

Commercial and Non-Commercial Uses of Traditional Knowledge and Traditional Cultural Expressions: Examples and Lessons Learned in the United States

Karin Ferriter
U.S. Mission to the WTO
March 31, 2015

Commercial and Non-Commercial Uses of Traditional Knowledge and Traditional Cultural Expressions: Examples and Lessons Learned in the United States

- Definitions
 - Indigenous people
 - Local communities
 - State or States
- Examples of TCEs and TK
- Lessons Learned
 - The pyramid approach provides protection and promotes culture
 - Voluntary schemes can also facilitate benefit sharing

Commercial and Non-Commercial Uses of Traditional Knowledge and Traditional Cultural Expressions: Examples and Lessons Learned

As defined in WIPO/GRTKF/IC/28/5:

- Traditional knowledge [refers to]/[includes]/[means], for the purposes of this instrument, know-how, skills, innovations, practices, teachings and learnings of [indigenous [peoples] and [local communities]]/[or a state or states].
- [Traditional knowledge may be associated, in particular, with fields such as agriculture, the environment, healthcare and indigenous and traditional medical knowledge, biodiversity, traditional lifestyles and natural resources and genetic resources, and know-how of traditional architecture and construction technologies.]

As defined in WIPO/GRTKF/IC/28/6:

- **[Traditional] cultural expression** means any form of [artistic and literary], [creative and other spiritual] expression, tangible or intangible, or a combination thereof, such as actions, materials, music and sound, verbal and written [and their adaptations], regardless of the form in which it is embodied, expressed or illustrated [which may subsist in written/codified, oral or other forms] (the omitted footnotes provides examples including:
 - dance, works of mas, plays, ceremonies, rituals, rituals in sacred places and peregrinations, games and traditional sports/sports and traditional games, puppet performances, and other performances, whether fixed or unfixed, material expressions of art, handicrafts, ceremonial masks or dress, handmade carpets, architecture, and tangible spiritual forms, and sacred places. songs, rhythms, and instrumental music, the songs which are the expression of rituals, stories, epics, legends, popular stories, poetry, riddles and other narratives; words, signs, names and symbols)

Selected US Population Data

- Indigenous peoples:
 - Native Americans and Alaskans: 6,220,579
 - 566 Federally recognized tribes
 - Hawaiians and other Pacific Islanders: 1,225,195
- Local Communities, for example:
 - German-American: 50,708,000
 - Hispanic or Latin American: 50,477,594
 - African American: 42,020,743
 - Asian American: 17,320,856
 - Swiss-American: 1,018,000
 - Jamaican-American: 951,000
- State or States: Total US: 308,745,538

[indigenous [peoples] and [local communities]]/[or a state or states]

Native Americans



Inuit Basket



Zuni girl with jar



"Chilkat blanket



Three sisters, beans, corn and squash



Peace pipe- tobacco use

[indigenous [peoples] and [local communities]]/[or a state or states]

African-Americans



banjo



Gullah woman making a Sweetgrass basket



Rice in South Carolina (originally Madagascar in 1685)



Peanut plant



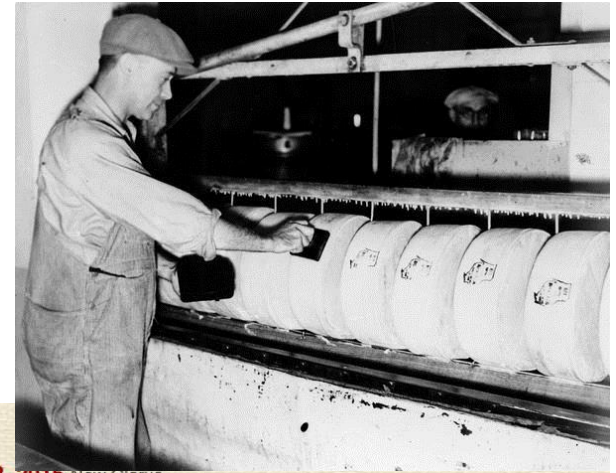
Ankole-Watusi longhorn cattle

[indigenous [peoples] and [local communities]]/[or a state or states]

Swiss-Americans



Glarus,
Switzerland



Heidi Festival

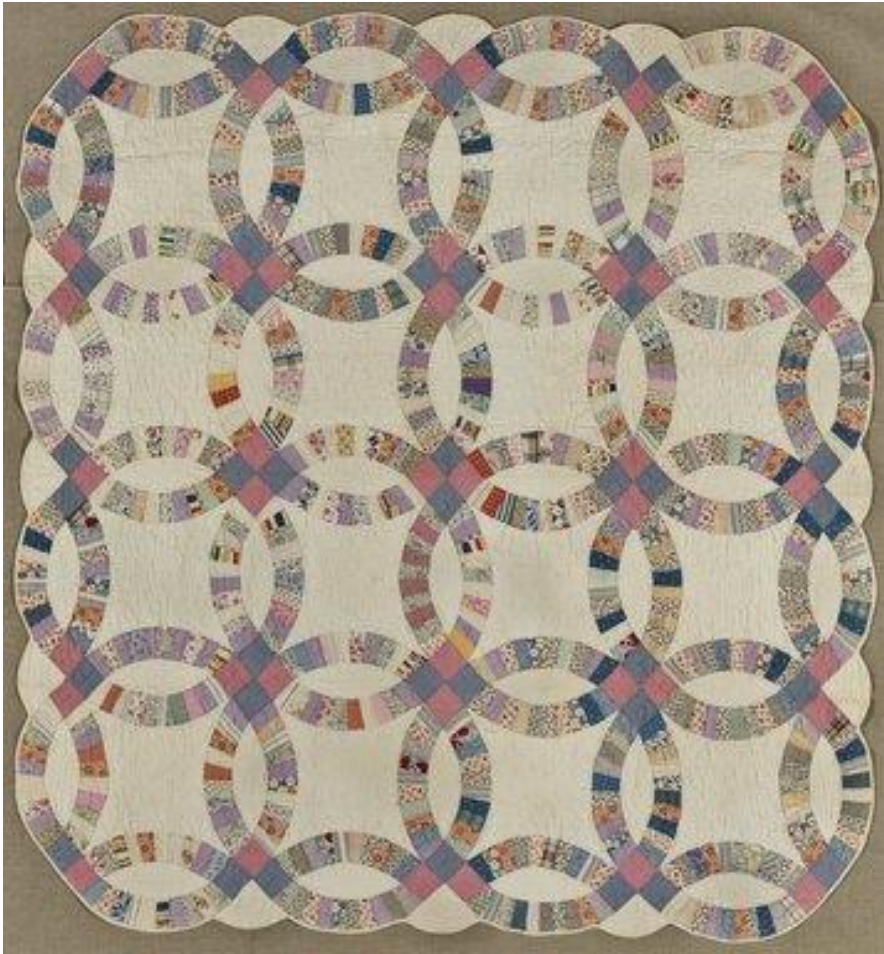
June 26, 2015 - June 28, 2015 New Glarus

[Overview](#) [Places To Stay](#) [Dining](#) [Things To Do](#)



Heidi drama performances. Chicken BBQ Friday. Craft fair and mini expo in Village Park Sat & Sun. Taste of New Glarus (Downtown) Sat.

[indigenous [peoples] and [local communities]]/[or a **state or states**]



Traditional quilt



Shaker furniture

TK: Surfing, TCE: Surfboard, Shaka-sign



TK or TCE: Hot Dogs



TK or TCE: Philadelphia Cheese Steaks



TK or TCE: Basketball



1891, Springfield, Massachusetts. Canadian physical education instructor James Naismith: Inventor of Basketball

TK or TCE: Baseball



Afghan Girl playing baseball



Japanese baseball players, 1921

Trademarks to Protect TCEs?

- Federal Trademarks
 - Navajo Gaming®
- State Trademarks
 - Alaska Silver Hand Program



Database of Official insignia of Native American tribes

The Trademark Law Treaty Implementation Act (1998) provides for the Official insignia of Native American tribes. This registration system makes the Official insignia of federally or state recognized tribes available for trademark examiners to use, in examination of trademark applications.



AGUA CALIENTE BAND
OF CAHULLA INDIANS



Indian Arts and Crafts Act of 1990

The Indian Arts and Crafts Act of 1990 (P.L. 101-644), as amended, is a truth in marketing law that prohibits the offer or display for sale, or sale, of 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 Tribe. Covering all traditional and contemporary American Indian and Indian-style art and craftwork produced after 1935, the Act carries both criminal and civil penalties.

According to South Dakota statutes (SDCL ch. 37-7), individuals and businesses are prohibited from distributing, selling, or offering for sale any article similar to American Indian art or craft which was not manufactured by an American Indian. The only exception is if the individual or business places a clear and legible label on the article and posts a sign immediately above the items for sale that explicitly states the products are not genuine American Indian art or craft.



TCE: Hula



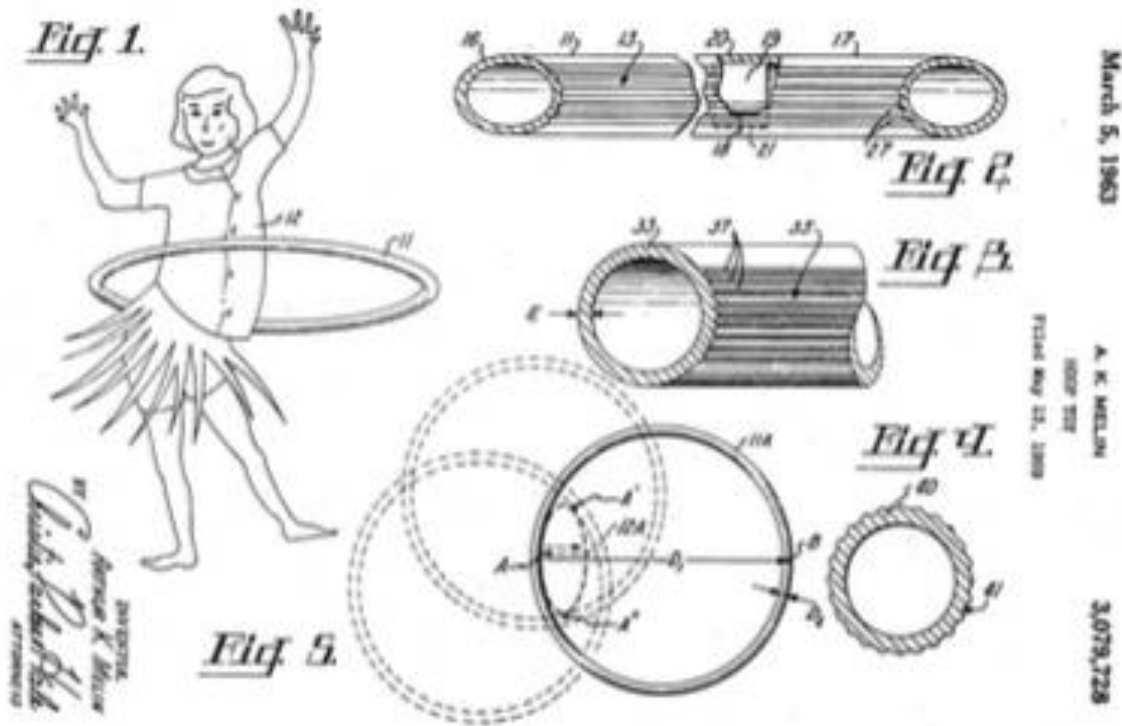
TCE: Hopi Hoop Dance



Commercial use of a TCE: “Hula-hoop®”



Commercial use of a TCE: “Hula-Hoop®”



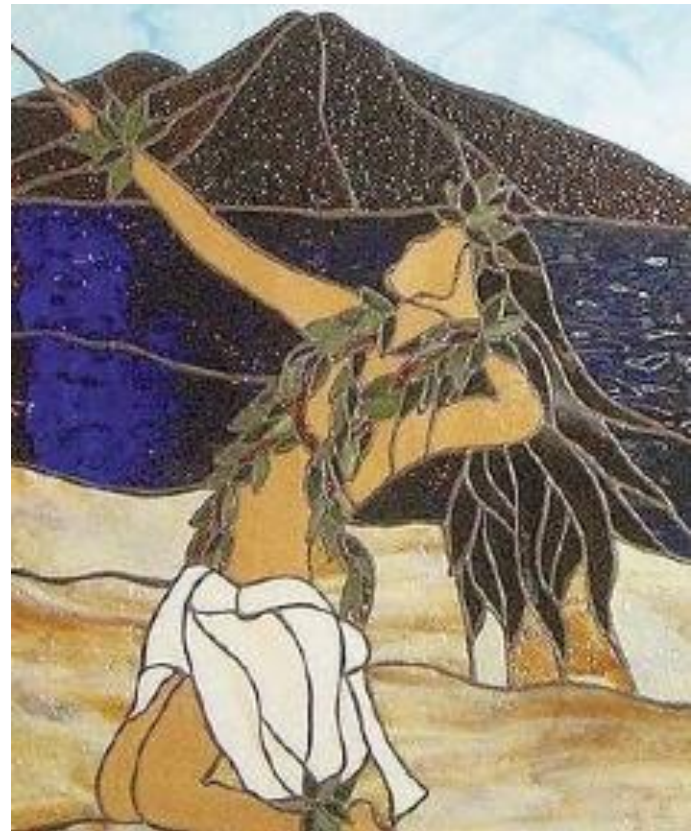
I claim:

1. A hoop toy especially suited for rotation about a human body in response to the user's body gyrations, comprising a member formed into a closed circular hoop, the member being of rigid tubular plastic and having an outside diameter of about an inch so that the hoop as a whole is substantially rigid, the hoop having an outside diameter of approximately 31 to 37 inches and having a total weight of approximately 7 to 10 ounces, so that a portion of the hoop diametrically opposite from a hoop portion in contact with the user's body is spaced from the user's body a sufficient distance to co-act with the weight of the hoop to cause the hoop by virtue of its being substantially rigid to rotate about the user in response to the user's body movements.

Copyright



Photograph of a hula dancer



Stained glass artwork based on photograph

Commercial uses inspired by TCEs: Pendleton Blankets



WOMEN MEN HOME & BLANKETS SALE OUTLET

HOME & BLANKETS

- New Arrivals
- Home Collections
- Blankets
 - Solid / Pattern Blankets
 - Jacquard Blankets
 - National Parks Blankets
 - Baby Blankets
- Throws
- Native American Inspired
- Decorative Pillows
- Bedding Coordinates
- Furniture
- Rugs
- Bath
- Tabletop And Linens
- Home Decor / Gifts
- Travel And Take Alongs

Tatanka Huhanska Blanket



ZOOM

TATANKA HUHANSKA BLANKET

72040

★★★★★ write the first review

The buffalo, known as *tatanka* to the Lakota tribe, has long been a symbol of wisdom and hope for Native people. In recent years, the buffalo population has begun to grow again, and so has another symbol of wisdom and hope: tribal colleges. There are now 37 campuses throughout the country, dedicated to imparting the same values of knowledge, selflessness, strength and leadership represented by *tatanka* throughout Native culture.

A portion of the proceeds from this blanket, woven in our American mills, will be donated to the American Indian College Fund to help support colleges.

- 80" x 64"
- Unnapped, felt bound
- 82% pure virgin wool/18% cotton
- Dry clean
- Made in the USA

\$299.00

MORE IDEAS



EARTH BLANKET
\$299.00



Conclusion

- Thank you for allowing me the opportunity to share some of our national experiences and to demonstrate the diversity of our population.
- It is from learning from national and regional experiences, we can understand our shared objectives and principles.
- With such a sound foundation for our work, we may negotiate a workable outcome.

Thank you very much!

Karin Ferriter

Intellectual Property Attache

U.S. Mission to the World Trade Organization