

## Enforcing IP rights

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Enforcing intellectual property rights is important and necessary to safeguard an owner's commercial position. Unauthorised use, distribution and sale of infringing products can jeopardise sales or damage product and brand value for owners of products which do carry rights.

### What is infringement?

Infringement is breaching someone else's intellectual property right. For instance, someone could copy a product or trade mark either inadvertently, or deliberately by making counterfeit products.

Depending on the type of intellectual property right different criteria apply in determining infringement. For example, in the case of designs, under the New Zealand Designs Act 1953 a New Zealand design registration provides exclusive rights in the design, and to establish infringement does not require proof of actual copying. Alternately, in the case of copyright (which is not registrable) under the Copyright Act 1994 the owner of copyright in an original work has the right to prevent production of an identical work or a work that is substantially similar, unless the alleged infringer can prove that he or she

independently created that work.

An intellectual property right is a valuable asset. Like any asset, it needs to be protected from competitors and others who try to gain advantage through using it or whose activities are likely to damage it.

### **What can be done?**

It is the responsibility of the owner to monitor the market for potentially infringing activity. Court proceedings can be issued to enforce the IP right. There are other methods of resolving disputes such as negotiation, mediation and arbitration. Border protection measures are available for counterfeit products protected by trade marks, designs, patents and copyright.