



Issue 21: 30 September 2002

Part A – Policy Decisions

Trade Marks

- Defining the Colour of Registered Colour Trade Marks
- Limitation of Treatment of Materials in a Trade Mark Specification
- Limitation of Machines in a Trade Mark Specification
- Trade Mark Evidence and Accompanying Exhibits in Support of Registration

General

- Order of Procedure at Hearings
- Proceedings in Maori Language

Part B – Proposed Practices

- No items this issue

Part C – General Notices/Practice Matters

Trade Marks

- Trade Mark Applications Online

General

- Online Payments
- Relocation of Christchurch and Wellington Companies Offices
- Client Survey

Part D – Decisions of the Commissioner

A full index of policy decisions can be found on the IPONZ website www.iponz.govt.nz under Information Library – Regular IPONZ Publications – Information for Clients.

The *Information for Clients* is intended to provide information on current IPONZ practices and policy decisions. The relevant and paramount law is the Trade Marks Act 1953, the Patents Act 1953, the Designs Act 1953, the Regulations under these Acts, and applicable case law.

Part A - Policy Decisions



Effective from 30 September 2002

Part A covers policy decisions made by IPONZ and confirmation of proposed procedures after consultation with clients.

Defining the Colour of Registered Colour Trade Marks

IPONZ will enter the colour description of a registered colour trade mark if the proprietor voluntarily supplies the description from a widely known and readily available colour standard. The colour description will be entered as an explanation.

The wording will be standardised as in these examples:

“The proprietor advises that the colour of the trade mark is *Pantone Blue 123456*”

or

“The colour of the mark is *Pantone Red 56789*”.

Limitation of Treatment of Materials in a Trade Mark Specification

An objection to registration will be raised under section 20 of the Trade Marks Act 1953 for all applications where the specification includes the unlimited terms “treatment of materials” or the like. IPONZ will request that the specification be limited by stating the materials that are to be treated, or similar.

Limitation of Machines in a Trade Mark Specification

An objection to registration will be raised under section 20 of the Trade Marks Act 1953 for all applications where the specification includes the unlimited term “machines” or the like. IPONZ will request that the specification be limited by stating the purpose or type of machine, or similar.

Trade Mark Evidence and Accompanying Exhibits in Support of Registration

This policy supersedes that set out in Information for Clients No. 7 August 1999.

Trade mark exhibits provided in support of registration will, if practicable, be attached to the relevant application file. All evidence must be retained as public records under the Archives Act 1957.

An annexure listing all documents and exhibits must be supplied with all evidence submitted. This annexure will be retained on file.

IPONZ will not return evidence submitted in support of trade mark applications, unless the applicant provides a good reason for the return of the evidence. Clear and accurate certified copies of documents must accompany original copies of evidence that the applicant wishes to be returned.

Part A - Policy Decisions



Electronic images or clear and detailed photographs of exhibits will continue to be accepted (and preferred) in place of the exhibits themselves.

Exhibits containing one or more of the following are not to be provided as evidence unless there is no practical alternative:

- foodstuffs
- liquids
- any material, such as glass, which, if damaged in any way may be dangerous
- any material that is not directly related to the trade mark applied for, e.g., the contents of containers where those contents are immaterial to the trade mark concerned.

Order of Procedure at Hearings

If the parties at a hearing have between themselves agreed an order of procedure in advance, the Hearing Officer will accede to that. If there is no such agreement, hearings will proceed in the following order:

Substantive Opposition/Revocation/Rectification cases

- submissions will be heard in the order evidence is filed, i.e.:
 - o the opponent/applicant for revocation/rectification will begin with their submissions
 - o the applicant/proprietor will then have the opportunity to make their submissions
 - o the opponent/applicant for revocation/rectification will then have the opportunity to reply to the applicant's submissions
- in general, the party speaking is allowed to continue uninterrupted until they have finished their presentation. However the Hearing Officer may allow some comment from the other party if it leads to clarification of a matter
- any further submissions will be at the discretion of the Hearing Officer – for example the Hearing Officer may invite submissions as to Costs if this matter has not been covered.

Interlocutory Hearings (usually in respect of extensions of time/admission of evidence)

- the party initiating the action/seeking the indulgence of the Commissioner in respect of which the hearing is taking place will begin with their submissions
 - o as examples: the party seeking an extension of time/the party seeking to have additional evidence admitted
 - o this order applies whether or not they are also the party which sought the hearing
- the other party will then make their submissions
- the initiating party will have the opportunity to reply.

Part A - Policy Decisions



Proceedings in Maori Language

Amendment to Practice Note, Journal No. 1377, Vol. 83, Issue No. 1, Issued 25 February 1994

The Maori language is one of the taonga guaranteed to the Maori people in the Treaty of Waitangi and is, by virtue of section 3 of the Maori Language Act 1987, an official language of New Zealand.

Documents filed at the Intellectual Property Office in relation to the Patents Act 1953, the Designs Act 1953 and the Trade Marks Act 1953, may be filed in either the English or Maori languages.

Where documents are filed in Maori, the Commissioner may request suitably certified translations.

Regulation 24(2) of the Trade Marks Regulations 1954 provides that translations of words in a trade mark in a language other than English may be required. Translations are not required where those words in a trade mark are in the Maori language.

Part B - Proposed Procedure



No items this issue.

Part C - General Notices/ Practice Matters



Part C covers general notices, clarification of IPONZ procedure, or changes to procedure resulting from recent hearing decisions.

Trade Mark Applications Online

Trade mark applications can now be filed online via our website www.iponz.govt.nz – Lodge Application – Trade Mark Application. Help is available via the on-screen help button, or through the Information Library – Online Services folder, or by contacting us at 0508 4IPONZ (0508 447669).

Online Payments

Under Regulation 5 of the Trade Marks Regulations 1954, the Patents Regulations 1954 and the Designs Regulations 1954, the Commissioner has the discretion to choose the form of payment that will be accepted. As the Commissioner has chosen to accept payment online by way of direct debiting and credit card, the fee for an online application or renewal is accepted as being paid as at the date the online application or renewal is made and the payment details are submitted and accepted.

Relocation of Christchurch and Wellington Companies Offices

The Christchurch and Wellington Companies Offices moved to new offices on Monday 16 September. The Christchurch Companies Office is located in the Ministry of Economic Development Southern Business Centre, 55 Wordsworth Street, Sydenham, and the Wellington Companies Office is located at 86-90 Lambton Quay (north end).

All Companies Offices accept lodgement of documents and applications on behalf of IPONZ.

Client Survey

IPONZ returned an overall client satisfaction rating of 7.1 in this year's client survey, compared with 6.5 in 2001. The overall satisfaction rating with Searchlink was 8.5. A more comprehensive summary of findings can be found in the Information Library ("About the Intellectual Property Office" folder) on our website, www.iponz.govt.nz.

Part D - Decisions of the Commissioner



The following decisions have been issued since publication of *Information for Clients No. 20*. Copies of decisions can be obtained through from www.iponz.govt.nz, the Information Centre, or Searchlink (0800 767 778, e-mail info@searchlink.co.nz). If you would like to be notified when decisions are issued, please e-mail decisions@iponz.govt.nz.

Patents

Date of Decision	Patent No.	Parties		Subject
2/07/02	331529	Pfizer Products Inc	Bayer AG	S21 Opposition
11/07/02	504742	Allflex New Zealand Ltd	Zee Tags Limited	S21 Opposition
6/08/02	328267	Tetra Pak Tebel BV	Carlisle Process Systems Ltd	S21 Opposition

Part D - Decisions of the Commissioner



Trade Marks

Date of Decision	Trade Mark No.	Trade Mark	Parties		Class & Subject
27/06/02	235937 237331 242261 & 235936 242462	ARMOURSHIELDAR-MOURSHIELD stylised & device, ARMOURSEAL & ARMOURSHIELD ARMOURSEAL	Andrew John Van Lier	Ameron Inc	Class 2 Opposition Class 37 Application for Rectification
12/07/02	312805	FLIRT ADULT NOVELTIES stylised & device	Bryan Douglas Kincaid	Flirt Fashions Limited	Class 16 Opposition
1/07/02	311655	COUNTRY GOODNESS	Premiere Bacon Company Limited	NZDF Brands Ltd and New Zealand Dairy Foods Ltd	Class 29 Admissibility of opponent's evidence
4/07/02	178713	THE PRESS	Independent Newspapers Ltd		Class 16 S26(2)
4/07/02	253317 & 253318	CALLER DISPLAY	Telecom New Zealand Ltd		Classes 9 & 38 S26(2)
22/08/02	313001	I-PROFEN & device	Multichem Laboratories Ltd	Knoll AG	Class 5 Opposition
12/07/02	299777	SOLA	New Zealand Wines & Spirits Ltd	Demerara Distillers Limited	Class 33 Opposition
3/07/02	617347-355 & 617442-445	VDO	Mannesmann VDO AG		Classes- various Abandonment of applications
4/07/02	56330	FELIX	Heinz-Wattie Ltd	Dalgety Spillars Foods Ltd	Class 31 Application for removal
8/07/02	310274	HEMP BEER	Shaun Roberts Allen		Class 32 S26(2)
8/07/02	621405	HEMP	Shaun Roberts Allen		Class 32 S26(2)
18/07/02	256673-80	GW	Glaxo Group Ltd		Classes 1,3,5,9,10,16,41,42 S26(2)
25/07/02	224139	POLLINI stylised	Calzaturificio Pollini SPA		Class 18 S26
27/07/02	303198-200	VISION, VISION CONSOLIDATOR, VISION DIRECT	Rosenbluth International Inc	Telecom Corp of NZ Ltd	Class 9 Opposition
22/07/02	604383	MAGNERS	Bulmers Ltd (formerly Showerings (Ireland) Ltd)		Class 33 Correction to the application
25/07/02	231117	STAR device	Starter Corporation	Converse Inc	Class 25 Reinstate to hold in abeyance
31/07/02	641953	COCOON CORPORATION BUSH SINGLET	G M Smith	P J Creighton Associates Ltd	Class 25 Application for extension of time
15/08/02	295073	GARDEN OF EDEN & device	Michael J McCammon	Roger P Bremner	Class 5 Application for rectification
15/08/02	265448	OASIS	Melco New Zealand Limited	Oasis Corporation	Class 11 Opposition
15/08/02	285601	ROYAL CROWN DRAFT	Royal Crown Company, Inc	Carlton and United Breweries Limited	Class 32 Opposition
27/08/02	312128 & 312129	PAINTDIRECT stylised & device	Amway of New Zealand	Wattyl (NZ) Limited	Classes 2 & 35 Opposition
30/08/02	270789 & 270790	Shape of a biscuit	Societe Produits Nestle SA	Cadbury Confectionery Ltd and Horizon Biscuit Co Ltd	Class 30 Oppositions
11/09/02	267142	REMINGTON	Desa International Inc	Remington Corporation LLC	Class 8 Opposition
11/09/02	611217	XAIR	BYK Gulden Lomberg Chemische Fabrik GMBH	Novartis AG	Class 5 Opposition

Neville Harris

Neville Harris
Commissioner of Patents, Trade Marks and Designs