

ESTTA Tracking number: **ESTTA727160**

Filing date: **02/16/2016**

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

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	mMetrocom LLC
Granted to Date of previous extension	02/14/2016
Address	c/o Pilot Group Manager LLC 75 Rockefeller Center - 23rd Floor New York, NY 10019-6923 UNITED STATES

Attorney information	Ralph H. Cathcart Ladas & Parry LLP 1040 Avenue of the Americas New York, NY 10018-3738 UNITED STATES rcath- cart@ladas.com,dprahl@ladas.com,jkwon@ladas.com,rroa@ladas.com,mmerc ado@ladas.com Phone:(212) 708-1920
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Applicant Information

Application No	86504326	Publication date	08/18/2015
Opposition Filing Date	02/16/2016	Opposition Period Ends	02/14/2016
Applicant	YOLOTech, LLC 7711 Bayshore Drive Margate City, NJ 08402 UNITED STATES		

Goods/Services Affected by Opposition

<p>Class 009. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Downloadable computer software applications for mobile phones and handheld computer devices, namely, software which facilitates reservations and service bookings with vendors providing recreational activities and services by individuals seeking to participate in these services, namely, software for the rental of or participation in all-terrain vehicles (ATVs) riding, archery and cross-bow, ballooning and balloon racing, batting cage and batting practice, bicycling, baseball,softball, boating, bowling, bungee jumping, canoeing, dirt biking, dog sledding, fishing, go-carts, golf, hang gliding,horseback riding and equestrian sports,gymnastics, hunting, ice skating and ice sports, jet skiing, kayaking, kite sailing, miniature golf, mopeds and motorized bicycles and scooters, motorcycles, mountaineering and hiking, mountain biking, paddle boarding, paint ball, paragliding and parasailing, powerboat rental, tennis, table tennis, racquetball, squash,badminton, beach tennis, pickleball, speed-ball, rafting, riflery and pistol shooting, rowing, sculling, rappelling, rock and boulder climbing, rollerblading, roller skating, sailing, scuba diving, two-wheeled electrical personal vehicle riding, skate boarding, skeet shooting, skiing, skydiving, snorkeling, snowboarding, snowmobiling, snowshoeing, snow-tubing, swimming and diving, trampoline, walking, water sports, waterskiing, windsurfing, yoga, and zip lining</p>

Class 035. First Use: 0 First Use In Commerce: 0

All goods and services in the class are opposed, namely: Provision of an on-line marketplace for buyers and sellers of recreational goods and services, namely, providing an on-line marketplace for commercial purposes connecting buyers and sellers wishing to rent or participate in recreational service activities, namely, all-terrain vehicle (ATVs) riding, archery and cross-bow, ballooning and balloon racing, batting cage and batting practice, bicycling, baseball, softball, boating, bowling, bungee jumping, canoeing, dirt biking, dog sledding, fishing, go-carts, golf, hang gliding, horseback riding and equestrian sports, gymnastics, hunting, ice skating and ice sports, jet skiing, kayaking, kite sailing, miniature golf, mopeds and motorized bicycles and scooters, motorcycles, mountaineering and hiking, mountain biking, paddle boarding, paint ball, paragliding and parasailing, powerboat rental, tennis, table tennis, racquetball, squash, badminton, beach tennis, pickle ball, speed-ball, rafting, riflery and pistol shooting, rowing, sculling, rappelling, rock and boulder climbing, rollerblading, roller skating, sailing, scuba diving, two-wheeled electrical personal vehicle riding, skate boarding, skeet shooting, skiing, skydiving, snorkeling, snow boarding, snowmobiling, snowshoeing, snow-tubing, swimming and diving, trampoline, walking, water sports, water skiing, windsurfing, yoga, zip lining; Providing an on-line marketplace for commercial purposes for sellers and buyers of outdoor activity services, namely, an online marketplace connecting buyers and sellers wishing to rent or participate in recreational service activities, namely, all-terrain vehicle (ATVs) riding, archery and cross-bow, ballooning and balloon racing, batting cage and batting practice, bicycling, baseball, softball, boating, bowling, bungee jumping, canoeing, dirt biking, dog sledding, fishing, go-carts, golf, hang gliding, horseback riding and equestrian sports, gymnastics, hunting, ice skating and ice sports, jetskiing, kayaking, kite sailing, miniature golf, mopeds and motorized bicycles and scooters, motorcycles, mountaineering and hiking, mountain biking, paddle boarding, paint ball, paragliding and parasailing, powerboat rental, tennis, table tennis, racquetball, squash, badminton, beach tennis, pickle ball, speed-ball, rafting, riflery and pistol shooting, rowing, sculling, rappelling, rock and boulder climbing, rollerblading, roller skating, sailing, scuba diving, two-wheeled electrical personal vehicle riding, skate boarding, skeet shooting, skiing, skydiving, snorkeling, snow boarding, snowmobiling, snowshoeing, snow-tubing, swimming and diving, trampoline, walking, water sports, water skiing, windsurfing, yoga, and zip lining; The bringing together of consumers and providers of a variety of services in the field of outdoor recreational activities for commercial purposes via the Internet; Providing a website that brings together, for commercial purposes, consumers and providers of a variety of services in the field of outdoor recreational activities, namely, all-terrain vehicle (ATVs) riding, archery and cross-bow, ballooning and balloon racing, batting cage and batting practice, bicycling, baseball, softball, boating, bowling, bungee jumping, canoeing, dirt biking, dog sledding, fishing, go-carts, golf, hang gliding, horseback riding and equestrian sports, gymnastics, hunting, ice skating and ice sports, jet skiing, kayaking, kite sailing, miniature golf, mopeds and motorized bicycles and scooters, motorcycles, mountaineering and hiking, mountain biking, paddle boarding, paint ball, paragliding and parasailing, powerboat rental, tennis, table tennis, racquetball, squash, badminton, beach tennis, pickle ball, speed-ball, rafting, riflery and pistol shooting, rowing, sculling, rappelling, rock and boulder climbing, rollerblading, roller skating, sailing, scuba diving, two-wheeled electrical personal vehicle riding, skate boarding, skeet shooting, skiing, skydiving, snorkeling, snow boarding, snowmobiling, snowshoeing, snow-tubing, swimming and diving, trampoline, walking, water sports, water skiing, windsurfing, yoga, and zip lining

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	4636005	Application Date	01/31/2014
Registration Date	11/11/2014	Foreign Priority Date	NONE
Word Mark	THRILLIST		

Design Mark	
Description of Mark	The mark consists of a split circle in red with black crosshairs with the word "THRILLIST" starting inside the right hand side of the circle in black.
Goods/Services	<p>Class 035. First use: 2012/10/01 First Use In Commerce: 2012/10/01 Electronic commerce services, namely, providing information about products and services for advertising and sale purposes via computer, computer networks, the Internet, mobile devices, or electronic mail; advertising services; promoting the goods and services of others via the Internet; arranging and conducting marketing promotional events for others; advertising, marketing and promotion services; online retail store services featuring clothing, footwear, headphones, sunglasses, hats, speakers, and watches; promoting the goods and services of others by providing a website featuring discounted sales of local services; Organization of events and exhibitions for commercial, promotional and advertising purposes; Providing information and reviews of venues, products and events relating to automobiles for sale</p> <p>Class 041. First use: 2012/10/01 First Use In Commerce: 2012/10/01 Publication services, namely, online publications in the nature of newsletters in the fields of products, services, entertainment, popular culture, and lifestyles; providing information relating to celebrities, entertainment, and popular culture and providing reviews of venues, products and events in connection therewith; providing online newsletters in the field of entertainment, consumer product information, consumer information about the services of others, popular culture and lifestyles via e-mail</p>

U.S. Registration No.	3264673	Application Date	06/15/2006
Registration Date	07/17/2007	Foreign Priority Date	NONE
Word Mark	THRILLIST		

Design Mark	
Description of Mark	The mark consists of the color red with the word THRILLIST in the color gray placed slanted across and centered on the circle and two gray lines intersecting the circle at the top and the bottom.
Goods/Services	Class 041. First use: First Use: 2005/06/01 First Use In Commerce: 2005/06/01 Publication services, namely, online publications in the nature of newsletters in the fields of entertainment and lifestyles

Attachments	86181196#TMSN.png(bytes) 78908786#TMSN.png(bytes) Notice of Opposition - YOLOTech.pdf(1222606 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Ralph H. Cathcart/
Name	Ralph H. Cathcart
Date	02/16/2016

THRILLIA Application Serial No. 86/504,326 and hereby opposes registration of the mark on the following grounds:

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Section 2(d) Likelihood of Confusion

1. Opposer is the owner of the common law rights to the well-known and distinctive THRILLIST Marks, including THRILLIST and Device Registration No. 4,636,005 for “Electronic commerce services, namely, providing information about products and services for advertising and sale purposes via computer, computer networks, the Internet, mobile devices, or electronic mail; advertising services; promoting the goods and services of others via the Internet; arranging and conducting marketing promotional events for others; advertising, marketing and promotion services; online retail store services featuring clothing, footwear, headphones, sunglasses, hats, speakers, and watches; promoting the goods and services of others by providing a website featuring discounted sales of local services; Organization of events and exhibitions for commercial, promotional and advertising purposes; Providing information and reviews of venues” in International Class 35; and incontestable THRILLIST Registration Nos. 3,264,673 covering “. . . online publications in the nature of newsletters in the fields of entertainment and lifestyles” in International Class 41 (“THRILLIST Marks”).

2. Opposer adopted and has continuously used Opposer’s THRILLIST Marks in commerce in connection with “Electronic commerce services, namely, providing information about products and services for advertising and sale purposes via computer, computer networks, the Internet, mobile devices, or electronic mail; advertising services; promoting the goods and services of others via the Internet;

arranging and conducting marketing promotional events for others; advertising, marketing and promotion services; online retail store services featuring clothing, footwear, headphones, sunglasses, hats, speakers, and watches; promoting the goods and services of others by providing a website featuring discounted sales of local services; Organization of events and exhibitions for commercial, promotional and advertising purposes; Providing information and reviews of venues” in International Class 35 since long prior to the filing date and alleged first use date of THRILLIA.

3. Opposer has extensively advertised, promoted, marketed, and otherwise publicized its services such that consumers have come to know and recognize Opposer’s THRILLIST Marks as identifying goods which originate with, are authorized by, or otherwise identify, Opposer.

4. Applicant’s use of the virtually identical THRILLIA in connection with

“Provision of an on-line marketplace for buyers and sellers of recreational goods and services, namely, providing an on-line marketplace for commercial purposes connecting buyers and sellers wishing to rent or participate in recreational service activities . . . The bringing together of consumers and providers of a variety of services in the field of outdoor recreational activities for commercial purposes via the Internet.”

in International Class 35 constitutes use of a mark confusingly similar to Opposer’s THRILLIST Marks. Applicant’s THRILLIA mark is likely to be perceived by purchasers as either a variation or another of Opposer’s THRILLIST Marks. Moreover, Applicant’s applied-for services are closely related and/or complimentary to the goods and services marketed and sold by Opposer under Opposer’s THRILLIST Marks.

5. Insofar as the recited goods and services are not identical, consumers are likely to believe that Opposer has “bridged the gap” or expanded to additional related and/or complimentary services within Opposer’s Natural Zone of Expansion.

6. Registration should be refused to Applicant pursuant to Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), on the grounds that Applicant's THRILLIA mark so closely resembles Opposer's THRILLIST Marks as to be likely, when used on or in connection with the services identified in the THRILLIA application, to cause confusion, or to cause mistake, or to deceive, insofar as the average purchaser is likely to be confused or deceived into believing that Applicant's services originate with Opposer, or are in some way associated with, or are connected, sponsored or authorized by, Opposer, with consequent injury to Opposer and to the public.

WHEREFORE, Opposer respectfully requests that this opposition be sustained and that Application Serial No. 86/504,326 be refused registration.

Respectfully submitted,

LADAS & PARRY LLP

Attorneys for Opposer

Dated: February 16, 2016

By: 

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(Our Ref: C15672442)

CERTIFICATE OF TRANSMISSION

I, Reinaldo M. Roa, hereby certify that a copy of the foregoing **NOTICE OF OPPOSITION** has been transmitted electronically to the United States Patent and Trademark Office on the date indicated:

Dated: February 16, 2016


Reinaldo M. Roa

CERTIFICATE OF SERVICE

I, Reinaldo M. Roa, hereby certify that a copy of the foregoing **NOTICE OF OPPOSITION** was served via First Class Mail, postage pre-paid, on the date indicated below, to the following:

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and served via e-mail to the following:

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Dated: February 16, 2016


Reinaldo M. Roa