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

Proceeding	92066411
Party	Defendant Oneida Indian Nation of New York
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Date	12/21/2017
Attachments	Oneida - Motion to Suspend.pdf(2454416 bytes)

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

ONEIDA NATION, Petitioner, v. ONEIDA INDIAN NATION OF NEW YORK, Registrant.	Cancellation No. 92066411 Mark: ONEIDA INDIAN NATION Registration No.: 2309491 Registered: January 18, 2000 Mark: ONEIDA Serial No.: 4808677 Registered: September 8, 2015 Mark: ONEIDA Serial No.: 4813028 Registered: September 15, 2015
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**REGISTRANT’S MOTION FOR SUSPENSION
OF ALL PROCEEDINGS PENDING DISPOSITION OF CIVIL ACTION**

Pursuant to Trademark Rule 2.117, 37 C.F.R. § 2.117(a), Oneida Indian Nation of New York (“Registrant”) requests suspension of the above-identified cancellation proceeding filed by Oneida Nation (“Petitioner”) against Registration Nos. 2309491, 4808677, and 4813028.

Registrant has filed a civil action against the U.S. Department of Interior (“Interior”), *Oneida Indian Nation v. United States Department of the Interior*, 5:17-cv-00913-MAD-TWD (the “Civil Action”), which is currently pending in the U.S. District Court for the Northern District of New York. A true and correct copy of the complaint filed in the Civil Action, along with all exhibits attached to that complaint, are attached as Exhibit A (the “Civil Action Complaint”). Through the Civil Action, Registrant challenges Interior’s administrative acts that allowed Petitioner to seek and obtain approval to change its federally-recognized name from the “Oneida Tribe of Indians of Wisconsin” to

simply “Oneida Nation.” If Registrant prevails in the Civil Action, Interior’s decision to recognize Petitioner as “Oneida Nation” may be set aside, and Interior may be enjoined from approving “Oneida Nation” as Petitioner’s federally-recognized name.

It is clear that Petitioner relies on Interior’s decision to recognize Petitioner as “Oneida Nation” when raising claims against Registrant in this Board proceeding. For example, in both its original and amended petition for cancellation, Petitioner alleges facts related to the name-change proceeding before Interior. Petitioner alleges that “[o]n May 2, 2015, Petitioner conducted an election adopting . . . an amendment to change its name from Oneida Tribe of Indians of Wisconsin to Oneida Nation,” “[t]he Bureau of Indian Affairs approved this amendment on June 16, 2015, and this change was published in 2016.” (Dkt. 8 at ¶ 12; *see also* Dkt. 1 at ¶ 11.)

Moreover, Petitioner relies on its alleged rights in the “Oneida Nation” name that resulted from Interior’s decision to allege that Petitioner would suffer harm if Registrant’s ONEIDA and ONEIDA-formative trademarks remain on the Register. Specifically, Petitioner alleges that Registrant’s enforcement of Registrant’s registered trademarks has harmed Petitioner by “limiting Petitioner’s own use of its federally-recognized name—Oneida Nation.” (Dkt. 8 at ¶ 9; *see also* Dkt. 1 at ¶ 8.)

Petitioner has also used Interior’s decision to try to limit *Registrant’s* use of its longstanding “Oneida Nation” name and mark. Attached and incorporated into the Civil Action Complaint is a January 16, 2017 letter that Petitioner sent to Registrant asserting that Registrant’s “federally recognized name is Oneida Nation of New York, and [Registrant] should not abbreviate that as Oneida Nation or otherwise refer to itself as

the Oneida Nation, which is the federally recognized name of [Petitioner].” (Civil Action Complaint Ex. C at 2.)

Accordingly, Petitioner has taken the position that Interior’s decision to recognize it as “Oneida Nation” gave Petitioner rights to that name and mark, which, according to Petitioner, bear on Registrant’s ability to use, register, and enforce ONEIDA and ONEIDA-formative marks (such as ONEIDA NATION as a mark and trade name). Therefore, according to Petitioner, the Civil Action has a bearing on this cancellation proceeding. *See New Orleans Louisiana Saints LLC & NFL Properties LLC v. Who Dat? Inc.*, 99 USPQ2d 1550 (TTAB 2011) (“The civil action does not have to be dispositive of the Board proceeding to warrant suspension, it need only have a bearing on the issues before the Board.”).

In view of Petitioner’s reliance on Interior’s decision, Registrant respectfully requests that the Board suspend this cancellation proceeding pending disposition of the Civil Action.

Dated: December 21, 2017

By: /Linda K. McLeod/

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CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing MOTION FOR
SUSPENSION PENDING DISPOSITION OF CIVIL ACTION was served on counsel for
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EXHIBIT A

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK**

ONEIDA INDIAN NATION)

1 Territory Road)

Oneida, New York 13421,)

Plaintiff,)

v.)

UNITED STATES DEPARTMENT OF THE)
INTERIOR,)

1849 C Street, N.W.)

Washington, D.C. 20240,)

Defendant.)

COMPLAINT

Civil Action No. 5:17-CV-0913 (MAD/TWD)

1. The Oneida Indian Nation (“the Nation”) – long known as the Oneida Nation, the Oneida Nation of New York and the Oneida Indian Nation of New York – is a federally recognized Indian tribe. *See* 82 Fed. Reg. 4915, 4917 (Jan. 17, 2017) (most recent official list federally recognizing the Nation as Oneida Nation of New York); H.R. Rep. No. 103-781, at 4 (1994) (referring to the Nation as Oneida Nation and Oneida Nation of New York); L. 2013, ch. 174, § 12 (N.Y.) (referring to the Nation as Oneida Nation and Oneida Nation of New York); *Oneida Nation of New York v. Cuomo*, 645 F.3d 154 (2d Cir. 2011) (referring to the Nation as Oneida Nation of New York and Oneida Nation); *United States v. Markiewicz*, 978 F.2d 786 (2d Cir. 1992) (referring to the Nation as Oneida Nation).

2. The United States Department of the Interior (“the Department”) is an agency of the United States. It owes trust obligations to the Nation, like all federally-recognized Indian tribes. *E.g.*, Federally Recognized Indian Tribe List Act of 1994, Pub. L. No. 103-454, § 103(2) (“the United States has a trust responsibility to recognized Indian tribes”).

3. The Nation sues the Department under the Administrative Procedure Act to overturn a series of final agency actions taken during the previous administration. By those actions, the United States first gave federal approval to and then federally recognized the change of name of the Oneida Tribe of Indians of Wisconsin (“the Wisconsin tribe”) to Oneida Nation, causing confusion with and damaging the Nation. The last of the challenged agency actions – the Department’s decision to change the Wisconsin tribe’s federally recognized name that is published in the Federal Register in the official list of federally recognized tribes – appears to have been approved by a Department official who was a member of and a former attorney for that Wisconsin tribe who thus had a disqualifying conflict of interest.

4. To be clear, the Nation’s claims here are not about what an Indian tribe chooses to call itself. The Nation’s claims concern official agency action taken by the Department under a federal statute, 25 U.S.C. § 5123, first to give federal approval to the Wisconsin tribe’s name change, and then under another statute, 25 U.S.C. § 5131, to federally recognize the changed name and to publish the federally recognized name in the Federal Register.

5. As a result of the Department’s approval and recognition actions, the Wisconsin tribe is now claiming legal rights in the Oneida Nation name. The Wisconsin tribe also is insisting that the Nation has lost trademark rights in the Oneida Nation name and more generally has now lost the right even to refer to itself as the Oneida Nation, a name by which the Nation has been known.

6. Department records discovered through Freedom of Information Act requests reveal that, in taking the challenged actions, the Department knew about but decided not to consider the Nation’s clear interests in its name and identity. The Department also did not give

the Nation notice of the Department's contemplated actions or, consequently, an opportunity to be heard before it federally approved and recognized the Wisconsin tribe's changed name.

7. The Department decided, without regard to any other facts, to automatically accept – for purposes of federal law and federal recognition – the decision of the Wisconsin tribe to change its name. By abdicating its duty to make an independent federal decision before federally approving and recognizing the name change, the Department entirely yielded federal decision-making responsibility to the Wisconsin tribe.

8. The Department has since confirmed to the Nation that, without applying any limiting principle, it automatically gives federal approval to and federally recognizes any change that an Indian tribe chooses to make concerning its name. Thus, pursuant to this non-public rule, the Oneida Tribe of Indians of Wisconsin was able to automatically bind the United States, for purposes of federal recognition of the Wisconsin tribe, to the tribe's unilateral decision to jettison "Tribe" and Wisconsin and to assume the name "Oneida Nation."

9. The Department's actions were arbitrary and capricious and otherwise violated the Department's obligations under the List Act, 25 U.S.C. § 5131, the Indian Reorganization Act, 25 U.S.C. § 5123, and the Administrative Procedure Act, 5 U.S.C. §§ 555 & 701, *et seq.*, as well as its statutory and trust obligations to Indian tribes, including the Nation.

10. Unless the Department's actions are set aside, the potential for damage and unfairness to Indian tribes – and chaos – is enormous. Many tribes share common histories and have similar names and now are susceptible to the same misappropriation of identity that the Nation has suffered. Among them are the Mississippi Band of Choctaw and the Choctaw Nation of Oklahoma; the Iowa Tribe of Kansas and Nebraska and the Iowa Tribe of Oklahoma; the Mississippi Band of Choctaw Indians and the Choctaw Nation of Oklahoma; the Ponca Tribe of

Indians of Oklahoma and the Ponca Tribe of Nebraska; the Seminole Tribe of Florida and the Seminole Nation of Oklahoma; the Sac & Fox Nation of Missouri in Kansas and Nebraska, the Sac & Fox Nation, Oklahoma and the Sac & Fox Tribe of the Mississippi in Iowa; and the Kickapoo Traditional Tribe of Texas, the Kickapoo Tribe of Oklahoma and the Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas. Under the rule the Department applied here, for example, either of the Choctaw tribes could claim the mantle of the Choctaw Nation – or both could – and the Department, absurdly, would recognize those changes for purposes of federal law and federal recognition. A similarly absurd result could apply to all of the other tribes given as examples above, and to others not listed as examples here.

11. If the Department is required to consider the interests of all affected tribes and to make an independent federal decision before federally approving and federally recognizing tribal name changes, absurd and harmful results are unlikely to occur.

JURISDICTION AND VENUE

12. 28 U.S.C. §§ 1331 and 1362 provide federal subject matter jurisdiction. This action arises under the Administrative Procedure Act, 5 U.S.C. §§ 551, *et seq.* & 701 *et seq.*, under 25 U.S.C. §§ 5123 & 5131 and under federal statutory and common law creating or recognizing trust responsibilities on the part of the United States to Indian tribes. Plaintiff is an Indian tribe with a governing body duly recognized by the Secretary of the Interior.

13. Judicial review is authorized by the Administrative Procedure Act, 5 U.S.C. §§ 701 *et seq.*, and by 25 U.S.C. § 5123(d)(2). The challenged decisions are final agency actions not subject to further administrative review. The Nation has suffered a legal wrong and is adversely affected and aggrieved by the agency actions, in which it had and has a clear interest.

14. This district is a proper venue pursuant to 28 U.S.C. § 1391(e)(1). The Department is an agency of the United States. No real property is involved in this action, and the Nation resides in this district. Further, a substantial part of the omissions giving rise to the Nation's claims (failures of notice to the Nation) occurred in this district.

FACTS

A. Two Separate Indian Tribes: Formation of the Oneida Tribe of Indians of Wisconsin

15. The Oneida Nation was an original member of the Haudenosaunee, or Six Nations Confederacy, in New York, which consists of: the Mohawk, the Oneida, the Cayuga, the Onondaga, the Seneca and the Tuscarora.

16. In the latter part of the eighteenth century, the United States entered into several treaties recognizing the Oneida Nation and promising to protect its lands in New York. 7 Stat. 15 (Oct. 22, 1784); 7 Stat. 33 (Jan. 9, 1789); 7 Stat. 44 (Nov. 11, 1794); 7 Stat. 47 (Dec. 2, 1794). Of these, the most important is the November 11, 1794 treaty, which is referred to as the Treaty of Canandaigua. The Treaty of Canandaigua acknowledged and continues to acknowledge the Oneida reservation in New York. *See Oneida Indian Nation v. Madison County*, 665 F.3d 408, 443-44 (2d Cir. 2011).

17. In the years following 1794, some Oneida Nation members sold Nation lands, moved to Wisconsin and formed a separate tribe that became known as the Oneida Tribe of Indians of Wisconsin. That tribe made its own treaties with the United States, and moved onto a new reservation provided by the federal government near Green Bay. The treaty providing that reservation was made only with the Wisconsin tribe, which recognized it as a separate tribe. 7 Stat. 566 (Feb. 3, 1838) (referring to the "First Christian and Orchard Parties of the Oneida Indians Residing at Green Bay"). The Wisconsin tribe has not since resided in or exercised tribal

governance in New York, where the Nation continued to exist, govern, and treat separately with the United States.

18. Department officials have provided affidavits, filed in federal court, addressing the names and identities of the Nation and the Wisconsin tribe. In 1976, the Chief of the Tribal Relations Branch in the Office of Indian Services within the Bureau of Indian Affairs (“BIA”) provided an affidavit asserting:

The Oneida Indian Nation of New York and the Oneida Tribe of Wisconsin are federally recognized Indian tribes. The Oneida Nation of New York is one of the Indian tribes which entered into and signed [three federal treaties between 1784 and 1794, including the Treaty of Canandaigua]. The Oneida Tribe of Wisconsin is recognized by the Secretary of the Interior as a successor in interest to the signatories of those treaties.

The Bureau of Indian Affairs recognizes the Oneida Indian Nation of New York as the Indian tribe which remained on the New York Oneida Indian reservation. . . .

. . .

The Bureau of Indian Affairs recognizes the Oneida Tribe of Indians of Wisconsin as a distinct and separate entity from the Oneida Indian Nation of New York.

March 17, 1976 Affidavit of Leslie M. Gay, Jr., filed in *Oneida Indian Nation of New York v. Williams, et al.*, Civ. No. 74-CV-167 (N.D.N.Y.) (emphasis added).

19. A Deputy Commissioner of Indian Affairs later provided a similar affidavit:

The Secretary of the Interior recognizes the Oneida Nation of New York as the Indian tribe that remained on the New York Oneida Reservation. . . .

The Secretary of the Interior recognizes the Oneida Tribe of Indians of Wisconsin as a distinct and separate entity from the Oneida Nation of New York.

The Secretary of the Interior recognizes the Oneida Nation of New York and the Oneida Tribe of Indians of Wisconsin as federally recognized tribes and lists them on the current official list . . . printed in the Federal Register.

June 14, 2001 Affidavit of Sharon Blackwell, filed in *Oneida Indian Nation of New York State, et al. v. State of New York, et al.*, Civ. No. 74-CV-187 (N.D.N.Y.) (emphasis added).

B. The Department's Prior Decisions to Recognize Distinctly Named Tribes: Oneida Tribe of Indians of Wisconsin and Oneida Nation of New York

20. For decades, the Department officially recognized and distinctly named an “Oneida Nation of New York” and an “Oneida Tribe of Indians of Wisconsin,” using appropriate words to distinguish the “Tribe” in “Wisconsin” from the “Nation” in “New York.”

21. After passage of the Indian Reorganization Act of June 18, 1934 (“the IRA”), 48 Stat. 984, the Department conducted separate tribal elections to determine whether either tribe wanted to reorganize under the IRA. The Nation voted to retain its traditional government in New York and not to reorganize or to have a written constitution. The Wisconsin tribe voted to reorganize in Wisconsin with an elective form of government, specifying its name as “Oneida Tribe of Indians of Wisconsin” in a written constitution that required and received formal approval by the Department.

22. In 1979, the Department began to periodically publish in the Federal Register a list of all federally recognized Indian tribes. The list establishes – for other federal agencies and the public and for the purpose of federal law – which Indian tribes are recognized by the United States and the name by which the United States officially recognizes them.

23. Since 1994, pursuant to the 1994 List Act, the Secretary of the Interior has been required to annually publish that Federal Register list. 25 U.S.C. § 5131(b), Federally Recognized Indian Tribe List Act of 1994 (“List Act”), Pub. L. No. 103-454, 108 Stat. 4791 (Nov. 2, 1994). The annual list must be “accurate,” and its publication is a function of the “trust responsibility” of the United States to Indian tribes and of federal respect for “the sovereignty of those tribes.” Pub. L. No. 103-454 § 103(2) & (7). The List Act was Congress’ response to, among other things, actions of the Department taken “capriciously and improperly” with respect to withdrawal of recognition of tribes and tribal leaders. H.R. Rep. No. 103-781, at 4 (1994).

That “disturbing tendency in the Department” involved the Nation in particular. Congress specifically criticized the Department’s “unilateral[.]” decision to recognize a new government “of the Oneida Nation of New York last year [1993] *without consulting, notifying or discussing the decision with the Oneida Nation or its leaders,*” a decision reversed after “active intercession by members of the House.” *Id.* (emphasis added). Note especially Congress’ interchangeable use of the names Oneida Nation and Oneida Nation of New York.

24. In all of the lists published from 1979 through passage of the 1994 List Act and then from passage of the Act through January 29, 2016, the Department used geographic designations and the names “Nation” and “Tribe” to distinguish the “Oneida Nation of New York” and the “Oneida Tribe of Indians of Wisconsin.”

- a. The Nation was listed as “Oneida Nation of New York.” *See* 44 Fed. Reg. 7235, 7236 (Feb. 6, 1979); 47 Fed. Reg. 53130, 53132 (Nov. 24, 1982); 53 Fed. Reg. 52829, 52831 (Dec. 29, 1988); 58 Fed. Reg. 54364, 54367 (Oct. 21, 1993); 60 Fed. Reg. 9250, 9253 (Feb. 16, 1995); 61 Fed. Reg. 58211, 58213 (Nov. 13, 1996); 62 Fed. Reg. 55270, 55272 (Oct. 23, 1997); 63 Fed. Reg. 71941, 71943 (Dec. 30, 1998); 65 Fed. Reg. 13298, 13300 (Mar. 13, 2000); 67 Fed. Reg. 46328, 46330 (July 12, 2002); 68 Fed. Reg. 68180, 68182 (Dec. 5, 2003); 70 Fed. Reg. 71194, 71196 (Nov. 25, 2005); 72 Fed. Reg. 13648, 13650 (Mar. 22, 2007); 73 Fed. Reg. 18553, 18555 (Apr. 4, 2008); 74 Fed. Reg. 40218, 40220 (Aug. 11, 2009); 75 Fed. Reg. 60810, 60812 (Oct. 1, 2010); 77 Fed. Reg. 47868, 47870 (Aug. 10, 2012); 78 Fed. Reg. 26384, 26387 (May 6, 2013); 80 Fed. Reg. 1942, 1945 (Jan. 14, 2015); 81 Fed. Reg. 5019, 5022 (Jan. 29, 2016); 81 Fed. Reg. 26826, 26829 (May 4, 2016).

- b. The Wisconsin tribe was listed by a name that always incorporated the distinguishing words “Tribe” and “Wisconsin:” as “Oneida Tribe of Wisconsin, Oneida Reservation, Wisconsin” in the 1979 list, 44 Fed. Reg. 7235 (Feb. 6, 1979); as “Oneida Tribe of Indians of Wisconsin, Oneida Reservation, Wisconsin” in the 1982 list, 47 Fed. Reg. 53130, 53132 (Nov. 24, 1982); as “Oneida Tribe of Wisconsin” in the lists published between 1988 and 2000, 53 Fed. Reg. 52829, 52831 (Dec. 29, 1988); 58 Fed. Reg. 54364, 54367 (Oct. 21, 1993); 60 Fed. Reg. 9250, 9253 (Feb. 16, 1995); 61 Fed. Reg. 58211, 58213 (Nov. 13, 1996); 62 Fed. Reg. 55270, 55272 (Oct. 23, 1997); 63 Fed. Reg. 71941, 71943 (Dec. 30, 1998); 65 Fed. Reg. 13298, 13300 (Mar. 13, 2000); and as “Oneida Tribe of Indians of Wisconsin” in the lists published between 2002 and January 29, 2016, 67 Fed. Reg. 46328, 46330 (July 12, 2002); 68 Fed. Reg. 68180, 68182 (Dec. 5, 2003); 70 Fed. Reg. 71194, 71196 (Nov. 25, 2005); 72 Fed. Reg. 13648, 13650 (Mar. 22, 2007); 73 Fed. Reg. 18553, 18555 (Apr. 4, 2008); 74 Fed. Reg. 40218, 40220 (Aug. 11, 2009); 75 Fed. Reg. 60810, 60812 (Oct. 1, 2010); 77 Fed. Reg. 47868, 47870 (Aug. 10, 2012); 78 Fed. Reg. 26384, 26387 (May 6, 2013); 80 Fed. Reg. 1942, 1945 (Jan. 14, 2015); 81 Fed. Reg. 5019, 5022 (Jan. 29, 2016).

25. The Department’s use of the words “Tribe” and “Nation” with differentiating geographic designations was consistent with the Department’s established practice to distinguish Indian tribes that share historic roots. Numerous examples – like the Mississippi Band of Choctaw and the Choctaw Nation of Oklahoma – are named in paragraph 10, above.

C. Previous Efforts of the Wisconsin Tribe to Pass Itself Off in New York as the Nation

26. Beginning in the 1990s, the Wisconsin tribe sought to interfere in Nation affairs and to claim the Nation's rights. For example, the Wisconsin tribe claimed an interest in revenues from the Nation's casino in New York, claimed rights in the Nation's reservation in New York, and asserted the power to settle the Nation's land claim against the State of New York (then pending in the Northern District of New York).

27. The Wisconsin tribe also formed an entity that it named the "Oneida Preservation Committee," which was named and acted to materially mislead the public into believing it was a Nation entity working in New York on behalf of the Nation. The Committee was headed by a Wisconsin tribal official.

28. By confusing the public, causing it to believe that the Committee was the Nation, and then intensifying local hostility to the Nation by threatening the Nation's non-Indian neighbors with the loss of their lands, the Wisconsin tribe intended for the Committee to pressure the Nation to settle its land claim case. The Committee flooded the area in and around the Oneida reservation in central New York with adversarial mailings and radio ads, knowing that references to Oneida, the Nation and Oneida Nation would be universally understood to refer to the Nation. Specifically, the Committee:

- a. used the tribal name "Oneida," omitting any Wisconsin reference;
- b. falsely stated in writing that "[t]he Oneida Preservation Committee is charged by the Nation with working out a settlement that will not displace current residents;"
- c. used stationery with a logo that mimicked the Nation's logo;

- d. used stationery with “New York” printed on it and used a New York return address and a New York postmark on mailings; and
- e. stated in mailings that the committee spoke for “the Oneidas,” “the Oneida people” and “the people of the Oneida Nation.”

29. After a mid-1994 mailing, the Nation filed suit to stop the impersonation.

30. The Committee settled by agreeing to a “JUDGMENT AND PERMANENT CONSENT ORDER” that the court entered. The order applied to the Committee, its chair and “all other persons acting under them or on their behalf” and requires them, among other things, to use the following disclaimer in future documents and radio advertisements: “The Oneida Preservation Committee is not affiliated with or approved by the Oneida Indian Nation of New York.” The order required the disclaimer on any document or radio advertisement using the terms: “Oneida Nation,” “Oneida Indian Nation,” “Oneida Preservation Committee,” “the Oneida People,” “the Oneidas,” “the people of the Oneida Nation” and “the Oneida Indians.”

D. The Wisconsin Tribe’s Subsequent Strategy to Misappropriate and Assume the Oneida Nation Name Nationally

31. More recently, the Wisconsin tribe sought to misappropriate the historic Oneida Nation name and identity and to be something other than the Oneida Tribe of Indians of Wisconsin. Misappropriating the historic Oneida Nation name and eliminating any reference to Wisconsin is intended to convey the false message that the Oneida Nation actually left New York and now resides in Wisconsin and that the Nation on its reservation in New York is an offshoot of a true Oneida Nation that is located in Wisconsin. It also confuses the public and siphons away the goodwill that the Nation has created in its business and governmental relations.

32. The Wisconsin tribe wanted a federal imprimatur to be placed on the new name and to have the United States change the name by which the United States officially recognizes the Wisconsin tribe.

33. To that end, on November 10, 2010, the Wisconsin tribe's government passed a resolution requesting that the Secretary of the Interior conduct a Secretarial election in which the tribe's members could vote to amend the tribe's constitution in several ways, including changing the tribal name from "Oneida Tribe of Indians of Wisconsin" to "Oneida Nation." A Secretarial election is a federal election conducted by the Secretary of the Interior pursuant to federal regulations set forth in 25 C.F.R. Part 81. *See* 25 U.S.C. § 5123 (governs Secretarial approval of amendment of tribal constitutions).

34. By letter dated January 19, 2011, the Wisconsin tribe submitted the resolution to the Midwest Regional Office of the BIA and sought a decision by the Department to conduct a Secretarial election regarding the name change.

E. The BIA Midwest Regional Office's Decisions Approving a Secretarial Election Regarding the Name Change and Approving the Name Change

35. By federal statute and regulation, at the times relevant here, the United States acted in its role as trustee to Indian tribes in that it controlled the process of holding Secretarial elections and amending tribal constitutions. The Department could not have approved the Wisconsin tribe's name-change amendment if it were found to be "contrary to applicable laws," which are defined to include federal statutes, federal common law and executive orders. 25 U.S.C. § 5123 (c)-(d) (statute governing Secretarial elections); Pub. L. 100-581, § 102 (Nov. 1, 1988); 25 C.F.R. Part 81; *see also* 80 Fed. Reg. 63094 (Oct. 19, 2015) (recent amendments to regulations, effective Nov. 18, 2015, permitting tribes to amend constitutions to remove requirement that the Department approve subsequent amendments). The federal statute

governing Secretarial elections contains an explicit requirement of non-discrimination by the Department as to federally recognized Indian tribes, a requirement that incorporates the general duty as trustee among multiple beneficiaries. 25 U.S.C. § 5123(f)-(g).

36. By letter dated October 11, 2011 (Exhibit A to this complaint), the Midwest Regional Office advised the Wisconsin tribe that “[n]one of the proposed amendments appear to be contrary to law” and that “a secretarial election can proceed.” Ex. A, at 1 & 5. The letter provided no explanation or other analysis and did not identify any law or legal principle under which the name-change amendment had been evaluated. Incredibly, the letter described the harm the proposed name change would cause the Nation and others but yielded any responsibility to consider that harm to the Wisconsin tribe, merely offering “comments . . . for consideration by the Oneida Tribe:”

A concern is that the name “Oneida Tribe of Indians of Wisconsin” has a long history including the reorganization under the Indian Reorganization Act. Changing the name *will cause confusion* for a number of entities engaged in business with the Oneida Tribe as well as other governments. Compounding this difficulty will be the name of the tribe in the state of New York, called the “Oneida Nation of New York”. While the two names would not be exactly the same they are close enough so that they *will undoubtedly be confused more often than they are now*. The Oneida Nation of New York is often referred to as the Oneida Indian Nation, including some self-determination contracts with the Bureau of Indian Affairs, which *will compound the existing confusion* over this matter.

Id. at 2 (emphasis added).

37. The Midwest Regional Office’s letter indicated no consideration of, or even awareness that the law governing its decision included, among other things, the Department’s trust obligations to the Nation imposed by federal common law and explicitly recognized in federal statutes. Nor did the Department acknowledge or consider its obligation under 25 U.S.C. § 5123(f) not to enhance or diminish any tribe’s legal rights when making any decision, and did

not acknowledge or consider established agency practice to use geographic modifiers and other words to distinguish tribes that otherwise share a name. Although declaring without explanation that the Wisconsin tribe's name change would not be "contrary to law," the Midwest Regional Office failed to apply or even consider the applicable law.

38. The Midwest Regional Office did not provide the Nation or other tribes with notice or an opportunity to be heard prior to or after making the decision to authorize a name-change vote. Nor did the *Midwest* Regional Office give any notice to the BIA's *Eastern* Regional Office, which has responsibility regarding the Nation and could have offered its views and would have informed the Nation. Instead, the Midwest Regional Office quietly yielded its authority to the Wisconsin tribe by agreeing to approve the name chosen by that tribe despite the Office's recognition of the confusion and harm to the Nation it would cause.

39. Unsurprisingly, the Wisconsin tribe decided that avoidance of confusion and the interests of the Nation and others would not affect its decision-making, responding as follows to the Midwest Regional Office in a January 11, 2012 letter (Exhibit B to this complaint):

- a. After mentioning the Department's "concern that the proposed name change from Oneida Tribe of Indians of Wisconsin to Oneida Nation may result in confusion with the Oneida Nation of New York," the Wisconsin tribe admitted that it "recognize[s] this concern."
- b. The Wisconsin tribe then cast the concern aside, declaring that it "*believe[s] strongly in the proposed amendment as being more responsive to the Tribe's governmental status.*" (Emphasis added). This declaration not only dismissed the harms the Midwest Regional Office had raised, but also gave notice that

the tribe desired the name-change as a way of appearing to change its governmental status vis-à-vis the Nation.

40. The Department then conducted a Secretarial election on May 2, 2015, acting through a Secretarial Election Board chaired by the Superintendent of the Great Lakes Agency of the BIA. That same day, the Secretarial Election Board certified that a majority of the Wisconsin tribe's eligible voters who cast ballots voted to adopt all proposed amendments, including the name-change amendment.

41. On June 16, 2015, the Midwest Regional Office approved the amendments, including the name-change amendment, certifying them "effective as of this date, PROVIDED, that nothing in this approval shall be construed as authorizing an action under this document that would be contrary to Federal law." In deciding to give formal federal approval to the name-change vote, the Midwest Regional Office gave no explanation and considered no factor at all other than the arithmetic tally of the votes that had been cast in the election.

F. The Subsequent Decision of the Acting Assistant Secretary for Indian Affairs to Change "Oneida Tribe of Indians of Wisconsin" to "Oneida Nation" in the Department's Federal Register List of the Names by Which the United States Officially Recognizes Indian Tribes

42. On May 4, 2016, the Department published a revised Federal Register list setting forth the names by which the United States officially recognizes Indian tribes. In the revised list, the Department changed the name of the "Oneida Tribe of Indians of Wisconsin" to "Oneida Nation," 81 Fed. Reg. 26826, 26829 (May 4, 2016), the same name that Congress had used to refer to the Nation in the House Report that explains that the 1994 List Act was needed to prevent unilateral, capricious and improper Departmental decisions regarding Indian tribes. H.R. Rep. No. 103-781, at 4 (1994).

43. The Federal Register notice provided no explanation for the federal name-change decision. On information and belief the administrative record will contain no explanation for the decision, no reference to any published rule that guides such a decision and no consideration of the Department's established practice to use geographic modifiers and other words, such as Tribe or Nation, to distinguish tribes with similar names and some common history. Further, the Federal Register notice and likely the administrative record contain no evidence of consideration of the confusion and harm to the Nation that the Midwest Regional Office had identified and declined to consider and no acknowledgement or consideration of the federal trust obligation to all Indian tribes, including the Nation.

44. The Department acted without giving the Nation or any other party with interest in the matter notice or an opportunity to be heard.

45. The Department lacks a process of any kind for giving affected parties notice and an opportunity to be heard before the Department makes final decisions about changing the name by which the United States officially recognizes an Indian tribe.

46. The Department appears to have acted under the direction of and notwithstanding the conflict of interest of the Acting Assistant Secretary. The Federal Register indicates that the revised list was published by or under the authority of "Lawrence S. Roberts, Acting Assistant Secretary – Indian Affairs." 81 Fed. Reg. 26826 (May 4, 2016) (bold and italics omitted); *see* 82 Fed. Reg. 4915, 4917 (Jan. 17, 2017) (most recent published list, under Mr. Roberts' name, republishing Wisconsin tribe's changed name). In 2016, the Nation, by counsel, made FOIA requests to the Department in Washington, D.C. for documents regarding Mr. Roberts' recusal from decisions regarding the May 4, 2016 list. The Department neither produced documents nor indicated that it had no responsive documents.

47. Mr. Roberts, who served during the prior administration and left the Department on January 20, 2017, could not be a neutral decision-maker. He is a member of the Wisconsin tribe, which had included Mr. Roberts' name in a list provided to the Department in connection with the name-change election, titled "Final List of Registered Voters for the May 2, 2015 Secretarial Election Amending the Constitution and Bylaws of the Oneida Tribe of Indians of Wisconsin." As a lawyer in private practice, Mr. Roberts had previously represented his tribe and had reason to believe he would continue to do so after leaving government service and returning to private practice. His interests could be substantially affected by the decision to change or not to change the name by which the United States officially recognizes his tribe, and his impartiality in the matter would reasonably be questioned.

48. On information and belief, there is no record that the Acting Assistant Secretary resolved how he could comply with conflict of interest rules while making a decision that would benefit his tribe. Under conflict of interest rules that effectuate constitutional due process protections and are applicable when an executive branch employee has a financial relationship with or is an active participant in an organization, the Acting Assistant Secretary could not participate in matters related to that organization that would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter, unless he first informed the agency designees of the appearance of a problem and then received the necessary authorization to participate in accordance with specific guidelines. 5 C.F.R. §§ 2635.502(a), (b)(1)(i) & (b)(1)(v); *see also* 5 C.F.R. § 2635.601, *et seq.*

G. The Wisconsin Tribe's Quick Exploitation of the Department's Decisions

49. In late 2015, the Nation learned that the Wisconsin tribe intended to host a professional golf tournament on its reservation, to be called the "Oneida LPGA Classic." Because the Nation has invested tens of millions of dollars in building the reputation of its golf

courses and golf business and in hosting nationally televised professional golf tournaments, the Nation's lawyers objected, making it clear in a November 25, 2015 letter that "Oneida" and "Oneida Nation" are federally registered trademarks of the Nation and that the Nation's federally-recognized name was Oneida Nation of New York.

50. In a subsequent January 16, 2017, letter (Exhibit C to this complaint), a lawyer for the Wisconsin tribe asserted that the federal name-change decisions entitled the Wisconsin tribe to use the "Oneida Nation" name and consequently that the Nation could no longer use the name "Oneida Nation." Specifically, the Wisconsin tribe, through its lawyer:

- a. invoked the decisions to claim that the Wisconsin tribe had a right to use the "Oneida Nation" name with no clarifying reference to Wisconsin;
- b. stated that "[y]our client" (i.e., the Nation, which had commonly been referred to as the Oneida Nation, as by Congress in the List Act's legislative history, or the Nation) "unlike ours, has never been federally recognized as Oneida Nation;"
- c. threatened to petition to cancel the Nation's registered trademarks unless the Nation would enter into an agreement permitting the Wisconsin tribe to market itself under the newly-federally approved name "Oneida Nation;" and
- d. insisted that the Nation never again "refer to itself as the Oneida Nation, which is the federally recognized name of my client."

51. The Wisconsin tribe thereafter (June 27, 2017) petitioned to cancel the Nation's trademarks. (Exhibit D to this complaint). In the filing before the Trademark Trial and Appeal Board, the Wisconsin tribe alleged that it had legal rights based on the federal name-change decisions and that those rights limited the Nation's rights.

52. The petition:

- a. urges that the Wisconsin tribe was recognized as the “Oneida Tribe of Indians of Wisconsin” but is “now recognized as the Oneida Nation,” Ex. D at ¶4;
- b. repeats more broadly that “the Bureau of Indian Affairs approved this [name-change] amendment on June 16, 2105, and this change was published in 2016. 81 F.R. 26826, 26827 (May 4, 2016),” *id.* at ¶ 11;
- c. asserts that, notwithstanding the Nation’s registered trademarks, the Wisconsin tribe is entitled to the “use of its federally recognized name—Oneida Nation,” *id.* at ¶8; and
- d. astoundingly reverses the concerns expressed by the Midwest Regional Office about confusion that the Wisconsin tribe’s name change would cause, asserting in contrast that the Nation’s use of “ONEIDA” “is likely to cause confusion, mistake, or deception” and that it should be cancelled and that, apparently in light of the federal name-change decisions, the Wisconsin tribe has “superior rights in the ONEIDA mark,” *id.* at ¶¶112 & 130.

H. Efforts to Avoid APA Litigation

53. After learning in August 2016 of the Department’s decisions, the Nation requested that the Department announce a reconsideration process in which the Wisconsin tribe and the Nation could participate before a decision would be made. The Nation sought a process that would permit a consideration of the issues *by the Department* and a decision *by the Department*, as opposed to just handing matters over to the Oneida Tribe of Indians of Wisconsin for decision.

54. The Department rejected a reconsideration process. In a final meeting with Department officials in early 2017, those officials indicated that, for purposes of federal

recognition of a tribal name and the published list reflecting that recognition, the rule followed by the Department is to automatically adopt any name chosen by a tribe and not to make an independent federal judgment, regardless of the facts. The Department has never given notice or sought comment regarding that rule, and has never published the rule. In denying the Nation's request for a reconsideration process, the Department officials explained that following such a new process would require notice and comment rulemaking and would be controversial with some Indian tribes.

I. The Nation's Pre-Suit Effort to Diminish Harm from the Department's Decisions Regarding the Wisconsin Tribe

55. After the unsuccessful meeting with the Department officials, the Nation changed its name to Oneida Indian Nation to at least diminish the harm caused by the Department's name-change decisions regarding the Wisconsin tribe. Elimination of the geographic designation "New York" serves to some limited extent to ameliorate the Wisconsin tribe's effort to use the federal name-change decision to mean that it is the true Oneida Nation and that the Oneida Nation of New York is just a subset or offshoot. It does nothing to eliminate the confusion and business harm caused by the Department's name-change actions. If the Department is required to vacate its name-change decisions and to list the Wisconsin tribe as "Oneida Tribe of Indians of Wisconsin," the Nation has no objection to returning to the previous, longstanding status quo and being federally recognized and listed as "Oneida Nation of New York." Then, as was true before the Department's challenged decisions, the use of differentiating state designations and the different words "Tribe" and "Nation" would distinguish the two tribes.

FIRST APA CLAIM: ASSISTANT SECRETARY'S DECISION TO FEDERALLY RECOGNIZE AND LIST THE WISCONSIN TRIBE AS "ONEIDA NATION"

56. The List Act requires the Department to publish a list accurately stating the names by which the Department recognizes Indian tribes. 25 U.S.C. § 5131 (formerly 25 U.S.C. § 479a-1); 108 Stat. 4791-4792 (Nov. 2, 1994), Pub. L. 103-454, §§ 101(2) & 103(2), (6) & (7) (acknowledging federal "trust responsibility" and obliging Secretary of Interior to make an "accurate" list of "federally recognized tribes"). Congress' purpose in passing the List Act was, in part, to stem "capricious[] and improper[] action the Department had taken in the past, including the specific example of an adverse federal recognition decision taken with respect to the Nation "without consulting, notifying or discussing the decision with *the Oneida Nation* or its leaders." H.R. Rep. No. 103-781, at 4 (1994) (emphasis added).

57. As set forth more fully in paragraph 69 below, 25 U.S.C. § 5123(f) prohibits the Department from making any decision that enhances or diminishes the legal rights of an Indian tribe and, in 25 U.S.C. § 5123(d), provides a private of right of action to enforce the requirements of section 5123.

58. The Administrative Procedure Act authorizes the federal courts to hold unlawful and to set aside those actions of the Department that are "arbitrary, capricious, an abuse of discretion, or otherwise contrary to law;" that are "in excess of statutory jurisdiction, authority or limitations, or short of statutory right;" or that are taken "without observance of procedure required by law." 5 U.S.C. § 706.

59. The APA is construed to require that an agency consider every important aspect of the problem presented by a proposed agency action; that an agency's decision not be unreasonable, run counter to the available evidence, or be contrary to the requirements or prohibitions of applicable federal statutes; that an agency not act without ascertainable standards,

depart without explanation from established precedent or apply an unpublished rule made without public notice and comment; that an agency not fail to provide notice and opportunity for comment where it is required; that an agency not fail to explain its decisions sufficient and not fail to provide a record sufficient to permit meaningful judicial review. Where agency action negatively affects Indian tribes, these obligations – in particular the obligation to consider important aspects of the problem and to provide notice and opportunity for comment – are enhanced because of the federal statutory and common law trust obligations to such tribes.

60. The APA further allows interested persons to appear and be heard regarding agency decision-making, 5 U.S.C. § 555(b) – a right that, when applied in light of the federal trust obligation to Indian tribes and applicable executive orders and Departmental directives, requires that tribes with an interest in proposed agency action be given notice of the proposed action and an opportunity to be heard.

61. In violation of each of the foregoing legal requirements, Acting Assistant Secretary for Indian Affairs Larry Roberts approved publication of the May 4, 2016 Federal Register list that changed his own tribe's federally recognized, federally listed name "Oneida Tribe of Indians of Wisconsin" to "Oneida Nation," and, as well, approved the January 17, 2017 republication of the changed name.

62. Acting Assistant Secretary Roberts made the listing decisions based *solely* on the fact that the Wisconsin tribe had decided to use that name in its constitution, and did so without consideration of statutory requirements, other relevant facts, other interests that were at stake, applicable statutory duties and prohibitions, or the statutory and common law trust obligations of the United States to the Nation. The Acting Assistant Secretary thus surrendered the federal listing decision to the Wisconsin tribe, permitting that tribe to control the Department's decisions

regarding the names by which the United States will recognize Indian tribes and list them in the Federal Register.

63. The Acting Assistant Secretary failed to consider:
 - a. his disqualifying conflict of interest (or otherwise to follow applicable conflict-of-interest rules);
 - b. the Wisconsin tribe's prior efforts to impersonate the Nation and the fact that the Nation had a federally registered trademark right in the name "Oneida Nation;"
 - c. the need for notice to the Nation and other affected parties and an opportunity for them to be heard;
 - d. the confusion and harm to the Nation, particularly given the Department's long history of distinguishing between the Oneida Nation of New York and the Oneida Tribe of Indians of Wisconsin and using the shortened name "Oneida Nation" for the Nation – which the Midwest Regional Office recognized but declined to consider;
 - e. the deviation from longstanding precedent, evident in every published official list of federally recognized tribes, using geographic designations and other words to distinguish tribes with a similar tribal root name – *e.g.*, the Mississippi Band of Choctaw and the Choctaw Nation of Oklahoma, or the Sac & Fox Tribe of the Mississippi in Iowa, the Sac & Fox Nation, Oklahoma and the Sac & Fox Nation of Missouri in Kansas and Nebraska; and
 - f. the chaos and damages that will flow from a Department decision to federally recognize any name offered to it by a federally recognized Indian tribe,

without independent federal decision-making, particularly where there are so many tribes around the country who could appropriate a tribal root name shared by other tribes.

64. The listing decision made by Acting Assistant Secretary Roberts was arbitrary and capricious, an abuse of discretion, otherwise contrary to law, in excess of statutory jurisdiction, authority or limitations, or short of statutory right and was taken without observance of procedure required by law because of:

- a. the surrender of federal decision-making authority to the Wisconsin tribe and the corresponding failure to consider important facts and aspects of the problem presented, including the confusion and harm the name-change would cause the Nation, and to make an independent federal decision on the merits, all pursuant to an unpublished rule that the Department will recognize for federal purposes and publish in the federal list any name that a tribe selects for itself, a rule of which the Department has not given notice or sought comment as required by 5 U.S.C. § 553;
- b. the absence a neutral decision-maker as a consequence of Acting Assistant Secretary's disqualifying conflict of interest, which required his recusal under applicable regulations and under established constitutional due process principles;
- c. the absence of a process permitting notice to and an opportunity for the Nation and others to comment and be heard regarding the name change;

- d. the absence of ascertainable standards and of any explanation for the federal name-change decision or other record that would permit judicial review of the rationale for the decision;
- e. failure to consider important facts and circumstances related to the decision;
- f. failure to consider, and violation of, federal statutory and common law trust obligations;
- g. its unreasonableness and conflict with all available evidence;
- h. violation of the Department's duty under 25 U.S.C. § 5131 to make accurate federal determinations of the name by which the United States recognizes tribes;
- i. violation of the prohibition in 25 U.S.C. § 5123(f) of Departmental decisions that would enhance or diminish the legal rights of any Indian tribe; and
- j. the absence of a lawful basis for the United States to approve and recognize the Wisconsin tribe's misappropriation of the historic Oneida Nation name.

65. Because of the Acting Assistant Secretary's decision, the Nation has suffered and will suffer injury by reason of the confusion of federal agencies and the public that has occurred and will continue to occur regarding the Nation and the Wisconsin tribe (including the need to pay consultants and lawyers to attempt to limit that confusion); by reason of the Wisconsin tribe's claims to greater legal rights as against the Nation and that the Nation cannot refer to itself as the Oneida Nation; and by reason of the cultural and political diminishment of the Nation.

**SECOND APA CLAIM: MIDWEST REGIONAL OFFICE’S DECISIONS
TO HOLD SECRETARIAL ELECTION AND TO APPROVE NAME-CHANGE VOTE**

66. Under 25 U.S.C. § 5123 and in related regulations in 25 C.F.R. Part 81, the United States took control of the process of adopting and amending tribal constitutions and thereby accepted trust obligations to Indian tribes as part of its statutory obligations.

67. Under 25 U.S.C. § 5123(c)-(d), the Department may approve a Secretarial election to amend a constitutional provision unless that federal approval – here, of the Wisconsin Tribe’s changed name – would be “contrary to applicable laws.”

68. “[A]pplicable laws” are defined to “mean any treaty, Executive order or Act of Congress or any final decision of the Federal courts which are applicable to the tribe, and any other laws which are applicable to the tribe pursuant to an Act of Congress or by a final decision of the Federal Courts.” Pub. L. 100-581, § 102 (Nov. 1, 1988); 102 Stat. 2938 (Nov. 1, 1988).

69. The “applicable laws” include subsections (f) and (g) of the same statute, which enforce a principle of equality or non-discrimination as to federally recognized tribes, as well as the United States’ trust obligations to tribes that are embodied in and enforced by subsections (f) & (g), federal court decisions and executive orders.

- a. Subsection 5123(f) provides: “Departments or agencies of the United States shall not promulgate any regulation or make any decision or determination pursuant to the Act of June 18, 1934 (25 U.S.C. 461 et seq., 48 Stat. 984) as amended, or any other Act of Congress, with respect to a federally recognized Indian tribe that classifies, enhances, or diminishes the privileges and immunities available to the Indian tribe relative to other federally recognized tribes by virtue of their status as Indian tribes.”

- b. Subsection 5123(g) provides (with emphasis added): “Any regulation or administrative decision or determination of a department or agency of the United States that is in existence on May 31, 1994, and that classifies, enhances, or diminishes the privileges and immunities available to a federally recognized Indian tribe relative to the privileges and immunities available to other federally recognized tribes by virtue of their status as Indian tribes *shall have no force or effect.*”
- c. The Department thus must apply its statutory non-discrimination duty in light of, and under section 5123 as a part of, its statutory and common law trust obligation to all tribes, including the Nation, and cannot focus only on the effects of its decisions on or the interests of one tribe. The Department is forbidden to make a decision to change the federally recognized tribal name of one tribe to the name of another tribe, to limit or confuse the right of another tribe to use its name, or to expresses the supremacy of one tribe over another.
- d. Section 5213 provides a private right of enforcement with respect to the Department’s actions that are controlled by section 5123. “Actions to enforce the provisions of this section may be brought in the appropriate Federal district court.” 25 U.S.C. § 5123(d)(2).

70. The Administrative Procedure Act authorizes the federal courts to hold unlawful and to set aside those actions of the Department that are “arbitrary, capricious, an abuse of discretion, or otherwise contrary to law;” that are “in excess of statutory jurisdiction, authority or limitations, or short of statutory right;” or that are taken “without observance of procedure required by law.” 5 U.S.C. § 706.

71. The APA is construed to require that an agency consider every important aspect of the problem presented by a proposed agency action; that an agency's decision not be unreasonable, run counter to the available evidence, or be contrary to the requirements or prohibitions of applicable federal statutes; that an agency not act without ascertainable standards, depart without explanation from established precedent or apply an unpublished rule made without public notice or comment; that an agency not fail to provide notice and opportunity for comment where it is required; that an agency not fail to explain its decisions sufficient and not fail to provide a record sufficient to permit meaningful judicial review. Where agency action negatively affects federally recognized Indian tribes, these obligations – in particular the obligation to consider important aspects of the problem and to provide notice and an opportunity for comment – are enhanced because of the United States' statutory and common law trust obligations to such tribes.

72. The APA further allows interested persons to appear and be heard regarding agency decision-making, 5 U.S.C. § 555(b) – a right that, when applied in light of the federal trust obligation to Indian tribes and applicable executive orders and Departmental directives, requires that tribes with an interest in proposed agency action be given notice of the proposed action and an opportunity to be heard.

73. In violation of each of the foregoing legal requirements, the Midwest Regional Office decided to authorize and hold a federal Secretarial election on a constitutional amendment changing the Wisconsin tribe's name and to approve the result of that election. That approval of the result of the name-change amendment was made *solely* on the basis of an arithmetic calculation to determine whether a majority of voters voted in favor of the name-change amendment, without consideration of other facts or interests or the applicable legal principles.

74. In authorizing a federal Secretarial election and approving its result, the Midwest Regional Office failed to consider *any* important legal or factual aspect of the problem presented by the approval of the name-change amendment and, in fact, surrendered federal decision-making authority by leaving it solely to the Wisconsin tribe to decide whether to take the Oneida Nation name, notwithstanding the confusion and harm the change of name would cause.

75. That failure to consider any important aspect of the problem – after having recognized the confusion the Wisconsin tribe’s name change would cause and the harm it would cause the Nation – was reflected in the failure of the Midwest Regional Office (headed by a member of another Wisconsin Indian tribe) to give any notice or an opportunity to be heard to or to consult with the Nation or the BIA’s Eastern Regional Office, which has responsibilities with respect to the Nation and would have notified the Nation about the name-change amendment.

76. Specifically, the Midwest Regional Office made decisions to approve holding a Secretarial election and the resulting name-change amendment without considering and taking into account the facts and circumstances detailed above in paragraph 63(b)-(f).

77. The Midwest Regional Office’s failure to consider the Nation’s interests and the need for federal recognition of a tribal name that does not cause confusion with other tribes was especially serious because the Office actually recognized the confusion and harm a name-change would cause but determined the Wisconsin tribe, not the Midwest Regional Office, should consider those matters. The Department often has to reconcile conflicting tribal interests when exercising its trust responsibility to all federal-recognized tribes, but here it rejected the need to consider and evaluate the Nation’s interests *at all*.

78. The failures of the Midwest Regional Office are also aggravated in light of the response the Wisconsin tribe gave to the Office’s October 11, 2011, letter explaining the harm

and confusion the name change would cause. The response advised that the Oneida Tribe of Indians of Wisconsin “recognize[s] this concern but believe[s] strongly in the proposed amendment as being more responsive to the Tribe’s governmental status.” That was an admission that the name change was sought to appropriate the historical Oneida Nation name and identity in order to claim the status of the historical tribe itself, shedding the name and identity of the Wisconsin tribe that had been recognized by the United States.

79. The Midwest Regional Office’s decisions were arbitrary and capricious, an abuse of discretion, otherwise contrary to law, in excess of statutory jurisdiction, authority or limitations, or short of statutory right and were taken without observance of procedure required by law because of:

- a. the surrender of federal decision-making authority to the Wisconsin tribe and the corresponding failure to consider important facts and aspects of the problem presented, including the confusion and harm the name-change would cause the Nation, and to make an independent federal decision on the merits;
- b. the absence of a process permitting notice to and an opportunity for the Nation and others to comment and be heard regarding the name change;
- c. the absence of ascertainable standards and of any explanation for the federal name-change decision or other record that would permit judicial review of the rationale for the decision;
- d. failure to consider, and violation of, federal statutory and common law trust obligations;
- e. failure to consider important facts and circumstances related to the decisions;
- f. their unreasonableness and conflict with all available evidence;

- g. violation of the prohibition in 25 U.S.C. § 5123(f) of Departmental decisions that would enhance or diminish the legal rights of any Indian tribe; and
- h. the absence of a lawful basis for the United States to approve and recognize the Wisconsin tribe's misappropriation of the historic Oneida Nation name.

80. Because of the Midwest Regional Office's decisions, the Nation has suffered and will suffer injury by reason of the confusion of federal agencies and the public that has occurred and will continue to occur regarding the Nation and the Wisconsin tribe (including the need to pay consultants and lawyers to attempt to limit that confusion); by reason of the Wisconsin tribe's claims to greater legal rights as against the Nation and that the Nation cannot refer to itself as the Oneida Nation; and by reason of the cultural and political diminishment of the Nation.

PRAYER FOR RELIEF

WHEREFORE, the Oneida Indian Nation prays for entry of judgment:

1. Declaring to be unlawful and setting aside the Acting Assistant Secretary's decision to list the Oneida Tribe of Indians of Wisconsin as "Oneida Nation" in the May 4, 2016, Federal Register list of federally recognized Indian tribes and in subsequent lists;
2. Declaring to be unlawful and setting aside the Midwest Region's earlier decisions to permit and approve the Wisconsin tribe's constitutional name-change amendment;
3. Enjoining the Department from approving "Oneida Nation" as the name of the Wisconsin tribe or from listing that tribe as "Oneida Nation" in the official list published by the Department in the Federal Register;
4. Remanding the foregoing matters to the Department for proper administrative consideration, if the Court determines that the agency's decisions are invalid only for reasons of lack of notice, process, reasoned explanation or absence of a neutral decision-maker; and

5. Awarding the Oneida Indian Nation such other and further relief to which it may be entitled at law or in equity or as may otherwise be just and proper.

Respectfully submitted,

/s/ Michael R. Smith

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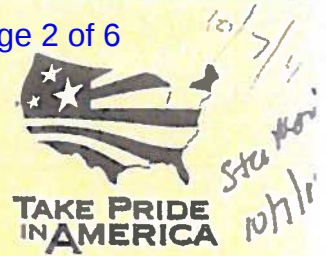
¹Mr. Sansonetti is not admitted in the United States District Court for the Northern District of New York. He will file a motion for leave to appear pro hac vice in this civil action.

EXHIBIT A



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Midwest Regional Office
Norman Point II
5600 West American Blvd.
Bloomington, Minnesota 55437



IN REPLY REFER TO:
Tribal Operations

OCT 11 2011

Honorable Edward Delgado
Chairman, Oneida Business Committee
P. O. Box 365
Oneida, WI 54155

Re: Request for Secretarial Election for five proposed amendments to the Constitution of the Oneida Tribe of Indians

Dear Chairman Delgado,

In February the Midwest Regional Office received a request from the Oneida Tribe of Indians of Wisconsin to call a Secretarial Election to amend the tribal constitution. The request was transmitted through Oneida Business Committee Resolution No. 11-10-10-F. The resolution was submitted on behalf of the General Council, the governing body of the Tribe. The General Council approved requesting an election for the five proposed amendments at a fall meeting in 2010. The General Council is made up of the adult members of the Oneida Tribe twenty one years of age and older. If approved, the proposed amendments would effectuate the following:

- Proposed Amendment "A" would amend Article III, Section 2. The effect of the amendment would be to lower the voting age to (18) years of age and older in Tribal elections. This is a decrease from the current minimum voting age of (21) years.
- Proposed Amendment "B" would amend the preamble and several articles in the constitution and bylaws by changing the name from the Oneida Tribe of Indians of Wisconsin to the Oneida Nation.
- Proposed Amendment "C" will amend the Preamble by adding language affirming the sovereign independent status of the Oneida Nation while affirming the trust relationship with the United States. More fundamentally, the Secretary of the Interior will be removed from oversight of all Oneida Constitutionally required processes. The Secretary will be removed from Article II, approving enrollment ordinances, Article VI 1(b) approving attorney contracts, managing economic affairs through a Charter approved by the Secretary, and reviewing ordinances governing conduct of members and land assignments. Finally, this proposed amendment would remove the Secretary from calling and approving future elections amending the constitution and provide for calling elections through a reduced number of signatures on a petition or by the Oneida Business Committee submitting proposals to the General Council.

- Proposed Amendment “D” would add a new Article V-Judiciary. This proposed amendment requires the General Council to establish a judiciary.
- Proposed Amendment “E” removes mandatory language requiring meetings of the General Council to be held the first Monday in January and July, thus allowing more flexible scheduling for General Council meetings.

None of the proposed amendments appear to be contrary to federal law. Accordingly, comments are offered for consideration by the Oneida Tribe prior to authorizing a Secretarial Election.

Proposed amendment “A” would change the minimum voting age from 21 to 18. This amendment would bring the tribal voting age requirement in line with federal elections. The only comment is that the section would still require voting at the polls in person by the members. However, the Oneida election ordinance provides for a polling site in Milwaukee for tribal elections. It is unclear why individual members in Milwaukee would have greater access to the polls than non-resident members not living in Milwaukee. The Oneida Tribe may wish to consider allowing absentee voting by its members.

Proposed amendment “B” would change the name of the tribe from the Oneida Tribe of Indians of Wisconsin to the Oneida Nation. A concern is that the name “Oneida Tribe of Indians of Wisconsin” has a long history including the reorganization under the Indian Reorganization Act. Changing the name will cause confusion for a number of entities engaged in business with the Oneida Tribe as well as other governments. Compounding this difficulty will be the name of the tribe in the state of New York, called the “Oneida Nation of New York”. While the two names would not be exactly the same they are close enough so that they will undoubtedly be confused more often than they are now. The Oneida Nation of New York is often referred to as the Oneida Indian Nation, including some self-determination contracts with the Bureau of Indian Affairs, which will compound the existing confusion over this matter.

Proposed amendment “C” would remove all approval requirements by the Secretary of the Interior currently in the Oneida Constitution, including approval of future constitutional amendments. To be clear this would not include review or approval of matters requiring Secretarial approval as a matter of federal law such as liquor ordinances or Revenue Allocation Plans having per capita payments from casino revenues. Removing Secretary of the Interior approval authority in the constitution for attorney contracts and tribal ordinances not otherwise required by federal law is permissible and is to be commended.

Removing the Secretary from the oversight process of amending the constitution is a matter that should be carefully considered. There are consequences of removing Secretarial oversight over the constitutional amending process that are worth considering.

Notably, removing the Secretary from review and approval also removes federal administrative and adjudicatory processes and safeguards currently available for Secretarial elections held to amend the tribal constitution. This means the Oneida Tribe would have to develop and use its own laws and processes to resolve those issues for itself. While this is in the best interests of the

tribe in the long run as an exercise of tribal sovereignty, resolution of constitutional and election matters can be quite difficult and is often very contentious. Oneida processes will need to be established as a matter of law and should be in considerable detail to avoid problems in order to resolve voting and election challenges as they arise.

A concern is that at this time the Oneida Constitution does not expressly provide for a court to resolve disputes and a proposed amendment providing for such a court still has not passed and it is possible that such an amendment may not pass in this election or for sometime if at all. Should the removal of the Secretary of the Interior from the amending process occur and the judicial amendment does not pass, the Oneida Tribe would be in the position of having to resolve constitutional issues without having an expressly authorized constitutional court. Such a situation could prove to be very difficult while in the midst of litigation over an election to amend the constitution. Though certainly not a requirement, the Oneida Tribe may wish to consider approaching these issues in two separately called elections with the judicial amendment first.

In addition to removing the Secretary of the Interior from the constitutional amending process, the third proposed amendment contains two provisions for calling an election to amend the constitution. The first provision requires that eight members of the Business Committee, excluding the Chair, approve a proposed amendment and present it to the General Council. The General Council then determines if the proposed amendment will be placed on a ballot in an upcoming election. The intent appears to be that an election to amend the constitution can occur either by special election or general election. The concern is that the election provision may not be clear enough as drafted.

The other process available to call an election for a proposed amendment is by a petition signed by the members. Any such petition must have valid signature from at least 10% of the qualified Oneida voters. This provision would make a proposed amendment part of the Oneida General Election. Confusing this is that either the Business Committee or the General Council can decide if the election may also be conducted as a special election. The question is which entity has the ability to determine whether the vote on an amendment is at a special election or a general election. The concern is that there is the potential for conflicting decisions calling for the election by two entities using differing election processes. It is recommended this provision be simplified. Another concern is that there is a time requirement for having the proposed amendments presented to some authorized person 90 days before the election. The concern is that there may be different start times to the 90 days if there are multiple entities calling elections. This could be problematic and open the door for challenges to an election.

An additional concern is that the language in proposed Article VI, Section 2 states, "Every petition shall include the full text of the proposed amendment, and be signed by qualified voters of the Oneida Nation, equal in number to at least ten percent (10%) of the qualified voters of the Oneida Nation." However, the section does not define "qualified voters". However, the constitution, at Article III Section 2 states, "All enrolled members of the Oneida Tribe of Indians of Wisconsin who are 21 (18 if the proposed amendment passes) years of age or over shall be **qualified voters provided they present themselves in person at the polls on the day of the election.**" (Emphasis added.) If the calculation to determine "qualified voters" may only be

reached based on eligible voters presenting themselves at the polls on the day of the election, the proposed computation method is not workable for determining an appropriate number of signatures on a petition. Another definition needs to be developed such as a percentage of the members over the age of 18 or a percentage of qualified voters who participated in the last general or special election.

Another concern is with the amending provision of Amendment "C". It appears there could be conflicting provisions approved by voters in the same election and if that were to happen, the proposal receiving the most votes would prevail and be adopted into the constitution and the other proposal not, even if a majority of voters approved it. There is a concern on how a determination is made on whether there is a conflict with proposed provisions or not. It is recommended that such a potential conflict be resolved before the election rather than after. It is also recommended that each proposed provision get an affirmative or negative vote rather than have multiple choices to avoid this situation. There also is an indication that an amendment approved by voters would not go into effect for 30 days after the election. Another concern is a question of when other provisions approved by voters go into effect and is there a general thirty day period before an approved amendment goes into effect. Finally, there is a question on the impact of challenges or appeals and the impact on the date of an amendments application. These issues should be so that the intent of the amendment is clear.

As a final matter, there appears to be a typographical error in Amendment "C" as there is no Article III section 5. The Oneida Tribe will want to ensure that all references to other provisions in the amendments are correct.

Proposed amendment "D" requires that the General Council establish a judiciary. This indicates that the General Council will have to take an affirmative action establishing a judiciary. However, it is unclear what happens if the General Council fails to take such an action or subsequently disestablishes the judiciary. In order to provide for a judiciary with the most independence as possible it is recommended that the constitution itself establish a judiciary. This added safeguard would more likely prevent the disestablishment of a judiciary or creation of a competing judiciary. Then as a matter of legislative prerogative the powers and limitations of the judiciary can be established as a matter of law by a duly adopted ordinance. It will undoubtedly come to pass that the judiciary makes a decision that a particular General Council or at least a significant voting bloc in the General Council does not like. Accordingly, it should not be easy for the General Council to take direct actions against the judiciary or judges and the law should be clear preventing this. This should be a deliberative process.

Proposed amendment "E" would remove the mandatory "first Monday" of January and July requirement for General Council meetings. This would allow flexibility in scheduling. The only comment is to ensure that members are notified of meetings in advance as a matter of law and not just as a practice.

This concludes the review and technical comments to the eight proposed amendments. While it may appear that the BIA is being overly critical, that is not the intent. Over the years, problems have arisen when a tribe has not been technically precise in the wording of the language in their constitutions and amendments. The objective of this technical comment letter is to identify

issues so that the Oneida Tribe is aware of potential issues in order to prevent problems before they occur. Should you have any questions, staff will be glad to discuss any concerns you may have prior to authorizing the election.

As noted above the proposed amendments do not appear to be contrary to federal law and a Secretarial election can proceed. Upon written notification from the Oneida Business Committee, the Secretarial election process will proceed with the Regional Director issuing an authorization letter to call and conduct the election. Secretarial elections must be conducted consistent with the election regulations found in the Code of Federal Regulations found at 25 C.F.R. Part 81. (Copy enclosed). Please be aware that the authorization of a Secretarial election does not carry with it a presumption of Secretarial approval of the amendment should it be accepted by the voters. Finally, if adopted, an amendment does not become effective until approved by the Regional Director.

If you need additional information or have questions, please contact David Christensen, Tribal Operations Officer at (612) 725-4554.

Sincerely,

/s/ Todd Kennedy
Acting Regional Director

Enclosure(s): 25 C.F.R. Part 81

EXHIBIT B

Oneida Tribe of Indians of Wisconsin

Post Office Box 365

Phone: (920) 869-2214

Oneida, WI 54155



Oneidas bringing several hundred bags of corn to Washington's starving army at Valley Forge, after the colonists had consistently refused to aid them.



UGWA DEMOLUM YATEHE
Because of the help of
this Oneida Chief in
cementing a friendship
between the six nations
and the colony of
Pennsylvania, a new
nation, the United States
was made possible.

2.14.17 PM 2:00

January 11, 2012

Diane K. Rosen
Regional Director
United States Department of Interior
Bureau of Indian Affairs
Midwest Regional Office
Bishop Henry Whipple Office Building
One Federal Drive, Room 550
Ft. Snelling, Minnesota 55111

RE: Oneida Tribe of Indians of Wisconsin Response to Technical Review

Dear Ms. Rosen:

We have received the October 11, 2011 Technical Review letter regarding our proposed constitutional amendments. Many of the questions or concerns raised within the letter have been and are addressed within current Tribal law or processes. Our response to the Technical Review letter is outlined below, including in some circumstances amendments based on the letter.

Amendment A.

There were two issues raised regarding these amendments – the Milwaukee polling site and absentee balloting. During General elections the Oneida Tribe authorizes the use of the Milwaukee polling site as a result of our having established a program in that area. Significant concentrations of members living in the Milwaukee area have strong and close ties to the Reservation. As a result, we believe that providing a polling site during General elections is appropriate. We will continue to provide that polling site.

You have also recommended that the Tribe consider absentee balloting. The original constitutional amendment involved a request to include the ability to conduct absentee balloting. This matter was presented at public hearings, community meetings and ultimately at the General Tribal Council meeting along with other proposed amendments. The General Tribal Council rejected this proposal specifically and as a result we are not presenting this for consideration.

No amendments to our original request are being submitted.

Amendment B.

You have raised a concern that the proposed name change from Oneida Tribe of Indians of Wisconsin to Oneida Nation may result in confusion with the Oneida Nation of New York. We recognize this concern but believe strongly in the proposed amendment as being more responsive to the Tribe's governmental status.

No amendments to our original request are being submitted.

Amendment C.

There were five issues raised in the Technical Review letter – laws addressing constitutional amendment processes, no constitutional court, clarification of how election is called, clarification of qualified voter, and clarification regarding implementation date for adopted amendments. These are addressed separately below. Finally, although the amendments also appear in other proposed amendments, we have clarified the numbering in sections 3-5.

Laws addressing constitutional amendment processes. The Technical Review letter is correct that there are no current laws for this process. However, incorporating amendments into the Tribe's Election Law under the processes set forth in the Tribe's Administrative Procedures Act would be standard process for the Oneida Business Committee with adoption by the General Tribal Council.

No constitutional court. While it is true that the Tribe does not have a constitutional court, we have had a court in place since 1991. The Oneida Appeals Commission was created by the Oneida Business Committee and re-affirmed by the General Tribal Council in August 1991. Since that time it has been consistently operating and carrying out its judicial responsibilities. The Oneida Appeals Commission's decisions are respected by the Oneida Business Committee, General Tribal Council, members, petitioners and respondents in both civil and administrative hearings.

The Tribe is currently in the process of developing the laws and rules for a more formal judicial system. We anticipate that these laws will be adopted this year and the more formal court system in place via a transition period from the Oneida Appeals Commission to Tribal Court system in 2013. We also believe this system will receive additional formal support through adoption of these proposed constitutional amendments.

Regardless, it is the opinion of the Oneida Business Committee that a constitutional court is not necessary to adjudicate constitutional questions. We believe that the proposed Tribal Court system, the proposed amendments to the Constitution directing that a Tribal court be developed and our consistent and respected election processes are sufficient.

Clarification of how election is called. This concern arises over either the Oneida Business Committee or General Tribal Council being able to call a special election or having the proposed amendment presented at the next General Election and potential conflict between those two bodies. The potential conflict, however, is resolved once the General Tribal Council makes specific direction. In all cases this would trump any decision made by the Oneida Business Committee. Although this is rather simply stated, this is consistent with the organizational and

membership understanding of the delegated authority in the Constitution from the membership to the General Tribal Council and subsequently to the Oneida Business Committee.¹

However, for consistency in use of terms we have one correction in Article VI, section 1 to refer to the "general" election in the last sentence.

Clarification of qualified voter. The Constitution, and proposed amendments, does not clarify what is a qualified voter. We agree that this could be better defined and have proposed alternative language to clarify this term. In Amendment C "qualified voter" is now changed to "members eligible to vote."

Clarification regarding implementation date for adopted amendments. The Technical Review raises a question about the implementation date for adopted amendments. We agree that this may raise confusion and propose the following language to clarify this issue – "Amendments adopted under this Article are effective thirty days after submission of the final election report as directed by law."

We have presented three changes to clarify proposed Amendment C.

Amendment D.

The Technical Review letter suggests that the Tribe separate the issue of constitutional court amendments from the proposed series of amendments and adopt this first. The Tribe has discussed the development of a judiciary for several decades. As identified above, we currently have in place since 1991 a Tribal Judicial System operated by the Oneida Appeals Commission. In addition, we are formalizing a judiciary with expanded and clarified jurisdiction and authority. However, we believe that the current Oneida Appeals Commission will be sufficient in the short term to manage cases and controversies and be removed from General Tribal Council or Oneida Business Committee influence.

No amendments to our original request are being submitted.

Amendment E.

The Technical Review letter identifies a concern regarding proper notice being given regarding Annual and Semi-Annual meetings if a specific date is removed from the Constitution. This process has been in place since early 1991 with the adoption of the Ten Day Notice Policy by the General Tribal Council. The Policy was updated approximately ten years ago to reflect a change in cost and demand regarding the meeting materials. In addition, recent discussions regarding new technology have identified potential future changes to the Policy to allow for alternative methods of notice which are both more accessible and cost effective. As a result, inclusion of specific notice provisions in this section would be a hindrance to the flexibility needed to affect change based on technology or membership demands.

No amendments to our original request are being submitted.

¹ It is understood that the processes and actions taken by either party are subject to the authority set forth in the Constitution and in accordance with laws adopted in accordance with the Constitution, Ten Day Notice Policy and Administrative Procedures Act.

Again, we appreciate the time and attention given to our proposed constitutional amendments in your Technical Review letter. We hope that the responses above clarify the application or concerns you have raised.

By separate correspondence we have requested clarification regarding our concern about removal of the Secretary from our Constitution. While we believe the amendments we have requested are in appropriate format to move forward to Secretarial Election, we cannot in good conscious request that a Secretarial Election be scheduled until we have a response to this issue. Upon receipt of that response, we will forward our formal request to conduct a Secretarial Election. However, we are sending this correspondence in the desire to keep this process on track and ready for presentation at an election in a timely manner.

Sincerely,



Edward Delgado
Chairman
Oneida Business Committee

EXHIBIT C



Email: chris.liro@andruslaw.com

January 16, 2017

VIA EMAIL

Ms. Linda McLeod
Kelly IP, LLP
1919 M Street NW, Suite 610
Washington, DC 20036
Linda.McLeod@Kelly-IP.com

Re: Use of ONEIDA and ONEIDA Trademark Registrations.
Andrus Ref. 6363-00001

Dear Ms. McLeod:

We represent Oneida Nation, previously known as Oneida Tribe of Indians of Wisconsin, with respect to certain intellectual property matters. I am writing concerning U.S. Trademark Registration Numbers 2,309,491, 4,808,677, and 4,813,028 owned by your client Oneida Nation of New York, a/k/a Oneida Indian Nation of New York, and certain issues raised by your November 25, 2015 correspondence to Ms. Liz Moore, the Chief Legal Officer of the Ladies Professional Golf Association (“LPGA”).

As an initial matter, you should be aware (if you are not already) that our client changed its name from Oneida Tribe of Indians of Wisconsin to Oneida Nation in May 2015. The Bureau of Indian Affairs approved this amendment on June 16, 2015, and this name change was published in May 2016. 81 Fed. Reg. 26826, 26827 (May 4, 2016). Thus, the assertion in your letter to Ms. Moore that the “Indian nation located in Wisconsin is federally recognized as the Oneida Tribe of Indians of Wisconsin” was and is incorrect. Similarly, your assertion that “consumers are likely to be confused [by the LPGA’s press release] to believe that the tournament is licensed by, sponsored by, endorsed by, other otherwise connected to the Oneida Nation, when in fact, it is not,” also was and is incorrect.

Moreover, your letter to Ms. Moore improperly asserts that your client is “the Oneida Nation,” and holds exclusive rights in the terms Oneida Nation and Oneida. While your letter correctly states that your client’s name is Oneida Nation of New York in its first line, the letter then proceeds as if use of the abbreviation “Oneida Nation” somehow changes things. Your client, unlike ours, has never been federally recognized as Oneida Nation. Your assertion that your client “has continuously used and been recognized as the ONEIDA and the ONEIDA NATION for hundreds of years,” even if accurate, applies equally to our client. It is inexplicable that your client sent threatening letters to my client’s business partners asserting that my client cannot refer to itself as ONEIDA or ONEIDA NATION.

Contrary to your client’s unfounded claims of exclusivity underlying its threats and interference with our client’s business ventures, our client believes that in light of the longstanding

January 16, 2017

Page - 2 -

use of the terms Oneida, Oneida Tribe, Oneida Indian Tribe, Oneida Nation, and Oneida Indian Nation by **both** entities, **both** should be able to use and continue to use these terms to identify themselves and the source of various goods and services provided by each tribe to their members and members of the general public. To that end, and to avoid the type of disputes your client created concerning the Wisconsin LPGA event, our client proposes that the parties enter into a coexistence agreement covering these uses, under which my client and its affiliates and partners will have express rights to use these terms in Wisconsin and surrounding states without fear of enforcement or litigation by Oneida Nation of New York, together with Oneida Nation of New York's agreement to refrain from use of the marks in this territory.

We hope that your client will promptly enter such an agreement. If not, however, our client will not simply stand by while your client makes unfounded claims to exclusive use of the terms ONEIDA, ONEIDA NATION, and related terms, especially when doing so harms our client and its ventures. If your client insists on continuing its confrontational approach, our client intends to protect its rights to continue use of these terms by itself and its partners in at least Wisconsin by seeking cancellation of your client's Trademark Registration Numbers 2,309,491 (for ONEIDA INDIAN NATION), 4,808,677 (for ONEIDA), and 4,813,028 (for ONEIDA). Our client is prepared to move quickly, and a draft petition is attached for your consideration. I draw your particular attention to statements made in 1994 and 1995 during prosecution of Registration Number 2,309,491, in which your client, and in particular Mr. Ray Halbritter, conceded our client's use of ONEIDA since at least 1937. The draft petition identifies a number of bases for cancellations for the three registrations, including our client's prior use of ONEIDA and defects and false statements made by your client during prosecution of the three registrations.

Further, unless and until the parties have a coexistence agreement, I remind you that your client's federally recognized name is Oneida Nation of New York, and that your client should not abbreviate that as Oneida Nation or otherwise refer to itself as the Oneida Nation, which is the federally recognized name of my client.

Please provide your written confirmation by January 31, 2017 that your client agrees in principle to such a co-existence agreement. Following that, we will prepare and provide a draft agreement for your review. Absent this confirmation, my client reserves the right to file its petition for cancellation at or after that time. We hope, however, that the parties can amicably resolve the issue without the need for the U.S. federal government to act as arbiter between the two parties.

Yours truly,

A handwritten signature in blue ink, appearing to read "C. Liro", followed by a horizontal line.

Christopher R. Liro

CRL/mgm

EXHIBIT D

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

ONEIDA NATION,)	
)	
Petitioner	)	CANCELLATION NO. _____
)	
v.	)	Registration No. 2,309,491
	)	Serial No. 75/978,733
ONEIDA INDIAN NATION OF NEW	)	Mark: ONEIDA INDIAN NATION
YORK)	
	)	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

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).

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 and the source of various goods and services provided by each tribe to their members and members of the general public.

7. 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 and the source of various good and services provided by each tribe to their members and members of the general public.

8. 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

9. 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>.

10. 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).

11. 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).

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



13. 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.

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

15. Petitioner is the owner of Oneida Golf Enterprises Corporation (“OGEC”), a tribal corporation of the Oneida Nation.

16. 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.”

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

18. 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

19. 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.

20. 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.

21. 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.

22. 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).

23. 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.

24. 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.”

25. 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.”

26. 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.”

27. 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.’”

28. 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.

29. 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

30. 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.

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

32. The application for what issued as the '491 Registration was filed on July 13, 1994 as Serial Number 74/548,930. 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.

33. 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.

34. Registrant submitted an Amendment to the application on August 25, 1995, which included a substitute statement and declaration. 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.

35. 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.

36. 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

37. 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.

38. 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.

39. 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.

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

41. 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.

42. 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.

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

44. On January 18, 2006, Registrant filed a Declaration under Sections 8 and 15. 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.

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

46. On July 19, 2010, Registrant filed a Declaration under Sections 8 and 9. 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 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.

47. On information and belief, Registrant has never used the ONEIDA INDIAN NATION mark of the '491 Registration in commerce in connection with all of the goods and services currently listed in the registration.

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

Registrant's '677 Registration

49. 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.

50. Registrant's application for what issued as the '677 Registration was filed on January 26, 2006 as Serial Number 78/800,006 under Section 1(b), including 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.

51. Registrant's January 26, 2006 Application further included a Declaration by Registrant's counsel Christine Baty Heinze, certifying that to the best of her 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.

52. 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.

53. On information and belief, 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.

54. On information and belief, 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.

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

56. 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.

57. 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.

58. 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). Registrant also filed a Declaration at that time executed by Registrant's General Counsel Megan Murphy Beakman, 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.

59. On information and belief, 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.

60. On information and belief, 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.

61. 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.

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

Registrant's '028 Registration

63. 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.

64. The application for what issued as the '028 Registration was filed on January 26, 2006 as Serial Number 78/799,982 under Section 1(b), including 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.

65. Registrant's January 26, 2006 Application further included a Declaration by Registrant's counsel Christine Baty Heinze, certifying that to the best of her 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.

66. 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.

67. On information and belief, 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.

68. On information and belief, 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.

69. 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.

70. 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, 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.

71. 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.

72. 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 showing, balloon rides, and basketball (Class 41). Registrant also filed a declaration at that time executed by Registrant's General Counsel Megan Murphy Beakman, 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.

73. On information and belief, 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.

74. On information and belief, 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.

75. 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.

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

Cancellation of the '491 Registration

77. On information and belief, the ONEIDA INDIAN NATION mark of the '491 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 application dated July 13, 1994 as of the date of the application.

78. By virtue of the false and material claims regarding use of the mark ONEIDA INDIAN NATION in United States commerce in connection with all of the goods and services listed in the July 13, 1994 application and the resulting issue of the '491 Registration, the registration was invalidly obtained and should be cancelled on that basis.

79. Alternatively, on information and belief, when 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.

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

81. Alternatively, on information and belief, the ONEIDA INDIAN NATION mark of the '491 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 Declaration of January 18, 2006, and had not used for five consecutive years before the January 18, 2006 Declaration the ONEIDA INDIAN NATION mark in connection with all of the goods and services listed in the Declaration.

82. By virtue of the false and material claims regarding use of the mark ONEIDA INDIAN NATION in United States commerce in connection with all of the goods and services listed in the January 18, 2006 Declaration and the resulting renewal of the '491 Registration, the registration was invalidly renewed and should be cancelled on that basis.

83. Alternatively, on information and belief, the ONEIDA INDIAN NATION mark of the '491 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 Declaration of July 19, 2010.

84. By virtue of the false and material claims regarding use of the mark ONEIDA INDIAN NATION in United States commerce in connection with all of the goods and services listed in the July 19, 2010 Declaration and the resulting renewal of the '491 Registration, the registration was invalidly renewed and should be cancelled on that basis.

85. Alternatively, on information and belief, 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.

86. 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.

87. 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 misrepresentation in the Declaration.

88. Petitioner accordingly alleges that the January 18, 2016 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.

89. Alternatively, on information and belief, 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.

90. 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.

91. 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 misrepresentation in the Declaration.

92. 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.

93. Alternatively, on information and belief, Registrant has either never used the ONEIDA INDIAN NATION mark of the '491 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, and therefore has abandoned the 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.

94. Alternatively, on information and belief, neither Registrant nor any related company was using or uses ONEIDA INDIAN NATION as a trademark 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.

95. Petitioner accordingly alleges that the '491 Registration should be cancelled because it was obtained contrary to the provisions of 15 U.S.C. § 1051, 15 U.S.C. § 1053, and 15 U.S.C. § 1054.

Cancellation of the '677 Registration

96. 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 all of the goods and services included in the application.

97. 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 all of 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.

98. Alternatively, Registrant's July 6, 2007 request to divide improperly enlarged the identified goods and services of the application, and the resulting '677 Registration was invalidly obtained and should be cancelled on that basis.

99. 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.

100. 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.

101. Alternatively, on information and belief, when the July 31, 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.

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

103. Registrant would not have received the renewal of the '677 Registration for all of the goods and services identified in the July 31, 2015 Statement of Use but for the willful material misrepresentation in the Statement of Use.

104. Petitioner accordingly alleges that the July 31, 2015 Statement of Use 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.

105. Alternatively, on information and belief, 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.

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

107. 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.

108. Alternatively, on information and belief, 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.

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

110. 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

111. Alternatively, on information and belief, Registrant has either never used the ONEIDA mark of the '677 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, and therefore has abandoned the 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.

112. Alternatively, on information and belief, neither Registrant nor any related company was using or uses ONEIDA as a trademark 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.

113. Petitioner accordingly alleges that the '677 Registration should be cancelled because it was obtained contrary to the provisions of 15 U.S.C. § 1051, 15 U.S.C. § 1053, and 15 U.S.C. § 1054

114. 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.

Cancellation of the '028 Registration

115. 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 all of the goods and services included in the application.

116. 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 all of 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.

117. 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.

118. 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.

119. Alternatively, on information and belief, 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.

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

121. Registrant would not have received the renewal of the '028 Registration for all of the goods and services identified in the August 10, 2015 Statement of Use but for the willful material misrepresentation in the Statement of Use.

122. Petitioner accordingly alleges that the August 10, 2015 Statement of Use 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.

123. Alternatively, on information and belief, 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.

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

125. 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.

126. Alternatively, on information and belief, 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.

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

128. 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

129. Alternatively, on information and belief, Registrant 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, and therefore has abandoned the 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.

130. Alternatively, on information and belief, neither Registrant nor any related company was using or uses ONEIDA as a trademark 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.

131. Petitioner accordingly alleges that the '028 Registration should be cancelled because it was obtained contrary to the provisions of 15 U.S.C. § 1051, 15 U.S.C. § 1053, and 15 U.S.C. § 1054

132. 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.

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: June 27, 2017

/Christopher R. Liro/
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Phone: (414) 271-7590
Attorneys for Petitioner Oneida Nation

Exhibit A



ONEIDA NATION TO SPONSOR NEW LPGA TOUR EVENT IN GREEN BAY IN 2017

Tournament will be held at Thornberry Creek at Oneida, the official golf course of the Green Bay Packers

NAPLES, Fla., October 20, 2015 – The Ladies Professional Golf Association (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 Enterprise Corporation. The specific dates for the event will be announced in the coming months.

The event will feature a full field of 144 players who will compete for a \$2 million purse, tied for the largest domestic non-major purse on the LPGA Tour. The Oneida Nation has agreed to a three-year deal with the LPGA Tour starting in the summer of 2017.

"It's exciting to have the Oneida Nation and Thornberry Creek at Oneida on board with over a year and a half to prepare for what I think has the potential to be one of the top stops on Tour," said LPGA Commissioner Mike Whan. "Green Bay is already a great sports town and we hope the community, and all of the cheeseheads, will be out in full force to cheer on the best female golfers on the planet".

The Oneida LPGA Classic will mark the first time the LPGA, or PGA Tour, has hosted a sanctioned event in the greater Green Bay area. The last time the LPGA stars played in the state of Wisconsin was the 2012 U.S. Women's Open conducted by the USGA at Blackwolf Run in Kohler.

Thornberry Creek at Oneida is the official golf course of the Green Bay Packers. The Green Bay Press Gazette tagged Thornberry as the 2015 Best of the Bay. In 2014, Thornberry served as a qualifying site for the Wisconsin State Open.

"This newfound partnership between the Oneida Nation of Wisconsin and the LPGA couldn't be more exciting," said Joshua R. Doxtator, PGA General Manager at Thornberry Creek at Oneida. "The world will have an opportunity to see what the Oneida Nation has to offer; world class gaming, superior lodging, retail to tourist interests and of course the best golf course in Northeast Wisconsin. We're confident this event will be a favorite amongst the players and spectators alike and we look forward to setting a precedent for entertainment and hospitality in the professional arena."

IMG will operate this new event. In addition to operating the Oneida LPGA Classic, IMG also produces the ANA Inspiration, the RICOH Women's British Open, the Swinging Skirts LPGA Classic, the Coates Golf Championship presented by R+L Carriers and six LPGA tournaments in Asia.

"IMG Golf is the biggest promoter of golf globally and we are delighted to be adding the Oneida LPGA Classic to our North American portfolio," said Grant Slack, Senior Vice President and Head of Golf Events at IMG. "This tournament will be a celebration of the best that women's golf has to offer and we are looking forward to working with Oneida Nation and everyone at Thornberry Creek at Oneida to deliver a new champion to Titledown, USA!"

Topic: LPGA NEWS

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Site by Lightmaker

Exhibit B



www.kelly-ip.com

Linda K. McLeod

(202) 808-3574

linda.mcleod@kelly-ip.com

November 25, 2015

Liz Moore
Chief Legal Officer
Ladies Professional Golf Association
100 International Golf Drive
Daytona Beach, Florida 32124-1092
liz.moore@lpga.com

VIA EMAIL AND FEDEX

RE: 2017 Oneida LPGA Classic

Dear Ms. Moore:

We represent the Oneida Nation of New York (the "Oneida Nation").

It has come to our attention that the Ladies Professional Golf Association ("LPGA") has announced a new tournament planned for 2017 called the "Oneida LPGA Classic." Attached are copies of a LPGA press release stating 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 "Press Release").

Oneida Nation of New York is the federally recognized name of our client, which is located in the federally recognized Oneida Reservation in New York State. 80 Fed. Reg. 1942, 1945 (January 14, 2015). 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.

In addition to its long history and use of the ONEIDA and ONEIDA NATION names, the Oneida Nation owns numerous federal trademark registrations for the ONEIDA trademark, including U.S. Reg. No. 4813028 for "conducting sporting events, namely, boxing, yoga, lacrosse, and golf," among others. The Oneida Nation's Turning Stone Resort has been recognized as a "Most Excellent Golf Resort" by Condé Nast Johansens. Moreover, since at least 2006, the Oneida Nation's Turning Stone Resort has hosted various PGA tournaments in connection with its ONEIDA name and mark, including the PGA Professional National Championship (2006), the B.C. Open (2006), and the Turning Stone Resort Championship on the PGA Tour (2007-2010), and the PGA Professional National Championship is returning to Turning Stone in 2016.

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. This is particularly a concern given the Oneida Nation's long use and registration of ONEIDA in connection with its premier Turning Stone Resort golf resort and tournaments.

Kelly IP, LLP

1919 M Street, NW | Suite 610 | Washington, DC | 20036
Phone | (202) 808-3570 | Fax | (202) 354-5232

Page 2

Please understand that it is not the Oneida Nation's desire to interfere with the LPGA's business or tournaments, but rather it seeks to maintain and preserve the integrity of its ONEIDA name and mark. To that end, the Oneida Nation respectfully requests that LPGA provide written confirmation by **Monday, December 7, 2015** that it will:

- (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."

We look forward to hearing from you. Thank you in advance for your cooperation.

Sincerely,



Linda K. McLeod

LKM/av

Enclosures: Press Release

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM)

I. (a) PLAINTIFFS

Oneida Indian Nation

DEFENDANTS

United States Department of the Interior

(b) County of Residence of First Listed Plaintiff **Madison**

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant **Washington, D.C.**

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)

Attorneys (If Known)

(see attachment)

unknown

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input checked="" type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

5 U.S.C. § 551, et seq.; 5 U.S.C. § 701, et seq.; 25 U.S.C. §§ 5123, 5131.

Brief description of cause:

Challenge to Department of the Interior's administrative decisions affecting the Oneida Indian Nation.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

8-17-2017

SIGNATURE OF ATTORNEY OF RECORD

Michael R. Smith

FOR OFFICE USE ONLY

RECEIPT# 0206-4107243 AMOUNT \$400.00

APPLYING IFP

JUDGE

MAD

MAG. JUDGE

TWD

Attachment to Civil Cover Sheet
Names of Counsel of Record for Plaintiff Oneida Indian Nation

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