

16 Maori advisory committee & Maori trade marks

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1 Introduction

Subpart 2 of Part 5 of the Trade Marks Act 2002 (“the Act”) prescribes the appointment of an advisory committee and incorporates sections 177-180 of the Act.

Section 177 of the Act requires the Commissioner of Trade Marks (“the Commissioner”) to appoint an advisory committee.

Section 178 of the Act states that the function of the advisory committee is to advise the Commissioner whether the registration of a trade mark that is, or appears to be, derivative of Māori text and imagery, is likely to be offensive to Māori.

Section 179 of the Act prescribes the membership of the advisory committee.

Section 180 of the Act prescribes that the advisory committee may regulate its own procedures.

2 History

Sections 177-180 of the Act are the result of recommendations made to the government through a consultative process.

The process began in 1990 when the then Ministry of Commerce (now Ministry of Economic Development) released a discussion paper titled “Review of Industrial Property Rights,” with the intention of undertaking a broad-ranging and integrated law review of New Zealand’s intellectual property rights legislation. It was subsequently decided that work should be progressed in three stages, encompassing trade marks, patents, designs and other issues.

In 1991 the Ministry of Commerce proposed a number of changes to the Trade Marks Act 1953. In view of concerns expressed by Māori that the 1953 Act did not adequately protect Māori cultural and intellectual property, work on the legislation was suspended in order to undertake consultations with Māori. Four national hui were held in 1994, resulting in the establishment of the Māori Trade Marks Focus Group (“the Focus Group”).

The Focus Group met during 1995 and 1996 and produced a background paper (“Māori and Trade Marks: A Discussion Paper”) which reported on the outcome of the Focus Group’s deliberations relating to the registration, as trade marks, of Māori words, symbols, sounds or smells. It was used as the basis of discussion for a series of eight further hui which were held throughout New Zealand.

The work of the Focus Group and subsequent consultations formed the basis of recommendations to Cabinet in April 1999, concerning measures to be included in the Trade Marks Act. Included was a recommendation that a consultative group to advise the Commissioner be established. In September 1999 Cabinet agreed that the Trade Marks Act should include a provision to establish what is now referred to as the Māori Trade Marks Advisory Committee (“the Committee”).

A key rationale for establishing the Committee was to minimise the risk that the Crown may inadvertently register as trade marks, Māori text and imagery, where registration or use of the trade mark was likely to cause offence to Māori.

In order to achieve this, it is necessary that the Commissioner have access to expert advisers to provide assurance that the decisions the Commissioner is required to make in respect of the registration of trade marks containing Māori text or imagery are made appropriately.

The advice of the Committee is not binding on the Commissioner. The Commissioner will consider the advice taking into account all relevant factors affecting registrability and may come to a determination on the eligibility of an application that is different to the advice received from the Committee.

3 Identification of Maori signs

All trade mark applications received by the Intellectual Property Office of New Zealand (“IPONZ”) will be assessed to determine whether they contain a Māori sign, or are derived from a Māori sign.

The fact that a word, of any other language, is recognised as a Māori word in New Zealand, will mean that it will be treated as such. For example, “amaru” in Japanese means “to remain, to be left over, to be in excess”, however, in Māori “amaru” is defined as “dignified”.

The same applies to imagery. For example, the fact that a spiral, whether it is a koru or a Greek spiral design, is recognised as a Māori sign in New Zealand, will mean that it will be treated as such.

Where an Examiner is unsure whether or not the trade mark under consideration is covered by these guidelines, the application is to be referred to the Liaison, Māori Trade Marks Advisory Committee.

Where a Māori sign is identified, IPONZ will add the trade mark type descriptor “Māori”.

3.1 Identification of Maori words

3.1.1 Maori alphabet

The Māori alphabet consists of 13 letters and two digraphs.

Letters:

A, E, H, I, K, M, N, O, P, R, T, U, W

Digraphs:

NG, WH

3.1.2 Features of Maori words

Vowels

All Māori words end with a vowel. Long vowels are signaled by either repeating the vowel or by placing a macron above the vowel.

e.g. aa or ā

A vowel can be preceded or followed by another vowel, consonant or digraph. A digraph never forms the end of a word.

e.g. ao, āwhina, ingoa, iwi, ngutu, umere, whio

Digraphs

A digraph, unless at the start of a word, is always preceded and followed by a vowel.

e.g. āwhina, ngārara, taonga, wheke

Consonants

A consonant, unless it is at the beginning of a word, is always preceded or followed by a vowel.

e.g. atua, ētahi, hinaki, kereru, taua

3.1.3 Dialect

There are a number of dialects in te reo Māori.

Some examples of variations in pronunciation are Kai Tahu's use of `k' instead of `ng' (e.g. raki for rangi, tākata for tāngata) or Tuhoe's use of `n' (e.g. rani, rangi). Taranaki descendants replace `h' with a catch in the throat called a glottal stop (e.g. `aere for haere, or mi'i for mihi).

3.1.4 Reference resources - Maori language - Te Reo Māori resources

A. W. (Alexander Wyclif) Reed, *The Reed Dictionary Of Māori Place Names: Te Papakupu Ingoa Wāhi Māori* (3 ed, Reed, Auckland NZ, 1996). ISBN 0790004941 (pbk).

Bruce Biggs, *The Complete English-Māori Dictionary* (Auckland University Press, Auckland NZ, 1981). ISBN 0196479894 (hbk).

Bruce Biggs, *English-Māori, Māori-English Dictionary* (Auckland University Press, Auckland NZ, 1990). ISBN 1869400569 (pbk).

David Karena-Holmes, *Māori Language: Understanding The Grammar/Te Reo Māori: He Whakamārama Wetenga Reo* (Reed Books, Auckland NZ, 1997). ISBN 0790005727 (pbk).

English-Māori Word Translator, Otago University at: <http://kel.otago.ac.nz/translator/> .

H M Ngata, Whai Ngata, *English-Māori Dictionary* (Learning Media, Wellington NZ, 1993). ISBN 0478058454 (pbk).

Available online at <http://www.learningmedia.co.nz/ngata/index.html>.

Herbert W Williams, A Dictionary Of The Māori Language (Government Printer, Wellington NZ, 1971).

K T Harawira, Karetu T S, Teach Yourself Māori (Reed, Auckland NZ, 1994). ISBN 0790003252 (pbk).

Kimikupu Hou Database, New Zealand Council For Educational Research, Te Rūnanga o Aotearoa mō te Rangahau i te Mātauranga at: <http://www.nzcer.org.nz/search/kimikupu.htm> (covers the most current and technical Māori words).

P M Ryan, The Reed Dictionary Of Modern Māori (Reed, Auckland NZ, 1997). ISBN 0790005913 (hbk).

Pita Cleave, Katarina Mataira, Rangimarie Rose Pere, E C Parnwell, Oxford Māori Picture Dictionary He Pukapuka Kupuāhua Māori (Oxford University Press, Wellington NZ, 1978). ISBN 0195580281 (pbk).

Te Taura Whiri i te Reo Māori, Māori Language Commission, Te Matatiki: Contemporary Māori Words (Oxford University Press, Auckland NZ, 1996). ISBN 0195583418 (pbk).

Te Taura Whiri i te Reo Māori, Māori Language Commission, Te Matatiki: Ngā Kupu Hou a Te Taura Whiri i te Reo Māori (Te Taura Whiri i te Reo Māori, Māori Language Commission, Wellington NZ, 1992). ISBN 0908878052 (pbk).

Te Taura Whiri i te Reo Māori, Māori Language Commission, Ngā Kupu Hou 1 Ngā Hākinakina (1) (Te Taura Whiri i te Reo Māori, Māori Language Commission, Wellington NZ, 1990). ISBN 0908878001 (pbk).

Te Taura Whiri i te Reo Māori, Māori Language Commission, Ngā Kupu Hou 2 Ngā Hākinakina (2) (Te Taura Whiri i te Reo Māori, Māori Language Commission, Wellington NZ, 1991). ISBN 0908878036 (pbk).

Te Taura Whiri i te Reo Māori, Māori Language Commission, Māori For The Office (Te Taura Whiri i te Reo Māori, Māori Language Commission, Wellington NZ, 1990). ISBN 0908878028 (pbk).

Wakareo ā-ipurangi (Wakareo ā-ipurangi is a compilation of a large number of separate Māori-English and English-Māori online dictionaries, lexicons, and word-list resources - compiled, organised and maintained by Wordstream Corporation Ltd - Te Tokapū Whakairo Kupu) (subscription required) <http://www.reotupu.co.nz> .

3.2 Identification of Maori imagery

The two most distinctive features of Māori imagery are:

- curvilinear designs as depicted in tā moko (tattooing), kowhaiwhai (rafter patterns) and whakairo (carving);
- rectilinear designs as depicted in tukutuku (ornamental) paneling or taniko (embroidery).

The following are examples of marks that contain Māori imagery that may have been acceptable for registration at one time, but would be unlikely to be acceptable today.



Goods: "butter" (1893)



Goods: "ale and stout" (1914)



Goods: “Worcester sauce, pickles and chutney” (1927)



Goods: “cigarettes” (1931)

3.2.1 Vienna classification

Where a sign contains an image, the image classified according to the Vienna Classification. The Vienna Classification system is a numbering system developed by the World Intellectual Property Organization to describe trade mark representations. The system aids in effective searching of trade marks which consist of, or contain, pictorial representations, words presented in a special form, ornamental motifs or other figurative elements¹.

IPONZ has supplemented the [WIPO Vienna Descriptors](#) by adding descriptors that are specific to New Zealand images. Where a sign contains Māori imagery, appropriate New Zealand specific descriptors will be assigned.

Examiners use the classification as a guide to assist in determining whether or not the device under consideration could be a Māori device.

The New Zealand specific descriptors are:

53.1 Maori

- 53.1.1 Moko (tattooing) (See also 2.1.1, 2.1.25, 2.3.1 and 2.3.25)
- 53.1.2 Kowhaiwhai (curvilinear design) (See also 25.7.1)
- 53.1.3 Tukutuku (rectilinear design) (See also 25.7.3 and 25.7.23)
- 53.1.4 Whakairo (carving) (See also 2.1.1, 2.1.22, 2.3.1 and 2.3.22)
- 53.1.5 Tiki (See also 4.5.5)
- 53.1.20 Other Māori

53.2 Flora

- 53.2.1 Fern (Does not include silver fern, see 53.2.2) (See also 5.1)
- 53.2.2 Silver fern (See also 5.3.7, 5.3.13 and 5.3.14)
- 53.2.3 Flax (See also 5.1)
- 53.2.4 Kauri (See also 5.1)
- 53.2.5 Kowhai (See also 5.1 and 5.5)
- 53.2.6 Pohutukawa (See also 5.1 and 5.5)
- 53.2.7 Nikau (See also 5.1)
- 53.2.8 Ti Tree (Cabbage tree) (See also 5.1.30)
- 53.2.20 Other flora

53.3 Fauna

- 53.3.1 Tuatara (See also 3.11.23)
- 53.3.2 Weta (See also 3.13.23)
- 53.3.10 Fantail / Piwakawaka (See also 3.11.23)
- 53.3.11 Huia (See also 3.7.21)
- 53.3.12 Kiwi (See also 3.7.21)
- 53.3.13 Moa (See also 3.7.21)
- 53.3.14 Tui (See also 3.7.21)
- 53.3.30 Other fauna (See also 3.7.21)

53.4 Other New Zealand

53.4.1 NZ map (Any of North, South, Stewart or combination) (See also 1.17.6)

53.4.2 NZ flag (See also 24.7.1)

53.4.3 Aoraki (Mt Cook) (See also 6.1.2 and 6.1.4)

53.4.4 Taranaki (Mt Egmont) (See also 6.1.2 and 6.1.4)

53.4.20 Other

Footnote

¹ See Introduction Guidelines.

3.2.2 Reference resources - Maori art - Toi Māori resources

D R Simmons, *Tā Moko: The Art Of Māori Tattoo* (Reed Books, Auckland NZ, 1986). ISBN 0474000443 (pbk).

David Simmons, *Whakairo: Māori Tribal Art* (Oxford University Press, Auckland NZ, 1994). ISBN 0195581199 (pbk).

Hans Neleman, *Moko Māori Tattoo* (Edition Stemmler, Zurich, c1999). ISBN 3908161967.

Janet Davidson, D C Starzecka, *Ngahua Te Awēkotuku, Māori: Art And Culture* (D. Bateman, in association with British Museum Press, Auckland NZ, 1996). ISBN 186953302X.

J H (John Henry) Menzies, *Māori Patterns Painted And Carved* (Hagley Press, Christchurch NZ, 1975).

Māori art and graphics at: <http://winson.maoriart.net/index.html> (examples of Māori art and graphics).

Māori art at: <http://www.maoriart.org.nz/>; <http://www.maoriart.net/>; <http://www.artmaori.com/>; <http://www.humboldt.edu/~rwj1/mauri.html>; <http://www.americanpentimento.com/art.htm#NZ> (links, examples and information regarding Māori art).

Mick Pendergrast, *Raranga Whakairo Māori Plaiting Patterns* (Coromandel Press, Coromandel NZ, 1984). ISBN 0908632959 (pbk).

Pita Graham, *Māori Moko Or Tattoo* (Bush Press, Auckland NZ, 1994). ISBN 0908608632 (pbk).

Sandy Adsett, Chris Graham, Rob McGregor, *Kōwhaiwhai Arts* (Education Advisory Service - Art & Design, Tauranga NZ, 1992). ISBN 0477015999 (pbk).

Sidney M Mead, *The Art Of Māori Carving* (Reed, Auckland NZ, 1961). ISBN 079000366X (pbk).

Tā Moko at: <http://www.tamoko.org.nz/> (examples and information regarding Tā Moko, Traditional Māori tattooing).

Terence Barrow, *An Illustrated Guide To Māori Art* (Reed, Auckland NZ, 1995). ISBN 0790004100 (pbk).

W J (William John) Phillipps, *Māori Rafter And Taniko Designs* (Harry H. Tombs, Wellington NZ, 1960).

3.3 Maori customary concepts

Māori attribute spiritual and cultural significance to certain words, images and locations. It is necessary to have some understanding of Māori culture and protocols to avoid offence. This includes, for example, an understanding of tapu and noa, perhaps some of the most complex of Māori concepts to understand.

“Tapu” is the strongest force in Māori life. It has numerous meanings and references. Tapu can be interpreted as "sacred", or defined as "spiritual restriction" or "implied prohibition", containing a strong imposition of rules and prohibitions. A person, object or place, which is

tapu, may not be touched or come into human contact. In some cases, not even approached.

“Noa”, on the other hand, is the opposite of tapu and includes the concept of common; it lifts the "tapu" from the person or the object. Noa also has the concept of a blessing in that it can lift the rules and restrictions of tapu.

Māori consider “rangatira (chief)” and “whakairo (carving)” to be tapu and “food” or “cigarettes” to be noa. Therefore the association of the chief and carving devices (above) in relation to the specified goods, namely “Worcester sauce, pickles and chutney”, “butter”, “cigarettes” and “ale and stout” may be considered culturally offensive and inappropriate to a significant number of Māori. That is, to associate something that is extremely tapu with something that is noa signifies an attempt to lift the tapu of the rangatira and whakairo – and therefore appears offensive.

3.3.1 Māori customary concepts - Tikanga Māori resources

Anne Salmond, Hui: A Study Of Māori Ceremonial Gatherings (A. H. & A. W. Reed, Wellington NZ, 1975).

Angela Ballara, Iwi: The Dynamics Of Māori Tribal Organisation From c.1769 To c.1945 (Victoria University Press, Wellington NZ, 1998). ISBN 0864733283 (pbk).

Cleve Barlow, Tikanga Whakaaro: Key Concepts In Māori Culture (Oxford University Press, Auckland NZ, 1991). ISBN 0195582128 (pbk).

Elsdon Best, The Māori As He Was: A Brief Account Of Māori Life As It Was In Pre-European Days (Government Printer, Wellington NZ, 1974).

Elsdon Best, Māori Religion And Mythology: Being An Account Of The Cosmogony, Anthropogeny, Religious Beliefs And Rites, Magic And Folk Lore Of The Māori Folk Of New Zealand. (Government Printer, Wellington NZ, 1976-1982). ISBN 0909010360.

J Patterson, Exploring Māori Values (Dunmore Press, Palmerston North NZ, 1992). ISBN 0864691564 (pbk).

James Irwin, An Introduction To Māori Religion: Its Character Before European Contact And Its Survival In Contemporary Māori And New Zealand Culture (Australian Association for the Study of Religions, Bedford Park Sth Australia, 1984). ISBN 0908083114 (pbk).

Michael King, Te Ao Hurihuri: Aspects of Māoritanga (Reed, Auckland NZ, 1992). ISBN 0790002396 (pbk).

Michael P Shirres, Te Tangata: The Human Person (Accent Publications, Auckland NZ, 1997). ISBN 0958345414 (pbk).

Peter Henry Buck, The Coming Of The Māori (Māori Purposes Fund Board, Wellington NZ, 1950).

R J Walker, Ka Whawhai Tonu Matou: Struggle Without End (Penguin Books, Auckland NZ, 1990). ISBN 0140132406 (pbk).

Sidney M Mead, Customary Concepts Of The Māori: A Sourcebook For Māori Students (Dept. of Māori Studies, Victoria University of Wellington, Wellington NZ, 1984).

Sidney M Mead, Neil Grove, Ngā Pepeha A Ngā Tipuna: The Sayings Of The Ancestors (Victoria University Press, Wellington NZ, 2001). ISBN 0864733992 (hbk).

Rangimarie Rose Pere, Ako: Concepts And Learning In The Māori Tradition (Dept. of Sociology, University of Waikato, Hamilton NZ, 1982). ISBN 0959758348 (pbk).

3.3.2 General

Aroha Te Pareake Mead, Ngā Tikanga, Ngā Taonga - Cultural And Intellectual Property: The Rights Of Indigenous Peoples (Research Unit for Māori Education, University of Auckland, Auckland NZ, 1994).

Māori Trade Mark Focus Group, Ministry of Commerce (Now Ministry of Economic Development), Māori and Trade Marks: A Discussion

Paper (Ministry of Commerce, Wellington NZ, 1997). ISBN 0478003803 (pbk).

Margaret Rose Orbell, *The Illustrated Encyclopedia Of Māori Myth And Legend* (Canterbury University Press, Christchurch NZ, 1995). ISBN 0908812450 (hbk).

Online White Pages at: <http://www.whitepages.co.nz>.

Puna Web Directory Māori Subject List at: <http://webdirectory.natlib.govt.nz/dir/en/nz/maori/>
(a selection of sites with a high level of Māori content).

Tuhi Tuhi Communications, *Takoa 2002ad Te Aka Kumara O Aotearoa: A Directory Of Māori Organisations And Resource People* (Tuhi Tuhi Communications, Auckland NZ, 2002). ISBN 0473085623 (pbk).

Wises Publications Limited, *Discover New Zealand: A Wises Guide* (Wises Publications, Auckland NZ, 1994).

4 Examination of trade marks containing Maori signs

Where a trade mark contains a Māori sign:

- the application will initially be forwarded to the Committee;
- the applicant will be advised that the Commissioner is seeking the advice of the Committee to determine whether the mark is likely to be offensive to Māori; and
- the trade mark will be examined pursuant to the Act except for sections 17 and 18 (examination under sections 17 and 18 will occur once advice has been received from the Committee).

A Compliance Report will be issued. The Compliance Report will explain how the application does not comply with the other requirements of the Act, and the Trade Marks Regulations 2003 (“the Regulations”), if any, and explain the referral to the Committee.

Generally, no time limit will be set until a full Compliance Report is issued. However a time limit may be set where:

1. the specification is so vague so that the Committee is unlikely to be able to make an assessment as to the potential offensiveness; or
2. regulation 43 (2)(a) of the Regulations applies. That is, applicants have one month to add an extra class if the goods and services are listed in the original specification.

To ensure there are no undue delays to registration, Committee members will be required to advise the Commissioner within a set timeframe of the outcome of their “preliminary consideration”.

If individual members are confident that the registration of the trade mark will not cause offence to Māori, IPONZ will advise the applicant accordingly, and the application will then proceed through the usual process of trade mark examination.

If committee members have initial concerns, or trade marks are filed shortly before the next Committee meeting, the Committee will meet to consider the application and determine whether the trade mark is either:

- not offensive to Māori;
- not likely to be offensive to Māori;
- likely to be offensive to Māori; or
- offensive to Māori.

Alternatively, the Committee may advise that further information is required before a determination can be made. In such a case the Committee must advise the Commissioner of this, together with the nature of the further information required. The Commissioner will consider the Committee’s advice in such cases and determine whether to advise the applicant to obtain this additional information.

Once the Committee has provided advice on the trade mark, IPONZ will examine the trade mark and issue a full Compliance Report. Applicants will have 12 months from the date the full Compliance Report issues to have their application in order for acceptance.

5 Examination after advice from committee

5.1 Offensiveness under section 17 of the Act

Section 17(1)(b)(ii) of the Act makes specific reference to the need to consider whether the use or registration of a mark would be likely to offend Māori.

Where the Māori Trade Marks Advisory Committee advises that the application contains matter that is offensive or, likely to be offensive to Māori, IPONZ will raise a concern that the mark is not registrable under section 17(1)(b)(ii) of the Act. For more information please see [Absolute Grounds General](#).

5.2 Distinctiveness under section 18 of the Act

Where the Māori Trade Marks Advisory Committee advises that the application does not contain matter that is offensive or, likely to be offensive to Māori, the mark will be examined for its distinctiveness under the same guidelines for distinctiveness under section 18 of the Act.

The fact that a word, of any other language, is recognised as a Māori word in New Zealand, will mean that it will be treated as such. For example, “amaru” in Japanese means “to remain, to be left over, to be in excess”, however, in Māori “amaru” is defined as “dignified”.

The same applies to imagery. For example, the fact that a spiral, whether it is a koru or a Greek spiral design, is recognised as a Māori sign in New Zealand, will mean that it will be treated as such.

Where the trade mark is or consists of an abbreviation that forms a word that is identifiably Māori, the abbreviation is to be considered to be a Māori word and examined accordingly.

5.3 Notification of non-compliance

When the Māori Trade Marks Advisory Committee has advised IPONZ on a Māori sign, the applicant will be sent a Compliance Report explaining whether or not the application complies with section 17 or section 18 of the Act and will invite the applicant to respond.

The Compliance Report will give the applicant a time limit in which it must respond or amend its application. The time limit must be not less than 12 months from the date this Compliance Report was sent out.²

For more information on the time limits and the application process, see the Guidelines to [The Application Process](#).

Footnote

² See regulation 61 of the Trade Marks Regulations 2003.

6 Annexure

³The Māori Trade Marks Advisory Committee has advised the Commissioner that it does not consider the following words to be offensive for a wide range of goods and services:

Footnote

³ Practice Guideline Amendment 2004/04, Information For Clients, Issue 31: 30 June 2004.

6.1 Kiwi

⁴The Māori Trade Marks Advisory Committee has advised the Commissioner that they do not consider the word 'kiwi' to be offensive for a wide range of goods and services:

As a result, the Commissioner will not send marks incorporating the above to the Committee, unless:

- The Commissioner considers that the mark may be offensive in relation to particular goods and services; or
- The mark includes other Māori text and/or imagery

Footnote

⁴ Practice Guideline Amendment 2004/04, Information For Clients, Issue 31: 30 June 2004.

6.2 Geographical locations

⁵The Māori Trade Marks Advisory Committee has advised the Commissioner that where a Māori word in a trade mark is a geographical location in New Zealand, it does not consider such geographical locations to be offensive for a wide range of goods and services.

As a result, the Commissioner will not send marks incorporating geographical locations to the Committee, unless the mark contains:

- Any matter the Commissioner considers might be offensive or ambiguous in relation to particular goods and services;
- An Atua or Tupuna name/image;
- An association with wahi tapu - a place sacred to Māori in the traditional, spiritual, religious, ritual, or mythological sense;
- A word that that may be regarded by whānau/hapū/iwi as having mana; or
- Other Māori text and/or imagery.

Footnote

⁵ Practice Guideline Amendment 2005/04, Information For Clients, May 2005.

6.3 Pitau (Koru)

⁶The Māori Trade Marks Advisory Committee has advised the Commissioner that where a pitau (also known as koru) appears as a device in a trade mark, it does not consider such devices to be offensive for a wide range of goods and services.

As a result, the Commissioner will not send marks incorporating pitau to the Committee, unless:

- the application contains an association with genetic technologies;
- the application includes other Maori text and/or imagery; or
- the Commissioner considers that the application may be offensive in relation to particular goods and services.

Footnote

⁶ Practice Guideline Amendment 2006/11, IPONZ Newsletter, December 2006.
