

ESTTA Tracking number: **ESTTA452625**

Filing date: **01/23/2012**

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

|                        |   |
|------------------------|---|
| Proceeding             | 91202077  |
| Party                  | Defendant<br>Merrick Pet Care, Inc.   |
| Correspondence Address | CHRISTIAN D STEWART<br>LAW OFFICE OF CHRIS STEWART PC<br>301 S POLK ST STE 700<br>AMARILLO, TX 79101 1418<br>UNITED STATES<br>Chris@ChrisStewartLaw.com |
| Submission             | Answer  |
| Filer's Name           | Christian D. Stewart  |
| Filer's e-mail         | chris@chrisstewartlaw.com,amy@chrisstewartlaw.com,carl@chrisstewartlaw.com  |
| Signature              | /s/ Christian D. Stewart  |
| Date                   | 01/23/2012  |
| Attachments            | Answer to Notice of Opposition filed by Red & White Foundation.pdf ( 5 pages )<br>(91273 bytes )  |

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

|                            |   |                         |
|----------------------------|---|-------------------------|
| RED & WHITE FOUNDATION,    | § |                         |
| THE FEDERATED GROUP, INC., | § |                         |
|                            | § |                         |
| Opposers,                  | § |                         |
|                            | § |                         |
| V.                         | § | Opposition No. 91202077 |
|                            | § |                         |
| MERRICK PET CARE, INC.,    | § |                         |
|                            | § |                         |
| Applicant.                 | § |                         |

**ANSWER**

Applicant, MERRICK PET CARE, INC., by its attorneys, hereby files its Answer to the Notice of Opposition of RED & WHITE FOUNDATION and THE FEDERATED GROUP, INC. and admits, denies and alleges as follows:

A. Admissions and Denials

1. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1.
2. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2.
3. Applicant admits the portion in paragraph 3 that states that the United States Patent and Trademark Office has issued numerous trademark registrations for the RED & WHITE mark to Red & White covering the goods and services identified in the Registration Nos. 203,957, 719,835, 720,012, 720,117, 727,335, 728,904, 1,028,823, 1,265,469, 1,267,565 and 1,308,548, Patent and Trademark Office online records of

which are attached as Exhibit A. Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 3.

4. Applicant admits the allegations in paragraph 4.

5. Applicant admits the allegations in paragraph 5.

6. Applicant admits the allegations in paragraph 6.

7. Applicant admits the allegations in paragraph 7.

8. Applicant admits the allegations in paragraph 8.

9. Applicant admits the allegations in paragraph 9.

10. Applicant admits the allegations in paragraph 10.

11. Applicant admits the allegations in paragraph 11.

12. Applicant admits the allegations in paragraph 12.

13. Applicant admits the allegations in paragraph 13.

14. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 14.

15. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 15.

16. Applicant admits the allegations in paragraph 16.

17. Applicant admits the allegations in paragraph 17.

18. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 18.

19. Applicant denies the allegations in paragraph 19.

20. Applicant admits the allegations in paragraph 20.

21. Applicant denies the allegations in paragraph 21.
22. Applicant denies the allegations in paragraph 22.
23. Applicant denies the allegations in paragraph 23.
24. Applicant denies the allegations in paragraph 24.
25. Applicant denies the allegations in paragraph 25.
26. Paragraph 26 does not require a response.
27. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 27.
28. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 28.
29. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 29.
30. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 30.
31. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 31.
32. Applicant denies the allegations in paragraph 32.
33. Applicant denies the allegations contained in the Prayer for Relief.

B. Affirmative Defenses

34. Applicant's mark and Opposer's mark are different. Applicant's mark has a unique patriotic theme.

35. Applicant's mark has been used on product packaging along with Applicant's registered house mark MERRICK (Registration No. 3,161,791).

36. The Trademark Examiner found no confusion between the two marks.

C. Prayer

WHEREFORE, Applicant respectfully requests that the Notice of Opposition be dismissed with prejudice.

Respectfully submitted,

s/ Christian D. Stewart

Bar Number: 24013569

Law Office of Chris Stewart, P.C.

301 S. Polk, Suite 700

Amarillo, Texas 79101

Telephone: (806) 322-1251

Facsimile: (806) 322-1252

E-mail: [Chris@ChrisStewartLaw.com](mailto:Chris@ChrisStewartLaw.com)

ATTORNEY FOR APPLICANT,  
PROJECT 7, INC.

**CERTIFICATE OF SERVICE**

This is to certify that true and correct copy of this document was, this 23<sup>rd</sup> day of January, 2012, served upon all parties of record in this cause by first-class mail, addressed as follows:

Joseph T. Nabor  
FITCH, EVEN, TABIN & FLANNERY  
120 South LaSalle, Suite 1600  
Chicago, Illinois 60603-3406

s/ Christian D. Stewart