

ESTTA Tracking number: **ESTTA215587**

Filing date: **06/04/2008**

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, a federally recognized Indian Tribe
Granted to Date of previous extension	06/04/2008
Address	17675 S. Muskogee Tahlequah, OK 74464 UNITED STATES

Attorney information	Anthony J. Jorgenson Hall, Estill, Hardwick, Gable, Golden & Nelson, P.C. 320 South Boston Avenue Suite 200 Tulsa, OK 74103 UNITED STATES ajorgenson@hallestill.com Phone:(918) 594-0400
----------------------	---

Applicant Information

Application No	77005998	Publication date	02/05/2008
Opposition Filing Date	06/04/2008	Opposition Period Ends	06/04/2008
Applicants	The Tribe of The Lost Cherokee of Arkansas and Missouri 281 East Camp Street Dover, AR 72837 UNITED STATES Maxwell, Jr., William K. 5150 CR 160 Jonesboro, AR 72404 UNITED STATES		

Goods/Services Affected by Opposition

<p>Class 016. All goods and services in the class are opposed, namely: Acid-resistant paper; Advertising signs of paper or cardboard; Art paper; Automatic paper clip dispensing machines for office or stationery use; Banners of paper; Blank or partially printed paper labels; Blank paper computer tapes for recording programs; Blank paper tapes and cards for the recording of computer programs; Blotting paper; Bond paper; Book-cover paper; Boxes of paper or cardboard; Business card paper; Calendar-finished paper; Calligraphy paper; Carbon paper; Carbon paper; Carrying cases made of paper; Coasters made of paper; Collapsible boxes of paper; Computer paper; Construction paper; Copier paper; Copy paper; Corrugated board and paper containers; Corrugated paper; Craft paper; Crepe paper; Digital printing paper; Directory paper; Drawing paper; Duplicating paper; Embroidery design patterns; Envelope paper; Envelope papers; Facsimile transmission paper; Filler paper; Gift wrap paper; Gift wrapping paper; Graph paper; Hand towels of paper; Illustration paper; Imitation leather paper; Industrial packaging containers of paper; Label paper; Laminated paper; Laser print paper; Laser</p>

printing paper; Letter paper; Letterhead paper; Loose leaf paper; Magazine paper; Modeling materials for use in making cast paper sculptured flowers; Napkin paper; Newsprint paper; Note paper; Note papers; Notebook paper; Office paper stationery; Offset printing paper for pamphlets; Packing paper; Paper; Paper and cardboard; Paper baby bibs; Paper badges; Paper bags; Paper bags and sacks; Paper bags for packaging; Paper banners; Paper board; Paper boards; Paper bows for gift wrap; Paper boxes; Paper cartons for delivering goods; Paper clip holders; Paper containers; Paper emblems; Paper embossers; Paper envelopes for packaging; Paper expanding files; Paper file jackets; Paper folders; Paper for bags and sacks; Paper for photocopies; Paper for photocopying; Paper for use in the graphic arts industry; Paper for wrapping and packaging; Paper gift bags; Paper gift tags; Paper gift wrap bows; Paper gift wrapping ribbons; Paper hand-towels; Paper handkerchiefs; Paper hang tags; Paper identification tags; Paper illustration boards; Paper knives; Paper labels; Paper lace; Paper letters and number for use in making signs, posters; Paper mail pouches; Paper mats; Paper name badges; Paper napkins; Paper note tablets; Paper party bags; Paper party decorations; Paper party favors; Paper party hats; Paper pennants; Paper place mats; Paper pouches for packaging; Paper report covers; Paper sheets for note taking; Paper sign holders; Paper stationery; Paper stock; Paper tags; Paper teaching materials in the field of education; Paper transparencies; Papers for use in the graphic arts industry; Photocopy papers; Place mats of paper; Plastic or paper bags for household use; Plastic or paper bags for merchandise packaging; School supply kits containing various combinations of selected school supplies, namely, writing instruments, pens, pencils, mechanical pencils, erasers, markers, crayons, highlighters, folders, notebooks, paper, graduated rulers, protractors, paper clips, pencil sharpeners, writing grips, glue and book marks; Stationery writing paper and envelopes; Stencil paper; Table cloths of paper; Table linens of paper; Table mats of paper; Table napkins of paper; Typewriter paper; Writing paper

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)
Consists of or comprises the flag or coat of arms or other insignia of the United States, or of any State or municipality, or of any foreign nation, or any simulation thereof	Trademark Act section 2(b)
Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)
Other	The mark has not acquired sufficient distinctiveness under Trademark Act section 2(f).

Marks Cited by Opposer as Basis for Opposition

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	CHEROKEE NATION		
Goods/Services	governmental, social, financial, educational and other services as well as numerous goods, including without limitation, newspapers, books and printed materials		

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	CHEROKEE		
Goods/Services	governmental, social, financial, educational and other services as well as numerous goods, including without limitation, newspapers, books and printed materials		

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Design Mark			
Goods/Services	governmental, social, financial, educational and other services as well as numerous goods, including without limitation, newspapers, books and printed materials		

Attachments	The Seal of the Cherokee Nation.jpg doc058.PDF (8 pages)(399600 bytes)
-------------	--

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Anthony J. Jorgenson/
Name	Anthony J. Jorgenson
Date	06/04/2008

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

In the matter of Trademark Application Serial No.: 77005998
For the mark: **THE LOST CHEROKEE ARKANSAS AND MISSOURI, Plus Design**
Published in the Official Gazette on: February 5, 2008

**CHEROKEE NATION, a Federally
Recognized Indian Tribe,**

Opposer,

v.

Opposition No. _____

**THE TRIBE OF THE LOST CHEROKEE
OF ARKANSAS AND MISSOURI and
WILLIAM K. MAXWELL, JR.,**

Applicants.

NOTICE OF OPPOSITION

Cherokee Nation, a federally recognized Indian Tribe
17675 S. Muskogee
Tahlequah, OK 74464

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 federally recognized Indian tribe that provides governmental, social, financial, educational, and other services to its tribal citizens. There are approximately 109,724 citizens who live within Opposer's Tribal Jurisdictional Service Area and approximately 268,761 citizens dispersed throughout the world.

2. Opposer has used the mark **CHEROKEE NATION**, and more generally, the mark **CHEROKEE**, in conjunction with its governmental, social, financial, educational, and

other services, as well as numerous goods, including without limitation, newspapers, books and printed materials, since at least 1791 (Treaty of Holston, July 2, 1791), Opposer's first treaty with the United States of America. Opposer's current governmental structure was established under the 1975 constitution, which was ratified by the Cherokee voters and was approved by the Secretary of Interior.

3. Since its initial use of its **CHEROKEE NATION** and **CHEROKEE** marks, Opposer has continuously used, advertised, promoted, and offered its governmental, social, financial, educational and other services, as well as numerous goods, including without limitation, newspapers, books and printed materials, under the **CHEROKEE NATION** and **CHEROKEE** marks with the result that individuals have come to know and recognize Opposer's **CHEROKEE NATION** and **CHEROKEE** marks and to associate the same with Opposer and/or Opposer's goods and services.

4. In addition to its use of the **CHEROKEE NATION** and **CHEROKEE** marks, Opposer has adopted **THE SEAL OF THE CHEROKEE NATION**. Opposer's seal was designed to embrace both the early government structure, and the eternal endurance of the Cherokee Nation. It was adopted by Act of the Cherokee National Council, and approved in 1871. The seven-pointed star symbolizes: (i) the seven age-old clans of Opposer; and (ii) the seven characters of Sequoyah's syllabary, meaning "Cherokee Nation." The wreath of oak leaves symbolizes the sacred fire which, from time immemorial, Opposer's members kept burning in their land. Oak was the wood traditionally burned, different species of oak having ever been indigenous to Cherokee country, both in North Carolina and Georgia as well as in the "Indian Territory" to which Opposer's members were removed in the early 1800's. The margin wording proclaims the authority of the seal in both the English and the Cherokee languages, and

records the date (1839) of the adoption of the Constitution of the Cherokee Nation. **THE SEAL OF THE CHEROKEE NATION** is widely used and imprinted on all official documents of the Nation.

5. Since its initial use of the **CHEROKEE NATION** and **CHEROKEE** marks and **THE SEAL OF THE CHEROKEE NATION**, Opposer has continuously used, advertised, promoted, and offered its governmental, social, financial, educational and other services, as well as numerous goods, including without limitation, newspapers, books and printed materials, utilizing the **CHEROKEE NATION** and **CHEROKEE** marks and **THE SEAL OF THE CHEROKEE NATION** with the result that individuals have come to know and recognize **THE SEAL OF THE CHEROKEE NATION** and to associate the same with Opposer and/or Opposer's goods and services.

6. On information and belief, on September 23, 2006, Applicants filed an Application for Registration of the mark **THE LOST CHEROKEE ARKANSAS AND MISSOURI, Plus Design**. The application was assigned Serial No. 77005998, and was published for opposition in the Official Gazette of February 5, 2008, for

Acid-resistant paper; Advertising signs of paper or cardboard; Art paper; Automatic paper clip dispensing machines for office or stationery use; Banners of paper; Blank or partially printed paper labels; Blank paper computer tapes for recording programs; Blank paper tapes and cards for the recording of computer programs; Blotting paper; Bond paper; Book-cover paper; Boxes of paper or cardboard; Business card paper; Calendar-finished paper; Calligraphy paper; Carbon paper; Carbon paper; Carrying cases made of paper; Coasters made of paper; Collapsible boxes of paper; Computer paper; Construction paper; Copier paper; Copy paper; Corrugated board and paper containers; Corrugated paper; Craft paper; Crepe paper; Digital printing paper; Directory paper; Drawing paper; Duplicating paper; Embroidery design patterns; Envelope paper; Envelope papers; Facsimile transmission paper; Filler paper; Gift wrap paper; Gift wrapping paper; Graph paper; Hand towels of paper; Illustration paper; Imitation leather paper;

Industrial packaging containers of paper; Label paper; Laminated paper; Laser print paper; Laser printing paper; Letter paper; Letterhead paper; Loose leaf paper; Magazine paper; Modeling materials for use in making cast paper sculptured flowers; Napkin paper; Newsprint paper; Note paper; Note papers; Notebook paper; Office paper stationery; Offset printing paper for pamphlets; Packing paper; Paper; Paper and cardboard; Paper baby bibs; Paper badges; Paper bags; Paper bags and sacks; Paper bags for packaging; Paper banners; Paper board; Paper boards; Paper bows for gift wrap; Paper boxes; Paper cartons for delivering goods; Paper clip holders; Paper containers; Paper emblems; Paper embossers; Paper envelopes for packaging; Paper expanding files. Paper file jackets; Paper folders; Paper for bags and sacks; Paper for photocopies; Paper for photocopying; Paper for use in the graphic arts industry; Paper for wrapping and packaging; Paper gift bags; Paper gift tags; Paper gift wrap bows; Paper gift wrapping ribbons; Paper hand-towels; Paper handkerchiefs; Paper hang tags; Paper identification tags; Paper illustration boards; Paper knives; Paper labels; Paper lace; Paper letters and number for use in making signs, posters; Paper mail pouches; Paper mats; Paper name badges; Paper napkins; Paper note tablets; Paper party bags; Paper party decorations; Paper party favors; Paper party hats; Paper pennants; Paper place mats; Paper pouches for packaging; Paper report covers; Paper sheets for note taking; Paper sign holders; Paper stationery; Paper stock; Paper tags; Paper teaching materials in the field of education; Paper transparencies; Papers for use in the graphic arts industry; Photocopy papers; Place mats of paper; Plastic or paper bags for household use; Plastic or paper bags for merchandise packaging; School supply kits containing various combinations of selected school supplies, namely, writing instruments, pens, pencils, mechanical pencils, erasers, markers, crayons, highlighters, folders, notebooks, paper, graduated rulers, protractors, paper clips, pencil sharpeners, writing grips, glue and book marks; Stationery writing paper and envelopes; Stencil paper; Table cloths of paper; Table linens of paper; Table mats of paper; Table napkins of paper; Typewriter paper; Writing paper

in International Class 16.

7. On information and belief, Applicants' goods are 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 and/or Opposer's services are offered under Opposer's

CHEROKEE NATION and **CHEROKEE** marks, including **THE SEAL OF THE CHEROKEE NATION**.

8. Applicants' **THE LOST CHEROKEE ARKANSAS AND MISSOURI** mark so closely resembles Opposer's **CHEROKEE NATION** and **CHEROKEE** marks and **THE SEAL OF THE CHEROKEE NATION** that the registration and use of **THE LOST CHEROKEE ARKANSAS AND MISSOURI** by Applicants 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.

9. Applicants' **THE LOST CHEROKEE ARKANSAS AND MISSOURI** mark so closely resembles Opposer's **CHEROKEE NATION** and **CHEROKEE** marks and **THE SEAL OF THE CHEROKEE NATION** that the registration and use of **THE LOST CHEROKEE ARKANSAS AND MISSOURI** by Applicants will falsely suggest a connection with Opposer 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.

10. Applicants' **THE LOST CHEROKEE ARKANSAS AND MISSOURI** mark is misrepresentative of citizenship (membership) in and/or association with Opposer and is deceptive in violation of Section 2(a) of the Trademark Act of 1946 (15 U.S.C. § 1052(a)).

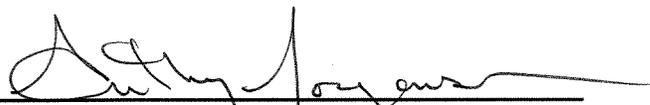
11. Applicants' **THE LOST CHEROKEE ARKANSAS AND MISSOURI** mark will be used in such a manner that the registration and use of **THE LOST CHEROKEE ARKANSAS AND MISSOURI** by Applicants will bring the Opposer and Opposer's **CHEROKEE NATION** and **CHEROKEE** marks, including **THE SEAL OF THE CHEROKEE NATION**, 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.

12. Applicants' **THE LOST CHEROKEE ARKANSAS AND MISSOURI** mark is not entitled to registration because Applicants' use of the **THE LOST CHEROKEE ARKANSAS AND MISSOURI** 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)).

13. Opposer believes that it will be damaged by the registration by Applicants of the **THE LOST CHEROKEE ARKANSAS AND MISSOURI** mark, as set forth in Applicants' Application Serial No. 77005998, 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, Applicants will receive benefits to which they are not entitled, to the damage and detriment of Opposer, and its **CHEROKEE NATION** and **CHEROKEE** marks, including **THE SEAL OF THE CHEROKEE NATION**.

WHEREFORE, and in view of Opposer's use of the marks **CHEROKEE NATION**, **CHEROKEE** and **THE SEAL OF THE CHEROKEE NATION** to which Applicants' mark is confusingly similar, Opposer prays that this opposition be sustained and that registration of the mark **THE LOST CHEROKEE ARKANSAS AND MISSOURI**, based on Applicants' Application Serial No. 77005998, filed September 23, 2006, be refused and denied.

Respectfully submitted this 4th day of June, 2008.



Anthony J. Jorgenson, OBA #17074
**HALL, ESTILL, HARDWICK, GABLE,
GOLDEN & NELSON, P.C.**
320 South Boston, Suite 200
Tulsa, OK 74103
Telephone (918) 594-0400
Facsimile (918) 594-0505

and

A. Diane Hammons OBA #10835
Attorney General
Cherokee Nation
PO Box 948
Tahlequah, OK 74465-0948
Telephone (918) 453-5282
Facsimile (918) 458-5099

**ATTORNEYS FOR OPPOSER,
CHEROKEE NATION, A FEDERALLY
RECOGNIZED INDIAN TRIBE.**

CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being electronically transmitted via ESTTA to the United States Patent and Trademark Office on this 4th day of June, 2008.

s/Anthony J. Jorgenson

CERTIFICATE OF SERVICE

I, the undersigned, pursuant to Trademark Trial and Appeal Board Rules 2.111 and 2.119, do hereby certify that on the 4th day of June, 2008, a true and correct copy of the above and foregoing NOTICE OF OPPOSITION was sent by U.S. Mail, first-class, with proper postage thereon fully paid, to:

The Tribe of the Lost Cherokee of Arkansas and Missouri
281 East Camp Street
Dover, Arkansas 72837

And

William K. Maxwell, Jr.
5150 CR 160
Jonesboro, Arkansas 72404

s/Anthony J. Jorgenson

864396.1:231629:02060