



SUBMISSION

Prepared by the
New Zealand Retailers Association

For the
Foreign Affairs and Defence Select Committee

On
**The Trade Marks (International Treaties and
Enforcement) Amendment Bill**

May 2009

Barry Hellberg
Government Relations Consultant
New Zealand Retailers Association
Level 8, Willbank House
57 Willis Street, P O Box 12 086
Wellington

Ph: 04 472 3733
Fax: 04 472 1071
Email: bhellberg@retail.org.nz

Introduction

These submissions are presented by the New Zealand Retailers Association, in association with the NZ Sports Industry Association (NZSIA)

The Association is the largest trade association involved in the retail industry in New Zealand. We represent an industry that has annual sales of \$66billion and which employs 325,000 people (approx 20% of the New Zealand workforce) in more than 49,000 outlets throughout New Zealand.

Our national membership includes general merchandise chains, specialised chains, traditional department stores, grocery stores, supermarkets and thousands of owner operators spread throughout the country. The membership also includes a number of specialised trade groups representing manufacturers, distributors and retailers in the plumbing materials, metal fastener, pet, equestrian, jewellery, bicycle and sporting goods sectors.

The NZSIA membership comprises importers, agents, manufacturers, and retailers of a wide range of sports goods (including apparel).

More specifically, the NZSIA membership ranges from the very large national chains and brand owners through to dozens of smaller owner operators.

General Submission

The NZRA, largely represented by members of the NZSIA, have for some years had increasing concerns about the growth in counterfeit merchandise entering New Zealand and, in particular, the inability of the Government border protection agencies to deal adequately with auditing the increasing volume of imported merchandise now entering New Zealand through the abolition of import licensing controls and the lowering of tariff barriers.

We are also continually concerned at the personal health and safety risks New Zealanders are subjected to by a vast range of poor quality counterfeit goods (these can range from car parts to pharmaceuticals and perfumes). The Bill's Explanatory Note states:

"In addition to having a wider negative economic impact, the sale of counterfeits can lead to an entrenchment in society of the acceptance and consumption of counterfeits, which is likely to result in health and safety risks because of poor materials and substandard processes used in the manufacture of counterfeits, and a disregard for the law."

As one example of this issue, we have appended to this document a letter from one of our members, the New Zealand Snow Industries Federation.

Given all of the above concerns, both the NZRA and NZSIA have in recent years been proactive in working with Government Officials to mitigate the counterfeit problem and we see this Bill as a very positive means of addressing the problem.

Accordingly we are supportive of the Bill proceeding.

Specific Submissions

a) Greater resources for the Ministry of Economic Development

We are supportive of the specific proposal to provide the National Enforcement Unit of the Ministry of Economic Development with additional resources under the Trade Marks Act and the Copyright Act to enable the National Enforcement Unit to play a role in enforcing criminal offences that pertain to counterfeit activities.

We note the comment in the explanatory Note to the Bill that this proposal does not alter the responsibilities of other Government agencies, such as the Customs' administration of the border protection measures under the Trade Marks Act and the Copyright Act or the Commerce Commission's responsibilities under the Fair Trading Act.

We also note that the proposal does not substitute or otherwise negate the responsibilities of right holders to take civil action to enforce their trade mark or copyright rights.

We believe that the specific policy option chosen of giving additional resources to the Ministry of Economic Development is appropriate in that both the Trademarks Act and Copyright acts' are in fact the statutory responsibility of the Ministry of Economic Development.

We note, additionally, that the National Enforcement Unit is an established enforcement unit within the Ministry of Economic Development with a wide range of experience investigating and prosecuting various forms of regulatory crime.

b) Greater Resources to the Customs Department

We are similarly supportive of the proposals contained in the Bill to give greater powers to Customs officers to deal with counterfeit goods such as undertaking warranted searches, retention of certain goods and so on.

Whilst some interested parties may have reservations about the principle of increased intrusion by the state, we believe that the resources of Customs New Zealand are inadequate to deal with the current problem of trying to curb the availability of counterfeit goods on the New Zealand market.

c) Assignment

We note that the Bill also proposes to prevent the current practice of overseas trade mark owners assigning their local trade mark registrations to local distributors or licensees to stop the 'parallel' importation of goods.

We appreciate that the parallel importation of goods has been a legitimate practice in New Zealand for many years and we have accepted that this practice

of assignment has been to date recognised as a legitimate right by which brand owners can actively protect their investment in their brands.

We see no evidence contained within the Bill of why this practice should not continue and we accordingly recommend this proposal not proceed and be deleted from the Bill.

d) Regulatory Statement

We are in general agreement with the benefits outlined in the regulatory statement of the public and private sector benefits arising from the Bill.

However, we believe that there are other specific measures that could be adopted to mitigate the counterfeit problem such as:

- Removing the \$400 exemption on private imports and charge GST and duty where applicable on all goods entering New Zealand.

Shopping on the internet opens supply chains from all around the world up to New Zealanders. These suppliers have a significant price advantage over local sellers who supply New Zealanders and pay tax and GST and significantly impact the New Zealand economy. Why should we give off-shore suppliers even more significant advantage in times such as these?

- Changing the rules around customs declarations and requiring that the brand(s) of product be identified on consignment documentation.

The purpose of this is to alert Customs to shipments of goods for which Customs Notices have been put in place. This would help reduce the “chance” element of detection under Customs Notices.

- Creating a deterrent effect by maximising public prosecution so that visibility to counterfeit activity is enhanced and that those parties that engage in this type of activity are identified.
- Giving the Police additional financial resources to deal with the counterfeit problem.

Much of the counterfeit product arriving into New Zealand is sold through weekend markets and internet sites.

We accept that these specific suggestions are outside the scope of the Bill but commend them for consideration should the Committee seek to undertake a wider review of the counterfeit problem in New Zealand, particularly that of giving the Police additional resources as they are best placed to investigate allegations on the sale of counterfeit merchandise online or at weekend markets.

Conclusion

We recommend that the Bill proceeds subject to the refinements outlined above.

We wish to appear before the Committee to speak to our submission.

New Zealand Retailers Association
May 2009