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Filing date: **05/20/2009**

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	05/20/2009
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	77082909	Publication date	01/20/2009
Opposition Filing Date	05/20/2009	Opposition Period Ends	05/20/2009
Applicant	The Lost Cherokee of Arkansas and Missouri, Inc. PO Box 1071 Conway, AR 72033 UNITED STATES		

Goods/Services Affected by Opposition

<p>Class 016. First Use: 1999/04/05 First Use In Commerce: 1999/04/05 All goods and services in the class are opposed, namely: Acid-resistant paper; Advertising signs of paper or cardboard; Art paper; Banners of paper; Blank or partially printed paper labels; Blank paper computer tapes; Blank paper computer tapes for recording programs; 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; Digital printing paper; Directory paper; Embroidery design patterns; Envelope paper; Envelope papers; Facsimile transmission paper; Filler paper; Gift wrap paper; Gift wrapping paper; Hand towels of paper; Label paper; Laminated paper; Laser print paper; Laser printing paper; Letter paper; Letterhead paper; Loose leaf paper; Magazine paper; Napkin paper; Newsletters in the field of education; Newspapers; Newspapers for general circulation; Newspapers in the field of education; Newsprint paper; Note paper; Note papers; Notebook paper; Office paper stationery; Offset printing paper for pamphlets; Packing paper; Paper; Paper and cardboard; Paper badges; Paper banners; Paper boxes; Paper emblems; Paper envelopes for packaging; Paper expanding files; Paper file jackets; Paper flags; Paper folders; Paper for photocopies; Paper for photocopying; Paper for recording machines; Paper for use in the graphic arts industry; Paper for use in the manufacture of Citizenship/Membership Cards; Paper hand-towels;</p>
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Paper handtowels; Paper hang tags; Paper identification tags; Paper labels; Paper mail pouches; Paper packaging and containers for food and beverages comprised of materials designed to lessen adverse effects on the environment; Paper place mats; Paper pouches for packaging; Paper report covers; Paper sign holders; Paper stationery; Paper stock; Paper teaching materials in the field of culture revitalization; Paper towels; Paper transparencies; Papers for use in the graphic arts industry; Photocopy papers; Postcard paper; Posters made of paper; Printed paper labels; Printed paper signs; Printed paper signs, namely table tents; Printing paper; Printing papers; Proofing paper; Publication paper; Recycled paper; Ruled paper; Safety paper; 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; Tracing paper; Unprinted paper; Wrapping paper; Writing paper; Writing paper holders; Writing paper pads

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 under Section 2(f) of the Trademark Act.

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 Date	NONE
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	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 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

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.		

Attachments	77376451#TMSN.jpeg (1 page)(bytes) 77387126#TMSN.jpeg (1 page)(bytes) CHEROKEE NATION OPPOSITION.PDF (8 pages)(155307 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	05/20/2009
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Trademark Application Serial No.: 77082909
For the mark: **LOST CHEROKEE OF ARKANSAS AND MISSOURI**
Published in the Official Gazette on: January 20, 2009

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

Opposer,

v.

Opposition No. _____

**THE LOST CHEROKEE OF ARKANSAS
AND MISSOURI, INC., an Arkansas
corporation,**

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 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 Serial No. 7738126 was published for opposition. 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 at least 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. Since its initial use of its **CHEROKEE NATION, CHEROKEE, CHEROKEE PHOENIX**, and **GWY** 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, CHEROKEE, CHEROKEE PHOENIX**, and **GWY** marks with the result that individuals have come to know and recognize Opposer’s marks and to associate the same with Opposer and/or Opposer’s goods and services.

7. On information and belief, on January 15, 2007, Applicant filed an Application for Registration of the mark **LOST CHEROKEE OF ARKANSAS AND MISSOURI**. The application was assigned Serial No. 77082909, and was published for opposition in the Official Gazette of January 20, 2009, for

Acid-resistant paper; Advertising signs of paper or cardboard; Art paper; Banners of paper; Blank or partially printed paper labels; Blank paper computer tapes; Blank paper computer tapes for recording programs; 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; Digital printing paper; Directory paper; Embroidery design patterns; Envelope paper; Envelope papers; Facsimile transmission paper; Filler paper; Gift wrap paper; Gift wrapping paper; Hand towels of paper; Label paper; Laminated paper; Laser print paper; Laser printing paper; Letter paper; Letterhead paper; Loose leaf paper; Magazine paper; Napkin paper; Newsletters in the field of education; Newspapers; Newspapers for general circulation; Newspapers in the field of education; Newsprint paper; Note paper; Note papers; Notebook paper; Office paper stationery; Offset printing paper for pamphlets; Packing paper; Paper; Paper and cardboard; Paper badges; Paper banners; Paper boxes; Paper emblems; Paper envelopes for packaging; Paper expanding files; Paper file jackets; Paper flags; Paper folders; Paper for photocopies; Paper for photocopying; Paper for recording machines; Paper for use in the graphic arts industry; Paper for use in the manufacture of Citizenship/Membership Cards; Paper hand-towels; Paper handtowels; Paper hang tags; Paper identification tags; Paper labels; Paper mail pouches. Paper packaging and containers for food and beverages comprised of materials designed to lessen adverse effects on the environment; Paper place mats; Paper pouches for packaging; Paper report covers; Paper sign holders; Paper stationery; Paper stock; Paper teaching materials in the field of culture revitalization; Paper towels; Paper transparencies; Papers for use in the graphic arts industry; Photocopy papers; Postcard paper; Posters made of paper; Printed paper labels; Printed paper signs; Printed paper signs, namely table tents; Printing paper; Printing papers; Proofing paper; Publication paper; Recycled paper; Ruled paper; Safety paper; 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; Tracing paper; Unprinted paper; Wrapping paper; Writing paper; Writing paper holders; Writing paper pads.

in International Class 16.

8. 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.

9. Applicant's **LOST CHEROKEE OF ARKANSAS AND MISSOURI** mark so closely resembles Opposer's **CHEROKEE NATION, CHEROKEE, CHEROKEE PHOENIX, and GWY** marks that the registration and use of **LOST CHEROKEE OF ARKANSAS AND MISSOURI** 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.

10. Applicant's **LOST CHEROKEE OF ARKANSAS AND MISSOURI** mark so closely resembles Opposer's **CHEROKEE NATION, CHEROKEE, CHEROKEE PHOENIX, and GWY** marks that the registration and use of **LOST CHEROKEE OF ARKANSAS AND MISSOURI** 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.

11. Applicant's **LOST CHEROKEE OF 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)).

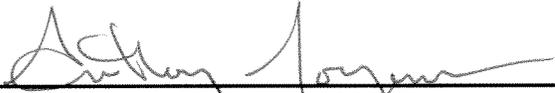
12. Applicant's **LOST CHEROKEE OF ARKANSAS AND MISSOURI** mark will be used in such a manner that the registration and use of **LOST CHEROKEE OF ARKANSAS AND MISSOURI** by Applicant will bring the Opposer and Opposer's **CHEROKEE NATION, CHEROKEE, CHEROKEE PHOENIX, and GWY** marks into disrepute in 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.

13. Applicant's **LOST CHEROKEE OF ARKANSAS AND MISSOURI** mark is not entitled to registration because Applicant's use of the **LOST CHEROKEE OF 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)).

14. Opposer believes that it will be damaged by the registration by Applicant of the **LOST CHEROKEE OF ARKANSAS AND MISSOURI** mark, as set forth in Applicant's Application, Serial No. 77082909, 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.

WHEREFORE, and in view of Opposer's use of the marks **CHEROKEE NATION, CHEROKEE, CHEROKEE PHOENIX**, and **GWY** to which Applicant's mark is confusingly similar, Opposer prays that this opposition be sustained and that registration of the mark **LOST CHEROKEE OF ARKANSAS AND MISSOURI**, based on Applicant's Application Serial No. 77082909, filed January 15, 2007, be refused and denied.

Respectfully submitted this 20th day of May, 2009.



Anthony J. Jorgenson, OBA #17074
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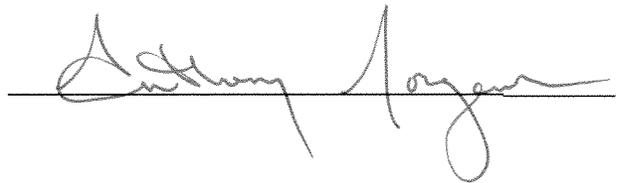
and

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

CERTIFICATE OF TRANSMISSION

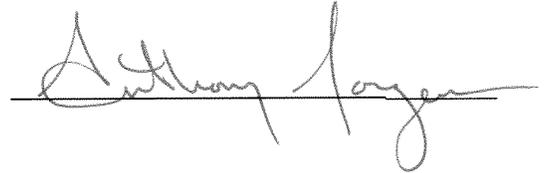
I hereby certify that this correspondence is being electronically transmitted via ESTTA to the United States Patent and Trademark Office on this 20th day of May, 2009.



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 20th 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:

The Lost Cherokee of Arkansas and Missouri, Inc.
P.O. Box 1071
Conway, Arkansas 72033

A handwritten signature in cursive script, appearing to read "Anthony Forger", is written over a horizontal line.

960402.1:231629:02060