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23 September 2020

Ellie Dwyer
Merger and Authorisation Review
Australian Competition & Consumer Commission
Level 17, 2 Lonsdale Street
Melbourne 3000

By email

Dear Ellie

Certification Trade Mark application 1914662 lodged by Humane Farm Animal Care Pty Ltd (HFAC).

Thank you for your letter of 26 August 2020 inviting Humane Farm Animal Care Pty Ltd (HFAC) to respond to any of the issues raised in interested party submissions about Version 2 of the CTM Rules.

In response to some of the issues raised in the interested party submissions, the applicant has made further changes and clarifications to the rules relating to above Certification Trade Mark (CTM). Marked copies of the revised rules are attached. In addition, the applicant has provided the following comments (*in bold italics*) in relation to the main issues raised by the interested parties.

- **Issue 1:** The rules state that HFAC's standards are based on the UK RSPCA guidelines (with a UK web address provided as reference).

Response: This entry has been qualified in each of the rules to clarify that RSPCA standards were used as a FORMAT or initial basis, back in 2003, 17 years ago. The standards have undergone many adaptations all along to allow for various welfare practices world-wide in addition to scientific advances. The Introduction Page of each set of standards has been revised as follows:

Humane Farm Animal Care is a non-profit charity whose mission is to improve the lives of farm animals in food production by providing viable, credible, duly monitored standards for humane husbandry and traceability, assuring consumers that certified producers meet these standards.

Humane Farm Animal Care Standards* have been developed to provide the only approved standards for the rearing, handling, transport and slaughter of Cattle, Dairy Cows, Young Dairy Beef, Sheep, Pigs, Goats, Chickens & Laying Hens, Turkeys, Bison & Red Deer for use in the "Certified Humane" program. These standards are living documents which under-go periodic improvements as necessary, incorporating the

latest scientific research, veterinary advice, and practical experience of the farming industry world-wide.

Animal welfare is improved when livestock managers adhere to the following:

- Access to wholesome and nutritious feed
- Appropriate environmental design
- Caring and responsible planning and management
- Skilled, knowledgeable, and conscientious animal care
- Considerate handling, transport, and slaughter

*We are very grateful to the Royal Society for the Prevention of Cruelty to Animals (RSPCA) who gave us permission to use their then current farm animal standards and document format as the basis for developing the original set of Humane Farm Animal Care Standards published in 2003.

- **Issue 2:** References to various environmental aspects (for example, protecting shorn sheep) are not required for Australian production systems.

Response: HFAC understands this concern. If these references are not necessary in Australia, an Australian farmer would not be required to comply, like with any other local variances. The audit checklist for use in Australia, the only tool the inspectors use, will be adjusted to reflect this.

- **Issue 3:** The units of measurement within the various standards are provided in the US imperial system, rather than the metric system used in Australia.

Response: HFAC's intention over the years has been to convert all the measurements and offer US and metric measurements for all measures. Some of the measurements are already specified in both US and Metric measures. Work is progressing to provide measurements in both US and Metric systems.

- **Issue 4:** Only one of the 40 committee members is based in Australia.

Response: This is technically true. However, several inspectors and scientific advisors have spent time in Australia and are very familiar with practices in Australia. For example, Dr. Brenda Coe and Erika Voogd have a very good understanding of the Australian practices. HFAC plan to further increase the Australian representation on the scientific committee once it fully establishes its operations in Australia.

- **Issue 5:** Regarding sheep and lamb production, many of the potential certification requirements in HFAC's program are based on more intensive operations which are more common in the northern hemisphere and cannot simply be transferred or applied to Australian production systems.

Response: If a larger more intensive systems for lamb and sheep does not meet the specific written requirements but the well-being of the animals is clearly addressed to comply with the "spirit" of the standard, a derogation is allowed. HFAC employs experienced animal scientists like Dr Ellen Jongman or others trained by her so these determinations can be made easily in a professional and timely manner.

- **Issue 6:** There are ongoing concerns that HFAC does not have sufficient people in place in Australia to undertake the roles of approved certifiers, third party auditors and inspectors.

Response: It is true that HFAC does not have a large number of staff in Australia at present. Similarly, HFAC does not have sufficient producers on the program as of yet to keep a team of more than several auditors busy with work. As needed and the program develops, more staff will be recruited and trained to meet the demand in Australia.

- Issue 7: While HFAC has modified its rules to reference the Australian Animal Welfare Standards and Guidelines (AAWSG), Version 2 of the CTM Rules have not been amended to directly incorporate Australian law or terminology. There are frequent changes to legislation, Codes of Practice, Standards and Guidelines and the rules would need constant revision to ensure compliance with Australian requirements. It remains unclear how Version 2 of the CTM Rules could be automatically modified in accordance with Australian legislation.

Response: Every attempt will be made to refer to the latest guidelines and legislation in Australia in HFAC's Australian rules. All HFAC trained auditors will have an up to date knowledge of the legislation and guidelines in Australia. The farmer being inspected is also welcome to advise an auditor of what is required by law or contest a non-compliance without retribution so they feel no pressure to comply with something out of date.

- Issue 8: The HFAC *Laying Hen Standards* permits stocking densities of above the Australian National Information Standard made under Australian Consumer Law, which defines 'free range eggs' as coming from hens with 'meaningful and regular access to the outdoors' and stocked at a rate of up to 10 000 hens per hectare.

Response: This may be due to a nomenclature issue. Pasture-raised in HFAC standards more closely relates to Free-range in Australian standards. HFAC has published a separate checklist for use in Australia for use by the auditors to ensure the terminology or claims are appropriately used.

- Issue 9: The HFAC *Standards for Production of Sheep* allow for tail docking, and do not specify the use of any pain relief when castration is undertaken.

Response: The text says that pain medication should be used, it is actually required as it is in all species for painful medical procedures. HFAC will reword this section to make it clearer.

- Issue 10: Under the Halal Slaughter Exception, the *HFAC Standards for Chickens* allow for poultry to be stunned within 5 seconds of a neck cut, effectively allowing the slaughter of a fully conscious bird. RSPCA Australia submits this practice is inconsistent with practices in Australia where Halal slaughter is undertaken in the majority of chicken abattoirs and that slaughter is conducted with prior stunning (either electrical or gas). Any product with a 'humane' label must ensure that production and slaughter methods are indeed humane and therefore no exception should be provided for Halal Slaughter without prior stunning in the standards.

Response: This stun after cut is an exception in certain jurisdictions where the local Muslim authority will not permit it the other way around. HFAC is prepared to amend this to say this will only be permitted if local legislation permits. Where a pre-stun is legally required, there are no exceptions or work-arounds permitted.

- **Issue 11:** Interested parties have expressed concern that the use of the word ‘humane’ may infer that other products (that do not bear the mark) have not been produced humanely. In particular, consumers may incorrectly assume that produce that does not bear any mark may not have been produced humanely, even though the producers may have met strict animal welfare requirements and all Australian producers are required to meet minimum welfare standards.

Response: A certification trade mark is used or intended to be used to distinguish goods or services dealt with or provided in the course of trade and certified by the owner of the trade mark or by another person approved by the owner of the trade mark (an approved certifier), from goods or services not so certified.

The certification mark applied for does not solely consist of the word “humane” It is a composite mark with a distinctive device element in addition to the words “Certified Humane”.

As part of the implementation of the certification scheme in Australia, HFAC will be undertaking appropriate advertising and marketing activities in the relevant market to differentiate the products certified under the HFAC certification scheme to assist consumers to identify the difference between products that have been certified under the HFAC mark and other products. Certified Humane label on a product assures consumers that products have come from operations that meet precise, objective standards for farm animal treatment.

HFAC understands that rules relating to each certification mark would be assessed on their individual merits. However, HFAC would like to point out that rules for certification marks containing the word “Humane” have been approved previously for similar products, one such example being TM 1424025 – “Humane Choice True Free Range”. Products carrying this label does not mean other products have been produced less humanely. It simply means the products carrying this label have been certified to meet certain standards in accordance with the rules of the CTM.

Similarly, products carrying the label–Organic Certified (CTM 1736972) for food products does not mean they are more organic than other products or other organic products are not organic. It simply means, the products have been certified to meet certain standards. Another example is Australian Fresh (CTM 659737) for agricultural and fresh food. Again, the products carrying this label does not mean that they are fresher than other fresh products. It simply means the products carrying the label has gone through a process to be certified as meeting certain standards.

The following is a list of all documents (three Zip Folders) attached to this submission.

Zip Folder HFAC SEP 1

1. Annexure 2 REDLINE to CTM Rules – Beef Cattle September 2020
2. Annexure 3 REDLINE to the CTM Rules – Chickens – September 2020
3. Annexure 5 REDLINE to the CTM Rules – Dairy Cows – September 2020
4. Annexure 6 REDLINE Dairy, Fiber, and Meat Goats – September 2020
5. Annexure 7 REDLINE to the CTM Rules –Pigs – September 2020

6. Annexure 8 REDLINE to the CTM Rules –Sheep – September 2020
7. Annexure 9 REDLINE to the CTM Rules Turkey – September 2020
8. Annexure 10 REDILINE to the CTM Rules – Young Diary Beef – September 2020
9. Annexure 11 REDLINE to the CTM Rules – Bison – September 2020

Zip Folder HFAC SEP 2

10. Annexure 4 REDLINE to the CTM Rules – Egg Laying Hens – September 2020

Zip Folder HFAC SEP 3

11. Insp.Cklist Sheep edit in progress for Australia September 2020

We trust the rules of the above certification trade mark are now in order for acceptance. However, the applicant would be prepared to make further changes to the rules if ACCC deems it is necessary.

Please do not hesitate to contact the writer for clarification of any points made or for any further information you might require.

Yours sincerely



Kumudu Ramasundara

Patent and Trade Mark Attorney

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