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By email

Dear Interested Party

Certification Trade Mark Application Nos. 2097432 and 2079575 lodged by the Gluten Intolerance Group of North America

The Australian Competition and Consumer Commission (**ACCC**) has received an application from the Gluten Intolerance Group of North America to register Certification Trade Mark Nos. 2097432 and 2079575 (**the CTMs**).

I am writing to you as a party who may be interested in commenting on the application.

The proposed rules provide that the CTM may be granted to products in the categories of 'food', 'beverages', 'nutritionals', 'supplements', and 'personal care'. The only legal entities that can apply for certification are:

- The plant that makes the product and has control over which product packages will bear the CTMs; and
- The product brand owner.

Certification trade marks

A certification trade mark (**CTM**) is an image or series of words which identifies 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 and include the requirements that goods or services must meet to in order to display the CTM and the processes the CTM owner will use to decide whether these requirements have been met.



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 according to the rules.

The ACCC has a role to assess CTMs particularly whether they raise consumer protection, competition or associated concerns. In addition, the ACCC will assess the requirements in the rules that goods or services must meet in order to have a CTM applied to them.

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

The CTM application

The Gluten Intolerance Group of North America has applied to register its CTMs, illustrated below. The CTMs intend to certify that a food, beverage, nutritional, supplement or personal care product is gluten-free as set out in the CTM Rules.

CTM No. 2097432 ("Master Logo")	CTM No. 2079575 ("Consolidated Logo")
	

The proposed CTM Rules are available on the [ACCC's CTM register](#) and are attached to this letter.

During the ACCC's initial consultation on the CTM Rules, the ACCC and interested parties raised concerns with the definition of 'Gluten-Free' adopted under the CTM Rules. Subsequently, the Applicant provided a revised version of its proposed CTM Rules on 25 May 2023, replacing the previous set of Rules received on 9 August 2021. In summary, the amendments are:

- The 'Gluten-Free' definition has been updated to include a direct reference to the Australian nil detectable gluten threshold as well as reference to the regulatory threshold in the country of sale, and now reads as follows:

"The presence of Gluten at 10 parts per million ("ppm") or less, or the regulatory threshold of the country of sale, whichever is lower, including a threshold of nil detectable gluten in Australia and New Zealand, AND whole grains, beans, seeds, pulses or legumes that contain less than 0.25 Gluten-containing grains per kilogram."¹
- A positive (fail) test result is now defined by reference to the Gluten-Free definition (as the defined Applicable Gluten-Free Threshold); and
- All oats references have been deleted except where contextually relevant (e.g. when referencing the Australian/New Zealand exclusion of oats).

Invitation to comment

We invite your views on any aspect of the application, including whether the Applicant's CTMs and their revised 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 'Gluten-Free' definition contained in the rules is defined in a way that is consistent with what Australian consumers may reasonably expect.

The ACCC invites you to comment on the applications before it issues an initial assessment.

¹ GFCO Manual, Rev. 2023, p 6.

If you wish to comment please do so by **29 November 2023**.

Submissions should be emailed to CTMs@acc.gov.au with the subject "CTM 2097432/CTM 2079575 – Gluten Intolerance Group of North America - Submission".

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 exclusion).**

You can also forward this letter to any others who may wish to make a comment to the ACCC regarding the CTM applications.

After considering any submissions, the ACCC will release an initial assessment, which will be open to further public comment, before the ACCC issues a final assessment.

Please advise if you do not wish to make any comment 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 do not hesitate to contact Ben Janover on +61 3 9290 1813 or by email to CTMs@acc.gov.au.

Yours sincerely



Naomi Menon
Director
Competition Exemptions