

CARLTON, FIELDS, WARD, EMMANUEL, SMITH & CUTLER, P. A.

ATTORNEYS AT LAW

ONE HATHORNE PLACE P.O. BOX 3730 TAMPA, FLORIDA 33601 (813) 883-7800 FAX (813) 883-4133	FINSTATE TOWER P.O. BOX 1171 MIAMI, FLORIDA 33101 (305) 540-0100 FAX (305) 540-0000	HATHORNEVIEW BUILDING P.O. BOX 12400 MIAMI, FLORIDA 33186 (305) 434-0100 FAX (305) 434-0100	THIRTY FLORIDA BATH BUILDING P.O. BOX 11100 MIAMI, FLORIDA 33186 (305) 374-1000 FAX (305) 374-0300	EMPERANTE P.O. BOX 180 WEST PALM BEACH, FLORIDA 33410 (407) 830-7070 FAX (407) 830-7300	BARNETT TOWER P.O. BOX 8881 ST. PETERSBURG, FLORIDA 33731 (813) 881-7000 FAX (813) 881-3700
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F95000005972

November 10, 1995

Mr. Hart Collins, Administrator
Foreign Qualification Section
Florida Department of State
Division of Corporations
P.O. Box 6327
Tallahassee, Florida 32314

Mr. Marc Dunbar
Assistant General Counsel
Department of State
Qualifications/Tax Lien Section
Division of Corporations
P.O. Box 6327
Tallahassee, Florida 32314

Dear Sirs:

On October 27, 1995 we attempted to file electronically the application of our client Cinemeccanica, U.S., Inc., a Virginia corporation, for authority to transact business in the state of Florida as a foreign corporation. We were unable to do so and received a summary of filing fees and instructions on how to proceed. Pursuant to those instructions my legal assistant, Lisa Tully, called the corporate office and spoke with Mr. Collins. Mr. Collins explained the assessment of fees and advised her on how to proceed. In following those instructions I am writing to you today on behalf of my client to rectify the situation.

Our client received a letter and an application from the Secretary of State, Sandra M. Mortham, requesting that the corporation register to transact business as a foreign corporation with the Department of State. The letter made no mention of previously assessed fees that would be due upon registration of the corporation. Upon receipt of the letter from the Secretary

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-11/30/95--01014--001
***1001.25 ***1001.25

*Spoke with Linda 11/20 - will
send \$1001.25 in AR fees*

Q. 343 - logbook

WAS-2293

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SECRETARY OF STATE
DIVISION OF CORPORATIONS
95 DEC -7 PM 3:12

400001642224
-11/21/95--01005--001
*****70.00 *****70.00

Mr. Hart Collins and Mr. Marc Dunbar
November 15, 1995
Page 2

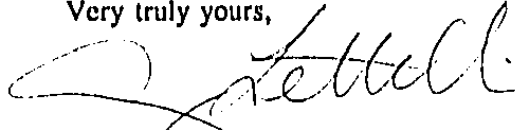
of State my client called me and asked that I prepare the paperwork. I prepared the paperwork and offered to file electronically from our offices. As I already stated, we were unable to register our client because of the assessed fees.

Mr. Collins advised Ms. Tully that the corporation or its attorney may request a waiver of the penalty by submitting the original application with the \$70.00 filing fee, a letter requesting the waiver, and the corporation's tax returns for the last five (5) years, all of which are enclosed.

Please call me at 813-821-7000 with any questions or comments on this matter. I look forward to your favorable review and appreciate your time.

Kindest regards.

Very truly yours,

A handwritten signature in cursive script, appearing to read "A. Lettelleir", written in dark ink.

Amy E. Lettelleir

Enclosures

CARLTON, FIELDS, WARD, EMMANUEL, SMITH & CUTLER, P. A.

ATTORNEYS AT LAW

ONE HARBOR PLACE P.O. BOX 3819 TAMPA, FLORIDA 33601 (813) 283-7100 FAX (813) 283-4155	FOURTH FLOOR P.O. BOX 1171 ORLANDO, FLORIDA 32802 (407) 840-0100 FAX (407) 840-0000	HARBORVIEW BUILDING P.O. BOX 17499 PENSACOLA, FLORIDA 32502 (904) 434-0149 FAX (904) 434-0300	FIRST FLORIDA BANK BUILDING P.O. BOX 1800 TALLAHASSEE, FLORIDA 32302 (904) 884-1000 FAX (904) 884-1500	EMPERANT P.O. BOX 180 WEST PALM BEACH, FLORIDA 33402 (407) 859-7070 FAX (407) 859-7300	BARNETT TOWER P.O. BOX 2801 ST. PETERSBURG, FLORIDA 33731 (813) 891-7000 FAX (813) 891-3700
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PLEASE REPLY TO :
St. Petersburg

November 28, 1995

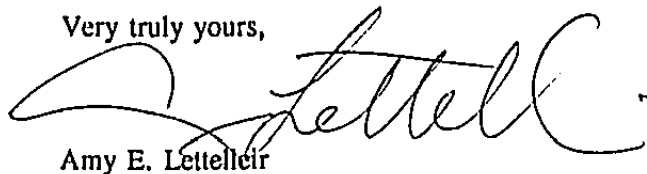
Mr. Hart Collins
Foreign Qualification Section
Florida Department of State
Division of Corporations
P.O. Box 6327
Tallahassee, Florida 32314

Dear Mr. Collins:

In response to your message left with my secretary on November 20, 1995, I am enclosing the check in the amount of \$1,001.25 for the Annual Report fees assessed against Cinemeccanica U.S., Inc. since 1985. As for the original signatures on the application I am afraid I cannot obtain them without a tremendous amount of coordination. The original was faxed to our offices and my original signature was placed thereon. Because we filed electronically we do not have the original. It is in the hands of Giuseppe Cecchi who resides in Virginia but is out of the country for the holidays. If we are required to re-execute an original please let me know and we will coordinate it. Should you need anything else from myself or my client please contact me at 813 821-7000. Thank you for your assistance.

Kindest regards.

Very truly yours,



Amy E. Lettelier

Enclosures

MEMORANDUM

TO: Marc Dunbar

FROM: Hart Collins

DATE: November 30, 1995

RE: Request for Waiver of Civil Penalties; Cinemecanica,
U.S., Inc., a Virginia corporation

Marc, enclosed is the file for the above foreign corporation. The DOS picked this corporation up from revenue data. The corporation has paid \$1001.25 in past annual report fees and has provided five years of federal income tax returns. The corporation is requesting waiver of \$10,000 in maximum civil penalties for transacting business in Florida without obtaining a certificate of authority since 1985.

Please call if you have any questions regarding this matter.

Thanks, Hart.

- 12/4 - spoke w/ Amy (Marc's sister) informed her of denial of waiver request, but stated that \$d cut penalty to \$5000; she stated that is still "too much" + discussed possibilities of interstate commerce exemption
- corp. has office + employees in FL (corp sells photographic equipment)
 - Amy will be getting back w/ me re: interstate commerce exemption

RECEIVED
95 NOV 30 PM 3:42
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

SENT BY:

12- 5-93 ; 5:11PM :

CARLTON FIELDS-

001 022 57031# 2/ 4

CARLTON, FIELDS, WARD, EMMANUEL, SMITH & CUTLER, P. A.

ATTORNEYS AT LAW

WEEKS OFFICE PHONE P.O. BOX 3333 TALLAHASSEE, FLORIDA 32304 (904) 222-1200 FAX (904) 222-1201	ST. PETERSBURG OFFICE P.O. BOX 1171 ST. PETERSBURG, FLORIDA 33705 (813) 844-0200 FAX (813) 844-0201	ORLANDO OFFICE P.O. BOX 15488 ORLANDO, FLORIDA 32816 (407) 444-1144 FAX (407) 444-1145	WEST PALM BEACH OFFICE P.O. BOX 1190 WEST PALM BEACH, FLORIDA 33401 (561) 834-1555 FAX (561) 834-1556	MIAMI OFFICE P.O. BOX 104 MIAMI, FLORIDA 33101 (305) 371-1111 FAX (305) 371-1112	DADE COUNTY OFFICE P.O. BOX 3361 MIAMI, FLORIDA 33101 (305) 371-1111 FAX (305) 371-1112
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PLEASE REPLY TO:
St. Petersburg

December 5, 1993

Mr. Marc Dunbar
Assistant General Counsel
Department of State
Qualifications/Tax Lien Section
Division of Corporations
P.O. Box 6327
Tallahassee, Florida 32314

Re: Cinemeccanica U.S., Inc., a Virginia corporation

Dear Marc:

After further inquiry of my client, Cinemeccanica U.S. Inc. ("Cinemeccanica") I am of the opinion that they are exempt from filing under Florida Statutes Section 607.1501(2), which section contains a non-exhaustive list of activities that do not constitute "transacting business" within the meaning of subsection (1) of the statute. For this reason I request that you waive the fees assessed against Cinemeccanica for failure to register with the State of Florida in order to have the requisite authority to transact business within the state pursuant to the legal argument set forth in the following paragraphs.

Section 607.1501 of the Florida Statutes reads, in part, as follows:

- (1) A foreign corporation may not transact business in this state until it obtains a certificate of authority from the Department of State.
- (2) The following activities, among others, do not constitute transacting business within the meaning of subsection (1):
...

Mr. Marc Dunbar
December 5, 1995
Page 2

(f) Soliciting or obtaining orders, whether by mail or through employees, agents, or otherwise, if the orders require acceptance outside the state before they become contracts.

...
(i) Transacting business in interstate commerce.

(3) The list of activities in subsection (2) is not exhaustive.

Cinemecanica maintains that its activities fall within subsections (f) and (i) and it is, therefore, not required to register. Cinemecanica is a Virginia corporation with its mother company based in Italy. The local office sells projection equipment and consoles produced by the mother company in Italy. There is one local agent who sells the projection equipment to customers all around the United States. A few of Cinemecanica's customers are located within the State of Florida, however, I do not believe this divests the company of its interstate character. It is the transaction of its business in interstate commerce that relieves Cinemecanica from its obligation to register pursuant to Florida Statutes Section 607.1501(1).

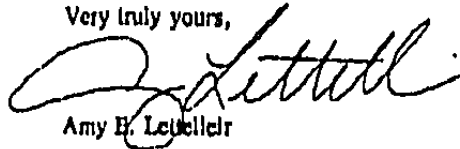
According to Robbins v. Shelby County Taxing District, 7 S.Ct. 592, a company is free to send salesmen into a state to promote interstate trade without interference from regulations imposed by the state. Unlike the company in Ell Lilly and Company v. Sav-On Drugs, 81 S.Ct. 1316, Cinemecanica is not transacting local intrastate business. In Lilly, the Indiana company sent agents to New Jersey for the purpose of providing promotional materials and information to retail pharmacists, physicians and hospitals to acquaint them with the products of the Indiana company in order to encourage them to order from the local wholesalers. The court determined that the Indiana company was obligated to register as those activities rose to the level of transacting intrastate business. The salesman employed by Cinemecanica is located in Florida in order to transact interstate commerce by soliciting orders for the projection equipment made in Italy from customers in the State of Florida and all over the United States and in no way conducts activities to promote sales for a local company as in Lilly. In KAR Products, Inc. v. Bert L. Acker, 217 So.2d 595, 597 (Fla. 1st DCA 1969), the court stated that "the fact that a nonresident corporation procures orders for the purchase of its products through the services of resident agents or representatives working within the state does not divest the corporation's business of its interstate character." Much like the company in KAR, Cinemecanica is solely engaged in the transaction of interstate business by maintaining an office within the State of Florida from which sales of its products are solicited.

Mr. Marc Dunbar
December 5, 1995
Page 3

Based upon the language of Florida Statutes Section 607.1501(2) and the above referenced case law it can be concluded that Cinemecanica was not required to register with the State of Florida in order to have the authority to transact business within the state because the business conducted by Cinemecanica is only in the nature of interstate commerce. Therefore, it is inappropriate to assess the statutory penalty fees for so failing to register. Again I ask that these fees be waived.

I look forward to your favorable consideration on this matter. Should you have any questions or comments please do not hesitate to call. Kindest regards.

Very truly yours,



Amy H. LeBellet



Department of State

Memorandum Office of the General Counsel

TO: File

FROM: Marc W. Dunbar, Assistant General Counsel

DATE: December 6, 1995

RE: Cinemecannien U.S., Inc.

Based upon a review of the file, the legal memorandum submitted by counsel for the corporation, and legal research conducted by this office, it is my recommendation that this file be closed and this corporation qualified to do business in Florida. The presence of this corporation in the State of Florida appears to be exclusively related to its interstate business activities. As such, it is my opinion that this corporation may be exempt from the qualification requirements of Chapter 607. Given the costs related to litigation and the small amount of outstanding penalties which may or may not have accrued against this corporation, it is my recommendation that this case be settled for the payment of all outstanding fees in this matter, and this corporation qualified to do business in this state.

MWD/mwd

APPLICATION BY FOREIGN CORPORATION FOR AUTHORIZATION
TO TRANSACT BUSINESS IN FLORIDA

IN COMPLIANCE WITH SECTION 607.1503, FLORIDA STATUTES, THE FOLLOWING IS
SUBMITTED TO REGISTER A FOREIGN CORPORATION TO TRANSACT BUSINESS IN THE
STATE OF FLORIDA:

1. CINEMECCANICA U.S. INC.
(Name of corporation must include the word "INCORPORATED", "COMPANY", "CORPORATION" or words
or abbreviations of like import in language as will clearly indicate that it is a corporation instead of a natural
person or partnership if not so contained in the name at present.)

2. VIRGINIA 3. 62-1243180
(State or country under the law of which it is incorporated) (FBI number, if applicable)

4. AUGUST 1, 1985 5. PERPETUAL
(Date of Incorporation) (Duration: Year corp. will cease to exist or
"perpetual")

6. SEPTEMBER 1, 1985
(Date first transacted business in Florida. (SEE SECTIONS 607.1501, 607.1502, AND 817.153, F.S.))

7. 13130 - 56th COURT, SUITE 608

CLEARWATER, FL 34620
(Current mailing address)

8. IMPORTATION & DISTRIBUTION OF PHOTOGRAPHIC & CINEMATOGRAPHIC EQUIPMENT
(Principal activity of corporation authorized in home state or country to be carried out in the state of Florida)

9. Name and street address of Florida registered agent: (P.O. Box or Mail Drop Box **NOT**
acceptable)

Name: AMY LETTELLEIR

Office Address: BARNETT TOWER, SUITE 2300
200 CENTRAL AVENUE

ST. PETERSBURG, , Florida , 33701
(Zip Code)

10. Registered agent's acceptance:

Having been named as registered agent and to accept service of process for the above stated
corporation at the place designated in this application, I hereby accept the appointment as
registered agent and agree to act in this capacity. I further agree to comply with the provisions of
all statutes relative to the proper and complete performance of my duties, and I am familiar with
and accept the obligations of my position as registered agent.


(Registered agent's signature)

11. Attached is a certificate of existence duly authenticated, not more than 90 days prior to
delivery of this application to the Department of State, by the Secretary of State or other
official having custody of corporate records in the jurisdiction under the law of which it is
incorporated.

FILED
SECRETARY OF STATE
DIVISION OF CORPORATIONS
95 DEC -7 PM 3:13

12. Names and addresses of officers and/or directors: (Street address ONLY- P. O. Box NOT acceptable)

A. DIRECTORS (Street address only- P. O. Box NOT acceptable)

DIRECTOR
NAME: VITTORE NICELLI

Address: VIA CHARAVELLE 11 MILANO, ITALY

DIRECTOR
NAME: MASSIMO RIVA

Address: VIA ANTONELLI 7/A
MILANO, ITALY

Director: LUIGI BRANCA

Address: VIA GRANSU
TROMELLO, ITALY

Director: PIERO CARNEVALE

Address: CASCINA COSTA
MORTARA, ITALY

SEE ATTACHED ADDENDUM

B. OFFICERS (Street address only- P. O. Box NOT acceptable)

President: VITTORE NICELLI

Address: VIA CHARAVELLE 11
MILANO, ITALY

Vice President:

Address:

Secretary: GIUSEPPE CECCHI

Address: 1209 ALDEBARAN DRIVE
MC LEAN, VIRGINIA 22101

Treasurer: VITTORE NICELLI

Address: VIA CHARAVELLE 11 MILANO, ITALY

NOTE: If necessary, you may attach an addendum to the application listing additional officers and/or directors.

13


(Signature of Chairman, Vice Chairman, or any officer listed in number 12 of the application)

14.

GIUSEPPE CECCHI, SECRETARY

(Typed or printed name and capacity of person signing application)

.. . *ADDENDUM*

DIRECTOR

GIUSEPPE CECCHI
1709 ALDERMAN DRIVE
MC LEAN, VA 22101

Commonwealth of Virginia



State Corporation Commission

I Certify the Following from the Records of the Commission:

CINEMECCANICA, U.S., INC. is a corporation existing under and by virtue of the laws of Virginia, and is in good standing.

The date of incorporation is August 14, 1985.

Nothing more is hereby certified.

FILED
SECRETARY OF STATE
DIVISION OF CORPORATIONS
95 DEC -7 PM 3:13



Signed and Sealed at Richmond
on this Date: October 25, 1995

William J. Bridge

William J. Bridge, Clerk of the Commission