Indian Arts and Crafts Act of 1990

One Hundred First Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Tuesday, the twenty-third day of January, one thousand nine hundred and ninety An Act To expand the powers of the Indian Arts and Crafts Board, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I--INDIAN ARTS AND CRAFTS

SEC. 101. SHORT TITLE.

This title may be cited as the `Indian Arts and Crafts Act of 1990'.

SEC. 102. 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 Indian arts and crafts organization, trademarks of genuineness and quality for
Indian products and the products of an individual Indian or particular Indian tribe or Indian arts and crafts 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 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 `Indian arts and crafts organization' means any legally established arts and crafts marketing organization composed of members of Indian tribes.'.

**SEC. 103. 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 of 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. 104. 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:
Sec. 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 Indian arts and crafts 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 Indian arts and crafts 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 `Indian arts and crafts 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. 105. 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 Indian arts and crafts organization, resident within the United States, to--

(1) obtain injunctive or other equitable relief; and

(2) recover the greater of--

(A) treble damages; or

(B) in the case of each aggrieved individual Indian, Indian tribe, or Indian arts and crafts organization, 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 Indian arts and crafts organization; or

(B) by an Indian tribe on behalf of itself, an Indian who is a member of the tribe, or on behalf of an Indian arts and crafts organization.

(2) Any amount recovered pursuant to this section shall be paid to the individual Indian, Indian tribe, or Indian arts and crafts organization, 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 Indian arts and crafts 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 `Indian arts and crafts 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. 106. 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. 107. 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.

- Read the Final Regulations as Published in the October, 1996 Federal Register

- Read the Indian Arts and Crafts Act of 1935