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FILED'04 NOV 08 15:22USDC-ORP

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

Barbara W. Dawson and **Matthew A. Katzer**, an Oregon partnership, d/b/a KAM Industries, Plaintiff, v. **Jerry R. Britton**, an individual resident of Pennsylvania, Defendant.	Case No. 16 **COMPLAINT FOR TRADEMARK INFRINGEMENT, UNFAIR COMPETITION AND UNLAWFUL TRADE PRACTICES**

PARTIES AND JURISDICTION

1. Plaintiff is an Oregon partnership composed of Barbara M. Dawson and Matthew A. Katzer. Plaintiff operates under the name "KAM Industries" and has a place of business in Hillsboro, Oregon.

2. Upon information and belief, defendant Jerry R. Britton is an individual resident of

the State of Pennsylvania.

3. This case arises under the trademarks laws of the United States, 15 U.S.C. §§ 1051-1129, and the common law. The Court has jurisdiction of the subject matter herein pursuant to 28 U.S.C. §§ 1331 and 1338, 15 U.S.C. § 1121, and the principles of supplemental jurisdiction contained in 28 U.S.C. § 1367.

PLAINTIFF'S FACTUAL ALLEGATIONS

4. Plaintiff is the owner of the trademarks COMPUTER DISPATCHER and COMPUTER DISPATHER PRO for computer software for operating a model railroad. Plaintiff owns U.S. trademark registration No. 2,306,690 for COMPUTER DISPATCHER, which issued on January 4, 2000 on the Supplemental Register of the U.S. Patent and Trademark Office.

5. Plaintiff sells and distributes software under its COMPUTER DISPATCHER and COMPUTER DISPATCHER PRO marks throughout the United States, primarily through its website located at www.kamind.com and through distributors. (Photocopies of screen shots from plaintiff's website showing the COMPUTER DISPATCHER and COMPUTER DISPATCHER PRO marks are attached hereto as Exhibit A). A copy of a product information sheet advertising plaintiff's COMPUTER DISPATCHER software and a copy of a compact disk containing plaintiff's COMPUTER DISPATCHER PRO software are attached as Exhibit B.

6. Upon information and belief, defendant has registered the domain name computerdispatcherpro.com and is operating a website at www.computerdispatcherpro.com (hereinafter "defendant's site") that features articles and information about using computers and computer software to operate model railroads.

7. Upon information and belief, defendant developed and hosted the materials on defendant's site.

8. The homepage of defendant's site emphasizes the phrase "**Computer**izing **Dispatcher** Operations per the **Pro**totype" (bold face in original). The bolded portions spell out plaintiff's mark COMPUTER DISPATCHER PRO. (A photocopy of the defendant's homepage is Exhibit C hereto.)

9. Prior to the opening of defendant's site, the parties corresponded by e-mail and plaintiff urged defendant to not use the domain name computerdispatcherpro.com for a website relating to using computers to operate model railroads. Therefore, defendant opened his website with full knowledge of plaintiff's prior rights to the trademarks COMPUTER DISPATCHER and COMPUTER DISPATCHER PRO.

10. Upon information and belief, the actions of defendant described herein have been willful, wanton, and carried out with disregard of plaintiff's trademark rights.

FIRST CLAIM FOR RELIEF
(Trademark Infringement – Lanham Act § 43(a))

11. This claim arises under § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a). Plaintiff incorporates by reference paragraphs 1-10.

12. By registering the domain name computerdispatcherpro.com, by operating a website under that domain name devoted to operating model railroads by computer, and by developing and hosting the materials on his website, defendant has caused and/or is likely to cause confusion with plaintiff's marks COMPUTER DISPATCHER and COMPUTER DISPATCHER PRO, and Plaintiff has been and will continue to be damaged thereby unless defendant is enjoined.

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SECOND CLAIM FOR RELIEF

(Statutory Passing Off – Lanham Act § 43(a))

13. This claim arises under § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a). Plaintiff incorporates by reference paragraphs 1-10.

14. By registering the domain name computerdispatcherpro.com, by operating a website under that name devoted to operating model railroads by computer, and by developing and hosting the materials on his website, defendant has caused and/or is likely to cause confusion, mistake, or deception as to the affiliation, connection or association of defendant with plaintiff. Plaintiff has been and will continue to be damaged thereby, unless defendant is enjoined.

THIRD CLAIM FOR RELIEF
(Common Law Trademark Infringement)

15. This claim arises under the common law. Plaintiff incorporates by reference paragraphs 1-10.

16. Defendant's use of computerdispatcherpro.com has caused and/or is likely to cause confusion with plaintiff's marks COMPUTER DISPATCHER and COMPUTER DISPATCHER PRO and infringes plaintiff's rights in the marks. Plaintiff has been and will continue to be damaged thereby unless defendant is enjoined.

FOURTH CLAIM FOR RELIEF
(Common Law Passing Off)

17. This claim arises under the common law. Plaintiff incorporates by reference paragraphs 1-10.

18. By operating a website under the domain name computerdispatcherpro.com,

defendant has deliberately passed off his site as being provided by, associated with, sponsored by, or authorized by plaintiff. Plaintiff has been and will continue to be damaged thereby unless defendant is enjoined.

FIFTH CLAIM FOR RELIEF
(Oregon Unlawful Trade Practices)

19. This claim arises under the Oregon Unlawful Trade Practices Act, O.R.S. 646.605-646.652. Plaintiff incorporates paragraphs 1-10 by reference.

20. By operating a website under the domain name computerdispatcherpro.com devoted to operating model railroads by computer and by developing and hosting the materials on the website, defendant has caused likelihood of confusion or of misunderstanding as to the source, sponsorship or approval of his website with plaintiff, in violation of O.R.S. 646.608(1), subsections (b) and (c). Plaintiff has been and will continue to be damaged thereby unless defendant is enjoined.

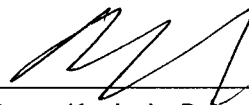WHEREFORE, plaintiff prays for judgment in its favor on all claims for relief and for an Order:

A.   That defendant has infringed plaintiff's trademarks COMPUTER DISPATCHER and COMPUTER DISPATCHER PRO under Lanham Act § 43(a), 15 U.S.C. § 1125(a), and under the common law, and that plaintiff has been damaged by said infringement;

B.   That defendant has caused and/or is likely to cause confusion, mistake, deception or misunderstanding as to the affiliation, connection, association or approval of defendant's website with and/or by plaintiff, under Lanham Act § 43(a), 15 U.S.C. § 1125(a), under the common law, and under O.R.S.

646.608(1) (b) and (c), and that plaintiff has been damaged by defendant's actions;

C.   Permanently enjoining defendant and all those acting in concert or in privity with him from using the name or mark computerdispatcherpro.com and any other name or mark confusingly similar to plaintiff's marks COMPUTER DISPATCHER and COMPUTER DISPATCHER PRO;

D.   Requiring defendant to assign all rights in and to the domain name computerdispatcherpro.com to plaintiff;

E.   An award of damages sustained by plaintiff due to the actions of defendant described herein, pursuant to 15 U.S.C. § 1117(a) and/or O.R.S. 646.641(1);

F.   An award to plaintiff of its reasonable attorney fees, pursuant to O.R.S. 646.641(2);

G.   Plaintiff's costs and disbursement incurred herein; and

H.   Such other relief as the Court deems equitable under the circumstances.

DATED this 8th day of November 2004.

CHERNOFF, VILHAUER, MCCLUNG & STENZEL, LLP

By: Kevin L. Russell, OSB No. 93485
       Brenna K. Legaard, OSB No. 00165
       Telephone: (503) 227-5631
       Of Attorneys for Plaintiff

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Computer Dispatcher Pro

Computer Dispatcher Pro Server software is the modeler's version of Train Driver Professional (by Train Track Computer Systems, Inc. **www.traintrack.com**) a state of th art centralized traffic control program that is in use at 21 class I and regional railroads. K Industries has licensed this software and integrated it into KAM's patented Train Server® software interface for use with model railroad command and control system. Computer Dispatcher Pro supports the lates microsoft operatings systems (Windows CE (PC2002 an PC2003, Windows 2003 Mobile Second Edition), Windows 2000, Windows Xp, Windows 20 and Windows .NET).
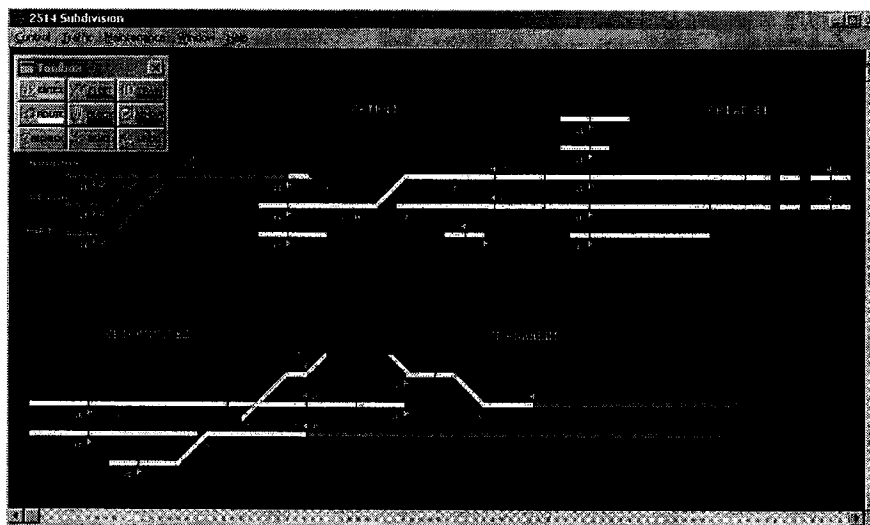
Purchase Computer Dispatcher Pro Today!

Computer Dispatcher Pro features

- Administrative configuration center

- Track editor for layout creation

- Layout compiler and syntax checker

- Dispatcher display of railroad including multiple windows, views, Zoom-in/Zoom-out, print screen and wide views.

- History log for command recording playback of dispatcher commands

- Command control device activation via Train Server technology.

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Home
Store
Product Info
Register
Forum
Documents
Press Room
Tech Notes
Clinics

Evaluation SW

Your Info
Order History
Privacy Policy
Contact Info
About KAM

Computer Dispatcher Suite
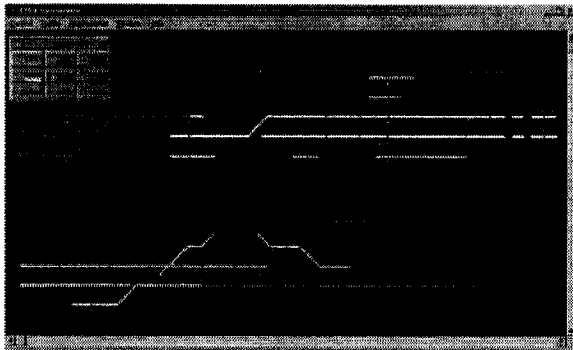

More Information

Computer Dispatcher® suite product is a prototype dispatching software is built around product from Train Tracks Track Driver Professional 32 (TDPro), Computer aided dispatchers control panel. This software has b modified by KAM Industries for the control of model railroads using KAM's patent train serv interface.

Train Tracks Software is in service at 21 Class railroads for dispatching, train operation management and goods management. This is first time a commercial software package has been made available for DCC and non DCC m railroad layout.

Computer Dispatcher pro runs on Windows 20 Windows XP and Windows 2003.net

Computer Dispatcher Suite includes:

Engine Commander
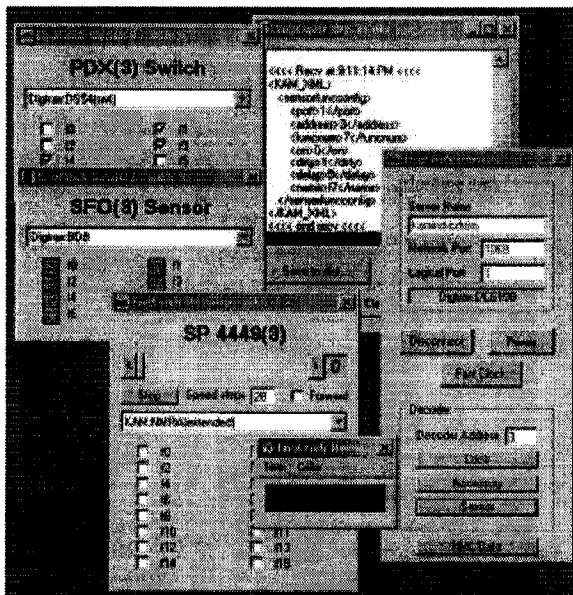
Engine Commander® software control the comm station or server fastclock, locomotives, programming (operations and service mode), switches and sensors.

The software packaged includes two configuratio a local version for running on your desktop with Train Server® command station interface, and a remote version for running on other windows platforms that are networked (Ethernet or wirele using TCPIP sockets Train Server.

Train Server Software
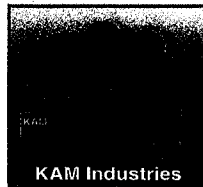
Computer Dispatcher® is the state-of-the-art Centralized Traffic Control (CTC) system for Digital Command Control railroads

Computer Dispatcher® provides the model railroad enthusiast with all of the control capabilities used by Class I railroads. The program is a state-of-the-art Centralized Traffic control (CTC) system that implements traffic control functions on a single Windows* 95/98 or Windows NT system using Digital Command Control.
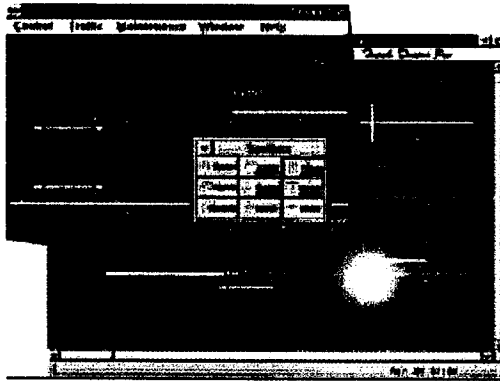
Computer Dispatcher® is modeled after the TrainTrack (http://www.traintrack.com) TDPro™ system, which is in production on over 20 Class 1 railroads worldwide. KAM has made an exclusive world wide business arrangement to bring the TDpro system to the DCC operation environment, integrating the product into KAM's patent-pending Train Server® Technology

Train Server® technology allows model railroad users to have multiple program access to a single or multiple command stations. This technology is key for operation of model railroad layouts of all sizes, where functionality has dictated multiple command stations in territories or operation districts. The Train Server Technology allows the modeler to control the layout just like the professionals do.
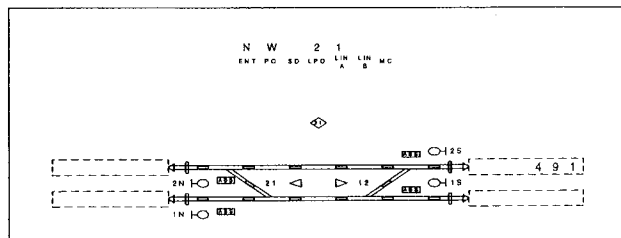
Computer Dispatcher® features include:

- A visual ToolBox allowing configurable access to the most commonly used commands.

- Graphics windows with all of the expected enhancements, including multiple windows and views, and Zoom-in and Zoom-out, print screen and wide views.

- A Blocking Summary describes active blocks within a territory (multiple DCC districts). Dispatchers view blocks by number, location, type and name.

- DCC activation of throttles, signals and accessories used to control the model railroad layout on active objects.
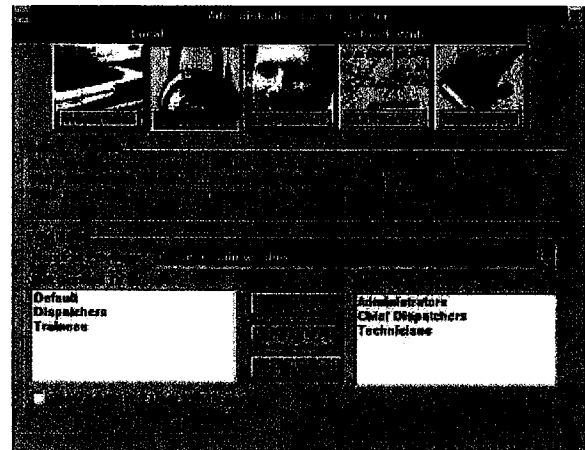
Computer Dispatcher also features administrative control centers for large layouts. The administrative center is designed to simulate the production environment on your model layout for dispatching and operation.

- The Administrative Control Center sets all standards for workstation functions, security, access, network and territory (multiple DCC segments) control.

- Territory Transfer allows Chief Dispatchers to divide, consolidate or transfer territories during peak or slow times.

- Entry & Exit can clear a complete route using simple "point & click" commands. The system supports preferred routes and shortest available routes. If the requested signals and switches can not be selected, the route will be "stored" for later execution.

Computer Dispatcher® features a CTC panel for visual identification of operation. The CTC panel gives the dispatcher a streamlined look at the layout in a small window or in a system view.
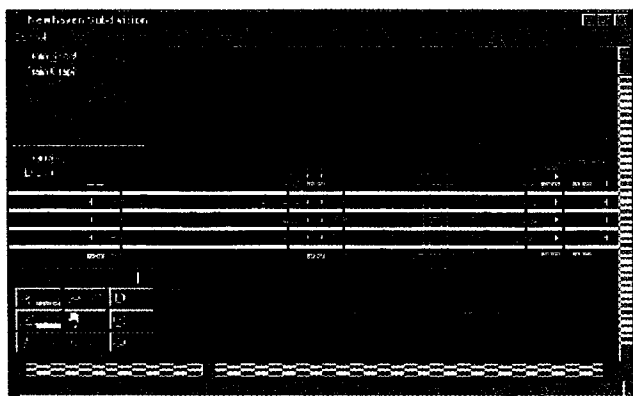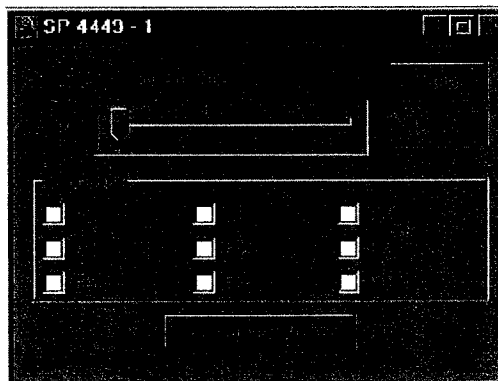

Computer Dispatcher® also provides the user with detailed control over the layout and the functionality of the locomotives and signals. The modeler has control over the level of activation of signals and operation of the layout.
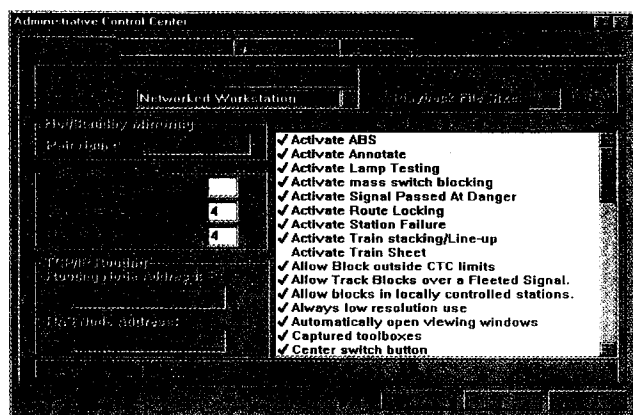
The detailed view of Computer Dispatcher® provides the user with a model view of a specific section of the layout. KAM combines this view with the patent pending Train Server® technology which allows the user to expand the object one more level, that of using DCC controllable objects.

The user can click on any object in the model view and bring up the active control element for the model railroad such as a throttle.

Computer Dispatcher is expected to retail for $249 for single users. Expected ship date is April 1999. Computer Dispatcher® also provides additional options for prototype operation. These add-ons, also available in April 1999, are expected to retail for $99 each.

- Historical playback of railroad events
- Direct train control for dark area operation
- Track warrant issue and management
- Train sheet/rolling stock distribution
- Train simulation and trainer package.

After looking at the features of Computer Dispatcher®, model railroading will never be the same. This is why we say:

"Why play with toys when you can use the prototype"SM

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KAM Industries

Computer Dispatcher® Pro

suite

"Why play with toys when you can use the prototype?"[SM]
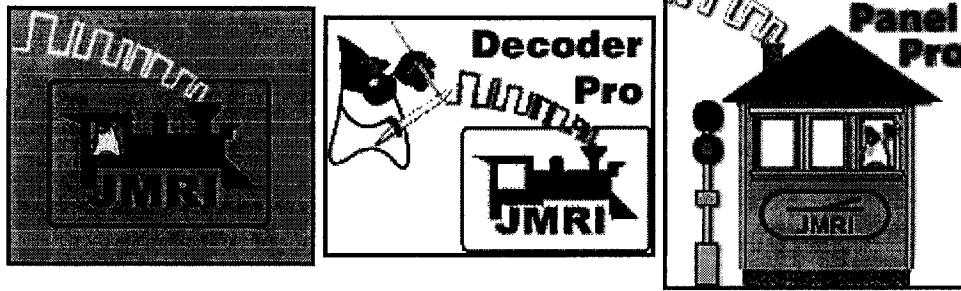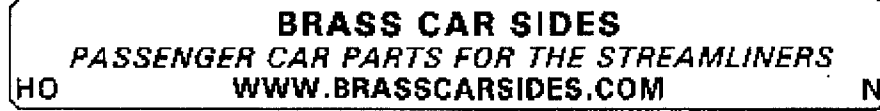
Computerizing **Dispatcher** Operations per the **Prot**otype

Welcome!

After adopting JMRI and PanelPro for my own use, with extensive feedback from others online, I wanted to "give back" to the JMRI community by sharing some links I found useful.

Why do I like PanelPro? a) it's free; b) it works on multiple platforms; c) it supports multiple users; d) it works over the Internet; e) it is extremely flexible and extensible; f) there is great programmer and peer support; g) many others use it. Did I mention it was free?

PanelPro Examples:

Mark Bridgewater's Feather River Route.

Jerry Britton's PRR Eastern Region - Scroll down to the section on Yardmaster.

Robert Bucklew's Quaker Valley Lines.

Nick Kulp's Cornwall Railroad.

Patrick Lana's Cedar River and Iowa Central.

Kent Williams' Oregon Washington Navigation & Railway.

PanelPro Tutorials and Tips:

Jerry Britton's JMRI Tips.

Nick Kulp's JMRI PanelPro Clinic.

Nick Kulp's C/MRI PanelPro Clinic.

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