



Australian
Competition &
Consumer
Commission

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26 August 2016

Ms Lauren Eade
Gilbert + Tobin
Tower 2, International Towers
200 Barangaroo Ave
Barangaroo NSW 2000

Via email: LEade@gtlaw.com.au

Dear Ms Eade

**Ceres Agricultural Company – Certification Trade Mark Application No. CTM 1749229
– information request**

As you are aware, the Australian Competition and Consumer Commission (ACCC) recently conducted a public consultation process in relation to the application from the Ceres Agricultural Company Pty Ltd (Ceres) to register a Free Range Pasture Finished certification trade mark (CTM). A copy of all public submissions received was provided to you on 3 August 2016.

Following this public consultation process the ACCC is now seeking further information to assist its consideration of the proposed certification trade mark. The further information requested is set out at **Attachment A** to this letter.

We would appreciate receiving Ceres' response by **16 September 2016**.

Subject to any confidentiality claims, we will place Ceres' response on the ACCC consultation hub for this matter on the ACCC's website.

This letter will also be placed on the ACCC consultation hub. If you would like to discuss any of the issues raised, please contact Saraj Bhullar on (03) 9290 1941.

Yours sincerely

Gavin Jones
Director
Adjudication

ATTACHMENT A – REQUEST FOR FURTHER INFORMATION

Industry initiatives aimed at establishing standardised descriptions of livestock production methods

A number of submissions have stated that the red meat and livestock industry, through AUS-MEAT Limited, is currently determining standardised industry definitions that describe livestock production methods that will enable consistency in the way products are labelled across the industry.

In this respect, the ACCC notes that AUS-MEAT was established as an industry-oriented body responsible for the development, maintenance and oversight of meat trading language for both domestic and export meat.¹ Under Regulation 3(1) of the Australian Meat and Livestock Industry (Export Licensing) Regulations 1998, AUS-MEAT is responsible for setting standards for meat export. AUS-MEAT, by understanding with the Commonwealth Department of Agriculture and Water Resources, is also responsible for certain trade descriptors under the *Export Control Act 1982* and *Export Control (Meat and Meat Products) Orders 2005*.

Submissions have raised concerns that the Free Range Pasture Finished Assurance System Standards (FPAS Standards) proposed by Ceres run counter to ongoing initiatives aimed at reaching a consensus about standardised industry definitions that describe livestock production methods. In particular, they note the ongoing work being undertaken to achieve this by the body through which AUS-MEAT manages its trade descriptors, the Australian Meat Industry Language and Standards Committee (AMILSC), whose membership includes meat and livestock industry associations and councils and the Department of Agriculture and Water Resources.

1. Please provide a response to the concerns raised that the proposed FPAS Standards may:
 - (a) undermine initiatives to establish industry wide consensus on definitions that describe livestock production methods.
 - (b) if inconsistent with definitions that may be established and adopted by the industry more broadly, create confusion for consumers.
2. More broadly, please provide a view about the work currently being undertaken by the AMILSC to develop industry definitions around livestock production methods and in particular the potential implications of this work for the FPAS Standards and CTM?

Use of the term 'Pasture Finished'

Some submissions have argued that use of the term 'Pasture Finished' may imply to consumers that meat derived from cattle produced and certified under the CTM have predominantly eaten, or been raised entirely on a grass or pasture fed diet, when this is not necessarily the case.

Specifically, element 3 '*Free Range Period*' of the FPAS Standards states that 'cattle will have ad-lib access to both grain and pasture in order to ensure optimal performance as well as animal welfare outcomes.'

¹ Department of Agriculture and Water Resources: *Meat notice number 2016/12 – Reminder of AUS-MEAT's responsibilities for accuracy of trade descriptors as they relate to export meat*, 31 May 2016.

3. Please provide a response to the concerns raised that the term 'Pasture Finished' implies a predominantly grass or pasture fed diet whereas the FPAS Standards appear to provide significant discretion about the mix of diet (grass/pasture and grain).

More generally, a standard providing for 'ad-lib access to both grain and pasture' absent guidance about how this part of the standard should be interpreted, appears to give broad discretion to Certified Producers about the mix of diet allowed.

4. Please provide a response to concerns raised that the mix of diet allowed could create confusion for consumers about the diet on which cattle from which products bearing the mark have been raised.

Use of the term 'free range'

A concern has been raised in submissions that allowing cattle to be confined to yards and pens for an initial socialisation period of up to 20 days, as provided for by element 2 of the FPAS Standards, does not accord with consumers understanding of the term free range.

5. Please provide a response to these concerns.

Element 3 of the FPAS Standards states that following the socialisation period cattle should be 'allowed to roam in a free range environment with stocking rates being appropriate for the region, nutrient balance requirements and health of the animal and taking into consideration the feed production capacity and environmental impacts'

This element appears to provide significant discretion for individual Certified Producers to determine appropriate stocking rates.

6. Please provide details about how it is intended that individual Certified Producers will determine the appropriate stocking rate for the region, including the type of information to be used as guidance in making this decision.

Natural Grain module

Element 7 of the FPAS Standards, which details the requirements to use the term 'Natural Grain' in conjunction with the CTM, requires that 'on-farm systems have been implemented to ensure cattle have access to graze open pasture and access to grain rations appropriate to their physiological needs'. The term 'access to grain rations appropriate to their physiological needs' appears to be somewhat ambiguous and appear to provide significant discretion for individual Certified Producers to determine appropriate grain rations.

7. Please provide details about how it is intended that individual Certified Producers will determine what grain rations are appropriate to the physiological needs of the cattle including the criteria to be used as guidance in making this determination.

Dispute resolution

We note that the certification decision appeals process (CTM rules 46 to 49) do not appear to provide for recourse to an independent arbiter in the event that a party is dissatisfied with the decision of the Approved Certification Body.

In this respect, the ACCC considers that dispute resolution processes are generally more effective when recourse to an independent arbiter is available. An independent dispute

resolution process provides comfort that a CTM applicant will not be denied certification for reasons beyond the CTM rules.

In instances where there is not an independent review or appeal option as a component of the dispute resolution process, the internal review process should be well documented, including details of the staff that will be handling or adjudicating on the disputes.

In this respect, the appeals process described in the Free Range Pasture Finished CTM rules does not provide any details about how appeals will be conducted other than noting that persons considering an appeal must have the requisite expertise to hear the appeal and not have been involved in the original decision.

We also note that there does not appear to be any appeal process available (internal or independent) in relation to decision to suspend or withdraw certification (CTM rules 68 to 80).

8. Please provide details about the process for considering appeals about certification decisions. Please also advise if it is intended that Certified Producers will have a right of appeal against decisions to suspend or withdraw certification, and if so provide details.

Other issues

Some submissions have noted similarities between some elements of the FPAS Standards and the Pasturefed Cattle Assurance System (PCAS) program developed by the Cattle Council of Australia. In particular, some submissions contended that there are structural similarities between the two systems and that 'almost identical' language is adopted in parts of the FPAS Standards and PCAS program.

9. The ACCC is interested to understand the basis of the similarities between some elements of the FPAS Standards and the PCAS program. Please provide details about the development of the FPAS Standards, including any source material relied on in developing the FPAS Standards.
10. Please also provide a response to the concerns raised in some submissions that similarities between the FPAS Standards and PCAS program could create confusion for cattle producers and consumers.