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Filing date: **07/28/2006**

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

Proceeding	92044657
Party	Plaintiff YOUNG AGAIN PRODUCTS, INC.,
Correspondence Address	MARK A. FREEMAN, ESQUIRE FREEMAN & FREEDMAN, P.C. ONE CHURCH STREET, SUITE 200 ROCKVILLE, MD 20850
Submission	Other Motions/Papers
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Signature	/s/ Mark A. Freeman /s/
Date	07/28/2006
Attachments	Motion4Default.7.28.06.pdf (12 pages)(174945 bytes)

**UNITED STATES DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

**In the Matter of Registration No. 2,515,560
Mark: BETTER PROSTATE HEALTH
Date of Issue: December 4, 2001**

Young Again Products, Inc.,)	
)	
Petitioner,)	
)	
v.)	Cancellation No. 92044657
)	
Econugenics, Inc.)	
)	
Registrant.)	
)	

**PETITIONER'S MOTION TO ENTER DEFAULT
JUDGMENT FOR REGISTRANT'S FAILURE TO FILE A BRIEF
IN OPPOSITION TO PETITIONER'S MOTION**

Petitioner in the above-identified Cancellation No.92044657, hereby moves, pursuant to Trademark Trial and Appeal Board Rule 2.127, to request an Order to enter a default judgment against Registrant for Registrant's failure to provide a brief in response to Petitioner's Motion filed with this Board on June 15, 2006. As grounds in support of this motion, Petitioner attaches the following Memorandum of Points and Authorities in Support, and submits the following:

On June 15, 2006, Petitioner, Young Again Products Inc. ("YAP") filed a motion titled, "Motion to Enter Default Judgment or in the Alternative to Compel Answers to Discovery." Pursuant to Trademark Trial and Appeal Board Rule 2.119, YAP served Registrant, Econugenics, Inc. ("Econugenics") with a copy of this Motion, the Memorandum of Grounds and Authorities in Support, the Certificate of Attempted Resolution, and a Proposed Order.

Pursuant to Trademark Trial and Appeal Board Rule 2.127(a), Econugenics had fifteen (15) days from date of service in which to file a brief in response to YAP's Motion. Following the Trademark Trial and Appeal Board Rules, as well as the applicable Federal Rules of Civil Procedure, Econugenics had until July 3, 2006, to file its response. As of the filing of this Motion, over three (3) weeks past this due date, Econugenics has neither filed a response nor requested an extension of time in which to respond. Accordingly, YAP now requests that this Board consider YAP's Motion conceded and enter an Order granting this Motion and enter an Order for Default Judgment in YAP's favor, or in the alternative order Econugenics to provide responses and documents in response to YAP's interrogatories and requests for production without objection.

Respectfully submitted,

FREEMAN & FREEMAN, P.C.

Dated: July 28, 2006

/s/ Mark A. Freeman /s/
Mark A. Freeman, Esquire
One Church Street, Suite 200
Rockville, Maryland 20850
301-315-0200

Attorneys for Petitioner

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that on this 28th day of July 2006, the forgoing Motion To Enter Default Judgment For Registrant's Failure To File A Brief In Opposition To Petitioner's Motion, the Memorandum of Grounds and Authorities in Support Thereof, Certificate of Attempted Resolution, and Proposed Order were filed with the Trademark Trial and Appeal Board through the TEAS system and a copy was mailed via first class, postage prepaid, to:

Jay H. Geller, Esquire
Jay H. Geller, A Professional Corporation
West Tower, Suite 4000
2425 W. Olympic Blvd
Santa Monica, California 90404
(310) 449-1399
Attorneys for Registrant

/s/ Mark A. Freeman /s/ _____
Mark A. Freeman

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**MEMORANDUM OF GROUNDS AND AUTHORITIES IN SUPPORT
OF PETITIONER'S MOTION TO ENTER DEFAULT
JUDGMENT FOR REGISTRANT'S FAILURE TO FILE A BRIEF
IN OPPOSITION TO PETITIONER'S MOTION**

I. INTRODUCTION AND FACTUAL BACKGROUND

Petitioner Young Again Products, Inc. ("YAP") incorporates as if fully set forth herein its Motion and Memorandum of Points and Authorities in Support to Enter Default Judgment or in the Alternative to Compel Answers to Discovery, filed on June 15, 2006.

On June 15, 2006, YAP filed a motion titled, "Motion to Enter Default Judgment or in the Alternative to Compel Answers to Discovery." Pursuant to Trademark Trial and Appeal Board Rule 2.119, YAP served Registrant, Econugenics, Inc. ("Econugenics") with a copy of this Motion, Memorandum of Grounds and Authorities in Support, Certificate of Attempted Resolution, and Proposed Order.

Pursuant to Trademark Trial and Appeal Board Rule 2.127(a), Econugenics had fifteen (15) days from date of service in which to file a brief in response to YAP's Motion. As such, pursuant to the Trademark Trial and Appeal Board Rules, as well as the applicable Federal Rules of Civil Procedure, Econugenics had until July 3, 2006, to file its response. As of the filing of this Motion, over three (3) weeks past this due date, Econugenics has neither filed a response nor requested an extension of time in which to respond.

II. APPLICABLE LAW

Because Econugenics Failed to File a Response Brief or Request an Extension Pursuant to Trademark Rule 2.127(a), the Board May Treat the Motion as Conceded, and Young Again Requests that the Board Enter a Default Judgment.

Trademark Rule 2.127(a), in pertinent part, states,

(a) ... a brief in response to a motion shall be filed within fifteen days from the date of service of the motion unless another time is specified by the Trademark Trial and Appeal Board or the time is extended by stipulation of the parties approved by the Board, or upon motion granted by the Board, or upon order of the Board.... When a party fails to file a brief in response to a motion, the Board may treat the motion as conceded.

Trademark Trial and Appeal Board Rule 2.127(a).

YAP requests that this Board enter a default judgment against Econugenics. *See, Ladien v. Astrachan*, 128 F.3d 1051, 1056 (7th Cir. 1997)(These rules allow a district court to impose sanctions, including dismissal, upon a party for that party's "persistent failure to comply with discovery and scheduling orders.").

As set forth fully in YAP's Motion to Enter Default Judgment or in the Alternative to Compel Answers to Discovery, Econugenics failed to produce any substantive responses to discovery which forced YAP to file said motion on June 15, 2006. Pursuant to the applicable

Trademark Rules and Federal Rules of Procedure, Econugenics had until July 3, 2006 to file its response. As of the date of this filing, Econugenics has neither filed its response nor has it requested an extension of time to file a response. Econugenics' failure to file a response or even request an extension of time to file a response is indicative of its approach to this cancellation proceeding which has been, and continues to be, to consistently ignore the Rules of Procedure and its obligations thereunder. As set forth in detail in its Motion to Enter Default Judgment, Econugenics has failed to abide by its discovery obligations. It has further ignored YAP's attempts to resolve the dispute without Board intervention. Now it has failed to file a response or even request an extension. It is clear from its actions, or more precisely, its inactions that Econugenics does not intend to anything in this matter or comply with its obligations under the both the Rules of the Trademark Trial and Appeal Board and the applicable Federal Rules of Procedure. This blatant disregard for the rules is prejudicing YAP in moving this cancellation proceeding forward and should not be allowed to stand. Accordingly, YAP respectfully requests that the Board enter a default judgment against Econugenics.

III. CONCLUSION

WHEREFORE, based on the above, YAP respectfully requests the Trademark Trial and Appeal Board to grant this Motion and enter default against Econugenics.

Respectfully submitted,

FREEMAN & FREEMAN, P.C.

/s/ Mark A. Freeman /s/
Mark A. Freeman, Esquire
One Church Street, Suite 200
Rockville, Maryland 20850
301-315-0200

Attorneys for Petitioner

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**CERTIFICATE OF ATTEMPTED RESOLUTION
PURSUANT TO TRADEMARK RULE 2.220(E)**

On June 15, 2006, Petitioner Young Again Products, Inc. filed a Motion to Enter Default Judgment or in the Alternative to Compel Answers to Discovery. Registrant, Econugenics Inc.'s brief in response to Petitioner's Motion was due by July 3, 2006. Registrant has both failed to file a response and failed to request an extension, and this motion becomes necessary.

Respectfully submitted,

FREEMAN & FREEMAN, P.C.

/s/ Mark A. Freeman /s/
Mark A. Freeman, Esquire
One Church Street, Suite 200
Rockville, Maryland 20850
301-315-0200

Attorneys for Petitioner

Judge, Trademark Trial and Appeal Board

Copies to:

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Attorneys for Petitioner

Jay H. Geller, Esquire
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2425 W. Olympic Blvd
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CERTIFICATE OF SERVICE

Pursuant to Trademark Rule 2.119, WE HEREBY CERTIFY that copies of the foregoing Petitioner's Motion to Enter Default Judgment for Respondent's Failure to File a Brief In Opposition to Petitioner's Motion, Memorandum of Grounds and Authorities in Support, Certificate of Attempted Resolution, and Proposed Order were mailed first class, postage prepaid, on this 28th day of July, 2006, to:

Jay H. Geller, Esquire
Jay H. Geller, A Professional Corporation
West Tower, Suite 4000
2425 W. Olympic Blvd
Santa Monica, California 90404
(310) 449-1399
Attorneys for Registrant

Respectfully submitted,

FREEMAN & FREEMAN, P.C.

/s/ Mark A. Freeman /s

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