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

Proceeding	91160296
Party	Defendant Ferrellgas Partners L.P. Ferrellgas Partners L.P. One Liberty Plaza Liberty, MO 64068
Correspondence Address	Michael Elbein HOVEY WILLIAMS LLP 2405 GRAND BOULEVARD, SUITE 400 KANSAS CITY, MO 64108
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Date	10/31/2006
Attachments	Applicant's Response to Order of October 16, 2006 - Page 1.pdf (1 page) (42829 bytes) Applicant's Response to Order of October 16, 2006 - Page 2.pdf (1 page) (37598 bytes) Applicant's Response to Order of October 16, 2006 - Page 3.pdf (1 page) (27820 bytes) Applicant's Response to Order of October 16, 2006 - Page 4.pdf (1 page) (51865 bytes) Applicant's Response to Order of October 16, 2006 - Page 5.pdf (1 page) (49501 bytes) Applicant's Response to Order of October 16, 2006 - Page 6.pdf (1 page) (52752 bytes) Applicant's Response to Order of October 16, 2006 - Page 7.pdf (1 page) (48510 bytes)

**UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

Barrow Energies, Inc.)	
)	
Opposer,)	Opposition No. 91160296
)	Serial No.76/516,019
v.)	
)	
Ferrellgas Partners, L.P.)	
)	
Applicant.)	

APPLICANT’S RESPONSE TO ORDER OF OCTOBER 16, 2006

Applicant, Ferrellgas Partners, L.P., in response to the Trademark Trial and Appeal Board Order of October 16, 2006, states as follows:

1. This action was suspended on motion of the Opposer based on a pending action between the parties, to wit: *Ferrellgas Partners, L.P. v Barrow, et al*, Case No. 4:30-CV-107 (WDO), pending in the United States District Court for the District of Georgia. In that action, Applicant, as Plaintiff, filed claims against the Opposer and some individuals alleging violations of the Lanham Act as well as certain state law claims.

2. After the District Court denied Applicant’s motion for a preliminary injunction, Applicant appealed that decision to the United States Court of Appeals for the Eleventh Circuit. The Court of Appeals reversed the District Court, and remanded the case to the District Court for entry of a preliminary injunction.

3. On November 8, 2005, the District Court entered a preliminary injunction against the Opposer and others, prohibiting them from use of the BARROW name. A true and correct copy of that order is attached as Exhibit A.

4. On February 16, 2006, the District Court entered summary judgment in favor of the Applicant and against Opposer and certain other defendants on the Lanham Act claim. Summary judgment was found in favor of one defendant on the issue of contributory infringement and summary judgment was entered in favor of the Defendants on non-trademark claims. In its Order, the District Court, like the Court of Appeals, found that Applicant was the owner of the mark at issue.

5. On May 3, 2006, the Court entered a permanent injunction against Opposer and Janet Whitley, enjoining them from use of the BARROW mark. A copy of that Order is attached as Exhibit B.

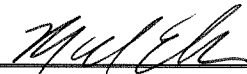
6. Pursuant to the Order of May 3, 2006, Applicant has submitted its motion for damages, which is presently pending before the District Court.

Wherefore, the court case is still pending before the District Court on the issue of damages. The Court of Appeals (on appeal from the denial of a preliminary injunction) and the District Court (in ruling on a motion for summary judgment after remand from the Court of Appeals) have both found that Applicant is the owner of the BARROW mark.

Opposition No. 91160296
Serial No.76/516,019

Respectfully submitted,
Ferrellgas Partners, L.P.
(Applicant)

HOVEY WILLIAMS LLP

By 
Michael Elbein
Thomas H. Van Hoozer
Cheryl L. Burbach
2405 Grand Boulevard, Suite 400
Kansas City, Missouri 64108
(816) 474-9050
ATTORNEYS FOR APPLICANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the Applicant's First Set of Interrogatories was mailed, first class, postage prepaid, this 31st day of October, 2006 to the following:

Jeanene L. Jobst
Womble Carlyle Sandridge & Rice, PLLC
1201 West Peachtree Street Suite 3500
Atlanta, GA 30309

ATTORNEY FOR OPPOSER


Michael Elbein

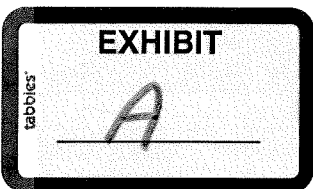
**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION**

FERRELLGAS PARTNERS, L.P., et al.,	:	
	:	
Plaintiffs	:	
	:	
v.	:	4:03-CV-107 (WDO)
	:	
HOMER BARROW, et al.,	:	
	:	
Defendants	:	

ORDER

This matter is before the Court on the Eleventh Circuit Court of Appeals’ order and mandate to issue a preliminary injunction enjoining the use of the “Barrow” name by the Defendants. Adopting the factual and legal findings set forth by the court of appeals, the Court hereby enters this PRELIMINARY INJUNCTION to enjoin during the pendency of this litigation, the Defendants, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise from:

- * use of the “Barrow” name in any form on company signs, trucks, propane tanks or any other company vehicles, employee uniforms, customer invoices, advertising material or any other manner of publicly or privately promoting the “Barrow” name in connection with any propane or energy business owned or in any way managed or operated by any of the Defendants;
- * use of the “Barrow” name in conjunction with the use of a blue and white color scheme in any logo for a propane or other energy business owned or in any way



managed or operated by any of the Defendants;

- * use of the “Barrow” name in conjunction with the use of the slogan “Large enough to serve you, small enough to know you” on any form of media, public or private, in connection with any propane or energy business owned or in any way managed or operated by any of the Defendants.

Within 60 days from the entry of this order, Defendants shall remove or cover any use of the name/term “Barrow” from all company signage (including but not limited to buildings, building signs, all types of propane tanks, “bobtail” trucks or any other vehicles used in connection with any manufacture, transportation, storage, sale or offering for sale of propane or other energy products and/or related services), advertising, business cards, invoices, stationary, envelopes or any other items on which such mark appears regarding Defendants’ propane business(es) and shall refrain from using any such mark/name on such items pending further order of this Court.

Defendants shall immediately direct or send to Plaintiffs any correspondence, inquiry, check or communication which is intended for Plaintiffs but misdirected to Defendants.

Finally, pursuant to Federal Rule of Civil Procedure 65(c), Plaintiffs are HEREBY ORDERED to post a bond in the amount of \$250,000 for the payment of such costs and damages as may be incurred or suffered in the event the Defendants are found to have been wrongfully enjoined and restrained as set forth above.

SO ORDERED this 8th day of November, 2005.

**S/Wilbur D. Owens, Jr.
WILBUR D. OWENS, JR.
UNITED STATES DISTRICT JUDGE**

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION**

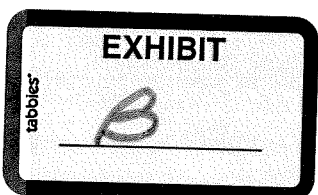
FERRELLGAS PARTNERS, et al.,	:	
	:	
Plaintiffs	:	
	:	
v.	:	4:03-CV-107 (WDO)
	:	
HOMER BARROW, JANET WHITLEY and BARROW ENERGIES, INC.,	:	
	:	
Defendants	:	

ORDER

After the Court entered summary judgment on Plaintiffs' claims, the parties were ordered to submit proposed forms for a permanent injunction. Having carefully considered the parties' submissions, and based on the legal and factual findings more thoroughly addressed in the summary judgment order:

Defendant Janet Whitley, Defendant Barrow Energies, Inc. (now known as Partners Propane of GA, Inc.) and their officers, agents, servants, employees and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise are **HEREBY PERMANENTLY ENJOINED** from

- * using the "Barrow" name in any form on company signs, trucks, propane tanks or any other company vehicles, employee uniforms, customer invoices, advertising material or any other manner of publicly or privately promoting the "Barrow" name in connection with any propane or energy business owned or in any way managed or operated by the Defendants;



- * using the “Barrow” name in conjunction with the use of a blue and white color scheme in any logo for a propane or other energy business owned or in any way managed or operated by the Defendants; and
- * using the “Barrow” name in conjunction with the use of the slogan “Large enough to serve you, small enough to know you” on any form of media, public or private, in connection with any propane or energy business owned or in any way managed or operated by any of the Defendants

with the exceptions that Janet Barrow Whitley may use the “Barrow” name to identify herself personally as long as she does not do so in a way that is an attempt to identify herself in a manner that violates the laws addressed in the Court’s summary judgment order <AND> Defendants are permitted to advertise and inform the public for a period of sixty (60) days from the date of this order that it was “formerly known as Barrow Energies” and is permitted to respond to inquiries regarding its identity by stating it was formerly known as “Barrow Energies,” but in either case the Defendants may not use the “Barrow” name in any manner that unlawfully infringes upon Plaintiffs’ interests therein.

Finally, within thirty (30) days of this order, Plaintiffs may file a motion regarding the amount of damages to which they claim they may be entitled or for any remaining matter related to the bond that was posted for the preliminary injunction.

SO ORDERED this 3rd day of May, 2006.

S/
WILBUR D. OWENS, JR.
UNITED STATES DISTRICT JUDGE