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

Proceeding	91179311
Party	Defendant C Merit USA, Inc.
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Submission	Answer
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Date	10/10/2007
Attachments	Answer to TTAB Opposition.pdf (6 pages)(451292 bytes)

In the matter of Application Serial No. 77/036690
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

THE TOPLINE CORPORATION)	
)	
Opposer,)	Opposition No. 91179311
)	
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 admits Opposer is a Washington Corporation with the principal place of business in Bellevue, Washington. However, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in the rest of 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 admits that the GOTTA FLURT shoes are sold to consumers of women's shoes, however, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in the rest of 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 23 of the Notice of Opposition.

Ground No. 24:

Applicant denies the allegations set forth in paragraph 24 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: October 10, 2007

Buus, Kim, Kuo & Tran, LLP

By: _____

JOHN D. TRAN
Attorneys for Applicant
C-MERIT USA, INC.

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CERTIFICATE OF MAILING
IN ACCORDANCE TO TRADEMARK RULE 2.126

I hereby certify that this Answer to Notice of Opposition is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to:

William O. Ferron, Jr.
Seed IP Law Group, PLLC
701 Fifth Ave., Suite 5400
Seattle, WA 98104

Dated: October 10, 2007

By: _____

John D. Tran