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

Proceeding no.	92071596
Party	Plaintiff Schiebel Industries AG
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Signature	/Jonathan Myers/
Date	12/22/2021
Attachments	EXHIBIT M.pdf(272645 bytes )

# **EXHIBIT M**

**From:** [Jonathan Myers](#)  
**To:** [Legal@lilliant.com](mailto:Legal@lilliant.com)  
**Cc:** [Peter J. Phillips](#); [Linda Berrios](#); [Info](#)  
**Subject:** FW: Schiebel v. Camera Copters; Our Ref: RIPJ-1032-CANC  
**Date:** Sunday, November 21, 2021 2:54:00 PM  
**Attachments:** [image007.png](#)  
[image008.png](#)  
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Dear Lilian:

We are in receipt of your Notice of Reliance.

Schiebel objects to Camera Copters' intention to rely on the following alleged affirmative defenses, because they were not included in Camera Copters' Answer, and so Schiebel was not given notice of any of these alleged defenses. Schiebel will not agree to try these alleged defenses by express or implied consent:

1. Schiebel never policed its CAMCOPTER mark;
2. Schiebel's mark CAMCOPTER is so descriptive that it is incapable of distinguishing its unmanned helicopters from those of any one else and that is why Schiebel refers to its unmanned helicopters as CAMCOPTER S-100 and not CAMCOPTER per se. Schiebel never used the mark CAMCOPTER per se, but instead CAMCOPTER S-100 ;
3. Camera Copters has sold aerial photography equipment under the CAMERA COPTERS mark before Schiebel has sold unmanned helicopters under the CAMCOPTER mark;
4. Camera Copters alleging a Morehouse defense, alleging that aerial filming and photography services on the one hand and unmanned helicopters on the other hand are the same thing; (The Decision on Camera Copters' Motion to Dismiss made it clear that this defense should have been pled as an affirmative defense to be considered, but was not)

5. Camera Copters' allegation that it has sold helicopters under the CAMERA COPTERS mark since 2003 (thus allegedly predating Schiebel's date of first use in its initial pleading;
6. Camera Copters allegation that Schiebel never used the CAMCOPTER mark in US commerce, based on allegations of Schiebel's lack of advertising of the CAMCOPTER unmanned helicopters for the US market.

The TBMP Section 311.02(c) makes it clear that unpleaded affirmative defenses cannot be relied upon by the defendant unless defendant's pleading has been amended (which it hasn't). Scheibel would object to any proposed amendment by Camera Copters at this point in the proceedings, as highly prejudicial. Scheibel has proceeded in this case based on the initial pleadings, and has conducted its discovery, Initial Disclosures and Trial Testimony based on those pleadings, and has spent considerable sums and client resources based on those pleadings. As a non-limiting example, Schiebel would have sought discovery on any affirmative defenses raised in Camera Copter's Answer, including seeking documents which Camera Copters would use as possibly relevant to those defenses. Due to the absence of any Affirmative Defenses pled, Schiebel conducted its discovery accordingly. Camera Copters attempt to use any documents that it did produce in discovery is also objectionable, and Schiebel objects to use of any documents not produced in discovery. The discovery period has long been concluded.

Schiebel requests that you amend your Notice of Reliance to remove reference to any of the above alleged defenses, or any other issues not raised by Camera Copters' Answer, and remove any documents which it did not produce in discovery. If Camera Copters does not do so by November 29, 2021 at noon EST, Scheibel will proceed with a motion to the Board.

Best regards,

Jonathan Myers  
Peter J. Phillips  
Lucas & Mercanti, LLP  
30 Broad Street, 21<sup>st</sup> Floor  
New York, NY 10004