NOTE: This order is nonprecedential.

# United States Court of Appeals for the Federal Circuit

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IN RE CARMINE'S BROADWAY FEAST INC.

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2010-1528

(Serial No. 78/934,642)

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Appeal from the United States Patent and Trademark Office, Trademark Trial and Appeal Board.

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ON MOTION

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Before GAJARSA, MAYER, and PROST, *Circuit Judges*.

GAJARSA, *Circuit Judge*.

## ORDER

Carmine's Broadway Feast Inc. and the Under Secretary for Commerce for Intellectual Property and Director of the United States Patent and Trademark Office jointly move to vacate the Trademark Trial and Appeal Board decision as moot and to remand for further proceedings.

The Board affirmed a rejection of Carmine's Broadway's trademark application as likely to cause confusion with two trademark registrations, U.S. Registration Nos. 1,444,609 and 2,864,349. Registration No. 2,864,349 has

since been cancelled, and Registration No. 1,444,609 is now owned by Carmine's Broadway and therefore no longer poses a bar to the present trademark registration.

Carmine's Broadway's ownership of Registration No. 1,444,609 subsequent to the Board's decision does not mean that vacatur by this court is appropriate. *See, e.g., U.S. Bancorp Mortgage Co. v. Bonner Mall Partnership,* 513 U.S. 18, 29 (1994) (holding that "mootness by reason of settlement does not justify vacatur of a judgment under review"). The proper course is to remand the case so that the Board can consider the Carmine's Broadway's request for vacatur of the Board's decision.

Accorgingly,

IT IS ORDERED THAT:

(1) The motion for vacatur is denied.

(2) The motion to remand for further proceedings is granted.

FOR THE COURT

MAY 27 2011
Date

/s/ Jan Horbaly
Jan Horbaly
Clerk

cc: Beth A. Chapman, Esq.
Raymond T. Chen, Esq.

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FILED
U.S. COURT OF APPEALS FOR
THE FEDERAL CIRCUIT

MAY 27 2011

JAN HORBALY
CLERK