

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Taylor

Mailed: January 21, 2003

Cancellation No. 92027275

Abtrax Pharmaceutical
Company d/b/a Summit Hill
Laboratories

v.

Carl Freudenberg

Jyll S. Taylor, Attorney:

On September 7, 2002, the Board issued an order allowing petitioner time to show cause why its failure to file a brief in this case should not be treated as a concession of the case. In response, petitioner indicated that it had previously filed a withdrawal of the petition to cancel that the Board acknowledged on December 20, 2000.

A review of the records in this case show that because respondent/counterclaim petitioner, Carl Freudenberg, did not file a withdrawal of the counterclaim, these proceedings have not been settled as regards the counterclaim.¹ Further the show cause order that issued on September 7 inadvertently was directed to petitioner/counterclaim defendant, Abtrax Pharmaceutical instead of Mr. Freudenberg.

¹ The parties should review their records, particularly the Board orders issued December 19, 2000 and August 1, 2001.

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In view of the forgoing, the September 7, 2002 show cause order is hereby vacated.

However, as stated earlier, this case is ongoing as it pertains to the counterclaim. In that regard, it is noted by the Board that counterclaim-petitioner's time for filing a brief on the case has expired, and no brief has been filed. Trademark Rule 2.128(a)(3) provides that when a party in the position of plaintiff fails to file a main brief, an order may be issued allowing plaintiff until a set time, not less than 15 days, in which to show cause why the Board should not treat such failure as a concession of the case. The rule further provides that if plaintiff fails to file a response to the order, or files a response indicating that it has lost interest in the case, judgment may be entered against plaintiff.

In view of the above, counterclaim/petitioner, Carl Freudenberg, is allowed until **thirty days** from the mailing date of this order to show cause why the Board should not treat its failure to file a brief as a concession of the case, failing which a judgment dismissing the counterclaim with prejudice will be entered against petitioner.

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