



Trade Marks Amendment Regulations 2011

Jerry Mateparae, Governor-General

Order in Council

At Wellington this 3rd day of October 2011

Present:

His Excellency the Governor-General in Council

Pursuant to section 199 of the Trade Marks Act 2002, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following regulations.

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Part 16A

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Regulations

- 1 Title**
These regulations are the Trade Marks Amendment Regulations 2011.
- 2 Commencement**
These regulations come into force on 7 October 2011.
- 3 Principal regulations amended**
These regulations amend the Trade Marks Regulations 2003.
- 4 New Part 16A inserted**
The following Part is inserted after regulation 146:

**“Part 16A
“Enforcement officers**

“146A Form of warrant of appointment of enforcement officer

A warrant of appointment issued to an enforcement officer under section 134B of the Act must be in form 1 of Schedule 1A.

“146B Form of warrant to search place or thing

A search warrant issued under section 134F of the Act must be in form 2 of Schedule 1A.

“146C Form of order to produce documents under section 134Y of Act

An order to produce documents under section 134Y of the Act must be in form 3 of Schedule 1A.”

5 New regulations 160A to 160F inserted

The following regulations are inserted after regulation 160:

“160A Form of notice to produce documents concerning goods in control of Customs

A notice under section 155B of the Act requiring a person to produce documents concerning goods in the control of Customs must be in form 1 of Schedule 3.

“160B Form of notice to appear and answer questions concerning goods in control of Customs

A notice under section 155C of the Act requiring a person to appear and answer questions concerning goods in the control of Customs must be in form 1 of Schedule 3.

“160C Form of application by Customs officer for order to produce documents

An application by a Customs officer under section 155D of the Act for an order to produce documents under section 155E of the Act must be in form 2 of Schedule 3.

“160D Form of order to produce documents under section 155E of Act

An order to produce documents under section 155E of the Act must be in form 3 of Schedule 3.

“160E Form of application by Customs officer for search warrant

An application by a Customs officer under section 155G of the Act for a search warrant to be issued under that section must be in form 4 of Schedule 3.

“160F Form of warrant to Customs officer to search place or thing

A search warrant issued to a Customs officer under section 155G of the Act must be in form 5 of Schedule 3.”

6 New Schedule 1A inserted

The Schedule 1A set out in Schedule 1 of these regulations is inserted after Schedule 1.

7 New Schedule 3 added

The Schedule 3 set out in Schedule 2 of these regulations is added.

Schedule 1

r 6

New Schedule 1A inserted**Schedule 1A**

rr 146A–146C

Forms relating to enforcement officers**Form 1**

r 146A

Warrant of appointment of enforcement officer*Section 134B, Trade Marks Act 2002*

(Front of warrant)

Enforcement officer*Warrant of appointment*

Full name:

Identification number:

[*Photo of warrant holder*]

Signature:

(Back of warrant)

Warrant of appointment issued under section 134B of the Trade Marks Act 2002

This is to certify that the person whose name, photograph, and signature appear on this warrant—

- is an enforcement officer appointed under section 134A of the Trade Marks Act 2002; and
- may enter and examine a place described in section 134D of that Act without a search warrant; and
- may exercise the other powers conferred on enforcement officers by that Act.

Date:

Signature:

Chief executive, Ministry of Economic Development

Schedule 1A—*continued*

Form 2

r 146B

Search warrant to enter and search place or thing

Section 134F, Trade Marks Act 2002

To every enforcement officer appointed under section 134A of the Trade Marks Act 2002 and every member of the Police

1 I am satisfied, on an application made in accordance with sections 134G and 134H of the Trade Marks Act 2002 by [*full name of applicant*], that, in relation to [*specify address or description of place or thing that may be entered and searched*], there are reasonable grounds for believing that—

- *(a) an offence against the Trade Marks Act 2002, namely [*specify offence provision*], has been, or is being, committed at that place/committed involving that thing*:
- *(b) there is at, in, on, over, or under that place/that thing* some thing that is evidence of an offence against [*specify offence provision*] of the Trade Marks Act 2002:
- *(c) there is at, in, on, over, or under that place/that thing* some thing that is intended to be used for the purposes of committing an offence against [*specify offence provision*] of the Trade Marks Act 2002.

*Select those that apply.

2 This warrant authorises you, pursuant to section 134F of the Trade Marks Act 2002, to—

- (a) enter and search [*address or description of place or thing*] at any time that is reasonable in the circumstances; and
- (b) use any assistance that is reasonable in the circumstances; and
- (c) 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; and
- (d) seize [*describe, in reasonable detail, what may be seized*]; and
- (e) bring and use in or on the place/thing* searched any equipment, to use any equipment found on the place/thing*, and to extract any electricity from the

Schedule 1A—*continued*Form 2—*continued*

- place/thing* to operate the equipment that is reasonable to use in the circumstances, for the purpose of carrying out the entry and search; and
- (f) copy any document, or part of any document, that may lawfully be seized; and
 - (g) take photographs or sound or video recordings of the place/thing* and of any thing found in that place if you have reasonable grounds to believe that the photographs or sound recordings may be relevant in any proceedings related to the entry and search; and
 - (h) do the following in a manner and for a duration that is reasonable for the purposes of carrying out the search:
 - (i) secure the place/thing* searched, any area within that place/thing*, or any thing found within that place/thing*:
 - (ii) exclude any person from that place/thing*, or from any area within the place/thing*, or give any other reasonable direction to that person if you have reasonable grounds to believe that the person will obstruct or hinder the exercise of your powers under this warrant.

*Select one.

- 3 A person assisting you (other than a member of the Police) is subject to your control and has the power to do any of the following:
- (a) enter the place/thing* to be searched:
 - (b) while in your company and under your direction, use reasonable force in respect of any property for the purposes of carrying out the entry and search:
 - (c) search areas within the place/thing* that you determine may lawfully be searched:
 - (d) seize any thing that you determine may lawfully be seized:
 - (e) take photographs and sound and video recordings of the place/thing* and things found in the place/thing* if you determine that those things may lawfully be done:

Schedule 1A—*continued*Form 2—*continued*

- (f) bring in or on to the place/thing* and use any equipment, make use of equipment found on the place/thing*, or extract electricity from the place/thing* for the purposes of operating the equipment that you determine may lawfully be used:
- (g) copy any document, or part of a document, that you determine may lawfully be copied.

*Select one.

- 4 This warrant may be executed [*specify period in accordance with section 134I(4)(g) of the Trade Marks Act 2002*] from the date of issue of the warrant.
- 5 This warrant is subject to the following conditions: [*specify any conditions*].
- 6 This warrant may be executed on 1 occasion/[*specify number*] occasions*.

*Select one.

Date:

Signature:

Name of issuing officer:

(District Court Judge/Justice of the Peace/Community Magistrate/Registrar of a District Court*)

*Select one.

Schedule 1A—*continued*

Form 3

r 146C

Order to produce documents

Section 134Y, Trade Marks Act 2002

To [*name (full name if known) of person required to produce document(s)*]

- 1 An application under section 134X of the Trade Marks Act 2002 for an order requiring you to produce documents under section 134Y of that Act was made to me by [*full name of applicant*], enforcement officer, on [*date*].
- 2 I am satisfied that there are reasonable grounds for believing that you [*name (full name if known)*] have possession, custody, or control of a document that is/documents that are* evidence of, or may be of significant relevance to the investigation of, an offence against section(s) [*specify relevant section(s) between 120 and 124*] of the Trade Marks Act 2002.
- 3 You are required by this order to produce to the enforcement officer named in paragraph 4 the following document that is/documents that are* in your possession, custody, or control: [*specify the document or documents to be produced*].
- 4 The document/documents* must be produced to [*full name*], enforcement officer, at [*time*] on [*day, date*] at [*place*].
- 5 This order is subject to the following conditions: [*specify any conditions*].
- 6 This order to produce documents is made under section 134Y of the Trade Marks Act 2002.

*Select one.

Date:

Signature:

(District Court Judge)

Note

- 1 Under section 5(1) of the Trade Marks Act 2002, a **document** means—

Schedule 1A—*continued*Form 3—*continued*

- (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—
 - (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:
 - (iii) a photograph, film, or negative; and
 - (b) information electronically recorded or stored, and information derived from that information.
- 2 The enforcement officer to whom you produce any document for inspection under this order may, under section 134Z of the Trade Marks Act 2002, do 1 or more of the following:
- (a) inspect the document:
 - (b) take extracts from the document:
 - (c) make copies of the document.
- 3 It is an offence against section 134ZA of the Trade Marks Act 2002 to fail, without reasonable excuse, to comply with an order to produce documents made under section 134Y of that Act.
- An individual who commits an offence against section 134ZA of the Trade Marks Act 2002 is liable on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding \$10,000.
- A body corporate that commits an offence against section 134ZA of the Trade Marks Act 2002 is liable to a fine not exceeding \$50,000.
-

Schedule 2

r 7

New Schedule 3 added**Schedule 3**

rr 160A–160F

Forms relating to Customs officers**Form 1**

rr 160A, 160B

Notice to produce documents/to appear and answer questions/to produce documents and appear and answer questions* concerning goods in control of Customs

Section 155B/Section 155C/Sections 155B and 155C,
Trade Marks Act 2002*

*Select one.

To [name (full name if known) of person required to produce documents/appear and answer questions]

- 1 A Customs officer believes on reasonable grounds that—
 - (a) the goods in the control of Customs specified in paragraph 2 have been imported in breach of section 124(a) of the Trade Marks Act 2002; and
 - (b) you imported the specified goods or acted as agent of the person who imported those goods.
- 2 The goods in the control of Customs are: [set out particulars of the goods to which this notice relates].
- 3 You are required, at [time] on [day, date] at [place],—
 - *(a) to produce to [full name of Customs officer], Customs officer, the following document that is/documents that are* in your possession or control that the Customs officer considers relevant to determining whether the goods should be seized under section 155A of the Trade Marks Act 2002 or released: [specify and, if more than 1, number (a), (b) etc, the document(s) to be produced]:
 - *(b) to appear and answer questions that [full name of Customs officer], Customs officer, considers relevant to determining whether the goods should be seized under section 155A of the Trade Marks Act 2002 or released.

*Select those that apply.

Schedule 3—*continued*Form 1—*continued*

4 This notice is given under section 155B/section 155C/sections 155B and 155C* of the Trade Marks Act 2002.

*Select one.

Date:

Signature:

Chief executive, New Zealand Customs Service

Note

*1 Under section 5(1) of the Trade Marks Act 2002, a **document** 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—
 - (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;
 - (iii) a photograph, film, or negative; and
- (b) information electronically recorded or stored, and information derived from that information.

*Delete if not applicable.

*2 The Customs officer to whom you produce any document for inspection under this notice may, under section 155F of the Trade Marks Act 2002, do 1 or more of the following:

- (a) inspect the document;
- (b) take extracts from the document;
- (c) copy the document.

* Delete if not applicable.

3 It is an offence against section 155J(4) of the Trade Marks Act 2002—

Schedule 3—*continued*Form 1—*continued*

- (a) to refuse or fail, without reasonable excuse, to comply with a notice to produce documents given under section 155B of that Act; or
- (b) for a person who is required by a notice given under section 155C of that Act to appear before a Customs officer and to answer questions—
 - (i) to refuse or fail, without reasonable excuse, to appear before a Customs officer in accordance with the notice; or
 - (ii) to refuse, without reasonable excuse, to answer any question.

An individual who commits an offence against section 155J(4) of the Trade Marks Act 2002 is liable on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding \$10,000.

A body corporate that commits an offence against section 155J(4) of the Trade Marks Act 2002 is liable to a fine not exceeding \$50,000.

Schedule 3—*continued*

Form 2

r 160C

Application by Customs officer for order to
produce documents*Section 155D, Trade Marks Act 2002*

To a District Court Judge

- 1 I, [*full name of applicant*], Customs officer, by this document apply on oath for an order under section 155E of the Trade Marks Act 2002 that [*name (full name if known)*] be required to produce for inspection by a Customs officer in accordance with paragraph 2 the following document that is/documents that are* in that person's possession, custody, or control: [*specify and, if more than 1, number (a), (b), etc, the document(s) sought*].
- 2 The document is/documents are* to be produced to [*full name of Customs officer*], Customs officer, at [*time*] on [*day, date*] at [*place*].
- 3 The ground on which the order is sought is that I have reasonable grounds to believe that [*name (full name if known)*] has possession, custody, or control of a document that is/documents that are* evidence of, or may be of significant relevance to the investigation of, an offence against section(s) [*specify relevant section(s) between 120 and 124*] of the Trade Marks Act 2002 in respect of imported goods.
- 4 The evidence relied on for the purpose of this application is as follows: [*set out in reasonable detail, in numbered paragraphs, all relevant information in support of the ground stated in paragraph 3*].

*Select one.

Sworn/Affirmed* at [*place, date*]Before me: [*full name, signature*](a solicitor of the High Court of New Zealand *or* Registrar/Deputy Registrar* of a District/the High* Court *or* Justice of the Peace*)

*Select one.

Schedule 3—*continued*

Form 3

r 160D

Order to produce documents

Section 155E, Trade Marks Act 2002

To *[name (full name if known) of person required to produce document(s)]*

- 1 An application under section 155D of the Trade Marks Act 2002 for an order requiring you to produce documents under section 155E of that Act was made to me by *[full name of applicant]*, Customs officer, on *[date]*.
- 2 I am satisfied that there are reasonable grounds for believing that you *[name (full name if known)]* have possession, custody, or control of a document that is/documents that are* evidence of, or may be of significant relevance to the investigation of, an offence against section(s) *[specify relevant section(s) between 120 and 124]* of the Trade Marks Act 2002 in respect of imported goods.
- 3 You are required by this order to produce to the Customs officer named in paragraph 4 the following document that is/documents that are* in your possession, custody, or control: *[specify the document or documents to be produced]*.
- 4 The document/documents* must be produced for inspection to *[full name of Customs officer]*, Customs officer, at *[time]* on *[day, date]* at *[place]*.
- 5 This order is subject to the following conditions: *[specify any conditions]*.
- 6 This order to produce documents is made under section 155E of the Trade Marks Act 2002.

*Select one.

Date:

Signature:

(District Court Judge)

Schedule 3—*continued*Form 3—*continued***Note**

- 1 Under section 5(1) of the Trade Marks Act 2002, a **document** 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—
 - (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;
 - (iii) a photograph, film, or negative; and
 - (b) information electronically recorded or stored, and information derived from that information.
- 2 The Customs officer to whom you produce any document for inspection under this order may, under section 155F of the Trade Marks Act 2002, do 1 or more of the following:
 - (a) inspect the document;
 - (b) take extracts from the document;
 - (c) make copies of the document.
- 3 It is an offence against section 155J(4) of the Trade Marks Act 2002 to fail, without reasonable excuse, to comply with an order to produce documents made under section 155E of that Act.

An individual who commits an offence against section 155J(4) of the Trade Marks Act 2002 is liable on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding \$10,000.

A body corporate that commits an offence against section 155J(4) of the Trade Marks Act 2002 is liable to a fine not exceeding \$50,000.

Schedule 3—*continued*

Form 4

r 160E

Application by Customs officer for search
warrant*Section 155G, Trade Marks Act 2002*

- 1 I [*full name of applicant*], Customs officer, apply under section 155G of the Trade Marks Act 2002 for a search warrant to be issued authorising every Customs officer to enter and search [*specify address or description of place or thing*] at any time that is reasonable in the circumstances.
- 2 The ground on which the application is made is that there are reasonable grounds for believing that there is/there are* in, on, over, or under that place/that thing* a thing that is/things that are* evidence of, or of significant relevance to the investigation of, an offence against [*specify relevant section(s) between 120 and 124 of the Trade Marks Act 2002*] in respect of imported goods, namely [*describe as specifically as possible the item or items believed to be in, on, over, or under the place or thing*].
- 3 I rely on the following in support of this application: [*set out in reasonable detail all relevant information in support of the ground referred to in paragraph 2*].
- 4 The period of time, in accordance with section 134I(4)(g) of the Trade Marks Act 2002, for which the warrant is sought is: [*specify*].
- 5 The number of occasions on which the warrant is sought to be exercised is 1/[*specify number*]*.
- 6 *Omit this paragraph if it does not apply*
The grounds on which the execution of the warrant on more than 1 occasion is believed to be necessary are: [*set out in reasonable detail all relevant information concerning the grounds on which execution of the warrant more than once is believed to be necessary*].
- 7 Within the 3 months immediately preceding this application, in respect of [*address or description of place or thing to be searched*], the following application(s) for a search warrant has/have* been made: [*set out the details of any other relevant*

Schedule 3—*continued*

Form 4—*continued*

application(s) for a search warrant, including the result of that application/those applications].

or

Having made reasonable inquiries within the agency in which I am employed/engaged*, I am not aware of any other application for a search warrant in respect of [*address or description of place or thing to be searched*] being made within the 3 months immediately preceding this application.*

*Select one.

Date:

Signature:

(Customs officer)

Schedule 3—*continued*

Form 5

r 160F

Search warrant to enter and search place or thing

*Section 155G, Trade Marks Act 2002***To every Customs officer**

- 1 I am satisfied on an application made in accordance with section 155G of the Trade Marks Act 2002 by [*full name of applicant*], Customs Officer, that, in relation to [*specify address or description of place or thing that may be entered or searched*], there are reasonable grounds to believe that there is in, on, over, or under that place/that thing* some thing that is evidence of, or of significant relevance to the investigation of, an offence against [*specify relevant section(s) between 120 and 124 of the Trade Marks Act 2002*] in respect of imported goods.
- 2 This warrant authorises you, pursuant to section 155G of the Trade Marks Act 2002, to—
 - (a) enter and search [*address or description of place or thing*] at any time that is reasonable in the circumstances; and
 - (b) use any assistance that is reasonable in the circumstances; and
 - (c) 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; and
 - (d) seize [*describe, in reasonable detail, what may be seized*]; and
 - (e) bring and use in or on the place/thing* searched any equipment, to use any equipment found on the place/thing*, and to extract any electricity from the place/thing* to operate the equipment that is reasonable to use in the circumstances, for the purpose of carrying out the entry and search; and
 - (f) copy any document, or part of any document, that may lawfully be seized; and
 - (g) take photographs or sound or video recordings of the place/thing* and of any thing found in that place if you have reasonable grounds to believe that the photographs

Schedule 3—*continued*Form 5—*continued*

- or sound or video recordings may be relevant in any proceedings related to the entry and search; and
- (h) do the following in a manner and for a duration that is reasonable for the purposes of carrying out the search:
 - (i) secure the place/thing* searched, or any area within that place/thing*, or any thing found within that place/thing*:
 - (ii) exclude any person from that place/thing*, or from any area within the place/thing*, or give any other reasonable direction to that person if you have reasonable grounds to believe that the person will obstruct or hinder the exercise of your powers under this warrant.
- 3 A person assisting you is subject to your control and has the power to do any of the following:
- (a) enter the place/thing* to be searched:
 - (b) while in your company and under your direction, use reasonable force in respect of any property for the purposes of carrying out the entry and search:
 - (c) search areas within the place/thing* that you determine may lawfully be searched:
 - (d) seize any thing that you determine may lawfully be seized:
 - (e) take photographs and sound and video recordings of the place/thing* and things found in the place/thing* if you determine that those things may lawfully be done:
 - (f) bring in or on to the place/thing* and use any equipment, make use of equipment found on the place/thing*, or extract electricity from the place/thing* for the purposes of operating the equipment that you determine may lawfully be used:
 - (g) copy any document, or part of a document, that you determine may lawfully be copied.
- 4 This warrant may be executed [*specify period in accordance with section 134I(4)(g) of the Trade Marks Act 2002*] from the date of issue of the warrant.

Schedule 3—*continued*Form 5—*continued*

- 5 This warrant is subject to the following conditions: [*specify any conditions*].
- 6 This warrant may be executed on 1 occasion/[*specify number*] occasions*.

*Select one.

Date:

Signature:

Name of issuing officer:

(District Court Judge/Justice of the Peace/Community Magistrate/Registrar of a District Court*)

*Select one.

Rebecca Kitteridge,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on 7 October 2011, prescribe forms for the purposes of the Trade Marks Act 2002 (the **Act**). These are—

- the following forms relating to the appointment, functions, and powers of enforcement officers under subpart 2A of Part 4 of the Act:
 - the form of the warrant of appointment of an enforcement officer, issued under section 134B:
 - the form of a search warrant to enter and search a place or thing for the purposes of section 134I, which relates

- to search warrants issued to enforcement officers and members of the Police under section 134F:
- the form of an order to produce documents to an enforcement officer for the purposes of section 134Y:
 - the following forms relating to the powers of Customs officers under subpart 3 of Part 4 of the Act, which relates to border protection measures:
 - a notice to appear and answer questions concerning goods in the control of Customs or to produce documents concerning goods in the control of Customs, or to do both of those things, for the purposes of sections 155B and 155C:
 - an application by a Customs officer for an order to produce documents for the purposes of section 155D:
 - an order to produce documents for the purposes of section 155E:
 - an application by a Customs officer for a search warrant to be issued under section 155G:
 - a search warrant to enter and search a place or thing for the purposes of section 155G.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 6 October 2011.
These regulations are administered by the Ministry of Economic Development.
