

ESTTA Tracking number: **ESTTA370501**

Filing date: **09/28/2010**

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

Proceeding	92052895
Party	Plaintiff Jeffrey Kaplan
Correspondence Address	JEFFREY KAPLAN POB 11106 FT LAUDERDALE, FL 33339 UNITED STATES eggcream@earthlink.net
Submission	Motion for Default Judgment
Filer's Name	Jeffrey Kaplan
Filer's e-mail	eggcream@earthlink.net
Signature	/Jeffrey Kaplan/
Date	09/28/2010
Attachments	scan0001.pdf (2 pages)(945582 bytes)

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

In the matter of Trademark Registration No. 762,642
For the Mark “DI-GEL”

Jeffrey Kaplan
P.O.B. 11106
Ft. Lauderdale, Fl. 33339,

Cancellation No: 92052895

Petitioner,

v.

Schering-Plough Health Care Products, Inc.
3030 Jackson Avenue
Memphis, TN 38151

Registrant

PETITIONER’S MOTION FOR DEFAULT JUDGMENT

Pursuant to 37 C.F.R. Section 2.114(a), Jeffrey Kaplan (“Petitioner”) hereby moves for entry of default judgment on its Petition for Cancellation, filed on August 15th 2010. Registrant has failed to file a timely answer. Accordingly, default judgment should be entered against Registrant and Registrant’s trademark, Registration No.762642 for DI-GEL should be cancelled accordingly.

I. Argument

Trademark Rule 2.114(a) provides that “(i) if no answer is filed within the time set, the Petition may be decided as in case of default”. 37 CFR Section 2.114(a). A motion for default judgment for failure to answer may be filed by Petitioner, if Registrant fails to file a timely answer. See TMBP 508.

Petitioner filed a Petition for Cancellation on August 15th 2010, based on Registrant’s non-use/abandonment of the mark DI-GEL. On August 15th 2010, the Petitioner mailed a copy of its Petition for Cancellation via U.S. First Class Mail to Registrant and

Petitioner signed a Certificate of Service.

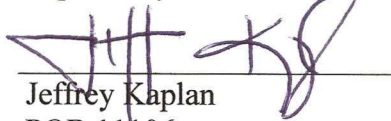
On August 16th 2010, the Board mailed a Notice of Cancellation Proceeding and Trial Dates to Registrant, setting September 25th 2010, as the Deadline for filing an Answer (forty days from mailing date if the said Notices)

Registrant has been delinquent in filing an Answer in this Cancellation proceeding. Pursuant to this Board's Rules of Procedure, Petitioner moves the Board to enter a default judgment against Registrant and cancel the subject Registration.

II. Conclusion

The Registrant has failed to file a timely Answer to Petitioner's Petition for Cancellation of Registration No 762642 (DI-GEL). Judgment should be entered for Petitioner and the Petition for Cancellation should be granted.

Respectfully Submitted,

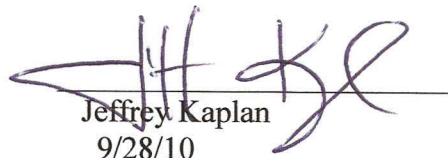


Jeffrey Kaplan
POB 11106
Ft. Lauderdale, Florida 33339
(954) 793-0637

9/28/10

CERTIFICATE OF MAILING

It is hereby certified that the attached Petition for Cancellation is being deposited First Class Postage Prepaid with the U.S. Postal Service addressed to Barbara A. Cullen-Schering-Plough Corporation- P.O.B. 520- Kenilworth, N.J. 07033.



Jeffrey Kaplan
9/28/10