

KAREN L. LOEFFLER
United States Attorney

JACK S. SCHMIDT
Assistant U.S. Attorney
Federal Building & U.S. Courthouse
709 W. 9th St., Room 937
P.O. Box 21627
Juneau, AK 99802
Phone: (907) 796-0400
Fax: (907) 796-0409
Email: jack.schmidt@usdoj.gov

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,) No.
)
Plaintiff,) <u>COUNTS 1 and 2:</u>
)
vs.) MISREPRESENTATION OF INDIAN
) PRODUCED GOODS
JUDY M. GENGLER and) Vio. 18 U.S.C. §§1159 (a) and
ROSEMARY V. LIBERT d.b.a.) (b)(1)(B)(i)
LYNCH AND KENNEDY DRY)
GOODS, INC.,)
Defendant.	

I N F O R M A T I O N

The United States Attorney charges that:

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GENERAL ALLEGATIONS

At all times relevant to this Information:

1. JUDY M. GENGLER, during the summer tourist seasons of 2014 and 2015, was an employee working as a floor manager at LYNCH AND KENNEDY DRY GOODS, INC. in Skagway, Alaska.

2. ROSEMARY V. LIBERT was an owner and operator of LYNCH AND KENNEDY DRY GOODS, INC. in Skagway, Alaska and was the supervisor of all employees at the business.

3. LYNCH AND KENNEDY DRY GOODS, INC. sold a wide range of gift items including carvings and handicrafts. Some of the products sold were made by Alaska Native artists and other items sold were crafted based upon traditional Alaska Native designs or styles, but were not made by Alaska Natives or members of any American Indian tribe.

INDIAN ARTS AND CRAFTS ACT

4. Under the Indian Arts and Crafts Act (IACA) makes it is unlawful, to offer, display for sale, or sell any good in a manner that falsely suggest that it was Indian produced, an Indian product, or the product of a particular Indian tribe, resident in the United States. 18 U.S.C 1159(a).

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5. Congress adopted the IACA as a truth-in-marketing law. With the purpose of requiring 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. 25 C.F.R 309.7

6. Under the IACA, an “Indian” means any individual who is a member of an Indian tribe or certified by an Indian tribe as a non-member Indian artisan.

18 U.S.C. 1159(c)(1) and 25 C.F.R. 309.2 (a). An “Indian artisan” means an individual who is certified by an Indian tribe as a non-member Indian artisan.

25 C.F.R. 309.2 (b). An “Indian product” means any art or craft made by an Indian.

The term “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. This may include more

than one Indian working together, however, the labor component of the product

must be entirely Indian for the Indian art or craft object to be an “Indian product.”

25 C.F.R. 309.2 (d). “Indian products” include, but is not limited to art made by an

Indian in a traditional or non-traditional style or medium, craft work made by an

Indian in a traditional or non-traditional style or medium, or a handicraft made by an

Indian. 25 C.F.R. 309.2 (2)(i-iii).

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7. The following are not considered “Indian product”: a product in the style of an Indian art or craft product or designed by an Indian but produced by non-Indian labor; a product in the style of an Indian product assembled from a kit; a product originating from a commercial product, without substantial transformation by Indian artistic or craft work labor; Industrial products that have an exclusively functional purpose which do not serve do not serve as a traditional artistic medium and do not lend themselves to an Indian embellishment; a product in the style of an Indian art and craft product that is produced in an assembly line or related production line using multiple workers not all whom are Indians. 25 C.F.R. 309.2 (3)(i-vi).

8. An “Indian tribe” means any Indian tribe, band, nation, Alaska Native village, or organized group or community which is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians; or 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. 25 C.F.R. 309.2 (e)(1)(2).

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USFWS UNDERCOVER INVESTIGATION

9. On July 23, 2014, an undercover U.S. Fish and Wildlife Service (USFWS) agent entered into the LYNCH AND KENNEDY DRY GOODS, INC. and contacted JUDY M. GENGLER and asked her about a bone carving carved by an artist the agent knew was not an Alaska Native or member of any American Indian tribe. JUDY M. GENGLER falsely represented that the bone carving was made by an individual who was “Native or First Nation” and “Eskimo.” JUDY M. GENGLER said that “First Nation” was similar to an Indian or American Indian tribes in the lower 48 and “Eskimos” were “Natives” who lived way up in the Artic. JUDY M. GENGLER offered to sell the carving to the agent for \$2,000. The undercover agent subsequently left and returned to the store a short time later. The undercover agent again contacted JUDY M. GENGLER and advised that the artist that she previously represented as an “Eskimo” and “Native” was born in Cambodia and was not Native Alaskan or Eskimo. JUDY M. GENGLER showed the agent a biography on the artist. JUDY M. GENGLER responded that the artist was from Cambodia; and then falsely stated that the artist was adopted into a family in Juneau and given an “Eskimo” name.

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10. On September 24, 2015, a USFWS agent contacted JUDY M. GENGLER. The USFWS agent identified himself as a USFWS agent and asked JUDY M. GENGLER if she knew that the particular artist who carved the bone sculpture offered for sale on July 23, 2014, was Alaska Native. JUDY M. GENGLER told the agent that the artist was not “Native” and not a member of an American Indian tribe. JUDY M. GENGLER stated they did not have a biography on the artist.

11. On September 22, 2014, the same undercover USFWS agent contacted ROSEMARY V. LIBERT at the owner’s business email for LYNCH AND KENNEDY DRY GOODS, INC. about the same bone carving and artist identified on July 23, 2014 by GENGLER. The agent asked ROSEMARY V. LIBERT in the email if the artist was Alaskan Native or Native American. ROSEMARY V. LIBERT responded the artist “is NOT native indian or eskimo (Alaskan native). He is a native Alaskan (resident of Alaska) for many years.”

12. On June 30, 2015, the same undercover USFWS agent entered into LYNCH AND KENNEDY DRY GOODS, INC. and contacted ROSEMARY V. LIBERT and asked her about a bone carving carved by an artist the agent knew was not an Alaska Native or member of an American Indian tribe.

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ROSEMARY V. LIBERT falsely represented that the bone carving was made by an individual who was “Eskimo” and an “Alaska Native.” The agent subsequently purchased the bone carving for \$1,165.50 and confirmed that the artist was not Alaska Native or American Indian.

13. On September 24, 2015, two USFWS agents contacted ROSEMARY V. LIBERT. The two USFWS agents identified themselves as USFWS agents and asked ROSEMARY V. LIBERT if she knew that the particular artist who carved the bone sculpture sold on June 30, 2015, was Alaska Native. ROSEMARY V. LIBERT told the agents that the artist was not “Native” and was not a member of an American Indian tribe. ROSEMARY V. LIBERT stated the supplier, whom she has known for over 20 years and purchased the bone carvings from, has never misrepresented to her that the artist was “Native,” only that the carvings were made in Alaska. ROSEMARY V. LIBERT explained to the agents that “Native” is “Eskimo or the northwest coast Inuit’s.”

14. The artist who made the bone carvings lives and works in Alaska but is not an Alaska Native or member of any American Indian tribe.

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COUNT 1

15. Paragraphs 1-10 and 14 are re-alleged and incorporated herein.

16. On or about July 23, 2014, the defendant, JUDY M. GENGLER, within the District of Alaska, did knowingly offer and display for sale goods, specifically a bone carving that was not made by an Alaska Native, in a manner that falsely suggested these goods as being Indian produced and Indian products, in particular that they were authentic Alaska Native handicrafts knowing that they were not.

All of which is in violation of Title 18, United States Code, §§1159 (a) and (b)(1)(B)(i).

COUNT 2

17. Paragraphs 1-14 are re-alleged and incorporated herein.

18. On or about June 30, 2015, the defendant, ROSEMARY V. LIBERT d.b.a. LYNCH AND KENNEDY DRY GOODS, INC., within the District of Alaska, did knowingly offer and display for sale and sell goods, specifically a bone carving that was not made by an Alaska Native, in a manner that falsely suggested these goods as being Indian produced and Indian products, in particular that they were authentic Alaska Native handicrafts knowing that they were not.

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All of which is in violation of Title 18, United States Code, §§1159 (a) and (b)(1)(B)(i).

RESPECTFULLY submitted on this 3rd day of March, 2016, at Juneau, Alaska.

KAREN L. LOEFFLER
United States Attorney

s/Jack S. Schmidt
JACK S. SCHMIDT
Assistant U.S. Attorney
United States of America