



NEW ZEALAND
CUSTOMS SERVICE
TE MANA ĀRAI O AOTEAROA

WELLINGTON

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PROTECTING NEW ZEALAND'S BORDER

20 November 2012

Ref: IPC OIA 12-150

Alan Heward
fyi-request-614-03ae8abe@requests.fyi.org.nz

Dear Mr Heward

I refer to your email dated 21 October 2012 in which you have requested information regarding a Palmerston North retailer "Tastes of the UK", and the seizure by the New Zealand Customs Service (Customs) of all products from the Weetabix company.

Your request has been dealt with pursuant to section 12 of the Official Information Act 1982 (the Act) and my reply has been prepared in accordance with section 16 of the same Act, which relates to the manner in which the information is released to you.

In response please find attached the following documentation:

- one file number "AKI1265844", which provides the basis for targeting imports of goods that possibly infringe the Weet-Bix trade mark.
- one file named "Inspections planner's docs" containing Customs documentation relating to the inspection by Customs of a consignment of goods imported by Tastes of the UK Ltd.
- one file named "Legal advice sought" containing a Customs internal request for legal advice.

Customs is releasing all documentation relating to its inspection of goods imported by Tastes of the UK Ltd except for 20 documents provided by the company that are commercially sensitive and provided to Customs under an obligation of confidence. These documents are withheld pursuant to section 9(2)(ba)(i) of the Act.

Please note that some documents contain deletions as provided for under section 17 of the Act. Where a deletion has been made, the statute ground for withholding the information is cited.

Section 6(c) provides for the withholding of information that may prejudice the maintenance of the law. In this instance, disclosure of this information would reveal investigative techniques used by Customs for the detection of offences.

Section 9(2)(a) provides for the protection of an individual's privacy where this is not outweighed by the public interest. In this particular case, the names of Customs employees, customs brokers and freight company representatives have been withheld.

Section 9(2)(ba)(i) provides for the protection of information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the

authority of any enactment, where the making available of the information would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public interest that such information should continue to be supplied.

Section 9(2)(h) provides for the protection of information to maintain legal professional privilege.

The inspection of this importation was carried out as a result of Customs accepting notices filed with it under section 137 of the Trade Marks Act 2002 for the Weet-Bix and Marmite trade marks. The notices request the detention of any goods on which an infringing sign is used that are in, or at any time come into, the control of Customs. The person filing the notices is the New Zealand Health Association (Sanitarium) on behalf of the Australasian Conference Association Limited.

The provisions for accepting and enforcing notices filed under the Act are set out in Part 3 (Border protection measures) of the Trade Marks Act 2002.

There is no specific correspondence from external organisations relating to the inspection of the goods imported by Tastes of the UK Ltd in this instance.

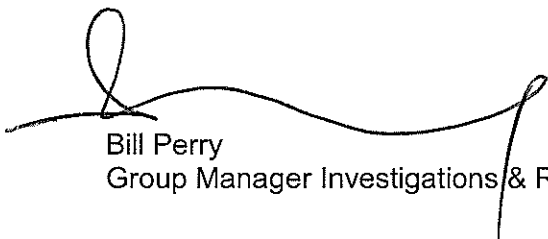
There has been no seizure of goods from this importation. There are goods from this shipment being held pursuant to section 151 of the Customs and Excise Act 1996 pending a determination by Customs of any trade mark infringement.

The basis for the inspection was a search for goods that might infringe the Weet-Bix and Marmite trade marks. Customs does not necessarily restrict the purpose of an inspection to just one profile. It might also inspect goods for a number of reasons according to current goods risk profiles. These profiles might relate to possible enclosures of undeclared goods, prohibited and restricted goods, or drugs, as the inspection plan in this case indicates.

Customs has reviewed a Court of Appeal decision in the case of NV Sumatra Tobacco Trading Co v New Zealand Milk Brands Ltd CA25/2009; [2011] NZCA 264, which was submitted to it by Sanitarium. All documentation reviewed by Customs in respect of the Weet-Bix and Marmite notices was provided by Sanitarium. This information has been released to you in your request for information referenced as 613-cdf96dbc. One internal email from the Customs Legal Services team has been withheld to maintain legal professional privilege.

You have the right to seek a review and investigation of any refusal to provide information, including partial deletions of information contained in documents, by way of complaint to the Ombudsman.

Yours sincerely



Bill Perry
Group Manager Investigations & Response