

Trade Marks Amendment Bill

Government Bill

As reported from the committee of the whole
House

This bill was formerly part of the Trade Marks (International Treaties and Enforcement) Amendment Bill as reported from the Foreign Affairs, Defence and Trade Committee. The committee of the whole House has further amended the bill and divided it into the following bills:

- This bill comprising Part 1
 - Copyright Amendment Bill (No 2) comprising Part 2.
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Trade Marks Amendment Bill

Key to symbols used in reprinted bill

**As reported from the committee of the whole
House**

text inserted

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Hon Simon Power

Trade Marks Amendment Bill

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.

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Trade Marks Amendment Act **2009**.

2 Commencement

- (1) **Sections 3, 4 to 10, 12 to 16, 18 to 20, and 22A to 27** come into force on the day after the date on which this Act receives the Royal assent. 5
- (2) The rest of this Act comes into force on a date to be appointed by the Governor-General by Order in Council; and 1 or more Orders in Council may be made appointing different dates for different provisions and different purposes. 10

3 Principal Act amended

This **Part** amends the Trade Marks Act 2002.

4 Interpretation

- (1) Section 5(1) is amended by inserting the following definitions in their appropriate alphabetical order: 5
- “**document**, for the purposes of **subpart 2A of Part 4** and **sections 155B and 155D to 155F**, means—
- “(a) any material, whether or not it is signed or otherwise authenticated, that bears symbols (including words and figures), images, or sounds or from which symbols, images, or sounds can be derived, and includes— 10
- “(i) a label, marking, or other writing that identifies or describes a thing of which it forms a part, or to which it is attached:
- “(ii) a book, map, plan, graph, or drawing: 15
- “(iii) a photograph, film, or negative; and
- “(b) information electronically recorded or stored, and information derived from that information
- “**International Bureau** means the International Bureau of the World Intellectual Property Organization 20
- “**Madrid Protocol** means the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, adopted at Madrid on 27 June 1989, as amended from time to time
- “**Ministry** means the department of State that, with the authority of the Prime Minister, is responsible for the administration of this Act 25
- “**Nice Agreement** means the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks adopted at Nice on 15 June 1957, as amended from time to time 30
- “**Nice Classification** means the classification of goods and services for the registration of marks published from time to time under the Nice Agreement
- “**protected international trade mark (New Zealand)** means a trade mark that is entitled to protection in New Zealand under the Madrid Protocol”. 35

- (2) Paragraph (b) of the definition of **applicant** in section 5(1) is amended by adding “; and”.
- (3) The definition of **applicant** in section 5(1) is amended by adding the following paragraphs:
- “(c) in **sections 134G, 134H, and 134K**, means the applicant for a search warrant; and 5
- “(d) in **section 134U** means the applicant for the order referred to in that section”.
- (4) Section 5(1) is amended by repealing the definition of **chief executive** and substituting the following definition: 10
- “**chief executive**,—
- “(a) in subpart 3 of Part 4 (border protection measures), has the meaning set out in section 135; and
- “(b) in the rest of this Act, means the chief executive of the Ministry”. 15
- (5) Section 5(1) is amended by repealing the definition of **Court** and substituting the following definition:
- “**court**—
- “(a) means the High Court; and
- “(b) for the purposes of sections 126 to 134, and **134T to 134V**, includes a District Court or a Judge of that court”. 20
- (6) Section 5(1) is amended by repealing the definition of **licensee** and substituting the following definition:
- “**licensee**, in relation to a trade mark, means a person whose use of the trade mark is authorised by, and subject to the control of, the owner of the trade mark”. 25
- (6A) Paragraph (d) of the definition of **owner** in section 5(1) is amended by omitting “a an” and substituting “an”.
- (6B) Section 5(1) is amended by repealing the definition of **permitted use**. 30
- (7) Section 5(1) is amended by repealing the definition of **series of trade marks** and substituting the following definition:
- “**series of trade marks** means a number of trade marks for the same goods or description of goods or the same services or description of services (as the case may be) that— 35
- “(a) resemble each other in their material particulars; and
- “(b) differ only in respect of 1 or more of the following matters:

- “(i) statements of the goods or services for which they are, or are proposed to be, used:
- “(ii) statements of number, price, quality, or names of places:
- “(iii) other matters of a non-distinctive character that do not substantially affect the identity of the trade marks: 5
- “(iv) colour”.
- (7A) The definition of **trade mark** in section 5(1) is amended by repealing paragraph (b) and substituting the following paragraph: 10
- “(b) includes,—
- “(i) except in section 85, a certification trade mark; and
- “(ii) except in section 85, a collective trade mark”. 15
- 5 Classification of trade marks**
- Section 31 is amended by repealing subsection (1) and substituting the following subsection:
- “(1) Goods and services must be classified, for the purpose of registration of a trade mark, according to the edition of the Nice Classification in effect at the time of application for registration of the trade mark.” 20
- 6 New section 53 substituted**
- Section 53 is repealed and the following section substituted:
- “53 Reissuing certificate of registration” 25**
- The Commissioner may issue a further certificate of registration if—
- “(a) an application for a further certificate of registration has been made in the prescribed manner; and
- “(b) the prescribed fee, if any, has been paid.” 30
- 7 Grounds for revoking registration of trade mark**
- (1) Section 66(1) is amended by repealing paragraphs (a) and (b) and substituting the following paragraph:
- “(a) that at no time during a continuous period of 3 years or more was the trade mark put to genuine use in the 35

course of trade in New Zealand, by the owner for the time being, in relation to goods or services in respect of which it is registered.”

- (2) Section 66 is amended by inserting the following subsection after subsection (1): 5

“(1A) For the purposes of **subsection (1)(a), continuous period** means a period that commences from a date after the actual date of registration and continues uninterrupted up to the date 1 month before the application for revocation.”

- (3) Section 66(3) is amended by— 10
- (a) omitting “grounds” and substituting “ground”; and
 - (b) omitting “or (b)”.

8 Onus of proof for revocation of registration of trade mark for non-use

- (1) Section 67 is amended by omitting “or (b)” in the first place where it appears. 15

- (2) Section 67 is amended by repealing paragraph (a) and substituting the following paragraph:

“(a) provide proof of the use of the trade mark if the ground in section 66(1)(a) forms the basis for the application; or” 20

9 Alteration of register

- (1) Section 78 is amended by repealing paragraph (a) and substituting the following paragraph:

“(a) at the request of the owner of the trade mark, allow the owner’s name or address to be altered on the register.” 25

- (2) Section 78 is amended by repealing paragraph (c) and substituting the following paragraph:

“(c) at the request of the owner,—

“(i) enter a memorandum that relates to the trade mark, provided that the memorandum does not in any way extend the rights given by the existing registration of the trade mark; or 30

“(ii) alter a memorandum, provided that the alteration does not in any way extend the rights given by the existing registration of the trade mark; or 35

“(iii) remove a memorandum, provided that the removal does not in any way extend the rights given by the existing registration of the trade mark.”

- 10 Section 81 repealed** 5
Section 81 is repealed.
- 11 Registration of title to trade mark**
Section 82 is amended by repealing subsections (2) to (4) and substituting the following subsections:
- “(2) If title to a trade mark is assigned or transmitted after the date the trade mark is registered, either of the following persons may apply to the Commissioner to register the new owner’s title: 10
- “(a) the person registered as the owner of the trade mark:
“(b) the person to whom the trade mark has been assigned or transmitted. 15
- “(3) On proof of the new owner’s title, the Commissioner—
- “(a) must register the new owner as the owner of the trade mark in relation to the goods or services in respect of which the assignment or transmission has effect; and 20
- “(b) may issue a replacement certificate of registration in the name of the new owner; and
- “(c) must cause any assignment, transmission, or other document produced in evidence of title, or a copy of any of those documents, to be filed for public record. 25
- “(4) If title to a trade mark is assigned or transmitted before the actual date of registration, either of the following persons may apply to the Commissioner to change the name of the applicant on the application:
- “(a) the applicant for registration of the trade mark: 30
- “(b) the person to whom the trade mark has been assigned or transmitted.
- “(5) On proof of the new owner’s title, the Commissioner must—
- “(a) change the name of the applicant on the application; and

“(b) cause any assignment, transmission, or other document produced in evidence of title, or a copy of any of those documents, to be filed for public record.”

12 Heading above section 83 and sections 83, 84, 86, and 87 repealed

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(1) The heading above section 83 and sections 83, 84, 86, and 87 are repealed.

(2) All registrations of licensees (to avoid doubt, including registrations made under section 37 of the Trade Marks Act 1953) are revoked.

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13 No infringement for honest practices

(1) Section 95(c)(ii) is amended by adding “; or”.

(2) Section 95 is amended by adding the following paragraph:

“(d) the trade mark where reasonably necessary to indicate the intended purpose of the goods (in particular as accessories or spare parts) or services.”

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13A No infringement for certain continuous use of unregistered trade mark

Section 96(1) is amended by repealing paragraph (b) and substituting the following paragraphs:

20

“(b) trade mark B was used in relation to those goods or services in the course of trade by the owner or a predecessor in title of the owner before whichever is the earlier of the following dates:

“(i) the date of application in New Zealand for the registration of trade mark A; or

25

“(ii) the date that the owner, or a predecessor in title, first used trade mark A; and

“(c) trade mark B has been used continuously in relation to those goods and services in the course of trade by the owner’s predecessors in title (if any) and the owner since that date.”

30

14 New section 97 substituted

Section 97 is repealed and the following section substituted:

“97 No infringement for use in relation to certain identical or similar goods

A trade mark registered in respect of goods is not infringed by its use in relation to identical or similar goods connected in the course of trade with the owner or licensee if, as to those goods 5 or a bulk of which they form part,—

“(a) the owner or licensee has applied the trade mark and has not later removed or obliterated it; or

“(b) the owner or licensee has consented to the use of the trade mark.” 10

15 New section 97A substituted

Section 97A is repealed and the following section substituted:

“97A Exhaustion of rights conferred by registered trade mark

“(1) A registered trade mark is not infringed by the use of the trade mark (including use for the purpose of advertising) in relation 15 to goods that have been put on the market anywhere in the world under that trade mark under any 1 or more of the following circumstances:

“(a) by the owner:

“(b) with the owner’s express or implied consent: 20

“(c) by an associated person of the owner.

“(2) For the purposes of **subsection (1)(c)**, a person is **an associated person of the owner** if—

“(a) they are in the same group of companies; or

“(b) they are both bodies corporate and they consist of substantially the same members or are directly or indirectly 25 under the control of the same persons; or

“(c) either of them has effective control of the other’s use of the trade mark; or

“(d) a third person has effective control of the use of the trade 30 mark by each of them.

“(3) For the purposes of **subsection (2)**,—

“(a) **group of companies** includes a holding company and its subsidiaries within the meaning of section 5 of the Companies Act 1993; and 35

“(b) a person has **effective control** of the use of a trade mark if that person may authorise the use of the trade mark or has significant influence over how it is used,

regardless of how that authorisation or influence arises (for example, whether directly or indirectly and whether by way of proprietary interest, contract, arrangement, understanding, a combination of those things, or otherwise).”

5

16 Application of Criminal Justice Act 1985

- (1) The heading to section 118 is amended by omitting “**Criminal Justice Act 1985**” and substituting “**Sentencing Act 2002**”.
- (2) Section 118(a) is amended by omitting “section 22(1)(b) of the Criminal Justice Act 1985” and substituting “section 32(1)(a) and (c) of the Sentencing Act 2002”.

10

17 New subpart 2A of Part 4 inserted

The following subpart is inserted after section 134:

“Subpart 2A—Enforcement officers

“Appointment and functions of enforcement officers

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“134A Chief executive may appoint enforcement officers

The chief executive may appoint enforcement officers, on a permanent or temporary basis, to perform the functions set out in **section 134C** and exercise the powers conferred on an enforcement officer by this Act.

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“134B Authority to act as enforcement officer

“(1) The chief executive must issue a warrant of appointment to every person appointed as an enforcement officer.

“(2) A warrant of appointment must— 25

“(a) be in the prescribed form; and

“(b) bear the photograph and signature of the holder; and

“(c) contain a statement of the power conferred by **section 134D**; and

“(d) contain any other prescribed particulars. 30

“(3) A warrant of appointment is, in the absence of evidence to the contrary, sufficient proof that the holder of the warrant may exercise the powers conferred on an enforcement officer.

- “(4) A person who ceases to be an enforcement officer must return the person’s warrant of appointment.
- “(5) A person who fails to comply with **subsection (4)** commits an offence and is liable on summary conviction to a fine not exceeding \$1,000. 5
- “**134C Functions of enforcement officer**
- An enforcement officer must, to the extent that is reasonably practicable, promote compliance with this Act by carrying out the following functions:
- “(a) gathering information relating to offences under this Act: 10
- “(b) investigating offences under this Act:
- “(c) reporting to the chief executive on any matters relating to the enforcement officer’s functions.
- “*Enforcement officer’s power of entry and examination without warrant* 15
- “**134D Enforcement officer’s power of entry and examination without warrant**
- “(1) For the purpose of carrying out his or her functions, an enforcement officer may enter and examine any place (**place A**) 20 where goods are being offered for sale, exposed for sale, or publicly displayed if—
- “(a) place A is in a public place and the entry is made when place A is open to the public; or
- “(b) place A is a place of business and the entry is made— 25
- “(i) when it is open for carrying on business; and
- “(ii) only to those parts of it that are open to the public; or
- “(c) the occupier of place A consents to the entry and examination after the enforcement officer has informed the occupier— 30
- “(i) of the purpose of the entry and examination; and
- “(ii) that the occupier may refuse to give consent to the entry and examination; and
- “(iii) that the occupier may revoke his or her consent 35 at any time; and

- “(iv) that any thing seized during the examination may be used in evidence in proceedings.
- “(2) In **subsection (1)**,—
- “**place A**—
- “(a) includes (without limitation)— 5
- “(i) a structure or tent, whether fully or partly erected; and
- “(ii) a stand or stall; and
- “(iii) a vehicle; and
- “(iv) a caravan, trailer, or other conveyance; but 10
- “(b) does not include a private dwellinghouse
- “**public place** means any place that is open to or being used by the public, with or without payment by the public of a charge.
- “(3) For the purposes of this section, any person who appears to be under 14 years of age may not be treated as the occupier. 15
- “**134E What enforcement officer and person assisting may do when exercising power of entry and examination without warrant**
- “(1) The power of entry and examination conferred by **section 134D** authorises an enforcement officer to do any of the following: 20
- “(a) examine the place and all things, including any document:
- “(b) seize any thing that he or she has reasonable grounds to believe is evidence of, or of significant relevance to the investigation of, an offence under this Act: 25
- “(c) bring and use in or on the place equipment for the purposes of carrying out the examination:
- “(d) take photographs or sound or video recordings of the place, and of any thing found in that place, if the enforcement officer has reasonable grounds to believe that the photographs or sound or video recordings may be relevant in any proceedings (including future proceedings) related to the entry and examination: 30
- “(e) take any person to the place to assist him or her with the examination. 35

- “(2) A person who assists an enforcement officer exercising the power of entry and examination may, under the direction of the enforcement officer,—
- “(a) exercise any of the powers described in **subsection (1)(a), (c), and (d)**; and 5
- “(b) seize any thing that the enforcement officer determines may lawfully be seized.
- “(3) If an enforcement officer enters and examines a place under **section 134D(1)(c)** and the occupier revokes his or her consent, the officer and any person assisting the enforcement officer must immediately stop the examination and leave the place. 10
- “(4) **Subsection (3)** is subject to **subsection (5)**.
- “(5) The enforcement officer may, before leaving the place, seize any thing already identified by him or her before the revocation of consent as a thing that he or she has reasonable grounds to believe is evidence of, or of significant relevance to the investigation of, an offence under this Act. 15
- “(6) If a member of the police assists an enforcement officer, nothing in this section prevents that member of the police from exercising any power ordinarily exercisable by him or her. 20
- “(7) **Sections 134P to 134S** contain further provisions that apply to an enforcement officer’s power of entry and examination.

“Entry and search under search warrant

- “**134F Enforcement officer or member of police may apply for search warrant** 25
- “(1) An enforcement officer or a member of the police may apply for a search warrant to search a place or thing.
- “(2) Any District Court Judge, Justice of the Peace, Community Magistrate, or any Registrar of a District Court (not being a member of the police) (the **issuing officer**) may, on an application by an enforcement officer or a member of the police, issue a search warrant to search a place or thing if the issuing officer is satisfied that there are reasonable grounds for believing that— 30
- “(a) an offence under this Act has been, or is being, committed at the place or involving the thing; or 35

- “(b) there is at, in, on, over, or under the place or thing, any thing that is—
- “(i) evidence of an offence under this Act; or
- “(ii) intended to be used for the purpose of committing an offence under this Act. 5
- “(3) **Sections 134G to 134S** apply in respect of every search warrant applied for and issued under this section.
- “**134G Application for search warrant**
- “(1) An application for a search warrant must contain, in reasonable detail, the following particulars: 10
- “(a) the name of the applicant:
- “(b) the provision of this Act authorising the making of the application:
- “(c) the grounds on which the application is made:
- “(d) the address or other description of the place or thing proposed to be searched: 15
- “(e) a description of the item or items believed to be at, in, on, over, or under the place or thing that are sought by the applicant:
- “(f) the period for which the warrant is sought: 20
- “(g) if the applicant wants to be able to execute the warrant on more than 1 occasion, the grounds on which execution on more than 1 occasion is believed to be necessary.
- “(2) The issuing officer may require the applicant to supply further information concerning the grounds on which the search warrant is sought. 25
- “(3) The applicant must disclose in the application—
- “(a) details of any other application for a search warrant that the applicant knows to have been made within the previous 3 months in respect of the place or thing proposed to be searched: 30
- “(b) the result of that application or those applications.
- “(4) The applicant must, before making an application for a search warrant, make reasonable inquiries within the agency in which the applicant is employed or engaged for the purpose of complying with **subsection (3)**. 35

“(5) The issuing officer may authorise the search warrant to be executed on more than 1 occasion during the period in which the warrant is in force if he or she is satisfied that this is required for the purposes for which the warrant is being issued.

“**134H Mode of application for search warrant** 5

“(1) Unless **subsection (3)** applies, an application for a search warrant—

“(a) must be in writing; and

“(ab) must be in the prescribed form (if any); and

“(b) may be transmitted to the issuing officer electronically. 10

“(2) The applicant must appear in person before the issuing officer, unless **subsection (3)** applies.

“(3) An issuing officer may allow an application for a search warrant to be made verbally (for example, by telephone call) and excuse the applicant from making a personal appearance if the issuing officer is satisfied that— 15

“(a) the delay that would be caused by requiring an applicant to appear in person would compromise the effectiveness of the search; and

“(b) the question of whether the warrant should be issued can properly be determined on the basis of a verbal communication (including the information described in **paragraph (c)**); and 20

“(c) the information required by **section 134G(1) to (3)** has been supplied to the issuing officer. 25

“(4) An issuing officer who allows an application for a search warrant to be made verbally must record the grounds for the application as soon as practicable.

“**134I Form and content of search warrant**

“(1) Every search warrant issued must be in the prescribed form. 30

“(2) Every search warrant issued must be directed generally to every enforcement officer and every member of the police.

“(3) A search warrant—

“(a) may be executed by any of the persons to whom it is directed: 35

- “(b) may be subject to any conditions specified in the warrant that the issuing officer considers reasonable:
- “(c) may be executed only once, unless execution on more than 1 occasion is authorised.
- “(4) Every search warrant must contain, in reasonable detail, the following particulars: 5
- “(a) the name of the issuing officer and the date of issue:
- “(b) the provision of this Act authorising the issue of the warrant:
- “(c) that the person executing the warrant may use any assistance that is reasonable in the circumstances: 10
- “(d) that the person executing the warrant may use any force that is reasonable in the circumstances to enter or break open or access any place being searched, or any area within that place, or any thing being searched or thing found: 15
- “(e) the address or description of the place or thing that may be searched:
- “(f) a description of what may be seized:
- “(g) the period during which the warrant may be executed, 20 being—
- “(i) a period specified by the issuing officer not exceeding 14 days from the date of issue; or
- “(ii) if the issuing officer is satisfied that a period of longer than 14 days is necessary for execution, a period specified by the issuing officer not exceeding 30 days from the date of issue: 25
- “(h) any conditions specified by the issuing officer under **subsection (3)(b)**:
- “(i) if the warrant may be executed on more than 1 occasion, the number of times that the warrant may be executed. 30

“134J Transmission of search warrant

If it is not possible for the person charged with executing the warrant to have it in his or her possession at the time of execution, 1 of the following documents (which is deemed for all purposes to constitute the warrant) may be executed: 35

- “(a) a facsimile or other electronic copy of a warrant issued by the issuing officer:

- “(b) a copy of the text of a warrant, made at the direction of the issuing officer, and endorsed to that effect by the person who made the copy.

“134K Retention of documents

- “(1) A copy of every written application for a search warrant or, in the case of a verbal application, the written record of the application made by the issuing officer, must be retained at the District Court at which, or the District Court that is closest to the place at which, the application was made, until,—
- “(a) in a case where a search warrant is issued, the completion of any proceedings in respect of which the search warrant may be in issue; and
- “(b) in any other case, the expiry of 2 years after the documents were first retained by the District Court.
- “(2) An applicant to whom a search warrant is issued must retain the warrant, a copy of the application (if made in written form), and all documents tendered by the applicant in support of the application until,—
- “(a) in the case of a warrant that is executed, the completion of any proceedings in respect of which the validity of the warrant may be in issue; and
- “(b) in any other case, the destruction or transfer of the warrant and other documents is required by the Public Records Act 2005 or any other enactment or rule of law.

“134L When search warrant is executed

A search warrant is executed when the person executing the warrant—

- “(a) has seized all the items specified in the warrant; or
- “(b) leaves the place or thing being searched and does not return within 4 hours.

“134M Powers of entry and search under warrant

- “(1) Every search warrant authorises the person executing it to do any of the following:
- “(a) to enter and search the place or thing that the person is authorised to enter and search, and any item or items

- found in that place, at any time that is reasonable in the circumstances:
- “(b) to request any person to assist with the entry and search (including, without limitation, a member of a hapu or an iwi if the place to be entered is of cultural or spiritual significance to that hapu or iwi): 5
 - “(c) to use any force that is reasonable for the purposes of the entry and search:
 - “(d) to seize any thing authorised to be seized:
 - “(e) to bring and use in or on the place or thing searched any equipment, to use any equipment found on the place or thing, and to extract any electricity from the place or thing to operate the equipment that it is reasonable to use in the circumstances, for the purposes of carrying out the entry and search: 10 15
 - “(f) to copy any document, or part of a document, that may lawfully be seized:
 - “(g) to take photographs or sound or video recordings of the place or thing searched, and of any thing found in that place, if the person exercising the power has reasonable grounds to believe that the photographs or sound or video recordings may be relevant in any proceedings related to the entry and search. 20
- “(2) The person executing the warrant may, in a manner and for the duration that is reasonable for the purposes of carrying out the search,— 25
- “(a) secure the place or thing searched, any area within that place or thing, or any thing found within that place or thing; and
 - “(b) exclude any person from the place or thing searched, or from any area within the place or thing, or give any other reasonable direction to such a person, if the person carrying out the search has reasonable grounds to believe that the person will obstruct or hinder the exercise of the power. 30 35
- “(3) The powers conferred by this section are subject to any conditions imposed under **section 134I(3)(b)**.
- “(4) Section 198B of the Summary Proceedings Act 1957 applies with all necessary modifications as if for each reference to a

constable there were substituted a reference to the person authorised to execute the search warrant.

“134N Powers of persons called to assist

- “(1) Every person called on to assist a person executing a warrant is subject to the control of the person executing the warrant. 5
- “(2) Every person called on to assist a person executing a warrant may do any of the following:
- “(a) enter the place or thing to be searched:
 - “(b) while in the company and under the direction of the person executing the warrant, use reasonable force in respect of any property for the purposes of carrying out the entry and search: 10
 - “(c) search areas within the place or thing that the person executing the warrant determines may lawfully be searched: 15
 - “(d) seize any thing that the person executing the warrant determines may lawfully be seized:
 - “(e) take photographs and sound and video recordings of the place or thing and things found in the place or thing if the person executing the warrant determines that those things may lawfully be done: 20
 - “(f) bring in or on to the place or thing and use any equipment, make use of any equipment found on the place or thing, or extract electricity from the place or thing for the purposes of operating the equipment that the person executing the warrant determines may lawfully be used: 25
 - “(g) copy any document, or part of a document, that the person executing the warrant determines may lawfully be copied.
- “(3) If a member of the police is assisting another person executing the warrant, that member of the police may exercise any power ordinarily exercisable by him or her. 30
- “(4) The person executing the warrant must—
- “(a) accompany any assistant on the first occasion when the assistant enters the place or thing to be searched; and 35
 - “(b) provide such other supervision of any assistant as is reasonable in the circumstances.

“General provisions that apply to powers of entry and search and entry and examination

“134O Application of sections 134P to 134S

- “**(1) Sections 134P to 134S** apply in respect of every search warrant issued under this Act. 5
- “**(2) Sections 134P(1) and 134Q to 134S** apply in respect of the power of entry and examination conferred by **section 134D**.
- “**(3) In sections 134P to 134S,—**
- “**(a) power of entry and search** means the power of entry and search under a search warrant issued under this Act; 10
and
- “**(b) power of entry and examination** means the power of entry and examination under **section 134D**.

“134P Powers and duties of person exercising power of entry and search or power of entry and examination 15

- “**(1)** A person exercising a power of entry and search or a power of entry and examination must,—
- “**(a)** before initial entry into or onto the place or thing to be searched or examined,—
- “**(i)** announce his or her intention to enter and search 20
or to enter and examine the place or thing under a statutory power; and
- “**(ii)** identify himself or herself; and
- “**(b)** before or on initial entry into or onto the place or thing to be searched or examined,— 25
- “**(i)** give the occupier of the place or thing a copy of the search warrant or, in the case of an examination, a copy of **section 134D**, (the **authority**) that authorises him or her to conduct the entry and search or entry and examination; and 30
- “**(ii)** produce to the occupier of the place or thing evidence of his or her identity (which may include details of a unique identifier instead of a name).
- “**(2)** The person exercising a power of entry and search is not required to comply with **subsection (1)** if he or she believes on 35
reasonable grounds that—

- “(a) no person is lawfully present in or on the place or thing to be searched; or
- “(b) compliance with **subsection (1)** would—
- “(i) endanger the safety of any person; or
- “(ii) prejudice the successful exercise of the power of entry and search; or
- “(iii) prejudice ongoing investigations under this Act.
- “(3) The person exercising a power of entry and search may use reasonable force in order to effect entry into or onto the place or thing if—
- “(a) **subsection (2)** applies; or
- “(b) following a request, the person present refuses entry or does not allow entry within a reasonable time.
- “(4) If the occupier is not present at any time during the exercise of a power of entry and search, the person carrying out the search must,—
- “(a) on completion of the search, leave a copy of the authority referred to in **subsection (1)(b)(i)** and the notice referred to in **subsection (5)** in a prominent position at the place or on the thing; or
- “(b) if this is not reasonably practicable, provide the copy of the authority referred to in **subsection (1)(b)(i)** and the notice referred to in **subsection (5)** to the occupier no later than 7 days after the execution of the warrant.
- “(5) The notice required by **subsection (4)** is a written notice containing the following particulars:
- “(a) the date and time of the commencement and completion of the search:
- “(b) the name or unique identifier of the person who had overall responsibility for that search:
- “(c) the address of the office to which inquiries should be made:
- “(d) if nothing is seized, the fact that nothing was seized:
- “(e) if any thing was seized, the fact that seizure occurred and, if an inventory is not provided at the same time under **section 134Q**, that an inventory of the things seized will be provided to the occupier or person in charge of the place or thing no later than 7 days after the seizure.

“(6) For the purposes of this section and **section 134Q**, any person who appears to be under 14 years of age may not be treated as the occupier.

“(7) **Subsections (4) and (5)** are subject to **sections 134R and 134S**.

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“134Q Inventory of things seized

“(1) A person who exercises a power of entry and search or a power of entry and examination must, at the time he or she seizes any thing, or as soon as practicable after the seizure of any thing, and in any case not later than 7 days after that seizure, provide to the occupier, and to every other person whom the person who carried out the search or examination has reason to believe is the owner of the thing that was seized,—

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“(a) written notice specifying what was seized; and

“(b) a copy of the authority referred to in **section 134P(1)(b)(i)**.

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“(2) A written notice referred to in **subsection (1)(a)**—

“(a) must contain information about the extent to which a person from whom a thing was seized or the owner of the thing has a right—

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“(i) to have access to the thing; and

“(ii) to have access to any document relating to the application for a search warrant or the exercise of the power of entry and examination that led to the seizure; and

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“(b) must contain information about the right to bring a claim that any privileged or confidential information has been seized; but

“(c) need not be provided to the occupier if the person who carries out the search or examination is satisfied that none of the things seized are owned by the occupier.

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“(3) If the occupier is not present at the time of seizure, the written notice referred to in **subsection (1)(a)** and a copy of the authority referred to in **section 134P(1)(b)(i)** may be provided to the occupier by leaving the notice in a prominent position at the place or on the thing.

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- “(4) A person who exercises a power of entry and search or a power of entry and examination must make reasonable inquiries for the purposes of complying with **subsections (1) and (2)**.
- “(5) **Subsection (1)** is subject to **subsections (2) and (3)**.
- “(6) This section is subject to **sections 134R and 134S**. 5
- “**134R Compliance with certain provisions may be deferred in certain circumstances**
- “(1) A person exercising a power of entry and search or a power of entry and examination may apply to a District Court Judge for an order postponing the obligation to comply with **section 134P(4) or (5)** (in the case of a power of entry and search) **or 134Q** on the grounds that compliance would— 10
- “(a) endanger the safety of any person; or
- “(b) prejudice ongoing investigations under this Act or exercises of the power of entry and search or the power of entry and examination on subsequent occasions. 15
- “(2) An application may be made under **subsection (1)**,—
- “(a) in the case of a search warrant, at the time of the initial application or until the expiry of 7 days after the warrant is finally executed; and 20
- “(b) in the case of the power of entry and examination, until the expiry of 7 days after the power of entry and examination is exercised.
- “(3) On an application under **subsection (1)**, the District Court Judge may make an order postponing for a specified period 25 not exceeding 12 months the obligation to comply with **section 134P(4) or (5) or 134Q**, if the Judge is satisfied on either ground set out in **subsection (1)**.
- “**134S Further extension to, or dispensation from, obligation to comply with certain provisions** 30
- “(1) A person who has obtained an order under **section 134R(3)** may, before the expiry of that order, apply to a District Court Judge for a further order for postponement of, or dispensation from, the obligation to comply with **section 134P(4) or (5) or 134Q** on the grounds set out in **section 134R(1)**. 35

- “(2) An application for a further postponement may only be made on 1 occasion.
- “(3) On an application under **subsection (1)**, the District Court Judge may postpone for a further specified period not exceeding 12 months, or order a permanent dispensation from, the obligation to comply with **section 134P(4) or (5) or 134Q**, if the Judge is satisfied on either ground set out in **section 134R(1)**. 5
- “(4) A District Court Judge may not grant, under **subsection (3)**, any postponement of, or dispensation from, an obligation in respect of any thing that has been seized, unless the thing seized is a copy of any information taken or made. 10

“Provisions relating to things seized

“134T Period things seized may be retained

- “(1) A thing seized under this Act may be retained by the Commissioner of Police or by the chief executive while it is required for the purposes of investigating or prosecuting an offence under this Act. 15
- “(2) **Subsection (1)** is subject to—
- “(a) any order of the court under **section 134U**; and 20
- “(b) **section 134W**.
- “(3) If a thing seized is no longer required for the purposes of investigating or prosecuting an offence under this Act, the Commissioner of Police or the chief executive must return it to the person he or she believes is entitled to it. 25
- “(4) The Commissioner of Police or chief executive may apply to the court for an order for directions as to the disposal of the thing if—
- “(a) the person who is entitled to it cannot be found; or
- “(b) the Commissioner of Police or chief executive is in doubt about who is entitled to it. 30
- “(5) On an application under **subsection (4)**, the court may make such order concerning the disposal of the thing that it thinks appropriate in the circumstances.

“134U Application for order to return things seized

- “(1) A person who claims to be entitled to a thing seized may apply to the court for an order that the thing be delivered to him or her.
- “(2) On an application under **subsection (1)**, the court may make an order for delivery of the thing to the applicant if it is satisfied—
- “(a) that the applicant is the person entitled to it; and
 - “(b) that it would be contrary to the interests of justice for the thing to be retained, having regard to—
 - “(i) the gravity of the alleged offence in respect of which the thing is being retained; and
 - “(ii) any loss or damage to the applicant caused, or likely to be caused, by retention of the thing; and
 - “(iii) the likely evidential value of the thing, having regard to any other evidence held by the Commissioner of Police or the chief executive, as the case may be; and
 - “(iv) whether the evidential value of the thing can be adequately preserved by means other than its retention.

“134V Disposal of things seized

- “(1) In any proceedings for an offence relating to a thing seized, the court may, either at the trial or on an application, order—
- “(a) that the thing be delivered to the person who appears to the court to be entitled to it; or
 - “(b) that the thing be destroyed or otherwise disposed of in the manner that the court thinks appropriate; or
 - “(c) if a person is convicted of an offence to which the thing relates,—
 - “(i) that the thing be forfeited to the trade mark owner; or
 - “(ii) that the thing be destroyed or otherwise disposed of as the court directs at the expense of the convicted person.
- “(1A) In considering what order, if any, should be made under **subsection (1)(c)(ii)**, the court must consider the need to ensure

that no infringing goods are disposed of in a manner that would adversely affect the owner of the registered trade mark.

- “(2) If the court makes an order under **subsection (1)(c)**, it may order that the convicted person pay any reasonable costs incurred by the Commissioner of Police or chief executive in retaining the thing for the purpose of the proceedings. 5
- “(3) If no order for delivery, forfeiture, destruction, or other disposal is made in respect of a thing seized and retained for the purpose of proceedings, it must, on completion of the proceedings, be returned by the Commissioner of Police or the chief executive to the person entitled to it. 10
- “(4) The Commissioner of Police or chief executive may apply to the court for an order for directions as to the disposal of the thing if—
- “(a) the person who is entitled to it cannot be found; or 15
- “(b) the Commissioner of Police or chief executive is in doubt about who is entitled to it.
- “(5) On an application under **subsection (4)**, the court may make any order concerning the disposal of the thing that it thinks appropriate in the circumstances. 20

“**134W Disposal of perishable things**

If, in the opinion of the Commissioner of Police or chief executive, a thing seized may rot, spoil, deteriorate, or otherwise perish, he or she may dispose of it in the way and at the price (if any) or the cost he or she may determine. 25

“Other powers of enforcement officers

“**134WA Enforcement officer may apply for production order**

- “(1) If an enforcement officer believes on reasonable grounds that a person has in his or her possession, custody, or control, 1 or more documents that are evidence of, or may be of significant relevance to the investigation of, an offence against any of sections 120 to 124, the enforcement officer may apply to a District Court Judge for an order requiring the person to produce the documents for inspection by an enforcement officer. 30
- “(2) ~~An application by an enforcement officer for an order under **subsection (1)** must be in writing, be made on oath, and—~~ 35

- “(a) ~~set out, in reasonable detail, the grounds for the application; and~~
- “(b) ~~provide details of the documents in respect of which the order is sought.~~
- “(2) An application by an enforcement officer for an order under **subsection (1)** must— 5
- “(a) be in writing; and
- “(b) be in the prescribed form (if any); and
- “(c) be made on oath; and
- “(d) set out, in reasonable detail, the grounds for the application; and 10
- “(e) provide details of the documents in respect of which the order is sought.
- “**134WB Judge may order documents to be produced**
- “(1) If an application is made under **section 134WA** and the District Court Judge is satisfied that there are reasonable grounds to believe that the person in respect of whom the order is sought has in that person’s possession, custody, or control, 1 or more documents that are evidence of, or may be of significant relevance to the investigation of, an offence against any 20 of sections 120 to 124, the District Court Judge may order the person to produce those documents for inspection by an enforcement officer.
- “(2) An order under **subsection (1)**—
- “(aa) must be in the prescribed form (if any); and 25
- “(a) must specify—
- “(i) when the documents are to be produced for inspection; and
- “(ii) the place where the documents are to be produced for inspection; and 30
- “(iii) the enforcement officer to whom the documents are to be produced for inspection; and
- “(b) may be subject to any further terms and conditions the District Court Judge thinks fit.

“134WC Powers of enforcement officer to whom documents produced

An enforcement officer to whom any document is produced for inspection under an order under **section 134WB** may do 1 or more of the following:

- “(a) inspect the document;
- “(b) take extracts from the document;
- “(c) make copies of the document.

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“134WD Offence of failing to comply with order to produce documents

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“(1) No person may, without reasonable excuse, fail to comply with an order under **section 134WB**.

“(2) Every person who breaches **subsection (1)** commits an offence and is liable on summary conviction,—

- “(a) in the case of an individual, to imprisonment for a term not exceeding 6 months or a fine not exceeding \$10,000; and
- “(b) in the case of a body corporate, to a fine not exceeding \$50,000.

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“Powers of police

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“134X Powers of police

Every member of the police has all, and may exercise any, of the powers of an enforcement officer under this subpart.

“Miscellaneous

“134XA Privilege against self-incrimination

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“(1) An order under **section 134WB** does not affect the privilege against self-incrimination that an individual may have under section 60 of the Evidence Act 2006.

“(2) Any assertion of a privilege against self-incrimination must be based on section 60 of the Evidence Act 2006.

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“(3) If any individual refuses to produce a document on the ground that it is a privileged communication under section 60 of the Evidence Act 2006, an enforcement officer or a member of the police may apply to a District Court Judge for an order determining whether the claim of privilege is valid; and, in respect

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of any such application, the individual must offer sufficient evidence to enable the District Court Judge to assess whether self-incrimination would be reasonably likely if the individual produced the document.

- “(4) To avoid doubt, nothing in this section affects the application of section 65 of the Evidence Act 2006 (which relates to waiver of privilege) in respect of the privilege against self-incrimination that a person may have under section 60 of that Act. 5
- “(5) Section 63 of the Evidence Act 2006 does not apply to an order made under **section 134WB**. 10

“**134Y Other privileges**

- “(1) If, in a criminal proceeding, a person could assert a privilege under section 54 or 56 of the Evidence Act 2006 in respect of a communication or information, that person has the same privilege for the purposes of an examination under **section 134D**, a search warrant issued under **section 134F**, and an order made under **section 134WB**. 15
- “(2) **Subsection (3)** applies to documents that are books of account or accounting records referred to in section 55(1) of the Evidence Act 2006. 20
- “(3) The application, by **subsection (1)**, of section 54 of the Evidence Act 2006 (which relates to the privilege for communications with legal advisers) does not prevent, limit, or affect—
- “(a) the issue or execution of a search warrant under **section 134F**; or 25
- “(ab) the making of an order under **section 134WB**; or
- “(b) the admissibility, in a criminal proceeding under this Act, of any evidence that relates to the contents of a document to which this subsection applies obtained as a result of a search warrant issued under **section 134F** or an order made under **section 134WB**. 30
- “(4) A person who has a privilege under this section has the right—
- “(a) to prevent the examination under **section 134D**, or the search under a warrant issued under **section 134F**, or to refuse production under an order made under **section 134WB**, of any communication or information to 35

- which the privilege would apply if it were sought to be disclosed in a criminal proceeding; and
- “(b) to require the return of any such communication or information if it is seized by a person exercising the power of examination under **section 134D** or search under a warrant issued under **section 134F** pending determination of the claim to privilege. 5
- “(5) If a person asserts a claim to privilege under this section in respect of any communication or information, an enforcement officer or a member of the police may apply to a District Court Judge for an order determining whether or not the claim to privilege is valid; and, for the purpose of determining any such application, the District Court Judge may require the communication or information to be produced to him or her. 10
- “(6) A District Court Judge may, on the application of an enforcement officer or a member of the police, disallow a privilege claimed under this section if the Judge is satisfied that the claim to privilege would, under section 67(1) of the Evidence Act 2006, be disallowed in a proceeding. 15
- “(7) Section 65 of the Evidence Act 2006 (which relates to waiver of privilege) applies in respect of any privilege under this section. 20
- “134Z Disclosure of information**
- “(1) The chief executive (or any employee of the Ministry authorised in that behalf), the Chief Executive of the New Zealand Customs Service (or any employee of the New Zealand Customs Service authorised in that behalf), and the Commissioner of Police (or any member of the police authorised in that behalf) may disclose information to each other, on request, for the purpose of investigating and prosecuting offences under this Act. 25 30
- “(2) Information obtained under **subsection (1)** must not be disclosed except—
- “(a) to the persons authorised under that subsection; or
- “(b) for the purpose of any proceedings that have been commenced or that are reasonably in contemplation and that are connected with a matter in relation to which those persons perform their duties. 35

“(3) No obligation as to secrecy or other restriction on the disclosure of information imposed by any enactment or otherwise prevents a disclosure under this section.

“**134ZA No liability if functions performed or powers exercised in good faith** 5

“(1) This section applies to—

“(a) an enforcement officer:

“(b) a person who assists an enforcement officer or a member of the police under this subpart:

“(c) a member of the police who exercises any power of an enforcement officer under this subpart. 10

“(2) No person to whom this section applies is liable for any act done or omitted to be done by the person in the performance or intended performance of his or her functions or the exercise or intended exercise of his or her powers under this Act if the person acted— 15

“(a) in good faith; and

“(b) in a reasonable manner; and

“(c) in the reasonably held belief that the prerequisites for the performance of any function or the exercise of any power had been satisfied.” 20

18 Interpretation

Section 135 is amended by inserting the following definitions in their appropriate alphabetical order:

“**accepted notice** means a notice given under section 137 that has been accepted by the chief executive under section 139 25

“**Customs** means the New Zealand Customs Service”.

18A New section 136 substituted

Section 136 is repealed and the following section substituted:

“**136 Application of sections 137 to 141** 30

Nothing in sections 137 to 141 applies in relation to any infringing sign that has been applied to goods that are put on the market anywhere in the world under any 1 or more of the circumstances referred to in **section 97A(1)(a) to (c)**.”

19 New sections 139A to 139C inserted

The following sections are inserted after section 139:

“139A Chief executive may suspend accepted notice

- “(1) The chief executive may suspend an accepted notice if the chief executive is satisfied that— 5
- “(a) the information held in respect of the accepted notice is not correct or is no longer current; or
 - “(b) there has been a failure to comply with a requirement concerning the giving of security or indemnity or both; or 10
 - “(c) there has been a failure to comply with an obligation under an indemnity given for an amount in respect of the accepted notice.
- “(2) Before suspending an accepted notice, the chief executive must— 15
- “(a) give written advice of the chief executive’s intention to suspend the accepted notice to—
 - “(i) the person who gave the notice under section 137; or
 - “(ii) if the chief executive has received notification of an assignment or transmission of the trade mark to which the notice relates, the person notified as the current owner of the trade mark; and 20
 - “(b) include in or with the advice a statement of the chief executive’s reasons; and 25
 - “(c) give the person to whom the advice is given not less than 20 working days to respond; and
 - “(d) consider any response made by that person to the chief executive within the time allowed.
- “(3) The written advice under **subsection (2)** may be given— 30
- “(a) by delivering it to that person; or
 - “(b) by posting it to the most recent address for that person that has been notified to the chief executive.

“139B Notice of suspension

- “(1) If the chief executive decides to suspend an accepted notice, the chief executive must give written notice of the suspension to the person referred to in **section 139A(2)(a)**. 35
- “(2) The notice of suspension may be given—

- “(a) by delivering it to that person; or
- “(b) by posting it to the most recent address for that person that has been notified to the chief executive.

“139C Chief executive may reinstate accepted notice

The chief executive may reinstate an accepted notice suspended under **section 139A** if the chief executive is satisfied that the grounds for the suspension no longer apply.” 5

20 Duration of accepted notice

Section 140 is repealed and the following section substituted:

“140 Duration of accepted notice

“(1) An accepted notice remains in force for the period specified in the notice unless— 10

- “(a) it is revoked by the claimant by notice in writing; or
- “(b) the court orders, in proceedings under section 153, that the notice be discharged; or 15
- “(c) registration of the trade mark to which the notice relates has been cancelled, revoked, declared invalid, or has expired.

“(2) However, an accepted notice is not in force during the period of any suspension under **section 139A**.” 20

21 New headings and sections 155A to 155K inserted

The following headings and sections are inserted after section 155:

“Enforcement powers of customs officers

“155A Customs officer may seize goods in control of Customs

“(1) A customs officer may seize any imported goods that are in the control of the Customs if the officer has reasonable cause to believe that they are evidence of, or of significant relevance to the investigation of, an offence under section 124(a). 25

“(2) The provisions of **sections 134T to 134W** apply with all necessary modifications in respect of any imported goods seized under this section, and in applying those provisions every reference to the chief executive must be read as a reference to the chief executive of the New Zealand Customs Service. 30

- “155B Chief executive may require person to produce documents concerning goods in control of Customs**
- “(1) If a customs officer believes on reasonable grounds that goods in the control of the Customs have been imported in breach of this Act, the chief executive may, by notice in writing, require any person whom the customs officer believes to have imported the goods, or any person whom the customs officer believes to have acted as agent of that person, to produce to a customs officer for inspection any specified document or class of documents in the person’s possession or control that the customs officer considers relevant to determining whether the goods should be seized under **section 155A** or released. 5 10
- “(2) A notice under this section requiring a person to produce any document must—
- “(a) be in the prescribed form; and 15
- “(b) specify the customs officer to whom the person must produce the document; and
- “(c) specify a reasonable time and place at which the document must be produced; and
- “(d) be served on the person by— 20
- “(i) delivering it to him or her in person; or
- “(ii) posting it to the person’s address or delivering it to a box at a document exchange that the person is using at the time; or
- “(iii) sending it by fax machine to a telephone number used by the person for the transmission of documents by fax; or 25
- “(iv) if the person is a registered user of a Customs computerised entry processing system, by transmitting it by electronic means to the person in accordance with the normal procedure of operation of the relevant Customs computerised entry processing system in relation to that person. 30
- “(3) A customs officer to whom a document is produced for inspection may do 1 or more of the following: 35
- “(a) inspect the document:
- “(b) take extracts from the document:
- “(c) make copies of the document.

“155C Chief executive may require person to appear and answer questions concerning goods in control of Customs

- “(1) If a customs officer believes on reasonable grounds that goods in the control of the Customs have been imported in breach of this Act, the chief executive may, by notice in writing, require any person whom the customs officer believes to have imported the goods, or any person whom the customs officer believes to have acted as agent of that person, to appear before a customs officer and to answer questions that the customs officer considers relevant to determining whether the goods should be seized under **section 155A** or released. 5 10
- “(2) A notice under this section requiring a person to appear before a customs officer and to answer questions must—
- “(a) be in the prescribed form; and
 - “(b) specify the customs officer before whom the person must appear; and 15
 - “(c) specify a reasonable time and place at which the person must appear; and
 - “(d) be served on the person by—
 - “(i) delivering it to him or her in person; or 20
 - “(ii) posting it to the person’s address or delivering it to a box at a document exchange that the person is using at the time; or
 - “(iii) sending it by fax machine to a telephone number used by the person for the transmission of documents by fax; or 25
 - “(iv) if the person is a registered user of a Customs computerised entry processing system, by transmitting it by electronic means to the person in accordance with the normal procedure of operation of the relevant Customs computerised entry processing system in relation to that person. 30

“155D Customs officer may apply for production order

- “(1) If a customs officer believes on reasonable grounds that a person has in his or her possession, custody, or control, 1 or more documents that are evidence of, or may be of significant relevance to the investigation of, an offence against any of sections 120 to 124 in respect of imported goods, the customs officer 35

may apply to a District Court Judge for an order requiring the person to produce the documents for inspection by a customs officer.

~~“(2) An application by a customs officer for an order under **subsection (1)** must be in writing, made on oath, and must—~~ 5

~~“(a) set out, in reasonable detail, the grounds for the application; and~~

~~“(b) provide details of the documents in respect of which the order is sought.~~

“(2) An application by a customs officer for an order under **subsection (1)** must— 10

“(a) be in writing; and

“(b) be in the prescribed form (if any); and

“(c) be made on oath; and

“(d) set out, in reasonable detail, the grounds for the application; and 15

“(e) provide details of the documents in respect of which the order is sought.

“155E Judge may order documents to be produced

“(1) If an application is made under **section 155D** and the District Court Judge is satisfied that there are reasonable grounds to believe that the person in respect of whom the order is sought has in that person’s possession, custody, or control, 1 or more documents that are evidence of, or may be of significant relevance to the investigation of, an offence against any of sections 120 to 124 in respect of imported goods, the District Court Judge may order the person to produce those documents for inspection by a customs officer. 25

“(2) An order under **subsection (1)**—

“(aa) must be in the prescribed form (if any); and 30

“(a) must specify—

“(i) when the documents are to be produced for inspection; and

“(ii) the place where the documents are to be produced for inspection; and 35

“(iii) the customs officer to whom the documents are to be produced for inspection; and

“(b) may be subject to any further terms and conditions the District Court Judge thinks fit.

“155F Powers of customs officer to whom documents produced

A customs officer to whom any document is produced for inspection under an order under **section 155E** may do 1 or more of the following: 5

- “(a) inspect the document:
- “(b) take extracts from the document:
- “(c) make copies of the document.

“155G Issue of search warrants to customs officers

“(1) A customs officer may apply for a search warrant to search a place or thing. 10

“(2) Any District Court Judge, Justice of the Peace, Community Magistrate, or Registrar of a District Court (the **issuing officer**) may, on an application by a customs officer, issue a warrant if the issuing officer is satisfied that there are reasonable grounds for believing that there is in, on, over, or under the place or thing any thing that is evidence of, or of significant relevance to the investigation of, an offence against any of sections 120 to 124 in respect of imported goods. 15 20

“(3) **Sections 134G to 134S** apply with all necessary modifications in respect of every search warrant applied for and issued under this section. 20

“(4) **Sections 134T to 134W** apply with all necessary modifications in respect of any thing seized under a search warrant issued under this section, and in applying those provisions every reference to the chief executive must be read as a reference to the chief executive of the New Zealand Customs Service. 25

“155H Privilege against self-incrimination

“(1) A notice under **section 155B or 155C**, or an order under **section 155E**, does not affect the privilege against self-incrimination that an individual may have under section 60 of the Evidence Act 2006. 30

“(2) Any assertion of a privilege against self-incrimination must be based on section 60 of the Evidence Act 2006. 35

- “(3) If any individual refuses to produce any information or document or to answer any question on the ground that it is a privileged communication under section 60 of the Evidence Act 2006, a customs officer or a member of the police may apply to a District Court Judge for an order determining whether the claim of privilege is valid; and, in respect of any such application, the individual must offer sufficient evidence to enable the District Court Judge to assess whether self-incrimination would be reasonably likely if the individual produced the information or the document or answered the question. 5
- “(4) To avoid doubt, nothing in this section affects the application of section 65 of the Evidence Act 2006 (which relates to waiver of privilege) in respect of the privilege against self-incrimination that a person may have under section 60 of that Act. 10 15
- “(5) Section 63 of the Evidence Act 2006 does not apply to an order made under **section 155E**.

“**155I Other privileges**

- “(1) If, in a criminal proceeding, a person could assert a privilege under section 54 or 56 of the Evidence Act 2006 in respect of a communication or information, that person has the same privilege for the purposes of a notice issued under **section 155B or 155C**, an order made under **section 155E**, and a search warrant issued under **section 155G**. 20
- “(2) **Subsection (3)** applies to documents that are books of account or accounting records referred to in section 55(1) of the Evidence Act 2006. 25
- “(3) The application, by **subsection (1)**, of section 54 of the Evidence Act 2006 (which relates to the privilege for communications with legal advisers) does not prevent, limit, or affect— 30
- “(a) the issue of a notice under **section 155B** in respect of a document to which this subsection applies or the obligation to comply with such a notice; or
- “(b) the making of an order under **section 155E** in respect of a document to which this subsection applies or the obligation to comply with such an order; or 35

- “(c) the issue of a search warrant under **section 155G** in respect of a document to which this subsection applies; or
- “(d) the admissibility, in a criminal proceeding under this Act, of any evidence that relates to the contents of a document to which this subsection applies obtained under a notice issued under **section 155B**, an order made under **section 155E**, or a search warrant issued under **section 155G**. 5
- “(4) A person who has a privilege under this section has the right— 10
- “(a) to refuse to disclose a communication or information to which the privilege would apply if it were sought to be disclosed in a criminal proceeding; and
- “(b) to prevent the search of any such communication or information; and 15
- “(c) to require the return of any such communication or information if it is seized by a person exercising a power of search pending determination of the claim to privilege.
- “(5) If a person asserts a claim to privilege under this section in respect of any communication or information, a customs officer or a member of the police may apply to a District Court Judge for an order determining whether the claim to privilege is valid; and, for the purpose of determining any such application, the District Court Judge may require the communication or information to be produced to him or her. 20 25
- “(6) A District Court Judge may, on the application of a customs officer or a member of the police, disallow a privilege claimed under this section if the Judge is satisfied that the claim to privilege would, under section 67(1) of the Evidence Act 2006, be disallowed in a proceeding. 30
- “(7) Section 65 of the Evidence Act 2006 (which relates to waiver of privilege) applies in respect of any privilege under this section.
- “**155J Offences** 35
- “(1) No person may, without reasonable excuse, refuse or fail to comply with a notice given under **section 155B**.

- “(2) No person who is required by a notice given under **section 155C** to appear before a customs officer and to answer questions may, without reasonable excuse,—
- “(a) refuse or fail to appear before the customs officer in accordance with the notice; or 5
- “(b) refuse to answer any question.
- “(3) No person may, without reasonable excuse, refuse or fail to comply with an order made under **section 155E**.
- “(4) Every person who breaches any of **subsections (1) to (3)** commits an offence and is liable on summary conviction,— 10
- “(a) in the case of an individual, to imprisonment for a term not exceeding 6 months or to a fine not exceeding \$10,000; and
- “(b) in the case of a body corporate, to a fine not exceeding \$50,000. 15

“Immunity

“155K No liability if powers exercised in good faith

- “(1) This section applies to—
- “(a) a customs officer; and
- “(b) a person who assists a customs officer under this sub- 20
part.
- “(2) No person to whom this section applies is liable for any act done or omitted to be done by the person in the exercise or intended exercise of his or her powers under this Act if the person acted— 25
- “(a) in good faith; and
- “(b) in a reasonable manner; and
- “(c) in the reasonably held belief that the prerequisites for the exercise of any power had been satisfied.”

22A New sections 175 to 175C 30

Section 175 is repealed and the following sections substituted:

“175 Commissioner and Assistant Commissioners of Trade Marks

- “(1) The chief executive of the Ministry must appoint, under the State Sector Act 1988,— 35
- “(a) the Commissioner of Trade Marks; and

- “(b) as many Assistant Commissioners of Trade Marks as may be necessary for the purposes of this Act.
- “(2) Those persons are employees of the Ministry, and those appointments may be made separately or in conjunction with any other office in the Ministry. 5
- “175A Functions of Commissioner**
- The functions of the Commissioner are, in accordance with this Act and the regulations, to—
- “(a) examine applications for the registration of trade marks, consider applications for the alteration, renewal, assignment, revocation, declaration of invalidity, and cancellation of registered trade marks and make other decisions relating to the examination and registration of trade marks; and 10
- “(b) provide preliminary advice and search advice to persons who propose to apply for the registration of trade marks; and 15
- “(c) appoint and alter the advisory committee under section 177; and
- “(d) provide administrative support to the advisory committee; and 20
- “(e) maintain the register of trade marks and carry out other duties and responsibilities relating to the register of trade marks; and
- “(f) perform or exercise other functions, duties, and powers conferred on him or her by this Act and the regulations. 25
- “175B Powers of Assistant Commissioners**
- “(1) An Assistant Commissioner of Trade Marks has the functions, duties, and powers of the Commissioner under this Act, other than the power to delegate under **section 175C**, but is subject to the control of the Commissioner. 30
- “(2) The fact that an Assistant Commissioner performs or exercises those functions, duties, and powers is conclusive evidence of the authority to do so.

“175C Power of Commissioner to delegate

- “(1) The Commissioner may delegate to any person, either generally or particularly, any of the Commissioner’s functions, duties, and powers (except this power of delegation).
- “(2) A delegation— 5
- “(a) must be in writing; and
- “(b) may be subject to any restrictions and conditions that the Commissioner thinks fit; and
- “(c) is revocable at any time, in writing; and
- “(d) does not prevent the performance or exercise of a function, duty, or power by the Commissioner. 10
- “(3) A person to whom any of the functions, duties, and powers are delegated may perform and exercise them in the same manner and with the same effect as if they had been conferred directly by this Act and not by delegation. 15
- “(4) A person who appears to act under a delegation is presumed to be acting in accordance with its terms in the absence of evidence to the contrary.
- “(5) Any reference in this Act or the regulations to the Commissioner includes a reference to the delegate in respect of anything delegated to that person.” 20

23 Contents of register

Section 182 is amended by repealing paragraph (d) and substituting the following paragraph:

“(d) memoranda referred to in **section 78(c)**.”. 25

24 Regulations

- (1) Section 199(b) is amended by inserting the following subparagraph after subparagraph (i):
- “(ia) providing for the division of a registration of a trade mark into several registrations.”. 30
- (2) Section 199 is amended by repealing the heading above paragraph (c) and paragraph (c).
- (3) Section 199(e) is amended by repealing subparagraph (i) and substituting the following subparagraph:
- “(i) requiring a person to give security or an indemnity or both, subject to any conditions determined 35

- by the Chief Executive of the New Zealand Customs Service, for any costs incurred by the New Zealand Customs Service in relation to any 1 or more of the detention of goods, the disposal of goods, or the recovery of sums owed.” 5
- (4) Section 199 is amended by repealing paragraph (j) and substituting the following paragraph:
- “(j) prescribing forms for the purposes of this Act; and those regulations may require—
- “(i) the inclusion in, or attachment to, forms of specified information or documents: 10
- “(ii) forms to be signed by specified persons.”
- 25 New section 199A inserted**
- The following section is inserted after section 199:
- “199A Regulations: Madrid Protocol” 15**
- The Governor-General may, by Order in Council, make regulations for the purpose of giving effect in New Zealand to the Madrid Protocol, including providing for any of the following:
- “(a) making applications for international registration by way of the Patent Office as office of origin: 20
- “(b) procedures to be followed where the basic New Zealand application for registration ceases to be in force:
- “(c) procedures to be followed where the Patent Office receives from the International Bureau, or any body specified in the regulations, a request for extension of protection to New Zealand: 25
- “(d) the effects of a successful request for extension of protection to New Zealand:
- “(e) transforming an application for an international registration, or an international registration, into a national application for registration: 30
- “(f) communicating information to the International Bureau:
- “(g) requiring fees to be paid in respect of applications for international registrations, extensions of protection, and renewals, and prescribing the amounts of those fees: 35
- “(h) the application of the following provisions to a protected international trade mark (New Zealand):

- “(i) section 105 (unjustified proceedings):
- “(ii) subpart 2 of Part 4 (criminal proceedings):
- “(iii) subpart 3 of Part 4 (border protection measures).”

Consequential amendments

- 26 Amendments to Trade Marks Regulations 2003** 5
- (1) The section amends the Trade Marks Regulations 2003.
- (2) Regulation 3 is amended by revoking the definition of **Nice Classification** and substituting the following definition:
 “**Nice Classification** has the meaning given to it in section 5(1) of the Act”. 10
- (3) Regulation 44 is amended by revoking paragraph (c) and substituting the following paragraph:
 “(c) the class or classes of the edition of the Nice Classification in effect at the time of the application in which registration is sought; and” 15
- (3A) Regulation 135 is revoked and the following regulation substituted:
- “135 Request for alteration of owner’s name or address**
- A request under section 78(a) of the Act for the alteration of the name or address of the owner of a trade mark must— 20
- “(a) be in writing; and
 - “(b) be signed by the owner; and
 - “(c) contain the following information:
 - “(i) the trade mark’s registration number:
 - “(ii) a representation or description of the trade mark: 25
 - “(iii) the owner’s name:
 - “(iv) if the owner has an agent, the agent’s name:
 - “(v) the new name or address to be entered on the register.”
- (3B) The heading to regulation 137 is amended by inserting “, **alteration, or removal**” after “**Request for entry**”. 30
- (3C) Regulation 137 is amended by inserting “, alteration, or removal” after “A request under section 78(c) of the Act for the entry”. 35
- (3D) Regulation 137(c) is amended by revoking subparagraph (v) and substituting the following subparagraph:

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“(v) the memorandum to be entered, the alteration to be made to a memorandum, or the memorandum to be removed (as the case may be).”

- (4) Regulations 143 and 144 and Part 17 are revoked.
- (5) Regulation 160(1) is amended by omitting “section 152” and substituting “section 154”. 5

27 Amendments to Trans-Tasman Mutual Recognition Act 1997

- (1) This section amends the Trans-Tasman Mutual Recognition Act 1997. 10
- (2) Schedule 1 is amended by omitting the item relating to the Trade Marks Act 1953 and substituting the following item:
“Trade Marks Act 2002”.

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Legislative history

6 September 2011

Divided from Trade Marks (International Treaties and Enforcement) Amendment Bill (Bill 245–2) by committee of the whole House as Bill 245–3A
