

## Office of Fair Trading

# Indigenous souvenirs and artwork

## Avoiding false and misleading claims

Australia's marketplace law, the Australian Consumer Law (ACL), exists to protect consumers from unfair trading practices. The Office of Fair Trading (OFT) is responsible for administering and enforcing the ACL in Queensland.

Under the ACL, it is illegal for a business to make a claim or statement that is false or misleading. This applies if you sell Aboriginal and Torres Strait Islander souvenirs and artwork, whether it is a souvenir from a tourist shop or a one-of-a-kind collector's piece from an art gallery.

Consumers purchasing Indigenous souvenirs and artwork should be clear about what they are buying and must not be misled into believing a product is 'authentic' or 'genuine' when it is not.

Put simply, anything you represent about the products you sell must be true, and you must be able to prove it.

The representations you make can be made in many ways and include words, images and gestures. Information in advertisements, on websites, on signs or shelf labels, on stickers or packaging, and given verbally by a salesperson are common ways of making representations.

### False or misleading representations

You must ensure any representations you make are accurate. They could be about:

- the standard, quality, composition, style or value of goods
- the age, history or previous use of goods
- a sponsorship or approval the goods or services have, or a testimonial given by a person about the good or services
- the benefits and uses of the good or services
- the place of origin of the goods, including for example where they were manufactured or assembled.

Remaining silent or omitting relevant facts or information about goods or services can amount to making a false or misleading representation.

It does not matter whether the false or misleading statement or omission was intentional or not.

There are also specific rules for country of origin claims. For further information about these visit our website at [www.qld.gov.au/fairtrading](http://www.qld.gov.au/fairtrading).

### Representations made on Indigenous souvenirs and artwork

Businesses selling Indigenous souvenirs and artwork often make claims about the goods. While the OFT cannot give legal advice or definitions for these claims, guidance as to best practice is outlined in the following table.



| For a claim that a product is | Best practice when used in the context of Indigenous art and souvenirs would be  |
|-------------------------------|--|
| Authentic                     | <p>Characteristics which may go towards considering an item authentic include:</p> <ul style="list-style-type: none"> <li>• the name of the artist and their language group/homelands</li> <li>• the title of the work, when and where it was created</li> <li>• the details or the story depicted on the work</li> <li>• the work is an original</li> </ul> <p>If the work is a reproduction additional care is needed. Claims to be considered would include: clarity that it is a reproduction, that reproductions were authorised by the artist, how many were reproduced.</p> |
| Original                      | The first of its kind. The product is produced by an artist, sculptor, writer, designer etc and is not a copy. Copies may be made of the original but, if they are, they would not be claimed to be original.  |
| Genuine                       | Something that is real and exactly what it appears to be. For example, a 'genuine boomerang' would be able to be thrown like a boomerang and a 'genuine didgeridoo' would be able to be played, rather than being simply decorative pieces.  |
| Hand-painted                  | The actual product that the representation relates to is, itself, hand-painted. It would not be acceptable to claim a product is hand-painted if it was printed reproduction of an original hand-painted piece.  |
| Aboriginal                    | The product is produced by a person who identifies, or group of persons who all identify, as Australian Aboriginal. The seller or supplier would be able to individually identify the person or persons who made the product.  |
| Indigenous                    | The product is produced by a person who identifies, or group of persons who all identify, as Indigenous Australian. The seller or supplier would be able to individually identify the person or persons who made the product.  |
| Torres Strait Islander        | The product is produced by a person who identifies, or group of persons who all identify, as being the indigenous people of the Torres Strait Islands.   |
| Traditional                   | Produced in a long-established way. The seller or supplier would be able to identify the methods and practices used were typically employed by previous generations.   |
| Royalties paid to the artist  | The artist is paid previously agreed commission(s) for the reproduction of their artwork.  |
| Certificate of authenticity   | The product comes with documentation which at a minimum proves who made or created the item, its name, the size and medium of the item, and any identifying characteristics. The document will state the name and contact details of the person certifying the authenticity. Depending on the claims being made about the item it might also need to include: evidence the creator/s are Indigenous, when the product was made, where it was made, how it was made, what it was made with.   |

## Enforcement

Whether a statement or representation is false or misleading will depend on the circumstances of each individual case.

OFT Inspectors are authorised under the ACL to inspect businesses to ensure they meet the requirements of the ACL. Inspectors have the power to compel businesses to provide proof of any claim they make and failure to respond to such a request is an offence.

Consumers may also make complaints to the OFT if they believe a business is making a false or misleading representation about a product.

Where a business is proven to be acting contrary to the ACL, the OFT may take enforcement action. Penalties of up to \$1.1 million for companies and \$220,000 for individuals apply.

## Additional information

You can find more information about false and misleading advertising on our website at [www.qld.gov.au/fairtrading](http://www.qld.gov.au/fairtrading).

Further information can be obtained from the following consumer protection agencies.

Australian Capital Territory

### **Access Canberra**

GPO Box 158 Canberra City ACT 2601

T. 13 22 81

[accesscanberra.act.gov.au](http://accesscanberra.act.gov.au)

Northern Territory

### **Northern Territory Consumer Affairs**

PO Box 40946 Casuarina NT 0811

T. 1800 019 319

[consumeraffairs.nt.gov.au](http://consumeraffairs.nt.gov.au)

Tasmania

### **Consumer Affairs and Fair Trading**

PO Box 56, Rosny Park TAS 7018

T. 1300 654 499

[consumer.tas.gov.au](http://consumer.tas.gov.au)

South Australia

### **Consumer and Business Services**

GPO Box 1719 Adelaide SA 5001

T.131 882

[cbs.sa.gov.au](http://cbs.sa.gov.au)

Victoria

### **Consumer Affairs Victoria**

GPO Box 123 Melbourne 3001

T. 1300 55 81 81

[consumer.vic.gov.au](http://consumer.vic.gov.au)

Western Australia

### **Consumer Protection**

Locked Bag 14 Cloisters Square WA 6850

T. 1300 30 40 54

[commerce.wa.gov.au](http://commerce.wa.gov.au)

New South Wales

### **New South Wales Fair Trading**

PO Bag 972 Parramatta 2124

T. 13 32 20

[fairtrading.nsw.gov.au](http://fairtrading.nsw.gov.au)

### **Australian Competition and Consumer Commission**

GPO Box 3131

Canberra ACT 2601

T. 1300 302 502

[acc.gov.au](http://acc.gov.au)