

example, if twenty people make up the labor to create the product(s), and one person is not Indian, the product is not an "Indian product."

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§§ 309.3–309.6 [Redesignated as §§ 309.24–309.27]

■ 3. Sections 309.3 through 309.6 are redesignated as §§ 309.24 through 309.27

■ 4. Sections 309.6 through 309.23 are added to read as follows:

§ 309.6 When does a commercial product become an Indian product?

In addressing Indian embellishments to originally commercial products, the Indian labor expended to add art or craft

work to those objects must be sufficient to substantially transform the qualities and appearance of the original commercial item. "Commercial products," under this part, are consumer goods designed for profit and mass distribution that lend themselves to Indian embellishment, for example clothing and accessories. Through substantial transformation due to Indian labor, a product changes from a commercial product to an Indian product. Examples of formerly commercial products that become Indian products include tennis shoes to which an Indian applies beadwork and denim jackets to which an Indian applies ribbon appliqués.

§ 309.7 How should a seller disclose the nature and degree of Indian labor when selling, offering, or displaying art and craft work for sale?

The Indian Arts and Crafts Act is a truth-in-marketing law. Those who produce and market art and craft work should honestly represent and clarify the degree of Indian involvement in the production of the art and craft work when it is sold, displayed or offered for sale. The following guidelines illustrate the way in which art and craft work may be characterized for marketing purposes and gives examples of products that may be marketed as Indian products.

If . . .	then . . .
(a) An Indian conceives, designs, and makes the art or craft work	it is an "Indian product."
(b) An Indian produces a product that is "handcrafted," as explained in 309.3(d)(iii).	it can be marketed as such and it meets the definition of "Indian product."
(c) An Indian makes an art or craft work using some machine made parts.	it is "Indian made" and meets the definition of "Indian product."
(d) An Indian designs a product, such as a bracelet, which is then produced by non-Indians.	it does not meet the definition of "Indian product" under the Act.
(e) A product, such as jewelry, is made with non-artistic Indian labor, from assembled or "fit together parts".	it does not meet the definition of "Indian product" under the Act. ¹
(f) A product in the style of an Indian product is assembled by non-Indian labor from a kit.	it does not meet the definition of "Indian product" under the Act.
(g) A product is in the style of an Indian art or craft product, but not made by an Indian.	it does not meet the definition of "Indian product" under the Act.
(h) An Indian and a non-Indian jointly undertake the art or craft work to produce an art or craft product, for example a concho belt.	less than all of the labor is Indian and hence it does not meet the definition of "Indian product" under the Act. ²

¹ For example, a necklace strung with overseas manufactured fetishes or heshi. If an Indian assembled the necklace, in keeping with the truth-in-marketing focus of the Act, it can be marketed as "Indian assembled." It does not meet the definition of "Indian product" under the Act. Similarly, if a product, such as a dream catcher is assembled by an Indian from a kit, it can be marketed as "Indian assembled." It does not meet the definition of "Indian product" under the Act.

² In order to be an "Indian product," the labor component of the product must be entirely Indian. In keeping with this truth-in-marketing law, a collaborative work should be marketed as such. Therefore, it should be marketed as produced by "X" (name of artist or artisan), "Y" (Tribe of individual's enrollment) or (name of Tribe providing official written certification the individual is a non-member Indian artisan and date upon which such certification was issued by the Tribe), and "Z" (name of artist or artisan with no Tribe listed) to avoid providing false suggestions to consumers.

§ 309.8 For marketing purposes, what is the recommended method of identifying authentic Indian products?

(a) The recommended method of marketing authentic Indian products is to include the name of the artist or artisan, the name of the Tribe in which the artist or artisan is enrolled, and the individual's Tribal enrollment number. If the individual is a certified non-member Indian artisan, rather than an enrolled Tribal member, the product identification should include the name of the Tribe providing official written certification that the individual is a non-member Indian artisan and the date upon which such certification was issued by the Tribe. In order for an individual to be certified by an Indian Tribe as a non-member Indian artisan, the individual must be of Indian lineage of one or more members of such Indian Tribe and the certification must be issued in writing by the governing body

of an Indian Tribe or by a certifying body delegated this function by the governing body of the Indian Tribe.

(b) For example, the Indian product should include a label, hangtag, provenance card, or similar identification that includes W (name of the artist or artisan), and X (name of the Tribe in which the individual is enrolled) and Y (individual's Tribal enrollment number), or a statement that the individual is a certified non-member Indian artisan of Z (name of the Tribe providing certification and the date upon which the certification was issued by the Tribe).

§ 309.9 When can non-Indians make and sell products in the style of Indian arts and crafts?

A non-Indian can make and sell products in the style of Indian art or craft products only if the non-Indian or other seller does not falsely suggest to

consumers that the products have been made by an Indian.

§ 309.10 What are some sample categories and examples of Indian products?

What constitutes an Indian product is potentially very broad. However, to provide guidance to persons who produce, market, or purchase items marketed as Indian products, §§ 309.11 through 309.22 contain a sample listing of "specific examples" of objects that meet the definition of Indian products. There is some repetition, due to the interrelated nature of many Indian products when made by Indian artistic labor. The lists in these sections contain examples and are not intended to be all-inclusive. Additionally, although the Indian Arts and Crafts Act of 1990 and the Indian Arts and Crafts Enforcement Act of 2000 do not address materials used in Indian products, some materials are included for their descriptive nature only. This is not intended to restrict