

ESTTA Tracking number: **ESTTA326072**

Filing date: **01/11/2010**

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	01/13/2010
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	77731942	Publication date	09/15/2009
Opposition Filing Date	01/11/2010	Opposition Period Ends	01/13/2010
Applicant	Spell C. LLC 6835 Valjean Avenue Van Nuys, CA 91406 UNITED STATES		

Goods/Services Affected by Opposition

Class 003. All goods and services in the class are opposed, namely: Cosmetics, namely, beauty cream, cold cream, vanishing cream, rouges, eyebrow pencils, mascara, blushes and nail polish, suntan lotion; non-medicated hair care preparations; and non-medicated skincare preparations, namely wrinkle-removing skin care preparations, skin abrasive preparations, skin lotion, and skin moisturizer

Grounds for Opposition

Immoral or scandalous matter	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	Applicant's proposed mark has not acquired sufficient distinctiveness under Section 2(f) of the Trademark Act and registration of Applicant's proposed mark would violate the federal government's trust obligation to Opposer.

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	<p>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".</p>		
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. Registration No.	3641872	Application Date	02/02/2008
Registration Date	06/23/2009	Foreign Priority Date	NONE
Word Mark	GWY		
Design Mark			
Description of Mark	<p>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.</p>		
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;</p>		

	bowling shirts; jackets; wind shirts; wind resistant jackets; wind jackets; vests; fleece vests; fleece jackets; aprons; baseball caps
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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.		

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.		

Related Proceedings	None
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Attachments	77376451#TMSN.jpeg (1 page)(bytes) 77387126#TMSN.jpeg (1 page)(bytes) DOC033.PDF (7 pages)(199115 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	01/11/2010

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

In the matter of Trademark Application Serial No.: 77731942
For the mark: **CHEROKEE**
Published in the Official Gazette on: September 15, 2009

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

Opposer,

v.

Opposition No. _____

**SPELL C. LLC., a Delaware limited liability
company,**

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, 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, 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. Opposer is the owner of the mark **CHEROKEE PHOENIX**, Registration No. 3592624. 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** 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. Opposer is also the owner of the design mark, including the word **GWY**, Registration No. 3641872. The English translation of **GWY** on the design mark is "**CHEROKEE**." Opposer's Registration No. 3641872 is used in conjunction with 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, 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 May 7, 2009, Applicant filed an Application for Registration of the mark **CHEROKEE**. The application was assigned Serial No. 77731942, and was published for opposition in the Official Gazette of September 15, 2009, for:

Cosmetics, namely, beauty cream, cold cream, vanishing cream, rouges, eyebrow pencils, mascara, blushes and nail polish, suntan lotion; non-medicated hair care preparation; and non-medicated skincare preparations, namely wrinkle removing skin care preparations, skin abrasive preparations, skin lotion, and skin moisturizer

in International Class 003.

8. Throughout its history, Opposer’s members have used cosmetics, skin preparations and body paint for medicinal purposes and in connection with their ceremonies, rituals, and spiritual and religious observances. The use of cosmetics and other skin preparations are sacred and important features of Opposer’s history, culture and heritage.

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.

10. Applicant's **CHEROKEE** mark so closely resembles Opposer's **CHEROKEE NATION, CHEROKEE, CHEROKEE PHOENIX, and GWY** marks that the registration and use of **CHEROKEE** 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 **CHEROKEE** mark so closely resembles Opposer's **CHEROKEE NATION, CHEROKEE, CHEROKEE PHOENIX, and GWY** marks that the registration and use of **CHEROKEE** 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 **CHEROKEE** mark is misrepresentative of a connection with 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 proposed registration and use of the mark **CHEROKEE** is disparaging to Opposer and its members and will bring 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.

14. Applicant's **CHEROKEE** mark is not entitled to registration because Applicant's use of the **CHEROKEE** 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. The United States government owes a fiduciary trust obligation to federally recognized Indian tribes, including Opposer. Among other things, the federal government is obligated to ensure that Indian property is protected. For the Trademark Office, that obligation means the protection of Indian tribes' specific items of intellectual property -- in this case, the Opposer's rights in the term, **CHEROKEE**. Applicant's proposed appropriation, registration and use of the mark **CHEROKEE** will falsely lead consumers to believe that Applicant's goods are made by, sponsored by, and/or otherwise affiliated with, Opposer and will prohibit Opposer from using its own name to identify such goods now or in the future in violation of the federal government's trust obligation to Opposer.

16. Opposer believes that it will be damaged by the registration by Applicant of the **CHEROKEE** mark, as set forth in Applicant's Application, Serial No. 77731942, 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 registration and 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 **CHEROKEE**, based on Applicant's Application Serial No. 77731942, filed May 7, 2009, be refused and denied.

Respectfully submitted this 11th day of January, 2010.



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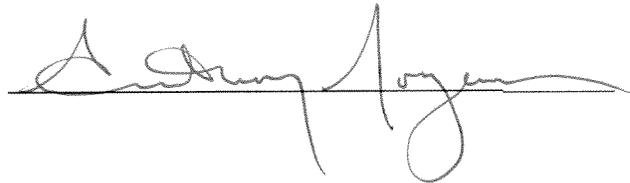
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**ATTORNEYS FOR OPPOSER,
CHEROKEE NATION, A FEDERALLY
RECOGNIZED INDIAN TRIBE.**

CERTIFICATE OF TRANSMISSION

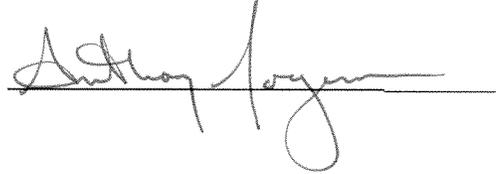
I hereby certify that this correspondence is being electronically transmitted via ESTTA to the United States Patent and Trademark Office on this 11th day of January, 2010.



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 11th day of January, 2010, 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:

Rod S. Berman, Esq.
Jeffer, Mangels, Butler & Marmaro, LLP
1900 Avenue of the Stars FL-7
Los Angeles, CA 90067-4308

A handwritten signature in black ink, appearing to read "Rod S. Berman", is written over a horizontal line.

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