

ESTTA Tracking number: **ESTTA149623**

Filing date: **07/05/2007**

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

Proceeding	91177658
Party	Defendant C Merit USA, Inc. C Merit USA, Inc. Suite F. 17531 Railroad St. City of Industry, CA 91748
Correspondence Address	JOHN D. TRAN BUUS, KIM, KUO & TRAN, LLP 2030 MAIN ST STE 1300 IRVINE, CA 92614-7220  jtran@bkkqlaw.com
Submission	Answer
Filer's Name	John D. Tran
Filer's e-mail	jtran@bkkqlaw.com
Signature	/johntran/
Date	07/05/2007
Attachments	Answer to TTAB Opposition.pdf ( 5 pages )(80403 bytes )

In the matter of Application Serial No. 77/036,707  
Published in the *Official Gazette* on June 5, 2007

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

THE TOPLINE CORPORATION	)	
	)	
Opposer,	)	Opposition No. 91177658
	)	
vs	)	
	)	
C-MERIT USA, INC.	)	Mark: GOTTA FLURT
	)	& Design
	)	
	)	
Applicant	)	
_____	)	

Assistant Commissioner for Trademarks  
BOX TTAB- NO FEE  
2900 Crystal Drive  
Arlington, VA 22202-3513

**ANSWER TO NOTICE OF OPPOSITION**

C-Merit USA, Inc. (“Applicant”), a California corporation having a place of principle business at 17531 Railroad St., Unit F, City of Industry, CA 91748, hereby answers the Opposition of The Topline Corporation (“Opposer”) as follows

Ground No. 1:

Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1, and on that basis denies each and every allegation therein.

Ground No.2:

Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2, and on that basis denies each and every allegation therein.

Ground No. 3:

Applicant admits the allegations in paragraph 3 of the Notice of Opposition.

Ground No. 4:

Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4, and on that basis denies each and every allegation therein.

Ground No. 5:

Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5, and on that basis denies each and every allegation therein.

Ground No. 6:

Applicant denies the allegations set forth in paragraph 6 of the Notice of Opposition.

Ground No. 7:

Applicant denies the allegations set forth in paragraph 7 of the Notice of Opposition.

Ground No. 8:

Applicant denies the allegations set forth in paragraph 8 of the Notice of Opposition.

Ground No. 9:

Applicant denies the allegations set forth in paragraph 9 of the Notice of Opposition.

Ground No. 10:

Applicant denies the allegations set forth in paragraph 10 of the Notice of Opposition.

Ground No. 11:

Applicant denies the allegations set forth in paragraph 11 of the Notice of Opposition.

Ground No. 12:

Applicant denies the allegations set forth in paragraph 12 of the Notice of Opposition.

Ground No. 13:

Applicant denies the allegations set forth in paragraph 13 of the Notice of Opposition.

Ground No. 14:

Applicant admits the allegations in paragraph 14 of the Notice of Opposition.

Ground No. 15:

Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 15, and on that basis denies each and every allegation therein.

Ground No. 16:

Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 16, and on that basis denies each and every allegation therein.

Ground No. 17:

Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17, and on that basis denies each and every allegation therein.

Ground No. 18:

Applicant denies the allegations set forth in paragraph 18 of the Notice of Opposition.

Ground No. 19:

Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 19, and on that basis denies each and every allegation therein.

Ground No. 20:

Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 20, and on that basis denies each and every allegation therein.

Ground No. 21:

Applicant denies the allegations set forth in paragraph 21 of the Notice of Opposition.

Ground No. 22:

Applicant denies the allegations set forth in paragraph 22 of the Notice of Opposition.

Ground No. 23:

Applicant denies the allegations set forth in paragraph 22 of the Notice of Opposition.

### **AFFIRMATIVE DEFENSES**

In further answer to the Notice of Opposition, Applicant asserts that:

#### **FIRST AFFIRMATIVE DEFENSE**

1. Opposer's Notice of Opposition fails to state a claim upon which relief can be granted, and in particular, fails to state legally sufficient grounds for sustaining the opposition.

#### **SECOND AFFIRMATIVE DEFENSE**

2. Applicant's use of its GOTTA FLURT mark will not mistakenly be thought by the public to derive from the same source as Opposer's goods, nor will such use be thought by the public to be a use by Opposer or with Opposer's authorization or approval

#### **THIRD AFFIRMATIVE DEFENSE**

3. Applicant's GOTTA FLURT mark in its entirety is sufficiently distinctively different from Opposer's FLIRT registration mark as to avoid confusion, deception or mistake as to the source or sponsorship or association of Applicant's goods. Further, Opposer's FLIRT registration are not confusingly similar to Applicant's mark in terms of sight, sound or meaning.

#### **FOURTH AFFIRMATIVE DEFENSE**

4. Applicant's GOTTA FLURT mark, when used on Applicant's goods, is not likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Applicant with Opposer, or as to the origin, sponsorship, or approval of Applicant's goods by Opposer.

#### **FIFTH AFFIRMATIVE DEFENSE**

5. Upon information and belief, Opposer abandoned any rights in the FLIRT registration for failure to use said mark in connection with the goods listed in the registration in the United States for a period of in excess of three years. In addition, Applicant specifically denies that Opposer's registration is incontestable because plaintiff

did not make continuous use of the FLIRT registration in the United States for five consecutive years subsequent to the date of said registration.

**SIXTH AFFIRMATIVE DEFENSE**

6. Opposer's FLIRT registration has failed to adequately monitor and police its registration by allowing numerous other entities to use and obtain registrations that are allegedly similar to the FLIRT registration, hence making the Opposer's registration weak. Thus, Opposer's purported rights in the FLIRT registration should be narrowed and limited to only the specific sight, sound and meaning of its mark as shown in the registration.

**WHEREFORE**, Applicant believes Opposer will not be damaged by registration of Applicant's GOTTA FLURT mark and that there exists no likelihood of confusion by consumers in regards to the source/origin of the GOTTA FLURT application mark and Opposer's FLIRT registration mark. Therefore, for the following reasons, Applicant respectfully requests that this opposition proceeding be dismissed, with prejudice, and the GOTTA FLURT application proceed toward registration.

Please recognize John D. Tran and the law firm of Buus, Kim, Kuo & Tran, LLP. as attorneys for Applicant, in connection with this opposition proceeding. Please address all correspondence regarding this proceeding to the undersigned.

DATED: July 3, 2007

**Buus, Kim, Kuo & Tran, LLP**

By: /s/ John Tran  
JOHN D. TRAN  
Attorneys for Applicant  
C-MERIT USA, INC.

Buus, Kim, Kuo & Tran, LLP  
2030 Main St., Ste. 1300  
Irvine, CA 92614  
Tel: 949-863-9782  
Fax: 949-863-9783  
[jtran@bkktlaw.com](mailto:jtran@bkktlaw.com)