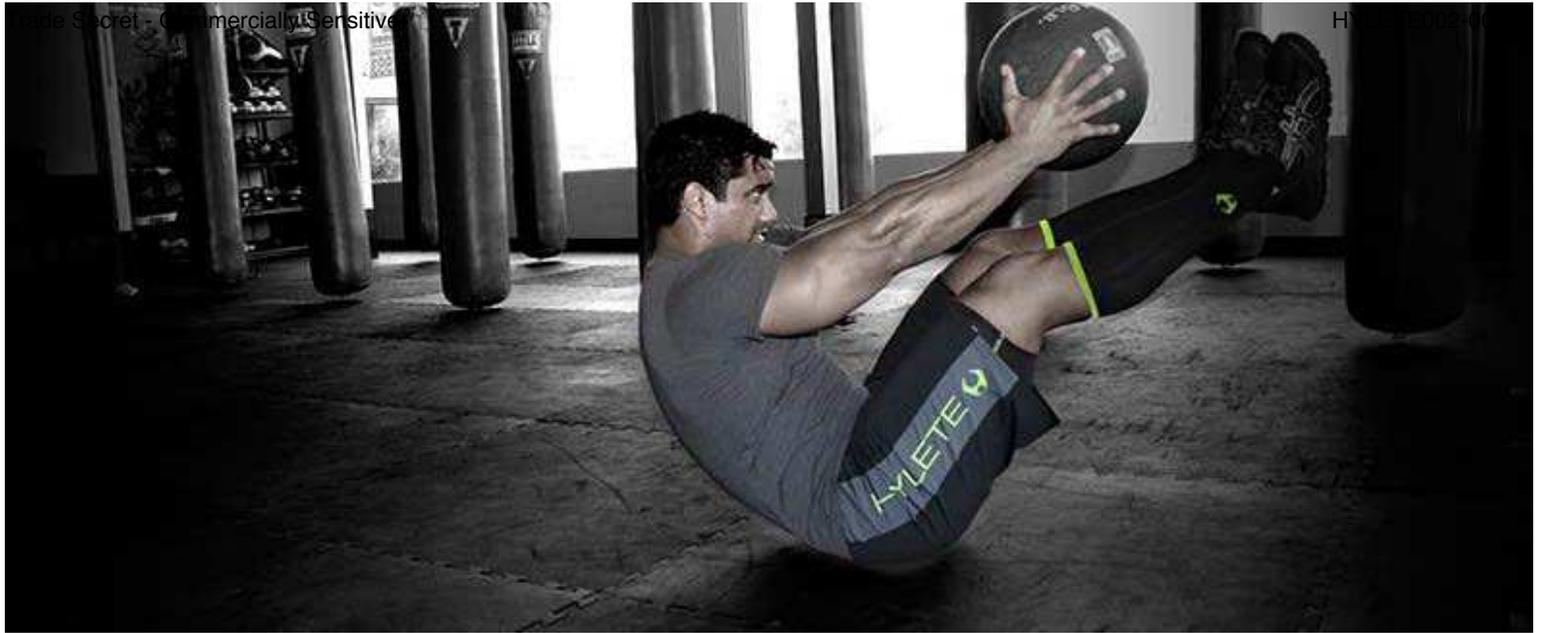
The distribution and use by each recipient of the information contained herein and any other information provided may not be distributed, reproduced or used without the express consent of the Company or for any purpose other than the evaluation of the transaction by the person reviewing this Investor Presentation.

Neither the Company or any of its affiliates or representatives makes any representation, warranty or guaranty of any kind, express or implied, as to the accuracy, completeness or reasonableness of the information contained herein or any other written or oral communication transmitted or made available to the recipient. The Company and its affiliates and representatives expressly disclaim any and all liability based on or arising from, in whole or in part, such information, errors therein or omissions therefrom.

In addition, this Investor Presentation includes certain projections and forward-looking statements provided by the Company with respect to the anticipated future performance of the Company. Such projections and forward-looking statements reflect various assumptions of management concerning the future performance of the Company, and are subject to significant business, economic and competitive uncertainties and contingencies, many of which are beyond the control of the Company. Accordingly, there can be no assurance that such projections or forward-looking statements will be realized. Actual results may vary from anticipated results and such variations may be material. No representations or warranties are made as to the accuracy or reasonableness of such assumptions or the projections or forward-looking statements based thereon.

Only those representations and warranties that are made in a definitive written agreement relating to a transaction, when and if executed, and subject to any limitations and restrictions as may be specified in such definitive agreement, shall have any legal effect. Each recipient should make an independent assessment of the merits of pursuing a transaction and should consult its own professional advisors. This Investor Presentation should not be considered to be an offer to buy the securities of the Company described herein. Any such offer, if and when made, will be in writing.

The delivery of this Investor Presentation should not create any implication that there has been no change in the business and affairs of the Company since such date. Neither the Company nor its affiliates or representatives undertakes any obligation to update any of the information contained herein. The Company is free to conduct the process for the transaction as it determines in its sole discretion (including without limitation, ceasing to proceed with any transaction, terminating further participation in the process by any party, negotiating with prospective buyers and entering into an agreement with respect to a transaction without prior notice to you or any other person) and any procedures relating to such transaction may be changed at any time without prior notice to you or any other person.



HYLETE

Founded upon three intertwined principles:
train to push yourself both physically and mentally;
compete so as to improve yourself, as well as those around you;
and *live* to be healthy in mind, body, and soul.

train. compete. live.

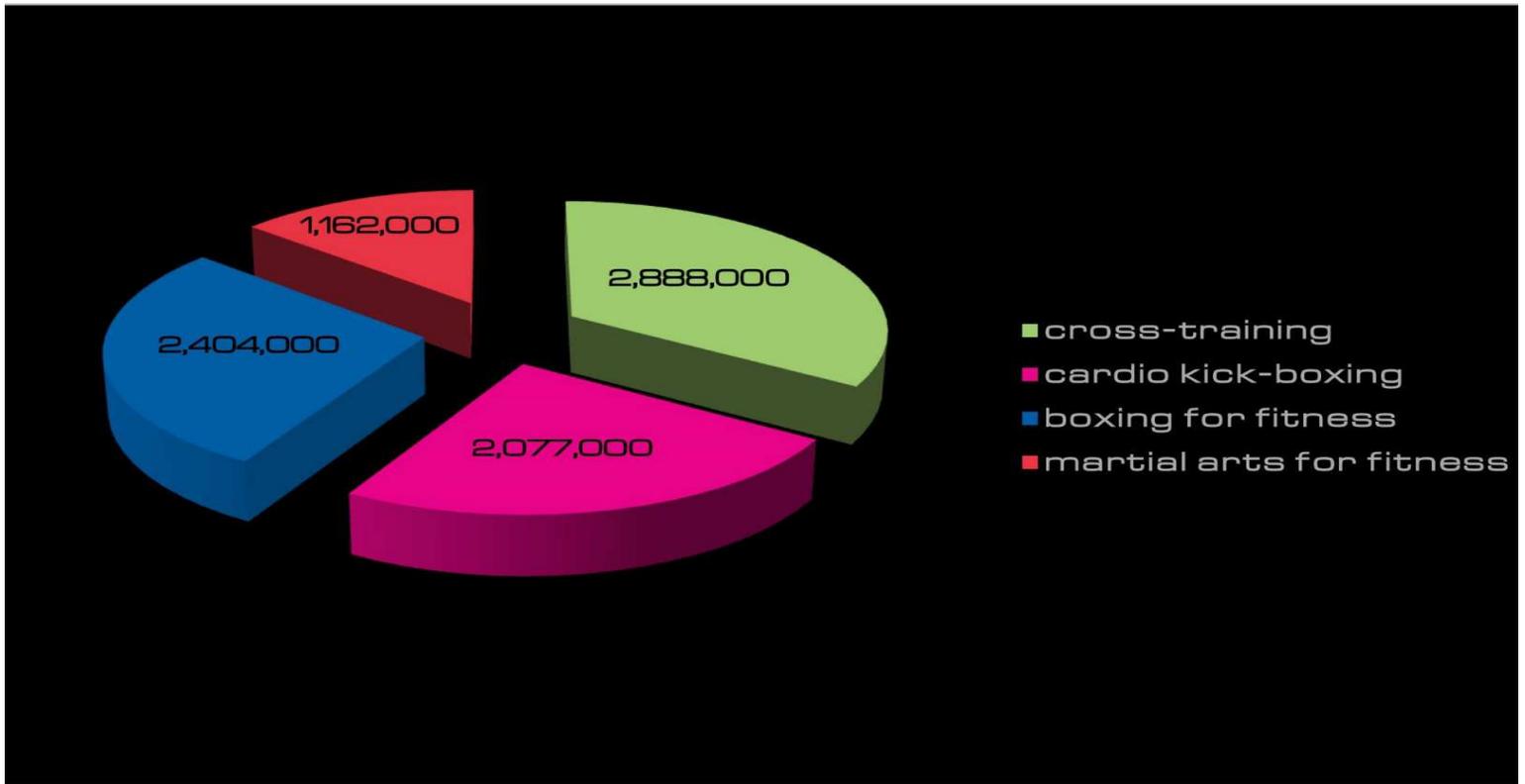
vision

our vision is to create innovative, performance cross-training apparel that captures the spirit of a new breed of hybrid athlete



hybrid training market

8,531,00 core participants



1. 2012 Sports Fitness and Leisure Activities Participation Report (SGMA)

2. core participant=50+ times/year

CrossFit market

1. There are approximately 7,000 CrossFit Boxes with most currently located in the United States¹
2. The average CrossFit box has between 100 and 150 members²
3. HYLETE launched at the 2012 CrossFit Games with their signature product (cross-training shorts) which was an immediate hit and resulted in virtually a complete sell-through of the first production run at the event
4. 39.8% of HYLETE customers participate in CrossFit³



1. Wikipedia
2. <http://clubindustry.com/profits/crossfit-makes-affiliates-trainers>
3. Exit Survey at HYLETE.com

the hybrid athlete



enjoys mental as well as physical challenges,
loves the camaraderie of cross training, and adopts new, authentic
brands if (s)he learns of them in a personal and organic manner

men's line



women's line



competitive product advantage



HYLETE's performance cross-training apparel is the result of the relentless, passionate drive to infuse each item with technical performance that is comfortable, durable, and styled to resonate with the hybrid athlete

direct to consumer

HYLETE has created a controlled direct to consumer distribution platform that leverages three distinct consumer segments that have substantial influence capacity.

The **first are certified trainers** (TrainTeam) who hold certifications in a wide array of disciplines including CrossFit, TRX, functional fitness, etc. There are over 251,400* certified trainers in the US with an average of twenty-seven clients each.

The **second influencer group are competitive athletes** (Compete Team) who compete in CrossFit, Olympic Lifting, powerlifting, bodybuilding, etc. These athletes train in the same facilities/ disciplines providing aspiration to the target consumer/ everyday athlete.

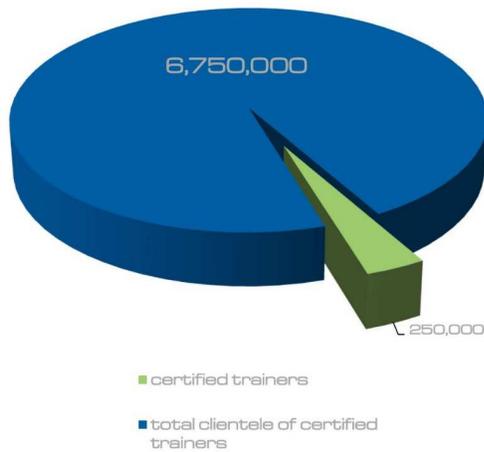
The **third target consumer segment are service personnel** (Service League) that require fitness as part of their job responsibilities and include active military, police, fire and paramedics. Over 2.5 million** consumers qualify for our service personnel segment.

* see page 29 for source info



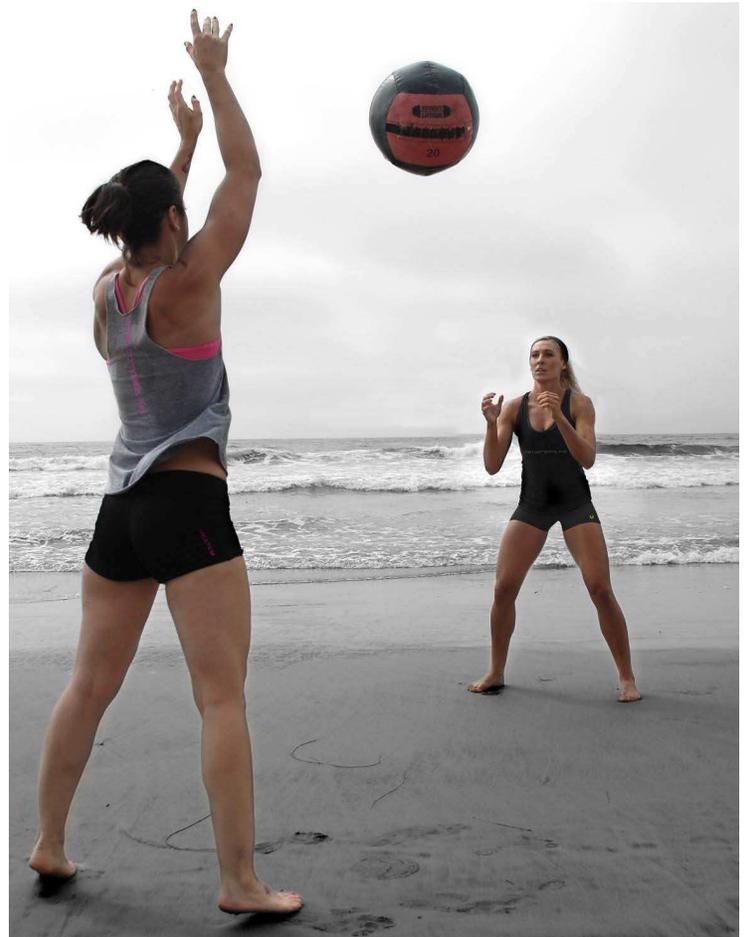
personal training market

7 million people



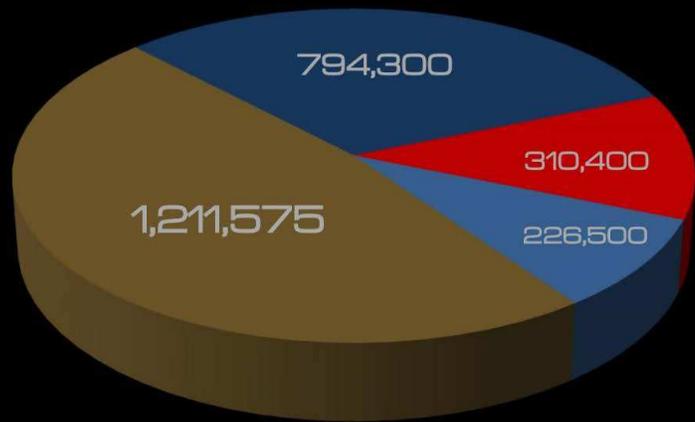
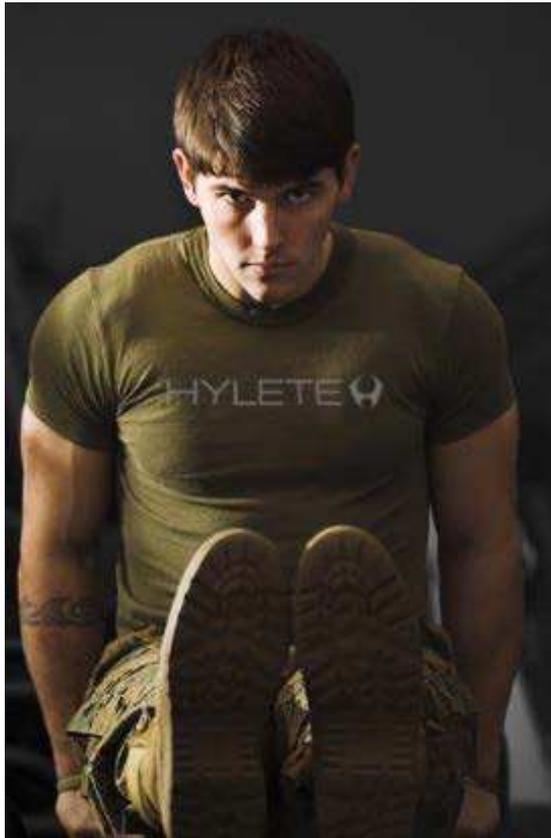
HYLETE Train Team members are offered substantial discounts and referral commissions as an additional incentive to promote the brand. Certified trainers influence a significant number of consumers through direct contact with clientele and their social networks. Compete Team and Service League members are offered similar incentives to wear and promote HYLETE.

source: Department of Labor; IHSRA
<http://www.ihsra.org/research-faqs/>



service personnel market

2.5 million people

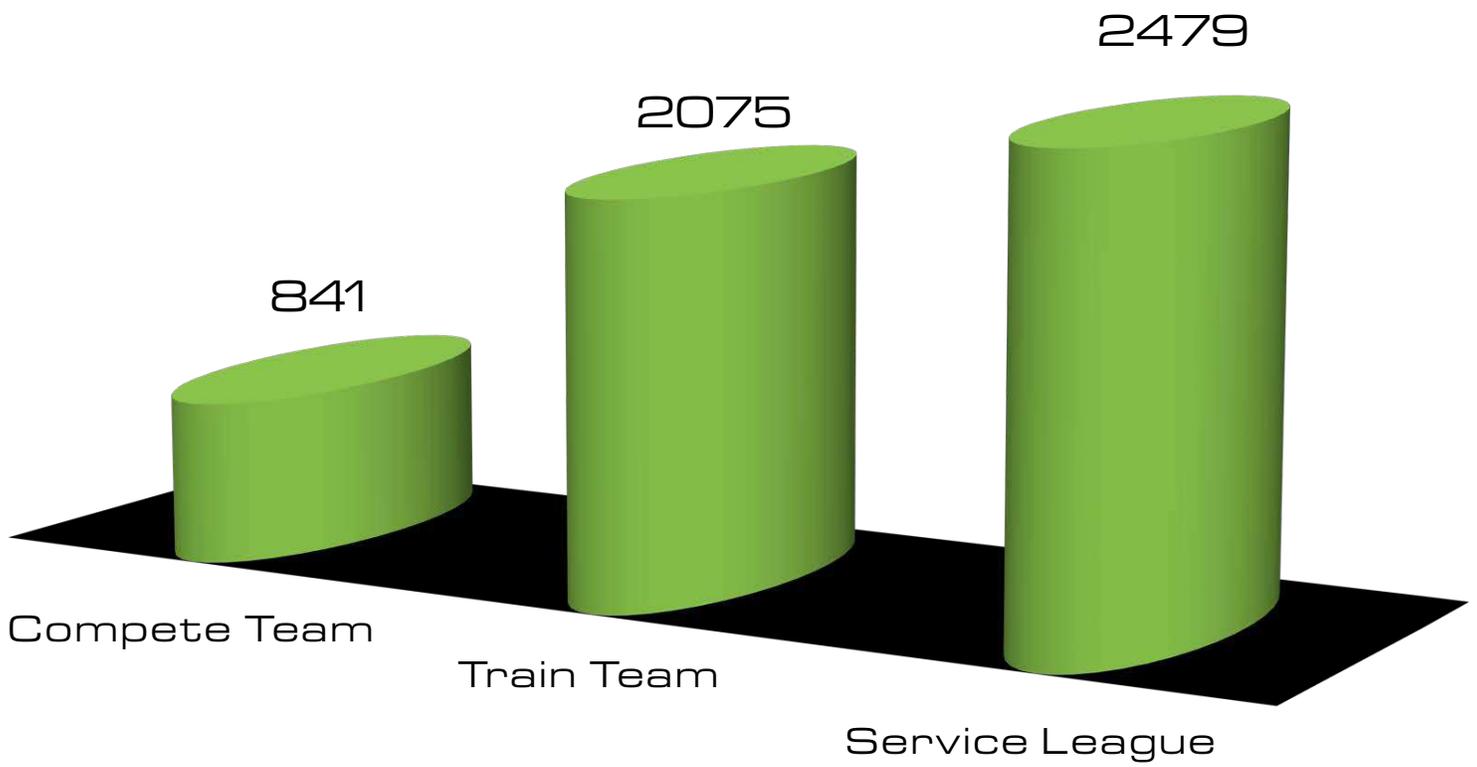


- active military
- police & detectives
- fire fighters
- emergency medical technicians & paramedics

* see page 29 for source info

team members

as of February 10th, 2014



“powered by HYLETE” strategy



HYLETE’s marketing strategy is comprised of 3 major pillars of execution:

1. event sponsorship
2. co-branding/uniform programs
3. affiliate referral programs

“powered by HYLETE”: events



objective: consistent, weekly brand visibility at events nationwide

goal: sponsor over 500 events during calendar year 2014

execution:

- leverage competitor and judge discount coupons to ensure significant brand visibility at each event
- add referral program element to event sponsorship to gain exposure with spectators, as well as other potential customers via the on-going promotion efforts of event coordinators (incentivized via commissions)
- garner goodwill through prize sponsorship (gift cards)
- where possible supply the co-branded apparel and gear for the event

"powered by HYLETE": co-branding

objective: brand awareness and building a large direct marketing database

goal: sign up 250+ CrossFit affiliates/functional fitness gyms to program by end of fiscal year

execution:

- continue to build a competency around providing high quality co-branded apparel
- create compelling marketing materials/web portals to promote the program and capabilities
- adhere to strict upfront payment requirements to ensure positive cash flow



“powered by HYLETE”: affiliates



objective: brand awareness, revenue and database growth

goal: triple the size of each list within the loyalty program by end of fiscal year and grow maintain monthly order percentages from each group

execution:

- continue to refine the marketing techniques to gain adoption into referral program
- analyze the success stories and develop strategies to scale them

web KPI's - visitors

Audience Overview

Jul 1, 2012 - Jan 31, 2014

Email Export Add to Dashboard Shortcut

All Visits
100.00%

Overview

Visits vs. Select a metric

Hourly Day Week **Month**



visitor growth of 1500% from 3.7K visitors in July 2012 to 59.2K visitors in January 2014

web KPI's - average order value



average order value increase of 111% from \$47.79 in July 2012 to \$100.74 in January 2014

web KPI's - conversion rate

Ecommerce Overview

Jul 1, 2012 - Jan 31, 2014

Email Export Add to Dashboard Shortcut

All Visits
100.00%

Overview

Ecommerce Conversion Rate vs. Select a metric

Hourly Day Week **Month**

Ecommerce Conversion Rate



conversion rate has increased by 112.7% from 1.58% in July 2012 to 3.36% in January 2014

web KPI's - revenues

Ecommerce Overview

Jul 1, 2012 - Jan 31, 2014

Email Export Add to Dashboard Shortcut

All Visits
100.00%

Overview

Revenue vs. Select a metric

Hourly Day Week Month

Revenue



on-line revenue increase of 7011% from \$2,819 in July 2012 to \$200,469 in January 2014

customer lifetime value (CLV) vs. customer acquisition cost (CAC)

CLV = ARPU (average revenue per user) times Gross Margin % divided by churn

ARPU = \$250k revenue / 10k customers = \$25 per user

GM% = 42%

Churn = 88 unsubscribes in October / 10k total customers = 0.88%

CLV = (\$25 * 42%) / 0.88% = \$1,200

CAC = total monthly acquisition cost divided by the of new subscribers

Acquisition costs = advertising (\$4K) + commissions (\$3K) + marketing (\$8K) + acquisition related head count (\$15K)

Average number of new subscribers = 500

CAC = \$60

CLV:CAC = 20X

financials - 2013 P&L statement

	Jan - Mar, 2013		Apr - Jun, 2013		Jul - Sep, 2013		Oct - Dec, 2013		Total	
Income										
Direct Sales	\$217,462	72.4%	\$244,223	85.4%	\$464,455	91.7%	\$590,615	80.4%	\$1,516,755	83.0%
OEM/Uniform	82,944	27.6%	41,887	14.6%	42,076	8.3%	143,581	19.6%	310,488	17.0%
Total Income	300,406	100.0%	286,110	100.0%	506,531	100.0%	734,196	100.0%	1,827,243	100.0%
Cost of Goods Sold										
Product Cost	205,969	68.6%	157,711	55.1%	269,837	53.3%	372,450	50.7%	1,005,966	55.1%
Shipping Expense (net)	15,555	5.2%	24,236	8.5%	23,508	4.6%	39,372	5.4%	102,671	5.6%
Total Cost of Goods Sold	221,524	73.7%	181,946	63.6%	293,344	57.9%	411,822	56.1%	1,108,637	60.7%
Gross Profit	78,882	26.3%	104,164	36.4%	213,187	42.1%	322,374	43.9%	718,607	39.3%
Expenses										
Advertising	4,662	1.6%	7,836	2.7%	17,826	3.5%	16,694	2.3%	47,019	2.6%
Banking Fees	7,653	2.5%	8,374	2.9%	14,075	2.8%	15,181	2.1%	45,284	2.5%
Commissions	2,444	0.8%	4,236	1.5%	5,087	1.0%	9,500	1.3%	21,267	1.2%
Insurance	258	0.1%	169	0.1%	180	0.0%	180	0.0%	787	0.0%
Legal & Professional	13,276	4.4%	2,132	0.7%	19,329	3.8%	10,511	1.4%	45,249	2.5%
Logistics	17,171	5.7%	29,639	10.4%	27,448	5.4%	34,951	4.8%	109,209	6.0%
Marketing	19,324	6.4%	41,954	14.7%	23,907	4.7%	21,712	3.0%	106,896	5.9%
Office Expenses	5,513	1.8%	20,999	7.3%	5,799	1.1%	6,362	0.9%	38,673	2.1%
Payroll	26,109	8.7%	106,084	37.1%	120,806	23.8%	123,564	16.8%	376,562	20.6%
Product Development	4,325	1.4%	10,695	3.7%	15,003	3.0%	16,243	2.2%	46,266	2.5%
Rent & Utilities	16,902	5.6%	10,654	3.7%	10,718	2.1%	11,268	1.5%	49,542	2.7%
Travel	5,978	2.0%	22,661	7.9%	1,995	0.4%	5,610	0.8%	36,244	2.0%
Web/Systems	4,584	1.5%	18,658	6.5%	12,861	2.5%	21,835	3.0%	57,937	3.2%
Total Expenses	128,200	42.7%	284,092	99.3%	275,034	54.3%	293,611	40.0%	980,936	53.7%
Net Operating Income	(49,319)	-16.4%	(179,928)	-62.9%	(61,847)	-12.2%	28,763	3.9%	(262,330)	-14.4%
Interest Expense	3,649	1.2%	14,079	4.9%	19,282	3.8%	17,163	2.3%	54,173	3.0%
Net Income	(\$52,968)	-17.6%	(\$194,007)	-67.8%	(\$81,129)	-16.0%	\$11,601	1.6%	(\$316,503)	-17.3%

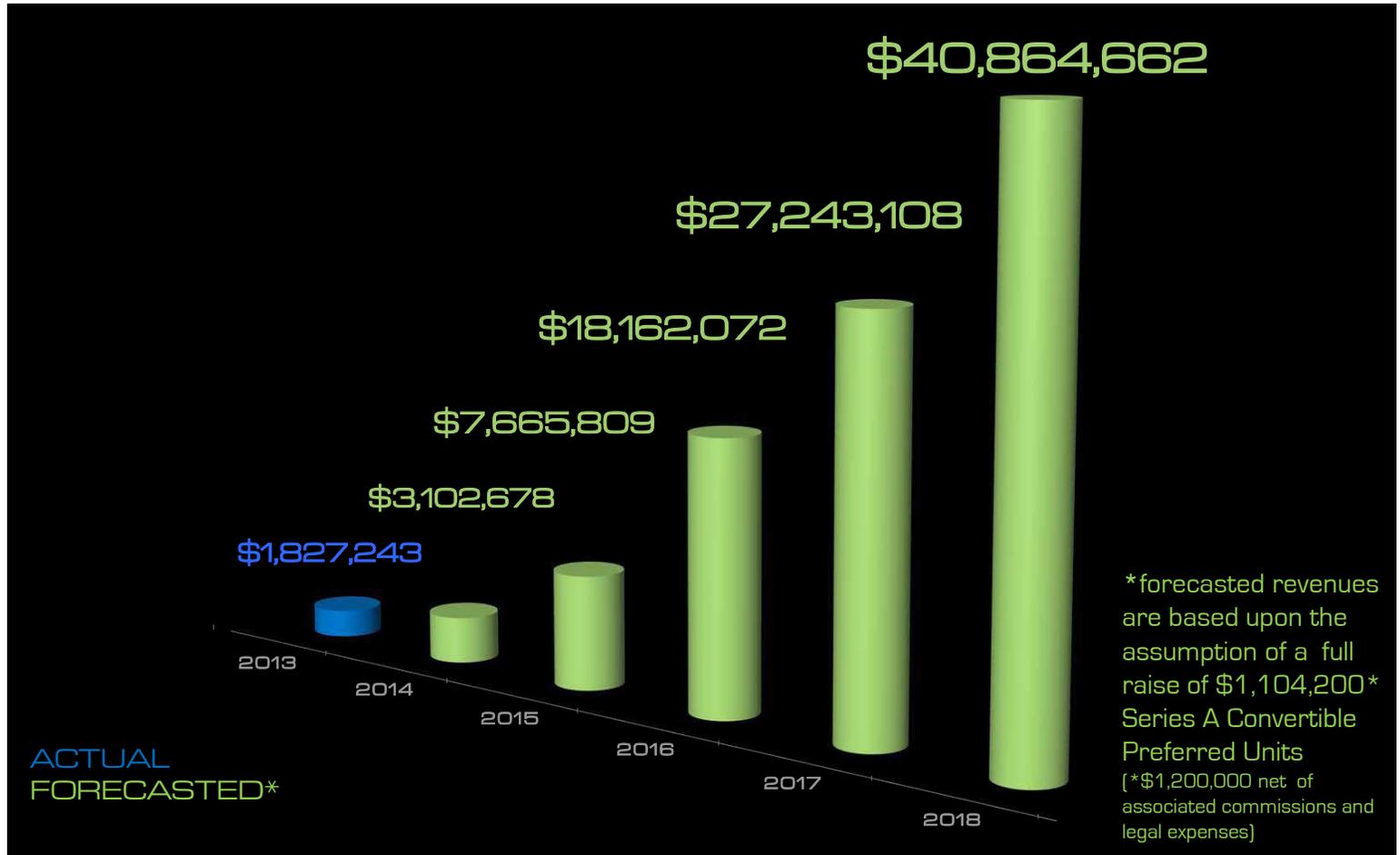
financials – 3 year plan

HYLETE Income Statement 3 Year Budget				
	ACTUAL	FORECAST	FORECAST	FORECAST
	2013	2014	2015	2016
Sales by Type:				
HYLETE.com	\$1,516,755	\$3,216,424	\$7,665,809	\$18,162,072
Powered-by-HYTELE	310,488	466,188	582,735	728,418
Total Net Sales	1,827,243	3,682,611	8,248,544	18,890,490
Cost of Goods Sold	1,108,637	2,042,952	4,006,735	8,358,686
Gross Profit	718,606	1,639,659	4,241,809	10,531,804
<i>Gross Margin %</i>	<i>39.3%</i>	<i>44.5%</i>	<i>51.4%</i>	<i>55.8%</i>
Selling Expense	329,675	601,219	1,484,738	3,683,646
<i>% of Sales</i>	<i>18.0%</i>	<i>16.3%</i>	<i>18.0%</i>	<i>19.5%</i>
Payroll Expenses	376,562	987,949	1,726,592	2,260,134
<i>% of Sales</i>	<i>20.6%</i>	<i>26.8%</i>	<i>20.9%</i>	<i>12.0%</i>
G&A Expense	274,699	344,350	441,350	579,350
<i>% of Sales</i>	<i>15.0%</i>	<i>9.4%</i>	<i>5.4%</i>	<i>3.1%</i>
Total Operating Expenses	980,936	1,933,519	3,652,680	6,523,130
<i>% of Sales</i>	<i>53.7%</i>	<i>52.5%</i>	<i>44.3%</i>	<i>34.5%</i>
EBITDA	(262,330)	(293,859)	589,129	4,008,674
<i>% of Sales</i>	<i>-14.4%</i>	<i>-8.0%</i>	<i>7.1%</i>	<i>21.2%</i>
Interest Expense/(Income)	54,173	66,655	52,413	62,936
Net Income	(316,503)	(360,515)	536,716	3,945,738
	<i>-17.3%</i>	<i>-9.8%</i>	<i>6.5%</i>	<i>20.9%</i>

Notes:

- 1) forecasted revenues are based upon the assumption of a full raise of \$1,104,200* Series A Convertible Preferred Units (*\$1,200,000 net of associated commissions and legal expenses)
- 2) salaries for FY13 were below market and are budgeted to be at market for FY14

financials – revenues by year



investment proposal

Offering Amount:	\$150,000 to \$1,200,000
Pre-Money Valuation:	\$3,000,000
Use of Funds:	Inventory and strategic growth initiatives
Security:	Series A Convertible Preferred Units
Preference:	One (1) times liquidation preference with 12% cumulative dividend
Redemption:	Five (5) years
Structure:	California LLC
Board Composition:	Steelpoint (1); Series A (1)*; Common (1); CEO (1); Independent (1)
Other Terms:	Standard protective positions, registration rights, etc.

*Kevin Park will hold the Series A Board Seat while the Convertible Promissory Note dated February 10th, 2014 is outstanding

use of proceeds

Use of Proceeds	Current	As of 12/31/2014	Net Change	Notes:
Inventory: increase inventory levels on most popular SKUs, introduction of new product offerings; reduce transportation costs via ocean freight vs. air freight	\$ 533,478	\$ 1,154,357	\$ 620,879	see 3 YR budget for monthly increases through 12/31/2014
Strategic Marketing Initiatives: Web-site update leveraging external resource (including creating a responsive site)	n/a	\$ 50,000	\$ 50,000	current marketing is covered by cash flow from operations
Inventory Financing Note	\$ 330,629	\$ -	\$ 350,870	current Inventory Financing Note is due in December 2014; the plan is to replace with more traditional financing at a lower rate (so may not be a use of proceeds ultimately)
Reserve			\$ 178,251	reserve
Total			\$ 1,200,000	

reference sources

page 10, 12:

*Department of labor - <http://www.bls.gov/ooh/personal-care-and-service/fitness-trainers-and-instructors.htm>

**Department of labor - <http://www.bls.gov/ooh/military/military-careers.htm#tab-2> and <http://www.bls.gov/ooh/Protective-Service/Police-and-detectives.htm> and <http://www.bls.gov/ooh/protective-service/firefighters.htm> and <http://www.bls.gov/ooh/healthcare/emts-and-paramedics.htm>

Allstyle Screenprinting

2435 La Mirada Drive
 Vista, CA 92081
 Ph: 760 877-5604
 Fax: 760 410-1502

Statement

Date
12/16/2014

To:
Hylete, LLC 550 Stevens Ave. Solana Beach, Ca 92075

Amount Due
 \$ 76,693.00

Date	Transaction				Amount	Balance
11/7/2014	INVOICE	2070	DUE	7-Dec	\$ 10,538.40	\$ 10,538.40
11/14/2014	INVOICE	2072	DUE	14-Dec	\$ 11,068.80	\$ 21,607.20
11/21/2014	INVOICE	2073	DUE	21-Dec	\$ 13,523.50	\$ 35,130.70
11/21/2014	INVOICE	2074	DUE	21-Dec	\$ 4,992.00	\$ 40,122.70
11/21/2014	INVOICE	2075	DUE	21-Dec	\$ 7,310.40	\$ 47,433.10
11/21/2014	INVOICE	2076	DUE	21-Dec	\$ 4,811.40	\$ 52,244.50
11/21/2014	INVOICE	2077	DUE	21-Dec	\$ 9,196.75	\$ 61,441.25
11/21/2014	INVOICE	2078	DUE	21-Dec	\$ 11,551.75	\$ 72,993.00
11/21/2014	INVOICE	2079	DUE	21-Dec	\$ 3,700.00	\$ 76,693.00
CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	OVER 60 DAYS PAST DUE	AMOUNT DUE		
\$ 55,085.80	\$ 21,607.20				\$	76,693.00

AlphaTek Co., Ltd.

7F South Wing, No.6 QingJiang Road, Qingdao, China (266033)
 Tel: +86-532-8561-7806 / Fax: +86-532-8562-5600

COMMERCIAL INVOICE

No: **INVOICE of** AS BELOW
 DATE: 26-Nov-2014 ATKH14019
For account and risk of Messrs. HYLETE, LLC.
 742 Genevieve St. Suite P, Solana Beach CA 92075, United States
Shipped by Pinnacle AlphaTek Co., **Per S.S**
 Global Logistics Co., Ltd.

sailing on or about **From** Qingdao, China **To** San Diego, CA, U.S.A. **28-Nov-2014**

Amount Unit Price Marks & Nos. Description of Goods Quantity

FOB Qingdao, China
 HYLETE LLC. PO# A141001
 PO# A141001 ASN#: 112044
 ASN#: 112044 Shorts-Cross-Training Short 2.0
 MADE IN CHINA 90% Polyester / 10% Spandex
 CAR Color 784 PCS USD 11.2 /PC USD 8,82
 TON r: 6 7.84
 S: Des
 281 ert
 n-
 San
 d
 Cam
 o

PO# A141001
 ASN#: 112044
 Shorts-Cross-Training Short 2.0
 90% Polyester / 10% Spandex
 Color: 761 PCS USD 11.26 /PC USD 8,568
 Black .86
 -Sand
 Camo

PO# A141001
 ASN#: 112044
 Shorts-Cross-Training Short 2.0
 90% Polyester / 10% Spandex
 Color: 1,074 PCS USD 11.26 /PC USD 12,09
 Militar 3.24
 y
 Gree
 n-
 Gree
 n
 Camo

PO# A141001
 ASN#: 112044
 Shorts-Cross-Training Short 2.0
 90% Polyester / 10% Spandex
 Color: 1,076 PCS USD 11.26 /PC USD 12,11
 Black 5.76
 -
 Gree
 n
 Camo

PO# A141001
 ASN#: 112044
 Shorts-Cross-Training Short 2.0
 90% Polyester / 10% Spandex

FedEx/3rd Party HYTELE, LLC

FOB FACTORY

CU-PRX-112 35 SA-Hylete 11/26/14 12/11/14 12/09/14

7186

331741 35 4L

331741

Order # 177602

Invoice # SOLD

TO

S

HIP

TO

Via

Invoice date

Customer

Job #

Customer #

Salesperson

Unit Customer po # Salesperson Order date Invoice date Date shipped Invoice #

Ordered Shipped Qty BO Item # Description Price Per Amount

CUSTOM LOGOS, INC.

REMITTANCE STUB

Customer #

7186

Job #

177602

SOLANA BEACH CA 92075

CANADA

60 59 PRM70DZ Independent Mens Zip Hood 23.500 E A 1386.50

Shipped Small Medium Large X-Large

Blk/Silver 16 16 17 10

2 2 PRM70DZ Independent Mens Zip Hood 23.500 E A 47.00

Shipped XX-Large

Blk/Silver 2

62 61 SS3CF Screenprint 3 Clr Front 0.000 E A 0.00

48

62 61 SS3CB Screenprint 3 Clr Back 0.000 E A 0.00

48

62 61 SS1SL Screenprint 1 Clr Sleeve 0.000 E A 0.00

48

62 61 SSNECK Screenprinted Neck 0.000 E A 0.00

Imprint (w/tag removal)

6 6 SETUP Setup for Screenprinting 30.000 E A 180.00

1 1 SHIP Shipping & Handling 0.000 E A 0.00

1 1 JB JOB TITLE: 0.000 E A 0.00

PRX Performance

Cu-prx-112514

PLEASE PAY THIS AMOUNT

Frt/Hndlg >>>>>

Net 30

1613.50 0.00 0.00 0.00 1613.50

Sub-total Insurance **Total**

Terms

E-MAILED CUSTOMER INVOICE

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1613.50

PLEASE EXAMINE THIS ORDER CAREFULLY AND IMMEDIATELY REPORT ANY ERRORS, CHECKING THE FOLLOWING ITEMS: **Style **Color
**Size **Quantity **Pricing **Ship to Address **PO Number **Shipping Method and Instructions

Total due

Sales tax



silkscreen • embroidery • specialties

4628 Mission Boulevard
San Diego, CA 92109

858.483.7076
fax: 858.270.8054

Date

12/4/2014

Invoice #

11484

BILL TO

HYTELE, LLC

ATTN: Judith Sussman

7345 Mission Gorge Rd, Ste E

San Diego, CA 92120

P.O. #

Assault Hats

TERMS Net 30

DUE

12/4/2014

Thank you for your business.

Total

Balance Due

Subtotal

Sales Tax (8.0%)

Payments/Credits

P

E jsussman@hylete.com

Invoice

Qty Item Code Description Color Size Price Each Amount

Embroidery: Assault Logo

Placement: Center Front

24 Hats Flexfit Hats S/M-12,

L/XL-12

Black 16.00 384.00

1 Set-Up Digitizing Set up Fee 75.00 75.00

1 shipping Shipping and Handling Fee 7.50 7.50

\$466.50

\$466.50

\$466.50

\$0.00

\$0.00

HYTELE002-0034

HYTELE002-0034

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HYTELE002-0035
HYTELE002-0035

TRI-LINK APPAREL LIMITED

UNIT B, 6/F, WORLD TECH CENTRE,
95 HOW MING STREET, KWUN TONG,
KOWLOON, HONG KONG.
TEL: (852)2353-6268 FAX: (852) 2325-6177
E-MAIL: info@trivigator.com

COMMERCIAL INVOICE

SOLD TO
HYLETE, LLC
742 GENEVIEVE ST., SUITE P
SOLANA BEACH, CA92075
UNITED STATES

CONSIGNEE: (SHIP TO)
HYLETE, LLC/PROLOG
7345 MISSION GORGE ROAD,
SUITE E, SAN DIEGO, CA 92120
UNITED STATES

PORT OF LOADING XIAMEN, CHINA
INVOICE DATE 24-Oct-14
DEPARTURE DATE 27-Oct-14
BY AIR FLT NO. KE888
TOTAL OF PACKAGES 45 CARTONS

DESTINATION: U.S.A.
INVOICE NO: CI-4257/14
P.O. TI40402
PAYMENT TERM: T/T

QUANTITY	UNIT	STYLE NUMBER	DESCRIPTION OF GOODS	UNIT PRICE/PC	U.S\$	U.S
3551	PCS	HFP1302	WOMEN'S 85% BAMBOO CHARCOAL POLYESTER 15% SPANDEX KNITTED PANTS P.O. NO.: TI40402	12.40	44,032.40	FOB CHINA
					44,032.40	

Manufacturer:
XIAMEN BOUNCE APPAREL INDUSTRY CO.LTD
4/F, JINHE BUILDING,
FIRST INDUSTRIAL ZONE, DIANJIANG,
HULLI DISTRICT, XIAMEN CITY, CHINA, 361006

TOTAL SAY UNITED STATES DOLLARS FORTY FOUR THOUSAND THIRTY TWO AND CENTS FORTY ONLY***
COUNTRY OF ORIGIN: CHINA
FREIGHT COLLECT
THIS SHIPMENT CONTAINS NO SOLID WOOD PACKAGING MATERIALS

Bank Details:
Beneficiary: Tri-link Apparel Limited
Bank Name: Chiyu Banking Corporation Ltd
Bank Address: 78 Des Voeux Road, Central, Hong Kong
Bank Swift Code: CTYUHKHH
A/C No. 039-730-9-204875-5 (US\$)

For used on behalf of
TRI-LINK APPAREL LIMITED
三聯 實業 有限公司



NORMAN KRIEGER, INC.
International Freight Forwarder, Customs Broker & 3PL

1 Civic Plaza Dr. Ste 250 Carson, CA 90745-7987
www.nkinc.com tel 310.668.5700 fax 310.668.5800
OTI 2435 N/F

DELIVERY ORDER

SHIPPER HYLETE LLC 742 GENEVIEVE ST #P & O SOLANA BEACH CA 92075 UNITED STATES	DATE 28-JUL-14	OUR REF NO SLAXAI409969
	THE MERCHANDISE DESCRIBED BELOW WILL BE ENTERED AND FORWARDED AS FOLLOWS	

CARGO FOR THE LIABILITY OF SHIPPER
IT INFO: 20530177523 25-JUL-14

IMPORTING CARRIER NH008 NH	LOCATION * ALL NIPPON AIRWAYS Y264	FROM PORT OF / ORIGIN AIRPORT TSINGTAO; QUINGDAO, CHINA
B/L OR AWB NO 20530177523	ARRIVAL DATE 26-JUL-14	FREE TIME EXP 28-JUL-14
LOCAL DELIVERY OR TRANSFER BY (DELIVERY ORDER ISSUED TO) MIGHTY TRUCKING & SERVICES INC		
CARRIERS LOCAL AGENT NH - ALL NIPPON AIRWAYS COMPANY, LTD	HAWB NO PGL4CA10751	ENTRY NO 175-3123863-6
FOR DELIVERY TO PROLOG C/O HYLETE LLC 7345 MISSION GORGE RD SUITE E SAN DIEGO CA 92120 UNITED STATES	CUST REF NO #A140403; ASN# 1042	FOR DELIVERY AND APPOINTMENT INSTRUCTIONS, CONTACT TEL: +1 (866) 977-6454 BEFORE ATTEMPTING PICK-UP OR DELIVERY OF CARGO

NO OF PKGS.	DESCRIPTION OF ARTICLES, SPECIAL MARKS & EXCEPTIONS	WEIGHT
6 CT	COMPRESSION CROSS TRAINING SHORT	126LB 57KG

CARRIER MUST PRESENT DELIVERY ORDER TO TERMINAL AT TIME OF PICK UP. FAILURE OF CARRIER TO NOTIFY OUR OFFICE OF CARGO BEING DETAINED AT TERMINAL WILL RESULT IN CARRIER BEING RESPONSIBLE FOR ALL DEMURRAGE CHARGES BEING INCURRED.

*6040 AVION DRIVE, LOS ANGELES, CA 90045

DELIVERY ORDER

FREIGHT CHARGES FOR ACCOUNT OF:	PREPAID / COLLECT (P) Norman Krieger, Inc.	Received in Good Order By _____
------------------------------------	---	------------------------------------

ISSUED AS AGENT ONLY
NORMAN KRIEGER, INC. (LOS ANGELES)
1 CIVIC PLAZA DR. STE 250
CARSON CA 90745-7987
TRACEY STAFFELDT



DELIVERY CLERK DELIVER TO
CARRIER SHOWN ABOVE

CARRIER MUST RETURN ONE SIGNED COPY OF DELIVERY ORDER AS PROOF OF DELIVERY TO Norman Krieger, Inc. FOR PAYMENT AND RELEASE



NORMAN KRIEGER, INC.
International Freight Forwarder, Customs Broker & 3PL

1 Civic Plaza Dr. Ste 250 Carson, CA 90745-7987
www.nkinc.com tel 310.668.5700 fax 310.668.5800
OTI 2435 N/F

Authority To Make Entry Page 1 of 1

SHIPMENT DETAILS		PRINTED BY: Gisele Aldrete	
CONSIGNEE HYTELE LLC 742 GENEVIEVE ST #P & O SOLANA BEACH CA 92075 UNITED STATES Phone: +1 (858) 225-7185 Fax:		IMPORT BROKER NORMAN KRIEGER, INC. (LOS ANGELES) 1 CIVIC PLAZA DR. STE 250 CARSON CA 90745 UNITED STATES Phone: +1 (310) 668-5700 Fax: +1 (310) 668-5800	
MERCHANDISE IMPORTED AT Los Angeles, United States		IMPORT DATE 26-Jul-14 00:00	
GOODS DESCRIPTION COMPRESSION CROSS TRAINING SHORT			
PACKAGES 6 CTN (OUTER), 0 CTN (INNER)	WEIGHT 57.000 KG	VOLUME	CHARGEABLE 57.000 KG
ORDER NUMBERS / REFERENCE	MAWB 20530177523	HAWB PGL4CA10751	
INBOND TRANSIT (IT) NUMBER IT 20530177523	IT DATE 25-Jul-14	ISSUE DATE SFO-2801	
FIRMS CODE Y264	COMMODITY TYPE GEN (General)		
FREIGHT LOCATION ALL NIPPON AIRWAYS 6040 AVION DRIVE LOS ANGELES CA 90045 UNITED STATES			
ROUTING INFORMATION			
Mode	Flight / Date	ETD	ETA
AIR	NH008 / 25-Jul	25-Jul-14	25-Jul-14
AIR	QF1639 / 26-Jul	26-Jul-14	26-Jul-14

TOTAL AMOUNT DUE TO: _____

STORAGE STARTS: _____

ALL STORAGE CHARGES ARE TO BE BILLED DIRECTLY TO THE ULTIMATE CONSIGNEE OR BROKER.

WE, NORMAN KRIEGER, INC. (LOS ANGELES), THE CONSIGNEE OF THE ABOVE MENTIONED HAWB COVERING MERCHANDISE FOR VARIOUS ULTIMATE CONSIGNEES, HEREBY AUTHORIZE NORMAN KRIEGER, INC. (LOS ANGELES) TO MAKE CUSTOMS ENTRY AND TAKE DELIVERY FOR THE ABOVE DESCRIBED MERCHANDISE.

NORMAN KRIEGER, INC. (LOS ANGELES)


ATTORNEY IN FACT

CONFIRMED

PLEASE BILL ANY STORAGE CHARGES DUE TO THE ULTIMATE CONSIGNEE TO WHOM THE FREIGHT IS RELEASED

END OF DOCUMENT

BOX 54

DEPARTMENT OF HOMELAND SECURITY
U.S. Customs and Border Protection

Page 1 of 1
Filer Code: 175

ENTRY/IMMEDIATE DELIVERY

ABI Certified

19 CFR 142.3, 142.16, 142.22, 142.24
NORMAN KRIEGER, INC. (LOS ANGELES)
1 CIVIC PLAZA DR. STE 250, CARSON, CA 90745
PHONE: +1 (310) 668-5700 FAX: +1 (310) 668-5800

CST# 742
Form Approved
OMB No. 1651-0024
Exp. 03-31-2015

Paperless Entry
AMS Air Carrier/CFS Notified

1. ARRIVAL DATE 07/26/14	2. ELECTED ENTRY DATE 07/28/2014	3. ENTRY TYPE CODE/NAME 01 Consumption-Free and Du	4. ENTRY NUMBER 175-3123863-6
5. PORT 2720	6. SINGLE TRANS. BOND	7. BROKER/IMPORTER FILE NUMBER SLAXAI409969/PO# A140403; ASN# 104227	
8. CONSIGNEE NUMBER 45-522052400		9. IMPORTER NUMBER 45-522052400	
10. ULTIMATE CONSIGNEE NAME HYTELE LLC 742 GENEVIEVE ST /#P & O SOLANA BEACH CA 92075 US		11. IMPORTER OF RECORD NAME HYTELE LLC 742 GENEVIEVE ST /#P & O SOLANA BEACH CA 92075 US	
12. CARRIER CODE NH	13. VOYAGE/FLIGHT/TRIP NH008	14. LOCATION OF GOODS-CODE(S)/NAME(S) Y264 ALL NIPPON AIRWAYS 6040 AVION DRIVE LOS ANGELES CA 90045	
15. VESSEL CODE/NAME	16. U.S. PORT OF UNLADING 2801	17. MANIFEST NUMBER	18. G.O. NUMBER
19. TOTAL VALUE 1,089			
20. DESCRIPTION OF MERCHANDISE COMPRESSION CROSS TRAINING SHORT			
21. IT/BL/AWB CODE	22. IT/BL/AWB NO.	23. MANIFEST QUANTITY	24. H.S. NUMBER
I	20530177523		6103431550
M	20530177523		CN
H	PGL4CA10751	6 CT	CNALPCO7QIN

27. CERTIFICATION		28. CBP USE ONLY	
I hereby make application for entry/immediate delivery. I certify that the above information is accurate, the bond is sufficient, valid, and current, and that all requirements of 19 CFR Part 142 have been met. SIGNATURE OF APPLICANT NORMAN KRIEGER, INC. (LOS ANGELES) <i>X Jee</i> ATTY-IN-FACT PHONE NO. +1 (310) 668-5700 FAX: +1 (310) 668-5800 DATE 07/28/14 29. BROKER OR OTHER GOVT. AGENCY USE Examination Site: Y264 ALL NIPPON AIRWAYS		<input type="checkbox"/> OTHER AGENCY ACTION REQUIRED, NAMELY: <input type="checkbox"/> CBP EXAMINATION REQUIRED. <input type="checkbox"/> ENTRY REJECTED, BECAUSE:	
DELIVERY AUTHORIZED:		SIGNATURE	DATE
ELECTRONIC ENTRY RELEASE NOTIFICATION. PORT OF 2720. I certify that proper release for this cargo has been received from U.S. Customs. Release Date: 07/28/14 12:56 NORMAN KRIEGER, INC. (LOS ANGELES) Signature: <i>Jee</i>			

Paperwork Reduction Act Statement: An agency may not conduct or sponsor an information collection and a person is not required to respond to this information unless it displays a current valid OMB control number and an expiration date. The control number for this collection is 1651-0024. The estimated average time to complete this application is 15 minutes. If you have any comments regarding the burden estimate you can write to U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW., Washington DC 20229.

CBP Form 3461 (10/09)

HYTELE002-0039
HYTELE002-0039

 HYLETE			V14 030 1		Vendor:	VUGA, Inc.				S H I P T O :	HYLETE , LLC/Pr oLog				
		HYLETE, LLC				1651 Leora Lane					7345 Missio n Gorge Road				
		742 Genevieve St. Suite P				Leucadia, CA 92024					Suite E				
		Solana Beach, CA 920 75				(760)822 -8366					San Diego, CA 92120				
		1- 858- 225- 718 5				engelchris9@gmail.com					Phone: 866- 977- 6454				
		Ship Date:	6/1 /20 14												
		ASN	102 860												
Gender	Category	Item Description	Style	SKU#	Color	Embellishment	Size	(these columns generate Code 39 barcode)			Code39	QTY	Est. Unit Price	Sub Total (\$)	

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												(\$)		
uni sex	bags	bags - cross-training convertible backpack 2.0--Black-Stealth Black-OSFM	cross-training convertible backpack 2.0	HUG6 2BKSB OS	Black	Stealth Black	OSFM	*	*	*HUG6 2BKSB OS*	*HUG6 2BKSB OS*	1250	4488	56,100.00
uni sex	bags	bags - cross-training convertible backpack 2.0--Black-Gun Metal-OSFM	cross-training convertible backpack 2.0	HUG6 2BKG MOS	Black	Gun Metal	OSFM	*	*	*HUG6 2BKG MOS*	*HUG6 2BKG MOS*	1250	4488	56,100.00
uni sex	bags	bags - cross-training convertible backpack 2.0--Black-Gun Metal-OSFM	cross-training convertible backpack 2.0	HUG6 2BKN GOS	Black	Neon Green	OSFM	*	*	*HUG6 2BKNG OS*	*HUG6 2BKNG OS*	500	4488	22,440.00

		con verti ble back pack 2.0-- Blac k- Neo n Gre en- OSF M	ible bac kpa ck 2.0											
										Duty:	30 00	7. 9 0	23,7 00.0 0	
										Ocean Freight :	30 00	3. 5 0	10,5 00.0 0	
										Total	30 00		\$ 168, 840. 00	
Notes:		1. Individual Polybag with sticker on each containing: Item Description, Size, PO#, SKU#, and Code 39 Barcode for SKU# (Column K)												
		2. Master Carton labeled with Item Descriptions, Size, SKU#, Quantity per SKU#, and ASN# (no Barcodes)										50 % De po sit:	\$67, 320. 00	
		3. Place PO# and ASN# on EACH Master Carton												
		50% deposit to be issued on FOB product cost only. Remaining PO balance, duties, freight cost to be paid upon delivery.												

		PO#	V14																	
		:	030																	
			1																	
		ASN	102																	
		#: 	860																	

SALES ORDER

PO/Ref #: IP140501/DRAWST

Job #: 202278

Date: 05/27/14

IP Advertising & Promotions

4525 South 2300 East

Holladay, UT 84117

Phone: 8018247375 Fax: 8017637839

Email: Jkingcook@gmail.com

Bill To:

Hylete

Ron Wilson

742 Geneive St.

Suite P

Solana Beach, CA 92075

Phone: 858-539-5091

Email: rwilson@hylete.com

Ship To:

Hylete

Peter Dirksing/PBD Receiving

905 Carlow Drive, Unit B

Bolingbrook, IL 60490

USA

Email: pdirksing@hylete.com

Salesperson Ship Via Ship Date Payment Terms

Jared Cook

Qty Item # Description Unit Price Ext. Price

22000 drawstring bag NASM drawstring bag-Hangtag and Postcard attached. Polybagged with desciccant pouch

Color: Gunmetal/Cool Gray 11C (match fabric swatch) Size: Exact size as sample provided Imprint: Hylete and additional logo-pantone 877C same as sample provided

\$5.12 \$112,640.00

Subtotal \$112,640.00

S&H TBD

Tax EXEMPT

Total \$112,640.00

Sales Order PO/Ref #IP140501/DRAWST Printed 9/28/2014 10:56:43 PM

Doc ID: 1706683

Bill To:

**HYLETE,
550 Steven
Solana Bea**

HYLETE002-0043
HYLETE002-0043

1-858-225-'

Atten:

PETER DIR

NO:	DESCRIP'
1	WB01HLT BACK GR
2	WB01HLT BACK GR
3	WB01HLT BACK GR
4	WB01HLT BACK GR
5	WB01HLT BACK GR
6	WB01HLT BACK GR

TOTAL SAY: US DOLLARS SIX TEEN THOUSAND TWO HUNDRED TWENTY AND NO CENTS ONLY

Remaining balance will be due net 7 days after shipment has been delivered to Hylete warehouse. There might be additional trucking charges from L.A. to San Diego, this will be determined once it arrives in Long Beach Port. Thank you very much for your business!

BAI



BANKING INFORMATION:

Citibank NA

Acct. No: 202917191

Swift Code: CITIUS33

Routing No. 322271724

Address: 20520 Devonshire St

Chatsworth,
1-818-700-5



**804 N. Twin Oaks Valley Rd. # 117 , San Marcos Ca.
92069**

Invoice

Invoice #: 00013316

Bill To: Hylete LLC

742 Genevieve Street, Suite P

Solana Beach, CA 92075

Ship To:

Hylete LLC

742 Genevieve Street, Suite P

Solana Beach, CA 92075

SALESPERSON

Linda Callahan

YOUR NO.

CCC140901

SHIP VIA

Drop

SHIP DATE

9/30/14

TERMS

Prepaid

DATE

10/3/14

QTY. ITEM NO. DESCRIPTION PRICE EXTENDED

858-225-7185

HYTELE002-0046

HYTELE002-0046

SALE AMT.
FREIGHT
SALES TAX
TOTAL AMT.
PAID TODAY
BALANCE DUE
550 mailers 20 x 12 x 8, 200B, diecut mailer wi/DF
& CL floodcoated black/outside w 1
color overprint & 1 color print on side
lid - no floodcoating - P/N410398
\$5.82 \$3,201.00
1 Die Die \$648.00 \$648.00
1 Plate Printing Plates, mounted for outside &
loose for inside
\$750.00 \$750.00
1 Ink Custom ink kit charge \$450.00 \$450.00
\$5,049.00
\$0.00
\$0.00
\$5,049.00
\$5,049.00

\$0.00

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HYTELE002-0048
HYTELE002-0048

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HYTELE002-0049
HYTELE002-0049

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Customer	Company	Address	Phone	Email	Overdue Invoices Total	Open Invoices Total	Unbilled Time & Costs Total	Estimates Total
13 Stripes, LLC	13 Stripes, LLC	5819 linglestow n road, Harrisburg , PA 17112, USA	(717) 639- 5822	jeremy@13stripescrossfit.co m	0.00	0.00	0.00	0.00
160th Special Ops	160th Special Ops	6521 36th Ln Se, Lacey, WA 98503, USA	(334) 714- 4670	kaplan.matthew@gmail.com	0.00	0.00	0.00	0.00
306 Rescue Squadron 360 Sports Products	306 Rescue Squadron	5020 E. Arizola St Bldg 1631, Davis- Monthan AFB, Tucson, AZ 85707, USA	(520) 228- 7807	julio.asensiobeniquez.8@us. af.mil	0.00	0.00	0.00	0.00
58 ERQS	58 ERQS	214 Turnberry Dr., Covington, LA 70433, USA		dominic.luke@us.af.mil	0.00	0.00	0.00	0.00
Ambition Athletics	Ambition Athletics	613 Westlake St., Encinitas, CA 92024, USA	(760) 532- 3502	Mbaltren@gmail.com	0.00	0.00	0.00	0.00
BB3 Personal Training & Performance Center	BB3 Personal Training & Performance Center	PO Box 413, Reistersto wn, MD 21136, USA	(954) 424- 8584	teambb3@live.com	0.00	0.00	0.00	0.00
Bella Body Boutique	Bella Body Boutique	2670 Via de la Valle C260, Del Mar, CA 92104, USA		info@bellabodyboutique.com	0.00	0.00	0.00	0.00
Beugelmans, PLLC Bkofamerica Mobile	Beugelmans, PLLC	80 Broad Street Suite 1302, New York, NY 10004, USA	(646) 350- 0049	jstepanian@beugelmans.co m	0.00	0.00	0.00	0.00
Black Box Fitness	Black Box Fitness	4201 Yale Blvd NE Suite I, Albuquerq ue, NM 87107	(505) 620- 5010	jessie@blackboxfitnessnm.c om	0.00	0.00	0.00	0.00

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Bomani Strength LLC	Bomani Strength LLC	15107 Clifton Blvd #1, Lakewood, OH 44107	(440) 334-7234	amandastanzo@gmail.com	0.00	0.00	0.00	0.00
boxfreak	boxfreak	2949 g st, Merced, CA 95340, USA	(209) 383-4426	pete@boxfreak.com	0.00	0.00	0.00	0.00
Calgary Board of Education	Calgary Board of Education	10951 Hidden Valley Dr., Calgary, Alberta T3A6J2	(403) 837-4727	mikedmaher@gmail.com	0.00	0.00	0.00	0.00
CF BWI	CF BWI	404 Via Los Tilos San Clemente, San Clemente, CA 92673, USA	(949) 212-7750	john@crossfitbwi.com	0.00	0.00	0.00	0.00
CF Response	CrossFit Response	25 Biggs Drive, Riverview, New-Brunswick E1B 3H5, Canada	(506) 866-8809	jgodin@crossfitresponse.ca	0.00	0.00	0.00	0.00
CF Westerville LLC	CF Westerville LLC	Flicker Dr., Columbus, OH 43230, USA	(614) 440-4749	alex@crossfitwesterville.com	0.00	0.00	0.00	0.00
CircleUp				tericamessmer@ymail.com	0.00	0.00	0.00	0.00
Cole-Frieman & Mallon LLP	Cole-Frieman & Mallon LLP	One Sansome St. Suite 1895, San Francisco, CA 94104, USA	(415) 762-2847	akatz@colefrieman.com	0.00	0.00	0.00	0.00
Columbus Weightlifting	Columbus Weightlifting	5040 Nike Drive, Suite D Hilliard, OH 43026	(614) 832-2757	chelsea@columbusweightlifting.org	0.00	0.00	0.00	0.00
Comal CrossFit	Comal CrossFit	1345 Palmetto Pt., Spring Branch, TX 78070, USA	(830) 822-2737	brandonbonser@comalcrossfit.com	0.00	0.00	0.00	0.00
Concept 2	Concept 2	105 Industrial Park Dr., Morrisville, VT 05661, USA	(877) 887-8467	tracyd@concept2.com	0.00	0.00	0.00	0.00
Cross Fit Salt Lake	Cross Fit Salt Lake	12162 Business Park Dr. BLDG 2, WHS #114, Draper, UT 84020, USA	(801) 808-2569	zach@crossfit.com	0.00	0.00	0.00	0.00

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CrossFit 290	CrossFit 290	15607 Hermitage Oaks, Tomball, TX 77377, USA	(713) 922- 2711	tommy@ixfit.net	0.00	0.00	0.00	0.00
CrossFit 405	CrossFit 405	1012 Renita Way, Moore, OK 73160 3042 Barranca Dr, Pittsburg, PA 94565, USA	(405) 410- 2593	aaron@crossfit405.com	0.00	0.00	0.00	0.00
CrossFit 777	CrossFit 777	335 E. T St., Benecia, CA 94510, USA	(925) 605- 6000	david@crossfit777.com	0.00	0.00	0.00	0.00
CrossFit Adventure	CrossFit Adventure	, Akron, OH 44333, USA	(510) 681- 5370	nathan@crossfitadventure.com josh@crossfitakron.com, ben@functionalfitnesslabs.com	0.00	0.00	0.00	0.00
CrossFit Akron	CrossFit Akron	2640 S. Faulkenbu rg Road, Riverview, FL 33579, USA	(330) 664- 9671		0.00	0.00	0.00	0.00
CrossFit BNI	CrossFit BNI	1115 Delaware Ave Unit 2A, Buffalo, NY 14209 29 Edwards Ct., Burlingam e, CA	(813) 404- 7006	mike@crossfitBNI.com	0.00	0.00	0.00	0.00
CrossFit Buffalo	CrossFit Buffalo	94010, USA	(716) 583- 1011	mpaulson@hylete.com	0.00	0.00	0.00	0.00
Crossfit Burlingame	Crossfit Burlingame	216 Cougar Point Rd, Canmore, Alberta T1W 29Y, Canada	(415) 244- 3954	james@crossfitburlingame.com	0.00	0.00	0.00	0.00
CrossFit Canmore	CrossFit Canmore	6451 E. Shea, Scottsdale , AZ	(403) 707- 9336	admin@crossfitcanmore.com	0.00	0.00	0.00	0.00
CrossFit Chaparral	CrossFit Chaparral	85254, usa Unit 20, 25-33 Alfred Road, Chipping Norton, NSW	(480) 991- 9878	nick@crossfitchaparral.com	0.00	0.00	0.00	0.00
CrossFit Chipping Norton	CrossFit Chipping Norton	2170, Australia 3804	+6141582 6116	scott@crossfitchippingnorton.com	0.00	0.00	0.00	0.00
CrossFit CLE	CrossFit CLE	Franklin Blvd	(330) 550- 6812	daugherty.adam@gmail.com	0.00	0.00	0.00	0.00

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CrossFit Consular	CrossFit Consular	Unit 3, Cleveland, OH 44113 884 Division Street 105, Cobourg, Ontario K9A 5V3, USA 4759 Alexander Road, Atwater, OH 44201, USA 6841 Collamer Road, East Syracuse, NY 13057, USA PO Box 2208, Taylor, Michigan 48180, USA 13209 Getty Ln., Clarksburg , MD 20871, USA 120 Window LN, Elizabethtown, KY 42701, USA 5040 Nike Dr Unit D, Hilliard, OH 43026, USA 3443 Ramona Ave. Ste 21, Sacramento, CA 95826, USA 829 Lawrence Dr. Suite 2, Fort Wayne, IN 46804, USA 659 Queen Street, Fredericton, NB	(905) 396-1697	jamie@crossfitconsurgo.com	0.00	0.00	0.00	0.00
CrossFit Deterrence	CrossFit Deterrence		(330) 257-1976	crossfitdeterrence@gmail.com	0.00	0.00	0.00	0.00
CrossFit Dewitt Strength & Conditioning, LLC	CrossFit Dewitt Strength & Conditioning, LLC		(315) 751-4441	dewittcrossfit@gmail.com	0.00	0.00	0.00	0.00
CrossFit Down River	CrossFit Down River		(313) 820-3341	fxplosion@gmail.com, josephalberga@yahoo.com	0.00	0.00	0.00	0.00
CrossFit DTR	CrossFit DTR		(301) 755-4645	tai@crossfitdtr.com, danielle@crossfitdtr.com	0.00	0.00	0.00	0.00
CrossFit Elizabethtown	CrossFit Elizabethtown		(270) 401-6548	tdavis@bluegrasstank.com, watts@crossfitelizabethtown.com	0.00	0.00	0.00	0.00
CrossFit Endeavor	CrossFit Endeavor		(614) 219-9225	aaron@endeavordcf.com	0.00	0.00	0.00	0.00
CrossFit Envy	CrossFit Envy		(916) 747-2411	jkhasleton@gmail.com	0.00	0.00	0.00	0.00
CrossFit Fort Wayne	CrossFit Fort Wayne		(260) 444-5722	sophia@crossfitfortwayne.com	0.00	0.00	0.00	0.00
CrossFit Fredericton	CrossFit Fredericton		(506) 450-5587	anthony@crossfitfredericton.com	0.00	0.00	0.00	0.00

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CrossFit Gamma	CrossFit Gamma	E3B1C3, Canada 26 Northeast Drive, Hershey, PA 17033 2800 Peninsula Road Apt. 206, Oxnard, CA 93035, USA 19635		kerijenkins324@gmail.com	0.00	0.00	0.00	0.00
CrossFit Gravis	CrossFit Gravis	Hwy 59N, Humble, TX 77338, USA 1497 Miloiki Street, Honolulu, HI 96825, USA 1084	(805) 824- 1322	jay@crossfitgravis.com	0.00	0.00	0.00	0.00
CrossFit Haste	CrossFit Haste	Forest Lake Drive, Chula Vista, CA 91915, USA 3746 6th Ave, San Diego, CA 92103, USA 1983 w 680 n #5, Pleasant Grove, UT 84062, USA 5209	(281) 724- 3061	troy@cfhaste.com	0.00	0.00	0.00	0.00
CrossFit Hawaii	Hardass Fitness LLC	Ebright Rd, Canal Winchester, OH 43110, usa 10441	(808) 741- 7292	kimo@hardassfitness.com, taffyandkimo@yahoo.com	0.00	0.00	0.00	0.00
CrossFit Heroism	CrossFit Heroism	Blockade Dr., Reno, NV 89521, USA 3715 W. 85th TERR, Prairie Village, Kansas 66206, USA 77	(407) 222- 7017	crossfitheroism@gmail.com	0.00	0.00	0.00	0.00
CrossFit Hillcrest	CrossFit Hillcrest	Kingspoint e Parkway, Parkway, USA 2668	(734) 306- 2266	doug@crossfithillcrest.com	0.00	0.00	0.00	0.00
CrossFit Hyperion	CrossFit Hyperion		(801) 372- 0323	crossfithyperion@gmail.com	0.00	0.00	0.00	0.00
CrossFit IFM	CrossFit IFM		(419) 631- 4549	crossfitifm@gmail.com	0.00	0.00	0.00	0.00
CrossFit Initiative	CrossFit Initiative		(775) 848- 4786	soupha@crossfitinitiative.com	0.00	0.00	0.00	0.00
CrossFit Kansas City	CrossFit Kansas City		(913) 940- 2668	coach.rut@gmail.com	0.00	0.00	0.00	0.00
CrossFit Kings Point	CrossFit Kings Point		(407) 286- 2671	jimmy@crossfitkingspoint.com	0.00	0.00	0.00	0.00

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Crossfit Lakeland	Crossfit Lakeland	Orlando, FL 32819 4970 Foxrun Lane, Lakeland, CA 33813, USA 5157 Quitman St., Denver, CO 80212, USA 5757	(863) 327-5913	mike.knaisch@goruck.com	0.00	0.00	0.00	0.00
Crossfit Lodo	Crossfit Lodo	Manatee Ave. W., Bradenton, FL 34209, USA 1377 Donna Ct., Merced, CA 95340, USA	(303) 946-1721	ryan@crossfitlodo.com	0.00	0.00	0.00	0.00
Crossfit Manatee	Crossfit Manatee	USA 6780	(941) 545-8074	Lucas@Crossfitmanatee.com	0.00	0.00	0.00	0.00
CrossFit Merced	CrossFit Merced		(626) 513-6780	crossfitmerced@gmail.com	0.00	0.00	0.00	0.00
Crossfit Misc.					0.00	0.00	0.00	0.00
CrossFit Muskego	CrossFit Muskego	W184 S8408 Challenger Drive, Muskego, WI 53150, USA 4782 Duckhorn Drive, Sacramento, CA 95834, USA 701 Schoolgate Rd, New Lenox, IL 60451, USA 440 W. Rawson Ave, Oak Creek, WI 53154, USA 606 S. Clinton St., Baltimore, MD 21224, USA 3000 Opportunity Ct. Suite D, South Daytona, FL 32119, USA 1016 Blackthorn Cove, Ft. Wayne, IN		jay@crossfitmuskego.com	0.00	0.00	0.00	0.00
CrossFit Natomas	CrossFit Natomas		(916) 802-6977	coach@crossfitnatomas.com	0.00	0.00	0.00	0.00
CrossFit New Lenox	CrossFit New Lenox		(815) 474-3221	jared.bjorgo@gmail.com	0.00	0.00	0.00	0.00
CrossFit Oak Creek	CrossFit Oak Creek		(414) 364-3869	crossfitoc@gmail.com	0.00	0.00	0.00	0.00
CrossFit PCR	CrossFit PCR		(240) 339-3268	bronson@crossfitpcr.com	0.00	0.00	0.00	0.00
CrossFit Port Orange	CrossFit Port Orange		(386) 212-8983	kyle@crossfit-portorange.com	0.00	0.00	0.00	0.00
CrossFit Praus	CrossFit Praus		(260) 410-4287	shane@crossfitpraus.com	0.00	0.00	0.00	0.00

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CrossFit Sandy	CrossFit Sandy	46804, USA 10228 Buttercup Drive, Sandy, UT 84092, USA 4039 Bumper Circle, San Diego, CA	(801) 864- 9400	dave@crossfitsandy.com	0.00	0.00	0.00	0.00
CrossFit SoCal	CrossFit SoCal	92124, USA 1029 N Institute St, Colorado Springs, CO 80903, USA 316 Wyndham Drive, Gray, TN	(314) 570- 8303	sarah@crossfitsocal.com	0.00	0.00	0.00	0.00
CrossFit SoCo	CrossFit SoCo	37615, USA 1 Madison St. Bldg D, East Rutherford , NJ 07073, USA 3030 Erie Blvd E, Syracuse, NY 13224, USA 355 West Chestnut Street Apt 205, Lancaster, PA 17603, USA 376 Commerce Loop, Orem, UT	(719) 233- 2697	crossfitsoco@gmail.com	0.00	0.00	0.00	0.00
CrossFit Stacked	CrossFit Stacked	84058, USA 1100 Exploratio n Way Ste 302 E, Hampton, VA 23666, USA 3877 Pell Place Unit 105, San Diego, CA	(828) 719- 1878	lw74579@gmail.com	0.00	0.00	0.00	0.00
CrossFit Steam	CrossFit Steam	(619) 847- 8793	(201) 446- 2034	patrickdokeefe@gmail.com	0.00	0.00	0.00	0.00
CrossFit Syracuse	CrossFit Syracuse	(319) 299- 7470	(319) 299- 7470	ellen@crossfitsyracuse.com	0.00	0.00	0.00	0.00
CrossFit Trinium	CrossFit Trinium	(717) 799- 4211	(717) 799- 4211	chadhake@yahoo.com	0.00	0.00	0.00	0.00
CrossFit Utah Valley Inc	CrossFit Utah Valley Inc	(801) 900- 3480	(801) 900- 3480	brandywann@gmail.com	0.00	0.00	0.00	0.00
Crossrope	Crossrope, LLC	(904) 589- 1351	(904) 589- 1351	dave@crossrope.com	0.00	0.00	0.00	0.00
DB Strength deductbodya ction	DB Strength	(619) 847- 8793	(619) 847- 8793	dougalz@yahoo.com	0.00	0.00	0.00	0.00
Drench Fitness	Drench Fitness	2343 N Cramer St,	(414) 313- 1638	djcartledge9@hotmail.com	0.00	0.00	0.00	0.00

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E282 L148 FDNY	E282 L148 FDNY	Milwaukee , WI 53211 28 Bartlett Ave., Staten Island, NY 10312, USA	(917) 952- 6738	adsimoncini@aol.com	0.00	0.00	0.00	0.00
Elkhart Brass	Elkhart Brass	P.O. Box 1127, South Bend, IN 46514, USA	(920) 202- 2108	jbaker@elkhartbrass.com	0.00	0.00	0.00	0.00
Epic Series Event Sales	Epic Series	Tourmaline St, San Diego, CA 92109, usa	(858) 344- 8471	tim@epicseries.co	0.00	0.00	0.00	0.00
EVF Performance Experticity Inc Des Experticity-C	EVF Performanc e	1623 York Avenue, New York, NY 10028, USA	(212) 288- 8045	allie@evfperformance.com	0.00	0.00	0.00	0.00
Fit Athletic	Fit Athletic	350 10th Ave. Suite 200, San Diego, CA 92101, USA	(858) 792- 4008	jfelix@fitathletic.com	0.00	0.00	0.00	0.00
Fitness Anywhere, LLC (TRX)	Fitness Anywhere, LLC (TRX)	755 Sansome Street Unit 600, San Francisco, CA 94111, USA		mpaulson@hylete.com	0.00	0.00	0.00	0.00
Flagship Crossfit	Flagship Crossfit	250 Montgome ry Street Suite 150, San Francisco, CA 94104, USA	(415) 407- 0157	ryan@flagshipcrossfit.com	0.00	0.00	0.00	0.00
Focus Climbing Center	Focus Climbing Center	2150 W Broadway Rd #103, Mesa, AZ 85202, USA	(602) 617- 7370	Coachjoe@cox.net	0.00	0.00	0.00	0.00
Futurist Climbing Consultants	Futurist Climbing Consultants	428 Sycamore St NE, Albuquerq ue, NM 87106, USA	(505) 331- 8727	info@timyfairfield.com	0.00	0.00	0.00	0.00
Gardens Crossfit	Gardens Crossfit	4098 PGA BLVD, Palm Beach	(561) 630- 3118	leejarcure@gmail.com	0.00	0.00	0.00	0.00

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Gladiator	Gladiator Events	Gardens, FL 33410, USA 7743 Woodrow Wilson Drive, Los Angeles, CA 90046, USA 4657 Bay Summit		michelle@gladiatorrocknrun.com, dan@gladiatorrocknrun.com	0.00	0.00	0.00	0.00
Gladiator Strength & Conditioning	Gladiator Strength & Conditioning	Place, San Diego, CA 92117, usa 3501 Northwest Parkway, Dallas, TX 75225 3847 12th St., Sacramento, CA 92037, USA	(717) 965-2007	nathansmall3864@yahoo.com	0.00	0.00	0.00	0.00
Gold's Gym	Gold's Gym	Northwest Parkway, Dallas, TX 75225 3847 12th St., Sacramento, CA 92037, USA	(972) 757-0600	acave@goldsgym.com	0.00	0.00	0.00	0.00
Good Times CrossFit	Good Times CrossFit	Ivanhoe Avenue Suite 200, La Jolla, CA 92037, USA	(916) 417-2128	ericbotsford@hotmail.com	0.00	0.00	0.00	0.00
GovX, Inc.	GovX, Inc.	938 Clark Ave. #87, Mountain View, CA 94040, USA		invoices@govx.com	0.00	0.00	0.00	0.00
Hassle-Free BBC	Hassle-Free BBC	808 Wilshire Blvd., Santa Monica, CA 90401, USA	(415) 290-4907	k_p_doherty@yahoo.com	0.00	0.00	0.00	0.00
Honolulu Club	Honolulu Club	2572 Drexel Way, Sparks, NV 89434, USA	(808) 397-3280	jnetterville@honoluluclub.com	0.00	0.00	0.00	0.00
Human Performance Project	Human Performance Project	10098 E. Evans Drive, Scottsdale, AZ 85260	(775) 737-3819	robbie.hpproject@gmail.com	0.00	0.00	0.00	0.00
Innovative Fitness Solutions	Innovative Fitness Solutions	76 Greenfield Ave, Ballston Spa, NY 12020, USA	(602) 717-2197	jessica@ultimatesandbagtraining.com	0.00	0.00	0.00	0.00
International Society of Clinical Rehab Specialist	International Society of Clinical Rehab Specialist	500 Kwanzan Circle, Orem, UT 84058, USA	(518) 928-0889	jbrowndc@gmail.com	0.00	0.00	0.00	0.00
IronWorx	IronWorx			bruce.roberts75@gmail.com	0.00	0.00	0.00	0.00

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James River CrossFit	James River CrossFit	1105 Buckingham Station Dr Apt 3A, Midlothian, VA 23113, USA	(804) 304-9808	info@jamesrivercrossfit.com	0.00	0.00	0.00	0.00
Jason Feinstein	Crossfit Scioto	1203 Lake Shore Dr Unit B, Columbus, OH 43204, USA	(614) 747-3367	Jason@crossfitscioto.com	0.00	0.00	0.00	0.00
Jean-Luc Godin	CrossFit Response	35 Ritchie Road, Upper Coverdale, NB E1j1V2, Canada		metfit77@gmail.com	0.00	0.00	0.00	0.00
JK Conditioning	JK Conditioning	22 Kenna's Hill. #116, St. John's, Newfoundland.	(604) 525-1459	jonerikkawamoto@gmail.com	0.00	0.00	0.00	0.00
Juan Houlgin		A1A1H9., Canada PO BOX 6037, El Paso, TX 79906, USA		juan.holguin@dhs.gov	0.00	0.00	0.00	0.00
Juggernaut Training Systems	Juggernaut Training Systems	46 Sycamore Creek, Irvine, CA 92603	(949) 533-8499	cwesleysmith@yahoo.com	0.00	0.00	0.00	0.00
Kazakhstan Kristian Vrecic					0.00	0.00	0.00	0.00
Legendary Competitor	Legendary Competitor			lamarr@legendarycompetitor.com	0.00	0.00	0.00	0.00
Lex Gillette	Lex Gillette	2800 Olympic Parkway, Chula Vista, CA 91915		lex@lexgillette.com	0.00	0.00	0.00	0.00
Life Time Fitness, Inc.	Life Time Fitness, Inc.	2902 Corporate Place, Chanhasseen, MN 55317, USA	(952) 229-7109	apinvoices@lifetimefitness.com	0.00	0.00	0.00	0.00
Lifecore Fitness	Lifecore Fitness/Adult Fitness	2575 Pioneer Ave Suite 101, Vista, CA 92081, USA	(760) 599-4555	traci@lifecorefitness.com	0.00	0.00	0.00	0.00
Ludo Fitness LLC	Ludo Fitness LLC	7101 Easy Wind Dr. #3116, Austin, TX	(512) 940-1543	conner@ludofitness.com	0.00	0.00	0.00	0.00

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Lumberyard	Lumberyard	78752, USA 348 Meadow Ct, Brea, CA 92821, usa Aleja Jerzego Waszynglo na 37/4, Warszawa , Nie dtyczy 04- 015, Poland	(714) 457- 2457	reid.worthington@gmail.com	0.00	0.00	0.00	0.00
Mar-Cross MARIUSZ POGORZEL SKI Merchant eSolutions	Mar-Cross			mariusz.mar7@wp.pl	0.00	0.00	0.00	0.00
					0.00	0.00	0.00	0.00
					0.00	0.00	0.00	0.00
Movement Minneapolis	Movement Minneapolis	2100 Lyndale Ave S, Minneapolis, MN 55405 1512 Howe Ave Suite A, Sacrament o, CA 95825, USA 1750 E. Northrop Blvd. Suite 200, Chandler, AZ 85286, USA 11161	(507) 358- 1445	david@movementminneapolis.com	0.00	0.00	0.00	0.00
MVMNT Athletics LLC	MVMNT Athletics LLC	Overbrook Road, Leawood, KS 66211 PO Box 19238, Portland, OR 97280, USA 605 E. Robinson suite 635, Orlando, FL 32801, usa 2446 trident way, San Diego, ca 92155, usa 7752 Warner Ave, Huntington Beach, CA 92647	(916) 564- 5700	saturdaynightcrossfit@gmail.com	0.00	0.00	0.00	0.00
NASM Events National Academy of Sports Medicine (NASM)	NASM National Academy of Sports Medicine (NASM)		(602) 383- 1200	ruth.chiu@nasm.org	0.00	0.00	0.00	0.00
Naval Special Warfare Command	Naval Special Warfare Command		(602) 383- 1285	mike.fantigrassi@nasm.org	0.00	0.00	0.00	0.00
Naval Special Warfare Command	Naval Special Warfare Command		(619) 537- 2383	nicholas.lovasz@navsoc.socom.mil	0.00	0.00	0.00	0.00
Net Profit Explosion (NPE)	Net Profit Explosion (NPE)		(888) 866- 4998	cristina@netprofitexplosion.com	0.00	0.00	0.00	0.00
NSW	Naval Special Warfare			Lester.Tune@navsoc.socom.mil	0.00	0.00	0.00	0.00
OC Fast Twitch	OC Fast Twitch		(714) 979- 7979	fasttwitch@socal.rr.com	0.00	0.00	0.00	0.00

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Onnit	Onnit	4401 Freidrich Lane, Austin, TX 78744 233 S.	(512) 765- 9956	rhetto@onnit.com	0.00	0.00	0.00	0.00
Optimal Health	Optimal Health Chiropractic and Rehabilitati on	Wacker Dr. 661- 054, Chicago, IL 60606, usa 11344 E. Autumn Sage Dr, Scottsdale , AZ 85255, USA	(312) 879- 1979	opthealthchiro@yahoo.com	0.00	0.00	0.00	0.00
Optimum Performance Training (OPT)	Optimum Performanc e Training (OPT)	85255, USA 7819 112 Street NW Bay 7, Calgary, Alberta T3R 0J5, Canada	(480) 395- 0789	kegan@optexperience.com	0.00	0.00	0.00	0.00
Optimum Performance Training (OPT) Canada	Optimum Performanc e Training (OPT) Canada	803 Via Barquero, San Marcos, CA 92069, USA 15 Bloomfield Ave., Monclair, NJ 07042, USA	(403) 796- 3489	optimumtraining@live.ca	0.00	0.00	0.00	0.00
OYR Fitness	OYR Fitness	15 Bloomfield Ave., Monclair, NJ 07042, USA	(760) 579- 2151	MROctraining@gmail.com	0.00	0.00	0.00	0.00
Parabolic Performance & Rehab Paycycle Inc Des PayPal	Parabolic Performanc e & Rehab	2620 Ingraham St. Suite B, San Diego, CA 92109, USA 6459 South Virginia, Reno, NV 89511, USA 4775 Long Branch, San Diego, CA 92107, USA	(917) 535- 3092	steve@proactivenj.com	0.00	0.00	0.00	0.00
Performance 360	Performanc e360	2620 Ingraham St. Suite B, San Diego, CA 92109, USA 6459 South Virginia, Reno, NV 89511, USA 4775 Long Branch, San Diego, CA 92107, USA	(619) 800- 2774	bryan@perform-360.com	0.00	0.00	0.00	0.00
Performanc EDU	Performanc EDU	51 Wolseley St. Suite 502, Toronto, Ontario M5A 1A4, Canada	(775) 354- 8959	mdigesti@performancedu.com	0.00	0.00	0.00	0.00
Petes Paleo	Petes Paleo	51 Wolseley St. Suite 502, Toronto, Ontario M5A 1A4, Canada	(775) 354- 8959	sarah@petespaleo.com	0.00	0.00	0.00	0.00
Precision Nutrition	Precision Nutrition	51 Wolseley St. Suite 502, Toronto, Ontario M5A 1A4, Canada	(519) 619- 3464	erin@precisionnutrition.com	0.00	0.00	0.00	0.00

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Promera Health, LLC	Promera Health, LLC	61 Accord Park Drive, Norwell, MA 02061	(781) 733-0541	dan@promerasports.com	0.00	0.00	0.00	0.00
Proving Grounds Competitions	Proving Grounds Competitions	2417 La Marque St., San Diego, CA 92109, USA	(619) 246-0878	chris.boyd@provinggroundscomps.com	0.00	0.00	0.00	0.00
PRx Performance	Branick Industries	PO Box 1937, Fargo, ND 58107, USA	(701) 388-0129	ericj@prxperformance.com	0.00	0.00	0.00	0.00
Pure Fitness	Pure Fitness	6215 El Camino Real, Carlsbad, CA 92009, USA	(760) 603-9190	bendeluca@purefitness.cc	0.00	0.00	0.00	0.00
RatioOne61	RatioOne61	11851 Taffy Bagley, El Paso, TX 79936, USA	(915) 401-5923	justin@ratioone61crossfit.com	0.00	0.00	0.00	0.00
Reaction Defense	Reaction Defense	21 East Lewis St, Struthers, OH 44471, usa	(330) 717-3648	reaction29@gmail.com	0.00	0.00	0.00	0.00
Red Cord	Red Cord	800 Bunn Drive Suite 102, Princeton, NJ 08540, USA	(646) 229-2182	mleonardi@redcord.us	0.00	0.00	0.00	0.00
Redcord	Redcord	83 Princeton Ave. Suite 3B Hopewell, NJ 08525	(609) 446-9004	jandrade@activcore.com	0.00	0.00	0.00	0.00
RedSide Crossfit	RedSide Crossfit	10960 E. Crystal Falls Pkwy Suite 100, Leander, TX 78641, USA	(832) 526-4585	kyle@redsidecrossfit.com	0.00	0.00	0.00	0.00
River Market Crossfit	River Market Crossfit	510 w 5th st, Kansas City, MO 64105-113210, USA	(810) 500-5409	Tiffany.m.nelson@gmail.com	0.00	0.00	0.00	0.00
Road Rig	Road Rig	1218 Pronghorn Drive, Rock Springs, Wyoming 82901, USA	(307) 705-3694	joseph.burger@live.com	0.00	0.00	0.00	0.00
Saskpro Crossfit	Saskpro Crossfit	365 Marquis Road	(306) 764-9348	whit@saskprocrossfit.com	0.00	0.00	0.00	0.00

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Scottsdale Police	Scottsdale Police	West #2, Prince Albert, Saskatchewan S6V 7L4, CA 20118 N 67th Ave. #300-263, Glendale, AZ 85308, USA 849 2nd St., Encinitas, CA 92024, USA 3 Berkeley Street, Norwalk, CT 06460 14885 N. 83rd Place, Scottsdale, AZ 85260, USA 233 N. Mountain Ave., Monrovia, CA 91016	(602) 228-9572	namamshaw@scottsdaleaz.gov	0.00	0.00	0.00	0.00
SealFit	US Tactical Inc.	1100 Russell Street, Baltimore, MD 21230, USA 7311 State Rt. 43, Kent, OH 442, USA 2570 Boulevard of the Generals Suite 124, Norristown, PA 19403, USA	(619) 294-4709	rich@sealfit.com	0.00	0.00	0.00	0.00
ShoeMart	ShoeMart	(330) 671-0814	markw@theshoemart.com	0.00	0.00	0.00	0.00	
SICFIT	SICFIT	(760) 333-9451	najla@sicfit.com	0.00	0.00	0.00	0.00	
SISU Slovakia	SISU	(626) 823-3253	daren@sisuteam.com	0.00	0.00	0.00	0.00	
South Baltimore Strength & Conditioning	South Baltimore Strength & Conditioning	1100 Russell Street, Baltimore, MD 21230, USA 7311 State Rt. 43, Kent, OH 442, USA 2570 Boulevard of the Generals Suite 124, Norristown, PA 19403, USA	(410) 929-5520	sean@southbaltimorecf.com	0.00	0.00	0.00	0.00
SPC Crossfit	SPC Crossfit	(330) 671-0814	toby@sppcrossfit.com	0.00	0.00	0.00	0.00	
Special Olympics PA (Philadelphia)	Special Olympics PA (Philadelphia)	5462 Adobe Falls Road, San Diego, CA 92120, USA	(610) 331-6473	cgildea@specialolympicspa.org	0.00	0.00	0.00	0.00
Steelpoint					0.00	0.00	0.00	0.00
Strong Made Simple	Strong Made Simple	10770 Thornmint Road, San Diego, CA 92127, USA	(619) 940-4822	brian@strongmadesimple.com	0.00	0.00	0.00	0.00
Submodal					0.00	0.00	0.00	0.00
Sweathaus Training Center	Sweathaus Training Center	(858) 683-7828	corey@sweathaus.com	0.00	0.00	0.00	0.00	

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SweatWorks Sweden	SweatWorks	115 Old Short Hill Road, Suite 253, West Orange, NJ 07052, USA	(201) 394-8542	miqbal@sweatworks.net, paul.buijs@mudandadventure.com	0.00	0.00	0.00	0.00
					0.00	0.00	0.00	0.00
The City CrossFit, LLC	The City CrossFit, LLC	250 Montgomery St Suite 150, San Francisco, CA 94104, USA	(415) 407-0157	ryan@flagshipcrossfit.com	0.00	0.00	0.00	0.00
The Pantheon Games	The Pantheon Games	1907 NW 79th Ave, Miami, FL 33126, USA	(305) 414-5568	bruno@dafactory.com	0.00	0.00	0.00	0.00
The Strength Lab	The Strength Lab	160 Park Drive, Wilmington, OH 45177, USA	(937) 944-3686	bryan@thestrengthlab.com	0.00	0.00	0.00	0.00
Town and Country Disposal	Town and Country Disposal	P.O. Box 10, Harrisonville, MO 64701, USA	(816) 918-3163	jr@townandcountrydisposal.net	0.00	0.00	0.00	0.00
Train Adapt Evolve	Train Adapt Evolve	14301 Hunters Pass, Austin, TX 78734, USA	(512) 579-6843	ben.house@utexas.edu	0.00	0.00	0.00	0.00
Trap Door Athletics	Trap Door Athletics	1913 E Arizona St., Philadelphia, PA 19125	(215) 948-2062	emily@trapdoorathletics.com	0.00	0.00	0.00	0.00
Trinity Competitions	Trinity Competitions	1403 Bluff Forest, San Antonio, TX 78248, USA	(210) 286-3838	chris@trinitycompetitions.com	0.00	0.00	0.00	0.00
Triple Stacked Operator Strength LLC	Triple Stacked Operator Strength LLC (RedSide Cros	1900 Little Elm #55, Cedar Park, TX 78613, USA		david@redsidecrossfit.com	0.00	0.00	0.00	0.00
Triple Stacked Operator Strength LLC (RedSide CF)	Triple Stacked Operator Strength LLC (RedSide CF)	10960 Crystal Falls #100, Cedar Park, TX 78613, USA	(910) 723-0155	david@redsidecrossfit.com	0.00	0.00	0.00	0.00
TrueFIT Athletics	TrueFIT Athletics	702 S. Ewing St.,	(740) 277-7148	truefitathletics@gmail.com	0.00	0.00	0.00	0.00

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Twenty Two Undeposited Credit Card Receipts	Twenty Two	Lancaster, OH 43130, usa 777 29th St #202, Boulder, CO 80303, USA		mfayez@22-twentytwo.com	0.00	0.00	0.00	0.00
					0.00	0.00	0.00	0.00
Universal Fitness Club	Universal Fitness Club	37381 Harrow Ct., Palmdale, CA 93550, USA 7720 East Big Meadow Drive, Tucson, AZ 85756, USA	(661) 916-3007	jkrizek@universalfitnessclub.com	0.00	0.00	0.00	0.00
USAF	USAF	14219 E. Placita de la Zurita, Vail, AZ 85641, usa	(513) 265-5929	dslillis@hotmail.com	0.00	0.00	0.00	0.00
USAF 306	USAF 306	4625 S. Phoenix St. Bldg 4843, Tucson, AZ 85707, USA	(505) 235-2121	christopher.tellsworth@us.af.mil	0.00	0.00	0.00	0.00
USAF 48th RQS Booster Club	USAF 48th RQS Booster Club	PSC 41 Box 5407, APO, AE 09464, USA	(520) 228-0525	emily.thein@us.af.mil	0.00	0.00	0.00	0.00
USAF 56TH RQS	USAF 56TH RQS	Box 1065, APO, AE 09464, USA	+44 07455 028082	daywalker286@gmail.com	0.00	0.00	0.00	0.00
USAF 57TH ERQS	USAF 57th ERQS	8936 Vancouver Crest Ct., Las Vegas, NV 89149, USA	(503) 568-8736	anthonyderoest@gmail.com	0.00	0.00	0.00	0.00
USAF 58th RQS	USAF 58th RQS	Windflower Court, Mount Laurel, NJ 08054, USA	(303) 921-4669	gavinfishfisher@yahoo.com	0.00	0.00	0.00	0.00
USAF- Peter Dinich	USAF	212 East Williams Fierld Road Suite 230, Gilbert, AZ 85215, US	(856) 296-7371	pdinich1@gmail.com	0.00	0.00	0.00	0.00
Weider Global Nutrition LLC	Weider Global Nutrition LLC	20957 Mandrake Drive,	(425) 654-1585	anthonyk@weider.com	0.00	0.00	0.00	0.00
Weightlifting Wise	Weightlifting Wise		(512) 426-3385	upapandrea@suddenlink.net	0.00	0.00	0.00	0.00

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WODsomnia c		Pflugerville , TX 78660, USA 11274 S Kestrel Rise Rd #J, South Jordan, UT 84095, USA 5771	(801) 930- 5280	joe@cmcrossfit.com	0.00	0.00	0.00	0.00
X-1 Audio	X-1 Audio	Copley Dr. Suite 102, San Diego, CA 92111, USA	(858) 875- 1427	scott@x-1.com	0.00	0.00	0.00	0.00
X-life	X-life			lasse@x-life.no	0.00	0.00	0.00	0.00
Your Total Fitness Shop	Your Total Fitness Shop	2418 North Gregg, Fayetteville, AK 2703, USA 12162 Business Park Dr. BLDG 2, WHS #114,	(479) 521- 3481	nathan@ytfs.com	0.00	0.00	0.00	0.00
Zach Ludlow	CrossFit Great Salt Lake	Draper, UT 84020, USA 9325 Dorchester Street #202, Highlands Ranch, CO 80129	(801) 808- 2569	zach@CrossFitGSL.com	0.00	0.00	0.00	0.00
Zen Planner	Zen Planner			shilo@zenplanner.com	0.00	0.00	0.00	0.00

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HYLETE

Page Activity Insights Settings Build Audien



HYLETE
Clothing

Timeline About Photos Likes More

PEOPLE

101,458 likes

Todd Rackowitz, Ashley Jensen Paulson and 178 others like this.

Status Photo / Video Offer, Event

What have you been up to?

HYLETE posted an offer.
8 minutes ago

FREE UPS ground shipping (Orders over \$100) - Ends Dec. 17th

Hybrid Athletics / Crossfit Conan



Hybrid Athletics / Crossfit Conan
Gym

Timeline About Photos Reviews More

PEOPLE

8,490 likes
473 visits

Jenn Null, KB Nic and 5 others like this.

Hybrid Athletics / Crossfit Conan shared a link.
November 30 · Edited

Hey Guys,

LuRong Living will be at our evening classes Wednesday to speak about their product and offer a 50% discount for new customers!

Exhibit F

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

HYBRID ATHLETICS, LLC,

Opposer,

v.

HYLETE, LLC,

Applicant.

Opposition No.: 91213057

Application Serial No.: 85/837,045

APPLICANT HYLETE'S REVISED
OBJECTIONS AND RESPONSES
TO OPPOSER'S FIRST SET OF
INTERROGATORIES

PROPOUNDING PARTY: Opposer, Hybrid Athletics, LLC

RESPONDING PARTY: Applicant, Hylete LLC

SET NO.: Two

Applicant Hylete, LLC (“APPLICANT”) responds to Opposer Hybrid Athletics, LLC (“OPPOSER” or “PROPOUNDING PARTY”) Interrogatories, Set One as follows:

PRELIMINARY STATEMENT AND GENERAL OBJECTIONS

1. The following Preliminary Statement and General Objections are incorporated into APPLICANT’s responses to each Interrogatory as if APPLICANT separately so objected and/or stated in response to each Interrogatory.

2. Investigation and discovery by APPLICANT is continuing and is not complete. As discovery proceeds, witnesses, documents, facts, and evidence may be discovered that were not presently known, but upon which APPLICANT may rely in support of its contentions in this action. The responses contained herein shall not preclude APPLICANT from introducing evidence based on such new and/or additional information.

3. Facts and evidence now known may be imperfectly understood, or the relevance or consequences of such facts and evidence may be imperfectly understood, and, accordingly, such facts and evidence may, in good faith, not have been analyzed for purposes of the following responses. APPLICANT reserves the right to refer to, conduct discovery with reference to, or offer into evidence at trial any and all such witnesses, facts, and evidence, notwithstanding these responses. APPLICANT expressly reserves the right to rely at any time, including trial, on information omitted from these responses as a result of mistake, error, oversight, inadvertence, or subsequent discovery.

4. APPLICANT objects to these Interrogatories to the extent that they seek information that is not in the possession, custody or control of APPLICANT or is in the custody or control of a person or entity that is not a party to this

litigation, or is in the joint custody and control of APPLICANT and PROPOUNDING PARTY, or is equally or more readily accessible to PROPOUNDING PARTY and its counselor is contained in public records.

5. APPLICANT objects to these Interrogatories and accompanying definitions to the extent they require the production or identification of documents, writings, records or publications in the possession of third parties or in the public domain, because such information is equally available to PROPOUNDING PARTY.

6. APPLICANT objects to these Interrogatories to the extent that they seek information which requires legal interpretation and/or a legal conclusion.

7. APPLICANT objects to these Interrogatories to the extent that they seek privileged information, including, without limitation, information protected by the attorney-client privilege, the attorney work-product doctrine, or any applicable common law, statutory or constitutional privileges. To the extent that these Interrogatories seek such privileged or protected information, APPLICANT will not provide such information. Moreover, even if APPLICANT inadvertently provides information protected from disclosure by the foregoing privileges or protections, APPLICANT does not waive its right to assert those privileges and/or objections to disclosure.

8. Nothing herein should be construed as an admission by APPLICANT with respect to the admissibility or relevance of any fact or document, or as an admission that APPLICANT agrees with the characterization of such fact or document(s) by APPLICANT. Responses to any Interrogatory are subject to all objections as to competence, relevance, materiality, propriety and admissibility, as well as to any and all other objections on any grounds that would require the exclusion of any statement therein if the response were introduced in

court, all of which objections and grounds are expressly reserved and may be interposed at any time of any motion or trial.

9. APPLICANT objects to the INSTRUCTIONS on the grounds they seek to impose obligations on it beyond those provided for by the Code of Civil Procedure.

10. These responses are made without prejudice to APPLICANT's right to produce evidence or contentions, or to add, modify, or to otherwise change or amend the responses herein based upon information hereafter obtained or evaluated, including, but not limited to, information and documents produced by APPLICANT and other witnesses and/or any developments in the law.

**APPLICANT'S REVISED OBJECTIONS AND RESPONSES TO
OPPOSER'S FIRST SET OF INTERROGATORIES**

INTERROGATORY NO. 1:

Identify all persons who participated in any way in the preparation of the responses to Hybrid's interrogatories and state specifically, with reference to interrogatory numbers, the area of participation of each such person.

RESPONSE TO INTERROGATORY NO. 1:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine.

Subject to and without waiving the objections above, APPLICANT responds as follows: Ron Wilson; Matt Paulson; and Jennifer Null.

///

INTERROGATORY NO. 2:

With respect to the April 9, 2012 first date of use alleged by Applicant in its U.S. Trademark Serial No. 85837045 for the Hylete Mark, identify all documents upon which Applicant relies to establish that date.

RESPONSE TO INTERROGATORY NO. 2:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks expert opinions and/or legal conclusions.

Subject to and without waiving the objections above, APPLICANT responds as follows:

Applicant's date of first use is at least as early as April 9, 2012. A zazzle.com web order placed on April 9, 2012. Pursuant to Fed. R. Civ. P. 33(d), Applicant directs Opposer to documents bearing bates nos. HYLETE 001-0133.

INTERROGATORY NO. 3:

State and describe any known incidents wherein a person was confused, mistaken, or deceived as to the source of products sold by Hylete or any business conducted by Hylete under the Hylete Mark, believing that Opposer's business and Hylete's business were related in some way, and identify all documents related to each incident or purported incident.

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RESPONSE TO INTERROGATORY NO. 3:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine.

Subject to and without waiving the objections above, APPLICANT responds as follows:

Prior to Opposer's Objections and Responses to Applicant's First Set of Interrogatories, wherein a Facebook posting was provided, Applicant was unaware of any incidents wherein a person was confused, mistaken, or deceived as to the source of products sold by Hylete or any business conducted by Hylete under the Hylete mark.

INTERROGATORY NO. 4:

State whether you have received any inquiries or communications as to whether products sold by Hylete are associated with, sponsored by, or in any manner connected with Hybrid and/or the Hybrid Mark, or whether you are aware of any other incidents of actual confusion, mistake or deception arising from the use of the Hylete Mark. Identify and describe all relevant facts and circumstances surrounding each incident and identify all documents relating thereto.

RESPONSE TO INTERROGATORY NO. 4:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; protected by the attorney-client privilege and/or work-product doctrine; seeks expert opinions and/or legal conclusions.

Subject to and without waiving the objections above, APPLICANT responds as follows:

Prior to Opposer's Objections and Responses to Applicant's First Set of Interrogatories, wherein a Facebook posting was provided, Applicant was unaware of any incidents wherein a person was confused, mistaken, or deceived as to the source of products sold by Hylete or any business conducted by Hylete under the Hylete mark.

INTERROGATORY NO. 5:

State the facts and circumstances under which you first became aware of Opposer's use of the Hybrid Mark, including the date on which it first became aware of Opposer's use of the Hybrid Mark, and identify each document relating to such facts and circumstances.

RESPONSE TO INTERROGATORY NO. 5:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; seeks expert opinions and/or legal conclusions.

Subject to and without waiving the objections above, APPLICANT responds as follows:

Matt Paulson and Jennifer Null were aware of Opposer's mark in 2011. There is no documentation relating to such facts and circumstances.

INTERROGATORY NO. 6:

State whether, after Hylete became aware of Opposer's use of the Hybrid Mark, anyone affiliated with Hylete questioned the propriety of Hylete's use of the Hylete mark, and identify the parties involved in such matters, each document that evidences such matters, and any person who has knowledge about such matters.

RESPONSE TO INTERROGATORY NO. 6:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine.

Subject to and without waiving the objections above, APPLICANT responds as follows:

No one affiliated with Applicant questioned the propriety of Hylete's use of the Hylete mark.

INTERROGATORY NO. 7:

Identify and fully describe the channels of trade and/or the potential channels of trade, including all distributors, agents, or retail outlets, through which Hylete's goods and/or services bearing the Hylete Mark are currently sold, offered, or distributed and/or intended to be sold, offered, or distributed.

RESPONSE TO INTERROGATORY NO. 7:

APPLICANT objects to this request to the extent it is: vague and ambiguous; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence.

Subject to and without waiving the objections above, APPLICANT responds as follows:

Applicant's items are sold primarily through web sales via website www.hylete.com. In addition, items are also sold through approximately 150 gyms that carry co-branded merchandise.

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///

INTERROGATORY NO. 8:

Fully describe the facts surrounding the selection of the Hylete Mark.

RESPONSE TO INTERROGATORY NO. 8:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine.

Subject to and without waiving the objections above, APPLICANT responds as follows:

Ron Wilson designed the mark on the days of March 17 – March 20, 2012. Given that the Applicant’s company name is Hylete, Applicant sought to design the mark to have a shield like appearance and contain a stylized “H”.

INTERROGATORY NO. 9:

Identify all products and/or services sold or intended to be sold by Hylete in the United States in connection with the Hylete Mark and identify all documents related thereto.

RESPONSE TO INTERROGATORY NO. 9:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine.

Subject to and without waiving the objections above, APPLICANT responds as follows:

Hylete products and/or services sold can be seen on Applicant's website www.hylete.com. Hylete currently sells or intends to manufacture and sell men's and women's performance apparel including but not limited to: shirts, pants, socks, base layer, compression tops/bottoms, and tights. In addition, Hylete manufactures and sells a convertible backpack, a drawstring bag, and sells or intends to manufacture and sell equipment bags, messenger bags, duffle bags, and toiletry bags.

INTERROGATORY NO. 10:

Describe all methods in which goods bearing the Hylete Mark are, or are intended to be, advertised, promoted, marketed or otherwise brought to the attention of customers and potential customers.

RESPONSE TO INTERROGATORY NO. 10:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine.

Subject to and without waiving the objections above, APPLICANT responds as follows:

Applicant advertises, markets, and promotes its products through events and social media.

INTERROGATORY NO. 11:

With respect to the products and services identified in response to Interrogatory No. 9, provide the date(s) that the Hylete Mark was first used in interstate commerce as defined by the Lanham Act (15 U.S.C.S. §§ 1051 et seq.).

RESPONSE TO INTERROGATORY NO. 11:

APPLICANT objects to this request to the extent it is vague and ambiguous.

Subject to and without waiving the objections above, APPLICANT responds as follows: at least as early as July 7, 2012.

INTERROGATORY NO. 12:

With respect to the products and services identified in response to Interrogatory No. 9, provide the geographical scope of such former or current use of the Hylete Mark within the U.S.

RESPONSE TO INTERROGATORY NO. 12:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence.

Subject to and without waiving the objections above, APPLICANT responds as follows:

Applicant's current use of the Hylete mark extends throughout the entire United States.

INTERROGATORY NO. 13:

With respect to the products and services identified in response to Interrogatory No. 9, identify the dates during which you have continuously used the Hylete Mark, or if such use(s) has (have) not been continuous, state with particularity the dates and reason for any period that the Hylete Mark has not been used by you.

RESPONSE TO INTERROGATORY NO. 13:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible.

Subject to and without waiving the objections above, APPLICANT responds as follows:

Applicant has continuously used the Hylete mark from at least as early as July 7, 2012 to present day.

INTERROGATORY NO. 14:

Describe fully any advertising conducted by any person of the Hylete Mark within the U.S. including, but without limitation, the nature of such advertising, the geographic scope of such advertising, and the amount of money spent for such advertising on a yearly basis.

RESPONSE TO INTERROGATORY NO. 14:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence.

Subject to and without waiving the objections above, APPLICANT responds as follows:

Applicant has conducted advertising and marketing nationwide through events and social media.

INTERROGATORY NO. 15:

State the names and addresses of each Hylete customer and the inclusive dates each such person has been a customer.

RESPONSE TO INTERROGATORY NO. 15:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine.

INTERROGATORY NO. 16:

Identify all facts and documents which support Hylete's first affirmative defense that the "Notice of Opposition, and each paragraph thereof, taken individually or collectively, fails to state claims upon which relief can be granted."

RESPONSE TO INTERROGATORY NO. 16:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine.

Subject to and without waiving the objections above, APPLICANT directs Opposer to provided documents.

INTERROGATORY NO. 17:

Identify all facts and documents which support Hylete's second affirmative defense that "Opposer has abandoned any and all rights to the alleged mark in this Opposition."

RESPONSE TO INTERROGATORY NO. 17:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible.

Subject to and without waiving the objections above, APPLICANT directs Opposer to provided documents.

INTERROGATORY NO. 18:

Identify all facts and documents which support Hylete's third affirmative defense that "Opposer's alleged mark is not protectable as sought in this Opposition."

RESPONSE TO INTERROGATORY NO. 18:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence.

INTERROGATORY NO. 19:

Identify all facts and documents which support Hylete's fourth affirmative that "Opposer's alleged rights in its mark, if any, are narrow and not subject to wide protection due to dilutive third party use of similar marks for similar goods and services."

RESPONSE TO INTERROGATORY NO. 19:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible.

Subject to and without waiving the objections above, APPLICANT responds as follows:

Applicant has provided all information it is currently knowledgeable of and in its current possession.

INTERROGATORY NO. 20:

Identify all facts and documents which support Hylete's fifth affirmative defense that "Opposer does not have standing to oppose registration of Applicant's application."

RESPONSE TO INTERROGATORY NO. 20:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine.

Subject to and without waiving the objections above, APPLICANT responds as follows:

Subject to and without waiving the objections above, APPLICANT directs Opposer to provided documents.

INTERROGATORY NO. 21:

Identify all manufacturers of goods using the Hylete Mark.

RESPONSE TO INTERROGATORY NO. 21:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence.

DATE: December 31, 2014

By /kyri tsircou/
Kyriacos Tsircou
Attorney for Applicant HYLETE, LLC

CERTIFICATE OF SERVICE

I hereby certify that on December 31, 2014, I have sent a copy of APPLICANT HYTELE'S REVISED OBJECTIONS AND RESPONSES TO OPPOSER'S SECOND SET OF INTERROGATORIES Pursuant to Fed. R. Civ. P. 26(a)(1) to the foregoing, by electronic mail and U.S. Mail, First Class pre-paid postage, to:

Wesley W. Whitmyer
St. Onge, Steward Johnston & Reens LLC
986 Bedford Street
Stamford, CT 06905
Tel. (203) 324-6155 Facsimile (203) 327-1096
Email:litigation@ssjr.com

/kyri tsircou/

Kyriacos Tsircou, Esq.

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

HYBRID ATHLETICS, LLC,

Opposer,

v.

HYLETE, INC.,

Applicant.

Opposition No.: 91213057

Application Serial No.: 85/837,045

Mark:



Declaration of John Begakis In Support of Applicant's Trial Brief

I, John Begakis, declare:

1. I am an attorney at Tsircou Law, PC, 515 S. Flower Street, 36th Floor, Los Angeles, CA 90071 and I am admitted to practice law in the State of California. I submit this Declaration based upon my personal knowledge, information and belief and from review of the documents and business records produced in this matter.
2. A search of the USPTO website was conducted via the Trademark Status and Document Retrieval on April 19, 2016 for "H" full mark in the International Class 025.
3. True and correct copies of the resulting U.S. trademark registrations in International Class 025 printed from the USPTO online database are attached hereto as Exhibit G.
4. A further search of the USPTO website was conducted via the Trademark Status and Document Retrieval on April 19, 2016 for "H" full mark and the International Class 025, and goods and services containing the word "athletic".
5. True and correct copies of the resulting U.S. trademark registrations in International Class 025, with goods and services containing the term "athletic" printed from the USPTO online database are attached hereto as Exhibit H.
6. I submit this Declaration in support of Applicant's Trial Brief.
7. I declare under penalty of perjury that the foregoing is true and correct.

Date: April 21, 2016

/John Begakis/
John Begakis

CERTIFICATE OF SERVICE

I hereby certify that on April 21, 2016 I have sent a copy of Trial Brief to the foregoing, by electronic mail and U.S. Mail, First Class pre-paid postage, to:

Michael J. Kosma
WHITMYER IP GROUP LLC
600 SUMMER STREET
STAMFORD, CT 06901
UNITED STATES

Email: mkosma@whipgroup.com

/kyritsircou/

Kyriacos Tsircou, Esq.

Exhibit G



Trademarks > Trademark Electronic Search System(Tess)

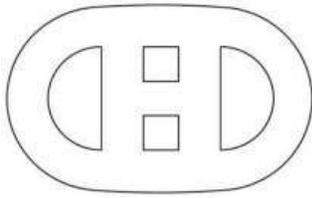
TESS was last updated on Tue Apr 19 03:21:44 EDT 2016

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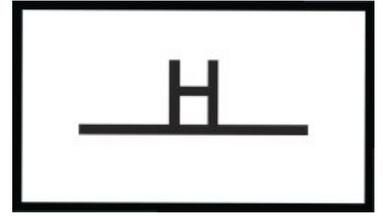
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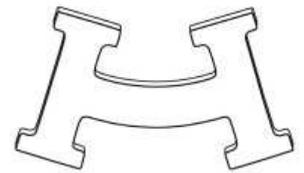
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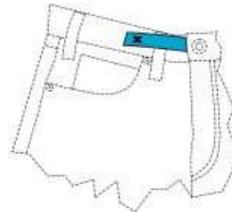
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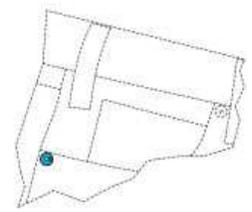
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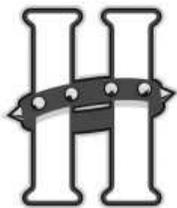
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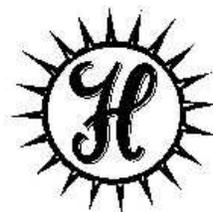
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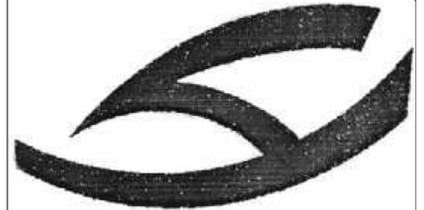
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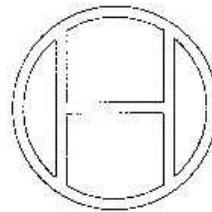
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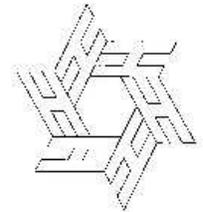
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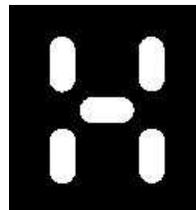
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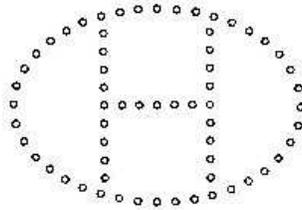
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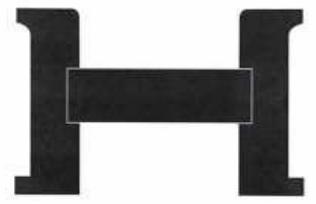
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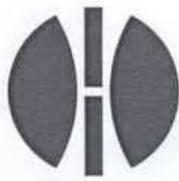
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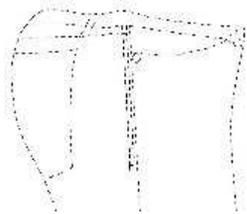
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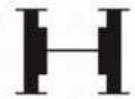
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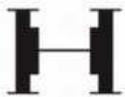
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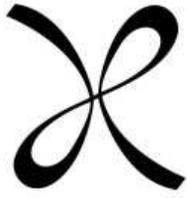
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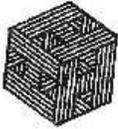
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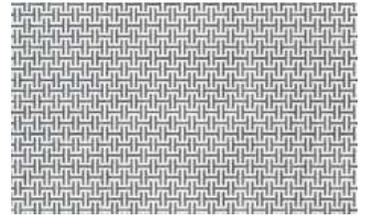
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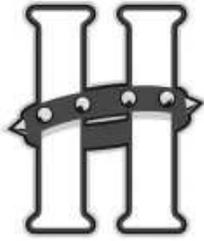
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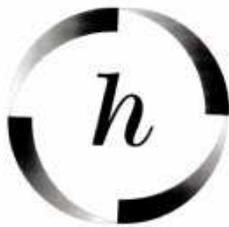
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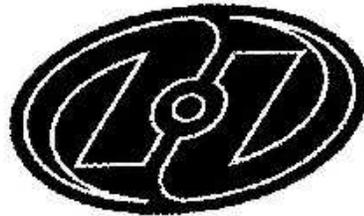
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[NEXT LIST](#)

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[TOP](#)

[HELP](#)

[| HOME](#) | [SITE INDEX](#) | [SEARCH](#) | [eBUSINESS](#) | [HELP](#) | [PRIVACY POLICY](#)