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By email

Dear Sir/Madam

Certification Trade Mark Application No 1914662 lodged by Humane Farm Animal Care

The Australian Competition and Consumer Commission (**ACCC**) has received an application from Humane Farm Animal Care (**HFAC**) to register Certification Trade Mark No. 1914662 (**HFAC CTM**).

I am writing to you as a party who may be interested in commenting on the application. We invite your views on any aspect of the application, including whether the HFAC CTM and associated rules are likely to raise any competition concerns or may result in consumers being misled. In particular, the ACCC is interested in your views on whether the various farm animal welfare standards contained in the rules would ensure that animals are treated in a way that is consistent with Australian consumers' reasonable expectations of 'humane' food production.

Certification trade marks

A certification trade mark (**CTM**) is an image or series of words which certifies that a good or service is of a particular standard – for example, with regard to quality, origin, material or mode of manufacture. Each CTM has rules that govern the use of the CTM. The rules contain the standards that goods or services must meet to use the CTM, and the criteria the CTM owner uses to decide whether the mark should be applied to the good or service.

Registering a CTM under the *Trade Marks Act 1995* (Cth) (**TMA**) gives its owner the exclusive right to use the CTM and to allow other people to use it.

ACCC's role in CTMs

Under Part 16 of the TMA, before a CTM can be registered, the ACCC must be satisfied that certain criteria are met. Specifically, under section 175(2) of the TMA, the ACCC must give a certificate approving the registration of a CTM if it is satisfied that:

1. 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 certification requirements; and
2. the CTM rules:
 - a. would not be to the detriment of the public; and
 - b. are satisfactory having regard to the criteria prescribed in the relevant TM Regulations, being:
 - the principles relating to restrictive trade practices in Part IV of the *Competition and Consumer Act 2010* (**CCA**),

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

More information about the process and the ACCC's role in assessing CTMs is in the ACCC's publication [Certification Trade Marks – the role of the ACCC](#).

Humane Farm Animal Care's CTM application

Humane Farm Animal Care

HFAC states in its '*Program / Policy Manual: 2016*' included with its application that its purpose 'is to improve the welfare of farm animals by providing viable, credible, duly monitored standards for humane food production and ensuring consumers that certified products meet these standards.' HFAC was established in the USA, and has operated there for some time.

The HFAC CTM

HFAC is seeking to register the HFAC CTM in Australia. The HFAC CTM intends to certify that animal derived products bearing the mark have complied with HFAC's livestock and poultry welfare standards. The mark bears the words 'Certified Humane'. The mark is illustrated below.



The HFAC CTM rules

The rules governing the use of the HFAC CTM comprise the *Rules for the Certification Trade Mark of Certified Humane* and the following Annexures (together referred to as the **Proposed CTM Rules**):

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| 1. | Program/Policy Manual, 1 October 2016 |
| 2. | Beef Cattle standards, January 2014 |
| 3. | Chickens standards, August 2014 |
| 4. | Egg Laying Hens standards, January 2018 |
| 5. | Dairy Cows standards, January 2014 |
| 6. | Dairy, Fiber and Meat Goats standards, March 2013 |
| 7. | Pigs standards, January 2018 |
| 8. | Sheep, including Dairy Sheep standards, March 2013 |
| 9. | Turkeys standards, August 2014 |
| 10. | Young Dairy Beef, January 2012 |
| 11. | Bison standards, January 2014 |
| 12. | Inspector Information Manual, April 2013. |
| 13. | Recommended Animal Handling Guidelines and Audit Guide: A systematic Approach to Animal Welfare, June 2017 |

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| 14. | Procedures for Humane Euthanasia, 28 January 2013 |
| 15. | American Veterinary Medical Association (AVMA) Guidelines on Euthanasia, June 2007 |
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The Proposed CTM Rules contain animal welfare standards that relate to the treatment of a variety of livestock and poultry from farm to slaughter.

On 21 June 2019 HFAC advised the ACCC of proposed amendments to the Proposed CTM Rules. The first is to include the following general statement:

The CTM rules which are available to Australian farmers and/or suppliers are compliant with Australian Animal Welfare Standards and Guidelines and will be automatically modified in accordance with these standards.

The second is in relation to the proposed process to vary the Proposed CTM Rules, to include a statement to note the requirement for the ACCC's approval of any proposed changes to the Proposed CTM Rules in the future.

A copy of the Proposed CTM Rules is available through the [ACCC's Online Consultation Hub](#). A link to each of the specific farm animal care standards (listed in the above table) is contained within the Proposed CTM Rules document on the ACCC's website. The ACCC will also make each standard available as a stand alone document from the Online Consultation Hub shortly.

Invitation to comment

The ACCC invites you to comment on the application before it issues an initial assessment. If you wish to comment, please do so by **Friday, 30 August 2019**.

The specific animal welfare standards which underpin HFAC's application are provided in Annexures 2-11, and Annexures 13-15 of the Proposed CTM Rules. You might wish to focus on commenting on the standards that are most relevant to you.

Submissions should be emailed to CTMs@acc.gov.au with the subject "CTM 1914662 – Humane Farm Animal Care - Submission".

Submissions will be placed on the ACCC's Online Consultation Hub, subject to any request for exclusion. **Please indicate clearly in your submission whether you are willing for the ACCC to make it publicly available by placing it on our Online Consultation Hub, or are requesting that part or all of it be excluded (with brief reasons for exclusion).**

You can also forward this letter to any other party who may wish to make a comment to the ACCC regarding the application.

After considering submissions, the ACCC will release an initial assessment of the application, which will be open to further public comment, and will then issue a final assessment.

Please advise if you do not wish to make any comments at this time, but would like to be informed of the outcome of the ACCC's initial and/or final assessment. Please provide a nominated contact email address for future correspondence.

If you wish to discuss any aspect of this matter, please contact Ms Jaime Martin on (03) 9290 1477, myself on (02) 6243 1266, or by email to CTMs@acc.gov.au.

Yours sincerely



David Hatfield
Director
Adjudication