

ESTTA Tracking number: **ESTTA144309**

Filing date: **06/05/2007**

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	The Topline Corporation		
Entity	Corporation	Citizenship	Washington
Address	13150 SE 32nd Street Bellvue, WA 98005-4436 UNITED STATES		

Attorney information	William O. Ferron, Jr. Seed IP Law Group PLLC 701 Fifth Avenue, Suite 5400 Seattle, WA 98104 UNITED STATES BillF.docketing@SeedIP.com, litcal@SeedIP.com Phone:206-622-4900		
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Applicant Information

Application No	77036707	Publication date	06/05/2007
Opposition Filing Date	06/05/2007	Opposition Period Ends	07/05/2007
Applicant	C Merit USA, Inc. Suite F. 17531 Railroad St. City of Industry, CA 91748 UNITED STATES		

Goods/Services Affected by Opposition

Class 025. First Use: 2006/10/15 First Use In Commerce: 2006/10/15 All goods and seviceis in the class are opposed, namely: Footwear for men and women; Footwear for women; Women's shoes
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Other	Bad faith filing; knew or should have known use allegation was false

Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	2283566	Application Date	09/18/1996
Registration Date	10/05/1999	Foreign Priority Date	NONE
Word Mark	FLIRT		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 1997/01/15 First Use In Commerce: 1997/01/15 shoes

Attachments	75167704#TMSN.gif (1 page)(bytes) SP-NoticeOfOpposition.PDF (4 pages)(149535 bytes)
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Signature	/William O. Ferron, Jr./
Name	William O. Ferron, Jr.
Date	06/05/2007

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

THE TOPLINE CORPORATION,)	
)	Opposition No.
Opposer,)	
)	Serial No. 77/036707
v.)	
)	
C MERIT USA, INC.,)	
)	
Applicant.)	
<hr style="width: 40%; margin-left: 0;"/>)	Docket No. 910009.847

NOTICE OF OPPOSITION

Opposer The Topline Corporation (“Opposer”) believes that it would be damaged by registration of the mark GOTTA FLURT, as shown in U.S. Application Serial No. 77/036707 (“the ’707 Application”), filed by C MERIT USA, INC. d/b/a/ Flurt Footwear (“Applicant”) and published for opposition on June 5, 2007 for “Footwear for men and women; Footwear for women; Women’s shoes” in International Class 25.

The grounds asserted for this Opposition are as follows:

1. Opposer is a Washington corporation with its principal place of business in Bellevue, Washington. Opposer is engaged in the manufacture and distribution of footwear.
2. Commencing as early as January 15, 1997, well prior to the November 3, 2006 filing date of the ’707 Application and Applicant’s claimed October 15, 2006 first use date, Opposer has used the mark FLIRT in commerce in the United States as a trademark in connection with the sale of footwear products.

3. Opposer is the owner of U.S. Trademark Registration No. 2283566 (“the ’566 Registration”), with a filing priority date of September 18, 1996, for FLIRT in International Class 25 for shoes.

4. Since commencing use of its FLIRT mark, Opposer has generated substantial revenue from the sale of its FLIRT goods in the United States. Additionally, Opposer has expended substantial sums of money, time and effort in advertising and promoting the FLIRT mark in the United States.

5. As a result of Opposer’s use of the FLIRT mark, and its advertising and promotion of its FLIRT shoes and other footwear products, Opposer’s FLIRT mark is recognized as identifying the high-quality goods of Opposer. Thus, the FLIRT mark and the associated goodwill are valuable assets of Opposer.

6. The GOTTA FLURT mark shown in the ’707 Application for the goods described therein is confusingly and deceptively similar to Opposer’s FLIRT mark, such that the trade and purchasing public will be confused by and deceived into believing that Applicant’s goods originate with Opposer, or are otherwise authorized by, sponsored by, licensed by, affiliated with, or associated with Opposer.

7. The dominant portion of the GOTTA FLURT mark is “FLURT”.

8. The mark FLURT is substantially identical to Opposer’s FLIRT mark.

9. FLURT and FLIRT are indistinguishable when used in speech.

10. The mark FLURT is confusingly similar to Opposer’s FLIRT mark.

11. The GOTTA FLURT mark includes the substantial entirety of Opposer’s FLIRT mark.

12. The GOTTA FLURT mark is a confusingly similar variation of Opposer’s FLIRT mark.

13. Applicant is using the GOTTA FLURT mark in conjunction with FLURT. For example, Applicant does business as Flurt Footwear and operates a website

www.flurtfootwear.com where Applicant offers for sale, markets and sells women's shoes having the GOTTA FLURT mark.

14. Applicant is using the mark GOTTA FLURT to promote and sell women's shoes.

15. Applicant's GOTTA FLURT shoes are sold to the same types of consumers (*i.e.*, people shopping for shoes) as Opposer's goods.

16. Applicant's GOTTA FLURT shoes are sold through the same types of channels of trade and offered at the same trade shows as Opposer's FLIRT shoes.

17. The goods described in the '707 Application (*i.e.*, footwear for men and women; footwear for women; women's shoes) directly overlap with goods that are sold by Opposer under its FLIRT mark and goods that are identified in the '566 Registration.

18. Applicant knew of the '566 Registration and Opposer's use of the FLIRT mark when Applicant filed the '707 Application in November 2006 and allegedly began using the GOTTA FLURT mark for women's shoes in October 2006.

19. As early as January 13, 2006, Applicant had actual knowledge of the '566 Registration when Mr. Jia Juncheng dba Jeffrey Jia, president of Applicant C Merit USA, Inc., attempted to register the mark FLURT with the U.S. Patent and Trademark Office ("USPTO") for goods including women's "shoes, sandals, boots and slippers," as found in U.S. Trademark Application No. 78/642125 ("the '125 Application"). The '125 Application was rejected on the grounds that the mark FLURT was likely to be confused with the '566 Registration for FLIRT. The Trademark Office sent Mr. Jia a copy of the '566 Registration with the January 13, 2006 Office Action rejecting the '125 Application. Mr. Jia expressly abandoned the '125 Application on March 13, 2007.

20. Applicant also knew of the '566 Registration and Opposer's use of the FLIRT mark prior to the filing of the '707 Application and prior to Applicant's alleged use of the GOTTA FLURT mark from cease-and-desist letters and other correspondence from Opposer demanding that Applicant stop infringing Opposer's FLIRT mark through use of Applicant's FLURT mark.

21. Applicant filed the '707 Application in bad faith after Applicant learned of the '566 Registration for the FLIRT mark and after Opposer's objections to Applicant's use of the FLURT mark. Applicant's GOTTA FLURT application is therefore a bad faith filing and is void *ab initio*.

22. Upon information and belief, Applicant has not used the GOTTA FLURT mark on all goods identified in the '707 Application, namely "footwear for men."

23. Upon information and belief, at the time it filed the '707 Application, Applicant misrepresented to the USPTO that it had had used its mark for at least some of the goods identified in the application. Applicant knew or should have known that such misrepresentation was false and has committed fraud in attempting to procure a registration for Applicant's mark, thus making the '707 Application void *ab initio*.

24. WHEREFORE, Opposer prays that this Opposition be sustained and Applicant's GOTTA FLURT mark refused registration.

Correspondence Address

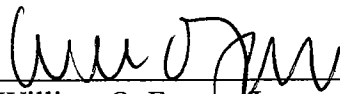
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DATED this 5th day of June, 2007.

Respectfully submitted,

SEED IP Law Group PLLC



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