

Government Response to the Advisory Council on Intellectual Property's Report on 'The Protection of National Icons'

The Advisory Council on Intellectual Property's (ACIP's) Report proposed the introduction of a concept of a 'non-exclusive trade mark' and recommended:

1. amending the *Trade Marks Act* to prevent trade mark rights from accruing to individuals or bodies and also amending the *Trade Practices Act* to prevent the ability of traders to take action for deceptive or misleading conduct, on the basis of the trade mark use of an icon under sections 52 and/or 53 of the *Trade Practices Act*, and
2. that any pre-existing rights in relation to the term should remain unaffected.

The Government has decided not to accept the report's proposal as:

- recommendation 1 would be inconsistent with current law, have the potential to cause considerable confusion for consumers, and could result in removing some consumer protection;
- recommendation 2 would be inconsistent with recommendation 1, as traders would not be free to use an iconic name or expression where existing rights have been established; and
- the two recommendations could not operate effectively in practice as the combined effect would be that those existing rights would be strengthened and other traders would be discouraged from using the icon as a trade mark because they would not be able to develop and enforce any rights.

The Government considers that the existing legislative framework provides a sufficient range of measures to protect national icons from inappropriate use and strikes an appropriate balance between the interests of the public and those who own rights in names or expressions.

Also, if a specifically designed system for protecting national icons was to be established, it would involve putting into place a process for assessing and recognising a name or expression as an icon. The Government considers that any such process would be complex, with considerable costs for administering and enforcing it.