



23 Marcus Clarke Street
Canberra ACT 2601

GPO Box 3131
Canberra ACT 2601

tel: (02) 6243 1111
adjudication@acc.gov.au
www.acc.gov.au

Our ref: CTM-R-70007
Contact officer: Jaime Martin
Contact phone: (03) 9290 1477

26 June 2020

By email

Dear Sir/Madam

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

I refer to the Australian Competition and Consumer Commission (ACCC) Initial Assessment of 28 February 2020 which proposed not to approve the registration of Humane Farm Animal Care's (HFAC) certification trade mark application.

In response to the Initial Assessment, the ACCC has received a revised set of rules from HFAC in relation to Certification Trade Mark No. 1914662 (**HFAC CTM**).

I am writing to you as a party who may be interested in commenting on the revised set of rules received from HFAC, or who has previously made a submission in relation to HFAC's original CTM rules.

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](#).

Background

Humane Farm Animal Care

HFAC states in its 'Program / Policy Manual' 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.

Humane Farm Animal Care's CTM application

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 ACCC's initial assessment

The ACCC consulted with interested parties on HFAC's original CTM application in August 2019, with significant concerns raised by interested parties at that time.

The ACCC issued an Initial Assessment in February 2020, proposing not to give a certificate to approve the registration of CTM 1914662 under s175(2) of the *Trade Marks Act 1995*. The reasons, including an overview of the concerns raised by interested parties, were set out in the ACCC's [Initial Assessment Statement of Reasons](#), available through the [ACCC's CTM Register](#).

Revised CTM Rules

The HFAC revised CTM Rules

In response to the ACCC's Initial Assessment, on 5 May 2020 HFAC provided a revised suite of documents which it advises now comprise revised CTM Rules for the operation of its certification program in Australia (defined as HFAC's **CTM Rules – Version 2**) – see links below:

- Version 2 - Policy Manual CTM Rules ([Annexure 1](#))
- Version 2 - Beef Cattle CTM Rules ([Annexure 2](#))
- Version 2 - Chickens CTM Rules ([Annexure 3](#))
- Version 2 - Egg Laying Hens CTM Rules ([Annexure 4](#))
- Version 2 - Dairy Cows CTM Rules ([Annexure 5](#))
- Version 2 - Dairy Fibre and Meat Goats ([Annexure 6](#))
- Version 2 - Pigs CTM Rules ([Annexure 7](#))
- Version 2 - Sheep CTM Rules ([Annexure 8](#))
- Version 2 - Turkeys CTM Rules ([Annexure 9](#))
- Version 2 - Young Dairy Beef CTM Rules ([Annexure 10](#))
- Version 2 - Bison CTM Rules ([Annexure 11](#))
- Version 2 - Inspector Information Manual ([Annexure 12](#))
- Version 2 - Animal Handling Guidelines CTM Rules ([Annexure 13](#))
- Version 2 - Humane Euthanasia CTM Rules ([Annexure 14](#))

- Version 2 - AVMA Euthanasia Guidelines CTM Rules ([Annexure 15](#))
- Version 2 - [Inspection Checklist Sheep](#)
- Version 2 - [Inspection Checklist Chickens](#)
- Version 2 - [Inspection Checklist Beef Cattle](#) and
- Version 2 - [Inspection Check List Laying Hens](#).

A copy of the revised 'CTM Rules – Version 2' is also available through the [ACCC's CTM Register](#). Each specific farm animal care standard will be available as a standalone document to facilitate review of the specific animal welfare standards underpinning HFAC's application that are most relevant to you.

Changes to the original CTM Rules (Version 1)

HFAC has proposed a number of amendments to the original CTM Rules (Version 1), which are detailed in 'HFAC's Response to ACCC's Initial Assessment' (**attached**).

HFAC submits that it has completely revised the CTM rules for specific use in Australia bringing them in line with Australian standards, guidelines and model codes of practice.

Further, HFAC has appointed Dr Ellen Jongman of the Animal Welfare Science Centre, Faculty of Veterinary and Agricultural Science, University of Melbourne to its scientific committee. Dr Jongman will now act as the contact person in Australia for certification applications, on-site inspections and any dispute matters.

HFAC has also amended its CTM rules to provide:

- How future changes to the Australian Animal Welfare Standards and Model Code of Practice for the Welfare of Animals (MCP) will be incorporated into the CTM Rules and communicated.
- Inspection checklists for four standards (sheep, chickens, beef cattle and laying hens) that set out how farms are evaluated for compliance and certification in Australia.
- Information on engaging, and the qualifications of, inspectors and certifiers of the revised CTM Rules.
- Wording changes to the following Annexures have been made - Annexure 1 (policy manual), 2 (beef cattle), 3 (chickens), 4 (egg laying hens), 6 (dairy fibre meat goats), 7 (pigs), 8 (sheep), 9 (turkeys), 10 (young dairy beef) and 11 (bison).

Invitation to comment – second round of consultation

The ACCC invites you to comment on the revised CTM Rules (Version 2) before it proceeds with its final assessment of the application. If you wish to comment, please do so by **Friday, 24 July 2020**.

We invite your views on whether HFAC's revised CTM Rules (Version 2) 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 amended farm animal welfare standards contained in the revised CTM Rules (Version 2) and new Inspector Checklists would ensure that animals are treated in a way that is consistent with Australian consumers' reasonable expectations of 'humane' food production and are in compliance with Australian regulations.

If you have previously provided views to the ACCC, it would be helpful if any submission you provide indicates whether you consider HFAC's revisions address any previous concerns you might have had about the implementation of the certification program in Australia.

Submissions should be emailed to CTMs@acc.gov.au with the subject "CTM 1914662 – Humane Farm Animal Care – Submission on Version 2 of the CTM Rules".

Submissions will be placed on the ACCC's public CTM Register, 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 CTM Register, or are requesting that part or all of it be excluded (with brief reasons for any exclusion request).

You can also forward this letter to any other party who may wish to make a comment to the ACCC regarding the revised CTM Rules (Version 2).

Next steps

HFAC will be provided time to consider and respond to public submissions received by the ACCC, before the ACCC issues a final assessment.

If you wish to discuss any aspect of this matter, please contact Jaime Martin on (03) 9290 1477, Ellie Dwyer on (03) 9290 1874, or by email to CTMs@acc.gov.au.

Yours sincerely

A handwritten signature in blue ink, appearing to read "D Hatfield".

David Hatfield
Director
Adjudication