

FIGHTING GENERIKEE

Resistance Against Native American
Marketing Representations, 1932 – 2021

Winnebago Motor Homes Oneida Silverware Red Man Chewing Tobacco Calumet Baking Powder Seneca Juice Mohawk Carpet Mills Chief Joseph Fruits
Indian Root Pills Toyota Tacoma Indian Head Corn Meal Pala Brave Mazda Navajo Hiawatha Web Server Santa Fe Super Chief Hiawatha Mineral Chie
Paints Indian Warrior Citrus Fruit Keystone – Seneca Wire Cloth Cherokee Chemical Indian Head Knives Red Cloud Corn Big Chief Sugar Redman Apple
kee Red Soda Honest Injun Stout Navajo Bronze Hair Dye Hogan Rug Indian Joe's Smoke Shops Indian Vegetable Pills Crazy Horse III Gentlemen's Clu
Redskin Oranges Chief Oshkosh Beer Crazy Horse Resort and Spa Honest Injun Equipment Massasoit Coffee Seneca Warrior Paddle Black Hawk Stout F
ks Redskins Candy Squaw Badge Aspinock Beverages Big Chief Peanut Butter Powhatan Apple Sauce Sno – Chief Apples Minnequa Flax Water Bag Je
ef Firewater Surfboard Cleaner Honest Injun Equipment Mischief Washington Apples Red Man Snuff Lakota Knives OshKosh B'Gosh Chippewa Mountai
d Pocahontas Chewing Tobacco Cherokee Coal Kickapoo Indian Remedies Big Injun Plows Pontiac Aztek Hiawatha Corn Apache Geronimo Web Appli
ad Cotton Ytoc Beer Oshkosh Chief Trunks Oswego Starch Lawn Chief Mowers Lil' Chief Popcorn Red Cloud Grapefruit Navajo Moccasins Mohawk Cr
ottery Saginaw Furniture Mohawk Tires Indian Blood Syrup Mohawk Electric Apache Chief Camping Trailer Wigwam Socks Bannock Chief Potatoes In
ale Ypsilanti Indian Shoes Wachusett Shirts Blackhawk Films Kickapoo Stove Works Worumbo Fabrics Big Chief Soda Mohican Coffee Modoc Oil Chi
d Pueblo Traders Mohonk Mountain House Mohawk Lumber Minidoka Princess Potatoes Sioux Electric Drill Minnehaha Spring Water Tomahawk Boats
Chippewa Granulated Salt Indian River Fruit Tomahawk Corn Meal Indian Head Hydraulic Brake Fluid Pocahontas Beverages Seneca Cameras Cayuga Lay

Evelyn Huber

Fighting Generikee

Resistance Against Native American Marketing Representations, 1932 – 2021

by
Evelyn Huber

Dissertation
for the award of the degree
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of the University of Mannheim

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Abstract

The thesis investigates historic and contemporary resistance against Native American marketing representations, primarily in the United States, companies' crisis management strategies to cope with such protests, and the results and impact of these protests. It combines qualitative and quantitative methods and incorporates evidence from newspaper articles, court documents, social media posts, artwork, non-public correspondence between critics and marketers, and personal interviews. The study demonstrates that Native and non-Native peoples have criticized Indian-inspired marketing practices and representations at least since the 1930s. Driven by other minorities' successes during the civil rights movement, better education and economic growth among Native peoples, and the temporary popularity of Indigeneity in contrast to the actual treatment of Natives, protests increased during the 20th and 21st centuries. The study identified three main reasons for protest: fraud, that is, falsely marketing products as Indian-made; the unauthorized appropriation of Indigenous cultural elements for marketing purposes; and the misrepresentation of Indigenous peoples and cultures. Depending on the protest cause, protesters used strategies ranging from education to public, economic, and legal pressure to gain allies, supporters, and publicity through effective framing.

Through adamant protest, protesters achieved notable immediate successes in at least 28.1 percent of the cases and contributed to a growing awareness among marketers and consumers. While most marketers either ignored protests or disputed the reasons, 13.7 percent responded favorably to protests, but very few considered cooperation a productive rebuilding strategy despite its positive publicity effects. Both art and advertising as weapons and carriers of counter-narratives played a significant role in the education of U.S. consumers. Although mainstream advertising that critics deemed offensive, inappropriate, or misleading continues to exist, the results of decades of constant protest and awareness raising became increasingly visible in more sensitive marketing practices. These changes reached a preliminary peak during a general cultural shift toward social justice induced by the Black Lives Matter movement, although it remains to be seen how sustainable this effect is.

The author recognizes that some of the brand names and words cited in this study are offensive. The purpose of repeating them here is to accurately describe historical and contemporary marketing practices and to allow the reader to fully understand the protesters' experiences and criticisms.

Contents

Contents.....	i
Introduction	1
Part I: History of Resistance Against Native American Marketing Representations	30
1. The Indian New Deal: Protecting Indian Arts and Crafts	40
2. The Civil Rights Era: “A New Awareness and Readiness”	50
2.1 Advocating for Fair Representation in Marketing	52
2.2 Advertisers as Allies Against Media Misrepresentation: “The Legend of Custer”	61
2.3 Native American Media Surveillance	69
2.4 The Indian Arts and Crafts Board Under Pressure	79
2.5 Defining Indigeneity in Opposition to “Pseudo-Indians”	87
3. The Quincentennial: Indian Sovereignty and Self-Determination	93
3.1 Misrepresentation and Appropriation as Violations of Civil Rights Law	104
3.2 Protecting Intellectual Property	108
3.3.1 Protecting the Legacy of Historic Leaders	109
3.3.2 Trademarking Native American Cultures	122
4. Indigenous Entrepreneurship and the Enforcement of the Indian Arts and Crafts Act.....	140
4.1 Civil Enforcement of the Indian Arts and Crafts Act.....	141
4.2 Criminal Enforcement of the Indian Arts and Crafts Act	147
5. Fighting Colonialism: Native American Self-Representation in Marketing.....	158
5.1 Racialized Sexism and White Female Hegemony	159
5.1.1 Forms of Sexualization.....	161
5.1.2 White Female Hegemony	165
5.1.3 Self-Expression of Native American Women	168
5.1.4 Countering the Effects of Racialized Sexism.....	173
5.2 Criticism of Indigenous Self-Representations in Marketing.....	181
5.2.1 Criticism of Indigenous Marketing Practices	183
5.2.2 Native Agency as Actors.....	191
6. Marketing Ethics in the Age of Globalization	199
7. Advertising in the 21st Century as a Mirror of Society and Driver of Change.....	219
7.1 Interdependencies Between Population and Protest.....	219
7.2 ‘Discovery’ of the Native American Consumer	227
7.3 Providing Counter-Narratives: Advertising as a Tool of Decolonization.....	235
7.4 Brand Activism and Cause Marketing	240

Part II: Analysis of Resistance Strategies, Reactions, and Results.....	247
8. Strategies of Resistance.....	255
8.1 Fighting Fraud.....	262
8.2 Fighting Appropriation and Misrepresentation.....	264
8.2.1 Framing Strategies.....	275
8.2.2 Raising Awareness and Educating Through Art.....	288
8.2.3 Producing Economic Pressure Through Boycotts.....	292
8.2.4 Publicizing and Legitimizing Protests Through the News Media.....	300
8.2.5 Educating and Organizing Through New Media.....	306
8.2.6 Generating Publicity Through Demonstrations and Walks.....	314
9. Advertisers' Crisis Management.....	318
9.1 Crisis Communication Strategies.....	326
9.1.1 Denial.....	333
9.1.2 Diminishment.....	352
9.2 Rebuilding and Renewal Strategies.....	361
9.2.1 Corporate Apologiae.....	362
9.2.2 Rebuilding Through Redemption.....	369
9.2.3 Renewal Through Cooperation.....	376
Conclusion: Effects of Resistance	386
Appendix	401
Figures.....	401
Tables.....	411
Bibliography	420
Sources	420
1. Protest Sources.....	420
1.1 Protest Cases by Marketer.....	421
1.2 Protest Against Unspecified Marketers or Sellers, or General Issue.....	475
1.3 Criticism of Multiple Targets.....	481
1.4 Protest Campaigns.....	482
1.5 Art Criticism: Exhibits.....	486
1.6 Art Criticism: Artwork and Solo Exhibits by Artist.....	487
2. Miscellaneous Protest Sources.....	492
3. Company and Advertising Agency / Model Sources.....	495
4. Government and Legal Sources.....	497
4.1 United States Government and Legal Sources.....	497
4.2 German Government Sources.....	500
4.3 United Nations Sources.....	500
4.4 Legal Papers.....	500
5. Government and Institutional Studies and Reports.....	502

6. Polls Re: Sports Team Names and Mascots	503
7. Newspaper and Magazine Articles	504
8. Criticism of Celebrities	511
9. Other Sources	515
Secondary Literature	515
Illustrations	523

Table of Case Studies

Case Study 1: Calvert Distilling (1965)	54
Case Study 2: National Bank of Commerce (1969)	59
Case Study 3: The Cherokee Complaint (1974-77)	83
Case Study 4: Sload v. Educators Mutual Life Insurance (1996)	104
Case Study 5: Hornell Brewing (1992-2004)	111
Case Study 6: Urban Outfitters (2011-16)	127
Case Study 7: J.C. Penney (1998-99)	142
Case Study 8: Operation Al-Zuni (2012-21)	151
Case Study 9: Treaty Beer (1988-94)	293
Case Study 10: Nike Air N7 (2007)	372

Table of Illustrations

Illustration 1: NCAI, “A New Awareness and Readiness,” campaign billboard, 1969.	71
Illustration 2: Wesson & Warhaftig, “The only Indian America ever cared about,” print PSA, Time, January 1970.	74
Illustration 3: General Dynamics, “The Last Thing He Wants Is a Handout,” print ad, Time, January 1970.	75
Illustration 4: Nick Vangopoulos, “Sexy woman,” n.d., photograph.	161
Illustration 5: Kiselev Andrey Valerevich, “Beautiful girl,” n.d., photograph.	161
Illustration 6: Andrey Arkusha, “Young woman,” n.d., photograph.	161
Illustration 7: andreonegin, “Beautiful young Caucasian girl,” n.d., photograph.	161
Illustration 8: Polaroid Corp., “The best minute of the day,” print ad, Time, June 1973.	234
Illustration 9: Marty Two Bulls, “Black Lives Matter. Native Lives ... Not So Much,” 2020, cartoon.	242
Illustration 10: Alex Jacobs, “Santa Fe Dude #4,” 1999, mixed media on canvas.	278
Illustration 11: Shan Goshorn, “Smoke Screen,” 2015, arches watercolor paper splints printed with archival inks, acrylic paint.	279
Illustration 12: Jaune Quick-To-See Smith, “Modern Times,” 1994, lithograph.	280
Illustration 13: Oscar Arredondo, “Welcome to Cleveland,” 2000, framed prints series.	282
Illustration 14: Savage Arms Co., “Savage Rifles,” print ad, Cosmopolitan, May 1899.	344
Illustration 15: Lalo Alcaraz, “But I’m honoring you, dude!” 2002, cartoon.	356

Table of Figures

Figure 1: Protest causes by frequency.....	36
Figure 2: Examples of offenses by protest category.	37
Figure 3: Timeline of protests, 1932-2018.....	39
Figure 4: International protest map.	202
Figure 5: Geography of protest.	221
Figure 6: U.S. minority population growth by race, 1900-2020.	225
Figure 7: U.S. Indigenous population share, 1900-2020.....	227
Figure 8: Overview of protests and protesters by race, gender, and organization.	251
Figure 9: Targets of protest by product category.	254
Figure 10: Marketing materials.	255
Figure 11: Protesters' diagnostic arguments and frames.....	256
Figure 12: Targets' reactions to protest.....	258
Figure 13: Results of protest actions.	259
Figure 14: Results of actions by protest category.	260
Figure 15: Diagnostic framing profile for fraud.....	262
Figure 16: Protest strategies for challenging fraud.	263
Figure 17: Diagnostic framing profile for appropriation.	264
Figure 18: Protest strategies for challenging appropriation.	268
Figure 19: Diagnostic framing profile for misrepresentation.....	269
Figure 20: Protest strategies for challenging misrepresentation.	274
Figure 21: Protesters' prognostic and motivational arguments and frames.	317
Figure 22: Crisis types.....	320
Figure 23: Recommended response strategies by crisis type.	326
Figure 24: Response arguments and frames by ethnicity.....	330
Figure 25: Response frames by communication strategy.....	332
Figure 26: Targets' reactions by communication strategy.	362
Figure 27: Timeline of success rates by protest cause, 1930s-2010s.....	389
Figure 28: Protesters' diagnostic framing profiles by protest cause.	401
Figure 29: Prognostic and motivational frames profile by protest cause.	401
Figure 30: Response frame profile by protest cause.	402
Figure 31: Targets' reactions by result.....	402
Figure 32: Single addressees of protest.....	403
Figure 33: Targets' reactions to protests by arena.	403
Figure 34: Timeline of single arenas, 1932-2018.	404
Figure 35: Timeline of protesters' diagnostic frames, 1932-2018.	404
Figure 36: Timeline of protest media, 1932-2018.....	405
Figure 37: Timeline of protesters' diagnostic arguments, 1932-2018.	406
Figure 38: Timeline of targets' response arguments, 1965-2018.....	407
Figure 39: Targets' response arguments and frames by reaction and result.	409
Figure 40: U.S. population growth by race, 1900-2020. Data: U.S. Census Bureau.	410

List of Tables

Table 1: Summary of protesters' diagnostic arguments by frame.....	256
Table 2: Summary of marketers' response arguments by frame.....	329
Table 3: Diagnostic, prognostic, and response frames.....	411
Table 4: Protests by race and gender.....	411
Table 5: Individual protesters by race and gender.	412
Table 6: Protests by product category and cause.	412
Table 7: Institutions involved in protests at least twice.	413
Table 8: Protest arenas for fraud.	413
Table 9: Protest arenas for appropriation.	414
Table 10: Protest arenas for misrepresentation.	414
Table 11: Addressees for challenging fraud.....	414
Table 12: Addressees for challenging appropriation.....	415
Table 13: Addressees for challenging misrepresentation.....	415
Table 14: Reactions by desirability.....	416
Table 15: Reactions by protest cause.	416
Table 16: Results by protest cause.	416
Table 17: Classification of results.	417
Table 18: Reactions by result.	417
Table 19: Successes by protest causes and decade.....	417
Table 20: Success rates by protest cause and decade in percent.	418
Table 21: U.S. Indigenous population share, 1900-2020.....	418
Table 22: Protest actions by state.....	419

Index of Abbreviations

AAAA	American Association of Advertising Agencies
AAIA	Association on American Indian Affairs
ABC	American Broadcasting Company
ACLU	American Civil Liberties Union
ADL	Anti-Defamation League
AI/AN	American Indian / Alaska Native
AICF	American Indian College Fund
AIDA	American Indian Defense Association
AIM	American Indian Movement
AIMS	American Indian Media Surveillance
AITEN	American Indian Tobacco Education Network
AITEP	American Indian Tobacco Education Partnership
ANTM	America's Next Top Model
APA	American Psychological Association
ASA	Advertising Standards Authority (U.K.)
ATF	Bureau of Alcohol, Tobacco, Firearms and Explosives
ATIIN	Advanced Tribal Integrated Information Networks, Inc.
BIA	Bureau of Indian Affairs
BP	British Petroleum
CDIB	Certificate of Degree of Indian Blood
CHML	Crazy Horse Malt Liquor
CILS	California Indian Legal Services
CTR	Clickthrough Rate
DEA	Drug Enforcement Administration
DOI	Department of the Interior
DOJ	Department of Justice
DPTP	Don't Pay to Pray
EONM	Eradicating Offensive Native Mascotry
FBI	Federal Bureau of Investigation
FTC	Federal Trade Commission
FWS	Fish and Wildlife Service
G&G	Gray & Gray Advertising
GAO	Government Accountability Office
GWA	Gesamtverband Kommunikationsagenturen (D)
HIS	Homeland Security Investigations
HISD	Houston Independent School District
HONOR	Honor Our Neighbors' Origins and Rights
IACA	Indian Arts and Crafts Association
IACA	Indian Arts and Crafts Act
IACB	Indian Arts and Crafts Board
IACEA	Indian Arts and Crafts Enforcement Act
IAIA	Institute of American Indian Arts
ICCR	Interfaith Center on Corporate Responsibility
ICRA	Indian Civil Rights Act
ICT	Indian Country Today
ICTMN	Indian Country Today Media Network
ICWA	Indian Child Welfare Act
IHS	Indian Health Service
IIED	Intentional infliction of emotional distress

IITC	International Indian Treaty Council
IMC	Indian Motorcycle
IRATE	Indigenous Resistance Against Tribal Extinction
ITBC	Intertribal Bison Cooperative
LDF	(NAACP) Legal Defense and Educational Fund, Inc.
LENAC	Lake Erie Native American Council
LHRAA	Lutheran Human Relations Association of America
MAI	Maya Archaeology Initiative
MLB	Major League Baseball
MoCNA	Museum of Contemporary Native Art
MPAA	Motion Picture Association of America
NAA	Native American Arts, Inc.
NAAA	Native American Arts Association
NAACP	National Association for the Advancement of Colored People
NAGPRA	Native American Graves Protection and Repatriation Act
NAHA	Native American Heritage Association
NAHC	Native American Heritage Commission
NAIA	National Association on Indian Affairs
NAJA	Native American Journalist Association
NAM	New America Media
NARF	Native American Rights Fund
NATI	Native American Tribal Insignia Database
NCAA	National Collegiate Athletic Association
NCAI	National Congress of American Indians
NCAIE	National Center for American Indian Enterprise
NCARSM	National Coalition Against Racism in Sports and Media
NCCJ	National Conference of Christian and Jews
NCRSM	National Coalition on Racism in Sports and Media
NIGA	National Indian Gaming Association
NIYC	National Indian Youth Council
NFL	National Football League
NMAI	National Museum of the American Indian
NOAA	National Oceanic and Atmospheric Administration
NPS	National Park Service
NWIFC	Northwest Indian Fisheries Commission
OCR	Office for Civil Rights, United States Department of Education
PSA	Public Service Announcement
PTO	Patent and Trademark Office
SAIA	Survival of American Indians Association
SFNT	Santa Fe Natural Tobacco Co.
STA	Stop Treaty Abuse Inc.
TFA	Trademark Facilitation Agreement
TTAB	Trademark Trial and Appeal Board
UDHR	Universal Declaration of Human Rights
UITA	United Indian Traders Association
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNESCO	United Nations Educational, Scientific and Cultural Organization
UPOW	United Property Owners of Washington
VAWA	Violence Against Women Act
WARN	Women of All Red Nations
WIPO	World Intellectual Property Organization

Introduction

Unaware of your Indian roots? Or maybe you have no Indian roots? Feel uncomfortable at pow-wows?

Well, soon you will be out there singing and dancing with the rest of us – thanks to Generikee! Yes, one spoon full of Generikee and your Native roots will start to grow back instantly. You will never feel spiritually inadequate again. Take it as directed, Generikee increases wisdom, it stores artiness and it makes you one with the universe without a prescription. So try it today with someone else. You, your tribal affiliation - just say Generikee. You may not be able to proof it, but you know it in your heart.

Cautioned side effects may include suicide, poverty, disease, religious persecution, and general loss of land.¹

This ad parody for the fictional medicine “Generikee,” presented by comedian Charlie Hill at the 2005 Winnipeg Comedy Festival, is representative of the non-Native advertising practices many Native Americans and their supporters have criticized since the 1930s. This caricature of people claiming or using Indigenous heritage and cultures illustrates many aspects of marketing protest during the 20th and 21st centuries. “Generikee,” as a contraction of the terms “generic” and “Cherokee,” points to two common issues with Indian-inspired marketing practices: First, the often-generic representations depict an archetypal Native American based on stereotypes from Western popular culture, while, second, Cherokee is the most popular tribe commonly cited when non-Indians claim Native American ancestry (“Cherokee grandma”) for marketing purposes. By contrasting the idealized advertising image with real-life “side effects,” Hill points to the surreal construction of the generic Indian “Generikee” which obscures Indigenous diversity and masks real problems within individual Indigenous communities. In U.S. society, Indigenous identity or cultural elements were simply for the taking, in this example in the form of medicine, thereby usurping and redefining Native cultures according to Euro-American norms and ideals. While Anglo-American law prohibited the adoption of Indian identity to sell products as Indian-made to protect both consumers and Native manufacturers, it did not cover more subtle forms of identity misuse and manipulation through cultural appropriation and misrepresentation.

When looking at Indigenous marketing representations, it is important to recognize that the opinions about whether a representation or product is offensive are diverse and sometimes contrary. Thus, the analysis of protests in the U.S. since the 1930s is not a history of inappropriate marketing practices but shows what kinds of advertising elements have provoked protests by Native and non-Native individuals and groups and how they sought to change marketing practices. The controversies over Native American Barbie and G.I. Joe “Dart” demonstrate how people perceived and interpreted the same traits of a product in different ways and how people gave weight to different elements of Indigeneity.

¹ “Charlie Hill at the Winnipeg Comedy Festival, 2005,” YouTube video, 5:29, October 13, 2009, accessed November 10, 2018, <https://www.youtube.com/watch?v=R6gu-t2IPCA>.

It is no coincidence that Mattel released an Indian doll in the early 1990s when “through marketing and research they found that Native American Barbie was a product that was in demand.”² Mattel introduced its well-selling Native American Barbie in 1993 as part of the Dolls of the World collection that was “created to reflect the different countries and cultures around the world.”³ In 2000, Hasbro developed the Navajo Code Talker doll that “not only looked Navajo”⁴ but also had the voice of an actual Navajo Code Talker. Two years later, Hasbro released another Indian doll, G.I. Joe Dart, a “product line . . . based on what people want,”⁵ according to a Hasbro customer relations representative.

Compared to older versions of male American Indian dolls from the 1970s, the representation of Indigeneity has changed in desirable ways, as commentators agreed. Jon Proudstar recalled, “when I was a kid we did not have any thing like the Navajo Code Talker or Dart.” He disliked the Caucasian-looking dolls with long hair and a slightly darker skin tone as much as he disliked the generic-looking Crazy Horse, Geronimo, or Lone Ranger and Tonto dolls of the 1970s. Proudstar was impressed with Hasbro’s new G.I. Joe doll Dart because, with its Lakota look and shoulder-length hair, the high cheek bones and deep-set eyes, it was not only “realistic” and “accurate” but “looked just like him.”⁶ Others questioned G.I. Joe’s authenticity since long hair was rather unlikely in the military, and, unlike Proudstar, found that it “not only looked menacing, but perpetuated media stereotypes.”⁷

Indigenous women had similar experiences with female dolls, as Oglala Sioux doll maker Gloria Little remembered. During her childhood, there were no female Indian dolls to relate to, especially since all dolls had blonde hair. Years later, as a mother, she established “a rule in my house that we don’t have dolls with blonde or yellow hair because it is confusing for the children.”⁸ While Little’s main concern was being represented at all, Lakota clothing designer Patty Runs After disapproved of the doll’s stereotypical Apache-style dress because she preferred *adequate* representation.

Scholar Maureen Schwarz argued that Barbies encouraged children to pretend to be Native American, objectifying Indigeneity and reducing it to a playtime activity.⁹ Since the civil rights movement, toys representing other minorities have indeed targeted that minority market, but the toys depicting Native Americans were not made for Indigenous consumption.¹⁰ As a result, these dolls representing primitivity “leave American Indians living outside of reality in a static, calm, pristine past.”¹¹

The same year Hasbro began selling the Navajo Code Talker doll, Mattel released its Northwest Coast Native American Barbie, usually referred to as Tlingit Barbie, for collectors. Mattel developed Tlingit Barbie in collaboration with the Sealaska Heritage Institute and with

² Donna Gibbs, Director of Media Relations, Mattel Co., quoted in Annemarie Clifford, “Newly Released Native American Barbie wears mixed tribal regalia,” *Indian Country Today*, August 25, 1993, ProQuest 362593269.

³ Donna Gibbs, Director of Media Relations, Mattel Co., quoted in *ibid.*

⁴ Jon Proudstar, “G.I. Joe Introduces the Rez Cowboy, ‘Dart,’” *The Native Voice*, September 19, 2003, ProQuest 368838125.

⁵ Hasbro Customer Relations Representative, quoted in Bill Grasse and Jonnie T. Finn, “Native G.I. Joe Doll Draws Criticism,” *The Native Voice*, November 2, 2003, ProQuest 368795164.

⁶ Proudstar, “G.I. Joe Introduces the Rez Cowboy, ‘Dart’.”

⁷ Krystle Tree, Navajo, paraphrased in Grasse and Finn, “Native G.I. Joe Doll Draws Criticism.”

⁸ Gloria Little, quoted in Clifford, “Newly Released Native American Barbie.”

⁹ Cf. Maureen T. Schwarz, “Native American Barbie: The Marketing of Euro-American Desires,” *American Studies* 46, no. 3/4 (Fall/Winter 2005): 323.

¹⁰ Cf. *ibid.*, 322.

¹¹ *Ibid.*, 322.

the support of Tlingit tribal leaders.¹² Although the doll did not precisely represent Tlingit people, they “welcomed it as a change for Tlingit girls to play with a doll that looks like them” and because it encouraged Non-Natives to learn more about Alaska Native people.¹³ After the Sealaska Heritage Institute advised Mattel on the doll’s representation, its “introduction did not raise tensions with the Tlingit tribe” but “provides an example of constructive cultural collaboration between Alaska Natives and non-Natives.”¹⁴ Such collaborations with non-Native manufacturers gave tribes the opportunity to shape popular representations, “license particular styles and images, and also provide guidance (or refuse to provide information) on what sacred images they do not want to see adorning souvenirs.”¹⁵

Although critics disagreed on what constituted a fair representation, there was some consensus that Indigenous representations in popular culture had evolved desirably. Marketing representations had become more diverse, and many advertisers replaced old clichés with more accurate representations or abandoned appropriations, though traditional popular culture representations continued to exist. Proudstar attributed the changes in representations to the various forms of Indigenous resistance:

In an age where huge sports teams use our image in an offensive manner and other forms of media treat us in an archaic or disrespectful manner it means a lot. It means that a step forward has happened. That all the fighting, struggling and surviving are slowly taking their effect. That our new warriors who battle in court and fight with words in newspapers like this are having profound effect that will not be recognized for years to come.¹⁶

Deeper understanding, slowly changing attitudes and expectations, and evolving representations resulted from an ongoing struggle on many levels. Marketing protest was part of a broader movement promoting Indigenous cultural sovereignty and self-determination that was rooted in “social movements oriented to autonomy, self-expression, and the critique of postindustrial society.”¹⁷ According to Charles Tilly, “1968 marked a significant transition in American public politics and a substantial expansion in the range of social movement activity” that saw the “sheer power of government, corporations, and mass media to produce stifling conformity” as the “enemy of creativity and change.”¹⁸ Since the late 1960s, as identity gained importance,¹⁹ issues of Native American representation and, since the 1990s, the appropriation of Indigenous cultural expressions constituting their identity have sparked protests in many areas. Marketing protest was part of a broader discourse on Native American representation in U.S. society, including celebrities dressing as ‘Indians,’ especially around Thanksgiving or Halloween,²⁰ and school, university, and professional sports teams with In-

¹² Cf. Stuart Schüssel, “Copyright Protection’s Challenges and Alaska Natives’ Cultural Property,” *Alaska Law Review* 29, no. 2 (2012): 336.

¹³ Sarah De Capua, *First Americans: The Tlingit* (New York: Marshall Cavendish Benchmark, 2010), 38.

¹⁴ Schüssel, “Copyright Protection’s Challenges,” 336.

¹⁵ *Ibid.*, 336.

¹⁶ Proudstar, “G.I. Joe Introduces the Rez Cowboy, ‘Dart’.”

¹⁷ Charles Tilly, *Social Movements, 1768-2012* (Boulder: Paradigm Publishers, 2013), 70.

¹⁸ *Ibid.*, 70.

¹⁹ Cf. *ibid.*, 71.

²⁰ Protesters criticized not only marketers but also stars like Leona Lewis, Chris Hemsworth, or the Hilton sisters for promoting themselves by dressing up in Indian-style clothing or wearing sacred insignia like bonnets or face paint.

digenous mascots or names.²¹ Protest against the misrepresentation of Indigeneity in movies, music videos, literature, comic books, school textbooks, and other media is also part of the discourse on fair representation and self-determination.

Since the 1990s, colonialism and cultural hegemony were the concepts activists used to make sense of the misrepresentation and appropriation of Native Americans and their cultures. Racism was the primary frame for these issues since the 1960s, but in light of the Quincentennial, the 500th anniversary of Christopher Columbus' arrival in America, protesters started discussing racism as a result of America's colonial past. In their view, marketing practices, just like media representations in general, have acted as forces that project external expectations onto Native peoples and shape beliefs about Native peoples and cultures. In general, advertising contributes to the construction of identities as it "constructs idealized images of people, depicts their patterns of interacting with others, and positions them in the social hierarchy."²² Additionally, by appropriating historical figures, tribal names, cultural symbols, or images of Native Americans for marketing purposes, the American advertising industry continued the process of colonization by the dominant society. This process of commodification helped to adapt Indigenous belief systems to Euro-American standards and to assimilate ethnic minorities into American society. Some critics viewed Indigenous people who marketed themselves through mainstream clichés, thus adopting and affirming the imposed identity, as the product of a completed assimilation process.

The study identified three main reasons for protests against Indian-inspired marketing practices. Fraud claims challenged misleading marketing practices that created the impression a product was made by a Native American; appropriation claims criticized the unauthorized and often inappropriate use of Indigenous cultural elements for marketing purposes; and misrepresentation claims denounced, for example, inaccurate, racist, or sexist portrayals of Indigenous peoples and cultures. While fraud, appropriation, and misrepresentation constitute three separate protest categories, they sometimes overlap and represent different shades of interrelated issues. Although protests against deceptive marketing practices, such as misrepresenting products as Indian-made or claiming Indian ancestry for marketing purposes, aimed to protect economic sources for Indigenous artists and craftspeople, cultural identity was also a major concern. Indian manufacturers could only continue and preserve these cultural traditions if they could make a living from their work. Legal definitions of Indigeneity and consumer-driven demand for Indian goods also curtailed Indigenous peoples' right to self-identification and cultural self-determination.

"In today's climate," wrote Hilary Weaver, "in which New Age spirituality has become popular and so much cultural appropriation has happened, there is a fear of the ultimate

Cf. Landen Zumwalt, "Khloe Kardashian Breaks Silence on Native American Headdress Controversy," *Wet Paint*, June 24, 2014, accessed October 12, 2016, <http://www.wetpaint.com/breaks-silence-native-american-headaddress-517959/>.

²¹ Corey Collins, "Sports teams that retired Native American mascots, nicknames," *Sporting News*, October 12, 2015, accessed June 28, 2020, <https://www.sportingnews.com/us/nfl/list/washington-redskins-native-american-mascot-controversies-history/1wmax2elthrth1kvstmdreyre65>; "American Indian Sports Team Mascots. Chronology over 35 Years of effort addressing the use of American Indian related sports team mascots," American Indian Sports Team Mascots, accessed October 8, 2016, <http://aistm.org/fr.chronology.htm>; "List of sports team names and mascots derived from indigenous peoples," *Wikipedia*, accessed October 8, 2016, https://en.wikipedia.org/wiki/List_of_sports_team_names_and_mascots_derived_from_indigenous_peoples.

²² William M. O'Barr, *Culture and the Ad: Exploring Otherness in the World of Advertising* (Boulder: Westview Press, 1994), 3.

cultural appropriation: the usurpation of Native cultural identity.”²³ The fear of identity loss among Native Americans grew with increasing numbers of people identifying as Native American and disseminating media-based and commercially oriented ideas of Indigeneity. While some critics sought to change only particular marketing practices they disliked, activists frequently involved in protests aimed to raise awareness of America’s colonial legacy inherent in these ads. Since this commercial discourse mirrored and reinforced societal values, ideologies, race, and racial hierarchies, activists ultimately challenged the social order by challenging marketing practices.

Promoting the removal of First Amendment protection from commercial speech, Desiree Kennedy argued that “Commercial discourse, open only to those speakers who are in a position to pay, has steadily and dramatically increased in importance and prevalence in the public sphere.”²⁴ Although marketing protests have become highly visible in the 21st century, Native Americans and advocates for fair Indigenous representations had started protecting Indian identities from marketing practices much earlier. “Fighting Generikee” reconstructs this history of protest against the use of Indigeneity in U.S. marketing, focusing on the perspectives of both activists and marketers. By analyzing protests against Indigenous marketing representations, this study implicitly explores the struggles for fair representation and self-representation, cultural dignity, and recognition of intellectual ownership and the right to profits.

This study shows that Native Americans have been protesting marketing practices since at least the 1930s and long before the criticism of Crazy Horse Malt Liquor (1992-2004) or Victoria’s Secret (2012) became widely known. It establishes three main reasons for protest: fraud, appropriation, and misrepresentation. These protests were directly related to the popularity of Indigeneity, social movements, and the education and economic growth of Indigenous peoples. Depending on the protest cause, protesters employed different strategies, ranging from education to public, economic, and legal pressure, which, through effective framing, brought them allies, supporters, and publicity. Both art and advertising, as weapons and carriers of counter-narratives, played a significant role in educating U.S. consumers, which eventually came to fruition in a general cultural shift toward social justice induced by the Black Lives Matter movement. Through adamant protest and the use of advantageous trends or similar movements, protesters achieved notable immediate successes and contributed to a broader shift in attitudes that would eventually become visible in marketing practices.

Theoretical Background

The exercise of power by the dominant culture derives, in part, from the ability to select and manipulate media content and, thus, actively influence the recipient’s perception, as framing theory suggests.²⁵ Images, particularly advertising images, play a crucial role in this process because, according to Stuart Hall, media images are not representations of reality but con-

²³ Hilary N. Weaver, “Indigenous Identity: What Is It, and Who Really Has It?” *American Indian Quarterly* 25, no. 2 (Spring 2001): 250.

²⁴ Desiree A. Kennedy, “Marketing Goods, Marketing Images: The Impact of Advertising on Race,” *Arizona State Law Journal* 32, no. 2 (Summer 2000): 693.

²⁵ See Erving Goffman, *Frame Analysis: An Essay on the Organization of Experience* (New York: Harvard University Press, 1974); Robert Entman, “Framing: Towards Clarification of a Fractured Paradigm,” in *McQuail Reader in Mass Communication Theory*, ed. Denis McQuail (London: SAGE, 2002), 390-397.

struct reality in the first place.²⁶ So-called “counter-narratives” created by minorities, such as those found in Indigenous advertisements, break the silence of the oppressed and challenge Euro-American supremacy.²⁷ For a deeper understanding of the protests against Indian-inspired marketing practices, this theory chapter briefly summarizes theories of identity construction, cultural hegemony, decolonization, and resistance. In addition, the methodology chapter discusses the theory of framing.

Indigeneity is a political construct erected by the dominant majority that depends on the place and time of colonial history. As Native Americans disagree about what constitutes Indigeneity, the term has always meant something different to different people.²⁸ Similarly, some have argued that masculinity and femininity cannot be clearly defined by specific attributes because they are merely culturally endowed with the meaning of being an expression of a masculine or feminine nature.²⁹ Like a biological definition of Indigeneity, the biological determination of gender is neither unambiguous nor free of contradictions since one cannot take an objective, socially unbiased look at the body. Biology and psychology do not prove the existence of two sexes but presuppose it.³⁰ There is neither a biologically determined Indigeneity nor a biologically determined gender identity since identity is the effect of discursive practices.³¹

According to Michel Foucault, “the picture has no other content in fact than what it represents.”³² Advertising images reveal the productivity of discourses and show how they produce what they supposedly only designate. When “viewed repeatedly, the discourse of advertising reiterates themes to which we ultimately become desensitized” and “even expect such ideas in other advertisements because we have seen them in the past.”³³ Philip Deloria explains that visual features, such as an Indigenous dress, evoke a culturally defined set of expectations, and those same expectations may, in turn, demand the acceptance and performance of visual features. The unexpected, or the anomaly, reaffirms already existing expectations by declaring situations and attributes that do not fit into the given categories unnatural and strange.³⁴

Because Native Americans appear inauthentic compared to popular notions of the ‘original, real Indian,’ some imitate these images.³⁵ In U.S. society, Natives are denied their

²⁶ Cf. Stuart Hall, *Representation and the Media*, prod. and dir. Sut Jhally (Northampton: Media Education Foundation, 1997), transcript published at Media Education Foundation, accessed December 25, 2020, <https://www.mediaed.org/transcripts/Stuart-Hall-Representation-and-the-Media-Transcript.pdf>.

²⁷ See Richard Delgado and Jean Stefancic, *Critical Race Theory: An Introduction* (Philadelphia: Temple University Press, 2013).

²⁸ Cf. Weaver, “Indigenous Identity,” 248.

²⁹ Cf. Regine Gildemeister, “Doing Gender: Soziale Praktiken der Geschlechterunterscheidung,” in *Handbuch Frauen- und Geschlechterforschung: Theorie, Methoden, Empirie*, ed. Ruth Becker and Beate Kortendiek (Wiesbaden: Springer VS, 2008), 137.

³⁰ Cf. Andrea Wetterer, “Konstruktion von Geschlecht: Reproduktionsweisen der Zweigeschlechtlichkeit,” in *Handbuch Frauen- und Geschlechterforschung: Theorie, Methoden, Empirie*, ed. Ruth Becker and Beate Kortendiek (Wiesbaden: Springer VS, 2008), 129-130.

³¹ Cf. Judith Butler, “Das Unbehagen der Geschlechter,” in *Gender Studies*, ed. Franziska Bergmann, Franziska Schößler and Bettina Schreck (Bielefeld: transcript, 2012), 146.

³² Michel Foucault, *The Order of Things: An Archaeology of the Human Sciences* (New York: Pantheon Books, 1971), 64.

³³ O’Barr, *Culture and the Ad*, 206.

³⁴ Cf. Philip Deloria, *Indians in Unexpected Places* (Lawrence: University Press of Kansas, 2004), 3-5.

³⁵ Cf. Deborah L. Madsen, “Contemporary Discourses on ‘Indianness,’” Albany: State University of New York Press, 2010, accessed April 15, 2014, <http://www.sunypress.edu/pdf/62032.pdf>.

Indigeneity when they deviate from the cultural concept of 'The Indian.' Similarly, gender identities that do not conform to the "norms of cultural intelligibility . . . are regarded within the realm of cultural intelligibility only as developmental disorders or logical impossibilities."³⁶ Through the mechanism of social expectation and forced cultural convergence, Judith Butler believes self-fulfilling prophecies have the general power of gender normology. While it is true that the advertising discourse "reflects social practices and cultural values already present, . . . it is simultaneously true that it recreates them in the process of depicting them. It becomes impossible to say which comes first: the culture or the ad."³⁷

With the rise of post-structuralism, academic interest in imperialism discourses shifted from material to representational phenomena.³⁸ Discussions of cultural imperialism focused on media such as television, film, journalism, or advertising³⁹ and on the "effects of practices, images, and idioms, on the productivity of precepts and processes" that reveal the intersections of colonialism and culture.⁴⁰ In Western culture, the "notion of colonialism has taken on a wider, metaphorical meaning . . . to describe modes of domination and control within the West."⁴¹

Due to the relatively flexible use of the terms 'colonialism' and 'imperialism,' they are hardly distinguishable from the concept of cultural hegemony, which explicitly aims at a cultural leadership role within a community. Jürgen Osterhammel describes Indigenous peoples' increasing opposition to "colonialist thinking" as the "struggle for cultural hegemony,"⁴² which developed and grew during the 20th and 21st centuries. The concept of cultural hegemony suggests that the identity construction process is grounded on negotiations seeking to reach a consensus on the part of the dominated. Traditional scholarship on colonialism considers this a top-down process in which the identities and stereotypes constructed by the colonizers "often found their way into their [the oppressed] own psychological habitus through education, habit, lack of alternatives, and a kind of identification with the aggressor."⁴³ The idea of a simple imposition of identities, however, may result from an overestimation of colonial violence and an underestimation of Indigenous self-determination and co-determination. Since the mid-1990s, a growing body of research literature has emphasized the role of Native Americans as active agents in the production of 'mainstream' culture.⁴⁴ In tourism, movies,

³⁶ Butler, "Das Unbehagen der Geschlechter," 146. Transl. by author.

³⁷ O'Barr, *Culture and the Ad*, 206.

³⁸ Cf. Patrick Wolfe, "History and Imperialism: A Century of Theory, from Marx to Postcolonialism," *American Historical Review* 102, no. 2 (1997): 406.

³⁹ Cf. John Tomlinson, "The Discourse of Cultural Imperialism," in *McQuail Reader in Mass Communication Theory*, ed. Denis McQuail (London: SAGE, 2002), 223.

⁴⁰ Cf. Richard King, "Imperial Recollections: The Colonial Contexts and Postcolonial Predicaments of Exhibiting Native American Cultures and Histories in the Contemporary United States" (PhD diss., University of Illinois at Urbana-Champaign, 1996), 15.

⁴¹ Jan Pieterse and Bhikku Parekh, eds., "Shifting Imaginaries: Decolonization, Internal Colonization, Postcoloniality," in *The Decolonization of Imagination: Culture, Knowledge and Power* (London: Zed Books, 1995), 4.

⁴² Jürgen Osterhammel, *Kolonialismus: Geschichte, Formen, Folgen* (München: C.H. Beck, 2001), 118. Transl. by author.

⁴³ Ibid., 117. Transl. by author.

⁴⁴ See, for instance, Lester G. Moses, *Wild West Shows and the Images of American Indians, 1883-1933* (Albuquerque: University of New Mexico Press, 1996); Linda S. McNenly, *Native Performers in Wild West Shows: From Buffalo Bill to Euro Disney* (Norman: University of Oklahoma Press, 2012); James H. Nottage, "Illusions and Deceptions: The Indian in Popular Culture," in *Powerful Images: Portrayals of Native America*, ed. Sarah Boehme (Seattle: University of Washington Press, 1998), 75-83; Deloria, *Indians in Unexpected Places*; Jay

and Wild West shows of the late 19th and early 20th centuries, Native Americans were not exclusively passive objects of the Euro-American mainstream but have always influenced representations in subtle ways or actively resisted unwelcome representations.

Following Craig Owens, who argues that “to represent is to subjugate,”⁴⁵ representations are never neutral but the “founding act of power” in Western culture. Stuart Hall calls this structure the “regime of representation,” which is grounded in symbolic power through representational practices, that is, “to mark, assign, and classify”⁴⁶ others in a certain way. Paradoxically, it is “precisely in being represented by the dominant culture that these [marginalized] groups have been rendered absent within it.”⁴⁷

Choctaw philosophy professional Laurie A. Whitt explained how the dominant culture imposed intellectual property laws on Indigenous peoples to legitimize cultural imperialism. The concept of the public domain played a similar role in late capitalism as the “concept of terra nullius once provided legal and moral cover for the imperial powers’ treatment of indigenous peoples.” Declaring Indigenous culture to be common property laid “the groundwork for the private ownership secured” by private property rights, which, through patenting, led to the “control of, and denial of indigenous access to,” their own resources.⁴⁸ As Whitt argued, whether intended or not, commercial exploitation of Indigenous cultures extended the political power of the dominant regime, secured its social control over the culture it subordinated, and enhanced its economic profit. Furthermore, commodification served to assimilate Native belief systems to Euro-American standards and, consequently, helped Euro-American culture “establish itself in indigenous cultures by appropriating, mining, and redefining what is distinctive, constitutive of them.”⁴⁹

Since colonization is a process of mutual acculturation⁵⁰ that transforms ways of life or creates new ones, decolonization is a liberation process for both the colonized and the colonizers. It does not aim at the “restoration of a historically continuous and allegedly pure precolonial heritage, but an imaginative creation of a new form of consciousness and way of life.”⁵¹ Although colonization is not a top-down process, room for negotiation is limited in that colonialism imposes boundaries that must be appropriated in the process of decolonization.⁵² At the same time, mutual involvement in the discourse of identity is also responsible for the paradox of the self-fulfilling prophecy. Minorities remain partly trapped in the binary structure of the stereotype, inadvertently confirming the opposite pole in a deliberate attempt not to serve a

Mechlin, “Florida Seminoles and the Marketing of the Last Frontier,” in *Dressing in Feathers: The Construction of the Indian in America in Popular Culture*, ed. S. Elizabeth Bird (Boulder: Routledge, 1996), 159-161.

⁴⁵ Craig Owens, *Beyond Recognition: Representation, Power, and Culture* (Berkeley: University of California Press, 1992), 261.

⁴⁶ Stuart Hall, ed., “The Spectacle of the Other,” in *Representation: Cultural Representations and Signifying Practices* (London: SAGE, 1997), 259.

⁴⁷ Owens, *Beyond Recognition*, 262.

⁴⁸ Laurie A. Whitt, “Cultural Imperialism and the Marketing of Native America,” *American Indian Culture and Research Journal* 19, no. 3 (1995), 19-20.

⁴⁹ *Ibid.*, 2.

⁵⁰ Not only did the colonized adopt the cultural practices of the colonizers, sometimes voluntarily, sometimes under duress, but the colonizers also learned and profited from the experience and knowledge of the Indigenous population. Cf. Osterhammel, *Kolonialismus*, 92.

⁵¹ Pieterse and Parekh, “Shifting Imaginaries,” 3.

⁵² Cf. *ibid.*, 10.

stereotype.⁵³ In this way, the “cycle between reality and representation makes the ideological fictions of racism empirically ‘true’.”⁵⁴

As Butler explains, agency arises from intersections where discourse renews itself.⁵⁵ The connotations of texts and symbols are beyond anyone’s control and make it possible to induce a change in meaning from marginal meanings. Hall calls this technique of “taking an existing meaning and re-appropriating it for new meanings”⁵⁶ transcoding. Artists play an important role in deconstructing and transcoding media identities. The postmodern artist demonstrates to the viewer that the reality which (visual) media ostensibly represents is nothing more than a culturally specific fiction.⁵⁷ Deloria seeks to attack this belief system by injecting alternative “secret stories of Indigenous life” into the media supply, which are not as anomalous as many think.⁵⁸ Expanding and complicating the media discourse ultimately aims to recover “a history hitherto either misrepresented or rendered invisible.”⁵⁹

According to Deloria, a paradox of historiography arises from the real diversity and the simplified naming practices. The “most effective frame for making general sense of the diverse experiences of hundreds of tribal peoples has been that of federal government policy. In effect, this practice centers Indian history, not on Indian people, but on the U.S. government.”⁶⁰ For this reason, many historians and Natives themselves have turned to the unique characteristics of Indigenous communities. This trend is also evident in the increasing preference for tribal names over generic terms such as ‘Native American’ or ‘American Indian’ when speaking of themselves.⁶¹ This study refers to tribal affiliations when this information is available and according to the spelling used in each source. Otherwise, the study uses Indian, American Indian, Native, Native American, and Indigenous peoples interchangeably. In fact, the study oversimplifies basically every group, from Native Americans and Non-Natives to activists, producers, sellers, and advertisers.

Since protests result from “dissatisfaction with political institutions, their decisions, and societal and social grievances,”⁶² protest is an “expression of political emancipation and thus holds the potential for democratic revitalization.”⁶³ Accordingly, many protesters direct their anger at political and economic elites whom they see as responsible for society’s fundamental problems. This view is one way to conceptualize protest or resistance but, as Jocelyn A. Hollander and Rachel L. Einwohner noted, researchers have used the term resistance to “describe a wide

⁵³ Cf. *ibid.*, 9.

⁵⁴ Hall, “The Spectacle of the Other,” 262.

⁵⁵ Cf. Paula-Irene Villa, “(De) Konstruktion und Diskurs-Genealogie: Zur Position und Rezeption von Judith Butler,” in *Handbuch Frauen- und Geschlechterforschung: Theorie, Methoden, Empirie*, ed. Ruth Becker and Beate Kortendiek (Wiesbaden: Springer VS, 2008), 152.

⁵⁶ Hall, “The Spectacle of the Other,” 270.

⁵⁷ Cf. Owens, *Beyond Recognition*, 111.

⁵⁸ Deloria, *Indians in Unexpected Places*, 7.

⁵⁹ Edward Said, “Opponents, Audiences, Constituencies and Community,” in *The Anti-Aesthetic: Essays on Postmodern Culture*, ed. Hal Foster (New York: The New Press, 2002), 182.

⁶⁰ Deloria, *Indians in Unexpected Places*, 11.

⁶¹ Cf. Michael Yellow Bird, “What We Want to be Called: Indigenous Peoples’ Perspectives on Racial and Ethnic Identity Labels,” *American Indian Quarterly* 23, no. 2 (Spring 1999): 15.

⁶² Asiye Öztürk, editorial to themed issue “Protest und Beteiligung,” *Aus Politik und Zeitgeschichte* 62, no. 25-26 (June 2012), 2. Transl. by author.

⁶³ Stephan Klecha, Stine Marg and Felix Butzlaff, “Wie erforscht man Protest? Forschungsdesign und Methodik,” in *Die neue Macht der Bürger: Was motiviert die Protestbewegungen?*, ed. Stine Marg, Lars Geiges, Felix Butzlaff, and Franz Walter (Bonn: Bundeszentrale für politische Bildung, 2013), 12. Transl. by author.

variety of actions and behaviors at all levels of human social life (individual, collective, and institutional) and in a number of different settings, including political systems, entertainment and literature, and the workplace.”⁶⁴ Since scholars have described everything from revolutions to hairstyles as resistance, the term resistance “remains loosely defined, allowing some scholars to see it almost everywhere and others almost nowhere.”⁶⁵

Definitions of resistance have varied, referring to a range of actions, speech, and other symbolic behavior (marching, silence or breaking silence, practicing traditions), different scales and levels of coordination (individual vs. collective, widespread vs. locally confined), different targets (individuals, groups, organizations, institutions, or social structures such as gender concepts), and different directions and goals (change vs. curtailing change, from oppressed vs. structurally more powerful people).⁶⁶ While Hollander and Einwohner found a “virtual consensus that resistance involves oppositional action of some kind, there is considerable disagreement about whether resistance must be intended by actors and whether it must be recognized by targets and/or observers.”⁶⁷ Depending on the set of criteria defining resistance, actors’ consciousness or intent and targets’ or observers’ recognition of actions as resistance determine whether everyday oppositional actions count as resistance. For some, actions qualify as resistance only if the actor intends to resist, but assessing intent is almost impossible, others contend. Other researchers argue that actors may not be aware that actions like dressing in a particular style constitute a form of resistance. Additionally, since actions have different meanings in different cultures, it is difficult as a researcher to determine an actor’s intent who is not from the same culture.⁶⁸ The requirement that actions be visible or apparent to others may exclude everyday acts of resistance by powerless people, who sometimes mask the resistant nature of their actions as humor, for instance, to protect themselves from repression. While culturally aware observers may recognize such resistance, the targets may not.⁶⁹

Since this study aims to examine all forms of resistance to marketing practices, it uses a broad definition. Although many actions against marketing representations qualify as protest, some ‘civil’ actions may qualify as everyday resistance. Actions the study considers acts of resistance include demonstrations, public gatherings in meaningful places, walks, special issues or press conferences; social media or blog posts and online petitions; calls to boycott directed at consumers and sellers; complaint letters or calls and personal confrontations in stores; legal actions such as lawsuits, trademark challenges, official complaints, and cease-and-desist orders; artistic forms of protest such as paintings, collages, installations, and displays of artwork or marketing collections.

A case of protest or resistance is any criticism by a civil protester or social activist, whether public or non-public, individual or collective, directed at any stakeholder, such as the marketer, the government, a seller or publisher, or the public. Publicity-seeking actions like

⁶⁴ Jocelyn A. Hollander and Rachel L. Einwohner, “Conceptualizing Resistance,” *Sociological Forum* 19, no. 4 (December 2004), 534.

⁶⁵ Rose Weitz, “Women and Their Hair: Seeking Power through Resistance and Accommodation,” *Gender and Society* 15, no. 5 (October 2001), 669.

⁶⁶ Cf. Hollander and Einwohner, “Conceptualizing Resistance,” 535-536.

⁶⁷ *Ibid.*, 544.

Action involves active verbal, cognitive, or physical behavior. Opposition is defined as contradiction, social change, rejection, challenge, opposition, subversion, or disruption. See *ibid.*, 538.

⁶⁸ Cf. *ibid.*, 542-543.

⁶⁹ Cf. *ibid.*, 539-541.

demonstrations or walks are directed at society as a collective addressee and serve to raise awareness and produce social pressure to enforce change. Non-public efforts like personal confrontations or writing complaint letters target an individual addressee whom critics expect to initiate change.

This study treats people who criticized Indigenous marketing representations as protesters and people who protested more frequently, publicly, and agenda-driven as activists. Many protesters contacted offenders or reported cases to the Indigenous community when accidentally encountering inappropriate marketing representations in their daily lives. Typically, these protesters were not involved in many other protests and often became active only once. In this analysis, about 200 of the 587 protest cases involve this type of one-time protester. On the other hand, activists were involved in multiple cases that may have come to their attention accidentally through their social environment and networks or because they were actively searching for marketing misrepresentations or other misleading marketing practices. While an activist is a “person who believes strongly in political or social change and takes part in activities such as public protests to try to make this happen,”⁷⁰ some have rejected such labels. This study is less interested in classifying protesters than in identifying patterns, peoples, and organizations that were occasionally or frequently involved in protests. Therefore, in this study, the term protester includes any person who criticized a marketing practice publicly or non-publicly at least once. Activists are protesters, but protesters are not necessarily activists.

The study does not focus on specific tribes as it seeks to examine protests across the United States and beyond. Moreover, during the civil rights movement, pan-Indianism had become a leading paradigm that explicitly rejected isolated tribal thinking, which influenced Native resistance to marketing practices. As Francis McKinley, director of the Community Services Division of the Utah Indian Tribe, argued in his keynote address at the 17th Annual Convention of the National Congress of American Indians in Denver in 1960:

We have got to stop thinking of ourselves as Indian tribes who are different. . . . Too often in the past Indians and Indian tribes have been identified culturally. That is, we speak about our needs as a particular tribe, not as Indians, all working toward common goals. Once we have decided what we want; once we all work together toward these common goals, the American public will come to our aid.⁷¹

Pan-Indianism was visible in protests as Native people from all tribes criticized Indian-inspired marketing practices, regardless of the tribe or community represented in the ad. Often, members of different tribes were equally offended by a marketing misrepresentation and publicly expressed solidarity. To some extent, the feeling of a shared fate extended to the global level. In the First National City Bank case in 1971, for instance, Natives started protesting marketing representations showing Indigenous peoples of Brazil.

⁷⁰ *Cambridge Dictionary*, s.v. “activist”, accessed December 1, 2019, <https://dictionary.cambridge.org/de/worterbuch/englisch/activist>.

⁷¹ Francis McKinley, Director Community Services Division, Utah Indian Tribe, Keynote Address at the NCAI 17th Annual Convention, Denver, Colorado, November 14-18, 1960; Speeches, 1960; Box 12; Records of the National Congress of American Indians, 1933-1990, NMAI.AC.010; NMAI Archive Center, Smithsonian Institution, Suitland, MD. Hereafter cited as McKinley, Keynote Address, 1960: Speeches, 1960; Box 12; Series 1; NMAI Archive Center.

Many small and large newspapers reported on popular actions, but a significant number of local protests went unmentioned or were mentioned only in local newspapers. Excluding the many small protests would underestimate the extent of marketing protest, as it would mean ignoring everyday forms of resistance.⁷² The study attempts to include all tangible protests, from everyday criticism to protest campaigns, to provide as representative a picture of activism challenging marketing practices as possible. While individual protest actions do not necessarily represent a larger movement, they still represent a “condensed form of communication and action within the movement”⁷³ in which protest actors define their frames and perform publicly or non-publicly. By weaving numerous quotes from primary sources into the analysis, “Fighting Generikee” seeks to meet the standards of a study devoted to multiperspectivity and give voice to large-scale activists as much as to small-scale protesters, marketers, publishers, sellers, consumers, and other stakeholders.

While the research literature on protest movements often cites civil disobedience as a protest form that requires the violation of laws, this study extends this interpretation. It treats the application of law as a form of protest primarily directed against marketers as members of the economic elite. The use of law qualifies as an act of resistance because the mere existence of a law does not mean that it, in its current state, adequately reflects reality, is lived in practice, or is enforceable in court. For example, Native American plaintiffs enforced the Indian Arts and Crafts Act for the first time more than 60 years after its enactment. Applying and enforcing UNDRIP, the United Nations Declaration on the Rights of Indigenous Peoples, also seems challenging. Additionally, complainants sought to apply laws to different contexts, expand definitions, and reinterpret legal texts to serve their goals.

The literature analyzing Indigenous advertising imagery represents a source of protest since researchers like Jessica Metcalfe used academia as a forum to raise awareness in the hope of initiating change. Although examining how academia framed advertising misrepresentation provides further insight into marketing protest, academic literature does not serve as a primary source for the quantitative portion of this study. Similarly, legal scholarly articles on the application of existing laws to prohibit certain Indian-inspired marketing practices may be considered acts of resistance. However, this theoretical literature will only be part of the qualitative discussion of protest but not of the quantitative analysis.

Methodology

Sources

The main sources for protest activities are Indigenous and non-Indigenous newspaper articles that reveal different perspectives on advertising disputes. Relevant articles were identified through keyword searches in various combinations⁷⁴ and databases. Newspaper articles were

⁷² Cf. Verta Taylor and Nella VanDyke, “‘Get Up, Stand Up’: Tactical Repertoires of Social Movements,” in *The Blackwell Companion to Social Movements*, ed. David A. Snow, Sarah A. Soule and Hanspeter Kriesi (Malden: Wiley, 2007), 268.

⁷³ Johanna Niesyto, “Digitalized Anti-Corporate Campaigns: Toward a New Era of Transnational Protest?” in *Protest Beyond Borders: Contentious Politics in Europe since 1945*, ed. Hara Kouki and Eduardo Romanos (New York: Berghahn Books, 2011), 105.

⁷⁴ Keyword groups:

available at the Library of Congress in Washington, DC, through databases such as *ProQuest* (*EthnicNewsWatch*, *GenderNewsWatch*), *LexisNexis*, or *NewspaperARCHIVE* at the Heritage Archives.⁷⁵ Newspaper articles about recent protests since 2000 are often available online and findable through a Google search, especially after 2010.

Letters and clippings relating to protests by the Association of American Indian Affairs are held at the Princeton University Library, New Jersey, and on microfilm at the Library of Congress in Washington, DC.⁷⁶ Letters and internal communications documenting discussions and protests by the National Congress of American Indians are collected at the National Museum of the American Indian (NMAI) Archive Center in Suitland, Maryland.⁷⁷ In 2016, Lawrence R. Baca (Pawnee) donated his collection of approximately 800 products, packages, and labels to the NMAI Archive Center. Baca, a civil rights attorney for the U.S. Department of Justice for 32 years and recipient of both the American Bar Association's Thurgood Marshall Award for Civil Rights (2008) and the Federal Bar Association's Sarah T. Hughes Civil Rights Award (2017), supported this study with an interview.

Complaints against marketers falsely selling products as Indian-made that critics sent to the Indian Arts and Crafts Board are filed at the National Archives in Washington, DC.⁷⁸ Lawsuits based on the Indian Arts and Crafts Act, U.S. federal or state case law, and other legal sources are available through the *Westlaw* and *HeinOnline* databases.⁷⁹

Many Indigenous artists view art as a form of social protest to highlight issues of Native American representation, self-determination, and visual independence.⁸⁰ Artists like Marcus Amerman, Arthur Amiotte, Frank Buffalo Hyde, and Richard Ray Whitman explicitly criticized the commodification of Indigenous culture. These artworks are interpreted with the help of artist statements. Many works by Native artists can be found in the archive of the Museum of Contemporary Native Art (MoCNA) in Santa Fe, New Mexico.⁸¹ The Institute of American Indian Arts (IAIA) Archives in Santa Fe, New Mexico,⁸² and the Vine Deloria, Jr.

Native American American Indian Indigenous Tribe	Chief Princess Injun Redskin	Promotion Marketing Advertising Ad	Image Stereotype Representation	Boycott Challenge Protest	Political correctness Offensive
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⁷⁵ See E-Resources Online Catalog, Library of Congress, accessed December 24, 2020, <https://eresources.loc.gov/search~S9/m?SEARCH=Historical+News>.

⁷⁶ See Association on American Indian Affairs Records, 1851-2016, MC147; Public Policy Papers; Seeley G. Mudd Manuscript Library, Princeton University. See also Series 3: The Association on American Indian Affairs Archives, 1851-1983; Native America, a Primary Record; Woodbridge: Primary Source Microfilm, 2005. Filmed from the holdings of the Seeley G. Mudd Manuscript Library, Princeton University; accessed December 24, 2020, <https://lcn.loc.gov/2009366345>. For this study, the sources were taken from the microfilm. However, the source citations refer to the original sources, which are also documented on the microfilm, so that the documents can be found in both sources.

⁷⁷ See Records of the National Congress of American Indians, 1933-1990, NMAI.AC.010, NMAI Archive Center, Smithsonian Institution, Suitland, MD.

⁷⁸ See Records of the Indian Arts and Crafts Board, 1929-88, Record Group 435, National Archives, accessed December 24, 2020, <https://www.archives.gov/research/guide-fed-records/groups/435.html>.

⁷⁹ See Databases & eResources, Library of Congress Law, accessed December 24, 2020, <https://www.loc.gov/law/find/databases.php>.

⁸⁰ Cf. Will Wilson, "Preface: Some Practical Reflections," in *New Native Art Criticism: Manifestations*, ed. Nancy Mithlo (Santa Fe: Museum of Contemporary Arts, 2011), 17.

⁸¹ See New Mexico Digital Collections, University of New Mexico, accessed December 24, 2020, <https://econtent.unm.edu/digital/collection/mcna/search>.

⁸² See Native Artists Files; Institute of American Indian Arts Archives, Santa Fe, NM.

Library of the NMAI in Suitland, Maryland,⁸³ hold artist files, including journalistic sources and personal statements. Information from personal conversations with artists and from their publicly available or privately provided statements supplement these sources. Some works and statements are published in art catalogs available at the NMAI and IAIA libraries.⁸⁴ In addition to Fine Arts, caricatures are another artistic source of marketing protest.

Especially for 21st-century protests, online media is one of the most important sources. Online protests range from social media and blog posts to videos and petitions via *Change.org*. Protest media such as commercials, documentaries, or comedy performances are also available online, often on *YouTube*. Advertising itself is a protest medium against media misrepresentation. Native American advertising agencies like G&G Advertising created marketing campaigns explicitly designed to shatter mainstream misconceptions about Native peoples and cultures. Social organizations like the National Congress of American Indians created campaigns like “Proud To Be” (2014) to promote the abolition of the Washington Redskins team name, which became the Washington Football Team in 2020,⁸⁵ and other representational issues. Advertisements and commercials criticizing Native misrepresentation and appropriation as well as protests in the fields of art and comedy, such as artist Cannupa Hanska’s documentary “This Is A Stereotype” (2014) or the 1491s’ numerous comedy gigs and videos, offer insights into the broader discourse of marketing protest. Online blogs such as *Native Appropriations* by Adrienne Keene provided Native Americans with opportunities to post their opinions and reach a diverse online community. As Keene explains, “Native Appropriations is a forum for discussing representations of Native peoples, including stereotypes, cultural appropriation, news, activism, and more,”⁸⁶ which she used to raise awareness of inappropriate corporate marketing practices and misrepresentation anywhere.

Qualitative-Quantitative Approach

A database was created using FileMaker Pro to collect the protest data and make it available for statistical analysis. Each record is based on a protest case as defined above. Each protest case is initiated by a protest action and comprises at least one action. The dataset also includes hearings and interviews conducted by government officials in response to complaints as actions. This approach helps to provide more detailed insights into the nature of actions in marketing protest cases, reactions to individual protests or government actions, and their outcomes. If protests lasted for several years and critics took up another protest action after the previous action or series of actions ended, it is counted as a separate protest case (see Hornell Brewing Co., 1992-2004; there were several years between these actions, which are counted as separate protests). Criticism of different products or marketing items produced by the same

⁸³ See Art & Artist files; Vine Deloria, Jr. Library; National Museum of the American Indian, Smithsonian Institution, Suitland, MD.

⁸⁴ See *ibid.*; Institute of American Indian Arts Library, accessed December 24, 2020, <https://iaia.edu/academics/library/>.

⁸⁵ Starting as Boston Braves in 1932, the team became the Boston Redskins in 1933 and the Washington Redskins in 1937. From 2020 to 2022 the team’s official name was Washington Football Team until it was named Washington Commanders in 2022. For clarity, and because the name dispute was at its height at the time the study was written, it generally refers to the team as the Washington Football Team.

See “History by the Decades,” Washington Commanders, accessed December 10, 2022, <https://www.commanders.com/team/history/2020-by-the-decade>.

⁸⁶ See Adrienne Keene, *Native Appropriations*, accessed March 5, 2017, <http://nativeappropriations.com/>.

marketer also count as separate cases if the protests came from different protesters and/or were temporally isolated incidents (Zazzle, 2010/2011/2014; Nike, 1992/2007/2014). If a critic reported an advertiser to a regulatory agency and the investigation uncovered other potential violators against whom active measures were taken, these also count as separate protest cases (see Denver Investigation, 1944-47; Cherokee Complaint, 1974-77; Operation Al-Zuni, 2012-21). If a critic reported multiple supposed violators of laws but no action was taken, that complaint counts as one case. If a critic *publicly* denounced several marketers simultaneously, each of those marketers counts as one case.

To determine who was protesting Indian-inspired marketing practices, the protesters' names, gender, race, tribal affiliation, and organization, if they were speaking on behalf of that institution, were documented. Similar data was collected on the protest targets, including company name, racial affiliation, and country. Additionally, the study distinguishes four types of targets: producers, sellers, publishers, and consumers.

Information on the marketing practices includes the product category (arts and crafts, fashion, tobacco, etc.), the marketing object (product, commercial, print ad, etc.), and the protest cause (fraud, appropriation, misrepresentation). For more details on marketing practices, the study documented the specific textual or visual expression that provoked criticism (text, logo, representation, etc.), the person represented (Pocahontas, Geronimo, Crazy Horse, etc.), the brand (Cherokee, Chief Oshkosh beer, Indian Motorcycle, etc.), and the culture represented (U.S. Native American, First Nations, Maya, etc.).

The analysis of the protest actions includes the year and place(s) (state, country) of protest to gain insight into how protests varied across regions or changed. The study also captures the protest media (letter, demonstration, artwork, etc.), the addressees (offender, public, government, etc.), and the arena protesters used to voice their concerns (art scene, legal system, social media, etc.). The success or failure of a protest action is measured by the target's reaction and the direct results. Possible reactions range from complete ignoring and dismissive justification to apology and cooperation. The result may be the ad's cancellation, adaption, banning, or approval, but the reactions and results are often unknown.

In addition to protest actions and targets' reactions, the project identifies verbal arguments and counter-arguments and clusters them into frames defining the marketing protest discourse. Through frame analysis, the concept of framing makes it possible to reveal the power of a "communicating text" by illuminating the "precise way in which influence over a human consciousness is exerted by the transfer (or communication) of information."⁸⁷ Representation as a practice of giving meaning to objects rather than merely representing them encompasses any form of linguistic expression. This practice includes written and spoken language, music, clothing, facial expressions, and gestures – anything that constructs meaning.⁸⁸ Framing power arises from the selection and salience of what is being represented:

To frame is to *select some aspects of a perceived reality and make them more salient in a communicating text, in such a way as to promote a particular problem definition, causal interpretation, moral evaluation, and/or treatment recommendation* for the item described. Typically frames diagnose, evaluate, and prescribe.⁸⁹

⁸⁷ Entman, "Framing," 391.

⁸⁸ Cf. Hall, *Representation and the Media*.

⁸⁹ Entman, "Framing," 391-392.

Frames manifest themselves through the “presence or absence of certain keywords, stock phrases, stereotyped images, sources of information, and sentences that provide thematically reinforcing clusters of facts or judgements.”⁹⁰ Selected framing strategies, such as using metaphors, contrasts, stories, jargon, or ‘spin,’ are likely to have predictable effects on opinion formation.⁹¹ While both the communicator and the receiver consciously or unconsciously use frames in conveying or receiving information, the two do not necessarily use the same frames. Both, however, draw on frames common in their respective cultures and shared by most social group members.⁹²

Visual content analysis makes “statements about texts for which a dominant reading or a probable mode of reception can be identified.”⁹³ Grittmann and Ammann’s quantitative image type analysis inductively identifies recurring content-related themes in images and quantitatively measures their frequency. This method helps to identify popular visual frames or framing strategies, such as juxtaposition, and to incorporate them in the broader marketing protest analysis. In general, the polysemy of images makes visual content analysis a methodological challenge because the recipient can choose from a “floating chain of signifieds” when deciphering the message.⁹⁴ This study attempts to circumvent the relatively arbitrary interpretation of image content by relying on professional interpretations and artist statements.

Snow and Benford established three essential functions frames must serve to mobilize potential supporters. *Diagnostic framing* helps expose a problem and explain its origin to establish causalities. *Prognostic framing*, which corresponds to diagnostic framing, suggests solutions, including strategies, tactics, and goals. *Motivational framing* is a call to action to establish the rationale for planned corrective action.⁹⁵ Based on these functions, the frame study analyzes what protesters perceived as problematic about Indian-inspired marketing practices and what they believed to be the roots of these grievances (diagnostic framing). The study combines prognostic and motivational framing to assess how critics expected targets to respond and what critics planned to do or felt they needed to do to achieve their goals. Additionally, the study investigates the (crisis) response frames used by protest targets to deal with the criticism. The multi-perspectival project seeks to include all tangible positions, including counter-positions, as they influence framing processes.

Scope and Limitations of the Study

The study covers protests that took place between 1932 and 2021. The discovery of protest sources, the earliest of which is dated 1932, determines the period, although protests likely occurred much earlier. The statistical analysis includes all protests found up to and including 2016 and another single case in 2018, while the qualitative analysis extends to 2021.

⁹⁰ Ibid., 392.

⁹¹ Cf. Gail T. Fairhurst and Robert A. Sarr, *The Art of Framing: Managing the Language of Leadership* (San Francisco 1996), 101.

⁹² Cf. Entman, “Framing,” 392.

⁹³ Katharina Lobinger, *Visuelle Kommunikationsforschung: Medienbilder als Herausforderung für die Kommunikations- und Medienwissenschaft* (Wiesbaden: Springer VS, 2012), 220. Transl. by author.

⁹⁴ Roland Barthes, “Rhetoric of the Image,” in *McQuail Reader in Mass Communication Theory*, ed. Denis McQuail (London: SAGE, 2002), 294.

⁹⁵ Cf. David Snow and Robert Benford, “Ideology, Frame Resonance, and Participant Mobilization,” *International Social Movement Research* 1, no. 1 (1988): 200-204.

The study of marketing protest includes the protesters' and marketers' identities, the means and goals of protest, strategies for achieving their goals, and marketers' responses to protest. Ultimately, the study discusses the direct results of protest actions and potential long-term changes in attitudes and practices. A small number of case studies detail widely known or extraordinary protest cases. Quantitative analysis allows this research to distinguish between representative and exceptional protests and results. By describing the typical and the unusual, the study provides a more comprehensive picture of the different shades of marketing protest.

One informational limitation is the scarce availability of primary sources. In some cases, additional sources might have changed the evaluation. Except for Indian Arts and Crafts Board correspondence and art collections, primary sources are not collected over an extended period but filed separately by organization and scattered in many collections throughout the United States. Therefore, case sources may be incomplete and selective, particularly concerning earlier cases not covered by the news media or published online. Furthermore, since cases may be reopened without being reported or documented, the results recorded here may not be final or outdated in individual cases. In addition, the actual years of protest may differ because the sources did not always mention the dates or periods of protest actions. In these cases, the year of reporting, official documentation, or action counts as the year(s) of protest.

Another informational limitation is the subjective nature of reporting. Frames were identified in all primary sources, including letters, artwork, public statements, and news articles. While critics clearly stated their arguments in complainant letters, artist statements helped to interpret artwork. Advertisers' original statements were often available as letters or online. The frames derived from these sources are more meaningful than those derived from news reports. Journalists selected quotes, thereby highlighting certain frames and omitting others. The study tries to include as many primary sources created by complainants and protest targets as possible. It makes extensive use of quotes rather than paraphrasing the arguments of protesters, marketers, politicians, and journalists, among others, and identifies the originator of statements for the sake of accuracy and transparency. In addition to giving voice to the people involved, this method is ideal for a framing analysis dedicated to showing the complex nature of these protests. The study's bibliography section lists all protest sources for each case to evaluate individual cases as transparently as possible.

Methodological limitations include the number of protests and the coding of protest cases. As it was not possible to follow up on all cases, in some cases results may have changed since their documentation due to new criticism. Coding is not an objective process but depends on the coder's interpretation and the structure and definition of the data. Since the coding of information may change over time with increasing context or adjustment of definitions, the coding process was largely done in one piece, but several new cases were added twice. Furthermore, it is statistically likely that the coder will make simple errors like typos during the coding process. Therefore, a certain amount of error tolerance must be applied to the data sets on advertising protests.

Finally, while the number of cases is hardly manageable without data science methods, the amount of data over the 90 years is not statistically significant to prove correlations. Instead, the protest data helps identify trends, distinguish the unusual from the typical, or challenge assumptions.

Body of Research

Due to the scarce body of research for protest against Indian-inspired marketing practices, this study mainly relies on primary sources. For a deep understanding of the historical misrepresentation of Native Americans through media, this study draws on the large body of research literature on Native American media representations in the U.S. The study draws on essential works of related disciplines for qualitatively embedding the quantitative analysis in its historical and contemporary context. Charles Tilly's historical investigation of social movements since 1768 provides a broader context for goals, strategies, and the role of media in social resistance.⁹⁶ Colin Calloway's documentary survey of American Indian history weaves Indigenous perspectives into the history of Indian-White relations and offers important primary sources on political and social issues dominating certain eras.⁹⁷ Timothy Coombs' action guidelines for crises or crisis-like situations emphasizing the role of effective communication in the crisis management process are the basis for evaluating advertisers' reactions to marketing protests.⁹⁸

Fundamental to the understanding of popular ideas of Native Americans is Robert Berkhofer's *The White Man's Indian*⁹⁹ revealing the conceptions of and prejudices toward Native Americans in fields such as anthropology, literature, philosophy, and politics. A broad range of academic literature shows how these basic ideas found expression in popular culture and deconstructs the stereotypical cultural and legal concepts of Indigeneity.¹⁰⁰ Descriptions of Indigenous (mis)representations and how they changed over time mainly focused on the fields of museums and exhibitions,¹⁰¹ or literature, film, and comics,¹⁰² but more recently also

⁹⁶ See Tilly, *Social Movements*.

⁹⁷ See Colin Calloway, ed., *First Peoples: A Documentary Survey of American Indian History* (Boston/New York: Bedford/St. Martins, 2012).

⁹⁸ See W. Timothy Coombs, *Ongoing Crisis Communication: Planning, Managing, and Responding*, 3rd ed. (Thousand Oaks: SAGE Publications, 2012); W. Timothy Coombs, *Ongoing Crisis Communication: Planning, Managing, and Responding*, 5th ed. (Thousand Oaks: SAGE Publications, 2019).

⁹⁹ See Robert F. Berkhofer, *The White Man's Indian: Images of the American Indian from Columbus to the Present* (New York: Vintage Books, 1979).

¹⁰⁰ See Devon A. Mihesuah, *American Indians: Stereotypes & Realities* (Atlanta: Clarity, 1996); Eugene A. Wiggins, "Emerging from the Shadows: A Quest for Self-Identification," *American Indian Culture and Research Journal* 21, no. 4 (1997): 161-170; Yellow Bird, "What We Want to be Called;" Raymond Fogelson, "Perspectives on Native American Identity," in *Studying Native America: Problems and Prospects*, ed. Russell Thornton (Madison: University of Wisconsin Press, 1998), 40-59; Weaver, "Indigenous Identity"; Lucy Ganje, "Native American Stereotypes," in *Images That Injure: Pictorial Stereotypes in the Media*, ed. Paul M. Lester and Susan Dente Ross (Santa Barbara: Praeger, 2003), 113-120; Madsen, "Contemporary Discourses on 'Indianness'"; Michelle R. Jacobs, "Negotiation American Indian Identity in the Land of Wahoo" (PhD diss., Kent State University, 2012).

¹⁰¹ See C. Richard King, *Colonial Discourses, Collective Memories, and the Exhibit of Native American Cultures and Histories in the Contemporary United States* (New York: Garland Publishing, 1998); W. Richard West, *The Changing Presentation of the American Indian: Museums and Native Cultures* (Seattle: University of Washington Press, 2000); James Lujan, "A Museum of the Indian, Not for the Indian," *American Indian Quarterly* 29, no. 3-4 (Summer-Autumn 2005): 510-516.

¹⁰² See Jacquelyn Kilpatrick, *Celluloid Indians: Native Americans in Films* (Lincoln: University of Nebraska Press, 1999); Andrew Macdonald, Gina Macdonald, and MaryAnn Sheridan, *Shape-Shifting: Images of Native Americans in Recent Popular Fiction* (Westport: Praeger, 2000); Miriam E. Marubbio, "Death of the Celluloid Maiden: Images of Native American Women in Film" (PhD diss., University of Arizona, 2003); Michael A. Sheyashe, *Native Americans in Comic Books. A Critical Study* (Jefferson: McFarland, 2008); Jonathan S. Tomhave, "Cameras and Indians: An Examination of American Indian Character Performance in both Mainstream and Alternative Productions" (PhD diss., University of Washington, 2011).

captured journalism.¹⁰³ In this context, advertising as an essential source transcending eras has also received increasing attention. Apart from a dissertation on Indigenous representations in U.S. print advertising from 1890 to 2008,¹⁰⁴ several exemplary ad analyses focusing on certain advertising types or periods offer selective insights into the historical and contemporary use of Indian-style advertising imagery.¹⁰⁵ This study discusses central research findings on advertising representations in its conclusion. Issues of Native American marketing misrepresentation or cultural appropriation were only rarely subject to discussion in the field of business ethics.¹⁰⁶ Indigenous marketing representations in Wild West shows¹⁰⁷ and the sports industry¹⁰⁸ are closely related to advertising representations. Research on representations of

¹⁰³ See Mary Ann Weston, *Native Americans in the News: Images of Indians in the Twentieth Century Press* (Westport: Greenwood Press, 1996); John Coward, *The Newspaper Indian: Native American Identity in the Press, 1820-90* (Urbana: University of Illinois Press, 1999).

¹⁰⁴ See Stephanie Molholt, "A Buck Well Spent: Representations of American Indians in Print Advertising Since 1890" (PhD diss., Arizona State University, 2008).

¹⁰⁵ See Arrell M. Gibson, "Medicine Show," *The American West* 4 (1967): 35-39, 74-79; Ted Schwarz, "The Santa Fe Railway and early Southwest artists," *The American West* 19, no. 9 (1982): 32-40; Alfred Runte, "Promoting the Golden West: Advertising and the Railroad," *California History* 70, no. 1 (Spring 1991): 62-75; Zena Pearlstone, "Native American Images in Advertising," *American Indian Art Magazine* 20 (1995): 36-43; Marchell J. Wesaw, "Finders Keepers? Adulteration of Native American Culture in the Name of Profit," *Cultural Survival Quarterly* 18, no. 4 (January 1995), ProQuest 197430555; Whitt, "Cultural Imperialism"; Jeffrey Steele, "Reduced to Images: American Indians in Nineteenth-Century Advertising," in *Dressing in Feathers: The Construction of the Indian in American Popular Culture*, ed. S. Elizabeth Bird (Boulder: Routledge, 1996), 45-64; Elliott West, "Selling the Myth: Western Images in Advertising," *Montana* 46, no. 2 (1996): 36-49; Zena Pearlstone, "Reinventing the Indian: Stereotypes of Native Americans in Advertising," *Biblio* 2, no. 10 (October 1997): 40-45; Yasuko Takezawa, "Racial Boundaries and Stereotypes: An Analysis of American Advertising," *The Japanese Journal of American Studies* 10 (1999): 77-106; Gregory Reinhardt, *Indian Images in Commerce* (Weston: Pictures of Record, 2000); Michael E. Zega, "Advertising the Southwest," *Journal of the Southwest* 43, no. 3 (2001): 281-315; Debra Merskin, "Winnebagos, Cherokees, Apaches, and Dakotas: The Persistence of Stereotyping of American Indians in American Advertising Brands," *Howard Journal of Communications* 12 (2001): 159-169; Kevin C. Armitage, "Commercial Indians: Authenticity, Nature, and Industrial Capitalism in Advertising at the Turn of the Twentieth Century," *Michigan Historical Review* 29, no. 2 (2003): 70-95; Jane Marcellus, "Nervous Women and Noble Savages: The Romanticized 'Other' in Nineteenth-Century US Patent Medicine Advertising," *The Journal of Popular Culture* 41, no. 5 (2008): 784-808; Cory Pillen, "See America: WPA Posters and the Mapping of a New Deal Democracy," *The Journal of American Culture* 31, no. 1 (2008): 49-65; Debra Merskin, "The Princess and the SUV: Brand Images of Native Americans as Commodified Racism," in *Studies in Symbolic Interaction*, vol. 33, ed. Norman Denzin (Bingley: Emerald Group Publishing Ltd., 2009), 129-147; Jonathan P. Goldstein, "Race in Early Tobacco Advertising: The Case of American Tobacco Cards 1880-1911," *Review of Radical Political Economics* 43 (2011): 340-347; Cathy Rex, "Indians and Images: The Massachusetts Bay Colony Seal, James Pinter, and the Anxiety of Colonial Identity," *American Quarterly* 63, no. 1 (2011): 61-93; Stephanie Molholt, "American Indians in Print Advertising since 1890," in *American Indians and Popular Culture. Vol 1: Media, Sports, and Politics*, ed. Elizabeth DeLaney Hoffman (Santa Barbara: Praeger, 2012), 151-163; Victoria E. Sanchez, "Buying into Racism: American Indian Product Icons in the American Marketplace," in *American Indians and the Mass Media*, ed. Meta G. Carstarphen and John P. Sanchez (Norman: University of Oklahoma Press, 2012), 153-169; Caroline Williams, "Complementary or Objectified? How Images of American Indian Women are Used in American Advertising," *The American Mosaic* (Santa Barbara: ABC-CLIO, 2014).

¹⁰⁶ See Michael K. Green, "Images of Native Americans in Advertising: Some Moral Issues," *Journal of Business Ethics* 12, no. 4 (1993): 323-330; David Orozco and Latha Poonamallee, "The Role of Ethics in the Commercialization of Indigenous Knowledge," *Journal of Business Ethics* 119, no. 2 (January 2014): 275-286.

¹⁰⁷ See Moses, *Wild West Shows*; McNenly, *Native Performers in Wild West Shows*.

¹⁰⁸ See *Journal of Sport and Social Issues* 17, no. 1 (1993); Mark R. Connolly, "What's in a Name? A Historical Look at Native American-Related Nicknames and Symbols at Three U.S. Universities," *The Journal of Higher Education* 71, no. 5 (2000): 515-547; C. Richard King and Charles F. Springwood, "Fighting Spirits: The Racial Politics of Sports Mascots," *Journal of Sport and Social Issues* 24, no. 3 (2000): 282-304; C. Richard King and Charles F. Springwood, *Team Spirits: The Native American Mascots Controversy* (Lincoln: University of Nebraska Press, 2001); Jason E. Black, "The 'Mascotting' of Native America: Construction, Commodity, and Assimilation," *American Indian Quarterly* 26, no. 4 (Autumn 2002): 605-622; Cornell D. Pewewardy, "Playing

Indigeneity in tourism includes non-Native marketing practices as well as Native American self-marketing and souvenir production for tourists.¹⁰⁹ Mainly since the 2000s, scholars have investigated Indigenous marketing practices in terms of authenticity and self-determination but also highlighted the deliberate instrumentalization of stereotypes and the situational adaptation of Indigenous identities depending on the target audience.¹¹⁰ Research also revealed the tensions arising with Native permission for mainstream marketing imagery such as sports mascots.¹¹¹ Asking whether Native permission for mascots represented acts of “resistance or complicity within rhetorical colonialism,” Danielle Endres noted that scholarship “has not as often examined conflicts that show the variety of perspectives within American Indian people on an issue” and should attend to “the multivocal characteristics of American Indian discourse.”¹¹² The complex nature of Native self-marketing is part of this study in the context of criticism of Indigenous self-representation in marketing.

Since the early 1990s, law professionals have discussed legal options to challenge offensive marketing representations and cultural appropriation of Native American names and symbols. Tribal law and treaty rights as legal options were first discussed in connection with the Crazy

Indian at Halftime: The Controversy over American Indian Mascots, Logos, and Nicknames in School-Related Events,” *The Clearing House* 77, no. 5 (2004): 180-185; *Journal of Sport and Social Issues* 28, no. 1 (2004); Michael Taylor, *Contesting Constructed Indianness: The Intersection of the Frontier, Masculinity, and Whiteness in Native American Mascot Representations* (Lanham: Lexington Books, 2013).

¹⁰⁹ See Kelley A. Gilpin-Hays, “Commercialization before Capitalists: Hopi Ceramic Production and Trade in the Fourteenth Century,” *Journal of the Southwest* 38, no. 4 (Winter 1996): 395-414; Shelby Tisdale, “Railroads, Tourism, and Native Americans in the Great Southwest,” *Journal of the Southwest* 38, no. 4 (Winter 1996): 433-462; Sarah H. Hill, “Marketing Traditions: Cherokee Basketry and Tourist Economies,” in *Selling the Indian: Commercializing & Appropriating American Indian Cultures*, ed. Carter J. Meyer and Diana Royer (Tucson: University of Arizona Press, 2001), 212-235; Kristal Markowitz, “Cultural Tourism: Exploration or Exploitation of American Indians?” *American Indian Law Review* 26, no. 2 (2001/2002): 233-260; Susan R. Pitchford, “Identity Tourism: A Medium for Native American Stories,” *Tourism Culture & Communication* 6, no. 2 (2006): 85-105; Schwarz, “Native American Barbie”; Joanna D’Silva, Erin O’Gara and Nicole T. Villaluz, “Tobacco industry misappropriation of American Indian culture and traditional tobacco,” *Tobacco Control*, February 19, 2018, accessed April 9, 2021, <https://tobaccocontrol.bmj.com/content/27/e1/e57>.

¹¹⁰ Cf. Theodore Jojola, s.v. “Public Image,” *Native America in the Twentieth Century. An Encyclopedia*, ed. Mary B. Davis (New York: Garland, 1994); Rhonda S. Fair, “Becoming the White Man’s Indian: An Examination of Native American Tribal Web Sites,” *Plains Anthropologist* 45, no. 172 (May 2000): 203-213; Karl Neuenfeldt, “www.nativeamericanmusic.com: Marketing Recordings in an Interconnected World,” *The World of Music* 44, no. 1 (2002), 115-126; John J. Bodinger de Uriarte, “Imagining the Nation with House Odds: Representing American Indian Identity at Mashantucket,” *Ethnohistory* 50, no. 3 (Summer 2003): 549-565; Bill Anthes, “Learning from Foxwoods: Visualizing the Mashantucket Pequot Tribal Nation,” *American Indian Quarterly* 32, no. 2 (Spring 2008): 204-218; Erika Marie Bsumek, *Indian-Made: Navajo Culture in the Marketplace, 1868-1940* (Lawrence: University Press of Kansas, 2008); Lisa K. Neuman, “Indian Play: Students, Wordplay, and Ideologies of Indianness at a School for Native Americans,” *The American Indian Quarterly* 32, no. 2 (Spring 2008): 178-203; Dennis Wiedman, “Global Marketing of Indigenous Culture: Discovering Native America with Lee Tiger and the Florida Miccosukee,” *American Indian Culture and Research Journal* 34, no. 3 (2010): 1-26; Maureen T. Schwarz, *Fighting Colonialism with Hegemonic Culture: Native American Appropriation of Indian Stereotypes* (Albany: State University of New York Press, 2013); Dina Barajas, “Zitkala-Ša and Wendy Rose: Romantic Imagery, Appealing to the Masses,” *The American Mosaic* (Santa Barbara: ABC-CLIO, 2014); Darrel Manitowabi, “Masking Anishinaabe Bimaadiziwin: Uncovering Cultural Representation at Casino Rama,” in *Gambling on Authenticity: Gaming, the Noble Savage, and the Not-So-New Indian*, ed. Becca Gercken and Julie Pelletier (East Lansing: Michigan State University Press, 2018), 135-158.

¹¹¹ Danielle Endres, “American Indian Permission for Mascots: Resistance or Complicity within Rhetorical Colonialism?” *Rhetoric and Public Affairs* 18, no. 4 (Winter 2015): 649-690; Larry R. Gerlach, “Appropriation and Accommodation: The University of Utah and the Utes,” *Utah Historical Quarterly* 85, no. 3 (Summer 2017): 204-223.

¹¹² Endres, “American Indian Permission for Mascots,” 675.

Horse Malt Liquor case when family members sought to bring the case against the producer, the Hornell Brewing Company, to a tribal court¹¹³ and in a more general context.¹¹⁴ Most scholars explored intellectual property laws regulating copyrights and trademarks to challenge Indigenous cultural appropriation.¹¹⁵ Others promoted the Indian Arts and Crafts Act,¹¹⁶ the U.S. Trademark Act, the Federal Trade Commission Act, and the Food, Drug and Cosmetic Act to protect Indigenous intellectual property and consumers.¹¹⁷ Scholars also discussed international laws¹¹⁸ and export regulations¹¹⁹ as a legal basis for protecting intellectual property. Several scholars debated limitations to the application of existing intellectual property law

¹¹³ See Nell J. Newton, "Memory and Misrepresentation: Representing Crazy Horse," *Connecticut Law Review* 27 (1995): 1003-1054; Joseph W. Singer, "Publicity Rights and the Conflict of Laws: Tribal Court Jurisdiction in the Crazy Horse Case," *South Dakota Law Review* 41 (1996): 1-44; Christopher J. Schneider, "Hornell Brewing Co. v. Rosebud Sioux Tribal Court: Denigrating the Spirit of Crazy Horse to Restrain the Scope of Tribal Court Jurisdiction," *South Dakota Law Review* 43 (1998): 486-526; Frank Pommersheim, "The Crazy Horse Malt Liquor Case: From Tradition to Modernity and Halfway Back," *South Dakota Law Review* 57 (2012): 42-66.

¹¹⁴ See Angela R. Riley, "'Straight Stealing': Towards an Indigenous System of Cultural Property Protection," *Washington Law Review* 80 (2005): 69-164; Angela R. Riley and Kristen A. Carpenter, "Owning Red: A Theory of Indian (Cultural) Appropriation," *Texas Law Review* 94 (2016): 859-931; Jason Zenor, "Tribal (De) Termination? Commercial Speech, Native American Imagery and Cultural Sovereignty," *Southwestern Law Review* 48 (2019): 81-104.

¹¹⁵ See Christine H. Farley, "Protecting Folklore of Indigenous Peoples: Is Intellectual Property the Answer?" *Connecticut Law Review* 30, no. 1 (Fall 1997): 1-57; Terence Dougherty, "Group Rights to Cultural Survival: Intellectual Property Rights in Native American Cultural Symbols," *Columbia Human Rights Law Review* 29 (1998): 355-400; Alexis A. Lury, "Official Insignia, Culture, and Native Americans: An Analysis of Whether Current United States Trademark Law Should Be Changed to Prevent the Registration of Official Tribal Insignia," *Chicago-Kent Journal of Intellectual Property* 1, no. 2 (1999): 137-157; Maury Audet, "Native American Tribal Names as Monikers and Logos: Will these Registrations Withstand Cancellation Under Lanham Act § 2(b) After the Trademark Study on Official Insignia of Native American Tribes?" *Chicago Kent Journal of Intellectual Property* 2 (2000), accessed August 4, 2021, <https://studentorgs.kentlaw.iit.edu/ckjip/wp-content/uploads/sites/4/2013/10/02JIntellProp42001.pdf>; Kristine A. Brown, "Native American Team Names and Mascots: Disparaging and Insensitive Or Just a Part of the Game?" *Sports Lawyers Journal* 9 (2002): 115-130; Suzanne Milchan, "Whose Rights Are These Anyway? A Rethinking of Our Society's Intellectual Property Laws in Order to Better Protect Native American Religious Property," *American Indian Law Review* 28, no. 1 (2003/2004): 157-172; Megan M. Carpenter, "Intellectual Property Law and Indigenous Peoples: Adapting Copyright Law to the Needs of a Global Community," *Yale Human Rights & Development Law Journal* 7 (2004): 51-78; Rachel C. Hughey, "The Impact of Pro-Football, Inc. v. Harjo on Trademark Protection of Other Marks," *Fordham Intellectual Property, Media & Entertainment Law Journal* 14 (2004): 327-367; Jill K. Kelley, "Owning the Sun: Can Native Culture be Protected through current Intellectual Property Law?" *Journal of High Technology Law* 7, no. 2 (2007): 180-202; Susy Frankel, "Trademarks and Traditional Knowledge and Cultural Intellectual Property Rights," *Victoria University of Wellington Legal Research Papers* 1, no. 6 (2011): 1-39; Schüssel, "Copyright Protection's Challenges"; Dinisha L. Fernando, "Intellectual Property and the Protection of Indigenous Culture in the United States and New Zealand: An Effective Solution for Indigenous Communities?" *Cardozo Public Law, Policy, and Ethics Journal* 12 (2013): 149-181; Alexandria Chu, "The Washington Redskins and the Current Standard for Disparaging Trademarks: The Impact of Disparaging Trademarks in the Modern World," *Review of Law and Social Justice* 25, no. 1 (2015): 39-67.

¹¹⁶ See Richard A. Guest, "Intellectual Property Rights and Native American Tribes," *American Indian Law Review* 20, no. 1 (1995/1996): 111-139; Brian Zark, "Use of Native American Tribal Names as Marks," *American Indian Law Journal* 3, no. 2 (Spring 2015): 537-557.

¹¹⁷ See Janet McGowan, "What's in a Name? Can Native Americans Control Outsiders' Use of their Tribal Names?" *Cultural Survival Quarterly*, December 1994, accessed February 2, 2020, <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/whats-name-can-native-americans-control-outsiders-use>.

¹¹⁸ See David J. Stephenson, "The Nexus Between Intellectual Property Piracy, International Law, the Internet, and Cultural Values," *St. Thomas Law Review* 14 (2001): 315-335.

¹¹⁹ See Antonia M. De Meo, "More Effective Protection for Native American Cultural Property Through Regulation of Export," *American Indian Law Review* 19, no. 1 (1994): 1-72.

by the free speech clause of the First Amendment.¹²⁰ The right to publicity¹²¹ and the right to privacy¹²² were legal options scholars considered only rarely.

Many scholars found existing intellectual property laws insufficient to address Indigenous standards and contended lawmakers should change existing laws or create *sui generis* laws to protect Indigenous cultural property better.¹²³ Others and the U.S. Patent and Trademark Office pointed to the potential of trademark law to assist Native Americans in their struggle for intellectual property protection.¹²⁴ While the legal discourse mainly focused on the applicability of laws, few researchers outlined possible unintended side effects of legal cultural property protection.¹²⁵

Some articles explored legal options to fight cultural appropriation and misrepresentation under civil rights law¹²⁶ or suggested applying the Equal Protection Clause of the Fourteenth Amendment¹²⁷ and the common law cause of action, intentional infliction of emotional distress (IIED), as another legal means to eliminate Native mascots.¹²⁸

Based on the government-to-government relationships of tribes with the United States, Robert J. Miller advised treating the protection of Indigenous names and other intellectual property as a political issue rather than a race issue and raising equal protection claims.¹²⁹ As scholar-activist Adrienne Keene put it conversely, “if there is little respect shown to our cultural markers, designs, ideas, or voices, there will be little respect shown to our tribal sovereignty, treaty rights, or tribal governments.”¹³⁰ Moreover, Miller suggested trust responsibility towards tribes and Native peoples might extend to intellectual property issues.¹³¹

¹²⁰ See Jeffrey Lefstin, “Note: Does the First Amendment Bar Cancellation of Redskins?” *Stanford Law Review* 52, no. 3 (February 2000): 665-708; Joseph Hemmer, “Exploitation of American Indian Symbols: A First Amendment Analysis,” *American Indian Quarterly* 32, no. 2 (2008): 121-140.

¹²¹ See Jessica R. Herrera, “Not Even His Name: Is the Denigration of Crazy Horse Custer’s Final Revenge?” *Harvard Civil Rights - Civil Liberties Law Review* 29 (1994): 175-195; Geraud Blanks, “Skin the Game: Providing Redress for American Sports’ Appropriation of Native American Iconography” (PhD diss., University of Wisconsin-Milwaukee, 2016).

¹²² See David Howes, “Cultural Appropriation and Resistance in the American Southwest: Decommodifying ‘Indianness’,” in *Cross-Cultural Consumption: Global Markets, Local Realities*, ed. David Howes (London: Routledge, 1996), 138-160.

¹²³ See Farley, “Protecting Folklore of Indigenous Peoples”; Dougherty, “Group Rights to Cultural Survival”; Lury, “Official Insignia, Culture, and Native Americans”; Carpenter, “Intellectual Property Law and Indigenous Peoples”; Kelley, “Owning the Sun.”

¹²⁴ See Frankel, “Trademarks and Traditional Knowledge and Cultural Intellectual Property Rights.”

¹²⁵ See Stephen D. Osborne, “Special Features. Protecting Tribal Stories: The Perils of Propertization,” *American Indian Law Review* 28, no. 1 (2003/2004): 203-236; Gail Sheffield, *The Arbitrary Indian: The Indian Arts and Crafts Act of 1990* (Norman: University of Oklahoma Press, 1997).

¹²⁶ See Daniel J. Trainor, “Native American Mascots, Schools, and the Title VI Hostile Environment Analysis,” *University of Illinois Law Review* 4 (1995): 971-1001; Lawrence R. Baca, “Native Images in Schools and the Racially Hostile Environment,” *Journal of Sport & Social Issues* 28, no. 1 (2004): 71-78; “Notes: A Public Accommodations Challenge to the Use of Indian Team Names and Mascots in Professional Sports,” *Harvard Law Review* 112, no. 4 (February 1999): 904-921; Scott R. Rosner, “Legal Approaches to the Use of Native American Logos and Symbols in Sports,” *Virginia Sports and Entertainment Law Journal* 1, no. 2 (Spring 2002): 258-273.

¹²⁷ See Jack A. Guggenheim, “The Indians’ Chief Problem: Chief Wahoo as State Sponsored Discrimination and a Disparaging Mark,” *Cleveland State Law Review* 46 (1998): 211-237.

¹²⁸ See Aaron Goldstein, “Intentional Infliction of Emotional Distress: Another Attempt at Eliminating Native American Mascots,” *Journal of Gender, Race and Justice* 3, no. 2 (Spring 2000): 689-714.

¹²⁹ See Robert J. Miller, “American Indian and Tribal Intellectual Property Rights,” *ssrn.com*, March 16, 2002, posted March 23, 2010, accessed March 21, 2021, <https://ssrn.com/abstract=1573090>.

¹³⁰ Adrienne Keene, “Engaging Indigeneity and Avoiding Appropriation: An Interview with Adrienne Keene,” *The English Journal* 106, no. 1 (September 2016): 56.

¹³¹ Miller, “American Indian and Tribal Intellectual Property Rights.”

Elaborating on resistance against the Washington Football Team in the historical-political context of colonialism, Kevin Bruyneel concluded the team enjoyed a “free pass” which “persists to the degree that settler-colonialism remains invisible in this political debate.”¹³² As long as “these efforts to raise and engage Indigenous political issues remain within the logic and narrative of racial liberalism in a post-civil rights era paradigm that defines the mascot issue as a matter of offensiveness, exclusion, and discrimination rather than an anticolonial focus on appropriation, dispossession, and violence, they are more likely to reproduce, even if unintentionally, settler memory as a practice that sustains liberal colonialism.”¹³³

While not counting academic work as protest cases, the study still views this literature as a substantial element of activism against marketing appropriation and misrepresentation because many articles ultimately aim to support critics in some way. For instance, C. Richard King’s handbook on the Native American Mascot Controversy provides discussions of Indigenous marketing representations in the sports industry, resistance against these practices, civil rights institutions’ statements as primary resources, and calls to action such as Suzan Shown Harjo’s “Note to Congress” demanding that the government should “Stop Shielding ‘Indian’ Mascots and Start Defending Indian People.”¹³⁴ Therefore, this study weaves discussions of legal options to challenge marketing practices into the history of marketing resistance as part of this history.

Scholars have mentioned examples of protest against Native American misrepresentation and appropriation in marketing occasionally,¹³⁵ but only a few case histories and analyses exist. A case description published at the Case Western Reserve University details the history of protests against the Hornell Brewing Company’s Crazy Horse Malt Liquor from its introduction to the market in 1992 to the producer’s apology in 2001.¹³⁶ In “Confronting Racism: Treaty Beer Comes to Washington State,” Michelle Aguilar-Wells and Barbara Leigh Smith told the “story of disputes and organizing efforts over Indian treaty rights in Wisconsin and Washington state and an attempt to sell a beer in Washington State in the late 1980’s [sic] that came to be labeled as ‘hate in a can’.”¹³⁷ In “The Case of the Zia: Looking Beyond Trademark Law to Protect Sacred Symbols,” Stephanie B. Turner outlined the Zia tribe’s two-decade-long fight to reclaim its sacred symbol, the Zia sun. Analyzing possible solutions within current trade-

¹³² Kevin Bruyneel, “Race, Colonialism, and the Politics of Indian Sports Names and Mascots: The Washington Football Team Case,” *Native American and Indigenous Studies* 3, no. 2 (2016): 21.

¹³³ *Ibid.*, 21.

¹³⁴ Suzan Shown Harjo, “Note to Congress: Stop Shielding ‘Indian’ Mascots and Start Defending Indian People,” in *The Native American Mascot Controversy: A Handbook*, ed. C. Richard King (Lanham: Scarecrow Press, 2010), 179-182.

¹³⁵ Molholt gives several examples such as the protest against Crazy Horse Malt Liquor in New York, or Fry’s Electronics in Tempe, Arizona. Cf. Molholt, “A Buck Well Spent,” 206-211.

¹³⁶ See “Crazy Horse,” Case Western Reserve University, accessed December 30, 2019, <https://case.edu/affil/sce/authorship-spring2004/crazyhorse.html>. The case, however, was not yet settled in 2001.

¹³⁷ Michelle Aguilar-Wells and Barbara L. Smith, “Confronting Racism: Treaty Beer Comes to Washington State,” *The Evergreen State College*, 2010, accessed June 16, 2016, <http://nativecases.evergreen.edu/collection/cases/confronting-racism>. See also “The Anti-Treaty Movement: Guaranteed Treaty Rights Violated up through the 1980s,” Smithsonian Institution, accessed June 16, 2016, http://go.si.edu/site/PageServer?pagename=Telling_The_Story_Form5.html; Zoltan Grossman, “Treaty Rights and Responding to Anti-Indian Activity,” in *Hate and Bias Crime. A Reader*, ed. Barbara Perry (New York: Routledge, 2008), 203-209.

mark law, Turner concluded that “for the Zia, non-legal measures have been more effective than legal ones. The case of the Zia thus suggests that indigenous groups should look beyond trademark law in the fight to protect their sacred symbols.”¹³⁸

Jackson B. Miller’s evaluation of protest strategies against sports mascots revealed that, as of 1999, protests have raised awareness but “not generated significant changes in attitudes and practices” for two reasons. First, discussions were limited to sports-related forums where “sentiments are overwhelmingly opposed to any reforms.” Second, “protesters have lumped fans, owners, and players together” although these groups had separate interests in preserving marketing imagery. Protesters had to convince marketers by demonstrating “that using Indian names and logos could ultimately hurt the organization economically” and, to create this adverse economic impact, fans by showing “that the pretend can do harm to the real.”¹³⁹ Rachel C. Hughey summarized in her 2004 analysis of “The Impact of Pro-Football, Inc. v. Harjo on Trademark Protection of Other Marks” that Native American “advocates have staged protests surrounding major sporting events and spoken out in the media. While these protests also have been successful in changing some school mascots and team names, they have had little effect on changing professional team names.”¹⁴⁰ As this study shows, since then, public support for advocates of fair representation has grown and these marketing practices eventually became financially risky, ultimately moving even professional sports teams to change their brands.

In “Native Americans and Marketing: A Paradoxical Relationship,” Stephanie L. Brooks and Cara Peters investigated the paradox of persisting Native stereotypes in marketing. Although “Exposure to Native American stereotypes in advertising is commonplace, . . . given the growing number of Native American-owned businesses and the perennial consumer interest in tribal motifs, an opportunity exists for a unified Native voice to influence how their culture, imagery, and symbols are portrayed by marketers and in popular culture.”¹⁴¹ Discussing retailers’ use of tribal names and symbols and misappropriation of Native culture in the music, festival, and sports industries, the article asks when the use of Native American cultural symbols is appropriate and why “some tribes approve the use of their likenesses for some nontribal marketing purposes.”¹⁴²

Brooks and Peters argued the paradox of persistent marketing stereotypes “exists because of the enduring nature of tribal governments, which historically are responsible for all aspects of economic development and social welfare for tribal members within tribal territory.” Many tribal governments’ competition for economic resources and capital made it “challenging to partner in broader cultural preservation and education initiatives.” For hundreds of tribes to “coordinate efforts and speak with a unified voice against the misappropriation of their culture” and for “a social movement to take shape, organizations like the NCAI need to

¹³⁸ Stephanie B. Turner, “The Case of the Zia: Looking Beyond Trademark Law to Protect Sacred Symbols,” *Chicago Kent Journal of Intellectual Property* 11, no. 2 (2012): 116.

¹³⁹ Jackson B. Miller, “‘Indians,’ ‘Braves,’ and ‘Redskins’: A Performative Struggle for Control of an Image,” *Quarterly Journal of Speech* 85 (1999): 199-200. See also Laurel Davis, “Protest Against the Use of Native American Mascots: A Challenge to Traditional American Identity,” *Journal of Sport and Social Issues* 17, no. 1 (1993): 9-22.

¹⁴⁰ Hughey, “The Impact of Pro-Football, Inc. v. Harjo,” 335-336.

¹⁴¹ Stephanie L. Brooks and Cara Peters, “Native Americans and Marketing: A Paradoxical Relationship,” in *American Indian Business: Principles and Practices*, ed. Deanna M. Kennedy et al. (Seattle: University of Washington Press, 2017), 201.

¹⁴² *Ibid.*, 204.

mobilize resources, including material (financial and physical capital); moral (unified support for goals); social-organizational (organizing goals and social networks); human (volunteers, leaders); and cultural (prior activist experience, understanding of the issues, collective action).”¹⁴³ Despite the existence of organizations such as the NCAI and Women of All Red Nations (WARN), Brooks and Peters see a “void because of the inability to mobilize across all tribes and the lack of many resources necessary to create a sustained social movement,” ranging from “telecommunications and wireless access to financial capital and the rural nature of many tribal reservations.”¹⁴⁴ This study confirms these findings, with resource availability changing over time and varying among protesters, but emphasizes the successes of resistance against Indian-inspired marketing practices despite the more decentralized nature of resistance.

Not only do Indian-inspired advertising practices have a long tradition in the United States, but so do protests against them. The study treats the fight against these marketing practices as a pan-Indian issue and collects, combines, and contextualizes the vast range of stories of marketing resistance into a trans-local history of resistance since the 1930s. The long-term approach distinguishes this study from others focusing on specific cases such as the Crazy Horse Malt Liquor or Treaty Beer cases, or single tribe’s efforts like the Zia’s fight to reclaim the Zia sun, but also from research on specific product categories such as sports marketing. Therefore, the study also fills a research gap by shifting the focus away from the well-documented mascot controversy to other product categories without excluding the issue of sports marketing. As a multi-perspective protest analysis, it includes protesters and protest targets, the media, and other stakeholders. The examination of advertisers’ crisis management strategies represents a novelty in the research of Indigenous protest against marketing practices. The study also includes the still under-researched issue of criticism of Native American advertising practices to do justice to the complexity of Indigenous marketing representations and the diversity of Indigenous opinions. Among other things, protest results were analyzed here for the first time based on a broad database created through extensive source research. The genuinely interdisciplinary study contributes to various fields besides history and protest studies, such as cultural studies, gender studies, legal studies, and marketing and corporate communications. This foundational work provides a big picture of protests against Indian-inspired marketing practices and offers numerous starting points for further research questions.

While the author believes that historical research aims to illuminate the past to promote a critical understanding of the present, this study has no agenda beyond that. It does not provide guidelines for protesters or advertisers on how to stage or deal with protests. It will discuss the results of protest actions and the reception of marketers’ crisis management strategies. However, due to the complex and changing nature of representational issues, readers seeking recommendations must draw their own conclusions from the historical description of marketing protests and apply them to their situation.

¹⁴³ Ibid., 209.

¹⁴⁴ Ibid., 210.

Part I outlines protesters' historical fight against misleading, inappropriate, or offensive marketing practices based on 587 cases of marketing protest. The study establishes misrepresentation (49.7 percent), fraud (38.2 percent), and appropriation (21.0 percent) as the three major protest causes. In 489 of the 587 protest cases, protesters directly addressed advertisers or stakeholders involved in the marketing process. In 98 cases of general protest, critics intended to raise awareness of marketing practices they found inappropriate and educate the public.

Reasons for protest varied regionally depending on Natives' main concerns, such as securing income through the sale of arts and crafts or changing popular conceptions of Native Americans to counter restricting myths and raise awareness of the real-life consequences of stereotyping for many Natives. Overall, critics wanted to change the way marketers used Native names or symbols and represented Native peoples. They argued Native Americans should be represented in a more accurate and ethically acceptable way; Native cultural elements should not be used without permission and not in a culturally inappropriate way according to Indigenous norms; and marketers claiming Indian heritage should have not only some blood quantum but also connections to the Indigenous community and understanding for Indigenous issues, which should translate into appropriate marketing practices. Protesters aimed to induce immediate changes in marketing practices but hoped for long-term change so that marketers would develop advertising practices on their own that could withstand Indigenous norms. They understood Indigenous norms to be part of a set of general ethical norms that pertained to all of U.S. society because of the multiculturalism and basic respect for Indigenous peoples and human rights.

Since at least the 1930s, Native Americans have regularly criticized the unauthorized use of Indigenous designs, symbols, and names because the marketing implied the product was Indian-made. Native producers and sellers viewed this marketing technique as unfair competition that deprived them of their income and was prohibited by the Indian Arts and Crafts Act of 1935 (IACA). Although Native Americans were very supportive of the law in principle, it also brought some adverse side effects that provoked resistance. Early definitions of 'Indian-made' as 'handmade' hampered the development of new production methods and reduced the competitiveness of Indian-produced goods. Although the IACB convinced many marketers to drop their advertising voluntarily, it remained largely ineffective throughout the 20th century due to its lack of funding and authority to enforce the Act. After the Indigenous arts-and-crafts seller Native American Arts started successfully applying the IACA in court in 1998, the IACB, in cooperation with other federal agencies, also became increasingly successful in obtaining convictions based on the Act and other state and federal laws. With the increasing enforcement of the Indian Arts and Crafts Act in the 20th and 21st centuries, the need to legally define Indigeneity exacerbated the problems resulting from such definitions, the presentation of evidence, and their consequences.

Since the civil rights movement of the 1960s and again following the Quincentennial in the 1990s, misrepresentation and cultural appropriation issues extended the discourse of Indian identity and questions of power and self-determination. Inspired by other minorities' successes during the civil rights movement in the 1960s, activists increasingly raised ethical arguments to question stereotypical or negative representations of Native Americans. Focusing on the media's role in shaping Native identities, the NCAI and the Association on American Indian Affairs (AAIA) started protesting advertising and other media representations through news media to effect change. These protests took on campaign-like forms and result-

ed in concentrated media attention. Since the 1980s, economic progress allowed Native Americans to focus more on issues of identity and representation. With the advent of digitization and the growth of the Internet as a medium to communicate dissent, the number of protests, or the visibility of protests, grew significantly, and protests increasingly addressed marketing practices in e-commerce. As the general awareness of intellectual property and the frustration with the seemingly powerless government as a guardian of Indigenous intellectual property grew, tribes started legally protecting their tribal names in the 2000s. Protesters made use of the cyclical popularity of Indigeneity and other minorities' struggles for social justice, which altogether led to a changing awareness and resulted in a growing number of government regulations and an adjustment in corporate marketing strategies. Although the consequences of protests against non-American marketers have been limited so far on the international level, occasional protests in Great Britain, France, Australia, and New Zealand suggest that globalization requires a consensus of minimum ethical standards regarding Indigenous representations, particularly for companies that operate internationally.

Since the early 1990s, activists discussed marketing practices as a result and driver of colonization that both Natives and Non-Natives had to overcome. Facing both racist and sexist attitudes toward Native Americans and women, Indigenous women in particular suffered from the U.S. colonial legacy. Claiming 'White female hegemony,' Indigenous feminists held White women partially accountable for the sexualization of Indigenous women, which divided Native and White feminists. Meanwhile, opinions were divided over whether Native women who played roles of the 'sexy princess' were victims of a 'colonized mind' or exercising their right to use their femininity. However, this question was not limited to Native American women but arose whenever a Native American was 'playing Indian' according to mainstream ideas.

Native Americans not only used media and advertising as a weapon to combat mainstream misrepresentations but also produced their own marketing imagery, thereby providing counter-narratives as a tool of decolonization and diversifying the pool of Indigenous marketing representations. Advertising as a source of learning was a powerful tool of cultural reproduction but also of renegotiation and, thus, in the (re-) writing of history. While media misrepresentation and the appropriation of Indigenous culture functioned as colonizing tools for the dominant society, media and advertising were also tools of decolonization which opened arenas for Native peoples to practice intellectual and cultural sovereignty, redefine identities, and tell their own stories. In this process, Native advertisers themselves became targets of protest against stereotypical or inappropriate marketing strategies. Given the diversity of Indigenous peoples and the differences in their opinions regarding the use of cultural symbols, Native advertisers still had to establish norms for appropriate uses and representations of Indigenous peoples and cultures for marketing purposes.

Despite criticism of Indigenous advertisers themselves and although mainstream misrepresentations continue to exist, pressure or willingness to accommodate Native perceptions of appropriateness might increase due to a growing Indigenous population and changing societal attitudes toward the treatment of Native peoples and cultures. The statistical growth of the Native population was partially the result of more sensitive and targeted government marketing efforts that sought to encourage Native Americans to identify as Native and answer the census questionnaire. Starting with the 1990 Census, such efforts became increasingly successful with hiring Indigenous organizations and marketing agencies to create the marketing

posters for the U.S. Census campaigns. The Census report became a primary source for data-driven marketing, along with other sources documenting the population and economic strength of Native Americans. Using that data, advertisers ‘discovered’ Native Americans as consumers and started targeting them with marketing representations that addressed a diverse Native American audience in ways that were better aligned with Native preferences.

In Part II, the study analyses protest strategies, marketers’ reactions, and protest results on a quantitative level. Besides individual protesters, Indigenous organizations, businesses, tribes, and other interest groups actively protested against marketing practices they found inappropriate to protect their rights and assets, sometimes with the support of federal agencies. Representing two-thirds (67.6 percent) of all cases, Non-Natives were the main protest targets. Native American marketers (1.7 percent) and marketers whose Indigeneity was doubted (1.5 percent) were also targets of protest.¹⁴⁵ Products from the arts and crafts industry provoked the most protests (38.0 percent of all cases), predominantly against misleading marketing practices that evoked the impression an object was Indian-made. Protests against the appropriation and misrepresentation of Indigeneity in the fashion industry amounted to 8.2 percent of all cases and an additional 2.7 percent for costumes. In addition, marketing materials in the food (6.0 percent), hobby items, toys, or collectibles (6.0 percent), and alcohol (4.3 percent) product categories sparked protests most frequently.

Through effective framing, protesters promoted understanding of the basic issues and anchored their concerns in the American public as consumers through awareness raising and education with the help of mainstream and new media. Depending on the individual circumstances of each case, protesters successfully convinced advertisers directly to drop their marketing practices or exerted pressure through calls for boycott and publicity seeking actions like demonstrations. Allies like human rights or religious organizations, government divisions, or sponsors supported protests and occasionally intervened as mediators.

The study demonstrates that, through adamant protest, protesters achieved notable successes and contributed to a change in attitudes that became increasingly evident in advertising. In the short term and despite predominantly undesirable first reactions, at least 28.1 percent of the cases ended with desirable results for protesters, whereas 17.2 percent ended with an undesirable result for them. With a success rate of 28.1 percent across the study, significant differences emerge depending on the protest category. Protests against misrepresentation (success rate: 29.5 percent) and fraud (32.1 percent) were significantly more successful than protests against appropriation (12.7 percent). The reasons are the controversial applicability of existing intellectual property laws to Indigenous concerns and the almost unmanageable resource requirements for plaintiffs. Critics of appropriation face massive resistance to date, as the expected profit often exceeds the potential damage from a crisis.

Many marketers dropped or adapted their marketing practices due to the protest. In the long run, the constant criticism of and education about offensive advertising and its adverse effects helped make such practices less acceptable in U.S. society and, consequently, ethically and financially risky. The continued use of Native-inspired themes for marketing purposes despite the growing general public’s awareness that many Native Americans consider this offensive affirms the economic value of Indigenous imagery, symbols, and names. Simultaneously, the efforts many companies undertook to ensure their advertising was not offensive

¹⁴⁵ The ethnicity of 29.1 percent of the targets was unknown.

and received Native approval and the increasingly broad and diverse range of frames to defend and legitimize their marketing practices testify to a growing need for justifying such practices. The need for justification intensified as public awareness of social justice issues increasingly shaped consumers' attitudes and perceptions of marketing strategies and a company's values and conduct. When the Black Lives Matter movement and racial unrest across the U.S. led to a cultural shift that forced companies to rethink their brands and marketing practices, the constant, decades-long criticism of Native American marketing representations and cultural appropriation finally took hold on a broader societal level. Pressured by investors and shareholders, even brands like the Washington Football Team, which had determinedly resisted change despite 48 years of constant protest, dropped its name and imagery as consumers started considering marketing representations in their historical context as relics of America's colonial past rather than as objects of opinions.

Part I: History of Resistance Against Native American Marketing Representations

Since the European invasion of the Americas, non-Native people have used fictional representations of Indigenous people for personal gains. From travel journals, novels, Wild West and medicine shows to movies and advertisements, creators of popular culture have invented and circulated ideas about Indigeneity that continue to shape dominant imaginaries about Native life and culture. Upon the inception of national advertising in the late 19th century United States, advertisers have used familiar representations to sell a wide range of goods and services.

Atchison, Topeka and Santa Fe Railway Advertising Manager William Simpson's request of a commissioned work to artist Ernest Blumenschein on June 8th, 1911, testifies to the awareness of the marketing value of Indian subjects: "If you go out to Taos this summer will be glad to buy painting of you. . . . Prefer an Indian subject with Taos Pueblo in background, if such a thing is feasible. Such a picture would have an advertising value apart from its art quality."¹⁴⁶ In her 1940 compilation of advertising materials like bookplate designs and trade cards entitled *The Indian does not vanish in American advertising*, Bella C. Landauer noted the "vast Indian influence" in American vocabulary which became apparent in contemporary naming and marketing practices. "Whether we stay at the Algonquin or Iroquois Hotels, at the Navarro or Mohican Apartments, go through the Housatonic tunnel, drive in a Pontiac car, sail on the Huron or Winnebago Lakes, . . . eat an Eskimo pie in Detroit or Chicago, we are continually employing either pure Indian names or Indian names transmitted through the early French settlers."¹⁴⁷

To this day, hundreds of companies court their products, services, and events with a touch of Indigeneity to connect them with associations such as naturalness, wisdom, mysticism, or nostalgia. For some critics, the construct of Indian identity for marketing purposes was so arbitrary and its commercial use in U.S. society so dominant that they associated the term Indian with products rather than with Indigenous peoples. As Ojibway Lenore Keeshig-Tobias remarked in 1990, "How I loathe the term 'Indian.' [...] 'Indian' is used to sell things-souvenirs, cigars, cigarettes, gasoline, cars. [...] 'Indian' is a figment of the white man's imagination."¹⁴⁸ Journalist David Segal commented on the frequent use of clichés for marketing purposes that the "Nasty stereotypes have helped move the merchandise for more than a century, . . . and the history of their use and abuse offers a weird and telling glimpse of race relations in this country."¹⁴⁹ Likewise, activism against marketing practices based on Indigeneity, which aimed to change race relations in U.S. society, is part of this history and expression of a larger struggle for sovereignty and self-determination.

¹⁴⁶ William Simpson, quoted in Schwarz, "The Santa Fe Railway," 37.

¹⁴⁷ Bella C. Landauer, *The Indian does not vanish in American advertising* (New York [?] 1940), 1, <https://lccn.loc.gov/41015805>.

¹⁴⁸ Lenore Keeshig-Tobias, Ojibway, 1990, quoted in Ronald Wright, *Stolen Continents: The Americas Through Indian Eyes Since 1492* (Boston: Houghton Mifflin, 1992), ix.

¹⁴⁹ David Segal, quoted in Dan Mitchell, "The Pangs of Two Becoming One," *The New York Times*, April 28, 2007, C5.

The analysis of marketing protest reveals three protest categories based on the concerns protesters identified as causes for action: fraud, appropriation, and misrepresentation. In many cases, critics simultaneously addressed multiple issues, with appropriation and representation being the most frequent combination of allegations. Usually, critics focused on one dominant reasoning or a combination of two but, in a few instances, brought up a range of accusations against a marketing strategy. The study treats the three protest reasons as separate categories, although they overlap in some points, as the description of the categories shows.

Fraud

The category of fraud follows but is not limited to the IACB's determination of what constitutes a violation of the Indian Arts and Crafts Act because protesters, despite criticism, increasingly applied the legal classification. The Indian Arts and Crafts Act (IACA)

is a truth-in-advertising law that prohibits misrepresentation in the marketing of Indian arts and crafts products within the United States. It is illegal to offer or display for sale, or sell any art or craft product in a manner that falsely suggests it is Indian produced, an Indian product, or the product of a particular Indian or Indian tribe or Indian arts and crafts organization, resident within the United States.¹⁵⁰

The law covers arts and crafts produced after 1935, such as jewelry, pottery, baskets, carved stone fetishes, woven rugs, kachina dolls, and clothing, which were among the most frequently copied products. Notably, the study also includes protests as cases of fraud that the IACA does not legally cover. Critics have questioned the definition of 'Indian-made' as 'handmade' and the limitation of products to the arts and crafts category, which should be expanded. Furthermore, artists complained about products advertised as 'Indian style,' which was technically legal, because consumers would not recognize the difference between authentic Indian-made and Indian-style arts and crafts.

Deciding whether a marketer violated the IACA meant deciding whether a product was Indian-made, which meant a court had to determine the artist's ethnicity. While the IACA was designed to support Indigenous crafts peoples, the legal definition of an Indian person "as a member of any federally or officially State recognized tribe of the United States, or an individual certified as an Indian artisan by an Indian tribe"¹⁵¹ potentially harmed Native artists who could not prove their heritage in compliance with the law. Due to this unfavorable effect, the IACA's definition of Indigenous identity has proven to be highly controversial, given the historical practice of tribal recognition and the ethnic diversity of Indigenous peoples. Among activists, there was some consensus that the underlying legal definitions of who was Indian reflected the U.S. colonial legacy rather than reality.

As much as the IACA was to protect Indigenous crafts peoples and consumers, protesters sought to protect artists' incomes but also the cultural practices and expressions connected with the crafts. Complaints often came from Indigenous artists and consumers who felt betrayed after their purchase. Fraud was one primary reason for protest because fraudulent

¹⁵⁰ U.S. Department of the Interior, Indian Arts and Crafts Board, "The Indian Arts and Crafts Act of 1990," accessed July 22, 2019, <https://www.doi.gov/iacb/act>.

¹⁵¹ Ibid.

labeling affected Indian individuals and communities significantly on an economic and cultural level. The sale of imitation products not only harmed the Indian arts and crafts market by alienating potential customers but diverted revenues away from artists and tribes who relied on this market for their income.¹⁵² A more far-reaching impact of imitations was the depreciation of the label ‘Indian-made,’ which worked like a brand and depended on consumers’ trust to be effective.¹⁵³ A purchaser’s discovery that a seller misrepresented the product’s origin “may cause them to question the authenticity of genuine goods, further damaging the Indian arts and crafts market at large.” Consequently, economic losses may result in a cultural loss as “the traditional knowledge of how to create these goods – often passed down from generation to generation within the tribes – will not be carried forward by younger generations if they cannot make a living producing these goods.”¹⁵⁴ Looking at the high demand for Indian-made products, a 2015 *Law 360* article concluded, as “Native Americans continue to expand their presence in the marketplace, the need to protect tribal identity, affiliation and brand is becoming an issue of increasing importance.”¹⁵⁵

Cultural Appropriation

“Cultural property” usually means “prehistorical and historical objects that significantly represent a group’s cultural heritage”¹⁵⁶ regardless of its status as a cultural, racial-ethnic, or political entity. According to U.S. law, appropriation falls under the category of invasion of privacy and “occurs when a defendant uses a plaintiff’s name, likeness, or image without his or her permission for commercial purposes.”¹⁵⁷ The definition explicitly excludes the use of names and likenesses for newsworthy purposes. Protesters extended appropriation to the con-

¹⁵² “The actual size of the Indian arts and crafts market, and extent of misrepresentation that is occurring, are unknown, because existing estimates are outdated, limited in scope, or anecdotal and no national sources contain the data necessary to make reliable estimates.” A study conducted by the Department of Commerce in 1985 estimated annual sales of \$400 to \$800 million and a misrepresentation share of 10 to 20 percent, but those “estimates were based on ‘guesses’ from industry experts, not data collected from a survey or other systematic data collection technique.” More recent studies such as the Interior’s 2005 Inspector General report rely on that data which they adjusted for inflation.

U.S. Government Accountability Office, “Indian Arts and Crafts: Size of Market and Extent of Misrepresentation Are Unknown,” GAO-11-432, Washington, DC, April 2011, 9-10, accessed December 29, 2019, <https://www.gao.gov/assets/gao-11-432.pdf>. See also U.S. Department of Commerce, International Trade Administration, “Study of Problems and Possible Remedies Concerning Imported Native American-Style Jewelry and Handicraft,” Washington, DC, 1985; U.S. Department of the Interior, Office of Inspector General, “Indian Arts and Crafts: A case of misrepresentation,” E-EV-OSS-0003-2005, Washington, DC, June 1, 2005, accessed December 29, 2019, <https://www.doioig.gov/sites/doioig.gov/files/2005-G-0015.pdf>.

¹⁵³ Cf. *In the Matter of Maisel Trading Post, Inc.*, Docket No. 2037, 2 (Finding as to the Facts and Conclusions, August 21, 1933); Violations of Section 6 – Maisel’s Trading Post, Albuquerque, N.M., Case Closed; General Correspondence, 1976 - , Misrepresentation Violations (Closed Cases); Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980; Records of the Indian Arts and Crafts Board, Record Group 435; National Archives Building, Washington, DC. Hereafter cited as *In the Matter of Maisel Trading Post, Inc.*, Docket No. 2037, 2 (Finding as to the Facts and Conclusions, August 21, 1933); Viol. Sect. 6 – Maisel’s Trading Post; Gen. Corresp., 1976 - ; Corresp. Re Misrep., 1932-1980; RG 435; NAB.

¹⁵⁴ U.S. Government Accountability Office, “Indian Arts and Crafts,” 1.

¹⁵⁵ Brendan Johnson and Seth Nielsen, “The Indian Arts And Crafts Act – A Powerful Tool,” *Law360*, June 30, 2015, accessed September 11, 2016, <http://www.law360.com/articles/673518/the-indian-arts-and-crafts-act-a-powerful-tool>.

¹⁵⁶ James D. Nason, “Traditional Property and Modern Laws: The Need for Native American Community Intellectual Rights Legislation,” *Stanford Law & Policy Review* 12, no. 2 (2001): 255.

¹⁵⁷ Legal Information Institute, s.v. “Appropriation,” accessed May 29, 2020, <https://www.law.cornell.edu/wex/appropriation>.

cept of cultural appropriation, which was more suitable for Indigenous values and assigned ownership of cultural names, symbols, and designs to heirs and cultural communities.

As an online protest poster urging the public to “Say No to Cultural Appropriation” explained, appropriation is “the taking of intellectual property, knowledge, and cultural expressions from someone else’s culture without permission.”¹⁵⁸ Examples of cultural appropriation cited in the poster include wearing hipster headdresses, Halloween or Thanksgiving costumes, Native-inspired dresses at designer shows, and celebrities playing (sexy) Indian. From an economic point of view, appropriation means taking over parts of another culture for capital growth, which is “usually done willfully and purposely without accurate information, understanding, consultation and consent with the families or tribes.” Furthermore, Bob Gough, attorney for the Crazy Horse Estate, pointed out that the appropriation of Indigenous culture was “a major issue with many American Indian leaders today because of corporate America’s attitude about taking, using and marketing Indian names.”¹⁵⁹ Scholars and activists like Laurie Whitt and Adrienne Keene viewed appropriation as a subtle, socially accepted form of colonialism equivalent to the historical dispossession of Indigenous land.¹⁶⁰

The 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property defined cultural property as “property which, on religious or secular grounds, is specifically designated by each State as being of importance for archeology, prehistory, history, literature, art or science.”¹⁶¹ This definition includes intellectual property as represented in U.S. patent, copyright, and trademark law. Although law professionals commonly framed cultural appropriation as an intellectual property issue, advocates of fair use and representation of cultural elements sought to protect not only economic interests but also Indigenous identities. These issues were closely linked since a “people’s identity as a sovereign group can be represented by tangible cultural property, and demoralized or destroyed by its removal.” It is equally “vital to recognize the comparable role of intangible cultural property, which lacks important legal protections.”¹⁶²

Appropriation is only partially a legal category because the Anglo-American legal system does not protect collective property such as tribal designs but only individual property. Since tribes increasingly started trademarking their tribal names and seals, appropriating such elements violates intellectual property rights and, thus, represents a legal offense. The taking of collective property, such as cultural designs that members passed down within tribal cultures throughout generations, represents a legally not covered appropriation of Indigenous culture. When individual artists produced and copyrighted work based on such cultural elements, these pieces or elements became their intellectual property and were legally protected. As the individual’s heritage was irrelevant in that process, ownership of and control over Indigenous culture could become a matter of timing, that is, who would copyright Indigenous culture first.

¹⁵⁸ The Kahnawake Youth Forum, “Say No to Cultural Appropriation,” online protest image, posted May 2015, accessed May 8, 2017, <http://shsrattler.com/wp-content/uploads/2015/05/STOP-TRYING-TO-BE-OTHER-CULTURES.jpg>.

¹⁵⁹ Bob Gough, attorney for Crazy Horse Estate, quoted in “ICCR Shareholders and British Petroleum To Meet With Rosebud Sioux Tribal Leaders,” *PR Newswire*, June 26, 2002, 1.

¹⁶⁰ Cf. Whitt, “Cultural Imperialism,” 19.

¹⁶¹ United Nations, “Conserving Heritage: Cultural and Intellectual Property Rights,” *UN Chronicle* 30 (June 1993): 50.

¹⁶² Nason, “Traditional Property and Modern Laws,” 255.

Protesters sought legislative and non-legislative ways to maintain control over their designs, names, or symbols and prevent companies from taking Indigenous cultural elements. While protesters used the remedies defined by the U.S. judicial system for legally covered cases of appropriation, a strategy for non-legal cases was raising awareness of the implications cultural appropriation had on Native peoples, thereby moving consumers to avoid concerned products. For Gary Brouse, Program Director for the Interfaith Center on Corporate Responsibility (ICCR), the struggle against cultural appropriation extended to issues and goals beyond changing marketing practices. He saw the ICCR's protest against the clothing company Liz Claiborne, who used Crazy Horse's name without consent, "as part of the larger movement to erase corporate ignorance about American Indian issues."¹⁶³ As Brouse argued, the ICCR's "initiative to end corporate use of the Crazy Horse name [was] deeply related to ... our overall efforts to achieve equal employment opportunities for American Indians in the workplace."¹⁶⁴ Similar to misrepresentations of Native American peoples and cultures, the practice of cultural appropriation reflected U.S. colonial legacy. As Brouse implied, changing the practice of cultural appropriation was both part of and a driving force behind a larger struggle to enhance Native Americans' socio-economic lives.

Playing Indian was a form of cultural appropriation motivated by economic and personal interests. Celebrities dressed up as Indian warriors and sexy princesses for publicity when Indigeneity gained popularity. Since publicity brought financial opportunities, playing Indian was partially an economically motivated practice for celebrities. Usually, Thanksgiving or Halloween were the events that inspired people to dress up as Indians – celebrities and people of no public interest alike. For private peoples, playing Indian was a learned cultural practice that had no financial impetus but represented a social tradition. As early as in elementary school, children role-play Thanksgiving by dressing up as Pilgrims and Indians, which ingrains in them a celebratory relationship between Native Americans and English colonizers, as well as a stereotypical image of Native America.

In almost all cases, criticism of playing Indian addressed the appropriation and the misrepresentation of Indigenous culture. In criticism of the TV show "Germany's Next Topmodel" (2014), Ruth Hopkins commented on the flood of fashion appropriations: "Appropriators, I don't care how cute you look in a headdress. You aren't Native. You have no right to wear a warbonnet because you have not earned it."¹⁶⁵ From ethnicity to gender and social norms, protesters raised multiple reasons why taking Native cultural elements and dressing up in Indian style was offensive. The taking as an act of appropriation was one offense, but the false representation of Indigenous culture and traditional symbols constituted another act of violence.

Another form of appropriation beyond playing Indian is the appropriation of Indian identity or heritage by so-called pseudo-Indians. Occasionally, people felt connected with Indigenous culture for personal reasons and created an Indigenous self that embodied the ideals this person associated with Indigeneity. Particularly during times of heightened interest in

¹⁶³ Mark Thomsen, "Liz Claiborne and J.C. Penney Criticized for Use of Crazy Horse Name," *Social Funds*, December 12, 2000, accessed July 1, 2016, <http://socialfunds.com/news/print.cgi?sfArticleId=449>.

¹⁶⁴ Gary Brouse, Program Director, ICCR, quoted in Thomsen, "Liz Claiborne and J.C. Penney Criticized for Use of Crazy Horse Name."

¹⁶⁵ Ruth Hopkins, "@HeidiKlum's Redface Photo Shoot," *bknation*, April 8, 2014, accessed August 24, 2016, <http://bknation.org/2014/04/heidi-klums-redface-photo-shoot/>.

Native Americans, Non-Natives claimed Indian heritage to gain marketable value that set them apart from the mainstream to push sales or promote issues. People also claimed Indian heritage to qualify for public assistance or gain admission to restricted university programs. If Native identity “were to be considered intellectual property, it would most probably be analogous to that which is called ‘publicity rights’ rather than to the more familiar areas of trademark, copyright, and patents.”¹⁶⁶

In “Wearing Native America,” Andrea Holm explained the difference between cultural exchange and cultural appropriation. European colonists exchanged their European clothing for moccasins, leather pants, and jackets because these were better adapted to the climatic conditions of the Americas. Indigenous clothing had thus been a commodity of trade between Native Americans and Euro-Americans since the 17th century. But Indian designs did not make their way into women’s fashion until the early/mid-20th century, ironically at a time when the Indian Reorganization Act of 1934 forced the assimilation of Natives into the mainstream. Holm sees the difference between exchange and appropriation in Euro-Americans’ cultural insensitivity and ignorance of the consequences. The commodification of Indigenous regalia such as feather bonnets, tattoos, or specific designs creates the impression that these religious symbols were merely interchangeable costumes and have no cultural relevance. This interpretation, Holm argued, might lead to diminished public support for Natives in the legal fight to protect religious rights.¹⁶⁷

In some cases, appropriations were profit-oriented; in other cases, people used Indigeneity to gain attention and spread their message or sought to be more interesting to others. While the Indian Arts and Crafts Act and similar state-level laws provided a legal basis to challenge peoples’ false claims of Indian ancestry to promote their businesses, enforcing those laws proved difficult, as the history of marketing protest shows.

Misrepresentation

“Representation” refers to the process of mentally constructing meaning through language, whether on a textual, musical, or pictorial level. Native Americans speak of Euro-American representations as misrepresentations because, in their view, the construction of meaning is based on erroneous assumptions and associations.¹⁶⁸ Complaints about misrepresentations of Indigeneity criticized the inaccurate, fallacious representation of Native peoples and cultural beliefs in marketing materials. Activists and many ‘civil’ critics noticed marketing representations they disliked, voiced their disapproval, and demanded change. On the verbal level, people criticized descriptions of and references to Native Americans in slogans or marketing descriptions they deemed inappropriate, including names like “PocaHotAss” or Natives speaking pidgin English. Visual elements, like images and logos, however, were objectionable representations of Indigeneity because they often drew on visual Plains Indian clichés.

In the context of misrepresentation, protesters frequently accused marketers of racism or racialized sexism, pointing to the inaccuracy and offensive nature of old stereotypes and the harm they engendered with modern Native Americans. For instance, in protest of T-shirts

¹⁶⁶ Sheffield, *The Arbitrary Indian*, 140.

¹⁶⁷ Cf. Andrea H. Holm, “Wearing Native America,” *The American Mosaic* (Santa Barbara: ABC-CLIO, 2014).

¹⁶⁸ Cf. “Introduction: Native Representations. Media and the Arts,” in *Native American Voices: A Reader*, ed. Susan Lobo, Steve Talbot, and Traci L. Morris (Upper Saddle River: Prentice Hall, 2010), 202.

bearing the imprints “My Indian Name is Falls Down Drunk” or “My Indian Name is Runs with Beer,” Corine Fairbanks of the South California Chapter of the American Indian Movement (AIM) explained why her resistance was so important:

The American Indian Movement has been fighting racism in media and sports for almost 50 years ... [because] it has been documented in psychological journals and in academia that racial stereotypes HURT people. How a child feels about himself / herself determines their future or chances of survival. There are links from these studies to statistics of suicide rates for Native people (which we all know is the highest among everyone) and substance abuse.¹⁶⁹

Others thought it was a “waste of our time to be addressing ‘everyday issues’ such as mascot issues or shirts,” but, as Fairbanks pointed out, there “have been so many bricks taken down from our self-esteem and self-worth as a people and as individuals (historical trauma) – that addressing ‘little everyday issues’ becomes a necessary act towards stepping forward and helping our communities heal.”¹⁷⁰ On the meta-level, activists deemed (marketing) images “representative of deeper issues like colonialism,” as Adrienne Keene argued at the 2014 Indigenous New Media Symposium. Activists did “not really discuss baking powder but [took] it as a starting point to reflect on power relations” and sought to create “challenges to deeper issues of white privilege, colonialism, and power.”¹⁷¹ As the history of marketing protest shows, protesters saw textual and visual marketing representations as expressions and driving forces of racism and colonialism.

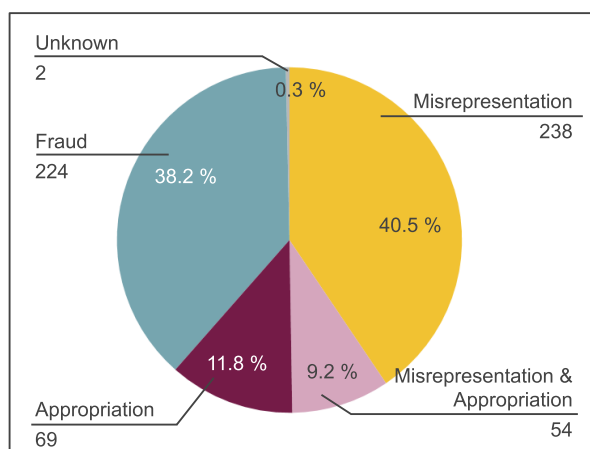


Figure 1: Protest causes by frequency.

With 40.5 percent (238 of 587 cases), the most frequent trigger for protest was how marketers represented Indigeneity, as Figure 1 shows. In 38.2 percent of the cases (224 cases), protesters confronted advertisers with fraud charges. The appropriation of Indigenous cultural assets was a primary concern in 11.8 percent of the cases (69 cases), while critics disapproved of the representation and appropriation of Indigeneity in 9.2 percent of all cases (54 cases).

Totaled up, with 49.7 percent, the misrepresentation of Indigeneity was the most frequent reason for protest, claims of fraud second (38.2 percent), and appropriation the least frequent reason (21 percent).

Figure 2 visualizes which marketing elements typically provoked charges of fraud, appropriation, and misrepresentation and gives examples of how the various marketing elements

¹⁶⁹ Corine Fairbanks, “Little Everyday Issues & Racist T-Shirts – For those of you that think we are going overboard on the T-Shirts,” quoted in Robert Schmidt, “Are t-shirt protests worth it?” *Newspaper Rock*, January 22, 2011, accessed October 23, 2016, <http://newspaperrock.bluecorncomics.com/2011/01/are-t-shirt-protests-worth-it.html>.

¹⁷⁰ Ibid.

¹⁷¹ Adrienne Keene, talk at the Indigenous New Media Symposium, February 21, 2014, accessed February 26, 2014, <http://www.inms2014.com/>.

offended critics' moral codex. The size of the box surrounding the marketing element signifies how often such elements have caused criticism. Claiming a product was Indian-made was the major cause for protests against fraud. Actors or models for advertisements or commercials sparked debates about their heritage if they appeared non-Native or were suspected 'wannabes,' and if the person had not authorized the use of a representation. With marketing imagery as one of the two most frequently protested marketing elements, the misrepresentation of Indigeneity was a significant concern on the visual level. Additionally, protesters felt marketing texts, names, and logos misrepresented Indigenous culture.

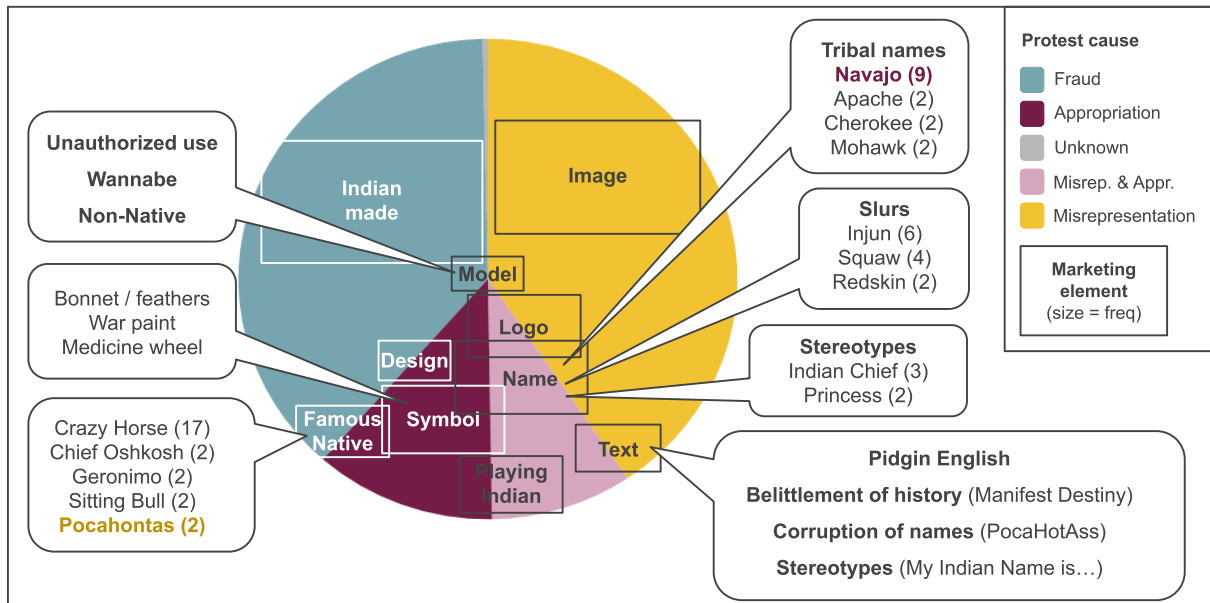


Figure 2: Examples of offenses by protest category.

Taking cultural elements without permission and not representing them adequately was a common and much-criticized marketing practice. Protesters viewed the use of famous Indigenous persons, tribal designs, and symbols for marketing purposes as appropriation. Some sought to protect designs and representations of ancestors by legal means such as copyright. Typical marketing elements for the appropriation category were dressing up advertising characters or models Indian-style and playing Indian, but also the use and designs of logos, names, symbols, and textual references. Heirs of famous Native people argued that marketers used their ancestors' names or images without permission. However, when marketers depicted Pocahontas, critics were concerned with how she was represented. Misrepresentation was a subliminal issue in many other cases where marketers connected historical leaders with products like alcohol. Historic icons used as marketing characters included Crazy Horse, Chief Oshkosh, Geronimo, Sitting Bull, Cochise, Pocahontas, and Tonto. Corruptions of renowned peoples' names, like PocaHotAss, added insult to the appropriation of names and images. Among the most protested uses of tribal names for marketing purposes were the Navajo, Apache, Cherokee or Chierikee, Mohawk, Aztecs, Comanche, Dakota, Lakota, Shoshone, Sioux, and Seneca. While the Navajo tribe sought to protect its trademarked tribal name by legal means, other tribes opposed the use of their names outside the legal system. They aimed to make clear they had no connection with certain products like cigarettes or alcohol because they found any reference inappropriate due to Native health issues.

There was less consensus on whether ethnic labels like Indian, Eskimo, Inuit, or Redman (Chewing Tobacco) were appropriate compared to the use of ethnic stereotypes. Indian stereotypes in marketing include the Chief (Indian Chief, Little Chief, Chief Runs With Paws), the Princess (Native American Princess, Princess of the Navajo), or the Drunken Indian. Slurs like Injun (Honest Injun, Injun Orange, Injun Joe, Honorary Injun), Squaw (Indian Squaw, Sassy Squaw), Redskin, Dirty Drunken Half-Breed, or Indian Kill were particularly offensive. Protesters also criticized textual references like “Sioux Me” or “My Indian Name is” that aimed at clichés, just like Native American advertising characters using stereotypical pidgin English. In a few cases, like GAP’s “Manifest Destiny” T-shirt, people felt offended because the slogan belittled the historical origin of the U.S.

The results of this study are based on the analysis of 587 cases of protest against product, service, and event marketing practices since 1932. Throughout the 20th and 21st centuries, the main reasons for tangible protests changed consistently with sociocultural changes (see Figure 3). While fraud has constantly been of great concern for Native American arts and crafts people and consumers, representation became a major issue during the civil rights movement and an increasingly important issue again since the Quincentennial. With the Quincentennial and the growing popularity of Indigeneity, appropriation developed as a new category, although protesters had previously raised this argument on occasion. Protests increased with the growing popularity of Indigeneity and were directly related to other social movements, educational attainment, and the economic and physical growth of the Indigenous population.

Fraud was the primary issue between the 1930s and 1965 since the establishment of the IACB offered new opportunities for complainants to report cases of marketers falsely selling arts and crafts pieces as Indian-made. Arts and crafts were and still are traditionally one of the most important sources of income for Native Americans. Imitations and cheap imports from Asia, among other places, have threatened the craft and, thus, the livelihood of many Indigenous people. As Frank Tom-Pee-Saw of the pan-Indian League of American Indians explained to John Collier, Commissioner of Indian Affairs, in 1943, counterfeit jewelry “will almost completely destroy the southwestern Indian roadside markets for their handcraft work, especially the jewelry, which is their only source of livelihood in peacetime.”¹⁷²

Beginning in the mid-1960s, in the wake of the civil rights movement and after the relocation policy engendered a pan-Indianism and national pride in Indigenous culture that strengthened resistance, the representation of Native Americans increasingly came into focus, motivated in part by the successes of other minorities. The pan-Indian organization National Congress of American Indians made the public image of Native Americans in U.S. society and the struggle against mainstream media representations a significant issue in their agenda.

Protest against marketing strategies tended to rise in times of Indian popularity, which was the case during the civil rights era, around the Quincentennial in the early 90s, and during the New Age Hipster hype during the early 2010s. On one side, the omnipresence of Indige-

¹⁷² Frank Tom-Pee-Saw, League of American Indians, letter to Mr. John Collier, Commissioner of Indian Affairs, Parsons, Kansas, April 25, 1943; Board Legislation, Gen. Correspondence Re Imitation Handicrafts, 1936-73, Folder 1 of 3; General Correspondence, 1936-1975; Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980; Records of the Indian Arts and Crafts Board, Record Group 435; National Archives Building, Washington, DC. Hereafter cited as Tom-Pee-Saw to Collier, April 25, 1943; Board Legisla., 1936-73, Folder 1 of 3; Gen. Corresp., 1936-1975; Corresp. Re Misrep., 1932-1980; RG 435; NAB.

nous imagery fueled protests. On the other side, advocates of fair media representations also saw their chance to use the popularity for educational purposes and reach out to a broad and well-disposed audience. During times of heightened interest in civil rights and Native American culture, issues of representation seemed easier to promote in public than before.

Since the 1990s, appropriation became a significant issue as critics insisted on Indigenous control over and the right to monetize their own culture because control and profits should lie with the creators. The promotion of Indian self-determination and sovereignty was one driving force that fostered activism against marketing practices in mainstream American society. Financial progress from the gambling industry and better educational opportunities allowed many Natives to address identity issues. The Quincentennial and the accompanying popularity of Indigeneity acted as a catalyst for protests.

As a new communication medium, the Internet offered protesters a mostly free exchange of opinions via social media platforms. It allowed direct and uncensored public criticism of advertisers, which also attracted international attention. As in the civil rights era, the Black Lives Matter movement fueled protests against the commercialization of Native American cultures in recent years.

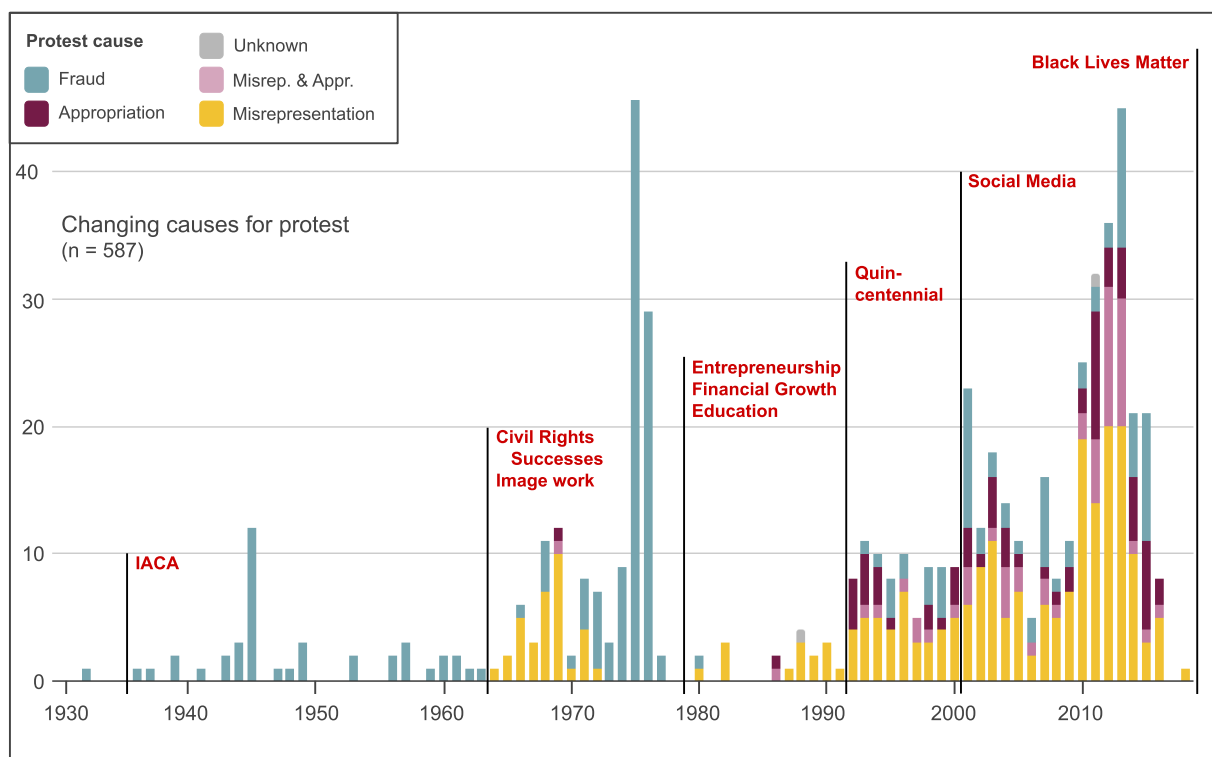


Figure 3: Timeline of protests, 1932-2018.

Throughout this study, readers should keep in mind that the cases analyzed represent only a small portion of the marketing protest happening during the 20th and 21st centuries. The earliest letters and legal records documenting protests against product marketing practices date back to the early 1930s and focused on the fraudulent sale of arts and crafts as Indian-made. However, since Indigenous men and women traditionally earned their living from selling craftwork, it is conceivable that craftspeople protested misleading sales practices much earlier. Criticism of movie representations in the early 20th century demonstrates that Native Americans started protesting this type of imagery almost simultaneously with the develop-

ment of the movie industry. For instance, Anishinaabeg, Shoshone, Cheyenne, and Arapahoe Indians protesting the “grossly libelous” depiction of Native Americans in the movie “Curse of the Redman” in 1911 demonstrated that “Native viewers had a pretty good sense of how they were being portrayed,”¹⁷³ as Philip Deloria noticed. Even in the early 20th century, the issue of misrepresentation in media was important enough for many Natives that a “need for authenticity – inculcated through decades of Wild West shows” moved them to pursue careers as actors that were dedicated to “politics of representation.”¹⁷⁴ Against this background, it seems likely that Native Americans both posed for and criticized Indigenous marketing representations as soon as the marketing industry developed and entered into Natives’ lives in some way.

Although different protest causes peaked at certain times, issues of fraud, appropriation, and misrepresentation were equally ever-present throughout the 20th and 21st centuries. The historical treatment of marketing protest shows how criticism of marketing practices has changed from the 1930s to 2021, demonstrating economic needs and development, increasing Indigenous self-determination, advancing protest strategies, and changing social attitudes that supported a positive trend toward the diversification of marketing representations.

1. The Indian New Deal: Protecting Indian Arts and Crafts

Although marketing protests likely started much earlier, the 1920s progressivism, with its reform packages, paved the way for growing resistance against misleading sales and marketing practices. Several factors facilitated the enactment of the Indian Arts and Crafts Act of 1935 (IACA)¹⁷⁵ and other legal efforts to provide and protect economic opportunities for Native Americans: their changing status as American citizens; the 1928 Meriam Report revealing and giving visibility to Indigenous issues such as educational, health and poverty problems; the promotion of a new Indian policy rejecting cultural assimilation; and the zeitgeist of the 1930s, when the Great Depression “changed the way the U.S. government conceived of its role and responsibilities toward American society and the economy,”¹⁷⁶ and “engendered more sympathy for the disenfranchised Native Americans.”¹⁷⁷

The IACA had the “three fold purpose of educating the Indian craftsman in modern commercial methods, of expanding the market for Indian goods, and of protecting both the consumer and the Indian producer from cheaply imitated wares.”¹⁷⁸ Backed by a study of American Indian arts and crafts, the act was the result of the new policy of Indigenous cultural and economic independence. The Department of the Interior (DOI) “believed that the enhanced marketing of genuine native arts and crafts could be part of the overall effort to im-

¹⁷³ Deloria, *Indians in Unexpected Places*, 91.

¹⁷⁴ *Ibid.*, 75-76.

¹⁷⁵ See Indian Arts and Crafts Act of 1935, Pub. L. 355-74, 49 Stat. 891, August 27, 1935, accessed December 28, 2019, <https://www.doi.gov/iacb/indian-arts-and-crafts-act-1935>.

¹⁷⁶ Calloway, *First Peoples*, 485.

¹⁷⁷ Kilpatrick, *Celluloid Indians*, 41.

¹⁷⁸ Secretary of the Interior, “Annual Report of the Department of the Interior, 1940,” 394, quoted in Living New Deal, s.v. “Indian Arts And Crafts Board (1935),” accessed December 21, 2019, <https://livingnewdeal.org/glossary/indian-arts-and-crafts-board-1935/>.

prove the economic situation of various tribes.”¹⁷⁹ That Native Americans gained American citizenship in 1924 played an essential role as they implicitly became entitled to governmental protection of their rights. Commissioner of Indian Affairs John Collier, who also served as chairman of the Indian Arts and Crafts Board during the New Deal era, asserted those rights and assured Indigenous complainants and activists that his “Office [was] in sympathy with all legitimate efforts to protect the rights of our Indian citizens against infringement.”¹⁸⁰

During the early 1930s, Collier supported Native efforts to prohibit people with no Native ancestry from capitalizing on a pretended Indigenous identity. The Indian advocate founded the American Indian Defense Association (AIDA) as early as 1923 to fight for and protect the religious freedom and property of Indian tribes throughout the United States. When Collier was appointed Commissioner of Indian Affairs in 1933, AIDA called for the enactment of bill S. 1413 to fight so-called pseudo-Indians. The bill should make it a “crime to present to be an Indian, and provide punishment therefor,”¹⁸¹ a “needed law to ‘crack down’ on the imposters and fakirs who falsely claim to be Indians, usually for pecuniary reasons.”¹⁸²

The intention behind the bill, however, was not to prevent pseudo-Indians from trading on their false identity in the free market. The intent was to prevent pseudo-Indians from gaining governmental assistance by claiming Indian identity “for the purpose of obtaining employment or any contract for the rendition of services, or of obtaining pecuniary or other assistance, or of securing to himself or to any other person any of the privileges or benefits conferred by law upon Indians.”¹⁸³ Although the bill was introduced in Congress with support of the Roosevelt Administration in 1933 as part of the Indian Reorganization Act, it was never enacted. There was “no rejection of its merits, but its omission from enactment was partly due to the comprehensive reach of other measures in the package.”¹⁸⁴ Native Americans would have profited from such a law, but it was not far-reaching enough to protect their economic interests.

While the bill was drafted to protect governmental funds, Natives asked for a similar law applicable to the free market “that could penalize a person posing as an Indian person

¹⁷⁹ Living New Deal, s.v. “Indian Arts And Crafts Board (1935),” accessed December 21, 2019, <https://livingnewdeal.org/glossary/indian-arts-and-crafts-board-1935/>.

¹⁸⁰ John Collier, Commissioner of Indian Affairs, letter to Frank Tom-Pee-Saw, League of American Indians, Washington, DC, June 7, 1943; Board Legislation, Gen. Correspondence Re Imitation Handicrafts, 1936-73, Folder 1 of 3; General Correspondence, 1936-1975; Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980; Records of the Indian Arts and Crafts Board, Record Group 435; National Archives Building, Washington, DC. Hereafter cited as Collier to Tom-Pee-Saw, June 7, 1943; Board Legisl., 1936-73, Folder 1 of 3; Gen. Corresp., 1936-1975; Corresp. Re Misrep., 1932-1980; RG 435; NAB.

¹⁸¹ U.S. Congress, Senate, “A Bill Making it a crime to represent one’s self to be an Indian, and providing punishment therefor,” S. 1413, 73d Cong., 1st sess., introduced April 17, 1933; Pseudo Indians [II]; Box 193; Records of the National Congress of American Indians, 1933-1990, NMAI.AC.010; NMAI Archive Center, Smithsonian Institution, Suitland, MD. Hereafter cited as U.S. Congress, Senate, Pseudo Indian bill, 1933; Pseudo Indians [II]; Box 193; NCAI Records; NMAI Archive Center.

¹⁸² “Pseudo Indians – S. 1413,” *American Indian Life*, Bulletin 24 (April 1934), 16.

¹⁸³ U.S. Congress, Senate, Pseudo Indian bill, 1933; Pseudo Indians [II]; Box 193; NCAI Records; NMAI Archive Center.

¹⁸⁴ Hank Adams, “Suggestion Draft” for Introducing a ‘Pseudo Indian’ bill, 1986; Pseudo Indians [II]; Box 193; Records of the National Congress of American Indians, 1933-1990, NMAI.AC.010; NMAI Archive Center, Smithsonian Institution, Suitland, MD. Hereafter cited as Adams, “Suggestion Draft”; Pseudo Indians [II]; Box 193; NCAI Records; NMAI Archive Center.

when they have nothing to show or prove their descent,”¹⁸⁵ as Mamie Smith, secretary of The Consolidated Tribes of North American Indians of Milwaukee County, wrote to Collier in 1937. Some states enacted their own Native American arts and crafts laws, but the Pseudo Indian bill passed out of mind until Indigenous activists tried to revive the bill again in 1983.

Due to a gradually changing mindset in favor of cultural pluralism, Natives “began to be heard on their own terms as intelligent and informed spokespersons for their own causes,” even though the mythology about Indians “remained surprisingly unchanged from earlier times.”¹⁸⁶ Native Americans “responded to the policy shifts emanating from Washington, DC, working both within and against the system to effect change.”¹⁸⁷ In 1943, Frank Tom-Pee-Saw approached Collier to advocate a bill protecting all types of cultural elements representing Indigeneity from marketing misuse:

The League of American Indians has drafted a bill which is now in the hands of the Indian Affairs Committee of the House of Representatives, which provides for the control of unauthorized use of Indian names, titles, pictures, patterns, monograms, and other things of original Indian character, providing further for the setting up of an Indian rate-making committee authorized to make contracts with any manufacturing company, firm, corporation, or private individual who desires to use Indian names, titles, pictures, patterns, or monograms for trade-marks or designs on manufactured goods sold in interstate commerce or applied to advertise individual services of business.¹⁸⁸

Tom-Pee-Saw asked Collier to “redeem [his] pledge and promise” that he “would not allow any one or source to infringe on the source of livelihood of those Indians who make an honest living from the sales of handicrafts” and support the bill. In case they were unable to get the bill passed, the League’s executive council “decided to enjoin by court procedure any and all individuals who attempt to use anything characteristically Indian, unless they arrange to pay a royalty or annual privilege fee to the individual or tribe whose design, name, or title is being used.”¹⁸⁹ As Collier responded, the 8-year-old Indian Arts and Crafts Act was the only legal measure at that time, which, however, could prevent only willful misrepresentations of craft-work as Indian handicrafts but not Indian-style products making use of such elements.

Instead, the Indian Arts and Crafts Board developed a system of trademarks for Indigenous producers of genuine handicrafts. When “these trade-marks have been put into general use and have become known to the public, it is believed that the situation will be greatly improved, and that the chances for competition of Indian-style, factory-made merchandise with Indian handicraft products will be materially lessened.”¹⁹⁰ As the Board noted later, the trademarks and certificates developed by the IACB would not find broad acceptance and re-

¹⁸⁵ Mrs. Mamie Smith, Secretary of The Consolidated Tribes of North American Indians of Milwaukee County, letter to John Collier, Commissioner, DOI, Milwaukee, Wisconsin, December 29, 1937; Board Legislation, Gen. Correspondence Re Imitation Handicrafts, 1936-73, Folder 1 of 3; General Correspondence, 1936-1975; Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980; Records of the Indian Arts and Crafts Board, Record Group 435; National Archives Building, Washington, DC.

¹⁸⁶ Weston, *Native Americans in the News*, 78-79.

¹⁸⁷ Calloway, *First Peoples*, 485.

¹⁸⁸ Tom-Pee-Saw to Collier, April 25, 1943; Board Legisl., 1936-73, Folder 1 of 3; Gen. Corresp., 1936-1975; Corresp. Re Misrep., 1932-1980; RG 435; NAB.

¹⁸⁹ Ibid.

¹⁹⁰ Collier to Tom-Pee-Saw, June 7, 1943; Board Legisl., 1936-73, Folder 1 of 3; Gen. Corresp., 1936-1975; Corresp. Re Misrep., 1932-1980; RG 435; NAB.

mained ineffective.¹⁹¹ While the Federal Trade Commission heard the earliest cases during the 1930s, the Indian Arts and Crafts Board took over this role but soon realized it had only limited authority.

Opposition Against the Definition of “Indian-made” as “handmade”

After Woodrow Wilson signed the Federal Trade Commission Act into law in 1914, the Federal Trademark Commission (FTC) started its work to protect consumers and promote competition the following year.¹⁹² This law became the legal basis for Indigenous producers of arts and crafts, sellers, and consumers to challenge misleading marketing representations and labeling and for the government to prosecute such violations. In 1932, three years before the Indian Arts and Crafts Act (IACA) was signed into law, the Jeffrey Jewelry Co. (Chicago, Illinois) was the first known company (in this study) to be prohibited by the FTC from using ethnic labels and tribal names for marketing purposes. For the reason of unfair competition, the FTC ordered the company to “cease and desist from representing by the words ‘Indian,’ or ‘Navajo,’ or any other words, markings, or labels . . . that said jewelry is manufactured by hand by American Indians when such is not the fact.”¹⁹³ A main argument was, besides the fact that no Indigenous person produced the jewelry, that it was “manufactured or fabricated by machinery in mills or factories” whereas the labels “Indian” or “Navajo” implied a handmade process.¹⁹⁴ As the following case shows, the FTC focused heavily on the production process and only secondarily on the producers’ identity.

The same year, the FTC held a hearing regarding a similar case involving the Maisel’s Trading Post (Albuquerque, New Mexico, 1932-36), where it marketed jewelry as Indian-made. Native Americans in fact made the jewelry, but Maisel “mislead and deceive[d] some dealer customers” into buying products “in the belief that those products are made exclusively by hand” while they were partly made with machinery. As the finding of facts explained, Spaniards had taught Natives how to make silver jewelry, and Navajo, Zuni, and other Pueblo tribes of New Mexico and Arizona made silver jewelry exclusively by hand tools and processes for generations.¹⁹⁵

¹⁹¹ Cf. Robert G. Hart, General Manager IACB, letter to Manuel Lujan, U.S. House of Representatives, Washington, DC, June 17, 1974; Board Legislation, Gen. Correspondence Re Imitation Handicraft, 1974-75, Folder 1 of 3; General Correspondence, 1936-1975; Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980; Records of the Indian Arts and Crafts Board, Record Group 435; National Archives Building, Washington, DC. Hereafter cited as Hart to Lujan, June 17, 1974; Board Legis., 1974-75, Folder 1 of 3; Gen. Corresp., 1936-1975; Corresp. Re Misrep., 1932-1980; RG 435; NAB.

¹⁹² Cf. U.S. Federal Trade Commission, “Our history,” accessed December 21, 2019, <https://www.ftc.gov/about-ftc/our-history>.

¹⁹³ *In the Matter of Jeffrey Jewelry Co.*, Docket No. 2004, (Order to Cease and Desist, September 21, 1932); Federal Trade Commission (violations) - Jeffrey Jewelry Co., 1932; Misrepresentation Violations (Closed – Pending Cases); Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980; Records of the Indian Arts and Crafts Board, Record Group 435; National Archives Building, Washington, DC.

¹⁹⁴ *In the Matter of Jeffrey Jewelry Co.*, Docket No. 2004, 2 (Complaint, February 2, 1932); Federal Trade Commission (violations) - Jeffrey Jewelry Co., 1932; Misrepresentation Violations (Closed – Pending Cases); Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980; Records of the Indian Arts and Crafts Board, Record Group 435; National Archives Building, Washington, DC.

¹⁹⁵ *In the Matter of Maisel Trading Post, Inc.*, Docket No. 2037, 2 (Finding as to the Facts and Conclusions, August 21, 1933); Viol. Sect. 6 – Maisel’s Trading Post; Gen. Corresp., 1976 - ; Corresp. Re Misrep., 1932-1980; RG 435; NAB.

Maisel employed only Native Americans to make the jewelry, and many steps were still done by hand. However, the “use of machinery enables respondent to turn out many times the output per workman” and reduce the production costs compared to similar but exclusively Indian hand-made jewelry. Additionally, hand-hammered jewelry was “superior to that rolled by machinery in temper and durability,” but experts could not accurately distinguish pieces made to disguise the production method.¹⁹⁶ Since such products could undersell its competitors, the FTC saw the livelihoods of Indigenous producers of hand-made items threatened, people who depended upon their craftwork (roughly one-tenth of the Navajo tribe and one-fifth of the Zuni tribe) particularly since the economic depression struck “especially at luxury merchandise” and the “depression in the Indian jewelry line has been increased by the trade terms of respondent.”¹⁹⁷

With the “increase of tourist travel to the southwest and the development of the Indian curio business throughout the entire country, the public demand for Indian hand-made jewelry has gradually increased.” Supported by a “widespread sentiment in favor of the Indians and the products of their arts and crafts,” such jewelry had “acquired a reputation for beauty, artistic character, individuality and wearing qualities and a wide popularity, demand and distribution.” According to the FTC’s finding of facts, the public has long known and purchased such jewelry under the label ‘Indian’ or ‘Indian-made,’ with the understanding that the product was not only made by Indians but handmade by Indians. The FTC believed the desire to purchase such products was destroyed if buyers learned of the partial use of machinery.¹⁹⁸

The FTC identified two competitive groups that sold silver jewelry. While one focused on Indian-made items, which they labeled as “Indian” or “Indian-made,” the other group distributed Indian-style products labeled as “Indian design” jewelry. Still, they sold their products to the same class of customers, that is, curio dealers through the U.S.¹⁹⁹ Consequently, the competitors’ use of the trade terms disadvantaged and injured producers of ‘Indian design’ jewelry. Chairman Charles H. March concluded that Maisel’s “trade terms are literally true but mislead and deceive the public and divert trade from respondent’s competitors to respondent. The use of said trade terms by respondent without such explanation as will prevent the misleading and deception of the public is unfair and unlawful.”²⁰⁰ The FTC ordered Maisel to stop advertising its partly machine-made jewelry in any way as ‘Indian’ or ‘Indian-made.’²⁰¹ In 1936, however, the U.S. Circuit Court of Appeals, Tenth Circuit, overruled the order and allowed Maisel to advertise his products as Indian-made when explaining the production method on promotional materials.²⁰²

Maisel’s Trading Post became subject to investigations again in 1944 as a supplier for multiple shops selling Indian arts and crafts in Denver, Colorado. Jesse L. Nusbaum, National Park Service (NPS) Superintendent at the Mesa Verde National Park in Colorado, complained to the IACB about jewelry sold as “Genuine Indian Made Jewelry” in Denver stores. Rogers Jewelry Co. (1944-47) used this label and added a small note advising customers the items

¹⁹⁶ Ibid., 3-4.

¹⁹⁷ Ibid., 5.

¹⁹⁸ Ibid., 4.

¹⁹⁹ Cf. Ibid., 2.

²⁰⁰ Ibid., 5.

²⁰¹ Cf. *Federal Trade Commission v. Maisel Trading Post, Inc.*, 77 F.2d 246, 248 (10th Cir. May 1, 1935).

²⁰² Cf. *Federal Trade Commission v. Maisel Trading Post, Inc.*, 84 Fed. 2d 768 (10th Cir. 1936).

were “Made by using a press or drop hammer or by casting and finishing by tumbling,”²⁰³ as required by the 1936 court decision. René d’Harnoncourt, chairman of the IACB, agreed that Maisel’s marketing materials qualifying the items as ‘genuine Indian-made jewelry’ although they were machine-made violated the IACA.

The subsequent investigation (Denver, Colorado, Investigation, 1944-47) identified 13 shops selling and supposedly misrepresenting Native American jewelry, five companies that produced the items in question, and 18 distributors. Eight sellers agreed to change their marketing practices, while five sellers insisted they did not violate any laws. Research revealed that six distributors and two producers were enlisted members of the United Indian Traders Association and therefore considered trustworthy.²⁰⁴ Since the main issue was the production method while the artists’ Indigeneity was beyond doubt, Associate Solicitor Felix S. Cohen rejected criminal prosecution of the case because all vendors cooperated and prosecution was not in Native artists’ best interest. Quite contrary, marketing such items as ‘Indian-style’ jewelry would “reduce the product to the same level as ‘Indian style jewelry’ made by non-Indians,” which would “deprive a number of Indians of employment.”²⁰⁵

The understanding and equation of ‘Indian-made’ as handmade and as a relevant defining criterion of Indian-made items was problematic because production methods, like styles of Indian crafts, go through changes and developments and could, thus, not be tied down to any point in history. As most Native producers could hardly compete with the significantly cheaper imports, the “idea of mass production of Indian arts and crafts with the object of most return for least output has been suggested many times as one solution to raise the Indian economy,” noted IACB General Manager Edward Davis in 1962. However, Davis also believed the value of arts and crafts items, in general, came from “fine craftsmanship with its investment of painstaking time and labor,” and mass production methods would destroy the quality of highly prized Indian products. As a result, the search for better markets for these products with an inevitably growing demand presented the Board with an unsolved dilemma.²⁰⁶

²⁰³ Jesse L. Nusbaum, Superintendent, National Park Service, Mesa Verde National Park, Colorado, letter to Rene d’Harnoncourt, Chairman, IACB, Mesa Verde, Colorado, December 1, 1944; Violations of Section 6 – Rogers Jewelry Company – Case Closed; Misrepresentation Violations (Closed – Pending Cases); Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980; Records of the Indian Arts and Crafts Board, Record Group 435; National Archives Building, Washington, DC.

²⁰⁴ Cf. U.S. Department of the Interior, Office of the Secretary, “Investigation of Alleged Misrepresentation in the Advertising in Denver, Colorado, of Indian Style Jewelry Produced Largely by Mechanical Means,” February 17 to 24, 1945, D.I. 1270, March 9, 1945; Violations of Section 6 – Rogers Jewelry Company – Case Closed; Misrepresentation Violations (Closed – Pending Cases); Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980; Records of the Indian Arts and Crafts Board, Record Group 435; National Archives Building, Washington, DC.

²⁰⁵ Felix S. Cohen, Associate Solicitor, U.S. Department of the Interior, memorandum to Chairman, Indian Arts and Crafts Board, Washington, DC, March 19, 1947; Violations of Sec. 6 – Rogers Jewelry Co.; Misrepresentation Violations (Closed – Pending Cases); Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980; Records of the Indian Arts and Crafts Board, Record Group 435; National Archives Building, Washington, DC.

²⁰⁶ J. Edward Davis, General Manager, IACB, letter to Marguerite L. Lotridge, Washington, DC, May 22, 1962; Board Legislation, Gen. Correspondence Re Imitation Handicrafts, 1936-73, Folder 1 of 3; General Correspondence, 1936-1975; Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980; Records of the Indian Arts and Crafts Board, Record Group 435; National Archives Building, Washington, DC.

The new Indian policy based on self-determination and self-development should “strengthen the Indian’s sense of autonomy,” as Richard Nixon declared in 1970, and “create the conditions for a new era in which the Indian future is determined by Indian acts and Indian decisions.”²⁰⁷ Criticism of bureaucratic U.S. policies arose after a 1972 *Arizona Republic* article revealed how “White man’s red tape fouls Indian industry”²⁰⁸ when several National Parks followed a new policy that disallowed the sales of non-authentic products. These “federal policies were introduced to eliminate the fakey imported stuff or domestic products passed off as Indian handicrafts, but it is our Navajos who are getting hurt.”²⁰⁹ The 15 Natives employed at Old West, many of whom were disabled, did not produce bracelet chains and earring wires but bought them from domestic manufacturers. Furthermore, the plant was not located on a reservation. For these reasons, their products did not qualify as Indian handicrafts, even though all employees were living on the reservation 50 miles from Williams, Arizona. Hoke argued, “With the ‘Indian handicraft’ label we could outsell imports on nationalistic grounds alone,” but “now we’re in there with the fakes from Japan and Hong Kong.”²¹⁰ Samuel Cooper, a disgruntled reader of the article, asked the DOI, “Is this the way you help the Indian OUT of the opportunity to help himself by self-employment?”²¹¹

Advocating for a reinterpretation of the label ‘Indian-made,’ John R. Burden, Manager of The Monument Valley Trading Post and Lodge, explained to Senator Barry Goldwater, who had promised to pursue the matter, that using machine-produced elements was a common practice since entirely handmade items were hardly affordable for anyone. Also, Native craftspeople should be allowed to live on or off reservations as they wished. Rather than focusing on the production process, the government should pursue foreign copies like the Navajo rugs made in Mexico, which sold for \$20 while original rugs started at \$300.²¹²

Accomplishments of the Indian Arts and Crafts Board

Since the Indian Arts and Crafts Board lacked authority to enforce the IACA, particularly in early times, the Federal Trade Commission was the Board’s most important partner for prosecuting violations of the act. In collaboration with the FTC, the Board achieved eleven documented successes between 1935 and 1965. In three cases in the Southwest against the Bell Indian Trading Post (Albuquerque, New Mexico, 1948-50), the Guild Moccasin Co. (Los Angeles, California, 1957), and Fiesta Novelty Co. (Los Angeles, California, 1959), the defend-

²⁰⁷ “President Nixon, Special Message on Indian Affairs, July 8, 1970,” in *Documents of United States Indian Policy*, 3rd ed., ed. Francis P. Prucha (Lincoln: University of Nebraska Press, 2000), 257-258.

²⁰⁸ Paul Dean, “White man’s red tape fouls Indian industry,” *Arizona Republic*, March 2, 1972, 27.

²⁰⁹ George Hoke, Chief Executive, Old West Co., quoted in Dean, “White man’s red tape fouls Indian industry.”

²¹⁰ George Hoke, Chief Executive, Old West Co., quoted in *ibid*.

²¹¹ Samuel Cooper, letter to the Department of the Interior, Camp Verde, Arizona, March 4, 1972; Board Legislation, Gen. Correspondence Re Imitation Handicrafts, 1936-73, Folder 2 of 3; General Correspondence, 1936-1975; Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980; Records of the Indian Arts and Crafts Board, Record Group 435; National Archives Building, Washington, DC. Hereafter cited as Cooper to the DOI, March 4, 1972; Board Legisl., 1936-73, Folder 2 of 3; Gen. Corresp., 1936-1975; Corresp. Re Misrep., 1932-1980; RG 435; NAB.

²¹² Cf. John R. Burden, Manager, The Monument Valley Trading Post and Lodge, letter to Senator Barry Goldwater, Monument Valley, Utah, March 7, 1972; Board Legislation, Gen. Correspondence Re Imitation Handicrafts, 1936-73, Folder 2 of 3; General Correspondence, 1936-1975; Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980; Records of the Indian Arts and Crafts Board, Record Group 435; National Archives Building, Washington, DC.

ants signed cease and desist agreements with the FTC. In 1950, after a two-year struggle, the Bell Indian Trading Post agreed to change the company name to Bell Trading Post and desist from advertising their products as Indian-made.²¹³ After using descriptions such as “Authentic Indian Moccasin,” “Authentic Indian style,” “Indian Beaded,” “Genuine Squaw Boot,” and “Apache Branded,” the Guild Moccasin Co. agreed to cease and desist from “Representing through the use of tribal or Indian names, derivations of Indian names, Indian symbols or Indian illustrations, or in any other manner, that their products are Indian products or Indian made.”²¹⁴ Two years later, the Fiesta Novelty Co. signed a similar agreement after having advertised jewelry as “Zuni” and “Navajo Indian.”²¹⁵

During the 1940s and 50s, formal notification letters from the IACB induced four more companies to change their advertising practices voluntarily. After falsely naming products “Indian jewelry,” J.C. Wolff (Denver, Colorado, 1944) sent out a “circular to all our clients announcing that that [sic] the goods in question were not actually Indian made” and “changed the heading in our stationery as suggested by Mr. Hart.”²¹⁶ The Arizona Craftsmen Co. (Omaha, Nebraska, 1947),²¹⁷ falsely marketing crafts as Navajo-made, and the Navajo Gift Shop (Oklahoma City, Oklahoma, 1949)²¹⁸ agreed to change their advertising practices and asked for recommendations after being made aware of the legal conflict. Besides changing the product names for their “Apache” and “Navajo Moccasins,” the Old Pueblo Traders (Tucson, Arizona, 1949-50) requested information on where to buy real Indigenous craft-work.²¹⁹ In the case of Sancrest Jewelry Co. (Inglewood, California, 1962) advertising “Indian

²¹³ Cf. D.C. Daniel, Secretary, letter to John M. Provinse, Assistant Commissioner, Bureau of Indian Affairs, Washington, DC, October 3, 1950; Violations of Section 6 – Bell Trading Post, Albuquerque, New Mex., Case Closed; General Correspondence, 1976 - , Misrepresentation Violations (Closed Cases); Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980; Records of the Indian Arts and Crafts Board, Record Group 435; National Archives Building, Washington, DC.

²¹⁴ *In the Matter of Guild Moccasin*, No. 5520055, Stipulation No. 8868 (signed February 4, 1957, approved February 28, 1957); Violations of Section 6 – Guild Moccasin Co., Los Angeles, Calif., Case Closed; General Correspondence, 1976 - , Misrepresentation Violations (Closed Cases); Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980; Records of the Indian Arts and Crafts Board, Record Group 435; National Archives Building, Washington, DC.

²¹⁵ *In the Matter of Sol Weiner d/b/a Fiesta Novelty Co.*, No. 5823575, Stipulation No. 9150 (signed January 20, 1959, approved February 17, 1959); Violations of Section 6 – Fiesta Novelty Co., Los Angeles, Calif., Case Closed; General Correspondence, 1976 - , Misrepresentation Violations (Closed Cases); Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980; Records of the Indian Arts and Crafts Board, Record Group 435; National Archives Building, Washington, DC.

²¹⁶ J. C. Wolff, letter to the Indian Arts and Crafts Board, Denver, Colorado, August 29, 1944; Violations of Sec. 6 – J. C. Wolff – Case Closed; Misrepresentation Violations (Closed – Pending Cases); Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980; Records of the Indian Arts and Crafts Board, Record Group 435; National Archives Building, Washington, DC.

²¹⁷ Cf. John H. Provinse, Acting Commissioner, Office of Indian Affairs, memorandum to Assistant Secretary, Washington, DC, May 26, 1947; Violations of Section 6 – Arizona Craftsmen Company, Case Closed; General Correspondence, 1976 - , Misrepresentation Violations (Closed Cases); Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980; Records of the Indian Arts and Crafts Board, Record Group 435; National Archives Building, Washington, DC.

²¹⁸ Cf. Jack Eagle, Navajo Gift Shop, letter to J.C. McCaskill, General Manager, IACB, Oklahoma City, Oklahoma, March 17, 1949; Violations of Section 6 – Navajo Gift Shop, Oklahoma City, Okla., Case Closed; General Correspondence, 1976 - , Misrepresentation Violations (Closed Cases); Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980; Records of the Indian Arts and Crafts Board, Record Group 435; National Archives Building, Washington, DC.

²¹⁹ Cf. Ruth Brawer, Old Pueblo Traders, letter to J.C. McCaskill, General Manager, IACB, Tucson, Arizona, January 18, 1950; Violations of Section 6 – Old Pueblo Traders, Tucson, Arizona, Case Closed; General Correspondence, 1976 - , Misrepresentation Violations (Closed Cases); Correspondence Relating to Misrepresenta-

jewelry,” the ad agency Fischbein Advertising took responsibility for their “error” and dropped the ad.²²⁰

Stuckey’s instructed Bill Casey, operator of the Stuckey’s Pecan Shoppe in Petersburg, Virginia (1953), to remove the misleading tags on its Japan-produced tomahawk brooms stating “Cherokee Indian Reservation, Great Smokey Mountains.” If he could not “remove this tag, satisfactorily,” Stuckey’s ordered to “please refrain from selling any of the merchandise in question.”²²¹ R.A. Baures (St. Petersburg, Florida, 1953) reassured the Board they would gladly change a product label after explaining that they “adopted this [Cherokee] label because of its Indian name, though other names might have sold as well such as Teepee.”²²² Beyond legal provisions which did not prohibit the use of the ‘Cherokee’ label, general manager Edward Davis appealed to the trader’s sense of honor:

Your use of the name ‘Cherokee’ on your label is within the law although it could be considered a fringe case. We cannot require you to cease using it, but would suggest that you use only the trade name ‘Tewa’ as it belongs to the manufacturer and is his authentic label. You may wish to confer with the Cherokee Tribal Councils and negotiate with them for the use of their name on your label. This would be the honorable way to handle the situation. The Cherokee are a proud people. Their name is a most sacred possession and we should respect them and cooperate with them in all transactions.²²³

As the Board lacked legal authority to enforce the IACA, their success depended on the marketers’ understanding and goodwill, and educational work became their main business.

The lack of clear provisions and enforcement resulted in few and sometimes random concessions. The Movitz Co. (Salt Lake City, Utah, 1957) advertised “Indian goldstone” as being “just off the reservation” which evoked the impression that the jewelry was made on an Indian reservation by Indian craftsmen, according to the complaint. Dick Movitz disagreed as he “felt that [his] customers realized that \$1 retail lines are commercially produced.” Despite his objection, Movitz “immediately ‘killed’ [the] ‘just off the reservation’ reference, realizing from your advice, that this slang phrase and trite expression could be ambiguously interpreted

tions of Native American Arts and Crafts, 1932-1980; Records of the Indian Arts and Crafts Board, Record Group 435; National Archives Building, Washington, DC.

²²⁰ Jerome H. Fischbein, Fischbein Advertising Inc., letter to J. Edward Davis, IACB, Minneapolis, Minnesota, August 15, 1962; Violations of Section 6 – Sancrest Jewelry Co., Inglewood, Calif. – Case Closed; Misrepresentation Violations (Closed – Pending Cases); Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980; Records of the Indian Arts and Crafts Board, Record Group 435; National Archives Building, Washington, DC.

²²¹ H.E. Rouse, Stuckey’s, Inc., letter to Bill Casey, Stuckey’s Pecan Shoppe, Eastman, Georgia, July 27, 1953; Violations of Sec. 6 – Stuckey’s, Inc., Petersburg, Virginia – Case Closed; Misrepresentation Violations (Closed – Pending Cases); Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980; Records of the Indian Arts and Crafts Board, Record Group 435; National Archives Building, Washington, DC.

²²² R.A. Baures, Wholesale Jewelry Manufacturers Representative, letter to Edward Davis, General Manager, IACB, St. Petersburg, Florida, January 11, 1953; Violations of Section 6 – R.A. Baures, St. Petersburg, Florida, Case Closed; General Correspondence, 1976 - , Misrepresentation Violations (Closed Cases); Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980; Records of the Indian Arts and Crafts Board, Record Group 435; National Archives Building, Washington, DC.

²²³ Edward Davis, General Manager, IACB, letter to R.A. Baures, Wholesale Jewelry Manufacturers Representative, Washington, DC, January 27, 1953; Violations of Section 6 – R.A. Baures, St. Petersburg, Florida, Case Closed; General Correspondence, 1976 - , Misrepresentation Violations (Closed Cases); Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980; Records of the Indian Arts and Crafts Board, Record Group 435; National Archives Building, Washington, DC.

and possibly misunderstood” but kept the name “Indian goldstone,” which was given by the maker in New York.²²⁴ The Deerskin Trading Post (Danvers, Massachusetts, 1961-65) removed some bracelets from the catalog²²⁵ but kept an “authentic war bonnet” and a Navajo rug with “authentic Indian designs” that were equally questionable.²²⁶

Initially, the owner of the Miles Big Bookstore and The Cherokee Traders (Oklahoma City, Oklahoma, 1949-50) informed the Board through his attorney that “steps are being taken to comply with the law.”²²⁷ While the owner dropped the description of products as “Indian made,” in a subsequent letter, his attorney Max Morgan insisted on the reference to the Cherokee tribe in the trade name because it was a common practice to adopt Indian names and it represented a significant investment. “In this State, we have a Town of Cherokee; it is my recollection there is a Cherokee Coal and a number of products that bear the name of ‘Cherokee’.” Additionally, “there has been considerable time and money spent in building up the good-will of the name ‘Cherokee Traders.’ It is a good name; the discontinuance thereof would represent a loss.”²²⁸

In cooperation with the FTC, the Indian Arts and Crafts Board achieved several successes, and several marketers voluntarily complied with the IACA. Especially when only few art pieces were involved, resistance to compliance with the law was rather low. One exception was the definition of Indian-made as handmade, which found little support from various quarters from the beginning. When it came to brand names in which an entrepreneur had invested time and money, they strongly resisted changing their marketing practices. While protests up to that point had focused mainly on protecting Indigenous sources of income, during the civil rights movement, the focus increasingly shifted toward the representation of Indigeneity. Although protecting Indian identity became a central concern for many activists, this did not replace economically motivated protests. Instead, marketing protests increasingly diversified.

²²⁴ Dick Movitz, Movitz Company, letter to Edward Davis, General Manager, IACB, Salt Lake City, June 10, 1957; and Dick Movitz, Movitz Company, letter to Edward Davis, General Manager, IACB, Salt Lake City, August 30, 1957; Violations of Section 6 - Movitz Co., Salt Lake City, Utah, Case Closed; General Correspondence, 1976 - , Misrepresentation Violations (Closed Cases); Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980; Records of the Indian Arts and Crafts Board, Record Group 435; National Archives Building, Washington, DC.

²²⁵ Cf. James H. Partridge, Manager, Deerskin Trading Post, letter to Edward Davis, General Manager, IACB, Danvers, Massachusetts, January 19, 1962; Violations of Section 6 - Deerskin Trading Post, Danvers, Mass., Case Closed; General Correspondence, 1976 - , Misrepresentation Violations (Closed Cases); Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980; Records of the Indian Arts and Crafts Board, Record Group 435; National Archives Building, Washington, DC.

²²⁶ Cf. Edward Weinberg, Deputy Solicitor, letter to the Attorney General, Washington, DC, April 7, 1965; Violations of Section 6 - Deerskin Trading Post, Danvers, Mass., Case Closed; General Correspondence, 1976 - , Misrepresentation Violations (Closed Cases); Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980; Records of the Indian Arts and Crafts Board, Record Group 435; National Archives Building, Washington, DC.

²²⁷ Max G. Morgan, Attorney, letter to J.C. McCaskill, General Manager, IACB, Oklahoma City, Oklahoma, January 24, 1950; Violations of Section 6 - Miles Big Bookstore, Oklahoma City, Oklahoma, The Cherokee Traders, Oklahoma City, Oklahoma, Case Closed; General Correspondence, 1976 - , Misrepresentation Violations (Closed Cases); Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980; Records of the Indian Arts and Crafts Board, Record Group 435; National Archives Building, Washington, DC.

²²⁸ Max G. Morgan, Attorney, letter to J.C. McCaskill, General Manager, IACB, Oklahoma City, March 14, 1950; Violations of Section 6 - Miles Big Bookstore, Oklahoma City, Okla., The Cherokee Traders, Oklahoma City, Oklahoma, Case Closed; General Correspondence, 1976 - , Misrepresentation Violations (Closed Cases); Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980; Records of the Indian Arts and Crafts Board, Record Group 435; National Archives Building, Washington, DC.

2. *The Civil Rights Era: “A New Awareness and Readiness”*

While the Indian policy of the Termination Era aimed to eradicate the special status of Indigenous peoples and assimilate them into the American mainstream, the actual effects were contrary and unintentional. As many Native Americans were fighting in the Korean War (1950-53) and the Vietnam War (1960s-73), they “began to relate struggles for independence from colonial rule elsewhere in the world to their own situation in America.” In reaction to the threat of termination, Native intellectuals started asking how the United States could “claim to be defending freedom, justice, and self-determination for peoples abroad when it so clearly denied those same rights to Native Americans at home?”²²⁹

At the 17th Annual Convention of the NCAI in Denver, Colorado, in 1960, Francis McKinley, director of the Community Services Division of the Utah Indian Tribe, noted in his keynote address on the Indian self-image that “the Indian does not now have the image of himself that we once had.” McKinley attributed the changed self-image to the “present policy in administration of the trusteeship relationship of Indians and the federal government [which] makes it very difficult for American Indians to establish an image concept.” Since “a trust relationship inevitably extends to control of a person’s behavior,” it ultimately “affects a person’s behavior, and therefore his self-image.”²³⁰

The relocation programs of the 1950s and 60s produced a similar effect on the understanding of Indigenous identity as boarding schools did before. While both efforts aimed to eradicate Native American culture, Native peoples from all over the U.S. united and strengthened their cultural self-awareness and pride, thereby developing a pan-Indian identity.²³¹ As many relocated Indians maintained their strong ties with their communities, the influence of growing urban activism reached onto reservations, where it revived Indian nationalism and boosted an all-Indian culture and identity regardless of tribal affiliation.²³² Nevertheless, separation and different environments had left their mark on Indigenous identities. Comparing Native peoples living on reservations and those living in urban areas, “self-images of an Indian American differ greatly.” McKinnley also noted a difference in the quality of the self-image as the “closer one gets to an area of Indian country, the worse the image becomes.”²³³ To “create and build an image of Indian Americans being capable of self-determination,”²³⁴ Natives first had to answer the questions of what kind of image they wanted to project, how they wanted to look at themselves, and how they wanted the American public to feel about them. Then they should utilize public relations tools like advertising and adopting “pertinent slogans”²³⁵ to build and present the new image to the public.

Simultaneously, NCAI president Clarence Wesley appealed to Indigenous tribes and groups to build upon the American peoples’ “tremendous goodwill toward American Indians in many parts of the country” and the “understanding willingness to help us and support us . . . when people understand our problems and our needs.” Native Americans had to “step up our

²²⁹ Calloway, *First Peoples*, 506.

²³⁰ McKinley, Keynote Address, 1960: Speeches, 1960; Box 12; Series 1; NMAI Archive Center.

²³¹ Cf. Calloway, *First Peoples*, 506.

²³² Cf. *ibid.*, 509.

²³³ McKinley, Keynote Address, 1960: Speeches, 1960; Box 12; Series 1; NMAI Archive Center.

²³⁴ *Ibid.*

²³⁵ *Ibid.*

public relations efforts” to reach the American public. With their help, they could “go more effectively to the state and the federal governments, to the many colleges and universities who, by their presence in this very convention, show their desire to help us; to the newspapers and to the service clubs and the civic organizations.”²³⁶ At a time when the U.S. was “charged with emotion fueled by Kennedy’s assassination, an increasingly unpopular war, and the resultant public demonstrations, urban riots, and youth protests,” during the early sixties the “public was in general receptive to change, and reform was the order of the day.”²³⁷ While Native Americans in the past “have under-estimated the necessity and importance of public relations,” Wesley was confident that, “As rapidly as we are able to present our case to the American people we are able to make friends, to gain support, to become more effective.”²³⁸

Lyndon B. Johnson’s War on Poverty created the essential condition for Native American identity formation. Enormous financial aid on reservations “allowed Native American communities to focus a little less on survival and allowed the emerging doctrine of tribal sovereignty to gain some ground, turning the termination era into an era of ‘self-determination’.”²³⁹ As President Johnson proclaimed in his 1968 address to Congress on the “Problems of the American Indian,” the “Forgotten American,” the key lay in discarding old attitudes of paternalism and promoting self-help through Indian leadership and initiative.²⁴⁰

The new sentiment toward Native Americans also brought a turning point in news coverage of Native issues as “the advocate-author was likely to be an Indian,” and “Indians now had some access to the mainstream press to tell their own stories.”²⁴¹ Vine Deloria Jr.’s *Custer Died For Your Sins* of 1969, Dee Brown’s *Bury My Heart at Wounded Knee* of 1971, and Deloria’s *God is Red* of 1972 met the mainstream society’s and Indigenous demand for Indian points of view. After Vietnam War had produced a “longing to ‘be’ Indian” and resulted in a “nostalgic appropriation of homogenized Indian identity,”²⁴² these new perspectives and ideas shaped Native American thought and shattered popular misconceptions U.S. society had of its Indigenous peoples. As “Native Americans were prominent on the news agenda of the late 1960s and early 1970s,” they “became celebrities as musicians, authors, and aggressive activists,” and “Indian culture and clothing became widely fashionable.”²⁴³

At the same time, with the rise of middle-class consumerism, Indian imagery started representing an American mainstream identity rather than a social elite. Between 1950 and 1970, the *New York Times* reporting on Indian-style fashion increased exponentially, testifying to a diversifying group of consumers. While elite art collectors continued their passion, “Fringes, buckskin, beads and feathers became a symbol of fun and youthfulness” among average consumers. As Indian-style fashion “served to distinguish from European clothing design . . . , this new trend also supported assimilation, by integrating supposedly Native cloth-

²³⁶ Clarence Wesley, President, NCAI, Address at the 17th Annual Convention, Denver, Colorado, November 14-18, 1960; Speeches, 1960; Box 12; Records of the National Congress of American Indians, 1933-1990, NMAI.AC.010; NMAI Archive Center, Smithsonian Institution, Suitland, MD. Hereafter cited as Wesley, Address, 1960; Speeches, 1960; Box 12; NCAI Records; NMAI Archive Center.

²³⁷ Kilpatrick, *Celluloid Indians*, 67.

²³⁸ Wesley, Address, 1960; Speeches, 1960; Box 12; NCAI Records; NMAI Archive Center.

²³⁹ Kilpatrick, *Celluloid Indians*, 67.

²⁴⁰ Cf. “President Johnson, Special Message to Congress, March 6, 1968,” in *Documents of United States Indian Policy*, 3rd ed., ed. Francis P. Prucha (Lincoln: University of Nebraska Press, 2000), 249-250.

²⁴¹ Weston, *Native Americans in the News*, 147.

²⁴² Kilpatrick, *Celluloid Indians*, 66.

²⁴³ Weston, *Native Americans in the News*, 148.

ing into American homes and lives” and subsuming “Indigenous cultures into the imagined unity of a national American identity” while actual Native cultures were made irrelevant.²⁴⁴ With the growing popularity and appropriation of Indigeneity, Indigenous resistance against the stereotypization of Native peoples and the commercialization of their culture grew.

2.1 Advocating for Fair Representation in Marketing

Although the civil rights movement inspired many Native Americans to raise their voices against inappropriate marketing and media representations, such protests were not new. As early as 1949, the Motion Picture Association of America (MPAA) received “a rather steady flow of letters from individuals protesting against the misrepresentation of the American Indians carried out in the movies,” as employee Harold Mantail reported.²⁴⁵ Based on these protests, Alexander Lesser of the AAIA concluded that “there already exists some body of public sentiment which would respond to our announcement of an organized effort to begin correcting the Indian stereotype in a modest way.”²⁴⁶

In 1960, critics were already looking back on a continuous history of Indigenous protest against movie images. At a meeting in Fort Gibson, Oklahoma, Creek Tribal Chief Turner Bear and delegates of eleven tribes decided “to submit a petition to President Eisenhower protesting false portrayals on the television screen.” The group argued that the “blood-curdling TV ‘war whoopers’” were “giving viewers, particularly impressionable children, a distorted and harmful picture of frontier life and the historical role of the Indians.” Instead, they demanded the media should “show what really happened – including the fact that the Indians were fighting to defend their home against what they considered to be invasions by the white man.”²⁴⁷

This “new Indian uprising,” as a *New York Times* article named it, was “being supported by many Americans who are not Indians,”²⁴⁸ including the AAIA Public Education Committee. “Indians and their non-Indian friends all over the country are protesting the portrayal of our original Americans as bloodthirsty, savage killers,”²⁴⁹ an AAIA newsletter stated. The organization had favorable connections to media like *The New York Times* since Arthur Ochs Sulzberger, assistant to the newspaper’s general manager, was chairman of the committee and had “offered consultation services to television and motion-picture producers

²⁴⁴ Reetta Humalajoki, “Consumption as Assimilation: *New York Times* Reporting on Native American Art and Commodities, 1950–1970,” *Journal of American Studies* 53, no. 4 (November 2019): 972, 995.

²⁴⁵ Harold Mantail, MPAA, paraphrased in Alexander Lesser, AAIA, Memorandum, August 1949, New York, New York; Derogatory Images: General, 1949–1983; Box 90; Association on American Indian Affairs Records, 1851–2016, MC147; Public Policy Papers; Seeley G. Mudd Manuscript Library, Princeton University.

²⁴⁶ Lesser, Memorandum, August 1949; Derogatory Images: General, 1949–1983; Box 90; AAIA Records; Pub. Pol. Papers; Mudd Man. Lib., Princeton.

²⁴⁷ Leonard Buder, “TV Westerns Draw Fire of Indians,” *The New York Times*, June 26, 1960, clipping; Derogatory Images: Television, 1960; Box 89; Association on American Indian Affairs Records, 1851–2016, MC147; Public Policy Papers; Seeley G. Mudd Manuscript Library, Princeton University. Hereafter cited as Buder, “TV Westerns Draw Fire of Indians”; Derogatory Images: Television, 1960; Box 89; AAIA Records; Pub. Pol. Papers; Mudd Man. Lib., Princeton.

²⁴⁸ Ibid.

²⁴⁹ AAIA, “An Action In Progress,” *AAIA Newsletter*, April 1960; Derogatory Images: Television, 1960; Box 89; Association on American Indian Affairs Records, 1851–2016, MC147; Public Policy Papers; Seeley G. Mudd Manuscript Library, Princeton University.

to insure accuracy in the dramatization of frontier life.”²⁵⁰ While civilians often wrote letters of complaint to companies directly or to organizations promoting Native issues, such as the AAIA or the NCAI, professional advocates of fair Indigenous representations used their networks to ensure support of their protest against large corporations.

Although Native Americans were long overlooked in civil rights discussions, they profited from marketing protests at the hands of other minorities. After Chinese grocers in Sacramento complained about Pillsbury’s “funny-face drinks” bearing fruits with silly-looking faces and names based on minority racial derivations of Asian Americans (“Chinese Cherry”) and Native Americans (“Injun Orange”), the company decided in 1965 to rename the drinks “Choo-Choo Cherry” and “Jolly-Olly Orange,” respectively.²⁵¹ When Mary Payne of the AAIA complained about the marketing of the orange drink,²⁵² the change was not implemented yet and brought the Minneapolis-based company some more publicity. A Pillsbury spokesperson let the public know that “We admit guilt all over the lot. . . . It was in poor taste. We quickly saw our fault and as early as last July we decided to change the names.”²⁵³

According to a 1963 *Wall Street Journal* article, the AAIA made it one of their “major objectives right now” to persuade “advertisers to refrain from depicting Indians in a derogatory fashion in ads.” Following the “swelling tide of Negro civil rights protests,” the author argued, a new trend had developed in which “minority groups whose members feel themselves victims of discrimination also have stepped up efforts to remove real or suspected barriers.”²⁵⁴ African Americans’ successes in erasing stereotypes declaredly inspired Native Americans like student Duane McGinnis (see National Bank of Commerce case, 1969) to pursue similar goals. That the AAIA has moved “several national advertisers” within two years “to drop unfair ads” arguably confirmed the organization’s agenda to “eliminate this type of advertising permanently as well as derogatory movies, TV shows, etc.”²⁵⁵ In 1965, the Calvert Distilling Co. was not the first to become the target of protests against Indigenous marketing misrepresentations. Still, it was one of the earliest examples of intensified protests from multiple organizations and individuals broadly covered by the news media. Additionally, the Calvert case sparked discussions of paternalism and representation between Native and non-Native advocates of fair media representation.

²⁵⁰ Buder, “TV Westerns Draw Fire of Indians”; Derogatory Images: Television, 1960; Box 89; AAIA Records; Pub. Pol. Papers; Mudd Man. Lib., Princeton.

²⁵¹ See The Pillsbury Co., “Pillsbury’s Funny-Face Drink” “Injun Orange” and “Chinese Cherry,” ca. 1965, product packages, photographs posted in Shirley, “Pillsbury’s Funny-Face Drink / Injun Orange / Chinese Cherry,” *Too Hot For Words*, April 1, 2011, accessed January 1, 2019, <https://toohotforwords.wordpress.com/2011/04/01/pillsburys-funny-face-drink-injun-orange-chinese-cherry/>.

²⁵² See Louis I. Gelfand, Manager, Corporate Relations, The Pillsbury Company, letter to Mrs. Mary G. Payne, Director, Public Education, AAIA, Minneapolis, Minnesota, February 3, 1966; Derogatory Images: Pillsbury, 1966; Box 89; Association on American Indian Affairs Records, 1851-2016, MC147; Public Policy Papers; Seeley G. Mudd Manuscript Library, Princeton University.

²⁵³ Homer Bigart, “Indians Take Aim at Drink Ad, Find Chinese Hit Target First,” *The New York Times*, February 3, 1966, clipping; Derogatory Images: Pillsbury, 1966; Box 89; Association on American Indian Affairs Records, 1851-2016, MC147; Public Policy Papers; Seeley G. Mudd Manuscript Library, Princeton University.

²⁵⁴ “Spreading Protest: Negroes’ Push Spurs Other Minority Drives Against Misrepresentation,” *The Wall Street Journal*, July 25, 1963, 1.

²⁵⁵ William Byler, Executive Director, AAIA, letter to Cato Valandra, President Rosebud Sioux Tribe, New York, New York, May 11, 1965; Derogatory Images: Calvert Distillers Company, 1965; Box 89; Association on American Indian Affairs Records, 1851-2016, MC147; Public Policy Papers; Seeley G. Mudd Manuscript Library, Princeton University. Hereafter cited as Byler to Valandra, May 11, 1965; Derogatory Images: Calvert Distillers Company, 1965; Box 89; AAIA Records; Pub. Pol. Papers; Mudd Man. Lib., Princeton.

*Case Study 1: Calvert Distilling (1965)****Case Study 1: Calvert Distilling (1965)***

In spring 1965, when the advertisement for the Calvert Distilling Co.'s Soft Whiskey developed by advertising agency Doyle, Dane, Bernbach appeared in major publications such as *The New York Times*, the ad drew criticism immediately. The ad showed a generic Plains Indian warrior wearing a bonnet and a script explaining how much softer their whiskey was than the "fire water" Indians drink:

If the Sioux had had Soft Whiskey they would never have called it fire water. The Indians didn't call whiskey 'fire water' for nothing. (Why do you think they are yelping all the time?) And basically, distilling methods haven't changed much since those days. Except for Soft Whiskey, of course. Soft Whiskey swallows easy. It's gentle going down. You could say we've gotten rid of the evil spirits. But don't fool yourself. Soft Whiskey isn't for old squaws. It's 86 proof. And it can do anything any other 86 proof can do. It just does it softer. . . .²⁵⁶

Public relations and merchandising professional Felice Maier from New York City had complained to the AAIA because she thought this kind of humor was inappropriate. Maier found the ad "distasteful" because the Sioux were made "objects of ridicule and derision" as the ad "attempts to make a 'cute' situation out of the real historic tragedy of deliberate corruption by the white man of the Indian through whiskey."²⁵⁷ She recommended notifying the American Association of Advertising Agencies (AAAA) as "guardian of good taste in advertising" and addressing Samuel Bronfman of the parent company Seagram in Montreal, Canada, since he "likes to be known for his generous contributions to 'causes,' [and] might really put a stop to these ads."²⁵⁸

As executive director of the NCAI, Vine Deloria Jr. contacted the advertising manager of Calvert, Walter Houghton, to educate him about the inaccuracy and racism inherent in the advertisement. Deloria resented the fact that Calvert picked the Sioux out as opposed to other Indian tribes, particularly after Houghton explained that "there was no danger or malice involved as these people have been dead for 200 years."²⁵⁹

As the ad suggested, Indians yelped all the time because they were drinking "fire water" instead of Soft Whiskey. Asking "Do Indians yelp?" Deloria criticized the "image that if you don't speak English you don't speak intelligently. I should remind you that many Indians have mastery of two languages. I should be most interested in your ability to speak an Indian language." While Calvert had "gotten rid of the evil spirits" through innovative distilling methods

²⁵⁶ Calvert Distilling Co., "If the Sioux had had Soft Whiskey they would never have called it fire water," print advertisement, *The New York Times*, April 1965; Derogatory Images: Calvert Distillers Company, 1965; Box 89; Association on American Indian Affairs Records, 1851-2016, MC147; Public Policy Papers; Seeley G. Mudd Manuscript Library, Princeton University.

²⁵⁷ Felice Maier, Public Relations and Merchandising, letter to William Byler, Executive Director, AAIA, New York, New York, April 27, 1965; Derogatory Images: Calvert Distillers Company, 1965; Box 89; Association on American Indian Affairs Records, 1851-2016, MC147; Public Policy Papers; Seeley G. Mudd Manuscript Library, Princeton University.

²⁵⁸ Ibid.

²⁵⁹ Vine Deloria, Jr., Executive Director, NCAI, letter to Walter Houghton, Advertising Manager, Calvert Distilling Company, Washington, DC, April 29, 1965; Derogatory Images: Calvert Distillers Company, 1965; Box 89; Association on American Indian Affairs Records, 1851-2016, MC147; Public Policy Papers; Seeley G. Mudd Manuscript Library, Princeton University. Hereafter cited as Deloria to Houghton, April 29, 1965; Derogatory Images: Calvert Distillers Company, 1965; Box 89; AAIA Records; Pub. Pol. Papers; Mudd Man. Lib., Princeton.

which made the whiskey “gentle going down,” Deloria’s “5 years in Seminary have been sufficient to inform me of the absolute terror your ancestors dwelt in. I would only remind you of the mild insanity of the Salem witch hunts to feel that you [sic] inference to ‘evil spirits’ is much more appropriate to your group than to mine.” As Calvert warned its consumers that the 86 proof “Soft Whiskey isn’t for old squaws,” Deloria asked, “Pray tell me, what is an old squaw? . . . Do you still refer to Negro males as ‘bucks’? Are the minority races still ‘species’ for you?”²⁶⁰

Deloria went on to explain how Indian humor could help with new marketing strategies that focused more on the effect of advertising content than on visibility:

The advertising format you use is apparently the ‘new sophistication’ that is described in Time magazine. There Arthur C. Fatt, Chairman of Grey Advertising is quoted as follows: ‘Up till recently we were concerned with whether or not people saw our advertisements. Now we are more concerned with what impression the advertisements amkes [sic].’ Now I believe that we could cooperate with you to provide some real good Indian ads that would make an impression. Let’s take the massacre scene of Wounded Knee where a band of Sioux were slaughtered by U.S. Cavalry and let’s show a caption ‘Before the Massacre, we all had a shot of Calverts, it was smooth on us but rather hard on the Indians, but they didn’t yelp for long.’ Or let’s show a picture of the beautiful Minnesota lake country with the notation ‘Calverts helped us steal this land, Calverts and a smooth talker is too hard for the Sioux to handle.’ You see, I believe that Indians would cooperate with your firm in good natured fun if we only had the chance. But you can also understand how the point of view makes a great deal of difference in what is fun and what is not.²⁶¹

Deloria sent copies of his letter to various tribes, organizations, churches, and friends. At the same time, the AAIA notified the AAAA, as Felice Maier recommended, some more organizations, the Sioux tribe, and several media. In a united effort, Calvert received protests from the United Sioux Tribes in South Dakota, the NCAI, the Tribal Indian Land Rights Association, the AAIA, and many others.²⁶² After having received these complaints, the company removed all posters from the subway stations in NYC over the weekend.²⁶³ In his apology to the AAIA, Arthur Murphy, vice president of the Calvert Distilling Co., wrote:

We acknowledge receipt of your telegram of April 30th in which you indicate that in your opinion the ‘Sioux Indian’ advertisement of our Calvert Extra Whiskey is in derogation not only of the Sioux but of the entire Indian community. Nothing could have been farther from our intention. Nowhere at any time have we attempted to disparage any group. . . . Since [y]our unusual reaction was at [sic] it was we can only say that we are sorry. Immediately after receiving your wire we cancelled all of the scheduled advertising newspaper magazine and outdoor at no inconsiderable expense to ourselves. . . . We could not catch all of the advertisements due to irrevocable printing schedules but these instances were relatively few.

²⁶⁰ Ibid.

²⁶¹ Ibid.

²⁶² Cf. William Byler, Executive Director, AAIA, letter to Vine Deloria, Jr., Executive Director, NCAI, New York, New York, June 18, 1965; Derogatory Images: Calvert Distillers Company, 1965; Box 89; Association on American Indian Affairs Records, 1851-2016, MC147; Public Policy Papers; Seeley G. Mudd Manuscript Library, Princeton University.

²⁶³ Cf. William Byler, Executive Director, AAIA, letter to Vine Deloria, Jr., Executive Director, NCAI, New York, New York, May 3, 1965; Derogatory Images: Calvert Distillers Company, 1965; Box 89; Association on American Indian Affairs Records, 1851-2016, MC147; Public Policy Papers; Seeley G. Mudd Manuscript Library, Princeton University.

We are sure you will understand that we had no such intention as you impute to us and please convey our apology to the Indian community for whom we have the greatest respect.²⁶⁴

Newspapers, radio, and TV throughout the country carried announcements of the cancellation, including *The Wall Street Journal*, *The New York Times*, and New York-based news radio station 1010 WINS.²⁶⁵ Although all three used the popular war frame when reporting the protest, different attitudes shone through. The *NYT* headline “Indian’s Protest Kills Whisky Ad”²⁶⁶ introduced a rather neutral news report. Conversely, the *WSJ* article “Indian Uprising Causes Red Faces at Calvert; ‘Firewater’ Ad Killed” explained that “Some irate American Indian organizations went on the warpath against Calvert Distillers Co. Calvert retreated, and the only apparent casualty was an ad.”²⁶⁷ While this article diminished the cause of fair representation in marketing, Stan Burns of WINS seemed to be sympathetic to the cause, arguing that “Imagine in this age of civil rights, Indians can’t be treated that way. There were many protests made on behalf of the Sioux Indians.” Linking historic Indian resistance with the current resistance against marketing imagery, Burns concluded in Wild West phraseology, “The Indians got the scalp of the Transit Commissioner, but they did it 1965 style with a telegram.”²⁶⁸

A controversy initiated by the National Indian Youth Council (NIYC) about the allegedly paternalistic role of a non-Indigenous organization overshadowed the protest’s success. The dispute between members of the NIYC, the NCAI, and the AAIA ignited by a *Wall Street Journal* article misstating the AAIA’s telegram to the Calvert Distillers Co. that “The association said it represented 40,000 Sioux in North and South Dakota, as well as 540,000 other Indian citizens.”²⁶⁹ In fact, however, the telegram stated that “The Association on American Indian Affairs, representing 25,000 members, vigorously protests your advertisement The 40,000 Sioux today living in North and South Dakota, and the 540,000 American Indian citizens throughout the nation have the same right to fair representation as other groups enjoy.”²⁷⁰ While the AAIA did not claim to represent Native Americans, the debate shows how Indigenous public service organizations struggled for Indian self-representation and publicity.

²⁶⁴ Arthur F. Murphy, Vice President, Calvert Distillers Co., telegram to William Byler, Executive Director, AAIA, May 7, 1965; Derogatory Images: Calvert Distillers Company, 1965; Box 89; Association on American Indian Affairs Records, 1851-2016, MC147; Public Policy Papers; Seeley G. Mudd Manuscript Library, Princeton University.

²⁶⁵ Cf. Byler to Valandra, May 11, 1965; Derogatory Images: Calvert Distillers Company, 1965; Box 89; AAIA Records; Pub. Pol. Papers; Mudd Man. Lib., Princeton.

²⁶⁶ Eric Pace, “Indians’ Protest Kills Whiskey Ad,” *The New York Times*, May 8, 1965, 33.

²⁶⁷ “Indian Uprising Causes Red Faces at Calvert; ‘Firewater’ Ad Killed,” *The Wall Street Journal*, May 10, 1965, 6.

²⁶⁸ Stan Burns, WINS News Reporter, in transcript of the news, *WINS*, New York, New York, May 7, 1965, 7:30 PM; Derogatory Images: Calvert Distillers Company, 1965; Box 89; Association on American Indian Affairs Records, 1851-2016, MC147; Public Policy Papers; Seeley G. Mudd Manuscript Library, Princeton University.

²⁶⁹ AAIA telegram to the Calvert Distilling Company, quoted in Vine Deloria, Jr., Executive Director, NCAI, letter to Melvin D. Thom, President, NIYC, Washington, DC, June 16, 1965; Derogatory Images: Calvert Distillers Company, 1965; Box 89; Association on American Indian Affairs Records, 1851-2016, MC147; Public Policy Papers; Seeley G. Mudd Manuscript Library, Princeton University. Hereafter cited as Deloria to Thom, June 16, 1965; Derogatory Images: Calvert Distillers Company, 1965; Box 89; AAIA Records; Pub. Pol. Papers; Mudd Man. Lib., Princeton.

²⁷⁰ William Byler, Executive Director, AAIA, telegram to the President of the Calvert Distillers Company, New York, New York, April 30, 1965; Derogatory Images: Calvert Distillers Company, 1965; Box 89; Association on American Indian Affairs Records, 1851-2016, MC147; Public Policy Papers; Seeley G. Mudd Manuscript Library, Princeton University.

Melvin D. Thom, President of the National Indian Youth Council, criticized that “the Association on American Indian Affairs does not, as it claims, represent American Indians. AAIA is composed almost entirely of non-Indians who are self-appointed and who are developing their organization at the expense of Indian voice and Indian initiative.”²⁷¹ Due to its lack of Native employees at the management level, Deloria agreed that the AAIA was not a legitimate speaker on behalf of Native Americans and viewed their protest as an act of paternalism: “When Indians do not speak for themselves then someone decides to speak for them. . . . I would be very interested in knowing when the A.A.I.A. is going to put some more Indians on its Board of Directors and stop the paternalism.”²⁷² According to Thom, there were “only two national Indian Organizations who can appropriately represent American Indians” – the National Congress of American Indians and the National Indian Youth Council. He stressed the successes of Indigenous agency, as “Our Indian organizations are building a solid front in overcoming the image that we did not create of ourselves. We intend to take strong measures to eliminate the misconceptions and misrepresentations that have long plagued us.”²⁷³

Having declared that the AAIA only claimed to represent its members, Byler avoided the controversy on whether the AAIA had the right to speak on behalf of Native Americans. Instead, he pointed to the shared objectives and solidarity beyond racial or ethnic boundaries: “The Association does not claim to speak for all or any American Indians. It speaks for 25,000 American citizens of many races, creeds, and colors.”²⁷⁴ Ultimately, the result counted for Byler since “The advertisement was dropped. Let us move on. It seems to me there are enough difficulties in the world without fighting over phony issues, and more formidable adversaries than the Association.”²⁷⁵

The discussion was not just about representation and paternalism but also about public relations as an essential factor that potentially impacted an organization’s visibility, influence, and funding opportunities. Articles on minority protests, like the 1963 *Wall Street Journal* article, named the AAIA as an organization responsible for “Some of the most active efforts on behalf of the nation’s 500,000-odd Indians”²⁷⁶ without mentioning other Indian rights groups. That public visibility as an organization promoting Native American issues was contested shows the example of a 1969 Newsweek Indian interest PSA, “published with the hope

²⁷¹ Melvin D. Thom, President, NIYC, letter to Walter Houghton, Advertising Manager, Calvert Distilling Company, Gallup, New Mexico, May 13, 1965; Derogatory Images: Calvert Distillers Company, 1965; Box 89; Association on American Indian Affairs Records, 1851-2016, MC147; Public Policy Papers; Seeley G. Mudd Manuscript Library, Princeton University. Hereafter cited as Thom to Houghton, May 13, 1965; Derogatory Images: Calvert Distillers Company, 1965; Box 89; AAIA Records; Pub. Pol. Papers; Mudd Man. Lib., Princeton.

²⁷² Deloria to Thom, June 16, 1965; Derogatory Images: Calvert Distillers Company, 1965; Box 89; AAIA Records; Pub. Pol. Papers; Mudd Man. Lib., Princeton.

²⁷³ Thom to Houghton, May 13, 1965; Derogatory Images: Calvert Distillers Company, 1965; Box 89; AAIA Records; Pub. Pol. Papers; Mudd Man. Lib., Princeton.

²⁷⁴ William Byler, Executive Director, AAIA, letter to Melvin D. Thom, President, NIYC, New York, New York, June 11, 1965; Derogatory Images: Calvert Distillers Company, 1965; Box 89; Association on American Indian Affairs Records, 1851-2016, MC147; Public Policy Papers; Seeley G. Mudd Manuscript Library, Princeton University.

²⁷⁵ William Byler, Executive Director, AAIA, letter to Vine Deloria, Jr., Executive Director, NCAI, New York, New York, June 18, 1965; Derogatory Images: Calvert Distillers Company, 1965; Box 89; Association on American Indian Affairs Records, 1851-2016, MC147; Public Policy Papers; Seeley G. Mudd Manuscript Library, Princeton University.

²⁷⁶ “Spreading Protest,” 1.

it will remind some Americans of their basic responsibilities.”²⁷⁷ John Belindo, executive director of the NCAI, complimented the ad but was “shocked and chagrined to learn that the National Congress of American Indians, established in 1944, and very much on the current scene, is not included among your sources of information,”²⁷⁸ as he wrote to the director of the Newsweek Responsibility Series.

Thom and Deloria believed members of the AAIA were promoting their organization by utilizing Native issues at a time when minority rights became an increasingly popular topic in the American public. Thom did “not disagree with their statement that pictures of Indians to advertise soft whiskey is derogatory. But we do disagree with their using Indian people for their gain.”²⁷⁹ Deloria added the Association was in the midst of an extensive fundraising program and found it “singularly unfortunate that the A.A.I.A. is so in need of funds to continuing whatever they do that they give the impression that they are the only ones working with Indians.”²⁸⁰ In a tense field between Indigenous self-representation, cooperation to promote Indigenous issues, and competition for publicity, Indian-led organizations emphasized their right to represent Native Americans and Native issues towards organizations that were not Indian-led.

Despite some competition between organizations, the various groups, organizations, and institutions generally cooperated in furthering their causes. Praising that “In Unity There is Strength,” Clarence Wesley emphasized at the 17th Annual Convention of the NCAI in 1960 how, in recent years, Native Americans “have grown in learning how to work together as many tribes.” Wesley promoted pan-Indian cooperation because “we shall destroy ourselves if we allow our organizations to become competitive.”²⁸¹ While Wesley promoted pan-Indian unity, protesters also took advantage of a large network of Native and non-Native people and professionals interested in fair representations of Indigenous peoples.²⁸² As the Cal-

²⁷⁷ Newsweek, Inc., “Bad deal at the trading post,” print PSA, 1969, clipping; Media Surveillance - Public Awareness Correspondence [1 of 2]; Box 255; Records of the National Congress of American Indians, 1933-1990, NMAI.AC.010; NMAI Archive Center, Smithsonian Institution, Suitland, MD. Hereafter cited as Newsweek, “Bad deal at the trading post,” 1969; Public Awareness Corresp. [1 of 2]; Box 255; NCAI Records; NMAI Archive Center.

²⁷⁸ John Belindo, Executive Director, NCAI, letter to the Director of the Responsibility Series, Newsweek, Washington, DC, April 19, 1969; Media Surveillance - Public Awareness Correspondence [1 of 2]; Box 255; Records of the National Congress of American Indians, 1933-1990, NMAI.AC.010; NMAI Archive Center, Smithsonian Institution, Suitland, MD.

²⁷⁹ Thom to Houghton, May 13, 1965; Derogatory Images: Calvert Distillers Company, 1965; Box 89; AAIA Records; Pub. Pol. Papers; Mudd Man. Lib., Princeton.

²⁸⁰ Deloria to Thom, June 16, 1965; Derogatory Images: Calvert Distillers Company, 1965; Box 89; AAIA Records; Pub. Pol. Papers; Mudd Man. Lib., Princeton.

²⁸¹ Wesley, Address, 1960; Speeches, 1960; Box 12; NCAI Records; NMAI Archive Center.

²⁸² Deloria sent copies of his protest letter to the AAIA and other organizations such as the Indian Rights Association, ARROW, Inc., American Indian Development, Inc., and the National Indian Youth Council. He also informed multiple Sioux tribes that may have been interested in the matter (copies of Deloria’s letter were sent to the United Sioux Tribes, Rosebud Sioux Tribe, Cheyenne River Sioux Tribe, Lower Brule Sioux Tribe, Oglala Sioux Tribe, Flandreau Sioux Tribe, Yankton Sioux Tribe, Sisseton Sioux Tribe, Santee Sioux Tribe, Lower Sioux Reservation, Prairie Island Sioux Tribe, Upper Sioux Business Council, Fort Peck Sioux and Assiniboine Tribes, Devil Lake Sioux Tribe, and the Standing Rock Sioux Tribe), his professional network as a reverend (copies of Deloria’s letter were sent to the National Council of Churches, Protestant Episcopal Church, American Friends Services Committee, United Church of Christ, and The Lutheran Church – Missouri Synod/Indian Christian Concerns), and contacts at the American Heritage Magazine and the Carnegie Foundation. Additionally, William Byler of the AAIA sent letters to the New York Daily News, as well as the AAAA, the Anti Defamation League, and the New York State Commission for Human Rights.

vert case showed, the protests and support from many peoples and groups resulted in the cancellation of Calvert's marketing campaign, which cost the company roughly \$30,000,²⁸³ or the equivalent of \$258,067 in 2021.²⁸⁴

Many critics informed organizations concerned with fair media representations of Native Americans about marketing misrepresentations. Others contacted advertisers directly to voice their concerns, like Duane McGinnis, "a Clallam student speaking independently of my tribe or any Indian Organization."²⁸⁵ His protest against a National Bank of Commerce ad published in the *University of Washington Daily* in October 1969²⁸⁶ exemplifies how the African American struggle for fair representation and new perspectives on Indian history and culture expressed by Indigenous intellectuals influenced Native American thinking and self-confidence.

Case Study 2: National Bank of Commerce (1969)

Case Study 2: National Bank of Commerce (1969)

Along with the headline "An NBoFC Special Checking Account is enough to make anybody smile," the National Bank of Commerce ad featured an edited version of an image of Geronimo holding a rifle and grinning inanely. In a protest letter, McGinnis wrote the president of the bank "a few words about the rather illiterate ad for your NBC checking account." He was "surprised that some of your more perceptive members failed to recognize the ludicrousness of this ad, its subtle, emotive meanings." Pointing to the U.S. history of minority stereotyping and oppression, McGinnis explained, "Incidentally, the man in the picture is Geronomo [sic], and is to many Indian communities, a cultural hero. I understand to white Americans he is nothing more than a caricature, at least, today. Yet, and apparently it cannot be over-stated, Sir, that the times are, indeed, a changing." Since "the blacks have been immeasurably [sic] successful in erasing these stereotypes from American thought and speech, . . . now it is time to let you know the Indian American is having his own reawakening of self and history, as cultural identity with roots."²⁸⁷

McGinnis' book recommendation points to the important influence of contemporary Indigenous intellectuals on marketing protest. "I want to recommend a book that has recently caused considerable stir among many people in this country: Custer Died For Your Sins. The author is a

Cf. Deloria to Houghton, April 29, 1965; Derogatory Images: Calvert Distillers Company, 1965; Box 89; AAIA Records; Pub. Pol. Papers; Mudd Man. Lib., Princeton. See also William Byler, Executive Director, AAIA, memorandum to Alden Stevens, Benjamin C. O'Sullivan, Arthur Lazarus, Jr., New York, New York, April 30, 1965; Derogatory Images: Calvert Distillers Company, 1965; Box 89; Association on American Indian Affairs Records, 1851-2016, MC147; Public Policy Papers; Seeley G. Mudd Manuscript Library, Princeton University.

²⁸³ Cf. Pace, "Indians' Protest Kills Whiskey Ad," 33.

²⁸⁴ Cf. "US Inflation Calculator," Coin News Media Group, accessed July 20, 2021, <https://www.usinflationcalculator.com/>.

²⁸⁵ Duane McGinnis, letter to the Pres. of the National Bank of Commerce, Seattle, Washington, October 30, 1969; Media Surveillance - Public Awareness Correspondence [1 of 2]; Box 255; Records of the National Congress of American Indians, 1933-1990, NMAI.AC.010; NMAI Archive Center, Smithsonian Institution, Suitland, MD. Hereafter cited as McGinnis to the Pres. of NBoFC, October 30, 1969; Public Awareness Corresp. [1 of 2]; Box 255; NCAI Records; NMAI Archive Center.

²⁸⁶ National Bank of Commerce, "An NBoFC Checking Account is enough to make anybody smile," print advertisement, *University of Washington Daily*, October 1969; Media Surveillance - Public Awareness Correspondence [1 of 2]; Box 255; Records of the National Congress of American Indians, 1933-1990, NMAI.AC.010; NMAI Archive Center, Smithsonian Institution, Suitland, MD.

²⁸⁷ McGinnis to the Pres. of NBoFC, October 30, 1969; Public Awareness Corresp. [1 of 2]; Box 255; NCAI Records; NMAI Archive Center.

Standing Rock Sioux named Vine Deloria, Jr. You would profit (?) from reading this book, I'm sure."²⁸⁸ *Custer Died For Your Sins* had just appeared on the market in 1969 and shattered White misconceptions of Native Americans at the same time when protests against marketing misrepresentations peaked for the first time during the years between 1968 and 1972.

Robert P. Becker, vice president of the National Bank of Commerce, responded within one day that the letter was "entirely justified" and the bank's employees and the advertising agency had "clearly erred." The advertisement series featured several famous people, including Buster Keaton, Clark Gable, Humphrey Bogart, and "the Indian," whose expressions "were meant to win a grin from the reader. Obviously, the end result was quite to the contrary, and somewhere in the development process the original intent was lost."²⁸⁹

As a result of the protest, the "bank's President, Mr. Maxwell Carlson, understands and agrees completely with your reaction and, upon seeing the ad last week, immediately directed the cancellation of this advertising series." Since the bank "endeavored to present an advertising effort consistent with good taste in order to build the fine customer relations we have enjoyed over the past seventy years," it agreed to send letters to the organizations and individuals mentioned by McGinnis, such as the NCAI.²⁹⁰ Since Becker referred to Geronimo as "the Indian" instead of using his name, the advertisers may not have recognized his historical identity. The potential lack of knowledge about Native American histories and sensitivity towards Indigenous perspective, however, was contrasted by a very well-disposed perception of McGinnis' criticism.

As critics began to denounce offensive representations of Native Americans, they also refuted historical myths propagated in advertising, such as General Electric's (1966) magazine advertisement showing a violent scene of a 'Cowboy and Indian' movie on a TV screen.²⁹¹ Pointing to the moral double standard that "No-one would run an advertisement for a television by showing a Negro being throttled by a gun wielding Klansman," the GE ad "serves to perpetuate the erroneous image of the American Indian as merely a tomahawk wielding, feather-headdressed, constantly-on-the-warpath savage."²⁹²

David Michaels, advertising director of *The New Yorker*, who had published the ad, first argued that the fight between western pioneers and Native Americans was "simply a historical fact that has become a popular subject for children's television programs," but also admitted it was an unhealthy myth. "We turn down many advertisements where we feel there is a prejudice involved, and although I don't personally feel that the cowboy and Indian myth is a particular healthy one to continue, I never did feel there was a prejudice involved."²⁹³

²⁸⁸ Ibid.

²⁸⁹ Robert Becker, Vice President National Bank of Commerce, letter to Duane McGinnis, Seattle, Washington, October 31, 1969; Media Surveillance - Public Awareness Correspondence [1 of 2]; Box 255; Records of the National Congress of American Indians, 1933-1990, NMAI.AC.010; NMAI Archive Center, Smithsonian Institution, Suitland, MD.

²⁹⁰ Ibid.

²⁹¹ See General Electric, "Now color TV doesn't have to be big to be good," print advertisement, *The New Yorker*, 1966; Derogatory Images: General Electric, 1966-1967; Box 89; Association on American Indian Affairs Records, 1851-2016, MC147; Public Policy Papers; Seeley G. Mudd Manuscript Library, Princeton University.

²⁹² John Reynolds, letter to The Editors of Advertising Age, Bronxville, New York, November 23, 1966; Derogatory Images: General Electric, 1966-1967; Box 89; Association on American Indian Affairs Records, 1851-2016, MC147; Public Policy Papers; Seeley G. Mudd Manuscript Library, Princeton University.

²⁹³ David D. Michaels, Advertising Director, The New Yorker, letter to John Reynolds, New York, New York, December 2, 1966; Derogatory Images: General Electric, 1966-1967; Box 89; Association on American Indian Affairs Records, 1851-2016, MC147; Public Policy Papers; Seeley G. Mudd Manuscript Library, Princeton

T.H. Castle, General Electric Advertising & Public Relations Manager, however, agreed the ad was inappropriate and promised to adapt the print ad:

We can certainly appreciate your concern with the scene depicted on the TV screen in this ad as an example of the lack of understanding of the role played in our country's history by the American Indian and its implications regarding his present status in our country.

We were certainly remiss in approving the use of this scene of violence, and compounding it with the 'Cowboys & Indians' cliché, and have instructed our advertising agency to substitute a more suitable subject on the screen as soon as possible in future use of this ad.²⁹⁴

Only one month later, Reynolds found himself "questioning the sincerity" of GE's letter after the company "release[d] another offensive 'Indian' advertisement" in *LIFE* magazine.²⁹⁵

Activists not only criticized advertising representations they found offensive but the underlying Euro-American constructions of history transported through all types of media as a mirror of and learning source for U.S. society. For this reason, a new series about George Armstrong Custer produced by the American Broadcasting Company (ABC) became the focus of highly concentrated protest that sought to involve companies who had bought advertising time during the show as allies.

2.2 Advertisers as Allies Against Media Misrepresentation: "The Legend of Custer"

In 1967, the announcement of a new series called "The Legend of Custer," produced by the American Broadcast Company (ABC), immediately provoked resistance and resulted in a major controversy about Indigenous historical and medial representations.²⁹⁶ Had Native Americans, during the past years, increasingly criticized advertisers' marketing imagery, protesters now asked them for support and to boycott ABC because of their inaccurate portrayal of Native Americans in the "Custer" series. Peter Wensberg, vice director of Polaroid's advertising division and advertiser on the series, was "surprised that you have singled this one out for such concentrated attention, since the first few episodes seem no better nor worse than hundreds of television Westerns and movie reruns in recent years. . . . I'm sure you are aware (as we are) that the general level of television programming is depressingly low. We wish it were better."²⁹⁷ The NCAI explained the symbolic relevance of the "Custer" series:

University. Hereafter cited as Michaels to Reynolds, December 2, 1966; Derogatory Images: General Electric, 1966-1967; Box 89; AAIA Records; Pub. Pol. Papers; Mudd Man. Lib., Princeton.

²⁹⁴ T.H. Castle, Manager Advertising & Public Relations, General Electric, letter to John Reynolds, Syracuse, New York, December 8, 1966; Derogatory Images: General Electric, 1966-1967; Box 89; Association on American Indian Affairs Records, 1851-2016, MC147; Public Policy Papers; Seeley G. Mudd Manuscript Library, Princeton University.

²⁹⁵ John Reynolds, letter to T.H. Castle, Advertising & Public Relations Manager, Bronxville, New York, January 12, 1967; Derogatory Images: General Electric, 1966-1967; Box 89; Association on American Indian Affairs Records, 1851-2016, MC147; Public Policy Papers; Seeley G. Mudd Manuscript Library, Princeton University.

²⁹⁶ All sources for the chapter "Advertisers as Allies Against Media Misrepresentation: The Legend of Custer" are filed in Derogatory Images: American Broadcasting Company's "Custer," 1967; Box 89; Association on American Indian Affairs Records, 1851-2016, MC147; Public Policy Papers; Seeley G. Mudd Manuscript Library, Princeton University. For exceptions, differing sources are stated.

²⁹⁷ Peter Wensberg, Vice President Advertising Marketing Division, Polaroid Corporation, letter to Mary Lou Byler, AAIA, Cambridge, Massachusetts, September 29, 1967. Hereafter cited as Wensberg to Byler, September 29, 1967.

[The] Custer-Big Horn motif is a classic model type for a much larger and more diffuse pattern of stereotype folklore and attitudes on the part of white America with respect to the Indian peoples. . . . These motifs support and perpetuate attitudes on the part of much of the non-Indian white population which, when exercised on an everyday basis of life, provoke a descending cascade of incident and experience which produce real present day socio-economic disadvantages for the present day Indians.²⁹⁸

By changing popular representations of Native American history, which critics deemed inaccurate, they sought to enter the discourse of American history, rewrite the American past, and share the Indigenous perspective with a broad American audience.

The “Custer” protest started in the summer of 1967 when Federal Judge Peirson Hall denied a temporary restraining order against the series’ fall premiere, which Kiowa Amos Hopkins-Dukes had sought.²⁹⁹ The AAIA asked ABC to preview the series before it was released and offered consultation services since “This would forestall later embarrassment to the American Indian, to the sponsor of the program, and to A.B.C. itself.” Citing previous protests of marketing campaigns, Mary Lou Byler cautioned that “Con Edison, General Electric and Seagram’s all called off costly advertising campaigns when certain of their ads were shown to be derogatory to the American Indian.”³⁰⁰ ABC declined the “request for a private viewing of the series in advance” because “Not only would chaos result from such a practice, but the essential precept of the broadcasters relating to freedom from censorship could be seriously affected.”³⁰¹ The network assured the AAIA that ABC “maintains a Department of Standards and Practices whose purpose is to review all entertainment programs from script stage to completed film One of the more specific standards contemplates that racial or nationality types not be shown on television in such a manner as to ridicule the race or nationality.”³⁰² However, ABC’s broadcasting standards did not cover the protesters’ primary concern, the biased and inaccurate portrayal of Natives that fostered traditional stereotypes.

Within a few weeks, many individuals, organizations, and tribes joined to “launch a national campaign to protest the September debut of the new ‘Custer’ series on ABC-TV.”³⁰³ Vine Deloria Jr., the South Dakota Episcopal Church archdeacon and director of the NCAI, appealed to the clerical community that “We American Indians desperately need your help, instantly and vigorously.” As Deloria explained, the “series must not go on tv” because it “would cause irreparable damage to the image of Indians as human beings and as people trying to join the modern technological world. All the old hatreds would come to the surface.”³⁰⁴ In support of Deloria’s plea, Reverend W.W. Horstick, bishop of Eau Claire, asked the com-

²⁹⁸ NCAI, “The American Indian Media Surveillance Committee (AIMS). The History of Events which Identified the Need for the American Indian Media Surveillance Committee (AIMS),” Washington, DC, February 29, 1968, 2; Media Surveillance #2 AIMS Committee Memoranda [1 of 2]; Box 255; Records of the National Congress of American Indians, 1933-1990, NMAI.AC.010; NMAI Archive Center, Smithsonian Institution, Suitland, MD. Hereafter cited as NCAI, “The American Indian Media Surveillance Committee,” February 29, 1968; AIMS Committee Memoranda [1 of 2]; Box 255; NCAI Records; NMAI Archive Center.

²⁹⁹ Cf. “Episcopal Bishop Joins Redskins On Warpath Vs. Custer,” *Daily Variety*, August 28, 1967, 11.

³⁰⁰ Mary Lou Byler, Director of Public Education, AAIA, letter to Leonard Goldenson, President, American Broadcasting Companies, Inc., New York, New York, August 7, 1967.

³⁰¹ Martin Pompadur, Vice President, Administration, ABC Television Network, letter to Mary Lou Byler, AAIA, New York, New York, August 16, 1967.

³⁰² Ibid.

³⁰³ National Congress of American Indians, press release, Washington, DC, n.d.

³⁰⁴ Vine Deloria, quoted in “Episcopal Bishop Joins Redskins On Warpath Vs. Custer,” 11.

munity of his diocese to join his protest against the “Custer” series.³⁰⁵ Reverend Dr. Clifford L. Samuelson, Executive Council of the Episcopal Church, sent protest letters to multiple companies planning to place commercials during the “Custer” program.

Tribes like the Yakima Indian Nation voiced protest through their tribal attorneys, demanding equal time under the Fairness Doctrine of the Federal Communications Commission to “call to the attention of the American public the Indian side of the story”³⁰⁶ of the battle at Little Big Horn. Protesters appealed “to all Indian tribes” to follow the Yakima Nation’s example and “have their lawyers file similar statements with the national ABC Network and with local affiliate.” The call for action urged all tribes to respond because “no one tribe or group of tribes can do it alone.”³⁰⁷ Within a week, a pan-Indian alliance against ABC developed when the Inter-Tribal Council of the Five Civilized Tribes asked for equal time on ABC³⁰⁸ and “joined virtually every Indian leader and Indian organization in the country in donning the warpaint,”³⁰⁹ as the *Tulsa Daily World* reported.

As the TV protest gained increasing attention, it took on the image of a battle. The protesters “realize[d] some of the complex realities underlying commercial television, . . . and the fact that there is little room for cultural dabblings on a sponsored show.” Nevertheless, “if the television industry is going to insist on playing up the Indian stereotype in their pseudo-westerns, then the Indians will be forced to unite like the Teton Sioux Council did back in 1876.”³¹⁰ Likewise, news media made use of the Wild West war frame in their coverage of the protest, producing headlines such as “Indians Sound War Cry Over Television Image” (*Tulsa Daily World*), “Episcopal Bishop Joins Redskins On Warpath Vs. Custer” (*Daily Variety*), or “Chippewas Join With Old Enemy Sioux On Kill-’Custer’ Trail” (*New York Weekly*).³¹¹

The controversy’s outcome gained symbolic significance as “the greatest victory since the little Big Horn, and over the same foe.”³¹² A special rating forecast published by Television Age predicted that Custer would rank 53rd out of 85 new and returning programs, which meant the show would probably cease within its first 13 weeks.³¹³ While ABC officials sought to calm down the protest by pointing to poor Nielson ratings, John Belindo insisted that “We didn’t lose that first encounter with the 7th Cavalry, . . . and we don’t intend to lose this one – Nielson or no Nielson!”³¹⁴

³⁰⁵ Cf. “Episcopal Bishop Joins Redskins On Warpath Vs. Custer,” 11.

³⁰⁶ Hovis, Cockrill & Roy, Attorneys and Counselors, letter to Tom Moore, President, ABC-TV, Yakima, Washington, August 15, 1967.

³⁰⁷ “To All Indian Tribes,” August 25, 1967.

³⁰⁸ Cf. “Indians Ask Equal Time For ‘Custer’,” *Oklahoma Journal*, September 1, 1967, clipping.

³⁰⁹ George Kane, “Indians Sound War Cry Over Television Image,” *Tulsa Daily World*, September 3, 1967, clipping.

³¹⁰ National Congress of American Indians, press release.

³¹¹ Kane, “Indians Sound War Cry Over Television Image”; “Episcopal Bishop Joins Redskins On Warpath Vs. Custer,” 1, 11; “Chippewas Join With Old Enemy Sioux On Kill-’Custer’ Trail,” *New York Weekly*, September 13, 1967, clipping.

³¹² “To All Indian Tribes.”

³¹³ Cf. R.O. Stratton, Manager Institutional Advertising, General Electric, letter to Rev. Dr. Clifford L. Samuelson, Executive Council, Episcopal Church, New York, New York, August 31, 1967. Hereafter cited as Stratton to Samuelson, August 31, 1967.

³¹⁴ John Belindo, quoted in National Congress of American Indians, press release.

Belindo's call for action came with a list of companies³¹⁵ that had bought commercial time slots during the "Custer" series, suggesting each tribe "send a letter of protest to each company pointing out that the series would do great injustice to American Indian people."³¹⁶ The call for action suggested boycott threats of products consumed in Native communities since "your tribal store can stop buying their products in the cases of Campbell Soup, Procter & Gamble, (soaps) Polaroid, and General Electric (appliances)."³¹⁷ The Network made some concessions after massive protests, its broad media coverage, and the imminent loss of advertisers since the Associated Press published a few large advertisers' names, such as Bristol-Myers, Colgate Palmolive, Procter & Gamble, Campbell Soup, General Mills, American Telephone & Telegraph Co., and the New York Telephone Co.³¹⁸

While ABC maintained that the Custer series was a "fictional drama and no historical documentary,"³¹⁹ it tried to ease the controversy by making changes to the series.³²⁰ Though the company had initially denied private screenings, it now offered private previews to representatives of the offended groups.³²¹ The NCAI, however, viewed the concessions as an attempt to "involve and associate those objecting to the series in its production and promotion so as to blur the areas and identities in disagreement and perhaps even milk the public attention created by the issues for promotional publicity."³²²

After ABC aired the first episode of "Custer" on September 8th, protests intensified as the activists saw their apprehensions of the series' character proven. Protests came from tribes like the Chippewa Indians on the Red Lake Reservation and the Consolidated Minnesota Chippewa Tribe, but also from "Twin Cities newspapers, which have come out editorially against the program."³²³ By glorifying a man like Custer, "you contribute to the debasement of your country's character," wrote Bobo Dean on behalf of the Oglala Sioux Tribe of the Pine Ridge Reservation to the president of ABC. On the contrary, in this age, "all Americans, regardless of ancestry, should stand together."³²⁴ Mary Lou Byler, Director of Public Education at the AAIA, appealed to advertisers that "It is no more appropriate for your company to

³¹⁵ The list of advertisers included: Armour & Company (Chicago, Illinois); Chrysler Corp. (Detroit, Michigan); Procter & Gamble (Cincinnati, Ohio); Polaroid Co. (Cambridge, Massachusetts); Campbell Soup Company (Camden, New Jersey); General Electric Co. (New York City); Armstrong Cork Co. (Lancaster, Pennsylvania); American Home Products Corp. (New York City); Bristol-Myers, Co. (New York City); American Telephone & Telegraph Co. (New York City); Colgate – Palmolive (New York City); The Andrew Jergens Co. (Cincinnati, Ohio); General Mills, Inc. (Minneapolis, Minnesota); Milton Bradley Co. (Springfield, Massachusetts); National Biscuit Co. (Nabisco) (New York City); Sauter Labs Inc. (Clifton, New Jersey); Spiedel Corp. (Fernwood, Pennsylvania); Sunbeam Corp. (Chicago, Illinois); Warner-Lambert Pharmaceutical Co. (Morris Plains, New Jersey). Cf. "To All Indian Tribes."

³¹⁶ "To All Indian Tribes."

³¹⁷ Ibid.

³¹⁸ Cf. Associated Press, "Indians Ask Sponsors Drop Custer Series," *The Springfield Union*, September 13, 1967, clipping.

³¹⁹ William D. Swanson, General Manager, KTUL-TV, quoted in Kane, "Indians Sound War Cry Over Television Image."

³²⁰ One of the changes was the renaming of a "bad Indian guy" from Red Cloud to Fire Cloud "because they were fearful some of the Indian's descendants might sue," as a *Kenosha News* writer speculated. Untitled, *Kenosha News*, September 11, 1967, clipping.

³²¹ Cf. NCAI, "The American Indian Media Surveillance Committee," February 29, 1968, 1; AIMS Committee Memoranda [1 of 2]; Box 255; NCAI Records; NMAI Archive Center.

³²² Ibid., 1.

³²³ "Chippewas Join With Old Enemy Sioux On Kill-'Custer' Trail."

³²⁴ Bobo Dean, Strasser, Spiegelberg, Fried, Frank & Kampelman, letter to Thomas W. Moore, President, American Broadcasting Company, Washington, DC, September 7, 1967.

sponsor a series glorifying an American Army officer who engaged in the senseless slaughter of women and children than it would be to sponsor one romanticizing the exploits of a Nazi war criminal or an American slave trader.”³²⁵

Some protesters had already contacted the companies mentioned in the Associated Press article. Now the AAIA decided to send out boycott calls to all advertisers, “urging sponsors of the A.B.C. television series ‘The Legend of Custer’ to halt their advertisements on the grounds that the series glorifies Custer’s criminal atrocities against American Indian people and presents American Indians in a derogatory manner.”³²⁶ Copies of the telegram went to a network of allies, intellectuals, and the media, including Alvin Josephy Jr. of *American Heritage* and Arthur Ochs Sulzberger of *The New York Times*. Thereupon, advertisers received “many letters . . . from private citizens and organizations concerned with Indian affairs expressing their disapproval of this program.”³²⁷ The AAIA sent protest letters to 27 advertisers on August 29th,³²⁸ September 8th,³²⁹ and 13th,³³⁰ to which at least 21 responded.³³¹

The protest became increasingly complex and time-consuming when the first advertisers dropped their commercials. Byler noted, “I believe the station’s tactic on this will be to run in smaller advertisers at a reduced rate – as the larger sponsors pull out. So it’s going to be like chasing fleas!”³³² From September 27th through December 1st, the AAIA hired Frank Diaz for \$10 per program “to send us a list of the products and the names of the sponsors on each show, and mail the list to us immediately.”³³³ Diaz identified multiple known and new advertisers, such as Warner-Lambert Pharmaceutical, Armstrong Cork, Mars Candies, American Broadcasting, Bristol-Myers, and Hoffman La Roche (Sauter Labs),³³⁴ which the AAIA contacted for their protest against the “Custer” series.

During the early stage of the protest, several large advertisers chose to discontinue their advertising arrangements with ABC. Campbell Soup,³³⁵ Bristol-Myers,³³⁶ McDon-

³²⁵ Mary Lou Byler, Director of Public Education, AAIA, telegrams to Proctor & Gamble (Cincinnati, Ohio); Campbell Soup Company (Camden, New Jersey); General Mills, Inc. (Minneapolis, Minnesota); American Telephone & Telegraph Co. (New York, New York); Colgate – Palmolive (New York, New York); Bristol-Meyers, Co. (New York, New York), New York, New York, September 8, 1967.

³²⁶ Association on American Indian Affairs, press release, New York, New York, September 8, 1967.

³²⁷ Wensberg to Byler, September 29, 1967.

³²⁸ Rev. Dr. Clifford L. Samuelson’s protest letters are not filed, but some company responses to the said letter.

³²⁹ Byler to Proctor & Gamble; Campbell Soup Company; General Mills, Inc.; American Telephone & Telegraph Co.; Colgate – Palmolive; Bristol-Meyers, Co.

³³⁰ Mary Lou Byler, Director of Public Education, AAIA, letters to Armour & Company (Chicago, Illinois); American Home Products Corp. (New York, New York); Armstrong Cork Co. (Lancaster, Pennsylvania); The Andrew Jergens Co. (Cincinnati, Ohio); Milton Bradley Co. (Springfield, Massachusetts); Polaroid Co. (Cambridge, Massachusetts); Sunbeam Corp. (Chicago, Illinois); Warner-Lambert Pharmaceutical Co. (Morris Plains, New Jersey); Sauter Labs Inc. (Clifton, New Jersey); National Biscuit Co. (New York, New York); Spiedel Corp. (Fernwood, Pennsylvania), New York, New York, September 13, 1967.

³³¹ No responses filed from Armour & Company (Chicago, Illinois), The Andrew Jergens Co. (Cincinnati, Ohio), Milton Bradley Co. (Springfield, Massachusetts), National Biscuit Co. (New York, New York), Spiedel Corp. (Fernwood, Pennsylvania), and Pepsi-Cola Co. (Purchase, New York).

³³² Mary Lou Byler, Director of Public Education, AAIA, letter to Bobo Dean, AAIA, New York, New York, September 15, 1967. Hereafter cited as Byler to Dean, September 15, 1967.

³³³ William Byler, Executive Director, AAIA, letter to Frank Diaz, Radio and TV Reports, Inc., New York, New York, September 25, 1967.

³³⁴ Cf. “Special Order: A list of the products and sponsors on the television show - Custer,” September 28, 1967.

³³⁵ Cf. William P. MacFarland, Director Advertising, Campbell Soup Company, letter to Rev. Clifford L. Samuelson, Executive Council of the Episcopal Church, Camden, New Jersey, September 1, 1967.

³³⁶ Cf. Marvin H. Koslow, Vice President, Bristol-Myers Co., New York, New York, September 12, 1967.

ald's,³³⁷ and General Mills assured they had "no plans for any further sponsorship on subsequent episodes."³³⁸ Edwin W. Rawlings, president of General Mills, said in an interview with the *Minneapolis Tribune* that "We (General Mills) did not have an opportunity to screen the show, but we certainly are going to take a look at it," as he wanted to be sure that the sponsored program was "in good taste."³³⁹ The day after the newspaper published his statement, Rawlings told Byler, "We are extremely sorry to have offended you, your organization or any group of responsible Americans. General Mills does feel a keen responsibility in its advertising practices even though we do not control program content as such."³⁴⁰ Similarly, after a preview of the Custer show, General Electric was "inclined to share your views"³⁴¹ and dropped its advertisement.

Consolidated Edison³⁴² had already been a target of Indigenous protests for their marketing practice in early July 1967.³⁴³ Con Edison made clear they had not placed a commercial in the Custer program but, "Through circumstances over which we had no control, the local television station inserted our commercial during the middle of the Custer program instead of at the normal 'station-break' where it was intended to be shown. Regardless of these circumstances, upon review of 'The Legend of Custer' program, we directed that our commercial be removed from that time segment so that no one could mistakenly construe an adjacent time position as any possible support of this program."³⁴⁴

Although most companies sympathized with the issue, only a few provided explicit statements. Some advertisers framed careful responses trying to demonstrate sensitivity but avoided proposing measures. Pabst Brewing, for instance, being "in complete sympathy with your objective," promised to "instruct our advertising manager to avoid the program in their local television buy if at all possible."³⁴⁵ Colgate-Palmolive explained through its advertising agency Ted Bates & Company that they had "bought only a very minimal sponsorship in 'The Legend of Custer'," but it was "not our intention to expand it."³⁴⁶

Most advertisers took no position on the matter but pointed to the lack of control advertisers had on the program content, free speech, and censorship. Ben S. Gilmer, President of the American Telephone and Telegraph Company, made clear that "I don't believe sponsors

³³⁷ Cf. Harold Krieger, Marketing Department, McDonald's System, Inc., letter to Mary Lou Byler, Chicago, Illinois, October 6, 1967.

³³⁸ E.W. Rawlings, President, General Mills, Inc., letter to Mary Lou Byler, Minneapolis, Minnesota, September 11, 1967. Hereafter cited as Rawlings to Byler, September 11, 1967.

³³⁹ Edwin W. Rawlings, President, General Mills, quoted in "Indian Group Joins Protest Over 'Custer'," *Minneapolis Tribune*, September 10, 1967, clipping.

³⁴⁰ Rawlings to Byler, September 11, 1967.

³⁴¹ Stratton to Samuelson, August 31, 1967.

³⁴² Cf. Mary Lou Byler, Director of Public Education, AAIA, letter to Consolidated Edison Co., Inc., September 18, 1967.

³⁴³ Cf. Roger A. Jourdain, Chairman, Red Lake Band of Chippewa Indians, telegram to J.V. Cleary, President, Con Edison, and G.P. Goetz, Director of Advertising, Con Edison, July 10, 1967; Derogatory Images: Con Edison, 1967; Box 89; Association on American Indian Affairs Records, 1851-2016, MC147; Public Policy Papers; Seeley G. Mudd Manuscript Library, Princeton University.

³⁴⁴ John V. Cleary, President, Consolidated Edison Company of New York, Inc., letter to Mary Lou Byler, New York, New York, September 22, 1967.

³⁴⁵ A.J. Winograd, Corporate Advertising Director, Pabst Brewing Company, letter to Mary Lou Byler, AAIA, Milwaukee, Wisconsin, October 20, 1967.

³⁴⁶ Richard A. R. Pinkham, Senior Vice President, Ted Bates & Company, letter to Mary Lou Byler, AAIA, New York, New York, October 6, 1967.

should serve as censors.”³⁴⁷ Likewise, Polaroid, Colgate, American Home Products, and Sunbeam declared they had no right to censorship. They refused to influence the program content of the shows on which they advertise in the same way they would not ask newspapers or magazines to change an editorial they did not like.³⁴⁸ While the appearance of a commercial did not constitute an endorsement of the series, as Spencer C. Boise from Procter & Gamble explained, the company decided that, after the “network has assured us that they have reviewed the program and feel that the ‘Custer’ series presents certain legends and stories that are in accordance with their programming standards . . . , we plan to fulfill our very limited commitment to the network.”³⁴⁹

In several cases, advertisers were unaware that their commercials appeared during the “Custer” series because they purchased commercial packages, that is, “commercial time on many television programs so as to reach the widest possible audience.”³⁵⁰ Sterling Drug,³⁵¹ T.V. Guide Magazine,³⁵² and Gillette declared they were no sponsors and had “never placed advertising on this show.”³⁵³ As General Foods added, the critics might have seen one of the commercials that “are placed locally and independent of network programming and which might have appeared during one of the local station breaks adjacent to the CUSTER program.”³⁵⁴ ABC likely placed some commercials in the program after other advertisers pulled theirs in response to the protest letters.

Strong opposition came only from four companies that disagreed with the protesters’ positions and defended the representations of Native Americans in the series. Armstrong Cork argued, “As a manufacturer, we do not feel qualified to enter into an historical controversy; our very limited sponsorship of the series was purchased primarily on the basis of the potential audience for the program. We would point out, however, having read several of the proposed scripts, that in our opinion the American Indian’s point of view is well represented in the series.”³⁵⁵ American Telephone and Telegraph responded that the “‘cowboys and indians’ [sic] story . . . is pretty much accepted by all of us . . . as a phantasy that no longer involves ‘real’ people.” Despite that, as “a one-time alternate,” they would “not appear again as a participating sponsor on the Custer show.”³⁵⁶ The Sunbeam advertising team was “genuinely

³⁴⁷ Ben S. Gilmer, President, American Telephone and Telegraph Company, letter to Mary Lou Byler, AAIA, New York, New York, September 13, 1967. Hereafter cited as Gilmer to Byler, September 13, 1967.

³⁴⁸ See Wensberg to Byler, September 29, 1967; Colgate spokesman, quoted in Associated Press, “Indians Ask Sponsors Drop Custer Series;” William F. Laporte, Office of the Chairman of the Board, American Home Products Corp., letter to Mary Lou Byler, AAIA, New York, New York, September 26, 1967; Laurence W. Scott, Director of Advertising, Sunbeam Corp., letter to Mary Lou Byler, AAIA, Chicago, Illinois, September 19, 1967. Hereafter cited as Scott to Byler, September 19, 1967.

³⁴⁹ Spencer C. Boise, Director Product Division, Public Relations Department, Procter & Gamble Co., letter to Rev. Clifford L. Samuelson, Cincinnati, Ohio, September 13, 1967.

³⁵⁰ Wensberg to Byler, September 29, 1967.

³⁵¹ Cf. R.A. McNell, The Thompson-Koch Co., Inc., letter to Mary Lou Byler, AAIA, New York, New York, September 21, 1967.

³⁵² Cf. James T. Quirk, Publisher, TV GUIDE, letter to Mary Lou Byler, AAIA, Radnor, Pennsylvania, September 22, 1967.

³⁵³ S. Warner Pach, President, Gillette Safety Razor Company, letter to Mary Lou Byler, AAIA, Boston, Massachusetts, November 10, 1967.

³⁵⁴ Ridge Blackwell, Director of Broadcast Services, General Foods Corporation, letter to Mary Lou Byler, AAIA, White Plains, New York, October 27, 1967.

³⁵⁵ Craig W. Moodie, Jr., Director Advertising and Promotion, Armstrong Cork Company, letter to Rev. Dr. Clifford L. Samuelson, Lancaster, Pennsylvania, Sep. 20, 1967.

³⁵⁶ Gilmer to Byler, September 13, 1967.

disturbed that you have found the first episode of ‘Custer’ distasteful” since they “found nothing that appeared to be derogatory.”³⁵⁷

Warner-Lambert Pharmaceutical³⁵⁸ and Sauter Laboratories, through its ad agency McCann-Erickson, forwarded the protest letter to ABC, asking “them to advise both you and us of the steps they have taken to insure fairness in the historical presentation to all parties involved.”³⁵⁹ Urging ABC to respond to the criticism, Thomas O’Reilly, vice president of McCann-Erickson, stressed that “Our client and we are most concerned about the treatment of the American Indian in the Legend of Custer series.”³⁶⁰

In addition to asking companies to boycott ABC, Byler contacted the advertising agencies representing the sponsors,³⁶¹ urging them “to recommend to your clients that they not buy time on these programs and that they cancel any commercials already scheduled.”³⁶² Between September 13th and 28th, the AAIA wrote letters to 19 ad agencies, most of them based in New York City, including Doyle Dane & Bernbach, Grey Advertising, and Ogilvy & Mather.³⁶³ With one exception, all advertising agencies preferred to avoid the controversy by pointing to freedom of speech. Only Banton & Bowles declaredly “agreed not to purchase any time on the Custer series for any of its clients.”³⁶⁴ While both Cunningham & Walsh³⁶⁵ and Ogilvy & Mather rejected any editorial censorship on the program, the latter agreed to take the AAIA’s views concerning the series “into account in our future purchasing of time on this program.”³⁶⁶ Although many advertisers and their agencies avoided the Custer controversy, several companies took a position and supported the protest by withdrawing their commercials. With news media and professional magazines like *Advertising Age*³⁶⁷ covering the protest, the issue gained attention from a broad public and a professional audience.

ABC discontinued the series in December 1967 due to “its intrinsic lack of theatrical merit.” As the NCAI argued, the protest against the Custer series “has demonstrated that the present day Indian has expressed a new awareness and readiness to speak out and act in defense to his interests and will aggressively seek means by which this assertiveness can be

³⁵⁷ Scott to Byler, September 19, 1967.

³⁵⁸ Cf. Hugh Goodman, Manager Advertising Services, Warner-Lambert Pharmaceutical Company, letter to Mary Lou Byler, AAIA, Morris Plains, New Jersey, October 2, 1967.

³⁵⁹ Thomas L. O’Reilly, Vice President, McCann-Erickson, Inc., letter to Mary Lou Byler, AAIA, New York, New York, September 26, 1967.

³⁶⁰ Thomas L. O’Reilly, Vice President, McCann-Erickson, Inc., letter to Henry Hede, Vice President, Administrative Sales, ABC Television Network, New York, New York, September 26, 1967.

³⁶¹ Cf. Byler to Dean, September 15, 1967.

³⁶² Mary Lou Byler, Director of Public Education, AAIA, letter to Batten, Barton Durstine & Osborn, Inc., New York, New York, September 13, 1967.

³⁶³ Ad agencies contacted by Mary Lou Byler, Director of Public Education, AAIA:
September 13, 1967: Batten, Barton Durstine & Osborn, Inc.; Cunningham & Walsh, Inc.; Doyle Dane & Bernbach, Inc.; Grey Advertising, Inc.; Compton Advertising, Inc.; Benton & Bowles; Leo Burnett Co., Inc.; Tatham-Laird & Kudner, Inc.; Young & Rubicam, Inc.;
September 22, 1967: N.W. Ayer & Son Advertising, Inc.; Thompson Koch Co.; Elkman Advertising Co., Inc.;
September 28, 1967: Ted Bates & Co, Inc.; Ogilvy & Mather, Inc.;
September 29, 1967: Street & Finney; Norman, Craig & Kummel; Dancer-Fitzgerald-Sample, Inc.; LaRoche, McCaffrey & McCall; J. Walter Thomson Co.

³⁶⁴ William Byler, Executive Director, AAIA, letter to Bobo Dean, New York, New York, September 21, 1967.

³⁶⁵ James R. Frankenberry, Cunningham & Walsh Inc., letter to Mary Lou Byler, New York, New York, September 27, 1967.

³⁶⁶ Stanley D. Ganter, Senior Vice President and Director of Marketing Services, Ogilvy & Mather Inc., letter to Mary Lou Byler, AAIA, New York, New York, October 27, 1967.

³⁶⁷ Cf. “Indian Groups Ask Sponsors to Drop ‘Custer’ Telecast,” *Advertising Age*, September 25, 1967, clipping.

made effective.” Simultaneously, the “sympathetic response on the part of non-Indian groups and portions of the large society have also demonstrated a changing of social attitudes in the mainstream society toward a more mature position in recognition of the need for basic social justice.” Given the newly awakened willingness of public opposition and a sensitized society, the NCAI saw the “need to create an organization to serve on an on-going basis the ends achieved in the Custer television confrontation” which was to become the focus of the American Indian Media Surveillance (AIMS) Committee formed in 1968.³⁶⁸

2.3 Native American Media Surveillance

At the annual convention in Omaha, Nebraska, in 1968, and as a result of the “Custer” controversy, the NCAI adopted a resolution on the “INDIAN IMAGE” to fight the “inaccurate, slanted and distorted” media representations. It aimed to challenge media material that “casts the Indian in an unfavorable, undignified light which leads to anti-Indian prejudice and bigotry” and “create a favorable public image of them, and imbue feelings of pride and accomplishment among the Indians.”³⁶⁹

The AIMS committee’s purpose was threefold, to decide whether the “image shaping phenomena” were historically accurate and truthful, to determine their nature and degree of social and economic impact on the lives of contemporary Native Americans, and to determine their impact on Natives’ self-esteem. The challenge was to support positive or enhancing media portrayals to amplify the beneficial aspects and to reduce the damaging effects already initiated through countermeasure activities. Giving Native Americans the opportunity to create a self-image not shaped by the non-Indian society’s popular folklore, as the NCAI argued, would also benefit American society. The organization feared that “the gradual acceptance of the popular folklore with an attrition of the spirit” would generate “a counter folklore which is equally distorted and hostile, but serves compensatory needs.” The NCAI warned that, as a result, Native Americans could form groups comparable to the “Black Muslims and Militant Black intellectuals” and stressed the need to prevent this development.³⁷⁰

The NCAI urged Indian organizations, government education departments, and public agencies to initiate programs to eliminate such material about Native Americans.³⁷¹ The U.S. Office of Education offered to assist the NCAI in achieving these goals. For the “Indian Image” project, the Office identified some of the primary needs: “American people should be conversant with the totality of the Indian’s role and contribution in American life,” “Indian people should be enabled to develop a meaningful self-identity and cultural pride,” and “Non-Indian people should recognize Indian heritage as a living, evolving legacy.”³⁷²

³⁶⁸ NCAI, “The American Indian Media Surveillance Committee,” February 29, 1968, 2; AIMS Committee Memoranda [1 of 2]; Box 255; NCAI Records; NMAI Archive Center.

³⁶⁹ NCAI, “Resolution No. 17: PUBLIC INFORMATION - - INDIAN IMAGE,” 1968 Convention, Omaha, Nebraska, September 23-27, 1968; Resolutions, 1968; Box 16; Records of the National Congress of American Indians, 1933-1990, NMAI.AC.010; NMAI Archive Center, Smithsonian Institution, Suitland, MD. Hereafter cited as NCAI, “Resolution No. 17;” Resolutions, 1968; Box 16; NCAI Records; NMAI Archive Center.

³⁷⁰ NCAI, “The American Indian Media Surveillance Committee,” February 29, 1968, section 2, 1-3; AIMS Committee Memoranda [1 of 2]; Box 255; NCAI Records; NMAI Archive Center.

³⁷¹ Cf. NCAI, “Resolution No. 17;” Resolutions, 1968; Box 16; NCAI Records; NMAI Archive Center.

³⁷² For that purpose, the Office of Education drafted three main targets for its planned efforts, that is, to “identify means by which information about Indians is communicated to the American public,” to “identify ways in which

The AIMS committee also planned a project to “develop a new and revised history of events”³⁷³ in cooperation with historians and anthropologists, but the first outlines were more concerned with the question of how to reach the American public and develop a media campaign. The AIMS committee’s structure represented its main task to challenge media representations through media. The executive component was to be composed of tribal chieftains, Indian lawyers, administrators, and community action types with sufficient American Indian descent, including Vine Deloria Jr. and John Belindo as initial members. Earl Old Person (Blackfeet), Marshall Thom (Navajo), and Roger Jourdain (Minnesota Chippewa) comprised the policy-making committee.³⁷⁴

The advisory portion did not necessarily need Indigenous heritage but required crucial skills from various media industries and professions. These included the press, radio, TV, motion pictures, public relations advertising, and performing arts; professionals from the fields of behaviorism, anthropology, sociology, psychology, economy, and law; and educators and public figures whose stature commands public attention and respect.³⁷⁵ Given their goals, the NCAI prioritized media-oriented capabilities, particularly the “capability of commanding public attention by either being a prominent public figure, a performer or commentator for example, or through access to means and techniques which command public attention, the press, radio-TV, and motion pictures or performing arts.”³⁷⁶

Part of the publicity strategy was to take advantage of those elements of the Indian image that society considered positive “as a point of departure from which to base favorable promotional efforts” and correct “bad elements.”³⁷⁷ Focusing on positive representations included the promotion of cultural activities involving Natives (for instance, Buffy St. Marie, Four Moons Ballet), of success stories of individual Natives or groups (for instance, Iroquois high steel workers), and of prominent Native American personalities or non-Indians whose activities have a positive impact on the interests of Indigenous peoples.³⁷⁸

For the media campaign planning, the AIMS committee had to formulate the goals and clarify “what reaction we want from the public, what message we want to ‘sell’ and what we want the public to do.”³⁷⁹ A public service announcement series dealing with Indigenous culture and a Native person’s value as an employee in modern industry addressed three segments of American society. The series addressed Native Americans with the topics of “Opportuni-

Indian people can achieve understanding of and pride in their Indian identity while living in an environment which is strongly monocultural,” and to “identify means by which the life of non-Indians can be enriched through familiarity with other values and traditions in America’s multicultural society.”

R. George Mylecraine, Department of Health, Education, and Welfare, Office of Education, letter to John Belindo, Executive Director, NCAI, Washington, DC, February 6, 1969; Media Surveillance - Public Awareness Correspondence [2 of 2]; Box 255; Records of the National Congress of American Indians, 1933-1990, NMAI.AC.010; NMAI Archive Center, Smithsonian Institution, Suitland, MD.

³⁷³ NCAI, “The American Indian Media Surveillance Committee,” February 29, 1968, section 4, 2; AIMS Committee Memoranda [1 of 2]; Box 255; NCAI Records; NMAI Archive Center.

³⁷⁴ Cf. *ibid.*, section 2, 4.

³⁷⁵ Cf. *ibid.*, section 2, 4.

³⁷⁶ *Ibid.*, section 3, 2.

³⁷⁷ *Ibid.*, section 4, 1.

³⁷⁸ Cf. *ibid.*, section 4, 2.

³⁷⁹ A. David Lester, conference co-ordinator, NCAI, memorandum to John Belindo, Executive Director, NCAI, Washington, DC, September 25, 1969; Media Surveillance #2 AIMS Committee Memoranda [1 of 2]; Box 255; Records of the National Congress of American Indians, 1933-1990, NMAI.AC.010; NMAI Archive Center, Smithsonian Institution, Suitland, MD.

ties” and “Trade Education,” the American society with the topics of “Heritage,” “Equality,” “Support,” and “Dispossessed,” and American employers with “Dynamics.”³⁸⁰

Major TV and radio networks and their affiliates showed the spots across the nation.³⁸¹ Additionally, the NCAI posted billboards bearing the campaign’s theme “The American Indian – A New Awareness and Readiness” (see Illustration 1³⁸²) in nine cities: Oklahoma City, San Francisco-Oakland, Los Angeles, Chicago, Dallas, New York, Cleveland, Cincinnati, and Washington, DC. Advertising companies and media channels, like *KOCO-TV* of Oklahoma City and *United Nations Television* of New York City, supported the campaign by sponsoring billboard space and broadcasting time.³⁸³ The campaign began on March 14, 1969, during a press conference at the Century Plaza Hotel in Los Angeles, where the AIMS committee met representatives of the press, movie, and TV industries. While the planned campaign duration is unknown, two Washington channels regularly showed the PSA for at least five weeks.³⁸⁴

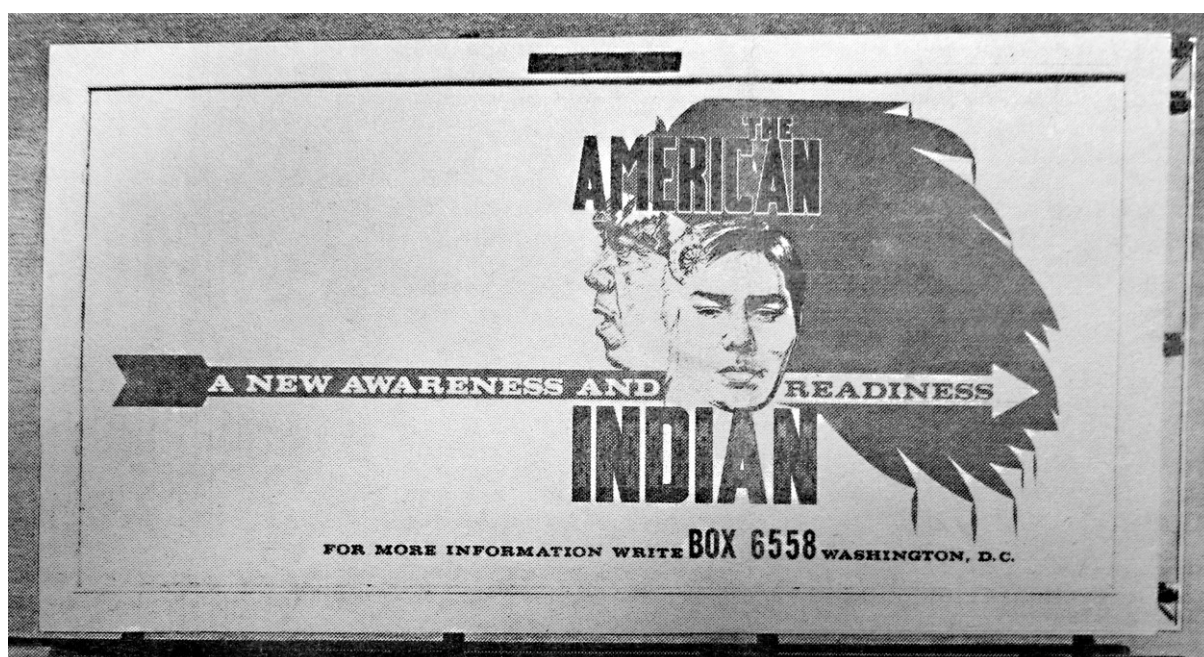


Illustration 1: NCAI, “A New Awareness and Readiness,” campaign billboard, 1969.

© National Congress of American Indians. All rights reserved.

³⁸⁰ KOCO-TELEVISION in ass. with the AIMS Committee of NCAI, “PUBLIC SERVICE ANNOUNCEMENT SERIES,” November 1968; Media Surveillance #2 AIMS Committee Memoranda [1 of 2]; Box 255; Records of the National Congress of American Indians, 1933-1990, NMAI.AC.010; NMAI Archive Center, Smithsonian Institution, Suitland, MD.

³⁸¹ Cf. “NCAI Wages War On Indian Images,” *NCAI Sentinel*, Winter/Spring 1969, 5.

³⁸² National Congress of American Indians, “A New Awareness and Readiness,” campaign billboard, 1969, photograph published in *Indian Messenger*, May/June 1969; Media Surveillance #2 AIMS Committee Memoranda [2 of 2]; Box 255; Records of the National Congress of American Indians, 1933-1990, NMAI.AC.010; NMAI Archive Center, Smithsonian Institution, Suitland, MD. © National Congress of American Indians. All rights reserved.

³⁸³ Cf. “NCAI Wages War On Indian Images,” 5; John Belindo, Executive Director, NCAI, letter to William Guilford, KOCO-TV, Washington, DC, June 7, 1969; Media Surveillance - Public Awareness Correspondence [2 of 2]; Box 255; Records of the National Congress of American Indians, 1933-1990, NMAI.AC.010; NMAI Archive Center, Smithsonian Institution, Suitland, MD. Hereafter cited as Belindo to Guilford, June 7, 1969; Public Awareness Corresp. [2 of 2]; Box 255; NCAI Records; NMAI Archive Center.

³⁸⁴ Cf. Belindo to Guilford, June 7, 1969; Public Awareness Corresp. [2 of 2]; Box 255; NCAI Records; NMAI Archive Center.

The NCAI informed non-Indian and Indian media outlets about the campaign, sending press releases to all major news outlets in the Los Angeles area, the Washington offices of *Look*, *Newsweek*, *Time*, *Broadcasting*, *Ad Age*, and the three major TV networks in New York, as well as to over 100 Indigenous publications. *Tundra Times*, *Native Nevadan*, and the *Rosebud Sioux Herald*, among others, published the release, including photos of the billboards. Non-Indian newspapers like *The Washington Post* also printed photos of the billboards, thus spreading the image nationwide.³⁸⁵

In the press, Belindo emphasized the organization's non-violent tactic of the media campaign that conveyed "Nothing violent, nothing pressure-group, just a polite mention of what we regard as offensive."³⁸⁶ At the same time, the organization published an article entitled "NCAI Wages War On Indian Images" in the *NCAI Sentinel*, declaring that the "public awareness campaign is one of the Committee's chief weapons in this all-out attack."³⁸⁷

The NCAI received many letters of support from interested individuals, offers to assist the organization, and notifications of instances of media distortion and stereotyping they thought should be eliminated.³⁸⁸ Within three months, the organization received 300 requests for information, mainly from California, Oklahoma, New York City, and Washington, DC.³⁸⁹ Positive feedback came from individuals who saw the campaign on-site and from individuals from more distant states who heard of the campaign through contacts and asked for more information.³⁹⁰ "Congratulations!" wrote Joyce Sandman of the Carlson Advertising Co. in Cincinnati, Ohio, after reading about the campaign in her local newspaper and offered the NCAI her "time, here in Cincinnati, to do whatever possible to further your image program."³⁹¹ The organization ICAP Indian Project, which was working on Indigenous alcoholism issues, read about the story in the *Rosebud Sioux Herald* and asked for posters and other materials since they "would very much like to have the type of atmosphere in our two offices that would make our clients feel a sense of identity and self-esteem."³⁹²

The campaign successfully acquired support from media outlets and multiplied the outreach of the regionally limited billboards and spots, thus reaching a nationwide audience.

³⁸⁵ Cf. John Belindo, Executive Director, NCAI, letter to Michael Hayward, Chief, United Nations Television, Washington, DC, April 9, 1969; Media Surveillance - Public Awareness Correspondence [2 of 2]; Box 255; Records of the National Congress of American Indians, 1933-1990, NMAI.AC.010; NMAI Archive Center, Smithsonian Institution, Suitland, MD. Hereafter cited as Belindo to Hayward, April 9, 1969; Public Awareness Corresp. [2 of 2]; Box 255; NCAI Records; NMAI Archive Center.

³⁸⁶ John Belindo, Executive Director, NCAI, quoted in A.R., "The False Image Makers," *Civil Rights Digest* (Spring 1969): 8.

³⁸⁷ "NCAI Wages War On Indian Images," 5-7.

³⁸⁸ Cf. Belindo to Hayward, April 9, 1969; Public Awareness Corresp. [2 of 2]; Box 255; NCAI Records; NMAI Archive Center.

³⁸⁹ Cf. Belindo to Guilford, June 7, 1969; Public Awareness Corresp. [2 of 2]; Box 255; NCAI Records; NMAI Archive Center.

³⁹⁰ Cf. John Belindo, Executive Director, NCAI, letter to Dr. and Mrs. O.R. Sellers, Washington, DC, May 7, 1969; Media Surveillance - Public Awareness Correspondence [2 of 2]; Box 255; Records of the National Congress of American Indians, 1933-1990, NMAI.AC.010; NMAI Archive Center, Smithsonian Institution, Suitland, MD.

³⁹¹ Joyce Sandmann, Carlson Advertising Co., letter to John Belindo, NCAI, Cincinnati, Ohio, April 1, 1969; Media Surveillance - Public Awareness Correspondence [2 of 2]; Box 255; Records of the National Congress of American Indians, 1933-1990, NMAI.AC.010; NMAI Archive Center, Smithsonian Institution, Suitland, MD.

³⁹² Perry Manywounds, Counselor Aide, ICAP Indian Project, letter to John Belindo, NCAI, Sioux City, Iowa, April 10, 1969; Media Surveillance - Public Awareness Correspondence [2 of 2]; Box 255; Records of the National Congress of American Indians, 1933-1990, NMAI.AC.010; NMAI Archive Center, Smithsonian Institution, Suitland, MD.

The amount and quality of support from across the country, and that officials like the Commissioner on Indian Affairs, H.E. Cameron, in St. Marie, Michigan, “wholeheartedly subscribed and endorsed” the campaign, demonstrated the importance Native and non-Native peoples attached to the Native American image. In its *Sentinel*, the NCAI reveled its success as “only a beginning, but it looks like we could be on to something big.”³⁹³

Much of the AIMS committee’s work from 1969 through 1971 was devoted to challenging Indigenous misrepresentations in advertising that Native and non-Native people reported to the committee. During that time, AIMS received many letters complaining about marketing images. While the movie industry was likely the primary target, the committee’s purpose of lifting the Indigenous image in the American public and the self-image was not limited to a particular medium or genre. Cheyenne Mrs. Gruytch, who had seen the campaign in California, suggested focusing on cartoons and commercials to lift the American Indian image, although it “is much easier to create a good image than to have to erase a bad one.”³⁹⁴ Others followed, like James R. Jaquith, an anthropologist at Washington University in St. Louis, Missouri, who sent many magazine and newspaper advertisements, some of which students had collected and forwarded, to the AIMS committee.³⁹⁵

Additionally, the committee received several letters requesting assistance and suggestions on proposed documentaries, screenplays, and books dealing with Native subjects.³⁹⁶ Margaret Stephens, an associate editor at Rand McNally, consulted the NCAI in 1969 regarding a “charming” children’s picture book entitled *Ten Little Injuns*.³⁹⁷ John Belindo disapproved of the whole book concept as “trash which book publishers indiscriminately print about the Indian for consumption by America’s youth.”³⁹⁸ Within a week, Sanford Cobb, Vice President of the Trade Division at Rand McNally, clarified that “If I had seen the letter sent to you by our associate editor, I would never have allowed it to leave this office. I greatly appreciate your forthright and honest reply and I can assure you that the type of publication suggested . . . would never have received editorial approval by Rand McNally.”³⁹⁹ Irrespective of the proposed content, the committee viewed Stephens’ inquiry as an indicator of change since “for a moviemaker or a publisher to seek Indian approval or opinion would have been unheard

³⁹³ “NCAI Wages War On Indian Images,” 7.

³⁹⁴ Mrs. Robert Gruytch, letter to the NCAI, Hawthorne, California, March 17, 1969; Media Surveillance - Public Awareness Correspondence [2 of 2]; Box 255; Records of the National Congress of American Indians, 1933-1990, NMAI.AC.010; NMAI Archive Center, Smithsonian Institution, Suitland, MD.

³⁹⁵ Cf. James R. Jaquith, Department of Anthropology, Washington University, letter to the NCAI, St. Louis, Missouri, December 10, 1969; Media Surveillance - Public Awareness Correspondence [1 of 2]; Box 255; Records of the National Congress of American Indians, 1933-1990, NMAI.AC.010; NMAI Archive Center, Smithsonian Institution, Suitland, MD.

³⁹⁶ Cf. “NCAI Wages War On Indian Images,” 7.

³⁹⁷ Margaret Stephens, Associate Editor, Children’s Books, Trade Publishing Division, Rand McNally & Co., letter to the NCAI, Chicago, Illinois, February 21, 1969; Media Surveillance - Public Awareness Correspondence [2 of 2]; Box 255; Records of the National Congress of American Indians, 1933-1990, NMAI.AC.010; NMAI Archive Center, Smithsonian Institution, Suitland, MD.

³⁹⁸ John Belindo, Executive Director, NCAI, letter to Margaret Stephens, Washington, DC, March 6, 1969; Media Surveillance - Public Awareness Correspondence [2 of 2]; Box 255; Records of the National Congress of American Indians, 1933-1990, NMAI.AC.010; NMAI Archive Center, Smithsonian Institution, Suitland, MD.

³⁹⁹ Sanford Cobb, Vice President, Trade Division, Rand McNally & Co., letter to John Belindo, NCAI, Chicago, Illinois, March 13, 1969; Media Surveillance - Public Awareness Correspondence [2 of 2]; Box 255; Records of the National Congress of American Indians, 1933-1990, NMAI.AC.010; NMAI Archive Center, Smithsonian Institution, Suitland, MD.

of just a few years ago.” Celebrating that an employee requested assistance and the company accepted their opinion, the NCAI concluded, “People do seem to care – and understand.”⁴⁰⁰

This new attitude was a significant achievement after the previous indifference of U.S. society toward its Indigenous population, as Wesson & Warhaftig’s 1970 awareness-raising PSA suggests. The “only Indian American ever cared about” was the Native American represented on the Indian Head nickel the U.S. Mint struck from 1913 to 1938 (Illustration 2⁴⁰¹). James Early Fraser, the designer of the coin, believed the Indian head on one side and the buffalo on the other was 100 percent American so the coin “could not be mistaken for any other country’s coin.”⁴⁰² Fraser created the Indian head based on three Indigenous models, and since his “purpose was not to make a portrait but a type,”⁴⁰³ the head represents a generic Indian. The year of minting points to the Oklahoma Indian Welfare Act of 1936 designed to help “rebuild Indian tribal societies, return land to the tribes, rejuvenate Indian governments, and emphasize Native culture.”⁴⁰⁴

Viewers might interpret the PSA as a criticism of U.S. Indian policy that reduced Native Americans to social welfare recipients and Indian identity to a means for obtaining access to social programs, as some argued. They might also view the ad as a criticism of the idea of a prototypical 19th-century Plains Indian and the commercial exploitation of this nostalgic construct represented through the coin. “If you really care,” the PSA recommended contacting Arrow, the Association of American Indian Affairs, the Bureau of Catholic Indian Missions, the Indian Rights Association, or the National Congress of American Indians.

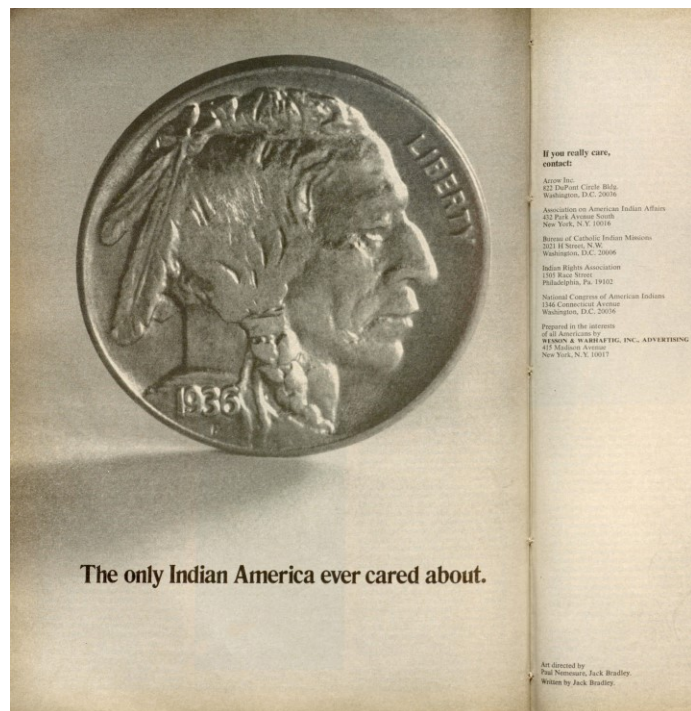


Illustration 2: Wesson & Warhaftig, “The only Indian America ever cared about,” print PSA, *Time*, January 1970.

“PEOPLE DO CARE,”⁴⁰⁵ concluded the NCAI *Sentinel* after receiving many letters of support and advertisers’ requests for advice succeeding the NCAI’s 1969 “Awareness and Readiness” campaign.

⁴⁰⁰ “NCAI Wages War On Indian Images,” 7.

⁴⁰¹ Wesson & Warhaftig, “The only Indian America ever cared about,” print PSA, *Time* 95, no. 3, January 19, 1970, 58-59.

⁴⁰² Cf. Roger W. Burdette, *Renaissance of American Coinage, 1909-1915* (Great Falls: Seneca Mill Press, 2007), 224.

⁴⁰³ David Q. Bowers, *A Guide Book of Buffalo and Jefferson Nickels* (Atlanta: Whitman Publishing, 2007), 38-39.

⁴⁰⁴ Brian F. Rader, “Oklahoma Indian Welfare Act,” *Oklahoma Historical Society*, accessed September 6, 2020, <https://www.okhistory.org/publications/enc/entry.php?entry=OK059>.

⁴⁰⁵ “NCAI Wages War On Indian Images,” 7.

As the *Sentinel* reported in 1970, the “American Indian is being used in advertising more and more in the United States publications. Some of these ads have been excellent in portraying the American Indian, while other have riled Indian tribes across the country.”⁴⁰⁶ The article mentioned a 1970 ad published by General Dynamics, which was operating an electronic assembly plant in Fort Defiance, Arizona,⁴⁰⁷ and chose Navajo John Billy as the “face of the Navajo people to the American public” in their ad.⁴⁰⁸ The two-page ad “The last thing he wants is a handout” featured Billy’s face and an accompanying text that referred to the issue of Native American stereotypes, which the NCAI and other organizations addressed in their campaigns during the civil rights era. In the ad, General Dynamics informed the public that in their “facility near the tribal capitol at Window Rock, Arizona, most production supervisors, all inspectors and assembly workers are Navajos. They’re putting together highly complex electronic assemblies for aerospace systems and tearing apart a lot of popular misconceptions about Indians in general and Navajos in particular. By building a new economy, the Navajo is making one thing clear [...] he’s not to be counted as a ‘vanishing American’” (Illustration 3⁴⁰⁹).



Illustration 3: General Dynamics, “The Last Thing He Wants Is a Handout,” print ad, *Time*, January 1970.

© General Dynamics. All rights reserved.

⁴⁰⁶ National Congress of American Indians, “Indians in Advertising,” *The Sentinel*, Spring 1970, 6.

⁴⁰⁷ See also Fairlee E. Winfield, “General Dynamics in the Navajo Nation,” *Andrews University*, accessed August 30, 2020, <https://www.andrews.edu/~tidwell/bsad560/Navajo>; Bill Donovan, “50 Years Ago: Fort Defiance once home to big missile plant,” *Navajo Times*, February 9, 2017, accessed August 30, 2020, <https://navajotimes.com/50years/50-years-ago-fort-defiance-home-big-missile-plant/>.

⁴⁰⁸ Donovan, “50 Years Ago.”

⁴⁰⁹ General Dynamics, “The Last Thing He Wants Is a Handout,” print advertisement, *Time* 95, no. 1, January 5, 1970, 24-25. © General Dynamics. All rights reserved.

Not only the “overall response from tribal leaders was very positive”⁴¹⁰ towards the ad published in *Time*, *Business Week*, and four other national publications. The NCAI also commended that such “ads give stature to the American Indian and go toward changing the stereotype concepts about the American Indian” and forwarded General Dynamics a letter of encouragement.⁴¹¹ As writer Bill Donovan noted in the *Navajo Times*, the ad “was probably the best publicity the tribe had received in years” and reached hundreds of thousands of people “at a time when the tribe was spending a lot of money trying to get companies to set up business on the reservation.” Posing an entire day for the photographer, Billy received a modeling fee of \$75 an hour, but the ad most likely did not attract businesses to the reservation.⁴¹²

That same year, the Standard Oil Company published an ad in *Time* magazine depicting Tyonek Indian workers and explaining how their oil business supported them:

The Tyonek Indians in Alaska used to struggle for their living. Their sole means of support was trapping and fishing.

Then one of our affiliates, Humble Oil & Refining Company, paid the Tyoneks several million dollars for the right to explore for oil on their land.

We didn’t discover any oil. But we’re used to that. . . .

The Tyoneks used their money wisely.

They invested in a modern office building, in nearby Anchorage, for future income.

They bought a share in a utility company, a sawmill and a small airline.

And they formed their own construction company, and rebuilt their village, complete with modern homes, electricity, roads and a new school.

While they were rebuilding their village, the Tyoneks learned to be welders and electricians and surveyors and technicians.

Now the work is done.

The village is completed. The Tyonek Indians have many new skills. And how they’re looking for some new ways to use them.⁴¹³

The ad’s headline, “Five years ago the Tyonek Indians needed food. Now they need an industry,” reads like a call to action for companies to continue to support the Tyonek through business relationships. At the time, Native peoples’ reception of such advertising was likely positive because it featured real people and promoted Native causes. In the decades that followed, reactions to companies highlighting their fair business practices or charitable deeds became increasingly wary and dependent on individual implementation. As audiences came to see such marketing as a standardized but meaningless public relations ploy, reactions shifted from appreciating that companies were making agreements, building collaborations, and giving back to Indigenous communities to accusing companies of using the guise of corporate social responsibility to justify their exploitation of Native peoples and resources.

By 1968, when critics had started publicly protesting Indigenous marketing representations and civil rights commissions started discussing media representations as a human

⁴¹⁰ Donovan, “50 Years Ago.”

⁴¹¹ National Congress of American Indians, “Indians in Advertising,” 6.

⁴¹² Cf. Donovan, “50 Years Ago.”

⁴¹³ Standard Oil Company, “Five years ago the Tyonek Indians needed food. Now they need an industry,” print advertisement, *Time* 95, no. 19, May 11, 1970, 42-43.

rights issue, Native Americans and Mexican Americans⁴¹⁴ were still blind spots in the discourse of minority stereotyping in media. A 1968 *Civil Rights Digest* article suspected that “the advertising media must have recourse to the minority stereotype to sell some of its clients’ products.” This particularly affected Indigenous peoples, who were still lagging behind in raising awareness of and enforcing civil rights issues. As the article reasoned, “Having been deprived of one group to exploit for its allegedly inferior traits, advertisers in television, magazine and newspaper ads, and on billboards seem to have found an easy outlet for thwarted creativity in formerly silent minorities.”⁴¹⁵

Advocates for fair Native American representation demanded they be heard by civil rights groups and included in discussions. After two weeks of hearings on the “alleged discrimination against minority groups by broadcasters and advertising agencies,”⁴¹⁶ John Belindo criticized the New York City’s Commission on Human Rights for hearing only African American and Puerto Rican witnesses and ignoring Native Americans as a group victimized through radio, television, movies, newspapers, and advertising representations. William H. Booth, chairman of the commission, “apologized that the Indian had been overlooked in the seven months of preparation for the hearings”⁴¹⁷ and invited Belindo, Executive Director of the NCAI, as a witness for the Indigenous perspective on media discrimination. Belindo testified that the “perpetuation of stereotype motifs of the Indian as drunken, savage or treacherous, unreliable or childlike, produces impeding effects on employability of the Indian or his opportunities for education to a state of employability.”⁴¹⁸ This effect, in turn, caused severe economic problems and loss of self-esteem.

Demanding a higher degree of social responsibility on the part of media outlets, Michael L. Vallon, Hearing Counsel for the City Commission on Human Rights, noted regarding a previous hearing’s success:

One of the pluses of our hearing was to get the advertisers and the programs and the advertising agencies to admit that their programming and their commercials have an impact far beyond that prime purpose of entertaining or moving goods. They have an educational impact; they affect attitudes, and social responsibility of that they – and opinions that they help mold and form is so great that they have no right – I say they have no right, to hide behind the face of programming.⁴¹⁹

While all media contributed to the stereotyping of Indigenous peoples, Jeffrey Newman, assistant to the Executive Director of the AAIA, identified the treatment of Native Americans in textbooks as a source of learning and, thus, an important lever to challenge marketing repre-

⁴¹⁴ The National Mexican American Anti-Defamation Committee, Inc. (NMAAC) had targeted commercial advertising by companies such as Liggitt & Myers, Frito-Lay, American Telephone & Telegraph, American Motors, or Granny Goose Potatoe Chips. Cf. A.R., “The False Image Makers,” 8.

⁴¹⁵ Ibid., 8.

⁴¹⁶ Robert E. Dallos, “American Indian Group Accuses Several Media of Discrimination,” *The New York Times*, March 22, 1968, 94.

⁴¹⁷ Ibid., 94.

⁴¹⁸ John Belindo, Executive Director, NCAI, quoted in Dallos, “American Indian Group Accuses Several Media of Discrimination,” 94.

⁴¹⁹ Michael L. Vallon, Hearing Counsel for the City Commission on Human Rights, quoted in Radio TV Reports, Inc., transcript of the WEVD program special “The Distorted Indian Image on TV,” New York, New York, April 3, 1968, 8 pm; Derogatory Images: General, 1949-1983; Box 90; Association on American Indian Affairs Records, 1851-2016, MC147; Public Policy Papers; Seeley G. Mudd Manuscript Library, Princeton University.

sentations. Newman thought if this was “cleared up,” Native Americans “would not have the problem of image projection on television and TV commercials,” and Madison Avenue “would have a hard time finding people who would accept their images if people knew a little more.”⁴²⁰ William Byler considered government documents such as the “Federal Textbook on Citizenship” of 1964⁴²¹ as “leverage in a concerted [sic] Association effort to encourage fairer representation to the American Indian in text books and historical documents in general.”⁴²²

Charles Swanton assessed in his analysis of 48 recently published high school history texts that in 1974,

there has been painfully little change in the presentation of Indian-White history although, given the social concerns of the 1960's [sic], we should have every reason to expect that there would be. . . . [W]hat textbooks say, as well as what they leave unsaid or imply about Indian-White history encourages favorable impressions, if not blind worship, of the White majority's social institutions. Concomitantly, this selective editing helps to develop and sustain, in the minds of young people, a less than accurate picture of the past and present role of minority groups in our society. It also serves to encourage chauvinism and prejudice.⁴²³

In a three-year study conducted by 32 scholars and educators, the Council on Interracial Books for Children concluded in 1977 that, despite some improvements, White, male, and upper-class perspectives still dominated. Although Native Americans were treated with more sympathy, the “heightened visibility of previously ignored people has not assured an accurate depiction of their reality.”⁴²⁴

Children's toys represent a significant product category that has received much criticism for misrepresenting Indigeneity. Arlene Hirschfelder's 1982 bibliography of *American Indian Stereotypes in the World of Children*⁴²⁵ showed “how children absorb the little they ‘know’ about Native Americans and [aimed] to demonstrate ways in which the racist attitudes

⁴²⁰ Radio TV Reports, Inc., transcript of a WEVD program special, New York, New York, January 22, 1969, 8 pm, commissioned by Felice Maier; Derogatory Images: General, 1949-1983; Box 90; Association on American Indian Affairs Records, 1851-2016, MC147; Public Policy Papers; Seeley G. Mudd Manuscript Library, Princeton University. Hereafter cited as Radio TV Reports, Inc., transcript of a WEVD program special, January 22, 1969; Derogatory Images: General, 1949-1983; Box 90; AAIA Records; Pub. Pol. Papers; Mudd Man. Lib., Princeton.

⁴²¹ “The only groups in this country with whom the settlers were not able to cooperate or to make many friendly contacts were the American Indians. These Indians did not know how to read or write like white men . . . ; they did not like to work regularly at farming or home industries, and they fought very often among themselves. A few Indians joined the settlers' groups, but most of them stayed apart, were suspicious of the white men, and were a constant danger to the peace and order of the Colonies.”

Federal Textbook on Citizenship: Our Constitution And Government, prepared by Catheryn Seckler-Hudson, revised edition (Washington: U.S. Printing Office, 1964), 53; Derogatory Images: General, 1949-1983; Box 90; Association on American Indian Affairs Records, 1851-2016, MC147; Public Policy Papers; Seeley G. Mudd Manuscript Library, Princeton University.

⁴²² William Byler, Executive Director, AAIA, letter to Arthur Lazarus, Jr., AAIA, February 4, 1966; Derogatory Images: General, 1949-1983; Box 90; Association on American Indian Affairs Records, 1851-2016, MC147; Public Policy Papers; Seeley G. Mudd Manuscript Library, Princeton University.

⁴²³ Charles Swanson, “The Treatment of the American Indian in High School History Texts,” *The Indian Historian*, 35; Derogatory Images: General, 1949-1983; Box 90; Association on American Indian Affairs Records, 1851-2016, MC147; Public Policy Papers; Seeley G. Mudd Manuscript Library, Princeton University.

⁴²⁴ Council on Interracial Books for Children, Inc., press release, January 20, 1977; Derogatory Images: General, 1949-1983; Box 90; Association on American Indian Affairs Records, 1851-2016, MC147; Public Policy Papers; Seeley G. Mudd Manuscript Library, Princeton University.

⁴²⁵ Arlene B. Hirschfelder, *American Indian Stereotypes in the World of Children: A Reader and Bibliography* (Metuchen: Scarecrow Press, 1982).

they learn can be counteracted.”⁴²⁶ The bibliography also included offensive Indigenous representations in the toy industry. Toys, like children’s books or schoolbooks, were important sources of learning, and advocates of fair media representations sought to change those representations to educate the children of today as the consumers of tomorrow. At least since 1990, education became an increasingly important and popular protest form in the field of arts to educate not only children but U.S. society at large about Indigenous identity and representation.

2.4 The Indian Arts and Crafts Board Under Pressure

Throughout the 1960s and 70s, fraud remained a major issue of marketing protest, fueled by a massive influx of imported and cheaply available Indian-style artwork and souvenirs threatening Indigenous arts and crafts peoples’ livelihoods. Indigenous artists, dealers, and consumers started turning to the Indian Arts and Crafts Board because they felt cheated or threatened. The economic threat came partly from domestic plagiarism but also increasingly from cheap imports from Hong Kong and Japan. As the threat to Indigenous livelihoods grew, so did the pressure on the IACB.

In 1960, Indian craftsman James Lone Bear Reney complained to the IACB that since 1955, “it has been almost impossible to sell our beadwork and novelties because of the tremendous increase in beadwork from Hong Kong and other novelties from Japan. We don’t mind that so much as the fact non-Indians are getting rich from these things and we feel it is unfair competition. Most of the dealers are passing the things off as Indian made and selling for pennies.”⁴²⁷ Indeed, Jimmy Little Turtle, an Indigenous seller of Indian arts and crafts, informed the Board that at a show where he was selling merchandise, other sellers told him he “should get Hong Kong, make more money, and nobody knows the difference.”⁴²⁸ The Board advised him that educating the public about this unfair competition was a way to combat the problem but pre-empted the IACB’s funding was insufficient for such a large-scale educational program.⁴²⁹

⁴²⁶ *Interracial Books for Children BULLETIN*, 29, clipping; Derogatory Images: General, 1949-1983; Box 90; Association on American Indian Affairs Records, 1851-2016, MC147; Public Policy Papers; Seeley G. Mudd Manuscript Library, Princeton University.

⁴²⁷ James Lone Bear Reney, Lone Bear Indian Craft Co., letter to the IACB, New York, New York, January 4, 1960; Board Legislation, Gen. Correspondence Re Imitation Handicrafts, 1936-73, Folder 1 of 3; General Correspondence, 1936-1975; Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980; Records of the Indian Arts and Crafts Board, Record Group 435; National Archives Building, Washington, DC.

⁴²⁸ Jimmy Little Turtle, letter to the Indian Arts & Crafts Board, Harrisburg, Pennsylvania, February 3, 1968; Board Legislation, Gen. Correspondence Re Imitation Handicrafts, 1936-73, Folder 2 of 3; General Correspondence, 1936-1975; Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980; Records of the Indian Arts and Crafts Board, Record Group 435; National Archives Building, Washington, DC. Hereafter cited as Little Turtle to the IACB, February 3, 1968; Board Legisl., 1936-73, Folder 2 of 3; Gen. Corresp., 1936-1975; Corresp. Re Misrep., 1932-1980; RG 435; NAB.

⁴²⁹ Cf. Edward Davis, General Manager, IACB, letter to James Lone Bear Reney, Lone Bear Indian Craft Co., Washington, DC, January 13, 1960; Board Legislation, Gen. Correspondence Re Imitation Handicrafts, 1936-73, Folder 1 of 3; General Correspondence, 1936-1975; Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980; Records of the Indian Arts and Crafts Board, Record Group 435; National Archives Building, Washington, DC.

Tourists like Lois Seiden, who had not been aware of this competition and believed she had bought Indian-made souvenirs during her family's visits to the Rocky Mountain National Park, the Grand Canyon National Park, and Mesa Verde, noticed the devastating effect imports had on the self-esteem of Indigenous craftspeople. After she found out the souvenirs were replicas made in Hong Kong and Taiwan, she addressed the Secretary of the Interior:

It is impossible for either my husband or me to explain to my children why their fellow Americans must sit like beggars by the sides of the roads to sell their beautiful beadwork while the shops on federal land are selling imported imitations. Perhaps you, or one of the gentlemen receiving copies of this letter, would be able to provide an answer which would help to restore my children's sense of justice and honesty.⁴³⁰

According to Seiden, selling imitated artwork in National Parks and effectively reducing fellow Americans to the level of beggars was not only an ethical mistreatment of Native Americans by the government. It also contradicted the American ideal that honest, hard-working people would be able to live a just and proper life. Similarly, Samuel Cooper found it "unethical and unpatriotic to allow the foreign 'imitations' to compete and undercut the 'real thing'."⁴³¹ Sellers of American Indian souvenirs and craftwork like Ken Mynter, owner of the Old Indian Trading Post in Claverack, New York, warned that the replicas which "flooded the domestic market in recent years" threatened to "wipe out a distinctively American Craft."⁴³²

While consumers felt cheated because they believed they bought something uniquely American, resellers of Native arts and crafts also struggled with suppliers who misrepresented the products as Indian-made. Although some "Dealers have been withholding the source of this type of thing, jealously guarding a source of supply obtainable at a fraction of the already low initial cost of Genuine Indian craftwork,"⁴³³ as Mynter observed, sellers also became victims of fraud. Connie Nathanson, who started a small but since 1975 rapidly growing business when "awareness of Indian jewelry [was] awakening in the Midwest and eastern parts of the United States," explained how imitations threatened her business as a seller of Indian jewelry. "If I cannot establish myself as a dealer of authentic Indian jewelry and have a reputation of total integrity, I do not believe I can be successful. I want to avoid overpriced, inferior and fraudulent imitations." Since "not all the persons who have tried to sell me Indian jewelry have been honest and forthright," Nathanson asked the Board for a list of "reputable sources" of Native artwork.⁴³⁴

⁴³⁰ Lois Seiden, Muller Jordan Herrick Inc., letter to C.B. Morton, Secretary of the Interior, New York, New York, July 9, 1973; Board Legislation, Gen. Correspondence Re Imitation Handicraft, 1936-73, Folder 3 of 3; General Correspondence, 1936-1975; Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980; Records of the Indian Arts and Crafts Board, Record Group 435; National Archives Building, Washington, DC.

⁴³¹ Cooper to the DOI, March 4, 1972; Board Legislat., 1936-73, Folder 2 of 3; Gen. Corresp., 1936-1975; Corresp. Re Misrep., 1932-1980; RG 435; NAB.

⁴³² Ken Mynter, Old Indian Trading Post, letter to Edward Davis, General Manager, IACB, Claverack, New York, February 25, 1960; Board Legislation, Gen. Correspondence Re Imitation Handicrafts, 1936-73, Folder 1 of 3; General Correspondence, 1936-1975; Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980; Records of the Indian Arts and Crafts Board, Record Group 435; National Archives Building, Washington, DC.

⁴³³ Ibid.

⁴³⁴ Connie Nathanson, letter to the Bureau of Indian Affairs, Shaker Heights, Ohio, March 7, 1975; Board Legislation, Gen. Correspondence Re Imitation Handicraft, 1974-75, Folder 2 of 3; General Correspondence, 1936-

Though the Board could not “recommend or endorse any particular private firm,” it provided a list of Native American individuals and organizations marketing Native craftwork. Furthermore, Hart advised requiring suppliers “to certify specifically and in writing that the goods comply with the Federal Trade Commission guidelines.” Sellers could also contact the Indian Arts and Crafts Association (IACA) in Gallup, New Mexico, a “trade organization particularly concerned with ethics and security in the business,” to find dealers.⁴³⁵

In May 1972, the Board came under severe pressure at the hands of U.S. senators and representatives who received complaints from Native Americans about the Commission’s inactivity. The NCAI seriously questioned the role of the IACB and concluded it was just “another instance where Justice and Interior have failed to pursue their trust responsibility with sufficient order and diligence.”⁴³⁶ Robert G. Hart, General Manager of the IACB, explained to Senator James Abourezk that

18 U.S.C. 1159 (Section 6 of PL 74-355) is a criminal provision, which is interpreted literally by the courts, and willful misrepresentation is difficult to prove beyond a reasonable doubt. We have been consistently advised that complaints we have made based on this provision are not substantial enough to sustain prosecution, and alleged violators have tended to cease their activity when the provision is brought to their attention. As an alternative, the Federal Trade Commission has taken a number of successful actions at our behest. Direct law enforcement, including legal investigation and arrests, is not a capacity in which the Board itself serves.⁴³⁷

As chairman of the All Indian Pueblo Council, Delfin Lovato complained to the Representative of New Mexico, Manuel Luján, that the “board has apparently been dormant [sic] and/or ineffective. We strongly urge you to use your influence in making the board response to the Indian people of New Mexico.”⁴³⁸ Luján immediately ordered an investigation of the statements and asked the Board to clarify their accomplishments. The accomplishments of the past four decades, as stated by Hart, included enforcement by assisting the FTC with evidence to

1975; Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980; Records of the Indian Arts and Crafts Board, Record Group 435; National Archives Building, Washington, DC.

⁴³⁵ Robert G. Hart, General Manager, IACB, letter to Connie Nathanson, Washington, DC, March 13, 1975; Board Legislation, Gen. Correspondence Re Imitation Handicraft, 1974-75, Folder 2 of 3; General Correspondence, 1936-1975; Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980; Records of the Indian Arts and Crafts Board, Record Group 435; National Archives Building, Washington, DC.

⁴³⁶ Leo W. Vocu, Executive Director, NCAI, letter to James Abourezk, U.S. House of Representatives, Washington, DC, May 2, 1972; Board Legislation, Gen. Correspondence Re Imitation Handicrafts, 1936-73, Folder 2 of 3; General Correspondence, 1936-1975; Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980; Records of the Indian Arts and Crafts Board, Record Group 435; National Archives Building, Washington, DC. Hereafter cited as Vocu to Abourezk, May 2, 1972; Board Legisl., 1936-73, Folder 2 of 3; Gen. Corresp., 1936-1975; Corresp. Re Misrep., 1932-1980; RG 435; NAB.

⁴³⁷ Robert G. Hart, General Manager, IACB, letter to James Abourezk, U.S. Senate, Washington, DC, June 27, 1974; Board Legislation, Gen. Correspondence Re Imitation Handicraft, 1974-75, Folder 1 of 3; General Correspondence, 1936-1975; Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980; Records of the Indian Arts and Crafts Board, Record Group 435; National Archives Building, Washington, DC.

⁴³⁸ Delfin J. Lovato, Chairman All Indian Pueblo Council Inc., letter to Manuel Lujan, U.S. Congress, Albuquerque, New Mexico, March 26, 1974; Board Legislation, Gen. Correspondence Re Imitation Handicraft, 1974-75, Folder 1 of 3; General Correspondence, 1936-1975; Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980; Records of the Indian Arts and Crafts Board, Record Group 435; National Archives Building, Washington, DC.

support prosecution; legislation by assisting the Oklahoma Indian Affairs Commission, the State of Washington, and the Native American Rights Fund, as well as some legislative action pending in Oklahoma, South Dakota, and New Mexico; the completion of a trademark, although none of the Board's marks and certificates developed in the years 1937, 1939, and 1943 were used much;⁴³⁹ and finally making artists aware of their rights.⁴⁴⁰ In light of the limited results, Hart identified the difficulty "to legally define imitation products and methods of misrepresentation in enough detail to sustain prosecutions" as one major reason for the Board's inefficiency. The "more fundamental problem for the Board [was] to obtain the cooperative commitment and support – on the Federal, state, and private levels – that will enable us to carry out such a plan of action."⁴⁴¹

The severe criticism of the early 1970s forced the Board to prevail and ascertain a process to prosecute violations of the IACA. The act provided a district attorney had the duty to "cause appropriate proceedings to be commenced and prosecuted in the proper courts of the United States for the enforcement of the penalties herein provided."⁴⁴² However, Hart's inquiry to the Solicitor asking for advice about how to proceed in such a case shows that until 1973 the Board had not established a procedure to enforce the act.⁴⁴³

In response to another complaint from Donna Eichstaedt regarding a Sears advertisement for Native jewelry in the *Chicago Tribune*, Hart replied two years later that "We do not have the authority to prosecute (that is vested in the Department of Justice), nor do we have the authority, expertise or manpower to undertake investigations. What we can do in this respect is to stimulate and co-ordinate the activities of others."⁴⁴⁴ Activities, however, required funding, and complainants often were not able or willing to provide the necessary financing for prosecution, as in the case against Albert Smiley & Wild Bear Trading Post (Garden Grove, California, 1977-78).

⁴³⁹ The Indian Arts and Crafts Act of 1935 vested the IACB with the power to "create Government trade marks of genuineness and quality for Indian products and the products of particular Indian tribes or groups; to establish standards and regulations for the use of such trade marks; to license corporations, associations, or individuals to use them." The Board also had the power to "charge a fee for their use," but the study could not determine if a fee possibly prevented Natives from using the trademarks.

Indian Arts and Crafts Act of 1935, Pub. L. 355-74, 49 Stat. 891, August 27, 1935.

⁴⁴⁰ Cf. Hart to Lujan, June 17, 1974; Board Legisl., 1974-75, Folder 1 of 3; Gen. Corresp., 1936-1975; Corresp. Re Misrep., 1932-1980; RG 435; NAB.

⁴⁴¹ Ibid.

⁴⁴² Act quoted in Vocu to Abourezk, May 2, 1972; Board Legisl., 1936-73, Folder 2 of 3; Gen. Corresp., 1936-1975; Corresp. Re Misrep., 1932-1980; RG 435; NAB.

⁴⁴³ "We are very interested in having such a case prosecuted. We need your advice about how to proceed. Should the whole matter simply be referred to a District Attorney, and if so, in what form should it be referred to encourage action on his part? Does evidence need to be assembled first, and if so, what sort of evidence is needed and from whom should we request assistance with this? Any guidance you can give us about how to take legal action on seemingly sound complaints . . . would be appreciated."

Robert G. Hart, General Manager, IACB, memorandum to Solicitor, Washington, DC, July 23, 1973; Violations of Sec. 6 – General closed cases: before 1975; Misrepresentation Violations (Closed – Pending Cases); Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980; Records of the Indian Arts and Crafts Board, Record Group 435; National Archives Building, Washington, DC.

No response was filed in the records.

⁴⁴⁴ Robert G. Hart, General Manager, IACB, letter to Donna Eichstaedt, Washington, DC, December 23, 1975; Gen. Correspondence Re Imitation Handicraft, 1974-75; Folder 3 of 3; General Correspondence, 1936-1975; Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980; Records of the Indian Arts and Crafts Board, Record Group 435; National Archives Building, Washington, DC.

Jimmy Nezzie, a Navajo silversmith of Dilkon, Arizona, reported through his lawyer that one of his ring designs was stolen and duplicated by Albert Smiley and sold by the ‘Duke’ of the Wild Bear Trading Post in Garden Grove, California. Furthermore, Nezzie’s name was stamped on the mass-produced imitations without authorization. Hart warned Nezzie that the “provision has proven very difficult to enforce” and “there has not been a successful prosecution to date.” Instead, he recommended considering private civil remedies like a civil action in Federal court under the terms of the Lanham Trademark Act (U.S.C. 1125), a suit in state court under common law copyright provisions, or a complaint to the California consumer protection agency for action under state unfair trade practices provisions.⁴⁴⁵

Nezzie rejected civil remedies because he was not willing to invest the attorney and court costs.⁴⁴⁶ Simultaneously, the Department of Justice decided not to pursue criminal prosecution in this case, although “the investigation substantially confirmed the basic facts and suppositions.” The DOJ based the decision on the finding “that those involved did not criminally intend to misappropriate and misrepresent Mr. Nezzie’s name and work, and as such intent is a major part of the Federal criminal law, the Department of Justice feels that it is highly unlikely that a jury would decide on a conviction if the cases were brought to trial.”⁴⁴⁷ While the court system did not promise success in assisting Indigenous artists and craftspeople, the Cherokee Complaint (Cherokee, North Carolina, 1974-76) revealed further limitations of the IACA and its enforcement for jurisdictional reasons.

Case Study 3: The Cherokee Complaint (1974-77)

Case Study 3: The Cherokee Complaint (1974-77)⁴⁴⁸

Speaking for a group of 26 craftspeople from the popular tourist city Cherokee, North Carolina, Nathan Robinson wrote to the IACB in 1974 that in “most of the shops, cheap, Japanese beadwork is being passed for Cherokee work. The ‘made in Hong Kong’ or ‘Japan’ stickers are removed. I feel this is gross exploitation of my people while the shop owners, both Anglo and Indian, make a fast buck.”⁴⁴⁹ An investigation of multiple shops on the reservation confirmed that the

⁴⁴⁵ Cf. Robert G. Hart, General Manager, IACB, letter to Martha Blue, Ward, Hufford, Blue & Withers, Lawyers, Washington, DC, September 9, 1977; Violations of Sec. 6 – General closed cases: 1975-1979; Misrepresentation Violations (Closed – Pending Cases); Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980; Records of the Indian Arts and Crafts Board, Record Group 435; National Archives Building, Washington, DC.

⁴⁴⁶ Cf. Robert G. Hart, General Manager, IACB, memorandum to Roger Adams re Nezzie case, Washington, DC, January 31, 1978; Violations of Sec. 6 – General closed cases: 1975-1979; Misrepresentation Violations (Closed – Pending Cases); Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980; Records of the Indian Arts and Crafts Board, Record Group 435; National Archives Building, Washington, DC.

⁴⁴⁷ Robert G. Hart, General Manager, IACB, letter to Martha Blue, Ward, Hufford, Blue & Withers, Lawyers, Washington, DC, February 1, 1978; Violations of Sec. 6 – General closed cases: 1975-1979; Misrepresentation Violations (Closed – Pending Cases); Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980; Records of the Indian Arts and Crafts Board, Record Group 435; National Archives Building, Washington, DC.

⁴⁴⁸ In the National Archives files, the case of “The Cherokees Complaint” refers specifically to criticism of the producer “The Cherokees.” This case should not be confused with the “Cherokee Complaint” as the larger controversy of imported replicas in Cherokee, North Carolina.

⁴⁴⁹ Nathan Robinson, letter to the Indian Arts & Crafts Board, Cherokee, North Carolina, Received June 14, 1974; Violations of Section 6, Cherokee, N.C./1974-, Pending; Misrepresentation Violations (Pending Cases); Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980; Records of the

“degree of misrepresentation, by removing labels of foreign origin, was apparently extensive”⁴⁵⁰ and “Many, if not most, of the souvenir shops in Cherokee sell only fake Indian products.”⁴⁵¹

The Board recognized that the complaint was a “matter of paramount importance to the Native American Indian artists and craftsmen” for economic reasons. In the mid-1970s, the tourist trade in Cherokee amounted to more than \$17 million per year. Approximately \$2 to \$5 million were attributed to souvenirs and objects of art sold as Indian-made, but only a small percentage of 5 to 10 percent of the products were, in fact, Indian-made. The tourist industry in nearby towns, like Gatlinburg, Tennessee, approached \$60 million annually. Additionally, countless roadside business motels, filling stations, and hot dog stands were scattered along the way from Cherokee to Asheville selling ‘Indian’ souvenirs. As Assistant Solicitor Justin Patterson argued, not only local but also Indigenous craftspeople from other regions like the Southwest suffered losses from places like Cherokee that amounted to many millions of dollars because many of their souvenir shops sold counterfeit Southwestern Indian jewelry.⁴⁵²

While most of the items mass-produced in the U.S. or overseas were “sold legitimately to consumers who want a low-priced fashion accessory or souvenir,” sometimes labels were removed “to conceal the country-of-origin of foreign products” and confuse consumers.⁴⁵³ When Ms. Mattern visited Cherokee in June 1975 and sought to buy “real Cherokee moccasins” at the reservation-based store Frontier Land, she could only “find the real Cherokee items in their museum and co-op” while the Cherokee stores “were full of items made in Japan, Okinawa, Taiwan etc.”⁴⁵⁴ Hart recommended Mattern that “businesses on the reservation are regulated by the local tribal council, and it would be most effective for you to make your feelings known to them.”⁴⁵⁵

The Tribal Council had “turned a deaf ear to the complaints of the artists and craftsmen,”⁴⁵⁶ the Assistant Solicitor suspected, because it was involved in or profited from the sale of the mer-

Indian Arts and Crafts Board, Record Group 435; National Archives Building, Washington, DC. Hereafter cited as Robinson to the IACB, Received June 14, 1974; Viol. Sect. 6, Cherokee, N.C./1974-, Pending; Misrep. Viol. (Pending); Corresp. Re Misrep., 1932-1980; RG 435; NAB.

⁴⁵⁰ Geoffrey Stamm, IACB, notes on Ed Wiles’ visit to Cherokee, N.C., Washington, DC, September 17, 1974; Violations of Section 6, Cherokee, N.C./1974-, Pending; Misrepresentation Violations (Pending Cases); Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980; Records of the Indian Arts and Crafts Board, Record Group 435; National Archives Building, Washington, DC. Hereafter cited as Stamm, notes on Ed Wiles’ visit, September 17, 1974; Viol. Sect. 6, Cherokee, N.C./1974-, Pending; Misrep. Viol. (Pending); Corresp. Re Misrep., 1932-1980; RG 435; NAB.

⁴⁵¹ Justin P. Patterson, Assistant Solicitor, Procurement, Division of General Law, memorandum to Robert G. Hart, General Manager, IACB, Washington, DC, received December 2, 1974; Cherokee Tribal Resolutions; Misrepresentation Violations (Pending Cases); Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980; Records of the Indian Arts and Crafts Board, Record Group 435; National Archives Building, Washington, DC. Hereafter cited as Patterson, memorandum to Hart, received December 2, 1974; Cherokee Tribal Res.; Misrep. Viol. (Pending); Corresp. Re Misrep., 1932-1980; RG 435; NAB.

⁴⁵² Cf. *ibid.*

⁴⁵³ U.S. Department of the Interior, news release, for release May 16, 1975; Cherokee – Press Release, temporary file; Denver Meeting, 1974; Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980; Records of the Indian Arts and Crafts Board, Record Group 435; National Archives Building, Washington, DC. Hereafter cited as DOI, news release, for release May 16, 1975; Cherokee – Press Release; Denver Meeting, 1974; Corresp. Re Misrep., 1932-1980; RG 435; NAB.

⁴⁵⁴ G.A. Mattern, letter to Robert Hart, West Hyattsville, Maryland, July 6, 1975; Violations of Section 6 – Cherokee, N.C. / 1974- - Pending; Misrepresentation Violations (Closed – Pending Cases); Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980; Records of the Indian Arts and Crafts Board, Record Group 435; National Archives Building, Washington, DC.

⁴⁵⁵ Robert G. Hart, General Manager, IACB, letter to Ms. G.A. Mattern, Washington, DC, August 6, 1975; Violations of Section 6 – Cherokee, N.C. / 1974- - Pending; Misrepresentation Violations (Closed – Pending Cases); Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980; Records of the Indian Arts and Crafts Board, Record Group 435; National Archives Building, Washington, DC.

⁴⁵⁶ Patterson, memorandum to Hart, received December 2, 1974; Cherokee Tribal Res.; Misrep. Viol. (Pending); Corresp. Re Misrep., 1932-1980; RG 435; NAB.

chandise. The tribe collected a four percent tax on the sales of the souvenir shops and owned the land on which some shops were located. After a visit, the IACB gaged “the local political situation . . . touchy, as a number of the shops misrepresenting products are owned by local Cherokees, in some cases members of the Council.”⁴⁵⁷ The shop owners had already ignored notification letters from the FTC in 1972 since they regarded the federal government as “barking but not biting.”⁴⁵⁸ Indeed, the Board did not know how to deal with the Cherokee Complaint because they did “not have anyone on our staff with the legal and investigatory training and experience to handle this sort of situation.”⁴⁵⁹ For this reason, Hart recommended Robinson “to encourage the Cherokee Tribal Council to take care of the matter itself through measures available to them as a local governing body.”⁴⁶⁰

The Cherokee Tribal Council passed a resolution⁴⁶¹ to deal with the situation on March 5, 1975. Representatives of the Eastern Cherokee Craftspeople’s Association, Geoffrey Stamm (IACB), and E.E. Wiles (Solicitor’s Office) gathered at a Council Meeting on April 3, 1975, to resolve the matter. Stamm praised the Council for taking “a big step forward in taking action through Tribal Council, rather than asking Big Brother in Washington to solve their problems for them,” emphasizing how this self-determination effort encouraged the IACB. To his disappointment, the Council ultimately rescinded the resolution and handed the matter over to Washington, the BIA, and the Department of Justice.⁴⁶²

After continuing complaints from craftspeople in that area, the IACB, on May 12, 1975, formally notified 94 businesses in western North Carolina and eastern Tennessee of the federal laws against the misrepresentation of imitations of Indian arts and crafts.⁴⁶³ In July, Robinson reported that “the notice to shop owners had had substantially no effect,” and the Council did “not take any action since they considered this to be a violation of Federal law.”⁴⁶⁴ The case had reached an impasse that called the government’s authority and power into question. Hart wrote to Roger Adams, “If the Federal Government is to retain any protective credibility with Indian

⁴⁵⁷ Stamm, notes on Ed Wiles’ visit, September 17, 1974; Viol. Sect. 6, Cherokee, N.C./1974-, Pending; Misrep. Viol. (Pending); Corresp. Re Misrep., 1932-1980; RG 435; NAB.

⁴⁵⁸ Patterson, memorandum to Hart, received December 2, 1974; Cherokee Tribal Res.; Misrep. Viol. (Pending); Corresp. Re Misrep., 1932-1980; RG 435; NAB.

⁴⁵⁹ Robert G. Hart, General Manager, IACB, memorandum to Moody Tidwell, Associate Solicitor Division of General Law, Washington, DC, June 26, 1974; Violations of Section 6, Cherokee, NC/1974-, Pending; Misrepresentation Violations (Pending Cases); Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980; Records of the Indian Arts and Crafts Board, Record Group 435; National Archives Building, Washington, DC.

⁴⁶⁰ Moody R. Tidwell III, Associate Solicitor Division of General Law, memorandum to Robert G. Hart, General Manager, IACB, Washington, DC, December 22, 1975; Cherokee Tribal Resolutions; Misrepresentation Violations (Pending Cases); Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980; Records of the Indian Arts and Crafts Board, Record Group 435; National Archives Building, Washington, DC. Hereafter cited as Tidwell to Hart, December 22, 1975; Cherokee Tribal Res.; Misrep. Viol. (Pending); Corresp. Re Misrep., 1932-1980; RG 435; NAB.

⁴⁶¹ Cherokee Council House, “Whereas, numerous complaints have been made by Cherokee craftspeople regarding the misrepresentation of non-Indian products as Indian made,” Cherokee, North Carolina, n.d.; Cherokee Tribal Resolutions; Misrepresentation Violations (Pending Cases); Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980; Records of the Indian Arts and Crafts Board, Record Group 435; National Archives Building, Washington, DC.

⁴⁶² “Tribe Rescinds Craftspeople’s Resolution,” *The Cherokee One Feather*, April 9, 1975, 6; Cherokee Tribal Resolutions; Misrepresentation Violations (Pending Cases); Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980; Records of the Indian Arts and Crafts Board, Record Group 435; National Archives Building, Washington, DC.

⁴⁶³ Cf. DOI, news release, for release May 16, 1975; Cherokee – Press Release; Denver Meeting, 1974; Corresp. Re Misrep., 1932-1980; RG 435; NAB.

⁴⁶⁴ Tidwell to Hart, December 22, 1975; Cherokee Tribal Res.; Misrep. Viol. (Pending); Corresp. Re Misrep., 1932-1980; RG 435; NAB.

craftsmen or with the businessmen of Cherokee, North Carolina, it is essential that prosecution be pursued without further delay.”⁴⁶⁵

The Cherokees, a manufacturer in Cherokee, North Carolina, produced many of the items sold in shops on the reservation, often under false labels as Indian-made. As an FBI investigation revealed in March 1977, the items produced wholly or partially outside the U.S. were marked correctly. P.K. Ferree, chairman of the Board of Saddle Craft that owned The Cherokees, indicated retailers in the Cherokee area possibly removed the tags signifying that a product was made outside the U.S. “as many retailers have complained about these tags.”⁴⁶⁶

It was not only tourists and artists who criticized the mislabeling of products. Competition between manufacturers of such products also prompted one to complain about production methods that would not allow these products to be labeled Indian-made. In April 1977, Indian-owned and operated cooperative Qualla Arts & Crafts Mutual of Cherokee complained to Hart about The Cherokees’ machine carvings which were not advertised as such and might be confused with handmade carvings.⁴⁶⁷ Ferree countered, “Simply because the equipment we own is somewhat more sophisticated than the equipment used by some other carvers,” The Cherokees were still “operating within both the spirit and the letter of the laws that you refer to,” as their attorneys confirmed. Quite contrary, the Board worked “diligently to declass us in the eyes of the buying public.”⁴⁶⁸ Ferree presented the company as a victim of the IACB personnel’s “unorthodox and rude . . . unannounced, secretive and accusing”⁴⁶⁹ investigation methods, which resulted in public image damage. “We may say humbly that we will carry this resistance as far as necessary to settle once and for all the doubts that are beginning to creep into certain people’s minds as a result of your statements.”⁴⁷⁰

Although the Board’s and FBI’s investigations appeared unsuccessful at the legal level, they, in combination with complaints from tourists, likely impacted marketing practices in Cherokee. As The Cherokees’ struggle to maintain their public image demonstrates, such investigations, combined with critical media coverage, could have lasting effects on manufacturers and

⁴⁶⁵ Robert G. Hart, General Manager, IACB, memorandum to Roger C. Adams, Criminal Division, Department of Justice, Washington, DC, December 8, 1976; Cherokee Tribal Resolutions; Misrepresentation Violations (Pending Cases); Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980; Records of the Indian Arts and Crafts Board, Record Group 435; National Archives Building, Washington, DC.

⁴⁶⁶ U.S. Federal Bureau of Investigation, investigations report re P.K. Ferree dba ‘The Cherokees, Charlotte, North Carolina, March 3, 1977; Qualla / The Cherokees Complaint, 1977; Misrepresentation Violations (Closed – Pending Cases); Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980; Records of the Indian Arts and Crafts Board, Record Group 435; National Archives Building, Washington, DC.

⁴⁶⁷ Cf. McKinley Ross, President, Qualla Arts & Crafts Mutual Inc., letter to Robert Hart, Cherokee, North Carolina, April 15, 1977; Qualla / The Cherokees Complaint, 1977; Misrepresentation Violations (Closed – Pending Cases); Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980; Records of the Indian Arts and Crafts Board, Record Group 435; National Archives Building, Washington, DC.

⁴⁶⁸ P.K. Ferree, Chairman of the Board of Directors, The Cherokees, letter to Robert Hart, General Manager, IACB, Cherokee, North Carolina, June 20, 1977; Qualla / The Cherokees Complaint, 1977; Misrepresentation Violations (Closed – Pending Cases); Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980; Records of the Indian Arts and Crafts Board, Record Group 435; National Archives Building, Washington, DC. Hereafter cited as Ferree to Hart, June 20, 1977; Qualla / The Cherokees Complaint, 1977; Misrep. Viol. (Closed – Pending); Corresp. Re Misrep., 1932-1980; RG 435; NAB.

⁴⁶⁹ Superintendent, Cherokee Agency, memorandum to Harry A. Rainbolt, Area Director Eastern Area Office, Cherokee, North Carolina, May 17, 1977; Qualla / The Cherokees Complaint, 1977; Misrepresentation Violations (Closed – Pending Cases); Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980; Records of the Indian Arts and Crafts Board, Record Group 435; National Archives Building, Washington, DC.

⁴⁷⁰ Ferree to Hart, June 20, 1977; Qualla / The Cherokees Complaint, 1977; Misrep. Viol. (Closed – Pending); Corresp. Re Misrep., 1932-1980; RG 435; NAB.

sellers of Native American arts and crafts by damaging their reputation and, thus, destroying potential customers' trust and business opportunities.

Since its foundation in 1935, Native American artists, sellers, and consumers of Native art sought assistance from the IACB, but it was not until the 1970s that Natives asserted pressure on the Board. Spurred by the “new social and political climate of reform created by the upheavals of the 1960s and 1970s,” which made judicial opinion “more sympathetic to the notion that the nation should live up to its treaty commitments,” people urged the Board to enforce the law and protect the Indian arts and crafts market and its producers and consumers. Despite serious efforts to enforce the act, the Board had to recognize that their scope for action was limited financially and legally in terms of enforcement authority and jurisdiction. It was not until its amendment in 1990 and the accumulation of some wealth that Native American business people could invest money and effort in prosecuting violations of the IACA. Then, the “courtroom replaced the battlefield as the arena where Indians could best promote and protect their people’s interests.”⁴⁷¹

2.5 Defining Indigeneity in Opposition to “Pseudo-Indians”

While Indigeneity was still in style for marketing purposes throughout the 1970s, Indigenous activism became increasingly unpopular toward the end of the siege of Wounded Knee in February 1973. After the government had denied reporters access to the settlement, news media started taking over the government’s version of the story without investigation, which resulted in a confused public. In her analysis of Native representations in the film industry, Kilpatrick observed that “Hollywood was apparently as confused as the media and the government about how to represent contemporary American Indians, whom the film audience was learning to recognize as more complex than the standard stereotypes would suggest.”⁴⁷² As Kilpatrick noted for the 1980s, when “the yuppies replaced the hippies, the cyclical American fascination with the Indian waned.”⁴⁷³

Despite the intermittently fading popularity of Indigeneity, people kept adopting Indian identities. In response to and driven by a growing sense of cultural awareness and financial straits, Native Americans increasingly targeted pseudo-Indians who profited from their claimed Indian identity. By 1980, the phenomenon of Non-Natives “purporting to be spiritual leaders”⁴⁷⁴ was so pervasive that spiritual leaders of the Navajo, Hopi, Muskogee Creek, Chippewa-Cree, Northern Cheyenne, Haudenosaunee, and Lakota Nations signed a resolution at the 5th Annual Meeting of the Tradition Elders Circle condemning that practice. In this resolution, Elders and representatives warned consumers that those peoples’ practices were “not a proper process, that the authority to carry these sacred objects is given by the people,

⁴⁷¹ Calloway, *First Peoples*, 566.

⁴⁷² Kilpatrick, *Celluloid Indians*, 98.

⁴⁷³ *Ibid.*, 104.

⁴⁷⁴ The People, “Resolution of the 5th Annual Meeting of the Tradition Elders Circle,” *The Peoples Paths*, accessed July 12, 2020, <http://www.thepeoplespaths.net/history/elders.html>.

and the purpose and procedure is specific to time and the needs of the people.”⁴⁷⁵ The NCAI adopted a resolution calling for action on the matter of pseudo-Indians and, one year later, in 1985, established a commission to oppose the money-driven pretense of Indigeneity.⁴⁷⁶ Since the Indian Arts and Crafts Act failed to distinguish between “fake art” (imports) and “fake Indians,” the NCAI drafted a Native American Cultural Rights Act (1989) with a broader scope than the IACA. This act aimed to create a civil cause of action “to make false representations for personal profit, gain or benefit, or for the profit, gain or benefit of third parties, by claiming to be a citizen of an Indian nation.”⁴⁷⁷

In his 1984 essay “The Popularity of Being Indian,” Vine Deloria Jr. ascertained the “strange phenomenon” of a “movement of non-Indians toward the Indian way of life . . . and the movement of Indians, their tribes, and communities toward the American institutional mainstream.”⁴⁷⁸ Marketing opportunities were one driving factor among many that led people with no Native heritage to claim Indigenous identity. So-called pseudo-Indians not only sold arts and crafts as Indian-made but, as medicine men or spiritual guides, marketed and sold Indigenous wisdom and experiences of self-discovery to consumers of a counterculture. Through these practices, which were not exclusively money-driven but sometimes served to establish some sense of self-worth, pseudo-Indians and the market-driven demand helped shape Indigenous identities and cultures.

Wannabe, Pretendee, Navahoax – there were many expressions for people who adopted Indigenous identities, usually for personal or economic reasons, as critics suspected.⁴⁷⁹ Iron Eyes Cody had claimed Cree-Cherokee heritage and played the famous “Crying Indian” in the anti-littering commercial “People Start Pollution. People Can Stop It.” launched in 1971 and produced by the Advertising Council for the organization Keep America Beautiful. After having adopted his Indian identity in the mid to late 1920s, Iron Eyes Cody’s case exemplifies how people not just adopted a Native culture but *became* Native and supported Native causes. As Angela Aleiss revealed in 1996, the “crying Indian was neither crying nor Indian”⁴⁸⁰ but an Italian-American from Louisiana named Espera Oscar De Corti. According to his half-sister May Abshire, he “always said he wanted to be an Indian” and started dressing up as ‘Indian’ as a teenager. After his father died in 1924, the 20-year-old started a new life in California, changed his name from Corti to Cody, and “turned 100 percent Indian.”⁴⁸¹

As “Hollywood became a comfortable escape from his unsettling past,” Cody’s movie passion inspired him to turn into a Native American. “He easily sympathized with an oppressed people and knew firsthand of hardship and persecution. He pledged his life to Native American causes, married an Indian woman (Bertha Parker), adopted two Indian boys (Robert

⁴⁷⁵ Ibid.

⁴⁷⁶ Cf. Adams, “Suggestion Draft”; Pseudo Indians [II]; Box 193; NCAI Records; NMAI Archive Center.

⁴⁷⁷ Executive Director, National Congress of American Indians, quoted in Sheffield, *The Arbitrary Indian*, 52.

⁴⁷⁸ Vine Deloria, Jr., “The Popularity of Being Indian: A New Trend in Contemporary American Society (1984),” in *First Peoples: A Documentary Survey of American Indian History*, ed. Colin Calloway (Boston/New York: Bedford/St. Martins, 2012), 599.

⁴⁷⁹ See Rayna Green, “The Tribe Called Wannabe: Playing Indian in American and Europa,” *Folklore* 99, no. 1 (1988): 30-55; Shari M. Huhndorf, *Going Native: Indians in the American Cultural Imagination* (Ithaca: Cornell University Press, 2001).

⁴⁸⁰ Ginger Strand, “The Crying Indian: How an environmental icon helped sell cans - - and sell out environmentalism,” *Orion* 27, no. 6 (November/December 2008), accessed August 1, 2021, <https://orionmagazine.org/article/the-crying-indian/>.

⁴⁸¹ May Abshire, quoted in Angela Aleiss, “Native Son,” *Times-Picayune*, May 26, 1996, D1.

and Arthur), and seldom left home without his beaded moccasins, buckskin jacket and braided wig.”⁴⁸² Despite his false claims, Hollywood’s Native American community honored Iron Eyes Cody for his longstanding contribution since “his charitable deeds were more important than this non-Indian heritage.”⁴⁸³

After the trend of going Native flared up again in the late 1960s, Native Americans again were looking for ways to stop people from assuming an Indian identity. With the enactment of the Indian Bill of Rights in the Civil Rights Act of 1968 and other succeeding enactments, a “national policy commitment toward the protection of Indians and their communities has been made evident by the Congress,” Hank Adams, National Director of the Survival of American Indians Association (SAIA), wrote in his suggested draft for reintroducing the Pseudo Indian bill in 1986. In “this same time period, there has emerged a renewed phenomenon of non-Indians assuming the pretensions, or making false claims, of being ‘Indian’ of one tribe or another.”⁴⁸⁴ While initial reasons for claiming Indigenous heritage may have been manifold, “newborn” Natives who used their supposed ancestry for funding eligibilities and other programs or for marketing purposes raised suspicion as they diverted funding and opportunities from “legitimate Indians.”⁴⁸⁵

Since 1983, Adams had tried to revive consideration of the Pseudo Indian bill of 1933/34. His efforts were induced by Jamake Highwater, among others, who “fraudulently misrepresented his ancestry, age, and experience, and other background information, to capitalize on Indians and to profit from others’ interest, ignorance, and commercial enterprises relating to Indians and Indian subject matter.”⁴⁸⁶ In 1969, ‘J Marks’ introduced himself to the public as an Indian for the first time, claiming a full-blooded Cherokee mother and a Greek circus aerialist father. When he applied for a \$225,825 grant from the Corporation for Public Broadcasting for his Primal Mind Foundation in 1983, he took on the name Jamake Highwater and declared his mother a Montana Blackfeet and French Canadian mixed-blood and his father Cherokee, as Adams detected.⁴⁸⁷ The matter involved not only “individuals and federal agencies but other federally-funded corporations, institutions, and organizations as well” and “undermine[d] the established public policy objectives of the United States in its good faith and legal relationships with Indian people.”⁴⁸⁸ Despite its broad impact, submitting the Pseudo Indian bill to Senator Mark Andrews in 1983 and Representative John Miller in 1986 did not further its implementation.

After prices for Indigenous art skyrocketed during the 1970s, “a large amount of people decided magically to become Indians,”⁴⁸⁹ Chippewa artist and activist David Bradley noted about the art market in Santa Fe, New Mexico. As a lobbyist for the passage of the 1990 Indian Arts and Crafts Act, his “activism became focused and highly politicized around con-

⁴⁸² Angela Aleiss, “Native Son,” *Times-Picayune*, May 26, 1996, D1.

⁴⁸³ *Ibid.*, D1.

⁴⁸⁴ Adams, “Suggestion Draft”; Pseudo Indians [II]; Box 193; NCAI Records; NMAI Archive Center.

⁴⁸⁵ Survival of American Indian Association, press release, April 19, 1984; Pseudo Indians [II]; Box 193; Records of the National Congress of American Indians, 1933-1990, NMAI.AC.010; NMAI Archive Center, Smithsonian Institution, Suitland, MD.

⁴⁸⁶ Hank Adams, National Director, SAIA, letter to Mark Andrews, U.S. Senate, Olympia, Washington, November 11, 1983; Pseudo Indians [II]; Box 193; Records of the National Congress of American Indians, 1933-1990, NMAI.AC.010; NMAI Archive Center, Smithsonian Institution, Suitland, MD.

⁴⁸⁷ Cf. Adams, “Suggestion Draft”; Pseudo Indians [II]; Box 193; NCAI Records; NMAI Archive Center.

⁴⁸⁸ *Ibid.*

⁴⁸⁹ “Who is an Indian, and why are they asking?” *Business Week*, December 26, 1988, 71.

cerns of fraud in the Indian arts and crafts business.”⁴⁹⁰ In his view, the practice of adopting an Indigenous identity was an act of the still ongoing colonization of Native Americans because “For 500 years, non-Indians have stolen our land and resources, and now that Indian identity has become a marketable commodity, they want to steal that, too.”⁴⁹¹

The threat Native Americans attributed to the commercial use of Indigeneity for Indigenous identities becomes evident through their war-like framing of the practice of New Age cultural appropriation. In June 1993, U.S. and Canadian Lakota, Dakota, and Nakota Nations representatives passed the Declaration of War Against Exploiters of Lakota Spirituality in opposition to “non-Indian wannabes, hucksters, cultists, and self-styled New Age shamans” who “persist in exploiting, abusing and misrepresenting the sacred traditions and spiritual practices of the Lakota people.”⁴⁹² The declaration aimed to stop the “spiritual genocide” through the exploitation and expropriation of Indian spirituality. It urged Lakota people to prevent “our own people from contributing to and enabling the abuse of our sacred ceremonies by outsiders and certain ones among our people who are prostituting our spiritual ways for their own selfish gain, with no regard for the spiritual well being of the people as a whole.”⁴⁹³ While critics often explicitly referred to New Agers as exploiters, Mary Brave Bird pointed to the historical tradition of commercializing Indigenous knowledge since “What is going on now is not too different from the Indian medicine shows a hundred years ago.”⁴⁹⁴

Although times had changed and political correctness standards became increasingly accepted, this attitude affected marketing practices but not to the extent that it rendered commercial appropriation and stereotypical misrepresentation unethical. When Keep America Beautiful planned the comeback of the Crying Indian for Earth Day 1998, so-called retromercials had become a new trend among advertisers trying to appeal to consumers’ nostalgia. Simultaneously, advertisers had to attune the retromercial to “an incredibly different world” in which “people are a lot more cynical and savvy” and devoted to “P.C. issues.” While Iron Eyes Cody’s tear represented their equity, copywriter Stephen Mark, who was involved in the 1998 campaign, advised not to “push the button that hard emotionally” as, in an era of political correctness, “people would totally tune out at the hard sell.” Consequently, the commercial showed Iron Eyes Cody as an icon on a poster, with a tear materializing and running down his face and ending with the words “Back by popular neglect.”⁴⁹⁵ Despite the increasing importance of political correctness and consumers’ savvy, New Age imaginations of Indigeneity that were considered ‘positive’ did not vanish but peaked throughout the 1990s and again in the early 2010s and caused considerable resistance.

Since the 1980s, Non-Natives have adopted Indigenous identities by claiming a spiritual connection to the animal world, as the flood of supposedly pro-Indian movies suggests.

⁴⁹⁰ Bradley Pecore, “David Bradley,” in *New Native Art Criticism: Manifestations*, ed. Nancy Mithlo (Santa Fe: Museum of Contemporary Arts, 2011), 86.

⁴⁹¹ David Bradley, quoted in David R. McFadden and Ellen N. Changing Hands Taubman, *Art Without Reservation 2: Contemporary Native North American Art from the West, Northwest & Pacific* (New York: Museum of Arts & Design, 2005), 59.

⁴⁹² “Declaration of War Against Exploiters of Lakota Spirituality,” quoted in Valerie Taliman, “Lakota Declaration of War,” *The Peoples Paths*, accessed July 12, 2020, <http://www.thepeoplespaths.net/articles/warlakot.htm>.

⁴⁹³ “Declaration of War Against Exploiters of Lakota Spirituality,” quoted in Taliman, “Lakota Declaration of War.”

⁴⁹⁴ Mary Brave Bird, *Ohitika Woman* (New York: Grove Press, 1993), 235.

⁴⁹⁵ Stuart Elliott, “An environmental campaign is ‘Back by popular neglect,’” *The New York Times*, April 22, 1998, D6.

In “The Emerald Forest” (1985), for example, the “peace-loving, innocent, and very likable” natural ecologist educated the public about the damage humans have done to the earth. Notably, a Non-Indian was “the ‘Indian’ that is focused on in the film, which means that the story is being told through an appropriated identity.”⁴⁹⁶ In “Emerald Forest,” the invader had the heart of a jaguar, which was determined or legitimated by a vision in which he saw a jaguar. By claiming a spiritual connection to the animal world, Non-Natives mystically adopted Indigenous identities. In the 21st century, companies’ marketing techniques still drew upon the construction of the spiritual Indian and his connection to a spirit animal. Thunderbird Energetica (2012), for example, advertised its energy bars by claiming the company owners and their products had spirit or power animals and created a marketing story to build a myth around the brand (see crisis management chapter, legitimizing marketing practices).

Protests against products and artwork falsely labeled as Indian-made were primarily economically driven, but for Indigenous craftspeople, cultural survival was a significant concern connected with the production process. In a letter to Senator Milton R. Young, Warren Reiten, director of Public Service Careers of the Sisseton-Wahpeton Sioux Tribe, made illegal advertising practices partly responsible for the poverty on reservations and the threat of cultural loss. Due to a “lack of education, skills, or physical disability, . . . many of the Sioux Indians attempt to maintain a liveable income, and also preserve part of their histology, through the making and marketing of handmade beadwork and other authentic Indian artifacts.” Creating and marketing material culture was not only a source of income but also a means of building and preserving cultural identity.⁴⁹⁷

Reiten considered the persistent threat of counterfeit imports an act of “final genocide to a civilization that has been forced to give up most of its pride and culture to ‘progress’.” Since Native craftspeople could not compete with the prices of artificial but well-made duplicates imported from the Orient, this “inability” to adapt to market-driven consumer demands had not only “a tremendously adverse affect [sic] of the originality of their culture and heritage, but an effect of grave economic considerations on the already ‘disadvantaged’ American.” Craftspeople could not sell their work if they did not comply with mainstream ideas of Indigenous material culture in a certain price range. Therefore, critics viewed the pressure of serving a market partially shaped by imported replicas as a means of assimilation forced by the free market economy.⁴⁹⁸

As a result of an overemphasis on marketing, art instructor Margaret MacKichan argued in 1993, Native artists were pressured to conform to mass appeal and validate buyers’ ideas of what Native art should look like. Societies generally viewed artists as “innovative people, even visionaries, who are often ‘ahead of their time’.” On the contrary, the “heavy emphasis placed upon marketing and marketability of American Indian art . . . works to constrict artistic creativity.” Young Indigenous artists often had not the same options as other artists because the only role models were “maker-marketers” selling their work at the Santa Fe Indian Market, the Northern Plains Tribal Art Show, in halls of tribal buildings, or on the

⁴⁹⁶ Kilpatrick, *Celluloid Indians*, 104-105.

⁴⁹⁷ Warren Reiten, Director Public Service Careers, Sisseton-Wahpeton Sioux Tribe, letter to Milton R. Young, U.S. Senate, Fort Totten, North Dakota, July 22, 1971; Board Legislation, Gen. Correspondence Re Imitation Handicraft, 1936-73, Folder 3 of 3; General Correspondence, 1936-1975; Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980; Records of the Indian Arts and Crafts Board, Record Group 435; National Archives Building, Washington, DC.

⁴⁹⁸ Ibid.

street. Ironically, what consumers now consider traditional Indian art, was “superimposed on Kiowa, Pueblo and other groups of young student artists by well-meaning white teachers, in order to help them ‘find a style’ that was marketable,” MacKichan explained.⁴⁹⁹

False advertising and imitation of Indigenous culture also affected Native Americans and their cultural practices. When the organizers of a pow-wow in 1967 advertised the event as an Indian pow-wow in the Department of Commerce calendars of events of Pennsylvania, “a small group of Oneidas came all the way from New York and then turned around and went home, as it was all hobby people.”⁵⁰⁰ IACB General Manager Robert Hart recommended addressing the sponsors and voicing criticism carefully “in a way it is a compliment that these people wish to imitate the American Indian, and in the process they learn about Indian culture.”⁵⁰¹ Quite contrary, the increasing identification of members of the counter-culture with Native Americans as ecologists and medicine men since the mid-1960s and 70s had a significant impact on Indigenous cultural practices. As only few Natives “questioned the activities of the contemporary medicine men, . . . the divergence from the Indian norm became almost an industry in itself.”⁵⁰² Vine Deloria Jr. declared, ultimately, “Indian culture became a national culture, not because whites adopted the culture as their own, but because they became Indian and helped to define its contemporary expressions and loyalties.”⁵⁰³

With increasing numbers of people identifying as Native American, however, the fear of identity loss among Native Americans grew, just like the effects of internalized oppression.

In today’s climate, in which New Age spirituality has become popular and so much cultural appropriation has happened, there is a fear of the ultimate cultural appropriation: the usurpation of Native cultural identity. When people with minimal Native heritage, no cultural knowledge, and no kinship ties attempt to assert an indigenous identity, it is often hotly contested among indigenous people, yet this does not appear to be much of an issue for others who are not indigenous.⁵⁰⁴

Hilary Weaver, Lakota professor and associate dean for diversity, equity, and inclusion at the University at Buffalo School of Social Work, agreed that “there are some nonnatives who pose as Natives and some Natives who sell traditions and spirituality for a profit, but the self-appointed ‘identity police’ . . . should also be an issue of concern.”⁵⁰⁵ Weaver observed, “Perhaps the harshest arbiters of Native identity are Native people themselves” since “Internalized oppression, a by-product of colonization, has become common among indigenous people. We fight among ourselves and often accuse each other of not being ‘Indian enough’ based on differences in politics, religion, or phenotype.”⁵⁰⁶ As the history of marketing protest shows, identity issues continued to grow in complexity and importance.

⁴⁹⁹ Margaret A. MacKichan, “When Art and Business Don’t Mix: Overemphasis on Marketing Can Distract Artists and Rob Cultures, Argues One Art Instructor,” *Tribal College* 5, no. 1, July 31, 1993, 20.

⁵⁰⁰ Little Turtle to the IACB, February 3, 1968; Board Legisl., 1936-73, Folder 2 of 3; Gen. Corresp., 1936-1975; Corresp. Re Misrep., 1932-1980; RG 435; NAB.

⁵⁰¹ Robert G. Hart, General Manager, IACB, letter to Jimmy Little Turtle, March 4, 1968; Board Legislation, Gen. Correspondence Re Imitation Handicrafts, 1936-73, Folder 2 of 3; General Correspondence, 1936-1975; Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980; Records of the Indian Arts and Crafts Board, Record Group 435; National Archives Building, Washington, DC.

⁵⁰² Deloria, “The Popularity of Being Indian,” 597.

⁵⁰³ *Ibid.*, 598.

⁵⁰⁴ Weaver, “Indigenous Identity,” 250.

⁵⁰⁵ *Ibid.*, 251.

⁵⁰⁶ *Ibid.*, 249-252.

3. *The Quincentennial: Indian Sovereignty and Self-Determination*

Since the early 1980s, the precarious economic situation and the growing number of pseudo-Indians profiting from their marketing identity spurred protests to protect both Indian identity and the financial opportunities connected with this identity. Reagan's new policy of Indian self-sufficiency through reducing dependency on federal aid required tribes to provide a larger share for financing their self-governance. The severe cutbacks in social program funds since 1981, high unemployment rates on reservations, and the nation's general recession had a devastating effect on tribal communities throughout the country.⁵⁰⁷ As private and government industries started using tribal lands and young Natives left the reservations for more lucrative areas, some tribes found the gaming industry offered a way out of the reservation's living conditions.

In 1979, the Florida Seminoles were the first to open a high-stakes Indian bingo hall, and within five years, one hundred Indian bingo halls opened on reservations across the nation.⁵⁰⁸ The establishment of the National Indian Gaming Association (NIGA) in 1985 and the Indian Gaming Regulatory Act of 1988 sealed the development of the gaming industry, although the regulation would remain under constant fire on the state level. While gambling revenue resulted in the new stereotype of the 'Casino Indian,' their newly won economic independence enabled Natives to fight stereotypes as it "offered American Indians the chance to begin taking back ownership of the imagery that has defined them for the White world."⁵⁰⁹ Imagery "only recently regarded as demeaning clichés and romantic idealizations were by the 1980s being reclaimed, redeemed, and reinvested with new meaning."⁵¹⁰ Since the "ability to define imagery is a consequence of power,"⁵¹¹ the reappropriation of Indigenous imagery and culture became symbolic of Native American sovereignty and self-determination, which would flourish with increasing economic prosperity.

For Native Americans, the 1990s was a decade of revival on many levels. After Congress officially repealed the termination policy in 1988, the Ponca Restoration Act of 1990 marked the beginning of the reinstatement of tribes and, thus, the reverse of the termination policy. Twenty-three tribes signed self-governance agreements with the federal government, and the Tribal Self-Governance Act of 1994 gave tribes control over federal funds. U.S. courts also upheld Native rights despite severe non-Native resistance in areas like Washington State and Wisconsin. While land settlement claims brought initial income and gambling revenues grew rapidly since the 1980s, economic development went beyond gaming and tourism. The Southern Ute tribe, for instance, "enriched by oil and gas, already has a AAA rating from Fitch and S&P," as the *Wall Street Journal* wrote in 2001. Throughout the 1990s, gaming wealth "has gone to indoor plumbing and other basics," but in the 2000s, "richer tribes are

⁵⁰⁷ Cf. Kilpatrick, *Celluloid Indians*, 102.

⁵⁰⁸ Cf. Calloway, *First Peoples*, 654.

⁵⁰⁹ S. Elizabeth Bird, "Introduction: Constructing the Indian, 1830s-1990s," in *Dressing in Feathers: The Construction of the Indian in American Popular Culture*, ed. S. Elizabeth Bird (Boulder: Routledge, 1996), 5.

⁵¹⁰ Allan J. Ryan, *The Trickster Shift: Humor and Irony in Contemporary Native Art* (Vancouver/Toronto: UBC Press, 1999), 14.

⁵¹¹ Bird, "Constructing the Indian," 5.

starting to explore more adventurous investments.” Tribes were now “expanding into energy, banks, hotels, ski resorts, meat-processing plants and cement factories.”⁵¹²

Economic prosperity for some tribes and the increasing implementation of political sovereignty and cultural self-determination ultimately facilitated a new ‘threat,’ the Indian lawyer. Fighting for Indian sovereignty on political, cultural, and economic levels, the “new American warrior comes armed with attorneys and economic clout.”⁵¹³ Financial resources enabled tribes to bring forth and hire lawyers to enforce tribal rights, which unleashed anxieties particularly in areas close to reservations.⁵¹⁴ A poster from the early 1990s in a Wisconsin bar announcing the “1st Annual Indian Shoot” hints at the anxieties increasing with Indigenous prosperity and power. In this ‘fun’ shooting, hunters were to get 5 points for killing a “PLAIN INDIAN,” 30 points for an “INDIAN WITH BOAT NEWER THAN YOURS,” and 100 points for an “INDIAN TRIBAL LAWYER.”⁵¹⁵ Although scholars regularly point to the rapidly rising numbers of Indigenous lawyers since the 1960s, a closer look at the statistics and U.S. Census data reveals that Indian lawyers were still underrepresented in 2010.⁵¹⁶

The confrontation of young Natives who sought to participate in life outside the reservations with American mainstream ideas and imagery of Indigenous peoples and cultures led to their politicization and resistance against Indigenous misrepresentation through media. While some Native artists, particularly from the Southwest, focused on misleading labeling of products as Indian-made, Marcus Amerman and Charlene Teters were ‘activated’ by their experiences at the University of Illinois which set off their fight against Native American misrepresentation. Marcus Amerman described his perception as a Choctaw student of the environment at the University in the late 1980s and how this experience influenced his later work as an artist:

⁵¹² Ianthe J. Dugan, “Former Actress Becomes a Key Link to Wall Street and the Reservation,” *The Wall Street Journal*, September 6, 2001, accessed July 12, 2014, <http://online.wsj.com/news/articles/SB999723261603548006>.

⁵¹³ Kilpatrick, *Celluloid Indians*, 176.

⁵¹⁴ Cf. *ibid.*, 176.

⁵¹⁵ “Photocopied announcement posted on a bar wall in Wisconsin, early 1990,” in *Dressing in Feathers: The Construction of the Indian in American Popular Culture*, ed. S. Elizabeth Bird (Boulder: Routledge, 1996), 5.

⁵¹⁶ Starting with less than 25 practicing Native lawyers in the mid-1960s, the number of lawyers rose 96-fold within a period of 50 years. With roughly 2,400 lawyers in 2015, Native Americans remained extremely underrepresented in the legal field, particularly compared to Euro-Americans. Although 1.6 percent of the total population is Indigenous, according to the U.S. Census of 2010, they provide only 0.2 percent of all lawyers in the United States. 77 percent of the population were recorded as white, but they provide 88 percent of all lawyers.

Cf. Matthew Fletcher, “The Growing Market for Indian Lawyering,” *Tribal College*, November 8, 2015, accessed January 18, 2017, <http://tribalcollegejournal.org/the-growing-market-for-indian-lawyering/>.

Lawrence Baca, a past national president of the National Native American Bar Association, estimated that between 50 and 65 percent of the self-identified Native American students enrolled in law school programs are actually “Box Checkers,” that is, “students who have absolutely no belief that they have Indian heritage but check the Native American box on the application because they believe that someone else is getting a break that they don’t deserve.” According to law school reports, between 1990 and 2000 2,497 Native American law students were graduating, but the Census data shows that the number of lawyers increased only by 228. Baca concluded that the “disparity between the numbers of graduates and the number of practicing lawyers cannot be explained away by death, retirement and bar passage rate.”

Lawrence Baca, “American Indians and the ‘Box Checker’ Phenomenon,” in *Review 2011: The State of Diversity and Inclusion in the Legal Profession*, ed. Institute for Inclusion in the Legal Profession, 2011, 72-74, accessed May 23, 2021, <http://www.theiilp.com/Resources/Documents/IILPReview2011.pdf>.

I came to address the notion of the appropriation of Native American art, mythology, and religion during my brief attendance at the University of Illinois in the late eighties. Because they had an Indian as a mascot, they felt justified in saturating the environment with endless offensive caricatures of Indian culture. What struck me, however, was how feverishly they defended their racist stereotypes and insisted that they did it with the utmost respect. That experience really activated me and informed my art in a whole different way.⁵¹⁷

Similarly, Charlene Teters, a graduate student from the Spokane tribe, was politicized by the half-time performance of the University's sports mascot Chief Illiniwek during a football game in 1989.⁵¹⁸ Amerman "wasn't that activated until then," but "seeing the products they offered at the school store and the way people dressed up for these games made me feel like it was an alien country."⁵¹⁹

Popular movies of the 1990s mostly built upon traditional representations of Indigeneity that the industry had established since the 1970s, but they also showed one major change. The untamed West and the past still defined the setting of those movies, and Indian identity was still appropriated by the main character ("Dances With Wolves," 1991), or the Indian experience was presented through White eyes ("Last of the Mohicans," 1992). But now Euro-American roles were frequently stereotyped as villains, as seen in "Dances With Wolves" and "Pocahontas" (1995). The Oscar-winning film "Dances With Wolves" succeeded due to a renewed interest in Native Americans and started influencing mainstream advertising.⁵²⁰ The Quincentennial and the rising popularity of Indigeneity inspired marketers in many product segments, particularly the collectibles market, to sell Native-inspired themes connected to "nature's secrets as well as mystical forces."⁵²¹ Ann Silve, buyer for Harold's in Dallas, and Joanna Seitz of J. Seitz, Connecticut, expected 20 percent increases in jewelry sales in 1991 and again in 1992 due to a "renewed interest in and awareness of Native American art and crafts, and consumer's interest in items that will outlast whimsical fashion."⁵²²

While Christopher Columbus collectibles turned out to be "retailing disasters" and "Southwest designs never caught on nationwide," these trends "reinforced the importance of Native American themes," as a 1993 *Giftware News* article resumed. It advised readers that, as "the country continues its concern for the environment and reestablishes its renewal of interest in Native American lifestyles and practices, Native-American-themed collectibles can put you on the cutting edge of extra business."⁵²³ In anticipation of the strong-selling film "Pocahontas," *Giftware News* remarked that manufacturers of merchandise could "Expect Pocahontas-power to push your 1995 profits over the top."⁵²⁴ In 1995, when "the collectibles market has enjoyed a steady stream of success with Native American-themed merchandise,"

⁵¹⁷ Marcus Amerman, quoted in "Marcus Amerman (Choctaw) is a multi-faceted artist," *THE magazine*, August 2008, 23, clipping; Amerman, Marcus; Native Artists Files; IAIA Archives, Santa Fe, NM. Hereafter cited as "Marcus Amerman (Choctaw) is a multi-faceted artist"; Amerman; Artists Files; IAIA Archives.

⁵¹⁸ Cf. Charleen Touchette and Suzanne Deats, *NDN Art: Contemporary Native American Art* (Albuquerque: Fresco Fine Art Publications, 2003), 43.

⁵¹⁹ Marcus Amerman, quoted in Arin McKenna, "The Artists Speak Out," *Indian Market*, 2005, 130, clipping; Teters, Charlene; Native Artists Files; IAIA Archives, Santa Fe, NM.

⁵²⁰ Cf. Patrick Lee, "Tracks of 'Wolves' Left in Ads Using Indian Imagery," *Los Angeles Times*, April 9, 1991, 6.

⁵²¹ Reinhardt, *Indian Images in Commerce*, 2.

⁵²² "Going Native: This time around, Southwestern jewelry is accessorizing mainstream fashion," *Accessories* 93, February 1992, 58.

⁵²³ "Native American Themes Remain Hot Collectible Topics," *Giftware News* 18, no. 7, July 1, 1993, 74.

⁵²⁴ "Designs Everywhere Are Going Native American!" *Giftware News* 19, no. 7, July 1, 1994, 28.

Walt Disney Studios was mainly responsible for the “flood” even before the film “Pocahontas” debuted as the company had spent millions of dollars throughout the preceding months for “beating the promotional drum to a pulp.”⁵²⁵ Notwithstanding the popularity of Indigeneity, the Southwest trend, which had started in the 1980s, was not ebbing but changing towards “genuine articles”⁵²⁶ and “has found a special, permanent niche in the fashion scene.”⁵²⁷ And while Indian-made merchandise had “a growing share of the market, . . . so too does Native American inspired merchandise from other manufacturers.”⁵²⁸

Giftware News identified men as “the best customers for such products” in the gift or collectibles markets and recommended advertising in newspapers’ business and sports sections.⁵²⁹ The examples of Wooden Cigar Store Indians and a figural bottle of Brown’s Celebrated Indian Herb Bitters demonstrate the value collectibles could gain. While Wooden Indians were available for between \$16 and \$125 around 1900, tobacco shop owners in 1950 were willing to pay \$250 as the art of carving these figures had died out.⁵³⁰ An inquiry for “Wooden Cigar Store Indian” on eBay showed that in 2021, prices ranged from \$750 to \$4,000.⁵³¹ An 1860s bottle in the shape of a Native American woman sold for \$4,800 at a 1997 auction in Pennsylvania.⁵³² In 1995, *Giftware News* noted that, although JusToys’ “Pocahontas” collectibles were designed for children ages three and up, “market watchers predict collectors will snatch them up for possible long-term investment purposes.”⁵³³

The same quest for authenticity apparent in “Dances With Wolves,” where actors spoke Lakota and wore Lakota clothing, became a success factor in marketing. As “Purist collectors want authentic designs,” sellers should be able to explain a particular style, color, and size of a headdress, the markings on a costume, and the personal history of a Native American chief.⁵³⁴ To market Native products, it was “essential to tell customers bout [sic] the artist, the design, and where the piece came from.”⁵³⁵ According to BJ Nocera, vice president of marketing, Sandy Dolls undertook “Extensive research . . . so that the costuming and materials are as historically accurate as possible.”⁵³⁶ Carole Howe, the owner of CBR, agreed that the most important selling strategy was to foster the “genuine appreciation for the products through information selling” and trained her employees “extensively in the use, background and significance of each item so they can inform consumers.”⁵³⁷ The information-based marketing strategy became a continuing trend. In 2012, an article about the growth of Indian-made souvenirs at National Parks still advised sellers that the “more information about

⁵²⁵ “Native American-Themed Merchandise Is Capturing The Collectibles Market,” *Giftware News* 20, no. 4, April 1, 1995, 106.

⁵²⁶ David Seng, “Native American stores attract tourist dollars,” *Giftware News* 18, no. 4, April 1993, 89.

⁵²⁷ “Going Native,” 59.

⁵²⁸ “Designs Everywhere Are Going Native American!” 27.

⁵²⁹ “Native American Themes Remain Hot Collectible Topics,” 74.

⁵³⁰ Cf. John Goette, “Wooden Indians Wanted,” *Olean Times Herald*, April 21, 1950, 6.

⁵³¹ Online search for “Wooden Cigar Store Indian” at eBay, accessed July 21, 2021, https://www.ebay.com/sch/i.html?_from=R40&_trksid=p2334524.m570.l1313&_nkw=wooden+cigar+store+indian&_sacat=0&LH_TitleDesc=0&_odkw=Cigar+Store+Wooden+Indian&_osacat=0.

⁵³² Cf. Ralph and Terry Kovel, “Figures symbolizing America are pricey,” *Star Tribune*, December 11, 1997, 4.

⁵³³ “Native American-Themed Merchandise,” 106.

⁵³⁴ “Native American Themes Remain Hot Collectible Topics,” 74.

⁵³⁵ “Going Native,” 60.

⁵³⁶ BJ Nocera, vice president of marketing, Sandy Dolls, quoted in “Native American-Themed Merchandise,” 108.

⁵³⁷ Seng, “Native American stores attract tourist dollars,” 90.

individual Native American-made products visitors can access, the greater the likelihood that they will purchase them.”⁵³⁸

In addition, Nocera recommended, “Purchase Native American blankets to promote Native American display; tie all Native American products into one themed area; use signing with attention drawn to products where Native American-made or historically accurate.”⁵³⁹ Although the theme “will sell all year,” fall was the best time for special marketing events from September to Thanksgiving when Native American festivals and powwows were held.⁵⁴⁰ Regionalization, that is, displaying “merchandise of tribes in each store’s region as well as other items unique to the area,”⁵⁴¹ was another key feature of CBR’s sales strategy. But the relationships she had with artisans was the most crucial part of Howe’s sales strategy because she was “committed [sic] to helping companies grow a product they can sell”⁵⁴² and worked closely with artists from conception to final market. While joint product development represented a financial opportunity for Indigenous artists, some critics decried the impact of this demand-driven marketing strategy on cultural traditions. Some saw this as a chance for economic independence and self-determination, others as an artist selling out.

Authenticity was not a new paradigm in advertising but had already inspired marketers in the 1960s and 70s to hire Native Americans as ad models for playing Indian roles. Journalist Patrick Lee still found signs of “heightened sensitivity among advertisers” like Japanese auto manufacturer Mazda who named a 1991 car model after the Navajo tribe “because of the connotations of nature and independence.” The company “took great pains to include the Navajo nation” by employing Navajo consultants, actors, and crew members during the shooting of a TV commercial and through donations to the nation.⁵⁴³ In the collectibles industry, several companies like Legends (Simi Valley, California), Sandy Dolls (Springfield, Montana), and Roman (Roselle, Illinois) launched “collections which donate a portion of the proceeds to various Native American organizations.” Legends donated proceeds from its “American Indian Dance Premier Edition” of sculptures to “the American Indian Dance Theater to help them continue the tradition and heritage of Native American dance;” and proceeds from its “Warriors of the Scared [sic] Circle” collection to the Native American Rights Fund and the Red Cloud Indian School.⁵⁴⁴ Contributing one of the Native collectibles “as a possible fund-raising item”⁵⁴⁵ was only one recommendation among various marketing options. Marketing and PR professionals deemed working with a Native American organization in the com-

⁵³⁸ Julie R. Ross, “Telling a Story with Souvenirs: Native American-made Products Are a Growth Area at National Parks,” *Souvenirs, Gifts & Novelties*, January 2012, 141.

⁵³⁹ BJ Nocera, vice president of marketing, Sandy Dolls, quoted in “Native American-Themed Merchandise,” 108.

⁵⁴⁰ The article listed several events: Totah Festival, Farmington, NM; Puyallup Tribal Powwow, Tacoma, WA; Indian Summer Festival, Milwaukee, WI; Indian Heritage Festival, Martinsville, VA; Guilford Native American Association Powwow, Guilford, NC; Cherokee Strip Celebration, Ponca City, OK; Chickahominy Fall Festival, Roxbury, VA (all events listed for September), American Indian Time Of Thanksgiving, Allentown, PA; Indian Heritage Festival, Huntsville, AL; Pioneer And Indian Festival, Ridgeland MS (October); Poarch Creek Indian Thanksgiving Day Powwow, Atmore, AL (November). Cf. “Native American Themes Remain Hot Collectible Topics,” 74-80.

⁵⁴¹ Seng, “Native American stores attract tourist dollars,” 90.

⁵⁴² Carole Howe, owner of CBR, quoted in Seng, “Native American stores attract tourist dollars,” 90.

⁵⁴³ Lee, “Tracks of ‘Wolves’ Left in Ads Using Indian Imagery,” 6.

⁵⁴⁴ Jennifer Mizera, spokeswoman for Legends, quoted in “Native American-Themed Merchandise,” 106-107.

⁵⁴⁵ Lisa Gordey, Public Relations Coordinator, Roman, Inc., quoted in “Native American-Themed Merchandise,” 107-108.

munity, co-sponsoring an open house with them, highlighting the history and culture, inviting Native artists, connecting with local colleges or universities that have Native American study programs, or co-sponsoring a symposium on Indigenous art valuable strategies to support Indigenous communities “while also gaining positive public relations for your business.”⁵⁴⁶

Despite consumers’ quest for authenticity and supposedly accurate information, “a lot of hand-holding, educating and romancing [was] involved,”⁵⁴⁷ Joanna Seitz explained. And while minorities increasingly filled roles in films and TV programs during the 1980s, the “drive to improve racial and ethnic diversity in advertising has stalled”⁵⁴⁸ by 1989. The 1991 report “Invisible People,” commissioned by Mark Green, New York City Commissioner of Consumer Affairs, examined representations of minorities in 11,391 ads from 27 national magazines. The study concluded that minorities represented a significantly smaller percentage of people depicted in ads than the actual share of the U.S. population and magazine readers.⁵⁴⁹ “American Indian-inspired clothing may be chic, but notice who models them,”⁵⁵⁰ writer Lili Wright pointed out.

That Indian imagery still diversified during the 1990s was partly due to an environment of multiculturalism and “the increasing presence of American Indians in law and politics, as business leaders on and off reservation land, as journalists, and as filmmakers.”⁵⁵¹ The rising level of sovereignty and education produced enough self-awareness and confidence that, when “old prejudices did surface in the media, Indian communities often strongly voiced their objections.”⁵⁵² For instance, challenging the treatment of Indigenous issues in journalism, the 1984-founded Native American Journalist Association (NAJA) gave its “Columbus Award” to a *Washington Post* story from 1994 covering the birth of a white buffalo calf for “perpetuating ignorance and stereotypes about Native Americans” by using mythological terminology and inappropriate references.⁵⁵³

In 1992, the 500-year celebration of Columbus’ discovery of the American continent gave marketing protest new momentum as “multicultural programs in education and the arts sought to recognize and integrate the contributions of all cultures within the United States on the basis of equality”⁵⁵⁴ during the years preceding the Columbian Quincentennial. Cherokee activist and artist Shan Goshorn explained she “became politically active with my art in the early 1990’s [sic] in response to America’s quincentennial.”⁵⁵⁵ Like Teters, a “contemporary artist who is not for sale, [n]or is her art a saleable commodity,”⁵⁵⁶ Goshorn insisted on her intellectual sovereignty to tell her own story instead of abiding by mainstream demands. As the demand for Indian storytellers and speakers in schools and for city celebrations grew with

⁵⁴⁶ “Native American-Themed Merchandise,” 107-108.

⁵⁴⁷ Joanna Seitz, J. Seitz, quoted in “Going Native,” 60.

⁵⁴⁸ Jube Shiver, “Placing More Minorities in Ads Turns Out to Be Hard Sale,” *Los Angeles Times*, January 22, 1989, D1.

⁵⁴⁹ Cf. Lili Wright, “Advertising Disparity: All-American Advertising by Using Models of Color, Ads Represent Real World People of Color Still Finding It’s Tough to Break Through Into the Mostly White Ad World,” *The Salt Lake Tribune*, October 3, 1993, C1.

⁵⁵⁰ *Ibid.*, C1.

⁵⁵¹ Kilpatrick, *Celluloid Indians*, 120.

⁵⁵² *Ibid.*, 121.

⁵⁵³ Weston, *Native Americans in the News*, 159.

⁵⁵⁴ Lisa R. Seppi, “Indigenous Activism: Art, Identity, and the Politics of the Quincentenary,” *Counterpoints* 515 (2017): 121.

⁵⁵⁵ “History,” Shan Goshorn, accessed September 27, 2016, <http://www.shangoshorn.net/history/>.

⁵⁵⁶ Touchette and Deats, *NDN Art*, 43.

the Quincentennial celebrations, “she decided she was not going to be ‘just another storytelling princess’ who would come in and entertain people.”⁵⁵⁷

Bradley declared 1992 the “Year of the Political Indian,” arguing that, “with all the mass media coverage, we have the chance to set the eurocentric [sic] historical record straight.”⁵⁵⁸ The broad range of activities, publications, and exhibitions “served as a means of revising the past and reclaiming identity”⁵⁵⁹ to “correct historical misunderstandings that foster[ed] racism and stereotypes.” This educational work should “promote awareness of distinctly indigenous values and belief systems that reaffirmed positive concepts of collective cultural identity and historical continuity.”⁵⁶⁰

The use of Indigenous names and imagery as sports teams and mascots became a national issue when the Atlanta Braves played in the World Series in 1991 and the Washington Football Team, then named the Washington Redskins, won the 1992 Super Bowl.⁵⁶¹ That the Atlanta Braves appeared in Minneapolis, where “the American Indian Movement began and where a sizable Indian population lived, galvanized opponents of Indian images and names.”⁵⁶² Although Native Americans previously protested against sports mascots, now major media outlets treated protests seriously and “explored the mascot issue and presented Native Americans’ views to a wide audience.”⁵⁶³ With three to five thousand participants, the Super Bowl protest against the Washington team’s name was perhaps one of the largest Native American protests since the occupation of Wounded Knee in 1973 and the largest at a sports event.⁵⁶⁴ The National Coalition of Racism in Sports and Media (NCRSM), formed in October 1991 in Minneapolis, focused explicitly on sports mascots to fight cultural illiteracy and insensitivity to this day.⁵⁶⁵

Since the “most prominent sports journalists in the country began writing columns opposed to mascots, logos, and names such as the Redskins,”⁵⁶⁶ this protest intensified the national media’s coverage of the mascot issue. Media coverage not only informed a national audience about the mascot controversy, but it also “unintentionally recruited many Native Americans into the anti-mascot movement”⁵⁶⁷ after they saw fans doing the tomahawk chop in stadiums for the first time. When the Cleveland Indians and the Atlanta Braves competed in the 1995 World Series, “these writers took the offensive by condemning both teams for their nicknames.”⁵⁶⁸ Although protesters had not convinced a majority of the press or the public,

⁵⁵⁷ Charlene Teters, “Photographer and Painter Shan Goshorn,” *Indian Artist*, Spring 1997, 72, clipping; Goshorn, Shan; Art and Artist Files; Vine Deloria, Jr. Library, NMAI, Smithsonian Institution, Suitland, MD. Hereafter cited as Teters, “Photographer and Painter Shan Goshorn;” Goshorn; Artist Files; NMAI.

⁵⁵⁸ David Bradley, “1992, The Year of the Political Indian,” paper, 1991; Bradley, David; Native Artists Files; IAIA Archives, Santa Fe, NM.

⁵⁵⁹ Seppi, “Indigenous Activism,” 138.

⁵⁶⁰ *Ibid.*, 121.

⁵⁶¹ Cf. Victoria Munro, *Hate Crime in the Media: A History* (Santa Barbara: Praeger, 2014), 219.

⁵⁶² Paul C. Rosier, *Native American Issues* (Westport: Greenwood Press, 2003), 7.

⁵⁶³ Weston, *Native Americans in the News*, 162.

⁵⁶⁴ Cf. Rosier, *Native American Issues*, 7.

⁵⁶⁵ Cf. “National Coalition of Racism in Sports and Media,” American Indian Movement, accessed February 13, 2021, <http://www.aimovement.org/ncrsm/>.

⁵⁶⁶ Rosier, *Native American Issues*, 7.

⁵⁶⁷ King and Springwood, *Team Spirits*, 250.

⁵⁶⁸ Rosier, *Native American Issues*, 7.

they “succeeded in educating the media – and through them, the public – that the use of American Indians as mascots and nicknames in sports is a controversial issue.”⁵⁶⁹

At least since the late 1980s, artists like Arthur Amiotte or Edgar Heap of Birds pioneered the discourse about Indigenous identity by challenging media and marketing images and offering alternative identities through their artwork. Amerman analogized “everything to the idea that art is war, so for me different mediums are different weapons . . . and I’m out to destroy stereotypes.”⁵⁷⁰ Some artists framed objectionable marketing representations of Native Americans and the deconstruction of stereotypes that dominated and limited Native American lives as a human rights issue. Shan Goshorn, for instance, “created several bodies of work that addressed human rights issues unique to native people, such as *Honest Injun*, a series of hand-painted black and white photographs of commercial products that use Indian names or images to hawk their wares.”⁵⁷¹ She believed that “reclaiming history and images from institutions and commercialization is critical to Indian identity and cultural diversity.”⁵⁷² Like Goshorn, increasing numbers of Native people “insist[ed] on greater intellectual and cultural sovereignty, the right to define their own identities and tell their own stories.” History had become “contested ground,” and the question who told or ‘owned’ history mattered.⁵⁷³

On a cultural and educational level, new legislation like the Native American Languages Act of 1990 or the Native American Graves Protection and Repatriation Act of 1990 strengthened Indian identity and heritage. Tribes increasingly sought to establish their own tribally controlled institutions to preserve and promote their cultures. While the first Native American studies program had been established in 1970, in 1996, the University of Arizona created the first Ph.D. program, and tribal colleges received further support from the government. Cultural institutions such as art schools, museums, and cultural centers were to become a mainspring of resistance against commercial representations of Indigeneity. Paul D. Gonzales, director of the Institute of American Indian Arts Museum, acknowledged that “Just to be Indian is not necessarily enough to recognize what is happening. Many of our own Indian people perpetuate and encourage these stereotypes without realizing that they are doing a disservice to all Indian people, especially future generations.” Educating Native Americans at institutions such as the IAIA, which became independent from the Bureau of Indian Affairs (BIA) in 1986, was a primary goal as the “first level of understanding and support for these issues should come from Indian people.”⁵⁷⁴

Charlene Teters inspired Gonzales to rethink and define the IAIA museum’s role as “an important instrument in educating all people, including Indian people, about who we are and what we do. An important aspect of achieving this goal is to understand and recognize stereotypes and racism where and when they exist.” Beyond the ability to recognize misrepresentation, Gonzales required his staff to join a lecture given by Teters to acquire the competence “to convey this message to our patrons and community members.” He considered it highly “important for the Museum staff to have as fluent a vocabulary to discuss these issues

⁵⁶⁹ King and Springwood, *Team Spirits*, 251.

⁵⁷⁰ Marcus Amerman, quoted in “Marcus Amerman (Choctaw) is a multi-faceted artist,” 23; Amerman; Artists Files; IAIA Archives.

⁵⁷¹ “History,” Shan Goshorn.

⁵⁷² Teters, “Photographer and Painter Shan Goshorn,” 72; Goshorn; Artist Files; NMAI.

⁵⁷³ Calloway, *First Peoples*, 630.

⁵⁷⁴ Paul D. Gonzales, IAIA, memorandum to All Museum Staff re Char Teters’ lecture, February 21, 1994; Teters, Charlene; Native Artists Files; IAIA Archives, Santa Fe, NM.

as possible. To create this vocabulary, I think that we should be participating in the open dialogue that is currently happening in Indian Country.” Cultural institutions took up the already ongoing discourse of commercial exploitation and assumed an educational role in the protest against marketing images.⁵⁷⁵

In the late 1990s, Kevin Gover, Pawnee lawyer and Assistant Secretary for Indian Affairs, pushed for the expansion of the gaming industry on reservations to create and ensure the financial basis of such efforts. The significance of the gaming industry was – and still is – lying in the fact that the “creation of wealth is the creation of clout, and with it comes the ability to tell your story and get it out.” This “luxury . . . to sit back and reflect on who we are and where we came from” was “the first juncture in our history where we’ve moved away from the culture of mere survival, even if we’re not yet in a culture of prosperity.” In this process, cultural institutions like museums were “so damned important, because, over time, they will inoculate the mainstream against acceptance of destructive stereotypes of Indians.”⁵⁷⁶

At least since the 1990s, artists framed the commercial exploitation of Indigenous cultures as a matter of colonization and educated their audiences through different artistic practices such as reappropriation, juxtaposition, or the deconstruction of Indian myths. Through their artwork presented at markets and increasing numbers of exhibits dedicated to the issue of inaccurate Native media representations, artists aimed to decolonize Euro-American ideas and expectations of Native Americans as well as Indigenous self-perceptions.

Ben Nighthorse Campbell: Marketing Icon and Advocate for Fair Representation

With Ben Nighthorse Campbell, a member of the U.S. House of Representatives (1987-1993) and U.S. Senator (1993-2005), and Ada Deer, the first Indigenous woman to become appointed Assistant Secretary for Indian Affairs, Native Americans visibly appeared on the Euro-American political stage again. For his political career, PR professionals advised Campbell on strategies when and how to present his heritage best to win races. The strategy to withhold and represent his Indigeneity when appropriate was crucial to his successful campaigns.

In his 1986 campaign to enter the House of Representatives, the key decision “was to play down Ben’s Indian heritage” while promoting his name Nighthorse. The “name was simply too colorful to waste” as one of the “hardest things for a person running for public office to achieve is name recognition.” Since the voters in Colorado were predominantly White, Western, and rural, the “Fear of a white backlash was the overriding factor in the decision not to play up Campbell’s Indian heritage.” Instead, the campaign focused on Campbell as a “semi-orphan, high school dropout, Korean war veteran, small businessman, Olympic athlete, artist, truck driver, teacher, rancher, and admired state legislator” and portrayed him as a “Renaissance man.” The strategy efficiently got voters to identify with Campbell because the diverse components of his background appealed to various groups of voters.⁵⁷⁷

When Campbell ran for senator in 1992, the campaign again highlighted his background but now, in the year of the Quincentennial, added his Native heritage. The campaign

⁵⁷⁵ Ibid.

⁵⁷⁶ Kevin Gover, quoted in Sean P. Murphy, “The Ring of Slot Machines, the Rescue of Indian Culture Massive Casino Profits Are Producing Side Benefit For Tribes: The Clout to Defend Their Heritage,” *Boston Globe*, June 30, 2002, H1.

⁵⁷⁷ Herman Viola, *Ben Nighthorse Campbell: An Indian Warrior* (New York: Orion Books, 1993), 226-227.

successfully utilized the American cultural myth of the American Dream “to strike responsive chords within the voter stored political memories.” In emphasizing his Indigeneity and poor background, Campbell was presented as a “true American hero” who had achieved personal accomplishments and prosperity through hard work.⁵⁷⁸ Although his Indigeneity could have estranged him from most voters, campaign treasurer Ken Lane was convinced that Campbell won because he “was an easy candidate for voters to identify with.”⁵⁷⁹ As American politics professor Richard Semiatin wrote, the bio ad campaign produced for Campbell’s 1992 U.S. Senator race staged “an authentic American hero – the triumph of an individual over adversity” and “remains one of the best advertisements created in the last 20 years.”⁵⁸⁰

Campbell was a senator and a lifetime Cheyenne chief, which allowed him to wear a feather headdress that he put on for certain events like the 2004 opening of the NMAI and during his speech to the Senate the same day.⁵⁸¹ While his Indigeneity was highly visible through his appearance, Campbell grew up during the 1930s and 40s when, “Though it felt difficult and shameful to hide one’s own identity, it was often the safest thing to do.”⁵⁸² People who could pass as Italian or French would hide their Indigenous identities to avoid prejudice and violence, and Campbell’s father was highly determined to shield his children from discrimination and contact with other Native Americans.⁵⁸³ Whether in opposition to his childhood experience, as a strategy to gain publicity, or both, as a proponent of cultural diversity and Indigenous self-determination, he remained conscious of his Indigenous, Western appearance. “How fitting it was,” wrote Jon Margolis in the *High Country News*, “that true celebrity came to Sen. Ben Nighthorse Campbell not over a vote in Congress, or a speech, or even when he switched parties, but over advertising.”⁵⁸⁴

His image as a renegade, which Campbell would also cultivate during his time in office, made him the ideal advertising icon for marketers such as Banana Republic.⁵⁸⁵ While his long hair had alienated many potential voters during his race for U.S. Representative because it was associated with “hippies or crazy artists or antiestablishment types,” later, his “ponytail became a trademark long before the New York designers in the 1990s made it a yuppie emblem.”⁵⁸⁶ As Campbell explained, he never cut his hair because Native Americans “would be terribly hurt if I tried to change my image for political gain.” By the early 1990s, his cultural pride and resistance to adapt had turned into an asset as “More and more people began to tell

⁵⁷⁸ Karen S. Johnson-Cartee and Gary A. Copeland, *Inside Political Campaigns: Theory and Practice* (Westport: Praeger, 1997), 165.

⁵⁷⁹ Ken Lane, quoted in Viola, *Ben Nighthorse Campbell*, 223.

⁵⁸⁰ Richard J. Semiatin, *Campaigns in the 21st Century: The Changing Mosaic of American Politics* (Boston: McCraw-Hill, 2004), 143.

⁵⁸¹ Cf. “National Museum of the American Indian Opening,” *C-Span*, September 21, 2004, accessed July 19, 2018, <https://www.c-span.org/video/?183601-1/national-museum-american-indian-opening>.

⁵⁸² Vincent Schilling, *Native Men of Courage*, rev. ed. (Summertown: 7th Generation/Book Publishing Co., 2016), 63.

⁵⁸³ *Ibid.*, 62-63.

⁵⁸⁴ Jon Margolis, “A U.S. senator who shoots from the hip,” *High Country News*, March 17, 1997, accessed July 17, 2018, <http://www.hcn.org/issues/107/3375>.

⁵⁸⁵ After his election to the Senate, Campbell not only sought to change the “Senate dress code to allow his usual handmade bolo instead of a conventional necktie” but he was also “hotly criticized by conservatives for attending fund-raisers for the legal defense fund of a Hell’s Angels member, and by Democrats for his defection from their party.”

Lisa Greim, “Banana Republic Ads Fall to Environmentalist Heat,” *Ad Age*, April 15, 1996, accessed July 17, 2018, <http://adage.com/article/news/banana-republic-ads-fall-environmentalist-heat/79577/>.

⁵⁸⁶ Ben Nighthorse Campbell, quoted in Viola, *Ben Nighthorse Campbell*, 200-201.

me they would vote for me because I had the courage to stick by my beliefs.”⁵⁸⁷ Senator Campbell’s “rugged looks, his informal style, his Native American background and his motorcycle would provide just the right image”⁵⁸⁸ for marketers.

In 1996, Campbell decided to pose for an advertising campaign developed by the Arnell Bickford Group for the clothing chain Banana Republic after the Senate Ethics Committee approved his participation as a charitable event. For his service, the company donated \$2,000 to his charity of choice, the Dull Knife Memorial College on the Northern Cheyenne Reservation, Montana.⁵⁸⁹ The *Freedom at Work* ad campaign showed the senator sitting on his Harley Davidson motorcycle, and standing on the steps of the Jefferson Memorial, looking toward the Washington Monument. Columnist Walter Shapiro criticized Campbell for crossing an ethics line because a “U.S. Senator should not be an advertising commodity, except, alas, unavoidably in election years. The implicit message in the Banana Republic campaign is that anything can be bought in this allhype era, even a senator’s image.”⁵⁹⁰ George Washington University law professor Jonathan Turley, who was also director of the law school’s Environmental Law Advocacy Center, criticized Senator Campbell’s marketing appearance because of his voting record on environmental issues⁵⁹¹ and “threatened to organize demonstrations, hold news conferences and conduct a nationwide boycott”⁵⁹² of Banana Republic. The retailer did not explain the reason for their decision but started removing its point-of-purchase displays featuring the senator within a few days.⁵⁹³ Though the “inspiration for using him had nothing to do with policy or politics, and everything to do with an image based on fashion, ethnicity and recreation,”⁵⁹⁴ critics argued it was his status as a political representative and his stance on environmental issues that made Campbell’s role as advertising icon inappropriate.

Due to his Indian heritage and popularity as a passionate biker, Campbell became an involuntary advertising spokesman for the revived Indian Motorcycle Company. In the ‘Indian’ trademark case (2001), the Cow Creek band of the Umpqua tribe in Myrtle Creek, Oregon, accused Indian Motorcycle of “mislead[ing] the public by falsely suggesting a connection between Indian Motorcycle and American Indians.” The tribe alleged that the company published advertisements “in a widely-circulated American Indian newspaper featuring a photograph of Senator Ben Nighthorse Campbell on an Indian Motorcycle and referring to him as a ‘Native American icon,’ even though Senator Campbell had disavowed giving his permis-

⁵⁸⁷ Ben Nighthorse Campbell, quoted in Viola, *Ben Nighthorse Campbell*, 201.

⁵⁸⁸ Margolis, “A U.S. senator who shoots from the hip.”

⁵⁸⁹ Cf. Ben Nighthorse Campbell, “Ad was for a good cause: Native Americans,” letter to the editor, *USA TODAY*, March 14, 1996, 10A.

⁵⁹⁰ Walter Shapiro, “Senator/biker Campbell crosses ethics/image line,” *USA TODAY*, March 13, 1996, 2A.

⁵⁹¹ According to Greim, Campbell “voted to allow oil drilling in Alaska’s Arctic National Wildlife Refuge and to kill funding for a southeastern red wolf recovery program.” Margolis quoted Turley calling Campbell an “extremist on environmental issues” and asking Banana Republic whether they would make similar use of “a senator with a racist, sexist or anti-Semitic record.” Margolis argued that Turley was “both wrong and overwrought” because, “According to the League of Conservation Voters, Campbell’s environmental voting record has been as low as 13 percent (in 1990) and as high as 69 (in 1987-88), averaging about 38 percent for his 10-year career as a lawmaker. That’s not the record of an environmental extremist.” Greim, “Banana Republic Ads Fall to Environmentalist Heat”; Margolis, “A U.S. senator who shoots from the hip.”

⁵⁹² Greim, “Banana Republic Ads Fall to Environmentalist Heat.”

⁵⁹³ Cf. Associated Press, “Chain pulls Campbell’s clothing ads/Environmentalists threatens boycott,” *Colorado Springs Gazette – Telegraph*, March 29, 1996, B7.

⁵⁹⁴ Margolis, “A U.S. senator who shoots from the hip.”

sion to use his name or likeness in association with Indian Motorcycle.”⁵⁹⁵ Campbell, who was also known as a promoter of the Indian Arts and Crafts Act amendments, also advocated for fair representations of Native Americans in advertising.

3.1 Misrepresentation and Appropriation as Violations of Civil Rights Law

Questioning the understanding of humor in advertisements, Campbell interpreted the content of a ‘fun’ ad as racially motivated and thus a violation of civil rights law. In 2000, Senator Campbell campaigned against a “mock newspaper ad announcing a bogus ‘Indian Hunting Season’ in South Dakota and setting forth rules for Sioux-killing.”⁵⁹⁶ As Indian committee chairman, he asked the Justice Department to investigate the case as a hate crime because, “Just as the use of Indian mascots perverts the perception of Indian people, this ad dehumanizes Native Americans and legitimizes violence against them.”⁵⁹⁷ Similarly, Victoria Sload sought to apply civil rights law in a case against the Educators Mutual Life Insurance Company, where an advertising skit served as evidence of a racially hostile environment.⁵⁹⁸

Case Study 4: Sload v. Educators Mutual Life Insurance (1996)

Case Study 4: Sload v. Educators Mutual Life Insurance (1996)

Victoria E. Sload, who had been working for Educators Mutual Life Insurance for roughly 20 years, alleged that “she was terminated from employment by the defendant because of racial discrimination.” As one-half Native American and a member of the Makah Tribe, Sload was a member of a protected class under the Civil Rights Act of 1964, 42 U.S.C.A. § 2000(e). Furthermore, she was the only Native American employee the insurer had listed on his Equal Employment Opportunity reports. In this case, the advertising skit combined with the differential treatment of Sload by her supervisors, who micro-managed her, established evidence of a racially hostile environment.

In April 1991, the insurer’s Image Committee and its Planning Committee informed the employees of a new marketing strategy for its products through a play. This play was intended to promote the new motto “Catch the Vision–Market Driven” and to “lead the way to new market needs and how to serve them.” As the court’s analysis stated, the central theme of the “ill-fated” skit revolved around the explorations of Lewis and Clark, accompanied by Shoshone Sacajawea and Chief Standing Bull, a fictional character. Sacajawea was to be portrayed by Alex Schnee-bacher, the company’s President and Chief Executive Officer. His “make-up and attire appeared to be designed to make him look ugly and ridiculous, with blacked out teeth, heavily rouged cheeks and hairy legs.”⁵⁹⁹

⁵⁹⁵ Wayne Shammel and Dave Stephenson, “Protecting American Indian Intellectual Property in the Twenty-First Century: The Case of the Cow Creek Tribe and Indian Motorcycle,” *Cultural Survival Quarterly* 24, no. 4 (January 31, 2001): 51.

⁵⁹⁶ Suzan Shown Harjo, “Worthy of the honor: An appreciation of Sen. Ben Campbell,” *Indian Country Today*, March 8, 2000, ProQuest 362742106.

⁵⁹⁷ Ben Nighthorse Campbell, quoted in Harjo, “Worthy of the honor.”

⁵⁹⁸ *Sload v. Educators Mut. Life Ins. Co.*, No. 93-6819, 1996 WL 673572, 72 Fair Empl.Prac.Cas. (BNA) 826 (E.D.Pa. Nov. 15, 1996). Note: Since the advertisement was not the matter of concern of this lawsuit, the case is not part of the quantitative analysis.

⁵⁹⁹ *Ibid.*, at *3.

The case analysis captured Sload's reaction toward the advertising skit: "Most offended was the plaintiff, a Native American. She testified that her race and heritage was ridiculed and she was humiliated" by the "skit's lampooning of her race and heritage." While "Several other employees were uncomfortable with the skit," the "defendant's witnesses testified that plaintiff was too sensitive and the skit was all in fun." Furthermore, "all of the witnesses of the defendant (all were employees or former employees) testified that they did not think the portrayal was discriminatory. They testified that they would not have been offended. Of course, none of them acknowledged any ethnic orientation as a minority in any workplace. All seemed to think that because plaintiff failed to complain about the insult that it was of little consequence."⁶⁰⁰

Judge Leomporra agreed to Sload's argument that her supervisors' subsequent behavior supports her impression that the "skit was more than just fun." The "offensive skit in 1991 demonstrates a discriminatory animus on the part of [her supervisors] Rapp and Gimber, two of the individuals responsible for the skit and plaintiff's termination. The differential treatment plaintiff received from Rapp also reflects a discriminatory animus." Leomporra believed that Sload "was exposed to a hostile environment where she was being harassed so that she would quit"⁶⁰¹ and ordered a back pay of \$10,018 and prejudgment interest of \$2,782.⁶⁰²

Tom and Jennifer Crazy Bear DuBray filed a \$61 million suit against the rock band The Cult in New York's State Supreme Court alleging that the widescale and unauthorized marketing of their son Eternity's image violated civil rights laws. Time Warner used a picture of the Native American boy Eternity DuBray and placed it on the CD cover of The Cult's album *Ceremony* (1991), on posters, magazine ads, and T-shirts. Indigenous photographer John Running had taken the picture at a tribal gathering where four-year-old Eternity was wearing ceremonial coyote skins and a headdress. The company gave credit to John Running, who used the photograph without the DuBray family's consent. To the "family and tribal leaders, the simple Polaroid picture was supposed to be a private moment. Instead, its dissemination has infuriated Sioux elders who regard it as a sign of disrespect and ongoing exploitation of American Indians for commercial gain."⁶⁰³ In *DuBray v. Warner Bros. Records, Inc.* (1992), the family unsuccessfully sought to apply sections 50 and 51 of the New York State Civil Rights Law prohibiting the "commercial use of a photograph without the subject's written permission."⁶⁰⁴ According to the complaint, the use of the boy's image "intrudes upon the culture, religion and way of life of native American peoples, particularly the Oglala Sioux tribe,"⁶⁰⁵ while Eternity "suffered humiliation and disturbance of his peace of mind."⁶⁰⁶ The lawsuit had the effect that "sales suffered with the arrival of grunge rock and time spent dealing with the lawsuit"⁶⁰⁷ and the "lawsuit is what most rock fans remember about *Ceremony*."⁶⁰⁸

⁶⁰⁰ Ibid., at *3.

⁶⁰¹ Ibid., at *2.

⁶⁰² Cf. Ibid., at *6.

⁶⁰³ Scott Ladd, "Overexposed Photo? Suit: Photo of Indian boy used illegally," *Newsday*, June 3, 1992, 08.

⁶⁰⁴ *DuBray v. Warner Bros. Records, Inc.*, 236 A.D.2d 312, 313, 653 N.Y.S.2d 592, 1997 N.Y. Slip Op. 01686 (1997).

⁶⁰⁵ Ladd, "Overexposed Photo," 08.

⁶⁰⁶ Richard Harrington, "On the Beat," *Washington Post*, June 10, 1992, accessed March 8, 2020, <https://www.washingtonpost.com/archive/lifestyle/1992/06/10/on-the-beat/73ffed0-dc57-4899-aa94-86a93650ebdd/>.

⁶⁰⁷ "The Cult: Ceremony," *Last.fm*, last modified December 9, 2012, accessed July 28, 2021, <https://www.last.fm/music/The+Cult/Ceremony/+wiki>.

Legal Discourse: Civil Rights Law

In response to increasing protests against school sports mascots, the U.S. Department of Education started investigating whether schools' use of Native American mascots constituted a violation of the civil rights of Native American students by creating a hostile environment.⁶⁰⁹ Accordingly, scholars deliberated on applying civil rights law primarily against the backdrop of the mascot controversy. A *Harvard Law Review* Note (1999) suggested a public accommodations challenge to the use of Native American names and mascots in professional sports by making use of Title II of the Civil Rights Act of 1964. Title II guarantees the "right to the 'full and equal enjoyment' of places of public accommodation [to all persons] without regard to race, color, religion, or national origin." By contrast, Indigenous team names and mascots "deter a substantial number of American Indians from patronizing places of public accommodation, and therefore cause a denial of the full and equal enjoyment of those facilities."⁶¹⁰

In his applicability investigation of hate speech codes and discrimination laws, Scott R. Rosner (2002) added that the "evidentiary obstacles" might "prevent Title II from becoming a successful weapon in challenging the use of Native American logos and nicknames"⁶¹¹ as it was necessary to establish tangible proof of the psychological and physical harm by the use of sports names, imagery, and mascots. Since anecdotal evidence was insufficient, protests at sporting events and a collective negative response from Native Americans "may not suffice in establishing that the use of Native American names and symbols leads to exclusion or unequal access to stadia by Native Americans."⁶¹²

Law professionals also discussed how Section VI of the Civil Rights Act of 1964 prohibiting discrimination based on race, color, or national origin in federally funded programs could serve to regulate school mascot imagery as it prohibits schools from creating, promoting, or tolerating a racially hostile environment.⁶¹³ Daniel J. Trainor (1995) concluded that, "while the hostile environment analysis is applicable in the primary school setting, it is inapplicable in the college and university setting."⁶¹⁴ However, Lawrence Baca (2004) argued it does apply to colleges and universities and sees the criterion of racial hostility in the fact that Native Americans often refrained from applying to schools with Native mascots because the imagery was mentally and emotionally disturbing for them, as supported by the experiences described by Teters and Amerman. Indigenous sports imagery was often based on the stereotype of the aggressive warrior, which influenced the behavior of Non-Indians toward Native Americans. According to Baca, this attitude was responsible for the significantly higher proportion of hate-motivated acts of violence committed by Non-Indians against Natives compared to all other ethnic groups.⁶¹⁵

A U.S. Department of Education's Office for Civil Rights (OCR) investigation of the University of Illinois' use of its mascot Chief Illiniwek found that "the allegations of which

⁶⁰⁸ Chris Rowella, "The Cult's CEREMONY - 25 Years Later," *Blood + Spirit*, September 23, 2016, accessed July 28, 2021, <http://www.bloodandspirit.com/home/2016/9/23/the-cults-ceremony-25-years-later>.

⁶⁰⁹ Cf. Trainor, "Title VI Hostile Environment Analysis," 971.

⁶¹⁰ "A Public Accommodations Challenge," 906. Citations omitted by author.

⁶¹¹ Rosner, "Legal Approaches to the Use of Native American Logos and Symbols in Sports," 267.

⁶¹² *Ibid.*, 266.

⁶¹³ Cf. Baca, "Native Images in Schools and the Racially Hostile Environment," 71.

⁶¹⁴ Trainor, "Title VI Hostile Environment Analysis," 971.

⁶¹⁵ Cf. Baca, "Native Images in Schools and the Racially Hostile Environment," 77.

the university had notice were not sufficiently severe, pervasive or persistent to rise to the level of a racially hostile environment.”⁶¹⁶ Beyond the claim that the mascot use contributed to a racially hostile environment, the OCR argued many additional racial harassment allegations “were not substantiated, and that the incidents were isolated, spread over a six-year period and involved different individuals.”⁶¹⁷ Notably, Teters did not lose because OCR decided “the hostile environment claim couldn’t be applied to colleges, she lost because they [OCR] said the hostility towards her wasn’t because of the Chief Illiniwek mascot but because she was protesting.”⁶¹⁸ Given the findings of three OCR investigations rejecting racially hostile environment complaints, Rosner concluded, “it may be very difficult for Native American students to successfully assert that a hostile environment has been created by a school’s use of Native American imagery and symbols in its sports program.”⁶¹⁹

Since “interpretation shapes the content of the norm ‘trapped’ inside the [legal] text,”⁶²⁰ the interpreter plays a central role in applying existing laws. Baca attributes the conflicting interpretation of Section VI of the Civil Rights Act to Trainor’s background as a University of Illinois graduate who aimed “to show that OCR should not challenge the use of Chief Illiniwek.”⁶²¹ As the perception of Indigenous issues is socially shaped and members of that society interpret laws, the media dissemination of Indigenous marketing representations contributes to the legal cementing of the status quo by shaping ideas of Indian identity and perceptions of Indian issues. Sherrilyn Ifill, president and director-counsel of the NAACP Legal Defense and Educational Fund (LDF), noted that she “believes the presence of the Washington football team and the constant mentioning of the name Redskins has a negative impact on the minds of the justices when they hear cases involving federal Indian law.”⁶²²

Elaborating on legal options to stop the Cleveland Indians from using their logo, Jack A. Guggenheim (1998) advised giving more attention to the quality and meaning of the trademarked names. Besides the disparaging trademark section of the Lanham Act, the Fourteenth Amendment guaranteeing equal protection provided a legal basis for challenging the Indian’s logo as state-sponsored discrimination. If the use of the Chief Wahoo logo was “viewed as government action, such use is subject to a challenge as a violation of the Equal Protection Clause of the Fourteenth Amendment or as racist speech and as such a violation, under a novel theory, of the First Amendment.” To this end, the logo’s use by the Cleveland Indians in Jacobs Field might be “attributed to the City of Cleveland because of the significant involvement the city has in the financing and regulation of the team.” However, “it would still have to be shown that there was sufficient discriminatory intent behind the creation of Chief Wahoo such that the emblem is a violation of the Equal Protection Clause.”⁶²³

Aaron Goldstein (2000) analyzed the common law cause of action, intentional infliction of emotional distress (IIED), as legal means to eliminate Native mascots. He established

⁶¹⁶ *Munson v. State Superintendent of Public Instruction*, 217 Wis.2d 290, 577 N.W.2d 387, 1998 WL 61018, at *6 (Wis. Ct. App. Feb. 17, 1998).

⁶¹⁷ *Ibid.*, at *6.

⁶¹⁸ Lawrence Baca, email message to author, July 12, 2021.

⁶¹⁹ Rosner, “Legal Approaches to the Use of Native American Logos and Symbols in Sports,” 269.

⁶²⁰ Aharon Barak, *Purposive Interpretation in Law*, transl. Sari Bashi (New Jersey: Princeton University Press, 2005), accessed July 18, 2021, <https://assets.press.princeton.edu/chapters/s7991.pdf>.

⁶²¹ Lawrence Baca, email message to author, July 12, 2021.

⁶²² Sherrilyn Ifill, talk at an ABA conference on race in Baltimore, Maryland, as paraphrased by Lawrence Baca. Lawrence Baca, email message to author, October 13, 2017.

⁶²³ Guggenheim, “The Indians’ Chief Problem,” 237.

seven factors that made Native American mascots outrageous, such as that they “mock a race, religion, and culture,”⁶²⁴ and how these mascots caused severe emotional distress. Charlene Teters “experienced both psychological and tangible displays of emotional distress” due to the University of Illinois’ use of its mascot, which led to her moving away. Furthermore, she “suffered emotional distress from speaking out” against the mascot, such as harassing phone calls, being spit upon, and being insulted.⁶²⁵ In conclusion, “For the policy reasons of ending racism and power inequality, IIED must change its standard of outrageousness to incorporate racial slurs such as these mascots.”⁶²⁶

Some used civil rights law to protect their image and challenge offensive sports team marketing practices, while others applied intellectual property rights to protect Indigenous cultural elements from misappropriation and to challenge offensive marketing practices.

3.2 *Protecting Intellectual Property*

With increasing awareness of intellectual property, Indigenous critics framed the use of Indigenous names as a matter of intellectual property rights, that is, “whether we have the right to use our own tribal designations, whether we own them or not.”⁶²⁷ In the face of Dakota and Navajo pick-up trucks, Cherokee pick-ups, Winnebago RVs, Pontiac cars, and Blackhawk tires, Dennis Jennings from the Sac/Fox Nation and teacher of oral literature at SF State University argued that there “is a Cherokee Nation, a Winnebago Nation and a Dakota Nation. Yet in this society, the court system would have to decide the case if they tried to reclaim their own name. This society is like a virus, a fungus. This culture just snaps everything up and co-ops [sic] it, and you don’t recognize it for what it originally was.”⁶²⁸ Beyond mere appropriation as taking over Indigenous culture without consent, this process changed cultural elements until they lost their original meaning.

Protesters have questioned the Anglo-American concept of intellectual property not only in terms of appropriation but also as a matter of representation. Beyond the unauthorized use of Indigenous culture, resistance against the inappropriate use of individual or tribal names goes back to at least the 1960s. The Navajo Nation found Urban Outfitter’s “use of ‘Navajo’ with products like its ‘Navajo Flask’ . . . derogatory, scandalous, and contrary to the Navajo Nation’s principles because it has long banned the sale and consumption of alcohol within its borders and the Navajo Nation does not use its mark in conjunction with alcohol.”⁶²⁹ The case of the Hornell Brewing Company’s Crazy Horse Malt Liquor has received some attention not only in the media but also in academia.⁶³⁰ As this case has been taken up

⁶²⁴ Goldstein, “Intentional Infliction of Emotional Distress,” 704.

⁶²⁵ Ibid., 709-710.

⁶²⁶ Ibid., 712.

⁶²⁷ Dennis Jennings, Sac/Fox Nation, quoted in Max Millard, “The snafu over Snapple,” *Indian Country Today*, June 29, 1995, A1.

⁶²⁸ Dennis Jennings, Sac/Fox Nation, quoted in Millard, “The snafu over Snapple,” A1.

⁶²⁹ *Navajo Nation v. Urban Outfitters, Inc.*, 935 F.Supp.2d 1147, 1178 (D.N.M. 2013).

⁶³⁰ See C. Blalock, “Crazy Horse controversy riles Congress: Controversies over Crazy Horse Malt Liquor and Black Death vodka,” *Beverage Industry* 83, no. 9 (1992): 1-3; Antonia C. Novello, “Crazy Horse Malt Liquor Beverage: The Public Outcry to Save the Image of a Native American Hero,” *South Dakota Law Review* 38, no. 1 (1993): 14-21; Herrera, “Not Even His Name”; Sharon Metz and Michael Thee, “Brewers intoxicated with

primarily in legal journals, potential protest strategies to prevent, oppose or regulate such marketing practices have been discussed mainly in a legal context.

In the 21st century, throughout Indian country tribes were “challenging and confounding old stereotypes about identity and culture, and preserving and applying tribal values in the modern world.”⁶³¹ As part of this process, tribes increasingly started to challenge the legacy of colonialism that shaped Anglo-American law since the “mindset that created the laws of this country is the same mindset that found this continent free for the picking,” and Native Americans and their cultures “were included in the natural resources,”⁶³² as attorney Bob Gough noted. Indigenous intellectual property became of major concern for tribes across the U.S. which Native attorneys addressed at business conferences and other events. At the 22nd Annual Reservation Economic Summit organized by the National Center for American Indian Enterprise (NCAIE) in 2008, roughly 3,000 tribal leaders, vendors, and businesspeople attended to discuss the protection of intellectual property. Preston Hardison, attorney of the Tulalip tribe, and Gough recommended starting to pass tribal statutes because “Indian law says that in the absence of federal law, tribal law governs.”⁶³³ Tulalip tribal attorney Terry Williams urged other tribes to follow the Tulalip’s example who had just “passed a Cultural Heritage Protection Act, which begins to address some issues involving arts and crafts, publications, genetic resources, and marketing Native products.”⁶³⁴ Susan Anthony of the U.S. Patent and Trademark Office endorsed the attorneys’ strategy, arguing that “Intellectual property rights are private rights” and “not something the government can do for you.”⁶³⁵

3.3.1 Protecting the Legacy of Historic Leaders

Exploring legal means against the commodification of Hopi culture, one of the most marketed cultures of the American Southwest, David Howes noted it was most important to know and manipulate the cultural bias of the Anglo-American legal system when developing legal strategies.⁶³⁶ Since the 1960s, Native Americans have searched for and tested various legal ways to prevent cultural appropriation and the misuse of symbols, designs, images, and tribal or historic leaders’ names.

racist imagery,” *Business and Society Review* 89 (1994): 50-51; Newton, “Memory and Misrepresentations”; Singer, “Publicity Rights and the Conflict of Laws”; Schneider, “Hornell Brewing Co. v. Rosebud Sioux Tribal Court”; Stephenson, “The Nexus between Intellectual Property Piracy, International Law, the Internet, and Cultural Values”; Winona LaDuke, “In the Spirit of Crazy Horse,” in *Cultural Representation in Native America*, ed. Andrew Jolivette (Lanham: AltaMira Press, 2006), 111-115.

⁶³¹ Calloway, *First Peoples*, 619.

⁶³² Bob Gough, attorney, quoted in Cindy Yurth, “Presenters: Tribes should protect intellectual property,” *Navajo Times*, March 6, 2008, A4.

⁶³³ Bob Gough, attorney, quoted in Yurth, “Presenters,” A4.

⁶³⁴ Terry Williams, attorney, Tulalip Tribe, paraphrased in Yurth, “Presenters,” A4.

⁶³⁵ Susan Anthony, U.S. Patent and Trademark Office, quoted in Yurth, “Presenters,” A4.

⁶³⁶ Howes, “Cultural Appropriation and Resistance in the American Southwest,” 138-160.

For more information on the ethnocentric perspective of the Anglo-American legal system see also Peggy C. Davis, “Law as Microaggression,” in *Critical Race Theory: The Cutting Edge*, ed. Richard Delgado and Jean Stefancic (Philadelphia: Temple University Press, 2013), 187-196; Kenneth B. Nunn, “Law as a Eurocentric Enterprise,” in *Critical Race Theory: The Cutting Edge*, ed. Richard Delgado and Jean Stefancic (Philadelphia: Temple University Press, 2013), 555-561.

Records documenting Native American resistance against the commercial use of historic leaders' names and images date back to at least 1969. Natives, often descendants of famous leaders, turned to organizations like the NCAI for help since businesses would typically not agree to change their name or logo voluntarily. When Geneva C. Gannon noticed that a tavern named Comanche Inn in Scottsdale, Arizona, displayed on its exterior two photographs of her grandfather Quannah Parker, the last chief of the Comanche, she asked the NCAI for assistance. Since discussions with the owner remained fruitless, the NCAI suggested using local influence through contacting the mayor or the Chamber of Commerce and the "remote possibility" of "legal action for invasion of privacy" but expressed "doubts as to the feasibility" of this undertaking.⁶³⁷ Parker's great-granddaughter Juana Parker Lyon approached Mayor Tims to "appeal to the government and citizens of Scottsdale to cause the removal of these pictures." In her view, this use was "degrading to the memory of my grandfather, humiliating to the Parker family, . . . and offensive to the Indian people who look upon Quannah Parker as a great leader and historical figure."⁶³⁸

Similarly, critics considered the commercial use of the Apache Chief Cochise's image, a "historically inaccurate portrayal of a man whose real visage was never recorded," a "degradation" and a "racist exploitation" of the heritage of Native Americans.⁶³⁹ In 1993, 15 AIM Mesa chapter members urged people to boycott the Cochise Fine Arts Gallery in Bisbee, Arizona, at its grand opening to protest the gallery's logo depicting Cochise. Attorney and co-founder of the gallery Mark McGowan, however, noted "such an argument [was] ridiculous in a county named for Cochise" which had "his image on everything from the courthouse to dump trucks."⁶⁴⁰

While records do not reveal whether the Parker family (Comanche Inn) or AIM (Cochise Fine Arts Gallery) succeeded, these cases show that options to stop the use of historic people's names and images were limited and required legal expertise and funding. The protest campaign against the Hornell Brewing Company's Crazy Horse Malt Liquor, one of the most high-profile protests against a marketing strategy based on a Native American icon, shows how much effort it could take and protesters were willing to invest to effect change. Simultaneously, the case demonstrated a sensitivity and willingness of the government and a wide range of organizations to help protect Indian cultural symbols. Furthermore, the CHML case is one of the few cases where plaintiffs tried to apply treaty rights and tribal law to protect Indigenous intellectual property.

⁶³⁷ Harold Gross, memorandum to John Belindo, Executive Director, NCAI, June 10, 1969; Media Surveillance - Public Awareness Correspondence [1 of 2]; Box 255; Records of the National Congress of American Indians, 1933-1990, NMAI.AC.010; NMAI Archive Center, Smithsonian Institution, Suitland, MD.

⁶³⁸ Juana P. Lyon, letter to B. L. Tims, Mayor, City of Scottsdale, Phoenix, Arizona, June 4, 1969; Media Surveillance - Public Awareness Correspondence [1 of 2]; Box 255; Records of the National Congress of American Indians, 1933-1990, NMAI.AC.010; NMAI Archive Center, Smithsonian Institution, Suitland, MD. Hereafter cited as Lyon to Tims, June 4, 1969; Public Awareness Corresp. [1 of 2]; Box 255; NCAI Records; NMAI Archive Center.

⁶³⁹ Vernon Foster, AIM, Arizona chapter, quoted in Ignacio Ibarra, "Art gallery's Cochise logo prompts Indian protest," *The Arizona Daily Star*, July 24, 1993, *The Arizona Daily Star* TUCS174642.

⁶⁴⁰ Mark McGowan, co-founder of Cochise Fine Arts Gallery, paraphrased in Ibarra, "Art gallery's Cochise logo."

*Case Study 5: Hornell Brewing (1992-2004)****Case Study 5: Hornell Brewing (1992-2004)***

When Vultaggio and Ferolito decided to build a brand for the Hornell Brewing Company's malt liquor upon the image of the iconic leader Crazy Horse in the early 1990s, market research had shown a "resurgence of popularity of products and services with a western theme." Due to this trend, Don Vultaggio "thought a beverage with a western theme would be successful."⁶⁴¹ The "idea for Crazy Horse Malt Liquor came from the movie 'Dances With Wolves',"⁶⁴² explained Mark Rodman, a marketing consultant who had worked for Vultaggio and Ferolito. As soon as Hornell introduced the Crazy Horse Malt Liquor (CHML) label to the market in 1992, Crazy Horse's descendants started a massive protest campaign, eventually resulting in an apology and the adaption of the label. The fight over the Crazy Horse brand was more than a brand name controversy. For activists, it was "part of an ongoing battle to establish the kind of basic respect for the culture of the nation's 2 million Indians that is now taken for granted by other minority groups."⁶⁴³

The family, government officials, and supporters raised several points that made the use of Crazy Horse as a marketing image for the beer label inappropriate. The connection of Crazy Horse with an alcoholic beverage was an important ethical concern regarding the representation of the leader, not only because Crazy Horse opposed alcohol consumption but also because the brand targeted ethnic markets, including young urban Natives, as critics noted. Furthermore, critics considered taking the leader's name and image without authorization cultural appropriation of a historical icon and a violation of intellectual property rights according to Lakota law.

Native American youth as a target group

Although the "antique-style packaging and premium price" was designed to "appeal to mainstream, upscale American consumers, but also to the EC – Pacific rim export market which Hornell seeks to penetrate,"⁶⁴⁴ critics pointed out that the label, in fact, targeted Latino and African American males and appealed to the Native American youth.⁶⁴⁵ Hornell emphasized they did not sell the beer in states with high reservation populations, such as Minnesota, South Dakota, and Washington.⁶⁴⁶ However, over half of Native Americans lived in or near urban areas⁶⁴⁷ like Colorado, Michigan, Ohio, Maryland, New Jersey, and New York, where the beer was distributed. According to Surgeon

⁶⁴¹ *Estate of Witko v. Hornell Brewing Co.*, 156 F.Supp.2d 1092, 1095, 59 U.S.P.Q.2d 1841 (D.S.D. 2001), citing Vultaggio Affidavit at ¶ 5.

⁶⁴² Mark Rodman, Marketing Consultant, paraphrased in David Melmer, "Minnesota bans beer: Says no to Crazy Horse Malt Liquor," *Indian Country Today*, December 14, 1995, ProQuest 362603702.

⁶⁴³ Michael A. Fletcher, "Crazy Horse Brew a Tasteless Bid for Money, Indians Say," *The Washington Post*, February 19, 1997, 1A.

⁶⁴⁴ Hank Shafran, Beverage Distribution Consultants, Swampscott, Massachusetts, prepared statement, in U.S. Congress, House of Representatives, Committee on Children, Youth, and Families, "Confronting the Impact of Alcohol Labeling and Marketing on Native American Health and Culture: Hearing before the Select Committee on Children, Youth and Families," 102d Congress, 2d sess., May 19, 1992, 147.

⁶⁴⁵ See also Maria L. Alaniz and Chris Wilkes, "Pro-Drinking Messages and Message Environments for Young Adults: The Case of Alcohol Industry Advertising in African American, Latino, and Native American Communities," *Journal of Public Health Policy* 19, no. 4 (1998): 447-472.

⁶⁴⁶ Cf. Associated Press, "Indians protest malt liquor named after Crazy Horse," *Minneapolis Star Tribune*, June 22, 1992, 4B. Notably, the label was banned in Minnesota and Washington. See below.

⁶⁴⁷ According to the U.S. Census, in 1950 13.4 percent of the Indigenous population was living in cities, in 1970 44 percent, in 1980 50 percent, and in 2000 roughly two thirds of the Indian population. Cf. Calloway, *First Peoples*, 502.

General Antonia Novello, Hornell president John Ferolito had explicitly stated that “growth in the industry has been fastest in ethnic markets in major cities, and, we will go where [sic] the market is.”⁶⁴⁸ The “Impact of Alcohol Labeling and Marketing on Native American Health and Culture” was the committee’s primary concern in the debate, as the hearing’s title demonstrates, but protecting Natives from cultural appropriation was another major concern. Regarding the recurring paradigm of protectionism, Massachusetts Representative Joseph P. Kennedy II maintained that the discussion was not “about the same old white man’s paternalism” but sought “corporate responsibility, and corporate respect for Indian culture, and corporate sensitivity to the hazards of alcohol abuse.”⁶⁴⁹

In addition, critics argued that labels such as CHML not only promoted the consumption of alcohol among young people but also affected the identity formation particularly of young, urban Natives. Novello was “concerned about the possible attraction of this product to the young people who have just seen ‘Dances with Wolves,’ and the Native American youth themselves who would understandably want to identify with such a noble leader and such heroic heritage.”⁶⁵⁰ Native American “urban youth, having been removed or not being raised on an Indian reservation,” was a particularly vulnerable group because these youth “traditionally have asked the question, ‘what is an Indian?’”⁶⁵¹ remarked Gregg Bourland, chairman of the Cheyenne River Sioux Tribe. U.S. Senator Thomas Daschle agreed to historic leaders’ impact as role models since “Indian heritage and accomplishment are symbolized not through recognition of leaders like Representative Ben Nighthorse Campbell, who represents what today’s young Indian could become, but through the marketing of alcohol”⁶⁵² and other products.

Hank Shafran of Beverage Distribution Consultants maintained on behalf of Hornell that there was a legally and culturally accepted practice of using Native American tribal and individual names for marketing purposes. The name Crazy Horse “has been used by, and is a registered trademark of, dozens of other American businesses.” There were “dozens of beer, wine and spirits products and firms with Native American names including Apache, Seneca, Onondaga, Oneida, Dakota, Shawnee, Cherokee, Black Hills, Cheyenne, Sequoia, Chippewa, Mohawk, Algonquin, Black Hawk, Cayuga, Pocahontas, Thunderbird, etc.” Pointing to the label “Black Hawk Stout,” which the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) had just recently approved for the Mendocino Brewing Company of Hopland, California, Shafran argued, to “claim that linkage of Native American cultural symbols to leisure beverages undermines a de-

⁶⁴⁸ John Ferolito, President, Hornell Brewing Co., quoted by Antonia C. Novello, M.P.H. Surgeon General, U.S. Public Health Service, prepared statement, in U.S. Congress, House of Representatives, Committee on Children, Youth, and Families, “Confronting the Impact of Alcohol Labeling and Marketing on Native American Health and Culture: Hearing before the Select Committee on Children, Youth and Families,” 102d Congress, 2d sess., May 19, 1992, 23.

⁶⁴⁹ Joseph P. Kennedy II, U.S. House of Representatives, Massachusetts, opening statement, in U.S. Congress, House of Representatives, Committee on Children, Youth, and Families, “Confronting the Impact of Alcohol Labeling and Marketing on Native American Health and Culture: Hearing before the Select Committee on Children, Youth and Families,” 102d Congress, 2d sess., May 19, 1992, 16.

⁶⁵⁰ Novello, prepared statement, in U.S. Congress, House of Representatives, Committee, “Impact of Alcohol Labeling and Marketing on Native American Health and Culture,” 21.

⁶⁵¹ Gregg Bourland, Chairman, Cheyenne River Sioux Tribe, Eagle Butte, South Dakota, prepared statement, in U.S. Congress, House of Representatives, Committee on Children, Youth, and Families, “Confronting the Impact of Alcohol Labeling and Marketing on Native American Health and Culture: Hearing before the Select Committee on Children, Youth and Families,” 102d Congress, 2d sess., May 19, 1992, 30-31.

⁶⁵² Thomas Daschle, U.S. Senate, South Dakota, prepared statement, in U.S. Congress, House of Representatives, Committee on Children, Youth, and Families, “Confronting the Impact of Alcohol Labeling and Marketing on Native American Health and Culture: Hearing before the Select Committee on Children, Youth and Families,” 102d Congress, 2d sess., May 19, 1992, 107.

sired role model for Indian youth ignores the reality of the current American marketplace and smacks of arbitrariness.”⁶⁵³

Since Crazy Horse outspokenly condemned the consumption of alcohol because it was destructive to his society, activists considered the beer label disrespectful of his heritage and ethically inappropriate. According to critics, there was a double moral standard because, “while it is virtually unimaginable that Martin Luther King Jr.’s name would ever be used to market a commercial product, the inappropriateness of Crazy Horse is not so readily understood or acknowledged.”⁶⁵⁴ Comparative examples of product labels that ethnic groups and U.S. society would deem inappropriate ranged from “Martin Luther King Dark Ale” or “Malcolm XX’s,” “Jesus Christ White Wine,” “Pope John Paul Abortion Center” or abortion pills, or “a rabbi’s name on a package of pork rinds.”⁶⁵⁵ A medicine wheel and an eagle feather bonnet as sacred symbols did, like a crucifix, not belong on a beer bottle, but “when it comes to Native Americans, somehow it’s a different thing.”⁶⁵⁶ Although the marketers had “devoted thousands of hours to the development of the Crazy Horse malt product and its successful introduction,”⁶⁵⁷ Hornell’s lawyer Lawrence I. Fox stated, his “clients didn’t ever know that Crazy Horse was actually a living person” but thought he was merely a “symbol of the Old West.”⁶⁵⁸

Legal attempts to ban the CHML label

As the representative of “a large Indian population,” South Dakota Senator Larry Pressler urged Ferolito to change the beer label because the marketing practice undermined his political attempts to “resolve conflicts between Indians and non-Indians.” Having “failed to consult Indian leaders before naming and marketing your product,” the companies’ “actions and inactions deteriorate the relationship between non-Indians and Indians and diminish the goals of [the designation of 1992 as] the Year of Reconciliation.”⁶⁵⁹ After Hornell warded off complaints from Crazy Horse’s family and government officials and refused to withdraw the beer label, a Congressional committee took up the matter in May 1992. Since “the laws [did] not reach to this type of an issue,” the hearing was scheduled to discuss the question “whether we need to change the laws.”⁶⁶⁰

Floyd Red Crow Westerman, a Dakota Sioux who had played the role of Ten Bears in the

⁶⁵³ Shafran, prepared statement, in U.S. Congress, House of Representatives, Committee, “Impact of Alcohol Labeling and Marketing on Native American Health and Culture,” 146-147.

⁶⁵⁴ Metz and Thee, “Brewers Intoxicated With Racist Imagery,” 51.

⁶⁵⁵ Cf. Seth Big Crow, Sr., “Exploitation, stereotype of historical hero Crazy Horse on a malt liquor must stop,” *The Ojibwe News*, September 18, 1998, 3; Kelly Richmond, “Malt Liquor called threat, slap by Native Americans,” *Colorado Springs Gazette-Telegraph*, May 20, 1992, B4; Metz and Thee, “Brewers Intoxicated With Racist Imagery,” 51; Jim Postema, “Crazy Horse Malt Liquor Protest,” *Indigenous People*, April 14, 1995, accessed September 20, 2020, <https://www.indigenouspeople.net/crazhor1.htm>.

⁶⁵⁶ Andy Dawkins, U.S. House of Representatives, Minnesota, quoted in Michael A. Fletcher, “Crazy Horse Again Sounds Battle Cry,” *The Washington Post*, February 18, 1997, A3.

⁶⁵⁷ *Estate of Witko v. Hornell Brewing Co.*, 156 F.Supp.2d 1092, 1095, 59 U.S.P.Q.2d 1841 (D.S.D. 2001), citing Vultaggio Affidavit at ¶ 61.

⁶⁵⁸ Lawrence I. Fox, attorney for Hornell Brewing Co., quoted in Fletcher, “Crazy Horse Again Sounds Battle Cry,” A3.

⁶⁵⁹ Larry Pressler, U.S. Senate, South Dakota, letter to Mr. John Ferolito, President, Hornell Brewing Co., Washington, DC, April 20, 1992, in U.S. Congress, House of Representatives, Committee on Children, Youth, and Families, “Confronting the Impact of Alcohol Labeling and Marketing on Native American Health and Culture: Hearing before the Select Committee on Children, Youth and Families,” 102d Congress, 2d sess., May 19, 1992, 53.

⁶⁶⁰ Patricia Schroeder, in U.S. Congress, House of Representatives, Committee on Children, Youth, and Families, “Confronting the Impact of Alcohol Labeling and Marketing on Native American Health and Culture: Hearing before the Select Committee on Children, Youth and Families,” 102d Congress, 2d sess., May 19, 1992, 5.

movie, noted before the committee how public awareness of Native American issues had changed since “Dances With Wolves” as people now showed interest in the “Indian point of view.”⁶⁶¹ In light of this changing attitude, law professor Robert Destro, who was selected to find a way to circumvent the first amendment’s free speech regulation to pave the way to a ban of the CHML label, expressed skepticism regarding the committee’s dedication:

When we talk about issues such as these today, what I am concerned about here, from a First Amendment perspective, is that we not look at Crazy Horse Malt Liquor as a politically correct opportunity to give a meaningless affirmation to the troubles of Native Americans. These are very real problems. They exist today. However, I have yet to see really resounding statements either from the leadership of the Congress, or the White House. A lot of what is said is more trendy than it is real.⁶⁶²

According to Destro, the committee also had “a problem understanding what to do because the issues are not well defined.”⁶⁶³ Notwithstanding Destro’s clarification that a ban on the label was unconstitutional, in October 1992, President George Bush signed the “law banning the national sale of any alcohol bearing the Crazy Horse label.”⁶⁶⁴ One year later, a Federal Court of New York declared the ban unconstitutional as it violated the First Amendment. Though the court did not endorse the choice of name, it referred to the case of *Sambo’s of Ohio, Inc. v. Toledo* for its decision:

If they are offended by the word not only can they refuse to patronize the plaintiffs, but they, too, can erect signs, carry placards, or publish advertisements designed to persuade others to refuse to patronize the plaintiffs. That is what freedom of speech is all about. One cannot have freedom of speech for himself if it can be denied to others, nor is speech free if only innocuous utterances are permitted. [...] It would be selling our birthright for a mess of pottage to hold that because language is offensive and distasteful even to a majority of the public, a legislative body may forbid its use.⁶⁶⁵

While Washington state and Minnesota banned the Crazy Horse Malt Liquor label as offensive, similar efforts in California and Nebraska failed as “unconstitutional restraint on freedom of speech.”⁶⁶⁶ The Minnesota law targeting Crazy Horse Malt Liquor and Chief Oshkosh Beer⁶⁶⁷ in 1994 revoked state approval of brand label registration for any malt liquor that “states or im-

⁶⁶¹ Floyd Red Crow Westerman, actor, Sisseton-Wahpeton Tribe, Dakota Sioux Nation, oral statement, in U.S. Congress, House of Representatives, Committee on Children, Youth, and Families, “Confronting the Impact of Alcohol Labeling and Marketing on Native American Health and Culture: Hearing before the Select Committee on Children, Youth and Families,” 102d Congress, 2d sess., May 19, 1992, 57.

⁶⁶² Robert A. Destro, Associate Professor of Law, Catholic University of America, Washington, DC, oral statement, in U.S. Congress, House of Representatives, Committee on Children, Youth, and Families, “Confronting the Impact of Alcohol Labeling and Marketing on Native American Health and Culture: Hearing before the Select Committee on Children, Youth and Families,” 102d Congress, 2d sess., May 19, 1992, 72.

⁶⁶³ Robert A. Destro, in U.S. Congress, House of Representatives, Committee, *Impact of Alcohol Labeling and Marketing on Native American Health and Culture*, 82.

⁶⁶⁴ “Crazy Horse beverage fight goes to federal court,” *Baltimore Sun*, November 8, 2000, accessed September 2, 2016, http://articles.baltimoresun.com/2000-11-08/news/0011080183_1_crazy-horse-malt-liquor-hornell-brewing/2.

⁶⁶⁵ *Hornell Brewing Co., Inc. v. Brady*, 819 F.Supp. 1227 (1993), citing *Sambo’s of Ohio, Inc. v. Toledo*, 466 F.Supp. 177, 180 (N.D. Ohio 1979).

⁶⁶⁶ “Sioux Join ‘Crazy Horse Malt Liquor’ Suit,” *Albion Monitor*, July 20, 1996, accessed December 31, 2019, <http://www.albionmonitor.com/free/crazyhorsesuit.html>.

⁶⁶⁷ Oshkosh was chief of the Menominee Indian Tribe of Wisconsin. The beer label was produced by Barton Beers Ltd. of Chicago, Illinois.

plies in a false or misleading manner a connection with an actual living or dead American Indian leader.”⁶⁶⁸ Bob Gough used the marketer’s rationale for their marketing strategy to establish the necessary “connection and intent between Crazy Horse and the malt liquor label”⁶⁶⁹ and ban the label. As Hornell previously explained, they selected the name “to celebrate a great Native American chieftain as part of our introduction to the lines of beers which commemorate the American west and its legends.”⁶⁷⁰ Legislators issued the ban “Because Tasunke Witko (Crazy Horse) was opposed to the use of alcoholic beverages, and because the heirs of his estate have not endorsed and have specifically disavowed any connection with Crazy Horse Malt Liquor, the Crazy Horse Malt Liquor brand label states or implies in a false and misleading manner a connection”⁶⁷¹ to Crazy Horse. Consequently, Hornell had to clear shelves but contested the ban as another “very dangerous effort to legislate political correctness.”⁶⁷² While a court overruled the ban in 1996 as it violated the free speech clause,⁶⁷³ Kevin Burns, spokesman for the Public Safety Department of Minnesota, noted that Crazy Horse Malt Liquor was “already difficult to buy in Minnesota”⁶⁷⁴ since “most retailers in that state had pulled the beer from stores after it became the focus of complaints by Indians.”⁶⁷⁵

Robert Peck, Legislative Counsel from the American Civil Liberties Union (ACLU), suggested that “education – counterspeech to the speech that has offended – is the most appropriate response to the problem” and “public outcry and boycott of those products are the only constitutional means available to remove them from the marketplace.”⁶⁷⁶ “[K]nowing that there is little that can be done to stop a product like Crazy Horse malt liquor from reaching the store shelves,”⁶⁷⁷ as Novello admitted, multiple government officials like South Dakota Representative Tim Johnson supported a boycott of the label.⁶⁷⁸ In opposition to the “irresponsible actions of a

⁶⁶⁸ Mordecai Spektor, “Crazy Horse exploited to peddle liquor,” *National Catholic Reporter*, January 6, 1995, 3.

⁶⁶⁹ Bob Gough, attorney for Crazy Horse estate, quoted in Melmer, “Minnesota bans beer.”

⁶⁷⁰ *Estate of Witko v. Hornell Brewing Co.*, 156 F.Supp.2d 1092, 1095, 59 U.S.P.Q.2d 1841 (D.S.D. 2001), citing Vultaggio Affidavit at ¶ 16.

⁶⁷¹ Quoted in Associated Press, “Minnesota Bans Sale of Crazy Horse Malt Liquor,” *AP News Archive*, December 3, 1995, accessed September 1, 2016, <http://www.apnewsarchive.com/1995/Minnesota-Bans-Sale-of-Crazy-Horse-Malt-Liquor/id-5221d254003da06fb1673ece913949a6>.

⁶⁷² Lawrence Fox, attorney for Hornell and Heilemann, quoted in Spektor, “Crazy Horse exploited to peddle liquor,” 3.

⁶⁷³ “The Commissioner of Public Safety revoked brand label registration of malt liquor product, and appeal was taken. The Court of Appeals, Peterson, J., held that statute providing that Commissioner of Public Safety shall refuse to register malt liquor brand label if the label states or implies in a false or misleading manner a connection with actual living or dead American Indian leader was impermissibly content based and, therefore, facially invalid under the First Amendment.”

Hornell Brewing Co., Inc. v. Minnesota Dept. of Public Safety, 553 N.W.2d 713, 713 (8th Cir. 1996).

⁶⁷⁴ Kevin Burns, spokesman for the Public Safety Department of Minnesota, paraphrased in Associated Press, “Minnesota Bans Sale of Crazy Horse Malt Liquor.”

⁶⁷⁵ Dirk Johnson, “Complaints by Indians Lead to Bans on a Beer,” *The New York Times*, December 6, 1995, accessed September 1, 2016, <http://www.nytimes.com/1995/12/06/us/complaints-by-indians-lead-to-bans-on-a-beer.html>.

⁶⁷⁶ Robert Peck, Legislative Counsel, American Civil Liberties Union, letter to Patricia Schroeder, Washington, DC, June 2, 1992, in U.S. Congress, House of Representatives, Committee on Children, Youth, and Families, “Confronting the Impact of Alcohol Labeling and Marketing on Native American Health and Culture: Hearing before the Select Committee on Children, Youth and Families,” 102d Congress, 2d sess., May 19, 1992, 124-126.

⁶⁷⁷ Novello, prepared statement, in U.S. Congress, House of Representatives, Committee, “Impact of Alcohol Labeling and Marketing on Native American Health and Culture,” 20.

⁶⁷⁸ “Given the current legal state of things, I am very supportive of following that route. It would seem to me that we have a business here that responds to profit and loss and very little else given the protests that tribes have made and others have made.” Tim Johnson, U.S. House of Representatives, South Dakota, in U.S. Congress, House of Representatives, Committee on Children, Youth, and Families, “Confronting the Impact of Alcohol

company that has placed profit above respect for human values,”⁶⁷⁹ Daschle, Gregg Bourland, Mike Her Many Horses, and other Indian leaders called for a national boycott of the Crazy Horse malt liquor. Since Nebraska’s Attorney General rejected a legal label ban, the Nebraska Liquor Control Commission passed a resolution requesting “all Nebraska Beer Wholesalers refuse to handle the product known as ‘Crazy Horse Malt Liquor’ thus ensuring that the product will not be sold in Nebraska.”⁶⁸⁰

Public relations work had accompanied the protest campaign since the beginning, such as press conferences by U.S. Surgeon General Antonia Novello in South Dakota in April and a demonstration across the Heileman headquarters at LaCrosse, Wisconsin, in June 1992.⁶⁸¹ In cooperation with the Wisconsin Greens, Vernon Bellecourt of the AIM proclaimed a national boycott of CHML and announced further action like leafletting LaCrosse’s annual Riverfest celebration to approach “Indian casino operators about discontinuing their purchase of Heileman products.”⁶⁸² On a leaflet sponsored by the Wisconsin Greens, AIM, NCRSM, the International Indian Treaty Council, and Concerned Americans, activists called to boycott several products for “their corporate irresponsibility in brewing and selling an intoxicant named for the legendary Native American, Crazy Horse.”⁶⁸³ Another call for boycott of the “liquid terrorist act,”⁶⁸⁴ as New York Human Rights Commissioner Denis DeLeon called the brand, followed in June 1993 at a City Hall rally. The Native American Council of New York City organized the rally after the New York court decided to repeal the ban and strong sales since then.⁶⁸⁵ Alex Ewen, director of the Solidarity Foundation, announced that “the struggle would now continue in the form of an economic boycott of all Hornel [sic] Brewing Co. products.”⁶⁸⁶

Legal efforts reportedly had a significant impact on the sale of Crazy Horse Malt Liquor (see below), but publicity efforts contributed to the beer’s decreasing popularity. Ongoing publicity efforts initiated by the family and supporters included, for instance, the article “Brewers Intoxicated With Racist Imagery” written by HONOR (Honor Our Neighbors’ Origins and Rights) members Sharon Metz and Michael Thee,⁶⁸⁷ a protest letter written by Jim Postema⁶⁸⁸ and signed by 162 Native and non-Native supporters in 1995,⁶⁸⁹ and another call for a boycott through a public letter from Seth Big Crow in 1998.⁶⁹⁰ In 2000, the Crazy Horse Defense Project organized an-

Labeling and Marketing on Native American Health and Culture: Hearing before the Select Committee on Children, Youth and Families,” 102d Congress, 2d sess., May 19, 1992, 44.

⁶⁷⁹ Daschle, prepared statement, in U.S. Congress, House of Representatives, Committee, “Impact of Alcohol Labeling and Marketing on Native American Health and Culture,” 108.

⁶⁸⁰ Donald Dworak, Chairman, Nebraska Liquor Control Commission, Resolution of the Nebraska Liquor Control Commission, May 1992, in U.S. Congress, House of Representatives, Committee on Children, Youth, and Families, “Confronting the Impact of Alcohol Labeling and Marketing on Native American Health and Culture: Hearing before the Select Committee on Children, Youth and Families,” 102d Congress, 2d sess., May 19, 1992, 109.

⁶⁸¹ Cf. Associated Press, “Indians protest malt liquor named after Crazy Horse,” 4B.

⁶⁸² “Greens and A.I.M. Unite Boycott Heileman Brewing Co.,” *The Circle*, September 9, 1999, 7.

⁶⁸³ American Indian Movement, “Please join us in a BOYCOTT,” 1992/93, leaflet; Teters, Charlene; Native Artists Files; IAIA Archives, Santa Fe, NM.

⁶⁸⁴ Denis DeLeon, New York Human Rights Commission, quoted in Alan Wax and Bob Liff, “Minorities Boycott Beer Distributor Brand name of strong brew is offensive to American Indians,” *Newsday*, June 26, 1993, 14.

⁶⁸⁵ Cf. Wax and Liff, “Minorities Boycott Beer Distributor,” 14.

⁶⁸⁶ Karen Carrillo, “Native American leader urges boycott of Hornell Brewing Co.,” *New York Amsterdam News*, July 3, 1993, 6.

⁶⁸⁷ Sharon Metz, Executive Director, and Michael Thee, Advocacy Coordinator, HONOR (Honor Our Neighbors Origins and Rights Inc.). Cf. Metz and Thee, “Brewers Intoxicated With Racist Imagery,” 50-51.

⁶⁸⁸ Cf. Postema, “Crazy Horse Malt Liquor Protest.”

⁶⁸⁹ Cf. “Crazy Horse Malt Liquor Protest: Signees,” *Indigenous People*, April 14, 1995, accessed January 2, 2020, <https://www.indigenousepeople.net/crazhor2.htm>.

⁶⁹⁰ Cf. Big Crow, Sr., “Exploitation, stereotype of historical hero Crazy Horse,” 3.

other nationwide boycott of the malt liquor and other products distributed by Ferolito and Vultaggio until the companies would “recognize the legal rights of the Crazy Horse family or when they settle or are ordered to pay compensation to the estate.”⁶⁹¹ According to Vultaggio, by 1997, annual sales had dropped from a peak of three million to some 240,000 cases.⁶⁹²

As early as 1993, Seth Big Crow brought suit in the Rosebud Sioux Tribal Court to stop the use of his ancestor’s name. However, an appellate court decided in 1998 that the tribal court had no subject matter jurisdiction over the suit because “breweries’ manufacture, sale, and distribution of malt liquor did not occur on reservation land” and “breweries’ advertising of malt liquor on Internet was not basis for tribal court jurisdiction.”⁶⁹³ Following the decision, Big Crow took the case to the District Court in Sioux Falls, stating similar causes of action. Seeking damages as well as injunctive and declaratory relief, the Estate and the Rosebud Sioux Tribe sued Hornell “alleging defamation, misappropriation and misuse of inheritable property rights, privacy violations, negligent and intentional infliction of emotional distress, and violations of the Indian Arts and Crafts Act, the Lanham Act, and the Federal Trademark Dilution Act.”⁶⁹⁴ Since the Estate lacked standing under the IACA of 1990, the Rosebud Sioux Tribe joined the lawsuit on the grounds of the IACA and the so-called “bad men clause”⁶⁹⁵ of the 1868 Treaty of Fort Laramie.⁶⁹⁶

The right of publicity, commonly interpreted as an intellectual property right, became the most important legal issue in the lawsuit.⁶⁹⁷ In contrast to Ferolito and Vultaggio, who maintained they had taken “something from the public domain and turned it into something of value,”⁶⁹⁸ the family argued that under Lakota Customary Law, Crazy Horse’s name was the intellectual property of his family and tribe. After a person’s death, ownership of their name as a “personal, familial and spiritual property right” did not extinguish but “continue with the extended family, or ti-ospaye, and remain in the family’s jurisdiction for the next seven generations.”⁶⁹⁹

Five years after SBC Holdings acquired the bottler Heileman Brewing, chairman John Stroh III apologized to Crazy Horse’s descendants for its part in producing the beer in 2001.⁷⁰⁰ As District Judge Lawrence Piersol dismissed the lawsuit in 2004, Hornell and Seth Big Crow settled

⁶⁹¹ “Crazy Horse beverage fight goes to federal court.”

⁶⁹² Cf. “Ferolito, Vultaggio & Sons History,” *Funding Universe*, accessed January 2, 2020, <http://www.fundinguniverse.com/company-histories/ferolito-vultaggio-sons-history/>.

⁶⁹³ *Hornell Brewing Co. v. Rosebud Sioux Tribal Court*, 133 F.3d 1087, 1087, 45 U.S.P.Q. 2d 1458 (8th Cir. 1998).

⁶⁹⁴ *Estate of Witko v. Hornell Brewing Co.*, 156 F.Supp.2d 1092, 1092, 59 U.S.P.Q.2d 1841 (D.S.D. 2001).

⁶⁹⁵ “If bad men among the whites, or among other people subject to the authority of the United States, shall commit any wrong upon the person or property of the Indians, the United States will, upon proof . . . , proceed at once to cause the offender to be arrested and punished according to the laws of the United States, and also reimburse the injured person for the loss sustained.”

“Sioux Treaty of 1868,” in National Archives, accessed December 31, 2019, <https://www.archives.gov/education/lessons/sioux-treaty>.

⁶⁹⁶ Cf. “Sioux Join ‘Crazy Horse Malt Liquor’ Suit.”

⁶⁹⁷ Cf. “Crazy Horse,” Case Western Reserve University.

⁶⁹⁸ *Ibid.*

⁶⁹⁹ “Crazy Horse beverage fight goes to federal court.”

⁷⁰⁰ The settlement included a “public apology for misusing the name Crazy Horse; Assignment to the Estate of all intellectual property rights in the name of Crazy Horse, including outstanding applications with the Patent and Trademark Office; Cooperation in developing documents in SBC Holdings’ possession; Destruction of all packages and packaging materials related to Crazy Horse Malt Liquor; Agreement to never use the name Crazy Horse in any commercial venture.” “Crazy Horse,” Case Western Reserve University.

The apology included ceremonial gifts representing the 7 breweries that produced the beer and representing the 32 states where it was sold: 32 blankets, 32 braids of sweet grass, 32 twists of tobacco and 7 thoroughbred horses. Cf. Elizabeth Stawicki, “Crazy Horse Dispute Settled,” *Minnesota Public Radio*, April 26, 2001, accessed December 30, 2019, http://news.minnesota.publicradio.org/features/200104/26_stawickie_crazyhorse/?refid=0.

the case in agreement that Hornell would stop using Crazy Horses' name to market the malt liquor.⁷⁰¹ Although many retailers continued to sell the label, as a side-effect of the lawsuit, "one supermarket chain, A&P, pulled the beer for ethical reasons,"⁷⁰² as Gary Brouse of the ICCR noted in support of the campaign. After twelve years of protest, including demonstrations, calls for boycott, government hearings, bans, lawsuits, and sometimes bad press, the label was finally adapted by replacing the Native head with the image of a horse's feathered head and by renaming the beer "Crazy Stallion."

Crazy Horse's family kept fighting to protect his name from commercial use, urging marketers across the U.S. and beyond to change their product or business names. When London-based British Petroleum (BP) decided in 2002 to give one of its oil platforms in the Gulf of Mexico Crazy Horse's name, the family asked the Interfaith Center on Corporate Responsibility (ICCR) to help settle the dispute. Rosebud tribal leaders and Seth Big Crow from the Crazy Horse Estate met in a "historic meeting" with British Petroleum corporate executives to discuss the renaming of the project and "reconcile with the Lakota people and the Crazy Horse family." Mediated by ICCR shareholders, the parties agreed on a transition period for BP to meet their obligations and to search for a new name that would be Thunder Horse. Patricia Marshall, an ICCR representative, praised BP's decision as "the kind of response we would like to see from all companies" and which represents the "difference between saying you respect someone and showing respect."⁷⁰³

In 1951 France, Alain Bernardin was about to open a strip club and developed a marketing idea showing his fascination with "the America of the cowboy saloons and the myth of the Far West." Bernardin wanted to do "something different, based on the idea of an American style striptease,"⁷⁰⁴ and named the strip club Le Crazy Horse Paris. About 50 years later, in 2004, Harvey White Woman, a descendant of Crazy Horse and executor of the Crazy Horse estate, asked the current club owners, Bernardin's three children, in a letter to change the name. According to White Woman, "the request was prompted by an HBO cable television special that featured the club and its dancers wearing what looked to be feathered headdresses, a revered native symbol."⁷⁰⁵ Alfred Red Cloud, a descendant of the famous Oglala Sioux warrior Chief Red Cloud, set himself to "try and bring the Crazy Horse name home where it belongs,"⁷⁰⁶ and delivered the letter to the club owners when he traveled to France on behalf of Serle Chapman.⁷⁰⁷ The request and French media coverage of the issue did not induce a conversation or the change of the club's name.

⁷⁰¹ Cf. "Crazy Horse malt liquor case to be settled out of court," *Wind River News*, January 15, 2004, 5.

⁷⁰² Gary Brouse, ICCR, paraphrased in Specktor, "Crazy Horse exploited to peddle liquor," 3.

⁷⁰³ Sr. Patricia Marshall, Sister of the Blessed Sacrament from the Philadelphia Area Coalition for Responsible Investment, quoted in "ICCR Shareholders and British Petroleum To Meet," 1.

⁷⁰⁴ Alain Bernardin, quoted in Carson Walker, "Paris strip club name draws ire," *Rapid City Journal*, October 14, 2004, accessed July 22, 2017, http://rapidcityjournal.com/news/state-and-regional/paris-strip-club-name-draws-ire/article_a07a55fb-6dec-50a8-935a-ec90d7f412f9.html.

⁷⁰⁵ Carson Walker, "Crazy Horse family protests club," *Journal Star*, October 18, 2004, accessed September 2, 2016, http://journalstar.com/news/state-and-regional/crazy-horse-family-protests-club/article_fd87f8b2-2168-572d-984e-af5f0db9726b.html.

⁷⁰⁶ Alfred Red Cloud, quoted in Walker, "Crazy Horse family protests club."

⁷⁰⁷ Chapman's book 'We The People' about Indigenous culture was just about to be released in a French edition and the author had been invited to a major literary festival in Paris. While Chapman was not able to attend the festival for health reasons, he "sent Red Cloud in hopes of drawing attention to the issue of the nightclub name."

The protest against Le Crazy Horse Paris came during intensified efforts of the Crazy Horse family to defend their ancestor's reputation, particularly against the use of his name for strip clubs. Owners of multiple clubs, such as Crazy Horse Management (2001) in Anchorage, Alaska, a Crazy Horse strip club in Las Vegas (2003), and the Crazy Horse III Gentlemen's Club in Las Vegas, Nevada (2013), received requests from family members to change their business names.⁷⁰⁸ While all requests from the family remained unanswered, Renato Carrettin, owner of Crazy Horse clubs in Cleveland, Ohio, and the *Crazyhorse.com* porn site, decided around 2001 to change the names of three of his clubs. The decision came after he regularly received complaints about the bad treatment at the venue from people who had been to other strip clubs with the same name that were not associated with his company. Carrettin "felt it was better to disassociate with these other clubs"⁷⁰⁹ by dropping the name Crazy Horse since its reputation decreased in this industry.

Legal Discourse: Tribal Law

Since the early 1990s, evermore law professionals have started debating legal ways to stop marketers in the U.S. from appropriating and misrepresenting Indigenous cultural elements. Apart from the sports industry, the Crazy Horse Malt Liquor case gave the starting signal for an ongoing and intensifying discussion of legal possibilities to prevent certain advertising practices based on Indigeneity. Framing the marketing of the beer label as a health issue, Antonia C. Novello (1993) appealed to readers of the *South Dakota Law Review*: "As the Surgeon General's Office has responded to other products that crossed the line of acceptability – 'Cisco,' 'Power Master' and 'Black Death' vodka – we must continue to urge Americans to speak out about such products. In a democracy, our voices must be heard."⁷¹⁰ While Novello deemed public pressure the best option to challenge the brand, Jessica R. Herrera (1994) argued, "Control over the right of publicity would empower the estate in its fight against those who profit from marginalizing Native American culture, from reducing a people to logos, labels, mascots and slogans." As control over meaning was the essential issue behind a right of publicity litigation, the estate should have the power to control the meaning of Crazy Horse. But "Where such power is in the public domain, and the public is indifferent to the harm caused by consistently negative presentations, a shift in power so that oppositional voices can be heard is warranted."⁷¹¹

Other law professionals focused on treaty rights and tribal law to elaborate on the Crazy Horse Malt Liquor case as a matter of tribal sovereignty and self-determination. Joseph W. Singer (1996) clarified, "Neither free speech nor free competition is at stake, given the fact that the first company to appropriate a name will protect that name as a property interest

Walker, "Crazy Horse family protests club."

⁷⁰⁸ For Crazy Horse Management Inc. (2001) see Jon Lurie, "Crazy Horse name used on strip clubs," *The Circle*, February 28, 2001, 7; for Crazy Horse strip club, Las Vegas (2003) see Jodi R. Lee, "Crazy Horse's name being misused, abused in Las Vegas," *Lincoln Journal Star*, March 2, 2003, 4; for Crazy Horse III Gentlemen's Club (2013) see Robert Schmidt, "Crazy Horse clubs battle over name," *Newspaper Rock*, May 23, 2013, accessed October 20, 2016, <http://newspaperrock.bluecorncomics.com/2013/05/crazy-horse-clubs-battle-over-name.html>.

⁷⁰⁹ Lurie, "Crazy Horse name used on strip clubs," 7.

⁷¹⁰ Novello, "Crazy Horse Malt Liquor Beverage," 21.

⁷¹¹ Herrera, "Not Even His Name," 194.

against others.”⁷¹² Instead, Singer framed it as a tribal sovereignty issue because the Treaty of 1868 guaranteed the Sioux Nation’s lands and sovereignty, giving the Rosebud Sioux Tribe the right to define its members’ personal property and privacy rights. Consequently, the “Rosebud Sioux Tribal Court presumptively has adjudicative jurisdiction over ‘bad men among the whites’ who harm members of the tribe at home. As long as such jurisdiction is not fundamentally unfair to the defendant, the due process requirements of the ICRA [Indian Civil Rights Act] are met.”⁷¹³

According to Christopher J. Schneider (1998), the decision of the Eighth Circuit Court of Appeals that the Rosebud Sioux Tribal Courts did not have subject matter jurisdiction in the CHML case was “a clear example of the judicial subjectivity that continues to emerge and threatens to destroy vast areas of Indian law.”⁷¹⁴ Frank Pommersheim (2012) pointed to the collateral consequences as the decision prevented Rosebud Sioux courts from developing significant tribal common law on the issue of whether the claimed causes of action were part of Lakota tradition and custom or whether the Estate of Crazy Horse had the right to control the use of his name.⁷¹⁵ Despite this decision, the “lawsuit and the community meetings attendant to it have raised a great deal of interest among Lakota people and coalesced community opposition to the misuse of tribal names and symbols,”⁷¹⁶ as Nell J. Newton (1995) explained. Had the estate been successful, Newton added, other drawbacks to the lawsuit concerning the tribal court system, settlement amounts, and the distribution of cash settlements would have been considerable.⁷¹⁷

Angela R. Riley (2005) promoted tribal law as a foundation that works together with international and national laws to protect Indigenous intellectual property because, “Unlike top-down legal systems, tribal laws reflect tribal economic systems, cultural beliefs, and sensitive sacred knowledge in nuanced ways that national and international regimes simply cannot.”⁷¹⁸ Besides reinforcing tribal sovereignty and self-determination through developing a tribal legal system, tribal law could influence dominant legal systems as adjudicatory bodies increasingly referred to tribal law to address tribal issues.⁷¹⁹ Riley’s analysis of cultural resource protection programs through tribal websites and codified systems of law relating to the preservation of cultural resources, traditional knowledge, or both revealed how tribes actively sought to protect their cultural assets. As of 2005, newly available resources increasingly enabled tribes to establish tribal museums, colleges, and other agencies that fostered cultural survival by preserving and perpetuating tribal culture. The “growing number of tribal codes ded-

⁷¹² Singer, “Publicity Rights and the Conflict of Laws,” 43.

⁷¹³ *Ibid.*, 43-44.

⁷¹⁴ Schneider, “Hornell Brewing Co. v. Rosebud Sioux Tribal Court,” 486.

⁷¹⁵ Cf. Pommersheim, “The Crazy Horse Malt Liquor Case,” 65.

⁷¹⁶ Newton, “Memory and Misrepresentation,” 1051.

⁷¹⁷ An “ultimate decision favorable to Seth Big Crow on the merits in the tribal court system will lead to a challenge to the tribal court’s jurisdiction in the federal court system.” Additionally, “any cash settlement could open Mr. Big Crow to criticism from tribal people and his relations for taking too much or too little. . . . Distribution of any money judgment or cash settlement will require difficult decisions by the estate, decisions that will be subject to Rosebud Sioux probate law. The estate may be required to distribute the money to the heirs instead of using it for some other purpose, such as setting up a community organization.” *Ibid.*, 1051, 1053.

⁷¹⁸ Riley, “Straight Stealing,” 69.

⁷¹⁹ Cf. *ibid.*, 69.

icated to various aspects of cultural property protection” demonstrated that Native Americans utilized “law more than ever to protect vital cultural resources.”⁷²⁰

However, as Riley and Kristen A. Carpenter (2016) explained, “tribes do not have regulatory jurisdiction over non-Indians outside of their reservations As a result, even when there is a tribal law regarding appropriation that might provide limits and remedies in cases of appropriation, these cannot be applied extraterritorially.”⁷²¹ Courts have partially compensated for the taking of land and recognized tribal interests in gravesites, including human remains and artifacts. However, concerning intangible property, legal decision-makers and scholars hardly “understand why Indian tribes should be able to regulate the use of Indian names, symbols, and expressions. Indeed, non-Indians often claim interests, sounding in free speech and the public domain, in the very same resources.”⁷²² Native advocates viewed this process as part of a historical and continuing experience of dispossession.

Conversely, tribal sovereignty made it difficult to legally restrict advertising practices within the jurisdiction of Indigenous nations. As the Cherokee Complaint of 1974 already revealed, the case against the Oneida Nation’s Turning Stone Casino in New York state (2002-09) showed the limitations of the U.S. legal system in the face of tribal sovereignty. After the casino used his image without authorization to market a boxing match and various gambling activities, former boxer Joseph Frazier alias Smokin’ Joe brought an action against the tribe and its casino, among others, “for misappropriation of the boxer’s image and likeness for advertising and promotional purposes in violation of New York Civil Rights Law.”⁷²³ The tribe used his image “knowingly, intentionally, maliciously, and solely for . . . their commercial and financial gain.” Frazier, as a “person of Christian faith,” suffered extreme emotional damage and compensatory loss because the commercial use of his image “irreparably damaged his reputation, distorted the public image he has established for himself, exploited and abused his property rights in himself and his image and offended his personal sensibilities.”⁷²⁴ Several U.S. Courts ruled that the District Court lacked subject matter jurisdiction because of tribal sovereign immunity and dismissed the case for this and other reasons.⁷²⁵ Despite the dismissal of this suit from the federal court, the Second Circuit’s Court of Appeals decision explained this did “not foreclose all relief against the tribe, its casino, and its agents.” Frazier could pursue his claims in the Oneida Nation’s trial and appellate court system,⁷²⁶ though it is not known if he has done so.

Similarly, the lawsuit against the Chicken Ranch Rancheria Tribe and the Chicken Ranch Bingo and Casino of Me-Wuk Indians in Jamestown, California (2007-09), was dismissed by a U.S. District Court for lack of subject matter jurisdiction. In 1986, Bruce Alan Ingrassia and Millimac Enterprises produced artwork, like a visual image entitled “MiWuk Indian Riding on a Chicken,” for the Chicken Ranch but was neither hired nor paid for his work. As part of their arrangement, Millimac Enterprises, owner of the copyright, printed the

⁷²⁰ Ibid., 132.

⁷²¹ Riley and Carpenter, “Owning Red,” 927.

⁷²² Ibid., 859.

⁷²³ *Frazier v. Turning Stone Casino*, 254 F.Supp.2d 295, 295 (N.D.N.Y. 2003).

⁷²⁴ Ibid., 302-303.

⁷²⁵ See *ibid.*; *Frazier v. Turning Stone Casino*, No. 5:02 CV 131 FJS/GJD, 2005 WL 2033483 (N.D.N.Y. Aug. 16, 2005); *Frazier v. Turning Stone Casino*, No. 5:02 CV 131 FJS/GJD, 2008 WL 4834929 (N.D.N.Y. Nov. 4, 2008); *Frazier v. Brophy*, 358 Fed.Appx. 212 (2d Cir. 2009).

⁷²⁶ *Frazier v. Brophy*, 358 Fed.Appx. 212, 213 (2d Cir. 2009).

image on shirts and souvenirs which Chicken Ranch acquired for resale. The business relationship ended after several years, but Chicken Ranch started producing and selling items bearing the image without Ingrassia's permission. The lawsuit alleging breach of contract, common counts, and copyright infringement was dismissed for lack of subject matter jurisdiction due to tribal sovereign immunity.⁷²⁷

3.3.2 Trademarking Native American Cultures

The Lanham (Trademark) Act, enacted in 1946 and signed into law by President Harry Truman, as the primary U.S. federal trademark law, provided legal means to challenge appropriation and misrepresentation. The law established "a national system of trademark registration and protects the owner of a federally registered mark against the use of similar marks if such use is likely to result in consumer confusion, or if the dilution of a famous mark is likely to occur."⁷²⁸ Section 2(a) of the Lanham Act refused registration if the trademark "Consists of or comprises immoral, deceptive, or scandalous matter; or matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute."⁷²⁹ Indigenous activist Suzan Shown Harjo, among others, successfully applied this exclusion to prevent and cancel offensive trademark registrations of marks consisting of the word Redskins and influenced future decisions of trademark refusal.

In 1997, George Kechriotis filed a request to register the brand "Injun Joe" for marketing fishing lures, rods, and tackle. The U.S. Patent and Trademark Office published his request for opposition and accepted a letter of protest written by Harjo and her lawyer Stephen R. Baird, Dorsey & Whitney LLP, Minneapolis, who also assisted her in the lawsuit against the Washington Football Team (*Harjo v. Pro Football, Inc.*). Citing scholarly sources on the word "Injun" which explained it was an "ethnic epithet" equivalent to "other nonstandard forms as NIGGER or POLACK," the letter declared that the registration of this trademark was violating Section 2(a) of the Lanham Act. It was inappropriate for federal registration because the "mark INJUN JOE consists of or compromises scandalous and immoral matter which may disparage Native American persons, namely, the racial slur 'INJUN'."⁷³⁰ Admitting that "a clear error was made,"⁷³¹ the PTO withdrew the previous allowance count and abandoned the mark in February 1999.⁷³²

Section 2(a) of the Lanham Act was also the legal basis for activists to challenge the name of the Washington Redskins football team. As early as 1972, a delegation of Indigenous leaders sought to move the then-president of the team, Edward Bennett Williams, to change

⁷²⁷ Cf. *Bruce Alan Ingrassia and Millimac Enterprises v. Chicken Ranch Bingo and Casino, and Chicken Ranch Rancheria*, 676 F.Supp.2d 953, 2009 U.S. Dist. LEXIS 122771, at **17-18, 93 U.S.P.Q.2D (BNA) 1307 (E.D.Cal. 2009).

⁷²⁸ Legal Information Institute, s.v. "Lanham Act," accessed February 2, 2020, https://www.law.cornell.edu/wex/lanham_act.

⁷²⁹ 15 U.S. Code § 1052(a) - Trademarks registrable on principal register; concurrent registration.

⁷³⁰ Suzan Shown Harjo and Stephen R. Baird, Dorsey & Whitney LLP, Minneapolis, quoted in "Protest granted against 'Injun Joe' trademark," *Indian Country Today*, May 4, 1998, ProQuest 362731397.

⁷³¹ U.S. PTO official, quoted in "Protest granted against 'Injun Joe' trademark."

⁷³² "INJUN JOE - Trademark Details," Justia Corporate Center, accessed June 24, 2016, <https://trademarks.justia.com/752/45/injun-joe-75245053.html>.

its name because it was “disparaging, insulting and degrading to Native Americans.”⁷³³ In 1992, seven Indigenous activists led by Harjo filed a petition with the U.S. Patent and Trademark Office (PTO) requesting to cancel the team’s trademark registrations.⁷³⁴ After the 1999 ruling in favor of Harjo, Pro-Football “appealed the rulings that the claim of disparagement was not supported by substantial evidence and that the defense of laches may be asserted against a disparagement claim.”⁷³⁵ In 2006, Amanda Blackhorse and four other Natives filed another petition with the PTO while a federal appeals court dismissed Harjo’s case because of a technical issue.⁷³⁶

After more than 40 years of resistance against the brand, the PTO canceled the team’s trademark registrations in 2014 as required under Sections 2(a) and 14(3) of the Trademark Act. The PTO based its decision on the evidence showing that “a substantial composite of Native Americans found the term REDSKINS to be disparaging in connection with respondent’s services during the relevant time frame of 1967-1990.”⁷³⁷ Arguing that the *Webster’s Collegiate Dictionary* defined the word as “often contemptuous” as early as 1898,⁷³⁸ the U.S. District Court for the Eastern District of Virginia fundamentally questioned the original naming of the team, rejected the team’s appeal, and upheld the PTO’s decision.⁷³⁹

Since 1992, the PTO rejected at least eleven trademark applications because the proposed marks contained the term ‘Redskin’ in violation of Section 2(a) of the Lanham Act. Among those were the marks “Redskins Hog Rinds,” “Redskin Review,” “Redskins Fanatics,” “Redskin Pigskins,” “Redskin Rooters,” “Washington Redskins Cheerleaders,” and “Washington Redskins 70th Anniversary Est. 1932 Limited Edition.”⁷⁴⁰ In the case of a registration application for the mark “Redskins Hog Rinds,” for instance, examining attorney Kathy de Jonge explained the refusal by adding proof of the disparaging nature of the word Redskin from both non-Native and Native sources. Besides quotes from dictionaries like *Collinsdictionary.com*, *Oxforddictionaries.com*, or *Vocabulary.com*, which labeled the term “offensive,” “disparaging,” or “taboo,” the decision listed the then still unresolved case of the Washington Football Team as evidence for its inappropriateness. Indigenous sources for evidence were the online newspaper *Indian Country Today Media Network* and the National Congress of American Indians, thereby attributing those institutions significant authority.⁷⁴¹ Despite possible disagreement among Native Americans over whether the term is offensive,

⁷³³ *Harjo v. Pro-Football Inc.*, 50 U.S.P.Q.2d 1705, 1999 WL 375907, at *19 (TTAB 1999).

⁷³⁴ Cf. *Pro-Football, Inc. v. Blackhorse*, 112 F.Supp.3d 439, 450, 115 U.S.P.Q.2d 1524 (E.D.Va. 2015).

⁷³⁵ *Blackhorse v. Pro-Football, Inc.*, 111 U.S.P.Q.2d 1080, 2014 WL 2757516, at *3 (TTAB 2014).

⁷³⁶ Cf. Ian Shapira and Ann E. Marimow, “Washington Redskins win trademark fight over the team’s name,” *The Washington Post*, June 29, 2017, accessed February 2, 2020, https://www.washingtonpost.com/local/public-safety/2017/06/29/a26f52f0-5cf6-11e7-9fc6-c7ef4bc58d13_story.html.

⁷³⁷ *Blackhorse v. Pro-Football, Inc.*, 111 U.S.P.Q.2d 1080, 2014 WL 2757516, at *29 (TTAB 2014).

⁷³⁸ Cf. Shapira and Marimow, “Washington Redskins win trademark fight over the team’s name.”

⁷³⁹ *Pro-Football, Inc. v. Blackhorse*, 112 F.Supp.3d 439, 490, 115 U.S.P.Q.2d 1524 (E.D.Va. 2015).

⁷⁴⁰ Cf. Theresa Vargas, “Agency rejects trademark of ‘Redskins Hog Rinds,’ calling term ‘derogatory,’” *The Washington Post*, January 6, 2014, accessed April 17, 2017, http://www.washingtonpost.com/local/pork-rinds-cant-be-sold-under-trademark-redskins-hog-rinds-agency-rules/2014/01/06/954feca4-7726-11e3-b1c5-739e63e9c9a7_story.html.

⁷⁴¹ Cf. U.S. Trademark Application No. 86052159, REDSKINS HOG RINDS, Docket No. 72225, December 29, 2013, accessed April 17, 2017, <http://tsdr.uspto.gov/documentviewer?caseId=sn86052159&docId=OOA20131229163025#docIndex=2&page=1>.

the PTO decided that “once a substantial composite has been found, the mere existence of differing opinions cannot change the conclusion.”⁷⁴²

In 2017, however, the Supreme Court ruled in a similar case that the constitution’s guarantee of free speech includes racist names. An Asian-American rock band named themselves The Slants, a derogatory term for Asians, intending to desensitize and reclaim the epithet. Initially, the PTO denied trademark status, but the Supreme Court ruled in the group’s favor. The Supreme Court held that the “disparagement clause of [the] Lanham Act, prohibiting federal trademark registration for marks that might disparage any persons, living or dead, was facially invalid under First Amendment protection of speech.”⁷⁴³ Since the decision that the disparagement clause was unconstitutional, there was “no more challenge to make,”⁷⁴⁴ as attorney Jesse A. Witten representing Blackhorse said.

Resistance by the Zia since 1992 against the use of the Zia sun showed that trademark law per se did not assist the tribe in its struggle to protect its tribal emblem but helped to exert pressure on users of the symbol outside the legal arena. Zia people have been using their sacred symbol, the Zia sun, for ceremonial purposes since 1200. According to tribal members, the state of New Mexico appropriated the symbol in 1925 without the tribe’s permission and placed it on the state flag.⁷⁴⁵ As the Zia argued, the U.S. Patent and Trademark Office had to reject the registration of a mark using the Zia sun because Section 2(b) of the Lanham Act prohibits registration of marks based on any “insignia of the United States, or of any State or municipality, or of any foreign nation”⁷⁴⁶ to prevent commercial misuse. By granting trademark registration to the State of New Mexico, the state’s “use of the Zia sun symbol is protected but the Pueblo of Zia’s use of their own symbol is not.”⁷⁴⁷ Additionally, many companies offering various services and products adopted the Zia sun as a logo and several registered trademarks.⁷⁴⁸

The enactment of the 1990 Native American Graves Protection and Repatriation Act (NAGPRA), the “most important example of cultural property legislation in our history . . . [which] has established an international landmark for such legislation,”⁷⁴⁹ and the amendment of the IACA in 1990 “laid the foundation for the tribe’s own fight, which began just two years later.”⁷⁵⁰ When the Coulston International Corporation (Alamogordo, New Mexico) sought to register a trademark showing an adaption of the Zia sun in 1992, the tribe “formally objected to the registration, arguing that allowing Coulston to register the trademark would violate Section 2(a) of the Lanham Act by falsely suggesting a connection to the tribe and bringing the Zia people into disrepute.”⁷⁵¹ That Coulston withdrew its trademark application “right before the TTAB [Trademark Trial and Appeal Board] was to issue a decision” in 1995 was disap-

⁷⁴² *Blackhorse v. Pro-Football, Inc.*, 111 U.S.P.Q.2d 1080, 2014 WL 2757516, at *29 (TTAB 2014).

⁷⁴³ *Matal v. Tam*, 137 S.Ct. 1744 (2017).

⁷⁴⁴ Jesse A. Witten, attorney, quoted in Shapira and Marimow, “Washington Redskins win trademark fight over the team’s name.”

⁷⁴⁵ Cf. Phil Patton, “DESIGN NOTEBOOK; Trademark Battle Over Pueblo Sign,” *The New York Times*, January 13, 2000, accessed April 6, 2021, <https://www.nytimes.com/2000/01/13/garden/design-notebook-trademark-battle-over-pueblo-sign.html>.

⁷⁴⁶ 15 U.S. Code § 1052(a) - Trademarks registrable on principal register; concurrent registration.

⁷⁴⁷ David Mielke, General Counsel, Zia Pueblo, quoted in Turner, “The Case of the Zia,” 122.

⁷⁴⁸ Cf. Patton, “Trademark Battle Over Pueblo Sign.”

⁷⁴⁹ Nason, “Traditional Property and Modern Laws,” 255.

⁷⁵⁰ Turner, “The Case of the Zia,” 128.

⁷⁵¹ *Ibid.*, 128. Citations omitted by author.

pointing to the Zia. The tribe had “expended a large amount of resources in formally opposing Coulston” and hoped a favorable TTAB ruling would create “legal precedent that would make it harder for commercial entities to register similar marks in the future.”⁷⁵²

In 1998, Zia tribal lawyer Roberta Price objected to the trademark application of Santa Fe-based travel provider American Frontier Motorcycle Tour too late in the PTO’s consideration process. Seeking changes in the trademark law, the Zia found support from Senator Jeff Bingaman of New Mexico. The Zia’s demand of \$74 million from the State of New Mexico as compensation for the appropriation of the Zia sun and, until 1999, its use for 74 years on the flag had already raised political awareness. While tribal officials did not expect to receive the compensation, they aimed at the “recognition of the tribe’s rights, a contract for the state’s continued use of the symbol and a symbolic payment.”⁷⁵³ After the senator asked the PTO to reject the mark and informed the Associated Press he believed registering sacred symbols as a trademark should be illegal, “negative publicity and political pressure brought on by Bingaman’s intervention caused the company to withdraw its trademark application soon after the article was published.”⁷⁵⁴

In 2014, the New Mexico Senate requested a Department of Cultural Affairs report on who could rightfully use the Zia sun and if this use was somehow restricted. The Senate requested the investigation due to the “widespread interest by the public in the use of the state flag of New Mexico and the Zia sun symbol incorporated within it” and the Zia tribe’s “history of litigation, legislation, gubernatorial actions and efforts.”⁷⁵⁵ The report concluded that, “although anyone can use the Symbol, certain laws restrict the Symbol’s commercial use as a protected mark used to identify goods and services. These laws may be difficult to enforce and it is not clear how different a mark needs to be from the Symbol to make it eligible for registration as a trademark.”⁷⁵⁶

As a result of the tribe’s efforts, many companies, like Southwest Airlines in 2000, started approaching the tribe to request permission before using the symbol and usually donated to their scholarship fund in exchange. Although there was no legal requirement to ask for permission as long as it did not intend to register a trademark, the Zia had undertaken at least 20 negotiations with commercial entities until 2005.⁷⁵⁷ These negotiations gave them more control over outsiders’ use of their sacred symbol. Furthermore, through educational efforts following their first successes, the tribe reinforced the “social and political pressure created by their earlier efforts, making commercial entities and the state even more likely to seek cooperation with the tribe before using the symbol.”⁷⁵⁸ Ultimately, they did “not succeed thanks to trademark law as such” but “used the processes afforded by trademark law in order to exert social and political pressure, which in turn would help the tribe to find solutions outside of the legal arena.”⁷⁵⁹

⁷⁵² Ibid., 129.

⁷⁵³ Patton, “Trademark Battle Over Pueblo Sign.”

⁷⁵⁴ Turner, “The Case of the Zia,” 132.

⁷⁵⁵ Cf. Erin McSherry, General Counsel, New Mexico Department of Cultural Affairs, “Report to the Indian Affairs Committee of the New Mexico Legislature: Day two of the fourth meeting of the Committee,” Zia Pueblo, August 30, 2014, 2, accessed April 6, 2021, <https://www.nmlegis.gov/handouts/IAC%20092914%20Item%206%20FINAL%20REPORT%20Zia%20Sun%20Symbol%20ekm%209%2029%202014.pdf>.

⁷⁵⁶ Ibid., 8.

⁷⁵⁷ Cf. Turner, “The Case of the Zia,” 139.

⁷⁵⁸ Ibid., 143.

⁷⁵⁹ Ibid., 129-130.

In 1994 and partly due to the Zia's actions against Coulston, the PTO started compiling a list of official insignia of Native American tribes that helped determine more easily whether trademark applications violated Section 2(a) of the Lanham Act.⁷⁶⁰ Having sent approximately 500 inquiries to federally-registered Native American tribes, the Office received only ten responses with information about the tribe's official insignia.⁷⁶¹

Due to tribal interests in gaining trademark protection of tribal insignias, among other items, Congress directed the PTO to study the issue of tribal insignia protection in 1998.⁷⁶² With the support of Senator Bingaman, the Zia tribe recommended amending Section 2(b) of the Lanham Act and treating tribal symbols the same way as symbols of nations, states, and municipalities, which were already protected by law.⁷⁶³ The PTO, however, concluded existing "trademark law protects the symbols from being trademarked in a way that falsely implies a connection with a tribe or disparages a tribe's beliefs"⁷⁶⁴ and decided to resume their work on the tribal insignia compilation. The PTO's "Report on the Official Insignia of Native American Tribes" recommended the creation of a database comprising the official insignia of all State and federally recognized Native American tribes that were to be maintained and updated by the U.S. Patent and Trademark Office. Relevant federal agencies should "work cooperatively to educate and assist Native American tribes in their efforts to protect their official insignia" and "to educate the public at large with respect to the rights surrounding official insignia of Native American tribes."⁷⁶⁵

In 2001, the Patent and Trademark Office established the Native American Tribal Insignia Database (NATI) to prevent companies from registering misleading trademarks that suggested a connection with a tribe.⁷⁶⁶ Tribes could submit their insignia adopted by tribal resolution to build up a comprehensive database the PTO could refer to when examining applications for trademark registration.⁷⁶⁷ NATI gave the PTO "the power to reject applications for similar marks, since it can forbid copyrights that suggest a 'likely false association' - as for example, a food product that buyers might conclude was produced by the tribe, or anything that implied 'possible disparagement' of a group that owns a symbol,"⁷⁶⁸ but it could not guarantee that result.

Since "insignia management can be a useful marketing tool for entities that are engaged in, for example, casino gambling," the NATI was "planned as an effective business strategy" for Native American tribes.⁷⁶⁹ In 2011, ten years after its inception, the database comprised 33 tribal insignia submitted by 25 tribes. Another ten years later, in 2021, 52 tribes

⁷⁶⁰ Cf. *ibid.*, 130.

⁷⁶¹ Cf. Patton, "Trademark Battle Over Pueblo Sign."

⁷⁶² Cf. Miller, "American Indian and Tribal Intellectual Property Rights." See also Trademark Law Treaty Implementation Act, Pub. L. 105-330, 112 Stat. 3064, October 30, 1998, accessed July 14, 2021, <https://www.govinfo.gov/content/pkg/PLAW-105publ330/pdf/PLAW-105publ330.pdf>.

⁷⁶³ Cf. Patton, "Trademark Battle Over Pueblo Sign."

⁷⁶⁴ Miller, "American Indian and Tribal Intellectual Property Rights."

⁷⁶⁵ U.S. Department of Commerce, Patent and Trademark Office, "Report on the Official Insignia of Native American Tribes," September 30, 1999, 47, accessed March 21, 2021, <https://www.uspto.gov/sites/default/files/web/offices/com/sol/notices/insgstdy.pdf>.

⁷⁶⁶ Cf. U.S. Government Accountability Office, "Indian Arts and Crafts," 24.

⁷⁶⁷ Cf. *ibid.*, 25.

⁷⁶⁸ Patton, "Trademark Battle Over Pueblo Sign."

⁷⁶⁹ Charles Bernholz, Linda G. Novotny and Ana L. Gomez, "American Indians and the United States Patent and Trademark Office: The Native American Tribal Insignia Database," *Government Information Quarterly* 26, no. 1 (2008): 184.

listed 63 insignia in the NATI, including the Seminole Tribe of Florida, the Oneida Indian Nation, the Ponca Tribe of Nebraska, the Georgia Tribe of Eastern Cherokee, or the Seneca-Cayuga Tribe of Oklahoma, among others. It was not until 2018 that the Zia submitted the Zia sun to the database.⁷⁷⁰ As Stephanie Turner opined, “the small participation size does suggest that Native American tribes do not see the database as a particularly helpful tool.”⁷⁷¹ The low rate of tribal participation was likely due to the lack of trademark protection for tribal insignias under the NATI program as opposed to a regular, more expensive trademark registration.⁷⁷²

The Urban Outfitters case is a prime example of a tribe utilizing trademark law to protect its economic interests and image. The strong solidarity among Native protesters from different tribes expressed in social media and the continuing news coverage made the Urban Outfitters case exceptional. Since the Urban Outfitters case attracted national attention, the appropriation of tribal designs, infringement of trademark rights, and the offensive misrepresentation of Indigenous culture became widely known through social media and extensive news media reporting. Along with other well-known cases like Victoria’s Secret (2012), news media continued to cite the Urban Outfitters case when covering protests in the following years.

Case Study 6: Urban Outfitters (2011-16)

Case Study 6: Urban Outfitters (2011-16)

The Urban Outfitters case turned on the use of the Navajo tribal name and tribal designs in connection with inappropriate products such as an alcohol flask and underwear for marketing purposes. In their lawsuit, the Navajo Nation argued that “it and its members have been known by the name ‘Navajo’ since at least 1849, have continuously used the NAVAJO trademark in commerce, and have made the NAVAJO name and trademarks famous with numerous products, including, among other things, clothing, accessories, blankets, jewelry, foods, tools, decorations, crafts, and retail services.”⁷⁷³ The tribe owned 86 trademarks based on the element ‘NAVAJO’ that it had registered with the PTO. Furthermore, the Navajo Nation had established a practice of licensing its tribal name to businesses that paid a share of their profits to the tribe in return. Consequently, if a company was interested in using the name for marketing purposes, there was a legally sound way to do so in collaboration with the tribe.

Despite a culturally developed awareness of trademark and property rights that most U.S.

⁷⁷⁰ Cf. The Pueblo of Zia, Zia sun, Native American Tribal Insignia 89002171, filed December 18, 2018, and issued January 31, 2019.

⁷⁷¹ Turner, “The Case of the Zia,” 138.

⁷⁷² “The entry of an official insignia into the Trademark systems does not confer any rights to the tribe that submitted the insignia, and entry is not the legal equivalent of registering the insignia as a trademark under 15 U.S.C. 1051 *et seq.* The inclusion of an official tribal insignia in the database does not create any legal presumption of validity or priority, does not carry any of the benefits of federal trademark registration, and is not a determination as to whether a particular insignia would be refused registration as a trademark pursuant to 15 U.S.C. 1051 *et seq.*”

Kimberly Hardy, Information Collections Officer, Office of the Chief Administrative Officer, U.S. Patent and Trademark Office, “Native American Tribal Insignia Database: A Notice by the Patent and Trademark Office on 03/16/2020,” 85 FR 14926, March 16, 2020, accessed April 6, 2021, <https://www.federalregister.gov/documents/2020/03/16/2020-05312/native-american-tribal-insignia-database>. See also Bernholz, Novotny and Gomez, “The Native American Tribal Insignia Database,” 184.

⁷⁷³ *Navajo Nation v. Urban Outfitters, Inc.*, 918 F.Supp.2d 1245, 1249, 90 Fed. R. Evid. Serv. 581 (D.N.M. 2013).

citizens shared, many entrepreneurs still tended to think of Indigenous culture as a common good. Ed Looram, the company spokesman for Urban Outfitters, defended the retailer's marketing practice since the "Native American-inspired trend and specifically the term 'Navajo' have been cycling thru fashion, fine art and design for the last few years." Therefore, "Like many other fashion brands, we interpret trends and will continue to do so for years to come."⁷⁷⁴ Looram's mindset mirrored the prevalent perception of Indigenous culture as a common good instead of intellectual property protected by law. However, the "widespread [unauthorized] use of the word 'Navajo' on products does not make it an acceptable practice, nor does it go unnoticed,"⁷⁷⁵ as tribal Department of Justice attorney Brian Lewis emphasized.

While the Navajo Nation had asserted its trademark rights before, this was its first action in a federal court. Usually, letters and phone calls from the tribe "convince[d] others to stop infringing on the tribe's rights."⁷⁷⁶ The tribe identified more than 20 companies supposedly violating their trademark, but since tribal resources were limited, the Navajo Nation had to prioritize its actions. In the Urban Outfitters case, "the level and degree of egregious behavior and harm to the Navajo Nation factored heavily into the Navajo Nation's decision to act."⁷⁷⁷ Shortly after the Navajo Nation Department of Justice sent Urban Outfitters a cease and desist letter dated June 30, 2011, the company "took steps to remove the term 'Navajo' from its web pages in order to avoid potential litigation."⁷⁷⁸ But the tribe's research showed that Urban Outfitters did, in fact, not comply with the cease and desist letter. It still offered items tagged with the word "Navajo" for sale in a store in Evanston, Illinois, which induced the Navajo Nation to file an action against the clothing producer in 2012.⁷⁷⁹

The complaint against Urban Outfitters was twofold and sought to protect not only the Navajo Nation's trademark rights but also their right to represent themselves conforming with their own cultural values. Additionally to having registered the NAVAJO trademark, the tribe argued that their trademark was "inherently distinctive" and "prominently featured on its and its agents' websites." Furthermore, the "famous NAVAJO trademark [was] broadly recognized by purchasers of consumer goods and the general public as a trademark for the Navajo Nation's Indian-styled and Indian-produced goods."⁷⁸⁰ The court granted the four counts of trademark infringement, unfair competition and false advertising under the Lanham Act, violation of the IACA, and violation of the New Mexico Unfair Practices Act.⁷⁸¹

⁷⁷⁴ Ed Looram, spokesman for Urban Outfitters, quoted in Felicia Fonseca, "Navajo Nation Sues Urban Outfitters Over Product Names," *Native American Times*, March 9, 2012, 1, 3.

⁷⁷⁵ Brian Lewis, attorney, Department of Justice, Navajo Nation, quoted in Fonseca, "Navajo Nation Sues Urban Outfitters Over Product Names," 1, 3.

⁷⁷⁶ Brian Lewis, attorney, Department of Justice, Navajo Nation, quoted in Fonseca, "Navajo Nation Sues Urban Outfitters Over Product Names," 1, 3.

⁷⁷⁷ Brian Lewis, attorney, Department of Justice, Navajo Nation, quoted in Fonseca, "Navajo Nation Sues Urban Outfitters Over Product Names," 1, 3.

⁷⁷⁸ *Navajo Nation v. Urban Outfitters, Inc.*, 918 F.Supp.2d 1245, 1250, 90 Fed. R. Evid. Serv. 581 (D.N.M. 2013).

⁷⁷⁹ Cf. *ibid.*, 1251.

⁷⁸⁰ *Ibid.*, 1249.

⁷⁸¹ 1) Trademark infringement in violation of 15 U.S.C. §§ 1114 and 1117 of the Lanham Act as the use of 'Navajo' or 'Navaho' mark was "likely to cause confusion, mistake, or deception in the market place, and has created actual confusion in the market place."

2) Unfair Competition and False Advertising under § 1125(a) of the Lanham Act.

3) Violation of the Indian Arts and Crafts Act, 25 U.S.C. § 305 et. seq., as "damages suffered include lost sales by members of the Navajo Nation, lost profits through driven-down prices caused by Defendants' imitation products, and loss of goodwill and reputation."

4) Violation of the New Mexico Unfair Practices Act NMUPA, N.M. Stat. Ann. § 57-12-3, as Urban Outfitters had "falsely represented [the aforementioned items] as authentic goods while not made by or in connection with the Navajo Nation." *Ibid.*, 1250.

While the lawsuit against Urban Outfitters was pending, the company sued Hanover Insurance Co. over its duty to defend and indemnify Urban Outfitters. The court ruled in favor of the insurer who profited from the “prior publication” or “first publication” exclusion clause in the policy. Since the offending publications allegedly began at least in March 2009 but coverage with One Beacon and Hanover started in July 2010 and July 2011, respectively, “Hanover ha[d] no potential duty to indemnify, and therefore, no duty to defend the Urban Outfitters defendants in connection with the underlying suit brought by the Navajo Nation.”⁷⁸²

In November 2016, Urban Outfitters and the Navajo Nation settled the matter and planned to collaborate on a Native jewelry line. As the company’s general counsel Azeez Hayne stated, Urban Outfitters “has long been inspired by the style of Navajo and other American Indian artists and looks forward to the opportunity to work with them on future collaborations.”⁷⁸³ Navajo Nation president Russell Begaye, in turn, commended the retailer for “acknowledging the validity of the Navajo Nation trademark,” adding that he expected that “any company considering the use of the Navajo name, or our designs or motifs, will ask us for our permission.”⁷⁸⁴

Offensive representation

Since tribes represented their identity not only through political communication but also through their products and commercial communication associated with the products, imitations and products incorrectly associated with the tribe due to misleading product naming or labeling had both an economic and cultural impact. Kristen Carpenter, a University of Colorado law professor specializing in Native American property rights, noted that the “use of Indian names and imagery without consent of the relevant Indian nation diminishes both critical opportunities for economic development and, as importantly, for tribes to represent themselves consistent with cultural norms and traditions, both ancient and contemporary.”⁷⁸⁵ In the cease and desist letter mentioned above, the Navajo Nation Attorney General explained the socio-political and economic impact the clothing line had on the tribe:

As a Nation with a distinguished legacy and unmistakable contemporary presence, the Nation is committed to retaining this distinction and preventing inaccuracy and confusion in society and the market. The Nation must maintain distinctiveness and clarity of valid association with its government, its institutions, its entities, its people, and their products in commerce. When an entity attempts to falsely associate its products with the Nation and its products, the Nation does not regard this as benign or trivial.⁷⁸⁶

⁷⁸² *Hanover Ins. Co. v. Urban Outfitters, Inc.*, No. 12 CV 03961, 2013 WL 4433440, at *6 (E.D.Pa. Aug. 9, 2013).

Urban Outfitters sought to overturn the decision but a court upheld the original decision that the insurer had no duty to indemnify and to defend. An “insured cannot insure against something that has already begun and which is known to have begun.” The ‘prior publication’ exclusion prevents a continuing tortfeasor from passing the risk for its misconduct on to an unwitting insurer. Taking Navajo Nation’s underlying allegations as true, Urban Outfitters engaged in similar liability-triggering behavior both before and during Hanover’s coverage period.”

Hanover Ins. Co. v. Urban Outfitters, Inc., 806 F.3d 761, 770, 116 U.S.P.Q.2d 1699 (3d Cir. 2015), citing *Mata-gorda Ventures, Inc. v. Travelers Lloyds Ins. Co.*, 203 F.Supp.2d 704, 716 (S.D.Tex. 2000).

⁷⁸³ Azeez Hayne, General Counsel, Urban Outfitters, quoted in Nicky Woolf, “Urban Outfitters settles with Navajo Nation after illegally using tribe’s name,” *The Guardian*, November 19, 2016, accessed January 17, 2019, <https://www.theguardian.com/us-news/2016/nov/18/urban-outfitters-navajo-nation-settlement>.

⁷⁸⁴ Russell Begaye, President, Navajo Nation, quoted in Woolf, “Urban Outfitters settles with Navajo Nation.”

⁷⁸⁵ Kristen Carpenter, quoted in Stephanie Siek, “Navajo Nation Sues Urban Outfitters for Alleged Trademark Infringement,” *St. Joseph News-Press*, March 2, 2012, ProQuest 925946488.

⁷⁸⁶ Navajo Nation Department of Justice, cease and desist letter, June 30, 2011, quoted in Adrienne Keene, “Urban Outfitters is Obsessed with Navajos,” *Native Appropriations*, September 21, 2011, accessed April 27, 2017, <http://nativeappropriations.com/2011/09/urban-outfitters-is-obsessed-with-navajos.html>.

Besides financial interests, the Navajo Nation sought to protect its “contemporary presence” and distinctiveness in the market and U.S. society. Since Anglo-American law upheld free speech over offensive expressions, the Navajo Nation sought to apply the Lanham Act to protect its right to self-representation in accordance with Navajo norms. Specifically, the tribe wanted to restrain the retailer from selling alcohol flasks wrapped in a print fabric bearing a Navajo-style design to prevent and challenge the connection between the Navajo Nation and alcohol. The tribe charged the company with willful trademark dilution by blurring and by tarnishment under § 1125(c) of the Lanham Act, reasoning that “Defendants’ use of ‘Navajo’ with products like its ‘Navajo Flask’ is derogatory, scandalous, and contrary to the Navajo Nation’s principles because it has long banned the sale and consumption of alcohol within its borders and the Navajo Nation does not use its mark in conjunction with alcohol.” The court denied this count because the “companies’ use of mark with their ‘Navajo Print Fabric Wrapped Flask’ product was not sufficiently unwholesome or unsavory to support trademark dilution by tarnishment claim.”⁷⁸⁷ Ultimately, only claims concerning fraud had standing after the judge dismissed the matter of offensive and inappropriate representation of the tribe.

In addition to the fact that Urban Outfitters used the Navajo name and tribal designs without authorization, public criticism of the marketing campaign focused primarily on how the company used the name and designs. Activist Adrienne Keene was among the first to post her opinion on Urban Outfitters’ clothing line in her blog *Native Appropriations*, backed by a quick analysis of the prevalence of Indian-style marketing names throughout some of Urban Outfitters’ collections. Looking through the company’s online shop for women’s clothing and accessories, Keene found 58 ‘Native-inspired’ items. Searching for popular terms indicating ‘Indianness,’ she received one result for “Cherokee,” two for “Indian,” ten for “Native,” and 15 for “Tribal.” “Navajo” was part of the name alone for 24 products, leading Keene to conclude that “Urban Outfitters is Obsessed with Navajos.”⁷⁸⁸

Activists found the “Navajo Hipster Panty” and the “Navajo Flask” most offensive as the products trivialized, sexualized, and demeaned Navajo tribal culture. Like the Navajo Nation, activists criticized the connection between tribes and alcohol “considering the long history of alcohol abuse among Native American tribes, many of which ban the sale and consumption of alcohol on their reservations.” Additionally, “branding underwear as ‘Navajo’ goes against the tribe’s spiritual beliefs of modesty and avoidance of indecency,” as Dwayne Clauschee, a designer from the Navajo town of Chinle, explained to the press.⁷⁸⁹

Blogger Robert Schmidt attributed the extensive media attention regarding the case to the “power of protest” because Keene’s post and Brown’s open letter “compelled the mainstream media to cover the issue.”⁷⁹⁰ Publishing “An Open Letter to Urban Outfitters on Columbus Day,”

⁷⁸⁷ As part of the dilution by tarnishment claim, the Navajo Nation also asserted “that Defendants’ use of “Navaho” was “scandalous” because the Navajo Nation Code provided that the use of “Navajo” shall use the spelling “j”, not “h,” which the court rejected as well.

Navajo Nation v. Urban Outfitters, Inc., 935 F.Supp.2d 1147, 1178 (D.N.M. 2013).

More recently, a court also denied the count of Violation of the New Mexico Trademark Act NMTA, N.M. Stat. Ann. § 57-3B-15, which stated that Urban Outfitters’ “willful committed acts and omissions caused dilution and/or tarnishment of the distinctive quality of the Navajo Nation’s NAVAJO marks” because “Plaintiffs have not provided evidence that their marks are sufficiently famous to sustain dilution by blurring or tarnishment under NMSA 1978, § 57-3B-15.”

Navajo Nation v. Urban Outfitters, Inc., No. 12 CV 0195, 2016 WL 3475342, at *5 (D.N.M. May 13, 2016).

⁷⁸⁸ Keene, “Urban Outfitters is Obsessed with Navajos.”

⁷⁸⁹ Dwayne Clauschee, quoted in Felicia Fonseca, “Navajo Nation Calls Out Urban Outfitters,” *Detroit Free Press*, November 6, 2011, G5.

⁷⁹⁰ Robert Schmidt, “Media covers Urban Outfitters controversy,” *Newspaper Rock*, October 12, 2011, accessed October 23, 2016, <http://newspaperrock.bluecorncomics.com/2011/10/media-covers-urban-outfitters.html>.

activist Sasha H. Brown initiated a wave of protest against the “cheap, vulgar and culturally offensive retail collection.”⁷⁹¹ Following the letter, Tiffany Wilson started a petition via *Change.org* which, in terms of signatures, became the most successful online petition against offensive marketing practices involving Native Americans. 16,588 signees supported Wilson’s petition demanding that Urban Outfitters “Remove the ‘Navajo’ Collections from Stores!”⁷⁹² National, local, and Indigenous newspapers (*L.A. Times*, *Arizona Republic*, *Minneapolis Star Tribune*, *University Wire*; *Navajo Times*, *The Circle*, *Native American Times*), multiple international newspapers (*Daily Mail*, UK; *Guardian*, UK; *Kurier*, D), as well as special interest magazines (*Vanity Fair*, *The Wall Street Journal*) covered the protest.

While the Navajo Nation proceeded against Urban Outfitters as a closed political entity, media activists framed the protest as a matter of concern not just for the Navajos. Brown, a member of the Santee Sioux tribe of Nebraska, considered selling imported replicas a practice that “disrespects *our* history and undermines *our* sovereignty as Tribal Nations” (emphasis added). Promoting pan-Indian support, she declared she stood “in solidarity with the Navajo Nation” and demanded that Urban Outfitters “stop selling faux Indian apparel that cheapens our culture and heritage.”⁷⁹³ Beyond pan-Indian solidarity, Wilson advocated for solidarity across non-White ethnic borders. In her opinion, the clothing line and accessories were “culturally offensive [n]ot just to the Navajo people, but to all people of color who find themselves starting at cheap, vulgar, knockoffs of ideas, dress, and culture that are a way of life.”⁷⁹⁴

Legal Discourse: Intellectual Property Rights

Most law professionals examined cultural appropriation as an intellectual property issue within the copyrights, patents, and trademarks framework. While copyright, patent, and trade secret laws protect inventions and expressions from theft, trademark law primarily protects the consumer.⁷⁹⁵ Focusing on consumer protection legislation, Janet McGowan (1994) suggested checking the U.S. Trademark Act, the Indian Arts and Crafts Act, the Federal Trade Commission Act, and the Food, Drug and Cosmetic Act for individual applicability. To date, the legal discourse tended to interpret the IACA, a truth-in-advertising law, in terms of intellectual property rather than consumer protection. Commenters on such cases believed the Act “could possibly be given a broad reading by courts and be used to protect items such as traditional seeds, cultural ideas and expressions, and property other than just the usual works of arts and crafts.”⁷⁹⁶ McGowan considered all these laws suitable to protect consumers from fraud when advertisers created misleading impressions or made false statements of Indigenous origin.

⁷⁹¹ Sasha H. Brown, “An Open Letter to Urban Outfitters on Columbus Day,” *Indian Country Today Media Network*, October 10, 2011, accessed July 12, 2016, <http://indiancountrytodaymedianetwork.com/2011/10/10/open-letter-urban-outfitters-columbus-day-57817>; Tiffany Wilson, “Remove the ‘Navajo’ Collections from Stores!” *Change.org* petition, October 2011, accessed July 12, 2016, <https://www.change.org/p/ceo-urban-outfitters-remove-the-navajo-collection-from-stores>.

⁷⁹² Wilson, “Remove the ‘Navajo’ Collections from Stores!”

⁷⁹³ Brown, “Open Letter to Urban Outfitters.”

⁷⁹⁴ Wilson, “Remove the ‘Navajo’ Collections from Stores!”

⁷⁹⁵ Cf. Lury, “Official Insignia, Culture, and Native Americans,” 137.

⁷⁹⁶ Miller, “American Indian and Tribal Intellectual Property Rights.”

While Richard A. Guest (1995) also recommended applying the IACA,⁷⁹⁷ Brian Zark (2015) suggested to first address the IACB's inefficiency by increasing the Board's funding "so the Board can hire more investigators and conduct a study of the amount of misrepresentation currently taking place in the Indian arts and craft industry."⁷⁹⁸ Knowledge about the amount of misrepresentation would help the Board to justify giving violations of the IACA higher priority. Furthermore, the Board should publish the number of complaints annually to see whether the issue is increasing or decreasing.⁷⁹⁹

Terence Dougherty (1997) believed property rights were a counterproductive method for protecting the integrity of Indigenous leaders' memory because the "idea of attaching ownership, with all of its connotations of fungibility, to a sacred image may seem 'sacrilegious'."⁸⁰⁰ Additionally, granting property rights to the Rosebud Sioux Tribe could be objectionable to other Sioux tribes, particularly since reservations were creations of the federal government.⁸⁰¹ Dougherty still considered property rights the most successful method for protecting the integrity of Crazy Horse because within the U.S. political and legal systems, "property defines what the society, or its representative, the state, cannot touch."⁸⁰² However, since "constitutional jurisprudence is wary of considering rights claims from anything but an individual rights-based perspective," the Lanham Act or direct grants of limited property rights to Native tribes would best serve tribes' interests.⁸⁰³

Christine H. Farley (1997) likewise concluded the existing intellectual property law supports those who participate in and control the marketing of their arts and crafts but not those who want to bar any use of their culture.⁸⁰⁴ Suzanne Milchan (2003) found it "necessary to support a combination of the utilitarian, Western model of intellectual property theory and the European intellectual property model, which focuses on morality rights to protect both the author's use of the thing and the author herself."⁸⁰⁵ Because U.S. society was hardly able to "fathom the intimacy with which our identities can be linked to intellectual property,"⁸⁰⁶ society first had to learn about the cultural differences between mainstream and Indigenous cultures so that lawmakers change intellectual property laws to meet the needs for protecting Indigenous cultural property. Similarly, Jill K. Kelley (2007) maintained U.S. society first had to acknowledge the concept of cultural property with its significance to Indigenous peoples. Then it should "enact intellectual property legislation that protects cultural property to permit Native Americans to maintain or regain control over sacred artifacts, symbols and stories which sustain their Indian identity and promote mutual respect of culture."⁸⁰⁷

Both Megan M. Carpenter (2004) and Stuart Schüssel (2012) did not view current copyright law as an effective means to protect Native cultural property but also believed adap-

⁷⁹⁷ Guest, "Intellectual Property Rights and Native American Tribes."

⁷⁹⁸ Zark, "Use of Native American Tribal Names as Marks," 556.

⁷⁹⁹ Cf. *ibid.*, 556.

⁸⁰⁰ Dougherty, "Group Rights to Cultural Survival," 398.

⁸⁰¹ Cf. *ibid.*, 398.

⁸⁰² *Ibid.*, 398. Citations omitted by author.

⁸⁰³ *Ibid.*, 400.

⁸⁰⁴ Cf. Farley, "Protecting Folklore of Indigenous Peoples."

⁸⁰⁵ Milchan, "Whose Rights Are These Anyway?" 158-159.

⁸⁰⁶ *Ibid.*, 171.

⁸⁰⁷ Kelley, "Owning the Sun," 202.

tions of intellectual property laws⁸⁰⁸ were difficult to implement and might likely draw constitutional scrutiny.⁸⁰⁹ The U.S. Government Accountability Office also argued copyright law was not applicable to protect traditional knowledge and cultural expressions because they were “not original and usually not fixed in any tangible medium of expression.”⁸¹⁰ Instead, they were the product of shared cultural understanding and passed down orally. Consequently, if the tribe did not publish a tribal origin story, the story was not copy-righted, and the tribe could not sue for copyright infringement.

Maury Audet (2000),⁸¹¹ Kristine A. Brown (2002), Rachel C. Hughey (2004), and Alexandria Chu (2015) agreed that the Lanham Act did not promise success in protecting Indigenous cultural assets due to constitutional concerns and professional sports organizations’ enormous commercial and economic power. Hughey and Chu found that non-legal means were more promising to change Native American mascots, logos, and names by raising public awareness. Although the decision of the Trademark Trial and Appeal Board to cancel the Washington Redskins trademark was overturned, “this type of publicity has caused many primary, secondary, and collegiate teams to change their names.”⁸¹² Both favored the combination of taking legal action to raise public awareness and protests, political lobbying, educational initiatives, and informal negotiations to protect their cultural assets and rights.⁸¹³ Susy Frankel (2011) advocated a *sui generis* system related to trademarks, but the “existing trademark-registration systems should have robust objection procedures for registration of culturally inappropriate or offensive marks so that they can coexist with, rather than clash with, a *sui generis* system.”⁸¹⁴

There was less consensus between Michelle B. Lee (1997), Jeffrey Lefstin (2000), and Justin Blankenship (2001) regarding the constitutionality of trademark cancellations based on

⁸⁰⁸ Carpenter suggested three changes to existing copyright laws to protect and maintain the vitality of creative Indigenous works: the “incorporation of collective and communal notions of authorship, the expansion of the originality requirement to reflect these forms of authorship, and the application of limits on the duration of copyright protection in a broader community context.”

Carpenter, “Intellectual Property Law and Indigenous Peoples,” 51-52.

See also Geraud Blanks exploration of the “legal validity of American Indian sports nicknames and mascots by examining trademark, copyright and right of publicity laws that govern the appropriation of personal and brand identity.” If Illinois law extended “right of publicity protections to indigenous peoples in perpetuity,” made “descendability based on tribal affiliation, not lineal descendancy,” and treated “Native American tribes . . . as juristic persons,” then “the Black Hawk name would represent the property of the Sauk and Fox nation. The Sauk and Fox could then make the claim that the identity of the tribe was infringed upon by the Chicago Blackhawks for the purpose of commercial use.”

Blanks, “Skin the Game,” ii; 50-51.

Susan Scafidi suggested making significant changes by adapting the concept of authorship to cultural products created through unincorporated group collaboration by “source communities” analogous to the classification of “Science and useful Arts”; by altering temporal restrictions on intellectual property protection analogous to trademark law’s emphasis on current use or “a trade secret-like requirement that the source community continue to derive benefit from the cultural product”; and by revising “its common law emphasis on the reduction of cultural products to concrete form as a requirement for protection.”

Susan Scafidi, *Who Owns Culture? Appropriation and Authenticity in American Law* (New Brunswick: Rutgers University Press, 2005), 148-149.

⁸⁰⁹ Cf. Schüssel, “Copyright Protection’s Challenges,” 340.

⁸¹⁰ U.S. Government Accountability Office, “Indian Arts and Crafts,” 24.

⁸¹¹ Audet, “Native American Tribal Names as Monikers and Logos.”

⁸¹² Hughey, “The Impact of Pro-Football, Inc. v. Harjo,” 328-329.

⁸¹³ Cf. Hughey, “The Impact of Pro-Football, Inc. v. Harjo,” 336; Chu, “The Washington Redskins and the Current Standard for Disparaging Trademarks,” 67.

⁸¹⁴ Frankel, “Trademarks and Traditional Knowledge,” 5.

the disparaging trademark section of the Lanham Act. Lee argued canceling or prohibiting Native American team names and marks from being placed on the Federal Register was unconstitutional because, as “a content-based regulation on commercial speech it clearly violates the First Amendment.”⁸¹⁵ Lefstin opined on the other side that “the trademark’s lack of informational content renders commercial speech doctrines largely irrelevant to the First Amendment analysis.”⁸¹⁶ Still, the cancellation of a trademark such as the Washington Redskins would be interpreted as a First Amendment violation, as was the case later. Viewing “trademark registration as a designated public forum, the constitutionality of the cancellation depends on difficult judgments as to whether the denial of disparaging marks is a ‘reasonable’ measure to preserve the system of commercial communication, and whether it embodies discrimination on the basis of viewpoint.”⁸¹⁷ Blankenship concluded the 1999 decision in *Harjo v. Pro-Football, Inc.* that the mark “Redskin” was disparaging to Native Americans within the meaning of section 2(a) of the Lanham Act was correct.⁸¹⁸

The First Amendment offers little to eliminate or restrict the use of Indigenous imagery, as Joseph Hemmer (2008) explored by testing the Amendment in terms of offensive expression, fighting words, hate speech, group libel, substantial governmental interest, and commercial speech.⁸¹⁹ Laurie Whitt (1995) argued, “law has never been separate from politics” as it always “provided the legitimating rationale for territorial and cultural imperialism and for the privatization of Indigenous land and resources.”⁸²⁰ As Whitt explained, by declaring Indigenous knowledge and culture to be part of the public domain, free and available for anybody, the dominant culture sets the legal status to transform the knowledge and culture into the private property of single persons or companies and, consequently, into profit. Like the concept of *terra nullius* before, the concept of public domain nowadays plays a crucial role in the dispossession and commodification of Indigenous resources.⁸²¹ Richard Delgado and Jean Stefancic agreed that, while the First Amendment was helpful in small, clearly limited discussions, it had the opposite effect and inhibited social reform when it came to systemic grievances such as racism or sexism.⁸²² Hemmer concluded, “Efforts to limit the use of such symbols might be better served by appeals based on moral and ethical standards, appeals that are directed at the conscience of the symbol user.”⁸²³

Since the early 2000s, law professionals started debating the concept of cultural property as it clashed with the legal understanding of intellectual property rights of individuals. Stephen Osborne (2003) argued that cultural resource laws such as NAGPRA and the Indian Child Welfare Act of 1978 indeed acknowledged “communal rights for tribal peoples, but their focus on tangible resources (artifacts and children, respectively) leaves stories, songs and

⁸¹⁵ Michelle B. Lee, “Section 2(A) of the Lanham Act as a Restriction on Sports Team Names: Has Political Correctness Gone Too Far?” *Sports Law Journal* 4 (1997): 80.

⁸¹⁶ Lefstin, “Note: Does the First Amendment Bar Cancellation of Redskins?” 665.

⁸¹⁷ *Ibid.*, 708.

⁸¹⁸ Cf. Justin Blankenship, “Note. The Cancellation of Redskins as a Disparaging Trademark: Is Federal Trademark Law an Appropriate Solution for Words That Offend?” *University of Colorado Law Review* 72, no. 1 (2001): 418.

⁸¹⁹ Cf. Hemmer, “Exploitation of American Indian Symbols,” 137.

⁸²⁰ Whitt, “Cultural Imperialism,” 22.

⁸²¹ Cf. Whitt, “Cultural Imperialism,” 19.

⁸²² Cf. Richard Delgado and Jean Stefancic, eds., “Images of the Outsider in American Law and Culture: Can Free Expression Remedy Systemic Social Ills?”, in *Critical Race Theory: The Cutting Edge* (Philadelphia: Temple University Press, 2013), 323, 327.

⁸²³ Hemmer, “Exploitation of American Indian Symbols,” 137.

ceremonies unprotected.” Meanwhile, the power of law was limited as employing “intellectual property law to prevent appropriation and commodification by outsiders could, ironically, end up freezing cultures into static commodities.” Since the law was more helpful in preserving objects than meanings, Osborne agreed with other researchers that the people who produced and understand their culture should have control over the protection of their cultural property.⁸²⁴ Jason Zenor (2019) highlighted tribal sovereignty as companies should be obligated to get Indigenous permission to use their cultural property, and if they fail to do so, tribal courts should have the power to prevent the use.⁸²⁵ While this procedure might violate the First Amendment, it does not apply to tribes as sovereign nations. However, “Extending the tribal court’s jurisdiction to non-tribal members is worrisome for civil libertarians.”⁸²⁶

To prevent the use of Hopi culture by non-Indigenous people for marketing purposes, David Howes (1996) recommended the same strategy American celebrities used to market their personalities, the right of publicity. In his opinion, it should not be difficult to meet the criteria for the protection of the right of publicity, that is, a “name or likeness has publicity value;” the Hopi themselves have “exploited” this name or likeness in a way that demonstrates their “recognition of the extrinsic commercial value;” and this right of publicity was appropriated without consent for marketing or trade purposes.⁸²⁷ However, as Anglo-American law rejected traditional Indigenous belief systems as anachronistic and, thus, applied a different understanding of “Ordinary Sensibilities,” the efficacy of the right to privacy was limited, Howes argued.⁸²⁸ Additionally, the U.S. Government Accountability Office found it complicated to substantiate the claim of invasion of the right of privacy because a tribe would have to show how the alleged misrepresentation was “unreasonable and highly objectionable publicity that attributes to the tribe false characteristics, conduct, or beliefs and thereby places the tribe in a false position before the public.”⁸²⁹

Another legal option discussed by the GAO was state trade secret laws as part of the intellectual property legislation that “would apply equally to Indian traditional knowledge and cultural expressions if they were kept secret and had some economic value.” The GAO, however, was not aware of any case.⁸³⁰ Antonia M. De Meo (1994) hinted at the necessity to enact export regulations “to ensure that cultural property is also protected in international markets.”⁸³¹ Apart from the technical and practical legal obstacles, De Meo identified public ignorance as the most pervasive hindrance because mainstream American culture and religion were separable. She believed, “If Americans could begin to empathize with Native Americans, then the biggest obstacle to the cultural preservation problem would be solved” as they “would stop collecting artifacts for sport, report more occurrences of archaeological site destruction, and return more guilty verdicts as jurors.”⁸³²

⁸²⁴ Osborne, “Protecting Tribal Stories,” 236.

⁸²⁵ Cf. Zenor, “Tribal (De) Termination?” 103.

⁸²⁶ Ibid., 103-104.

⁸²⁷ Howes, “Cultural Appropriation and Resistance in the American Southwest,” 154.

⁸²⁸ Cf. *ibid.*, 147-148.

⁸²⁹ U.S. Government Accountability Office, “Indian Arts and Crafts,” 26.

⁸³⁰ Ibid., 26.

⁸³¹ De Meo, “More Effective Protection,” 71-72.

As De Meo explained, many “art-rich, third world countries have strict export regulations or total export prohibitions, while art-poor, importing countries encourage free trade.” U.S. laws support free trade as an art importing nation but it also faced losses from the looting of Civil War and Native American sites. *Ibid.*, 2.

⁸³² Ibid., 70-71.

As U.S. intellectual property laws did not provide sufficient protection, the GAO searched for pioneering examples in other countries. It found that Australia and Nigeria had developed a legal basis for protecting Indigenous intellectual property but lacked research and funding.⁸³³ In Panama, Indigenous communities could “register their collective rights with a government office and [prohibit] unauthorized third parties from holding exclusive rights in indigenous traditional knowledge and cultural expressions.”⁸³⁴ Protecting the intangible intellectual property of Indigenous peoples, New Zealand’s Trade Marks Act of 2002 prohibited the “Commissioner of Trade Marks from registering a trademark” when it is “likely to offend a significant section of the community.” Furthermore, the Commissioner had to establish a “committee comprising those knowledgeable about indigenous matters to advise the Commissioner” if the “derivative of an indigenous sign, text, or image is, or is likely to be, offensive to indigenous groups.”⁸³⁵

Additionally, the GAO proposed several international conventions that might protect Indigenous intellectual property. Suggestions included the Bern Convention for the Protection of Literary and Artistic Works, the World Intellectual Property Organization Performances and Phonograms Treaty, and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). UNDRIP, for instance, vested Indigenous people with “the right to maintain, control, protect, and develop their intellectual property over their cultural heritage, traditional knowledge, and traditional cultural expression.” The GAO also deemed UNESCO’s Convention for the Safeguarding of Intangible Cultural Heritage useful because it “requires parties to ensure that intangible cultural heritage is safeguarded, including its protection and promotion, through identification, inventory, and other measures,” although the U.S. was not a party of this convention. The Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, which was established in 2000 by the World Intellectual Property Organization (WIPO) to ensure “the protection of (1) traditional knowledge, (2) traditional cultural expressions and expressions of folklore, and (3) genetic resources,” offered opportunities for protection. However, the U.S. would not likely join because “protection of folklore raises significant concerns for the public domain and for stakeholders such as libraries and the motion picture industry.”⁸³⁶

David J. Stephenson (2001) noted a rising number of international human rights laws such as UDHR and UNDRIP, intellectual property rights laws such as the IACA, and similar ethical declarations and codes to protect Indigenous intellectual property rights.⁸³⁷ The Universal Declaration on Human Rights (UDHR), adopted in 1948 by the United Nations General Assembly, provides some legal protection for Indigenous intellectual property. According to Stephenson, Article 17 provides the “Right to Collective Property,” Article 23 the right to fair compensation for work, and Article 27 the right to benefit from moral and material interests

⁸³³ Australia: The Arts Law Centre of Australia developed an Indigenous intellectual property ‘toolkit’ which was stopped because it lacked funding.

Nigeria: A copyright act aimed to protect expressions of folklore for commercial purposes or outside their traditional context against “(1) reproduction; (2) communication to the public by performance, broadcasting, distribution by cable or other means; and (3) adaptations, translations, and other transformations,” but, as the report noted, the law has probably never been used.

U.S. Government Accountability Office, “Indian Arts and Crafts,” 29-31.

⁸³⁴ Ibid., 29.

⁸³⁵ Ibid., 30.

⁸³⁶ Ibid., 25-28.

⁸³⁷ Cf. Stephenson, “Intellectual Property Piracy,” 332.

from artistic, literary, and scientific production, which were pertinent to the protection, although partially only to a limited extent.⁸³⁸ Meanwhile, obstacles such as litigation costs and adequate compensation for injuries to an entire cultural tradition remained.⁸³⁹

After 20 years of deliberation, the General Assembly of the United Nations finally adopted the Declaration on the Rights of Indigenous Peoples in 2007.⁸⁴⁰ This “nonbinding document . . . sets out the individual and collective rights of the estimated 370 million indigenous peoples in the world in matters of self-determination, culture, identity, language, employment, health, education, and other issues.”⁸⁴¹ While 143 countries voted in favor of the declaration and eleven abstained, Australia, Canada, New Zealand, and the United States voted against it. In 2009 and 2010, respectively, the four remaining states accepted and signed the declaration – the United States being the last to do so.⁸⁴² However, the 2012 “Indigenous Elders and Medicine Peoples Council Statement” demanded that “Real enforcement mechanisms must be created. Legal authority without enforcement is meaningless.”⁸⁴³

Although no plaintiff has applied UNDRIP so far, one commenter based his criticism on the human rights law. Calvin Spotted Elk responded to Victoria’s Secret’s apology posted on Facebook, “Scanning the comments I see a lot of people thinking that this is about being politically correct but not understanding that this is part of a larger human rights issue” which had been addressed by the United Nations. He expressly referred to Article 15 stating that “Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations WHICH SHALL BE APPROPRIATELY REFLECTED IN EDUCATION AND PUBLIC INFORMATION.” Furthermore, “States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.”⁸⁴⁴ Beyond Article 15, UNDRIP provided several sections to protect Indigenous intellectual property against cultural appropriation and challenge offensive marketing representations. Marketing practices undermined a range of principles protected by the UN Declaration, such as equality, dignity, sovereignty over their identity and culture, and the appropriate reflection of Indigenous diversity in public information.

⁸³⁸ Article 17 provides that “everyone has the right to own property alone as well as in association with others.” Article 23 provides the “fundamental basis for any claim that one should be fairly compensated for one’s efforts, whether of a tangible or more intangible, intellectual, nature.” Article 27, the right to benefit from moral and material interests from artistic, literary, and scientific production, “is the most directly pertinent to IPR. It recognizes the right to benefit from both artistic and scientific productions and that the right to benefit from such productions is a fundamental, global human right. However, it assumes that all such production will be by individuals and thus fails to address or anticipate the communal claims to such benefits of indigenous peoples.” Stephenson, “Intellectual Property Piracy,” 325. See also United Nations General Assembly, “Universal Declaration of Human Rights,” accessed August 6, 2021, <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

⁸³⁹ Cf. *ibid.*, 332.

⁸⁴⁰ See United Nations General Assembly, “United Nations Declaration on the Rights of Indigenous Peoples,” in *First Peoples: A Documentary Survey of American Indian History*, ed. Colin Calloway (Boston/New York: Bedford/St. Martins, 2012), 683-689.

⁸⁴¹ Calloway, *First Peoples*, 681.

⁸⁴² Cf. *ibid.*, 681.

⁸⁴³ Shawn Mulford, “The Significance of the Declaration on the Rights of Indigenous Peoples,” *Indigenous Action*, April 30, 2012, accessed June 14, 2016, <http://www.indigenousaction.org/the-significance-of-the-declaration-on-the-rights-of-indigenous-peoples>.

⁸⁴⁴ Calvin Spotted Elk on Victoria’s Secret, “We are sorry that the Native American headdress replica used in our recent fashion show has upset individuals,” *Facebook*, November 10, 2012, accessed July 25, 2016, <https://www.facebook.com/victoriasssecret/posts/10151263247814090>.

According to UNDRIP, Native peoples have the “right to maintain, protect and develop the past, present and future manifestations of their cultures” (Art. 11). They also have the “right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions” and their intellectual property over these (Art. 31).⁸⁴⁵ Natives have the right to “own, use, develop and control the . . . resources that they possess [such as artistic and spiritual traditions like visual arts, crafts, and mythology⁸⁴⁶] by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired”⁸⁴⁷ (Art. 26). Since Native Americans were “free and equal to all other peoples and individuals,” (Art. 2) they have the inherent “right to be free from any kind of discrimination, . . . in particular based on their indigenous origin or identity.” Article 7 vests the “collective right to live in freedom, peace and security as distinct peoples” and prohibits any “act of violence.”⁸⁴⁸

In 2005, the American Psychological Association called for the “immediate retirement of all American Indian mascots, images, and symbols”⁸⁴⁹ because racist stereotyping harmed the physical and mental well-being especially of young Native Americans. The call demonstrates the scientific recognition of a link between the omnipresent harmful Indigenous imagery in popular media reflecting and shaping popular beliefs on one side and its effects on “daily human relationships and individual self-esteem” on the other. This link results in “‘more tangible’ problems such as alcohol abuse, college and high school dropout rates, unemployment, poverty, and, some would argue, the treatment of Native people by state and local governments and of Native issues by the courts.”⁸⁵⁰ A discriminatory governmental treatment of Native Americans would impede the state’s obligation to actively support Indigenous peoples by preventing and redressing for any “form of propaganda designed to promote or incite racial or ethnic discrimination directed against them”⁸⁵¹ (Art. 8).

Discussing whether social values or the law had to change first to challenge Native American misrepresentation, cultural appropriation, or both, some scholars argued that society or social values had to change first, and then lawmakers would adapt the laws. Others maintained law had to be adjusted first to induce societal change. Milchan believed U.S. society first had to learn about cultural differences before intellectual property laws were changed.⁸⁵² According to De Meo, empathy was key so citizens would return more guilty verdicts as jurors⁸⁵³ instead of the government implementing and enforcing laws to protect cultural property. On the other side, scholars argued it might be necessary first to change the law to establish values adapted to new circumstances and ways of thinking, thereby altering U.S. citizens’ societal values. Susan Scafidi (2005) explained law functions not exclusively as a judge and jury to decide cases but also as a pedagogue to establish values. For if “the law states that cultural products

⁸⁴⁵ United Nations General Assembly, “Declaration on the Rights of Indigenous Peoples,” 684; 687.

⁸⁴⁶ Cf. Solomon E. Salako, *The UN Declaration On Indigenous Peoples’ Rights* (bookboon, 2014), 23, accessed December 31, 2020, <https://bookboon.com/en/the-un-declaration-on-indigenous-peoples-rights-ebook>.

⁸⁴⁷ United Nations General Assembly, “Declaration on the Rights of Indigenous Peoples,” 686.

⁸⁴⁸ *Ibid.*, 683.

⁸⁴⁹ Calloway, *First Peoples*, 667.

⁸⁵⁰ *Ibid.*, 666-667.

⁸⁵¹ United Nations General Assembly, “Declaration on the Rights of Indigenous Peoples,” 684.

⁸⁵² Cf. Milchan, “Whose Rights Are These Anyway?” 171.

⁸⁵³ Cf. De Meo, “More Effective Protection,” 71.

are valued creations of their source communities, should be treated with respect according to the norms of those source communities, and yet should in most cases be accessible in the public domain for civic reasons, then well-intentioned members of society are afforded guidelines for civil interaction.”⁸⁵⁴ Concerning civil rights law, the *Harvard Law Review* Note reasoned the “fundamental purpose of remedial civil rights legislation is to alter the majority group’s actions and notions of social propriety to conform to a legislatively prescribed code of conduct.”⁸⁵⁵

While much “has been written about indigenous knowledge and intellectual property rights (IPRs) in fields like anthropology and law, . . . it remains an under-examined topic in business and management literature,”⁸⁵⁶ David Orozco and Latha Poonamallee (2014) detected. If marketers wanted to make use of Indigenous knowledge, Orozco and Poonamallee suggested to “adopt a voluntary screening process for disclosing the origin of the knowledge” and “approach this process from a joint benefit sharing model with key stakeholders.”⁸⁵⁷ Furthermore, companies might “develop cooperative ownership structures for productive business enterprises that generate employment and economic value to the community and respect indigenous community’s dignity and autonomy.”⁸⁵⁸

Calling for ethical standards in business, Michael K. Green (1993) discussed the use of Indigenous stereotypes for marketing purposes from a moral standpoint. Native American advertising images often relied on stereotypes like the nature-loving ‘noble savage’ in the Land O’ Lakes commercials. Green explained, according to the “traditional conception of morality . . . mere natural objects have no moral standing” and Native Americans as natural objects needed to “be saved from their animal-like existence by the knowledge of the West.”⁸⁵⁹ In its unique way, such commercials and ads “deny the humanness of the Native Americans.” From the moral perspective, Green concluded that the use of Indigenous peoples and cultural objects for marketing purposes that fails to acknowledge Indigenous humanity must be rejected. By denying humanity to Native Americans, advertising “den[ies] to them the possibility of receiving the moral standing and treatment that is due to them as human beings.”⁸⁶⁰ To this day, only two articles in the business sector have called for moral standards in marketing in the context of Indigenous misrepresentation and cultural appropriation.

The growing body of legal discussions focusing on how to legally protect intellectual property and prevent the appropriation and misrepresentation of Indigenous cultural elements demonstrates an increasing interest, particularly in the legal sector, to promote Native issues. Most scholars were interested in finding ways within the U.S. legal system to support critics of marketing practices, though often concluding that the laws in their current interpretation did not fit Indigenous needs. Some proposals, like applying state trade secret laws, have yet to be tested in practice. Many pointed out that broadening the definitions of basic categories would be sufficient to make laws successfully applicable to Indigenous concerns, while others favored *sui generis* laws tailored explicitly to Indigenous needs. Only a few scholars like Os-

⁸⁵⁴ Scafidi, *Who Owns Culture?*, 155.

⁸⁵⁵ “A Public Accommodations Challenge,” 920.

⁸⁵⁶ Orozco and Poonamallee, “The Role of Ethics,” 275.

⁸⁵⁷ *Ibid.*, 284.

⁸⁵⁸ *Ibid.*, 285.

⁸⁵⁹ Green, “Images of Native Americans in Advertising,” 328.

⁸⁶⁰ *Ibid.*, 329.

borne and Sheffield analyzed unintentional side effects of laws meant to protect Indigenous cultures, pointing to the limitations of what law can accomplish.

Some scholars provided alternative recommendations after concluding that the legal means discussed would likely not be successful. Hemmer's recommendation of moral appeals directed at the symbol user relies on the marketers' understanding and goodwill but can be effective, as this study demonstrates. Dinisha L. Fernando (2013) suggested seal programs granting Native groups more control over the use of their cultural assets, which the government might develop in cooperation with Indigenous groups.⁸⁶¹ A look at the IACB's attempt to create trademarks might provide further insights. Brown proposed market-driven remedies to effect change by "affecting the economic structure of a major industry." Consequently, "attention to profit maximization may mean addressing socially sensitive issues."⁸⁶² In agreement with Hughey and Chu, this study finds the combination of direct appeals to marketers, legal action, protests, political lobbying, educational initiatives, and informal negotiations to be most promising to protect Indigenous cultural assets. Ideally, increasing awareness of Indigenous cultural property would lead to collaborations between corporations and Native tribes, as recommended by Schüssel, like the partnership between the Tlingit tribe and Mattel, where tribes could keep control of and license particular styles and images.⁸⁶³

The growing interest in protecting Indigenous intellectual property was not limited to tribal names, designs, and symbols. Robert J. Miller (2002) predicted intellectual property issues would rise in the future, with a growing interest in protecting tribal and individual songs, totems, crests, stories, and local knowledge of healing plants, traditional seeds and crops.⁸⁶⁴ Stephenson noted Indigenous peoples will "increasingly be weaving such [intellectual property] laws, declarations, and codes into strong advocacy positions. . . . [T]he extent that they successfully do so will reflect an objective, relatively universally accepted measure of their right to compensation for their intellectual property that heretofore has largely escaped their collective grasps."⁸⁶⁵

4. Indigenous Entrepreneurship and the Enforcement of the Indian Arts and Crafts Act

While casino revenue was the starting point for many tribes, Native Americans diversified their entrepreneurship and sources of income. For instance, after tribes fought unsuccessfully for the exemption of New York state's taxation of name-brand cigarettes sold on reservations, they started manufacturing their own cigarettes. Although the state had a right to tax Indian-made cigarettes sold to Non-Indians, governors failed to collect taxes from tribes and focused on enforcement efforts elsewhere.⁸⁶⁶ In 1994, Indigenous entrepreneurs started producing Smokin Joes on the Tuscarora reservation in New York. Other brands like Cayuga, Seneca, Buffalo, Omaha, and Native followed, which tribes sold in their convenience stores much

⁸⁶¹ Cf. Fernando, "Protection of Indigenous Culture in the United States and New Zealand," 151.

⁸⁶² Brown, "Native American Team Names and Mascots," 130.

⁸⁶³ Cf. Schüssel, "Copyright Protection's Challenges," 336.

⁸⁶⁴ Cf. Miller, "American Indian and Tribal Intellectual Property Rights."

⁸⁶⁵ Stephenson, "Intellectual Property Piracy," 332.

⁸⁶⁶ Cf. Thomas Kaplan, "In Tax Fight, Tribes Make, and Sell, Cigarettes," *The New York Times*, February 23, 2012, A1.

cheaper than non-Indian retailers. As sales shifted from smoke shops and small-town markets to websites, access to cigarettes became more convenient and at about one-fifth the cost of cigarettes bought in grocery stores.⁸⁶⁷ Unlike other brands, Native-brand cigarettes were “colorful, attractive, eye-catching, and appealing to ethnic pride,” and the sale represented a “sizeable source of income for some tribes and American Indian entrepreneurs.”⁸⁶⁸

Ho-Chunk Inc. packaged, stamped, and marketed cigarette brands like Omaha and Smokin Joes on their website *AllNative.com*, which generated 8 million dollars in 2004. From “the very beginning, the goal has been to provide the Winnebago Tribe with enough of a revenue stream, through non-gaming business ventures, to create employment opportunities on and off the reservation and enable the tribe to reach total economic self-sufficiency.”⁸⁶⁹ Since its foundation in 1994, Ho-Chunk has become a formidable employer with ventures such as Ho-Chunk Trading Group, including companies that manufacture and distribute Native American tobacco products, crafts, and food to other tribes throughout the United States, real estate investment and management company Ho-Chunk Capital, system builder Dynamic Homes, Ho-Chunk Construction Group, the full-service marketing and public relations firm Blue Earth Marketing, and online news organization *Indianz.com*⁸⁷⁰ with the total revenue of 290 million dollars in 2019 at their 25th anniversary.⁸⁷¹ The Ho-Chunk Nation assisted Native American Arts Inc. in becoming the first to use the IACA successfully.

4.1 Civil Enforcement of the Indian Arts and Crafts Act

Since the 1990s, not only “Indian tribes assumed greater responsibility over their own affairs, developed their own businesses, and planned for their futures,”⁸⁷² but also Indigenous businesses and individuals. Beginning in the late 1990s and over two decades of legal resistance, Native American Arts Inc. became the most vigorous business opponent of producers and distributors misrepresenting products as being Indian-made. On April 2, 1996, Mary Mullen and her son Matthew Mullen, enrolled members of the Ho-Chunk (Winnebago) Nation, incorporated Native Americans Arts (NAA). Native American Arts was a wholly Native-owned business located in Illinois distributing authentic Indian arts and crafts. As the company comprised members of the Ho-Chunk Nation, a Native American tribe recognized by the BIA, NAA was an Indian arts and crafts organization as defined by the IACA.⁸⁷³ “Finding it difficult to compete with stores that were misrepresenting unauthentic goods as real Indian arts

⁸⁶⁷ Cf. Felicia S. Hodge et. al, “American Indian Internet Cigarette Sales: Another Avenue for Selling Tobacco Products,” *American Journal of Public Health* 94, no. 2 (February 2004): 260.

⁸⁶⁸ *Ibid.*, 260.

⁸⁶⁹ David Melmer, “Beyond business as usual,” *Indian Country Today*, May 4, 2005, C1; see also “History,” Ho-Chunk, Inc., accessed February 28, 2021, <https://hochunkinc.com/history.php>.

⁸⁷⁰ See “Housing/Construction,” Ho-Chunk, Inc., accessed February 28, 2021, <https://hochunkinc.com/housing-construction.php>; “Commercial Markets,” Ho-Chunk, Inc., accessed February 28, 2021, <https://hochunkinc.com/commercial-markets.php>.

⁸⁷¹ Cf. “2019 Annual Report,” Ho-Chunk, Inc., accessed February 28, 2021, 24, <https://hochunkinc.com/annual-report-2019/2019-Ho-Chunk-Annual-Report-web.pdf>.

⁸⁷² Calloway, *First Peoples*, 633.

⁸⁷³ Cf. *Ho-Chunk ex rel. Native American Arts, Inc. v. Nature’s Gifts, Inc.*, No. 98 C 3951, 1999 WL 169319, at *3 (N.D.Ill. Mar. 19, 1999).

and crafts,”⁸⁷⁴ attorney Michael Patrick Mullen of Mullen & Foster, Chicago, in 1998 filed the first of many lawsuits alleging violation of the Indian Arts and Crafts Act.

The three amendments to the IACA⁸⁷⁵ increasing penalties and expanding enforcement of the act provided the legal foundation for NAA’s progressively successful legal actions. The first amendment of 1990 made the knowing misrepresentation of Indian products a felony rather than a misdemeanor by adding civil remedies and increasing the criminal penalties. Furthermore, it empowered Indian tribes, individual Native Americans who were a member of the tribe, and Indian arts and crafts organizations to sue on their behalf. The amendment allowed the IACB to refer cases to the FBI to investigate allegations and, subsequently, to the Attorney General to prosecute violations. The following amendment of 2000 authorized Indian arts and crafts organizations and individual Indians to file civil suits on their own and against any organization involved in the distribution chain of the misrepresented product, regardless of whether or not they were in direct competition. In 2010, the third amendment again increased penalties and authorized all federal law enforcement officials to investigate fraud complaints.⁸⁷⁶ One of the first major and successful cases was a lawsuit against J.C. Penney at a U.S. District Court in Illinois in 1998-99.

Case Study 7: J.C. Penney (1998-99)

Case Study 7: J.C. Penney (1998-99)

As Native American Arts claimed, since 1990, “several Penney’s stores in Illinois have sold imitation Indian arts and crafts that the stores misrepresent as genuine Indian-made products, including Indian-style baskets, feather earrings, necklaces, pendants, and statues.”⁸⁷⁷ NAA sued J.C. Penney for violating the IACA, the Illinois Consumer Fraud and Deceptive Business Practices Act, and the Illinois Uniform Deceptive Business Practices Act. Adding state laws to protect consumers from fraud became a common practice that the IACB had already recommended to Indigenous complainants when federal agencies could not enforce the IACA. NAA sought more than \$60 million in statutory damages for this misrepresentation.⁸⁷⁸

As NAA lacked standing under the IACA of 1990, the Ho-Chunk Nation joined and sued on behalf of the company.⁸⁷⁹ Safeguarding against financial loss, J.C. Penney filed a third-party complaint against several suppliers.⁸⁸⁰ The company “denied any liability to the Plaintiffs, but asserted, *inter alia*, that if it is ultimately found liable to the Plaintiffs . . . , any such liability arose

⁸⁷⁴ U.S. Government Accountability Office, “Indian Arts and Crafts,” 17.

⁸⁷⁵ See Indian Arts and Crafts Act of 1990, Pub. L. 101-644, 4662 Stat. 104, November 29, 1990, accessed December 28, 2019, <https://www.congress.gov/bill/101st-congress/house-bill/2006/text>; Indian Arts and Crafts Enforcement Act of 2000, Pub. L. 106-497, 2219 Stat. 114, November 9, 2000, accessed December 28, 2019, <https://www.congress.gov/bill/106th-congress/senate-bill/2872>; Indian Arts and Crafts Amendments Act of 2010, Pub. L. 111-211, 2258 Stat. 124, July 29, 2010, accessed December 28, 2019, <https://www.congress.gov/bill/111th-congress/house-bill/725/text>.

⁸⁷⁶ Cf. U.S. Government Accountability Office, “Indian Arts and Crafts,” 1-3.

⁸⁷⁷ *Native American Arts, Inc. v. J.C. Penney Co.*, 5 F.Supp.2d 599, 600 (N.D.Ill. 1998).

⁸⁷⁸ Cf. *Native American Arts, Inc. v. Adobe Moon Arts, Inc.*, No. 00 C 5267, 2001 WL 55544, at *600 (N.D.Ill. Jan. 18, 2001).

⁸⁷⁹ Cf. *Ho-Chunk Nation v. J.C. Penney Co., Inc.*, No. 98 C 3924, 1998 WL 774118 (N.D.Ill. Oct. 29, 1998).

⁸⁸⁰ Third-party defendants in the J.C. Penney case were ABQ Trading Co.; Colorado Cactus; Sky Creations, Inc. dba Earthtones; Kabana, Inc.; Lazart; Shube’s Manufacturing, Inc.; Russ Chambers; Southwest Indian Art, Inc. See *Ho-Chunk Nation v. J.C. Penney Co., Inc.*, No. 98 C 3924, 1999 WL 495899 (N.D.Ill. Jul. 2, 1999).

from the misconduct of its suppliers” because J.C. Penney declaredly “did not manufacture, design, alter or create any of the goods in question.”⁸⁸¹ The retailer brought four causes against the third-party defendants: contribution, violation of the Consumer Fraud Act, breach of contract, and violation of the implied warranty of merchantability.⁸⁸²

The agreement between J.C. Penney and NAA included a payment of \$1 million to NAA and the assignment of Penney’s rights against the third-party defendants who did not agree to the settlement.⁸⁸³ Some suppliers like Nancy Flodine (Natural Wonders)⁸⁸⁴ and Moon Arts⁸⁸⁵ refused to settle. NAA and Penney “determined that \$2,160,000 would be attributed to Flodine as a fair settlement amount for her liability to Penney was \$2,160,000.”⁸⁸⁶ After a court decided that Flodine’s insurer, State Farm Insurance Co., had the duty to defend Natural Wonders,⁸⁸⁷ she also entered into an agreement with NAA. Flodine paid \$500 and assigned her indemnification rights to NAA against her insurer. A final lawsuit ruled that “Flodine was reasonable in her anticipation of liability”⁸⁸⁸ and State Farm had a duty to indemnify, but the judge could not decide if the settlement amount was reasonable. Due to the typically confidential nature of settlements, the final settlement is unknown, but it is safe to assume that NAA received at least \$1 million from the lawsuit against J.C. Penney.

Defendants often sought to pass on responsibility and financial compensation from merchants to suppliers and insurers. The smaller suppliers tended to accept liability and assigned their claims against insurers to NAA, if they had one, to avoid a trial and potentially high costs. Insurers, in turn, tried delegitimizing the agreement and applying exclusions from the policy. While State Farm could not successfully apply one of the exclusions in the policy to the case,⁸⁸⁹ Hartford Casualty Insurance and Great American Insurance were more successful in fighting off a lawsuit brought by NAA against Stravina Operating Co. (2001-03). Under two settlement agreements between Stravina and NAA, the company agreed to pay NAA \$150,000 and a settlement value of \$3 million to assign Stravina’s claims against its insurers to NAA.⁸⁹⁰ The two separate actions NAA filed against Hartford and Great American as defendants resulted in a summary judgment in favor of the insurers, which granted policy exclu-

⁸⁸¹ Ibid., at *1.

⁸⁸² “Contribution; Violation of the Consumer Fraud Act, 815 ILCS 505/2 (West 1994); Breach of Contract; and Violation of the Implied Warranty of Merchantability, 810 ILCS 5/2-314 (West 1994).” Ibid., at *2.

⁸⁸³ Cf. *Flodine v. State Farm Ins. Co.*, No. 99 C 7466, 2003 WL 1394977, at *2 (N.D.Ill. Mar. 19, 2003).

⁸⁸⁴ *Flodine v. State Farm Ins. Co.*, No. 99 C 7466, 2001 WL 204786 (N.D.Ill. Mar. 1, 2001); *Flodine v. State Farm Ins. Co.*, No. 99 C 7466, 2003 WL 1394977 (N.D.Ill. Mar. 19, 2003).

⁸⁸⁵ *Native American Arts, Inc. v. Adobe Moon Arts, Inc.*, No. 00 C 5267, 2001 WL 55544 (N.D.Ill. Jan. 18, 2001).

⁸⁸⁶ *Flodine v. State Farm Ins. Co.*, No. 99 C 7466, 2003 WL 1394977, at *2 (N.D.Ill. Mar. 19, 2003).

⁸⁸⁷ *Flodine v. State Farm Ins. Co.*, No. 99 C 7466, 2001 WL 204786, at *13 (N.D.Ill. Mar. 1, 2001).

⁸⁸⁸ *Flodine v. State Farm Ins. Co.*, No. 99 C 7466, 2003 WL 1394977, at *11 (N.D.Ill. Mar. 19, 2003).

⁸⁸⁹ 1. “Penney’s complaint alleges that Flodine willfully violated the IACA, which State Farm contends is a penal statute. However, the IACA has been held to be a strict liability statute, which requires no proof of intent.”

2. “State Farm’s argument that any alleged advertising injury arose from a breach of contract is unavailing.”

3. “‘the failure of goods, products or services to conform with advertised quality or performance.’ State Farm asks the court to read ‘quality’ to mean ‘attribute,’ arguing that ‘the representation that a product is an authentic Native American product is a ‘quality’ of that product. ... Though trademarks and/or designations of authenticity can be indicators of quality (in the sense of excellence) to consumers, they are primarily concerned with identifying the source or origin of goods, not how well the goods will perform.”

Flodine v. State Farm Ins. Co., No. 99 C 7466, 2001 WL 204786, at *12 (N.D.Ill. Mar. 1, 2001).

⁸⁹⁰ Cf. *Native American Arts, Inc. v. Hartford Cas. Ins. Co.*, No. 03 C 7233, 03 C 7234, 2004 WL 2065065, at *1 (N.D.Ill. Sep. 10, 2004).

sion from advertising injury coverage.⁸⁹¹ In this case, NAA received the settlement amount of \$150,000 but lost the assignment deal.

Although lawsuits usually targeted non-Native companies, NAA did not avoid Native retailers. Bear Tracks (2001-03), one of several defendants in a lawsuit brought by NAA, was a company operating retail establishments in the Northern District of Illinois that sold arts, crafts, and jewelry. It violated the IACA and the American Indian Arts and Crafts Enforcement Act (IACEA) by “offering, displaying for sale and selling arts, crafts and jewelry in a manner that falsely suggests the goods were Indian-made,”⁸⁹² as the suit stated. Bundy-Howard dba Bear Tracks filed a cross-claim against its codefendants⁸⁹³ and a third-party complaint against Waldron Corp. and Sandstone Creations. Bear Tracks sought to “lay off . . . part or all of its potential liability” to NAA since it “exhibits the assertedly offending goods for sale only in the condition that its suppliers . . . have delivered them.”⁸⁹⁴ While Bear Tracks’ equitable claim of implied indemnity survived, the court dismissed its claims seeking indemnity under the acts as a Native arts organization. The court reasoned Bear Tracks’ claims were “empty of merit,” and the business attempted “to wrap itself in the mantle of the Acts’ protection on the basis that it is itself an Indian arts and crafts organization.” However, “that effort ignores the fact that even such organizations can violate the Acts by infringing on the statutory rights of other such organizations . . . Bear Tracks – as an asserted violator of the Acts – is by definition not a member of the class for whose benefit Congress passed the Acts.”⁸⁹⁵

Since NAA brought lawsuits against large corporations and small resellers, the case of a self-described small online retailer under the pseudonym britestar adds insights into NAA’s methods to find and pursue potential offenders. When NAA sued the seller for \$6 million for violating the IACA by selling an imported “Navajo Lamp” featuring Navajo-style patterns, britestar turned to the online community at *FatWallet.com* for help. According to his description, NAA had ordered the items for evidence or to examine whether the labeling as a Native product was legitimate. While the IACB usually sent cease and desist notifications or letters of complaint before taking further action, NAA allegedly had not contacted the seller before he “received a Court document with a case# and all.” After britestar found an attorney “not charging an arm and a leg,” the attorney recommended, “Most probably, settlement is the way to go.”⁸⁹⁶ Britestar was not a seller of Indigenous arts and crafts but had a few items as described above in his product portfolio. How NAA found sellers like britestar or by which criteria the company selected defendants was not evident from the various case documents, particularly since NAA sued retailers from all over the U.S. Due to the many lawsuits and seemingly low research efforts, courts started questioning NAA’s legal actions as “fishing expeditions.”

⁸⁹¹ Cf. *Native American Arts, Inc. v. Hartford Cas. Ins. Co.*, 435 F.3d 729, 735 (7th Cir. 2006).

⁸⁹² *Native American Arts, Inc. v. Bundy-Howard, Inc.*, 168 F.Supp.2d 905, 909 (N.D.Ill. 2001).

⁸⁹³ Codefendants were Feathers, Funky Fiber Works and Nine Mile Creek.

⁸⁹⁴ *Native American Arts, Inc. v. Bundy-Howard, Inc.*, No. 01 C 1618, 2002 WL 1488861, at *1, 48 UCC Rep.Serv.2d 123 (N.D.Ill. Jul. 11, 2002).

⁸⁹⁵ *Ibid.*, at *1.

⁸⁹⁶ Britestar, “Help! Native American Arts lawsuit,” *Fat Wallet*, April 7, 2010, accessed September 15, 2016, <https://www.fatwallet.com/forums/finance/998813>.

The Ho-Chunk Nation Tribal Court criticized that NAA was “utilizing the [IACA] without any research.”⁸⁹⁷ The lack of investigatory effort became apparent in multiple cases, such as in a lawsuit against Peter Stone Inc. for selling the “Wolfwalker” Collection. Wendy Whiteman, the designer of the jewelry collection, had no Indigenous heritage but claimed “spiritual roots.” Since Stone did not raise the argument of either provable or spiritual heritage, the court considered this an admission that she was not Native American. However, it struck the court that “Significantly, Ms. Whiteman was never asked if she was an Indian/Native American.”⁸⁹⁸

Similarly, in *Native American Arts, Inc. v. Aquino* (2004) the court remarked that “Devoid of any detail, these allegations appear to be nothing more than a ‘fishing expedition,’ that is, general averments of fraud cast in the hopes that subsequent discovery will uncover enough evidence to substantiate them.” Accordingly, Judge J. Grady dismissed the complaint “because plaintiff’s fraud allegations made on ‘information and belief’ are improper, and other allegations lack any particulars whatsoever.”⁸⁹⁹ As the owner and attorney of Native American Arts told the GAO, the “challenges to bringing suits are that they are costly and time-consuming” because “investigating cases and developing the evidence to meet legal requirements for civil cases . . . make for an expensive and lengthy process.”⁹⁰⁰ In contrast to the above cited cases, in a more recent lawsuit against Wal-Mart (2015), NAA “alleged that it had sent a letter to the retail giant in April demanding proof that the dream catcher earrings were designed and handmade by Native Americans, but Wal-Mart never responded to the letter and continued to sell the earrings.”⁹⁰¹

Between 1998 and 2015, NAA filed at least 125 lawsuits in the Northern District of Illinois alone, 38 of which were available for this study. Of these 38 cases, six defendants successfully challenged the legal complaint, and six were ordered to drop their marketing strategy. In one case, NAA withdrew the lawsuit “to concentrate Plaintiffs and counsel’s resources in pursuit of another related case.”⁹⁰² For 25 defendants, no recorded results were available, which indicates they may have reached confidential settlements with NAA. Drawing on the latest reported decisions by the courts, NAA most likely dropped their allegations against three defendants and obtained eight agreements.⁹⁰³ Considering only the 24 cases with known or predictable results, until 2015, NAA won fourteen and lost nine cases.

⁸⁹⁷ *Native American Arts, Inc. v. Peter Stone Co., U.S.A., Inc.*, No. 08 C 3908, 2015 WL 3561439, at *5 (N.D.Ill. Jun. 9, 2015), citing Dkt. # 249-14; Def.Ex. D-1.

⁸⁹⁸ *Ibid.*, at *3.

⁸⁹⁹ *Native American Arts, Inc. v. Aquino*, No. 04 C 2540, 2004 WL 2434260, at *3 (N.D.Ill. Oct. 29, 2004).

⁹⁰⁰ U.S. Government Accountability Office, “Indian Arts and Crafts,” 22.

⁹⁰¹ Lance Daroni, “Overstock, Sears Sell Bogus Native American Jewelry: Suit,” *Law 360*, May 18, 2015, accessed November 21, 2016, <http://www.law360.com/articles/656946/overstock-sears-sell-bogus-native-american-jewelry-suit>.

⁹⁰² *Native American Arts, Inc. v. Mangalick Enterprises, Inc.*, No. 08 C 4464, 2014 WL 2535059, at *1 (N.D.Ill. May 7, 2014).

⁹⁰³ For this estimation, the analysis considers lawsuits successful if the defendant’s motion to dismiss was denied. Typically, defendants argued there was a lack of jurisdiction or that NAA had no standing under the IACA, the complaint was untimely, and the IACA and the IACEA, respectively, was unconstitutional. These motions have been treated differently, but in recent years courts usually agreed that NAA did have standing and the Act with its amendments was constitutional. The most controversial question was whether the plaintiff was required to prove an injury in fact in order to meet the standing requirements of Article III, even though there was no requirement to prove damages. While the Seventh Circuit decided that the violation of the IACA was sufficient to confer Article III standing, the Ninth Circuit and courts in other jurisdictions contradicted that conclusion. Cf. Johnson and Nielsen, “The Indian Arts And Crafts Act.”

While most of NAA's cases seemed "short-lived and dismissed pursuant to settlement,"⁹⁰⁴ their strategy prevailed. According to NAA, the lawsuits were "highly successful, obtaining injunctions in almost every case to prevent defendants from violating the act and requiring them to include a disclaimer on imitation products or in their advertising, stating that their products are not made by Indians and are not Indian products under the act."⁹⁰⁵ In NAA's opinion, "civil action under the act is more effective than criminal prosecution to curtail misrepresentation,"⁹⁰⁶ and defendants usually complied with the injunctions. Until 2011, follow-up action was necessary in only two cases. Additionally, the successful lawsuits induced some companies to place disclaimers on their products to prevent a lawsuit.

Possible consequences of lawsuits, such as tightened investigatory requirements for retailers or online sales platforms, among others, might also have undesirable effects on Native Americans. Weighing costs, profit, and risk, it might be "easier, and safer, for such companies to avoid Indian products altogether rather than undertake the obligation of determining which products are genuine and authentic,"⁹⁰⁷ as Johnson and Nielsen stated in their IACA analysis.

Additionally, in the britestar case, online commenters reduced NAA's lawsuits to the cliché of the greedy Indian. Another user named NantucketSunrise urged commenters to re-think their posts:

I'm sad to see some of the stereotyping and hatred that oozed out of a couple of posts here (some posts appear to have been deleted since I first read this thread, or I would quote them). They were immature, violent, and unfunny. Just because a few people from a minority group do something annoying, it doesn't mean it's okay to lambast, smear – and harken back to/encourage the 'ethnic cleansing' of – that entire group of people.⁹⁰⁸

Britestar made clear that the "point of my original post was just to vent and ask for any advice. Please don't stereotype the native [sic] Americans."⁹⁰⁹ At the same time, the interpretation of the company's strategy as primarily money-driven came up also in court.

Although the IACA did not require Indigenous plaintiffs to prove damages⁹¹⁰ and entitled them to seek statutory damages, the Ho-Chunk Nation Tribal Court viewed NAA's proceedings critically. In connection with the NAA lawsuit series, the Tribal Court noted that NAA was "mainly concerned with monetary gains" and that "dollar amounts of \$1,000 per day and \$2,000,000 [were] preposterous and frivolous."⁹¹¹ Except for Matthew Mullen's statement that, over the 20 years the organization was in business, NAA had "garnered \$1.25 million in revenue from the sale of Native American arts and crafts,"⁹¹² it had never filed any

⁹⁰⁴ *Native American Arts, Inc. v. Peter Stone Co., U.S.A., Inc.*, No. 08 C 3908, 2015 WL 3561439, at *5 (N.D.Ill. Jun. 9, 2015).

⁹⁰⁵ NAA attorney, paraphrased in U.S. Government Accountability Office, "Indian Arts and Crafts," 17.

⁹⁰⁶ NAA owner and attorney, paraphrased in U.S. Government Accountability Office, "Indian Arts and Crafts," 21.

⁹⁰⁷ Johnson and Nielsen, "The Indian Arts And Crafts Act."

⁹⁰⁸ NantucketSunrise, comment on britestar, "Help!"

⁹⁰⁹ Britestar, "Help!"

⁹¹⁰ "Although Native American plaintiffs are not specifically required to prove damages under the IACA, they may still be required to prove an injury in fact in order to meet the standing requirements of Article III, at least in the Seventh Circuit." Johnson and Nielsen, "The Indian Arts And Crafts Act."

⁹¹¹ *Native American Arts, Inc. v. Peter Stone Co., U.S.A., Inc.*, No. 08 C 3908, 2015 WL 3561439, at *5 (N.D.Ill. Jun. 9, 2015), citing Dkt. # 249-14; Def.Ex. D-1.

⁹¹² *Ibid.*, at *2, citing Dkt. # 279-1, ¶ 94, # 298-2, ¶ 16.

records for profits. Thus, the calculations in *Native American Arts, Inc. v. Peter Stone Co.* (2009-15) that NAA's annual profit from selling arts and crafts did probably not exceed \$30,000 were based on estimates. NAA sought \$36 million in statutory damages from Peter Stone, "representing an amount that NAA would be unable to generate in gross revenues over the course of more than two centuries."⁹¹³ The defendant argued that NAA had "offered not a particle of proof of lost sales or lost profits or any other form of injury in fact" and was "hiding behind a faulty claim of privilege."⁹¹⁴ Stone had challenged that privilege as unconstitutional in 2009, but the court defended the constitutionality of the IACEA, reasoning that

As long as the special treatment can be tied rationally to the fulfillment of Congress's unique obligation toward the Indians, such legislative judgments will not be disturbed. Here, where the preference is reasonable and rationally designed to further Indian self government, we cannot say that Congress's classification violates due process.⁹¹⁵

Irrespective of NAA's agenda, the court found that "there is nothing inherently wrong with a zealous private attorney general." And "certainly, in view of the absence of governmental enforcement in the first 60 years of the statute's existence, . . . if any statute ever needed a boost in terms of enforcement, it's the IACA."⁹¹⁶

Pointing to a lawsuit against Overstock.com and Sears, among others, which NAA had filed in 2015 to seek over \$75 million for 15 misrepresented products, Johnson and Nielsen called attention to the "potential staggering impact of a statutory damages model involving multiple defendants and multiple products."⁹¹⁷ The article "Dangerous Territory: How the Indian Arts and Crafts Act Can Ruin Your Business" analyzed the history of cases brought by NAA and advised business owners how to fend off the "oppressive statute." It demonstrated NAA's impact on law enforcement and the "gravity of what [was] at stake" for wholesalers, retailers, manufacturers, and sellers of Indian-themed products.⁹¹⁸

4.2 Criminal Enforcement of the Indian Arts and Crafts Act

In 2009, the Indian Arts and Crafts Association estimated that "nationally, as much as 75% of the roughly \$1 billion of jewelry, pottery, rugs and other merchandise sold every year as authentic is not. In the jewelry business, as many as 90% of pieces held out as examples of Native American craftsmanship are fake."⁹¹⁹ Due to the choice of materials, production methods, and pricing, authentic and phony jewelry had become "virtually indistinguishable."⁹²⁰ Be-

⁹¹³ *Ibid.*, at *3.

⁹¹⁴ *Ibid.*, at *11.

⁹¹⁵ *Native American Arts, Inc. v. Peter Stone Co., U.S.A., Inc.*, No. 08 CV 3908, 2009 WL 1181483, 91 U.S.P.Q.2d 1701 (N.D.Ill. Apr. 30, 2009), citing *Morton*, 417 U.S. at 555.

⁹¹⁶ *Native American Arts, Inc. v. Peter Stone Co., U.S.A., Inc.*, No. 08 C 3908, 2015 WL 3561439, at *5 (N.D.Ill. Jun. 9, 2015).

⁹¹⁷ Johnson and Nielsen, "The Indian Arts And Crafts Act."

⁹¹⁸ Howard L. Huntington, "Dangerous Territory: How the Indian Arts and Crafts Act Can Ruin Your Business," *In-House Defense Quarterly* (Winter 2010): 56.

⁹¹⁹ Stephanie Simon, "U.S. News: Cheap Jewelry Imports Vex Artisans in Southwest – As Improving Quality Makes Fakes Harder to Distinguish, New Mexico Steps Up Enforcement; 'Tourists Fall for It,'" *The Wall Street Journal*, Eastern Edition, November 2, 2009, A5.

⁹²⁰ Shane Hendren, Vice President, Indian Arts and Crafts Association, quoted in Simon, "U.S. News," A5.

tween 2006 and 2010, the Board received 649 complaints of suspected IACA violations, of which the Board decided that 150 (23 percent) were justified as violations of the IACA (148) or state law (2).⁹²¹ During the same period, the IACB directed educational and warning letters to 290 (45 percent) of the alleged violators, 102 of which were generalized educational letters to sellers of Indian arts and crafts to prevent violations, and 188 warning letters to potential offenders of the IACA. According to the Board's director, sending letters to obtain voluntary compliance was a practical approach, "given the Board's limited staff and resources, and also effective, often resulting in the seller's agreeing to comply or seeking additional information on the act."⁹²² Furthermore, the Board referred 117 complaints for further investigation, but no case was filed under the act.⁹²³

A report on misrepresentations of Indian arts and crafts and the Board's role and efficiency in assisting Indigenous artisans explained the absence of legal action. With a budget of \$1.2 million for the fiscal year of 2010, three professional and two administrative staff in DC, and "lacking criminal investigators on its own staff, the Board relie[d] on other law enforcement agencies for assistance in enforcing."⁹²⁴ Since the mid-1990s, the IACB has referred complaints to the FBI, BIA, NPS, the Office of Inspector General, and state attorneys general for investigation. However, the limited number of investigators, competing priorities within the Department of the Interior, and the FBI's primary focus on violent crimes were "significant challenge[s] to curtailing misrepresentation." As only few IACA cases had "gone through the courts, little case history exists for the U.S. Attorneys' Offices to look at for guidance on how to put together a winning case." Furthermore, given the general requirement "that the case be 'large scale,' meaning involving wither a large dollar amount or a network of shops implicated in misrepresentation,"⁹²⁵ IACA cases were of little interest and relevance to U.S. Attorneys.

Beyond competing law enforcement priorities, the IACB report identified ignorance of the law as one of the main challenges that made it difficult to control misrepresentations of Native arts and crafts. The report continued, "while sellers may be aware of the act, they may not be aware that the Board is available to respond to complaints of violations."⁹²⁶ Sellers who were aware of the potential legal consequences but aimed to profit from the label 'Indian-made' attempted to circumvent the IACA by using phrases associated with Indigeneity, like "Northwestern Art," or took on "Indian-sounding names to create the illusion of authenticity."⁹²⁷ Since vendors learned how to avoid misrepresentations as defined by law, consumer

⁹²¹ In 61 percent of the complaints (395) the Board either found no violation or could not come to a decision as the complainants did not deliver enough information. The online form asks complainants to provide personal contact information but also allows anonymous complaints. Furthermore, the Board needs "information on the alleged violator, date, location, and venue of the violation; the type of art or craft involved; how the item was offered for sale and what representations were made about it – such as statements regarding authenticity of the item or the tribal membership of the maker – and any documentation that may help to verify the complaint, such as advertisements or catalogs." It is important to provide all information needed such as marketing brochures, pictures of the item, tags indicating a product's origin, or a link to the online shop to make sure the complaint can be processed.

Cf. U.S. Government Accountability Office, "Indian Arts and Crafts," 7, 14.

⁹²² Ibid., 14.

⁹²³ Cf. *ibid.*, 15.

⁹²⁴ Ibid., 5, 7.

⁹²⁵ Ibid., 20-21.

⁹²⁶ Ibid., 19.

⁹²⁷ Ibid., 20.

education as a powerful method to challenge fraud gained significance. Not only could “better-informed consumers . . . ask the questions necessary to avoid such ploys,” but “they might [also] feel a greater obligation to buy authentic arts and crafts” if they knew more “about cultural significance and quality.”⁹²⁸ In 2011 like in the past, the Board’s role had still been mainly educational. Efforts to inform consumers included educational advertisements in Indian arts and crafts, state tourism, and airline magazines.

Since 1999, the IACB has successfully closed several cases by extending the charges to other federal and state-level laws. The first case was filed in South Dakota against Wayne Eagleboy (1999)⁹²⁹ for “misrepresenting Indian-produced goods and products” and violating the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. After pleading guilty to violating the Bald and Golden Eagle Protection Act, all other charges were dismissed, and Eagleboy was sentenced to one year of probation.⁹³⁰ Jerry Lee Boose (Michigan, 2002)⁹³¹ pled guilty to the charge of mail fraud and was sentenced to 13 months in jail, while the charges based on the IACA as well as the charge of embezzlement and theft from a tribal organization were dismissed. Against that, in both cases against Nader Pourhassan (Utah, 2001)⁹³² and Richard Tescher (Alaska, 2004-05),⁹³³ the charges relating to the misrepresentation of Indian-produced goods and products were dismissed.⁹³⁴ By adding other charges, the Board achieved some success even though the primary charges of violating the IACA were dismissed in all cases except one (see *United States v. Rose Morris*).

Protecting the ‘Indian-made’ label under state laws has proven successful. From 2006 to 2010, the “Board has had the most success collaborating with New Mexico’s Attorney General” while “offices of attorney general in seven other states that we [GAO] contacted with Indian arts and crafts laws could not provide any information on cases investigated or prosecuted under those laws in recent years.”⁹³⁵ In partnership with New Mexico’s Attorney General and under the state Indian Art and Crafts Sales law, the IAC Commission attained “agreements to not misrepresent merchandise and to pay restitution and a civil penalty” with two sellers of Indian arts and crafts (Golden Bear Trading Co., New Mexico, 2009; Santa Fe Indian Jewelry, New Mexico, 2009⁹³⁶). Fraud charges under state law against Amro A. Al-Assi (New Mexico, 2004-07) led to a guilty verdict, including 18 months of probation and the payment of a fine and restitution.⁹³⁷

⁹²⁸ Ibid., 19-20.

⁹²⁹ *United States v. Wayne Eagleboy*, 200 F.3d 1137, 30 Env’tl. L. Rep. 20,274 (8th Cir. 1999); *United States v. Wayne Eagleboy*, No. 5:98 MJ 00031 (D. S.D. May 3, 2000). See U.S. Government Accountability Office, “Indian Arts and Crafts,” 36.

⁹³⁰ Cf. U.S. Government Accountability Office, “Indian Arts and Crafts,” 36.

⁹³¹ *United States v. Jerry Lee Boose*, No. 1:01 CR 20017 (E.D.Mich. Mar. 19, 2002). See U.S. Government Accountability Office, “Indian Arts and Crafts,” 36.

⁹³² *United States v. Nader Pourhassan*, 148 F.Supp.2d 1185 (D.Utah 2001). See also U.S. Government Accountability Office, “Indian Arts and Crafts,” 36.

⁹³³ *United States v. Richard Tescher*, No. 3:01 CR 0168 (D.Alaska Jan. 1, 2005). See U.S. Government Accountability Office, “Indian Arts and Crafts,” 36.

⁹³⁴ Cf. U.S. Government Accountability Office, “Indian Arts and Crafts,” 36.

⁹³⁵ Ibid., 16-17.

⁹³⁶ *State of New Mexico v. Mohammed Sulieman, Jamal Sulieman, and Golden Bear Trading, Inc.*, No. D 0101 CV 200802466 (Santa Fe County D. Ct. July 29, 2009); *State of New Mexico v. Yousef Nassar, d/b/a Santa Fe Indian Jewelry*, No. D 0101 CV 200802467 (Santa Fe County D. Ct. Aug. 27, 2009). See U.S. Government Accountability Office, “Indian Arts and Crafts,” 16.

⁹³⁷ *State of New Mexico v. Amro A. Al-Assi*, No. D 1113 CR 200600208 (McKinley County D. Ct. Dec. 26, 2007). See U.S. Government Accountability Office, “Indian Arts and Crafts,” 16.

The case against Rose Morris (New Mexico, 2007)⁹³⁸ was successfully prosecuted in collaboration with the NPS and the FBI. Morris admitted she had sold about 500 Navajo-style rugs as Navajo-made while the products were imported from Mexico and India. Some of the 25 individuals who bought the rugs detected the fraud after they pursued expert assessments for insurance purposes. After reporting the facts to the FBI, the FBI and the NPS initiated an investigation that, through “controlled buys,” convicted Morris of violating the IACA. In 2007, Morris was sentenced to 60 months of probation and the payment of restitutions totaling \$49,590 to the fraud victims.⁹³⁹

Since its third amendment in 2010, the IACB recorded multiple successes in IACA cases against artists claiming Indian heritage, sellers misrepresenting artwork as ‘Indian-made,’ and well-known companies producing Indian-style artwork. Investigations in Alaska under the IACA led to several convictions and agreements. In 2012, Edward Schlieff received three years of probation and was fined \$7,500 for falsely marketing and selling 1,000 seal skin bow hunting tabs as made by Alaska Natives.⁹⁴⁰ Tourists’ complaints on *Facebook* in 2014 induced federal authorities to commence investigations against the Northstar Gift Shop as the owner Norma Carandang orally misled customers to believe a \$799 carving was “Alaska Eskimo” made. The certificate of authenticity later proved it was produced by an “Alaskan Artist.” Carandang pled guilty to violating the IACA and was fined \$4,000.⁹⁴¹

During this investigation, three more art sellers came under fire for violating the IACA. In all investigations, U.S. Fish and Wildlife Service (FWS) undercover agents obtained the incriminating evidence through purchases and inquiries of the artists’ heritage. The owner of Diamond Island, Icy Strait, and Gemstone Heaven (2014-16) plead “guilty to selling bone carvings to an undercover U.S. FWS agent in August and falsely presenting them as ‘Inuit Indian’ work,” which the agent had purchased for \$1,985. The settlement included a public letter of apology, probation, store policies, and a fine and donation of \$3,500 each.⁹⁴² Gabriel Karim, owner of Alaskan Heritage (2014-16), sold a carving to an FWS agent for \$1,118.25 but admitted later that the artist was not Native and that his supplier had not misinformed him about the origin.⁹⁴³ Lynch and Kennedy Dry Goods (2015-16) did not sign an agreement and was found not guilty by a court. An agent had purchased a sculpture made by a Cambodian artist living in Juneau for \$1,100, but the evidence did not prove a willful misrepresentation of the artist’s heritage.⁹⁴⁴ While willful misrepresentations were sometimes hard to prove, since 2012, sellers of Indian crafts had to expect fines of up to \$7,000 and probation, among other sanctions, if they violated the IACA.

⁹³⁸ *United States v. Rose Morris*, No. 1:05 CR 01378 (D.N.M. Dec. 5, 2007). See U.S. Government Accountability Office, “Indian Arts and Crafts,” 36; U.S. Department of the Interior, Indian Arts and Crafts Board, “Mission Statement,” *World Intellectual Property Organization*, accessed February 26, 2018, http://www.wipo.int/edocs/mdocs/tk/en/wipo_ipk_ge_17/wipo_ipk_ge_17_presentation_9van_vey.pdf.

⁹³⁹ Cf. Sherry Hutt and David Tarler, *Yearbook of Cultural Property Law 2008* (New York: Routledge, 2016), Google Books.

⁹⁴⁰ Cf. Indian Arts and Crafts Board, “Mission Statement.”

⁹⁴¹ Cf. Paula A. Solis, “Guilty plea ends Native art scam in Juneau,” *Juneau Empire*, June 20, 2016, accessed March 2018, <http://juneauempire.com/local/2016-06-20/guilty-plea-ends-native-art-scam-juneau>.

⁹⁴² *Ibid.*

⁹⁴³ Cf. *United States v. Gabriel T. Karim d.b.a. Alaskan Heritage*, No. 1:16 CR 00005 LCL (D. Alaska Mar. 3, 2016).

⁹⁴⁴ Cf. Jillian Rogers, “Skagway shop owner found not guilty of misrepresenting Native art,” *Alaska Public*, September 7, 2016, accessed March 4, 2018, <https://www.alaskapublic.org/2016/09/07/skagway-shop-owner-found-not-guilty-of-misrepresenting-native-art/>.

*Case Study 8: Operation Al-Zuni (2012-21)****Case Study 8: Operation Al-Zuni (2012-21)***

In 2012, the federal government started its most extensive investigation, Operation Al-Zuni, against the misrepresentation of Indian arts and crafts involving the IACB, FBI, Drug Enforcement Administration (DEA), U.S. Marshals Service, Homeland Security Investigations (HSI), the New Mexico Department of Game and Fish, the California Department of Fish and Wildlife, tribal law enforcement authorities, as well as the Philippines National Bureau of Investigations. Inspecting a network of businesses operating in several U.S. States and the Philippines, Operation Al-Zuni resulted in 15 search warrants in New Mexico and one in California, several indictments in the District of New Mexico, and the seizure of 350,000 pieces of artwork with a potential market value of more than \$35 million.⁹⁴⁵ By documenting and marking the imported Filipino-made jewelry, FWS inspectors and special agents tracked the pieces to the shops in Albuquerque, Gallup, Santa Fe, and Zuni, New Mexico, and Calistoga, California, where the marked items were sold as genuinely Indian-made and acquired by agents through undercover purchases.⁹⁴⁶

The Aysheh family established one network and “built the international scheme, established the production facilities, sent authentic Native American items to the Philippines to be mass reproduced, and then imported the fraudulent pieces into the U.S. for illegal sale.”⁹⁴⁷ Imad Aysheh (Imad’s Jewelry, Philippines) manufactured the fraudulent jewelry that Iyad Aysheh (IJ Wholesale, California) imported to the U.S. The individuals of the second network distributed and sold the jewelry in New Mexico (Nael Ali dba Gallery 8 and Galleria Azul, Albuquerque; Mohammad Abed Manasra, Albuquerque; Nedal Aysheh, Gallup) and California (Raed and Nedal Aysheh dba Golden Bear & Legacy, Calistoga). Besides violating the IACA, these individuals also faced charges of violating federal fraudulent importation, money laundering, wire fraud, and mail fraud laws. According to William Cody, Chief of the FWS Office of Law Enforcement, the “networks identified throughout this case have either discontinued the production and importation of fraudulent Native American jewelry, or changed their business practices to include properly labeling items with the country of origin.”⁹⁴⁸

In 2018, Ali Manasra was sentenced to six months, becoming the first person to be jailed for violating the Indian Arts and Crafts Act.⁹⁴⁹ In 2019, federal law enforcement officials announced charges against five men and two businesses for conspiracy, smuggling goods into the U.S., and misrepresenting products as Indian-made.⁹⁵⁰ If convicted of conspiracy and smuggling

⁹⁴⁵ Cf. Indian Arts and Crafts Board, “Mission Statement.”

⁹⁴⁶ Cf. “Testimony of William Woody, Chief, Office of Law Enforcement, U.S. Fish and Wildlife Service, Department of the Interior, Before the Senate Committee on Indian Affairs on Modernizing the Indian Arts and Crafts Act to Honor Native Identity and Expression,” July 7, 2017, 2, accessed March 5, 2018, <https://www.fws.gov/laws/Testimony/docs/7717WoodySIAFraudulentNativeAmericanArt.pdf>.

⁹⁴⁷ Ibid., 2.

⁹⁴⁸ Ibid., 3.

⁹⁴⁹ Cf. Maraya Cornell, “Biggest Fake Native American Art Conspiracy Revealed,” *National Geographic*, March 15, 2018, accessed January 17, 2019, <https://news.nationalgeographic.com/2018/03/native-american-indian-art-fake-forgery-hopi-zuni0/>.

⁹⁵⁰ Cf. U.S. Department of Justice, U.S. Attorney’s Office, District of New Mexico, “Five men, two businesses charged with illegally importing Native American-style goods and selling them as authentic,” February 1, 2019, accessed December 26, 2019, <https://www.justice.gov/usao-nm/pr/five-men-two-businesses-charged-illegally-importing-native-american-style-goods-and>.

Defendants: Jawad Khalaf (owner of Sterling Islands Inc., Albuquerque, New Mexico), Nashat Khalaf (owner of Al-Zuni Global Jewelers, Inc., Gallup, New Mexico) and Zaher Mostafa (manager of Al-Zuni Global Jewelers, Inc.), Nader Khalaf (Gallup), and Taha Shawar (Breckenridge, Colorado).

offenses, the defendants faced a maximum of 20 years in prison, and if convicted of misrepresentation, up to five years in prison.⁹⁵¹ As New Mexico U.S. Attorney John C. Anderson commented on Operation Al-Zuni, “The tremendous contributions made by Native Americans to the cultural and artistic heritage of our nation must be preserved and protected.” The Justice Department was committed to “safeguard[ing] the rich culture and heritage of New Mexico’s Pueblos and Tribes while promoting confidence in New Mexico’s rich art market.”⁹⁵²

Notably, with Operation Al-Zuni, the investigators “just scratched the surface of the illegal activity occurring in the southwestern United States” and other “locations across the country that have high volume sales for tourists and visitors.”⁹⁵³ In many popular tourist regions like the American Southwest, fraudulent sales of Indigenous art were pervasive issues. According to the IACB, between 2006 and 2010, most complaints came from California (24.2 percent), Arizona (19.8 percent), and New Mexico (18.1 percent).⁹⁵⁴ Although Hawaii was not among the states with many complaints, the prosecution of Hawaiian Accessories (Hawaii, 2013-16) became another model case of successful cooperation between federal authorities.

Beginning in 2013 and in collaboration with the National Oceanic and Atmospheric Administration (NOAA), the FWS picked up a smuggling ring in Honolulu run through Hawaiian Accessories in which pieces were produced in the Philippines and, after importation, labeled as “Hawaiian made.” The materials and wildlife used for carvings and jewelry, like ivory, bone, and coral, were illegally acquired and sent to the Philippines to produce counterfeit Hawaiian artwork. When Hawaiian Accessories’ president Curtis Wilmington and several employees were indicted, Wilmington signed a plea agreement that included six months in prison and a \$40,000 fine for smuggling ivory while the other charges of conspiracy and violation of the Lacey Act⁹⁵⁵ were dismissed.⁹⁵⁶

In 2014, the IACB was able to gain an agreement with one of America’s most famous and largest producers of Indian-style textile fabrics. In cooperation with the U.S. Department of Justice, the Board settled with Pendleton Woolen Mills (2013-14) after the company used tribal names for marketing purposes without permission. In their catalog and on their homepage, Pendleton offered imported products as “Sioux Star Quilt,” “Lakota Dinnerware,” and

⁹⁵¹ Cf. *ibid.*

⁹⁵² John C. Anderson, New Mexico U.S. Attorney, quoted in U.S. Department of Justice, U.S. Attorney’s Office, District of New Mexico, “Owner of Old Town Albuquerque Jewelry Stores Sentenced to Six Months for Fraudulently Selling Filipino-Made Jewelry as Native American-Made,” August 28, 2018, accessed January 17, 2019, <https://www.justice.gov/usao-nm/pr/owner-old-town-albuquerque-jewelry-stores-sentenced-six-months-fraudulently-selling>.

⁹⁵³ “Testimony of William Woody,” 3.

⁹⁵⁴ Complaints from states amounting to less than 5 percent include Oklahoma (12 cases, 4.8 percent), Minnesota (6 cases, 2.4 percent), South Dakota (6 cases, 2.4 percent), Montana (5 cases, 2.0 percent), Nevada (4 cases, 1.6 percent). Cf. “Table 4: Number of Complaints by State for States with Indian Arts and Crafts Laws, Fiscal Years 2006 to 2010,” in U.S. Government Accountability Office, “Indian Arts and Crafts,” 35.

⁹⁵⁵ “Under the Lacey Act, it is unlawful to import, export, sell, acquire, or purchase fish, wildlife or plants that are taken, possessed, transported, or sold: 1) in violation of U.S. or Indian law, or 2) in interstate or foreign commerce involving any fish, wildlife, or plants taken possessed or sold in violation of State or foreign law.” U.S. Fish and Wildlife Service, “Lacey Act,” accessed March 30, 2018, <https://www.fws.gov/international/laws-treaties-agreements/us-conservation-laws/lacey-act.html>.

⁹⁵⁶ Kathleen Gallagher, “Hawaiian Accessories owner receives sentence for illegal ivory sales,” *Pacific Business News*, June 28, 2016, accessed March 5, 2018, <https://www.bizjournals.com/pacific/news/2016/06/27/hawaiian-accessories-owner-receives-sentence-for.html>.

“Sioux Star Blanket.”⁹⁵⁷ The settlement included a donation of \$41,250 to the Red Cloud Indian School’s Heritage Center in Pine Ridge, South Dakota, to “assist with The Heritage Center’s promotion of Sioux artisans and economic development through the production, promotion, and sales of authentic Sioux art and craftwork, and associated programs.”⁹⁵⁸ Pendleton also agreed to publish an educational note about the IACA for consumers in catalogs, the web shop, and other marketing materials for resellers of the company’s Indian-style products for at least two years.⁹⁵⁹ Pendleton’s 2021 web shop no longer contained information about the IACA.⁹⁶⁰ With the development of the e-commerce sector, notifications about the IACA became increasingly important for online sellers and sales platforms such as eBay and Etsy.

Operation Al-Zuni and the cases against Hawaiian Accessories and Pendleton demonstrate how federal authorities have improved their cooperation in prosecuting violations of the IACA and other laws for this purpose. The FWS has been working with the IACB since 2012 as the “enforcement arm of the Department.” As the case history shows, with its “technical expertise, investigative capability, and international presence,” the FWS was “uniquely suited within the Department of Interior to enforce the Act.”⁹⁶¹

Proving Indian Identity For Purposes of the Indian Arts and Crafts Act

With the increasingly successful enforcement of the IACA, the Act gained power as a legal basis for challenging artists who unrightfully claimed Indian heritage to market their work. But the Act’s distinction between legitimate and illegitimate claims of Indian identity, which critics felt was arbitrary in its definition, was now gaining traction for artists who may rightly claim Indigenous heritage according to other criteria, such as cultural or legal standards, but could not prove it. The cases against Alvarez and Whetstone show how official records, such as a birth certificate and a marriage license application, refuted the claimed Indigenous heritage while historic legislative records helped Natchez defend his status as Native American. However, precisely the requirement to prove Indigenous ancestry with official records was problematic for some Natives.

After the IACB referred the case against jeweler Andrew Alvarez (2010-13) to the FBI, an FBI agent and an NPS criminal investigator made undercover purchases at the Native Treasures show in Santa Fe, New Mexico. By including business cards describing the jewelry and his purported tribal affiliation as Colville/Apache, Alvarez violated the IACA as an inquiry had already “determined that Alvarez was not an enrolled member of a recognized Native American tribe.” Court records consulted for his indictment showed that “Alvarez’s birth certificate identifies both his parents as white with no reference to Indian blood or ancestry.”⁹⁶² In 2013, Andrew “Redhorse” Alvarez pled guilty to a misdemeanor count under the

⁹⁵⁷ Indian Arts and Crafts Board, “Mission Statement.”

⁹⁵⁸ “Indian Arts & Crafts Act Settlement with Pendleton Woolen Mills Reached,” *Native News Online*, February 12, 2014, accessed January 28, 2018, <https://nativenewsonline.net/currents/indian-arts-crafts-act-settlement-pendleton-woolen-mills-reached/>.

⁹⁵⁹ Cf. *ibid.*

⁹⁶⁰ Pendleton online shop, Pendleton Woolen Mills, accessed August 2, 2021, <https://www.pendleton-usa.com>.

⁹⁶¹ “Testimony of William Woody,” 1-2.

⁹⁶² U.S. Department of Justice, U.S. Attorney’s Office, District of New Mexico, “California Man Pleads Guilty to Misrepresenting His Jewelry as Produced by an Indian,” *Federal Bureau of Investigation*, June 19, 2013, accessed February 25, 2018, <https://archives.fbi.gov/archives/albuquerque/press-releases/2013/california-man-pleads-guilty-to-misrepresenting-his-jewelry-as-produced-by-an-indian>.

Act for falsely selling his work as Colville/Apache and received 30 months of probation. Furthermore, the court prohibited him from marketing his work as Indian produced.⁹⁶³

Terry Lee Whetstone (2007-15), who identified as “mixed-blood Cherokee” and cited this heritage to advertise his music, paintings, sculptures, and jewelry, attracted attention when he used a “fraudulent Cherokee Nation of Oklahoma enrollment card in conjunction with the sale of his products.”⁹⁶⁴ After the Cherokee Nation verified that Whetstone was not an enrolled member, the IACB referred the complaint to the U.S. Attorney for the Western District of Missouri. The fraudulent Cherokee Nation card and a brochure entitled “Cherokee Artist,” which FWS officers received with an undercover purchase from his website, a print of his work “Endless Flame,” established a violation of the IACA.⁹⁶⁵ A 1997 Jackson County marriage license application, which gave the option of marking white, black, American Indian, or other, convicted Whetstone as he had listed his race as white.⁹⁶⁶ After pleading guilty to misrepresenting Indian-produced goods, Whetstone was sentenced to three years of probation. During this time, he had to take down his website and was not permitted to perform and sell his art unless he notified consumers that he was not a member of an Indian tribe.⁹⁶⁷

A lawsuit against Stanley Natchez (2014-16) alleged he misrepresented his art as Indian-made because he was “not an enrolled member of a recognized Indian tribe and is not a certified Indian artisan, nor a member of an Indian arts and crafts organization” as defined for purposes of the Act. Natchez argued he did not violate the IACA because he was an enrolled member of a tribe recognized by a California commission, the Fernandeno-Tataviam Band of Mission Indians. Furthermore, prosecuting him for describing his Native heritage to market his paintings violated the First Amendment. The Court, however, questioned “if Native American Heritage Commission [NAHC] is a State Commission as defined by IACA and has authority to recognize tribes.” Ultimately, it concluded that the legislative history behind the NAHC established it was a State commission and had recognition authority.

Yet, the Court denied Natchez’s motion to dismiss because even “if violation of IACA was dismissed there would be the violation of 18 U.S.C. § 1001(a)(2)” by making false statements during the official investigation. During an interview conducted by an FWS special agent in his art gallery in Santa Fe, New Mexico, Natchez “did willfully and knowingly make materially false, fictitious, and fraudulent statements and representations”⁹⁶⁸ regarding prob-

⁹⁶³ Cf. Indian Arts and Crafts Board, “Mission Statement.”

⁹⁶⁴ U.S. Department of Justice, U.S. Attorney’s Office, Western District of Missouri, “Odessa Man Sentenced for Selling Fake Indian Art,” September 9, 2015, accessed December 28, 2019, <https://www.justice.gov/usao-wdmo/pr/odessa-man-sentenced-selling-fake-indian-art>.

⁹⁶⁵ Cf. Steve Russell, “Fake Indian Terry Lee Whetstone Convicted Under Indian Arts and Crafts Act,” *Indian Country Media Network*, September 15, 2015, accessed February 26, 2018, <https://indiancountrymedianetwork.com/culture/arts-entertainment/fake-indian-terry-lee-whetstone-convicted-under-indian-arts-and-crafts-act/>.

⁹⁶⁶ Cf. Tony Rizzo, “Feds accuse Missouri man of posing as Indian to sell art,” *The Kansas City Star*, June 28, 2015, accessed February 26, 2018, <http://www.kansascity.com/news/local/crime/article25737253.html>.

⁹⁶⁷ Cf. U.S. Attorney’s Office, Western District of Missouri, “Odessa Man Sentenced for Selling Fake Indian Art.”

⁹⁶⁸ During the interview, Natchez denied that “he had marketed his goods as produced by a Shoshone/Paiute Indian, that he had attempted to market his art at Indian art exhibits and at Indian art shows, that he had had problems with his Tataviam group affiliation when seeking admission to art shows that require tribal affiliation because the Tataviam group is not federally or state recognized, that he had applied for admission to the Eiteljorg Indian Market and Festival, which application was rejected because STANLEY NATCHEZ was not affiliated with a state or federally recognized Indian tribe, and that his application to participate in the Heard Museum art

lems he has had as Tataviam Indian due to his recognition status. Despite these new allegations, Natchez defended his right to identify as Native American and use his heritage for marketing purposes.⁹⁶⁹

With increasing enforcement of the IACA, the law became more threatening to Native American artists who could not prove their ancestry, although the act's definition of Indian identity had already sparked criticism a few years after its 1990 amendment. As defined by 18 U.S.C. 1159 prohibiting the misrepresentation of Indian-produced goods and products, an Indian was "any individual who is a member of an Indian tribe, or for the purposes of this section is certified as an Indian artisan by an Indian tribe." The term Indian tribe included "any Indian tribe, band, nation, Alaska Native village, or other organized group or community which is recognized as eligible for the 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." An Indian arts and crafts organization was "any legally established arts and crafts marketing organization composed of members of Indian tribes."⁹⁷⁰

U.S. Senator and jeweler Ben Nighthorse Campbell, a co-sponsor of the Indian Arts and Crafts Act of 1990 and sponsor of the Indian Arts and Crafts Enforcement Act of 2000, defended the legal definition of 'Indian-made' for criminalizing misrepresentations of Indian products:

If an artist is proud of advertising that he is a specific kind of Indian, then he should have no problem tracing his background, even if he is not enrolled. On the other hand, if he cares so little about his heritage that he never has anything to do with the tribe from which he claims to have descended except to use it as a marketing ploy, or if the only way he can get his work sold is by advertising that he is an Indian, then he should not be validated. There are a great many artists out there doing Indian art, but good art should be able to stand on its own merits and not need the words 'Indian-made' to prop it up.⁹⁷¹

In defense of the Navajo trademark, Erny Zah, director of communications for the Navajo Nation's Office of the President, argued relating to the Urban Outfitters case (2012-16) that, "For some of our Navajo or native artisans, that's what sells their products. Attaching the name Navajo to their item generates income,"⁹⁷² which was the very essence of trademarks and labels such as 'Indian-made.'

In *The Arbitrary Indian*, Gail Sheffield analyzed how the Indian Arts and Crafts Act, despite its intent to "help American Indian artists and craftspeople economically, protect the industry from erosion of consumer confidence, and protect the unwary buyer," was flawed as

show was rejected because STANLEY NATCHEZ was not affiliated with a state or federally recognized Indian tribe. In violation of 18 U.S.C. § 1001(a)(2)."

United States vs. Stanley Natchez, No. CR 15 2843 MCA, 2016 WL 9777188, at *2 (D.N.M. Jun. 21, 2016).

⁹⁶⁹ On the stanley natchez gallery website, the artist identified as Native American.

Cf. "Artist Biography," Stanley Natchez, accessed December 28, 2019, <https://www.stanleynatchez.com/pages/about-us>.

⁹⁷⁰ 18 U.S. Code § 1159(c) (1), (3), (4) - Misrepresentation of Indian produced goods and products.

⁹⁷¹ Ben Nighthorse Campbell, quoted in Viola, *Ben Nighthorse Campbell*, 191.

⁹⁷² Erny Zah, Director of Communications, Office of the President, Navajo Nation, quoted in Siek, "Navajo Nation Sues Urban Outfitters."

an ethnic law. It engenders concerns including “ethnic identity, survival of traditional arts and crafts, survival of Indian culture in general, protection of religious and spiritual integrity, protection of sovereignty interests, and freedom of expression.”⁹⁷³ The IACA confuses the political/legal, ethnic/cultural, social, and racial/biological usages of the term ‘Indian,’ whereas Indian identity consists of various combinations and degrees of all these attributes.⁹⁷⁴ Furthermore, the Act places state-recognized tribes, which have no government-to-government relationship with the federal government, on the same footing as federally recognized tribes over which a state has no control. The Act confuses tribal sovereign political power to determine one’s membership criteria by creating the non-political category of certified artisans. This “blurring of the *sovereign right* to determine membership/citizenship with the *statutory authority* to certify nonmembers is . . . an opportunity for the former to be contaminated by the latter.”⁹⁷⁵

As a result, some “tribes will end up being defendants in legal challenges by disgruntled non-members who are denied certification or who are certified but question any assumed authority of the tribe over them.”⁹⁷⁶ Conversely, the combination of the definition of ‘Indian’ and the certification requirements produce a power shift as non-enrolled artists who claim Indian ancestry have to submit to the power of a federally or state-recognized tribe.⁹⁷⁷ Ultimately, the three categories of members of federally recognized tribes, state-recognized tribes, and artisans certified by either “include extraordinary variations in criteria.” The “lumping of these three categories into a class called ‘Indian’ is virtually meaningless in terms of the problems the statute is intended to solve.”⁹⁷⁸

The Indian Arts and Crafts Act in eCommerce

A statistical analysis of complaints to the IACB by sales venue for the fiscal years of 2006 to 2010 showed that, after retail (49 percent of complaints), online sales had become the second largest sales venue where critics found and reported non-authentic Indian art (33.1 percent).⁹⁷⁹ The Board started its online complaint form in 2005, creating an easy way to report supposed violations of the IACA for all those who had access to the Internet and owned any Internet-capable device. Online misrepresentations are most likely a growing issue compared to non-digital venues. They might also be reported more frequently than others due to their far outreach to potential complainants and the easy complaint process a few clicks away from where the supposed violation happened.

⁹⁷³ Sheffield, *The Arbitrary Indian*, 3, 7.

⁹⁷⁴ Cf. *Ibid.*, 151.

⁹⁷⁵ *Ibid.*, 153.

⁹⁷⁶ *Ibid.*, 130.

⁹⁷⁷ Cf. *Ibid.*, 149.

⁹⁷⁸ *Ibid.*, 156.

⁹⁷⁹ Powwows (5.1 percent), markets and festivals (3.4 percent), and wholesale (1.4 percent) were other sales venues where supposed misrepresentations occurred.

Cf. “Table 1: Number of Complaints by Sales Venue, Fiscal Years 2006 to 2010,” in U.S. Government Accountability Office, “Indian Arts and Crafts,” 32.

Flutes, jewelry, dolls, drums, bags, and textiles were among the most frequently copied and faked products.

Cf. “Table 2: Number of Complaints by Art or Craft Type, Fiscal Years 2006 to 2010,” in U.S. Government Accountability Office, “Indian Arts and Crafts,” 33.

In the 21st century, “enforcement of IACA and regulating markets [wa]s becoming more difficult due to the growing online economy [where] E-commerce websites such as Etsy and eBay have *rapidly outpaced the law*,”⁹⁸⁰ as museum anthropologist and arts writer McEnaney concluded. Seth Nielsen and Brendan Johnson, former U.S. attorney for the District of South Dakota and chairman of the U.S. Department of Justice’s Native American issues subcommittee, argued that falsely selling products as Indian-made was not a new problem in the U.S. but had been happening for years. But “as more and more companies are selling products online, the extent of the problem is becoming more obvious and easier to detect.”⁹⁸¹ Due to the pervasiveness of replicas in online shops, their distinct designs, and partially low prices, counterfeits were often easy to identify. Since the late 1990s and with the expansion of the Internet, Native American Arts had become the busiest fake-hunter, tracing sellers of Indian arts online and holding them liable for violating the IACA.

When Jessica Metcalfe asked Etsy (2012) to “not condone illegal sales activities on your site and . . . not promote items that violate trademark laws and/or the federal Indian Arts and Crafts Act,”⁹⁸² the company rejected any responsibility. It responded that shop owners selling on Etsy were responsible for their content and, by signing Etsy’s Terms of Use, agreed to follow all applicable laws. While Etsy could not “judge the legality of items or the seller’s ability to legally sell an item,” the platform underlined that it removes and takes measures to comply with the law if it receives notice from the authorities about illegal content or activities. But beyond legal issues, “it’s up to each member to make important ethical and moral decisions about what they choose to buy and sell on Etsy.”⁹⁸³

While the IACB’s mission was to provide “general business advice, and information on the Indian Arts and Crafts Act (Act) to Indian artists, craftspeople, and cultural organizations of federally recognized tribes,”⁹⁸⁴ it also sought to educate consumers and sellers. Catching consumers’ attention where they bought pieces to inform them on the matter of authenticity of Indigenous craftwork, and catching sellers’ attention about the laws where they sold the items, became part of the Board’s informational strategy. For this purpose, the Board “worked with a prominent online sales and auction Web site to compose an educational message to educate online Indian art sellers about the act’s requirements.”⁹⁸⁵ Since 2012, protests and lawsuits against online auction and shopping websites that tolerated misleading marketing practices put additional pressure on e-commerce corporations to lay down specific rules for selling Native American arts and crafts.

Both eBay and Etsy employed policies regulating the description of Native American arts and crafts that went beyond the provisions of the IACA. Under its ‘House Rules,’ Etsy

⁹⁸⁰ Lillia McEnaney, “5 Charged with Selling Non-Genuine Native Goods: A Violation of the Indian Arts and Crafts Act,” *Center for Art Law*, August 5, 2016, accessed March 4, 2018, <https://itsartlaw.com/2016/08/05/5-charged-with-selling-non-genuine-native-goods-a-violation-of-the-indian-arts-and-crafts-act/>. Text in italics hyperlinked in original article.

⁹⁸¹ Johnson and Nielsen, “The Indian Arts And Crafts Act.”

⁹⁸² Jessica Metcalfe, “Does Etsy Condone Trademark Violation?” *Beyond Buckskin*, February 29, 2012, accessed February 29, 2018, <http://www.beyondbuckskin.com/2012/02/does-etsy-condone-trademark-violation.html>.

⁹⁸³ Katie, Etsy’s Marketplace Integrity Team, quoted in Metcalfe, “Does Etsy Condone Trademark Violation?”

⁹⁸⁴ U.S. Department of the Interior, “Indian Arts and Crafts Board,” accessed December 27, 2019, <https://www.doi.gov/iacb>.

⁹⁸⁵ U.S. Government Accountability Office, “Indian Arts and Crafts,” 18.

provided information from the IACB on the misrepresentation of Native products.⁹⁸⁶ Likewise, eBay updated its regulations and included the IACA to “protect items of significant cultural value, and ensure[] that important government regulations are followed.”⁹⁸⁷ eBay’s “Artifacts and cave formation policy” now extended to Native American arts, crafts, and jewelry which had to meet the requirements as defined by the IACA. Additionally, the policy explicitly prohibited describing items as “Alaska Native style,” “American Indian style,” “Native American style,” and “Other descriptions that may suggest the item was made by a Native American.” Instead, sellers of Indian-style products now had to list such items in the non-Native American category. Not following eBay’s guidelines could lead to the product’s removal, restrictions on the buying and selling privileges, and suspension of the seller’s account.⁹⁸⁸

Since eBay often failed to remove reported policy violations, critics called on eBay to enforce the policy “Not just for some sellers, but for all of them.”⁹⁸⁹ In 2015, NAA added eBay to a lawsuit against Overstock.com and Sears, among others. Since at least November 2012, eBay “has displayed for sale and earned a financial benefit from the sale of numerous jewelry items which are advertised as Native American designed, made, created and/or hand-made through the ‘Overstock.com on eBay’ portion of eBay’s website.”⁹⁹⁰ Johnson and Nielsen noted that “eBay being named as a defendant raises questions about what obligations, if any, a company has to investigate products listed on its website for authenticity.”⁹⁹¹ As the authors noted, whether such obligations might have the undesirable effect that online platforms ban authentic and Indian-style products to avoid legal issues remains questionable given the size of the Native American arts and crafts market. The e-commerce cases gave more visibility to the IACA through the websites’ policies. However, with increasing publicity and implementation of the act, the controversial definition of Indigenous identity became a serious issue not only for so-called pseudo-Indians but also for Native Americans who did not meet the criteria as defined for the Act or had difficulties proving the criteria.

5. Fighting Colonialism: Native American Self-Representation in Marketing

Focusing on intersections of race and gender in Native American marketing representations, activists discussed advertising as both a result of and contributor to colonialism and its effects on Indigenous lives. Through playing sexy Indian princess, activists argued, White women were co-responsible for the sexualization of Indigenous women in U.S. society. Mainly White

⁹⁸⁶ Cf. “Native American Crafts,” Etsy, Inc., last modified February 1, 2018, accessed January 17, 2019, <https://www.etsy.com/legal/policy/native-american-crafts/239384128056>.

⁹⁸⁷ “Artifacts and cave formation policy,” eBay, Inc., accessed December 26, 2019, <https://www.ebay.com/help/policies/prohibited-restricted-items/artefacts-cultural-heritage-graverelated-items-policy?id=4282>.

⁹⁸⁸ Cf. “Artifacts, grave-related items, and Native American arts and crafts policy,” eBay, Inc., accessed January 17, 2019, <https://www.ebay.com.sg/pages/help/policies/artifacts.html>.

⁹⁸⁹ “eBay and Etsy Fail When It Comes to Native American Goods,” *eCommerce Bytes*, December 15, 2014, accessed December 26, 2019, <https://www.ecommercebytes.com/C/letters/blog.pl?pl/2014/12/1418699758.html>.

⁹⁹⁰ *Native American Arts Inc. v. Overstock.com, Inc., et al.*, 1:15 CV 04332 (N.D.Ill. 2015), Santa Clara Law Digital Commons, accessed November 21, 2016, <http://digitalcommons.law.scu.edu/cgi/viewcontent.cgi?article=1996&context=historical>.

⁹⁹¹ Johnson and Nielsen, “The Indian Arts And Crafts Act.”

women exercised White female hegemony over Native women, thereby denying them self-expression. This inequality among women of different ethnicities separated Indigenous feminists from other feminists. Citing sources from Amnesty International and the American Psychological Association, activists increasingly put the effects of marketing hypersexualization at the center of public attention and developed strategies to counter racialized sexism. Controversies over the impact of Native and non-Native marketing practices on Indigenous identities also reflected upon the question of Native agency as actors and its limitations through a “colonized mind,” as some critics alleged.

5.1 Racialized Sexism and White Female Hegemony

Representations of Indigenous women have been criticized at least since the 1960s, as Mary Helen Deer noted regarding street protests against marketing representations in New York City during the civil rights movement.⁹⁹² Sexist representations of Native American women mostly involved but were not limited to the sexualized depiction of women. Sexism also included the absence of any representation or the reduction to subservient roles. While this phenomenon affected women regardless of their ethnicity, critics attributed high rates of sexual violence against Indigenous women to, first, the even more sexualized imagery of Native women in media and, second, society’s indifference regarding their well-being as a result of a history of race- and gender-based violence against Native women. In this study, there was no case of protest against sexist representations of Native men, which, however, does not mean such instances do not exist.

At least since the millennium, critics started more visibly challenging sexualized advertising representations of Native American women. Multiple studies investigating sexual violence against women, and Native American women in particular, published between 2000 and 2010, pointed to increasing awareness of sexual violence in U.S. society. Since critics of sexist Indian-inspired marketing imagery regularly cited these studies, this newly available research encouraged protests and provided a scientific basis for arguments. Earliest examples of criticism of female representations in advertising in this project date back to 1970.

In 1970, Elan Corp. International advertised the cosmetic product ‘Couvert’ in the *Ladies Home Journal* by depicting a Native American elderly woman before and after using the product. The picture was accompanied by the text “IF COUVERT CAN HIDE EVERY LINE AND WRINKLE OF THIS 46 YEAR OLD INDIAN GRANDMOTHER ... imagine what it can do for you.”⁹⁹³ Bruce Wilkie, NCAI Executive Director, wrote to the company, “we are distressed at the implication your advertisement gives indicating that Indian women are consistently subject to wrinkles with age as opposed to any other race.”⁹⁹⁴ However, Wilkie framed his objection as an issue of racism (“degrading one race”) but not as an issue of sexism.

⁹⁹² Cf. Mary Helen Deer, telephone interview by author, Augsburg, Germany, September 23, 2018.

⁹⁹³ Elan Corp. International, print advertisement, published in *Ladies Home Journal*, March 1970, quoted in National Congress of American Indians, “Indians in Advertising,” 6. Note: Age was not clearly readable due to blurred script.

⁹⁹⁴ Bruce A. Wilkie, Executive Director, NCAI, letter to the President of the Elan Corp. International, Washington, DC, May 19, 1970; Media Surveillance; Box 255; Records of the National Congress of American Indians, 1933-1990, NMAI.AC.010; NMAI Archive Center, Smithsonian Institution, Suitland, MD. Hereafter cited as

In the U.S. Mint case (2000), a female representation appeared sexist precisely because the woman was *not* being represented. Critics denounced an ad campaign promoting the Sacagawea Dollar for showing George Washington selling the coin although her counterfeit was on the product, thereby disregarding and demeaning Sacagawea. Booth Moore asked in a letter to the *L.A. Times*, “why is Washington flogging the coin when he’s not even on it? . . . So what is the message here? That the feminist icon, whose navigational and negotiating skills were essential to the trip’s success can’t hold her own in an advertising campaign? What does it take for an American woman to be captivating enough to sell a coin? The attributes of a Pamela Anderson Lee or Cindy Crawford?”⁹⁹⁵ Notably, the critic described her as an “American woman” and focused on the subordination of women in general rather than Indigenous peoples or women. In an interview for a newspaper article, Zelda Tillman, director of the Shoshone Cultural Center in Fort Washakie, Wyoming, explained that she found the campaign “disgusting, because even on the expedition, she wasn’t really recognized . . . It’s like a woman is never recognized for what’s she done, like she’s not worthy.”⁹⁹⁶ As the author added, “Lewis and Clark paid Sacagawea’s husband for his help during the expedition. But Sacagawea got nothing.” Therefore, “Some American Indians think Sacagawea is left empty-handed all over again by the George commercials.”⁹⁹⁷

Sexism in advertising was distinct for Native American women and could not be discussed without debating race and ethnicity, protesters argued. Generally, there were four essential aspects of sexism protesters criticized: First, the subordination of women, for instance, through placing them in subservient roles like the Land O’Lakes maiden; second, the disregard for Indigenous social norms such as gender roles (war bonnets, for instance, were reserved for Indian men who had earned the right to wear them, although not all critics emphasized that these were only for men); third, the desecration of religious insignia by placing them in a sexualized context, like a nude model wearing a bonnet; and fourth, the visual and verbal sexualization of Indigenous women by depicting them as sexual objects or using sexualized terms such as ‘PocaHotAss.’

Stock imagery provided on *Shutterstock.com* for editorial and commercial use exemplifies the sexualized representations of White women wearing Native regalia and dresses. The four stock images (Illustrations 4 to 7⁹⁹⁸), sorted by popularity, were all highly popular,

Wilkie to the President of the Elan Corp. International, May 19, 1970; Media Surveillance; Box 255; NCAI Records; NMAI Archive Center.

⁹⁹⁵ Booth Moore, “Face It: Some Images Have More Selling Power,” *Los Angeles Times*, March 15, 2000, 2.

⁹⁹⁶ Zelda Tillman, quoted in Denise Gamino, “Sacagawea ad campaign is a day late, dollar short,” *Austin American Statesman*, July 9, 2000, K1.

⁹⁹⁷ Gamino, “Sacagawea ad campaign is a day late, dollar short,” K1.

⁹⁹⁸ Illustration 4: Nick Vangopoulos, “Sexy woman wearing American Indian war bonnet,” n.d., photograph, Shutterstock 505731490, accessed April 4, 2023, <https://www.shutterstock.com/de/image-photo/sexy-woman-wearing-american-indian-war-505731490>. © Nick Vangopoulos/[Shutterstock.com](https://www.shutterstock.com). All rights reserved.

Illustration 5: Kiselev Andrey Valerevich, “Close-up portrait of a beautiful girl wearing native american indian chief headdress. Western style. Jeans fashion,” n.d., photograph, Shutterstock 242381470, accessed April 4, 2023, <https://www.shutterstock.com/de/image-photo/close-portrait-beautiful-girl-wearing-native-242381470>. © Kiselev Andrey Valerevich/[Shutterstock.com](https://www.shutterstock.com). All rights reserved.

Illustration 6: Andrey Arkusha, “Young woman in costume of American Indian,” n.d., photograph, Shutterstock 146146088, accessed April 4, 2023, <https://www.shutterstock.com/de/image-photo/young-woman-costume-american-indian-146146088>. © Andrey Arkusha/[Shutterstock.com](https://www.shutterstock.com). All rights reserved.

as indicated by the number of views and save processes according to *Shutterstock*, and often used, as measured by the number of downloads:



Illustration 4: Nick Vangopoulos, “Sexy woman,” n.d., photograph.

© Nick Vangopoulos/Shutterstock.com. All rights reserved.



Illustration 5: Kiselev Andrey Valerevich, “Beautiful girl,” n.d., photograph.

© Kiselev Andrey Valerevich/Shutterstock.com. All rights reserved.



Illustration 6: Andrey Arkusha, “Young woman,” n.d., photograph.

© Andrey Arkusha/Shutterstock.com. All rights reserved.



Illustration 7: andreonegin, “Beautiful young Caucasian girl,” n.d., photograph.

© andreonegin/Shutterstock.com. All rights reserved.

This imagery is representative of the trend of White women wearing feather bonnets, face paint, and Indian-style dresses or other sexually provocative clothing while posing seductively, which has caused considerable resistance among Indigenous women and men.

5.1.1 Forms of Sexualization

The much-raised assumption in the field of marketing that ‘sex sells’ is not new. When mainstream magazines like *Time* and *Better Homes & Gardens* featured the first advertisements representing Native Hawaiian women in the late 1920s and early 1930s, these ads depicted

Illustration 7: andreonegin, “A beautiful young Caucasian girl in a white top on her head is wearing an Indian hat Roach Lies in the desert. close up portrait,” n.d., photograph, Shutterstock 1596033346, accessed April 4, 2023, <https://www.shutterstock.com/de/image-photo/beautiful-young-caucasian-girl-white-top-1596033346>. © andreonegin/Shutterstock.com. All rights reserved.

Hawaiian women in sexually alluring postures and nakedly to a significantly higher degree than Native American women. In almost all ads, Hawaiian women wore nothing more than a hula skirt, a flower garland, and only sometimes a bikini top or bra. For instance, in two 1940s ads for Murad Cigarettes and Bank of America Travelers Checks, a Native Hawaiian woman was dancing seductively for a male tourist while his jealous wife was watching. In both cases, the product had no apparent connection with Hawaii.⁹⁹⁹

Attracting attention and overcoming sales resistance was the main purpose of female Native Hawaiian advertising figures, as a *Better Homes & Gardens* advertisement promoting ad space in the magazine indicated. The ad depicting a cartoonish half-naked Hawaiian dancing girl wearing a hula skirt, a bikini top, and flower garlands asked, “WHAT! NO HULA GIRL? Don’t need her. . . . Name a spot where sales resistance to your product would be lower!”¹⁰⁰⁰

Advertisers regularly constructed exoticized Hawaiian women as sexually more appealing than Euro-American women. While Native American women appeared less sexualized in magazine advertisements, hypersexualized representations were more common in other marketing media like ad posters and online ad images. For instance, in 2010, Jessie Daniels blogged about a poster promoting a Thanksgiving event in the sports bar *Station 280* in Minnesota because the “image of the supposedly indigenous woman in the photo (I have my doubts) dressed in a sexy outfit and provocative pose also plays on the gendered racism of Native American women as squaw, princess, sexual slave.”¹⁰⁰¹

For a report addressing the sexualization of girls in the U.S., the American Psychological Association (APA) established a definition of sexualization in contrast to healthy sexuality. According to APA, sexualization occurs when “a person’s value comes only from his or her sexual appeal or behavior, to the exclusion of other characteristics; a person is held to a standard that equates physical attractiveness (narrowly defined) with being sexy; a person is sexually objectified – that is, made into a thing for others’ sexual use, rather than seen as a person with the capacity for independent action and decision making; and/or sexuality is inappropriately imposed upon a person.”¹⁰⁰²

Protest against sexist representations of Indigeneity typically focused on female advertising characters and names. Although Indigenous women felt personally affected by offensive marketing practices, male protesters were responsible for one-half of all cases addressing sexism against Indian women. In 2007, eBay user Marie vented her anger with Robert Schmidt, who had started a stereotype of the month contest via his blog *Blue Corn Comics*. “As an Anishinaabeqwe, I am outraged by the ‘sexy Indian princess’ fad in Halloween costumes. . . . Please expose this disrespect of Indigenous women. I would like to enter ebay in

⁹⁹⁹ See P. Lorillard Co., “LE MOMENT TERRIBLE,” print advertisement, *Time* 15, no. 24, June 16, 1930, 60; Bank of America, “Protect your money when you travel,” print advertisement, *Time* 51, no. 16, April 19, 1948, 64.

¹⁰⁰⁰ “WHAT! NO HULA GIRL? Don’t need her. Our readers – over 3,000,000 families, husbands and wives – pore over *Better Homes and Gardens* solely because of the 100% service it gives them to help them run a better home. Your story is right up their alley. Name a spot where sales resistance to your product would be lower!” *Better Homes and Gardens*, “WHAT! NO HULA GIRL?” print advertisement, *Time* 50, no. 19, November 10, 1947, 96.

¹⁰⁰¹ Jessie Daniels, “‘Drink like an Indian’: Racism to Celebrate Thanksgiving,” *Racism Review*, November 25, 2010, accessed April 5, 2020, <http://www.racismreview.com/blog/2010/11/25/drink-like-an-indian-racism-to-celebrate-thanksgiving/>.

¹⁰⁰² American Psychological Association, “Report of the APA Task Force on the Sexualization of Girls,” 2007, 1, accessed May 19, 2017, <https://www.apa.org/pi/women/programs/girls/report-full.pdf>.

your stereotype of the month contest,”¹⁰⁰³ Marie wrote. Hypersexualized marketing imagery was most pervasive in the event sector for promoting events such as Halloween- and Thanksgiving-themed private and public parties and selling costumes. In multiple instances, fraternities, bars, and other organizers of events have faced protests by Native Americans which could lead to the cancellation of such events.

In 2011, the Pi Kappa Phi fraternity at Duke University received criticism for the “Pilgrims and Indians”-theme of their party and the email invitation because it sexualized a whole group of people, thereby trivializing the colonial past:

In 1621 some crazy pilgrims had a pretty brutal harvest. Word on the street was they didn’t have enough food for half the bros in Plymouth. Then some hot natives came along with some extra food. ... On Saturday, the brothers of Pi Kappa Phi will be honoring that party spirit. There will be a cornucopia of treats in our modern-day teepee. Tap into your inner pocahotness, wear a few feathers and party like you don’t care if you survive the winter.¹⁰⁰⁴

Nicole Daniels, a student at Duke University who attended the party despite the invitation text, wrote in a blog afterward that “It was very disheartening to find my own friends there, dressed in outfits that epitomized an insensitive caricature of Native Americans. Hordes of my peers had faces covered in ‘war paint’ and wore rainbow-colored feathers on their heads.” Sexualizing the “Native American race” by using descriptions such as “hot natives” and “pocahotness,” the “fraternity took on a terrible history of colonialism and genocide and turned it into a sexy party theme.”¹⁰⁰⁵ In response to parties like this and Indigenous reactions, universities started condemning Native-inspired party-themes on campus, just like sports mascots.

More typically, Native American women were subject to the sexualization of their bodies and cultures. The restaurant chain Hooters (2012), for instance, put on a promotion with young women posing suggestively in sexy Pocahontas or Halloween costumes which perpetuated the “fetishization of American Indian women,” argued Sarah Deer, Muscogee Creek of Oklahoma and assistant professor at William Mitchell College of Law in St. Paul. According to Deer, Native American women were “the only ethnic group in the country where women are generally seen as ‘hot.’” At the same time, Native women were “the poorest and most victimized population in the U.S.”¹⁰⁰⁶

Beyond visual aspects of sexualization, advertisers sexualized Native women on a verbal level through sexualized name-giving. Multiple protesters criticized Bedlam Presents’ *Facebook* invitation for an ‘Indian’-themed party in Atlanta (2011), which depicted a sexy girl in an ‘Indian dress’ as well as the “PocaHotAss” theme for “turning a young Native girl into a sexual object.”¹⁰⁰⁷ After dozens of complaints, mainly from the LGBT community,

¹⁰⁰³ Robert Schmidt, “Stereotype of the Month Entry (10/21/07),” *Blue Corn Comics*, October 21, 2007, accessed July 1, 2016, <http://www.bluecorncomics.com/stype7a4.htm>.

¹⁰⁰⁴ Pi Kappa Phi, Duke University, email invitation to “Pilgrims and Indians” party, quoted in Robert Schmidt, “Duke’s ‘Pilgrims and Indians’ party,” *Newspaper Rock*, December 5, 2011, accessed October 23, 2016, <http://newspaperrock.bluecorncomics.com/2011/12/dukes-pilgrims-and-indians-party.html>.

¹⁰⁰⁵ Nicole Daniels, “Pi Kapp party fuels anger,” quoted in Schmidt, “Duke’s ‘Pilgrims and Indians’ party.”

¹⁰⁰⁶ Sarah Deer, quoted in Tanya Lee, “Hooters Launches Culturally-Offensive Marketing Campaign,” *Indian Country Today Media Network*, November 16, 2012, accessed October 27, 2016, <http://indiancountrytodaymedianetwork.com/2012/11/16/hooters-launches-culturally-offensive-marketing-campaign-145729>.

¹⁰⁰⁷ Robert Schmidt, “‘PocaHotAss’ party canceled,” *Newspaper Rock*, November 10, 2011, accessed October 2016, <http://newspaperrock.bluecorncomics.com/2011/11/pocahotass-party-canceled.html>.

reached the organizer and the public on Bedlam Presents' *Facebook* page, and after activists wrote emails and *Facebook* posts to the event's sponsors, one after another withdrew their sponsorship. American Harvest Organic Spirit denied it had ever been a sponsor of the event; Pinnacle Vodka pulled its sponsorship; Whynatte founder and CEO Jesse Altman claimed the company had "absolutely no idea that this month's Bedlam party was a Native American themed party" and pulled out from the event and future parties as the Whynatte brand "promotes equality and diversity" and "never would have approved" the theme.¹⁰⁰⁸ As a result, the organizers canceled the event, as did the organizer of another "Special Pilgrims & Indians Theme Party" in Oklahoma around the same time. A non-Native woman wearing a sexy dress, a Plains headdress, and smoking a cigarette caused enough protest on *Facebook* that the organizer of Robotic Wednesdays (2011) felt pressured to call off the party.¹⁰⁰⁹

When model and TV host Sophie Turner advertised her apparel by wearing a Pocahontas-inspired dress, Robert Schmidt criticized her promotion of "Poca-Hotness:" "Can you imagine turning Amelia Earhart, Harriet Tubman, or Indira Gandhi into sexual figures? Then why would you do it to Pocahontas? . . . I guess 'Sexagawea' would be too obvious; it would call too much attention to the notion of Native women as sexual objects to be raped by white men."¹⁰¹⁰ As Schmidt suggested, the verbal sexualization of a female historic icon by giving suggestive names was unthinkable for iconic women of other ethnicities but a socially acceptable practice with Indigenous women.

Many designers have faced protests for stealing and countless models and celebrities for wearing Indigenous designs and desecrating Indigenous symbols. Taking these out of their cultural context and sexualizing them was equally offensive to many protesters. Non-Native women wearing bonnets disregarded Indigenous cultural norms that limited the rights to wear certain regalia. This practice violated ethnic and social norms as well as gender roles because only male political or spiritual leaders of Plains tribes were supposed to wear bonnets. Particularly in the fashion industry, activists and other protesters regularly denounced the sexualization and, thus, desecration of sacred symbols. For instance, Indigenous designer Dorothy Grant criticized Samantha Tajik's costume design, a deerskin bikini combined with a war bonnet,¹⁰¹¹ to represent Canada at the Miss Universe pageant in 2008 because "sexualizing the war bonnet is tantamount to sexualizing another cultures' [sic] spiritual symbol."¹⁰¹² Although the offender's ethnicity was irrelevant in such cases, the pervasiveness of non-Native women wearing hypersexualized Indian-style clothing, designs, and insignia led to charges of White female hegemony.

¹⁰⁰⁸ Jesse Altman, quoted in Dyana Bagby, "Sponsors withdraw support from 'Bedlam Presents' party over 'Indian' theme," *The Georgia Voice*, November 10, 2011, accessed April 29, 2017, <http://www.thegaVOICE.com/index.php/news/atlanta-news/3744-sponsors-withdraw-support-from-bedlam-presents-party-over-indian-theme>.

¹⁰⁰⁹ Cf. Robert Schmidt, "'Pilgrims & Indians Theme Party' canceled," *Newspaper Rock*, November 23, 2011, accessed October 23, 2016, <http://newspaperrock.bluecorncomics.com/2011/11/pilgrims-indians-theme-party-canceled.html>.

¹⁰¹⁰ Robert Schmidt, "Sophie Turner's 'Poca-Hotness'," *Newspaper Rock*, November 2, 2011, accessed October 23, 2016, <http://newspaperrock.bluecorncomics.com/2011/11/sophie-turners-poca-hotness.html>.

¹⁰¹¹ See Samantha Tajik representing Canada at the 2008 Miss Universe pageant, 2008, photographs, reposted in Robert Schmidt, "Pageant contestant = sexy chief," *Newspaper Rock*, July 20, 2008, accessed July 1, 2016, <http://newspaperrock.bluecorncomics.com/2008/07/pageant-contestant-sexy-chief.html>.

¹⁰¹² Dorothy Grant, paraphrased in Robert Schmidt, "Pageant contestant = sexy chief," *Newspaper Rock*, July 20, 2008, accessed July 1, 2016, <http://newspaperrock.bluecorncomics.com/2008/07/pageant-contestant-sexy-chief.html>.

5.1.2 White Female Hegemony

Although women, regardless of their ethnicity, were often represented in sexualized ways, the media showed Native American femininity as sexually more appealing if women with different ethnicities were being represented. The contrasting representation and perception of Indigenous and White women is visible in a 2013 online ad for the tanning studio Club Sun Color Studios. The ad played with the juxtaposition of White chastity and Native American sexiness, represented by the historical archetypes of a blonde woman completely covered by Puritan garb and a more dark-skinned Indian-looking woman wearing a more revealing buckskin dress and posing seductively. While the Puritan woman represents the European ideals of innocence and chastity, the “Indians brought more than just ‘corn’ to the first Thanksgiving ...they brought Sexy ‘Color’!” as the ad explained.¹⁰¹³

Feminist activists have focused intensely on sellers of costumes as well as consumers and celebrities dressing up as some variation of a ‘sexy Indian’ for Halloween, Thanksgiving, or theme parties. Since wearing ‘sexy’ or ‘slutty’ dresses for theme parties had become a tradition in the U.S., activists started addressing non-Native women as they viewed these sexualized costuming traditions as the epitome of White female supremacy. Female celebrities marketing themselves through social media represented a significant target group of protest due to their media presence and status as idols and role models. While involving celebrities was generally a helpful strategy in social movements,¹⁰¹⁴ especially female celebrities playing Indian and profiting from the commercialization of Indigenous cultures were frequently protest targets. The sample of randomly selected cases for this study includes 38 protests of female celebrities since 2008 (24 in the U.S., nine internationally)¹⁰¹⁵ and seven protests addressing male celebrities since 2012 (four in the U.S., one Indigenous, three internationally).¹⁰¹⁶ Some faced protests more than once, like the Kardashians, the Hilton sisters, and Heidi Klum.¹⁰¹⁷

¹⁰¹³ Club Sun Color Studios, “Have a ‘Colorful Thanksgiving’!” online advertisement, reposted in Margot Peppers, “Tanning salon forced to remove Thanksgiving-themed ad for Native American ‘sexy skin color’ after it is branded ‘offensive and tasteless,’” *Daily Mail* [UK], November 7, 2013, accessed May 10, 2017, <http://www.dailymail.co.uk/femail/article-2491220/Tanning-salon-Thanksgiving-themed-ad-sexy-Native-American-color.html>.

¹⁰¹⁴ Cf. Tilly, *Social Movements*, 113.

¹⁰¹⁵ Female celebrities U.S.: Chrissy Teigen (2008), Juliette Lewis (2008), Karen O (2009), Ke\$ha (2010), Paris Hilton (2010), Khloe Kardashian (2010, 2014), Drew Barrymore (2012), Kourtney Kardashian (2012), Aubrey O’Day (2012), Mary Romney (2012), Chrystle Lightning (2012), Angela Simmons (2013), Michelle Williams (2013), Ireland Baldwin (2013), Christina Fallin (2014), Teresa Palmer (2014), Leilani Dowding (2014), Kaley Cuoco (2014), Anna Dello Russo (2014), Vanessa Hudgens (2014, 2016), Alessandra Ambrosio (2014), Perrie Edwards (2014), Jessica Simpson (2015), Kylie Jenner (2015), Kimberly Stewart (2015), Nicky Hilton (2015); female celebrities international: Kate Horne (AUS, 2010), Sophie Turner (AU, 2011), Heidi Klum (D, 2012), Samantha Barks (GB, 2014), Kimberley Garner (GB, 2015), Ellie Goulding (GB, 2014), Susan Boyle (GB, 2015), Leona Lewis (GB, 2016), Pixie Lott (GB, 2015).

¹⁰¹⁶ Male celebrities U.S.: Snoop Dogg (2012), David Guetta (2015), Gus Kenworth (2015); male celebrities international: Pharell Williams (GB, 2014), Harry Styles (GB, 2014), Chris Hemsworth (AUS, 2016); Indigenous celebrities: Kiowa Gordon (2010).

¹⁰¹⁷ Events: Thirsty’s (2002), Station 280 (2010), Pi Kappa Phi / Duke University (2011), Robotic Wednesdays (2011), Bedlam Presents (2011), Diablos Bar (2012), Off-Centered Film Fest (2012), Drink Nightclub (2012), McFadden’s (2012), G Bar (2012), Rhino Restaurant and Bar (2013), Sleepless Entertainment (2013), The Gypsy Parlor (2013); musicians / bands / performers: OutKast (2004), Nicole Scherzinger (2011), Tomahawk Tassels (2011), Joan (2012), No Doubt (2012), Lana Del Rey (2012), DJ TAI (2013), Kanye West (2013), Mastodon (2013), Flaming Lips (2014), Emerson Windy (2014), Jennifer Lopez (2015); designers / fashion labels: Liz Claiborne Inc. (1998-2000), Nike Inc. (2007), Old Navy (2008), Lucky Brand (2009), The Mountain Corp.

Feminists split on the question of who was contributing to and responsible for the hypersexualization of Indigenous women. While Native critics argued White women dressing up as ‘sexy Indian’ promoted the sexualization of Native women, White feminists identified men as the main suppressors of women. When several AIM women formed WARN in 1974, the first Indigenous feminist movement,¹⁰¹⁸ their Indigeneity shaped Native women’s activism crucially in distinction from White women. Indigenous women did not automatically support issues raised by White feminists, as these had anticipated. Issues such as the “wholesale abduction and adoption of Indian children,”¹⁰¹⁹ high infant mortality rates, the highest school dropout rate of any group in the U.S., and the secret sterilization of Indigenous women were entirely unknown to White, middle-class women.¹⁰²⁰ This alienation of feminist activist groups persisted from early Indigenous feminism of the 1970s throughout feminist activism against Indian marketing representations since the late 1990s. Protesters consistently denounced the sexualization of Indigenous women regardless of the model’s ethnicity, but a non-Native actress or model playing ‘sexy Indian’ meant more than sexualizing Native women. It represented White female supremacy over Indigenous women as these women shaped and spread ideas of Indigenous female identity without having to suffer the consequences.

Through their phenotypical appearance, non-Native actors and actresses playing Indian roles promoted a ‘white-washed’ version of male and female Indigeneity. By hiring non-Native actresses for advertising campaigns, marketers constructed and idealized a ‘white-washed’ marketing version of Indian sexiness that was “just exotic enough to be alluring, but not so exotic that she’ll actually discomfit anyone.”¹⁰²¹ Marketers could draw upon a long history of media representations of romanticized and sexualized Indian women in popular culture. Describing advertisements from the “Hall of Beauty” section in a 2004 *Model Kits Catalogue*, Schmidt noted that “portraying a Native woman as slender and buxom, with light skin and blue eyes, is the classic approach of old Westerns, romance novels, and collectors’ dolls and plates.”¹⁰²²

Since popular images of ‘noble Indians’ were “highly Europeanized in appearance,” Native “women have endured the burden of both racial and gender stereotyping” by Euro-Americans, noted S. Elizabeth Bird.¹⁰²³ Mary Brave Bird described how this ideal of Native American female beauty affected her self-perception as she felt pressured to “conform to standards that are not our own” but set up by men of a different culture. She was “tired of the pressure to adapt to the white men’s idea of beauty, which prods me to have an ivory skin, to be as thin as a rail but have big breasts, to spend money on all kinds of crap to have ‘glorious

(2009), JCrew (2011), Spirit Hoods (2011), Forever 21 (2011), Urban Outfitters Inc. (2011-), Victoria’s Secret (2012), Paul Frank Industries (2012), Gucci (2012), Louis Vuitton (2013), Ecko Unltd. (2013), Theodora & Callum (2013), H&M (2013), Chanel Inc. (2013), Ralph Lauren (2014), Vans (2015); producers and vendors of costumes: One Step Ahead (2000), Star Design Costumes (2001), Facemakers Inc. (2001), Magic Makers Costumes (2004), eBay (2007), InCharacter (2012), Spirit Halloween (2012), Disney Store (2013); international producers and vendors of costumes: Spirit Halloween (CA, 2016).

¹⁰¹⁸ Cf. Mary Crow Dog, *Lakota Woman* (New York: Harper Perennial, 1991), 249.

¹⁰¹⁹ Brave Bird, *Ohitika Woman*, 191.

¹⁰²⁰ Cf. Donna Langston, “American Indian Women’s Activism in the 1960s and 1970s,” *Hypatia*, Special Issue: Indigenous Women in the Americas 18, no. 2 (Spring 2003): 129.

¹⁰²¹ Robert Schmidt, “Stereotype of the Month Entry (6/30/04),” *Blue Corn Comics*, June 30, 2004, accessed July 1, 2016, <http://www.bluecorncomics.com/stype46b.htm>.

¹⁰²² Ibid.

¹⁰²³ S. Elizabeth Bird, “Gendered Construction of the American Indian in Popular Media,” *Journal of Communication* (Summer 1999): 67, 73.

silky hair,' to be manicured by a 'nail artist,' and to shave the hair nature made grow under my armpits."¹⁰²⁴

While support for the anti-hipster movement grew, Indigenous feminist blogger Don't Pay To Pray (DPTP) was surprised by the negative feedback from White feminists. After she received "several vitriolic emails from individuals identifying themselves as white and feminist who insisted that the seductive sq**w stereotype was purely misogynist, and not at all racist,"¹⁰²⁵ DPTP explained how playing Indian not only reinforced White dominance but also White female superiority. She challenged White feminists' insistence that they were color-blind, that "patriarchy is the cause of all racism and that if we eliminate patriarchy, we will automatically eliminate racism."¹⁰²⁶ According to DPTP, this insistence that all women were "equal victims of patriarchy" was a defense rhetoric she frequently met because the "most taboo subject in liberal audience is whiteness and racism on the left. They are more than happy to point the finger at how racist the tea party is, but they cannot or will not look at the less obvious racism in their own camp."¹⁰²⁷ Women of minority groups shared experiences of racism which White women lacked and which complicated alliances across ethnic boundaries. Quite contrary, White female "defensiveness leaves them with an incomplete and distorted understanding of oppression and prevents any productive work between women of color and white women,"¹⁰²⁸ DPTP noted.

While it is true that all women are objectified and hyper sexualized, women of color are always depicted as inferior to white women. This is no accident. The theme party teaches white women how undesirable it is to be a 'ghetto chick' or a 'seductive sq**w' and how much better it is to be a white woman in this society. The ritual of re-creating the 'easy/seductive sq**w' stereotype reinforces the superior social position of white women. In popular culture, television, social media, . . . white women are held up as the standard of beauty and desirability. Women of color are exoticized and sexually objectified to teach young white men that they are inferior to white women, but young white women are also being taught that they are superior to women of color. This is racism. It is well hidden as 'sexy fun' but it is still racism.¹⁰²⁹

Through their media presence and status as role models, celebrities set up or contributed to cultural practices such as playing sexy Indian. DPTP argued it was "no accident that heiress Paris Hilton chose to be a 'seductive sq**w' last Halloween" in 2010 because she "represents privilege in this country and the mainstream media uses her to send messages to the public."¹⁰³⁰ The protest image "I AM THE FACE OF WHITE FEMALE PRIVILEGE," posted in *Everyday Feminism* in 2015, depicting a young White woman in a tight dress wearing a feather bonnet, defines White female privilege:

¹⁰²⁴ Brave Bird, *Ohitika Woman*, 207.

¹⁰²⁵ "Halloween Nightmares: Hyper-sexualized Racism Is Still Racism," Don't Pay To Pray, October 30, 2011, accessed May 5, 2017, <http://dontpaytopray.blogspot.de/2011/10/halloween-nightmares-hyper-sexualized.html>.

¹⁰²⁶ Feminist critic, quoted in "Halloween Nightmares," Don't Pay To Pray.

¹⁰²⁷ "Halloween Nightmares," Don't Pay To Pray.

¹⁰²⁸ Ibid.

¹⁰²⁹ Ibid.

¹⁰³⁰ Ibid.

I am a racist white girl stealing sacred objects from cultures I am privileged over. I am also presenting a hypersexualized image of native women, with additional use of Eurocentric ultra-thin beauty ideals. I am contributing to the rape and sexual assaults on native women daily. I am disrespecting cultures whose genocide I benefit from.¹⁰³¹

Since White women had the power to shape the identities of Native women without having to suffer the consequences, critics argued, this practice constituted White female hegemony. Consequences included the preference for physiognomic attributes and heteronomous styles that influenced expectations of female Indigeneity and, as a result, the Indian women's self-perception and desire for self-optimization. Additionally, hypersexualized representations shaped the attitude and behavior toward Indigenous women at the hands of U.S. society and sometimes Indigenous communities.

Activists increasingly referred to statistics analyzing sexual violence against Indian women and pointed out that non-Native women generally suffered significantly less violence. An online protest image depicting a white woman wearing a bonnet, face paint, and smoking a cigarette was a prime example of how many White women presented themselves. The text line added, "Go ahead and continue sexualizing American Indian and First Nations Women."¹⁰³² By quoting rape statistics released by the Department of the Interior, which found that Indian women had a 2.5 times higher chance of being raped compared to all other women in the U.S., the creator held non-Indian women at least partially responsible for the high rates of sexual violence against Native women. However, charges of hypersexualizing Indigenous women by wearing sexualized, stereotypical dresses were not limited to non-Native women, as the cases of Tomahawk Tassels and Johna Edmonds show.

5.1.3 Self-Expression of Native American Women

Amanda Riley, performing under the name Tomahawk Tassels as a burlesque dancer since 2006 and promoting her 'Indian Show' as "The Cherokee Seductress" since 2007, spurred intense protests against that show in 2013. Indigenous critics contacted Riley via social media to educate her about the issue of sexual violence against women that was shaking Native American communities. As one critic recollected, "I would post statistics and information about violence against Native women, try to make her understand that she was doing a modern version of blackface and that it was painful to watch what she did."¹⁰³³ Similarly, activist Chase Iron Eyes expressed his support for the protest, arguing that Riley's show promoted

¹⁰³¹ "I AM THE FACE OF WHITE FEMALE PRIVILEGE," online protest image, posted March 2015, accessed June 13, 2021, <https://i.pinimg.com/236x/03/a3/d7/03a3d7c5049ebf5fd959cad66428aa46.jpg>.

¹⁰³² "Go ahead and continue sexualizing American Indian and First Nations Women," online protest image, reposted in Robert Schmidt, "Indians sexualized since the beginning," *Newspaper Rock*, October 24, 2011, accessed May 5, 2017, <http://newspaperrock.bluecorncomics.com/2011/10/indians-sexualized-since-beginning.html>.

¹⁰³³ Critic, quoted in Robert Schmidt, "Tomahawk hangs up her tassels," *Newspaper Rock*, January 31, 2013, accessed October 28, 2016, <http://newspaperrock.bluecorncomics.com/2013/01/tomahawk-hangs-up-her-tassels.html>.

“the un-nerving Violence Against Women, especially Indigenous women, the rapes, the molestation, the beatings, the recent gang rape of a Native woman.”¹⁰³⁴

Riley acknowledged she was now aware of the statistics on the sexual victimization of Indigenous women and the importance of the Violence Against Women Act (VAWA). “I’ve heard the statistics quoted to me constantly. My response is that rape is awful anytime – I don’t support that... it’s one of the reasons why I’m suspending at the moment. Maybe VAWA will get passed, maybe it won’t be as much of an issue.” Meanwhile, Riley rejected any connection with her burlesque show or responsibility resulting from that practice, arguing that “Getting onstage, you are empowered. It’s not saying I’m sexually available to everyone in this room, it’s not an open invitation.”¹⁰³⁵ Asking rhetorically, “Why blame the woman when the issue at hand is the male dominated culture that is negative and hateful toward women?”¹⁰³⁶ journalist Sheila Regan interpreted that Riley was putting herself in the victim role. Riley’s supposed attempt to ally with Indigenous women on the basis of gender and constructing men as the joint enemy was not successful, as protesters insisted she was actively contributing to the sexualization of Native women.

In defense of her show, Riley asserted she had some Indian heritage, “much to everyone’s relief,” Lisa Charleyboy noted. Responding to an inquiry by Charleyboy, Riley explained she was “Cherokee and Irish, with her estranged father having Cherokee blood.”¹⁰³⁷

Growing up in [Tulsa,] Oklahoma, I have been exposed to Native American history and culture since I was very young . . . I realize how I took it for granted, and only now am able to fully internalize and express that history. Part of my personal journey is to research my roots and ancestral history. Burlesque performance has been the perfect medium for this.

[In the show, I aim] to remind others of our rich American Indian history while also making a satirical social commentary on stereotypes, specifically from the 1950’s [sic].¹⁰³⁸

Since it was “kind of hard to make a ‘satirical social commentary on stereotypes’ when most of the people watching probably have no idea that what they are watching IS a stereotype,”¹⁰³⁹ critics questioned her agenda.

Most other comments targeted her self-identification as Native American and Cherokee in particular. There was a tradition of claiming Indigenous ancestry, typically a Cherokee grandmother, as Vine Deloria Jr. observed.¹⁰⁴⁰ A commentator asked, “Seriously, who doesn’t claim to be a ‘little Cherokee’ these days?”¹⁰⁴¹ Another commenter added, “She can self identify with Cherokee image, but that’s truly what it is to her an image with no real meaning, but

¹⁰³⁴ Chase Iron Eyes, quoted in “Burlesque Dancer Tomahawk Tassels Suspends Indian-Themed Act,” *Indian Country Today Media Network*, February 1, 2013, accessed October 29, 2016, <https://indiancountrytoday.com/archive/burlesque-dancer-tomahawk-tassels-suspends-indian-themed-act>.

¹⁰³⁵ Amanda Riley, quoted in Sheila Regan, “Burlesque Performer Suspends American Indian Act,” quoted in Schmidt, “Tomahawk hangs up her tassels.”

¹⁰³⁶ Regan, “Burlesque Performer Suspends American Indian Act,” quoted in Schmidt, “Tomahawk hangs up her tassels.”

¹⁰³⁷ Lisa Charleyboy on Tomahawk Tassels, quoted in Robert Schmidt, “Tomahawk Tassels stereotypes Native women,” *Newspaper Rock*, October 25, 2011, accessed October 23, 2016, <http://newspaperrock.bluecorncomics.com/2011/10/tomahawk-tassels-stereotypes-native.html>.

¹⁰³⁸ Tomahawk Tassels, quoted in Schmidt, “Tomahawk Tassels stereotypes Native women.”

¹⁰³⁹ Critic, quoted in Schmidt, “Tomahawk Tassels stereotypes Native women.”

¹⁰⁴⁰ Cf. Vine Deloria Jr., *Custer Died for Your Sins: An Indian Manifesto* (New York: Macmillan, 1969), 3.

¹⁰⁴¹ Critic, quoted in Schmidt, “Tomahawk Tassels stereotypes Native women.”

the real meaning behind it all is ego, money, fame and distortion.”¹⁰⁴² Though Riley may have been “exposed to Native American history and culture,” as she stated, commenters criticized she did not grow up *being* a Native American. “Saying you are part-Cherokee is different than being Cherokee,”¹⁰⁴³ argued one commenter.

A critic who was in contact with Tomahawk Tassels for at least one year to discuss her show described the reactions she received from Tassels’ fans via *Facebook*: “Over the course of a year I had polite (on both sides) conversations with Amanda. . . . I got a lot of hate from her fans for it, but remained polite, as did she.”¹⁰⁴⁴ As critics’ reactions became increasingly harsh, Riley decided to suspend the ‘Indian act’ mainly “for her own safety.” Furthermore, she wanted to “give herself time to reflect on everything, particularly in light of the stalled Violence Against Women Act.”¹⁰⁴⁵

I have raised the white flag. Said my piece. Suspended the art that is supposedly offensive. Questioned, debated, gotten angry, felt misunderstood, cried until I can’t cry anymore. Blocked all the haters. Tried to remain humble, honest, and true to myself. Now, I must move on. [...] I am willing to step back. Listen. Research. Educate. Strengthen myself. Find clarity of vision.¹⁰⁴⁶

Some critics saw Riley’s appearance at the Idle No More flash mob dance at the Mall of America (2013) in regalia as the “ultimate spit in the face,”¹⁰⁴⁷ which “eventually led to an outcry that Tassels says has left her feeling harassed and bullied”¹⁰⁴⁸ and fearing for her safety.¹⁰⁴⁹ Calling for the retirement of Riley’s “mockery of Indian women,” a critic explained that, in the face of “white privilege and oppression of Indian people, . . . we, as Native people, will define our own image, our own culture.”¹⁰⁵⁰ Several protests later,¹⁰⁵¹ Riley suspended her performance but not her business identity as Tomahawk Tassels, as her 2020 profile at the modeling community platform *Model Mayhem* suggested.¹⁰⁵²

Indigenous models, whose identity was beyond doubt, were sometimes caught between expectations of Natives, Non-Natives, and feminists and had to meet Indigenous and feminist standards of representation to avoid criticism. In 2014, Johna Edmonds, a member of the

¹⁰⁴² Critic, quoted in Schmidt, “Tomahawk hangs up her tassels.”

¹⁰⁴³ Critic, quoted in Schmidt, “Tomahawk Tassels stereotypes Native women.”

¹⁰⁴⁴ Critic, quoted in Schmidt, “Tomahawk hangs up her tassels.”

¹⁰⁴⁵ Regan, “Burlesque Performer Suspends American Indian Act,” quoted in Schmidt, “Tomahawk hangs up her tassels.”

¹⁰⁴⁶ Tomahawk Tassels, statement, *Facebook*, quoted in “Burlesque Dancer Tomahawk Tassels Suspends Indian-Themed Act.”

¹⁰⁴⁷ Critic, quoted in Schmidt, “Tomahawk hangs up her tassels.”

¹⁰⁴⁸ Sheila Regan, “Burlesque Performer Suspends American Indian Act,” quoted in Schmidt, “Tomahawk hangs up her tassels.”

¹⁰⁴⁹ Cf. “Burlesque Dancer Tomahawk Tassels Suspends Indian-Themed Act.”

¹⁰⁵⁰ Edberg, quoted in Rebecca McDonald, “Tomahawk Tassels protested over Native-themed burlesque performance,” quoted in Robert Schmidt, “Natives protest Tomahawk Tassels,” *Newspaper Rock*, February 4, 2013, accessed October 28, 2016, <http://newspaperrock.bluecorncomics.com/2013/02/natives-protest-tomahawk-tassels.html>.

¹⁰⁵¹ See “Burlesque Dancer Tomahawk Tassels Suspends Indian-Themed Act”; Sheila Regan, “Burlesque Performer Suspends American Indian Act,” quoted in Schmidt, “Tomahawk hangs up her tassels”; McDonald, “Tomahawk Tassels protested over Native-themed burlesque performance,” quoted in Schmidt, “Natives protest Tomahawk Tassels.”

¹⁰⁵² Cf. “Tomahawk Tassels,” *Model Mayhem*, last activity November 23, 2019, accessed March 3, 2020, <https://www.modelmayhem.com/tomahawktassels>.

Lumbee tribe and Miss North Carolina 2013, faced immediate protests after she posted professional photos produced for an ad page in the Miss North Carolina program book. Since this program book evolved around the theme “Disney Princesses,” Edmonds dressed as her “childhood favorite Disney princess, ‘Pocahontas’.” She posed for the pictures for “the purpose of helping an incredible artistic team who have been unbelievably generous to the Miss North Carolina Scholarship Program.” However, “Within a matter of minutes,” Edmonds had been charged with “misappropriating Native American culture” and “perpetuating society’s hyper-sexualization of Native American women.”¹⁰⁵³

Edmonds rejected any allegation of misappropriation because of her strong ties to her Indigenous community, which made the “difference between ‘misappropriation’ and ‘appreciation’.” Consenting that “Of course it’s wrong to objectify a group’s behavior or history and consume it for entertainment and capital,” the model did not consider her case an objectification or commercialization because “this photo shoot was based on the photographer’s artistic vision of ‘Pocahontas,’ rather than a real world depiction of a Native American woman.”¹⁰⁵⁴

Despite some agreement that, “Without a doubt, beauty and art are political issues,” Edmonds and her critics discussed the issue of representation on two different levels. The model argued that being represented at all was an enormous success because “Growing up, I was assaulted with media images that looked nothing like me My seven-year-old self would have been thrilled to know that someone like me [without blonde hair and blue eyes] could one day be crowned Miss North Carolina and have the opportunity to even take part in such a photo shoot that would reach so many people.”¹⁰⁵⁵ On the other side, a female Indigenous commenter disapproved of how Edmonds represented Indigenous women and culture contrary to traditional self-perception. “While I appreciate what you aspire to be, Johna, let’s please, as Native Women, uphold our image and culture in a way to honour our ancestors,”¹⁰⁵⁶ Danette commented.

Ultimately, her right to self-determination allowed her to represent Pocahontas and use her body in any way she wished, Edmonds argued. She emphasized she actively shaped the representation of Pocahontas since she “never aimed to convey ‘hyper-sexiness’ at any point during this photo shoot” but “wanted to epitomize and portray the beauty and regal nature of the ‘Pocahontas’ [she] fondly remember[d].” Furthermore, Edmonds dismissed the allegations of hypersexualizing Indian women because the mere fact that a minority woman was portrayed was progressive, and the representation at stake was fictional. In a counter-offensive, she rebuked feminists and other critics as their “respective comments have only served as a reminder for how the bodies of minority women continue to be a battleground for so many oppressive forces.” In her opinion, protesters had become the same kind of oppressors they sought to challenge by seeking to restrict the actress’s self-determination. After all, Edmonds noted, “my sexuality or femininity . . . are mine to use.”¹⁰⁵⁷

Lori Winfree, a member of the Lumbee Tribe, stepped in to soothe public discussions and reached out to *Indian Country Today Media Network (ICTMN)*, hoping to avoid “seeing a

¹⁰⁵³ Johna Edmonds, statement, *Facebook*, March 18, 2014, quoted in Toyacoyah Brown, “Lumbee Miss North Carolina 2013 Getting Flack for Pocahontas Photoshoot,” *Pow Wows*, March 21, 2014, accessed May 29, 2017, <http://www.powwows.com/lumbee-miss-north-carolina-2013-getting-flack-for-pocahontas-photoshoot/>.

¹⁰⁵⁴ Edmonds, statement, quoted in Brown, “Lumbee Miss North Carolina 2013.”

¹⁰⁵⁵ Edmonds, statement, quoted in Brown, “Lumbee Miss North Carolina 2013.”

¹⁰⁵⁶ Danette, quoted in Brown, “Lumbee Miss North Carolina 2013.”

¹⁰⁵⁷ Edmonds, statement, quoted in Brown, “Lumbee Miss North Carolina 2013.”

young woman who made a mistake, get dragged through the mud” and “make this a teaching moment if at all possible and not a persecution moment.” As Winfree reported to *ICTMN*, Beth Knox, the Miss North Carolina organization’s Executive Director, received the information on the hyper-sexualization of Native American women and statistics of sexual assault on reservations “with welcoming arms and receptivity.”¹⁰⁵⁸ Knox “unanimously agreed to remove the pictures” and “took the opportunity to make ourselves more aware regarding the sexualization of the Native American woman and how those images were offensive to so many.”¹⁰⁵⁹

For various reasons, Native Americans “themselves sometimes employ the same clichés that other people find offensive as a marketing strategy,” noted Calloway.¹⁰⁶⁰ While Riley possibly had Cherokee roots, which many protesters doubted, critics did not accept heritage as permission for representing Native women in sexualized ways. Similarly, critics did not accept Johna Edmonds’ heritage, which was beyond doubt, or her gender as legitimization for representations they deemed harmful to the Indigenous community. Additionally, not only individuals but also “tribes can and do manufacture and circulate self-exploitative images. The Mashantucket Pequot tribe’s skimpy outfits for female casino employees have famously led to use of the term ‘Pocahoochies’,”¹⁰⁶¹ wrote Nancy Mithlo.

Online ads and billboards advertising the Pueblo of Pojoaque tribal Buffalo Thunder Resort & Casino in New Mexico caused protest because they “contained questionable images of what looked to be female tribal members” who “were depicted in stylized poses next to a Mercedes as part of a casino promotion.” Zuni Cruz, a member of the Isleta Pueblo and law professor at the University of New Mexico School of Law, found the ads “sexist and culturally inappropriate” as they “demean the self-esteem of Native women.”¹⁰⁶² George Rivera, governor of the Pueblo of Pojoaque, rejected the allegations and argued instead the casino was “proud to use images of Native Americans, Native American women, Native American artists and Native American models” and the intent of the ads “was to convey beauty, elegance and a chance to win a dream car.” Instead, Rivera criticized Cruz’ “handling of the situation” as “he wished she had shared her concerns with him of Buffalo Thunder management before she circulated her thoughts to members of the Indian legal community” since her “reputation as a respected law professor” was well known.¹⁰⁶³ “When you speak, you speak not as a private individual expressing your views, but as a public persona.”¹⁰⁶⁴ Although Rivera disagreed with Cruz’s objections, he promised to remove all ads.

¹⁰⁵⁸ Lori Winfree, quoted in Vincent Schilling, “Miss NC’s Pocahontas Photo Shoot: No Big Deal, or Teachable Moment?” *Indian Country Today Media Network*, March 26, 2014, accessed October 20, 2016, <http://indiancountrytodaymedianetwork.com/gallery/photo/miss-ncs-pocahontas-photo-shoot-no-big-deal-or-teachable-moment-154168>.

¹⁰⁵⁹ Beth Knox, quoted in Schilling, “Miss NC’s Pocahontas Photo Shoot.”

¹⁰⁶⁰ Calloway, *First Peoples*, 630.

¹⁰⁶¹ Nancy M. Mithlo, “A Realist View of Image Politics: Reclamation of the ‘Every Indian’,” in *[Re]inventing the Wheel: Advancing the Dialogue on Contemporary American Indian Art*, ed. Nancy J. Blomberg (Denver: Denver Art Museum, 2008), 107.

¹⁰⁶² Zuni Cruz, member of the Isleta Pueblo and law professor, quoted and paraphrased in Rob Capriccioso, “Sexism charge receives promise of Pueblo advertising removal,” *Indian Country Today*, September 9, 2009, 7.

¹⁰⁶³ Capriccioso, “Sexism charge receives promise of Pueblo advertising removal,” 7.

¹⁰⁶⁴ George Rivera, Governor, Pueblo of Pojoaque, quoted in Capriccioso, “Sexism charge receives promise of Pueblo advertising removal,” 7.

5.1.4 Countering the Effects of Racialized Sexism

Jodi Lynn Maracle, part Mohawk and American Studies Ph.D. student at the University at Buffalo, commented on a photograph showing the owner of the bar *The Gypsy Parlor* in Buffalo, New York, (2013) posing in a “sexist Pocahottie” costume: “ya know, I think these commenters are right. We Indian Maidens bust (sic) be sexy given the reality that we are at least 3 times more likely to be sexually assaulted, 88% of those crimes committed by non-Natives, and a sickeningly low prosecution rate against perpetrators of violent sexual crimes against Native women because, ya know, we’re just too darn sexy.”¹⁰⁶⁵ Protesters quoted several statistics and studies conducted by the U.S. Department of Justice, the American Psychological Association, Amnesty International, and Human Rights Watch. For digital protest imagery, they combined representative cases of female Indigenous misrepresentation, like Victoria’s Secret model Karlie Gloss, with study results, thereby contrasting sexy Native-inspired outfits with real-life effects for Native American women. The 2012 protest image “Victoria’s Secret – Thank You” featured a photo of Gloss performing at the Victoria’s Secret show, accompanied by the text:

Dear Victoria’s Secret:

Did you know that if all of your 63 ‘outfits’ had been worn by American Indian women:

- 21 of those women will have been raped at some point in their life, and
- 18 of those 21 rapes would have been perpetrated by non-Native men.

So Thank You, Victoria’s Secret, for blatantly & ignorantly perpetuating the oversexualization of American Indian women to your predominantly non-Native male audience...

... said no Native woman. Ever.¹⁰⁶⁶

“Given the epidemic levels of sexual violence Native women and girls are faced with in the United States, why can they not see how incredibly insensitive and inappropriate it is to equate Native womanhood as little more than a sexual fetish?”¹⁰⁶⁷ asked activist Ruth Hopkins in response to Victoria’s Secret’s show.

Activists regularly pointed to statistics evidencing the violence against Indigenous peoples and sexual violence against Indigenous women to draw a connection between media representations and both mental and physical harm of those being represented. Amnesty International compiled statistical reports for Indigenous women in Canada and the U.S., showing similar results. A 2016 report compiling data for women in Canada suggested that Indigenous females experienced a sexual assault rate of 115 incidents per 1,000 population as op-

¹⁰⁶⁵ Jodi L. Maracle, quoted in Andrew Z. Galarneau, “Gypsy Parlor’s ‘Pocahotties’ photo draws Internet ire from Native American critic,” *Buffalo News*, December 5, 2013, accessed October 31, 2016, <http://buffalonews.com/2013/12/05/gypsy-parlors-pocahotties-photo-draws-internet-ire-from-native-american-critic/>.

¹⁰⁶⁶ “Victoria’s Secret – Thank You,” online protest image, posted in Adrienne Keene, “Guess we can add Victoria’s Secret to the list,” *Native Appropriations*, November 9, 2012, accessed July 25, 2016, <http://nativeappropriations.com/2012/11/guess-we-can-add-victorias-secret-to-the-list.html>.

¹⁰⁶⁷ Ruth Hopkins, “Victoria’s Secret’s Racist Garbage Is Just Asking for a Boycott,” *Jezebel*, November 12, 2012, accessed July 25, 2016, <http://jezebel.com/5959312/victorias-secrets-racist-bullshit-is-just-asking-for-a-boycott>.

posed to 35 per 1,000 for non-Indigenous women.¹⁰⁶⁸ Furthermore, a 2007 study for Saskatchewan, Canada, where data for missing Indigenous women was most reliable, showed that 60 percent of its missing women were Indigenous while Indigenous women represented only 6 percent of the Saskatchewan population.¹⁰⁶⁹ The Amnesty International report explained this salience by perpetrators' racism and the Canadian society's disregard toward Indigenous peoples:

[T]here is clear evidence that some men seek out Indigenous women as targets for attacks. Acts of violence against Indigenous women and girls may be motivated by racism, or may be carried out in the expectation that society's indifference to the welfare and safety of these women will allow the perpetrators to escape justice.¹⁰⁷⁰

In 2007, Amnesty International conducted a study to investigate sexual violence against Indigenous women in the U.S. While the "root causes of discrimination and violence are often complex and invariably interconnected" and include factors like poverty and socioeconomic marginalization, it "appears that Indigenous women in the USA may be targeted for acts of violence and denied access to justice on the basis of their gender and Indigenous identity."¹⁰⁷¹

A study conducted by the Department of Justice covering the years 1992 through 2002 reported that Indigenous women were 2.5 times as likely to be a victim of a rape or sexual assault compared to all other women in the U.S.¹⁰⁷² Furthermore, rapes of Indigenous women included a higher level of additional physical violence which was the case in 50 percent of rapes, as opposed to 30 percent in general.¹⁰⁷³ Another report by the Department of Justice indicated that 34.1 percent of Indigenous women would experience rape and 61.4 percent some sort of sexual violence in their life, while the national average accounted for 18.2 percent and 51.8 percent, respectively.¹⁰⁷⁴ In a later version of the report, the authors limited their findings to the extent that it "most likely underestimates the actual number of annual rapes because it excludes rapes of children and adolescents and those who are homeless or live in

¹⁰⁶⁸ Cf. Paula Arriagada, "Women in Canada: A Gender-based Statistical Report. First Nations, Inuit and Métis Women," *Statistics Canada*, February 23, 2016, accessed August 6, 2021, <https://www150.statcan.gc.ca/n1/pub/89-503-x/2015001/article/14313-eng.htm>.

The Amnesty International report referred to an older version of the report: Vivian O'Donnell and Susan Wallace, "Women in Canada: A Gender-based Statistical Report. First Nations, Inuit and Métis Women," *Statistics Canada*, 2011, quoted in Amnesty International, "Violence Against Indigenous Women and Girls in Canada: A Summary of Amnesty International's Concerns and Call to Action," February 2014, 2, accessed May 17, 2017, https://www.amnesty.ca/sites/amnesty/files/iwfa_submission_amnesty_international_february_2014_-_final.pdf.

¹⁰⁶⁹ Cf. Ministry of Justice and Attorney General, Saskatchewan Provincial Partnership Committee on Missing Persons, "Final Report of the Provincial Partnership Committee on Missing Persons," October 2007, 19, accessed August 6, 2021, https://pubsaskdev.blob.core.windows.net/pubsask-prod/86177/86177-Final_Report_on_PPCMP_2007.pdf.

¹⁰⁷⁰ Amnesty International, "Violence Against Indigenous Women and Girls in Canada," 3.

¹⁰⁷¹ Amnesty International, "Maze of injustice: The failure to protect Indigenous women from sexual violence in the USA," 2007, 5, accessed May 17, 2017, <https://www.amnestyusa.org/pdfs/mazeofinjustice.pdf>.

¹⁰⁷² Cf. Steven W. Perry, "A BJS Statistical Profile, 1992-2002: American Indians and Crime," *U.S. Bureau of Justice Statistics*, 2004, NCJ 203097, 5, accessed May 17, 2017, <https://www.bjs.gov/content/pub/pdf/aic02.pdf>.

¹⁰⁷³ Cf. Ronet Bachman, "The Epidemiology of Rape and Sexual Assaults Against American Indian Women: An Analysis of NCVS Data, presented to a federal and tribal working group on sexual assault against Native women," 2003, cited in Sarah Deer, "Sovereignty of the Soul: Exploring the Intersection of Rape Law Reform and Federal Indian Law," *Suffolk University Law Review* 38, no. 2 (2005): 457.

¹⁰⁷⁴ Cf. Patricia Tjaden and Nancy Thoennes, "Full Report of the Prevalence, Incidence, and Consequences of Violence Against Women," *National Institute of Justice / Centers for Disease Control and Prevention*, 2000, 22, accessed May 17, 2017, <https://www.ncjrs.gov/pdffiles1/nij/183781.pdf>.

institutions, group facilities, or residences without telephones.”¹⁰⁷⁵ Since the researchers produced most of the data via telephone interviews, and Indigenous residents of rural areas were less likely to have access to telephones, data might represent urban Native Americans and Alaska Natives more adequately than rural Natives. To this date, there is a lack of statistics addressing sexual violence in Indian Country.¹⁰⁷⁶

Moreover, statistics on sexual violence against women revealed that Indigenous women in the U.S. were more likely to be raped by a stranger.¹⁰⁷⁷ Rapists and assaulters were in 78 percent of all cases white, in 8 percent African American, and in 14 percent of any other race.¹⁰⁷⁸ Researchers suggested that the high assault rates and the predominance of non-Indigenous and unknown perpetrators were probably due to the distinct legal situation on reservations. The Amnesty International report on the U.S. showed that “complicated jurisdictional issues can significantly delay and prolong the process of investigating and prosecuting crimes of sexual violence.”¹⁰⁷⁹ As reports for Canada have demonstrated concerning society’s indifference to Indigenous peoples’ well-being,¹⁰⁸⁰ perpetrators might visit tribal land to commit certain crimes in the expectation of not being punished for jurisdictional reasons.

Lawrence Baca, who argued that school and university mascots violated civil rights laws, pointed to the need for more investigations proving the connection between media representations and violent or racist behavior.¹⁰⁸¹ For a TEDx Talk in 2013, Nancy Mithlo, curator, teacher, photographic archivist, and critic exploring “how distinct identities are negotiated and how history is chronicled through the visualization of culture,”¹⁰⁸² sought to establish such a connection through a Google search:

I typed in the words ‘Hispanic Girl.’ And this is what I got: beautiful young girls and women, they’re going to school, they’ve got careers, they’ve got dreams. Then, I typed ‘African American Girl.’ And I got much the same: young girls and women look at the camera lens with complete self-confidence. Then, I typed in ‘American Indian Girl.’ And this is what I got: The ‘Sexy Indian Squaw.’ The flowing hair. The nudity.¹⁰⁸³

¹⁰⁷⁵ Ibid., iii.

¹⁰⁷⁶ Cf. Amnesty International, “Maze of injustice,” 4, 93.

¹⁰⁷⁷ See Perry, “A BJS Statistical Profile, 1992-2002: American Indians and Crime;” Callie M. Rennison, “Criminal Victimization 2000: Changes 1999-2000 with Trends 1993-2000,” *U.S. Bureau of Justice Statistics*, 2001, NCJ 187007, accessed May 18, 2017, <https://www.bjs.gov/content/pub/pdf/cv00.pdf>; Jennifer L. Truman, “Criminal Victimization, 2010,” *U.S. Bureau of Justice Statistics*, 2011, NCJ 235508, accessed May 18, 2017, <https://www.bjs.gov/content/pub/pdf/cv10.pdf>.

¹⁰⁷⁸ Cf. Perry, “A BJS Statistical Profile, 1992-2002: American Indians and Crime,” 9.

¹⁰⁷⁹ “Three main factors determine where jurisdictional authority lies: whether the victim is a member of a federally recognized Indian tribe or not; whether the accused is a member of a federally recognized Indian tribe or not; and whether the alleged offence took place on tribal land or not. The answers to these questions are often not self-evident. However, they determine whether a crime should be investigated by tribal, federal or state police, whether it should be prosecuted by a tribal prosecutor, a state prosecutor (District Attorney) or a federal prosecutor (U.S. Attorney) and whether it should be tried at tribal, state or federal level. Lastly, this determination dictates the body of law to be applied to the case: tribal, federal or state.” Amnesty International, “Maze of injustice,” 27.

¹⁰⁸⁰ Cf. Amnesty International, “Violence Against Indigenous Women and Girls in Canada,” 3.

¹⁰⁸¹ Cf. Lawrence Baca, telephone interview by author, Washington, DC, August 14, 2014.

¹⁰⁸² “Resume,” Nancy Marie Mithlo, accessed March 29, 2020, <http://nancymariemithlo.com/Resume/index.html>.

¹⁰⁸³ Nancy M. Mithlo, “Americana Indian – thinking twice about images that matter: Nancy Marie Mithlo at TEDxABQWomen,” YouTube video, 9:50, May 2, 2013, accessed March 28, 2020, https://www.youtube.com/watch?v=vdhWdgJI_ck.

Pointing to the statistical prognosis that “one in three Native women will be raped during her lifetime,” Mithlo argued, “if we go back to our slide on American Indian girls, that ratio for demeaning images is exactly the same: it’s one in three.” Although it was “difficult to draw a direct cause and effect between media images and harm to Native communities,” the outfits and titles like “Tribal Treat” and “Sexy Tribal Trouble” demonstrated “that the sexualization of Native American women is a given.”¹⁰⁸⁴ Due to its interactive character, Google selects search results based on browsing interests. The way a Google search works shows that the result of such a search reflects users’ interests, beliefs, and preferences in a particular area at a particular time.¹⁰⁸⁵

The APA report proposed that sexualization occurs within three interrelated spheres. First, society communicates cultural norms and expectations through media; second, through interpersonal contribution, family members, friends, and others might treat women as sexual objects and encourage; third, the self-sexualization of girls and women through internalizing standards if “sexualized behavior and appearance are approved of and rewarded by society and by the people.”¹⁰⁸⁶ While the sociocultural sexualization of girls and women occurs in all kinds of media such as TV, music videos and lyrics, movies, cartoons and animations, magazines, sports media, video and computer games, and the Internet, the “sexualization of women is particularly prominent in the world of advertising.”¹⁰⁸⁷

Advertising frequently treated women as sexually appealing appendages to a product rather than as active users. Female models for ads published in fashion and fitness magazines were “more likely than males to be placed in submissive positions, sexually displayed, and subjects of violent imagery.”¹⁰⁸⁸ Bringing together a wide range of studies on the issue of female sexualization, the report concluded “that young women and adult women are frequently, consistently, and increasingly presented in sexualized ways in advertising, creating an environment in which being female becomes nearly synonymous with being a sexual object.”¹⁰⁸⁹ While researchers found in the late 1990s that ads were “more sexual than ever,”¹⁰⁹⁰ an *Adweek* poll conducted in 1999 revealed that 84 percent of female and 58 percent of male

¹⁰⁸⁴ Ibid.

¹⁰⁸⁵ The Google search engine seeks to show users the most suitable images possible by indexing and ranking the images Google crawlers identified on websites. Among the top Google ranking factors for images are the image’s file name, caption, alt attribute (text-based, alternative information for people with visual impairment), contents around the image, and the clickthrough rate (CTR). While the first four factors are based on the quality and quantity of keywords which have to match users’ search keywords, the CTR as factor prioritizes images which users have clicked most often. The CTR is a “ratio showing how often people who see your ad end up clicking it” and “how well your keywords and ads are performing.” In digital marketing, the information whether or not users click an ad is a measurement to determine the success of a company’s advertising efforts. The same logic is true for images available through Google search. The length of stay on a website also contributes to the ranking, i.e. clicked search hits on whose pages users stay for a long time are prioritized in the ranking. Since Google responds to users and their demands, and ranking factors change, results vary across space and time. Therefore, Mithlo’s Google search results were representative of users’ expectations and imaginaries in the U.S. at that time.

Cf. “Video: SEO für die Google Bildersuche,” Evergreen Media, accessed March 29, 2020, <https://www.evergreenmedia.at/lernvideos/bilder-seo/>; “Clickthrough rate (CTR): Definition,” Google LLC, accessed March 29, 2020, <https://support.google.com/google-ads/answer/2615875?hl=en>.

¹⁰⁸⁶ American Psychological Association, “Report on the Sexualization of Girls,” 2.

¹⁰⁸⁷ Ibid., 10.

¹⁰⁸⁸ William J. Rudman and Patty Verdi, “Exploitation: Comparing sexual and violent imagery of females and males in advertising,” *Women & Health* 20, no. 4 (1993): 1.

¹⁰⁸⁹ American Psychological Association, “Report on the Sexualization of Girls,” 11-12.

¹⁰⁹⁰ Ibid., 11.

¹¹⁰⁰ Cases involving allegations of sexism include for designers / fashion labels: The Mountain Corp. (2009), Urban Outfitters Inc. (2011-16), Victoria's Secret (2012); pageants and participants: Samantha Tajik (CA, 2008), Germany's Next Top Model (D, 2014), Johna Edmonds (2014), Paola Nunez (CA, 2015); producers and vendors of costumes: eBay (2007), Spirit Halloween (2012); events: Station 280 (2010), Pi Kappa Phi / Duke University

As part of the clothing sector, the fashion and costume industries represented an important instance of socialization. Since costume producers addressed children as a primary target audience, such products contributed significantly to the socialization of relationships between men and women and the roles of Native Americans in U.S. society. “Racism: it has to be carefully taught,” warned a protest image posted by DPTP depicting non-Native children playing Indian in Indian-style costumes. What people learned as children about ethnic and gender roles formed a person’s attitude, which translated into a person’s behavior and the racist cultural practice of playing Indian, as the protest image proposed.¹¹⁰¹

In 2000, Adie Nelson detected in a content analysis of 469 children’s Halloween costumes that “feminine costumes were clustered in a narrow range depicting beauty queens, princesses, and other exemplars of traditional femininity”¹¹⁰² and typically emphasized physical attractiveness as beauty queens and princesses, and sometimes sexual eroticism.¹¹⁰³ Mithlo noted, “while all women might be said to be coerced into sexualized fictional roles for Halloween, Native American women in particular are singled out by ethnicity or race more often for this special appropriation.”¹¹⁰⁴ The focus on stereotypical ‘Pilgrims & Indians’ themes combined with the growing trend of sexualizing women and hypersexualizing Native American women resulted in racialized sexism which society passed on through cultural practices such as costuming and other product categories like toys.

According to Mithlo, the sexualization of Native women in media was part of an old tradition of how the government treated Native Americans, especially Native women. The U.S. government “has long waged a war on Native women’s bodies, including rape in military action, boarding school abuse, forced sterilization. These demeaning images and attitudes are learned.”¹¹⁰⁵ Amnesty International noted that gender-based violence against women by settlers during the Trail of Tears and the Long Walk was “not random or individual” but “an integral part of conquest and colonization.” The study exemplified how the “effects of such abuses against Indigenous peoples reverberate through US society and popular culture today.”¹¹⁰⁶

The study cited a 1980s video game named “Custer’s Revenge” that invited players “to manipulate the character of General Custer to have sex with a Native American woman who was bound to a post.” Likewise, it noted the University of North Dakota insisted on keeping its mascot, although “students at the University wore T-shirts depicting a caricature of a Sioux Indian having sexual intercourse with a bison.” As Amnesty International concluded, the “legacy of historic abuses persists. The fact that Native American and Alaska Native women have been dehumanized throughout US history informs present-day attitudes. It helps

(2011), Bedlam Presents (2011), Drink Nightclub (2012), Hooters (2012), The Gypsi Parlor (2013), Mastodon (2013); other: U.S. Mint (2000), Paradise Galleries (2001), Model Kits Catalogue (2004), West Main Liquors (2005), Louis Comfort Tiffany (2005), Buffalo Thunder Resort & Casino (2009), Rosa Acosta (2010), Sophie Turner (AU, 2011), Tomahawk Tassels (2011), No Doubt (2012), Club Sun Color Studios (2013).

¹¹⁰¹ “Hypersexualized racism is still racism,” online protest image, posted in “Halloween Nightmares: Hypersexualized Racism Is Still Racism,” Don’t Pay To Pray, October 30, 2011, accessed May 5, 2017, <http://dontpaytopray.blogspot.de/2011/10/halloween-nightmares-hyper-sexualized.html>; “Racism: it has to be carefully taught,” online protest image, posted in *ibid*.

¹¹⁰² Adie Nelson, “The pink dragon is female: Halloween costumes and gender markers,” *Psychology of Women Quarterly* 24 (2000): 137.

¹¹⁰³ Cf. *ibid.*, 142-143.

¹¹⁰⁴ Mithlo, “A Realist View of Image Politics,” 107.

¹¹⁰⁵ Mithlo, “Americana Indian.”

¹¹⁰⁶ Amnesty International, “Maze of injustice,” 17.

fuel the high rates of sexual violence perpetrated against them and the high levels of impunity enjoyed by their attackers.”¹¹⁰⁷ “Surely these concerns should also count as ‘real reservation issues’,”¹¹⁰⁸ Mithlo argued to counter reactions by Natives and Non-Natives who deemed discussions of media representations irrelevant and thought Indians should focus on ‘real’ problems like drugs, unemployment, or suicides.

Taté Walker, a Miniconjou Lakota freelance journalist and an enrolled citizen of the Cheyenne River Sioux Tribe of South Dakota, attributed high suicide rates among the female youth to “the many oppressions attacking young, indigenous girls today” with sexualization being the most destructive oppression. “The hypersexualization of indigenous women is at the forefront of these oppressions. How our daughters see their culture and themselves represented in the media, how products are marketed to them, and how society built on colonial violence treats them in real life affect every aspect of their existence.”¹¹⁰⁹ The “epidemic of youth suicides and attempts” rose to 97 suicides or attempts during one year from December 2008 to December 2009 and forced the Oglala Sioux Tribe to declare a state of emergency.¹¹¹⁰ This epidemic prompted Walker to contribute an advisory article to the online magazine *Everyday Feminism* guiding parents on “How to Support Your Young, Indigenous Daughter in Fighting Hypersexualization.”¹¹¹¹ Like other critics of media representations, Walker promoted resistance to mainstream images of Native American women because “adherence to cis-gender identities and sexualities is a product of colonialism we’re slowly moving away from.”¹¹¹²

Indigenous critics of mainstream media representations followed the recommendations of the APA report to counteract the influence of sexualization, highlighting the role of education, alternative media, and activism against sexist representations, among others. APA determined a need to teach children and particularly girls media literacy, that is, to view media critically and challenge their realism.¹¹¹³ APA considered alternative media such as blogs especially important and helpful in challenging sexist media representations because “they provide a forum to teach girls to critically examine the sexualizing images presented by society and corporations.”¹¹¹⁴ Equally important were magazines, books, and films created by feminists and feminist organizations.

Based on this report’s advice, which Taté Walker referred to, she recommended three steps Native American parents could take to protect their daughter’s mental and physical

¹¹⁰⁷ Ibid., 17.

¹¹⁰⁸ Mithlo, “A Realist View of Image Politics,” 107.

¹¹⁰⁹ Taté Walker, “How to Support Your Young, Indigenous Daughter in Fighting Hypersexualization,” *Everyday Feminism*, March 9, 2015, accessed May 22, 2017, <http://everydayfeminism.com/2015/03/supporting-indigenous-daughter/>.

¹¹¹⁰ In 2015, after five youth suicides on the Pine Ridge Reservation within roughly six weeks, the last one of “another little girl, a seventh-grader,” the Oglala Sioux Tribe (OST) declared a state of emergency. This time tribal officials declared the state of emergency much sooner and sent out counselors to advise teachers and parents how to predict and prevent the suicide of children. During one of the worst years between December 2008 through December 2009, the tribal ambulance service registered 97 suicides or attempts, 17 of which in November alone, until OST President Theresa Two Bulls declared a state of emergency.

Cf. Jim Stasiowski, “Youth suicides prompt emergency declaration on Pine Ridge,” *Rapid City Journal*, February 14, 2015, accessed May 22, 2017, http://rapidcityjournal.com/news/local/youth-suicides-prompt-emergency-declaration-on-pine-ridge/article_835a8f69-79ef-52f6-a942-d9a3437b3e91.html.

¹¹¹¹ Walker, “How to Support Your Young, Indigenous Daughter.”

¹¹¹² Ibid.

¹¹¹³ Cf. American Psychological Association, “Report on the Sexualization of Girls,” 35.

¹¹¹⁴ Ibid., 38.

health. The first step, “Limit Exposure to Media and Products That Hypersexualize Her,” sought to prevent any influence media could take on the child’s mind in the first place. Since parents could not control access to media entirely, Walker suggested discussing “merchandise with a feminist and indigenous lens” in terms of body proportions, diversity, gender identity, or gender-targeted marketing that diverged from the kid’s own identity. The second piece of advice, “Encourage Her to Know and Love Her Own Body by Modeling the Behavior,” recommended being anatomically accurate and body-positive when talking about media representations, not comparing the child to stereotypes, and making sure she understands her worth did not come from her appearance. Finally, “Help Her Build Positive Relationships” advised parents to be role models demonstrating mutual respect, that is, “peers who offer the same kind of strength” and having “friends of different ethnicities and genders and cultures and beliefs and abilities [which] helps her be more aware of the vast diversity of the human experience.”¹¹¹⁵

AIM member Mary Brave Bird held mainstream images of Indigeneity responsible for the unequal gender relationship among the Sioux. Although Plains tribes had historically been male-oriented, women were equally valued and not without rights. But when the “dominant culture forced its values upon our tribes,” the “whites’ attitude of male superiority rubbed us off on us.”¹¹¹⁶ She saw the attitude that “among Plains tribes, some men think that all a woman is good for is to crawl into the sack with them and mind the children” as the result of colonization. Once having been famous warriors and hunters, this attitude “compensates for what white society has done to them.”¹¹¹⁷ Some Native feminists believed “acting sexist was a sign of being assimilated” and, hence, “ignorance of Indian traditions.”¹¹¹⁸ Feminists like Frank Waln sought to revive traditional concepts of masculinity based on the concept of an honorable warrior. As Waln proclaimed in his protest image opposing domestic violence, being a warrior did not mean “Acting MACHO, Abusing POWER/ CONTROL, [and] DISrespecting our Sisters.”¹¹¹⁹ Critics called for the decolonization of Euro-American society and Indigenous peoples and communities to eliminate learned racist-sexist attitudes from which Indigenous women particularly suffered.

Successful protests against sexualized marketing imagery gave critics hope for similar success and change. Hyundai decided not to advertise in a *Sports Illustrated* annual swimsuit edition in 1993 after they had faced resistance through letter-writing campaigns. As Hasbro also canceled the planned production of a doll modeled after the Pussycat Dolls in 2006, the authors of the APA report hoped that “focused, sustained pressure on corporate sources of sexualization will lead to other such successes.”¹¹²⁰

¹¹¹⁵ Walker, “How to Support Your Young, Indigenous Daughter.”

¹¹¹⁶ Brave Bird, *Ohitika Woman*, 184.

¹¹¹⁷ Crow Dog, *Lakota Woman*, 5.

¹¹¹⁸ Langston, “American Indian Women’s Activism,” 128.

¹¹¹⁹ Save Wiyabi Project, “Frank Waln addressing rape culture & male responsibility,” online protest image, reposted in *Shy Feminist*, March 27, 2014, accessed March 22, 2020, <https://shyfeminist.tumblr.com/post/80926949794/save-wiyabi-project-frank-waln-addressing-rape>.

¹¹²⁰ American Psychological Association, “Report on the Sexualization of Girls,” 38.

5.2 Criticism of Indigenous Self-Representations in Marketing

As Indigenous entrepreneurship grew, so did the Indigenous advertising industry, raising questions about Native advertising practices that targeted Native American and non-Native consumers while meeting Native and U.S. cultural norms. As Oneida tribal leader Ray Halbritter noted regarding the production and sale of Indian-brand cigarettes, “tobacco had come to symbolize the tensions over sovereignty.”¹¹²¹ It was “a sort of shame that it has to be cigarettes, which is very distasteful to us Yet at the same time, the principle is the same, if we were manufacturing whatever it was.”¹¹²² The sale of Indian-brand cigarettes represented not only a source of income but also an ethical dilemma as “income is in direct conflict with the impact of cigarette smoking on the health status of American Indian communities.”¹¹²³ Likewise, the *KTNN* board of directors’ decision that the Navajo tribally-owned radio station was allowed to solicit liquor ads was controversial because liquor was prohibited on the Navajo reservation. While *KTNN* news correspondent Deenise Becenti argued the station was no longer the “Voice of the Navajo People” but turned into “just another voice for the liquor industry,” station director Tasbah McCullah pointed out the “prohibition against accepting liquor ads has cost the radio station thousands of dollars in potential ads annually.”¹¹²⁴

Native American marketing imagery was useful for Indigenous entrepreneurs because it worked to address both Native and non-Native consumers. To make their First Nations Cola “the number one choice of First Nations cola drinkers,” the Winnipeg-based Aboriginal Beverage Company developed a “distinctive label, featuring a white eagle’s head framed by a red sun and flanked on each side by white feather headdresses, . . . to stir Aboriginal pride.”¹¹²⁵ In 1997/98, at a time of rising romanticism, Native identity appealed not only to Native Americans but “will attract non-Native consumers too,”¹¹²⁶ Larry Henderson, president of First Nations Group, argued.

Native marketer Grey Owl Wild Rice, based in Grand Rapids, Minnesota, and since 1989 the U.S. division of the 100 percent Indian-owned Saskatchewan Indian Agricultural Program, developed a logo to represent wild rice as a Native product appropriately. The logo depicted a Native American with braids and wearing one feather who was surrounded by a circle representing the “oneness of nature,”¹¹²⁷ as Jeff Borg, U.S. distribution manager for Grey Owl, explained. Marketing wild rice products with Indigenous imagery was a sensitive issue in this industry because it was a traditional Indian food, and, according to Minnesota law, rice had to be 100 percent Indian-produced or lake-harvested to qualify as ‘wild.’¹¹²⁸

¹¹²¹ Ray Halbritter, Nation Representative, Oneida Indian Nation Inc., paraphrased in Kaplan, “In Tax Fight, Tribes Make, and Sell, Cigarettes,” A1.

¹¹²² Ray Halbritter, quoted in Kaplan, “In Tax Fight, Tribes Make, and Sell, Cigarettes,” A1.

¹¹²³ Hodge et. al, “American Indian Internet Cigarette Sales,” 260-261.

¹¹²⁴ Deenise Becenti, News Correspondent, *KTNN*, and Tasbah McCullah, Director, *KTNN*, quoted in Bill Donovan, “Liquor ads to be broadcasted on airwaves,” *Navajo Times*, November 27, 1996. ProQuest 225296528.

¹¹²⁵ Debbie Faulkner, “First Nations Cola set to take the Pepsi challenge,” *Windspeaker* [CA], June 1, 1997, Insert.

¹¹²⁶ Larry Henderson, President, First Nations Group Ltd., quoted in *ibid*.

¹¹²⁷ Jeff Borg, U.S. Distribution Manager, Grey Owl, quoted in Philip Burnham, “Indians can’t shake label as guides to good buys,” *The Washington Times*, May 27, 1992, E1.

¹¹²⁸ Cf. Burnham, “Indians can’t shake label as guides to good buys,” E1.

Criticizing the use of Indian logos to sell mystique, Grey Owl aimed to “employ Indian people in a way that doesn’t drastically differ from their culture.”¹¹²⁹ Borg emphasized that “the company name has nothing to do with the historical ‘Grey Owl’ – a turn-of-the-century environmentalist who it turns out, was an Englishman who merely ‘passed’ as Indian.” Omitting his ethnic background, the 2021 company webpage entitled “Who Was Grey Owl?” depicted a Native man wearing a buckskin jacket and feathers in his hair, paddling in a canoe on a lake. Additionally, the page offered book recommendations about Grey Owl and the 1999 movie “Grey Owl” to learn more about the “Legend of Grey Owl,” and links to *Amazon* to buy the items.¹¹³⁰ While the website nowhere claimed a connection, consumers may or may not have drawn conclusions from the company’s website about a connection between Grey Owl and the rice product.

Native American (mis)representation in self-produced advertising is a controversially researched issue. Research literature covering casino marketing¹¹³¹ and tourism often revolves around the maxim of (historical) authenticity and self-determination. While many viewers found Native American representations at the Foxwoods casino stereotypical, such as the twelve-foot-tall Rainmaker statue, Bill Anthes argued these were the “authentic expression of a nation that has endured. The modern Pequot nation as such is a product of a history of destruction and dispersal, and the display of what seems impermanent - even inauthentic - may speak most eloquently of that history of loss and redemption.”¹¹³² Ultimately, the “Pequots have managed to harness the centrifugal forces of the global marketplace to shore up their own centripetal claims to a place-based identity, pouring casino profits into an impressive array of community-building projects.”¹¹³³

Dennis Wiedman considered the Florida Miccosukee’s successful touristic self-promotion as epitomizing the intentions of UNDRIP with respect to cultural and economic self-determination.¹¹³⁴ Jay Mechlin, however, questioned the scope of real self-determination in the discourse of tourist identity, arguing that the Seminoles were an invention from the beginning, influenced by Euro-American expectations.¹¹³⁵ Rhonda S. Fair’s evaluation of websites maintained by federally recognized tribes revealed that those “used by a local tribal community focus on local identity, while web sites directed at a broader audience, including ethnic tourists, use more generalized or stereotypical images of Indians.”¹¹³⁶ These different

¹¹²⁹ Jeff Borg, U.S. Distribution Manager, Grey Owl, quoted in *ibid.*, E1.

¹¹³⁰ “Who Was Grey Owl,” Grey Owl Wild Rice, accessed February 27, 2021, <http://www.greyowlwildrice.com/whowas.shtml>.

The website described Grey Owl as “one of the most important Canadian writers and famous naturalists, [who] created a worldwide legend around his message of protecting the wild life and forests of the northern wilderness.”

¹¹³¹ See Bodinger de Uriarte, “Imagining the Nation with House Odds;” Anthes, “Learning from Foxwoods;” Manitowabi, “Masking Anishinaabe Bimaadiziwin.”

¹¹³² Anthes, “Learning from Foxwoods,” 215.

¹¹³³ *Ibid.*, 205.

¹¹³⁴ Marketing expert Lee Tiger can draw on many years of experience in self-marketing by the Miccosukee tribe and developed international marketing concepts to arouse the interest of European (and especially German) tourists in visiting North American tribes. This eventually resulted in the *DiscoverNativeAmerica.com* homepage as a successful platform where all tribes in the United States may market themselves as tourist destinations. See Wiedman, “Global Marketing of Indigenous Culture.”

¹¹³⁵ According to Mechlin, Seminoles have been an invention from the beginning as they were actually a very heterogeneous group of Calusa, Creek, and other tribes that have adopted traditions invented for tourism, like alligator wrestling, as part of their culture. Cf. Mechlin, “Florida Seminoles,” 159-161.

¹¹³⁶ Fair, “Becoming the White Man’s Indian,” 211.

ways of self-representation, depending on the audience, testify to the “multifaceted nature of identity” where “identity is situational and adaptive and can serve multiple purposes.”¹¹³⁷

Highlighting the mutual interdependency in the production of Indigenous artifacts by the Navajo, Erika Marie Bsumek emphasized that at no time did external forces alone determine the production. Also, the Navajo never abandoned their cultural identity despite incorporating nontraditional materials or technologies.¹¹³⁸ Similarly, Kelley A. Gilpin-Hays showed how Hopi potters, who produced pottery for trade at the household level, had been adapting to market demands since the 14th century. In the “prehistoric period, pots had to be durable for transport, and potters responded by increasing their use of high-quality fuel and clay. In the modern period, durability was not an issue, but . . . vessels for tourists had to be small, so miniaturization was the response.” Since “pots apparently had to look Hopi” in both periods, Hopi potters chose yellow-firing clays and made use of only a “limited range of painted designs.”¹¹³⁹ Challenging the prevalent way of looking at Indigenous souvenirs, J.C.H. King argued that tourism artifacts should not be viewed as the crown of the process of colonization but rather as a medium of communication between Native and non-Native societies.¹¹⁴⁰ Karl Neuenfeldt focused on the marketing of Native American music recordings on websites as “successful collaborations between Native American and non-Native American marketers, artists and consumers” to demonstrate how the sites “combine[d] aspects of culture, commerce and creativity.”¹¹⁴¹

Particularly in the casino business, Native American entrepreneurs sought to develop marketing strategies representing Native peoples or tribes that appealed to Non-Natives without offending Native cultural norms. As the protest cases show, Native marketers themselves first had to define rules for the adequate use of Indigenous symbols and representations in accordance with Indigenous norms.

5.2.1 Criticism of Indigenous Marketing Practices

Criticism against Indigenous marketers misrepresenting Native Americans arose several times against operators of casinos like Mystic Lake Casino in Minnesota (1992), the Buffalo Thunder Resort & Casino in New Mexico (2009), and Initiative 651 (I-651) that sought to legalize unrestricted gambling on Indigenous lands in Washington State (1995). While the Buffalo Thunder Resort & Casino’s marketing campaign triggered a sexism debate (see self-expression of Native American women chapter), activists criticized Mystic Lake commercials for using Indigenous symbols inappropriately, whereas the marketing campaign promoting I-651 made use of offensive stereotypes of Native Americans.

“In a populist pitch to disgruntled taxpayers,” Jim Simon reported on the protest against I-651, “the ad features a man in a flannel shirt being kicked in the head and punched with a boxing glove.” In his interpretation, “The ads seem to borrow a page from a common conservative strategy of turning welfare – and, liberal critics often charge, resentment toward

¹¹³⁷ Ibid., 203.

¹¹³⁸ Cf. Bsumek, *Indian-Made*, 208, 219.

¹¹³⁹ Gilpin-Hays, “Commercialization before Capitalists,” 408-409.

¹¹⁴⁰ Cf. J.C.H. King, “Marketing Magic: Process, Identity and the Creation and Selling of Native Art,” in *Present is Past: Some Uses of Tradition in Native Societies*, ed. Marie Mauzé (Lanham: UPA, 1997), 84.

¹¹⁴¹ Neuenfeldt, “www.nativeamericanmusic.com,” 115.

welfare recipients – into a political hot button in many races.”¹¹⁴² Tribes had sponsored the commercial, arguing they would “spend gambling profits to create jobs and get American Indians off welfare and other social programs.” Other tribes countered the initiative “lacked restrictions to ensure gaming would benefit all of the state’s 26 tribes.”¹¹⁴³

Representatives of “several Washington Indian tribes” protested the “shockingly racist commercial that plays on unfair stereotypes.”¹¹⁴⁴ The “ad wrongly implies Indians consume a big chunk of welfare dollars,”¹¹⁴⁵ noted critics referring to information from the Washington State Department of Social and Health Services showing that Native Americans made up 4.37 percent of state welfare recipients. In opposition to I-651, the group Tribes for Responsible Gaming wrote the initiative that

This ad exploits a very negative perception of the Indian community It is one thing for tribal leaders to seek economic independence for their people; it is quite another for a wise-cracking actor to accuse us of being welfare freeloaders... Surely, it is clear to you that this ad does far more damage to our cause and on a deeper level than any passing victory at the ballot box could be worth to you.¹¹⁴⁶

Denouncing the use of “that kind of an image for financial advantage,” Doreen Maloney, council member and acting general manager of the Upper Skagit Tribe, asked, “What would happen if a non-Indian group put that out? . . . It would be accused of racism. The offensiveness doesn’t change just because it’s Indians putting it out.”¹¹⁴⁷ In a press release, I-651 campaign creator and chairman Russell LaFountaine responded, “Indians ‘who have survived off government handouts’ naturally feel uncomfortable when the ad connects those payments directly to the taxpayers who foot the bill.”¹¹⁴⁸ Herb Whitish, chairman of the Shoalwater Bay Tribe and a campaign leader, added the commercial “was designed to deliver a strong message that we, too, are sick of having so many people have to rely on federal payments” and gambling “is a way out.”¹¹⁴⁹ As the campaign was “trying to tell people what’s really happening on the reservation,” Whitish reversed the argument that the stereotype of the welfare recipient did not mirror reality. Board members of the ad campaign rejected protesters’ plea to withdraw the ad.

To promote their new Indian gaming facility, the Mystic Lake Casino in Minnesota (1992), the Mdewakanton Sioux placed an ad campaign featuring sacred Indigenous symbols “not just to draw people to Mystic Lake but to educate people to the beauty of Indian traditions.”¹¹⁵⁰ White-owned advertising agency Hunt Murray Consortium, which won the Mystic

¹¹⁴² Jim Simon, “Tribes’ gaming ads anger other Indians,” *Seattle Times*, November 1, 1995, B3.

¹¹⁴³ Lisa Kremer, “Foes see racism in ad for gaming initiative – stereotype accurate, I-651 backers insist,” *The News Tribune*, October 31, 1995, B1.

¹¹⁴⁴ *Ibid.*, B1.

¹¹⁴⁵ Simon, “Tribes’ gaming ads anger other Indians,” B3.

¹¹⁴⁶ Tribes for Responsible Gaming, quoted in Simon, “Tribes’ gaming ads anger other Indians,” B3.

¹¹⁴⁷ Doreen Maloney, General Manager, Upper Skagit Tribe, quoted in Kremer, “Foes see racism in ad for gaming initiative,” B1.

¹¹⁴⁸ Russell LaFountaine, I-651 campaign chairman, paraphrased in Simon, “Tribes’ gaming ads anger other Indians,” B3.

¹¹⁴⁹ Herb Whitish, Chairman, Shoalwater Bay Tribe, quoted in Simon, “Tribes’ gaming ads anger other Indians,” B3.

¹¹⁵⁰ Leonard Prescott, Chairman, Little Six Inc., quoted in Doug Grow, “Indian casino’s ads put new spin on cultural exploitation,” *Minneapolis Star Tribune*, May 8, 1992, 3B.

Lake account, had done the research for the marketing campaign and organized a screening by Native Americans “to avoid as many landmines as possible.” Ultimately, director Pat Hunt and many Indian leaders found “use of the buffalo in the ads is symbolically ideal” as it “once represented good times to the Indians, much as the casinos do now.”¹¹⁵¹

Critics denounced the casino’s use of sacred symbols for economic purposes for various reasons. In a *News from Indian Country* article, Sherrole Benton explained that the tribe did not own these symbols that many tribes and cultures shared and, thus, had no right to make commercial use of them. Since nearly “every tribal group on this continent has a religious and social reference to the eagle, buffalo, turtle, tree, and other indigenous symbols,” the Mdewakanton Sioux did not “have a monopoly on the religious symbols and teachings they used in their advertisement blitz.”¹¹⁵² Furthermore, she compared the “use of Indian religious symbols and spiritual teachings to promote commercial activity . . . to a church/state issue.” Since it was “unethical and undesirable to allow either one to control or promote the other . . . , a case can be made for a separation of church and state debate.”¹¹⁵³

For some, the fact that the casino was wholly Native-owned and -operated made the offense worse because critics expected more differentiated marketing strategies from Native advertisers. As Grow recalled, many critics had opposed the “trivialization of their culture” through sports mascots before, but “in the case of Mystic Lake Casino, the issue is closer to home and more delicate for American Indians than ever before.”¹¹⁵⁴ While most sports teams were White-owned or represented mainstream America, Mystic Lake was wholly owned and operated by the Shakopee Mdewakanton Sioux. Leonard Prescott, chairman of Little Six Inc., which oversaw the operation of Mystic Lake Casino, emphasized “the ads were to show that Mystic Lake is a sovereign operation,” whereas most casinos in Minnesota had White partners or management teams.¹¹⁵⁵ While protesters assumed the casino’s marketing campaign undermined the critics’ goals precisely because it was Native-owned, the advertisers considered the ads an expression of their sovereignty.

Critics alleged the “multimillion-dollar facility” lived up to Euro-American values expressed in a capitalist attitude and “sold out to a very lucrative business.”¹¹⁵⁶ Although many agreed that the “ads have been sweet in tying traditional stories of the good fortune represented by the buffalo and the eagle to the spanking-new casino, the intent is simple. The intent is to sell, sell, sell.”¹¹⁵⁷ Benton suspected tribal officials involved established Indian peoples in the marketing in an “attempt to head off criticism on the use of religious symbols and teachings to promote commercial activity.” Additionally, in a sacred ceremony, Willard Male Bear’s 92-year-old grandfather advised him the campaign “was a good thing to do.” Benton viewed the argument that the campaign was rooted in Indigenous tradition as a justification

¹¹⁵¹ Grow, “Indian casino’s ads put new spin on cultural exploitation,” 3B.

¹¹⁵² Sherrole Benton, “From sacred alter to commercial media blitz,” *News from Indian Country*, May 15, 1992, 11.

¹¹⁵³ Ibid., 11.

¹¹⁵⁴ Grow, “Indian casino’s ads put new spin on cultural exploitation,” 3B.

¹¹⁵⁵ Leonard Prescott, Chairman, Little Six Inc., quoted in Grow, “Indian casino’s ads put new spin on cultural exploitation,” 3B.

¹¹⁵⁶ Benton, “From sacred alter to commercial media blitz,” 11.

¹¹⁵⁷ Grow, “Indian casino’s ads put new spin on cultural exploitation,” 3B.

strategy because spiritual teachings and guidance were not about commercial prosperity but “generosity, capacity to rebuild and the finite.”¹¹⁵⁸

Researchers of Indigenous marketing strategies highlighted marketers’ differentiation between public marketing and ‘real’ cultural representations. In his analysis of marketing strategies for the Chippewa Casino Rama in Ontario, Canada, Darrel Manitowabi found that the casino “is the ‘public face’ or ‘mask’ of Anishinaabe cultural representation, while the Culture and Research Department is its ‘private face’ for non-casino eyes since activities are only open to community members.” The casino developers collaborated with Anishinaabe artists to gain ideas to market an Indian casino. In the creation and marketing process, casino “actors and artists willingly and actively created a projected image of the Anishinaabe” which they considered “not ‘real,’ but merely a ‘show’ designed for non-Aboriginal visitors.”¹¹⁵⁹

In their collective psychology, they separated casino marketing imagery based on the mainstream concepts of Indigeneity from their actual cultural reality. This reality was a “shared worldview and experience that puts the individual, family, environment, and spiritual beings at its core and is understood by all members of the community, regardless of the level of their knowledge of clans, language, and ceremonies.” This Anishinaabe concept of reality is called *bimaadiziwin* and is expressed through the Cultural and Research Department, whereas the casino representation ‘masks’ Anishinaabe *bimaadiziwin*. While Indigeneity “is misrepresented to serve an economic purpose,” the “Rama Anishinaabeg negotiate this misrecognition and transform the resulting economic gain to revitalize their culture and identity based on an Indigenous way of knowing and being.”¹¹⁶⁰

When AIM leaders Vernon and Clyde Bellecourt raised criticism after seeing the Mystic Lake Casino ads, the activists met with Mdewakanton leaders and reached a compromise on how “these things . . . can be done tastefully.”¹¹⁶¹ The activists’ opinion weighed heavily, and “in the highly competitive business of casino gambling, the last thing Mystic Lake folks want is for such people as Vernon and Clyde Bellecourt . . . to voice strong objection to the Mystic Lake ad campaign.”¹¹⁶² Acknowledging that there were “differences among Indian people about the use of Indian symbols,” Benton concluded Natives needed to “define the types of speech using the symbols” to establish norms for acceptable uses of such symbols.¹¹⁶³

Controversies over the use of Native American names, symbols, and imagery for marketing purposes are not simply Native versus non-Native, Danielle Endres points out. Tribal permission for mascots, for instance, can be seen as a “form of complicity with colonization” that ultimately upholds rather than challenges the colonial system, whereby Native Americans themselves “might engage in rhetorical colonialism through acts of complicity.”¹¹⁶⁴ On the other side, by reducing a sovereign decision to an act of “rhetorical self-colonization,” tribes might doubly oppress others who are capable of protecting their sovereignty.¹¹⁶⁵ While some

¹¹⁵⁸ Benton, “From sacred alter to commercial media blitz,” 11.

¹¹⁵⁹ Manitowabi, “Masking Anishinaabe Bimaadiziwin,” 151-153.

¹¹⁶⁰ Ibid., 153.

¹¹⁶¹ Clyde Bellecourt, AIM, quoted in Grow, “Indian casino’s ads put new spin on cultural exploitation,” 3B.

¹¹⁶² Grow, “Indian casino’s ads put new spin on cultural exploitation,” 3B.

¹¹⁶³ Benton, “From sacred alter to commercial media blitz,” 11.

¹¹⁶⁴ Endres, “American Indian Permission for Mascots,” 674.

¹¹⁶⁵ Ibid., 674. See also Gerlach, “Appropriation and Accommodation.”

Natives might defend sports mascots as a result of internalized oppression,¹¹⁶⁶ others find the warrior image “empowering” and utilize “the political, economic, and symbolic rewards” coming with the public endorsement “to challenge more troubling stereotypes about Indians.”¹¹⁶⁷

Drawing on the concept of ‘Indian Play,’ some recent publications examined how Native Americans adopted popular stereotypes and instrumentalized them for their purposes.¹¹⁶⁸ In doing so, Natives often used familiar images to attract the attention of a broader public but also renegotiated media representations and Indigenous identities. Dina Barajas summarized the complexity of this process using the example of two Indigenous women of the 19th and 20th centuries who re-appropriated Native imagery to promote their political agendas. “Although Zitkala-Ša and Wendy Rose intended to foster cultural understanding and civil equality with the use of this imagery, they also inadvertently enabled the perpetuation of romanticized and stereotypical American Indian imagery utilized by the advertising and marketing industry for the purpose of corporate profit,”¹¹⁶⁹ Barajas concluded.

Native American use of Indigenous culture for marketing purposes raised questions about the impact of such practices and Native peoples’ roles in promoting and sustaining the heteronormous construction of Indigeneity. “Like everyone else,” wrote Peter Hassrick, “American Indians own only part of their personal and historical identity. Every individual is a combination of corporeal and spiritual self, as well as an amalgam of . . . external conceptions, whether observations or expectations, [which] ultimately influence who we really are.”¹¹⁷⁰ Consequently, self-identification as Native American was a choice influenced by social, economic, and political factors and partly limited by others, such as phenotypical appearance, as Hilary Weaver argued.¹¹⁷¹ Hassrick believed Native Americans suffered from this phenomenon more than others, although the “inescapable nature of this [identification process] varies only by degree. When the external force is particularly strong, be it the family or parent of the individual or a dominant culture for a group of people, it is sometimes more difficult for the individual or group to hold onto the corporeal/spiritual essence.”¹¹⁷²

Multiple times Native Americans have criticized Native entrepreneurs from Cherokee, North Carolina, for misusing and misrepresenting Indigenous and sometimes a particular tribe’s culture. The so-called Cherokee Complaint in the mid-1970s sought to prevent stores on the reservation from fraudulently selling souvenirs as Indian-made. More recent protests focused on the issue of misrepresentation through producing and selling stereotypical items and through stereotypical performances contributing to the stereotyping and fetishization of Native Americans. By creating “quality items made by the Cherokee Indians,” such as gifts,

¹¹⁶⁶ Cf. C. Richard King, “Defensive Dialogues: Native American Mascots, Anti-Indianism, and Educational Institutions,” *Studies in Media and Information Literacy Education* 2, no. 1 (2002): 5.

¹¹⁶⁷ *Ibid.*, 8.

¹¹⁶⁸ See Neuman, “Indian Play;” Schwarz, *Fighting Colonialism with Hegemonic Culture*; Barajas, “Zitkala-Ša and Wendy Rose.”

¹¹⁶⁹ Barajas, “Zitkala-Ša and Wendy Rose.”

¹¹⁷⁰ Peter Hassrick, foreword to *Powerful Images: Portrayals of Native America*, ed. Sarah E. Boehme (Seattle: University of Washington Press, 1998), ix.

¹¹⁷¹ Cf. Weaver, “Indigenous Identity,” 244.

¹¹⁷² Hassrick, foreword, ix.

souvenirs, costumes, and toys,¹¹⁷³ Robert Schmidt thought the manufacturer The Cherokees (2013) with their “stupidly stereotypical” products “are foolishly contributing to the caricaturing of themselves and other Indians as primitive savages.”¹¹⁷⁴

Simultaneously, critics argued such practices thwarted other Natives’ efforts to change the clichés circulated and reinforced through media. AIM leaders and others staged protests against the misrepresentation of Native Americans in Atlanta Braves promotional products and fans’ traditions, like the tomahawk chop or wearing bonnets and face paint during the World Series in 1991.¹¹⁷⁵ At the same time, “Cherokee Indians in North Carolina worked overtime to supply the Atlanta baseball team the chicken-feather headdresses and foam tomahawks that so many Indians in Minnesota found offensive.”¹¹⁷⁶ Jonathan Taylor, Principal Chief of the Eastern Band of Cherokee Indians, responded to this criticism that “We’re not fighting a war of Indians versus whites anymore The Cherokee just want to make a living. It’s welfare that’s demeaning. Go Braves!”¹¹⁷⁷ While Cherokee entrepreneurs decided to take advantage of the market demand for the tribe’s economic progress, Vernon Bellecourt maintained, “They have prostituted their culture.”¹¹⁷⁸

Economic advancement was a goal and driver of self-determination for Cherokee businesses and individuals, and for casino operations on reservations in general. Calloway pointed out, “with an economic downturn at the beginning of the new century, many states showed a new willingness to cooperate with Indian gaming to secure a piece of the pie, most notably in New York State, where the negative economic effects of 9/11 were most severe.” With this new prosperity came self-sufficiency, opportunities for economic diversification, and true self-determination. Self-determination expanded to the cultural level since revenues from casinos allowed tribes like the Pequots to open a \$193 million research center. Additionally, with capital, Indigenous people could advance their own culturally appropriate projects with goals and values beyond economic success. For example, tribal efforts to reinstitute buffalo herds as a holistic restoration project “helped to restore ecological, social, cultural, and spiritual health to Plains Indian communities.”¹¹⁷⁹

More than any other business sector, gaming businesses were criticized for “capitalizing on their Indian heritage but sacrificing traditional values for easy money.” Still, opinions diverged on the potential effects of participation in modern capitalism on Indigenous communities and cultures. Could “Native communities . . . survive incorporation into the global capitalist market system. Can they still be Indians if they are successful capitalists?” While critics feared this would undermine tribal community, culture, and values, many tribes developed successful models of tribal capitalism based on Indigenous norms where the tribal community

¹¹⁷³ The Cherokees, quoted in Robert Schmidt, “The Cherokees gift shop,” *Newspaper Rock*, February 9, 2013, accessed October 30, 2016, <http://newspaperrock.bluecorncomics.com/2013/02/the-cherokees-gift-shop.html>.

¹¹⁷⁴ Schmidt, “The Cherokees gift shop.”

¹¹⁷⁵ Cf. “WORLD SERIES; Indians Stage Protest Outside the Dome,” *The New York Times*, October 20, 1991, 8.

¹¹⁷⁶ Grow, “Indian casino’s ads put new spin on cultural exploitation,” 3B.

¹¹⁷⁷ Jonathan L. Taylor, Principal Chief, Eastern Band of Cherokee Indians, quoted in Grow, “Indian casino’s ads put new spin on cultural exploitation,” 3B.

¹¹⁷⁸ Vernon Bellecourt, AIM, quoted in Grow, “Indian casino’s ads put new spin on cultural exploitation,” 3B.

¹¹⁷⁹ Calloway, *First Peoples*, 650-655.

benefited from redistributed profits. Ultimately, for many tribes, the new wealth served to “preserve and revive their culture, not to undermine it.”¹¹⁸⁰

Indian gaming, as one of the most lucrative business sectors for some Indigenous tribes, drew attention to the issue of Indian identity because, to many people, “gaming Indians [appeared] as being ‘too white’ or ‘too black’ to be ‘real Indians’.” Since the common perception that real Indians lived in poverty remained, although history provided many examples of Indian wealth and prosperity, supporters thought tribes like the Pequots were “shattering stereotypes of Indian poverty.” Others feared the new cliché of wealthy Indian casino operators would distort reality and harm all Native Americans since only a few tribes actually profited from gaming.¹¹⁸¹

In the *Native Times*, S.E. Ruckman pointed to the effect tribal infomercials promoting the image of Native Americans as successful business people in the gaming industry had not only on the perception of Native Americans in U.S. society but also on their self-perception. “Thanks to Indian gaming revenues,” tribes started “investing in short clips (I loathe to call them commercials) that quickly educate, expand or redefine a tribe’s profile.” As tribes now had the power to speak for themselves and shape their image, Ruckman argued, the tribal snapshots seemed a triumph on the surface. However, one of the “pitfalls of these commercialized efforts is that new Indian stereotypes are often perpetuated by these well-meaning messages.” Like society in general, Indian Country was equally susceptible to subliminal and obvious messages communicated in media and tribal infomercials, respectively. Due to “smaller-tribe sensibilities,” Ruckman found it dangerous to promote Native Americans as an integral part of the general society because the “calamity in wanting mainstream society to accept us is that we again become susceptible to being something others find comfortable and nothing like our ancestors would recognize.”¹¹⁸²

“[S]elf-inscription in Native America is no less problematic than false representations by non-Indians,” Nancy Mithlo wrote about local tribes permitting sports teams to keep their names and mascots. These permissions contrasted the National Collegiate Athletic Association’s (NCAA) efforts to ban disparaging Native mascots from their tournaments. As Mithlo believed, “economic motivation has led to a lack of internal resolution about the appropriate use of ‘primitive’ imagery.”¹¹⁸³ Beyond internal resolution, Native Americans disagreed on how to use symbols and imagery appropriately. There is a history of Indian intellectuals like Northern Paiute activist and educator Sarah Winnemucca (1844-1891) using “popular images and stereotypes for their own purposes.” Some activists “adopted and adapted to public performance as a way to be heard and to help advance Indian causes.”¹¹⁸⁴ Like Ted Jojola called AIM leader Russell Means “an American Indian movement stereotype,”¹¹⁸⁵ other critics accused activists of serving stereotypes.

¹¹⁸⁰ Ibid., 653; 649. See also Duane Champagne, “Tribal Capitalism and Native Capitalism: Multiple Pathways of Native Economy,” in *Native Pathways: American Indian Culture and Economic Development in the Twentieth Century*, ed. Brian Hosmer and Colleen O’Neill (Boulder: University Press of Colorado, 2004), 308-329.

¹¹⁸¹ Calloway, *First Peoples*, 653-655.

¹¹⁸² S.E. Ruckman, “The new trend: Tribal infomercials,” *Native Times*, August 23, 2011, accessed April 4, 2020, http://www.nativetimes.com/index.php?option=com_content&view=article&id=5910:the-new-trend-tribal-infomercials&catid=46&Itemid=22.

¹¹⁸³ Mithlo, “A Realist View of Image Politics,” 107.

¹¹⁸⁴ Calloway, *First Peoples*, 432-33.

¹¹⁸⁵ Ted Jojola, “Some Preliminary Notes on Pocahontas,” *American Indian Libraries Newsletter* 18, no. 1 (Fall 1995), 1.

The occupation of Wounded Knee in 1973, for instance, was a “desperate attempt to grab the world’s attention,”¹¹⁸⁶ and the visual display of Indian identity helped the protesters reach their goals. Since media attention was vital for the movement’s success, the long hair and feathers urban activists started wearing furthered their objectives as it seemed even “more exciting to the white media than to reservation populations.”¹¹⁸⁷ The visual representation of Indigeneity became a symbol of resistance since many Natives viewed the forced cutting of hair and wearing of Euro-American clothing in boarding schools as an act of strained assimilation and cultural ‘killing’ of the Indian. With increasing popularity, AIM “set a style for Indians to imitate.”¹¹⁸⁸ As a result of their media strategy, Mary Brave Bird concluded, “Some people loved AIM, some hated it, but nobody ignored it.”¹¹⁸⁹

On the other side, when ‘hipsters’ used symbols of Indigeneity as a signifier to visualize their opposition to the ‘dominant system,’ DPTP argued, they “promote their stance against consumerism as an excuse for a lot of offensive cultural appropriation Their privilege allows them to play with cultural images and identities and take them out of context for their amusement.” But in fact, “the act of re-creating an old racist stereotype is actually the ultimate act of conformity.”¹¹⁹⁰

While a marketer’s ethnic background was generally irrelevant in cases of offensive marketing representations, and respectful use of Indigenous names and images was paramount, in some cases, it made a difference who used Native culture. Becky Mackintosh, part Navajo and owner of the Denver-based trucking company Navajo Express, modeled for the new logo that superseded the image of a male chief when she bought the company in 1981. Mackintosh received complaints about the female Native American wearing a single-feather headband, but “when they find out it’s me and not some random person on the side of our trucks, it makes a big difference.”¹¹⁹¹

Protests against Indigenous misrepresentation or appropriation through marketing practices typically targeted Euro-Americans, sometimes Native Americans, but also other non-White marketers. Playing Indian, for instance, as an extension of cultural appropriation was not “limited to the dynamics of power between white folks and Native folks.” Quite contrary, Keene found it “honestly hard to see people from other marginalized communities jumping on the bandwagon to oppress another group.”¹¹⁹²

During his *Yeezus* tour in 2013, Kanye West sold merchandise to concertgoers, like T-shirts bearing a skeleton wearing a war bonnet and another depicting the Confederate flag, which “inspired outrage and befuddlement.”¹¹⁹³ As West argued, the “Confederate flag repre-

¹¹⁸⁶ Peter Harriman, “The Legacy of Wounded Knee,” *Manataka*, March 16, 2003, accessed October 5, 2013, <http://www.manataka.org/page1710.html>.

¹¹⁸⁷ Langston, “American Indian Women’s Activism,” 125.

¹¹⁸⁸ Crow Dog, *Lakota Woman*, 82.

¹¹⁸⁹ *Ibid.*, 74.

¹¹⁹⁰ “Halloween Nightmares,” Don’t Pay To Pray.

¹¹⁹¹ Becky Mackintosh, owner of Navajo Express Inc., quoted in Jonathan Wegner, “Honor or insult? – The use of American Indian symbols by businesses and sports teams sometimes is about money, as well as about respect,” *Omaha World Herald*, October 2, 2005, 1D.

¹¹⁹² Adrienne Keene, “Paul Frank offends every Native person on the planet with Fashion Night Out ‘Dream Catchin’ Pow wow,’” *Native Appropriations*, September 9, 2012, accessed July 28, 2016, <http://nativeappropriations.com/2012/09/paul-frank-offends-every-native-person-on-the-planet-with-fashion-night-out-dream-catchin-pow-wow.html>.

¹¹⁹³ “Kanye West’s Tour T-Shirts Feature Indian Skull, Confederate Flag,” *Indian Country Today Media Network*, October 22, 2013, accessed November 1, 2016,

sented slavery in a way” and “So I made the song ‘New Slaves’ so I took the Confederate flag and made it my flag. It’s my flag now, now what you going to do?”¹¹⁹⁴ According to Danielle Miller, West was “guilty of perpetuating racism” since he could reclaim “the confederate flag, [but] he cannot do the same with Native American identity.” Miller announced Native Americans would “continue to address Kanye and let him know that he does not own our identities or our struggles. He will not profit from our oppression and historical trauma without being held accountable for his actions. We are taking sovereignty over our image, we will continue to address celebrities and anyone who has intentions to exploit, oppress or demean us.”¹¹⁹⁵

5.2.2 Native Agency as Actors

There is a long history of Native Americans playing roles in shows or playing Indian according to or responding to Euro-American expectations to reach their goals. While some “scholars view Indians who participated [in Wild West shows] as victims of commercial capitalism that marginalized Native people,” Natives themselves “who participated in the shows do not seem to have viewed themselves as victims or pawns.”¹¹⁹⁶ Quite contrary, for many Indigenous actors, Wild West shows were “the only place to be an Indian – and defiantly so – and still remain relatively free from the interference of missionaries, teachers, agents, humanitarians, and politicians.”¹¹⁹⁷ As academic work such as Lisa K. Neuman’s *Indian Play: Indigenous Identities at Bacone College* shows, scholars’ perceptions and concepts of agency and heteronomy have changed. This approach considered Natives who played roles according to non-Native expectations as active agents who employed Indian play to reach their goals rather than passive victims of stereotyping. Asking whether Native Americans could “reappropriate non-Indian images of Indianness to serve their own ends,” Newman sought to “disrupt the opposition between *authentic* and *inauthentic* that has often limited our abilities to write about Native cultures and identities.”¹¹⁹⁸ In her opinion, Indian play was not an inauthentic expression of Indigenous identity because it referenced outsiders’ images of Natives. Instead, Indian play was a creative way to produce new Native identities.

At least since the 1880s, Native actors played roles in non-Native popular culture productions such as Medicine and Wild West shows, with Sitting Bull becoming “the first great Show Indian.”¹¹⁹⁹ Show Indians, as Lester G. Moses called Indigenous actors in Wild West shows, repeatedly played the role of a defeated people. These actors created stereotypes that the shows and later the movie industry, the “engines of popular culture,” distributed to the American population, and which persist to this day. The controversy initiated by Indian ser-

<http://indiancountrytodaymedianetwork.com/2013/10/22/kanye-west-t-shirts-feature-indian-skull-confederate-flag-151868>.

¹¹⁹⁴ Kanye West, quoted in Danielle Miller, “Kanye West Continues to Profit From Genocidal Historical Trauma,” quoted in Robert Schmidt, “Kanye’s t-shirts feature Indian skulls,” *Newspaper Rock*, October 26, 2013, accessed November 1, 2016, <http://newspaperrock.bluecorncomics.com/2013/10/kanyes-t-shirts-feature-indian-skulls.html>.

¹¹⁹⁵ Kanye West, quoted in Miller, “Kanye West Continues to Profit From Genocidal Historical Trauma.”

¹¹⁹⁶ Calloway, *First Peoples*, 439.

¹¹⁹⁷ Moses, *Wild West Shows*, 278.

¹¹⁹⁸ Lisa K. Neuman, *Indian Play: Indigenous Identities at Bacone College* (Lincoln: University of Nebraska Press, 2013), 5.

¹¹⁹⁹ Moses, *Wild West Shows*, 30.

vice agents and reformer allies over the concern “whose image of Indians would prevail in the public mind” led to a “battle of imagery” against the shows.¹²⁰⁰

Reformers were convinced that shows portrayed Native Americans as wild savages but “wished to foster the idea of Indians as tamed humans in a tamed land, who were embracing civilization through land allotment, education, and industry.”¹²⁰¹ Although “peaceable Indians had every right to come and go as they wished,” Indian Agent Gallagher at Pine Ridge attempted to prohibit tribal members from leaving the reservation “without proper authority.” In his view, it was “degrading to travel around the country advertising for the Kickapoo Medicine Company.” Moreover, without the “friendly care and protection of the government, they would be at the mercy of employers whose greed nowhere equaled their concern for employees’ health and morals.”¹²⁰²

Native Americans shared similar concerns, like Sioux Brule reformer and member of the Society of American Indians Chauncey Yellow Robe, who, in 1913, found participating in Wild West shows “degrading, demoralizing, and degenerating.”¹²⁰³ Wild West shows featuring Native Americans had “found paying audiences to support their views of the Indians.”¹²⁰⁴ The popularity of such shows, which were very successful in the East but would have failed in the West,¹²⁰⁵ stimulated the development and commercialization of Eastern ideas of the mythic Wild West Indian. Looking back at the history of Native representations in the movie industry, Mohawk actor Jay Silverheels (1912-1980) thought the motion pictures “made the Indian a foreigner in his own land.”¹²⁰⁶

Numerous Natives joined the shows because the salary and the perspective of adventurous travels throughout the U.S. or overseas were more attractive than leading a “productive” life on the reservation.¹²⁰⁷ Show Indians were also a crucial part of traveling medicine shows like those organized by the Kickapoo Medicine Company, which originated in 1881 through a partnership between Texas Charlie Bigelow and Colonel John Healy. When company representatives searched for Indigenous actors in the spring of 1889, at Pine Ridge alone, 62 Oglalas signed up, and another 53 Oglalas soon joined.¹²⁰⁸ Most actors came from Iroquois tribes in New York to work with the thirty show groups traveling across the East, but “at no time did a genuine Kickapoo ever grace a Healy-Bigelow troupe.”¹²⁰⁹

Indigenous actors were vital for Wild West shows because their “presence gave the exhibits a patina of authenticity if not respectability.”¹²¹⁰ They were equally important to medicine shows to “attract attention, overcome customer resistance, and promote sales”¹²¹¹ of products such as Indian Sagwa. The obligatory medicine man, usually posing as the “poor man’s friend” or the “people’s doctor,” had to have “poise and stage presence, and to succeed he had to know his regions and his people, their prejudices and assumed needs. Above all

¹²⁰⁰ Ibid., xi-xii.

¹²⁰¹ Ibid., 5.

¹²⁰² Ibid., 71-73.

¹²⁰³ Chauncey Yellow Robe, quoted in Moses, *Wild West Shows*, 6.

¹²⁰⁴ Moses, *Wild West Shows*, 5.

¹²⁰⁵ Cf. Gibson, “Medicine Show,” 36.

¹²⁰⁶ Jay Silverheels, quoted in A.R., “The False Image Makers,” 8.

¹²⁰⁷ Cf. Moses, *Wild West Shows*, 8.

¹²⁰⁸ Cf. *ibid.*, 71, 75.

¹²⁰⁹ Gibson, “Medicine Show,” 76.

¹²¹⁰ Moses, *Wild West Shows*, 21.

¹²¹¹ Gibson, “Medicine Show,” 35.

else, he had to be able to ‘scare all hell out of a man’.”¹²¹² How convincing medicine men could be demonstrates a viewer’s recollection of a medicine show. He recounted, “a man could enter that medicine-shop tent a picture of health but depart a terrible sick man with a bottle of cure-all clasped tightly in his hand and new hope in his heart.”¹²¹³

One hundred years later, ‘real’ Native Americans were still popular as actors in Wild West shows in the U.S. and Canada. In 1996, Euro Disney sought to hire Indigenous actors from Alberta, Canada, for a Wild West show, including runaway stagecoaches and gunfights between cowboys and Indians. Using a newspaper recruiting ad designed in the style of a ‘Wanted’-poster, Disney sought “real Cowboys, Native Americans and First Nations Men” with experience in rodeos and handling livestock.¹²¹⁴ James Badger, Grand Chief of the Slave Lake Tribal Council, remained wary because, “if the Walt Disney Co. wants to accurately portray how the West was won, they should hire folks to play Catholic missionaries and department of Indian affairs bureaucrats instead.”¹²¹⁵ He warned the company that “if the show at the theme park just outside Paris includes racist Hollywood stereotypes of native Indians as bloodthirsty savages, Disney will hear about it from him.”¹²¹⁶

Like 19th-century Show Indians sought to leave their home for financial or adventurous opportunities, Native Americans in the 21st century pursued similar opportunities to escape conditions at home. In 2004, Shiala King became the first Native American model for the Levi Strauss jean company and signed with the modeling agency Ford Models. Shiala’s parents had sent her photos to a casting agent after she complained she was the only Native girl in the fifth grade, and her classmates did not play with her anymore after they started understanding perceived ethnic differences. The family’s intention of applying with the fashion company was to get Shiala out of South Dakota limitations to a place where she could “see that being Native is a positive thing, a very good thing, not a negative thing ... we wanted her to have a boost for her self esteem . . . at this age where they form impressions that last a lifetime.”¹²¹⁷

Native Americans controversially discussed how much agency actors had while playing a role. To what extent did Natives fulfill popular expectations to get hired; was playing stereotyped roles selling oneself; and how much pressure came from Indigenous communities to meet their expectations which often contradicted mainstream notions of Indigeneity? In many instances, Native Americans “have turned the familiar stereotypes to their own advantage.” While some Natives “fume over such ‘selling out’ or lack of ‘authenticity,’ . . . others perceive it as taking back power,”¹²¹⁸ noted Elizabeth Bird. One of the most popular and controversial examples of a Native American playing Indian was the iconic Cherokee Chief of Saunooke Village in Cherokee, North Carolina.

¹²¹² Ibid., 39.

¹²¹³ Ibid., 39.

¹²¹⁴ “Alberta chief wary of Euro Disney job ad,” *The Vancouver Sun* [CA], February 5, 1996, A4.

¹²¹⁵ James Badger, Grand Chief, Slave Lake Tribal Council, quoted in “Alberta chief wary of Euro Disney job ad,” A4.

¹²¹⁶ “Alberta chief wary of Euro Disney job ad,” A4.

¹²¹⁷ Lise King, quoted in “New Native Levi’s Model Signs With Ford Agency,” *The Native Voice*, March 21, 2004, 4.

¹²¹⁸ Bird, “Constructing the Indian,” 5.

Having started his job as a tourist attraction in 1951 as a 16-year-old boy, Henry Lambert aka Chief Henry was posing for photos with tourists for more than 50 years. Since this activity turned out to be significantly more lucrative, Lambert gave up his job at the Cherokee Indian Police Department and his construction job during the summer.¹²¹⁹ The practice of chiefting, that is, dressing up as ‘Indian Chief,’ was “controversial even in a community known for tolerance of native stereotypes, and Chief Henry was often a target of criticism.”¹²²⁰ One of his critics was Migizi Pensoneau, an Ojibwe writer, filmmaker, and member of the 1491s:

It’s messed up that an Indian person would actually sell their own image, this fake image. It’s messed up that they would do that to themselves. That they would see themselves as so... not real that they would do that. . . .
[But] even if he didn’t believe himself to be a stereotype, even if he was a guy that understood what it meant to be Indian, if he knew all his traditions, spoke his language, all this stuff, he is still a dude that thought that the only way people would be interested in his Indianness is as if it was in a way that they had seen it on TV, this messed up, romanticized version of it. The only way, he thought, that non-Native people would be interested is that he played it to that role.¹²²¹

According to Pensoneau, there were two reasons why Lambert would use this kind of imagery. He might identify with the popular idea of Indigeneity or believe that non-Native people were only interested in him or his identity if he played Indian according to their expectations. Jarrett Martineau believed these practices were generally rooted in “the demands and limits imposed by settler colonial power upon Indigenous artists to perform indigeneity according to settler colonial logics.”¹²²² Lambert, however, “never denied that the character he created was taken from Hollywood expectations of what an Indian should look like. He never promised to be authentic, only entertaining.”¹²²³

From his point of view, Lambert pursued a job he enjoyed, and it enabled him to send five of his six children to college, one of them to law school at Chapel Hill.¹²²⁴ Furthermore, the tourism industry of Cherokee profited highly from his promotional activity as the “chief singled-handedly [sic] brought people to Cherokee,” said David Wise, manager of two shops at Saunooke Village.¹²²⁵ Cherokee County resident Joe Martin wrote, as “the face of Cherokee tourism,” Lambert left “a lasting legacy,” and nobody could “match the contributions he made in promoting Cherokee.”¹²²⁶

¹²¹⁹ Cf. Jon Ostendorff, “Iconic Cherokee Chief Henry has died,” *The Asheville Citizen Times*, November 20, 2007, quoted in Robert Schmidt, “Stereotype of the Month Entry (11/20/08),” *Blue Corn Comics*, November 20, 2008, accessed August 5, 2018, <http://www.bluecorncomics.com/stype7b8.htm>.

¹²²⁰ Joe Martin, “Chief Henry was face of tribal tourism,” *The Asheville Citizen Times*, November 29, 2007, quoted in Robert Schmidt, “Stereotype of the Month Entry (11/20/08),” *Blue Corn Comics*, November 20, 2008, accessed August 5, 2018, <http://www.bluecorncomics.com/stype7b8.htm>.

¹²²¹ Migizi Pensoneau, in Cannupa Hanska, “This Is A Stereotype,” 2014, Vimeo video, 40:21, accessed April 14, 2020, <https://vimeo.com/107837040>.

¹²²² Jarrett Martineau, *Creative Combat: Indigenous Art, Resurgence, and Decolonization* (PhD diss., University of Victoria, 2015), iii.

¹²²³ Ostendorff, “Iconic Cherokee Chief Henry has died,” quoted in Schmidt, “Stereotype of the Month Entry (11/20/08).”

¹²²⁴ Ibid.

¹²²⁵ David Wise, paraphrased in Ostendorff, “Iconic Cherokee Chief Henry has died,” quoted in Schmidt, “Stereotype of the Month Entry (11/20/08).”

¹²²⁶ Martin, “Chief Henry was face of tribal tourism,” quoted in Schmidt, “Stereotype of the Month Entry (11/20/08).”

Native American visitors of Cherokee had also objected to other performers who used tribal culture that was not their own. When an Oglala Lakota from the Pine Ridge Nation in South Dakota confronted a Cherokee storyteller wearing war paint, beaded necklaces, and a headdress over faded jeans and sneakers with charges of cultural misappropriation and misrepresenting their own history, the performer asked in return: “You say you’re Lakota, eh? Do you speak the language? Do you know the dances and the ceremonies? I do. But I don’t do them here. They’re too sacred.”¹²²⁷ As this reaction “hit a nerve,” the Lakota’s companion, who described their experience at Cherokee, started wondering: Was profiting from personal or foreign traditions acceptable, was performing one’s identity commoditization, was profitability compatible with authenticity, and did “any of this matter if you were simply trying to survive?”¹²²⁸

In a 1966 conference, John Belindo appealed to New York-based advertising agencies “to portray native people correctly and to portray them in everyday situations because we are a contributing part of society.” Since this view ideally suited the new “Truth in Advertising” maxim, Belindo and his message were well received.¹²²⁹ According to this precept, a model representing a nurse had to be a nurse, and a model representing a Native American had to be Indigenous. During the civil rights era, advertising agencies became increasingly interested in hiring Indian actors and models for their campaigns. Agencies contacted organizations like the AAIA in DC, or the American Indian Community House in New York City, among others, to ask for Indigenous models but frequently rejected them because “that person didn’t look Indian”¹²³⁰ enough. As Mary Byler noted, advertisers were searching for Natives fitting the generic phenotype, “someone with high cheek bones and a sharply plain face and a very prominent nose, and very tall and copper color and all of these very romantic things With feather and everything.”¹²³¹

Mary Helen Deer decided to work as an advertising model to represent Native Americans because they had often been represented by Non-Natives or “non-recognizable” Natives, that is, Natives of mixed heritage with light skin and blonde hair. After Deer “lost out on a television commercial to a Jewish girl who ‘looked’ more Indian” than she did, she was “glad to be the recognizeable [sic] native woman to represent”¹²³² in other ads. Deer worked with Cherokee agent Tony Rivers and modeled for several print ads and commercials, but her main goal was not to be a model. Instead, she wanted to portray Natives as a protest against Whites representing Indians, especially as advertising rarely depicted regular Native Americans, Native individuals, or families.¹²³³

Without having planned to become a model, she had contacts through Mifaunwy Shunatona Hines, Pawnee and Otoe, who established a group of Native women and eventually the

¹²²⁷ Cherokee storyteller, quoted in Stephanie E. Griest, “Chiefing in Cherokee: Commodifying a Culture to Save It,” *VQR Online*, Fall 2016, accessed August 5, 2018, <https://www.vqronline.org/reporting-articles/2016/10/chiefing-cherokee>.

¹²²⁸ Griest, “Chiefing in Cherokee.”

¹²²⁹ Mary Helen Deer, email message to author, September 11, 2018.

¹²³⁰ Mary Byler, AAIA, in Radio TV Reports, Inc., transcript of a WEVD program special, January 22, 1969, 6; Derogatory Images: General, 1949-1983; Box 90; AAIA Records; Pub. Pol. Papers; Mudd Man. Lib., Princeton.

¹²³¹ *Ibid.*, 16.

¹²³² Deer, email message to author, September 11, 2018.

¹²³³ Cf. Deer, interview, September 23, 2018.

American Indian Community House in New York. The Community House was not only a center to come together and find assistance but also an advocacy group for supporting activists in Wounded Knee, for instance. Furthermore, it supported artists by inviting buyers of Indian clothing lines and consulted with marketers who needed Indian actors.¹²³⁴

Being represented in advertising through recognizable Natives was important for many Natives in the 1960s and 70s who wanted U.S. society to see that Indigenous peoples were still alive and part of modern society. Popular expectations of Native Americans relating to phenotypes and roles simultaneously limited the job opportunities as an advertising model, and in the media industry in general, to Indian roles. In many industries like movie production, arts, marketing, or law, producers, merchants, and employers forced Native Americans into “Indian categories.” Natives had to play the roles of Indians, produce Indian art, market to Indian clients, sell Indian products, or work in Indian law. Similarly, despite the Native advertising agency’s growing success, G&G Advertising was “still slowed down by barriers that are difficult to overcome,” their heritage. While the advertisers wanted to be seen as an “advertising agency, not just an American Indian advertising agency,” their “background defined [their] niche.” As large companies thought of G&G as experts in their supposed segment only, Michael Gray was “waiting for the day when someone comes knocking on my door and says, ‘I have brand X and I want you to target the general audience’.”¹²³⁵

Although their heritage predetermined and limited their opportunities, Native models and actors did not necessarily oppose or condemn that practice. In 2012, Mariah Watchman became the first Indigenous contestant on the show “America’s Next Top Model” (ANTM). Due to her heritage, the producers expected her to portray Pocahontas, a quite predictable decision, as Watchman said. “As soon as I heard what the competition was, I knew that’s who I would be . . . I was completely fine with it. There’s no one else I’d want more to portray. It’s someone everybody knows.” Playing Pocahontas was acceptable for her because Watchman “always ha[d] to refer to her anyway” to explain to people that she was Native American, “As in Pocahontas.”¹²³⁶

While Watchman did not mind the producers’ choice, Adrienne Keene found it offensive that Watchman had to play a role predetermined by her race while other models of color were allowed to play White roles like George Washington or Jackie O. The producers were exploiting her “heritage [a]s her exotic selling point for the show” and forced her to wear a “pocahottie halloween” style dress based on the “Hollywood Indian stereotype without any regard for historical accuracy, regionality, or how effing racist it is to make the only Native girl basically dress up in blackface.” Especially juror Nigel Barker’s judgment that, as a Native American, she “had a very easy thing to do” (playing a Native American), and he felt she had not “committed” was “ludicrous” to Keene. “She’s somehow supposed to be ‘better’ at playing a fictionalized historic figure because she happens to be the same race?” By imposing movie stereotypes on the contestant, the producers were subverting her actual appearance as an Indigenous person:

¹²³⁴ Cf. Deer, interview, September 23, 2018.

¹²³⁵ Angela M. Cranon, “Native Talent: Michael Gray is proud to be an American Indian, and determined to break down the barriers,” *Minority Business Entrepreneur* 17, no. 5 (2000), 8.

¹²³⁶ Mariah Watchman, quoted in Rob Owen, “Pendleton resident Mariah Watchman competes on ‘America’s Next Top Model,’” *Oregon Live*, February 27, 2012, accessed October 26, 2016, http://www.oregonlive.com/movies/index.ssf/2012/02/pendleton_resident_mariah_watc.html.

It's just so frustrating. The only lens that millions of viewers of ANTM have to view us (Natives) through is that of stereotypes and false representations – even when faced with a, [sic] living, breathing counter-narrative to those stereotypes in Mariah. An educated, reservation-raised, Sahaptin language-speaking Native woman who doesn't walk around in buckskin and braids, but is still Native (and proud!).¹²³⁷

Keene saw the ANTM case as a “reflection of the sad, sad state of our society if a proud Native woman feels the only ‘iconic figure’ that ‘everyone knows’ of her race is a 12 year old [sic] who was famous for ‘saving’ and marrying an old white dude, and then becoming a Disney character.”¹²³⁸

While Natives have played Indian roles or dressed up in Indian style, some changed their attitude after learning about the process and consequences of stereotyping and colonization. Elissa Washuta shared her experience as an Indigenous woman dressing up as an Indian and recollected, “Stuffed into my fake buckskins, wearing the false headdress of the wrong gender, I was a short-haired, Technicolor monstrosity.” After having taught Indigenous Studies at the university level with a special interest in media images, Washuta had “become deeply ashamed of my night in costume.” At that time, dressing Indian had a seemingly subversive appeal to her, but by “donning my own fake feathers, I subverted nothing. Instead, I excused Halloween racism, inviting anyone who met me to do the same – after all, they’d met an Indian girl who wore a headdress and everything.”¹²³⁹ Colonialism was a dominant frame for academic activists to criticize the misrepresentation and appropriation of Indigenous culture.¹²⁴⁰ According to protesters, these practices resulted from a colonial mentality and contributed to colonial structures that continued to persist.

Besides the theft of Indigenous land and resources, James Bay Cree artist Erika Iserhoff viewed cultural appropriation as one of the “devastating consequences of settler culture.”¹²⁴¹ Cultural appropriation “continues the colonial mentality that Native peoples, lands, and traditions are free for the taking” because it “takes away our symbols, our art and our designs, and with it, takes away our power over our cultural markers,”¹²⁴² as Keene explained in the context of the Ralph Lauren case (2014). The taking and, thus, taking control of Indigenous culture through commercial representations was part of a long tradition of others trying to “tell us what our culture is.”¹²⁴³ According to Danielle Miller, “Those in privilege don’t

¹²³⁷ Adrienne Keene, “Oh ANTM, where do I even start? Mariah Watchman and the Pocahontas controversy,” *Native Appropriations*, March 2, 2012, accessed October 26, 2016, <http://nativeappropriations.com/2012/03/oh-antm-where-do-i-even-start-mariah-watchman-and-the-pocahontas-controversy.html>.

¹²³⁸ Keene, “Oh ANTM, where do I even start?”

In fact, Pocahontas, or Matoaka (Indigenous name; Rebecca would become her English name) did not marry John Smith, as is commonly believed, but John Rolfe, an English planter and colonial official of Jamestown, Virginia, in 1614. Cf. U.S. National Park Service, “Pocahontas: Her Life and Legend,” last modified July 17, 2015, accessed July 19, 2021, <https://www.nps.gov/jame/learn/historyculture/pocahontas-her-life-and-legend.htm>.

¹²³⁹ Elissa Washuta, “I regret my ‘Naughty Native’ Halloween costume,” *Salon*, October 23, 2013, accessed October 31, 2016, http://www.salon.com/2013/10/23/i_regret_my_naughty_native_halloween_costume/.

¹²⁴⁰ With respect to misrepresentation, protesters used the colonialism frame most frequently in connection with the reality, economics and race frames which reflected the influence they attributed to marketing practices on the perception of Native Americans and the real-life effects.

¹²⁴¹ Erika Iserhoff, quoted in Lauren Pelley, “We’re taking back ‘Indian Giver’,” *Toronto Star*, June 4, 2016, L1.

¹²⁴² Adrienne Keene, “Keene: Dear Ralph Lauren, Our Ancestors Are Not Your Props!” *Indian Country Today Media Network*, December 18, 2014, accessed October 19, 2016, <https://indiancountrytodaymedianetwork.com/2014/12/18/keene-dear-ralph-lauren-our-ancestors-are-not-your-props-158363>.

¹²⁴³ Erika Iserhoff, quoted in Pelley, “We’re taking back ‘Indian Giver’,” L1.

have to deal with their own identity being questioned or defined by the mainstream frequently,” and acts of cultural appropriation had “become a rite of passage for those in privilege,”¹²⁴⁴ including African American rapper Kanye West (2013). Due to its effect of redefining Native culture, acts of cultural appropriation represented “subconscious micro aggressions and acts of conquest”¹²⁴⁵ against Indigenous peoples and cultures.

Asking “What a Crest Toothpaste Commercial Can Teach Us About Racism,” an *Indian Country Today* (ICT) article warned of the socializing effect of a Crest/Oral-B commercial of 2013 showing children dressing up. “Kids look cute dressed as bumblebees, or robots, or ninjas, and there’s little danger that their fertile minds will form opinions about these things they will carry into adulthood. But what of the little Indian? What does his costume teach? If this is what an Indian looks like, does that define, for children, what all Indians are? Can an Indian be a lawyer? Do Indians live in houses? Do Indians speak proper English, drive cars, or even wear underwear?”¹²⁴⁶

Navajo artist Hulleah Tsinnahjinnie sought to educate Non-Natives and “a Native audience, without apology to the ‘mainstream’”¹²⁴⁷ to strengthen Indigenous peoples’ identity. Her digital print “Native Children Diffuse Something Different” deconstructed an advertisement by adding an alternative text to the image that warned of the general effects of marketing and media images. As her work suggests, the purpose of inaccurate imagery is to legitimize colonial history and re-write history in a favorable way. These images were no harmless coincidence but had a “hidden agenda” that Native children had to “defuse:”

Every time I see imagery that degrades Native people, my blood begins to boil, it bubbles, it erupts...

To defuse the power of this image it must be shown to native children, the reasoning must be explained, the hidden agenda uncovered.

Take a person, turn them into a cartoon they become unreal and if you happen to hurt or steal from these unreal people, nothing wrong has been done. Because good Christians do not murder, rape or steal from real people.

Native Children defuse this image.¹²⁴⁸

Dwanna Robertson interpreted offensive marketing imagery and cultural appropriation as a result of a “colonized mind,” that is, “one that sees no issue in cultural appropriation or using stereotypical caricatures that denigrate our cultures.” As a consequence of internalized oppression, a colonized mind affected Native Americans and Non-Natives alike who “have been socialized to ‘play Indian’ since they could walk.” In Robertson’s opinion, advertisements

¹²⁴⁴ Danielle Miller, “Kanye West’s Yeezus Album Art is Racist,” quoted in Robert Schmidt, “Kanye’s t-shirts feature Indian skulls,” *Newspaper Rock*, October 26, 2013, accessed November 1, 2016, <http://newspaperrock.bluecorncomics.com/2013/10/kanyes-t-shirts-feature-indian-skulls.html>.

¹²⁴⁵ Miller, “Kanye West’s Yeezus Album Art is Racist.”

¹²⁴⁶ “What a Crest Toothpaste Commercial Can Teach Us About Racism,” *Indian Country Today Media Network*, November 6, 2013, accessed November 1, 2016, <http://indiancountrytodaymedianetwork.com/2013/11/06/what-crest-toothpaste-commercial-can-teach-us-about-racism-152048>.

¹²⁴⁷ Andrew Smith Gallery Inc., “Hulleah J. Tsinnahjinnie: Portraits Against Amnesia,” post card, 2003; Tsinnahjinnie, Hulleah; Art and Artist Files; Vine Deloria, Jr. Library, NMAI, Smithsonian Institution, Suitland, MD.

¹²⁴⁸ Hulleah J. Tsinnahjinnie, “Photographic Memoirs of an Aboriginal Savant. Native Children Diffuse Something Different (#12),” 1994, digital print, in Eiteljorg Museum of American Indians and Western Art, *Path Breakers: The Eiteljorg Fellowship for Native American Fine Art* (Seattle: University of Washington Press, 2003), 88.

like those for Sun Club Color Studio (2013) and “society’s inadequate understanding of their inappropriateness show the depth of microaggressions, normalized racism, and internalized oppression that American Indians struggle with on a daily basis.”¹²⁴⁹

Media representations affected Native American children as they constructed Indigenous role models and shaped self-perceptions, as demonstrated by the cases of “America’s Next Top Model” or the Miss Lumbee photo shoot. In both cases, Native girls were to play Pocahontas, a historical person whose media representation was manipulated to fit the media format and message. Since the real story of Pocahontas was too long, Walt Disney producer James Pentecost explained, “We decided to dramatize what we felt was the essence of Pocahontas.”¹²⁵⁰ In her analysis *Celluloid Indians*, Jacqueline Kilpatrick summed up that Pocahontas’ ‘essence’ inspired the producer to “change her age and her body, and give her a motive for her actions that boils down to falling desperately in love with the first white man she sees.”¹²⁵¹ For that purpose, supervising animator Glen Keane researched paintings of Pocahontas and decided to make some adjustments: more Asian eyes, a waspish waist, sexy hips and legs, and impressive breasts.¹²⁵² By “turning the 12-year-old Pocahontas into an animated Playboy playmate,” *The New York Times* asked, “what impact the film is likely to have on its target audience – children.”¹²⁵³ For some, Johna Edmonds’ portrayal of Pocahontas as her childhood favorite Disney princess may be evidence of the impact of media representations on Native children.

6. Marketing Ethics in the Age of Globalization

The international perspective of marketing protest focuses on protests against the misrepresentation and appropriation of Native American peoples and cultures in foreign markets. While cheap imports had a significantly damaging impact on the U.S. market and the Indian Arts and Crafts market in particular, there is no evidence that protesters directly contacted producers of counterfeit Indigenous artwork operating in China, Japan, and other countries. Instead, critics asked U.S. sellers to boycott these products or urged the U.S. government to limit sales of imported counterfeits in the U.S. market legally.

In international cases (n = 29) where critics addressed marketers directly or through media, the main concerns were the misrepresentation of Indigeneity (17 cases) and the appropriation of Indigenous cultural symbols (10 cases), or both (2 cases). Most international activism was evident for advertisers in Great Britain, France, and New Zealand, but in a few instances, the protest reached companies in Finland, Ireland, Germany, and Australia. As this research suggests, international criticism of Native American marketing representations main-

¹²⁴⁹ Dwanna L. Robertson, “Dousing the Pocahottie Stereotype,” *Indian Country Today Media Network*, November 19, 2013, accessed July 5, 2016, <http://indiancountrytodaymedianetwork.com/2013/11/19/dousing-pocahottie-stereotype>.

¹²⁵⁰ James Pentecost, producer of Disney’s Pocahontas, quoted in Betsy Sharkey, “Moving Beyond Tepees and Totem Poles,” *The New York Times*, June 11, 1995, accessed January 24, 2019, <https://www.nytimes.com/1995/06/11/arts/beyond-teepees-and-totem-poles.html>.

¹²⁵¹ Kilpatrick, *Celluloid Indians*, 152.

¹²⁵² Cf. *ibid.*, 153.

¹²⁵³ Sharkey, “Moving Beyond Tepees and Totem Poles.”

ly concentrated on the European market. Protests in the U.S. against misrepresentations of Indigenous peoples outside the U.S. focused on Central American cultures.

Native Americans in the U.S. have not limited their activism exclusively to marketing practices representing themselves but demonstrated solidarity with Indigenous peoples from other countries who shared America's colonial history as 'natural' allies. In all nine protest cases against marketers using South American and Central American Indigenous culture, the cause for the protest was the misrepresentation of Indigenous peoples or cultures. More precisely, the misrepresentation of cultural beliefs and the representation of Indigenous peoples as 'uncivilized savages' induced Natives and Non-Natives alike to protest against ads created for the First National City Bank (1971, Brazil), Nike (1992, Maya), the Floorcraft Garden Center (2003, Meso America), Wizards of the Coast (2007, Aztec), Kia Motors (2011, Maya), Kellogg / Maya Archaeology Initiative (2011, Maya), General Motors (2012, Maya), Inca Lane (2012, Inca), or Commerce Casino (2013, Maya). The Kellogg Company was exceptional in asking the Maya Archaeology Initiative to change its logo because it was too similar to Kellogg's mascot Toucan Sam.

The Internet encouraged international protest, but even before this technical innovation, a certain feeling of solidarity may have originated from the pan-Indianism that developed during the civil rights movement. As early as 1971, George Duke, in his role as Director of California Indian Legal Services (CILS), complained to the First National City Bank about their advertisement referencing Indigenous peoples of Brazil. The ad image showed a scene of São Paulo and asked viewers whether they could "spot any Indians, snakes or leopards in this Brazilian jungle." Duke wrote, "Classifying Indians with snakes and leopards is crude racism," which "is particularly true in the context of disclosures in the New York Times with the past year of massacres of Brazilian Indians and theft of their land by government officials there."¹²⁵⁴ The bank explained, "In seeking to attract a reader's eye, we used the term Indians, referring to those Brazilian Indians who do, in fact, live in the jungles. We very much regret that anyone would interpret this ad as an effort to ridicule people. You may be assured that, having brought to our attention what appears now as an ill-advised choice of words, we will not publish this ad again."¹²⁵⁵

In 1992, Nike met a group of Native peoples from the Southwest who had protested a *Sports Illustrated* advertisement for the shoe model Air Flight Huarache. Tupac Enrique of the Tlahtokan Izkalotl Nation, Mexico, criticized that Nike's ad disrespectfully misrepresented the traditional sacred Mayan Tlachtl game, which symbolized the game of life, by turning it into a crazed version of modern Basketball, as the ad suggested:

In ancient Mayan civilizations, basketball was a game played to the death by crazed, savage warriors who grabbed and scratched and kicked and clawed each other to the delight of thousands of delirious, bloodthirsty spectators. Although the game hasn't changed, the shoes have.¹²⁵⁶

¹²⁵⁴ George Duke, Director, California Indian Legal Services, letter to the President of the First National City Bank, Berkeley, California, January 29, 1971; Media Surveillance; Box 255; Records of the National Congress of American Indians, 1933-1990, NMAI.AC.010; NMAI Archive Center, Smithsonian Institution, Suitland, MD.

¹²⁵⁵ Donald Colen, Vice President, First National City Bank, letter to Leo W. Vocu, New York, New York, February 22, 1971; Media Surveillance; Box 255; Records of the National Congress of American Indians, 1933-1990, NMAI.AC.010; NMAI Archive Center, Smithsonian Institution, Suitland, MD. Hereafter cited as Colen to Vocu, February 22, 1971; Media Surveillance; Box 255; NCAI Records; NMAI Archive Center.

¹²⁵⁶ Nike Inc., "In ancient Mayan civilization," print advertisement, *Sports Illustrated*, April 1992.

Manuel Pino, professor at the School of Justice at Arizona State University, sided with Mayans as the ad “reinforces all the racist stereotypes we’ve been fighting for years, like the Redskins and the tomahawk chop.”¹²⁵⁷ Nike apologized and “expressed an interest in pursuing the idea” to “get involved in projects that benefit indigenous peoples,” as the protesters suggested.¹²⁵⁸ Although there is no connection between this statement and future collaborations, in 2009, Nike created its N7 Fund to get “youth in Native American and Indigenous communities in North America moving.”¹²⁵⁹

The Kellogg Company asked the California-based nonprofit organization Maya Archaeology Initiative (MAI) to “remove an image of the tropical bird in its logo, claiming that it could be confused with Kellogg’s trademarked Froot Loops mascot, Toucan Sam.”¹²⁶⁰ Besides representing a Toucan, the logos had only little in common. The MAI logo showed a black and white toucan with a green eye area and a yellow and orange beak. Toucan Sam had a blue-white plumage, a black beak with orange, red, and pink stripes, and a different body shape.¹²⁶¹ MAI president, Francisco Estrada-Belli, denied any similarities or competition between the two logos and noted Kellogg’s argument was “a bit like the Washington Redskins claiming trademark infringement against the National Congress of American Indians.”¹²⁶²

In turn, MAI’s legal counsel Sarah Mott accused Kellogg of cultural insensitivity since their “Froot Loops advertising strategy sends racist messages to its young target audience with the presence of a dark-skinned villain named the Greedy Witch Doctor who steals from children.”¹²⁶³ While Kellogg dropped the trademark allegations,¹²⁶⁴ MAI’s criticism of the commercial as “a demeaning caricature of an advanced and ancient civilization” encouraged them as “a company long committed to diversity and inclusion and responsible marketing” to incorporate the feedback into their future marketing efforts.¹²⁶⁵

Protesters also addressed companies in Europe (Great Britain, Ireland, Finland, France, Germany, and Italy), Australia, and New Zealand. Most criticisms originated from the U.S. and Canada, but in some instances, protests came up in other countries like Great Britain and New Zealand. Social media criticism often emanated from multiple sources simultaneously and independently, like Trelise Cooper received criticism not only from New Zealand but also from Australia, Canada, and other countries.

¹²⁵⁷ Manuel Pino, law professor, School of Justice, Arizona State University, quoted in Valerie Taliman, “Nike Agrees to discontinue racist advertisement,” *News from Indian Country*, July 15, 1992, 6.

¹²⁵⁸ Taliman, “Nike Agrees to discontinue racist advertisement,” 6.

¹²⁵⁹ “N7 Community Giving,” Nike, Inc., accessed June 6, 2021, <http://n7fund.com/>.

¹²⁶⁰ Tiffany Hsu, “Mayan group’s logo too much like Toucan Sam, Kellogg’s squawks,” *Los Angeles Times Blogs*, August 23, 2011, accessed October 25, 2016, http://latimesblogs.latimes.com/money_co/2011/08/kellogg-asks-mayan-group-to-remove-toucan-from-logo.html.

¹²⁶¹ See juxtaposition of the MAI logo and Kellogg Co.’s Toucan Sam, institutional logo/product package, posted in Nathan Gray, “Mayan group claims Kellogg’s legal action over toucan logo,” *BakeryandSnacks*, August 25, 2011, accessed January 4, 2019, <https://www.bakeryandsnacks.com/Article/2011/08/26/Mayan-group-claims-Kellogg-s-legal-action-over-toucan-logo>.

¹²⁶² Francisco Estrada-Belli, President, MAI, quoted in Nathan Gray, “Mayan group claims Kellogg’s legal action over toucan logo,” *BakeryandSnacks*, August 25, 2011, accessed January 4, 2019, <https://www.bakeryandsnacks.com/Article/2011/08/26/Mayan-group-claims-Kellogg-s-legal-action-over-toucan-logo>.

¹²⁶³ Hsu, “Mayan group’s logo too much like Toucan Sam, Kellogg’s squawks.”

¹²⁶⁴ Assumption based on the 2019 website logo of the Maya Archaeology Initiative homepage, accessed January 4, 2019, <http://mayaarchaeology.org/>.

¹²⁶⁵ Kris Charles, Vice President, Kellogg Co., Global Communications, quoted and paraphrased in Gray, “Mayan group claims Kellogg’s legal action over toucan logo.”

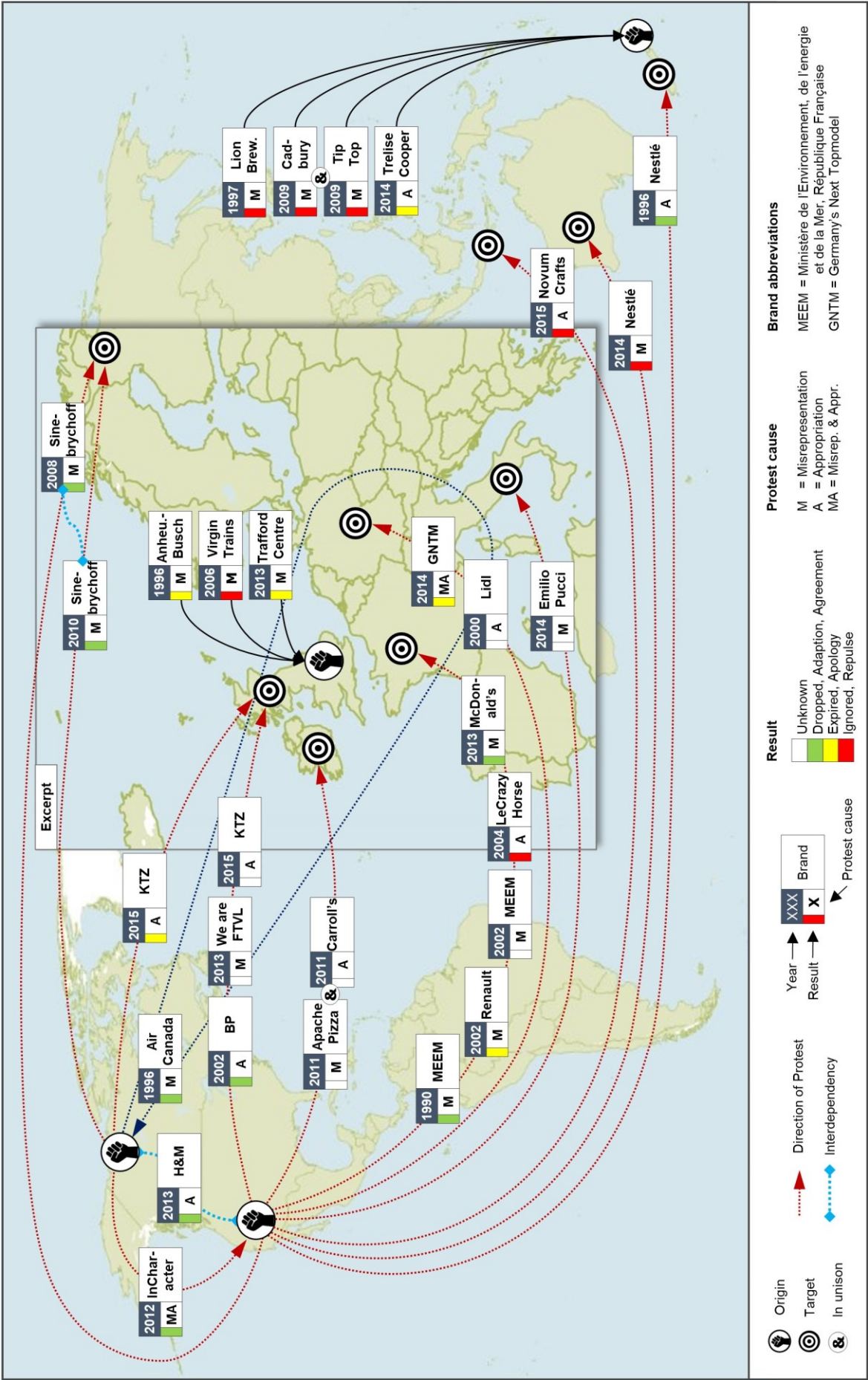


Figure 4: International protest map.

The international protest map (Figure 4¹²⁶⁶) visualizes the origins and targets of protests on the global level. The encircled fist symbolizes the origin of a protest, while the red lines represent the direction of protests, with the arrow pointing to the country of a protest target. The targeted companies are placed on the protest line between the protester's and the marketer's countries. Light blue lines indicate that some kind of interdependency existed, like between markets (H&M) or across time when the same ad sparked protest again as marketing materials were not entirely removed (Sinebrychoff). Furthermore, the map illustrates the results of protests against misrepresentation and appropriation, grouped by unknown, desirable, neutral, and undesirable results.¹²⁶⁷ With undesirable results in seven cases, neutral results in six cases, and desirable results in nine cases, there is no clear prognosis of what a protester might expect when criticizing a foreign marketer. Nevertheless, the individual cases demonstrate that companies have taken marketing offenses and protests seriously.

Protests against InCharacter and H&M demonstrate that companies should be aware of the cultural characteristics and differences of the target market. In 2012, InCharacter Costumes, a U.S. company producing costumes for all ages and occasions, pulled a children's Halloween costume sold in a Canadian store after *CBC North* made inquiries about the costume's name, "Sassy Squaw."¹²⁶⁸ In an email statement to the news channel, InCharacter wrote, "We have admitted our error and issued apologies to anyone and everyone who has contacted us." Additionally, the company promised to discontinue "this style" and "contact any retailers who may still have this product on their shelves to request that they remove the packaging with the name from their stores."¹²⁶⁹ Blogger Robert Schmidt criticized that the producer pulled only the dress in question and no other stereotypical costume, but "Still, it's good that the company responded without a lot of whining about how innocent and fun its costumes are. That alone is a step forward."¹²⁷⁰ While the Canadian and the U.S. markets represent separate entities, Indigenous issues, including cultural appropriation and misrepresentation, were similar enough that marketers might anticipate such protests in both markets.

In the case of H&M (2013), a Scandinavian clothing company selling products globally, protests started in Canada and affected U.S. stores that removed the item in question to prevent further criticism. The initial incentive came from Kim Wheeler, a "proud Ojibway/Mohawk woman who fights against cultural (mis)appropriation"¹²⁷¹ and wrote an email to H&M after finding a faux headdress in a Toronto store. Wheeler explained to H&M Cana-

¹²⁶⁶ Basic map by Free Vector Maps, <http://freevectormaps.com>.

¹²⁶⁷ Desirable results included that targets of protest agreed to the criticism and dropped or adapted their marketing practice (green, 9 cases, or 7 cases not considering North American cases of InCharacter and Air Canada). Phasing out an advertising campaign counts as a neutral result as this is not an active reaction. Similarly, an apology is treated neutrally, because companies stating non-apology often did not take any further action (yellow, 6 cases). If targets reportedly ignored protests, that is, refused to respond, or rejected criticism, the result is considered undesirable (red, 7 cases). When it was not clear whether marketers were aware of the criticism or no reactions were reported, the result is unknown (white, 7 cases).

¹²⁶⁸ Cf. "Company pulls 'Sassy Squaw' costume, apologizes," *CBC News* [CA], October 27, 2012, accessed August 27, 2017, <http://www.cbc.ca/news/canada/north/company-pulls-sassy-squaw-costume-apologizes-1.1183902>.

¹²⁶⁹ InCharacter, statement, quoted in "Company pulls 'Sassy Squaw' costume, apologizes."

¹²⁷⁰ Robert Schmidt, "Company pulls 'Sassy Squaw' costume," *Newspaper Rock*, October 27, 2012, accessed October 27, 2016, <http://newspaperrock.bluecorncomics.com/2012/10/company-pulls-sassy-squaw-costume.html>.

¹²⁷¹ Kim Wheeler, quoted in Ashante Infantry, "'Offensive' headdresses pulled from H&M stores," *Toronto Star* [CA], August 10, 2013, A8.

da that “People in my community have kind of been fighting that whole ‘hipster headdressing’ for a while now. . . . I hope you can see how this item is offensive and helps to perpetuate cartoon-like negative stereotypes of our proud heritage.”¹²⁷² After three complaints, H&M removed the headdresses from 62 Canadian stores within six days. H&M spokeswoman Emily Scarlett said, “If it had been one or 100 (complaints), the reaction would have been the same.”¹²⁷³

The fashion company was aware that cultural appropriation and misrepresentation were similarly controversial issues in Canada and the U.S. and decided to take preventive action. One week after the complaints in Canada, H&M also dropped the headdresses from all 30 U.S. stores that sold the items. U.S. company spokeswoman Marybeth Schmitt declared H&M “made the decision in the U.S. to remove it after the feedback from our customers in Canada,” although “the company had not received any complaints in the U.S.”¹²⁷⁴

Even though never introduced to the American market, marketing representations reached Indigenous attention in various ways. Protest could spring from Native Americans living in the country where the ad was published (Virgin Trains, GB) or who spent time abroad as tourists (Tip Top/Cadbury, NZ). TV and other news reports about businesses in foreign countries also informed Native Americans of misrepresentations and appropriations (Le Crazy Horse, F). Since the millennium, the Internet has made marketers vulnerable to activism from practically anywhere (“Germany’s Next Topmodel,” D). Via *Facebook*, *Twitter*, and *Instagram* as marketing channels, marketers could spread information as quickly as it could become the arena for a potential ‘shit storm.’ Protesters started using social media channels as a medium defying any borders to let companies know that Native Americans were aware and disapproving of their marketing practices.

The Indigenous New Media Symposium in New York City in 2014 resulted from a pan-Indian alliance between U.S. and Canadian Indigenous activists who gathered to elaborate on how to utilize social media to fight colonial (marketing) misrepresentation and promote Indigenous self-determination. Dr. Adrienne Keene of the Cherokee Nation, Dr. Jessica Metcalfe, Turtle Mountain Chippewa from North Dakota, and Chase Iron Eyes, Sioux growing up on the Standing Rock Reservation, joined hands with Canadian activists Dr. Jarrett Martineau, a Nêhiyaw (Plains Cree) and Dene Suline from the Frog Lake First Nation in Alberta, and Clayton Thomas-Muller of the Mathias Colomb Cree Nation in Northern Manitoba to discuss their experiences as media producers and activists.

While Metcalfe advocated for “Collaborations within and outside Native communities,”¹²⁷⁵ Keene explicitly put activism in a global perspective. Considering cases like GAP, Urban Outfitters, Victoria’s Secret, and Paul Frank, Keene emphasized the need to build “a global community of indigenous activists and allies” to “create a transnational community

¹²⁷² Kim Wheeler, quoted in Dodai Stewart, “Here We Go Again: H&M Pulls Offensive Headdresses From Canadian Stores,” *Jezebel*, August 9, 2013, accessed May 24, 2020, <https://jezebel.com/here-we-go-again-h-m-pulls-offensive-headdresses-from-1078786774>.

¹²⁷³ Emily Scarlett, spokeswoman for H&M in Canada, quoted in Infantry, “‘Offensive’ headdresses pulled from H&M stores,” A8.

¹²⁷⁴ Marybeth Schmitt, spokeswoman for H&M in the U.S., quoted in Lisa Flam, “H&M pulls native-inspired headdress after customer complaints,” *Today*, August 12, 2013, accessed May 24, 2020, <https://www.today.com/style/h-m-pulls-native-inspired-headdress-after-customer-complaints-6C10900100>.

¹²⁷⁵ Jessica Metcalfe, talk at the Indigenous New Media Symposium, February 21, 2014, accessed February 26, 2014, <http://www.inms2014.com/>.

that calls for accountability & questions dominant ideas about [the] ‘right’ of cultural access.”¹²⁷⁶ Martineau, who was particularly interested in “exploring how Indigenous resistances to colonialism and neoliberal capitalism have changed under globalization,” has worked with several media producers like *CBC* “to produce award-winning content for a global audience across all media.”¹²⁷⁷ Thomas-Muller, an activist concerned with Indigenous self-determination and environmental justice, “has appeared in media broadcasts internationally as an expert advocate on Indigenous rights and on environmental and economic justice.”¹²⁷⁸ The activist speakers of the symposium were representatives of “a new tech-savvy young generation that is speaking out strongly about cultural, political and economic issues.”¹²⁷⁹ Through social media, they endeavored to build a strong community across ethnic, cultural, and national borders to take control of their image. Although international protests did not rely on new media, as previous protests show, they ushered in a new age of protest on a global scale. News media’s call for global ethical standards supported the development of a global market in which representations stakeholders deemed ethically inappropriate had no place.

With the help of new media, Indigenous activists could build on a loose, global network of sympathizers and allies who would report incidents to Indigenous friends, organizations, or news media, for instance (Renault, F). International seminars and talks on Indigenous issues and media stereotyping helped create this community by providing knowledge and raising consumer awareness abroad, which has inspired some sympathizers to protest Indigenous marketing representations in their home country (Lion Breweries, NZ). Better education including Indigenous perspectives for Native Americans and Non-Natives, and technological innovations were increasingly melting down cultural and geographical borders and gave rise to a global community of allies, as Robert Taylor of *Indian Country Today* noted in the Renault case in 2002:

The world has become a small place with the expansion of the Internet and more Native Americans are receiving higher education than ever before... some of us can actually speak and read French. The executives at Renault who approved this advertisement obviously failed to consider its inherent bigotry, but also failed to realize that American Indians and Indian Country Today have friends and subscribers in France who would bring it to our attention. . . .

The question now is what will Renault do in the form of an apology, especially to the Northern and Southern Cheyenne Tribes. There are several prominent Americans, including Sen. Ben Nighthorse Campbell, who are members of either of the Cheyenne Tribes, who are likely to be outraged.¹²⁸⁰

Advancements enabling and encouraging international travel and communication supported international protests against the appropriation and misrepresentation of Native American peoples and cultures by building networks and spreading and archiving marketing materials.

¹²⁷⁶ Adrienne Keene, talk at the Indigenous New Media Symposium, February 21, 2014, accessed February 26, 2014, <http://www.inms2014.com/>.

¹²⁷⁷ “Jarrett Martineau,” Jarrett Martineau, accessed August 27, 2017, <http://www.jarrettmartineau.com/bio/>.

¹²⁷⁸ “Clayton Thomas-Muller,” *Occupy Love*, accessed August 27, 2017, <http://occupylove.org/clayton-thomas-muller/>.

¹²⁷⁹ Indigenous New Media Symposium homepage, February 21, 2014, accessed February 26, 2014, <http://www.inms2014.com/>.

¹²⁸⁰ Robert Taylor, “Renault apologizes for offensive ads,” *Indian Country Today*, April 24, 2002, A5.

More than two years after the initial complaint in 2008, Angel Bigstone complained about Sinebrychoff's commercial for KOFF Indian Beer after having seen the video online. The producer assured Bigstone that "Sinebrychoff and its parent company Carlsberg Group have not any ongoing viral campaigns – or any other marketing campaigns – on the cancelled beer brand." Since "in the era of internet, the commercial can unfortunately still be found," Sinebrychoff promised to "seek ways to contact those still possessing the film with a request to abolish it from the web."¹²⁸¹ In the digital age, commercials and ads were not only accessible to a geographically and culturally large and diverse group of consumers. Given the widespread and barely controllable digital distribution, removing all marketing materials from the Internet became costly regarding time and labor.

Foreign Markets and Global Ethics Standards

The arguments companies raised in defense of their marketing practices often revolved around the construct of the foreign market. International advertisers rejected ethical objections because their Native American representations were distinctly favorable, because there was no Indigenous target audience, or pointed to their lack of cultural knowledge. Hornell's reasoning that the label was not ethically objectionable because they did not sell Crazy Horse Malt Liquor in states with high reservation populations represented the same argument of reservations as foreign markets within the U.S. while ignoring urban Native peoples. Since borders of markets were dissolving and populations were becoming increasingly diverse, protesters, many media representatives, and other stakeholders accepted such arguments neither in the U.S. nor on the international level.

While U.S. and international criticism of marketing misrepresentations and marketers' responses were similar, non-American marketers added the foreign market as one counterargument. Multiple global advertisers insisted that ethical objections against the use of Native American marketing imagery were not legitimate because the images were designed for a foreign, non-American market and limited to that national market and audience. In this context, non-America marketers noted they had their own tradition of Indigenous imagery, and the perception of Native American peoples and cultures in Europe was significantly more favorable. The two examples of Budweiser in Great Britain (1996) and Renault in France (2002) demonstrate how foreign marketers used positive connotations of Indigenous imagery in Europe as an argument to defend their representations.

In 1996 Great Britain, a Budweiser commercial entitled "Pale Rider" sought to present Budweiser as a "genuine article"¹²⁸² by emphasizing its American roots. The former ad agency, D'Arcy Masius Benton & Bowles, built this image upon tap dancers and jazz musicians. Now, the London-based agency of Omnicom Group's DDB Needham Worldwide Communications unit featured a Native American to evoke associations of genuine Americanness.¹²⁸³ Activists like Suzan Shown Harjo deemed the ad showing an Indigenous actor driving a truck,

¹²⁸¹ Marja-Liisa Weckström, Director of Communications and Legal, Sinebrychoff, written response to Angel Bigstone, May 19, 2010, quoted in Robert Schmidt, "Beer maker apologizes for Koff ads," *Newspaper Rock*, May 25, 2010, accessed October 22, 2016, <http://newspaperrock.bluecorncomics.com/2010/05/beer-maker-apologizes-for-koff-ads.html>.

¹²⁸² "Bud Ads Anger Native Americans," *St. Louis Post*, July 17, 1996, C1.

¹²⁸³ Cf. Tara Parker-Pope, "British Budweiser Ads Rankle American Indians," *The Wall Street Journal*, July 16, 1996, B1.

which bore an Indian logo, and drinking Budweiser an insensitive and offensive “continuation of the stereotype.”¹²⁸⁴

Since British consumers were unaware of the issue of alcoholism among Native Americans as well as of negative stereotypes about Natives and alcohol, Mr. Fraser of DDB argued, in Britain, “most people have positive thoughts when they see a Native American in this country” and it “probably wouldn’t work over there” in the U.S.¹²⁸⁵ Peter Jackson, Anheuser-Busch marketing director for the U.K. and Ireland, explained that in these markets, “consumers see him as independent and self-confident and very much genuine person, which is very much aspirational to young men in the U.K.”¹²⁸⁶ According to Anheuser-Busch, the “Indian campaign is Budweiser’s most popular ever in Britain, raising brand awareness to an all-time high, [and] prompting viewers to request photos of the main actor.” Furthermore, the campaign “has enlivened Budweiser sales in the U.K., which are up 20% compared with last year, and has given the brand a younger, hipper image.”¹²⁸⁷

In response to protests in 1990, the French government had turned Bison Futé (“Smart Buffalo”), the mascot of the French National Traffic Center depicting a Native American wearing a headdress with buffalo horns, into a cartoonish character that appeared less human. In 2002, French car manufacturer Renault and the advertising agency Publicis adapted Bison Futé for an ad as a “clay figure of a stereotypical Indian man wearing a loincloth and feathers, with an ear to the ground, whose head has been flattened by the silent new car.”¹²⁸⁸ In their apology, Publicis stated the “purpose of the ad (whose publication will stop in a few weeks) was only to show the silence of the Kangoo’s new diesel engine by using a cartoon-like creative device.” While, for the marketer, “the use of modeling clay clearly establishes a distance with real life situations,”¹²⁸⁹ Robert Schmidt argued this was precisely the problem because Indian mascots dehumanized Native Americans to the point that it was “okay to show an Indian getting flattened.”¹²⁹⁰

As Renault spokesman Pierre Zigmant added, the “Native American community . . . clearly enjoys a very favorable image in our country, due to its ancestral wisdom, its traditional responsible attitude towards nature and the environment, and its proverbial bravery.”¹²⁹¹ While “French people immediately see the reference [to Bison Futé] that is a positive and friendly one,” the apology acknowledged that “Understandably enough, this reference does not carry the same positive connotations for your people. So again, let me renew my apologies for having offended your community with an ad that was not meant to cross the Atlantic.”¹²⁹²

As images and ideas of Native Americans had been highly popular in Europe since the European discovery of the Americas, ideas of Indigeneity had been passed down for hundreds of years. Europeans had not simply adopted American ideas of Indigeneity but were influenced by “earlier carriers of imagery . . . through journalism, travelogues, immigrant letters,

¹²⁸⁴ Suzan Shown Harjo, quoted in Parker-Pope, “British Budweiser Ads Rankle American Indians,” B1.

¹²⁸⁵ Mr. Fraser, quoted in Parker-Pope, “British Budweiser Ads Rankle American Indians,” B1.

¹²⁸⁶ Peter Jackson, Marketing Director, Anheuser Busch, quoted in Parker-Pope, “British Budweiser Ads Rankle American Indians,” B1.

¹²⁸⁷ Parker-Pope, “British Budweiser Ads Rankle American Indians,” B1.

¹²⁸⁸ Taylor, “Renault apologizes for offensive ads,” A5.

¹²⁸⁹ Publicis, apology, quoted in Taylor, “Renault apologizes for offensive ads,” A5.

¹²⁹⁰ Robert Schmidt, “Stereotype of the Month Entry (4/12/02),” *Blue Corn Comics*, April 12, 2002, accessed August 21, 2016, <http://www.bluecorncomics.com/stype243.htm>.

¹²⁹¹ Pierre Zigmant, spokesman for Renault, quoted in Taylor, “Renault apologizes for offensive ads,” A5.

¹²⁹² Publicis, apology, quoted in Taylor, “Renault apologizes for offensive ads,” A5.

or visual materials such as paintings, drawings, prints, and photographs.”¹²⁹³ To some extent, American and European ideas of Indigeneity interacted as, in fact, the romanticized version of the ‘noble savage’ was developed and circulated by European philosophers and writers like Jean-Jacques Rousseau, and in the early 19th century incorporated in American concepts of Indigeneity. Based on some intellectuals’ ideas that ‘simple’ societies were happier or more prosperous than modern ones, the ‘noble Indian’ increasingly became a symbol of criticism of European society and culture.¹²⁹⁴ On a commercial level, American tourism had “used the fascination of Europeans with Indian imagery from the earliest voyage of Columbus to the present questing of German visitors to the Hopi mesas.” U.S. tour operators had “learned to deliver what the customer wants and European expectations are a powerful aspect of the creating of images of the native people of America.”¹²⁹⁵

French writer François-René de Chateaubriand and others popularized the romantic image of the noble Indian. By the time American Wild West shows started touring through Europe, the “European fantasy of the American West [as a projection screen] had already spawned its own popular authors like Balduin Mollhausen and Karl May in Germany, Gustave Aymard in France, and Mayne Reid in England.”¹²⁹⁶ Buffalo Bill’s Wild West show as the catchiest and, thus, most ‘American’ show¹²⁹⁷ began its European tour in 1887, starting in Great Britain and later in France, Spain, Italy, Austria, and Germany, among other countries in Central and Northern Europe.¹²⁹⁸ Since the historically and culturally diverse European countries “had at the time its own specific history in fictionalizing the American West,” Europe was “never just one homogeneous setting for the reception of Buffalo Bill’s Wild West show,” for instance.¹²⁹⁹ The degree of people’s fascination with Indians and the American West varied among European countries, with Germany being the “clearest case of a long-time infatuation with the American Indian” due to a “romantic, if not nostalgic, affiliation with peoples threatened by the onward march of civilization.”¹³⁰⁰ When English newspapers reported on Wild West shows in Europe, they portrayed Native American life in much greater detail and sympathy than the U.S. press.¹³⁰¹ Contemporary European advertisers referred to this differential attitude toward and treatment of Native Americans in Europe as expressed in the more positive news coverage.

Merck’s ‘Kytta Indian’ (Germany, 2008) exemplifies how German notions of Indigeneity have shaped the Ad Indian internationally. Advertisers increasingly aimed to produce more authentic marketing representations in the U.S. and other markets such as Germany. Simultaneously, despite a general quest for authenticity, folk wisdom and old archetypes in-

¹²⁹³ Robert W. Rydell and Rob Kroes, *Buffalo Bill in Bologna: The Americanization of the World, 1869-1922* (Chicago: University of Chicago Press, 2005), excerpt published in *University of Chicago Press*, accessed August 7, 2017, <http://press.uchicago.edu/Misc/Chicago/732428.html>.

¹²⁹⁴ Cf. Roy H. Pearce, *Savagism and Civilization: A Study of the Indian and the American Mind* (Berkeley: University of California Press, 1988); Berkhofer, *The White Man’s Indian*, 75.

¹²⁹⁵ Paul Apodaca, “Powerful Images: Portrayals of Native America,” *American Anthropologist* 101, no. 4 (December 1999): 822.

¹²⁹⁶ Rydell and Kroes, *Buffalo Bill in Bologna*.

¹²⁹⁷ Cf. *ibid.*

¹²⁹⁸ Cf. Daniele Fiorentino, “‘Those Red-Brick Faces’: European Press Reactions to the Indians of Buffalo Bill’s Wild West Show,” in *Indians and Europe: An Interdisciplinary Collection of Essays*, ed. Christian F. Feest (Lincoln/London: University of Nebraska Press: 1999), 403.

¹²⁹⁹ Rydell and Kroes, *Buffalo Bill in Bologna*.

¹³⁰⁰ *Ibid.*

¹³⁰¹ Cf. Moses, *Wild West Shows*, xii.

herent in such marketing campaigns sold well precisely because of their obvious lack of authenticity. German pharmaceutical company Merck Selbstmedikation used the proverbial ideal not to show pain to advertise and boost brand awareness of its pain salve Kytta Salbe f. In the German market, Merck's product reached only four percent brand recognition and had to compete with Novartis' widely known Voltaren pain salve. Merck's advertising partner, the New York-based agency McCann Worldgroup Deutschland GmbH, developed the marketing campaign¹³⁰² based on the German proverb "An Indian does not know pain" ("Ein Indianer kennt keinen Schmerz") to promote the salve's naturalness as its unique selling point. As opposed to the chemical agent Diclofenac in Voltaren, the curative effect of the Kytta Salbe f was based on a natural substance of the medical plant comfrey's root.

While many Europeans shared a fascination with Native peoples and cultures, they did this in different ways according to their distinct political-cultural history. Due to Germans' "elective affinity" toward Native Americans, as Glenn Penny called it, Indian-inspired marketing imagery works particularly well in Germany. Germany's strong elective affinity dated from "the polycentric character of German national and cultural identity combined with a history of resistance (putative and actual) toward Roman imperialism, Christianity, cultural homogenization, and a profound sense of loss stemming from that history." Penny concluded, because of their history and a "sense of shared fate in the increasingly impersonal and hyper-modern world of global capitalism," Germans were "particularly sensitive to the mixed implications of assimilation facing American Indians during the past two centuries."¹³⁰³ Germans celebrated the "unwillingness of these truly free men to forsake that freedom and adopt a necessarily arduous and servile life under European American civilization" and drew hope from Indigenous resistance in the 20th century that they themselves could successfully "combat corporate power, and protect their own individuality from the corrupting powers of so-called civilization."¹³⁰⁴

Since some North American tribes used the plant for the same purpose, the ad agency created an Indian marketing character "as adjuvant of the *Kytta* communication."¹³⁰⁵ As a kind of medicine man, the Native American was supposed to inform customers about the herbal ingredient and convince them of its equipollent healing power compared to chemical products.¹³⁰⁶ He activated a familiar set of associations, including the idea of strong and healthy people living in harmony with nature and utilizing natural remedies.

To give authenticity to the ad, McCann, who promoted its marketing services with the slogan "Truth Well Told,"¹³⁰⁷ hired Apache actor Sam Bearpaw as the so-called Kytta Indian. The Kytta Indian was depicted in an easily recognizable manner, with a bare torso and tradi-

¹³⁰² For TV commercial see "Kytta-Salbe Werbung - Werbespot 2011 [HQ & Download Link]," YouTube video, 0:24, September 11, 2011, accessed August 22, 2020, <https://www.youtube.com/watch?v=O5-Of9Fmt0E>.

¹³⁰³ Glenn Penny, *Kindred By Choice: Germans and American Indians since 1800* (Chapel Hill: University of North Carolina Press, 2013), 16.

¹³⁰⁴ Ibid., 19, 21.

¹³⁰⁵ Brandmeyer Markenberatung, "Total authentisch! Aber ist das für das Markenmanagement immer richtig?" *Marke* 41 (March 2011), 34, accessed August 10, 2017, https://www.brandmeyer-markenberatung.de/downloads/11_03_30_Total_Authentisch.pdf.

¹³⁰⁶ Cf. Manfred Bruhn, *Unternehmens- und Marketingkommunikation: Handbuch für ein integriertes Kommunikationsmanagement* (München: Verlag Franz Vahlen, 2012), 383.

¹³⁰⁷ McCann Worldgroup Deutschland GmbH, homepage, accessed August 11, 2017, <http://www.mccann.de/>.

tional jewelry in the open nature.¹³⁰⁸ “Hardened in the snow-covered mountains of the White Mountain Apache Reservation in Arizona, which maintains and preserves the old traditions, customs and habits with its tribal members,” Sam was “the ideal ambassador for the brand. Because when it hurts, even a hard-boiled Apache reaches for Kytta ointment with the purely herbal active ingredient comfrey root,”¹³⁰⁹ as the German marketing magazine *Werben & Verkaufen* explained.

As the *Kickapoo Indian Dream Book* of the late 1890s and early 1900s revealed, marketers of patent medicine in the U.S. used similar ideas that the “Indian has ever been noted for his power to endure physical pain” while, in fact, they just knew “how to allay it” with remedies.¹³¹⁰ While the origin of the German proverb is still unknown,¹³¹¹ the earliest reference dates back to James Fenimore Cooper’s *Last of the Mohicans*, where Cora said she had thought “that an Indian warrior was patient, and that his spirit felt not and knew not the pain his body suffered.”¹³¹² Inspired by Cooper, German writer Karl May (1842-1912) explained in one of his famous novels describing the adventures of Apache chief Winnetou and his White blood brother Old Shatterhand, *Treasure of the Silver Lake* (*Schatz im Silbersee*, 1890), that

From earliest childhood, an Indian is trained to bear physical pain. He comes so far that he is capable of bearing the greatest torture without blinking an eye. Perhaps the red man’s nerves are less sensitive than the white man’s nerves. If the Indian is caught and dies at the stake, he smilingly bears the pain inflicted upon him, sings his death song in a loud voice, and suspends singing occasionally just to taunt and deride his tormentor.¹³¹³

The German proverb dates back to the 19th century as a projection of male virtues. In Prussian Germany, when qualities such as rigidity, particularly toward oneself, and bravery were highly valued, training self-control to bear pain aroused admiration.¹³¹⁴ While crying was a socially acceptable practice of mourning for men during the 18th century, in the 19th century, the emergence of a variation, “Indian heart knows no pain” (“Indianerherz kennt keinen

¹³⁰⁸ See Merck Selbstmedikation, “Schnelle und starke Hilfe aus der Natur!” 2011, foldable ad card, courtesy of author.

¹³⁰⁹ Roland Gerber, “Merck und die Heilkraft der Kampagne,” *W&V*, November 26, 2009, accessed August 22, 2020, https://www.wuv.de/marketing/merck_und_die_heilkraft_der_kampagne. Transl. by author.

¹³¹⁰ The Kickapoo Indian Medicine Co., *Kickapoo Indian Dream Book* (New Haven, 1896/1908), 22.

¹³¹¹ One theory of origin points to Lakota ceremonial sun dances which became known in the German public during the 1970s, but the proverb dates to the 19th century. Cf. Harro Albrecht, “Überwinde den Schmerz!” *Zeit [D]*, March 5, 2015, accessed August 10, 2017, <http://www.zeit.de/2015/08/wahrnehmung-schmerz-lust-qual/seite-3>.

¹³¹² James Fenimore Cooper, *The Last of the Mohicans* (London 1826), 198, accessed August 10, 2017, http://www.planetpublish.com/wp-content/uploads/2011/11/The_Last_of_the_Mohicans_NT.pdf.

¹³¹³ Karl May, *Der Schatz im Silbersee* (Zeitschriftenfassung von 1890/91, Bibliotheca Augustana), accessed August 10, 2017, https://www.hs-augsburg.de/~harsch/germanica/Chronologie/19Jh/May/may_ss12.html. Transl. by author.

“Ein Indianer wird von frühester Kindheit an in dem Ertragen körperlicher Schmerzen geübt. Er gelangt dadurch so weit, daß er die größten Qualen ertragen kann, ohne mit der Wimper zu zucken. Vielleicht sind die Nerven des Roten auch weniger empfindlich als diejenigen des Weißen. Wenn der Indianer gefangen wird und am Marterpfahl stirbt, so erträgt er die ihm zugefügten Schmerzen mit lächelndem Munde, singt mit lauter Stimme sein Todeslied und unterbricht dasselbe nur hie und da, um seine Peiniger zu schmähen und zu verlachen.”

¹³¹⁴ Cf. “‘Ein Indianer kennt keinen Schmerz’ - Ein dummer Spruch, der wehtut,” *Neue Osnabrücker Zeitung [D]*, May 29, 2010, accessed August 10, 2017, <https://www.noz.de/lokales/osnabrueck/artikel/365369/ein-indianer-kennt-keinen-schmerz-ein-dummer-spruch-der-wehtut>.

Schmerz”), bears witness to a changing concept of manliness and the increasing tabooing of emotions, or showing emotions.¹³¹⁵

The campaign raised brand awareness by 103.6 percent compared to 2007¹³¹⁶ and more than 400 percent compared to 2006.¹³¹⁷ In 2009, the “Indian knows no pain” campaign won a silver Effie in the GWA Effie Awards, an annual contest by the German Association of Communication Agencies (Gesamtverband Kommunikationsagenturen GWA e.V.) to honor the most successful marketing communication strategies in Germany.¹³¹⁸ Marketing consulting firm Brandmeyer Markenberatung found the campaign efficient since Karl May and Western movies had already formed positive associations for decades. They concluded that, even though many consumers were seeking more authenticity in advertising, the success of the Kytta marketing campaign demonstrated how archetypical concepts still offered effective marketing ploys due to its too-obvious lack of authenticity.¹³¹⁹

Although several advertisers referred to market-specific imagery, Air Canada’s response suggests that advertisers did not always clearly separate American and European imagery, and Native imagery had international appeal to some extent. In 1996, Air Canada faced criticism of an advertising campaign designed for Great Britain, France, and Germany as one target audience, which appeared in a magazine supplement of the weekly newspaper *The European*. The ad depicted a spear-wielding chief in traditional dress riding in business class and highlighted that customers were “Sitting Comfortabull” and “Business chiefs get more moccasin room.” Critics opposed the campaign created by advertising agency McCann-Erickson for its “politically incorrect – some say racist – presentation of Indians in Canada.”¹³²⁰ Ovide Mercredi, leader of the national assembly of Canadian Indian chiefs, noted that the “ad campaign is denigrating and pulls down our culture It also reinforces the racist stereotype that Indians are lazy. It’s not just a crass way of using our symbols but it leaves the impression that we lead lives of leisure.”¹³²¹

Kym Robertson, spokeswoman for Air Canada, countered that the ad was “not meant for a North American audience” and the company was “selling [their] product in Canada abroad, . . . using very readily identifiable images in those markets.”¹³²² Another official maintained the ad “uses ‘standard Canadian images’ and the intent was not meant to be disrespectful.”¹³²³ Sitting Bull, whom the phrase “Sitting Comfortabull” alluded to, was an interna-

¹³¹⁵ Cf. Gordon Müller-Seitz, *Positive Emotionalität in Organisationen* (Wiesbaden: GWV Fachverlag, 2008), 20.

¹³¹⁶ Cf. Bruhn, *Unternehmens- und Marketingkommunikation*, 384.

¹³¹⁷ Cf. “Kytta-Salbe von Merck gewinnt Kommunikationspreis Effie,” *Healthcare Marketing* [D], October 13, 2009, accessed January 6, 2021, <https://www.healthcaremarketing.eu/unternehmen/detail.php?rubric=Unternehmen&nr=4992>.

¹³¹⁸ Cf. “GWA-Effies 2009 verliehen,” *Das Auge* [D], October 13, 2009, accessed August 27, 2017, <https://dasauge.de/aktuell/werbung/e1429>. See also “GWA Effie Awards,” Gesamtverband Kommunikationsagenturen GWA e.V., accessed August 27, 2017, <https://www.gwa.de/Awards/GWAEffieAward>.

¹³¹⁹ Cf. Brandmeyer Markenberatung, “Total authentisch!” 34.

¹³²⁰ Jack Aubry, “Mercredi irked by Air Canada ad campaign using natives,” *The Vancouver Sun* [CA], May 7, 1996, D1.

¹³²¹ Ovide Mercredi, quoted in Associated Press, “Air Canada apologizes as Indians object to ad / Native leader wants the agency fired,” *Houston Chronicle*, May 8, 1996, 2.

¹³²² Kym Robertson, spokeswoman for Air Canada, quoted in Associated Press, “Air Canada apologizes as Indians object to ad,” 2.

¹³²³ Air Canada official, paraphrased in Aubry, “Mercredi irked by Air Canada ad campaign using natives,” D1.

tionally well-known Hunkpapa Lakota leader from South Dakota. The standard Canadian American image was also a standard U.S. American image that equally worked in Europe. Although American and European ideas of Indigeneity differed to some extent, some highly popularized images worked internationally. The airline first stuck by the ad but later apologized for the insensitivity and withdrew the advertisement.¹³²⁴

Detlev Zwick, a York University marketing professor, explained against the background of the H&M case how not only advertising material but also products and merchandise take on new meanings in different, nationally and historically distinct frameworks:

What I see going on here with H&M is something quite different than the whole ongoing ding-dong about the Redskins name, for example A Swedish, fast-fashion designer house considers a relatively freewheeling variation on traditional aboriginal headwear entirely unproblematic, because back in Europe it probably is. When you bring this fashion item into a new context, such as Canada, with its troubled imperial history towards the First Nations, well, the meaning of the same thing changes. Now, you very likely would not see H&M make the same mistake with some variation of the Star of David as (an) accessory for your latest summer jacket, given the use of this symbol by the Nazis.¹³²⁵

In a few instances, non-American marketers raised the argument of lack of cultural or historical knowledge. Since the creators of marketing imagery and campaigns had not grown up in the U.S., marketers argued, they could not have been aware of the historical background, stereotypes, and controversies. In 2013, Steve Aoki used his “ignorance of these matters” to explain the “poor choices [of artwork] to represent my artistic direction.” DeeJay NDN of the Indigenous music group A Tribe Called Red published a *Facebook* post about Aoki’s aka DJ TAI’s EP *Indian Kill* featuring a type of cover artwork that he considered “racist” in the light of Native American genocide. The cover featured a dead-looking male Indian head wearing a bonnet with an arrow stuck in his forehead. DJ TAI agreed to remove all EPs from the stores and promised to pass on all profits from that release to the Native American Heritage Association (NAHA). He apologized and added, “Having been born in London and raised in Thailand, I was raised with a strong respect and affinity for all cultures. But being from the Eastern Hemisphere, I was unfortunately not fully versed in the negative connotations that my EP’s content would have”¹³²⁶ DeeJay NDN objected that Aoki should have known better because he “has been criticized in the past for wearing a Native headdress as a fashion accessory.”¹³²⁷

Like DJ TAI, Heidi Klum had already gained ground in the U.S. market and was widely recognized by American and Native American fashion enthusiasts when her German show “Germany’s Next Topmodel” sparked criticism in the U.S. in 2014. Indigenous activist Ruth Hopkins wrote, “I’ve been a fan of Heidi Klum’s show “Project Runway” since episode one. I’ve seen every single season.” Klum received applause for supporting Taos Pueblo fashion designer Patricia Michaels in Project Runway and showing “what appeared to be sincere ap-

¹³²⁴ Cf. Associated Press, “Air Canada apologizes as Indians object to ad,” 2.

¹³²⁵ Detlev Zwick, quoted in *Infantry*, “‘Offensive’ headdresses pulled from H&M stores,” A8.

¹³²⁶ Steve Aoki, quoted in “‘Indian Kill EP’ Causes Controversy and Earns Swift Apology,” *Indian Country Today Media Network*, May 3, 2013, accessed October 31, 2016, <http://indiancountrytodaymedianetwork.com/2013/05/03/indian-kill-ep-causes-controversy-and-earns-swift-apology-149191>.

¹³²⁷ DeeJay NDN, quoted in “‘Indian Kill EP’ Causes Controversy and Earns Swift Apology.”

preciation for Native culture.” However, in 2014, after well-known cases like GAP, Victoria’s Secret, Chanel, and Ralph Lauren, she drew harsh criticism of her “second rate reality TV show” where German models dressed up Plains Indian-style for a photo shoot.¹³²⁸

What’s particularly disconcerting about this act of appropriation is Heidi Klum should know better. For that reason I can only deduce that this act is not due to ignorance. . . . Normally this is where I ask Ms. Klum for an apology, but because this act of appropriation is so willful, any apology would ring hollow. Like many Natives, I’m tired of lip service. Auf wiedersehen, Heidi. This is where I get off. Shame on you.¹³²⁹

A female critic quoted in the British *Daily Mail* felt that “the ignorance of the followers of Heidi Klum are taking our progress away from discrimination and stereotypes many steps backwards.”¹³³⁰ Michael Smith of the *Guardian Liberty Voice* agreed with the criticism but found Klum “cannot be held completely responsible for the fashion debacle” because she was an “American citizen who did not grow up in her adoptive country.” She could be excused for the mistake because “really how many of the younger generation are aware of what horrible things were done in the name of Manifest Destiny.”¹³³¹

In the Internet age and considering the abundance of fashion faux pas, protesters, fans, consumers, and other stakeholders did not accept the lack of knowledge, which was often refutable, as a valid excuse. When New Zealand fashion designer Trelise Cooper staged a show featuring American Indian feather headdresses, her “Facebook page . . . exploded with comments opposed to the Indian theme.”¹³³² Local news media quoted Peter Shand, an art and fashion design professor, who questioned Cooper’s apology due to the ubiquity of appropriation in the fashion industry. “If she’s going to claim ignorance of what’s gone on overseas that means she’s not in touch with international fashion, for one of the leading fashion designers in New Zealand, that would seem highly unlikely.”¹³³³

While only a few advertisers quoted cultural distance and their lack of knowledge or awareness to defend marketing practices, multiple advertisers like Anheuser-Busch and Renault insisted that consumers of that national market viewed their Indigenous marketing characters in a very positive way. In contrast, Virgin Trains argued that there had not been any identifiable Indigenous consumers in the U.K. who could have been insulted by their stereotypical representation of a Virgin train being attacked by Indians. While Virgin Trains “inves-

¹³²⁸ Hopkins, “@HeidiKlum’s Redface Photo Shoot.”

¹³²⁹ Ibid.

¹³³⁰ Female critic, quoted in Margot Peppers, “‘Cultural appropriation is NEVER okay!’ Heidi Klum faces racism backlash over Native American-themed photo shoot with models in ‘redface’,” *Daily Mail* [UK], April 10, 2014, accessed August 23, 2016, <http://www.dailymail.co.uk/femail/article-2601908/Cultural-appropriation-NEVER-okay-Heidi-Klum-faces-racism-backlash-Native-American-themed-photo-shoot-models-redface.html#ixzz4IBDjCb3i>.

¹³³¹ Michael Smith, “Heidi Klum: Bury My Art at Wounded Knee?” *Guardian Liberty Voice*, April 10, 2014, accessed August 24, 2016, <http://guardianlv.com/2014/04/heidi-klum-bury-my-art-at-wounded-knee/>.

¹³³² Richard Shears and Leesa Smith, “What does a Native American headdress have to do with fashion in New Zealand? Kiwi designer forced to apologise after including Indian accessory in her show,” *Daily Mail* [UK], August 27, 2014, accessed May 26, 2014, <https://www.dailymail.co.uk/news/article-2735390/Indian-Headdress-Fashion-Faux-Pas-Top-New-Zealand-Designer.html>.

¹³³³ “Trelise Cooper’s apology labelled ‘disingenuous’,” *TVNZ* [NZ], August 27, 2014, accessed May 26, 2020, <https://www.tvnz.co.nz/one-news/new-zealand/trelise-cooper-s-apology-labelled-disingenuous-6065405.html>.

tigated if there were any American Indian groups in the U.K. but didn't find any,"¹³³⁴ the British press noted there were "estimated to be 25 native Americans in the UK and 300 in Europe."¹³³⁵ Shoshone protester Steve Pattinson, who was living in the U.K., wrote

The advert is sickening. It's straight out of the dark ages of cowboy and Indian films. It's trying to show us as savages or dumb-ass Indians who are going to be wiped off the face of the Earth because we don't belong here. As long as people such as Mr Branson keep bringing up these stereotypes, we will still face prejudice.¹³³⁶

The argument that no Native Americans lived among the target group contrasted with journalists' discussion of globalization and ethics. U.S. media had covered the Anheuser-Busch case of 1996 in Great Britain more extensively than other protest cases outside the U.S. They extended the issue to a broader discussion of ethical marketing guidelines for global advertisers: "In their ads in foreign markets, should multinational companies be held to the same standards of ethics and taste as they are at home? Does it make a difference if images that are offensive in one culture are benign in the market where the ads are shown?"¹³³⁷ asked Tara Parker-Pope in the *St. Louis Post*.

The Anheuser-Busch case in Great Britain gained considerable interest from the international press, including the U.S. and European editions of the influential *Wall Street Journal*.¹³³⁸ In their discussion, marketing experts agreed that globalization had changed the reach and target audience of marketing practices. Donny Deutsch, chief executive of the New York-based agency Deutsch Inc., believed that with globalization and increasingly dissolving boundaries, "advertisers have to get more sensitive to this" since "Marketers obviously do different things in different countries that wouldn't be applicable in their home state or country."¹³³⁹ Allyson Stewart-Allen, director of the London-based consulting firm International Marketing Partners, called Budweiser's ad "totally naive and offensive"¹³⁴⁰ as multiethnic client bases had become the norm in a global marketplace. Consequently, as Parker-Pope outlined, "questionable ads airing in foreign markets boomerang back to the advertiser's home market."¹³⁴¹

Simultaneously, Parker-Pope discussed the risk of trying to please all sensitivities and avoiding potential conflict. Since there was no "czar of global tastes," as Clive Chajet, New York marketing and corporate identity consultant and chairman of Lippincott & Margulies, remarked, advertisers risked "coming up with something that says absolutely nothing to nobody everywhere."¹³⁴² While pointing to the difficulty of developing a meaningful and globally non-objectionable marketing campaign, her protest coverage was critical of the Budweiser campaign and sympathetic toward complainants. Similarly, other U.S. newspapers that tradi-

¹³³⁴ Virgin Trains, quoted in John Coles, "Virgin ad's offensive to Injuns," *The Sun* [UK], September 23, 2006, 33.

¹³³⁵ Coles, "Virgin ad's offensive to Injuns," 33.

¹³³⁶ Steve Pattinson, quoted in Coles, "Virgin ad's offensive to Injuns," 33.

¹³³⁷ "Bud Ads Anger Native Americans," C1.

¹³³⁸ Parker-Pope, "British Budweiser Ads Rankle American Indians," B1; Tara Parker-Pope, "U.K. Beer Ads Rankle American Indians – Budweiser of U.S. Defends Series as Sales Gain," *The Wall Street Journal Europe*, July 17, 1996, 4; "Bud Ads Anger Native Americans," C1.

¹³³⁹ Donny Deutsch, quoted in Parker-Pope, "British Budweiser Ads Rankle American Indians," B1.

¹³⁴⁰ Allyson Stewart-Allen, quoted in Parker-Pope, "British Budweiser Ads Rankle American Indians," B1.

¹³⁴¹ Parker-Pope, "British Budweiser Ads Rankle American Indians," B1.

¹³⁴² Clive Chajet, quoted in Parker-Pope, "British Budweiser Ads Rankle American Indians," B1.

tionally supported Native American issues and protests against Indigenous misrepresentations called for global ethics standards.

The *Minneapolis Star Tribune*'s editorial section questioned Anheuser-Busch's global marketing standards. "Drink responsibly, say beer companies. Amen to that. But advertise responsibly? That's an issue for Anheuser-Busch."¹³⁴³ By comparing marketing practices within and outside the U.S., the *Star Tribune* put the company's ethical standards to the test, asking, "if there is an ethical problem with such advertising here, what makes it right in Britain? Even if a British ad agency prepared the ads for a British-only market? . . . such misleading use of American Indian images is wrong and insensitive wherever it occurs."¹³⁴⁴ Richard Estrada, an associate editor of *The Dallas Morning News*, emphasized, "Also offensive is the notion that because the linkage of Indians and alcohol isn't an issue in the United Kingdom, Indians shouldn't feel offended."¹³⁴⁵ Both editorials rejected the idea of foreign markets as separate, morally closed systems. In their opinion, the same ethical standards that applied to Indigenous advertising representations in the U.S. market also applied to international markets. As Estrada argued, Anheuser-Busch's defense that British consumers admired Native Americans "misses the point" because "Beer drinkers everywhere may admire the American Indian as an ideal, but such admiration doesn't absolve anyone from considering the group in a social or moral vacuum."¹³⁴⁶

For reasonably discussing Indigenous marketing representations, Estrada suggested stepping away from the separatist race frame and instead focusing on the unifying identity of Americans. While "Ideologues naturally will want to focus mainly or exclusively on racism and the corporate culture," the "subject of how the image of American Indians is being manipulated is also germane to the issue of American nationhood." Instead of identifying as Indian Nations, he thought it was "time to emphasize that Indians also are Americans. They are U.S. citizens. We all should deeply respect the Indian origin of Ira Hayes, the Marine from Arizona who helped plant the American flag on Iwo Jima, but we should celebrate the fact that he was an American."¹³⁴⁷ From American citizenship, Estrada deduced a moral obligation for marketers to avoid ethnic offenses since, "in the most ethnically diverse nation on earth, there is nothing more important than promoting fairness, decency and respect among all our ethnic communities."¹³⁴⁸

Media positioning in reports about international protest cases was predominantly neutral, with a tendency toward supportive attitudes toward (Indigenous) protesters, but few contrary examples exist. British journalists and consumers treated the Virgin Trains case in a distinctly antagonistic way in the British newspapers *The Sun* and *Northern Echo*. While *The Sun* subliminally challenged the validity of the protest, *Northern Echo* framed it as a threat of censorship in the name of political correctness. Calling the Virgin Trains commercial "just harmless, affectionate and funny," the author claimed, "WE live in an age when political correctness has gone too far," and "If Virgin is censured, what next? Will the TV networks have to ban re-

¹³⁴³ "Beer in Britain: Using American Indians to sell Bud," *Minneapolis Star Tribune*, July 22, 1996, A8.

¹³⁴⁴ Ibid., A8.

¹³⁴⁵ Richard Estrada, "Beer ads with Indians worsen an already bad stereotype," *The Dallas Morning News*, July 19, 1996, A27.

¹³⁴⁶ Ibid., A27.

¹³⁴⁷ Ibid., A27.

¹³⁴⁸ Ibid., A27.

peats of the old John Wayne cowboy films? We hope not because we can't help feeling that the complainants in this case have suffered a serious sense of humour bypass – and they need to get a life.” Although the U.K. Advertising Standards Authority (ASA) received 78 complaints about the commercial,¹³⁴⁹ as the writer noted, he delegitimized protesters as hypersensitive, hoping that “common sense will prevail.”¹³⁵⁰

In the two cases of Tip Top's Eskimo Pies and Cadbury's Eskimo Marshmallows in New Zealand, it was not Veevee Parsons, an Inuit tourist from Canada, who initiated a media protest campaign. First local and then national media puffed up her distaste for the brands. According to Parsons, she gave interviews to media from across the country after she had mentioned her opinion of the brand name to a television reporter. The brands' popularity and the unexpected criticism may have contributed to the high media attention, just as the media's interest in selling a story.

In New Zealand, where consumers were less familiar with criticism of the term Eskimo, comments “were harsh and overwhelmingly in support of keeping the Eskimos treat the way it” was. The case triggered phone calls to radio shows and hundreds of comments on online news sites, many of them “outraged” and “demanding the 21-year-old tourist go home if she's offended by their sweet treats,” but she also received some support from people in New Zealand.¹³⁵¹ The backlash against Parsons' criticism encouraged New Zealand's high commissioner Kate Lackey to comment in the Canadian press that she was “disappointed at comments left in online forums.”

I would hope New Zealanders would be a bit more courteous and understanding . . . I'll probably get into trouble in New Zealand for saying such a thing, but often there's a sort of 'redneck' element [...] The people who get on talk-back (radio) and stuff haven't had time to think through a bit more deeply how the other person might feel.¹³⁵²

Lackey clarified the controversy was not “causing a political rift between New Zealand and Canada” because one “could hardly have two countries closer together in attitudes and values than Canada and New Zealand.”¹³⁵³ For the same reason, a Maori TV show invited Parsons for an interview as “the historic plights and stereotypes of both indigenous groups are similar.”¹³⁵⁴ Since issues of misrepresentation and appropriation were not unique to North America, Indigenous peoples from different countries demonstrated mutual understanding. After Trelise Cooper's fashion faux pas, a Maori United Nations advocate commented that “he was offended for his First Nation brothers and sisters that it happened in Aotearoa, and . . . Maori felt the pain of other indigenous people when their culture was used inappropriately.”¹³⁵⁵

¹³⁴⁹ The *Daily Record* stated 83 complaints. Cf. Bill Caven, “Virgin's Indians Ad Stays On Track; Complaints rejected,” *Daily Record* [UK], November 22, 2006, 25.

¹³⁵⁰ “Seeing red over Indians,” *Northern Echo* [UK], October 24, 2006, 10.

¹³⁵¹ Chris Purdy, “Kiwis not sweet on Inuit tourist's complaints,” *Toronto Star* [CA], April 22, 2009, accessed October 21, 2016, https://www.thestar.com/news/canada/2009/04/22/kiwis_not_sweet_on_inuit_tourists_complaints.html.

¹³⁵² Kate Lackey, High Commissioner, New Zealand, quoted in Edward Gay, “Canada joins ‘racist’ NZ Eskimo lolly debate,” *NZ Herald* [NZ], April 24, 2009, accessed October 21, 2016, http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10568487.

¹³⁵³ Gay, “Canada joins ‘racist’ NZ Eskimo lolly debate.”

¹³⁵⁴ Veevee Parsons, paraphrased in Purdy, “Kiwis not sweet on Inuit tourist's complaints.”

¹³⁵⁵ “Designer apologises for using headdress,” *Radio New Zealand* [NZ], August 27, 2014, accessed May 26, 2020, <https://www.rnz.co.nz/news/te-manu-korihi/253142/designer-apologises-for-using-headdress>.

Cadbury and Tip Top, however, did not rethink their brand due to its long history and popularity. As Eskimo Pies had been available in New Zealand since the 1940s and were one of Tip Top's top ten sellers, the company argued that change was unlikely in the short term.¹³⁵⁶

Results of International Protests

In nine of 29 cases, protests led to a desirable result, that is, the company agreed with the criticism and adapted or dropped their marketing campaign. That means protests had a positive effect in 31.0 percent of the international cases, or 40.9 percent, excluding cases that may never have reached the company's attention. Six marketers did not act on the protest but apologized and decided to let the campaign expire rather than cancel it. Seven more marketers rejected or ignored protests. Reactions from the Crazy Horse Club in France and Nestlé Australia exemplify undesirable results. While the management of the Crazy Horse Club in Paris decided to ignore the complaint entirely, refusing to answer any inquiries from news media, Nestlé Australia stifled a social media comment from the U.S. with a tongue-in-cheek derivation of the origin of one of their candy's names. To a *Twitter* feed asserting Nestlé Australia should discontinue using a "racial slur" to name its candy, Nestlé's Consumer Care responded, "RED SKINS are raspberry flavoured. Raspberries are red. Hence the name. They are made to be enjoyed by all races. :)"¹³⁵⁷ In seven cases, news outlets did not report any reaction, or critics voiced their objections via social media which never reached the company's attention.

While companies operating on a global level were more aware of diversity issues and quickly attracted media attention, the idealization of Native Americans in the European imagination may have contributed to sympathetic reactions from targeted companies to avoid negative publicity. International corporations that "have millions of customers and employees who represent diverse cultural and ethnic backgrounds" uphold mission statements that "value and respect all cultures,"¹³⁵⁸ Heidi Barker Sa Shekhem, Vice President of Global External Communications of McDonald's, stated in a letter to an *ICTMN* correspondent in response to criticism. A cartoonish marketing character representing a stereotypical Indian Chief developed by French advertising agency TBWA for a children's card game for the French market in 2013 received criticism after images of the characters appeared within the designers' portfolio on the website DesignTaxi. While the character's "picture has not been used outside of France," the U.S.-based food chain noted, "Unfortunately the sensitivities around the use of this image within the French market were not fully appreciated at the time." McDonald's or-

¹³⁵⁶ Cf. "Eskimo stays despite frosty reception," *NZ Herald* [NZ], April 22, 2009, accessed October 21, 2016, http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10567850.

¹³⁵⁷ Nestlé Consumer Care, statement, quoted in Adrienne Keene, "Random Appropriation of the Day: Nestlé Redsk*ns," *Native Appropriations*, December 8, 2014, accessed October 14, 2016, <http://nativeappropriations.com/2014/12/random-appropriation-of-the-day-nestle-redskns.html>.

¹³⁵⁸ Heidi Barker Sa Shekhem, Vice President of Global External Communications, McDonald's Corp., quoted in Vincent Schilling, "American Indian Happy Meal Characters: McDonald's Responds," *Indian Country Today Media Network*, April 11, 2013, accessed October 30, 2016, <http://indiancountrytodaymedianetwork.com/2013/04/11/american-indian-happy-meal-characters-mcdonalds-responds-148752>.

dered that the picture be removed immediately from all restaurants in France and all of the agency's online channels.¹³⁵⁹

The Finnish beer producer Sinebrychoff put a lot of effort into developing the brand KOFF Indian Beer for their national market. The company's marketing department created the beer brand in collaboration with Dakota Indians, "some of which also featured in the commercial, . . . in order to respect the said people," and introduced KOFF as a seasonal corn beer in April 2007. Though the producer did not sell the beer outside the Finnish market and only one Finnish TV channel presented the commercial, critics reproduced the ad online. The reproduction made its way to the U.S. and caused anger among some Indigenous viewers within two weeks after its publication. Sinebrychoff reassured the complainant that

[O]ur honest purpose was not to hurt or insult the American Indians, not to be racist nor deprive them of their dignity. The Natives are greatly respected in Finland and also by our company. Unfortunately, we were not sensitive enough to understand firstly how this kind of advertising is indeed building a stereotype of the Natives and is secondly undermining the seriousness of the problems that alcohol has caused among many of them.

I would like to apologize [to] you and your people for not understanding the issues behind and thus making our product and its commercial hurt you and your people.

We have learned an important lesson.¹³⁶⁰

Sinebrychoff pulled the ad and removed the beer from its product portfolio in January 2008. As a subsidiary company of the Carlsberg Group, a brewer with a "global presence" and exporting beer brands to more than 100 countries,¹³⁶¹ Sinebrychoff may have been interested in settling the controversy quickly and on amicable terms to protect its international image.

Virgin Trains pursued a strategy of passing on responsibility for the commercial's content. The company established Indigenous affirmation by hiring a Native American actor and referring to him as an instance of approval since "he didn't feel it was denigrating."¹³⁶² According to Virgin Trains, the Broadcast Advertising Clearance Centre had also permitted the script.¹³⁶³ Combined with the fact that the company investigated if there were any Native American groups in the UK, the extent of efforts taken to assure their commercial would not cause any offense suggests that Virgin Trains was aware of the potential conflict.

The efforts Sinebrychoff and Virgin Trains had taken to ensure that the representation of Native Americans in their marketing campaign was appropriate demonstrates that European companies were aware of the controversies surrounding the use of Native American imagery for marketing purposes. Possibly due to the popularity of Indigeneity and the idealization of Native peoples in European cultures, some marketers may have feared protests from Native Americans as damaging publicity that outweighed other publicity effects such as media attention and brand awareness.

¹³⁵⁹ Heidi Barker Sa Shekhem, Vice President of Global External Communications, McDonald's Corp., quoted in Schilling, "American Indian Happy Meal Characters: McDonald's Responds."

¹³⁶⁰ Marja-Liisa Weckström, Director of Communications and Legal, Sinebrychoff, written response to Angel Bigstone, May 19, 2010, quoted in Schmidt, "Beer maker apologizes for Koff ads."

¹³⁶¹ "Who We Are," Carlsberg Group, accessed July 1, 2017, <https://carlsberggroup.com/who-we-are/about-the-carlsberg-group/global-presence/>.

¹³⁶² Virgin Trains, quoted in Coles, "Virgin ad's offensive to Injuns," 33.

¹³⁶³ Cf. Coles, "Virgin ad's offensive to Injuns," 33.

Novum Crafts, an Indonesia-based producer and seller of Native-inspired crafts, denounced in 2016 that a “Native American headdress for sale is now thought as stereotyping and even worse – racist.” However, “having been enlightened by the significance of a Native American headdress and other treasured ornaments, we grasp a sharper understanding of their culture.”¹³⁶⁴ While critics objected to this reasoning, Novum Crafts’ statement demonstrates that Native American protests had been acknowledged globally and forced marketers beyond North America to rethink and justify their marketing practices.

7. Advertising in the 21st Century as a Mirror of Society and Driver of Change

Native American activism and media campaigns during the civil rights movement helped change Indigenous self-awareness and American society’s perception of Native Americans. With increasing Native American awareness and pride and the growing popularity of Indigeneity, more and more people with (and without) Native ancestry identified as Indigenous or part Indigenous. Since 1980, Census campaigns designed to encourage Native Americans to answer the Census and reduce undercount rates provided increasingly accurate population counts. Besides the steady population growth, the Census reports documented relevant information about potential Native consumers that advertisers could use for target-oriented marketing. Simultaneously, growing population numbers also meant the rising significance of Indigenous issues, including awareness of and activism against Indigenous misrepresentation and cultural appropriation in marketing. As a basis for data-driven marketing, census reports helped advertisers acknowledge Native Americans as consumers and niche markets. Marketing practices targeting Indigenous consumers necessarily had to address Native Americans according to their self-perception, which presumably resulted in more accurate marketing representations, although traditional representations continue to exist.

Indigenous advertising efforts added to the increasingly diverse range of marketing representations. Indigenous ads challenged popular ideas of Indigeneity and offered alternative representations that could fill emerging gaps regarding Indigenous identity in the public sphere after protests continuously clarified that common notions about Indigeneity were pure fiction. A visible change came in the wake of the Black Lives Matter movement, which rebelled against societally entrenched racism and which Indigenous people used to draw attention to the differential treatment of minorities. Then, even tradition-conscious companies dropped their logos and names that critics had long denounced as racist.

7.1 Interdependencies Between Population and Protest

Researcher Hayley Munguia and the IACB have already investigated correlations between Indigenous representations, population statistics, and protest against offensive or unfair marketing practices. As Munguia’s quantitative evaluation of the number of school mascots by state and Indigenous population data indicates, the occurrence of protests against offensive Native American representations or appropriation depended on the composition of the local or

¹³⁶⁴ “What has become of the Native American Trend?” Novum Crafts, April 4, 2016, accessed January 9, 2019, <https://indianheaddress.com/blogs/news/99029574-what-has-become-of-the-native-american-trend>.

regional population.¹³⁶⁵ For instance, superintendent and principal Patrick Kraning of Estelline High in South Dakota believed the reduction of the Redmen's logo to an 'E' with two feathers attached "combined with the fact that Estelline doesn't have a significant Native American population, is why there hasn't been much local debate on the topic."¹³⁶⁶ Protesters like Erica Lee (Mastodon, 2013), who were directly confronted with certain marketing practices and spoke out "As a fan,"¹³⁶⁷ indicate a connection between protest and population. With increasing numbers of Indigenous peoples, the likeliness of protest was rising due to the growing number of stakeholders and the significance of Indigenous issues, as well as an expanding discourse and increasing awareness furthered by new media and traditional mainstream media.

This study found a connection between high Indigenous population numbers and higher rates of complaints and protest actions in Washington, California, New Mexico, Arizona, and New York.¹³⁶⁸ Furthermore, despite a lower Indigenous population than in the first five states, it documented high complaint and protest rates for South Dakota, Illinois, and Washington, DC. In Oklahoma and Texas, there were fewer protests, although those states had a significantly larger Indigenous population than most other states.

As the complaint map (Figure 5,¹³⁶⁹ upper map) shows, most complaints against marketing practices (n = 278) came from Illinois (15.8 percent), New York (12.9 percent), California (10.4 percent), Washington, DC (9.0 percent), South Dakota (7.9 percent), New Mexico (7.2 percent), Arizona (5.8 percent), Minnesota (4.0 percent), and Oklahoma (3.2 percent). In Illinois (NAA), New York (AAIA), DC (NCAI), and South Dakota (Crazy Horse family), single organizations or groups protested very frequently, which significantly impacts the statistic. Even not considering NCAI marketing protests, DC was one of the top complaint states, although the number and share of Indigenous peoples were relatively low. Excluding complaints from all four groups, California, New Mexico, DC, and Arizona were the states with the highest complaint counts.¹³⁷⁰ California, New Mexico, and Arizona were also states with

¹³⁶⁵ See Munguia, "The 2,128 Native American Mascots People Aren't Talking About."

¹³⁶⁶ Patrick Kraning, Superintendent and Principal, Estelline High, paraphrased in Munguia, "The 2,128 Native American Mascots People Aren't Talking About."

¹³⁶⁷ Erica V. Lee, "An Open Letter to Mastodon regarding your Thanksgiving t-shirts [[Updated With Band Response]]," *Moontime Warrior*, last modified October 11, 2015, accessed May 12, 2017, <https://moontimewarrior.com/2015/10/11/an-open-letter-to-mastodon-regarding-your-thanksgiving-t-shirts/>.

¹³⁶⁸ In 2010, states with largest Indigenous populations, that is, people who identified as Native American or indicated Indigenous ancestry according to 2010 U.S. Census definitions, included, in ascending order, California, Oklahoma, Arizona, Texas, New York, New Mexico, Washington and North Carolina, which had more than or almost 200,000 residents each. Counting only peoples who primarily identified as Native American, states with largest Indigenous populations were, in ascending order, California, Oklahoma, Arizona, New Mexico, Texas, North Carolina, New York, Alaska, Washington and South Dakota. Considering states' Indigenous population shares (including people with some Native heritage), Oklahoma ranked first with 12.9 percent, followed by New Mexico (10.7 percent), South Dakota (10.1 percent), Montana (7.9 percent), North Dakota (6.4 percent) and Arizona (5.5 percent). All other states had an Indigenous population share of 3.3 percent and lower.

Cf. Tina Norris, Paula L. Vines, and Elizabeth M. Hoeffel, "The American Indian and Alaska Native Population: 2010," 2010 Census Briefs, C2010BR-10, issued January 2012, accessed September 6, 2020, 7, <https://www.census.gov/content/dam/Census/library/publications/2012/dec/c2010br-10.pdf>.

¹³⁶⁹ Basic maps by Google Maps, <https://www.google.com/maps>.

¹³⁷⁰ If single groups very frequently protesting against marketing practices, these were excluded (NAA, AAIA, NCAI, Crazy Horse family); most complaints came from California (10.4 percent), New Mexico (7.2 percent), Washington, DC (6.1 percent), Arizona (5.8 percent), South Dakota (4.7 percent), Minnesota (4.0 percent), New York (4.0 percent), and Oklahoma (3.2 percent).

the highest Indigenous population numbers or percentages, having Indian arts and crafts laws, and the same top three as in the IACB's ranking of states with the most IACA complaints.

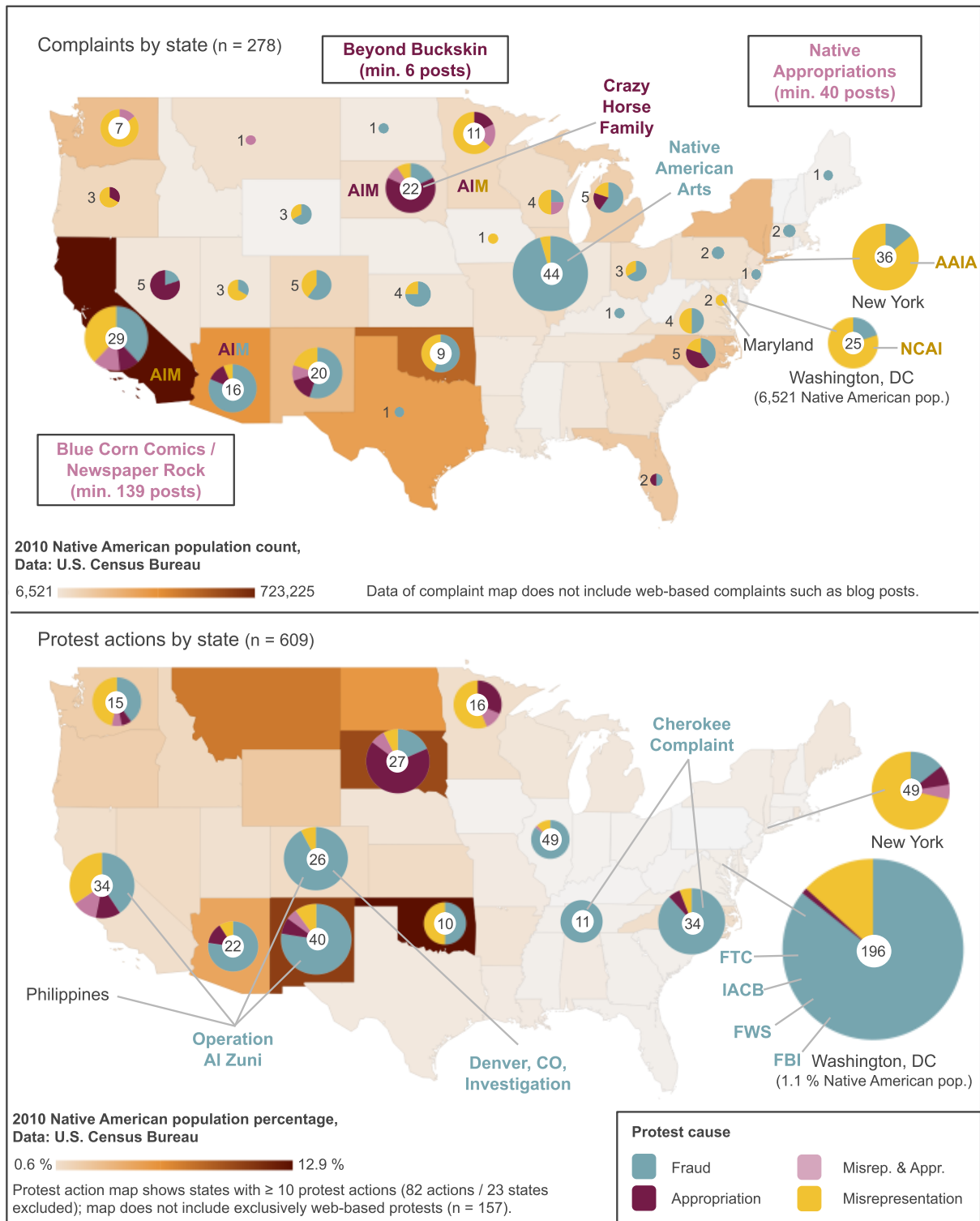


Figure 5: Geography of protest.

According to the Indian Arts and Crafts Board ($n = 649$), 2.3 percent of the complaints were international, coming from all over the world,¹³⁷¹ but most complaints came from the U.S. By region, most complaints came from the West (28.7 percent) and the Southwest (20.2 percent).¹³⁷² Thirty-eight percent of the complaints (248) came from one of the twelve states having their own laws to protect the Indian arts and crafts industry by prohibiting misrepresentations: California (24.2 percent), Arizona (19.8 percent), New Mexico (18.1 percent), Texas (10.1 percent), Alaska (7.7 percent), Colorado (6.9 percent), Oklahoma (4.8 percent), Minnesota (2.4 percent), South Dakota (2.4 percent), Montana (2.0 percent), Nevada (1.0 percent), and Nebraska (0).¹³⁷³

In Illinois, New Mexico, Arizona, and Oklahoma, complainants' primary concern was fraud, while misrepresentation was the most prominent reason for protest in New York, DC, Minnesota, and Washington State. Critics from California were equally concerned about fraud, appropriation, and misrepresentation. Only in South Dakota and Nevada was appropriation the major protest cause, frequently in the form of a Crazy Horse name dispute. Since 2000, online activism developed and spread quickly and, as neither the place of the offense nor the protesters' or addressees' location limited protest actions, rendered geographic factors increasingly irrelevant. Nevertheless, digital activism had a demographic dimension as *Facebook*, *Twitter*, and online blogging represented methods used by a "largely urban American Indian population throughout North America and in each of the United States – not simply in the rural Southwest, as some may believe."¹³⁷⁴ According to the 2010 census, 71 percent of Native Americans lived in urban regions.

While the study's findings suggest some connection between the size or share of a state's Indigenous population and marketing protest, population statistics alone do not explain the occurrence or absence of protest. The protest action map (Figure 5, lower map) includes complaints and subsequent actions but no online-based actions. It reveals that subsequent actions were not limited to the place or state of the original complaint. This was typical for fraud issues when artists or customers addressed the IACB in Washington, DC, and the Board initiated investigations that unveiled networks of producers and sellers of imitation artwork, for instance. As the Denver Investigation (1944-47), the Cherokee Complaint (1974-77), and Operation Al-Zuni (2012-21) demonstrate, one or few complaints could lead to large-scale efforts against dozens of organizations in multiple states and even countries involved in illegal sales practices. In this context, the IACB identified China, Philippines, Thailand, Indonesia,

¹³⁷¹ Australia, Canada, Czech Republic, England, Germany, Nigeria, Philippines, Switzerland, Thailand. Cf. Table 3: Number of Complaints by Region, Fiscal Years 2006 to 2010, in U.S. Government Accountability Office, "Indian Arts and Crafts," 34.

¹³⁷² West (Alaska, California, Colorado, Idaho, Montana, Nevada, Oregon, Utah, Washington): 186; Southwest (Arizona, New Mexico, Oklahoma, Texas): 131; Southeast (Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, North Carolina, South Carolina, Tennessee, Virginia, West Virginia): 92 (14.2 percent), Northeast (Connecticut, Delaware, DC, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Vermont): 80 (12.3 percent); Midwest (Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Ohio, South Dakota, Wisconsin): 71 (10.9 percent).

Cf. Table 3: Number of Complaints by Region, Fiscal Years 2006 to 2010, in U.S. Government Accountability Office, "Indian Arts and Crafts," 34.

¹³⁷³ Cf. Table 4: Number of Complaints by State for States with Indian Arts and Crafts Laws, Fiscal Years 2006 to 2010, in U.S. Government Accountability Office, "Indian Arts and Crafts," 35.

¹³⁷⁴ Stephen Crawford, "Using social media for a greater good," quoted in Robert Schmidt, "Indians educate via social media," *Newspaper Rock*, March 7, 2013, accessed October 28, 2016, <http://newspaperrock.bluecorncomics.com/2013/03/indians-educate-via-social-media.html>.

Pakistan, and Mexico as countries producing imitation artwork that suppliers sold on the U.S. market.¹³⁷⁵ In fraud cases, the importance of tourism and the arts industry for the local economy was usually the most relevant factor.

Both awareness of issues such as fraud, appropriation, and misrepresentation and means of fighting them differed by state. While Southwestern states such as Arizona and New Mexico had Indian arts and crafts laws, the DuBray family from South Dakota sought to move the Cult / Time Warner case (1992-97) to a New York court where existing civil rights laws supported their protest cause. Accordingly, there were many fraud cases in Arizona and New Mexico. In contrast, marketing protests erupting in New York and DC since the 1960s, where organizations and laws reflected the broad civil rights discourse, concentrated mainly on the representation of Indigeneity.

Organizations and groups developing according to local circumstances also shaped the geography of protest. The AAIA in New York and the NCAI in DC believed they supported Indigenous issues best by changing Native Americans' public image. After its establishment in 1968 in Minneapolis, Minnesota, AIM supported and initiated protests mostly against misrepresentation and appropriation in South Dakota (Crazy Horse family), California, and Arizona, but also Nevada, Kansas, and Florida, and online since at least 2010 to promote and protect Indigenous cultural integrity. Illinois-based Native American Arts, as the first complainant, successfully applied the IACA to confront more than 100 sellers of Native arts and crafts with lawsuits or cease and desist orders to protect their economic interests.

This study highlights interdependencies between Indigenous population shares and protests and the Census's role in this relationship. The sudden increases in statistical population analyses were due to political, practical, and societal changes that influenced population counts more than demographic changes. Indigenous population statistics were unreliable due to the arbitrary nature of biological criteria like blood quantum, which differed across ethnicities and changed over time.¹³⁷⁶ During the 20th century, the government surrendered step by step the power to determine who was and who was not Indigenous. If the U.S. government aimed to reduce its responsibilities toward Native Americans by defining Indigeneity narrowly, new counting methods such as self-identification and the option to choose more than one race indicated a political change regarding Indian-White relations. Most significantly, children from mixed marriages, who would have fallen through the racial raster, now decided whether they wanted to be counted as Native American by the U.S. government. The number of multiracial Natives grew more significantly than the number of single-race Natives. While both Whites and, at a higher rate, Non-Whites increasingly identified as partially Native American,¹³⁷⁷ especially Hispanics identifying as Native were responsible for the significant population growth between 1990 and 2010.¹³⁷⁸ Several factors influenced the identification process and, thus, the population counts: changing racial definitions and the shift towards acknowledging multi-racial identities in the census; practically motivated changes in counting

¹³⁷⁵ Cf. Indian Arts and Crafts Board, "Mission Statement."

¹³⁷⁶ See "Indians and the Census 1790-2010," Native Heritage Project, May 14, 2013, accessed April 23, 2015, <http://nativeheritageproject.com/2013/05/14/indians-and-the-census-1790-2010/>.

¹³⁷⁷ Cf. Norris, Vines, and Hoeffel, "The American Indian and Alaska Native Population: 2010," 4.

¹³⁷⁸ See Carolyn A. Liebler and Timothy Ortyl, "More than a Million New American Indians in 2000: Who Are They?" *Demography* 51, no. 3 (June 2014): 1101-1130, accessed August 29, 2020, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5124484/>.

methods; a changing societal sentiment toward Native Americans; and their own changing self-awareness.

James L. Simmons postulated six definitions of Native Americans which differed greatly depending on the purpose and person of identification. Simmons differentiated between legal definitions, self-declaration (self-reporting in the U.S. census, for instance), community recognition, recognition as an Indian by non-Indians, biological definitions like blood quantum in Certificates of Degree of Indian Blood (CDIB), and cultural definitions that may vary among persons, groups, and over time.¹³⁷⁹ Continuously varying definitions of race and racial affiliation and a significant demographic change toward increasing multiracial populations¹³⁸⁰ have further blurred such categorizations. Ethnic identities have “become increasingly complex and flexible,” and “the same person might consider him- or herself Indian for some purposes and in some situations but not in others.”¹³⁸¹ Consequently, Census marketing gained even more importance in moving people with Native American ancestry to remember or think about their identity and answer the Census questionnaire.

Among many other factors affecting census participation and counts, the marketing campaigns significantly supported the statistical Indigenous population growth. Public service advertising campaigns to enhance the Indian image in American society and Indian self-awareness contributed to the increasing identification of people with full or mixed Indigenous heritage as Native American. Since 1980, changing census marketing methods boosted Indigenous population counts as the Census Bureau declaredly aimed to increase response rates among the highly undercounted population group of Native Americans.

Increasing Indigenous self-awareness and self-confidence has affected Native American self-identification and Census counts since the civil rights movement. The Red Power movement and the many activist efforts during the 1960s and 70s represented “turning points in the evolution of indigenous identity” as Native Americans started seeing their “heritage as a valuable part of personal identity and as a foundation for pan-Indian solidarity.”¹³⁸² The American Indian Movement, a particularly media-adept activist group, “dramatically raised the level of awareness and political action.”¹³⁸³ Due to their media presence, AIM “served as a catalyst for an American Indian ethnic renewal whose impact was reflected in growing Indian population figures recorded in U.S. censuses in the last decades of the twentieth century.”¹³⁸⁴

¹³⁷⁹ James L. Simmons, “One Little, Two Little, Three Little Indians: Counting American Indians in Urban Society,” *Human Organization* 36, no. 1 (1977): 78.

¹³⁸⁰ “According to Pew Research Center analysis of the 2013 American Community Survey, the median age of all multiracial Americans is 19, compared with 38 for single-race Americans.”

Kim Parker et al., “Multiracial in America: Proud, Diverse and Growing in Numbers,” *Pew Research Center*, June 11, 2015, accessed August 29, 2020, <https://www.pewsocialtrends.org/2015/06/11/multiracial-in-america/#fn-20523-1>.

¹³⁸¹ Calloway, *First Peoples*, 622.

See also Felix Cohen’s *Handbook of Federal Indian Law*: Some people “can be Indian for one purpose but not for another. A Caucasian or people of little Indian ancestry might become a tribal member by adoption for some purposes, such as voting and participation in tribal government, but not be Indian for purposes of federal criminal jurisdiction. An Indian whose tribe has been terminated will not be considered an Indian for most federal purposes. Nevertheless, such a person remains an Indian ethnologically and continues to be a tribal member for internal tribal purposes.”

Felix S. Cohen, *Felix S. Cohen’s Handbook of Federal Indian Law*, ed. Rennard Strickland and Charles F. Wilkinson (Charlottesville: Michie, Bobbs-Merrill, 1982), 26.

¹³⁸² Weaver, “Indigenous Identity,” 246.

¹³⁸³ Calloway, *First Peoples*, 552.

¹³⁸⁴ *Ibid.*, 552.

Additionally, media campaigns like the NCAI's awareness campaign and other media efforts not only promoted Native American issues but explicitly aimed to change the image of Native Americans in U.S. society.

Since 1990, increasingly target-oriented Census marketing strategies based on research and created by Native American advertising agencies like G&G Advertising helped to produce more accurate population counts for the U.S. Census. With new communication strategies, the Census Office sought to encourage Native Americans' responsiveness to the census questionnaire by building trust, appealing to Natives' community sense, and specifically addressing people whose Indigenous heritage did not play a significant role in their lives and who might not have identified as Native American in previous censuses. Marketing media strategies adapted to new media and aimed to reach Natives in highly frequented places and areas on reservations, in cities with known notable but 'hidden' Indigenous populations, and online. Since marketing efforts for the 1990 U.S. Census aimed at "Hard to Count" Native peoples, that is, urban Natives who had not self-identified as Indigenous in previous censuses, the population growth rate since 1980 may also be seen as the Census campaigns' success.¹³⁸⁵

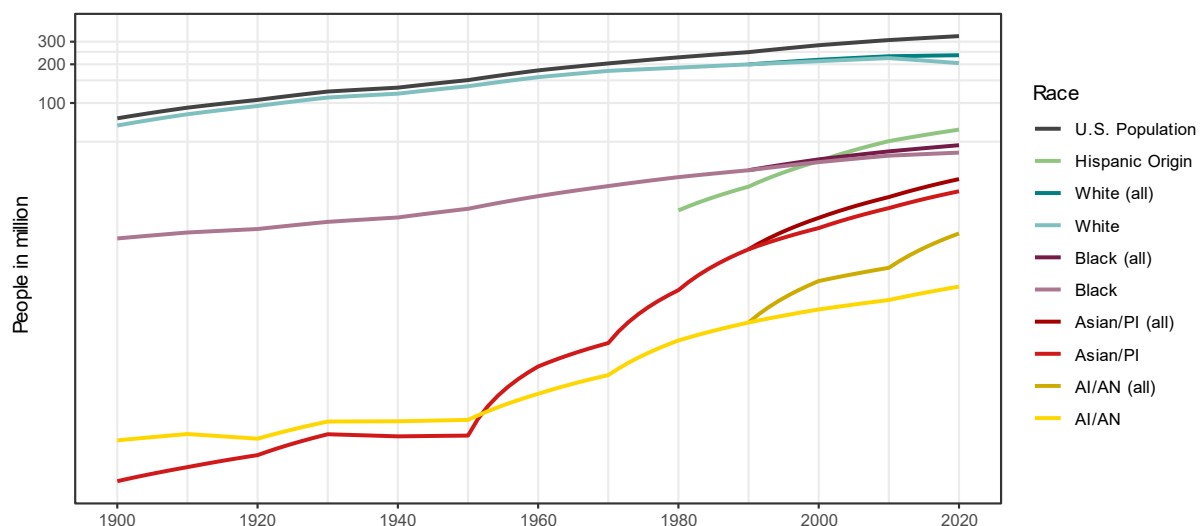


Figure 6: U.S. minority population growth by race, 1900-2020.¹³⁸⁶

¹³⁸⁵ Cf. Transcript of the Institute of American Indian Arts and Bureau of Census Interagency Meeting, July 31, 1989, Santa Fe, New Mexico, 14-17; Lloyd H. New Papers; IAIA Archives, Santa Fe, NM.

¹³⁸⁶ To improve the visibility of low-population minorities, a logarithmic function was used to "zoom in" to the lower 100 million. For original data visualization see Figure 40, appendix. AI/AN = American Indian / Alaska Native, PI = Pacific Islander. Since 2000 Asians and Native Hawaiians / Pacific Islanders are counted separately. For the reason of clarity, these data have been summed up for the infographic.

Data: Frank Hobbs and Nicole Stoops, "Demographic Trends in the 20th Century," Census 2000 Special Reports, *U.S. Bureau of the Census*, CENSR-4, issued November 2002, accessed April 21, 2015, <https://www.census.gov/prod/2002pubs/censr-4.pdf>; Karen R. Humes, Nicholas A. Jones, and Roberto R. Ramirez, "Overview of Race and Hispanic Origin: 2010," 2010 Census Briefs, *U.S. Bureau of the Census*, C2010BR-02, issued March 2011, accessed April 21, 2015, <http://www.census.gov/prod/cen2010/briefs/c2010br-02.pdf>; "DEC Redistricting Data (PL 94-171)," *U.S. Bureau of the Census*, accessed October 30, 2022, <https://data.census.gov/cedsci/table?q=Population%20Total&g=0100000US&y=2020&tid=DECENNIALPL2020.P1>.

U.S. Census data since 1900 (Figure 6) demonstrates a general growth of minority populations which varied in degree by race and historical era. The steady growth rate of the African American population contrasts with the sudden Indigenous population increases roughly every 20 years. The light orange graph represents people who identified as American Indian and Alaska Native (AI/AN). The dark orange graph emerging in the 2000 Census shows the sum of all people who identified as either fully or partially Indigenous. The analysis reveals a slight increase in the Indigenous population between 1920 and 1930 and a stronger increase since 1950. However, Census data does not exclusively prove growing numbers of non-White populations but also the increasing identification with or recognition of peoples as Non-Whites which critics deemed responsible for the population increases of Native Americans to different degrees.

Like in previous Census campaigns, overcoming the high undercount rates of Indigenous reservation populations became a major goal of the 2020 U.S. Census campaign.¹³⁸⁷ That the 2010 Census modified the criteria for Hispanic Native Americans, marked a significant change since Hispanics had to identify as White up to that point.¹³⁸⁸ Ongoing activist efforts to move people with Inca, Maya, and Aztec ancestry to identify as Native American¹³⁸⁹ may have contributed to another significant Indigenous population growth. Their goal was to move Hispanics to “DECOLONIZE THE CENSUS” by “rejecting colonialist terms like hispanic [sic] / LATINO and inform us why we are NOT THE WHITE RACE.”¹³⁹⁰ In the 2020 Census, the Indigenous population, including those who identified as Native alone (3.7 million people) or in combination (5.9 million people), increased by 86.5 percent over the 2010 Census, amounting to a population of 9.7 million Native Americans.

While some critics believed marketers ignored the views and interests of Native peoples because they made up only about one percent of the U.S. population, the rising Indigenous population gave them more prominence. As Figure 7 shows, the population share of single-race Native Americans has constantly been rising since 1950, from 0.23 percent to 0.79 percent in 1990 to 1.12 percent in 2020. Multiracial Natives represented 1.46 percent of the U.S. population in 2000, 1.69 percent in 2010, and reached 2.92 percent in 2020.

¹³⁸⁷ Cf. Ben Kessler, “Native Americans, the census’ most undercounted racial group, fight for an accurate 2020 tally,” *NBC News*, December 29, 2019, accessed September 6, 2020, <https://www.nbcnews.com/news/us-news/native-americans-census-most-undercounted-racial-group-fight-accurate-2020-n1105096>.

For statistics or undercount rates of previous Censuses and efforts to reduce undercount rates of Native Americans see “Census,” National Congress of American Indians, accessed September 6, 2020, <http://www.ncai.org/policy-issues/economic-development-commerce/census>; Larry Fish, “Big Census Push for Tiny N.M. Pueblo in its Special Effort to Count Every Native American, the U.S. Reaches Zia, Population 775,” *Philadelphia Inquirer*, March 31, 2000, A21; Carol C. Lujan, “American Indians and Alaska Natives Count: The U.S. Census Bureau’s Efforts to Enumerate the Native Population,” *American Indian Quarterly* 38, no. 3 (Summer 2014): 319-341; Stella U. Ogunwole, “The American Indian and Alaska Native Population: 2000,” Census 2000 Brief, C2KBR/01-15, issued February 2002, accessed August 29, 2020, 2, <https://www.census.gov/prod/2002pubs/c2kbr01-15.pdf>; U.S. Department of Commerce, Bureau of the Census, “We the... First Americans,” WE-5, issued September 1993, accessed August 29, 2020, 1, <https://www.census.gov/prod/cen1990/wepeople/we-5.pdf>.

¹³⁸⁸ Cf. Heidi Zhou, “Census changes criteria for Hispanic American Indians,” *News 8 Austin*, YouTube video, 2:36, February 15, 2010, accessed August 29, 2020, <https://www.youtube.com/watch?v=bA-677jCQSY>.

¹³⁸⁹ Cf. “We are not Hispanics but Native Americans,” YouTube video, 6:14, October 17, 2009, accessed August 29, 2020, <https://www.youtube.com/watch?v=C9jMzWVVaak>.

¹³⁹⁰ Cuitlahuac and Citlalli, “DECOLONIZE THE CENSUS: What is the Census 2020: Hispanics? Native? White? Let’s talk about it!” YouTube video, 33:14, March 31, 2020, accessed August 29, 2020, <https://www.youtube.com/watch?v=OQcp1kuxHp0>.

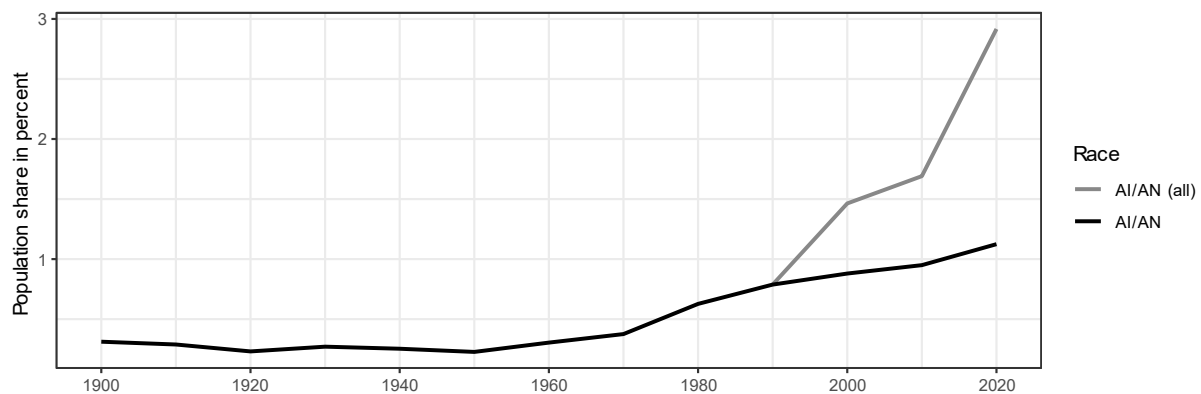


Figure 7: U.S. Indigenous population share, 1900-2020.¹³⁹¹

More accurate population counts, rising Indigenous population shares, and increasing economic clout resulted in the ‘discovery’ or increasing acknowledgment of Native Americans as consumers. This development required marketers to present marketing strategies that appealed to Natives and contributed to a changing marketing discourse about Indigeneity. Some producers like Anheuser-Busch or PepsiCo had identified Natives as a target group much earlier, as their roles as sponsors of powwows and other events suggest. Now, however, *Ad Age* and other magazine articles advertising the Native American niche market and protests against marketing practices promoted awareness and publicity of Indigenous consumers.

Simultaneously, the recognition of Native Americans as consumers will likely make them vulnerable to the misconstruction of Native identities by advertisers who aim to change Native people’s perceptions of themselves to turn them into consumers. As Katharina Lindner’s ad analysis revealed, “advertisements in *Vogue*, a magazine geared toward a female audience, depict women more stereotypically than do those in *Time*, a magazine with the general public as a target audience.”¹³⁹² Therefore, Lindner argues, the “portrayal of women as inferior and ‘flawed’ is a necessity for the existence of a women’s fashion magazine such as *Vogue*.” These magazines were “primarily a means for advertising and selling products that are suggested to be a ‘cure’ for women’s feelings of inferiority and inappropriateness.”¹³⁹³ A similar effect may also occur in the Native American market, for instance, when advertisers do not address an existing demand but seek to create new demands.

7.2 ‘Discovery’ of the Native American Consumer

As early as the late 1940s, PepsiCo started taking notice of “the Negro market” and hired African American marketers to sell their products to Black customers. Despite Jim Crow segregation laws that made their work more difficult, these salesmen “helped bolster sales at Pepsi-Cola during its most troubled times.” More significantly, they “helped define the concept and

¹³⁹¹ See also Table 21: Indigenous population share, 1900-2020, appendix. Data based on Hobbs and Stoops, “Demographic Trends in the 20th Century;” Humes, Jones, and Ramirez, “Overview of Race and Hispanic Origin: 2010;” “DEC Redistricting Data (PL 94-171).”

¹³⁹² Katharina Lindner, “Images of women in general interest and fashion advertisements from 1955 to 2002,” *Sex Roles* 51, nos. 7/8 (2004): 409.

¹³⁹³ *Ibid.*, 420.

strategy of niche marketing and were instrumental in changing the way African-Americans were portrayed in advertising. Instead of stereotypes . . . the Pepsi ads appearing in the black press showed African-Americans as stylish, fun-loving, middle-class consumers living the American Dream.”¹³⁹⁴ As African American consumers found themselves in Pepsi advertising, the ‘discovery’ of the Native American market eventually moved marketers to address Native Americans as consumers and adapt marketing representations. In the meantime, traditional Indian advertising representations appealing to non-Natives continued to sell, at least in part due to its character as myth.

By at least the 1990s, American businesses started discovering or acknowledging Native Americans as a target group that had long existed but had only recently become visible as consumers and solvent. The increasing identification of people as fully or partially Indigenous in the U.S. Census was a prerequisite for, or at least furthered, the recognition of Native Americans as consumers. Since the Census was an “essential tool in modern marketing research”¹³⁹⁵ and the most cost-effective basis on which marketers could conduct research, marketers likely reacted to changing population statistics. Awareness of a growing Indigenous target group would likely lead to marketing practices that make greater efforts to achieve authenticity to appeal to the target audience. For instance, while Eunice Simonson did not mind the fashion trend of Indian jewelry per se, she wrote to Indian Commissioner Robert Bennett regarding the fake imports from Hong Kong that she was “particularly appalled at the ‘junk’ Amerindian jewelry that is being foisted upon the public here in Dayton, Ohio,” and “Being part Cherokee myself makes it even more unappealing to me.”¹³⁹⁶

The U.S. Census was an essential source for the “nation’s business community” as a “Marketing Radar” for data-driven marketing. As “an essential tool in modern marketing research,” the Census was relevant for anyone owning or marketing a business to understand present and potential customers. Census data not only helped detect regional markets with a “high proportion of families and individuals in the appropriate income range.” It also provided information on population characteristics, including age or housing details that were valuable for finding “a theme or particular products for an advertising campaign . . . for its marketing area.”¹³⁹⁷

In 1994, the U.S. Department of Housing and Urban Development used Census data and hired a Native-owned marketing firm to create advertising addressing the Indigenous population. Jim Gray, marketing manager at Feathergraphx Inc. of Tulsa, Oklahoma, noted, “Many of the ideas were based upon research in the actual numbers of American Indians in the 30-county area from 1990 Census data and current statistics that highlight the Tulsa ar-

¹³⁹⁴ Stephanie Capparell, “How Pepsi Opened Door to Diversity,” *The Wall Street Journal*, January 9, 2007, B1, accessed January 9, 2021, http://www.comlabgames.com/45-870N/instructor/01_day/How_Pepsi_Opened_Door_to_Diversity.pdf.

¹³⁹⁵ National Advertising Council, “Marketing Radar,” 1980, Business Press Ad No. CEN-3332-80; Ad Council; Statistical Abstract of U.S. TO Ad Council; Publicity Records of the 1980 Decennial Census, 1980; Census Promotion Office; Records of the Bureau of Census, Record Group 29; National Archives Building, Washington, DC. Hereafter cited as National Advertising Council, “Marketing Radar,” 1980; Ad Council; Statist. Abstract; Publ. Rec. of 1980 Census; Census Prom. Office; RG 29; NAB.

¹³⁹⁶ Eunice E. Simonson, letter to Robert Bennett, BIA, Dayton, Ohio, September 12, 1968; Board Legislation, Gen. Correspondence Re Imitation Handicrafts, 1936-73, Folder 2 of 3; General Correspondence, 1936-1975; Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980; Records of the Indian Arts and Crafts Board, Record Group 435; National Archives Building, Washington, DC.

¹³⁹⁷ National Advertising Council, “Marketing Radar,” 1980; Ad Council; Statist. Abstract; Publ. Rec. of 1980 Census; Census Prom. Office; RG 29; NAB.

ea.”¹³⁹⁸ Furthermore, the new approach aimed to reach the intended audience through “advertising in tribal newspapers and in programs that promote Indian events like pow wows, art shows and pageants because that’s where most of the Native Americans live and work.”¹³⁹⁹

The Census was particularly useful for “Picking areas for evaluating new products with selective appeal” but also for “Evaluating the potential for specialty products” and “Developing advertising strategies based on demographic characteristics.”¹⁴⁰⁰ Census data allowed marketers and advertisers to “identify a racial or ethnic category of consumers in America with sufficient numbers to warrant the economic costs of differential treatment.”¹⁴⁰¹ With a growing population identifying as fully or partially Native American, niche markets became increasingly interesting for companies.

As marketers could draw conclusions from Census data on new target groups and markets, the Census ultimately influenced how marketers addressed and represented Native Americans for commercial purposes. As William O’Barr reasoned in 2013, with the emergence of the Native American market, “advertisers/marketers will pay attention to their different cultures and interests, design campaigns directed specifically to them, and above all else make great efforts to treat their cultures and traditions with sensitivity.”¹⁴⁰² However, marketing to the Indigenous population “can be tricky because there is no single tradition on which marketers might draw.” Particularly in the Southwest, Natives from some pueblos have been living in the same place for 500 years. In contrast, northern regions had a history of assimilation because the U.S. government forced tribes to move to other areas and reservations.¹⁴⁰³ Instead of appealing to one Native American niche market, “You have to find the commonalities, . . . but if you want to go deep, you have to consider segmenting.”¹⁴⁰⁴ Since marketers became more aware of Native Americans as valued consumers and customers, companies had to develop strategies for addressing Natives rather than utilizing their ethnicity as a marketing subject for non-Natives. Growing Indigenous economic clout further pushed the recognition of Native Americans as consumers and targets of advertising.

“What Indians are is a market,”¹⁴⁰⁵ opined Rothenberg in *Ad Age*. By the late 1990s, marketers started recognizing the economic impact of reservation-based businesses on neighboring regional economies where Indigenous governments, businesses, and residents spent billions of dollars off their reservations for goods and services.¹⁴⁰⁶ Many Native Americans had a “substantial discretionary income,” as Michael Gray explained, and during the 1990s,

¹³⁹⁸ Jim Gray, Marketing Manager, Feathergraphx Inc., paraphrased in “HUD targets Native homebuyers with marketing firm,” *Indian Country Today*, February 23, 1994, B5.

¹³⁹⁹ “HUD targets Native homebuyers with marketing firm,” B5.

¹⁴⁰⁰ National Advertising Council, “Marketing Radar,” 1980; Ad Council; Statist. Abstract; Publ. Rec. of 1980 Census; Census Prom. Office; RG 29; NAB.

¹⁴⁰¹ William M. O’Barr, “Images of Native Americans in Advertising,” *Advertising & Society Review* 14, no. 1 (2013), accessed December 26, 2019, <https://muse.jhu.edu/article/509019>.

¹⁴⁰² Ibid.

¹⁴⁰³ Cf. Randall Rothenberg, “A Native-American ad agency bids to change tired images,” *Advertising Age*, Viewpoint Section, August 2, 1999, Advertising Age 00018899.

¹⁴⁰⁴ Michael Gray, G&G Advertising, quoted in Rothenberg, “A Native-American ad agency bids to change tired images.”

¹⁴⁰⁵ Rothenberg, “A Native-American ad agency bids to change tired images.” See also “Ad firm’s focus: Native Americans,” *Editor & Publisher*, July 10, 1999.

¹⁴⁰⁶ Cf. Rothenberg, “A Native-American ad agency bids to change tired images.” See also “Ad firm’s focus: Native Americans.”

Indian Country gained a lot of “quiet wealth.” The Native American market had a “strong potential for many brands, and it’s our job to educate the advertisers and push forward.”¹⁴⁰⁷

Economic growth in many Indigenous communities made the Native market increasingly attractive for a growing range of businesses and marketers. The “intense competition for the Indian investment market” with Morgan Stanley, the Bank of America Corporation, and other large firms “descending upon reservations”¹⁴⁰⁸ in the 2010s demonstrated the rising economic potential of Native markets for investors. When the Mashantucket Pequot tribe sought to build a bingo hall in the late 1980s, 25 banks and investment houses rejected the tribe. While the Pequot “had to go to Saudi Arabia and Malaysia for money,” in 2001, they had to “sift through more than 100 investment proposals a week.”¹⁴⁰⁹

From \$19.6 billion in 1990 to \$40 billion in 2000 to \$67.7 billion in 2010 and \$115 billion in 2018, Native American buying power grew continuously and at a larger rate than White or the whole U.S. population’s buying power. While the buying power of the U.S. population increased by 100 percent between 2000 and 2018, the Indigenous buying power increased by 185 percent during the same period.¹⁴¹⁰ Population growth and entrepreneurial activity were the main forces boosting the growth of Native American buying power.

The Indigenous population is “growing much more rapidly than the total population, and is expected to continue to do so.” Although Native Americans comprised only one percent of the U.S. population in 2010, they “will control \$67.7 billion in disposable income, which makes this diverse group economically attractive to businesses.”¹⁴¹¹ According to the 2002 Survey of Business Owners, Native-owned businesses increased by 67 percent from 1997 to 2002, whereas all U.S. businesses increased by ten percent.¹⁴¹² This was part of a continuous trend of minority-owned businesses outpacing the growth of nonminority-owned businesses.¹⁴¹³

While Native businesses grew, they also used mainstream trends and notions of Indi-geneity. Due to the “emergence and popularity of the natural and organic market” and the skepticism of chemical ingredients, the idea of Indigenous traditional knowledge of natural remedies re-materialized in personal care items such as salves based on “traditional Native formulas.”¹⁴¹⁴ Since people were “familiar with medicine men and interested in natural and organic alternatives,”¹⁴¹⁵ 21st-century producers of Native (inspired) organic products revived older proven marketing traditions like 19th-century patent medicine, as Nathan Wright ar-

¹⁴⁰⁷ Michael Gray, G&G Advertising, quoted in “Role Model: MICHAEL GRAY,” *Adweek*, September 27, 2010, Business Source Complete 15499553.

¹⁴⁰⁸ Dugan, “Former Actress Becomes a Key Link.”

¹⁴⁰⁹ Ibid.

¹⁴¹⁰ Cf. Carmen Davis, “Native American Buying Power Increased by 185 Percent Since 2000,” *Native Business*, March 21, 2019, accessed January 9, 2021, <https://www.nativebusinessmag.com/native-american-buying-power-increased-by-185-percent-since-2000/>; “Native American Buying Power,” *The Shelby Report*, October 28, 2011, accessed January 9, 2021, <https://www.theshelbyreport.com/2011/10/28/native-american-buying-power/>.

¹⁴¹¹ “Native American Buying Power.”

¹⁴¹² Cf. *ibid.*

¹⁴¹³ Cf. U.S. Department of Commerce, “U.S. Minority-Owned Firms Continue to Outpace Growth of Nonminority-Owned Firms,” August 20, 2015, accessed January 9, 2021, <https://2014-2017.commerce.gov/news/blog/2015/08/us-minority-owned-firms-continue-outpace-growth-nonminority-owned-firms.html>.

¹⁴¹⁴ Scott Cronick, “Fitting for the Native American Theme: The Outlook for Natural Personal Care Products,” *Souvenirs, Gifts & Novelties*, February 2013, 80, 82.

¹⁴¹⁵ Nathan Wright, owner of Herbal Lodge, quoted in Cronick, “Fitting for the Native American Theme,” 84.

gued. As Native Americans developed businesses and products they marketed to Native and non-Native customers, Indigenous marketers also used these familiar cultural concepts for their advertising. White owned the 2009 founded Herbal Lodge, a Native-owned producer of “natural/organic skin care, pain relief and medicinal teas products using natural/organic and wildharvested herbs or mushroom ingredients.”¹⁴¹⁶ The company website advised customers,

With more than 10,000 years of Native American herbal medicine making history and organic and sustainable practices, Herbal Lodge creates products from the knowledge of our Anishinabek (Chippewa/Ojibwe) ancestors. Herbal knowledge handed down for generations with the traditions and stories behind them. Herbal Lodge utilizes sustainable Native American processes by the same people who have loved and respected the land they came from since time immemorial.¹⁴¹⁷

As the 2021 company profile states, it sold “Authentic Natural Remedies” online and in more than 250 stores throughout the U.S. and Canada.

For its marketing strategy, Herbal Lodge drew on a long history of Indian-inspired marketing representations for pharmaceutical products that began in the 1880s but changed since then. The role of the ‘Ad Indian’ has progressed according to political and social changes and evolved from the ‘Indian giver’ in patent medicine marketing in the 1880s; to a contributor to medical progress and a consumer of medical products in the 1970s; to a representative of the general target audience in the 2000s. Native Americans already appeared as consumers in ads of the 1970s, but after the millennium, Native marketing characters not only appealed to but started representing the general audience. Although there is no overarching change in marketing representations, and stereotypical imagery continues to exist and sell, the marketing discourse at least diversified. The following outline shows the development of Native advertising roles in pharmaceutical marketing.

During the rapid industrialization of the late 19th and early 20th centuries, “tension between wilderness and industrial modernity” were especially potent “when Americans started suspecting that civilization could be not only a blessing but also a curse.”¹⁴¹⁸ Nature became a precious spiritual resource, and Native Americans, as “children of nature,” were used as a symbol to highlight the shortcomings of industrial civilization. Indians as advertising figures were to “help bridge the ostensibly irreconcilable worlds of industrial science and nature.”¹⁴¹⁹ By using Indian imagery and attributes associated with them on their packaging and in their advertising, the patent medicine industry took advantage of a distinct distrust of doctors, their inadequate treatment of diseases, and peoples’ superstition of native secret remedies.¹⁴²⁰ The trend to use Indian imagery in advertising started flourishing as soon as Native Americans were being driven out to the West.¹⁴²¹

The Kickapoo Indian Medicine Company, the best-known manufacturer of patent medicine, was founded in 1881 by John E. Healy alias “Doc Healy” and Charles H. Bigelow

¹⁴¹⁶ “About Us,” Herbal Lodge LLC, accessed April 18, 2021, <https://herballodge.com/pages/about-us>.

¹⁴¹⁷ Ibid..

¹⁴¹⁸ Armitage, “Commercial Indians,” 72.

¹⁴¹⁹ Ibid., 75.

¹⁴²⁰ Cf. Ann Anderson, *Snake Oil, Hustlers, and Hambones: The American Medicine Show* (Jefferson: McFarland, 2004), 33.

¹⁴²¹ Cf. James H. Young, *The Toadstool Millionaires: A Social History of Patent Medicines in America before Federal Regulation* (New Jersey: Princeton University Press, 2015), 176.

alias “Texas Charlie,”¹⁴²² with their “Principal Wigwam”¹⁴²³ located in New Haven, Connecticut. The founders chose the Kickapoo tribe as their namesake because it was easy to remember and sounded funny.¹⁴²⁴ Their standard patent medicine was produced by a pharmaceutical company, branded by Healy and Bigelow with invented names such as “Sagwa,” and comprised no plants used by Indigenous medicine men.¹⁴²⁵ As early as 1882, the founders patented their first two products, Indian Sagwa and Indian Oil, to preempt cheap imitations.¹⁴²⁶

In their marketing materials, Healy and Bigelow used romanticized myths and imagery involving Indian warriors, princesses, chiefs, and medicine men. The Kickapoo Indian Medicine Co.’s marketing booklet explained that Indian medicine men “have always been priestly doctors, and their secret art of healing has been handed down from one to another, especially among the Kickapoos, who to-day preserve the Indian traditions more closely than any other tribe. The convocations of the Medicine Men of a tribe are always shrouded in mystery.”¹⁴²⁷ Native Americans’ ability to endure pain was due to a remedy Healy and Bigelow sold under the name Kickapoo Indian Oil:

The Indian has ever been noted for his power to endure physical pain, but were the truth known it was not so much the Indian’s power of enduring pain as his knowledge of how to allay it. The Indian knew that as soon as he could get to his wigwam he had at hand a remedy that would immediately stop any hurts of an accidental nature that might overtake him.¹⁴²⁸

Thanks to Indian Sagwa, Native Americans were always healthy – a phenomenon already described by White travelers like George Catlin.¹⁴²⁹ “Their continual perfect health and longevity, and the fact that sudden strokes . . . are unknown to them, is due to the fact that from their birth they have used KICKAPOO INDIAN SAGWA.”¹⁴³⁰ Indian Sagwa, their bestseller, was a purely herbal miracle cure for indigestion and rheumatism, which contained such secret substances that it defied chemical analysis. In fact, it only had a laxative effect.¹⁴³¹ The booklet stated, “While the Medicine Men, like the Indians themselves, have been dying out, their healing art and knowledge is preserved in the KICKAPOO INDIAN REMEDIES.”¹⁴³² Although the Kickapoos were allegedly extinct, whole groups of pure-blooded and highly respected Kick-

¹⁴²² Young argued that Healy and Bigelow met in 1879 and formed a partnership shortly thereafter to sell medicine under the above-mentioned manufacture two years later, whereas Holbrook dated the beginning of this partnership to 1875.

See Young, *The Toadstool Millionaires*, 192; Stewart H. Holbrook, *The Golden Age of Quackery* (New York: Macmillan, 1959), 208.

¹⁴²³ Healy & Bigelow, *Healy & Bigelow’s New Cook Book* (New Haven, 1890), 64, accessed June 12, 2021, <https://repository.duke.edu/dc/ea/CK0084>.

¹⁴²⁴ Cf. Anderson, *Snake Oil, Hustlers, and Hambones*, 62.

¹⁴²⁵ Cf. Holbrook, *The Golden Age of Quackery*, 213.

¹⁴²⁶ Cf. Digger Odell Publications, “The Kickapoo Indian Medicine Company,” *Bottlebooks*, 1998, accessed August 22, 2018, <http://www.bottlebooks.com/kickapoo.htm>.

¹⁴²⁷ The Kickapoo Indian Medicine Co., *Kickapoo Indian Dream Book* (New Haven, 1896/1908), 2.

The booklet is undated, but the Kickapoo Indian Dream Book was produced and published between 1896 and 1908. Cf. Digger Odell Publications, “The Kickapoo Indian Medicine Company.”

¹⁴²⁸ The Kickapoo Indian Medicine Co., *Kickapoo Indian Dream Book*, 22.

¹⁴²⁹ “I never saw a more hardy and healthy race of men in my life, whilst they remain in the country.”

George Catlin, *Letters and Notes on the Manners, Customs, and Conditions of the North American Indians*, Vol. II (New York: Dover Publications, 1973), 228.

¹⁴³⁰ The Kickapoo Indian Medicine Co., *Kickapoo Indian Dream Book*, 7.

¹⁴³¹ Cf. Anderson, *Snake Oil, Hustlers, and Hambones*, 62.

¹⁴³² The Kickapoo Indian Medicine Co., *Kickapoo Indian Dream Book*, 2.

poo medicine men and women who had come to the “Principal Wigwam” confirmed the cure’s efficiency and the company’s credibility.¹⁴³³

A drug insert for the contraceptive Ortho-Novum published around 1970 sought to pay tribute to Indigenous knowledge as the basis for modern medical research. The first of three pages shows a Hopi woman in traditional dress holding a small clay bowl with the drug and the caption “What the American Indian women knew about oral contraception [...]” The second page shows the same woman in a white medical coat sitting at a table with test tubes, accompanied by the continuous ad text “[...] helped lead to the modern era of oral contraceptives [...]” On the last page, the woman represents the consumer wearing a nightdress and holding the drug in her hand while the ad text concludes, “[...] which led Ortho to Ortho-Novum 1/50□21 for the woman of today’s world.”¹⁴³⁴

From a historic Hopi woman who used an herb for contraception to the scientist who developed the drug to the consumer of the drug, a Native American woman represented all three phases. As Muscogee Creek and a registered nurse, Mary Helen Deer was the ideal model to fulfill the ‘truth in advertising’ precept. Her Indigeneity was highlighted only in the first phase, but as a scientist and consumer, she represented a “woman of today’s world.” According to Deer, “someone had done their homework and knew . . . that a married woman wore her hair in braids not the big bun on the side. Those were for young unmarried girls. I wore the dress of a Hopi woman who lived in NYC and was part of the Indian community during those years.”¹⁴³⁵

Another example of a more sensitive advertisement showing real people in contemporary everyday situations is Polaroid’s ad presenting a Native American grandmother holding her grandchild in her arms (Illustration 8¹⁴³⁶). No explicit textual reference but only the woman’s shirt with tribal patterns in combination with their phenotype indicates their Indigeneity. The ad implies a private moment with the Native family as consumers who wish to capture the precious moment, noting, “Look who just found out how soft Grandma is and won’t let go. The kind of moment memories are made of.” That critics of the ‘Custer’ series proposed a tribal boycott of Polaroid products in 1967 suggests the company specifically targeted Native Americans as consumers and sold their products in tribal stores on reservations which may have influenced their advertising practices.

¹⁴³³ Cf. Anderson, *Snake Oil, Hustlers, and Hambones*, 62.

¹⁴³⁴ Ortho Pharmaceutical, “What the American Indian women knew,” drug insert, ca. 1970, courtesy of Mary Helen Deer.

¹⁴³⁵ Deer, email message to author, September 11, 2018.

¹⁴³⁶ Polaroid Corp., “The best minute of the day,” print advertisement, *Time* 101, no. 23, June 4, 1973, inside back cover.

*Suggested list price. Details on camera comparison available from Polaroid Corp., Cambridge, Mass. 02139.

The best minute of the day.

Look who just found out how soft Grandma is and won't let go. The kind of moment memories are made of.

A moment you can bring back while the magic is still in the air with the 60-second pictures you get with this camera.

Our Square Shooter 2. This Polaroid Land camera is only \$24.95* and it is equipped like cameras costing \$20 more.

An electric eye and electronic shutter set your exposures automatically, even for flash.

The built-in flash takes inexpensive flashcubes, and even tells you when all 4 flashes are used.

You use Polaroid's face-in-the-square viewfinder. Just fit the little square to the subject's face. It gives you the best distance for most shots, the best distance for flash.

You also get Polaroid's sharp 3-element focusing lens. Unlike inexpensive "fixed focus" lenses, it focuses from 3½ feet to infinity.

And Polaroid's snap-in film packs. This is our square film. Strictly color—and it gives you the least expensive one-minute color pictures you can take.

60 seconds. \$24.95.
The best minute of the day



The Polaroid minute.
24.95

Illustration 8: Polaroid Corp., "The best minute of the day," print ad, *Time*, June 1973.

While civil rights era advertisers were increasingly interested in Native American actors who 'looked Indian' because they were supposed to play Indian roles,¹⁴³⁷ a Sanofi-Aventis 2007 print ad promoting the Lantus SoloStar pen represented a significant change.¹⁴³⁸ Published in *Time*, the ad for Lantus Insulin worked for both the general and a Native American target audience. The ad shows Frank Atherton, who was not an actor but a real person, a Lantus patient, and a member of the Lakota Sioux Tribe. While his Indigeneity is neither mentioned nor indicated in the ad, his LinkedIn profile reveals he was a diabetic traveling around the U.S. as a diabetic coach.¹⁴³⁹

Set in a present-day location with no signifiers of Indigeneity, his Western clothing appealed to Natives and Non-Natives alike. The ad also presented a horse and the beauty of the landscape, which are culturally meaningful to many Indigenous communities and transition into the popular beauty of nature and cowboy themes. The ad provided a representation many patients could identify with but also offered particularly relevant content to Natives

¹⁴³⁷ Cf. Mary Byler, AAIA, in Radio TV Reports, Inc., transcript of a WEVD program special, January 22, 1969; Derogatory Images: General, 1949-1983; Box 90; AAIA Records; Pub. Pol. Papers; Mudd Man. Lib., Princeton. See also Deer, email message to author, September 11, 2018.

¹⁴³⁸ Sanofi-Aventis U.S. LLC. "His Passion: Riding the Range." Print advertisement. *Time* 170, no. 20, November 12, 2007, 135.

¹⁴³⁹ Cf. Frank Atherton, LinkedIn profile, *LinkedIn*, accessed May 13, 2017, https://www.linkedin.com/in/frank-atherton-8b1ba21b/?locale=de_DE.

because diabetes, as a result of malnutrition, remained one of the most problematic health issues in Indigenous communities and American society.¹⁴⁴⁰

Although such campaigns remained exceptional, the Lantus ad indicates a diversification of Native American marketing imagery by Native advertisers and corporate America. Indigenous commercial actors started not only to appeal to but also to represent the general target audience. In fact, it has become difficult to determine how exceptional such representations were because Native Americans were often not identifiable as Indigenous in these roles without any visual or verbal reference.

7.3 Providing Counter-Narratives: Advertising as a Tool of Decolonization

Since people are surrounded by media and largely depend on media as a source of learning in nearly any respect, anyone can succumb to dominant expectations. This is particularly true if people cannot make alternative, real-life experiences to revise the dominant belief set. Philip Deloria suggested challenging the popular belief system by offering alternate “secret histories of Indian life.”¹⁴⁴¹ Similarly, Adrienne Keene and Jessica Metcalfe pointed to the necessity that Natives provide positive representations of Native Americans as “counter-images”¹⁴⁴² and “substitute-images.”¹⁴⁴³

Indigenous marketing efforts developing since the mid-1990s opened new opportunities to challenge heteronomous representations of Native Americans in advertising. In an article covering the successes of the Native-owned advertising agency G&G Advertising, Lise King, editor of *The Native Voice*, suggested using “Advertising as a tool for harnessing the winds of thought.”¹⁴⁴⁴ Michael Gray, co-founder of the ad agency, agreed, “Media is one thing that we have that we can control. We can use it, form it, be more proactive with it – rather than always reacting to it.”¹⁴⁴⁵

Blackfeet and Chippewa-Cree Michael Gray, who earned an advertising degree at Oregon State in 1990, founded Gray & Gray Advertising (G&G) as a small design shop in 1992 and expanded into a full-service advertising agency in 1995.¹⁴⁴⁶ While working on promo-

¹⁴⁴⁰ Diabetes is the 4th leading cause of death among non-Hispanic Native American and Alaska Native men, and the 5th leading cause of death among non-Hispanic Native American and Alaska Native women in the U.S., as documented by the CDC in 2017.

Cf. Centers for Disease Control and Prevention, “Leading Causes of Death - Males - Non-Hispanic American Indian or Alaska Native - United States, 2017,” last modified November 20, 2019, accessed May 8, 2021, <https://www.cdc.gov/healthequity/lcod/men/2017/nonhispanic-native/index.htm>; Centers for Disease Control and Prevention, “Leading Causes of Death - Females - Non-Hispanic American Indian or Alaska Native - United States, 2017,” last modified November 20, 2019, accessed May 8, 2021, <https://www.cdc.gov/women/lcod/2017/nonhispanic-native/index.htm>.

¹⁴⁴¹ Deloria, *Indians in Unexpected Places*, 7.

¹⁴⁴² Adrienne Keene, talk at the Indigenous New Media Symposium, February 21, 2014, accessed February 26, 2014, <http://www.inms2014.com/>.

¹⁴⁴³ Jessica Metcalfe, talk at the Indigenous New Media Symposium, February 21, 2014, accessed February 26, 2014, <http://www.inms2014.com/>.

¹⁴⁴⁴ Lise B. King, “Media Power in Indian Country: Advertising as a tool for harnessing the winds of thought,” *The Native Voice*, November 7, 2002, C1.

¹⁴⁴⁵ Michael Gray, G&G Advertising, quoted in King, “Media Power in Indian Country,” C1.

¹⁴⁴⁶ Cf. Karen L. Testerman, “Blackfeet/Chippewa-Cree tribal member will tackle U.S.,” *Indian Country Today*, December 8, 1997, D2; Lou Belmont, “N.M. ad agency aims to combat stereotypes of American Indians,” *Denver Post*, November 5, 1999, A32.

tional materials for the IAIA in Santa Fe, New Mexico, he noticed that “virtually everything that represented Native Americans was wrong.”¹⁴⁴⁷ During that time, he met his future mentor David Kennedy of Wieden+Kennedy Advertising, who encouraged Gray “to start an ad agency that would counter many of the Indian stereotypes created by Hollywood.”¹⁴⁴⁸ Empowered by Kennedy’s inspiration, Gray was “determined to preserve his culture, educate corporate America and modernize the American Indian image.”¹⁴⁴⁹ Beyond merely creating ads, Gray became a consultant and advocate for marketing ethics, a driver of (not exclusively) Indigenous causes and businesses, and an influencer of Indigenous representations.

As an advocate for marketing ethics, Gray started talking with designers and marketers who used Native American images and symbols, “urging them to consult with ‘real’ American Indians about the use of imagery or symbols representing them.”¹⁴⁵⁰ The educational work about sending culturally sensitive messages inspired him to give college lectures on cultural sensitivity in advertising.¹⁴⁵¹ His “wall of shame,” a collection of products featuring stereotypical images of Natives without connection to Indigenous peoples, such as House Blessing Air Freshener, Calumet Baking Powder, and Sioux City Iced Tea, symbolized the meaning these commercial representations conveyed for Gray. Shattering these outdated ideas, he did not grow tired of consulting with companies about advertising that Native Americans might find offensive.¹⁴⁵²

G&G has been an effective driver for Indigenous businesses as its advertising strategies were “authentic, capturing and expressing the voice of Native America in their collective language of words and pictures and sounds.” One of the agency’s most important assets was sensitivity and awareness of the cultural differences between Indigenous tribes, which enabled G&G to “express both our commonalities and their unique identities.”¹⁴⁵³ Cultural sensitivity also meant the skill to show Native Americans in both a traditional and a modern world, while non-Indigenous marketers typically built on the feathers and drums theme. Additionally, G&G made sure the tribes involved profited from his work by doing shootings on reservations, paying for locations there, and hiring Indigenous talents.¹⁴⁵⁴

As early as 1996, Gray turned to innovative marketing strategies and helped Indigenous businesses expand to the developing online market. In collaboration with Advanced Tribal Integrated Information Networks (ATIIN), G&G “Put Natives on the Net,” as their slogan promised. This way, they helped clients like Native Cybertrade, Russell Publications, Spiritware, the Indian Artist Magazine, the Ukpeagvik Inupiat Corp., and the Tesque Pueblo Corp. advertise their products and services online.¹⁴⁵⁵ In the mid-1990s, when the popularity of Indigeneity had peaked again, the agency’s Indigeneity and reputation also attracted ‘wannabes’ seeking to profit from a proclaimed Indigenous heritage and Gray’s marketing ser-

¹⁴⁴⁷ Michael Gray, G&G Advertising, quoted in “Role Model: MICHAEL GRAY.”

¹⁴⁴⁸ Belmont, “N.M. ad agency aims to combat stereotypes of American Indians,” A32.

¹⁴⁴⁹ Cranon, “Native Talent,” 8.

¹⁴⁵⁰ Marjane Ambler, “Dear Readers,” *Tribal College*, April 30, 1997, 3.

¹⁴⁵¹ Cf. Michael Gray, G&G Advertising, quoted in “Role Model: MICHAEL GRAY;” Julia Duin, “Census Bureau makes effort to count American Indians: Distrust of white culture has kept them off the tally,” *The Washington Times*, September 1, 1999, A2.

¹⁴⁵² Cf. “Ad firm’s focus: Native Americans.”

¹⁴⁵³ King, “Media Power in Indian Country,” C1.

¹⁴⁵⁴ Cf. *ibid.*, C1.

¹⁴⁵⁵ Cf. Shannon Jahrig, “Indian advertiser: Michael Gray,” *Montana Business Quarterly* 34, no. 2 (Summer 1996): 4.

vices. Consequently, Gray had to “watch out for Indian wannabes all the time” who claimed they were Native-owned businesses until G&G “had to put out a position paper on it because we were getting so many requests.”¹⁴⁵⁶

In addition to educational and consultation services, G&G Advertising offered its pro bono service after Gray saw a black-and-white print series promoting the National Museum of the American Indian’s New York and Maryland facilities that he found “somewhat dated and stereotypical.” Raising awareness for the new museum in DC and its \$70 million fundraising program, Gray developed a series of five magazine and newspaper ads that “juxtapose the modern, contemporary person with how they’re known or identified by Native people.”¹⁴⁵⁷

G&G’s clients included Native and non-Native educational or business organizations¹⁴⁵⁸ that aimed to support “a cause for the American Indian”¹⁴⁵⁹ or “address ‘Indian country’ . . . [in] a sophisticated way to market their wares.”¹⁴⁶⁰ Despite the agency’s experience and expertise, Gray struggled to win tribal enterprises headed by Natives and Non-Natives as customers because “sometimes our Indian leaders are convinced that the non-Indian businesses can do a better job.” Since “only non-Indians did business” until recently, he considered it a generational problem that “Proving ourselves to other Indian businesses can take twice as long as talking to corporate America.”¹⁴⁶¹ Ideally, Gray would like “to work with more non-Indian clients” because G&G was “culturally sensitive and can offer new perspectives on mainstream messages.”¹⁴⁶² With his commitment to changing popular perceptions and representations of Native Americans, Gray joined a growing group of Native peoples who were not content with being represented but attached particular importance to a self-directed, accurate, and appreciative way of representing Indigeneity.

As the Indigenous rights movement had changed since the 1960s and 70s, Migizi Pensoneau noted in 2014, “‘We are still here’ is not a good enough statement. It was in the 70s. But the question now is: What are we gonna do? What are we gonna show to the world? What do we say?”¹⁴⁶³ Activism was not about mere existence anymore but about showing *who* Native Americans were. Indigenous marketing could challenge popular ideas of Indigeneity but also fill the emerging identity gap with alternatives.

One example of an alternative “secret history,” as suggested by Deloria, is a successful Native American physician like Dr. Lori Alvord, a member of the Navajo tribe. Alvord graduated from Stanford Medical School and pursued a career in surgery at a time when only

¹⁴⁵⁶ Ibid., 4.

¹⁴⁵⁷ Kathryn Schroeder, “Seeing Who Native Americans Are,” *Adweek*, April 2, 2001, 8.

¹⁴⁵⁸ Clients: American Indian College Fund, Tribal College Journal, National Indian Business Association and Native American Public Telecommunications, American Indian Higher Education Consortium, Native Americans in Philanthropy, City of Albuquerque, Laguna Pueblo, IAIA, Santa Fe Opera, New Mexico State Fair, National Office of Drug Control Policy, Coca Cola Foundation, Philipp Morris, American Diabetes Association, W.K. Kellogg Foundation, Bureau of Indian Affairs, Dept. of Commerce, Cigna’s Lovelace Health Care Systems, New Mexico Symphony Orchestra.

Cf. Ambler, “Dear Readers,” 3; Julia Knight, “New Mexico’s Advertising Agencies: What Agencies Say About the Ad Business in New Mexico,” *New Mexico Business Journal*, September 2002, 28; Cranon, “Native Talent,” 8; Kathryn Schroeder, “Native son: G+G mixes Indian mores with Western business savvy,” *Adweek*, Eastern Edition, March 20, 2000, Biography Reference Bank 01992864.

¹⁴⁵⁹ Cranon, “Native Talent,” 8.

¹⁴⁶⁰ Duin, “Census Bureau makes effort to count American Indians,” A2.

¹⁴⁶¹ King, “Media Power in Indian Country,” C1.

¹⁴⁶² Michael Gray, G&G Advertising, quoted in Schroeder, “Native son: G+G mixes Indian mores with Western business savvy.”

¹⁴⁶³ Migizi Pensoneau, in Hanska, “This Is A Stereotype.”

about four percent of practicing surgeons were women, and none of them were Native American. Combining Western and Navajo traditional medicine to become both a good surgeon and healer, Alvord hoped her accomplishments would make it easier for other Navajo to follow a medical path in the future.¹⁴⁶⁴

A series of PSAs commissioned by the American Indian College Fund seeking donations to support Native students used such secret histories of Indian life. They showed Indigenous peoples of various tribes, ages, genders, and professions, like a surgeon, a judge, a news correspondent, or an attorney. One advertisement in the series showed surgeon Dr. Lori Alvord in a hospital setting, wearing a blue surgical gown, with a mask hanging around her neck and latex gloves in her hands. The question “HAVE YOU EVER SEEN A REAL INDIAN?” ran across the entire width of the ad, with her portrait in the background. Other than this question and the mention of the advertiser, the American Indian College Fund (AICF), with its slogan “EDUCATION IS STRENGTH,” there were no other signifiers of Indigeneity in the ad.¹⁴⁶⁵

The ad urged viewers to rethink the idea of racial visibility based on physical characteristics or phenotypes and expectations associated with such categorizations. Visual features like a beaded buckskin dress or headdresses “continue to evoke a broad set of cultural expectations about Indian people,” including “primitivism, technological incompetence, physical distance, and cultural difference,”¹⁴⁶⁶ whereas the PSA challenged these expectations. A successful Indigenous woman working in a high-proficiency job as part of American society was a reality many people did not consider. Since Dr. Alvord’s identity was not unmistakably visible and many viewers might not recognize her as Native American in the ad just like in real life, her mere existence hardly altered mainstream imaginaries of Native Americans. By contrasting her appearance with the simple but effective slogan “Have You Ever Seen a Real Indian,” the ad questioned and altered peoples’ perceptions and expectations of recognizable Natives. As David Cournoyer of the AICF lauded, “G&G’s work has been about telling the story of American Indians, and that’s never easy. There are stereotypes and layers of complexity and misunderstandings to break through.”¹⁴⁶⁷

Comparing a 1972 Project HOPE ad and the 2003 American Indian College Fund ad demonstrates a significant change over 30 years. Both PSAs sought to move people to make donations to support the educational efforts of Native Americans in professional fields. In the 1970s, the Navajo reservation suffered from a lack of medical personnel as there was “only one Navajo physician in the world.” The Navajo still had “a long way to go,” as the Project HOPE ad stated.¹⁴⁶⁸ By contrast, the 2003 American Indian College Fund PSA sought to move people to donate by focusing on what Native Americans had already achieved.

The “Have You Ever Seen a Real Indian” campaign was created in collaboration with the advertising agency Wieden+Kennedy which worked for the College Fund on a pro bono basis. Dan Wieden and David Kennedy traveled across the country to visit tribal colleges on many reservations and listen to students before starting their work. Their goal was to make the

¹⁴⁶⁴ Cf. Jane Westberg, “‘The Scalpel and the Silver Bear’ Dr. Lori Arviso Alvord First Navajo Woman Surgeon,” *Winds of Change*, Spring 2000, 44f.

¹⁴⁶⁵ American Indian College Fund, “Have You Ever Seen a Real Indian?” print PSA, *Whispering Wind* 33, no. 1, 2003, 48. For PSA series see also *Andartha’s Web*, accessed May 13, 2023, <https://andartha-web.tumblr.com/post/75576856452/rematuration-wolfpangs-images-from-the>.

¹⁴⁶⁶ Deloria, *Indians in Unexpected Places*, 3–4.

¹⁴⁶⁷ Cranon, “Native Talent,” 8.

¹⁴⁶⁸ Project HOPE, “A long way to go,” print PSA, *Time* 100, no. 8, August 21, 1972, 68.

public aware of the financial needs Indigenous students had to overcome to go to college and the role of tribal colleges in preserving Native cultures while providing education.¹⁴⁶⁹ Many indigenous actors in the AICF ad campaigns were scholarship recipients, like Khadjiah Clauschee from Chinle, Arizona, who planned on pursuing healthcare studies to become an ultrasound technician.¹⁴⁷⁰

Richard Williams, president and CEO of the College Fund, said, “So many of our donors have come to us after seeing one of our Wieden and Kennedy public service announcements. They are so striking and have really shattered people’s misconceptions about Indian people. They move people to want to help.”¹⁴⁷¹

Gray found an effective way of instilling pride in Indigenous peoples while promoting causes vital to Native communities and individuals. G&G’s “Native pride. My anti-drug” campaign, the first media anti-drug campaign targeting Native Americans, explicitly appealed to a sense of pride by focusing “on the strength of Indian families, communities, and traditions and their role in preventing drug use.”¹⁴⁷² With TV and print ads featuring Acoma, Blackfeet, Laguna, Lummi, Warm Springs, and Yakima children with a parent or grandparent, the campaign sought to contest substance abuse among Native children by promoting values associated with traditional Indigeneity. Campaigns challenging popular assumptions about Natives offered counter-images for Native and non-Native viewers. Indigenous peoples could “relate to the stories” the campaigns offered and were “proud to see the ads.”¹⁴⁷³ In this way, the ads educated Non-Natives and instilled pride in Native viewers.

Relevant and attractive content, high-quality designs, and Indigenous speakers were crucial to reach the intended audience. As Lise King wrote, a new dimension of “Madison avenue-quality advertisements . . . with beautiful imagery and real people giving us important messages . . . , made by Natives for Natives” became a “powerful affirmation in the media saturated world that we are visible and important.”¹⁴⁷⁴ Native Americans have successfully used advertising as a tool to counter Indigenous media representations by offering alternate stories and identities. By creating, using, and reinforcing imaginaries about Indigenous peoples, Native and non-Native advertisers contributed to the public discourse on Indigeneity. Consequently, advertisements reflected American history by responding to dominant cultural beliefs, values, and ideologies.¹⁴⁷⁵ Simultaneously, ads were active agents in the writing of history and, as sources of learning, powerful sites of cultural reproduction but also of renegotiation. Media misrepresentation and the appropriation of Indigenous culture functioned as colonizing tools for the dominant society, but media and advertising were also tools of decolonization which opened up arenas for Native peoples to practice intellectual and cultural sovereignty, redefine identities, and tell their own stories.

¹⁴⁶⁹ Cf. “Advertising: The American Indian College Fund Public Service Announcements,” American Indian College Fund, accessed May 12, 2015, http://www.collegefund.org/content/advertising_pieces.

¹⁴⁷⁰ Cf. “Clauschee awarded American Indian College Fund scholarship,” *Navajo Times*, November 23, 2011, C6.

¹⁴⁷¹ Richard Williams, President, American Indian College Fund, quoted in American Indian College Fund, “Advertising.”

¹⁴⁷² “On Campus: Ad Campaign Aimed at American Indians,” *Tribal College*, September 30, 2003, 47.

¹⁴⁷³ King, “Media Power in Indian Country,” C1.

¹⁴⁷⁴ *Ibid.*, C1.

¹⁴⁷⁵ Cf. Anthony J. Cortese, *Provocateur: Images of Women and Minorities in Advertising* (Lanham: Rowman & Littlefield Publishers, 2008), 12-13.

7.4 Brand Activism and Cause Marketing

Activists had long demanded consistency with their core values from companies, but it was only in the wake of massive race riots that social responsibility norms forced companies to act. As the continuous growth of brand activism, cause marketing, or movement marketing during the 2010s demonstrates, “Forward-thinking brands have become powerful allies for nonprofit groups working to slow climate change, cure cancer, and eradicate poverty.”¹⁴⁷⁶ “Politics and consumer behavior have never been so closely intertwined as in the last few years,” noted Brayden King, Northwestern University Professor of Management and Organizations. According to King, companies were caught between two sides of a political polarization in which many preferred to “avoid taking a stance.” Others saw it as an “opportunity to appeal to Millennials, the population most committed to idealism and activism.”¹⁴⁷⁷ While companies still avoided taking sides in social justice issues, in 2020, “Silence Isn’t Golden Anymore.” According to the Edelman Trust Barometer report, 60 percent of Americans, and 78 percent among those between 18 and 34, believed “brands should publicly speak out on systemic racism and racial injustice following the death of George Floyd and other recent racially motivated attacks on Blacks.”¹⁴⁷⁸ Depending on the company’s response to protests and racial injustice, stakeholders decided whether they would buy or boycott their products in the future.¹⁴⁷⁹ As 46 percent of respondents in a Piplsay study believed the “collective show of support from brands will lead to a credible change,” accordingly, 62 percent of Gen Zers and Millennials “will be more willing to buy from brands that speak out against racism.”¹⁴⁸⁰

Content marketing specialist Taylor Holland maintained, “Activism and capitalism are no longer at odds on this issue. What’s good for the cause is good for the profit margin. But marketers beware: It’s not enough to say Black Lives Matter; you’ve got to prove you mean it by taking action.”¹⁴⁸¹ Although such marketing strategies potentially strengthen sales and brand loyalty with this target group, authenticity and commitment were the key factors for the success of such a marketing strategy.¹⁴⁸² If marketing appeared as ‘performative activism,’ it cast the brand in an even worse light than silence.¹⁴⁸³ In 2017, for instance, PepsiCo withdrew an ad featuring Kendall Jenner, whom minority protesters hailed as the bringer of peace by sharing a Pepsi with a police officer, that was meant to “project a global message of unity,

¹⁴⁷⁶ Taylor Holland, “Components of Authentic Social Justice Content Marketing,” *Skyword*, September 25, 2020, accessed January 9, 2021, <https://www.skyword.com/contentstandard/4-components-of-authentic-social-justice-content-marketing/>.

¹⁴⁷⁷ Brayden King, Professor of Management and Organizations, Kellogg School of Management, Northwestern University, quoted in Laura Montgomery, “When activism and advertising collide,” *The Economist*, accessed January 9, 2021, <https://exceed.economist.com/blog/industry-trends/when-activism-and-advertising-collide>.

¹⁴⁷⁸ “Edelman Trust Barometer 2020,” Daniel J. Edelman Holdings, Inc., 7, accessed January 9, 2021, <https://www.edelman.com/sites/g/files/aatuss191/files/2020-06/2020%20Edelman%20Trust%20Barometer%20Spec%20Rept%20Brands%20and%20Racial%20Justice%20in%20America.pdf>.

¹⁴⁷⁹ Cf. *ibid.*, 6.

¹⁴⁸⁰ “Brands against racism: Does it impress the consumers?”, Piplsay, July 24, 2020, accessed January 9, 2021, https://piplsay.com/brands-against-racism-does-it-impress-the-consumers/?utm_source=Email&utm_medium=Text1&utm_campaign=BrandPerception.

¹⁴⁸¹ Holland, “Components of Authentic Social Justice Content Marketing.”

¹⁴⁸² Cf. Brayden King, Professor of Management and Organizations, Kellogg School of Management, Northwestern University, quoted in Montgomery, “When activism and advertising collide.”

¹⁴⁸³ Cf. Holland, “Components of Authentic Social Justice Content Marketing.”

peace and understanding.”¹⁴⁸⁴ Critics of the commercial argued “it trivialized the widespread protests against the killings of black people by the police,” and the fun demonstration from the commercial was the “opposite of their real-world experience of protesting police brutality.”¹⁴⁸⁵ Bernice King, daughter of Martin Luther King, tweeted, “If only Daddy would have known about the power of #Pepsi” along with a picture showing a confrontation between King and police officers at a demonstration.¹⁴⁸⁶

Ben & Jerry’s, on the other side, advocated for racial justice, LGBT equality, refugees, democracy, “Getting The Dough Out Of Politics,” fair trade, and peacebuilding¹⁴⁸⁷ in an “authentic, credible, activist way without do-gooder-stink.”¹⁴⁸⁸ Being part of the movement against racial injustice, Ben Cohen and Jerry Greenfield explained on their 2016 corporate website why “Black Lives Matter”¹⁴⁸⁹ and encouraged their consumers with specific calls to action to “dismantle white supremacy.”¹⁴⁹⁰ In 2018, Ben and Jerry spoke at the A.C.T. to End Racism Rally in Washington, DC, about “How White Privilege Made Ben & Jerry’s Possible.”¹⁴⁹¹ The ice cream producer, now part of Unilever, consistently promoted the same values internationally, as a job ad for the position of a Digital Marketing Specialist in Germany demonstrates.¹⁴⁹² At Ben & Jerry’s, a marketer had to develop not only “campaigns that promote our delicious ice cream” but also “campaigns in which we want to mobilize our fans to work for a good cause.”¹⁴⁹³

Consistency with core values became a critical issue for marketers when professional sports teams supported the Black Lives Matter movement and condemned racism on social media channels. Among other teams, the Cleveland Indians stated it “stands united with African Americans and all those who seek social justice and equality.” As a “civic institution,” the Cleveland Indians acknowledged “that sports can be a powerful agent of change in our socie-

¹⁴⁸⁴ PepsiCo, statement, quoted in Daniel Victor, “Pepsi Pulls Ad Accused of Trivializing Black Lives Matter,” *The New York Times*, April 5, 2017, accessed August 8, 2018, <https://www.nytimes.com/2017/04/05/business/kendall-jenner-pepsi-ad.html>.

¹⁴⁸⁵ Critic, quoted in Victor, “Pepsi Pulls Ad Accused of Trivializing Black Lives Matter.”

¹⁴⁸⁶ Bernice King, “If only Daddy would have known about the power of #Pepsi,” *Twitter*, April 5, 2017, accessed August 8, 2018, <https://twitter.com/BerniceKing/status/849656699464056832/photo/1>.

¹⁴⁸⁷ Cf. “Issues We Care About,” Ben & Jerry’s Homemade, Inc., accessed August 8, 2018, <https://www.benjerry.com/values/issues-we-care-about>.

¹⁴⁸⁸ Markus Gull, “Geh leck!” *Xing* [D], August 6, 2018, accessed August 8, 2018, https://www.xing.com/news/insiders/articles/geh-leck-1591630?xing_share=news. Transl. by author.

¹⁴⁸⁹ Cf. “Why Black lives matter,” Ben & Jerry’s Homemade, Inc., October 6, 2016, accessed January 9, 2021, <https://www.benjerry.com/whats-new/2016/why-black-lives-matter>.

¹⁴⁹⁰ “Silence Is NOT An Option,” Ben & Jerry’s Homemade, Inc., accessed January 9, 2021, <https://www.benjerry.com/about-us/media-center/dismantle-white-supremacy>.

¹⁴⁹¹ In this speech, the founders explain how the color of their skin determined that their parents received money from the government to buy a new house, save money to send their children to private colleges, let them get away with a \$5 fine for drug possession, and finally, receiving money to start their ice cream business while, had they been African American, none of this had happened this way and their lives would have taken entirely different paths. Cf. Ben Cohen and Jerry Greenfield, “How White Privilege Made Ben & Jerry’s Possible,” speech held at the A.C.T. to End Racism Rally in Washington, DC, July 24, 2018, Ben & Jerry’s Homemade, Inc., accessed August 8, 2018, <https://www.benjerry.com/whats-new/2018/07/ben-jerry-white-privilege>.

¹⁴⁹² The ad described the company as a “true value-driven organization” with an “activist spirit” and the social mission that aimed to have an “impact on human rights, workers’ rights and social justice around the world.” Besides common marketing skills the applicant had to bring the right mindset, that is, a “Great interest in actively helping to shape German Society.” “Digital Marketing Specialist Ben & Jerry’s (m/f) (Job Number: 180008VW),” Unilever, July 27, 2018, accessed August 8, 2018, <https://unilever.taleo.net/careersection/external/jobdetail.ftl?lang=en&searchExpanded=true&job=180008VW>.

¹⁴⁹³ Ibid.

ty” and “we commit to doing our part to end the systemic racism that persists in our society and to call for empathy and understanding for all communities.”¹⁴⁹⁴ Native Americans found similar statements by the Atlanta Braves, Chicago Blackhawks, and the Washington Football Team “paradoxical in light of years of criticism aimed at those teams for the names, logos, mascots and chants that indigenous groups find offensive – and racist.”¹⁴⁹⁵

Amanda Blackhorse, who sued the Washington team in trademark court, found the teams’ commitment to racial justice “laughable.”¹⁴⁹⁶ In his cartoon alluding to the symbolic taking-the-knee gesture against racism associated with the Black Lives Matter movement, Marty Two Bulls denounced that “Black Lives Matter” but “Native Lives ... Not So Much” (Illustration 9). Companies publicly promoting diversity, racial justice, and empathy had to ensure they lived up to the values they claimed to avoid a reputational threat by accusations of hypocrisy and the pretense of social responsibility for marketing purposes and profit.

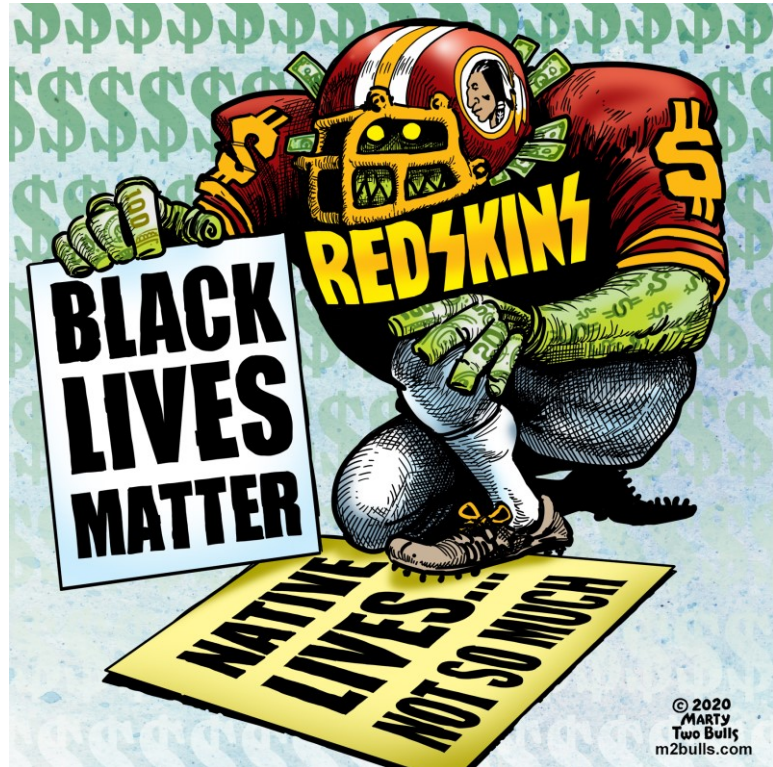


Illustration 9: Marty Two Bulls, “Black Lives Matter. Native Lives ... Not So Much,” 2020, cartoon.

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Although team owner Daniel Snyder insisted he would never change the name of the Washington Football Team, the “decision to change the nearly 87-year-old team name [came] amid mounting pressure on the franchise from corporate sponsors and the broader nationwide discussion of race.”¹⁴⁹⁷ More than 85 investment firms and shareholders representing \$620 billion in assets had joined together to call on FedEx, Nike, and PepsiCo to give up their connections with the team unless Snyder changed his name.¹⁴⁹⁸ Within a week, FedEx, a Fortune 100 company branded with the team for more than two decades,¹⁴⁹⁹ threatened to take the

¹⁴⁹⁴ Cleveland Indians, “Statement from the Indians,” *Twitter*, June 3, 2020, accessed June 28, 2020, <https://twitter.com/Indians/status/1267980952661360643>.

¹⁴⁹⁵ Mary E. O’Hara, “Native American Advocates Call Out Redskins and Other Teams Condemning Racism,” *Ad Week*, June 3, 2020, accessed June 28, 2020, <https://www.adweek.com/brand-marketing/native-american-advocates-react-to-the-redskins-and-other-teams-condemning-racism/>.

¹⁴⁹⁶ Amanda Blackhorse, quoted in O’Hara, “Native American Advocates Call Out Redskins.”

¹⁴⁹⁷ Les Carpenter and Mark Maske, “Redskins to retire team name Monday; new name to be revealed later,” *The Washington Post*, July 13, 2020, accessed January 5, 2021, <https://www.washingtonpost.com/sports/2020/07/13/redskins-change-name-announcement/>.

¹⁴⁹⁸ Liz Clarke, “FedEx calls on Redskins to change name following investor’s demands on sponsors,” *The Washington Post*, July 3, 2020, accessed January 5, 2021, <https://www.washingtonpost.com/sports/2020/07/02/fedex-redskins-name-change/>.

¹⁴⁹⁹ Cf. *ibid.*

company's name off FedEx Field, the team's home stadium, if the team name was not changed. Other sponsors like PepsiCo, Nike, and the Bank of America followed. In 2020, the Washington Redskins finally became the Washington Football Team. In 2021, the team adapted their attire policy for the stadium and "welcome[d] everyone back wearing their Burgundy & Gold However, Native American-inspired ceremonial headdresses or face paint may no longer be worn into the stadium."¹⁵⁰⁰ While the process of finding a new identity for the Washington Football Team was not yet complete, team president Jason Wright noted, "We recognize that not everyone is in favor of this change And even the Native American community offers a range of opinions about both our past and path forward. But in these moments, it is important to prioritize the views of those who have been hurt by our historical use of Native American language, iconography and imagery."¹⁵⁰¹ In 2022, the team finally became the Washington Commanders.¹⁵⁰²

The Washington Football Team's decision to change its name represented a significant shift in a battle "in which the terrain has shifted from moral appeals to business and political tactics during a period in which the country is reexamining statues, monuments, symbols and corporate names and logos that some Americans have never questioned but others long have considered a source of offense, insult or pain."¹⁵⁰³ The Black Lives Matter movement with its mission to "eradicate white supremacy and build local power to intervene in violence inflicted on Black communities by the state and vigilantes"¹⁵⁰⁴ raised societal awareness of systemic racial injustice in the U.S. Although the movement had already created a public discourse about police brutality in 2013, the impact became visible only after George Floyd's death in May 2020.¹⁵⁰⁵

Now, the U.S. experienced and responded to a "reckoning around the legacy of slavery and the genocide of indigenous people."¹⁵⁰⁶ Companies started changing their old and well-known brands after some had been under fire for decades for offensive marketing representations of ethnic minorities. After the 2018 season, the Cleveland Indians removed the Chief Wahoo logo from its uniforms.¹⁵⁰⁷ In 2020 and following the Washington Football Team, the Cleveland Indians' team owner Paul Dolan also decided to change the team's name. Fully recognizing that their "name was among the most visible ways in which we connect with the community . . . the recent social unrest in our community and our country has only under-

¹⁵⁰⁰ The Washington Football Team, stadium policy statement, quoted in Jesus Jiménez, "Washington Football Team Bans Native American Headdresses and Face Paint," *The New York Times*, August 4, 2021, accessed August 7, 2021, <https://www.nytimes.com/2021/08/04/sports/washington-football-team-dress-code.html>.

¹⁵⁰¹ Jason Wright, President, Washington Football Team, quoted in Nicki Jhabvala, "Washington Football Team bans Native American-inspired headdresses, face paint at FedEx Field," *The Washington Post*, August 4, 2021, accessed August 7, 2021, <https://www.washingtonpost.com/sports/2021/08/04/washington-face-paint-headdresses-fedex-field/>.

¹⁵⁰² Nick Shook, "Washington announces new team name: Washington Commanders," *NFL*, February 2, 2022, accessed October 22, 2022, <https://www.nfl.com/news/washington-commanders-new-team-name>.

¹⁵⁰³ Clarke, "FedEx calls on Redskins to change name following investor's demands on sponsors."

¹⁵⁰⁴ "About," Black Lives Matter Global Network Foundation, Inc., accessed January 5, 2021, <https://blacklivesmatter.com/about/>.

¹⁵⁰⁵ Cf. Daniel O. Shaw and Saman A. Kidwai, "The Global Impact of the Black Lives Matter (BLM) Movement," *The Geopolitics*, August 21, 2020, accessed January 5, 2021, <https://thegeopolitics.com/the-global-impact-of-the-black-lives-matter-movement/>.

¹⁵⁰⁶ Ibid.

¹⁵⁰⁷ Cf. Jason Hanna and Homero De la Fuente, "Cleveland Indians changing name to Cleveland Guardians," *CNN*, July 23, 2021, accessed July 23, 2021, <https://edition.cnn.com/2021/07/23/us/cleveland-major-league-baseball-name/index.html>.

scored the need for us to keep improving as an organization on issues of social justice.”¹⁵⁰⁸ The new name was to “better unify our community and build on our legacy for a new generation.”¹⁵⁰⁹ In 2021, the team finally dropped its ‘Indian’ name which dated back to 1915 “as part of a larger cultural shift across the US as corporate brands reexamine their use of racist caricatures and stereotypical names.”¹⁵¹⁰ The teams’ new name, Cleveland Guardians, was to represent “the pride, resiliency and loyalty of Clevelanders . . . while drawing on the iconic Guardians of Traffic just outside the ballpark on the Hope Memorial Bridge.” Don Nolan concluded, “While ‘Indians’ will always be a part of our history, our new name will help unify our fans and city as we are all Cleveland Guardians.”¹⁵¹¹

Additionally, the team ordered a “no-tolerance policy” restricting attire including “headdresses and face paint that references American Indian cultures and traditions. Inappropriate or offensive images, words, dress or face paint must be covered or removed,”¹⁵¹² while wearing attire bearing the Chief Wahoo logo was still permitted. Fans who did not follow the policy could be ejected or refused admission to games at Progressive Field.¹⁵¹³ Cynthia Connolly, Executive Board of the Lake Erie Native American Council (LENAC) that supported the team in its transition process, found it “really encouraging to see these changes happen[,] and our community is truly looking forward to showing who we truly are.”¹⁵¹⁴

In June 2020, Quaker Oats announced it would rename and remove the logo from its more than 130-year-old brand because “Aunt Jemima’s origins are based on a racial stereotype,” as Kristin Kroepfl, Vice President and Chief Marketing Officer of Quaker Foods North America, explained. “While work has been done over the years to update the brand in a manner intended to be appropriate and respectful, we realize those changes are not enough. . . . We acknowledge the brand has not progressed enough to appropriately reflect the confidence, warmth, and dignity that we would like it to stand for today.”¹⁵¹⁵ Only few weeks later, another famous food brand dropped its long-lasting marketing identity.

That a brand like Land O’Lakes replaced the Indian maiden Mia with photos of Land O’Lakes member farmers “quietly,” as several media noted, was seen as an attempt to “update its image without addressing the national conversation that has built up around the use of ste-

¹⁵⁰⁸ Blake Schuster, “Report: Cleveland Indians ‘Prepared to Consider’ Nickname Change More Seriously,” *Bleacher Report*, July 3, 2020, accessed January 5, 2021, <https://bleacherreport.com/articles/2898816-report-cleveland-indians-prepared-to-consider-nickname-change-more-seriously>.

¹⁵⁰⁹ Eric Levenson, “These teams faced pressure to change their Native American names. Here’s what’s happened since,” *CNN*, December 14, 2020, accessed January 5, 2021, <https://edition.cnn.com/2020/12/14/us/cleveland-washington-native-american/index.html>.

¹⁵¹⁰ Hanna and De la Fuente, “Cleveland Indians changing name to Cleveland Guardians.”

¹⁵¹¹ Don Nolan, owner of the Cleveland Guardians, quoted in Paul Hoynes, “Cleveland Indians choose Guardians as new team name,” *Cleveland.com*, July 23, 2021, accessed July 23, 2021, <https://www.cleveland.com/tribe/2021/07/cleveland-indians-choose-guardians-as-new-team-name.html>.

¹⁵¹² Marc Bona, “No Native American face paint, headdresses allowed in Progressive Field for Indians games,” *Cleveland.com*, March 31, 2021, accessed August 7, 2021, <https://www.cleveland.com/entertainment/2021/03/no-native-american-face-paint-headdresses-allowed-in-progressive-field-for-indians-games.html>.

¹⁵¹³ Cf. *ibid.*

¹⁵¹⁴ Cynthia Connolly, Executive Board, LENAC, quoted in Will Ujek, “Community reacts after Cleveland Indians ban headdresses and Native American face paint at Progressive Field,” *WKYC*, March 31, 2021, accessed August 7, 2021, <http://www.wkyc.com/article/sports/mlb/indians/community-reacts-after-cleveland-indians-ban-headdresses-native-american-face-paint/95-42e0b895-df36-439d-b221-3fbd5b6d688c>.

¹⁵¹⁵ Kristin Kroepfl, Vice President and Chief Marketing Officer, Quaker Foods North America, quoted in Beth Kowitt, “Aunt Jemima brand looks to shed its racist roots with vow to change name and logo,” *Fortune*, June 17, 2020, accessed January 5, 2021, <https://fortune.com/2020/06/17/aunt-jemima-logo-name-change/>.

reotypical imagery.”¹⁵¹⁶ Looking toward its 100th anniversary in 2021, President Beth Ford explained, the cooperative “needed packaging that reflects the foundation and heart of the company’s culture.” The producer of butter, cheese, and other products believed, as “a farmer-owned co-op, we strongly feel the need to better connect the men and women who grow our food with those who consume it.”¹⁵¹⁷ Robert DesJarlait, whose father, Ojibwe artist Patrick DesJarlait, redesigned the Indian maiden in the 1950s, was “sad to see it go” but noted, “We live in a politically correct time, so maybe it was time to get rid of it. It certainly devolved into a stereotype.”¹⁵¹⁸ Minnesota Lieutenant Governor Peggy Flanagan from the White Earth Nation of Ojibwe thanked the Minnesota-based company “for making this important and needed change.”¹⁵¹⁹ Although Mia, created in 1928, accompanied consumers for decades, a study indicated as early as 1991 that “Land O’Lakes, as a brand name, was viewed positively by 59% of the survey, but the approval dropped to 52% when it was shown alongside its Indian squaw symbol.” As the study explained, corporate logos represent “signatures companies use when they talk to consumers and shareholders” but “can do more harm than good, undercutting the corporate image.”¹⁵²⁰

Simultaneously, defenders of the Indian maiden started four online petitions to “Save the Land O’ Lakes Indian” and collected 355 of 500, 49 of 100, and 12 of 100 signatures, respectively, meaning none was successful.¹⁵²¹ Erin Dixon, Chair of the Wopumnes Nisenan-Mewuk Indians of El Dorado County, California, collected 214 of 500 signatures within the first week but reached only 228 until six months later. Dixon argued, “I would rather boycott ‘Land O Lakes’ butter, buying another brand, than to see my children cry about another piece of their Native American heritage lost.”¹⁵²² The equating or linking of Native American historical heritage with commercial branding stories suggests that Indian-inspired marketing imagery has influenced Native American identity-building processes. Despite “predictable blowback from critics who saw the company as caving in to political correctness and from

¹⁵¹⁶ Jessi Devenyns, “Land O’Lakes quietly removes Native American woman from label,” *FoodDive*, April 20, 2020, accessed July 5, 2020, <https://www.fooddive.com/news/land-olakes-quietly-removes-native-american-woman-from-label/576308/>.

¹⁵¹⁷ Beth Ford, President and CEO, Land O’Lakes, quoted in Associated Press, “Native American woman removed from Land O’Lakes packaging,” *PBS*, April 17, 2020, accessed July 5, 2020, <https://www.pbs.org/newshour/arts/native-american-woman-removed-from-land-olakes-packaging>.

¹⁵¹⁸ Robert DesJarlait, quoted in Associated Press, “Native American woman removed from Land O’Lakes packaging.”

¹⁵¹⁹ Peggy Flanagan, Minnesota Lieutenant Governor, quoted in Mallika Kallingal, “Land O’Lakes replaces Native American woman logo, touts farmer-owned credentials instead,” *CNN*, April 17, 2020, accessed July 5, 2020, <https://edition.cnn.com/2020/04/17/us/landolakes-logo-change-trnd/index.html>.

¹⁵²⁰ Laura Bird, “Eye-Catching Logos All Too Often Leave Fuzzy Images in Minds of Consumers,” *The Wall Street Journal*, December 5, 1991, B1.

¹⁵²¹ Harmony S., “Keep the Native American Woman on Land O Lakes Butter/ Products that’s been almost 100yrs,” Change.org petition, April 2020, accessed January 24, 2021, <https://www.change.org/p/president-ceo-beth-e-ford-keep-the-native-american-woman-on-land-o-lakes-butter-products-that-s-been-almost-100yrs?redirect=false>; Johnny C., “Bring back the Native American on the Land O Lakes butter package,” Change.org petition, April 2020, accessed January 24, 2021, https://www.change.org/p/land-o-lakes-bring-back-the-native-american-on-the-land-o-lakes-butter-package?source_location=topic_page; Save the Land O’ Lakes Indian, “Save the Land O’ Lakes Indian,” Change.org petition, August 2020, accessed January 24, 2021, <https://www.change.org/p/land-o-lakes-save-the-land-o-lakes-indian?redirect=false>.

¹⁵²² Tribal Council Wopumnes, “Put the Indian Girl back on the Land O Lakes Butter!” Change.org petition, January 2021, accessed January 24, 2021 and July 19, 2021, <https://feed.change.org/p/ceo-land-o-lakes-butter-put-the-indian-girl-back-on-the-land-o-lakes-butter>.

some consumers who fondly recalled the iconic logo as part of growing up,”¹⁵²³ others welcomed the change. *The Washington Post*’s Editorial Board wished the company had been “more candid, but what is important is that it recognized the harm caused by its Indian stereotype. Others should follow suit.”¹⁵²⁴

Several marketers adapted their contemporary brands to new standards, and some started rethinking their historical campaigns and materials. In 2023, Keep America Beautiful referred its rights to the “People Start Pollution. People Can Stop It.” campaign to the National Congress of American Indians Fund after the iconic ad became the subject of criticism and mockery for its stereotypical portrayal of Native Americans. While the campaign “became synonymous with furthering environmental protection and awareness in popular culture at the time of its creation,” a Keep American Beautiful statement explained, it “was later known for featuring imagery that stereotyped American Indian and Alaska Native people and misappropriated Native culture” and should be retired.¹⁵²⁵ The NCAI decided to retire the advertisement because it had always been inappropriate but to allow its use in “settings where it can be understood in its ‘historic context’.”¹⁵²⁶ The organization did not specify appropriate settings or context, but it will likely be available for educational purposes.

These adaptations, right transfers, and other changes came at a time when many businesses, universities, and sports teams started dropping their Native American images and symbols from logos.¹⁵²⁷ Since brand refreshes are commonplace, companies will likely continue to change imagery that is losing social acceptability and bring it up to ever-changing standards.¹⁵²⁸

¹⁵²³ Editorial Board, *The Washington Post*, “Land O’Lakes did the right thing. Others (like D.C.’s NFL team) should follow,” April 21, 2020, accessed July 5, 2020, https://www.washingtonpost.com/opinions/land-olakes-did-the-right-thing-by-nixing-native-american-imagery-others-should-follow-suit/2020/04/21/af2fa65e-8348-11ea-878a-86477a724bdb_story.html.

¹⁵²⁴ *Ibid.*

¹⁵²⁵ Keep America Beautiful, statement, quoted in Emily Schmall, “‘Crying Indian’ Ad That Targeted Pollution to Be Retired,” *The New York Times*, February 27, 2023, accessed February 27, 2023, <https://www.nytimes.com/2023/02/27/us/native-american-pollution-ad.html>.

¹⁵²⁶ Schmall, “‘Crying Indian’ Ad That Targeted Pollution to Be Retired.”

¹⁵²⁷ Cf. Peggy Flanagan, Minnesota Lieutenant Governor, quoted in Kallingal, “Land O’Lakes replaces Native American woman logo.”

¹⁵²⁸ Cf. Devenyns, “Land O’Lakes quietly removes Native American woman from label.”

Part II: Analysis of Resistance Strategies, Reactions, and Results

The second part of the study is devoted to the qualitative and quantitative analysis of protest strategies, reactions, and results. It begins with a summary showing who protested against marketing practices and why; who were the typical targets of protest; how critics framed the issues of fraud, appropriation, and misrepresentation; and how successful protest strategies were, including a definition of success or failure, respectively. The study of protest strategies as planned or spontaneous behavior to achieve short- or long-term goals takes a closer look at the protest arenas and the communication media critics used to raise their concerns and the addressees they approached to achieve their goals. As strategies varied by protest cause, the study examines strategies and results separately for each protest category. Furthermore, it contextualizes these protest strategies with the responses and reactions of the protest targets, that is, the marketers' crisis management strategies. The evaluation of protesters' perceptions of these strategies explains why protesters appreciated some strategies more than others. The analysis of crisis management strategies shows how successful strategies have helped in the past to prevent or end a crisis in a way acceptable to all parties.

Throughout the 20th and 21st centuries, representatives of organizations, institutions, or special interest groups addressed marketing strategies on a singular or regular basis. The IACB served to protect Indigenous economic interests and consumers from inauthentic Native art. The NCAI developed official agendas specifically against offensive marketing practices as part of their media surveillance program. Indigenous businesses like Native American Arts, tribes like the Navajo Nation, or other interest groups like the Estate of Tasunke Witko, the Intertribal Bison Cooperative (ITBC), and the American Indian Tobacco Education Program/Network (AITEP/N) actively protected their rights and assets.

With few exceptions like the Crazy Horse Malt Liquor case, the U.S. government was primarily concerned with consumer protection or the protection of Indigenous labor and, therefore, intervened in cases of fraud as defined for purposes of the Indian Arts and Crafts Act. The IACB was, by definition, the designated addressee for alleged violations of the Indian Arts and Crafts Act. In the beginning, the FTC pushed cases that were technically covered by the IACA under the banner of consumer protection. Since several U.S. states had their own consumer protection laws and laws to protect Indigenous artwork, consumer protection divisions like the division of the New Mexico Attorney General's Office enforced laws prohibiting the false marketing of products as Indian-made at the state level. In conjunction with other agencies, such as the NPS, the FWS, and the FBI, the IACB eventually effectively enforced the IACA on the federal level.

Native American Arts, a Native-owned business selling Indian arts and crafts, was the most important non-governmental actor in the resistance against misleading marketing practices. The NAA's legal fight against the sale of fraudulent Indian art replicas and imports became a major and increasingly successful quasi-business and produced a case history other lawyers could refer to.

Tribal governments of the Sioux, the Navajo Nation, and the Lumbee Tribe of North Carolina fought against alleged trademark infringement, appropriation, and misrepresentation. In protest of appropriation, tribal governments often pointed to the frivolous nature of connecting Indigenous designs and symbols with certain products or the harmful effects such

connections had on its tribal members or tribal reputation. For those reasons, tribes opposed connecting their names or symbols with tobacco or alcohol to protect their public image and avoid marketing messages that would reach tribal members and seduce them to consume such products. With one exception, Sioux tribal governments challenged exclusively alcoholic beverages marketed with Indigenous cultural elements. For instance, in 1965, the United Sioux Tribes of South Dakota criticized the misrepresentation of a Sioux in an ad marketing the Calvert Distillers' whiskey; the Oglala Sioux reached out to the Stroh Brewing Co. in 1986 alleging cultural appropriation; the Great Sioux Nation addressed the Miller Brewing Co. in response to a planned Dakota Beer in 1986 as a matter of appropriation and misrepresentation; and the Oglala Sioux urged the Hornell Brewing Co. in 1992 to stop using Crazy Horse's name for their Malt Liquor.

Private or family interest groups like the Tasunke Witko Estate and the Crazy Horse Defense Project fought against marketing representations to protect their ancestor's reputation. These interest groups sought to protect Crazy Horse's name and legacy internationally against companies such as the Hornell Brewing Co. (1992-2004), Liz Claiborne (1998-2001), British Petroleum (2002-03), and the cabaret Le Crazy Horse in Paris, France (2004). The Estate of Crazy Horse operated independently and in collaboration with other organizations like the religious Interfaith Center on Corporate Responsibility, which pursued social responsibility interests in the economic system. Other religious organizations, church representatives, and religious media like the *National Catholic Reporter*¹⁵²⁹ also supported protests against misrepresentations of Indigenous culture and the appropriation of revered leaders' names and sacred symbols. Frequently, religious supporters related to protesters by comparing Indigenous sacred traditions to Christian traditions and pled for an equally respectful treatment of those traditions in marketing.

The special interest group American Indian Tobacco Education Program/Network (AITEP/AITEN) challenged marketing representations to protect Indigenous traditions. The network's mission was "to promote, support, and protect the health, traditions, and cultural values of American Indians as they relate to sacred tobacco use and commercial tobacco abuse."¹⁵³⁰ More precisely, the group sought to disconnect commercial products, which were "radically different in content, form, and context from the native tobacco," and Native American imagery on the basis of cultural sensitivity because the marketing practice was "offensive and harmful to Native American people."¹⁵³¹ The fact that Native Americans smoked more commercial tobacco products and died from tobacco-related diseases at a higher percentage than any other ethnic group in the United States made "the use of historic and culturally sensitive images, like the early-twentieth-century photograph of a Hupa woman healer used in an ad for Natural American Spirit cigarettes, not only inappropriate but also eerily symbolic of colonialist violence."¹⁵³² From approximately 1997 to 2007, AITEP/N called for the boycott of tobacco products made by manufacturers like the SFNT Co. as the Natural American Spirit Cigarettes logo was a "dishonorable and obscene representation of American Indians' tradi-

¹⁵²⁹ See Mordecai Specktor, "Ban on Indian's name overturned," *National Catholic Reporter*, October 18, 1996, 6-7; Specktor, "Crazy Horse exploited to peddle liquor," 3; "Crazy Horse has bad taste," *National Catholic Reporter*, Editorial, January 6, 1995, 20.

¹⁵³⁰ AITEP, mission, quoted in Margaret Dubin, "Campaign Against Tobacco Products with Indian Images Achieves Success," *News from Native California*, Spring 2007, 40.

¹⁵³¹ Dubin, "Campaign Against Tobacco Products with Indian Images Achieves Success," 40.

¹⁵³² *Ibid.*, 40.

tional sacred purpose of the tobacco plant,”¹⁵³³ and the company was “exploiting a product that was never intended to be used as a commercial product.”¹⁵³⁴ The AITEP/N’s work resulted in a boycott by Indigenous and non-Indigenous sellers and Indigenous groups asking for copies of the campaign posters and other materials.¹⁵³⁵

The Intertribal Bison Cooperative aimed to protect its economic interests in the meat market. According to Mark Heckert, director of the ITBC, the Cooperative challenged producers of buffalo meat like the Badlands Ranch Enterprises for using Indigenous imagery on packages “to lure the customer into thinking that it is an authentic product.”¹⁵³⁶ As food companies increasingly attempted to market food traditionally associated with Native Americans as Indian-produced, like wild rice, Native producers lagged “behind the commercial non-Indian producers in getting a foothold on the market with Indian-raised and Indian-processed buffalo meat.”¹⁵³⁷ Since the “manner in which the buffalo [was] cared and respected before processing may be important to people with a social agenda,”¹⁵³⁸ the ITBC opposed misleading marketing imagery and descriptions. Their resistance aimed to secure their market share based on a specific target audience interested in Native American-produced goods as presumably socially responsibly produced goods.

Native American civil rights groups and organizations started or intensified their work during the 1960s, including marketing protests, and kept fighting for Indigenous rights and promoting Native issues until this day. As AIM member Corine Fairbanks explained, the American Indian Movement had been fighting racism in media and sports since the civil rights era. Between 1988 and 2015, AIM protested at least 17 supposed offenses due to the misrepresentation of Indigeneity, the appropriation of cultural elements, or both, and fraud.¹⁵³⁹ Media covered at least nine of the 17 cases, with non-Native media covering seven cases, Native media covering four cases, and the international press covering one highly controversial and publicly visible case (GAP, 2012).

Like the media-savvy organization AIM, public service organizations AAIA and NCAI learned to utilize media to give Native Americans a voice and “promote national and international understanding of the American Indians and their cultural heritage.”¹⁵⁴⁰ During the civil rights era, both institutions became highly active as critics of Native American marketing misrepresentations as part of larger campaigns furthering the understanding of Indigenous peoples and their specific problems. Between 1965 and 1971, the NCAI and the AAIA sent many protest letters to companies misrepresenting Indigenous culture in their marketing materials. The NCAI continues to be involved in the sports mascot controversy. One of its

¹⁵³³ Radley Davis, Chairman, AITEP, quoted in Kay Humphrey, “Groups fight tobacco firm with boycott: HIS agency calls logo exploitive,” *Indian Country Today*, August 4, 1997, D1.

¹⁵³⁴ Toni Martinez, Project Manager, AITEP, quoted in Humphrey, “Groups fight tobacco firm with boycott,” D1.

¹⁵³⁵ Dubin, “Campaign Against Tobacco Products with Indian Images Achieves Success,” 45.

¹⁵³⁶ Mark Heckert, Director, ITBC, quoted in David Melmer, “Denver company accused of exploitation,” *Indian Country Today*, August 24, 1995, A1.

¹⁵³⁷ Melmer, “Denver company accused of exploitation,” A1.

¹⁵³⁸ Mark Heckert, Director, ITBC, quoted in Melmer, “Denver company accused of exploitation,” A1.

¹⁵³⁹ Representation cases: Isuzu Motors Ltd., 1988; Northminster Presbyterian Church, Hutchinson, 2003; Lucky Brand, 2009; Zazzle, 2010; Zazzle, 2011; Moon River, 2011; GAP, 2012; Half Acre, 2015. Representation & appropriation cases: Hooters, 2012. Appropriation cases: Mystic Lake Casino, 1992; Hornell Brewing Co., 1992; Cochise Fine Art Gallery, 1993; Hornell Brewing Co., 1993; Liz Claiborne, 2000; Lance Gilman/ Susan Austin, 2001; Fred Simmons, 2004. Fraud cases: Deer Tribe Metis Medicine Society, 1993.

¹⁵⁴⁰ National Congress of American Indians, press release.

most famous protest commercials, “Proud To Be,” launched just before the 2014 Super Bowl and was viewed more than five million times and received almost 25.000 likes until 2019.¹⁵⁴¹ Several individual protesters stand out for fighting marketing practices and representations. Since the 1990s, artists like David Bradley, Shan Goshorn, Alex Jacobs, Jaune Quick-To-See-Smith, and Charlene Teters raised criticism of marketing misrepresentation and appropriation through their artwork which museums presented in special exhibits. For 16 years, Lawrence Baca, a civil rights lawyer and collector of marketing items depicting Native imagery or names, organized exhibits in the Department of Justice building in Washington, DC, to educate colleagues and visitors about stereotypes and appropriation through marketing practices.

Principally, Indian-led organizations like the NCAI considered cooperation with experienced advocacy groups representing other minorities helpful, such as the Jewish or Italian Antidefamation Leagues, the National Conference of Christians and Jews (NCCJ), or the NAACP.¹⁵⁴² Journalists detected “signs of greater cooperation among the diverse groups seeking to remove racial barriers,” but there remained “sharp divisions among the groups in goals and attitudes.”¹⁵⁴³ Looking back, social and political activist Ron Daniels called for more solidarity between African Americans and Native Americans in their struggle for fair representation:

The victimization of Africans in America by negative imaging and stereotyping should serve as motivation for Blacks to be among the first to assist other groups who are fighting against the same problem. Unfortunately, we have not been quick to join with our Native-American brothers and sisters to lend our support to their righteous efforts to get rid of logos and mascots that demean Native-American culture and native people.¹⁵⁴⁴

Citing Martin Luther King, who said, “injustice anywhere is a threat to justice everywhere,” Daniels urged African Americans to “stand with all oppressed people in their struggle for liberation,” and the “next time you see Native-Americans staging a protest against negative imaging and stereotyping of their people, express your solidarity by joining them!”¹⁵⁴⁵

The most visible and active critics in terms of frequency used online media after the millennium. Robert Schmidt, writer, editor, designer, and a “non-Native with no Cherokee princesses in his background,”¹⁵⁴⁶ posted, re-posted, and supported at least 139 cases of marketing protest in his blog *Blue Corn Comics* (since 1995) and later in *Newspaper Rock* (2006-2016). Dr. Adrienne Keene, scholar, writer, blogger, activist, and member of the Cherokee Nation, “is passionate about reframing how the world sees contemporary Native cultures.”¹⁵⁴⁷ In her blog *Native Appropriations*, Keene critically analyzed at least 40 marketing practices. She not only used her blog to induce change but was also “very interested in the way Native

¹⁵⁴¹ Cf. National Congress of American Indians, “Proud To Be (Mascots),” YouTube video, 2:00, January 27, 2014, accessed December 12, 2019, <https://www.youtube.com/watch?v=mR-tbOxlhvE>. 5,055,772 views, 24,395 likes.

¹⁵⁴² Cf. NCAI, “The American Indian Media Surveillance Committee,” February 29, 1968, section 4, 1; AIMS Committee Memoranda [1 of 2]; Box 255; NCAI Records; NMAI Archive Center.

¹⁵⁴³ “Spreading Protest,” 1.

¹⁵⁴⁴ Ron Daniels, “Struggle against Native-American stereotyping,” *New Pittsburgh Courier*, July 10, 1999, 5.

¹⁵⁴⁵ *Ibid.*, 5.

¹⁵⁴⁶ Robert Schmidt, “Biographies,” *Blue Corn Comics*, accessed December 1, 2019, <http://www.bluecorncomics.com/biograph.htm>.

¹⁵⁴⁷ “Adrienne Keene,” Speak Out, accessed August 27, 2017, <http://www.speakoutnow.org/speaker/keene-adrienne>.

peoples are using social and new media to challenge misrepresentations and present counter-narratives that showcase true Native cultures and identities.”¹⁵⁴⁸ Other bloggers like Dr. Jessica Metcalfe and Ruth Hopkins, among others, also expressed their concerns through online media on a regular basis.

While protesters of marketing misrepresentation were predominantly Native American, Non-Natives played significant roles as protesters and supporters. Of all individual protesters, 57.9 percent were Indigenous, and 21.7 percent were non-Native. Indigenous protesters were responsible for 32.8 percent of all protests, whereas Non-Natives accounted for 21.0 percent. In nearly one-third of all cases (30.5 percent), people of various ethnicities initiated protests, teamed up to proceed against offenders, or declared solidarity with protesters. Totaled up, Natives were involved in at least 63.3 percent of all marketing protest cases and non-Native protesters in at least 51.5 percent.

Figure 8 sums up the findings regarding people and institutions involved in protests.¹⁵⁴⁹

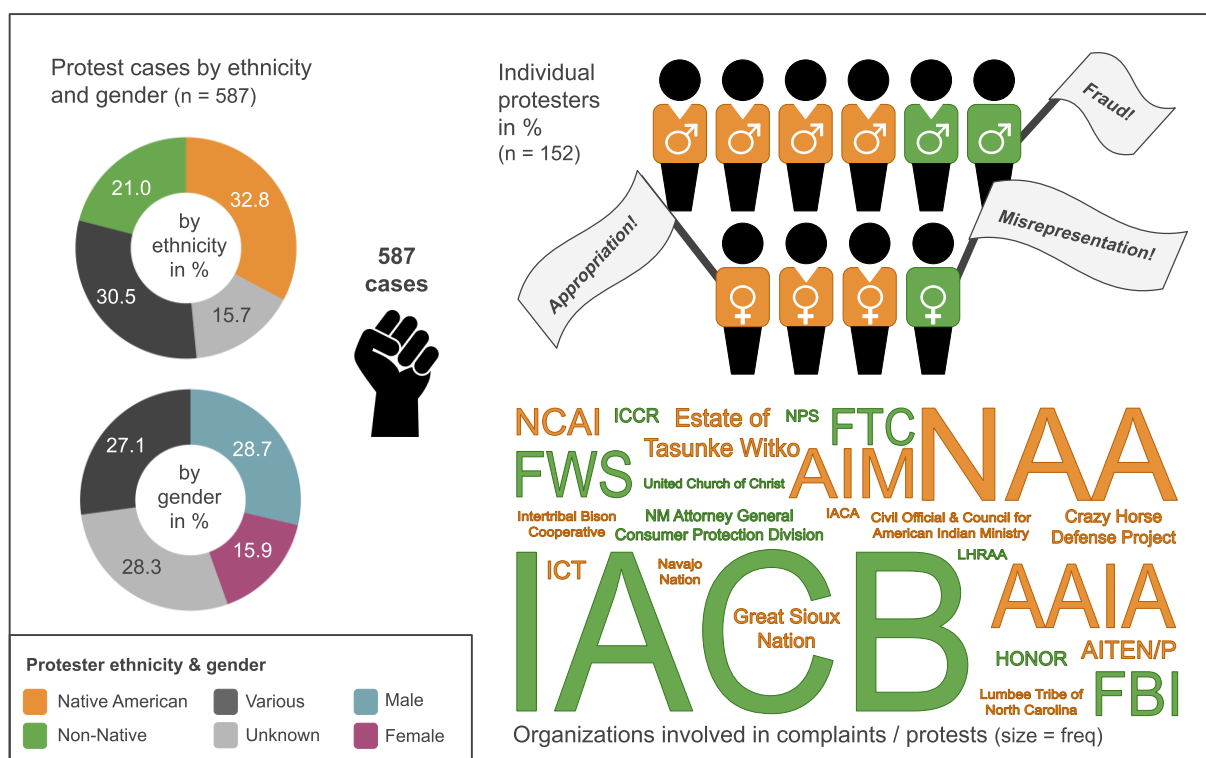


Figure 8: Overview of protests and protesters by race, gender, and organization.

¹⁵⁴⁸ Ibid.

¹⁵⁴⁹ The figure includes only cases when individual protesters' ethnicity and gender were known. Figure includes only institutions involved in protests at least twice.

Targets of Protest

Explaining why the AAIA protested the Nutty Mad Indian doll sold by Sears in 1966, Mary Payne reasoned that, “If it weren’t such a popular toy, we wouldn’t be so upset. . . . Not only do the major department stores carry it, but it’s featured in the catalog of one of the nation’s largest mail order firms.”¹⁵⁵⁰ Sometimes, companies became the target of protests because of their high visibility and economic power, sometimes protesters found supposedly inappropriate marketing representations by accident, and sometimes stakeholders actively searched for offenders.

Among primary targets, the most frequently targeted group was producers of products and/or marketing materials (60.6 percent). Protesters approached sellers in 38.2 percent of all cases to persuade them to stop selling items or change marketing materials. In 1.0 percent of the protest cases, critics asked consumers directly not to buy products they found offensive or marketed inappropriately. These cases addressing consumers, however, were all part of general educational protests that did not target specific marketers. In one instance (0.2 percent), a protester addressed Etsy as the publisher of marketing content, but publishers usually rejected responsibility for such content. As publishers sought to stay out of marketing controversies, activists and artists educated consumers to achieve long-term effects, like people stop buying such products, while protesters persuaded or forced sellers and producers to change their marketing practices.

Non-Natives were the main protest targets in two-thirds (67.6 percent) of the cases. In 29.1 percent of all cases, the target’s racial background was not evident from the documents,¹⁵⁵¹ or protests did not target any specific marketer but aimed to raise awareness of certain marketing practices in general. Museums and other institutions exhibiting artwork and advertising collections were the main arenas for such general protests that served to educate the American public and consumers, respectively, about the misrepresentation and appropriation of Indigeneity.

In ten cases (1.7 percent), critics addressed Native American marketers, and in nine (1.5 percent), marketers who claimed Indian heritage that protesters doubted. Notably, the two separate groups do not represent real vs. ‘wannabe’ Native peoples but marketers whose ethnic backgrounds were undisputed vs. disputed by protesters. The study does not seek to question or verify the correctness of a claimed or doubted heritage. When a person claimed Indigenous roots or a connection to an Indigenous community, protesters often interpreted these claims as a PR strategy to legitimize the marketing practice rather than a real cultural identity (see Old Town Baking Co., 2013; Tomahawk Tassels, 2011-13; Lakota, 2005).

While Native-inspired marketing practices worked for any product, event, or service, they prevailed in some industries, such as sports, tourism, fashion, food, alcohol, and tobacco. Criticism arose more frequently in those sectors. With 224 cases, the arts and crafts industry provoked most protests and predominantly against misleading marketing practices that evoked the impression that an object was Indian-made. Fraud was furthermore the only cause for protests in the field of spiritualism and sometimes in the fashion, gambling, and hob-

¹⁵⁵⁰ Mary Payne, AAIA, quoted in “‘Nutty Indian’ Doll Puts Real Indians On Warpath,” clipping, March 1966; Derogatory Images: “Nutty Mad Indian,” 1966; Box 89; Association on American Indian Affairs Records, 1851-2016, MC147; Public Policy Papers; Seeley G. Mudd Manuscript Library, Princeton University.

¹⁵⁵¹ These were mostly sellers of Indian arts and crafts who may have been Native or non-Native.

by/toys/collectibles industries. Protests in the fashion industry amount to 48 cases and an additional 16 cases against costumes, focusing on the misrepresentation and appropriation of Indigeneity. Marketing materials for food (35 cases), hobby items, toys, or collectibles (35), alcohol (25), events (15), vehicles (13), cleaners, cosmetics and drugs (twelve), and tobacco (eleven), among many other industries, sparked protests primarily against the misrepresentation of Indigenous culture. Common reasons were stereotypical depictions of Native Americans or the undesirable connection of Indigeneity with unhealthy products that potentially damaged a Native or tribal image or targeted Native Americans as consumers.

The ten Indigenous targets whose identity was not in dispute did business in the gambling (four of five cases), the arts and crafts (three of 224 cases), and the fashion industries (one of 48 cases), were involved in a pageant (one of four cases) or the field of politics (one of five cases). Targets whose Indigeneity was questioned marketed products or services in the arts and crafts (four of 224 cases), food (two of 35 cases), music (one of 13 cases), and event sectors (one of 15 cases). Taken together, Indigenous marketing practices and misrepresentations in the arts and crafts industry most often led to controversies around the authenticity of products. Letters from Native artists and sellers to the IACB suggest that, particularly in this industry, both Native and non-Native vendors chose profit over authenticity and sold imported items as Indian-made.¹⁵⁵² Figure 9 gives a broad overview of the targets' roles, ethnic backgrounds, and industries in relation to protest causes.

¹⁵⁵² See Little Turtle to the IACB, February 3, 1968; Board Legisl., 1936-73, Folder 2 of 3; Gen. Corresp., 1936-1975; Corresp. Re Misrep., 1932-1980; RG 435; NAB. See also Robinson to the IACB, Received June 14, 1974; Viol. Sect. 6, Cherokee, N.C./1974-, Pending; Misrep. Viol. (Pending); Corresp. Re Misrep., 1932-1980; RG 435; NAB.

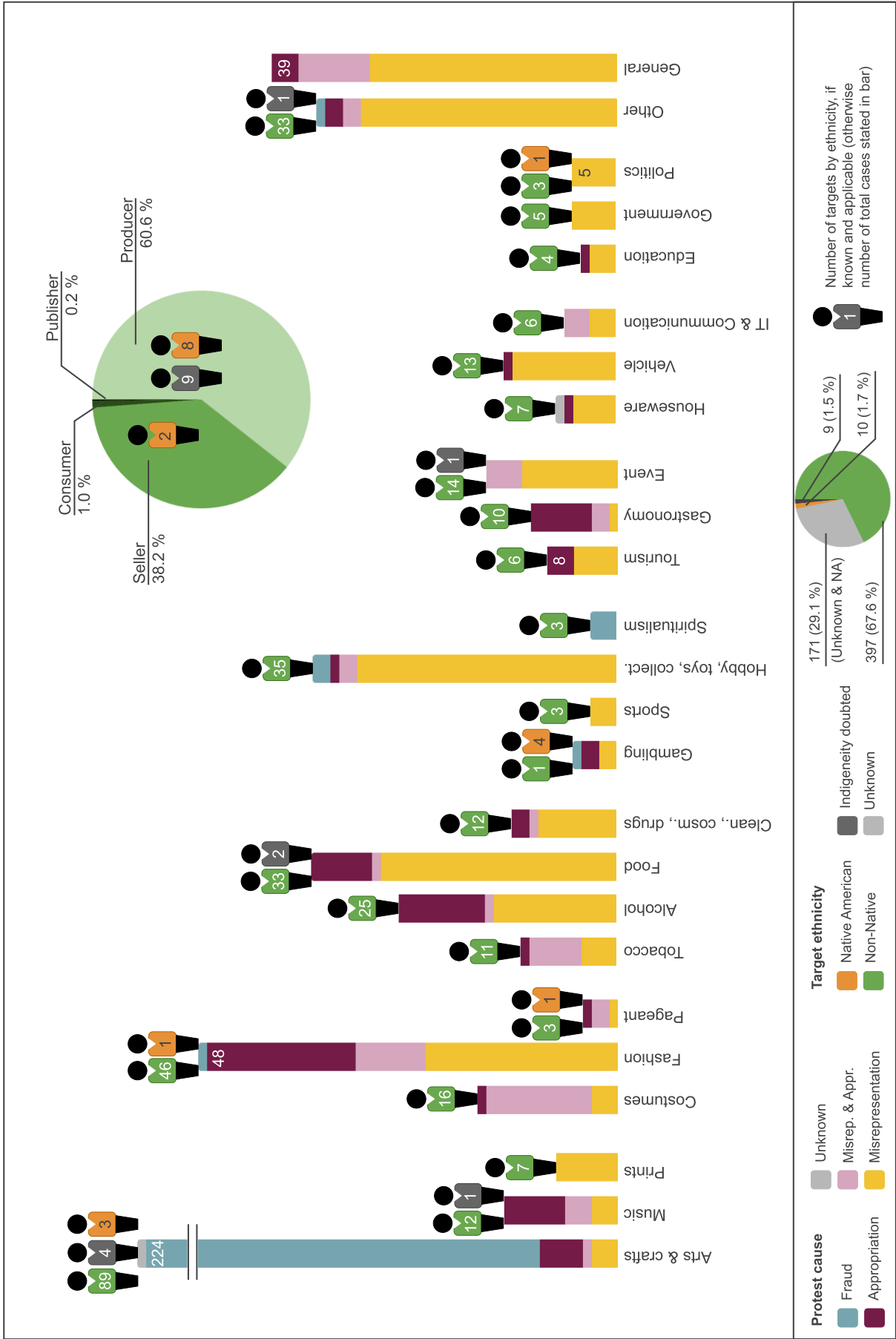


Figure 9: Targets of protest by product category.

As seen in Figure 10, there is some correlation between marketing materials and protest causes. Promotional materials, that is, combinations of product descriptions on tags and in catalogs, as well as print ads and products, often led to fraud charges. In this context, marketers typically used text to claim or insinuate products were Indian-made. Brand names and logos, decorations, products, and packages most frequently caused protests against the appropriation of Indigenous cultural elements. Protesters criticized the misrepresentation of Indianness mainly with products, brand names and logos, promotional materials, commercials, print ads, posters, decorations, and product packages. Online ads as protest triggers were a more recent, post-millennium phenomenon that will likely increase.

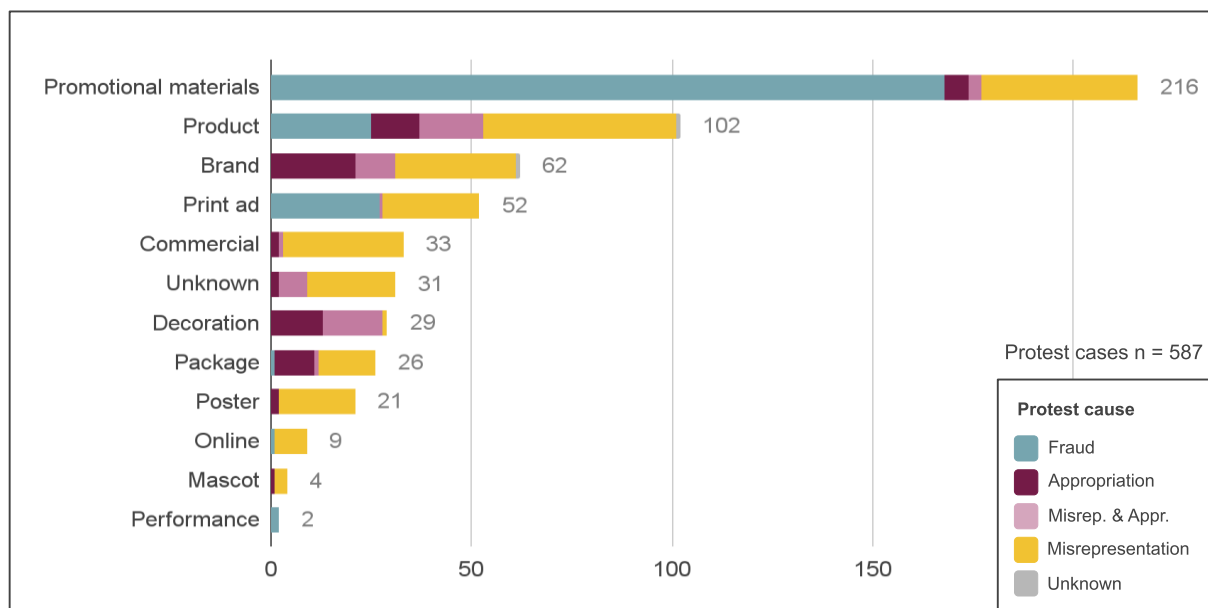


Figure 10: Marketing materials.

8. Strategies of Resistance

Figure 11 provides an overview of protesters' seven major frames to address fraud, appropriation, and misrepresentation issues. In almost 90 years of protest against Indian-inspired marketing practices, the law and reality frames were the most frequently used, followed by the ethics, race, economics, colonialism, and gender frames, represented by the grey bars. Within these broad frames, the figure details the precise arguments critics raised concerning a specific protest cause. The law frame represents legal arguments that a marketing representation or statement was misleading, violated intellectual property rights, lacked the author's authorization for use, and violated human or Indigenous rights. The reality frame, which was most relevant in cases of misrepresentation, consists of the four major arguments explaining why the marketing practices were inappropriate. The representations were inaccurate, which protesters sometimes contrasted with descriptions of the reality they experienced; the representation of the product had adverse effects on the health of Indigenous peoples; and through socialization, marketing representations affected Indigenous lives in many ways. Through the ethics frame, critics declared representations were insulting or ethically objectionable in opposition to claims these were harmless. The economics frame represents arguments like appropriation

in the sense of taking Indigenous cultural elements without giving back, capitalism, and market value which all point to profit interests as a major driving force of marketing misrepresentation and appropriation. The race, gender, and colonialism frames stand for the allegations of racism, sexism, and colonialism as historically determined cultural driving forces.

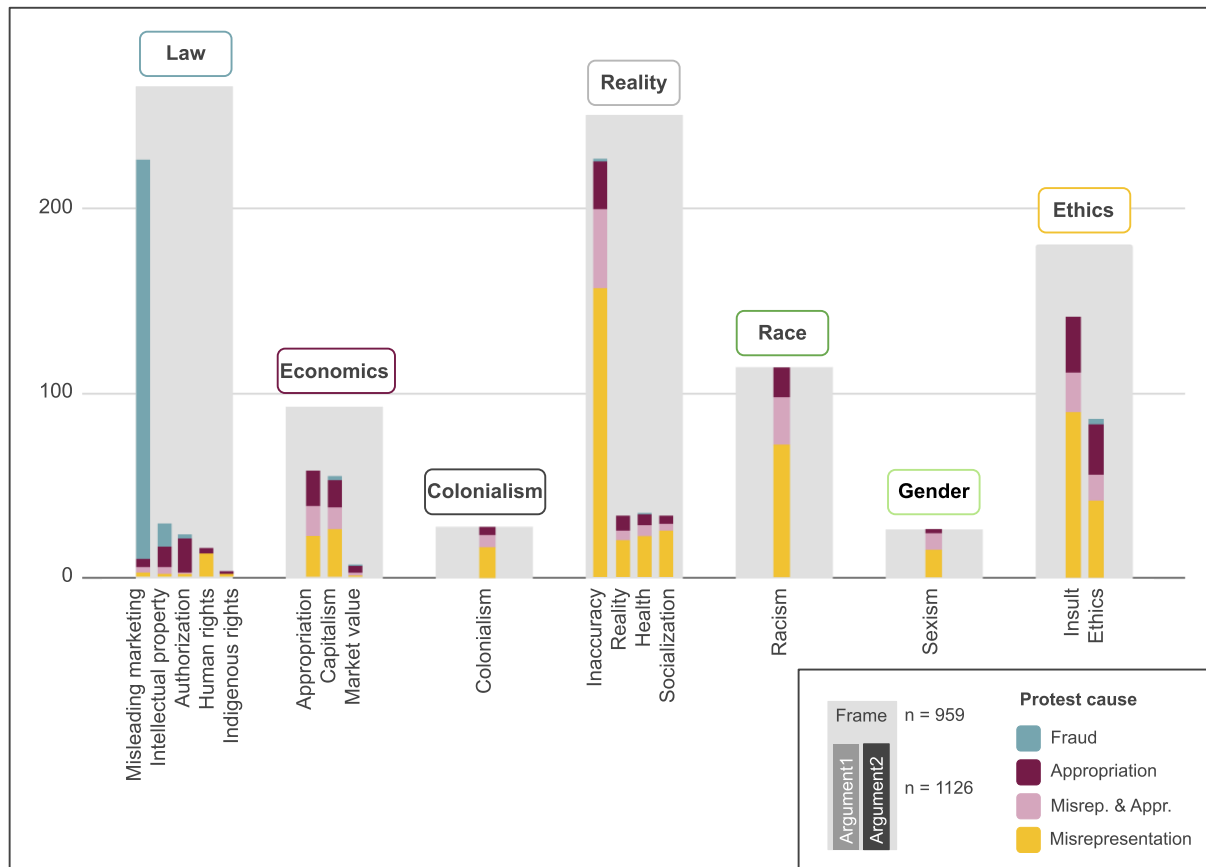


Figure 11: Protesters' diagnostic arguments and frames.

Table 1 summarizes and briefly explains the protest arguments by frame.

Table 1: Summary of protesters' diagnostic arguments by frame.

Frame	Diagnostic argument	Protesters' claim that ...
Law	Authorization	the marketer lacked Native authorization, that is, permission to use tribal cultural elements, for instance.
	Human rights	the marketing practice violated human rights.
	Indigenous rights	the marketing practice violated Indigenous rights.
	Intellectual property	the marketing practice violated intellectual property rights.
	Misleading marketing	the marketing practice was misleading.
Economics	Appropriation	marketers took Indigenous cultural elements without giving back.
	Capitalism	marketers, as part of a capitalist system, were mainly or only interested in gaining wealth without sharing profits.
	Market value	advertisers used Indigeneity because it had market value and served their profit interests.

<i>Colonialism</i>	Colonialism	the ad/representation both reflected historically determined colonialist attitudes and contributed to the ongoing colonization of Native Americans in U.S. society.
<i>Reality</i>	Health	the representation had real-life effects on the health of Native peoples.
	Inaccuracy	the representation was inaccurate or stereotypical and did not represent reality.
	Reality	historical and present facts contrasted with false media myths, which protesters sought to correct and refute.
	Socialization	the representation affected Indigenous lives in many ways through socialization.
<i>Race</i>	Racism	the ad/representation was racist.
<i>Gender</i>	Sexism	the ad/representation was sexist.
<i>Ethics</i>	Ethics	the ad/representation was ethically objectionable, as opposed to claims that these were harmless.
	Insult	the ad/representation was offensive and insulting.

Critics rarely used arguments outside the law frame to address fraudulent marketing practices. Similarly, advocates of fair representation only rarely used legal arguments like human rights or Indigenous rights to address misrepresentation. This distinction in framing protest causes likely represents socially coined ways of framing fraud or misrepresentation on the one side and what protesters believed was the most promising argument or strategy to bring about change on the other side. While moral appeals to marketers or consumers were often the only means to induce change in cases of misrepresentation, consumer protection laws offered more prospects of success than ethical arguments in cases of fraud.

The framing profiles of fraud, appropriation, and misrepresentation reveal which frames protesters used most frequently to address these issues (see Figure 28, appendix). In cases of appropriation, the framing was more diverse because it was a multifaceted issue involving appropriation in the sense of legally stealing cultural goods and misrepresentation by using Indigenous culture inappropriately. In appropriation cases, the arguments of authorization (legal frame) and appropriation (economic frame) demonstrate Indigenous peoples' desire that the protection of cultural goods should be treated as a legal issue. By adding ethical arguments, critics acknowledged that moral appeals were the best means in the absence of legal regulations.

Evaluation of Protest Strategies and Results

The quantitative analysis of reactions to protest action (Figure 12) shows that, of 495 known and unknown reactions, 13.7 percent were desirable, 8.9 percent were neutral, and 30.7 per-

cent were undesirable, while 46.7 percent of all reactions were unknown.¹⁵⁵³ Considering only the 264 known reactions, 25.8 percent of verbal reactions were desirable, 16.7 percent were neutral, and 57.6 percent were undesirable. The study refers to ‘documented rates’ when only known results were included in a statistic to discuss success and defeat rates. The ‘minimum rates’ include unknown results but not cases of general protest when protesters addressed no specific marketer. In cases of misrepresentation and appropriation, minimum success rates most likely show actual rates best because marketers possibly were not aware of or ignored media protests which necessarily led to no, that is, an undesirable result. In fraud cases, settlements were usually not published, but a desirable result seems likely in many cases so that the actual success rate may lie somewhere in between.

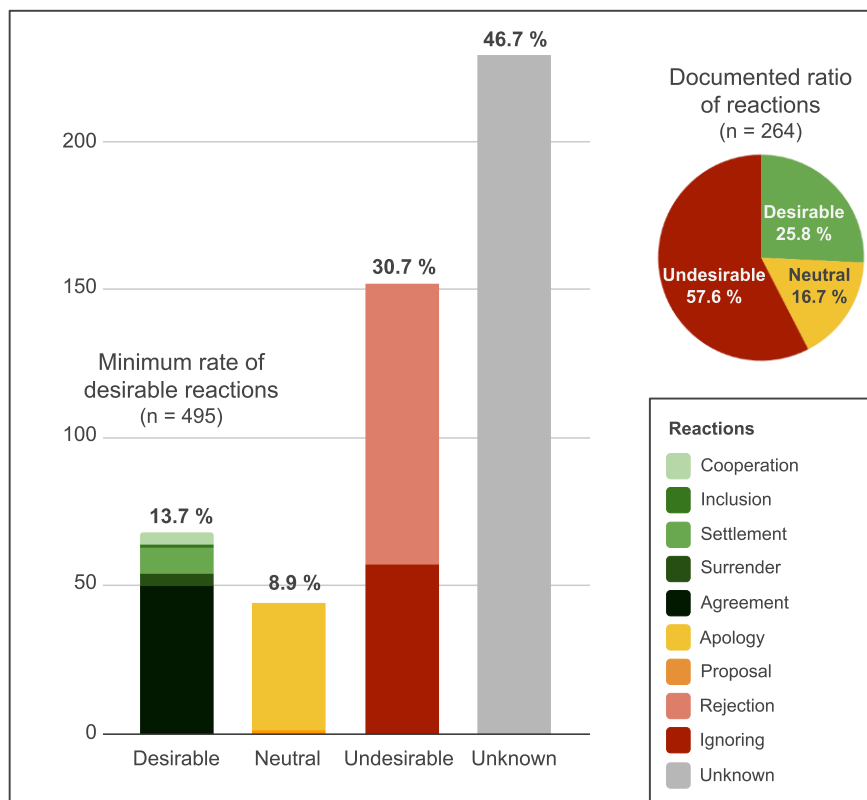


Figure 12: Targets' reactions to protest.

Desirable reactions included the agreement with criticism, the inclusion of protesters in the process of developing or revising a marketing campaign, or the settlement of the issue. Some organizations ‘surrendered,’ which this study considers a positive reaction. Due to the relatively high number of allegations of non-apologies, which are difficult to prove, the study avoids attributing a positive or negative evaluation to apologies. Like the proposal of a modification of an ad, the appraisal of such a reaction depends on its sincerity and stakeholders’ perception and represents a neutral reaction in this study. Rejecting and reportedly ignoring protests count as undesirable reactions.

¹⁵⁵³ The number of reactions and results is smaller than the number of protests for three reasons. First, general protests did not address any particular marketer. Second, marketers may not have been aware of the criticism. Third, reactions were not reported or archived. In these cases, the reaction or result is unknown.

The analysis of the results of protest actions (Figure 13), however, reveals that 28.1 percent of all cases ended with for protesters desirable results, 1.2 percent with neutral results, and 17.2 percent with undesirable results. Not considering unknown results (53.5 percent of all cases), 60.4 percent of the protest cases were successful, 2.6 percent neutral, and 37.0 percent ended as a defeat for protesters.

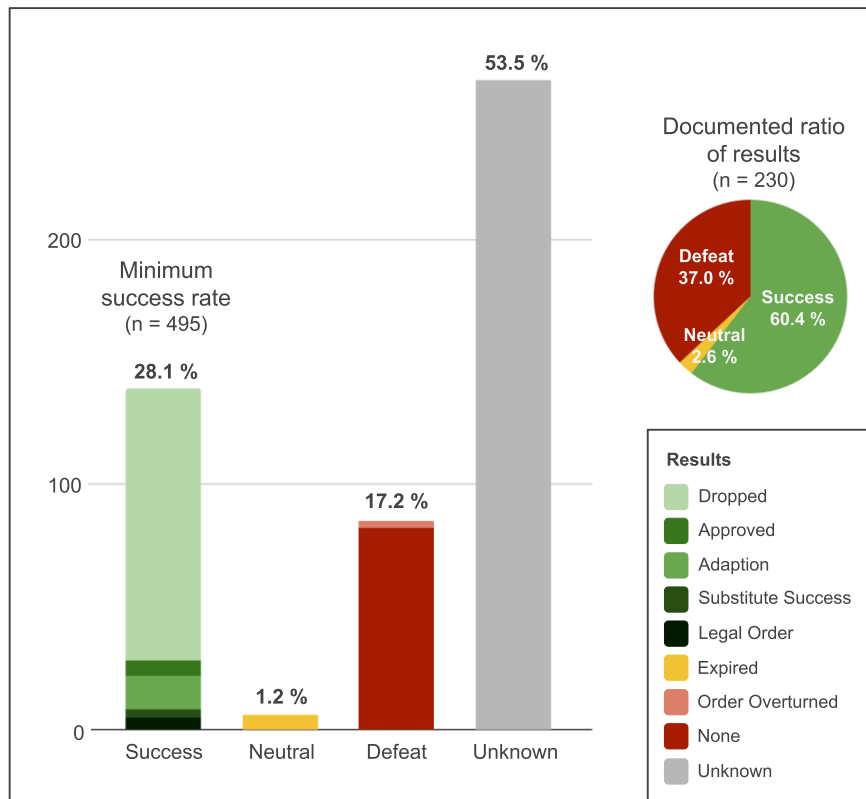


Figure 13: Results of protest actions.

The definition of success is a matter of perspective and may also change retrospectively. From the protesters' point of view, protests were successful if the organization dropped or adapted its advertising, if protesters approved of the practice or achieved any substitute success, or if protesters obtained an injunction against an advertising practice. According to the minimum rates, in 22.4 percent of the cases, advertisers dropped (111 cases), and in 2.8 percent adapted their marketing practice due to criticism (14). In 1.2 percent of the cases, critics approved of the marketing campaign (six), in 0.6 percent, they gained some substitute success (three), and in 1.0 percent of the cases, a ban or injunction was the result (five). The result was neutral when marketers took no action but allowed a campaign to expire, as this may have been planned anyway or was a decision to cancel a planned extension. In 1.2 percent of the cases, marketers let their campaign expire (six).

A result was negative if an injunction or ban was overturned (0.6 percent / three cases) or if an organization did not make any changes to its marketing practices (16.6 percent / 82 cases). Notably, a protest ending without a result was not per se a negative outcome. Sometimes review bodies like the IACB concluded that there was no legal or moral violation when critics found marketing practices misleading or inappropriate. For example, critics sometimes felt that an advertiser was misleading consumers through a product presentation or description while the advertising practice did not violate any law. In their view, consumers could not fully

understand the meaning of terms such as ‘Indian-style.’ Visual stimuli and legally accepted phrases frequently misled consumers into believing an item was Indian-made. Therefore, no result could imply a defeat for protesters if they disagreed with the law’s provisions. Since no judgment is to be made here as to whether laws were sufficient or protests were justified, the protester, with their protest reasons and goals, is the standard for classifying the result. Counting only known results, in 48.3 percent of the cases, marketers dropped, and in 6.1 percent, adapted their marketing practices, while in 35.7 percent of the cases, marketers did not take any action.

The short-term results must be distinguished from the medium- or long-term results. As the case of the Ottawa Children’s Aid Society (2012) demonstrates, even if a marketer reacted immediately and dropped offensive materials, damage may already have been done. While the Society’s spokesperson apologized and removed the poster seeking adoptive parents for an Inuit baby, “it might have already done the job. The society says a couple of people have come forward hoping to adopt the boy.”¹⁵⁵⁴ In addition, these short-term results must be distinguished from the long-term effects, which should be considered and discussed in the overall context of protest against marketing practices.

Although organizations reacted in a desirable way in only 13.7 percent of all cases, 28.1 percent resulted in short-term successes from the protesters’ perspective. In a range of cases, only the reaction or the result is known, which affects the statistic. Additionally, apologies as neutral reactions mostly ended with a desirable result. Although the results of crisis management strategies generally corresponded with reactions, desirable reactions also led to unfavorable results in 4.4 percent of all cases, and undesirable reactions led to favorable results in 11.8 percent of the cases (see Figure 31, appendix). The juxtaposition of reactions and results shows that organizations’ verbal and actual crisis management was consistent in most cases, but the result was not with certainty predictable based on the verbal response.

Success and defeat rates were similar for cases of fraud, misrepresentation, and the combination of misrepresentation and appropriation (Figure 14). For cases of appropriation, the success rate was much lower (12.7 percent compared to 27.3 percent for the combination of misrepresentation and appropriation and compared to 32.1 percent for fraud), and the defeat rate much higher (36.5 percent compared to 13.8 percent for fraud and compared to 15.9 percent for the combination of misrepresentation and appropriation).

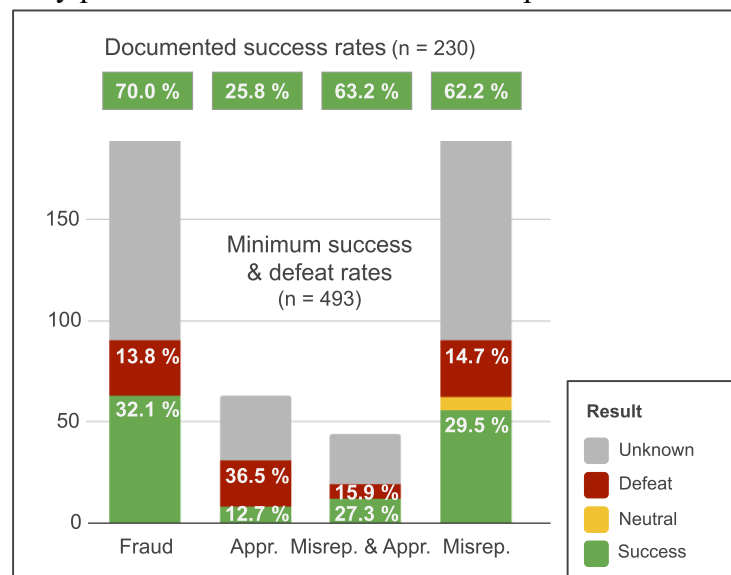


Figure 14: Results of actions by protest category.

¹⁵⁵⁴ “Children’s Aid Society under fire for Inuk baby adoption poster,” *CBC* [CA], March 29, 2012, accessed October 27, 2016, <http://www.cbc.ca/news/canada/north/children-s-aid-society-under-fire-for-inuk-baby-adoption-poster-1.1170332>.

The comparatively low success rate indicates that companies' resistance to change was higher in cases of appropriation. Organizations possibly viewed appropriation claims less as a threat than the financial risks of a lawsuit in cases of fraud or ethical charges of racism or sexism in cases of misrepresentation. Ethical norms regarding representations of ethnic groups have been subject to protests and widely known since the 1960s and have changed to the protesters' advantage. The issue of cultural appropriation was less known and accepted than issues such as racism because, with few exceptions, Native American appropriation as a protest cause against marketing practices started spreading later, in the early 1990s. Additionally, by refraining from appropriating cultural property, companies would have to waive a lucrative marketing strategy. Because the benefits may have outweighed the risks, given the inadequacy of the law and the established practice of cultural appropriation, there was little pressure or incentive for companies to forgo such a financial opportunity.

This study defines the protest arena as the 'playground' protesters chose to raise their criticism and effect change, like the legal system/law arena (official notifications, hearings, lawsuits), media (petitions, public talks, press information, social media), the non-public sphere (letters, calls), the educational sector (artwork, exhibits), or confrontational tactics in the face-to-face arena (demonstrations, personal talks, store visits).

The law, media, and non-public arenas were most popular among critics. Protesters chose the legal system as an arena mostly in cases of fraud, media in cases of appropriation and misrepresentation, and a non-public strategy in cases of misrepresentation. While critics first used the law and non-public arenas in the 1930s, in the mid-1960s, they also started using media. With few exceptions, confrontational tactics became more prevalent during the early 1990s but always remained exceptional. At the same time, since the late 1980s, criticism in the educational sector has grown significantly as a reaction to the Quincentennial and the growing popularity of Indigeneity (see Figures 34 and 36, appendix).

A comparison of single arenas and targets' reactions indicates that protest targets reacted differently depending on the arena. Putting desirable and neutral reactions into relation with undesirable reactions, protesters received the most positive reactions in the non-public arena (desirable and neutral / undesirable = 1.3 / 1) and most negative reactions in the media (0.9 / 1), law (0.5 / 1) and face-to-face arenas (0.2 / 1) – from the protesters' point of view (see also Figure 33, appendix).¹⁵⁵⁵

Addressees are stakeholders whom protesters approached in a particular arena to achieve their goals, like the protest target itself; a seller of a product; a publisher of an ad; the public; an organization that was supposed to support or carry out the protest; or government officials of various departments (IACB, DOI, FTC, etc.); and tribes. Critics typically chose

¹⁵⁵⁵ Targets responded to confrontational tactics in the face-to-face arena in 60.7 percent of the protest cases with an undesirable reaction (n = 28). In all other arenas the ratio of undesirable reactions was much lower (law: 42.9 percent, n = 191; non-public: 23.2 percent, n = 177; media: 16.8 percent, n = 262), although this result has to be interpreted cautiously as the number of cases for confrontational tactics is significantly smaller than for all other arenas. Protesters could expect most desirable reactions in the law (21.5 percent), the non-public (22.6 percent plus 7.9 percent neutral) and the media arena (3.1 percent plus 12.6 percent neutral), but only 7.1 percent desirable and neutral reactions, respectively, in the face-to-face arena. Arenas by reactions: (desirable reactions in % + neutral reactions in %) / undesirable reactions in %. The result 1.0 means the number of positive and negative reactions was equal. A number smaller than 1.0 means there were more negative than positive reactions. A number higher than 1.0 means there were more positive than negative reactions. The analysis is based on all single arenas (n = 658), not arena combinations (n = 587).

one arena and one addressee, but combinations of two and, in a few cases, more arenas or addressees were common in cases of misrepresentation. Counting every single addressee in all cases, but only once for each case if one was addressed multiple times ($n = 708$), with 43.2 percent, the public was the most frequently addressed interest group, followed by the protest target (31.5 percent), and the government (20.8 percent). The public was the primary addressee in cases of misrepresentation and appropriation, whereas the government was the primary addressee in fraud cases. Protesters contacted targets directly if their objective was misrepresentation or fraud. The government also approached marketers proactively after an initial complaint if they suspected other fraudulent marketing practices within a network (for more details on addressees, see Figure 32, appendix).

8.1 Fighting Fraud

As the diagnostic framing profile for fraud shows (Figure 15), protesters almost exclusively (96.4 percent) used the law frame in fraud cases, with misleading marketing practices and violations of intellectual property rights being the major issues identified. Consequently, protesters mainly sought to apply laws protecting intellectual property and consumers.

Although some sellers of Native American arts and crafts knowingly ignored laws, many were unaware of the IACA and agreed to adjust their marketing practices. In some instances, (re-) sellers themselves were victims of fraud and had to learn how to verify their products' origins.

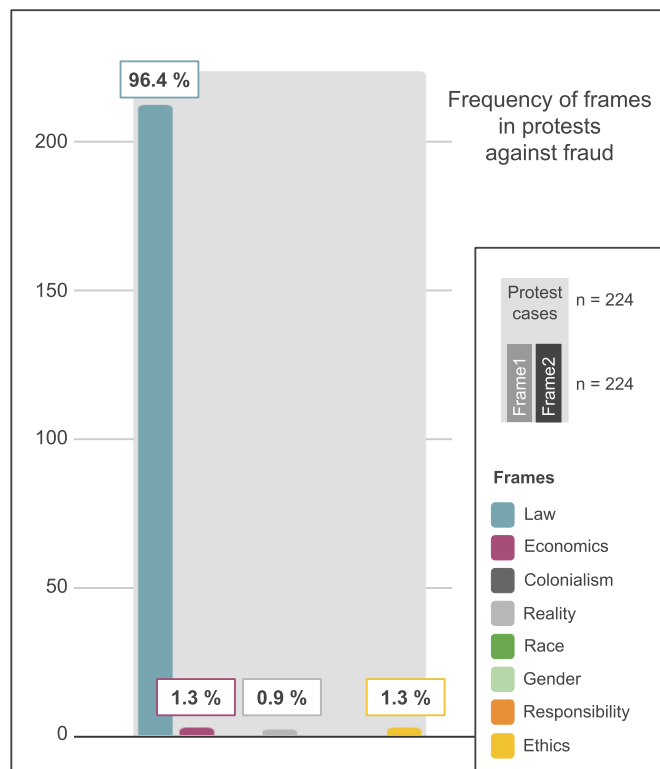


Figure 15: Diagnostic framing profile for fraud.

The legal arena was used mainly for protest against fraudulent marketing practices, and the non-public arena only for general protest. Legal action in cases of supposed fraud included complaints with the IACB, cease and desist letters from the IACB to violators, or lawsuits based on consumer protection laws. Accordingly, protesters most typically used complaint letters to the IACB as a protest medium to notify the Board of specific sellers' marketing practices or the general issue of imitation artwork. Since the late 1990s, NAA has initiated a range of injunctions and claims for damages against supposed IACA violators. Although not always successful, this tactic seemed to have evolved into a kind of business model resulting in several agreements worth millions with corporations like J.C. Penney. Simultaneously, the strategy fueled the greedy casino Indian cliché and could be detrimental to protests concerned with the misrepresentation of Native Americans.

More precisely, in fraud cases, critics mostly applied the IACA, the FTCA, and state laws and added charges based on other laws to enhance the chances of a conviction. Due to the low chances of success for a long time, protesters did not base their complaint on the IACA alone. Instead, they successfully included other charges like violations of the Illinois Consumer Fraud and Deceptive Business Practices Act, the Illinois Uniform Deceptive Business Practices Act (J.C. Penney, Illinois, 1998-99), the Bald and Golden Eagle Protection Act (Wayne Eagleboy, South Dakota, 1999), or mail fraud (Jerry Lee Boose, Michigan, 2002). Ranging from violating federal fraudulent importation, money laundering, wire fraud, and mail fraud laws (Operation Al-Zuni, 2012-21) to charges of conspiracy and violation of the Lacey Act (Hawaiian Accessories, 2013-15), the charges in fraud cases remained manifold. The first IACA case successfully prosecuted in federal court was in collaboration with the NPS and the FBI against Rose Morris (New Mexico, 2007). Other successful prosecutions and settlements based on the IACA and state law followed,¹⁵⁵⁶ including a settlement with Pendleton Woolen Mills (2013-14). In 2018, Ali Manasra became the first person to go to jail for violating the Indian Arts and Crafts Act.

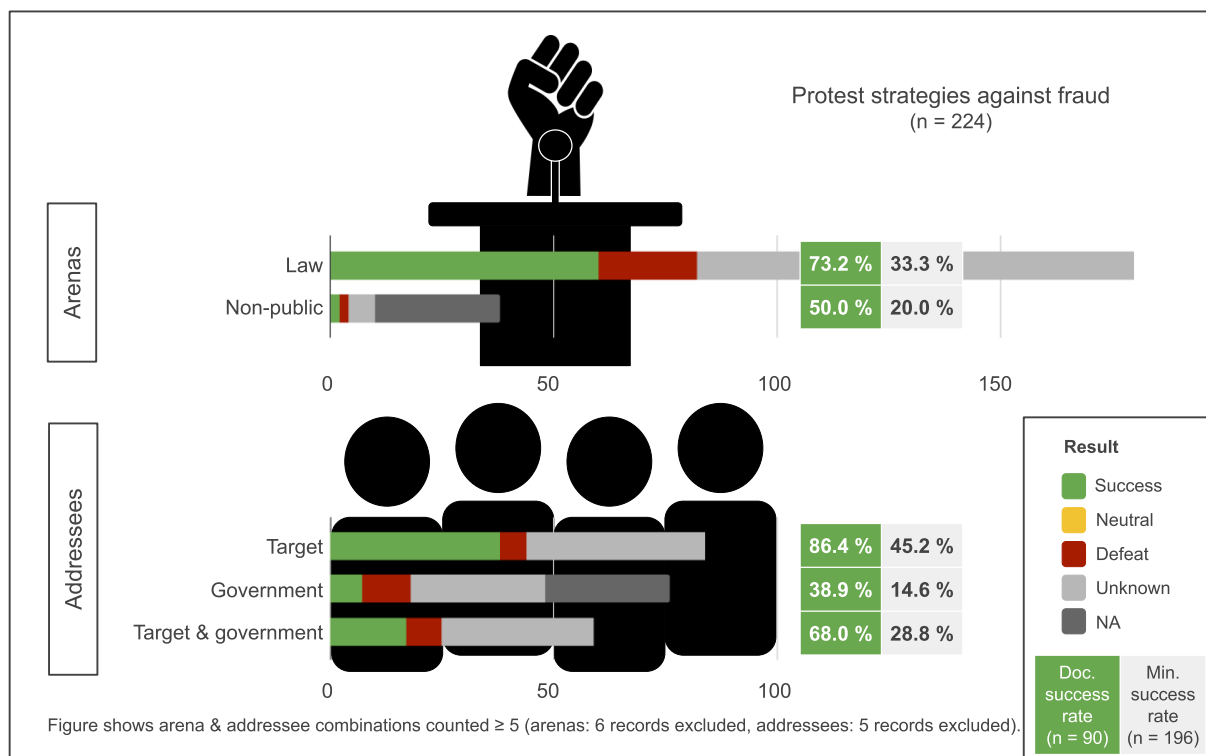


Figure 16: Protest strategies for challenging fraud.

Overall, protests against fraud (n = 224, Figure 16) staged in the legal arena were successful in at least 33.3 percent of the cases (based only on known results, the success rate documented in this study is 73.2 percent). With a minimum success rate of 45.2 percent (or 86.4 percent considering only known results), addressing the supposed offender directly appeared to represent the most successful tactic. When critics turned to the government, they succeeded in at least 14.6 percent of the cases (or 38.9 percent). Although the governmental success rate

¹⁵⁵⁶ See Amro A. Al-Assi, New Mexico, 2004-07; Golden Bear Trading Co., New Mexico, 2009; Santa Fe Indian Jewelry, New Mexico, 2009; Edward Schlieff, Alaska, 2012; Northstar Gift Shop, Alaska, 2014; Diamond Island, Icy Strait, and Gemstone Heaven, Alaska, 2014-16; Alaskan Heritage, Alaska, 2014-16.

seems significantly lower, the IACB also addressed targets directly in follow-up investigations beyond the original complaint, which Figure 16 visualizes in the group of target-only addressees. Many sellers voluntarily agreed to comply with laws when contacted by the Board. Notably, not every complaint was legally legitimate, as some marketing practices seemed inappropriate to critics but did not violate any law. According to the GAO report, of 649 complaints to the IACB, only 23 percent were violations of the IACA (148) or state law (2). For 61 percent of the complaints (395), the Board “identified no violation of the federal law or could not make a determination” since particularly “anonymous complaints sometimes do not provide sufficient information to identify a violation.”¹⁵⁵⁷

In cases of fraud, the most practical approach for protesters without financial basis was through direct contact with advertisers and/or a complaint to the IACB because lawsuits were costly and time-consuming. For this purpose, the IACB offers multiple ways to report cases of violations, including submitting an online form, writing or faxing a complaint to the Washington, DC, office, or calling the office via its toll-free complaint line.¹⁵⁵⁸ If protesters prefer to contact a seller directly before involving the government, the Board recommends providing information by sending links to the IACB’s online materials, for instance. As violations of the Indian Arts and Crafts Act appeared more serious since NAA and later the Board successfully applied the law, citing cases of convicted violators supports the complaint’s significance.

8.2 Fighting Appropriation and Misrepresentation

Appropriation

The concerns protesters raised most frequently in opposition to the appropriation of Indigenous names, symbols, or designs (Figure 17) were the lack of ethics in marketing (62.3 percent), the economic motivation behind such practices (46.4 percent), contradictions with reality (46.4 percent), that marketing practices were or should be legally prohibited (37.7 percent), and marketers’ racism (32.2 percent). Colonialism (5.8 percent) and sexism (2.9 percent) played a less significant role in cases of appropriation, although the framing timeline demonstrates that their relevance has risen since the 1990s.

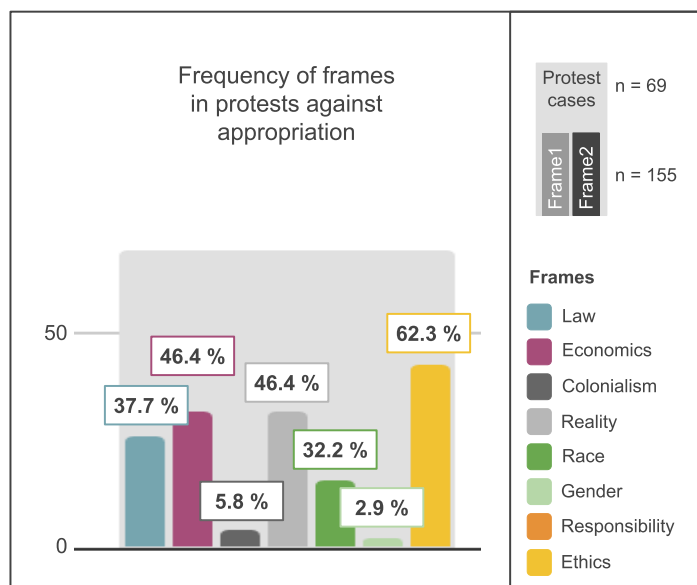


Figure 17: Diagnostic framing profile for appropriation.

¹⁵⁵⁷ U.S. Government Accountability Office, “Indian Arts and Crafts,” 14.

¹⁵⁵⁸ See U.S. Department of the Interior, Indian Arts and Crafts Board, “Should I Report a Potential Violation?” accessed December 5, 2020, <https://www.doi.gov/iacb/should-i-report-potential-violation>; toll-free complaint line: (888) ART-FAKE.

Intellectual property and authorization as part of the **law frame** were primary legal concerns regarding the appropriation of Indigenous cultural elements for marketing purposes. Although appropriating Native American culture was not a legal category in most cases, protesters argued the appropriation and presentation of Indian imagery in marketing was misleading as it might lure consumers into believing there was a connection between Native tribes or institutions and the product. For instance, the Denver Bison Co. (1995) and other buffalo companies allegedly used Indian imagery to “lure the customer into thinking that it is an authentic product”¹⁵⁵⁹ made by Native Americans. In the Hornell case (1992-2004), critics feared that, as a result of ethnic targeting, “American Indians might believe falsely that the estate of Crazy Horse endorses Crazy Horse Malt Liquor or benefits from its sale.”¹⁵⁶⁰

Although authorization was an issue in cases of fraud and misrepresentation in a few instances, protesters primarily denounced the use of Indian cultural or individual elements without permission in cases of appropriation. From family members who claimed power over their ancestors’ names, images (Comanche Inn, 1969; Hornell, 1992-2004), and designs that did not qualify as intellectual property (KTZ, November 2015¹⁵⁶¹) to Native individuals and tribes asserting their intellectual property (KTZ, February 2015¹⁵⁶²) and trademark rights (Forever 21, 2011; Urban Outfitters, 2011-16), Native Americans criticized the companies’ “apparent distaste for paying licensing fees”¹⁵⁶³ or sharing their profits. As a result, the “use of Indian names and imagery without consent of the relevant Indian nation diminishes both critical opportunities for economic development and, as importantly, for tribes to represent themselves consistent with cultural norms and traditions, both ancient and contemporary.”¹⁵⁶⁴

The **economics frame** played a significant role in the criticism of appropriation since marketers, as part of the capitalist system, used Indigeneity to gain profits without sharing and giving back to Native communities and individuals, as protesters contended. Although profit-making was one driving force in the history of colonialism, protesters did not frequently use the colonialism frame in the context of appropriation. Instead, they used the **race frame** in one-third of the appropriation cases by arguing that the practice of cultural appropriation in marketing was racist because it often took the form of playing Indian or redface. Redface involved “selectively adopting a hodgepodge of items associated with a culture that is not yours, without an acknowledgment of the social and historical context” and was part of the structural

¹⁵⁵⁹ Mark Heckert, ITBC director, quoted in Melmer, “Denver company accused of exploitation,” A1.

¹⁵⁶⁰ Metz and Thee, “Brewers Intoxicated With Racist Imagery,” 51.

¹⁵⁶¹ “The U.K.-based fashion label KTZ’s fall 2015 men’s collection includes a number of garments based on traditional Inuit designs and a sweater that appears to be a replica of a shaman’s jacket, which a Nunavut woman says was used without her family’s consent. . . . ‘This is my great-grandfather’s sacred garment copied right down to the tee,’” said Salome Awa. The parka “has been the subject of study for generations and is considered by experts as the ‘most unique garment known to have been created in the Canadian Arctic.’”

Sima S. Zerehi, “KTZ fashion under fire for using Inuit design without family’s consent,” *CBC* [CA], November 26, 2015, accessed May 8, 2020, <https://www.cbc.ca/news/canada/north/ktz-fashion-inuit-design-1.3337047>; Sima S. Zerehi, “Inuit shaman parka ‘copied’ by KTZ design well-studied by anthropologists,” *CBC* [CA], December 2, 2015, accessed May 8, 2020, <https://www.cbc.ca/news/canada/north/inuit-shaman-parka-design-history-1.3345968>.

¹⁵⁶² See Adrienne Keene, “New York Fashion Week Designer steals from Northern Cheyenne/Crow artist Bethany Yellowtail,” *Native Appropriations*, February 18, 2015, accessed May 8, 2020, <http://nativeappropriations.com/2015/02/new-york-fashion-week-designer-steals-from-crow-artist-bethany-yellowtail.html>.

¹⁵⁶³ Jenna Sauers, “Forever 21 Didn’t Get The Navajo Memo,” *Jezebel*, November 3, 2011, accessed October 25, 2016, <http://jezebel.com/5856106/forever-21-didnt-get-the-navajo-memo>.

¹⁵⁶⁴ Kristen Carpenter, professor of law at the University of Colorado who specialized in Native American property rights, quoted in Siek, “Navajo Nation Sues Urban Outfitters.”

racism toward Native Americans and a “direct intrusion on cultural traditions.”¹⁵⁶⁵ The reality frame, which came up in almost half of the appropriation cases, provided deeper insights into how the appropriation of Indigenous cultural elements was racist and offensive.

According to the **reality frame**, in “almost all instances when corporate America starts looking at Native people, it’s usually in some very superficial, stereotypical kind of way.”¹⁵⁶⁶ While the single elements taken by marketers were sometimes historically accurate, protesters criticized the recontextualization of cultural elements through combinations of popular symbols, designs, or items from different tribal cultures. This practice was particularly offensive when the elements were inauthentic replicas of cultural elements, as Sasha Brown noted in light of Urban Outfitters’ “Plastic dreamcatchers wrapped in pleather hung next to an indistinguishable mass of artificial feather jewelry and hyper sexualized clothing featuring an abundance of suede, fringe and inauthentic tribal patterns.”¹⁵⁶⁷ In addition, the recontextualization of cultural elements like bonnets, turquoise, and fringe dresses with a leopard design, as presented by Victoria’s Secret in 2014, evoked the generic ‘savage’ theme. The Pyramid Collection’s combination of authentic and inauthentic symbols and beliefs from different tribal and non-tribal cultures resulted in a “mish-mash of spiritual beliefs thrown in with occult study.”¹⁵⁶⁸ Since the various forms of combination and recontextualization produced new meanings that challenged original meanings, protesters essentially advocated a fair use doctrine to protect the original meanings of Indigenous cultural elements.

Furthermore, the reality frame highlighted the socialization effect of marketing practices on Indigenous consumers. Many Natives argued the impact was much stronger if Indigenous consumers believed a product was connected with or endorsed by a tribe or renowned Indigenous leader like Crazy Horse or if young Natives identified with peoples and stories companies appropriated and recontextualized for marketing purposes. For instance, Seth Big Crow argued against Hornell Brewing that

Consumers become accustomed to stereotypical marketing campaigns, and the ploy here is to romanticize the life and death struggle of a Lakota Warrior, as a macho-myth appealing primarily to young urban men. The issue is CONSUMER IDENTITY, and the message is DRINK THIS PRODUCT AND BECOME A ‘CRAZY HORSE’. In reality, this strategy promotes both stereotyping and alcohol abuse. Our young people can be particularly vulnerable to this romanticized type of advertising, ‘buying into’ myths that contribute to the very stereotypes which damage our self-perceptions, our communities and our future generations.¹⁵⁶⁹

In consequence, such marketing practices impacted the health of Native Americans as they contributed to alcoholism, like in this case. Pointing to the historic role alcohol played in Indian-White relations, Alex Ewen, director of the Solidarity Foundation, interpreted Hornell’s marketing practice targeting Native Americans, as the pricing and advertising suggested, as

¹⁵⁶⁵ S.E. Smith, “Paul Frank Hosts Racist ‘Dreamcatchin’ Party, Surprised When People Protest,” *xoJane*, September 10, 2012, accessed July 28, 2016, <http://www.xojane.com/issues/paul-frank-hosts-racist-dreamcatchin-party-surprised-when-people-protest>.

¹⁵⁶⁶ Robert O. Porter, Seneca, quoted in Rob Capriccioso, “Native Nike footwear raises concerns, despite healthy intentions,” *News from Indian Country*, November 26, 2007, 6.

¹⁵⁶⁷ Brown, “Open Letter to Urban Outfitters.”

¹⁵⁶⁸ “Get ‘em while their hot: Trail of Tears earrings,” *Indian Country Today*, July 13, 1994, ProQuest 362702462.

¹⁵⁶⁹ Big Crow Sr., “Exploitation, stereotype of historical hero Crazy Horse,” 3.

“cultural smallpox designed to break down Latino, African-American, Caribbean and Native American cultures because they’re in the way.”¹⁵⁷⁰ According to this understanding, companies continued the historical process of colonization and cultural extermination of Native peoples through their marketing practices.

Using Native names, symbols, and designs in connection with certain products like alcohol or in a sexualized context was offensive to most protesters. With a frequency of more than 60 percent, the **ethics frame** was the most-used frame to voice criticism of cultural appropriation. AIM member Corine Fairbanks found the “cultural prostitution” of Native Americans in marketing “socially irresponsible” and denounced that “the corporations do not have a sense of moral responsibility.”¹⁵⁷¹ In light of the mascot controversy, Tim Giago pointed out that the appropriation of Indigenous culture was more than an issue of racism but also affected Native American dignity as “They are direct attacks upon the spirituality (religion) of the Indian people.”¹⁵⁷² Since eagle feathers, pipes, and the way Native peoples painted faces were sacred, he demanded that the dominant society “Stop insulting the spirituality and the traditional beliefs of the Indian people by making us mascots for athletic teams.”¹⁵⁷³

Media representations affected Non-Natives in a way that they could not recognize Native Americans as real people with real problems. Cheyenne artist Hachivi Edgar Heap of Birds emphasized the trivialization of Native peoples and cultures through appropriation because Native Americans were “overpowered and manipulated” in such a way as a “mockery is made of us by reducing our tribal names and images to the level of insulting sports team mascots [and] other commercial products produced by the dominant culture.” To Heap of Birds, this was “particularly insulting when one considers the great lack of attention given to real Indian concerns.”¹⁵⁷⁴

Ethnic studies professor Brian Baker explained this problem of reducing distinct peoples to a generic ideal by the example of a fruit crate label for California pears. Instead of depicting a Patwin, native to the Suisun Valley where the pears were grown, the label showed a generic ‘Indian’ wearing a bonnet and teepees in the background. As an informational sign in the 2007 exhibit “Americana Indian” analyzed, “the Americana Indian is represented and remembered, while the Patwin, although indigenous to this territory, are effectively ignored and erased from American memory and imagination.”¹⁵⁷⁵ For Native Americans, this kind of attention paid to Indians by White people meant that “They might have a football team named after Indians, a Pontiac car, Oneida flatware, or a Winnebago camper, but they’d never hire a Winnebago to build a camper, although that kind of attention to the living people would be helpful,”¹⁵⁷⁶ as Heap of Birds noticed.

¹⁵⁷⁰ Alex Ewen, Director, Solidarity Foundation, quoted in Carrillo, “Native American leader urges boycott of Hornell Brewing Co.,” 6.

¹⁵⁷¹ Corine Fairbanks, AIM, quoted in Lee, “Hooters Launches Culturally-Offensive Marketing Campaign.”

¹⁵⁷² Tim Giago, “Mascots, Spirituality, and Insensitivity (1991),” in *First Peoples: A Documentary Survey of American Indian History*, ed. Colin Calloway (Boston/New York: Bedford/St. Martins, 2012), 669.

¹⁵⁷³ *Ibid.*, 669.

¹⁵⁷⁴ Hachivi Edgar Heap of Birds, quoted in Suzan Shown Harjo, “Gallery Exhibition: Identity Perspectives by Native Artists,” *Native Americas* 19, no. 1 (June 30, 2002), 72.

¹⁵⁷⁵ Exhibit sign, quoted in Bill Lindelof, “CSUS ad exhibit seeks an end to Indian stereotypes,” *McClatchy – Tribune Business News*, October 8, 2007, ProQuest 464014588.

¹⁵⁷⁶ Hachivi Edgar Heap of Birds, quoted in “Shaking Native stereotypes,” clipping, 1987; Heap of Birds, Edgar; Native Artists Files; IAIA Archives, Santa Fe, NM.

Since protesters had no legal means to challenge appropriation, except those cases covered by trademark or copyright law, ethical arguments dominated, that is, the lack of ethics. Critics sought to convince stakeholders of companies like Liz Claiborne (1998-2001) that business and ethics were not necessarily mutually exclusive, arguing that “We believe that if company representatives choose to make an ethical difference they will enhance their company’s reputation and garner greater public respect and customer loyalty.”¹⁵⁷⁷ To challenge the practice of cultural appropriation, groups like the ICCR representing religious investors have been challenging corporations on issues such as workplace inequality for minorities and women or racist advertising images, among many others, for 30 years.¹⁵⁷⁸ In light of multiple companies using Crazy Horse’s name, the ICCR took the battle against sports mascots and logos to corporations, and any “corporation that has exploited Native people, land, resources . . . or sacred sites, can be approached and pressured by shareholder activists.”¹⁵⁷⁹

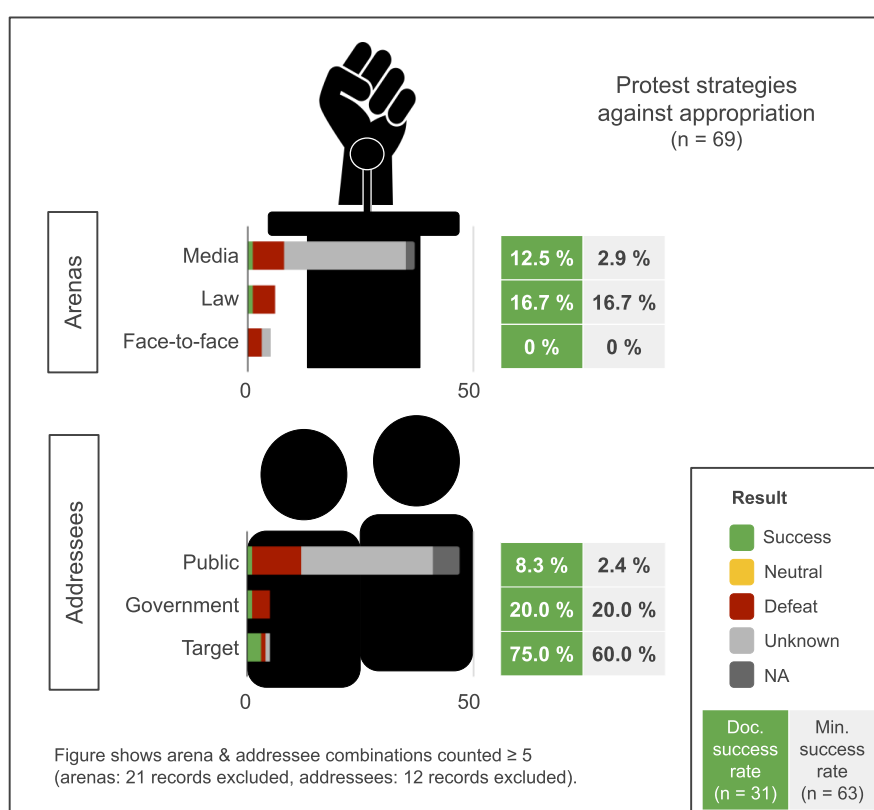


Figure 18: Protest strategies for challenging appropriation.

While critics primarily chose the legal arena for fraud-related complaints, the media was the most common arena for appropriation allegations (Figure 18). Since the legal system did not provide a basis to challenge cultural appropriation, the legal arena was used only if protesters believed they could apply laws to the specific form of appropriation. As the Crazy Horse Malt Liquor case showed, the government as addressee supported protesters and banned certain

¹⁵⁷⁷ Father Gordon Judd, “A Public Letter to Liz Claiborne & JC Penney Company,” reposted in Robert Schmidt, “Stereotype of the Month Entry (12/9/00),” *Blue Corn Comics*, December 9, 2000, accessed July 2016, <http://www.bluecorncomics.com/stype0c3.htm>.

¹⁵⁷⁸ Cf. Gelvin Stevenson, “Investors battle anti-Native actions by corporations,” *News from Indian Country*, January 31, 2000, 12A.

¹⁵⁷⁹ *Ibid.*, 12A.

marketing practices, although such bans were overturned later. Confrontational tactics were rare and little promising, but addressing the supposed offender directly appeared to be the most successful strategy, with a minimum success rate of 60.0 percent (or 75.0 percent of known results). Addressing the public to protest against acts of appropriation helped sensitize and educate society, but it did not generally move offenders to adjust their marketing practices. In only 2.4 percent of publicity-based protests, critics achieved a desirable result (or 8.3 percent of known results). Critics used diverse media types to protest appropriation, ranging from official hearings, public talks, and press information to demonstrations since the early 1990s. With the rise of online media, social media became a major medium to raise criticism publicly (see Figure 36, appendix).

Misrepresentation

When criticizing misrepresentation (Figure 19), protesters most frequently raised reality-based arguments (71.4 percent) or pointed to unethical marketing practices (45.0 percent) or racist marketing practices (30.3 percent). Less frequently, critics denounced marketers' economic motivation (14.7 percent) or the colonial legacy inherent in these practices (7.1 percent). In a few cases, protesters used legal arguments (6.7 percent) and sought legal means to challenge misrepresentation, sometimes in combination with appropriation. They used civil rights law, copyright, the Lanham Act, Congressional laws, treaty rights, or tribal law in very few instances. Criticism of sexist marketing representation as part of the gender frame (6.3 percent) started rising since the millennium, often in combination with claims of racism.

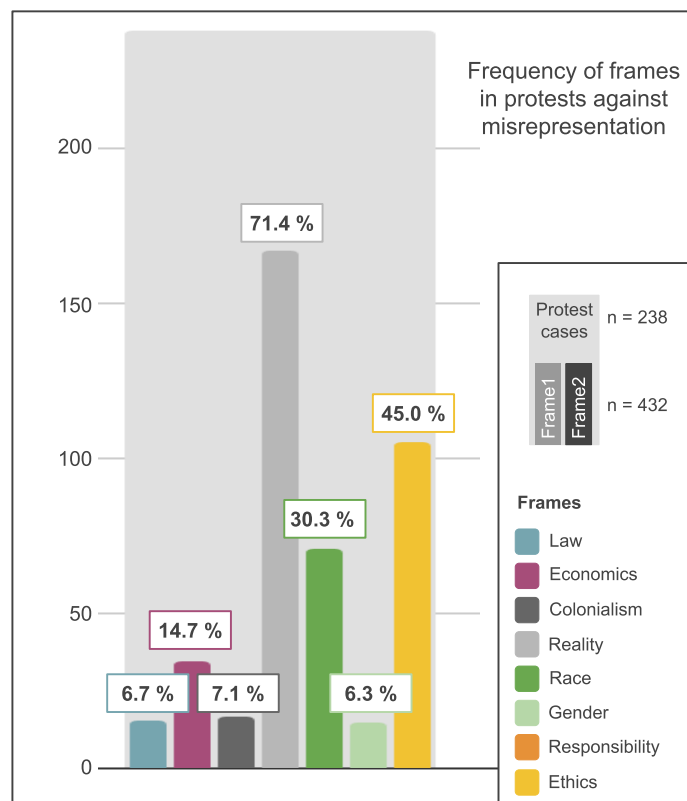


Figure 19: Diagnostic framing profile for misrepresentation.

As Milton Bluehouse noted after seeing commercial billboards along I-40 in New Mexico and Arizona depicting stereotypical caricatures of Native Americans, **racism** was the basis for commercial exploitation, while racist advertisements, at the same time, supported the institutionalization of racism.¹⁵⁸⁰ Similarly, James Branum criticized that the subtle racism inherent in marketing practices and representations was based on the maxim “that we don’t count, that you can display our skulls in museums and put our skulls on funny t-shirts, that you can take our sacred religious objects and use them for satirical purposes. You can even

¹⁵⁸⁰ Milton Bluehouse, “Subtle racism: Border town businesses stereotype Native Americans,” *Navajo Times*, February 1, 2001, A5.

make funny mascots out of us and use them to name your sporting teams”¹⁵⁸¹ (War Paint Clothing Co., 2010). Marketing practices like Nike’s Huarache ad reinforced racist stereotypes Native Americans had been fighting for years (Nike, 1992).¹⁵⁸² In the U.S., the frequent use of Indigeneity for marketing purposes was due to “racial and other prejudices” and a “lack of concern for the American Indian,” Leo Vocu of the NCAI explained. Although advertisers regularly argued that “no harm was intended,” the “harm has been done over the years via mass media and needs to be stopped”¹⁵⁸³ (Hallmark Cards, 1971).

Marketing practices as a result of **colonialism** threatened Indigenous identities by promoting colonial maxims, Adrienne Keene argued. In response to Ecco’s claim, their product line bearing skulls with Native headdresses was “highlighting the melting pot of cultures that now make up our wonderful culture,” Keene explained that “Melting pot requires assimilation. Melting pot requires that cultures give up their individual characteristics for the benefit of a broader unifying ‘culture’ . . . , which is how colonialism works. We’ve had plenty of that assimilation stuff, and it didn’t work out too well.” Since Ecco represented “dead Indians” instead of highlighting “current contributions of Native peoples,” Keene assumed “Native people aren’t included in this ‘wonderful culture’ you speak of”¹⁵⁸⁴ (Ecco, 2012). Ecco’s or GAP’s (2012) marketing practices were seen as both result and promoter of the ‘Manifest Destiny’ doctrine because such products served “to normalize oppression”¹⁵⁸⁵ and contributed to the “systematic desensitization”¹⁵⁸⁶ of American peoples.

As part of the **reality frame** and in response to the prevalence of stereotypical representations of Native Americans in marketing, protesters in almost all misrepresentation cases exposed the inaccuracy of a representation. From deconstructing cultural myths and stereotypes of Native Americans to explaining historical incidents referenced in marketing materials, in 65.5 percent (156 cases) of all misrepresentation cases and 77.8 percent (42 cases) of all cases involving both misrepresentation and appropriation, critics sought to educate marketers about the accurate facts behind their marketing content. Robert Schmidt explained that *TeaPartySwag.com*’s representation of the historical Boston Tea Party was inaccurate since the “colonial protesters probably dressed as Mohawk Indians,” and they “wouldn’t have dressed as stereotypical Plains Indians because they didn’t know such Indians existed.”¹⁵⁸⁷ In his opinion, the image was also inaccurate because it represented an actual Native American

¹⁵⁸¹ James M. Branum, “Discussion re: T-shirts sold by War Paint Clothing Co. of Oklahoma City,” *JMBzine*, May 17, 2010, accessed January 7, 2019, <https://jmbx.wordpress.com/2010/05/15/a-call-to-action-response-to-racist-shirts-sold-by-war-paint-clothing-co-of-oklahoma-city/>.

¹⁵⁸² Cf. Manuel Pino, law professor, School of Justice, Arizona State University, quoted in Taliman, “Nike Agrees to discontinue racist advertisement,” 6.

¹⁵⁸³ Leo W. Vocu, Executive Director, NCAI, letter to David Hall, President, Hallmark Cards, Inc., Washington, DC, February 10, 1971; Media Surveillance; Box 255; Records of the National Congress of American Indians, 1933-1990, NMAI.AC.010; NMAI Archive Center, Smithsonian Institution, Suitland, MD.

¹⁵⁸⁴ Adrienne Keene, “Ecco ‘Weekend Warrior’ Update: ‘the intentions of the Weekend Warrior line were never to be racist, but to be fun’,” *Native Appropriations*, July 30, 2012, accessed November 1, 2016, <http://nativeappropriations.com/2012/07/ecco-weekend-warrior-update-the-intentions-of-the-weekend-warrior-line-were-never-to-be-racist-but-to-be-fun.html>.

¹⁵⁸⁵ Dorit I, “GAP: Discontinue the ‘MANIFEST DESTINY’ tshirt and issue a formal apology,” Change.org petition, 2012, accessed July 4, 2016, <https://www.change.org/p/gap-discontinue-the-manifest-destiny-t-shirt-and-issue-a-formal-apology>.

¹⁵⁸⁶ Bluehouse, “Subtle racism,” A5.

¹⁵⁸⁷ Robert Schmidt, “Indian on Tea Party t-shirt,” *Newspaper Rock*, May 15, 2010, accessed October 28, 2016, <http://newspaperrock.bluecorncomics.com/2010/05/indian-on-tea-party-t-shirt.html>.

instead of a White man dressed as an Indian, which falsely suggested that Native Americans supported the Tea Party movement (*TeaPartySwag.com*, 2010).

Furthermore, critics ascribed to marketing myths the power of self-fulfilling prophecies that had a socializing effect. Relating to food branding, Keene reasoned, “for many people, these are the only representations of American Indians that they see.” How “is a small child supposed to know that all Indians don’t say ‘how’ and wear feathered headdresses everyday, when every morning they are putting Land O’Lakes butter and Sue Bee Honey on their squ*w bread?”¹⁵⁸⁸ This socializing process affected both Native and non-Native children alike, whom marketing imagery helped “establish an inaccurate and inappropriate image of themselves and others”¹⁵⁸⁹ (RAX Restaurants, 1988).

The effect of such misrepresentations on Indigenous identity building and self-perception was just as crucial as its influence on Non-Natives’ perceptions and expectations “because it is that image which looms large as non-Indians decide the fate of Indian people.”¹⁵⁹⁰ Part of the reality created by media imagery was the direct and indirect effects of such representations on Native American individuals and communities. With regards to the media awareness campaign in 1969, NCAI Executive Director John Belindo explained that “false derogatory, and harmful stereotypes . . . have resulted in real present-day socioeconomic handicaps and loss of self-esteem among members of the Indian population.”¹⁵⁹¹

Critics regularly emphasized the offensive nature of Indigenous marketing representations through the **ethics frame** (insult). While marketers frequently defended their practices as fun, Belindo saw “nothing humorous about this highly offensive document [an “Honorary Injun Chief” certificate], which manages in a short paragraph to ridicule Indian names, customs, and literacy, while perpetuating degrading, false stereotypes of the American Indian”¹⁵⁹² (Petley Studios, 1969). Navajo children’s reaction to a riddle wrapped in a Nestlé-Beich candy reading “Why were the Indians the first in North America? Because they had reservations.” demonstrated its emotional effect on Natives since the children “viewed it as a personal attack.” As their teacher explained, “It’s rude, It’s not a funny joke. Native Americans did not ask to be put on reservations”¹⁵⁹³ (Nestlé-Beich, 1992).

In 2010, the issue of ethnic joking was still pervasive enough that the Michigan Department of Civil Rights published a December holiday shopping reminder asking retailers and consumers to boycott products that displayed offensive jokes:

¹⁵⁸⁸ Adrienne Keene, “I eat stereotypes like you for breakfast,” *Native Appropriations*, July 24, 2012, accessed October 30, 2016, <http://nativeappropriations.com/2012/07/i-eat-stereotypes-like-you-for-breakfast.html>.

¹⁵⁸⁹ Twila Souers, Coordinator, Natives Program, 4J Education Center, letter to Larry Ritter, President RAX Restaurants, Inc., Eugene, Oregon, November 9, 1988; Cultural Concerns [II]; Box 181; Records of the National Congress of American Indians, 1933-1990, NMAI.AC.010; NMAI Archive Center, Smithsonian Institution, Suitland, MD.

¹⁵⁹⁰ Rennard Strickland, *Tonto’s Revenge: Reflections on American Indian Culture and Policy* (Albuquerque: University of New Mexico Press, 1997), 18.

¹⁵⁹¹ John Belindo, Executive Director, NCAI, letter to Petley Studios, Inc., Washington, DC, July 8, 1969; Media Surveillance - Public Awareness Correspondence [1 of 2]; Box 255; Records of the National Congress of American Indians, 1933-1990, NMAI.AC.010; NMAI Archive Center, Smithsonian Institution, Suitland, MD. Hereafter cited as Belindo to Petley Studios, July 8, 1969; Public Awareness Corresp. [1 of 2]; Box 255; NCAI Records; NMAI Archive Center.

¹⁵⁹² Ibid.

¹⁵⁹³ “Nestle-Beich wrapper target of Indian protest,” *Pantagraph*, April 3, 1992, A1.

The Michigan Department of Civil Rights reminds both retailers and shoppers that what may be funny to one person, can be offensive to another. We ask that companies refrain from selling, and that shoppers refrain from buying such items. Of particular concern are items of clothing emblazoned with messages intended to be fun, that are in fact no more than bad jokes told at the expense of others.

We ask that anyone who has already bought such an item for themselves, or who receives one as a gift, consider the effect it will have on others before wearing it in public.

One particular line of products being promoted this season is the 'My Indian name is...' t-shirts and related items. While such a shirt could be worn with pride by an American Indian who has been given such a name, this clearly is not the intent of those marketing these items. Companies are suggesting such 'Indian' names as 'runs with beer,' 'drinks like fish,' 'chief of remote,' and 'bets on horse.' At best, this trivializes a proud tradition of America's Native peoples. In many instances it also promotes inaccurate and unacceptable stereotypes.

... 'Humor' that denigrates or maligns people has no place in society.

... No considerate person would promote or purchase such items for wear in public.

The Michigan Department of Civil Rights simply asks that, in this season of peace, joy, and goodwill, everyone take care to ensure that their holiday cheer is not achieved at the expense of others. After all, the spirit of the season demands no less.¹⁵⁹⁴

While the intent of ethnic joking was obvious in many cases, Native Americans defined offensive mockery in a broader sense, including the disrespectful use of Indigenous culture for commercial purposes. Critics contrasted that lack of respect by pointing to the history of cultural assimilation and oppression. Navajo Nation spokesman Erny Zah noted, "We have gone through the atrocities to survive and ensure our way of life continues. . . . Any mockery, whether it's Halloween, Victoria's Secret they are spitting on us. They are spitting in our culture, and it's upsetting"¹⁵⁹⁵ (Victoria's Secret, 2012).

As the prevalence of the ethics frame suggests, protesters identified a lack of moral responsibility and business ethics, particularly toward ethnic minorities, as a significant issue in business and marketing practices, respectively. Protesting a Philco-Ford commercial that used western scenes showing Indians chasing a woman on horseback, Bobo Dean wrote to the company's president Robert E. Hunter that he found it "truly shocking that at this late date an allegedly responsible business corporation, which is actually receiving federal funds to train Indian Americans, should feed the fires of inter-ethnic bigotry for commercial gain"¹⁵⁹⁶ (Philco-Ford, 1969).

¹⁵⁹⁴ Michigan Department of Civil Rights, holiday shopping reminder, quoted in Robert Schmidt, "Michigan opposes 'Indian name' t-shirts," *Newspaper Rock*, December 15, 2010, accessed October 22, 2016, <http://newspaperrock.bluecorncomics.com/2010/12/michigan-opposes-indian-name-t-shirts.html>.

¹⁵⁹⁵ Erny Zah, spokesman for the Navajo Nation, quoted in Associated Press, "Victoria's Secret says sorry for Native American insult," *The New Zealand Herald* [NZ], November 13, 2012, Points of View Reference Center HOB395686276812.

¹⁵⁹⁶ Bobo Dean, AAIA, letter to Robert E. Hunter, President, Philco-Ford Corp., Washington, DC, March 28, 1969; Media Surveillance - Public Awareness Correspondence [2 of 2]; Box 255; Records of the National Congress of American Indians, 1933-1990, NMAI.AC.010; NMAI Archive Center, Smithsonian Institution, Suitland, MD. Hereafter cited as Dean to Hunter, March 28, 1969; Public Awareness Corresp. [2 of 2]; Box 255; NCAI Records; NMAI Archive Center.

The various frames were highly complex, covered a broad range of facets of the fundamental issues, and changed over time. The timeline of protest frames (Figure 35, appendix) shows that the law frame was the earliest and, until the early 1960s, the only frame used, which correlates with fraud as the primary issue at that time. During the civil rights movement in the late 1960s, the ethics and reality frames peaked at the same time when the race frame appeared for the first time. With one exception, the colonialism frame first appeared in the early 1990s when Native Americans started sensitizing the American public regarding U.S. colonial history and its effects on modern Native Americans.

While protesters established the race frame to address issues of misrepresentation and appropriation during the late 1960s, they did not use the gender frame until the millennium. In the 2010s, the race, gender, and colonialism frames merged into the concept of White female hegemony that identified White women as significant contributors to sexual violence against Native women. In the meantime, criticism of Indigenous marketing practices demonstrated that protesters opposed any marketing representation they deemed inappropriate regardless of the marketer's ethnicity. Some critics viewed inappropriate Indigenous marketing practices and Natives who contributed as models or actors as the result of a colonized mind rather than Native self-expression.

In cases of misrepresentation (Figure 20), protesters preferred the media, legal, and non-public arenas. Most protests were limited to one arena, but with a minimum success rate of 56.7 percent (77.3 percent considering only known cases), the most successful strategy was the combination of protest actions in the media and the non-public arenas. The media arena combined with confrontational face-to-face actions such as demonstrations or meetings were rare but effective (45.5 percent minimum or 50.0 percent documented success rate), as far as the small database allows a comparative statement. Accordingly, minimum success chances were 53.3 percent (or 64.0 percent) when addressing both the advertiser and the public.

In most cases, protesters' criticism in the media arena resulted in a minimum success rate of 17.9 percent, although the documented success rate of known results was as high as 63.3 percent. The significant difference was due to the high number of unknown results since targets of protest may not have known of the criticism or their response was not available. Addressing the public led to a desirable result in at least 20.4 percent of the cases (or 63.9 percent). Protests in the educational arena, which were excluded from the success statistics, were also directed at the public and likely impacted the public perception of Indigenous misrepresentation, but this effect is hardly quantifiable. Artwork and museum exhibits have been popular protest media since the late 1980s to educate consumers and U.S. society, and contributed to the long-term effects of marketing protest. With a minimum success rate of 25.0 percent (or 46.7 percent), the non-public arena was less promising than most other arenas but still a useful first step because protesters could still add publicity-oriented actions if an advertiser did not react as expected. Contacting only the offender led to a desirable result in at least 19.0 percent of the cases (or 33.3 percent).

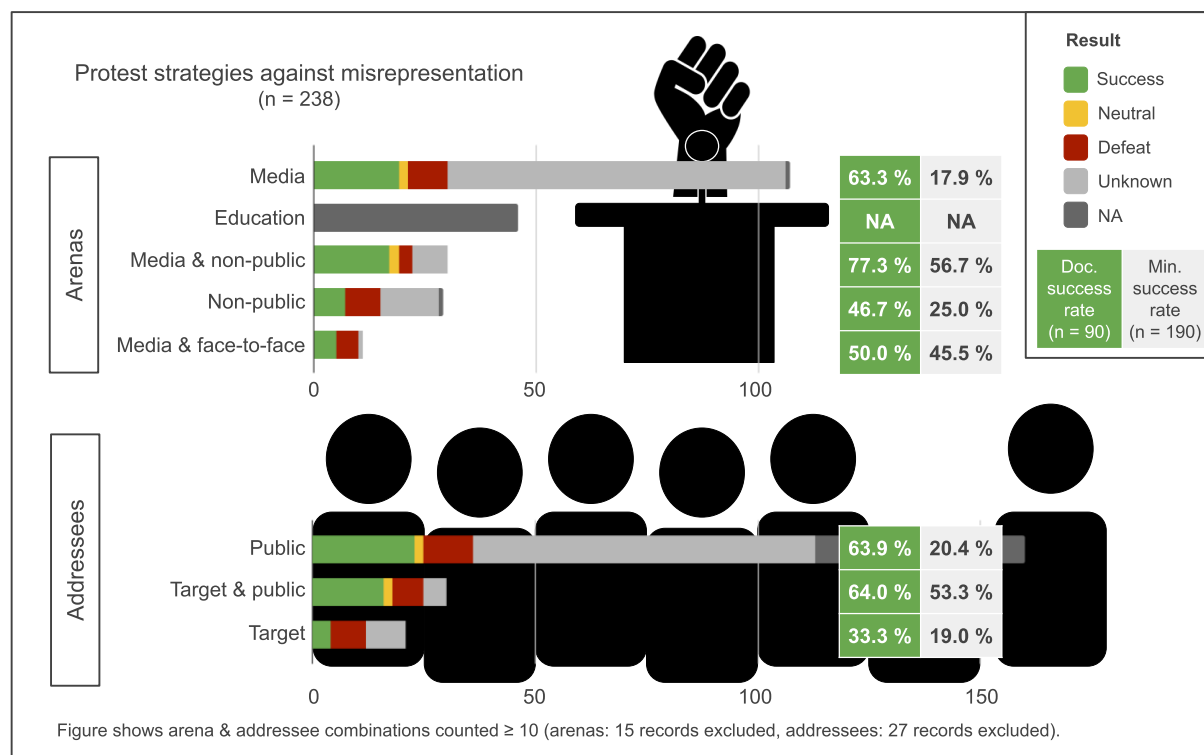


Figure 20: Protest strategies for challenging misrepresentation.

When a stakeholder thought a product was offensive or marketed inappropriately, critics addressed the producer or marketer directly but also publishers of advertising materials or sellers of products to convince them to drop marketing imagery or products through soliciting understanding. Some critics called stores and bars, others wrote complaint letters to larger companies, and some chose face-to-face confrontations at the place where items were sold.

During the civil rights era, organizations also started using media through press information or interviews. Particularly during the 1960s and 70s, critics sent copies of such protest letters to institutions like the NCAI or AAIA, which had previously launched media campaigns on the issue or similar protests, or to institutions with a subject-specific interest in the matter to gain support. For media support, critics also shared their protest with journalists and editors who reported on their activism to the public. In some cases, protesters informed the media or chose other public forms of protest after their non-public complaint was unsuccessful. In other cases, protesters went public from the beginning and organized demonstrations or walks. Press information remained an occasionally used strategy to inform the public.

Although letters remained an important protest medium, social media has become the most widely used medium since the millennium, mainly in protests against misrepresentation. In case of negative or no responses, critics could stage their own campaign online and provide pictures of offensive marketing materials or protest actions, quotes and expert opinions, or other materials such as related statistics, company reactions, or links to related protests, which was previously reserved for mainstream media outlets. Social media activists like Keene connected more easily and were able to build large readerships, but, as with local protests, they still needed mainstream media for publicity. Since the late 2000s, activists have used online petitions to exert pressure on marketers (see Figure 36, appendix). The publicity generated through social media and mainstream media helped protesters produce enough ethical pressure that marketers dropped or changed their advertising practices.

8.2.1 Framing Strategies

Artists assumed a crucial role in deconstructing and transcoding media identities. The post-modern artist demonstrated to the viewer that the reality represented through media was nothing but a culturally specific fiction. Exposing the manipulateness of images, artists sought to influence the viewer's belief system or modify behavior in some way.¹⁵⁹⁷

Artists who deal with such images [photography and film] work to expose them as instruments of power. Not only do they investigate the ideological messages encoded therein, but, more importantly, the strategies and tactics whereby such images secure their authoritative status in our culture. For if such images are to be effective tools of cultural persuasion, then their material and ideological supports must be erased so that, in them, reality itself appears to speak. Through appropriation, manipulation, and parody, these artists work to render visible the invisible mechanisms whereby these images secure their putative transparency – a transparency that stems, as in Classical representation, from the apparent absence of an author.¹⁵⁹⁸

While fine arts were the preferred arena for the emancipatory renegotiation of Indigenous identities, with growing self-confidence, Natives increasingly used 'pre-modern' forms of expression such as weaving, pottery, basketry, woodcarving, or embroidery. In opposition to the preference for painting and sculpture as the royal disciplines of art, colonialist thought "was henceforth opposed not only to strengthened, revived, or invented native traditions, but also to those philosophical, juridical, and aesthetic ideas of Europe before which colonialism could not stand."¹⁵⁹⁹ In this way, culture can open itself to the experience of the Other through art, which it had marginalized as an outsider position based on its own norms.¹⁶⁰⁰ Native artists started inducing this educational process since the 1980s and established framing strategies such as exposing paradoxes through Indian humor, counting coup through reappropriation, de(con)struction, juxtaposition, and parallelism, which inspired other protest actions.

Since the early 1990s, exhibits increasingly incorporated marketing materials to demonstrate the ubiquity of commercialized Indigenous imagery and its impact as sources of learning. Jaune Quick-to-See Smith's artwork "Big Myth\$ Die Hard"¹⁶⁰¹ asked whether the man on the Big Chief Tablet cover¹⁶⁰² was a professor, fancy dancer, or tablet, pointing to the defining power of marketing materials that shaped Euro-American expectations and imaginations for what roles a Native American could assume in U.S. society. Edgar Heap of Birds was convinced that "misrepresentation and the lack of opportunities that exist for natives to comment on their own condition themselves" was the "most serious problem facing native peoples throughout the world."¹⁶⁰³

¹⁵⁹⁷ Cf. Owens, *Beyond Recognition*, 99, 111.

¹⁵⁹⁸ Ibid, 111.

¹⁵⁹⁹ Osterhammel, *Kolonialismus*, 118. Transl. by author.

¹⁶⁰⁰ Cf. Said, "Opponents, Audiences, Constituencies and Community," 182.

¹⁶⁰¹ See Steinbaum Krauss Gallery, postcard depicting Jaune Quick-to-See Smith's "Big Myth\$ Die Hard," 1995, charcoal, collage on paper, 1995; Quick-to-See Smith, Jaune; Art and Artist Files; Vine Deloria, Jr. Library, NMAI, Smithsonian Institution, Suitland, MD.

¹⁶⁰² See American Trademark Publishing, "Big Chief Rockmount Tablet," 2019, product image, accessed January 26, 2019, <https://www.shop.americantrademarkpublishing.com/Big-Chief-Rockmount-Tablet-R49700A.htm>.

¹⁶⁰³ Edgar Heap of Birds, "Comment. Representation. Realize," *Territory of Oklahoma* 5, no. 1 (August 1983); Heap of Birds, Edgar; Native Artists Files; IAIA Archives, Santa Fe, NM.

Besides solo exhibits showing the collage-like paintings of Jaune Quick-to-See Smith (Chrysler Museum of Art, 1993), installations created by Charlene Teters, or Oscar Arredondo's "A Mile in My Moccasins" (Franklin Art Works, 2001), several exhibits have focused on the issue of Native representations in popular culture.

Indian Humor

One of the earliest exhibits, "Fluffs and Feathers" at the McCord Museum of Canadian History (Montreal, Canada, 1993), presented the origins of Indian stereotypes and the commodification of the Indian image by showing product examples like Land O'Lakes or Red Indian Motor Oil.¹⁶⁰⁴ "Fluffs and Feathers" used "a tongue-in-cheek approach to very politically sensitive subject matter." The Native and non-Native audience "recognized that the perpetuation of such images is wrong and damaging to the First Nations, but they were allowed to laugh at this outdated cultural error. The Indian value of teaching through teasing and laughing (even though it hurts) was invariably sensed and appreciated in this exhibition."¹⁶⁰⁵ The appropriation of Indigenous culture was the main objective of exhibits like "Iconoclash" at the Museum of Indian Arts and Culture (Santa Fe, New Mexico, 2005/06). Countering Natural American Spirit Cigarettes, Land O'Lakes, and Santa Fe tourism promotions, David Bradley and Marcus Amerman "alternately poke[d] fun at and outright blast what they call misappropriation of Indian imagery."¹⁶⁰⁶

Like in "Iconoclash," humor played a crucial role for Native artists in communicating their anger and resentment at the exploitation of Indigenous culture.¹⁶⁰⁷ The humor visible in many Native artists' critical works "comes from Indian cultures' 'survival' humor that has developed over centuries as an antidote or way to tolerate the harshness of their treatment by the dominating culture and as a sarcastic reaction to the absurdity of much Anglo culture."¹⁶⁰⁸

Counting Coup Through Reappropriation

Drawing on famous examples like Urban Outfitters, the exhibit "Indian Giver" at Gallery 1313 (Toronto, Canada, 2016) displayed "fashion, textiles and wearable art produced by eight indigenous artists highlighting the objectification of indigenous culture."¹⁶⁰⁹ At least since the 1980s, many Indigenous artists have "appropriated stereotypical images about Indians to critique denigrating mass media stereotypes of Native Americans."¹⁶¹⁰ Reappropriation art became a widespread medium to make "social commentary by combining the advertising lexicon and Indian iconography" to criticize how U.S. society saw Indigenous cultures as a prod-

¹⁶⁰⁴ Cf. Michelle Lalondel, "No feathers, no how; Exhibit aims to dispel myths about Indians," *The Gazette*, March 31, 1993, A3.

¹⁶⁰⁵ Viviane Gray, "Fluffs and Feathers: An Exhibition on the Symbols of Indianness by Deborah Doxtator," *American Anthropologist* 95, no. 4 (December 1993): 1077.

¹⁶⁰⁶ Dave Kavanaugh, "Exhibit Focus Is Exploitation; Native Anger Illustrated in Museum's 'Iconoclash'," *Albuquerque Journal*, August 15, 2005, 1.

¹⁶⁰⁷ Cf. *ibid.*, 1.

¹⁶⁰⁸ Jaune Quick-to-See Smith, *Postmodern Messenger* (Tucson: Tucson Museum of Art, 2004), 9.

¹⁶⁰⁹ Pelley, "We're taking back 'Indian Giver'," L1.

¹⁶¹⁰ Touchette and Deats, *NDN Art*, 12. Touchette and Deats argued that the artists started reappropriating popular culture since the 1960s, whereas Ryan dated this art style back to the 1980s. The artwork considered for this study date back to the 1980s.

uct.¹⁶¹¹ Claiming American pop culture as his own, Marcus Amerman took images from the dominant society, like advertisements and portraits of iconic Indians, to “re translate them into native imagery, in beads. It’s like taking it back.”¹⁶¹² Reappropriation became an artistic intervention to take back and “overwrit[e] Western popular culture and materialization.” Douglas Miles “challenge[d] the notion of marginalization by reversing the center,” that is, “indigenizing or ‘counting coup’ on the popular cultural icons of Western culture.”¹⁶¹³ Through counting coup¹⁶¹⁴ on mainstream culture, Indigenous artists regained power over their cultures by challenging and negotiating meanings and influencing popular concepts of Indigeneity. In this process, images “only recently regarded as demeaning clichés and romantic idealizations were . . . being reclaimed, redeemed, and reinvested with new meaning.”¹⁶¹⁵

The ideal medium for counting coup was the collage, which artists like Arthur Amiotte, Frank Buffalo Hyde, and Alex Jacobs used to confront issues pertaining to commercialization, exoticization, and identity in different ways. In criticism of modernity and assimilation of Lakota people between 1880 and 1930, Amiotte combined “Visual and verbal puns from advertising” with handwritten text to give “voice to his ancestors.”¹⁶¹⁶ In his collage-style work, Hyde connected Native American imagery with contemporary marketing materials, “suggesting that commercialism is doing its part to build up a false myth about Native Americans.”¹⁶¹⁷ On the grounds that the concept of America was propaganda, an invention of the mass media,¹⁶¹⁸ Akwesasne Mohawk Alex Jacobs explained,

I use commercial packaging, logos, mascots, romantic and other commonly exploited images of Native and Indigenous people in my collage art, because many times these images are already embedded in the mind and consciousness of the viewer. It is why people immediately resort to stereotypes and Hollywood images and sounds when talking to or about Native Peoples. . . . We start at this common ground and then proceed to write or draw a new narrative and make the viewer take apart their own memory and fantasies and replace them with our new narratives. Images and stories that tell a better, more truthful history, a more immediate past, present and possible futures.¹⁶¹⁹

¹⁶¹¹ Cf. Dottie Indyke, “Frank Buffalo Hyde,” *Southwest Art* (May 2004), 60, clipping; Buffalo Hyde, Frank; Native Artists Files; IAIA Archives, Santa Fe, NM.

¹⁶¹² Gussie Fauntleroy, “Zen beadism: Path doesn’t lead to ‘Jeopardy’,” clipping; Amerman, Marcus; Native Artists Files; IAIA Archives, Santa Fe, NM.

¹⁶¹³ Barry Ace, “Douglas Miles,” in *New Native Art Criticism: Manifestations*, ed. Nancy Mithlo (Santa Fe: Museum of Contemporary Arts, 2011), 144.

¹⁶¹⁴ “Counting coup, or striking an enemy, was the highest honor earned by warriors participating in the intertribal wars of the Great Plains. . . . Killing was part of war, but showing courage in the process was more important for individual status. This was best accomplished by risking one’s life in charging the enemy on foot or horseback to get close enough to touch or strike him with the hand, a weapon, or a ‘coupstick.’ . . . Counting coup, then, was the epitome of a type of warfare that pitted the skill and daring of one man against another.”

Anthony R. McGinnis, s.v. “Counting Coup,” *Encyclopedia of the Great Plains*, ed. David J. Wishart, accessed July 16, 2021, <http://plainshumanities.unl.edu/encyclopedia/doc/egp.war.013>.

¹⁶¹⁵ Ryan, *The Trickster Shift*, 14.

¹⁶¹⁶ Jennifer C. Vigil, “Arthur Amiotte,” in *New Native Art Criticism: Manifestations*, ed. Nancy Mithlo (Santa Fe: Museum of Contemporary Arts, 2011), 81.

¹⁶¹⁷ Robert Nott, “The truth is still out there,” clipping; Buffalo Hyde, Frank; Native Artists Files; IAIA Archives, Santa Fe, NM.

¹⁶¹⁸ Cf. Alex Jacobs, “An American Mythology,” *World Literature Today*, November 11, 2019, accessed May 15, 2023, <https://www.worldliteraturetoday.org/blog/cultural-cross-sections/american-mythology-alex-jacobs>.

¹⁶¹⁹ Alex Jacobs, “Alex Jacobs Statement & Bio 2023,” in email message to author, May 14, 2023.



Jacobs created his Santa Fe Dude #4 (Illustration 10) from calico, commercial packages, and labels such as American Spirit Cigarettes boxes or Land O'Lakes butter packages. By cutting out calico figures of contemporary or historical Native figures and glu[ing] them on top of the 'commercialized' background," this background became "fantasy, romanticized or idealized."¹⁶²⁰ Explaining the collage-like style, Jacobs noted, "in using the cigarette labels as recycled materials, I discovered that they carry their own political commentary. Recycling is its own political statement, but the designs and images found in packaging often carry their own overt or covert political and lifestyle statements."¹⁶²¹ Besides recycling materials and creating new meanings, Jacobs reappropriated Indigenous imagery appropriated by commercial enterprises such as the SFNT Co. When the tobacco company purchased one of Jacobs' reappropriation artworks, a Thunderbird made of American Spirit cigarette packages, to display at its headquarters in Santa Fe, New Mexico,¹⁶²² the artist and the marketer entered into an active exchange about the use and meaning of Indigenous imagery.

Illustration 10: Alex Jacobs, "Santa Fe Dude #4," 1999, mixed media on canvas.

© Alex Jacobs. MH-26. IAIA Museum Purchase, 2000. Courtesy of the IAIA Museum of Contemporary Native Arts, Santa Fe, NM.

¹⁶²⁰ Alex Jacobs, artist statement, personal portfolio, accessed at the Santa Fe Indian Market, Santa Fe, New Mexico, August 2014.

¹⁶²¹ Alex Jacobs, artist statement, in "Alex Jacobs (designer), Akwesasne Mohawk," clipping; Jacobs, Alex; Native Artists Files; IAIA Archives, Santa Fe, NM.

¹⁶²² Cf. Alex Jacobs, interview by author, Santa Fe, New Mexico, August 2014.

De(con)struction

“[F]ollowing traditions that reach farther back than federal history,” Shan Goshorn’s work focused on Cherokee basketry to deconstruct ideas of Indigeneity. For her baskets, she printed and cut paper-based materials into stripes that she reconstructed into baskets. The “cutting, this physical deconstruction of history – both text and image, the slicing and dissecting” of paper was a metaphorical process.¹⁶²³ Her technique aimed to “manipulate the material and authority of paper (and the written word) as a weapon aimed against Native Americans in the form of treaties, ancestry rolls, laws, restrictions, land allotment and more,”¹⁶²⁴ a weapon “against their cultures, their sovereignty, their identities.”¹⁶²⁵ By reproducing historical documents and transforming them into baskets, Goshorn re-interprets history “from an Indigenous point of view woven from tradition.”¹⁶²⁶

Since Goshorn believed the genocide of Native Americans was under-recognized, she reproduced the definition of genocide in the basket “Smoke Screen” (Illustration 11¹⁶²⁷) in blue splints and combined it with “brown splints listing a variety of commercial products that use Indian names and images to promote something.” Using warfare symbolism, the title referred to “the literal definition of something intended to disguise, conceal, or deceive; camouflage.” She chose the traditional Arrow-head Point pattern weaving style because “the casual acceptance of native culture as advertising gimmicks is wielded like an insidious weapon.”¹⁶²⁸



Illustration 11: Shan Goshorn, “Smoke Screen,” 2015, arches watercolor paper splints printed with archival inks, acrylic paint.

© Shan Goshorn. All rights reserved.

The permanent exhibit “Americans” at the NMAI (Washington, DC, launched in 2018) focused on popular culture, place names, military weapons, and advertising to explore the identity-giving dimension of appropriating Indian names and imagery. It shows how the federal government used Native American imagery to “distinguish the United States from

¹⁶²³ Jennifer C. McNutt and Ashley Holland, *RED: Eiteljorg Contemporary Art Fellowship, 2013* (Indianapolis: Eiteljorg Museum of American Indians and Western Art, 2013), 88.

¹⁶²⁴ “Shan Goshorn: We hold these truths,” solo exhibit, *Museum of Contemporary Native Arts*, 2014, accessed June 23, 2014, <http://www.iaia.edu/museum/exhibition/shan-goshorn-we-hold-these-truths/>.

¹⁶²⁵ McNutt and Holland, *RED*, 88.

¹⁶²⁶ “Shan Goshorn: We hold these truths.”

¹⁶²⁷ See Shan Goshorn, “Smoke Screen,” 2015, arches watercolor paper splints printed with archival inks, acrylic paint, accessed January 27, 2019, <http://www.shangoshorn.net/smoke-screen>. © Shan Goshorn. All rights reserved.

¹⁶²⁸ “Smoke Screen,” Shan Goshorn, accessed January 27, 2019, <http://www.shangoshorn.net/smoke-screen>.

other nations and to define the nation for its citizens, by U.S. armed forces to express military might, by American corporations to signify integrity, and by designers, such [as] those who created the 1948 Indian motorcycle, to add luster and cachet to commercial products.”¹⁶²⁹

Juxtaposition

Borrowing from various sources, including commercial materials, Jaune Quick-to-See Smith created “complex juxtapositions that re-contextualize the ways viewers understand relationships between Euro-American and Indigenous American cultures.” This way, they “capture the paradigms of American society in ways that reveal the cultural implications of capitalism, historic amnesia and assignment of racial categories.”¹⁶³⁰

In an ironic pun on the label ‘apple’ for an Indigenous person who was red on the outside and white on the inside, Quick-to-See Smith outlined an American Indian lawyer carrying a suitcase in combination with a generic Indian head on a Hi-Yu Apple fruit crate label (Illustration 12). The lawyer and the cat were metaphors symbolizing the new world, whereas the traditional medical plant dogwood symbolized the past. Quick-to-See Smith noticed numerous Indigenous lawyers wearing suits and carrying briefcases in Western airports. Her “own Flathead tribe of 6000 people employed 50 lawyers attempting to represent and save land, fishing, gaming and other rights.” In the lithograph, the commercialized generic Indian head turned into a lawyer’s head who mastered the transition from the old to the new world, looking to the right into the future of the new world.¹⁶³¹

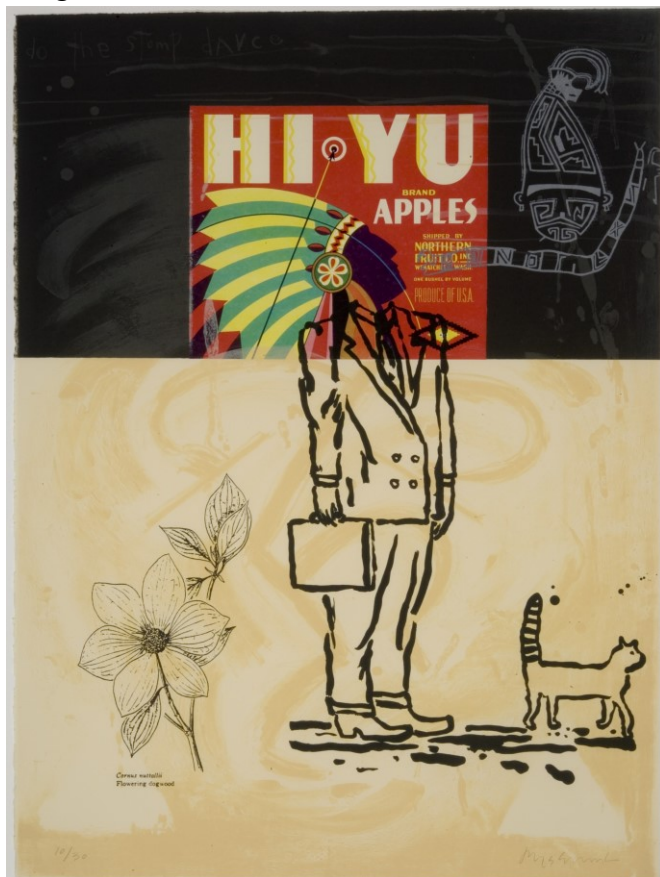


Illustration 12: Jaune Quick-To-See Smith, “Modern Times,” 1994, lithograph.

Courtesy of the artist and Garth Greenan Gallery, New York. Spencer Museum of Art, University of Kansas, Museum purchase, 1994.0047.

¹⁶²⁹ Cécile R. Ganteaume, “Americans: Major Exhibition Asks, Why Do Images of American Indians Permeate American Life?” *NMAI Magazine*, Fall 2017, 20.

¹⁶³⁰ Gail Tremblay, “Jaune Quick To See Smith,” in *New Native Art Criticism: Manifestations*, ed. Nancy Mithlo (Santa Fe: Museum of Contemporary Arts, 2011), 168.

¹⁶³¹ Charles Lovell, “Jaune Quick-To-See Smith: Modern Times,” in *Jaune Quick-To-See Smith: Modern Times* (Las Cruces: New Mexico State University, 1997), 4.

The media exhibit “Powerful Images” at the Buffalo Bill Historical Center (Cody, Wyoming, 1998) contextualized marketing imagery with Indigenous self-representations to demonstrate the underlying perspectivity and artificiality and challenge perceptions and stereotypes of Indigenous imagery in cultural history.¹⁶³² It juxtaposed art about Native Americans with art created by Natives by showcasing mythic images “side by side with artifacts by native peoples that reveal how American Indians represent themselves through their own artistic traditions.”¹⁶³³ Byron Price, executive director of the Buffalo Bill Historical Center, explained “Powerful Images” aimed “to encourage visitors to test their perceptions of Native Americans and to begin to see how their concepts have been formed.”¹⁶³⁴

Michael Gray, founder of the Native American ad agency G&G Advertising, sought to challenge perceptions of Native peoples by constructing paradoxes, like highlighting the importance of every individual symbolized by generic Indigenous representations. The G&G Advertising logo, for instance, represented an “archetypal Indian” with braids, wearing a beaded necklace and a blanket, who stood for the “unidentified Indian brave seen in many movies and throughout American culture – but [was] never viewed as a person in his own right.”¹⁶³⁵ Pictures of traditionally-dressed and unidentified Natives, which Gray had found incidentally in photo archives in Montana, adorned business cards, letterhead, jackets, stationery, and invoices “to put them in the limelight” and demonstrate that these individuals “were just as important in our history as the big chiefs like Sitting Bull.”¹⁶³⁶

Parallelism

Through parallelism, protesters asked others to put themselves in their shoes and appealed to their empathy. To persuade Mayor Bud L. Tims of Scottsdale, Arizona, to proceed against the local tavern Comanche Inn using photographs of her great-grandfather Quanah Parker, Juana Parker Lyon asked Tims: “If it is true that one should not judge until he has walked a mile in his moccasins, may those who object to this action picture themselves as traveling past the Comanche Inn and pointing out to their children that ‘that’s Grandpa’s picture over that bar over there’! A cause for family pride? Hardly.”¹⁶³⁷ Native Americans used various parallelisms relating to race, religion, or politics to promote an understanding of their situation.

Aztec artist Oscar Arredondo incorporated commercial materials in his work to demonstrate “the insults inherent in toys, advertisements and emblems that incorporate Indian figures and myths” and to warn about what would happen if people lived up to the stereotypes. In his exhibit “A Mile in My Moccasins,”¹⁶³⁸ Arredondo showed 17 drawings, one de-

¹⁶³² Cf. “Powerful Images: Portrayals of Native America,” *Wind River News*, May 28, 1998, 7.

¹⁶³³ Brandon Griggs, “The Preconceived Native,” *The Salt Lake Tribune*, August 13, 2000, D1.

¹⁶³⁴ Byron Price, President, Museums West, and Executive Director, Buffalo Bill Historical Center, quoted in “Powerful Images,” 7.

¹⁶³⁵ Michael Gray, G&G Advertising, paraphrased in Julia Duin, “Census Bureau makes effort to count American Indians: Distrust of white culture has kept them off the tally,” *The Washington Times*, September 1, 1999, A2.

¹⁶³⁶ Michael Gray, G&G Advertising, quoted in Cranon, “Native Talent,” 8.

¹⁶³⁷ Lyon to Tims, June 4, 1969; Public Awareness Corresp. [1 of 2]; Box 255; NCAI Records; NMAI Archive Center.

¹⁶³⁸ See Oscar Arredondo, “Welcome to Cleveland,” 2000, framed prints series, Center for Holocaust and Genocide Studies, University of Minnesota, Twin Cities, MN. See also in *Flickr*, January 11, 2010, accessed January 27, 2019, <https://www.flickr.com/photos/fotoflow/4317279054/in/photostream/>.

picting Chief Wahoo and the other 16 depicting transformations of the “maniacally grinning” mascot into stereotypes of different cultures or religions. Among others, Arredondo represented drunken “Irish,” black-faced “Negroes,” “White folks” wearing a KKK hood, and “Germans” as a cartoonish reduction of Adolf Hitler (Illustration 13¹⁶³⁹). Like all stereotypes, the *Minneapolis Star Tribune* wrote, these are “cruel, simplistic, anachronistic and vulgar. They’re insulting enough to get your dander up.”¹⁶⁴⁰ None of these images were tolerable in the U.S. at that time except Wahoo.

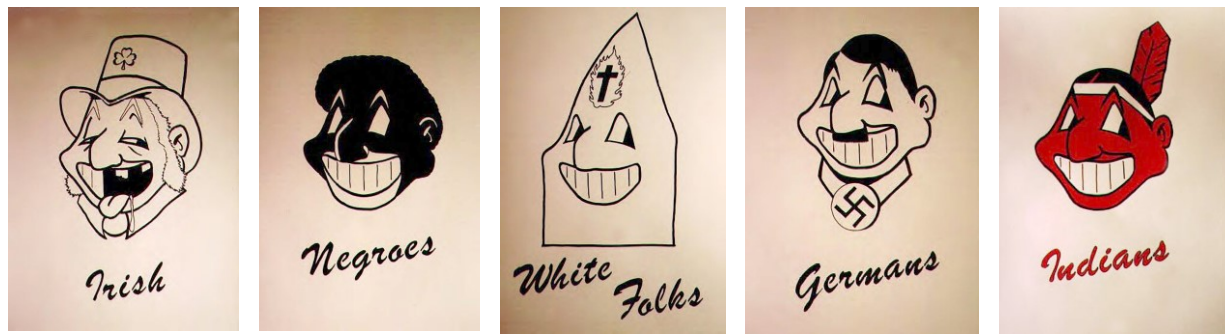


Illustration 13: Oscar Arredondo, “Welcome to Cleveland,” 2000, framed prints series.

Courtesy of the Center for Holocaust and Genocide Studies, University of Minnesota, Twin Cities, MN.

Using a comparative approach and materials from brands like Land O’Lakes, Mohawk playing cards, or Kickapoo Indian Salve, the exhibit “Tonto and Sambo Revisited” at the Langston Hughes Institute (Buffalo, 2001) compared the stereotypical treatment of Native Americans and African Americans by showing images and objects created by Whites side by side, such as toys, comic books, movie posters, postcards, record albums, cartoons, or souvenirs. Particularly “hateful” examples like the Alligator Bait postcard from Florida depicting African American children playing near a swamp and the “malevolent psychology behind this card can’t fairly be compared with the strictly commercial exploitation of Indians and blacks in the marketing of butter and syrup.”¹⁶⁴¹ While the exhibit showed that there were degrees and differences in kind, protesters have argued that stereotypes caused adverse effects on the lives of Native peoples regardless of the intent.

¹⁶³⁹ Oscar Arredondo, “Welcome to Cleveland,” 2000, framed prints series, courtesy of the Center for Holocaust and Genocide Studies, University of Minnesota, Twin Cities, MN.

From the “Welcome to Cleveland” series from left to right:

Oscar Arredondo, “Irish,” 2000, drawing, 1065067, Center for Holocaust and Genocide Studies, University of Minnesota, Twin Cities, MN, accessed May 13, 2023, <https://umedia.lib.umn.edu/item/p16022coll221:6>.

Oscar Arredondo, “Negroes,” 2000, drawing, 1065072, Center for Holocaust and Genocide Studies, University of Minnesota, Twin Cities, MN, accessed May 13, 2023, <https://umedia.lib.umn.edu/item/p16022coll221:0>.

Oscar Arredondo, “White Folks,” 2000, drawing, 1065074, Center for Holocaust and Genocide Studies, University of Minnesota, Twin Cities, MN, accessed May 13, 2023, <https://umedia.lib.umn.edu/item/p16022coll221:4>.

Oscar Arredondo, “Germans,” 2000, drawing, 1065064, Center for Holocaust and Genocide Studies, University of Minnesota, Twin Cities, MN, accessed May 13, 2023, <https://umedia.lib.umn.edu/item/p16022coll221:14>.

Oscar Arredondo, “Chief Wahoo,” 2000, drawing, 1065059, Center for Holocaust and Genocide Studies, University of Minnesota, Twin Cities, MN, accessed May 13, 2023, <https://umedia.lib.umn.edu/item/p16022coll221:15>.

¹⁶⁴⁰ Mary Abbe, “The Insult Artist Oscar Arredondo quietly demonstrates the insults inherent in toys, ads, mascots and emblems that incorporate Indian figures,” *Minneapolis Star Tribune*, January 19, 2001, 12.

¹⁶⁴¹ Richard Huntington, “Harmful Images Stereotypes User to Pitch Products,” *Buffalo News*, August 10, 2001, G19.

Contrasting offensive representations of Native Americans with other ethnicities or religions was a common strategy to raise awareness of the moral double standard applied to Natives. Comparing racial discrimination of Natives to African Americans, protesters argued that advertisers “would not utilize stereotyped ‘nigger’ jargon for messages on your cards”¹⁶⁴² (Hallmark Cards, 1969-70); that media “would not have accepted the advertisement if it portrayed a Negro being throttled by a gun wielding Klansman”¹⁶⁴³ (General Electric, 1966); or that it “has been quite some time since we saw a group of black males chasing a terrified white girl on a television commercial”¹⁶⁴⁴ (Philco-Ford, 1969). Although comparisons to African Americans were common, protesters occasionally referred to other ethnicities, such as Asian Americans, Latinos, or Italian Americans. When an ad opposing a Mohawk off-reservation casino asked, “Why would Gov. George Pataki give millions of dollars to a group accused of drug smuggling, money laundering, trafficking in illegal immigrants and violence?”¹⁶⁴⁵ Darhon Rees-Rohrbach wrote to *Times Union*, which had published the ad: “If the title of this ad instead read, ‘Members of the Italian-American community have a long criminal record ... and ties to the mob,’ it would never be tolerated by the general public, and persons of Italian descent would be outraged, even though such a statement might have some basis in fact”¹⁶⁴⁶ (Institute for Law & Society / Times Union, 2000).

Comparisons to groups outside the U.S. were rare and focused on Nazi Germany as a reference. Milton Bluehouse emphasized the threatening impact of stereotypical marketing representations, particularly in border towns like Gallup. He compared the “grotesque images along I-40 and in pawn shops and curios stores” to “Nazi Germany’s racial propaganda . . . which depicted Jewish people with large noses, claws instead of fingers, and created and perpetuated a deadly stereotype that Jewish people we[r]e not human. The result: the Holocaust.” To parallel the effects of everyday racism, he linked the treatment and deaths of Indigenous peoples around Gallup and Farmington “to the systematic desensitization that billboards and stereotypes produce in non-Indian people in border towns, just as Nazi propaganda desensitized German towns which denied the existence of death camps only a few miles away.”¹⁶⁴⁷

Protesters have also compared the use of iconic Indigenous leaders to the commercial use of Martin Luther King Jr. as an African American icon or iconic persons from other ethnicities. Oglala Sioux Bill Means argued that commercializing Crazy Horse’s name was “tantamount to exploiting the legacies of Martin Luther King Jr. or John F. Kennedy for similar purposes.”¹⁶⁴⁸ When Liz Claiborne offered to change the spelling of her Crazy Horse brand, Father Gordon Judd pointed out, “All stakeholders believe that, whether intended or not, a double standard operates here. Neither company, for instance, would contend that putting

¹⁶⁴² John Reynolds, letter to Donald J. Hall, President, Hallmark Cards, Inc., New York, New York, December 4, 1969; Derogatory Images: General, 1949-1983; Box 90; Association on American Indian Affairs Records, 1851-2016, MC147; Public Policy Papers; Seeley G. Mudd Manuscript Library, Princeton University.

¹⁶⁴³ Reynolds to the Director of Advertising, *The New Yorker*, November 23, 1966; Derogatory Images: General Electric, 1966-1967; Box 89; AAIA Records; Pub. Pol. Papers; Mudd Man. Lib., Princeton.

¹⁶⁴⁴ Dean to Hunter, March 28, 1969; Public Awareness Corresp. [2 of 2]; Box 255; NCAI Records; NMAI Archive Center.

¹⁶⁴⁵ Institute for Law & Society, newspaper ad, quoted in James M. Odato, “Native Americans Decry Ads As ‘Racist,’” *Times Union*, February 5, 2000, B2.

¹⁶⁴⁶ Darhon Rees-Rohrbach, “Ad Linking Mohawks With Crime Offensive,” *Times Union*, June 19, 2000, A6.

¹⁶⁴⁷ Bluehouse, “Subtle racism,” A5.

¹⁶⁴⁸ Phyllis Toussey-Frederick, lawyer for Crazy Horse Defense Project, paraphrased in Robert Desjarlait, “Crazy Horse name protested – again,” *The Circle*, February 28, 2001, ProQuest 196588314.

Gandhi in lower case or pluralizing Martin Luther King, Jr. would sever all associations to these revered spiritual leaders.”¹⁶⁴⁹ Phyllis Toussey-Frederick, a lawyer with the Crazy Horse Defense Project, extended the double standard to the issue of authorization as “No American company would consider using the name of a revered white leader for marketing purposes without permission, . . . but that standard is ignored when the name is that of an American Indian.” This attitude was a “systematic pattern of racism” against American Indians, the lawyer noted.¹⁶⁵⁰

Religious comparisons, rooted in Indigenous holistic worldviews, were common to explain why using sacred practices, objects, and revered people for marketing purposes was inappropriate. In the case of the Crazy Horse Malt Liquor label, which depicted a Native American wearing an eagle feather bonnet and a medicine wheel, authors of the *Business and Society Review* asked, “Does a crucifix belong on a beer bottle?”¹⁶⁵¹ Hinting at the fact that Crazy Horse opposed alcohol consumption, a *Minneapolis Star Tribune* article stated that the marketing ploy was “as offensive as putting the pope’s name on an abortion pill.”¹⁶⁵² Arguing that advertisers “would not use the ritual ceremonies of Christians or Muslims in mockery to sell its service”¹⁶⁵³ (Priceline, 2012), protesters have typically pointed to the Christian religion to demonstrate that Native American religious beliefs were treated differently. In opposition to “Trail of Tears” earrings and masks that were “dedicated in the spirit of forgiveness,” as the catalog advertised, *Indian Country Today* asked, “Wouldn’t it be interesting if these cultist catalog publishers would be as liberal with other religions? They could publish a catalog selling ‘funny hats just like Pope wears,’ or ‘garden of Eden lawn ornaments.’ There could be designer Muslim veils, prayer hot-wheels and Hindu backpacks made of genuine cowhide”¹⁶⁵⁴ (Pyramid Collection, 1994).

As advertisers repeatedly referenced U.S.-Indian historical political relations, protesters raised awareness of the differential treatment of historical tragedies. The comparative strategy helped critics provide an understanding of how the belittlement of colonial structures and historic tragedies was insulting. While popular themes such as the ‘cowboys and Indians’ theme represented merely Western myths to some people, for others, it represented the colonial and genocidal past. John Belindo thanked a critic for her “awareness, sensitivity and concern” after reading “The Daily News’ recent article by John Baskin which ridicules the protest of Mrs. Konrad Reisner regarding an airport amusement concession in which an American Indian is made the target of toy pistol fire”¹⁶⁵⁵ (Dayton Airport, 1969). Similarly, distorted through novels and movies, the “convivial image of a white cowboy and the ‘drunk’ Indian as companionable drinking buddies, obscures a history of genocide.” Comparing the U.S.-Indian

¹⁶⁴⁹ Judd, “A Public Letter to Liz Claiborne & JC Penney Company,” reposted in Schmidt, “Stereotype of the Month Entry (12/9/00).”

¹⁶⁵⁰ Desjarlait, “Crazy Horse name protested – again.”

¹⁶⁵¹ Metz and Thee, “Brewers Intoxicated With Racist Imagery,” 51.

¹⁶⁵² Tony Kennedy, “Official promises aid, but no liquor ban,” *Minneapolis Star Tribune*, November 23, 1993, 3D.

¹⁶⁵³ Mary Sharlow, “Remove the Long Island Medium smudging commercial from the air,” Change.org petition, 2012, accessed October 27, 2016, <https://www.change.org/p/priceline-remove-the-long-island-medium-smudging-commercial-from-the-air-2>.

¹⁶⁵⁴ “Get ‘em while their hot.”

¹⁶⁵⁵ John Belindo, “The Daily News Shows Its Insensitivity,” *Dayton Daily News*, April 18, 1969, clipping; Media Surveillance - Public Awareness Correspondence [1 of 2]; Box 255; Records of the National Congress of American Indians, 1933-1990, NMAI.AC.010; NMAI Archive Center, Smithsonian Institution, Suitland, MD.

relationships to NS Germany-Jewish relationships, Jessie Daniels asked, “Would it be possible to imagine featuring an SS officer and a Jewish person in such an embrace?”¹⁶⁵⁶ (Station 280, 2010).

References to NS Germany increased and became more drastic the more obviously marketing materials referenced the death of Indigenous peoples. Asking why it had to be representations of dead people to “honor” Native Americans, Branum suggested the company could likewise “make shirts showing holocaust victims eviscerated by starvation and showing their numbers tattooed on their body. Or maybe they could make shirts showing the skulls of dead Cambodians, or maybe poke fun at machetes”¹⁶⁵⁷ (War Paint Clothing Co., 2010). In response to protests against GAP’s black T-shirt with the white imprint “MANIFEST DESTINY,” newspapers like *ICT* and the *Guardian* quoted Indigenous suggestions for T-shirt slogans for GAP. Recommendations included poet William S. Yellowrobe’s phrases based on U.S. and German political maxims such as “The Only Good Indian is a Dead Indian,” “Kill the Indian save the Man,” “Final Solution,” “Got Slaves,”¹⁶⁵⁸ or artist Gregg Deal’s lines “AMERICAN IMPERIALISM” or “FORCED ASSIMILATION.”¹⁶⁵⁹ Klee Benally noted, “a shirt with ‘Arbeit macht frei’ would [not] have made it this far”¹⁶⁶⁰ (GAP, 2012).

While there were other genocides to relate to on a global level, most protesters used Nazi Germany as a projection screen to demonstrate how inappropriate such representations were considering the genocidal history. Since the holocaust was very well-documented, including visual materials, it served as a startling reference to bring attention to other grievances. The “discursive opportunity structure” within a political system defines which construction of reality is considered realistic and which demands are legitimate.¹⁶⁶¹ Since the extermination of the Indigenous population was not officially recognized as genocide, references to the holocaust may have served protesters’ purposes best due to its official recognition and the level of awareness. Additionally, parallelisms to the NS holocaust demonstrated the differential dealing with their past. Based on the official recognition of the NS crimes,¹⁶⁶² Western

¹⁶⁵⁶ Daniels, “‘Drink like an Indian’.”

¹⁶⁵⁷ Branum, “T-shirts sold by War Paint Clothing Co. of Oklahoma City.”

¹⁶⁵⁸ William S. Yellowrobe, quoted in “Gap ‘Manifest Destiny’ T-Shirt Sparks Outrage in Indian Country,” *Indian Country Today Media Network*, October 15, 2012, accessed July 4, 2016, <http://indiancountrytodaymedianetwork.com/2012/10/15/gap-manifest-destiny-t-shirt-sparks-outrage-indian-country-14000>.

¹⁶⁵⁹ Gregg Deal, quoted in James Mackay, “Gap’s ‘manifest destiny’ T-shirt was a historic mistake,” *The Guardian*, October 16, 2012, accessed July 4, 2016, <https://www.theguardian.com/commentisfree/2012/oct/16/gap-manifest-destiny-t-shirt>.

¹⁶⁶⁰ Klee Benally, “AIM SO CAL Delivers Demands, Receives Apology Email from GAP Representative,” *Indigenous Action*, October 18, 2012, accessed July 4, 2016, <http://www.indigenoussaction.org/southern-california-a-i-m-issues-demands-gap-apologizes-for-manifest-destiny-tshirt/>.

¹⁶⁶¹ Ruud Koopmans and Paul Statham, “Ethnic and Civic Conceptions of Nationhood and the Differential Success of the Extreme Right in Germany and Italy,” in *How Social Movements Matter*, ed. Marco Giugni, Doug McAdam, and Charles Tilly (Minneapolis: University of Minnesota Press, 1999), 228.

¹⁶⁶² Germany officially acknowledged the NS holocaust as crime against humanity, but German Chancellors Helmut Kohl (1985), Gerhard Schröder (2005), and Dr. Angela Merkel (2008) referred to the holocaust as genocide. Historians have criticized the use of the term holocaust because it reduces the intent of destruction to Jews. “Genocides” would be most fitting to cover all groups who were persecuted by national socialists. Many competing formulations and terminologies have emerged to include even those crimes not covered by the UN Convention on the Prevention and Punishment of the Crime of Genocide.

Cf. Wissenschaftliche Dienste, Deutscher Bundestag, *Bezeichnet die Bundesregierung den Holocaust als Völkermord?*, WD 1 – 3000/033/12, April 25, 2012, accessed January 6, 2021, <https://www.bundestag.de/resource/blob/410324/1f2eb8bc2321a1ed1c2cdb3fee62064e/WD-1-033-12-pdf-data.pdf>.

culture had developed a commemorative culture that defined the socially acceptable limits of its public discourse.¹⁶⁶³

By comparing the differential awareness and treatment of the Jewish and the Indigenous mass killings, Native protesters implicitly criticized the denial and trivialization of U.S. colonial history. In 2009 and five years after its first introduction, Senate passed a stand-alone Apology Resolution which “recognizes that there have been years of official depredations, ill-conceived policies, and the breaking of covenants by the Federal Government regarding Indian tribes.” Furthermore, the resolution “apologizes on behalf of the people of the United States to all Native Peoples for the many instances of violence, maltreatment, and neglect inflicted on Native Peoples by citizens of the United States.”¹⁶⁶⁴ Since the apology was added to a defense appropriations spending bill and signed in “overwhelming silence,” it remained relatively unnoticed.¹⁶⁶⁵

According to some critics, the use of political maxims for product designs or marketing materials was linked to the U.S. government’s hesitant dealing with its colonial past. Mark McNairy, the designer of GAP’s T-shirt, noted he learned about the concept of Manifest Destiny in junior high school and associated the ideology with the idea that “one could set goals, work hard, and achieve their dreams.”¹⁶⁶⁶ As James Mackay noted in the *Guardian*, McNairy’s “SURVIVAL OF THE FITTEST” comment on a request to remove the shirt demonstrated that he was aware of the term’s meaning.¹⁶⁶⁷ Other media like *The Huffington Post*¹⁶⁶⁸ picked up Mackay’s comment about GAP’s “historic mistake” that “America has never really come to terms with the contradiction between this bloody origin and its rhetoric of exceptionalism.” Contrary, “the fact that such an item could go on sale at all speaks volumes about Euro-America’s ignorance of its history with the continent’s original inhabitants.”¹⁶⁶⁹

Through parallelisms, protesters achieved some understanding of the Indigenous point of view and fostered favorable results. Introducing legislation to ban Crazy Horse Malt Liquor in Minnesota, state Representative Andy Dawkins explained, “Everybody would understand

¹⁶⁶³ With paragraph 130 on the “incitement of the people to hatred,” German criminal law makes it illegal to “approve, deny or belittle” the acts committed under the NS regime, as defined by international criminal law, publicly or in a gathering in a way that is disturbing public peace. Furthermore, it is illegal to “approve, glorify or justify” the “National Socialist rule of violence and arbitrariness” publicly or in a gathering as this is disturbing public peace and the dignity of the victims.

§130, Strafgesetzbuch, Volksverhetzung, *De Jure*, accessed January 5, 2021, <https://dejure.org/gesetze/StGB/130.html>. Transl. by author.

¹⁶⁶⁴ The United States apologized “on behalf of the people” and added the disclaimer that “Nothing in this Joint Resolution – (1) authorizes or supports any claim against the United States; or (2) serves as a settlement of any claim against the United States.”

U.S. Congress, Senate, “A joint resolution to acknowledge a long history of official depredations and ill-conceived policies by the Federal Government regarding Indian tribes and offer an apology to all Native Peoples on behalf of the United States,” S. J. RES. 14, 111th Cong., 1st sess., introduced April 30, 2009, <https://www.congress.gov/bill/111th-congress/senate-joint-resolution/14/text>.

¹⁶⁶⁵ Robert T. Coulter, Executive Director, Indian Law Resource Center, quoted in Rob Capriccioso, “A sorry saga: Obama signs Native American apology resolution; fails to draw attention to it,” *Indian Law Resource Center*, January 13, 2010, accessed January 29, 2019, <https://indianlaw.org/node/529>.

¹⁶⁶⁶ Mark McNairy, designer for GAP, quoted in Robert Schmidt, “McNairy apologizes for ‘Manifest Destiny’ t-shirt,” *Newspaper Rock*, October 17, 2012, accessed April 13, 2020, <http://newspaperrock.bluecorncomics.com/2012/10/mcnairy-apologizes-for-manifest-destiny.html>.

¹⁶⁶⁷ Cf. Mackay, “Gap’s ‘manifest destiny’ T-shirt was a historic mistake.”

¹⁶⁶⁸ Jessica Misener, “Gap ‘Manifest Destiny’ T-Shirt Pulled After Huge Outcry,” *The Huffington Post*, October 16, 2012, last modified December 6, 2017, accessed January 29, 2019, https://www.huffpost.com/entry/gap-manifest-destiny-t-shirt_n_1970659.

¹⁶⁶⁹ Mackay, “Gap’s ‘manifest destiny’ T-shirt was a historic mistake.”

how insulting it would be to have, say, a Martin Luther King Jr. Dark Ale or a Golda Meir Stout, . . . But when it comes to Native Americans, somehow it's a different thing."¹⁶⁷⁰ Some media used their own parallelisms to convince their audience through comparisons they could relate to. In the *National Catholic Reporter*, for instance, Mordecai Spektor adopted a highly supportive attitude toward Native protests against the use of Crazy Horse's name. The wording of the article's headline, "Crazy Horse exploited to peddle liquor,"¹⁶⁷¹ demonstrated the paper's posture on the issue. In the editorial section of the same issue, the *National Catholic Reporter* compared Hornell's marketing practice to the use of Christian leaders' names, quoting the case of "Corpus Christi," the Navy's 77th \$600 million nuclear attack submarine. Under massive pressure, the Navy changed the name to "City of Corpus Christi" in 1982. "Christ would have railed against such an antithetical use of his name," noted the editorial, "And, while not equating Tashunke Witko to Christ, Crazy Horse, as he is popularly known, did advocate against a killer of his Oglala Lakota people: alcohol."¹⁶⁷²

Criticism that marketers romanticized American colonialism and ignored the genocides of the Indigenous populations also arose in Europe. In Austria, Jens Kastner wrote an article for the left-wing weekly newspaper *Jungle World* criticizing Austrian companies, the brewery Stiegl and chocolate producer Xocolat, for "downplaying the crimes of European colonial history." Kastner considered it "scandalous" that the conquest of America and other colonies, euphemistically called discovery, still qualified for positive references in marketing.¹⁶⁷³

In 2016, the Stiegl brewery in Salzburg, Austria, launched its new IPA beer brand Stiegl Columbus 1492, "The beer for explorers," as the slogan told customers.¹⁶⁷⁴ The connection was based on the coincidence that the brewery was established in the same year when Columbus arrived at the coast of a country as new to him as IPA beer was to many European customers. Christina Kirnstötter, media manager at Stiegl, countered that the brewery "distanced itself from the dramatic historical events" but did not intend change since the marketing strategy was just about "familiarizing the relatively unknown style of beer in Austria among a big circle of beer lovers."¹⁶⁷⁵

Austrian chocolate manufacturer Xocolat developed a marketing story around the slogan "A great lust field for explorers and emperors" that reinterpreted the imperial history of a Spanish conquistador as the "history of chocolate" that "is rich in fantastic stories." In their story, Aztec emperor Montezuma II. was "an early chocolate connoisseur" who introduced the popular chocolate drink of the Aztecs to Cortéz, "the first importer of cocoa, the basic ingredient of any chocolate."¹⁶⁷⁶ By referencing Spanish conquistador Hernán Cortéz who destroyed the Aztec Empire in 1521, Kastner criticized, "the brand is referring to a man re-

¹⁶⁷⁰ Andy Dawkins, U.S. Representative, Minnesota, quoted in Fletcher, "Crazy Horse Again Sounds Battle Cry," A3. The ban was overthrown in 1996. See also Spektor, "Ban on Indian's name overturned," 6-7.

¹⁶⁷¹ Spektor, "Crazy Horse exploited to peddle liquor," 3.

¹⁶⁷² "Crazy Horse has bad taste," 20.

¹⁶⁷³ Jens Kastner, "Das Bier der anderen," *Jungle World* [DE], January 19, 2017, accessed August 11, 2017, <http://jungle-world.com/artikel/2017/03/55592.html>. Transl. by author.

¹⁶⁷⁴ "Stiegl-Columbus 1492 Pale Ale," Stieglbrauerei zu Salzburg GmbH, accessed June 3, 2020, <https://www.brauwelt.at/de/gastronomie/bierkarte/stiegl-biere/stiegl-columbus-1492>. Transl. by author.

¹⁶⁷⁵ Christina Kirnstötter, media manager, Stiegl, quoted in Kastner, "Das Bier der anderen." Transl. by author.

¹⁶⁷⁶ "Warum? Wo? Wie?" Xocolat Schokoladen-Kontor, September 2016, accessed August 15, 2017, https://xocolat.at/wordpress/wp-content/uploads/2016/09/XO_Franchise_Information-web.pdf. Transl. by author.

sponsible for the death of thousands of people and, as a result of the conquest, unleashing a mass murder that would last decades.”¹⁶⁷⁷ Werner Meisinger, co-owner of Xocolat, acknowledged that, “with the respective sensorium,” one could interpret the advertisement as an endorsement of the atrocities shown in the ad, and promised to correct the ad text for the reprint.¹⁶⁷⁸

While these framing strategies helped protesters to promote an understanding of the issues and gain support from stakeholders, critics applied a range of protest strategies against marketing practices throughout the 20th and 21st centuries. Protesters employed educational efforts to raise awareness through artwork and exhibits as well as strategies to solicit understanding through personal confrontation, producing economic pressure through boycotting products or companies, gaining support from organizations and allies, and creating publicity through demonstrations and media.

8.2.2 *Raising Awareness and Educating Through Art*

Some artists sought to ‘take back’ what “the dark history of colonization”¹⁶⁷⁹ took from Native Americans, like the exhibit “Indian Giver” in Toronto, Canada (June 2016). Hulleah J. Tsihnahjinnie emphasized Native agency “to address the ‘myth of colonial authority’.”¹⁶⁸⁰ Whether as “spokes people” in performing “the ‘living in two worlds’ balancing act”¹⁶⁸¹ (David Bradley) or as “a bridge to understanding and mutual respect”¹⁶⁸² (Charlene Teters), Indigenous artists carried the responsibility to equip particularly young people with a “true Indian self-image to avoid self-confusion with stereotypes in the outside world.” In Bradley’s understanding, artists had “the opportunity to promote Indian truths and at the same time help dispel the myths and stereotypes which are projected upon us.”¹⁶⁸³

Indigenous artists used art as their weapon since art was the perfect medium for challenging misconceptions about Native Americans and rebuilding Native identity simultaneously. For Tsihnahjinnie, art was her “weapon of thought,” her “weapon of ideas,” and her “weapon of survival.”¹⁶⁸⁴ Jean LaMarr explained, “As an artist my work is my weapon and my solace in this struggle”¹⁶⁸⁵ against capitalist and colonizing structures. In multifaceted ways, contemporary Native artists used “postmodern strategies of play, performance, appropriation and irony to disrupt colonial constructs that narrowly define Native identity and au-

¹⁶⁷⁷ Kastner, “Das Bier der anderen.” Transl. by author.

¹⁶⁷⁸ Werner Meisinger, co-owner of Xocolat, quoted in *ibid.* Translated by author.

¹⁶⁷⁹ Pelley, “We’re taking back ‘Indian Giver,’” L1.

¹⁶⁸⁰ “Hulleah J. Tsihnahjinnie,” clipping; Tsihnahjinnie, Hulleah; Art and Artist Files; Vine Deloria, Jr. Library, NMAI, Smithsonian Institution, Suitland, MD. Hereafter cited as “Hulleah J. Tsihnahjinnie”; Tsihnahjinnie; Artist Files; Vine Deloria, Jr. Library, NMAI.

¹⁶⁸¹ David Bradley, artist statement for “Selections From The Permanent Collection: Past and Present Faculty,” 1994; Bradley, David; Native Artists Files; IAIA Archives, Santa Fe, NM. Hereafter cited as Bradley, artist statement; Bradley; Artists Files; IAIA Archives.

¹⁶⁸² Teters, “Photographer and Painter Shan Goshorn,” 72; Goshorn; Artist Files; NMAI.

¹⁶⁸³ Bradley, artist statement; Bradley; Artists Files; IAIA Archives.

¹⁶⁸⁴ “Hulleah J. Tsihnahjinnie”; Tsihnahjinnie; Artist Files; Vine Deloria, Jr. Library, NMAI.

¹⁶⁸⁵ Dylan A.T. Miner, “Jean LaMarr,” in *New Native Art Criticism: Manifestations*, ed. Nancy Mithlo (Santa Fe: Museum of Contemporary Arts, 2011), 121.

thenticity.”¹⁶⁸⁶ Rhetorical and visual strategies to counter media representations included collecting media materials, counting coup through reappropriation, deconstruction, juxtaposition, and parallelism. In the arts field, exhibits were the primary arena to educate the public about the issues of misrepresentation or appropriation and its implications for Indigenous identity. Since deconstructing colonial myths was not enough, many Native artists considered “their mission to be the correction of entrenched misconceptions by using their art to retell Native American history from their own perspective.”¹⁶⁸⁷

Native Americans have started collecting marketing items for different reasons. While Lawrence Baca intended to gather illustrative material for educational purposes, Keene felt empowered by collecting the objects of offense. Baca, who donated his collection of hundreds of marketing items dating back to the 1890s to the NMAI in 2016, started collecting a vast range of different advertising materials in 1980. As a Native American civil rights lawyer, Baca was invited to speak at schools and other institutions to explain how stereotypes affected peoples’ thinking and actions. He started to collect marketing items for his talks to show his audience because often they had only a vague memory of what they saw in grocery stores, but “when you hold it up and show it to them, they react like ‘Oh my God!’”¹⁶⁸⁸ Likewise, Bad River Chippewa Brian Baker started “scour[ing] antique stores and fairs for finds that he would normally never buy” for his exhibit “Americana Indians” in the hope to “awaken people to stereotyping.”¹⁶⁸⁹ By contrast, Keene stated regarding an Indian Smurf (Schleich Toys, 2010) that she bought for herself as an act of empowerment:

I can only speak for myself, but I bought the one I have (he’s in a canoe) because I thought it was hilarious and should be so offensive, but, it’s a smurf, so you can’t help but smile. Sometimes you just have to laugh at the ridiculousness, because I find it tiring to be angry all the time. By buying the figurine I realize I play into the stereotyping and mis-appropriation, but at the same time having it in my room as something ironic and silly makes me feel I have more power over it. It’s a give and take. :)¹⁶⁹⁰

In his talks, Baca personalized the offensive materials by using marketing items from his own life span and placing them in his biography, telling his audience that items were on sale when he was in elementary school or college. By contextualizing “the use of stereotypes, the use of Indian imagery with growing up Indian in America as well as the enactment of civil rights laws and the enforcement of civil rights laws,”¹⁶⁹¹ he personalized the abstract issue of marketing misrepresentation. To highlight their contradictory nature, he juxtaposed the offensive marketing items with civil rights laws that were supposed to end discrimination.

Exhibits provide a forum for such collections to raise awareness and educate their audience. At his workplace in the U.S. Department of Justice, Baca started an exhibition that ran

¹⁶⁸⁶ Michelle McGeough, quoted in *New Native Art Criticism: Manifestations*, ed. Nancy Mithlo (Santa Fe: Museum of Contemporary Arts, 2011), 194.

¹⁶⁸⁷ Gülriz Büken, “Native American Artists’ Use of Irony in Works Restating the Past,” *Journal of American Studies in Turkey* 8 (1998): 43.

¹⁶⁸⁸ Baca, interview.

¹⁶⁸⁹ Lindelof, “CSUS ad exhibit seeks an end to Indian stereotypes.”

¹⁶⁹⁰ Adrienne Keene, “Random Appropriation of the Day! (Indian Smurfs),” *Native Appropriations*, April 15, 2010, accessed October 14, 2016, <http://nativeappropriations.com/2010/04/random-appropriation-of-the-day-indian-smurfs.html>.

¹⁶⁹¹ Baca, interview.

every year during Native American Heritage Month from 1990 through 2005. The eight cases, two showing the various items from his collection, were placed in a highly trafficked part of the department, a corridor all visitors had to pass. By comparing Indigenous sports mascots to mascots of other ethnicities, for instance, Baca aimed to demonstrate that the same kind of stereotyping that was unacceptable with other ethnic groups was still common for Native Americans. The message of the “Big Chief” display case was that not all Indians are chiefs, but looking at advertising like a package of Big Chief condoms sold during the 1950s and 60s suggests that all Indians wear headdresses.¹⁶⁹²

Several exhibits were based on collections of marketing items that they presented en masse to demonstrate the ubiquity of such representations. “Americana Indian: American Indians in the American Imagination” at California State University (Sacramento, 2007) made Brian Baker’s advertising collection available to the public.¹⁶⁹³ “Bittersweet Winds” at Harmony Café (Green Bay, 2008) offered more than 200 items that showed “the good and the ugly of use of Native images in marketing, sports and schools.”¹⁶⁹⁴

Usually, the intent behind artwork and exhibits was the educational effect of raising awareness and fostering mutual understanding. The Ford Motor Co., the sponsor of the “Powerful Images” exhibition, hoped this “unique presentation of Native American images will help foster a better understanding of Native Americans.”¹⁶⁹⁵ Since “Native people who helped shape our country are recognized today as little more than car model names and team mascots,”¹⁶⁹⁶ the central gallery entitled “Indians Everywhere” within the NMAI permanent exhibit “Americans” aimed to raise awareness of the “pervasive presence of American Indian imagery in everyday life.” The gallery urged its audience to understand this phenomenon in its extensive dimension as something relatively unique to the U.S. because “the United States was carved out of American Indian land, and ... its history is profoundly intertwined with American Indians.”¹⁶⁹⁷

From bombardment of viewers with ‘Indian kitsch’¹⁶⁹⁸ to humoristic exposures of social injustice,¹⁶⁹⁹ from the juxtaposition of Native and non-Native views to the contextualization of marketing materials within broader media frames, curators and artists employed different techniques to stir up their visitors’ opinions. Although most exhibits did not name specific target audiences, some explicitly addressed Native and non-Native audiences to call Indigenous stereotypes into question,¹⁷⁰⁰ thus breaking their impact to define perceptions and self-perceptions of Indigeneity.

To stop the acts of racial and gender microaggressions against Native women, Robertson appealed that “We have to decolonize our hearts and minds, and then stand against the perpetuation of denigrating stereotypes”¹⁷⁰¹ (Sun Club Color Studio, 2013). Many female In-

¹⁶⁹² Cf. *ibid.*

¹⁶⁹³ Cf. Lindelof, “CSUS ad exhibit seeks an end to Indian stereotypes.”

¹⁶⁹⁴ Richie Plass, director of education for the exhibit sponsor, quoted in “Native American imagery display opens Oct. 26,” *Green Bay Press Gazette*, October 18, 2008, A7.

¹⁶⁹⁵ Peter Pestillo, Executive Vice President, Corporate Relations, Ford Motor Company, quoted in “Powerful Images,” 7.

¹⁶⁹⁶ Kevin Gover, Director, NMAI, letter of appeal for donations, 2016, courtesy of author.

¹⁶⁹⁷ Ganteaume, “Americans,” 20.

¹⁶⁹⁸ Cf. Gray, “Fluffs and Feathers,” 1077.

¹⁶⁹⁹ Cf. Kavanaugh, “Exhibit Focus Is Exploitation,” 1.

¹⁷⁰⁰ Cf. Miner, “Jean LaMarr,” 121.

¹⁷⁰¹ Robertson, “Dousing the Pocahottie Stereotype.”

Indigenous artists considered their art criticizing mainstream representations of Indigeneity and its commercialization political. However, Jean LaMarr noted in 1992 that she was “never invited to participate in any Indian art show because my work was political” and “the curators said that only men did political artwork.”¹⁷⁰² LaMarr’s 1994 series of box assemblages was an early example of criticism of Native women’s representations by referencing commercial materials such as Longfellow’s Minnehaha, Knott’s Berry Farm Maiden, or cartoons of sexualized ‘maidens’ and Wild West ‘princesses’.¹⁷⁰³ As the case analysis of this study suggests, protests against the sexualization of Native American women have likely occurred earlier but were less visible in media until the millennium. A discriminatory attitude toward female artists may have slowed the discourse of commercialized sexualizations of Indigenous women at a time when protests against representations of Native American history and culture were starting to flourish.

In their struggle against colonizing structures, artists themselves faced the “danger of commercial colonization” and should not allow their work “to be reduced to mere product or entertainment for the Eurocentric art world,”¹⁷⁰⁴ David Bradley emphasized. Since the art market told Native artists to produce beautiful ‘Indian’ scenes, LaMarr refused to sell her work in Santa Fe because “I feel I’d have to participate in negative stereotyping of Indian art because that’s what sells.”¹⁷⁰⁵ To counter such expectations, Frank Buffalo Hyde decided that “Instead of doing beautiful, stoic Indians, I attempt to make the images disturbing.”¹⁷⁰⁶ In his work, “which is anything but subtle regarding the commodification of Indian culture,” Hyde placed “icons of popular Indian culture into frameworks where the eye expects to see a familiar Anglo lexicon.” By not fulfilling these expectations, he asserted an “aggressive, proactive role for Native American identity in the contemporary world.”¹⁷⁰⁷ Challenging representations of Indigeneity in all types of media, including marketing materials, Hyde demonstrated how “Native people [were] taking an active role in reclaiming their stories and representations”¹⁷⁰⁸ to counter colonialism. As Indigenous peoples increasingly pursued the “need to tell our own story,”¹⁷⁰⁹ reclaiming history became part of a “whole cultural reclamation movement – a demand for dignity,”¹⁷¹⁰ as Suzan Harjo concluded in view of her 35 years of activism against sports mascots.

Beyond awareness raising, art also provided alternative representations for Native and non-Native marketers alike. Ojibwe artist Mike Ivall designed a culturally appropriate alterna-

¹⁷⁰² “Beautiful Indians on Top of a Hill,” *Creativity is Our Tradition*, 1992, clipping; LaMarr, Jean; Art and Artist Files; Vine Deloria, Jr. Library, NMAI, Smithsonian Institution, Suitland, MD.

¹⁷⁰³ Miner, “Jean LaMarr,” 121.

¹⁷⁰⁴ Bradley, artist statement; Bradley; Artists Files; IAIA Archives.

¹⁷⁰⁵ “Profile: Jean LaMarr, Printmaker,” *Artwinds*, Summer 1990, 2, clipping; LaMarr, Jean; Native Artists Files; IAIA Archives, Santa Fe, NM.

¹⁷⁰⁶ Frank Buffalo Hyde, quoted in Michael Koster, “Frank Hyde’s art deviates from traditional,” clipping; Buffalo Hyde, Frank; Native Artists Files; IAIA Archives, Santa Fe, NM.

¹⁷⁰⁷ Zane Fischer, statement from *FBH SFReporter* (Indian Market Issue), 2003; Buffalo Hyde, Frank; Native Artists Files; IAIA Archives, Santa Fe, NM.

¹⁷⁰⁸ Jessica R. Metcalfe, “Frank Buffalo Hyde,” in *New Native Art Criticism: Manifestations*, ed. Nancy Mithlo (Santa Fe: Museum of Contemporary Arts, 2011), 110.

¹⁷⁰⁹ Erika Iserhoff, quoted in Pelley, “We’re taking back ‘Indian Giver,’” L1.

¹⁷¹⁰ Suzan Shown Harjo, quoted in Kavanaugh, “Exhibit Focus Is Exploitation,” 1.

tive to the Chicago Blackhawks logo by reshaping the Indian head into a hawk's head.¹⁷¹¹ Within four days, it was viewed by two million people on social media and collected over 15,000 likes and 12,000 shares. After his logo "went viral" online, Ivall sold it to the Ottawa-based children's hockey team Maplesoft Hawks.¹⁷¹²

8.2.3 Producing Economic Pressure Through Boycotts

In a protest letter against the Nutty Mad Indian doll produced by Louis Marx & Co. (1964-66), Jane LeClair let the company know she "made sure that my son did not receive one Marx toy this Christmas. I have twenty-four (24) nieces and nephews who did not receive a Marx toy from me this year. . . . The only possible way I could be induced to buy a Marx toy is that your company apologizes to our Indians and contribute some of those undeserved profits you rake in towards a needy Indian Tribe and there are many."¹⁷¹³ As the toy was still on sale in 1966, LeClair wrote to the AAIA that "Individual protests do not carry enough influence." Rather, it would take "strong and determined 'united' Indian leadership to protest against such unfair and unjust presentation of the American Indian" until he "takes his rightful place in the history and society of the United States."¹⁷¹⁴ Milton Bluehouse hoped the community and individuals would use the boycott as "another means by which to receive justice" to "address this problem by frequenting businesses that respect diversity and boycotting businesses that do not."¹⁷¹⁵

In her TEDx talk "Americana Indian," Nancy Mithlo appealed to "Consumers, choose not to buy derogatory products. Buy Native products from Native people. What I'm asking for is simple: think twice. Speak out. Educate yourselves. Have a conversation."¹⁷¹⁶ AAIA member Mary Payne proposed to initiate a change in marketing practices at a much earlier stage in the production process. Ad agencies were "not known for their ethics but since they are service industries, so to speak, their ethics can be regulated by clients."¹⁷¹⁷ In this study, critics targeted producers, sellers, and consumers with calls for boycotts but not the advertising

¹⁷¹¹ See Mike Ivall, Alternative Blackhawks logo, 2008, design draft, posted in "Is the Blackhawks logo racist? One hockey fan wants a change," *Chi Town Review*, June 28, 2013, accessed February 28, 2021, <https://www.chitownreview.com/is-the-blackhawks-logo-racist-one-hockey-fan-wants-a-change/>.

¹⁷¹² Vincent Schilling, "Culturally Appropriate Chicago Blackhawks Logo by First Nations Artist Goes Viral," *Indian Country Today Media Network*, November 18, 2015, accessed July 4, 2016, <https://indiancountrytoday.com/archive/culturally-appropriate-chicago-blackhawks-logo-by-first-nations-artist-goes-viral>. See also Maplesoft Hawks, homepage, accessed April 7, 2023, <http://maplesofthawks.com/>.

¹⁷¹³ Jane R. LeClair, letter to Louis Marx & Co. Inc., Rochester, New York, December 17, 1964; Derogatory Images: "Nutty Mad Indian," 1966; Box 89; Association on American Indian Affairs Records, 1851-2016, MC147; Public Policy Papers; Seeley G. Mudd Manuscript Library, Princeton University.

¹⁷¹⁴ Jane R. LeClair, letter to The American Indian Association, Rochester, New York, March 9, 1966; Derogatory Images: "Nutty Mad Indian," 1966; Box 89; Association on American Indian Affairs Records, 1851-2016, MC147; Public Policy Papers; Seeley G. Mudd Manuscript Library, Princeton University.

¹⁷¹⁵ Bluehouse, "Subtle racism," A5.

¹⁷¹⁶ Mithlo, "Americana Indian."

¹⁷¹⁷ Mary G. Payne, letter to Miss Nancy Peterson, New York, New York, February 8, 1966; Derogatory Images: Pillsbury, 1966; Box 89; Association on American Indian Affairs Records, 1851-2016, MC147; Public Policy Papers; Seeley G. Mudd Manuscript Library, Princeton University. Hereafter cited as Payne to Peterson, February 8, 1966; Derogatory Images: Pillsbury, 1966; Box 89; AAIA Records; Pub. Pol. Papers; Mudd Man. Lib., Princeton.

agencies. Furthermore, activists called to boycott trends such as the New Age movement.¹⁷¹⁸ From special interest groups like AITEP/N and activist civil rights groups like AIM to Native and non-Native consumers, people with diverse backgrounds have called for a boycott of offensive marketing representations. The case of Treaty Beer, a beer label introduced to and removed from the market three times in 1987, 1988, and 1990, demonstrates the potential power groups could exercise over brands through calls for a boycott.

Case Study 9: Treaty Beer (1988-94)

Case Study 9: Treaty Beer (1988-94)

Dean Crist, leader of Stop Treaty Abuse (STA), developed the label Treaty Beer in the hope it “would be a vehicle for the public to voice their discontent, force out unresponsive politicians, and eventually restore equal rights for all.”¹⁷¹⁹ Sales from the beer “were intended to finance resistance efforts against Indian treaty rights”¹⁷²⁰ and hunting and fishing rights in particular. His resistance was part of the anti-treaty movement spurred by Federal District Court Judge George H. Boldt’s 1974 decision to uphold treaty rights, which resulted in a strong anti-Indian sentiment and death threats against federal judges who sided with Native Americans.¹⁷²¹

Minocqua, Wisconsin, where Crist started his initiative, was a rural area “with several Indian reservations and considerable rural poverty” where beer and taverns were “a strong element in the state’s German American culture.”¹⁷²² In this setting, activist Zoltan Grossman argued, the label was an “effective organizing tool in the bars – a way to get conversation going as a first step to recruitment.” The slogan on the can, “True Brew of the Working Man,” was a “populist message that resonated with white rural working-class people who were losing their jobs (as corporate chains displaced small businesses), and were looking for someone to blame.”¹⁷²³ In support of Indigenous rights and protest against Treaty Beer, the Lutheran Human Relations Association of America (LHRAA) announced a beer boycott. In August 1987, after six weeks of boycott, the “brewer pulled out because of image problems associated with the product.”¹⁷²⁴ Hibernia Brewing Co.’s president Michael Healy explained that a retailer who carried other Hibernia brands “feared her business was in jeopardy from a boycott begun by Treaty Beer’s opponents.”¹⁷²⁵

When Crist started producing the beer brand in cooperation with the Schoenling Brewing Co. and sought to introduce Treaty Beer in Washington in 1988, the LHRAA announced a second

¹⁷¹⁸ In 1994, at a press conference at the Peace and Justice Center in Maine which organizers had called to object to the celebration of Columbus, the coordinator of Indigenous Resistance Against Tribal Extinction (IRATE) called for a public boycott of “the New Age movement and their plastic, self-proclaimed medicine people who shamelessly exploit native people and our sacred cultural ways for financial gain” (Esther Attean, IRATE coordinator). IRATE provided a “list of 40 individuals, organizations and churches that IRATE would like to see boycotted.” Roxanne M. Saucier, “Maine Indian IRATE at treatment Wants public boycott of ‘New Age’ groups,” *Bangor Daily News*, October 8, 1994, ProQuest 413841470.

¹⁷¹⁹ Aguilar-Wells and Smith, “Confronting Racism,” 3.

¹⁷²⁰ *Ibid.*, 1.

¹⁷²¹ “The Anti-Treaty Movement,” Smithsonian Institution.

¹⁷²² Aguilar-Wells and Smith, “Confronting Racism,” 2.

¹⁷²³ Zoltan Grossman, personal interview by Aguilar-Wells and Smith, November 15, 2010, quoted in Aguilar-Wells and Smith, “Confronting Racism,” 2.

¹⁷²⁴ Don Hannula, “Treaty Beer: The Burial Of A Bad Brew,” *The Seattle Times*, May 23, 1990, accessed June 16, 2016, <http://community.seattletimes.nwsources.com/archive/?date=19900523&slug=1073385>.

¹⁷²⁵ Michael Healy, President, Hibernia Brewing Co., paraphrased in Rogers Worthington, “Treaty Beer Storm Linger,” *Chicago Tribune*, August 24, 1987, accessed June 16, 2016, http://articles.chicagotribune.com/1987-08-24/news/8703040364_1_treaty-opponents-non-indian-19th-century-treaties.

beer boycott. Appealing to “caring Christians” and “those in Washington and Oregon who thought that these battles were over ten years ago,” the religious group called “its members to join in the boycott, and write or call the distributors and producers of this product, which promotes racism, dissension and animosity against our Native American brothers and sisters. Watch for the product, let the distributors know about the boycott, and ask for their cooperation in getting it off the market.”¹⁷²⁶ Indian interest, civil rights, environmental, fishing groups,¹⁷²⁷ and officials, including the Governor of Washington State, Booth Gardner, supported the boycott and asked that people refrain from purchasing Treaty Beer.¹⁷²⁸

The Steelhead/Salmon Protective Association, United Property Owners of Washington (UPOW), and the Wildlife Network S/SPAWN that eventually switched sides¹⁷²⁹ supported Crist’s anti-treaty campaign but could not counteract the boycott. Kenneth Lichtendahl, president of the Hudepohl-Schoenling Brewing Co., ceased production because “In as much as it’s not our label, not our message, we did not want to be put in the middle between two factions.”¹⁷³⁰ Ultimately, the brewer and STA agreed to terminate the beer label because of the controversy and poor sales.¹⁷³¹ Given the low sales in Wisconsin and pressure on distributors in Washington state to boycott the beer, Crist was “disheartened by northern Wisconsin store, resort and tavern owners who complain loudly about the Chippewa Indian’s rights to spear fish but did not actively support the product and promote sales.”¹⁷³²

Crist’s third and last effort to sell Treaty Beer in Washington ended after another four-month boycott in 1990. Supportive groups organized “a ‘don’t stock it or you’ll be boycotted’ letter writing and press campaign with letters to every convenience store and bar in the state.”¹⁷³³ HONOR started branch operations in Washington and “sent messages to stores and taverns that carrying Treaty Beer endorsed racial divisiveness.” As a result of the strategy, “No major outlets wanted Treaty Beer,” and at “Treaty Beer’s peak, there probably were fewer than 20 outlets. Eventually, all but six dumped it.”¹⁷³⁴

A suit against Crist and Stop Treaty Abuse-Wisconsin brought by the Lac de Flambeau Band of Lake Superior Chippewa Indians & Wa-Swa-Gon Treaty Association in 1991 marked the last chapter of the Treaty Beer case. Arguing that Crist’s “protest activities were motivated by racial animus,” Judge Barbara Crabb issued a permanent injunction against Stop Treaty Abuse Inc., thus finally halting his resistance group and beer label in 1994.¹⁷³⁵

In 1997, AITEN asked more than 104 California tribes to boycott the SFNT cigarette label, but only some tribes participated.¹⁷³⁶ Ten years later, in another campaign, AITEP’s poster

¹⁷²⁶ LHRAA, quoted in “LHRAA calls for ‘Treaty Beer’ boycott,” *News from Indian Country*, June 30, 1988, 4.

¹⁷²⁷ United Indians, Seattle (Bernie White Bear), El Centro De La Raza, Church Council of Greater Seattle, Northwest Coalition against Malicious Harassment, Washington Environmental Council, HONOR (Honor Our Neighbors’ Origins and Rights), Northwest Fisheries Commission (Steve Robinson, publicist; Billy Frank, head), Great Lakes Indian Fish and Wildlife Commission, some sport fishing groups in Seattle.

¹⁷²⁸ Cf. “LHRAA calls for ‘Treaty Beer’ boycott,” 4.

¹⁷²⁹ Cf. Aguilar-Wells and Smith, “Confronting Racism,” 5.

¹⁷³⁰ Kenneth Lichtendahl, President, Hudepohl-Schoenling Brewing Co., quoted in Maryann Mrowca, “Brewer Quits Making Treaty Beer,” *Associated Press*, June 3, 1988, accessed June 16, 2016, <http://www.apnewsarchive.com/1988/Brewer-Quits-Making-Treaty-Beer/id-73b0490e2909a1af477c906561c38917>.

¹⁷³¹ Cf. Dean Crist, paraphrased in Mrowca, “Brewer Quits Making Treaty Beer.”

¹⁷³² Mrowca, “Brewer Quits Making Treaty Beer.”

¹⁷³³ Aguilar-Wells and Smith, “Confronting Racism,” 5.

¹⁷³⁴ Hannula, “Treaty Beer: The Burial Of A Bad Brew.”

¹⁷³⁵ Cf. Aguilar-Wells and Smith, “Confronting Racism,” 6.

¹⁷³⁶ Cf. Humphrey, “Groups fight tobacco firm with boycott,” D1.

invited sellers of tobacco products to boycott the brands Natural American Spirit, Geronimo, Noble, and Redman “For respecting and supporting the traditional use of tobacco by agreeing not to sell any commercial tobacco products that misuse American Indian imagery.”¹⁷³⁷ The campaign, funded by the California Department of Health Services, was based on survey results showing with one exception that, “while most [tobacco] merchants were unaware of how offensive the images are, they were willing to help remove the offending products from display or possibly even stop selling them.”¹⁷³⁸

Although advertisers feared losing shares of their target market that was typically not Native American, Indigenous critics have noted that companies also risked losing Indigenous customers and fans. Marketing practices like Victoria’s Secret’s use of a feather headdress as an accessory or No Doubt’s music video for their song ‘Looking Hot’ had “alienated many Native fans” and moved some to boycott the products.¹⁷³⁹ Mohawk Designer Marlana Thompson explained why she decided to stop buying Victoria’s Secret’s wares after the 2012 show:

Victoria’s Secret is a major brand name, and the only brand whose undergarments I liked. But they just lost a ‘valued’ customer. I cut up my platinum VIP Angels credit card and closed my account. Because not only am I a first Nations woman, I am a mother to two beautiful daughters, and what kind of example would I be setting for them if I condoned the actions of this worldwide company? As a native mother to two impressionable daughters, I have a duty to instill morals and values that do not compromise our traditional teachings or hinder our culture in any way.¹⁷⁴⁰

Similarly, activist Ruth Hopkins advised Victoria’s Secret to “Consider yourself boycotted” because, as “a Victoria’s Secret customer, I am livid. After years of patronage and loyalty to the Victoria’s Secret brand, I am repaid with the mean-spirited, disrespectful trivialization of my blood ancestry and the proud Native identity I work hard to instill in my children.”¹⁷⁴¹ In the case of a Mastodon music event, Erica V. Lee pointed out that these marketing practices created a racially hostile environment that repelled Native customers (see Mastodon, 2013). While “Metal and hard rock music are still viewed as the domain of straight white men,” there were “plenty of us who don’t fit that category and still want to feel at home in your music.”¹⁷⁴²

Milton Bluehouse tried to mobilize Native Americans as customers on reservations and in border towns to make use of their power as customers and stop buying products. In a commentary published in the *Navajo Times*, Bluehouse appealed to the “collective spirit of the Navajo people to unite to oppose racist business tactics in Gallup and other reservation border towns.” Bluehouse suggested a “boycott of Gallup for two tribal paydays” to fight the racism in such border towns where, “On a daily basis, Navajo people, out [sic] culture, and

¹⁷³⁷ AITEP, “Thank You, Federated Indians of Graton Rancheria,” print PSA, *News from Native California*, Spring 2007, 41.

¹⁷³⁸ Dubin, “Campaign Against Tobacco Products with Indian Images Achieves Success,” 41.

¹⁷³⁹ “Mohawk Designer Marlana Thompson Discusses the Victoria’s Secret Fashion Show,” *Indian Country Today Media Network*, November 27, 2012, accessed October 28, 2016, <http://indiancountrytodaymedianet.com/2012/11/27/mohawk-designer-marlana-thompson-discusses-victorias-secret-fashion-show-145916>.

¹⁷⁴⁰ Marlana Thompson, quoted in “Mohawk Designer Marlana Thompson Discusses the Victoria’s Secret Fashion Show.”

¹⁷⁴¹ Hopkins, “Victoria’s Secret’s Racist Garbage Is Just Asking for a Boycott.”

¹⁷⁴² Lee, “An Open Letter to Mastodon.”

our basic humanity are cruelly misrepresented, profited on, and denied.” He saw billboards depicting Native Americans as cartoon caricatures and campaigns inviting tourists “to ‘Come and See the Indian Village,’ as if a Navajo community holds the same entertainment value as a circus freak show,” as the embodiment of racism. Beyond strategies like the requirement of training programs to receive or renew business leases or municipal laws prohibiting race-based stereotypes in advertising, Bluehouse believed consumers needed to be educated about their economic power. In his opinion, the combination of buying at businesses that respect diversity and a boycott led by the Navajo Nation was “an effective tool for social and economic change.”¹⁷⁴³

Companies selling large amounts of products like beer or soft drinks on reservations and often sponsoring Indigenous events were aware of the potential financial threat of an Indigenous boycott of their products. As a sponsor of the 65th Annual Tribal Fair, Parade and Rodeo of 1990 on the White Mountain Apache reservation in Arizona, Anheuser-Busch sent Budweiser’s promotional ‘party animal’ Spuds MacKenzie to toss beer candies, which were “packaged as perfect replicas of Budweiser beer cans,”¹⁷⁴⁴ to the predominantly Indigenous kids attending the parade. “The big breweries often are main sponsors of Indian festivals,”¹⁷⁴⁵ wrote Melanie Haiken, linking their sponsorship and marketing strategies with the high alcohol consumption and abuse rates for Native children and teenagers.

Through sponsoring Indigenous events, companies gained publicity, strengthened relationships with customers, and reached new customers. Anheuser-Busch’s strategy to target Indigenous customers at an early age to build brand loyalty indicates that Native Americans represented an important target group for some companies and, consequently, had the potential power as customers to correct corporate behavior through product boycotts. The threat of a financial loss may have been most apparent for advertisers on a reservation where a tribal government could order a ban or shops could boycott products without fearing that customers would visit other shops due to the limited number of stores.

Urban Native critics used their social media network to mobilize support. Identifying as a “Descendant of the Sand Creek Massacre Survivors,” “Descendant of the Battle of the Washita Survivors,” and “Enrolled Member of the Cheyenne & Arapaho Tribes of Oklahoma,” Renee Roman Nose wrote GAP: “It is with great sadness that I notify you I will not be shopping at your store until you remove the ‘Manifest Destiny’ t-shirts available at your stores. . . . I’m also inviting the more than 1700 people on my Facebook page to boycott your stores and inviting them to shop with their conscience.”¹⁷⁴⁶ Calls for boycotts on reservations were geographically limited, but this limitation no longer played a role in online calls to followers within a digital network.

Since the early struggle against the CHML beer label had not brought the desired results, U.S. Surgeon General Antonia Novello believed a “boycott of the company threatened by Native American leaders could be effective.”¹⁷⁴⁷ Arguing that boycotts had also forced brands such

¹⁷⁴³ Bluehouse, “Subtle racism,” A5.

¹⁷⁴⁴ Melanie Haiken, “This Bud’s for you, kids – dogging Native Americans,” *Mother Jones* 16, no. 3 (May/June 1991): 10.

¹⁷⁴⁵ *Ibid.*, 10.

¹⁷⁴⁶ Renee Roman Nose, quoted in “Gap ‘Manifest Destiny’ T-Shirt Sparks Outrage in Indian Country.”

¹⁷⁴⁷ Antonia Novello, U.S. Surgeon General, paraphrased in Richmond, “Malt Liquor called threat,” B4.

as Power Master off the market, Novello urged “the leaders of the Indian Nations to stop this exploitation, to use public outrage and alert the nation on this marketing ploy.”¹⁷⁴⁸ Activists staged multiple protests, including a coalition of New York City Native groups and the Native American Council that called for the boycott of products like ‘Arizona Iced Tea,’ ‘Dragon’ beer, and ‘Crazy Horse’ and ‘James Bowie Brew’ malt liquors.¹⁷⁴⁹ As explained in the case study, activists argued the various boycotts were responsible for the decreasing sales numbers of the malt liquor and other products,¹⁷⁵⁰ although such an effect was hard to prove.

In the Air Canada case (1996), the media at least implicitly attributed the cancellation of a stereotypical ad depicting a spear-wielding chief riding in business class to Mercredi’s boycott threat. “Under threat of a boycott by Canadian Indians, Air Canada apologized for insensitivity Tuesday and withdrew”¹⁷⁵¹ the ad. Mercredi argued such a boycott would have been significant and affected national flights within the Canadian borders since the “assembly’s annual meeting, which will be held in Ottawa this summer, will see hundreds of Indian chiefs and councilors fly to the capital from across Canada.”¹⁷⁵²

While some calls to boycott may have represented an economic threat to some degree, the potential negative publicity stemming from ethical issues may also have induced marketers to react reconciliatorily and adapt their marketing practices. In 1992, a call for boycott by a group of Navajo students from the Leupp Boarding School in Arizona moved Nestlé-Beich to change a candy wrapper the children found offensive. The 7th and 8th graders felt personally attacked by a joke printed on a Laffy Taffies wrapper asking, “Why were the Indians the first in North America? Because they had reservations.” Following their protest, Nestlé-Beich reviewed “the 99 other wrapper riddles to determine whether others could be found offensive” and allowed the students “to review two other Indian jokes, in addition to having their own joke printed.” Along with their apology, the company destroyed the printing plates for the offensive joke developed by an unspecified ad agency in 1986. As a result of the cooperative crisis management strategy, the students called off the boycott.¹⁷⁵³

Asking why Treaty Beer failed, Michelle Aguilar-Wells and Barbara L. Smith summarized that “a few quipped that it wasn’t very good beer” while others believed “times had changed” and the “edge was off the anti-Indian movement that had preceded and followed the Boldt decision.”¹⁷⁵⁴ Billy Frank, chair of the Northwest Indian Fisheries Commission (NWIFC), argued the “solid cooperation among tribes, the state, and sports and commercial fishermen” who all had the goal “to make the resource better for all”¹⁷⁵⁵ prohibited the beer label’s and similar initiatives’ success. NWIFC spokesman Steve Robinson noted, “Washington has outgrown him. And he’s losing in Wisconsin. . . . The days are numbered for political types to try and build causes around hatred.”¹⁷⁵⁶ In light of changing Indian-White political

¹⁷⁴⁸ Antonia Novello, U.S. Surgeon General, quoted in Richmond, “Malt Liquor called threat,” B4.

¹⁷⁴⁹ Cf. Alex Ewen, director of the Solidarity Foundation, paraphrased in Carrillo, “Native American leader urges boycott of Hornell Brewing Co.,” 6.

¹⁷⁵⁰ Cf. “Crazy Horse beverage fight goes to federal court.”

¹⁷⁵¹ Associated Press, “Air Canada apologizes as Indians object to ad,” 2.

¹⁷⁵² Aubry, “Mercredi irked by Air Canada ad campaign using natives,” D1.

¹⁷⁵³ “Nestle-Beich wrapper target of Indian protest,” A1.

¹⁷⁵⁴ Aguilar-Wells and Smith, “Confronting Racism,” 6.

¹⁷⁵⁵ Billy Frank, Chair, Northwest Indian Fisheries Commission, quoted in Hannula, “Treaty Beer: The Burial Of A Bad Brew.”

¹⁷⁵⁶ Steve Robinson, spokesman for the Northwest Indian Fisheries Commission, quoted in Hannula, “Treaty Beer: The Burial Of A Bad Brew.”

relations and social-ethical norms, writer Don Hannula viewed the boycott results as “a birth announcement for increased awareness and cooperative understanding.”¹⁷⁵⁷

The 1995 boycott of station *KSTP* based in St. Paul, Minneapolis, demonstrates the potential impact of a boycott of Native American advertisers. After a radio talk show hosted by Mark Zelenovich and Matt Michalski involving racist comments about Indians and Indian rights, “virtually all . . . American Indian-owned casinos in the state, Mystic Lake and Dakota Country casinos are pulling advertising, estimated to be worth several hundred thousand dollars annually, from *KSTP-AM* and *KSTP-TV*.”¹⁷⁵⁸ Although Native artists had long presented statements such as “We’re not your Indians anymore,” Natives did not have “much political, financial, or media clout to stand behind these bold words,” Tim Giago commented. But now “the Indian nations of America have something they never had even 10 years ago: financial clout.”¹⁷⁵⁹ Since Indian-owned casinos spent at least ten million dollars on media advertising in Minnesota, the financial impact on the station’s operator Hubbard Broadcasting was potentially great, and the boycott was effective immediately.¹⁷⁶⁰ Hubbard Broadcasting’s agreement sent out to eleven tribal councils statewide included the sponsorship of a scholarship at the University of Minnesota School of Journalism for a Minnesota Indian student, internships for Minnesota Indian students interested in journalism and broadcasting careers, the airing of TV programming and radio news shorts on Indian issues running over several months, and increased access to the company’s equal opportunity program director regarding employment at the company.¹⁷⁶¹ As *News from Indian Country* author Stevenson observed, the “biggest challenge for Native leaders [was] to mobilize tribes with financial resources to join in using their ownership to force change on corporate behavior.”¹⁷⁶²

Forming Alliances to Increase Pressure

Although politicians and activists attributed much power to calls for boycotts, the impact of individual boycott threats not backed by financially powerful Indigenous organizations was limited and depended on the amount of publicity and support through a broad network of coalitions. As Navajo students’ successful call to boycott Nestlé Beich products suggests, sometimes unfavorable publicity rather than the immediate threat of financial loss was the primary incentive to change marketing practices. Stakeholders may have perceived protests by children differently than AIM protests, which many saw as a militant activist group. AIM had urged consumers to boycott organizations several times, often with signs at demonstrations in front of company buildings or stores, such as the Cochise Fine Arts Gallery in Bisbee, Arizona (1993),¹⁷⁶³ or J.C. Penny as distributor of Liz Claiborne’s Crazy Horse label (1998-2001).¹⁷⁶⁴ While these boycott calls have produced publicity and raised awareness, they did

¹⁷⁵⁷ Hannula, “Treaty Beer: The Burial Of A Bad Brew.”

¹⁷⁵⁸ Ann Merrill, “Mystic Lake, Dakota Country casinos join KSTP ad boycott // All casinos in state have now pulled advertising,” *Star Tribune*, February 18, 1995, 1D.

¹⁷⁵⁹ Tim Giago, “We’re not your Indian anymore,” *Indian Country Today*, March 2, 1995, ProQuest 362601967.

¹⁷⁶⁰ Cf. Merrill, “Mystic Lake, Dakota Country casinos join KSTP ad boycott,” 1D.

¹⁷⁶¹ Cf. Ann Merrill, “KSTP hopes agreement ends ad boycott by Indian casinos // Action stems from comments during radio show,” *Star Tribune*, March 21, 1995, ProQuest 418622182.

¹⁷⁶² Stevenson, “Investors battle anti-Native actions by corporations,” 12A.

¹⁷⁶³ Cf. Ibarra, “Art gallery’s Cochise logo.”

¹⁷⁶⁴ Cf. Desjarlait, “Crazy Horse name protested – again”; Thomsen, “Liz Claiborne and J.C. Penney Criticized for Use of Crazy Horse Name.”

not cause short-term changes. AIM and other protesters have also formed close alliances and broad coalitions as a factor for success.

The Santa Barbara AIM Chapter had made it “a priority to address issues regarding the degradation of Native American people in regards to offensive marketing tactics and the use of Native American images as mascots.” Protesting Lucky Brand’s T-shirt bearing the image of a Native American chief with the words “White Lightning Watering Hole Our Booze made by Mohave Distiller Co.” and the phrase “may see miracles and spiritual wonders” (2010), representatives of the Santa Barbara AIM Chapter threatened to ally with other associations on a local level where a co-founder of the company had “several other businesses and investments.” Roberta Weighill informed Lucky Brand, “If this is not resolved at your level, I will assure that it will be addressed at all other associations within our city and made known Nationally as this is not something we will continue to overlook.”¹⁷⁶⁵

Besides media, Native and non-Native churches, and special interest organizations, protesters formed coalitions with influential social responsibility organizations as allies. The Interfaith Center on Corporate Responsibility, an association of 300 religious investors founded in 1971, used its economic power to enforce ethical standards in corporate behavior. In 2000, the ICCR joined a meeting with Michael Haney, Vernon Bellecourt, and Juanita Helphrez “to discuss ways of combating Native American stereotypes and other anti-Native behavior on the part of corporate America.” The goal of the “historic meeting of religious activist-investors and Native American activists” was to “take the battle beyond sports franchises to corporations.” The investors’ strategy was typically to “influence corporate behavior by first calling executives’ attention to the issue and entering into a dialogue with the executive,” which oftentimes produced desirable results. If talks did not show any effect, the investors filed a shareholder resolution to be presented for a vote to all shareholders. As the chapter on protecting intellectual property showed, the ICCR repeatedly supported the Crazy Horse family in defending their ancestor’s name.

Filing complaints with advertising councils against presumably offensive marketing practices was a strategy used in international protest cases in New Zealand and Great Britain. In the U.S., protesters consulted with social institutions like the ICCR, churches, or government agencies like the IACB that specialized in particular issues. In the absence of such organizations, advertising councils may have been the primary addressee for Native American misrepresentation in advertising outside the U.S. In the 2006 Virgin Trains case in Great Britain, the Advertising Standards Authority receive 83 complaints about their commercial but decided it was “a tongue-in cheek pastiche of Hollywood cowboys and indians [sic] films”¹⁷⁶⁶ and, thus, rejected the complaints. Ironically, the very problem the critic denounced, the renewal and passing on of old clichés defined and approved by mainstream society, served to legitimize the marketing ploy.

A decade earlier, in 1997, the Advertising Standards Complaint Board of New Zealand had decided differently after discussing complaints against a TV commercial by Lion Breweries. In their commercial, a Native American was sitting in a tavern and giving names to famous inventors like Thomas Edison and Alexander Graham Bell, among others, like Glowing

¹⁷⁶⁵ Roberta Weighill, Community Liaison & AIM TV Host, Santa Barbara Chapter, AIM, quoted in Robert Schmidt, “Lucky Brand sells ‘White Lightning’ t-shirt,” *Newspaper Rock*, February 24, 2010, accessed September 27, 2020, <http://newspaperrock.bluecorncomics.com/2010/02/lucky-brand-sells-white-lightning-t.htm>.

¹⁷⁶⁶ Caven, “Virgin’s Indians Ad Stays On Track,” 25.

Orb, Talking Bone, and Running Beer. Critics asked the board to ensure that Lion Breweries removed the ad because they found it “offensive, insensitive and embarrassing to our country.”¹⁷⁶⁷ One of the complainants identified as a Menominee Indian living in New Zealand who thought the ad was “offensive, derogatory, tasteless and senseless” and “furthered the ‘drunken Indian’ stereotype.”¹⁷⁶⁸ A non-Indigenous critic became aware of the commercial after he had attended a university course about Native American history and a lecture on media stereotyping of Natives. This critic drew a parallel between American Indians and Maori but emphasized the differential treatment of those two groups in New Zealand. “I believe that if this advertisement portrayed a stereotype of Maori, there is no way Lion Red would get away with it.”¹⁷⁶⁹

Lion Breweries and its advertising agency, Saatchi&Saatchi, held that the Native American character had been “portrayed as wise, . . . came across as good-humoured and likable, and was a positive rather than a negative character.”¹⁷⁷⁰ A minority of board members approved of the advertisement, arguing “the American Indian actor who played the character had been consulted to ensure the advertisement would portray him and his people in an authentic and appropriate way. . . . But the majority believed the advertisement would encourage belief in an inaccurate and outdated stereotype of American Indians.”¹⁷⁷¹ Although the board members disagreed on whether the Indigenous representation was accurate and appropriate, the board finally upheld the complaint.

8.2.4 Publicizing and Legitimizing Protests Through the News Media

Promotional publicity strategies like giving interviews with newspapers, radio stations, and TV channels, staging press conferences, writing letters to editors, and publishing articles and columns¹⁷⁷² were useful for selling marketing protests to the public as press coverage implicitly gave more significance to such protests. Like critics in the 1960s, social media activists in the 21st century still celebrated that mainstream media picked up their protest and presented it to a larger audience.

Maintaining productive relationships with media professionals was crucial in gaining favorable publicity. For organizing promotional interviews during the 1990s, Fritz Opel, marketing consultant for the Sycuan Gaming Center, experienced that “stations are supportive of tribal issues and very seldom do you run into a hostile reporter If you do, chances are you will know in advance.”¹⁷⁷³ Like in the case of Treaty Beer, activists often knew the journalists with an Indian-friendly attitude. Since most newspaper stories were based on information provided by outside sources, activists had good chances to sell their story if it was of public interest and interesting enough to catch the editor’s attention.

¹⁷⁶⁷ Critics, quoted in “Beer advertisement ‘offensive, insensitive’,” *Dominion* [NZ], December 13, 1997, 10.

¹⁷⁶⁸ Menominee critic, paraphrased in in “Beer advertisement ‘offensive, insensitive’,” 10.

¹⁷⁶⁹ Critic, quoted in in “Beer advertisement ‘offensive, insensitive’,” 10.

¹⁷⁷⁰ Saatchi&Saatchi, advertising agency for Lion Breweries, paraphrased in in “Beer advertisement ‘offensive, insensitive’,” 10.

¹⁷⁷¹ “Beer advertisement ‘offensive, insensitive’,” 10.

¹⁷⁷² Cf. Fritz Opel, “Publicity: The Unpaid Medium,” *Indian Gaming Magazine*, June 1995, 9.

¹⁷⁷³ Opel, “Publicity: The Unpaid Medium,” 9.

Reporting is essential for explaining a protest's legitimacy to gain acceptance. Since the late 18th century, "newspapers, magazines, pamphlets, and other print media conveyed campaign messages, announced forthcoming movement activities, evaluated those activities, and provided news reports on their successes or failures." Innovations of the 20th century ranging from radio, television, electronic messaging, and opinion polls to the worldwide proliferation of the press offered new opportunities and exposure. Natives themselves invited well-meaning journalists, whose attitude was known and desired, to protests to take advantage of media exposure. The dissemination of movement claims through the public media reaches far more third parties than non-public attacks or negotiations. Additionally, since news media coverage "produces a sort of echo chamber in which activists hear how others are interpreting their claims to program, identity, and standing," the extent and character of the reporting are part of the protest strategy.¹⁷⁷⁴

The AAIA staged multiple protests against misrepresentations of Native Americans in marketing during the 1960s and actively sought the support of their protest through media coverage. When the AAIA complained to Pillsbury (1966), the organization also sent a copy of the letter to *The New York Times*, which printed the story.¹⁷⁷⁵ *The New York Times* news service syndicate then issued the story to its member papers, like the *St. Louis Post-Dispatch* on page one, the *Philadelphia Evening Bulletin*, the *Cleveland Plain Dealer*, and the *San Francisco Chronicle*.¹⁷⁷⁶ Mary Payne argued the "New York Times article will help spread the word that no minority group is going to stand by in silence, but perhaps more important that the citizens of the United States will demand fairness."¹⁷⁷⁷ After *Ad Age* also covered the marketing protest,¹⁷⁷⁸ Felice Maier was confident that, "Since this piece on AAIA's success with Pillsbury appeared in the 'bible' of Madison Avenue, it may very well scare off future 'cute' advertising gimmicks maligning the American Indian!"¹⁷⁷⁹ Members of the organization attributed much power to news coverage by informing marketers of their protest and influencing their future choices. They also sought to gain support from other stakeholders and encouraged them to join and involve the media to spread their criticism.

After protests against the popular children's toy Nutty Mad Indian (Louis Marx & Co., 1964-66), critics celebrated that the Associated Press "hooked the AAIA protest about the toy on to the lead about the mother's protest about war toys"¹⁷⁸⁰ and that both "UPI and AP car-

¹⁷⁷⁴ Tilly, *Social Movements*, 84-85.

¹⁷⁷⁵ Cf. "Pillsbury Still Fights Indian War," *Supermarket News*, February 7, 1966; Derogatory Images: Pillsbury, 1966; Box 89; Association on American Indian Affairs Records, 1851-2016, MC147; Public Policy Papers; Seeley G. Mudd Manuscript Library, Princeton University.

¹⁷⁷⁶ Cf. Felice Maier, note to Mr. William Byler and Mrs. Mary Lou Payne, s.l., February 15, 1966; Derogatory Images: Pillsbury, 1966; Box 89; Association on American Indian Affairs Records, 1851-2016, MC147; Public Policy Papers; Seeley G. Mudd Manuscript Library, Princeton University.

¹⁷⁷⁷ Payne to Peterson, February 8, 1966; Derogatory Images: Pillsbury, 1966; Box 89; AAIA Records; Pub. Pol. Papers; Mudd Man. Lib., Princeton.

¹⁷⁷⁸ Cf. "Pillsbury Gets Complaints on Its Funny Face Drink Wrappers," *Advertising Age*, February 14, 1966, clipping; Box 89; Association on American Indian Affairs Records, 1851-2016, MC147; Public Policy Papers; Seeley G. Mudd Manuscript Library, Princeton University.

¹⁷⁷⁹ Felice Maier, note to Mr. William Byler, s.l., February 24, 1966; Derogatory Images: Pillsbury, 1966; Box 89; Association on American Indian Affairs Records, 1851-2016, MC147; Public Policy Papers; Seeley G. Mudd Manuscript Library, Princeton University.

¹⁷⁸⁰ Anonymous, note to Mr. William Byler and Mrs. Mary Lou Payne, s.l., March 23, 1966; Derogatory Images: "Nutty Mad Indian," 1966; Box 89; Association on American Indian Affairs Records, 1851-2016, MC147; Public Policy Papers; Seeley G. Mudd Manuscript Library, Princeton University.

ried stories about the ‘Nutty Mad Indian’ on their wires.”¹⁷⁸¹ After their success of winning media coverage, Mary Payne recommended supporters, “If you do write to Marx & Company protesting the toy, or to Sears, Roebuck and Company, . . . it probably would be a good idea for you to send copies of your letter to the local papers there in Wisconsin – it certainly wouldn’t hurt to get some publicity on it.”¹⁷⁸²

While protests against large companies such as Calvert and Pillsbury received media attention, there “have been numerous local ads here that have been changed or canceled as a result of a complaint from us [the AAIA], but they were of little interest to the press.”¹⁷⁸³ To become newsworthy, protest actions had to be big, colorful, locally relevant, and/or oriented to issues already under widespread public discussion. Because of this built-in asymmetry, protesters had little control over whether their protest was covered and how they were portrayed in the media.¹⁷⁸⁴ Jeffrey Newman of the AAIA found it “quite often very difficult to get coverage because if you don’t have a story that’s very violent or immediately very violent or very exciting or there isn’t a lot of action going on you don’t get much coverage. And most stories involved with Indian affairs are not very violent.”¹⁷⁸⁵

According to Hearit and Roberson, the “media have an interest in keeping the crisis interesting, and often do so by describing it as a morality tale of good versus evil.”¹⁷⁸⁶ The author of a news article, who frames issues according to his personal interpretation, is an important factor. This begins with the quotation or paraphrasing of actors, through which journalists choose whom to listen to and, thus, give weight. In many articles, the leading frame was already evident in the headline, and the naming of protest actions can have a stigmatizing or heroizing effect if they carry valid evaluations.¹⁷⁸⁷ With headlines such as “Indians Sound War Cry Over Television Image” or “Episcopal Bishop Joins Redskins On Warpath Vs. Custer,”¹⁷⁸⁸ media outlets stylized protests into a fight or war by using ‘Indians on the warpath’

¹⁷⁸¹ UPI: *St. Louis Post-Dispatch* (Missouri), March 7, 1966. AP: *Danville Bee* (Virginia), March 9, 1966; *Rochester Times-Union* (New York), March 9, 1966; *The Evening Sun* (Maryland), March 9, 1966 (page one); *The Muskegon Chronicle* (Michigan), March 9, 1966; *The Saginaw News* (Michigan), March 9, 1966; *Torrington Register* (Connecticut), March 9, 1966; *San Francisco Examiner* (California), *The Middleton Journal* (Ohio), March 10, 1966; *New London* (Connecticut), March 10, 1966; *Springfield, Ohio News*, March 10, 1966; *Sunday Journal and Star* (Nebraska), March 13, 1966.

Clippings from Derogatory Images: “Nutty Mad Indian,” 1966; Box 89; Association on American Indian Affairs Records, 1851-2016, MC147; Public Policy Papers; Seeley G. Mudd Manuscript Library, Princeton University.

¹⁷⁸² Mary G. Payne, letter to Mr. Arvid Miller, s.l., March 30, 1966; Derogatory Images: “Nutty Mad Indian,” 1966; Box 89; Association on American Indian Affairs Records, 1851-2016, MC147; Public Policy Papers; Seeley G. Mudd Manuscript Library, Princeton University.

¹⁷⁸³ Mary G. Payne, letter to Miss Nancy Peterson, New York, New York, February 3, 1966; Derogatory Images: Pillsbury, 1966; Box 89; Association on American Indian Affairs Records, 1851-2016, MC147; Public Policy Papers; Seeley G. Mudd Manuscript Library, Princeton University.

¹⁷⁸⁴ Cf. Tilly, *Social Movements*, 85.

¹⁷⁸⁵ Jeffrey Newman, AAIA, in Radio TV Reports, Inc., transcript of a WEVD program special, January 22, 1969; Derogatory Images: General, 1949-1983; Box 90; AAIA Records; Pub. Pol. Papers; Mudd Man. Lib., Princeton.

¹⁷⁸⁶ Keith M. Hearit and Kasie M. Roberson, “Denial, Differentiation, and Apology: On the Use of Apologia in Crisis Management,” in *Handbook of Risk and Crisis Communication*, ed. Robert Heath and Dan O’Hair (New York: Routledge, 2009), 544.

¹⁷⁸⁷ Cf. Tilly, *Social Movements*, 7.

¹⁷⁸⁸ Kane, “Indians Sound War Cry Over Television Image”; “Episcopal Bishop Joins Redskins On Warpath Vs. Custer,” 1, 11.

platitudes. Accordingly, media framed companies' crisis management strategies as war strategies, like the *Houston Chronicle* labeled BP's name change in 2002 a "capitulation."¹⁷⁸⁹

During the 1960s, the use of "simple-minded clichés in the reporting"¹⁷⁹⁰ of Indigenous issues, as news headlines like "Indians Claim They Don't Scalp Whites Any More"¹⁷⁹¹ demonstrate, was pervasive. Advocates for fair representation wished "reporters for all the newspapers would cease using Indians on the warpath" but acknowledged that this style of news reporting "sells papers."¹⁷⁹² Simultaneously, Indigenous activists adapted their warrior concepts to modern fights against issues like misrepresentation, thereby reviving and remodeling the war frame in a contemporary setting which helped to attract media attention.

In his analysis of Euro-American TV coverage of Indigenous protests between 1968 and 1979, Tim Baylor identified four frames that dominated media coverage: the "Militant Frame," the "Stereotype Frame," the "Factionalism Frame," and the "Civil Rights Frame," while only activists used the "Treaty Rights Frame."¹⁷⁹³ Baylor concluded that the emphasis on Indigenous militancy overshadowed the real problems and was ultimately detrimental to the movement, even if it temporarily attracted attention. The presentation of treaty and civil rights issues in connection with the "Stereotype Frame" obscured the seriousness of the social and economic problems. Overall, 98 percent of TV news stories used either the "Militant" or "Stereotype Frame," reflecting established concepts of the aggressor or noble savage.¹⁷⁹⁴

Many Native and non-Native newspapers and national and international newspapers reported on marketing protests in the U.S. and beyond. Occasionally, newspapers like *Indian Country Today* acted as agents of fair marketing practices and initiated criticism of marketing practices. Other newspapers, Indigenous and non-Indigenous alike, also took a stance on Indigenous marketing representations in their editorial or special topic sections, as the *Minneapolis Star Tribune* or the *Guardian* did repeatedly.

Overall, coverage of marketing protests available for this study seemed mostly neutral or with a supportive bias for the activists. Indigenous media did generally not show a critical or negative stance toward such protests. Major non-Indigenous newspapers reported critically occasionally, but negative or hostile reports of marketing protests were rare. Through the legitimacy frame, which neither activists nor marketers had used in the controversy, writers sometimes doubted the legitimacy of a protest by dismissing it as not significant, groundless, or a political correctness debate. While such arguments questioning the legitimacy appeared only in non-Native news media, all news media occasionally used the war frame for covering

¹⁷⁸⁹ David Kaplan, "FOCUS: ENERGY/ BP project now Thunder Horse/Capitulation on name eases Lakota objection," *Houston Chronicle*, February 21, 2002, B1.

¹⁷⁹⁰ DKS, "Indians Shouldn't Tolerate Cheapening of Heritage," *Twin City Indian News* 2/3, April 1966; Derogatory Images: Pillsbury, 1966; Box 89; Association on American Indian Affairs Records, 1851-2016, MC147; Public Policy Papers; Seeley G. Mudd Manuscript Library, Princeton University.

¹⁷⁹¹ "TV Sidelights: Indians On Warpath Over False Portrayals On TV," 1960, collage; Derogatory Images: Television, 1960; Box 89; Association on American Indian Affairs Records, 1851-2016, MC147; Public Policy Papers; Seeley G. Mudd Manuscript Library, Princeton University.

¹⁷⁹² Lyons, in Radio TV Reports, Inc., transcript of a WEVD program special, January 22, 1969; Derogatory Images: General, 1949-1983; Box 90; AAIA Records; Pub. Pol. Papers; Mudd Man. Lib., Princeton.

¹⁷⁹³ Tim Baylor, "Media Framing of Movement Protest: The Case of American Indian Protest," *Social Science Journal* 33, no. 3 (1996), accessed December 24, 2020, <https://www.sciencedirect.com/science/article/abs/pii/S036233199690021X>.

¹⁷⁹⁴ Cf. *ibid.*

marketing protests. The general nature of reporting suggests a rather ‘progressive’ media discourse, which activists were able to use to their advantage.¹⁷⁹⁵

Holding Media Accountable

When protesters addressed publishers of advertisements, such as editors of newspapers or magazines but also radio channels, they urged the media to take up a position. Critics asserted media had a responsibility to paint a realistic picture of Indigenous peoples and support their struggle against media misrepresentations. Jeffery Newman of the AAIA complained to *Life* magazine that with their 1967 article, “Rediscovery of the Redman,” the magazine did “a great disservice to the American Indian.” *Life* “could be of great service in furthering public understanding of Indians, their history, their culture and their problems, but has settled instead for the most commercial and distorted ideas.” The “equating of modern hippies with the American Indian” while “most Indian tribes and their leaders are baffled by the ‘hippie Indian movement’” was “inaccurate and irresponsible,” wrote Newman.¹⁷⁹⁶ All types of content were subject to screenings, such as articles, cartoons, jokes, and advertisements. When protesters addressed the media regarding publishing content they deemed offensive, some media outlets accepted and others denied responsibility by referring to freedom of speech and rejecting any interference as censorship.

A 60-second radio commercial¹⁷⁹⁷ promoting a Thanksgiving party at the nightclub Thirsty’s (2002) in Spokane, Washington, caused criticism as it referred to the drunken Indian stereotype and “was in extremely poor taste.”¹⁷⁹⁸ As publisher of the ad, radio channel KZZU accepted responsibility and was “very apologetic” because, “Normally, we have a filter within our system so that content such as this doesn’t get on the air. The station would never produce such a commercial,”¹⁷⁹⁹ local sales manager Joe Via asserted. Nightclub owner Dave Harris said the commercial, “an attempt at humor,”¹⁸⁰⁰ was airing the third year and had already been changed after protests from offended listeners. KZZU mistakenly aired the original commercial instead of the revised version, thereby prompting more complaints.¹⁸⁰¹

Norman Miles, advertising manager for the *Gannett Rochester Newspapers*, acted as a mediator between local complainant Jane LeClair and McEvoy Dodge as the advertiser.¹⁸⁰² “We can only agree that the theme of the advertisement was an ill-thought and regrettable

¹⁷⁹⁵ The description of media coverage of marketing protests is not an in-depth analysis. While analyzing the media reports on marketing protest, media frames were noted but were not part of the analysis.

¹⁷⁹⁶ Jeffery Newman, Assistant to William Byler, AAIA, letter to the Editors of LIFE Magazine, s.l., November 30, 1967; Derogatory Images: General, 1949-1983; Box 90; Association on American Indian Affairs Records, 1851-2016, MC147; Public Policy Papers; Seeley G. Mudd Manuscript Library, Princeton University.

¹⁷⁹⁷ The commercial “begins with the phrase, ‘The first Thanksgiving on the Mayflower, brought to you by Thirsty’s, Spokane’s number one nightclub,’ and features Pilgrims on a ship who encounter an Indian after landing on Plymouth Rock. ‘Hello, do you speak English?’ asks a male voice with a British accent. ‘How,’ replies the Indian. ‘Where are all the women?’ says the voice with the British accent. ‘All the women drink \$1 firewater,’ says the Indian. ‘Get in my canoe and I take you there.’” “In the revised commercial, the Native American says ‘Wassup?’ instead of ‘How.’ He also no longer mentions canoes and firewater and says, ‘All the women are at Thirsty’s. Come on, I’ll take you there.’” Virginia de Leon, “KZZU yanks controversial ad; Thirsty’s spot insensitive to Indians, listeners say,” *Spokesman Review*, November 27, 2002, A1.

¹⁷⁹⁸ Marian Trevino, quoted in de Leon, “KZZU yanks controversial ad,” A1.

¹⁷⁹⁹ Joe Via, local sales manager, KZZU, quoted in de Leon, “KZZU yanks controversial ad,” A1.

¹⁸⁰⁰ Dave Harris, owner of Thirsty’s, quoted in de Leon, “KZZU yanks controversial ad,” A1.

¹⁸⁰¹ Cf. de Leon, “KZZU yanks controversial ad,” A1.

¹⁸⁰² Since neither the original complaint nor the advertisement was filed, the ad content is unknown.

choice,” Miles responded. “The ad was produced by an advertising agency for McEvoy Dodge and as often happens in this too busy world of ours no one took the time to give proper thought process to its implications.” According to Miles, the “offending agency, as has McEvoy Dodge, been informed of your objection and we have their promise that the ad will not appear again.” Agreeing that “this is not the form of good advertising,” the advertising manager apologized on behalf of all organizations involved.¹⁸⁰³

Although some media invoked freedom of expression and rejected editorial intervention as censorship, media outlets have taken a stance on social issues and Native American concerns. In 1969, *Newsweek* published its own PSA to raise awareness of the precarious conditions of Native Americans “with the hope it will remind some Americans of their basic responsibilities,” which John Belindo of the NCAI complimented.¹⁸⁰⁴ During the civil rights era, several media have published similar editorial features and PSAs to take a sociopolitical stance. David D. Michaels, advertising director of *The New Yorker*, explained in response to a letter of complaint from John Reynolds regarding a 1966 GE print ad depicting a violent ‘Cowboy and Indian’ movie scene, “We turn down many advertisements where we feel there is a prejudice involved.”¹⁸⁰⁵ Michaels highlighted the magazine’s core values and integrity as, “After the stand we have taken editorially so often in the past on the subject of the American Indians and other minority races, I hope you will believe that the last thing we would wish to do would be to add to their unhappy condition.”¹⁸⁰⁶

Since media and advertisers had to consider changing social norms, and these two entities were connected economically, some protesters also used this dependency to exert pressure on the media by calling on advertisers to boycott media, like in the “Custer” series case. In 2008, Durham-based advocacy group Brown Babies Inc. asked advertisers to boycott radio station *GI05* because DJ Bob Dumas made negative comments on his show “Bob and the Showgram” about the Lumbee tribe and that Native Americans, in general, were lazy. The station’s general manager Dick Harlow suspended Dumas for three days and agreed to the executive director of the North Carolina Commission of Indian Affairs, Greg Richardson, and a Lumbee representative to “stop insulting Indians and promised to promote a better understanding of Indians in North Carolina.”¹⁸⁰⁷ Harlow did not reveal whether advertisers dropped out of the show and whether the call for a boycott or other reasons moved him to come to the agreement.

¹⁸⁰³ Norman C. Miles, Advertising Manager, Metropolitan, letter to Jane R. LeClair, Rochester, New York, July 30, 1971; Media Surveillance; Box 255; Records of the National Congress of American Indians, 1933-1990, NMAI.AC.010; NMAI Archive Center, Smithsonian Institution, Suitland, MD.

As the original complaint was not preserved, the ad and the reason why Jane LeClair considered it inappropriate is unknown.

¹⁸⁰⁴ Contrasting what Euro-Americans learned from Natives and what they gave Native Americans back, the PSA “Bad deal at the trading post” encouraged its readers that “Somebody better do *something* before those rungs collapse.”

Newsweek, “Bad deal at the trading post,” 1969; Public Awareness Corresp. [1 of 2]; Box 255; NCAI Records; NMAI Archive Center.

¹⁸⁰⁵ Michaels to Reynolds, December 2, 1966; Derogatory Images: General Electric, 1966-1967; Box 89; AAIA Records; Pub. Pol. Papers; Mudd Man. Lib., Princeton.

¹⁸⁰⁶ *Ibid.*

¹⁸⁰⁷ John Fuquay, “Group proposes radio station boycott,” *McClatchy – Tribune Business News*, April 22, 2008.

8.2.5 Educating and Organizing Through New Media

As Native Americans started using media as a weapon to challenge Indigenous misrepresentations in advertising, new media offered new tools for them to connect and organize. “We don’t all run around with tomahawks and bows and arrows, or war whoop and say ‘how’,” Keene remarked. “We do, however, mobilize as a diverse yet connected community through technology, and continue to fight for our living cultures to be celebrated in respectful and meaningful ways.”¹⁸⁰⁸ Not only social media like *Facebook* and *Twitter*, online channels like *YouTube*, and online petition sites like *Change.org* offered new opportunities. New tools like the Google search engine also helped activists detect offenses by keyword search or by creating search alerts including keyword combinations such as “Native American” and “Fashion,” which Jessica Metcalfe used to stay informed on specific topics.¹⁸⁰⁹ Transforming from local demonstrations to a national movement, the Idle No More movement as the “most focused use of social media in aboriginal activism”¹⁸¹⁰ demonstrates the power of digital activism as it reached “a dramatic spike in activity after Tanya Kappo created a Facebook page for the movement and included the hashtag #idlenomore.”¹⁸¹¹

Online platforms as a new medium for protest multiplied the initiation and the diffusion of marketing protests. Increasing online activism might also be due to the fact that contentious online advertisements reach a broad audience faster and more easily. As noted earlier, 33 percent of the complaints the IACB received between 2006 and 2011 involved online sales.¹⁸¹² Even if advertisers did not market their products, services, or events online, advertising materials made their way through social media channels when stakeholders took pictures and shared them through online networks. Popular channels for spreading offensive ads and protests included *Facebook* and *Twitter*, while the national and international press regularly picked up these posts. Social media provided new opportunities for internationalizing the movement for Indigenous rights, activism, and networking.¹⁸¹³

Although attorney Lloyd Williams correctly wrote in 2000 that, via the Internet, the “great equalizer, . . . ideas travel from here to anywhere in the blink of a mouse,”¹⁸¹⁴ new media was not available to all Native Americans alike across the U.S. With its unequal access, the Internet “reaches far beyond any activist’s immediate circle, but it reaches selectively.”¹⁸¹⁵ Like every new form of communication connection, the World Wide Web tied users of the same technology more tightly together while separating them from non-users. For instance, there was no reliable cell coverage on the Navajo Reservation until 2010, enabled by the

¹⁸⁰⁸ Keene, “Paul Frank offends every Native person on the planet.”

¹⁸⁰⁹ Cf. Jessica R. Metcalfe, “Paul Frank’s Racist Powwow,” *Beyond Buckskin*, September 9, 2012, accessed July 28, 2016, <http://www.beyondbuckskin.com/2012/09/paul-franks-racist-powwow.html>.

¹⁸¹⁰ Joanne St. Lewis, law professor, University of Ottawa, quoted in Annette A. Portillo, *Sovereign Stories and Blood Memories: Native American Women’s Autobiography* (Albuquerque: University of New Mexico Press, 2017), 131.

¹⁸¹¹ Portillo, *Sovereign Stories and Blood Memories*, 131.

¹⁸¹² “The remaining 18 percent involved an assortment of venues such as powwows, art markets, and individual sellers.” U.S. Government Accountability Office, “Indian Arts and Crafts,” 14.

¹⁸¹³ Cf. Portillo, *Sovereign Stories and Blood Memories*, 121.

¹⁸¹⁴ Lloyd Williams, “Commentary: The only good Indian,” *New Pittsburgh Courier*, City Edition, April 19, 2000, A7.

¹⁸¹⁵ Tilly, *Social Movements*, 85.

American Recovery and Reinvestment Act of 2009.¹⁸¹⁶ This selective effect tends to “reflect larger categories of racial, gender, and class inequality.”¹⁸¹⁷ Since online media was available only to people with access to digital devices such as computers, tablets, smartphones, and the Internet, some rural areas were excluded from this discourse. Consequently, Native Americans who pursued a “mission to educate the world on their heritage through Facebook, Twitter and online blogging . . . reflect[ed] a largely urban American Indian population.”¹⁸¹⁸ Notwithstanding these differences among Native peoples, in general, “the Internet is an important ally to indigenous peoples for organizing, lobbying, publicizing, and ultimately liberation and insurrection.”¹⁸¹⁹

Non-Native blogger Robert Schmidt was the first to create an online platform that explicitly addressed Indigenous representations in media. In his blog *Blue Corn Comics*, succeeded by the blog *Newspaper Rock*, he invited Native and non-Native people to join his fight and send him examples of everyday racism toward Indigenous peoples in media that he posted online. In March 2000, he started the “Stereotype of the Month Contest,” seeking to “identify the worst stereotype, mistake, or offense regarding Native Americans.”¹⁸²⁰ Through this contest, he encouraged readers to actively participate in the critical discourse and rethink contemporary concepts of Indigeneity that appeared in everyday media and outlets of public knowledge. One of his key goals was to “highlight institutional stereotyping, not individual stupidity. Anyone can be ignorant, but that isn’t necessarily society’s fault. But when a school, a media outlet, or a corporation – any institution with enough decision-makers who should know better – perpetuates a stereotype, that’s symptomatic of the cultural values rooted in our society.”¹⁸²¹

Cultural institutions like the IAIA assumed an educational role in the protest against marketing images by creating a vocabulary to challenge Native American misrepresentations during the 20th century. 21st-century advocates of fair representation started using social media and other online media channels to educate marketers, consumers, and other stakeholders. At the 2014 Indigenous New Media Symposium in New York, Adrienne Keene explained how social media helped “creating vocabulary, resources, and support to ‘speak out’.” Giving critics of media representations “the language on how to articulate themselves of how to hold an argument on mis-representation” was still a major goal because the “hardest part about finding your voice when you are confronted by ignorance, racism, etc. is how to respond in that moment or later when you’ve been reflecting on in.”¹⁸²²

Among his several thousand posts over 17 years,¹⁸²³ Schmidt has published at least 139 cases of product, service, or event marketing misrepresentation, thereby raising awareness of the issue, teaching his readers that they could make a difference by raising their voices and providing people the vocabulary to do so. Anne Marie, one of his Indigenous readers, was

¹⁸¹⁶ Cf. Megan Finnerty, “Social media key tool for Indians in ‘Redskins’ fight,” *Arizona Republic*, October 11, 2014, A1.

¹⁸¹⁷ Tilly, *Social Movements*, 104-105.

¹⁸¹⁸ Crawford, “Using social media for a greater good,” quoted in Schmidt, “Indians educate via social media.”

¹⁸¹⁹ Portillo, *Sovereign Stories and Blood Memories*, 122.

¹⁸²⁰ Robert Schmidt, “Stereotype of the Month Rules,” *Blue Corn Comics*, accessed March 5, 2017, <http://www.bluecorncomics.com/strules.htm>.

¹⁸²¹ Ibid.

¹⁸²² Keene, talk at the Indigenous New Media Symposium.

¹⁸²³ Schmidt archived 13,566 posts from between 2006 and 2016 in the *Newspaper Rock*’s Blog Archive. See Robert Schmidt, *Newspaper Rock*, accessed July 26, 2021, <http://newspaperrock.bluecorncomics.com/>.

“worried sometimes I don’t know things as I should, and don’t wish to give misinformation. You seem to be able to disprove the common responses [sic] from those who see no wrong in this.”¹⁸²⁴ Thus, she asked Schmidt for a “piece of information, anything at all, I would like to send to the company,” to approach Pizza Schmizza (2004) regarding a Cigar Store Indian adorning their restaurant because she could not present and phrase arguments that expressed her feelings about the wooden figure. Similarly, Cheryl Williams-Barger, who was offended by a Haunted House billboard published by the Lineboro Voluntary Fire Department in 2007, thanked Schmidt for encouraging her to protest. “Sir, I have seen this stuff all of my life growing up in Kansas and I was always hurt and angered by it. Until I came across what you do I never had it dawn on me that I could make a difference. Thank you for that. . . . I realize it is a lot easier to sit and gripe or be hurt than to stand up and fight. . . . Educate one at a time. We do make a difference.”¹⁸²⁵

The “Indigetechs” increasingly acquired a “political pulse online”¹⁸²⁶ and started using the growing array of online channels for their purposes. Unlike mainstream media and in-person on-site events, protesters banded together more easily by using new media for online meetings and status updates or to circulate petitions and announce events.¹⁸²⁷ Portillo identified a “movement to indigenize the Internet, where some individuals and groups collectively participate in . . . commune-biographies.” On these virtual sites, participants spread testimonies and truths about Indigenous communities that had the potential to create larger social justice and Indigenous rights movements.¹⁸²⁸

In 2001, Navajo Klee Benally founded Indigenous Action Media “to provide strategic communications and direct-action support for Indigenous community’s sacred lands defense”¹⁸²⁹ and started producing documentaries and short *YouTube* videos. In his subsequent work, Benally focused on “teaching media literacy, how to create viral videos and how to write press releases and blogs.”¹⁸³⁰ Having organized hundreds of actions, marches, banner drops, workshops, conferences, benefits, and much more, Indigenous Action Media served as an “outlet for critical analysis, alerts, action support, and propaganda.”¹⁸³¹

Since 2009, The 1491s produced “videos which honour Indigenous resilience and advocate for political causes” and used *YouTube* to disseminate their videos to a global audience strategically. Dallas Goldtooth, Sterlin Harjo, Migizi Pensoneau, Ryan Red Corn, and Bobby Wilson used the positive energy of comedy to shake up others. Their goal was to change how Indigenous peoples were seen and how they saw themselves, thereby encouraging Native Americans to think critically about the conditions in which they lived. The placement of comedy videos next to PSAs and videos from the REPRESENT series pushing back against stereotypical expectations was unique. Armed with a “subversive power [that] rests in their ability

¹⁸²⁴ Anne Marie, quoted in Robert Schmidt, “Stereotype of the Month Entry (8/23/04),” *Blue Corn Comics*, August 23, 2004, accessed July 1, 2016, <http://www.bluecorncomics.com/stype48c.htm>.

¹⁸²⁵ Cheryl Williams-Barger, quoted in Robert Schmidt, “Stereotype of the Month Entry (9/6/07),” *Blue Corn Comics*, September 6, 2007, accessed July 1, 2016, <http://www.bluecorncomics.com/stype794.htm>.

¹⁸²⁶ Natanya A. Pulley, “Indigetechs: The Original Time-Space Traveling Native Americans and Our Modern World Hyper-Pow-Wow,” *Western Humanities Review* 68, no. 2 (2014): 100.

¹⁸²⁷ Cf. Jeff Berglund, “‘Go Cry Over Someone Else’s Tragedy’: The YouTube Activism of The 1491s,” *Australasian Journal of Information Systems* 21 (2017): 3.

¹⁸²⁸ Portillo, *Sovereign Stories and Blood Memories*, 121.

¹⁸²⁹ “About,” Indigenous Action, accessed April 11, 2021, <https://www.indigenouaction.org/about-2/>.

¹⁸³⁰ Finnerty, “Social media key tool for Indians in ‘Redskins’ fight,” A1.

¹⁸³¹ “About,” Indigenous Action.

to lift up others through razor-sharp critiques, energizing, often humorous and positive messages, directed inside as well as outside of Indigenous communities,” the 1491s constitute “a major force in social change, inspiring Indigenous and non-Indigenous audiences alike.”¹⁸³²

Cherokee activist Adrienne Keene became one of the best-known and most cited bloggers after starting *Native Appropriations* in 2010, a “forum for discussing representations of Native peoples, including stereotypes, cultural appropriation, news, activism, and more.”¹⁸³³ In her early posts, she “spent a large amount of time making an argument to both non-Native and Native readers that representations matter and were an issue worthy of focus and attention despite ‘bigger issues’ in our communities.” As her own knowledge of cultural appropriation and representation grew, Keene “began to be able to articulate not only that these images were harmful but also *how* and *why*.”¹⁸³⁴

Voicing careful optimism after the Victoria’s Secret case in 2012, Keene wrote, “While this feels like a never ending battle, remember the successes we’ve had as a community, and every little bit chips away at the centuries of colonization and disrespect of Native peoples. We’re making gains, though sometimes it may not feel like it. I’ve been at this for over two years now, and I can’t believe how quickly things have changed for the better. We’re getting there!”¹⁸³⁵ During the period of growth for her blog, the national consciousness began to change as well. As public attention and support increased, the need to justify this work diminished.¹⁸³⁶ In 2016, “when a brand or celebrity engages in cultural appropriation, the reaction is swift and damning, with Twitter and Facebook users jumping into action, and offensive images pulled and apologies is sued within hours.”¹⁸³⁷ Having posted at least 40 cases of marketing misrepresentation within seven years, Keene had gained authority on issues of Indigenous representation. The organizers’ voluntary ban of Indigenous costumes at the 2014 Meredith Music Festival in Australia demonstrates the outreach and influence of *Native Appropriations* even on a global level. As *Music Feeds* reported, “[T]his year will be the first where punters heading to Meredith will be banned from carrying ‘offensive signage, slogans, clothing and costumes,’ including the once ubiquitous but now uber passé feathered ‘Native American’ headdress. As an explanation for the update to its list, the Meredith site links to an article by Native Appropriations which explains the many reasons why festival-goers shouldn’t wear ‘a hipster Headdress’.”¹⁸³⁸

Although it was usually not clear whether social media comments directly influenced companies to remove or change their marketing materials, protesters attributed such actions to their activism due to the temporal correlation.¹⁸³⁹ After Jessica Metcalfe posted a picture from

¹⁸³² Berglund, “‘Go Cry Over Someone Else’s Tragedy’,” 1-2.

¹⁸³³ Adrienne Keene, *Native Appropriations*, accessed March 5, 2017, <http://nativeappropriations.com/>.

¹⁸³⁴ Keene, “Engaging Indigeneity and Avoiding Appropriation,” 55.

¹⁸³⁵ Keene, “Guess we can add Victoria’s Secret to the list,” *Native Appropriations*, November 9, 2012, accessed July 25, 2016, <http://nativeappropriations.com/2012/11/guess-we-can-add-victorias-secret-to-the-list.html>.

¹⁸³⁶ Keene, “Engaging Indigeneity and Avoiding Appropriation,” 55.

¹⁸³⁷ *Ibid.*, 55.

¹⁸³⁸ Nastassia Baroni, “Meredith Music Festival Bans Native American Headdresses,” *Music Feeds* [AU], August 14, 2014, accessed October 12, 2016, <http://musicfeeds.com.au/news/meredith-music-festival-bans-native-american-headdresses/#/slide/1>.

¹⁸³⁹ See Design Taxi: “Since the comments were posted, Mounoury and Bilheude have removed the American Indian characters from their portfolio sites, although it is unclear whether the removal was a direct result of the complaints. It is also unknown whether McDonald’s plans, or ever planned, to use the two Native characters. Several attempts were made to reach Mounoury and Bilheude as well as the TBWA Agency, but all requests have remained unanswered.” Vincent Schilling, “Native Happy Meal Characters: Now You See Them, Now You

Paul Frank's album on *Beyond Buckskin's Facebook* page, "So many people reacted to the obvious racism, and posted on Paul Frank's wall, and reported the images as 'Racist', that within 24 hours of that first image post, the entire albums were removed from Paul Frank's FB page."¹⁸⁴⁰ Keene found the outpouring of anger and rage on *Facebook* and *Twitter* remarkable, particularly compared to any other event or issue she had discussed on her blog. That there "were hundreds of comments and tweets in the course of a few hours last night, and there was only one (literally, one) comment I saw that defended the party as 'fun' and told commenters to 'get over it' . . . gives me hope that the word is starting to get out about how seriously effed up the continued misrepresentation and stereotyping of Native people is, and that it is high time for it to change."¹⁸⁴¹

Social media protests included protests on activists' own social media pages, like in the Paul Frank case, and on marketers' social media pages. Soon after No Doubt published its music video for the song 'Looking Hot,' "a backlash on Twitter erupted and dislikes jumped from 60 to over 700 in a few hours. Several YouTube viewers made comments in frustration and support of the video."¹⁸⁴² Robert Schmidt believed the online exposure of offenders would make them socially unacceptable and stick to them for a long time. Regarding a 'Sioux me' Teazshirt, he noted, "No need to sue you, Johnson, when we can mock you instead. If you don't mind postings such as this one following you the rest of your life, I don't either. When your employer Googles you 10, 20, or 30 years from now, I hope you can explain why you mocked and stereotyped a racial minority."¹⁸⁴³ In their own social media channels, however, marketers could control content to a certain degree. When Charlie Clark Nissan disabled comments on his TV commercial published on *YouTube* (2013), critic wonfeather reposted the video with a comment on the "incredibly offensive" marketing piece.¹⁸⁴⁴ After Charlie Clark Nissan removed the original video¹⁸⁴⁵ and responded to wonfeather with a copyright infringement complaint to protect its reputation, *YouTube* removed the reposted video.

Communication media used for protest and reporting differ significantly in their degree of symmetry and asymmetry. Traditional media like newspapers, radio, and television, with few producers and many consumers, exhibit significant asymmetry.¹⁸⁴⁶ Digital communication media opened up new possibilities for protesters, allowing media consumers to become producers ("produsage").¹⁸⁴⁷ Advocates for fair representation argued that social media

Don't," *Indian Country Today Media Network*, April 5, 2013, accessed October 31, 2016, <https://indiancountrytoday.com/archive/native-happy-meal-characters-now-you-see-them-now-you-dont>.

¹⁸⁴⁰ Metcalfe, "Paul Frank's Racist Powwow."

¹⁸⁴¹ Keene, "Paul Frank offends every Native person on the planet."

¹⁸⁴² Vincent Schilling, "Gwen Stefani and No Doubt Release Latest Music Video, Its Stereotypical Native Theme Garners Criticism," *Indian Country Today Media Network*, November 3, 2012, accessed October 14, 2016, <https://indiancountrytoday.com/archive/gwen-stefani-and-no-doubt-release-latest-music-video-its-stereotypical-native-theme-garners-criticism>.

¹⁸⁴³ Robert Schmidt, "Stereotypical 'Sioux me!' Teazshirt," *Newspaper Rock*, October 19, 2010, accessed October 22, 2016, <http://newspaperrock.bluecorncomics.com/2010/10/stereotypical-sioux-me-teazshirt.html>.

¹⁸⁴⁴ wonfeather, "Offensive Charlie Clark Nissan Tonto Video," YouTube video, July 22, 2013, accessed November 1, 2016, <https://www.youtube.com/watch?v=OnkutxSVCps>.

¹⁸⁴⁵ Cf. Robert Schmidt, "Racist car ad features Tonto ripoff," *Newspaper Rock*, July 20, 2013, accessed November 1, 2016, <http://newspaperrock.bluecorncomics.com/2013/07/racist-car-ad-features-tonto-ripoff.html>.

¹⁸⁴⁶ Cf. Tilly, *Social Movements*, 104.

¹⁸⁴⁷ Cf. Sigrid Baringhorst, "Politischer Protest im Zeichen digitaler Kommunikation – Akteure, Themen und Organisationsstrukturen," in *E-Protest. Neue soziale Bewegungen und Revolutionen*, ed. Karlheinz Sonntag (Heidelberg: Universitätsverlag Winter, 2013), 18.

has “created a space where Native Americans have taken control of their own identity.”¹⁸⁴⁸ In this process, individual blog posts and success stories became “powerful narratives that resonate with traditional storytelling practices, because there is a real-time dialogue with writer-scholar-activists who raise the consciousness of their followers and advocate for their people through indigenous-centered shared knowledges.”¹⁸⁴⁹ Native Americans did not just create their own space, but thrust “themselves into the mainstream’s space – demanding to be acknowledged and heard.”¹⁸⁵⁰ By utilizing online media channels, protesters became less dependent on traditional media since, “instead of writing a press release and hoping it gets picked up somewhere, we can push it out on our website for instant dissemination.”¹⁸⁵¹ While Amanda Blackhorse “would celebrate one article a year being written about the [Washington Football Team] cause,” now in 2014 it felt like “a news story or blog post gets written each day.”¹⁸⁵² However, activist Chase Iron Eyes still emphasized the need for Indigenous platforms as *Twitter* and *Facebook* censored Native voices and shut down their accounts.¹⁸⁵³

While marketers received criticism directly and visibly to all stakeholders on their social media pages, blog protests primarily reached their specific target audience but also marketers and other stakeholders as blog posts were sometimes diffused through reposting, notifications, and mainstream media. Robert Schmidt dealt “only with people online” and “discussed the stereotype issue online with a few perpetrators who read my response. Sometimes the discussion persuades them and sometimes it doesn’t.”¹⁸⁵⁴ Countering skeptics who believed nobody was “paying attention to this ‘small’ protest” against Robotic Wednesdays in 2011, Schmidt argued his “blog item got reposted on Pechanga.net and mentioned on Indian Country Today Media Network (Oklahoma City Establishment Touts ‘Pilgrims and Indians Theme Party’). That’s two of the three biggest sources of Native news. (Indianz.com is the other.) So tens of thousands of people in Indian country saw the protest. And I don’t see anyone defending the party or denouncing the protesters.”¹⁸⁵⁵ Indigenous and mainstream media picked up protests like the Urban Outfitters case initiated by Adrienne Keene and Sasha Brown, which was proof of the “awesome power of protest” to Schmidt.¹⁸⁵⁶ Although some Indigenous activists’ social media feeds had not “more than a couple of thousand followers, those followers are influential. They include activists and writers on race, sports, and social justice and journalists from *The Washington Post*, *NPR*, *Salon*, *USA TODAY*, and *The Atlantic*.”¹⁸⁵⁷ Through the strategic use of online media with its global outreach and the collectivist struggle against misrepresentation and appropriation, activists provided counter-narratives

¹⁸⁴⁸ Crawford, “Using social media for a greater good,” quoted in Schmidt, “Indians educate via social media.”

¹⁸⁴⁹ Portillo, *Sovereign Stories and Blood Memories*, 134.

¹⁸⁵⁰ Robert Schmidt, “Indians educate via social media,” *Newspaper Rock*, March 7, 2013, accessed October 28, 2016, <http://newspaperrock.bluecorncomics.com/2013/03/indians-educate-via-social-media.html>.

¹⁸⁵¹ Klee Benally, Indigenous Action, quoted in Finnerty, “Social media key tool for Indians in ‘Redskins’ fight,” A1.

¹⁸⁵² Amanda Blackhorse, paraphrased in Finnerty, “Social media key tool for Indians in ‘Redskins’ fight,” A1.

¹⁸⁵³ Chase Iron Eyes, talk at the Indigenous New Media Symposium, February 21, 2014, accessed February 26, 2014, <http://www.inms2014.com/>.

¹⁸⁵⁴ Schmidt, “Stereotype of the Month Entry (8/23/04).”

¹⁸⁵⁵ Schmidt, “‘Pilgrims & Indians Theme Party’ canceled.”

¹⁸⁵⁶ Schmidt, “Media covers Urban Outfitters controversy.”

¹⁸⁵⁷ Finnerty, “Social media key tool for Indians in ‘Redskins’ fight,” A1.

The statement was made in the context of the *Twitter* and *Facebook* feeds of Navajo/Yankton Sioux Jacqueline Keeler and her group Eradicating Offensive Native Mascotry founded in 2013.

against advertisers' honoring and factionalism arguments to a sympathetic and supportive digital community.

Tiffany Wilson "decided to start a petition once she learned of the products after reading Native American activist Sasha Houston Brown's compelling"¹⁸⁵⁸ open letter to Urban Outfitters. Through online petitions, activists found supporters faster and at a greater number than before. While 162 signees supported Jim Postema's open letter to Hornell Brewing in 1995,¹⁸⁵⁹ a highly popular and controversial case, online petitions reached significantly more signatures due to the increasing distribution of online media. Annie Wenstrup's petition against Alaska Air Group (2016) gained 269 signatures, Mary Sharlow's petition against Priceline (2012) 733 signatures, Bree Herne's petition against Victoria's Secret (2012) 4,140 signatures, a petition against GAP (2012) 5,905 signatures, Chad Girardin's petition against Vans (2015) roughly 15,000 signatures, and Tiffany Wilson's petition against Urban Outfitters (2011) 16,588 signatures.¹⁸⁶⁰ *Change.org* was the online petitioning platform for all protesters except one (*Care2 Petitions*) to mobilize stakeholders.

Beyond using the Internet to challenge fraud, appropriation, and misrepresentation, it also provided "space for revolution, healing, and ultimately survivance."¹⁸⁶¹ As digital space for "preserving indigenous culture, building alliances, and resisting and modifying misrepresentation,"¹⁸⁶² Native Americans were no longer merely reacting to external events and processes that affected them but put themselves in a position where others had to dispute *with* them.¹⁸⁶³ The Internet and social media provided digital space for 'communal storytelling,' enabling users to upload and share live-streaming protests and rallies, videos, digitized archives, recordings, and interviews with thousands of readers within minutes.¹⁸⁶⁴ Portillo argued that Indigenous users and communities "indigenized the Internet," thus "creating and participating in a communal space of testimonio that resonates with storytelling practices."

Since the Internet, with its websites and hyperlinks, was comparable to Leslie Marmon Silko's concept of Pueblo stories as a spider's web "with many little threads radiating from the center, crisscrossing one another,"¹⁸⁶⁵ this medium was particularly compatible with Native communal communication styles involving visual imagery. Besides social media plat-

¹⁸⁵⁸ Wilson, "Remove the 'Navajo' Collections from Stores!"

¹⁸⁵⁹ Number of signees counted September 3, 2016.

Postema, "Crazy Horse Malt Liquor Protest"; for signees see "Crazy Horse Malt Liquor Protest: Signees."

¹⁸⁶⁰ Cf. Annie Wenstrup, "End Alaska Airlines Rebranding Campaign," Care2 Petitions petition, accessed October 19, 2016, http://www.thepetitionsite.com/920/010/808/end-alaska-airlines-rebranding-campaign/?taf_id=21322236&cid=fb_na#; Sharlow, "Remove the Long Island Medium smudging commercial from the air"; Bree Herne, "Apologize for using a Native American Headdress in their 2012 Fashion Show," Change.org petition, November 2012, accessed July 25, 2016, <https://www.change.org/p/victoria-s-secret-apologize-for-using-a-native-american-headdress-in-their-2012-fashion-show>; Dorit I, "GAP: Discontinue the 'MANIFEST DESTINY' tshirt and issue a formal apology"; Chad Girardin, "Petition to Vans Shoe Manufacturing Co.," Change.org petition, 2015, accessed October 19, 2019, <https://www.change.org/p/vans-shoe-manufacturing-company-drunken-indian-is-not-acceptable-image-to-be-portraying-on-your-clothing-we-want-you-to-discontinue-your-beer-can-totem-pole-t-shirt-and-make-a-formal-apology-for-your-racist-clothing-item>; Wilson, "Remove the 'Navajo' Collections from Stores!"

Numbers of signatures change over time, numbers as stated above were documented by the author at the date of access, or as reported in news media.

¹⁸⁶¹ Portillo, *Sovereign Stories and Blood Memories*, 127.

¹⁸⁶² Ibid. 127.

¹⁸⁶³ Cf. Kristy A. Belton, "From Cyberspace to Offline Communities: Indigenous Peoples and Global Connectivity," *Alternatives: Global, Local, Political* 35, no. 2 (2010): 194.

¹⁸⁶⁴ Cf. Portillo, *Sovereign Stories and Blood Memories*, 132.

¹⁸⁶⁵ Leslie Marmon Silko, *Ceremony*, quoted in Portillo, *Sovereign Stories and Blood Memories*, 128.

forms, websites published by bloggers, the NCAI, *ICT*, NCARSM, AIM, Indigenous Action, and many others¹⁸⁶⁶ provided not only arguments against marketing practices based on Indi-
 geneity but also case histories and a net of links to similar cases and marketers' histories of
 offenses. Along with Native and non-Native news outlets, these sites helped distribute news
 on protests and publish protest images, videos, and letters challenging popular marketing rep-
 resentations, such as an Oneida Nation's radio ad campaign (2013), an NCARSM ad cam-
 paign (2014), or the NCAI commercial "Proud To Be" (2014) targeting the Washington Foot-
 ball Team.¹⁸⁶⁷ Furthermore, the websites offered readers additional information on the legal
 and historical background or the effects of media misrepresentation through reports published
 by APA, Amnesty International, and other organizations. Bloggers and critics equipped sup-
 porters with the vocabulary to join their protest, exchanged their experiences, and gave advice
 for staging protests. Indigenous Action Media provided tutorials like an infographic for mak-
 ing banners as a "proven protest tool for getting attention."¹⁸⁶⁸ The 1491s "openly share[d]
 their equipment, filmmaking knowledge, YouTube platform, and their existing fanbase, all to
 support work outside of typical commercial media infrastructures."¹⁸⁶⁹ Finally, as the follow-
 ing chapter shows, activists used the Internet to organize and inform protesters and supporters
 about planned actions, whether online or offline. This way, a range of websites "dedicated to
 social justice, self-determination, and sovereignty are actually reeducating their public audi-
 ence while providing space for solidarity, coalition building, and healing."¹⁸⁷⁰

To this day, there is an ongoing trend of increasing online actions, such as social me-
 dia protests and online petitions, and decreasing 'classical' forms of protest, such as letters or
 face-to-face operations. Since 2001 there have been at least 157 exclusively web-based pro-
 tests, which account for 51.1 percent of all cases since 2001 (n = 307). Despite remarkable
 successes in the fight for fair representation, resistance against protests of traditional practices
 such as Halloween costuming was massive. For Halloween 2012, Keene refrained from the
 obligatory Halloween post because "I've tried many approaches – the emotional plea, the in-
 your-face-racism approach, the 'I am not a Costume' campaign – but every year, the argu-
 ments are the same. No one listens, people on both sides get angry, and then the conversation
 gets shelved until next year."¹⁸⁷¹ Looking back, Keene noted that, between 2010 and 2016, the
 "instances of misuse of Native imagery and cultures has not slowed down" and "there hasn't
 been as much attention paid to the next steps – the processes of reconciliation, moving for-

¹⁸⁶⁶ Indian Country Today, homepage, accessed March 14, 2021, <https://indiancountrytoday.com/>; National Congress of American Indians, homepage, accessed March 14, 2021, <https://www.ncai.org/>; American Indian Movement, homepage, accessed March 14, 2021, <http://www.aimovement.org/>; Coalition Against Racism in Sports and Media, homepage, accessed March 14, 2021, <https://www.coalitionagainstracism.org/>; Indigenous Action, homepage, accessed March 14, 2021, <https://www.indigenousaction.org/>.

¹⁸⁶⁷ Cf. Michael Hill, "NY tribe launching radio ad against Redskins name," *Native American Times*, September 13, 2013, 1; "Anti-Washington team ad launched before Vikings game," *The Circle*, November 2014, ProQuest 1626534221; "Ending the Era of Harmful 'Indian' Mascots," National Congress of American Indians, accessed March 14, 2021, <https://www.ncai.org/proudtobe>.

¹⁸⁶⁸ Kleeon, "Protest Banner Making 101 – Tutorial and Infographic," *Indigenous Action*, August 26, 2013, accessed March 14, 2021, <http://design.indigenousaction.org/portfolio/detail/banner-making-101-infographic/>.

¹⁸⁶⁹ Berglund, "'Go Cry Over Someone Else's Tragedy,'" 7.

¹⁸⁷⁰ Portillo, *Sovereign Stories and Blood Memories*, 129.

¹⁸⁷¹ Adrienne Keene, "So you wanna be an Indian for Halloween?" *Native Appropriations*, October 23, 2012, accessed October 27, 2016, <http://nativeappropriations.com/2012/10/so-you-wanna-be-an-indian-for-halloween.html>.

ward in a productive way, or to the larger structural and power issues that set up the circumstances for cultural appropriation to become such a widespread phenomenon.”¹⁸⁷²

While social media “tends to be overestimated as factor for success because social media does not automatically lead to protest frames and demands being taken up directly by politicians,”¹⁸⁷³ it was still helpful in mobilizing protesters and supporters. The study demonstrated that protesters used *Twitter* and *Facebook* as channels to raise criticism and blogs to educate people, but it did not analyze how protesters used social media for protest mobilization and its potential effects. Research would have to investigate to what extent the number of signatures under an online petition, the number and quality of supportive versus hostile comments to social media posts, and the count of views or shares were considered significant, represented stakeholders’ opinions, and had an impact on the reception or outcome of a protest.

8.2.6 Generating Publicity Through Demonstrations and Walks

Protest activities like demonstrations and walks exemplify Tilly’s argument that technological innovations like social media did not change the character of activism, and protesters rather “adapted newly available media to an activity they were already pursuing”¹⁸⁷⁴ and became more effective. Various AIM chapters and members like Bill Means and Vernon Bellecourt organized or joined demonstrations against marketers such as Liz Claiborne in front of their Manhattan headquarter (1998-2001), GAP (2012), the Cochise Fine Arts Gallery (1993), and Geronimo’s Spirit (2004) in front of their stores, or the Heilemann Brewing Co. (1992) and the Hornell Brewing Co. (1993) in front of the headquarter in LaCrosse, Wisconsin, and New York City in front of the Town Hall, respectively. In general, demonstrations against marketing misrepresentation or appropriation were held in front of headquarters, stores, or public buildings to confront producers with their criticism and inform the public.

Most demonstrations involved groups of 10 to 20 demonstrators, mostly Native Americans, sometimes joined by supporters “interested in Indian affairs.”¹⁸⁷⁵ Only the demonstration against Hornell Brewing Co.’s CHML label drew more than 100 people to call for a boycott.¹⁸⁷⁶ Demonstrations against misrepresentation and appropriation could last for several hours or weeks. Protests in front of Fred Simmons’ Geronimo’s Spirit store went on for six weeks on a regular basis, where the AIM and University of Southern Florida students joined local Native Americans.¹⁸⁷⁷

While AIM was involved in a range of demonstrations as an effective way to draw media attention, others believed this protest method was too aggressive and preferred a “pro-

¹⁸⁷² Keene, “Engaging Indigeneity and Avoiding Appropriation,” 56.

¹⁸⁷³ Nina-Kathrin Wienkoop, in Kevin Ebert, “Interview mit Protestforscherin Nina-Kathrin Wienkoop: So geht erfolgreicher Protest,” *Bayerischer Rundfunk* [D], October 14, 2019, accessed January 9, 2021, <https://www.br.de/puls/themen/welt/so-geht-erfolgreicher-protest-100.html>. Transl. by author.

¹⁸⁷⁴ Tilly, *Social Movements*, 86.

¹⁸⁷⁵ Pace, “Indians’ Protest Kills Whiskey Ad,” 33.

¹⁸⁷⁶ Cf. Wax and Liff, “Minorities Boycott Beer Distributor Brand name,” 14.

¹⁸⁷⁷ Cf. Michael Stewart, “‘Geronimo’ liquor store draws ire, protesters,” quoted in Robert Schmidt, “Stereotype of the Month Entry (12/27/03),” *Blue Corn Comics*, December 27, 2003, accessed July 1, 2016, <http://www.bluecorncomics.com/stype3ce.htm>.

cess that was yielding a peaceful solution.”¹⁸⁷⁸ Demonstrations as a tool for the ‘others’ as opposed to the ‘adapted’ always cause resistance.¹⁸⁷⁹ In front of Simon Shakad’s store ‘I Love Duluth’ in Duluth, Minnesota (2009), ten Indigenous demonstrators joined Donna Blue Bird, who demanded an apology from Shakad for selling offensive joke T-shirts bearing imprints such as “My Indian name is ‘Drinks Like Fish’” or “My Indian name is ‘Crawling Drunk’.” Although Ricky DeFoe, co-chairman of the Duluth American Indian Commission, had joined the protest, other members of the organization disagreed with his action because “when you come at something with anger and protesting, it is almost like the oppressed becomes the oppressor – and then where does that end?”¹⁸⁸⁰ In this case, the shop owner apologized, but in the case of the Cochise Fine Arts Gallery (1993), demonstrators declaredly expected the owner not to respond but “chose to protest the grand opening in order to make a statement.”¹⁸⁸¹

40 Days for Life, a 2012 anti-abortion campaign on the University of New Mexico campus where 13.5 percent of the students were Native American, provoked protests with a promotional poster. The poster depicted a fetus inside a medicine wheel and read, “Abortion extinction, color the redman gone. Today, an Indian boy was killed the Indian way, hey ya hey!”¹⁸⁸² Arguing that the “Native American community will no longer let their culture and identity be appropriated to further the agenda of outside interests,”¹⁸⁸³ Native students avoided the abortion debate but focused on the depiction of Native Americans in the posters.¹⁸⁸⁴ Indigenous students started a demonstration on the UNM campus, holding up signs reading “We will not be used to further your political agenda,” and organized a *Facebook* group that attracted nearly a hundred members and 370 more pending invitations within days. With new media, winning supporters and showing support through local action like demonstrations had become much easier. “Great Job everyone today! We received a few mixed responses from the community, but for the most part, we gained support from not only the Native American community here at UNM, but also other departments and organizations in a unified effort,”¹⁸⁸⁵ wrote Kelly Francisco, one of the initiators of the resistance.

Critics of marketing practices in Gallup and at the University of North Dakota made use of the walk as Indigenous activists had done during the civil rights movement. After three buffalo died at Gallup Indian Plaza, where Mohammad Aysheh (1993-94) displayed wooden tipis and buffalo to advertise his curio shop, the Navajo National Council demanded that Aysheh stop his business practices. In the bitter cold, a group of Navajo marched 30 miles

¹⁸⁷⁸ Michelle Gordon, Secretary, Duluth American Indian Commission, quoted in “Duluth store owner apologizes over T-shirt controversy,” *DL-Online*, August 7, 2009, accessed October 22, 2016, <http://www.dl-online.com/content/duluth-store-owner-apologizes-over-t-shirt-controversy>.

¹⁸⁷⁹ Cf. Susanne Baer, in Landtag von Baden-Württemberg, “LIVE: WERTSACHEN.”

¹⁸⁸⁰ Michelle Gordon, Secretary, Duluth American Indian Commission, quoted in “Duluth store owner apologizes over T-shirt controversy.”

¹⁸⁸¹ Ibarra, “Art gallery’s Cochise logo.”

¹⁸⁸² 40 Days for Life, poster, quoted in Jes Abeita, “Freedumb of Speech: Racist anti-abortion posters draw student ire,” *Alibi* 21, no. 39 (2012), accessed September 13, 2020, <https://alibi.com/news/42761/Freedumb-of-Speech.html>.

¹⁸⁸³ Lane Bird Bear, President, Kiva Club, quoted in Abeita, “Freedumb of Speech.”

¹⁸⁸⁴ Cf. Mark Trahan, “Elections 2012: Abortion Debate Targets Native Students at University of New Mexico,” *Indian Country Today Media Network*, September 20, 2012, accessed October 28, 2016, <http://indiancountrytodaymedianetwork.com/2012/09/20/elections-2012-abortion-debate-targets-native-students-university-new-mexico-134990>.

¹⁸⁸⁵ *Ibid.*

from Gallup, New Mexico, to the council chambers to protest.¹⁸⁸⁶ As protester Mervyn Tilden argued, “Our elders who survived the Long Walk had it in their hearts to keep our way of life going.”¹⁸⁸⁷

Native American students initiated a Walk for Change on UND campus in 2014 “in response to a variety of racist and insensitive incidents at UND,”¹⁸⁸⁸ like a “Siouxper Drunk” T-shirt that students wore on campus and which Indigenous UND students viewed as a racist provocation. The UND’s prehistory contributed to the uproar because students had been criticizing the University’s sports mascot, Chief Illiniwek, since the 1990s. Criticizing the climate of racism, the “Walk for Change” advocated a general change in the way Native Americans were treated.¹⁸⁸⁹ When UND President Robert Kelley joined the “Walk for Change,” Emmy Scott, one of the organizers, feared “administrators were using the march as a publicity stunt,” and “I want them to know that we are not a photo-op.”¹⁸⁹⁰ Besides sensitivity training workshops for incoming students, protesters demanded that the university condemn the Fighting Sioux nickname, restrict students from wearing clothing bearing the nickname or logo, and hold “accountable students who wore the ‘Siouxper drunk’ T-shirts.”¹⁸⁹¹ Concerned with the “dangers of censorship,” Kelley rejected regulations of students’ clothing.¹⁸⁹²

Summary: Calls to Action

The prognostic and motivational frames (Figure 21, see also Figure 30, appendix) summarize critics’ expectations of targets’ reactions and what they planned to do or thought had to be done to achieve their goals. Some voiced expectations about how targets should react and manage the issue or crisis. Sometimes they explained what had to be done to support change or announced further action if targets did not handle the issue as expected. Others focused more on what they believed had to change in U.S. society in general so that advertisers voluntarily abstained from using such marketing practices.

Mostly in cases of fraud but also in cases of appropriation, protesters considered the legal system the best way to battle marketing practices. Only rarely did critics believe the legal system was a promising strategy to challenge marketing misrepresentations. As marketing strategies were an economically motivated practice to generate revenue, critics suggested specific economic remedies based on the protest cause. Almost exclusively in cases of alleged fraud, protesters expected violators to compensate the victims of their marketing practices. In other cases, and irrespective of the protest cause, critics thought a donation was the appropriate reaction or focused on economic development for Native communities by suggesting

¹⁸⁸⁶ Cf. Brenda Norrell, “Navajo Nation Council calls for removal of wooden tipis,” *Indian Country Today*, January 26, 1994, A1.

¹⁸⁸⁷ Mervyn Tilden, quoted in Norrell, “Navajo Nation Council calls for removal of wooden tipis,” A1.

¹⁸⁸⁸ “Speakfaithfully Podcast Episode 5: The Walk for Change at UND with Dani Miller and Emmy Scott,” *Speakfaithfully*, June 29, 2014, accessed September 13, 2020, <https://speakfaithfully.com/2014/06/29/speak-faithfully-podcast-episode-5-the-walk-for-change-at-und-with-dani-miller-and-emmy-scott/>.

¹⁸⁸⁹ Cf. Anna Burleson, “After racially insensitive T-shirt incident, UND community marches in protest,” *Grand Forks Herald*, May 17, 2014, accessed September 13, 2020, <https://www.grandforksherald.com/content/after-racially-insensitive-t-shirt-incident-und-community-marches-protest>.

¹⁸⁹⁰ Emmy Scott, paraphrased and quoted in “Speakfaithfully Podcast Episode 5.”

¹⁸⁹¹ Burleson, “After racially insensitive T-shirt incident, UND community marches in protest.”

¹⁸⁹² Robert Kelley, President, University of North Dakota, quoted in Burleson, “After racially insensitive T-shirt incident, UND community marches in protest.”

commercial cooperation. Since many critics believed ethical arguments were less convincing than economic arguments, in 31 cases, they threatened to call for a boycott through consumers or sellers. Occasionally, protesters suggested ethics-based strategies such as calling for solidarity and producing public pressure to move advertisers to change their marketing practices to challenge appropriation and misrepresentation. Multiple critics agreed that these issues were a matter of colonialism entrenched in U.S. society. Educational efforts to decolonize Native Americans' and Non-Natives' minds were the basis for changing marketing practices supported by the colonial belief system. Artists aimed to disrupt this system of taking and reinvesting Native American imagery, names, and symbols with new meanings through reappropriation as an act of decolonization.

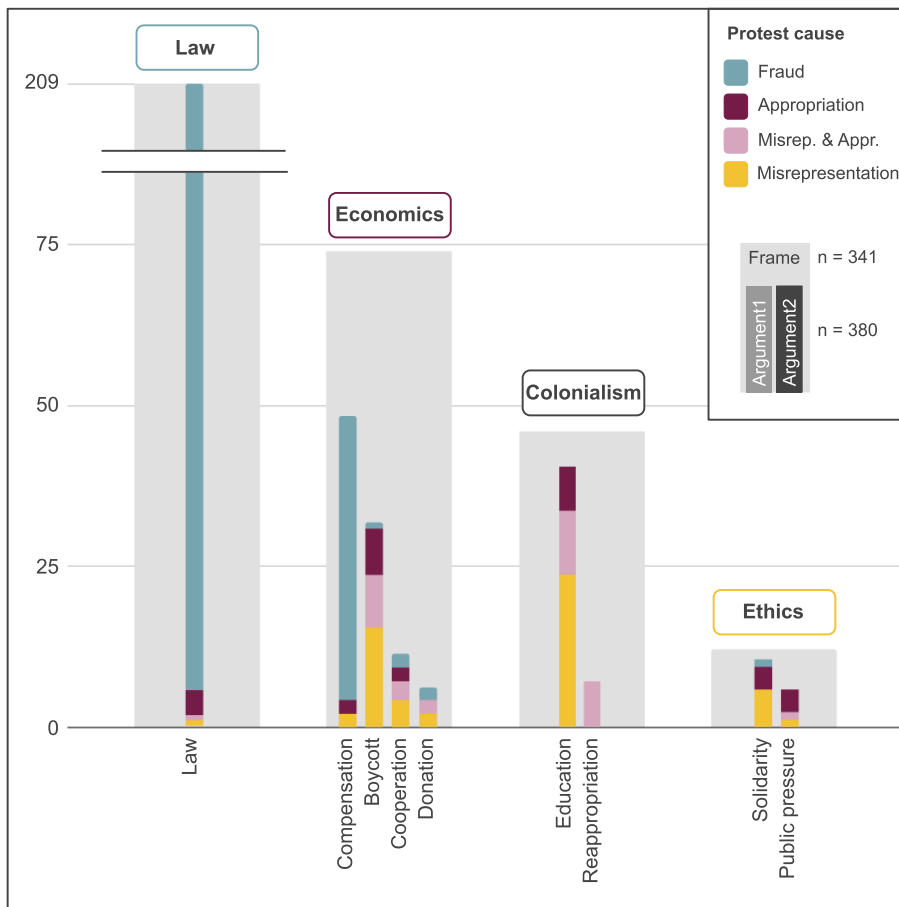


Figure 21: Protesters' prognostic and motivational arguments and frames.

9. Advertisers' Crisis Management

According to Timothy Coombs, a crisis is “the perception of an unpredictable event that threatens important expectancies of stakeholders and can seriously impact an organization’s performance and generate negative outcomes.”¹⁸⁹³ A crisis can affect an entire organization or even an industry that suffers reputational damage or financial loss through new regulations, recall costs, or lawsuits.¹⁸⁹⁴ Coombs’ approach to grasping the genesis of a crisis is the three-stage model that divides the crisis into pre-crisis, crisis event, and post-crisis. The pre-crisis stage involves signal detection, prevention, and crisis preparation. Recurrent complaints, for instance, could be a warning signal that organizations could answer with corrective action to prevent further complaints and publicly visible conflicts with stakeholders.¹⁸⁹⁵ Crisis recognition and containment are the two stages defining the crisis event. During the post-crisis phase, the evaluation of the crisis management should improve strategies for the next crisis, check stakeholders’ impressions and attitudes toward the company, and verify the end of a crisis.¹⁸⁹⁶

Coombs separates para-crises as a special crisis type. A para-crisis as “a specific type of crisis warning sign . . . mimics a crisis itself”¹⁸⁹⁷ and may not always be clearly distinguishable from a crisis. Since visibility gives power to para-crises, publicly addressing a para-crisis is a preventive action during the pre-crisis phase to avoid an escalation. If handled timely and carefully, a para-crisis results in only minor reputational damages but no significant financial losses. A typical case is social media criticism for an offensive advertisement that the advertiser removes immediately and issues a public apology, which Coombs classifies as a faux pas. Other para-crisis types are challenges and rumors.¹⁸⁹⁸

While members of Indian interest organizations tended to inform news media of their protest, particularly civilian critics did not notify the press. Since many complaints did not reach the public, producers’ and marketers’ reactions may be considered crisis prevention strategies. However, this study does not separate para-crisis responses as crisis prevention strategies and crisis response communication strategies for two reasons. First, as crises and para-crises are too similar, it is difficult to determine whether a communication strategy is preventive or responsive. Second, one crucial aspect of any crisis is its perceptual character, that is, if “stakeholders believe an organization is in crisis, a crisis does exist, and stakeholders will react to the organization as if it is in crisis.”¹⁸⁹⁹ Therefore, this study treats all public and private statements marketers, publishers, and sellers made to protesters as a crisis communication strategy. Since non-public criticism through letters of complaint or personal confrontation in a store, for instance, initiates the pre-crisis phase, all following reactions represent crisis prevention strategies. In the previous chapter about protesters’ activism strategies, the study distinguished various strategies as public and non-public to evaluate organizations’ reactions and the varying success rates based on the chosen strategy.

¹⁸⁹³ Coombs, *Ongoing Crisis Communication* (2012), 2.

¹⁸⁹⁴ Cf. *ibid.*, 3-4.

¹⁸⁹⁵ Cf. *ibid.*, 11-12.

¹⁸⁹⁶ Cf. *ibid.*, 12.

¹⁸⁹⁷ *Ibid.*, 26.

¹⁸⁹⁸ Cf. *ibid.*, 26.

¹⁸⁹⁹ *Ibid.*, 2.

Following Coombs, this chapter investigating marketers' crisis management strategies first details the various crisis types that determine which crisis management strategy is most appropriate depending on the organization's reputation and crisis history. It moves on to explain the four basic postures organizations can take when responding to criticism or protest and which crisis response strategies they typically use with each posture. For analyzing crisis management strategies in cases of protest against fraud, appropriation, and misrepresentation, this study identifies counterarguments to criticism and groups them into frames. Then it assigns the arguments and frames to the respective communication strategies and postures. The assignment is based on the qualitative analysis of the arguments and balanced by the quantitative analysis of organizations' reactions and the results of the protests.

The analysis shows which arguments and frames organizations used most frequently and how these fit into their crisis management strategy. It seeks to determine how marketers used arguments to deny or diminish criticism and contrasts verbal reactions with organizations' actions to evaluate whether organizations' communication strategies and actions were consistent. After identifying patterns of response strategies, the chapter illustrates the crisis management strategies by describing target responses and stakeholders' reactions to those responses.

Crisis Types

Identifying crisis types helps determine the best response strategy in the event of criticism or protest. Depending on the amount of responsibility stakeholders attribute to the company, they will treat a crisis as a victim (no or almost no responsibility), accidental (low responsibility), or preventable crisis (heavy responsibility). Natural disasters, workplace violence, and malevolence as well as rumors are basically beyond the company's control, making the organization the victim of a crisis. Technical error accidents or product harm as well as challenges result in accident crises for which the company carries some responsibility. Human error accidents, product harm, and organizational misdeeds result in crises the company could have prevented. In this context, accidental and preventable crises are most relevant, particularly challenges and organizational misdeeds.¹⁹⁰⁰

Figure 22¹⁹⁰¹ shows the categorization of crises according to Coombs and assigns the protest categories of this study, fraud, appropriation, and misrepresentation, to these crisis types. This study views cases of fraud and appropriation covered by the law as an organizational misdeed (preventable crisis). Organizational misdeeds like violating trademark laws or the IACA are preventable as sellers of crafts, for instance, are supposed to know relevant regulations, and ignorance of laws is generally not a legally accepted defense. Thus, warranted claims of fraud always lead to preventable crises.

¹⁹⁰⁰ Cf. *ibid.*, 158.

¹⁹⁰¹ Based on *ibid.*

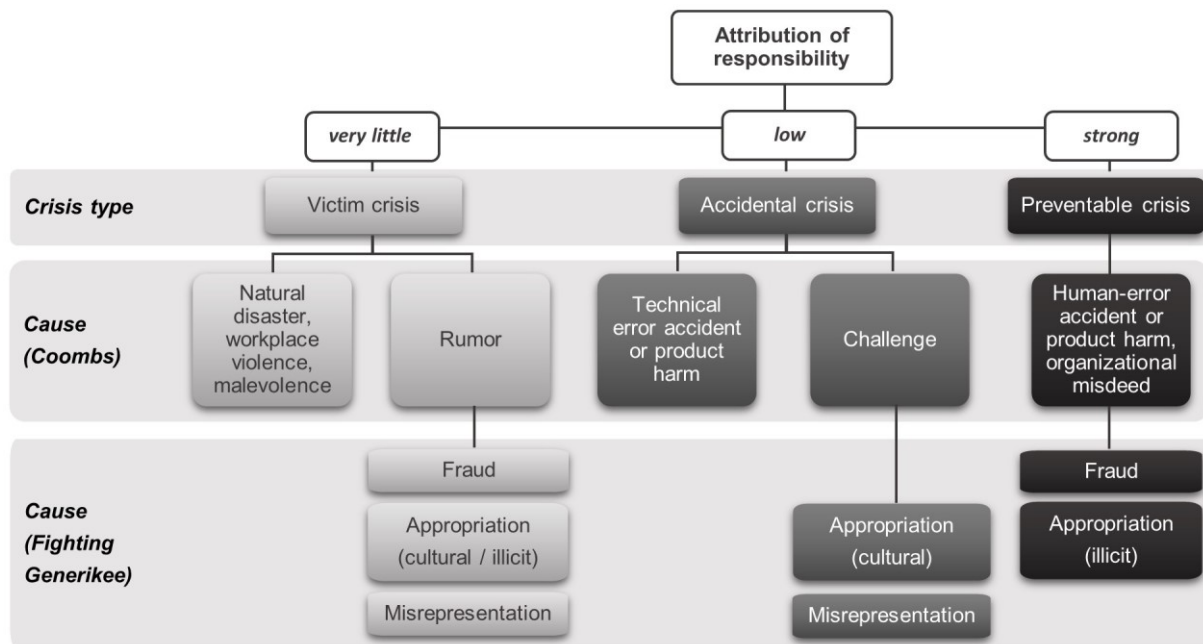


Figure 22: Crisis types.

This study views criticism of cultural appropriation and misrepresentation generally as an accidental crisis. Depending on the circumstances, however, these causes may also be treated as preventable crises. The misrepresentation of Indigenous peoples and the appropriation of cultural elements not protected by law qualify as challenges (accidental crises) because protest claims can hardly be proven. Whether or not a representation or the taking of a traditional symbol was appropriate may be subject to individual experiences and perceptions. In that sense, challenges are ambiguous because one stakeholder may claim that an organization is acting inappropriately while other stakeholders “must decide whether to accept the claim of wrongdoing or to accept the organization’s claim that its actions are appropriate.”¹⁹⁰² Moral challenges are ambiguous as they revolve around moral principles that may vary among stakeholders and change over time. Consequently, the current zeitgeist influences the potential threat of a challenge since “stakeholders support the side that is most believable or credible to them.”¹⁹⁰³ While advertisers might defend marketing representations with the free speech doctrine or appropriated cultural goods as a public good, public pressure can be stronger during times when many stakeholders share an interest in certain civil rights issues, like the heightened sensitivity following the Black Lives Matter movement.

Coombs classifies advertising messages that managers believe are positive or neutral but that stakeholders find racist or insulting as a faux pas. According to his definition of a challenge, an organization operates inappropriately in cases of human rights abuse, for instance, while the organization’s actions do not violate any laws or regulations.¹⁹⁰⁴ As some protesters framed misrepresentation and cultural appropriation as human rights issues, these protest causes may qualify as a challenge. Since the U.S. signed UNDRIP, which protects Indigenous peoples’ equality, dignity, sovereignty over their identity and culture, and the appropriate portrayal of Indigenous diversity in public information, one could also argue the

¹⁹⁰² Ibid., 160-161.

¹⁹⁰³ Ibid., 161.

¹⁹⁰⁴ Cf. Coombs, *Ongoing Crisis Communication* (2019), 59.

misrepresentation of Indigenous peoples and cultural appropriation in marketing results in preventable crises.

This study considers criticism of misrepresentation and appropriation preventable if an organization conveys indifference through its past actions and repetition. Stakeholders who are sympathetic to the cause attribute more responsibility to offenders who repeatedly employ offensive representations or appropriation of Indigenous cultural elements compared to companies with a favorable reputation or no crisis history. If a targeted company has a history of crises or a prior negative reputation, stakeholders will react more strictly and treat an accidental crisis like a preventable one.¹⁹⁰⁵ Additionally, the analysis of protests against Indigenous marketing representations shows that stakeholders became increasingly annoyed with offenses when Indigeneity was highly popular and protests were daily fare. Under such circumstances, repeating other organizations' mistakes had similar effects as a crisis history or negative reputation.

Rumors may occur in all three protest categories. Critics claiming fraud could assume that a producer was not Native American while the label identified a product as Indian-made. As the evaluation of fraud cases showed, sometimes a manufacturer's heritage can clearly be established or denied, and sometimes the complex reality of ethnic origins defies any ethnic categorization due to arbitrary definitions. Rumors then remain unresolved and can cause lasting damage to an entrepreneur's reputation. Similarly, stakeholders might question an actor's or model's heritage, thereby criticizing the authenticity or appropriateness of an Indigenous representation. In cases of appropriation, protesters might assume a marketer used an image, name, or artwork without permission, which an investigation can clarify.

The example of a Gatorade ad demonstrates how rumors emerged, although rumors did not necessarily go viral and cause damage. Regarding the "nicely done, seemingly sensitive" Gatorade commercial showing a fancy dancer, Robert Schmidt raised several questions, like "Did the Native performers agree to participate in this ad? Did they agree to (implicitly) endorse Gatorade?" In addition, Schmidt queried if the parent company PepsiCo had "done anything for Native communities other than sell them sugar drinks that contribute to their obesity problem? Unless Pepsi is doing something concrete, this salute [to Native performers] is as meaningless as the various apologies have been."¹⁹⁰⁶

PepsiCo had contacted Red Circle of Minneapolis, a Native-owned advertising agency,¹⁹⁰⁷ to help create a TV campaign for the 2009 Gathering of Nations celebration in New Mexico. As part of a re-branding campaign, Francella Giatrakis sought to "connect the heritage of athleticism for the Gatorade brand to pow wow dancing." Red Circle retained champion pow-wow dancer R.J. Smith of Wisconsin as spokes dancer and received permission to use Red Bull's track "Crow Hop." As Toyacoyah Brown wrote, the "campaign was a big hit at its debut of the Gathering of Nations and has had quite the afterlife on YouTube."¹⁹⁰⁸ In social media, critics raised their concerns quickly and sometimes without previous research. With

¹⁹⁰⁵ Cf. Coombs, *Ongoing Crisis Communication* (2012), 157-158.

¹⁹⁰⁶ Robert Schmidt, "Native dancer in Gatorade commercial," *Newspaper Rock*, May 27, 2009, accessed October 21, 2016, <http://newspaperrock.bluecorncomics.com/2009/05/native-dancer-in-gatorade-commercial.html>.

¹⁹⁰⁷ See "About Us," Red Circle Agency, accessed May 29, 2020, <https://redcircleagency.com/about>.

¹⁹⁰⁸ Toyacoyah Brown, "VOTD: Native Dancer in Gatorade Commercial," *PowWows*, January 21, 2014, accessed October 21, 2016, <http://www.powwows.com/2014/01/21/votd-native-dancer-in-gatorade-commercial/>. See also "Gatorade Commercial - Native Dancer," YouTube video, 0:31, May 15, 2009, accessed May 29, 2020, <https://www.youtube.com/watch?v=kQgrY0TOdLQ>.

more background information on marketing campaigns, perceptions could change drastically because, due to the pervasiveness of offenses, critics sometimes automatically assumed inappropriate or unlawful behavior on the part of marketers.

Reputation and Crisis History

Coombs recommends choosing the best response strategy based on the reputational threat, which is determined by crisis type, crisis history, and the company's prior reputation. Preventable crises resulting from organizational misdeeds typically entail strong attributions of crisis responsibility and, consequently, threaten a company's reputation because the perceived heavy responsibility causes greater reputational damage. Additionally, a history of crises or an unfavorable reputation intensifies the reputational threat as stakeholders tend to assume intention in such cases.¹⁹⁰⁹ Meanwhile, a "favorable reputation counters the negative speculation and the willingness to believe the worst."¹⁹¹⁰

A marketer's crisis history plays a significant role in stakeholders' perception of marketing missteps like misrepresentation and cultural appropriation, especially since news media reveals and spreads a marketer's crisis history and reputation. Across the various cases, protesters and media repeatedly pointed to similar cases of misrepresentation and appropriation that preceded the current case from which advertisers could have learned. They also referred to countless other cases of protest against similar marketing failures by other companies, thereby rendering the routine justifications and apologies untrustworthy.

For instance, the Hornell Brewing Co. had a crisis history of two previous protests against marketing campaigns that offended women and African Americans. In 1986, Hornell marketed "Midnight Dragon Malt Liquor," a beer label featuring a partially nude woman, along with the slogan "I could suck on this all night." In 1991, Heileman introduced its malt liquor "PowerMaster" targeting inner-city African Americans.¹⁹¹¹ Both brands were "discontinued shortly after their introduction due to the protestations of women's groups and African-American groups." Given the marketing history and the results of protests, Metz and Thee believed the fact that "American Indians comprise only 1 percent of the population, a much smaller figure than that of women of African Americans," and "the lampoon and trivialization of American-Indian cultures and religions are a time-honored tradition in the United States," explained "why Heileman and Hornell continue to produce and market Crazy Horse Malt Liquor long after other offensive labels have been discontinued."¹⁹¹²

Since Hornell was one of the earliest targets of Indigenous protest during a time of high media attention, activists could not point to similar cases of offensive product marketing. Instead, AIM member Vernon Bellecourt referenced the closely related mascot controversy and "reminded demonstrators of recent controversies over the use of Indian names, logos and cultural symbols in professional sports."¹⁹¹³ When protests against Victoria's Secret's fashion show started rising in 2012, Adrienne Keene found it particularly frustrating because "this

¹⁹⁰⁹ Cf. Coombs, *Ongoing Crisis Communication* (2012), 157-158.

¹⁹¹⁰ Ibid. 163.

¹⁹¹¹ Cf. Winona LaDuke, *Recovering the Sacred: The Power of Naming and Claiming* (Cambridge: South End Press, 2005), 146-147.

¹⁹¹² Metz and Thee, "Brewers Intoxicated With Racist Imagery," 51.

¹⁹¹³ "Greens and A.I.M. Unite Boycott Heileman Brewing Co.," 7.

comes on the heels of the No Doubt ‘Look Hot’ controversy.” After protests against Urban Outfitters, Ecko, Gap, Outkast, Ke\$ha, Lana Del Ray, NeverShoutNever, Frank Ocean, No Doubt, and Paul Frank, Keene noted, “Guess we can add Victoria’s Secret to the list.”¹⁹¹⁴ Covering criticism of Chanel’s latest fashion show in 2013, the *Daily Mail* quoted activist Sasha Brown noting that “Chanel should have learned from previous Native-inspired fashion offenses by Urban Outfitters, Victoria’s Secret, and H&M.”¹⁹¹⁵

As soon as critics could refer to marketers’ crisis management strategies they considered ideal, protesters and the media also cited these positive examples regularly. In opposition to the use of Crazy Horse’s name for a Las Vegas strip club, critics highlighted that “Some responsible corporate citizens, such as British Petroleum America, have returned its use of the Crazy Horse name to the family. Stroh’s Brewing Company apologized and did the same.”¹⁹¹⁶ Among the most cited marketing offenders in media were Hornell Brewing, Urban Outfitters, Paul Frank, Chanel, Victoria’s Secret, H&M, Liz Claiborne, GAP, and No Doubt. In the cases of the Hornell Brewing Co., Urban Outfitters, Liz Claiborne, and Victoria’s Secret, journalists dug deeper and contextualized the protest against Native American misrepresentation or appropriation with their previous marketing offenses. Through constructing histories of insults, they sought to demonstrate some companies’ fundamental lack of sensitivity toward groups such as Hindus, Muslims, Jews, African Americans, and women.

The evaluation of Urban Outfitters’ history of offensive marketing in a *Wall Street Journal* article revealed that a crisis might represent a calculated risk or even the goal of publicity efforts. In 2004, the retailer stopped producing a T-shirt with the imprint “Everyone Loves a Jewish Girl” surrounded by dollar signs after a protest from the Anti-Defamation League (ADL). In 2007, the company removed kaffiyehs labeled as “anti-war woven scarf” from stores after criticism from a blogger who posted photos of terrorists wearing the same type of scarf.¹⁹¹⁷ More recent cases of advertising which critics found inappropriate included a mock bloodstained “vintage Kent State” sweatshirt, a shirt in the style of a Third Reich concentration camp uniform, and merchandise bearing images of Hindu deities.¹⁹¹⁸ Urban Outfitters’ dense history of marketing offenses suggests that the company deliberately employed controversial marketing content while accepting criticism as calculated collateral damage. Triggering a crisis may even have been the goal of a publicity-seeking campaign.

In a *WSJ* article examining the consequences of the Navajo complaint, Jakab Spencer observed that, “Despite at least a half-dozen high-profile product gaffes, it was an enviable growth rate for a mall-based retailer during a difficult period” and “the success of the company’s brands, such as its leading chain by revenue Anthropologie, suggests that free publicity is worth the headache.” Jakab advised investors to “ignore the headlines and focus on the bot-

¹⁹¹⁴ Keene, “Guess we can add Victoria’s Secret to the list”; see also Hopkins, “Victoria’s Secret’s Racist Garbage Is Just Asking for a Boycott.”

¹⁹¹⁵ “Chanel’s Dallas show branded ‘an offensive mockery’ by Native Americans over ‘sacred’ feathered head-dresses,” *Daily Mail* [UK], December 11, 2013, accessed May 31, 2020, <https://www.dailymail.co.uk/femail/article-2522291/Chanel-Dallas-branded-offensive-mockery-Native-Americans-sacred-feathered-headaddresses.html>.

¹⁹¹⁶ Lee, “Crazy Horse’s name being misused, abused in Las Vegas,” 4.

¹⁹¹⁷ Cf. Wilson, “Remove the ‘Navajo’ Collections from Stores!”

¹⁹¹⁸ Cf. Spencer Jakab, “Urban Outfitters can Overcome Fashion Faux Pas,” *The Wall Street Journal*, August 16, 2015, accessed May 31, 2020, <https://www.wsj.com/articles/urban-outfitters-can-overcome-fashion-faux-pas-1439742577>.

tom line” because there “is no accounting for taste – even if it is extraordinarily poor.”¹⁹¹⁹ Comparing Tara Parker Pope’s *Wall Street Journal* article on Budweiser’s marketing faux pas in Great Britain calling for global ethics standards to Spencer’s conclusion exemplifies how framing a marketing protest also depended on journalists’ perceptions and attitudes. While Parker-Pope framed the protest as a matter of business ethics, Spencer took an economic perspective and recommended ignoring ethics, framed as an issue of good taste and opinion, in business matters.

Opinions on whether ethical marketing faux pas such as misrepresentation threatened a company’s reputation differed, but companies like The Cherokees took accusations of falsely selling products as Indian-made very seriously due to the potential reputational damage. The producer The Cherokees (1977) vigorously resisted the Indian Arts and Crafts Board’s investigations since the methods and media reporting worked to “declass us in the eyes of the buying public,”¹⁹²⁰ as Ferree, chairman of the Board of Directors, alleged. Similarly, the reseller Hecht Co. (1975) appealed to IACB General Manager Robert Hart that, as “a matter of fundamental fairness,” any doubts or “questions with respect to the authenticity of the jewelry offered for sale . . . be brought . . . to the attention of appropriate officials at the Hecht Co. prior to their public airing.”¹⁹²¹ Although resellers and consumers generally had the right to demand proof of origin, they largely depended on companies’ reputations as trustworthy dealers for practical reasons. The Hecht Co. was “reluctant on just this bare assertion [that its supplier, Jack A. Levin & Associates, misrepresented the products as Indian-made] alone to sever a relationship with a company that in every respect has handled its business with us and with our customers on what appears to be a proper, forthright basis.”¹⁹²² However, consumers interested in authentic Indian products more easily went to another seller if there was even the slightest doubt about the company’s trustworthiness. IACB investigations and the Zia tribe’s resistance against the use of the Zia sun and marketers’ voluntary withdrawal of trademark registrations suggest that investigations by the U.S. government, whether justified or not, in combination with news reporting represented a reputational threat as it questioned companies’ trustworthiness and ethical business practice standards and alienated potential customers.

Postures

Coombs generally recommends responding quickly, consistently, openly, and honestly in a crisis without letting a request go unacknowledged. He explicitly advises against the no-

¹⁹¹⁹ Ibid.

¹⁹²⁰ Ferree to Hart, June 20, 1977; Qualla / The Cherokees Complaint, 1977; Misrep. Viol. (Closed – Pending); Corresp. Re Misrep., 1932-1980; RG 435; NAB.

¹⁹²¹ Walter Pozen, Resident Partner, Stroock & Stroock & Lavan, letter to Robert G. Hart, General Manager, Indian Arts and Crafts Board, Washington, DC, April 22, 1975; Violations of Section 6 – Jack A. Levin & Associates / The Hecht Company / Feb 75, Peoples Drug Stores / March 75 – Pending; Misrepresentation Violations (Closed – Pending Cases); Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980; Records of the Indian Arts and Crafts Board, Record Group 435; National Archives Building, Washington, DC.

¹⁹²² Thomas A. Hays, Chairman of the Board, The Hecht Co., letter to Robert G. Hart, General Manager, Indian Arts and Crafts Board, Washington, DC, April 17, 1975; Violations of Section 6 – Jack A. Levin & Associates / The Hecht Company / Feb 75, Peoples Drug Stores / March 75 – Pending; Misrepresentation Violations (Closed – Pending Cases); Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980; Records of the Indian Arts and Crafts Board, Record Group 435; National Archives Building, Washington, DC.

comment strategy emanating from legal liability concerns. In terms of crisis response content, a company should provide adjusting information that details the crisis and explains why it happened and repair the organization's reputation if necessary.¹⁹²³ Reputation management strategies such as an "Apology and compensation are equally effective at protecting reputations."¹⁹²⁴ Corrective action, that is, "Communicating action taken to prevent a similar crisis,"¹⁹²⁵ as part of the adjusting information package is necessary if the company has a crisis history or an unfavorable prior reputation. Similarly, Hearit and Roberson's mortification strategy includes the agreement with criticism, corrective action, and the promise of betterment. This strategy is "rhetorically efficacious because it communicates to consumers that the problem that precipitated the wrongdoing has been identified and fixed."¹⁹²⁶ For instance, GAP promised in response to criticism of its "Manifest Destiny" T-shirts in 2012 to stop selling them and improve the process of "how we select product designs for these types of partnerships in the future." GAP thanked protesters for their "continued feedback" and reassured stakeholders that "we're always listening."¹⁹²⁷

Depending on an organization's goals, Coombs identifies denial, diminishment, rebuilding, and bolstering as the four basic postures that embrace specific crisis response strategies. By applying denial strategies, companies seek to remove any connection between the organization and the crisis. It aims to reduce the reputational threat by diminishing a crisis, while rebuilding techniques improve an organization's reputation. More precisely, by diminishing a crisis, organizations acknowledge only limited culpability and shift responsibility away from the company to a small group of employees or individuals. Conversely, the rebuilding or renewal response strategy focuses on "rebuilding confidence and restoring the organization, not on assigning or averting blame,"¹⁹²⁸ and requires a favorable reputation and consistency with the organization's core values. Bolstering is a supplemental strategy to build a positive connection between a company and stakeholders. For a consistent appearance, companies should not use denial strategies in combination with diminishment or rebuilding strategies, whereas the latter two may be used together.¹⁹²⁹

Figure 23¹⁹³⁰ gives an overview of the best strategic choice depending on the circumstances of a crisis. Based on the categorization of cases of fraud, legally prohibited appropriation, and socially recognized misrepresentation as a preventable crisis, rebuilding is the most appropriate response strategy. Cultural appropriation, which was not covered by the law, and misrepresentations that did not clearly violate cultural norms qualify as a warranted challenge (accidental crisis), so corrective action is the best response strategy. Denial is a valid tactic to counter rumors or unwarranted challenges but is only effective if the company manages to render the allegations insignificant or incredible.¹⁹³¹

¹⁹²³ Cf. Coombs, *Ongoing Crisis Communication* (2012), 140-154.

¹⁹²⁴ Ibid., 188.

¹⁹²⁵ Ibid., 150.

¹⁹²⁶ Hearit and Roberson, "Denial, Differentiation, and Apology," 552.

¹⁹²⁷ Mari Mesloh, spokesperson for GAP, email cited in Benally, "AIM SO CAL delivers demands, receives apology email from GAP representative."

¹⁹²⁸ Coombs, *Ongoing Crisis Communication* (2012), 150.

¹⁹²⁹ Cf. ibid., 155-157.

¹⁹³⁰ Based on Coombs, *Ongoing Crisis Communication* (2012 / 2019).

¹⁹³¹ Cf. Hearit and Roberson, "Denial, Differentiation, and Apology," 551.

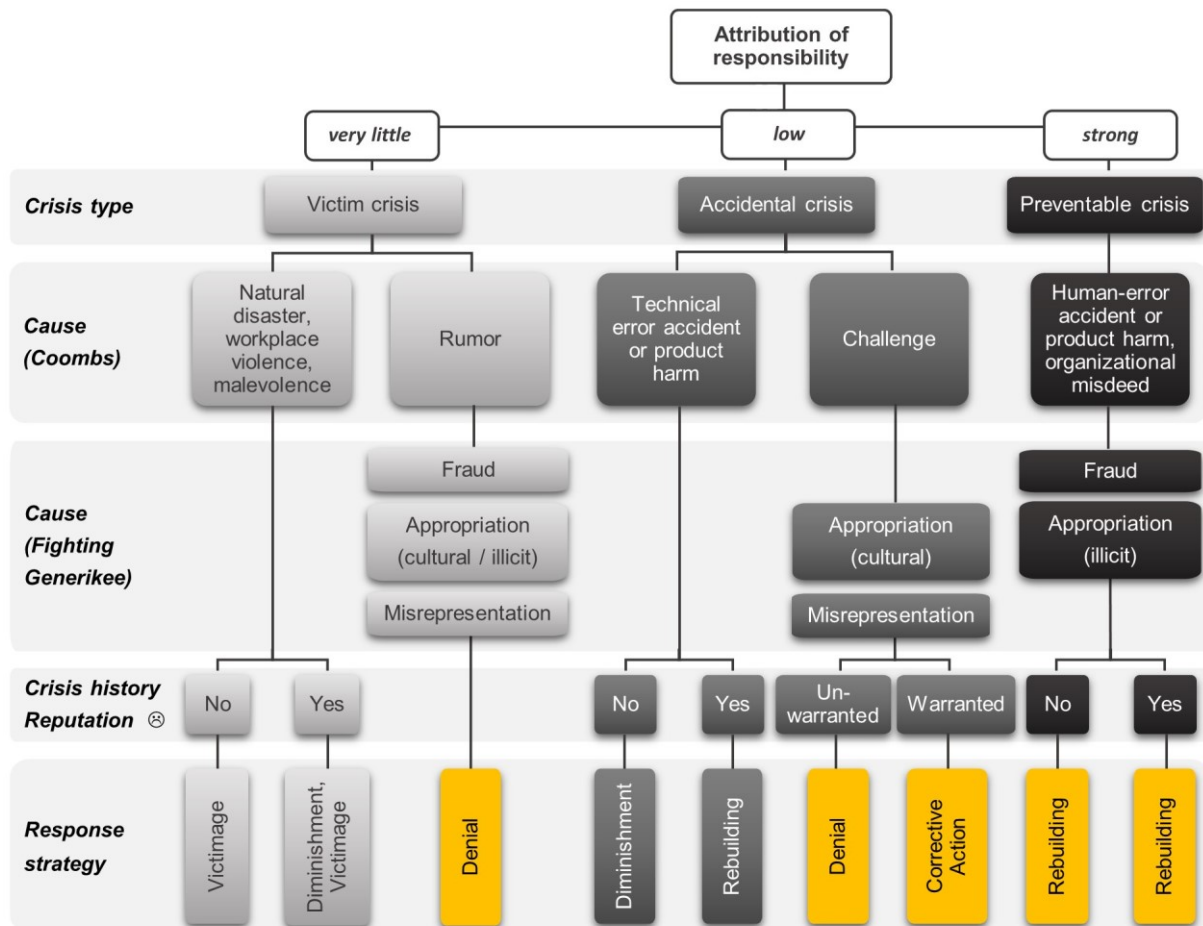


Figure 23: Recommended response strategies by crisis type.

9.1 Crisis Communication Strategies

The analysis of marketers' response frames shows which arguments marketers used most frequently to defend their marketing practices against claims of fraud, appropriation, and misrepresentation (see Figure 30, appendix). While ethical arguments (ethics frame), a representations' relation to reality or fictivity (reality frame), and the minimization of responsibility (responsibility frame) were major arguments in cases of misrepresentation and appropriation, these frames played almost no role in cases of fraud. In such cases, marketers typically focused on the dismissal of legal charges.

The **ethics frame** presents the most frequently used response arguments (79 cases / 66.4 percent), arguing that a representation was likable or honorable, the advertisement was just fun and marketers had no intent to offend anyone, the ad was sensitive, or activists were hypersensitive. Marketers often justified their actions by using ethical arguments which ignored or dismissed the criticism as irrelevant. While likability (three cases), hypersensitivity (three cases), humor (seven cases), and the sensitivity of the ad (nine cases) were relatively rare responses, marketers regularly maintained their practices were honoring Native Americans (19 cases) and they had no intent to offend anyone (52 cases). The routine statements were evident in the form of numerous "I'm sorry you got upset non-apologies," as Erin G.

Ryan called them.¹⁹³² Through such statements, marketers did not apologize for the campaign but for the fact that critics ‘misinterpreted’ the advertising practice as offensive. Marketers whose Indigeneity was doubted used the honoring argument more frequently than other marketers.

Although advertisers have used ethical arguments in response to marketing protests since the mid-1960s, such as humor or clarifying the intent, some arguments developed later. In this study, the honoring argument appeared for the first time in the early 1990s around the Quincentennial and when the sports mascot issue gained national attention and the pressure to defend marketing practices grew. In this study, marketers did not label critics as hypersensitive until the early 2010s when protests started increasing again.

The **reality frame** (21 cases, 17.6 percent) covers marketers’ claims that a representation was not offensive because it represented reality (eleven cases), it was surreal (two cases), and there was no connection between Indigenous names or imagery and a marketing representation (eight cases). Marketers started using the reality frame as a defense at the same time when the honoring frame appeared in the early 1990s.

The ethics and reality frames in cases of misrepresentation¹⁹³³ demonstrate how protesters and marketers used the same frames differently. Complainants informed marketers that their practices were offensive and explained why representations were inaccurate by stating historical and contemporary facts as well as real-life consequences through socialization that were supported by APA reports, among others. Conversely, marketers mostly raised rather perceptual arguments such as likability, sensitivity, honoring, humor, or the intent behind an ad that could not be refuted. There is a parallel to the mascot controversy, where offensiveness was a key issue. As C. Richard King observed, the framing of the mascot issue prevented understanding of the issue because discussions “exclude history, take mascots out of context, discourage an appreciation of how race and gender matter, and reduce the question to one of feelings and opinions.”¹⁹³⁴

When marketers used the **responsibility frame** (28 cases / 23.5 percent), they sought to pass the responsibility for a marketing campaign to others. Arguing that a marketing practice or representation was a common practice or tradition, that is, social convention (14 cases), served to shift responsibility to the anonymous society. Sales numbers and positive feedback, which constitute the market demand, shift responsibility to consumers who legitimize and push the production of goods and marketing materials by buying them (six cases). Marketers also tried to reduce accountability (seven cases) by passing responsibility to advertising agencies that designed and created marketing materials. In three cases, marketers blamed testers or institutions that pre-tested a campaign. Organizations have constantly used the responsibility frame since the mid-1960s.

¹⁹³² Erin G. Ryan, “Duke Fraternity Demonstrates Proper Way to Apologize For Being Racist,” quoted in Robert Schmidt, “Apology for ‘Pilgrims and Indians’ party,” *Newspaper Rock*, December 8, 2011, accessed October 23, 2016, <http://newspaperrock.bluecorncomics.com/2011/12/apology-for-pilgrims-and-indians-party.html>.

¹⁹³³ In cases of misrepresentation, the analysis of frames protesters used to explain their objections showed that protesters made use of the ethics frame in 45.0 percent of the 238 cases, while organizations responded to claims of misrepresentation with ethical arguments in 76.5 percent of the cases with known responses (52 of 68 cases). Simultaneously, critics used the reality frame in 71.4 percent of those cases, whereas organizations raised reality-based arguments in 17.6 percent of the documented responses to claims of misrepresentation (12 of 68 cases).

¹⁹³⁴ C. Richard King, ed., introduction to *The Native American Mascot Controversy: A Handbook* (Lanham: Scarecrow Press, 2010), 1.

Along with the reality frame, the **race frame** (21 cases / 17.6 percent), and Native bonding in particular, was the third most frequently used frame to defend marketing practices. Factionalism (two cases), that is, emphasizing the diversity of opinions among Native Americans regarding a marketing representation, was the strategy Daniel Snyder utilized to defend the name of his Washington Football Team. However, in the protest cases analyzed in this study, factionalism seemed to have no validity or promise of success for most marketers and was used only twice. Instead, marketers referred to connections to Indigenous culture or bonds to Native peoples that should legitimize the marketing strategy.

Native bonding strategies included claiming Indigenous ancestry (irrespective of legitimacy) or close ties to Native co-workers, friends, or partners; seeking advice from Native Americans or a tribe; pointing to Indigenous participation in the production process of promotional materials; or citing some sort of qualifying spiritual experience. While Indigenous ancestry was sometimes neither provable nor disprovable, the fundamental problem for protesters was not the blood percentage but the lack of involvement in an Indigenous community and awareness of their specific issues (see Tomahawk Tassels). Native bonding techniques used 13 non-Native marketers, seven marketers whose Indigeneity was doubted, and one Native American seller who claimed his representation of a skull wearing a bonnet was honoring. The race frame appeared first in defense of marketing practices in the late 1980s when more and more people started adopting Indian identities. It became increasingly popular in the mid-2000s and particularly after 2010 when some marketers sought to legitimate their marketing practices in advance due to the ubiquity of protests.

As part of the **economics frame** (17 cases / 14.3 percent), only a few marketers informed protesters that their marketing represented quite an investment (three cases) by pointing to the costs of marketing materials. Others highlighted their charitable deeds (seven cases) to justify their advertising. Charity might also qualify as an ethical argument but is treated as economic reasoning here because protesters regularly questioned the sincerity of the rather symbolic amounts of donations. The claim that Native Americans were protesting out of greed and that their resistance ultimately damaged their own business because merchants would refrain from handling Native art as it was hard to authenticate is summarized under Native profit (three cases). The chapter covering marketing misrepresentation on a global level examined the economic argument that misrepresentations and cultural appropriation were not offensive in foreign markets (five cases). Organizations referred to charitable deeds since the late 1960s but did not raise other economic arguments until the early 1990s.

The **law frame** (11 cases / 9.2 percent) was the least common response frame marketers used to maintain their constitutional rights (seven cases) or the rights of a free market which treated Indigenous culture not protected by laws as a public good (three cases) in response to claims of fraud, appropriation, and misrepresentation. The law frame was used mainly during the early 1990s but never gained significance.

Table 2 explains the arguments marketers used to counter protesters' claims.

Table 2: Summary of marketers' response arguments by frame.

Frame	Response Argument	Marketers' claim that ...
Law	Constitutional rights	the marketer exercised their constitutional right of free speech.
	Free market	the free market system vested marketers with the right to take Indigenous culture for marketing purposes.
Economics	Charity	the marketer had donated to charitable deeds.
	Foreign market	the ad/representation was not offensive in a foreign market where no Natives lived.
	Native profit Investment	Natives protested out of greed. their marketing was a significant investment.
Reality	No connection	there was no connection between Native names or imagery and the ad/representation.
	Reality Surreality	the ad was not offensive as it represented reality. the ad was not offensive as it was surreal and did not represent reality.
Race	Factionalism	Natives disagreed over the question of whether or not an ad/representation was offensive.
	Native bonds	the marketer had connections to Indigenous culture through a qualifying spiritual experience; the marketer had close ties to Native peoples, such as Native co-workers, friends, or partners; had sought advice from Natives or tribes; Natives had participated in the production process of the ad.
Responsibility	Accountability	the marketer did not create the ad/representation but an ad agency or designer.
	Pre-tested Social convention	the ad was pre-tested by an organization or by test persons. the marketing campaign was a common practice or tradition in U.S. society.
Ethics	Honoring	the ad/representation honored Natives.
	Humor	the ad was just fun or humorous.
	Hypersensitivity	the critic was hypersensitive.
	Intention	the marketer had no intention to offend Natives.
	Likability Sensitivity	the ad/representation was likable. the ad was sensitive.

Figure 24 summarizes that companies made use of the ethics frame (66.4 percent) most frequently, which was followed by the responsibility frame (23.5 percent), the reality and race frames (17.6 percent each), the economics frame (14.3 percent) and, least popular, the law frame (9.2 percent). Altogether, the 119 organizations responding to criticism used 177 frames, averaging 1.5 frames per respondent. Most responses answered claims of misrepresentation (68 cases / 57.1 percent), appropriation (31 cases / 26.1 percent), and the combina-

tion of misrepresentation and appropriation (13 cases / 10.9 percent), but only a few addressed claims of fraud (seven cases / 5.9 percent).

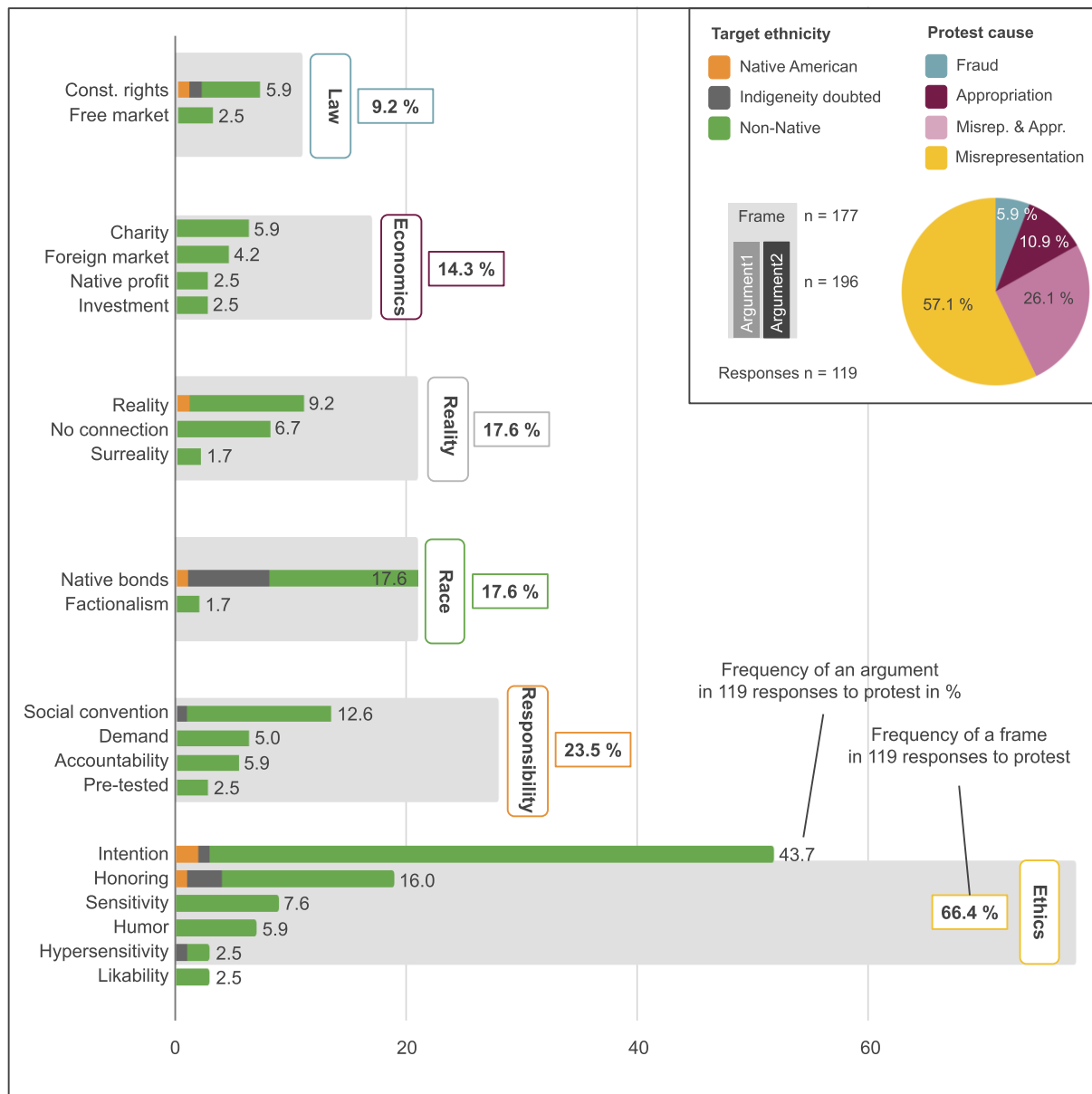


Figure 24: Response arguments and frames by ethnicity.

The analysis of response strategies is based on 489 protest cases against one or multiple organizations and includes only criticism of specific marketers but no general criticism. Fifty-seven targets reportedly ignored complainants and press inquiries. Another 225 targets had possibly not noticed the complaint, refused to comment, their response was not recorded or archived, or the media did not report the case or response. While 264 targets reacted to complaints, only 119 responded to the criticism.

Figure 25 summarizes the communication strategies marketers deployed in response to criticism and public protests and reveals patterns of response strategies on multiple levels. On the top level, the graphic groups responses by the organization's basic posture, that is, denial, diminishment, rebuilding, and bolstering. On the second level, it categorizes responses by communication strategy ranging from attacking protesters to highlighting the organization's

victimhood. On the third level, it sorts the response arguments by communication strategy while the colored frames indicate the response frames described above. On the lowest level, bar charts show the frequency of arguments by protest cause and group the arguments by response frames.

Verbal communication strategies for dealing with mainly misrepresentation and appropriation criticism were dominated by the denial posture (applied 97 times) and the diminishing posture (applied 88 times). Bolstering tactics represent the least used posture (applied ten times). Defenders used the ethics frame predominantly for diminishment tactics and only occasionally to deny a crisis. The responsibility frame, the second largest response frame, coincided with the scapegoating tactic as a denial strategy. The race frame offered arguments to legitimize a marketing practice or cast doubt on a protester, which ultimately aimed to deny a crisis. Organizations used reality frame arguments mainly to reject criticism and the law frame to legitimize their marketing practice, thereby denying any crisis. The economics frame was used occasionally in combination with denial and diminishment but mostly with bolstering postures.

The thumbs up and thumbs down symbols indicate trends of a communication strategy toward positive or negative protest results from the protester's perspective. While organizations applying diminishment and rebuilding tactics tended to accommodate protesters, bolstering tactics did not yield positive results. Although stakeholders would not expect positive results when an organization demonstrated a denial posture, the communication strategies of attacking protesters and legitimizing marketing strategies tended to lead to desirable changes. Additionally, the legend shows that organizations using the reality and responsibility frames in their responses tended to reject change, as opposed to organizations using race and ethics frames.

Like grouping arguments into frames, categorizing them by posture is ambivalent as marketers used the arguments in different ways. For instance, some Native bonding strategies, as a tactic to legitimize marketing practices, might also be seen as a scapegoating tactic that shifts responsibility to Natives who approved a marketing campaign. Also, while some organizations shifted all responsibility to an ad agency that created a campaign, others still admitted wrongdoing by approving their work. Although claiming that an ad was just fun usually aimed to minimize the offense, some used the humor argument to deny any offense, and another marketer argued, "I try to offend everyone – that way, no one feels left out or singled out."¹⁹³⁵ Since diminishment and denial strategies often intermingled, this study generally took reactions and results into consideration, which indicated a denial or diminishment posture, to categorize the arguments.¹⁹³⁶ For instance, as both reactions and results were negative when organizations used scapegoating arguments, the study considers scapegoating a denial strategy. Figure 25 indicates only patterns that become more distinct and meaningful with a larger database. The following chapter describes organizations' crisis communication strategies in cases of marketing protests and explains the intent behind such strategies.

¹⁹³⁵ Dell Schanze, owner of Totally Awesome, quoted in Bob Mims, "New 'SuperDell' ad offends Indians," *The Salt Lake Tribune*, October 17, 2003, D1.

¹⁹³⁶ See Figure 39, appendix to explore arguments by reactions and results. These figures helped with the categorization of arguments that organizations used in diverging ways, such as scapegoating, by posture.

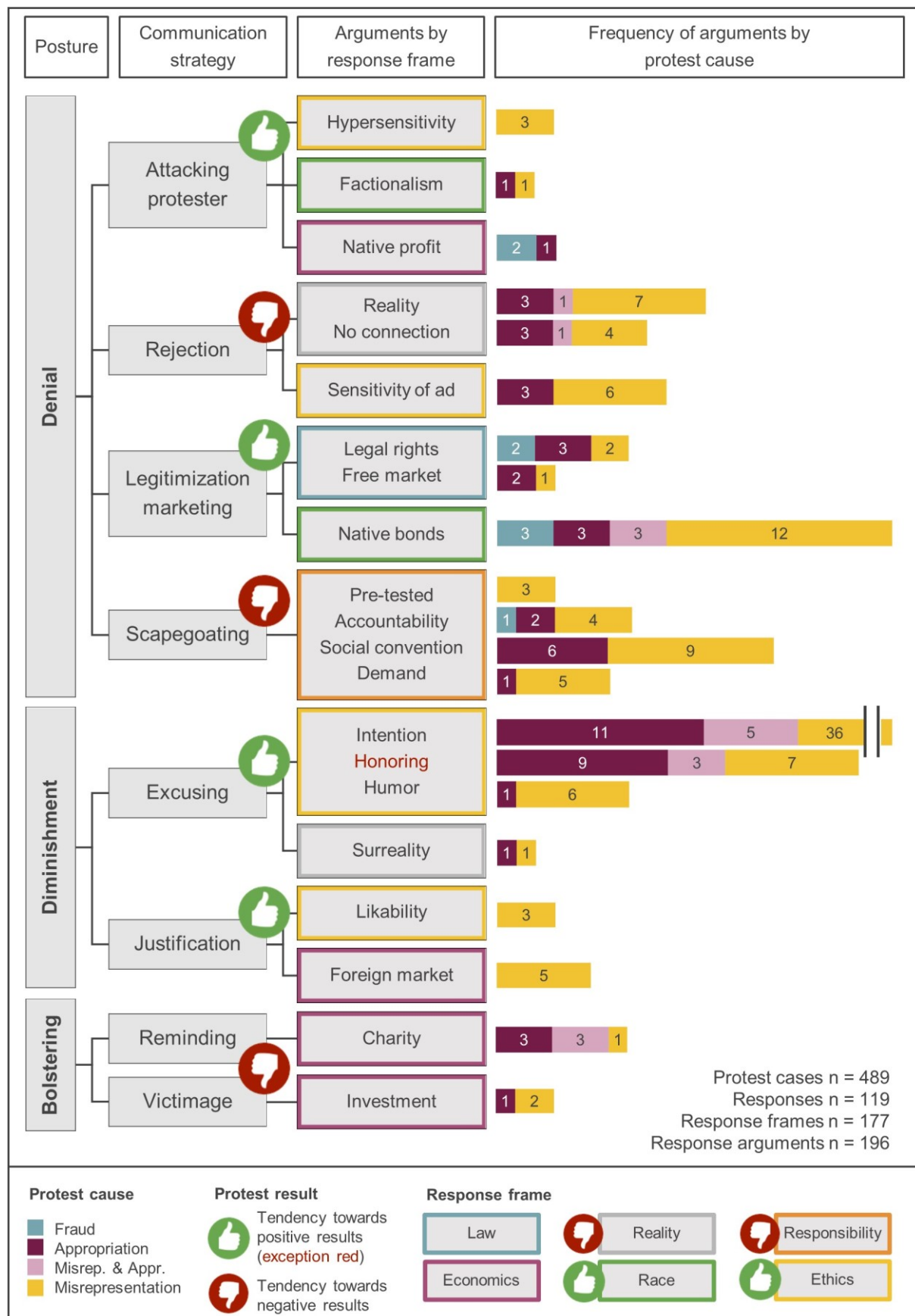


Figure 25: Response frames by communication strategy.

9.1.1 Denial

A. Attacking Protesters

Organizations use denial strategies to remove any connection between the organization and the crisis. The denial posture involves four different communication strategies ranging from attacking the protester (8 cases), rejecting criticism (27 cases), legitimizing marketing practices (31 cases), and scapegoating (31 cases). This study interprets the arguments of hypersensitivity, Native profit, and factionalism as strategies to attack protesters to delegitimize the criticism. Claiming a critic was greedy aimed to question their intention, as seen in response to Native American Arts' lawsuit campaign. If claims are legitimate, such counterattacks are usually seen as "a futile, last-ditch effort by a guilty company to spread the blame."¹⁹³⁷ Additionally, by declaring a protester was hypersensitive and opinions were diverse even among Native Americans, organizations doubted that the protester represented accepted social norms or other stakeholders. Although reactions tended to be less desirable, there was a tendency toward positive results because criticism was legally justified in fraud cases. Also, stakeholders shared a critic's position on social media and disagreed that the issue was merely a political correctness debate. Generally, Coombs notes, attacks are not a useful crisis management strategy as they generate "considerable media attention because the conflict adds additional drama to the existing crisis."¹⁹³⁸ In his view, attacking the accuser is only in cases of rumor legitimate, possibly by threatening a lawsuit.¹⁹³⁹

No marketer physically threatened a critic, but stakeholders threatened a protester in one case. In the Aysheh case (1993-94), criticism of a marketing practice resulted in death threats against Mervyn Tilden and his sister. As *ICT* reported, his "sister's life was threatened in a telephone call and two persons have reported overhearing plans discussed of 'hiring' a hit to kill Mr. Tilden."¹⁹⁴⁰ After reporting the threats to the FBI, local police in McKinley County, Gallup, and the Navajo Nation, Tilden was still convinced he "did the right thing" but "just underestimated the cost."¹⁹⁴¹ With this exception, attacking protesters usually implied challenging his standing rather than threatening his physical well-being.

Native Profit

In cases of alleged fraud, some defenders contended that Native American Arts' greed and, by extension, the IACA would ultimately hurt their own people. NAA's campaign against violators of the Indian Arts and Crafts Act beginning in 1998 and its rising demands for damages drew criticism from several violators. When NAA demanded \$8 million in damages from the Milne Jewelry Co. (2007), Bryce Dixon, the company's lawyer, questioned the protester's approach since "This group gets on Internet to look for people advertising things that look Indian, they make a purchase and lay in wait to allow damages to accumulate. . . . They try to

¹⁹³⁷ Hearit and Roberson, "Denial, Differentiation, and Apology," 551.

¹⁹³⁸ Ibid., 546.

¹⁹³⁹ Cf. Coombs, *Ongoing Crisis Communication* (2019), 151.

¹⁹⁴⁰ Norrell, "Navajo Nation Council calls for removal of wooden tipis," A1.

¹⁹⁴¹ Mervyn Tilden, quoted in Norrell, "Navajo Nation Council calls for removal of wooden tipis," A1.

shake down companies for as much money as they can get. It's a racket."¹⁹⁴² Jacob Lonetree, president of the Ho-Chunk Nation, defended NAA's demands because their actions were expensive, especially in complex cases that required extensive investigations.¹⁹⁴³ These lawsuits, Dixon argued, ultimately damaged Native American businesses because they had a "dampening effect on other businesses buying from American Indians."¹⁹⁴⁴ These businesses could never be entirely sure they were buying Indian-made products while facing high charges in case they were deceived. As Wes Milne pointed out, "stores and Internet sites are staying away from advertising any products made by certified Indians. Instead of Hopi silver jewelry, for instance, companies market silver pieces."¹⁹⁴⁵ Some sellers of Indigenous arts and crafts might change advertising practices in reaction to such lawsuits. However, this change is unlikely in online businesses where visibility in search engine rankings through keywords is crucial for generating revenue. Although "silver jewelry" is an often-used keyword in online searches, keywords such as "Indian jewelry," "Hopi jewelry," or "Hopi silver jewelry" represent a specific sub-market. The more accurate results search engines provide users, the higher the conversion rates in e-commerce, that is, the more purchases they will make.

Factionalism

The factionalism argument, only rarely used, seeks to legitimize commercial representations and question critics' opinions by pointing to Native Americans who either voiced approval for marketing practices or claimed not to care. According to Bob Almond, owner of West Main Liquors (2005), none of his Indigenous customers ever complained about the allegedly offensive mural picture¹⁹⁴⁶ to him. Still, he agreed to paint over the wall – against his Chickasaw wife's stance, who also thought it was "just a painting."¹⁹⁴⁷ While Nike (2007) did not officially defend its shoe model Air N7 by highlighting Native factionalism (see also Case Study 10), Comanche Nike consultant Rodney Stapp argued Nike's project was supportive and "culturally-sensitive to our [Indigenous] needs." Stapp deemed the "several hundred complaints from Indians on the Internet" insignificant because "we have over 4.1 million Indians in the United States" and "if only a couple hundred are unhappy about it, that's a pretty good percentage."¹⁹⁴⁸

Factionalism was a major argument in the mascot controversy, where several polls asked Native Americans whether they found sports team names, imagery, and mascots offensive and produced contradictory findings.¹⁹⁴⁹ On one side, an *Indian Country Today* survey of

¹⁹⁴² Bryce Dixon, lawyer for Milne Jewelry Co., quoted in Dawn House, "Native American Arts sues Utah firm over dolls," *The Salt Lake Tribune*, November 17, 2006, ProQuest 282172635.

¹⁹⁴³ Cf. Jacob Lonetree, President, Ho-Chunk Nation, quoted in House, "Native American Arts sues Utah firm over dolls."

¹⁹⁴⁴ Bryce Dixon, lawyer for Milne Jewelry Co., paraphrased in House, "Native American Arts sues Utah firm over dolls."

¹⁹⁴⁵ Bryce Dixon, lawyer for Milne Jewelry Co., and Wes Milne, owner of Milne Jewelry Co., paraphrased in *ibid.*

¹⁹⁴⁶ The picture showed a Native American woman waiting with her kids for her husband to buy liquor.

¹⁹⁴⁷ Sheila Almond, quoted in Penny Cockerell, "Mural on Hugo liquor store decried as racist," quoted in Robert Schmidt, "Stereotype of the Month Entry (7/27/05)," *Blue Corn Comics*, July 27, 2005, accessed July 1, 2016, <http://www.bluecorncomics.com/stype577.htm>.

¹⁹⁴⁸ Rodney Stapp, Comanche, quoted in Capriccioso, "Native Nike footwear raises concerns," 6.

¹⁹⁴⁹ Cf. C. Richard King et al., "Of Polls and Race Prejudice," *American Indian Sports Team Mascots*, accessed June 28, 2020, <http://aistm.org/fr.2002.of.polls.htm>.

2001 revealed that 81 percent of Native American respondents found Indian names, symbols, and mascots offensive, and 73 percent believed mascots created a racially hostile environment for Native students at non-Indian schools, colleges, and universities.¹⁹⁵⁰ Another study conducted at California State University in 2014 showed that 67 percent of Native Americans thought it was racist.¹⁹⁵¹

On the other side, a poll conducted by the Peter Harris Research Group for *Sports Illustrated* (SI) in 2002 found that 67 percent of Natives living on reservations and 87 percent of Natives living off reservations did not object to using Indian imagery in sports.¹⁹⁵² The SI poll found that 69 percent of Native Americans did not object to the Washington team's name. A 2004 National Annenberg Election Survey showed that 90 percent of 768 self-identified Native Americans did not find the name offensive.¹⁹⁵³ As a result of a telephone survey of 504 self-identified Native Americans conducted in 2016, *The Washington Post* concluded that 90 percent of Native American respondents were not offended by the Washington team's name.¹⁹⁵⁴ Another web-based survey of 500 self-identified Native Americans conducted by *The Washington Post* confirmed those results.¹⁹⁵⁵

For non-Native opinions, the SI poll (2002) argued that, like Native Americans, 79 percent of the fans surveyed thought using Native American names, mascots, or symbols for marketing sports teams was not objectionable, and 74 percent opposed renaming the Washington Football Team.¹⁹⁵⁶ Since such polls suggested fans and Native Americans shared a similar opinion on the mascot controversy, the author of the SI article assumed the result implied "a near total disconnect between Native American activists and the general Native American population on this issue."¹⁹⁵⁷ Civil rights lawyer Lawrence Baca noted protesters represented Indigenous people's thoughts on such issues more adequately than Natives who

¹⁹⁵⁰ Cf. "American Indian Opinion Leaders: American Indian Mascots," *Indian Country Today*, August 7, 2001, accessed June 28, 2020, <http://web.archive.org/web/20040301122612/http://www.indiancountry.com/?43>.

¹⁹⁵¹ Cf. Lindsey Adler, "New Study Finds 67% Of Native Americans Find Redskins Name Offensive," *BuzzFeed*, June 4, 2014, accessed June 28, 2020, <https://www.buzzfeed.com/lindseyadler/native-americans-offended-by-racial-slur>.

¹⁹⁵² Cf. Andrea Woo, "Polls apart SI polled Native Americans and sports fans in general on the use of Indian nicknames, and got some surprising answers," *Sports Illustrated Vault*, March 4, 2020, accessed June 28, 2020, <https://vault.si.com/vault/2002/03/04/polls-apart-si-polled-native-americans-and-sports-fans-in-general-on-the-use-of-indian-nicknames-and-got-some-surprising-answers>.

¹⁹⁵³ Cf. "'Redskins' question in 2004 Annenberg study cited anew in controversy," Annenberg Public Policy Center, October 10, 2013, accessed June 28, 2020, <https://www.annenbergpublicpolicycenter.org/redskins-question-in-2004-annenberg-study-cited-anew-in-controversy/>; Annenberg Public Policy Center, press release re National Annenberg Election Survey, September 24, 2004, accessed July 4, 2020, https://cdn.annenbergpublicpolicycenter.org/wp-content/uploads/2004/09/2004_03_redskins_09-24_pr2.pdf.

¹⁹⁵⁴ Cf. John W. Cox, Scott Clement, and Theresa Vargas, "New poll finds 9 in 10 Native Americans aren't offended by Redskins name," *The Washington Post*, May 19, 2016, accessed June 28, 2020, https://www.washingtonpost.com/local/new-poll-finds-9-in-10-native-americans-arent-offended-by-redskins-name/2016/05/18/3ea11cfa-161a-11e6-924d-838753295f9a_story.html.

¹⁹⁵⁵ Cf. Theresa Vargas, "A survey explores how Native Americans feel about the name Washington Redskins. No, it's not that survey. This one is new," *The Washington Post*, August 9, 2019, accessed June 28, 2020, https://www.washingtonpost.com/local/a-survey-explores-how-native-americans-feel-about-the-name-washington-redskins-no-its-not-that-survey-this-one-is-new/2019/08/09/e38553bc-b581-11e9-8949-5f36ff92706e_story.html.

¹⁹⁵⁶ Cf. Woo, "Polls apart SI polled Native Americans and sports fans in general."

¹⁹⁵⁷ S.L. Price, "The Indian wars the campaign against Indian nicknames and mascots presumes that they offend Native Americans – but do they? We took a poll, and you won't believe the results," *Sports Illustrated Vault*, March 4, 2002, accessed June 28, 2020, <https://vault.si.com/vault/2002/03/04/the-indian-wars-the-campaign-against-indian-nicknames-and-mascots-presumes-that-they-offend-native-americans-but-do-they-we-took-a-poll-and-you-wont-believe-the-results>.

did not find such imagery and naming offensive. In his opinion, those arguing they would not mind this type of imagery did not understand the harmful effects of stereotypes or settled for the assumption that, at least, people knew Indians continued to exist. Generally acknowledging factionalism among Native peoples, Baca argued that the diversity of opinions was generally not a valid argument because there was always some disagreement, as exemplified by African Americans who defended segregation during the civil rights movement.¹⁹⁵⁸ Activist Ruth Hopkins commented on Victoria's Secret's marketing faux pas, "I don't know their hearts. Nonetheless, what happened to common courtesy, i.e. if someone doesn't want to be made fun of, you cease the offensive behavior?"¹⁹⁵⁹

As a Langer Research poll conducted in 2014 showed, in 1992, only eight percent of Americans thought the Washington team should change its name, but in 2014, 23 percent of Americans shared that opinion. Although Langer Research found "no difference in attitude between men and women, or whites and non-whites,"¹⁹⁶⁰ 83 percent of Republicans and 57 percent of Democrats maintained the team name was not offensive. Accordingly, 89 percent of Republicans and 58 percent of Democrats opposed a name change. The tripling of support for a change "has occurred chiefly among Democrats, younger adults, those living in the Northeast and West, and people with higher incomes and more education."¹⁹⁶¹ A UC Berkeley study launched by Arianne Eason and Stephanie Fryberg in 2020 revealed the same correlation between liberalism and conservatism and respondents' attitudes toward change.

The UC Berkeley study found that 49 percent of more than 1,000 self-identified Native American respondents were offended by the Washington team's name, while 38 percent were not bothered. As this study aimed to capture the diversity of Native peoples and experiences, it revealed that "the degree to which those surveyed identified as Native American influenced how offensive they found Native mascots." Progressive liberal Natives opposed the name more than conservatives, and "people who identify most with being Native American are the ones most likely to feel harmed by the continued use of stereotypical Native American team names and mascots,"¹⁹⁶² Eason concluded.

Critics of previous polls showing that Native Americans did not oppose sports teams' names and imagery questioned the polls' methodology since the tribal status of respondents was not verified.¹⁹⁶³ The self-identification as Native American was also problematic because polling methods affected the outcome of a study if the race question was asked at the beginning or the end of a survey.¹⁹⁶⁴ Regarding the whole polling issue, Fryberg was skeptical of

¹⁹⁵⁸ Cf. Baca, interview.

¹⁹⁵⁹ Hopkins, "Victoria's Secret's Racist Garbage Is Just Asking for a Boycott."

¹⁹⁶⁰ "Poll: 71 percent say keep Redskins," *ESPN*, September 2, 2014, accessed July 4, 2020, https://www.espn.com/espn/otl/story/_/id/11451964/redskins-poll-most-favor-keeping-name-dissent-growing.

¹⁹⁶¹ Langer Research, quoted in *ibid*.

¹⁹⁶² Yasmin Anwar, "Washington Redskins' name, Native mascots offend more than previously reported," *Berkeley News*, February 4, 2020, accessed June 28, 2020, <https://news.berkeley.edu/2020/02/04/native-mascots-survey/>.

Numbers of people who felt offended rose with "participants who were heavily engaged in their native or tribal cultures" (67 percent), young people (60 percent) and "people with tribal affiliations such as members of federally recognized tribes" (52 percent).

¹⁹⁶³ Cf. Adler, "New Study Finds 67% Of Native Americans Find Redskins Name Offensive."

¹⁹⁶⁴ Research showed that if people are asked after the questionnaire what race they are, 40 percent said they were Native, and they had approved of the Chief Illiniwek image. In a second version of the test the race was asked ahead, and only 1-2 percent claimed to be Native. In the latter case, those people did not approve the im-

the intent behind polls since the “data from previous opinion polls [was] often used to silence Native people.”¹⁹⁶⁵ As the varying numbers demonstrate, the result of polls asking whether people found sports team names or mascots offensive and supported change depended much on the respondents’ socio-cultural background and polling methods. Respondents’ liberal or conservative attitudes, education or socialization, and identification with Native American cultures were the key factors identified by recent studies which determined people’s perception of the mascot controversy.

Hypersensitivity

The hypersensitivity argument framed protests as political correctness debates to deny the legitimacy of criticism. As Larry Andrews, vice president of sales at Club Sun Color Studio, commented, “this day and time people look for something to complain about and something to stir the pot.”¹⁹⁶⁶ In her comment on ‘Hipster racism,’ social justice writer Lindy West explained how the norms of what people considered socially acceptable changed while some people’s fundamental attitudes have not.

Eventually we arrived at the point (now) where it’s socially unacceptable in mainstream culture for white people to say denigrating things about people of other races. But just because the behavior has been suppressed, that doesn’t mean people’s prejudices have simply disappeared. And white people haaaaaaate being told what to do in our own country (fun fact: not actually ‘ours’)! So racism went underground.¹⁹⁶⁷

Following West’s reasoning, the strategy of framing debates on racism as political correctness resulted from underground racism. Claiming a marketing representation was just fun or honoring Natives was a “typical defense” of popular “strains of ‘ironic racism’” which replaced openly communicated racism. This hidden “hipster racism,”¹⁹⁶⁸ justified as fun and honoring, represented microaggressions against Natives. As demonstrated in the Pocahontie-debate, these “Microaggressions are often unintentional, but they still have real consequences.”¹⁹⁶⁹

While ‘political correctness’ describes the predominantly liberal approach that language could alter attitudes and beliefs and lead to social change, “patriotic correctness”¹⁹⁷⁰ as the equivalent term defines conservative efforts to suppress progressive criticism and maintain

age. In the first case, people might think what they said sounds racist and they are trying to excuse this by claiming Indian heritage. Cf. Baca, interview.

¹⁹⁶⁵ Stephanie Fryberg, member of the Tulalip Tribes of Washington, quoted in Anwar, “Washington Redskins’ name, Native mascots offend more than previously reported.”

¹⁹⁶⁶ “AL tanning salon drops Thanksgiving ad touting ‘sexy color’ of American Indians,” *WSFA12 News*, November 7, 2013, accessed July 5, 2016, <http://www.wsfa.com/story/23912009/tanning-salons-ad-sparks-controversy>.

¹⁹⁶⁷ Lindy West, “A Complete Guide to ‘Hipster Racism’,” *Jezebel*, April 26, 2012, accessed October 27, 2016, <http://jezebel.com/5905291/a-complete-guide-to-hipster-racism>.

¹⁹⁶⁸ Ibid.

¹⁹⁶⁹ Robertson, “Dousing the Pocahontie Stereotype.”

¹⁹⁷⁰ Alex Nowrasteh, “The right has its own version of political correctness,” *The Washington Post*, December 7, 2016, accessed July 12, 2020, <https://www.washingtonpost.com/posteverything/wp/2016/12/07/the-right-has-its-own-version-of-political-correctness-its-just-as-stifling/>.

power relations.¹⁹⁷¹ Economist Paul Krugman wrote that “the big threat to our discourse is right-wing political correctness, which – unlike the liberal version – has lots of power and money behind it. And the goal is very much the kind of thing Orwell tried to convey with his notion of Newspeak: to make it impossible to talk, and possibly even think, about ideas that challenge the established order.”¹⁹⁷² Opponents of political correctness countered that proponents committed “the very evils they claim to correct, including reverse discrimination and suppression of free speech.”¹⁹⁷³ As psychologist Scott Kaufman argued in 2016, the idea of political correctness was “central to the culture wars of American politics”¹⁹⁷⁴ between the extreme right and the extreme left.

Recent polls investigating peoples’ opinions on the mascot controversy showed a similar split between liberals and conservatives. When targeted marketers sought to delegitimize protesters by portraying critics as hypersensitive and downplaying the dispute regarding Native American misrepresentation in marketing as a matter of opinion or as a political correctness debate, it unfolded within the established political discourse between liberal and conservative flanks where protesters usually represented the liberal view and marketers the conservative.

B. Legitimizing Marketing Practices

Marketers legitimized their marketing practices by referring to their constitutional rights, free market rights, and Native bonding strategies. Free speech arguments and declaring Indigenous cultural goods as common goods did not discuss whether a marketing practice was appropriate or not but denied there was a crisis because the organization’s actions were legally sound. Similarly, the appropriateness of marketing content did not play a significant role when organizations cited Native heritage or other connections with Native peoples or communities to legitimize their marketing practice. Although these arguments were basically valid, they did not address the issues raised by protesters, and organizations tended to retreat.

Freedom of Expression and Religion and the Free Market

Advertisers have used the law frame by establishing their legal and systemic freedom to conduct their marketing practices. Pointing to free speech, advertisers who identified as Native American, irrespective of their actual heritage, argued it was their right to practice their religion and express their Indigeneity in any way they wished. Non-Native advertisers insisted the same doctrine gave them the right to use Indigenous names or symbols, sometimes adding that the free-market system allowed them to pursue their marketing practices as long as it sold.

Harley ‘SwiftDeer’ Reagan of the Deer Tribe Metis Medicine Society (1993) maintained an identity as a Cherokee “Medicine Man, Shaman, Warrior, Author, Martial Arts Mas-

¹⁹⁷¹ Cf. Scott B. Kaufman, “The Personality of Political Correctness,” *Scientific American Blog*, November 20, 2016, accessed July 12, 2020, <https://blogs.scientificamerican.com/beautiful-minds/the-personality-of-political-correctness/>.

¹⁹⁷² Paul Krugman, “The New Political Correctness,” *The New York Times Blog*, May 26, 2012, accessed July 12, 2020, <https://krugman.blogs.nytimes.com/2012/05/26/the-new-political-correctness/>.

¹⁹⁷³ Kaufman, “The Personality of Political Correctness.”

¹⁹⁷⁴ Ibid.

ter, Healer and a Psychologist” for marketing purposes, advertising himself in brochures as an “energy dancer, a warrior who constantly pushes the edge.”¹⁹⁷⁵ Vernon Foster of the AIM Southwest Chapter challenged his status as a medicine man and charged Reagan “with using sacred Native American beliefs and objects in a pornographic way under the guise of being a medicine man.” Defending his Cherokee heritage and status as a medicine man, Reagan returned that “under the constitution he has the freedom to practice his religion, saying protesters were infringing on his rights, not the other way around.”¹⁹⁷⁶

Many entrepreneurs selling Indigenous arts, crafts, experience, or wisdom used their heritage for promotional purposes, whereas ‘going Native’ without claiming Native heritage was a marketing strategy companies employed to highlight spirituality as the added value of a product. Thunderbird Energetica (2012),¹⁹⁷⁷ for instance, established a spiritual connection with Indigeneity and used the free speech doctrine to legitimize their marketing strategy. Thunderbird Energetica’s designer Jed Rogers aka “Sprinting White Horse” decided to participate in a month-long sweat lodge experience in the New Mexico desert, where he discovered his spirit animal and found the inspiration to design the Thunderbird logo. The specialty of their product was that “Thunderbird Energetica is the only energy bar company to harvest the mystical powers of spirit animals during the fabrication and design of our product,” that is, the energy bars were “shaman blessed.” Therefore, “Not only do the owners of our company have intimate relationships with their respective spirit animals, but each one of our bars has its own power animal.”

Adrienne Keene responded to the company’s branding strategy and deconstructed the myth. She found the brand story stereotypical and offensive due to the history of religious suppression, and the theme of going Native trivialized the ongoing fight for Indigenous sovereignty.

First of all, your images and language collapse hundreds and hundreds of distinct tribes and traditions into a generic new-age Native stereotype. We don’t all participate in sweat lodge ceremonies, we don’t have ‘spirit animals,’ very few of us have names that follow the extremely stereotypical ‘adjective + animal’ format. The website perpetuates stereotypes that you may see as ‘positive’ – Native peoples as stewards of the land, connected to nature, mystical, magical, special – but even these stereotypes are harmful because they relegate us to a mystical, fictional creature that exists in the past, not allowing Native people to exist as a modern, heterogeneous population that lives in the same world you do.

As Keene explained, the branding strategy drawing on spirituality was particularly offensive because “until 1978, American Indians couldn’t even legally practice our spirituality that you so openly appropriate – sweat lodges, naming ceremonies, ‘vision quests’ – all illegal. That is why it hurts many of us so deeply when we see these practices being appropriated or mocked.”

¹⁹⁷⁵ Harley ‘SwiftDeer’ Reagan, quoted in Avis Little Eagle, “Deer Tribe Move Brings Protest,” *Indian Country Today*, January 14, 1993, ProQuest 362594765.

¹⁹⁷⁶ Little Eagle, “Deer Tribe Move Brings Protest.”

¹⁹⁷⁷ All quotes concerning the Thunderbird Energetica case including the company’s marketing and defense statements were cited from Adrienne Keene, “Thunderbird Energetica: When good intentions go wrong,” *Native Appropriations*, March 6, 2012, accessed October 26, 2016, <http://nativeappropriations.com/2012/03/thunderbird-energetica-when-good-intentions-go-wrong.html>.

Consumers of Thunderbird Energetica could sign up with the company and purchase a “Join the tribe” package, which made them a member of the “Thunderbird Tribe.” After admittance into the tribe, the company promised, “Your life is going to improve exponentially after donning the sacred colors of the Thunderbird Nation. Be prepared to transcend time and space as you begin a magical journey into manhood/womanhood/tribeshood.” The invention of tribal names was equally ethically objectionable because it trivialized the ongoing fights for Indigenous sovereignty:

I also struggle with your use of the term ‘Thunderbird tribe’ and ‘Thunderbird nation.’ Our American Indian tribes are sovereign nations within the United States. We have tribal governments that deal with the US government on a Nation-to-Nation basis. Our nations are strong and proud, and have existed long before the United States. They are not something that can be created from wearing a spandex outfit and signing a joke contract (don’t even get me started on calling it a ‘sacred treaty’). To call yourself a ‘tribe’ and a ‘nation’ trivializes the 500+ years that we have been fighting against colonization and fighting to keep our tribal rights.

Although the company did not comment on Adrienne Keene’s criticism, her blog post induced the marketers to change their website. In response to several email complaints, Taylor of Thunderbird Energetica stated they had a right to express their Indigeneity.

We have nothing but respect and honor for all indigenous tribes and cultures globally. I myself have deep Lakota Sioux roots that I am very proud of! So proud that I chose to start an energy bar company that would reflect that. The way I select to express my freedom of expression and speech is my conscious choice and perhaps it is too light hearted for your taste.

Instead of making Taylor’s heritage subject of discussion, Keene explained what freedom of speech and expression meant to Native Americans and what it meant to Euro-Americans.

... “freedom of speech and expression,” yes. But for those who identify with the majority culture, you have most of those freedoms because of a system of privileges afforded to you simply because of the color of your skin and your position in society. You can turn on a tv, open a magazine, walk down the street, and see millions of images that reflect and affirm your life, your culture, and others like you. Native people don’t have such a privilege. The only images and representations we see are those created by outside forces, most of which, like your company, are stereotypes that don’t reflect or affirm the true nature of our cultures at all.

As Keene argued, being represented adequately was a privilege people identifying with mainstream culture shared. Since eliminating stereotypical representations of Indigeneity and replacing them with adequate representations was the activists’ primary goal, it did not matter whether it was a Native or non-Native marketer who misrepresented Indigeneity.

Advertisers like Hornell who clearly identified as non-Native used the freedom of speech clause to establish their right to use Crazy Horse’s name. In its proclaimed attempt to “honor the celebrated warrior and spiritual leader” with the beer brand Crazy Horse Malt Liquor, the brewery insisted on its “First Amendment right to call its product anything it wants,”¹⁹⁷⁸ as Hornell representative Charles Robinson noted. “That is truly in the American

¹⁹⁷⁸ Charles Robinson, representative for Hornell Brewing Co., quoted in David Postman, “Indians Fight Crazy Horse Beer,” *Morning News Tribune*, August 26, 1993, B1.

spirit,” added their lawyer, Lawrence I. Fox, calling his clients “quiet heroes” who “have stood solidly on principle.”¹⁹⁷⁹

Some advertisers combined constitutional rights with economic rights of free commercial activity in a system where the market determined prices, products, and services. Middle Eastern businessman Mohammad Aysheh (1993-94) explained that he “came to America because of the great opportunities that would be available” to him. One of those opportunities was the use of tipis and buffalo to advertise his jewelry shop in Gallup, and the tipis “apparently don’t offend the tourists,” that is, his customers. “If you can afford to build it, why not? . . . It’s on my property. I paid for it.”¹⁹⁸⁰ In “America, I have a moral and philosophical right to keep the buffalo,” especially since other “communities use the Native American motif and are not criticized.”¹⁹⁸¹ For *Indian Country Today* writer Valerie Taliman, Aysheh’s “attitude about the controversy spoke volumes about his morals and ethics.”¹⁹⁸² As several researchers concluded, how authorities interpreted the First Amendment undermined rather than supported fights against racism and sexism, and advised protesters to appeal to marketers’ morality.¹⁹⁸³ The analysis of company responses, however, suggests that those advertisers who used the constitutional or economic rights frame insisted on their legal rights and were little receptive to moral or ethical appeals.

Native Bonding

Being confronted with the depiction of a skull wearing a plains Indian headdress on a T-shirt, James Branum explained to the shop owner this was a “celebration of a dead Indians in a ‘hipster cliché’ kind of manner that dehumanized real live Indians of today.”¹⁹⁸⁴ The Indigenous owner of the War Paint Clothing Co. in Oklahoma (2010), however, rejected his argument as they were “just honoring our native american [sic] heritage.” Pointing to his Certificate of Degree of Indian Blood (CDIB) card to prove his ancestry, the owner “went on to challenge my [Branum’s] ethnic identity saying ‘you don’t look Indian at all to me.’ I told him, well I am part native but that’s not really the point here.”¹⁹⁸⁵ Like casting doubt upon a protester’s ethnicity, factionalism was a relatively rare strategy, but establishing some kind of connection with Indigeneity was most popular and used 21 times. Some have claimed Indian heritage to assign themselves the right to utilize their own identity for marketing purposes, while others established connections to Indigenous peoples or communities to counter criticism.

¹⁹⁷⁹ Lawrence I. Fox, lawyer for Hornell Brewing Co., quoted in Fletcher, “Crazy Horse Again Sounds Battle Cry,” A3.

¹⁹⁸⁰ Mohammad Aysheh, quoted in Valerie Taliman, “Middle Eastern businessman accused of exploiting buffalo and crafts in Gallup,” *Indian Country Today*, October 27, 1993, ProQuest 362716581.

¹⁹⁸¹ Mohammad Aysheh, quoted in Norrell, “Navajo Nation Council calls for removal of wooden tipis,” A1.

¹⁹⁸² Taliman, “Middle Eastern businessman accused of exploiting buffalo and crafts in Gallup.”

¹⁹⁸³ Cf. Hemmer, “Exploitation of American Indian Symbols”; Delgado and Stefancic, “Images of the Outsider in American Law and Culture.”

¹⁹⁸⁴ Branum, “T-shirts sold by War Paint Clothing Co. of Oklahoma City.”

¹⁹⁸⁵ Ibid.

Establishing Indigenous Connections

Most commonly, advertisers sought to legitimize their marketing activities by establishing some connection with or legitimization through Indigenous peoples or communities. Crisis management strategies, both preventive and responsive, ranged from invoking Indian heritage, establishing an “Indian office,” and pointing to Indigenous participation as actors, producers, or helpers and requests for advice.

By highlighting that Native Americans were involved in the process of developing, producing, or publishing advertising, marketers intended to diminish or deny any offense and improve their reputation. In defense of the allegedly offensive tipis, which Aysheh had set up to promote his crafts shop in Gallup (1993-94), he argued local Native Americans painted his tipis, and he generally bought his crafts from local Indigenous artisans.¹⁹⁸⁶ The argument that products or materials were Indian-made also came up in other cases but did not address the matter raised because the reasons for protest were offensive representations rather than claims of fraud. In the Aysheh case, the response aimed to highlight the company’s fairness toward Native Americans to ease criticism.

Some companies like Rand McNally (1969) sought advice from Native tribes or institutions in advance to ensure their marketing practices contained no objectionable content. While Rand McNally canceled its marketing plans due to the NCAI’s feedback, Isuzu Motors (1988) claimed it had sought advice from the Cherokee Nation tribal headquarters in Oklahoma but never received a response.¹⁹⁸⁷ Although there was no guarantee for protest-proof results, asking for advice from tribes or institutions was a strategy that activists and tribes generally recommended.

As the brand name suggests, Indian Motorcycle had a history of marketing its motorcycles by making references and ‘going Indian.’ In 1897, Hendee Manufacturing chose “Indian” as the brand name to emphasize its American origin, and “No more popular or wealth-producing name could have been chosen,” as the company’s first advertising executive said.¹⁹⁸⁸ Manufacturer Charles Hendee “went whole hog on the cultural appropriation,” calling himself the “Big Chief,” designer Oscar Hedstrom a “Medicine Man,” the factory a “wigwam,” and his dealers the “Tribe.”¹⁹⁸⁹

After criticism that the revived Indian Motorcycle (1999-2000) was merely profiting off Native Americans and not contributing to Indian communities, the company opened an Office of Indian Affairs.¹⁹⁹⁰ With Native American actor Branscombe Richmond as vice-president for the office, the company maintained it sought to “provide Native Americans and Indian country a voice to merge two respective entities: Indian motorcycle and Indian herit-

¹⁹⁸⁶ Cf. Norrell, “Navajo Nation Council calls for removal of wooden tipis,” A1.

¹⁹⁸⁷ Lynn Howard, Communications Director at the tribal headquarters, “said her office never approved of the commercials,” whereas Isuzu advertising manager Ken Tremaune pointed out that “the Cherokee Nation spoke out against the advertisements only after Isuzu had finished the commercial.” Associated Press, “Indian group criticizes Isuzu ads,” *Minneapolis Star Tribune*, June 29, 1988, 6B.

¹⁹⁸⁸ Hendee Manufacturing advertising executive, quoted in “Indian Imagery in Everyday America,” *NMAI Magazine*, Summer 2017, 54.

¹⁹⁸⁹ “Indian Imagery in Everyday America,” 54.

¹⁹⁹⁰ Cf. Jamie Monastyrisk, “Cow Creek claims bikemaker leaves Indian country in the dust,” *Indian Country Today*, December 15, 1999, A1.

age.”¹⁹⁹¹ Pointing to the \$15,000 donation to reservations and scholarship funds, Richmond assured skeptics that “this is not a public relations ploy to smooth the wrinkles created by the Trademark Facilitation Agreement nor is his a ‘token Indian’ department.”¹⁹⁹²

Other legitimizing strategies of marketing imagery and logos beyond the sources of this study include claiming it was dedicated to or gifted by a Native American person. The Savage Arms Co., founded in 1894 and named after its founder Arthur Savage, explained on its 2011 company website that Chief Lane Deer offered to use his image as a logo as part of a trade deal.¹⁹⁹³ The 2021 company history timeline lacks this information,¹⁹⁹⁴ but the logo’s origin story is still available at *pressconnects.com*:

In 1919 he [Arthur Savage] was approached by Chief Lane Deer, a Native American resident of New York, to purchase rifles for his tribe. Lane Deer offered his image for the logo and Savage agreed to sell the tribe rifles at a reduced rate in return for its endorsement. Former CEO Ron Corburn told me early a few years ago that the company still pays an annual fee to the tribe for the use of his image after Lane Deer’s death.¹⁹⁹⁵

Lawrence Baca considered this story an ill-conceived myth because “they chose the date 1919 when they’d been using the Indian logo image for at least 14 years before that.” Furthermore, other versions of the myth claimed the logo was “a direct gift from the Chief.”¹⁹⁹⁶ Since Native Americans were not granted citizenship until 1924, “the company would have had to go through the Bureau of Indian Affairs in the United States government to sell anything to an Indian tribe. It is unlikely that the BIA would have authorized a sale of repeating rifles to an Indian tribe in 1919.”¹⁹⁹⁷

An 1899 *Cosmopolitan* ad for Savage rifles depicting Geronimo and stating “MAKE BAD INDIANS GOOD” (Illustration 14¹⁹⁹⁸) contradicted their story. Their use of the proverb “The Only Good Indian Is a Dead Indian,” which is attributed to General Philip Sheridan and in use since the 1860s,¹⁹⁹⁹ demonstrated “Savage Arms was clearly advertising that you should buy this gun to kill Indians. But they wanted people to believe that in 1919 they sought the endorsement of ‘Chief Lane Deer’.”²⁰⁰⁰

¹⁹⁹¹ Indian Motorcycle Co., mission statement, quoted in Monastyrisk, “Cow Creek claims bikemaker leaves Indian country in the dust,” A1.

¹⁹⁹² Monastyrisk, “Cow Creek claims bikemaker leaves Indian country in the dust,” A1.

¹⁹⁹³ Cf. “Savage Arms History,” Savage Arms, accessed May 2, 2011, <http://www.savagearms.com/history/>.

¹⁹⁹⁴ Cf. “About,” Savage Arms, accessed July 16, 2021, <https://www.savagearms.com/content?p=about>.

¹⁹⁹⁵ Dave Henderson, “Dave Henderson Outdoors: Busy mailbag about Savage Arms, firearms and more,” *pressconnects.com*, August 2, 2018, accessed July 16, 2021, <https://eu.pressconnects.com/story/sports/2018/08/02/dave-henderson-outdoors-mailbag-savage-arms-firearms-more/879631002/>.

¹⁹⁹⁶ Lawrence Baca, email message to author, July 18, 2021.

¹⁹⁹⁷ Ibid.

¹⁹⁹⁸ Savage Arms Co., “Savage Rifles,” print advertisement, *Cosmopolitan*, May 1899, Courtesy of Lawrence Baca.

¹⁹⁹⁹ Cf. Wolfgang Mieder, “‘The Only Good Indian Is a Dead Indian’: History and Meaning of a Proverbial Stereotype,” *The Journal of American Folklore* 106, no. 419 (Winter 1993): 60. See also Gerry Biron, “The Cultural Appropriation of American Indian Images in Advertising – 1880s-1920,” *Whispering Wind* 44, no. 3 (2016), 24.

²⁰⁰⁰ Baca, email message to author, July 12, 2021.



Illustration 14: Savage Arms Co., “Savage Rifles,” print ad, *Cosmopolitan*, May 1899.

Citing or Claiming Indigenous Heritage

This study does not seek to distinguish between marketers whose claims of Indigenous ancestry were false or legitimate. Whether or why critics doubted or accepted a person’s Indigeneity is not a subject of this study but how stakeholders perceived these arguments.

In his lectures about the stereotyping of Native Americans, Baca noticed that people from the audience would stand up and discuss stereotypes with him and, when running out of arguments, they would claim part Indian heritage.²⁰⁰¹ Claiming Indian heritage or pointing to this heritage to assign oneself the right to utilize Indian identity for marketing purposes was the most common argument when targets of criticism used the race frame. Although neither activists nor targets of protests ever argued that Indian heritage justified offensive representations of Indigeneity, marketers’ ancestry was sometimes the first and only argument raised in defense. David Arnett, marketing director for Club Sun Color Studios (2013), which promoted Indian sexy color, for instance, “apologize[d] for any offense and misunderstanding” and assured protesters that “I myself am Native American and I am very proud of my heritage and skin tone. The thought process behind the ad was simply a play on my own sexy ‘color’.”²⁰⁰² Considering the discourse of racialized sexism against Native women, the race frame did not adequately respond to the issue at stake.

Similarly, critics did not accept a model’s reasoning that she was honoring her Native heritage by wearing sexually appealing dresses. After posing for an online ad published on *Facebook* and advertising a “Pilgrim & Indian” party for the Drink Nightclub (2012), actress Denise was charged with “stereotyping Native women as sex objects and setting them up to

²⁰⁰¹ Cf. Baca, interview.

²⁰⁰² David Arnett, Marketing Director, Club Sun Color Studios, quoted in “Tanning salon offers ‘sexy color’ of American Indians,” *United Press International*, November 7, 2013, accessed July 5, 2016, http://www.upi.com/Odd_News/2013/11/07/Tanning-salon-offers-sexy-color-of-American-Indians/93161383870191/.

be victims of sexual crimes.”²⁰⁰³ While the organizers of the Thanksgiving Eve party at the club apologized for the depiction of a sexualized Native-looking woman, Denise rejected any criticism. Since Denise was “part Cherokee on [her] father’s side (his grandmother),” she dressed up to honor her heritage and found it “flattering that women dress up in whatever costume they chose, and portraying Native American women as being very beautiful and sexy.”²⁰⁰⁴

As the case of Amanda Riley aka Tomahawk Tassels showed, who also cited Cherokee heritage, critics were particularly sensitive to Cherokee ancestry. Vine Deloria Jr. called it the “Indian grandmother complex” that suspiciously many Americans, except Jewish Americans, claimed a Cherokee grandmother. Cherokee grandmas were so popular that Deloria “once did a projection backward and discovered that evidently most tribes were entirely female for the first three hundred years of white occupation.”²⁰⁰⁵ As Deloria assumed, a “male ancestor has too much of the aura of the savage warrior, the unknown primitive, the instinctive animal, to make him a respectable member of the family tree.”²⁰⁰⁶

Irrespective of advertisers’ actual ancestry, protesters’ responses to such justifications demonstrated that their heritage was irrelevant in offensive representations. Instead, living the life of a Native person with all experiences made as a person of Native American descent weighed more than biological ancestry. Due to their lack of real-life experience, “Whites claiming Indian blood generally tend to reinforce mythical beliefs about Indians,”²⁰⁰⁷ as Deloria noted on the Indian grandmother complex. In cases of marketing misrepresentation, as opposed to protests against fraudulent marketing practices which falsely suggested items were Indian-made and deprived Indigenous artists of their income, Indigenous heritage was irrelevant as its socializing effects and impact on Native lives were ultimately the same.

C. Rejecting Criticism

By rejecting criticism, organizations generally claim that no crisis exists and risk offending the victims of a crisis.²⁰⁰⁸ The reality and no connection arguments rejected criticism that appropriations and misrepresentations were objectionable because marketing materials represented reality or had no connection to Indigenous culture. Arguing that an advertisement was sensitive, organizations contradicted the critics’ perception. As marketers rejected criticism fundamentally, the outcomes tended to be negative.

Sensitivity

Claiming that a representation was sensitive while protesters criticized its offensive nature was a strategy that denied any wrongdoing and undermined a conversation about the issue of misrepresentation. Despite protests against the use of Crazy Horse’s name, which disrespected his legacy, Liz Claiborne insisted the company had “the greatest respect for the Native Amer-

²⁰⁰³ Robert Schmidt, “Drink’s ‘Sexy Pilgrim & Indian Party’,” *Newspaper Rock*, November 20, 2012, accessed October 27, 2016, <http://newspaperrock.bluecorncomics.com/2012/11/drinks-sexy-pilgrim-indian-party.html>.

²⁰⁰⁴ Denise, actress, quoted in Schmidt, “Drink’s ‘Sexy Pilgrim & Indian Party’.”

²⁰⁰⁵ Deloria, *Custer Died for Your Sins*, 3.

²⁰⁰⁶ *Ibid.*, 3.

²⁰⁰⁷ *Ibid.*, 3.

²⁰⁰⁸ Cf. Coombs, *Ongoing Crisis Communication* (2019), 151, 153.

ican community, its culture, its traditions and the legacy of its leaders. We oppose products that reinforce negative stereotypes about Native Americans or any ethnic, racial or cultural group. And, we will continue to work to ensure that none of our products violates the letter or spirit of this policy.”²⁰⁰⁹ Liz Claiborne suggested changes to the writing style of the brand name that made no difference for protesters and basically ignored the criticism.

Reality and Historical Accuracy

Although protesters and advertisers used the reality frame to explain criticism or defend marketing practices, they used these arguments in very different ways. Advertisers argued both with distance and closeness to reality to reject criticism. On the other side, protesters used the reality frame to educate marketers about the factual background and real-life effects their representations caused for Native Americans, regardless of the degree of realism.

Statements excusing marketing strategies with ignorance of the factual background put advertisers in an unfavorable light and were less common than statements justifying marketing as historical fact. Fox, Hornell’s lawyer, for instance, claimed that his “clients didn’t ever know that Crazy Horse was actually ever a living person. To them, he was just a symbol of the Old West.”²⁰¹⁰ More popular was the argument that a marketing image was not offensive because it “simply depicts a historical fact,”²⁰¹¹ as Snapple (1995) responded to criticism of their label depicting the Boston Tea Party. Snapple president Leonard Marsh pointed out that the “label is a depiction of an authentic event in American history and not a representation of beliefs or opinions held by the Snapple Beverage Company.”²⁰¹² In an *ICT* article, Max Millard deconstructed Snapple’s crisis communication by stating the Bettman Archive annotation that the “engraving is an artist’s rendering and should not be considered historically accurate to the details of the event such as clothing or placement of individuals.”²⁰¹³

As Coombs explained, a company’s initial response was particularly important because “first impressions form quickly and color the remainder of stakeholders’ reception of the crisis communication efforts.”²⁰¹⁴ While quick responses are necessary to avoid speculations since crises could spread rapidly, the risk of making mistakes grows. As message quality is equally vital to successful crisis management, information should be carefully considered and consistent among spokespersons. In this case, the media picked up responses from Snapple and Quaker Oat employees, which had acquired Snapple, that cast both companies in a bad light as the media aimed to reveal their ignorance of American history. Millard quoted Mary Dillon, director of product offerings for Snapple, admitting “she did not know the figures on the label were actually whites in disguise,”²⁰¹⁵ and added that Lisa Carlson, Quaker

²⁰⁰⁹ Liz Claiborne, statement, quoted in Desjarlait, “Crazy Horse name protested – again.”

²⁰¹⁰ Lawrence I. Fox, lawyer for Hornell Brewing Co., quoted in Fletcher, “Crazy Horse Again Sounds Battle Cry,” A3.

²⁰¹¹ Snapple, quoted in Millard, “The snafu over Snapple,” A1.

²⁰¹² Leonard Marsh, President, Snapple Beverage Co., quoted in “Snapple Iced Tea Label Offensive to Native Americans,” *Red Sticks Press*, September 30, 1994, 3.

²⁰¹³ Bettman Archive, quoted in Millard, “The snafu over Snapple,” A1.

²⁰¹⁴ Coombs, *Ongoing Crisis Communication* (2012), 139.

²⁰¹⁵ Mary Dillon, Director of Product Offerings, Snapple Beverage Co., quoted in Millard, “The snafu over Snapple,” A1.

Oat spokeswoman, confessed that “She, too, was unaware that the figures were whites dressed as Indians but explained, ‘I don’t look at people by color.’”²⁰¹⁶

Companies’ arguments that a marketing strategy represented reality or was historically accurate were not principally false. However, for protesters, it was also a matter of appropriateness to use certain themes or imagery rather than a matter of truth or accuracy. Criticism of the Santa Fe Natural Tobacco’s and West Main Liquors’ advertising practices exemplify how the different contexts defined what stakeholders considered adequate.

Santa Fe Natural Tobacco (1997) held that the “original concept for Natural American Spirit Tobacco Products was based on traditional American Indian usage of tobacco in its natural state.”²⁰¹⁷ Founded in 1982, SFNT started advertising in publications targeting consumers “interested in spiritual and macrobiotic issues” in 1987 and extended the “increasing base of dedicated consumers” by distributing the cigarette brand to health food and herb stores but not to convenience stores.²⁰¹⁸ Alluding to the once healthy lifestyles of Native Americans, SFNT CEO Robin Sommers argued, “If this culture used tobacco the way American Indians did without adulteration, without additives, there wouldn’t be nearly the problems we see today. I think American Indians should be proud of their cultural heritage as it relates to tobacco. Originally, they didn’t abuse it.” In opposition to Sommers’ claim they were “revisionists with respect to the use of the tobacco in the culture,”²⁰¹⁹ writer David Melmer deconstructed the implicit health argument as a standardized but meaningless advertising promise by quoting the producer’s admission “that its cigarettes are higher in tar and nicotine than most others on the market,” just like “the Crazy Horse malt liquor has a higher alcohol content than regular beer, and don’t those [Winnebago] motor homes suck up gas like a thirsty elephant?”²⁰²⁰

Although protesters did not contradict Sommers’ remarks regarding the historical use of tobacco in Native cultures, it was a “misrepresentation of our cultural heritage,” commented Toni Martinez, AITEN project manager. Sommer explained his company “chose the symbol to honor the Indian people,” and the design and logo were “intended to exhalt [sic] the image of the American Indian and the cultural traditions of the American Indian involving tobacco.”²⁰²¹ Quite the contrary, in Martinez’s opinion, the tobacco company was “exploiting a product that was never intended to be used as a commercial product.”²⁰²² AITEN chairman Radley Davis added that the company’s use of the logo was a “dishonorable and obscene representation of American Indians’ traditional sacred purpose of the tobacco plant.”²⁰²³ Ultimately, the “commercialization of tobacco creates a different product than when it was first used as a sacred herb.”²⁰²⁴

When Bob Almond, owner of the West Main Liquors store in Oklahoma (2005), argued that the mural showing a Native American woman waiting with her kids for her husband

²⁰¹⁶ Lisa Carlson, spokeswoman for Quaker Oat Co., quoted in Millard, “The snafu over Snapple,” A1.

²⁰¹⁷ Humphrey, “Groups fight tobacco firm with boycott,” D1.

²⁰¹⁸ “Brave spirit moves through new lands,” *World Tobacco*, July 1998, 26.

²⁰¹⁹ Robin Sommers, CEO, SFNT, quoted in Humphrey, “Groups fight tobacco firm with boycott,” D1.

²⁰²⁰ David Melmer, “Smoking honors American Indians – NOT,” *Indian Country Today*, August 11, 1997, ProQuest 362594856.

²⁰²¹ Robin Sommers, CEO, SFNT, quoted in Humphrey, “Groups fight tobacco firm with boycott,” D1.

²⁰²² Toni Martinez, project manager, AITEN, quoted in Humphrey, “Groups fight tobacco firm with boycott,” D1.

²⁰²³ Radley Davis, Chairman, AITEN, quoted in Humphrey, “Groups fight tobacco firm with boycott,” D1.

²⁰²⁴ Melmer, “Smoking honors American Indians – NOT.”

to buy liquor merely “depicts part of our culture,” Choctaw critic Rose Harris commented she did not think “he realizes what he is portraying.”²⁰²⁵ Portraying this stereotype was not only in poor taste but undermined efforts to “reduce the abuse of drugs and alcohol among [Choctaw] tribal members,” as Julia Durrence added. The stereotype of the drunken Indian was exactly “what we have been trying to get away from. People drive up and down that road coming from Texas everyday and that is what they see when they come to Oklahoma.”²⁰²⁶ Hugo City Manager David Rawls explained there were no regulations for private businesses regarding this matter, except for obscenities, but “if the Indian population is offended by it, I personally would side with them.”²⁰²⁷ Ultimately, Almond agreed to paint over the wall. In many instances, Native Americans advised marketers such as the Miller Brewing Co. (1986), Anheuser-Busch (2006), and the Hornell Brewing Co. (1992-2004) that they found the use of Indigenous names, symbols, or imagery offensive precisely because alcoholism was a real and severe issue in some communities.

What some advertisers found entertaining was offensive to Native Americans because it represented a reality of the colonial past and was inappropriate for marketing purposes. The Thanksgiving T-shirt sold at a Mastodon event (2013) questioning the ‘Indian giver’ myth sparked harsh criticism from Native Americans who disagreed that the historical killing of America’s Indigenous population was an appropriate T-shirt theme (see the humor argument in the chapter on crisis communication strategies).

D. Scapegoating

Scapegoating tactics aim to blame another person or group outside the organization and should be avoided because they might anger victims and nonvictims.²⁰²⁸ In this study, scapegoating is also a diminishment strategy because targets sought to reduce responsibility rather than pass on responsibility entirely, but due to the high rate of negative reactions and results, this study treats scapegoating as a denial tactic. Specifically, declaring that a marketing practice was pre-tested, that the advertiser was not responsible for the ad, that the ad content was conventional, and that the organization merely fulfilled a demand produced by the market works to either share or shift responsibility to groups outside the organization.

The responsibility frame included various forms of reducing or shifting responsibility for marketing practices. Scapegoating represents the most rigid method of blaming others and distracting attention away from the marketer. However, in most cases, advertisers accepted some wrongdoing and minimized their responsibility by pointing to others involved in developing, creating, and publishing an ad or to consumers and society who accepted, used, and demanded the products and marketing practices.

Companies shifted attention to designers and advertising agencies who created marketing imagery and campaigns. Although some advertisers noted that an agency created their ads,

²⁰²⁵ Rose Harris, quoted in Sam Lewin, “Hugo mural draws fire from Choctaw women,” quoted in Robert Schmidt, “Stereotype of the Month Entry (7/27/05),” *Blue Corn Comics*, July 27, 2005, accessed July 1, 2016, <http://www.bluecorncomics.com/stype577.htm>.

²⁰²⁶ Julia Durrence, quoted in Lewin, “Hugo mural draws fire from Choctaw women,” quoted in Schmidt, “Stereotype of the Month Entry (7/27/05).”

²⁰²⁷ David Rawls, Hugo City Manager, quoted in Cockerell, “Mural on Hugo liquor store decried as racist,” quoted in Schmidt, “Stereotype of the Month Entry (7/27/05).”

²⁰²⁸ Cf. Coombs, *Ongoing Crisis Communication* (2019), 151, 153.

they still acknowledged that they erred in approving them. Nestlé-Beich (1992) mentioned that their offensive wrapper “riddles were developed for Nestlé-Beich by an advertising agency about six years ago,” but admitted the offense and apologized.²⁰²⁹ Marketers made such comments not to make others too obviously the scapegoat but rather to claim mitigating circumstances.

Market testing in advance also allowed companies to reduce their perceived responsibility. To ensure “good taste in our advertising messages,” Philco-Ford (1969) argued that,

... not only did we carefully review it [the commercial] internally, but pretested the commercial among groups of both men and women to insure that, among other things, there would not be anything offensive to people reviewing this commercial. Frankly, all of our pretesting did not raise any negative comments in this area. In fact, the comment that we did receive was that a great number of people found this commercial to be more interesting and different from the ordinary commercial that they usually see and did not have that ‘irritating quality.’²⁰³⁰

Bobo Dean of the AAIA, who protested the commercial, suggested that there may have been “some defect in your procedure,” such as prejudiced thinking. “It may be, for example, that the undoubtedly well-intentioned outside groups who pre-tested the commercial, consciously or subconsciously, do not consider that American Indians are an alive and existing minority group but think of Indians as galloping out of the pages of history.”²⁰³¹ Though pre-testing was undoubtedly a valuable method to ensure social acceptability, there were most likely no Native American test persons in the reviewing team as they did not represent the target audience. In effect, the testing team’s conclusion that there was nothing objectionable in the commercial most likely represented what U.S. society in the 1960s considered acceptable.

Asking advice from one Native American as representative of the whole group of people was not a guarantee that no other person might take offense at an advertisement but might offer at least one different perspective and new marketing ideas. As described above, marketers have sought to legitimize their advertising by establishing some kind of connection to Native peoples, but marketers in such cases usually sought approval or a retrospective justification rather than involving Natives in the thought process. Asking a tribe, an Indigenous organization, or a diverse group of Native Americans as consumers or as people being represented helps to ensure social acceptability from the Indigenous perspective and in general, particularly in times of heightened awareness.

‘Others do it, too’ statements aimed to excuse misrepresentations or appropriations by reasoning that these practices were a common practice or social convention in U.S. society. As Louis A. Marx defended the offensive nature of the Nutty Mad Indian doll in 1966, “Lots of companies make Indian dolls that might be called ‘derogatory.’ This characterization isn’t

²⁰²⁹ “Nestle-Beich wrapper target of Indian protest,” A1.

²⁰³⁰ Charles S. Grill, Advertising Manager, Philco-Ford Corp., letter to Bobo Dean, AAIA, Philadelphia, Pennsylvania, April 9, 1969; Images: General, 1949-1983; Box 90; Association on American Indian Affairs Records, 1851-2016, MC147; Public Policy Papers; Seeley G. Mudd Manuscript Library, Princeton University. Hereafter cited as Grill to Dean, April 9, 1969; Derogatory Images: General, 1949-1983; Box 90; AAIA Records; Pub. Pol. Papers; Mudd Man. Lib., Princeton.

²⁰³¹ Bobo Dean, AAIA, letter to Robert E. Hunter, President, Philco-Ford Corp., Washington, DC, April 10, 1969; Media Surveillance - Public Awareness Correspondence [2 of 2]; Box 255; Records of the National Congress of American Indians, 1933-1990, NMAI.AC.010; NMAI Archive Center, Smithsonian Institution, Suitland, MD.

new and we didn't start it."²⁰³² Other marketers applied the same reasoning to appropriation, as Hornell argued in 1995 that "more than 200 products and services around the nation use the name Crazy Horse, including tobacco products, saloons and striptease clubs."²⁰³³ Similarly, Urban Outfitters spokesman Ed Loram noted in 2011 that the clothing company was merely picking up a trend, implying that the Indigenous designs and tribal names were a public good.²⁰³⁴ Although U.S. society generally treated Indigenous cultural elements as a public good from the legal perspective, these responses disregarded ethical norms and, in the Urban Outfitters case, trademark laws.

Organizations also pointed to the tradition of an advertising character²⁰³⁵ but more commonly invoked the popularity of specific imagery as the reason for their choice. In 1969, Philco-Ford advertising manager Charles Grill stated, "The decision to use western scenes showing Indians chasing a woman on horseback was, among other things, selected based upon the popularity of western type programs on television."²⁰³⁶ Marketing professionals picked up trends already established in various industries, such as media or sports, which would resonate with consumers. Marketers explicitly named sports mascots, team names, and imagery as inspiration and legitimization of their marketing practices. James Vu, the organizer of Robotic Wednesdays' party (2011), told protesters that they "should be focusing attention more on the professional teams and institutional schools"²⁰³⁷ who dressed up and chanted all year instead of his Thanksgiving theme party. Novum Crafts legitimized the production and sales of Native American replicas by referring to U.S. sports teams that used Native imagery and to tribes that gave their permission to do so.

Novum Crafts (2015), a business registered in Indonesia under the legal name PT Seni Bali Online, sold "handmade artworks created by local gifted artists in the heart of Bali," as the company website explained. Inspired by Native American culture, it "started with a mere fascination for the traditional arts, in which Balinese craftspeople were urged to recreate cultural emblems, such as dreamcatchers, turquoise jewelry, and the Indian Headdress to celebrate living pieces of history."²⁰³⁸ In an *ICTMN* article, Sheena Louise Roetman observed that the company explicitly addressed the issue of cultural appropriation and cited "the example of the Seminole Tribe of Florida's co-signing of the Florida State Seminole mascot, as well as Saginaw Chippewa's now-revoked permission for Central Michigan University to use Native mascots" as legitimization for their production and sale of "authentic looking replicas," as the website stated initially. Additionally, Novum Crafts specifically identified and used the "Kansas City Chiefs, Atlanta Braves, Chicago Blackhawks and the Washington NFL

²⁰³² Louis A. Marx, Louis Marx & Co., quoted in "'Nutty Indian' Doll Puts Real Indians On Warpath"; Derogatory Images: "Nutty Mad Indian," 1966; Box 89; AAIA Records; Pub. Pol. Papers; Mudd Man. Lib., Princeton.

²⁰³³ Francie Patton, spokeswoman for Hornell Brewing Co., quoted in Johnson, "Complaints by Indians Lead to Bans on a Beer."

²⁰³⁴ Cf. Ed Loram, spokesman for Urban Outfitters Inc., quoted in Fonseca, "Navajo Nation Sues Urban Outfitters," 1, 3.

²⁰³⁵ "We have had the character for 25 years."

Cristy Thomas, spokeswoman for Inca Lanes, quoted in Robert Schmidt, "Bowling alley revives 'Inca' mascot," *Newspaper Rock*, October 1, 2012, accessed October 27, 2016, <http://newspaperrock.bluecorncomics.com/2012/10/bowling-alley-revives-inca-mascot.html>.

²⁰³⁶ Grill to Dean, April 9, 1969; Native America; Derogatory Images: General, 1949-1983; Box 90; AAIA Records; Pub. Pol. Papers; Mudd Man. Lib., Princeton.

²⁰³⁷ James Vu, organizer of Robotic Wednesday's Thanksgiving Party, statement, *Facebook*, quoted in Schmidt, "'Pilgrims & Indians Theme Party' canceled."

²⁰³⁸ "Who we are," Novum Crafts, accessed June 3, 2020, <https://indianheaddress.com/pages/about-us>.

team . . . as justification for appropriation.”²⁰³⁹ Explaining that these teams expressed through their image that “We will win! We are the braves, we are chiefs, we will fight until you are defeated,” the 2015 website asked, “How is it offensive to attribute such desirable characteristics of bravery, valor, honor and courage to known objects or symbols from the Native Americans?”²⁰⁴⁰ Whether in response to criticism or for some other reason, Novum Crafts removed all references to sports teams, as their 2020 website demonstrated.²⁰⁴¹

By placing Indigenous imagery on official seals and using Indigenous names for geographical regions, federal, state, and local governments have set a standard and exercised a form of appropriation that advertisers claimed for themselves. Mark McGowan, co-founder of the Cochise Fine Arts Gallery, whom Vernon Foster of the AIM Southwest Chapter criticized in 1993 for appropriating and misrepresenting the Apache leader Cochise, found arguments like racism and inaccuracy “ridiculous in a county named for Cochise.” Not only were there “more than 70 businesses that use the name Cochise,” but the “county has his image on everything from the courthouse to dump trucks.”²⁰⁴² While marketers pointed to official seals, government officials pointed to other organizations in the U.S. employing the same practices. For instance, Matthew R. Veeh, Director of Government and Public Affairs at the Long Beach Department of Water and Power, California (2014), dismissed criticism of a billboard advertising for his department as unwarranted because everyone had signs like that.²⁰⁴³ By referring to peoples, groups, industries, or organizations that used Indigenous imagery or names, marketers sought to shift away responsibility, thereby mutually legitimizing the cultural practice of using Indigeneity for marketing purposes. As opposed to comparing marketing practices as part of a social convention, some organizations sought to shift responsibility to the people who bought their services and products.

Communication strategies focusing on economic factors such as consumer demand and sales numbers were closely connected with the free market argument and served to shift responsibility to consumers and, by extension, to society. Dean Crist, the creator of the infamous beer label Treaty Beer (1987), sought to legitimize the brand with consumer demand as a democratic tool to “let the people speak.” The creators hoped “to market Treaty Beer nationally, especially in other states such as Maine and Washington, where there are Indian treaty disputes.”²⁰⁴⁴ Crist put consumers in the position to decide whether the label was appropriate as this was a matter of “consumer demand here and free enterprise. There is an enormous demand. Let the people of Washington speak. If they don’t want Treaty Beer, it won’t sell.”²⁰⁴⁵ Since the producers communicated the brand’s purpose quite upfront, which many deemed racist and hateful, the brand finally failed on the market after successful boycotts. Journalists covering the Treaty Beer controversy shared the protesters’ perception of the label, writing that “IT WAS malted with malice. Brewed in bad faith. Its message was mean and

²⁰³⁹ Sheena L. Roetman, “Company Says Indian Mascots Are Reason They Can Sell Headdresses,” quoted in Robert Schmidt, “IndianHeaddress.com,” *Newspaper Rock*, September 13, 2015, accessed October 19, 2016, <http://newspaperrock.bluecorncomics.com/2015/09/indianheaddresscom.html>.

²⁰⁴⁰ Novum Crafts, quoted in Roetman, “Company Says Indian Mascots Are Reason They Can Sell Headdresses,” quoted in Schmidt, “IndianHeaddress.com.”

²⁰⁴¹ Cf. “Who we are,” Novum Crafts.

²⁰⁴² Mark McGowan, co-founder of Cochise Fine Arts Gallery, quoted in Ibarra, “Art gallery’s Cochise logo.”

²⁰⁴³ Cf. Robert Schmidt, “Billboard mocks rain dances,” *Newspaper Rock*, May 16, 2014, accessed October 20, 2016, <http://newspaperrock.bluecorncomics.com/2014/05/billboard-mocks-rain-dances.html>.

²⁰⁴⁴ Worthington, “Treaty Beer Storm Lingering.”

²⁰⁴⁵ Dean Crist, quoted in Hannula, “Treaty Beer: The Burial Of A Bad Brew.”

misguided. Treaty Beer is dead. It deserves no tears.”²⁰⁴⁶ As *Seattle Times* writer Don Hannula concluded, the customers “spoke twice. . . . It didn’t sell. It failed on the shelves and in the marketplace of ideas.”²⁰⁴⁷

Chase Iron Eyes argued that economic interests had shaped American society to such an extent that society and the market have become inseparable. For instance, U.S. “society produces and tolerates” GAP’s “Manifest Destiny” T-shirt, which “essentially celebrat[es] genocide.” Iron Eyes concluded, “Whatever the market (sometimes called ‘society’) demands, the market will produce.”²⁰⁴⁸ Adrienne Keene made the connection between individual economic interests and socially accepted practices that were rooted in America’s colonial past. Keene saw in Euro-American entrepreneurs like Ralph Lauren (2014) profiting from Native culture “Pretty much the story of the United States.” Selling a T-shirt featuring a headdress for \$265, “all of this money is going straight to building Lauren’s personal wealth and empire, none of it is going to the communities he is directly exploiting to sell his product. How American of him: seeing Natives as inherently disposable and exploitable, and using Native resources to build his personal wealth, while simultaneously yearning for the romanticized past when Natives roamed the plains, and ignoring his own complicity in the ongoing settler colonial project.”²⁰⁴⁹ Putting the fight against misrepresentation and cultural appropriation in the tradition of Indigenous resistance, Iron Eyes declared, “The Indian Wars Never Ended!”²⁰⁵⁰

9.1.2 Diminishment

By diminishing a crisis, organizations seek to reduce reputational threat and acknowledge only limited culpability. Among the diminishment tactics, excusing marketing practices was the most common communication strategy, which organizations applied 80 times, whereas arguments justifying marketing practices were used only eight times. In general, excusing and justification as diminishment tactics work best for crises with low levels of responsibility but risk to anger victims and nonvictims.²⁰⁵¹

While scapegoating usually seeks to eliminate responsibility, excusing tries to reinforce minimal responsibility. By excusing marketing practices, the organization minimizes its responsibility for a crisis by “denying any intention to do harm or claiming that the organization had no control of the events that led to the crisis.”²⁰⁵² The intent, honoring, humor, and surreality arguments excuse marketing faux pas by denying any malicious intent and highlighting a marketing campaign’s humorous or honoring intent.

²⁰⁴⁶ Hannula, “Treaty Beer: The Burial Of A Bad Brew.”

²⁰⁴⁷ Ibid.

²⁰⁴⁸ Chase Iron Eyes, “You Indians Need to Worry about More Important Things than Halloween Costumes,” quoted in Robert Schmidt, “Halloween = ‘socially accepted racism’,” *Newspaper Rock*, October 31, 2012, accessed June 2, 2020, <http://newspaperrock.bluecorncomics.com/2012/10/halloween-socially-accepted-racism.html>.

²⁰⁴⁹ Keene, “Keene: Dear Ralph Lauren.”

²⁰⁵⁰ Iron Eyes, “You Indians Need to Worry about More Important Things than Halloween Costumes,” quoted in Schmidt, “Halloween = ‘socially accepted racism’.”

²⁰⁵¹ Cf. Coombs, *Ongoing Crisis Communication* (2019), 153.

²⁰⁵² Ibid., 151.

With justification strategies, organizations seek to “minimize perceived damage associated with a crisis”²⁰⁵³ by claiming there were no serious damages, for instance. As discussed in the chapter about global marketing misrepresentation, only international organizations used likability and foreign market arguments in cases of misrepresentation. International marketers maintained that an Indigenous marketing representation was likable to reduce the offense or that there was no offense because the marketing practice was designed for a foreign target audience of which Native Americans were not part. As diminishment strategies did not deny wrongdoing but rather limited responsibility and the perceived offense, organizations using such arguments tended to accommodate protesters. Only the honoring argument stands out as negative results predominated. Organizations applied this argument to defend their decision to keep their marketing practices rather than explain wrongdoing. Insofar, the honoring argument might also be viewed as a denial strategy.

Intention

International marketers used the claim that a Native American representation was likable as a communication strategy to either deny or diminish the offense. Conversely, American marketers excused or denied misrepresentations and appropriations of Native peoples and cultures by stating their intention and frequently adding that the intent was humorous or to honor Natives. 43.7 percent (52) of targeted organizations who responded either declared they had no intent to offend anyone or explained the intent behind their marketing strategy. From short and simple “We didn’t want to offend anyone”²⁰⁵⁴ statements to the “regret that anyone would interpret this ad”²⁰⁵⁵ as offensive, corporate elaborations on their intent sometimes implied notions of denial by suggesting critics misinterpreted their advertising.

The owner of Diablo’s bar in Eugene, Oregon, issued an apology explaining the intention behind the poster advertising “The Spanksgiving Fetish Night” featuring a naked Indian-looking girl with face paint and feathers.²⁰⁵⁶

Shame on us [...]. yes, agreed. It was in VERY poor taste. Here’s our general response on the issue [...] While fetish events frequently offend someone, this is a case where the offence was not intentional and poorly considered. The posters and facebook event logo have been pulled and changed. We sincerely apologize for the offence.

By nature fetishes frequently involve objectification, within the fetish community it is mandatory that it be consensual objectification. In this case we made a big mistake and didn’t consider consent of the community we were depicting. We try to be a completely inclusive bar. We host drag shows, fundraisers, bingo, fetish events, and we have a very diverse clientele. We failed this time. We are very sorry!²⁰⁵⁷

²⁰⁵³ Ibid., 151.

²⁰⁵⁴ Dave Harris, owner of Thirsty’s, quoted in de Leon, “KZZU yanks controversial ad,” A1.

²⁰⁵⁵ Colen to Vocu, February 22, 1971; Media Surveillance; Box 255; NCAI Records; NMAI Archive Center.

²⁰⁵⁶ Diablo’s, “The Spanksgiving Fetish Night,” 2012, advertising poster, photograph posted in Camilla Mortensen, “Protest Against Racist Portrayal of Native Americans in Diablos Poster,” *Eugene Weekly*, November 15, 2012, accessed January 14, 2019, <https://www.eugeneweekly.com/2012/11/15/protest-against-racist-portrayal-of-native-americans-in-diablos-poster/>.

²⁰⁵⁷ Diablos Bar, statement, quoted in Camilla Mortensen, “Protest Against Racist Portrayal of Native Americans in Diablos Poster,” *Eugene Weekly*, November 15, 2012, accessed January 14, 2019, <https://www.eugeneweekly.com/2012/11/15/protest-against-racist-portrayal-of-native-americans-in-diablos-poster/>.

The apology came after Will Doolittle called attention to the poster on *Facebook* and comments started accumulating. Although the initial response when Doolittle called the bar was dismissive, after some time of consideration, Diablo's fully acknowledged wrongdoing and apologized.

Marketers most typically maintained they did not intend to degrade Native Americans or offend anyone and, in some instances, added an explanation of their intent. For instance, Mattel (2002) argued their doll's "traditional garb and feathers are meant to highlight the beauty of native culture."²⁰⁵⁸ The Ford Motor Co. (1966) explained that "the intent of this advertising was to communicate a message about our product in a warm and friendly way, and certainly we regret any interpretation of the theme as being derogatory."²⁰⁵⁹ In most cases, honoring was the prominent intent marketers claimed.

Honoring

Advertisers commonly argued that Native Americans 'misunderstood' their intentions as their marketing representation was "a celebration of the American West,"²⁰⁶⁰ for example. Although denying any intentional offense is a recommended crisis management strategy, it had no credibility when similar protests had already raised a certain degree of public awareness. A range of significant news media outlets, including the *Associated Press*, *The New York Times*, or *The Washington Post*, among others, had been covering the Crazy Horse Malt Liquor dispute since 1992, which was representative of many similar cases. To deprive Liz Claiborne of their intent-excuse, Father Gordon Judd announced in a public letter to the clothing company signed by a range of Indigenous stakeholders²⁰⁶¹ that the "family of the Lakota Sioux Leader has testified to Claiborne Management that the use of this name is a profoundly hurtful violation of their most deeply held spiritual beliefs. No longer can Claiborne or Penney claim that it intends to do no harm."²⁰⁶² The honoring defense was highly contested by Native Americans but continued to be one of the major arguments in response to marketing criticism, particularly among so-called hipsters and New Agers, as critics noted.

²⁰⁵⁸ Robert Schmidt, "Stereotype of the Month Entry (2/18/02)," *Blue Corn Comics*, February 18, 2002, accessed July 1, 2016, <http://www.bluecorncomics.com/stype229.htm>.

²⁰⁵⁹ John J. Morrissey, Director Advertising & Sales Promotion Office, Ford Motor Co., letter to Mary Payne, Dearborn, Michigan, December 29, 1966; Derogatory Images: Ford Motor Company, 1966-1967; Box 89; Association on American Indian Affairs Records, 1851-2016, MC147; Public Policy Papers; Seeley G. Mudd Manuscript Library, Princeton University.

²⁰⁶⁰ Charles Robinson, spokesman for Hornell Brewing Co., quoted in Postman, "Indians Fight Crazy Horse Beer," B1.

²⁰⁶¹ Signees: Seth Big Crow, Crazy Horse Estate; Elsie Meeks, U.S. Commission on Civil Rights, Washington, DC; Dr. Phyllis Tousey Frederick, Crazy Horse Defense Project, St. Paul, MN; Vernon Bellecourt, National Council on Racism in Sports & Media; Charlene Teters, Santa Fe, NM; Rosemary Richmond, American Indian Community House, New York, NY; Tonya Gonnella Frichner, Esq., American Indian Law Alliance, New York, NY; Fern Mathias, American Indian Movement of Southern California, Los Angeles, CA; Sheridan Murphy, American Indian Movement of Florida; Rabbiah Yazzie, American Indian Movement of Virginia, West City, VA; Alex Ewen, Native American Council of NYC, New York, NY; Ken Demsey, Native American Cultural Foundation, Cleveland, OH; Loretta V. Malaxen, Oneida Nation of Wisconsin, Oneida, WI; Renee Still Day, N.A.T.I.V.E.S., Pueblo, CO; Philip Yenyo, American Indian Movement of Ohio Northern District; and others. Cf. Judd, "A Public Letter to Liz Claiborne & JC Penney Company," reposted in Schmidt, "Stereotype of the Month Entry (12/9/00)."

²⁰⁶² Ibid.

Aaron Parr, co-founder of the Cochise Fine Arts Gallery, reasoned, “We’re not trying to insult the Indian people. I think we honor them... I think everyone in this country would like to be an Indian.”²⁰⁶³ That Non-Natives wanted to be Native was precisely the problem arising with the New Age movement and alike, but “There is no spirituality in this. It’s about profit; it’s a degradation,”²⁰⁶⁴ as AIM member Vernon Foster said. Instead of honoring, the commercial use of Crazy Horse’s name “disappropriates and desecrates the name and legacy of one of the most revered spiritual and political leaders in American Indian history by treating him and his legacy as a mere commodity.”²⁰⁶⁵ Patrick Faure, the designer of the gallery’s logo, was “very disappointed that the interpretation that has been given is so much different than my intent, which was to pay homage.”²⁰⁶⁶

In fundamental criticism of American consumerism and capitalism, Native Americans found it egregious that “these people have the audacity to put a price on our beliefs, customs, tradition and religion.”²⁰⁶⁷ Companies like Urban Outfitters took “Indigenous life ways and artistic expressions and trivialized and sexualized them for the sake of corporate profit.”²⁰⁶⁸ Marketers using Indigenous imagery were “leading the way for entrepreneurs everywhere to exploit, oppress and commit racist acts in fine capitalist fashion, all justified, because it’s an ‘honor’.”²⁰⁶⁹ Since the 1970s, the American Indian Movement kept fighting the New Age movement as a billion-dollar industry and New Agers as “white collar pimps that prostitute our spirituality and culture to whoever has a buck.” While so-called New Age predators used rhetoric such as “love and light” and “be the change you want the world to be,” they “execute strategic marketing plans to profits from selling and desecrating our ceremonies, sacred objects, and medicines,” AIM director Corine Fairbanks complained, and “nothing comes back to our Native communities.”²⁰⁷⁰

The honoring frame was highly popular with non-Native marketers, but one exception was the Native owner of the War Paint Clothing Co. who argued their T-shirt depicting a dead Indian wearing a headdress was “just honoring our native american [sic] heritage.” For James Branum, the “vague” honoring our Native heritage argument did not “have the vibe of remembrance or honor” because “It feels more like they are using the imagery of the past with Indians in the abstract (i.e. the Buffalo head nickel) rather than celebrating specific Indians (i.e. the Sacagawea coin).” Reflecting upon the question of why “only dead Indians, and abstract/stereotypical Indians . . . get celebrated,” he concluded that “You can’t tell if they are trying to be ironic or just trying to cash in on their hipster cliché coolness.”²⁰⁷¹

With a frequency of 16.0 percent (19), the honoring frame was one of the most pervasive responses to crises resulting from cultural appropriation or misrepresentation claims, particularly in the fashion industry. In this study, the honoring frame appeared for the first time

²⁰⁶³ Ibarra, “Art gallery’s Cochise logo.”

²⁰⁶⁴ Vernon Foster, AIM, quoted in Ibarra, “Art gallery’s Cochise logo.”

²⁰⁶⁵ Judd, “A Public Letter to Liz Claiborne & JC Penney Company,” reposted in Schmidt, “Stereotype of the Month Entry (12/9/00).”

²⁰⁶⁶ Patrick Faure, quoted in Ibarra, “Art gallery’s Cochise logo.”

²⁰⁶⁷ “Get ‘em while their hot.”

²⁰⁶⁸ Brown, “Open Letter to Urban Outfitters.”

²⁰⁶⁹ Melmer, “Smoking honors American Indians – NOT.”

²⁰⁷⁰ Corine Fairbanks, “New Agers Need to Put Money Where Their Mouths Are to Free Leonard Peltier,” quoted in Robert Schmidt, “New Agers should help Indians,” *Newspaper Rock*, December 27, 2011, October 23, 2016, <http://newspaperrock.bluecorncomics.com/2011/12/new-agers-should-help-indians.html>.

²⁰⁷¹ Branum, “T-shirts sold by War Paint Clothing Co. of Oklahoma City.”

in 1992 when the Hornell Brewing Co. selected Crazy Horse's name to celebrate and honor the warrior and spiritual leader. Although the honoring frame is much older, the Quincentennial offered a fitting occasion for the "commemoration" of an Indigenous legend and paved the way for the honoring frame.



Jay Rosenstein's documentary "In Whose Honor" (1997), covering Charlene Teters' fight against the University of Illinois' sports mascot, Chief Illiniwek, or Lalo Alcaraz's honoring cartoon of 2002 testify to the pervasiveness of the honoring frame especially in the context of the sports mascot controversy (Illustration 15).

5/10

Illustration 15: Lalo Alcaraz, "But I'm honoring you, dude!" 2002, cartoon.

Lalo Alcaraz © 2002 Dist. by Andrews McMeel Syndication. All rights reserved.

While protests against sports mascots, names, and imagery have changed the public perception of what was appropriate in sports marketing and inspired numerous teams to change their practice, protesters' successes also sparked backlash. When the North Dakota State Board of Higher Education announced in 2010 that the University of North Dakota's hockey team had to drop its "Fighting Sioux" name and logo, former UND football player Zachariah Johnson, who supported the logo, created a 'Teazshirt' after its retirement. The front of the shirt read "UNDERstand we've been fighting since 1700," framed in feathers, while the back depicted a referee wearing face paint and a bonnet, surrounded by the words "If you don't like it, Sioux me!" According to *teazshirt.com*, the shirt was "designed to pay tribute to the mighty Sioux tribe and commemorate the strife between UND and the NCAA over the use of the 'Fighting Sioux' as the schools [sic] mascot."²⁰⁷² As Robert Schmidt commented, by creating such a T-shirt as a pun on the mascot controversy and in opposition to change, Johnson proved "the stereotypes' existence and demonstrat[ed] their influence. His protest against eliminating UND's mascot shows exactly why UND *should* eliminate it."²⁰⁷³ Both honoring and making harmless fun or ironic comments were a matter of perspective and tended to reproduce stereotypes instead of challenging them. Exemplifying Vine Deloria Jr.'s

²⁰⁷² Product description from *Teazshirt.com*, quoted in Alex Cavanaugh, "T-shirts raise concerns," quoted in Robert Schmidt, "Stereotypical 'Sioux me!' Teazshirt," *Newspaper Rock*, October 19, 2010, accessed October 22, 2016, <http://newspaperrock.bluecorncomics.com/2010/10/stereotypical-sioux-me-teazshirt.html>.

²⁰⁷³ Schmidt, "Stereotypical 'Sioux me!' Teazshirt."

statement that “the point of view makes a great deal of difference in what is fun and what is not,”²⁰⁷⁴ the following chapter evaluates the diminishment strategy of claiming a humorous intent.

Humor

In cases of offensive representations, some companies like Thirsty’s explained their intent by arguing their “commercial was an attempt at humor.”²⁰⁷⁵ With this crisis management strategy, marketers primarily aimed to minimize the offense, but some also agreed that their advertising was inappropriate. Petley Studios (1969) immediately admitted its “HONORARY INJUN CHIEF” certificate, which Mike Caravallo received as a gift and forwarded to the NCAI, was offensive. The certificate ridiculing Indian names and customs and perpetuating degrading stereotypes, as John Belindo of the NCAI criticized,²⁰⁷⁶ depicted a caricature of an Indian Chief and stated: “Ugh! Him come to Injun country pay much wampum for Injun relics and curios, drink much firewater, blowum much smoke, do ceremonial dances in roadside teepees, we make-um: [blank line for the recipient’s name] Honorary-Injun-Chief.”²⁰⁷⁷ The certificate was signed by the fictive “CHIEF STINKER” named Sitting Skunk, the “CHIEF HOWLER” Sitting Coyote, the “NO GOTTUM CLOTHES” Sitting Bear, and the “CATCHUM MANY ARROWS” Sitting Duck. Robert Petley agreed to immediately cease publication, stating he was “in agreement with you that our certificate #D-4, Onorary [sic] Injun Chief is not complimentary to the American Indian. The artist who composed this regarded it primarily as harmless humor, intending no offense or ridicule of the American Indian.”²⁰⁷⁸

Unlike Petley Studios, other targeted marketers did not use the humor frame to minimize but to deny any wrongdoing. In 2003, a radio commercial promoting a hockey series between the Oklahoma City Blazers and the New Mexico Scorpions stated the Scorpions were “composed of Navajo Indians from Santa Fe who can’t shoot, can’t check, can’t pass, but in between periods will be selling jewelry.”²⁰⁷⁹ New West CEO Bob Hammock, the ad’s producer, said it “was meant to be humorous and that he would not hesitate to run it again.”²⁰⁸⁰ Dell Schanze, the owner of Totally Awesome in Utah (2003), rejected criticism of his commercial showing ‘Shiffer Indians,’ an extinct tribe that “died out because of their notorious stupidity.” As the ad suggested, people who did not buy computers from his shop had “Shiffer

²⁰⁷⁴ Deloria to Houghton, April 29, 1965; Derogatory Images: Calvert Distillers Company, 1965; Box 89; AAIA Records; Pub. Pol. Papers; Mudd Man. Lib., Princeton.

²⁰⁷⁵ Dave Harris, owner of Thirsty’s, quoted in de Leon, “KZZU yanks controversial ad,” A1.

²⁰⁷⁶ Cf. Belindo to Petley Studios, July 8, 1969; Public Awareness Corresp. [1 of 2]; Box 255; NCAI Records; NMAI Archive Center.

²⁰⁷⁷ Petley Studios, Inc., “Honorary Injun Chief,” copyright 1955, mock certificate, issued to Michael Caravallo in 1969; Media Surveillance - Public Awareness Correspondence [1 of 2]; Box 255; Records of the National Congress of American Indians, 1933-1990, NMAI.AC.010; NMAI Archive Center, Smithsonian Institution, Suitland, MD.

²⁰⁷⁸ Robert T. Petley, Petley Studios, Inc., letter to John Belindo, Executive Director, NCAI, Phoenix, Arizona, July 24, 1969; Media Surveillance - Public Awareness Correspondence [1 of 2]; Box 255; Records of the National Congress of American Indians, 1933-1990, NMAI.AC.010; NMAI Archive Center, Smithsonian Institution, Suitland, MD.

²⁰⁷⁹ Commercial quoted in Sam Lewin, “Ad that taunts Navajo may have unintended consequence,” quoted in Robert Schmidt, “Stereotype of the Month Entry (12/5/03),” *Blue Corn Comics*, December 5, 2003, accessed July 1, 2016, <http://www.bluecorncomics.com/stype3c6.htm>.

²⁰⁸⁰ Bob Hammock quoted in Lewin, “Ad that taunts Navajo may have unintended consequence,” quoted in Schmidt, “Stereotype of the Month Entry (12/5/03).”

brains.” “Sure, it’s juvenile. . . . But it’s obviously intended to be funny.... I have nothing against Indians. All groups have people known for being foolish. Caucasians have Democrats, for example.”²⁰⁸¹ Bruce Parry, executive director of the Northwestern Band of Shoshoni, represented an Indigenous counter-voice who found that “Some people are pretty touchy about things like that I’m sure there are some people in our tribe who would be offended. But I’m not so touchy, and I don’t mind a little humor... as long as it doesn’t belittle Indian people or is in really bad taste.” Answering the question of whether a fictional tribe met that standard, Parry noted, “For some yes, for others, no.”²⁰⁸²

While the three advertisers Petley Studios (1969), National Bank of Commerce (1971), and Thirsty’s (2002) dropped or adapted their marketing campaigns after explaining their humorous intent, the other four companies, Totally Awesome (2003), Oklahoma City Blazers (2003), Ecko (2012), and Mastodon (2013) did not propose any change. The currently more prevalent use of humor as a denial strategy was equally unsatisfactory to activists as the honoring frame and non-apologies because “it just gets frustrating to see the same, tired, offensive responses to Native peoples’ objections.”²⁰⁸³

What advertisers considered harmless humor became a harsh reality for Native Americans because false stereotypes have resulted in socio-economic handicaps, loss of self-esteem among Natives, and other unintended effects.²⁰⁸⁴ Even accepting the intent to make a satirical statement, the Mastodon case demonstrates that “Actions have consequences, regardless of intent.”²⁰⁸⁵ As Erica Lee argued, stakeholders did not necessarily understand the humorous intent, and the satire, in fact, consolidated misconceptions that it claimed to challenge. In 2013, Mastodon received criticism for its Thanksgiving T-shirts which aimed to challenge the common ‘Indian giver’ myth, as the creators explained. The yellow shirt depicted a colonist pointing his rifle at a Native American woman who was scantily clad in a short buckskin skirt and top, sitting on her knees and offering the man a prepared turkey. The scene was meant as an allusion to the voluntariness of the ‘Indian giver’ and the Thanksgiving myth. Instead of being subversive, protesters thought the depiction reinforced stereotypes by reproducing violent imagery disguised as satire.

Indigenous feminist Erica Lee found “nothing subversive or edgy” about Mastodon’s T-shirt and pledged not to reproduce offensive imagery even if it actually “was designed with the intent of trying to disrupt the lie of American Thanksgiving But there are better ways to make political statements than printing t-shirts with disturbing imagery that reinforces racist myths rather than challenging them.” While their representation merely contributed “to an already bursting repository of that crap,”²⁰⁸⁶ according to Lee, the band maintained the shirt was a critical satire of the Thanksgiving myth:

²⁰⁸¹ Dell Schanze, owner of Totally Awesome, quoted in Mims, “New ‘SuperDell’ ad offends Indians,” D1.

²⁰⁸² Bruce Parry, Executive Director, Northwestern Band of Shoshoni, quoted in Mims, “New ‘SuperDell’ ad offends Indians,” D1.

²⁰⁸³ Keene, “Ecko ‘Weekend Warrior’ Update.”

²⁰⁸⁴ Cf. Belindo to Petley Studios, July 8, 1969; Public Awareness Corresp. [1 of 2]; Box 255; NCAI Records; NMAI Archive Center.

²⁰⁸⁵ Keene, “Ecko ‘Weekend Warrior’ Update.”

²⁰⁸⁶ Lee, “An Open Letter to Mastodon.” Grammatical errors have been copied without marking.

Regarding our thanks giving shirt, whether you choose to believe or not, the American Indians were massacred by the white settlers who became the Americans we are today. this shirt represents this atrocity and celebrating in the face of this atrocity is chilling.
we may have a sick sense of humor, but we are far from being ‘Racist’ as some of you who might not get it are calling us.²⁰⁸⁷

Mastodon’s official *Facebook* statement triggered responses from fans and other stakeholders ranging from unconditional support for the shirt to requests to stop selling it. Lee quoted several comments, arguing that the “only thing that the statement accomplished was providing bait and a forum for more racist, sexist comments toward Native Americans.”

All I know is that I’m thankful for smallpox blankets lol

Fuck em, they all just drunks anyways

No the Indians gave us the land [...] And now they want it back [...] Indian givers [...] Who cares it’s a shirt u don’t like the shirt, use it for a diaper u cry ass cry babies

I’m sorry some of my ancestors were smarter, more industrious and slightly more ruthless than the peoples they found when they got here

Grow up and quit be bitches. If the Indians wanted to land,they should of fought harder. Fuck em

Rock and roll mother fuckers, man the fuck up! Dude has a gun pointing it a hot Indian with big tits!²⁰⁸⁸

By listing selected comments showing a racist or sexist attitude, Lee demonstrated that some fans did not grasp the satirical commentary regardless of Mastodon’s intention. Quite contrary, the commenters’ violent speech proved how such representations reinforced colonial myths and had adverse real-life effects on Native Americans. “These are the people who are wearing your shirt, Mastodon. So rebellious, so ironic, so alternative.”

Supporters of Lee’s protest problematized the shirt’s perspective as a creation for a non-Native target audience. One commenter asked the organizers to “Try sporting this shirt on a reservation and see how many people appreciate the satire.” Another one pointed out that it was an inappropriate shirt to wear for anyone because, in Arizona, “Native Americans make up a good part of the metal crowd around here and frequently appear in the pit. This is the last thing I want to be wearing at a show.” Others did not believe the shirt was meant to be a satirical comment since, “If you were truly concerned about the plight of Native Americans, you would do something about it the other 364 days of the year, instead of exploiting this holiday to sell a tasteless shirt and make more money for yourself.” The mere fact that Mastodon was selling their shirt for profit made “some of this outcry . . . warranted” to some fans.²⁰⁸⁹ Lee appealed to Mastodon to respect all their fans, including Native Americans, and make a sincere statement instead of an ambiguous satire. “As a fan, I want to see the shirts taken off the

²⁰⁸⁷ Mastodon, statement, *Facebook*, quoted in *ibid*.

²⁰⁸⁸ Comments on Mastodon’s *Facebook* statement, quoted in Lee, “An Open Letter to Mastodon.” Bold face removed by author, all grammatical, spelling and typing errors have been copied without marking.

²⁰⁸⁹ User comments on Mastodon’s *Facebook* statement, quoted in Lee, “An Open Letter to Mastodon.” Bold face removed by author.

site and a statement from the band. There is an opportunity here to make a real stand, because your words and actions are powerful in circles where racism/sexism are rarely discussed. I think that would be pretty metal of you.”²⁰⁹⁰

Marketing methods based on humor that pretended subversiveness did start just after Native Americans had been successfully challenging stereotypes and presenting Indigenous points of view. Jokes produce laughter if there is a surprising payoff like, in the following ad, the juxtaposition between the expected and the unexpected. A 1948 print ad promoting Arrow White Shirts in *Time* drew on the myth of Native illiteracy. The ad showed a tourist in a suit with a camera approaching an Indigenous man who he believed was posing for tourists. The Native American with braided pigtails and a feather in his hair was sitting cross-legged on the ground with a clay jug and a woven basket with jewelry next to him. He wore a long-sleeved shirt with a blanket depicting tribal designs thrown over his shoulder. The train and mountains in the background suggest the American West as a setting.

Since the tourist in the ad expected the Indigenous person to be uneducated, he used stereotypical language to ask, “You pose for picture, huh, Injun feller?” The humorous effect occurred when, after first playing along, the Native unexpectedly started speaking in a well-educated manner to explain that he went to college where he wore nothing but Arrow Shirts, although now he just sought to “get a few quiet snickers out of the tourist.”

Mr. G.: You pose for picture, huh, Injun feller?

Chief: Sure-Sure.

Mr. G.: Fine! Fine! Now, stand still, huh? No move, huh? Me flickum shutter. See?

Chief: Ummm. Me see.

Mr. G.: Good! All done. No hurt, huh? By way, that’s a nice-looking sports shirt, Chief! Too bad him no got wonderful Arrow Collar like my shirt, huh? Best collar in world, him.

Chief: Ummm. Best collar.

...

Mr. G.: Him also got *Sanforized* label, see? Him mean ‘fabric shrinkage less than 1%.’ Mean shirt no gettum smaller in wash, huh? Arrow Shirt offer best of everything. Remember him!

Chief: I remember ‘him’ very well indeed, my dear fellow. When I was at college I wore nothing but Arrow Shirts. I am of the opinion that their impeccable appearance attracted the attention of my former wife, for which I am forever grateful. Today, however, I am a widower. My sole diversion is to hold a few red beads and get a few quiet snickers out of the tourist.²⁰⁹¹

As Philip Deloria explained, despite increasing awareness of stereotyping through media, optical features like an Indigenous dress, face, and hairstyle still evoke a culturally defined set of expectations about Natives. On the other side, the unexpected reaffirmed the already existent assumptions and expectations by declaring situations or attributes that did not fit into the given categories as unnatural and odd.²⁰⁹² Readers may or may not have interpreted the ad as subversive because it represented an educated Native person and a prejudiced tourist. Under the surface, the ad reinforced old notions of Native inferiority by depicting the idea of an educated and eloquent Native American as something unexpected and funny. Similarly, the range of comments on Mastodon’s shirt and statement demonstrated that at least a share of their

²⁰⁹⁰ Lee, “An Open Letter to Mastodon.”

²⁰⁹¹ Arrow Shirts Inc., “You pose for picture, huh, Injun feller?” print advertisement, *Time* 51, no. 25, June 21, 1948, 14.

²⁰⁹² Cf. Deloria, *Indians in Unexpected Places*, 3-5.

consumers and other stakeholders interpreted the representation in a way that supported their existing cultural beliefs.

Organizations applied communication strategies to deny or diminish a crisis by attacking protesters, legitimizing marketing practices, rejecting criticism, scapegoating, and excusing or justifying marketing practices. While the communication strategies explained how organizations used a range of arguments in response to protests, the following chapter analyzes their (re-) actions and final decisions of crisis handling.

9.2 *Rebuilding and Renewal Strategies*

The first step toward rebuilding and renewal is seeking a dialogue. After Pi Kappa Phi received criticism for their ‘Pilgrim and Indians’-themed Thanksgiving party (see chapter on fighting colonialism), the group apologized and invited the whole Duke community “to join the brothers of Pi Kappa Phi and the Native American Student Association This event will be a learning opportunity for everyone and a chance for our fraternity and any other interested parties to learn more about a culture that we admittedly don’t know enough about.”²⁰⁹³ Though many targeted organizations have consulted with protesters about settling their concerns, only few showed interest in a deeper conversation. A range of strategies helped marketers to end marketing protests in a sensitive and respectful way. As the following chapters show, strategies such as apologizing, financial compensation, or cooperation required some degree of intercultural exchange and understanding.

Figure 26 gives a broad overview of how protest targets reacted on the verbal level, ranging from ignoring and denying any wrongdoing to rebuilding through admitting inappropriate marketing practices, apologizing, settling the issue, or proposing cooperation. Fifty-seven companies reportedly ignored protests and media inquiries, accounting for 11.6 percent of all cases. Coombs recommends avoiding the no-comment strategy as it was too obviously most concerned with liability issues. The finding that 40 of the 57 companies that ignored protesters (70.2 percent) refused to give a response to *fraud* allegations supports this view. In 95 cases (19.3 percent), organizations rejected allegations of fraud, appropriation, and misrepresentation, while in four cases (0.8 percent), they ‘surrendered’ without assuming any guilt. Not considering unknown reactions (48 percent), 21.6 percent of targeted companies ignored and 36.0 percent rejected the criticism.

The four major rebuilding strategies include agreeing with the protester, apologizing, settling a case, and cooperation which companies applied in at least 21.7 percent of all cases (n = 489). In 50 cases (10.2 percent), marketers agreed with protesters that their marketing practice was inappropriate and apologized in 43 cases (8.8 percent). Marketers often agreed with complainants in cases of fraud which was usually the basis for a cease-and-desist-agreement or the withdrawal of a campaign to avoid legal sanctions. Organizations only rarely apologized for fraudulent marketing practices or appropriation but predominantly in cases of misrepresentation. A settlement was a common tactic to resolve fraud claims but also helped

²⁰⁹³ Tyler Donahue, President, Pi Kappa Phi, Duke University, letter of apology, quoted in Erin G. Ryan, “Duke Fraternity Demonstrates Proper Way to Apologize For Being Racist,” quoted in Schmidt, “Apology for ‘Pilgrims and Indians’ party.”

settle appropriation issues, as seen in nine cases (1.8 percent). Cooperation was the least common rebuilding strategy organizations proposed in response to criticism (four cases / 0.8 percent). Counting only cases with known reactions ($n = 264$), in 18.9 percent of the cases, marketers agreed with protesters, in 16.3 percent they apologized, in 3.4 percent they settled the issue, and in 1.5 percent of the cases, they announced cooperation. In sum, 40.2 percent of the known verbal reactions count as rebuilding strategies. Notably, verbal reactions must be separated from actions a company takes after promising corrective action or cooperation. The following chapters scrutinize various rebuilding and renewal strategies regarding stakeholder acceptance and outcome.

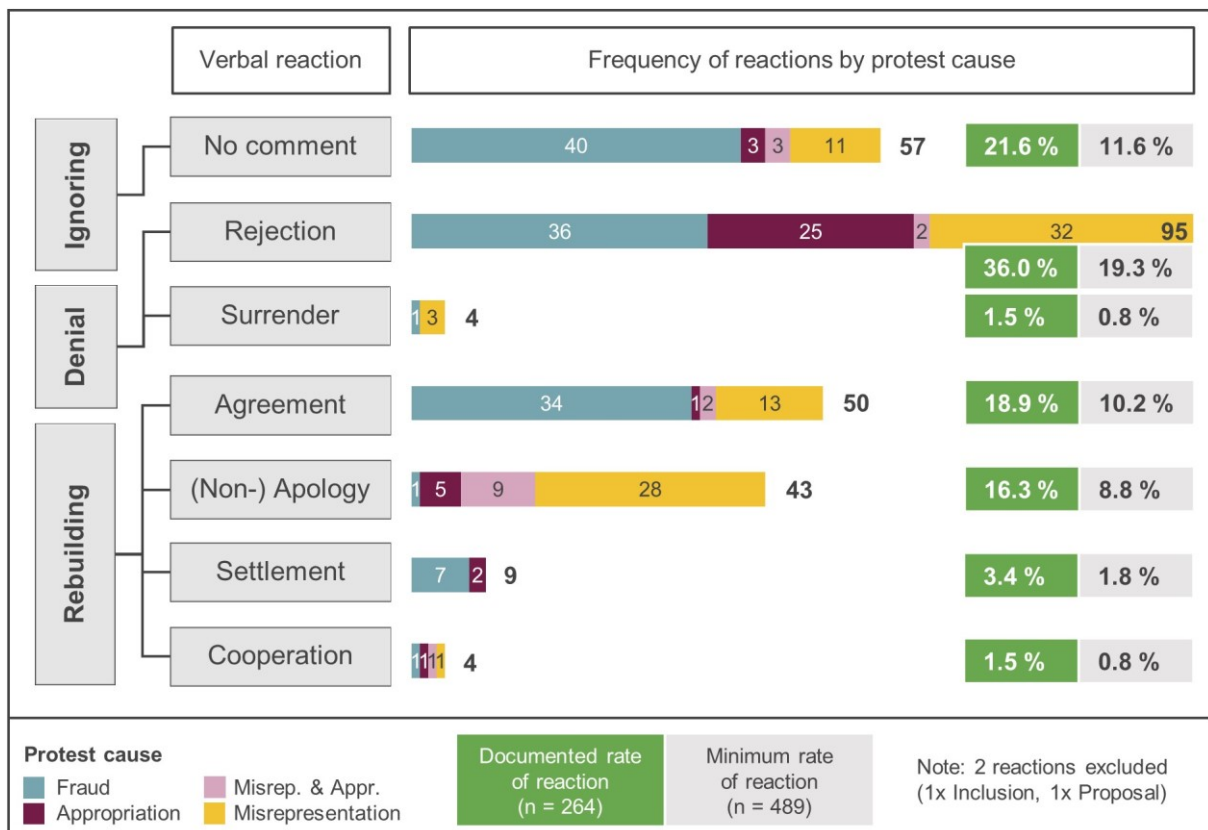


Figure 26: Targets' reactions by communication strategy.

9.2.1 Corporate Apologiae

The rebuilding and renewal strategies focus on rebuilding confidence and a favorable reputation. In this study, 43 organizations issued an apology and acted consistently by dropping or adapting their marketing practices in 74.4 percent of those cases. Only three organizations did not actively drop the campaign but let it expire, and another three kept their marketing practice despite their apology. 65.1 percent of the apologies (28 cases) responded to protests against the misrepresentation of Indigeneity, 11.6 percent to protests against appropriation (five cases), and 20.9 percent to both (nine cases). Only 2.3 percent, that is, one apology, responded to fraud claims.

By issuing an apology, an organization “takes full responsibility for the crisis and asks forgiveness.”²⁰⁹⁴ A corporate apology typically aims to resolve a social legitimization crisis that arises when an organization fails to meet expectations of responsibility, trust, and legality. Illegalities and social irresponsibility, among others, are typical contexts requiring apologies. Social irresponsibility occurs if an organization violates a public social code by violating social values or using ‘politically incorrect’ language.²⁰⁹⁵ Crisis managers often must sell crises to the top management because they might not accept a crisis exists or is worth a reaction. These contrary perceptions are typical for moral-ethical issues that do not require immediate responses because there is no immediate danger.²⁰⁹⁶

Though legal issues can be settled by paying fines or sanctions, “earning back the public’s trust may be much more difficult”²⁰⁹⁷ and require an apology. That there is “no consensus on what specific apologetic strategies are necessary to use within an apologetic address”²⁰⁹⁸ points to the uniqueness of each case. While an apology is recommended when the “organization is the primary actor responsible for the crisis,” it might increase expenses.²⁰⁹⁹ To avoid such expenses, some organizations used non-apologies which angered stakeholders, as several cases show.

Corporate apologiae are delicate because they must serve the sometimes opposed expectations of consumers and the business community. While consumers expect that statements demonstrate responsibility and concern, business community members mostly favor denial strategies to prevent legal or financial consequences. Hearit and Roberson determined the circumstances under which it is “ethically right” and “makes strategic sense” to apologize. Such contexts include defamatory offenses through speech, when the apology is part of a larger legal settlement, when the amount of damages can be calculated, and when an organization’s guilt can be established without an apology and results in consequences anyway. In the case of the latter two situations, generating social goodwill for “doing the right thing” is likely to offset the crisis’ expenses or limit punitive damages. On the other hand, Hearit and Roberson recommend avoiding apologies if not all facts are known or the extent of misconduct is not clear, if damages would threaten a company’s existence, and if a class action lawsuit is looming.²¹⁰⁰

Due to the complexity of expectations and circumstances, apologies in practice often do not apologize for wrongdoing but convey the whole range of response strategies to avoid legal liability. Consequently, prototypical and popular apologetic strategies “tend to cluster into a relatively limited list of specific incarnations,” ranging from “a denial stance that disavows any wrongdoing to an apology posture that fully acknowledges wrongdoing.”²¹⁰¹ In fact, denying apologies were most typical at times when Indigeneity was popular and profitable. In the fashion industry, protests began rising in 2009, but it was not until 2011 that large corporations started using Native American themes in their collections and protests became widely

²⁰⁹⁴ Coombs, *Ongoing Crisis Communication* (2019), 151.

²⁰⁹⁵ Other contexts include scandals, accidents, and product safety incidents. Cf. Hearit and Roberson, “Denial, Differentiation, and Apology,” 544-545.

²⁰⁹⁶ Cf. Coombs, *Ongoing Crisis Communication* (2012), 116, 118.

²⁰⁹⁷ Hearit and Roberson, “Denial, Differentiation, and Apology,” 543.

²⁰⁹⁸ *Ibid.*, 549.

²⁰⁹⁹ Coombs, *Ongoing Crisis Communication* (2019), 153.

²¹⁰⁰ Hearit and Roberson, “Denial, Differentiation, and Apology,” 554.

²¹⁰¹ *Ibid.*, 551.

known. Since 2011, companies like Urban Outfitters, Forever 21, and J.Crew took up the trend which others followed during the subsequent years, including GAP (2012), Victoria's Secret (2012), Paul Frank (2012), Gucci (2012), H&M (2013), Chanel (2013), Louis Vuitton (2013), Ecko (2013), Ralph Lauren (2014), Nike (2014), Vans (2015), or KTZ (2015), to name only the best-known companies that sparked protests. As Erin G. Ryan observed in 2011, "usually stories like this end with people writing defiant 'I'm sorry you got upset' non-apologies."²¹⁰²

In response to charges of misappropriating and misrepresenting Native American regalia, Victoria's Secret posted an apology on *Facebook*, stating, "We are sorry that the Native American headdress replica used in our recent fashion show has upset individuals. We sincerely apologize as we absolutely had no intention to offend anyone. Out of respect, we will not be including the outfit in any broadcast, marketing materials nor in any other way."²¹⁰³ Four days later, "nearly 5,000 responses to the apology had been left online, ranging from accusations of racism and threats to boycott the brand, to indifference and even gratitude."²¹⁰⁴

Protests against Victoria's Secret created a massive stir among stakeholders. They made it into all types of news and special interest media channels, from original sites of protest like *Change.org*, *Native Appropriations*, and *Jezebel*, to Indigenous news sources like *Native American Times* and *ICTMN*, to magazines like *Cosmopolitan* and *Fashionista*, the *Hollywood Reporter* and *New York Magazine*, to news media such as *The Huffington Post US*, *L.A. Times*, or *Fox News*, among others. The case became internationally known not only among fashion industry experts but through reports in the *International Business Times*, *Canadian Press*, *New Zealand Herald*, *Irish Times*, and British news media like *The Huffington Post UK*, *Daily Mail*, *The Sun*, and the *Independent*, for instance.²¹⁰⁵ Accordingly, there is a good case to believe that any person working in the fashion industry at that time was aware of the controversy around the appropriation of Indigenous designs, symbols, and regalia. Since this extensive media attention on an international level did not prevent other marketers from making the same mistake, it seems likely that other companies sought to gain publicity by provoking protests or at least accepted the high risk of a protest.

The issue had already been so well-known before the Victoria's Secret case that the media anticipated protests before they happened. Jessica Misener wrote in *The Huffington Post* that "after scoping out Wednesday night's 2012 show in New York, we're sure that one of Kloss' looks is sure to cause controversy." The "maybe-forthcoming Karlie Kontroversy [sic] comes at a sensitive time" when No Doubt had already pulled their music video for 'Looking Hot' and apologized.²¹⁰⁶ The same day, *ICT* published an article on the show start-

²¹⁰² Erin G. Ryan, "Duke Fraternity Demonstrates Proper Way to Apologize For Being Racist," quoted in Schmidt, "Apology for 'Pilgrims and Indians' party."

²¹⁰³ Victoria's Secret, "We are sorry."

²¹⁰⁴ Sara C. Nelson, "Victoria's Secret Apologises For 'Racist' Native American Headdress... After No Doubt Pulls Video," *The Huffington Post* [UK], November 14, 2012, accessed July 25, 2016, http://www.huffingtonpost.co.uk/2012/11/14/victorias-secret-apologises-racist-native-american-headdress-no-doubt-video_n_2129679.html.

²¹⁰⁵ See bibliography, Victoria's Secret case.

²¹⁰⁶ Jessica Misener, "Karlie Kloss Wears Native American Headdress At Victoria's Secret Fashion Show," *The Huffington Post*, November 8, 2012, accessed July 27, 2016, http://www.huffingtonpost.com/2012/11/08/karlie-kloss-victorias-secret-headdress-fashion-show_n_2091958.html.

ing with “Here We Go Again,”²¹⁰⁷ followed by a *Native Appropriations* blog post adding Victoria’s Secret to the list of offenders the next day.²¹⁰⁸

While Victoria’s Secret’s apology already sounded like “an automated response”²¹⁰⁹ to some commenters, the apologies of succeeding offenders became more “defiant” and provocative. Chanel’s 2013 apology rejected criticism by arguing their actions were “misinterpreted.” As the apology read, “Native Americans are an integral part of Texas’ rich history and culture and the feather headdress, a symbol of strength and bravery, is one of the most visually stunning examples of creativity and craftsmanship. We deeply apologize if it has been misinterpreted or seen as offensive as it was really meant to be a tribute to the beauty of craftsmanship.”²¹¹⁰ Ignoring critics’ arguments, “Chanel (Sort of) Apologizes,”²¹¹¹ as Lauren Indvik commented in the *Fashionista* article’s headline.

With the continuous use of Indigenous culture in the fashion industry, celebrities dressing up as ‘Indian,’ and a steady flood of criticism, the issue of cultural appropriation became so widely known and protests so predictable that some organizations and individuals seemed to provoke protests deliberately for publicity. In 2014, Christina Fallin, daughter of Oklahoma Governor Mary Fallin and singer for the band Pink Pony, performed at the Norman Music Festival wearing a warbonnet. Keene addressed Fallin directly, arguing, “You titled your photo ‘Appropriate Culturation’ which means you are aware of the concept of cultural appropriation, and knew that Native peoples would be hurt by your choice, and you did it anyway.”²¹¹² For Keene, the “kicker” of Fallin’s subsequent apology was her plea to “Please forgive us if we innocently adorn ourselves in your beautiful things. We do so with the deepest respect. We hold a sincere reverence for and genuine spiritual connection to Native American values. . . . Lastly, we feel that it would not be honest if we did not admit publicly that a woman in a headdress can be a very beautiful thing.”²¹¹³ The festival organizers and Fallin’s mother, however, did not support her statement publicly.

The Norman Music Festival posted that it “does not support the actions of Pink Pony, and in particular Christina Fallin, at our festival on Saturday night. . . . We certainly understand that these actions do nothing but promote racism, cultural discrimination and religious discrimination. The Norman Music Festival is here to support artists and bring people together – not divide them. We apologize to anyone who was offended.”²¹¹⁴ Mary Fallin responded to the “uproar” in her role as governor:

²¹⁰⁷ “Here We Go Again: Victoria’s Secret Angel Karlie Kloss Dons Headdress,” *Indian Country Today Media Network*, November 8, 2012, accessed July 25, 2016, <http://indiancountrytodaymedianetwork.com/2012/11/08/here-we-go-again-victorias-secret-angel-karlie-kloss-dons-headdress-144773>.

²¹⁰⁸ Keene, “Guess we can add Victoria’s Secret to the list.”

²¹⁰⁹ Indigenous critic, quoted in “Victoria’s Secret apologises for Native American ‘mockery,’” *The Sun* [UK], November 13, 2012, accessed December 31, 2018, <https://www.thesun.co.uk/archives/news/1040256/victorias-secret-apologises-for-native-american-mockery/>.

²¹¹⁰ Chanel, Inc., email message to *Fashionista*, quoted in Lauren Indvik “Chanel (Sort of) Apologizes for Controversial ‘Cowboys and Indians’ Pre-Fall Collection,” *Fashionista*, December 13, 2013, accessed July 21, 2016, <http://fashionista.com/2013/12/chanel-apologizes-for-metiers-d-art-collection>.

²¹¹¹ Indvik, “Chanel (Sort of) Apologizes.”

²¹¹² Adrienne Keene, “Dear Christina Fallin,” *Native Appropriations*, March 7, 2014, accessed March 6, 2016, <http://nativeappropriations.com/2014/03/dear-christina-fallin.html>.

²¹¹³ Christina Fallin and Chrome Pony, “Regarding Headdress,” quoted in *ibid*.

²¹¹⁴ Norman Music Festival, statement, quoted in Lindsey Adler, “Daughter Of Oklahoma Governor Provokes Protests Over Her Use Of Native American Symbols,” *Buzz Feed News*, April 28, 2014, accessed July 26, 2021,

On Saturday night, while performing at the Norman Music Festival, my daughter acted in a way that I believe was inappropriate. While she will always be my daughter and I love her very much, I don't approve of her behavior on that night or that of her band. I have communicated that to Christina. I have great respect for Oklahoma's tribal members and I celebrate their traditions and culture. As governor, I work in [sic] hand in hand with tribal leaders on everything from disaster response to economic development. Tribal governments are important partners to our state government, and I value the good relationships my administration has cultivated with them.²¹¹⁵

Like Fallin, Spirit Hoods (2011) had been aware of cultural appropriation and misrepresentation controversies but sought to prevent criticism of their advertising by maintaining their well-meaning intent. On their shop website for partly Native-inspired hoods like the 'Navajo Black Wolf,' Alexander Mendeluk, Spirit Hoods co-founder and director of design and public relations, recalled that "us four owners went to a traditional native American sweat lodge out here in California together. If anything we are inspired by native culture and their respect for the land and it's animals, but not just Native American's, native's all over the world." This legitimization followed a statement, "In no way are we trying to demean or prostitute Native American's,"²¹¹⁶ suggesting that Spirit Hoods was aware of the controversies about Indigenous marketing imagery.

Since the founders "truly think they are showing respect to Native peoples and cultures," Keene asked, "how do we go about addressing something as deep as this?" As marketers who seemed convinced of their moral righteousness tended to react defensively and dismissively, "Especially when their products are making them hella cash," Keene thought the most efficient way to effect change was through consumer boycotts. Thus, Keene asked her readers, "Don't buy from Spirit Hoods, because they promote the stereotyping of Native peoples, the appropriation of our tribal names and traditions, encourage the problematic practice of 'playing Indian,' and the company philosophy is based off of a harmful romanticized vision of Native cultures."²¹¹⁷

A look at recent protests against marketing campaigns that stakeholders deemed racist towards African Americans gives deeper insights into the planning of marketing strategies and patterns of marketing offenses. When H&M apologized for posting a picture of an African American child wearing a hoodie featuring the imprint "Coolest Monkey in the Jungle," political reporter Liam Stack noted in *The New York Times* that "mistakes like this happen in the world of advertising with some regularity."²¹¹⁸ Only months earlier, in 2017, Nivea and Dove pulled ads for skin care products that made use of the whitewashing topos which companies used for soap advertisements during the 19th century.²¹¹⁹ Furthermore, both Nivea and

<https://www.buzzfeednews.com/article/lindseyadler/daughter-of-oklahoma-governor-provokes-protests-over-her-use>.

²¹¹⁵ Mary Fallin, Governor, Oklahoma, statement, quoted in Adler, "Daughter Of Oklahoma Governor Provokes Protests."

²¹¹⁶ Alexander Mendeluk, co-founder and Director of Design and PR, Spirit Hoods, quoted in Keene, "Oh Spirit Hoods." All grammatical errors have been copied without marking.

²¹¹⁷ Keene, "Oh Spirit Hoods."

²¹¹⁸ Liam Stack, "H&M Apologizes for 'Monkey' Image Featuring Black Child," *The New York Times*, January 8, 2018, accessed December 31, 2018, <https://www.nytimes.com/2018/01/08/business/hm-monkey.html>.

²¹¹⁹ Nivea advertised its "Invisible For Black & White" deodorant with the slogan "White Is Purity" and apologized within two days. Cf. Amie Tsang, "Nivea Pulls 'White Is Purity' Ad After Online Uproar," *The New York Times*, April 4, 2017, accessed December 31, 2018, <https://www.nytimes.com/2017/04/04/business/media/nivea-ad-online-uproar-racism.html>.

Dove had caused similar protests in 2011 with “racist” ads for skin care products featuring African Americans.²¹²⁰ Reporters and writers wondered how these advertisements made it through multiple layers of review if there was no intent, especially given the regularity of similar incidents within one industry at the same time and by the same organizations.

Though small businesses possibly cannot and do not invest enough money in research to avoid marketing missteps, large companies and corporations usually act cautiously and deliberately. As Nike’s controversial campaign featuring civil rights activist and American football quarterback Colin Kaepernick turned out highly successful and profitable, Chief Marketing Officer Aaron Goldman of the marketing technology company 4C, which created the ad, stated: “You can be darn sure that Nike has done its research and knows what will move its product and who this campaign will resonate with They are the ones [Nike has] decided will be its future customers, so, if others are getting upset, [Nike has] planned for that, and it doesn’t care.”²¹²¹ Such a stance supports the idea that organizations may indeed have been aware of controversies about Native misrepresentation and appropriation but ignored such issues because Native Americans and supporters were not part of their target audience.

4C identified through social media analysis Nike’s most engaged audience persona. These were people who “are generally successful in their careers and personal lives, are typically single with robust social lives, and like to spend money on entertainment and travel, as well as online streaming services,” and “Racial equality is a top concern for this audience, along with causes like clean-water access and gun control.” On the other hand, companies producing goods for everyone would not “do something controversial that might alienate half their audience.”²¹²² How such strategies can backfire exemplifies the Pepsi 2017 campaign featuring Kendall Jenner. While “Pepsi was trying to project a global message of unity, peace and understanding,”²¹²³ as the statement declared, protesters criticized the company for appropriating images of the Black Lives Matter demonstrations against police violence to sell soda and, thus, trivializing the movement.²¹²⁴ Ultimately, marketers’ focus on the preferences

Dove pulled a Facebook ad for a body wash that showed an African American woman removing her brown t-shirt and revealing a white woman in a white shirt. Cf. Maggie Astor, “Dove Drops an Ad Accused of Racism,” *The New York Times*, October 8, 2017, accessed December 31, 2018, <https://www.nytimes.com/2017/10/08/business/dove-ad-racist.html>.

²¹²⁰ Nivea: “That’s the message of the ‘Re-Civilize Yourself’ Nivea ad . . . , as a black man brandishes the large-afroed, disembodied head of his former, uncivilized self and prepares to give it the old heave-ho.” Tim Nudd, “Nivea Apologizes for Wanting to ‘Re-Civilize Black Man,’” *Adweek*, August 18, 2011, accessed December 31, 2018, <https://www.adweek.com/creativity/nivea-apologizes-wanting-re-civilize-black-man-134226/>.

Dove: Under the slogan “Visibly more beautiful skin” the Dove ad showed “three women standing side by side, each with lighter skin than the woman next to her. Behind them were signs reading ‘before’ and ‘after’; the ‘before’ sign, positioned behind an African-American woman, showed cracked skin, while the ‘after’ sign, behind a white woman, showed smooth skin.” Astor, “Dove Drops an Ad Accused of Racism.”

²¹²¹ Aaron Goldman, Chief Marketing Officer, 4C, quoted in Ciara Linnane, “Nike’s online sales jumped 31% after company unveiled Kaepernick campaign, data show,” *MarketWatch*, September 17, 2018, accessed September 24, 2018, <https://www.marketwatch.com/story/nikes-online-sales-jumped-31-after-company-unveiled-kaepernick-campaign-2018-09-07>.

²¹²² Linnane, “Nike’s online sales jumped 31% after company unveiled Kaepernick campaign, data show.”

²¹²³ “Pepsi Statement Re: Pepsi Moments Content,” PepsiCo, April 5, 2017, accessed December 31, 2018, <https://www.pepsico.com/news/press-release/pepsi-statement-re--pepsi-moments-content04052017>.

²¹²⁴ Cf. Danielle Paquette, “Pepsi apologizes to Kendall Jenner for decision she made and got paid for,” *The Washington Post*, April 6, 2017, accessed December 31, 2018, https://www.washingtonpost.com/news/wonk/wp/2017/04/06/pepsi-apologizes-to-kendall-jenner-for-decision-she-made-and-got-paid-for/?utm_term=.3be60584e784.

of specific personas, that is, target group representatives, points to the importance of public protest to raise awareness and educate consumers. Educational efforts aimed to establish issues such as fair representation and cultural appropriation as significant concerns with consumers that take effect in times of heightened attention to Indigenous or social issues.

As the frequency of para-crises increased rapidly in social media,²¹²⁵ organizations' crisis communication appeared increasingly ritualized. According to the ritualistic approach, an apology is a cultural performance that seeks to complete the classical drama of misconduct, guilt, and restoration. Although marketers may have sought to gain publicity by using Native American imagery or accepted the risk of public protest, the goal of a ritual apology is to stop "the steady drumbeat of negative media stories" and "depriv[e] journalists of an ongoing story."²¹²⁶ However, by issuing a non-apology, which potentially draws more criticism, marketers might actually extend a crisis until the media loses interest.

In light of the ubiquitous non-apologies and in response to Ecco's apology, Adrienne Keene formulated a template of an ideal apology for organizations that became targets of criticism.

Hi, on behalf of the Ecco Unltd brand, I offer my deepest apologies for the disrespectful and offensive imagery that we employed in our most recent line. While we had no intention to cause pain to Native communities, we now realize how our actions were hurtful and harmful. We will be pulling all of the advertising and signage featuring the 'warrior' image, as well as removing the image from the homepage of our website, especially the image of the model wearing the warbonnet. While we unfortunately cannot pull the rest of the line from stores, we will be donating all of the proceeds from the sales of the 'weekend warrior' line to charities that benefit Native communities. This incident has caused us in the Ecco offices to reflect on the ways that we, even unconsciously, have contributed to the stereotyping and misrepresentation of Native peoples, so we have decided that our next line will be a collaboration with a Native artist, who can represent Native cultures and perspectives in a contemporary and respectful way.²¹²⁷

While a partial apology expresses only concern and regret to avoid legal liability, a full apology "must acknowledge the crisis, accept responsibility, include a promise to not repeat the crisis, and express concern and regret."²¹²⁸ Aside from assuming responsibility and promising betterment, protesters felt that an apology was only sincere if the organizations followed up their statements with action. First, an organization had to cancel and remove all marketing materials and related items from the public to prove sincerity. Second, if sales had been generated or would be generated, the company was supposed to donate the profits gained from the use of Indigenous cultural elements. Third, a future collaboration between the organization and Native American artists was supposed to provide Natives both economic opportunities and the opportunity to represent themselves from their individual or tribal perspective. Ultimately, Keene considered cooperation between Native Americans and non-Native companies the most appropriate way to produce or market products that reference Indigeneity. Very few companies sought a collaborative project, but several applied other recommendable strategies that critics acknowledged.

²¹²⁵ Cf. Coombs, *Ongoing Crisis Communication* (2012), 188.

²¹²⁶ Hearit and Roberson, "Denial, Differentiation, and Apology," 552.

²¹²⁷ Keene, "Ecco 'Weekend Warrior' Update."

²¹²⁸ Coombs, *Ongoing Crisis Communication* (2012), 156.

9.2.2 Rebuilding Through Redemption

While crisis communication research typically focuses on “how an organization’s image is damaged or threatened and repaired through communication,” Ulmer, Sellnow, and Seeger argue that “crises also carry the potential for opportunity.” As crises reveal organizations’ ethical values, they also “provide the opportunity to identify failures that have built up over time and have been ignored or gone undetected.”²¹²⁹ Such failures may include ignorance of laws like the IACA, but ethically questionable marketing representations might also cast doubt on a company’s core values and threaten its reputation. Prospective crisis communication focuses “on the future, organizational learning, optimism, their core values, and rebuilding rather than on issues of blame or fault.” In contrast, image protection strategies have the “potential to extend the lifecycle of the crisis.”²¹³⁰ As Coombs explains, by providing damages in the form of cash payments or gifts to the victims, organizations take responsibility for a crisis.²¹³¹ A range of protest cases demonstrates how organizations successfully used crisis management strategies focusing on rebuilding to ease media reporting and gain positive feedback from stakeholders. However, offering pecuniary means such as compensation or donations was a sensitive issue because critics viewed financial interests as the initial problem underlying marketing misrepresentation and appropriation.

Compensation and Gift Giving

Financial compensation²¹³² was usually part of settlements following allegations of fraud or appropriation. In trademark infringement cases, a settlement could prevent further damage when the outcome of a lawsuit was predictable. Arguing that the illegal use of the Lumbee tribe’s logo and “Heritage, Pride & Strength” slogan to promote Budweiser and Bud Light Beer (2016) “leaves the false impression of an affiliation” between the tribe and the two companies,²¹³³ the tribe filed a trademark infringement case against the R.A. Jeffreys Distributing Company. The parties reached a settlement that included an unspecified but “sizeable donation” to the tribal non-profit organization Lumbee Land Development that was to be used for youth and educational programs.²¹³⁴

²¹²⁹ Robert R. Ulmer, Timothy L. Sellnow, and Matthew W. Seeger, “Post-Crisis Communication and Renewal: Understanding the Potential for Positive Outcomes in Crisis Communication,” in *Handbook of Risk and Crisis Communication*, ed. Robert Heath and Dan O’Hair (New York: Routledge, 2009), 304.

²¹³⁰ Ibid., 307-308.

²¹³¹ Cf. Coombs, *Ongoing Crisis Communication* (2019), 151.

²¹³² While the terms damages and compensation are often used interchangeably, and in both cases money is “paid to an injured party that attempts to make amends,” damages are not always compensatory in nature, like punitive damages which are “awarded to punish the negligent party.” “What Is the Difference Between Damages and Compensation?” Johnson Firm, December 23, 2019, accessed June 2, 2020, <https://yourattorney.com/blog/difference-between-damages-compensation/>.

²¹³³ Anne Blythe, “Lumbees of NC sue Anheuser-Busch over trademark use in Budweiser ads,” *The News & Observer*, June 14, 2016, accessed October 21, 2016, <http://www.newsobserver.com/news/local/article83791057.html#storylink=cpy>.

²¹³⁴ Harvey Godwin, Tribal Chairman, Lumbee, quoted in K.C. Cunilio, “*UPDATE* Lumbee Tribe & North Carolina Distributor Settle Trademark Lawsuit,” *Porch Drinking*, July 8, 2016, accessed October 21, 2016, <https://www.porchdrinking.com/articles/2016/07/08/update-lumbee-tribe-north-carolina-distributor-settle-trademark-lawsuit/>.

Although damages as “a remedy in the form of monetary compensation to the harmed party”²¹³⁵ were a common form of redemption in Anglo-American law, protest targets used such demands to call the intention behind a protest into question. In the Rosebud Sioux Tribal Court in South Dakota, Seth Big Crow sought \$100 million in damages for “breaching the property rights of Crazy Horse’s estate.”²¹³⁶ In 1998, the 10th Circuit Court of Appeals “ruled the Rosebud Tribal Court had no standing because the malt liquor was neither sold nor bottled on the reservation.”²¹³⁷ In a subsequent complaint, Seth Big Crow again sought damages and the destruction of all marketing items such as labels, bottles, containers, and displays, as well as a permanent injunction to stop the commercial use of the name Crazy Horse. Demands included punitive damages for the disparaging effects on the family, profits from past and future sales as compensatory damages, and triple damages of profits for violating the Lanham Act.²¹³⁸ Fox, Hornell’s attorney, claimed greed was the real motive as Big Crow and the estate “talk about principle, but what they really want is the bucks,” adding that “We will never pay.”²¹³⁹ It was not until SBC Holdings, formerly the Stroh Brewery Company, absorbed Hornell that the Crazy Horse Estate reached a settlement.

After nine years of conflicts around the use of Crazy Horses’ name and image on the malt liquor label, John Stroh III sought to end the legal dispute and apologized in 2001. The producer explained, “We understand your deep and sincere feeling that the marketing of the malt liquor beverage [...] disparaged his spirit and caused you and his other descendants emotional distress.” According to Stroh Brewery’s lawyer George Kuehn, Stroh was “thrilled” to be “able to resolve this matter in a way that is fair and more importantly, culturally significant to the estate.”²¹⁴⁰ The settlement included no financial compensation but a range of ceremonial gifts of 32 blankets, 32 braids of sweet grass, 32 twists of tobacco, and seven thoroughbred horses for the 32 states that sold the beverage and the seven breweries that manufactured it.²¹⁴¹ As the products bearing the infamous label were still being sold, the settlement negotiations continued until the producer ceased using Crazy Horse’s name in 2004. The final settlement also included compensatory damages of \$150,000 for the profits the company made from using the leader’s name.²¹⁴² Since no protester in this study demanded gifts instead of financial compensation, gift-giving did not represent a sufficient redemption strategy in response to appropriation claims. Critics appreciated the symbolic value of culturally meaningful gifts as a means of reconciliation rather than compensation.

While stakeholders did not question a protester’s sincerity who sought to protect an ancestor’s name, some companies like Hornell or Milne Jewelry used the demand for financial compensation as the basis for a counterattack. As discussed earlier, this strategy aims to

²¹³⁵ Legal Information Institute, s.v. “Damages,” accessed January 11, 2019, <https://www.law.cornell.edu/wex/damages>.

²¹³⁶ Fletcher, “Crazy Horse Again Sounds Battle Cry,” A3.

²¹³⁷ “Crazy Horse beverage fight goes to federal court;” see also *Hornell Brewing Co. v. Rosebud Sioux Tribal Court*, 133 F.3d 1087, 45 U.S.P.Q. 2d 1458 (8th Cir. 1998).

²¹³⁸ Cf. “Crazy Horse beverage fight goes to federal court.”

²¹³⁹ Lawrence I. Fox, lawyer for Hornell Brewing Co., quoted in Fletcher, “Crazy Horse Again Sounds Battle Cry,” A3.

²¹⁴⁰ George Kuehn, lawyer for SBC, quoted in Dennis Gale, “Crazy Horse Malt Liquor Apologizes,” *Moccasin Bend*, April 27, 2001, accessed February 25, 2011, <http://www.moccasinbend.net/cita/chml.html>.

²¹⁴¹ Gale, “Crazy Horse Malt Liquor Apologizes.”

²¹⁴² Cf. Kihm Winship, “Malt Liquor: A History,” *Faithful Readers*, April 29, 2012, accessed September 3, 2016, <https://faithfulreaders.com/2012/04/29/malt-liquor-a-history/>.

delegitimize protesters by questioning their intentions and undercutting the support they might get from other stakeholders. Protesters who demanded compensation not for themselves but for organizations or groups did not face the same risk. Alternatively, protesters demanded that marketers invest money in educational programs that prevent similar marketing missteps. For instance, since Ovide Mercredi viewed Air Canada's magazine ad as a failure by the corporate management and advertising agency, he urged the airline not only to discharge the person or agency responsible for the advertisement but also to fund a "\$250,000 training course on race relations for senior executives of Air Canada."²¹⁴³

Donations

Requests to donate to an Indigenous institution also avoided accusations of greediness. The reason for a protest usually determined what kind of institution should receive the remedial donation. For appropriating Indigenous imagery or evoking the impression that a product was Indian-made, protesters have suggested contributing to institutions that helped Native Americans develop artistic and trading skills as craftspeople. "Since you are profiting off of a caricature of our cultures," Jessica Metcalfe advised Paul Frank (2012) that "a donation to a Native American youth arts program would be fitting to accompany your apology."²¹⁴⁴ Being confronted with charges of violating the IACA, Pendleton (2014) entered into an agreement with the IACB that included a donation of \$41,250 to the Red Cloud Indian School's Heritage Center in Pine Ridge, South Dakota. The funds were to "assist with The Heritage Center's promotion of Sioux artisans and economic development through the production, promotion, and sales of authentic Sioux art and craftwork, and associated programs."²¹⁴⁵

In cases of offensive representations, the effect protesters assigned to the representation determined who should receive a donation. In 2012, Hooters initiated an advertising campaign featuring young women in skimpy dresses inspired by popular cartoon images of Pocahontas or Halloween squaw costumes, including toy headdresses.²¹⁴⁶ Calling for a boycott of Hooters, activist Gray Wolf referred to rape statistics showing that one in three Native women became victims of rape, mainly by non-Native men. By sexualizing Native women in their campaign, he explained, Hooters was "expressing the conquest mentality that leads to that kind of victimization."²¹⁴⁷ Corine Fairbanks urged Hooters to not only apologize for "cultural prostitution" but also "donate the proceeds from this promotion to help Native communities or to support domestic violence programs."²¹⁴⁸

Although compensation and donations have successfully settled protests, marketers who reminded stakeholders of their charitable deeds as a bolstering strategy to win stakeholders' goodwill or legitimize marketing practices often had a contrary effect. Since generally reminding stakeholders about past good works "adds positive information about the organiza-

²¹⁴³ Aubry, "Mercredi irked by Air Canada ad campaign using natives," D1.

²¹⁴⁴ Metcalfe, "Paul Frank's Racist Powwow."

²¹⁴⁵ "Indian Arts & Crafts Act Settlement with Pendleton Woolen Mills Reached"; see also Indian Arts and Crafts Board, "Mission Statement."

²¹⁴⁶ Cf. Lee, "Hooters Launches Culturally-Offensive Marketing Campaign."

²¹⁴⁷ Gray Wolf, Yoeme Tribe, "long-time activist," quoted in Lee, "Hooters Launches Culturally-Offensive Marketing Campaign."

²¹⁴⁸ Corine Fairbanks, AIM, quoted and paraphrased in Lee, "Hooters Launches Culturally-Offensive Marketing Campaign."

tion,”²¹⁴⁹ in cases of misrepresentation and appropriation, marketers sometimes highlighted how they supported Native American issues and groups with donations. However, many protesters viewed such donations as an attempt to buy the right to use Indigenous culture or to polish the company image and present themselves as socially responsible philanthropists.

By donating to professional training programs (Philco-Ford, 1969), alcohol abuse programs (Miller Brewing Co., 1986), or health programs (Nike, 2007), companies chose recipients or programs that represented some connection to their products or that supported popular issues. Philco-Ford explained they “had no intent to induce discrimination or to offend any group of people. In fact, as you know, we have been active in regard to Indian affairs. We operate the Madera Training Center in Madera, Calif. at which Indians are trained to make the transition from reservation life to life on the outside.”²¹⁵⁰ Some organizations highlighted their charitable activities supporting Native Americans to underpin the organization’s honorable intention in response to and in advance of criticism.

Stakeholders regularly rejected references to charity as untrustworthy and questioned organizations’ philanthropic image by doubting the intent and cross-checking corporate behavior in other business areas. Regarding their controversial “Air Native N7” campaign in 2007, Nike officials stated they “intended to get more Indians moving and to help combat increasingly alarming obesity rates in Indian Country.”²¹⁵¹ The Nike case demonstrates how stakeholders closely scrutinized a company in various areas, uncovered inconsistencies, and insisted on adherence to the advertised values.

Case Study 10: Nike Air N7 (2007)

Case Study 10: Nike Air N7 (2007)

Nike’s Air N7 was explicitly designed for Native American feet and sold to Indigenous customers in tribal wellness programs and schools at wholesale prices. To market the ethnic shoe to Native Americans, Nike used Indigenous symbolism and named it N7 after the ‘Seven Generations’ concept that maintains decisions made in the present had an impact on the following seven generations.

Critical voices called the project “culturally insensitive” and believed it fostered “stereotypes because . . . the footwear features feathers, Arrowheads, sunset designs and circle of life motifs.”²¹⁵² Klee Benally of Indigenous Action questioned the sincerity of Nike’s claim to honor traditional Indigenous beliefs and the ‘Seven Generations’ concept in particular because of their role in the mascot controversy and their resistance to adhere to corporate accountability standards. “If Nike really wanted to honor Indigenous peoples and the Seven Generations then they would stand with us and work to ban racist mascots in the industry that they definitely have the most impact on.”²¹⁵³

²¹⁴⁹ Coombs, *Ongoing Crisis Communication* (2019), 153.

²¹⁵⁰ Grill to Dean, April 9, 1969; Derogatory Images: General, 1949-1983; Box 90; AAIA Records; Pub. Pol. Papers; Mudd Man. Lib., Princeton.

²¹⁵¹ Capriccioso, “Native Nike footwear raises concerns,” 6.

²¹⁵² Ibid., 6.

²¹⁵³ Klee Benally, “Nike Opportunism: Turning Native Plight Into Profit? N7,” *Indigenous Action*, September 26, 2007, accessed July 1, 2016, <http://www.indigenousaction.org/nike-opportunism-turning-native-plight-into-profit/>.

Benally advised stakeholders, “we should critically question the true intentions behind this gesture, their slick marketing scheme, and especially their business practices.”²¹⁵⁴ By exploring Nike’s business practices, Benally aimed to refute the marketer’s argument that the shoe honored the traditional Native American Seventh Generation philosophy. He specifically referred to a 2000 Corpwatch press release signed by various human rights advocates that exposed Nike as “an international symbol of sweatshops and corporate greed.” According to the press release, Nike “made announcements of changes to its behavior only after enormous public pressure,” and it “aggressively opposed the only union and human rights-group supported independent monitoring program – the Worker Rights Consortium.”²¹⁵⁵ In light of Nike’s business behavior, “As Indigenous Peoples we have to ask ourselves if . . . this is just a marketing opportunity used to mask Nike’s unethical and frequently illegal labor practices. We follow the Seventh Generation philosophy because we know that our actions impact future generations. Can we really trust that respect, understanding, and altruism underlie this effort?”²¹⁵⁶

Additionally, Benally found Nike’s proclaimed goal to elevate Native health and wellness issues opportunistic as the amount of \$200,000 Nike planned to raise for tribal programs was extremely low compared to the several billions in revenue the corporation made every year and direct donations to health services would be more helpful.²¹⁵⁷ Quoting an *AP* news article that argued, “At \$42.80 wholesale, it represents less of a financial opportunity than a good will and branding effort,”²¹⁵⁸ Benally presented Nike’s N7 project as an act of opportunism for profits. Eugene Johnson of the Siletz tribe believed there were better methods to deal with Indian health and obesity, noting he had “no doubt that the sales folks are hoping that Indian sympathizers and the public will be thinking of how Nike is so charitable in thinking of the Indians, thus, increasing sales through the usual brand of Nike branding advertising.”²¹⁵⁹

In a press release, the Indian Health Service (IHS) stated that, since the partnership started over a decade ago, it “has made great progress in encouraging American Indians and Alaska Natives to take charge of their health with innovative exercise and nutrition programs.” In the future, it would “serve American Indian and Alaska Native communities by expanding the information available on the importance of physical activity and healthy lifestyle choices.”²¹⁶⁰ Through its N7 Fund, established in 2009 and supported by the N7 collection, Nike “has awarded more than \$8 million in grants to more than 270 communities and organizations,”²¹⁶¹ as stated on the company website.

Comanche podiatrist Rodney Stapp, Chief Executive Officer for the Urban Inter-Tribal Center of Texas and eventually consultant for Nike, found Nike’s project supportive and “culturally-sensitive to our [Indigenous] needs.” Given the 4.1 million Native Americans in the U.S., Stapp deemed the several hundred online complaints from Indians insignificant.²¹⁶² Ultimately, Seneca critic Robert Porter conceded, the project might lead to positive results and “could be a

²¹⁵⁴ Ibid.

²¹⁵⁵ Corpwatch press release, 2000, quoted in Benally, “Nike Opportunism.”

²¹⁵⁶ Benally, “Nike Opportunism.”

²¹⁵⁷ Cf. *ibid.*

²¹⁵⁸ Associated Press, quoted in Benally, “Nike Opportunism.”

²¹⁵⁹ Eugene Johnson, Confederate Tribes of Siletz Indians, quoted in Capriccioso, “Native Nike footwear raises concerns,” 6.

²¹⁶⁰ U.S. Department of Health and Human Services, Indian Health Service, “IHS/Nike sign agreement to promote healthy lifestyles,” December 5, 2014, accessed January 3, 2019, <https://www.ihs.gov/newsroom/pressreleases/2014pressreleases/ihspressreleasedec52014/>.

²¹⁶¹ “The N7 Fund,” Nike, Inc., accessed January 3, 2019, <https://www.nike.com/n7-native-american-indigenous-heritage>.

²¹⁶² Cf. Rodney Stapp, Chief Executive Officer for the Urban Inter-Tribal Center of Texas and Nike consultant, quoted in Capriccioso, “Native Nike footwear raises concerns,” 6.

good effort” to “the extent that this can blend the therapeutic with the economic.” In this respect, it was “a huge step forward for a Fortune 500 company to be making with Native Americans.”²¹⁶³

In 2014, the mascot issue Benally had quoted to question Nike’s intentions boiled up again as a group of Indigenous parents and allies called on Nike to stop selling products featuring Chief Wahoo, the Cleveland Indians’ mascot.²¹⁶⁴ Jacqueline Keeler, co-founder of Eradicating Offensive Native Mascotry (EONM), urged Nike to “be more consistent with its commitment to diversity”²¹⁶⁵ and stop selling Chief Wahoo products and branded merchandise using Native American imagery for the Washington Football Team and Florida State University. Nike avoided the mascot controversy and shifted responsibility to the baseball team as “Each MLB team is responsible for choosing their team logos and marks and we understand that the Cleveland Indians are engaging their fans and the local community in conversation concerning their logo.” While essentially rejecting Keeler’s demand, the statement added that the company had “a long history of supporting the Native American community and we encourage the teams and leagues to engage in constructive dialogue with their communities.”²¹⁶⁶ In 2021, the Cleveland Indians finally became the Cleveland Guardians.

Skeptics viewed charitable contributions as an attempt to buy the right to use Indigenous names or imagery for marketing purposes. Bob Bertini, spokesman for the Miller Brewing Co. (1986), agreed to commit \$20,000 to Gene Thin Elk’s Red Road Approach to Alcohol Abuse, a training program for alcohol abuse counselors, and “emphasized that the grant was not directly related to the newspaper article in the Lakota Times or the protests by the Sioux” and that the “good Sioux name is not for sale.”²¹⁶⁷ While \$20,000 was more than many other companies donated, critics also drew conclusions about the purpose of a donation based on the amount. Highlighting the sum of their donation, David Melmer of *Indian Country Today* called the motive behind SFNT’s (1996) donations into question:

The Santa Fe tobacco company, in its infinite wisdom uses guilt-laden philanthropy. It gives money to American Indian organizations – three grand to the Native American Rights Fund and another pittance of \$3,000 to the American Indian College Fund in 1996. And that paltry sum buys the tobacco company the right to exploit the American Indian image, all in the name of honor? That’s peanuts.²¹⁶⁸

²¹⁶³ Robert O. Porter, Seneca, quoted in Capriccioso, “Native Nike footwear raises concerns,” 6.

²¹⁶⁴ Cf. “Native Americans Demand Nike ‘#Dechief’ – Stop Selling Grotesque ‘Chief Wahoo’ Products,” *Native News Online*, April 28, 2014, accessed January 3, 2019, <http://nativenewsonline.net/currents/native-americans-demand-nike-dechief-stop-selling-grotesque-chief-wahoo-products/>.

²¹⁶⁵ Jacqueline Keeler, co-founder of Eradicating Offensive Native Mascotry, paraphrased in Gosia Wozniacka, “Native Americans pressing Nike to ax Chief Wahoo,” *IMDiversity*, 2014, accessed April 10, 2020, <https://imdiversity.com/diversity-news/native-americans-pressing-nike-ax-chief-wahoo/>.

²¹⁶⁶ Nike, Inc., statement, quoted in Matthew Kish, “Nike responds to Chief Wahoo protest,” *Portland Business Journal*, May 2, 2014, accessed January 3, 2019, https://www.bizjournals.com/portland/blog/threads_and_laces/2014/05/nike-responds-to-chief-wahoo-protest.html.

²¹⁶⁷ Bob Bertini, spokesman for Miller Brewing Co., quoted in Joan Morrison, “Miller Brewing Co. to work with tribes on economic development,” *Indian Country Today*, September 24, 1986, 1.

Many Sioux and others like Jerry Jaeger of the BIA had “oppose[d] using the name Dakota on any alcohol product” in the first place. Upon review, representatives of the Rosebud and Oglala Sioux tribes changed their minds because the TV ads did not use the Sioux name or imagery in any way. The name rather “capitalize[d] on the popular conception of the Dakotas as wheat territory, the heartland of American.”

Jerry Jaeger, Aberdeen area director, Bureau of Indian Affairs, quoted in Joan Morrison, “Dakota Beer angers the Dakota,” *Indian Country Today*, June 25, 1986, 1.

²¹⁶⁸ Melmer, “Smoking honors American Indians – NOT.”

To deprive SFNT and others of their strategy to represent themselves as charitable and philanthropic, the American Indian Tobacco Educational Partnership, which previously asked merchants to boycott several tobacco brands, asked that all American Indian organizations reject any donations from the tobacco company.²¹⁶⁹ In the meantime, Indigenous organizations themselves, like the Lumbee tribe, decided not to accept donations from sources they considered inappropriate.

In 2008, the Lumbee tribe rejected sharing profits from Lumbee brand cigarettes due to competing financial and health-related interests. The distributor considered Cherokee, Seneca, Cheyenne, and other tribal names as brand names for the cigarette label, but the “name Lumbee was a perfect name . . . to market a product in the Southeast, especially in North Carolina.”²¹⁷⁰ Wayne Moss, owner of the Coastal Distributing Co. that distributed the Uruguay-produced cigarette label in Pembroke, “planned to donate 1 percent of the sales to assist the tribe with its recognition efforts.”²¹⁷¹ The Lumbee rejected his offer as the tribe received a grant for its Lumbee Prevention and Cessation Project aiming to help people quit smoking and increase awareness of tobacco-related health risks. Additionally, tribal chairman Jimmy Goins raised the concern “that some tribal members may buy this cigarette thinking they are supporting the tribe.”²¹⁷² While the tribe distanced itself from the brand, Lumbee cigarettes did not sell well and eventually disappeared from the market.

Sue M. Shaffer waived Indian Motorcycle’s (1999) “Indian Office” and donations to Native groups as “an expedient short-term, small-scale media and brand-development strategy employed to divert attention from the TFA [Trademark Facilitation Agreement] lawsuit.”²¹⁷³ As Indian Motorcycle highlighted its contribution of \$15,000 to reservations and scholarship funds, critics noted, “Many tribes and tribal enterprises will donate more in a single month to charities and communities, Indian and non-Indian, than the company will in a year or even five years.”²¹⁷⁴ Additionally, the small donations “required photo shoots and displayed Indian Motorcycle Company banners as part of IMC’s advertising campaign. In other words, for the organization to receive its donation, they must pose for pictures with the board and famous personalities as part of the advertising campaign for Indian motorcycle.”²¹⁷⁵

Similarly, the Fort Yuma Quechan Tribe rejected a donation to build a skate park from the Washington Redskins Original Americans Foundation offered in 2014 as they would “not align ourselves with an organization to simply become a statistic in their fight for name acceptance in Native communities We’re stronger than that, and we know bribe money when we see it.”²¹⁷⁶

²¹⁶⁹ Cf. Ibid.

²¹⁷⁰ Wayne Moss, owner of Coastal Distributing Group, quoted in Mark Locklear, “Tribe distances itself from Lumbee cigarette,” *The Robesonian*, January 15, 2009, accessed October 21, 2016, http://robesonian.com/archive/35326/view-full_story-1654673-article-tribe_distances_itself_from_lumbee_cigarette.

²¹⁷¹ Locklear, “Tribe distances itself from Lumbee cigarette.”

²¹⁷² Jimmy Goins, Lumbee Tribal Chairman, quoted in Locklear, “Tribe distances itself from Lumbee cigarette.”

²¹⁷³ Sue M. Shaffer, quoted in Monastyrisk, “Cow Creek claims bikemaker leaves Indian country in the dust,” A1.

²¹⁷⁴ Elaine Raper, “Indian Motorcycles Back on the Road: Indian Trademark Violates Indian Country,” *Country Road Chronicles*, June 30, 2000, 1.

²¹⁷⁵ Ibid., 1.

²¹⁷⁶ Fort Yuma Quechan Tribe, statement, quoted in Jay Busbee, “After splashy 2014 debut, Washington’s ‘Original Americans Foundation’ zeroed out contributions,” *Yahoo! Sports*, July 8, 2020, accessed January 5, 2021,

9.2.3 Renewal Through Cooperation

As with rebuilding strategies, whether renewal strategies based on cooperation between protesters and advertisers satisfied critics depended on the proposals' quality and implementation. Forms of cooperation included the cancellation of marketing campaigns, their adaption, and future-oriented collaborations. For protesters, a partnership made "it clear that there is a difference between saying you respect someone and showing respect."²¹⁷⁷

Cancellation and Rebranding

Canceling campaigns and removing marketing materials underscored the sincerity of an apology as it demonstrated understanding and willingness to learn from crises. As brand names, logos, and marketing campaigns were investments that involved development and production costs of prints and other materials, removing promotional materials represented a significant financial loss for organizations. In 1968, REA EXPRESS removed ads stating "REA Scalps Shipping Costs" from their trucks after the AAIA called the campaign offensive and derogatory. William J. Taylor of REA responded, "in view of your objections and our firm desire not to offend any ethnic group of American citizens, I have ordered removal of the ad from our trucks. This, as you would expect, represents a very sizeable and costly undertaking."²¹⁷⁸ Similarly, Calvert Distilling "canceled all of the scheduled advertising – newspaper, magazine and outdoor – at no inconsiderable expense to ourselves,"²¹⁷⁹ which amounted to at least \$30,000, equaling \$258,067 in 2021.

Since dropping a marketing strategy represented a financial loss, particularly smaller businesses pointed to the financial burden coming with renaming their business or changing their marketing. Raising awareness of the loss of investments was a victimage strategy aiming to gain stakeholders' sympathy and highlight the significance of the marketer's reaction. The victimage strategy, as a supplemental bolstering tactic for an organization to build a positive connection between an organization and stakeholders, sought to demonstrate how the marketer "too is a victim of the crisis."²¹⁸⁰

Sandee Klein, owner of a food truck in Oregon named Pow Wow Fried (2016), rejected Sarah Molloy's criticism that Native Americans might take offense at her "stereotypical" business sign depicting an Indigenous child wearing a headdress and standing next to a tipi. Klein replied that changing her business name and logo "could put me out of business. It would cost a lot to replace all my signage and flyers."²¹⁸¹ Nevertheless, Klein initiated a name

<https://sports.yahoo.com/after-splashy-2014-debut-washingtons-original-americans-foundation-zeroed-out-contributions-190239739.html>.

²¹⁷⁷ Cynthia Kent, representative for the Southern Ute and United Methodist Church, quoted in "ICCR Shareholders and British Petroleum To Meet," 1.

²¹⁷⁸ William Taylor, Chairman of the Board, REA EXPRESS, letter to William Byler, Executive Director, AAIA, New York, New York, September 20, 1968; Derogatory Images: General, 1949-1983; Box 90; Association on American Indian Affairs Records, 1851-2016, MC147; Public Policy Papers; Seeley G. Mudd Manuscript Library, Princeton University.

²¹⁷⁹ Arthur Murphy, Executive Vice President, Calvert Dist. Co., quoted in Pace, "Indians' Protest Kills Whiskey Ad," 33.

²¹⁸⁰ Coombs, *Ongoing Crisis Communication* (2019), 151.

²¹⁸¹ Sandee Klein, owner of Pow Wow Fried, quoted in Amy M. Strong, "Bandon's Pow Wow Fried name causes controversy. Should it?" *The World*, April 20, 2016, accessed March 17, 2017,

change contest on her *Facebook* page, announcing that the name with the most likes won a free taco.²¹⁸² Lewann Rice, who suggested renaming the business “Fry Bread Trading Post,” won the contest but, since Klein received “extremely supportive” letters “from several folks, many if [sic] them local Natives,” she felt “confident that our local folks are behind us 100%, and as such, have decided NOT to change our name.”²¹⁸³

When Fred Simmons opened his Pensacola Beach, Florida, liquor store “Geronimo’s Spirit” in 2003, Indigenous critics found it “offensive, inappropriate and insulting”²¹⁸⁴ that the store used Geronimo’s name and image to sell alcohol. Simmons responded he had “spent a lot of money getting this place ready” and “then, to have to consider changing the name is disappointing.”²¹⁸⁵ An Andy Warhol print of Geronimo inside the store alone had cost him \$20,000. When pressure grew, the owner conceded to think about changing the name but gave no time frame or guarantee for the adaption because the store first had to “show a profit” so Simmons could “get some of [his] investment back.”²¹⁸⁶ Besides other factors like public pressure, for many marketers, the amount of financial investment has undoubtedly been one of the most relevant factors when considering protest responses and reactions.

Although most organizations in this study avoided arguments of brand value and costs, it was a much-discussed issue in the mascot controversy. Sports teams hesitated to change their names, mascots, or imagery because the “sale of merchandise with team mascots and nicknames on items such as t-shirts, hats and jackets brings in millions of dollars to various schools and sports teams every year.” Many teams, particularly schools, feared a “changeover would cost money and render much of the current merchandise obsolete.”²¹⁸⁷ Bans like the Oregon Board of Education’s 2012 order that the Rogue River School District had to “retire the Native American nicknames, mascots and logos of its two schools within five years or risk losing state funding” represented a financial burden for such schools.²¹⁸⁸

Following the North Carolina State Board of Education’s 2003 request that school districts review the use of Native American mascots, Guilford County invested \$187,000 to retire Native mascots. Most of the funds served to replace sports uniforms bearing logos or names and to remove symbols from gymnasium floors and scoreboards.²¹⁸⁹ When the Houston Independent School District (HISD) in 2013 decided to eliminate names and mascots “with Native

http://theworldlink.com/bandon/news/bandon-s-pow-wow-fried-name-causes-controversy-should-it/article_650cfe80-6c35-5d51-8c3a-40b62914a96e.html.

²¹⁸² Cf. Pow Wow Fried, posts, *Facebook*, April 14, 2016, accessed January 10, 2019, https://www.facebook.com/Powwowfried/posts/613900122098770?__tn__=K-R.

²¹⁸³ Pow Wow Fried, company page, *Facebook*, accessed January 10, 2019, <https://www.facebook.com/Powwowfried/>.

²¹⁸⁴ Linda Lindsey, member of the Chickasaw Nation and the American Indian Rights Association, quoted in Stewart, “‘Geronimo’ liquor store draws ire, protesters,” quoted in Schmidt, “Stereotype of the Month Entry (12/27/03).”

²¹⁸⁵ Fred Simmons, owner of Geronimo’s Spirit, quoted in Stewart, “‘Geronimo’ liquor store draws ire, protesters,” quoted in Schmidt, “Stereotype of the Month Entry (12/27/03).”

²¹⁸⁶ Fred Simmons, owner of Geronimo’s Spirit, quoted in Michael Stewart, “Liquor store owner considers name change,” quoted in Schmidt, “Stereotype of the Month Entry (12/27/03).”

²¹⁸⁷ Phyllis R. Emert, “Native American Mascots: Racial Slur or Cherished Tradition?” *respect* 2 (Winter 2003): 4.

²¹⁸⁸ Sanne Specht, “State bans Native American mascots,” *Mail Tribune*, May 18, 2012, accessed June 28, 2020, <https://mailtribune.com/archive/state-bans-native-american-mascots>.

²¹⁸⁹ Cf. Terry B. Grier, “The Cost of Insensitive School Mascots,” *School Administrator* 71, no. 7 (August 2014): 12, accessed June 12, 2021, <https://aasa.org/content.aspx?id=34458>.

American or historically insensitive ties,”²¹⁹⁰ HISD superintendent Terry Grier planned to spend \$250,000 to change mascots at four schools. As Grier noted regarding the decision to change, while “traditions matter, nothing is more important than respect for cultural differences and sensitivities.”²¹⁹¹ Despite the costs of a brand change, the “moral cost to our reputation as a diverse district . . . would be incalculable if we were not to do this.”²¹⁹²

Peter Keating, a senior writer at *ESPN* covering investigative and statistical subjects, remarked, “No college team has lost money in the long run by moving away from derogatory Native American mascots.” Compared to college teams, NFL teams risk less when “altering their identities because pro football franchises generate so much money from so many sources beyond their logos.” Given the number of sports teams that changed their names or imagery over the past decades, Keating concluded, “renaming the Redskins wouldn’t hurt Washington’s NFL team.”²¹⁹³

Several state Boards of Education and legislators have introduced, passed, and sometimes overturned bills to examine or ban names, imagery, and mascots that Native Americans found offensive from schools, or denied state funding to such schools. Discussions about the mascot controversy and possible consequences began as early as 1993 in Washington and spread to other states such as New York and Tennessee after the millennium and to Arizona, California, Colorado, Florida, Connecticut, Maine, Massachusetts, Michigan, Nebraska, Oregon, South Dakota, Tennessee, Texas, and Wisconsin after 2010.²¹⁹⁴ In May 2019, Maine was the first U.S. state that banned Native American mascots for school and university sports teams,²¹⁹⁵ prohibiting the “use of a name, symbol or image related to a Native American tribe, person, custom or tradition for use as a mascot, logo or team name.”²¹⁹⁶

The rising number of state regulations, particularly in the educational sector, suggests this trend is likely to intensify because educational institutions not only reflect the changing sentiment toward issues of Native American representation and appropriation but actively drive it forward. As Anne Blanchard, a member of the Natick School Board, noted regarding the decision to drop Natick High School’s mascot “Redmen” in 2007: “If it were decided by popular vote, we would have the name But we had to take into account our nondiscrimination policy, as well as minority and majority interests.”²¹⁹⁷ Considering that roughly 92 per-

²¹⁹⁰ Ericka Mellon, “New HISD mascots: Huskies, Wolf Pack, Texans,” *CHRON.*, April 15, 2014, accessed July 5, 2020, <https://www.chron.com/news/houston-texas/houston/article/New-HISD-mascots-Huskies-Wolf-Pack-Texans-5403772.php>.

²¹⁹¹ Grier, “The Cost of Insensitive School Mascots,” 12.

²¹⁹² Terry Grier, Superintendent, HISD, quoted in “Houston schools change ‘historically insensitive’ mascots,” *FOX SPORTS*, April 16, 2014, accessed July 5, 2020, <https://www.foxsports.com/southwest/story/houston-schools-change-historically-insensitive-mascots-041614?ocid=twmsn>.

²¹⁹³ Peter Keating, “Washington has everything to lose,” *ESPN*, September 2, 2014, accessed July 4, 2020, https://www.espn.com/nfl/story/_/id/11419303/washington-redskins-losing-money-keeping-name.

²¹⁹⁴ Cf. “Native American mascot laws and regulations,” *Wikipedia*, last modified June 28, 2020, accessed July 5, 2020, https://en.wikipedia.org/wiki/Native_American_mascot_laws_and_regulations.

²¹⁹⁵ Cf. Nick Allen, “Maine becomes first US state to ban Native American mascots for sports teams,” *Telegraph [UK]*, June 4, 2019, accessed June 28, 2020, <https://www.telegraph.co.uk/news/2019/06/04/maine-becomes-first-us-state-ban-native-american-mascots-sports/>.

²¹⁹⁶ Henry DeVries, “Why Maine Banning Indian Mascots Is A Marketing Wake Up Call,” *Forbes*, June 1, 2019, accessed June 28, 2020, <https://www.forbes.com/sites/henrydevries/2019/06/01/why-maine-banning-indian-mascots-is-a-marketing-wake-up-call/#13fc0a1126d1>.

²¹⁹⁷ Anne Blanchard, member of the Natick School Board, quoted in Hayley Munguia, “The 2,128 Native American Mascots People Aren’t Talking About,” *FiveThirtyEight*, September 5, 2014, accessed July 5, 2020, <https://fivethirtyeight.com/features/the-2128-native-american-mascots-people-arent-talking-about/>.

cent of 2,129 Native-inspired team names collected in the database *MascotDB* belonged to high schools, and 8.2 percent of all active high schools in the database used Native-inspired team names,²¹⁹⁸ regulations ending these traditions had a potentially all-changing influence on the mascot landscape across the U.S.

Marketing expert Henry DeVries asked, “From a marketing standpoint, why would an organization want a symbol that many Americans deem offensive?” Pointing to marketing mascots like Frito Bandito that “had to go,” DeVries argued that a “brand needs to stand for something” and “organizations that are keeping these mascots are on the wrong side of history.”²¹⁹⁹ Due to changing social norms, marketing professors Michael Lewis and Manish Tripathi from Emory University revealed, “Native American mascots are becoming less valuable brand assets over time.” The trend of growing opposition to mascots, which opinion polls indicated, ultimately implicated that “keeping a Native American mascot is reducing financial performance and harming team brand equity.”²²⁰⁰

Considering new research refuting economic arguments, Keating revised his original conclusion from 2013. Rather than framing a name change as an ethical decision that would not result in financial loss, Keating and a range of marketing experts a few years later started framing the mascot issue in economic terms and the refusal to change as a threat to brand value. Not only was Snyder “actively hurting his team by clinging to its offensive moniker”²²⁰¹ as society increasingly perceived the team name as offensive. Additionally, the team lost “opportunity cost, the revenue Snyder is forgoing by refusing to change,”²²⁰² whereas other teams like the University of North Dakota’s Fighting Hawks, formerly the Fighting Sioux, used the change as a branding opportunity that marketing experts commended.²²⁰³

Adaption

Protesters generally welcomed negotiations about the adaption of marketing campaigns, but often marketers were unwilling to make meaningful concessions. Following protests in 1995, Snapple considered “changing that label, to make it less offensive to the people who are offended by it.” Still, spokeswoman Lisa Carlson noted there was “a delicate balance in trying to keep the personality of the product the way it has been, and the way our consumers expect it to be.”²²⁰⁴ Since Indigeneity helped define a product’s personality, suggested changes sought to keep this connection while protesters aimed to eliminate it, as the Liz Claiborne case (1998-2001) demonstrates. Liz Claiborne, which maintained “CRaZY HORSE” as a registered trademark to sell clothing lines, engaged in dialogues with Claiborne shareholders and

²¹⁹⁸ In the database MascotDB, Terry Borning documented over 50,000 mascots nationwide since 2006.

Cf. Terry Borning, MascotDB, accessed August 3, 2021, <https://www.mascotdb.com/lists/native-american-related-mascots>.

By the time when Munguia researched the MascotDB, it documented 42,624 mascots. Cf. Munguia, “The 2,128 Native American Mascots People Aren’t Talking About.”

²¹⁹⁹ DeVries, “Why Maine Banning Indian Mascots Is A Marketing Wake Up Call.”

²²⁰⁰ Mike Lewis and Manish Tripathi, “The Financial Impact of Mascots on Sports Brands,” *Emory Scholar Blogs*, December 19, 2013, accessed June 28, 2020, https://web.archive.org/web/20141020044121/https://scholarblogs.emory.edu/esma/2013/12/19/the-financial-impact-of-mascots-on-sports-brands/?_ga=1.256951951.500422532.1397069844b.

²²⁰¹ Keating, “Washington has everything to lose.”

²²⁰² Ibid.

²²⁰³ Cf. DeVries, “Why Maine Banning Indian Mascots Is A Marketing Wake Up Call.”

²²⁰⁴ Lisa Carlson, spokeswoman for Quaker Oats Company, quoted in Millard, “The snafu over Snapple,” A1.

representatives from the Crazy Horse Estate, among others. Negotiations failed because the “Claiborne Management has offered only cosmetic changes, such as providing a horse as part of the logo, pluralizing horse to horses, or putting crazy horse in lower case letters.” Stakeholders expected Claiborne to “go beyond mere cosmetic changes that do nothing to break the clear association with the Lakota Sioux Leader.”²²⁰⁵

Potential limitations for renewal and change are resistance to learning based upon the company culture and mindlessness of “individuals or organizations responding in routine, habitual ways to situations and acting from a single perspective,” among others.²²⁰⁶ Although the company and stakeholders agreed it was an ethical issue, Father Gordon Judd alleged a double standard was operating because nobody would argue that lower-casing Gandhi or pluralizing Martin Luther King Jr. would erase the problem.²²⁰⁷ Organizations counterbalanced considerations of product identity and financial risk in cases of rebranding by the risk of ethical misconduct. As long as stakeholders did not consider ethical issues severe enough to render such a practice financially risky, marketers tended not to change their marketing.

Collaboration

A future-oriented collaboration is an effective strategy for two reasons. First, as a communication strategy, it “mobilize[s] the support of stakeholders and give[s] these groups a vision to follow in order to overcome the crisis.”²²⁰⁸ Second, while a defensive posture offers survival as the only benefit, a “combined emphasis on the threat and opportunity of crises foster the simultaneous benefits of survival and growth.” More precisely, companies could use a crisis to develop or improve their public profile. In the past, some organizations “have responded to crises in such a socially responsible manner that they have created an opportunity for renewing their public image.”²²⁰⁹ Paul Frank Industries, for instance, deployed an ideal crisis management strategy and turned protests into productive cooperation that benefited all parties. As a side effect, the company earned favorable publicity from activists and eased news media which ranged from neutral to supportive stances.

Within 24 hours of the first image post on *Facebook*, Paul Frank Industries removed the pictures of their Fashion’s Night Out Party 2012 after facing accusations of racism. Fitting to the party’s powwow-theme, “Glow-in-the-dark war-painted employees in feather headbands and bow and arrows invited guests to be photographed on a mini-runway holding prop tomahawks.”²²¹⁰ The party’s logo was Julius the Monkey, wearing war paint and a headdress, while similar designs appeared on a series of T-shirts.

While companies usually checked off crises with a standardized apology, Paul Frank “reached out to Native Appropriations and Beyond Buckskin to move forward and create a

²²⁰⁵ Judd, “A Public Letter to Liz Claiborne & JC Penney Company,” reposted in Schmidt, “Stereotype of the Month Entry (12/9/00).”

²²⁰⁶ Ulmer, Sellnow, and Seeger, “Post-Crisis Communication and Renewal,” 318.

²²⁰⁷ Cf. Judd, “A Public Letter to Liz Claiborne & JC Penney Company,” reposted in Schmidt, “Stereotype of the Month Entry (12/9/00).”

²²⁰⁸ Ulmer, Sellnow, and Seeger, “Post-Crisis Communication and Renewal,” 308.

²²⁰⁹ *Ibid.*, 319.

²²¹⁰ Description of the party from an article about which a Google alert notified Metcalfe, quoted in Metcalfe, “Paul Frank’s Racist Powwow.”

positive outcome from this terrible situation.”²²¹¹ Adrienne Keene, who held talks with Elie Dekel, President of Paul Frank Industries’ parent company Saban Brands, commented that “The phone call went so much better than I could have even imagined” because he was “truly apologetic.” Elie “took full responsibility for the event, and said he wanted to make sure that this was something that never happened again, and wanted to learn more so he could educate his staff and colleagues.”²²¹² As a “direct result of our own awakening to this issue from our Paul Frank Fashion’s Night Out event,” Dekel said, the apparel company took the collaboration as “an opportunity . . . to help raise awareness about cultural misappropriations.”²²¹³

The crisis turned into a collaboration involving four Indigenous designers from different tribes and regions: Louie Gong (Nooksack), Candace Halcro (Plains Cree / Metis), Dustin Martin (Navajo), and Autumn Dawn Gomez (Comanche / Taos). The small collection of clothing and accessories, a tote bag, hand-beaded sunglasses, graphic T-shirts, and Hama bead jewelry, was meant to represent an “expression of the Native American culture and a way for the artists to integrate their perspective and tribal identity into fashion.”²²¹⁴ In partnership with the IAIA’s Museum of Contemporary Native Arts (MoCNA), the collection was presented in Santa Fe, New Mexico, during the Indian Market Week in August 2013 and later sold at the MoCNA store.

Looking back at Paul Frank’s reaction and the crisis outcome, Keene appraised the result as a “history-making” success for both sides that was “beyond a best case scenario.”²²¹⁵ People involved in the collaboration hoped it would “serve as a template for other manufacturers”²²¹⁶ and “demonstrate more appropriate ways to engage and celebrate the Native American communities.”²²¹⁷ As Metcalfe concluded, besides “educating about the (mis)appropriation of Native American cultures,” it has become a further goal “to promote collaborations between companies and Native American communities.”²²¹⁸

²²¹¹ Metcalfe, “Paul Frank’s Racist Powwow.”

²²¹² Adrienne Keene, quoted in “Paul Frank Industries Will Take Major Steps to Reconcile With Native Americans,” *Indian Country Today Media Network*, September 14, 2012, accessed July 28, 2016, <http://indiancountrytodaymedianetwork.com/2012/09/14/paul-frank-industries-will-take-major-steps-reconcile-native-americans-134202>.

²²¹³ Elie Dekel, President, Saban Brands, quoted in “Paul Frank To Unveil Fashion Collaboration with Native American Designers during Santa Fe Indian Market Week,” *PR Newswire*, August 12, 2013, accessed July 28, 2016, <http://www.prnewswire.com/news-releases/paul-frank-to-unveil-fashion-collaboration-with-native-american-designers-during-santa-fe-indian-market-week-219247061.html>.

²²¹⁴ “Paul Frank Announces First-Ever Fashion Collaboration with Native American Designers,” *PR Newswire*, June 18, 2013, accessed June 1, 2020, <https://www.prnewswire.com/news-releases/paul-frank-announces-first-ever-fashion-collaboration-with-native-american-designers-211954831.html>.

²²¹⁵ Adrienne Keene, quoted in “Paul Frank Industries Will Take Major Steps to Reconcile.”

²²¹⁶ Susan M. Bryan, “Marketing misstep leads to collaboration between Paul Frank and 4 Native American designers,” *The Huffington Post* [CA], August 16, 2013, accessed July 28, 2016, http://www.huffingtonpost.ca/2013/08/16/marketing-misstep-leads-t_n_3769754.html.

²²¹⁷ Elie Dekel, President, Saban Brands, quoted in “Paul Frank To Unveil Fashion Collaboration with Native American Designers.”

²²¹⁸ Metcalfe, “Paul Frank’s Racist Powwow.”

Summary of Protest Strategies and Reactions

Protesters established framing strategies such as exposing paradoxes through Indian humor, counting coup through reappropriation, de(con)struction, juxtaposition, and parallelism to raise awareness and educate stakeholders about the misrepresentation and appropriation of Native peoples and cultures in advertising. The public was the primary addressee of protest actions in cases of misrepresentation and appropriation, whereas the government was the primary addressee in fraud cases. While protesters first raised their criticism in the law and non-public arenas in the 1930s, they started using media as a weapon in the mid-1960s. With few exceptions, confrontational tactics became more prevalent during the early 1990s but always remained exceptional. At the same time, since the late 1980s, criticism in the educational sector has grown significantly as a reaction to the Quincentennial and the growing popularity of Indigeneity. For achieving immediate success, addressing the marketer directly was the most promising tactic for cases of fraud and appropriation. In contrast, the combination of non-public protest directed at the marketer and media protest was most promising in cases of misrepresentation.

The framing strategies represent a combination of socially shaped ways of framing fraud or misrepresentation and what protesters considered the most promising argument or approach to effect change. The frame analysis shows that protesters primarily used the legal frame to counter fraud issues, the ethics frame in cases of appropriation, and the reality frame against the misrepresentation of Indigeneity. In fraud cases, protesters applied legal regulations of marketing practices but also challenged its limitations through definitions and enforcement. By focusing on the ethics frame, protesters acknowledged that moral appeals were the best way to challenge appropriation in the absence of legal regulations. Simultaneously, they raised arguments of authorization and appropriation as part of the legal and economic frames to call for the legal protection of Indigenous cultural goods.

Complainants countered misrepresentation with the reality frame, often combined with the ethics frame, to inform marketers that their practices were offensive. They explained why representations were inaccurate by stating historical and contemporary facts and real-life consequences through socialization that studies and reports supported. Conversely, as part of the ethics frame, marketers mostly raised rather perceptual arguments such as likability, sensitivity, honoring, humor, or the intent behind an ad which stakeholders could not refute. The way many marketers defended their practices and discussed Indigenous marketing representations ultimately reduced the “question to one of feelings and opinions,”²²¹⁹ as Richard King noted.

In cases of fraud, the most practical approach for protesters without financial basis was through direct contact with advertisers and/or a complaint to the IACB because lawsuits were costly and time-consuming. If rightfully confronted with fraud charges, protesters expected marketers to remove or correct all directly or indirectly misleading marketing statements. Although sellers were often unaware of regulations for Indian arts and crafts, particularly if they had not specialized in this market, the IACB, artists, and consumers principally expect sellers of Native American products to know the relevant regulations. The Indian Arts and Crafts

²²¹⁹ King, introduction to *The Native American Mascot Controversy*, 1.

Board is available for information and assists consumers and sellers with identifying authentic Indian-produced items and finding trustworthy dealers and suppliers.

If a protester addressed marketing misrepresentation or appropriation, the first step was to contact the supposed offender and explain the matter. Getting in touch on a written basis was useful because letters or emails could be forwarded to other stakeholders and served as proof for the conversation. Since many people did not know of or understand the effects of colonialism, critics not only framed the issue as a matter of colonialism but added frames like socialization and reality along with racism and sexism, all of which helped to explain the effects of offensive marketing practices.

After clarifying the issue at stake, protesters frequently expressed their expectations and sometimes included a clear call to action, like dropping an advertisement, changing elements of a campaign, or getting permission to use cultural elements. If demanding financial remedies, naming them specifically and explaining why this remedy was appropriate helped stakeholders to understand the protest issue. For instance, describing how this remedy was meaningful additionally provided credibility to the issue and the protester's sincerity in the case of a donation to some institution. Optionally, protesters sought allies such as organizations (human rights, religious, Indian interest, professional), governmental divisions, experts, trade partners, or sponsors who supported protests and successfully intervened as mediators, like the Interfaith Center on Corporate Responsibility (ICCR).

Critics involved the media sometimes from the beginning and sometimes in a second step if the target of a protest ignored the criticism or reacted in a manner that failed to satisfy the protesters. Journalists and media, in general, tended to be sympathetic to Indigenous causes, and activists often knew in advance if they were not. On the local level, demonstrations and walks had the power to draw media attention and lend protests publicity and, thus, significance. Although some marketers seemed to be out for publicity, protesters still criticized them on social media to expose their provocative marketing strategy. At the same time, this criticism gave marketers a larger audience.

Calls for boycott have helped in some instances to put marketers under pressure if the protester was very obviously in an ethically or morally advantageous position and appeared particularly vulnerable (see Nestlé-Beich, 1992); or if the protester had a strong network of supporters which stakeholders considered powerful and financially threatening (see Treaty Beer, 1988-1994). Boycott threats by financially powerful Indigenous advertisers like casino operators against media companies have been successful. In general, urging sellers not to offer a product for sale seemed more promising than persuading consumers not to buy certain products, at least for short-term effects. In the long run, consumer education helped recruit Native and non-Native stakeholders to speak out against marketing offenses and avoid certain products. By and large, the success of a boycott threat depended on the degree of economic threat or moral inferiority.

If a marketer clung tightly to their marketing strategy, only economic pressure through sponsors or other stakeholders could effect change. Even if publishers, sellers, or otherwise related entrepreneurs rejected any interference as censorship or violation of free speech, a significant financial threat convinced them to throw this ideal overboard and pass on the pressure to the marketer (see Washington Football Team). Even though some publishers or sellers invoked freedom of speech, at least as many reacted sympathetically and supported the protest.

In the case of offensive trademarks, complaints with the U.S. Patent and Trademark Office (PTO) have led to several changes and trademark rejections. Still, given the preference for the free speech clause in recent years, whether this strategy will continue to prevail is questionable. Other legal remedies have not yet generally proven effective in the fight against cases of misrepresentation or appropriation.

Since Indigenous tribal patterns, symbols, and designs have sold well for hundreds of years and continue to do so, the soundest way for non-Native and Native companies to make use of a tribe's or another tribe's cultural expressions was obtaining the tribe's or individual's permission for use and, if applicable, pay fees as required by copyright and trademark laws. Even though the law did not require such a procedure for 'public goods,' an advertiser might see the advantage of avoiding potential protests and promoting their ethically considerate marketing practices as a corporate social responsibility strategy for PR purposes.

Of course, opinions on whether a representation was offensive varied. However, if a marketing representation obviously violated a cultural moral code, charges of misrepresentation required advertisers to drop or change marketing content like text references or imagery. Hiring an Indigenous actor, advertising agency, or tribal PR division not only lent marketing stories more authenticity. It also potentially functioned as a counseling entity and helped to avoid offenses even though they cannot speak for all Indigenous peoples.

The study also investigates the 119 documented crisis communication tactics, the 264 documented reactions developed by targeted companies,²²²⁰ and the reception of their PR strategies. The frame analysis of 119 company crisis responses shows that in most cases, they used a range of frames to deny (81.5 percent) or diminish (73.9 percent) a crisis. Besides the ethics frame (66.4 percent), advertisers used the responsibility frame (23.5 percent), the second largest response frame, as scapegoating tactic for a denial strategy, most typically in cases of misrepresentation to hold others accountable. While most of the 264 marketers either ignored protests or disputed the reasons (30.7 percent), 13.7 percent of organizations responded favorably to protests. Very few (four organizations) considered cooperation a productive rebuilding strategy, although activists praised it as an ideal response and brought positive publicity effects. In addition to earnest apologies as part of a usually commendable communications strategy, the frequent accusations of "non-apologies" suggest that protests were a calculated risk or even the goal of promotional practices for some marketers to generate publicity. When confronted with charges of racism, sexism, or appropriation, the company's reaction ultimately determined whether a protest damaged its image or could be turned into an opportunity for positive image building. In this study, the Paul Frank Industries' crisis management strategy stood out as an example praised by protesters and the media.

If taken seriously, protest against fraud, appropriation, or misrepresentation could require the marketer to select a team or individual to handle the (para) crisis or consult an expert who is familiar with such issues if the organization had no experience with this type of crisis, like a lawyer in cases of fraud. Contacting protesters or critics and, in case of a public protest, informing the public that the organization is working on the crisis and having talks with complainants is the first step of a crisis management strategy, as Coombs recommends. As the

²²²⁰ The number of reactions and results is smaller than the number of protests for three reasons. First, general protests did not address any particular marketer. Second, marketers may not have been aware of the criticism. Third, reactions were not reported or archived. In these cases, the reaction or result is unknown.

analysis of response frames shows, a company's willingness to participate in quality dialogues had a crucial impact on protesters' perception of the crisis response. Critics praised company representatives for listening seriously and beginning negotiations on how to proceed and make amends. Depending on the degree of offensiveness, protesters named donations that matched the reason for the protest as an appropriate rebuilding strategy. For instance, stakeholders viewed the appropriate response to sexism charges to be a donation to a Native women's organization or the appropriate response to racism charges to be a donation to anti-racist educational programs. Critics suggested sensitivity training for employees, particularly those in leadership positions, to correct racial beliefs that contributed to biased behavior in an organization. As opposed to these rather short-term redemption strategies, stakeholders valued the long-term effect of sponsoring programs or institutions that benefit Native Americans, unless companies used such methods to legitimize inappropriate marketing practices.

Once a marketer and the critic reached a consensus, the study demonstrates that taking actions should follow to achieve a satisfactory outcome. After checking the costs for adapting versus dropping marketing practices, an organization could decide on the best option. While most marketers dropped offensive marketing practices in cases of misrepresentation, adapting advertising in cooperation with Indigenous tribal, organizational, or professional representatives was also valuable. In cases of appropriation, the best option was often getting permission to use the elements or drop them, whereas adaptations have spurred more protest because these sought to maintain the connection with Indigeneity or specific peoples. Critics have highly appreciated future-oriented strategies such as collaboration that go beyond crisis management and contribute to positive image building as media reported on Native-non-Native business cooperations. Whatever approach an organization chose, the reaction should be congruent with the negotiations. As Coombs recommends, informing the public about the result and issuing a thoughtful apology should end a crisis, followed by the organization's evaluation of stakeholders' reactions and the effect of their crisis management strategy. In this respect, Paul Frank Industries was the big winner of this study since protesters and the media repeatedly cited its reaction and collaboration with great enthusiasm, hoping other marketers would follow their lead.

Conclusion: Effects of Resistance

As Jon Proudstar noted in 2003, when he saw the new G.I. Joe Dart doll that looked just like him, the existence of such a toy means that “a step forward has happened. That all the fighting, struggling and surviving are slowly taking their effect. That our new warriors who battle in court and fight with words in newspapers like this are having profound effect that will not be recognized for years to come.”²²²¹ This study reconstructed these protests and investigated the immediate reactions and outcomes of activism challenging marketing practices.

Protest is “particularly successful when it takes different forms,”²²²² protest researcher Nina-Kathrin Wienkoop noted. In this study, the broad definition of protest includes demonstrations, public assemblies at meaningful places, walks, special issue or press conferences, social media or blog posts, online petitions, calls to boycott directed at consumers and sellers, complaint letters or calls, as well as personal confrontations in stores, but also legal actions such as lawsuits, trademark challenges, official complaints, and cease and desist orders, as well as artistic forms of protest such as paintings, collages, installations, and exhibits of artwork or marketing collections. The wide range of protest actions directed at manufacturers, vendors, advertising publishers, state and federal governments, consumers, and the public challenged marketing practices and raised awareness in many ways and on many levels.

While the analysis showed that 28.1 percent of all cases ended with desirable short-term results and 17.2 percent with undesirable results, long-term effects are hard to quantify. Since the criteria for measuring success are contested, it is helpful to include various criteria. First, “Fighting Generikee” analyzed advertisers’ reactions as immediate results of activism on a qualitative and quantitative level. Second, for discussing a potential impact on U.S. society’s attitude toward Indian-inspired marketing practices, the study draws upon a range of criteria, including protester acceptance, transnational expansion, media coverage, taking up the issues in politics, and the alteration of cultural codes. The latter would mean that advertising practices have changed, which cannot be attributed to marketing protest only but to a set of factors.

While civilian protesters often sought to change only particular marketing practices they disliked, activists aimed to raise awareness of America’s colonial legacy inherent in these ads. Since this commercial discourse mirrored and reinforced societal values, ideologies, and racial hierarchies, activists sought to challenge the social order by challenging marketing practices. Overall, critics wanted to change how marketing used and represented Indigenous names, symbols, and peoples. Native Americans should be represented in a more accurate and ethically acceptable way; Native cultural elements should not be used without permission and not in a culturally inappropriate way according to Indigenous norms; and marketers claiming Indian heritage should have not only some blood quantum but connections with the Indigenous community and understanding for Indigenous issues which should translate into appropriate marketing practices. Protesters aimed to induce immediate changes in marketing practices but also hoped for long-term change so that marketers would develop advertising practices on their own that were consistent with Indigenous norms. They understood

²²²¹ Proudstar, “G.I. Joe Introduces the Rez Cowboy, ‘Dart’.”

²²²² Nina-Kathrin Wienkoop, in Ebert, “Interview mit Protestforscherin Nina-Kathrin Wienkoop.” Transl. by author.

Indigenous norms to be part of a set of general ethical norms that applied to all of U.S. society because of multiculturalism and basic respect for Indigenous peoples and human rights. Notably, critics never wanted to prevent companies from using Indian themes in advertising in general. Quite contrary, “We are indeed appreciative of industry using Indian subjects to advertise their various products because in many instances it offers an enhancement to both industry and to the Indian people of the United States,”²²²³ as NCAI Executive Director Bruce Wilkie explained in 1970.

Despite the ubiquity of Indian-style brands and their sometimes-long history dating back to the 19th century, there has always been some change that was not induced by criticism. United Bank & Trust, headquartered in Ann Arbor, Michigan, was founded in 1893 in Tecumseh, Michigan, as Tecumseh Bank. The town was named after Tecumseh, a Shawnee chief who resisted western expansion, and the bank adopted his name and stylized portrait as its logo. After the bank moved in 2010 to Ann Arbor with a different target group, the board of directors and top managers decided on a rebrand because the move “had reduced the significance of the iconic Indian on the logo.”²²²⁴ The result was “confusion among customers concerning what we stood for”²²²⁵ since the bank did not have a clear brand identity in Ann Arbor. As part of the rebranding strategy, the bank published a ‘brand book’ explaining the brand position and image that served not only as a reminder for employees but “turned into a powerful recruitment tool – something we did not anticipate when we did the rebranding.”²²²⁶

Just as brands came into being and disappeared, they sometimes came back again. Jeep Liberty replaced Jeep Cherokee in 2002, but due to the Grand Cherokee’s success, the midsize SUV was revived again in 2013. In “a time of heightened sensitivity over stereotypes, [when] ethnic, racial and gender labeling has been largely erased from sports teams, products and services,” backward-oriented cases like Jeep Cherokee existed. As “coming up with new names is very expensive these days,”²²²⁷ and due to its rich associations and people’s fondness for the Cherokee, giving the Jeep its old tribal name was an acceptable risk. Although names can be polarizing and cause controversy, Glenn Collins noted in the *International Herald Tribune* that “opposition to brand names has become something of a national pastime.”²²²⁸ But if “you have a name that offends nobody, then you end up with a forgettable brand”²²²⁹ that customers will not memorize, a brand consultant advised.

In 2021, Cherokee Nation Principal Chief Chuck Hoskin Jr. disapproved of the company’s use of the tribal name because it was “not honoring the Cherokee people” and “we’ve had this name a bit longer than the Jeep company has. We’ve had it since before recorded

²²²³ Wilkie to the President of the Elan Corp. International, May 19, 1970; Media Surveillance; Box 255; NCAI Records; NMAI Archive Center.

²²²⁴ Walt Abro, “Retiring the Indian Chief Logo,” *ABA Bank Marketing and Sales*, March 2014, 26-27.

²²²⁵ Jamie Guise, Executive Vice President, United Bank & Trust, quoted in Abro, “Retiring the Indian Chief Logo,” 26-27.

²²²⁶ Jamie Guise, Executive Vice President, United Bank & Trust, quoted in Abro, “Retiring the Indian Chief Logo,” 29.

²²²⁷ Mr. Adamson, Brand Consultant, quoted in Glenn Collins, “A driving force in stereotypes,” *International Herald Tribune*, June 22, 2013, ProQuest 1370192639.

²²²⁸ Collins, “A driving force in stereotypes.”

²²²⁹ Mr. Adamson, Brand Consultant, quoted in Collins, “A driving force in stereotypes.”

history.”²²³⁰ As Hoskin explained, the best way to honor the Cherokee people was to learn about its culture and have a conversation on cultural appropriateness, whereas a “deal with Jeep to provide royalties or donations from the sale of the Cherokee vehicles would be ‘problematic’.”²²³¹ Jeep Cherokee and Grand Cherokee SUVs were “among the brand’s bestsellers in the U.S., accounting for 43% of Jeep’s sales in its largest market.”²²³² Carlos Tavares, CEO of Stellantis, Jeep’s parent company, did not see “a real problem”²²³³ but, in “the wake of a broad reckoning over racial and social injustice in the U.S. that was sparked by the police killing of George Floyd,”²²³⁴ presented the company as open to change. While law professionals publicly supported changing the brand name,²²³⁵ talks between the company and Cherokee Nation leadership did not result in any change.²²³⁶

According to Mary Joyce, founder of the DigiActive and the Meta-Activism Project, it can be considered an overall success if the campaign’s original goal has been achieved. Yet, in online activism, protesters may have reached the goal of one or multiple online components, like awareness building or mobilizing people, but not the campaign’s overall goal.²²³⁷ This study focused on the **immediate protest results measured against protest goals** to measure the success of protests. The definition of success is a matter of perspective and may also change retrospectively. From the protesters’ point of view at that time, protests were in general successful if the organization met the demands and dropped or adapted its advertising, if protesters approved of the practice, achieved any substitute success, or if protesters obtained an injunction against an advertising practice.

Although organizations reacted in a desirable way in only 13.7 percent of all cases, 28.1 percent resulted in short-term successes from the protesters’ perspective. According to the minimum rates, in 22.4 percent of the cases, advertisers (111 cases) dropped, and in 2.8 percent (14 cases), they adapted their marketing practice due to criticism. As a neutral result, six marketers did not take any measures but let a campaign expire (1.2 percent). A result was negative if an injunction or ban was overturned (three cases, 0.6 percent) or if an organization did not make any changes to its marketing practices, as was the result in 82 cases (16.6 percent). Success and defeat rates were similar for cases of fraud, misrepresentation, and the combination of misrepresentation and appropriation. For cases of appropriation, the success rate was much lower (12.7 percent vs. 27.3 percent for the combination of misrepresentation

²²³⁰ Chuck Hoskin, Jr., Principal Chief, Cherokee Nation, quoted in Michael Wayland, “Chief of Cherokee Nation wants Jeep to stop using tribe’s name on SUVs,” *CNBC*, February 22, 2021, accessed February 22, 2021, <https://cnbc.com/2021/02/22/chief-of-chokeee-nation-wants-jeep-to-stop-using-tribes-name-on-suvs.html>.

²²³¹ Wayland, “Chief of Cherokee Nation wants Jeep to stop using tribe’s name on SUVs.”

²²³² Nick Kostov and Nora Naughton, “Jeep-Owner Stellantis Is Open to Dropping Cherokee Name, CEO Says,” *The Wall Street Journal*, March 3, 2021, accessed March 7, 2021, <https://www.wsj.com/articles/jeep-owner-stellantis-is-open-to-dropping-chokeee-name-ceo-says-11614799301>.

²²³³ Carlos Tavares, Chief Executive Officer, Stellantis N.V., quoted in Kostov and Naughton, “Jeep-Owner Stellantis Is Open to Dropping Cherokee Name, CEO Says.”

²²³⁴ Kostov and Naughton, “Jeep-Owner Stellantis Is Open to Dropping Cherokee Name, CEO Says.”

²²³⁵ Cf. Angela R. Riley, Sonia K. Katyal, and Rachel Lim, “Opinion: The Jeep Cherokee is not a tribute to Indians. Change the name,” *The Washington Post*, March 7, 2021, accessed July 16, 2021, <https://www.washingtonpost.com/opinions/2021/03/07/jeep-chokeee-name-change-native-americans/>.

²²³⁶ Cf. Danyell Marshall, “Jeep Declines Name Change After Talks With Cherokee Nation,” *Motor Biscuit*, March 14, 2021, accessed July 16, 2021, <https://www.motorbiscuit.com/jeep-declines-name-change-after-talks-with-chokeee-nation/>.

²²³⁷ Cf. Mary Joyce, founder of the DigiActive and Meta-Activism Project, quoted in Anna Rees, “Digital and Online Activism,” *Reset*, last modified May 2020, accessed January 9, 2021, <https://en.reset.org/knowledge/digital-and-online-activism>.

and appropriation vs. 32.1 percent for fraud), and the defeat rate much higher (36.5 percent vs. 13.8 percent for fraud vs. 15.9 percent for the combination of misrepresentation and appropriation).

Figure 27 visualizing the frequency of protests by decade and the frequency of protest successes demonstrates that the number of protests was constantly rising for all protest causes since the 1980s. The number of successes stagnated in appropriation cases, whereas the number of successes rose according to the number of protests for fraud and misrepresentation. Protest against misrepresentation and appropriation in combination was not successful until the 2010s when objections against misrepresentation and misappropriation of Native American peoples and cultures became widely known. This data hints at the continuous resistance to change in cases of appropriation because prospects for profits still outweighed possible consequences, although the Black Lives Matter movement might create a shift in this attitude.

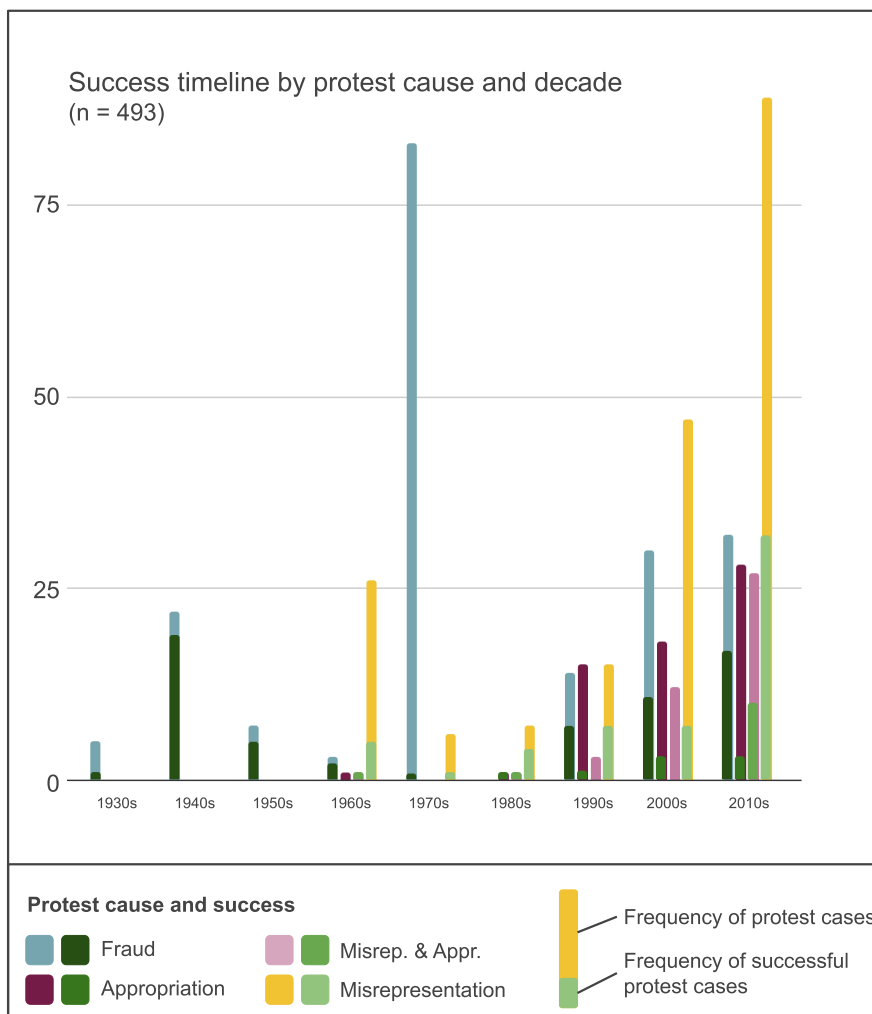


Figure 27: Timeline of success rates by protest cause, 1930s-2010s.²²³⁸

²²³⁸ Protest cases were documented by the year of the first action, end years were not recorded. If longer lasting protests reached into the following decade, like the CHML case, the result is documented for the decade when the protest began. Ideally, end years should be documented and used for analysis, although the number of cases extending beyond a decade is very limited.

In the context of the mascot controversy, activism and data on mascot changes support a general trend toward increasing sensitivity due to resistance. After growing protest since 1963, the University of Oklahoma was the first to discard its 30-year-old mascot named “Little Red” in April 1970.²²³⁹ Subsequently, hundreds of schools, semi-professional, and ultimately professional teams abandoned their Native American names and mascots. Since 1968, “with the establishment of an organizational campaign to end harmful stereotypes,” the NCAI “contributed to the development of a diverse and large coalition of institutions” including tribal governments and tribal members who made ending harmful mascots a “national priority.”²²⁴⁰ As a result of state policies and educational efforts, many schools throughout the U.S. dropped their ‘Indian’ names, mascots, and logos. The NCAI declared that “tribal advocates have succeeded in eliminating over two-thirds of derogatory Indian sports mascots and logos over the past 50 years. Today, there are fewer than 1,000 of these mascots left.”²²⁴¹

Since the 1970s, dropping Indigenous mascots and names had become a steady trend, but the number of changes increased particularly after the Washington Football Team gave up its logo and nickname in response to pressure from sponsors. As the movement against sports mascots “gained new allies – and earned victories that were long thought impossible – amid nationwide protests against racial injustice,”²²⁴² between August and December 2020 alone, 29 sports teams abandoned their Native mascots.²²⁴³

On an individual level, success can mean that a protester gained acceptance as a legitimate spokesperson or achieved the goals of single protest actions. **Acceptance** means the protester or group of protesters is “treated by its targets as a valid spokesperson for a legitimate set of interests.”²²⁴⁴ Letters from companies who sought advice from the NCAI after their awareness campaign indicate that marketers viewed this organization and others as valid spokespersons on the matter of representation in marketing. While the AAIA also gained acceptance from targets during the civil rights era, other Indigenous organizations questioned the AAIA’s “paternalistic” role as a spokesperson because this organization comprised mainly Non-Natives. In the era of social media protest, many supporters and other critics shared Adrienne Keene’s posts, protest targets conferred with her, and marketers taking a stance against cultural appropriation explicitly referred to Keene as a reason for their attitude.

Although different institutions and persons gained authority on issues of misrepresentation and cultural appropriation at different times, there was no primary spokesperson for these issues in this rather decentralized protest structure. Many diverse Indigenous groups and both Native and non-Native individuals have spoken out against marketing practices and were either ignored or addressed directly or via public media. The fact that marketers asked

²²³⁹ Cf. Collins, “Sports teams that retired Native American mascots, nicknames.”

²²⁴⁰ “Ending the Legacy of Racism in Sports & the Era of Harmful ‘Indian’ Sports Mascots,” National Congress of American Indians, October 2013, 6, accessed January 24, 2021, https://www.ncai.org/attachments/PolicyPaper_mijApMoUWDbjqFtjAYzQWlqLdrwZvsYfakBwTHpMATcOroYolpN_NCAI_Harmful_Mascots_Report_Ending_the_Legacy_of_Racism_10_2013.pdf.

²²⁴¹ “Anti-Defamation & Mascots,” National Congress of American Indians, accessed January 24, 2021, <https://www.ncai.org/policy-issues/community-and-culture/anti-defamation-mascots>.

²²⁴² David Waldstein, “For Opponents of Native American Nicknames, 2020 Has Brought Hope,” *The New York Times*, December 18, 2020, accessed January 24, 2021, <https://www.nytimes.com/2020/12/18/sports/nicknames-mascots-native-americans.html>.

²²⁴³ Cf. “NCAI ‘Ending ‘Indian’ Mascots’ Initiative,” National Congress of American Indians, accessed January 24, 2021, https://www.ncai.org/NCAI_School_Mascot_Tracking_Database_-_Overview_and_Numbers.pdf.

²²⁴⁴ William Gamson, “Measuring Movement Outcomes,” *Mobilizing Ideas*, January 1, 2014, accessed January 9, 2021, <https://mobilizingideas.wordpress.com/2014/01/01/measuring-movement-outcomes/>.

spokespersons for their opinion and advice on planned campaigns indicates the success of marketing protests beyond immediate results. However, this is not quantifiable and might vary depending on the popularity of Indigeneity and social awareness at the time.

Transnational expansion as another indicator of success is given to some degree as protesters of marketing practices created international networks via social media, strengthened their connections at rallies, demonstrations, and symposia, and allied for various Indigenous issues. Some protesters criticized marketing practices in remote markets,²²⁴⁵ and international marketers reportedly adapted their marketing practices. A range of cases also demonstrated that international marketers, successfully or not, have taken steps to ensure their advertising was not objectionable internationally. Some marketers responded to protests in advance by legitimizing their practices or explicitly abstaining from these practices. In her analysis of URBN's global marketing of Indigenous culture in fashion, Sarah Fowler argued that this form of 'playing Indian' through the consumption of supposedly Indigenous products had made the violation of Indigenous rights such as self-determination an international problem for all Indigenous peoples.²²⁴⁶ However, the study cannot establish whether these qualitative changes have occurred on a quantitatively significant level.

Protests may be seen as successful if the issue at stake gained high social priority.²²⁴⁷ In this context, broad **media coverage** is one indicator of success because the more journalists report on a protest, the more likely it is to get social attention and gain visibility.²²⁴⁸ The extensive and tendentiously friendly nature of mainstream news coverage of marketing protests indicates that issues of misrepresentation and appropriation have gained some priority in U.S. society. News media and business magazines like *Wall Street Journal* and *Ad Age* covered marketing criticism, thus giving significance to these protests. In their editorials, newspapers such as the *Minneapolis Star Tribune* or *Indian Country Today* have repeatedly taken a clear stance in support of marketing protests. In 2013, major media outlets like *Slate*, *Mother Jones*, the *New Republic*, and prominent sports reporters like *Sports Illustrated*'s Peter King and *USA Today* sports writer Christine Brennan announced they would stop using the name of the Washington Football Team. Previously, the *Oregonian* (Oregon), the *Portland Press Herald* (Maine), the *St. Cloud Times* (Minnesota), the *Kansas City Star* (Montana), and the *Lincoln Journal Star* (Nebraska) had agreed to stop using the term 'Redskins' when writing about sports teams.²²⁴⁹ Further research is necessary to show to what extent mainstream, Indigenous, and international media accepted and took up protest frames or modified the discourse, how this process changed over time, and which roles mainstream and ethnic press played as mediators and active agents in the public discourse of Native American misrepresentation and cultural appropriation in marketing.

The differing opinions among stakeholders on the appropriateness of marketing practices complicate the evaluation of protest legitimacy and success. For Tony Provost, a mem-

²²⁴⁵ For an exemplary analysis of Indian marketing representations in Spain see Luisa J. Hervás, "The Imagined Indian Imaged in Four Spanish Advertisements," in *Proceedings of the 20th International AEDEAN Conference* (Barcelona: Universitat de Barcelona, 1997), 551-555.

²²⁴⁶ Cf. Sarah Fowler, "The Commodification of the Native in the 21st Century," *Global Societies Journal* 1 (2013): 44-53.

²²⁴⁷ Cf. Philipp Gassert, in Landtag von Baden-Württemberg, "LIVE: WERTSACHEN."

²²⁴⁸ Cf. Nina-Kathrin Wienkoop, in Ebert, "Interview mit Protestforscherin Nina-Kathrin Wienkoop."

²²⁴⁹ Cf. "Ending the Legacy of Racism in Sports & the Era of Harmful 'Indian' Sports Mascots," National Congress of American Indians, 15.

ber of the Omaha Tribal Council, the Mutual of Omaha's logo represented a "painful reminder of how the Omaha Tribe has been left behind."²²⁵⁰ The same article cited John Blackhawk, chairman of the Winnebago Tribe of Nebraska, who did not object to the logo's use because "At Mutual, they don't have a caricature of an Indian with long black hair and a big nose. I think it's OK."²²⁵¹ News media regularly presented contradictory opinions, which may have served different purposes of demonstrating the complexity of discourses on marketing representations or weakening criticism. Further research is needed to understand how media selected representatives for stakeholders and presented participants, supporters, or opponents of protest to create a newsworthy story as part of the framing strategy. **Media standing**, which "is measured by who gets quoted in mainstream media," points to a protester's success because "journalists treat movement spokespersons as agents of some larger constituency whom they are representing."²²⁵² Since mainstream reporting plays a vital role in gaining publicity, legitimating protest, and producing reputational pressure, an analysis of media framing would give further insights into how news coverage possibly affected protest outcomes. From the constitutional perspective, a protest was successful if society recorded it as a **positive democratic experience**.²²⁵³ Analyzing news reports and social media discourses might help answer whether society viewed the protests and their results as a positive democratic experience.

A protest may count as successful if **protest frames - the demands - made it into policy** in any form through politicians,²²⁵⁴ which also points to its high social priority. The general willingness to enact legislation to support Native Americans, which often turned out devastating, was not new. Still, the enactment of specific laws and guidelines indicates the success of complaints and protest actions. The establishment and amendment of the Indian Arts and Crafts Act and its increasingly efficient criminal enforcement may be seen as a result of continuous protests directed at the government that highlighted the impact of the sale of counterfeit Indian products on the Native American arts and crafts market as well as artists and craftspeople, sellers, and consumers. As Sheffield noted, the industry section of the IACA "at all stages . . . reflects and was advanced largely by American Indian interests."²²⁵⁵ The increasing number of ethical guidelines established by the U.S. and state governments to protect Indigenous people's cultural identity, often as a direct result of complaints about misrepresentation and cultural appropriation, was also driven by Indian interests. The enactment of such regulations shows that policymakers have taken up protest frames and demands addressing self-determination and control over identity.

Beginning with the Minnesota State Board of Education in 1988, a vast range of state Boards of Education issued statements or resolutions calling for the retirement of school mascots.²²⁵⁶ Since then, thousands of schools have changed their names and mascots.²²⁵⁷ While the 1992 Congressional ban of the Crazy Horse Malt Liquor label, which law professor Robert Destro interpreted "as a politically correct opportunity to give a meaningless affirmation to

²²⁵⁰ Tony Provost, Omaha Tribal Council, paraphrased in Wegner, "Honor or insult?" 1D.

²²⁵¹ John Blackhawk, Chairman, Winnebago Tribe, quoted in Wegner, "Honor or insult?" 1D.

²²⁵² Gamson, "Measuring Movement Outcomes."

²²⁵³ Cf. Susanne Baer, in Landtag von Baden-Württemberg, "LIVE: WERTSACHEN."

²²⁵⁴ Cf. Nina-Kathrin Wienkoop, in Ebert, "Interview mit Protestforscherin Nina-Kathrin Wienkoop."

²²⁵⁵ Sheffield, *The Arbitrary Indian*, 6.

²²⁵⁶ See "American Indian Sports Team Mascots," American Indian Sports Team Mascots.

²²⁵⁷ See "NCAI 'Ending 'Indian' Mascots' Initiative," National Congress of American Indians.

the troubles of Native Americans,”²²⁵⁸ was overturned due to its unconstitutionality, more regulations aiming at marketers and consumers followed. In light of the sports mascot controversy, the Census Office ruled that its marketing materials could “feature only those teams that promote or enhance cultural sensitivity and multi-culturalism and will not feature teams (including semi-pro teams) that use American Indian or Alaska Native related names or images” to ensure cultural sensitivity in support of an accurate count and out of the “necessity for establishing a position.” Additionally, the Census Bureau did not allow sports players to promote the 2000 Census if the player wore a team uniform carrying “an icon or logo that American Indians and Alaska Natives find disparaging or offensive.”²²⁵⁹

In 2005, the APA called for the immediate retirement of all American Indian mascots, symbols, images, and personalities by schools, colleges, universities, athletic teams, and organizations. The organization’s position was “based on a growing body of social science literature that shows the harmful effects of racial stereotyping and inaccurate racial portrayals.”²²⁶⁰ In the same year, the NCAA “adopted a new policy to prohibit NCAA colleges and universities from displaying hostile and abusive racial/ethnic/national origin mascots, nicknames or imagery at any of the 88 NCAA championships.”²²⁶¹

In 2010, the Michigan Department of Civil Rights published a December holiday shopping reminder asking retailers and consumers to boycott products that displayed offensive jokes and “My Indian name is...” T-shirts and similar items. In 2019, Maine, as the first U.S. state, banned Native American mascots for school and university sports teams, prohibiting the “use of a name, symbol or image related to a Native American tribe, person, custom or tradition for use as a mascot, logo or team name.”²²⁶² Instead of deciding by popular vote, government officials increasingly accepted marketing practices as discriminatory acts and reacted based on their “nondiscrimination policy, as well as minority and majority interests.”²²⁶³

In 2021, Debra Haaland, Secretary of the Interior and enrolled member of the Laguna Pueblo, declared ‘squaw’ a derogatory and hateful term that carries “a long history of brutality, misogyny, and dehumanization.” Haaland ordered the replacement of the term in the names of 643 federal land units to “ensure that these lands are accessible and welcoming to everyone.”²²⁶⁴ Some marketers referred to organizations, including the government, that used

²²⁵⁸ Destro, Oral Statement, in U.S. Congress, House of Representatives, Committee, *Impact of Alcohol Labeling and Marketing on Native American Health and Culture*, 72.

²²⁵⁹ Susan M. Miskura, Chief, Decennial Management Division, “Census 2000 Informational Memorandum No. 37,” December 1999, accessed October 9, 2016, <http://aistm.org/2000census.htm>.

²²⁶⁰ “Summary of the APA Resolution Recommending Retirement of American Indian Mascots,” American Psychological Association, accessed July 26, 2021, <https://www.apa.org/pi/oema/resources/indian-mascots>.

²²⁶¹ “NCAA Executive Committee Issues Guidelines for Use of Native American Mascots at Championship Events,” National Collegiate Athletic Association, August 5, 2005, accessed July 26, 2021, [http://fs.ncaa.org/Docs/PressArchive/2005/Announcements/NCAA%2BExecutive%2BCommittee%2BIssues%2BGuide-](http://fs.ncaa.org/Docs/PressArchive/2005/Announcements/NCAA%2BExecutive%2BCommittee%2BIssues%2BGuide-lines%2Bfor%2BUse%2Bof%2BNative%2BAmerican%2BMascots%2Bat%2BChampionship%2BEvents.html)

[lines%2Bfor%2BUse%2Bof%2BNative%2BAmerican%2BMascots%2Bat%2BChampionship%2BEvents.html](http://fs.ncaa.org/Docs/PressArchive/2005/Announcements/NCAA%2BExecutive%2BCommittee%2BIssues%2BGuide-lines%2Bfor%2BUse%2Bof%2BNative%2BAmerican%2BMascots%2Bat%2BChampionship%2BEvents.html).

²²⁶² DeVries, “Why Maine Banning Indian Mascots Is A Marketing Wake Up Call.”

²²⁶³ Anne Blanchard, member of the Natick School Board, quoted in Munguia, “The 2,128 Native American Mascots People Aren’t Talking About.”

²²⁶⁴ Deb Haaland, “How we expunged a racist, sexist slur from hundreds of public lands,” *The Washington Post*, September 28, 2022, accessed November 13, 2022, <https://www.washingtonpost.com/opinions/2022/09/28/remove-racial-slur-federal-land-native-american/>. See also U.S. Department of the Interior, Secretary of the Interior, Order No. 3404, November 19, 2021, accessed November 13, 2022, <https://www.doi.gov/sites/doi.gov/files/elips/documents/so-3404-508.pdf>.

Indigenous names to shift away responsibility and legitimize the cultural practice of using Indian names and sometimes offensive terms for marketing purposes. The change of geographic names was a first step to deprive marketers of their scapegoating strategy to deny any wrongdoing, at least for derogatory terms.

Additionally, Senator Pressler's and Governor Fallin's statements after protests demonstrate that politicians saw offensive marketing practices like cultural appropriation as more than just a minor faux pas. After her daughter wore a Native headdress at a music event, Governor Mary Fallin of Oklahoma emphasized her respect for and collaboration with Oklahoma tribes since "Tribal governments are important partners to our state government, and I value the good relationships my administration has cultivated with them."²²⁶⁵ Senator Larry Pressler of South Dakota argued the marketing practices for Crazy Horse Malt Liquor "deteriorate[d] the relationship between non-Indians and Indians" and undermined his political attempts to "resolve conflicts between Indians and non-Indians."²²⁶⁶ Such statements aiming to maintain strong positive political relationships with tribes demonstrate that politicians have treated marketing practices and resistance to change as potential threats to Indian-White relations in the U.S.

Despite the enactment of well-intentioned laws such as the IACA, eBay's policy that sellers could not describe products as 'Indian-style' and had to categorize them as non-Indian if they were not Indian-made went way beyond the IACA. Given the limited applicability of the Act to very specific product groups, such a policy had a market-driven potential to advance the fight against misleading marketing and fraud on the basis of consumer protection. As customers likely choose to buy on trustworthy platforms that accurately label and categorize products, others may follow eBay's lead and, in the long run, change marketing practices in e-commerce or move the government to adapt the IACA's provisions to new standards.

Regression and distribution of a movement's cultural elements into the mainstream, or the **alteration of cultural codes**, may count as the greatest possible impact a movement can have.²²⁶⁷ Since advertising mirrors cultural codes, their alteration would become evident in changing marketing practices. Some marketing practices like hiring Native actors may have appeared innovative in the 1960s, but they were, in fact, not new. Just like Native actors lent authenticity to 19th-century Wild West and medicine shows, since the mid-20th century, Native actors evidenced authenticity to meet new advertising standards. Since the late 20th century, cooperations with Native American artists, designers, musicians, models, and actors increasingly demonstrated social responsibility and offered additional PR value for companies promoting fair business practices.

Academia both reflected and influenced opposition to and protests against offensive marketing practices. Researchers published academic literature primarily during times of heightened protest since the early 1990s and, thus, promoted awareness of and interest in issues such as Indigenous marketing misrepresentation and cultural ownership. While various humanities disciplines discussed Native misrepresentations, legal research focused on whether

²²⁶⁵ Mary Fallin, Governor, Oklahoma, statement, quoted in Adler, "Daughter Of Oklahoma Governor Provokes Protests."

²²⁶⁶ Pressler to Ferolito, April 20, 1992, in U.S. Congress, House of Representatives, Committee, "Impact of Alcohol Labeling and Marketing on Native American Health and Culture," 53.

²²⁶⁷ Cf. Thomas V. Reed, *The Art of Protest: Culture and Activism from the Civil Rights Movement to the Streets of Seattle* (Minneapolis: University of Minnesota Press, 2005), 297.

and how to apply U.S. laws to protect Indigenous individual and tribal cultural property. The humanities were the first academic field to take up the issue of representation during the 1980s, but legal analyses followed since the mid-90s. Both legal and humanistic academic research has increased since then, which may point to changing societal awareness and understanding of Indigenous issues and needs. Furthermore, it influenced activism by providing the language for protesters to frame their concerns and show possible means of protest.

Research analyzing Native American representations in mainstream advertising showed that basic themes and stereotypes of Native Americans persisted even though new ones were formed, but the character of representations changed depending on various factors. Studies of Native marketing representations illuminated how marketers constructed Indigeneity to address contemporary anxieties coming with industrial capitalism and technological progress,²²⁶⁸ created mythic beliefs about Native Americans,²²⁶⁹ and how these ads shaped American identity²²⁷⁰ and affected Native American roles in U.S. society.²²⁷¹ Stephanie Molholt's dissertation, *A Buck Well Spent*, as the first comprehensive analysis on a broad source base of 850 advertisements from the period between 1890 and 2008, concludes that misrepresentations of Natives in advertising have been common from 1890 to the present, and Euro-Americans continued the process of colonization by controlling Indigenous images in the media.²²⁷² As Gregory Reinhardt summarized, Indian images in commerce "usually are entirely imaginary creations that can appear in any context, can mean anything specific or nothing in particular, can present myriad thematic stereotypes simultaneously, and – somehow or other – can still succeed in selling *something*."²²⁷³

While Michael Green, Gregory Reinhardt, and Stephanie Molholt identified different categories of representations based on Native American stereotypes or themes,²²⁷⁴ Jonathan Goldstein argued that the kind of representation depended on the target audience. In his examination of Indigenous representations on American tobacco cards between 1880 and 1911, Goldstein compared Native American and African American advertising images. He established a connection between the subject matter of the ad image and how minorities were portrayed. When the advertising images depicted some form of art (painting, literature, dance, etc.), celebrities (political or other leaders, celebrities), or 'primitive' peoples, positive modes of representation predominated. The marketing of tobacco to a socially higher, cosmopolitan, and progressive social group more interested in art allowed for a distinctly positive portrayal of minorities. After the temporary end of open Indigenous resistance in 1890, Indigenous

²²⁶⁸ See Armitage, "Commercial Indians," 70-95.

²²⁶⁹ See Runte, "Promoting the Golden West"; Pearlstone, "Native American Images in Advertising"; West, "Selling the Myth"; Pearlstone, "Reinventing the Indian"; Takezawa, "Racial Boundaries and Stereotypes"; Zega, "Advertising the Southwest."

²²⁷⁰ See Pillen, "See America"; Schwarz, "The Santa Fe Railway."

²²⁷¹ See Marcellus, "Nervous Women and Noble Savages"; Sanchez, "Buying into Racism"; Williams, "Complementary or Objectified?"

²²⁷² Molholt, "A Buck Well Spent"; Molholt, "American Indians in Print Advertising since 1890."

²²⁷³ Reinhardt, *Indian Images in Commerce*, 1.

²²⁷⁴ Green: The three categories 'Noble Savage,' 'Civilizable Savage,' and 'Bloodthirsty Savage' were based on three stereotypes; Reinhardt: The categories of the 'Respectable Indian' (= 'Noble Indian'), 'Laughable Indian,' 'Threatening Indian,' 'Benevolent Indian' (= 'Indian Giver'), and 'Enigmatic Indian' (since 1990s) were based on five themes; Molholt: The categories of the 'Plains Indian Motif,' 'Indian on the Warpath,' 'Indian as Other,' and 'Custer Rides Again' (distorted representation of history) were based on four major themes.

Cf. Green, "Images of Native Americans in Advertising;" Reinhardt, *Indian Images in Commerce*; Molholt, "A Buck Well Spent."

leaders were integrated into such card series and depicted in a respectable and progressive manner. Advertising images also changed toward more positive valuations as interest in nature increased.²²⁷⁵ In her analysis of the various versions of the Massachusetts Bay Colony seal established in 1629, Cathy Rex detected that modifications in the mode of depiction, changing from the peaceful to the more savage and uncivilized Native, occurred in parallel with the political deterioration of the relationship between the colonists and Natives, especially when King Philip's War (1675-76) broke out. The fictitious projections took on the face of increasing threat, suggesting a sudden insecurity in the certainty of colonial domination.²²⁷⁶

When evaluating the potential impact of protest on Indigenous marketing representations, general changes due to changing Indian-White relations or marketing techniques must be separated from changes resulting from protest action. Analyses of Indigenous marketing representations have shown changes in the way Natives were represented based on what marketers believed would appeal to their target audience and based on the current political relationship between Natives and Euro-Americans. Depending on these factors, Native American advertising representations have become more 'friendly' and well-meaning or fierce looking, respectively. This type of change was also evident in product brand logos like the Savage Arms logo²²⁷⁷ and sports logos like the Boston/Milwaukee Braves logo²²⁷⁸ which depicted a Native head wearing a feather bonnet with increasingly friendly facial traits since the 1940s and 50s. Debra Merskin observed that, as opposed to brand icons such as Aunt Jemima, Rastus, or Betty Crocker, Indigenous representations remain static since their first use.²²⁷⁹ While Indigenous representations appeared increasingly positive, the basic underlying constructs and use of Indianness had not changed. Beyond changing Indian-White relations and Indigenous popularity, the preference for 'positive' representations likely also resulted from general attempts to avoid negative imagery in advertising and provide 'positive' messages and emotional appeals that were to be associated with a product.²²⁸⁰

Marchell Wesaw (1995) asked why 'Indian' themes sold so well and came across as politically unobjectionable. While images of 'mammies,' 'pickanies,' or 'bucks' in advertising were no longer acceptable, 'squaws,' 'chiefs,' and 'wild injuns' still seemed harmless in sociopolitical terms. Wesaw saw the solution to the problem of the adulteration of Indigenous culture through marketing in educating the public and changing consumers' buying habits. If consumers only bought products made by Native Americans, non-Native companies would be forced to remarket their products more problem-consciously.²²⁸¹ As the study showed, educa-

²²⁷⁵ Cf. Goldstein, "Race in Early Tobacco Advertising," 346.

Goldstein considered stereotypical racial images rather unsuitable for advertising purposes, because they only appeal to a small target group.

²²⁷⁶ Cf. Rex, "Indians and Images."

Rex viewed the seals as images of imperialism and colonialism that primarily reflect the colonists' self-perceptions. All these images depicted an Indigenous person, sometimes male, sometimes female, with an arrow in one hand and a bow in the other, and the words "COME OVER AND HELP US."

²²⁷⁷ Cf. Hal Morgan, *Symbols of America* (New York: Viking Adult, 1986), 62.

²²⁷⁸ Cf. Chris Creamer, "Boston Braves Logo History," *Sports Logos*, accessed January 17, 2021, https://www.sportslogos.net/logos/list_by_team/81/Boston_Braves; Chris Creamer, "Milwaukee Braves Logo History," *Sports Logos*, accessed January 17, 2021, https://www.sportslogos.net/logos/list_by_team/84/Milwaukee_Braves/.

²²⁷⁹ Cf. Merskin, "Winnebagoes, Cherokees, Apaches, and Dakotas"; Merskin, "The Princess and the SUV."

²²⁸⁰ Cf. Christa Wehner, *Überzeugungsstrategien in der Werbung: Eine Längsschnittanalyse von Zeitschriftenanzeigen des 20. Jahrhunderts* (Opladen: VS Verlag für Sozialwissenschaften, 1996), 150.

²²⁸¹ Cf. Wesaw, "Finders Keepers?"

tional efforts have been a major strategy to challenge offensive marketing representations since the early 1990s. Critics have sensitized consumers and made Indigenous representations, once considered unproblematic in U.S. society, politically objectionable.

Jeffrey Steele (1996) compared depictions of Native Americans and African Americans on trade cards created between 1870 and 1900 for products such as Indian Queen Perfume, Ayer's Cherry Pectoral, and Arbuckle Brothers Coffee. Unlike African Americans, ad imagery did not show Natives in common contemporary role models, public places, or modern clothing. This practice of representing Natives made those who still lived east of the Mississippi and had adopted the Western way of life invisible. Although the situation and roles for Natives had changed fundamentally around 1890, hardly any trade card echoed this change. Based on one exception, Steele postulated, "No longer positioned solely as entertaining icons used to symbolize products, they began to gain a role as accepted consumers in their own right."²²⁸²

Merskin (2001, 2009) suggested the lack of Native Americans' financial power in the market was the reason for the fact that hardly any modern Indigenous representation existed and racist images persist to this day. With only one percent of the population and 30 percent living in poverty (in 2000), Native Americans did not represent a significant target group for businesses and, thus, did not carry the same weight as African Americans and Latinos in initiating change.²²⁸³ Victoria Sanchez (2012) noted that, despite criticism, the situation was only slowly improving. To bring about a change in representational practices, Sanchez believed the group norm had to be changed first since group dynamics would ensure appropriate conformity on an individual basis. She saw this potential in the mass media in conjunction with new corporate and communication ethics.²²⁸⁴ Wesaw, Steele, Merskin, and Sanchez made valid hypotheses that appeared to become true to a certain extent.

Notwithstanding continuances, this study argues that activism has changed what stakeholders viewed as acceptable marketing representations and practices. This change was part of a larger shift towards more sensitive representations that also became evident in other media segments where Native Americans and other minorities had long been misrepresented, such as the movie industry. In October 2020, Walt Disney added a 12-second disclaimer, which cannot be skipped, to the movies "Dumbo" (1941), "Peter Pan" (1953), and "The Aristocats" (1970), warning viewers of some problematic scenes. "Peter Pan" portrayed Indigenous people "in a stereotypical manner" and referred to them repeatedly with a slur.²²⁸⁵ "Pocahontas" (1995) received no disclaimer "despite rumblings by some that those films contain stereotypes, too."²²⁸⁶ The warning explained, "These stereotypes were wrong then and are wrong now. Rather than remove this content, we want to acknowledge its harmful impact, learn from it and spark conversation to create a more inclusive future together."²²⁸⁷

²²⁸² Steele, "Reduced to Images," 63.

²²⁸³ Cf. Merskin, "Winnebagos, Cherokees, Apaches, and Dakotas"; Merskin, "The Princess and the SUV."

²²⁸⁴ Cf. Sanchez, "Buying into Racism."

²²⁸⁵ Bryan Pietsch, "Disney Adds Warnings for Racist Stereotypes to Some Older Films," *The New York Times*, October 18, 2020, accessed October 19, 2020, <https://www.nytimes.com/2020/10/18/business/media/disney-plus-disclaimers.html>.

²²⁸⁶ Mae Anderson, "Disney Plus adds disclaimer about racist movie stereotypes," *AP News*, November 14, 2019, accessed July 26, 2021, <https://apnews.com/article/technology-race-and-ethnicity-us-news-business-ap-top-news-b03d3e6c25f04b47837fc1f197e43379>.

²²⁸⁷ Walt Disney Co., disclaimer, quoted in Pietsch, "Disney Adds Warnings for Racist Stereotypes to Some Older Films."

Additionally, a diversification of marketing representations was due to advertising campaigns that explicitly challenged stereotypes; to changing marketing practices of mainstream advertisers, some of which targeted Native Americans; and to the increase of Native American entrepreneurs, advertisers, and ad agencies who started their own marketing discourse. Since some Indigenous advertising creators, like artists, considered their work a means of protest, the diversification of marketing representations may be viewed both as a protest strategy and a result of the protests.

An innovative commercial produced by PepsiCo received enthusiastic reactions from Natives across the U.S., as the overwhelmingly positive comments on social media demonstrated. In 2009, Gatorade published a commercial featuring Native dancer Robert Smith performing a traditional dance to “Crow Hop,” a song created by the Indigenous drum group Red Bull. The video contained four embedded text passages: “For those who find themselves through motion, Define themselves through action, Honor their elders through rhythm. We salute you.”²²⁸⁸ Parent group PepsiCo developed the commercial in collaboration with the Native American advertising agency Red Circle of Minneapolis and launched it at the 2009 Gathering of Nations. Since its release date, “the commercial has continued to be a success among Indian Country on YouTube and at pow wow events.”²²⁸⁹

An anonymous commentator was pleased to see the Gatorade commercial because it showed how physically demanding Native dancing was. Additionally, a dancer was a positive representation because contest powwows provided not only financial supplements but the practice also helped keep traditions alive and intact. The commenter noted, “I feel that the add [sic] was done in very good taste,” and if “they give it some primetime spots on television it could do some real positive things for us Native’s [sic].”²²⁹⁰ Cree Sekwun Ahenakew commented, “OMG, I just finished drinking a GATORADE!! The Nehiyaw, (Cree), of Saskatchewan love this Commercial!” Cherokee/Creek Brittanie Sidebottom noted, “I couldn’t be more proud of my heritage,” while Blackfeet Levi Bullplume thought it was “bout time we get recognized. shout out to gatorade corp for this small commercial even tho it may never hit tv.” Even critics of the product like Tess Teas, who pointed to the dangers of Gatorade’s ingredient corn syrup for diabetics, found it a “stunningly beautiful commercial.” Only a few comments raised criticism that a sacred dance should not be used commercially, which commentator Cameron Williams countered with the argument that “people Fancy Dance and Traditional Dance in Contest for Cash Prizes. The dances that are kept to a singular tribe and not used for monetary gain are the true sacred dances.”²²⁹¹

Visions of positive Indian role models in media started becoming true in the 1990s with Native ad agencies like G&G Advertising. While advertising depicting Native American themes has become culturally more sensitive in the way they represented Indigenous peoples and cultures, a 2015 commercial for SoCalGas’s solar water heating system, that promised to

²²⁸⁸ “Gatorade Commercial - Native Dancer.”

²²⁸⁹ Charlie Roe, “Gatorade’s ‘Native Dancer’ ad, its lasting effect,” *NDN Impact*, March 17, 2014, accessed August 6, 2018, <https://ndnimpact.wordpress.com/2014/03/17/gatorades-native-dancer-ad-its-lasting-effect/>.

²²⁹⁰ Comment on Schmidt, “Native dancer in Gatorade commercial.”

²²⁹¹ Comments posted on “Gatorade Commercial - Native Dancer.”

save energy and money, received positive attention because the ad was “rare if not unique” in that it featured Cherokee actor Rob Vestal but had “nothing to do with anything Native.”²²⁹²

While being represented in a recognizable way was the main goal for some Natives during the civil rights era, the focus on recognizability also led to the preference for Indian actors with an archetypal appearance. In that sense, one critic’s success would have been a failure for someone else. Some protesters considered being represented accurately more important to show who Native Americans were or could be. Skeptics believed that gambling enterprises on tribal lands offered marketing opportunities to represent Native peoples according to Indigenous norms but reduced Native American roles mainly to commercials that “touted their casinos or their history and culture – usually to build support for their casinos.”²²⁹³ Although Native actors have played accurate and ethically proper roles as well as non-Indian roles appealing to the general audience, limited roles for Indigenous actors remain an issue today.

Protest “initiates social discourses, accompanies them, and drives them forward, but is hardly the cause of change itself. These are the socio-structural and economic transformation processes.”²²⁹⁴ Continuous protests contributed to the diversification of marketing practices in the U.S., but socio-structural and economic transformation processes enabled and pushed these changes. The gaming industry and other ventures have furnished Indigenous communities and individuals with capital, resulting in a growing number of Native businesses and marketing agencies. As a result, Non-Natives started viewing Native peoples as valuable customers, forcing them to rethink traditional marketing communication and imagery styles. Native Americans gained power in defining and designing their image according to their own standards rather than reacting to representations created by Non-Natives. However, despite the increasing diversity of Indigenous marketing representations, it remains questionable whether these are limited to ethnic media or appear in mainstream media as well.

These new marketing representations might also become subject to criticism by Indigenous subgroups because these images show a version of Indigeneity representing wealthier Native groups or tribes. Several issues point to future controversies of accurate and appropriate Native marketing representations among Native Americans: the increasing number of peoples claiming mixed Native heritage; criticism of Native Americans who supposedly misrepresented Indigenous peoples and cultures; and the perception of Native self-representations resembling mainstream ideas of Indigeneity as the result of a ‘colonized mind.’

Due to trends towards ethnic sensitivity and authenticity, progressive ad campaigns had already appeared during the civil rights movement and possibly earlier but did not become part of mainstream culture. Inspired by other minorities’ protests and successes during the civil rights movement, protesters of marketing practices over decades challenged and re-defined what was morally appropriate and acceptable. Protesters have used social movements and opposed trends to advance their agenda, like the popularity of Indigeneity following the 1992 Quincentennial and the hipster trend during the 2010s, as well as the Black Lives Matter movement, which intensified in 2020.

²²⁹² Robert Schmidt, “Cherokee actor in solar commercial,” *Newspaper Rock*, September 24, 2015, accessed August 5, 2018, <http://newspaperrock.bluecorncomics.com/2015/09/cherokee-actor-in-solar-commercial.html>.

²²⁹³ Ibid.

²²⁹⁴ Philipp Gassert, “Politischer Protest – gestern und heute: Warum Menschen auch im digitalen Zeitalter demonstrieren,” *Geschichte Aktuell*, November 2020, 11. Transl. by author.

Keene noted in 2016 that, despite successful protests, activism challenging marketing practices had not achieved its broader goals of finding productive ways to move forward and disrupting the underlying power structure that fostered cultural appropriation and misrepresentation.²²⁹⁵ While marketers with an Indigenous target audience sought to appeal to their consumers, other marketers targeting the general population had less incentive to adapt their marketing practices until the Black Lives Matter movement and growing public awareness made offensive marketing practices financially risky. That professional sports teams, which resisted change for almost five decades, changed their names and set up attire policies banning face paint and headdresses from their home stadium, represents a major success in the mascot controversy. This trend is also becoming apparent in the advertising industry, as the disappearance of Aunt Jemima and Mia or Keep American Beautiful's transfer of the rights to their anti-littering campaign to the NCAI suggests. Whether the peak of social unrest in 2020 led to short-term or fostered long-term changes remains open. But the growth rates of the American Indian population and Native-owned businesses indicate that marketing representations will keep changing. At the same time, new issues may arise when marketers intensify appealing to and influencing Native Americans as consumers.

This study provides a broad overview of resistance to Indian-inspired marketing practices in the U.S. and beyond national borders. This initial research is intended to stimulate further in-depth research on numerous topics, many of which have only been briefly touched upon here. Further research is necessary to illuminate the media's role in such protests, including mainstream and ethnic media outlets and social media. Criticism of Indigenous marketing practices certainly deserves more attention, focusing on marketing strategies and the various Indigenous perceptions of what is appropriate. While this study argues for a change in advertising practices, broad-scale mainstream advertising analyses need to confirm this change. At the same time, analyses of Indigenous advertising practices would provide insights regarding Native Americans' construction of Indigeneity and how they may differ when addressing Native versus non-Native audiences. That a Native American "would rather boycott 'Land O Lakes' butter, buying another brand, than to see my children cry about another piece of their Native American heritage lost"²²⁹⁶ raises questions about how commercial representations of Indigeneity influence Native American identity-building processes. Challenging the use of Crazy Horse as a marketing icon, protesters already pointed to the process of identity formation through consumption, which had severe consequences especially for Indigenous children and youth.²²⁹⁷ While an analysis of the construction of Native American identity and Native gender roles in mainstream advertising provides insights into the identity-building process, advertising analyses do not discuss such effects. The perspective of how Native Americans perceive, accept, or reject these images and how these constructs play out in real life is still a significant research gap. As Lawrence Baca pointed to the need for studies proving the connection between media representations and violent or racist behavior,²²⁹⁸ there is also still a need for more research on the effects of Indian-inspired marketing practices.

²²⁹⁵ Cf. Keene, "Engaging Indigeneity and Avoiding Appropriation," 56.

²²⁹⁶ Tribal Council Wopumnes, "Put the Indian Girl back on the Land O Lakes Butter!"

²²⁹⁷ Cf. Big Crow Sr., "Exploitation, stereotype of historical hero Crazy Horse," 3.

²²⁹⁸ Cf. Lawrence Baca, telephone interview by author, Washington, DC, August 14, 2014.

Appendix

Figures

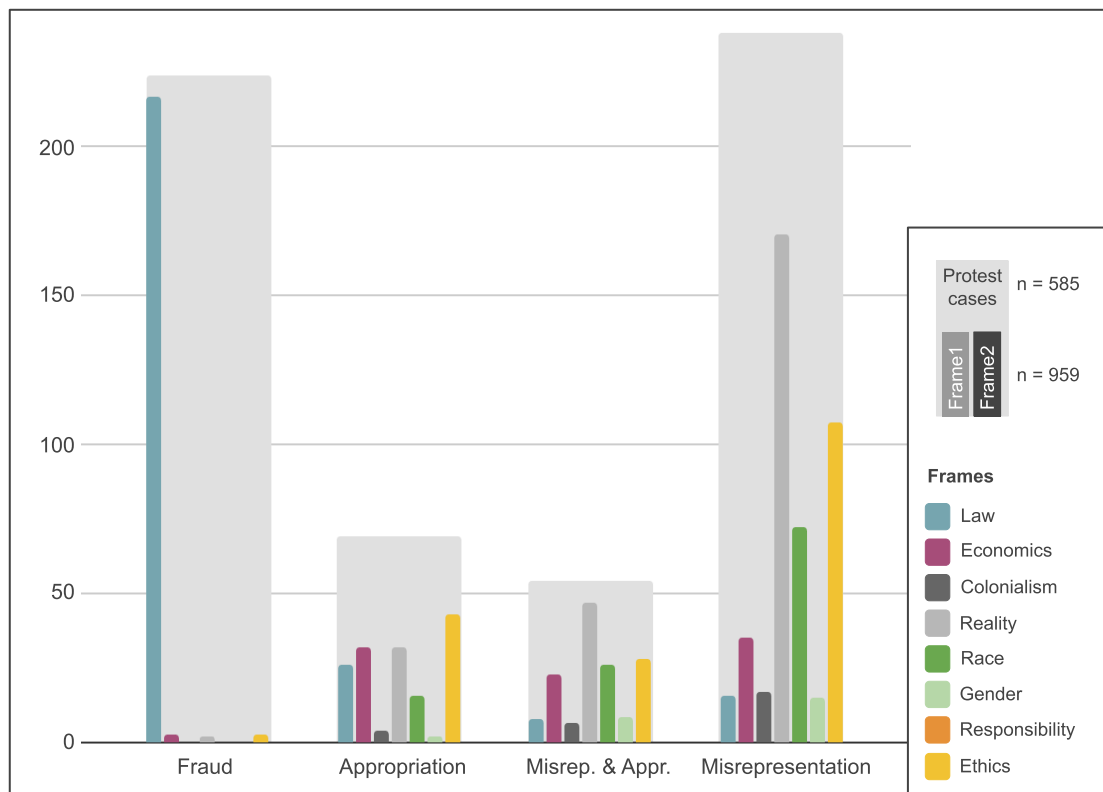


Figure 28: Protesters' diagnostic framing profiles by protest cause.

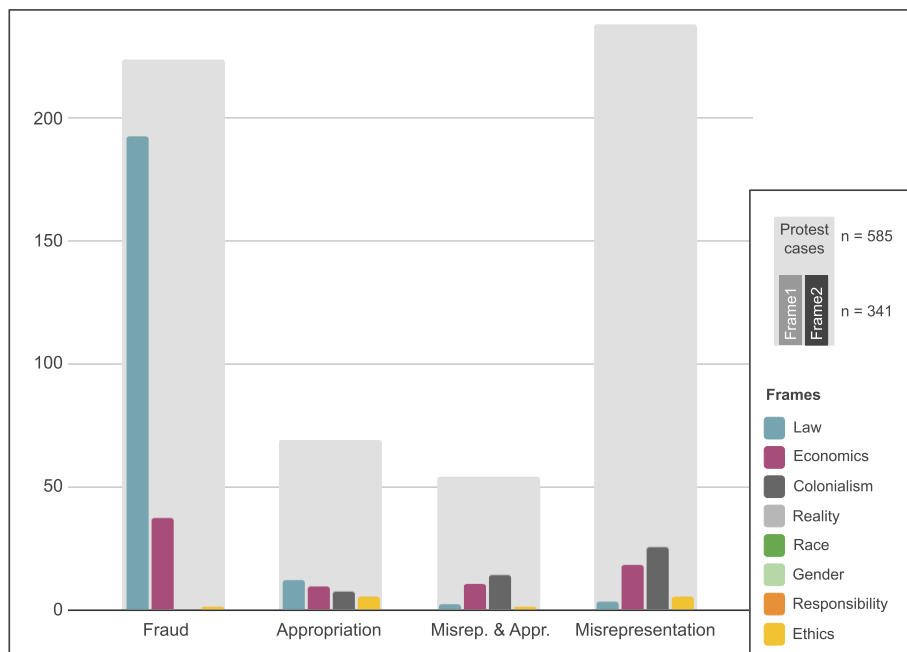


Figure 29: Prognostic and motivational frames profile by protest cause.

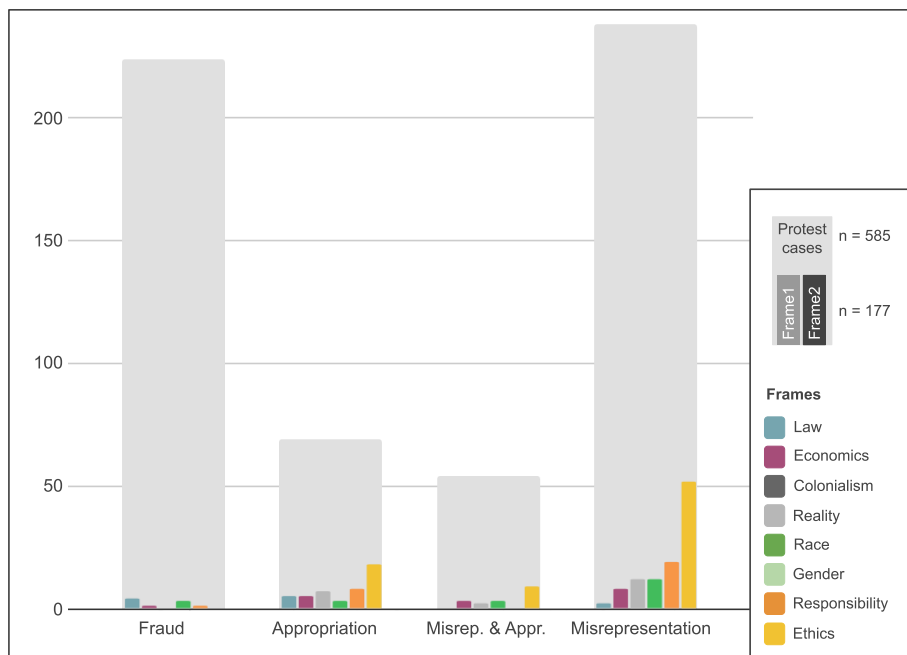


Figure 30: Response frame profile by protest cause.

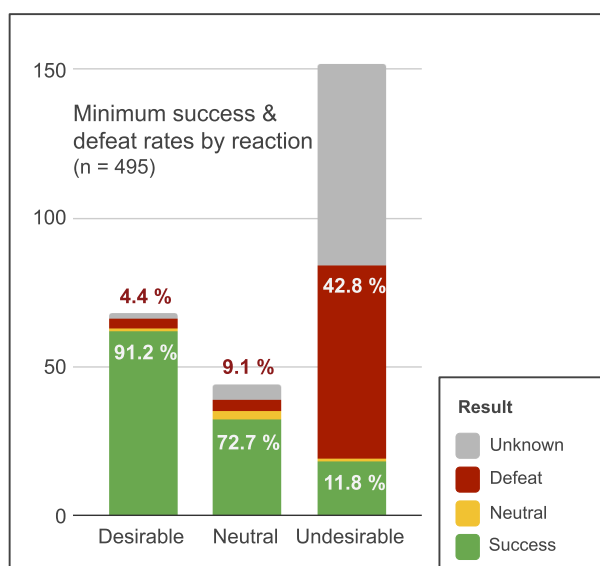


Figure 31: Targets' reactions by result.

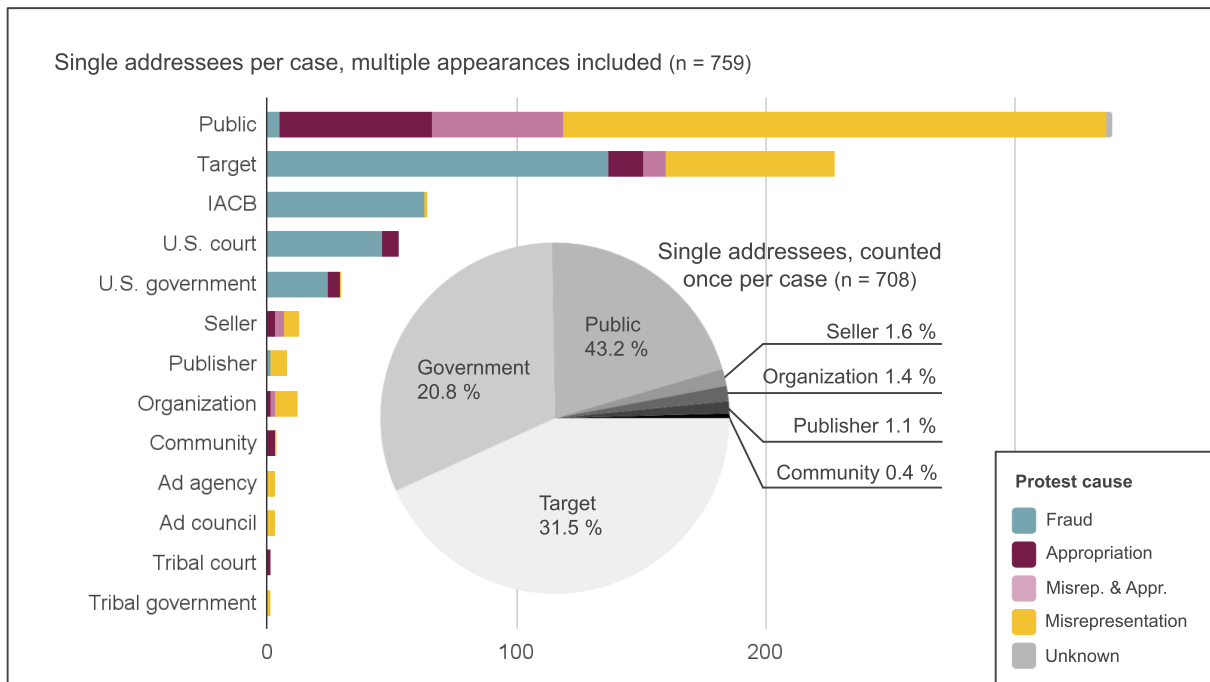


Figure 32: Single addressees of protest.

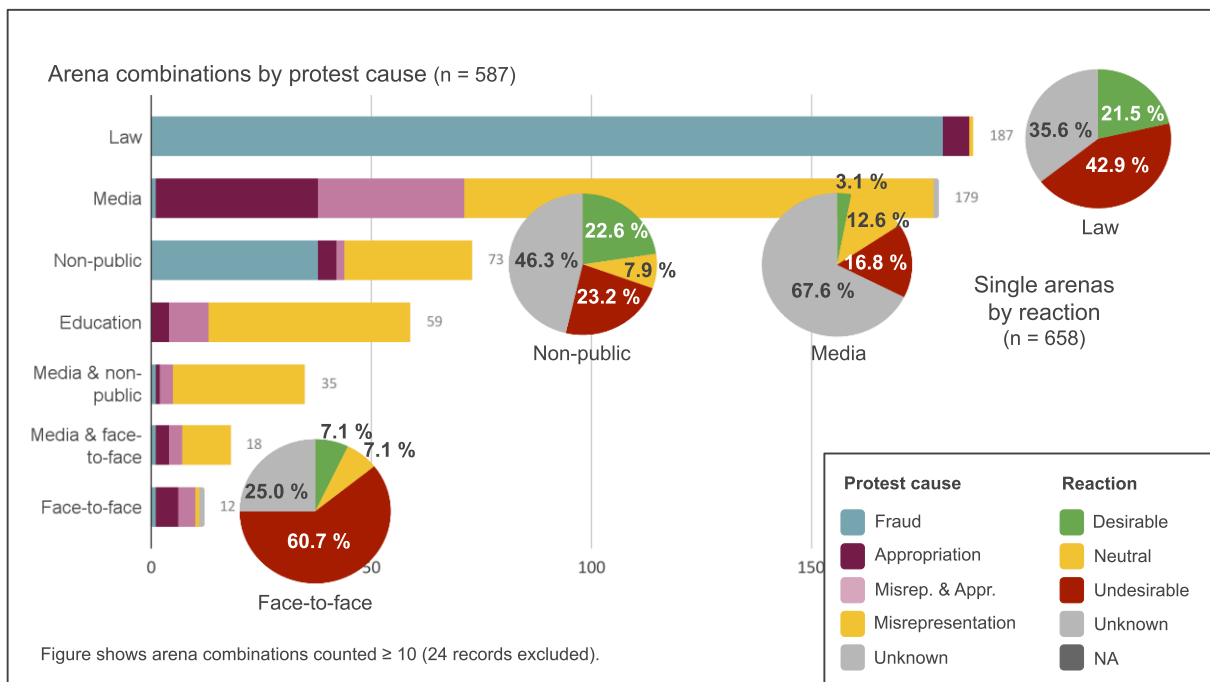


Figure 33: Targets' reactions to protests by arena.

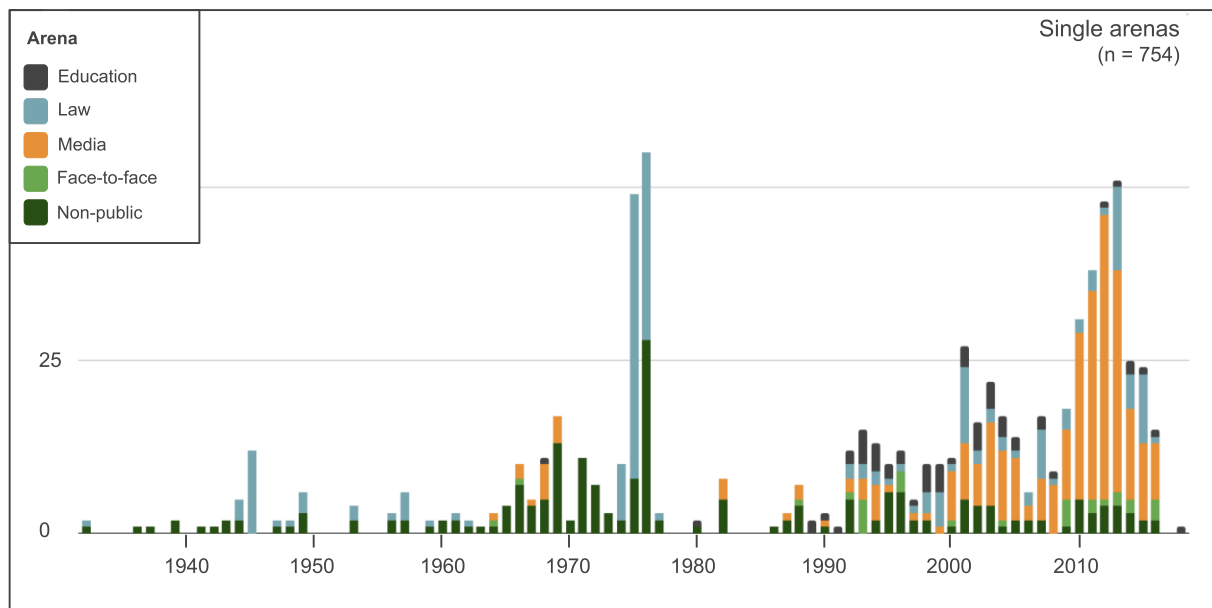


Figure 34: Timeline of single arenas, 1932-2018.

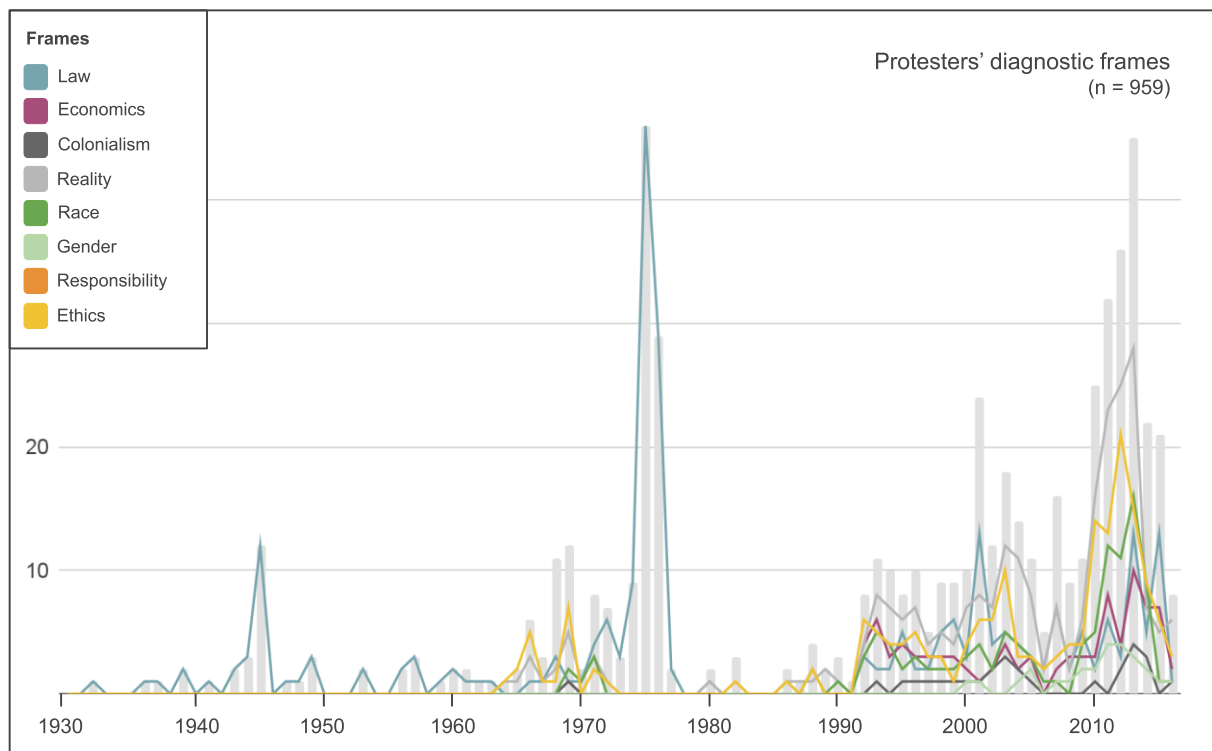


Figure 35: Timeline of protesters' diagnostic frames, 1932-2018.

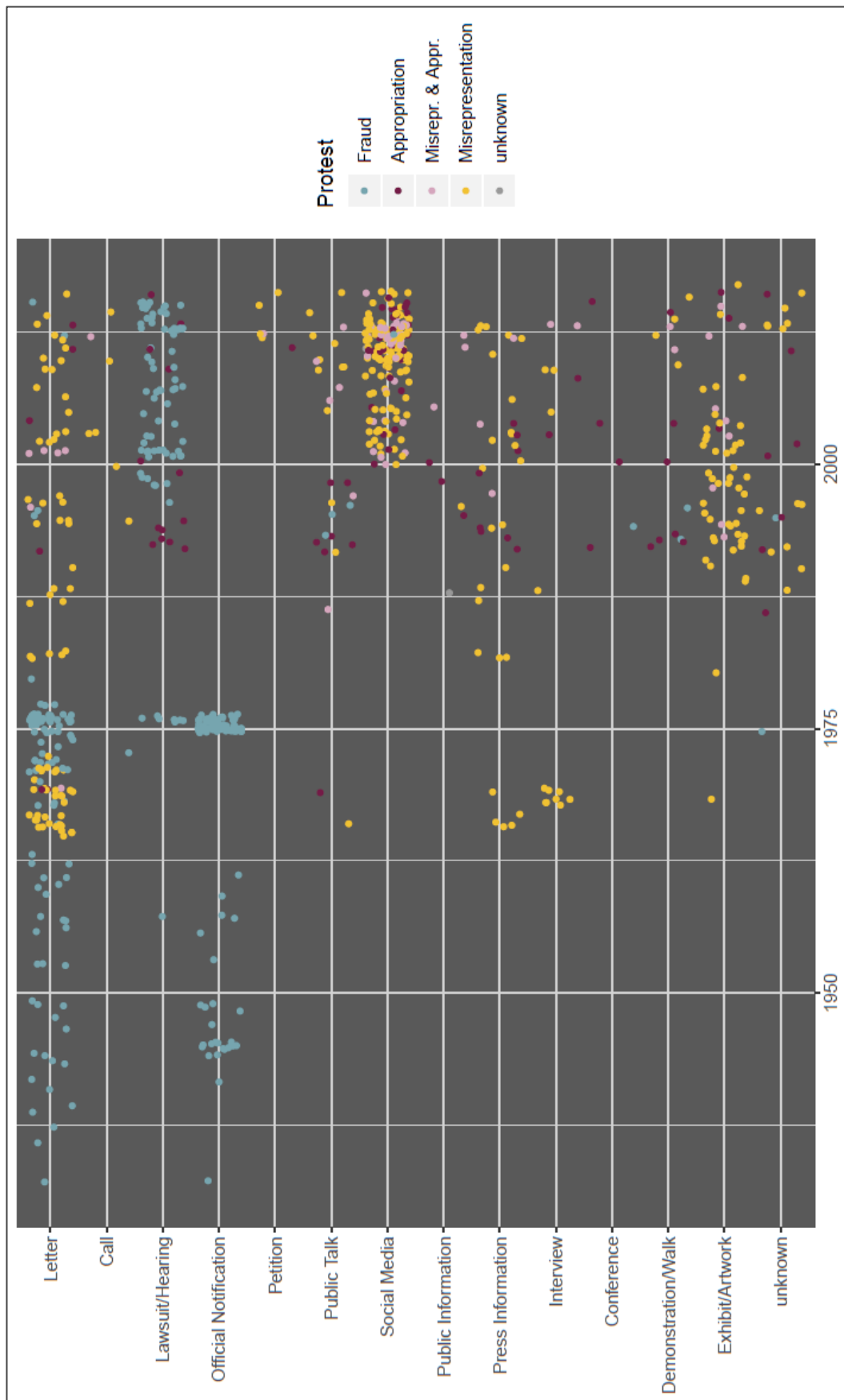


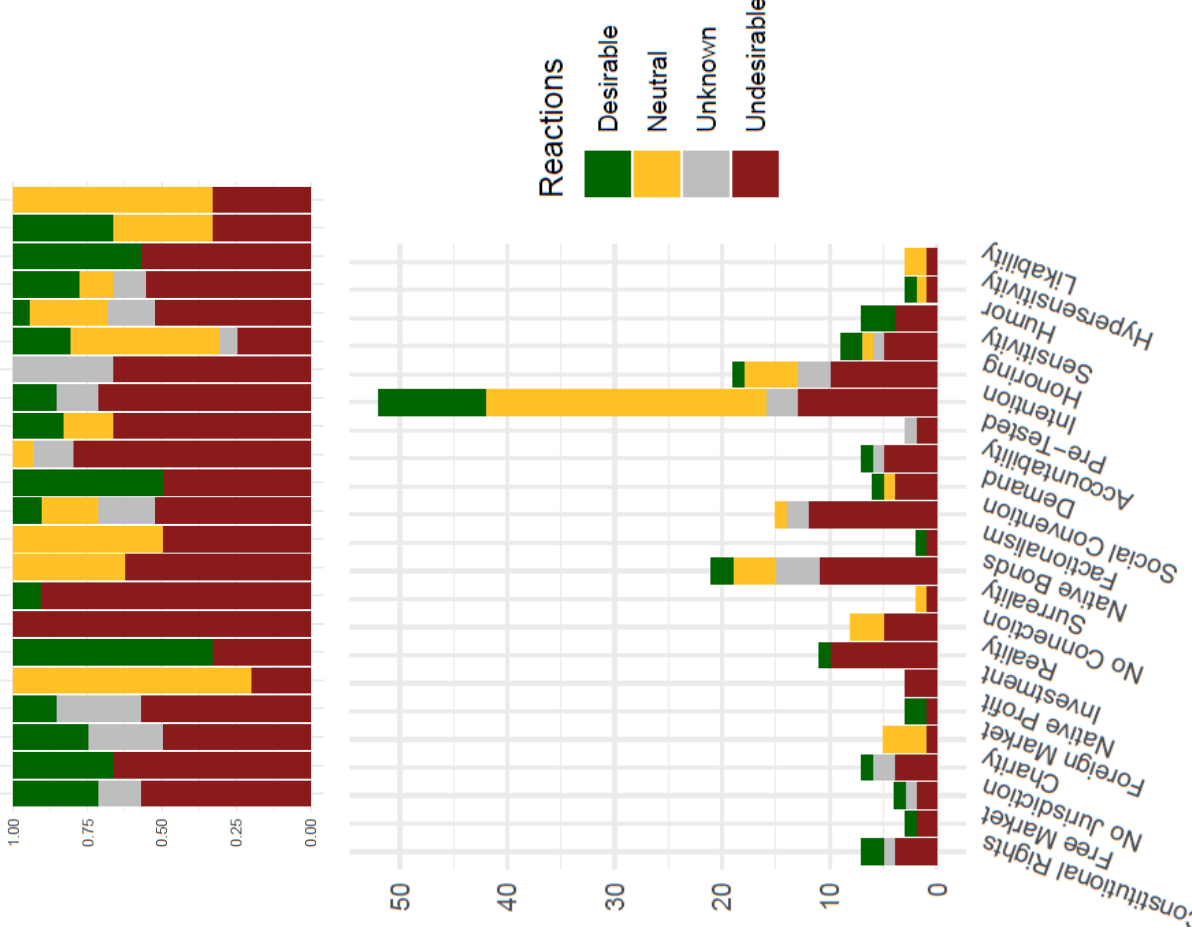
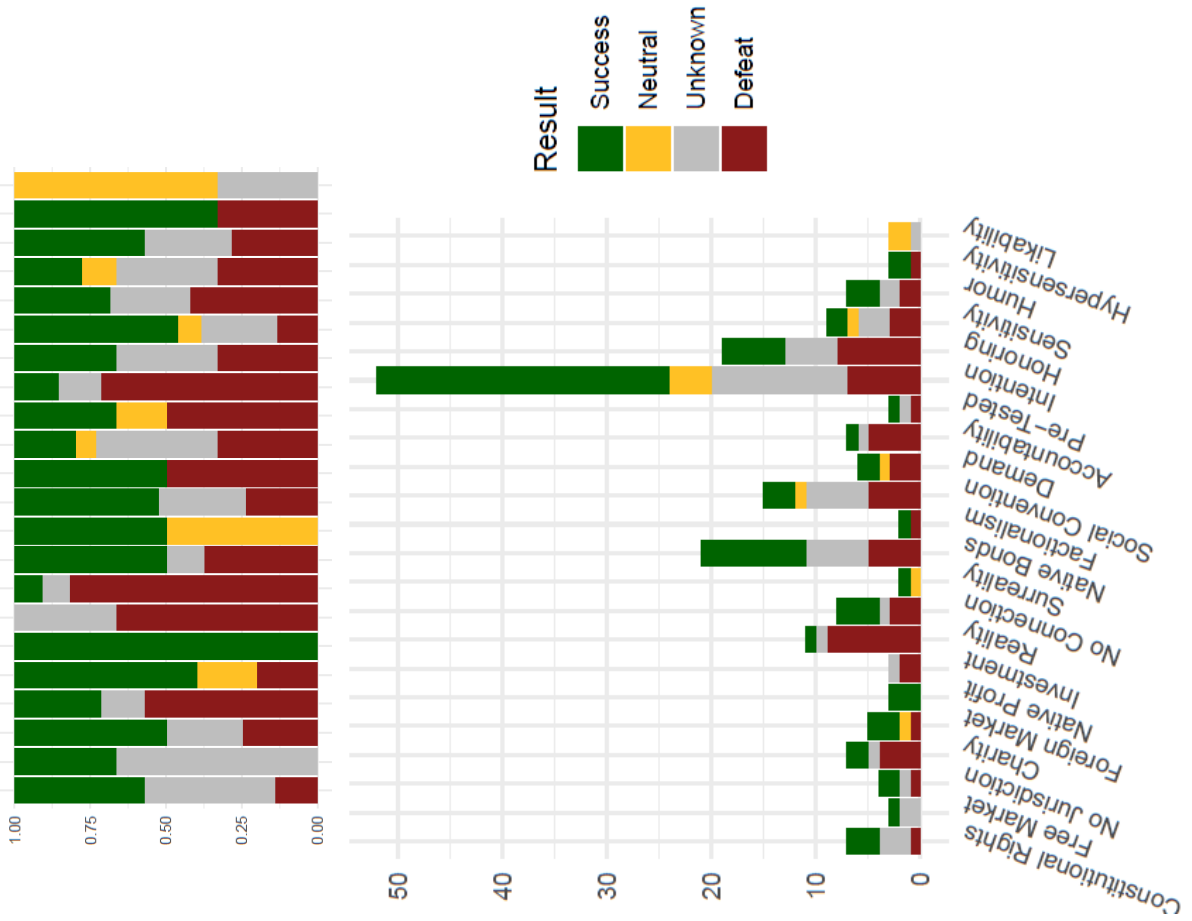
Figure 36: Timeline of protest media, 1932-2018.



Figure 37: Timeline of protesters' diagnostic arguments, 1932-2018.



Figure 38: Timeline of targets' response arguments, 1965-2018.



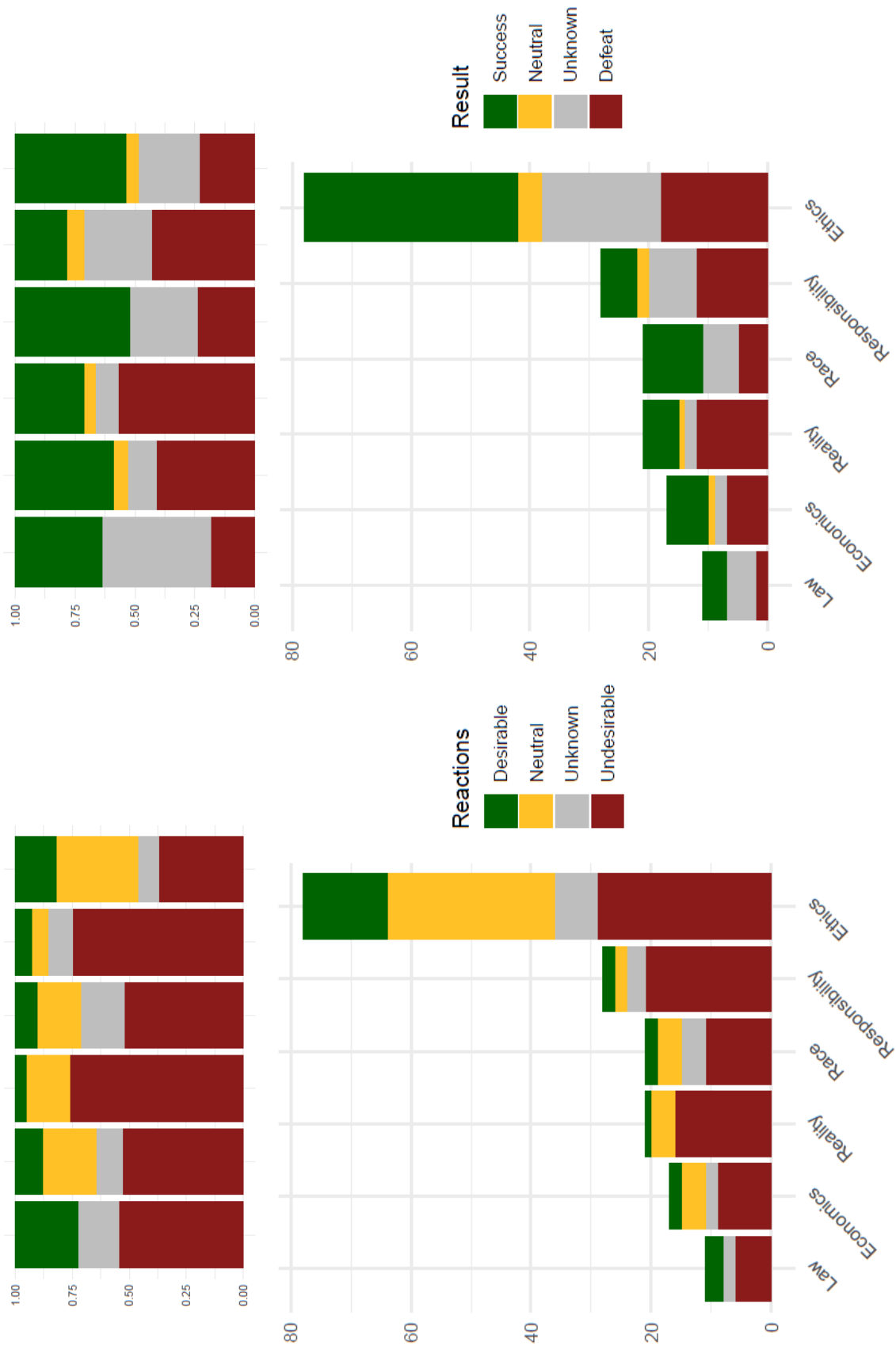


Figure 39: Targets' response arguments and frames by reaction and result.

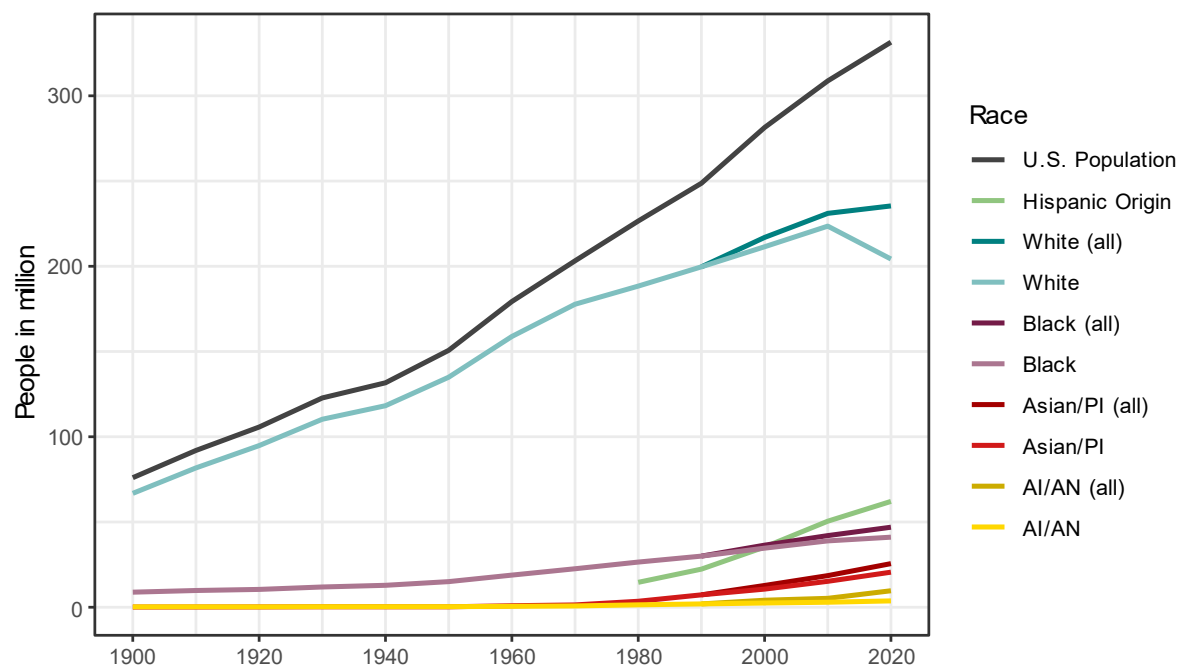


Figure 40: U.S. population growth by race, 1900-2020. Data: U.S. Census Bureau.

Tables

Table 3: Diagnostic, prognostic, and response frames.

Frame	Diagnosis	Prognosis/Motivation	Response
Law	Misleading marketing	Injunction	Free market
	Intellectual property	Civil rights law	Constitutional rights
	Indigenous rights	Treaty rights	
	Human rights	Tribal law	
	Authorization	State fair practice law	
		Congressional law	
		IACA	
		FTC Act	
		Copyright	
		Lanham Act	
Economics	Capitalism	Merchant boycott	Charity
	Market value	Consumer boycott	Investment
	Appropriation	Compensation	Native profit
		Donation	Foreign market
Race	Racism		Factionalism
			Native bonds
Gender	Sexism		
Ethics	Insult	Solidarity	Honoring
	Ethics	Public pressure	Intention
			Sensitivity of ad
			Humor
Colonialism	Colonialism	Reappropriation	Hypersensitivity of critic
		Education	Likability
Reality	Inaccuracy		Reality
	Reality		No connection
	Health		Surreality
	Socialization		
Responsibility			Accountability
			Social convention
			Pre-tested

Table 4: Protests by race and gender.

	Native American	Non-Native	Various	Unknown	Total	Percent
Female	65	10	3	15	93	15.9 %
Male	68	63	17	20	168	28.7 %
Various	48	8	96	7	159	27.1 %
Unknown	11	42	63	50	166	28.3 %
Total	192	123	179	92	587	-
Percent	32.8 %	21.0 %	30.5 %	15.7 %	-	100 %

Table 5: Individual protesters by race and gender.

	<i>Native American</i>	<i>Non-Native</i>	<i>Unknown</i>	<i>Total</i>	<i>Percent</i>
<i>Female</i>	39	10	12	61	40.1 %
<i>Male</i>	48	23	17	88	57.9 %
<i>Unknown</i>	1	0	2	3	2.0 %
<i>Total</i>	88	33	31	152	-
<i>Percent</i>	57.9 %	21.7 %	20.4 %	-	100 %

Note: Cases with diverse groups of protesters in terms of race and/or gender are excluded. As every protester is counted only once, this table represents the number of individual protesters by race and gender.

Table 6: Protests by product category and cause.

	<i>Fraud</i>	<i>Appr.</i>	<i>Misrep. & Appr.</i>	<i>Misrepr.</i>	<i>Unknown</i>	<i>Total</i>
<i>Alcohol</i>	0	10	1	14	0	25
<i>Arts and crafts</i>	214	5	1	3	1	224
<i>Cleaners, cosmetics, drugs</i>	0	2	1	9	0	12
<i>Costumes</i>	0	1	12	3	0	16
<i>Education</i>	0	1	0	3	0	4
<i>Event</i>	0	0	4	11	0	15
<i>Fashion</i>	1	17	8	22	0	48
<i>Food</i>	2	5	1	27	0	35
<i>Gambling</i>	1	2	0	2	0	5
<i>Gastronomy</i>	0	7	2	1	0	10
<i>General</i>	0	3	8	28	0	39
<i>Government</i>	0	0	0	5	0	5
<i>Hobby, toys, collectibles</i>	2	1	2	30	0	35
<i>Houseware</i>	0	1	0	5	1	7
<i>IT / Communications</i>	0	0	3	3	0	6
<i>Music</i>	0	7	3	3	0	13
<i>Other</i>	1	2	2	29	0	34
<i>Pageant</i>	0	1	2	1	0	4
<i>Politics</i>	0	0	0	5	0	5
<i>Prints</i>	0	0	0	7	0	7
<i>Spiritualism</i>	3	0	0	0	0	3
<i>Sports</i>	0	0	0	3	0	3
<i>Tobacco</i>	0	1	6	4	0	11
<i>Tourism</i>	0	3	0	5	0	8
<i>Vehicle</i>	0	1	0	12	0	13
<i>Total</i>	224	70	56	235	2	587

Table 7: Institutions involved in protests at least twice.

	<i>Native American</i>	<i>Count</i>	<i>Non-Native</i>	<i>Count</i>
<i>Organization</i>	AAIA	25	ICCR	4
	AIM	17	HONOR	4
	NCAI	8		
	AITEN/P	4		
	IACA	2		
	Intertribal Bison Cooperative	2		
<i>Company</i>	Native American Arts	38		
	Great Sioux Nation / Sioux Tribe	4	IACB	114
	Navajo Nation	2	FWS	15
	Lumbee Tribe of North Carolina	2	FBI	13
			FTC	11
			NM AG - Consumer Protection Division	5
<i>Government</i>			NPS	3
<i>Church</i>	United Church of Christ	2	LHRAA	2
	Civil Official & Council for American Indian Ministry	2		
<i>Media</i>	Indian Country Today	4		
	Estate of Tasunke Witko	6		
<i>Private</i>	Crazy Horse Defense Project	3		

Table 8: Protest arenas for fraud.

	<i>Success</i>	<i>Neutral</i>	<i>Defeat</i>	<i>Unknown</i>	<i>NA</i>	<i>Total</i>
<i>Law</i>	60	0	22	98	0	180
<i>Non-public</i>	2	0	2	6	28	38
<i>Face-to-face</i>	0	0	1	0	0	1
<i>Face-to-face & non-public</i>	0	0	0	1	0	1
<i>Media</i>	0	0	0	1	0	1
<i>Media & face-to-face</i>	0	0	1	0	0	1
<i>Media & non-public</i>	0	0	1	0	0	1
<i>Unknown</i>	1	0	0	0	0	1
<i>Total</i>	63	0	27	106	28	224

Table 9: Protest arenas for appropriation.

	<i>Success</i>	<i>Neutral</i>	<i>Defeat</i>	<i>Unknown</i>	<i>NA</i>	<i>Total</i>
<i>Media</i>	1	0	7	27	2	37
<i>Law</i>	1	0	5	0	0	6
<i>Face-to-face</i>	0	0	3	2	0	5
<i>Education</i>	0	0	0	0	4	4
<i>Non-public</i>	3	0	1	0	0	4
<i>Media & face-to-face</i>	0	0	1	2	0	3
<i>Media & non-public & law</i>	1	0	1	0	0	2
<i>Face-to-face & law</i>	1	0	0	0	0	1
<i>Face-to-face & non-public</i>	0	0	1	0	0	1
<i>Law & academia</i>	0	0	1	0	0	1
<i>Media & face-to-face & law</i>	0	0	1	0	0	1
<i>Media & face-to-face & non-public</i>	0	0	1	0	0	1
<i>Media & non-public</i>	0	0	1	0	0	1
<i>Non-public & law</i>	0	0	0	1	0	1
<i>Unknown</i>	1	0	0	0	0	1
<i>Total</i>	8	0	23	32	6	69

Table 10: Protest arenas for misrepresentation.

	<i>Success</i>	<i>Neutral</i>	<i>Defeat</i>	<i>Unknown</i>	<i>NA</i>	<i>Total</i>
<i>Media</i>	19	2	9	76	1	107
<i>Education</i>	0	0	0	0	46	46
<i>Media & non-public</i>	17	2	3	8	0	30
<i>Non-public</i>	7	0	8	13	1	29
<i>Media & face-to-face</i>	5	0	5	1	0	11
<i>Unknown</i>	3	1	1	1	0	6
<i>Media & face-to-face & non-public</i>	2	1	0	0	0	3
<i>Business</i>	0	0	1	1	0	2
<i>Academia</i>	1	0	0	0	0	1
<i>Face-to-face</i>	1	0	0	0	0	1
<i>Face-to-face & non-public</i>	0	0	1	0	0	1
<i>Law</i>	1	0	0	0	0	1
<i>Total</i>	56	6	28	100	48	238

Table 11: Addressees for challenging fraud.

	<i>Success</i>	<i>Neutral</i>	<i>Defeat</i>	<i>Unknown</i>	<i>NA</i>	<i>Total</i>
<i>Target</i>	38	0	6	40	0	84
<i>Government</i>	7	0	11	30	28	76
<i>Target & government</i>	17	0	8	34	0	59
<i>Public</i>	0	0	1	1	0	2
<i>Target & public</i>	0	0	0	1	0	1
<i>Public & publisher</i>	0	0	1	0	0	1
<i>Unknown</i>	1	0	0	0	0	1
<i>Total</i>	63	0	27	106	28	224

Table 12: Addressees for challenging appropriation.

	Success	Neutral	Defeat	Unknown	NA	Total
<i>Public</i>	1	0	11	29	6	47
<i>Government</i>	1	0	4	0	0	5
<i>Target</i>	3	0	1	1	0	5
<i>Community & government</i>	0	0	2	0	0	2
<i>Target & public</i>	0	0	1	1	0	2
<i>Target & public & government</i>	1	0	1	0	0	2
<i>Target & government</i>	0	0	0	1	0	1
<i>Target & public & seller</i>	0	0	1	0	0	1
<i>Target & seller</i>	0	0	1	0	0	1
<i>Public & government</i>	1	0	0	0	0	1
<i>Public & seller & government</i>	0	0	1	0	0	1
<i>Unknown</i>	1	0	0	0	0	1
<i>Total</i>	8	0	23	32	6	69

Table 13: Addressees for challenging misrepresentation.

	Success	Neutral	Defeat	Unknown	NA	Total
<i>Public</i>	23	2	11	77	47	160
<i>Target & public</i>	16	2	7	5	0	30
<i>Target</i>	4	0	8	9	0	21
<i>Organization</i>	1	0	1	5	0	7
<i>Target & public & seller</i>	2	1	0	0	0	3
<i>Publisher</i>	1	0	1	1	0	3
<i>Government</i>	1	0	0	0	1	2
<i>Target & public & organization</i>	1	0	0	1	0	2
<i>Target & publisher</i>	2	0	0	0	0	2
<i>Unknown</i>	1	1	0	0	0	2
<i>Community</i>	1	0	0	0	0	1
<i>Target & organization</i>	1	0	0	0	0	1
<i>Target & public & publisher</i>	1	0	0	0	0	1
<i>Target & public & tribal gov.</i>	0	0	0	1	0	1
<i>Public & publisher</i>	0	0	0	1	0	1
<i>Public & seller</i>	1	0	0	0	0	1
<i>Total</i>	56	6	28	100	48	238

Table 14: Reactions by desirability.

	<i>Desirable</i>	<i>Neutral</i>	<i>Undesirable</i>	<i>Unknown</i>	<i>Total</i>
<i>Agreement</i>	50	0	0	0	50
<i>Apology</i>	0	43	0	0	43
<i>Cooperation</i>	4	0	0	0	4
<i>Ignoring</i>	0	0	57	0	57
<i>Inclusion</i>	1	0	0	0	1
<i>Proposal</i>	0	1	0	0	1
<i>Rejection</i>	0	0	95	0	95
<i>Settlement</i>	9	0	0	0	9
<i>Surrender</i>	4	0	0	0	4
<i>Unknown</i>	0	0	0	231	231
<i>Total</i>	68	44	152	231	495
<i>Percent all cases</i>	13.7 %	8.9 %	30.7 %	46.7 %	100 %
<i>Percent excl. unknown</i>	25.8 %	16.7 %	57.6 %	86.7 %	

Table 15: Reactions by protest cause.

	<i>Fraud</i>	<i>Appr.</i>	<i>Misrepr. & Appr.</i>	<i>Misrepr.</i>	<i>Unknown</i>	<i>Total</i>	<i>Percent excl. unknown</i>	<i>Percent all cases</i>
<i>Agreement</i>	34	1	2	13	0	50	18.9 %	10.2 %
<i>Apology</i>	1	5	9	28	0	43	16.3 %	8.8 %
<i>Cooperation</i>	1	1	1	1	0	4	1.5 %	0.8 %
<i>Ignoring</i>	40	3	3	11	0	57	21.6 %	11.7 %
<i>Inclusion</i>	0	0	1	0	0	1	0.4 %	0.2 %
<i>Proposal</i>	0	1	0	0	0	1	0.4 %	0.2 %
<i>Repulse</i>	36	25	2	32	0	95	36.0 %	19.4 %
<i>Settlement</i>	7	2	0	0	0	9	3.4 %	1.8 %
<i>Surrender</i>	1	0	0	3	0	4	1.5 %	0.8 %
<i>Unknown</i>	69	25	26	103	2	225		
<i>Total</i>	189	63	44	191	2	489		

Table 16: Results by protest cause.

	<i>Success</i>	<i>Neutral</i>	<i>Defeat</i>	<i>Unknown</i>	<i>Total</i>	<i>Success rate</i>	<i>Defeat rate</i>	<i>Success rate excl. unknown</i>
<i>Fraud</i>	63	0	27	106	196	32.1 %	13.8 %	70 %
<i>Appropriation</i>	8	0	23	32	63	12.7 %	36.5 %	25 %
<i>Repr. & Appr.</i>	12	0	7	25	44	27.3 %	15.9 %	63.2 %
<i>Representation</i>	56	6	28	100	190	29.5 %	14.7 %	62.2 %
<i>Total</i>	139	6	85	265	493			

Unknown protest causes excluded.

Table 17: Classification of results.

	<i>Success</i>	<i>Neutral</i>	<i>Defeat</i>	<i>Unknown</i>	<i>Total</i>	<i>Percent all cases</i>	<i>Percent excl. unknown</i>
<i>Adaption</i>	14	0	0	0	14	2.8 %	6.1 %
<i>Approved</i>	6	0	0	0	6	1.2 %	2.6 %
<i>Dropped</i>	111	0	0	0	111	22.4 %	48.3 %
<i>Expired</i>	0	6	0	0	6	1.2 %	2.6 %
<i>Legal Order</i>	5	0	0	0	5	1.0 %	2.2 %
<i>None</i>	0	0	82	0	82	16.6 %	35.7 %
<i>Order Overturned</i>	0	0	3	0	3	0.6 %	1.3 %
<i>Substitute Success</i>	3	0	0	0	3	0.6 %	1.3 %
<i>Unknown</i>	0	0	0	265	265	53.5 %	
<i>Total</i>	139	6	85	265	495		
<i>Percent all</i>	28.1 %	1.2 %	17.2 %	53.5 %	100 %		
<i>Percent excl. unknown</i>	60.4 %	2.6 %	37.0 %				

Table 18: Reactions by result.

	<i>Success</i>	<i>Neutral</i>	<i>Defeat</i>	<i>Unknown</i>	<i>Total</i>	<i>Success rate</i>	<i>Defeat rate</i>
<i>Desirable</i>	62	1	3	2	68	91.2 %	4.4 %
<i>Neutral</i>	32	3	4	5	44	72.7 %	9.1 %
<i>Undesirable</i>	18	1	65	68	152	11.8 %	42.8 %
<i>Unknown</i>	27	1	11	192	231	11.7 %	
<i>Total</i>	139	6	83	267	495	28.1 %	

Table 19: Successes by protest causes and decade.

<i>Year</i>	<i>Fraud</i>	<i>Appropriation</i>	<i>Misrepr. & Appr.</i>	<i>Misrepresentation</i>	<i>Total</i>
<i>1930s</i>	1				1
<i>1940s</i>	19				19
<i>1950s</i>	5		0	0	5
<i>1960s</i>	2		1	5	8
<i>1970s</i>	1	0	0	1	2
<i>1980s</i>	0	1	1	4	6
<i>1990s</i>	7	1	0	7	15
<i>2000s</i>	11	3	0	7	21
<i>2010s</i>	17	3	10	32	62
<i>Total</i>	63	8	12	56	139

Table 20: Success rates by protest cause and decade in percent.

<i>Year</i>	<i>Fraud</i>	<i>Appropriation</i>	<i>Misrepr. & Appr.</i>	<i>Misrepresentation</i>
<i>1930s</i>	20	0	0	0
<i>1940s</i>	86	0	0	0
<i>1950s</i>	71	0	0	0
<i>1960s</i>	67	0	100	19
<i>1970s</i>	1	0	0	17
<i>1980s</i>	0	100	100	57
<i>1990s</i>	54	7	0	47
<i>2000s</i>	35	17	0	15
<i>2010s</i>	53	11	37	36
<i>Average</i>	43.0	15.0	26.3	21.2

Table 21: U.S. Indigenous population share, 1900-2020.

<i>Year</i>	<i>Single Race Native American Population Share</i>	<i>Multiracial Native American Population Share</i>
<i>1900</i>	0,31	
<i>1910</i>	0,29	
<i>1920</i>	0,23	
<i>1930</i>	0,27	
<i>1940</i>	0,25	
<i>1950</i>	0,23	
<i>1960</i>	0,30	
<i>1970</i>	0,38	
<i>1980</i>	0,63	
<i>1990</i>	0,79	
<i>2000</i>	0,88	1,46
<i>2010</i>	0,95	1,69
<i>2020</i>	1,12	2,92

Table 22: Protest actions by state.

	<i>Fraud</i>	<i>Appropriation</i>	<i>Misrep. & Appr.</i>	<i>Misrepresentation</i>	<i>Total</i>
<i>District of Columbia</i>	168	2	0	26	196
<i>Illinois</i>	42	0	1	6	49
<i>New York State</i>	7	4	3	35	49
<i>New Mexico</i>	31	3	2	4	40
<i>North Carolina</i>	30	2	0	2	34
<i>California</i>	13	4	4	11	32
<i>South Dakota</i>	5	18	2	2	27
<i>Colorado</i>	24	0	0	2	26
<i>Arizona</i>	17	3	0	2	22
<i>Minnesota</i>	0	5	2	9	16
<i>Washington State</i>	6	1	1	7	15
<i>Tennessee</i>	11	0	0	0	11
<i>Oklahoma</i>	5	0	0	5	10
<i>Michigan</i>	4	1	0	3	8
<i>Wisconsin</i>	1	1	2	3	7
<i>Nevada</i>	1	4	0	1	6
<i>Pennsylvania</i>	4	1	0	1	6
<i>Texas</i>	1	0	1	4	6
<i>Kansas</i>	4	0	0	1	5
<i>Utah</i>	3	0	0	2	5
<i>Missouri</i>	1	1	0	2	4
<i>Ohio</i>	2	0	0	2	4
<i>Oregon</i>	1	1	0	2	4
<i>Virginia</i>	2	0	0	2	4
<i>Maryland</i>	1	0	0	2	3
<i>Massachusetts</i>	2	0	0	1	3
<i>Wyoming</i>	2	0	0	1	3
<i>Florida</i>	1	1	0	0	2
<i>Iowa</i>	1	0	0	1	2
<i>Kentucky</i>	1	0	0	1	2
<i>Montana</i>	1	0	1	0	2
<i>New Jersey</i>	1	1	0	0	2
<i>Arkansas</i>	1	0	0	0	1
<i>Georgia</i>	1	0	0	0	1
<i>Maine</i>	1	0	0	0	1
<i>North Dakota</i>	1	0	0	0	1
<i>Total</i>	397	53	19	140	609

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1. Protest Sources

The sources for protest cases are sorted by each company the protesters targeted. They include all documents consulted for the statistical analysis, although some titles may not be cited in the text. Sources used for the analysis but not cited are grayed out (artwork excluded). Case sources are listed chronologically. If dates or periods of protest actions were not mentioned in the sources, the year of reporting, official documentation, or action is taken as the year of protest. Actual protest years may vary.

Twenty cases are not part of quantitative data analysis for two reasons. Five of these cases are not considered criticism of marketing practices as defined in this study but provide context (American Broadcasting Company's "Custer"; Educators Mutual Life Ins. Co.; NCAI Native American Media Surveillance; Pseudo Indians; Land O'Lakes). After the quantitative analysis was completed, fifteen cases were detected or identified as protest cases and are therefore not included in this analysis.

Definition of a protest case: Every protest case is initiated by a protest action and comprises at least one action. The data set also lists hearings and interviews conducted by government officials in reaction to complaints as action. This approach helps to gain more detailed insights into the kind of actions in marketing protest cases, responses to single protest or government actions and their results. If protests lasted several years and critics took up another protest action after the previous action or set of actions ended, it counts as another protest case (see Hornell Brewing Co., 1992-2004; here, there were several years between these actions that count as separate protests). Criticism of different products or marketing items produced by the same marketer also counts as individual cases if these protests came from different protesters and/or were temporally isolated incidents (Zazzle, 2010/2011/2014; Nike, 1992/2007/2014). When a critic reported an advertiser to a regulatory agency, and investigations uncovered other potential violators of laws against whom active measures were taken, these also count as separate protest cases (see Denver Investigation, 1944-47; Cherokee Complaint, 1974-77; Operation Al-Zuni, 2012-21). When a critic reported several supposed violators of laws but no measures were taken, this complaint counts as one case. When a critic publicly denounced several marketers at once, each of those marketers counts as one case.²²⁹⁹

²²⁹⁹ For this study, the sources from Association on American Indian Affairs Records, 1851-2016, MC147; Public Policy Papers; Seeley G. Mudd Manuscript Library, Princeton University were taken from the microfilm. As throughout the study, the bibliography lists the original sources, which are also documented on the microfilm, so that the documents can be found in both sources. See Series 3: The Association on American Indian Affairs Archives, 1851-1983; Native America, a Primary Record; Woodbridge: Primary Source Microfilm, 2005. Filmed from the holdings of the Seeley G. Mudd Manuscript Library, Princeton University; accessed December 24, 2020, <https://lcn.loc.gov/2009366345>.

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Giago, Tim. "Native Americans are the invisible consumers out West." Quoted in Schmidt, Robert. "KELO-Land's all-white TV ads." *Newspaper Rock*, February 7, 2011. Accessed October 22, 2016. <http://newspaperrock.bluecorncomics.com/2011/02/kelo-lands-all-white-tv-ads.html>.

Glover, Emily M. Re: Counterfeits Sold at Grand Canyon Souvenir Shop and Colorado Stores (1968)

Glover, Emily M. Letter to Philloe Nash (Commissioner, BIA). Medford, Massachusetts, November 3, 1968. Board Legislation, Gen. Correspondence Re Imitation Handicrafts, 1936-73, Folder 2 of 3. General Correspondence, 1936-1975. Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980. Records of the Indian Arts and Crafts Board, Record Group 435. National Archives Building, Washington, DC.

Graham, Hattie B. Re: Pikes Peake, Colorado, Souvenir Counter (1941)

Graham, Hattie B. Letter to the Bureau of Indian Affairs, East Falls Church, Virginia, September 22, 1941. Board Legislation, Gen. Correspondence Re Imitation Handicrafts, 1936-73, Folder 1 of 3. General Correspondence, 1936-1975. Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980. Records of the Indian Arts and Crafts Board, Record Group 435. National Archives Building, Washington, DC.

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Highsmith, Gale (Vice President and Chairman, Fraud Committee of the Badger State Archaeological Society). Letter to Robert Hart (General Manager, IACB). Milwaukee, Wisconsin, August 11, 1976. Board Legislation, Gen. Correspondence Re Imitation Handicraft, 1976-80, Folder 1 of 2. General Correspondence, 1976-, Misrepresentation Violations (Closed Cases). Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980. Records of the Indian Arts and Crafts Board, Record Group 435. National Archives Building, Washington, DC.

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Saucier, Roxanne M. "Maine Indian IRATE at treatment Wants public boycott of 'New Age' groups." *Bangor Daily News*, October 8, 1994. ProQuest 413841470.

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Iron Eyes, Chase. "You Indians Need to Worry about More Important Things than Halloween Costumes." Quoted in Schmidt, Robert. "Halloween = 'socially accepted racism'." *Newspaper Rock*, October 31, 2012. Accessed June 2, 2020. <http://newspaperrock.bluecorncomics.com/2012/10/halloween-socially-accepted-racism.html>.

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Joseph, Sister M. Benedict (St. Michael High School). Letter to Robert Bennett (Commissioner, BIA). St. Michaels, Arizona, July 14, 1968. Board Legislation, Gen. Correspondence Re Imitation Handicrafts, 1936-73, Folder 2 of 3. General Correspondence, 1936-1975. Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980. Records of the Indian Arts and Crafts Board, Record Group 435. National Archives Building, Washington, DC.

Keene, Adrienne. Re: Food Branding incl. "Calumet" Baking Powder, "Indian Head" Corn Meal, SueBee Honey, Land O-Lakes, "Squaw" Bread, "Indien" Orangina, Arizona Iced Tea, "Umpqua" Ice Cream, "Cherokee Red," "Pemmican" Beef Jerky (2012)

Keene, Adrienne. "I eat stereotypes like you for breakfast." *Native Appropriations*, July 24, 2012. Accessed October 30, 2016. <http://nativeappropriations.com/2012/07/i-eat-stereotypes-like-you-for-breakfast.html>.

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Keene, Adrienne. "But Why Can't I Wear a Hipster Headdress?" *Native Appropriations*, April 27, 2010. Accessed October 12, 2016. <http://nativeappropriations.com/2010/04/but-why-cant-i-wear-a-hipster-headdress.html>.

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Keene, Adrienne. "We are not a costume." *Native Appropriations*, October 31, 2011. Accessed October 27, 2016. <http://nativeappropriations.com/2011/10/we-are-not-a-costume.html>.

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Keene, Adrienne. "Random Appropriation of the Day: 'Seneca Warrior' Paddle Ball." *Native Appropriations*, August 4, 2010. Accessed October 14, 2016. <http://nativeappropriations.com/2010/08/random-appropriation-of-the-day-seneca-warrior-paddle-ball.html>.

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Keene, Adrienne. "Random Appropriation of the Day! ('Tiger Lily Teapot')." *Native Appropriations*, December 7, 2010. Accessed October 14, 2016. <http://nativeappropriations.com/2010/12/random-appropriation-of-the-day-tiger-lily-teapot.html>.

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Kindle, Joan. Letter to Hon Clifford Hansen (U.S. Senate). Riverton, Wyoming, August 22, 1972. Board Legislation, Gen. Correspondence Re Imitation Handicraft, 1936-73, Folder 3 of 3. General Correspondence, 1936-1975. Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980. Records of the Indian Arts and Crafts Board, Record Group 435. National Archives Building, Washington, DC.

Lee, Jodi R. Re: "Crazy Horse" Strip Club, Las Vegas, Nevada (2003)

Lee, Jodi R. "Crazy Horse's name being misused, abused in Las Vegas." *Lincoln Journal Star*, March 2, 2003, 4.

Little Turtle, Jimmy. Re: Counterfeits Sold by Native and Non-Native Traders, Hobby Indians Organizing and Advertising PowWows (1968)

Little Turtle, Jimmy. Letter to the Indian Arts & Crafts Board. Harrisburg, Pennsylvania, February 3, 1968.

Hart, Robert G. (General Manager, IACB). Letter to Jimmy Little Turtle. Washington, DC, March 4, 1968.

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McCoy, Mrs. Thomas L. Re: Counterfeits Sold in Albuquerque, New Mexico (1966)

McCoy, Mrs. Thomas L. Letter to the Indian Arts and Crafts Board. East Lansing, Michigan, August 6, 1966. Board Legislation, Gen. Correspondence Re Imitation Handicrafts, 1936-73, Folder 2 of 3. General Correspondence, 1936-1975. Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980. Records of the Indian Arts and Crafts Board, Record Group 435. National Archives Building, Washington, DC.

Mynter, Ken. Re: Japan and China Produced Counterfeits (1960)

Mynter, Ken (Old Indian Trading Post). Letter to Edward Davis (General Manager, IACB). Claverack, New York, February 25, 1960. Board Legislation, Gen. Correspondence Re Imitation Handicrafts, 1936-73, Folder 1 of 3. General Correspondence, 1936-1975. Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980. Records of the Indian Arts and Crafts Board, Record Group 435. National Archives Building, Washington, DC.

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Phillips, Whitney. "Pro-gun rights billboard depicting American Indians sparks outrage." *McClatchy-Tribune Business News*, April 28, 2013. ProQuest 1346640779.

Rosen, Mike. "Is billboard control next?" *Denver Post*, May 9, 2013, A21.

"'Turn in your arms' gun billboard draws criticism." *Native American Times*, May 10, 2013, 1.

Pecina, Mrs. Fred. Re: Taiwan Produced Counterfeits Sold at Grand Canyon, Arizona (1972)

Pecina, Mrs. Fred. Letter to the Bureau of Indian Affairs. Linden, New Jersey, August 6, 1972. Board Legislation, Gen. Correspondence Re Imitation Handicraft, 1936-73, Folder 3 of 3. General Correspondence, 1936-1975. Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980. Records of the Indian Arts and Crafts Board, Record Group 435. National Archives Building, Washington, DC.

Powers, Suzanna. Re: Counterfeits and Unfair Competition (1972)

Powers, Suzanna. Letter to Clifford Hansen (U.S. Senate). Ethete, Wyoming, August 22, 1972. Board Legislation, Gen. Correspondence Re Imitation Handicraft, 1936-73, Folder 3 of 3. General Correspondence, 1936-1975. Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980. Records of the Indian Arts and Crafts Board, Record Group 435. National Archives Building, Washington, DC.

Reiten, Warren. Re: Japan Produced Counterfeits, Protection of American Market (1971)

Reiten, Warren (Director Public Service Careers, Sisseton-Wahpeton Sioux Tribe). Letter to Milton R. Young (U.S. Senate). Fort Totten, North Dakota, July 22, 1971. Board Legislation, Gen. Correspondence Re Imitation Handicraft, 1936-73, Folder 3 of 3. General Correspondence, 1936-1975. Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980. Records of the Indian Arts and Crafts Board, Record Group 435. National Archives Building, Washington, DC.

Rice, Richard R. Re: Acoma Pueblo Pottery (1980)

Rice, Richard R. Letter to the Indian Arts and Crafts Board. Amarillo, Texas, August 25, 1980. Board Legislation, Gen. Correspondence Re Imitation Handicraft, 1976-80, Folder 1 of 2. General Correspondence, 1976-, Misrepresentation Violations (Closed Cases). Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980. Records of the Indian Arts and Crafts Board, Record Group 435. National Archives Building, Washington, DC.

Schmidt, Robert. Re: "Chief Firewater" Surfboard Cleaner (2012)

Schmidt, Robert. "Chief Firewater surfboard cleaner." *Newspaper Rock*, November 26, 2012. October 27, 2016. <http://newspaperrock.bluecorncomics.com/2012/11/chief-firewater-surfboard-cleaner.html>.

Schmidt, Robert. Re: "My Indian Name is..." Sweatshirt (2010)

Schmidt, Robert. "Michigan opposes 'Indian name' t-shirts." *Newspaper Rock*, December 15, 2010. Accessed October 22, 2016. <http://newspaperrock.bluecorncomics.com/2010/12/michigan-opposes-indian-name-t-shirts.html>.

Schmidt, Robert. Re: "Pocahontas" Costume (2004)

Schmidt, Robert. "Stereotype of the Month Entry (8/17/04)." *Blue Corn Comics*, August 17, 2004. Accessed July 1, 2016. <http://www.bluecorncomics.com/stype484.htm>.

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Schmidt, Robert. "Phony pro-gun Indian image." *Newspaper Rock*, February 28, 2013. Accessed October 30, 2016. <http://newspaperrock.bluecorncomics.com/2013/02/phony-pro-gun-indian-image.html>.

Schmidt, Robert. Re: Thanksgiving event posters/ads (2012)

Schmidt, Robert. "Tasteless Thanksgiving party promotions." *Newspaper Rock*, November 21, 2012. Accessed October 27, 2016. <http://newspaperrock.bluecorncomics.com/2012/11/tasteless-thanksgiving-party-promotions.html>.

Seiden, Lois. Re: Hong Kong and Taiwan Produced Tourist Souvenirs Sold at Rocky Mountain National Park, Colorado, Grand Canyon National Park, Arizona, and Mesa Verde National Park, Colorado (1973)

Seiden, Lois (Muller Jordan Herrick Inc.). Letter to C.B. Morton (Secretary of the Interior). New York, New York, July 9, 1973. Board Legislation, Gen. Correspondence Re Imitation Handicraft, 1936-73, Folder 3 of 3. General Correspondence, 1936-1975. Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980. Records of the Indian Arts and Crafts Board, Record Group 435. National Archives Building, Washington, DC.

Simonson, Eunice E. Re: Hong Kong Produced Counterfeits Sold in Dayton, Ohio (1968)

Simonson, Eunice E. Letter to Robert Bennett (BIA). Dayton, Ohio, September 12, 1968. Board Legislation, Gen. Correspondence Re Imitation Handicrafts, 1936-73, Folder 2 of 3. General Correspondence, 1936-1975. Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980. Records of the Indian Arts and Crafts Board, Record Group 435. National Archives Building, Washington, DC.

Simsick, Raymond J. Re: Nemadji Pottery Sold at Glacier National Park, Montana (1971)

Simsick, Raymond J. Letter to the Department of the Interior. Dearborn, Michigan, October 1, 1971. Board Legislation, Gen. Correspondence Re Imitation Handicrafts, 1936-73, Folder 2 of 3. General Correspondence, 1936-1975. Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980. Records of the Indian Arts and Crafts Board, Record Group 435. National Archives Building, Washington, DC.

Slonaker, Larry. Re: Berkeley Vendor (1993)

Slonaker, Larry. "New Age merchants exploiting sacred traditions, Indians say." *Knight Ridder Tribune News Service*, September 29, 1993. Accessed June 12, 2014. GALE 13283199.

Smith, Mrs. Norman M. Re: Jewelry, Washington, DC (1937)

Smith, Mrs. Norman M. Letter to the Secretary of the Interior. Washington, DC, March 5, 1937. Board Legislation, Gen. Correspondence Re Imitation Handicraft, 1936-73, Folder 1 of 3. General Correspondence, 1936-1975. Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980. Records of the Indian Arts and Crafts Board, Record Group 435. National Archives Building, Washington, DC.

Snyder, George. Re: 'Cherokee Wannabe,' San Rafael (1995)

Snyder, George. "Indians Protest Rip-off Spirituality." *SFGATE*, December 25, 1995. Accessed August 2, 2016. <http://www.sfgate.com/news/article/PAGE-ONE-Indians-Protest-Rip-off-Spirituality-3017411.php>.

Snyder, George. Re: Sedona, Arizona, New Age Community (1995-98) [not part of quantitative data analysis]

Snyder, George. "Indians Protest Rip-off Spirituality." *SFGATE*, December 25, 1995. Accessed August 2, 2016. <http://www.sfgate.com/news/article/PAGE-ONE-Indians-Protest-Rip-off-Spirituality-3017411.php>.

Norrell, Brenda. "Sedona's New Age community: Marketing American Indian Rituals and Ceremonies." *Indian Country Today*, April 13, 1998, B4.

Van Zelst, Theodore W. Re: China Produced Counterfeits (1975)

Van Zelst, Theodore W. Letter to the Indian Arts & Crafts Board. Glenview, Illinois, December 2, 1975. Board Legislation, Gen. Correspondence Re Imitation Handicraft, 1976-80, Folder 1 of 2. General Correspondence, 1976-, Misrepresentation Violations (Closed Cases). Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980. Records of the Indian Arts and Crafts Board, Record Group 435. National Archives Building, Washington, DC.

Woodburn, Maurice E. Re: Counterfeits Sold in Kansas City, Kansas (1956)

Woodburn, Mrs. Maurice E. (The Longan Study Club). Letter to the Bureau of Indian Affairs. Merriam, Kansas, September 21, 1956. Board Legislation, Gen. Correspondence Re Imitation Handicraft, 1936-73, Folder 1 of 3. General Correspondence, 1936-1975. Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980. Records of the Indian Arts and Crafts Board, Record Group 435. National Archives Building, Washington, DC.

Youngman, Etta (Red Cloud Arts & Crafts Cooperative). Re: Japan and Korea Produced Counterfeits (1972)

Youngman, Etta (Red Cloud Arts & Crafts Cooperative). Letter to James Abourezk (U.S. House of Representatives). Pine Ridge, South Dakota, March 3, 1972.

Leo W. Vocu (Executive Director, NCAI). Letter to James Abourezk (U.S. House of Representatives). Washington, DC, May 2, 1972.

All letters from Board Legislation, Gen. Correspondence Re Imitation Handicrafts, 1936-73, Folder 2 of 3. General Correspondence, 1936-1975. Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980. Records of the Indian Arts and Crafts Board, Record Group 435. National Archives Building, Washington, DC.

1.3 Criticism of Multiple Targets

[one complainant = one case]

Bouldin, Loretta (1975)

Bouldin, Loretta. Letter to the Indian Arts & Crafts Board. Shiprock, New Mexico, June 16, 1975. Board Legislation, Gen. Correspondence Re Imitation Handicraft, 1974-75, Folder 3 of 3. General Correspondence, 1936-1975. Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980. Records of the Indian Arts and Crafts Board, Record Group 435. National Archives Building, Washington, DC.

Targets of Criticism:

StarCrest of California. Costa Mesa, California.
Superior Greetings. Souderton, Pennsylvania.
Bouldin & Green GS. Shiprock, New Mexico.

Lone Bear Reney, James, Cherokee-Delaware craftsman (1960)

Lone Bear Reney, James (Lone Bear Indian Craft Co.). Letter to the Indian Arts and Crafts Board. New York, New York, January 4, 1960.

Davis, Edward (General Manager, IACB). Letter to James Lone Bear Reney (Lone Bear Indian Craft Co.). Washington, DC, January 13, 1960.

All letters from Board Legislation, Gen. Correspondence Re Imitation Handicrafts, 1936-73, Folder 1 of 3. General Correspondence, 1936-1975. Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980. Records of the Indian Arts and Crafts Board, Record Group 435. National Archives Building, Washington, DC.

Targets of Criticism:

Redman Buckskin Co. Minneapolis, Minnesota.
Thunderbird Products. Chicago, Illinois.
Lone Eagle Indian Crafts. Brooklyn, New York.
Grey Owl Indian Craft Co. Brooklyn, New York.

Plume Trading & Sales Co. Monroe, New York.
 Pawnee Bills Indian Trading Post. Pawnee, Oklahoma.
 Tepee Town. New York, New York.

Walking Bear, Chief (1963)

Chief Walking Bear. Letter to the Indian Arts and Crafts Board. Jarvis, Kentucky, February [n.d.], 1963. Received February 19, 1963. Board Legislation, Gen. Correspondence Re Imitation Handicrafts, 1936-73, Folder 2 of 3. General Correspondence, 1936-1975. Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980. Records of the Indian Arts and Crafts Board, Record Group 435. National Archives Building, Washington, DC.

Targets of Criticism:

The Wilderness Trail Shop. London, Kentucky.
 The Craft Barn at Dog Patch. London, Kentucky.
 Fort Sequoyah Indian Valley Village Craft Shop. Livingston, Kentucky.
 Mack's Place. Livingston, Kentucky.
 Wig Wam Craft Shop. Cherokee, North Carolina.

Wolf Robe Hunt, Chief (1974)

Chief Wolf Robe Hunt. Letter to Robert Hart (General Manager, IACB). Tulsa, Oklahoma, November 14, 1974. Board Legislation, Gen. Correspondence Re Imitation Handicraft, 1974-75, Folder 2 of 3. General Correspondence, 1936-1975. Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980. Records of the Indian Arts and Crafts Board, Record Group 435. National Archives Building, Washington, DC.

Targets of Criticism:

Williams Auction Co. Tulsa, Oklahoma.
 Camelot Inn. Tulsa, Oklahoma.
 Holiday Inn East. Tulsa, Oklahoma.

1.4 Protest Campaigns

[number of targets / addressees = number of cases]

AITEN/P. Re: Tobacco Products Including Natural American Spirit Cigarettes, "Redman" Chewing Tobacco, "Noble," "Geronimo" Rolling and Pipe Tobacco Products (1997, 2005-07) [4 cases]

AITEP. "Thank You, Federated Indians of Graton Rancheria." Print PSA. *News from Native California*, Spring 2007, 41.

Dubin, Margaret. "Campaign Against Tobacco Products with Indian Images Achieves Success." *News from Native California*, Spring 2007, 40, 41, 45.

Cherokee Complaint (1974-1976)

Denver Meeting, 1974. Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980. Records of the Indian Arts and Crafts Board, Record Group 435. National Archives Building, Washington, DC.

Cherokee, North Carolina / Cherokee Complaint

Violations of Section 6 – Cherokee, N.C. / 1974- - Pending. Misrepresentation Violations (Closed – Pending Cases). Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980. Records of the Indian Arts and Crafts Board, Record Group 435. National Archives Building, Washington, DC.

Cherokee Tribal Resolutions. Misrepresentation Violations (Pending Cases). Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980. Records of the Indian Arts and Crafts Board, Record Group 435. National Archives Building, Washington, DC.

Violations of Section 6, Cherokee, N.C./1974-, Pending. Misrepresentation Violations (Pending Cases). Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980. Records of the Indian Arts and Crafts Board, Record Group 435. National Archives Building, Washington, DC.

Violations of Sec. 6, Cherokee, N.C/Formal Notification letters 1975-76, Folder 1 of 2. Misrepresentation Violations (Pending Cases). Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980. Records of the Indian Arts and Crafts Board, Record Group 435. National Archives Building, Washington, DC.

Addressees of Formal Notification Letters:

Honest Injun Trading Post / Albert S. Lambert. Cherokee, North Carolina, May 12, 1975.
 Big Chief Pottery Shop / Albert S. Lambert. Cherokee, North Carolina, May 12, 1975.
 Western Photo & Craftshop. Cherokee, North Carolina, May 12, 1975.
 Drama Motel / Carl F. Stanford. Cherokee, North Carolina, May 12, 1975.
 Golden Arrow Craftshop / Steve Stratos. Cherokee, North Carolina, May 12, 1975.
 Bigmeat's House of Pottery / John H. Maney. Cherokee, North Carolina, May 12, 1975.
 Reservation Craftshop / Joseph Meliski. Cherokee, North Carolina, May 12, 1975.
 Reservation Trading Post / William C. Morris. Cherokee, North Carolina, May 12, 1975.
 Tee Pee Restaurant / Harry E. Myers. Cherokee, North Carolina, May 12, 1975.
 The Raven's Place / James Paxton Myers. Cherokee, North Carolina, May 12, 1975.
 Soco Trail Campground / J. Frank Needam. Cherokee, North Carolina, May 12, 1975.

Gatlinburg / Cherokee Complaint

Violations of Sec. 6, Cherokee, N.C/Formal Notification letters 1975-76, Folder 1 of 2. Misrepresentation Violations (Pending Cases). Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980. Records of the Indian Arts and Crafts Board, Record Group 435. National Archives Building, Washington, DC.

Addressees of Formal Notification Letters:

Pioneer Trading Post. Gatlinburg, Tennessee, May 12, 1975.
 Rebel Corner. Gatlinburg, Tennessee, May 12, 1975.
 Parkway Book Shop. Gatlinburg, Tennessee, May 12, 1975.
 Gatlin Center. Gatlinburg, Tennessee, May 12, 1975.
 4 Mountaineers. Gatlinburg, Tennessee, May 12, 1975.
 Tramway Souvenirs. Gatlinburg, Tennessee, May 12, 1975.
 The Wishing Well. Gatlinburg, Tennessee, May 12, 1975.
 Acorn Shop. Gatlinburg, Tennessee, May 12, 1975.
 The Atelier. Gatlinburg, Tennessee, May 12, 1975.
 McCutchan's Gifts. Gatlinburg, Tennessee, May 12, 1975.
 Ole Smoky Silver Gallion. Gatlinburg, Tennessee, May 12, 1975.

Maggie Valley / Cherokee Complaint

Violations of Sec. 6, Cherokee, N.C/Formal Notification letters 1975-76, Folder 1 of 2. Misrepresentation Violations (Pending Cases). Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980. Records of the Indian Arts and Crafts Board, Record Group 435. National Archives Building, Washington, DC.

Addressees of Formal Notification Letters:

Molly Brown Craft Shop. Maggie Valley, North Carolina, May 12, 1975.
 Ghost Town Crafts Shop. Maggie Valley, North Carolina, May 12, 1975.
 Soco Crafts. Maggie Valley, North Carolina, May 12, 1975.
 Old Smokey Museum & Crafts Shop. Maggie Valley, North Carolina, May 12, 1975.
 Blue Ridge Crafts. Maggie Valley, North Carolina, May 12, 1975.
 Maggie Mountaineer Crafts. Maggie Valley, North Carolina, May 12, 1975.
 Horner's Nest Crafts. Maggie Valley, North Carolina, May 12, 1975.
 Stuckey's. Maggie Valley, North Carolina, May 12, 1975.

Qualla, North Carolina / Cherokee Complaint

Violations of Sec. 6, Cherokee, N.C/Formal Notification letters 1975-76, Folder 1 of 2. Misrepresentation Violations (Pending Cases). Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980. Records of the Indian Arts and Crafts Board, Record Group 435. National Archives Building, Washington, DC.

Addressees of Formal Notification Letters:

Qualla Arts and Crafts Mutual. Qualla, North Carolina, May 12, 1975.
 Cherokee Craftshop / Nell Rattler. Qualla, North Carolina, May 12, 1975.
 El Camino Restaurant / Nathan Robinson. Qualla, North Carolina, May 12, 1975.
 Chief Saunooke's War Bonnet Craftshop. Qualla, North Carolina, May 12, 1975.
 Saunooke Enterprises / Hazel L. Saunooke. Qualla, North Carolina, May 12, 1975.
 Village Grocery / Odell Shuler. Qualla, North Carolina, May 12, 1975.
 Boundary Tree Dining Room & Rest / Sue Owl. Qualla, North Carolina, May 12, 1975.
 Mountainside Craftshop / Jerome Parker. Qualla, North Carolina, May 12, 1975.
 Qualla 5 & 10 Variety Store / James L. Parton. Qualla, North Carolina, May 12, 1975.
 Dale's Fish Camp Restaurant. Qualla, North Carolina, May 12, 1975.

Denver, Colorado, Investigation (1944-47)

Department of the Interior, Office of the Secretary. "Investigation of Alleged Misrepresentation in the Advertising in Denver, Colorado, of Indian Style Jewelry Produced Largely by Mechanical Means." February 17 to 24, 1945. D.I. 1270. March 9, 1945. Violations of Section 6 – Rogers Jewelry Company – Case Closed. Misrepresentation Violations (Closed – Pending Cases). Correspondence Relating to Misrepresentations of Native American Arts and Crafts, 1932-1980. Records of the Indian Arts and Crafts Board, Record Group 435. National Archives Building, Washington, DC.

*Targets of Investigation:*²³⁰⁰

Producers:

Maisel's Indian Trading Post. Albuquerque, New Mexico. Producer and supplier for RJ, RM, BF, HS, ACJ, BGS, SS.

Sellers:

Rogers Jewelry Co. Denver, Colorado.
 Watch Repairing and Jewelry / Ralph Meyer. Denver, Colorado.
 E.R. Callahan Novelty Co. Denver, Colorado.
 Dragon Gift Shop. Denver, Colorado.
 Ben Frumess. Denver, Colorado.
 Durkee's Cosmopolitan Shop. Denver, Colorado.
 Denver Jewelry Co. Denver, Colorado.
 Leffler Gift Shop. Denver, Colorado.
 Slatkin, Harry / Diamond Broker. Denver, Colorado.

²³⁰⁰ Interview partners for the investigation, who were also potential offenders but are not part of the quantitative data analysis, include:

Producers: Clyde W. Blanchard Jewelry Co. Denver, Colorado. Producer and supplier for RJ; Gross, Kelly and Co. Gallup, New Mexico. Producer and supplier for SP, BF. UITA (United Indian Traders Association) member; Kirk Brothers Trading Post. Gallup, New Mexico. Producer and supplier for SP, BF, MH, DJ, LMS. UITA member; San Luis Valley Turquoise Co. Las Vegas, New Mexico. Producer and supplier for MJ.

Distributors: Box Canyon Indian Trading Post. Lupton, Arizona. Supplier for KJ. UITA member; Gallup Mercantile Co. Gallup, New Mexico. Supplier for BF, DCS, LGS, HS, SS, JJ. UITA member; Griswold, F.H. Towaoc, Colorado. Supplier for ERCN. UITA member; Hansen, John. Estes Park, Colorado. Supplier for DGS, DCS, MH. UITA member; Harris Brothers. Kansas City, Missouri. Supplier for KJ, DJ; Horwitz, M.L. Albuquerque, New Mexico. Supplier for ACJ; Humphrey, Mathilda. Grand Lake, Colorado. Supplier for DCS; Indian Reservation Arts and Crafts. Denver, Colorado. Supplier for DCM; Johnson Jewelry Co. Denver, Colorado. Supplier for DGS; K and S Trading Post. Gallup, New Mexico. Supplier for SP, BF. UITA member; Kenmark Jewelry Co. Denver, Colorado. Supplier for IRAC; Lew Marker Sales Co. Denver, Colorado. Supplier for BGS; L.G. Balfour Co. Denver, Colorado. Supplier for RM; Pakula Manufacturing Co. Chicago, Illinois. Supplier for DJ; Southwest Products. Gallup, New Mexico. Supplier for VJS; Stapleton, Franklin H. Denver, Colorado. Supplier for ERCN. UITA member; Tammen Co. Denver, Colorado. Supplier for ERCN, DGS, LGS, SS; Vicksman Jeweler's Supply. Denver, Colorado. Supplier for RM.

American Curio and Jewelry Co. Denver, Colorado.
 Barth Gift Shop. Denver, Colorado.
 Sherman, Sam. Denver, Colorado.
 Morris Jewelry Co. Denver, Colorado.

National Congress of American Indians, Native American Media Surveillance *[not part of quantitative data analysis]*

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 Manasra, Mohammad Abed. Traveling jewelry seller. Albuquerque, New Mexico.
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[one exhibit = one case]

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[one art object / one solo exhibit = one case]

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