



CERTIFICATES OF AUTHENTICITY

AUTHENTICITY of ABORIGINAL ARTWORK

Authentic Aboriginal artwork is artwork that has been made by an Aboriginal or Torres Strait Islander person. The authenticity of an Aboriginal artwork is important not only for ethical and legal reasons but because it has significant value in the art market. The problem facing Aboriginal artists and communities is how to protect authentic artwork from rip offs made by non-Indigenous people. This has become an increasing problem. If fake Aboriginal artworks are sold, eg at tourist shops, this means that the profits from these sales do not go to the Aboriginal artist or community. There are a number of systems that have been developed to try to overcome this problem.

1. What is the Label of Authenticity?

- In 2000, National Indigenous Arts Advocacy Association (NIAAA) developed the Label of Authenticity.
- The Label of Authenticity is a national trade mark that encouraged people to buy authentic Australian Indigenous artwork.
- The Label aimed to:
 - protect Australian Indigenous artists to make sure that they were adequately paid for the sale of their work;
 - protect buyers who wanted to purchase authentic Australian Indigenous artwork;
 - allow people to see the different styles of Australian Indigenous artwork; and
 - create a system which highlighted the differences between real and copied artworks.
- To register an artwork the artist had to show that they identified as an Aboriginal or Torres Strait Islander and had permission from the relevant community to make the artwork.
- Registration meant that the artist had permission to attach the Label to their artwork. This meant that buyers were aware that the artwork was authentic.
- The Label of Authenticity is no longer in use after NIAAA stopped operating.

2. What are people using now?

- There is now no national / state based organisation that regulates labels to make sure that particular works are authentic works made by an Aboriginal or Torres Strait Islander person or group.
- As the Label of Authenticity is no longer used, individual artists and organisations are creating and using certificates of authenticity that are attached to art products.
- These certificates are different to the Label of Authenticity. Certificates are created by individuals and organisations and vary across communities.
- Certificates of authenticity do not guarantee work is authentic. Works have not been through an independent assessment process.
- Certificates do not prevent artworks being forged or fake. For example: a certificate may include a photograph of an artist holding a work. This does not guarantee that the artist made the work.
- Certificates of authenticity usually include the artist's name, date of birth, artwork name, and photographs of the artist painting the artwork. Some dealers supply videotapes of the artist painting the work as evidence. This still does not guarantee that the artwork is authentic.
- Problems that have arisen with certificates include:
 - they do not guarantee that the work is authentic;
 - there has been misuse of certificates by commercial galleries which have attached existing certificates made by an art centre to artwork made by an artist who is not from that art centre; and
 - they can be created by anyone.

3. What legal action can be taken if someone buys artwork that is not authentic?

- If someone buys an artwork that has a certificate of authenticity attached to it and he or she later finds out that the work is fake, they can take legal action against the person who supplied the certificate.
- Legal actions include:
 - Misleading and deceptive conduct (on the basis of the wrongful description of the goods) under the *Trade Practices Act* or *Fair Trading legislation*. For example, if a label is attached to a work made by a non-Indigenous person stating that the work is authentic Aboriginal art, the Australian Competition and Consumer Commission (ACCC) and the purchaser of the artwork can take action against the person or business that attached the label.

- Breach of contract (agreement) because the purchaser did not get what they thought they were buying eg the purchaser can sue the person or business who created and attached the certificate that stated that the artwork was a genuine Aboriginal artwork and named the Aboriginal artist when the artwork was in fact manufactured elsewhere for example, in Indonesia.
- Passing off/misrepresentation – eg a person or business creates and signs a certificate stating that a well-known Aboriginal artist made the work when this is not true and then sells the work. The well-known artist could bring an action against the person or business for misrepresenting that its goods are those of the artist.

4. What are the options for the future?

The Arts Law Centre of Australia supports best practice models to deal with authenticity issues. Some possibilities include:

- The introduction of a national system where an authorised body issues certificates of authenticity. Before issuing the certificates the authorised body must make sure that the person being issued with a certificate meets certain requirements.
- A trade mark practice similar to that adopted in New Zealand that recognises and protects Maori culture and intellectual property. Specifically, a Maori Trade Marks Advisory Committee examines all trade marks that contain a Maori sign and advises the Commissioner of Trade Marks if a trade mark that contains Maori text and imagery will be offensive. There are also 3 (authentication) trade marks. The 'toi iho' Maori made mark' is a registered trade mark that can be used in relation to Maori arts and crafts made by Maori artists. The other marks are a "mainly Maori mark" which can be applied to artwork made mainly by Maori artists, and a "co-production mark" for works made by Maori artists with non-Maori persons.

Further Information

Arts Law Centre of Australia

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Website: www.artslaw.com.au

Australian Copyright Council

Website: www.copyright.org.au

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The law as at 6 January 2006. This information applies to people who live in, or are affected by the law as it applies in Australia.

The Arts Law Centre of Australia has been assisted by the Australian Government through the Australia Council, its arts funding and advisory body.

