

House of Representatives
Supplementary Order Paper

Tuesday, 17 October 2006

Geographical Indications (Wine and Spirits) Registration Bill

Proposed amendments

Hon Judith Tizard, in Committee, to move the following amendments:

Clause 13

To omit this clause (lines 15 to 26 on page 9) and substitute the following clause:

- 13 No registration of geographical indication if identical to trade mark for identical goods or services**
- (1) The Registrar must not register a geographical indication if it is identical to a trade mark and the trade mark is registered in New Zealand in respect of identical goods or services.
 - (2) The Registrar must not register a geographical indication if—
 - (a) it is identical to a trade mark; and
 - (b) the owner of the trade mark has in good faith applied for the registration in New Zealand of the trade mark in respect of identical goods or services; and
 - (c) the trade mark's deemed date of registration (as defined in section 5 of the Trade Marks Act 2002), if the trade mark were to be registered, is earlier than the date of the application for registration of the geographical indication.
 - (3) The Registrar must not register a geographical indication if it is identical to a trade mark and rights to the trade mark have been acquired through use in New Zealand in good faith in respect of identical goods or services.

Clause 14

To omit this clause (line 27 on page 9 to line 16 on page 11) and substitute the following clauses:

14 No registration of geographical indication if identical to trade mark for similar goods or services

- (1) The Registrar must not register a geographical indication if—
 - (a) it is identical to a trade mark; and
 - (b) the trade mark is registered in New Zealand in respect of similar goods or services; and
 - (c) its use is likely to deceive or confuse.
- (2) The Registrar must not register a geographical indication if—
 - (a) it is identical to a trade mark; and
 - (b) the owner of the trade mark has in good faith applied for the registration in New Zealand of the trade mark in respect of similar goods or services; and
 - (c) the trade mark's deemed date of registration (as defined in section 5 of the Trade Marks Act 2002), if the trade mark were to be registered, is earlier than the date of the application for registration of the geographical indication; and
 - (d) its use is likely to deceive or confuse.
- (3) The Registrar must not register a geographical indication if—
 - (a) it is identical to a trade mark; and
 - (b) rights to the trade mark have been acquired through use in New Zealand in good faith in respect of similar goods or services; and
 - (c) its use is likely to deceive or confuse.

14A No registration of geographical indication if similar to trade mark for identical goods or services

- (1) The Registrar must not register a geographical indication if—
 - (a) it is similar to a trade mark; and
 - (b) the trade mark is registered in New Zealand in respect of identical goods or services; and
 - (c) its use is likely to deceive or confuse.
- (2) The Registrar must not register a geographical indication if—
 - (a) it is similar to a trade mark; and
 - (b) the owner of the trade mark has in good faith applied for the registration in New Zealand of the trade mark in respect of identical goods or services; and
 - (c) the trade mark's deemed date of registration (as defined in section 5 of the Trade Marks Act 2002), if the trade mark were to be registered, is earlier than the date of the application for registration of the geographical indication; and
 - (d) its use is likely to deceive or confuse.
- (3) The Registrar must not register a geographical indication if—
 - (a) it is similar to a trade mark; and
 - (b) rights to the trade mark have been acquired through use in New Zealand in good faith in respect of identical goods or services; and

- (c) its use is likely to deceive or confuse.

14B No registration of geographical indication if similar to trade mark for similar goods or services

- (1) The Registrar must not register a geographical indication if—
 - (a) it is similar to a trade mark; and
 - (b) the trade mark is registered in New Zealand in respect of similar goods or services; and
 - (c) its use is likely to deceive or confuse.
- (2) The Registrar must not register a geographical indication if—
 - (a) it is similar to a trade mark; and
 - (b) the owner of the trade mark has in good faith applied for the registration in New Zealand of the trade mark in respect of similar goods or services; and
 - (c) the trade mark's deemed date of registration (as defined in section 5 of the Trade Marks Act 2002), if the trade mark were to be registered, is earlier than the date of the application for registration of the geographical indication; and
 - (d) its use is likely to deceive or confuse.
- (3) The Registrar must not register a geographical indication if—
 - (a) it is similar to a trade mark; and
 - (b) rights to the trade mark have been acquired through use in New Zealand in good faith in respect of similar goods or services; and
 - (c) its use is likely to deceive or confuse.

Clause 36

Paragraph (c): to add (line 8 on page 19) “; or”.

To add the following paragraph (after line 8 on page 19):

- (d) the removal of a registered geographical indication from the register.

Clause 51

To insert the following subclause after *subclause (1)* (after line 18 on page 23):

- (1A) In deciding whether or not to establish a geographical indications committee under **subsection (1)** in relation to an application for registration of a geographical indication, the Registrar must have regard to the following factors:
 - (a) whether any person opposes or, in the opinion of the Registrar, is likely to oppose the application for registration;
 - (b) whether the application is supported by the relevant national and regional organisations representing the wine or spirit industry, as the case may be;
 - (c) whether there are any existing trade mark rights that may need to be taken into account in considering the application:

- (d) whether there are any existing homonymous geographical indications:
- (e) whether, if the application is successful, the geographical indication might be registered subject to conditions:
- (f) the history and the current use of the geographical indication in New Zealand and the country of origin:
- (g) any other factors that the Registrar considers relevant.

Clause 52

Subclause (2): to add the following paragraph (after line 31 on page 23):

- (c) 1 or more persons who, in the Registrar's opinion, have appropriate knowledge of the wine or spirits industry, as the case may be.

Subclause (3): to omit this subclause (lines 1 to 4 on page 24) and substitute the following subclauses:

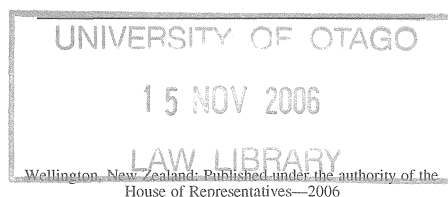
- (3) **Subsection (2)(a) or (b)** do not apply if the matter on which the Registrar requires advice does not relate to boundaries or place names respectively.
- (3A) In appointing a person under **subsection (2)(c)**, the Registrar must first consult the relevant national and regional organisations representing the wine or spirits industry, as the case may be.

Subclause (4): to omit this subclause (lines 5 to 8 on page 24) and substitute the following subclause:

- (4) The Registrar may appoint as members of the committee any other persons who, in the opinion of the Registrar, have appropriate knowledge or expertise in relation to the matter to be considered by the committee.

Explanatory note

This Supplementary Order Paper makes minor technical changes to *clauses 13 and 14* as reported back from the Foreign Affairs, Defence and Trade Committee. For ease of reading it was preferable to recast *clause 13* and divide *clause 14* into *new clauses 14, 14A, and 14B*. The changes in *clauses 51 and 52* accommodate concerns raised by the wine industry regarding industry participation in any geographical indications committee established by the Registrar of Registered Geographical Indications and give greater guidance as to the factors that may indicate that a committee should be convened.



2-NOV-06