

ESTTA Tracking number: **ESTTA197607**

Filing date: **03/11/2008**

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

Proceeding	91177319
Party	Defendant Georgia Tribe of Eastern Cherokee
Correspondence Address	WALKER DAN DAVIS, CHIEF PO BOX 607 DAHLONEGA, GA 30533-0011 UNITED STATES wddavis1937@alltel.net
Submission	Answer
Filer's Name	Walker Dan Davis
Filer's e-mail	wddavis1937@alltel.net, stroudp2@mindspring.com, sharonhousley@bellsouth.net
Signature	/wdd/
Date	03/11/2008
Attachments	March 10 2008 GTEC Revised Opposition Answer 91177319.pdf (12 pages) (3870221 bytes)



The Georgia Tribe of Eastern Cherokee
PO Box 607
Dahlonega, Georgia 30533
Walker Dan Davis, Chief

March 10, 2008

United States Patent and Trademark Office
Trademark Trial and Appeal Board
PO Box 1451
Alexandria, Virginia 22313-1451

SUBJECT: Specific Revised Answer to Trademark Opposition 91177319
Combined Opposition Numbers: 91177319 & 91177321
Serial Number: 78773672

Per the direction of the US Patent & Trademark Office in correspondence of February 14, 2008, the Georgia Tribe of Eastern Cherokee, the Applicant, in this correspondence, denies all of the Opposer's grounds for opposition and alleged violations and defends the Applicant and the Applicant's mark answering each of the Opposer's alleged grounds of opposition to the registration of the Applicant's membership mark (Serial Number 78773672) with the US Patent & Trademark Office.

1. The Applicant acknowledges the Cherokee Nation is a federally recognized Indian tribe with a tribal jurisdictional service area in the State of Oklahoma. The Applicant is a separate State of Georgia recognized Tribe with pending federal recognition. The Applicant is distinct from the Opposer with a tribal jurisdictional service area distant and not overlapping of the Opposer's. The Applicant has no business or service association with the Cherokee Nation and would not be knowledgeable of the

organization details of the Opposer's membership statistics quoted. The Applicant neither confirms nor denies the Opposer's membership statistics statements.

2. Denied. The Applicant denies that the Opposer has used the mark **CHEROKEE NATION** since 1791. In 1791, the mark "Cherokee Nation" represented all Cherokee in federal treaty terms as a whole. The "Cherokee Nation" was divided in the 1810s to 1830s due to federal treaties for Cherokee removal from eastern states. Some Cherokee legally remained in the east taking other marks such as the Applicant, the Eastern Band of Cherokee Nation, and the Cherokee Tribe of Northern Alabama, among others. The Opposer only legally took the mark **CHEROKEE NATION** as a Cherokee group or tribe, independent of other Cherokee who remained in the east, after the 1830s removal. The current Cherokee Nation is only a subset of the original and historical federal treaty designation "Cherokee Nation". The Applicant is without sufficient knowledge of the date the Opposer's constitution was ratified or approval by the Secretary of Interior. The Applicant neither confirms nor denies that the Opposer's constitution was ratified and approved in 1975.

3. Denied. The Applicant is without sufficient knowledge of who the Opposer's use of the term "individuals" includes.

4. The Applicant agrees in so far as the Applicant filed an Application for Registration of the Applicant's mark Serial Number 78773672 on December 14, 2005, identifying the collective membership mark as indicating membership in a state-recognized Indian Tribe in International Class 200 and which was published for opposition on January 16, 2007.

5. Denied. The Applicant's Mark indicates membership only in the "GEORGIA TRIBE OF EASTERN CHEROKEE." The only Cherokee Indians enrolled in the GEORGIA TRIBE OF EASTERN CHEROKEE are those listed in the Applicant's Application for federal recognition with the U.S. Bureau of Indian Affairs and their direct descendants. Merely being a descendent of Cherokee Indians now living in the primary area of Georgia does not qualify one to be a member of the GEORGIA TRIBE OF EASTERN CHEROKEE.

6. Denied. The Applicant denies that the Applicant's mark GEORGIA TRIBE OF EASTERN CHEROKEE and the Opposer's mark CHEROKEE NATION resemble in any regard. The Applicant denies there is any likelihood of confusion, mistake and deception.

7. Denied. The Applicant denies that the Applicant's mark GEORGIA TRIBE OF EASTERN CHEROKEE and the Opposer's mark CHEROKEE NATION resemble in any regard. The Applicant denies Applicant's Mark gives any false suggestion of connection of the Applicant with the Opposer.

8. Denied. The Applicant's Mark indicates membership only in the "GEORGIA TRIBE OF EASTERN CHEROKEE." The only Cherokee Indians enrolled in the GEORGIA TRIBE OF EASTERN CHEROKEE are those listed in the Applicant's Application for federal recognition with the U.S. Bureau of Indian Affairs and their direct descendants. Merely being a descendent of Cherokee Indians now living in the primary area of Georgia does not qualify one to be a member of the GEORGIA TRIBE OF EASTERN CHEROKEE. The Applicant's Mark is not misrepresentative and is not deceptive.

9. Denied. The Applicant denies that the Applicant's mark has been or is being used in any manner to bring disrepute in violation of Section 2(a) of the Trademark Act of 1946 upon the Applicant or the Opposer. The Applicant is highly restrictive of the use of the Applicant's mark. It is only used for the Applicant's official Tribal business operations and correspondence with State and Federal Governments. No member of the Applicant is allowed to use the Applicant's mark for any purpose. The Applicant does not promote or market anything with the Applicant's mark. The Applicant does not operate any businesses nor does it engage in questionable business practices or ventures that would in any manner be considered at any level, disreputable. The Opposer's opposition claim in regard to Section 2(a) of the Trademark Act of 1946 and use in a manner that brings disrepute on the Opposer is false and the potential for harm is not founded.

10. Denied. The Applicant denies that the Applicant's mark has not been sufficiently used and is not sufficiently distinctive per Section 2(f) of the Trademark Act of 1946. The Applicant has used the Applicant's mark for thirty years (Exhibit 1). Clearly, the Applicant's mark is strikingly distinctive in word and visual design and content from that of the Opposer. Per Trademark Act Section 2(f), nothing shall prevent the registration of a mark used by the applicant which has become distinctive of the applicant's goods in commerce. The Commissioner may accept as prima facie evidence that the mark has become distinctive, as used on or in connection with the applicant's goods in commerce, proof of substantially exclusive and continuous use thereof as a mark by the applicant in commerce for the five years before the date on which the claim of distinctiveness is made. The Applicant historically used the Applicant's Mark from its

earliest years of business as recorded on the Applicant's non-profit corporation filing with the State of Georgia in 1977 and Petition for Federal Tribal Recognition in 1978. This is a significant period of time beyond that required by the Act before applying for registration of the Mark in 2005. The Opposer's grounds for opposition in regard to Trademark Act Section 2(f) are unfounded and unsupported.

11. Denied. The Applicant is without sufficient knowledge of any benefits that the Applicant would receive that the Applicant would not be entitled to resulting from having the Applicant's mark registered thus the Applicant denies the potential of receiving any benefit to which the Applicant is not entitled. The opposition claim is unfounded at best. There is no supporting evidence to suggest that there is any potential for damage or detriment of the Opposer or the Cherokee Nation from registration of the Applicant's mark.

WHEREFORE, the Opposer has not presented a basis for opposition and is unjustified in opposing. The Sections of the Trademark Act cited in opposition, are clearly unfounded. The Opposer has not presented any documentation to support the cited grounds for opposition and alleged violations. The Opposer has not established cause for the Appeal Board's rejection of the Applicant's mark. The Applicant is entitled to have the Applicant's mark registered. The Applicant requests the US Patent and

Trademark Office, Trademark and Appeal Board dismiss the Opposition 91177319 and complete registration of the Applicant's mark without further delay.

Thank You,

A handwritten signature in cursive script that reads "Walker Dan Davis".

Walker Dan Davis
Chief
Georgia Tribe of Eastern Cherokee

cc: Anthony J. Jorgenson (Opposer's Attorney)

Enclosures:

Exhibit 1: Early Use of Applicant's Mark

Certificate of Mailing:

The undersigned hereby certifies that a true and correct copy of the foregoing Specific Revised Answer to Trademark Opposition 91177319, Combined Opposition Numbers: 91177319 & 91177321, Serial Number: 78773672; was served upon opposer by forwarding said copy, via first class mail, postage prepaid to:

Anthony J. Jorgenson
Hall, Estill, Hardwick, Gable, Golden & Nelson, PC
320 South Boston Avenue
Suite 400
Tulsa, OK 74103

on 3/11/2008 (Date)

Denise Horsley (Signature)

Denise Horsley (Typed or printed name)

Exhibit 1: Early Use of Applicant's Mark

Exhibit 1.a. Scan of U.S. Bureau of Indian Affairs photocopy of the original Applicant Cover Letter accompanying the Applicant's Petition for Federal Recognition, November 11, 1978 (3 pages):

GEORGIA TRIBE OF EASTERN CHEROKEE INDIANS, INC.
ROUTE 3
DAHLONEGA, GEORGIA 30533
(404) 864-3805

Assistant Secretary - Indian Affairs Office
Department of the Interior
18th and "D" Streets N. W.
Washington, D. C. 20245

ATTENTION: Federal Acknowledgement Project

This is a Petition for Federal Acknowledgement by the Georgia Tribe of Eastern Cherokees, Inc., Dahlonega, Georgia 30533, Route 3. Phone: 404-864-3805.

Hannah L. Note, Dahlonega, Georgia 30533, Route 3, Phone: 404-864-3805 is authorized to act as spokesman for the group. Thomas B. Note same address as above is also authorized to act on behalf of the group.

Handwritten:
2/11/79
✓
Copy
1-1-79

November 11, 1978

Assistant Secretary - Indian Affairs Office
Department of the Interior
18th and "C" Streets N. W.
Washington, D. C. 20245

ATTENTION: Federal Acknowledgement Project

Dear Sir:

We the members of The Georgia Tribe of Eastern Cherokee Indians, request federal acknowledgement as an Indian Tribe.

Under the treaties with the Cherokees, July 8, 1817 and February 27, 1819 our ancestor Daniel Davis was entitled to reservation. This was purchased for the state of Georgia under the provision made by Congress for that purpose. We are still residing here in Lumpkin County, Georgia on parts of that same reservation. It has been handed down from one generation to the next through all these years.

Our people are listed on the Cherokee Census of 1835, Henderson Roll of 1835, Ciler Roll of 1851, Chapman Roll of 1852, Nester Roll of 1883, and Coker Miller Roll of 1909-1918. Davis in Indian Language is Ta Wee Seh.

The Georgia Tribe of Eastern Cherokee Indians has a six (6) member council, a chief and vice-chief.

The council members are :

- D - Lila M. Davis Calhoun - Miller Roll #688
- D - Mattie Davis Adams - Miller Roll #693 *Miss Calhoun - wife of Lila ✓ De Davis*
- ✓ - WALKER DAN Davis - Son of Walker Rufe Davis - Miller Roll #687
- D - Hannah L. Corn Note - Daughter of Elisha Corn - Miller Roll #587
Granddaughter of W. E. Davis - Miller Roll #732
- F - Carlton Seitz - Son of John C. Seitz - Miller Roll #2322
- F - J. W. Davis - Grandson of Jerra A. Davis - Miller Roll #719
Grandson of Lorenzo Newton Davis - Miller Roll #718 *- de- fact -*

Honary members and advisors to the council are

- ✓ D - Acstell Davis - Miller Roll #720 - *son: Dan's*
- D - Clinton Davis - Miller Roll #692 -
- Amanda Davis Jones - Miller Roll #694 -
- ✓ - Erolene Arrendale Christian - Miller Roll #30271 - *Daughter Seitz*
- D - Cleora Odum - Miller Roll #1766
- Ura Beck Walls - Miller Roll #30289 -

The Chief is Thomas E. Note, Maternal grandson of Elisha Corn, Miller Roll #587, W. E. Davis, Miller Roll, #732 and paternal grandson of Belle Arrendale Note, Miller Roll #30269. He is also a member of the Georgia State Commission of Indian Affairs. He was appointed to the Georgia State Commission by Mr. George Murphy, Speaker of the House of Georgia Legislature

November 11, 1978

Page -2-

Vice-Chief is Virgil Graham Hopkins, Jr., whose mother Maggie Mae Rogers was on Miller Roll Eastern #1149 and Western #32812. He also is a member of the Georgia State Commission of Indian Affairs and was appointed by Governor George Busbey.

All applications are reviewed by the Council and an ancestor must be listed on a Federal Roll, preferably the Guleon Miller Roll of 1909-1910, but we check out all rolls back to the census of 1835. If we cannot find an ancestor listed on the Federal Rolls the applicant is rejected, but the application is kept on file in hopes of finding documentary proof later. The applicant must do his own genealogical research as we do not have funds for research. If the applicant or his or her ancestor is found on a Federal Roll the applicant is approved and issued a certificate stating that he is a member of The Georgia Tribe of Eastern Cherokee Indians and is allowed all privileges of the other members.

None of these people are members of any other North American Indian Tribe.

We are disgusted with people claiming to be Indian descendants with no proof of ever being listed on a Federal Roll. It has become quite a fad in the State of Georgia to be an Indian. Groups are springing up all over the state especially ones in Atlanta, Georgia and Columbus, Georgia

Any other proof or recommendations you may need will be sent at your request.

Sincerely yours,

Hannah L. Note

HLM/km

Members of Council

.....
.....
.....
.....
.....
.....
.....
.....
.....
.....

Exhibit 1.b. Scan of Applicant's registered copyright for Applicant's mark, April 28, 1995 (Registration Number Vau-337-817):

CERTIFICATE OF REGISTRATION

FORM VA
For a Work of the Visual Arts



This Certificate issued under the seal of the Copyright Office in accordance with Title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Margbeth Peters
REGISTER OF COPYRIGHTS

Vau 337-817

EFFECTIVE DATE OF REGISTRATION
APR 28 1995

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

1 TITLE OF THIS WORK Seal of the Georgia Tribe of Eastern Cherokee NATURE OF THIS WORK Ink Drawing
PREVIOUS OR ALTERNATIVE TITLES

PUBLICATION AS A CONTRIBUTION If this work was published as a contribution to a periodical, serial, or volume, give information about the respective title in which the contribution appears. Title of Literature

If published in a periodical or serial give: Volume Number Issue Date In Pages

2 a NAME OF AUTHOR Denise Housley USA DATES OF BIRTH AND DEATH
Year Born 1965 Year Died

Was this contribution to the work a "work made for hire"? Yes No

AUTHOR'S NATIONALITY OR DOMICILE Citizen of Domiciled in

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK Anonymous? Yes No Pseudonymous? Yes No

NOTE
Under the law, the author of a work made for hire is the employer or other person who owns the copyright.

NATURE OF AUTHORSHIP Check appropriate boxes. See instructions.
 3-Dimensional sculpture Map Technical drawing
 2-Dimensional artwork Photograph Text
 Reproduction of work of art Jewelry design Architectural work
 Design on shoe-like material

b NAME OF AUTHOR DATES OF BIRTH AND DEATH
Year Born Year Died

Was this contribution to the work a "work made for hire"? Yes No

AUTHOR'S NATIONALITY OR DOMICILE Citizen of Domiciled in

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK Anonymous? Yes No Pseudonymous? Yes No

NATURE OF AUTHORSHIP Check appropriate boxes. See instructions.
 3-Dimensional sculpture Map Technical drawing
 2-Dimensional artwork Photograph Text
 Reproduction of work of art Jewelry design Architectural work
 Design on shoe-like material

3 a YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED This information must be given in all cases. 1994 b DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK Complete this information ONLY if this work has been published.

4 COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the author given in space 2. Denise Housley
4860 Brandon Acres LN, Buford, GA 30519-4269

APPLICATION RECEIVED APR 28 1995
ONE DEPOSIT RECEIVED APR 28 1995
TWO DEPOSITS RECEIVED

TRANSFER If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright.

FUNDS RECEIVED

EXAMINED BY _____ FORM _____
 CHECKED BY DMK
 CORRESPONDENCE FOR COPYRIGH OFFICE USE ONLY
 Yes

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?
 Yes No If your answer is "Yes," why is another registration being sought? (Check appropriate box)
 a. This is the first published edition of a work previously registered in unpublished form.
 b. This is the first application submitted by this author as copyright claimant.
 c. This is a changed version of the work, as shown by space 5 on this application.
 If your answer is "Yes," give Previous Registration Number Year of Registration

DERIVATIVE WORK OR COMPILATION Complete both space 6a and 6b for a derivative work; complete only 6a for a compilation.
 a. Preexisting Material Identify any preexisting work or works that this work is based on or incorporates.
 b. Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claimed.

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.
 Name Account Number

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name / Address / Apt./City/State/ZIP
 Denise Housley
 4860 BRANDON ACRES LANE
 BUFORD, GEORGIA 30519-4269
 Area Code and Telephone Number 404-347-3555 ext. 6335
 404-932-9122
 No sure to give your daytime or number

CERTIFICATION* I, the undersigned, hereby certify that I am the
 check only one
 author
 other copyright claimant
 owner of exclusive rights
 authorized agent of _____
 Name of author to enter copyright claimant, or owner of exclusive rights

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.
 Typed or printed name and date If this application gives a date of publication in space 3, do not sign and submit it before that date.
 Denise Housley Date 04/16/1995
 Handwritten signature (X)

MAIL CERTIFICATE TO
 Name Denise Housley
 Number/Street/Apt. 4860 Brandon Acres Lane
 City/State/ZIP Buford, GA 30519-4269
 * Complete all necessary copies. Sign your application in space 3.
 1. Postage paid
 2. Non-refundable 220 Ring fee in check or money order payable to Registrar of Copyrights
 3. Envelopes marked
 Registrar of Copyrights
 Library of Congress
 Washington, D.C. 20540-8000
 The Copyright Office has the authority to just fees at over \$100.00. Work, books, films, or the Copyright Office. The fee of \$100.00 is not a deposit. Please contact Copyright Office, June 1995 to determine the actual fee when

*17 U.S.C. § 508(c). Any person who knowingly makes a false representation of a material fact in this application for copyright registration provided for by section 508, or in any written statement filed in connection with an application, shall be fined not more than \$2,500.
 July 1995-305-000 PRINTED ON RECYCLED PAPER U.S. GOVERNMENT PRINTING OFFICE: 1993-340-500-80