

Methods

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The following methods can be employed to enforce an owner's existing rights, and in some cases as a defence for users of intellectual property assets for which protection has not yet been granted.

Watching

Watching Services enable clients to stay informed of market activity, industry developments and applications for rights which may be potentially competitive or trespassing. They can be an important warning signal to clients that they need to take steps to enforce their intellectual property rights.

Border protection *Relevance: [trade marks](#), [designs](#), [copyright](#)*

Stopping counterfeit products at the border is the best way of preventing them from being traded. An effective way of doing this is with customs notices. Owners of a registered trade mark or design, or who can prove ownership of copyright, can lodge a notice with the New Zealand Customs Service requesting detention of infringing goods that come under the control of Customs. A refundable bond of

NZ\$ 5,000 must be provided to Customs which will cover any number of notices filed. Notices remain in place for up to 5 years (unless withdrawn by the owner) and can be renewed. When it detains goods, New Zealand Customs will issue a determination as to whether the goods are counterfeit. If this is confirmed, commonly the importer will consent to forfeiture and destruction of the goods. However, if the importer chooses not to consent, claimants have 10 days in which to file proceedings.

Warning letters

For products or services considered to infringe existing rights in the New Zealand market and where border protection is not an option, a highly effective first step is to issue a warning letter notifying the infringer of an owner's existing rights. Many infringers then stop their activity immediately. If the infringer does not stop or provides an unsatisfactory response to the warning the next course of action may be to issue court proceedings. It is important to act promptly on any unauthorised use of intellectual property rights as delays can prejudice obtaining interim relief from the court.

Injunctions *Relevance: [patents](#), [trade marks](#), [designs](#), [copyright](#), [domain names](#)*

The owner of an intellectual property right can apply to the court for an interim injunction which, if awarded, will temporarily stop the infringing conduct (such as use of a product) until the court determines the parties' respective rights. Many

cases settle after an interim order is made. If the case goes on to a full hearing and the court decides there has been infringement, the court can make a permanent injunction order stopping the infringing behaviour. It can also award damages to the plaintiff.

If however the defendant believes that a claimed right such as a patent or a trade mark is invalid and should not have been granted in the first place, it can apply to have the accuser's right revoked.

Alternative Dispute Resolution procedures *Relevance: [patents](#), [trade marks](#), [designs](#), [copyright](#), [domain names](#)*

There are a various ways parties can settle a dispute without going to a court hearing. These methods allow the parties a greater degree of control over the process and also often over the outcome. They can also be particularly suitable where the parties do not want the dispute aired in public or there are issues in several different countries which the parties agree to settle at once.

Negotiation between the parties without any external intervention can occur at any time, and many disputes are resolved in this way without the need to resort to court proceedings. Negotiation commonly also features significantly during the course of a court proceeding: it has been estimated that about 90 percent of court proceedings settle before trial.

Mediation allows parties to engage in a confidential dialogue under the supervision of a mediator with a view to obtaining a commercial settlement. Any resulting agreement is final and binding. The mediator facilitates the discussion but does not make a determination. It is usual for both parties to agree on the mediator and for each to pay half the mediator's costs. Mediation is particularly effective where the parties are likely to have ongoing contact, and it can produce creative solutions to disputes that could not eventuate from a court decision.

Arbitration is a proceeding where an arbitrator is appointed by the parties as decision maker and assumes a role equivalent to a judge. Arbitration clauses may feature in licensing agreements or contracts. Arbitration is private and generally confidential. Decisions can only be appealed to the court on a point of law.