This notice contains collection-of-information requirements subject to the Paperwork Reduction Act. The Sea Grant Project Summary Form and the Sea Grant Budget Form have been approved under Office of Management and Budget (OMB) Control Number 0648–0362, with estimated times per response of 20 and 15 minutes respectively. The use of Standard Forms 424, 424A, 424B, and SF–LLL have been approved by OMB under the respective control numbers 0348–0043, 0348–0044, 0348–0040, and 0348–0046. The response time estimates above include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments on these estimates or any other aspect of these collections to National Sea Grant Office/NOAA, 1315 East-West Highway, Silver Spring, MD 20910 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: NOAA Desk Officer).

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DEPARTMENT OF COMMERCE
United States Patent and Trademark Office

RIN 0651–AB30
Establishment of a Database Containing the Official Insignia of Federally Recognized Native American Tribes


ACTION: Notice and request for comments.

SUMMARY: The United States Patent and Trademark Office (USPTO) is proposing to create and maintain a database of the official insignia of federally and state-recognized Native American tribes. The USPTO seeks comments on its proposed method for creating and maintaining this database.

DATES: Comment Deadline Date: To ensure consideration, written comments must be received on or before February 8, 2001. No public hearing will be held.

ADDRESSES: Comments should be sent by electronic mail message over the Internet addressed to: tribal.insignia@uspto.gov. Comments may also be submitted by mail addressed to: Box Comments—Trademarks, Commissioner for Trademarks, Washington, DC 20231; or by facsimile to (703) 308–9285, marked to the attention of Ari Leifman.

The comments will be available for public inspection at the Office of the Commissioner for Trademarks, 2900 Crystal Drive, Room 10B10, Arlington, Virginia, 22202 and will be posted at the USPTO’s web site (address: http://www.uspto.gov). All comments will be available for public inspection.

FOR FURTHER INFORMATION CONTACT: Ari Leifman by telephone at (703) 308–8900, or by mail addressed to: Box Comment Trademarks, Commissioner for Trademarks, Washington, DC 20231, or by facsimile to (703) 872–9285, marked to the attention of Ari Leifman.

SUPPLEMENTARY INFORMATION:
Trademark Law Treaty Implementation Act, Pub. L. 105–330, § 302, 112 Stat. 3071 (1998) required the USPTO to study issues surrounding the protection of the official insignia of federally and state-recognized Native American tribes. The study was conducted, and a report was presented to the Chairman of the Committee on the Judiciary of the Senate and to the Chairman of the Committee on the Judiciary of the House of Representatives on November 30, 1999.

One of the recommendations in the report was that the USPTO create and maintain an accurate and comprehensive database of the official insignia of Native American tribes.

The USPTO proposes to create such a database and seeks comments on the proposed method. If the comments received include a suggestion for a better method for creating and maintaining the database, the USPTO will publish a proposal describing this method and requesting further comments. Otherwise, the USPTO will publish an announcement that finalizes the procedures described in the present notice.

Proposed Procedures

All requests to enter an official insignia of a Native American tribe into the USPTO database must be in writing, addressed to the Commissioner for Trademarks, and must include the following:

(1) A depiction of the insignia. If the insignia consists of a word, this word should be typed in upper-case letters. If the insignia consists of a design, or a combination of a word or words and a design, the depiction of the insignia should not be larger than 4 inches by 4 inches (10.3 cm. by 10.3 cm.). The depiction of the insignia should be placed at or near the center of a sheet of white paper 8 to ½ inches (20.3 to 21.6 cm.) wide and 11 inches (27.9 cm.) long. The paper should have a heading that includes the name of the tribe and the address for correspondence.

(2) A copy of the tribal resolution adopting the insignia in question as the official insignia of the tribe;

(3) A statement, signed by an official with authority to bind the tribe, confirming that the insignia included with the request is identical to the official insignia adopted by tribal resolution; and

(4) For all entities not recognized as Native American tribes by the Bureau of Indian Affairs (BIA), either (a) a document issued by a state official that evidences the state’s determination that the entity is a Native American tribe, or (b) a citation to a state statute that designates the entity as a Native American tribe.

The request should be sent by facsimile to (703) 872–9192, or mailed to a United States Postal Service mailbox that the Office will identify at a later date.

The USPTO will record any official insignia of a Native American tribe submitted in the above manner, if the Commissioner determines that the entity that submitted the request is a Native American tribe recognized by the Federal Government or by one or more state governments.

The Commissioner will determine whether or not the entity that submitted the request is a federally recognized Native American tribe by consulting the list of Native American tribes maintained by the BIA.

If an entity that seeks recordal of its insignia wishes to demonstrate that it is a state-recognized Native American tribe rather than a federally recognized Native American tribe, that entity must provide the Commissioner with either (1) a document issued by a state official that evidences the state’s determination that the entity is a Native American tribe, or (2) a citation to a state statute that designates the entity as a Native American tribe.
Legal Significance of Recordal

The recordal of an official insignia of a Native American tribe at the USPTO will not be the equivalent of registering that insignia as a trademark pursuant to 15 U.S.C. 1051 et seq. Thus, including an insignia in the USPTO’s database would not create any legal presumption of validity or priority, and none of the benefits of trademark registration will accrue to a Native American tribe whose insignia may be recorded pursuant to this notice.

Acceptance of the insignia for recordal will not be a determination as to whether a particular insignia for which recordal has been requested would be refused registration as a trademark pursuant to 15 U.S.C. 1051 et seq., or to some provision of Chapter 37 of the Code of Federal Regulations, or to any requirement of the USPTO.

The USPTO will use the official insignia recorded by the USPTO as information useful in the examination of certain applications for registration of trademarks and as evidence of what a federally or state-recognized tribe considers to be its official insignia.

The database of official insignia of Native American tribes will be included, for informational purposes, within the USPTO’s database of material that is not registered but is searched to make determinations regarding the registrability of marks. This database is available at the USPTO’s web site. Inclusion of official insignia in this database will ensure that an examining attorney, who is searching a mark that is confusingly similar to an official insignia will find and consider the official insignia before making a determination of registrability.

For correspondence pertaining to the database of official insignia of Native American tribes, the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office has waived the requirement of 37 CFR 1.1 that all correspondence intended for the United States Patent and Trademark Office be mailed to one of the addresses identified in 37 CFR 1.1.

The Office has determined that the proposed establishment of the database has no federalism implications affecting the relationship between the National Government and the State as outlined in Executive Order 12612. The proposed database conforms with Executive Order 12612.