

ESTTA Tracking number: **ESTTA282133**

Filing date: **05/06/2009**

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
Granted to Date of previous extension	05/06/2009
Address	17675 South 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
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**Applicant Information**

Application No	77396682	Publication date	01/06/2009
Opposition Filing Date	05/06/2009	Opposition Period Ends	05/06/2009
Applicant	Arkansas Cherokee Enterprises, Inc. PO Box 1071 Conway, AR 72033 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 016. First Use: 2007/05/01 First Use In Commerce: 2007/05/01 All goods and services in the class are opposed, namely: Heat transfer paper; Newsletters in the field of cultural education; Credit cards without magnetic coding
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**Grounds for Opposition**

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, 15 U.S.C. sec. 1052(f).

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

U.S. Registration No.	3592624	Application Date	01/21/2008
Registration Date	03/17/2009	Foreign Priority	NONE

		Date	
Word Mark	CHEROKEE PHOENIX		
Design Mark			
Description of Mark	The mark consists of the wording "CHEROKEE PHOENIX" in English, the Cherokee characters meaning "CHEROKEE PHOENIX", and a design featuring a phoenix rising from flames beneath a banner topped with seven stars containing the Cherokee characters meaning "CHEROKEE PHOENIX".		
Goods/Services	<p>Class 016. First use: First Use: 1828/02/00 First Use In Commerce: 1828/02/00 Newspapers; daily newspaper; newspaper comic strips; newspapers in the field of Native American news and information; brochures about Native American news and information; pens; posters; books in the field of Native American news, history and information</p> <p>Class 041. First use: First Use: 2008/08/00 First Use In Commerce: 2008/08/00 Newspaper publication; newspaper publishing; publication of newspapers; publication of electronic newspapers accessible via a global computer network (world wide web); news reporting services; publication of brochures; publication of books</p>		

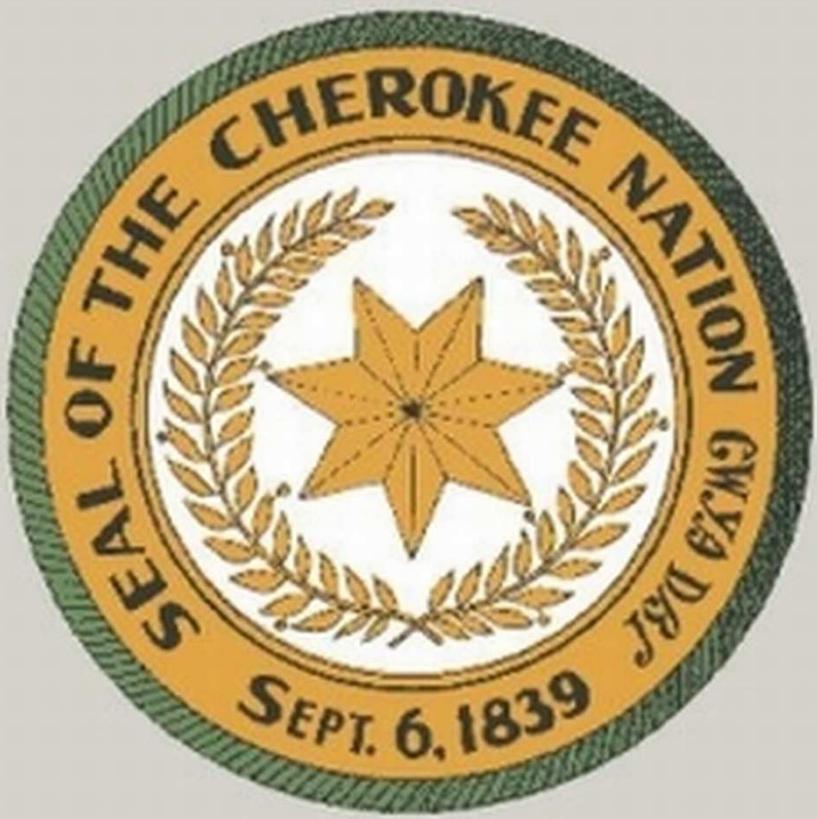
U.S. Application No.	77387126	Application Date	02/02/2008
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	GWY		
Design Mark			
Description of Mark	The mark consists of the wording "GWY" followed by non-Latin characters within a banner; beneath the banner design is a phoenix bird with wings spread rising out of a fire; in the background there are rays emanating out of the sun.		
Goods/Services	<p>Class 021. First use: First Use: 2007/07/00 First Use In Commerce: 2007/07/00 coasters, not of paper and other than table linen; cups and mugs; portable beverage coolers; portable coolers</p> <p>Class 025. First use: First Use: 2006/09/00 First Use In Commerce: 2006/09/00 T-shirts; sweat shirts; sweat pants; sweat bands; golf shirts; hoodies; tank tops; bowling shirts; jackets; wind shirts; wind resistant jackets; wind jackets; vests; fleece vests; fleece jackets; aprons; baseball caps</p>		

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		
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		
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	77376451#TMSN.jpeg ( 1 page )( bytes ) 77387126#TMSN.jpeg ( 1 page )( bytes ) The Seal of the Cherokee Nation.jpg Cherokee Nation -- Notice of Opposition.PDF ( 8 pages )(136594 bytes )
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**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	05/06/2009

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

In the matter of Trademark Application Serial No.: 77396682  
For the mark: **ARKANSAS CHEROKEE NATION; CHICKAMAUGA OF ARKANSAS;  
GWY**  
Published in the Official Gazette on: January 6, 2009

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

**Opposer,**

v.

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

**ARKANSAS CHEROKEE ENTERPRISES,  
INC., a for profit corporation organized and  
chartered by the Sac and Fox Nation, a  
federally recognized Indian tribe,**

**Applicant.**

**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. On March 17, 2009, Opposer registered the mark **CHEROKEE PHOENIX**, Registration No. 3592624, with the United States Patent and Trademark Office. Opposer has continuously used the mark **CHEROKEE PHOENIX** since at least 1828. Opposer registered the mark **CHEROKEE PHOENIX** for the following goods: "newspapers; daily newspaper; newspaper comic strips; newspapers in the field of Native American news and information; brochures about Native American news and information; pens; posters; books in the field of Native American news; history and information." Opposer also registered the mark **CHEROKEE PHOENIX** with the intent to use the mark for the following services: "newspaper publication; newspaper publishing; publication of newspapers; publication of

electronic newspapers accessible via a global computer network (world wide web); news reporting services; publication of brochures; publication of books.”

5. On February 2, 2008, Opposer filed an application to register a design mark including the word **GWY**, Serial No. 7738126, with the United States Patent and Trademark Office. The English translation of **GWY** on the design mark is “CHEROKEE.” On April 7, 2009, Opposer’s application for Registration No. 7738126 was published for opposition in the Official Gazette. Opposer filed the application for Serial No. 7738126 for the following goods: “coasters, not of paper and other than table linen; cups and mugs; portable beverage coolers; portable coolers” with use dating back to July 2007, and “T-shirts; sweat shirts; sweat pants; sweat bands; golf shirts; hoodies; tank tops; bowling shirts; jackets; wind shirts; wind resistant jackets; wind jackets; vests; fleece vests; fleece jackets; aprons; baseball caps” with use dating back to at least September 2006.

6. In addition to its use of the **CHEROKEE NATION, CHEROKEE, CHEROKEE PHOENIX,** and **GWY** 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 initial Constitution of the Cherokee Nation. **THE SEAL OF THE CHEROKEE NATION** is widely used and imprinted on all official documents of the Nation as well as Opposer's publications and Opposer's website.

7. Since its initial use of the **CHEROKEE NATION, CHEROKEE, CHEROKEE PHOENIX,** and **GWY** 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, CHEROKEE, CHEROKEE PHOENIX,** and **GWY** marks and **THE SEAL OF THE CHEROKEE NATION**, with the result that individuals have come to know and recognize the marks and **THE SEAL OF THE CHEROKEE NATION** and to associate the same with Opposer and/or Opposer's goods and services.

8. On information and belief, on February 14, 2008, Applicant filed an Application for Registration of the mark **ARKANSAS CHEROKEE NATION; CHICKAMAUGA OF ARKANSAS; GWY**. The application was assigned Serial No. 77396682, and was published for opposition in the Official Gazette of January 6, 2009, for "Heat transfer paper; Newsletters in the field of cultural education; Credit cards without magnetic coding" in International Class 16.

9. On information and belief, Applicant's 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, CHEROKEE, CHEROKEE PHOENIX,** and **GWY** marks, including **THE SEAL OF THE CHEROKEE NATION**.

10. Applicant's **ARKANSAS CHEROKEE NATION; CHICKAMAUGA OF ARKANSAS; GWY** mark so closely resembles Opposer's **CHEROKEE NATION, CHEROKEE, CHEROKEE PHOENIX,** and **GWY** marks and **THE SEAL OF THE CHEROKEE NATION** that the registration and use of **ARKANSAS CHEROKEE NATION; CHICKAMAUGA OF ARKANSAS; GWY** 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 **ARKANSAS CHEROKEE NATION; CHICKAMAUGA OF ARKANSAS; GWY** mark so closely resembles Opposer's **CHEROKEE NATION, CHEROKEE, CHEROKEE PHOENIX,** and **GWY** marks and **THE SEAL OF THE CHEROKEE NATION** that the registration and use of **ARKANSAS CHEROKEE NATION; CHICKAMAUGA OF ARKANSAS; GWY** by Applicant 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.

12. Applicant's **ARKANSAS CHEROKEE NATION; CHICKAMAUGA OF ARKANSAS; GWY** 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)).

13. Applicant's **ARKANSAS CHEROKEE NATION; CHICKAMAUGA OF ARKANSAS; GWY** mark will be used in such a manner that the registration and use of **ARKANSAS CHEROKEE NATION; CHICKAMAUGA OF ARKANSAS; GWY** by Applicant will bring the Opposer and Opposer's **CHEROKEE NATION, CHEROKEE, CHEROKEE PHOENIX,** and **GWY** 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.

14. Applicant's **ARKANSAS CHEROKEE NATION; CHICKAMAUGA OF ARKANSAS; GWY** mark is not entitled to registration because Applicant's use of the **ARKANSAS CHEROKEE NATION; CHICKAMAUGA OF ARKANSAS; GWY** 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 **ARKANSAS CHEROKEE NATION; CHICKAMAUGA OF ARKANSAS; GWY** mark, as set forth in Applicant's Application, Serial No. 77396682, 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, CHEROKEE, CHEROKEE PHOENIX**, and **GWY** marks, including **THE SEAL OF THE CHEROKEE NATION**.

**WHEREFORE**, and in view of Opposer's use of the marks **CHEROKEE NATION, CHEROKEE, CHEROKEE PHOENIX, GWY** and **THE SEAL OF THE CHEROKEE NATION** to which Applicant's mark is confusingly similar, Opposer prays that this opposition be sustained and that registration of the mark **ARKANSAS CHEROKEE NATION; CHICKAMAUGA OF ARKANSAS; GWY**, based on Applicant's Application Serial No. 77396682, filed February 14, 2008, be refused and denied.

Respectfully submitted this 6th day of May, 2009.

/s/Anthony J. Jorgenson

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**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 6<sup>th</sup> day of May, 2009.

\_\_\_\_\_  
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 6<sup>th</sup> day of May, 2009, 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:

Arkansas Cherokee Enterprises, Inc.  
P.O. Box 1071  
Conway, Arkansas 72033

s/Anthony J. Jorgenson

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