

# APPENDICES

## Table of Contents

Verbatim Report.....	3
Written Responses.....	74
Additional Information.....	119
Standing Committee on Foreign Affairs and Defence Site Visitation.....	141

# Verbatim Report

# Siwatibau and Sloan Lawyers

# **[VERBATIM REPORT]**

## **STANDING COMMITTEE ON FOREIGN AFFAIRS AND DEFENCE**

### **BILL**

#### **Trademarks (Amendment) Bill 2025**

**ENTITY:** Siwatibau and Sloan Lawyers  
**VENUE:** Big Committee Room (East Wing)  
**DATE:** Monday, 1<sup>st</sup> September, 2025

**VERBATIM REPORT OF THE MEETING OF THE STANDING COMMITTEE ON FOREIGN AFFAIRS AND DEFENCE HELD AT THE BIG COMMITTEE ROOM, PARLIAMENT PRECINCTS, GOVERNMENT BUILDINGS ON MONDAY, 1<sup>ST</sup> SEPTEMBER, 2025, AT 09.02 A.M.**

**Present**

1. Hon. L.S. Qereqeretabua - Chairperson
2. Hon. P.K. Ravunawa - Member
3. Hon. R.R. Sharma - Member
4. Hon. V. Lal - Member

**Submittee: Siwatibau and Sloan Lawyers**

Mr. Aminiasi Vulaono

-----

-----

MADAM CHAIRPERSON.- Honourable Members and members of the public who are watching this morning, the Secretariat and the viewers, ladies and gentlemen; a very good morning to you all. It is a pleasure to welcome everyone, especially you viewers, who are watching this proceeding.

Pursuant to the Standing Orders of Parliament, specifically Standing Order 111, all Committee meetings are to be open to the public, so this submission is open to the public and to members of the media. Any sensitive information concerning this submission that cannot be disclosed in public, can be provided to the Committee, either in private or in writing. But we do note that this will only be allowed in a few very specific circumstances, and they are for national security matters, third party confidential information, personnel or human resource matters, and Committee deliberation and development of Committee recommendations and reports.

I just wish to remind honourable members and our invited submittee that all comments and questions are to be addressed through me, the Chair, and for viewers watching this live on *Facebook*, we welcome your questions as well, and you can ask them in the comments below, and only relevant questions will be considered by the Committee.

Please, note that if there are any questions from the members of the Committee, or any interjections, we will wait until the end of your submission to ask our questions. This is a parliamentary meeting, therefore, all information gathered is covered under the Parliamentary Powers and Privileges Act and the Standing Orders of Parliament. Please,

bear in mind that we will not condone any slander or libel of any sort, and any information brought before this Committee should be based on facts.

In terms of other protocols of this Committee meeting, please, be advised that any movement within the meeting room is restricted, and we ask that you put your mobile phones onto vibrate mode.

[Introduction of Members of the Committee]

The Committee is having an oral submission from Siwatibau & Sloan Lawyers in relation to the Trademarks (Amendment) Bill 2025 (Bill No. 28 of 2025), to amend the Trademarks Act 2021. First, I welcome our Submittee who is representing Siwatibau & Sloan Lawyers, Mr. Aminiasi Vulaono, and we can start with your submission, Mr. Vulaono. Thank you for the answers to the questions so far.

MR. A. VULAONO.- Thank you, Madam Chairperson, and good morning to you, honourable Members. First of all, I would like to thank the Committee for the invitation to our firm, and I hope that my submission this morning will do justice to such an invitation. I will go straight into my submission.

I have read the Bill and at the end of the day, it is an amendment Bill. It is not a full-length proposed law so, in summary, I think it is trying to propose five different changes to the Act that is yet to commence.

Generally, our view is, we do not have issues with the proposals for the amendments, except, perhaps, the first and the last which are related. If we can just go through it, Madam Chairperson and honourable Members, the first one is with regards to a proposal to widen what may not be accepted to be registered as a trademark. I think this amendment is to section 12 of the Act.

If we read the current Act, there are only two restrictions under those provisions - one is the word 'Fiji', which cannot be used unless there is an approval from the Minister; and any corporate body's name or business name registered under the Companies Act. Those are the two existing ones.

This amendment wants to expand that. It is quite substantial, I must say, to include any *iTaukei* word, simple phrase, Fiji, Hindi, Rotuman, religious communal symbol and any other term likely to mislead or falsely suggest association with Fiji indigenous communities.

While we understand the need, perhaps, to protect words that might be of cultural significance, the way the amendment is proposed, I would suggest a little bit of caution, simply because if we read the current section 12 further down, which is the power of the minister, that is quite a great power for the minister just to determine that without any cross-section, et cetera, and the powers of the minister further down in section 13, cannot be appealed in any court of law. So, whatever he says is absolute.

I am just thinking, generally, that a language cannot be barred from being trademarked, otherwise, we would not have any trademark in the English word. In that sense, what we have suggested is section 12, and if I remember correctly, there is a similar section in New Zealand where it involves the Maori language. So, instead of it being in the sole discretionary power of the minister, there is actually a Maori Language Board that looks into such applications that might be considered sensitive to the population of Maori, and it is from that Board that considers whether or not to be accepted as a trademark. In this case, I do not see any such board being formed under this amendment.

It is not only the iTaukei community, but also the Rotuman and the religious groups, so the amendment, as we have stated, does not require the minister to get any expert advice from outside. It is in his sole discretion, whether he may or may not, and I do not think, with utmost respect, a minister may be fully aware of every sector of every group.

I would think that as a minister, you should be required to get opinions from different groups - from the leading religious group of Islam or Hindu or the iTaukei Affairs Board, for example. I think those should be included in that proposed amendment to help the minister because, again, at the end of the day, his decision cannot be appealed, and it is absolute. You can have a lot of businesses, local businesses, for example, that might be affected by that and if this Bill is to protect them, I would think that we encourage them to use our local symbol for their trademark. Obviously, if it does not offend anyone, but in this case, that might actually discourage our local businesses from going in that direction.

Legally as well, this amendment does not state the process of how we are going to obtain this approval. Is it an internal process between the commissioner and the minister, or is it us, on behalf of a client, that has to obtain the approval from the minister? Currently, there is a process under the current Act which we have done, and we are thankful to the Ministry of Justice that approval was obtained in both scenario whereby before we file applications, we apply first to the minister for his approval for the use of the word, 'Fiji'. In both instances, it was granted because of the fact that our clients represent the national interest.

However, that process is not in this amendment. Perhaps, a bit of clarity is required whether we should incur the cost of obtaining this approval or is it an internal system between the registry and the Ministry because every application comes with a cost and time for our clients. Obviously, we would like that - its internal structure to save cost, especially for small businesses, et cetera, that may need to come under this amendment.

Secondly, in terms of process, I have noticed that the minister's decision is final and when the minister makes the decision, he can base it on a few factors, whether it is offensive and whether it complies with written laws, et cetera. Once he/she approves it, the application process proceeds as normal. What happens if, for example, the minister has approved that it is not offensive to the community, but when the application comes for public opposition, the community actually opposes it? Whose decision supersedes here, is it the minister's opposition or the fact that the community themselves is opposing because there will be a clash contrary?

It is not clear who supersedes because while the minister, perhaps, lack of advice has approved it, it cannot be appealed, and it is final. But then, it goes to opposition and a member of iTaukei in the village or somewhere actually opposes it, what happens in those cases? Will the minister be able to admit that he was wrong, and he is making his decision, et cetera? That is not in the amendment as to who supersedes the other, if that happens.

As I have stated, my submission is in page 2, I think. Those are the issues that we see that might arise out of the amendment. If we can read, it says, and I quote:

“The proposed amendment is broadly defined, ambiguous and vague for a single individual, the Minister, to decide without his decision being challenged or appealed in a Court of Law.”

Again, I am saying it is vague because the amendment is, “any word, any symbol whatsoever”, and considering the makeup of a community, et cetera, one section may consider it offensive, the other section does not. How do we deal with that? I think that is one of the main difficulties when it comes to trademark, as far as traditional knowledge or traditional symbols are concerned, that these are practical difficulties that the lawmakers may face.

If I may continue, I quote:

“The Minister is not required under section 12 to obtain expert advice from a thirdparty regarding issues of cultural, spiritual or historical significance. Instead, it allows the Minister to make decisions based on his own opinion, knowledge or with utmost respect, lack thereof, of any particular subject.”

This is problematic in our opinion. As I have stated, the possibility of a clash between a decision of the Minister and then a subsequent opposition, because we have to remember that for applications we are filing, the registry examines it and if the registry approves it, we then advertise it for public opposition for three months. So, this concern from the minister is the first part.

If it is all obtained, then we give it to the newspaper and Government Gazette, which then invites members of the public to oppose. That is what I am saying, at that later stage, if members of

the community actually oppose it, does the decision of the minister

still stand or we rely on the members of the public? There is a certain clash there. Perhaps, the amendment should include some paragraphs of how to address that issue.

I think this was the issue that occurred a few years ago with regards to the Fiji Airways registration of the *masi* motif. It, obviously, created a lot of issues but by law, I believe they were within their rights to raise their expression for the overseas market, to protect its local use. Over the years, I believe we can confidently say that no local producers of *masi* have been affected by those registrations. That would be an example, but for that, the Clause is much clearer whereas in here, again, the possibility of a clash between the Minister and members of the community.

Secondly, given the commercial nature of the trademark, there should be timely registration. One thing we always state about trademark is that it has to do with businesses. Before most of our clients enter the market commercially, they would like to have their trademark all set up because most of the time when we talk about law, we forget the fact that there is a big commercial aspect to it in terms of Intellectual Property (IP). So, with these things, there is no time period that is stated as to when the minister should be able to give this. I would like to say, “as quickly as possible”, to make this decision, but knowing the ministers’ schedule or timetable, they are quite busy individuals, just for them to come down, give you one letter and sign off on it, I am not too sure when will they get that time. Sometimes, we will just have to wait, and from experience, we had to wait for a long time for us to get their approval.

Again, in section 12, a minister may approve it, but I do not see him anywhere, providing reasons for his decision. He can just simply write a letter, which we have received a few times, with a simple 'yes' or a simple 'no', but it will be nice to also include that, that he should provide reasons and, perhaps, materials that he relied on as to why he refused the application.

The last one is that the proposed amendment would, obviously, affect a lot of local companies or businesses, especially we have a lot of small businesses who love their marks to be identified with Fiji. Madam Chairperson, the issue that this might provoke is that they might move away, and we have a lot of local designers, fashion designers and artisans that, under this amendment, I am not too sure whether they will be able to do so.

Perhaps, to make it easier, I will deal with this amendment together with the very last amendment. The last amendment is simply saying that if a current registration right now has to be renewed under the new Act, it might be refused, if it does not comply with the iTaukei under this amendment. So, that is problematic because our current Act is 1933, so you can see how far back some of these rights to trademarks have been, and they have built reputation around it. They have built brand, and they have invested in it.

However, under this new amendment, they risk their mark not being renewed because of this amendment. Now, they might be forced to either reinvent a new trademark altogether, even though all these years we have known them for who they are, so that is another problematic issue. Perhaps, not moving forward for new registration but it is this old registration that have existed.

I have actually registered a few marks for small registered companies that use iTaukei and some are Rotuman languages. How will those come under this Act? You are looking at them. Perhaps, they might have to change their trademark, which I think might be a little bit unfair, especially when they have been operating without any public protest, which I am not aware of. So, I am not too sure why then, under this, that they should be refused.

A recommendation that I have stated there is, as far as those renewals or amendments are concerned, start with the new registration, do not touch the current registration. When they come to renew, automatic renewal, and not to come under the requirements of this amendment. Again, it is like you are about to turn 50 years old and you are forced to change your name. All these years, you have been alive with your birth name, and all of a sudden, a law changed or have to change because

‘Vulaono’ does not suit the new law - it does not make sense to me. Even though, throughout the years, I have built a reputation as Mr. Vulaono, everyone knows me so long for that, but I have to change it now. So, those are what those businesses will face under this proposed amendment. I think we should rethink about that.

With regards to the recommendation for that, perhaps, the writers of this law have their reasons for that, but I think the law, in itself, has already addressed what this amendment may want to do. For example, in section 12, it prohibits the commissioner from raising anything that might be offensive. That is already there, and it is also in the current law that we already have, and we have not faced any problems so far. I think that is already addressed in the current law.

Additionally, the current law provides a secondary layer of protection, which is the opposition of the public. Not only the commissioner has the discretion, but then the public also has the opportunity to oppose. That is already there.

With regards to the amendment, it is only expanding it and giving the sole decision to one particular person, which is the minister, and it cannot be appealed, so it is too rigid. It is set in stone, especially that part that cannot be appealed in any Court of Law which, I think, any law should be able to be appealed but, in this case, it is not.

If we are to go ahead with this amendment as stated there, “an applicant should be provided with the opportunity...”, what we do is, before we apply, we get consent from the iTaukei Affairs Board and we apply it in our application. In here, it does not say that but the application, I think, should be allowed to provide that, and submit in their application for the Minister to also consider that. If the iTaukei Affairs Board does not oppose it, I am not too sure what reason a minister would want to oppose it if it is based on ethnic or iTaukei language. That, perhaps, is something that needs to be included to be part of the application. That is in regard to section 12.

Lastly, we propose the decision of the minister to be subject to an appeal. I think there needs to be a little bit more caution with it, a little bit more rethink about it because our main concern is that an absolute power and sole discretion is given to one person without any review whatsoever.

The second amendment is with regards to section 107 of the Act. We do not have much opposition to that, it is basically the introduction of an interim measure which is something that is already allowed in the High Court – the interim injunction. You come in to try to stop something, while your main case is going on, so that you do not lose out on

someone disposing of, hiding the goods, et cetera, so that is what this section is for. It is normal, it is available already in the High Court, so we do not have much issue with this proposed amendment, and I think it is actually helpful. I have not included here, but I have just read it this morning which is with regards to part of the amendment. That amendment is Clause (3)(8) on page 3 of the Bill.

Everything is alright, we do not have any comment on it. It reads, and I quote:

“A respondent who has suffered damage as a result of an order made under this section, which is subsequently discharged or found to be unjustified, is entitled to compensation from the applicant, including reasonable legal costs and expenses...”

Again, I think this is already available in the normal way an injunction works, but in terms of trademark, we have to be mindful of the nature of trademark owners in future, most of which are small businesses.

This amendment basically says, “If you come to court, if you fail, you will compensate the other party substantially”, and it is not limited to just cost. For example, if a court case goes on for four years and the interim measure is in place and they suffered business for four years, is that small business going to compensate for the loss of business, for example, with Vinod Patel for four years? That is quite a substantial compensation which one - might affect the business or worse, they would not even want to come to court, even though they might have a valid claim. And in court, one party loses, one party wins and sometimes, we really think that our case is strong, but we still lose. So, in that case, do they still have to compensate the losing party entirely? To me, that section seems to suggest that.

Sometimes, some court cases last long in court, not because of any party, but the schedule of the court. They are busy. There are court schedules, so just because of that, does the small business still has to compensate for the loss of a big party through that? That is what I was just thinking of this morning when I was reading it.

Again, I have represented a lot of trademark owners who are just start-ups, who actually came up with genuine ideas and they have actually suffered in the hands of bigger companies, whereby they did not have outreach, resources, et cetera, and this kind of subsection might actually discourage them further, which is something that we should consider.

If you just go further up which is Subclause (5), it is already addressed there. It says, and I quote:

“The court may require the applicant to provide security, an undertaking, or other appropriate assurance...

Again, this is normal for interim injunction. So, is Subclause (5) and Subclause (8) meaning the same, or is Subclause (5) different whereby they have to provide security and in Subclause (8), in addition to security, they have to pay compensation if they lose? For any business, that is a huge ask. Do we want to encourage businesses to actually use the Trademarks Act and or we are pushing them away? Perhaps, take away Clause 8 because Clause 5 is normal and already how court cases work. We did not have any much comment in our written submission on that one, so I thought I would share that with you this morning.

The third amendment on section 110, we absolutely have no issue with that. It is good to define what is the commercial scale that when someone can act on it, because we can have someone just producing something outside of your house but does not necessarily mean that it is in commercial scale.

Section 131, we do not have much say in that. I think that section deals more with FRCS and the way they operate. I believe the only change there is with regards to timeframe. It is changing from 20 days to seven days. From what I understand about this provision, if I am an owner of a trademark, I give a notice to FRCS that there is a good sitting in the wharf that is infringing on my trademark, FRCS will issue a notice to whoever brought that goods in. Under the current Act, that person has 20 days to come in and oppose it. If they do not, FRCS has the power to destroy it, dispose of the goods, et cetera, so the 20 days is changing to seven days.

I have just stated ‘days’ because of the nature of what FRCS will do. Is seven days really enough? Perhaps, increase it a little bit to 14 days? The reason is because FRCS can destroy it without even the trademark owner requesting it to be destroyed, so it is at FRCS’s own discretion. For seven days, and we know in Fiji whereby an owner is a slow talker or in Labasa, who may not be able to come down to Suva to see the consignment. I think seven days might be short for this. Perhaps, 20 days is also a long time because of the storage cost, et cetera. Maybe, a medium point of 14 days might be better. I am sure the Gounder Shipping cannot make a trip down quickly from Labasa within that period of time. That is the only thing. Perhaps, increase the days from seven days to 10 days or 14 days.

Then fourth amendment is the one that we have initially addressed because this proposed amendment makes some trademarks' current registration not eligible for renewal under the new Act because of the new requirements and if it is offensive to the *iTaukei* or any of the religion or Rotuman population. Again, I would strongly suggest, unless there is a better reason for it against these provisions, allow the trademark owners under the current Trademarks Act to renew their trademark without many issues, that they should not come under the same requirement under this new Act. Again, they have built their reputation and their brand over the years under the current Act, and it would be unfair for them to now deregister, change their trademark or something of that sort. That is our recommendation for that.

Our recommendation is, "submission should only apply to new registrations. It should not apply to any renewal from the Trademarks Act 1933. Section 1 of the new Act should only apply to new application for registration, moving forward, not so much the renewals of trademarks from the old Act.

There are only five other amendments here and we do not usually come forward to submit on amendment Bills, but we are thankful to the Committee that they have considered this as well. Just another point that I have stayed there is that while the amendment has touched on section 173, which is totally not relevant or not part of the amendment. It states that all registration from the old Act will be renewed, but it states now that as far as section 12, it may not be renewed, but it does not deal with what happens to the current registration that are based on the UK, because under the current law, you can either file a national application or one based on the UK registration.

It does not state whether those going to be renewed, or they cannot. Obviously, they cannot because we are moving away from the UK registration, but the wording of the current Act does not say that. It just says, "all registrations shall be renewed", which in my reading, that includes the UK but does not make sense if it includes the UK. It is just that, perhaps, a little bit of confusion and can be tidied up a bit by just simply saying, "all UK or part three registration are no longer renewed".

I think in Tonga, if you remember correctly, they did away with everything and they just required everyone to re-register. I think it was unfair, but that was what they did.

That was just the final point that I thought I would make but since we are touching on Clause

173 regarding who can be renewed or not, but the UK registration is not being mentioned there, which I think should. All in all, those are our minor submissions on this, which I hope are of use to the Committee. If there are any questions, I am more than happy to answer.

Just a disclaimer by stating that the Committee is there. In overseas they do have associations of registered trademark attorneys and registered patent attorneys. I have to disclaim that I am not a registered trademark attorney, and I do not think anyone in Fiji is because we do not have that association. My submission is based solely on the experiences that I have had under the current law that we have, and we have been doing filing extensively under that law, so our submission this morning is just based on our experience and the reading of the law itself.

The general comment is that we are looking forward to this new Act. I think it is definitely time that we update our law, and I think our Trademarks Act, apart from the Solomons, Tuvalu and Kiribati, in terms of such a modern concept in intellectual property, our current law is one of the oldest - 1933. We have changed our Constitution a few times, but we have not changed this law. It has been a frustrating exercise dealing with this old Act simply because it is a little difficult when you consider goods of today. For example, you can only register for goods, you cannot register for services, so places like McDonalds, the Banks, they cannot register their trademark because they are services.

I am glad that in this new law, we can finally come up to some level with the rest of the world. I think only Fiji, Tuvalu, Kiribati and the Solomons are still using our pre-independence law with regards to intellectual property, and I thank the Committee for its effort. Perhaps, if you can just give everyone five months' notice or a year notice of when that might come in, unlike the Companies Act a few years ago, whereby we woke up one morning and the Act was in force. That would be appropriate because, again, like trademark and others, these things are quite technical, et cetera. Even for us, local practitioners, we might need assistance in updating ourselves with the law and professional training from WIPO, et cetera.

I understand the Registry is also doing its training, but apart from the Registry, it is also us who represent the trademark owners who might actually need training under the requirements of this Act. Otherwise, it is just a go by experience again, which might not be the best way to go, especially for clients who are incurring costs on a daily basis. That is our submission, Madam Chairperson and honourable Members.

MADAM CHAIRPERSON.- Thank you very much, Mr. Vulaono. I cannot begin to tell you just how valuable your recommendations/reflections have been for us as we go through

this very important amendment Bill. Thank you for all your thoughts. I can see the cogs turning in everyone's brains right now, as we go toward reporting back to Parliament. As you know, we have been given until the next sitting of Parliament to go back to Parliament with a report on this amendment Bill. So at this time, thank you.

I will leave the floor open to our Members to ask any questions that they may have.

HON. V. LAL.- Thank you, Madam Chairperson. Through you, in regard to the use of trademarks – I am just trying to familiarize myself. As a lawyer, are there a lot of disputes or I should say disagreements in regard to the use of trademarks amongst the different clients you have?

MR. A. VULAONO.- Fiji, I must say, compared to other countries, may not be so, but upon search of PacLII, there is quite a few cases, especially with regards to passing off - a client who has what you call a well-known brand and then there is a company that comes tries to buy off them. So, there is a lot of passing off whereby brand owners try and stop another one from using something similar to theirs. There is a few court cases that have done that.

In terms of the law with regards to Fiji, it is quite conformed, it is well developed with regards to the rest of the Commonwealth because for passing off, it is not based on the Act, it is based on common laws, which is the court system.

With regards to dispute under the Trademarks Act, we have filed numerous applications that have been opposed at that time whereby I mentioned the three months opposition period. So, a lot of opposition have been filed against our client and for us, against other applications, but that is another concern for this Act - the Trademarks Act has a process for opposition hearings.

I think there has not been any opposition proceedings been done for the last 15 years or 20 years, so all the opposition that we file simply remain pending. Those are big brands, and we have to go back and explain to our clients, “I am sorry, but yes, it has been proposed, but you got nothing else to do now.” They say, “What about the decision?” We said, “There is no tribunal for it.”

I see under the new Act, there is opposition period. I hope that that will be improved under the new Act and expertise from WIPO because under the current Act, which is old and smaller, those things are still not done. This new Act is much substantial, much larger in terms of requirements of the Registry.

In 2021, when we submitted against the Bill, we made submission whereby, “yes, there is a need to develop our laws, but we really need to do it cautiously to make sure that our Registry is given the resources that it needs, the tribunal that it needs for its obligations under the Act if those obligations are not being carried out. So, disputes under trademarks just remain pending, it does not go forth.

With regards to infringement of current trademarks, yes, we do have options to go to court. Again, it also comes down to injunction, which is now being codified with this amendment - the injunction whereby to stop someone from using your trademark and to deliver goods to you that are counterfeit or are in breach.

As far as what we have done, we have done numerous cases that have not actually reached court. But what we have done is just a simple cease and desist notice, which is the step one. Surprisingly, those cease and desist have worked tremendously well and have saved cost to our clients, which just involves us writing a notice to the other party and saying, “we own this trademark. We have noticed that you are using it. Stop it now, or we go to court.” I was grateful that they complied with those notices.

I think no one disputes the fact that if a trademark is forced, they will not argue against it, because how else can you argue when we are the owners of the trademark, telling you that we are representing the owners of the trademark. ‘

Yes, for those disputes, we are glad to report that they already cease there, and we have done numerous, including the ones where we actually have to go to supermarkets to deliver for them, to give us T-shirts with the brand logo of well-known sports brands. So, that does happen.

As far as the court is concerned, yes, there are legal avenues that the court are helpful in, just that those under the Trademarks Act has not really been working for a few times now. So, I do not know what will happen to those opposition, whether they will ever be heard, it does not say anything because the transition clause says, whatever was done there will continue until it needs to be renewed in this new Act. It does not say about those oppositions that have been pending. I have filed oppositions that are more than 10 years ago that have still not been heard and those are for big brand owners.

I think even the brand owners have, sort of, lost hope and have not really come back. So, if we are to encourage trade investment, brand owners really need to be assured that their brands will be protected when it is needed. There are mechanisms in place for them to exercise their right. So that is one of the main things, I think.

I have confidence in the Registry that we will have the necessary processes and equipment in place for the requirements of the new Act.

HON. V. LAL.- Through you, Madam Chairperson, in the new Act, is there provision for a tribunal?

MR. A. VULAONO.- If I remember correctly, there is, and what I forgot to mention is that the new Act may not, but where it is normally at as well is in the regulation. I have not seen any regulation that accompanies this Act, and I do not know how you can implement this Act without the regulations. Perhaps, the regulation might also shed some light into that because regulations come down with processes, details of cost, et cetera. I have not seen any regulation and I am not too sure whether there is a regulation.

There are two countries in the Pacific that made the mistake of commencing the Act without any regulations, and they did not have any forms to the point whereby we created our own forms until a regulation came into place. Even for the fees, we had to do a certain application. "I do not see your fees. What is the fees?" Two weeks later, all of a sudden, a fee appears, but there was no regulation.

I think the regulation might answer your question. It would also be nice if parties also comment on regulation if and when it is available because the current trademarks bring up the regulation and this one does not have regulation.

The regulation will have that which I have not seen in section 171. The Minister may make regulation, but we have not seen a regulation yet. As all regulations are essential for any action, so I am assuming that before this comes into place, there is a regulation in place before that happens.

HON. V. LAL.- Perhaps, that question should be reserved for the Solicitor-General to answer because they are the ones who do the regulations.

MR. A. VULAONO.- Yes, the Minister may prescribe the regulation in section 170 through the Minister for Justice. Well, the Attorney-General's Office comes under him as his legal adviser, so they are the appropriate office to address that.

MADAM CHAIRPERSON.- Thank you, Mr. Vulaono. We will definitely take that under advisement and we will take that approach. Thank you. Honourable. Do you have any questions?

HON. P.K. RAVUNAWA.- Thank you, Mr. Vulaono, for presenting a very comprehensive elaboration on the amendments to the Bill that is before the Committee and before Parliament. We were told that Siwatibau and Sloan Lawyers are one of the law firms that are quite interested in mitigating all these trademark issues in our country. And we are thankful for your passion and the experience that your firm has been doing so far in accommodating the needs of the people who are affected by this Bill.

The Bill initially came into force in 1933 and was amended in 2021. However, it did not really move on as there was no organisation structure, there was no prescribed regulations, as you have mentioned, and the operationalisation of the Office of the Registry of Trademarks Act was very vague, given in front of the Committee this morning. It is something that we just take for granted over the years, but listening to your presentation this morning, it is something that has brought a lot of light into our ignorance of the Trademarks Act and the exercise altogether.

You are hoping that the seven amendments that are before us will not be applied retrospectively, affecting those who are already in the business, however, you have provided us with a good recommendation. You also mentioned that the amendments before us are, in a way, kind of poorly worded.

Therefore, if there is any other point that you would love to present to the Committee, perhaps in writing to the Secretariat, to improve the wording of the Bill so that it fits the purpose and the objective that the Office of the Attorney-General has presented to us. I know it is to do with the international standard of trademarks and complying with the other provisions that are exercised internationally.

You have given some good recommendations to the Committee which are very important and enlightening for me personally. You have, in fact, given us a broad perspective to deal with the Office of the Attorney-General and the drafters of the Bill in order to put in measures that are critical to make these amendments workable and improve from the previous 2021 amendment and also the original Trademarks Act 1933. I may seek your assistance if you can help us further in making our recommendation to Parliament on the wording of the Bill that is before us. Thank you, Madam Chairperson.

MR. A. VULAONO.- Madam Chairperson and honourable Members, we do not have to have general opposition to the amendments, perhaps, just a bit of tidying up on the sides and more clarification on certain aspects of the amendments. My concern in the first amendment is that it leaves a lot of room for interpretation on whether that works for the application of trademark, I am not too sure, but it is in the discretion of the minister. What is necessary is just a requirement, that there are other bodies that have a say to assist the minister in that, and to ensure that given their expert advice, will also be considered because the way it is worded, it is just a sole discretion of the minister, with or without any consideration from any expert or on the ground type of organisation.

The second one was with regards to the compensation. There is a high requirement, but just to clarify whether the proposed section 5 includes section 8, or there are two different heads of compensation? If they are two different ones, I do not think it is justified because currently, in court, one of the main things that occurs is indemnity cost. A losing party is forced to pay the legal fees, and it is understandable. It is just that word 'compensation' which is quite a large wording, especially because, as stated, this Act is not only for big businesses, but also for small businesses and sole traders who may lose hope in trying to exercise their right because of the high risk that is going to be put on them.

Generally, yes, I do agree, but the only other correction that I do not agree with is the last one, which is the renewal, whereby those who have been registered under the new Act now have to satisfy the minister, under the new Act, as to why they have to be renewed again, even though they may have been using that mark and building their reputation for decades.

I do not agree with that because if it was offensive, if it was against cultural norms, we would have heard about it by now. Obviously, we have not, so that is something I may not agree with it.

HON. P.K. RAVUNAWA.- Thank you, Madam Chairperson. I did ask the Deputy SolicitorGeneral who presented before the Committee last week about the sound, smell and taste to be part of this trademark. Through your experience, how feasible is that?

MR. A. VULAONO.- That is one of the reasons why I said five months' notice for them to give a heads up to us because at the end of the day, we have been practicing under the 1933 Act that does not accept sounds, design, et cetera, as trademarks. So, all of these are new to us as well.

I am glad that WIPO is assisting the State because those are the right expertise that we may actually get training from. Other countries have allowed sounds, and it is now normal practice in other jurisdiction, but as far as we are concerned, none of us have actually had any experience in it. I can just say that it will be an interesting one, especially when it comes to cultural sounds, et cetera, because we already have Copyright Act 1999 which covers songs, works of art, et cetera. What is it that we can cover here that is not already covered in the Copyright Act 1999?

Again, I have not had any experience in that. We do hope that invitation to trainings, et cetera, for private practitioners and brand owners alike, is done before the Act comes in. That will be very helpful to the private sector because I understand that the training is limited at the moment to the registries and the official government, but we have not had any trainings for us who will actually be using this Act, and more importantly, the brand owners - the trademark owners, themselves.

HON. V. LAL.- Madam Chairperson, this is not a question but maybe a comment. In listening to you now, Madam Chairperson, I think one of the recommendations that we should give to Parliament is that expert advice be given to the minister before he makes any decision because his decision is absolute. If he is given expert advice, then he will be able to make the right decision because there is a lot of implications in his decision. That is just a recommendation. Thank you.

MADAM CHAIRPERSON.- Thank you very much, honourable Lal. When we do present our report to Parliament, we will have a list of recommendations. And I thank you very much, Mr. Vulaono, if there is anything else you would like to add?

MR. A. VULAONO.- I would like to comment on that, honourable Lal, and just to be of assistance, I have written here, "Under the current Act, when we file anything in a foreign language or different language apart from English, we have to provide translation for it".

Perhaps, I think that is something that will be useful as well - the provided translation and what it means as far as a trademark is concerned because an *iTaukei* language in different context may mean different thing. That is something as well that needs to be considered. It might be not so good in other context, but as a trademark and what you would think of, it will make perfect sense. So, perhaps, a translation, and for that panel to explain what it means, as far as their business is concerned, which will also assist the registry and the minister, et cetera, in making their decision.

To include that whereby “to include a translation and an explanation of what it means for your trademark and the applicant to provide it, and then decision can be made further. However, I do agree that there are some bodies that are of importance, for example, religious bodies or ethnic bodies are to have a say, whether it is actually something that is offensive because we may even have a risk whereby the minister approves something without realising it is offending a different ethnic group.

That is why it is important to have those differences.

MADAM CHAIRPERSON.- Thank you, Mr. Vulaono. If there is no other question from the from the honourable Members, I just want to thank you very, very much for really enlightening us with your presentation today, in particular with your recommendations to the amendments. We say,

“thank you very much”, and we hope that if we have other questions for you, that you will be able to respond to our request and...

MR. A. VULAONO.- I am more than happy, Madam Chairperson.

MADAM CHAIRPERSON.- ...recommendations in writing.

With that, this meeting is now over. Thank you.

The Committee adjourned at 10.02 a.m.

# Oceanica Intellectual Property

# **[VERBATIM REPORT]**

## **STANDING COMMITTEE ON** **FOREIGN AFFAIRS AND** **DEFENCE**

### **BILL**

#### **Trademarks (Amendment) Bill 2025**

**ENTITY:** Oceanica Intellectual Property  
**VENUE:** Big Committee Room (East Wing)  
**DATE:** Tuesday, 2<sup>nd</sup> September, 2025

**VERBATIM REPORT OF THE MEETING OF THE STANDING COMMITTEE ON FOREIGN AFFAIRS AND DEFENCE HELD AT THE BIG COMMITTEE ROOM (EAST WING), PARLIAMENT PRECINCTS, GOVERNMENT BUILDINGS, ON TUESDAY, 2<sup>ND</sup> SEPTEMBER, 2025, AT 9.09 A.M.**

**Interviewee/Submittee: Oceanica Intellectual Property**

In Attendance:

- (1) Mr. Pita Niubalavu - Solicitor
  - (2) Ms. Mareta Gonevinaka
- 

MADAM CHAIRPERSON.- Honourable Members and members of the public, the Secretariat and viewers who are watching us on the livestream of this Committee meeting; it is a pleasure to welcome everyone.

For your information, pursuant to the Standing Orders of Parliament, specifically Standing Order 111, all Committee meetings are to be open to the public, so this meeting is open to the public and members of the media. For any sensitive information concerning the submission, which you feel cannot be disclosed in public, that can be provided to the Committee, either in private or in writing.

However, do note that this will be allowed only in a very few specific circumstances, which include:

- (a) National security matters;
- (b) Third party confidential information;
- (c) Personnel, or human resource matters;
- (d) Committee deliberation in private and putting together recommendations and reports to go back to Parliament.

I wish to remind those of us here in the room that comments and questions are to be addressed through me, the Chair, and viewers watching this live on *Facebook*, if you have any questions, please, ask them via the comment section and relevant questions will be considered by the Committee.

This is a Parliamentary meeting, and all information gathered is covered under the Parliamentary Powers and Privilege Act and the Standing Orders of Parliament. Please, bear in mind that we will not condone any slander or libel of any sort, and any information brought before this Committee should be based on facts. Please, be advised that movement be kept to a minimum in this room, and use of mobile phones should be kept at a bare minimum, or not at all.

I would now like to introduce you to the Members of the Standing Committee on Foreign Affairs and Defence.

(Introduction of Committee Members and Secretariat)

MADAM CHAIRPERSON.- I would like to ask you to, please, make your submission.

For those of you who have just joined us, we are taking submissions on Bill No. 28 of 2025. It is a Bill for an act to amend the Trademarks Act of 2021. I would now like to ask you to introduce yourselves and go into your presentation.

(Introduction of Oceania Intellectual Property Officials)

MR. P. NIUBALAVU.- Firstly, we would like to thank the honourable Members of the Standing Committee for extending the invitation to us to make submission today on the Bill concerning the amendments to sections 12, 110, 131, 173, as well as the insertion of a new section 107A.

Briefly, we are an intellectual property law firm and over the years, we have carried out extensive intellectual property and traditional knowledge consultancy works around the Pacific through various Governments and international organisations which include the World Intellectual Property Organization (WIPO), UNESCO, ILO, SPC and PIFS, to name a few.

We were also a WIPO nominee to the Inter Geographical Indication Training in Switzerland and speaker at the 29th WIPO Inter Governmental Committee (IGC) Conference in Geneva in 2015, and we were also representatives of the indigenous panel in the 30th and the 31st session of the IGC on Intellectual Property, Traditional

Knowledge, Genetic Resources and Folklore. We recently authored a copyright handbook, through UNESCO, for musicians in Fiji, Vanuatu and Solomon Islands. It is a Copyright Handbook 2025.

With regards the Bill No. 28 of 2025 to amend the Trademarks Act 2021, what we will share this morning you will be able to take into account. Unfortunately, we are only able to retrieve the email two days ago. I put together some comments on the Bill last night and, hopefully, it will help the work of the Parliamentary Standing Committee.

In the absence of a legal protection for our traditional knowledge and cultural expression, and the increasing concerns of the unauthorised use of cultural heritage in trademarks are for profit by individuals or corporations, without any benefit or recognition to the traditional owners, the indigenous or local communities, we fully support the amendments.

If I may talk about the new section 107A inserted, the proposed section offers further protection to owners of registered trademark and provides an option to owners, investors and manufacturers to make an application, without notice, to the court to prevent an infringement or imminent infringement of an intellectual property right.

The purpose of the particular section is to prevent infringement, causing damage to ease service or product reputation, prevent trade port entry of infringing goods, and also preserve evidence of an alleged infringement. This proposed section 107A on title as application for provisional measures is in line with Article 50 of the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement.

The proposed amendment to section 110 relating to “offence to counterfeit registered trademark” will definitely provide some clarity on the definition of what is a commercial scale, providing great assistance to the court and taking away the burden to define the term when faces with charges made pursuant to section 110.

The term ‘commercial scale’ threshold for intellectual property-related criminal offences also appears in Article 61 of the TRIPS Agreement. So, the term ‘commercial scale’, although it is left undefined in the TRIPS Agreement, it allows member States to interpret the term in their domestic legislations, and that is what we are currently proposing.

On amendment to section 131, section 131(3) as proposed is meant for clear case of infringement, providing swift way to dispose of infringing goods, court litigation is a lengthy and costly exercise.

We have issues of counterfeit medical, cosmetics and food products that are often unregulated, thus posing significant health risk. The proposed amendment to section 131 will lessen the 20 working days' time limit to oppose confiscation and destruction, or disposal of infringing goods, to seven working days after being served with the notice, thus taking away the burden and heavy cost of keeping infringing goods for a lengthy period of time.

We now wish to make comments to the proposed amendments to section 12 and section 173. We support the proposed amendments to section 173, however, we propose that expressed exceptions must be allowed to indigenous and local communities, who have registered their cultural expressions as trademark through the respective trustees of the different *vanua* and communities.

Recently, we assisted the trustees of the Nasaumatua Trust of Daku Village from Tailevu in the re-registration of a number of their cultural expressions. They are known for the "*iri ni Daku*" but the "*iri ni Daku*" have different versions which use *iTaukei* expressions which belongs to them, and we have recently obtained a certificate of trademarks for those expressions. I am now holding an example of the certificate that was issued by the Fiji Intellectual Property Office (FIPO). Those registrations will allow the people of Daku to claim exclusive rights over the use of its cultural expressions, use the cultural expression as a trademark on crafted products, such as virgin oil. and also provides them with an opportunity to license the mark to outsiders in exchange of a licensing fee. This village owns 100 acres of coconut trees. We propose that exceptions must be allowed to such a community.

On the amended section 12, the proposed amendment is a defensive approach to protection. It will expand the absolute grounds for not registering a trademark of indigenous word, phrase, or symbol of cultural, spiritual, or historical significance, Fiji-Hindi word deeply tied to cultural identity or societal values, religious or communal symbol, and other misleading suggestive expressions.

The current proposed section 12(2)(c) may need some rewording and changes to really capture and express the intention of the amendment, and in line with the terminology and definition of certain words that are widely accepted by WIPO and also the UNESCO conventions.

From my read, the intention of the amendment is to cater for the growing concern of the unauthorised use of intangible cultural heritage as trademarks, without proper authorisation or respect for their cultural significance. When we speak of intangible cultural heritage, we speak of both, traditional knowledge and traditional cultural expressions.

The definition of cultural heritage in the Fiji World Heritage Act 2024, unfortunately, does not capture this. Article 2 of the UNESCO Convention for the Safeguarding of Intangible Cultural Heritage gives us the clear definition of “intangible cultural heritage”, which include, amongst other things, representations, expressions, knowledge, objects, artifacts, language, oral traditions, performing arts, social practices and traditional craftsmanship.

Madam Chairperson and honourable Members, WIPO is leading the text-based negotiations at its IGC to develop an international legal instrument for the protection of traditional knowledge and traditional cultural expressions, and that to be in line with the UNESCO Convention and the current undertaking by WIPO. Such terminology, “intangible cultural heritage and/or traditional knowledge and traditional cultural expressions” must also be included in the proposed Clause 12(2)(c).

Secondly, this is very important. The proposed amendments must not only prevent others from gaining intellectual property rights using cultural significance symbols, motif or phrases, but it must also –

- (1) Enable the indigenous and local communities to legally use their cultural expressions as trademark, to enable them to explore cultural expressions commercially; and
- (2) allow others with proper consent of the indigenous or local community, through a benefit sharing agreement in place, to use the expressions as trademark. However, the renewal must always be subject to further consent from the traditional owners of expressions.

Both of the above will still be subject to the distinctiveness test in the Trademarks Act.

One must understand that one of the main functions of trademark is to enable consumers to identify a product of an entity from those of its competitors. In the same way, allowing the indigenous or local communities and owners of the cultural expressions

to register their expression as trademark, will assist the recognition of their culture and foster indigenous and local communities' economic development.

Furthermore, it will also allow the indigenous and local communities to use their registered cultural expressions as a tool of distinction and branding, and with the good marketing strategy, it will lead to increased consumer recognition of the cultural expression, as well as commercial benefits for traditional cultural expression holders.

The new trademark law also has provisions for registration of certification and collective marks, which can be taken advantage of by our indigenous and local communities. Another reason why the amendment must not only prevent others from registering their cultural expression as trademark, but it must also allow the indigenous local communities to register their expression as trademark.

There are three examples of successful collective marks of indigenous communities. I pulled out an example from Kenya. For example, Sisal baskets are manufactured in a traditional way. The community of basket weavers have formed the Taita Basket Association, which is the owner of the collective mark, 'Taita Basket'. The mark is being used to protect and promote their baskets and, furthermore, establish rules and quality standards on the use of the mark.

May I remind you that true empowerment is not only about preservation and protection but allowing the indigenous and local communities to commercialise their cultural expression to their advantage, and for their economic benefits.

Lastly, we propose that the discretion to use such an expression must be separate from the sole authority of the minister to an established cultural authority within the respective Government Ministries. Those are our submissions.

MADAM CHAIRPERSON.- That you very much, Mr. Niubalavu. We really appreciate your very comprehensive presentation today. I welcome you as well, Ms. Gonevinaka. *Vinaka vakalevu* for taking the time to be with us.

I am now going to hand over to the Members of the Committee. I know that there were some glances exchanged. I just wanted to clarify, Mr. Niubalavu, you spoke about the "*iri*

*ni Daku*". For those who do not understand, *iri*, it is a banner. The banner in Hindi is the fan, so the fan is traditionally made in Daku in Tailevu to a certain style.

I will leave the floor open now for honourable Members.

HON. P.K. RAVUNAWA.- *Yadra vinaka*, Mr. Niubalavu and Ms. Gonevinaka, thank you for your presentation this morning. We have come to realise that the Act has been around since 1933. It was reviewed in 2021 and now, we are doing the amendment to the Bill that is before the Committee and Parliament.

My question is the operationalisation of the Act. As you have mentioned, there is too much power concentrated on the honourable Attorney-General and Minister for Justice. There are fees that are paid for the registration of trademarks. Are the fees enough to get the Office up and running in terms of its secretariat and guidelines that need to be put in place? After this Bill is presented back to Parliament, what would be some of your suggestions or recommendations or insights that you have, in moving forward, to help the Committee in our submission to Parliament?

The Act is quite old, and we seem to be having a lot of gaps in between, in terms of property rights, consumer protection and having a level playing field where consumers are not confused with the items that are branded and are out there in the market.

You have talked at length about protection of traditional artefacts, et cetera, what would be your view in moving this forward and getting it operationalised for the benefit of those who are part of the business, whether SMEs or big businesses that are out there in the market?

MR. P. NIUBALAVU.- Through you, Madam Chairperson, in terms of the new Trademarks Act 2021, it is almost similar to all other trademark law around the world, where the sole discretion is with the commissioner, or otherwise with the minister, or otherwise with the Registrar of Trademarks, to allow a smooth registration of marks, but when it comes to approval of a traditional cultural expression as a trademark, because the authority is left with sole discretion of a minister, who may not be aware of the cultural significance of the mark, and probably there is a danger that it can be allowed for approval without proper advice.

If you look at the New Zealand Trademark Act, our law on trademark is basically borrowed from the New Zealand Trademark Law, and there is an establishment of cultural authority that allows the approval whenever there is a sign or language that belongs to the Maori people that is going to be used. So what has happened, it has to be referred to the cultural authority, which can be appointed by the minister, or for Fiji, probably to the relevant Government department, for example, *iTaukei* expressions, can be referred to a cultural authority within the Ministry of iTaukei Affairs, to approve who holds the discretion over the approval before it is passed on as recommended approval to FIPO.

You also have to be mindful that there will be a dispute on ownership of those expressions. For that, the Ministry of iTaukei Affairs has carried out an extensive cultural mapping exercise for the purpose of determining the owners of those expressions. So, they are in a better position than FIPO to provide those kind of approvals.

Our recommendation in terms of an established authority is basically when it comes to the use of cultural expressions. However, for a normal trademark, it is just to pass a distinctive test. The discretion can be vested within one authority, the minister or the Registrar of Trademarks.

MADAM CHAIRPERSON.- If I may just follow on, Mr. Niubalavu, we are talking about the distinctiveness test. How does that test actually happen?

MR. P. NIUBALAVU.- The law itself has provided elements for distinctiveness and are also assisted by common law. The person who holds the discretion must be fully aware of those elements when it comes to distinctiveness. For a trademark to be registrable, the Trademarks Act requires that it must be distinctive, so it is the same as the designs.

There are different requirements for design, for example, for copyright, it must be original expressions; for design, the law says it must be a new design; for trademark, it must be a distinctive mark, and a mark is well defined which includes a number of things, but in terms of distinctiveness, the law itself provides for certain elements that requires it to be satisfying. For example, a mark that is descriptive is not distinctive.

If you want to register a yellow banana, for example, when you are going to start exporting banana, that cannot be registered as a trademark because it is descriptive. It must be distinctive. A good example will be an apple, just to bring some understanding to that.

Apple is a registered trademark with regards to products, such as computers. So, Apple is a unique name, if it is attached to a product such as computer, in that category or class of goods. However, if you are trying to register the word, 'apple', to supply goods, such as apple, it becomes descriptive.

HON. P.K. RAVUNAWA.- Just a follow up question on that; in your view, which agency will have the lead responsibility for enforcement, and will they have the necessary resources to act effectively?

MR. P. NIUBALAVU.- Madam Chairperson, that is a good question, and is one of the problems that we are facing in Fiji when it comes to intellectual property enforcement.

I remember a few years ago when we came across a case of clear copyright infringement, and copyright infringement is a criminal offence in the Copyright Act 1999. However, where one of the artworks of visual artists from Fiji was mass produced abroad and then was made available in different shops. These are original expressions of hers, but then when it was launched, because that was in 2015 when we had just conducted a training through SPC and the members were visual artists, musicians and crafters, she went and lodged a report with the Police. But then, she was written a letter a few months later that it must be a civil case, and she needs to go and see a lawyer.

So, there is a problem of understanding their role within the different intellectual property legislations that we have. When it comes to trademark, you can see how the Customs Officers are empowered under the law because they are the first receiver of infringement items, if it comes across the border, so might as well empower them to confiscate those infringing goods at the border.

In terms of infringement, that probably is taking place within our jurisdiction, then we have to see which Ministries. At one stage, suggestions have come up that FIPO should be empowered under the law to not only do registration but also do enforcement. So, those are some of the things that we can think of when it comes to enforcement of the Trademarks Act.

MADAM CHAIRPERSON.- Do you have a follow-up question, honourable Ravunawa?

HON. P.K. RAVUNAWA.- Yes, Madam Chairperson. How does the Bill address online trademark, like for infringement and counterfeit goods that are sold online? How does this Bill address that?

MR. P. NIUBALAVU.- It really does not matter where the infringement items are available, whether it is available online or physically available at the shop, the infringement is an infringement. It is also covered under the under the Act. The only difference is that one is available online and one is available through physical shops, but infringement is an infringement.

HON. P.K. RAVUNAWA.- Is it covered in this review?

MR. P. NIUBALAVU.- Even though the online infringements have no specific sections in the Trademarks Act, but the definition of what is infringement in the Act can still capture those online infringements.

HON. V. LAL.- Madam Chairperson, through you, in regards to injunction or seizure of goods, the amendment is proposing that the days be reduced from 20 days to 7 days. How do you look at it – from 22 to 7, is too small, the one week?

MR. P. NIUBALAVU.- As I have mentioned, the reduction is not to do with the injunction but is to do with how the Comptroller is going to exercise his powers, under the law, to dispose of infringing goods. So, after you have received notice, the current law has 20 days. From the day you receive the notice, you have 20 days to raise an objection. However, the current amendment is reducing it to seven days.

My reading of the proposed amendments, that particular provision is meant to deal with the quick turnaround of disposal of straightforward, sort of, kind of infringement cases. For example, infringement products that you are wanting to cross the border. The other provision in terms of injunction is before that particular provision, the proposed amendments. So, the reduction of the 20 days to seven days is on the exercise of the Comptroller's powers to dispose of infringing items. It has been reduced to seven days.

In our opinion, it takes away the unnecessary cost of storing those items for those number of days. Also, it allows him to promptly deal with infringement items that are in his possession. If you look at the subsection below that, in terms of fairness, it provides an option to the complainant to seek orders from the court. So, if you are talking about

the interest of the person whose mark has been infringed, he will want the disposal of those infringement items, and I have mentioned the importance of how counterfeit goods is a threat to health in terms of medical products and food products and that has to be considered as well. But when you look at the interest of the owner of those counterfeiting products, he still has the right to address through the provision that is below the proposed amendments. So, both their interests, in my opinion, Madam Chairperson, is taken care of.

MADAM CHAIRPERSON.- Thank you, Mr. Niubalavu. Perhaps, just to clarify, looking at section 131 of the Trademarks Act 2021, the heading is the disposal of infringing goods. The court has already decided that the goods are infringing someone else's copyright. Seven days is too short to have this conversation between the Comptroller and the trademark owner and the infringer, but it already has been decided by the courts that there has been an infringement, which is why it makes it more commonsense that it is not sitting at the wharf for days on end, costing someone some money. Did I catch that correctly?

MR. P. NIUBALAVU.- My reading of section 131(3), it is a standalone provision.

Subsections (1) and (2) deals with litigation in court but then subsection (3) talks about the discretion of the Comptroller to dispose of those infringing goods which, to my reading, is meant for a clear case of infringement, which provides for a swift way to dispose of infringing goods.

HON. R.R. SHARMA.- Madam Chairperson, through you, on the same section 131(3)(a), FRCS has the authority to dispose the infringing goods without a court order, and that gives absolute power to FRCS, minister himself, and even without a request from the rights of the holder. If you have five containers of infringing goods, can you roll out a process as to how this would be carried out? Who bears the burden, who bears the cost of 5 x 40-foot containers of infringing goods? Where is it disposed? How is it disposed? How do we regulate this?

Amendment is one process, but when you look at social media right now, there is so many things happening that we are not able to even tackle. In my view, seven days is too less, because when you look at the magnitude of some of the names, the big key players in Fiji, who are subjected to be questioned about intellectual property and trademarks, those are the businesses, at the end of the day, that employ majority of the people, who pay so much taxes, but at the end of the day, I think, seven days is too less.

In your view, what do you think about this whole process of regulating this? On a realistic note, how would this be carried out? Goods that have been labelled as infringing goods is of massive magnitude, because Fiji is not a dumping ground, that is one thing I stand for.

MR. P. NIUBALAVU.- Madam Chairperson, I think that is a good point - in case of such a magnitude where you have five containers of infringed goods, and who is going to bear the cost for them? The law will not be able to provide for the details of the disposal, et cetera. That is why the relevant agency will have to create their own practical direction on how this is merely carried out at the border.

However, one thing is for sure, that infringement goods should not be welcomed into Fiji. Why? It will breach international conventions and agreements and also, it will breach our national law. How do we deal with it? The customer responsible is the only agency that is responsible to deal with goods at the border. The law has provided them with certain discretions.

How is that applied to such a magnitude of infringement? Either that can further clarified in the regulations or otherwise, the certain agency must have their own practical direction on how these are disposed. In terms of the seven to 20 working days, we may have different opinion on the applicability of whether that is sufficient time for disposal. In other words, we will not be able to keep those five containers for such a time. That will only add extra expenses on security, et cetera, to the relevant Government agency. That is my opinion, Madam Chairperson.

HON. R.R. SHARMA.- I always feel that the law and the part of a regulation should go hand in hand because what is the point of making fancy laws when they are not enacted, like the Protection of Animals Act? The other one is the Anti-Litter Act. Those are some of the things that we need to work on.

You mentioned about the minister having authority. In terms of approvals and disapprovals and there is no appeal, what is your view in terms of tribunal that processes these applications, who supersedes, what are your views?

MR. P. NIUBALAVU.- We will welcome the decision of the minister to be synchronised by another authority, instead of leaving the sole discretion with the Minister, which does not provide the right of appeal to others. It is always good to have those decisions and, most importantly, when it is made by a single person to be tested by a higher authority. We welcome such changes to the trademark law.

HON. R.R. SHARMA.- I will talk about the *iTaukei*. *iTaukei* culture, traditional names, heritage names and tribe names have been used in ways where they have been exploited, and you feel that they deserve compensation. Do you have any data? Do you have names of entities, hotels and businesses have done so and so?

One is, if the business does well, it is good. "Oh, my tribe's name is flourishing globally, regionally." If the business goes haywire, it is the opposite. There is damage control. So, where are we? Do we want to encourage people to take up the names of Fijian heritage, culture, and showcase it to the world and create a brand name, or in the name of protection, we rather cage ourselves and there is no growth? Where are we going, in your view?

MR. P. NIUBALAVU.- Through you, Madam Chairperson, I have provided our opinion in terms of the amendments to Clause 12, which we have proposed that not only we allow the law for protection, but also allow the owners of those cultural expressions or the local communities to register those expressions as their trademark to allow them to commercially exploit those expressions.

Secondly, we also recommend that the law allows others to use the expressions, but through a benefit sharing agreement and the consent of the cultural expression holder for the use, which means we are looking at a law that not only protects the expressions but also allows the traditional owners to commercially benefit from those expressions.

I will give you an example of the word, 'Ai Sokula,' which I understand belongs to the people of Taveuni. When a person from that particular village, who is a fashion artist, tried to register the word 'Ai Sokula,' which is a cultural expression belonging to that particular community, she realised that the word was already being registered as a trademark of a business in Fiji that has a number of clothing outlets around Fiji.

We are talking about a business that has been benefitting from cultural expression, belongs to certain people for a number of years, and we are also now talking about the owner of an expression who now cannot use their cultural expression as trademark because someone else now holds exclusive rights to those cultural expressions.

Of course, the traditional owner of the cultural expression will want some compensation on the use, the commercial exploitation of their expression for the number of years that

has benefited this particular clothing outlet. That is the whole reason why a lot of *iTaukei* are looking forward to the Traditional Knowledge and Cultural Expression Bill to come into Parliament. This is an overdue law which previous governments have failed to pass in Parliament. If you look at the *Daily Hansard*, it will tell you a number of promises made by politicians and parliamentarians that this will be the law that will be passed in Parliament. I am more concerned because I am heavily involved in traditional knowledge around the Pacific. This was an issue realised through our Trade Ministers' Meeting in 1999, and that is why the Pacific came up with a model law to protect this in 2002.

While other Pacific Island nations have moved on to enact certain legislation to protect their knowledge and cultural expression, Fiji has failed. There are even presentations in Parliament when the Designs Bill came into place where promises have been made in Parliament that cultural expressions are protected within that specific legislation. You have a number of lawyers from the Opposition, who even failed to address that there is no such provision in the Design law.

When this Government came into place, it started preaching about Traditional Knowledge law that will come into play sometimes soon and their term is almost over, and we are disappointed. Why? We are worried and concerned that, again, this will not come into being. I can tell you and address you on the number of infringements all across the world, affecting local communities and indigenous people, and there are a lot of cases of infringements.

All of us realise the number of misappropriations locally and internationally but still, we have not done anything and passed this important law in Parliament and that is the whole reason why we welcome the amendments to the trademarks law. At least, it will provide some protection to those expressions that belong to the local communities and the indigenous people.

HON. R.R. SHARMA.- Madam Chairperson, I understand your sentiments but, at least, be aware that this was long overdue but then, the Bill to amend the Trademarks Act 2021 clearly states that 2021 was a COVID-19 period. You know what happened in 2022 and any government that comes in needs to find their footing and then prioritise things accordingly.

Yes, of course, we welcome the Bill before the Committee. One of my questions to you is, you have spoken about the number of infringements. What about domain names, like that

young lady who wanted to start her line from Taveuni. Because social media is part of our life and will always be now, what is your perspective on domain names being taken? You have a great business going on but now, you cannot do business without being on social media and having your own website. What are your views on domain names that are already been taken or booked, like Cakaudrove, Kadavu, Koro, et cetera. Your views on the domain names which is taken from our local heritage or cultural names.

MR. P. NIUBALAVU.- Madam Chairperson, in regards to anything that deals with the use of cultural expressions or an expression that belongs to a local communities, because intellectual property honours the rights of creators and also allow creators to benefit economically from what they have created, when it comes to expressions, a visual artist cannot claim traditional motifs as his original work, and the same thing that aligns to anything or whoever wants to claim rights over domain name that is a cultural expression cannot do so because cultural expressions belong to a certain community.

With trademarks, when it comes to trademark law, it deals only with marks that are registered. Anything that is not registered within the Registrar of Trademarks Office, you cannot claim exclusive rights over it. However, when it comes to cultural expressions or expressions that belong to local communities, in my opinion, the person who is wanting to exploit those expressions must seek consent.

MADAM CHAIRPERSON.- Thank you very much, Mr. Niubalavu. Do we have any closing remarks or closing questions from the honourable Members?

HON. P.K. RAVUNAWA.- Madam Chairperson, maybe a last comment, I would like to ask this question, if there is anything outside of this Bill where Fiji's legislation and international obligation to TRIPS and other Convention that you would like to be included in this amendment that is before Parliament? Any burning issue that would assist the Committee in putting forward to Parliament to make this amendment Bill meet its objective entirely.

MR. P. NIUBALAVU.- Madam Chairperson, thank you for that question. I was wanting to draft the proposed amendment itself. Unfortunately, due to lack of time, I could not do that.

As I have mentioned, the Trademarks Act 2021 almost capture everything. It is a good piece of legislation, in line with the TRIPS Agreement and in case we are going to enter into signing the Madrid Protocol, its provisions are almost in line with the same.

Our lengthy submission in terms of section 12, we want the provision to really capture the intention of protecting expressions that belong to local communities and also expressions that belong to the indigenous communities. Not only that but also allow the owners of those expressions to register that as trademark and also benefit from it.

However, we want the drafters to take into account the terminology that is available. For example, the wordings - traditional knowledge and cultural expression, to be included in the amendments, to fully capture what all categories of expressions that are protected when we talk about a cultural expression or otherwise use the term as 'intangible cultural heritage', which is in the UNESCO Convention.

When we are talking about the indigenous communities, if you look at the preamble of the 2013 Constitution, the Rotumans and the *iTaukei* are indigenous. To me, there is no meaning by mentioning the Rotumans. So, if you mention 'indigenous' in the law, we are talking about the Rotuman and *iTaukei*, so we are talking about indigenous knowledge, then we are talking about the knowledge of Rotumans and the knowledge of the *iTaukei* because the preamble of the Constitution, recognises both the *iTaukei* and Rotuman as the indigenous. So, to me, there is no point in mentioning Rotumans when you have already mentioned indigenous in the same provision.

Those are some of the things that need to be tidied up so that it is in line with the preamble of our Constitution, and also in line with the terminology that is used in international agreements.

MADAM CHAIRPERSON.- *Vinaka saka vakalevu*, Mr. Niubalavu. I think we have run out of questions now, as well as time. So, I just want to take this time to say thank you very, very much, both of you, Mr. Niubalavu and Ms. Gonevinaka from Oceanica Intellectual Property. Thank you for taking the time to come and educate us and also give us your opinions on the amendment Bill before this Committee. We hope that you will be able to come back to us should we have more questions, and I just want to let the honourable Members know that the presentation from Mr. Niubalavu today will be available to us very shortly this morning.

Again, thank you very, very much for helping us to understand how this amendment Bill will affect our communities and businesses. I now declare this meeting closed.

The Committee adjourned at 10.01 a.m.

# Solicitor-General's Office (SGO)

# **[VERBATIM REPORT]**

## **STANDING COMMITTEE ON FOREIGN AFFAIRS AND DEFENCE**

### **BILL**

#### **Trademarks (Amendment) Bill 2025**

**ENTITY:** Office of the Solicitor-General  
**VENUE:** Big Committee Room (East Wing)  
**DATE:** Wednesday 3<sup>rd</sup> September, 2025

**VERBATIM REPORT OF THE MEETING OF THE STANDING COMMITTEE ON FOREIGN AFFAIRS AND DEFENCE HELD AT THE BIG COMMITTEE ROOM (EAST WING), PARLIAMENT PRECINCTS, GOVERNMENT BUILDINGS, ON WEDNESDAY, 3<sup>RD</sup> SEPTEMBER, 2025, AT 9.47 A.M.**

**Interviewee/Submittee: Office of the Solicitor-General**

In Attendance:

- (1) Mr. Eliesa Tuiloma - Deputy Solicitor-General
- (2) Mr. Martin Chedondo - Consultant

-----  
-----  
  
MADAM CHAIRPERSON.- Honourable Members, members of the media and the public, the secretariat, ladies and gentlemen; a very good morning to you all. It is a pleasure to welcome everyone, especially those of you who are watching this meeting online.

Pursuant to the Standing Orders of Parliament, specifically Standing Order 111, all Committee meetings are open to the public. However, moving on, any sensitive information concerning this submission that cannot be disclosed in public, can be provided to the Committee, either in private or in writing, but this will only be allowed in a few specific circumstances, which include:

- (1) national security matters;
- (2) third party confidential information;
- (3) personnel or human resource matters; and
- (4) during closed Committee deliberations, as we develop our Committee recommendations and report back to Parliament.

I want to remind honourable Members and our invited submittee that all comments and questions that you ask are to be addressed through the Chair. I also want to remind everyone that this being a parliamentary meeting, all information gathered is covered under the Parliamentary Powers and Privileges Act and the Standing Orders of Parliament. Please, bear in mind that we will not condone any slander or libel of any sort, and any information brought before this Committee should be based on facts.

In terms of other protocols, gentlemen, I know you have seen the crowd at Albert Park, so those are the pathfinders of the Seventh Day Adventist Church, and they are having a huge jamboree. There might be a little bit of noise so, please, I ask that you use the microphones in front of you and speak directly into your microphone so that we can

capture everything that you say, should the music come up again or speeches happen across at Albert Park.

I want to advise everyone that movement within this room is restricted, and we ask that we turn our mobile phones off and, at least, on silent. I want to introduce the honourable Members of the Standing Committee to you gentlemen.

(Introduction of Committee Members and Secretariat)

I take this time to ask you to introduce yourselves, for the benefit of our viewers, and then proceed with your submission.

(Introduction of OAG and OSG Officials)

I take this time to ask you to introduce yourselves, for the benefit of our viewers, and then proceed with your submission.

(Introduction of OAG and OSG Officials)

MADAM CHAIRPERSON.- Would you like to continue with your presentation, or how did you think this presentation was going to go? Would you like us to ask questions based on the last meeting we have had?

MR. E. TUILOMA.- Madam Chairperson, I think it would be best if you ask questions, since we have already made our presentation earlier on. I think we are just ready to answer your questions.

MADAM CHAIRPERSON.- Certainly, I will leave the floor open now for the honourable Members to ask any questions or seek clarifications.

HON. R.R. SHARMA.- Through you, Madam Chairperson, I would like to ask, why does the minister have so much power when it comes to decision-making in this amendment Bill? What are the proposals forward because if there needs to be a council or an advisory group or a committee, that decision can supersede the minister's decision because Parliamentarians come and go, but this is something that is very critical, especially to keeping and protecting the *iTaukei*, I believe, heritage, culture, tradition and norms, especially the names. However, I feel that the minister responsible has absolute power in that. Could you, please, just elaborate on your perspective on this?

MR. E. TUILOMA.- Madam Chairperson and honourable Members, I think that is a very good question. The law as it is at present, the minister also has quite extensive powers, even to approve things that cannot be approved under the law. He has that extensive power under the Trademarks Act 1933.

The amendment Bill that we have here, even though he has that power, that power is filtered by the Ministry of iTaukei Affairs. They will be the ones who will be giving him direction on *iTaukei* customs and traditions and words. He does not have that ultimate power as we think. In fact, he has to work with the Ministry of iTaukei Affairs.

It is something that we need to line it up properly in the regulation on how that relationship has to work because otherwise, as your question suggests, it can be abused by ministers in case they have conflicts. At times, he or she can easily overrule the decision by the Ministry of iTaukei Affairs and that may not be good, as far as tradition, customs and words are concerned. However, it will come through regulation where we have to run up all those concerns as well.

HON. R.R. SHARMA.- Madam Chairperson, through you, a follow-up on that, so the minister's decision is the final one. There is no provision for appeal or challenging the minister's decision. Is that going to be changed in the regulation?

MR. E. TUILOMA.- That is another good question, Madam Chairperson. We have to be very careful with that. When there has to be a conflict between the two ministries, we feel that the decision of the Ministry of iTaukei Affairs has to supersede the ministers in such cases as that.

However, there are also instances where he has the power, and so long as he does not abuse those powers. For example, at present, the use of certain words like the word 'Fiji', and there are other words which are actually almost prohibited to be used. The minister has the authority to give some, sort of, green light to applicants, at certain times, provided there is a disclaimer somewhere around, but he has the authority at present.

HON. R.R. SHARMA.- Madam Chairperson, one final one, because it is a follow-up to that. I will give you a scenario, a very quick one. Suppose I am the Minister for Justice and my colleague is the Minister for iTaukei Affairs. It is our government. People are aligned to what we want happening. Let us say we want to approve a certain name and we all give the green light but let us just say that the owners of that name or tribe would refuse. We think it is good because of the investment of profit coming in, which is good for the

country's economy. So, where is the check and balance here? I apologise, I am going into the regulation, because when it comes to debate, it is going to open up. I just need to understand this - the check and balance.

MR. E TUILOMA.- Madam Chairperson and honourable Members, those concerns are live concerns, and they can actually happen on the ground when the law comes into effect. For those kinds of concerns, what we are trying to do under the Act, the owners of those names and those whatever they we may decide, they will have the ultimate say. Even though we try to push, once they say no, it will be a no. It is hard because most of these words and signs are internal - something that defines them, and it is hard for them to try and give it out, even for business purpose. That is why those concerns are coming in to be reflected under our law.

There have been lots of concerns coming up from people and they want those injected into the law. They have to have a say on something that they actually own. However, if they agree, then there is another system which has to be followed. If they agree, then there has to be a benefit sharing sort of agreement to be made between the owners of those words and those businesses that would like to use those signs or those words or whatever. Thank you.

HON. V. LAL.- Madam Chairperson, through you, adding to what honorable Sharma asked, in case where the public is not happy with the minister's decision, is there any provision for a tribunal in this amendment?

MR. M. CHEDONDO.- Thank you, for the question. I think the important thing that we are trying to do under this amendment is to strengthen the enforcement provisions under the recommendations of the likes of the Trade Related Aspects of Intellectual Property Rights (TRIPS) and World Intellectual Property Organization (WIPO). So, other issues to do with tribunals and the addressing of grievances as it were, are already addressed and placed in the original Act, and it goes on even to the first question when we speak of checks and balances.

In the original Trademarks (Amendment) Act 2021, they are already there. That is to say, when we were going through the processes, certain applications are first handled at the administrative stage, the vetting process. After that, then it goes on to, as it were, the ministerial stage. That is where there will be consultations taking place. After that, if there are grievances, the grievances procedures would then also be provided by the original 2021 Act, which was put in place. I think I can hand over to the DSG. Thank you.

HON. V. LAL.- Madam Chairperson, adding on to that, we have heard in the past two days that the Act does not specify the procedure in cases where the minister approves the application and, at the same time, there is opposition by the members of the public. Which one prevails, the minister's approval of the application or the public's opposition?

MR. E. TUILOMA.- The questions that had been asked are regulatory questions. Those issues that deal with the actual implementation of this law here will have to be put under the regulation where we have to define the process when there is an application. If the application is made and the owners of those applications do not consent and the minister grants what has to be done, those are the things that will have to be put under the regulation. At present, we are still working on that, but the concerns that you have raised are concerns that we have to make sure that we cover very well under the regulation.

HON. V. LAL.- Madam Chairperson, a last question from me, perhaps, the timeline is also not specified when the minister approves the application and it does not say anything on how, may be a year or two years. When do you think implementation will come in?

MR. E. TUILOMA.- Madam Chairperson, in intellectual property registration applications, whether it is a trademark or patent or design, we always talk about timelines because it is a process that usually takes place. For example, in trademarks, once a trademark is lodged today, it goes through the process straightaway - the preliminary examination. There is a team that needs to examine that. If they satisfy those requirements at the preliminary stage, then they can pass it on to the secondary stage. From the secondary, then they go to the tertiary and, finally, to the grant. Those are the timelines that we are talking about.

It is not an easy process, it normally takes months because, as I have said earlier on, trademarks or intellectual property are national powers that you give outsiders, those that are from outside to run whatever they have that you are granting within the country. That is why we have to be very careful that whatever grant that we are making, it does not run parallel to something that we already have for those from outside, even within, we must make sure of that, but it is a process that we have to follow.

However, that process will also be regulated on how the process will take place. I have said earlier on, it is the manpower that we need to have, to run this system here. We are trying to improve our law but if you do not have the necessary manpower, then it is really of no effect. Thank you.

MADAM CHAIRPERSON.- Yes, we take your point there, Mr. Tuiloma. I have a question pertaining to the amendment to section 131 on the disposal of infringing goods. We spoke about this with the submittee yesterday, and in the amendment Bill, section 131(3A) of the principal Act is amended by deleting 20 working days from the Act of 2021 and substituting it with seven days in the amendment Bill.

We had spoken about this with other submittees and we were asking why the big change from 20 days to seven days. Of course, it is going to be sitting at the wharf, and someone is going to take the responsibility of clearing it. One question that came from honourable Sharma yesterday was the disposal of these items. If there are five 40-foot containers that are found to be infringing, whose responsibility is it then to dispose of it - is it the importer? My question then was, what is the possibility of sending it back to the sender, just so that it is not Fiji's responsibility to get rid of infringing goods? We already have enough trouble with our disposal systems. Thank you.

MR. M. CHEDONDO.- Mr. Chairman, allow me to, perhaps, take the first half of the question, and then the Deputy Solicitor-General will take the issue of who exactly is responsible for disposing.

I am sure it is apparent as to why there was the radical shift in the number of days. One of the issues that is always of importance is administering justice in a way that does not always overburden the court system. Initially before the amendment, we have found that if someone has infringing goods, the number of days that he had was equal to the number of days in which the courts had to make a determination or an order. So, by reducing the number of days here from 20 working days to seven, we are saying, "If you have infringing goods, you have seven days to either claim ownership of them. If you are not claiming ownership of them, are you consenting to them being destroyed or removed without the government having to go to court in order to carry on the legal process?" Then that, in effect, I think as is always the case, efficient, speedy delivery of justice and administration. So that is the first thing.

In the event that the infringing person does not take ownership within the seven days, and the word I am looking for is to "capitulate" and accede to his goods being removed, then the courts would then have to step in and then, obviously, the courts would then make the determination. However, in the interim, in terms of who determines and who moves the goods out of the country and who destroys them, then I will hand over to the Deputy Solicitor-General.

MR. E. TUILOMA.- Madam Chairperson, section 131 itself is quite an extensive section which covers the destruction of goods, especially by those who are importing those

goods. But the destruction of those goods will depend very much on whoever the declarant or claimant to be the owner of the actual goods.

We are talking here about the trademark. Mostly, these are the Nike, not the other goods, that we are dealing with. These are mostly those kinds of designs or trademarks that are counterfeit. Yes, they have to be destroyed once the owners of those marks give us enough evidence that they actually are the owners of those marks, and those goods are not theirs. If they do not provide that, then there is no way we can destroy those goods. Those goods will have to come through or will have to be allowed in as normal goods, if there is no Opposition to the importation of those goods at the border.

There is a lot of things that come into play when we talk about this, but it is a trademark issue that normally happens between the owners of those very distinctive marks -well-known marks. They try to stop the importation of their goods to some countries and most of them, they follow the rule, so that is why we have these provisions as well.

MADAM CHAIRPERSON.- Just to follow up, Sir, I noticed that with section 131(2)(d), it talks about the “re-exportation of the counterfeit trademark goods in an unaltered state must not be permitted”, because the end of my question was, can we send it back to the sender, to the place of origin?

MR. E. TUILOMA.- Section 131 just stipulates, it does not guide us through the process. What needs to be done here, as your question reflects, it has to be through regulation. Then, we have to follow the rule so that those concerns are actually replicated in the Act, that we do not try and repeat and ensure whether it is distraction or whether it has to be sent back, but there has to be a system in play, so long as there is no burden on us, especially for commercial purposes, because they are normally very expensive processes. We have to ensure that those who are supposed to be liable at a certain stage, have to be made liable for those things and payment also has to be made and claim from them. Those processes will have to come through regulations.

HON. R.R. SHARMA.- Through you, Madam Chairperson, a follow up from one of your questions; when you look at fake products in the market, for example, some of the knives that come into the country and I do not remember the name of that one particular knife that is of high price, but I have heard and seen the others coming from China and other places, is this Bill going to restrict a lot of trade that Fiji does, especially looking at some of the fake products that are coming in with names that are trademarked already?

I will give you a scenario. We talk about all these improper or bright lights in cars that have that, so we ask, where is the LTA? But they are being widely imported into the country. Although you are not allowed to have excessive lights and all these things which cause accidents, but the market is open, we have shops that are advertising and selling.

My point here is, goods that are trademarked and people are getting in fake products or rather getting in part of it, labelling is printed here and sold, because, again, when it goes to debate, my point is, how are we going to regulate this? We would be the ones to defend these amendments because it must not be seen as if we have done the amendment for the sake of it, but we do not have the finances, the manpower to enforce and strengthen it, and fill in the loopholes. How do you see trade being affected or how are you going to tighten that up in terms of fake products and counterfeit trademarks?

MR. E. TUILOMA.- The office is only dealing with trademarks. We are only look into the registration. In as far as enforcement, unfortunately, we do not have that means to go right all the way. Enforcement is given to the Trade Standards in the Ministry of Commerce and Trade. They have to follow the rule with all those methods.

In this Bill, we are trying to ensure that whatever process we have, we have to ensure that we complement that, in a way that Ministries will have to work together on all these. We cannot continue to work in silo, otherwise we will continue to put the public at a disadvantage. Even though they are buying slightly cheaper goods, the quality is not there, especially if they are counterfeiting those goods. It is something that Ministries will have to talk about, especially with the enforcement office. This law here, our Ministry can only deal with the registration aspect of it. With the enforcement of how things are done, it goes to the other Ministries.

HON. P.K. RAVUNAWA.- Madam Chairperson, through you, my question to the team from the Solicitor-General's Office; why was the Trademarks Bill that was first planned in 2006 for amendment by the Qarase SDL Government, delayed for so long? Is it to do with the organisation structure? Is it to do with the budget?

Since it is coming before Parliament now, if your team can explain to us or provide us with a detailed view of the steps the government would take to pass this Bill, so that it comes into effect and is implemented.

MR. E. TUILOMA.- Madam Chairperson, the question as to why there has been a delay, from my perspective and from the vantage point as IP person, I would only say that it takes time for government to realise the importance of intellectual property, and I know

the last government had other priorities as well. Probably, once they came to realise that it is something they need to, that is the time they took it up.

Perhaps, this Government has also seen that. Now, they are seeing that intellectual property needs to be brought up to the level where it has to be placed in. That may have been the cause of the delay here. I can only say that different governments come in with different ways and how they place their priorities, perhaps that may have been the way they thought at that time.

Madam Chairperson and honourable Members, it was brought through them, and it is before us. I think all we need to do now is to improve the law and ensure that the system that has to facilitate it has to be very effective. That is the only addition that I would like to request - if we could place a system and ensure that the system that we have to enforce these laws are very effective so that the people can get the benefit out of whatever they are buying.

HON. P.K. RAVUNAWA.- Madam Chairperson, a follow up question; with respect to section 12, the proposed amendment adopts a very defensive approach, obstructing those who would love to register. Talking about traditional knowledge and traditional expression of culture, we would love to hear from the team if the language can be revised explicitly in line with the UNESCO Convention for the Safeguarding of Intangible Cultural Heritage and WIPO, to ensure that it is consistent with UNESCO and WIPO standards. So, the amendment to property rights over cultural significance, symbol, et cetera, must empower our indigenous and local communities to legally register and use their cultural expression as a trademark.

It is important also to factor in the amendment, the renewal as it comes to the end of the term of registering a trademark. If there can be a mechanism where we go back and seek the consent of the traditional owners of this trademark. Thank you.

MR. M. CHEDONDO.- Thank you, Madam Chairperson and honourable Member, for the question. Allow me to take the second part of your question in regard to the renewal processes and having to go back to the owners of these culturally significant words, symbols and meanings. Again, it goes back to what was intimated earlier on that some of the administrative processes must and should be handled in the regulations.

This feedback is very important because it ensures that it must be there because renewal is something that is being looked at as a matter of the regulations - how the processes go, what sort of paperwork is needed, what processes are needed and, therefore, it will

define what to follow that it will be considered as part of the regulation mechanisms for going back. Again, not only just going back to the owners of these words, but also to the Ministry of iTaukei Affairs to also ensure that there is always consistency because sometimes, views change, the way people feel about certain words change, and language in itself changes. There are certain words that we no longer use today that were very acceptable 20 years ago, so it is very important that there always a need to be consistent, going back when there are renewals and taking out assumptions that it is still acceptable.

MADAM CHAIRPERSON.- Thank you, Mr. Chedondo. Would you like to answer the first part of the question, Mr. Tuiloma?

MR. E. TUILOMA.- Madam Chairperson and honourable Members, I just want to add to what Martin has mentioned. In as far as registration of traditional knowledge and entering into the arena of intellectual property, that is also a concern that we have to be very mindful of because of the time limitation that separates them.

Traditional knowledge and traditional cultural expressions and designs and all these traditional items, the timeline for their effectiveness is unlimited at the international level, because it is something that is living with the indigenous people. That is the problem when we try to shift them into the arena of intellectual property. The intellectual property arena has time limitations. For trademarks, different countries have different time limitations for registration. Once you are registered, you have to satisfy that within that timeline. If not, you will be cancelled.

However, on the other side, we still have the Bill, and I know it is probably coming in very soon but before you get that, the timeline is unlimited. Even though they will be replicated here, but under the Bill, they are there for life - until time immemorial.

The other aspect of registration in as far as traditional knowledge and traditional cultural expression is concerned, the consent that has to be given by the owners of those who own it, that consent is another process, which this part of the law that we are putting here, it is a very small aspect of it, but there is a long process that has to follow the route when we go to the Ministry of iTaukei Affairs. That process will have to be put under the regulation as well so that the two Ministries work together, in as far as this concern is made, but I thank honourable Ravunawa for his question. Those are very good questions, and I think we will take those considerations when we draft the regulations. Thank you very much.

HON. P.K. RAVUNAWA.- Just a follow up question, Madam Chairperson. In our research and also in our deliberation, we noticed that there is the preamble of our 2013 Constitution, and how the Rotuman and the Rabi islanders are considered as indigenous

Fijians in that manner. They would also be part of the amendment in this Bill, if the wording of section 12(2)(c) can be consistent without preamble, and also with the WIPO and the UNESCO Convention. That is just a comment.

MADAM CHAIRPERSON.- If I may just seek your clarification, gentlemen, was there ever a Registrar of Trademarks? What is the connection between the Registrar of Trademarks and now the Commissioner, as we see in the 2021 Act. Are they the same person? Can you just explain that to us, please?

MR. E. TUILOMA.- Under the old Act, we have the Registrar of Trademarks who is actually the person who deals with all complaints that may come in during the registration process. He makes his decision, and his decision is only challengeable in court. He makes that decision right there and then.

The Comptroller under the Act is actually the Solicitor-General. The Comptroller is the ultimate authority within the trademark system. He is the one that says 'yes' and 'no', instead of the Registrar, he is the person who has to make decisions before the minister. For example, under section 12, the minister comes into play at certain times, but the Comptroller is the one that makes his decision first, even before he goes there, even in the patents, the design, the Comptroller is the ultimate authority. Unfortunately, we have done away with the existing system under the new law that we have. I do not think we have the registrar anymore.

MADAM CHAIRPERSON.- So, we just have a register - a list, not the registrar - the position. However, I still see that we have application to commissioner. Who are we talking about with the commissioner? Before a comptroller, now a commissioner, can you just clarify that for us, please?

MR. E. TUILOMA.- There are commissioners who are actually appointed to oversee certain areas in the law. Before the comptroller. The comptroller is above the commissioners. It is the renaming of positions, but they are the ones who look into the areas that deal with trademarks. Those commissioners make certain decisions, but the comptroller is the one who ultimately gives his final say on those matters.

MADAM CHAIRPERSON.- Thank you, Mr. Tuiloma.

HON. P.K. RAVUNAWA.- Madam Chairperson, I have another question; how would the owners of these traditional trademarks that affect our tradition and our sovereignty derive economic benefit from this review?

MR. E. TUILOMA.- Most of the marks that we will have to deal with may have been already registered. If they have been registered, then we have to give time. We cannot just go and cancel them right there and then. We have to give time for the owners and those who have registered them, to discuss on how they can, once the timeline has been reached, if they want to continue with those marks. There has to be a way forward between them because they cannot continue.

As I have said from the beginning, they cannot continue using them without the consent of the actual owners of those names, words or designs. That is where the benefit sharing will have to come in - the impact of the law that we have. There has to be a system. The Ministry of iTaukei Affairs have the register of the owners of words and designs, they have their database, and it is something that they have to ensure that they have it reviewed and updated.

HON. R.R. SHARMA.- Through you, Madam Chairperson, a follow up from the question by honourable Ravunawa; looking at 1933, 2021 and now 2025, I see only six Clauses to amend. Why only six Clauses?

In terms of benefit sharing, when you want to protect something, you also do not want to engage it so much that no one wants to take it up, because we also need to look at it from a business perspective. Businesses run the economy. They run the lives of everyone in a nation. You may ask, why is the cost of these goods going high? The process time. In business, time is money, and the market is so complex that it keeps changing every day. So, my simple question is, with this amendment and the regulations that you want to bring about, do you think this is going to encourage or discourage people to even consider these names? I mean, to get these traditional names or names trademarked, that will hold Fiji back because the process is too long. The cost is there, the cost of goods is going high, geopolitics is at play, so where are we going with this?

MR. E. TUILOMA.- Thank you, honourable Sharma. I think that is a very good question, but we are not especially specialized in those areas.

However, the purpose of the law that have been put before you are more to encourage business, as well as those that own certain rights, to work together. I think it is the best way we can ensure that the communities that we are in, once we work together, as we always do, there is always a way out. I think cost will be very minimal, if it has been increased.

However, the most important thing there is once we discuss, there is a way out of it. Definitely, that is something that the law is trying to push through and encourage the community to work together, whether it is the financial sector, business sector or the traditional system. We have to work together to ensure that we come to a compromise on

things. That is where we are coming from, probably the only way we the law that we are trying to reflect in here. Thank you, Madam Chairperson.

MADAM CHAIRPERSON.- Thank you, Mr. Chedondo.

MR. M. CHEDONDO.- Yes, Madam Chairperson, through you, if I may also chime in on the specific aspect of honourable Sharma's question that after all these years, why only six Clauses? Obviously now, the first thing is, we had to separate the issues because in the intellectual property space, we have trademarks, and we have patents, designs and copyrights. While they are different, there is sometimes a little bit of interplay between the two. You can imagine a system whereby we are constantly developing just one area throughout many, many revisions, and forgetting all the other areas. It would, perhaps, leave us in a situation where we might just start to say, "let us scrape everything and start from the beginning."

The second thing is, we have to remember that in this space, Fiji is not in isolation at all. The region is doing quite well, especially with advancements and developments like this, which shows the intent by Government to be the leader in the region in this area. At the same time, because we are not in a vacuum, there is always going to be other developments.

Many, many years ago, the process of registering trademarks would have been very manual, flipping through hundreds of pages, trying to see if there is a similar design, and in some jurisdictions, that is still the case. As the entire sphere, under the auspices, obviously, of WIPO develops and changes, there is always going to be areas that, as a global community, they can say, "let us put our focus for the next couple of years in developing this area", so that all the countries will move along so there is interplay, and it then ties into the earlier questions, like trade, for example. As one country might be developing and defending their trademarks, but their borders are open to all these products which are infringing, so it causes a lot of mishaps in the sector. Just to chime on to that.

HON. P.K. RAVUNAWA.- Madam Chairperson, just a question, where is Fiji standing with the Madrid Protocol at this time? Have we signed up to that Protocol?

MR. E. TUILOMA.- Fiji may probably move into redefining that Protocol once we enact this law here. There are a lot of conventions that are also there. I think the two main conventions that we have already ratified are the TRIPS, as well as the Paris Convention on Industrial Property. I do not think we have ratified the Berne Convention that deals with copyrights. Also, there are other conventions that are there, that have moved further

ahead than what we can anticipate at present, but we have to put the first platform first before we move on to discuss those areas. In as far as we are concerned at this time, we have not ratified the Madrid Protocol as well.

HON. V. LAL.- I would like to know what happens to those existing trademarks that use indigenous words or symbols, once this Bill, which we are talking about, comes into an Act?

MR. E. TUILOMA.- There is a transitional provision under the Bill. For those who have already registered and are now using, they will keep on using them until the registration lapses. But, from then onward, we have to ensure that they consult the owners of those marks. They have to work with them. So, there is a lot of time given to them. For example, I think registration in Fiji is for 14 years and that is quite a long time. But if the registration is about to lapse, then they may have to work within that short timeline to make sure that they work with the community.

I only hope that the communities are not that unreasonable in ensuring that if certain things that they actually own are being used, so they can come to a compromise on the continuity of the use of those words, marks or designs as trademarks.

MADAM CHAIRPERSON.- Thank you very much, Mr. Tuiloma. If there are no further questions from the Committee, I just want to take this time to thank you both, Mr. Chedondo and Mr. Tuiloma, for your time this morning. We still have several weeks to go before we bring our report back to Parliament. So, in the meantime, we hope that we can send you more questions or if we seek clarification from your offices on the Amendment Bills.

With that said, we thank you very much for appearing before the Committee this morning. *Vinaka saka vakalevu.*

The Committee adjourned at 10.44 a.m.

# Munro Leys

# **[VERBATIM REPORT]**

## **STANDING COMMITTEE ON** **FOREIGN AFFAIRS AND** **DEFENCE**

### **BILL**

#### **Trademarks (Amendment) Bill 2025**

**ENTITY:** Munro Leys Lawyers  
**VENUE:** Big Committee Room (East Wing)  
**DATE:** Thursday, 4<sup>th</sup> September, 2025

**VERBATIM REPORT OF THE MEETING OF THE STANDING COMMITTEE ON**  
**FOREIGN AFFAIRS AND DEFENCE HELD AT THE BIG COMMITTEE ROOM,**

**PARLIAMENT PRECINCTS, GOVERNMENT BUILDINGS, ON THURSDAY, 4<sup>TH</sup> SEPTEMBER, 2025, AT 12.04 P.M.**

**Present**

1. Hon. L.S. Qereqeretabua - Chairperson
2. Hon. R.R. Sharma - Member
3. Hon. P.K. Ravunawa - Member
4. Hon. V. Lal - Member

**Submittee: Munro Leys Lawyers**

Mr. Jon Apted - Partner

-----  
-----  
MADAM CHAIRPERSON.- Honourable Members, the Secretariat and viewers watching this on the live coverage, it is a pleasure to welcome everyone.

Pursuant to the Standing Orders of Parliament, specifically Standing Order 111, all Committee meetings are open to the public and the media. Any sensitive information concerning this submission that cannot be disclosed in public can be provided to the Committee, either in writing or in private, but do note that this will only be allowed in a few very specific circumstances, which include national security matters, third party confidential information, personnel or human resource matters and, of course, during the time when the Committee deliberates and develops its recommendations and report back to Parliament.

I want to remind honourable Members and Mr. Apted that all comments and questions to be asked are to be addressed through the Chair. For viewers watching, if you have any questions, please, put them in the comment section and only relevant questions will be considered by the Committee. This is a parliamentary meeting, and all information gathered is covered under the Parliamentary Powers and Privileges Act and the Standing Orders of Parliament.

Please, bear in mind that we will not condone any slander or libel of any sort, and any information brought before this Committee should be based on facts. In terms of other protocols of this Committee meeting, please, keep the movement to a minimum, and switch your mobile phones onto silent.

I would now like to introduce the members of the Standing Committee to Mr. Apted this morning.

(Introduction of Committee Members and the Secretariat)

Honourable Members and members of the public, today, the Committee will be hearing an oral submission from Munro Leys in relation to the Trademarks (Amendment) Bill 2025 (Bill No. 28/2025), to amend the Trademarks Act 2021. I now take this time to invite our guest, Mr. John Apted, to give us his oral submission.

MR. J. APTEd.- Madam Chairperson, I am here, as you have said, representing the firm that I belong to – Munro Leys. A little bit of background for the benefit of the Members of the Committee, Munro Leys is a general practice firm. We practice general, civil and commercial, so we do employment, car accidents, all conveyancing and all kinds of civil work. However, we do have a very large trademarks and Intellectual Property (IP) practice.

I believe we have the biggest IP practice in Fiji. We file the most trademarks into the Fiji Intellectual Property Office (FIPO). We act for many and maybe most of the overseas firms that file international brands for registration in Fiji, so we have experience both, with filing of trademarks with FIPO and experience of the variety of brands or trademarks that owners seek to register. I focused on overseas interests, but we also act for many local large businesses, and we file applications for their trademarks.

I hope in my submission today, which I will make orally and off the cuff, I can share with the Committee some of the issues that may arise from these proposed amendments for both, international businesses, but equally and maybe more so, for local businesses.

If I could go to the amendment Bill itself, I will say, at the outset, that I will get rid of the easy stuff. We have no issues at all with Clauses 3 and 4 of the Bill which deal with the new section 107A for provisional measures and amending section 110 of the Act to introduce a new subsection regarding what commercial scale means. Those are desirable amendments that are required to fill in a lacuna, or to clarify uncertainties and add to the ability to enforce the new Act.

However, we do have comments and reservations about Clauses 2 and 5. Before I go to Clause 2, I hope I do not insult the members of the Committee, but I do not know how much background knowledge you have about how trademarks work, both legally and in practice. So, I will share with you some Trademark 101. These are very, very basic ideas about trademarks.

First, what is commonly misunderstood in the community is what trademark registration is for. It is important to understand that you do not need to register your brand or your logo or your image as a trademark in order to use it. It is important to understand that Clause 2 of the Bill which proposes to amend section 12 of the Act to control the registration of indigenous marks and other community sensitive marks, does not prevent anyone from using that mark. You can use any trademark you want without registering.

If you use a brand (I call it a brand) or a logo without registration, your use is not protected from copycats until you have used it sufficiently to have developed and can prove a reputation in the market. So, if you can prove to the court that you have developed a reputation in an unregistered trademark, you can then stop someone from using it. The reason that the court does that is that it protects your goodwill, and it also protects consumers who may be confused if someone else is allowed to register that trademark, once it has become associated in the people's mind only with the original user.

I will use a very, very good example here - the brand 'Fiji' for water. The brand 'Fiji' for water could not be registered originally. However, because of natural waters promotion of it and considerable sales over the years, when a competing business in Fiji decided to introduce a product that also used the word 'Fiji' on the front, together with some similar imagery, we were able to get an injunction against that company because by then, the brand had established sufficient reputation in the community that the court had to protect consumers from being confused by this alternative brand that had similar features.

The point is, when you are dealing with this particular amendment, bear in mind that whatever you decide on the amendment, it will not stop anyone from introducing a brand that uses an indigenous Fijian word, or a word that is special to any of the other communities, or that is religious. So, this amendment does not stop use, it will only stop registration.

The next point we need to understand is, if that is the case, why was the concept of trademark registration invented? The concept of trademark registration was introduced in England two centuries ago. Let me go back one stage. The protection that I described earlier by going to court takes a long time to establish a reputation. During that time, your product can be copied, so there is that degree of uncertainty. Even when you have traded for a long time and promoted it for a long time, going to court is expensive, and it is not certain. You do not know how the court might decide. You might think you have established a reputation. The court might think your proof is not enough. So, in England,

they invented this concept of registration of trademarks to give brand owners immediate protection before they have even started to sell.

The economic reason why this is important is that it allows brand owners to invest in a mark, to invest in the development of that brand, to invest in the promotion of that brand, because if you know from the outset that you are protected, you will spend the money. I will give you a good example. We have a client here whose brand in Fiji includes the word 'Fiji'. It is a very, very well-known local and international brand. They have not yet been able to register their brand in Fiji because of section 12 relating to the word 'Fiji'. They wanted to export to China, but growing a market in China takes a lot of investment, in terms of promotion, in terms of developing relationships with wholesalers and retailers. They wanted to register the brand in China, but China will not register it unless they get permission from Fiji. As a result of not being able to get that, this brand has not realised its potential for export to China because it has not got the assurance that it will be protected. So, if they spend the money without a registration in China and they are successful, someone else will make a copy and start selling. I am using that example loosely to show the practicalities about economic benefit to the country and about how it affects investment from a brand owner.

The other thing that is often misunderstood in relation to trademarks is, yes, when you register a trademark, whether it is a word, a series of words, a logo or a combination of all of them, you get exclusive rights to use that, but your exclusive right is not for all purposes. A lot of laypeople think that if you register a trademark, no one else can use that word or logo for anything - that is actually not true. When you register a trademark, you register it in a class and for specific goods within that class, so a class would be food and beverage, clothing, machinery, and then you have to list the goods within that class that you want to register your mark for. So, if you want to register a mark called 'Munro' in relation to food, I would register it for food and I would put soft drinks, burgers, hot meals, blah blah blah. And if it is accepted, I can stop someone else from using that mark only for those goods in that class. So, if you get a registration of an indigenous Fijian word in clothing for t-shirts, sulu, trousers, dresses, you only have exclusive rights for that. You do not get exclusive rights for anything else. That is another common misunderstanding, so that needs to be borne in mind when you are looking at section 12.

The other thing that we need to understand, especially when we are dealing with indigenous words, is in order to register as a trademark, the mark has to be what is called 'distinctive'. That is the underlying test. Only distinctive marks can be registered and because of that rule, geographical words cannot be registered immediately. For example, if your trademark was Lautoka Electrical, you will not be able to register that trademark immediately. You may be able to register it later under a principle called 'secondary

meaning'. Secondary meaning is like the common law injunction. Secondary meaning is where the trademark has been used for so long that it has become associated only with that makeup, so that the law will protect that maker in the interest of consumers because when consumers see that brand, even though it is geographical, it will only associate it with that maker and when they buy that product, they think they are getting it from that person and it is on that basis that Fiji Water has been registered.

After the court case down the line, Fiji Water applied to register its mark for water on the basis of secondary meaning, and it was on that basis that it was granted the registration because by then, for water, it was so well known that anyone seeing the word 'water' would think it came from Yaqara and not from some other source, so there is that principle.

There are also descriptive words. The reason why I brought that up is a lot of indigenous words are actual place names. A lot of indigenous words that are used as brands are actually place names, which would not normally be registrable anyway, unless they have been used exclusively for a considerable time.

Now, let us go to the amendment. Protection of indigenous cultural expression is a new topic in the IP world, so there are not many precedents throughout the world that we can look at. At the moment, to the best of my knowledge, it is only protected in Canada, New Zealand and, informally, in Australia, which has copied New Zealand, but more as a matter of practice rather than law, and I will come to that. I am not familiar with what happens in Canada, but the New Zealand Act protects Maori expression only to the extent that registration of a Maori word or symbol or material cultural expression might offend Maori. It is not an absolute prohibition on the use of Maori cultural expression, it is only a discretion to refuse something that may offend.

Importantly, the New Zealand model provides in the legislation for the appointment of an advisory committee. It prescribes that the members of the committee must have expertise in this area, so that you can be sure that judgments made about indigenous cultural expression come from a person with the relevant expertise. So that is the New Zealand model.

Australia has no special provision. This is important to understand that although Australia has a provision similar to what is already in section 12(1) of our new Act. What section 12 of our new Act says that the Commissioner must not register a sign as a trademark or part of a trademark where the use or user registration of the sign (sign here can mean a logo or word or whatever), or any part of the sign, would be likely to deceive or cause confusion is contrary to any written law, or would, in the opinion of the

Commissioner, be likely to offend a significant section of the community. So, in Australia, they use 'A' and 'C'. 'C' is they have a committee unofficially and where the office believes that the use of a word or logo would offend an Aboriginal or First Peoples group, they disallow it under that. Where a brand seeks to use the name of a tribe or communal group, you know, like the nations, one of the nations. In Australia, when it is not related to that group, they would refuse it under the 'likely to deceive or cause confusion'. So, where a Caucasian or international business wants to use First People's logo or name, it is refused under (a) as well, so that is the Australian model.

Let us look at what we have here. It is important to note that the amendment to section 12 does not seek to prohibit the registration of these cultural expressions, it allows it subject to the approval of the minister. There is no provision for who the minister consults. Unofficially, he or she may consult whoever, but the question for the Committee is whether we should be like New Zealand and be transparent and fix the people that he or she is to consult because the Attorney-General will usually act on the advice of FIPO first because they are already doing this without authority. I have taken them to court, so I am speaking from experience.

What happens in practice is it comes to the examiner within FIPO, who is usually a lawyer of medium expertise, but who is not trained in cultural expression. They are just lawyers, so they do not have the relevant expertise, even to be the first filter to even recognize whether this is an indigenous word or not to send it up. Then if they believe it is an indigenous word or indigenous Fijian word - *iTaukei* word, according to the new word for these kinds of things, they send it to the Ministry of iTaukei Affairs for their views.

I know from experience that the Ministry of iTaukei Affairs takes a very, very conservative view of these words and they will seem to refuse anything that is remotely indigenous. It is a very strict view they take; it is not an enabling view – it is a conservative view.

However, I do not know what the expertise of those people in the Ministry of iTaukei Affairs is because that is a ministry, the people who work there are administrators, but that does not follow that they are experts in cultural things. They are good administrators, like you may be a good civil servant from PSC who gets transferred into the Ministry of iTaukei Affairs, but it does not mean that you are an expert in culture. So, there is some benefit, I would suggest, in prescribing who is to be consulted about these kinds of things, what kind of qualifications they have to have.

The next thing I would point out is that if you go to the actual proposed section, with all due respect to the Attorney-General or the Minister for Justice and his Ministry

who have proposed this Bill, the four criteria that are proposed to be introduced which is under section 12(2)(c), and I quote:

- “(i) any iTaukei word, phrase, or symbol of cultural, spiritual, or historical significance;
- (ii) any Fiji Hindi, Rotuman or other indigenous word deeply tied to cultural identity or societal values;
- (iii) religious or communal symbol; or
- (iv) any term likely to mislead or falsely suggest association with Fiji's indigenous communities, traditions, or institutions.”

In my respectful view, this is too broad and too uncertain. I point out again that there is already some protection implicit in section 12(1). The existing section 12(1) of the Act allows him or her to refuse any mark or any sign that may offend. So already, marks that may offend *iTaukei*, marks that may offend other communities, marks that are religious and may offend religious communities, are already implicitly covered. That is the first one.

The second is, and I am trying not to be a lecturer here but, please, bear with me. When you go to these criteria, the thing to remember too and understand is that the whole concept of ‘protection of indigenous traditional knowledge’ works best in patents, where traditional knowledge is used for an invention or something like that, and where you can ensure that returns are shared with the traditional custodians of that knowledge. It does not work in the same way with trademarks because trademarks do not involve any sharing of returns. This mechanism is only for approving registration or not approving registration.

I am not accusing anyone of this, but I am just saying that there is a tendency to think that it is improper to register any indigenous word as a trademark. That, with all due respect, is not a helpful attitude. Again, it does not reflect reality because in other countries, like New Zealand and Australia, the indigenous community is a minority. They do not participate broadly in the everyday commerce of the country, so they are a minority. The majority has come to protect their interests from exploitation by the majority.

In Fiji, the indigenous community are the majority. The indigenous community wishes to enter into commerce in a bigger way. We must be careful that we do not impede the indigenous people from entering into commerce using Fijian brands, Fijian words and symbols as their trademarks.

We also have to be conscious of the fact, and I do not know, there is a balancing exercise to be done here, that tourism is our biggest export, it is our biggest employer, it is our biggest generator of returns, not just to the country, but to indigenous communities. Already, *iTaukei* expression is a very, very important part of tourism branding. Many of the resorts have restaurants, bars and facilities that use *iTaukei* words.

The current Trade-Marks Act 1933 only allows registration for goods. The new Act will allow it for services, so when the new Act comes into force, many of these hotel operators that have restaurants that use *iTaukei* words, like *marau*, *takali*, those kinds of things will be wanting to register those words as their service marks for their restaurants. This amendment may prevent them from doing that.

Then you have indigenous Fijian businesses who may want, as a badge of their identity, to use indigenous words for their brands, like clothing, and I know that because I have participated in the fashion industry. I know that young indigenous designers use *iTaukei* words for their brand because that is their identity, so you need to think about how this will affect them.

We already have many retailers who use brands that will be affected by this. *Aisokula* is a brand of clothing that is sold in a chain of department stores. *Aisokula* is the name of a chiefly group. *Bati* is a well-known rum. *Drua* is a well-known brand for rugby and clothing. There are many, and with all due respect to the Ministry of Justice, I wonder whether they did any poll or any survey of their records before they proposed this amendment to see how many marks are already registered, how common use of these kinds of marks are in the community, because this Committee has to balance all the competing interests. It is not just about protection - protection has to happen in a way that does not stop SMEs, the emergence of indigenous businesses, Rotuman businesses, promotes tourism and job creation, and it does not impede things that have already happened.

The biggest example of use of cultural expression for tourism is Fiji Airways. The *teteva* would be caught - the logo on the aircraft, so it is a lot more complicated than it seems. There is a big balancing exercise that needs to go on to make sure that the process is such that you do not protect so much the expression, that you stop business and job creation and especially, the people whose expression you are trying to protect from themselves using this material for their own economic advancement. So, there is a big balancing exercise to be done there.

If you go to these tests, they are all very uncertain. What is a word or phrase or symbol that is of cultural or historical significance? What is not of cultural significance?

Everything is of cultural significance. Everything is of historical significance. For Fiji-Hindi, Rotuman or indigenous word, what does 'indigenous' mean? That cannot be *iTaukei* because *iTaukei* is covered by section 12(2)(c)(i). What is indigenous in section 12(2)(c)(ii)?

Rotumans are there already, so who are the indigenous here? Is it the people of Rabi? Are they indigenous? Is it the people of Kioa? Are they indigenous? I mean, I could argue, I speak *Kai Loma*. Is that indigenous? This test is very, very uncertain. It gives a lot of power to FIPO and the Attorney-General because the practices for *iTaukei* words, they go to the Ministry of iTaukei Affairs. For the other communities, where will they go? Will it just be the officer there who says, "no"? Religious or communal symbol, like a cross? It depends, like I am a Christian, I do not find a cross in certain trademarks to be offensive. They are common because of historical arms and all of that, but a cross in certain trademarks might be offensive. But I do not think that there should be an absolute control on all religious symbols, because if it is offensive, then it should be stopped.

Then you have, "any term likely to mislead or falsely suggest association with Fiji's indigenous communities, traditions or institutions." That is so broad that they may use it to say, "Any indigenous word - *iTaukei* word or any Rotuman word, cannot be used". However, that cannot be the case because indigenous Fijian businesses themselves want to use words, or the tourist industry might want to use words. Is that a false association, so what is the test there? What does it actually prevent and what does it not? It is not clear from the Explanatory Notes.

I would suggest respectfully that it might be better for Clause 12(1) to be amended so that this focuses on 'insult' or 'offence', or some test like that rather than these blanket vague provisions because what also happens in practice is that, proper business people who are running their businesses properly will first seek advice on whether a mark is likely to be accepted or not, before they even apply and before they even start to invest in using the mark.

Already, the processing of a trademark application takes two years. That is without this limit. Applying for approval takes two years as well, and it is a very, very slow and conservative process. I have lodged an application for a peak body. It is an organisation that is made up of businesses in the community, in an emerging economic area, which another Ministry consistently announces is the new growth area for our country. So, there is a peak body being formed with the support of that Ministry, with the support of donors, made up of all businesses that participate in that area, and because this body is being formed and has adopted a logo to take to the world to sell Fiji, it has the word 'Fiji' in the

brand for this big body and it has to because we are wanting to tell the world about what we offer.

That application for the approval of the word 'Fiji' has been sitting there for more than a year, and this is not a private business. This is supported by another Ministry as part of our economic development but because they are so conservative about the use of the word 'Fiji', they will only approve it if you are government owned. And because this is not government owned but is member owned but sponsored by the government in the interests of the government, it just sticks there because there are no rules about it. So, I am not here to complain about that, I am only sharing this to indicate some of the practicalities of the approval process.

If the criteria is vague and too wide, people will not be able to use local brands or even develop them if they have a business plan and they are doing it properly because they will never know whether they are going to get approval or not. That is what I would like to share.

I think we need to be very, very practical about this. We need to understand that the use of an indigenous symbol or expression from the *iTaukei* community or from any other community is not necessarily bad, and that *iTaukei* people and businesses that benefit *iTaukei* communities may legitimately want to use it and, in fact, if we commonly use it. So, we may be preventing people who use it and perhaps, when this Act comes into force, we would want to register service marks from doing that. I will leave it at that.

The other section which is more problematic is Clause 6, I will come back to Clause 5. Clause six is like a Freudian slip. A Freudian slip happens when you are hiding what you are thinking, and you suddenly say something down the line that reveals what your motive was originally. So, I will explain why I say that.

The amendments to section 12 that we have been discussing are, on their face, do not prohibit - they give the Attorney-General the discretion to approve. They make it seem like, "It's okay, as long as you come to us, and we control it". Everything that I have submitted up until now has suggested that the attitude behind it is actually prohibitory because they very rarely give permission for anything. The criteria are so broad that they can stop anything.

Then you come to Clause 6 and the amendment to section 173, the new subsection (4). If you read it, you will see what I am talking about. It says, and I quote:

“(4) Notwithstanding subsection (3), a trademark that, immediately before the commencement of this Act was valid, retains its existing registration period under the Trade-Marks Act 1933 but may not be renewed if it is prohibited under section 12(2)(c).”

This provision deals with marks that are already on the register.

However, section 12(2)(c) does not prohibit any registration at all - it allows registration subject to ministerial approval. So, not only is this an error, but also is actually unfair because the relationship between this and section 12 is, if you do not have a registration now and you apply under section 12 and get through, you get the approval of the minister because it does not fall into any of that - you can renew forever after. But, if you have one already, you cannot renew at all, even if it might have been approved if you came now, so this does not make any sense, first, because it says ‘prohibited’ and section 12 does not prohibit anything, so it is ineffectual. But even if you took it as requiring approval, it prevents renewal of a mark that is already there. That might have been allowed if it came after the Act came into force. It does not apply the same criteria to that existing mark. All existing marks are banned.

What it should say is, “cannot be renewed without the approval of the Attorney-General in accordance with that section”. So, then he exercises the discretion that he would exercise for a new mark. That is the problem with Clause 6.

If I can go back to Clause 5, it is on a different issue altogether. It has got nothing to do with indigenous marks. Clause 5 amends section 131 of the Trademarks Act 2001, and this is to do with Customs’ seizure of pirated goods. This provision wants to reduce the time that the importer has to counter evidence given by the brand owner.

What this is about is, for example, if I own the Munroe sneakers and it was registered in Fiji and someone imports fake Munroe sneakers, if I register my brand at Customs, Customs will stop it and ask me - the brand owner, to prove that I own Munroe sneakers. So, I give my proof to customs which is my registration certificate or whatever.

At the moment, the Act says that the importer has 20 days in which to respond and give his excuse or reason for being allowed to bring that in. It could be, for example, that I have given him a licence or that those goods were actually made in Hong Kong with my

permission, and he bought them because owning a right is not everything because you can permit people to use your right. At the moment, it is 20 days. This provision seeks to reduce it to seven working days, after which the Comptroller can destroy the goods.

I do not have a problem with reducing the 20 working days, but seven working days is an odd number. It is usually five or 10 working days, and seven calendar days. Very rarely do you have seven working days because then, you get confused. Is it going to be Monday or Tuesday? So, I would suggest that it be 10 working days, which is two weeks, which is a fair enough period but, at least, you know Friday to Friday or Monday to Monday, because that is the pattern of the law. You get weeks, not one and a half, or 1.4 weeks.

Also, the Explanatory Notes cross reference another section where it says, “to bring it into conformity”, but that section has 10 working days, not seven. I mean, it is a small thing, but it would be much more practical to have two weeks because also, the importer needs to get legal advice. The importer needs to run around and get copies of documents. These are not always waiting, so two weeks would be a fair period because sometimes, the lawyers have to come to parliamentary committees or go to cases at the AG's Office about trademarks and all of those things.

Unless you have any questions, Madam Chairperson and the Committee, that is all I have to say verbally, but I will follow up with the same ideas in writing.

MADAM CHAIRPERSON.- Thank you very much, Mr. Apted. We are very, very appreciative of your experience, your knowledge, and just sharing your experience. I mean, it has really opened our minds.

When we started with these deliberations, we came with almost next to nil knowledge, and we have been learning a lot in the last couple of days since we began these face to face submissions. Today, it has been very special for us, and I think the rest of the Committee will agree.

We do not have a lot of time, Mr. Apted, so if anyone has any questions for Mr. Apted? I know that he said he will provide a written submission that will follow his oral submission today, and we can follow up with questions then. Unless someone has a question for Mr. Apted right now?

MR. J. APTED.- I will not be insulted if you do not have any questions.

(Laughter)

MADAM CHAIRPERSON.- Since there are no questions, thank you, honourable Members. Thank you very much, Mr. Apted, for your time today, and we look forward to receiving your written submission.

With that said, ladies and gentlemen, I thank everyone, and also the ladies from Hansard and our Secretariat, and I declare this meeting closed.

The Committee adjourned at 12.55 p.m.

# Written Responses

Joint Submissions by  
the Solicitor-General's  
Office and the Ministry  
of *iTaukei* Affairs

## TRADEMARKS (AMENDMENT) ACT 2025:

**The Existing Landscape** – Trademarks Act 1933 and the TMA 2021

**TMA 2021** - Enacted in August 2021, aiming to modernize trademark regulation and registration in Fiji.

Originally intended to align with international standards (WIPO assistance in 2016 & 2020).

Implementation delayed due to resource constraints and the need for further regulatory provisions.

**TMA 1933** – Currently used until such a date appointed by the AG by notice in the Gazette – s1(2) TMA 2021.

## TRADEMARKS - DEFINITION

### EXISTING LANDSCAPE:

TMA 1933 – s2 "...a mark used or proposed to be used upon or in connection with goods for the purpose of indicating that they are the goods of the proprietor of such a trademark by virtue of manufacture, selection, certification, dealing with or offering for sale."

"mark" includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral or any combination thereof."

TMA 2021 – s2 "means any sign capable of being represented graphically; and distinguishing the goods or services of one person from those of another person, and includes certification trademark and collective trademark."

"sign" includes a brand, colour, device, heading, label, letter, name, numeral, shape, signature, smell, sound, taste, ticket or word, and any combination of signs.

## PURPOSE OF THE AMENDMENT

- **Core Objectives of the Trademarks (Amendment) Act 2025**
  - **Strengthens Fiji's trademark framework and aligns national law** with TRIPS and Paris Conventions
  - Close enforcement gaps and provide more efficient, fair and transparent system for TM owners, and consumers,
  - **Protecting Indigenous Cultural Heritage:** A primary driver is to safeguard culturally and religiously significant words, phrases, symbols, and images – Clause 2 - Protect Fiji's heritage and prevent cultural appropriations
  - 
  - **Modernizing Enforcement:** Streamlining infringement proceedings and providing mechanisms for provisional measures. (Clause 3)
  - **Alignment with International Standards:** Continuing the effort to align Fijian trademark law with international best practices, particularly those related to intellectual property rights (TRIPS Agreement).

## WHY FOCUS ON INDIGENOUS CULTURAL ELEMENTS?

### Why Focus on Indigenous Cultural Elements?

The Act specifically addresses trademarks incorporating iTaukei, Fiji Hindi, Rotuman, or other indigenous words deeply tied to cultural identity and societal values. (Clause 2)

It aims to prevent the renewal of trademarks containing such elements without express written consent from the Minister. (Clause 2)

This reflects a recognition of the unique cultural significance and potential for misuse or misappropriation.

## LEGAL IMPLICATIONS – KEY AMENDMENTS

### Significant Changes Introduced by the Act:

**Clause 2 (Section 12(2) Amendment):** Expands the definition of elements that cannot be trademarked to include:

“**Taukei** words, phrases, or symbols of cultural, spiritual, or historical significance. Fiji Hindi, Rotuman, or other indigenous words tied to cultural identity. Religious or communal symbols. Terms likely to mislead about association with Fijian communities – Rationale - Protect Fiji’s heritage and prevent cultural appropriation.

**Clause 3 (Section 107A) – Provisional Measures:** Introduces a mechanism for trademark owners to apply to the court for provisional measures to prevent infringement or preserve evidence – Rationale – ensures timely intervention before damage occurs – ‘Anton Piller’

**Clause 4 - Definition of "Commercial Scale":** Clarifies what constitutes "commercial scale" infringement, focusing on activities likely to cause harm – provide clarity for enforcement, and counter counterfeiters.

**Clause 5 – s129(2) - Reduced Response Time for Infringement Proceedings:** Shortens the time required to respond to infringement proceedings and speed up dispute resolutions

**Clause 6 – Transitional Provision –** existing TM containing indigenous words, marks or symbols cannot be renewed without Minister’s written consent – to safeguard indigenous knowledge and cultural property from appropriation without prior informed consent.

## PRACTICAL IMPLICATIONS

Provide Legal Certainty and predictability – clear definitions

Enhance enforcement and improve protection – provisional measures for quick court actions

Reduced Litigation Delays and ensure quick resolutions – shorter response timelines

Cultural safeguards – legal recognition of indigenous and religious sensitivities

Transitional provision – balance between protecting existing rights and respecting cultural heritage

## PRACTICAL IMPLICATIONS – PROVISIONAL MEASURES

How Will Section 107A Impact Trademark Enforcement?

- Allows for quicker action against potential infringers.
- Provides a tool to preserve evidence before formal legal proceedings, mitigating risks of destruction or concealment.
- The court can grant provisional measures with or without notice, based on the potential for irreparable harm or risk of evidence loss.

## PRACTICAL IMPLICATIONS – MINISTERIAL RESPONSIBILITY

Role of the Attorney-General

- The Act falls under the responsibility of the Attorney-General.
- The Minister has authority to appoint dates for the Act to come into force and can decide on renewal of trademarks containing indigenous elements.

## STAKEHOLDER IMPACT AND PUBLIC INTEREST

Trademark Owners – Stronger protection and faster remedies

Consumers/Public – greater confidence with better accessibility to authentic goods and services

Recognition of rights to indigenous cultural goods and protection of their rights to their cultural goods from appropriation

Business/investors – Confidence in the commercial system and its protection system – encourages investment and innovation

Government – satisfies international obligations and enhancement of efficient IP management and enforcement system

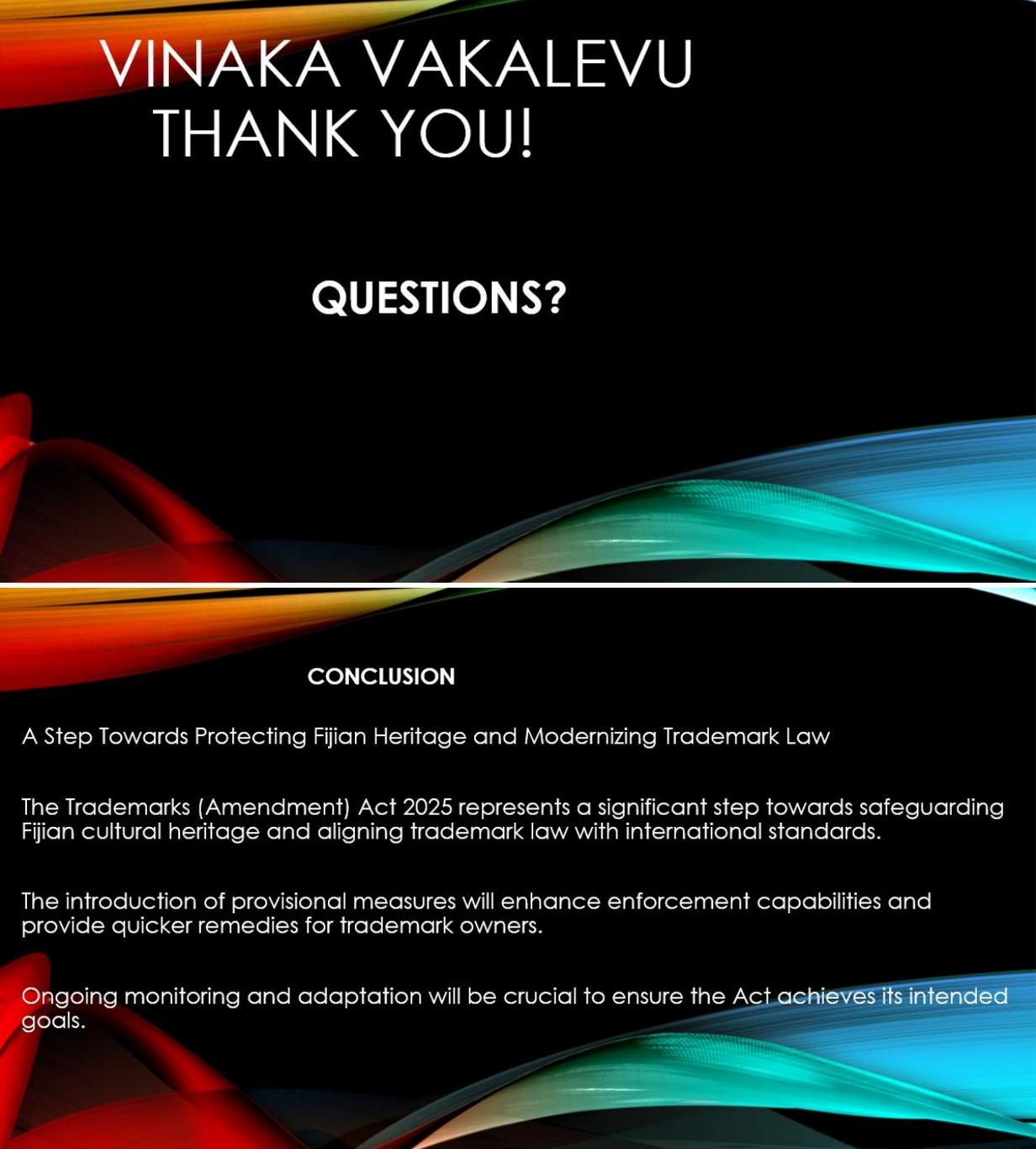
## POTENTIAL CHALLENGES AND CONSIDERATIONS

### Navigating the New Landscape

**Defining "Cultural Significance":** A potential challenge will be consistently defining what constitutes "cultural, spiritual, or historical significance" in the context of trademark applications.

**Balancing Protection and Innovation:** Ensuring that the Act doesn't unduly restrict legitimate business activity or stifle innovation.

**Implementation & Resources:** Adequate resources will be needed to effectively implement and enforce the amended Act together with the other Substantive IPR Acts; Patents, Design, Copyrights, Geographical Indications and (TK, TCE, TL Bill).



VINAKA VAKALEVU  
THANK YOU!

QUESTIONS?

#### CONCLUSION

A Step Towards Protecting Fijian Heritage and Modernizing Trademark Law

The Trademarks (Amendment) Act 2025 represents a significant step towards safeguarding Fijian cultural heritage and aligning trademark law with international standards.

The introduction of provisional measures will enhance enforcement capabilities and provide quicker remedies for trademark owners.

Ongoing monitoring and adaptation will be crucial to ensure the Act achieves its intended goals.

# Siwatibau and Sloan



SIWATIBAU & SLOAN  

---

BARRISTERS & SOLICITORS

01 September 2025



**THE STANDING COMMITTEE ON FOREIGN AFFAIRS AND DEFENCE,  
Parliament Complex, Constitutional Avenue, SUVA.**

The Madam Chair and Hon. Members of the Standing Committee,

**SUBMISSION – BILL NO. 28/2025 TO AMEND THE TRADEMARKS ACT 2021**

We are grateful for the invitation to present our firm's submission this morning concerning the Trade Marks (Amendment) Bill No. 28 of 2025 ("**the Bill**"). This is our submission.

The Bill proposes five amendments to the yet to commence Trade Marks Act 2021 ("**the Act**"). These proposed amendments are:

1. Amendment to section 12(2) - Absolute grounds for not registering a trademark.
2. Amendment to section 107A - Application for provisional measures.
3. Amendment to section 110 - Offence to counterfeit a registered trademark.
4. Amendment to section 131 - Disposal of infringing goods.
5. Amendment to section 173 - Transitional clause.

## AMENDMENT ONE - SECTION 12(2) (C)

Section 12(2) of the Act prohibits the registration of the word "Fiji," a body corporate name, or a trading name as a trademark without the approval of the Minister. The proposed amendment seeks to expand the grounds of prohibition to include:

- a. any l'taukei word, phrase, or symbol of cultural, spiritual, or historical significance;
- b. any Fiji Hindi, Rotuman, or other indigenous word deeply tied to cultural identity or social values;

- c. religious or communal symbols; or
- d. any term likely to mislead or falsely suggest association with Fiji's indigenous communities, traditions, or institutions.

### Submission

While we acknowledge the necessity of protecting words, phrases, or symbols of cultural, religious, or historical significance to any ethnic, religious, or concerned community group, we suggest changes to this proposed amendment.

- The proposed amendment is broadly defined, ambiguous, and vague for a single individual, the Minister, to decide without his decision being challenged or appealed in a Court of Law.
- The Minister is not required under section 12 to obtain expert advice from a third party regarding issues of cultural, spiritual or historical significance. Instead, it allows the Minister to make decisions based on his own opinion, knowledge or with utmost respect, lack thereof. This is made more problematic because of the fact that the Minister's decision cannot be appealed or challenged in a Court of Law.
- The Act does not specify the procedure in cases where the Minister approves an application under the amendment but the application is opposed by members of the public during the subsequent opposition period. Which shall prevail – the approval of the Minister under section 12 or the opposition of the public that the mark is offensive or is of cultural, spiritual or historical significance.
- Without court precedents, requirement of an expert input, decisions made under this proposed amendment might be inconsistent, varying with each successive Minister.
- Given the commercial nature of trademarks, timely registration is paramount for business owners. Section 12 does not specify a timeline for decisions by the Minister. This can be problematic based on the busy schedule of the Minister.
- Section 12 and the proposed amendment does not provide the process of obtaining the approval of the Minister. Is the process an internal process between the Commissioner and the Minister or does it require the applicant to apply for approval from the Minister before or during the registration application process?

- Section 12 does not require the Minister to provide reasons for his decision made under this section.
- The proposed amendment could potentially impede local trademark owners, including SMEs, from registering marks that embody a local Fiji identity.

### Recommendations

- We believe that the proposed amendment may already be addressed by section 12 (1) (c), which prohibits the Commissioner of Trademarks from registering any mark likely to offend a significant section of the community.
- Additionally, section 42 of the Act provides a secondary layer of protection, allowing public opposition to an application on valid grounds, including the mark being offensive.
- If the committee is of the view that section 12 (1) (c) and 42 are inadequate, then we recommend the inclusion of diverse bodies in the decision-making process for applications invoking the proposed section 12(c). This may include – the *I’Taukei Affairs Board*, Ministry of Multi Ethnic Affairs, *Fiji Muslim League*, *Shree Sanatan Dharm Pratinidhi Sabha (SSDPS) of Fiji*; *Rotuman Council* or similar bodies.
- An applicant must be provided with the opportunity to provide evidence of support or authorisation from relevant bodies. An applicant should be allowed to lodge its application with approvals from relevant bodies.
- If the proposed trademark is not in the English language, the applicant should be required to provide a translation and meaning of the mark. This may clarify issues especially for words that may have multiple meanings in the I’taukei, Fiji-Hindi or Rotuman language.
  - While it is not part of the amendment, we recommend that the decision of the Minister be subject to an appeal process.

## AMENDMENT TWO - SECTION 107(A)

The proposed amendment section 107(A) aims to introduce an interim measure for trademark owners whose trademarks have been or are likely to be infringed. This interim

measure can be applied for on an urgent basis and will remain in effect until the trademark owner's primary infringement application is resolved by the Court.

We are of the view that the amendment is necessary and will assist trademark owners against infringers. It also provides protection in the form of compensation for Respondents who may unfairly be affected by interim orders made under this proposed amendment.

## AMENDMENT THREE- SECTION 110

The proposed amendment aims to define "commercial scale" for the purposes of section 110. We are of the view that this amendment is necessary and will greatly assist in determining whether an offense has been committed under section 110.

## AMENDMENT FOUR - SECTION 131 (3)(a)

Regarding the proposed amendment to section 131 (3) of the Act, it reduces the opposition period from 20 to 7 days for owners of infringing goods to oppose a Notice of Sanction.

Under Section 131, upon the rights owner providing sufficient evidence of infringing goods, FRCS has the authority to destroy or dispose the infringing goods without a court order and even without a request from the rights holder that the goods be destroyed. Given the irreversible nature of FRCS action under this section and the potential risks associated with destroying goods without a court order, we respectfully suggest that a 10 to 14 day period for opposition would be more suitable.

## AMENDMENT FOUR - SECTION 173

Our interpretation of the proposed amendment is that trademarks registered under the Trade-Marks Act 1933 may not be eligible for renewal under the new Act if they are prohibited by amendment one mentioned in this submission.

The proposed amendment to section 173 may pose significant problems to relevant current owners of registered trademarks under the current 1933 Act. Many of these owners have invested considerable time, financial resources, and effort into establishing

their trademarks and building a strong reputation to differentiate their goods in the market.

Under the proposed amendment, there is a risk that these businesses could lose the substantial investments they have made. This may necessitate them to alter their trademarks and embark on the onerous process of rebuilding their brand from the beginning.

### Recommendations

- The amendment one mention in this submission should only apply to new registration applications under the new Act.
- The amendment one mention in this submission should not apply to any renewal of registrations registered under the Trade Marks Act 1933.
- Existing registrations under the Trade Marks Act 1933 should be renewed without consideration to amendment one.
- Section 173(3) of the new Act should apply to all existing registration without consideration to amendment one.
- NB: Section 173 of the new Act does not address the renewal of current UK based trademark registrations under the current Trade Marks Act 1933.

## CONCLUSION

The above is our submission that we hope will be of assistance to the Committee. We are available to answer any questions that the committee may have.

Respectfully Submitted.

A handwritten signature in black ink, appearing to read 'Aminiasi Vulaono', written in a cursive style.

AMINIASI VULAONO,

Partner.

# Oceanica Intellectual Property

2nd September 2025

Our Ref: 1 sub25Pa

**SUBMISSION TO THE PARLIMENTARY STANDING COMMITTEE ON  
FOREIGN AFFAIRS AND DEFENCE ON BILL NO. 28/2025**

Madam Chair and Honorable Members;

**In Attendance**

Mr Pita Niubalavu

Miss Mareta Gaunavinaka

**Introduction**

1. Firstly, we must thank the Standing Committee for extending the invitation to Oceanica Intellectual Property to make submission today on the Bill, concerning the amendments to section 12, 110, 131, 173 and insertion of section 107A to the Trademark Act 2021.

**About Oceanica Intellectual Property (OIP)**

2. OIP is an Intellectual Property law firm and over the years, we have carried out extensive Intellectual Property/Traditional Knowledge / Cultural Expression & Genetic Resources related consultancy works around the Pacific through various governments and international organizations, including WIPO, UNESCO, ILO, SPC, PIFS.
  - We were a WIPO nominee to the Inter Geographical Indication Training in Switzerland
  - Speaker at the 29th WIPO -IGC Conference (Geneva, 2015), and

- Representatives of the Indigenous Panel in the 30<sup>th</sup> & 31<sup>st</sup> session of the WIPO-IGC (Intellectual Property, Traditional Knowledge, Genetic Resources & Folklore).
- Recently, we authored the *UNESCO Copyright Handbook for Musicians* (Fiji, Vanuatu, Solomon Islands 2025)

## Bill No. 28/2025 To Amend the Trademarks Act 2021

3. In the absence of a legal protection for our Traditional Knowledge and Cultural Expression (Intangible Cultural Heritage), and with growing concerns about the unauthorized use of cultural heritage in trademarks for profit by individuals or corporations without any recognition or benefit to the traditional owners, the indigenous or local communities, as well as issues with trademark infringements and importation of counterfeit goods (including counterfeit cultural goods) **we fully support the amendments to section 12, 110, 131, 173 and the insertion of section 107A to the Trademark Act 2021.**

## Section 107A inserted

4. The proposed section 107A offers further protection to owners of registered trademark and provide an option to owners, investors, manufacturers to make an application without Notice to the Court to prevent an infringement or imminent infringement of an intellectual property right. The purpose is to prevent infringement that may cause damage to the business services or product reputation, prevent trade port entry of infringing goods and preserve evidence of an alleged infringement. This proposed section 107A on “Application for Provisional Measures” is in line with **Article 50 of the TRIPS Agreement**, which empowers judicial authorities of member states to order such prompt and effective provisional measures.

## Section 110 amended

5. The proposed amendment to section 110, relating to “Offence to counterfeit registered trademark” will provide some clarity on what is a “commercial scale”, thus providing great assistance to the court, taking away the burden to define the term by relying on common law and other secondary material, when face with charges made pursuant to section 110. The “commercial scale” threshold for IP related criminal offenses appears in **Article 61 of the TRIPS Agreement**. The term “commercial scale” is left undefined in the Agreement, thus allowing member states to interpret the same in their domestic legislations.

## Section 131 amended

6. Section 131 (1) provides an option to the owners of trademark to make an application to court and seek the necessary orders for disposal of the infringing goods. Such an application will have to go through the normal orders of litigation provided in the High Court Rules. It is a lengthy and costly exercise and is not appropriate for our SMEs. Section 131 (3), on the other hand, is meant for clear case of infringement, providing swift way to dispose of infringing goods. Counterfeit medical, cosmetics and food products are often unregulated and pose significant health risk. The proposed amendment to section 131 will lessen the 20 working days’ time limits to oppose confiscation and destruction or disposal of infringing goods to 7 working days, after been served with a notice, thus taking away the burden and heavy costs of keeping infringing goods for a lengthy period of time.

## Section 173 amended

7. The proposed amendment to section 173 is restrictive and will not allow the re-registration of a mark of indigenous word, phrase, or symbol of cultural, spiritual or historical significance, Fiji Hindi word deeply tied to cultural identity or societal values, religious or communal symbol.
8. We support the proposed amendments to section 173, however, some expressed exceptions must be allowed to the indigenous and local communities, who have registered their own traditional cultural expressions as Trademark through their respective Trustees of their different “vanua”.
9. Recently we assisted the “**NASAUMATUA TRUST**” acting on behalf of the people of Daku, enumerated accordingly in the Register of Native Landowners with the NLFC under Buretu Tikina- (288) in the Province of Tailevu, in the re-registration of the different versions of the ‘**IRI NI DAKU**’. The registration will now allow the Daku Village to claim exclusive rights over the use of its cultural expressions-marking authentic products of the people of Daku, use the cultural expression as a trademark on crafted products and may extend to virgin oil (this village owns around 100 acres of coconut trees) and an opportunity to license the mark to outsiders in exchange of a licensing fee. This is about empowering the traditional owners of the expressions and exceptions must be allowed in the proposed amendment, to such communities.

## Section 12 amended

10. The proposed amendment to section 12 is a defensive approach. It will expand the absolute grounds for not registering a trademark of indigenous words, phrases, or symbols of cultural, spiritual or historical significance, Fiji Hindi words deeply tied to cultural identity or societal values, religious or communal symbol and other misleading suggestive expressions.

## Recommendation 1

11. The current proposed section 12 (2) (c) may need some re-wording and changes to really express the intention of the amendment and in line with the preamble of the 2013 constitution, terminology and definitions of certain words that are widely accepted in WIPO and UNESCO conventions.
12. From my read, the intention of the amendment is to cater for the growing concern of the unauthorized use of “intangible cultural heritage” as trademarks, without proper authorization or respect for their cultural significance and no remuneration to the traditional owners.
13. The preamble of the 2013 Constitution tells us that the iTaukei and the Rotuman are referred to as indigenous of this country, thus, the word “indigenous” can be used as a common word for both, without making further reference to “iTaukei” or “Rotuman”.
14. When we speak of “intangible cultural heritage”, we speak of both Traditional Knowledge & Traditional Cultural Expressions. The definition of “cultural heritage” in the Fiji World Heritage Act 2024 does not capture this. Article 2 of the UNESCO Convention for the safeguarding of the Intangible Cultural Heritage gives us the clear definition of “intangible cultural heritage” which include, amongst other things, representations, expressions, knowledge, objects, artefacts, language, oral traditions, performing arts, social practices and traditional craftsmanship. WIPO is leading the text-based negotiations at its IGC to develop an international legal instrument for the protection of Traditional Knowledge and Traditional Cultural Expressions. The terms “Traditional Knowledge” and “Traditional Cultural Expression” are commonly used and understood. One of the core objectives of the UNESCO 2005 Convention on the protection and promotion of the

diversity of Cultural Expressions is to protect and promote the diversity of Cultural Expressions.

15. To align with the UNESCO convention and the current undertaking by WIPO, the terms “intangible cultural heritage” and/or “traditional knowledge” and “traditional cultural expressions” must be included in proposed section 12 (2) (c).

## Recommendation 2

16. The proposed amendments must not only prevent others from gaining intellectual property rights using cultural significant symbols, motifs or phrases but it must also enable: -
- a. The indigenous and local communities to legally use their cultural expressions as Trademark, to enable them to exploit the cultural expressions commercially; and
  - b. Others, with proper consent of the indigenous or local community and benefit sharing agreement in place, to use the cultural expressions as Trademark, however, the renewal must be subject to further consent from the traditional owners of the expressions.
17. Both of the above will still be subject to the distinctiveness test required in the law.
18. One must understand that one of the main functions of a Trademark is to enable consumers to identify a product of an entity from those of its competitors. In the same way, allowing the indigenous or local communities, owners of the cultural expressions to register their expressions as trademark, will assist the recognition of their culture, easy identification of their authentic goods and services and foster Indigenous and local communities’ economic development.

19. It allows the indigenous and local communities to use the registered cultural expressions as a tool of distinction and branding and with a good marketing strategy, it will lead to increase consumer recognition of the cultural expression, as well as commercial benefits for TCE holders.

## Recommendation 3

20. Section 11 of the new Trademark Act 2021 has provision for registration of Collective Marks that will allow collective associations in our indigenous and local communities to register collective marks in respect of goods produced by its members. This provision can be taken advantage of by cooperatives, youth groups, mataqali, tokatoka, and all other collective associations in our Indigenous and local communities. This is another reason why the proposed section 12 (c) must not only prevent others from registering cultural expressions as trademark but it must also allow the indigenous and local communities to register their cultural expressions as trademark.

### Example (“Taita Basket”- Kenya)

21. There are various examples of successful collective marks of indigenous communities- in Kenya, for example, Sisal baskets are manufactured in a traditional way. The community of basket weavers, formed the Taita Basket Association which is the owner of the collective mark ‘**Taita Basket**’. The mark is being used to protect and promote their baskets and to furthermore establish rules and quality standards on the use of the mark.

## Empowering the Indigenous & Local Communities

22. True empowerment is not only about preservation and protection but allowing the Indigenous and local communities to commercialize their cultural expressions to their advantage and for their economic benefit. The State has to provide the platform and legislative support. One of the intentions of protecting IP rights (in this case, through registration of Trademark) is to encourage creativities.

## Recommendation 4

23. In the case of any application to register a traditional cultural expression or expression that belongs to a particular community, such an application must be referred to a relevant Authority or government ministries first for approval before it is accepted by the Commissioner of Trademarks for normal examination and determination on whether it meets the normal distinctiveness test.

## Proposed Section 12 (c) amendment

24. That for ease of reference we have quoted the existing section 12 and our proposed section 12 (c) amendment (in red).

### ***“Absolute grounds for not registering trademark: General***

12. - (1) *The Commissioner must not register a sign as a trademark or part of a trademark where the use or registration of the sign or any part of the sign -*
- (a) would be likely to deceive or cause confusion;*
  - (b) is contrary to any written law or would otherwise be disentitled to protection in any court; or*
  - (c) would, in the opinion of the Commissioner, be likely to offend a*

*significant section of the community.*

*(2) The Commissioner must not register as a trademark or part of a trademark-*

*(a) the word "Fiji" or any word that makes reference to or implies approval from the State; and*

*(b) a body corporate's name or trading name duly registered under the Companies Act 2015, unless the use of the word or mark or the use of a disclaimer on the word or mark is approved by the Minister.*

*(c) that comprises of—*

*(i) any Indigenous intangible cultural heritage whether it be traditional knowledge or cultural expressions or derivatives of which;*

*(ii) any expressions that are deeply tied to the cultural identity or societal values of the descendants of the indentured labourers from British India and the Pacific Islands;*

*(iii) known religious symbol; or*

*(iv) any term likely to mislead or falsely suggest association with Fiji's indigenous communities, traditions, or institutions.*

*unless an application to register such an expression is first referred by the Commissioner to the appointed Authority by the Minister, for approval prior to examination by the Commissioner.*

*(3) The Minister may approve the use of the word or mark in subsection (2)(a)*

*and (b) on such terms and conditions as the Minister deems proper, if -*

*(a) the mark is necessary for the public interest;*

*(b) the mark complies and is in accordance generally with approved marks and brands recognized and licensed in accordance with written laws;*

- (c) the registration of the trademark has the effect of developing Fiji's economy and technology;*
- (d) the company seeking registration of its company name as a trademark is a government owned entity; or*
- (e) on any other reasonable ground.*

*(4) The Commissioner must not register a trademark if the application is made in bad faith.*

These are our submissions.

Respectfully Submitted.

Yours Faithfully,

OCEANICA IP

*Pita K Niubalavu*

Solicitor

# Fiji Council of Churches

## **Submission to the Standing Committee on the Review of the Trademark Amendment Bill:**

(This submission is compiled by Beniamino Salacakau on behalf of the Fiji Council of Churches.)

**Introduction:** The Fiji Council of Churches is made up of the major church groups in Fiji. Although the invitation is always sent out to all the churches, attendance and participation has not been general. Many of the smaller churches do not attend. However there is the confidence that the Fiji Council of Churches is an inclusive forum and non-participation is not due to exclusion but more by choice. There is little ideological and theological reason that can be identified and a reason for non-participation.

**Balance of views:** On the issue of Trademarks, there is a range of views that may cause differences but these are not significant. Generally the Fiji Council of Churches aligns with the stated reasons for the review and the amendments proposed. This may be due to the language. The council prefers to leave it to the experts. It trusts that the Government is acting for the good of the people and the country.

**Support for proposed amendments:** The council supports the as detailed by the explanatory notes. Particularly as reflected in 1.3, the Protection and enforcement of trademarks in Fiji. With the growing commercialization of traditional artefacts and flora and fauna we need to protect our brands.

**Minor concern or query:** The Council cannot align with the absolute power of the Minister such nothing nothing can be changed in a court, a commission etc. The question arises, what other recourse can an aggrieved party take for reconsideration in any matter pertaining to the Ministerial order? This places the Ministerial order above the judicial recourse.

**Thank you.:** Thank you for the opportunity afforded to the Churches. Perhaps some will make their submissions on a personal level. There was little opportunity for the churches collectively discuss and formulate a joint submission.

We wish the Committee well.

B. Salacakau

For Fiji Council of Churches.

Munro Leys

15 September 2025

Our ref M999-265 JLA:vs  
Your ref

**SUBMISSION TO THE PARLIAMENTARY STANDING COMMITTEE ON JUSTICE, LAW AND  
HUMAN RIGHTS ON THE TRADEMARKS (AMENDMENT) BILL 2025**

## Introduction

1. Munro Leys is pleased to respond to the Committee's invitation to make submissions on the Trademarks (Amendment) Bill. These written submissions record the submissions made verbally on 4 September 2025.

## About Munro Leys

2. Munro Leys is Fiji's largest law firm with a practice primarily directed to commercial law and foreign investment, one of its areas of speciality being trade marks. It has a significant international linkages, including with the major international law firms who deal in trade marks.
3. Currently two Fiji law firms specialise in trade mark work, particularly for international clients. Other firms perform trade mark work from time to time.
4. We understand that Munro Leys files the highest number of trade mark applications in Fiji. Munro Leys also files trade mark applications in seven other Pacific Island jurisdictions and its international clients.

## Context

5. Some basic context is necessary to understand the potential effects of the Bill –
- (a) The current law in force in Fiji is the Trade Marks (“**1933 Act**”). The Trade Marks (“**2021 Act**”) has not yet been brought into force.
  - (b) Trade marks are currently registered under the 1933 Act only for goods in specific classes and for the specific goods within that class listed in the registration.
  - (c) Under the 2021 Act, registration will be extended to trade marks used for services (“**service marks**”) such as for shops, hotels, sports teams, NGOs etc.
  - (d) Registration of a trade mark is not necessary to enable a person to lawfully use a trade mark.
  - (e) If a trade mark is not registered, the owner can only stop someone from copying or “infringing” their mark if it can prove in Court that it has “a reputation” because it has used or promoted its trade mark so extensively in relation to certain goods that consumers associate that mark only with their goods or services of that type so that if anyone else were allowed to use the trade mark for the same goods or services, this would mislead consumers. Establishing this reputation takes a long time during which the trade mark remains unprotected. Going to court to prove reputation is also time consuming and expensive and there is a risk that the Court may refuse relief.
  - (f) Trade mark registration was introduced to allow trade mark owners to obtain guaranteed exclusive rights to, and legal protection of their trade marks in the class and goods (and in the future in the services) for which the mark is registered, immediately upon registration without having to establish any reputation.
  - (g) However trademark registration is also aimed at protecting consumers by ensuring that generally only one business is able to use a mark for particular goods (or services), so that consumers are not deceived.
  - (h) Trade mark registration allows brand owners to get immediate protection of their trade marks, provided their trade mark is “distinctive” and after a process in which their application is advertised and open to objection. In many cases, brand owners do not invest in developing a brand unless it is first registered as a trade mark.

- (i) The requirement that a trade mark must be “distinctive” means that geographical, descriptive and commonly used words and images are not registerable unless the applicant proves that they have “acquired distinctiveness” (“secondary meaning”) through extensive prior use by that applicant.
- (j) In essence, “inherently distinctive” marks are immediately registerable, while non-distinctive marks only become registerable if they are used for a lengthy period of time and to such an extent that the public has come to associate the trade mark with that business and no other (e.g. FIJI water)
- (k) Trade mark applications are processed by the Fiji Intellectual Property Office (“**FIPO**”) which due to staff turnover and low priority takes an inordinate time to process trade marks (often years).
- (l) The Bill seeks to amend, among other things, section 12 of the 2021 Act, which currently requires the Minister’s approval to register a trade mark containing the word “Fiji” or which indicates approval of the State.
- (m) This requirement currently exists under section 14A of the 1933 Act. FIPO and the Minister have been very conservative and slow in granting approvals under the 1933 Act eg. an application by “Outsourcing Fiji” the peak body for the new outsourcing industry to register its “Outsourcing Fiji” trade mark which it will use to promote the industry, has been pending for some time.
- (n) There are already some registered trade marks on the Fiji register that comprise iTaukei words or images. The Ministry should provide the Committee with these details. There are also many unregistered brands and trade marks and service marks that use iTaukei words and images, particularly in the tourism, clothing and sports industries and in the community services sector (e.g. Tanoa Hotels and the names of bars and restaurants at hotels, in sports “Drua” or in community organisations “Loloma”).
- (o) Tourism brands are service marks and are currently not registerable. However, users are likely to want to register them when the 2021 Act comes into force and allows for their registration.
- (p) As far as we know, legal protection of indigenous cultural material presently only exists by law in Canada and New Zealand. Australia provides some protection through internal IPO guidelines and practices applying to general provisions.
- (q) In those countries, the indigenous communities are minorities as opposed to Fiji, where the iTaukei community is the majority, and iTaukei words are

increasingly in every day use. Also in Fiji, indigenous words and culture provide the public face of the country especially in tourism (as it they do in many other countries).

- (r) In New Zealand and Australia, the law does not require approval to use or register indigenous words or material, but rather prevents the registration of indigenous words and material that might offend the indigenous community, leaving it open to anyone to register indigenous marks that would not offend.
- (s) The New Zealand legislation requires their IPO to consult a committee established by the Act, to which experts must be appointed, when an application is made in the registration of a trade mark containing indigenous Māori material.

## Submissions

### Clause 2

- 6. Clause 2 of the Bill will make significant changes to Fiji's trade mark law. As noted above, presently section 12(2) of the 2021 Act requires the approval of the Minister for the registration of any trade mark containing the word "Fiji" or any mark that refers to or implies approval from the State (even if exclusive right to the material is disclaimed).
- 7. Clause 2 seeks to amend that subsection by requiring the approval of Minister for the registration of any trade mark that comprises of –
  - “(i) any iTaukei word, phrase, or symbol of cultural, spiritual, or historical significance;
  - (ii) any Fiji Hindi, Rotuman or any other indigenous word deeply tied to cultural identity or societal values; (iii) religious or communal symbol; or
  - (iv) any term likely to mislead or falsely suggest association with Fiji's indigenous communities, traditions, or institutions.”.
- 8. The proposed amendment –
  - (a) goes beyond the protection granted in any other jurisdiction

- (b) is imprecise in wording and may be interpreted broadly to cover many words about which there is no community sensitivity. For example, many iTaukei words may be common words but can be said to also have cultural, spiritual or historical significance, and yet not be offensive if used as a trade mark. Similarly Fiji Hindi, Rotuman or other indigenous words may be “deeply” tied to cultural identity or values, but may not be offensive if used as trade marks eg. “hanisi”, in Rotuman or Hindi words which are commonly used for spa and wellness brands, without objection.
  - (c) does not require any particular expertise for the decision-makers and appears to give an unfettered discretion to the Minister and those who advise him or her so promotes arbitrary decisions.
  - (d) requires approval for religious or community symbols like crosses which may be part of a historically accepted trade mark (eg. Swiss Army brand).
  - (e) in respect of the category “likely to mislead or suggests association with Fiji’s indigenous communities, traditional or institutions is also too broad and may prevent registration of marks that are legitimately used by brand owners in tourism, clothing, food and wellness and sports, community activity without offence.
  - (f) may deter members of indigenous and other communities from adopting and registering trade marks in their own languages that are not offensive and the approval process may prevent them from being able to protect trade marks in their own language. This would work against Government’s economic inclusiveness initiatives. (may impede use of local words and images for bonafide purposes e.g.: tourism, sports and community purposes).
9. Munro Leys submits that the amendment provided in clause 3 in the Bill is misguided and too wide reached. Instead there should be an amendment that prohibits the registration of any trade mark which would be offensive to any community in Fiji, including the iTaukei and other indigenous communities, and to religious groups.
  10. The Act should not give the Minister a role in these decisions, but like New Zealand should set up an appropriately qualified committee to advise the Commissioner of Trade Marks.

## Clause 3

11. Munro Leys does not oppose clause 3 of the Bill which inserts a new section 107A providing for provisional enforcement measures into the 2021 Act.

## Clause 4

12. Munro Leys does not oppose clause 4 of the Bill which seeks to insert a new section 110(1) defining the term “commercial scale”, into the 2021 Act.

## Clause 5

13. Clause 5 of the Bill seeks to amend section 131 of the 2021 Act. Under Division 3 of Part 4 of the Act, a trade mark owner can apply to the Comptroller of Customs to intercept the importation of infringing goods and provide proof of their ownership of the trade mark. The Comptroller may if satisfied suspend the clearance of the imported goods, but the trade mark owner must apply to the Court within 10 working days for the Court to decide whether the goods are infringing goods and if so to order their destruction. Section 131(3) currently allows the Comptroller to destroy the goods without a court order if the importer, exporter etc has been advised of the possibility of destruction and does not oppose this within 20 working days. Clause 5 seeks to reduce this period to “7 working days”.
14. Munro Leys submits that 7 working days is an odd period as legal time periods longer than one week are usually expressed in multiples of 5 (on the basis that 5 working days make a week). In this case, Munro Leys submits the period should be “10 working days”.

## Clause 6

15. Clause 6 proposes to insert a new subsection (4) into section 173 of the 2021 Act (which is the transitional section). It provides that a trade mark that was registered under the 1933 Act may not be renewed if it is “prohibited” under the new section 12(2)(c) of the Act.

16. First, the use of the word “prohibited” is incorrect. The new subsection 12(2)(c) does not prohibit the registration of marks describes in that subsection. It allows them to be registered if the Minister approves the use of the indigenous or protected word or material in it.
17. Second the proposed new subsection (4) provides that existing relevant registrations can never be renewed and does not provide a process for approval of a renewal by the Minister. This contrasts with a new registration under the 2021 Act which can be approved and once approved can be renewed indefinitely.
18. It is likely that existing registrations covered by the proposed section 12(2)(c) will have been used for a long period and be well known to consumers as representing the quality of the trade mark owner’s goods. The trade mark owner by the time of the next expiry will probably also have invested much time and money in establishing the reputation of their trade mark. To disallow renewal altogether would invite infringers to use the mark to the detriment of consumers and brand owners. It would also likely cause the owner to lose considerable valuable goodwill that may be reflected in their balance sheet as an intellectual property asset.
19. It is submitted that if the proposed new subsection 12(2)(c) is retained, renewal should of existing marks should be permitted but be made conditional on approval under that section in the same way as a new application.

## Conclusion

20. We would be happy to provide any further assistance that the Committee may require.

**RESPECTFULLY SUBMITTED**

MUNRO LEYS



Jon Apted

Partner

Direct Dial +679 322 1812

[jon.apted@munroleyslaw.com.fj](mailto:jon.apted@munroleyslaw.com.fj)

3678471

Ministry of *iTaukei*  
Affairs



# MINISTRY OF iTAUKEI AFFAIRS



ITAUKEI TRUST FUND BUILDING COMPLEX 87 QUEEN ELIZABETH DRIVE, SUVA  
P.O.BOX 2100, GOVERNMENT BUILDING, SUVA, FIJI.

TELEPHONE: (679) 3100 909

FAX: (679) 3300198

**File Ref:** MTA 52/14

**Date:** 01/09/2025

Hon. Lenora Qereqeretabua

Chairperson

Standing Committee on Foreign Affairs and Defence

Parliament of the Republic of Fiji

SUVA

**By Hand & Email Delivery** [lenora.qereqeretabua@foreignaffairs.gov.fj](mailto:lenora.qereqeretabua@foreignaffairs.gov.fj)

Dear Hon. Chairperson

**Subject: Request for Submission to the Standing Committee on Foreign Affairs and Defence – Bill to Amend Trademarks Act 2021 (Bill No. 28/2025)**

1. Reference is made to above-mentioned subject and your letter dated 21 August 2025, in relation to the same.
2. The Ministry of iTaukei Affairs, Culture, Heritage and Arts ( '**our Ministry**' ) submits as follows:

## Introduction

Our Ministry strongly supports the intent and passage of the Trademarks Amendment Bill 2025. This submission addresses the critical issue of cultural appropriation, specifically the misappropriation of Fijian cultural elements in trademarks, as highlighted by recent controversies. We commend the proactive stance in prioritising this vital legislative reform.

## Background and Context

The misappropriation of iTaukei cultural intellectual property is not a new phenomenon but has been exacerbated by globalised commerce and digital trademark applications. This includes:

- attempted trademarking of Fijian Arts, a classic example being the *kesakesa* patterns and designs of profound cultural significance by Fiji Airways;
- The trademarking of iTaukei Words e.g the word "Bula", the very heart of the Fijian spirit of welcome and hospitality by a businessman for commercial gain;
- The widespread commodification of *masi* (*tapa* cloth) designs, which are sacred narratives and historical records, not mere decorative patterns; and
- The use of traditional *cavuti* or sacred salutation for example the word "Nalagi" – used in Nalagi Hotel – it is the sacred salutation of a tribe in the Vanua of Nawaka in Nadi.

These acts constitute a form of cultural appropriation that strips these elements of their context, meaning, and sanctity, reducing them to mere commercial assets for entities that have no understanding of or limited connection to their origins.

## Key Concerns

The current legal framework have proven insufficient to protect iTaukei cultural heritage, leading to several severe consequences:

- i. Violation of Indigenous Intellectual Property Rights – iTaukei cultural symbols, traditional knowledge (TK), and traditional cultural expressions (TCEs) are the collective intellectual property of the iTaukei people. Their unauthorised use for private profit is a fundamental violation of these inherent rights, which are recognised under international instruments such as the UN Declaration on the Rights of Indigenous Peoples (*'UNDRIP'*) which we understand is international soft law and not an enforceable treaty; nonetheless, Fiji as a co-sponsor of UNDRIP, should still adhere to its principles;
- ii. Commodification of Sacred Heritage – Cultural elements like masi designs, the kesakesa, and ceremonial words are imbued with spiritual and historical significance. Their trademarking for use on commercial products (e.g., swimwear, alcoholic beverages) is deeply offensive and disrespectful, causing significant cultural and moral harm to the community;
- iii. Economic Disenfranchisement and Gender Impact – The primary creators and custodians of masi art are iTaukei women. When foreign entities massproduce and trademark imitations of their work, it directly undermines their economic livelihoods and devalues their artistry. This disproportionate impact on women, who are pillars of both cultural preservation and rural economies, must be a central consideration in this legislative reform and

- iv. Erosion of Cultural Identity – The uncontrolled commercial exploitation of core cultural identifiers like "Bula" risks diluting their meaning and detaching them from their Fijian roots, ultimately weakening cultural identity for future generations.

## Specific Comments and Recommendations

Clause	Comment	Recommendation
1	Standard provisions	N/A
2	Strongly supported	N/A
3	Subsection (8) is something the courts usually assess based on application of counsel.	Consider whether there is a need to specify this or whether it may imply this is an enhanced entitlement ie more than in other litigation. If that is not the drafter's intention, then perhaps consider removal.
4	Supported, this adds clarity.	N/A
5	N/A	Perhaps look at if 7 days is realistic.
6	Supported but also understand that this is likely to be contentious.	We would suggest retaining the ability to not renew, based on the amended 12(2)(c). We support this as it goes to the heart of redressing past historical wrongs. However, this is likely to be highly contentious and possibly end in litigation, so perhaps some risk assessment and mitigation ought to be considered by SG's Office, both as to whether this might be challenged on natural justice grounds etc and whether there is a way to do this fairly/equitably for all concerned.

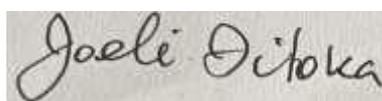
## Conclusion

The Trademarks Amendment Bill 2025 is a commendable step towards justice, cultural respect, and economic fairness. It represents an assertion of national sovereignty over our most precious cultural heritage. We urge the Honourable Committee to give this Bill your fullest consideration and to recommend its passage with the necessary strength and clarity

to provide needed protection for the unique and living heritage of the iTaukei people. Presumably this will mean it is likely the Principal Act is likely to be ready for commencement soon and we look forward to this, in the absence of a dedicated Traditional Knowledge and Expressions of Culture legislation (a draft Bill we understand is being prepared for tabling to Parliament soon).

8. If you require any additional information or clarification, please do not hesitate to contact us.

Vinaka Saka Vakalevu



Joeli J. Ditoka (Mr.)

*Acting Deputy Secretary Policy*

For the **Permanent Secretary for iTaukei Affairs, Culture, Heritage and Arts**

cc Secretary to the Standing Committee [elesi.waiwalu@legislature.gov.fj](mailto:elesi.waiwalu@legislature.gov.fj)

# Fiji Revenue and Customs Services (FRCS)

**Please address all correspondence to:**  
The Chief Executive Officer  
Fiji Revenue and Customs Service  
Private Mail Bag Suva Fiji  
T +679 324 3000 F +679 330 7693  
info@frcs.org.fj frcs.org.fj



**FIJI REVENUE AND  
CUSTOMS SERVICE**

16 September 2025

The Honorable Lenora Qereqeretabua  
Chairperson  
Standing Committee on Foreign Affairs and Defence  
PO Box 2353  
Government Buildings  
Suva

Dear Honorable Qereqeretabua,

**Re: Submission on the Trademarks (Amendment) Bill 2025 (Bill No. 28/2025)**

I wish to acknowledge receipt of your letter inviting a written submission on the Trademarks (Amendment) Bill 2025. FRCS appreciates the opportunity to contribute to this important legislative review, which will have a direct impact on our mandate in safeguarding intellectual property rights, strengthening border enforcement, and facilitating legitimate trade.

FRCS strongly supports the overall objectives of the Bill and recognises the significant progress it represents for Fiji's intellectual property regime. We have reviewed the Bill, and we note that the law (Trade Marks Act 2021) has captured the Border Protection Measures outlined in section 125 to section 132 of the Act. FRCS does not have any further comments on the said Bill.

We thank the Committee for the opportunity to provide this submission and remain available to provide further clarification or appear before the Committee if required.

Yours faithfully,



Mr. Udit Singh  
**CHIEF EXECUTIVE OFFICER**

## Annex: Comparative Analysis of Trademark Law Approaches

Area	Fiji (Bill 2025)	New Zealand	Australia	Singapore / UK
Cultural Expressions	Prohibits iTaukei, Fiji Hindi, Rotuman, indigenous & religious symbols; renewal ban	Māori Advisory Committee advises Registrar	General morality/public order grounds, indigenous recognition less explicit	Morality & public policy grounds; no indigenous-specific rules
Provisional Measures	Introduces Anton Piller-style orders; no Customs linkage	Anton Piller orders via courts	Court powers + strong Customs seizure powers	Statutory Anton Piller orders + Customs powers
Commercial Scale	Broad definition includes non-profit harmful use	Course of trade focus	Commercial purpose focus	Covers large and small-scale infringing activity
Timelines	Response cut to 7 days	1–2 months, extendable	1–2 months, extendable	2 months, extendable
Transitional Rights	No renewal of indigenous/cultural marks	Existing marks respected, prospective rule only	Prospective application only	Respect acquired rights
Border Measures	Not included	Customs recordal & seizure powers	Strong Customs recordal & enforcement	Customs recordal & enforcement powers
Digital/Online Infringement	Not addressed	Limited provisions	Some online enforcement tools	Domain name & online marketplace remedies
Institutional Support	No dedicated tribunal	General IP office, advisory role	Federal Court with IP expertise	Specialised IP Court/Tribunal (UK: IPEC, SG: IP Division)

# Additional Information

# Siwatibau and Sloan

Dear Ms. Tabuyaqona,

Attached is our internal list of pending opposition matters. These oppositions are currently awaiting hearings by the Registrar of Trademarks.

Please note that for matters where a "Counter-Statement" was not filed, our list is subject to the registry's records. Under the current 1933 Act, registration applications should be deemed abandoned if a Counter Statement to the Notice of Opposition was not filed.

Lastly, the attached list refers only to opposition matters our firm is handling. It does not include opposition matters we are not involved in. Other matters that have remained pending for years, in which we are involved, include:

1. Registration applications
2. Renewal applications
3. Recordal applications (including recording changes of name, address, or errors in registration)

We hope that this list is helpful but do let us know if you have any questions. Vinaka.

Sincerely,

Aminiasi Vulaono

## SIWATIBAU AND SLOAN

### IP Division - Pacific Islands Intellectual Property Service

Telephone: 3319 167

Visit us online [www.sas.com.fj](http://www.sas.com.fj)

This email is for the person or organisation it is addressed to and contains confidential information. If for any reason you are not the intended recipient of this email please do not read it, copy it or forward it and we would be grateful if you would delete it at your earliest convenience and inform us in a separate email that you received it in error.

---

**From:** Aminiasi Vulaono <[aminiasi@sas.com.fj](mailto:aminiasi@sas.com.fj)>

**Sent:** Friday, September 12, 2025 12:38 PM

**To:** Elesi Waiwalu <[elesi.waiwalu@legislature.gov.fj](mailto:elesi.waiwalu@legislature.gov.fj)>

**Cc:** [rita@sas.com.fj](mailto:rita@sas.com.fj) <[rita@sas.com.fj](mailto:rita@sas.com.fj)>; Ajendra Pratap <[ajendra.pratap@legislature.gov.fj](mailto:ajendra.pratap@legislature.gov.fj)>; Katie Batikawai <[katie.batikawai@legislature.gov.fj](mailto:katie.batikawai@legislature.gov.fj)>; SIWATIBAU SLOAN <[law@sas.com.fj](mailto:law@sas.com.fj)>; [lsqereqeretabua@gmail.com](mailto:lsqereqeretabua@gmail.com) <[lsqereqeretabua@gmail.com](mailto:lsqereqeretabua@gmail.com)>

**Subject:** Re: Request for Information

Dear Ms. Tabuyaqona,

Thank you for your email.

We will compile our list of pending matters and send it to you shortly.

Aminiasi Vulaono

## **SIWATIBAU AND SLOAN**

### **IP Division - Pacific Islands Intellectual Property Service**

Telephone: 3319 167

Visit us online [www.sas.com.fj](http://www.sas.com.fj)

This email is for the person or organisation it is addressed to and contains confidential information. If for any reason you are not the intended recipient of this email please do not read it, copy it or forward it and we would be grateful if you would delete it at your earliest convenience and inform us in a separate email that you received it in error.

On Fri, 12 Sept 2025 at 10:16, Elesi Waiwalu <[elesi.waiwalu@legislature.gov.fj](mailto:elesi.waiwalu@legislature.gov.fj)> wrote:

Dear Mr Vulaono,

The Standing Committee on Foreign Affairs and Defence is in the process of deliberating and finalising its Committee Review Report on the Trademarks Amendment Bill (Bill No. 28 of 2025).

During the Committee's deliberations today [12 September], a few matters arose that require your clarification:

1. In your submission on 1<sup>st</sup> September 2025, you had mentioned:

*"While legal avenues exist, the effectiveness of the current Trademark Act in handling opposition proceedings has been limited. Some opposition cases, even for large brand owners, have remained unresolved for over a decade. This uncertainty can*

*undermine investor confidence and trade development, as brand owners need assurance that their rights are protected and enforceable when necessary."*

In light of the above, the Committee kindly ask for examples of unresolved proceedings.

We would appreciate your response at your earliest by Tuesday 16 September 2025 to assist the Committee in concluding its report.

Vinaka,



"A Resilient Parliament  
responsive to the needs of  
the people and driven by  
the ideal of a better  
quality of life for all  
Fijians"

**Elesi Tabuyaqona (Mrs)**

**Deputy Committee Clerk**

**Committee Unit**

**Parliament of the Republic of Fiji**

**P.O Box 2352, Government Building**

**Suva, Fiji.**

**Phone : (679) 8925225/2397904**

**Website: <http://www.parliament.gov.fj/>**



Please consider the environment before printing this email

## INTERNAL LIST OF PENDING TM REGISTRATION OPPOSITION AS OF 10 September 2025

Our Ref	Client	TM	Status	Comments
T0009/003	Registration applicant.	 338/2013 – Class 38 339/2013 – Class 39 340/2013 – Class 50(10)	<ul style="list-style-type: none"> <li>• 26/06/2013 – Filed application.</li> <li>• 20/08/13 – Fiji Times Advertisement</li> <li>• 23/08/13– Government Gazetted</li> <li>• 20/12/2013 – Received Notice of Opposition.</li> <li>• 07/02/2014 – Filed Counter Statement to Notice of Opposition.</li> </ul>	<input type="checkbox"/> A hearing of the opposition is still pending since 2014.
T0009/004	Registration applicant.	 335/2013 – Class 38 336/2013 – Class 39 337/2013 – Class 50(10)	<ul style="list-style-type: none"> <li>• 26/06/2013 – Filed application.</li> <li><input type="checkbox"/> 20/08/13 – Fiji Times Advertisement <input type="checkbox"/> 23/08/13– Government Gazetted.</li> <li>• 20/12/2013 – Received Notice of Opposition.</li> <li>• 07/02/2014 – Filed Counter Statement to Notice of Opposition.</li> </ul>	<input type="checkbox"/> A hearing of the opposition is still pending since 2014.

L0002/077	Registration applicant.	TM Registration for  207/2012 - Class 45	<ul style="list-style-type: none"> <li>• 12/04/2012 - Filed application.</li> <li>□ 02/06/12 - Fiji Times Advertisement □ 08/06/12- Government Gazetted.</li> <li>• 07/12/2013 - Received Notice of Opposition.</li> <li>• 07/06/2014 - Filed Counter Statements to Notice of Opposition.</li> </ul>	<input type="checkbox"/> A hearing of the opposition is still pending since 2014.
S0005/065	Opponent	OPPOSITION of TM  Application for  11/2013 - Class 08 12/2012 - Class 45 13/2012 - Class 47 14/2012 - Class 50(10)	<ul style="list-style-type: none"> <li>• 17/05/13- Government Gazette Advertisement.</li> <li>• 16/08/2013 - PIIPS filed 3x Notice of Opposition &amp; Copy of Statutory Declaration.</li> </ul>	<ul style="list-style-type: none"> <li>• A hearing of the opposition is still pending since 2013.</li> <li>• Confirm if application abandoned.</li> </ul>

SPR55-2011	Opponent	<p>OPPOSITION of TM Application for "SWITCH".</p> <p>208/2011 - Class 08 209/2011 - Class 45 210/2012 - Class 47 211/2012 - Class 50(10)</p>	<ul style="list-style-type: none"> <li>• 26/08/11- Government Gazette Advertisement.</li> <li>• 21/03/2012 - PIIPS filed 3x Notice of Opposition.</li> </ul>	<ul style="list-style-type: none"> <li>• A hearing of the opposition is still pending since 2012.</li> <li>• Confirm if application abandoned.</li> </ul>
SPR10-2010	Opponent	<p>OPPOSITION of Trademark Application for TM No. 624/08 - "PHILIP MORRIS".</p>	<ul style="list-style-type: none"> <li>• 28/07/2008 - Application filed by CARPENTERS FIJI LIMITED.</li> <li>• 20/11/09- Government Gazette Advertisement.</li> <li>• 19/02/2010 - PIIPS filed 3x Notice of Opposition.</li> </ul>	<ul style="list-style-type: none"> <li>• A hearing of the opposition is still pending since 2010.</li> <li>• Confirm if application abandoned.</li> </ul>
A0011/002	Opponent	<p>OPPOSITION TO TM APPLICATION for TM no. 224/2012 "DEPEX" and 225/2012 "DIPEX"</p>	<ul style="list-style-type: none"> <li>• 16/04/2012 - Application filed AMRATLAL JOGIA T/A APSARA AGENCIES.</li> <li>• 04/05/12- Government Gazette Advertisement.</li> <li>• 13/07/2012 - PIIPS filed 3x Notice of Opposition.</li> </ul>	<ul style="list-style-type: none"> <li>• A hearing of the opposition is still pending since 2012.</li> <li>• Confirm if application abandoned.</li> </ul>

<p>PARMARS01-2009</p>	<p>Opponent</p>	<p>OPPOSITION FOR TM APPLICATION No. 502/2008 for</p> <p><b>BLUE OCEAN</b></p>	<ul style="list-style-type: none"> <li>• Application filed by HOUSE OF GARMENTS LTD.</li> <li>• 08/11/2008- Fiji Times Advertisement.</li> <li>• 14/11/2008 - Government Gazette Advertisement.</li> <li>• 1/05/2009 - PIIPS filed 3x Notice of Opposition.</li> </ul>	<ul style="list-style-type: none"> <li>• A hearing of the opposition is still pending since 2009.</li> <li>• Confirm if application abandoned.</li> </ul>
<p>S0005/059</p>	<p>Opponent</p>	<p>FIJI TRADEMARK OPPOSITION of TM Numbers:</p> <ul style="list-style-type: none"> <li>- 203/2010 - C1 8</li> <li>- 204/2010 - C1 45</li> <li>- 205/2010 - C1 47</li> <li>- 206/2010 - C1 50(10)</li> </ul> <p>Mark:</p> 	<ul style="list-style-type: none"> <li>• 8/02/2013 - Government Gazette Advertisement.</li> <li>• 03/06/2013 - PIIPS filed Notice of Opposition.</li> </ul>	<ul style="list-style-type: none"> <li>• A hearing of the opposition is still pending since 2013.</li> <li>• Confirm if application abandoned.</li> </ul>

SPR01-2007	Opponent	FIJI TRADEMARK OPPOSITION by PHILLIP MORRIS PRODUCTS S.A. TO TRADE MARK APPLICATION Nos.: - 668/2004 - Cl 47 - 669/2004 - Cl 45 - 670/2004 - Cl 08   Mark:	<input type="checkbox"/> 16/02/2007 - Government Gazette Advertisement. <input type="checkbox"/> 16/11/2007 - PIIPS filed 3X Notice of Opposition. <input type="checkbox"/> 9/01/2008 - Counter statement <input type="checkbox"/> filed.	<input type="checkbox"/> A hearing of the opposition is still pending since 2008.
SHE0016/005	Applicant	ASSIGNMENT OF TRADEMARK No.   329/2006 - Class 42  Mark:	<input type="checkbox"/> 14 April 2014 - Application for Assignment filed.	<ul style="list-style-type: none"> <li>• Assignment on hold as registration application opposed.</li> <li>• A hearing of the opposition is still pending since 2014.</li> </ul>

OR	Client:	TM	Status	Comments
2102 And 2360	Applicant	 414/2019 - Cl 11	<ul style="list-style-type: none"> <li>• 05/07/19 - Filed application and paid \$10.90. Receipt # 322843</li> <li>• 23/08/19 - Fiji Times Advertisement</li> <li>• 30/08/19- Government Gazette Advertisement.</li> <li>• 26/01/2019 - Opposition received.</li> <li>•</li> </ul>	<input type="checkbox"/> A hearing of the opposition is still pending since 2019.
0239	Applicant	 431/16 - Cl 39 432/16 - Cl 42 433/16 - Cl 44	<ul style="list-style-type: none"> <li>• 14/07/16 - Filed application.</li> <li>• 23/08/17 - Fiji Times Advertisement</li> <li>• 01/09/17 - Government Gazette Advertisement.</li> <li>• 03/01/2018 - Opposition received.</li> </ul>	<input type="checkbox"/> A hearing of the opposition is still pending since 2018.

0331 And 1434	Applicant	 463/16 - Cl 08	<ul style="list-style-type: none"> <li>• 03/08/16 – Filed application.</li> <li>• 23/08/17 - Fiji Times Advertisement</li> <li>• 01/09/17 - Government Gazette Advertisement.</li> <li>• 04/05/2018 - Opposition received.</li> </ul>	<input type="checkbox"/> A hearing of the opposition is still pending since 2018.
KEN01-2010	Opponent	 Disclaimers of the word "Fig" 272/2010 and 273/2010	<ul style="list-style-type: none"> <li>• 13/08/2010 - Letter from FIPO in regards to the Extension of time to file GROUNDS of OPPOSITION. 3 Months from 13/08/2010 to 13 Nov 2010.</li> <li>• 12/11/2010 - Filed 2 x Notice and grounds of Opposition for TM Nos. 272/10 &amp; 273/10.</li> </ul>	<input type="checkbox"/> A hearing of the opposition is still pending since 2010.
JAH01-2010	Applicant	 625/10 - Class 44	<ul style="list-style-type: none"> <li>• 23/06/10 - Filed Application.</li> <li>• 29/09/10 - Fiji Times Advertisement</li> <li>• 26/11/10 - Government Gazette Advertisement.</li> <li>• 21/03/11 - File 3X Notice of Opposition.</li> <li>• Counter Statement.</li> </ul>	<input type="checkbox"/> A hearing of the opposition is still pending since 2011.

17975  SPR005/091  And  00372	Applicant.	<b>PARLIAMENT Lable &amp; Device</b>  68/14 - 71/14  And  09/15	<input type="checkbox"/> 25/05/2019 -Filed Notice of Opposition	<input type="checkbox"/> A hearing pending since 2019.
---	------------	---	--	---

# Fiji Intellectual Property Office (FIPO)

## RE: Request for Information



Lavenia Waqaniburotukula <lavenia.yabaki@ag.gov.fj>

To: Elesi Waiwalu

Cc: Fiji Intellectual Property Office; Ajendra Pratap; Isqereqeretabua@gmail.com; Eliesa B S. Tuiloma



Trade-Mark Applications since 2021.pdf  
376 KB

Dear Ms Waiwalu

We sincerely apologise for the late response due to manual counting.

Please see attached copy of the request as per your initial email.

Please feel free to contact us for any query(s).

Kind regards



### Lavenia Y. Waqaniburotukula

Administrative Officer – FIPO

Ph # 3309866 / 3216610

Web: [www.ag.gov.fj](http://www.ag.gov.fj)

Email: [lavenia.yabaki@ag.gov.fj](mailto:lavenia.yabaki@ag.gov.fj)

Level 3, Suvavou House,  
Victoria Parade,  
Suva

---

**From:** Elesi Waiwalu [<mailto:elesi.waiwalu@legislature.gov.fj>]

**Sent:** Friday, September 12, 2025 12:39 PM

**To:** Lavenia Waqaniburotukula <[lavenia.yabaki@ag.gov.fj](mailto:lavenia.yabaki@ag.gov.fj)>

**Cc:** Fiji Intellectual Property Office <[FIPO@govnet.gov.fj](mailto:FIPO@govnet.gov.fj)>; Ajendra Pratap <[ajendra.pratap@legislature.gov.fj](mailto:ajendra.pratap@legislature.gov.fj)>; [lsqereqeretabua@gmail.com](mailto:lsqereqeretabua@gmail.com)

**Subject:** Request for Information

Bula Vinaka Ms Yabaki,

1. Reference is made to the above subject.
2. We thank you once again for the very informative briefing provided to the Committee during its visit on Tuesday, 9 September 2025.
3. In that regard, during the Committee's deliberations today [12 September], a few matters arose which require your clarification:
  - The number of trademark applications received by FIPO since 2021; and
  - The number of those applications that have been actioned.
4. We would appreciate your response at your earliest by Monday 15 September 2025 to assist the Committee in concluding its report.

Vinaka,

 The linked image cannot be displayed. The file may have been moved, renamed or deleted. Verify that the link points to the correct file and location.

Trade-Mark Application update since 2021							
No.	Particulars	2021	2022	2023	2024	2025	TOTAL
1	<b>Registered TM</b>	426	407	25			858
2	<b>Abandoned application</b>	9	3				12
3	<b>Refused</b>	12	3	1	2		18
4	<b>Query - await response from client</b>	49	131	161	258	86	685
5	<b>Withdrawn application</b>	32	17		7		56
6	<b>Approved – await clients copy of the advertisement</b>	11	53	50	310		424
7	<b>Still in process with FIPO</b>	316	228	371	171	390	1,476
8	<b>Total Applications Received</b>	855	842	608	748	476	3,529

**Note:**

1. Registered TM – complete application;
2. Abandoned application – client have confirmed through writing to FIPO for their application to be abandoned;
3. Refused – application through legal examination has been refused;
4. Query – client have been notified to respond to query found by examiner and legal examiner;
5. Withdrawn – client have notified FIPO to withdraw the application;
6. Approved – approval issued and client to advertise on newspaper and gazette;

7. Still in process with FIPO – application in process with examiner, legal examination search or SG’s endorsement; and
8. These numbers do not reflect endorsement application for example; renewal, change of name, change of address, merger, assignment etc.

• **Dear Mr Tuiloma and Ms Lavenia,**

• During its deliberation today [16.09], the Committee noted your office's submission received yesterday on matters requiring clarification. In this regard, the following additional questions were raised:

1. What efforts have been made to request an increase in the budget?
2. For the manual counting process, how long does it usually take?
3. How many times has your office requested funding to digitise the process?
4. How many times have you sought additional resources to increase human capacity?
5. What steps have been taken overall to build capacity within your office?

The Committee looks forward to a response please by **COB Wednesday, 17 September 2025.**

Vinaka,



"A Resilient Parliament  
responsive to the needs of  
the people and driven by  
the ideal of a better  
quality of life for all  
Fijians"

**Elesi Tabuyaqona (Mrs)**  
Deputy Committee Clerk  
Committee Unit  
Parliament of the Republic of Fiji  
P.O Box 2352, Government Building  
Suva, Fiji.  
Phone : (679) 8925225 / 2397904  
Website: <http://www.parliament.gov.fj/>



Please consider the environment before printing this email

## Response

### 1. Efforts to request an increase in the budget

Continuance requests have been submitted in recent years to increase the budget for the Fiji Intellectual Property Office (FIPO); however, these requests were not approved. In this year's budget, funding has been approved solely for the Director position, effective in the 2025/2026 financial year. The intention is to appoint the Director, who will then be responsible for formally establishing the Office. This approach follows the model used by the Fiji Law Reform Commission, where the Director was first appointed and subsequently went on to establish the Commission.

It is important to note, however, that the operational budget for FIPO has remained constant over recent years. This allocation has primarily been used for overtime payments to staff, meal allowances, and other operational expenses. As for staff establishment, this continues to fall under the Solicitor-General's Office personal emoluments.

### 2. Manual counting process

The manual counting process is time-consuming and labor-intensive. Depending on the volume of files and records to be processed, it usually takes several days to complete and requires the dedication of multiple officers. While an exact timeframe cannot be provided, it varies on a case-by-case basis. For example, there are 50 classes that must be cross-checked, each with subclasses, which significantly extends the process.

The procedure involves a thorough review of manual records and requires the involvement of all staff, including both administrative personnel and legal officers. Each application must undergo a manual search, a preliminary examination, and subsequently a detailed legal examination. Only after this process is completed is a recommendation made to the Solicitor-General for formal endorsement, determining whether an application is approved or refused.

### 3. Requests for funding to digitise the process

FIPO has reached out to WIPO for technical support to assist with the digitisation process, and this support has recently been approved. While full digitisation has not yet been implemented, preparatory steps, including the scanning of documents, have already commenced. Once the new Trademarks Act 2021 is operationalised, WIPO will provide access to the Industrial Property Automation System (IPAS), which will be instrumental in digitising records and streamlining operational processes.

The drafting of the Regulations is currently being finalised by the drafting team, including the revised prescribed forms and fees. Once these are completed, the Act will be ready for operationalisation.

#### **4. Requests for additional human resources**

As noted in response to Question One, we have consistently requested funding, including for staffing. This funding, however, was only approved this year, specifically for the establishment of the Director position for FIPO. The Director will be recruited and will have the responsibility of establishing the Office, including overseeing its staffing.

In addition, we are working with WIPO to undertake a business case analysis for FIPO. This analysis will help determine the appropriate structure of FIPO and provide a robust foundation for future staffing requests, ensuring that resources are aligned with operational needs and international best practices.

Once the proper structure is designed and outlined, we will seek funding for specific positions within FIPO, including roles related to trademarks, patents, designs, and Traditional Knowledge and Expressions of Culture. Funding for these positions will be sought in line with the operationalisation of the Trademarks Act 2021, Patents Act 2021 and Designs Act 2021, which are currently being prepared for implementation through the finalisation of the relevant Regulations. Similarly, the Traditional Knowledge and Expressions of Culture Bill is currently being finalised and will be ready for operationalisation in due course.

#### **5. Overall capacity-building efforts**

Capacity building remains a key priority for our Office. We have actively reached out to WIPO for technical assistance. Since early last year, WIPO has conducted both face-to-face and online training sessions for our staff, which includes four established administrative staff and six legal officers. These sessions have significantly enhanced our capacity and strengthened our institutional knowledge base.

WIPO provided online training sessions for FIPO staff on 1, 15, and 22 May 2024. Subsequently, a two-day face-to-face training session was delivered by Mr. Franck Fougere (trademark expert from Thailand) on 9 and 10 December 2024. Following this, a series of online training sessions conducted by Mr. Fougere from 12 June to 28 August 2025, covering various aspects of trademarks, was recently concluded.

Once the Trademarks Act 2021 is operational, WIPO will provide access to the IPAS to support digitisation, along with ongoing technical assistance. In parallel, we continue to develop staff skills through in-house training, external workshops, and regional collaboration, ensuring that our officers are fully equipped to deliver on our mandate effectively.

Standing Committee on Foreign  
Affairs and Defence Site Visit to the  
Fiji Intellectual Property Office (FIPO)  
– Tuesday 9 September 2025

**Site Visit to the Fiji Intellectual Property Office on Tuesday 9 September 2025**

The Committee visited the Fiji Intellectual Property Office (FIPO), under the Solicitor-General’s Office on Tuesday 9 September 2025 to gain a better understanding of the operations of FIPO.



