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

Proceeding	92074759
Party	Plaintiff Chief Troy Kerry
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Submission	Other Motions/Submissions
Filer's Name	Chief Troy Kerry
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Signature	/Chief Troy Kerry/
Date	12/02/2020
Attachments	Petitioners Resp to Registrant Motion to Dismiss Pet Motion to Amend .pdf(2489190 bytes)

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

In the matter of U.S. Service Mark Registration No. 5,915,019

Registration date: November 19, 2019

For the mark: TALIMALI BAND THE APALACHEE INDIANS OF LOUISIANA

TROY KERRY,

Petitioner

v.

TALIMALI BAND OF THE
APALACHEE INDIANS OF
LOUISIANA

Registrant.

CANCELLATION NO. 92074759

Petitioner's Response to Registrant's Motion to Dismiss Petitioner's Amended Pleading

Summary

Trademark Trial and Appeal Board (TTAB) Interlocutory Attorney has ruled:

"...plaintiffs to proceedings before the Board ordinarily can, and often do, respond to a motion to dismiss by filing, inter alia, an amended complaint. If a timely amended complaint is submitted, the original motion to dismiss normally will be moot. TBMP section 503.03.

Petitioner's amended petition to cancel was filed as a matter of course, and is accepted as Petitioner's operative pleading in this proceeding. See Fed. R. Civ. P. 15(a)(1)(A) and (B).

Accordingly, Respondent's first motion to dismiss, filed on August 28, 2020, is moot and will be given no consideration.

...the Board notes that Respondent has filed an opposition to Petitioner's motion for leave to amend his pleading, 11 TABVUE, and that Respondent contends that Petitioner's pleading again fails to state a claim for which relief can be granted."

Statement of Petitioner's Claim

Petitioner, the duly elected Chief of the main body (political side) and Chairman of the 12/27/1995 non-profit corporation (business side) of the Apalachee Tribe —with standing—objects to registration of the Apalachee Tribe's historic trademark, Talimali Band The Apalachee Tribe of Louisiana, by Arthur R. Bennett and collaborators--imposters without standing to do so. This fraudulent registration of a tribal trademark has deceived the USPTO and has proven damaging to the Apalachee Tribe by way of confusion in the marketplace especially at a moment when the tribe is pursuing sovereign recognition by the governments of the United States of America, Louisiana, and Florida. Petitioner requests that the TTAB cancel registration of the subject trademark. See Petitioner's Exhibit P.

Replies to Certain Registrant Assertions in

Registrant's Opposition to Petitioner Troy Kerry's Motion to Amend

Registrant: "...Registrant is left in the dark as to whether the request for leave to amend rests on the same or new allegations."

Petitioner answer: Both parties have agreed that the trademark belongs to the "main body of" or the "entire" (Keaty version) Apalachee Tribe. However, primary reasons for cancellation remain:

--Arthur R. Bennett's (actual "Registrant") lack of standing

--Registrant fraud

--Damaging confusion and

--Registrant's intentional deception perpetrated against the USPTO and TTAB.

Notwithstanding, "descriptive" and "surname" remain as secondary but applicable reasons, as well. "Talimali Band The Apalachee Tribe of Louisiana" does describe the kinship group of Apalachee Indians in Louisiana. The name brings to mind old history books and old maps of the American Southeast. The ancient Apalachee Tribe's homeland radiated out from Tallahassee, Florida. The Talimali Band was one of several villages or towns populated by Apalachee Tribal members within what Old Spanish Florida termed, Apalachee Province. The Talimali Band is commonly associated with the San Luis Mission of modern Leon County's, City of Tallahassee. This Franciscan Mission was subject to anti-Apalachee genocidal attacks by the enemy forces of British Colonel James Moore, former Governor of Carolina Colony, between 1702 and 1704. Apalachee survivors fled to French Mobile (now part of Alabama). Following conclusion of the French and Indian War in 1763, Mobile was surrendered to the British by France, and Talimali Band members living in Mobile fled to Central Louisiana.

"de Apalachee" was the 18th century surname of the Apalachee Tribal ancestor, Chief Salomon (or Solomon).

Registrant: [Petitioner claims to be an] "...alleged descendant of one of the founding members of the non-profit corporation..."

Petitioner answer: This statement is not accurate. Petitioner hereby clarifies the following familial facts as they relate to the non-profit corporation and the main body of Apalachee Tribe...

--Late Chief Gilmer Bennett was Petitioner's maternal second cousin. Gilmer's mother was Francis Vallery—the young girl appearing on the far right of the upper photo on page 4 of Registrant's Motion to Dismiss.

--Founding Registered Agent/Director Kenneth Kerry is Petitioner's paternal uncle.

--Founding Registered Agent/Director Shalyian Jenkins (nee Bennett) is Petitioner's maternal third cousin.

--Founding Director Serena Simonsen (nee Bennett) is Petitioner's maternal third cousin.

Registrant: [Registrant's allegation of Petitioner]"...voluntarily leaving the Registrant non-profit corporation is sufficient to deny Petitioner standing to initiate or to prosecute this trial."

Petitioner answer: This statement would be correct if the word, "voluntarily", genuinely applied but it does not. Unfortunately, "under duress" is a more accurate descriptive term here. Petitioner Exhibits I, J, K, and L are sworn affidavits that were signed and notarized by tribal members concerning the criminal proposal made to them by so-called "Chief" Arthur R. Bennett and his assistant "T.J." Gilmer Benn, Jr. The criminal proposal was to engage in Indian grave robbery—a felony crime under Federal and Louisiana State law. As a result, an emergency tribal election was convened and Arthur R. Bennett and collaborators experienced a mass stampede of tribal members from Arthur R. Bennett's cabal of self-appointed "leadership" posts within the main body of the Apalachee Tribe and within the non-profit corporation. Definition of cabal: A small group of political schemers and conspirators. Black's Law Dictionary, 7th Abridged Edition.

Three founding members of the non-profit corporation, Shalyian Jenkins, Serena Simonsen, and Kenneth Kerry, defected to current Chief and Chairman, Troy Kerry, Petitioner. Professional Genealogist and Genealogy Expert in this case, Mayra Sanchez-Johnson, has researched and prepared a certified list of two hundred twenty-one Apalachee descendants of 18th century Chief Salomon de Apalachee. These two hundred twenty-one Apalachee Tribal members are political supporters of Petitioner, Chief Troy Kerry, who also appears on the list of two hundred twenty-

one certified descendants of Salomon de Apalachee. Arthur R. Bennett and his collaborators do not appear in the Mayra Sanchez-Johnson Genealogy, and by this late date, Arthur R. Bennett and his collaborators have failed to produce their own certified genealogies or DNA tests confirming Apalachee or any other American Indian heritage. See Exhibit N.

Facts are stubborn things; and whatever may be our wishes, our inclinations, or the dictates of our passion, they cannot alter the state of facts and evidence.

John Adams, *'Argument in Defense of the Soldiers in the Boston Massacre Trials,' December 1770; US diplomat & politician (1735 - 1826)*

Yet Attorney Keaty refers to these events in a trivializing manner:

“Petitioner accuses Chief Arthur Bennett, Chairman of the Registrant non-profit corporation, of some criminal activity. However, this accusation has nothing to do with the trademark dispute. The sole issue in this case is whether Registrant knowingly made a misrepresentation of material fact during the service mark application process.”

In summary, Mr. Keaty’s cabal “client” proposed commission of a felonious Federal and State crime to members of the Apalachee Tribe. This led to an emergency election on 4/14/2018 as allowed by the tribal non-profit corporation’s Articles of Incorporation in which Arthur R. Bennett and collaborators were not elected. Despite not holding the tribal posts of Chief of the political wing and Chairman of the business wing, on 3/23/2019, Arthur R. Bennett and collaborators communicated via U.S. Mail with the U.S. BIA. They falsely identified themselves before the U.S. Bureau of Indian Affairs—a Federal Agency—as members of the legitimate Apalachee Tribal leadership:

“Dear Assistant Secretary—Indian Affairs:

We, the members of the governing body of Talimali Band The Apalachee Indians of Louisiana through this letter, notify you that the current officials of Talimali Band The

Apalachee Indians of Louisiana were selected on March 23, 2019. We submit to the Office of Federal Acknowledgement the names and titles of the newly selected officials, as follows:

Please place this letter in the administrative correspondence file for the Talimali Band The Apalachee Indians of Louisiana, Petition #166A.

Sincerely,

Names and signatures: Chairman Arthur Bennett, Councilman Gilmer Bennett, Councilman Little John Bennett, Councilwoman Evelyn Shirley, Vice Chairman Charissa Inabnet, Councilman Alex Torres, Jr., Councilman Alex Torres Tall III, Secretary Brianne Strother”

Petitioner acknowledges that these tribal imposters correctly state that they have been “selected”—not elected. As a result, they have violated Article VI of the Articles of Incorporation and are neither Apalachee Tribal members, non-profit corporation members nor officers thereof. See Registrant’s Exhibit G. However, their perjury does not stop here...

On “Trademark/Service Mark Application, Principal Register; TEAS Plus Application; serial no. 88506010; filing date: 7/9/2019” Arthur Bennett attests “to the Commissioner of Trademarks” as follows:

Declaration

Basis: If the applicant is filing the application based on use in commerce under 15 U.S.C. section 1051 (a):

The signatory believes that the applicant is the owner of the trademark/service mark sought to be registered;...

To the best of the signatory’s knowledge and belief, the facts recited in the application are accurate.

AND/OR if the applicant is filing the application based on an intent to use the mark in commerce under 15 U.S.C. section 1051 (b), section 1126 (d);

To the best of the signatory’s knowledge and belief, the facts recited in the application are accurate.

--To the best of the signatory’s knowledge and belief, no other persons, except, if applicable, concurrent users, have the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services of such other persons, to cause confusion or mistake, or to deceive.

--To the best of the signatory's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, the allegations and other factual contentions made above have evidentiary support.

--The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. section 1001, and that such willful false statements and the like may jeopardize the validity of the application or submission of any registration resulting therefrom, declares that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

The electronic signature of Arthur Bennett punctuates this Declaration on 7/9/2019 with a payment accounting date of 7/10/2019.

Actual Registrant, Arthur R. Bennett, has acknowledged in papers filed with this TTAB that the trademark belongs to the "entire tribe" or "main body" of the Apalachee Tribe (last term being Petitioner's wording). Yet, under oath, Arthur R. Bennett attested to the Commissioner of Trademarks:

--To the best of the signatory's knowledge and belief, no other persons, except, if applicable, concurrent users, have the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services of such other persons, to cause confusion or mistake, or to deceive.

18 U.S.C. section 1001—Perjury before Executive Branch agencies

(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully—

(1)

falsifies, conceals, or covers up by any trick, scheme, or device a material fact;

(2)

makes any materially false, fictitious, or fraudulent statement or representation; or

(3)

makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;

shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both. If the matter relates to an offense under chapter 109A, 109B, 110, or 117, or

section 1591, then the term of imprisonment imposed under this section shall be not more than 8 years.

Mr. Keaty, as the legal helper of Arthur R. Bennett and collaborators, has made multiple false and deceptive statements on behalf of his “client”, Arthur R. Bennett, asserting that he is “Chief” and “Chairman” when Arthur R. Bennett is no such thing.

Fed. R. Civ. P. rule 11

Signing Pleadings, Motions, and Other Papers; representations to the court; sanctions

(a) SIGNATURE. Every pleading, written motion, and other paper must be signed by at least one attorney of record in the attorney's name—or by a party personally if the party is unrepresented. The paper must state the signer's address, e-mail address, and telephone number. Unless a rule or statute specifically states otherwise, a pleading need not be verified or accompanied by an affidavit. The court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney's or party's attention.

(b) REPRESENTATIONS TO THE COURT. By presenting to the court a pleading, written motion, or other paper—whether by signing, filing, submitting, or later advocating it—an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

(3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

(c) SANCTIONS.

(1) *In General.* If, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation. Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee.

(2) *Motion for Sanctions.* A motion for sanctions must be made separately from any other motion and must describe the specific conduct that allegedly violates Rule 11(b). The motion must be served under Rule 5, but it must not be filed or be presented to the court if the challenged

paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service or within another time the court sets. If warranted, the court may award to the prevailing party the reasonable expenses, including attorney's fees, incurred for the motion.

(3) *On the Court's Initiative.* On its own, the court may order an attorney, law firm, or party to show cause why conduct specifically described in the order has not violated Rule 11(b).

(4) *Nature of a Sanction.* A sanction imposed under this rule must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated. The sanction may include nonmonetary directives; an order to pay a penalty into court; or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of part or all of the reasonable attorney's fees and other expenses directly resulting from the violation.

What is a Claim and How is it Stated?

Fed. R. Civ. P. Rule 8 – General Rules of Pleading

Claim for Relief. A pleading that states a claim for relief must contain:

- (1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;
- (2) a short and plain statement of the claim showing that the pleader is entitled to relief; and
- (3) a demand for the relief sought, which may include relief in the alternative or different types of relief.

37 C.F.R. PART 2-RULES OF PRACTICE IN TRADEMARK CASES

CANCELLATION

§ 2.112 Contents of petition for cancellation.

(a) The petition for cancellation must set forth a short and plain statement showing why the petitioner believes he, she or it is or will be damaged by the registration, state the ground for cancellation, and indicate, to the best of petitioner's knowledge, the name and address, and a current email address(es), of the current owner of the registration...

§ 2.115 Amendment of pleadings in a cancellation proceeding.

Pleadings in a cancellation proceeding may be amended in the same manner and to the same extent as in a civil action in a United States district court.

[48 FR 23136, May 23, 1983]

Accordingly, in the petition for cancellation, Petitioner must establish that (1) he has standing to maintain the proceeding, and (2) a valid ground exists for opposing the mark. *Lipton Indus., Inc. v. Ralston Purina Co.*, 670 F. 2d 1024, 213 USPQ 185, 187 (CCPA 1982). At

the motion to dismiss stage, the Board does not consider the merits of Petitioner’s standing or its claims but only considers whether the pleading is sufficient to state a claim to relief that is plausible on its face. *Bell Atl. Corp. v Twombly*, 550 U.S. 544, 570 (2007); *Libertyville Saddle Shop v. E. Jeffries & Sons, Ltd.*, 22 USPQ2d 1594, 1597 (TTAB 1992).

pp. 2 & 3, *Charles Bertini v. Apple Inc.*, Cancellation No. 92068213 (October 9, 2018)

A claim of fraud based on a declaration in the application must include particular facts which, if proven, would establish that: (1) there was in fact another use of the same or a confusingly similar mark at the time the oath was signed; (2) the other user had legal rights superior to the applicant’s; (3) applicant knew that the other user had rights in the mark superior to applicant’s, and either believed that a likelihood of confusions would result from applicant’s use of its mark or had no reasonable basis for believing otherwise; and that (4) applicant, in failing to disclose these facts to the Patent and Trademark Office, intended to procure a registration to which it was not entitled .

...to the extent that Petitioner intends to plead a fraud claim based on Respondent’s knowledge of Petitioner’s use, the claim cannot be based on an allegation that Respondent “knew or could have known about Petitioner’s use”. See *In Re Bose Corp.*, 580 F.3d 1240, 91 USPQ2d 1938, 1941 (Fed. Cir. 2009) (fraud may not be based on finding that party “knew or should have known”.

pp. 4 & 5, *Charles Bertini v. Apple Inc.*, Cancellation No. 92068213 (October 9, 2018)

Fraud in procuring or maintaining a registration may occur when an applicant for registration or a registrant in a declaration of use or renewal application knowingly makes specific false, material representations of fact in connection with an application to register or in a post-registration filing with the intent of obtaining or maintaining a registration to which it is otherwise not entitled. See *In Re Bose Corp.*, 91 USPQ2d at 1942. Thus, to assert a viable claim of fraud, the plaintiff must allege with particularity, rather than by implied expression, see Fed. R. Civ. P. 9(b), that the defending party knowingly made a false, material representation in the procurement of, maintenance of, or renewal of a registration with the intent to deceive the U.S. Patent and Trademark Office.

p. 7, *Charles Bertini v. Apple Inc.*, Cancellation No. 92068213 (October 9, 2018)

However, Petitioner has successfully surmounted this hurdle which was triggered when Petitioner uttered fraud allegations against Registrant. Petitioner achieved this by citing and submitting multiple sworn affidavits, ample documentary evidence, and a 4/14/2018 tribal election video in Petitioner’s Motion to Amend. Petitioner convincingly proved that Registrant successfully lied to and deceived the USPTO—a Federal agency—when Registrant registered his trademark.

Standing

...All that is required for a petitioner to plead standing to file the complaint is that it allege facts sufficient to show a “real interest” in the proceeding. *Int’l Order of Job’s Daughters v. Lindeburg & Co.*, 727 F.2d 1087, 220 USPQ 1017, 1020 (Fed. Cir. 1984). Under the Lanham Act, standing requires only that a plaintiff believe that it is likely to be damaged by the registration. See *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1844 (Fed. Cir. 2000)...See *Empresa Cubana del Tobacco v. Gen. Cigar Co.*, 111 USPQ2d 1058, 1062 (Fed. Cir. 2014) and *Corcamore, LLC, v. SFM, LLC*, 2020 USPQ2d 11277 (Fed. Cir. 2020) [precedential].

p. 3, *Charles Bertini v. Apple Inc.*, Cancellation No. 92068213 (October 9, 2018)

Petitioner successfully established his standing in this matter. Arthur R. Bennett and his collaborators failed to prove their standing.

On 12/27/1995, articles of incorporation were filed for a non-profit corporation with the Louisiana Secretary of State. The name of the corporation was “Apalachee Indians of Louisiana”. See Petitioner’s Exhibit A, Articles of Incorporation.

The purpose of the corporation is stated in Article II:

The purpose of this corporation is to re-establish the cultural and social heritage of Apalachee Indians of Louisiana and those members of the Indian Race, who live, have lived and whose ancestors have lived in the state of Louisiana and engaged in any lawful activity for which a corporation may be formed under the law of the State of Louisiana and elsewhere as might be permitted by law.

Thus, to belong to the 12/27/1995 non-profit corporation or to serve as an officer, a person must be an Apalachee or a member “of the Indian Race”.

Petitioner appears on list of two hundred twenty-one certified descendants of Salomon de Apalachee—the mid-18th century Apalachee chief--which was prepared by Professional Genealogist, Mayra Sanchez-Johnson Arthur R. Bennett and his collaborators do not appear in the Mayra Sanchez-Johnson Genealogy, and by this late date, Arthur R. Bennett and his collaborators have failed to produce their own certified genealogies or DNA tests confirming Apalachee or any other American Indian heritage.

Registrant's Exhibit E is a document dated 10/25/2015 and authored by Arthur R. Bennett which states that having been appointed Second Chief by founding First Chief Gilmer Tunney Bennett, Sr., he assumes the post of Chief upon the death of Chief Gilmer Tunney Bennett, Sr. on 10/22/2015. This was a self-appointment and did not follow an election as required by Articles of Incorporation, Article VI Voting Rights:

“All voting rights to be by affirmative vote of at least 51% of the so entitled to vote.”

In Exhibit E, Arthur R. Bennett alludes to a constitution but no “constitution” is listed as a document filed with the Louisiana Secretary of State. Petitioner's Exhibit A:

As Secretary of State of the State of Louisiana, I do hereby Certify that the attached document(s) of Talimali Band The Apalachee Indians of Louisiana are correct and are filed in the Louisiana Secretary of State's Office:

ORIGF 12/27/1995 8 pages

NMCHG 6/17/1996 1 page

AMEND 3/18/1998 1 page

12236 1/16/2020 3 pages

19 AR 11/30/2019 1 page

In testimony whereof, I have hereunto set my hand and caused the Seal of my office to be affixed a the City of Baton Rouge on, August 31, 2020

Signed R. Kyle Ardoin, Secretary of State

It must be assumed that any such “constitution” was concocted by Arthur R. Bennett and his collaborators for their respective and unlawful self-appointments.

Of those “entitled to vote”, Shalyian Jenkins, Serena Simonsen , and Kenneth Kerry supported Chief Troy Kerry while Gilmer T. Bennett, Jr., Zena Lee Spears, and Little John Bennett supported Arthur R. Bennett. This electoral impasse and a criminal proposal to engage in Indian grave

robbery presented to the tribe by Arthur R. Bennett and his collaborators moved the tribe to convene an emergency tribal vote on 4/14/2018 of the political and business sides of the tribe to address leadership of both entities.

Transcript excerpt of election video:

Petitioner (video time counter--5:19): We need to go ahead and have elections for our councilmen, for our chief, for our co-chief, and anybody else who is going to run this tribe.

Arthur R. Bennett (5:35): What is your roll number? Have you been to a meeting before?

5:47 [Gilmer T. Bennett, Jr. rapidly approaches Petitioner and aggressively enters his personal space.]

Petitioner (5:48): Don't come near me! Don't come near me!

[Two men and a woman rapidly separate Petitioner and Gilmer T. Bennett, Jr. The two men are Steven Kerry and Joshua Kerry. The woman is Michelle Kerry.]

Steven Kerry (5:55): How many meetings have we known about?

Gilmer T. Bennett, Jr. (6:02): Give me a few minutes.

Steven Kerry (6:03): How many meetings have we known about?

Gilmer T. Bennett, Jr. (6:05): Give me a few minutes.

[Gilmer T. Bennett, Jr. speaks with the two men and woman (unintelligible)]

Gilmer T. Bennett, Jr. (6:32): I'm so sorry, y'all. The meeting's over.

Petitioner (6:37): The meeting's not over. We're going to have elections and if they don't like it they're not going to be part of the tribe.

Gilmer T. Bennett, Jr. (6:39): You're not part of the tribe now.

Petitioner (6:40): I am part of the tribe.

Gilmer T. Bennett, Jr. (6:44): According to the constitution that we have... You don't realize how much work we've done.

Petitioner (6:46): You made it on your own. You're self-appointed!

See Exhibit O, non-profit corporation October 22, 1999 letter to Bureau of Indian Affairs with tribal roll as attachment including tribal member, roll #57: Troy Kerry, i.e. Petitioner.

Chief Troy Kerry prevailed in the election of 4/14/2018 which was boycotted by Arthur R. Bennett and his collaborators. See Petitioner Exhibits D, E, F, and Petitioner Exhibit G-- CD bearing video of actual 4/14/2018 election.

Following the election, Arthur R. Bennett continues—partly via Mr. Keaty--to claim being “Chief” or “Chairman” of the non-profit corporation. He and his collaborators have refused to surrender non-profit documents to the duly elected Chief and Chairman, Troy Kerry, and his elected Tribal Council.

As a result, Arthur R. Bennett has no standing in either entity and has no legal authority nor Legal Power to file registrations of trademarks in any way linked to the Talimali Band or to the Apalachee Tribe proper.

Material Dispositive Clarification

Respondent's legal counsel, Mr. Keaty, appears confused if not mistaken about whom he is actually representing in this matter. In his filings, Mr. Keaty has stated:

“Suffice it to say that the Registration’s Registrant is not Chief Arthur Bennett, but the non-profit corporation, Talimali Band of the Apalachee Indians of Louisiana, i.e. the entire tribe.”

In Registrant’s Opposition to Petitioner’s Motion to Amend, Mr. Keaty speculates about Petitioner:

“...who claims to be the authorized representative of the Registrant non-profit corporation, apparently petitions against the interest of that same entity.”

Under “Trademark/Service Mark Application, Principal Register; TEAS Plus Application; serial no. 88506010; filing date: 7/9/2019” is entered the name and signature of “Arthur Bennett, Secretary.” On said document, Arthur Bennett attests “to the Commissioner of Trademarks...Declaration, etc.” See page 6 of this paper.

However, as detailed in Motion to Amend, Arthur R. Bennett and his collaborators attended the Apalachee Tribal election of 4/14/2018, refused to participate as candidates, and were aware that Troy Kerry and his council candidates were elected unanimously by the main body of the Apalachee Tribe. Unfortunately, it appears that Mr. Keaty objects to the term “main body of the Apalachee Tribe” while Petitioner deems this to be synonymous with Mr. Keaty’s preferred term: “The entire tribe”.

In Board filings, Arthur R. Bennett has openly acknowledged that he is a self-appointed “Chief” based upon a “constitution” devised by Arthur R. Bennett and his collaborators. This is a constitution which has not been filed with the Louisiana Secretary of State, see Registrant’s Exhibit E and Petitioner’s Exhibit A. As such, it lacks legitimacy and deprives Arthur R. Bennett and his collaborators of any standing in this matter. In Articles of Incorporation of the non-profit corporation, Article...

VI Voting Rights states:

All voting rights to be by affirmative vote of at least 51% of the so entitled to vote. Voting can be done in person or by letter. No one member shall have more than one vote. Entitled to vote being: Officers of Incorporation and Registered Agents/Directors.

Of note is the fact that half of those “entitled to vote” in the non-profit corporation are supporters of duly elected Chief Troy Kerry--the Petitioner in this proceeding. See Petitioner Exhibits D, E, and F. Naturally, Mr. Keaty would prefer that “the issue of governance belongs in the tribal council, not the Trademark Office”. But legal standing to register a trademark is the first, most important step, in the process of applying for a trademark. Without registrant standing, a registration lacks legitimacy and must be cancelled.

Thus, because Petitioner is the duly elected Chief and Chairman of the political (“main body” or “entire”) and business (non-profit corporation) sides of the Apalachee Tribe aka Talimali Band the Apalachee Indians of Louisiana, and does not authorize Attorney Keaty to represent the Talimali Band the Apalachee Indians of Louisiana, Petitioner hereby prays that Board enter the correct Respondent Party name in the title of this TTAB case: Arthur R. Bennett and collaborators.

The absence of a correct case title leads to improper and economically damaging confusion.

Logically, because Mr. Keaty’s alleged client, Talimali Band the Apalachee Indians of Louisiana, is under Petitioner’s de jure control and jurisdiction, and because neither Petitioner nor the main body of the Apalachee Tribe have agreed to contract Mr. Keaty’s legal representation for the non-profit corporation, Mr. Keaty is hereby given ample notice that collection of his legal fees may prove problematic—if not impossible for him.

Perjury and Deceit of Arthur R. Bennett Against USPTO and TTAB

Because Arthur R. Bennett did not participate in the 4/14/2018 election against Tribal political opponent, Chief Troy Kerry, Arthur R Bennett is not the elected “Chairman” of the non-profit corporation nor “Chief” of the main body of the Apalachee Tribe. These facts were well-known to Arthur R. Bennett and to his collaborators when they completed the trademark application and submitted it to the USPTO. See pp. 6 to 8 of this paper. As a result, statements by Registrant to the USPTO and TTAB in this trademark registration matter and to the U.S. Bureau of Indian Affairs in his 3/23/2019 letter to that Federal agency must be deemed intentional false disclosures. First Use of the subject trademark occurred in the 17th century. The entire historic Apalachee Tribe owns the trademark. This fact is not disputed by either party. Thus, the trademark is not the exclusive property of Registrant, Arthur R Bennett and his collaborators—all of whom have no standing in this matter. By holding himself out—falsely-- before the USPTO as the “Secretary” of the non-profit corporation and before the TTAB, in this litigation, as Chief of the main body of the Apalachee Tribe and as Chairman of the non-profit corporation, Registrant’s actions have been deceptive and fraudulent towards the USPTO and the TTAB. The misconduct of Arthur R. Bennett and collaborators has been intentional and malicious.

Precedential Case

In re Kent Pederson, a non-member of the Lakota (Sioux) Tribe, Kent Pederson—a rheumatism medicine salesman—attempted to register the trademark “Lakota” for his rheumatism medicine. A USPTO examiner attorney refused to issue the trademark arguing that Pederson’s trademark alluded to the Lakota Tribe and that this allusion contributed to adverse confusion which would prove damaging to the Lakota Tribe. The TTAB affirmed the examining attorney’s decision to refuse issuance of the trademark, “Lakota”.

Troy Kerry's Trademark Cancellation Case No. 92074759 is identical to *re Kent Pederson*. Arthur R. Bennett, a person or persons having no standing in matters related to the Apalachee Tribe aka Talimali Band the Apalachee Indians of Louisiana, has registered the historic tribal trademark without the approval of the Apalachee Tribe and its duly elected leadership. In the Apalachee case, the person without standing has actually taken the bold step of notifying legitimate Apalachee Tribe members as well as elected Tribal officials and ordering them to immediately cease use of "Talimali Band The Apalachee Indians of Louisiana". See Exhibit Q, notice and accompanying emails.

Stare Decisis and the precedential doctrine requires that the TTAB rule in favor of Petitioner and against the actual Registrant, Arthur R. Bennett. The trademark must be cancelled.

Conclusion

Petitioner prays that:

--TTAB grant requests made by Petitioner in "conclusion" of Petitioner's Motion to Amend plus...

--TTAB correct the title of this cancellation case from Respondent name, Talimali Band the Apalachee Indians of Louisiana, to the factually correct Respondent name, Arthur R. Bennett and collaborators.

Respectfully submitted,

Date: December 1, 2020

/Chief Troy Kerry/

Pro Se/ Unrepresented Party

158 Donna Lane

Stonewall, LA 71078

Email: studyathome@aol.com

Phone:

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that on December 1, 2020, this pleading is being submitted to the Trademark Trial and Appeal Board via electronic means by filing with the Electronic Systems for Trademark Trial and Appeals.

By: _____

/Chief Troy Kerry/

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of this foregoing pleading has been served upon Registrant's Counsel by email and by First Class U.S. Mail at his address of record, namely:

Thomas S. Keaty

Keaty Law Firm, LLC

365 Canal Street, Suite 2410

New Orleans, LA 70130

Email: tskeaty@keatypatentfirm.com

By: _____

/Chief Troy Kerry/

Petitioner: Chief Troy Kerry

v.

Registrant: Talimali Band of the Apalachee Indians

of Louisiana

Cancellation Case No. 92074759

PETITIONER'S

EXHIBIT

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Talimali Band
The Apalachee Indians of Louisiana
P.O. Box 84
Libuse, Louisiana 71348
Office: (318) 561-0210
Fax: (318) 561-2333
Email: Bentac@aol.com

Bureau of Indian Affairs
Caroyln McCullan
1848 C. Street
MS 4660 MIB
Washington, D.C. 20240

October 22, 1999

Dear Carolyn McCullan,

We the governing body of the Talimali Band – The Apalachee Indians of Louisiana verify that this is a certified copy of our official membership roll consisting of our members.

Tribal Council:

Kenneth S. Key

Edward Vercher

Carlton Bennett

Little John Bennett

Bernett Bennett

James A. Key

Gilmer Bennett
Chief Gilmer Bennett

Membership Roll
Talimali Band The Apalachee Indians of Louisiana

Roll# 57
Name: Troy G. Kerry
Address: 5626 N. Heatherstone Drive
Shreveport, Louisiana 71129
D.O.B. August 06, 1963
P.O.B. Shreveport, Louisiana
Father: Robert Kerry
D.O.B. September 18, 1935
P.O.B. Bayou Cypre, Louisiana
Mother: Nela Fay Brown
D.O.B. September 29, 1941
P.O.B. Shreveport, Louisiana

Roll# 58
Name: Kimberly Kerry Gilcrease
Address: 2809 Higgins
Shreveport, Louisiana 71104
D.O.B. October 11, 1965
P.O.B. Shreveport, Louisiana
Father: Robert Kerry
D.O.B. September 18, 1935
P.O.B. Bayou Cypre, Louisiana
Mother: Nela Fay Brown
D.O.B. September 29, 1941
P.O.B. Shreveport, Louisiana

Roll# 59
Name: Michelle L. Kerry
Address: 169 Lee Smith Lane
Grand Cane, Louisiana 71032
D.O.B. October 02, 1969
P.O.B. Shreveport, Louisiana
Father: Robert Kerry
D.O.B. September 18, 1935
P.O.B. Bayou Cypre, Louisiana
Mother: Nela Fay Brown
D.O.B. September 29, 1941
P.O.B. Shreveport, Louisiana

Petitioner: Chief Troy Kerry

v.

Registrant: Talimali Band of the Apalachee Indians

of Louisiana

Cancellation Case No. 92074759

PETITIONER'S

EXHIBIT

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**Louisiana Governor's Office of Indian Affairs
Native American Commission**

November 25, 2020

Trademark Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1451
Alexandria, VA 22313-1451

**Re: Cancellation Case No. 92074759 - Troy Kerry, Petitioner VS. Talimali Band of
the Apalachee Indians of Louisiana, Registrant**

Dear Board Members –

As the Chairwoman of the Native American Commission, I can attest that Chief Troy Kerry has informed the Commission regarding the proceedings which are taking place regarding the above referenced case. The Tribe has been pursuing State Recognition as a Louisiana Tribe for some time now and once the Louisiana Native American Commission finalizes its procedures for State Recognition, they will present their petition. Chief Troy Kerry and his Tribal Council have also requested that the Native American Commission review the evidence and make a determination on the Tribal Election which took place on April 14, 2018 naming Troy Kerry as Chief.

Considering the Tribe has not been granted "Formal Recognition" by the State of Louisiana, I do not understand how a trademark can be issued under the rules governing Tribal Trademarks. It appears that in order to qualify for the trademark of a Tribal name, that a Tribe should have received Formal Recognition through their States legislative process or the Federal Acknowledgement process of the United States Government, but that is simply from my own understanding of reviewing the trademark process.

In consideration of the current proceedings through your department, the Native American Commission will postpone any hearings or determination regarding the State Recognition of the Tribe until the case determination is complete and I ask that we be provided with a copy of the determination of this case by the U.S. Trademark Trial and Appeal Board in order that we may resume our own proceedings and not cause the Tribe any further delay in their State Recognition determination.

If you should have any questions, please contact me via email at shirellparfaitdardar@gmail.com or phone at 985-791-2222. Thank you and many blessings.

Sincerely,



Shirell Parfait-Dardar
Chairwoman, Louisiana Governor's Office of
Indian Affairs Native American Commission
Ph: 985-791-2222

Petitioner: Chief Troy Kerry

v.

Registrant: Talimali Band of the Apalachee Indians

of Louisiana

Cancellation Case No. 92074759

PETITIONER'S

EXHIBIT

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Talimali Band the Apalachee Indians of
Louisiana

261 Libuse Cut-off Rd.
Pineville, LA 71360
318-473-2089
apalacheeofmissionsanluisla@gmail.com

December 01, 2019

To Troy Kerry, Justin Vallery, Serena Simonsen, Shalyian Bennett Jenkins, Michelle Kerry Lindley, Kenneth Kerry and associates,

Under federal and international law, you and any associates of yours will not use the name "Talimali Band" in any way for any purpose. This is a legal trademark of the Talimali Band the Apalachee Indians of Louisiana.

You will not under penalty of the law:

1. Use the name Talimali Band in or on any forms submitted to any institution, organization, state office or federal office.
2. You will not display in public any banners or signs with Talimali Band on it.
3. You will not wear any clothing with Talimali Band on it.
4. You will not display the name Talimali Band in any way, shape or form at the 2019 Winter Solstice Celebration at Mission San Luis in Tallahassee Florida, under penalty of law.
5. You will not sell any products with the name Talimali Band.
6. You will not take any donations using the Talimali Band name.
7. Any activity using the name Talimali Band will be prosecuted to the full extent of the

Chairman Arthur Bennett

Talimali Band The Apalachee Indians of Louisiana

From: Michelle Lindley <miclin8068@icloud.com>
Date: November 20, 2020 at 6:58:50 PM CST
To: Troy Kerry <studyathome@aol.com>
Subject: Fwd: Notification

Sent from my iPhone

Begin forwarded message:

From: Renee Bennett <apalacheeofmissionsanluisla@gmail.com>
Date: December 8, 2019 at 3:10:02 PM CST

To: studyathome@aol.com, Serena Simonsen <talimaliband.apalachee.of.LA@gmail.com>, Shalyian Bennett Jenkins Talimali Band Apalachee Indians <shalyian@yahoo.com>, Michelle Lindley <miclin8068@icloud.com>, kennyk5944@att.net
Subject: Notification

To Troy Kerry and associates,

This is a notification to stop using the Talimali Band name.

See the attached letter.

Chairman Arthur Bennett

Talimali Band The Apalachee Indians of Louisiana