

ESTTA Tracking number: **ESTTA139619**

Filing date: **05/09/2007**

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	Cherokee Nation Enterprises, L.L.C.
Granted to Date of previous extension	05/09/2007
Address	777 West Cherokee Street Catoosa, OK 74015 UNITED STATES

Correspondence information	Anthony J. Jorgenson Hall, Estill, Hardwick, Gable, Golden & Nelson, P.C. 320 South Boston Avenue Suite 400 Tulsa, OK 74103 UNITED STATES ajorgenson@hallestill.com Phone:918.594.0631
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**Applicant Information**

Application No	78831782	Publication date	01/09/2007
Opposition Filing Date	05/09/2007	Opposition Period Ends	05/09/2007
Applicant	The North-Eastern Band of Cherokee Indians 388-90 Grand Concourse #1 The Bronx, NY 10451 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 200. All goods and services in the class are opposed, namely: Indicating membership in an Indian Tribe consisting of descendants of Cherokee Indians now living in the North-Eastern United States
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**Grounds for Opposition**

Immoral or scandalous matter	Trademark Act section 2(a)
Deceptiveness	Trademark Act section 2(a)
False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
Other	The mark has not acquired sufficient distinctiveness under Trademark Act section 2(f).

**Marks Cited by Opposer as Basis for Opposition**

U.S. Registration No.	2961563	Application Date	04/21/2004
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Registration Date	06/07/2005	Foreign Priority Date	NONE
Word Mark	CHEROKEE CASINO RESORT		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 2004/09/08 First Use In Commerce: 2004/09/08 Entertainment services, namely, providing golf course and gaming facilities Class 043. First use: First Use: 2004/09/08 First Use In Commerce: 2004/09/08 Resort lodging, hotel, restaurant and bar services		

U.S. Registration No.	2961562	Application Date	04/21/2004
Registration Date	06/07/2005	Foreign Priority Date	NONE
Word Mark	CHEROKEE HILLS GOLF CLUB		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 2004/09/08 First Use In Commerce: 2004/09/08 Entertainment services; namely, providing golf course facilities		

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	CHEROKEE NATION ENTERPRISES		
Goods/Services	goods, entertainment services, advertising and business services		

Attachments	78405573#TMSN.jpeg ( 1 page )( bytes ) 78405555#TMSN.jpeg ( 1 page )( bytes ) doc060.PDF ( 5 pages )(261027 bytes )
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Signature	/Anthony J. Jorgenson/
Name	Anthony J. Jorgenson
Date	05/09/2007

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

In the matter of trademark application Serial No.: 78831782  
For the mark: THE NORTH-EASTERN BAND OF CHEROKEE INDIANS  
Published in the Official Gazette on: January 9, 2007

**CHEROKEE NATION ENTERPRISES,  
L.L.C.**

v.

**Opposition No.** \_\_\_\_\_

**THE NORTH-EASTERN BAND OF  
CHEROKEE INDIANS**

**NOTICE OF OPPOSITION**

Cherokee Nation Enterprises, L.L.C.  
777 West Cherokee Street  
Catoosa, OK 74015

The above-identified opposer believes that it will be damaged by registration of the mark shown in the above-identified application, and hereby opposes the same.

The grounds for opposition are as follows:

1. Opposer is a limited liability company organized under the laws of the Cherokee Nation, a federally recognized Indian Tribe.
2. Opposer is wholly owned by Cherokee Nation Businesses, L.L.C., a limited liability company organized under the laws of the Cherokee Nation, which is in turn wholly owned by the Cherokee Nation. Opposer's principal purpose is to help in the management of business affairs and/or commercial functions of the Cherokee Nation.

3. Opposer operates six casinos, two golf courses, a 236-acre horse racetrack, two convenience stores, seven retail tobacco shops, and two gift shops. Opposer employs over 2,800 persons. Twenty-five percent of Opposer's net profits are paid to the Cherokee Nation to fund governmental and other services to citizens of the Cherokee Nation.

4. The Cherokee Nation is a federally recognized Indian Tribe that provides governmental services to tribal citizens. There are approximately 109,724 citizens who live within the Cherokee Nation's Tribal Jurisdictional Service Area and approximately 268,761 citizens dispersed throughout the world.

5. Opposer has used the mark **CHEROKEE NATION ENTERPRISES** in conjunction with its goods, entertainment services and/or advertising and business services since April 4, 1996. Opposer's use of the mark **CHEROKEE NATION ENTERPRISES** in conjunction with its goods, entertainment services and/or advertising and business services directly benefits the Cherokee Nation and its citizens.

6. Opposer is also the owner of the following U.S. Trademark Registrations: Registration No. 2961563 for the mark **CHEROKEE CASINO RESORT**, issued June 7, 2005; and Registration No. 2961562 for the mark **CHEROKEE HILLS GOLF CLUB**, issued June 7, 2005 (the "Related Registrations"). The "Related Registrations" operate as prima facie and/or conclusive evidence of Opposer's ownership of the marks set forth therein in exclusive right to use same in connection with the goods and/or services listed in those registrations. 15 U.S.C. §§ 1065 and 1115(b).

7. Since its initial use of its **CHEROKEE NATION ENTERPRISES** mark and the Related Registrations, Opposer has continuously used, advertised, promoted, and offered its goods, entertainment services and/or advertising and business services under the **CHEROKEE**

**NATION ENTERPRISES** mark and the Related Registrations, with the result that individuals have come to know and recognize Opposer's **CHEROKEE NATION ENTERPRISES** mark and the Related Registrations and to associate the same with Opposer and/or Opposer's goods and services.

8. On information and belief, on March 8, 2006, Applicant filed an Application for Registration of the collective membership mark **NORTH-EASTERN BAND OF CHEROKEE INDIANS**. The application was assigned Serial No. 78831782, and was published for opposition in the Official Gazette of January 9, 2007, identifying the collective membership mark as “[i]ndicating membership in an Indian Tribe consisting of descendents of Cherokee Indians now living in the North-Eastern United States,” in International Class 200.

9. On information and belief, Applicant's organization purports to be the same and/or similar to Opposer's services and is and/or will be advertised, promoted, and offered through the same and/or similar channels of trade and to the same general class of individuals as Opposer's services are offered under Opposer's **CHEROKEE NATION ENTERPRISES** mark and the Related Registrations. In addition, on information and belief, the purported membership of Applicant's organization constitute “Cherokee Indians,” which will be the same and/or similar to the citizens (members) of the Cherokee Nation.

10. Applicant's **NORTH-EASTERN BAND OF CHEROKEE INDIANS** mark so closely resembles Opposer's **CHEROKEE NATION ENTERPRISES** mark and the Related Registrations that the registration and use of **NORTH-EASTERN BAND OF CHEROKEE INDIANS** by Applicant is likely to cause confusion, mistake and deception within the meaning of Section 2(d) of the Trademark Act of 1946 (15 U.S.C. § 1052(d)) and will result in irreparable damage and injury to Opposer.

11. Applicant's **NORTH-EASTERN BAND OF CHEROKEE INDIANS** mark so closely resembles Opposer's **CHEROKEE NATION ENTERPRISES** mark and the Related Registrations that the registration and use of **NORTH-EASTERN BAND OF CHEROKEE INDIANS** by Applicant will falsely suggest a connection with Opposer and the citizens of the Cherokee Nation in violation of Section 2(a) of the Trademark Act of 1946 (15 U.S.C. § 1052(a)) and will result in irreparable damage and injury to Opposer.

12. Applicant's **NORTH-EASTERN BAND OF CHEROKEE INDIANS** mark is misrepresentative of citizenship (membership) in the Cherokee Nation and deceptive in violation of Section 2(a) of the Trademark Act of 1946 (15 U.S.C. § 1052(a)).

13. Applicant's **NORTH-EASTERN BAND OF CHEROKEE INDIANS** mark is being used in such a manner that the registration and use of **NORTH-EASTERN BAND OF CHEROKEE INDIANS** by Applicant will bring the Opposer and Opposer's **CHEROKEE NATION ENTERPRISES** mark and the Related Registrations into disrepute in violation of Section 2(a) of the Trademark Act of 1946 (15 U.S.C. § 1052(a)) and will result in irreparable damage and injury to Opposer.

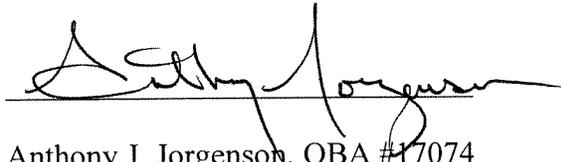
14. Applicant's **NORTH-EASTERN BAND OF CHEROKEE INDIANS** mark is not entitled to registration because Applicant's use of the **NORTH-EASTERN BAND OF CHEROKEE INDIANS** has been insufficient and therefore the mark has not acquired sufficient distinctiveness under Section 2(f) of the Trademark Act of 1946 (15 U.S.C. § 1052(f)).

15. Opposer believes that it will be damaged by the registration by Applicant of the **NORTH-EASTERN BAND OF CHEROKEE INDIANS** trademark, as set forth in Applicant's Application Serial No. 78831782, and that if registration on the opposed application is granted, and the presumptions accorded to such registration are conferred under the Trademark

Act of 1946, as amended, Applicant will receive benefits to which it is not entitled, to the damage and detriment of Opposer, and its **CHEROKEE NATION ENTERPRISES** mark and the Related Registrations.

WHEREFORE, and in view of Opposer's use of the mark **CHEROKEE NATION ENTERPRISES** and the Related Registrations to which Applicant's mark is confusingly similar thereto, Opposer prays that this opposition be sustained and that registration of the mark **NORTH-EASTERN BAND OF CHEROKEE INDIANS**, based on Applicant's Application Serial No. 78831782, filed March 8, 2006, a collective membership mark, namely, purporting to indicate membership in an "Indian Tribe" consisting of descendants of "Cherokee Indians" now living in the North-Eastern United States, in International Class 200, be refused and denied.

Respectfully submitted this 9<sup>th</sup> day of May, 2007.



Anthony J. Jorgenson, OBA #17074  
**HALL, ESTILL, HARDWICK, GABLE,  
GOLDEN & NELSON, P.C.**  
320 South Boston, Suite 400  
Tulsa, OK 74103  
Telephone (918) 594-0400  
Facsimile (918) 594-0505

**ATTORNEYS FOR OPPOSER,  
CHEROKEE NATION ENTERPRISES,  
L.L.C.**