

ESTTA Tracking number: **ESTTA289836**

Filing date: **06/15/2009**

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

Proceeding	91185103
Party	Plaintiff Cherokee Nation, a federally recognized Indian Tribe
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Submission	Motion to Strike
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Date	06/15/2009
Attachments	Adams-Motion to Strike.pdf (3 pages)(65846 bytes)

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

**CHEROKEE NATION, a federally recognized
Indian tribe,**

Opposers,

v.

TIFFANY ADAMS,

Applicant.

Opposition No. 91185103

**OPPOSER’S MOTION TO STRIKE SUPPLEMENTAL DECLARATION OF ANNA M.
VRADENBURGH AND BRIEF IN SUPPORT**

Opposer, Cherokee Nation, respectfully moves the Board pursuant to Fed. R. Civ. P. 56(e)(1) to strike Applicant’s Supplemental Declaration in Support of Motion to Strike (the “Supplemental Declaration”) on the grounds that the Supplemental Declaration is not sworn, is not made under penalty of perjury, and is not made on personal knowledge. In support hereof, Opposer shows the Board as follows:

1. On March 16, 2009, Opposer filed its Motion for Summary Judgment seeking judgment as a matter of law in its favor and sustaining Opposer’s opposition to Applicant’s attempt to register the mark, CHEROKEE, Serial No. 78748323.
2. Applicant filed her Response to Opposer’s Motion for Summary Judgment on May 11, 2009, to which Opposer replied on May 29, 2009.
3. Upon receipt of Opposer’s Reply, Applicant filed the Supplemental Declaration on June 3, 2009.
4. The Supplemental Declaration is not “sworn.” Furthermore, the Supplemental Declaration does not qualify as an unsworn declaration under 28 U.S.C. § 1746 because it is not made under penalty of perjury. Therefore, the Supplemental Declaration is fatally flawed and may not be considered in conjunction with Opposer’s Motion for Summary Judgment. See Nissho-Iwai American Corp. v. Kline, 845 F.2d 1300, 1305-06 (5th Cir. 1988) (refusing to consider unsworn declaration not

made under penalty of perjury in opposition to a motion for summary judgment).

5. Moreover, the Supplemental Declaration states that “all statements made of my own knowledge are true and all statements made on information and belief are believed to be true.” However, the Supplemental Declaration does not identify which statements, if any, are made on personal knowledge as opposed to those statements which are made on information and belief. In this regard, Fed. R. Civ. P. 56(e)(1) states that an affidavit (or unsworn declaration) supporting or opposing summary judgment “must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant is competent to testify on the matters stated.” (emphasis added). Affidavits based on “information and belief” -- facts that the affiant believes are true, but does not know are true -- are improper. See Automatic Radio Mfg. Co. v. Hazeltine Research, 339 U.S. 827, 831 (1950). Because the Supplemental Declaration does not establish that it is made on personal knowledge, and infers that some or all of the statements are made instead, upon information and belief, the Supplemental Declaration may not be considered in connection with Opposer’s Motion for Summary Judgment.

CONCLUSION

For the foregoing reasons, Opposer respectfully requests that the Supplemental Declaration of Anna M. Vradenburgh be stricken from the record and not considered by the Board in conjunction with Opposer’s Motion for Summary Judgment.

Respectfully submitted,

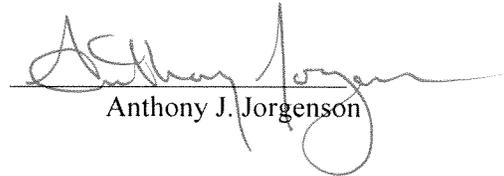


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**ATTORNEYS FOR OPPOSER,
CHEROKEE NATION**

CERTIFICATE OF FILING

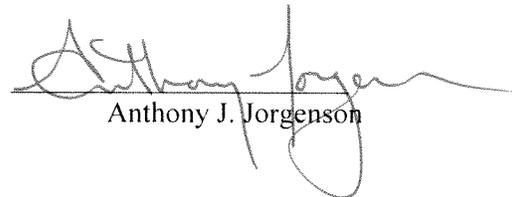
I, Anthony J. Jorgenson, hereby certify that a copy of the foregoing Opposer's Motion to Strike Supplemental Declaration is being filed with the Electronic System for Trademark Trial and Appeals ("ETTSa") of the U.S. Patent and Trademark Office on this 15th day of June, 2009.


Anthony J. Jorgenson

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on this 15th day of June, 2009, a true and correct copy of the above and foregoing Opposer's Motion to Strike Supplemental Declaration was served upon Applicant by first class mail, proper postage prepaid, at the following address:

Anna M. Vradenburgh
Piccionelli & Sarno
2801 Townsgate Rd., Suite 200
Westlake Village, CA 91361


Anthony J. Jorgenson

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