

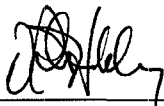


Applicant further moves this Board pursuant to 37 C.F.R. 2.210(f) for a protective order permitting Applicant to respond to Opposer's discovery twenty-one days after the date set by this Board by which Applicant's responses to Opposer's discovery are due.

The facts and arguments in support of Applicant's Motion are set forth in Applicant's Memorandum in Support of its Motion for an Order to Compel Discovery and for a Protective Order submitted herewith.

Respectfully submitted,

Date: May 8, 2003

By:   
D. PETER HOCHBERG  
Reg. No. 24,603

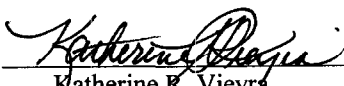
DPH/KRV  
D. PETER HOCHBERG CO., L.P.A.  
The Baker Building, 6<sup>th</sup> Floor  
1940 East 6<sup>th</sup> Street  
Cleveland, Ohio 44114  
(216) 771-3800

#### CERTIFICATE OF SERVICE

I, Katherine R. Vieyra, hereby certify that on the date indicated below, I have mailed by first-class United States mail, postage prepaid, the foregoing APPLICANT'S MOTION FOR AN ORDER TO COMPEL RESPONSES TO APPLICANT'S FIRST SET OF INTERROGATORIES, TO COMPEL PRODUCTION OF DOCUMENTS AND FOR A PROTECTIVE ORDER to:

Martin R. Greenstein, Esquire  
Techmark  
55 So. Market Street, 16<sup>th</sup> Floor  
San Jose, CA 95113

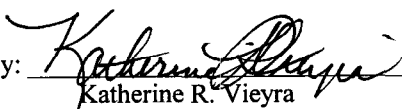
Date: May 8, 2003

By:   
Katherine R. Vieyra

#### CERTIFICATE OF MAILING/TRANSMISSION (37 C.F.R. 1.8(a))

I hereby certify that this paper (along with any paper referred to as being transmitted therewith) is being deposited with the United States Postal Service on the date below as first class mail in an envelope addressed to: Box TTAB No FEE, Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513

Date: May 8, 2003

By:   
Katherine R. Vieyra

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, filed November 5, 1999  
Mark: ERGOBRAIN in Int. Class 9  
Applicant: Campagnolo srl  
Published in the *Official Gazette* of December 26, 2000 at p. TM 123

VeloTrend	)	
	)	
Opposer,	)	
	)	
vs.	)	Opposition No. 124,261
	)	
Campagnolo srl	)	
	)	
Applicant.	)	

**APPLICANT'S MEMORANDUM IN SUPPORT OF ITS MOTION FOR AN  
ORDER TO COMPEL DISCOVERY AND FOR A PROTECTIVE ORDER**

The Applicant served Applicant's First Set of Interrogatories and Initial Requests for Production of Documents on Opposer on February 26, 2003. Specifically, they were served on the attorney representing Opposer in the above-identified opposition proceeding. The attorney representing the Opposer responded with an assertion of a general objection on the ground of excessive number of interrogatories; this response was served on April 2, 2003. Applicant's First Set of Interrogatories and Initial Requests for Production of Documents to Opposer as served on February 26, 2003 is attached, as is Opposer's response served on April 2, 2003.

Applicant's attorney had a telephone conference with the attorney representing the Opposer on April 9, 2003 to attempt to resolve the issue of whether the number of interrogatories was excessive. No agreement was reached; Opposer's attorney would neither

agree that the number of interrogatories was not excessive nor allow Applicant's attorney to submit a revised, smaller set of interrogatories.

TBMP §406.03(a) provides that the total number of written interrogatories which a party may serve upon another shall not exceed seventy-five (75), counting subparts. The rule also provides that the Trademark Trial and Appeal Board, in its discretion, may allow additional interrogatories. TBMP §406.03(d) further provides that each subpart within an interrogatory is to be counted as a separate interrogatory, regardless of whether the subpart is separately numbered or lettered. Applicant points out that introductory instructions or preambles to a set of interrogatories will not be counted by the Board as interrogatories or subparts for purposes of determining whether the limit has been exceeded.

The total number of interrogatories asked in Applicant's First Set of Interrogatories, including subparts, does not exceed the limit of seventy-five. When considering the substance of the interrogatories, and in turn counting the unnumbered or undesignated subparts of the interrogatories, the total still does not exceed the limit of seventy-five. Even the most liberal interpretation and application of TBMP §406.03(d) does not present an excessive amount of interrogatories. Opposer has undoubtedly created undesignated subparts where none exist for purposes of creating the façade that the limit has been exceeded and has counted numerous introductory instructions or preambles, which are not to be counted, as previously explained.


The material to which the interrogatories seek responses is essential for Applicant to obtain evidence at least with respect to the mark BIKEBRAIN used by Opposer in its business operations and the Applicant seeks these responses without exceeding the allotted interrogatory limit. As previously stated, Applicant's attorney has made a good faith effort,

by telephone, to resolve with the attorney for the Opposer the issues presented in this motion and has been unable to reach agreement.

37 C.F.R. 2.120(f) provides that upon motion by a party from whom discovery was sought, and for good cause, the Board may make an order to protect a party, in this case the Applicant, including one or more of the types of orders provided in the clauses (1) through (8) inclusive, of Rule 26(c) of the Federal Rules of Civil Procedure. These include a protective order stating that the disclosure or discovery may be had only on specified terms and conditions, including a designation of a time or place. It is accordingly requested that the Applicant not be required to supply responses to the discovery requests of Opposer until before the Applicant receives proper responses to Applicant's discovery requests, and not for twenty-one days after such responses have been received. It would be unfair to Applicant to provide responses to Opposer's discovery requests before receiving responses from Opposer to Applicant's requests, since Applicant was first in making its discovery requests. It is, therefore, respectfully requested that the present Motion to Compel and the Protective Order be granted.

Respectfully submitted,

Date: May 8, 2003

By:   
D. PETER HOCHBERG  
Reg. No. 24,603

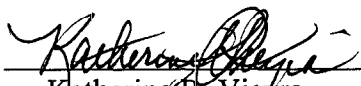
DPH/KRV  
D. PETER HOCHBERG CO., L.P.A.  
The Baker Building, 6<sup>th</sup> Floor  
1940 East 6<sup>th</sup> Street  
Cleveland, Ohio 44114  
telephone: (216) 771-3800

**CERTIFICATE OF SERVICE**

I, Katherine R. Vieyra, hereby certify that on the date indicated below, I have mailed by first-class United States mail, postage prepaid, the foregoing APPLICANT'S MOTION FOR AN ORDER TO COMPEL RESPONSES TO APPLICANT'S FIRST SET OF INTERROGATORIES, TO COMPEL PRODUCTION OF DOCUMENTS AND FOR A PROTECTIVE ORDER to:

Martin R. Greenstein, Esquire  
Techmark  
55 So. Market Street, 16<sup>th</sup> Floor  
San Jose, CA 95113

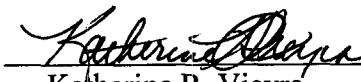
Date: May 8, 2003

By:   
Katherine R. Vieyra

**CERTIFICATE OF MAILING/TRANSMISSION (37 C.F.R. 1.8(a))**

I hereby certify that this paper (along with any paper referred to as being transmitted therewith) is being deposited with the United States Postal Service on the date below as first class mail in an envelope addressed to: Box TTAB No FEE, Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513

Date: May 8, 2003

By:   
Katherine R. Vieyra



2. The information requested includes such information as Opposer knows of its own personal knowledge, as well as that which is available to Opposer, including, but not limited to, information which is in the possession of Opposer's attorney, accountant, investigators, insurance carriers, agents or employees and anyone else acting in Opposer's behalf or on its behalf.

3. If the answering party is a public or private corporation, a partnership, association, or a governmental agency, the answering officer or officers, agent or agents, shall furnish such information as is available to the entity, itself, and not merely that which is available to him or her personally.

4. If, after exercising due diligence to secure the information requested, Opposer cannot fully answer an Interrogatory and/or Request or any part thereof, state the reasons for such inability to fully answer the Interrogatory and/or Request to the fullest extent possible, and state what information, knowledge or belief Opposer has concerning the unanswered portion.

5. If Opposer objects to an Interrogatory and/or Request or any part thereof, state the reasons for its objection and answer fully those parts to which Opposer does not object.

6. These interrogatories shall be deemed continuing, and supplemental answers shall be required if Opposer directly or indirectly obtains further information of a nature sought herein between the time the answers were served and the time of trial or hearing. The obligation to supplement includes, but is not limited to, supplementing Opposer's response to each Interrogatory and/or Request addressed to the identity of persons having knowledge of discoverable matter or expected to testify as expert witnesses (including the subject matter and substance of the expert's testimony). In addition, the Opposer is under a duty to seasonably amend a prior response to these interrogatories if information is obtained which discloses (a) that the response was incorrect when made or (b) that the response, though correct when made, is no longer true in light of that information.



7. With respect to each document which Opposer contends is privileged or otherwise excludible from discovery, state the basis for the privilege or other ground for exclusion so that Opposer and the TTAB may have sufficient factual basis to determine whether or not such documents or other material is privileged, including the name and address of the author and the addressee(s), the date, the general subject matter, the name and address of the person(s) who now have the original and any copies, and the identification and location of the files where the original and each copy are normally kept.

8. If the answering party, without substantial justification, either refuses to answer or provides an evasive or incomplete answer to these propounded interrogatories, TTAB may order the answering party to answer same, and may order the answering party, or their attorney, or both, pay the propounding party those reasonable expenses incurred in obtaining such order, including the propounding party's attorneys' fees.

#### DEFINITIONS

The following definitions apply to each Interrogatory and/or Request:

1. a) The term "document" as used in these interrogatories includes (without limitation and irrespective of whether original, copy or draft) all documents, objects, contracts, agreements, memoranda, assignments, licenses, minutes of meetings, books of account, orders, statements, computation sheets, reports, photographs, drawings of any kind, layouts, art work, tracings, blueprints, sketches, charts, schematic diagrams, catalogs, brochures, computer programs and computer files and print outs and tapes and magnetic disks, books, papers, files, purchase orders, bills, invoices, accounts, canceled checks, ledgers, correspondence, inter-office communications, communications of any kind, letters, e-mails, notes (in pencil, ink, or typewritten), including notes or records of oral communications, notebooks, telexes, telegrams (and other messages), audio or video tapes, and advertising or promotional material, instructions, or material of any kind, whether or not the document is privileged or within Opposer's possession, control, or

custody, as well as all drafts thereof and all copies bearing any notations not appearing on the original.

b) The word "thing" refers to any tangible object other than a document, and includes objects of every kind and nature such as, but not limited to, prototypes, models and specimens.

c) The words "every," "each," "all," "any," and "such" shall be construed in a manner which makes the Interrogatory and/or Request most inclusive.

d) The words "and" and "or" shall be construed conjunctively or disjunctively, whichever makes the Interrogatory and/or Request more inclusive.

e) "Fact" refers to, without limitation, every matter, occurrence, act, event, transaction, occasion, instance, representation, practice, policy, course of conduct or other happening and the source or basis upon which knowledge of such fact is based.

f) "Relate to" and "relating to" mean, without limitation, "refer to," "comprise," "contain," "describe," "discuss" or "pertain to."

g) "Opposer," "you," "your" and "VeloTrend" mean Opposer, VeloTrend, including related companies within the meaning of Section 45(d) of the Trademark Act of 1946 (15 U.S.C. 1127), its predecessors in interest, successors, divisions, subsidiaries, affiliates, licensees, franchisees and all officers, directors, employees, attorneys, consultants, agents, servants, accountants and all other persons or entities acting on behalf of or representing VeloTrend.

h) "Person" means any individual, firm, corporation, joint venture, partnership, association, fund, organization, or other entity.

i) "Person affiliated with VeloTrend" or "person affiliated with Opposer" means any person who is now or has ever been an officer or director of, or employed by, under the control of, under contract with, or a representative of VeloTrend.

j) "Partner" means a member of the VeloTrend partnership who participates fully, or in a limited way, in the profits, losses and management of the partnership and who is personally liable for its debts.

2. A request to "identify":

a) a "person" when referring to a natural person means to state his or her full name, present or last known address (specifying which), present or last known telephone number (specifying which), and, where applicable, present or last known employer or business affiliation (specifying which) and address thereof, present or last known job, position or title (specifying which), and relationship to the parties to this action;

b) a "person" when referring to an entity means to state the full name thereof, present or last known address (specifying which), date, state and country of organization, name under which organized, and identity of the chief executive officer or person holding comparable position.

3. A request to "identify" a "document" means to state:

a) the general nature of the document (i.e., whether it is a letter, memorandum, report, drawing, chart, pamphlet, etc.);

b) a statement of the particularized subject matter of the document;

c) the occasion for and/or circumstances under which the document was prepared;

d) the identity of the original authors or draftpersons of the document, as well as the identity of any person who has edited, corrected, revised, amended or placed any initials, comment, or notation thereon;

e) the identity of the companies or firms with which those persons listed in (d) were associated on the date of the document;

f) the date on the document, and date it was created, if different, as well as every date on which it was edited, corrected, revised or amended;

g) the identity of every person to whom or which the document was addressed or to be sent and of every other person you have reason to believe actually reviewed or received the document;

h) the identity of every person now having possession, custody, or control of such document;

i) the identity of the custodian of the original or a copy of such document; and

j) the production number, if any, assigned by you to the document for purposes of this litigation.

4. A request to "identify" a "communication" means to identify the persons sending, receiving or participating in the communication, to state the nature of the communication, the time, date and place in which it occurred, and to identify all documents relating to the communication.

5. Every pronoun shall mean the masculine, feminine or neuter gender, as may be appropriate. The singular of every noun or pronoun shall include the plural, and the plural of every noun or pronoun shall include the singular, as may be appropriate.

### INTERROGATORIES

The interrogatories are as follows:

#### INTERROGATORY NO. 1:

Identify all present or past partners of Opposer, any related company of Opposer and any manufacturer or distributor of goods and services bearing the mark BIKEBRAIN, who has any knowledge of the facts stated in Opposer's Notice of Opposition filed in the United States Trademark Office on April 25, 2001.

#### INTERROGATORY NO. 2:

With respect to the alleged mark BIKEBRAIN, or any part or portion thereof, used alone or in combination with other terms or devices:

(a) Identify each person having knowledge or information relating to the initial selection, adoption and contemplated or actual date of first use of BIKEBRAIN.

(b) Set forth all facts known to Opposer and identify all documents relating or referring to its creation, selection, adoption and contemplated or actual date of first use in the United States. If appropriate, such information may include the contemplated or actual date of first use; the manner in which Opposer has used or plans to use the mark

BIKEBRAIN with each type of goods and/or services to which it is applied; a description of the types of media in which Opposer has used or plans to use the mark BIKEBRAIN in any way in the advertising of its goods; the name of the buyer if first use was a sale of goods and/or services with the subject mark affixed thereto or displayed in conjunction therewith; an identification of any writings upon which Opposer will rely to support the date of first use; and the identity of any witnesses having knowledge of the date of first use.

**INTERROGATORY NO. 3:**

State whether or not Opposer has ever, either at the time of adoption or at a later date, conducted any investigation or search of the United States Federal Trademark Register or the Register of any state in the United States, or conducted any survey or other investigation to determine the likelihood of confusion, with regard to the alleged mark BIKEBRAIN, or any part or portion thereof used, alone or in combination with other terms or devices. If the answer is other than an unqualified negative, please:

- (a) Indicate when each such investigation or search was conducted.
- (b) Identify all documents relating in any way to any such investigation or search.
- (c) Identify all registrations or pending applications which were located as a result of any such investigation or search.
- (d) Identify the person or persons who are most familiar with the facts and documents relating to the conducting of any such investigation or search and the results thereof.

**INTERROGATORY NO. 4**

Identify and describe with particularity any and all goods and/or services which have been and/or are currently being promoted, sold, distributed or otherwise provided by Opposer or any licensee of Opposer or any manufacturer or distributor of Opposer in connection with the mark BIKEBRAIN, or any part or portion thereof, used alone or in combination with other terms or devices.

**INTERROGATORY NO. 5**

Identify and describe with particularity any and all goods and/or services which are planned to be promoted, sold, distributed or otherwise provided by Opposer or any licensee of Opposer in connection with the mark BIKEBRAIN, or any part or portion thereof, used alone or in combination with other terms or devices.

**INTERROGATORY NO. 6**

With respect to each of the goods and/or services identified in your answer to Interrogatory No. 4, describe with particularity the channels of distribution by which the goods and/or services reach the ultimate consumer including (but not limited to):

(a) the nature and circumstances surrounding the sales (e.g., whether the goods and/or services are provided or offered in conjunction with or as an adjunct to the selling of other goods or services of Opposer);

(b) the nature and circumstances surrounding the sales of the goods and/or services with respect to Applicant's goods marketed under the ERGOBRAIN mark (e.g., whether the goods and/or services are provided or offered in conjunction with or as an adjunct to the selling of other goods or services of Applicant's goods sold under the ERGOBRAIN mark);

(c) the types and ages of persons who are known to be purchasers or users of the goods and/or services; and

(d) the types and ages of persons to whom advertisements or promotional materials for goods and/or services are directed whether or not same are assumed to be users and/or purchasers.

**INTERROGATORY NO. 7**

With respect to each of the goods and/or services identified in your answer to Interrogatory No. 4, state the following information for each good or service from the date the product or service was first sold or provided:

(a) annual sales in approximate dollar amounts and/or an approximate estimate of the number of consumers provided with such goods and/or services;

(b) annual advertising and promotional expenditures;

(c) the geographical area of the sales and/or area in which goods and/or services are/were provided;

(d) the inclusive dates of each period lasting three (3) months or longer during which there was no sale of goods and/or no services provided; and

(e) identify all documents with particularity which relate to the goods and/or services, including each piece of advertising and/or promotional material used or distributed in connection with each such good or service, indicating the period during which the document was used and the geographical area of use.

**INTERROGATORY NO. 8**

Identify any predecessor in title under whom Opposer claims the benefit of any use of BIKEBRAIN, or any part or portion thereof, used alone or in combination with other terms or devices by any predecessor in title.

**INTERROGATORY NO. 9**

Describe any instances, wherein use of the mark BIKEBRAIN was discontinued for any period of time since its initial adoption, including but not limited to any instances wherein use of the mark BIKEBRAIN was discontinued with respect to one or more products or services although perhaps not all products or services.

**INTERROGATORY NO. 10**

With respect to each product or service identified in the answer to Interrogatory No. 4, identify all third party publications in which Opposer or its licensee(s) or distributor(s) advertises or promotes such goods and/or services or provides information or offers to provide information concerning the goods and/or services sold or provided.

**INTERROGATORY NO. 11**

With respect to each product or service identified in the answer to Interrogatory No. 4, identify the person or persons who have been and/or are responsible for the sale, advertising, promotion, and provision of each such product and/or service in conjunction with the mark BIKEBRAIN, or any part or portion thereof, used alone or in combination with other terms or devices, indicating the time period during which each person was responsible for such products and/or services.

**INTERROGATORY NO. 12**

State with specificity any goods and/or services sold, offered, or distributed by Opposer, in addition to those goods and/or services identified in the answer to Interrogatory No. 4.

**INTERROGATORY NO. 13**

With respect to the mark BIKEBRAIN, or any part or portion thereof, used alone or in combination with other terms or devices:

(a) Identify and provide a specimen of each form of planned or actual usage of the mark by Opposer.

(b) State the dates of initial selection, adoption and expected or actual first use of each form of usage.

(c) Provide all details of how each particular form of usage is or is planned to be employed (e.g., labels, signs, letterhead, brochures, accounting documents, pre-packaged forms, web pages, etc.).

(d) State the date of termination of the form of usage, if terminated.

**INTERROGATORY NO. 14**

Identify any licensees of the alleged mark BIKEBRAIN or any part or portion thereof, used alone or in combination with other terms or devices.

**INTERROGATORY NO. 15**

State whether or not Opposer has ever conducted any survey or other investigation to determine the likelihood of confusion between its mark BIKEBRAIN, or any part or portion thereof, used alone or in combination with other terms or devices, and any other mark as applied to any products or services, including those of Applicant. If the answer is other than an unqualified negative, please give the results of each such survey or investigation, identify all documents relating thereto and identify the custodian thereof.

**INTERROGATORY NO. 16**

Identify each document and each electronic entry showing Opposer's intention to use the mark BIKEBRAIN in the foreseeable future, including such items as invoices for



products purchased showing the BIKEBRAIN mark, correspondence referring to the BIKEBRAIN mark, designs of advertisements and labels showing the BIKEBRAIN mark, instructions to others regarding the protection of the BIKEBRAIN mark and orders for products having the BIKEBRAIN mark.

**INTERROGATORY NO. 17**

State whether or not Opposer has ever use the BIKEBRAIN mark in conjunction with additional terms or devices. If the answer is other than an unqualified negative, please indicate the additional terms or devices used, the frequency with which the combined mark is used and identify all documents relating thereto and identify all documents and communications relating thereto and identify the custodian thereof.

**INTERROGATORY NO. 18**

With respect to each of the goods and/or services identified in your answer to Interrogatory No. 4, indicate whether any of these goods and/or services could be used in conjunction with or at the same time as Applicant's goods marketed or sold under the ERGOBRAIN mark. If the answer is other than an unqualified negative, please indicate the frequency with which the BIKEBRAIN mark is used in conjunction with goods marketed or sold under Applicant's ERGOBRAIN mark and identify all documents relating thereto and identify all documents and communications relating thereto and identify the custodian thereof.

**INTERROGATORY NO. 19**

State whether or not Opposer has ever conducted any search regarding the availability of BIKEBRAIN as an Internet web page, and, if so, indicate the results of such search(es).

**INTERROGATORY NO. 20**

Identify all persons who prepared, assisted in preparation of, or provided information for the responses to the foregoing interrogatories stating, for each such person, each separate response to the foregoing interrogatories which he or she prepared, assisted in preparation of, or otherwise provided information.

### **INTERROGATORY NO. 21**

For each of the foregoing interrogatories, unless already done in answering the interrogatory, please identify:

(a) the person(s) most knowledgeable with respect to the facts stated in the answer; and

(b) all files of Opposer, giving label name and location, which were consulted in the preparation of answers to these interrogatories.

### **INTERROGATORY NO. 22**

Describe all relevant facts and circumstances surrounding any instance of confusion or mistake, or alleged confusion or mistake, between Opposer's mark and any other mark, including Applicant's ERGOBRAIN mark, or between the identify of Applicant and Opposer.

### **REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS**

1. All documents identified or requested to be identified in response to Interrogatory Nos. 1 through 22 served simultaneously herewith and all documents to which Opposer referred in answering those interrogatories.

2. To the extent not produced in response to Request No. 1 above, a specimen of each different label or device used or contemplated for use by Opposer in connection with goods or services bearing the alleged mark BIKEBRAIN, alone or in combination with other terms or devices.

3. To the extent not produced in response to Request Nos. 1 and 2 above, a specimen of each different advertising and/or promotional piece used or contemplated for use by Opposer, and any related company of Opposer, and any manufacturer or distributor in connection with goods or services bearing the alleged mark BIKEBRAIN, alone or in combination with other terms or devices.

4. To the extent not produced in response to Request Nos. 1-3 above, all documents relating or referring to the initial selection or adoption by Opposer of the alleged mark BIKEBRAIN, including any trademark search reports.

5. To the extent not produced in response to Request Nos. 1-4 above, all documents relating or referring to uses by persons other than Opposer of the term BIKEBRAIN, or phonetic equivalents thereof, alone or in combination with other terms or devices as a mark.

6. To the extent not produced in response to Request Nos. 1-5 above, all documents referring or relating to any search reports, market research or surveys conducted by or on behalf of Opposer involving the mark BIKEBRAIN, or portions thereof, alone or in combination with other terms or devices.

7. To the extent not produced in response to Request Nos. 1-6 above, all license agreements involving use of the term "BIKEBRAIN," alone or in combination with other terms or devices and documents referring or relating to such license agreements.

8. To the extent not produced in response to Request Nos. 1-7, above, all agreements relating or referring (i) to the manner in which Opposer or any other entity will use the term "BIKEBRAIN" or (ii) any other limitation on use of the BIKEBRAIN mark by Opposer or any other entity.

9. To the extent not produced in response to Request Nos. 1-8, above, any documents relating or referring to likelihood of confusion and/or actual confusion between the alleged mark BIKEBRAIN and any other mark.

10. To the extent not produced in response to Request Nos. 1-9 above, any documents relating or referring to the users and/or potential users of the goods or services provided by Opposer in conjunction with the designation BIKEBRAIN, alone or in combination with any other terms or devices.

11. To the extent not produced in response to Request Nos. 1-10, any document relating or referring to use of the BIKEBRAIN.

12. To the extent not produced in response to Request Nos. 1-11, any business plan to use the BIKEBRAIN mark by Opposer, or any other licensee or potential licensee.

13. To the extent not produced in response to Request Nos. 1-12, any document relating or referring to:

a) the date of first use of the BIKEBRAIN mark by Opposer or a licensee;

b) the manner in which Opposer or licensee or a potential licensee plans to use the BIKEBRAIN mark on the goods to which it will be applied; and

c) a description of the types of media in which Opposer or a licensee or a potential licensee or a distributor or a manufacturer has plans to use the mark BIKEBRAIN in any way in the advertising of the goods.

14. To the extent not produced in response to Request Nos. 1-13, all documents identified or requested in response to Interrogatory Nos. 1-22 serve simultaneously herewith and all documents to which Opposer referred in answering those interrogatories.

15. To the extent no produced in response to Request Nos. 1-14, a copy of all web pages of Opposer, and a copy of all web pages of Opposer showing the mark BIKEBRAIN.

16. To the extent not produced in response to Request Nos. 1-15, all documents Opposer intends to submit or rely on in this opposition proceeding.

Respectfully submitted,

Date: February 26, 2003

By:   
D. PETER HOCHBERG

Reg. No. 24,603

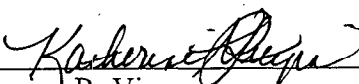
DPH/KRV  
D. PETER HOCHBERG CO., L.P.A.  
The Baker Building, 6<sup>th</sup> Floor  
1940 East 6<sup>th</sup> Street  
Cleveland, Ohio 44114  
(216) 771-3800

**CERTIFICATE OF SERVICE**

I, Katherine R. Vieyra, hereby certify that on the date indicated below, I have mailed by first-class United States mail, postage prepaid, the foregoing APPLICANT'S FIRST SET OF INTERROGATORIES AND INITIAL REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS TO OPPOSER to:

Martin R. Greenstein, Esquire  
Techmark  
55 So. Market Street, 16<sup>th</sup> Floor  
San Jose, CA 95113

Date: February 26, 2003

By:   
Katherine R. Vieyra

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

VELOTREND	)	
	)	
Opposer,	)	<b>Opposition No. 124,261</b>
	)	Appln. Ser. No. 75/841,357
v.	)	Mark: <b>ERGOBRAIN</b>
	)	
CAMPAGNOLO SRL,	)	
	)	
Applicant.	)	
_____)		

BA-2

**OPPOSER'S RESPONSES TO APPLICANT'S FIRST SET OF INTERROGATORIES**

Pursuant to Federal Rules of Civil Procedure 26 and 33 and Trademark Rule 2.120, Opposer, VELOTREND ("VeloTrend" or "Opposer") makes the following answers and objections to Applicant's First Set of Interrogatories.

**GENERAL OBJECTIONS**

1. Opposer objects to Applicant's discovery requests to the extent that they seek documents containing information which is protected by the attorney-client privilege of which constitutes attorney work-product, which may violate the privacy rights of third parties, or which is otherwise protected from disclosure, and Opposer will not produce such information and documents.

2. To the extent Opposer agrees to produce documents, Opposer will make a reasonable and diligent search for those documents reasonably within its possession, custody, or control. Opposer reserves the right to supplement its responses up to and including the time of trial in the event that it discovers additional documents and/or things responsive to Applicant's

interrogatories, and also reserves the right to supplement any responses or any objections.

3. Opposer objects to the definition of documents to the extent that it seeks duplicate versions or writings of the same information or document on the grounds that it is overly broad, unduly burdensome, and oppressive. Opposer assumes that the definitions relating to any documents are not intended to require duplicate or burdensome production of documents.

4. Opposer objects to each and every request, definition or instruction by Applicant to the extent that it is cumbersome, unduly burdensome, and/or imposes or attempts to impose greater obligations on Opposer than those authorized by the Federal Rules of Civil Procedure and the Trademark Rules of Practice. While Opposer may choose to use Applicant's definitions and instructions as a guide, Opposer does not concede or stipulate to their validity or appropriate usage in these proceedings.

5. Opposer objects to Applicant's Interrogatories and Document Requests to the extent that they mis-characterize Opposer, Opposer's products, services, or any fact alleged by Opposer. By responding to Applicant's Interrogatories and Document Requests, Opposer does not admit that Applicant's characterizations are accurate or correct.

6. These general objections are applicable to and are incorporated into each specific response herein, with or without further reference. Insertion of specific objections in the response to any particular interrogatory or document request shall not be construed as a waiver of such objection in any other response.

7. Opposer objects to providing documents and information constituting proprietary or confidential business information or trade secrets, including but not limited to, information about Opposer's customers, employees, and independent contractors, except pursuant to a protective order entered by the Board.

8. Opposer's internal inquiries and discovery are ongoing. Opposer therefore objects to Applicant's Interrogatories to the extent that they cut off or purport or may have the effect of cutting off Opposer's right to supplement its responses. Opposer reserves its right to supplement its responses up to and including time of trial.

9. Opposer objects to each and every discovery request to the extent that Applicant requests information about document requests or information to which Opposer has objected.

10. Opposer objects to each and every discovery request to the extent that Applicant requests documents and/or information which Applicant already has, and/or which has already been provided to Applicant, in connection with this or other proceedings.

**RESPONSES**

**RESPONSE TO INTERROGATORIES NOS. 1 - 22 :**

Opposer generally objects to each and every Interrogatory Nos. 1 - 22 on the grounds that the total number of interrogatories served, counting subparts, is excessive and beyond the seventy-five allowed by the Rules.

Dated: April 2, 2003

**AS TO OBJECTIONS:**

MARTIN R. GREENSTEIN

NEIL D. GREENSTEIN

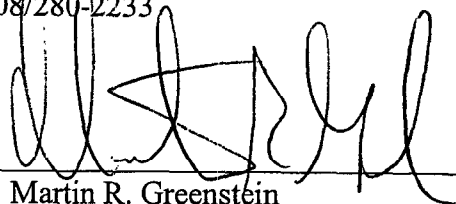
TECHMARK

55 S. Market Street, 16<sup>th</sup> Floor

San Jose, CA 95113

Tel: 408/280-2233

By: \_\_\_\_\_



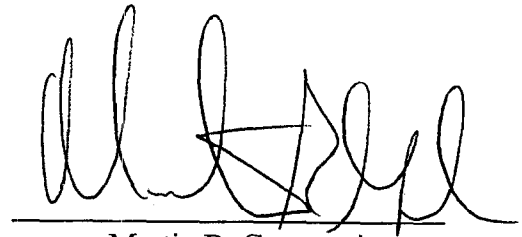
Martin R. Greenstein  
Attorneys for Opposer  
VeloTrend



**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing OPPOSER'S RESPONSES TO APPLICANT'S FIRST SET OF INTERROGATORIES TO OPPOSER is being served by first class mail postage prepaid on this 2nd day of April, 2003, on Applicant's attorneys:

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

A handwritten signature in black ink, appearing to read "Martin R. Greenstein", written over a horizontal line.

Martin R. Greenstein



interrogatories, and also reserves the right to supplement any responses or any objections.

3. Opposer objects to the definition of documents to the extent that it seeks duplicate versions or writings of the same information or document on the grounds that it is overly broad, unduly burdensome, and oppressive. Opposer assumes that the definitions relating to any documents are not intended to require duplicate or burdensome production of documents.

4. Opposer objects to each and every request, definition or instruction by Applicant to the extent that it is cumbersome, unduly burdensome, and/or imposes or attempts to impose greater obligations on Opposer than those authorized by the Federal Rules of Civil Procedure and the Trademark Rules of Practice. While Opposer may choose to use Applicant's definitions and instructions as a guide, Opposer does not concede or stipulate to their validity or appropriate usage in these proceedings.

5. Opposer objects to Applicant's Interrogatories and Document Requests to the extent that they mis-characterize Opposer, Opposer's products, services, or any fact alleged by Opposer. By responding to Applicant's Interrogatories and Document Requests, Opposer does not admit that Applicant's characterizations are accurate or correct.

6. These general objections are applicable to and are incorporated into each specific response herein, with or without further reference. Insertion of specific objections in the response to any particular interrogatory or document request shall not be construed as a waiver of such objection in any other response.

7. Opposer objects to providing documents and information constituting proprietary or confidential business information or trade secrets, including but not limited to, information about Opposer's customers, employees, and independent contractors, except pursuant to a protective order entered by the Board.

8. Opposer's internal inquiries and discovery are ongoing. Opposer therefore objects to Applicant's Interrogatories to the extent that they cut off or purport or may have the effect of cutting off Opposer's right to supplement its responses. Opposer reserves its right to supplement its responses up to and including time of trial.

9. Opposer objects to each and every discovery request to the extent that Applicant requests information about document requests or information to which Opposer has objected.

10. Opposer objects to each and every discovery request to the extent that Applicant requests documents and/or information which Applicant already has, and/or which has already been provided to Applicant, in connection with this or other proceedings.

### **RESPONSES**

#### **RESPONSE TO PRODUCTION REQUEST NO. 1:**

Opposer objects to this request to the extent that it seeks documents and information protected by the attorney-client privilege and/or the attorney work product doctrine. Opposer's investigation and preparation for trial in this matter is continuing. Opposer further objects to the extent that the production request seeks information neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to the extent that the production request is compound, is overbroad, unduly burdensome and oppressive, is vague and ambiguous, and seeks confidential information, especially at this stage of the proceedings. Subject to the foregoing and to the extent the request is understood, NOT APPLICABLE.

**RESPONSE TO PRODUCTION REQUEST NO. 2:**

Opposer objects to this request to the extent that it seeks documents and information protected by the attorney-client privilege and/or the attorney work product doctrine. Opposer's investigation and preparation for trial in this matter is continuing. Opposer further objects to the extent that the production request seeks information neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to the extent that the production request is compound, is overbroad, unduly burdensome and oppressive, is vague and ambiguous, and seeks confidential information, especially at this stage of the proceedings. Subject to the foregoing and to the extent the request is understood Subject to the foregoing and to the extent the request is understood, relevant, appropriate, non-privileged, representative documents, to the extent same exist, will be produced.

**RESPONSE TO PRODUCTION REQUEST NO. 3:**

Opposer objects to this request to the extent that it seeks documents and information protected by the attorney-client privilege and/or the attorney work product doctrine. Opposer's investigation and preparation for trial in this matter is continuing. Opposer further objects to the extent that the production request seeks information neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to the extent that the production request is compound, is overbroad, unduly burdensome and oppressive, is vague and ambiguous, and seeks confidential information, especially at this stage of the proceedings. Subject to the foregoing and to the extent the request is understood Subject to the foregoing and to the extent the request is understood, relevant, appropriate, non-privileged, representative documents, to the extent same exist, will be produced.

**RESPONSE TO PRODUCTION REQUEST NO. 4:**

Opposer objects to this request to the extent that it seeks documents and information protected by the attorney-client privilege and/or the attorney work product doctrine. Opposer's investigation and preparation for trial in this matter is continuing. Opposer further objects to the extent that the production request seeks information neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to the extent that the production request is compound, is overbroad, unduly burdensome and oppressive, is vague and ambiguous, and seeks confidential information, especially at this stage of the proceedings. Subject to the foregoing and to the extent the request is understood Subject to the foregoing and to the extent the request is understood, relevant, appropriate, non-privileged, representative documents, to the extent same exist, will be produced.

**RESPONSE TO PRODUCTION REQUEST NO. 5:**

Opposer objects to this request to the extent that it seeks documents and information protected by the attorney-client privilege and/or the attorney work product doctrine. Opposer's investigation and preparation for trial in this matter is continuing. Opposer further objects to the extent that the production request seeks information neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to the extent that the production request is compound, is overbroad, unduly burdensome and oppressive, is vague and ambiguous, and seeks confidential information, especially at this stage of the proceedings. Subject to the foregoing and to the extent the request is understood Subject to the foregoing and to the extent the request is understood, relevant,

appropriate, non-privileged, representative documents, to the extent same exist, will be produced, but none are believed to exist.

**RESPONSE TO PRODUCTION REQUEST NO. 6:**

Opposer objects to this request to the extent that it seeks documents and information protected by the attorney-client privilege and/or the attorney work product doctrine. Opposer's investigation and preparation for trial in this matter is continuing. Opposer further objects to the extent that the production request seeks information neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to the extent that the production request is compound, is overbroad, unduly burdensome and oppressive, is vague and ambiguous, and seeks confidential information, especially at this stage of the proceedings. Subject to the foregoing and to the extent the request is understood Subject to the foregoing and to the extent the request is understood, relevant, appropriate, non-privileged, representative documents, to the extent same exist, will be produced.

**RESPONSE TO PRODUCTION REQUEST NO. 7:**

Opposer objects to this request to the extent that it seeks documents and information protected by the attorney-client privilege and/or the attorney work product doctrine. Opposer's investigation and preparation for trial in this matter is continuing. Opposer further objects to the extent that the production request seeks information neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to the extent that the production request is compound, is overbroad, unduly burdensome and oppressive, is vague and ambiguous, and seeks confidential information,

especially at this stage of the proceedings. Subject to the foregoing and to the extent the request is understood Subject to the foregoing and to the extent the request is understood, relevant, no such documents exist.

**RESPONSE TO PRODUCTION REQUEST NO. 8:**

Opposer objects to this request to the extent that it seeks documents and information protected by the attorney-client privilege and/or the attorney work product doctrine. Opposer's investigation and preparation for trial in this matter is continuing. Opposer further objects to the extent that the production request seeks information neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to the extent that the production request is compound, is overbroad, unduly burdensome and oppressive, is vague and ambiguous, and seeks confidential information, especially at this stage of the proceedings. Subject to the foregoing and to the extent the request is understood, no such documents exist.

**RESPONSE TO PRODUCTION REQUEST NO. 9:**

Opposer objects to this request to the extent that it seeks documents and information protected by the attorney-client privilege and/or the attorney work product doctrine. Opposer's investigation and preparation for trial in this matter is continuing. Opposer further objects to the extent that the production request seeks information neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to the extent that the production request is compound, is overbroad, unduly burdensome and oppressive, is vague and ambiguous, and seeks confidential information, especially at this



stage of the proceedings. Subject to the foregoing and to the extent the request is understood, relevant, appropriate, non-privileged, representative documents, to the extent same exist, will be produced.

**RESPONSE TO PRODUCTION REQUEST NO. 10:**

Opposer objects to this request to the extent that it seeks documents and information protected by the attorney-client privilege and/or the attorney work product doctrine. Opposer's investigation and preparation for trial in this matter is continuing. Opposer further objects to the extent that the production request seeks information neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to the extent that the production request is compound, is overbroad, unduly burdensome and oppressive, is vague and ambiguous, and seeks confidential information, especially at this stage of the proceedings. Compliance with this request would require production of every magazine, article and other piece of information which in any way relates to bicycles, bicycle riders, and/or bicycling.

**RESPONSE TO PRODUCTION REQUEST NO. 11:**

Opposer objects to this request to the extent that it seeks documents and information protected by the attorney-client privilege and/or the attorney work product doctrine. Opposer's investigation and preparation for trial in this matter is continuing. Opposer further objects to the extent that the production request seeks information neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to the extent that the production request is compound, is overbroad, unduly burdensome

and oppressive, is vague and ambiguous, and seeks confidential information, especially at this stage of the proceedings. Opposer further objects to this request to the extent that it is duplicative, redundant and harassing in nature.

**RESPONSE TO PRODUCTION REQUEST NO. 12:**

Opposer objects to this request to the extent that it seeks documents and information protected by the attorney-client privilege and/or the attorney work product doctrine. Opposer's investigation and preparation for trial in this matter is continuing. Opposer further objects to the extent that the production request seeks information neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to the extent that the production request is compound, is overbroad, unduly burdensome and oppressive, is vague and ambiguous, and seeks confidential information, especially at this stage of the proceedings. Subject to the foregoing and to the extent the request is understood, relevant, appropriate, non-privileged, representative documents, to the extent same exist, will be produced.

**RESPONSE TO PRODUCTION REQUEST NO. 13:**

Opposer objects to this request to the extent that it seeks documents and information protected by the attorney-client privilege and/or the attorney work product doctrine. Opposer's investigation and preparation for trial in this matter is continuing. Opposer further objects to the extent that the production request seeks information neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to the extent that the production request is compound, is overbroad, unduly burdensome

and oppressive, is vague and ambiguous, and seeks confidential information, especially at this stage of the proceedings. Subject to the foregoing and to the extent the request is understood, relevant, appropriate, non-privileged, representative documents, to the extent same exist, will be produced.

**RESPONSE TO PRODUCTION REQUEST NO. 14:**

Opposer objects to this request to the extent that it seeks documents and information protected by the attorney-client privilege and/or the attorney work product doctrine. Opposer's investigation and preparation for trial in this matter is continuing. Opposer further objects to the extent that the production request seeks information neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to the extent that the production request is compound, is overbroad, unduly burdensome and oppressive, is vague and ambiguous, and seeks confidential information, especially at this stage of the proceedings. Opposer further objects to this request to the extent that it is duplicative, redundant and harassing in nature.

**RESPONSE TO PRODUCTION REQUEST NO. 15:**

Opposer objects to this request to the extent that it seeks documents and information protected by the attorney-client privilege and/or the attorney work product doctrine. Opposer's investigation and preparation for trial in this matter is continuing. Opposer further objects to the extent that the production request seeks information neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to the extent that the production request is compound, is overbroad, unduly burdensome

and oppressive, is vague and ambiguous, and seeks confidential information, especially at this stage of the proceedings. Subject to the foregoing and to the extent the request is understood, relevant, appropriate, non-privileged, representative documents, to the extent same exist, will be produced.

**RESPONSE TO PRODUCTION REQUEST NO. 16:**

Opposer objects to this request to the extent that it seeks documents and information protected by the attorney-client privilege and/or the attorney work product doctrine. Opposer's investigation and preparation for trial in this matter is continuing. Opposer further objects to the extent that the production request seeks information neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to the extent that the production request is compound, is overbroad, unduly burdensome and oppressive, is vague and ambiguous, and seeks confidential information, especially at this stage of the proceedings. Subject to the foregoing and to the extent the request is understood, responsive documents will be produced once identified and selected.

Dated: April \_\_, 2003

**AS TO OBJECTIONS:**

MARTIN R. GREENSTEIN

NEIL D. GREENSTEIN

TECHMARK

55 S. Market Street, 16<sup>th</sup> Floor

San Jose, CA 95113

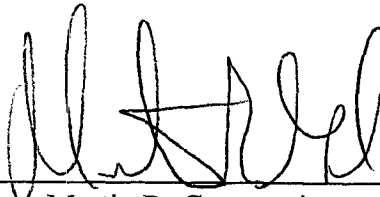
Tel: 408/280-2233

By: \_\_\_\_\_  
Martin R. Greenstein  
Attorneys for Opposer  
VeloTrend

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing OPPOSER'S RESPONSES TO APPLICANT'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS TO OPPOSER is being served by first class mail postage prepaid on this 2<sup>ND</sup> day of April, 2003, on Applicant's attorneys:

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



Martin R. Greenstein