

DETERMINATION REPORT

Importer: Savage Imports Limited
File: INV/17005
Date: 19 September 2012

BACKGROUND

The Chief Executive has accepted a Border Protection Notice given under s.137 of the Trade Marks Act 2002 stating that:

- Australasian Conference Association Ltd. is the owner of trade mark 281068 – the word "MARMITE".

IMPORTATION

On 28 August 2012 a consignment from the United Kingdom addressed to Savage Imports Limited, Unit 2, 120 Courtenay Drive, Kaiapoi, was examined by a Customs Officer at a Christchurch Customs Controlled Area and found to contain the following items:

- 1,908 jars (250 grams) of Ma'amite yeast-extract spread bearing Australasian Conference Association Marmite signs

It was considered that the goods might bear infringing signs for which a Notice had been accepted under the Act. In view of the apparent commercial nature of the importation, a sample of 1 jar of yeast-extract spread was referred to Fraud and Prohibitions IPR Investigations for further investigation.

EXAMINATION

The sample goods were examined, and an examination report was prepared. The back of the jar states that the product was made in the United Kingdom (and was therefore not made by Sanitarium in New Zealand). Sanitarium is the only company in New Zealand permitted under license from Australasian Conference Association Ltd. to produce goods bearing the word "Marmite". A Sanitarium legal representative has advised that they have not authorised the importation of these products.

INVESTIGATION

A letter was sent to the manager at Savage Imports Limited advising of the detention of the goods and requesting information under s.144 of the Act. Robert SAVAGE of Savage Imports Limited responded in writing on a Claim for Return of Goods form stating that the jars imported from the UK are unique. They say "Ma'amite" and phonetically it doesn't apply. British Marmite is generally called Marmite and cannot be called anything else as that is exactly what it is. NZ Marmite is a completely different product. SAVAGE stated that he / she would obtain legal advice. SAVAGE stated that he / she wished for the goods to be returned and that he / she had done nothing wrong.

OPINION

I have taken into consideration:

- the country of export of the goods
- the fact that the only authorised manufacturer of the goods is in New Zealand
- the fact that the rights holder has stated that they have not authorised the importation of these goods

Based on the factors stated above, I do not believe that the detained goods are genuine Australasian Conference Association Ltd. products. I believe that the signs on the goods were applied without the permission of the trade mark holder.

INTENDED USE

Section 146 of the Act provides for a determination to be made in relation to imported goods, which are subject to the control of Customs. However, s.142 of the Act excludes from these provisions goods imported for private and domestic use. It is considered that 1,908 jars of yeast-extract spread is an excessive quantity to be for private usage by a single person. The number of items imported, and the fact that the importing entity is a company, supports the belief that these goods may have been intended for commercial disposal. It is therefore believed that the goods are not for the sole use of a private importer, and that s.142 of the Act does not apply.

SUMMARY

The goods, which are under the control of Customs, are considered to bear infringing signs within the meaning in s.135 of the Act, as being identical to or similar with the registered trade mark, and used on identical goods, for which the Chief Executive has accepted a Notice. It is further considered that the usage of these trade mark signs would be likely to deceive or cause confusion.

RECOMMENDATION

I therefore recommend that a determination be made under s.146 of the Act that the 1,908 jars of Ma'amite yeast-extract spread appear to be goods to which a Notice relates.



s9(2)(a)

Investigator

IPR INVESTIGATIONS EXAMINATION REPORT

FILE:	17005	IMPORTER:	Savage Imports Limited
IMPORTATION DATE:	23/08/2012	DETENTION DATE:	28/08/2012
OPENING IR:	CHA1239721	GOODS TRACKING:	AKT1207307 <samples> CHT1200841 <bulk>
TOTAL NO. OF ITEMS:	1,908	TYPE OF GOODS:	Yeast-extract spread
BRANDS:	Marmite		
EXAMINATION DATE:	30/08/2012	PFF:	No

ITEM #:	ITEMS:	NOTICE:	PATENT ATTORNEY:	FEATURES:
1	1 x jar of "Ma'amite" yeast-extract spread - bearing Marmite branding (250 grams).	TM: 281068 - "MARMITE" Australasian Conference Association Ltd.	New Zealand Health Association Ltd. t/a Sanitarium Health & Wellbeing Company - Stephen ANDREWS	A label on the back of the jar states that the product was made in the United Kingdom (and therefore was not made by Sanitarium in New Zealand).

SUMMARY:

1,908 jars (250 grams) of "Ma'amite" yeast-extract spread bearing Australasian Conference Association Marmite signs

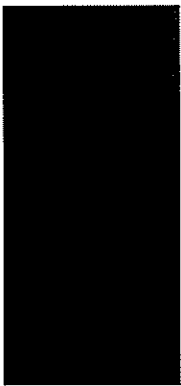
Importer: Savage Imports Limited, Unit 2, 120 Courtenay Drive, Katapoi 7630

Supplier: Turner & Price Limited, Wiltshire Road, Hull, United Kingdom

Description: <various commercial merchandise>

Method of importation: Sea cargo

Tracking numbers: MAN12152712 <bill of lading>



s9(2)(a)

Investigator

Date: 30 August 2012



Job sheet

Subject: Savage Imports Limited		File: INV/17005
Date and Time: 17/10/2012 0931 hours	<p style="text-align: right;">s9(2)(a)</p> <p>Received an email from Customs Chief Legal Counsel – Corporate, [REDACTED], that had originally been sent by Shan LANGSTON at Shieff Angland at Shan.Langston@shieffangland.co.nz on 16 October 2012 at 1850 hours.</p> <p>Attached to the email were the following documents:</p> <ul style="list-style-type: none">• Notice of Proceeding When Summary Judgement Sought by Plaintiffs, dated 12 October 2012 and signed by a Deputy Registrar at the Christchurch High Court on 15 October 2012.• Statement of Claim, dated 11 October 2012.• Affidavit of Stephen Grant Andrews in Support of Application for Summary Judgement, dated 11 October 2012.• Interlocutory Application for Summary Judgement in Respect of the First Cause of Action in the Statement of Claim, dated 12 October and stamped by the High Court in Christchurch on 15 October 2012. <p style="text-align: center;"><i>[Handwritten Signature]</i></p>	

Further Comment:	Name: [REDACTED] s9(2)(a)
	Designation: Customs Investigator
Date:	Date: 18 October 2012
Signed:	Signed: [REDACTED] s9(2)(a)






Job sheet

Subject: Savage Imports Limited		File: INV/17005
Date and Time:		
01/10/2012 1451 hours	Received an email from a representative of Australasian Conference Association Ltd., being Brandon CHIK at Shieff Angland Lawyers at Brandon.Chik@shieffangland.co.nz	
	CHIK stated that Australian Conference Association Ltd. had come to an agreement in principle with Savage Imports Limited for the release of the goods. CHIK stated that the Deed of Release was currently being drafted, and therefore he requested a 10 day extension of time in order to finalise the matter.	
1504 hours	Sent an email to CHIK advising that all the circumstances have been considered and that the detention period of the goods has been extended to 20 working days. Advised that the detention of the items will now end on 17 October 2012.	

Further Comment:	Name:	[Redacted]	s9(2)(a)
	Designation:	Customs Investigator	
	Date:	02 October 2012	
	Signed:	[Redacted]	s9(2)(a)
Date:			

Job sheet

Subject: Savage Imports Limited		File: INV/17005
Date and Time:	19/09/2012 1055 hours	Sent a letter to Robert SAVAGE at Savage Imports Limited, Unit 2, 120 Courtenay Drive, Kaiapoi, advising that a determination had been made under section 146 of the Trade Marks Act 2002. Specifically that 1,908 jars (250 grams) of Ma'amite yeast-extract spread imported by the company bear infringing signs. Advised SAVAGE that as he / she had made a claim for the goods, if a notice of commencement of proceedings has not been served on the Chief Executive within 10 working days of the service of this determination advice, the detention of the goods will cease and the goods will be released from Customs control and forwarded to him / her.
	1106 hours	Sent an email to the Patent Attorney representing Australasian Conference Association Ltd. advising that a determination had been made under section 146 of the Trade Marks Act 2002. Specifically that 1,908 jars (250 grams) of Ma'amite yeast-extract spread imported by Savage Imports Limited bear infringing signs. Received a reply email confirming receipt of determination notification. 

Further Comment:	Name:  s9(2)(a)
	Designation: Customs Investigator
Date:	Date: 24 September 2012
Signed:	Signed:  s9(2)(a)

Job sheet

Subject: Savage Imports Limited		File: INV/17005
<p>Date and Time:</p> <p>11/09/2012 1005 hours</p>	<p>Received in the post a completed Claim for Return of Goods form signed by Robert SAVAGE of Savage Imports Limited. SAVAGE stated that the jars imported from the UK are unique. They say "Ma'amite" and phonetically it doesn't apply. British Marmite is generally called Marmite and cannot be called anything else as that is exactly what it is. NZ Marmite is a completely different product. SAVAGE stated that he / she would obtain legal advice. SAVAGE stated that he / she wished for the goods to be returned and that he / she has done nothing wrong.</p> <p>The form was dated 04 September 2012. <i>[Signature]</i></p>	

Further Comment:	Name: [Redacted] s9(2)(a)
	Designation: Customs Investigator
Date:	Date: 12 September 2012
Signed:	Signed: [Redacted] s9(2)(a)



Job sheet

Subject: Savage Imports Limited		File: INV/17005
Date and Time:		
30/08/2012 1440 hours	<p>Commenced investigating a file involving yeast-extract spread detained at a Christchurch Customs Controlled Area. The goods were suspected to bear trade mark-infringing signs.</p> <p>The intercepting Officer advised the importer's details to be Savage Imports Limited, Unit 2, 120 Courtenay Drive, Kaiapoi.</p> <p>A sample of 1 jar of yeast-extract spread had been detained under Goods Tracking number AKT1207307 and provided to Fraud and Prohibitions IPR Investigations for investigation.</p> <p>The remaining 1,907 jars of yeast-extract spread had been detained under Goods Tracking number CHT1200841 and provided to CH Inspections Detained Goods Room for storage.</p> <p>Removed from ACIF IPR Storage the sample goods detained under Goods Tracking number AKT1207307. Examined the goods and completed an IPR Investigations Examination Report.</p>	
1450 hours	<p>Examination completed.</p> <p>Returned the sample goods detained under Goods Tracking number AKT1207307 to ACIF IPR Storage.</p>	
1510 hours	<p>Sent a Detention of Goods letter for 1,908 250 gram jars of Ma'amite yeast-extract spread bearing Australasian Conference Association Marmite signs to the manager at Savage Imports Limited, Unit 2, 120 Courtenay Drive, Kaiapoi. Also included a Forfeiture of Goods by Consent form and a Claim for Return of Goods form and advised the manager that the Border Protection Measures contained in sections 135 – 155 of the Trade Marks Act 2002 can be viewed at www.legislation.govt.nz Advised the manager that a copy of the sections is available on request from this office.</p> <p style="text-align: right;"><i>[Signature]</i></p>	

Further Comment:	Name: [Redacted] s9(2)(a)
	Designation: Customs Investigator
Date:	Date: 31 August 2012
Signed:	Signed: [Redacted] s9(2)(a)

Job sheet

Refer to NZCS 350A for instructions on completing this form

Subject: Savage Imports Ltd		File: CH120330
Date and Time:		
24 – 29 August 2012	<p>My name is [REDACTED], acting Chief Customs Officer, Christchurch Inspections Facility. s9(2)(a)</p> <p>IE 57285270 refers.</p> <p>This shipment of food products was held for an inspection as the result of an alert for British Marmite, for which a Trade Mark Notice is held by the NZ Customs Service.</p> <p>Container # TGHU0814787 was unpacked at GVI Logistics Ltd., in accordance with a Customs permit for removal of goods from a Customs Controlled Area (single permission) which was issued on 27/08/12. In accordance with the conditions of the permit, 159 cartons of Marmite (labelled Ma'amite) were set aside for examination.</p> <p>A Detention Notice was issued for the Marmite, and the entry was cleared on 28/08/12 to enable delivery of the remainder of the shipment to the importer. It is understood certain items were to be inspected and sampled by NZFSA officers.</p> <p>Importer : Savage Imports Ltd Unit 2 120 Courtney Drive KAIAPOI 7630</p> <p>Supplier : [REDACTED] s9(2)(ba)(i)</p> <p>Upon examination the goods were found to be 159 trays of 12 x 250g (1908) jars of Marmite spread.</p> <p>A sample of one 250g jar of Marmite has been forwarded to IPR Investigations. Goods tracking number CHT1200841 refers. Detention letter and information sheets have been handed to the Customs broker.</p>	
Further Comment:	Name: [REDACTED] s9(2)(a)	
	Designation: Acting Chief Customs Officer	
	Date: 29/08/12	
Date:	Signed:	Signed: [REDACTED] s9(2)(a)

[REDACTED] s9(2)(a)

From: [REDACTED] s9(2)(a)
Sent: Wednesday, 17 October 2012 09:31
To: [REDACTED] s9(2)(a)
Subject: FW: CIV -2012-409-2283 - Savage Imports Limited
Attachments: notice of proceeding.pdf; claim.pdf; affidavit.pdf; application for sj.pdf

s9(2)(a) [REDACTED] Chief Legal Counsel - Corporate | New Zealand Customs Service | PO Box 2218,
Wellington 6140 | DDI +64 4 [REDACTED] | Mobile + 64 [REDACTED] | Email s9(2)(a)
s9(2)(a) [REDACTED]@customs.govt.nz

From: Shan Langston [mailto:Shan.Langston@shieffangland.co.nz]
Sent: Tuesday, 16 October 2012 18:50
To: [REDACTED] s9(2)(a)
Subject: CIV -2012-409-2283 - Savage Imports Limited

Dear [REDACTED] s9(2)(a)

We attach, by way of service, copies of the following documents in the above proceeding:

1. Statement of Claim;
2. Notice of Proceeding where Summary Judgment is sought (the original plus 5 service copies);
3. Application for Summary Judgment in respect of the first cause of action in the Statement of Claim (the original plus 5 service copies); and
4. Affidavit of Stephen Grant Andrews in support of the Application for Summary Judgment.

As discussed, a copy of the documents follows by post. Please contact me if you have any questions.

Kind regards

Shan Langston Solicitor
t +64 9 300 8754 | f +64 9 309 3019
Shieff England | DLA Phillips Fox Tower | National Bank Centre | 205 Queen Street | Auckland
shan.langston@shieffangland.co.nz | www.shieffangland.co.nz

www.shieffangland.co.nz

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18/10/2012

[REDACTED] s9(2)(a)

From: [REDACTED] s9(2)(a)

Sent: Monday, 1 October 2012 15:04

To: 'Brandon Chik'

Subject: RE: Customs determination - Savage Imports Limited (INV/17005) AUSTRALASIAN CONFERENCE ASSOCIATION LTD.

Hi Brandon

I have received your email requesting an extension to the detention period to 20 working days of the following goods imported by Savage Imports Limited on or about 23 August 2012:

- One thousand nine hundred and eight (1,908) jars (250 grams) of Ma'amite yeast extract spread bearing Australian Conference Association Marmite signs

I have considered the circumstances that you have outlined, namely that Australasian Conference Association has come to an agreement in principle with Savage Imports Limited for the release of the goods, but are currently drafting the release and request an extension of time in order to finalise the matter.

I have the delegated authority to extend the detention period of goods to 20 working days, pursuant to section 149(3) of the Trade Marks Act 2002. I have considered the situation and I believe that it is appropriate in all the circumstances to extend the detention period of the above-specified goods to 20 working days. The detention of these items will now end on 17 October 2012.

[REDACTED] s9(2)(a)
Intellectual Property Rights (IPR) Investigations
New Zealand Customs Service

Location: Air Cargo Inspection Facility, 21 Tom Pearce Drive, Auckland Airport, Auckland

Address: PO Box 73003, Auckland Airport, Auckland 2150

Phone: [REDACTED]

Mobile: [REDACTED] s9(2)(a)

Email: [REDACTED]@customs.govt.nz s9(2)(a)

From: Brandon Chik [mailto:Brandon.Chik@shieffangland.co.nz]

Sent: Monday, 1 October 2012 14:51

To: [REDACTED] s9(2)(a)

Subject: RE: Customs determination - Savage Imports Limited (INV/17005) AUSTRALASIAN CONFERENCE ASSOCIATION LTD.

Hi [REDACTED], s9(2)(a)

Further to our conversation last Friday 29th of September 2012, I confirm that we have come to an agreement in principle with Savage Imports Limited, for the release of the Goods. We are currently drafting the Deed of release and therefore request a 10 (working) day extension of time in order to finalise this matter.

Please confirm that NZ Customs will grant the extension.

Kind regards,
Brandon Chik

From: [REDACTED] [mailto:[REDACTED]@customs.govt.nz] s9(2)(a)

Sent: Wednesday, 19 September 2012 11:06 a.m.

02/10/2012

To: Stephen.Andrews@sanitarium.co.nz
Cc: Brandon Chik; Brandon Chik
Subject: Customs determination - Savage Imports Limited (INV/17005) AUSTRALASIAN CONFERENCE ASSOCIATION LTD.

INV/17005

19 September 2012

Stephen ANDREWS
New Zealand Health Association Ltd. t/a Sanitarium Health & Wellbeing Company
124 Pah Road
Royal Oak
AUCKLAND 1023

Dear Stephen ANDREWS

DETERMINATION - TRADE MARKS ACT 2002

The Chief Executive of the New Zealand Customs Service has accepted a Border Protection Notice given under section 137 of the Trade Marks Act 2002 stating that:

- **Australasian Conference Association Ltd.** is the owner of trade mark 281068 – the word “MARMITE”.

A determination has been made under section 146 of the Act that the following goods appear to bear infringing signs to which a Notice relates:

Goods:

- **One thousand nine hundred and eight (1,908) jars (250 grams) of Ma’amite yeast-extract spread bearing Australasian Conference Association Marmite signs**

imported on or about 23 August 2012 at Christchurch.

Importer: Savage Imports Limited, Unit 2, 120 Courtenay Drive, Kaiapoi.

Supplier: [REDACTED] s9(2)(ba)(i)

These goods will be detained by the Chief Executive until:

- a) the Chief Executive has been served with an Order under section 152 of the Act; or
- b) after ten working days have elapsed since this Notice was served under section 147 of the Act and the Chief Executive has not been served with a Notice of Proceeding brought under section 153 of the Act by a person other than the importer or consignee.

Please respond to advise that this email has been received.

Yours Faithfully

[REDACTED] s9(2)(a)
Intellectual Property Rights (IPR) Investigations
New Zealand Customs Service

Location: Air Cargo Inspection Facility, 21 Tom Pearce Drive, Auckland Airport, Auckland

Address: PO Box 73003, Auckland Airport, Auckland 2150

Phone: [REDACTED] s9(2)(a)

Mobile: [REDACTED]
Email: [REDACTED]@customs.govt.nz s9(2)(a)

02/10/2012

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www.shieffangland.co.nz

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AIR CARGO INSPECTION FACILITY

21 Tom Pearce Drive, Auckland International Airport
PO Box 73003, Mangere 2150, New Zealand
Phone: 09 255 6600 Fax: 09 256 1452 All general enquiries phone: 0800 428 786
Email: feedback@customs.govt.nz Website: www.customs.govt.nz

19 September 2012

INV/17005

Robert SAVAGE
Savage Imports Limited
Unit 2, 120 Courtenay Drive
KAIAPOI 7630

Dear Robert SAVAGE

DETERMINATION – TRADE MARKS ACT 2002

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- **Australasian Conference Association Ltd.** is the owner of trade mark 281068 – the word “MARMITE”.

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Goods:

- **One thousand nine hundred and eight (1,908) jars (250 grams) of Ma'amite yeast-extract spread bearing Australasian Conference Association Marmite signs**

imported on or about 23 August 2012 at Christchurch.

These goods will be detained by the Chief Executive until:

- a) the Chief Executive has been served with an Order under section 152 of the Act; or
- b) after 10 working days have elapsed since this Notice was served under section 147 of the Act and the Chief Executive has not been served with a Notice of Proceedings brought under section 153 of the Act by a person other than the importer or consignee.

If a notice of commencement of proceedings has not been served on the Chief Executive within 10 working days of the service of this determination advice, the detention of the goods will cease. As you have made a claim for the goods, in the event that you do not forfeit the goods in the meantime, the goods will be released to you at the conclusion of the detention period.

Yours faithfully



s9(2)(a)

Investigator

[REDACTED] s9(2)(a)
From: [REDACTED] s9(2)(a)
Sent: Wednesday, 19 September 2012 11:06
To: 'Stephen.Andrews@sanitarium.co.nz'
Cc: 'Brandon Chik'; 'brandon.chik@shieffangland.co.nz'
Subject: Customs determination - Savage Imports Limited (INV/17005) AUSTRALASIAN CONFERENCE ASSOCIATION LTD.
INV/17005

19 September 2012

Stephen ANDREWS
New Zealand Health Association Ltd. t/a Sanitarium Health & Wellbeing Company
124 Pah Road
Royal Oak
AUCKLAND 1023

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Importer: Savage Imports Limited, Unit 2, 120 Courtenay Drive, Kaiapoi.

Supplier: [REDACTED] s9(2)(ba)(i)

These goods will be detained by the Chief Executive until:

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Please respond to advise that this email has been received.

Yours Faithfully

[REDACTED] s9(2)(a)
Intellectual Property Rights (IPR) Investigations
New Zealand Customs Service
Location: Air Cargo Inspection Facility, 21 Tom Pearce Drive, Auckland Airport, Auckland
Address: PO Box 73003, Auckland Airport, Auckland 2150
Phone: [REDACTED]
Mobile: [REDACTED] s9(2)(a)
Email: [REDACTED]@customs.govt.nz s9(2)(a)

19/09/2012

[REDACTED] s9(2)(a)

From: Stephen Andrews [Stephen.Andrews@sanitarium.co.nz]
Sent: Wednesday, 19 September 2012 11:22
To: [REDACTED] s9(2)(a)
Subject: RE: Customs determination - Savage Imports Limited (INV/17005) AUSTRALASIAN CONFERENCE ASSOCIATION LTD.

[REDACTED] s9(2)(a)

We confirm that we have received the determination email.

Regards
Steve



Stephen Andrews
Commercial Manager
p | +64 9 625 0750 m | +64 021744701
w | www.sanitarium.co.nz

Sharing with our community health and hope for a better life



Please consider the environment before printing this email

From: [REDACTED] [mailto:[REDACTED]@customs.govt.nz] s9(2)(a)
Sent: Wednesday, 19 September 2012 11:06 AM
To: Stephen Andrews
Cc: Brandon Chik; brandon.chik@shieffangland.co.nz
Subject: Customs determination - Savage Imports Limited (INV/17005) AUSTRALASIAN CONFERENCE ASSOCIATION LTD.

INV/17005

19 September 2012

Stephen ANDREWS
New Zealand Health Association Ltd. t/a Sanitarium Health & Wellbeing Company
124 Pah Road
Royal Oak
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A determination has been made under section 146 of the Act that the following goods appear to bear infringing signs to which a Notice relates:

Goods:

24/09/2012

- **One thousand nine hundred and eight (1,908) jars (250 grams) of Ma'amite yeast-extract spread bearing Australasian Conference Association Marmite signs**

imported on or about 23 August 2012 at Christchurch.

Importer: Savage Imports Limited, Unit 2, 120 Courtenay Drive, Kaiapoi.

Supplier: [REDACTED] s9(2)(ba)(i)

These goods will be detained by the Chief Executive until:

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- b) after ten working days have elapsed since this Notice was served under section 147 of the Act and the Chief Executive has not been served with a Notice of Proceeding brought under section 153 of the Act by a person other than the importer or consignee.

Please respond to advise that this email has been received.

Yours Faithfully

[REDACTED] s9(2)(a)
Intellectual Property Rights (IPR) Investigations
New Zealand Customs Service

Location: Air Cargo Inspection Facility, 21 Tom Pearce Drive, Auckland Airport, Auckland

Address: PO Box 73003, Auckland Airport, Auckland 2150

Phone: [REDACTED]

Mobile: [REDACTED] s9(2)(a)

Email: [REDACTED]@customs.govt.nz s9(2)(a)

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CLAIM FOR RETURN OF GOODS
COPYRIGHT ACT 1994 - TRADE MARKS ACT 2002

INV/17005

I, ROBERT SAVAGE
<full name>

of Savage Imports Limited
Unit 2, 120 Courtenay Drive
Kaiapoi,

understand that the following goods have been detained by an Officer of Customs under section 149 of the Trade Marks Act 2002 and / or section 140 of the Copyright Act 1994, and hereby make a claim for their return:

Goods:

- One thousand nine hundred and eight (1,908) 250 gram jars of Ma'amite yeast-extract spread bearing Australasian Conference Association Marmite signs

imported on or about 23 August 2012 at Christchurch.

I believe that

- (a) these goods are genuine products, that is that they do not bear infringing signs and are not pirated copies, AND / OR
 - (b) the goods are not subject to a Border Protection Notice
- because:

The jars imported from the UK are unique. The jars say "Ma'amite" and phonetically it doesn't apply. British Marmite is generally called Marmite and cannot be called anything else as that is exactly what it is. NZ Marmite is a completely different product.

I will obtain legal advice as and when required. I wish for the goods to be returned, I have done nothing wrong.

Importer [Signature]
<signature>

Date 4/SEPT/2012



AIR CARGO INSPECTION FACILITY

21 Tom Pearce Drive, Auckland International Airport

PO Box 73003, Mangere 2150, New Zealand

Phone: 09 255 6600 Fax: 09 256 1452 All general enquiries phone: 0800 428 786

Email: feedback@customs.govt.nz Website: www.customs.govt.nz

30 August 2012

INV/17005

The Manager
Savage Imports Limited
Unit 2, 120 Courtenay Drive
KAIAPOI 7630

Dear Sir or Madam

DETENTION OF GOODS – TRADE MARKS ACT 2002

The Chief Executive of the New Zealand Customs Service has accepted Border Protection Notices under the Trade Marks Act 2002 that request Customs to detain at the time of importation any goods that appear to bear infringing signs to which the Notices relate.

A shipment imported by your company from the United Kingdom on or about 23 August 2012 was found to contain the following goods, which have been detained as they may be goods to which a Notice relates:

Goods:

- **One thousand nine hundred and eight (1,908) 250 gram jars of Ma'amite yeast-extract spread bearing Australasian Conference Association Marmite signs**

A determination will be made as to whether or not the above items appear to be goods to which a Notice relates, and advice of the determination will be sent to you. Advice of the determination will also be sent to the trade mark owners (or their legal representatives) and it will include details of the goods, the importer and the supplier. The rights owners may then commence Court proceedings against you for a decision that the Notices relate to the goods, and for a Disposal Order for the goods.

Surrender of goods

If you wish to surrender the goods to the Crown, please complete the enclosed Forfeiture of Goods by Consent form and post it to IPR Investigations, New Zealand Customs Service, PO Box 73003, Auckland Airport, Auckland 2150; or email it to ipr@customs.govt.nz By completing this form and returning it, you are surrendering to the Crown all rights of ownership in the goods.

The determination advice to the rights owners will include the fact that you have forfeited the goods to the Crown. The goods will be then be disposed of by Customs in accordance with the Regulations.

Claim for goods

Alternatively, if you wish to make a claim for the return of these goods, please complete the enclosed Claim for Return of Goods form and return it to this office by post or email.

As a person appearing to have an interest in the goods, I require you under section 144 of the Trade Marks Act 2002 to advise me in writing within 10 working days of:

- (a) your full name and the street address (not a PO Box number) in New Zealand at which documents can be served on you, AND
- (b) any grounds you have for believing that these goods are genuine products, that is that they do not bear infringing signs, AND / OR
- (c) any grounds that you have for believing that these goods are not subject to a Border Protection Notice.

This information is considered necessary for the purposes of the investigation. Everyone who is required to provide information has the same privileges in relation to the giving of the information as witnesses have in any Court, but a refusal or failure to provide information may be taken into account in any investigation or in the making of the determination.

If you submit a claim for the return of the goods, an investigation will be conducted into the goods and their importation. A determination will be made at the end of the investigation and advice of the determination will be sent to you and to the rights owners. If the goods have not been forfeited to the Crown and no Court proceedings are commenced by the rights owners within 10 working days of the determination advice being served, the goods will be released to you.

The goods may be inspected by you by arrangement; if you wish to do so, please contact me and a suitable time will be scheduled.

No response

If no response to this letter is received by 24 November 2012, the goods may be treated as abandoned and disposed of as unclaimed cargo in accordance with section 39(4) of the Customs and Excise Act 1996.

The law

Details of the Border Protection Measures contained in sections 135 – 155 of the Trade Marks Act 2002 can be viewed at www.legislation.govt.nz. These include your right to apply to the Court for a Notice to be discharged or for the goods to be released. A copy of these sections is also available on request from this office.

Yours faithfully



s9(2)(a)

Investigator



FORFEITURE OF GOODS BY CONSENT
SECTION 151 TRADE MARKS ACT 2002
SECTION 141A COPYRIGHT ACT 1994

INV/17005

I,
<full name>

of Savage Imports Limited
Unit 2, 120 Courtenay Drive
Kaiapoi,

understand that the following goods have been detained by an Officer of Customs under section 149 of the Trade Marks Act 2002 and / or section 140 of the Copyright Act 1994, and hereby consent to the goods being forfeited to the Crown:

Goods:

- One thousand nine hundred and eight (1,908) 250 gram jars of Ma'amite yeast-extract spread bearing Australasian Conference Association Marmite signs

imported on or about 23 August 2012 at Christchurch.

Importer Date.....
(Signature)

Witness Date
(Signature)

Full name

Address

.....

.....



CLAIM FOR RETURN OF GOODS
COPYRIGHT ACT 1994 - TRADE MARKS ACT 2002

INV/17005

I,
<full name>

of Savage Imports Limited
Unit 2, 120 Courtenay Drive
Kaiapoi,

understand that the following goods have been detained by an Officer of Customs under section 149 of the Trade Marks Act 2002 and / or section 140 of the Copyright Act 1994, and hereby make a claim for their return:

Goods:

- One thousand nine hundred and eight (1,908) 250 gram jars of Ma'amite yeast-extract spread bearing Australasian Conference Association Marmite signs

imported on or about 23 August 2012 at Christchurch.

I believe that

- (a) these goods are genuine products, that is that they do not bear infringing signs and are not pirated copies, AND / OR
 - (b) the goods are not subject to a Border Protection Notice
- because:

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Importer Date
<signature>



CHRISTCHURCH
The Customhouse, 6 Orchard Road, Christchurch International Airport
PO Box 14086, Christchurch Airport, Christchurch 8544, New Zealand
Phone: 03 940 4500 Fax: 03 9244233 All general enquiries: 0800 428 786
Email: FEEDBACK@CUSTOMS.GOVT.NZ Website: www.customs.govt.nz

PROTECTING NEW ZEALAND'S BORDER

28 August 2012
CH120330

CHT1200841

Savage Imports Ltd
Unit 2, 120 Courtney Drive
KAIAPOI 7630

Dear Mr Savage

EXAMINATION OF GOODS SUBJECT TO THE CONTROL OF CUSTOMS

A shipment from the United Kingdom imported by you at Christchurch contained the following:

- 1908 x 250g jars of Marmite (Ma'amite)

These goods appear to bear infringing signs as per the Trade Marks Act 2002 and have been detained by the New Zealand Customs Service under the Customs and Excise Act 1996. They are being forwarded to Customs' Investigations unit and an investigation under the Trade Marks Act 2002 will be started.

If you want to surrender the goods to the Crown, please complete the bottom section of this letter and post the entire letter to: IPR Investigations, New Zealand Customs Service, PO Box 73003, Auckland Airport, Auckland 2150; or email it to ipr@customs.govt.nz If you want to discuss the importation with a Customs Investigator, please phone 09 255 6645.

Yours sincerely



s9(2)(a)

Acting Chief Customs Officer

I, ,<full name> understand that the above goods have been detained by a Customs Officer under the Trade Marks Act 2002. I want to forfeit the goods to the Crown and I understand that I am giving up all my rights of ownership in the goods.

Importer.

Date.

<signature>



Notice of Detention of Goods

Port: Christchurch
 Flight/Vessel: Weta Permasan Date: 28.8.12
 Name: Savage Imports Ltd
 Address: _____

The undermentioned goods: 159 units of
Merino

have been detained by the New Zealand Customs Service due to:
Further enquiries - Trade Mark
Police
E 57285270.

You have one (1) month to uplift the goods from the Customs Office at:

Failure to comply with this notice may result in the goods being sold in accordance with Section 97 of the Customs and Excise Act 1996.

Phone number: 9244218
 Officer: _____
 Signature: _____ s9(2)(a)



Te Mana Arai o Aotearoa

New Zealand Customs Service

Import Entry Summary
for Entry number 57285270

Client's reference: 221238E1 Version: 3
 Entry type: Import Status: Cleared
 Processing port: Christchurch Date/Time: 28/08/2012 09:43:04
 Payment method: Client Deferred

Remarks

BEF/NBF

Client information

s9(2)(a)

Code

Importer: [Redacted] Savage Imports Limited

s9(2)(a)

Broker: [Redacted] GVI Logistics Ltd (Christchurch Office)

CCA:

Declarant: [Redacted] s9(2)(a)

Supplier/s: [Redacted] s9(2)(ba)(i)

Totals

VFD (\$NZ): [Redacted]
 Insurance: [Redacted]
 Freight: [Redacted]
 Duty: s9(2)(ba)(i) [Redacted]
 GST: [Redacted]
 Misc: [Redacted]
 Total Payable: [Redacted]

Other information

Code	Description	Data
MCD	MAF Container Declaration	YNYYN
ATF	Approved Transitional Facility	17094

Permit number

Invoices

Number	Terms
2503353	Ex-works (yard)

Miscellaneous

Code	Value
IF	\$22.00

Shipping information

Mode of transport: Sea Date of import: 23/08/2012 00:00:00
 Voyage number: 85 Total gross weight(kg): 8,656.00
 Vessel name: KOTA PERMASAN

Delivery

Code Name

Authority:

CCA:

Instructions:

Port information



Te Mana Arai o Aotearoa

New Zealand Customs Service

Import Entry Summary
for Entry number 57285270

	Code	Name
Port of loading:	GBMNC	Manchester
Port of discharge:	NZLYT	Lyttelton

Container and package information

Package Type	No of Packages	Container No	Container Status	Bill No	Bill Type
Package	10	TGHU0814787	FCL	MAN12152712	Bill of Lading

Message to client

Date / Time	User Id	Free Text
24/08/2012 11:25:10	AE4017	INSPECTION MAY BE REQUIRED. PLEASE EMAIL ALL SUPPORTING DOX TO CHRISTCHURCHINSPECTIONS@CUSTOMS.GOVZ.NZ. THANKS

Detail line summary

Line	Tariff Item	Description	Value	Pref	Conc	Permit	Alert
1	2005.51.00.01D	BAKED BEANS		N	N	N	N
2	2005.99.09.17J	BEETROOT		N	N	N	N
3	2103.90.00.15D	SAUCES		N	N	N	N
4	1902.20.00.00H	STUFFED PASTA		N	N	Y	Y
5	1902.30.01.01F	NOODLES AND FLAVOUR SACHET		N	Y	Y	N
6	2001.90.01.12C	PICKLED ONIONS		N	N	N	N
7	2103.90.00.27H	CONDIMENTS PICKLES		N	N	N	N
8	1602.90.11.00F	LAMB HAGGIS IN A CAN		N	N	Y	Y
9	2104.10.09.41K	STOCK CUBES AND POWDERS		N	N	N	Y
10	2007.99.00.00C	FRUIT JELLYS AND JAMS		N	N	N	N
11	1602.50.01.00F	BEEF PASTE		N	N	Y	Y
12	1602.32.10.00G	CHICKEN PASTEGALLUS DOMESTICUS		N	N	Y	Y
13	1605.10.01.00F	CRAB SPREAD		N	N	Y	Y
14	1604.20.01.00A	FISH PASTES		N	N	Y	Y
15	0902.30.00.09K	BLACK TEA		N	N	N	Y
16	1905.90.09.19F	POTATO CRISPS AND CHIPS		N	N	N	N
17	3305.10.00.00A	SHAMPOO / CONDITIONER		N	N	N	N
18	1905.90.09.19F	POTATO CRISPS BACON FRIESWALKERS HOME BAKE ROUNDS		N	N	N	N
19	1602.50.09.19H	STEAK PIE / CASSEROLE/MEATBALL		N	N	Y	Y
20	1905.31.00.39F	BISCUITS		N	N	N	N
21	1901.20.09.00G	CAKE AND MUFFIN MIXESNOT CONTAINING COCOA		N	N	N	N
22	2106.90.99.79A	MARMITEMARMITE EXTRACTS		N	N	N	Y
23	1704.90.00.00G	SUGAR CONFECTIONERY		N	N	N	N

s9(2)(ba)(i)