

BEFORE THE UNITED STATES DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD

Z-TEL TECHNOLOGIES, INC.,

Opposer,

v.

BIZZLINE CORPORATION,

Applicant/Respondent.

Opposition No. 91158802

(Serial No. 76/502574)



06-14-2004

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #22

**ANSWER**

The applicant of the trademark "BIZZLINE" (the "BIZZLINE Mark") formerly of 6830 Walling Lane, Dallas, Texas, 75231, but now located at 8035 East R.L. Thornton Freeway, Suite 410, Dallas, Texas, 75228 ("Applicant") that is the subject of the "Notice of Opposition" ("Opposition") states as follows for its Answer:

1. The Applicant filed the application for the BIZZLINE Mark under the name of Bizzline Corporation. However this is a "doing business as" ("dba") name for Comm South Companies, Inc. ("Comm South").<sup>1</sup>

2. Applicant denies that Opposer Z-Tel Technologies, Inc. ("Opposer") will be damaged by the registration of the BIZZLINE Mark.

3. Applicant is without information or belief to know the status of the marks claimed by Opposer: "Z-LINE," "Z-LINE BUSINESS," "Z-LINE ANYWHERE," and "Z-LINE HOME EDITION" (hereafter the "Opposer's Marks"), denies the allegations regarding the

<sup>1</sup>The address for the Applicant --6830 Walling Lane, Dallas, Texas, 75231, was Comm South's address at the time the application was filed. Applicant attempted to amend its application to reflect the true owner as Comm South, but the TTAB rejected this amendment in its order dated May 4, 2004 because the amendment was filed without consent of Opposer and without service on

registration and ownership of those Marks on that basis, and states that Opposer has the burden of proving the registration and ownership status of the Opposer's Marks in this proceeding.

4. Applicant is without information or belief as to the status of the Opposer's Marks and on that basis denies the allegation that the registrations are in full force and in effect.

5. Applicant is without information or belief as to the value that Opposer places on the Opposer's Marks and denies the allegation that these Marks have value.

6. Applicant is without information or belief as to the ability of the Opposer's Marks to distinguish Opposer's services from the goods and service of others, and denies this allegation on that basis.

7. Applicant denies that the BIZZLINE Mark is used or to be used in connection with the same goods and services of Opposer in connection with Opposer's Marks.

8. There is no reasonable likelihood of confusion from the use of the BIZZLINE Mark and the existence of the Opposer's Marks.

9. Applicant denies that the BIZZLINE Mark is similar in wording, pronunciation, sound, spelling or appearance to the Opposer's Marks.

10. The term "BIZzLine" is not confusing with the Opposer's Marks. Among other things, the BIZZLINE Mark's primary distinguishing feature, in contrast to the Opposer's Marks, is the phrase BIZZ, which is short for "business."

11. The fact that the BIZZLINE Mark and the Opposer's Marks contain the word "line" is of no significance given the generic nature of the term "line" in the telecommunications industry.

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the Opposer. However, when the amendment was filed, Applicant was not aware that an opposition had been filed. Applicant will seek consent of the Opposer for this amendment.

12. Applicant denies that the BIZZLINE Mark incorporates the Opposer's Marks in its entirety or otherwise, and denies that the BIZZLINE Mark is an approximation of ZLINEBUSINESS.

13. Applicant denies that the BIZZLINE Mark resembles the Opposer's Marks in any manner, and denies that the BIZZLINE Mark is likely to cause confusion, mistake or to deceive consumers because of the existence of Opposer's Marks.

14. Applicant denies that the services recited in the application of the BIZZLINE Mark are closely related to the services offered by Opposer.

15. Applicant denies that Applicant's and Opposer's services are likely to be offered to the same classes of purchasers through the same channels of trade.

16. Applicant denies that purchasers and prospective purchasers familiar with Opposer's services provided in connection with Opposer's Marks are likely because of the registration of the BIZZLINE Mark to be misled into believing that Applicant's services are in some way sponsored by Opposer.

17. Applicant denies that Opposer would be damaged in any manner by allowing the BIZZLINE Mark to be registered.

18. Applicant denies the registration of the BIZZLINE Mark would inhibit Opposer from its use and natural expansion of the Opposer's Marks.

WHEREFORE, Applicant respectfully requests that the Opposition be DENIED and that the registration of the BIZZLINE Mark be allowed to proceed.

#### AFFIRMATIVE DEFENSES

1. The Opposition fails to state a claim for which relief may be granted.
2. There is no reasonable likelihood of confusion from the proposed "BIZZLINE" Mark and the existence of the Opposer's Marks.

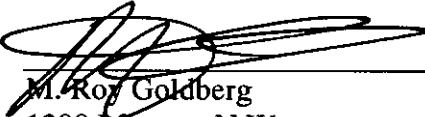
SHEPPARD, MULLIN, RICHTER & HAMPTON LLP  
1300 I STREET, N.W., 11TH FLOOR EAST  
WASHINGTON, D.C. 20005-3314  
(202) 218-0000

3. Comm South is undergoing debtor-in-possession reorganization under Chapter 11 of the U.S. Bankruptcy Code in Dallas, Texas. The petition was filed on September 19 of this year. Opposer's filing of this opposition, without seeking leave of the bankruptcy court in In re Comm South Companies, Inc., United States Bankruptcy Court for the Northern District of Texas, Dallas Division, Case No. 03-39496-11, violated the automatic stay provision of 11 U.S.C. § 362. Moreover, Opposer was advised of the bankruptcy proceeding and provided a copy of the petition, and of the relationship between Bizzline Corporation and Comm South, but proceeded with the Opposition anyway.

Respectfully submitted:

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By



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202/218-0007  
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Counsel for Applicant Comm South Companies, Inc.  
dba Bizzline Corporation.

DATED: June 11, 2004

**CERTIFICATE OF SERVICE**

I hereby certify that on June 11, 2004, I caused a true and accurate copy of the foregoing ANSWER to be served via facsimile and First Class U.S. mail on the following person:

Janice Housey, Esquire  
Roberts, Mlotkowski & Hobbes  
8270 Greensboro Drive  
Suite 850  
McClellan, Virginia 22102  
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Roy Goldberg

**TTAB**

June 11, 2004

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Our File Number: 02BD-107685

**EXPRESS DELIVERY FOR  
MONDAY MORNING JUNE 14, 2004**



**BOX TTAB – NO FEE**

06-14-2004

U.S. Patent & TMO/TM Mail Rcpt Dt. #22

Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, Virginia 22202-3514

Re: **BIZZLINE – Z-Tel Technologies, Inc. v. BIZzLine Corporation.**  
Opposition No. 91158802  
Serial No. 76/502574

Dear Sir:

Please find enclosed herewith an original plus one of the ANSWER to the Notice of Opposition being filed today by the Applicant for the underlying trademark registration "BIZZLINE." Please file stamp and return the return-address card which contains postage for that purpose.

Respectfully submitted:

SHEPPARD MULLIN RICHTER & HAMPTON LLP

Roy Goldberg  
Attorneys for Applicant/Respondent  
Bizzline Corporation (Comm South Companies, Inc.)

Enclosures