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ESTTA Tracking number: **ESTTA776846**

Filing date: **10/14/2016**

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	Seminole Tribe of Florida
Granted to Date of previous extension	10/15/2016
Address	6300 Stirling Road Hollywood, FL 33024 UNITED STATES

Attorney information	Miriam Richter Richter Trademarks, P.L. 2312 Wilton Drive, Suite 9 Wilton Manors, FL 33305 UNITED STATES mrichter@RichterTrademarks.com Phone:954-977-4711

Applicant Information

Application No	86702906	Publication date	08/16/2016
Opposition Filing Date	10/14/2016	Opposition Period Ends	10/15/2016
Applicant	Pomcor Longview, LLC RCG Longview, Suite 512 New York, NY 10001 UNITED STATES		

Goods/Services Affected by Opposition

Class 043. First Use: 0 First Use In Commerce: 0
Opposed goods and services in the class: Restaurant services, includingsit-down service of food and take-out restaurant services; Serving food and drinks; Serving of food and drink/beverages; Catering for the provision of food andbeverages; Catering of food and drinks;Food preparation services; Health resort services, namely, providing food and lodging that specialize in promoting patrons' general health and well-being; Preparation of food and beverages; Providingof food and drink; Provision of food and drink in restaurants; Hotel and restaurant services; Hotel, bar and restaurant services; Hotel, restaurant and bar services; Hotel, restaurantand catering services; Restaurant and hotel services; Contract food services; Hotel, motel, restaurant, bar and catering services

Applicant Information

Application No	86703012	Publication date	08/16/2016
Opposition Filing Date	10/14/2016	Opposition Period Ends	
Applicant	Pomcor Longview, LLC RCG Longview, Suite 512 New York, NY 10001		

	UNITED STATES

Goods/Services Affected by Opposition

Class 043. First Use: 0 First Use In Commerce: 0 Opposed goods and services in the class: Restaurant services, includingsit-down service of food and take-out restaurant services; Serving food and drinks; Serving of food and drink/beverages; Catering for the provision of food andbeverages; Catering of food and drinks;Food preparation services; Health resort services, namely, providing food and lodging that specialize in promoting patrons' general health and well-being; Preparation of food and beverages; Providingof food and drink; Provision of food and drink in restaurants; Hotel and restaurant services; Hotel, bar and restaurant services; Hotel, restaurant and bar services; Hotel, restaurantand catering services; Restaurant and hotel services; Contract food services; Hotel, motel, restaurant, bar and catering services

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3158461	Application Date	11/28/2005
Registration Date	10/17/2006	Foreign Priority Date	NONE
Word Mark	COUNCIL OAK		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 043. First use: First Use: 2004/05/11 First Use In Commerce: 2004/05/11 Restaurant		

U.S. Registration No.	4183456	Application Date	02/21/2012
Registration Date	07/31/2012	Foreign Priority Date	NONE
Word Mark	COUNCIL OAK STEAKS & SEAFOOD		

Design Mark	
Description of Mark	The mark consists of words "COUNCIL OAK" between two stylized lines. Above thetop line is the outline of an oak tree and below the bottom line are the words "STEAKS & SEAFOOD".
Goods/Services	Class 030. First use: First Use: 2004/05/11 First Use In Commerce: 2009/12/21 Condiments, namely, ketchup

U.S. Registration No.	4289200	Application Date	09/30/2012
Registration Date	02/12/2013	Foreign Priority Date	NONE
Word Mark	COUNCIL OAK		
Design Mark			
Description of Mark	The mark consists of an image of an oaktree above the words "COUNCIL OAK" which are between to slightly irregular horizontal lines. The bottom of the tree touches the upper line.		
Goods/Services	Class 043. First use: First Use: 2004/05/11 First Use In Commerce: 2004/05/11 Restaurant services		

Attachments	78761394#TMSN.png(bytes) 85547849#TMSN.png(bytes) 85742121#TMSN.png(bytes) Ntc of Opposition.pdf(116915 bytes)

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	/Miriam Richter/
Name	Miriam Richter
Date	10/14/2016

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

SEMINOLE TRIBE OF FLORIDA, a Federally-recognized Indian Tribe Opposer v. POMCOR LONGVIEW, LLC , a Delaware limited liability company. Applicant	§ § § § § § § § § §	Opposition No. _____ In the matter of: Application Serial No.: 86-702,906 Mark: LOST OAK and Application Serial No.: 86-703,012 Mark: LOST OAK and design Both filed on July 23, 2015 and published in the Official Gazette on August 16, 2016.

NOTICE OF CONSOLIDATED OPPOSITION

The Opposer SEMINOLE TRIBE OF FLORIDA, a Federally-recognized Indian Tribe (Seminole Tribe), by and through its undersigned counsel, hereby files this Opposition to the Registration of applications serial number 86-702,906 (′906) for the mark LOST OAK in International Class 043 for Restaurant services, including sit-down service of food and take-out restaurant services; Serving food and drinks; Serving of food and drink/beverages; Catering for the provision of food and beverages; Catering of food and drinks; Food preparation services; Health resort services, namely, providing food and lodging that specialize in promoting patrons' general health and well-being; Preparation of food and beverages; Providing of food and drink; Provision of food and drink in restaurants; Hotel and restaurant services; Hotel, bar and restaurant services; Hotel, restaurant and bar services; Hotel, restaurant and catering services; Restaurant and hotel services; Contract food services; Hotel, motel, restaurant, bar and catering services and serial number 86-703,012 (′012) for the mark LOST OAK & design International Class 043 for Restaurant services, including sit-down service of food and take-out restaurant

services; Serving food and drinks; Serving of food and drink/beverages; Catering for the provision of food and beverages; Catering of food and drinks; Food preparation services; Health resort services, namely, providing food and lodging that specialize in promoting patrons' general health and well-being; Preparation of food and beverages; Providing of food and drink; Provision of food and drink in restaurants; Hotel and restaurant services; Hotel, bar and restaurant services; Hotel, restaurant and bar services; Hotel, restaurant and catering services; Restaurant and hotel services; Contract food services; Hotel, motel, restaurant, bar and catering services by Applicant Pomcor Longview, LLC, an individual, and states as follows:

1. Opposer Seminole Tribe is the owner of three valid and subsisting U.S. federal trademark registrations for marks on the Principal Register (collectively the COUNCIL OAK marks), one of which has achieved incontestable status, as indicated on the table below:

Seminole Tribe Council Oak Marks

Mark	Date of First Use	Registration date	RN	Status	IC	G&S
Council Oak	5/11/04	10/17/06	3158461	live and incontestable	043	Restaurant
Council Oak Steaks & Seafood and design (Steaks & Seafood disclaimed)	12/21/09	7/31/12	4183456	live	030	Condiments, namely ketchup
Council Oak and design	5/11/04	2/21/13	4289200	live	043	Restaurant services

2. Since May 2004, the Seminole Tribe has continuously used one or more of the Council Oak marks in interstate commerce, for restaurant services.

3. Opposer's Council Oak restaurants are located on the grounds of its world-famous Seminole Hard Rock Hotel & Casino properties in Hollywood, Florida and Tampa, Florida.

These two locations are known by the general public as resort locations. Additionally, Opposer's Council Oak marks are frequently used in association with its famous Hard Rock Hotel & Casino trademarks[1]. Such marks include Registration No. 3,601,549 for

as well as Registration No. 3,601,548 for HARD ROCK HOTEL & CASINO, among many others. As such, an association has been created in consumer's mind between the Council Oak marks and the famous house brand HARD ROCK.

4. Since May 2004, Opposer Seminole Tribe has expended considerable sums in advertising, promoting, marketing, and otherwise developing the Council Oak marks.

5. All of the Council Oak marks have the words Council Oak as the dominant portion of the mark.

6. Applicant's marks are confusingly similar to Opposer's marks, in both appearance, sound, connotation, and commercial impression.

7. Both Opposer's marks and Applicant's '012 mark share the outline of a spreading oak tree as the main design feature of the design marks and both feature the word portions of the marks in a horizontal format, under a horizontal line, in all caps and in a serif font.

8. Opposer's restaurants, like most restaurants, provide alcoholic beverages to accompany meals and take-out services and thus Applicant's proposed marks' services (Restaurant services, including sit-down service of food and take-out restaurant services; Serving food and drinks; Serving of food and drink/beverages; Catering for the provision of food and beverages; Catering

[1] Hard Rock Cafe International (USA), Inc. is a wholly owned subsidiary of Seminole Hard Rock Entertainment, Inc., a wholly owned subsidiary of the Seminole Tribe of Florida.

of food and drinks; Food preparation services) are clearly encompassed in Opposer's restaurant services.

9. Additionally, as both of Opposer's current facilities are located in resort hotels, the remainder of the services which are opposed (Hotel and restaurant services; Hotel, bar and restaurant services; Hotel, restaurant and bar services; Hotel, restaurant and catering services; Restaurant and hotel services; Contract food services; Hotel, motel, restaurant, bar and catering services) are also certain to be a source of confusion for consumers who already associate Opposer's mark with resort hotels.

10. As Opposer's restaurants are advertised nationally and have been seen, over the past 12 years, by hundreds of thousands of visitors to Opposer's Hard Rock Hotel and Casinos, it is very easy for consumers to make a mistaken association between Applicant's marks and Opposer.

11. Further, as both of Opposer's current resort properties are located in Florida, the fact that Applicant's property is also located in Florida, a short distance from Opposer's locations, will contribute to and compound consumer confusion.

12. Applicant's consumers should be assumed to be the general public as the services they offer can be utilized by anyone who dines out at a restaurant, drinks at a bar, or stays at a hotel or resort. Likewise, Opposer's restaurants are open to the general public and are located on resort hotel property that is open to the general public. While Applicant's marks have yet to be offered to the public, it is clear from their marketing materials which are currently available to the general public via the internet, as well as governmental filings, that they intend to create a high-end resort destination and thus will most certainly be marketing their services to the same consumers who patronize Opposer's facilities.

13. Thus, Applicant's opposed services are virtually identical with Opposer's. This is likely to cause consumers to be confused, deceived, or misled into the mistaken belief that Applicant's

services are affiliated with or emanate from Opposer, as well as its HARD ROCK subsidiaries.

14. The registration of Applicant's marks for the services opposed, would prevent Opposer from exercising exclusive control over the goodwill and reputation associated with the Council Oak marks and therefore, the registration of Applicant's marks would damage and injure Opposer.

15. Opposer will also be damaged by the registration of Applicant's marks because such registration will support statutory rights for the Applicant in violation and derogation of Opposer's prior, superior, and exclusive rights in the Council Oak marks.

16. In view of the foregoing, issuance of registrations to the Applicant for the opposed services in international class 043, will be damaging to Opposer within the meaning of 15 U.S.C. §1063.

WHEREFORE, Opposer Seminole Tribe respectfully requests that the opposed services in class 043 be stricken from Applications No. 86-702,906 and No. 86-703,012 and that this opposition be sustained in favor of Opposer.

Respectfully submitted,

RICHTER TRADEMARKS, P.L.
ATTORNEY FOR OPPOSER
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DATED: October 14, 2016

/s/ Miriam Richter, Esq.
MIRIAM RICHTER
FLORIDA BAR NO. 44831

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Notice of Opposition has been served on Peter A. Koziol, Esq., by mailing said copy on October 14, 2016 via First Class Mail, postage prepaid to: Peter A. Koziol, Assouline & Berlowe PA, 1801 North Military Trail, Suite 160, Boca Raton, Florida 33431-1815 and a courtesy copy to pak@assoulineberlowe.com, via Rpost registered email.

Dated: October 14, 2016

/s/ Miriam Richter

MIRIAM RICHTER, ESQ.
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