

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

gcp/am

Mailed: February 15, 2006

Opposition No. 91168356

Empire Iron Works, Inc.

v.

Empire Home Services, LLC

George C. Pologeorgis, Interlocutory Attorney:

On February 10, 2006 applicant filed its answer to the notice of opposition and a proposed amendment to its application Serial No. 78456640 without opposer's consent.

By the proposed amendment applicant seeks to change the identification of goods in *Class 35* **from** "shop-at-home, retail store and on-line retail store services in the fields of carpeting, window treatments, cabinetry, closet organizers, doors, fencing, flooring, roofing, siding, windows, furniture, home furnishings and home improvement products" **to** "shop-at-home, retail store and on-line retail store services in the fields of carpeting, window treatments, flooring, siding, windows, and home improvement products" and in *Class 37* **from** "installation services in the fields of carpeting, window treatments, cabinetry, closet organizers, doors, fencing, flooring, roofing, siding, windows, furniture, home furnishings and home improvement products" **to** "installation

services in the fields of carpeting, window treatments, flooring, siding, windows, and home improvement products.”

Where an unconsented motion to amend an application that is involved in an *inter partes* proceeding is filed before trial, the Board generally will defer determination until final decision. See TBMP § 514.03. On the other hand, if a proposed amendment is clearly limiting in nature as required by Trademark Rule 2.71(b), and is consented to by opposer, it will typically be approved and entered. See Trademark Rule 2.133(a).

Inasmuch as applicant's proposed amendment is otherwise in compliance with Trademark Rule 2.71(b), proceedings herein are suspended to allow applicant until **THIRTY DAYS** from the date of this order to notify the Board in writing, if accurate, that opposer consents to the proposed amendment.

If applicant does not respond within the time allotted, or if applicant, or opposer, notifies the Board in writing that opposer does not consent to the proposed amendment, proceedings will be resumed, and the opposition will go forward on the application as presently worded.