

ESTTA Tracking number: **ESTTA69802**

Filing date: **03/08/2006**

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	Pascua Yaqui Tribe
Granted to Date of previous extension	03/08/2006
Address	7474 South Camino De Oeste Tucson, AZ 85746 UNITED STATES

Correspondence information	Stephen R. Baird Winthrop & Weinstine, P.A. 225 South Sixth Street, Suite 3500 Minneapolis, MN 55402 UNITED STATES sbaird@winthrop.com, slockner@winthrop.com, trademark@winthrop.com Phone:612-604-6800
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Applicant Information

Application No	78567092	Publication date	11/08/2005
Opposition Filing Date	03/08/2006	Opposition Period Ends	03/08/2006
Applicant	Johnson, Donald W. 5055 Gordon Valley Road Fairfield, CA 94534 UNITED STATES		

Goods/Services Affected by Opposition

Class 033. All goods and services in the class are opposed, namely: wine beverages, namely, sangria
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Attachments	20060308ConsolidatedNoticeOpposition.pdf (4 pages)
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Signature	/Samuel T. Lockner/
Name	Samuel T. Lockner
Date	03/08/2006

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

In the matter of Application Ser. No.: 78/567,092
Filed: February 14, 2005
For the marks: CAVINO DEL SOL
Published in the Trademark Official Gazette on November 8, 2005

Pascua Yaqui Tribe,

Opposer,

v.

Opposition No. _____

Donald W. Johnson

Applicant.

CONSOLIDATED NOTICE OF OPPOSITION

Opposer, Pascua Yaqui Tribe (“Opposer”), believes that it will be damaged by registration of the mark shown in intent-to-use Application Serial No. 78/567,092 (“Application”) in International Class 33 and hereby opposes the same.

The grounds for opposition are as follows:

1. Applicant Donald W. Johnson (“Applicant”) seeks to register CAVINO DEL SOL as a trademark for “wine beverages, namely, sangria,” in International Class 33.

2. The CAVINO DEL SOL mark in the Application was published for opposition in the Trademark Official Gazette on November 8, 2005. On December 7, 2005, Opposer filed a Request for Extension of Time to Oppose registration of the proposed CAVINO DEL SOL mark until January 7, 2006. On December 7, 2005, the

Trademark Trial and Appeal Board granted Opposer's extension request. On January 9, 2006, Opposer filed a Request for Extension of Time to Oppose for Good Cause registration of the proposed CAVINO DEL SOL mark until March 8, 2006. On January 9, 2006, the Trademark Trial and Appeal Board granted Opposer's extension request.

3. On information and belief, Applicant intends to use CAVINO DEL SOL in connection with, among other things, the goods set forth in Paragraph 1.

4. Opposer adopted and has continuously used the CASINO DEL SOL mark in connection with casino facilities and services, restaurant services, entertainment services, and a variety of merchandise since at least as early as 2001. These goods and services are closely related to, and overlap with, Applicant's goods set forth in Paragraph 1.

5. In addition to common law rights in the CASINO DEL SOL mark, Opposer is the owner of three (3) federal trademark registrations for the CASINO DEL SOL mark.

6. Opposer is the owner of United States Trademark Registration No. 3,027,158 for the mark CASINO DEL SOL in connection with "Restaurant services," in International Class 43.

7. Opposer is the owner of United States Trademark Registration No. 2,965,247 for the mark CASINO DEL SOL in connection with "Providing casino facilities; casino services; and entertainment services, namely, live performances by musical bands, live music concerts, live appearances by professional entertainers, and live sporting events," in International Class 41.

8. Opposer is the owner of United States Trademark Registration No. 2,800,090 for the mark CASINO DEL SOL in connection with “casino facilities and services,” in International Class 41.

9. Opposer has expended considerable time, effort, and expense in promoting, advertising, and popularizing the distinctive CASINO DEL SOL brand and the goods and services offered under the CASINO DEL SOL mark, and the purchasing public has come to know, rely upon and recognize the CASINO DEL SOL mark as a very strong indicator of the source of Opposer’s goods and services.

10. Opposer has priority of rights in the CASINO DEL SOL mark.

11. The goods on which Applicant seeks to apply its claimed CAVINO DEL SOL mark are similar to, and/or overlap with, Opposer’s goods and services that bear its CASINO DEL SOL mark; it is very common for casinos and restaurants to serve alcoholic beverages, including wine and sangria, to their customers. Indeed, Opposer’s restaurant services include the sale of alcoholic beverages, including wine.

12. The proposed CAVINO DEL SOL mark so resembles the CASINO DEL SOL mark as to be likely, when used on or in connection with the goods described in Paragraph 1, to cause confusion, mistake, or to deceive.

13. Applicant’s CAVINO DEL SOL mark is virtually identical to Opposer’s CASINO DEL SOL mark. The only distinction between the marks is one (1) letter out of twelve (12), which is situated in the middle of the mark so as to largely go unnoticed. As a result of the minimal difference between the marks, CASINO DEL SOL and CAVINO DEL SOL visually appear and phonetically sound the same.

14. Given the clear phonetic and visual similarities between the marks in question and the close similarity between the goods and services offered, or intended to be offered, under the respective marks, purchasers and prospective purchasers are likely to mistakenly believe that the goods Applicant claims to have an intention to offer under the proposed CAVINO DEL SOL mark are sponsored, endorsed or approved by Opposer, or are in some way affiliated, connected or associated with Opposer, all to the detriment of Opposer. Registration of the mark CAVINO DEL SOL shown in the Application should, therefore, be refused under 15 U.S.C. §1052(d).

15. Registration of the proposed mark CAVINO DEL SOL would additionally be a source of damage to Opposer as it would confer upon the Applicant various statutory presumptions to which it is not entitled in view of Opposer's use and multiple registrations for the CASINO DEL SOL mark.

WHEREFORE, Opposer, the Pascua Yaqui Tribe, prays that Application Serial No. 78/567,092 in International Class 33 be rejected, that registration of the mark therein for the goods therein specified be refused, and that the present opposition be sustained.

Dated: March 8, 2005

WINTHROP & WEINSTINE, P.A.

By: 

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