

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

QUILEUTE TRIBE, a federally recognized Indian)
tribe,) Case No. CV-
Plaintiff,)
v.) COMPLAINT FOR INJUNCTIVE RELIEF AND
DAMAGES WITH JURY DEMAND
NATIONAL ENTERTAINMENT)
COLLECTIBLES ASSOCIATION, INC., a New)
Jersey corporation,)
Defendant.)

I. INTRODUCTION

1. The Quileute Tribe brings this Complaint against National Entertainment Collectibles Association, Inc. ("NECA") for unfair competition and for violation of the Indian Arts and Crafts Act. In this action, the Quileute Tribe seeks to protect its heritage from Defendant's improperly marketed and advertised products, and to ensure that consumers are no longer deceived, confused or misled in their pursuits to find and acquire authentic and genuine Quileute products.

2. The Quileute people have lived on the Olympic Peninsula for thousands of years, and have their own unique language, art and folklore. Quileute art and artifacts are prized for their distinctive character, and are displayed in museums throughout Washington.

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1 3. As alleged herein, NECA has advertised, promoted, and sold its goods under the
2 "Quileute" name on the Internet and in various retail stores across the United States. Defendant's
3 conduct is designed to convey to consumers a false association or affiliation with the Quileute Tribe,
4 and to unfairly trade off of the fame, reputation and goodwill of the Quileute Tribe.
5

6 4. Consumers have been misled as to the source, origin, sponsorship, or affiliation of
7 Defendant's products sold under the "Quileute" name. If Defendant is permitted to continue to market
8 and retail its products, many consumers will conclude that the goods sold by NECA were originated
9 from, jointly developed by, licensed, certified, supported by or are otherwise affiliated with the
10 Quileute Tribe, which they are not.
11

12 5. In addition, NECA sells its goods by falsely suggesting they are the product of the
13 Quileute Tribe, are Indian-produced or are the product of an Indian Tribe, in violation of the Indian
14 Arts and Crafts Act.
15

16 6. The Quileute Tribe accordingly brings this action, seeks damages, and seeks to enjoin
17 NECA from using the "Quileute" name for the marketing and sale of goods.

18 **II. THE PARTIES**

19 **A. Plaintiff**

20 7. The Quileute Tribe is a sovereign, federally acknowledged Indian tribe. The Quileute
21 Tribe has approximately 800 enrolled tribal members. Since 1855, the Quileute Tribe has owned,
22 controlled, and exercised jurisdiction over a 1.6 mile territory around La Push, Washington, where
23 approximately 400 Quileute tribal members now reside. The Quileute Tribe is a political body that
24 acts through its governing body, the Quileute Tribal Council.
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1 **B. Defendant**

2 8. Defendant NECA is a merchandising company, with its headquarters located at
3 Hillside, New Jersey. Defendant markets its merchandise throughout the United States, including in
4 Washington. Defendant also maintains a significant presence on the World Wide Web or Internet, and
5 markets and promotes its products online at its website: www.necaonline.com.
6

7 **III. JURISDICTION AND VENUE**

8 9. This Court has personal jurisdiction over Defendant because Defendant transacts
9 business in the State of Washington and transacts business through the internet into Washington.
10

11 10. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§
12 1331 and 1338, because one or more of the claims at issue arises under federal law, specifically the
13 Lanham Act, 15 U.S.C. §§ 1051 et seq., and the Indian Arts and Crafts Act, 25 U.S.C. §§ 305e(b), (c),
14 and (d)(1)(B)(i) and (iii). Furthermore, the Quileute Tribe is an Indian tribe recognized by the
15 Secretary of the Interior, and this matter arises under the "Constitution, laws, or treaties of the United
16 States" for purposes of jurisdiction pursuant to 28 U.S.C. § 1362.
17

18 11. Venue is proper in this District pursuant to 28 U.S.C. § 1391, because a substantial
19 portion of the events giving rise to the claims in this action occurred in this District, the injuries
20 presented in this action occurred in this District, and Defendant may be found in this District.
21

22 **IV. FACTUAL BACKGROUND**

23 **A. The Recent Publicity Surrounding The Quileute Tribe**

24 12. Though the Quileute Tribe is relatively small in terms of relative affluence and
25 membership compared to other Native American tribes, the Quileute Tribe has become famous in U.S.
26 popular culture. Recently, the Quileute people have been depicted in the series of books and movies
27 known as the "Twilight Saga." While much of the Twilight Saga's fictionalized depiction of the
28

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1 Quileute people and culture is inaccurate, the Twilight Saga has raised interest in authentic Quileute
2 art, folklore and culture. In particular, the Twilight Saga has raised particular public interest in
3 Quileute mythology, which depicts the first Quileute tribal member as being created by the
4 transformation of a wolf.
5

6 13. Additionally, the Quileute people have long been known for the quality of their
7 craftsmanship. Quileute jewelry, baskets, carvings, and blankets are all especially prized by
8 purchasers of Native American products. Further, the art of the Quileute people has been displayed in
9 museums throughout this State, including recent exhibitions in the Seattle Art Museum and Burke
10 Museum of Natural History and Culture.
11

12 14. The Quileute Tribe sells Quileute-made products and merchandise on its website
13 "www.quileute-store.com." On its website, the Quileute Tribe sells Quileute-made clothing, jewelry
14 and baskets, among other things.
15

16 **B. NECA's improper use of the "Quileute" name**

17 15. NECA has been using the Quileute name to sell its products, and has been attempting to
18 pass off products as if they were of Quileute-origin and made by Quileute people.
19

20 16. For example, NECA has marketed and sold a product called a Quileute metal cuff.
21 Besides using the name "Quileute," the cuff also depicts a stylized wolf artwork, making it seem as if
22 the cuff were of Quileute origin:
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Twilight New Moon "Quileute" Metal Cuff
by NECA

★★★★★ · 7 customer reviews

Price: \$19.99 ~~Prime~~

Only 15 left in stock (more on the way).
Ships from and sold by Amazon.com. Gift-wrap available.

Want it tomorrow, Dec. 12? Order within 4 hrs 49 mins and choose One-Day Shipping at checkout. [Details](#)

- Inspired by New Moon the movie
- Features characters from the Twilight Saga
- Great gift
- Highly collectible
- Great quality by NECA

2 new from \$18.99 1 collectible from \$14.99

17. NECA has also marketed and sold a product called a "Quileute Tribal Pendant/Choker."



Twilight Saga New Moon - Jewellery Pendant Choker Quileute Tribe

18. NECA never took a license for any of these products from the Quileute Tribe, or even sought permission to use its name.

C. NECA's acts and omissions that falsely suggest It is displaying and selling Indian products

19. NECA is not a Native American or an American Indian enterprise, entity or instrumentality. Nor is Defendant an Indian arts and crafts association or an Indian artisan. Further, NECA has no affiliation, relationship, or valid connection with the Quileute Tribe, its political

1 subdivisions, instrumentalities, officers, employees, or authorized agents, nor any other federally-
2 acknowledged Indian tribe.

3 20. A non-Indian maker of products in an Indian style, motif, or design cannot use the
4 terms "Native American," "American Indian," "Tribal," or the name of a particular Indian tribe in
5 advertising or marketing its products, unless said maker qualifies the usage of such terms so that
6 consumers are not suggested to be purchasing authentic Indian-made products.
7

8 21. Defendant has offered, advertised, marketed, and displayed for sale and sold its goods
9 in manners that falsely suggested Defendant's products are an Indian product, Indian produced, or the
10 product of an American Indian tribe, or the product of an Indian arts and crafts organization within the
11 United States.
12

13 22. NECA did not qualify its use of "Quileute" connection with the sale of its goods.
14 Moreover, several of Defendant's retail products convey the false suggestion that they are Indian
15 products include, but are not limited to, Defendant's "Quileute Metal Cuff" and "Quileute Tribal
16 Pendant/Choker."
17

18 23. NECA's sale of its retail goods under the name of a particular Indian tribe falsely
19 suggests Defendant's products are Indian products of the Quileute Tribe, an Indian tribe, an Indian arts
20 and crafts association, or an Indian artisan, when in fact Defendant's products are not Indian products
21 of the Quileute Tribe, an American Indian Tribe, an Indian arts and crafts organization, or an Indian
22 artisan.
23

24 24. At various times relevant hereto, Defendant has been advertising, marketing, offering,
25 displaying for sale, and selling products in manners that falsely suggested its products are Indian-
26 made, an Indian product, a product of an Indian tribe, or the product of an Indian arts and crafts
27 organization within the United States.
28

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1 25. Defendant has advertised, marketed, offered, displayed for sale, and sold goods in
2 manners that falsely suggested they are Indian-made, an Indian product, a product of an Indian tribe,
3 or the product of an Indian arts and crafts organization resident within the United States, including
4 Indian products consisting of jewelry and clothing in a traditional Indian style, printed design, or
5 medium.
6

7 26. The Indian-style goods Defendant has advertised, displayed, offered for sale, and sold,
8 including those advertised, sold, displayed, and offered for sale alleged herein, are not, and were not
9 Indian produced, an Indian product made by an Indian, or the product of an Indian arts and crafts
10 organization in the United States, or any non-member Indian artisan properly certified by an Indian
11 tribe.
12

13 **D. The Quileute Tribe's Efforts to Stop NECA's Improper Activity**

14 27. On July 26, 2013, counsel for the Quileute Tribe sent a cease and desist letter to NECA,
15 informing NECA that its market and sales were in violation of the Lanham Act and the Indian Arts
16 and Crafts Act.
17

18 28. NECA did not respond to the letter; rather, its counsel stated by telephone that it would
19 need to confer with a licensor concerning indemnification, and would provide a written response later.
20

21 29. By telling the Quileute Tribe that it was going to seek indemnification from "its
22 licensor," NECA seemed to be suggesting that it thought it had permission to use the Quileute name
23 and to promote its products as if they were made by Quileute artists. The Quileute Tribe has never
24 licensed its name or affiliation to any entity; accordingly, no organization would have the authority to
25 grant NECA permission to use the Quileute name. Nor would any organization have the authority to
26 grant NECA the right to claim that NECA's products were of Quileute-origin or made by Quileute
27 artists.
28

1 30. Despite NECA's representation, it did not provide a response to the July 26, 2013 letter.
2 Accordingly, counsel for the Quileute Tribe sent a second letter on October 7, 2013, again demanding
3 a response from NECA, by no later than October 11, 2013.
4

5 31. Again, NECA did not provide any response. Finally, on March 19, 2014, counsel for
6 the Quileute tribe sent another letter to NECA, asking for a response by March 24, 2014. NECA did
7 not respond to the letter; thus, the Quileute Tribe initiated the present suit.
8

9 **COUNT ONE**

10 **DEFENDANT IS LIABLE TO THE QUILEUTE TRIBE FOR UNFAIR COMPETITION**
11 **PURSUANT TO THE LANHAM ACT'S SECTION 43.**

12 32. The Quileute Tribe realleges the previous paragraphs of this Complaint as if fully set
13 forth herein.

14 33. NECA's use of the "Quileute" name promote, market, and sell its retail items in
15 competition with the Quileute Tribe's constitutes Unfair Competition pursuant to 15 U.S.C. § 1125(a)
16 through false advertising.

17 34. NECA's unfair competition has caused, and will continue to cause, damage to the
18 Quileute Tribe; and further, NECA's conduct is causing irreparable harm to the Quileute Tribe for
19 which there is no adequate remedy otherwise available at law.
20

21 35. Such irreparable harm will continue unless Defendant's acts are restrained and enjoined
22 during the pendency of this action, and permanently thereafter.

23 **COUNT TWO**

24 **DEFENDANT IS LIABLE TO THE QUILEUTE TRIBE FOR VIOLATIONS OF THE INDIAN**
25 **ARTS AND CRAFTS ACT, 25 U.S.C. § 305 et seq.**

26 36. The Quileute Tribe realleges the previous paragraphs of this Complaint as if fully set
27 forth herein.
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1 37. The Indian Arts and Crafts Act ("IACA") prohibits non-Indian businesses and
2 individuals from misrepresenting that their goods are the product of an Indian tribe, or American
3 Indian or Native American person(s) through selling any good "in a manner that falsely suggests it is .
4 . . an Indian product." 25 U.S.C. § 305e(a).

5
6 38. The IACA prohibits non-Indians from engaging in "unqualified use" of the name of an
7 Indian Tribe in connection with products they market and retail for sale.

8 39. Defendant has offered, advertised, marketed, and displayed for sale, and sold its goods
9 via its catalogs, web-sites, and retail stores in manners that falsely suggest Defendant's products are
10 Indian products pursuant to the IACA.

11
12 40. Defendant's advertisement, display, offering for sale, and sale of Indian style goods in a
13 manner that falsely suggests Defendant's goods are Indian products is illegal, and must be enjoined,
14 because no adequate remedy at law is otherwise available.

15 41. With its marketing and retailing, having marketed and retailed, or having caused to be
16 marketed and retailed, its products under the Quileute name, and using Indian designs and motifs,
17 without qualification, Defendant is misrepresenting that its products are Indian products within the
18 meaning of the IACA.

19
20 42. Defendant offered and offers for sale its goods in a manner that falsely suggests they
21 were and are the products of an Indian Tribe, when in fact Defendant's products are not the products of
22 any Indian Tribe.

23
24 43. Defendant's acts, therefore, violate the IACA, and Defendant is accordingly strictly
25 liable to the Quileute Tribe for its acts.

26 44. The Quileute Tribe has been injured and damaged as a result of Defendant's actions
27 alleged herein.
28

1 45. Defendant's false suggestions have caused, and will continue to cause damage to the
2 Quileute Tribe for which there is no adequate remedy otherwise available at law.

3 46. The Quileute Tribe is a competitor of Defendant, which sells similar products, and the
4 Quileute Tribe has suffered competitive injuries as a result of Defendant's actions alleged herein, as
5 well as other damages including: (1) Members of the Quileute Tribe have lost sales as the direct and
6 indirect result of Defendant's offer, display, and sale of similar Indian-style products to those offered,
7 displayed, and sold by Quileute artists through similar media and markets; (2) NECA's imitation
8 products have driven down prices of authentic Quileute Indian products, forcing the Quileute Tribe
9 and Quileute artists to offer and garner revenues for authentic products at lower prices; (3) the
10 Quileute Tribe and Quileute artists have suffered a loss of goodwill and reputation because of
11 Defendant's counterfeit products; and (4) Defendant has made a gross profit on all of the products
12 alleged herein by its unlawful and unprivileged conduct.

13 47. The Quileute Tribe advertises, markets, and sells authentic Indian-made products
14 similar to those products advertised, offered, displayed, and sold by Defendant, by which Defendant
15 has falsely suggested to be Indian-made products; including, but not limited to, crafts, jewelry,
16 clothing, carvings, and accessories in a traditional Indian style or medium.

17 48. The Quileute Tribe sells authentic Indian-made products.

18 49. The injuries suffered by the Quileute Tribe include, but are not limited to, advertising
19 injuries arising out of Defendant's misappropriation of the Quileute Tribe's advertising ideas and styles
20 of doing business.

21 50. The injuries suffered by the Quileute Tribe include, but are not limited to,
22 disparagement of its products and advertising injuries, and web-site injuries arising out of Defendant's
23 disparagement of authentic Quileute products.

1 51. The injuries suffered by the Quileute Tribe include, but are not limited to, advertising
2 injuries and web-site injuries arising out of Defendant's infringement of title by falsely suggesting and
3 misrepresenting that its products are Indian-made, when they were not.

4 52. The injuries suffered by the Quileute Tribe include but, are not limited to, advertising
5 injuries arising out of Defendant's use of another's advertising ideas.

6 53. The injuries suffered by Quileute Tribe include, but are not limited to, advertising
7 injuries and web-site injuries arising out of Defendant's infringing upon the Quileute Tribe's identity,
8 culture, and cache associated with being a producer of authentic Indian products.

9 54. Liability for compensatory damages pursuant to the IACA is strict liability and not
10 dependent upon intentional conduct.

11 55. The IACA provides for damages that are the greater of treble damages or \$1,000 for
12 each day on which the offer or display for sale for each type of good falsely suggests or suggested to
13 be Indian-produced, an Indian product, or the product of an Indian, an Indian Tribe, or an Indian arts
14 and crafts organization continues at the time of filing.

15 56. The Quileute Tribe is entitled to compensation via monetary damages and injunctive
16 relief being imposed on Defendant for the acts stated herein.

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20 **PRAYER FOR RELIEF**

21 WHEREFORE, the Quileute Tribe prays for judgment and relief as follows:

22 1. That Defendant's conduct be declared improper and unlawful pursuant to common law,
23 the Indian Arts and Crafts Act, and the Lanham Act;

24 2. That Defendant, its subsidiaries, subdivisions, affiliates, officers, employees, agents, and
25 all other persons associated, or in concert with Defendant be permanently enjoined from using the
26 "Quileute" name in advertising, marketing, retailing, promoting, and associating the "Quileute" name
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1 with Defendant in any manner validly performed by the Quileute Tribe, its political subdivisions,
2 instrumentalities, officers, employees, tribal members, and authorized agents;

3 3. That Defendant be permanently enjoined from falsely designating and falsely associating
4 its corporation, subsidiaries, subdivisions, affiliates, officers, employees, agents, and products with the
5 Quileute name, or otherwise from performing any other act likely to create the appearance or belief that
6 Defendant its subsidiaries, subdivisions, affiliates, officers, employees, agents, and all other persons
7 associated with Defendant are in any way supported, in any manner tacit or active, licensed, assigned,
8 sponsored, endorsed, or otherwise associated with the Quileute Tribe, its political subdivisions,
9 instrumentalities, officers, employees, tribal members, or authorized agents;

10 4. That Defendant be ordered to pay the Quileute Tribe all profits made as a result of
11 Defendant's wrongful conduct;

12 5. That Defendant be ordered to pay the Quileute Tribe three times all profits generated by
13 the marketing and retailing of Defendant's "Quileute" products line pursuant to the Lanham Act;

14 6. That Defendant be ordered to pay the Quileute Tribe the greater amount of either \$1,000
15 per item for every day for each type of product that is, or has, offered, or displayed for sale, or three
16 times all profits generated by the marketing and retailing of Quileute, Indian, and Native American
17 products pursuant to the Indian Arts and Crafts Act;

18 7. That Defendant be ordered to pay the Quileute Tribe for all of its reasonable costs and
19 attorneys' fees;

20 8. That the Quileute Tribe be awarded exemplary damages for Defendant's willful and
21 intentional conduct, and punitive damages based on Defendants' willful actions pursuant to 25 U.S.C.
22 § 305(e);
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9. All other remedies available pursuant to the Indian Arts and Crafts Act, and the Lanham Act, including treble damages, disgorgement of profits, costs, and attorneys' fees;

10. That Defendant be ordered to file a written report with this Court, made under oath within 30 days of this Court's judgment, which sets forth in detail the manner that Defendant has fully complied with the permanent injunction pursuant to 15 U.S.C. § 1116; and

11. All additional and further relief this Court believes just and proper.

JURY DEMAND

The Quileute Tribe requests its causes of action be tried by jury.

Dated March 25, 2014

Respectfully submitted,

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