

ESTTA Tracking number: **ESTTA419316**

Filing date: **07/12/2011**

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**

Name	Dille Family Trust		
Entity	Trust	Citizenship	Pennsylvania
Address	3191 Mercer Road New Castle, PA 16105 UNITED STATES		

Attorney information	Vincent G. LoTempio Kloss, Stenger & LoTempio 69 Delaware Avenue Suite 1002 Buffalo, NY 14202 UNITED STATES vglotempio@klosslaw.com Phone:716-853-1111
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**Applicant Information**

Application No	77650082	Publication date	06/14/2011
Opposition Filing Date	07/12/2011	Opposition Period Ends	07/14/2011
Applicant	Nowlan Family Trust 325 Swede Street Norristown, PA 19401 UNITED STATES		

**Goods/Services Affected by Opposition**

<p>Class 009. All goods and services in the class are opposed, namely: Motion picture films about science fiction, fantasy heroism and action adventure; science fiction, and motion picture films about fantasy heroism and action adventure for broadcast on broadcast mediums; audio tapes, audio-video tapes, audio video cassettes, audio video discs, and digital versatile discs featuring music, comedy, drama, action, adventure, and animation; stereo headphones; batteries; cordless telephones; audio cassette and CD players; CD ROM computer game discs; telephone and radio pagers; short motion picture films about science fiction, fantasy heroism and action adventure and adventure; video cassette recorders and players, compact disc players, digital audio recorders and players; radios; mouse pads; eyeglasses, sunglasses and cases therefore; game equipment, namely, video game machines for use with televisions, hand-held electronic games adapted for use with television receivers only and player operated electronic controllers for electronic video game machines; video and computer game programs; video game cartridges and cassettes; cellular telephone accessories, namely, cell phone covers, batteries, fitted plastic films known as skins for covering and providing a scratch proof barrier, decorative charms, decorative ornaments, headsets, boosters, connectivity kits and memory cards; encoded magnetic cards</p>
<p>Class 016. All goods and services in the class are opposed, namely: Printed matter and paper goods, namely, books featuring science fiction, fantasy heroism and action adventure, comic books, magazines featuring science fiction, fantasy heroism and action adventure; stationery, writing paper, envelopes,</p>

notebooks, diaries, note cards, greeting cards, trading cards; lithographs; pens, pencils, cases therefor, erasers, crayons, markers, colored pencils, painting sets for children, chalk and chalkboards; decals, heat transfers; posters; mounted and unmounted photographs; book covers, book marks, calendars, gift wrapping paper; Paper party decorations; Printed patterns for costumes, pajamas, sweatshirts and t-shirts; paper party favors

**Class 025.**

All goods and services in the class are opposed, namely: Clothing, namely, pajamas, t-shirts, shirts, jumpers, sweatshirts, vests, coats, jackets, overcoats, trousers, shorts, socks, gloves, ties, scarves, skirts, underwear, footwear; headgear, namely, hats, caps, head scarves, baseball caps and headbands, clothing accessories, namely, belts, gloves, suspenders, sweat bands, straps for bras

**Class 028.**

All goods and services in the class are opposed, namely: Toys, namely, musical toys, inflatable toys, electric action toys, punch toys, plush toys, talking toys, toy cars, role-playing toys in the nature of play sets for children to imitate real life occupations, toy boats, toy airplanes, toy weapons, toy rocket ships, construction toys, toy putty, toy scooters, toy action figures and accessories for use with toy action figures, toy model vehicles, water squirting toys and toy model space craft, toy building blocks, toy model hobby craft kits comprising paints, beads, ceramics, plastics, crayons, stencils, toy model vehicles and related accessories sold as a units, toy modeling dough kits comprising toy modeling dough, molds and accessories for use therewith sold as units, toy vehicles, toy weapons, toy model vehicles and accessories therefor sold as a unit, wind-up toys and miniature toy helmets; sporting goods, namely, beach balls, playground balls, soccer balls, sport balls, baseball balls, basketball balls, baseball bats, and baseball gloves; games, namely, action type target games, board games, card games, hand held units for playing electronic games other than those adapted for use with an external display screen or monitor, virtual arcade shooting game machines, trading card games, parlor games, action skill games, coin operated and non-coin operated pinball machine games, stand alone video game machines, collectible card games, and collectible miniature board games

**Class 041.**

All goods and services in the class are opposed, namely: Entertainment services, namely, an on-going series provided through broadcast mediums, namely, television, webcasts, and radio broadcasts

### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)
Other	Trademark Act section 43(a)

### Marks Cited by Opposer as Basis for Opposition

U.S. Application No.	77831393	Application Date	09/21/2009
Registration Date	NONE	Foreign Priority Date	03/25/2009
Word Mark	BUCK ROGERS		
Design Mark			

Description of Mark	NONE
Goods/Services	<p>Class 009. First use: Downloadable electronic games, computer game programs, computer game software; downloadable electronic games via the Internet and wireless devices; downloadable multimedia files containing games; downloadable and non-downloadable sound recordings and audiovisual recordings featuring music, science fiction and adventure</p> <p>Class 016. First use: Printed materials, namely, paper party supplies in the nature of paper party bags, paper party decorations; paper school supplies, namely, paper folders, paper; paper desk supplies, namely, paper, paper folders; calendars, greeting cards</p> <p>Class 018. First use: Bags, namely, carrying cases; small articles made of leather or materials that look like leather, namely, key cases, wallets, leather cases, leather pouches, leather purses; umbrellas, wallets, all-purpose sport bags, messenger bags</p> <p>Class 021. First use: Mugs, dinnerware, serving dishes</p> <p>Class 024. First use: Bed linens, towels, comforters, curtains, shower curtains</p> <p>Class 025. First use: Clothing, namely, T-shirts, shirts, jackets; headwear; footwear</p> <p>Class 026. First use: Belt buckles</p> <p>Class 028. First use: Toys, games, and playthings, namely, action figures and accessories therefor, toy pistols</p> <p>Class 035. First use: Online retail store services, mail order services, retail store services, all featuring games, books, bags, clothing, toys, videos</p> <p>Class 041. First use: Entertainment services, namely, providing an online computer game, providing a website with entertainment information on a comic book series and science fiction/adventure character; Provision of a series of non-downloadable web-based television programs featuring science fiction and adventure via the Internet; provision of a series of non-downloadable motion pictures featuring science fiction and adventure via a video on demand service; provision of non-downloadable television programs, motion pictures and segments thereof for use with mobile telephones via a video on demand service</p>

U.S. Application No.	77831213	Application Date	09/21/2009
Registration Date	NONE	Foreign Priority Date	03/25/2009
Word Mark	BUCK ROGERS		

Design Mark	<h1>BUCK ROGERS</h1>
Description of Mark	NONE
Goods/Services	<p>Class 009. First use: First Use: 1939/00/00 First Use In Commerce: 1939/00/00  Motion picture films featuring science fiction and adventure; audio-visual recordings featuring science fiction and adventure; Audiovisual recordings featuring a series of television programs featuring science fiction and adventure; downloadable audio visual recordings featuring science fiction and adventure; sound recordings featuring musical soundtracks; downloadable sound recordings featuring musical soundtracks</p> <p>Class 016. First use: First Use: 1932/00/00 First Use In Commerce: 1932/00/00  A series of books featuring a collection of comic strips and information on comic strips; a series of fiction books; comic books</p> <p>Class 020. First use: First Use: 1979/00/00 First Use In Commerce: 1979/00/00  Figurines made of plastic</p> <p>Class 028. First use: First Use: 1934/00/00 First Use In Commerce: 1934/00/00  Toy rocket pistols, toy action figures; toy action figures with MP3 player; action dolls sold as a unit with an MP3 player</p> <p>Class 041. First use: First Use: 1950/00/00 First Use In Commerce: 1950/00/00  Provision of non-downloadable television programs featuring science fiction and adventure via a global computer network and via a video on demand service; Entertainment services in the nature of on-going television programs featuring science fiction and adventure; Production of television programs featuring science fiction and adventure which are aired on television, via a global computer network, and played online periodically</p>

U.S. Registration No.	714184	Application Date	07/05/1960
Registration Date	04/18/1961	Foreign Priority Date	NONE
Word Mark	BUCK ROGERS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U038 (International Class 016). First use: First Use: 1928/09/10 First Use In Commerce: 1928/09/10 Newspaper Comic Strip		

U.S. Registration No.	1555871	Application Date	10/03/1988
Registration Date	09/12/1989	Foreign Priority Date	NONE

Word Mark	BUCK ROGERS
Design Mark	
Description of Mark	NONE
Goods/Services	Class 028. First use: First Use: 1988/07/29 First Use In Commerce: 1988/07/29 BOARDGAMES

Attachments	77831393#TMSN.jpeg ( 1 page )( bytes ) 77831213#TMSN.jpeg ( 1 page )( bytes ) Executed Opposition.pdf ( 6 pages )(231058 bytes )
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### **Certificate of Service**

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Vincent G. LoTempio/
Name	Vincent G. LoTempio
Date	07/12/2011

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

DILLE FAMILY TRUST	)	
	)	
Opposer,	)	
	)	Opposition No.:
vs.	)	
	)	Serial No.: 77-650082
NOWLAN FAMILY TRUST	)	Mark: BUCK ROGERS
	)	
	)	
	)	
Applicant.	)	

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**NOTICE OF OPPOSITION**

In the matter of Application Serial No. 77-650082 for registration of the mark BUCK ROGERS (herein “the Mark”) in International Classes 009, 016, 025, 028, and 041 by the Nowlan Family Trust (herein the “Applicant”), which was published in the Official Gazette on June 14<sup>th</sup>, 2011, the Dille Family Trust (herein the “Opposer”), believes it will be damaged by registration and therefore opposes on the following grounds:

1. Applicant seeks to register the Mark in connecting with “Motion picture films about science fiction, fantasy heroism and action adventure; science fiction, and motion picture films about fantasy heroism and action adventure for broadcast on broadcast mediums; audio tapes, audio-video tapes, audio video cassettes, audio video discs, and digital versatile discs featuring music, comedy, drama, action, adventure, and animation; stereo headphones; batteries; cordless telephones; audio cassette and CD players; CD ROM computer game discs; telephone and radio pagers; short motion picture films about science fiction, fantasy heroism and action adventure and adventure; video cassette recorders and players, compact disc players, digital audio recorders and players; radios; mouse pads; eyeglasses, sunglasses and cases therefore; game equipment,

namely, video game machines for use with televisions, hand-held electronic games adapted for use with television receivers only and player operated electronic controllers for electronic video game machines; video and computer game programs; video game cartridges and cassettes; cellular telephone accessories, namely, cell phone covers, batteries, fitted plastic films known as skins for covering and providing a scratch proof barrier, decorative charms, decorative ornaments, headsets, boosters, connectivity kits and memory cards; encoded magnetic cards” in International Class 009.

2. Applicant seeks to register the Mark in connecting with “Printed matter and paper goods, namely, books featuring science fiction, fantasy heroism and action adventure, comic books, magazines featuring science fiction, fantasy heroism and action adventure; stationery, writing paper, envelopes, notebooks, diaries, note cards, greeting cards, trading cards; lithographs; pens, pencils, cases therefor, erasers, crayons, markers, colored pencils, painting sets for children, chalk and chalkboards; decals, heat transfers; posters; mounted and unmounted photographs; book covers, book marks, calendars, gift wrapping paper; Paper party decorations; Printed patterns for costumes, pajamas, sweatshirts and t-shirts; paper party favors” in International Class 016.

3. Applicant seeks to register the Mark in connecting with “Clothing, namely, pajamas, t-shirts, shirts, jumpers, sweatshirts, vests, coats, jackets, overcoats, trousers, shorts, socks, gloves, ties, scarves, skirts, underwear, footwear; headgear, namely, hats, caps, head scarves, baseball caps and headbands, clothing accessories, namely, belts, gloves, suspenders, sweat bands, straps for bras” in International Class 025.

4. Applicant seeks to register the Mark in connecting with “Toys, namely, musical toys, inflatable toys, electric action toys, punch toys, plush toys, talking toys, toy cars, role-playing

toys in the nature of play sets for children to imitate real life occupations, toy boats, toy airplanes, toy weapons, toy rocket ships, construction toys, toy putty, toy scooters, toy action figures and accessories for use with toy action figures, toy model vehicles, water squirting toys and toy model space craft, toy building blocks, toy model hobby craft kits comprising paints, beads, ceramics, plastics, crayons, stencils, toy model vehicles and related accessories sold as a units, toy modeling dough kits comprising toy modeling dough, molds and accessories for use therewith sold as units, toy vehicles, toy weapons, toy model vehicles and accessories therefor sold as a unit, wind-up toys and miniature toy helmets; sporting goods, namely, beach balls, playground balls, soccer balls, sport balls, baseball balls, basketball balls, baseball bats, and baseball gloves; games, namely, action type target games, board games, card games, hand held units for playing electronic games other than those adapted for use with an external display screen or monitor, virtual arcade shooting game machines, trading card games, parlor games, action skill games, coin operated and non-coin operated pinball machine games, stand alone video game machines, collectible card games, and collectible miniature board games” in International Class 028.

5. Applicant seeks to register the Mark in connecting with “Entertainment services, namely, an on-going series provided through broadcast mediums, namely, television, webcasts, and radio broadcasts” in International Class 041.

6. The opposed application, Serial No. 77-650082, was filed on January 15<sup>th</sup>, 2009.

7. Opposer is informed and believes and thereon alleges that Applicant has commenced use of the Mark or intends imminently to do so.

8. Opposer is informed and believes and thereon alleges that Opposer has superior rights to the Mark based on prior use of the BUCK ROGERS mark, which use has afforded Opposer

superior rights in said mark.

9. Opposer has filed trademark application Serial No. 77-831393 on September 21, 2009 for the mark BUCK ROGERS in International Classes 009, 016, 018, 021, 024, 025, 026, 028, 035, and 041; and claims the benefit of prior registrations 0714184 and 1555871, each of which predates Applicant's present application.

10. Opposer has filed trademark application Serial No. 77-831213 on September 21, 2009 for the mark BUCK ROGERS in International Classes 009, 016, 020, 028, and 041; and claims the benefit of prior registrations 0714184 and 1555871, each of which predates Applicant's present application.

11. Opposer is the owner of Trademark Registrations for, and including, the mark BUCK ROGERS, including German registrations 956384 entered into the register on March 29, 1977 and 2015984 entered into the register on June 25, 1992; French registrations 1448683 registered September 20, 1986 and 1663275 registered May 23, 1991; Japanese registrations 3208830 registered October 31, 1996, 3247046 registered January 31, 1997, and 3318225 registered June 6, 1997; and Canadian registrations UCA4652 registered April 27, 1934, TMA260231 registered June 26, 1981, TMA262493 registered September 18, 1981, and TMA406430 registered December 18, 1992; all of which are valid and subsisting.

12. Opposer has been and is now using, itself or through license, the mark BUCK ROGERS on said goods, including but not limited to comic books, action figures, feature films, picture frames, belt buckles, key chains, resin statues, artwork, t-shirts, board games, computer software, internet television show license, DVDs, Blu-Ray video discs, and radio programs. Said use has been continuous since date of first use and has not been abandoned. Opposer's BUCK ROGERS mark is symbolic of the extensive good will and consumer recognition built up by Opposer

through substantial amounts of financial contribution, time and effort in advertising and promotion.

13. Opposer alleges that the applied-for mark so resembles Opposer's BUCK ROGERS mark that, as used in connection with the applied-for goods, it is likely to cause confusion, mistake, or deception of the relevant trade and public, to the damage of Opposer as described in Section 2(d) of the Lanham Act.

14. Opposer alleges that the Applicant's use of the applied-for Mark will dilute the unique and distinctive significance of Opposer's famous BUCK ROGERS mark to identify and distinguish the Opposer's goods, as described in Section 43(a) and/or (c) of the Lanham Act.

15. BUCK ROGERS has acquired distinctiveness over the past century and is a famous mark. Opposer adopted the BUCK ROGERS mark at least as early as 1928 and Opposer's BUCK ROGERS mark acquired fame before Applicant's first use of its mark in commerce.

WHEREFORE, Opposer prays that this opposition be sustained, that Application Serial No. 77-650082 be rejected and the mark applied-for therein refused registration.

Respectfully submitted

BY:



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CERTIFICATE OF SERVICE

I, Vincent G. LoTempio, do hereby certify that a copy of the foregoing NOTICE OF OPPOSITION was served by first class mail, postage prepaid on this 12th day of July, 2011 to:

Brian McDevitt, Trustee  
Nowlan Family Trust  
325 Swede Street  
Norristown, Pennsylvania



Vincent G. LoTempio