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

Trademark Registration No. 2,188,714
Mark: FOCUS
Registration Date: September 15, 1998



03-01-2004

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #78

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|------------------------------------|---|
| D. MICHAEL BURK d/b/a Fokus, Inc., |) |
| |) |
| Petitioner, |) |
| |) |
| DERBY CYCLE WERKE GMBH, |) |
| |) |
| Registrant. |) |

Cancellation No.

BOX TTAB FEE
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

PETITION FOR CANCELLATION

Petitioner, D. Michael Burk d/b/a Fokus, Inc. of 122 South Chase Avenue, Lombard, Illinois 60148 seeks cancellation of U.S. Trademark Registration No. 2,188,714 as applied to all goods covered under International Classes 12 and 25.

To the best of Petitioner's knowledge, the name and address of the current owner of the above-identified registration is Derby Cycle Werke GmbH located at Siemensstr. 1-3, Cloppenburg, Germany D-49661. Petitioner believes that he is damaged by the above-identified registration and alleges the following grounds for cancellation:

1. Petitioner, D. Michael Burk d/b/a Fokus, Inc. has filed an application for registration of the trademark FOKUS & Design in the United States Patent and Trademark Office ("USPTO"), Application Serial Number 76/437,493. The application was filed on August 5, 2002. The application covers the following goods in International

Class 25, as amended: High Performance Sports Clothing Namely, Rainwear, Shirts, T-Shirts, Sweatshirts, Sweat Pants, Sweaters, Tank Tops, Jerseys, Jackets, Hats, Caps, Pants, Shorts, Socks, Gloves, Fleece Hats, Fleece Pullovers, Fleece Jackets, Fleece Pants, Fleece Gloves and Sports Bags.

2. On August 27, 2003, the USPTO issued a FINAL Office Action refusing registration to Petitioner under §2(d) of the Lanham Act citing U.S. Registration No. 2,188,714.

3. Upon information and belief, and a review of the Assignment Records of the USPTO, Derby Cycle Werke GmbH is the current owner of Registration No. 2,188,714, having obtained an assignment from the original owner, Mike Kluge, on September 29, 2001.

4. U.S. Registration No. 2,188,714 issued on September 15, 1998 for the mark FOCUS as applied to the following goods:

Bicycles, bicycles parts and accessories, namely, brakes, bicycle frames, bicycle forks, baggage carriers, handle bars, pumps, tires, saddles, saddle frames, disk wheels, mud guards, steering systems, comprising directional finders and handle bar covers and front end attachments, namely, fenders, tire covers and bumpers in International Class 12, and

Bicycle clothing, namely, shorts, head wear, shoes, gloves, shirts, jackets, leggings, pants, and socks in International Class 25.

5. Upon information and belief, Registrant and its predecessor have not used and are not currently using the mark FOCUS in commerce, which the U.S. Congress may regulate, in connection with any of the International Class 12 goods listed in Paragraph 4 above and therefore, Registrant has abandoned the mark.

6. Upon information and belief, Registrant and its predecessor has not used and is not currently using the mark FOCUS in commerce, which U.S. Congress may

regulate, in connection with any of the International Class 25 goods listed in Paragraph 4 above and therefore, Registrant has abandoned the mark.

7. If Registrant is permitted to continue to maintain its invalid registration, the same may be deemed incontestable after five (5) years from the date of registration, and Registrant would thereby obtain an incontestable right to use the FOCUS mark in commerce and in any event, the continued existence of such registration casts a cloud upon Petitioner's own right to use, register, develop and expand it's use of the mark FOKUS & Design.

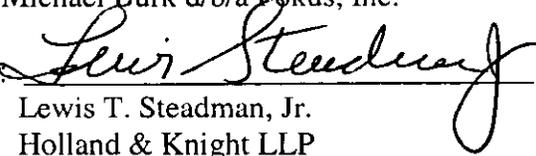
8. A duplicate copy of this Petition and the fee required in §2.6 (\$300 X 2 classes = \$600.00) are enclosed herewith.

WHEREFORE, Petitioner prays that Registration No. 2,188,714 issued September 15, 1998 be cancelled and that this Petition for Cancellation be sustained in favor of Petitioner.

Respectfully Submitted,

D. Michael Burk d/b/a Fokus, Inc.

Date: 2/27/04

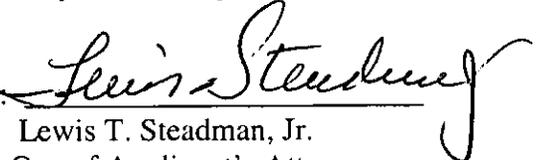
By: 

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Attorneys for Petitioner

CERTIFICATE OF MAILING

I hereby certify that true and correct duplicate copies of Petition for Cancellation is being deposited with the United States Postal Service as First Class Mail, postage prepaid in an envelope addressed to: BOX TTAB FEE, Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513 this 27th day of February, 2004.

Date: 2/27/04

By: 
Lewis T. Steadman, Jr.
One of Applicant's Attorneys

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