

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

ac/apb

Mailed: October 14, 2004

Opposition No. 91160296

Barrow Energies, Inc.

v.

Ferrellgas Partners L.P.

Andrew P. Baxley, Interlocutory Attorney:

On October 5, 2004, opposer filed a motion to suspend this proceeding pending final determination of a civil action involving the parties. See Trademark Rule 2.117.¹

Whenever the Board is made aware that a party or parties to a pending case are engaged in a civil action which may have a bearing on the case, proceedings before the Board may be suspended until termination of the civil action. See Trademark Rule 2.117(a).

After a review of the amended complaint and answer thereto in the civil action, the Board finds that suspension of this case is appropriate. To prevail in the

¹ The civil action is styled *Ferrellgas Partners L.P. v. Barrow*, Case No. 4:03-CV-107-2, filed in the United States District Court for the Middle District of Georgia.

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district court on its claim of unfair competition under Trademark Act Section 43, 15 U.S.C. Section 1125, applicant must prove the existence of its rights in the BARROW PROPANE GAS mark. If the district court finds that such rights exist, the court's findings will have a bearing on opposer's claims herein. More importantly, those findings would be binding upon the Board. See *American Bakeries Co. v. Pan-O-Gold Baking Co.*, 2 USPQ2d 1208 (D.C. Minn 1986); *Other Telephone Co. v. National Telephone Co.*, 181 USPQ 79 (Comm'r Pats. 1974); and *Whopper-Burger, Inc. v. Burger King Corp.*, 171 USPQ 805 (TTAB 1971).

Therefore, in the interest of judicial economy and consistent with the Board's inherent authority to regulate its own proceedings to avoid duplicating the effort of the district court and the possibility of reaching an inconsistent conclusion, the Board, by its own initiative, hereby suspends this proceeding indefinitely pending final determination, (i.e., following the termination of any and all appeals and remands), of Case No. 4:03-CV-107-2.² See Trademark Rule 2.117(a).

Within twenty days after the final determination of the civil action, the interested party should notify the

² Accordingly, opposer's motion to suspend is moot.

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Board so that this case may be called up for appropriate action. During the suspension period the Board should be notified of any address changes for the parties or their attorneys.