

ESTTA Tracking number: **ESTTA212476**
 Filing date: **05/19/2008**

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	911 Media Arts Center
Granted to Date of previous extension	05/18/2008
Address	402 9th Ave N Seattle, WA 98109 UNITED STATES

Attorney information	Scott Warner and Jennifer A. Krebbs Garvey Schubert Barer 1191 2nd Ave., 18th Floor Seattle, WA 98101 UNITED STATES jdelo@gsblaw.com Phone:206-464-3939
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Applicant Information

Application No	78973708	Publication date	11/20/2007
Opposition Filing Date	05/19/2008	Opposition Period Ends	05/18/2008
Applicant	Longhouse Media 117 E. Louisa St. #131 Seattle, WA 98102 UNITED STATES		

Goods/Services Affected by Opposition

Class 041. First Use: 2004/01/31 First Use In Commerce: 2004/05/23
 All goods and services in the class are opposed, namely: Charitable services for Native American and Indigenous youth, namely, media arts and media literacy programs providing film production, digital media production, film and digital media production equipment, and training in the use of film and digital media production equipment

Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)

Mark Cited by Opposer as Basis for Opposition

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	NATIVE LENS		

Goods/Services	media literacy training and equipment to the public, making it possible for individual artists and organizations to create and exhibit moving-image media, including video, film, animation, digital media, and video installation art.
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Attachments	911 opp to Native Lens TM app.pdf (8 pages)(35615 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	/SGW and JAK/
Name	Scott Warner and Jennifer A. Krebbs
Date	05/19/2008

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

911 Media Arts Center

Opposer,

vs.

Longhouse Media,

Applicant.

NOTICE OF OPPOSITION

Opposition No. _____

In re matter of Application Serial No: 78973708

Filed: September 13, 2006

Trademark: NATIVE LENS

Published: November 20, 2007

Box TTAB Fee
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

NOTICE OF OPPOSITION

To Whom It May Concern:

911 Media Arts Center, a Washington non-profit corporation with its principal place of business at 402 9th Ave N., Seattle, WA 98109, believes that it is or will be damaged by registration of the mark shown in application Serial No. 78973708, filed on September 3, 2006. 911 Media Arts Center will be harmed if the registration is issued because it established the Native Lens program and began using the NATIVE LENS

mark before Applicant used the mark. The Application was Published for Opposition on November 20, 2007. Requests for Extension of Time to Oppose were filed on November 20, 2007 and March 13, 2008.

As grounds for opposition, it is alleged that:

911 Media Arts Center used the NATIVE LENS mark prior to Applicant's use

1. Opposer 911 Media Arts Center ("911") is a non-profit, tax exempt organization that has provided media literacy training and equipment to the public since 1984, making it possible for individual artists and organizations to create and exhibit moving-image media, including video, film, animation, digital media, and video installation art.

2. In 1997, 911 established the Young Producers Project, which is dedicated to teaching young people critical viewing and media production skills. As part of the Young Producers Project, in May 2003, 911 sought and obtained grant funding for "Native Lens", a program designed to teach media skills to Native American youth so they can create and exhibit their own media projects.

3. In June 2003, 911 received a \$100,000 grant from AOL Time Warner Foundation through the 21st Century Literacy Community Grant program, \$50,000 for 2003 and \$50,000 for 2004, and began planning and training staff for Native Lens project.

4. In May 2004, 911 hosted a two-day conference and retreat to introduce and promote Native Lens to the Northwest tribal community. Thirteen young tribal members participated, each of whom signed a release granting 911 the right to use his or her image in connection with the Native Lens program. Also in May 2004, 911 hosted a

celebration for the Native Lens program at the Daybreak Start Arts and Cultural Center, which many tribal and other community members attended.

5. In May 2004, the Seattle Times published an article profiling Native Lens, “a new program of Seattle’s 911 Media Arts Center.”

6. Throughout the process, 911 worked closely with local tribes, including the Muckleshoot and Swinomish. In September 2004, the newsletter of the Swinomish Indian Tribe, “Kee-Yoks,” contained an article promoting the Native Lens program and the involvement of 911 Media Arts Center.

7. In September 2004, 911 held a second Native Lens conference.

8. In December 2004, 911 received a \$10,000 grant for the Native Lens program from the National Endowment for the Arts. 911’s receipt of this grant was mentioned in a December 2004 Seattle Times article.

Applicant is aware of Opposer 911’s prior use of the NATIVE LENS mark and intent to continue using the mark

9. During the period of time the Native Lens program was being developed by 911, Annasophia Silverstein, the current Artistic Director of Applicant Longhouse Media, was employed by 911, and Tracy Rector, the current Executive Director of Applicant Longhouse Media, was an independent contractor or volunteer for 911.

10. In early 2005, 911 laid-off Annasophia Silverstein and two other staff members due to budget cuts. These lay-offs were mentioned in a January 2005 article about 911 in the Seattle Post-Intelligencer.

11. Despite the lay-offs, 911 carried on with the Native Lens program. In May 2005, 911 presented a Native Lens workshop to celebrate the one-year anniversary

of the program. The workshop and student projects were profiled in a May 2005 Seattle Times article entitled “Film Program Gives Teens Direction.”

12. 911’s records show that in May 2005, it reimbursed Ms. Rector for expenses related to the Native Lens program and in September 2005, paid Ms. Silverstein \$250.00 for services related to the Native Lens program.

13. In November 2005, the Chairman of the Swinomish Indian Tribe and representatives of Longhouse Media contacted 911, describing their interest in creating a media literacy program for Native American youth using the name Native Lens. On November 21, 2005, 911 responded in writing that “The name Native Lens has generated substantial goodwill for 911 Media Arts Center, and we are not prepared at this time to turn over the program name, as we hope to continue our legacy in the realm.”

14. 911 has not abandoned the NATIVE LENS mark, and has no intention of abandoning the NATIVE LENS mark. Although the Native Lens program is currently not active at 911, 911 continues to use the mark in its promotional materials and on its website. 911 has also considered and would consider licensing the NATIVE LENS mark to appropriate entities.

15. On or about September 3, 2006, Applicant Longhouse Media, an inactive Washington non-profit corporation, filed the above-referenced application in the U.S. Patent and Trademark Office seeking registration on the Principal Register of the mark NATIVE LENS for an intent to use for charitable services in International Class 41, specifically:

IC 041. Charitable services for Native American and Indigenous youth, namely, media arts and media literacy programs providing film production, digital media production, film and digital media production equipment,

and training in the use of film and digital media production equipment.

Opposer knowingly made false statements in its registration application

16. At least two of the assertions in Applicant's original application are false: the First Use Date, which is listed as January 31, 2004, and the First Use in Commerce Date, which is listed as May 23, 2004. The actual First Use Date was May 10, 2003, when 911 requested funding for the Native Lens program, and the actual First Use in Commerce Date was June 19, 2003, when 911 received a \$100,000 grant from the AOL Time Warner Foundation to support Native Lens.

17. Applicant made an affirmative misrepresentation when it declared that "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...". Because Applicant's Executive and Artistic Directors were involved with 911 when 911 established the Native Lens program, Applicant had knowledge of 911's superior right to and prior use of the NATIVE LENS mark. Applicant also had knowledge that 911 did not intend to abandon the mark, because 911 had so informed it in writing in November 2005.

18. On May 13, 2008, Applicant added a statement to its application indicating that the Date of First Use and Date of First Use in Commerce were by a "predecessor in title to applicant." Assuming that Applicant is referring to 911 as the "predecessor," this assertion, aside from constituting an admission that 911 did originally

own the mark, is incorrect as it implies that 911 transferred or assigned the rights in the NATIVE LENS mark to Applicant, which did not occur.

If Opposer's application is granted, it will create confusion for the public

19. Both Applicant and 911 are non-profit organizations that promote media literacy, and 911 believes there is market overlap between the two entities. 911 would be injured if Applicant were granted a Certificate of Registration for the NATIVE LENS mark because Applicant would obtain thereby at least a *prima facie* exclusive right to use such mark which would lead to a likelihood of confusion among funding entities, potential program participants, and the public.

20. In addition, Applicant's use of the NATIVE LENS mark suggests a connection between Applicant and 911 that does not exist.

21. Further, despite Applicant's knowledge that 911 created the program and has a superior right to the NATIVE LENS mark, Applicant has been using the term over 911's express disapproval. If Applicant receives a Certificate of Registration for NATIVE LENS, Applicant will be rewarded for its misconduct at the expense of 911.

WHEREFORE, Opposer 911 Media Arts Center requests this Opposition be sustained and that the registration sought in Trademark Application Serial No.: 78973708 be denied.

Respectfully submitted,
GARVEY SCHUBERT BARER

Attorneys for Petitioner
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By: /Jennifer Amanda Krebs/
Jennifer Amanda Krebs, WSBA #35372
Scott Warner, WSBA #12873

Dated: May 19, 2008
Seattle, Washington

CERTIFICATE OF MAILING

Pursuant to Rules of Practice in Trademark Cases 2.101(a) and (b), and 2.119(4) & (5), 37 C.F.R. §§ 2.101(a) and (b) and 2.119(4) & (5) (2007), I hereby certify that a true, correct and complete copy of the foregoing Notice of Opposition has been served on counsel of record for the Applicant, Longhouse Media, Zachary Wright, Esq., by sending a copy of the same, on the 19th of May, 2008, via First Class Mail, postage prepaid, to Applicant's correspondence address of record in the Office, namely:

Zachary Wright
Wright Law PLLC
800 Fifth Avenue, Suite 4000
Seattle, Washington 98104
Direct Phone: 206-859-2050

/Jennifer Amanda Krebs/
Jennifer Amanda Krebs, WSBA #35372
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(206) 464-3939
Title: Attorney for Petitioner

Dated: May 19, 2008
Seattle, Washington