

ESTTA Tracking number: **ESTTA708148**

Filing date: **11/12/2015**

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	Dina Camiones, S.A. de C.V.
Granted to Date of previous extension	01/06/2016
Address	Cerrada de Acalotenco 237 San Sebastian, Estado de Mexico, 02040 MEXICO

Attorney information	John M. Murphy Arochi, Marroquin & Lindner, S.C. 5802 Bob Bullock (Loop 20) Building C1-56Y1 Laredo, TX 78040 UNITED STATES jmurphy@aml.com.mx Phone:011525550952031
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Applicant Information

Application No	86406691	Publication date	09/08/2015
Opposition Filing Date	11/12/2015	Opposition Period Ends	01/06/2016
Applicant	Timeless Corporation 11932 W 52ND AVE WHEAT RIDGE, CO 80033 UNITED STATES		

Goods/Services Affected by Opposition

Class 012. First Use: 2014/07/02 First Use In Commerce: 2014/07/02 All goods and services in the class are opposed, namely: Bodyworks for motor vehicles; Buses; Buses and structural parts therefor; Coachwork for motor vehicles; Electrically powered buses; Electrically-powered motor vehicles; Four-wheeled motor vehicles; Motor coaches; Motor vehicles, namely, concept motor vehicles; Recreational vehicles, namely, motor homes; Structural parts for buses
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Grounds for Opposition

Other	The application was filed under Trademark Section 1(a) but the mark was not in use for the goods identified in the application as of the application filing date.
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Attachments	DINA FLXIBLE OPPOSITION.pdf(688214 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 Overnight Courier on this date.

Signature	/John M. Murphy/
Name	John M. Murphy
Date	11/12/2015

UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

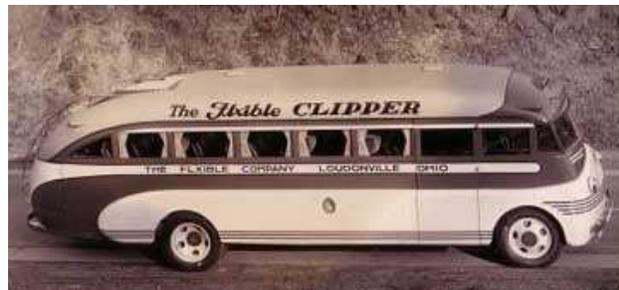
In the matter of Application Serial No. 86406691, published in the *Official Gazette* of September 8, 2015.

DINA CAMIONES, S.A. DE C.V.,)
)
 Opposer,)
)
 v.)
)
 TIMELESS CORPORATION,)
)
 Applicant.)
_____)

NOTICE OF OPPOSITION

Opposer Dina Camiones, S.A. de C.V., a Mexican *sociedad anónima de capital variable* located at Cerrada de Acalotenco 237, Col. San Sebastian, 02040 México D.F., Mexico, believes it will be damaged by and opposes registration of the mark shown in Application Serial No. 86406691. The grounds for relief are stated below.

1. Starting in the mid 1920s, The Flxible Company of Loudonville, Ohio manufactured and sold buses and other vehicles under the mark FLXIBLE. Two such buses are shown below:



2. From the early 1960s until the late 1980s, Opposer and its predecessors manufactured and sold DINA FLXIBLE buses in Mexico under license from The Flxible Company. A Mexican newspaper advertisement for DINA FLXIBLE buses appears below:

ULTIMA 8 EL INFORMADOR Miércoles 11 de Mayo de 1964

**VEINTE AUTOBUSES
"DINA-FLXIBLE" PARA "OMNIBUS DE MEXICO"**



CALIDAD EN MARCHA

EL DINA-FLXIBLE SE HA IMPUESTO, COMO EL MEJOR Y MAS EFICIENTE AUTOBUS DE PASAJEROS, POR SU INDISCUTIBLE CALIDAD Y SU EXTRAORDINARIO RENDIMIENTO. Omnibus de México, S. A. de C. V. (Flecha Roja), empresa en ascendente superación, adquirió VEINTE NUEVOS AUTOBUSES DINA-FLXIBLE. Esto es una prueba más del deseo de esta organización por mejorar y mantener a gran nivel el buen servicio que presta a los pasajeros que transporta a lo largo de sus importantes rutas que cruzan el país. Con estas nuevas veinte unidades, Omnibus de México, S. A. de C. V. eleva a noventa y cinco su moderna flota de autobuses DINA-FLXIBLE... ¡el mejor autobús fabricado en México por mexicanos para el eficiente transporte en México!

La adquisición de las veinte nuevas unidades DINA-FLXIBLE por Omnibus de México, S.A. de C.V. marca un paso más en el programa de esta línea camionera que próximamente inaugurará su moderna terminal de la Ciudad de México.



Dina Flxible expresión del desarrollo industrial de México

3. The ultimate successor of The Flxible Company ceased manufacturing FLXIBLE buses in 1995. However, numerous vintage FLXIBLE buses remain in existence. Many of these iconic vehicles have been restored and converted into motor homes, mobile kitchens, mobile retail businesses and the like.

4. On September 8, 2015, Applicant Timeless Corporation filed Application Serial No. 86406691 to register the mark FLXIBLE for “bodyworks for motor vehicles; buses; buses and structural parts therefor; coachwork for motor vehicles; electrically powered buses; electrically-powered motor vehicles; four-wheeled motor vehicles; motor coaches; motor vehicles, namely, concept motor vehicles; recreational vehicles, namely, motor homes; structural parts for buses” in Class 12. This application was filed under Section 1(a) of the Trademark Act and alleged use in commerce since July 2, 2014.

5. On October 13, 2014, Opposer applied to register the marks DINA FLXIBLE (Application Serial No. 86422418) and DINA FLEXIBLE (Application Serial No. 86422423) for “buses and structural parts therefor; land vehicles and structural parts therefor; motors and engines for land vehicles; buses; land vehicles” in International Class 12. Both applications were filed under Section 1(b) of the Trademark Act.

6. Opposer’s applications to register DINA FLXIBLE (Application Serial No. 86422418) and DINA FLEXIBLE (Application Serial No. 86422423) have been suspended, pending the final disposition of Application Serial No. 86406691. In each case Opposer has been advised by the examining attorney that its application may be refused under Section 2(d) of the Trademark Act if Application Serial No. 86406691 matures to registration. Accordingly, Opposer will be damaged if Application Serial No. 86406691 matures to registration, and has standing in this proceeding.

7. On information and belief, Applicant did not use the mark FLXIBLE in commerce for any of the goods identified in Application Serial No. 86406691 before applying for registration under Section 1(a) of the Trademark Act, and has not done so since then. At most, Applicant has restored and converted vintage FLXIBLE buses originally manufactured by The Flxible Company and its successors. For example, Applicant’s web site at www.timelesstraveltrailers.com shows a vintage FLXIBLE bus that was restored and converted to use as a mobile coffee shop:

Custom Motorized Vehicles

Allegro Coffee

1951 "Flxible" Bus on a new Freightliner Chassis

Looking to take their product on the road, Allegro Coffee called Timeless to build a vehicle that was function, reliable and truly a rolling masterpiece!



Allegro Coffee Bus

8. If the mark FLXIBLE appears on the buses restored and customized by Applicant, it continues to indicate the original source of the bus bearing the mark rather than Applicant. Applicant has not acquired any rights in the mark FLXIBLE through the sale of restored or converted vintage FLXIBLE buses. As stated by the Trademark Trial and Appeal Board in *Coup v. Vornado, Inc.*, 9 U.S.P.Q.2d 1824, 1825-1826 (T.T.A.B. 1988), “One who does not manufacture an article, but merely maintains and sells an inventory of goods previously produced by an original manufacturer which has abandoned the mark, establishes no rights in the mark.”

9. The restoration and customization of vintage FLXIBLE buses by Applicant is not “use in commerce” of the mark FLXIBLE for any of the goods identified in Application Serial No. 86406691, as this term is defined by Section 45 of the Trademark Act.

10. Since Applicant was not using the mark FLXIBLE on any of the goods identified in Application Serial No. 86406691 when it filed the application, it is not entitled to registration under Section 1(a) of the Trademark Act.

For the foregoing reasons, this opposition should be sustained and Application Serial No. 86406691 should be refused. Please direct all correspondence to counsel for Opposer at the address indicated below.

Respectfully submitted,

AROCHI, MARROQUÍN & LINDNER, S.C.

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Attorney for Applicant

CERTIFICATE OF SERVICE

I, John M. Murphy, certify that the foregoing NOTICE OF OPPOSITION was served by courier on Brett D. Hall, Timeless Corporation, 12250 W 52nd Avenue, Wheat Ridge, CO 80033-2024, on November 12, 2015.

/John M. Murphy/