

17#13



11-22-2002

**CERTIFICATE OF MAILING**

U.S. Patent & TMO/TM Mail Rcpt Dt. #73

I hereby certify that this document is being deposited with the United States Postal Service as first class mail in an envelope addressed: Box TTAB - No fee, Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA, 22202-3513, on the date noted below:

Date: November 19, 2002

Sean Mellino  
Sean Mellino

Attorney Docket BA-2 (#90383)

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

In the Matter of:

Application Serial No. 75/841,357  
Mark: ERGOBRAIN - International Class 9, 12  
Applicant: Campagnolo srl  
Published in the *Official Gazette* at Page TM 123 on December 26, 2000

VELOTREND	)	
Opposer,	)	
	)	
v.	)	Opposition No. 91/124,261
CAMPAGNOLO SRL	)	
Applicant	)	

**APPLICANT'S SUBMISSION OF COPY OF PREVIOUSLY FILED ANSWER**

Dear Sir:

Per a telephone conversation of November 19, 2002 with a representative of the office of the U.S. Trademark Trial and Appeals Board, it was discovered that the Answer of the Applicant in the above-referenced opposition has been misplaced at the TTAB. It was requested that the Applicant submit a copy of the previously filed answer along with a copy of the return postcard receipt. The copies are enclosed herewith.

Respectfully submitted,

Dated: November 19, 2002

D. Peter Hochberg  
D. Peter Hochberg  
Reg. No. 24,603

D. PETER HOCHBERG CO., L.P.A.  
The Baker Building, 6<sup>th</sup> Floor  
1940 East 6<sup>th</sup> Street  
Cleveland, Ohio 44114  
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TTAB



11-22-2002

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #73

Attorney Docket: BA-2 (#90383)

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

In the Matter of Application Serial No. 75/841,357  
Mark: "ERGOBRAIN" in International Class 9, 12  
Applicant: Campagnolo srl  
Published in the *Official Gazette* of December 26, 2000 at page TM 123

_____	)
VELOTREND,	)
	)
Opposer	)
	)
vs.	)
	)
CAMPAGNOLO SRL	)
	)
Applicant	)
_____	)

Opposition No. 124,261

BOX TTAB NO FEE  
Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, VA 22202-3513

**APPLICANT'S ANSWER TO NOTICE OF OPPOSITION**

Dear Sir:

Applicant, Campagnolo srl, a corporation organized and existing under the laws of Italy, located and having its place of business at Via della Chimica 4, 36100 Vicenza, Italy, (hereinafter referred to as "Applicant"), for its answer to the Notice of Opposition filed by Opposer, Velotrend, a partnership with its principal place of business at 235 Vincent Drive, Mountain View, CA 94041, against application for registration of Applicant's mark "ERGOBRAIN", Application Serial No. 75/841,357, filed November 5, 1999, and published in the Official Gazette of December 26, 2000, hereby pleads and avers as follows:

1. Answering paragraph 1 of the Notice of Opposition, Applicant is without sufficient knowledge or information to form a belief as to the allegations made therein and accordingly denies

said allegations.

2. Answering paragraph 2 of the Notice of Opposition, Applicant is without sufficient knowledge or information to form a belief as to the allegations made therein and accordingly denies said allegations.

3. Answering the third paragraph, labeled 2, of the Notice of Opposition, Applicant admits that Opponent did attach a copy of the particulars of Registration No. 2,304,231 but otherwise is without sufficient knowledge or information to form a belief as to the allegations made in paragraph 2 (second occurrence) and accordingly denies said allegations.

4. Answering paragraph 4 of the Notice of Opposition, Applicant is without sufficient knowledge or information to form a belief as to the allegations made therein and accordingly denies said allegations.

5. Answering paragraph 5 of the Notice of Opposition, Applicant admits that it filed a federal application for registration of the mark "ERGOBRAIN" on November 5, 1999 claiming a bona fide intent to use the mark in commerce. Applicant further states that said application also claims, under the Trademark Act Section 44(d), priority based on a foreign application.

6. Answering paragraph 6 of the Notice of Opposition, Applicant denies each and every allegation made therein.

7. Answering paragraph 7 of the Notice of Opposition, Applicant denies each and every allegation made therein.

8. Answering paragraph 8 of the Notice of Opposition, Applicant denies each and every allegation made therein.

9. Answering paragraph 9 of the Notice of Opposition, Applicant denies each and every allegation made therein.

10. Answering paragraph 10 of the Notice of Opposition, Applicant denies each and every allegation made therein.

#### AFFIRMATIVE DEFENSES

Further answering, Applicant asserts the following affirmative defenses:

11. The parties' marks are different in appearance, sound and connotation, are used in connection with divergent goods and/or services, and are provided through distinct channels of trade to distinct classes of consumers such that consumers are not likely to be confused, mistaken or

deceived into a belief that Applicant's goods provided under Applicant's mark are related in any way to Opposer.

12. Opposer has not shown wherein it will be, or is likely to be, damaged by the registration of Applicant's mark, and therefore does not have standing to oppose registration of Applicant's mark.

RELIEF REQUESTED

WHEREFORE, based on the foregoing reasons, Applicant contends that this opposition is groundless and baseless in fact; that the Opposer has not shown a substantial likelihood of confusion, or mistake, or deception among relevant consumers as to the source of origin or sponsorship of the Applicant's services. Applicant respectfully requests, therefore, that the Notice of Opposition be dismissed in its entirety, and that a registration issue to Applicant for its mark.

Respectfully submitted,

Date: October 2, 2002

By: [Signature]  
D. PETER HOCHBERG, Reg. No. 24,603

DPH/KRV

D. PETER HOCHBERG CO., L.P.A.  
The Baker Building, 6<sup>th</sup> Floor  
1940 East 6<sup>th</sup> Street  
Cleveland, Ohio 44114  
(216) 771-3800

**CERTIFICATE OF MAILING**

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October 2, 2002  
Date

[Signature]  
Katherine R. Vieyra

**CERTIFICATE OF SERVICE**

I, D. Peter Hochberg, hereby certify that on the date shown below, I have mailed by first-class United States mail, postage prepaid, the foregoing APPLICANT'S ANSWER TO NOTICE OF OPPOSITION to Martin R. Greenstein, Esquire, TechMark, 55 So. Market St., 16<sup>th</sup> Floor, San Jose, CA 95113.

October 2, 2002  
Date

[Signature]  
D. Peter Hochberg