

## **Australia**

### **Submission of IP Australia on the Draft Joint Recommendation Concerning the Protection of Country Names**

**July 2014**

We refer to Circular C.8361 inviting comments on Jamaica's proposal of a draft Joint Recommendation Concerning the Protection of Country Names.

Australia thanks Jamaica for the considerable work undertaken to address concerns about inappropriate use of country names.

Our general comments are that agreement on principles and an achievable scope of protection would be useful to guide the draft Articles contained in the draft Joint Recommendation. A less prescriptive and detailed approach would help accommodate the different legal systems of WIPO Member States.

More specifically, we are concerned that the breadth of the definition of country names would create problems for trade mark users and for trade mark examiners. A definition which includes pronunciations, translations and transliterations would be impractical to address at the examination level and would create a searching burden that seems disproportionate to the risk it is trying to address. We suggest the definition, for the purposes of the Joint Recommendation, be limited to official names of countries, and that SCT members discuss a suitable reference source for such official names for the sake of consistency.

Some draft Articles, such as those seeking the provision of documentary evidence even where there is no likelihood of deception or confusion, would increase administrative costs at a time when many countries are trying to reduce regulatory burdens for applicants and offices alike. There is an explicit presumption of registrability in Australian trade mark legislation. The onus is on the Registrar of Trade Marks to show there is a *prima facie* case that grounds for refusal exist, rather than the applicant having to provide evidence of registrability. Some of the draft Articles reverse this onus.

Australia is willing to discuss these and other aspects of the draft Joint Recommendation constructively and in more detail in future meetings of the SCT.