

ESTTA Tracking number: **ESTTA1043490**

Filing date: **03/19/2020**

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	RST Brands, LLC		
Entity	LLC	Citizenship	United States of America
Address	1891 West 2100 South Salt Lake City, UT 84119 UNITED STATES		

Attorney information	Robert E. Aycock; William B. Chadwick Pia Anderson Moss Hoyt 136 E. South Temple, 19th Floor Salt Lake City, UT 84111 UNITED STATES raycock@pamhlaw.com, wchadwick@pamhlaw.com no phone number provided		
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Applicant Information

Application No	88636310	Publication date	02/18/2020
Opposition Filing Date	03/19/2020	Opposition Period Ends	03/19/2020
Applicant	World Merchant Ltd. Parc House 25-37 Cowleaze Road Surrey, KT26DZ UNITED KINGDOM		


Goods/Services Affected by Opposition

<p>Class 020. First Use: 2017/10/22 First Use In Commerce: 2017/10/22 All goods and services in the class are opposed, namely: Brackets, not of metal, for furniture; Cabinets; Curtain holders, not of textile material; Curtain rails; Curtain rings; Curtain rods; Curtain tie-backs in the nature of non-textile curtain holders; Hangers in the nature of non-metal hooks used to hang a purse or bag from a table; Mirror frames; Mirror tiles; Mirrors; Clothes hangers; Coat hangers; Curtain hooks; Decorative mirrors; Hardware, namely, non-metal brackets for general use; Non-metal cabinet door catches; Non-metal cabinet stops; Non-metal hooks; Non-metal garment hooks; Non-metal handles comprised of wood for cabinets, drawers and furniture; Non-metal knobs comprised of wood for cabinets, drawers and furniture; Non-metal mounting brackets for general use; Non-metal picture hangers; Non-metal plant hangers; Non-metal pulls comprised of wood for cabinets, drawers and furniture; Non-metal shelf brackets; Picture frame brackets; Shelving and component parts thereof, namely, shelves and brackets sold as a unit; Shower curtain hooks; Towel hooks not of metal</p>

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	5059600	Application Date	04/15/2016
Registration Date	10/11/2016	Foreign Priority Date	NONE
Word Mark	FLOW WALL		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 019. First use: First Use: 2008/02/16 First Use In Commerce: 2008/02/16 Modular wall mounting kits comprising non-metal wall panels, non-metal slot wall panels, hooks, hangers, shelves and/or brackets; modular shelving kits comprising non-metal wall panels, non-metal slot wall panels, hooks, hangers, brackets, shelves, bins and/or racks; slot wall storage kits comprising non-metal slot wall panels, hooks, hangers, brackets, shelves, bins and/or racks		

Attachments	87002574#TMSN.png(bytes) 2020-03-19 RST Opposition to FLOW PLY Trademark Application.pdf(118045 bytes) Exhibit A - FLOW WALL - 87002574.pdf(28174 bytes)
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Signature	/William B. Chadwick/
Name	William B. Chadwick
Date	03/19/2020

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

In the matter of
Trademark Application Serial Number 88/636,310
Opposed Mark: FLOW PLY
Published in the Official Gazette on February 18, 2020

RST BRANDS, LLC

Opposer,

vs.

WORLD MERCHANT LTD.,

Applicant.

Opposition No.: _____

NOTICE OF OPPOSITION

Opposer RST Brands, LLC, formerly known as Red Star Traders, LLC (hereinafter referred to as “RST” or “Opposer”), a limited liability company with a principal place of business at with offices at 1891 W 2100 South, Salt Lake City, Utah 84119, believes that it will be damaged by registration of the mark “FLOW PLY” shown in Serial Number 88/636,310 in International Class 20 and hereby opposes same. The grounds for the opposition are that:

1. Upon information and belief, World Merchant Ltd. (“World Merchant” or “Applicant”) is a limited liability company with an address at Parc House, 25-37 Cowleaze Road, Surrey, United Kingdom KT26DZ. Applicant seeks to register the mark “FLOW PLY” (“Applicant’s Mark”) as a trademark to be used in International Class 20, as evidenced by the publication of such mark in the Official Gazette on TM 3724 of the February 18, 2020 issue, in conjunction with goods and services identified as:

Brackets, not of metal, for furniture; Cabinets; Curtain holders, not of textile material; Curtain rails; Curtain rings; Curtain rods; Curtain tie-backs in the nature of non-textile curtain holders; Hangers in the nature of non-metal hooks used to hang a purse or bag from a table; Mirror frames; Mirror tiles; Mirrors; Clothes hangers; Coat hangers; Curtain hooks; Decorative mirrors; Hardware, namely, non-metal brackets for general use; Non-metal cabinet door catches; Non-metal cabinet stops; Non-metal hooks; Non-metal garment hooks; Non-metal handles comprised of wood for cabinets, drawers and furniture; Non-metal knobs comprised of wood for cabinets, drawers and furniture; Non-metal mounting brackets for general use; Non-metal picture hangers; Non-metal plant hangers; Non-metal pulls comprised of wood for cabinets, drawers and furniture; Non-metal shelf brackets; Picture frame brackets; Shelving and component parts thereof, namely, shelves and brackets sold as a unit; Shower curtain hooks; Towel hooks not of metal.

2. Applicant filed the subject application on September 30, 2019 on the basis of Section 1(a) of the Lanham Act and received an application serial number of 88/636,310.

3. Since at least February 16, 2008, which is prior to the effective filing date of the subject application, Opposer has used “FLOW WALL” as a trademark in connection with its goods. In particular, Opposer has been engaged in the marketing, sale, and distribution of modular wall mounting kits including shelves and storage containers sold in interstate commerce throughout the United States as evidenced by the website flowwall.com.

4. Opposer’s FLOW WALL mark is distinctive and serves as a unique designation of origin with respect to goods offered by Opposer.

5. Notwithstanding the inherent distinctiveness of Opposer’s FLOW WALL mark, Opposer’s FLOW WALL mark has also acquired secondary meaning to the public indicating Opposer as the source of goods bearing Opposer’s FLOW WALL mark.

6. Since at least February 16, 2008, which is prior to the effective filing date of the subject application, Opposer has used the FLOW WALL mark to distinguish its goods from other goods of the same type, and Opposer has acquired goodwill and reputation in connection with the FLOW WALL mark through its use thereof. By virtue of Opposer’s widespread and continuous

use of its FLOW WALL, Opposer has established common law rights in its mark in connection with these goods.

7. Opposer is the owner of the following U.S. Trademark Registration:

Trademark	Reg. No.	Full Goods and Services Descriptions	Filing Date	Reg. Date
FLOW WALL	5,059,600	Class 19: Modular wall mounting kits comprising non-metal wall panels, non-metal slot wall panels, hooks, hangers, shelves and/or brackets; modular shelving kits comprising non-metal wall panels, non-metal slot wall panels, hooks, hangers, brackets, shelves, bins and/or racks; slot wall storage kits comprising non-metal slot wall panels, hooks, hangers, brackets, shelves, bins and/or racks.	April 15, 2016	October 11, 2016

8. Opposer's registration for FLOW WALL is valid and is evidence of Opposer's exclusive rights to use the mark in commerce in connection with the goods specified therein. Attached as Exhibit A to this Notice of Opposition is a current printout of information from the electronic database records of the U.S. Patent and Trademark Office showing the current status and title of Registration No. 5,059,600.

9. There is no issue as to priority. The filing dates and first use dates of Opposer's registration for FLOW WALL are before the filing date and the earliest listed use of commerce in the subject application.

10. Since Opposer's adoption and initial use of the FLOW WALL mark at least as early as February 16, 2008, Opposer has made a substantial investment in marketing and promoting its goods under this mark. Opposer has extensively used, advertised, promoted and offered for sale goods in association with the FLOW WALL mark with the result that Opposer's customers and the general public have come to know and recognize Opposer's FLOW WALL mark and that the

public associates this mark with Opposer and/or its goods. The FLOW WALL mark is thus a valuable asset of Opposer and a symbol of its goodwill.

11. As a result of Opposer's substantial and continuous use of the FLOW WALL mark in association with Opposer's goods, Opposer's FLOW WALL mark has become an asset of substantial value to Opposer as a distinctive indication of the origin and quality of its goods. Goods bearing the Opposer's FLOW WALL mark are marketed and sold throughout the United States and have acquired a broad and valuable reputation and goodwill.

12. Opposer has developed proprietary technology in connection with its FLOW WALL mark. This technology is disclosed and protected by U.S. Patent 8,146,754 ("Storage and organization system"), U.S. Patent 8,177,311 ("Storage and organization system"), U.S. Design Patent D648,448 ("Panel"), and U.S. Design Patent D649,267 ("Attachment device"). This technology used in the goods sold under the FLOW WALL mark adds to the valuable reputation and goodwill associated with the FLOW WALL mark.

13. Opposer is not connected with the goods Applicant offers or claims to intend to offer under the FLOW PLY mark; however, Applicant's use of FLOW PLY as a mark is likely to falsely suggest a connection between Applicant and Opposer's trade name and identity because FLOW PLY is confusingly similar to FLOW WALL and would be recognized as an approximation of the same.

14. FLOW PLY is similar in spelling, sound and connotation to the Opposer's mark FLOW WALL. Both marks begin with the word "FLOW" and are followed by a short, one-syllable word that was disclaimed during the prosecution of the respective applications. Consumers are likely to be confused as to source by Applicant's registration and use of such a similar mark.

15. A likelihood of confusion in the marketplace exists between Opposer's FLOW WALL mark, when applied to the goods of the respective parties and Applicant's Mark, since both include the word "flow," and both identify non-metal brackets, hooks, and other mountain hardware as well as shelving and component parts sold together. Additionally, no claim is made to the exclusive right to use "wall" as part of the FLOW WALL mark apart from the mark as shown. Likewise, no claim is made to the exclusive right to use "ply" as part of the FLOW PLY mark apart from the mark as shown. As such, the primary element of Opposer's mark is "flow" and is identical to the primary element of Applicant's mark, increasing the likelihood of confusion.

16. The goods identified in the subject application are either identical to or substantially related to the goods Opposer offers in connection with the FLOW WALL mark.

17. Because of the confusing similarity between FLOW PLY and FLOW WALL, and the relatedness of the parties' goods, FLOW WALL is likely to cause consumer confusion, mistake, or deception in the trade and among consumers as to the source, origin, affiliation, or sponsorship of the parties' respective good. Further, any defect, objection or fault found with the Applicant's goods marketed under Applicant's mark may reflect upon and injure the reputation which Opposer has established for its goods in association with Opposer's FLOW WALL mark.

18. Based on the above, including the likelihood of confusion and false connection, registration of FLOW PLY will cause loss, damages, and injury to Opposer and the purchasing public.

WHEREFORE, Opposer prays that this opposition be sustained, and that Application Number 88/636,310 be refused, and for such other and further relief at law or in equity as the Commissioner of Patents and Trademarks shall deem necessary or appropriate under the circumstances.

The fee required under 37 C.F.R. § 2.6(17) has been submitted.

Respectfully submitted,

Dated: March 19, 2020

/Robert E. Aycock/

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William B. Chadwick
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*Attorneys for Opposer
Red Star Traders, LLC*

CERTIFICATE OF SERVICE

I hereby certify that an original copy of the foregoing **NOTICE OF OPPOSITION** was transmitted online on March 19, 2020, through the ESTTA website of the Trademark Trial and Appeal Board of the United States Patent and Trademark Office and was served by email on counsel for Applicant as required by the Trademark Trial and Appeal Board.

/William B. Chadwick/

William B. Chadwick

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Mark: FLOW WALL

FLOW WALL

US Serial Number: 87002574

Application Filing Date: Apr. 15, 2016

US Registration Number: 5059600

Registration Date: Oct. 11, 2016

Filed as TEAS RF: Yes

Currently TEAS RF: Yes

Register: Principal

Mark Type: Trademark

TM5 Common Status Descriptor:



LIVE/REGISTRATION/Issued and Active

The trademark application has been registered with the Office.

Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Status Date: Oct. 11, 2016

Publication Date: Jul. 26, 2016

Mark Information

Mark Literal Elements: FLOW WALL

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Disclaimer: "WALL"

Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((..)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: Modular wall mounting kits comprising non-metal wall panels, non-metal slot wall panels, hooks, hangers, shelves and/or brackets; modular shelving kits comprising non-metal wall panels, non-metal slot wall panels, hooks, hangers, brackets, shelves, bins and/or racks; slot wall storage kits comprising non-metal slot wall panels, hooks, hangers, brackets, shelves, bins and/or racks

International Class(es): 019 - Primary Class

U.S Class(es): 001, 012, 033, 050

Class Status: ACTIVE

Basis: 1(a)

First Use: Feb. 16, 2008

Use in Commerce: Feb. 16, 2008

Basis Information (Case Level)

Filed Use: Yes

Currently Use: Yes

Filed ITU: No

Currently ITU: No

Filed 44D: No

Currently 44E: No

Filed 44E: No

Currently 66A: No

Filed 66A: No

Currently No Basis: No

Filed No Basis: No

Current Owner(s) Information

Owner Name: Red Star Traders, LLC

Owner Address: 1891 W 2100 S
Salt Lake City, UTAH UNITED STATES 84119

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country UTAH
Where Organized:

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Robert E. Aycock

Attorney Primary raycock@pamhlaw.com
Email Address:

Attorney Email Yes
Authorized:

Correspondent

Correspondent Robert E. Aycock
Name/Address: Pia Anderson Moss Hoyt
136 E. South Temple, 19th Floor
Salt Lake City, UTAH UNITED STATES 84111

Phone: 8018509000

Correspondent e- raycock@pamhlaw.com
mail: wchadwick@pamhlaw.com

Correspondent e- Yes
mail Authorized:

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Mar. 06, 2020	COUNTERCLAIM OPP. NO. 999999	252740
Oct. 24, 2019	APPLICANT/CORRESPONDENCE CHANGES (NON-RESPONSIVE) ENTERED	88888
Oct. 24, 2019	TEAS CHANGE OF OWNER ADDRESS RECEIVED	
Mar. 15, 2019	ATTORNEY/DOM.REP.REVOKED AND/OR APPOINTED	
Mar. 15, 2019	TEAS REVOKE/APP/CHANGE ADDR OF ATTY/DOM REP RECEIVED	
Oct. 11, 2016	REGISTERED-PRINCIPAL REGISTER	
Jul. 26, 2016	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Jul. 26, 2016	PUBLISHED FOR OPPOSITION	
Jul. 06, 2016	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Jun. 21, 2016	LAW OFFICE PUBLICATION REVIEW COMPLETED	73797
Jun. 20, 2016	ASSIGNED TO LIE	73797
Jun. 07, 2016	APPROVED FOR PUB - PRINCIPAL REGISTER	
May 20, 2016	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
May 19, 2016	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
May 19, 2016	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
May 04, 2016	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
May 04, 2016	NON-FINAL ACTION E-MAILED	6325
May 04, 2016	NON-FINAL ACTION WRITTEN	62920
May 04, 2016	ASSIGNED TO EXAMINER	62920
Apr. 20, 2016	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Apr. 19, 2016	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: Oct. 11, 2016

Proceedings

Summary

Number of Proceedings: 2

Type of Proceeding: Opposition

Proceeding Number: [91252740](#)

Filing Date: Dec 05, 2019

Status: Pending

Status Date: Dec 05, 2019

Interlocutory Attorney: MIKE WEBSTER

Defendant

Name: Taylor Gilbreath

Correspondent Address: MALLORY M HENNINGER
ADVENT LLP
17838 BURKE STREET, SUITE 200
OMAHA NE UNITED STATES , 68118

Correspondent e-mail: usptotm@adventip.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
FLOWCARE	Opposition Pending	88221439	

Plaintiff(s)

Name: Red Star Traders, LLC

Correspondent Address: ROBERT E AYCOCK
PIA ANDERSON MOSS HOYT
136 E SOUTH TEMPLE 19TH FLOOR
SALT LAKE CITY UT UNITED STATES , 84111

Correspondent e-mail: raycock@pamhlaw.com , wchadwick@pamhlaw.com , hechegaray@pamhlaw.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
FLOW WALL	Registered	87002574	5059600

Prosecution History

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Dec 05, 2019	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Dec 05, 2019	Jan 14, 2020
3	INSTITUTED	Dec 05, 2019	
4	D MOT FOR EXT W/ CONSENT	Jan 13, 2020	
5	EXTENSION OF TIME GRANTED	Jan 13, 2020	
6	D MOT FOR EXT W/ CONSENT	Feb 12, 2020	
7	EXTENSION OF TIME GRANTED	Feb 13, 2020	
8	ANSWER AND COUNTERCLAIM (FEE)	Feb 20, 2020	
9	ANSWER TO COUNTERCLAIM DUE (DUE DATE)	Mar 06, 2020	Apr 05, 2020

Type of Proceeding: Opposition

Proceeding Number: [91251858](#)

Filing Date: Oct 24, 2019

Status: Pending

Status Date: Oct 24, 2019

Interlocutory Attorney: WINSTON T FOLMAR

Defendant

Name: Bobrick Washroom Equipment, Ltd.

Correspondent Address: ANNE WANG
LEWIS ROCA ROTHGERBER CHRISTIE LLP
PO BOX 29001
GLENDALE CA UNITED STATES , 91209-9001

Correspondent e-mail: pto@lrrc.com , gnelson@lrrc.com , ctoomey@lrrc.com , awang@lrrc.com

Associated marks			
Mark	Application Status	Serial Number	Registration Number
FLOW	Opposition Pending	88000730	
Plaintiff(s)			

Name: Red Star Traders, LLC

Correspondent Address: ROBERT E AYCOCK
PIA ANDERSON MOSS HOYT
136 E SOUTH TEMPLE, 19TH FLOOR
SALT LAKE CITY UT UNITED STATES , 84111

Correspondent e-mail: raycock@pamhlaw.com , wchadwick@pamhlaw.com , hechegaray@pamhlaw.com

Associated marks			
Mark	Application Status	Serial Number	Registration Number
FLOW WALL	Registered	87002574	5059600

Prosecution History			
Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Oct 24, 2019	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Oct 24, 2019	Dec 03, 2019
3	INSTITUTED	Oct 24, 2019	
4	ANSWER	Dec 03, 2019	
5	D MOT FOR EXT W/ CONSENT	Mar 17, 2020	
6	EXTENSION OF TIME GRANTED	Mar 18, 2020	