

FAKE ART HARMS CULTURE

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Joint statement – Indigenous Art Code, Copyright Agency, Arts Law Centre of Australia

Federal Court rules against Birubi but Aboriginal artists need further protections.

The Indigenous Art Code, Copyright Agency and the Arts Law Centre of Australia have called for tougher laws to protect against the misrepresentation of fake art in the wake of the Federal Court's findings against Birubi.

The Federal Court found that Birubi made false and misleading representations that boomerangs, bullroarers, didgeridoos and message stones they sold were made in Australia and were hand painted by Australian Aboriginal persons, when in fact they were made in Indonesia. The misleading representations arose from the products featuring designs associated with Australian Aboriginal art and words such as "Aboriginal Art", "genuine" and "Australia".

The judgment, although welcome, does not make it illegal to sell fake Aboriginal Art as long as misleading representations are not made about the authenticity of the products. Birubi could have sold the same products if, for example, they were labelled made in Indonesia and did not claim to be genuine. Fake art can continue to be sold as long as misleading claims about authenticity are not made.

Up to 80% of Aboriginal souvenir products sold are fake art or have not been made under a fair and transparent licensing agreement. Fake art deprives Indigenous artists of economic opportunity and demeans Indigenous cultural heritage. These concerns cannot be overcome through the existing consumer protection laws on false and misleading representations. A new law enforced by the ACCC to prevent the sale of fake art is needed.

Gabrielle Sullivan, CEO, Indigenous Art Code, calls for tougher laws to protect against the misrepresentation of fake art, saying "While the ACCC acknowledges the cultural harm caused, it must be made clear that Birubi (in liquidation) were not on trial for abuses of Indigenous Cultural



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and Intellectual Property and producing “fake art”. There is no law in Australia that says you can’t make fake art and you can’t misappropriate Aboriginal and Torres Strait Islander culture.”

Copyright Agency call for greater transparency and fairness in licensing agreements with Indigenous artists. Too often artists are approaching Copyright Agency for assistance in response to unfair arrangements with producers/distributors of art and craft products, and while often these arrangements are not illegal they are unfair and they deprive Indigenous artists of economic opportunity and demean Indigenous cultural heritage.

Andrew Wiseman, Partner Allens and Vice-President of Arts Law, reflects that if Australia is serious about supporting and protecting Indigenous Culture, the Birubi decision, while helpful in limited circumstances, proves the case that Australia needs more than current Australian Consumer Law protection. Misleading and deceptive conduct is the wrong platform. What is needed is protection from misappropriation of the traditional cultural rights of Indigenous artists. Neither the current ACL nor the Copyright Act provides this. The drafting has been done. Let's show we are serious - and get the Fake Art Bill through to legislation. Now.

For more information or requests for an interview, please contact:

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