



“Adding value through Quality Management Partnerships”

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Gavin Jones
Director
Adjudication
Australian Competition and Consumer Commission

BY EMAIL: CTMS@ACCC.GOV.AU

Dear Mr Jones,

I wish to advise that in order to have a comprehensive discussion around the production of beef under CTM application No. 1749229, it has been proposed (and agreed) that Ceres Agriculture, Managing Director (Mark Mason) will attend the upcoming Australian Meat Industry Language and Standards Committee (AMILSC) meeting on 16th August 2016, to discuss all potential issues and opportunities associated with this CTM. This discussion will involve direct representation from Cattle Council Australia, Australian Lot Feeders' Association, Australian Meat Industry Council, Department of Agriculture and Water Resources (Department), Supermarket/Independent Retail representatives and AUS-MEAT Limited, with observers from Meat and Livestock Australia, Australian Pork Limited and Australian Livestock & Property Agents Association.

Notwithstanding this opportunity to work towards an industry agreed standard, the AMILSC, given the deadline for submissions, considered it important to raise concerns in regards to the potential for confusion with current Industry programs – Pasturefed Cattle Assurance System ([PCAS](#)) and National Feedlot Accreditation Scheme ([NFAS](#)).

CERTIFICATION TRADE MARK APPLICATION NO. 1749229 – LODGED BY CERES AGRICULTURAL COMPANY

We appreciate the opportunity to comment on the recent application by Ceres Agricultural Company to register with the Australian Competition and Consumer Commission (**ACCC**) the Certification Trade Mark (**CTM**) No. 1749229 (**CTM Application**).

AUS-MEAT is an industry owned company operating as a joint venture between Meat & Livestock Australia (**MLA**) and Australian Meat Processor Corporation. AUS-MEAT was established in September 1986 as an industry-owned and oriented body responsible for the development, maintenance and oversight of a national meat trading language for both domestic and export meat. AUS-MEAT is the custodian of the national meat trading language, operating not for profit but for the good of the Australian meat industry and its consumers.

Shortly after AUS-MEAT's establishment, the Commonwealth Department of Agriculture and Water Resources (**Department**) gave responsibility to AUS-MEAT for certain aspects of the national language, particularly those seen as pertaining to commercial or marketing matters. With the development of approved Quality Assurance arrangements, including the Approved Arrangement introduced in 2005 in the *Export Control (Meat and Meat Product) Orders*, further responsibility has been transferred to industry and to AUS-MEAT.

Under the *Export Control Act 1982* and the *Export Control (Meat and Meat Products) Orders 2005*, the role of verifying truth-in-labelling rests with the Department. An agreement between the Department and AUS-MEAT outlines that this obligation can be met through a verification process whereby AUS-MEAT takes day-to-day operational responsibility, including for corrective action, for most trade descriptions.

Under regulation 3(1) of the *Australian Meat and Live-stock Industry (Export Licensing) Regulations 1998*, AUS-MEAT is the prescribed standards body responsible for setting standards for meat for export. In that capacity, AUS-MEAT plays an important role in maintaining the consistently high standards of Australia's meat exports industry, which have made Australia a world-leader in the export of red meat and livestock, and among the world's largest and most successful and efficient producers of commercial livestock. The total value of Australia's off-farm beef and sheepmeat industry is estimated to be \$17 billion.¹

According to the OECD and UN Food and Agriculture Organization, Australians consumed 93kg of meat per capita in 2013, leading the rest of the world, ahead of Americans (91.1kg); Israelis (86kg); Argentineans (84.7kg) and Uruguayans (82.9kg).² Given that Australians lead the world in meat-consumption per capita, and in any event, there are important consumer (and economic and health-related) reasons to regulate diligently and carefully the quality of meat products available in the Australian markets, and the language used in marketing them and their benefits.

The Australian Meat Industry Language and Standards Committee (**AMILSC**) is the industry standards body responsible for the development, approval and maintenance of standards for trade description through the *Australian Meat Industry Classification System (AUS-MEAT Language)* and the *AUS-MEAT National Accreditation Standards for AUS-MEAT Accredited Enterprises*. Under these arrangements, the AMILSC sits in its capacity as an Advisory Committee for the AUS-MEAT Board.

As mentioned previously the AMILSC is comprised of representatives from Cattle Council Australia, Australian Lot Feeders' Association, Australian Meat Industry Council, Department of Agriculture and Water Resources (Department), Supermarket/Independent Retail representatives and AUS-MEAT Limited, with observers from Meat and Livestock Australia, Australian Pork Limited and Australian Livestock & Property Agents Association.

The CTM Application has raised a number of concerns, both from a consumer protection and a competition perspective, with the various industry bodies represented in the AMILSC. In particular, the AMILSC considers that, if approved, the proposed CTM will lead to confusion both for business and consumers with regard to the proper certification of pasturefed meat products in Australia. We believe that such a scenario will have a detrimental impact both on Australian consumers and on competition in the meat sector more broadly, as well as on the quality of Australian exports. In the circumstances, we believe that the ACCC cannot be satisfied that the CTM Application meets the relevant criteria for approval. The AMILSC accordingly provides the following submission opposing the CTM Application.

1. Summary

In our view the CTM Application will result in confusion for businesses and consumers with regard to the production and sale of Australian Beef for the following reasons:

¹ Meat & Livestock Australia, 'Industry Overview', accessible at <http://www.mla.com.au/About-MLA/Cattle-sheep-goat-industries/Industry-overview>.

² Joe Myers, 'Australians Eat the Most Meat of all the OECD Countries', *Business Insider*, (3 August 2015); accessible at <http://www.businessinsider.com.au/these-countries-eat-the-most-meat-and-the-us-isnt-no-1-2015-7>.

- The use of the Free Range Pasture Finished Certifications creates confusion for both wholesale and retail consumers of meat products as the combination of words and logo is similar to the Pasturefed Cattle Assurance System (**PCAS**) for Australian certified pasturefed meat products.
- CERES seeks to apply the proposed CTM to products that are of a lower standard than those that are certified within the PCAS program. It will be unclear and confusing to consumers and businesses what difference there is between pasturefed and pasture-finished.
- The use of “Natural Grain” is likely to mislead consumers that the standards applied by the proposed scheme reflect industry standards.
- The confusion created by the use of the proposed trade mark as set out above will have a detrimental effect on competition in the meat sector in Australia, because it will give a competitive advantage to those firms which operate under the proposed scheme at lower operational costs but obtaining the commercial benefits from consumers falsely believing that the proposed scheme is, or is similar to, the PCAS scheme.

In summary, the AMILSC is strongly of the view that the proposed CTM is misleading, and that the confusion and misperceptions created by the proposed CTM will have a detrimental impact both for the meat certification sector and for businesses and consumers of meat products in Australia. For these reasons, the AMILSC does not consider that the ACCC can be satisfied that the CTM Application meets the relevant criteria for approval.

2. Background

As might be expected given the importance of the meat industry to Australia’s economy, the industry is governed by a sophisticated and well-established set of standards that help to control the quality of Australia’s meat. As the Department stated in 2011: “Export regulation helps to maintain and expand markets and trade opportunities for Australian agriculture produce. It also provides our international trading partners with a high degree of confidence in the quality and hygiene of our agriculture and food exports. In addition, regulation protects the agricultural and food export sector from damage to its reputation that could result in lost or reduced markets. For example, it protects markets and public health by preventing the export of contaminated produce. Finally, regulation protects honest traders in the export industry from disreputable competitors.” These points are equally true in relation to the domestic market.

Australia’s export legislation states that any trade description applied to a product, including grading descriptions, must be accurate and true. This applies to any descriptions included on a label, on documentation or attached to product. Penalties apply for the application of false or misleading trade descriptions. There are similar labeling laws applicable for meat products that remain in Australia for domestic consumption.

As mentioned, AUS-MEAT provides Australia’s controls for accurate trade descriptions on exported meat through the *Export Control Act 1982* and associated *Export Control (Prescribed Goods – General) Order 2005* and *Export Control (Meat and Meat Products) Orders 2005*. The AUS-MEAT language allows products to be traded from any AUS-MEAT Accredited Abattoir according to specifications, with confidence that the product will be as described. This language is specified in the Australian Meat Industry Information document, as required by the *Export Control (Meat and Meat Products) Orders*.

The *Export Control (Meat and Meat Products) Orders* require that, through a product’s trade description, the product is accurately described at each stage of production and is identified at each stage of production. AUS-MEAT Accredited Abattoirs are required to provide an AUS-MEAT Approved Quality System to meet these requirements. Any claims made regarding a product under an AUS-MEAT Approved Quality System are regarded as “Raising Claims”. Such claims need to be approved and verified to the Department and AUS-MEAT

satisfaction under the *Meat Notice 2001/16 - Joint Certification Responsibility*. The Department conducts regular audits of AUS-MEAT to ensure that the Orders are being correctly maintained.

On 31 May 2016, the Department issued a reminder of AUS-MEAT's responsibilities for accuracy of trade descriptions as they relate to export meat ([MN 2016/02](#)). Relevantly for our purposes, by that Meat Notice, the Department reminded industry that AUS-MEAT is responsible for administering trade descriptors dealing with raising claims, and grainfed beef.

3. Misleading and deceptive

In its assessment of the CTM Application, the ACCC must, among other things, consider whether the CTM Application raises any concerns with regard to misleading and deceptive conduct.

As noted above, the AMILSC is of the view that the CTM Application raises a number of these concerns. In particular, we consider that the trade mark itself is ambiguous, confusing and misleading.

3.1 Confusion with PCAS

PCAS is an assurance program developed by Cattle Council of Australia with support of MLA that enables the industry to prove claims relating to pasturefed or grassfed production methods. Underpinning PCAS are the PCAS Standards, which govern the on-farm feed requirements and traceability of the cattle as well as pre-slaughter handling practices which influence eating quality. The PCAS Standards also include two optional modules to support claims relating to the freedom from antibiotics and hormone growth promotants (**HGP**).

The similarities between the PCAS program and the Free Range Pasture Finished Assurance System (**FPAS**) to which the CTM Application relates are self-evident.

They are both certification programs designed to verify the manner in which cattle have been raised, with particular focus on allowing operators to claim that cattle were not confined, have access to graze open pasture, and had a pasture-based diet. Each program requires that cattle are individually identified and that they are fully traceable throughout their entire life. Each program includes supplementary certifications that designate cattle as HGP-free and/or antibiotic-free.

In fact, a side-by-side comparison of the respective standards of each program (p1 of PCAS's standards; p3-4 of CERES's proposed standards) will make clear that CERES used the PCAS standards as a starting reference point, adopting identical language to the PCAS document.

The following is the summary of PCAS program:

Core module: Certified Pasturefed

	STANDARD ELEMENT	OUTCOMES
1	Identification and lifetime traceability	On-farm systems have been implemented to ensure that cattle are individually identified and that they are fully traceable throughout their entire life.
2	No confinement for the purpose of intensive feeding for production	On-farm systems have been implemented to ensure that cattle are not confined for the purpose of intensive feeding for production.
3	Lifetime pasturefed	On-farm systems have been implemented to ensure that cattle have never been fed separated grain or grain by-products and have access to graze open pasture with an Eligible Diet.
4	Minimum eating quality standards (on-farm)	On-farm systems have been implemented to ensure that cattle consigned to slaughter are eligible to be accompanied by a Meat Standards Australia (MSA) Vendor Declaration

Optional module 1: +HGP-free

5	Lifetime free from Hormonal Growth Promotants	On-farm systems have been implemented to ensure that cattle have never been treated with hormonal growth promotants (HGPs).
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Optional module 2: +Antibiotic-free

6	Lifetime free from antibiotics	On-farm systems have been implemented to ensure that cattle have never been treated with antibiotics including: Low-level (sub-therapeutic) or therapeutic level doses; sulphonamides, ionophores or coccidiostats.. <i>The use of anthelmintics for the treatment of parasites are allowable under this element.</i>
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There are numerous similarities in the standards of the respective programs. In fact, the language of the PCAS program has been reproduced entirely in some sections of the proposed scheme. The proposed FPAS program categorises its requirements into “Standard Elements” and “Outcomes” in the precise manner that PCAS does. The outcome of the first standard element – “identification and lifetime traceability” (in both documents) – has the exact same description: “On-farm systems have been implemented to ensure that cattle are individually identified and that they are fully traceable throughout their entire life.”

The proposed optional HGP-free module, described as “Lifetime free from Hormonal Growth Promotants” (in both programs), has the following outcome: “On-farm systems have been implemented to ensure that cattle have never been treated with hormonal growth promotants (HGPs).” This reproduces PCAS’ language precisely.

Likewise, the proposed optional antibiotic-free module, described as “Lifetime free of antibiotics”, designates the outcome using identical language: “On-farm systems have been implemented to ensure that cattle have never been treated with antibiotics including: Low-level (sub-therapeutic) or therapeutic level doses; sulphonamides, ionophores or coccidiostats. *The use of anthelmintics for the treatment of parasites are allowable under this element.*”

There are also obvious similarities between the respective logos, with a picture of a cow, the colour green, and depictions of grass common (with the use of parallel lines) to both pictures, and the terms ‘certified’ and ‘pasture’ featuring in both marks. In particular, the cow head is a prominent feature of both logos, being the core part of the proposed CTM and a point of interest in the PCAS logo. In the latter, although the cow is shown from the side in outline, the head faces forward, and is therefore very similar to the cow head device in the

proposed CTM. Although there are some obvious differences between the two logos, we submit that the overall impression created is one of similarity between them. The prominent shared features are such that an average consumer who is aware of the PCAS logo will likely, if they see the proposed CTM on packaging call to mind the PCAS logo. At the very least, we submit that such a consumer will be confused that the two trade mark signify the same (or equivalent) certification process, or are otherwise used by, related to, or endorsed by the same certifying entity.



FPAS logo



PCAS logo

No doubt, there are differences between the standards and the logos. Perhaps foremost among the differences is that use of “Pasture finished” and “Pasturefed”, the difference between which is unclear to industry and will be certainly unclear to consumers. After careful consideration of the respective rules (being an analysis that we assume will not be undertaken by the average consumer), “pasture finished” is not defined or clarified, although the rules seem to permit the logo to be used in situations where “cattle will have ad-lib access to both grain and pasture” (p13). That is to say that the proposed CTM will be applicable where cattle are fed a mix of grain and pasture, with no apparent minimum threshold for the pasture component of the “diet”.

By contrast, the PCAS program has strict requirements around its “pasturefed” requirement (p10 of the PCAS Rules). In particular, cattle must have access to graze in open pastures or have access to an “eligible diet” at all times. “Eligible diet” is clearly defined as deriving solely from forage, which consists of grass (annual and perennial); forbs (eg: legumes, brassica); browse; cereal grain crops in a pre-grain state; and legumes (such as lucerne, clover, peas, leucaena) and brassica (such as beets, kale, turnips). The PCAS rules are designed to avoid cereal grain crop as part of the eligible diet of “pasturefed” cattle: “Paddocks that have had a cereal grain crop harvested may be grazed by eligible cattle provided that over 75% of the paddocks average vegetative regrowth is higher than 21cm when cattle are first grazed to avoid the risk of cattle gaining access to grain that has shed during harvest.” Refer Zadoks Decimal Code – Appendix 4 [PCAS Standards](#).

The proposed CTM does not clarify the difference between “pasture finished” and “pasturefed”, nor do the proposed rules. But they do, perhaps deliberately, attempt to give the impression that the certifications are extremely similar. From the perspective of businesses and consumers making informed decisions as to their purchases, it is likely that the proposed CTM, if approved, will create confusion. Such confusion gives producers a competitive advantage where they can adopt a less onerous approach to raising cattle, while still enjoying the patronage of consumers who seek assurance that the meat products being purchased enjoyed a particular diet and lifestyle pre-slaughter.

Similarly, farmers who raise cattle without the strict pasture requirements imposed by PCAS in order to use the “certified pasturefed” logo, will be able to charge higher prices to unwitting consumers who are willing to pay

more for pasturefed meat products. Reports suggest that the grassfed meat is approximately 30% more expensive than its grainfed equivalent.³

Moreover, even if consumers are alert to the differences between the two certifications (which is unlikely) unwitting farmers who believe that the two programs are similar may raise their cattle under the proposed FPAS scheme only to discover that their products are not being purchased at the prices of the PCAS-certified products.

Given this confusion, we do not consider that the ACCC could be satisfied that the proposed CTM or its rules are satisfactory, particularly on the grounds of consumer protection.

3.2 The CERES proposed CTM can be used for products that do not have the benefits usually associated with cattle raised on a pasture-based diet

In another misleading aspect of the proposed CTM, meat products bearing the proposed CTM will not necessarily have the benefits usually associated with cattle raised on a pasture-based diet.

There are numerous reasons why certain consumers prefer meat that subsisted on a pasture-based diet. Some consumers consider grain to be less natural than pasture. Some consumers prefer the taste and texture of pasturefed meat. Some prefer the environmental benefits of pasturefed cattle (as pasture production requires less energy than grain). Some prefer the superior treatment of pasturefed animals over that of grainfed animals. Some prefer the nutritional benefits of pasturefed meat. For example, pasturefed beef usually contains less fat than grainfed beef, which means that pasturefed beef contains fewer calories gram for gram. Moreover, the composition of the fatty acids in pasturefed beef is superior to grainfed beef – pasturefed beef contains up to 5 times as much Omega-3, and about twice as much Conjugated Linoleic Acid. Pasturefed beef contains more Carotenoids, Vitamin E and minerals like Potassium, Iron, Zinc, Phosphorus and Sodium.

Given that “Pasture Finished” cattle have “ad-lib access” to grain, and often end their lives in feedlots, the benefits inherent in pasture-finished meat products cannot be guaranteed to consumers. This means that the application of the proposed CTM would give the producers commercial benefits to which they may not be entitled, by misleading consumers, and a competitive advantage over other producers who spend more producing cattle that are actually pasturefed.

3.3 Confusion with different industry standards

There are other industry standards beyond the PCAS scheme, all of which are administered by, or in connection with, the AMILSC.

It is extremely likely that any meat industry standards and certification programs will give the impression to consumers and the industry that they have been created by bodies connected to the AMILSC, when this is not true.

Thus, the CTM Application puts the AMILSC and its constituent bodies’ goodwill at risk, because it applies a lower standard of regulation.

³ Esther Han, ‘Aldi’s ‘Grass-Fed’ Beef Claim Misleads Consumers, Say Other Producers’, *Sydney Morning Herald* (20 August 2015), accessible at <http://www.smh.com.au/business/retail/aldi-grassfed-beef-claim-misleads-consumers-say-other-producers-20150819-gj2whl.html#ixzz3jPGHPjYY>. See also, Jon Condon, ‘Grassfed Terminology Comes Under Fire for ‘Mis-Description’, *Beef Central*, (21 August 2015); accessible at <http://www.beefcentral.com/trade/grassfed-terminology-comes-under-fire-for-mis-description/>.

3.4 Confusion with Grain-Fed standards

Further, of the ten CTMs for which CERES applies, four of them make reference to grain, by offering a voluntary “Natural Grain” certification over and above the basic certification.

The AMILSC believes that it is unlikely that most consumers would take note of the Natural Grain certification, and would likely be misled into thinking that the product was pasturefed, for the reasons mentioned above. However, even if consumers were alert to the meaning of “pasture finished”, and noticed (or even sought out) the assurance that the animal, to the extent that it was raised partially on grain, was raised only on natural grain, the proposed CTM creates further confusion where it incorporates the “Natural Grain” certification.

There are industry standards pertaining to grainfed meat products, as defined in the AUS-MEAT language and the trade descriptions under the *Export Control Act*. Cattle slaughtered and processed as grainfed must be sourced from a feedlot accredited with the National Feedlot Accreditation Scheme (NFAS) and audited by AUS-MEAT. All cattle from accredited feedlots must have the necessary NFAS Delivery Documents at the time of slaughter. The Department is the responsible organisation for the administration of declaration/documents on plant.

AUS-MEAT is the organisation responsible for post-slaughter monitoring of grainfed product. Carcasses eligible for Grain Fed Certification must comply with the clear criteria for meat quality assessments, including a set number of days on feed, age of animal, P8 fat depth, meat colour score, fat colour score. These standards are generally understood by the industry.

Accordingly, the AMILSC is concerned that the references to “Natural Grain” may lead consumers into thinking that the standards imposed by the new proposed scheme adhere to industry standards, or at least refer to them. Neither perception is accurate.

4. Competition concerns

In its assessment of the CTM Application, the ACCC must, among other things, consider whether the CTM Application raises any competition concerns in relation to the use of the CTM.

The AMILSC considers that the CTM does raise the potential for anti-competitive effects in the certification sector in Australia.

In particular, the CTM Application, if approved, would bestow an unfair competitive advantage on CERES and the producers it certifies, in that CERES can use a deceptively similar mark that may operate to create an impression that its products meet the rigorous standards of the PCAS program and the producers certified as “pasturefed”.

Given the competition concerns raised by the CTM Application, the AMILSC does not consider that the ACCC can be satisfied that the CTM meets the relevant criteria for acceptance by the ACCC.

We thank you again for the opportunity for the AMILSC to contribute to your processes in relation to this CTM Application and we look forward to hearing from you about its progress.

If there are any questions or if you would like the AMILSC to elaborate further on its view, please do not hesitate to contact me on the email or numbers below.

Yours faithfully



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