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RE: INTA Response to Pacific Island Forum Secretariat Regional Policy Consultation

The International Trademark Association (INTA) is a global association of trademark owners and professionals dedicated to supporting trademarks and related rights to foster consumer trust, economic growth and innovation. INTA has over 7,000 members, including trademark owners, professionals and academics, from more than 190 countries, including 136-member organizations in the 18 members of the Pacific Island Forum (PIF) (Australia, Cook Islands, Federated States of Micronesia, Fiji, French Polynesia, Kiribati, Nauru, New Caledonia New Zealand, Niue, Palau, Papua New Guinea, Republic of Marshall Islands, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu). INTA was founded in 1878 and is headquartered in New York City, with offices in Brussels, China, Chile, Singapore and Washington, D.C., with representatives in Geneva and Mumbai.

INTA is pleased to submit comments to the PIF Secretariat on this regional policy consultation. In September 2017, PIF Leaders endorsed The Blue Pacific as a new narrative for regional political action. The Blue Pacific aims to harness the shared ocean identity, geography and resources to develop policies that will drive positive change in the Pacific's sociocultural, political and economic development. INTA would like to highlight the importance of trademarks and brands as an essential pillar of commerce that will foster consumer confidence and protection, sustainable economic growth, unique cultural identity and cohesion, and innovation among PIF members states.

INTA's general policy recommendations are as follows:

- Develop a regional IPR Action Plan to include an emphasis on trademarks and brands;
- Build awareness of the value of trademarks and brands for SMEs;
- Build awareness of the danger of counterfeit goods for the general public;
- Build capacity in targeted jurisdictions for registration of trademarks, enforcement of trademark rights, and adjudication of trademark disputes;
- Prioritize harmonization, interoperability and legislative or regulatory improvements across the region; and
- Prioritize regional anticounterfeiting through regular training and information sharing among industry and enforcement officials including customs and police.

Background and Importance of Trademarks and Brands

INTA recognizes the significant efforts of PIF states to coordinate and improve intellectual property rights (IPR) protection in the Pacific. Notable recent awareness raising events occurred with partner countries

and international organizations such as WIPO.¹ Additionally, special emphasis has been placed on protecting important traditional knowledge.^{2 3} Also, national-level cooperation and training is taking place with international partners, such as trainings by WCO and China Customs in Fiji last year on IPR enforcement.⁴

Within this context, INTA stresses the importance of trademarks and brands for countries to incentivize creation of valuable intangible assets, such as trademarks, GIs, designs and related forms of intellectual property.

The value of trademarks to national economies should not be overlooked. A research report released by INTA in 2017 entitled *The Economic Contribution of Trademark-Intensive Industries to 5 ASEAN Economies*⁵ indicates that trademark-intensive industries generate increased employment across sectors, higher productivity per employee, and contributed to increased international trade.

The study focused on 5 countries in Asia, including developing, middle-income and developed countries. Specifically, across trademark-intensive industries within the five countries studied, workers' in trademark-intensive industries share of the total workforce ranged from 13% to 29% of total employment, direct contribution to GDP varied between 22% and 50%, and indirect contributions to GDP ranged from 40% to 60%. Findings from the study also revealed a strong "trademark effect," throughout the region, demonstrating an overall increase in value-added per worker of around 90%.

The value of trademarks and brands are dependent upon the ability to enforce these rights against infringers. The trade in counterfeit goods exploits vulnerable consumers and supports transnational crime. This is a priority for regional leaders, as incumbent Forum Chair, Samoa's Prime Minister Tuilaepa Sailele Malielegaoi said recently, "There is commitment to working together to ensure the security of our shared ocean geography, resources and ecosystems therein from unsustainable exploitation and illegal activities, including illegal fishing and transnational crime."⁶

Furthermore, Fiji Revenue and Customs Service Chief Executive Officer Visvanath Das at a recent IPR training said, "Criminals are taking advantage of globalization and loose border arrangements to disguise the scale and locations of their operations."⁷

INTA would also like to emphasize the need for countries to direct resources towards enforcement of trademark rights – without which, a registration would not be effectively utilized or valued. The negative impact of the trade in counterfeit goods cannot be understated. A recent report from Frontier Economics⁸, commissioned by INTA and the International Chamber of Commerce Business Action to Stop Counterfeiting and Piracy (ICC BASCAP), indicates that the global economic value of counterfeiting and piracy could reach US \$2.3 trillion by 2022. The report also estimates that counterfeiting and piracy will displace economic activity in investment, public fiscal losses and criminal enforcement, of nearly USD 1.9 trillion by 2022.

¹ <http://www.forumsec.org/pages.cfm/newsroom/in-news/2016-2/campaign-to-strengthen-intellectual-property-awareness.html>

² <http://www.forumsec.org/resources/uploads/attachments/documents/Traditional%20Knowledge%20Action%20Plan%202009.pdf>

³ http://www.wipo.int/edocs/mdocs/tk/en/wipo_iptk_ge_15/wipo_iptk_ge_15_presentation_mere_falamaka.pdf

⁴ <http://fijisun.com.fj/2017/12/06/experts-train-on-counterfeiting-and-piracy/>

⁵ https://www.inta.org/INTABulletin/Pages/Impact_Studies_Committee_Update_7216.aspx ,

<https://www.nst.com.my/business/2017/09/279238/businesses-using-trademarks-contribute-30-pct-malaysias-economy>

⁶ <http://www.forumsec.org/pages.cfm/newsroom/speeches/2017/opening-address-by-hon-prime-minister-tuilaepa-sailele-malielegaoi-of-3rd-republic-of-korea-pacific-forum-foreign-ministers-meeting.html>

⁷ <http://fijisun.com.fj/2017/12/06/experts-train-on-counterfeiting-and-piracy/>

⁸ The Economic Impacts of Counterfeiting and Piracy (2017). <http://www.inta.org/Communications/Pages/Impact-Studies.aspx>

Key Issues and Proposed Solutions

Awareness of trademarks and brands

As part of regional awareness, INTA encourages the PIF to develop a regional IPR Action Plan, to identify key areas for further advancement with clear, achievable goals within a specified time frame. This plan can be adjusted to accommodate the varying levels of development across PIF members.

Trademarks are unique as an intellectual property in that they offer immediate value to domestic SMEs, unlike other forms of intellectual property protection. However, training on the best way to utilize this value is necessary, though the gains should not be overlooked, even for Least Developed Countries (LDC). The United Nations Food and Agriculture Organization found that in the value of Cambodia's Kampot Pepper, a geographical indication, rose by over 300% from 2009 to 2015.⁹ Producers of this agricultural product reaped the benefits of this branding directly.

INTA members cite instances of successfully working with communities in Pacific island nations to successfully commercialize indigenous practices and products in sustainable and mutually beneficial ways that benefit the local community.

The trade in counterfeit goods often takes advantage of consumers unaware of the risks. INTA recommends that the Forum Secretariat encourage national-level public awareness campaigns, as well as develop regional best-practices for continuing these campaigns. We also encourage PIF states to take advantage of existing materials and efforts.

Improvement and Harmonization of Registration and Enforcement of Trademarks

We note that "one size fits all" is not an appropriate or productive strategy given the diversity of the region and the stakeholders involved. We propose that "harmonization" does not mean "homogenization", but rather the effort to create effective and efficient interoperability of systems that are transparent, predictable and consistent for the public, rightsholders and regulators.

INTA encourages PIF states to create dedicated trademark offices with specialized staff where financially and logistically possible given trademark registration volumes in the country. Resources should be targeted to those PIF states that demonstrate the greatest need for assistance with developing an effective trademark registration and enforcement regimes. Special assistance and resources should be concentrated on Smaller Island States (SIS).

Accordingly, to remove barriers to cross-border business, trademark registrations should be cost effective and harmonized to the greatest extent possible. As an example, INTA encourages countries, according to INTA's Model Trademark Law Guidelines, to accede to international treaties such as the WTO-TRIPS (1994), The Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (1989) and The Singapore Treaty on the Law of Trademarks (2006).

Training and Coordination of Enforcement Efforts

The other side of registering trademark rights is the ability to enforce those rights against parties that are misappropriating those rights, including importantly against counterfeiters who endanger public health and trust in the marketplace.

⁹ Kampot Pepper Association and UN FAO Presentation at AIPA Conference in Manila, April 24, 2017.

INTA encourages industry, government and non-government organizations to frequently hold trainings of customs, police and other enforcement officials to identify counterfeit products, and share information on trends in anticounterfeiting, including the use of technology to distribute counterfeits, such as through the online of counterfeit goods.

INTA also recommends that customs and enforcement officials in PIF states gather on a regular basis to share information and best practices. Cooperation with industry will be an important facet of this training and information sharing, as companies are best placed to train officials on product identification and provide intelligence on the trade in counterfeit goods globally. Practical tools should be implemented consistently across the region, such as the recordal of trademarks rights with customs agencies.

A laudable goal for the region would be the establishment of a regional IPR enforcement coordination center. The center would be a means for enforcement officials and industry to share practical, timely and relevant information on cross border trade in counterfeit goods. This information sharing center would also be a center for linking to jurisdictions outside PIF states, namely major trading partners, such as China.

As stated above, special assistance and resources should be concentrated on Smaller Island States (SIS) to build capacity on enforcement efforts.

In conclusion, INTA would like to offer our network and experience to the Pacific Island Forum and member states thereof, on the issues outlined above. INTA has extensive research, experience and materials over many decades working with national governments and regional organizations (such as the Association of Southeast Asian Nations, the European Community, African Regional Intellectual Property Organization, and Organisation Africaine de la Propriété Intellectuelle). Please see a selection of tools and resources below:

- INTA's Model Trademark Law Guidelines, and related committees provide an exhaustive examination of ideal trademark legislation based on the unique international perspective of INTA's membership: <http://www.inta.org/Advocacy/Pages/ModelLawsandGuidelines.aspx> .
- Numerous INTA committees offer training to IP Offices on implementing laws and best practices.
- INTA's Customs Connection is an online training webinar for customs and enforcement officials, grouped by industry to provide low-cost, flexible and efficient training on how to identify fake goods: <https://www.inta.org/Programs/Pages/2016CustomsConnection.aspx>
- INTA's Indigenous Rights Committee provides global views and best practices on the intersection between brands and indigenous communities' interests in protective cultural heritage.
- INTA offers a public awareness campaign for teenagers in schools, UNREAL – which has successfully reached 8000 students in 2017 across the globe.¹⁰

This submission was drafted by the Legislation and Regulation committee and staff. For further information or inquiries, please contact Seth Hays, Chief Representative, Asia-Pacific, at shays@inta.org.



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¹⁰ <http://www.inta.org/Advocacy/Pages/UnrealCampaign.aspx>

International Trademark Association