



## **Final assessment of Certification Trade Mark application CTM1991912 filed by**

### **Christian Certification Authority Australia Pty Ltd**

#### **Final assessment**

1. In accordance with the *Trade Marks Act 1995* (TMA) and the *Trade Marks Regulations 1995* (TM Regulations), the ACCC has completed its 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 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. Specifically, the ACCC considers that the use of the CCAA logo on food products may lead consumers to understand that the products conform with Christian dietary laws, standards, practices or requirements (collectively referred to as 'standards') when, in fact, there do not appear to be any authoritative, clear or widely accepted dietary standards within or across Christian denominations that are or could be encapsulated within the rules to this end. Detailed dietary laws and practices within other religions (such as Judaism and Islam) have been recognised and codified for centuries. There are no equivalent authoritative, clear or widely accepted standards which have been recognised and followed by Christians.
5. The ACCC also considers that the use of the CCAA logo on food products may lead consumers to understand that the CCAA is affiliated with, or has the approval of, one or more Christian religious institutions, denominations or peak representative organisations, when this does not appear to in fact be the case.
6. 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 authoritative or agreed standards, and because they may believe the CCAA has an affiliation with or approval of Christian organisations.
7. The ACCC does not suggest that, by making the CCAA available for use, the CCAA would be setting out to deliberately mislead consumers, or to engage in unfair conduct. Rather, our concern is that the rules are not, and cannot be, written and applied in such a way as to give sufficient assurance that consumers would not be misled by the CCAA logo appearing on food products.

## The CTM Application

### The applicant

8. 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.”<sup>1</sup> 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](http://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 application

9. 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.
10. The rules associated with the previous application were different from the current application, but similarly sought to certify food products as being fit for Christian consumption.
11. 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

12. The Applicant filed the CTM Application with the Registrar of Trademarks (the Registrar) on 25 February 2019.
13. 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.
14. 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”.

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<sup>1</sup> [www.ccaaustralia.com/about-us\\_v-e/](http://www.ccaaustralia.com/about-us_v-e/)



15. 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.”<sup>2</sup>
16. 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
  - e) dairy products should only be manufactured from milk supplied from mammals with cloven hoofs.
17. 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).
18. 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.”<sup>3</sup>

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<sup>2</sup> Certification rules abstract, CTM1991912.

<sup>3</sup> Rules at [33.5].

19. The CCAA Guidelines also contain a range of requirements relating to hygiene, food safety, and humane slaughter practices.
20. A range of Biblical references are listed at the end of the rules.
21. In a letter to the ACCC of 17 August 2020, CCAA clarified that it intended the CCAA logo to be applied only to products which already bear Kosher and/or Halal trademarks, and was not to appear independent of other religious certification. The CCAA states that the CCAA logo is intended to indicate that mainstream Christian beliefs have not been compromised in the Halal or Kosher certification process, and that this will occur where there has been no physical or spiritual change made by the Kosher or Halal certification.
22. 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.<sup>4</sup>

### **The ACCC's role in assessing CTM applications**

23. Broadly speaking, the ACCC's role is to promote competition, fair trading and regulate national infrastructure for the benefit of all Australians.
24. 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);
      - o 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
      - o 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,<sup>5</sup>

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

25. 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

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<sup>4</sup> Source: [ccaaustralia.com/frequently-asked-questions/](http://ccaaustralia.com/frequently-asked-questions/)

<sup>5</sup> 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.

- 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.
26. 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).
27. 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.
28. 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.<sup>6</sup>
29. 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;
  - 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.<sup>7</sup>
30. 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*.<sup>8</sup>

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<sup>6</sup> Regulation 16.4, TM Regulations.

<sup>7</sup> Regulation 16.5, TM Regulations.

<sup>8</sup> Section 175(4), TMA.

31. 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).
32. 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](http://www.accc.gov.au).

## **Initial Assessment**

33. On 13 July 2020, the ACCC issued its Initial Assessment of this CTM application, proposing not to approve it.
34. The ACCC was not satisfied that the Application met the criteria set out in section 175(2) of the TMA and regulation 16.6 of the TM Regulations.
35. In particular, the ACCC 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.
36. The Applicant provided a response to the Initial Assessment on 17 August 2020. This response has been taken into account in the assessment set out below.

## **ACCC assessment**

37. 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.
38. 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.

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

39. 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.
40. 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."<sup>9</sup> 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."<sup>10</sup> 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.

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<sup>9</sup> Rules, Annexure 1.

<sup>10</sup> Rules [37].

41. As the CCAA logo appears intended 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.
42. 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*

43. 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*
  - *are prepared in an environment where there is no risk of contamination from non-certified products.*
44. The ACCC considers such representations to be consistent with the use of a cross, a universally understood Christian symbol, in the CCAA logo.
45. The ACCC considers that an ordinary or reasonable consumer would be likely to understand by the use of the CCAA logo, that:
- food products on which it is displayed conform with authoritative, clear or widely accepted Christian dietary standards, and
  - the CCAA is affiliated with, or has the approval of, one or more Christian religious institutions, denominations or peak representative organisations.

#### *Concerns about accuracy of representations conveyed by CCAA logo*

46. In light of the representations that the ACCC considers are conveyed by the CCAA logo, for the reasons outlined below, 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.
47. Accordingly, the ACCC is not satisfied that the rules governing the use of the CCAA logo are satisfactory having regard to principles relating to unfair practices.

#### Compliance with established Christian standards

48. 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."
49. In its letter of 17 August, the CCAA asserts that Christian dietary requirements have been around for 2000 years, and include:
- communion, breaking of the bread, drinking of wine

- abstaining from red meat and consuming fish at certain times of the year
  - the consumption of certain foods at Easter and Christmas, such as fish, turkey, ham and chocolate.
50. The CCAA also pointed to a number of submissions made to the 2015 Senate inquiry into third party food certification, in which a range of individuals suggested that their Christian faith or atheistic beliefs led them to avoid food products certified by religious certifying bodies from faith practices other than Christian.
51. As noted above, the ACCC considers that an ordinary or reasonable consumer would be likely to understand the CCAA logo to convey that the food products to which it is applied conform with authoritative, clear or widely accepted Christian dietary standards.
52. In fact, there do not appear to be any authoritative, clear or widely accepted dietary standards within or across Christian denominations in the rules, or capable of being encapsulated within the rules, that could be applied to distinguish the food in this way. Detailed dietary laws and practices within other religions (such as Judaism and Islam) have been recognised and codified for centuries. There is no equivalent accepted set of standards which have been recognised and followed by Christians.
53. 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.

#### CCAA affiliation or approval

54. The ACCC considers that 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 is affiliated with, or has the approval of, one or more Christian religious institutions, denominations or peak representative organisations.
55. 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”. The rules do not set out any affiliation with or relationship to any Christian religious institution or organisation.
56. The ACCC therefore considers that use of the CCAA logo may mislead or deceive consumers.

#### **Section 175(2) – Attributes of the certifier**

57. 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.
58. 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).<sup>11</sup> There do not currently appear to be any approved certification bodies listed on the CCAA website.
59. 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

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<sup>11</sup> Rules [6].



auditors should also understand competently the... guidelines for food preparation in relation to Christian theology.”<sup>12</sup>

60. The Applicant’s letter of 17 August 2020 submits that any staff engaged in the certification process will receive additional specialised training related to Christian certification, and that “applying the rules for products to be Christian compliant is relatively easy and could be competently understood by individuals working with our company.”
61. 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 standards. The CCAA is not affiliated with a religious denomination or organisation, and its website indicates its team has “been involved in the food industry for the last ten years throughout Australia”.<sup>13</sup>
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.

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

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

63. 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.
64. 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.<sup>14</sup>
65. 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.”
66. 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.”
67. In its letter of 17 August, the CCAA advised that its auditing system is tailored to the types of production being carried out at the premises, and therefore the process for certification will be varied dependent on the type of production occurring. The CCAA provides examples of processes for yoghurt production, for which ingredient lists would need to be provided to demonstrate that camel’s milk and figs were not included, as well as written assurance that there had been no consecration of prayer to a false idol. Where products have been subject to Halal or Kosher certification, the CCAA would verify that none of the procedures for this certification contradicted CCAA processes for certification.
68. The ACCC does not consider the process set out by the CCAA is adequate to establish whether goods or services meet the certification requirements. In particular, the ACCC does not consider the process is sufficient – or that it could be sufficient - to ensure a certifying body could be satisfied that products have not been consecrated in prayer,

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<sup>12</sup> Rules [35].

<sup>13</sup> [www.ccaaustralia.com/services/](http://www.ccaaustralia.com/services/)

<sup>14</sup> Rules at [14-16].

noting that products to be certified by CCAA have previously been subject to the processes of other religious certification bodies, over which CCAA has no control or visibility.

## Conclusion

69. 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.

70. 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.

71. Accordingly, the ACCC has completed its assessment of the CTM Application and has decided not to give a certificate under section 175(2) of the TMA.

72. 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 ....7th.... day of December 2020



Delia Ann Rickard

Deputy Chair

Australian Competition and Consumer Commission

## **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.