

# Memorandum of Understanding for the Māori Trade Marks Advisory Committee

## THIS MEMORANDUM OF UNDERSTANDING OUTLINES THE RELATIONSHIP BETWEEN:

The Commissioner of Trade Marks (“the Commissioner”)

**AND:** an advisory committee established under Section 177 of the Trade Marks Act 2002 (“the Committee”)

### 1. Purpose

1.1 The purpose of this memorandum is to create an understanding of the relationship between the Commissioner and the Committee.

### 2. Standing of the document

2.1 This memorandum is not intended to be legally enforceable. The memorandum is a guiding document as to the powers and duties of the Committee. It should be read alongside and consistently with the Trade Marks Act 2002 (“the Act”) and the Terms of Reference for Establishment of the Māori Trade Marks Advisory Committee (“the Terms of Reference”).

### 3. Establishment and function of the Committee

3.1 The Act provides that the Commissioner must establish an advisory committee. The function of the Committee is to advise the Commissioner as to whether the proposed use or registration of a trade mark that is, or appears to be, derivative of a Māori sign<sup>1</sup>, including text and imagery, is, or is likely to be, offensive to Māori.

3.2 The Committee is to be established, and function in accordance with, the Act, and the Terms of Reference attached to this memorandum.

### 4. Relationship between the parties

4.1 The Committee will provide the Commissioner with advice in accordance with its function under the Act. This function will address some of the concerns of Māori regarding the inappropriate registration of Māori signs as trade marks.

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<sup>1</sup> The Trade Marks Act 2002 defines a sign as including a brand, colour, device, heading, letter, name, numeral, shape, signature, smell, sound, taste, ticket, or word, and any combination of signs.

- 4.2 The Committee will provide advice to the Commissioner of the highest possible standard, and in a timely fashion. The Commissioner will carefully consider all advice provided by the Committee when making decisions about the registration of trade marks, which contain Māori signs, including text and imagery. The Commissioner will also ensure that the Committee has administrative support and all necessary information about the trade mark registration process.
- 4.3 The Committee and the Commissioner will maintain open communication. If there are any issues that may affect the relationship between the Commissioner and the Committee, these will be brought to the attention of the other party openly, frankly and expeditiously.

## **5. Powers of the Commissioner**

- 5.1 The Commissioner has a duty to determine whether, and subject to what conditions (if any), a trade mark is to be registered under the Act. In doing so the Commissioner shall have regard to the advice of the Committee. If the Committee advises that further information should be sought from a specific group, the Commissioner may advise the applicant to seek this information. In such a case the Commissioner may inform the group that this information may be sought by an applicant and provide relevant information regarding the trade mark registration process to assist in the group's consultative role.
- 5.2 The Commissioner may seek clarification, through the Chairperson or the liaison officer, of any advice provided by the Committee.
- 5.3 The Commissioner has further powers as to the appointment or removal of members of the Committee and the processes to be adopted by the Committee as are set out in the Act.

## **6. Powers of the Committee**

- 6.1 The Committee is to provide advice to the Commissioner as to whether the proposed use or registration of a trade mark that is, or appears to be, derivative or a Māori sign, including text or imagery, is, or is likely to be, offensive to Māori.

## **7. Consideration of advice from the Committee**

- 7.1 Advice from the Committee will be returned to the Intellectual Property Office ("IPONZ") through the liaison officer (as defined in the Terms of Reference). A template attached to each file will record the advice of the Committee regarding whether the proposed trade mark is, or is likely to be, offensive to Māori. An indication that further information may need to be sought by the applicant will be recorded on this template.
- 7.2 The Commissioner will advise the Committee of any decision made by him or her regarding the eligibility of the registration of a trade mark that has been subject to the consideration of the Committee. The Committee may request a written explanation from the Commissioner outlining the reasons for his or her decision, which may be contrary to the advice of the Committee.

## **8. Provision for Review**

- 8.1 This Memorandum of Understanding and the accompanying Terms of Reference provide direction on the Committee's functions and processes, but are not intended to cover every eventuality. This Memorandum and the Terms of Reference are to be read together, and subject to the express provisions of the Act, and are to be interpreted flexibly and pragmatically, to allow the Committee the scope, to adapt its processes as the need arises, subject to any specific direction given by the Commissioner.

- 8.2 Both parties will act in good faith to adhere to and uphold the Terms of Reference and Memorandum of Understanding. In the event there is non-agreement between the two parties, then both will act in good faith to attempt to resolve the dispute.
- 8.3 It is intended that the parties will review this Memorandum of Understanding once the Committee has been in operation for 6 months. The Memorandum will be reviewed annually after this initial review.
- 8.4 The Commissioner and the Committee may from time to time vary this Memorandum by agreement in writing.