

REFERENCES IN TEXT

This Act, referred to in subsec. (b), is act Aug. 27, 1935, ch. 748, 49 Stat. 891, 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, § 5, 49 Stat. 892, related to counterfeiting of a trade mark and penalty, prior to repeal by act June 25, 1948, ch. 645, § 21, 62 Stat. 862, effective Sept. 1, 1948. See section 1158 of Title 18, Crimes and Criminal Procedure.

AMENDMENTS

2010—Pub. L. 111–211 amended section generally. Prior to amendment, text read as follows:

“(a) The Board may receive complaints of violations of section 1159 of title 18 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 305e of this title.”

§ 305e. Cause of action for misrepresentation of Indian produced goods

(a) Definitions

In this section:

(1) Indian

The term “Indian” means an individual that—

- (A) is a member of an Indian tribe; or
- (B) is certified as an Indian artisan by an Indian tribe.

(2) Indian product

The term “Indian product” has the meaning given the term in any regulation promulgated by the Secretary.

(3) Indian tribe

(A) In general

The term “Indian tribe” has the meaning given the term in section 5304 of this title.

(B) Inclusion

The term “Indian tribe” includes, for purposes of this section only, an Indian group that has been formally recognized as an Indian tribe by—

- (i) a State legislature;
- (ii) a State commission; or
- (iii) another similar organization vested with State legislative tribal recognition authority.

(4) Secretary

The term “Secretary” means the Secretary of the Interior.

(b) Injunctive or equitable relief; damages

A person specified in subsection (d) 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.

(c) Punitive damages; attorney’s fee

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

(d) Persons that may initiate civil actions

(1) In general

A civil action under subsection (b) may be initiated by—

- (A) the Attorney General, at the request of the Secretary acting on behalf of—
 - (i) an Indian tribe;
 - (ii) an Indian; or
 - (iii) an Indian arts and crafts organization;

(B) an Indian tribe, acting on behalf of—

- (i) the Indian tribe;
- (ii) a member of that Indian tribe; or
- (iii) an Indian arts and crafts organization;

(C) an Indian; or

(D) an Indian arts and crafts organization.

(2) Disposition of amounts recovered

(A) In general

Except as provided in subparagraph (B), an amount recovered in a civil action under this section shall be paid to the Indian tribe, the Indian, or the Indian arts and crafts organization on the behalf of which the civil action was initiated.

(B) Exceptions

(i) Attorney General

In the case of a civil action initiated under paragraph (1)(A), the Attorney General may deduct from the amount—

(I) the amount of the cost of the civil action and reasonable attorney’s fees awarded under subsection (c), to be deposited in the Treasury and credited to appropriations available to the Attorney General on the date on which the amount is recovered; and

(II) the amount of the costs of investigation awarded under subsection (c), to reimburse the Board for the activities of the Board relating to the civil action.

(ii) Indian tribe

In the case of a civil action initiated under paragraph (1)(B), the Indian tribe may deduct from the amount—

(I) the amount of the cost of the civil action; and

(II) reasonable attorney's fees.

(e) Savings provision

If 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.

(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; Pub. L. 111-211, title I, § 102(b), July 29, 2010, 124 Stat. 2259.)

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

2010—Subsec. (a). Pub. L. 111-211, § 102(b)(3), added subsec. (a). Former subsec. (a) redesignated (b).

Subsec. (b). Pub. L. 111-211, § 102(b)(2), (4), redesignated subsec. (a) as (b) and substituted "subsection (d)" for "subsection (c)" in introductory provisions. Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 111-211, § 102(b)(2), (5), redesignated subsec. (b) as (c) and substituted "subsection (b)" for "subsection (a)" and "the civil action" for "suit". Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 111-211, § 102(b)(6), added subsec. (d) and struck out former subsec. (d) relating to persons who may initiate civil actions.

Pub. L. 111-211, § 102(b)(1), (2), redesignated subsec. (c) as (d) and struck out former subsec. (d) relating to definitions.

Subsec. (e). Pub. L. 111-211, § 102(b)(7), inserted heading and substituted "If" for "In the event that".

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

Pub. L. 101-644, title I, § 107, Nov. 29, 1990, 104 Stat. 4665, 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 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."

§ 305f. Indian Arts and Crafts Board art collection

(a) Transfer of art collection and costs

Notwithstanding any other provision of law, the Secretary of the Interior is directed to transfer all right, title and interest in that portion of the Indian Arts and Crafts Board art collection maintained permanently by the Indian Arts and Crafts Board in Washington, District of Columbia, to the Secretary of the Smithsonian Institution to be a part of the collection of the National Museum of the American Indian, subject to subsection (b). Transfer of the collection and costs thereof shall be carried out in accordance with terms, conditions, and standards mutually agreed upon by the Secretary of the Interior and the Secretary of the Smithsonian Institution.

(b) Retention of permanent license to use of images

The Indian Arts and Crafts Board shall retain a permanent license to the use of images of the collection for promotional, economic development, educational and related nonprofit purposes. The Indian Arts and Crafts Board shall not be required to pay any royalty or fee for such license.

(Aug. 27, 1935, ch. 748, § 7, as added Pub. L. 105-277, div. A, § 101(e) [title III, § 356(a)], Oct. 21, 1998, 112 Stat. 2681-231, 2681-304.)

§ 306. Expenditures for encouragement of industry and self-support; repayment

On and after May 9, 1938, the expenditures for the purpose of encouraging industry and self-support among the Indians and to aid them in the culture of fruits, grains, and other crops shall be under conditions to be prescribed by the Secretary of the Interior for repayment to the United States on or before the expiration of five years, except in the case of loans on irrigable lands for permanent improvement of said lands, in which the period for repayment may run for not exceeding twenty years, in the discretion of the Secretary of the Interior.

(May 9, 1938, ch. 187, § 1, 52 Stat. 302.)

§ 306a. Advances for support of old, disabled, or indigent allottees; lien against land

On and after May 9, 1938, the Secretary of the Interior is authorized, in his discretion and under such rules and regulations as he may prescribe, to make advances to old, disabled, or indigent Indian allottees, for their support, to remain a charge and lien against their land until paid; such advances for the fiscal year 1939 to be made from the appropriations in this paragraph and those for fiscal years thereafter to be made from appropriations specifically available for such purposes.

(May 9, 1938, ch. 187, § 1, 52 Stat. 302.)