

It's all good...



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PART I the Trade Marks

The Buy New Zealand campaign (the Campaign) began in 1988 and is administered by Buy New Zealand Made Campaign Limited (we/us/our). The emphasis of the Campaign has shifted over the years, but the basic aim of encouraging consumers and organisations to buy New Zealand goods and services wherever possible has not changed. It's not a difficult concept to sell. Most people share the common human inclination to support their own local community ahead of outsiders. And the success of the Campaign has been greatly helped by the well recognised stylised kiwi.

The well recognised stylised kiwi is incorporated into the Buy New Zealand Made trade marks (the Trade Marks). The Trade Marks are the most recognised country of origin symbol on New Zealand shop shelves, enjoying an 85 per cent recognition level amongst New Zealand consumers.

The owner of the Trade Marks is Business New Zealand Inc, a not-for-profit organisation. We are owned by Business New Zealand. We are the organisers and administrators of the Campaign and manage and control to use of the Trade Marks.

We were established by the New Zealand Manufacturers Federation (now Business New Zealand Inc.) and the CTU specifically to administer and manage the Campaign.

Only members of the Campaign are permitted to use the Trade Marks, and then only in accordance with the rules and conditions set out in Part VII.



PART II the Code of Practice

Scope of the Code

This Code of Practice incorporates the official rules and conditions governing the certification and use of the Trade Marks.

The rules and conditions are provided at Part VII of this Code of Practice and have been developed in accordance with the requirements of the *Trade Marks Act 2002* and associated statutory obligations.

This Code of Practice applies to all members of the Campaign. The Code places a series of obligations on members, including a compliance test that goods and services must meet for members to be eligible to use the Trade Marks; record keeping obligations; and a complaint and dispute resolution process that all members must abide by. It is a condition of membership of the Campaign, and therefore of use of the Trade Marks, that applicants agree to be bound by all of the rules and conditions contained in this Code of Practice.

Membership of the Campaign does not give any entitlement to be a shareholder in us, and a member of the Campaign does not, by becoming a member, acquire any rights, interests or other entitlements with respect to the ownership, management, administration or control of us or the Trade Marks.

Objectives of the Code

The objectives of the Code of Practice are to:

- provide information to members of the Campaign on their rights and obligations to ensure the consistent, correct usage of the Trade Marks;
- build consumer confidence that goods and services promoted in association with the Trade Marks comply with established legislative consumer information and country of origin labelling standards and promote the benefits of buying New Zealand goods and services; and
- raise the domestic and international profile of goods and services that are made in New Zealand.

The Code of Practice does not take precedence over statutory requirements. It is the responsibility of members to ensure that their usage of the Trade Marks does not contravene any statutory requirements.

Administration of the Code

We are responsible for the administration of the Campaign, the use of the Buy New Zealand Made Logos and this Code of Practice. Our contact details are:

Buy New Zealand Made Campaign Limited
PO Box 1925
WELLINGTON

Telephone (04) 496 6555
Facsimile (04) 496 6550
Email admin@buynz.org.nz
Website www.buynz.org.nz

Amendment and review

We will review the Code of Practice periodically to determine its efficiency and effectiveness in guiding the correct usage of the trade marks, and the efficiency and effectiveness with which the Code of Practice has been administered.

PART III Becoming a Member

Any individual, business or organisation can apply for membership of the Campaign. Membership fees are payable in relation to the use of the Trade Marks and are levied according to the number of staff employed as explained in Part VIII. Goods or services for which the applicant intends to use the Trade Marks must be identified on a product list incorporated in the application for membership.

All goods or services promoted in association with the Trade Marks must meet the compliance test and it is the obligation of the applicant or member to apply the compliance test to determine which goods or services can be promoted with the Trade Marks. All applicants for membership are required to sign a statutory declaration stating that the goods or services identified on their product list meet the compliance test and that their use of the trade mark will be in strict accordance with the rules and conditions.

An application for membership is included in the Campaign information kit. Applications are assessed by and subject to our approval. In situations where an applicant for membership does not agree to abide by the rules and conditions contained in the Code of Practice or does not complete the associated statutory declaration, the application will be rejected.

PART IV Obligations on Members

Becoming a member of the Campaign brings with it a range of obligations, as detailed in this Code of Practice. The obligations on members in relation to the use of the Trade Marks are discussed in Part V of this Code of Practice. This section addresses informational and procedural obligations that apply to members of the Campaign.

Membership requirements

As part of the membership process, applicants must agree to be bound by the rules and conditions detailed in the Code of Practice. Applicants must also complete a statutory declaration in relation to the compliance of the goods or services identified on their product list with the rules and conditions contained in the Code. The statutory declaration is retained by us.

Annual membership fees are levied on all members of the Campaign according to the annual number of staff employed. Where a member exits the scheme voluntarily, or where membership is suspended or revoked, these fees are forfeited to us.

Systems and policies for compliance with the rules

In their application for membership of the Campaign, all applicants must agree to abide by a range of rules and conditions relating to record keeping, information provision, compliance monitoring and complaints and dispute resolution. Members of the Campaign should establish systems and policies to effectively meet their obligations and ensure that their employees and agents know their responsibilities in relation to the use of the Trade Marks.

The product list

The application for membership incorporates a product list. The product list is a list of those goods and services the applicant wishes to promote with the Trade Marks which meet the rules and conditions of the scheme, as well as all underlying statutory obligations. Upon acceptance for membership, we retain the product list on file. If a member, for whatever reason, wishes to amend the product list, they should apply to us. The Trade Marks can only be used in association with goods and services identified on the product list.

Complaints and dispute resolution processes

The rules and conditions include a complaints and dispute resolution process that we and all members must abide by. Members should be aware that the complaints and dispute resolution process places obligations on them in relation to their negotiation with the complainant in the direct negotiation stage and the provision of information to us in the compliance investigation phase. Part VI of this Code of Practice provides more detailed information on the operation of the complaints and dispute resolution processes.

PART V Obligations in Relation to the Trade Marks

Members of the Campaign are subject to a range of obligations in relation to the use of the Trade Marks. These are detailed in the rules and conditions contained at Part VII of this Code of Practice. These obligations are identified and discussed below.

Rules relating to design, colour and size

The design of the Trade Marks cannot be altered under any circumstance. This means that members cannot make alterations to the graphic proportions of the Trade Marks or their individual elements. However, the Trade Marks can be sized to meet member requirements and any colour combination can be applied to the elements of the design.

Compliance test

The trade marks can only be used in association with goods and services identified on the member's product list, as amended from time to time. These goods and services must meet the compliance test contained in the rules and conditions. In summary these are:

- New Zealand must be the place of origin of the goods or services in accordance with sections 9 and 13(j) of the Fair Trading Act 1986. The Commerce Commission, in its booklet *The Fair Trading Act: A General Guide*, gives the following definition:

“A place of origin can be defined as the country or region where the product was created in its final form from its raw materials or constituent parts. In other words, it is the country or region where the product's 'essential quality' was created. It is not necessarily the place where the most money was spent on a product - and it is not the place where only final assembly or packaging was done”

The Fair Trading Act: A General Guide is available free of charge from the Commerce Commission. It can be downloaded or ordered online from: www.comcom.govt.nz. Orders can also be phoned on 04 924 3600 or faxed 04 924 3700.

- Retail and wholesale services will not qualify for use of the Trade Marks if the goods sold do not qualify.

If a member is in doubt about their compliance with either element of the compliance test then they should seek their own legal advice.

Change of production process or sourcing of inputs

Where there is a change to a production process so that a good listed on a member's product list no longer meets the compliance criterion, the member must advise us immediately and cease using the Trade Marks in relation to that good.

Liability rests with the member

Members of the Campaign are solely liable in relation to the compliance of their usage of the Trade Marks with underlying statutory requirements.

PART VI Consumers, Complaints and the Trade Marks

Consumers are a key stakeholder

Consumers who look for and purchase products promoted in association with the Trade Marks are a key stakeholder in the Campaign. It is vital, therefore, that consumers are certain that the Trade Marks are being used according to the rules and conditions detailed in this Code of Practice, and that any consumer concern about the use of the Trade Marks is addressed in a manner that retains confidence in the Campaign.

The complaints and dispute resolution process

The rules and conditions provided at Part VII of this Code of Practice establish a complaints and dispute resolution process that applies to the Campaign and all members of the Campaign.

Members of the Campaign who use the Trade Marks according to the rules and conditions will not find the dispute resolution process either arduous or time-consuming. However, members need to be aware that the misuse of the Trade Marks by a member, or the use of the Trade Marks by a non-member will undermine the scheme for all members and consumer stakeholders. The key elements of the complaints and dispute resolution process are identified below.

Stage 1: Direct negotiation

- Any complaint received by a member of the Campaign must be responded to in writing within 14 days, addressing the issues in dispute, and a copy of the response must be provided to us.
- Where complaints are received in the first instance by us, the complainant will be provided with this Code of Practice, the member's contact details and relevant information about their statutory rights and this dispute resolution process.
- Where the direct negotiation stage is sufficient to resolve the concerns of the complainant, the affected member must provide written advice to us on the nature of the dispute and the resolution reached.
- A complainant may advise us that direct negotiation has failed to resolve a dispute. This action will initiate a compliance investigation by us.

Stage 2: Compliance investigation by us

- Where direct negotiation has failed to resolve a dispute, we will undertake a compliance investigation of the member to determine the extent of compliance with the rules and conditions.
- We will issue to the member to which the dispute relates a compliance investigation checklist.
- Upon receiving a compliance investigation checklist from us, the member must respond to us in writing within 14 days, attaching the checklist and detailing the basis and circumstances upon which the Trade Marks has been used in relation to the issues in dispute.
- We will, in writing and within 14 days of receiving a compliance investigation response, indicate to all parties to the dispute whether it is satisfied that the member is complying with these rules and conditions and whether we intend to pursue the matter further. Where we do not intend to pursue the matter further, our response to the complainant should indicate that statutory rights of action may be available to the complainant under the *Fair Trading Act* and under other legislation.

PART VII Rules

Owner of certification trade marks and approved certifier

1. Business New Zealand Inc. (Business NZ), a not-for-profit Organisation, is the owner of the certification trade marks attached in Schedule 1 (the Trade Marks). Business NZ owns Buy NZ Made Campaign Limited (Buy NZ Made) which is the company to which authority for authorising the use of the Trade Marks has been delegated. Buy NZ Made is the only person who may certify use of the Trade Marks for goods and services.

Membership of the Buy NZ Made Campaign

2. Buy NZ Made operates the Buy NZ Made Campaign (the Campaign). Any individual, business or organisation can apply for membership of the Campaign by completing and lodging the application for membership. Buy NZ Made will process all applications for membership of the Campaign and grant membership on the terms and conditions defined in these rules.

Approval of application for membership or renewal

3. Buy NZ Made will approve an application for membership or renewal where the applicant can satisfy it that they have:
 - i) paid the necessary fees;
 - ii) provided a list of goods or services that qualify under these rules for promotion using the Trade Mark and for which they will use the Trade Marks ;
 - iii) received a copy of these rules, demonstrated the capacity to abide by these rules and agreed to abide by these rules; and
 - iv) signed the declaration included in the application form confirming that they will comply with these rules.
 - v) Agreed never directly or indirectly challenge, contest or call into question the validity of the Trade Marks or the ownership of the Trade Marks;
 - vi) Agreed to indemnify and hold Buy NZ Made and Business NZ harmless from any claims arising out of the member's use of the Trade Marks; and
 - vii) Agreed to comply with any request from Buy NZ Made for evidence that the Trade Marks are being used in accordance with these Rules.

Right to appeal a decision not to grant or renew membership

4. Any member who's right to use the Trade Marks is cancelled by Buy NZ Made or who is refused authorisation to use the Trade Marks by Buy NZ Made may appeal that decision to the Commissioner of Trade Marks.

Certificate of membership

5. Buy NZ Made's approval of an application for membership will be evidenced by issuing a certificate of membership that is valid for the period specified on the certificate. The certificate of membership remains the property of Buy NZ Made and must be returned promptly to it on request or on termination of membership.

Membership register

6. Buy NZ Made will maintain a register of the following details relating to each member of the Campaign:
 - i) registered business name;
 - ii) trading name;
 - iii) street address;
 - iv) postal address;
 - v) business telephone number;
 - vi) business facsimile number;
 - vii) web site details;
 - viii) nominated contact officer and title of that officer;
 - ix) nominated persons email address; and

- x) product list – being a listing of all goods and services identified on each member’s application for membership, as amended from time to time in accordance with these rules that may be promoted in association with the Trade Marks.

Amendment to details on membership register

- 7. All members of the Campaign shall notify Buy NZ Made within 14 days of any change to the details relating to that member contained on the membership register.

Application to remove a good or service from the product list

- 8. Members of the Campaign may apply to Buy NZ Made to remove a good or service from the product list.

Application to include a new good or service on the product list

- 9. Members of the Campaign may apply to Buy NZ Made to include a new good or service on their product list. The application will be approved where the applicant can satisfy Buy NZ Made that they have signed a declaration in relation to the eligibility of the goods or services with these rules.

Right of appeal against a decision not to include a new good or service on the product list

- 10. In instances where an application for inclusion of a new good or service on a member’s product list is refused by Buy NZ Made, the applicant may appeal according to the procedures outlined in Rule 4.

Members can only use the Trade Marks in relation to goods and services that originate in New Zealand

- 11. Members can only use the Trade Marks in relation to goods and services that are on their product list that originate in New Zealand and will not breach section 13(j) of the Fair Trading Act 1986 (false or misleading representation as to the origin of the goods or services) as interpreted by Buy NZ Made. For the avoidance of doubt, retail and wholesale services do not originate in New Zealand if the goods sold do not originate in New Zealand.

Request for evidence from applicant

- 12. Buy NZ Made may at any time request evidence from a member that the goods and/or services for which it is using the Trade Marks or intends to use the Trade Marks originate in New Zealand. Within a time period set by Buy NZ Made the member must prove, to the satisfaction of Buy NZ Made, that the goods and/or services for which it intends to use or is using the Trade Marks Originate in New Zealand. In the absence of evidence from the Member that the goods and/or services originate in New Zealand, Buy NZ Made may refuse or cancel the member’s authorisation to use the Trade Marks.

Members not to misrepresent scope of membership

- 13. Members of the Campaign shall not misrepresent the scope of their membership of the Campaign and will not misrepresent the Trade Marks outside the bounds for which it is granted.

Right to use Trademarks conferred by membership

- 14. The Trade Marks are available for use by current members of the Campaign in relation to the goods or services identified on their product list, as amended from time to time in accordance with these rules.

Right to use not assignable

- 15. The member shall not be entitled to transfer or assign the right to use the Trade Marks granted under these Rules

Liability in relation to use of the Trade Marks rests with a member

- 16. All liability shall rest solely with the member in relation to that member’s use of the Trade Marks.

Use of Trade Marks to cease upon termination or withdrawal

17. Upon termination of membership or withdrawal from membership of the Campaign, the member shall immediately cease using the Trade Mark.

Compliance criteria relating to the use of the Trade Marks

18. Members of the Campaign can only use the Trade Marks:

- i) in relation to goods and/or services that originate in New Zealand and that are entered on the Register;
- ii) in compliance with the Fair Trading Act;
- iii) in a way that does not mislead the public as to the goods or services for which use of the Trade Marks is authorised;
- iv) in combination with other elements that do not detract from the effectiveness of the Trade Marks;
- v) in a context that does not imply quality assurance;
- vi) in a way that will not effect the validity of the Trade Marks;
- vii) with “CertTM” or “Certification TM” in close proximity to the Trade Marks;
- viii) on labels, displays, outer packaging and advertising in accordance with these rules and in such other manner as may from time to time be directed or approved by Buy NZ Made;

Trade Mark to be used in relation only to goods and/or services included on the product list

19. Members of the Campaign shall restrict their use of the Trade Marks to promote only those goods and/or services that are included on the product list, incorporated in the application for membership, and as amended from time to time.

Alteration of design of the Trade Marks not permitted

20. Members of the Campaign are not permitted to alter or amend in any way the design elements of the Trade Marks.

Trade Marks may be sized to meet member requirements

21. Members of the Campaign may alter the size, but not the relative proportions, of the Trade Marks to meet their individual requirements.

Use of colour to meet member requirements

22. Members of the Campaign may use any colour or colour combination in relation to the elements of the Trade Marks to meet their individual requirements.

Complaints and dispute resolution

23. Members of the Campaign shall abide by the procedures for complaints and dispute resolution as set out in these rules.

Complaints received initially by the Campaign

24. Where the Campaign receives an initial complaint about the use of the Trade Marks, it will inform the complainant, in writing within 14 days of receiving the complaint, whether the user of the Trade Marks is a member of the Campaign and what actions the complainant may take to pursue the matter, including their statutory consumer rights.

- i) Where the alleged misuse is by a member, Buy NZ Made will advise the complainant to contact the member directly in the first instance to resolve the dispute. Buy NZ Made will also provide to the complainant:
 - a) the member’s contact details;
 - b) a copy of these rules and conditions; and
 - c) a summary of the key features of the dispute resolution process.
- ii) Where the alleged misuse of the Trade Marks is by a non-member, Buy NZ Made will advise the complainant of their private rights of action to pursue the matter in the courts and that Buy NZ Made also has broad powers to maintain the integrity of the Trade Mark, including by pursuing unauthorised users through the courts.

Complaints received by members

25. Where a member of the Campaign receives a complaint about its use of the Trade Marks, it will respond to the complainant in writing within 14 days of receiving the complaint. The member will take all reasonable steps, in good faith, to resolve the complaint directly with the complainant.

- i) In its response to the complainant, the member will explain the basis, if any, upon which the claim in question is justified and/or what corrective action has been taken to remedy the complaint, if any.
- ii) A copy of the response must be provided to Buy NZ Made.

Cancellation

26. A member ceases to be authorised to use the Trade Marks if it does not fulfil any of the conditions of use set out in these Rules.

Membership fees forfeited if membership cancelled, suspended or revoked

27. In any instance where Buy NZ Made suspends or revokes a current membership in line with these rules, or where a member voluntarily cancels their membership, all membership fees are forfeited to Buy NZ Made.

Lodgement of rules and conditions with the Intellectual Property Office (IPONZ)

28. These rules and conditions are lodged with IPONZ and are available for inspection by any person.

Amendment to rules and conditions

29. Subject to the prior approval of the Commissioner of Trade Marks, Business NZ may from time to time alter these rules or adopt new rules wholly or in part. Buy NZ Made will advise all members of any change to the rules as soon as is practical.

Notices

30. Any notice given in pursuance of these Rules shall be deemed to have been duly given if forwarded through the post by prepaid letter addressed to the Member concerned at its address on the Register.

PART VIII Fee Schedule

There are two types of fee structure.

Manufacturer or Service Industry fees

Annual fees for membership of the Campaign are based on the number of staff employed by the Organisation applying for membership.

The minimum fee payable is \$150 when the number of staff employed is less than 15. The maximum fee payable is \$5,000 when the number of staff employed is over 500.

A sliding fee scale applies. For example, if the number of staff in the organisation is 30 the yearly fee payable would be \$300.

A once only registration fee is payable in the first year of membership. This is equal to \$75.

Retail member fees

Retail members are entitled to use the Buy New Zealand Made logo for advertising and display purposes only. They are not entitled to label any products with the Buy New Zealand Made logo.

The minimum fee payable is \$50 which can include up to 5 stores in a chain. A further \$50 is payable for each 5 stores.

Fees Each 5 stores = \$ 50.00 + GST
 i.e. 1-5 stores = \$ 50.00 + GST
 6-10 stores = \$100.00 + GST

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