

Statement of
Senator Jon Kyl (R-AZ)
before the
Senate Committee on Indian Affairs

Indian Arts and Crafts

May 17, 2000

Mr. Chairman, thank you for convening this hearing to consider the problems of counterfeiting and misrepresentation that continue to plague the Indian arts and crafts market, and to review the Interior Department's implementation of the Indian Arts and Crafts Act of 1990.

I want to begin by thanking you, Chairman Campbell, for your leadership in this area. You and I have been working to try to find a way to solve this problem since the days we served together in the House of Representatives.

We co-wrote the Indian Arts and Crafts Act of 1990, which vested the Indian Arts and Crafts Board at the Department of the Interior with new authority to combat counterfeits and misrepresentation. The 1990 act -- effectively a truth-in-advertising law that established criminal and civil penalties for misrepresentation -- supplemented the indelible-marking, country-of-origin requirements for Indian-style imports that were established in 1988 in the Omnibus Trade and Competitiveness Act.

Mr. Chairman, when we consider what Indian arts and crafts mean to Indian people, we need to understand that they are important for both economic and cultural reasons. Indian people depend on arts and crafts for their livelihoods.

To give you an idea just how important the sale of arts and crafts is to the economies in Indian country, let me cite just a few statistics. Representatives of the Hopi Tribe tell me that an estimated 37 percent of the Tribe's working population is employed in some way in arts- or crafts-making. That is a significant share. An estimated \$11.2 million of income to Hopi economy is due to arts and crafts.

But consider this: forgeries are estimated to cost the Hopi Tribe another \$4.6 million in lost sales. The Tribe estimates that fully 40 percent of forgeries sold in the marketplace are represented as Hopi. All told, estimates are that 40, 50, maybe even up to 60 percent of the \$1 billion Indian arts and crafts market is inappropriately represented as genuine.

With a market that large, some people will go to great lengths to claim a share of it for themselves. You've heard about the town in the Philippines, for example, that was renamed "Zuni" so that products made there could be marketed as Zuni-made. This is serious business, and it is costing Indian Tribes serious money.

As I said, though, more is at stake here than dollars and cents. Misrepresentation poses a threat to Native culture itself.

The Associated Press profiled Zuni Indian silversmiths Jan and Wilda Boone in a report earlier this year. According to the report, the Boones make earrings and bracelets in the workshop in their home in the Zuni Pueblo, south of Gallup. Jan's parents were silversmiths, as were his grandparents before them. Wilda's parents made animal carvings, and her daughter plies that craft now.

Their craft has been passed down from generation to generation, but because of counterfeiting and misrepresentation, the Boones are reportedly thinking about a different trade for their two youngest children. Imitations have not only cost the Boones sales, but have caused buyers to be wary of the genuineness of this family's own creations.

Of course, if Indian artisans can't make enough money due to competition from fakes, they will abandon the arts, and rich Native American traditions will die out. If they have to increase productivity at the expense of time-honored manufacturing techniques in order to compete with imitation products, an important part of their heritage will be compromised and lost. That would be a loss for all America.

Mr. Chairman, the Indian Arts and Crafts Act was intended to help solve this problem by establishing stiff criminal and civil penalties for misrepresentation. It was also intended to provide a mechanism for Indian artisans to easily obtain trademarks to help distinguish their works as genuine. But I have to tell you, implementation and enforcement of the act has been a big disappointment.

I will say up front that the fault is not all that of the Indian Arts and Crafts Board, which is the lead agency designated for enforcement. Five years ago, because of budget constraints, the House and Senate Appropriations Committees proposed to abolish the Board. I offered the amendment on the Senate floor that restored funding for it, but resources then were very tight, and they continue to be very tight. I have always been disappointed that the Interior Department has not requested the kind of funding necessary to aggressively enforce the 1990 act in order to attack the problem of counterfeiting and misrepresentation.

Aside from resources, though, I think the Indian Arts and Crafts Board has really failed to step up to the plate. According to the latest information I have, not a single case of misrepresentation has been referred to the Justice Department for prosecution. (One case is reportedly in the pipeline now.) A representative of the Indian Arts and Crafts Board was quoted last year as saying the Board was "still looking for a big test case." Mr. Chairman, with an estimated 50 to 60 percent of the marketplace plagued with forgeries, how hard can it be to find a test case? It almost seems as if the Board isn't looking for cases at all.

Regulations to implement the trademark provisions of the 1990 act have not even been promulgated -- and this is 10 years after the act's passage. Ten years! The museums that the Board runs around the country continue to lose money. They cost \$465,000 annually, yet raise only \$75,000 in net user fees.

As for the Customs Service's enforcement of the indelible-marking provisions of the 1988 trade act, it, too, has been lacking. I've heard anecdotal evidence that, after seizing counterfeits, Customs auctions off the goods, and some are then put right back into the marketplace where they may be sold as genuine.

Mr. Chairman, experts say there is enough law -- that it is now a matter of enforcement. For that reason, I have been working in the Senate Appropriations Committee to earmark a greater share of the Board's budget for Indian Arts and Crafts Act enforcement. This year, about 30 percent is set aside for enforcement. Next year, it will be about 35 percent.

Chairman Campbell, you had what I thought was also an excellent idea. You proposed the creation of a joint task force "to devise and implement a coordinated enforcement response to prevent the sale or distribution of any product or good sold in or shipped to the United States that is not in compliance with the Indian Arts and Crafts Act." The task force would be composed of representatives of the U.S. Trade Representative, the Department of Commerce, the Department of the Interior, the Department of Justice, the Department of Treasury, the International Trade Administration, and representatives of certain other agencies and departments.

I understand that you are pursuing this idea again this year, and I enthusiastically support your effort.

I look forward to hearing the Interior Department's testimony, and maybe getting some ideas about how we can ensure effective enforcement of existing law, and whether the Department thinks new laws or authorities might be required to tackle the problem. But I will also say this, if the Indian Arts and Crafts Board can't or won't aggressively implement and enforce the IACA, I am ready to look for another agency that can, whether at Interior or some other department.

Let me conclude by thanking you again for convening this hearing. If I may, I will have some questions for the Interior Department witnesses at the appropriate time.