

Dear

Please take this email as being KALACC's Submission to the inquiry into the proliferation of inauthentic Aboriginal 'style' art

We do understand perfectly well that the matters raised in this submission lie somewhat outside of the terms of reference for the Inquiry.

But we feel that they are important matters worthy of consideration by the Committee.

Essentially our submission to the Committee relates to the use, by both Indigenous and non – Indigenous people, of the Wandjina image.

From a Western, European perspective, the Kimberley Aboriginal Law and Culture Centre holds a Trademark over the Wandjina.

Trademark documents are attached.

From an Aboriginal perspective, KALACC represents the interests of the cultural custodians and law bosses for the 30 language groups of the Kimberley, including the north – Kimberley groups for which the Wandjina is the key to their spirituality and traditional law and culture.

From that perspective, only 'authorised' persons can use ie can artistically represent the Wandjina figure. Such permission or authorization will only ever be granted to members of those three language groups and even then only to selected individuals who are considered by the cultural bosses to be 'appropriate' persons to represent the Wandjina.

Sadly, the Western European law ie the Trademark affords us limited protections against unauthorized use of the Wadjina.

And certain individuals within the wider public are only too willing to disregard Aboriginal law and the wishes of the cultural custodians.

This thing has a very long history.

A Facebook dialogue on this current infringement can be found here -

[https://www.facebook.com/smetzenrath/posts/10212302873319423?comment\\_id=10212326510670342&reply\\_comment\\_id=10212345926515726&notif\\_t=feed\\_comment\\_reply&notif\\_id=1505170607659328](https://www.facebook.com/smetzenrath/posts/10212302873319423?comment_id=10212326510670342&reply_comment_id=10212345926515726&notif_t=feed_comment_reply&notif_id=1505170607659328)

But the longer history and examples are as follows:

- Blue Mountains Sculpture circa 2012
- Wicked Camper Van circa 2014
- 'Loud' Rock N Roll Band – 2016
- Perth Hot Dog Vendor – 2016
- Hervey Bay Indigenous artist – 2016
- Driller Armstrong – 2017

Clearly this issue is going to do away no time soon.

Following on from the recent Facebook discussion, Driller Armstrong messaged me on Facebook. I accepted his contact and said that on the face of the planet earth only three North Kimberley tribal groups had authority to paint the Wandjina. He then replied as follows:

“respectfully, by that reasoning - everything else is not a genuine Wandjina - i get that, so how can an image i created out of rock art drawings from all around the planet (including Australia) and the break dancers of New York Graffiti artist Keith Haring - painted on top of another artists european style depiction of the empty Australian landscape, how does any of that make my image a "genuine" Wandjina painted by the people who have the sacred knowledge? Of course it's not a true Wandjina. It doesn't mean that children shouldn't depict it. It doesn't mean artists cannot be inspired by it. I'm not trying to pass off my work as being "Aboriginal art", I'm not selling t-shirts with my "wandjinas" (lower case "w") not t shirts not boomerangs - All I'm doing is making what i think is a powerful statement with a hybrid image symbolising Aboriginal people as a whole into a Terra Nullius landscape by another artist. Caroll Karpany said he's never seen anything like my work. Those words inspire me. Can i paint a Wandjina? Of course i can't - I'm white. But can i draw what one looks like. I sure can. And I'm proud of that. All Australians should know what a Wandjina is and what it looks like. Knowing what it looks like and knowing what it means in a spiritual sense are very different.”

Your inquiry is in to ‘fake’ Aboriginal art. Driller Armstrong says that his artwork is not fake because he makes no attempt to pass it off as being genuine. Others that we have dealt with over the years have their own lines of reasoning, including this from an Indigenous artist not from the Kimberley:

“Currently my name and images of my work are not associated with the word Wandjina in any manner on line. I endeavour at all times to walk the line between the past and the present with as much respect to every one as I possibly can. As a artist is so difficult to find imagery that I can use to show our people in a dignified / imposing / spiritual manner.”

If I understand this meaning correctly, it is a statement that the artist acknowledges that they have gained some inspiration from elsewhere [ie the Kimberley]; that they sought to make a positive community contributing by representing positive imagery; that the works that they have produced are not named anywhere as being Wandjina.

So, whilst your inquiry is an inquiry in to fake art, we challenge the Committee to broaden its terms of reference and to give some consideration to what protections there are for cultural traditions.

Finally, we take this opportunity to point out that the old Indigenous Cultural Support Program of the Commonwealth Arts Department was terminated on 30 June 2016. And in its place we have since then had the Indigenous Languages and Arts Program. Along the way we have lost a tremendous amount of support for Aboriginal culture. There is at present a massive void in the Commonwealth Government's policy in regards to Aboriginal culture. Yes, the government can point to the 'Arts.' But support for 'Culture' has disappeared.

It really is shocking that in an advanced nation like Australia there is at present no policy and no funding support for the Traditional cultural practices of the world's oldest living culture.

Kind regards



*"To assist and promote the ceremonies, songs and dance of Kimberley Aboriginal people, to encourage and strengthen their social, cultural and legal values and ensure their traditions a place in Australian society."*



**Australian Government**  
**IP Australia**



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30/09/2014

Allens Patent & Trade Mark Attorneys  
Deutsche Bank Place  
Corner Hunter and Phillip Streets  
SYDNEY NSW 2000

**TRADE MARK APPLICATION - NOTICE OF ACCEPTANCE**

**Applicant:** Kimberley Aboriginal Law and Cultural Centre (Aboriginal Corporation)  
**Your Ref:** 201211460-004

Your Trade Mark Application No. 1454268 has passed the examination stage of the registration process. It will now be advertised in the Australian Official Journal of Trade Marks on 02/10/2014. Other people have 2 months from the advertisement date within which to oppose registration of your trade mark. Information on the opposition process and costs is available on our website. It should be noted that in an opposition proceeding, liability for costs begins from the date the Notice of Intention to Oppose is filed at IP Australia.

**REGISTRATION FEE IS NOW DUE**

As of the date of this Notice, the current fee to register your trade mark is \$900 and must be paid within 6 months of the advertisement date. GST does not apply to this fee.

**IMPORTANT:** The final date for payment is 02/04/2015. If payment is not received on or before this date your trade mark will lapse. If your trade mark does lapse and you wish to have it revived you must apply for an Extension of Time under S224 to pay the registration fee and pay extension of time fees of \$100 per month or part month past the final date for payment above.

If you delay paying you should be aware of the following. Firstly, opposition can be lodged at any time until your trade mark is registered. Secondly, if IP Australia raises fees before you have paid, the new fee will be payable.

IP Australia will register your trade mark within 10 working days after the opposition period has expired, provided no-one has opposed your application and any applicable fees have been paid. If your trade mark is successfully opposed your registration fee will be refunded on request.

Trade Mark Application No.

HOW DO YOU PAY?

Via our eServices portal at [www.ipaustralia.gov.au](http://www.ipaustralia.gov.au). From the My Payments menu select Trade Mark registration payment.

**IMPORTANT:** Your trade mark details are enclosed. You should ensure the details are recorded correctly as these are the details that will appear on your Certificate of Registration should your trade mark proceed to registration.

You should also be aware that trade mark owners may receive correspondence from unsolicited IP Services such as invoices for registration of a trade mark, offers of a monitoring service or to register a trade mark in an international register. Before paying a fee for any IP-related service, we recommend that you carefully consider what, if any, protection, promotion or other value the service will provide. Further details can be found on our website under Unsolicited IP services.

Details of this Trade Mark can be viewed in ATMOSS on our website at [www.ipaustralia.gov.au](http://www.ipaustralia.gov.au).

IP Australia has now introduced the "General eService" functionality. This latest enhancement allows users the ability to submit over 150 transaction/service request types including amendments, assignments, extensions of time, opposition matters and responses to examination reports via our eServices portal.

For further information visit [www.ipaustralia.gov.au](http://www.ipaustralia.gov.au) or contact 1300651010.

25/09/2014

Details RECORDED for Trade Mark Application No. 1454268  
Including Endorsements

Filed on : 18/10/2011                      Convention :  
Type : Trade Mark                      Divisional :

Owner Name  
(abbrev'n): Kimberley Aboriginal Law and Cultural Centre  
(Aboriginal Corporation)  
Address : Lot 213  
Great Northern Highway  
FITZROY CROSSING WA 6765

Address : Allens Patent & Trade Mark Attorneys  
for Deutsche Bank Place  
Service Corner Hunter and Phillip Streets  
SYDNEY NSW 2000  
Class : 35 41 45

Goods and : Class 35  
Services The bringing together for the benefit of others goods in connection with spiritual, cultural and artistic matters within the custody of the Worrora, Wunumbal and Ngarinyin Aboriginal people to enable people to purchase the goods; advertising and promotional services; business advocacy services in relation to cultural and artistic awareness; dissemination of advertising and promotional materials and information; retail services being services to assist people in the selection of goods; organising and conducting of exhibitions and other such events; all the foregoing services in relation to Aboriginal spiritual, cultural and artistic matters within the custody of the Worrora, Wunumbal and Ngarinyin Aboriginal people

Class 41  
Education and training, the organising and conducting of festivals, seminars, lectures and other events, the provision of publications (including online), all the foregoing services in relation to aboriginal spiritual, cultural and artistic matters within the custody of the Worrora, Wunumbal and Ngarinyin Aboriginal people; information, cultural activities, all the foregoing services in relation to aboriginal cultural and artistic matters within the custody of the Worrora, Wunumbal and Ngarinyin Aboriginal people

Class 45  
Spiritual guidance, advice, counselling and mentoring; spiritual development services; advocacy services; provision of information; all the foregoing services in relation to Aboriginal spiritual matters within the custody of the Worrora, Wunumbal and Ngarinyin Aboriginal people

No ENDORSEMENTS recorded

**Trade Mark Details :**

**Type : Device Mark**  
**Device(s) : WOMAN'S HEAD, STYLISTED**

add name

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