

ESTTA Tracking number: **ESTTA582790**

Filing date: **01/21/2014**

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

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Shakopee Mdewakanton Sioux Community		
Entity	Federally Recognized Indian Trib	Citizenship	United States
Address	2400 Mystic Lake Blvd. Prior Lake, MN 55372 UNITED STATES		

Attorney information	Jodi A. DeSchane Faegre Baker Daniels LLP 90 South Seventh Street 2200 Wells Fargo Center Minneapolis, MN 55402-3901 UNITED STATES tmmpls@FaegreBD.com, jodi.deschane@FaegreBD.com Phone:612-766-7000		
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Registration Subject to Cancellation

Registration No	3564656	Registration date	01/20/2009
Registrant	Pascua Yaqui Tribe 7474 S. Camino De Oeste Tucson, AZ 85746 USX		

Goods/Services Subject to Cancellation

Class 041. First Use: 2008/07/19 First Use In Commerce: 2008/07/19 All goods and services in the class are cancelled, namely: Entertainment services, namely, providing live bingo sessions; live appearances by professional entertainers

Grounds for Cancellation

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Priority and likelihood of confusion	Trademark Act section 2(d)

Mark Cited by Petitioner as Basis for Cancellation

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	COSMIC BINGO		
Goods/Services	Entertainment services, namely, providing and conducting bingo game events and promotions		

Attachments	Petition - signed.pdf(325915 bytes) Exhibit A.pdf(39820 bytes) Exhibit B.pdf(128187 bytes) Exhibit C.pdf(91448 bytes) Exhibit D.pdf(135303 bytes) Exhibit E.pdf(42521 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	/Jodi A. DeSchane dlg/
Name	Jodi A. DeSchane
Date	01/21/2014

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

In the Matter of Registration No. 3,564,656
For the Mark: COSMIC BINGO
Registered: January 20, 2009

SHAKOPEE MDEWAKANTON SIOUX)
COMMUNITY,)
)
Petitioner,)
)
v.)
)
PASCUA YAQUI TRIBE,)
)
Registrant.)
_____)

Cancellation No. _____

PETITION TO CANCEL

Shakopee Mdewakanton Sioux Community ("Petitioner") believes it will be damaged by the continued registration of the mark COSMIC BINGO (U.S. Reg. No. 3,564,656, hereinafter the "656 Registration"), and hereby petitions to cancel the same. Petitioner alleges the following grounds for this Petition:

1. Petitioner is a federally recognized Indian tribe with a principal place of business at 2400 Mystic Lake Blvd., Prior Lake, MN 55372.
2. Petitioner operates Mystic Lake, the largest gaming and entertainment facility in the Midwest. Mystic Lake currently features numerous gambling opportunities such video slot machines, blackjack tables and a state-of-the-art bingo hall.
3. Beginning as early August 17, 2007, Petitioner adopted and began to use the mark COSMIC BINGO in connection with providing and conducting bingo game events and promotions. Petitioner has used this mark continuously from that time until the present in

connection with such services. In addition to these common law rights, Petitioner is the registered owner of several state service mark registrations for COSMIC BINGO.

4. Petitioner is the owner of the following registrations for the COSMIC BINGO mark, each of which is valid, subsisting, unrevoked, and uncanceled:

State	Reg. No.	Reg. Date	Goods/Services	Exhibit
Iowa	W00840568	May 5, 2008	Entertainment services, namely, providing and conducting bingo game events and promotions	A
Minnesota	2834337-2	May 7, 2008	Entertainment services, namely, providing and conducting bingo game events and promotions	B
North Dakota	24820200	May 13, 2008	Entertainment services, namely, providing and conducting bingo game events and promotions	C
South Dakota	NA	May 5, 2008	Entertainment services, namely, providing and conducting bingo game events and promotions	D
Wisconsin	NA	August 6, 2008	Entertainment services, namely, providing and conducting bingo game events and promotions	E

Copies of the registration certificates and/or renewal certificates are attached hereto as Exhibits A-E.

5. By virtue of extensive advertising and sales of its goods and services thereunder, the COSMIC BINGO mark has become favorably known to the public and has become a valuable symbol of Petitioner's business and the goodwill appurtenant thereto.

6. On information and belief, Pascua Yaqui Tribe ("Registrant") is the owner of the '656 Registration for the mark COSMIC BINGO ("Registered Mark") for use with "Entertainment services, namely, providing live bingo sessions; live appearances by professional entertainers" in class 41.

7. Upon information and belief, Registrant owns and/or operates a casino in Arizona.

8. Upon information and belief, Registrant first used the Registered Mark in connection with bingo games in its casino on July 19, 2008.

9. Upon information and belief, Registrant filed a trademark application for the Registered Mark mark on August 5, 2008.

10. The Registered Mark is identical to Petitioners COSMIC BINGO mark and is likely, when used on or in connection with Registrant's services, to cause confusion or to cause mistake, or to deceive.

11. Petitioner's COSMIC BINGO mark has actual use priority over the Registered Mark and over the filing date of Registrant's application to register the Registered Mark.

12. Upon information and belief, Registrant's use of and application to register the Registered Mark began after representatives of Registrant visited Petitioner's casino and observed Petitioner's use of its COSMIC BINGO mark.

13. Upon information and belief, despite having actual knowledge of Petitioner's use of the identical mark, Registrant filed a federal trademark application.

14. Upon information and belief, despite having actual knowledge of Petitioner's use of the identical mark, Registrant submitted a declaration with its application attesting that, among other things:

“he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true.”

15. By submitting the declaration, Registrant knowingly made false, material representations of fact in its application for the Registered Mark.

16. The '656 Registration was obtained fraudulently and should, therefore, be cancelled.

17. The '656 Registration should also be canceled pursuant to 15 U.S.C. § 1052(d).

WHEREFORE, Petitioner believes that it will be damaged by Registrant's continuing registration of the COSMIC BINGO mark and that the registration was obtained fraudulently. Petitioner requests the Board sustain this proceeding in Petitioner's favor and cancel the '656 Registration.

The filing fee of \$300.00 is submitted herewith. If the amount submitted is determined to be incorrect, the Commissioner may charge any additional fees or to credit any over payment to Deposit Account No. 06-0029.

Dated: January 21, 2014

FAEGRE BAKER DANIELS LLP,

Jodi A. DeSchane

By _____

Jodi A. DeSchane
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, Minnesota 55402
Telephone: (612) 766-7000
Facsimile: (612) 766-1600
jodi.deschane@faegrebd.com

CERTIFICATE OF SERVICE

I, Dianna L. Gould, do hereby certify that on January 21, 2014, a true and correct copy of the Petition to Cancel has been forwarded by United States mail, first class, postage prepaid, to:

Pascua Yaqui Tribe
7474 S. Camino De Oeste
Tucson, ARIZONA 85746
UNITED STATES

Anne Aikman-Scalese
Lewis and Roca LLP
One S. Church Avenue
Suite 700
Tucson, ARIZONA 85701
UNITED STATES


Dianna L. Gould

IOWA

No. W00570425
Date: 05/06/2008

SECRETARY OF STATE

5480TM-000362992
COSMIC BINGO

REGISTRATION OF MARK

Applicant: SHAKOPEE MDEWAKANTON SIOUX COMMUNITY
2400 MYSTIC LAKE BLVD
PRIOR LAKE, MN 55372

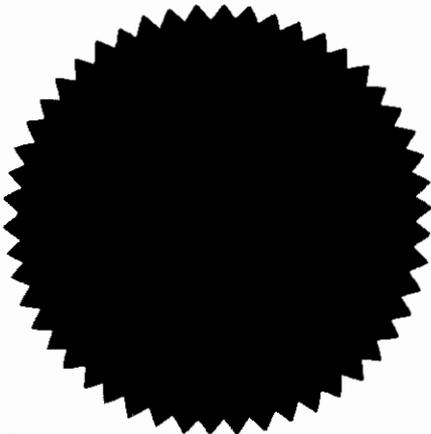
Pursuant to Iowa Code chapter 548, the applicant named above at the address above has registered a mark in the following class number(s) 107.

The applicant is

The mark is described as follows:
COSMIC BINGO

The mark was first used in the state of Iowa on August 17, 2007, and was registered on May 5, 2008 for a term of five years.

The amount of \$10.00 was received in full payment of the filing fee.



Michael A. Mauro

MICHAEL A. MAURO SECRETARY OF STATE



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Recycled Paper

State of Minnesota

SECRETARY OF STATE

Certificate of Registration of Mark

I, Mark Ritchie, Secretary of State of Minnesota, do certify that: The applicant listed below has on this date filed in the Office of the Secretary of State an application for the registration of the mark described below. Registration of this mark is granted to the applicant for a period of ten years from this date, under the terms and subject to the limitations of Minnesota Statutes, Chapter 333. The applicant claims the date listed below as the date of first use of the mark in this state, and the attached drawing, print or representation is a true and correct specimen of the mark.

Name of Applicant: Shakopee Mdewakanton Sioux

Type: Service

Description of Mark: COSMIC BINGO

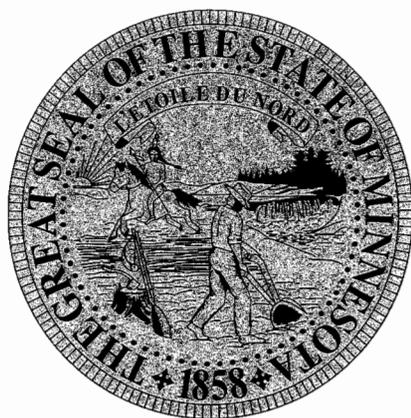
Date of First Use in this State: 08/17/2007

Classification of Mark: 41

Registration Number of Mark: 2834337-2

Mark Used On or In Connection With: Entertainment svcs,
providing & conducting bingo events & promos

This certificate has been issued on: 05/07/2008.



Mark Ritchie
Secretary of State.

State of North Dakota

SECRETARY OF STATE



CERTIFICATE OF TRADEMARK or SERVICE MARK REGISTRATION Secretary of State ID#: 24,820,200

The undersigned, as Secretary of State of North Dakota, hereby certifies that an Application for Registration of a Trademark or Service Mark, duly signed pursuant to the provisions of the North Dakota's Trademarks statutes, has been received in this office and is found to conform to law.

Accordingly the undersigned, as such Secretary of State, and by virtue of the authority vested in him by law, hereby issues this certificate of registration to:

SHAKOPEE MDEWAKANTON SIOUX COMMUNITY
2400 MYSTIC LAKE BLVD
PRIOR LAKE MN 55372-9004

For registration of:
COSMIC BINGO (THE WORDS)

To be used with the following goods or services:

EDUCATION AND ENTERTAINMENT

First used anywhere: 08/17/2007, in North Dakota: 08/17/2007

The registration shall remain in force until: 05/13/2018

A facsimile of the trademark is attached hereto.

Dated: May 13, 2008

A handwritten signature in cursive script, reading "Alvin A. Jaeger".

Alvin A. Jaeger
Secretary of State



State of South Dakota



OFFICE OF THE SECRETARY OF STATE

CERTIFICATE OF MARK REGISTRATION

I, **CHRIS NELSON**, SECRETARY OF STATE OF THE STATE OF SOUTH DAKOTA,
do hereby certify that:

Shakopee Mdewakanton Sioux Community
2400 Mystic Lake Blvd.
Prior Lake MN 55372

is the legal Registrant in South Dakota claiming ownership of the following Mark:

COSMIC BINGO

If Registrant is a corporation, the state of incorporation is: N/A.

Registrant claims the date of first use of the Mark anywhere was: August 17, 2007

Registrant claims the date of first use of the Mark in South Dakota was: August 17, 2007

Classification of goods or services: 41

Description of the goods on which or services for which the mark is used: entertainment services, namely, providing and conducting bingo game events and promotions.

Registration date: May 5, 2008

Registration is effective for a term of four years and will expire on: May 5, 2012

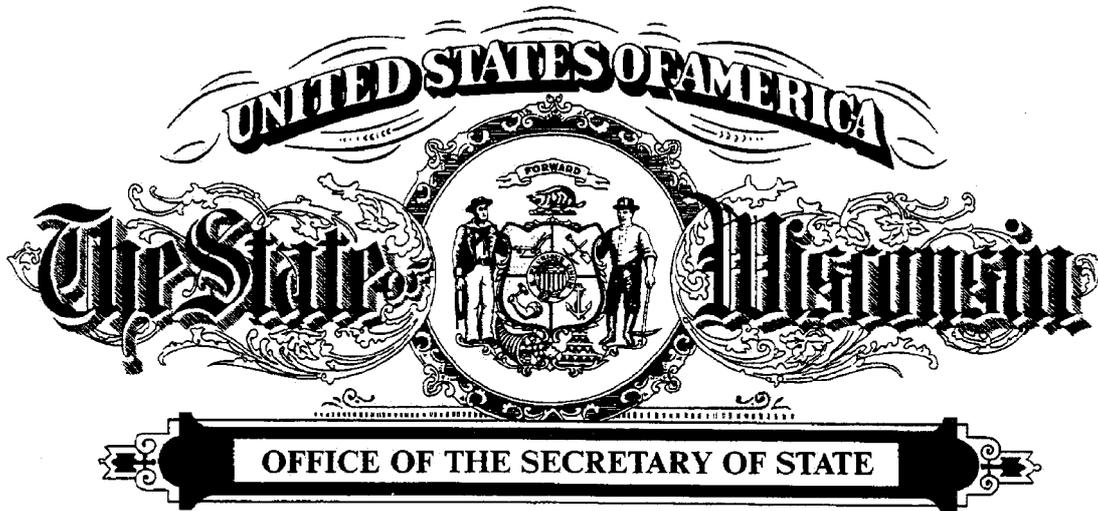
A facsimile of said Mark is thereto attached and has been duly filed in this office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of South Dakota, in Pierre, the Capital City, this day, May 5, 2008.



Chris Nelson

Chris Nelson
Secretary of State



To all to whom these presents shall come, Greetings!

I, DOUGLAS LA FOLLETTE, Secretary of State of the State of Wisconsin, do hereby certify that, pursuant to Chapter 132 of the Statutes,

SHAKOPEE MDEWAKANTON SIOUX COMMUNITY

has filed for record in this department, a statement of adoption of a mark, to wit:

COSMIC BINGO

This application is valid for a period of ten years from the date hereon, unless revoked sooner for cause.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, in the City of Madison, on August 06, 2008.



Douglas La Follette

Douglas La Follette
Secretary of State