

ESTTA Tracking number: **ESTTA282134**

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 Enterprises, L.L.C.
Granted to Date of previous extension	05/06/2009
Address	777 West Cherokee Street Catoosa, OK 74015 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.	2961563	Application Date	04/21/2004
Registration Date	06/07/2005	Foreign Priority	NONE

		Date	
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. Registration No.	3426163	Application Date	08/27/2007
Registration Date	05/13/2008	Foreign Priority Date	NONE
Word Mark	TEAM CHEROKEE		

Design Mark	<h1>TEAM CHEROKEE</h1>
Description of Mark	NONE
Goods/Services	<p>Class 035. First use: First Use: 2006/08/06 First Use In Commerce: 2006/08/06 customer loyalty services and customer club services, for commercial, promotional and/or advertising purposes</p> <p>Class 041. First use: First Use: 2006/08/06 First Use In Commerce: 2006/08/06 conducting and providing facilities for special events featuring casino and gaming contests and tournaments; gambling services; casinos; conducting and providing facilities for special events featuring casino and gaming contests and tournaments; entertainment services, namely, arranging and conducting of competitions for casinos and gaming events; entertainment in the nature of competitions in the field of casinos and gaming; providing casino facilities; providing facilities for gaming tournaments; entertainment in the nature of gaming tournaments; entertainment services, namely, conducting live poker, blackjack and other Class II and III card game tournaments</p>

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	CHEROKEE NATION ENTERPRISES		
Goods/Services	goods, including newsletters, paper products, and players' club cards, and other printed material; entertainment services and/or advertising and business services		

Attachments	78405573#TMSN.jpeg ( 1 page )( bytes ) 78405555#TMSN.jpeg ( 1 page )( bytes ) 77265446#TMSN.jpeg ( 1 page )( bytes ) CNE -- Notice of Opposition.PDF ( 7 pages )(113118 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 ENTERPRISES,  
L.L.C., a limited liability company  
organized under the laws of the 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 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; Registration No. 2961562 for the mark **CHEROKEE HILLS GOLF CLUB**, issued June 7, 2005; and Registration No. 3426163 for the mark **TEAM CHEROKEE**, issued May 13, 2008 (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 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's services are offered under Opposer's **CHEROKEE NATION ENTERPRISES** mark and the Related Registrations. Without limiting the generality of the foregoing, Opposer operates several casinos and related entertainment enterprises under the Related Registrations and the **CHEROKEE NATION ENTERPRISES** mark offering goods similar to the goods offered by Applicant.

10. Applicant's **ARKANSAS CHEROKEE NATION; CHICKAMAUGA OF ARKANSAS; GWY** mark so closely resembles Opposer's **CHEROKEE NATION ENTERPRISES** mark and the Related Registrations 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 ENTERPRISES** mark and the Related Registrations 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 some connection and/or association with the Cherokee Nation and/or 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 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 **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 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, 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 6<sup>th</sup> day of May, 2009.

/s/Anthony J. Jorgenson

Anthony J. Jorgenson, OBA #17074

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

**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 6th 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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