

INDIAN ARTS AND CRAFTS ACT OF 1990

SEPTEMBER 21, 1990.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BROOKS, from the Committee on the Judiciary,
submitted the following

REPORT

[To accompany H.R. 2006 which on April 17, 1989, was referred jointly to the Committee on Interior and Insular Affairs and the Committee on the Judiciary]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 2006) to expand the powers of the Indian Arts and Crafts Board, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Indian Arts and Crafts Act of 1990".

SEC. 2. POWERS OF INDIAN ARTS AND CRAFTS BOARD.

Section 2 of the Act entitled "An Act to promote the development of Indian arts and crafts and to create a board to assist therein, and for other purposes" (25 U.S.C. 305a) is amended—

(1) in the first sentence—

(A) by striking "the Board" and inserting "the Secretary of the Interior through the Board"; and

(B) by striking "the Indian wards of the Government" and inserting "Indian individuals";

(2) by amending clause (g) to read as follows: "(g)(1) to create for the Board, or for an individual Indian or Indian tribe or tribal organization, trademarks of genuineness and quality for Indian products and the products of an individual Indian or particular Indian tribe or tribal organization; (2) to establish standards and regulations for the use of Government-owned trademarks by corporations, associations, or individuals, and to charge for such use under such licenses; (3) to register any such trademark owned by the Government in the United States Patent and Trademark Office without charge and assign it and the goodwill associated with it to an individual Indian or Indian tribe or group

without charge; and (4) to pursue or defend in the courts any appeal or proceeding with respect to any final determination of that office;"; and

(3) by adding at the end the following new sentence: "For the purposes of this section, the term 'tribal organization' means any legally established arts and crafts marketing organization composed of members of Indian tribes."

SEC. 3. REFERRAL FOR CRIMINAL AND CIVIL VIOLATIONS.

The Act entitled "An Act to promote the development of Indian arts and crafts and to create a board to assist therein, and for other purposes" (25 U.S.C. 305 et seq.) is amended by adding at the end the following:

"SEC. 5. (a) The Board may receive complaints of violations of section 1159 of title 18, United States Code, and refer complaints of such violations to the Federal Bureau of Investigation for appropriate investigation. After reviewing the investigation report, the Board may recommend to the Attorney General of the United States that criminal proceedings be instituted under that section.

"(b) The Board may recommend that the Secretary of the Interior refer the matter to the Attorney General for civil action under section 6."

SEC. 4. CRIMINAL PENALTY FOR MISREPRESENTATION OF INDIAN PRODUCED GOODS AND PRODUCTS.

(a) **IN GENERAL.**—Section 1159 of title 18, United States Code, is amended to read as follows:

"§ 1159. Misrepresentation of Indian produced goods and products

"(a) It is unlawful to offer or display for sale or sell any good, with or without a Government trademark, in a manner that falsely suggests it is Indian produced, an Indian product, or the product of a particular Indian or Indian tribe or tribal organization, resident within the United States.

"(b) Whoever knowingly violates subsection (a) shall—

"(1) in the case of a first violation, if an individual, be fined not more than \$250,000 or imprisoned not more than five years, or both, and, if a person other than an individual, be fined not more than \$1,000,000; and

"(2) in the case of subsequent violations, if an individual, be fined not more than \$1,000,000 or imprisoned not more than fifteen years, or both, and, if a person other than an individual, be fined not more than \$5,000,000.

"(c) As used in this section—

"(1) the term 'Indian' means any individual who is a member of an Indian tribe, or for the purposes of this section is certified as an Indian artisan by an Indian tribe;

"(2) the terms 'Indian product' and 'product of a particular Indian tribe or tribal organization' has the meaning given such term in regulations which may be promulgated by the Secretary of the Interior;

"(3) the term 'Indian tribe' means—

"(A) any Indian tribe, band, nation, Alaska Native village, or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; or

"(B) any Indian group that has been formally recognized as an Indian tribe by a State legislature or by a State commission or similar organization legislatively vested with State tribal recognition authority; and

"(4) the term 'tribal organization' means any legally established arts and crafts marketing organization composed of members of Indian tribes.

"(d) In the event that any provision of this section is held invalid, it is the intent of Congress that the remaining provisions of this section shall continue in full force and effect."

(b) **CONFORMING AMENDMENT.**—The item relating to section 1159 in the table of sections for chapter 53 of title 18, United States Code, is amended to read as follows:

"1159. Misrepresentation of Indian produced goods and products."

SEC. 5. CAUSE OF ACTION FOR MISREPRESENTATION OF INDIAN PRODUCED GOODS AND PRODUCTS.

The Act entitled "An Act to promote the development of Indian arts and crafts and to create a board to assist therein, and for other purposes" (25 U.S.C. 305 et seq.) (as amended by section 3) is further amended by adding at the end of the following:

"SEC. 6. (a) A person specified in subsection (c) may, in a civil action in a court of competent jurisdiction, bring an action against a person who offers or displays for sale or sells a good, with or without a Government trademark, in a manner that

falsely suggests it is Indian produced, an Indian product, or the product of a particular Indian or Indian tribe or tribal organization, resident within the United States, to—

- “(1) obtain injunctive or other equitable relief; and
- “(2) recover the greater of—
 - “(A) treble damages;
 - “(B) in the case of each aggrieved purchaser, liquidated damages of not less than \$1,000 for each occurrence of any such offer, display, or sale; or
 - “(C) in the case of each aggrieved individual Indian, Indian tribe or tribal organization, or competing producer, supplier, or retailer, not less than \$1,000 for each day on which the offer or display for sale or sale continues.
- “(b) In addition to the relief specified in subsection (a), the court may award punitive damages and the costs of suit and a reasonable attorney’s fee.
- “(c)(1) A civil action under subsection (a) may be commenced—
 - “(A) by the Attorney General of the United States upon request of the Secretary of the Interior on behalf of an Indian who is a member of an Indian tribe or on behalf of an Indian tribe or tribal organization;
 - “(B) by an Indian tribe on behalf of itself, an Indian who is a member of the tribe, or on behalf of a tribal organization; and
 - “(C) by any person aggrieved by any such offer, display, or sale.
- “(2) Any amount recovered pursuant to this section shall be paid to the individual Indian, Indian tribe or tribal organization, or person concerned, except that—
 - “(A) in the case of paragraph (1)(A), the Attorney General may deduct from the amount recovered the amount for the costs of suit and reasonable attorney’s fees awarded pursuant to subsection (b) and deposit the amount of such costs and fees as a reimbursement credited to appropriations currently available to the Attorney General at the time of receipt of the amount recovered; and
 - “(B) in the case of paragraph (1)(B), the amount recovered for the costs of suit and reasonable attorney’s fees pursuant to subsection (b) may be deducted from the total amount awarded under subsection (a)(2).
- “(d) As used in this section—
 - “(1) the term ‘Indian’ means any individual who is a member of an Indian tribe; or for the purposes of this section is certified as an Indian artisan by an Indian tribe;
 - “(2) the terms ‘Indian product’ and ‘product of a particular Indian tribe or tribal organization’ has the meaning given such term in regulations which may be promulgated by the Secretary of the Interior;
 - “(3) the term ‘Indian tribe’ means—
 - “(A) any Indian tribe, band, nation, Alaska Native village, or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; or
 - “(B) any Indian group that has been formally recognized as an Indian tribe by a State legislature or by a State commission or similar organization legislatively vested with State tribal recognition authority; and
 - “(4) the term ‘tribal organization’ means any legally established arts and crafts marketing organization composed of members of Indian tribes.
- “(e) In the event that any provision of this section is held invalid, it is the intent of Congress that the remaining provisions of this section shall continue in full force and effect.”

SEC. 6. PENALTY FOR COUNTERFEITING INDIAN ARTS AND CRAFTS BOARD TRADEMARK.

Section 1158 of title 18, United States Code, is amended by striking “be fined not more than \$500 or imprisoned not more than six months, or both; and” and inserting “(1) in the case of a first violation, if an individual, be fined not more than \$250,000 or imprisoned not more than five years, or both, and, if a person other than an individual, be fined not more than \$1,000,000; and (2) in the case of subsequent violations, if an individual, be fined not more than \$1,000,000 or imprisoned not more than fifteen years, or both, and, if a person other than an individual, be fined not more than \$5,000,000; and (3)”.

SEC. 7. CERTIFICATION OF INDIAN ARTISANS.

For the purposes of section 1159 of title 18, United States Code, and section 6 of the Act entitled “An Act to promote the development of Indian arts and crafts and to create a board to assist therein, and for other purposes” (25 U.S.C. 305 et seq.) an Indian tribe may not impose a fee in certifying an individual as an Indian artisan. For the purposes of this section, the term “Indian tribe” has the same meaning given such term in section 1159(c)(3) of title 18, United States Code.

EXPLANATION OF AMENDMENT

Inasmuch as H.R. 2006 was ordered reported with a single amendment in the nature of a substitute, the contents of this report constitute an explanation of that amendment.

SUMMARY AND PURPOSE

The purpose of H.R. 2006 is to protect Indian artists from unfair competition from counterfeits. The bill would amend the provisions of 25 U.S.C. 305a, which creates and sets forth the powers and duties of the Indian Arts and Crafts Board, and the provisions of 18 U.S.C. 1158 and 1159, which set forth criminal and civil penalties for counterfeiting Indian Arts and Crafts Board trademarks and for misrepresenting goods and products as being Indian-produced.

STATEMENT OF LEGISLATIVE HISTORY

H.R. 2006 was introduced on April 17, 1989, and was jointly referred to the Committee on Interior and Insular Affairs and the Committee on the Judiciary. The Committee on the Judiciary, in turn, referred the bill to the Subcommittee on Courts, Intellectual Property, and the Administration of Justice, chaired by Robert W. Kastenmeier.

On August 17, 1989, the Interior Committee conducted a field hearing in Santa Fe, New Mexico on H.R. 2006. During that hearing, testimony was received from over twenty witnesses, including testimony from the Indian Arts and Crafts Board, the local U.S. Attorney, and a number of Indian tribes.

The Interior Committee considered the bill on November 15, 1989. At that time, an amendment in the nature of a substitute was adopted in light of testimony received by the Committee and on subsequent consultations with the Administration and other concerned parties. The Committee on Interior and Insular Affairs reported the bill on February 6, 1990.

Following the completion of action by the Committee on Interior and Insular Affairs, a number of concerns were addressed to the Committee on the Judiciary by the Department of Commerce, the Department of the Interior, the Department of Justice, and several Members of Congress. In response to those concerns, the Subcommittee on Courts, Intellectual Property, and the Administration of Justice prepared an amendment in the nature of a substitute, which was reported favorably by the Subcommittee on September 14, 1990.

COMMITTEE ACTION AND VOTE

H.R. 2006 was ordered favorably reported by the Committee on September 18, 1990, by voice vote, a quorum being present.

DISCUSSION

Since 1935, the Indian Arts and Crafts Board, as established by the Act of August 27, 1935 (49 Stat. 891; 25 U.S.C. Section 305a), has been responsible for promoting the development of Indian arts and crafts. The Board is responsible, in the field of Indian arts and

crafts, for improving the economic status of Native Americans; establishing and expanding the marketing opportunities for Indian people; and assisting Indian tribes to develop a framework to support the preservation and evolution of tribal cultural activities. The Board is also empowered to create a Government trade mark of genuineness; establish standards and regulations for the use of such trademarks; and to register them in the U.S. Patent Office without charge.

In addition, the 1935 Act established criminal penalties for counterfeiting of the Board's trademark and for misrepresentation, for purposes of sale, of Indian-produced goods and products. These provisions, now found in sections 1158 and 1159 of title 18, United States Code, provide for fines not to exceed \$500 and imprisonment not to exceed six months.

Although this law has been in effect for many years, very little has been done to enforce it. There is little information available which documents the effectiveness of the Board in assisting Indian artists to register trademarks or in the enforcement of the law against violations.

Under existing law, the Indian Arts and Crafts Board can only license an artist under a government-owned mark. The registration of a trademark does not guarantee exclusive rights, but rather recognizes the right of the owner to use the mark in commerce and to distinguish his or her goods from those of others. Because the office of the Board is located in Washington, D.C., far away from where many Indian Arts and Crafts are sold, registering complaints and enforcing the law has become a cumbersome process. Existing law provides no meaningful deterrent to those who misrepresent imitation Indian arts and crafts. As testimony indicated, there has not been a single prosecution in over fifty years, primarily because the current federal law requires "willfulness" and "intent" to prove a violation.

Many states, including Alaska, Arizona, California, Colorado, Minnesota, Montana, Nevada and New Mexico, have reacted to misrepresentation by enacting legislation to regulate the sale of Indian arts and crafts. However, in most states, enforcement of state legislation is weakened by ambiguity of the laws. Again, in most cases the responsibility for enforcement lies with county attorneys who, in the past, have shown little interest in investigating violation of the existing laws.

In recent years, Congress has paid renewed attention to protecting and promoting Indian arts and crafts. In a 1985 report to Congress, the Commerce Department estimated that unmarked import imitations of Indian arts and crafts are siphoning off 10 to 20 percent of the market for genuine handicrafts produced domestically. This industry's value has been estimated at \$400-\$800 million annually. This means that imitation of Native American handicrafts are siphoning an estimated \$40 to \$80 million from the genuine manufacturers markets.

The Commerce Department also found that most of the counterfeit market is made up of jewelry production that has been under-selling genuine Indian jewelry made by the Zuni, Navajo and Hopi by as much as 50 percent. Many of these counterfeits originate from imports in the Philippines and Mexico. Entrepreneurs are

now sending supplies and samples to foreign countries where they can be reproduced at a reduced cost. Those samples are then being duplicated and sent back to the United States and passed through Customs with a temporary peel-off tag which indicates the country of origin. Once these imitations reach the market it is very easy to sell them as Indian or American made. Areas where these imports appear to be concentrated are in Denver, Colorado; Albuquerque, New Mexico; and Phoenix, Arizona; all of which are major marketing areas for Indian arts and crafts.

In response to these practices, the Customs Service was directed in the Omnibus Trade Bill, Public Law 100-418, to promulgate regulations to require the permanent marking of country-of-origin on imported Indian-style jewelry. While most of the attention has been concentrated on curbing importation of foreign imitations and consumer education, Congress has begun to shift its attention to problems in the domestic market.

As noted above, sales of Indian arts and crafts total several hundred million dollars annually. Events such as the Santa Fe Indian Market have generated millions of dollars for the local economy. Because many Indians depend on the sale of their arts and crafts as their sole source of income, efforts have been made to expand Indian-owned marketing enterprises to more directly benefit Indian individuals and tribes.

In the last ten years, because of the expanding market of Indian arts and crafts, the number of fraudulent sales has increased. Particular attention has been focused in New Mexico where there is growing concerns about misrepresentation in the sale of authentic Indian arts and crafts and the misrepresentation of Indian artists by individuals claiming to be members of an Indian tribe.

In response to these concerns, Congressman Ben Nighthorse Campbell and Congressman Jon Kyl introduced H.R. 2006, a bill to expand the powers of the Indian Arts and Crafts Board. The bill, as introduced, amended section 2 of the 1935 Act to expand the power of the Board by authorizing it to recognize and register with the U.S. Patent and Trademark Office trademarks for individual Indians and Indian tribes in addition to the government trademark. It also specifically authorized the Board to pursue or defend actions in appropriate courts to protect its decisions. In addition, the bill amended the criminal provisions of the Act to clarify and simplify procedures for prosecution and to increase penalties for counterfeiting and misrepresentation.

SECTION-BY-SECTION ANALYSIS

Section 1

Section 1 cites this act as the "Indian Arts and Crafts Act of 1989."

Section 2

Section 2 of the Act amends clause (g) of the 1935 Act by expanding the powers of the Indian Arts and Crafts Board to include registration of trademarks by the Government without charge, and to assign them to individual Indians or tribes, again without charge. As introduced, the bill would have permitted the Board to register

trademarks on behalf of an Indian individual, Indian tribe or group. The Department of Commerce, however, objected that this provision deviated unjustifiably from the longstanding practice of registrants registering trademarks in their own names. Such concerns were deemed meritorious, and the provision was amended accordingly in a substitute amendment offered by Mr. Kastenmeier.

Section 3

Section 3 adds a new section 5 to the 1935 Act establishing the Arts and Crafts Board. Subsection (a) of this new section authorizes the Board to refer complaints to the FBI for investigation. It further authorizes the Board, on the basis of such investigation, to recommend to the Attorney General that criminal proceedings under that section be instituted.

Subsection (b) of the new section also authorizes the Board to recommend that the Secretary of the Interior refer the matter to the Attorney General for civil action under section 6 of the Act.

Section 4

Subsection (a) of section 4 amends section 1159 of title 18, U.S.C., which establishes existing penalties for criminal misrepresentation of any item as an Indian product when that product is not Indian made. Section 1159, as amended, includes Four subsections.

Subsection (a) of Section 1159, as amended, merely restates existing law making it a crime to misrepresent a product as Indian-produced.

Subsection (b) of Section 1159, as amended, expands the criminal penalties by increasing the fines and prison terms for first and subsequent violations. Pursuant to a suggestion from the Department of Commerce, the criminal penalties provided for in the bill as introduced, were increased by the subcommittee amendment to make them more consistent with penalties for comparable offenses under existing law.

Subsection (c) of Section 1159, as amended, defines the terms "Indian", "Indian product", "Indian tribe" and "tribal organization" for purposes of the section. Several members of Congress, who have state but not federally recognized Indian Tribes in their districts, objected to the definition of Indian Tribe, on the grounds that it did not include state recognized tribes. Because such tribes were not "Indian tribes" within the meaning of the bill, artisans in those tribes who represented their goods as Indian made would arguably be in violation of the Act. To avoid this problem, the definition of Indian tribe was revised to include state recognized tribes.

Subsection (d) of Section 1159, as amended, adds a severability clause.

Subsection (b) of Section 4, is a conforming amendment to the table of sections for chapter 53 of title 18.

Section 5

Section 5 adds a new section 6 to the 1934 Act, establishing the Indians Arts and Crafts Board, as follows:

Subsection (a) of the new section 6 adds new civil penalties for misrepresentation that may be sought by an aggrieved party to

obtain injunctive or other equitable relief and damages including treble damages.

Subsection (b) of the new section provides that, in addition to the relief as defined in subsection (a), the aggrieved party may be awarded punitive damages and the cost of the suit as well as reasonable attorney's fees.

Subsection (c)(1) establishes that a civil action may be commenced under subsection (a) in the following situations: (1) by the Attorney General of the United States upon the request of the Secretary of the Interior on behalf of an Indian tribe or tribal organization; (2) by an Indian tribe or group on behalf of its members; or (3) by any person aggrieved by the prohibited conduct. Originally, the bill also permitted suits to be brought by state attorneys general. The Department of Justice, however, argued that it would be inappropriate for state officials to enforce federal statutes and the Committee agrees.

Subsection (c)(2) provides that in such cases any amount recovered pursuant to this section shall be paid to the aggrieved party after the cost of the suit and attorney's fees are reimbursed to the Attorney General. In cases where the Indian tribe files on behalf of itself, the amount recovered for the costs of the suit and attorney's fees may be deducted from the total amount awarded under subsection (a)(2)(c). Subsection (d)(1) defines the term "Indian" to be any individual who is a member of an Indian tribe; or any individual who is certified by the tribe as an Indian artisan.

Subsection (d)(2) defines the term "Indian product" and "product of a particular Indian tribe or tribal organization."

Subsection (d)(3) defines the term "Indian tribe" to mean any Indian tribe, band, nation, Alaska Native village, or other organized group or community which is recognized by state or federal governments as eligible for special services because of their status of its members as Indians. Changes in the definition of "Indian Tribe" previously discussed in connection with section 4, were made here as well.

Subsection (d)(4) defines the term "tribal organization."

Subsection (e) adds a severability clause. The bill previously contained a preemption clause. Upon further consideration, however, it was concluded that states should be permitted to protect their own Indian arts and crafts, provided that they do not interfere with federal law, and the preemption clause was therefore deleted.

Section 6

Section 6 expands the existing criminal penalties for counterfeiting an Indian Arts and Crafts Board trademark as established under Section 1158 of title 18, United States Code, by raising the maximum fines and term of imprisonment for first and subsequent violations.

Section 7

Section 7 was added by the Subcommittee on Courts, Intellectual Property and the Administration of Justice, at the suggestion of Congressmen Kyl and Campbell. It authorizes Indian tribes, as defined by the Act, to certify individuals as Indian artisans who would not otherwise qualify as members of the tribe.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT OPERATIONS OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Operations were received as referred to in clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(1)(3)(B) of House Rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(1)(C)(3) of rule XI of the Rules of the House of Representatives the Committee sets forth, with respect to the bill H.R. 2006, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 20, 1990.

HON. JACK BROOKS,
Chairman, Committee on the Judiciary, U.S. House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 2006, the Indian Arts and Crafts Act of 1990, as ordered reported by the House Committee on the Judiciary on September 17, 1990. CBO estimates that enactment of this bill would result in costs of less than \$100,000 per year to the federal government and in no cost to state and local governments.

H.R. 2006 would expand the powers of the Indian Arts and Crafts Board, giving it the authority to register trademarks on behalf of Indians, to receive complaints about trademark violations, and to recommend criminal or civil action to the Attorney General. As well, the bill would amend existing civil penalties for misrepresenting Indian products, increasing fines, and maximum prison terms.

The Arts and Crafts Board would probably require additional staff to meet its expanded responsibilities under the act. CBO estimates that the cost of this staff would be less than \$100,000 per year. To the extent that the Attorney General pursues cases under the legislation, there also could be some prosecution and court costs; however, CBO anticipates that these costs would not be significant.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Martha Morgan, who can be reached at 226-2860.

Sincerely,

ROBERT F. HALE
(For Robert D. Reischauer).

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that H.R. 2006 will have no significant inflationary impact on prices and costs in the national economy.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, reported, as shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

THE ACT OF AUGUST 27, 1935

AN ACT To promote the development of Indian arts and crafts and to create a board to assist therein, and for other purposes

* * * * *

SEC. 2. It shall be the function and the duty of [the Board] *the Secretary of the Interior through the Board* to promote the economic welfare of the Indian tribes and [the Indian wards of the Government] *Indian individuals* through the development of Indian arts and crafts and the expansion of the market for the products of Indian art and craftsmanship. In the execution of this function the Board shall have the following powers: (a) To undertake market research to determine the best opportunity for the sale of various products; (b) to engage in technical research and give technical advice and assistance; (c) to engage in experimentation directly or through selected agencies; (d) to correlate and encourage the activities of the various governmental and private agencies in the field; (e) to offer assistance in the management of operating groups for the furtherance of specific projects; (f) to make recommendations to appropriate agencies for loans in furtherance of the production and sale of Indian products; [(g) to create Government trade marks of genuineness and quality for Indian products and the products of particular Indian tribes or groups; to establish standards and regulations for the use of such trade marks; to license corporations, associations, or individuals to use them; and to charge a fee for their use; to register them in the United States Patent Office without charge;] *(g)(1) to create for the Board, or for an individual Indian or Indian tribe or tribal organization, trademarks of genuineness and quality for Indian products and the products of an individual Indian or particular Indian tribe or tribal organization; (2) to establish standards and regulations for the use of Government-owned trademarks by corporations, associations, or individuals, and to charge for such use under such licenses; (3) to register any such*

trademark owned by the Government in the United States Patent and Trademark Office without charge and assign it and the goodwill associated with it to an individual Indian or Indian tribe or group without charge; and (4) to pursue or defend in the courts any appeal or proceeding with respect to any final determination of that office; (h) to employ executive officers, including a general manager, and such other permanent and temporary personnel as may be found necessary, and prescribe the authorities, duties, responsibilities, and tenure and fix the compensation of such officers and other employees: *Provided*, That the Classification Act of 1923, as amended, shall be applicable to all permanent employees except executive officers, and that all employees other than executive officers shall be appointed in accordance with the civil-service laws from lists of eligibles to be supplied by the Civil Service Commission; (i) as a Government agency to negotiate and execute in its own name contracts with operating groups to supply management, personnel, and supervision at cost, and to negotiate and execute in its own name such other contracts and to carry on such other business as may be necessary for the accomplishment of the duties and purposes of the Board: *Provided*, That nothing in the foregoing enumeration of powers shall be construed to authorize the Board to borrow or lend money or to deal in Indian goods. *For the purposes of this section, the term "tribal organization" means any legally established arts and crafts marketing organization composed of members of Indian tribes.*

* * * * *

Sec. 5. (a) The Board may receive complaints of violations of section 1159 of title 18, United States Code, and refer complaints of such violations to the Federal Bureau of Investigation for appropriate investigation. After reviewing the investigation report, the Board may recommend to the Attorney General of the United States that criminal proceedings be instituted under that section.

(b) The Board may recommend that the Secretary of the Interior refer the matter to the Attorney General for civil action under section 6.

SEC. 6. (a) *A person specified in subsection (c) may, in a civil action in a court of competent jurisdiction, bring an action against a person who offers or displays for sale or sells a good, with or without a Government trademark, in a manner that falsely suggests it is Indian produced, an Indian product, or the product of a particular Indian or Indian tribe or tribal organization, resident within the United States, to—*

(1) obtain injunctive or other equitable relief; and

(2) recover the greater of—

(A) treble damages;

(B) in the case of each aggrieved purchaser, liquidated damages of not less than \$1,000 for each occurrence of any such offer, display, or sale; or

(C) in the case of each aggrieved individual Indian, Indian tribe or tribal organization, or competing producer, supplier, or retailer, not less than \$1,000 for each day on which the offer or display for sale or sale continues.

(b) *In addition to the relief specified in subsection (a), the court may award punitive damages and the costs of suit and a reasonable attorney's fee.*

(c)(1) *A civil action under subsection (a) may be commenced—*

(A) *by the Attorney General of the United States upon request of the Secretary of the Interior on behalf of an Indian who is a member of an Indian tribe or on behalf of an Indian tribe or tribal organization;*

(B) *by an Indian tribe on behalf of itself, an Indian who is a member of the tribe, or on behalf of a tribal organization; and*

(C) *by any person aggrieved by any such offer, display, or sale.*

(2) *Any amount recovered pursuant to this section shall be paid to the individual Indian, Indian tribe or tribal organization, or person concerned, except that—*

(A) *in the case of paragraph (1)(A), the Attorney General may deduct from the amount recovered the amount for the costs of suit and reasonable attorney's fees awarded pursuant to subsection (b) and deposit the amount of such costs and fees as a reimbursement credited to appropriations currently available to the Attorney General at the time of receipt of the amount recovered; and*

(B) *in the case of paragraph (1)(B), the amount recovered for the costs of suit and reasonable attorney's fees pursuant to subsection (b) may be deducted from the total amount awarded under subsection (a)(2).*

(d) *As used in this section—*

(1) *the term "Indian" means any individual who is a member of an Indian tribe; or for the purposes of this section is certified as an Indian artisan by an Indian tribe;*

(2) *the terms "Indian product" and "product of a particular Indian tribe or tribal organization" has the meaning given such term in regulations which may be promulgated by the Secretary of the Interior;*

(3) *the term "Indian tribe" means—*

(A) *any Indian tribe, band, nation, Alaska Native village, or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; or*

(B) *any Indian group that has been formally recognized as an Indian tribe by a State legislature or by a State commission or similar organization legislatively vested with State tribal recognition authority; and*

(4) *the term "tribal organization" means any legally established arts and crafts marketing organization composed of members of Indian tribes.*

(e) *In the event that any provision of this section is held invalid, it is the intent of Congress that the remaining provisions of this section shall continue in full force and effect.*

TITLE 18, UNITED STATES CODE

PART I—CRIMES

CHAPTER 53—INDIANS

Sec.

1151. Indian country defined.

1152. Law governing.

[1159. Misrepresentation in sale of products.]

1159. Misrepresentation of Indian produced goods and products.

§ 1158. Counterfeiting Indian Arts and Crafts Board trade mark

Whoever counterfeits or colorably imitates any Government trade mark used or devised by the Indian Arts and Crafts Board in the Department of the Interior as provided in section 305a of Title 25, or, except as authorized by the Board, affixes any such Government trade mark, or knowingly, willfull, and corruptly affixes any reproduction, counterfeit, copy, or colorable imitation thereof upon any products, or to any labels, signs, prints, packages, wrappers, or receptacles intended to be used upon or in connection with the sale of such products; or

Whoever knowingly makes any false statement for the purpose of obtaining the use of any such Government trade mark—

Shall **[**be fined not more than \$500 or imprisoned not more than six months, or both; and**]** *(1) in the case of a first violation, if an individual, be fined not more than \$25,000 or imprisoned not more than five years, or both, and, if a person other than an individual, be fined not more than \$1,000,000; and (2) in the case of subsequent violations, if an individual, be fined not more than \$1,000,000 or imprisoned not more than fifteen years, or both, and, if a person other than an individual, be fined not more than \$5,000,000; and (3) shall be enjoined from further carrying on the act or acts complained of.*

[§ 1159. Misrepresentation in sale of products

[Whoever willfully offers or displays for sale any goods, with or without any Government trade mark, as Indian products or Indian products of a particular Indian tribe or group, resident within the United States or the Territory of Alaska, when such person knows such goods are not Indian products or are not Indian products of the particular Indian tribe or group, shall be fined not more than \$500 or imprisoned not more than six months, or both.**]**

§ 1159. Misrepresentation of Indian produced goods and products

(a) It is unlawful to offer or display for sale or sell any good, with or without a Government trademark, in a manner that falsely suggests it is Indian produced, an Indian product, or the product of a particular Indian or Indian tribe or tribal organization, resident within the United States.

(b) *Whoever knowingly violates subsection (a) shall—*

(1) in the case of a first violation, if an individual, be fined not more than \$250,000 or imprisoned not more than five years, or both, and, if a person other than an individual, be fined not more than \$1,000,000; and

(2) in the case of subsequent violations, if an individual, be fined not more than \$1,000,000 or imprisoned not more than fifteen years, or both, and, if a person other than an individual, be fined not more than \$5,000,000.

(c) *As used in this section—*

(1) the term "Indian" means any individual who is a member of an Indian tribe, or for the purposes of this section is certified as an Indian artisan by an Indian tribe;

(2) the terms "Indian product" and "product of a particular Indian tribe or tribal organization" has the meaning given such term in regulations which may be promulgated by the Secretary of the Interior;

(3) the term "Indian tribe" means—

(A) any Indian tribe, band, nation, Alaska Native village, or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; or

(B) any Indian group that has been formally recognized as an Indian tribe by a State legislature or by a State commission or similar organization legislatively vested with State tribal recognition authority; and

(4) the term "tribal organization" means any legally established arts and crafts marketing organization composed of members of Indian tribes.

(d) In the event that any provision of this section is held invalid, it is the intent of Congress that the remaining provisions of this section shall continue in full force and effect.

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