



Initial assessment of Certification Trade Mark application CTM1991912 filed by Christian Certification Authority Australia Pty Ltd

Initial assessment

1. In accordance with the *Trade Marks Act 1995* (TMA) and the *Trade Marks Regulations 1995* (TM Regulations), the ACCC has made an initial assessment of certification trade mark application 1991912 (CTM Application) filed by Christian Certification Authority Australia Pty Ltd (ACN 603 072 073) (CCAA).
2. The ACCC's initial assessment is that it is not satisfied that the Application meets the criteria set out in section 175(2) of the TMA and regulation 16.6 of the TM Regulations.
3. In particular, the ACCC is not satisfied that the rules governing the use of the CTM are satisfactory having regard to principles relating to unfair practices, because the ACCC considers that the rules would permit the CCAA logo to be used on goods/services in circumstances in which its use may mislead or deceive consumers.
4. Interested parties have one month from the date IP Australia publishes the ACCC's initial assessment in the *Official Journal of Trademarks* to lodge a submission and/or call a conference in relation to the initial assessment.

The CTM Application

The applicant

5. The Applicant describes itself as “an Australian owned and run company dedicated to providing equal marketing opportunities in the food manufacturing and production industries across Australia.”¹ It says its team “consists of a team of Christians from different denominations with the same beliefs in relation to our biblical food laws”. It operates a website for the Christian certification scheme (www.ccaaustralia.com), which advertises its certification services. The ACCC understands the Applicant is not a church or peak religious body, or affiliated with either.

Previous applications

6. The Applicant has previously lodged an application to register a similar mark (CTM1668186). CTM1668186 was lodged with IP Australia on 8 June 2015 and forwarded to the ACCC on 14 October 2016. The ACCC issued an initial assessment proposing to deny the application on 5 September 2017, and a final assessment denying the application on 6 March 2018.

¹ www.ccaaustralia.com/about-us_v-e/

7. The rules associated with the previous application are different from the current application, but similarly sought to certify food products as being fit for Christian consumption.
8. The ACCC denied the application for CTM1668186 because it was not satisfied that the rules governing the use of the CTM were satisfactory having regard to principles relating to unfair practices, because the ACCC considered that the rules would permit the CCAA logo to be used on goods/services in circumstances in which its use may mislead or deceive consumers.

The current CTM application

9. The Applicant filed the CTM Application with the Registrar of Trademarks (the Registrar) on 25 February 2019.
10. In accordance with section 174 of the TMA and regulation 16.2 of the TM Regulations, the Registrar of Trade Marks forwarded the CTM Application and relevant documents to the ACCC on 13 February 2020.
11. The mark the subject of the CTM Application is the “Christian Certified” logo (**CCAA logo**) depicted below. The mark features a black circle containing a white outline of a map of Australia, which in turn contains a large black cross. The logo is surrounded by the words “Christian Certification Authority Australia”.



12. According to the rules, products certified by the CCAA “will have been prepared in accordance with guidelines for the certification process, meaning that foods prepared have not undergone procedures that could cause concern for the Christian community and/or Christian beliefs.”²
13. The requirements for goods to be certified are set out within the rules in a section titled ‘Guidelines for the Terms Making Products Christian Certified’ (CCAA Guidelines) and specify, in relation to the certification of animal products:
 - a) all common fauna is acceptable for Christian consumption, namely mammals with cloven hoofs consuming a herbivorous diet as well as non-carnivorous birds and aquatic life bearing fins and scales
 - b) animals must not be strangled
 - c) slaughtered animals should be allowed to drain of blood
 - d) animals should not be consecrated by prayer or undergo any specific ritual to non-Christian Gods, idols for dedication, or shrines, and

² Certification rules abstract, CTM1991912.

- e) dairy products should only be manufactured from milk supplied from mammals with cloven hoofs.
14. In relation to non-animal products, the CCAA Guidelines specify they:
- a) can be prepared in accordance with individual company policies, and
 - b) should not come into contact with anything which can be considered unacceptable or restricted within Christian teachings and food safety guidelines stipulated by CCAA and the food safety authority. Things “considered unacceptable or restricted within Christian teachings” appear to be defined by the rules as poisonous plants, extracts and forbidden fruit (identified as figs).
15. Certified products “can be prepared in facilities that also prepare non certified products provided that there is no risk of contamination or cross contamination, and that company management are aware of potential risks and have in place procedures to minimise exposure and comply with food safety laws, international food safety regulations and standards (HACCP) based on the geographical area of manufacture including CCAA requirements.”³
16. The CCAA Guidelines also contain a range of requirements relating to hygiene, food safety, and humane slaughter practices which appear to be unrelated to Christian teaching.
17. A range of Biblical references are listed at the end of the rules.
18. The Applicant’s website states that its goals in certifying products are to:
- a) provide a service to the public that wish to purchase Christian Certified products
 - b) supply an alternative advertising avenue for manufacturers
 - c) create job opportunities
 - d) help charities and organisations with similar values towards disadvantaged people.⁴

The ACCC’s role in assessing CTM applications

19. Broadly speaking, the ACCC’s role is to promote competition, fair trading and regulate national infrastructure for the benefit of all Australians.
20. Under section 175(2) of the TMA, if the ACCC is satisfied that:
- a) the attributes a person must have to become an approved certifier are sufficient to enable the person to assess competently whether the goods and/or services meet the requirements to become certified; and
 - b) the CTM rules:
 - i. would not be to the detriment of the public; and
 - ii. are satisfactory having regard to the criteria prescribed in the TM Regulations, being:
 - o the principles relating to restrictive trade practices set out in Part IV of the Competition and Consumer Act 2010 (CCA);

³ Rules at [33.5].

⁴ Source: ccaaustralia.com/frequently-asked-questions/

- the principles relating to unconscionable conduct set out in Part 2-2 of the Australian Consumer Law (ACL) (as contained in Schedule 2 to the CCA); and
- the principles relating to unfair practices, product safety and product information set out in Parts 2-1 and 3-1 and Part 3-3 of the ACL respectively,⁵

the ACCC must give a certificate to the CTM applicant to that effect.

21. Section 173(2) of the TMA requires CTM rules to specify:

- a) the requirements that goods and/or services must meet for the CTM to be applied to them
- b) the process for determining whether goods and/or services meet the certification requirements
- c) the attributes that a person must have to become a person approved to assess whether goods and/or services meet the certification requirements
- d) the requirements that a person, who is the owner of the CTM or an approved user, must meet to use the CTM in relation to goods and/or services
- e) the other requirements about the use of the CTM by a person who is the owner of the CTM or an approved user
- f) the procedure for resolving a dispute about whether goods and/or services meet the certification requirements, and
- g) the procedure for resolving a dispute about any other issue relating to the CTM.

22. Regulation 16.3 of the TM Regulations requires the ACCC to make an initial assessment of an application as soon as practicable and:

- a) notify the CTM applicant and the Registrar of the initial assessment; and
- b) state in the notice to the CTM applicant that:
 - i. the initial assessment will be advertised in the Official Journal (Advertisement); and
 - ii. the CTM applicant or another person may respond in writing to the ACCC (Response) or request the ACCC in writing to hold a conference in relation to the initial assessment (such response/request to be made within 1 month of the advertisement).

23. The ACCC must give the CTM applicant a copy of any Responses and invite the CTM applicant and each respondent to make a written submission on each such Response.

24. If a person makes a written request for a conference on a matter included in the ACCC's initial assessment, the ACCC must hold a conference and invite any person who has responded in writing to attend.⁶

25. In considering a CTM application for the purposes of making a decision on the application, the ACCC must have regard to:

- a) the initial assessment;
- b) any Response that is relevant;

⁵ The reference to the *Trade Practices Act 1974* (C'th) in the TM Regulations have been read as references to the Competition and Consumer Act 2010.

⁶ Regulation 16.4, TM Regulations.

- c) any relevant submission that is made to the ACCC in writing about the initial assessment, whether or not the submission is made in relation to a conference;
 - d) any relevant oral submission made during a conference; and
 - e) any other relevant matter.⁷
26. If the ACCC is not satisfied of the matters in section 175(2) of the TMA, it must notify the CTM applicant and the Registrar of its decision not to give a Certificate and the Registrar must advertise the matter in the *Official Journal*.⁸
27. Regulation 16.7 of the TM Regulations sets out matters which must be included in the advertisement by the Registrar, including a statement to the effect that the decision may be appealed to the Administrative Appeals Tribunal (AAT).
28. For more information about the ACCC's role in the CTM approval process, refer to [Attachment A](#) or the publication *Certification Trade Marks - the role of the ACCC* available at www.accc.gov.au.

ACCC assessment

29. The ACCC has considered the CTM Application and all documents and information provided by Applicant and is not satisfied of the matters set out in section 175(2) of the TMA and regulation 16.6 of the TM Regulations. In particular, the ACCC is not satisfied that:
- a) the rules are satisfactory having regard to the principles of unfair practices set out in the ACL, or
 - b) the attributes a person must have under the rules to become an approved certifier are sufficient to enable the person to assess competently whether goods and/or services meet the certification requirements.
30. Nor does the ACCC consider that the rules adequately specify the matters required in section 173(2) of the TMA, relating to the process for determining whether goods and/or services meet the certification requirements.

Section 173(2) – matters to be specified in the rules

Processing for determining goods meet the requirements: s 173(2)(b)

31. The ACCC considers that the rules do not adequately specify the process which would be followed in order to establish whether goods/services meet the certification requirements.
32. The rules specify a system of audits which must be undertaken in order to obtain and maintain certification. This includes initial, annual, and random audits, both on-site and desktop, undertaken by CCAA or a certifying body approved by CCAA.⁹
33. During an on-site audit, the rules specify that an auditor will “audit the Licensee’s practices and management systems including records, facilities and other relevant information pertaining to these Rules to ensure that the Licensee is complying with these Rules.”

⁷ Regulation 16.5, TM Regulations.

⁸ Section 175(4), TMA.

⁹ Rules at [14-16].

34. A desktop audit, as specified within the Rules, will comprise a “review [of] the records supplied by the Authorised User to ensure that matters set out in these Rules are being complied with.”
35. However, the rules do not indicate, in practical terms, how compliance with the rules would be assessed or how it would (or could) be demonstrated. To satisfy this criteria, the rules would need to provide a means for the certifying body to assess whether each of the requirements within the rules are being met by the applicant or licensee. For example, the rules could specify that paperwork be provided which documents processes relating to slaughter and hygiene practices, selection of ingredients, and ensuring products do not come into contact with anything unacceptable. However it is not apparent how a certifying body could be satisfied that some of the criteria have been met – for example, how a licensee could demonstrate that products have not been consecrated by prayer.

Principles relating to unfair practices: s 175(2)(b)(ii)

36. The ACCC is not satisfied that the rules are satisfactory having regard to the principles relating to unfair practices under the ACL. In particular, the ACCC is concerned that the rules permit the CCAA logo to be applied to products in circumstances where its use may mislead or deceive consumers.
37. The rules advise that “the Certified [CCAA] Certification Mark is not intended to be a consumer-facing brand; but rather, the Mark and the appellations support primary brands.”¹⁰ However, the rules also recommend that “the Mark be placed on the packaging and supporting marketing materials [of certified goods or services] in a location where it can be seen easily.”¹¹ The application is for the CCAA mark to be applied to a wide range of food products covering classes 1, 4, 29, 30, 32, 33 and 35.
38. As the CCAA logo is intended for use, and would apparently be available for use, on the retail packaging of a wide range of food products, representations conveyed by the CCAA logo can be expected to be directed to the public at large.
39. Accordingly, the ACCC has considered:
- a) what an ordinary or reasonable consumer is likely to understand by the CCAA logo when applied to various food products, and
 - b) whether this accords with the standards imposed by the rules on the goods and services to which the CCAA logo is attached.

Representations conveyed by CCAA logo

40. The rules make clear that the CCAA logo is intended to convey broad representations about the nature of the foods and services to which the CCAA logo is applied. For example, the rules state that CCAA certifies that food and food products:
- *have been prepared in accordance with the beliefs and teachings of Christians*
 - *do not consist of ingredients or products that may be considered unacceptable in accordance with Christian teachings*
 - *have not been prepared, processed, or stored with anything considered to be unacceptable to Christian values and belief, and*

¹⁰ Rules, Annexure 1.

¹¹ Rules [37].

- *are prepared in an environment where there is no risk of contamination from non-certified products.*

41. The ACCC considers such representations to be consistent with the use of a cross, a universally understood Christian symbol, in the CCAA logo.
42. In addition to the representations above, use of the CCAA logo is also likely to convey a representation to consumers that the producer of the food product is Christian, abides by Christian ethical or moral standards, and/or is affiliated with a church or Christian organisation.
43. In addition, the ACCC considers that the use of the CACA logo in combination with the name of the certification scheme (“Christian Certification Authority”) is likely to convey a representation to consumers that the certifying body has particular expertise, authority or qualifications in Christian doctrine that enable it to assess whether goods or services meet Christian requirements.
44. Finally, the ACCC considers that the use of the CCAA logo (with a prominent map of Australia) on food products is likely to convey a representation to consumers that the product is grown, made or produced in Australia.

Concerns about accuracy of representations conveyed by CCAA logo

45. In light of the representations likely to be conveyed by the use of the CCAA logo, as outlined above, the ACCC is concerned that the rules would permit the CCAA logo to be applied to goods or services in a way that misleads or deceives consumers.

Compliance with Christian religious belief

46. The CCAA website (<https://ccaaustralia.com>) states, “Along with Australia’s many other faiths, Christians also have the right to be made aware if products made by companies uphold certain beliefs and practices... Consumers of food prepared by accredited companies displaying Christian Certification Authority Australia will know that products are not only acceptable but Christian principles have been implemented throughout the process.”
47. It is not clear to the ACCC that the rules would be able to ensure that food bearing the CCAA logo would not mislead consumers as to its conformity with Christian beliefs and teachings in relation to food, given that there do not appear to be any clear or widely accepted dietary laws within or across Christian denominations that could be applied to this end. Detailed dietary laws and practices within other mainline religions (such as Judaism and Islam) have been recognised and codified for centuries. There is no equivalent accepted set of laws and practices which have been recognised and followed by Christians.
48. As a result, the ACCC considers that consumers may be misled in purchasing food products displaying the CCAA logo, because they may believe that these products are compliant with particular standards associated within or across one or more Christian religions, when there are no such agreed standards. Given the nature of this concern, it is not clear how the rules could be amended so as to meet the requirements of the TMA on this issue.

Christian affiliation/ethical standards of producer

49. The ACCC considers that the CCAA logo may also convey a representation that the producer of the food product is Christian, abides by Christian ethical or moral standards, and/or is affiliated with a church or Christian organisation.

50. The CCAA's website reports that "[p]roducts certified by Christian Certification Authority Australia will empower those who follow the Christian faith to choose the brands and support companies that are aligned with our faith and values."¹²
51. The rules do not contain any basis for such a representation. In particular, the rules do not set out any requirements as to the religion, ethical or moral standards or church affiliation of persons wishing to use the CCAA logo.

Expertise or special position of certifier

52. The ACCC considers that the use of the CCAA logo in combination with the name of the certification scheme ("Christian Certification Authority") is likely to convey a representation to consumers that the certifying body has particular expertise, authority or qualifications in Christian doctrine that enables it to assess whether goods or services meet Christian requirements.
53. The rules do not set out any special expertise or authority the CCAA holds to certify food as Christian. The CCAA's website advises that it "consists of a team of Christians from different denominations with the same beliefs in relation to our biblical food laws".¹³
54. The ACCC considers that the Applicant has not demonstrated that it has the appropriate qualifications, authority or expertise to assess whether goods or services meet the requirements.

Country of origin of food

55. The ACCC considers that the use of a map of Australia as a prominent element of the CCAA logo is likely to convey a representation that the food product bearing the logo is grown, made or produced in Australia.
56. The rules do not contain any requirements as to the country of origin of the products to which the CCAA logo may be applied.
57. The ACCC therefore considers that the CCAA logo may be used, according to the rules, on products which have not been grown, made or produced in Australia and that consumers may therefore be misled or deceived.

Section 175(2) – Attributes of the certifier

58. Section 175(2) of the TMA requires that the ACCC must be satisfied the attributes of the certifier are sufficient to enable the person to assess competently whether the goods and/or services meet the requirements to become certified.
59. The rules set out that Licensees may only utilise the auditing and certification services of the CCAA or certification bodies that have been approved by the CCAA (listed on the CCAA website).¹⁴ There do not currently appear to be any approved certification bodies listed on the CCAA website.
60. The rules specify that auditors "must have a minimum two years' experience within the food industry and have a sound understanding of the pure food acts, food safety auditors shall be registered with Exemplar Global or equivalent known body. Certifiers and auditors should also understand competently the... guidelines for food preparation in relation to Christian theology."¹⁵
61. As noted above, the Applicant has not demonstrated that it has any special expertise or authority which would qualify it to assess whether goods or services meet Christian

¹² Ccaaaustralia.com

¹³ www.ccaaaustralia.com/about-us_v-e/

¹⁴ Rules [6].

¹⁵ Rules [35].

requirements. The Applicant's website indicates its team has "been involved in the food industry for the last ten years throughout Australia".¹⁶

62. The ACCC is not satisfied that these attributes are sufficient to enable the Applicant to make a competent assessment of whether goods or services meet Christian requirements.

Conclusion

63. For the reasons outlined above, the ACCC does not consider that the rules adequately specify the matters required in section 173(2) of the TMA.

64. In particular, the ACCC is not satisfied that:

- the owner of the CTM or the approved certifiers demonstrate the attributes necessary to assess whether the goods meet the required standard
- the rules are satisfactory having regard to principles relating to unfair practices set out in Parts 2-1 and 3-1 of the ACL, given that the rules would permit the CCAA logo to be used on goods/services in circumstances where its use may mislead or deceive consumers.

65. Accordingly, the ACCC has completed its Initial Assessment of the CTM Application and does not propose to give a certificate under section 175(2) of the TMA.

Next steps

66. Christian Certification Authority Australia Pty Ltd or any other interested person who wishes to comment on this initial assessment has one calendar month from the date the Registrar publishes the ACCC's initial assessment in the *Journal of Trademarks* to lodge a public written submission with the ACCC and/or request that the ACCC hold a conference to make an oral submission. Submissions may be sent to adjudication@acc.gov.au.

67. After holding a conference (if one is called) and considering any written submissions, the ACCC will proceed to make its final assessment.

68. If the ACCC is satisfied that the relevant criteria are met, the ACCC will provide a certificate stating that it is so satisfied to the CTM applicant and the Registrar. A certified copy of the rules will also be provided to the Registrar.

69. If the ACCC is not satisfied that the relevant criteria are met, the ACCC must notify the CTM applicant and the Registrar of its decision.

70. An application may be made to the Administrative Appeals Tribunal to review a decision by the ACCC to refuse to give a certificate.

Dated this ...13th... day of July 2020



Delia Rickard

Deputy Chair

Australian Competition and Consumer Commission

¹⁶ www.ccaaustralia.com/services/

Attachment A

The ACCC's role in assessing CTM applications

A Certification Trade Mark (CTM) certifies that a good or service is of a particular standard.

Before a CTM can be registered by the Registrar of Trademarks, the ACCC must be satisfied under section 175 of the *Trade Marks Act 1995* (TMA) that:

- a) the owner of the CTM or the approved certifiers demonstrate the attributes necessary to assess whether the goods/services in question meet the required standard; and
- b) the rules governing the use of the CTM are not to the detriment of the public; and
- c) the rules governing the use of the CTM are satisfactory having regard to the principles relating to restrictive trade practices set out in Part IV of the Competition and Consumer Act 2010 (CCA) and the principles relating to unconscionable conduct (Part 2-2), unfair practices (Parts 2-1 and 3-1), and safety of consumer goods and product related services (Part 3-3) in Schedule 2 (Australian Consumer Law) of the CCA.

Section 173 of the TMA specifies a number of matters which CTM rules must address, namely (in broad terms):

- a) the certification requirements that goods and/or services must meet for the certification trade mark to be applied to them;
- b) the process for determining whether goods and/or services meet the certification requirements and any ongoing requirements;
- c) the attributes that an approved certifier must have to assess whether goods and/or services meet the certification requirements;
- d) the requirements that a person must meet to use the certification trade mark and any ongoing requirements; and
- e) the procedure for resolving a dispute about whether goods and/or services meet the certification requirements or a dispute about any other issue relating to the certification trade mark.

In assessing CTM applications the ACCC has regard to whether or not the proposed rules meet these requirements. The ACCC may also require applicants to amend rules.