

25 August 2008

By email: cods@actrix.co.nz

Kaka 1080 Group
PO Box 54
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Contact: Ross Johnston

Attention: M Toseland

Infringement of Tourism New Zealand's intellectual property rights by Kaka 1080 Group

Introduction

- 1 We act for the New Zealand Tourism Board, a crown entity, established under the New Zealand Tourism Board Act 1991, also known as Tourism New Zealand ('our client').
- 2 Our client is responsible for domestic tourism and also for marketing New Zealand as a tourist destination offshore.

Our client's intellectual property rights

- 3 Since 1999 our client has offered tourism services and related products both domestically and abroad under the word mark 100% PURE NEW ZEALAND and the following trade marks (the '100% PURE Mark' and the '100% PURE NEW ZEALAND Mark' respectively):

100% PURE
100% PURE NEW ZEALAND

- 4 Our client owns the copyright in the 100% PURE Mark and the 100% PURE NEW ZEALAND Mark as artistic works.
- 5 Our client also owns five New Zealand trade mark registrations for the 100% PURE Mark. In addition, our client holds trade mark registrations for the 100% PURE Mark in Australia, China, Japan, Singapore, Taiwan, the United Kingdom, the European Union and the United States of America and has trade mark applications for the 100% PURE Mark filed in Hong Kong and India.
- 6 Our client has conducted widespread and regular marketing campaigns under the 100% PURE Mark, the 100% PURE NEW ZEALAND Mark, and the word mark 100% PURE NEW ZEALAND abroad, and public relations campaigns to raise awareness of the 100% Pure New

Zealand brand within New Zealand, since this campaign and the marks were adopted in 1999. As a result of this use, the 100% PURE Mark is very well known in New Zealand.

- 7 The above trade mark registrations provide our client with the exclusive right to make use of the 100% PURE Mark (and any mark confusingly similar thereto) throughout New Zealand, and those other countries in which it is registered, in relation to the goods and services claimed in its registrations. Use of our client's 100% PURE Mark (and any mark similar thereto) by third parties is also prohibited in relation to goods and services outside those listed in its trade mark registrations, if such use takes unfair advantage of or is detrimental to the distinctive character or repute of the mark.
- 8 Our client has also acquired an extensive reputation and goodwill in the 100% PURE Mark, the 100% PURE NEW ZEALAND Mark, and the word mark 100% PURE NEW ZEALAND, through its extensive use of the marks in trade and high profile marketing activities in New Zealand and abroad and thereby holds common law rights which enable it to stop unauthorised use of the marks.
- 9 Our client takes very seriously the protection and enforcement of the intellectual property rights in its 100% PURE NEW ZEALAND brand. Our client's 100% PURE and 100% PURE NEW ZEALAND Marks are an integral and valuable part of its 100% Pure New Zealand campaign that markets New Zealand tourism overseas by highlighting the beauty and uniqueness of New Zealand's landscapes, culture and people for the benefit of all New Zealanders.

Your actions

- 10 Our client has recently become aware that your website, www.kaka1080.co.nz, displays a 100% PURE NEW ZEALAND mark and a 1080% PURE NEW ZEALAND mark (together 'the Infringing Marks'). The website also offers for sale stickers bearing these marks.
- 11 We consider that your use of the Infringing Marks that are similar to our client's well known 100% PURE Mark to promote your dissatisfaction of the use of 1080 in New Zealand is detrimental to the distinctive character and repute of the 100% PURE Mark.
- 12 Further, your 1080% PURE NEW ZEALAND mark infringes our client's copyright in the 100% PURE NEW ZEALAND Mark by copying a substantial part of this copyright work.
- 13 For these reasons, we consider that your use of the Infringing Marks amounts to:
 - a trade mark infringement under the Trade Marks Act 2002; and
 - b infringement of our client's copyright in the 100% PURE NEW ZEALAND logo as an artistic work.

Undertakings

- 14 Our client views this matter very seriously. Accordingly, we have been instructed to request that you:
 - a immediately remove the Infringing Marks, and any other mark that is identical or confusingly similar to the 100% PURE Mark or that infringes our client's copyright in the

100% PURE and 100% PURE NEW ZEALAND Marks, from your website located at www.kaka1080.co.nz; and

- b cease to advertise, market, distribute, and sell stickers (or any other similar goods) bearing the Infringing Marks, or any other mark that is identical or confusingly similar to the 100% PURE Mark or that infringes our client's copyright in the 100% PURE and 100% PURE NEW ZEALAND Marks; and
 - c not infringe our client's rights in the 100% PURE Mark and the 100% PURE NEW ZEALAND Mark at any time in the future; and
 - d deliver up to us all items in your possession or control (including if directed by us the re-purchasing of stock sold to retailers) which bears the Infringing Marks, or any mark identical or confusingly similar to the 100% PURE Mark or that infringes our client's copyright in the 100% PURE and 100% PURE NEW ZEALAND Marks; and
 - e destroy or obliterate, to our client's satisfaction all hard copy and electronic materials incorporating the Infringing Marks, or any other mark identical or confusingly similar to the 100% PURE Mark or that infringes our client's copyright in the 100% PURE and 100% PURE NEW ZEALAND Marks, in your possession or control; and
 - f supply to us all information in your possession or control (including names, addresses, and other contact details) relating to:
 - i organisations, businesses and persons who either supplied the stickers to you or printed those, or any other items bearing the Infringing Marks, at your request; and
 - ii organisations, businesses and persons to whom items bearing the Infringing Marks were supplied; and
 - g provide a written undertaking that you have completed the requests a to e above.
- 15 Our client would prefer not to have to take legal action against you. However, in the absence of receipt of the above undertakings by 12pm **Thursday, 4 September 2008**, our client has advised that they will instruct us to take any necessary legal action including seeking an injunction to restrain your use of the Infringing Marks. Our client sincerely hopes that this course of action will not prove to be necessary.

Yours faithfully
Kensington Swan



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