Ben Wauneka, President of the Navajo Nation, received a phone call early in the afternoon from a Navajo councilwoman. Iina Johona was calling to discuss a large protest in northern New Mexico earlier that week. Although it was nonviolent, the protestors were upset over Urban Outfitter’s “Navajo Line.” Iina explained that many of the Navajo people feel this line makes light of the long history of abuse their people, along with other Indigenous groups have faced in the United States. According to Iina, by using traditional Navajo patterns and the name “Navajo” Urban Outfitters is misleading its customers into thinking there is a connection with the Navajo Nation. While this is problematic enough in terms of items such as handbags, jackets, and earrings, much worse is Urban Outfitter’s “Navajo Hipster Panties,” which Iina argued has taken Indigenous artistic expressions and trivialized and sexualized them for the sake of corporate profit.

More offensive is the “Navajo Print Fabric-Wrapped Flask,” which associates the Navajo aesthetic with a liquor flask. The pattern on the flask exhibits a fourfold symmetry, which is thought to embody traditional and spiritual ideas about harmony or hózhó. Navajo spiritual practice is about restoring harmony to a person’s life to produce health. Displaying this symbolic pattern on a flask is contradictory, as alcohol has a history of destroying the health of many Navajo people. Alcohol was a key component in the European colonization of Indigenous peoples and their lands. It was a policy to provide Native Americans with alcohol as part of assimilating them into European culture and gaining access to their recourses and wealth. This is a sensitive subject
among the Navajo people. In fact, the sale and consumption of alcohol is banned on the Navajo reservation that spans parts of northeast Arizona, southeast Utah, and northwest New Mexico.

Iina reiterated to Ben that Urban Outfitter’s product line perpetuates the stereotype of the “white man’s Indian” and allows for the ongoing commodification of an entire ethnic group. “The Navajo people feel as though their traditional homelands were stolen and expropriated without regard and now so too has their cultural identity,” Iina told Ben. He was not unsympathetic. Earlier that year he had sent Urban Outfitter’s a “cease-and-desist” letter demanding that they stop using the ‘Navajo’ name. His letter was brushed aside. Iina wanted Ben to take this case one step further. “We have formally asked them to stop and they won’t. We need to sue Urban Outfitters and make it sting; sue them for a million dollars.”

Urban Outfitters is a clothing company with stores in 35 states. Its corporate website claims it offers “a lifestyle-specific shopping experience for the educated, urban-minded individual.” Ben found this corporate promise ironic, since many people found their Navajo line to be an example of extreme ignorance and bigotry. To Ben’s mind, there was no doubt that Urban Outfitter’s Navajo line violates the Federal Indian Arts and Crafts act of 1990 and the Federal Trade Commission Act. According to the Department of the Interior:

The Indian Arts and Crafts Act of 1990 (P.L. 101-644) is a truth-in-advertising law that prohibits misrepresentation in 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. If a business violates the Act, it can face civil penalties or can be prosecuted and fined up to $1,000,000.

Iian was not being unreasonable in pushing for a million dollar settlement. At the same time, going to court with a large corporation would be expensive if the Navajo lost the case. A survey of the Navajo people in Iian’s own territory had shown that only 46% believed that the Nation should put their resources towards going to court with Urban Outfitters. The rest believed the case would not go anywhere and resources should be put into more beneficial community projects.

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1 A “cease-and-desist” letter requests that a person halt an activity and not take it up again, with the threat that failure to cease-and-desists will result in legal action being taken.
The Navajo Nation occupies the “Navajo Indian Reservation, established according to the Treaty of 1868 with the United States, which covers about 62,000 km$^2$, making it the largest Indian reservation in the United States. It is located over the meeting point of four states: Utah, Colorado, New Mexico, and Arizona. There are about 300,000 members of the Navajo Nation. Although historically they have been involved in coal and uranium mining, market and environmental concerns have mitigated these sources of income. The people do continue to undertake sheep and cattle herding, and their economic livelihood is now largely linked to wool and yarn production, blanket and rug making, and turquoise and silver jewelry crafting, along with other crafts such as sand painting, feather work, and pottery. A 2004 study by the Navajo Division of Economic Development found that at least 60 percent of all families have at least one member making arts and crafts.$^2$

Since the Navajo Nation is one of the United States’ largest Native American groups, Ben knew that a legal decision would be precedent setting for other First Nations peoples. At the same time, Ben realized that a lawsuit could easily be lost and cost the Nation resources they could not afford. He knew that he needed to consider all sides of the controversy before going forward with any legal action. He picked up his phone and called Bill Donovan, a contributor to the Navajo Times. Donovan had been covering the Navajo Nation for more than 30 years and had recently reported on this controversy. In response, Urban Outfitter’s spokesman Ed Looram issued a statement that Urban Outfitters had no plans to alter its products: “Like many other fashion brands, we interpret trends and will continue to do so for years to come. The Native American-inspired trend and specifically the term ‘Navajo’ have been cycling through fashion, fine arts, and design for the last few years.” Donovan told Ben that Looran was right; it would be hard to single out Urban Outfitters when any number of fashion companies constantly appropriate the aesthetic of religions and cultures the world over regardless of historical tensions.

Complicating the problem is the lack of trademark protection of the Navajo print. In 1975, the Navajo Nation tried to copyright the word “Navajo,” but they were told that it was too common. Even if they could copyright it, however, many of the Navajo people do not want to

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trademark their cultural property because of the legal requirement that a U.S. trademark be used in commerce. This would be offensive, since the Navajo print is considered sacred and thus not a proper subject for commercialization. If they trademarked their name and the print, they would need to commercialize it. As a result, without copyright protection, many companies have used Native American symbolism to market their products, such as the Jeep Cherokee or Victoria Secret’s Sexy Native “look.” In doing so they have never been prosecuted under the law. Thus, Donavon and Ben agreed that they could not build a legal case on the basis of Urban Outfitters appropriation of the Navajo name or pattern.

As he hung up the telephone, Ben retrieved his thick file of notes, newspaper clippings, and letters he had collected. After a few minutes, he found what he was looking for: a letter written by Sasha Houston Brown, a young spokeswoman and strong advocate against Urban Outfitter’s Navajo line. She wrote,

As sovereign Nations, Indigenous peoples have the right to speak for ourselves and not have dominant Euro-American society project and profit off of an artificial and socially constructed image of “Indian” identity. When you have major corporations commodify and take possession of various components of Native culture and intellectual property it speaks to the ongoing dehumanization of Indigenous peoples.

In response to this letter, Michael Lazarus, himself a Native American, wrote an essay called “Anti-racist Measures Take Culture Away From Sports” in which he argued that the use of an ethnic symbol by a sports team or a fashion brand is actually a progressive, liberal act that can be used by a culture to embrace history rather than hide from it. Sports teams such as the Chicago Black Hawks or the Washington Redskins were a positive part of American culture that celebrated the Indigenous heritage. Lazarus argues that the trend in contemporary American culture towards fear of upsetting Native Americans actually turns the First Nations peoples into the “other” and separates them even further from society. Through the commercial incorporation of the Navajo aesthetic into fashion, Indigenous people are better incorporated into American society.

Despite Lazarus’ claim, however, Ben knew that the protest earlier in the week was an expression of deep-seated feelings of offense, and he wondered whether Urban Outfitters products could be considered a violation of human rights. The United Nations Human Rights Council condemns “intolerance, negative stereotyping, stigmatisation, discrimination, incitement to violence, and violence against, persons based on religion or belief.” In US and International law a
corporation is recognized as an individual; this is called “Corporate Personhood.” This designation forms the basis for legal recognition that corporations hold the same rights as an individual. In other words, Urban Outfitters, just like an individual, is able to sell anything it desires as long as it is not explicitly illegal. On the other hand, a corporation can be condemned for being violent or violating human rights in the same way an individual can. Ben wondered whether he could prove that Urban Outfitters is violating human rights by negatively stereotyping the Navajo aesthetic through its merchandise.

In order to consider this question more fully Ben reached for an issue of *Journalism & Intolerance* to reread the argument of Frank La Rue, a famous Native American human rights activist. He seemed to recall that La Rue was of the opinion that taking offense over the appropriation of sacred symbolism was not sufficient for legal action. He found the relevant passage: “blasphemy is a horrible cultural phenomenon but, again, should not be censored or limited by criminal law. I would like to oppose blasphemy in general by being respectful, but that’s something you build in the culture and the traditions and the habits of the people, not something you put in the criminal code. Then it becomes censorship, or the suppression of the freedom of speech and expression.”

Ben has only a few days to construct his position on the controversy before he makes a public statement to the Navajo people. It had become increasingly clear that the Navajo people, much like other Native American peoples, have a range of opinions on the issue. He wants to take a stance on the issue that is best for his people but before he makes this decision, he has a few questions to mull over.

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Questions for Reflection and Class Discussion

1. Does Urban Outfitter’s “Navajo” line make light of the history of abuse faced by Indigenous groups in the North America or does it embrace and celebrate Aboriginal heritage?

2. By incorporating the Navajo aesthetic into fashion, are Indigenous people better incorporated into American society?

3. Is Michael Lazarus correct that contemporary American culture is so afraid of upsetting Native Americans and other religious/cultural groups that they in turn them into the “other” and separate them even further from society?

4. Should a corporation be afforded the same freedom of speech and expression as an individual, and with it the same responsibilities?

5. Is religious sensitivity something a society should build in the culture and the traditions of people or is it something that should be put in the criminal code?

6. Has Urban Outfitters gone too far in appropriating the Navajo aesthetic? Should legal action be taken, and if so, of what sort should it be?