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

Proceeding	92066411
Party	Plaintiff Oneida Nation
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

ONEIDA NATION,)	
)	
Petitioner	)	CANCELLATION NO. 92066411
)	
v.	)	Registration No. 2,309,491
	)	Serial No. 75/978,733
ONEIDA INDIAN NATION OF NEW YORK	)	Mark: ONEIDA INDIAN NATION
)	
	)	Registration No. 4,808,677
Registrant	)	Serial No. 78/978,999
	)	Mark: ONEIDA
)	
	)	Registration No. 4,813,028
	)	Serial No. 78/978,992
	)	Mark: ONEIDA

FIRST AMENDED CONSOLIDATED PETITION FOR CANCELLATION

Oneida Nation (“Petitioner”), a federally recognized sovereign Indian Tribe, having a reservation located within the borders of the State of Wisconsin, and doing business at N7210 Seminary Road, PO Box 365, Oneida, WI 54155, believes that it is being, and will continue to be, damaged by U.S. Trademark Registration Nos. 2,309,491 (“the ’491 Registration”), 4,808,677 (“the ’677 Registration”), and 4,813,028 (“the ’028 Registration”) on the Principal Register and owned by Oneida Indian Nation of New York, and hereby petitions to cancel these registrations. In support thereof, Petitioner states as follows:

Introduction

1. Petitioner, Oneida Nation, and Registrant, Oneida Indian Nation of New York, are both federally recognized sovereign Indian Tribes.¹

2. Petitioner and Registrant are direct descendants of and successors-in-interest to the original Oneida Indian Nation, one of the six nations of the Iroquois Confederacy, which were the most powerful Indian tribes in the northeastern United States at the time of the American Revolution. Through the Revolutionary period, the Oneidas inhabited millions of acres of land in what is now central New York State.²

3. During the Revolutionary War, the Oneida supported the colonies and served in General George Washington's army. For that service, the Oneida lands in New York were to be protected forever, a promise reflected in the 1794 Treaty of Canandaigua between the Oneida and United States. However, through the 1785 Treaty of Fort Herkimer and the 1788 Treaty of Fort Schuyler with the State of New York, the Oneida lost more than 5 million acres of their ancestral homelands to the State of New York. The State of New York continued to enter into a series of illegal land transactions with the Oneida, until only 32 acres remained in Oneida possession by the 1820s.

4. During the 1820s, several hundred Oneidas relocated to what would become the State of Wisconsin, with only a small number remaining in New York. The emigrating Oneidas became recognized as the Oneida Tribe of Indians of Wisconsin, now recognized as the Oneida

¹ While Registrant identifies itself on its registrations as Oneida Indian Nation of New York, its federally recognized name is Oneida Nation of New York. 82 F.R. 4915, 4917 (Jan. 17, 2017). Registrant indicates in its August 14, 2017 Motion to Dismiss that it changed its official name to Oneida Indian Nation as of March 2017.

² For further background *see, e.g., County of Oneida v. Oneida Indian Nation of New York State*, 470 U.S. 226, 229-231 (1985); *Oneida Indian Nation of New York v. County of Oneida*, 414 U.S. 661, 663-665 (1974); *New York Indians v. United States*, 170 U.S. 1 (1898); *Oneida Indian Nation of New York v. City of Sherrill*, 337 F.3d 139, 144-152 & n.1 (2d Cir. 2003), and historical sources cited therein.

Nation, who entered their final treaty with the United States in 1838, ten years before Wisconsin entered statehood.

5. The Oneidas that remained in New York became recognized as the Oneida Nation of New York.

6. For well over 100 years, both tribes have functioned as sovereign Indian Tribes, using the terms Oneida, Oneida Tribe, Oneida Indian Tribe, Oneida Nation, and Oneida Indian Nation to identify themselves.

7. Petitioner, for well over 100 years, has used the terms Oneida, Oneida Tribe, Oneida Indian Tribe, Oneida Nation, and Oneida Indian Nation to identify itself and the source of various goods and services provided by it to its members and members of the general public.

8. Petitioner submits that in light of this history and longstanding use of these terms by both entities, both tribes should be able to use and continue to use the terms Oneida, Oneida Tribe, Oneida Indian Tribe, Oneida Nation, and Oneida Indian Nation to identify themselves.

9. Registrant Oneida Indian Nation of New York, however, has turned to the Trademark Laws of the United States in an effort to claim nationwide exclusivity over the marks ONEIDA and ONEIDA INDIAN NATION, including efforts directed at limiting the Petitioner's own use of the name Oneida that it has used for hundreds of years, and limiting Petitioner's own use of its federally recognized name—Oneida Nation, thereby harming Petitioner.

Petitioner

10. As set forth above, Petitioner traces its origins to parties of the original Oneida Indian Nation who relocated to what is now Wisconsin in the 1820s, and who entered their final treaty with the United States in 1838.³

³ The text of this treaty may be found at <http://digital.library.okstate.edu/Kappler/vol2/treaties/one0517.htm>.

11. In 1978, the U.S. Department of the Interior adopted regulations setting out “Procedures for Establishing That an American Indian Group Exists as an Indian Tribe.” 43 F.R. 39361 (Sept. 5, 1978). The regulations expressly exempted tribes that were already recognized from these procedures, and required the Bureau of Indian Affairs to publish an initial list of tribes that were already recognized. 43 F.R. 39362-63 (25 CFR §§ 54.3 and 54.6(b)). This initial list of recognized tribes was published in 1979, and included the Oneida Tribe of Wisconsin. 44 F.R. 7235, 7236 (Feb. 6, 1979). In 2002, the federally recognized name was amended to Oneida Tribe of Indians of Wisconsin. 67 F.R. 46328, 46330 (July 12, 2002).

12. On May 2, 2015, Petitioner conducted an election adopting several amendments to its Constitution, including an amendment to change its name from Oneida Tribe of Indians of Wisconsin to Oneida Nation. The Bureau of Indian Affairs approved this amendment on June 16, 2015, and this change was published in 2016. 81 F.R. 26826, 26827 (May 4, 2016).

13. Petitioner owns U.S. Trademark Reg. No. 3,016,505 for the mark ONEIDA within a stylized design:



14. Petitioner’s U.S. Trademark Reg. No. 3,016,505 registered on November 22, 2005, from Application Serial No. 75/575,398 filed on October 23, 1998, for IC 035 / US 100, 101, and 102: Retail store services featuring convenience store items and gasoline; IC 041 / US 100, 101, and 107: Casinos; and IC 042 / US 100 and 101: Hotel and restaurant services; retail

and commercial printing and graphics art design services. The '505 Registration recites a first use and first use in commerce in 1992.

15. Petitioner owns common law trademark rights in the character mark ONEIDA.

16. Petitioner is the owner of Oneida Golf Enterprises Corporation ("OGEC"), a tribal corporation of the Oneida Nation.

17. In October 2015, OGEC reached an agreement with the Ladies Professional Golf Association ("LPGA") to host and sponsor an LPGA golf tournament at the Thornberry Creek at Oneida golf course, a golf course owned by Petitioner and operated by OGEC. On October 20, 2015, the LPGA issued a press release titled "Oneida Nation to Sponsor New LPGA Tour Event in Green Bay in 2017." Ex. A. The press release stated, in part: "The [LPGA] announced today that the Oneida Nation has agreed to title sponsor a new event in 2017, the Oneida LPGA Classic, on the Oneida Reservation immediately near Green Bay, Wisconsin. The tournament will take place at Thornberry Creek at Oneida, a course owned by Oneida Nation and managed by the Oneida Golf Enterprises Corporation."

18. This press release apparently caught the eye of Registrant, as discussed below.

19. Petitioner has used in the past and has a bona fide intent to use the ONEIDA and ONEIDA INDIAN NATION marks, or similar marks, for the same or related goods and services identified in the '491 Registration, the '677, Registration, and the '028 Registration.

Registrant

20. On information and belief, Registrant Oneida Indian Nation of New York is the owner of record of the '491 Registration, the '677, Registration, and the '028 Registration.

21. On information and belief, Registrant's address and email information is 2037 Dreamcatcher Plaza, Oneida, NY 13421; 5218 Patrick Road, Verona, NY 13478; tmdocketing@oneida-nation.org; and mbeakman@oneida-nation.org.

22. As set forth above, on information and belief, Registrant traces its origins to the Oneidas who remained in New York following the relocation of other Oneidas to what is now Wisconsin in the 1820s.

23. In 1978, the U.S. Department of the Interior adopted regulations setting out “Procedures for Establishing That an American Indian Group Exists as an Indian Tribe.” 43 F.R. 39361 (Sept. 5, 1978). The regulations expressly exempted tribes that were already recognized from the procedures, and required the Bureau of Indian Affairs to publish an initial list of tribes that were already recognized. 43 F.R. 39362-63 (25 CFR §§ 54.3 and 54.6(b)). This initial list of recognized tribes was published in 1979, and included the Oneida Nation of New York. 44 F.R. 7235, 7236 (Feb. 6, 1979). Oneida Nation of New York remains Registrant’s federally recognized name. 82 F.R. 4915, 4917 (Jan. 17, 2017).

24. On November 25, 2015, legal counsel for Registrant sent a letter to Ms. Elizabeth Moore, the Chief Legal Officer of the LPGA, attached as Exhibit B. The letter noted “We represent the Oneida Nation of New York (the “Oneida Nation”). Attached to the letter was a copy of the October 20, 2015 press release attached herein as Ex. A.

25. The letter asserted: “Our client has continuously used and been recognized as the ONEIDA and the ONEIDA NATION for hundreds of years. The Indian nation located in Wisconsin is federally recognized as the Oneida Tribe of Indians of Wisconsin.”

26. The letter further asserted: “In addition to its long history and use of the ONEIDA and ONEIDA NATION names, the Oneida Nation owns numerous federal trademarks for the ONEIDA trademark, including U.S. Reg. No. 4813028 for ‘conducting sporting events, namely boxing, yoga, lacrosse, and golf,’ among others.”

27. The letter further asserted: “The Oneida Nation is understandably concerned about the LPGA’s Press Release for the ‘Oneida LPGA Classic’ because consumers are likely to

be confused to believe that the tournament is licensed by, sponsored by, endorsed by, or otherwise connected to the Oneida Nation, when in fact, it is not.”

28. The letter further demanded that the LPGA “(1) immediately and permanently cease all use of the ONEIDA and ONEIDA NATION name and mark in connection with the ‘Oneida LPGA Classic;’ (2) cease all use, distribution, posting, display and dissemination of the Press Release, including without limitation removing it from all websites; and (3) refrain from any use of the Press Release or similar statements and/or advertisements in the future that, among other things, falsely suggest that the Oneida Nation is associated or affiliated in any way with the ‘Oneida LPGA Classic.’”

29. Because of the threats and business interference from Registrant to Petitioner’s business partner the LPGA, Petitioner acted to change the name of the LPGA tournament, to be conducted July 6-9, 2017, to Thornberry Creek LPGA Classic. In doing so, Petitioner was forced to avoid using its own name in order to avoid potential business losses and disruption intentionally caused by Registrant.

30. Based on Registrant’s acts, Petitioner believes that it has been and will be damaged by the ’491 Registration, the ’677, Registration, and the ’028 Registration, and therefore has a real interest in this cancellation proceeding.

Registrant’s ’491 Registration

31. The application for what issued as the ’491 Registration was filed on July 13, 1994 as Serial Number 74/548,930 for the mark ONEIDA INDIAN NATION.

32. The July 13, 1994 application stated that Registrant has adopted and is using the mark shown on the accompanying drawing for the following recitation of goods and services:

Class 14: Key fobs, pins

Class 16: Decals; Christmas cards; directories, newsletters, folders, stationary

Class 18: Tote bags

Class 21: Mugs; drinking glasses

Class 24: Flags

Class 25: Clothing – namely, t-shirts, hats, sweatshirts, sport shirts

Class 35: Governmental services – namely, vital statistics services, police services, medical care services, family care services; legal services; youth corps services; housing services

Class 36: Scholarship and educational financial assistance

Class 37: Construction and home maintenance services

Class 41: Entertainment services – namely, gaming services, live entertainment services; educational services relating to the culture, heritage and language of the Oneida Indian nation; providing recreational facilities and programs; information center services; information and referral services and

Class 42: Restaurant and non-alcoholic bar services; retail gift shop services; retail smoke shop services.

33. The July 13, 1994 application contained the following statements:

An exception to the applicant's exclusive use of ONEIDA as part of the mark shown on the accompanying drawing is The Oneida Tribe of Indians of Wisconsin, Inc., Oneida, Wisconsin, which is a tribe incorporated under the law of the United States and recognized by the United States as separate and distinct from the applicant Nation. The Oneida Tribe of Indians of Wisconsin, Inc. has used The Oneida Tribe of Indians of Wisconsin, Inc. since May 1, 1937 to identify itself, its goods and its services in Wisconsin. On information and belief, prior to May 1, 1937, the Oneida Tribe of Indians of Wisconsin, Inc. was also known as The Oneida Tribe of Wisconsin and/or The Oneida Tribe of Indians of the Oneida Reservation in Wisconsin.

The applicant disclaims "Indian Nation" separate and apart from the mark on the accompanying drawing.

34. The July 13, 1994 application further included a sworn declaration dated June 21, 1994 by Mr. Ray Halbritter as Nation Representative. The declaration certified that, to the best of his knowledge and belief, no other persons, firm, corporation, or association except as stated in the Statement, has 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 person, to cause confusion or mistake, or to deceive; that all statements made herein of his own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the warning that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any registration resulting therefrom.

35. On information and belief, Registrant was not using the ONEIDA INDIAN NATION mark on all the goods and services recited in the July 13, 1994 application.

36. On information and belief, Registrant was not using the ONEIDA INDIAN NATION mark on at least the following goods and services at the time of the July 13, 1994 application: key fobs, Christmas cards, folders, stationary, hats, sweatshirts, sport shirts, and construction and home maintenance services.

37. Although the application stated "Three (3) specimens showing the mark as currently used for goods and services in each of the classes set forth herein are presented herewith", the official record available to Petitioner does not include such specimens.

38. In an Office Action dated February 27, 1995, the Trademark Office stated:

The specimens of record are acceptable for all classes except Class 14, pins, and Class 35, vital statistics services. None of the specimens for services appear to reference vital statistics services, and it is not clear from the record that specimens for pins have been presented. The requirements for these specimens are stated below.

The specimens do not show use of the mark for any goods in Class 14 identified in the application. The applicant must submit three specimens demonstrating use of the mark for the goods specified' 37 C.F.R.. Sections 2.56 and 2.58. The applicant must verify, with an affidavit or a declaration under 37 C.F.R. Section 2.20 that the substitute specimens were in use in commerce at least as early as the filing date of the application. 37 C.F.R. Section 2.59(a); TMEP section 905.1 0.

The specimens do not show use of the mark for any services in Class 35 identified in the application. The applicant must submit three specimens showing use of the mark for the services specified. 37 C.F.R. Sections 2.56 and 2.58. The applicant

must verify, with an affidavit or a declaration under 37 C.F.R. Section 2.20, that the substitute specimens were in use in commerce at least as early as the filing date of the application. 37 C.F.R. Section 2.59(a); TMEP section 905.10.

The Office Action further noted that if Registrant added class 6, 18 or 20 to the application that additional specimens of use were required.

39. Registrant submitted an Amendment to the application on August 25, 1995, which included a substitute statement and declaration. The Amendment also included photocopies of specimens for classes 6, 14, and 35. The official record available to Petitioner, however, does not include such specimens.

40. The August 1995 statement also stated:

An exception to the applicant's exclusive use of ONEIDA as part of the mark shown on the accompanying drawing is The Oneida Tribe of Indians of Wisconsin, Inc., Oneida, Wisconsin, which is a tribe incorporated under the law of the United States and recognized by the United States as separate and distinct from the applicant Nation. The Oneida Tribe of Indians of Wisconsin, Inc. has used The Oneida Tribe of Indians of Wisconsin, Inc. since May 1, 1937 to identify itself, its goods and its services in Wisconsin. On information and belief, prior to May 1, 1937, the Oneida Tribe of Indians of Wisconsin, Inc. was also known as The Oneida Tribe of Wisconsin and/or The Oneida Tribe of Indians of the Oneida Reservation in Wisconsin. . . .

The applicant disclaims "Indian Nation" separate and apart from the mark on the accompanying drawing.

41. The August 1995 amendment further included a sworn declaration dated August 30, 1995 by Mr. Ray Halbritter as Nation Representative. The declaration certified that, to the best of his knowledge and belief, no other persons, firm, corporation, or association except as stated in the Statement, has 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 person, to cause confusion or mistake, or to deceive.

42. Application 74/548,930 published for opposition on September 24, 1996. The publication notice stated:

SUBJECT TO CONCURRENT USE PROCEEDING WITH THE ONEIDA
TRIBE OF INDIANS OF WISCONSIN ONEIDA RESERVATION
WISCONSIN APPLICANT CLAIMS EXCLUSIVE RIGHT TO USE THE
MARK IN THE ENTIRE UNITED STATES WITH THE EXCEPTIONS OF
WISCONSIN

43. On December 16, 1997, Registrant filed an Amendment After Publication for Application 74/548,930. The remarks stated, in part, the “Applicant has amended its application to remove any exception to the registration of its mark throughout the United States. Nothing else has changed.” The December 1997 amendment contained no explanation as to why the previously identified exception was incorrect or inapplicable, or why removal of the exception was otherwise appropriate.

44. The December 1997 amendment contained a substitute statement and declaration. The substitute statement omitted the prior reference to Petitioner’s prior use of ONEIDA, while asserting that the ONEIDA portion of the mark was distinctive in light of Registrant’s “substantially exclusive and continuous use in commerce within the Indian Nation since as early as 1492 in connection with the applicant’s goods and services.” The December 1997 statement contained no explanation as to why the previously identified exception was incorrect or inapplicable, or why removal of the exception was otherwise appropriate.

45. The December 1997 amendment further included a sworn declaration dated December 9, 1997 by Mr. Ray Halbritter as Nation Representative. The declaration certified that, to the best of his knowledge and belief, no other persons, firm, corporation, or association has 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 person, to cause confusion or mistake, or to deceive. The December 1997 declaration contained no explanation as to why the previously identified exception was incorrect or inapplicable, or why removal of the exception was otherwise appropriate.

46. On or before December 9, 1997, Registrant knew that Petitioner was using and had used the mark ONEIDA in conjunction with at least the following goods and services: newsletters pertaining to nation's events and issues; government services; entertainment services, namely casino services, bingo services; lottery services; and retail smoke shop services.

47. Application 74/548,930 re-published for opposition on March 10, 1998, omitting the exception related to Petitioner's use in Wisconsin.

48. On March 8, 1999, third party Oneida Ltd. filed a Notice of Opposition, requesting that registration of the ONEIDA INDIAN NATION mark by Registrant be denied with respect to Class 21.

49. On April 1, 1999, Registrant filed a Motion to Divide Application with the Trademark Trial and Appeal Board, requesting that Application 74/548,930 be divided into one application covering Class 21, at issue in the instituted Opposition, and a second application covering the unopposed classes. The Trademark Trial and Appeal Board granted the motion on June 7, 1999. On August 14, 1999, the Patent and Trademark Office issued a letter confirming that the divisional request had been completed, and that all classes other than Class 21 had been placed in newly created Application 75/978,733.

50. Application 75/978,733 matured as the '491 Registration on January 18, 2000.

51. Accordingly, on January 18, 2000, Registrant obtained the '491 Registration for the trademark and service mark ONEIDA INDIAN NATION for the following goods and services:

IC 006. US 002 012 013 014 023 025 050. G & S: metal key fobs.

IC 014. US 002 027 028 050. G & S: ornamental pins.

IC 016. US 002 005 022 023 029 037 038 050. G & S: decals; Christmas cards; nation directory of member services, newsletters pertaining to nation's events and issues; folders, stationery.

IC 018. US 001 002 003 022 041. G & S: tote bags.

IC 024. US 042 050. G & S: cloth flags.

IC 025. US 022 039. G & S: clothing, namely T-shirts, hats, sweatshirts, sports shirts.

IC 035. US 100 101 102. G & S: government services, namely, vital statistics services.

IC 036. US 100 101 102. G & S: providing educational, scholarship, welfare and personal financial assistance services to families and individuals in the form of check disbursements; providing personal loan services; providing housing agency services; providing home repair financial assistance services.

IC 037. US 100 103 106. G & S: construction and home maintenance services.

IC 041. US 100 101 107. G & S: entertainment services, namely casino services, bingo services, lottery services, live variety entertainment services in the nature of musical performances, seminars, workshops, lectures and classes relating to the culture, heritage and language of the Oneida Indian nation; providing recreational facilities and programs.

IC 042. US 100 101. G & S: restaurant and non-alcoholic bar services; retail smoke shop services; medical care services; legal services, police protection services, providing temporary housing accommodations, child care services, family counseling services, heating assistance services, financial assistance services, mental health assistant services, home visit services, nutrition program services, youth counseling services regarding alcohol and other substance abuse.

The '491 Registration further provides: "NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE 'INDIAN NATION' APART FROM THE MARK AS SHOWN."

52. On January 18, 2006, Registrant filed a Declaration under Sections 8 and 15 executed by Mr. Ray Halbritter. The Declaration certified under oath that Registrant is using the mark in commerce on or in connection with all of the goods and services recited in the existing registration, except for metal key fobs in International Class 6. The Declaration further included 10 specimens, which it asserted showed use of the ONEIDA INDIAN NATION mark as used in commerce in each of ten different classes. The Declaration further certified that Registrant has used the mark in commerce for over five consecutive years immediately preceding the execution

of the Declaration on or in connection with the goods and services recited in the registration, except for metal key fobs in International Class 6.

53. The January 18, 2006 specimens did not include specimens purporting to demonstrate use on at least: Christmas cards; nation directory of member services, newsletters pertaining to nation's events and issues; folders; stationery; hats; sweatshirts; providing personal loan services; construction and home maintenance services; casino services; bingo services; lottery services; workshops, lecturers and classes relating to the culture, heritage and language of the Oneida Indian nation; providing recreational facilities and programs; restaurant and non-alcoholic bar services; retail smoke shop services; legal services; police protection services; child care services; family counseling services; heating assistance services; financial assistance services; mental health assistant services; home visit services; nutrition program services; youth counseling services regarding alcohol and other substance abuse.

54. The January 18, 2006 Declaration did not include a statement certifying that to the best of his knowledge and belief, no other persons, firm, corporation, or association has 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 person, to cause confusion or mistake, or to deceive.

55. Registrant was not using on January 18, 2006 and had not for five consecutive years before the January 18, 2006 Declaration exclusively used the ONEIDA INDIAN NATION mark of the '491 Registration in commerce in connection with all of the goods and services listed in the registration.

56. On or before January 18, 2006, Registrant knew that Petitioner was using and had used the mark ONEIDA in conjunction with at least the following goods and services: Newsletters, casino services; bingo services; lottery services; workshops, lecturers and classes

relating to the culture, heritage and language of the Oneida Indian nation; and retail smoke shop services.

57. When Mr. Halbritter executed the declaration filed on January 18, 2006, he was aware of rights by others, including but not limited to Petitioner, to use the ONEIDA mark in connection with the identified goods and services.

58. When Mr. Halbritter executed the declaration filed on January 18, 2006, he was aware that an exception to Registrant's exclusive use of ONEIDA was Petitioner, which is a tribe organized under the law of the United States and recognized by the United States as separate and distinct from Registrant.

59. On July 19, 2010, Registrant filed a Declaration under Sections 8 and 9. The Declaration was executed by Peter D. Carmen, Chief Operating Officer, and certified under oath that Registrant is using the mark in commerce on or in connection with all of the goods and services recited in the existing registration, except for decals (Class 16), nation directory of member services (Class 16), folders (Class 16), government services, namely vital statistics services (Class 35), providing housing agency services (Class 36), providing home repair financial assistance services (Class 36), home maintenance services (Class 37), child care services (Class 42), heating assistance services (Class 42), and home visit services (Class 42). The Declaration further included nine specimens, which it asserted showed use of the ONEIDA INDIAN NATION mark as used in commerce in each of nine different classes.

60. The July 19, 2010 specimens did not include specimens purporting to demonstrate use on at least: Christmas cards; stationary; cloth flags; clothing, namely T-shirts, hats, sweatshirts, sports shirts; providing personal loan services; construction services; casino services; lottery services; workshops, lectures and classes relating to the culture, heritage and language of the Oneida Indian nation; providing recreational facilities and programs; restaurant

and non-alcoholic bar services; retail smoke shop services; legal services; police protection services; family counseling services; financial assistance services; nutrition program services; youth counseling services regarding alcohol and other substance abuse.

61. The July 19, 2010 Declaration did not include a statement certifying that to the best of his knowledge and belief, no other persons, firm, corporation, or association has 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 person, to cause confusion or mistake, or to deceive.

62. On or before July 19, 2010, Registrant knew that Petitioner was using and had used the mark ONEIDA in conjunction with at least the following goods and services: Newsletters, casino services; bingo services; lottery services; workshops, lectures and classes relating to the culture, heritage and language of the Oneida Indian nation; and retail smoke shop services.

63. When Mr. Carmen executed the declaration filed on July 19, 2010, he was aware of rights by others, including but not limited to Petitioner, to use the ONEIDA mark in connection with the identified goods and services.

64. When Mr. Carmen executed the declaration filed on July 19, 2010, he was aware that an exception to Registrant's exclusive use of ONEIDA was Petitioner, which is a tribe organized under the law of the United States and recognized by the United States as separate and distinct from Registrant.

65. Registrant was not using on July 19, 2010 and had not for five consecutive years before the July 19, 2010 Declaration exclusively used the ONEIDA INDIAN NATION mark of the '491 Registration in commerce in connection with all of the goods and services listed in the registration.

66. Registrant's use, if any, and registration of the ONEIDA INDIAN NATION mark is without Petitioner's consent or permission.

Registrant's '677 Registration

67. Registrant's application for what issued as the '677 Registration was filed on January 26, 2006 as Serial Number 78/800,006 for the mark ONEIDA.

68. The January 26, 2006 application was filed under Section 1(b), and included the certification that the "applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services":

IC 016. G & S: Newsletters pertaining to Oneida Indian Nation events and issues; newspapers and magazines of general circulation about Indian issues; decals; greeting cards; stationery.

IC 018. G & S: Bags.

IC 025. G & S: Clothing, headwear, and footwear.

IC 030. G & S: Sauces, seasonings.

IC 035. G & S: Promoting tourism in and to the Oneida Indian Nation and its environs.

IC 036. G & S: Charitable services, namely, providing financial assistance to families and individuals; providing educational scholarships.

IC 037. G & S: Construction and home maintenance services; automobile service station services.

IC 039. G & S: Marina services; air transportation services.

IC 042. G & S: Legal services.

IC 043. G & S: Child care services; providing temporary housing accommodations.

IC 044. G & S: Medical services; governmental services, namely, heating assistance services, mental health assistance services, home nursing aid services, family counseling services, nutrition counseling services, providing food, counseling services in the fields of alcohol and substance abuse, housing agency services, vital statistics services.

IC 045. G & S: Police protection services.

69. Registrant's January 26, 2006 Application further included a Declaration by Registrant's counsel Christine Baty Heinze on behalf of Registrant, certifying that to the best of her knowledge and belief, no other persons, firm, corporation, or association has the right to use the mark ONEIDA 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 person, to cause confusion or mistake, or to deceive.

70. On or before January 26, 2006, Registrant knew that Petitioner was using and had used the mark ONEIDA in conjunction with at least the following goods and services: Newsletters pertaining to Oneida Indian Nation events and issues; automobile service station services; and governmental services.

71. On information and belief, when Registrant submitted its application on January 26, 2016, it had no bona fide intent to use the ONEIDA mark in all of the identified goods and services.

72. When Ms. Heinze executed the declaration filed on January 26, 2006, she was aware of rights by others, including but not limited to Petitioner, to use the ONEIDA mark in connection with the identified goods and services.

73. When Ms. Heinze executed the declaration filed on January 26, 2006, she was aware that an exception to Registrant's exclusive use of ONEIDA was Petitioner, which is a tribe organized under the law of the United States and recognized by the United States as separate and distinct from Registrant.

74. Following issue of an office action, on July 6, 2007, Registrant submitted a response including amendments and a request to divide. Registrant requested that certain services be divided out and placed in a newly created child application. Registrant asserted that

the divided services were identical to a subset of the original application, when in fact the division enlarged the goods and services.

75. The Patent and Trademark Office completed the divisional request on August 23, 2007, including the divided goods and services within Serial Number 78/978,999:

IC 016. G & S: Newsletters pertaining to Oneida Indian Nation events and issues; newspapers and magazines of general circulation about Indian issues; decals; greeting cards; stationery.

IC 018. G & S: Bags, namely, tote bags, sports bags, gym bags, shopping bags, and golf bags.

IC 030. G & S: Sauces, seasonings.

IC 035. G & S: Promoting tourism in and to the Oneida Indian Nation and its environs; and governmental services, namely, vital statistics services.

IC 036. G & S: Charitable services, namely, providing financial assistance to families and individuals; providing educational scholarships; governmental services, namely, providing financial assistance for payment of heating services and providing housing agency services in the nature of financial assistance for housing, and family counseling in the areas of financial and budgeting skills..

IC 037. G & S: Construction and home maintenance services.

IC 039. G & S: Marina services; air transportation services.

IC 042. G & S: Legal services.

IC 043. G & S: Child care services; providing temporary housing accommodations; governmental services, namely, providing food to needy persons.

IC 044. G & S: Medical services; governmental services, namely, mental health assistance services, home nursing aid services, family mental health and psychological counseling services, nutrition counseling services, counseling services in the fields of alcohol and substance abuse.

IC 045. G & S: Police protection services; governmental services, namely, family counseling in the nature of marriage counseling and providing emotional support.

76. The application published for opposition on October 30, 2007. On February 26, 2008, third party Oneida Ltd. filed a Notice of Opposition, requesting that registration of the ONEIDA mark by Registrant be denied. On June 11, 2012, Oneida Ltd. and Registrant filed a

joint stipulated request to withdraw the opposition. On July 31, 2012, the Patent and Trademark Office issued a Notice of Allowance.

77. On January 31, 2013, Registrant submitted an Extension of Time to File a Statement of Use. This Extension Request deleted from the application the following goods or services: governmental services, namely, vital statistics services (Class 35); providing financial assistance for payment of heating services and providing housing agency services in the nature of financial assistance for housing (Class 36); home maintenance services (Class 37); air transportation services (Class 39); Child care services (Class 43); governmental services, namely, providing food to needy persons (Class 43); and home nursing aid services (Class 44).

78. The Trademark Office approved the January 31, 2013 Extension of Time to File a Statement of Use on February 13, 2013, and deleted the following goods or services from the application: governmental services, namely, vital statistics services (Class 35); home maintenance services (Class 37); air transportation services (Class 39); Child care services (Class 43); governmental services, namely, providing food to needy persons (Class 43); and home nursing aid services (Class 44).

79. Registrant filed a Second Extension of Time to File a Statement of Use on July 26, 2013 without amendment to the recited goods and services. The Second Extension of Time to File a Statement of Use was approved by the Trademark Office on August 7, 2013.

80. Registrant filed a Third Extension of Time to File a Statement of Use on January 21, 2014 without amendment to the recited goods and services. The Third Extension of Time to File a Statement of Use was approved by the Trademark Office on January 30, 2014.

81. Registrant filed a Fourth Extension of Time to File a Statement of Use on July 10, 2014. The Fourth Extension of Time to File a Statement of Use deleted from the application the

following goods or services: Sauces, seasonings (Class 30); Construction services (Class 37); and Legal services (Class 42).

82. The Trademark Office approved the Fourth Extension of Time to File a Statement of Use on July 12, 2014, and deleted the following goods or services from the application: Sauces, seasonings (Class 30); Construction services (Class 37); and Legal services (Class 42).

83. Registrant filed a Fifth Extension of Time to File a Statement of Use on February 2, 2015. The Fifth Extension of Time to File a Statement of Use deleted from the application the following goods or services: Promoting tourism in and to the Oneida Indian Nation and its environs (Class 35); Marina services (Class 39); and providing temporary housing accommodations (Class 43).

84. The Trademark Office approved the Fourth Extension of Time to File a Statement of Use on February 6, 2015, and deleted the following goods or services from the application: Promoting tourism in and to the Oneida Indian Nation and its environs (Class 35); Marina services (Class 39); and providing temporary housing accommodations (Class 43).

85. On July 31, 2015, Registrant filed a Statement of Use declaring under oath use of all goods and services of the application in U.S. commerce as of July 31, 2015, except for newspapers and magazines of general circulation about Indian issues (Class 16), greeting cards (Class 16), stationary (Class 16); bags, namely, tote bags, sports bags, gym bags, shopping bags, and golf bags (Class 18); governmental services, namely, family counseling in the areas of financial and budgeting skills (Class 36).

86. The July 31, 2015 specimens did not include specimens purporting to demonstrate use on at least: Charitable services, namely, providing financial assistance to families and individuals; nutrition counseling services; Police protection services; governmental services, namely, family counseling in the nature of marriage counseling and providing emotional support.

87. Registrant also filed a Declaration on July 31, 2015 executed by Registrant's General Counsel Megan Murphy Beakman on behalf of Registrant, certifying that to the best of her knowledge and belief, no other persons, except, if applicable, authorized users, members, and/or 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/collective membership organization of such other persons, to cause confusion or mistake, or to deceive.

88. On or before January 26, 2006, Registrant knew that Petitioner was using and had used the mark ONEIDA in conjunction with at least the following goods and services: Newsletters pertaining to Oneida Indian Nation events and issues; and governmental services.

89. When Ms. Beakman executed the declaration filed on July 31, 2015, she was aware of rights by others, including but not limited to Petitioner, to use the ONEIDA mark in connection with the identified goods and services.

90. When Ms. Beakman executed the declaration filed on July 31, 2015, she was aware that an exception to Registrant's exclusive use of ONEIDA was Petitioner, which is a tribe organized under the law of the United States and recognized by the United States as separate and distinct from Registrant.

91. Application 78/978,999 matured as the '677 Registration on September 8, 2015.

92. On September 8, 2015, Registrant obtained the '677 Registration for the trademark and service mark ONEIDA (standard character mark) for the following goods and services:

IC 016. US 002 005 022 023 029 037 038 050. G & S: Newsletters pertaining to Oneida Indian Nation events and issues.

IC 036. US 100 101 102. G & S: Charitable services, namely, providing financial assistance to families and individuals; providing educational scholarships.

IC 044. US 100 101. G & S: Medical services; governmental services, namely, mental health assistance services, family mental health and psychological counseling services, nutrition counseling services, counseling services in the fields of alcohol and substance abuse.

IC 045. US 100 101. G & S: Police protection services; governmental services, namely, family counseling in the nature of marriage counseling and providing emotional support.

93. Registrant has never used the ONEIDA mark of the '677 Registration in commerce in connection with all of the goods and services listed in the registration.

94. Registrant's use, if any, and registration of the ONEIDA mark is without Petitioner's consent or permission.

Registrant's '028 Registration

95. The application for what issued as the '028 Registration was filed on January 26, 2006 as Serial Number 78/799,982 for the mark ONEIDA.

96. The January 26, 2006 application was filed under Section 1(b), and included the certification that the "applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services":

IC 009. G & S: Gaming machines; computer hardware and software for gaming machines; computer hardware and software for making reservations at hotels, resorts, and casinos; computer hardware and software for communications between various amenities in hotels, resorts, and casinos.

IC 016. G & S: Identification cards for accessing casino games and casino game playing machines

IC 035. G & S: Retail clothing stores, retail convenience stores, retail smoke shops.

IC 041. G & S: Casinos; bingo services; lottery services; conducting casino and gaming contests, tournaments, and sporting events; entertainment services, namely, live musical performances, live comedy performances, and cooking demonstrations;; golf club services; golf courses; golf instruction; health club services, namely providing instruction and equipment in the field of physical exercise; conducting seminars, workshops, lectures, and classes relating to the

culture, heritage, and language of the Oneida Indian Nation; museum and cultural center services; entertainment services.

IC 043. G & S: Resort lodging services; hotel, bar, and restaurant services; banquet and social function facilities; catering services; conference, exhibition and meeting facilities services.

IC 044. G & S: Health spa services, namely, cosmetic body care services; hairdressing salons.

97. Registrant's January 26, 2006 Application further included a Declaration by Registrant's counsel Christine Baty Heinze on behalf of Registrant, certifying that to the best of her knowledge and belief, no other persons, firm, corporation, or association has the right to use the mark ONEIDA 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 person, to cause confusion or mistake, or to deceive.

98. On or before January 26, 2006, Registrant knew that Petitioner was using and had used the mark ONEIDA in conjunction with at least the following goods and services: Gaming machines; Identification cards for accessing casino games and casino game playing machines; retail convenience stores, retail smoke shops; Casinos; bingo services; lottery services; conducting casino and gaming contests conducting seminars, workshops, lectures, and classes relating to the culture, heritage, and language of the Oneida Indian Nation; museum and cultural center services.

99. On information and belief, on or before January 26, 2006, Registrant knew that Oneida Community Golf Club of Oneida, New York, was using and had used the mark ONEIDA in conjunction with at least the following goods and services: golf club services, golf courses, golf instruction.

100. On information and belief, when Registrant submitted its application on January 26, 2006, it had no bona fide intent to use the ONEIDA mark in all of the identified goods and services.

101. When Ms. Heinze executed the declaration filed on January 26, 2006, she was aware of rights by others, including but not limited to Petitioner, to use the ONEIDA mark in connection with the identified goods and services.

102. When Ms. Heinze executed the declaration filed on January 26, 2006, she was aware that an exception to Registrant's exclusive use of ONEIDA was Petitioner, which is a tribe organized under the law of the United States and recognized by the United States as separate and distinct from Registrant.

103. Following issue of an office action, on July 6, 2007, Registrant submitted a response including amendments and a request to divide. Registrant requested that certain services be divided out and placed in a newly created child application.

104. The Patent and Trademark Office completed the divisional request on August 22, 2007, including the divided goods and services within Serial Number 78/978,992:

IC 041. G & S: Conducting sporting events, namely, boxing, bull riding, snowmobile races, figure skating, jousting, snow shoeing, balloon rides, yoga, lacrosse, golf, and basketball; entertainment services, namely, live musical performances, live comedy performances, and cooking demonstrations; golf instruction; conducting seminars, workshops, lectures, and classes relating to the culture, heritage, and language of the Oneida Indian Nation; and museum and cultural center services.

105. The application published for opposition on December 5, 2007. On April 22, 2008, third party Oneida Ltd. filed a Notice of Opposition, requesting that registration of the ONEIDA mark by Registrant be denied. On June 11, 2012, Oneida Ltd. and Registrant filed a joint stipulated request to withdraw the opposition, which was consolidated with the opposition

to the application for the '677 Registration discussed above. On August 14, 2012, the Patent and Trademark Office issued a Notice of Allowance.

106. On January 21, 2014, Registrant submitted an Extension of Time to File a Statement of Use. This Extension Request deleted from the application the following goods or services: Conducting sporting events, namely, jousting.

107. On February 1, 2014, the Trademark Office approved the Extension of Time to File a Statement of Use, and deleted the following goods or services from the application: Conducting sporting events, namely, jousting.

108. Registrant filed a Second Extension of Time to File a Statement of Use on July 10, 2014 without amendment to the recited goods and services. The Second Extension of Time to File a Statement of Use was approved by the Trademark Office on July 17, 2014.

109. Registrant filed a Third Extension of Time to File a Statement of Use on February 16, 2015 without amendment to the recited goods and services. The Third Extension of Time to File a Statement of Use was approved by the Trademark Office on February 25, 2015.

110. On August 10, 2015, Registrant filed a Statement of Use declaring under oath use of all goods and services of the application in U.S. commerce as of August 10, 2015, except for bull riding, snowmobile races, figure skating, snow shoeing, balloon rides, and basketball (Class 41).

111. The specimens accompanying the August 10, 2015 Statement of Use did not purport to demonstrate use of the ONEIDA mark on the following services: Conducting sporting events, namely, boxing, yoga, lacrosse, golf; entertainment services, namely, live musical performances, live comedy performances, and cooking demonstrations; golf instruction.

112. Registrant also filed a declaration on August 10, 2015 executed by Registrant's General Counsel Megan Murphy Beakman on behalf of Registrant, certifying that to the best of

her knowledge and belief, no other persons, except, if applicable, authorized users, members, and/or 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/collective membership organization of such other persons, to cause confusion or mistake, or to deceive.

113. When Ms. Beakman executed the declaration filed on August 10, 2015, she was aware of rights by others, including but not limited to Petitioner and Oneida Community Golf Club of Oneida, New York, to use the ONEIDA mark in connection with the identified goods and services.

114. When Ms. Beakman executed the declaration filed on August 10, 2015, she was aware that an exception to Registrant's exclusive use of ONEIDA was Petitioner, which is a tribe organized under the law of the United States and recognized by the United States as separate and distinct from Registrant.

115. Application 78/978,992 matured as the '028 Registration on September 8, 2015.

116. Accordingly, on September 15, 2015, Registrant obtained the '028 Registration for the service mark ONEIDA (standard character mark) for the following goods and services:

IC 041. US 100 101 107. G & S: Conducting sporting events, namely, boxing, yoga, lacrosse, golf; entertainment services, namely, live musical performances, live comedy performances, and cooking demonstrations; golf instruction; conducting seminars, workshops, lectures, and classes relating to the culture, heritage, and language of the Oneida Indian Nation; and museum and cultural center services.

117. Registrant has never used the ONEIDA mark of the '028 Registration in commerce in connection with all of the goods and services listed in the registration.

118. Registrant's use, if any, and registration of the ONEIDA mark is without Petitioner's consent or permission.

Other January 2006 Applications of Registrant

119. In addition to Application 78/978,999 for the '677 Registration and Application 78/978,992 for the '028 Registration, both filed on January 26, 2006, Registrant filed several other applications in January 2006.

120. Registrant filed Application 78/799,982 on January 26, 2006 for the mark ONEIDA.

121. Application 78/799,982 was filed under Section 1(b), and included the certification that the “applicant has a bona fide intention to use or use through the applicant’s related company or licensee the mark in commerce on or in connection with the identified goods and/or services”:

IC 009: Gaming machines; computer hardware and software for gaming machines; computer hardware and software for making reservations at hotels, resorts, and casinos; computer hardware and software for communications between various amenities in hotels, resorts, and casinos

IC 016: Identification cards for accessing casino games and casino game playing machines

IC 035: Retail clothing stores, retail convenience stores, retail smoke shops

IC 041: Casinos; bingo services; lottery services; conducting casino and gaming contests, tournaments, and sporting events; entertainment services, namely, live musical performances, live comedy performances, and cooking demonstrations; golf club services; golf courses; golf instruction; health club services, namely providing instruction and equipment in the field of physical exercise; conducting seminars, workshops, lectures, and classes relating to the culture, heritage, and language of the Oneida Indian Nation; museum and cultural center services; entertainment services

IC 043: Resort lodging services; hotel, bar, and restaurant services; banquet and social function facilities services; catering services; conference, exhibition and meeting facilities services

IC 044: Health spa services, namely, cosmetic body care services; hairdressing salons

122. Registrant abandoned Application 78/799,982 on March 25, 2008.

123. Registrant filed Application 78/800,006 on January 26, 2006 for the mark ONEIDA.

124. Application 78/800,006 was filed under Section 1(b), and included the certification that the “applicant has a bona fide intention to use or use through the applicant’s related company or licensee the mark in commerce on or in connection with the identified goods and/or services”:

IC 016: Newsletters pertaining to Oneida Indian Nation events and issues; newspapers and magazines of general circulation about Indian issues; decals; greeting cards; stationery

IC 018: Bags

IC 025: Clothing, headwear, and footwear

IC 030: Sauces, seasonings

IC 035: Promoting tourism in and to the Oneida Indian Nation and its environs

IC 036: Charitable services, namely, providing financial assistance to families and individuals; providing educational scholarships

IC 037: Construction and home maintenance services; automobile service station services

IC 039: Marina services; air transportation services

IC 042: Legal services

IC 043: Child care services; providing temporary housing accommodations

IC 044: Medical services; governmental services, namely, heating assistance services, mental health assistance services, home nursing aid services, family counseling services, nutrition counseling services, providing food, counseling services in the fields of alcohol and substance abuse, housing agency services, vital statistics services

IC 045: Police protection services

125. Registrant abandoned Application 78/800,006 on March 25, 2008.

126. Registrant filed Application 78/800,981 on January 27, 2006 for the mark ONEIDA.

127. Application 78/800,981 was filed under Section 1(b), and included the certification that the “applicant has a bona fide intention to use or use through the applicant’s related company or licensee the mark in commerce on or in connection with the identified goods and/or services”:

IC 014. G & S: Ornamental pins.

IC 024. G & S: Cloth flags.

128. Registrant filed a statement of use on May 21, 2009, asserting first use in all goods and services by January 27, 2009.

129. Application 78/800,006 matured as Registration No. 3,667,888 on August 11, 2009.

130. Registration No. 3,667,888 was cancelled on March 18, 2016 for failure to file an acceptable declaration under Section 8.

Cancellation of the ’491 Registration

131. The allegations of paragraphs 1-130 are incorporated by reference as if stated in full.

Ground 1: Registrant committed fraud in the procurement of its registration or during the prosecution of its application for registration.

132. When the December 16, 1997 Amendment After Publication and substitute statement and declaration were filed, Registrant and its declarant Mr. Halbritter were aware of rights by others to use ONEIDA as part of the ONEIDA INDIAN NATION in connection with the identified goods and services, and the statements contained therein to the contrary, including the statement that the “ONEIDA portion of the Applicant’s mark has become distinctive as a result of its substantially exclusive and continuous use in commerce,” were false, were known to be false, were material misrepresentations of fact, and were made for the purpose of obtaining

rights to which Registrant was not entitled, and therefore were intended to deceive the USPTO when applying to register the ONEID INDIAN NATION mark.

133. Mr. Halbritter was aware that Petitioner, for well over 100 years, has used the terms Oneida, Oneida Tribe, Oneida Indian Tribe, Oneida Nation, and Oneida Indian Nation to identify itself and the source of various goods and services provided by it to its members and members of the general public, including services recited in the application for the '491 Registration.

134. Registrant would not have received the '491 Registration for the exclusive right to use all of the goods and services identified in application but for the willful material misrepresentation in the Declaration.

135. Petitioner accordingly alleges that the December 16, 1997 Declaration that resulted in the registration of the '491 Registration constituted fraud on the U.S. Patent and Trademark Office and the '491 Registration should be cancelled on that basis.

Ground 2: Registrant committed fraud in the first renewal of its registration.

136. Alternatively, when the January 18, 2006 Declaration reciting the identification of goods and recitation of services that included goods and services on which the trademark ONEIDA INDIAN NATION had not and was not being used was made, the statements contained therein were false, were known to be false, were material misrepresentations of fact, and were made for the purpose of obtaining rights to which Registrant was not entitled, and therefore were intended to deceive the USPTO when applying to renew the ONEIDA INDIAN NATION mark.

137. Specifically, neither Registrant nor any related company was using ONEIDA INDIAN NATION on all of the goods and services set forth in the January 18, 2006 Declaration on the date that the Declaration was signed or any prior dates sufficiently close to the date of

signing or filing of the Declaration to be a reasonable basis for a claim of use of the mark, and had not used the mark in commerce for over five consecutive years before that date.

138. Registrant was not using the ONEIDA INDIAN NATION mark on at least the following goods and services at the time of the January 18, 2006 Declaration: stationary and construction and home maintenance services.

139. On January 26, 2006 Registrant admitted in application Serial Number 78/800,006 that it had only an intent to use the mark ONEIDA on stationary and on construction and maintenance services.

140. ONEIDA forms the primary source designation significance of the ONEIDA INDIAN NATION mark as demonstrated by the disclaimer of “INDIAN NATION” in the ‘491 registration.

141. On information and belief, Registrant was not using the ONEIDA INDIAN NATION mark on additional goods and services active in the ‘491 registration at the time the renewal Declaration was filed on January 18, 2006.

142. Alternatively, Registrant knowingly and willfully withheld information from the USPTO that Registrant was aware of rights by others to use the ONEIDA mark in connection with the identified goods and services, and the withholding of such information was done for the purpose of obtaining rights to which Registrant was not entitled, and therefore were intended to deceive the USPTO when applying to renew the ONEIDA INDIAN NATION mark.

143. Specifically, Mr. Halbritter, as Registrant’s representative, was aware that Petitioner, for well over 100 years, has used the terms Oneida, Oneida Tribe, Oneida Indian Tribe, Oneida Nation, and Oneida Indian Nation to identify itself and the source of various goods and services provided by it to its members and members of the general public, including services recited in the ‘491 Registration.

144. Registrant would not have received the renewal of the '491 Registration for all of the goods and services identified in the January 18, 2006 Declaration but for the willful material misrepresentations in the Declaration.

145. Petitioner accordingly alleges that the January 18, 2006 Declaration that resulted in the renewal of the '491 Registration constituted fraud on the U.S. Patent and Trademark Office and the '491 Registration should be cancelled on that basis.

Ground 3: Registrant committed fraud in the second renewal of its registration.

146. Alternatively, when the July 19, 2010 Declaration reciting the identification of goods and recitation of services that included goods and services on which the trademark ONEIDA INDIAN NATION had not and was not being used was made, the statements contained therein were false, were known to be false, were material misrepresentations of fact, and were made for the purpose of obtaining rights to which Registrant was not entitled, and therefore were intended to deceive the USPTO when applying to renew the ONEID INDIAN NATION mark.

147. Specifically, neither Registrant nor any related company was using ONEIDA INDIAN NATION on all of the goods and services set forth in the Declaration on the date that the Declaration was signed or any prior dates sufficiently close to the date of signing or filing of the Declaration to be a reasonable basis for a claim of use of the mark.

148. Registrant was not using the ONEIDA INDIAN NATION mark on at least the following goods and services at the time of the July 19, 2010 Declaration: stationary and construction and home maintenance services.

149. On January 26, 2006 Registrant admitted in application Serial Number 78/800,006 that it had only an intent to use the mark ONEIDA on stationary and on construction and maintenance services.

150. On January 31, 2013, Registrant admitted in application Serial Number 78/800,006 that it was not yet using the ONEIDA mark on stationary and on construction services.

151. On July 31, 2013, Registrant admitted it was not using and did not have an intent to use the ONEIDA mark on maintenance service by deleting that service from application Serial Number 78/800,006.

152. On July 10, 2014, Registrant admitted it was not using and did not have an intent to use the mark ONEIDA on construction services by deleting that service from application Serial Number 78/800,006.

153. On July 31, 2015 Registrant admitted it was not using and did not have an intent to use the mark ONEIDA on stationary by deleting that good from application Serial Number 78/800,006.

154. ONEIDA forms the primary source designation significance of the ONEIDA INDIAN NATION mark as demonstrated by the disclaimer of “INDIAN NATION” in the ‘491 registration.

155. On information and belief, Registrant was not using the ONEIDA INDIAN NATION mark on additional goods and services active in the ‘491 registration at the time the renewal Declaration was filed on July 19, 2010.

156. Alternatively, Registrant knowingly and willfully withheld information from the USPTO that Registrant was aware of rights by others to use the ONEIDA mark in connection with the identified goods and services, and the withholding of such information was done for the purpose of obtaining rights to which Registrant was not entitled, and therefore were intended to deceive the USPTO when applying to renew the ONEIDA INDIAN NATION mark.

157. Specifically, Mr. Carmen, as Registrant's representative, was aware that Petitioner, for well over 100 years, has used the terms Oneida, Oneida Tribe, Oneida Indian Tribe, Oneida Nation, and Oneida Indian Nation to identify itself and the source of various goods and services provided by it to its members and members of the general public, including services recited in the '491 Registration.

158. Registrant would not have received the renewal of the '491 Registration for all of the goods and services identified in the July 19, 2010 Declaration but for the willful material misrepresentations in the Declaration.

159. Petitioner accordingly alleges that the July 19, 2010 Declaration that resulted in the renewal of the '491 Registration constituted fraud on the U.S. Patent and Trademark Office and the '491 Registration should be cancelled on that basis.

Ground 4: Abandonment, Trademark Act § 14(3), 15 U.S.C. § 1064(c).

160. Alternatively, on information and belief, Registrant has abandoned the mark because it has either never used the ONEIDA INDIAN NATION mark of the '491 Registration in commerce in connection with the goods and services currently listed in the registration, or completely ceased using the mark in connection with all of the goods and services listed in the registration for a period of at least three consecutive years with an intent not to resume such use.

161. Specifically, specimens filed with the PTO show that Registrant has either never used in commerce or completely ceased using the ONEIDA INDIAN NATION mark on at least the following goods and services: Christmas cards; stationary; cloth flags; clothing, namely T-shirts, hats, sweatshirts, sports shirts; providing personal loan services; construction services; casino services; lottery services; workshops, lectures and classes relating to the culture, heritage and language of the Oneida Indian nation; providing recreational facilities and programs; restaurant and non-alcoholic bar services; retail smoke shop services; legal services; police

protection services; family counseling services; financial assistance services; nutrition program services; youth counseling services regarding alcohol and other substance abuse.

162. Further, specimens filed with the PTO show that Registrant has either never used in commerce or completely ceased using the ONEIDA INDIAN NATION mark on any of the listed goods and services because the specimens purporting to show use do not show use of ONEIDA INDIAN NATION as a trademark, *i.e.*, to identify and distinguish its goods and services from those manufactured or sold by others and to indicate the source of the goods and services.

163. Therefore Registrant has abandoned the ONEIDA INDIAN NATION mark within the meaning of 15 U.S.C. § 1064(3) and 15 U.S.C. § 1127 such that the '491 Registration should be cancelled on that basis.

Cancellation of the '677 Registration

164. The allegations of paragraphs 1-163 are incorporated by reference as if stated in full.

Ground 1: Trademark Act § 1(b), 15 U.S.C. § 1051(b) - there was no bona fide intent to use of the ONEIDA mark in commerce prior to the filing of the intent-to-use-based application for the '677 registration.

165. On information and belief, when Registrant filed its application on January 26, 2006, it had no bona fide intent to use the mark ONEIDA in commerce in connection with the goods and services included in the application.

166. The circumstances of Registrant's applications and their prosecution show merely an intent to reserve a right in the mark rather than an intention to use the mark in the ordinary course of trade. The circumstances include the facts that: The applications for the '677 Registration and the '028 Registration were both filed in January 2006 under Section 1(b), both

identifying expansive listings of goods and services. At the same time, Registrant filed three additional Section 1(b) applications in January 2006 (78/799,982, 78/800,006, 78/800,981), all seeking registration of ONEIDA in various goods and services. Two of those applications were abandoned prior to registration, and one was abandoned after registration. The applications for the '677 Registration, the '028 Registration, and other applications show a pattern of expansive initial identification of goods and services, combined with a substantial postponement (nine years) of the filing of any statement of use, combined with a substantial narrowing of identified goods and services once a statement of use was filed, combined with the failure of the statement of use to show actual trademark use.

167. Further, amendments to the goods and services show that Registrant had no bona fide intent to use the mark ONEIDA in commerce in connection with at least the following goods or services: governmental services, namely, vital statistics services; providing financial assistance for payment of heating services and providing housing agency services in the nature of financial assistance for housing; home maintenance services; air transportation services; Child care services; governmental services, namely, providing food to needy persons; home nursing aid services; Sauces, seasonings; Construction services; Legal services Promoting tourism in and to the Oneida Indian Nation and its environs; Marina services; providing temporary housing accommodations; newspapers and magazines of general circulation about Indian issues; greeting cards, stationary; sports bags, gym bags, shopping bags, and golf bags; and governmental services, namely, family counseling in the areas of financial and budgeting skills.

168. By virtue of the false and material claims regarding a bona fide intent to use the mark ONEIDA in United States commerce in connection with the goods and services listed in the application and the resulting '677 Registration, the registration was invalidly obtained and should be cancelled on that basis.

Ground 2: Trademark Act § 1(c)-(d), 15 U.S.C. § 1051(c)-(d) - there was no bona fide use of the ONEIDA mark in commerce at the time Registrant filed its Statement of Use.

169. Alternatively, on information and belief, the ONEIDA mark of the '677 registration was not used in commerce by Registrant or any company related to Registrant on all of the goods and services set forth in Registrant's Statement of Use of July 31, 2015.

170. Specifically, on information and belief, the ONEIDA mark of the '677 registration was not used in commerce by Registrant or any company related to Registrant on at least the following goods and services set forth in Registrant's Statement of Use of July 31, 2015: Charitable services, namely, providing financial assistance to families and individuals; nutrition counseling services; Police protection services; governmental services, namely, family counseling in the nature of marriage counseling and providing emotional support.

171. By virtue of the false and material claims regarding use of the mark ONEIDA in United States commerce in connection with all of the goods and services listed in the July 31, 2015 Statement of Use and the resulting issue of the '491 Registration, the registration was invalidly obtained and should be cancelled on that basis.

Ground 3: Registrant committed fraud in the procurement of its registration or during the prosecution of its application for registration.

172. Alternatively, when the January 26, 2006 Declaration was filed, the declarant Ms. Heinze was aware of rights by others to use the ONEIDA mark in connection with the identified goods and services, and the statements contained therein to the contrary were false, were known to be false, were material misrepresentations of fact, and were made for the purpose of obtaining rights to which Registrant was not entitled, and therefore were intended to deceive the USPTO when applying to register the ONEIDA mark.

173. Specifically, Ms. Heinze, as Registrant's representative, was aware that Petitioner, for well over 100 years, has used the terms Oneida, Oneida Tribe, Oneida Indian Tribe, Oneida Nation, and Oneida Indian Nation to identify itself and the source of various goods and services provided by it to its members and members of the general public, including services recited in the application for the '028 Registration.

174. Registrant would not have received the '677 Registration for exclusive use all of the goods and services identified in application but for the willful material misrepresentation in the Declaration.

175. Petitioner accordingly alleges that the January 26, 2006 Declaration that resulted in the issue of the '677 Registration constituted fraud on the U.S. Patent and Trademark Office and the '677 Registration should be cancelled on that basis.

Ground 4: Registrant committed fraud when filing its Statement of Use.

176. Alternatively, when the July 31, 2015 Declaration was filed, the declarant Ms. Beakman was aware of rights by others to use the ONEIDA mark in connection with the identified goods and services, and the statements contained therein to the contrary were false, were known to be false, were material misrepresentations of fact, and were made for the purpose of obtaining rights to which Registrant was not entitled, and therefore were intended to deceive the USPTO when applying to register the ONEIDA mark.

177. Specifically, Ms. Beakman, as Registrant's representative, was aware that Petitioner, for well over 100 years, has used the terms Oneida, Oneida Tribe, Oneida Indian Tribe, Oneida Nation, and Oneida Indian Nation to identify itself and the source of various goods and services provided by it to its members and members of the general public, including services recited in the application for the '677 Registration.

178. Registrant would not have received the '677 Registration for exclusive use of all of the goods and services identified in application but for the willful material misrepresentation in the July 31, 2015 Declaration.

179. Petitioner accordingly alleges that the July 31, 2015 Declaration that resulted in the issue of the '677 Registration constituted fraud on the U.S. Patent and Trademark Office and the '677 Registration should be cancelled on that basis.

Ground 5: Abandonment, Trademark Act § 14(3), 15 U.S.C. § 1064(c).

180. Alternatively, on information and belief, Registrant has abandoned the mark because it either never used the ONEIDA mark of the '677 Registration in commerce in connection with the goods and services currently listed in the registration, or completely ceased using the mark in connection with all of the goods and services listed in the registration for a period of at least three consecutive years with an intent not to resume such use.

181. Specifically, specimens filed with the PTO show that Registrant has either never used in commerce or completely ceased using the ONEIDA mark on at least the following goods and services: Charitable services, namely, providing financial assistance to families and individuals; nutrition counseling services; Police protection services; governmental services, namely, family counseling in the nature of marriage counseling and providing emotional support.

182. On information and belief, Registrant may have abandoned additional goods and services recited in the '677 Registration.

183. Registrant therefore has abandoned the ONEIDA mark within the meaning of 15 U.S.C. § 1064(3) and 15 U.S.C. § 1127 such that the '677 Registration should be cancelled on that basis.

Ground 6: No Use as a Trademark, Trademark Act §§ 14(1) and 1, 2, and 45.

184. Alternatively, on information and belief, neither Registrant nor any related company was using or uses ONEIDA as a trademark, *i.e.*, to identify and distinguish its goods and services from those manufactured or sold by others and to indicate the source of the goods and services.

185. Specifically, specimens filed with the PTO show that Registrant has either never used in commerce or completely ceased using ONEIDA as a mark to identify and distinguish its goods and services from those manufactured or sold by others and to indicate the source of the goods and services on at least the following goods and services: Charitable services, namely, providing financial assistance to families and individuals; nutrition counseling services; Police protection services; governmental services, namely, family counseling in the nature of marriage counseling and providing emotional support.

186. Further, specimens filed with the PTO show that Registrant has either never used in commerce or completely ceased using the ONEIDA mark on any of the listed goods and services because the specimens purporting to show use do not show use of ONEIDA as a trademark, *i.e.*, to identify and distinguish its goods and services from those manufactured or sold by others and to indicate the source of the goods and services.

Ground 7: Trademark Act § 2(d), 15 U.S.C. § 1052(d): That defendant's mark so resembles a mark registered in the Office, or a mark or trade name previously used in the United States by another and not abandoned, as to be likely, when used on or in connection with the goods or services of the defendant, to cause confusion, or to cause mistake, or to deceive.

187. Alternatively, to the extent that Registrant is, in fact, using ONEIDA as a trademark to identify and distinguish good and services related to one or more goods and

services identified in the registration from those manufactured or sold by others and to identify the source of the good, Registrant's use of the ONEIDA mark for such goods and services is likely to cause confusion, mistake, or deception with Petitioner's superior rights in the ONEIDA mark for such goods and services, and should be cancelled on that basis.

188. Petitioner has priority in the ONEIDA mark because it has continuously used the ONEIDA mark to identify the source of goods and services the same as and/or highly related to the goods and services of Applicant's '677 Registration since before January 26, 2006, the application date of the '677 Registration.

189. Petitioner's ONEIDA mark is identical to Applicant's ONEIDA mark, and use of goods and services that are the same and/or highly related is likely to cause confusion, mistake, or deception.

Cancellation of the '028 Registration

190. The allegations of paragraphs 1-189 are incorporated by reference as if stated in full.

Ground 1: Trademark Act § 1(b), 15 U.S.C. § 1051(b) - there was no bona fide intent to use of the ONEIDA mark in commerce prior to the filing of the intent-to-use-based application for the '677 registration.

191. On information and belief, when Registrant filed its application on January 26, 2006, it had no bona fide intent to use the mark ONEIDA in commerce in connection with the goods and services included in the application.

192. The circumstances of Registrant's applications and their prosecution show merely an intent to reserve a right in the mark rather than an intention to use the mark in the ordinary course of trade. The circumstances include the facts that: The applications for the '677 Registration and the '028 Registration were both filed in January 2006 under Section 1(b), both

identifying expansive listings of goods and services. At the same time, Registrant filed three additional Section 1(b) applications in January 2006 (78/799,982, 78/800,006, 78/800,981), all seeking registration of ONEIDA in various goods and services. Two of those applications were abandoned prior to registration, and one was abandoned after registration. The applications for the '677 Registration, the '028 Registration, and other applications show a pattern of expansive initial identification of goods and services, combined with a substantial postponement (nine years) of the filing of any statement of use, combined with a substantial narrowing of identified goods and services once a statement of use was filed, combined with the failure of the statement of use to show actual trademark use.

193. Further, specimens filed with the PTO demonstrate that Registrant had no bona fide intent to use the mark ONEIDA in commerce in connection with at least the following goods or services: Conducting sporting events, namely, bull riding, snowmobile races, figure skating, jousting, snow shoeing, balloon rides, golf, boxing, yoga, lacrosse, and basketball; entertainment services, namely, live musical performances, live comedy performances, and cooking demonstrations; golf instruction. By virtue of the false and material claims regarding a bona fide intent to use the mark ONEIDA in United States commerce in connection with the goods and services listed in the application and the resulting '028 Registration, the registration was invalidly obtained and should be cancelled on that basis.

Ground 2: Registrant committed fraud in the procurement of its registration or during the prosecution of its application for registration.

194. Alternatively, when the January 26, 2006 Declaration was filed, the declarant Ms. Heinze was aware of rights by others to use the ONEIDA mark in connection with the identified goods and services, and the statements contained therein to the contrary were false, were known to be false, were material misrepresentations of fact, and were made for the purpose of obtaining

rights to which Registrant was not entitled, and therefore were intended to deceive the USPTO when applying to register the ONEIDA mark.

195. Specifically, Ms. Heinze, as Registrant's representative, was aware that Petitioner, for well over 100 years, has used the terms Oneida, Oneida Tribe, Oneida Indian Tribe, Oneida Nation, and Oneida Indian Nation to identify itself and the source of various goods and services provided by it to its members and members of the general public, including services recited in the application for the '028 Registration.

196. Registrant would not have received the '028 Registration for exclusive use of all of the goods and services identified in application but for the willful material misrepresentation in the Declaration.

197. Petitioner accordingly alleges that the January 26, 2006 Declaration that resulted in the issue of the '028 Registration constituted fraud on the U.S. Patent and Trademark Office and the '028 Registration should be cancelled on that basis.

Ground 3: Trademark Act § 1(c)-(d), 15 U.S.C. § 1051(c)-(d) - there was no bona fide use of the ONEIDA mark in commerce at the time Registrant filed its Statement of Use.

198. Alternatively, on information and belief, the ONEIDA mark of the '028 registration was not used in commerce by Registrant or any company related to Registrant on all of the goods and services set forth in Registrant's Statement of Use of August 10, 2015.

199. Specifically, on information and belief, the ONEIDA mark of the '028 registration was not used in commerce by Registrant or any company related to Registrant on at least the following goods and services set forth in Registrant's Statement of Use of August 10, 2015: Conducting sporting events, namely, boxing, yoga, lacrosse, golf; entertainment services,

namely, live musical performances, live comedy performances, and cooking demonstrations; golf instruction.

200. By virtue of the false and material claims regarding use of the mark ONEIDA in United States commerce in connection with all of the goods and services listed in the August 10, 2015 Statement of Use and the resulting issue of the '028 Registration, the registration was invalidly obtained and should be cancelled on that basis.

Ground 4: Registrant committed fraud when filing its Statement of Use.

201. Alternatively, when the August 10, 2015 Statement of Use reciting the identification of goods and recitation of services that included goods and services on which the trademark ONEIDA had not and was not being used was made, the statements contained therein were false, were known to be false, were material misrepresentations of fact, and were made for the purpose of obtaining rights to which Registrant was not entitled, and therefore were intended to deceive the USPTO when applying to register the ONEIDA mark.

202. Further, when the August 10, 2015 Declaration was filed, the declarant Ms. Beakman was aware of rights by others to use the ONEIDA mark in connection with the identified goods and services, and the statements contained therein to the contrary were false, were known to be false, were material misrepresentations of fact, and were made for the purpose of obtaining rights to which Registrant was not entitled, and therefore were intended to deceive the USPTO when applying to register the ONEIDA mark

203. Specifically, Ms. Beakman, as Registrant's representative, was aware that Petitioner, for well over 100 years, had used the terms Oneida, Oneida Tribe, Oneida Indian Tribe, Oneida Nation, and Oneida Indian Nation to identify itself and the source of various goods and services provided by it to its members and members of the general public, including services recited in the application for the '028 Registration.

204. Additionally, on information and belief, Ms. Beakman, as Registrant's representative, was aware that Oneida Community Golf Club of Oneida, New York, had used the ONEIDA mark in connection with one or more of the identified goods and services recited in the application for the '028 Registration.

205. Registrant would not have received the '028 Registration for exclusive use of all of the goods and services identified in application but for the willful material misrepresentation in the August 10, 2015 Declaration.

206. Petitioner accordingly alleges that the August 10, 2015 Declaration that resulted in the issue of the '028 Registration constituted fraud on the U.S. Patent and Trademark Office and the '028 Registration should be cancelled on that basis.

Ground 5: Abandonment, Trademark Act § 14(3), 15 U.S.C. §1064(c).

207. Alternatively, on information and belief, Registrant abandoned the mark because it has either never used the ONEIDA mark of the '028 Registration in commerce in connection with all of the goods and services currently listed in the registration, or completely ceased using the mark in connection with all of the goods and services listed in the registration for a period of at least three consecutive years.

208. Specifically, specimens filed with the PTO show that Registrant has either never used in commerce or completely ceased using the ONEIDA mark on at least the following goods and services: Conducting sporting events, namely, boxing, yoga, lacrosse, golf; entertainment services, namely, live musical performances, live comedy performances, and cooking demonstrations; golf instruction.

209. On information and belief, Registrant may have abandoned additional goods and services recited in the '677 Registration.

210. Registrant has therefore has abandoned the ONEIDA mark within the meaning of 15 U.S.C. § 1064(3) and 15 U.S.C. § 1127 such that the '029 Registration should be cancelled on that basis.

Ground 6: No Use as a Trademark, Trademark Act §§ 14(1) and 1, 2, and 45.

211. Alternatively, on information and belief, neither Registrant nor any related company was using or uses ONEIDA as a trademark, *i.e.*, to identify and distinguish its goods and services from those manufactured or sold by others and to indicate the source of the goods and services.

212. Specifically, specimens filed with the PTO show that Registrant has either never used in commerce or completely ceased using ONEIDA as a mark to identify and distinguish its goods and services from those manufactured or sold by others and to indicate the source of the goods and services on at least the following goods and services: Conducting sporting events, namely, boxing, yoga, lacrosse, golf; entertainment services, namely, live musical performances, live comedy performances, and cooking demonstrations; golf instruction.

213. Further, specimens filed with the PTO show that Registrant has either never used in commerce or completely ceased using the ONEIDA mark on any of the listed goods and services because the specimens purporting to show use do not show use of ONEIDA as a trademark, *i.e.*, to identify and distinguish its goods and services from those manufactured or sold by others and to indicate the source of the goods and services.

Ground 7: Trademark Act § 2(d), 15 U.S.C. § 1052(d): That defendant's mark so resembles a mark registered in the Office, or a mark or trade name previously used in the United States by another and not abandoned, as to be likely, when used on or in connection with the goods or services of the defendant, to cause confusion, or to cause mistake, or to deceive.

214. Alternatively, to the extent that Registrant is, in fact, using ONEIDA as a trademark to identify and distinguish good and services related to one or more goods and services identified in the registration from those manufactured or sold by others and to identify the source of the good, Registrant's use of the ONEIDA mark for such goods and services is likely to cause confusion, mistake, or deception with Petitioner's superior rights in the ONEIDA mark for such goods and services, and should be cancelled on that basis.

215. Petitioner has priority in the ONEIDA mark because it has continuously used the ONEIDA mark to identify the source of goods and services the same as and/or highly related to the goods and services of Applicant's '028 Registration since before January 26, 2006, the application date of the '028 Registration.

216. Petitioner's ONEIDA mark is identical to Applicant's ONEIDA mark, and use of goods and services that are the same and/or highly related is likely to cause confusion, mistake, or deception.

WHEREFORE, Petitioner prays that this Petition For Cancellation be granted, that Registrant's Trademark Registration Nos. 2,309,491, 4,808,677, and 4,813,028 be cancelled.

The required fee is submitted herewith; however, please charge any additional fees that may be due in this cancellation proceeding or credit any overpayments to Deposit Account No. 01.2000.

Respectfully submitted,

Date: September 12, 2017

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CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing was served by email on this 12th day of September 2017, upon Registrant at the following email addresses of record:

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