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

Proceeding	91166420
Party	Defendant Burkina Wear, Inc. Burkina Wear, Inc. 177 East Houston Street New York, NY 10002
Correspondence Address	Erik M. Pelton Erik M. Pelton, Attorney at Law PO Box 100637 Arlington, VA 22210 UNITED STATES emp@tm4smallbiz.com
Submission	Motion to Reopen
Filer's Name	Erik M. Pelton
Filer's e-mail	emp@tm4smallbiz.com
Signature	/ErikMPelton/
Date	05/25/2007
Attachments	CAMPNY Motion to Resume - Signed.pdf ( 3 pages )(52815 bytes )

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

CAMPAGNOLO S.R.L. )  
Opposer, ) Opposition No. 91166420  
v. ) Application Serial No. 78438884  
BURKINA WEAR, INC. ) Mark: CAMPNY  
Applicant. )

APPLICANT'S MOTION TO REOPEN PROCEEDING

COMES NOW Applicant BURKINA WEAR, INC. ("Applicant"), by counsel, and hereby notifies the Trademark Trial and Appeal Board ("Board") that the cause for the Board's suspension order of December 22, 2006, namely civil action *Campagnolo S.R.L. v. Burkina Wear, Inc.*, Case No. 06-4856, in the United States District Court for the Eastern District of Pennsylvania, has been dismissed. A copy of the District Court's May 1, 2007, dismissal order is attached. Applicant's motion to dismiss the civil action due to lack of personal jurisdiction and improper venue was granted by the District Court.

WHEREFORE, Applicant moves this Board to reopen the proceeding in Opposition No. 91166420, to consider Applicant's pending motions for dismissal, for sanctions, and for judgment on the pleadings, and for any other relief or action deemed appropriate by the Board.

Respectfully Submitted,

Dated: May 25, 2007

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/ErikMPelton/  
Erik M. Pelton, Attorney at Law  
Attorney for Applicant BURKINA WEAR, INC.

PO Box 100637  
Arlington, Virginia 22210

CERTIFICATE OF SERVICE

I hereby certify that a true copy of Applicant's Motion for Resume Proceeding was deposited for delivery via first class mail on May 25, 2007, to Counsel for Opposer at the following address:

Anthony S. Volpe  
Volpe and Koeing, P.C.  
United Plaza, Suite 1600 30 South 17th Street  
Philadelphia, PA 19103

By:           /ErikMPelton/            
Erik M. Pelton, Esq.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**CAMPAGNOLO S.R.L.** : **CIVIL ACTION**  
 :  
 **v.** : **NO. 06-4856**  
 :  
 **BURKINA WEAR, INC.** :

**ORDER**

**AND NOW**, this 1st day of May, 2007, upon consideration of Defendant's Motion to Dismiss Pursuant to F.R.C.P. 12(b)(2) and (3) Due to Lack of Personal Jurisdiction and Improper Venue (Document No. 20) and the plaintiff's response, it is **ORDERED** that the motion is **GRANTED**,<sup>1</sup> and this action is **DISMISSED**.

/s/ Timothy J. Savage  
TIMOTHY J. SAVAGE, J.

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<sup>1</sup> The only possible basis for exercising personal jurisdiction over the defendant in this trademark infringement suit is the defendant's websites, which allow Pennsylvania users to purchase the alleged infringing products. Whether a non-resident's internet website is sufficient to support personal jurisdiction depends on a sliding scale of interactivity. *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F.Supp. 1119, 1124 (W.D. Pa. 1997). At one end of the scale is the interactive website used in lieu of face-to-face contact to conduct all business with residents of the forum state. At the other end is the website used as an advertising tool to promote interest in the defendant's products.

The defendant's websites are not at either end of this scale. The defendant concedes that Pennsylvania customers can purchase its products online. However, the operation of a commercially interactive website accessible in the forum state is not enough to support personal jurisdiction. *Toys "R" Us, Inc. v. Step Two, S.A.*, 318 F.3d 446, 454 (3d Cir. 2003). There must also be evidence the defendant "purposefully availed" itself of conducting business activities here. *Id.* Nothing in the record suggests the defendant intentionally interacted with this forum. Approximately ninety-nine percent of the defendant's sales are made directly out of its New York City store. *Def.'s Mot.* ¶ 6. Of the one percent of sales made over the Internet, not a single one was made to Pennsylvania. *Id.*

The record after jurisdictional discovery demonstrates that the defendant's contacts with Pennsylvania, over the Internet or otherwise, are insufficient to justify the exercise of specific or general jurisdiction. Therefore, this action must be dismissed.