



27th August 2019

Your ref: CTM-R-70007

Mr David Hatfield
Director Adjudication
23 Marcus Clarke Street
CANBERRA ACT 2601

Attention: Ms Jaime Martin

Dear Sir/Madam

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

Thank you for the opportunity to comment on the above application which we have considered carefully.

We note the ACCC's assessment of this certification application will include an analysis of whether the Humane Farm Animal Care (HFAC) rules are likely to raise any competition concerns or may result in consumers being misled and whether as an approved certifier HFAC has the attributes to competently assess whether the goods meet the certification requirements.

In respect of these criteria we will restrict our comments to the pork industry.

Does HFAC have the attributes to competently assess whether the goods meet the certification requirements?

As an organisation committed to promoting sound animal welfare, we are concerned about the ability of a foreign owned certification body having the ability to adapt to local practice. The scientific committee does not have an Australian expert on it. Whilst HFAC has said it intends to modify its rules in line with Australian legislative changes, there is no evidence the organisation has an Australian management structure that is sufficient to keep up to date with reforms and changes which are often subtle and easily over-looked unless an organisation is close to the industry. In support of this proposition the documents provided to the ACCC by HFAC have not been amended to comply with Australian law or terminology.

Without proximity to the Australian industry it is not difficult to envisage a lag in the currency of the HFAC rules which could result in consumers purchasing product bearing a certification label that is inconsistent with current Australian standards.

Could consumers be misled by the 'Certified Humane' label?

In Western Australia animal welfare in the pork industry is controlled by the Animal Welfare Act (2002) which is underpinned by a Model Code of Practice for the Welfare of Animals (Pigs) and the Code of Practice for the Transportation of Pigs. These codes of practice have been prescribed in the Animal Welfare (General) Regulations. Specific welfare requirements also exist for product destined for export and for food safety and meat standards.

In addition to the regulatory requirements there are well-established voluntary quality assurance programs, the most common being APIQ[√]® which incorporates a comprehensive set of standards that must be adhered to. A rigorous auditing process is integral to continuing use of the term APIQ[√]® accredited. This program is owned and managed by the pork industry's national representative body, Australian Pork Limited, on behalf of industry. The standards cover management, production systems, food safety, animal welfare, biosecurity and environment. The introduction of another certification program that has its origins in a production and consumer environment different to Australian conditions has the potential to confuse consumers.

The use of the term 'humane' is also problematic in the context of consumer confusion. There is no legislative definition of 'humane' that we are aware of. The Macquarie dictionary defines 'humane' as 'characterised by tenderness and compassion for the suffering or distressed'. This suggests that the term 'humane' is contingent on suffering or distress being evident. This is clearly inconsistent with a healthy animal produced under strict legislative requirements that is eventually presented to a consumer as a safe product for purchase. In most cases there will have been no opportunity for 'humane' production because there was no distress or suffering which is clearly misleading consumers.

If we were to accept that 'certified humane' has a more general interpretation relating to good animal welfare practices, an equally confusing situation is created for consumers. Are consumers to assume that products that do not bear the 'certified humane' label have not been produced 'humanely' even though they have met strict animal welfare requirements and the production systems may have also met APIQ[√]® requirements?

Whichever interpretation of 'humane' is accepted the potential for consumer confusion is quite severe and, on that basis alone we believe the application should be rejected.

Are there any competition concerns?

The potential risk to competition from this application is linked to the potential to mislead consumers. Western Australian pork producers are producing a product in accordance with high standards of animal welfare which are legislatively based. Notwithstanding this they face the prospect of competing with a product bearing a label that infers their product is inferior if it does not carry the label. This is irrespective of the potential for that label to be behind in its standards when compared to the legislation and there being a confusing and misunderstood interpretation of the term 'humane'.

In conclusion, based on the issues outlined we recommend this application is rejected.

Yours sincerely



Dawson Bradford
President