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Fake Aboriginal art seller deserves up to \$2.5m fine, consumer watchdog argues

Penalty handed to Birubi Art should signify 'serious cultural harm' done, judge told

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The now-defunct company Birubi Art sold thousands of Indonesian-made items as Aboriginal art. Photograph: Ian Waldie/Getty Images

The Australian Competition and Consumer Commission is seeking a \$2m to \$2.5m penalty against a now-defunct company, Birubi Art, which breached consumer law by selling thousands of Indonesian-made items as Aboriginal art.

In October the federal court found that Birubi Art had “made false or misleading representations that products it sold were made in Australia and hand-painted by Australian Aboriginal persons, in breach of the Australian consumer law”.

At Friday’s penalties hearing Justice Melissa Perry of the federal court said the penalty sought by the ACCC was “very substantial” and could be seen as oppressive, since Birubi Art has already gone into liquidation.

But the ACCC argued that any penalty should signify the “serious cultural harm” done by fake Aboriginal art.

These harms were “grave and far-reaching” and involved “not just direct economic loss but a weakening of the value of the authentic products” and an “erosion of consumer confidence in the entire sector”, the ACCC told the court.

“The message should be: ‘Don’t represent goods with an authenticity they do not have.’ In choosing profits over harms, the consequences may be ... as dire as going out of business.”

Between July 2015 and November 2017, the ACCC said, Birubi sold more than 18,000 boomerangs, bullroarers, didgeridoos and message stones to retail outlets around Australia, featuring designs “associated with Australian Aboriginal art” and labelled with words such as “Aboriginal Art”, “genuine” and “Australia”.

“It was unacceptable that Birubi sold Indonesian-made products as having being hand-painted by Australian Aboriginal persons when that was not the case,” the ACCC commissioner, Sarah Court, said at the time.

Perry is expected to hand down her decision in coming weeks.