

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Baxley

Mailed: July 15, 2003

Opposition No. **91/124,309**

KIMBERLY-CLARK CORPORATION

v.

PETER SCHNEIDER AND BYRON
RACHOW

Andrew P. Baxley, Interlocutory Attorney:

On March 10, 2003, the Board issued an order to show cause why opposer's failure to file a brief should not be treated as a concession of the case. See Trademark Rule 2.128(a)(3).

Opposer timely responded thereto, but did not include proof of service upon applicants as is required by Trademark Rule 2.119(a).¹ Nonetheless, in the interest of moving this case forward, the Board will consider the response.

In response, opposer stated that the parties had settled this case; that applicants had agreed, with opposer's consent, to abandon their involved application Serial No. 76/127,717 and that applicants had filed an express abandonment of the application with the USPTO on

¹ A copy of the response is included with applicants' copy of this order.

Opposition No. 124,309

March 12, 2002. Opposer included a copy of the express abandonment with their response.²

The Board finds that opposer's response is sufficient to indicate that opposer has not lost interest in this case. Accordingly, the order to show cause is hereby discharged.

With regard to applicants' express abandonment of involved application Serial No. 76/127,717, in view of opposer's failure to include proof of service with its response to the show cause order, the Board is unwilling to consider the express abandonment and dismiss the opposition without first allowing applicants an opportunity to respond to opposer's filing of the abandonment.

Accordingly, applicants are allowed until **thirty days** from the mailing date of this order to show cause why, based on the express abandonment that opposer filed, their application should not stand as abandoned and the opposition dismissed, in accordance with the parties' settlement agreement. See Trademark Rule 2.106(c).

² It is noted that the express abandonment did not become associated with either the proceeding file or the application file.