

FORM OF NOTICE UNDER SECTION 137 OF
TRADE MARKS ACT 2002

NOTICE REQUESTING DETENTION OF GOODS INFRINGING
REGISTERED TRADE MARK

To: The Chief Executive of the New Zealand Customs Service

Australasian Conference Association Limited (**ACAL**) is the registered owner of trade mark No.26231 in Class 30 (**Mark**) and New Zealand Health Association Limited trading as Sanitarium Health & Wellbeing Company (**NZHA**) is the registered licensee of the Mark.

A copy of the registration of the Mark is attached to this notice.

NZHA has been given authority by ACAL to provide this notice on their behalf.

The Chief Executive of the New Zealand Customs Service is requested to detain any goods, on or in physical relation to which an infringing sign is used, that are in, or at any time come into, the control of the New Zealand Customs Service.

This notice shall be in force for the period 2 August 2012 to 1 August 2017.

Details of the person and business or residential address for the service of any notice are:

Name: Stephen Andrews, Sanitarium Health & Wellbeing Company

Business Address: 124 Pah Road, Royal Oak, Auckland 1023, New Zealand

Postal Address: 124 Pah Road, Private Bag 92127, Auckland, New Zealand

Telephone No: (09) 625 0750

Facsimile No: (09) 624 3444

E-mail: stephen.andrews@sanitarium.co.nz

Dated this 2nd day of August 2012.

Signed by


.....
Stephen Andrews, Commercial Manager
New Zealand Health Association Limited trading as
Sanitarium Health & Wellbeing Company

Intellectual Property Office of New Zealand - Case Details Report
Date and Time: 03 Aug 2012 09:54:46 a.m.

IP Number: 26231

Client Reference:

Status: Registered

Mark Nature: Trade Mark

Mark Type: Word

Series: No

Mark Name: WEET-BIX

Conditions, Explanations, Memoranda, Transliteration, English Translation:

- No claim is made to the right to the exclusive use of the word "Weet"

Intended use: Being used by the proprietor(s), (being the applicant)

Filing Date: 09 Mar 1928

Registration Date: 04 Sep 1929

Renewal Due Date: 09 Mar 2022

Under Proceeding: No

Nice Classification Schedule: 4

Pre-approved: No

Classes and Specifications:

Class	Goods and Services Descriptions
30	Preparations made from cereals including breakfast cereals

Priority: None

Agent:

AJ PARK	Postal : DX SX10007, Wellington, NZ Postal : PO Box 949, Wellington 6140, NZ Physical : State Insurance Tower, Level 22, 1 Willis Street, Wellington 6011, NZ Service : State Insurance Tower, Level 22, 1 Willis Street, Wellington 6011, NZ
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Applicant:

AUSTRALASIAN CONFERENCE ASSOCIATION LIMITED	Physical : 148 Fox Valley Road, Wahroonga, New South Wales 2076, AU Postal : 148 Fox Valley Road, Wahroonga, New South Wales 2076, AU
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Contact Details: AJ PARK, State Insurance Tower, Level 22, 1 Willis Street, Wellington 6011, NZ

Linked Cases: None

History:

Type	Description	Journal	Published
IP Renewed	Renewed by A J PARK	1588	28 Oct 2011
TM Classes Changed	Change IP Class		03 Jan 2003
TM Classes Changed	Change IP Class		03 Jan 2003

Intellectual Property Office of New Zealand - Case Details Report
 Date and Time: 03 Aug 2012 09:54:46 a.m.

Type	Description	Journal	Published
TM assigned to New Owner	Change proprietor name docs on TM 610690		05 Jun 2002
IP Renewed	Renewed by A J PARK		02 Oct 1997
IP Renewed	Renewed by A J PARK		09 Mar 1984
IP Renewed	Renewed by A J PARK		09 Mar 1970
IP Renewed	Renewed by A J PARK		09 Mar 1956
IP Renewed	Change Control Request 12		09 Mar 1942
IP Renewed	Renewed by A J PARK		09 Mar 1942
TM Registered	Registered		04 Sep 1929
TM App submitted	ARev conversion		09 Mar 1928
TM assigned to New Owner	ARev request: Subsequent proprietor		08 Mar 1967

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**FORM OF NOTICE UNDER SECTION 137 OF
TRADE MARKS ACT 2002**

**NOTICE REQUESTING DETENTION OF GOODS INFRINGING
REGISTERED TRADE MARK**

To: The Chief Executive of the New Zealand Customs Service

Australasian Conference Association Limited (**ACAL**) is the registered owner of trade mark No.281068 in Class 30 (**Mark**) and New Zealand Health Association Limited trading as Sanitarium Health & Wellbeing Company (**NZHA**) is the registered licensee of the Mark.

A copy of the registration of the Mark is attached to this notice.

NZHA has been given authority by ACAL to provide this notice on their behalf.

The Chief Executive of the New Zealand Customs Service is requested to detain any goods, on or in physical relation to which an infringing sign is used, that are in, or at any time come into, the control of the New Zealand Customs Service.

This notice shall be in force for the period 2 August 2012 to 1 August 2017.

Details of the person and business or residential address for the service of any notice are:

Name: Stephen Andrews, Sanitarium Health & Wellbeing Company

Business Address: 124 Pah Road, Royal Oak, Auckland 1023, New Zealand

Postal Address: 124 Pah Road, Private Bag 92127, Auckland, New Zealand

Telephone No: (09) 625 0750

Facsimile No: (09) 624 3444

E-mail: stephen.andrews@sanitarium.co.nz

Dated this 2nd day of August 2012.

Signed by


.....
Stephen Andrews, Commercial Manager
New Zealand Health Association Limited trading as
Sanitarium Health & Wellbeing Company



INTELLECTUAL
PROPERTY

Certificate of Trade Mark Registration

Trade Mark Registration Number: 281068

The above trade mark was entered on the register of trade marks under section 51(a) of the Trade Marks Act 2002 on 16 October 1998, with a deemed registration date of 11 July 1997.

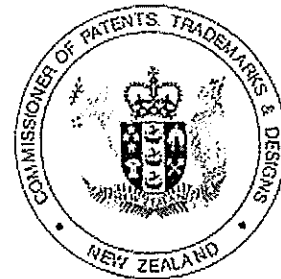
The details of registration are as follows:

MARMITE

Registered in the name of AUSTRALASIAN CONFERENCE ASSOCIATION LIMITED, 148 Fox Valley Road, Wahroonga, NSW 2076, Australia.
Contact address: AJ PARK, State Insurance Tower, Level 22, 1 Willis Street, Wellington 6011, New Zealand.

In respect of the goods and services that follow.

Neville Harris
Commissioner of Patents, Trade Marks and Designs



Issued on 10 May 2012

Certificate of Trade Mark Registration

Trade Mark Registration Number: 281068

30: yeast extract; yeast spread; yeast products in this class; yeast; condiments; spices; seasoning; relish; flavourings in this class; soy sauce; sauce.

Intellectual Property Office of New Zealand - Case Details Report
 Date and Time: 22 May 2012 08:34:27 a.m.

IP Number: 281068

Client Reference:

Status: Registered

Mark Nature: Trade Mark

Mark Type: Word

Series: No

Mark Name: MARMITE

Conditions, Explanations, Memoranda, Transliteration, English Translation:

- This trademark is associated with other trademarks, not listed

Intended use: Being used by the proprietor(s), (being the applicant)

Filing Date: 15 Aug 1997

Registration Date: 16 Oct 1998

Renewal Due Date: 11 Jul 2018

Under Proceeding: No

Nice Classification Schedule: 4

Pre-approved: No

Classes and Specifications:

Class	Goods and Services Descriptions
30	yeast extract; yeast spread; yeast products in this class; yeast; condiments; spices; seasoning; relish; flavourings in this class; soy sauce; sauce

Priority:

Country	Priority Date	Priority Number	Class	Claims
Australia	11 Jul 1997			

Agent:

A J PARK	Postal : DX SP20064, Wellington, NZ Postal : PO Box 949, Wellington 6140, NZ Physical : State Insurance Tower, Level 22, 1 Willis Street, Wellington 6011, NZ Service : State Insurance Tower, Level 22, 1 Willis Street, Wellington 6011, NZ
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Applicant:

AUSTRALASIAN CONFERENCE ASSOCIATION LIMITED	Physical : 148 Fox Valley Road, Wahroonga, NSW 2076, AU Postal : C/- A J Park, PO Box 949, Wellington 6140, NZ
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Contact Details: A J PARK, State Insurance Tower, Level 22, 1 Willis Street, Wellington 6011, NZ

Linked Cases: None

History:

Type	Description	Journal	Published
TM assigned to New Owner	Request for this change of interests is stored on IP 17104		21 Jul 2011

Intellectual Property Office of New Zealand - Case Details Report
Date and Time: 22 May 2012 08:34:27 a.m.

Type	Description	Journal	Published
Owner Address changed	Party Address Changed		21 Jul 2011
Agent changed	Multiple Change IP Contact		01 Nov 2004
TM assigned to New Owner	Request for this change of interests is stored on IP 610689		01 Nov 2004
TM assigned to New Owner	Multiple Change IP Own		01 Nov 2004
IP Renewed	Renewal ON line		17 Jul 2003
IP Renewed	Renewed by A J PARK	1490	29 Aug 2003
TM assigned to New Owner	Change proprietor name docs on TM 610690		05 Jun 2002
TM Registered	Arev conversion seed action		16 Oct 1998
TM Accepted	Change Control Request 13	1429	26 Jun 1998
TM App submitted	ARev conversion		15 Aug 1997

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FORM OF NOTICE UNDER SECTION 137 OF
TRADE MARKS ACT 2002

NOTICE REQUESTING DETENTION OF GOODS INFRINGING
REGISTERED TRADE MARK

To: The Chief Executive of the New Zealand Customs Service

(a) New Zealand Health Association Limited 124 Pak Rd, Royal oak 1023, AUCKLAND
of is (b) registered of
trade mark No. 850201 in Class 29, 30, 31, 32 licensee

A copy of the registration of the mark is attached to this notice.

The Chief Executive of the New Zealand Customs Service is requested to detain any goods, on or in physical relation to which an infringing sign is used, that are in, or at any time come into, the control of the New Zealand Customs Service.

This notice shall be in force for the period (c) 5 years

Details of the person and business or residential address for the service of any notice are:

Name Stephen Andrews

Business/residential address 124 Pak Rd, Royal oak 1023, AUCKLAND

Postal Address as above

Telephone No. (09) 625 0750

Facsimile No:

E-mail: Stephen.andrews@sanitarium.co.nz

Dated this 7th day of May 2012

(d) [Signature]

- (a) Insert full name and address of registered owner or registered licensee of trade mark;
- (b) Insert whether registered owner or registered licensee;
- (c) Insert period that is not longer than 5 years from the date of the notice or, if the registration of the trade mark will expire within 5 years from the date of the notice, not longer than the period for which the registration will last.
- (d) Signature.

FORM OF NOTICE UNDER SECTION 137 OF
TRADE MARKS ACT 2002

NOTICE REQUESTING DETENTION OF GOODS INFRINGING
REGISTERED TRADE MARK

To: The Chief Executive of the New Zealand Customs Service
(a) New Zealand Health Association Limited, 124 Pak Rd, Royal Oak 1023, AUCKLAND of is (b) registered licensee of
trade mark No. 281068 in Class 30

A copy of the registration of the mark is attached to this notice.

The Chief Executive of the New Zealand Customs Service is requested to detain any goods, on or in physical relation to which an infringing sign is used, that are in, or at any time come into, the control of the New Zealand Customs Service.

This notice shall be in force for the period (c) 5 years

Details of the person and business or residential address for the service of any notice are:

Name Stephen Andrews

Business/residential address 124 Pak Rd, Royal Oak 1023, Auckland


Postal Address as above

Telephone No. (09) 625 0750

Facsimile No:

E-mail: Stephen.andrews@sanitarium.co.nz

Dated this 10th day of May 2012

(d) 

- (a) Insert full name and address of registered owner or registered licensee of trade mark;
- (b) Insert whether registered owner or registered licensee;
- (c) Insert period that is not longer than 5 years from the date of the notice or, if the registration of the trade mark will expire within 5 years from the date of the notice, not longer than the period for which the registration will last.
- (d) Signature.

Trade Mark Notice Checklist

IPC PRO FORM 02

The Application

Trade Mark Holder AUSTRALASIAN CONFERENCE ASSN LTD Date Received 2 AUG 2012

Agent N.Z. HEALTH ASSN LTD (SANITARIUM) Due Date for reply

- Contents of application tally with covering letter.
- A separate notice is included for each trademark registration. Number lodged 1
- Application is a new ~~notice~~ (qty.....) / a renewal (qty.....) 281068
- Trade Mark Registration document included for each trade mark.

The Notice

- Notice is in the format required per Schedule 2, Trade Marks Regulations 2002.
- Notice is signed and dated.
- Notice is signed by: Agent / Trade ~~Mark~~ Holder (*delete one*).
- New Zealand address stated on the notice for service purposes.

Security

- Security instrument located from file held with current security deposit slip attached.
- Security instrument included with application (new applicant).
- N/A Cheque amounting to \$5,000 included and made out to NZ Customs Service. (new applicant).

Checks to be Undertaken between Notice and Trade Mark Registration

- Details of the registered owner or registered licensee of trade mark are stated on the notice and match those stated on the trade mark registration.
- Trade mark number stated on trade mark registration matches that stated on the notice.
- Trade mark class on trade mark registration matches that stated on the notice.
- Notice is in force for a period not longer than five years from the date of the notice.
- Period the notice is in force for does not exceed the next renewal date stated on the trade mark registration.
- Authority for Agent to act on behalf of trade mark holder included and appropriate for the notices lodged.

Errors or issues to be resolved

Trade Mark No.	Comment
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Referred to Legal & Advisory Services (date) 3 AUG 2012

Legal and Advisory Services Review

Notices may be accepted Yes / No. Number accepted...1.....
(If no, state trade mark number and comment as appropriate)

Trade Mark No. Comment

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Legal Advisor: Name: [s9(2)(a)] Signed: [s9(2)(a)] Date: 14/8/2012

Legal and Advisory Services comments have been actioned. Yes / No. State trade mark numbers notices to be approved and declined under separate headings.

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Approval of Notices Lodged

Notice(s) approved by delegation holder for acceptance by NZ Customs Service.

Delegation holder's name: [s9(2)(a)] Position: Manager, Operational Projects

Signed: [s9(2)(a)] Date: 03 August 2012

Final Action

- Security has been receipted, cheque to Client Services, and returned to file
- Notice has been published on the Longroom and Customs website.
- Copy of notices and registered trademarks sent to Fraud and Prohibitions, Auckland.
- Applicant advised.
- Notices filed.

Processed by [s9(2)(a)] Date: 6 AUG 2012

Trade Mark Notice Checklist

IPC PRO FORM 02

The Application

Trade Mark Holder AUSTRIAN CONFERENCE ASSN Date Received 6 AUG 2012

Agent SANITARIUM HEALTH + WELLBEING COMPANY Due Date for reply.....

- Contents of application tally with covering letter.
- A separate notice is included for each trademark registration. Number lodged 1
- Application is a new notice (qty.....) / a renewal (qty.....) 26231
- Trade Mark Registration document included for each trade mark.

The Notice

- Notice is in the format required per Schedule 2, Trade Marks Regulations 2002.
- Notice is signed and dated.
- Notice is signed by: Agent / Trade Mark Holder (*delete one*).
- New Zealand address stated on the notice for service purposes.

Security

- Security instrument located from file held with current security deposit slip attached.
- Security instrument included with application (new applicant).
- Cheque amounting to \$5,000 included and made out to NZ Customs Service. (new applicant).

Checks to be Undertaken between Notice and Trade Mark Registration

- Details of the registered owner or registered licensee of trade mark are stated on the notice and match those stated on the trade mark registration.
- Trade mark number stated on trade mark registration matches that stated on the notice.
- Trade mark class on trade mark registration matches that stated on the notice.
- Notice is in force for a period not longer than five years from the date of the notice.
- Period the notice is in force for does not exceed the next renewal date stated on the trade mark registration.
- Authority for Agent to act on behalf of trade mark holder included and appropriate for the notices lodged.

Errors or Issues to be resolved

Trade Mark No.	Comment
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Referred to Legal & Advisory Services (date) 6 AUG 2012

Legal and Advisory Services Review

Notices may be accepted Yes / No. Number accepted.....
(If no, state trade mark number and comment as appropriate)

Trade Mark No. Comment

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Legal Advisor: Name s9(2)(a) [Redacted] Signed s9(2)(a) [Redacted] Date 6/8/2012

Legal and Advisory Services comments have been actioned. Yes / No. State trade mark numbers notices to be approved and declined under separate headings.

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Approval of Notices Lodged

Notice(s) approved by delegation holder for acceptance by NZ Customs Service.

Delegation holder's name s9(2)(a) [Redacted] Position Manager, Operational Projects

Signed s9(2)(a) [Redacted] Date: 06 August 2012

Final Action

- Security has been receipted, cheque to Client Services, and returned to file
- Notice has been published on the Longroom and Customs website.
- Copy of notices and registered trademarks sent to Fraud and Prohibitions, Auckland.
- Applicant advised.
- Notices filed. s9(2)(a) [Redacted]

Processed by s9(2)(a) [Redacted] Date 6 AUG 2012

Trade Mark Notice Checklist

IPC PRO FORM 02

The Application

Trade Mark Holder AUSTRIAN ASIAN CONFERENCE ASSN LTD Date Received 18 MAY 2012 / 18 JUNE 2012

Agent NZ LEGAL ASSN LTD (SANTARUM) Due Date for reply.....

- Contents of application tally with covering letter.
- A separate notice is included for each trademark registration. Number lodged 2
- Application is a new notice (qty 2) / a renewal (qty.....)
- Trade Mark Registration document included for each trade mark.

The Notice

- Notice is in the format required per Schedule 2, Trade Marks Regulations 2002.
- Notice is signed and dated.
- Notice is signed by: Agent / Trade Mark Holder (*delete one*).
- New Zealand address stated on the notice for service purposes.

Security

- N/A* Security instrument located from file held with current security deposit slip attached.
- Security instrument included with application (new applicant).
- Cheque amounting to \$5,000 included and made out to NZ Customs Service. (new applicant).

Checks to be Undertaken between Notice and Trade Mark Registration

- Details of the registered owner or registered licensee of trade mark are stated on the notice and match those stated on the trade mark registration.
- Trade mark number stated on trade mark registration matches that stated on the notice.
- Trade mark class on trade mark registration matches that stated on the notice.
- Notice is in force for a period not longer than five years from the date of the notice.
- Period the notice is in force for does not exceed the next renewal date stated on the trade mark registration.
- Authority for Agent to act on behalf of trade mark holder included and appropriate for the notices lodged.

Errors or Issues to be resolved

Trade Mark No.	Comment
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Referred to Legal & Advisory Services (date) 18 JUNE 2012

Legal and Advisory Services Review

Notices may be accepted Yes / No. Number accepted.....
(If no, state trade mark number and comment as appropriate)

Trade Mark No.	Comment
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Legal Advisor: Name... s9(2)(a) Signed ... s9(2)(a) Date ... 19/06/12

Legal and Advisory Services comments have been actioned. Yes / No. State trade mark numbers notices to be approved and declined under separate headings.

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Approval of Notices Lodged

Notice(s) approved by delegation holder for acceptance by NZ Customs Service.

Delegation holder's name: s9(2)(a) Position... GMPT C

Signed: s9(2)(a) Date: 21 June 2012

Final Action

- Security has been receipted, cheque to Client Services, and returned to file
 - Notice has been published on the Longroom and Customs website.
 - Copy of notices and registered trademarks sent to Fraud and Prohibitions, Auckland.
 - Applicant advised.
 - Notices filed.
- Processed by s9(2)(a) Date 21 JUNE 2012



NEW ZEALAND
CUSTOMS SERVICE
TE MANA ARAI O AOTEAROA

WELLINGTON

The Customhouse, 1 Hinemoa Street, Wellington
PO Box 2218, Wellington 6140, New Zealand
Phone: 04 901 4500 Fax: 04 901 4555 All general enquiries phone: 0800 428 786
Email: feedback@customs.govt.nz Website: www.customs.govt.nz

PROTECTING NEW ZEALAND'S BORDER

12 July 2012

Mr Stephen Andrews
Commercial Manager
Sanitarium Health & Wellbeing Company
Private Bag 92127
Victoria Street West
Auckland 1142

Dear Mr Andrews

Enforcement of border protection notices for Weet-Bix and Marmite trade marks

Thank you for your letter and submissions dated 5 July 2012 concerning the enforcement by Customs of your Weet-Bix and Marmite trade marks.

Customs is now satisfied with your submissions with respect to the Weetabix brand infringing the Weet-Bix trade mark. The case law that you provided was particularly useful in clarifying Customs' reservations around your original submissions.

I would, however, like to clarify for you that the notices lodged by your company under s137 of the Trade Marks Act 2002 (the Act), request that Customs **detain** (not seize) any goods on which an infringing sign is used. The procedure leading to seizure of any goods, determined by Customs to infringe the trade marks specified on your notices, is set out in sections 149 to 154 of the Act.

Customs will continue to enforce your company's notices until they are withdrawn or expire. If you are aware of the names of any companies importing goods that infringe your Weet-Bix and Marmite trade marks, Customs would be interested in receiving that information from you.

Yours sincerely



s9(2)(a)

Operations Analyst
Intelligence, Planning & Coordination



NEW ZEALAND
CUSTOMS SERVICE
TE MANA ARAI O AOTEAROA

WELLINGTON

The Customhouse, 1 Hinemoa Street, Wellington
PO Box 2218, Wellington 6140, New Zealand
Phone: 04 901 4500 Fax: 04 901 4555 All general enquiries phone: 0800 428 786
Email: feedback@customs.govt.nz Website: www.customs.govt.nz

PROTECTING NEW ZEALAND'S BORDER

6 August 2012

Stephen Andrews
Commercial Manager
New Zealand Health Association Ltd
Private Bag 92127
Victoria Street West
Auckland 1142

Dear Mr Andrews

Border Protection Notices for GRANOLA, WEET-BIX and MARMITE trade marks

I am pleased to advise that the Customs Service accepted on 3 August 2012, the trade mark notice you lodged on behalf of the Australasian Conference Association Ltd for the GRANOLA trade mark (TM registration 20067). Customs has also accepted the replacement notices for the WEET-BIX and MARMITE trade marks in the name of the Australasian Conference Association Ltd (TM reg, 26231 and 281068 respectively).

Taking account of the volume of products that are imported into New Zealand, Customs cannot guarantee that all shipments of goods which infringe these notices will be intercepted and detained at the border.

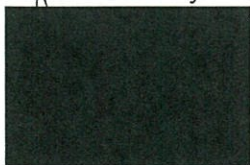
While Customs will take all reasonable steps to check imports for infringing products, you will appreciate it is not in a position to physically examine every item that is imported into New Zealand. Instead, a system of random checks and audits will be carried out.

A more detailed check of goods being imported will be undertaken based upon specific information on companies involved in importing infringing products. The following type of information will assist Customs in its targeting of shipments of interest:

- the name and address of the importer of the goods
- the tariff item if possible,
- the country of origin
- the country from which the goods are being shipped
- the name of the overseas supplier of the goods.

If you have any queries relating to the acceptance of these notices please do not hesitate to contact me.

Yours sincerely



s9(2)(a)

Operations Analyst
Intelligence Planning and Coordination

5 July 2012

New Zealand Customs Service
Procedures & Support
The Customhouse
1 Hinemoa Street
Wellington

Section 137 Border Notice for registered trade mark WEET-BIX

Thank you for your letter dated 21 June 2012 whereby you confirmed that our previous section 137 border notice applications for **WEET-BIX** and **MARMITE** had been accepted.

We also refer to your previous letter dated 7 June 2012 in which you commented that in relation to the seizing of or otherwise confiscating of "Weetabix" branded breakfast cereals, Customs "would have difficulty in enforcing a notice for a product with a different spelling from the registered trade mark".

We respectfully disagree with your position and contend that we are legally entitled to request such measures in order to have proper protection for our **WEET-BIX** brand as afforded by s 137 of the Trade Marks Act 2002.

Our position is based upon the following:

1. The Trade Marks Act (Act) - Infringement

Section 137 of the Act permits trade mark owners to request the detention of "any goods, on or in physical relation to which an **infringing sign** is used, that are, or at any time come into, the control of the Customs"

An **infringing sign** is defined in s 135 of the Act as "a sign that is **similar** to such a trade mark and is used on or in physical relation to goods that are identical with or **similar** to goods in respect of which the trade mark is registered, if such use would be **likely to deceive or confuse**."

This definition is consistent with s 89(1)(c) of the Act states that:

"s 89(1) A person infringes a registered trade mark if the person does not have the right to use the registered trade mark and uses in the course of trade a sign—

...

(c) **similar** to the registered trade mark in relation to any goods or services that are identical with or **similar** to any goods or services in respect of which the trade mark is registered, if that use would be **likely to deceive or confuse**."

*"Sharing health and hope
for a better life"*

In terms of Ss 89(1)(c) and 137, in our opinion it is clear that the **WEET-BIX** trade mark and Weetabix sign are similar. There is only one letter difference between the two and that letter is insignificant taking into account the words as a whole. Furthermore the goods that the **WEET-BIX** trade mark and Weetabix sign relate to – being wheat biscuits, are very similar as well.

Accordingly, what we understand is in question is whether or not the Weetabix sign is likely to deceive or confuse.

2. Case Law - “likely to deceive or confuse”

We refer you to *NV Sumatra Tobacco Trading Co v New Zealand Milk Brands Ltd* [2011] 3 NZLR 206 (a copy of which is **enclosed**) whereby the appellant was prevented from registering the trade mark ANKOR for class 30 products. The ANKOR mark was held to be too similar to the popular New Zealand milk brand ANCHOR and “likely to deceive or confuse”.

We would note the following comments in relation to the *NV Sumatra* case and determining likelihood of deception or confusion:

- The High Court Judge considered aural and visual similarities and that the overall assessment has to be whether ANKOR bears similarity with any of Milk Brands’ marks.
- Taking an overall assessment involves looking at the common denominator of all Milk Brands’ marks, which is the word ANCHOR. Accordingly, it is not the differences but the similarities that are important.
- Marks must be viewed as a whole in light of the markets in which the products will be sold and an imperfect rather than photographic recollection of the marks.
- Dobson J concluded that any slight aural difference would not register as a basis for distinction, especially in the intended market.
- As to visual similarities, Dobson J considered that the length of the words was identical and that the two words had many of the same letters.

In *NV Sumatra* it was concluded that a substantial number of people in the market for the goods in question would be unable to conceptually distinguish “ANCHOR” and “ANKOR”. Given the visual and aural similarities of those two marks, the Judge held that a substantial number of people would be likely to be confused or deceived by the use of the “ANKOR” mark.

Milk Brands also submitted, and the Court accepted, that ANCHOR was an iconic New Zealand brand and made the point that “*If another grocery brand with a similar sounding name emerges that deals with similar or identical goods, customers are likely to see what they know (the ANCHOR brand) and be deceived or confused, prejudicing Milk Brands’ interests.*”

Likewise, we contend that **WEET-BIX** too is an iconic New Zealand brand and that if Weetabix is allowed to be sold in the New Zealand market, this will create deception and confusion for our customers who are likely “to see what they know”.



*“Sharing health and hope
for a better life”*

3. The WEET-BIX LOOK

In phone discussions held previously with New Zealand Customs Service agent [REDACTED] it was implied that Weetabix packaging would not be mistaken for **WEET-BIX** as habitual **WEET-BIX** buyers would easily notice the difference. In response, we would submit that the threshold for the likelihood of deception or confusion, is not as high as [REDACTED] would believe. We contend that the threshold is much lower and, following Dobson J's comments in *NV Sumatra*, we must consider an average buyer with "an imperfect rather than photographic recollection of the marks". In other words, we must consider the average of all buyers as a whole when determining the likelihood of deception or confusion, not those buyers that are the habitual and loyal ones. s9(2)(a)

Furthermore, we would draw your attention to **Annexure A** which are examples of past and present **WEET-BIX** packaging and point of sales materials (**POS**). We submit that taking into account the look and feel of the packaging and POS materials as a whole, there is even further likelihood of deception or confusion. **WEET-BIX** is not just a standard 750g blue box. It is a family that comes in various shapes, sizes and colours as well as having accompanying POS that is dynamic and is always changing. Comparing these materials with the Weetabix examples in **Annexure B**, we think it unavoidable the conclusion that there is an element of deception and confusion as between our **WEET-BIX** mark and the Weetabix infringing sign. s9(2)(a)

4. Conclusion

In light of the above we request that you instruct your enforcement officers to seize and confiscate any Weetabix products that are imported into New Zealand for commercial purposes. Weetabix is an **infringing sign** as defined in s 135 of the Act and as described in this letter and **WEET-BIX** is a registered New Zealand trade mark that is subject of a s 137 Border Notice.

We look forward to hearing from you. If you have any queries, please let us know.

Yours faithfully,
New Zealand Health Association Limited,
trading as **Sanitarium Health & Wellbeing Company**



Stephen Andrews
Commercial Manager
Stephen.Andrews@sanitarium.co.nz
Ph: + 64 9 625 0750

*"Sharing health and hope
for a better life"*

ANNEXURE A

TRY

Weet-Bix™

WITH
HOT MILK

Another great idea to warm up your Winter!

JESANT100612E



SERVING SUGGESTION

Sanitarium
Wheat & Flax Foods

TRY

Weet-Bix™

WITH HOT MILK



*Another great idea to
warm up your Winter!*

SERVING SUGGESTION

Sanitarium
health & wellbeing

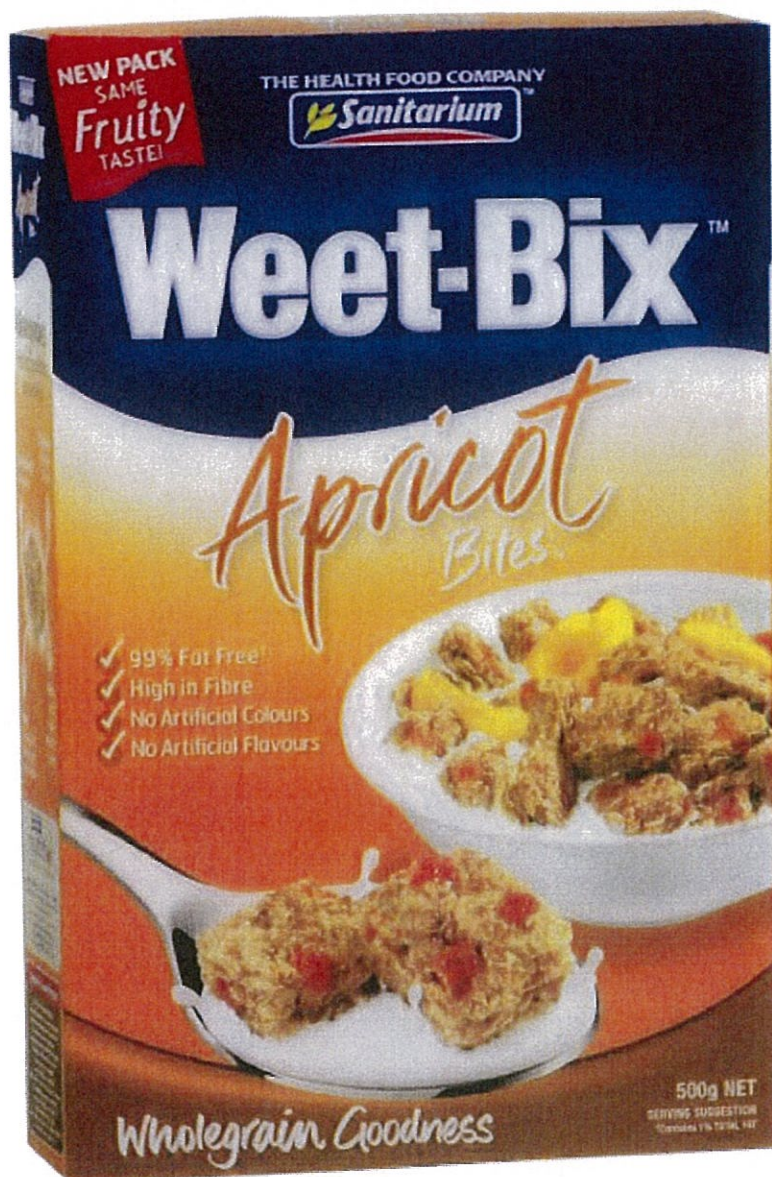
JBSANT100612E



Reason:

Marketing / Product images / Weet-Bix bites...









ANNEXURE B

Weetabix

500g

Ready brek

Smooth Porridge - Perfect for Kids!



Original

Now with Vitamin D

4 OATS 4 VITAMINS 4 MINERALS
Nothing else!

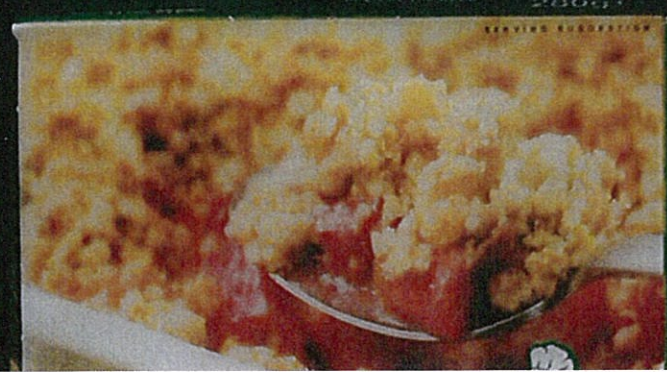
en
Swiss Recipe

750g



READY BREK 14 60
29110/2012

MCVITTIES MILKCHOC HOB NOBS 250G 8 55
10997 24/01/2012



1.99

24

Weetabix

Slow Release Energy

- ✓ High Fiber
- ✓ Low Fat & Sugar
- ✓ With 100% Whole Grain





WELLINGTON

The Customhouse, 1 Hinemoa Street, Wellington
PO Box 2218, Wellington 6140, New Zealand
Phone: 04 901 4500 Fax: 04 901 4555 All general enquiries phone: 0800 428 786
Email: feedback@customs.govt.nz Website: www.customs.govt.nz

PROTECTING NEW ZEALAND'S BORDER

21 June 2012

Mr Stephen Andrews
Commercial Manager
New Zealand Health Association Ltd
Private Bag 92127
Victoria Street West
AUCKLAND 1142

Dear Mr Andrews

BORDER PROTECTION NOTICES FOR MARMITE & WEET-BIX TRADE MARKS

I am pleased to advise that the Customs Service accepted on 21 June 2012, the two new notices you lodged under section 137 of the Trade Marks Act 2002 in respect of the registered trade marks for Marmite (281068) and Weet-Bix (850201).

Taking account of the volume of products that are imported into New Zealand, Customs cannot guarantee that all shipments of goods which infringe these notices will be intercepted and detained at the border.

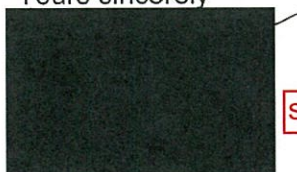
While Customs will take all reasonable steps to check imports for infringing products, you will appreciate it is not in a position to physically examine every item that is imported into New Zealand. Instead, a system of random checks and audits will be carried out.

A more detailed check of goods being imported will be undertaken based upon specific information of companies involved in importing infringing goods. The following type of information will assist Customs in its targeting for shipments of interest:

- the name and address of the importer of the goods
- the tariff item if possible,
- the country of origin
- the country from which the goods are being shipped
- the name of the overseas supplier of the goods.

The names of any companies (other than your company) who have been given approval to import goods carrying the Marmite and Weet-bix trade marks will help to facilitate the release of genuine products from the control of Customs.

Yours sincerely



s9(2)(a)

Operations Analyst
Intelligence, Planning and Coordination

[REDACTED] s9(2)(a)

From: Brandon Chik [Brandon.Chik@sanitarium.co.nz]
Sent: Monday, 18 June 2012 12:58
To: [REDACTED] s9(2)(a)
Subject: RE: Customs border protection notices for Marmite & Weet-bix
Attachments: ACAL Authorisation.pdf

Hi [REDACTED], s9(2)(a)

Please see ACAL (trade mark owner for MARMITE and WEET-BIX) authorisation **attached**.

Let me know if you require any further information otherwise I would be happy to hear that the notices have been approved.

With regards the "Weetabix" issue, we will send a letter with supporting documentation with regards this matter shortly.

Kind regards,
Brandon Chik

From: [REDACTED] [mailto:[REDACTED]@customs.govt.nz] s9(2)(a)
Sent: Thursday, 14 June 2012 2:33 p.m.
To: Brandon Chik
Subject: RE: Customs border protection notices for Marmite & Weet-bix

Hi Brandon

Thanks for your update.

Best regards

[REDACTED] s9(2)(a)

From: Brandon Chik [mailto:Brandon.Chik@sanitarium.co.nz]
Sent: Thursday, 14 June 2012 14:31
To: [REDACTED] s9(2)(a)
Subject: RE: Customs border protection notices for Marmite & Weet-bix

Hi [REDACTED], s9(2)(a)

Thanks for your letter. I am drafting a reply currently and will hopefully have something for you by next week.

Also working on the authorisations from the actual IP owner for you as well.

Kind regards,
Brandon

From: [REDACTED] [mailto:[REDACTED]@customs.govt.nz] s9(2)(a)
Sent: Thursday, 7 June 2012 5:58 p.m.
To: Brandon Chik; Stephen Andrews

18/06/2012

Subject: Customs border protection notices for Marmite & Weet-bix


Hi Brandon

Further to our conversation this morning, herewith the letter as discussed (attached).

Sorry I couldn't get it to you earlier in the day but other events intervened.

Best regards

 s9(2)(a)
Intelligence, Planning & Coordination
New Zealand Customs Service

P. +64 4  s9(2)(a)
F. +64 4 9014767

E1 @customs.govt.nz s9(2)(a)
E2 IPRnotices@customs.govt.nz
W. www.customs.govt.nz

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**WELLINGTON**

The Customhouse, 1 Hinemoa Street, Wellington
PO Box 2218, Wellington 6140, New Zealand
Phone: 04 901 4500 Fax: 04 901 4555 All general enquiries phone: 0800 428 786
Email: feedback@customs.govt.nz Website: www.customs.govt.nz

PROTECTING NEW ZEALAND'S BORDER

7 June 2012

Stephen Andrews
Commercial Manager
New Zealand Health Association Ltd
t/a Sanitarium Health & Wellbeing Company
Private Bag 92127
Victoria Street West
Auckland 1142

Dear Mr Andrews

Re: Border Protection Notices for WEET-BIX and MARMITE trade marks

Thank for your letter of 17 May 2012 containing notices requesting Customs to detain goods coming into the control of Customs that have the WEET-BIX and MARMITE trade marks.

These notices arrived at Customs while I was on leave and were held over pending my return because of issues Customs would have in enforcing a WEET-BIX trade mark notice per your expectations in respect of the British Weetabix product.

I am writing this letter to you after discussing the notices with Brandon Chik this morning and have copied him in on this letter.

A notice made under s137 of the Trade Marks Act 2002 may be filed with Customs by a person who is the owner of a registered trade mark. Notices may also be filed by a registered licensee of the trade mark provided that the registered licensee also files an appropriate authorisation from the trade mark owner which confirms that relationship and states what delegations or functions he/she/it may exercise on the owner's behalf.

An appropriate authorisation from the trade mark owner was not present with the documents filed with Customs.

In respect of the two notices submitted and your letter, I note the following:

- Your company manufactures Marmite under licence and has the sole right to distribute the product in New Zealand and Australia. Marmite is manufactured in the UK by Unilever and distributed in the UK under the name Marmite. This same product is also legitimately imported into New Zealand under the name "Our Mate" to avoid a conflict with the Marmite product your company distributes in New Zealand.

- Sanitarium manufactures and distributes Weet-bix in both New Zealand and Australia. The product originated in Australia and was later introduced into the UK as Weetabix to differentiate the product from that sold in New Zealand and Australia. While the Weetabix product to be eaten may appear to be essentially the same as Weet-bix, there appears to be a significant difference in appearance of the Weetabix packaging box and the spelling of the product name.

From a Customs perspective, front line officers would be able to reasonably recognise the Marmite trade mark and differentiate between the product manufactured in the UK and the product manufactured in New Zealand. The spelling of the Marmite name is the same in both countries of manufacture so there would be a reasonably clear infringement of the Marmite trade mark if the UK Marmite product was distributed as such in New Zealand

The New Zealand registered trade mark for Weet-bix is in respect of a word depiction (mark type). The spelling of Weetabix is not identical to Weet-bix but it could be said to be similar, even though it is presented differently on the outside packaging.

Your company contends that a consumer in New Zealand might confuse Weetabix for Weet-bix if only Weetabix was on a given retailer's shelf, or perhaps be led into thinking Weetabix might be Weet-bix under new packaging or a product variation.

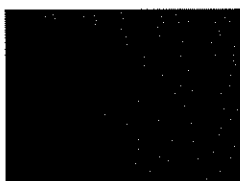
Customs is not confident with your assessment that a Weet-bix consumer would be confused between the Weet-bix and Weetabix labelling, or that the labelling might deceive a person into buying Weetabix instead of Weet-bix, because of the difference in package presentation and the different spelling of the trade mark. While Customs would accept a notice for the Weet-bix trade mark, it would have difficulty in enforcing a notice for a product with a different spelling from the registered trade mark.

It would appear that your company is relying on the s135 Trade Marks Act definition of "infringing sign", paragraph (c) in respect of the Weetabix brand. Customs would be interested in receiving any like case law examples you might have researched when you were making your case to have Customs detain importations of Weetabix at the border.

In the mean time, if you could attend to obtaining a letter of authorisation from the Australian Conference Association Ltd I will be able to proceed with processing the two notices you have filed with Customs.

I am happy to discuss this matter further with you or Brandon by phone or to arrange to have you talk with one of our legal staff on the issue. I can be contacted by phone on 04 901 4628 (ddi) or emailed at steve.westerby@customs.govt.nz.

Yours sincerely



s9(2)(a)

Operations Analyst
Intelligence, Planning & Coordination

17 May 2012

New Zealand Customs Service
Procedures & Support
The Customhouse
1 Hinemoa Street
Wellington

TO WHOM IT MAY CONCERN

Section 137 Border Notices for registered trade marks WEET-BIX and MARMITE (Notices)

1. We are New Zealand Health Association Limited, trading as Sanitarium Health & Wellbeing Company (**Sanitarium**).
2. We write to submit the following Notices along with supporting documentation:
 - (i) Section 137 Border Notice for registered trade mark **WEET-BIX**;
 - (ii) Section 137 Border Notice for registered trade mark **MARMITE**;
 - (iii) Copy of the trade mark No 26231 – **WEET-BIX** (in class 30 in respect of: *preparations made from cereals including breakfast cereals*);
 - (iv) Copy of the trade mark No 281068 – **MARMITE** (in class 30 in respect of: *yeast extract; yeast spread; yeast products in this class; yeast; condiments; spices; seasonings; relish; flavourings in this class; soy sauce; sauce*);
 - (v) Required signed Security document, including security bond of \$5,000 paid by way of cheque, and
 - (vi) Photo examples of the infringing products in question.
3. Australian Conference Association Ltd is the registered proprietor of the **WEET-BIX** and **MARMITE** trade marks, and Sanitarium is the sole registered and authorised user of them, such registration being with the Intellectual Property Office of New Zealand.
4. Sanitarium's **WEET-BIX** and **MARMITE** brands are extensively advertised and promoted in New Zealand, and are both extremely successful. They are iconic New Zealand brands.
5. We have recently become aware of imported product coming into New Zealand that are being sold to grocery stores and supermarkets throughout the country, in infringement of the **WEET-BIX** and **MARMITE** brands.

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for a better life"*

6. Specifically, we submit our section 137 Border Notices with the intention of stopping the importation of:

- (i) British Marmite (owned by Unilever), and
- (ii) Weetabix (owned by Bright Food).

(the products)

7. By way of background, we understand that the products are being imported into New Zealand not by the brand owners, but by one or more third-party suppliers.

8. We were previously under the understanding that infringements such as these were confined to the South Island, but we are increasingly aware of more occurrences now in the North Island particularly around Auckland.

9. Naturally, we view these matters very seriously as the selling of the products damages our goodwill and business. It constitutes the tort of passing-off and also amounts to misleading conduct in trade, in breach of sections 9 and 13 of the Fair Trading Act 1986.

10. Accordingly, we request that you accept our Notices and security deposit and assist us in stopping the importation of the products.

11. We would be happy to provide further information should anything in this letter be unclear, or should you require any clarification whatsoever.

Yours faithfully,

**New Zealand Health Association Limited,
trading as Sanitarium Health & Wellbeing Company**



Stephen Andrews
Commercial Manager
Stephen.Andrews@sanitarium.co.nz
Ph: + 64 9 625 0750



*"Sharing health and hope
for a better life"*



MARMITE 250G
MARMITE

12.99

314617 000 2103/2012
0 000050 186653 10000000000000

1.99

24

Weetabix

Slow Release Energy

- ✓ High Fiber
- ✓ Low Fat & Sugar
- ✓ With 100% Whole Grain



[REDACTED] s9(2)(a)

From: ASKLEGAL
Sent: Tuesday, 22 May 2012 10:10

To: [REDACTED] s9(2)(a)

Subject: RE: Trade mark notices

Hi [REDACTED] s9(2)(a)

Thanks for bringing down the copies of Sanitarium's letter and images of the imported goods. On

[REDACTED] s9(2)(h)

[REDACTED] s9(2)(h)

Hope this helps.

[REDACTED] s9(2)(a)

From: [REDACTED] s9(2)(a)

Sent: Tuesday, 22 May 2012 8:56

To: ASKLEGAL

Subject: Trade mark notices

Morning Legal

We have received two trade mark notices from Sanitarium to cover their products weet-bix and marmite.

They are specifically submitting the notices with the intention of stopping the importation of:

- British Marmite (owned by Unilever), and
- Weetabix

Am I able to arrange a meeting with one of you to discuss these notices?

I am available anytime this week so could you email me back with a time that suits you.

Thanks

[REDACTED] s9(2)(a)

[REDACTED] | Operations Analyst - Procedures and Support | Intelligence, Planning & Coordination |
New Zealand Customs Service | Tel 04 901 4530 | Fax 04 901 4767

[REDACTED] s9(2)(a)

From: Brandon Chik [Brandon.Chik@sanitarium.co.nz]

Sent: Monday, 6 August 2012 09:48

To: [REDACTED] s9(2)(a)

Subject: RE: Border Notice - Granola Trade mark

Hi [REDACTED], s9(2)(a)

As both trade marks are sufficient for our protection purposes, we are content with relying on TM # 26231 in this case.

Thanks,
Brandon

From: [REDACTED] [mailto:[REDACTED]@customs.govt.nz] s9(2)(a)

Sent: Monday, 6 August 2012 9:44 a.m.

To: Brandon Chik

Subject: RE: Border Notice - Granola Trade mark

Thanks Brandon.

Can you send me a replacement notice for TM 850201 thanks in the name of the Australasian Conference Association Ltd. A notice is required for each trade mark.

Sorry for any confusion.

Regards

[REDACTED] s9(2)(a)

From: Brandon Chik [mailto:Brandon.Chik@sanitarium.co.nz]

Sent: Monday, 6 August 2012 8:37

To: [REDACTED]; Lesley Hutchings s9(2)(a)

Subject: RE: Border Notice - Granola Trade mark

Hi [REDACTED], s9(2)(a)

We would like to protect both TM # 26231 and TM 26231.

Please see relevant IPONZ case details reports **attached**.

Regards,
Brandon Chik

From: [REDACTED] [mailto:[REDACTED]@customs.govt.nz] s9(2)(a)

Sent: Friday, 3 August 2012 9:58 a.m.

To: Lesley Hutchings

Cc: Brandon Chik

Subject: RE: Border Notice - Granola Trade mark

Hi Leslie

06/08/2012

I was just processing the notices that you submitted and noticed that one of the notices is for the Weet-Bix trade mark registered in class 4/30 (TM # 26231). This compares with the notice that was previously submitted to Customs for the Weet-Bix trade mark in class 9/29, 30, 31, 32 (TM # 850201).

Would you advise which TM registration you want to cover by notice thanks? If it is for TM 26231 (or both) would you kindly submit the IPONZ case detail report for this registration thanks.

Best regards

s9(2)(a)
Operations Analyst
Intelligence, Planning & Coordination
New Zealand Customs Service

P. +64 4 s9(2)(a)
F. +64 4 9014767

E1 @customs.govt.nz s9(2)(a)
E2 IPRnotices@customs.govt.nz
W. www.customs.govt.nz

From: Lesley Hutchings [<mailto:Lesley.Hutchings@sanitarium.co.nz>]
Sent: Thursday, 2 August 2012 16:31
To: s9(2)(a)
Subject: FW: Border Notice - Granola Trade mark

Hello s9(2)(a)

As per your email below to Brandon Chik, please find attached notices signed by Stephen Andrews.

Kind regards,

Lesley



Lesley Hutchings
PA to Commercial Manager
p | +64 9 625 0742
w | www.sanitarium.co.nz

Sharing with our community health and hope for a better life



From: [@customs.govt.nz">mailto:@customs.govt.nz] s9(2)(a)
Sent: Wednesday, 1 August 2012 12:55 p.m.
To: Brandon Chik
Cc: Stephen Andrews
Subject: RE: Border Notice - Granola Trade mark

Hi Brandon

s9(2)(h)
In terms of the Trade Marks Act 2002, s137 provides
as follows:

137 Notice may be given to chief executive

- A person who is the **owner** of a registered trade mark may give a notice in writing to the chief executive that—
 - (a) claims that he or she is the **owner** of a trade mark that is registered in respect of the goods specified in the notice; and
 - (b) requests the chief executive to detain any goods, on or in physical relation to which an infringing sign is used, that are, or at any time come into, the control of the Customs.

While the notice itself provides an option for either of the registered owner or registered licensee to give notice, the circumstances of that option is provided for in s141 of the TM Act as follows:

141 Licensee may require notice

- (1) Subject to agreement between a licensee of a registered trade mark and the owner of the trade mark, a licensee is entitled to require the owner to give notice under section 137 in relation to the trade mark.
- (2) If the owner refuses or neglects to do so within 2 months of being so required, the licensee may give notice under that subsection as if he or she were the owner.

In the first instance it is ACAL that should be giving the notice in this case.

Looking ahead at the possible implications of Customs detaining goods that infringe your trade marks and the matter subsequently being considered by the High Court, it is conceivable that a notice given in the name of your company could be ruled invalid where the owner is the ACAL.

Your company has already of course, two notices filed with Customs in respect of the Marmite and Weet-Bix trade marks.

What I now recommend is that your company provides replacement notices for the Marmite, Weet-Bix and Granola trade marks in the name of ACAL so this does not become an issue during any future court proceedings. The amendments required to each of the notices are as follows:

- Insert Australasian Conference Association Ltd as the registered owner of the trade mark
- Add your company's name after Stephen Andrews in the details of the person and business for service of the notice.
- Re-date the notices.

It is only the three notice pages that you need to resubmit as I have all the supporting documents for each.

I'm happy to discuss if required.

Best regards

██████████ s9(2)(a)
Operations Analyst
Intelligence, Planning & Coordination
New Zealand Customs Service

P. +64 4 ██████████ s9(2)(a)
F. +64 4 9014767

E1 ██████████@customs.govt.nz s9(2)(a)
E2 IPRnotices@customs.govt.nz
W. www.customs.govt.nz

From: Brandon Chik [<mailto:Brandon.Chik@sanitarium.co.nz>]
Sent: Monday, 30 July 2012 11:32
To: [REDACTED] s9(2)(a)
Cc: Stephen Andrews
Subject: RE: Border Notice - Granola Trade mark

Hi [REDACTED], s9(2)(a)

As requested, amended application is **attached**.

Kind regards,

Brandon Chik | Solicitor
t + 64 9 625 0857 | f +64 9 624 3444
brandon.chik@sanitarium.co.nz | www.sanitarium.co.nz

From: [REDACTED] [[mailto:\[REDACTED\]@customs.govt.nz](mailto:[REDACTED]@customs.govt.nz)] s9(2)(a)
Sent: Monday, 30 July 2012 10:10 a.m.
To: Brandon Chik
Cc: Stephen Andrews
Subject: RE: Border Notice - Granola Trade mark

Hi Brandon

The notice you sent has an incorrect period for the enforcement of the notice {refer s138(2)(b) attached}.

The person signing the notice is not identified.

I will phone you shortly re completing the notice.

Regards

[REDACTED] s9(2)(a)
Operations Analyst
Intelligence, Planning & Coordination
New Zealand Customs Service

P. +64 4 [REDACTED] s9(2)(a)
F. +64 4 9014767

E1 [REDACTED]@customs.govt.nz s9(2)(a)
E2 IPRnotices@customs.govt.nz
W. www.customs.govt.nz

From: Brandon Chik [<mailto:Brandon.Chik@sanitarium.co.nz>]
Sent: Monday, 30 July 2012 9:36
To: [REDACTED] s9(2)(a)
Cc: Stephen Andrews

06/08/2012

Subject: Border Notice - Granola Trade mark

Hi [REDACTED], s9(2)(a)

I write with regards the registered trade mark GRANOLA, and attach our application consisting of:

1. Section 137 Border Notice Application;
2. Authorisation from Australasian Conference Association Limited (registered owner of trade mark), and
3. A copy of the registration of the trade mark.

As discussed previously, we would appreciate Customs NZ approving this application as soon as possible.

If you require anything further from me, please don't hesitate to call me on my number below.

Kind regards,

Brandon Chik

Solicitor

t +64 9 625 0857 | f +64 9 624 3444

brandon.chik@sanitarium.co.nz

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[REDACTED] s9(2)(a)

From: [REDACTED] s9(2)(a)
Sent: Friday, 13 July 2012 11:08
To: 'Brandon Chik'
Subject: RE: Customs border protection notices for Marmite & Weet-bix
Attachments: Sanitaruim 12 Jul 12.pdf
Hi Brandon

Please find attached a letter in response to your submissions. A hard copy is in the mail to Mr Andrews.

s9(2)(a) Your liaison point for the enforcement of the notices in respect of Weet-Bix and Marmite trade marks will be [REDACTED] and [REDACTED] in the Customs Investigations Branch, Auckland.
[REDACTED] contact details are as follows: s9(2)(a)

**Intellectual Property Rights (IPR) Investigations
New Zealand Customs Service**

Location: Air Cargo Inspection Facility, 21 Tom Pearce Drive, Auckland Airport, Auckland
Address: PO Box 73003, Auckland Airport, Auckland 2150
Phone: 09 [REDACTED] s9(2)(a)
Mobile: [REDACTED] s9(2)(a)
Email: [REDACTED]@customs.govt.nz s9(2)(a)

Best regards

[REDACTED] s9(2)(a)
Operations Analyst
Intelligence, Planning & Coordination
New Zealand Customs Service

P. +64 4 [REDACTED] s9(2)(a)
F. +64 4 9014767

E1 [REDACTED]@customs.govt.nz s9(2)(a)
E2 IPRnotices@customs.govt.nz
W. www.customs.govt.nz

From: Brandon Chik [mailto:Brandon.Chik@sanitarium.co.nz]
Sent: Thursday, 5 July 2012 14:13
To: [REDACTED] s9(2)(a)
Subject: RE: Customs border protection notices for Marmite & Weet-bix

Hi [REDACTED], s9(2)(a)

Further to our previous discussions, please find **attached** a letter and supporting evidence regarding the trade mark infringement of our WEET-BIX mark, caused by the imported UK Weetabix mark.

Hard copies will be sent today in the post. I will be in touch early next week to touch base with you again.

Kind regards,
Brandon Chik

[REDACTED] s9(2)(a)

From: [REDACTED] s9(2)(a)
Sent: Friday, 13 July 2012 11:16
To: [REDACTED] s9(2)(a)
Subject: FW: Customs border protection notices for Marmite & Weet-bix
Attachments: Sanitarium 12 Jul 12.pdf; Sanitarium notices.pdf
[REDACTED] s9(2)(a)

FYI

From: [REDACTED] s9(2)(a)
Sent: Friday, 13 July 2012 11:08
To: 'Brandon Chik'
Subject: RE: Customs border protection notices for Marmite & Weet-bix

Hi Brandon

Please find attached a letter in response to your submissions. A hard copy is in the mail to Mr Andrews.

Your liaison point for the enforcement of the notices in respect of Weet-Bix and Marmite trade marks will be [REDACTED] and [REDACTED] in the Customs Investigations Branch, Auckland. s9(2)(a)

s9(2)(a) [REDACTED] contact details are as follows:

[REDACTED] s9(2)(a)
Intellectual Property Rights (IPR) Investigations
New Zealand Customs Service
Location: Air Cargo Inspection Facility, 21 Tom Pearce Drive, Auckland Airport, Auckland
Address: PO Box 73003, Auckland Airport, Auckland 2150
Phone: 09 [REDACTED] s9(2)(a)
Mobile: [REDACTED] s9(2)(a)
Email: [REDACTED]@customs.govt.nz s9(2)(a)

Best regards

[REDACTED] s9(2)(a)
Operations Analyst
Intelligence, Planning & Coordination
New Zealand Customs Service

P. +64 4 [REDACTED] s9(2)(a)
F. +64 4 9014767

E1 [REDACTED]@customs.govt.nz s9(2)(a)
E2 IPRnotices@customs.govt.nz
W. www.customs.govt.nz

From: Brandon Chik [mailto:Brandon.Chik@sanitarium.co.nz]
Sent: Thursday, 5 July 2012 14:13
To: [REDACTED] s9(2)(a)
Subject: RE: Customs border protection notices for Marmite & Weet-bix

Hi [REDACTED], s9(2)(a)

Further to our previous discussions, please find **attached** a letter and supporting evidence regarding the trade mark infringement of our WEET-BIX mark, caused by the imported UK Weetabix mark.

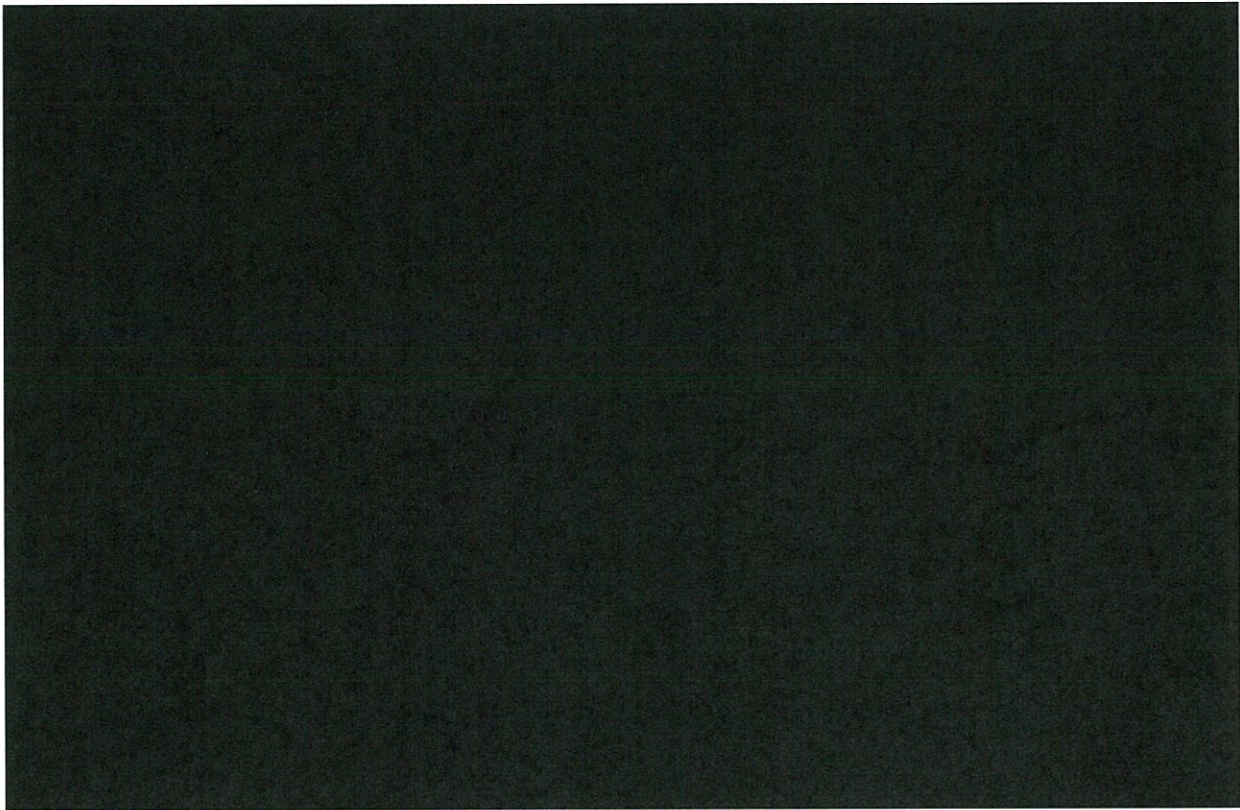
Hard copies will be sent today in the post. I will be in touch early next week to touch base with you

again.

Kind regards,
Brandon Chik

[Redacted] s9(2)(a)

From: [Redacted] s9(2)(a)
Sent: Tuesday, 10 July 2012 12:11
To: [Redacted] s9(2)(a)
Cc: [Redacted] s9(2)(a)
Subject: RE: Customs border protection notices for Marmite & Weet-bix
Hi [Redacted] – thank you for sparing your time this morning to discuss Sanitarium’s submissions in some detail with me. s9(2)(a)



s9(2)(h)

Happy to elaborate if required.

Kind regards

[Redacted] s9(2)(a)

From: [Redacted] s9(2)(a)
Sent: Thursday, 5 July 2012 15:00
To: [Redacted] s9(2)(a)
Cc: [Redacted] s9(2)(a)
Subject: RE: Customs border protection notices for Marmite & Weet-bix

Thanks [Redacted] s9(2)(a)

I'll have to give Comms a "heads up" on this one because of the likely media interest when Customs begin detaining Weetabix imports.

[Redacted] s9(2)(a)

From: [Redacted] s9(2)(a)
Sent: Thursday, 5 July 2012 14:41

To: [REDACTED] s9(2)(a)
Cc: [REDACTED] s9(2)(a)
Subject: RE: Customs border protection notices for Marmite & Weet-bix

[REDACTED] s9(2)(a)

In the past we have detained "Rexoma" deodorant, because it was considered that it was close enough to the "Rexona" trade mark to deceive / confuse; similarly with "NIKF" branded t-shirts, because it was considered that they were close enough to "NIKE".

Given that a Border Protection Notice has been accepted for the word "WEET-BIX" (non-stylised – therefore any font style and packaging design is covered), I would suggest that "WEETABIX" would be similar enough to deceive and confuse, given that there is only one letter difference, and it is on the same type of product.

[REDACTED] s9(2)(a)
Intellectual Property Rights (IPR) Investigations
New Zealand Customs Service
Location: Air Cargo Inspection Facility, 21 Tom Pearce Drive, Auckland Airport, Auckland
Address: PO Box 73003, Auckland Airport, Auckland 2150
Phone: 09 [REDACTED] s9(2)(a)
Mobile: [REDACTED] s9(2)(a)
Email: [REDACTED]@customs.govt.nz s9(2)(a)

From: [REDACTED] s9(2)(a)
Sent: Thursday, 5 July 2012 14:32
To: [REDACTED] s9(2)(a)
Cc: [REDACTED] s9(2)(a)
Subject: FW: Customs border protection notices for Marmite & Weet-bix

Hi [REDACTED] s9(2)(a)

This email from Sanitarium has just been received. Can we review and discuss this one at a mutually agreeable time next week thanks? There is quite a bit of material submitted in the attachment.

I'll acknowledge receipt of Brandon Chik's email shortly.

With thanks
[REDACTED] s9(2)(a)

From: Brandon Chik [mailto:Brandon.Chik@sanitarium.co.nz]
Sent: Thursday, 5 July 2012 14:13
To: [REDACTED] s9(2)(a)
Subject: RE: Customs border protection notices for Marmite & Weet-bix

Hi [REDACTED], s9(2)(a)

Further to our previous discussions, please find **attached** a letter and supporting evidence regarding the trade mark infringement of our WEET-BIX mark, caused by the imported UK Weetabix mark.

Hard copies will be sent today in the post. I will be in touch early next week to touch base with you again.

Kind regards,
Brandon Chik

From: [redacted] [mailto:[redacted]@customs.govt.nz] s9(2)(a)
Sent: Monday, 18 June 2012 4:22 p.m.
To: Brandon Chik
Subject: RE: Customs border protection notices for Marmite & Weet-bix

Thanks Brandon

Regards
[redacted] s9(2)(a)

From: Brandon Chik [mailto:Brandon.Chik@sanitarium.co.nz]
Sent: Monday, 18 June 2012 12:58
To: [redacted] s9(2)(a)
Subject: RE: Customs border protection notices for Marmite & Weet-bix

Hi [redacted], s9(2)(a)

Please see ACAL (trade mark owner for MARMITE and WEET-BIX) authorisation **attached**.

Let me know if you require any further information otherwise I would be happy to hear that the notices have been approved.

With regards the "Weetabix" issue, we will send a letter with supporting documentation with regards this matter shortly.

Kind regards,
Brandon Chik

From: [redacted] [mailto:[redacted]@customs.govt.nz] s9(2)(a)
Sent: Thursday, 14 June 2012 2:33 p.m.
To: Brandon Chik
Subject: RE: Customs border protection notices for Marmite & Weet-bix

Hi Brandon

Thanks for your update.

Best regards
[redacted] s9(2)(a)

From: Brandon Chik [mailto:Brandon.Chik@sanitarium.co.nz]
Sent: Thursday, 14 June 2012 14:31
To: [redacted] s9(2)(a)
Subject: RE: Customs border protection notices for Marmite & Weet-bix

Hi [redacted] s9(2)(a)

Thanks for your letter. I am drafting a reply currently and will hopefully have something for you by next week.

Also working on the authorisations from the actual IP owner for you as well.

Kind regards,

01/11/2012

Brandon

From: [redacted] [mailto:[redacted]@customs.govt.nz] s9(2)(a)
Sent: Thursday, 7 June 2012 5:58 p.m.
To: Brandon Chik; Stephen Andrews
Subject: Customs border protection notices for Marmite & Weet-bix

Hi Brandon

Further to our conversation this morning, herewith the letter as discussed (attached).

Sorry I couldn't get it to you earlier in the day but other events intervened.

Best regards

[redacted] s9(2)(a)
Operations Analyst
Intelligence, Planning & Coordination
New Zealand Customs Service

P. +64 4 [redacted] s9(2)(a)
F. +64 4 9014767

E1 [redacted]@customs.govt.nz s9(2)(a)
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W. www.customs.govt.nz

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01/11/2012

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