

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

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|                             |   |                            |
|-----------------------------|---|----------------------------|
| NATIVE AMERICAN ARTS, INC., | ) |                            |
|                             | ) |                            |
| Plaintiff,                  | ) | No. _____                  |
|                             | ) |                            |
| v.                          | ) | <b>JURY TRIAL DEMANDED</b> |
|                             | ) |                            |
| WALMART, Inc. ,             | ) |                            |
|                             | ) |                            |
|                             | ) |                            |
| Defendant.                  | ) |                            |

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**COMPLAINT**

Plaintiff, NATIVE AMERICAN ARTS, INC. (“NAA”), by its undersigned attorneys, complains of Defendant WALMART, INC. (“Walmart”), as follows:

**Nature of the Case**

1. This is an action for violation of 25 U.S.C. §305, et seq., and §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. Walmart is the world's largest retailer, with annual revenues in excess of \$475 billion. Walmart is headquartered in Bentonville, Arkansas. Walmart has over 11,000 stores in 27 countries, and operates 191 retail stores in Illinois as of March 31, 2014.

11. Walmart advertises and sells a wide range of consumer products in the United States at its retail locations as well as on-line.

12. Walmart also provides customers with the option to purchase its products online for pickup at its retail locations.

13. In its 2014 annual report, Walmart describes the integration of its retail stores, clubs, and website channels as "one unified relationship":

When we view our business through the eyes of our customers, we don't think about our stores, clubs or websites independently. Instead, our goal is to have customers see these channels converge as one unified relationship with us. We want to deliver a relevant, personalized and seamless experience across all channels.<sup>2</sup>

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<sup>2</sup> <http://cdn.corporate.walmart.com/66/e5/9ff9a87445949173fde56316ac5f/2014-annual-report.pdf> (last accessed May 6, 2015).

### **Jurisdiction and Venue**

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

15. This Court has personal jurisdiction over Walmart because Walmart conducts business in Illinois on a continuous and systematic basis.

16. 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**

17. Since at least January 2, 2013, Walmart has advertised, marketed and sold the “Brinley Co. Sterling Silver and Enamel Bead Dreamcatcher Drop Earrings” (hereinafter “dreamcatcher earrings”), pictured below, on its website as Native American designed and handmade:

These sterling silver earrings feature beautifully polished dreamcatchers with colored enamel bead accents. **The jewelry is an original design that has been handmade by Native American craftsmen.**<sup>3</sup> See Exhibit 1 (Emphasis added).

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<sup>3</sup> <http://www.walmart.com/ip/Brinley-Co.-Sterling-Silver-and-Enamel-Bead-Dreamcatcher-Drop-Earrings/21684077> (last accessed May 5, 2015) Exhibit 1.



18. Walmart allows customers to order these earrings on-line and pick them up in store at Walmart retail locations throughout the United States. See Exhibit 1.

19. On April 3, 2015, NAA's counsel sent a letter to Walmart, asking it to provide proof that the dreamcatcher earrings were in fact designed and hand made by Native Americans. Exhibit 2. Walmart received this letter on April 7, 2015.

20. Walmart did not respond to NAA's letter. Walmart declined to affirm that the dreamcatcher earrings were in fact Native American designed or made or provide proof of that position. After receiving the letter, Walmart continued to market, advertise and sell the dreamcatcher earrings as handmade Native American designed and manufactured jewelry.

21. On information and belief, the dreamcatcher earrings are mass produced by non-Indian labor, and are neither handmade by Native Americans nor designed by a Native American.

### **COUNT I**

(Indian Arts and Crafts Act)

22. Plaintiff realleges paragraphs 1-21.

23. 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

24. 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).

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

26. 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).

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

28. 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).

29. On information and belief, the dreamcatcher earrings were not produced, designed or manufactured by individuals/entities 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.

30. Walmart advertises, markets and sells the dreamcatcher earrings as Indian produced and Indian products.

31. Walmart has used the unqualified phrase “designed” and “handmade by Native Americans” when displaying the dreamcatcher earrings for sale on its website from at least January 2, 2013 to present.

32. On information and belief, the dreamcatcher earrings advertised, displayed, offered for sale, and sold by Walmart 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.

33. By using the congressionally granted designation of origin “Native American designed” and “handmade by Native Americans”, Walmart diluted and tarnished these designation of origins’ distinctiveness, and diminished the value of those designations of origin.

34. NAA’s business, reputation and goodwill is directly tied to the “Native American made” and “Native American designed” 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 Walmart’s counterfeiting activities as alleged herein.

35. In passing off the dreamcatcher earrings as Native American produced and Native American products, Walmart got 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 Walmart getting a “free ride” on NAA’s time, money and efforts to enhance the value of the congressionally granted designations of origin “handmade by Native Americans” and “Native American designed.”

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

37. Because Walmart willfully violated the IACA and continued to violate the IACA even after NAA informed it of the violation, an award of punitive damages is appropriate.

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

39. Walmart's advertisement, display, offering for sale, and sale of Native American-style goods in a manner that falsely suggests they are Native American produced or Native American 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, Plaintiff requests that this Court enter judgment in its favor and against Defendant as follows:

- a) Award statutory damages of \$1000 per day for the number of days Walmart violated the IACA by falsely offering the dreamcatcher earrings as authentic Native American products or Native American produced;
- b) Award reasonable attorney's fees and costs of suit;
- c) Award punitive damages;
- d) Issue a temporary restraining order, preliminary injunction, and permanent injunction to prevent Walmart from continuing to misrepresent the dreamcatcher earrings as a Native American product or Native American produced.



**JURY DEMAND**

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

NATIVE AMERICAN ARTS, INC.

By: /s/ John R. McInerney  
One of its Attorneys

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

# **EXHIBIT 1**



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## Brinley Co. Sterling Silver and Enamel Bead Dreamcatcher Drop Earrings

7 reviews Q&A By: Brinley Co. Walmart #: 551927640



**\$13<sup>99</sup>**

FREE shipping on orders \$50 + ?

**Actual Color:** Turquoise



**Quantity:**

1

[Add to cart](#)

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Sold by Walmart.com

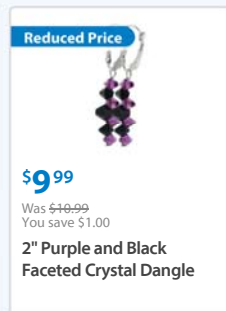
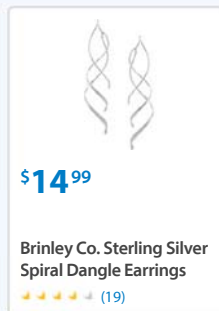
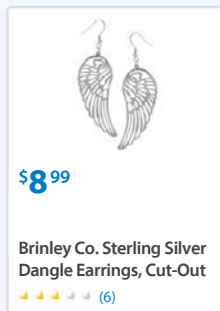
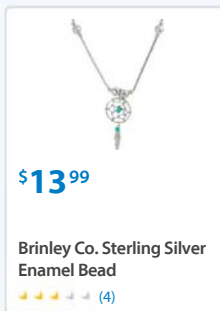
**Shipping**  
See delivery options

**FREE pickup**  
Not available

Enamel bead dreamcatcher drop earrings  
Crafted in sterling silver  
Traditional and graceful

[More about this item...](#)

### Customers also considered



**Last-minute jewelry gifts** Order online, pick up in-store [Shop Now](#)

[About this item](#)

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 Walmart

All 


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## About this item

These sterling silver earrings feature beautifully polished dreamcatchers with colored enamel bead accents. The jewelry is an original design that has been handmade by Native American craftsmen. Stone shape and color may vary.

Every piece of Walmart jewelry passes rigorous inspection at our Quality Assurance labs. So you can buy with confidence — guaranteed. [Learn More](#)

## Specifications

|                                 |  |
|---------------------------------|--|
| Multi Pack Indicator:           |  No |
| Battery Type:                   | Does Not Contain a Battery   |
| Model No.:                      | X_SE-2386-TRQ  |
| Shipping Weight (in pounds):    | 0.5  |
| Product in Inches (L x W x H):  | 1.0 x 1.0 x 1.0  |
| Assembled in Country of Origin: | Imported   |
| Origin of Components:           | Imported   |
| Walmart No.:                    | 551927640  |



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New Edge activation and port-in req'd.  
\$200 = \$100 trade-in VZW gift card + \$100  
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Trade-in must be in good working condition.


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Top Rated Products in Fashion Earrings



Vintage Bead Earrings



Handmade Earrings

Advertisement 

Galaxy S6

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## Customer reviews

 Walmart

All

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### dreamcatcher earrings

10/26/2014

★★★★★ by vrmj

These earrings are pretty and look a lot more expensive than they were. They are comfortable to wear if you forget and leave them in at night.

Was this review helpful? ☒ Yes (0) ☐ No (0)

 Report

vrmj

California

Would recommend to a friend? Yes

Age: 65 or older

Gender: Female

✓ Verified purchaser

### Dreamcatching

12/26/2014

★★★★★ by 7barretts

This item filled to items on my granddaughters wish list. A dreamcatcher and earrings.

Was this review helpful? ☒ Yes (0) ☐ No (0)

 Report

7barretts

Would recommend to a friend? Yes

### Very pretty but small

1/7/2015

★★★★☆ by Lithawitch

Much smaller than I was expecting, in fact they are tiny but they are as describes, sterling and very pretty

Was this review helpful? ☒ Yes (0) ☐ No (0)

 Report

Lithawitch

Would recommend to a friend? No

1 2

1-3 of 5 total reviews [See all](#) ▶

## Customer Q&A

Ask a question

Have questions? Get answers from experts and customers who own this product.

## Check out these related products

Walmart

All Search

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**\$19<sup>99</sup>**  
Brinley Co Girl Birthstone Pendant in Sterling Silver  
★★★★★ (1)

**\$19<sup>99</sup>**  
Brinley Co. Boy Birthstone Sterling Silver Pendant,  
★★★★★ (4)

**\$13<sup>99</sup>**  
Brinley Co. Sterling Silver Enamel Bead  
★★★★★ (4)

**\$22<sup>99</sup>**  
Brinley Co. Women's Sterling Silver Polished

**\$22<sup>99</sup>**  
Brinley Co. Women's Sterling Silver Calla Lily

## Customers also bought these products

**\$13<sup>99</sup>**  
Brinley Co. Sterling Silver Enamel Bead  
★★★★★ (4)

**\$10<sup>99</sup>**  
Brinley Co. Sterling Silver Sand Dollar Drop Earrings  
★★★★★ (4)

**Reduced Price**  
**\$12<sup>99</sup>**  
Was \$14.99  
You save \$2.00  
Ocean Blue Cluster Faceted Crystal Dangle  
★★★★★ (1)

**\$8<sup>99</sup>**  
Brinley Co. Sterling Silver Gecko Stud Earrings  
★★★★★ (2)

**\$9<sup>99</sup>**  
Brinley Co. Sterling Silver Dangle Earrings, Cut-Out  
★★★★★ (6)

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#### Sterling Silver Enamel

Find our Lowest Possible Price! Search for **Sterling Silver Enamel**  
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#### Catroid Jewellery-50% Off

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www.catroid.com

#### Vintage & Modern **Silver**

Shop Our Collection of Fine **Silver** The Most Beautiful Things on Earth.  
www.1stdibs.com/Silver

## Policies & Plans

**Walma**

All

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The following available options may be selected during checkout:

**Gift message:** Add a personal note that we'll include with your gift.

**Gift receipt:** When you add other gift options, we'll include a receipt that keeps the price a secret but makes it easy to exchange or return an item.

## Pricing policy










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|--|--|--|---|--|

© Walmart Stores, Inc. To ensure we're able to help you as best we can, please include your reference number: MIHEQGYZIY

# **EXHIBIT 2**



LAW OFFICES  
**DiTOMMASO ♦ LUBIN**  
A PROFESSIONAL CORPORATION

THE OAKBROOK TERRACE ATRIUM  
17W 220 22<sup>ND</sup> STREET  
SUITE 410  
OAKBROOK TERRACE, ILLINOIS 60181  
TELEPHONE 630.333.0000 ext. 37  
FACSIMILE 630.333.0333

OAKBROOK TERRACE  
CHICAGO

JOHN R. MCINERNEY  
jrm@ditommasolaw.com  
www.ditommasolaw.com

April 3, 2015

**Via Certified Mail**

Karen Roberts, General Counsel  
WAL-MART Legal Department  
702 S.W. 8<sup>th</sup> Street  
Bentonville, AR 72716

Re: Brinley Co. Sterling Silver and Enamel Band Dreamcatcher Drop Earrings

Dear Ms. Roberts:

I represent Native American Arts, Inc. ("NAA"), a Native American arts and crafts organization headquartered in Illinois. NAA manufactures, distributes, and sells only authentic Native American arts, crafts and jewelry. All of NAA's products are created by Native American artisans from 30 federally recognized Native American Tribes. These artisans each carry forward the bloodlines of their ancestors, and the cultural expressions of their respective Native American Indian Tribal heritage. NAA is wholly owned by registered members of the Ho-Chunk Nation, a federally-recognized Native American tribe.

**Wal-Mart's On-Line Advertisement of the Brinley Co. Sterling Silver and Enamel Band Dreamcatcher Drop Earrings May Violate the Indian Arts and Crafts Act**

NAA has informed us that Wal-Mart Stores, Inc. ("Wal-Mart") markets and sells a jewelry item called "Brinley Co. Sterling Silver and Enamel Band Dreamcatcher Drop Earrings" on its website and in Wal-Mart stores.<sup>1</sup> Wal-Mart currently advertises these Dreamcatcher earrings on its website as "an original design that has been handmade by Native American craftsmen." The dreamcatcher earrings are available for sale on Wal-Mart's website and are also available for pickup in Wal-Mart stores.

If the advertised dreamcatcher earrings are not designed and/or produced by registered members of a recognized Native American tribe or certified Indian artisans, Wal-Mart's on-line advertisement for these dreamcatcher earrings would violate the Indian Arts and Crafts Act (25 U.S.C. § 305e) ("IACA"), which prohibits the offer or display for sale, or sale of any arts or craft product in a manner that falsely suggests that product is: (1) Indian produced; (2) an Indian product; or (3) the product of a particular Indian or Indian Tribe or Indian arts and crafts organization.

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<sup>1</sup> <http://www.walmart.com/ip/Brinley-Co.-Sterling-Silver-and-Enamel-Bead-Dreamcatcher-Drop-Earrings/21684077> (last accessed April 1, 2015)

LAW OFFICES

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Page Two

April 3, 2015

Re: Brinley Co. Dreamcatcher Earrings

If it is the case that the dreamcatcher earrings are not designed and made by Native Americans, Wal-Mart's advertising of these products would violate the IACA. To assure our client and to ensure that no violation of the IACA has occurred, please provide us with proof that the dreamcatcher earrings are in fact: (1) designed; and (2) handmade by Native American craftsmen. Please include each location where the dreamcatcher earrings have been designed and/or manufactured, and the identity (including name and tribal affiliation) of each Native American or Certified Indian Artisan who designed and/or made the dream catcher earrings. Please also provide any documents in Wal-Mart's possession or control which relate to each Native American or Certified Indian Artisan's tribal affiliation. Please also identify any individuals who designed and/or made the dreamcatcher earrings who are neither Certified Indian Artisans nor registered members of a recognized Native American tribe.

If the dreamcatcher earrings are not designed and made by registered Native Americans or certified Indian Artisans, Wal-Mart should remove the misleading and violative product description from its website and it should publish a corrective disclaimer informing its customers that its prior representations were false. Please provide documents that verify that these steps were taken if called for.

Please be advised that if Wal-Mart does not provide proof that the dreamcatcher earrings are entirely designed and made by 100% Native American labor by May 4, 2015, NAA will be forced to file a lawsuit consistent with its rights and obligations and with applicable law.

**NAA has Made a Substantial Investment in Advertising and Promoting Native American Arts, Crafts and Jewelry. This Investment has been Harmed by the False Advertisement of Inauthentic Arts, Crafts and Jewelry.**

NAA has invested substantial time, money and effort over many years to promote Authentic Native American arts, crafts and jewelry in Illinois and throughout the United States through its brick and mortar store and over the internet. From 1996 to the present, NAA has spent more than \$52,000 advertising its Authentic 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 its web page over that same period.

To counteract the damage counterfeiters have done to the value of the "Native American Designed" and "Native American Made" designations of origin, NAA has made efforts to bolster the value of those designations through additional advertising and additional efforts to educate the public.

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Page Three

April 3, 2015

Re: Brinley Co. Dreamcatcher Earrings

As a direct result of NAA's owners' public relations work on behalf of NAA, including conducting extensive interviews with reporters, NAA appeared in numerous newspaper articles, its product offerings and its efforts to educate the public about Authentic Native American arts and crafts, NAA has a protectable interest in maintaining the integrity of the Native American Arts marketplace and this interest has been codified by statute.

If Wal-Mart falsely advertised the dreamcatcher earrings as Native American Designed and Made, it diluted the quality and value of the "Native American Designed" and "Native American Made" designations of origin. Again, assuming that Wal-Mart's advertisements are false, this advertising directly and proximately caused NAA to suffer a variety of intangible economic injuries including: (a) loss of reputation and good will to NAA's business by having to deal with consumer mistrust caused by the deceptive practices engaged in by Wal-Mart and other wrongdoers who violate the IACA; (b) diminution in value to the congressionally granted designation of origin in genuine or authentic Native American arts and crafts that NAA uses and relies upon to promote its business and make a livelihood; and (c) misappropriation of NAA's advertising and promotional investment in genuine Native American arts and crafts because of Wal-Mart's ability to get a free ride on those efforts.

Please call me to discuss the alleged violations of the IACA, the requested information and potential settlement of this matter, including resolution of damages if Wal-Mart violated the statute. Thank you.

Sincerely yours,



John R. McNerney

JRM:cd

7014 0150 0000 9893 6942

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| Restricted Delivery Fee<br>(Endorsement Required)  |  |
| Total Postage & Fees \$  |  |
| Sent To  |  |
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| PS Form 3800, August 2006 See Reverse for Instructions   |  |

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits.

Article Addressed to:

*Aren Roberts  
General Counsel  
Wal-Mart Legal Dept.  
225 W. 8th St.  
Fentonville, AR 72716*

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

*X Barbara Thurston*☐ Agent☐ Addressee

B. Received by (Printed Name)

*Barbara Thurston*

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes  
If YES, enter delivery address below: ☐ No*APR 07 2015*

3. Service Type

☒ Certified Mail☐ Express Mail☐ Registered☒ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

Article Number

Transfer from service lab

Form 3811, February 2004

7014 0150 0000 9893 6942

Domestic Return Receipt

102595-02-M-1540