

ESTTA Tracking number: **ESTTA39872**

Filing date: **07/25/2005**

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

<b>Name</b>	CSX Transportation, Inc.		
<b>Entity</b>	Corporation	<b>Citizenship</b>	Virginia
<b>Address</b>	500 Water StreetJ150 Jacksonville, FL 32202 UNITED STATES		

<b>Attorney information</b>	Karen Koster Burr Atlantic Beach Law, PA PO Box 330630 Atlantic Beach, FL 32233-0630 UNITED STATES kkb@atlanticbeachlaw.com Phone:904 242 9531		
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#### Applicant Information

<b>Application No</b>	78342722	<b>Publication date</b>	06/28/2005
<b>Opposition Filing Date</b>	07/25/2005	<b>Opposition Period Ends</b>	07/28/2005
<b>Applicant</b>	RUOCCHIO, ALBERT C. 429 Chadwick Drive Raleigh, NC 27609 UNITED STATES		

#### Goods/Services Affected by Opposition

Class 028. First Use: 19940901 First Use In Commerce: 19940901  
All goods and services in the class are opposed, namely: Toys, Namely, Model Toy Trains  
and Model Toy Train Layout Accessories

<b>Attachments</b>	Notice of OppositionWM.pdf ( 6 pages )
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<b>Signature</b>	/kkb/
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<b>Name</b>	Karen Koster Burr
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<b>Date</b>	07/25/2005
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Application Serial No. : 78/342,722  
For the Mark : WESTERN MARYLAND  
RAILROAD  
Filed : December 18, 2003  
Published in the *Trademark Official Gazette* on : June 28, 2005

CSX Transportation, Inc.

Opposer,

- against -

Albert C. Ruocchio,

Applicant.

*Opposition No.* \_\_\_\_\_

NOTICE OF OPPOSITION

July 25, 2005

NOTICE OF OPPOSITION

CSX Transportation, Inc., a Virginia corporation with offices at 500 Water Street, J150, Jacksonville, Florida 32202 (“Opposer”), believes that it will be damaged by the registration of the mark shown in the above-identified application, and hereby opposes the grant of the application of Albert C. Ruocchio, an individual residing at 429 Chadwick Drive, Raleigh, NC 27609 (“Applicant”), to register the mark “WESTERN MARYLAND RAILROAD” for “toys, namely, model toy trains and model toy train layout accessories” in International Class 028, on the following grounds:

## COUNT ONE

1. Since 1852, Opposer has continuously used the mark WESTERN MARYLAND RAILWAY in interstate commerce through its predecessor companies, both alone and in connection with its other marks, for freight transportation services by rail.

2. Opposer also owns the related WM design mark federal trademark registration No. 1,276,525 on the Principal Register for “railroad freight transportation services” in Int'l. Class 39, registered by predecessor Baltimore & Ohio Railroad Company. Although this registration has not been kept up to date, the mark is also still in use.

3. Opposer has licensed secondary uses of both the WESTERN MARYLAND RAILWAY mark at issue and the related WM mark on model trains, clothing, diverse memorabilia and in publications informally and formally since the inception of the Western Maryland Railway.

4. Upon information and belief, the WESTERN MARYLAND RAILROAD mark is intended to be used by Opposer as the nearly identical mark has been used by Applicant: as the long version of Opposer's WM mark.

5. As a result of the widespread use in interstate and international commerce by the Opposer and its licensees of the aforesaid trademarks in connection with a variety of goods and services, the marks have acquired extensive goodwill, have developed a high degree of distinctiveness and are well known and recognized as identifying high quality

goods and services which have their origin with or have been authorized by the Opposer.

6. Applicant's proposed WESTERN MARYLAND RAILROAD mark is confusingly similar to Opposer's WESTERN MARYLAND RAILWAY service mark in sound, appearance and commercial impression. In fact, applicant's decorative use of the Mark is intended to duplicate the historic trade dress of Opposer.

7. Applicant's goods are designed to be scale models of Opposer's freight transportation equipment with which it has rendered and renders transportation services. Applicant's goods are identical to the class of goods licensed by Opposer bearing the WESTERN MARYLAND RAILWAY mark and also represent a natural zone of expansion for Opposer and such goods and Services travel and are promoted through the same channels of trade for sale to, and use by, the same class of purchasers.

8. Applicant's use of the mark WESTERN MARYLAND RAILROAD in connection with its proposed goods and Services is likely to cause confusion, mistake or deception as to the source of origin of Applicant's goods and Services in that the public, the trade and others are likely to believe that Applicant's goods and services are provided by, sponsored by, approved by, licensed by, affiliated with or in some other way legitimately connected to Opposer and/or its goods, services or licensed products.

## COUNT TWO

9. Opposer repeats and realleges the allegations set forth in paragraphs 1 through 8 as though set forth herein.

10. Upon information and belief, Applicant has made no *bona fide* use of the mark WESTERN MARYLAND RAILROAD in commerce as a *trademark* in the United States. Opposer objects to registration of the mark on the ground that it has not been and will not be used as a trademark in the United States. It is not an indication of the source for applicant's goods.

## COUNT THREE

11. Opposer repeats and realleges the allegations set forth in paragraphs 1 through 10 as though set forth herein.

12. Upon information and belief, Applicant has not personally used the mark commercially at all. Accordingly, the pending application is void *ab initio* since it was not filed by the party or parties who own or are using the WESTERN MARYLAND RAILROAD mark.

#### COUNT FOUR

13. Opposer repeats and realleges the allegations set forth in paragraphs 1 through 12 as though set forth herein.

14. Opposer's WESTERN MARYLAND RAILWAY service marks are distinctive and famous and had become famous long prior to the acquisition of any rights Applicant may claim in the similar WESTERN MARYLAND RAILROAD mark.

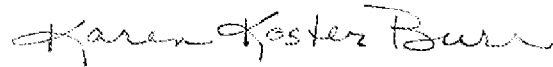
15. Use of the mark WESTERN MARYLAND RAILROAD by Applicant causes dilution of the distinctive quality of Opposer's famous WESTERN MARYLAND RAILWAY service mark.

16. Opposer will be damaged by the registration sought by Applicant because such registration would support and assist Applicant in use of its unauthorized use of the WESTERN MARYLAND RAILROAD mark and imitation of Opposer trade dress thereby dilute Opposer's rights in its distinctive and famous WESTERN MARYLAND RAILWAY service mark.

WHEREFORE, Opposer respectfully requests that this opposition be sustained and Applicant's application to register the mark WESTERN MARYLAND RAILROAD be denied in all respects.

Dated: July 25, 2005

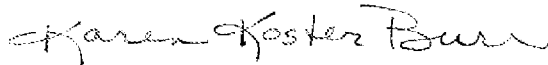
Respectfully submitted,  
ATLANTIC BEACH LAW, P.A.



By:

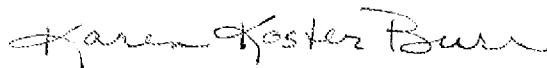
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Certificate of Mailing: I, Karen Koster Burr, hereby certify under penalty of perjury that I have filed this document with the TTAB electronically through ESTAS on July 25,



2005\_\_\_\_.

Certificate of Service: I, Karen Koster Burr, hereby certify under penalty of perjury that I will have served a copy of this Answer to Opposer Counsel by certified first class mail, postage pre-paid, on July 25,



2005\_\_\_\_.