

TITLE 25 - INDIANS**CHAPTER 7A - PROMOTION OF SOCIAL AND ECONOMIC WELFARE****§ 305e. Cause of action for misrepresentation of Indian produced goods****(a) Injunctive or equitable relief; damages**

A person specified in subsection (c) of this section may, in a civil action in a court of competent jurisdiction, bring an action against a person who, directly or indirectly, 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.

For purposes of paragraph (2)(A), damages shall include any and all gross profits accrued by the defendant as a result of the activities found to violate this subsection.

(b) Punitive damages; attorney's fee

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

(c) Persons who may initiate civil actions

- (1) A civil action under subsection (a) of this section 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;
 - (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; or
 - (C) by an Indian arts and crafts organization on behalf of itself, or by an Indian on behalf of himself or herself.
- (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—
 - (i) the amount for the costs of suit and reasonable attorney's fees awarded pursuant to subsection (b) of this section 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
 - (ii) the amount for the costs of investigation awarded pursuant to subsection (b) of this section and reimburse the Board the amount of such costs incurred as a direct result of Board activities in the suit; 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) of this section may be deducted from the total amount awarded under subsection (a)(2) of this section.

(d) Definitions

As used in this section—

NB: This unofficial compilation of the U.S. Code is current as of Jan. 8, 2008 (see <http://www.law.cornell.edu/uscode/uscpri.html>).

- (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) subject to subsection (f) of this section, the terms “Indian product” and “product of a particular Indian tribe or Indian arts and crafts organization” has the meaning given such term¹ 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) Severability

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.

(f) Regulations

Not later than 180 days after November 9, 2000, the Board shall promulgate regulations to include in the definition of the term “Indian product” specific examples of such product to provide guidance to Indian artisans as well as to purveyors and consumers of Indian arts and crafts, as defined under this Act.

Footnotes

¹ So in original. Probably should be “terms”.

(Aug. 27, 1935, ch. 748, § 6, as added Pub. L. 101–644, title I, § 105, Nov. 29, 1990, 104 Stat. 4664; amended Pub. L. 106–497, § 2, Nov. 9, 2000, 114 Stat. 2219.)

References in Text

This Act, referred to in subsec. (f), is act Aug. 27, 1935, ch. 748, 49 Stat. 891, as amended, which is classified generally to section 305 et seq. of this title. For complete classification of this Act to the Code, see Tables.

Prior Provisions

A prior section, act Aug. 27, 1935, ch. 748, § 6, 49 Stat. 893, related to offering for sale without trade mark goods as Indian goods, prior to repeal by acts June 25, 1948, ch. 645, § 21, 62 Stat. 862; June 25, 1948, ch. 646, § 39, 62 Stat. 992, effective Sept. 1, 1948. See section 1159 of Title 18, Crimes and Criminal Procedure.

Amendments

2000—Subsec. (a). Pub. L. 106–497, § 2(1), inserted “, directly or indirectly,” after “against a person who” in introductory provisions and inserted at end “For purposes of paragraph (2)(A), damages shall include any and all gross profits accrued by the defendant as a result of the activities found to violate this subsection.”

Subsec. (c)(1)(C). Pub. L. 106–497, § 2(2)(A), added subpar. (C).

Subsec. (c)(2)(A). Pub. L. 106–497, § 2(2)(B), designated existing text as cl. (i) and added cl. (ii).

Subsec. (d)(2). Pub. L. 106–497, § 2(3), inserted “subject to subsection (f) of this section,” before “the terms”.

Subsec. (f). Pub. L. 106–497, § 2(4), added subsec. (f).

Certification of Indian Artisans

Section 107 of Pub. L. 101–644 provided that: “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.) [25 U.S.C. 305e] an Indian tribe may not impose a fee

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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.”