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### **Submission on draft Code of Conduct 2018 and draft Guidelines to the Code of Conduct 2018**

This letter is in response to your request for submissions on the draft *Code of Conduct for Trans-Tasman Patent and Trade Mark Attorneys 2018* and the accompanying draft 'Guidelines to the Code of Conduct for Trans-Tasman Patent and Trade Mark Attorneys 2018'.

#### **1. AJ Park**

AJ Park comprises the partnerships of AJ Park Patent Attorneys and AJ Park Law, as well as AJ Park IP Pty Ltd, an Australian registered attorney firm. We are New Zealand's largest employer of patent attorneys, and also employ attorneys in Australia.

#### **2. Regulation generally**

In our view regulation should only be applied to solve a problem. Generally that is either consumer protection or unfair competition. Unless and to the extent that regulation is *necessary* to achieve those ends, businesses should be left to their own devices. Unnecessary red tape helps no one but can add significant cost and compliance risk.

In our view it is also important that regulation be general, rather than specific, so businesses like ours can apply them in ways that are appropriate to our own circumstances, while still achieving the objectives of the regulator.

#### **3. Regulation specifically**

We are largely in agreement with the tenor of the draft Code and Guidelines. However, we have some concerns. Our views are as follows:

- i. It is a minor point, but the objective of the Code in Clause 7 is somewhat circular. The objective is said to be to set out standards of practice. That is what it does, not its purpose. It is difficult to assess the suitability of the individual provisions for purpose when the objectives are not clearly

stated. Client protection is an obvious objective, but it is not clear whether the Code has (or should have) any other or broader intent.

- ii. The reference to ancillary business is inappropriate. It is beyond the scope of the Code to regulate activities that are not patent or trade mark attorney services. This is both unnecessary and ultra vires the authority of the Board as set out in clause 3 of the Guidelines.
- iii. We understand the need to set out all of the matters in clause 16 of the Code except clauses 16(1)(e) and (f). As consumers of all sorts of products and services we generally have no interest in whether our providers are a public or private company or are related to other companies. Unless there is a specific reason for a client to have an interest (which would be rare, and covered by the generic obligation of disclosure in clause 17) then this information will be irrelevant to them. JetStar is owned by Qantas, but doesn't have to go out of their way to tell every customer that. In the interests of only regulating as far as is necessary, we don't think these requirements do anything to protect any client from any foreseeable harm. And they do potentially have a substantial compliance cost.
- iv. If clauses 16(1)(e) and (f) are to remain, they and 16(1)(d) should be incorporated in the exemption under clause 16(2). It would be confusing, onerous and pointless to require them in dealing with foreign registered attorneys.
- v. Clause 19(4) of the code should be limited to the client's interests in relation to which the attorney is instructed, not the client's interests per se.
- vi. Clause 23(2) of the Code requires an unnecessary broadcast publication of the identities of related entities 'to the fullest extent reasonably feasible.' Why? In many industries a parent may own several brands. For example, in insurance, IAG owns State Insurance, NRMA, AMI, NZI, CGU, SGI, Swann and others. That information is easily available, but in no other industry that we are aware of is it compulsory to "clearly disclose [the names of related entities] on all client and public communication." Airlines don't, accountants don't, telcos don't. We understand that professional services firms have fiduciary obligations that some of these other industries don't, (hence the Code) but this specific proposal goes well beyond those.

Our firm has in the past had associations with entities that were irrelevant to 99% of our clients. We didn't need to specifically identify them on our letterhead and we didn't. No clients were misled or harmed. Using valuable space on our letterhead, collateral, etc to identify all related entities serves no purpose and makes no sense. Currently, our New Zealand letterhead makes no reference to AJ Park IP Pty Ltd. Although it is part of our group that is simply not necessary. This rule would make it so. Other general disclosure requirements and legislation

require us not to mislead clients. The nature of any disclosure should be determined by the circumstances. With respect, this proposed rule is an overreaction to the rise of the listed groups and will have unintended and unnecessary consequences and serves no practical purpose. Please see paragraph 2 above.

I am happy to discuss this submission further if you want to contact me.

Thank you for your attention to our submission.

Yours sincerely



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