

16 JUN 2016

**Briefing Note: 28<sup>th</sup> Māori Battalion Association; Protection of Trademark, Name and Emblem**

Date:	16 June 2016	Priority:	Low
To:	Hon Hekia Parata Minister of Education	CC:	
Security Level:	In Confidence	METIS No:	1005966
Approved by:	Apryll Parata, Deputy Secretary, Parents, Whānau and Communities Kim Shannon, Deputy Secretary, Office of the Minister of Education	DDI:	04 463 8845

**Purpose**

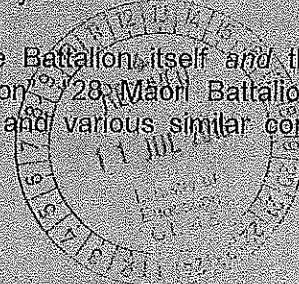
1. This Briefing Note tells you what we are doing to investigate how the Ngārimu VC and 28<sup>th</sup> (Māori) Battalion Memorial Scholarship Fund Board (the Board) will protect the trademark, name and emblem of the former 28<sup>th</sup> Māori Battalion (NZ) Association Incorporated (the Association).

**Key messages**

2. We are liaising with the Ministry for Culture and Heritage, which is responsible for the Act that protects the name and emblem of the former Association.
3. We have looked at how other names and emblems of cultural significance are protected: the poppy design of the Royal New Zealand Returned and Services' Association (RSA), the words ANZAC and Royal, and the Red Cross symbol as used by the NZ Red Cross Association.
4. Based on this information we have gathered our next step is to develop principles and operating procedures for consideration by the Board at its meeting on 25 August.

**Background**

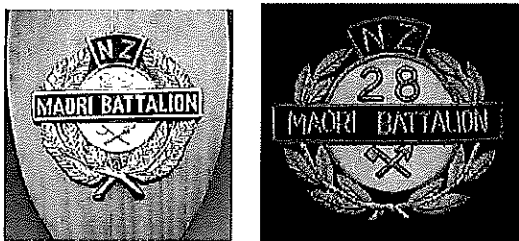
5. The Association assigned to the Board the trade mark in its emblem and all associated rights. Section 18A and Schedule 2A of the Flags, Emblems and Names Protection Act 1981 (the Act) refer.
6. There seems to be a slight difference between the *words* that are protected by section 18A of the Act, and the *emblems* protected by Schedule 2A.
  - o Section 18A protects both the name of the Battalion itself and that of the Association; for example "28<sup>th</sup> Māori Battalion"; "28<sup>th</sup> Māori Battalion"; "Māori Battalion"; "28<sup>th</sup> Māori Battalion Association" and various similar combinations including some in te reo Māori.



- o Schedule 2A on the other hand protects two emblems that specifically relate to the Association *only*. The emblems take the form of variations of the Battalion badge, with the word "Association" added. They are reproduced below.



- o Schedule 2A does not on the face of it protect the Battalion badge itself – ie without the word "Association". Two representations of the badge are shown below.



- o We will need to investigate if there is a legal reason for this difference, for example if the Battalion badge is protected by military convention. It may be a similar situation to the Red Cross symbol. As we understand it, the Red Cross itself is protected by the Geneva Conventions, not by NZ trade mark law. What NZ trade mark law protects is the Red Cross with the words "NZ Red Cross Association" added underneath.
7. In the Deed of Assignment the Association asked the Board to consider the following guidelines for requests to use the Association's emblem, name or related words:
    - o The intent of the trade mark and the Act is to protect the emblem and related words from connection with any trade or business ventures
    - o Whether there is a commemorative link between the proposed use and the 28<sup>th</sup> Māori Battalion
    - o The views of the 28<sup>th</sup> Māori Battalion community, including past decisions on same or similar uses, to the degree that these can be readily identified
    - o Whether the application is primarily for a charitable purpose
    - o Whether there is any commemorative, artistic and educational benefits for the proposed use
    - o Maintaining the legacy and honour of the 28<sup>th</sup> Māori Battalion and its members.
  8. The Ministry for Culture and Heritage (MCH) is responsible for enforcing the Act including enforcement and prosecution of offences. If the Association emblem was used without authorisation, and the Board wished to take enforcement action, MCH would do so in consultation with the Board. We have therefore discussed this project with MCH and will keep in touch generally.

9. We are attempting to find previous decisions of the Association where these can be ascertained, in order to remain consistent with previous practice.
10. We have looked at other examples of names and emblems of cultural significance are protected and how that operates: the poppy design of the RSA, the words ANZAC and Royal, and the Red Cross symbol as used by the NZ Red Cross Association.
11. From those examples we have identified some principles that are similar to those recommended by the Association, and some others that the Board may like to consider. The similar principles are:
  - o Keeping the emblem free from commercialisation; use for non-profit or charitable purposes only.
  - o A genuine commemorative link between the proposed use and the emblem or name.
  - o The views of the specific community who have close links to the name and emblem.
  - o Whether there are any educational benefits in the proposed use.
12. The following principles are additional and the Board may like to consider them:
  - o Respect for the name and emblem. This relates to how the name and emblem are used, for example size and placement of representation.
  - o Associated with the above principle is the ability for the Board to keep control of the name and emblem in use; that is, the ability of an applicant to use the name and emblem is limited to a specific purpose and usage.
  - o The proposed use is not offensive to public sentiment. This is a wider principle than the views of the 28<sup>th</sup> Māori Battalion community. In the case of the Battalion, 'public sentiment' could mean iwi most closely associated with each of the four companies, all Māori generally, and all New Zealanders.
  - o A principle relating to the qualities of the applicant. For example that the Board has confidence in the applicant. This could be related to the applicant's status in the community, and if an organisation, its size, longevity, and who are the people behind it.
  - o Discretion to consider any other matters the Board considers relevant and to consult with other parties if it sees fit. We consider it important that the Board retains flexibility to accept to reject applications even if other principles are met (or not).

#### Detection of unauthorised use and enforcement

13. None of the organisations we spoke to has a systematic way of scanning the environment for unauthorised use of their names and emblems. It is simply too big a task. Instead they rely on informal reporting by interested people and through publicity. Our initial view is that the Board is likely to be in the same position.

14. Where unauthorised use comes to the attention of the Board, it has several options:

- ask the user to stop by direct means, for example personal phone call, meeting or letter from the Board
- some form of public "naming and shaming"
- more formal approaches stopping short of court action, through the Ministry for Culture and Heritage or lawyers
- Court action.<sup>1</sup>

#### Next Steps

15. Our next steps will be to:

- firm up suggested principles for Board consideration
- develop suggested operating procedures, including:
  - whether some principles should carry more weight than others
  - what information applicants should be required to provide
- submit principles and operating procedures to the Board for consideration at its meeting on 25 August
- further develop procedures if the name and emblem are used without authorisation.

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