



Our ref: CTM 1914662
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26 August 2020

Kumudu Ramasundara
Moulis Legal
6/2 Brindabella Circuit
Canberra International Airport
ACT 2609

By email only: [REDACTED]

Dear Mr Ramasundara

Re: Certification Trade Mark No. 1914662 lodged by Humane Farm Animal Care

The ACCC conducted a public consultation process to inform its assessment of the revised certification trade mark (**CTM**) rules provided by Humane Farm Animal Care (**HFAC**) on 5 May 2020 (**Version 2 of the CTM Rules**). A number of interested parties provided submissions to the ACCC through this process.

All submissions are available on the ACCC's [CTM public register](#) (see submissions labelled 'Consultation 2'). We will notify you if any further submissions are received.

HFAC's response to issues raised

We invite HFAC to respond to any of the issues raised in interested party submissions about Version 2 of the CTM Rules.

The Trade Marks Act (**TMA**) requires that the ACCC only approve a CTM application if it is satisfied that:

- a) the attributes required of approved CTM assessors are sufficient to enable the person to competently assess whether goods and/or services meet the certification requirements; and
- b) the CTM rules would not be to the detriment of the public and are satisfactory having regard to the principles of competition, unconscionable conduct and consumer protection.

As you are aware, on 28 February 2020 the ACCC issued its initial assessment of the original CTM Rules. The ACCC's initial assessment was that it was **not** satisfied of the matters specified above and accordingly, did not propose to give a certificate to approve the registration of HFAC's CTM application.

Many parties providing a submission acknowledged that Version 2 of the CTM Rules had addressed some of the issues previously raised. However, in all of the submissions received by the ACCC, interested parties raised ongoing concerns regarding Version 2 of HFAC's CTM Rules. A summary of the concerns raised in these submissions is provided at **Attachment A** to this letter. This summary is not exhaustive of the matters raised in the submissions and several issues raised are relevant to multiple sections of Version 2 of the CTM Rules. We note that a number of these issues were also raised by interested parties during the initial public consultation and as such, the ACCC is concerned that a number of the issues identified in our initial assessment have not been addressed by HFAC.

We invite HFAC's response to any of the matters raised in the interested party submissions, and in particular to the concerns summarised at **Attachment A**, by **23 September 2020**.

Subject to considering any confidentiality claims made by HFAC, we will place HFAC's response on the ACCC's CTM public register. This letter will also be placed on the CTM public register.

Next steps

Following receipt and consideration of any response by HFAC, the next step is for the ACCC to issue its final assessment of the CTM application. The ACCC's final assessment will be informed by our consideration of Version 2 of the CTM Rules, submissions received by interested parties and any response from HFAC.

If the ACCC is satisfied that the relevant criteria in section 175(2) of the TMA are met, the ACCC will provide a certificate stating that it is so satisfied to HFAC and the Registrar. A certified copy of the rules will also be provided to the Registrar and HFAC.

If the ACCC's final assessment is that it is not satisfied that the relevant criteria are met, the ACCC will notify HFAC and the Registrar of its decision not to give a certificate. The Registrar must publish the matter in the Official Journal in accordance with the trade mark regulations.

If you wish to discuss any aspect of this matter, please do not hesitate to contact Ellie Dwyer on (03) 9290 1874 (or at ellie.dwyer@acc.gov.au) or me on (02) 6243 1266 (or at david.hatfield@acc.gov.au).

Yours sincerely



David Hatfield
Director
Adjudication

Attachment A

A summary of concerns raised in the interested party submissions about Version 2 of HFAC's CTM Rules follows. We note that this is not an exhaustive list of the concerns raised, and specific standards are provided as an example only, as the issue may be relevant to other areas of the rules.

- a) It remains unclear how the certification processes can practically operate in Australia.

Examples provided by interested parties include:

- references are still made to various US regulators, organisations or resources (for example, the Pennsylvania State University Guidance Document in the *HFAC Sheep Standards*), rather than Australian regulators, organisations or resources;
 - the rules state that HFAC's standards are based on the UK RSPCA guidelines (with a UK web address provided as reference);
 - references to various environmental aspects (for example, protecting shorn sheep) are not required for Australian production systems;
 - the units of measurement within the various standards are provided in the US imperial system, rather than the metric system used in Australia;
 - only one of the 40 committee members is based in Australia; and
 - the CTM rules and all other accompanying documentation should be updated to either contain an 'interpretation guide' or adapt terminology and/or spelling to suit their use in Australia.
- b) Regarding sheep and lamb production, many of the potential certification requirements in HFAC's program are based on more intensive operations which are more common in the northern hemisphere and cannot simply be transferred or applied to Australian production systems.
- c) There are ongoing concerns that HFAC does not have sufficient people in place in Australia to undertake the roles of approved certifiers, third party auditors and inspectors.
- d) While HFAC has modified its rules to reference the Australian Animal Welfare Standards and Guidelines (**AAWSG**), Version 2 of the CTM Rules have not been amended to directly incorporate Australian law or terminology. There are frequent changes to legislation, Codes of Practice, Standards and Guidelines and the rules would need constant revision to ensure compliance with Australian requirements. It remains unclear how Version 2 of the CTM Rules could be automatically modified in accordance with Australian legislation.
- e) Interested parties submit that Version 2 of the CTM Rules still require further significant and necessary amendments to be functionally appropriate in Australia. Some interested parties submit that use of the term 'humane' will be misleading to consumers. Interested parties submit that claims made by HFAC about animals raised and slaughtered under its standards must be demonstrably above the minimum welfare standards.

Specific (but non-exhaustive) examples provided by interested parties include:

- The HFAC *Laying Hen Standards* permits stocking densities of above the Australian National Information Standard made under Australian Consumer Law, which defines 'free range eggs' as coming from hens with 'meaningful and regular access to the outdoors' and stocked at a rate of up to 10 000 hens per hectare.

- The HFAC *Standards for Production of Sheep* allow for tail docking, and do not specify the use of any pain relief when castration is undertaken.
 - Under the Halal Slaughter Exception, the *HFAC Standards for Chickens* allow for poultry to be stunned within 5 seconds of a neck cut, effectively allowing the slaughter of a fully conscious bird. RSPCA Australia submits this practice is inconsistent with practices in Australia where Halal slaughter is undertaken in the majority of chicken abattoirs and that slaughter is conducted with prior stunning (either electrical or gas). Any product with a 'humane' label must ensure that production and slaughter methods are indeed humane and therefore no exception should be provided for Halal Slaughter without prior stunning in the standards.
- f) Interested parties have expressed concern that the use of the word 'humane' may infer that other products (that do not bear the mark) have not been produced humanely. In particular, consumers may incorrectly assume that produce that does not bear any mark may not have been produced humanely, even though the producers may have met strict animal welfare requirements and all Australian producers are required to meet minimum welfare standards.