



26 July 2016

Business Law
Building, Resources and Markets
Ministry of Business, Innovation & Employment
PO Box 1473
Wellington 6140
New Zealand

Dear Sir/Madam

Submission - Consultation on proposed regulations and fees for the Geographical Indications (Wine and Spirits) Registration Act 2006.

Thank you for the opportunity to present the following submission on behalf of Spirits New Zealand on the proposed regulations and fees structure for the Geographic Indications (Wine and Spirits) Registration Act 2006 (the Act). Our members are Bacardi, Beam Suntory, Brown-Forman, Diageo, Hancocks, Independent Liquor, Lion, Moet-Hennessy and Pernod Ricard. In addition we have three associate members who are Anchor Ethanol, EuroVintage and Federal Merchants.

As we have stated in previous submissions to the Act we are supportive of its passage and implementation. That being said we make the following comments.

Proposed Regulations

Question 1: The Regulations are based largely on corresponding provisions in the Trade Marks Regulations 2003. Do you agree with this approach? If not, why?

We see no issues with adopting this approach.

Question 2: Do you consider that all of the information set out in regulations 7 and 9 needs to be filed with the application? If not what information do you think should not be required at filing?

We largely believe that these regulations are appropriate but would make the following comments:

7(c) – we consider this clause needs further consideration to ensure that applications are accurate and robust. For example it is more than possible for written descriptions of map boundaries to differ from an actual representation. We would advise that either the written description or the representation be given precedence when considering an application. In this regard we feel a map clearly showing boundaries would be best.

8 (1) – (4) – while we understand the intent of this regulation we are concerned that the requirements as listed may not be necessary for all applications or might carry a different weighting – implicitly or explicitly – as an application is assessed. Does ‘failure’ to properly represent one clause in the regulation mean the entire application fails? We would ask that thought be given to what the true mandatory requirements are for a successful application and latitude be given to others.

8 (1) (d) – we consider this clause unnecessary given that, should a place name be offensive or have cultural significance, this can be raised through the objections process. Additionally we believe it unreasonable for an applicant to have the burden of providing information to establish whether the name is of cultural significance, and that the term is not offensive.

8(e) – We do not feel this clause is necessary nor supported by the intent of the Act and should be removed. We do not believe that there are any geographic areas that are either ‘discrete’ or ‘homogeneous’ in fact it might be that for a New Zealand spirit GI that its lack of uniformity is in fact one of the unique characteristics it wishes to emphasise.

9 (a) – (j) – We believe this regulation is comprehensive and should stand.

Question 3: The pre-registration opposition procedure (and the other opposition proceedings set out in the Regulations) is modelled on the pre-grant opposition procedure in the Patents Regulations 2014. Do you consider this procedure to be appropriate? If not what alternative procedures should be used?

We believe this procedure is appropriate.

Question 4: The procedure is modelled on the procedure for restoring a lapsed trade mark. Do you agree with this approach? If not, why?

We agree with this approach.

Question 5: Who should be able to apply for restoration of a lapsed registration? Should it be limited to the registrant, or should other people be permitted to apply for restoration and, if so, why?

We believe that because of the nature of a GI as opposed to, say, a trade mark that broader scope allowing others to apply for restoration should be allowed. GIs are commonly ‘owned’ not by one entity but by associations or a group of producers and allowing more flexibility in this regard would allow for natural changes or reorganisation of industry bodies that might have an interest in the GI.

Other Comments

Part 7 – Alteration of register – It is unclear how this Part will be applied to foreign GIs. We believe it should be made clear that Part 7 does not apply to foreign GIs. It would be of concern if a New Zealand-based system could somehow be used to try and alter an internationally registered GI.

Proposed Fees

Question 1: Do you agree with the “cost to serve entire register” approach to setting fees under the GI Act? If not, what alternative approach do you think should be used?

We agree with this approach.

Question 2: Do you agree with the Ministry’s preferred renewal period option? If not, what other option should be adopted? Why?

We agree with this preferred option.

Question 3: Do you agree with proposed fees for hearings, oppositions, and applications to alter or remove a registered geographical indication? If not, what alternative fee levels would be more appropriate?

We agree with the proposed fee structure for hearings, oppositions and applications to alter or remove a registered geographical indication.

Thank you for considering this submission.

Yours sincerely

A handwritten signature in blue ink, appearing to read "Robert Brown". The signature is fluid and cursive, with a long horizontal stroke at the end.

Chief Executive

cc Phil Brosnahan, Chair