

# Questions on notice from Senator Malarndirri McCarthy to the Australian Competition and Consumer Commission

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1. Why did the ACCC institute proceedings against Birubi Art? How were you made aware of Birubi's false and misleading representations of Aboriginal art?
2. What action was taken by ACCC against Birubi Art?
3. The Federal Court ordered Birubi Art Pty Ltd (in liquidation) to pay \$2.3 million for making false or misleading representations about products it sold in breach of the Australian Consumer Law. Did Birubi Art ever pay the \$2.3 million they were fined?
4. What further action can be taken against Birubi Art and its former director, Ben Wooster, now that Birubi Art is now in liquidation?
5. Can any action be taken any Ben Wooster as an individual or his current companies, GiftsMate and WAM?
6. Has the ACCC received complaints in relation to GiftsMate and WAM?
7. Is the ACCC investigating Giftsmate and WAM? Or its Directors Ben Wooster and Semille Moore?

## **ACCC response**

1. The ACCC instituted proceedings against Birubi Art P/L (Birubi) following an investigation into its conduct. We alleged that Birubi made false or misleading representations that some of its products, such as boomerangs and didgeridoos, were made in Australia and/or that Aboriginal people had made or hand painted them, when in fact they were made in Indonesia.

The ACCC became aware of Birubi's conduct through proactive monitoring and intelligence received through its continuing engagement with Australian Indigenous art industry stakeholder networks.

The ACCC took action because the conduct had the potential to undermine the integrity of the industry and reduce opportunities for Australian Aboriginal peoples. The action formed part of the ACCC's work addressing conduct impacting Indigenous Australians, which is an enduring priority for the ACCC.

2. The ACCC filed proceedings in the Federal Court. Please also see response to question 1, above. In October 2018, [the Federal Court found](#) that Birubi had falsely claimed that products it sold were hand painted by Australian Aboriginal persons and made in Australia when that was not true.
3. The ACCC sought, and was granted, leave by the Court to seek orders for a penalty against Birubi (in liquidation) for the reason that the ACCC and the Court, identified the need to send a strong message of deterrence to others in the Australian Indigenous Art industry by way of a penalty precedent. As Birubi was in liquidation at the time the Court ordered the penalty, the penalty is not able to be recovered.
4. Birubi was deregistered in September 2019 and is no longer a registered corporate entity. The ACCC is therefore unable to take further action in relation to the proceedings it brought against Birubi. The ACCC is unable to pursue Ben Wooster personally as he was not a party to the original Birubi proceedings.
5. GiftsMate, WAM and Ben Wooster cannot be held liable to pay the penalty awarded against Birubi.
6. The ACCC can confirm that it has received several contacts regarding Gifts Mate following the Birubi judgment and one contact regarding WAM clothing. The issues raised did not disclose any likely breach of the Australian Consumer Law.
7. The ACCC does not currently have an active investigation into Giftsmate, WAM or its Directors Ben Wooster and or Semele Moore.