‘Our’ flag raises questions

By DARREN COYNE

SO whose flag is it? The Aboriginal Flag was originally commissioned by the Commonwealth Government to be a symbol of the Aboriginal people of Australia. But many Aboriginal people are surprised to find out that it’s not ‘our flag’, despite being recognised as a Flag of National significance by the Australian Government in 1995.

The question about the flag’s provenance has again been raised after a newly formed Queensland-based company began notifying manufacturers recently that they cannot reproduce the Aboriginal flag on clothing without consent.

The company, WAM Clothing, was founded by the non-Indigenous team of Ben Wooster and Semele Moore in 2018.

Copyright

In a notice sent to manufacturers, WAM Clothing says it is the authorised agent for Harold Thomas, the owner of the flag’s copyright.

So who is Harold Thomas? Mr Thomas is an accomplished Aboriginal artist descended from the Luritja people of Central Australia. He is credited with designing the flag in 1971 as a symbol of the Aboriginal land rights movement. It was later flown at the Aboriginal Tent Embassy in Canberra, and has become a recognised sight at rallies ever since.

Mr Thomas gained legal recognition of his ownership following a Federal Government’s 1995 proclamation of the design as a Flag of Australia under the Flags Act 1953.

He is represented by two others, George Brown of Adelaide, a former art student of Harold Thomas, and James Tennant of Canberra, both of whom also claimed to have designed the flag.

The opposing claims, however, did not stand up in court. Following his win in 1997, Mr Thomas awarded rights to Flagworld Pty Ltd, which produces the actual flags which are flown on buildings throughout Australia, and later to Birubi Art Pty Ltd for the manufacture of products featuring the flag’s image.

A spokesperson for the ACCC, which brought the action against Birubi Pty Ltd, said he was unable to comment on the matter as it remained before the Federal Court. He did say however that businesses that contravene Australian consumer law prior to September 1, 2018, face maximum penalties of $1.1 million per contravention.

He also said that the recovery of a civil penalty does not affect the ACCC’s ability to seek an appropriate penalty order.

“Court penalty judgments also have a deterrent purpose of general deterrence, that is to deter other businesses from engaging in similar conduct,” he said.

A penalties hearing for Birubi will be held on June 14.

Meanwhile, it is worth noting that permission is not required to fly the Aboriginal Flag, as it is a public symbol owned by the Torres Strait Islander flag.

In contrast however, the Torres Strait Islander flag copyright holders do not charge anything when it is reproduced. All that is asked is that the original designer, Bernard Namok (dec), is credited.

An example of fake Aboriginal art.

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Any use of the Aboriginal Flag on clothing from 4 May 2019 without our consent or agreement is prohibited. The company, WAM Clothing, was founded by the non-Indigenous team of Ben Wooster and Semele Moore in 2018.

Prohibited

“Any use of the Aboriginal Flag on clothing from 4 May 2019 without our consent or agreement is forbidden,” the company said in its notice to manufacturers.

“If you are currently manufacturing the Aboriginal Flag on clothing, you are required to contact us immediately.

“Alternatively, if your customers would like to use the Aboriginal Flag on clothing, please have your customers contact us to discuss possible options, prior to engaging your services.

“We at WAM Clothing are a manufacturer and wholesaler and have the capacity to manufacture clothing ourselves. Due to us holding the worldwide exclusive licence to manufacture, sell or otherwise use the Aboriginal Flag on clothing, we can do this work in-house.

“However, we acknowledge you may have long-standing relationships with your clients who wish to use the Aboriginal Flag on clothing, and we are desirous to working with you to ensure that those business relationships are preserved. If you wish to explore this opportunity, we look forward to hearing from you.”

In response to Koori Mail questions, WAM Clothing’s management said, in addition to ensuring Harold Thomas was paid his royalty, the company was “committed to supporting Indigenous communities, with an intention to share a portion of its profits to supporting grass roots programs and organisations”.

The statement said clothing would be manufactured both overseas and in Australia, and the company had contacted Aboriginal owned companies with respect to manufacturing.

“We are providing current manufacturers including Aboriginal manufacturers with the option to continue manufacturing clothing bearing the Aboriginal Flag. However royalties will now need to be paid to Harold Thomas through WAM Clothing,” the company said. “WAM Clothing works with a number of Aboriginal owned companies who sell clothing bearing the Aboriginal Flag. Some Aboriginal-owned manufacturers have reacted angrily to the letter, given Mr Wooster’s previous business connections to Birubi.

Misleading

In a judgment handed down by Justice Perry in the Federal Court on October 23 last year, Birubi Art Pty Ltd was found guilty of making false or misleading representations that products sold were made in Australia and hand painted by Australian Aboriginal persons, in breach of Australian consumer law.

The court found that from July 2015 to November 2017 Birubi had sold over 18,000 boomerangs, bullaroos, digeridoos and message stones to retail outlets around Australia. These products, despite featuring designs associated with Australian Aboriginal art and words such as ‘Aboriginal Art’, ‘genuine’, and ‘Australia’, were made in Indonesia.

ACCC Commissioner Sarah Court said at the time that the judgment showed that 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 artwork, images and statements used by Birubi suggested a relationship between Australian Aboriginal people and the production of the products which did not exist.

“The ACCC is particularly concerned about any conduct that has the potential to undermine the integrity and value of genuine Indigenous Australian art and, consequently, the impact that could have on Indigenous Australian artists,” Ms Court said.

Following the court loss, Birubi subsequently resolved to enter voluntary liquidation as of October 29 and a liquidator was appointed on the same day.

Mr Wooster was back in business, founding WAM Clothing as a minority shareholder with Semele Moore, the wife of Leslie Mouore, who is Mr Wooster’s lawyer.

Mr Wooster also runs a separate company, Gifts Mate, which was registered in May 2018 and commenced trading shortly thereafter. We have taken extensive advice to ensure we are fully protected as a consumer law.

“Gifts Mate works with many Aboriginal artists and ensures that each has been paid a licence fee or receives ongoing royalties for their designs.

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Founders of WAM Clothing Ben Wooster and Semele Moore with Aboriginal Flag designer Harold Thomas.