

Senate Economics Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
Treasury Portfolio
Budget Estimates
2017 - 2018

Division/Agency: Australian Competition and Consumer Commission
Question No: 40
Topic: Arrogation of Indigenous Culture
Reference: Written
Senator: Ketter, Chris

Question:

Is the ACCC aware of the market in Australia of 'indigenous-style' products that seek to arrogate the look and feel of Aboriginal and Torres Strait Islander cultural artifacts, despite being produced without the involvement of any indigenous Australian? Would this be a case of misrepresentation or misleading if consumers are sold a product believing it to be a genuine product? Is there a regulatory gap in the Australian Consumer Law around protections for indigenous cultural expressions?

Answer:

The ACCC has taken enforcement action in various matters that have involved alleged false or misleading representations in relation to Indigenous artwork. Examples include:

- <https://www.accc.gov.au/media-release/court-declares-dealer-in-aboriginal-art-misled-consumers>
- <https://www.accc.gov.au/media-release/art-dealer-gives-accc-undertaking-for-misrepresentations-about-indigenous-art>

Whether or not representations or conduct is likely to be misleading or deceptive in contravention of the Australian Consumer Law will depend on the circumstances.

Direct claims that a product was made by or with the involvement of an Aboriginal or Torres Strait Islander person when it is not or claims of being made in Australia when it is imported are likely to breach the law. In certain circumstances these claims may also be made by implication such as reference to traditional or Australia(n) or the way they are presented for retail.

It is not clear however, under the consumer law, that the use of an Indigenous-style in itself will give rise to a representation of being produced by or with the involvement of an Indigenous person without further representations or conduct.

The ACCC is aware of concerns being raised about a number of suppliers of Indigenous style products in circumstances where they may not be made by or with the involvement on an Aboriginal or Torres Strait Islands person. The ACCC is currently investigating a number of suppliers.