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**IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT FAIRBANKS**

STATE OF ALASKA,)
)
Plaintiff,)
)
v.)
)
SUNIL THAPA DBA THE)
HIMALAYAN AKA MT.)
MCKINLEY CLOTHING)
COMPANY;)
TRISHNA DHUNGANA THAPA;)
TEJASH THAPA,)
)
Defendants.)
)

Case No. 4FA-23-_____ CI

**COMPLAINT FOR INJUNCTIVE RELIEF,
CIVIL PENALTIES, AND RESTITUTION
(AS 45.50.501, AS 45.50.551)**

The State of Alaska, by and through the Office of the Attorney General, alleges and complains as follows:

PARTIES

1. Plaintiff is the State of Alaska.
2. Defendant Sunil Thapa (“Sunil”) is a natural person who owns and operates The Himalayan, aka Mt. McKinley Clothing Co., as a sole proprietorship.
3. Defendant Trishna Dhungana Thapa (“Trishna”) is a natural person who works for The Himalayan. Trishna is married to Sunil.
4. Defendant Tejash Thapa (“Tejash”) is a natural person who works for The Himalayan. Tejash is Sunil’s son.

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VENUE AND JURISDICTION

5. The Attorney General has reason to believe the Defendants have engaged, continues to engage, and will continue to engage in acts or practices declared unlawful by AS 45.50.471, and brings this action in the public interest. This Court has jurisdiction over all aspects of the complaint pursuant to AS 45.50.501(a) and AS 22.10.020.

6. The Defendants conducted business at The Himalayan at all times relevant to this complaint. The Himalayan is located at the Denali Rainbow Village RV Park and Boardwalk Motel at approximately mile 238.6 on the Parks Highway, near the entrance to Denali National Park. Venue in the Superior Court for the Fourth Judicial District at Fairbanks is proper pursuant to Rule 3 of the Alaska Rules of Civil Procedure and AS 45.50.501(a).

FACTUAL ALLEGATIONS

I. Overview of the Himalayan's Operations

7. The Himalayan operates from a storefront at the Denali Rainbow Village RV Park and Boardwalk on the Parks Highway just outside Denali National Park.

8. The Himalayan took the storefront over from a previous company—Mt. McKinley Clothing Company—but the Himalayan continues to advertise with a storefront sign that says “Mt. McKinley Clothing Co., Denali, Alaska.”

9. The image below depicts The Himalayan with the Mt. McKinley Clothing Co. sign outside the store:

Image 1 – The Himalayan



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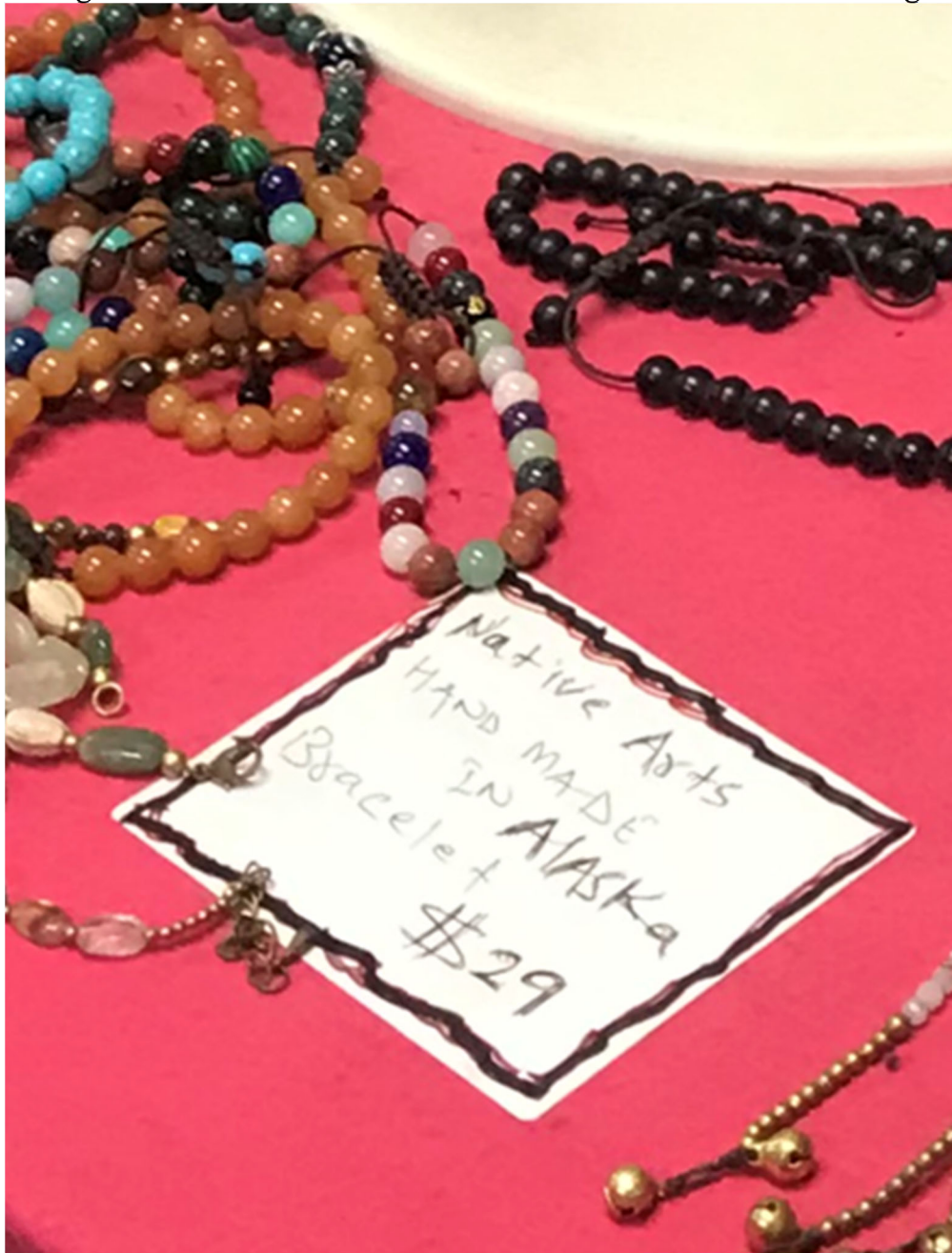
10. The Himalayan sells wool and alpaca hats, socks, sweaters, and ponchos as well as jewelry, puzzle boxes, sunglasses, and various tchotchkes.

11. From at least June 5, 2023 until at least July 12, 2023, The Himalayan was brimming with signage indicating that its products were made in Alaska, hand-made in Alaska, and/or made by Alaska Natives. These signs were typically made by Trishna.

Images 2 – Images 6, shown below, depict some of the products and signs the Himalayan used.

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Image 2 – Bracelet with “Native Arts Hand Made in Alaska” sign



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Image 3 – Various products with “Hand Made in Alaska” signs



Image 4 – Earrings with “Native Art Hand Made in Alaska” sign



Image 5 – Ponchos with “Hand Made in Alaska” sign



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Image 6 – Puzzle boxes with “Hand Made in Alaska” sign



Image 7 – Slippers with “Hand Knitted in Alaska” sign



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12. In addition, at some time after June 5, 2023, but before July 12, 2023, The Himalayan began placing labels on some products indicating that the products are made in Alaska, hand-made in Alaska, and or made from Alaskan alpacas. Examples of these labels are depicted below.

Image 11 – Sweater with “Alaskan 100% Alpaca Hand Knitted Alaska” label



Image 12 – Sweater with “Alaskan 100% Alpaca” label



13. The Himalayan’s products are not made in Alaska or by Alaska Natives. Nor are The Himalayan’s products made from Alaskan alpacas.

14. The Himalayan’s products are often made in Nepal, though they are also made in other countries including India and Thailand.

15. Many, if not all, of The Himalayan’s products were shipped to the United States with foreign country of origin labels, e.g. “Made in Nepal.” The Defendants removed the foreign country of origin labels, replacing them with labels indicating Alaska as the place of manufacture.

16. In addition to their written lies, the Defendants also lied to consumers verbally. Specifically, the Defendants made the false claims that the store was a non-profit that was owned by the Yakutat Village Council, that they were volunteering at the store, that the alpaca products were made from Yakutat alpacas, that products in the store were made by Alaska Natives in Yakutat, and that proceeds were returned to the Village Council to be used for charitable purposes such as building schools and building a rehabilitation center.

17. In fact, there is no entity called the “Yakutat Village Council.” Further, the Defendants do not have a relationship with any government entities operating in Yakutat such as the City and Borough of Yakutat or the Yakutat Tlingit Tribe. And the Defendants have never donated money to a government entity or charity based in Yakutat.

II. The First Undercover Purchase

18. On June 5, 2023, a Department of Law investigator visited several stores in the Denali National Park area for the purpose of learning more about the sale and advertisement of goods that are advertised as being made in Alaska or made by Alaska Natives. One of the stores the investigator entered was The Himalayan.

19. The investigator entered the Himalayan simultaneously with two prospective customers. As they entered the store, and without any prompting, Sunil told the group that everything in the store was from Yakutat.

20. The investigator immediately suspected that the items in the store were not from Yakutat, so he left the store without engaging Sunil, planning to return for further investigation.

21. On June 7, 2023, the investigator returned to The Himalayan. As soon as the investigator walked in the store, he was greeted by Sunil who stated—without prompting—“You are in the truly tribal store of Alaska from Yakutat.”

22. Sunil proceeded to claim that the store was a non-profit, and that all of its products were made by Alaska Natives in Yakutat who donated their products to the store. Sunil said that the proceeds were used to build schools and fund charities in Yakutat.

23. Sunil also said that he was originally from Yakutat and that he was working as a volunteer at the store for two weeks.

24. Sunil further stated that the store’s alpaca clothing was made in Yakutat, and that alpacas are farmed in Yakutat.

25. Sunil told the investigator that an alpaca poncho depicting a Native American chief in a feather headdress reflected Alaska’s traditions. An image depicting the poncho is shown below:

Image 13 – Poncho



26. The investigator told Sunil that he was interested in buying an alpaca poncho, but that he wanted to think more about it. The investigator left the store and returned 24 minutes later.

27. When the investigator returned to the store, Thapa was not present, but Trishna and Tejash were working in the store.

28. The investigator proceeded to the area of the store where alpaca ponchos were displayed, and while touching the poncho shown in Image 13, he asked Tejash, “Is this what the, the natives in Yakutat are like? Is that – I thought that was like southwest. Or is that what they’re in Yakutat like too?”

29. Tejash answered, “This is, like, pretty ancient. This is what they used to look like – like, two, three hundred years ago. Here in the North Americas.

[Unintelligible] the Yukon area and Yakutat.”

30. While still touching the poncho, the investigator asked “So, and – so, the Alaska Natives made this in Yakutat? That’s right?” and Tejash answered, “Yeah. Yeah. That’s very like, I don’t know the word, like, ancient.”

31. The investigator then asked, “Do you know, like, the artist that made it? Or something? Like if I give it as a gift…” and Tejash responded, “The artist specifically? I don’t know the artist specifically. But, yeah, they make it over there.”

32. The investigator asked Tejash, “So, if I get this for, like, my daughter – that’s like real Alaskan?” and he answered, “This is, like, as authentic as it can get.” The investigator then stated that he would buy the poncho.

33. While waiting to pay for the poncho, the investigator asked Tejash whether the socks that were displayed near the checkout counter were also from Yakutat. Both Tejash and Trishna answered, “Everything is.”

34. The investigator then began looking at beaded jewelry on the counter, and Tejash told him, “And all these go back to the village.” The investigator sought to clarify whether the money went to the village council, and Tejash answered, “Yeah, to the council, and then they use it for, like, schools and stuff.”

35. Sunil—who had since reentered the store—explained that the store had been sending money to the village council for about fifteen years.

36. The investigator returned to his office and began investigating the claims made by Sunil, Trishna, and Tejash. The investigator obtained evidence that these statements were false.

III. The Second Undercover Purchase and Execution of an Impound Order

37. The Alaska Department of Law obtained an order to impound samples of The Himalayan's property pursuant to AS 45.50.495(a)(5). However, before executing the impound order a second investigator made an undercover purchase.

38. On July 12, 2023, a second investigator entered The Himalayan. Only Trishna was working in the store at that time.

39. Trishna told the investigator that the store was a non-profit owned by the Yakutat Village Council, and that she was working as a volunteer.

40. Trishna stated that all of the items were hand-made or home-made, that they were authentic, and that nothing in the store was made in China.

41. Trishna pointed to items of clothing and stated that they were made from Alaskan alpacas.

42. The investigator selected a pink and grey hooded sweater, designed to mimic a kuspuk. The sweater is pictured below:

Image 14 -- Pink and Grey Hooded Sweater



43. The sweater had a label indicating that it was hand-knitted in Alaska. The tag is pictured below.

Image 15 – “Alaskan 100% Alpaca Hand Knitted Alaska” label



44. During the checkout process, Trishna claimed that she was from Yakutat, but that she currently lives in Fairbanks. Trishna further stated that she was working at the store as a volunteer, and that the proceeds go to charities in Yakutat, including a new rehabilitation center that is being built there.

45. After the investigator completed the purchase, Department of Law staff executed the impound order with the assistance of law enforcement officers.

46. Many of the items available for sale were displayed on tables, covered by tablecloths. While searching for products pursuant to the impound order, investigators discovered that products were being stored underneath the tables and behind the tablecloths. In general, the products stored underneath the tablecloths were similar or identical to the products displayed on top of the tables—but with one crucial difference: the products stored underneath the tables generally had labels indicating a foreign country of origin. Many of these labels indicated that the products were made in Nepal, but some labels indicated other countries of origin.

47. For instance, the images below depict: (a) a table with headbands; (b) a close-up of the sign on the table, which states, “Wool Head Bands Made in Alaska \$15 or 2 for \$20;” (c) a close-up of one of the headbands from on top of the table with a label stating, “100% Wool Hand knitted Alaska”; and (d) a close-up of a similar headband found underneath the table with a label stating “100% Wool Made in Nepal.”

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Image 16 – Headbands on table



Image 17 – Close-up of “Made In Alaska” sign on table



Image 18 – “Hand knitted Alaska” label on headband displayed on table



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Image 19 – “Made in Nepal” label on headband stored under the table



48. Upon further inspection, investigators discovered that the labels indicating that a clothing product was made in Alaska or with Alaskan wool were typically attached in such a way as to cover up a small hole in the garment. The investigators also noticed multiple rolls of adhesive-backed cloth labels indicating that products were made in Alaska. They further observed a label stating, “Made in Nepal,” in a trash bin. Near the rolls of labels indicating that products were made in Alaska and the trash bin, they observed a cutting board with scissors on it, as well as scraps of trimmed label material.

49. In other words, it is clear that the foreign country of origin labels had been removed, leaving a small hole, which was then covered by a label falsely indicating Alaska as the place of manufacture.

50. Images depicting the investigators' observations are shown below:

Image 20 – Roll of Adhesive-backed Cloth Labels Stating, “Alaskan 100% Alpaca Hand Knitted Alaska”

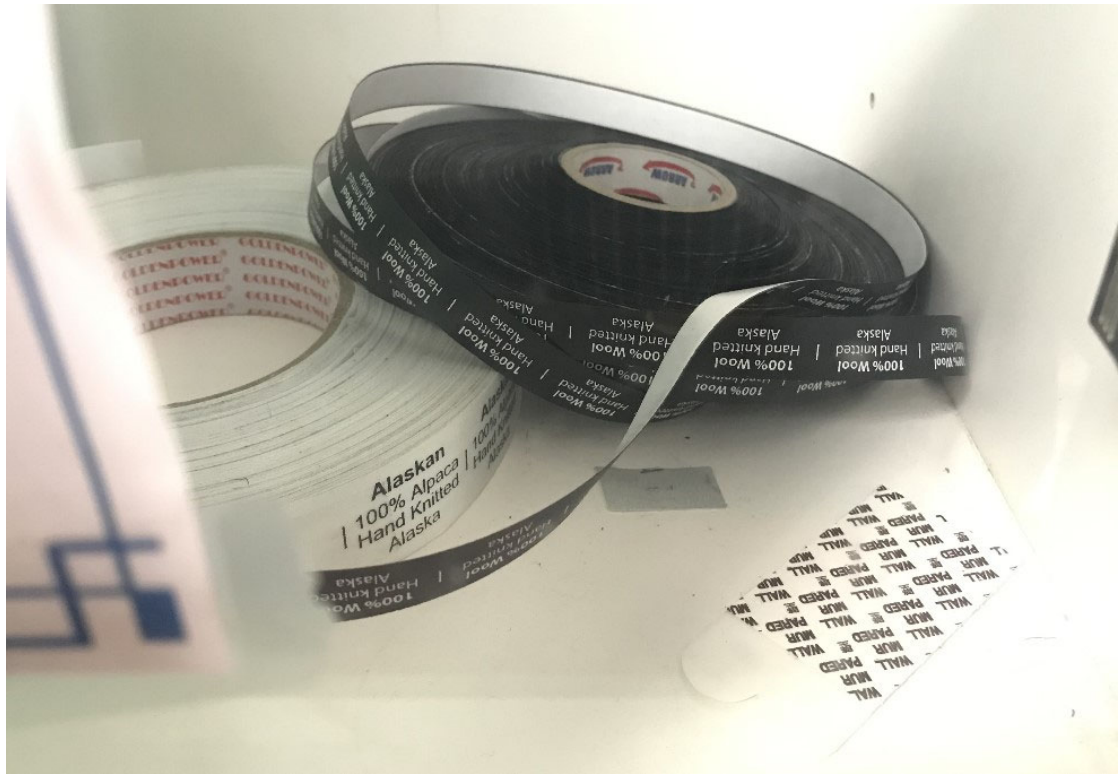


Image 21 – “Made in Nepal” label

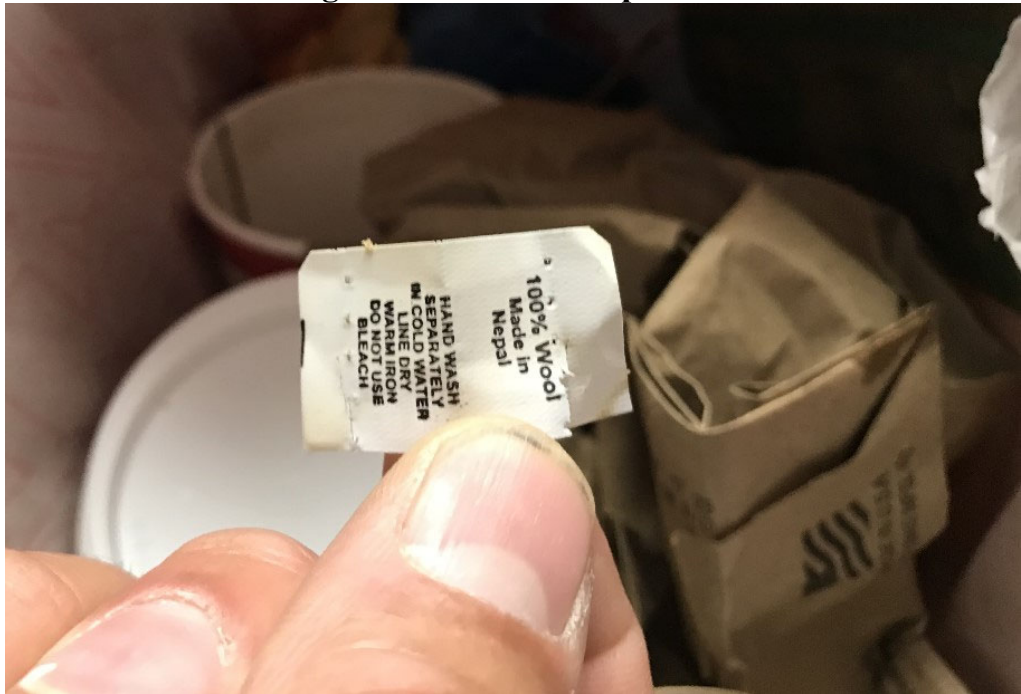


Image 22 – Workstation for removing foreign country of origin labels and adding “Alaskan 100% Alpaca Hand Knitted Alaska” labels



51. The images below illustrate the difference between the products found under the tables and the products displayed on top of the tables. The photographs depict:

(a) two pairs of impounded wool booties that are extremely similar in appearance; the booties on the left were found under a table, and the booties on the right were found on top of a table; (b) A close-up of the label on the inside of the booties found under the table, which states “100% Wool Made in Nepal”; (c) a close-up of the label on the inside of the booties that were found on top of the table, which states “100% Wool Hand knitted Alaska,” which was placed over a small hole in the material.

Image 23 – Two pairs of impounded booties



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Image 24 – Booties found under the table with “Made in Nepal” label



Image 25 – Booties found on top of the table with “Hand knitted Alaska” label



IV. Interviews of the Defendants

52. Department of Law staff interviewed the Defendants.

53. Sunil admitted that he was not from Yakutat. He also admitted that the Defendants had removed Made in Nepal labels from products and replaced them with the labels indicating the products were made in Alaska. Sunil further admitted that the Defendants had never donated money to the Yakutat Village Council.

54. Sunil claimed that some of his products were purchased from an individual who lived in Yakutat named Leroy. But Sunil could not provide the spelling of Leroy’s last name, and he claimed that he did not have any contact information for Leroy.

55. Sunil stated that he began the deceptive scheme this year because Leroy told him that everyone else was doing it, and because he thought it would increase his profits. Sunil stated that he was planning to give some of his profits to Leroy after the season was over, and that Leroy told him that he would pass the money on to the Village Council to help build a rehabilitation center in Yakutat.

56. Trishna admitted that she was not from Yakutat. She also admitted to making the signs indicating that items were made in Alaska or by Alaska Natives and to adding the labels indicating that items were made in Alaska or from Alaskan alpaca. Trishna further admitted that the store had never donated money to the Yakutat Village Council, but claimed that they planned to do so in the future.

57. Tejash initially claimed that he did not work or volunteer at The Himalayan, and that he did not know who owned The Himalayan. However, Tejash ultimately admitted that his father, Sunil, operated the store. Tejash further admitted that he did check out customers and answer their questions. Tejash declined to answer many of the questions that were put to him.

IV. The Defendants Defrauded Consumers

58. As of the date of this complaint, the Department of Law has identified and made contact with two consumers who were subjected to The Himalayan's unfair and deceptive trade practices.

59. Both consumers saw similar signs to the signs depicted in this complaint, and both consumers received similar sales pitches to those received by the undercover investigators as described in the complaint. One of the consumers recognized the

Defendants’ fraudulent scheme for what it was, and she did not make a purchase. But the other consumer believed the Defendants’ lies, and made a purchase.

60. The Plaintiff does not yet know how many consumers were subjected to the Defendants’ unfair and deceptive trade practices, nor does Plaintiff know how many customers the Defendants successfully defrauded.

COUNT I

VIOLATION OF THE UNFAIR TRADE PRACTICES ACT, AS 45.50.471 - .561

61. AS 45.50.471(a) provides that “Unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce are declared to be unlawful.”

62. AS 45.50.471(b) provides a list of acts and practice that are considered to be per se violations of AS 45.50.471, including:

(b)(2)—falsely representing or designating the geographic origin of goods or services;

(b)(4)—representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have;

(b)(11)—engaging in any other conduct creating a likelihood of confusion or of misunderstanding and that misleads, deceives, or damages a buyer or a competitor in connection with the sale or advertisement of goods or services; and

(b)(12)—using or employing deception, fraud, false pretense, false promise, misrepresentation, or knowingly concealing, suppressing, or omitting a material fact with intent that others rely upon the concealment, suppression, or omission in connection with the sale or advertisement of goods or services whether or not a person has in fact been misled, deceived, or damaged.

(b)(36)—violating AS 45.68 (charitable solicitations).

63. Acts and practices may be considered unfair or deceptive under AS 45.50.471 regardless of whether they are listed as per se violations under AS 45.50.471(b).

64. The Defendants committed numerous violations of AS 45.50.471 by:
- a) posting false signs in The Himalayan indicating that products were made in Alaska, made by Alaska Natives, and/or made from Alaskan raw materials;
 - b) removing foreign country of origin labels from products offered for sale at The Himalayan;
 - c) affixing labels to products offered for sale at The Himalayan falsely indicating that the products were made in Alaska or made from Alaskan raw materials;
 - d) falsely claiming that The Himalayan was owned by the Village Council of Yakutat;
 - e) falsely claiming that The Himalayan was a non-profit organization;

- f) falsely claiming that they were working as volunteers;
- g) falsely claiming that the proceeds from sales would be used for charitable purposes in Yakutat or that proceeds would go back to the people of Yakutat;
- h) falsely claiming that The Himalayan's products were made by Alaska Natives; and
- i) falsely claiming that The Himalayan's products were made in Alaska generally and/or in Yakutat specifically.

65. Trishna and Tejash Thapa are liable as agents or employees of The Himalayan for all acts or practices in violation of AS 45.50.471 that they participated in or had the authority to control.

66. As the owner of The Himalayan, Sunil Thap is liable for all acts and practices in violation of AS 45.50.471 that he personally committed. Sunil Thapa is additionally liable for violations of AS 45.50.471 that were committed by agents or employees of The Himalayan because he either: (a) had actual knowledge of the acts or practices; (b) was recklessly indifferent as to whether the acts or practices were occurring; or (c) knew it was highly probable that the acts or practices were occurring and intentionally avoided the truth.

DEMAND FOR JUDGMENT

67. The State of Alaska demands the following relief:

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68. Pursuant to AS 45.50.501, an order enjoining the Defendants, and all who act under, by, or through Defendant, from continuing to engage in the unlawful acts and practices alleged in this complaint.

69. Pursuant to AS 45.50.501(b), an order directing Defendants to restore to any person, any money or property which may have been acquired through the unlawful acts and practices alleged in this complaint.

70. Pursuant to AS 45.50.551(b), an award of civil penalties against the Defendants of \$25,000 per violation of AS 45.50.471, with the total number of violations to be proven at trial;


71. Pursuant to AS 45.50.537(d), an award of full reasonable costs and attorney fees to the State of Alaska, including the cost of investigation; and

72. Any additional relief that the court may deem proper.

DATED: July 19, 2023.

TREG R. TAYLOR
ATTORNEY GENERAL

By:



John Haley

Assistant Attorney General
Alaska Bar No. 1402010