APAA 2026, in Hong Kong
Trademark Committee
Group Report – New Zealand

A. Developments

1. The India–New Zealand Free Trade Agreement was signed on 27 April 2026, has since passed New Zealand's Parliament. Entered into force on 20 October 2026.

   The agreement expressly permits Geographic Indications (**GIs**) to be protected via the trade mark system (as well as sui generis or other mechanisms), and requires opposition procedures where administrative recognition is used. A side letter commits the parties to review the GI provisions within six months of entry into force, with India seeking a mechanism to identify and protect specific GIs and ensuring that GIs nominated by India (expressly including "BASMATI") on terms no less favourable than those New Zealand grants under its EU FTA or other international agreements, and requiring New Zealand to complete the legislative and regulatory steps needed to protect those GIs within 12 months of that review.

   New Zealand has also committed to amend its domestic GI legislation within 18 months of entry into force to extend GI protection beyond wines and spirits. This will extend GI protection more broadly to "other goods" from India which was previously only afforded to EU goods.

2. No changes in the Trade Marks Act or Regulations since previous update in 2025. However, the Ministry of Business, Innovation and Employment are currently drafting the Intellectual Property Laws Amendment Bill which will make amendments to the Trade Marks Act 2002 and the Trade Marks Regulations 2003. Unclear when it will come into force as the amendment bill has been on foot for several years.

B. Statistics

1. The number of new applications

Year	No. of new applications	Increase/Decrease
2024	17, 580 (national applications), 8,647 (international applications designating NZ)	**about 2.23% increase**
2025	19, 619 (national applications), 8,780 (international applications designating NZ)	**about 8.28% increase**

Comments and /or additional statistics:

2. Average timeframe from filing up to registration

Year	Average timeframe from filing up to registration (months)
2024	8.9 months
2025	9.4 months

Comments and /or additional statistics:

A full breakdown of the average timeframes from filing up to registration (months) in 2024 and 2025 is as follows:

Year	Month	Average no Months from Filed to Register
2024	Jan	10.0
2024	Feb	8.6
2024	Mar	8.8
2024	Apr	8.7
2024	May	8.5
2024	Jun	8.7
2024	Jul	9.2
2024	Aug	6.4
2024	Sep	9.5
2024	Oct	9.7
2024	Nov	6.3
2024	Dec	9.8
2025	Jan	9.7
2025	Feb	9.4
2025	Mar	9.2
2025	Apr	6.7
2025	May	9.5
2025	Jun	10.0
2025	Jul	9.9
2025	Aug	9.8
2025	Sep	9.0
2025	Oct	9.4
2025	Nov	10.3
2025	Dec	9.3

C. CASES

(Note: At least two (2) representing cases are advisable)

ZURU New Zealand Ltd v Lego Holding A/S [2025] NZCA 650 (10 December 2025)

Please note this case has been appealed to the Supreme Court.

The Court of Appeal overturned the High Court and found that Zuru's "LEGO® BRICK COMPATIBLE" statement for their plastic brick product did not infringe Lego's registered trade mark, holding (by majority) that the use was purely descriptive and did not constitute "use as a trade mark", and (unanimously, on the alternative analysis) that in any event the statement was protected by the comparative advertising defence.

Facts

Lego has manufactured plastic toy building bricks, baseplates and figurines since the late 1940s and holds the registered trade mark LEGO, although its patents and copyright in the basic brick have long expired. Zuru, a New Zealand-based "disrupter", began marketing its own compatible plastic toy building bricks under the MAX BUILD MORE brand in late 2018, and its packaging originally included the statement "LEGO® BRICK COMPATIBLE". Lego objected, and in January 2019 Zuru replaced it with "COMPATIBLE WITH MAJOR BRANDS". In May 2021 Zuru sought Lego's consent to reintroduce variants of the "LEGO" statement; Lego again refused, prompting Zuru to apply to the High Court for declarations that use of compatibility statements referencing the LEGO mark did not infringe the Trade Marks Act 2002, breach the Fair Trading Act 1986, or amount to passing off. Lego counterclaimed that the statements did infringe its trade mark and breach the FTA, and amounted to passing off, seeking an injunction but not damages.

Decision in the High Court

The High Court dismissed Zuru's case and agreed with the counterclaim by Lego on the trade mark issue. The Court found that the use of the word "Lego" in the original compatibility statements would be likely to be taken by potential purchasers as being use of the word as a trade mark and therefore was a contravention of law. However, Lego's the other two counterclaims were unsuccessful. While Zuru's use of "Lego" did serve to notify consumers of a characteristic of the Zuru products, it was not done in accordance with honest practices.

Decision of the Court of Appeal

The Court of Appeal allowed Zuru's appeal, declared that Zuru's use of "LEGO" in its original compatibility statement did not infringe the registered trade mark, dismissed Lego's cross-appeal, and awarded Zuru costs.

The majority held that "use as a trade mark" under s 89(2) retains its orthodox, pre-2002 meaning as use indicating the trade origin of the goods in the user, rather than the broader European concept of a trade mark's "guarantee" function urged by Lego. They considered the narrower interpretation also avoided conferring quasi-copyright protection on made-up words such as "LEGO" of unlimited duration. Applying that test, the majority found that Zuru's use of "LEGO" as part of the phrase "LEGO® BRICK COMPATIBLE" was purely descriptive rather than use as a trade mark, noting that MAX BUILD MORE was the dominant branding on the packaging and that a consumer would understand Zuru's bricks to be MAX BUILD MORE bricks, not Lego's.

Although this conclusion made it unnecessary to consider the specific defences, the majority addressed them for completeness and found, contrary to the High Court, that the original compatibility statement did constitute comparative advertising, and that Zuru's use was in accordance with honest practices: the statement was true, caused no real risk of deception, and several of the factors the High Court had relied on to find dishonesty (such as Zuru's knowledge of Lego's reputation and refusal of consent) were inherent in any comparative advertising case and did not, in the majority's view, bear on honesty.

On Lego's cross-appeal, the Court unanimously upheld the High Court's rejection of the passing off and Fair Trading Act (s 9) claims, agreeing that reasonable consumers viewing the packaging as a whole (dominated by the ZURU and MAX BUILD MORE branding and distinctive red colouring) would not be misled into believing Zuru's products were made by or associated with Lego, and that there was no likelihood of confusion or deception sufficient to found either cause of action.

Agricultural and Processed Food Products Export Development Authority v The Commissioner of Trade Marks [2025] NZHC 3264 (30 October 2025)

The High Court dismissed an appeal by the Agricultural and Processed Food Products Export Development Authority (APEDA) against the Assistant Commissioner of Trade Marks' refusal to register BASMATI as a certification trade mark for rice, holding that the mark remained insufficiently distinctive under section 18(1)(b) of the Trade Marks Act 2002 and, separately, that it merely designated a kind of goods and so was also barred under section 18(1)(c).

Facts

Basmati is a premium long-grain rice grown for centuries in the Basmati Growing Area (BGA), a region spanning parts of India and Pakistan where the Himalayan foothills meet the Indo-Gangetic Plain, and is imported into New Zealand in volumes of between 4,000 and 6,500 tonnes a year. APEDA, part of the Indian Government's Ministry of Commerce and Industry, has represented the interests of Indian basmati rice producers since 1995 and in February 2019 applied under the Trade Marks Act 2002 to register BASMATI as a certification trade mark in class 30 for "rice". BASMATI is registered as a geographical indication (GI) in India, but APEDA did not contend that BASMATI was registrable as a GI in New Zealand or that the word was inherently associated with Indian rice; instead it argued that use of the mark should be restricted to producers whose rice it had approved.

After a series of adverse compliance reports from the Intellectual Property Office of New Zealand, the Assistant Commissioner, refused registration in February 2024 for reasons similar to those given by the Australian Registrar's Delegate, who had declined a parallel Australian application in December 2022.

APEDA undertook to amend its proposed certification mark regulations to extend the definition of the relevant growing area to include Pakistan while making clear it could certify only Indian-grown rice and undertook not to oppose registration of a certification mark by the relevant Pakistani body for Pakistani basmati rice.

Decision of the High Court

On appeal under section 170 of the Act, the Court considered the question of registration afresh while giving appropriate weight to the Assistant Commissioner's analysis. Applying the distinctiveness test from *Registrar of Trade Marks v W&G du Cros Ltd*, as adapted to certification marks, the Court held that because Pakistani producers use the term "basmati" in good faith as an accurate description of their own product, it was impossible for the word BASMATI to distinguish Indian rice certified by APEDA from Pakistani rice that had not been so certified.

The Court found the case aligns with the New Zealand, United Kingdom and European Union decisions refusing registration of MANUKA HONEY as a certification mark on the basis that it was merely descriptive of a type of honey produced in more than one country. Although the Court gave APEDA a further opportunity to refine its proposed regulations, including a proposed condition that registration would not entitle APEDA to prevent legitimate use of "Basmati" by Pakistani producers, and a proposed requirement that packaging bear a "Product of India" statement, the Court held these refinements did not resolve the underlying contradiction: the undertaking not to enforce the mark against "legitimate" Pakistani use undercut the mark's utility, since consumers could not rely on BASMATI alone to guarantee product quality without looking for additional information, which was the very object the certification mark was meant to achieve, and the mark as it stood remained insufficiently distinctive under section 18(1)(b).

The Court also rejected APEDA's reliance on New Zealand's obligations under TRIPS, holding that TRIPS requires members to prevent misleading use of GIs but does not oblige New Zealand to recognise and enforce a GI registered elsewhere that cannot satisfy domestic registration requirements, and that New Zealand law (including the Fair Trading Act 1986 and passing off) already protects consumers from misleading representations of geographical origin.

On the separate descriptiveness ground, the Court held that, without modification, BASMATI merely served to "designate the kind" of goods and so was also barred from registration under section 18(1)(c), and dismissed the appeal.

Blue River Dairy LP v Spring Sheep Dairy NZ Limited Partnership [2026] NZHC 126 (5 February 2026)

The High Court (McQueen J) dismissed Blue River Dairy LP's appeal against the Assistant Commissioner of Trade Marks' decision on the non-use revocation of the registered trade mark SPRING SHEEP, and allowed Spring Sheep Dairy NZ Limited Partnership's cross-appeal, restoring a broader specification of goods than the Commissioner had allowed.

Facts

Spring Sheep owns the registered word mark SPRING SHEEP, registered in classes 5, 29 and 35 for sheep milk-based products including powdered infant formula, dairy products and related wholesale, retail and marketing services. Blue River, one of the three largest sheep milk exporters in New Zealand alongside Spring Sheep, manufactures and markets cow, sheep and goat milk products. On 10 July 2019, Blue River applied to revoke the SPRING SHEEP mark for non-use under sections 66(1)(a) and 66(1A) of the Trade Marks Act 2002. Spring Sheep's evidence showed sales of fresh sheep milk, sheep milk powder and gelato from 2015–2016, and, from July 2018, a Stage 3 "formulated milk powder for children" product exported to Malaysia, with New Zealand production commencing 9 May 2019. Spring Sheep had also finalised formulations for

Stage 1, 2 and 3 infant formula, engaged third parties for production trials and shelf-life testing, and presented the full three-stage range to Malaysian distributors and New Zealand supermarket chains, including Countdown on 16 May 2019, which ultimately declined to list the products.

The Assistant Commissioner found Spring Sheep had demonstrated use but that the specification was too broad, and narrowed it by inserting "sheep" before various milk-product descriptions in classes 5 and 29.

Decision of the High Court

On the first appeal ground, the Court rejected Blue River's argument that use on Stage 3 "toddler milk" could not be genuine use of "infant formula," holding that specifications are interpreted as consumers and the trade would understand them, not by regulatory definitions; since all stages of formula were displayed and sold together and treated as one category by supermarkets, the Commissioner did not err. The Court distinguished *SkyKick UK Ltd v Sky Ltd*, which concerned bad-faith invalidity based on sweeping Nice-classification-heading terms, whereas Spring Sheep had used the comparatively precise term "infant formula".

On the second ground (considered for completeness), the Court held Spring Sheep's preparatory steps (finalising formulations, commissioning production trials, and presenting to distributors and supermarkets) constituted genuine use, applying the principle that preparatory use consistent with a mark's essential origin-guaranteeing function can suffice even without actual consumer sales, as in *Cure Kids v National Sids Council of Australia Ltd* and *Target Australia Pty Ltd v Target New Zealand Ltd.*

On Spring Sheep's cross-appeal, the Court held the Commissioner's insertion of "sheep" before milk-product descriptions unduly narrowed the specification; although sheep milk was the primary ingredient, sheep, cow, A2 cow and goat milk-based infant formula were displayed and sold together by brand, so "sheep milk" defined particular examples rather than a distinct category, drawing an analogy to a prior United Kingdom decision treating use on beef and chicken sausages, salami and cheese as supporting a fair specification of "cheese, salami and sausages" rather than animal-specific wording. The Court also noted Blue River's own SPRING GOAT application had not limited its class 5 specification to goat milk products. The cross-appeal was allowed, and the class 5 and 29 specifications were revised to the broader wording Spring Sheep proposed, with class 35 unchanged.