

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA**

(1) SPECIALTY HOUSE OF CREATION,  
INCORPORATED, a New Jersey corporation,

Plaintiff,

v.

(1) CHEROKEE NATION ENTERTAIN-  
MENT, LLC, a Cherokee Nation limited liabil-  
ity company,

(2) CHEROKEE NATION ENTERPRISES,  
LLC, a Cherokee Nation limited liability com-  
pany,

(3) MEEKS LITHOGRAPHING COMPANY,  
an Oklahoma corporation,

(4) HAMMERHEAD INTERNATIONAL,  
INC., an Arizona corporation,

Defendants.

Case No. 10-CV-60-TCK-FHM

**FIRST AMENDED COMPLAINT FOR  
PATENT INFRINGEMENT AND FALSE MARKING**

This action is not related to any previously filed case in this Court. Plaintiff Specialty House of Creation, Incorporated alleges as follows:

**NATURE OF THE ACTION**

1. This is an action for patent infringement and false marking of United States Design Patent No. D486,531.

**PARTIES**

2. Plaintiff Specialty House of Creation, Incorporated (“Specialty House” or “Plaintiff”) is a corporation organized and existing under the laws of New Jersey, and has its headquarters and principal place of business in Pittsgrove, New Jersey.

3. On information and belief, Defendant Cherokee Nation Entertainment, LLC (“CNE”) is a limited liability company organized and existing under the laws of the Cherokee Nation, a federally recognized Indian tribe.

4. On information and belief, Defendant Cherokee Nation Entertainment, LLC was formerly known as Cherokee Nation Enterprises, LLC, also a limited liability company organized and existing under the laws of the Cherokee Nation, a federally recognized Indian tribe.

5. On information and belief, Defendant Meeks Lithographing Company (“Meeks”) is a corporation organized and existing under the laws of Oklahoma, and has its headquarters and principal place of business in Tulsa, Oklahoma.

6. On information and belief, Defendant Meeks Lithographing Company does business as and operates under the tradename “Meeks Group.”

7. On information and belief, Defendant Hammerhead International, Inc., (“Hammerhead”) is a corporation organized and existing under the laws of Arizona, and has its headquarters and principal place of business in Phoenix, Arizona.

8. On information and belief, Defendant Hammerhead International, Inc., does business as and operates under the tradename “Idle Eyes.”

### **JURISDICTION AND VENUE**

9. This is an action for patent infringement and false marking arising under the patent laws of the United States, Title 35 of the United States Code.

10. This Court has jurisdiction over this action pursuant to 35 U.S.C. §§ 271, *et. seq* and 28 U.S.C. §§ 1331 and 1338.

11. Venue is proper in this District under 28 U.S.C. §§ 1391 and 1400.

### **BACKGROUND**

12. Specialty House is the owner by valid assignment of the entire right, title, and interest in and to United States Design Patent No. D486,531 (“the ‘531 Patent”), which is entitled “Slot Machine Card Holder” and issued on February 10, 2004. The ‘531 Patent is attached hereto as Exhibit A.

13. Defendant CNE is the retail, gaming, entertainment, hospitality and cultural tourism entity of the Cherokee Nation. Defendant CNE operates the Hard Rock Hotel & Casino Tulsa, five Cherokee Casinos located in Roland, West Siloam Springs, Fort Gibson, Sallisaw, Tahlequah and Cherokee Casino Will Rogers Downs, a horse racing track and pari-mutuel wagering operation in Claremore.

14. Defendant Meeks is a printing company specializing in lithography and is a distributor of promotional and ad specialty items.

15. Defendant Hammerhead is a supplier of promotional and ad specialty items.

**DEFENDANT CNE’S KNOWLEDGE OF THE ‘531 PATENT**

16. On or about May 10, 2006, Defendant CNE ordered 20,000 Slot Machine Card Holders from Impressions Customs, a distributor of Specialty House located in Muskogee, for use in Defendant CNE’s various casinos. These Slot Machine Card Holders were delivered to Defendant CNE and offered by Defendant CNE to Cherokee Casino patrons at Cherokee Casino’s various locations. Every Slot Machine Card Holder in this order was stamped “PATENT #D486531.”

17. On or about September 12, 2006, Defendant CNE re-ordered 20,000 Slot Machine Card Holders from Impressions Customs, a distributor of Specialty House located in Muskogee, for use in Defendant CNE’s various casinos. These Slot Machine Card Holders were delivered to Defendant CNE and offered by Defendant CNE to Cherokee Casino patrons at Cherokee Ca-

sino's various locations. Every Slot Machine Card Holder in this order was stamped "PATENT #D486531."

18. On or about January 12, 2007, Defendant CNE ordered 200,000 Slot Machine Card Holders from Impressions Customs, a distributor of Specialty House located in Muskogee, for use in Defendant CNE's various casinos. These Slot Machine Card Holders were delivered to Defendant CNE and offered by Defendant CNE to Cherokee Casino patrons at Cherokee Casino's various locations. Every Slot Machine Card Holder in this order was stamped "PATENT #D486531."

**INFRINGEMENT, FALSE MARKING  
AND FURTHER KNOWLEDGE OF THE '531 PATENT**

19. During approximately the fourth quarter of 2008, Defendant CNE began the process of obtaining quotes from Specialty House for the purchase of additional Slot Machine Card Holders for use at Defendant CNE's various casinos.

20. At the request of Defendant CNE, Specialty House provided Defendant CNE a quote for 300,000 Slot Machine Card Holders on November 17, 2008, via an email from Specialty House representative Ken Stambler to Sherrie Larsen, Senior Buyer for Defendant CNE. This quote contained a reference to the '531 patent.

21. At the request of Defendant CNE, Specialty House provided Defendant CNE a quote for 500,000 Slot Machine Card Holders on February 13, 2009, via an email from Ken Stambler to Sherrie Larsen. This quote contained a reference to the '531 patent.

22. On February 13, 2009, via an email from Sherrie Larsen to Ken Stambler, Defendant CNE informed Specialty House of Defendant CNE's intention not to purchase the Slot Machine Card Holders pursuant to either of the above referenced quotes and instead purchase another product.

23. The email from Sherrie Larsen to Ken Stambler on February 13, 2009, stated:

Ken,

The marketing department has all agreed that the cost saving of the lobster claw is worth the change. With that said, since you do not hold a patent on the lobster claws, according to CNE policy, I will have to post a bid for the lobster claws.

Best regards,  
Sherrie Larsen  
Senior Buyer  
Cherokee Nation Enterprises LLC

24. On or about February 20, 2009, Defendant CNE posted a procurement request for “CNE Players Card Lanyards” on the Cherokee Nation’s official website.

25. Attached to the procurement request for “CNE Players Card Lanyards” was a photograph of a Slot Machine Card Holder previously purchased by Defendant CNE from Specialty House (see ¶¶ 16-18 supra).

26. On or about March 2, 2009, Defendant CNE authorized a purchase order with Defendant Meeks for 500,000 “Lanyard Players Card Holder w/ Cherokee Star.”

27. On or about March 20, 2009, Defendant CNE authorized a change order to the purchase order of March 2, 2009, with Defendant Meeks increasing the quantity of “Lanyard Players Card Holder w/ Cherokee Star” to be purchased from 500,000 to 825,000.

28. At some time after March 20, 2009, Defendant Meeks entered into an agreement with Defendant Hammerhead for the purchase of 825,000 “Lanyard Players Card Holder w/ Cherokee Star” per the order of March 20, 2009.

29. Defendants, either directly or through intermediaries, and without the permission or knowledge of Specialty House, arranged for the production of approximately 825,000 counter-

feit Slot Machine Card Holders by Yiwu Boyan Plastic Products Co. located in Yiwu, Zhejiang, China.

30. The counterfeit Slot Machine Card Holders produced for Defendants were imported into the United States.

31. The counterfeit Slot Machine Card Holders produced for Defendants and imported into the United States were ultimately delivered to Defendant CNE.

32. The counterfeit Slot Machine Card Holders produced for Defendants and imported into the United States are now being offered by Defendant CNE to Cherokee Casino patrons at Cherokee Casino's various locations.

33. The counterfeit Slot Machine Card Holders produced for Defendants, imported into the United States, and offered by Defendant CNE to Cherokee Casino patrons at the various Cherokee Casinos are identical to genuine Slot Machine Card Holders produced and sold by Specialty House.

34. The counterfeit Slot Machine Card Holders produced for Defendants, imported into the United States, and offered by Defendant CNE to Cherokee Casino patrons at the various Cherokee Casinos are identical to the Slot Machine Card Holder claimed in United States Design Patent No. D486,531.

35. The counterfeit Slot Machine Card Holders produced for Defendants, imported into the United States, and offered by Defendant CNE to Cherokee Casino patrons at the various Cherokee Casinos are stamped "PATENT #D486531."

36. As set forth above, Specialty House is the owner of the '531 Patent and Specialty House has the right to bring the present action.

**COUNT I**

(Patent Infringement – against all Defendants)

37. Specialty House re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs as though alleged in full herein.

38. On information and belief, Defendants have infringed and continue to infringe the '531 Patent, in violation of 35 U.S.C. § 271, by making, using, selling, offering for sale within the United States, or importing into the United States, articles that fall within the claim of the '531 Patent. Such articles include the counterfeit Slot Machine Card Holders produced for Defendants and imported into the United States that are now being offered by Defendant CNE to Cherokee Casino patrons at Cherokee Casino's various locations.

39. Defendants have been and are now contributing to and/or actively inducing the infringement of the '531 Patent by others.

40. Defendants' past and continued infringement of the '531 Patent have damaged and will damage Specialty House, and thus Specialty House is entitled to recover from Defendants damages in an amount adequate to compensate for that infringement.

41. Defendants' acts of infringement have caused and will continue to cause irreparable injury to Specialty House unless and until enjoined by this Court.

42. Defendants' acts of infringement were committed willfully and in knowing violation of the '531 Patent.

## **COUNT II**

(False Marking – against all Defendants)

43. Specialty House re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs as though alleged in full herein.

44. On information and belief, Defendants have falsely marked articles and otherwise committed "offenses" as defined by and in violation of 35 U.S.C. § 292. Such articles include the counterfeit Slot Machine Card Holders produced at the direction of Defendants, stamped

“PATENT #D486531,” and imported into the United States that are now being offered by Defendant CNE to Cherokee Casino patrons at Cherokee Casino’s various locations.

45. These “offenses” were committed without the consent of Specialty House.

46. These “offenses” were committed with the intent of counterfeiting, imitating the mark of the patentee, or deceiving the public.

47. Defendants’ acts of false marking were committed willfully and in knowing violation of the ‘531 Patent.

### **PRAYER FOR RELIEF**

WHEREFORE, Specialty House of Creation, Incorporated respectfully requests that judgment be entered in its favor and prays that the court grant the following relief:

A. declaring that Defendants have infringed United States Design Patent No. D486,531;

B. permanently enjoining Defendants and their officers, agents, employees, representatives, successors and assigns and those in privity with or acting in concert with Defendants from further infringing United States Design Patent No. D486,531;

C. awarding Specialty House damages adequate to compensate it for Defendants’ acts of infringement with interest, including pre-judgment, post-judgment interest, and costs in accordance with 35 U.S.C. § 284;

D. awarding Specialty House damages in accordance with 35 U.S.C. § 289;

E. fining each Defendant not more than \$500 for each of the approximately 825,000 articles falsely marked in violation of 35 U.S.C. § 292(a), awarding one half of the fine to the United States in accordance with 35 U.S.C. § 292(b), and awarding one half of the fine to Specialty House in accordance with 35 U.S.C. § 292(b).



F. increasing the damages to three times the amount found or assessed for willful infringement in accordance with 35 U.S.C. § 284;

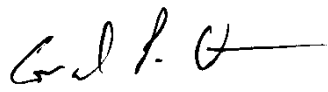
G. an order declaring that Specialty House is the prevailing party and that this is an exceptional case under 35 U.S.C. § 285 and award Specialty House its reasonable attorney fees, expenses, and costs in this action with interest thereon; and

H. such other and further relief as this Court may deem just and proper.

June 7, 2010

Respectfully submitted,

**ABINGTON INTELLECTUAL PROPERTY  
LAW GROUP, PC**

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