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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, FOR AND ON BEHALF OF THE APALACHEE INDIANS OF LOUISIANA, TALAMALI BAND
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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  
Mark: Talimali Band The Apalachee Indians Of Louisiana

Chief TROY KERRY, )  
for and on behalf of the )  
Apalachee Indians of Louisiana, )  
Talimali Band, )  
 )  
Petitioner )  
 )  
v. )  
 )  
TALIMALI BAND OF THE )  
APALACHEE INDIANS OF LOUISIANA )  
 )  
Respondent/Registrant )

Cancellation No. 92074759

**THIRD AMENDED PETITION FOR CANCELLATION**

Chief Troy Kerry, a United States citizen (hereinafter “Chief Kerry”), for and on behalf the Apalachee Indians of Louisiana, Talimali Band (hereinafter the “Apalachee Tribe”), with a mailing address of 158 Donna Lane, Stonewall, LA 71078, believing that the Apalachee Tribe will be damaged by Registration No. 5,915,019, as it relates to services in International Class 35, hereby petitions to cancel the registration of the mark Talimali Band The Apalachee Indians Of Louisiana® (hereinafter, the “Mark”) for these services.

As grounds therefor, it is alleged:

- 1) The Apalachee are a Native American people who historically lived in the Florida Panhandle. Today, the Apalachee Tribe consists of approximately 300 descendants of the Apalachee Indians of Northwest Florida, who were among the first indigenous North Americans encountered by European explorers.
- 2) Upon information and belief, the first use of the Mark occurred in the 17th century by the Appalachee Indians of Northwest Florida. Today, the Mark is owned by their

descendants, namely, the Apalachee Tribe.

3) Upon information and belief, on December 26, 1995, Respondent/Registrant Talimali Band of the Apalachee Indians Of Louisiana (“Registrant”) was incorporated as a non-profit corporation under Louisiana law, as “Apalachee Indians of Louisiana” and the Articles of Incorporation were filed with the Louisiana Secretary of State on December 27, 1995.

4) Upon information and belief, two individuals, Gilmer Vallery Bennett and Jeanette McCullin Bennett signed a document dated December 26, 1995, titled, “Letter of Consent,” stating, “We THE APALACHEE INDIAN TRIBE by affirmative vote of at least 51% here by [sic] give our consent to APALACHEE INDIANS OF LOUISIANA the use of the name APALCHEE INDIANS in anyway [sic] they see fit.”

5) Upon information and belief, there was never a vote or decision by the Apalachee Tribe to authorize Registrant to use the name APALACHEE INDIANS “in anyway [sic] they see fit” or in any way it may consider appropriate.

6) On June 14, 1996, Registrant’s name was changed from “Apalachee Indians of Louisiana” to “Talimali Band the Apalachee Indians of Louisiana.”

7) Until October 22, 2015, Gilmer Tunnie Bennett, Sr., was the Chief of the Apalachee Tribe. Upon information and belief, Gilmer Tunnie Bennett, Sr., was also known as Gilmer Vallery Bennett. Chief Gilmer died on October 22, 2015.

8) After Chief Gilmer’s death, upon information and belief, his son, Arthur R. Bennett, authored a document, dated October 25, 2015, stating that he had been appointed as Second Chief by Gilmer Tunney Bennett, Sr., and that he was now the Chief of the Apalachee Tribe. Upon information and belief, this document was not created or signed as of the date appearing on the document. Upon information and belief, this document was created after April 14, 2018, and was back-dated.

9) Upon information and belief, there was never a vote or decision by the Apalachee Tribe to elect Arthur R. Bennett as its Chief.

10) Upon information and belief, in or about February 2018, Gilmer T. Bennett, Jr., the brother of Arthur R. Bennett, stated to several members of the Apalachee Tribe that they sought to recover a gold award medallion or “gorget” from the burial grave of the historic Apalachee Tribal Chief Antoine. Upon information and belief, such an action would violate Section 937 of the Louisiana Historic Cemetery Act and 18 U.S.C. Code Section 1170, pertaining to illegal trafficking in Native American human remains and cultural items.

11) Subsequently, at a meeting of Apalachee Tribe on April 14, 2018, an election for the position of Chief was held at a meeting of the Apalachee Tribe. During this meeting Petitioner Chief Kerry was legitimately elected Chief or leader of the Apalachee Tribe. Upon information and belief, both Arthur R. Bennett and Gilmer T. Bennett, Jr., were present at this meeting, but said that they would not participate in the vote.

12) On November 19, 2019, Registrant filed the application for registration that ultimately matured into the registration of the mark **Talimali Band the Apalachee Indians of Louisiana**<sup>®</sup> for “association services, namely, promoting the interests of the Talimali Band of the Apalachee Indians of Louisiana; Club services, namely, promoting the interests of the Talimali Band of the Apalachee Indians of Louisiana” in Class 35, U.S. Registration No. 5915019, which is the subject of this proceeding. The application was signed by Arthur Bennett.

13) The Louisiana Native American Commission (the “Commission”) was created by state statute, effective August 1, 2018, to advise the Louisiana Governor's Office of Indian Affairs on matters relating to Native Americans in Louisiana. The Commission consists of a representative of each federally- recognized and state-recognized tribe. Among other things, the Commission recommends whether a tribe should be recognized by the State of Louisiana.

14) Petitioner Chief Kerry has submitted an application to the Commission on behalf of the Apalachee Tribe, seeking state recognition of the tribe. Upon information and belief, the application for recognition has been approved by the Commission, has been or is the process of being approved by the Louisiana legislature and shortly will be forwarded for signature by the Governor of Louisiana or his designee.

15) On December 1, 2019, Registrant sent to Chief Kerry and others a letter stating,

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 [Registrant] the Talimali Band the Apalachee Indians of Louisiana.

16) Among other things, the letter stated that the recipients and any of their associates may not use the name Talimali Band, including on publicly displayed banners and signs or on clothing, that they may not sell any products with the name Talimali Band, and that “Any activity using the name Talimali Band will be prosecuted to the full extent of the [law].

17) Registrant’s threat has led to some members of the Apalachee Tribe to cease use of “TalimaliBand” on articles such as shirts, cups and decals, *etc.* The sale of such articles has been used to pay expenses for the Apalachee Tribe and some of its members, and the threat has thereby caused monetary damage to the Apalachee Tribe and its members.

18) Failure to cancel Respondent’s registration would be damaging to the image and reputation of the Apalachee Tribe, including damaging to its efforts to attain State and Federal recognition, and damaging to its prospects of future commercial success and prosperity.

#### Count I (Lack of Ownership)

19) Petitioner incorporates the allegations of paragraphs 1-18 as if fully set forth herein.

20) The Mark, **Talimali Band of The Apalachee Indians of Louisiana**, is owned by the Apalachee Tribe.

21) Registrant was never authorized by the Apalachee Tribe to claim ownership of the Mark.

22) The Mark was never assigned by the Apalachee Tribe to Registrant.

23) Even if the Letter of Consent authorized Registrant to use the Mark on behalf of the Apalachee Tribe, such authorization would be in the nature of a license, and not a transfer of ownership of the Mark. However, the Letter of Consent contains no provisions for control of the quality of the goods or services provided by Registrant or, for that matter, for any control over use of the mark by Registrant and, as such, was a naked license and invalid.

24) Registrant is not and never has been the owner of the Mark.

25) If Registrant is permitted to retain the registration sought to be canceled, it will provide Registrant with a basis on which to claim it has the right and authority under federal law to speak for the Apalachee Tribe when, in fact, it does not; to disrupt and interfere with the ongoing efforts by the Apalachee Tribe to obtain sovereign recognition by the government of the State of Louisiana and any further efforts to be obtain sovereign recognition by the governments of the United States and/or Florida; and to disrupt and interfere with other lawful activities engaged in by Chief Kerry and/or the Apalachee Tribe and its members (as it has already done). Any of the foregoing activities by Registrant will damage the prospects of the Apalachee Tribe and its members for commercial and personal success and prosperity, to the great detriment of the Apalachee Tribe and its members.

26) Therefore, the Apalachee Indians of Louisiana, Talimali Band, are being or will be damaged by the continued registration of Registration Number 5,915,019.

#### Count II (Fraud)

27) Petitioner incorporates the allegations of paragraphs 1-26 as if fully set forth herein.

28) In signing the application for registration of the Mark, Registrant represented that it was the owner of the Mark to be registered and that, to the best of its knowledge and belief, no other persons 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.

29) At the time of the application, Registrant did not own the Mark; the Apalachee Tribe owned the Mark; Arthur Bennett was not the Chief of the Apalachee Tribe and was not authorized to sign the application; the Apalachee Tribe and its members were using the Mark or variations on the mark that resemble the mark in commerce; the Apalachee Tribe and its members had the right to use the Mark or variations that closely resemble the mark; and Registrant's rights, if any, in the Mark were not superior to the rights of the Apalachee Tribe.

30) At the time of signing the application, Registrant knew that it did not own the mark; that the Apalachee Tribe owned the Mark; that Arthur Bennett was not the Chief of the Apalachee Tribe and was not authorized to sign the application; that the Apalachee Tribe and its members were using the Mark or variations that closely resemble the mark in commerce; that the Apalachee Tribe and its members had the right to use the Mark or variations that closely resemble the mark; that Registrant's rights, if any, in the Mark were not superior to the rights of the Apalachee Tribe; and that use of the Mark or variations that closely resemble the mark, simultaneously by Registrant and by the Apalachee Tribe, was likely to cause consumer confusion or had no reasonable basis for believing otherwise.

31) Registrant's foregoing allegations were material, false and deceptive and were made with the intent of obtaining a registration to which it was not otherwise entitled.

32) Registrant's failure to disclose the foregoing facts were material, false and deceptive and made with the intent of obtaining a registration to which it was not entitled.

WHEREFORE, Petitioner Chief Troy Kerry, for and on behalf the Apalachee Indians of Louisiana, Talimali Band, prays that this Petition for Cancellation be sustained, that Registration

No. 5915019be cancelled, and for such other relief as the Trademark Trial and Appeal Board may deem appropriate.

Petitioner Chief Troy Kerry, for and on behalf  
the Apalachee Indians of Louisiana, Talimali  
Band

By: /Mitchell H. Stabbe/  
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Dated: June 4, 2021



CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of this foregoing pleading has been served upon the following person, at his said address, by email, on June 4, 2021:

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/Mitchell H. Stabbe/