

**UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451**

Mailed: October 30, 2008

Cancellation No. 92048271

Rhino Linings USA, Inc.

v.

Rapid Rack Industries, Inc.

**M. Catherine Faint,
Interlocutory Attorney:**

On October 29, 2008 the Board held a telephone conference involving Joseph S. Dowdy, counsel for Rhino Linings, USA, Inc., Patrick J. Orme, counsel for Rapid Rack Industries, Inc., and Interlocutory attorney Catherine Faint, Board attorney responsible for resolving interlocutory matters in this case.

The Board clarified with Mr. Orme that Patriarch Partners Agency Services, LLC is the holder of a security interest in respondent's Registration No. 1698407, as shown in the USPTO Assignments Database at reel/frame nos. 3218/0001, and that Rapid Rack Industries, Inc. is the owner of the registration. The petition for cancellation was filed naming Rapid Rack Industries, Inc. as the

respondent, and the caption for this proceeding is hereby amended to correct the name for respondent.

The Board turned next to respondent's fully-briefed motion (filed September 24, 2008) to suspend the proceeding pending final determination of Civil Action No. CV08-06266, in the United States District Court for the Central District of California. That proceeding was styled as Rapid Rack Industries, Inc. vs. Rhino Linings Corporation and RSI Home Products Manufacturing, Inc. Counsel for the parties stipulated that there is an identity of parties between Rhino Lining USA, Inc. and Rhino Linings Corporation.¹ Thus the civil action involves the same parties and the same marks at issue in the Board proceeding.

Having considered the arguments, the pleadings, and having reviewed the complaint for the civil action filed in the United States District Court for the Central District of California, the motion for suspension is granted. It is the policy of the Board to suspend proceedings when the parties are involved in a civil action, which may be dispositive of or have a bearing on the Board case. See Trademark Rule 2.117(a).

Accordingly, proceedings are suspended pending final disposition of the civil action between the parties.

Within twenty days after the final determination of the civil action, the parties shall so notify the Board and call this case up for any appropriate action.

Consideration of the pending motions is deferred, and response and reply briefing dates for any pending motions will be scheduled upon resumption, if appropriate. During the suspension period, the parties shall notify the Board of any address changes for the parties or their attorneys.

NEWS FROM THE TTAB:

The USPTO published a notice of final rulemaking in the Federal Register on August 1, 2007, at 72 F.R. 42242. By this notice, various rules governing Trademark Trial and Appeal Board inter partes proceedings are amended. Certain amendments have an effective date of August 31, 2007, while most have an effective date of November 1, 2007. For further information, the parties are referred to a reprint of the final rule and a chart summarizing the affected rules, their changes, and effective dates, both viewable on the USPTO website via these web addresses:

<http://www.uspto.gov/web/offices/com/sol/notices/72fr42242.pdf>
[http://www.uspto.gov/web/offices/com/sol/notices/72fr42242 FinalRuleChart.pdf](http://www.uspto.gov/web/offices/com/sol/notices/72fr42242_FinalRuleChart.pdf)

By one rule change effective August 31, 2007, the Board's standard protective order is made applicable to all TTAB inter partes cases, whether already pending or commenced on or after that date. However, as explained in the final rule and chart, this change will not affect any case in which any protective order has already been approved or

¹ In a subsequent teleconference held the same day the parties clarified that there was not an identity of parties between Rhino Linings USA, Inc. and RSI Home Products Manufacturing, Inc.

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imposed by the Board. Further, as explained in the final rule, parties are free to agree to a substitute protective order or to supplement or amend the standard order even after August 31, 2007, subject to Board approval. The standard protective order can be viewed using the following web address:

<http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm>