

ESTTA Tracking number: **ESTTA8012**

Filing date: **04/23/2004**

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

### Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

#### Opposer Information

<b>Name</b>	Barrow Energies, Inc.
<b>Granted to Date of previous extension</b>	05/26/2004
<b>Address</b>	Barrow Energies, Inc. P.O. Box 277 Butler, GA 31006 UNITED STATES

<b>Attorney information</b>	Jeffrey B. Sladkus Womble Carlyle Sandridge & Rice, PLLC 1201 West Peachtree Street Suite 3500 Atlanta, GA 30309 UNITED STATES jsladkus@wcsr.com Phone:404-872-7000
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#### Applicant Information

<b>Application No</b>	76516019	<b>Publication date</b>	03/09/2004
<b>Opposition Filing Date</b>	04/23/2004	<b>Opposition Period Ends</b>	05/26/2004
<b>Applicant</b>	Ferrellgas Partners L.P.		

## Goods/Services Affected by Opposition

Class 039. First Use: 19800000 First Use In Commerce: 19800000

All goods and services in the class are opposed, namely: SUPPLYING PROPANE GAS FUEL TO OTHERS

<b>Attachments</b>	Barrow Notice of Opposition.pdf ( 7 pages )
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<b>Signature</b>	/Jeffrey B. Sladkus/
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<b>Name</b>	Jeffrey B. Sladkus
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<b>Date</b>	04/23/2004
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Trademark Application Serial No. 76/516,019  
Filed May 23, 2003  
For the Mark **BARROW PROPANE GAS**  
Published in the Official Gazette on January 27, 2004

BARROW ENERGIES, INC.,	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. _____
	)	
FERRELLGAS PARTNERS, L.P.	)	
	)	
Applicant.	)	

**NOTICE OF OPPOSITION**

Opposer, Barrow Energies, Inc., located and doing business at 125 South Broad Street, Butler, Georgia, 31006, believes that it will be damaged by registration of the mark shown in Serial No. 76/516,019, and hereby opposes the same.

The grounds for opposition are as follows:

1.

Ferrellgas Partners, L.P. ("Applicant") filed United States Trademark Application Serial No. 76/516,019 on or about May 23, 2003 to register the mark "BARROW PROPANE GAS" in connection with "supplying propane gas fuel to others" with an alleged date of first use and first use in commerce of 1980 (hereinafter "Applicant's Mark").

2.

Opposer will be damaged by the registration of Applicant's Mark.

3.

Opposer, since at least as early as May 20, 2003, has used the mark "BARROW ENERGIES" in association with its propane gas supply services and such use has been valid and continuous since said date of first use.

4.

Opposer is the owner of the common law trademark "BARROW ENERGIES" for supplying propane gas fuel to others.

5.

Both Applicant and Opposer operate their businesses in and around Butler, Georgia. In this geographic area, the term BARROW is a common surname used in association with many businesses which offer diverse goods and services, including the supply of propane gas.

6.

Further, the term BARROW identifies Barrow County, a county within the State of Georgia.

7.

Upon information and belief, Opposer asserts that the dates of first use and first use in commerce of 1980 alleged by Applicant are inaccurate.

8.

Upon information and belief, Applicant's first use of the "BARROW PROPANE GAS" mark occurred no earlier than December 13, 2002.

## COUNT I

### APPLICANT'S MARK IS PRIMARILY MERELY A SURNAME

9.

Paragraphs 1-8 are realleged and incorporated herein by reference.

10.

In accordance with §2 of the Lanham Act, 15 U.S.C. § 1052(e)(4), Applicant's Mark is not entitled to registration. Specifically, 15 U.S.C. §1052 (e)(4) states that (emphasis added):

“No trademark by which the goods of the applicant may be distinguished from the goods of others shall be refused registration on the principal register on account if its nature unless it – (e) [c]onsists of a mark which .... (4) is primarily merely a surname.”

11.

Applicant's alleged dates of first use and first use in commerce of 1980 falsely suggests that Applicant has acquired a secondary meaning in the “BARROW PROPANE GAS” mark that would entitle Applicant to registration.

12.

Moreover, before Applicant could have used Applicant's Mark for a sufficient period of time to acquire secondary meaning, Opposer adopted and has continued an uninterrupted use of its “BARROW ENERGIES” mark.

13.

Applicant's attempt to register a trademark that is primarily merely a surname is contrary to the clear and unambiguous language contained in 15 U.S.C. §1052(e)(4).

14.

Registration of Applicant's Mark will therefore damage Opposer and should accordingly be denied.

## COUNT II

### APPLICANT'S MARK IS GEOGRAPHICALLY DESCRIPTIVE

15.

Paragraphs 1-14 are realleged and incorporated herein by reference.

16.

In accordance with §2 of the Lanham Act, 15 U.S.C. § 1052(e)(2), Applicant's Mark is not entitled to registration. Specifically, 15 U.S.C. §1052 (e)(2) states that (emphasis added):

“No trademark by which the goods of the applicant may be distinguished from the goods of others shall be refused registration on the principal register on account if its nature unless it – (e) [c]onsists of a mark which .... (2) when used on or in connection with the goods of the applicant is primarily geographically descriptive of them....

17.

Applicant's Mark incorporates the term “BARROW” which is the name of a geographic place known generally to the public; i.e, Barrow County, Georgia. Consumers in the Applicant's market regard the term “BARROW” as a geographic term.

18.

The date of first use of Applicant's Mark (no earlier than December 13, 2002) does not provide Applicant with sufficient time or exclusivity of use to achieve secondary meaning sin the BARROW PROPANE GAS mark sufficient to afford Applicant a registration on the Principal Register.

19.

Applicant's attempt to register a mark that is geographically descriptive is contrary to the clear and unambiguous language contained in 15 U.S.C. §1052(e)(2).

20.

Registration of Applicant's Mark will therefore damage Opposer and should accordingly be denied.

**COUNT III**

**FRAUD ON THE PATENT & TRADEMARK OFFICE**

21.

Paragraphs 1-20 are realleged and incorporated herein by reference.

22.

Applicant's sworn statement in its declaration regarding its alleged dates of first use and first use in commerce of 1980 is a material misrepresentation of fact to the Patent and Trademark Office.

23.

Applicant knew, or should have known, that such dates of first use and first use in commerce stated in its trademark application were materially false.

24.

Applicant's counsel knew, or should have known, that such dates of first use and first use in commerce stated in Applicant's trademark application were materially false.

25.

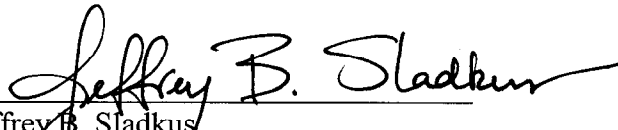
Opposer will be damaged if Applicant's material misstatement of fact, that it knew or should have known to be false, leads the Patent and Trademark Office to issue a U.S. Trademark Registration for Applicant's Mark.

WHEREFORE, Opposer prays that said Application Serial No. 76/516,019 be rejected, that no registration be issued, and that this Opposition be sustained in favor of Opposer. This Opposition is being filed in duplicate.

The Commissioner is hereby authorized to charge the \$300 filing fee required under 37 C.F.R. §2.6(a)(17), and to charge any additional fees which may be required, or to credit any overpayment, to Deposit Account No. 50-0517.

This the 23<sup>rd</sup> day of April, 2004.

Respectfully submitted,



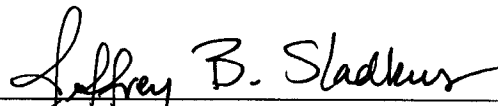
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**CERTIFICATE OF MAILING**

I do hereby certify that on April 23, 2004, I filed via electronic means (ESTTA)  
this Notice of Opposition with the:

U. S. Patent and Trademark Office  
Trademark Trial and Appeal Board  
Box TTAB – NO FEE  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

  
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Jeffrey B. Sladkus, Attorney