

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

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NATIVE AMERICAN ARTS, INC.,	)	
	)	
Plaintiff,	)	No. 15-cv-04380
	)	
v.	)	<b>JURY TRIAL DEMANDED</b>
	)	
SILVERBIN.COM and	)	
SILVERLIMIT.COM d/b/a JEWELRY &	)	
WATCH EXCHANGE, and	)	
AMAZON.COM, INC.	)	
	)	
Defendant.	)	

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**COMPLAINT**

Plaintiff NATIVE AMERICAN ARTS, INC. (“NAA”), by its undersigned attorneys, complains of Defendants SILVERBIN.COM and SILVERLIMIT.COM d/b/a Jewelry & Watch Exchange (“Jewelry & Watch Exchange”) and AMAZON.COM, INC. (“Amazon”) as follows:

**NATURE OF THE CASE**

1. This is an action for violation of 25 U.S.C. §305, et seq., and 25 U.S.C. §305e, the Indian Arts and Crafts Act of 1990, and the Indian Arts and Crafts Enforcement Act of 2000 (collectively the “IACA”). The IACA prohibits a person or entity from directly or indirectly offering, displaying for sale, or selling goods in a manner that falsely suggests those goods are Indian produced, Indian products, or the products of a particular Indian, an Indian tribe, or an Indian arts and crafts organization.

2. The IACA further provides that a “civil action [under the IACA] may be initiated by... an Indian arts and crafts organization.” 25 U.S.C. § 305e(d)(1)(A)(iii).

### PARTIES

3. NAA, is a Native American-owned arts and crafts organization headquartered in the Northern District of Illinois. NAA manufactures, distributes, and sells only authentic Native American arts, crafts and jewelry from its store and nationwide over the internet from its website. All of NAA's products are created by Native American artisans from recognized Native American tribes.

4. NAA is wholly owned by registered members of the Ho-Chunk Nation, a federally-recognized Native American tribe.<sup>1</sup> NAA is an Indian arts and crafts organization as defined by 25 U.S.C. § 305e.

5. NAA has invested substantial time, money and effort over many years to advertise, market and promote Authentic and Genuine Native American arts, crafts and jewelry in Illinois and throughout the United States through its store and over the internet on its website.

6. From 1996 to the present, NAA spent more than \$52,000 advertising and marketing its Authentic and Genuine Native American arts, crafts and jewelry across multiple advertising channels including catalogs, newspapers, internet, radio, email, direct mail, flyers, and in-store signage. NAA has spent approximately an additional \$25,000 on web advertising and on its web page over that same period. NAA has also engaged in extensive public relations and educational efforts to promote Authentic and Genuine Native American arts, crafts and jewelry.

7. To counteract the damage counterfeiters have done to the value of the "Native American Designed" and "Native American Made" and Authentic and Genuine Native American

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<sup>1</sup> 79 Fed. Reg. 4748 (Jan. 29, 2014).

designations of origin, NAA has made efforts to bolster the value of those designations through additional advertising and public relations work and efforts to educate the public.

8. As a direct result of its extensive public relations and educational efforts, NAA has appeared in numerous newspaper articles which discuss its product offerings and efforts to educate the public about Authentic and Genuine Native American arts and crafts.

9. NAA has a protectable interest in maintaining the integrity of the Native American Arts marketplace and the Authentic and Genuine Native American designations of origin conferred to it by the IACA upon which its business relies for its revenues and goodwill.

10. Jewelry & Watch Exchange is a Utah corporation having its principal place of business in Draper, Utah. Jewelry & Watch Exchange is an online retailer which advertises and sells a wide range of consumer products throughout the United States through its website.

11. Amazon is a Delaware Corporation having its principal place of business in Seattle, Washington. Amazon is an online retailer which advertises and sells a wide range of consumer products throughout the United States through its website. Amazon also allows other entities, such as Jewelry & Watch Exchange, to establish “Amazon WebStores” on Amazon’s website. Amazon earns a financial benefit from third-party’s display and sale of products through Amazon WebStores.

### **JURISDICTION AND VENUE**

12. Jurisdiction over this actions is conferred by 28 U.S.C. §1331, as this claim arises under the federal law.

13. Venue is proper in the Northern District of Illinois because Northern District of Illinois is where the injury to NAA occurred in diluting the Genuine and Authentic Native

American made designations of origin upon which its business relies for its revenues and goodwill.

**FACTUAL BACKGROUND**

***Jewelry & Watch Exchange's Advertising of Inauthentic Native American Products***

14. Since at least on or about November 3, 2012, Jewelry & Watch Exchange has advertised, marketed and sold through its website at least 16 jewelry items as Native American designed, made, created and/or handmade:

**Alexandria Collection Sterling Silver Brushed Finish Dangle Earrings**



Stylish and unique, these dangle earrings feature sterling silver beads in alternating sizes. The jewelry is an original design hand-made by Native American craftsmen. *See Exhibit A-1* (emphasis added).

**Alexandria Collection Sterling Silver Genuine Turquoise Arrowhead Necklace**



Showcasing an arrowhead made from green turquoise, this pendant is both earthy and stylish. *This sterling silver jewelry is an original design made by Native American craftsmen. See Exhibit B-1* (emphasis added).

**Alexandria Collection Sterling Silver Genuine Turquoise Inlay Southwest Money Clip**



Bold and primal, this beautiful genuine turquoise, lapis, and coral money clip features an organic composition that is strong and pleasing to the eye. *The sterling silver jewelry is an original design hand-made by Native American Indian craftsmen. See Exhibit C-1* (emphasis added).

**Riverbend Sterling Silver Turquoise Handcrafted Drop Earrings**



*These gorgeous drop earrings by Stillwater are handcrafted with Native American craftsmanship and feature lustrous polished sterling silver. A dangle style design is accented with turquoise accents and hangs from shepherd hook clasps. See Exhibit D-1* (emphasis added).

**Alexandria Collection Sterling Silver Genuine Turquoise Foot Print Stud Earrings**



*An original design by Native American craftsman, these stud earrings showcase footprints adorned with turquoise stones. The jewelry is crafted of fine sterling silver and highly polished to enhance the look. See Exhibit E-1 (emphasis added).*

**Alexandria Collection Silver Genuine Turquoise Coral Lapis Spiny Oyster Shell Bead Bracelet**



This stylish multiple bead bracelet features genuine turquoise, coral, lapis, and spiny oyster shell on a double strand, with sterling silver end caps and lobster claw clasp. *The jewelry is an original design handmade by Native American craftsmen in the USA. See Exhibit F-1 (emphasis added).*

**Alexandria Collection Sterling Silver Red Spiny Oyster Shell Stone Vintage Necklace**



This classy vintage style pendant features a genuine red shiny oyster shell stone and delicate lace edge circle detailing. *The jewelry is an original design handmade by Native American craftsmen in the USA. See Exhibit G-1* (emphasis added).

**Alexandria Collection Sterling Silver Genuine Turquoise And Coral Bead Earring**



These drop earrings feature sterling silver beads, genuine blue and green turquoise with red, purple and orange coral, stacked on silver shepherds' hooks backings. *This pair is an original, hand-made design by Native American craftsmen in the USA. See Exhibit H-1* (emphasis added).

**Alexandria Collection Sterling Silver Genuine Mother Of Pearl Earrings**



Stylish and alluring, these dangle earrings feature large, butterfly-shaped mother of pearl and a highly polished finish. *The sterling silver jewelry is an original design hand-made by Native American craftsmen. See Exhibit I-1* (emphasis added).

**Alexandria Collection Sterling Silver Brushed Finish Genuine Turquoise Necklace**



A strand of silver beads and turquoise bead chips adorn this fashionable necklace. *This sterling silver jewelry is an original design made by Native American craftsmen. See Exhibit J-1 (emphasis added).*

**Alexandria Collection Rhodium-Plated Sterling Silver Brushed Finish Bead Earrings**



Showcasing antiqued sterling silver beads, these earrings exude a uniquely modern style. *The jewelry is an original design that has been handmade by Native American craftsmen. See Exhibit K-1 (emphasis added).*

**Alexandria Collection Sterling Silver Brushed Finish Dangle Earrings**



Showcasing a looped bead strand and a brushed finish, these dangle earrings are stylish and unique. *The sterling silver jewelry is an original design hand-made by Native American craftsmen. See Exhibit L-1 (emphasis added).*

**Alexandria Collection Sterling Silver Genuine Turquoise Dangle Earrings**



Simple, yet stylish, these earrings feature four dangling turquoise beads. *The sterling silver jewelry is an original design hand-made by Native American craftsmen. See Exhibit M-1 (emphasis added).*

**Alexandria Collection Sterling Silver Brushed Finish Dangle Earrings**



With its two-tone silver and brushed finish, these dangle earrings can easily be incorporated into your daily look. *The sterling silver jewelry is an original design hand-made by Native American craftsmen. See Exhibit N-1 (emphasis added).*

**Alexandria Collection Sterling Silver Brushed Finish Dangle Earrings**



Stylish and unique, these dangle earrings feature sterling silver beads in different shapes and sizes. *The jewelry is an original design hand-made by Native American craftsmen. See Exhibit O-1 (emphasis added).*

**Alexandria Collection Sterling Silver Genuine Turquoise And Onyx Necklace**



Natural onyx and turquoise stones really made this necklace pop. *This sterling silver jewelry is an original design made by Native American craftsmen.* See Exhibit P (emphasis added).

15. On information and belief, the claimed authentic Native American jewelry listed on Jewelry & Watch Exchange's website are mass produced by non-Native American labor, and are neither handmade by Native Americans nor designed by a Native American.

***Amazon' Advertising of Inauthentic Native American Products***

16. Since at least on or about November 3, 2012, Amazon has displayed for sale and earned a financial benefit from the sale of at least 15 of the 16 jewelry items identified in Paragraph 14 *supra* which are advertised as Native American designed, made, created and/or handmade. See Exhibits A-2 – O-2.

17. On information and belief, the claimed authentic Native American jewelry listed on Amazon's website are mass produced by non-Native American labor, and are neither handmade by Native Americans nor designed by a Native American.

18. NAA sent a letter to the manufacturer and/or distributor of the jewelry identified in Paragraphs 14 and 16 *supra* asking it to provide proof that one of its products sold by another major retailer is in fact Native American produced; it ignored this request. On information and belief, in light of the manufacturer and/or distributor's failure to respond and other information

NAA has obtained including that a major retailer has changed its advertising to remove any reference to Native American craftsmanship immediately after being sued, NAA believes the jewelry items identified in Paragraphs 14 and 16 *supra* are not in fact produced by Native Americans.

**COUNT I**

**(Jewelry & Watch Exchange's Violations of the Indian Arts and Crafts Act)**

19. NAA realleges paragraphs 1-18.

20. The IACA prohibits a person from directly or indirectly offering, displaying for sale, or selling goods in a manner that falsely suggests those goods are (1) Indian produced, (2) an Indian product, or (3) the product of a particular Indian or Indian tribe or Indian arts and crafts organization. 25 U.S.C. § 305e

21. In the IACA, Congress delegated the task of defining "Indian Product" to the Secretary of the Interior. 25 U.S.C. § 305e(a)(2). The Secretary of the Interior defined "Indian product" as any art or craft product made by an Indian. 25 C.F.R. 309.2(d)(1). The Secretary further states that "made by an Indian" means that an Indian has provided the artistic or craft work labor necessary to implement an artistic design through a substantial transformation of materials to produce the art or craft work." 25 C.F.R. 309.2(d)(1).

22. The IACA is a strict liability statute and thus liability does not depend upon the defendant's intent.

23. The IACA provides that a "civil action [under the statute] may be initiated by . . . an Indian arts and crafts organization" for violation of the act. 25 U.S.C. § 305e(d)(1)(A)(iii).

24. NAA is an Indian arts and crafts organization under the IACA.

25. The IACA provides for the greater of treble damages, or \$1,000 per product, per day a violation occurs. 25 U.S.C. § 305e(b); *Native Am. Arts, Inc. v. Bundy-Howard, Inc.*, 168 F. Supp. 2d 905, 912-13 (N.D. Ill. 2001).

26. On information and belief, the jewelry identified in Paragraph 18 *supra* was not produced, designed, or manufactured by individuals who are Indians, members of an Indian tribe, recognized non-member Indian artisans, or Indian arts and crafts organizations as defined by 25 U.S.C. § 305e and § 305, *et. seq.*

27. Jewelry & Watch Exchange advertises, markets, and sells the jewelry identified in Paragraph 18 *supra* as Indian produced and Indian products.

28. Jewelry & Watch Exchange has used the unqualified phrase “made by Native American craftsmen” when advertising, marketing, and selling the jewelry identified in Paragraph 14 *supra* on its website.

29. On information and belief, the jewelry identified in Paragraph 14 *supra* is not in fact Indian products, nor was it Indian produced, as defined in 25 U.S.C. § 305 *et. seq.* and the corresponding regulations.

30. By advertising, marketing, and selling a product that “that falsely suggests it is Indian produced [or] an Indian product[,]” Jewelry & Watch Exchange diluted and tarnished this designation of origin and diminished its distinctiveness and value.

31. NAA’s business, reputation and goodwill are directly tied to the “Indian produced” and “Indian product” designations of origin. NAA has suffered a reputational injury and loss of goodwill and reputation to its business and the intellectual property rights and congressionally granted designations of origin it relies upon as a direct and proximate result of Amazon’s counterfeiting activities as alleged herein.

32. In passing off the jewelry identified in Paragraph 14 *supra* as Indian produced and Indian products, Jewelry & Watch Exchange is taking a free ride on NAA's time, effort and investment in promoting Authentic and Genuine Native American arts and crafts. NAA suffered injury as a direct and proximate cause of Jewelry & Watch Exchange's "free ride" on NAA's time, money and efforts to enhance the value of the congressionally granted designations of origin.

33. As an Indian arts and crafts organization, NAA is entitled to statutory damages and attorney's fees and costs under the IACA due to Amazon's IACA violations alleged herein.

34. Title 25 U.S.C. § 305e(a) of the IACA also provides for injunctive and other equitable relief.

35. Jewelry & Watch Exchange's advertising, marketing, and selling the jewelry identified in Paragraph 14 *supra* in a manner that falsely suggests they are Indian produced or Indian products should be enjoined as no adequate remedy at law exists. NAA will be irreparably injured without an injunction as actual damages are difficult to measure.

WHEREFORE, NAA requests that this Court enter judgment in its favor and against Jewelry & Watch Exchange as follows:

- a) Award statutory damages of \$1000 per day for the number of days Jewelry & Watch Exchange violated the IACA by falsely offering the jewelry items as authentic Native American products or Native American produced;
- b) Award reasonable attorney's fees and costs of suit;
- c) Issue a temporary restraining order, preliminary injunction, and permanent injunction to prevent Jewelry & Watch Exchange from continuing to misrepresent the jewelry items as a Native American product or Native American produced when it is not in fact an Indian product or Indian produced.

**COUNT II**  
**(Amazon's Violations of the Indian Arts and Crafts Act)**

36. NAA realleges paragraphs 1-18.

37. The IACA prohibits a person from directly or indirectly offering, displaying for sale, or selling goods in a manner that falsely suggests those goods are (1) Indian produced, (2) an Indian product, or (3) the product of a particular Indian or Indian tribe or Indian arts and crafts organization. 25 U.S.C. § 305e.

38. In the IACA, Congress delegated the task of defining "Indian Product" to the Secretary of the Interior. 25 U.S.C. § 305e(a)(2). The Secretary of the Interior defined "Indian product" as any art or craft product made by an Indian. 25 C.F.R. 309.2(d)(1). The Secretary further states that "made by an Indian" means that an Indian has provided the artistic or craft work labor necessary to implement an artistic design through a substantial transformation of materials to produce the art or craft work." 25 C.F.R. 309.2(d)(1).

39. The IACA is a strict liability statute and thus liability does not depend upon the defendant's intent.

40. The IACA provides that a "civil action [under the statute] may be initiated by . . . an Indian arts and crafts organization" for violation of the act. 25 U.S.C. § 305e(d)(1)(A)(iii).

41. NAA is an Indian arts and crafts organization under the IACA.

42. The IACA provides for the greater of treble damages, or \$1,000 per product, per day a violation occurs. 25 U.S.C. § 305e(b); *Native Am. Arts, Inc. v. Bundy-Howard, Inc.*, 168 F. Supp. 2d 905, 912-13 (N.D. Ill. 2001).

43. On information and belief, the jewelry listed on Amazon's website were not produced, designed, or manufactured by individuals who are Indians, members of an Indian

tribe, recognized non-member Indian artisans, or Indian arts and crafts organizations as defined by 25 U.S.C. § 305e and § 305, *et. seq.*

44. Amazon displays for sale and earns a financial benefit from the sale of the jewelry identified in Paragraph 16 *supra* as Indian produced and Indian products.

45. On information and belief, the jewelry identified in Paragraph 16 *supra* are not in fact Indian products, nor were they Indian produced, as defined in 25 U.S.C. § 305 *et. seq.* and the corresponding regulations.

46. By displaying for sale a product that “that falsely suggests it is Indian produced [or] an Indian product[,]” Amazon diluted and tarnished this designation of origin and diminished its distinctiveness and value.

47. NAA’s business, reputation and goodwill are directly tied to the “Indian produced” and “Indian product” designations of origin. NAA has suffered a reputational injury and loss of goodwill and reputation to its business and the intellectual property rights and congressionally granted designations of origin it relies upon as a direct and proximate result of Amazon’s counterfeiting activities as alleged herein.

48. In passing off the jewelry identified in Paragraph 16 *supra* as Indian produced and Indian products, Amazon is taking a free ride on NAA’s time, effort and investment in promoting Authentic and Genuine Native American arts and crafts. NAA suffered injury as a direct and proximate cause of Amazon’s “free ride” on NAA’s time, money and efforts to enhance the value of the congressionally granted designations of origin.

49. As an Indian arts and crafts organization, NAA is entitled to statutory damages and attorney’s fees and costs under the IACA due to Amazon’s IACA violations alleged herein.

50. Title 25 U.S.C. § 305e(a) of the IACA also provides for injunctive and other equitable relief.

51. Amazon's displaying for sale of the jewelry identified in Paragraph 16 *supra* in a manner that falsely suggests they are Indian produced or Indian products should be enjoined as no adequate remedy at law exists. NAA will be irreparably injured without an injunction as actual damages are difficult to measure.

WHEREFORE, NAA requests that this Court enter judgment in its favor and against Amazon as follows:

- d) Award statutory damages of \$1000 per day for the number of days Amazon violated the IACA by falsely offering the Earrings as Indian products or Indian produced;
- e) Award reasonable attorney's fees and costs of suit; and
- f) Issue a temporary restraining order, preliminary injunction, and permanent injunction to prevent Amazon from continuing to misrepresent the Earrings as an Indian product or Indian produced when it is not in fact an Indian product or Indian produced.

**JURY DEMAND**

Pursuant to Federal Rule of Civil Procedure 38(b), NAA demands a trial by jury of all claims in this Amended Complaint so triable.

NATIVE AMERICAN ARTS, INC.  
By: /s/ Peter S. Lubin  
One of its Attorneys

Peter S. Lubin  
Vincent L. DiTommaso  
John Auchter  
DITOMMASO ♦ LUBIN, P.C.  
17W 220 22nd Street, Suite 410  
Oakbrook Terrace, IL 60181  
(630) 333-0000