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

Proceeding	91226317
Party	Defendant YOLOTech, LLC
Correspondence Address	MARK A HOFFMAN YOLOTECH LLC 7711 BAYSHORE DRIVE MARGATE CITY, NJ 08402 UNITED STATES mhoffma1@alumni.law.upenn.edu
Submission	Other Motions/Papers
Filer's Name	Mark A. Hoffman
Filer's e-mail	mhoffma1@alumni.law.upenn.edu, amherst1972@gmail.com
Signature	/s/ Mark A. Hoffman
Date	04/28/2016
Attachments	Applicant THRILLIA Correction to Page 15 of Brief.pdf(210111 bytes )

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

MMETRO.COM LLC	X	
	:	<b>Opposition No. 91226317</b>
v.	:	
	:	<b>Serial No. 86504326</b>
	:	
YOLOTECH, LLC	:	
	:	
	X	

**APPLICANT’S CORRECTION TO PAGE 15 OF THE BRIEF IN SUPPORT OF  
APPLICANT’S RESPONSE IN OPPOSITION TO OPPOSER’S MOTION  
TO STRIKE APPLICANT’S ANSWER AND AFFIRMATIVE DEFENSES**

COMES NOW the Applicant, YOLOtech, LLC [“Applicant”], by and through Applicant’s undersigned counsel, Mark A. Hoffman, Esquire, who herein timely files a correction to page 15 of Applicant’s Response in Opposition to Opposer’s Motion to Strike Applicant’s Answer and Affirmative Defenses filed on April 25, 2016. Dkt. 7. A corrected copy of page 15 is attached hereto as **EXHIBIT A**. Respectfully submitted,

*Counsel for Applicant, YOLOtech, LLC*

By:

  
MARK A. HOFFMAN, ESQUIRE

7711 Bayshore Drive  
Margate City, New Jersey 08402

Date: April 28<sup>th</sup>, 2016

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 28<sup>th</sup> day of April, 2016, a true and correct copy of the foregoing **APPLICANT'S CORRECTION TO PAGE 15 OF THE BRIEF IN SUPPORT OF APPLICANT'S RESPONSE IN OPPOSITION TO OPPOSER'S MOTION TO STRIKE APPLICANT'S ANSWER AND AFFIRMATIVE DEFENSES** was served by First Class U.S. Mail, postage pre-paid, on the following:

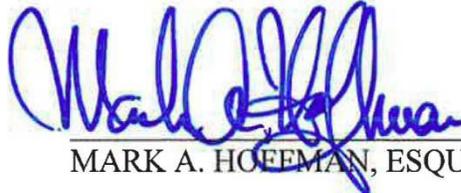
Ralph H. Cathcart, Esquire  
**LADAS & PARRY LLP**  
1040 Avenue of the Americas  
New York, New York 10018  
RCathcart@ladas.com



MARK A. HOFFMAN, ESQUIRE

**CERTIFICATE OF ELECTRONIC FILING**

The undersigned certifies that this submission (along with any paper referred to as being attached or enclosed) is being filed with the United States Patent and Trademark Office via the Electronic System for Trademark Trials and Appeals (ESTTA) on this 28<sup>th</sup> day of April, 2016.



MARK A. HOFFMAN, ESQUIRE

# **EXHIBIT A**

(h) **Waiving and Preserving Certain Defenses:**

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- (2) When to Raise Others. Failure to state a claim upon which relief can be granted, to join a person required by Rule 19(b), or to state a legal defense to a claim may be raised:
- (A) In any pleading allowed or ordered under Rule 7(a);
  - (B) By motion under Rule 12(c);
  - (C) at trial.

Applicant, therefore, respectfully requests that the Board issue an Order striking Applicant's First Affirmative Defense, *without prejudice*, pursuant to the Board's authority under Fed. R. Civ. P. 12(f). Opposer's Motion to Strike Applicant's First Affirmative Defense, in that regard, will thereby be rendered moot.

**B. Applicant's Second and Third Affirmative Defenses Must Simply be Construed Pursuant to the Federal Rules of Civil Procedure as General Defenses, and Must Not be Stricken**

Opposer complains in Opposer's Motion to Strike that Applicant's Second and Third Affirmative Defenses are redundant, and fail to set forth anything more availing than a general negative defense. These defenses retain vitality, even if misclassified by Applicant as affirmative defenses, and should not be stricken.

"In attempting to controvert an allegation in the complaint, a defendant occasionally may label his negative averment as an affirmative defense rather than as a specific denial. But as long as the pleading clearly indicates the allegations in the complaint that are intended to be placed in issue, the improper designation would not operate to prejudice the pleader. If the plaintiff has