

PRODUCT LABELLING

178. The problem which the submissions in this area raise for consideration is stated in paragraphs 25 to 27 above. The principal submissions come from major distributors of imported wines and liquor in Australia. Those making submissions included John Walker & Sons (Australia) Pty Limited, Lindeman (Holdings) Limited, Penfolds Wines Pty Limited, Swift & Moore Pty Limited and Taylor, Ferguson & co. Pty Limited. Lindemans and Penfolds are well known purveyors of wines and liquors. John Walker & Sons is a wholly owned subsidiary of the United Kingdom company bearing that name. The Australian company is the sole importer of the well known Scotch whisky and other alcoholic beverages. The English company is the owner of the copyright in all the John Walker labels. The shareholders of Swift & Moore are Tooheys Limited (a subsidiary of the Bond Corporation Limited), International Distillers & Vintners Limited (a subsidiary of Great Metropolitan Hotels Limited of the United Kingdom), Lion Brewery Limited of New Zealand and Hiram Walker Limited of Canada. The liquor brands marketed by Swift & Moore include Baileys Irish Cream, Tia Maria, Kahlua, Grand Marnier and Meet et Chandon. All brands are sold in packages bearing distinctive labels in which copyright is said to subsist. The copyright is owned in each case by the brand owner.

179. At the public hearings the Committee discovered that copyright in product packaging and labelling was not limited to the liquor industry. Cigarettes and other tobacco products, perfumes and cosmetics are also marketed under labels and in packaging in which copyright is said to subsist. It is apparent that the design of labels and packages in such a way as to make them the subject of copyright is a common practice in many areas.
180. It is to be observed that product labelling is not a problem which is limited to imported articles. It is clear that the provisions of the Copyright Act are used by local manufacturers and distributors to control markets for locally produced articles. That is not a matter with which this Committee is concerned but it is mentioned at this point for completeness.
181. The Committee is strongly of opinion that distributors of goods should not be able to control the market for their products by resorting to the subterfuge of devising a label or a package in which copyright will subsist. The purpose of copyright is to protect articles which are truly copyright articles such as books, sound recordings or films. This purpose is achieved by conferring on authors of works and makers of subject matter a bundle of exclusive rights entitling them to 'restrain conduct antipathetical to their incorporeal property and to sue for damages where such

conduct has already been committed. If the simple expedient of affixing or attaching a label in which copyright subsists to any goods at all entitles the owner of the goods to exclude others from marketing similar goods, the sooner the practice is stopped the better it will be. However imaginatively labelled or packaged a bottle of liquor may be, the product is liquor. The same may be said of cigarettes, perfume and cosmetics. In the Committee's opinion it would be quite wrong to allow the present position to continue. Abuses which may occur can be remedied by resort to causes of action for passing-off, for breaches of s. 52 of the Trade Practices Act or for infringements of the Trade Marks Act 1955. If the Trade Marks Act requires amendment to confer adequate protection, that is a matter for consideration in a different form of inquiry.

182. In the course of its consideration of this aspect of the Reference, the Committee has considered whether any product labelling or packaging should be capable of being used for the purpose of controlling a market in copyright articles. In other words, should the fact that copyright subsists in a label attached to a copyright article, for example, a book or a sound recording, be permitted to have some effect on the control of the marketing of such an article? The Committee has reached the conclusion that this also should be prevented. There is no evidence before the Committee of any such abuse taking place, but the

amendment which the Committee recommends should cover product labelling and packaging of all goods whether copyright articles or not.

183. In summary then the Committee recommends that ss. 37 and 38 should be repealed insofar as they apply to labelling and packaging of all goods of whatever kind.