

*Handwritten initials/signature*

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

MV Agusta Motor S.p.A. )  
Opposer, )  
v. )  
Team Obsolete Products, Ltd. )  
Applicant. )

Opposition No.s 119317 (Parent)  
119597  
11959~~8~~



04-11-2002

U.S. Patent & TMO/TM Mail Rcpt Dt. #58

**APPLICANT'S REPLY TO OPPOSER'S SUR-REPLY**

Applicant, Team Obsolete Products Ltd., respectfully submits this Motion for Leave to Reply to Opposer's Sur-reply and herewith submits its Reply. This Reply is necessary to clarify issues raised for the first time by Opposer in its Sur-reply. This short Reply will assist the Board in arriving at a just conclusion on Applicant's Motion for Summary Judgment which is based on a simple case of domestic priority.

*Vertical stamp: TRADEMARK AND APPEAL BOARD*

Applicant objects these previously unpleaded issues being raised at this late juncture, and respectfully requests they not be made part of the pleadings. The following comments are offered to put these newly raised issues into perspective.

1. Neither the Applicant or any other Team Obsolete entity ever sought or obtained any license or agreement of any kind to use the MV Agusta marks anywhere, anytime from any entity. Opposer's naked assertions to the contrary are simply untrue.

2. Neither the Applicant or any other Team Obsolete entity ever used the MV Agusta marks under any license anywhere anytime. Opposer's naked assertions to the contrary are simply untrue.

3. The abandonment of the United States applications for the MV Agusta marks by Opposer and its predecessors in interest is a matter of record. It abandoned the marks well prior to the date of Team Obsolete's application for the marks. Our application after abandonment by Opposer cannot be in bad faith. Opposer's assertions to the contrary are unfounded.

4. All samples of "use" supplied by Opposer were either samples of foreign "use" or dated well after Applicant's priority date. If Opposer had evidence to the contrary it should have

*Handwritten initials/signature*

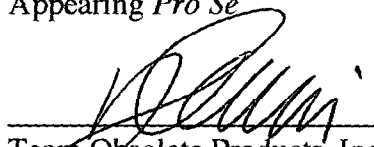
been supplied in response to Applicant's discovery demands seeking such specific information. A naked assertion of use is insufficient to overcome a motion for summary judgment.

5. Opposer disingenuously references to dispositive discovery information it hopes to obtain from Applicant in the future. This is a red herring. Applicant is not in possession of, or aware of any such information. Opposer is well aware that it waived **by agreement** all its discovery rights in return for Applicant's consent to its Motion to Reset the Trial Dates, which Motion was served *after* the discovery period had closed and Opposer's right to demand discovery had forever lapsed. The stated basis for its motion to extend time was for a settlement, not to allow Opposer a second chance to request discovery after the period had ended. No prior discovery requests had been served by Opposer. Revealingly, Opposer has pointedly refused to discuss settlement after the extension was granted, suggesting that it is only willing to discuss settlement if Applicant first withdraws its pending applications for the MV Agusta marks.

WHEREFORE Applicant respectfully requests that these previously unpleaded issues raised by the Opposer in its Sur-reply not be made part of the pleadings, and that the Board grant Applicant's Motion for Summary Judgment based on simple domestic priority.

Dated this 9<sup>th</sup> Day of February 2002.

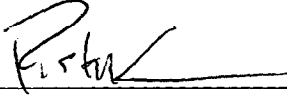
Respectfully Submitted  
Appearing *Pro Se*

  
\_\_\_\_\_, President  
Team Obsolete Products, Inc.  
139 Henry St  
Brooklyn NY 11201  
718 596-0504

**CERTIFICATE OF MAILING**

I hereby certify that on this 09<sup>th</sup> day April 2002, a true and correct copy of the foregoing Reply in reference to Opposition No's 119317, (Parent) 119597 and 119598 was deposited in the United States Mail, first class postage prepaid, to the foregoing address:

Assistant Commissioner of Trademarks  
2900 Crystal Drive  
Arlington VA. 22202-3513

  
\_\_\_\_\_  
Russell R. Kaiser

**PROOF OF SERVICE TO OPPOSER**

I hereby certify that on this 09<sup>th</sup> day of April 2002, a true and correct copy of the foregoing Reply in reference to Opposition No's 119317, (Parent), 119597 and 119598 was deposited in the United States Mail, first class postage prepaid, to the foregoing address:

Frank P. Presta, Esq.  
Nixon & Vanderhye, P.C.  
1100 N. Glebe Road, 8<sup>th</sup> Floor  
Arlington VA. 22201-4714

  
\_\_\_\_\_  
Russell R. Kaiser