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

Proceeding	91266877
Party	Defendant Onflick Inc.
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Date	04/14/2021
Attachments	2021.04.14-Answer.pdf(149511 bytes)

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

In the matter of Trademark Application Ser. No. 88106958

Applicant: Onflick Inc.

Mark: ONFLICK

Flickr, Inc.)	
)	
Opposer,)	
)	
vs.)	Opposition No. 91266877
)	
Onflick Inc.)	
)	
Applicant.)	
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UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

APPLICANT’S ANSWER

In response to Opposer Flickr, Inc.’s (“Opposer”) Notice of Opposition, Applicant Onflick Inc. (“Applicant”) responds as follows:

Applicant denies each and every allegation of the Notice of Opposition unless it is expressly admitted herein:

- 1) Applicant is without sufficient knowledge or information to form a belief as to the allegations of paragraph 1, and therefore, denies the same.
- 2) Admitted to the extent that Applicant is a Delaware corporation and the address listed is the same address listed in Applicant’s Application.
- 3) Applicant is without sufficient knowledge or information to form a belief as to the

allegations of paragraph 3, and therefore, denies the same.

4) Applicant is without sufficient knowledge or information to form a belief as to the allegations of paragraph 4, and therefore, denies the same.

5) Applicant is without sufficient knowledge or information to form a belief as to the allegations of paragraph 5, and therefore, denies the same.

6) Applicant is without sufficient knowledge or information to form a belief as to the allegations of paragraph 6, and therefore, denies the same.

7) Applicant is without sufficient knowledge or information to form a belief as to the allegations of paragraph 7, and therefore, denies the same.

8) Applicant is without sufficient knowledge or information to form a belief as to the allegations of paragraph 8, and therefore, denies the same.

9) Applicant is without sufficient knowledge or information to form a belief as to the allegations of paragraph 9, and therefore, denies the same.

10) Applicant is without sufficient knowledge or information to form a belief as to the allegations of paragraph 10, and therefore, denies the same.

11) Applicant is without sufficient knowledge or information to form a belief as to the allegations of paragraph 11, and therefore, denies the same.

12) Admitted. Applicant does not need Opposer's permission to use and register Applicant's Mark.

13) Admitted.

14) Admitted.

15) Admitted that Applicant's Application was Published for Opposition on August 11, 2020. The remainder of paragraph 15 calls for a legal conclusion to which no response is necessary. To

the extent a response is necessary, Applicant denies the allegations.

16) Paragraph 16 calls for a legal conclusion to which no response is necessary. To the extent a response is necessary, Applicant denies the allegations.

17) Applicant is without sufficient knowledge or information to form a belief as to the allegations of paragraph 17, and therefore, denies the same.

18) No response is required to Opposer's paragraph 18.

19) Paragraph 19 calls for a legal conclusion to which no response is necessary. To the extent a response is necessary, Applicant denies the allegations.

20) Paragraph 20 calls for a legal conclusion to which no response is necessary. To the extent a response is necessary, Applicant denies the allegations.

21) Applicant is without sufficient knowledge or information to form a belief as to the allegations of paragraph 21, and therefore, denies the same.

22) Applicant is without sufficient knowledge or information to form a belief as to the allegations of paragraph 22, and therefore, denies the same.

23) Paragraph 23 calls for a legal conclusion to which no response is necessary. To the extent a response is necessary, Applicant denies the allegations.

24) Paragraph 24 calls for a legal conclusion to which no response is necessary. To the extent a response is necessary, Applicant denies the allegations.

25) Paragraph 25 calls for a legal conclusion to which no response is necessary. To the extent a response is necessary, Applicant denies the allegations.

26) Paragraph 26 calls for a legal conclusion to which no response is necessary. To the extent a response is necessary, Applicant denies the allegations.

27) No response is required to Opposer's paragraph 27.

28) Paragraph 28 calls for a legal conclusion to which no response is necessary. To the extent a response is necessary, Applicant denies the allegations.

29) Paragraph 29 calls for a legal conclusion to which no response is necessary. To the extent a response is necessary, Applicant denies the allegations.

30) Paragraph 30 calls for a legal conclusion to which no response is necessary. To the extent a response is necessary, Applicant denies the allegations.

AFFIRMATIVE DEFENSES

1) First Affirmative Defense: The Notice of Opposition fails to state a claim upon which relief can be granted.

2) Second Affirmative Defense: There is no likelihood of confusion, mistake, or deception between Opposer's Mark and Applicant's Mark.

a. Specifically, Applicant's Mark and Opposer's Mark differ in appearance, sound, connotation, and commercial impression.

i. Regarding connotation and commercial impression, Opposer's Mark uses the term "flick" as a reference to a motion picture. Indeed, Opposer's goods and services largely focus on hosting images – a snapshot of a "flick". In contrast, Applicant's Mark makes reference to the slang phrase "on fleek", sometimes spelled "on flick". "On fleek" is a slang phrase that means "on point" or "very good".

ii. Regarding appearance, consumers will immediately be drawn to Applicant's use of the word "on" as a prefix. It will clearly appear to consumers that Applicant's Mark consists of two (2) separate and distinct words, and that Applicant's Mark is a reference to the well-known phrase

“on fleek”. In contrast, consumers will be drawn to Opposer’s use of “flick” as the first portion of Opposer’s Mark.

iii. Regarding sound, Opposer’s Mark consists of one (1) word. Consumers are readily familiar with the word “flick”, and will add an “err” sound on the end for the additional “r” of Opposer’s Mark. In contrast, Applicant’s Mark really consists of two (2) separate and distinct English words – “on” and “flick”. Again, “on fleek” is a common phrase that consumers are accustomed to seeing.

b. Moreover, the services offered under Applicant’s Mark vary wildly from the goods and services sold under Opposer’s Mark.

c. Finally, Applicant has used Applicant’s Mark since at least as early as February 23, 2018. This is a period of co-existence of more than three (3) years. There are no instances of actual confusion to date.

3) Third Affirmative Defense: There is no dilution by blurring.

4) Fourth Affirmative Defense: Applicant alleges on information and belief that as a result of Opposer’s own acts and/or omissions, the Opposition is barred by the doctrine of laches.

5) Fifth Affirmative Defense: Applicant alleges on information and belief that the Opposition is barred by the doctrine of estoppel.

6) Sixth Affirmative Defense: Applicant alleges on information and belief that as a result of its own acts and omissions, Opposer has waived any right to pursue this Opposition.

7) Seventh Affirmative Defense: Applicant alleges on information and belief that the Opposition is barred by the doctrine of acquiescence.

8) Eighth Affirmative Defense: Applicant alleges on information and belief that the

Opposition is barred by the doctrine of unclean hands.

9) Ninth Affirmative Defense: Any and all acts alleged to have been committed by Applicant were performed with lack of knowledge and lack of willful intent.

April 14, 2021

Respectfully submitted,

/s/ Rexford Brabson, Esq.

Rexford Brabson
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing APPLICANT'S ANSWER is being electronically mailed to the following:

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/s/ Rexford Brabson
Rexford Brabson

April 14, 2021