

Pokagon Band of Potawatomi Indians

Pokagon Band Seal Use Act

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Chapter 1 General

Section 1.01 Title.

This Act shall be known as the Pokagon Band Seal Use Act.

Section 1.02 Findings.

The Tribal Council finds that the Pokagon Band Seal and Pokagon Band Name are symbols of the authority and sovereignty of the Band and are valuable assets of the Band.

Section 1.03 Purpose.

The purpose of this Act is to:

- (a) Control all uses of the Pokagon Band Seal and Pokagon Band Name to ensure appropriate use;
- (b) Authorize Citizens to use the Pokagon Band Seal and Pokagon Band Name for personal, non-commercial purposes;
- (c) Provide standards and procedures for the authorization of acceptable uses of the Pokagon Band Seal and Pokagon Band Name; and
- (d) Provide for licensing of the Pokagon Band Seal and Pokagon Band Name in accordance with this Act to enable the Band to share in the economic benefits derived from such commercial use.

Section 1.04 Authority.

The Tribal Council enacts this act pursuant to the duties under Article IX, subsections 1(a), 1(c), and 1(d) of the Constitution and the authority of the Tribal Council under subsection 2(a) of the Constitution.

Section 1.05 Definitions.

The following terms, whenever used or referred to in this Act shall have their respective meanings stated below, which shall apply regardless of whether such terms are used in their singular or plural form.

- (a) “Act” means this Pokagon Band Seal Use Act.
- (b) “Appointed Official” means any individual who occupies a Band governmental office or position, whether compensated or voluntary, and who was appointed to the office or position by the Tribal Council or any other governing body of the Band with appointment authority, but not

any individual appointed to the Pokagon Gaming Authority, Mno-Bmadsen, or any of their subsidiaries.

(c) “Band” means the Pokagon Band of Potawatomi Indians.

(d) “Citizen” means a duly enrolled member of the Band.

(e) “Commercial Use” means use of the Pokagon Band Name or Pokagon Band Seal for any promotional or financial gain but not any use for Official Government Business.

(f) “Constitution” means the Band Constitution, as amended.

(g) “Elected Official” means any individual occupying a Band elective governmental office or position, whether such individual was appointed by the Tribal Council or elected by Citizens or a specified segment thereof, and whether the office or position is compensated or voluntary.

(h) “Employee” means any individual employed, in any capacity, by the Band government but not any individual employed by the Pokagon Gaming Authority or Mno-Bmadsen, or any of their subsidiaries.

(i) “Government Manager” means the Band Government Manager.

(j) “Non-Conforming” means that a proposed use of the Pokagon Band Seal or Pokagon Band Name does not comply with: (i) this Act; (ii) the description provided in the license request; or (iii) the terms of the license agreement.

(k) “Official Government Business” means use of the Pokagon Band Seal or Pokagon Band Name by an Elected Official, Appointed Official or an Employee if and to the extent the use is within the scope of the individual’s official duties.

(l) “Person” means any individual, corporation, partnership, limited liability company, business trust, association, or other entity.

(m) “Pokagon Band Flag” means the flag of the Band.

(n) “Pokagon Band Seal” means the seal of the Band, used in any form (embossed, displayed, printed, physical representation, electronic representation, or any other reproduction) as described in Chapter 2 of this Act.

(o) “Pokagon Band Name” includes “Pokagon Band of Potawatomi Indians”, which is the name used in federal law and Band law to confirm the identity of the Band as a sovereign, federally-recognized Indian tribe, and also includes “Pokagon Band of Potawatomi”, “Pokagon Band”, and “Pokagon Potawatomi”, all of which are the names under which the Band is known and conducts Official Government Business.

(p) “Tribal Council” means the governing body of the Band established pursuant to Article X of the Constitution.

(q) “Tribal Court” means the Pokagon Band Tribal Court.

Chapter 2 Pokagon Band Seal

Section 2.01 Description.

The seal consists of two concentric circles. The outer circle, which creates a wide band around the inner circle, is black and within the black band of the outer circle are woodland flowers on green stems that are blue, red, white, yellow, orange, and purple in color. Within the inner circle is a thin white band with a fading inner edge that runs the circumference of the inner circle. Inside of the inner circle is a red-tailed hawk, with a yellow beak, and yellow talons, against a blue background. The hawk is perched on a branch and has a branch in its beak and is facing a fire. To the right of the hawk is a yellow and orange saw-tooth sun. Above the hawk, within the thin white band of the inner circle, is the word “POKÉGNEK” and below the hawk and within the thin white band of the inner circle is the word “BODÉWADMIK”. Both words are in a slightly arched form.

Section 2.02 Representation.

The following is a graphical representation of the Pokagon Band Seal in full color:



Section 2.03 Meaning.

The round boarder of the Seal symbolizes the centering of all life within the four directions of Mother Earth. The red-tailed hawk bringing wood to the fire represents the feeding of the fire and honors the traditions and history of the Potawatomi or Bodewadmik people. Pokegnek Bodewadmik means Pokagon Potawatomi. Bodewadmik means “People of fire” and refers to

the role the Potawatomi played as keepers of the fire in the Three Fires Confederacy with the Odawa and Ojibwe. The vibrant, colorful flowers are the traditional woodland flowers common to the native lands of the Potawatomi.

Chapter 3 Authorized Uses

Section 3.01 Official Government Business.

The Pokagon Band Seal and Pokagon Band Name may be used for Official Government Business.

Section 3.02 Personal Use by Citizen.

The Band grants to all Citizens, a non-exclusive, limited, non-transferable, non-assignable, revocable license to use the Pokagon Band Seal and Pokagon Band Name solely for their personal, non-commercial use in accordance with this Act.

Section 3.03 Express Written Contract.

The Pokagon Band Seal and Pokagon Band Name may be used in accordance with any written contract which expressly authorizes such use and has been approved in accordance with Band law.

Section 3.04 Miscellaneous Uses.

(a) The Pokagon Band Seal and Pokagon Band Name may be used:

- (i) For illustrative purposes by the news media if the reproduction by the news media is incidental to the publication or the broadcast; or
- (ii) In proposals sent to the Band, including in response to solicitations issued by the Band.

(b) The Pokagon Band Name may be used for any non-commercial purpose that cannot reasonably be considered to serve as or suggest that:

- (i) The Band endorses a product or service; or
- (ii) Any Person is part of or associated by law with the Band, except as expressly authorized by Band law or by the Tribal Council.

Section 3.05 License Requirement.

Except for the authorized uses provided in Sections 3.01, 3.02, 3.03, and 3.04 above, no Person shall use, manufacture, sell, reproduce, copy, or imitate, in any manner, the Pokagon Band Seal

or Pokagon Band Name without a duly granted license under an agreement meeting the requirements of Chapter 6 of this Act.

Chapter 4 Prohibited Uses

The Pokagon Band Seal shall not be used:

(a) In any manner that implies endorsement or alliance by the Band of the product or service utilizing the Pokagon Band Seal, unless the use is Official Government Business or is specifically permitted by a duly approved license or authorized under Section 3.03 of this Act; or

(b) By political parties, candidates for elective office, or in association with any political issue, unless the use is Official Government Business.

Chapter 5 Requirements for Use

Section 5.01 Consistency.

(a) The Pokagon Band Seal shall not be altered, manipulated, edited, or redesigned in any way, including, but not limited to, the proportions, colors, or elements of the Pokagon Band Seal.

(b) The Pokagon Band Seal may be reduced or enlarged, but it must maintain its proportions, colors, and elements.

(c) No mark, insignia, letter, word, figure, design, picture, or drawing of any nature shall be placed upon any part of the Pokagon Band Seal.

(d) When displaying the Pokagon Band Name, the preferred font is the Nyala font and, to the fullest extent practicable, all displays of the Pokagon Band Name shall utilize the Nyala font.

Section 5.02 Quality.

The Pokagon Band Seal shall not be used in any way that tarnishes, blurs, or dilutes the Pokagon Band Seal.

Section 5.03 Exceptions.

Sections 5.01 and 5.02 notwithstanding, the Pokagon Band Seal may be reproduced in black and white for the purposes authorized under Sections 3.01, 3.02, 3.03, or 3.04(a) above, or pursuant to license issued under Chapter 6 below that permits the reproduction of the Pokagon Band Seal in black and white, but to the fullest extent practicable, all uses of the Pokagon Band Seal shall be in color.

Section 5.04 Copies.

All copies, electronic or otherwise, of the Pokagon Band Seal for uses authorized in this Act shall be obtained from the Tribal Council Secretary or such other Elected Official or Employee the Tribal Council Secretary may designate in writing.

Section 5.05 Pokagon Band Flag.

The Pokagon Band Flag shall be the Pokagon Band Seal centered in a yellow background. The Pokagon Band Flag shall not be presented in any other manner.

Chapter 6 License

Section 6.01 Requests.

All requests for a license to use the Pokagon Band Seal or Pokagon Band Name shall be in writing and addressed to the Government Manager.

Section 6.02 Fee.

(a) All requests for a license to use the Pokagon Band Seal or Pokagon Band Name regarding any use for which a license is required under Section 3.05 of this Act shall be accompanied by a license request fee.

(b) The Tribal Council shall, by resolution, establish and may periodically adjust the amount of the license request fee.

Section 6.03 Information.

All license requests to use the Pokagon Band Seal or Pokagon Band Name shall, at a minimum, include the following information:

- (a) The requester's name;
- (b) The requester's address;
- (c) The requester's telephone number;
- (d) Whether the proposed use is commercial or non-commercial in nature;
- (e) A description of the requester's business or the event at which the requester is seeking to use the Pokagon Band Seal or Pokagon Band Name;

(f) A detailed description of the proposed use that identifies the manner, purpose, and place of use, the manner of distribution of the item, the manner of advertising or promoting the item, and the manner of displaying the Pokagon Band Seal or Pokagon Band Name.

(g) The proposed duration of use of the Pokagon Band Seal or Pokagon Band Name;

(h) If available, a pre-production sample of the item, or at a minimum, a photograph, or detailed sketch of the item demonstrating the proposed use of the Pokagon Band Seal or Pokagon Band Name;

(i) If the proposed use is commercial in nature, the information concerning the factors set forth in Subsection 6.07(a), the proposed pricing of the item, and the proposed royalty payment.

Section 6.04 Review.

(a) The Tribal Council shall endeavor to review all completed requests for a license within twenty (20) days of their submission.

(b) In determining whether to grant or deny a license request to use the Pokagon Band Seal or Pokagon Band Name, the Tribal Council shall consider the information provided by the requester and shall apply the following standards:

(i) Whether the proposed use will enhance the image of the Band;

(ii) Whether the dignity of the Band through the proposed use may be compromised if a license is granted;

(iii) Whether the proposed use is consistent with the terms of this Act; and

(iv) If the proposed use is a commercial use, whether the proposed royalty payment is acceptable considering the factors set forth in Subsection 6.07(a).

Section 6.05 Decisions.

(a) All decisions by the Tribal Council concerning the granting of or denial of a license shall be final.

(b) A written letter of approval or denial from the Chairperson, or the Chairperson's designee, shall be sent to the requester via first-class mail within seven (7) business days of the Tribal Council's determination.

(c) If the Tribal Council approves the license request, the requester shall be granted a license which shall be set forth in a license agreement that complies with Section 6.06 below.

Section 6.06 License.

The license agreement shall, at a minimum, conform to the following requirements:

- (a) The license shall be limited, non-exclusive, and non-transferable and shall not grant perpetual use rights;
- (b) The term of the license agreement shall be stated in the license agreement;
- (c) No use of the Pokagon Band Seal or Pokagon Band Name by the licensee may occur except during the term of the license agreement;
- (d) The license agreement shall contain a provision for a royalty payment consistent with Section 6.07 of this Act;
- (e) The licensee shall provide, prior to commencing production, a production sample to the Government Manager, who shall have the right to object to the use within fifteen (15) business days of receipt of the sample if the sample is Non-Conforming;
- (f) If the Government Manager objects to the proposed use pursuant to Subsection 6.06(e) above, then:
 - (i) The licensee may not proceed with the proposed use until a sample is modified so that it is not Non-Conforming, as explained by the Government Manager in writing; and
 - (ii) After receiving the Government Manager's written explanation regarding the Non-Conforming sample, the licensee shall provide a conforming sample to the Government Manager and shall not proceed with production without the Government Manager's written approval;
- (g) If the use is a commercial use, the Band shall have the right to inspect production and financial records relating to the commercial use of the Pokagon Band Seal or Pokagon Band Name;
- (h) The license agreement shall include all required guidelines and limitations regarding the advertising or promotion of the item;
- (i) Unless expressly provided in the license agreement, the Pokagon Band Seal or Pokagon Band Name may not be used in any manner or otherwise associated with any advertising or promotion that may reasonably be considered to serve as or suggest that the Band endorses the product or service, and the licensee must explicitly and prominently state that the product, service, or event, as applicable, is not sponsored or endorsed by the Band;
- (j) The item may indicate that it is an officially licensed product or service of the Band;

(k) The grant of the license is contingent upon the licensee's continued compliance with this Act throughout the term of the license agreement;

(l) The Band may terminate the license agreement, if it determines that the licensee provided any materially false or misleading information in the license request; and

(m) The licensee acknowledges the Band's sole and exclusive ownership of the Pokagon Band Seal and Pokagon Band Name; shall not take any action inconsistent with such ownership; and shall not challenge or in any way infringe upon the rights of the Band in and to the Pokagon Band Seal or Pokagon Band Name.

Section 6.07 Royalty.

(a) When a licensee is making commercial use of the Pokagon Band Seal or Pokagon Band Name, the license agreement shall contain a royalty payment to the Band, consistent with the criteria set forth below, but if the licensee is a governmental instrumentality of the Band proposing to use the Pokagon Band Seal or Pokagon Band Name for commercial purposes, the Band may, in its sole discretion, waive the requirement for a royalty payment.

(b) There shall be no royalty payment if the intended use of the Pokagon Band Seal or Pokagon and Name is for non-commercial purposes.

(c) When establishing the royalty payment, the Tribal Council shall consider the following factors:

(i) The nature of the product or service;

(ii) The market in which the product or service will be sold;

(iii) The market presence of the licensee;

(iv) The licensee's plans and commitments to the product or service;

(v) The licensee's experience with this type of product or service;

(vi) The projected volume of sales;

(vii) The current average profit margin in the industry regarding the sale of similar items, if available;

(viii) The current average royalty rate in the industry regarding the sale of similar items, if available; and

(ix) Whether the licensee is a Citizen or an entity that is majority-owned by a Citizen.

(d) The royalty payment may be either an upfront royalty payment, a quarterly royalty payment, or both. For royalty payments that are not due upfront, the due date of the royalty payment shall be thirty (30) days following the end of each quarter during the term of the license agreement.

Chapter 7 Violations

Section 7.01 Criminal.

(a) Any Indian Person who knowingly and intentionally violates this Act, shall be guilty of a crime and shall be subject to a maximum fine of \$5,000 or one (1) year imprisonment, or both.

(b) Each day during which such violations continues shall constitute a separate violation of this Act.

Section 7.02 Civil.

(a) Any Person who knowingly and intentionally violates this Act shall be liable for a civil fine not to exceed \$5,000.

(b) Each day during which such violation continues shall constitute a separate violation of this Act.

(c) The amount of any such civil fine may be recovered in a civil action in the Tribal Court.

(d) All civil fines accruing under this Act shall be cumulative, and a suit for the recovery of one fine shall not bar or affect the recovery of another fine, judgment, penalty, forfeiture, or damages, nor bar the power of the Tribal Court to punish for contempt, nor bar any criminal prosecution.

Section 7.03 Seizure.

All property using the Pokagon Band Seal or Pokagon Band Name in violation of this Act and all funds derived from the sale of such property shall be subject to seizure by order of the Tribal Court.

Chapter 8 Repeal and Severability

Section 8.01 Repeal.

All other laws, regulations, and policies that may be inconsistent with or in conflict with this Act are repealed.

Section 8.02 Severability.

If any chapter, section, subsection, paragraph, sentence, phrase or other portion of this Act is, for any reason, held invalid or unconstitutional by a court of competent jurisdiction, such portion of this Act shall be deemed to be separate, distinct, and independent from the remaining portion of this Act, which shall not be affected by such judicial decision and shall remain in effect.

Legislative History

Enacted on March 21, 2011, by Resolution No. 11-03-21-02; amended on October 29, 2019, by Resolution No. 19-10-29-10.