



Our ref: CTM 1914662
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26 September 2019

Rohan Wallace
Principal
Golja Haines & Friend

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By email: rohan.wallace@ghfip.com.au

Dear Mr Wallace

Certification Trade Mark application 1914662 – lodged by Humane Farm Animal Care

As you are aware, the ACCC recently conducted a public consultation process to inform its initial assessment of the abovementioned certification trade mark (**CTM**) application. A number of interested parties provided submissions to the ACCC through this process.

All public submissions are available at the ACCC's online [Consultation Hub](#), with the link to these submissions most recently provided to you on 10 September 2019. The ACCC also received one confidential submission. The issues raised in this submission were also raised by other interested parties and are therefore included in the summary of interested party submissions provided at **Attachment A**. The ACCC is not expecting to receive any further submissions at this stage.

Response to issues raised

As foreshadowed in earlier correspondence, we invite Humane Farm Animal Care (**HFAC**) to respond to any of the issues raised in interested party submissions.

The Trade Marks Act requires that the ACCC only approve a CTM application if it is satisfied that:

- (a) the attributes required of approved CTM assessors are sufficient to enable the person to competently assess whether goods and/or services meet the certification requirements; and
- (b) the CTM rules would not be to the detriment of the public and are satisfactory having regard to the principles of competition, unconscionable conduct and consumer protection.

In the submissions that have been received by the ACCC, interested parties have raised a number of concerns regarding HFAC's CTM application. A summary of the concerns raised in these submissions is provided at Attachment A to this letter. The summary is not exhaustive of the matters raised in the submissions.

We invite HFAC's response to the matters raised in the interested party submissions, including the concerns summarised in Attachment A, by **17 October 2019**. Subject to considering any confidentiality claims made by HFAC, we will place HFAC's submission on the ACCC's online consultation hub. This letter will also be placed on the ACCC's online consultation hub.

Next steps

Following receipt and consideration of any response by HFAC, the next step will be for the ACCC to issue its initial assessment of the CTM application.

The ACCC's initial assessment of the CTM application is advertised by the Registrar of Trade Marks in the Official Journal of Trade Marks. The CTM applicant or any other person have one month to lodge a written submission with the ACCC in response to the initial assessment. They may also request the ACCC to hold a conference so they can make oral submissions.

After holding a conference (if one is called) and considering any written submissions, the ACCC issues a final assessment to the CTM applicant and notifies the Registrar of Trade Marks and any interested parties of its decision.

If you wish to discuss any aspect of this matter, please do not hesitate to contact Jaime Martin on (03) 9243 1266 (or at jaime.martin@acc.gov.au) or me on (02) 6243 1266 (or at david.hatfield@acc.gov.au).

Yours sincerely

A handwritten signature in blue ink that reads "D Hatfield".

David Hatfield
Director
Adjudication

A summary of concerns raised in the interested party submissions about the CTM application follows:

- a) It is unclear how the certification processes can practically operate in Australia. Examples provided by interested parties include:
 - the appeals mechanism available to producers is entirely US-based
 - the units of measurement within the various standards are provided in the US system, and not the metric system used in Australia
 - references are made to various US regulators or organisations, rather than Australian regulators or organisations and
 - the Proposed CTM Rules and all other accompanying documentation should be updated to either contain an ‘interpretation guide’ or adapt terminology to suit their use in Australia.
- b) There is no detail about who will be contracted or employed by HFAC as approved certifiers or third party auditors for its certification program in Australia, other than the education requirements for being trained as a HFAC inspector.
- c) HFAC’s *Policy Manual* is unclear about what processes will be followed to confirm that minor non-conformances have been corrected. Additionally, it is unclear how biosecurity measures will be applied where producers in close geographic proximity are sharing the cost of inspection fees and potentially having an inspector visiting different operations during one visit.
- d) Public animal welfare claims need to be verified through a rigorous audit process. RSPCA Australia submits that participants in HFAC’s program would be subject to one annual on-farm audit, which may be a sample set of facilities only. It submits a more robust audit process is required – for example, at least twice yearly on-farm audits.
- e) The *Inspectors Information Manual* (Annexure 12) needs to be re-drafted to enable HFAC’s program to be implemented in Australia – for example, it needs application forms that are relevant to Australian production systems and to align with Australian state and territory animal health, welfare and biosecurity legislation.
- f) While HFAC proposes to modify its rules in line with Australian Animal Welfare Standards and Guidelines, the Proposed CTM Rules have not been amended to comply with Australian law or terminology. In particular, the Proposed CTM Rules do not refer to the state/territory enforced animal welfare legislation, or the national framework for animal welfare in Australia. Therefore, it is unclear how HFAC’s Proposed CTM Rules could be automatically modified in accordance with Australian legislation.
- g) It is difficult to see how a foreign-owned certification body could adapt to local changes in animal welfare practices in a timely manner – for example, there is no evidence that HFAC has an Australian management structure that is sufficient to keep up to date with relevant animal welfare reforms.
- h) 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 to the northern hemisphere, and cannot simply be transferred or applied to Australian production systems.

- i) Interested parties submit the standards require significant and necessary amendments to be functionally appropriate in Australia and consistent with basic animal welfare measures in Australia. Some interested parties submit that unless amendments are made, the use of the term 'humane' will be misleading to consumers. Examples provided by interested parties include:
- The HFAC *Laying Hen Standards* permits stocking densities 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 (as opposed to HFAC's definition which would allow 52 631 birds per hectare).
 - The HFAC *Standards for Production of Sheep* allow for tail docking, and does not specify the use of any pain relief when castration is undertaken.
 - Australian sheep are subject to severe disease caused by flystrike. HFAC's *Sheep Standards* do not account for husbandry practices undertaken on Australian farms as preventative courses of action against flystrike. These practices would need to be recognised to achieve positive welfare outcomes (as per the *Australian Animal Welfare Standards and Guidelines for Sheep*).
 - The *HFAC Standards for Pigs* should be amended to prohibit the use of stalls or crates, tail docking and teeth clipping. It also does not prescribe pain relief for castration of piglets (under 7 days old).
 - HFAC's standards permit beak trimming (that is, removal of the sensitive tips of beaks) without pain relief for laying hens.
 - HFAC's standards permit teeth clipping and tail docking without the use of analgesia or anaesthesia in the pig industry.
 - HFAC's standards allow calves in the dairy industry to be prematurely separated from the mothers. Calves naturally wean between 7-8 months of age.
 - Insufficient emphasis is given to shade for free range systems in Part 3 of HFAC's *Chickens Standards*. Under Australian conditions, shade is critically important in getting birds out onto the range and comfortable, particularly in hot weather.
 - Part 3 of HFAC's *Chickens Standards* assumes that spot brooders are universally used for chicks. However, many Australian farms use hot air brooders, which are located on the external walls of the shed and pump heated air into the shed and provide a more even thermal environment.
 - Under HFAC's standards, an interested party submits that broiler chickens are permitted to be exposed to 72 hours of continuous light prior to slaughter, significantly interfering with their ability to sleep. This may be regarded as a form of torture.
 - Under the Halal Slaughter Exception, HFAC's *Chickens Standards* 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 scientific understanding of humane slaughter. It submits that when killing animals humanely for food, they must be stunned *prior* to bleeding out. Any product with a 'humane' label must ensure that production and slaughter methods are indeed humane.

- HFAC’s standards permit farrowing crates for mother pigs and are generally considered to be inhumane by Australian consumers.
 - HFAC’s standards for *Egg Laying Hens* permits ‘depopulation’ of birds, but does not provide information about how this is done apart from noting that ‘catching teams must never put speed of operation before hen welfare.’
- j) Interested parties submit that the ‘Certified Humane’ mark could mislead Australian consumers because the proposed standards that underpin this CTM application allow some suffering and killing of animals, and as such, animal production covered by HFAC’s standards cannot be considered ‘humane’.
 - k) An interested party submits that the killing of animals for food production could never be ‘humane’ given meat is not an essential part of the human diet.
 - l) Interested parties have expressed concern that the use of the word ‘humane’ may infer that other products (that do not bear any mark) have not been produced humanely. In particular, consumers may 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 (for example, *the Model Code of Practice for the Welfare of Animals (Pigs)* and the *Code of Practice for the Transportation of Pigs* prescribed under the Animal Welfare (General) Regulations in Western Australia).
 - m) There is a currently a pork quality assurance system in Australia which was developed by Australian Pork Limited – called Australian Pork Industry Quality Assurance System (or APIQ✓®) – which audits farms against animal welfare standards that go above those in the *Model Code of Practice for the Welfare of Animals (Pigs)* in Australia. Australian Pork Limited advises that APIQ currently covers 90 per cent of pigs produced in Australia, and has expressed concern that approval of the ‘Certified Humane’ CTM would undermine its existing audit program.
 - n) An interested party submits that given the difference between withholding periods for certain medications and other conditions for cattle and milk in Australia, HFAC’s standards may cause unfit for human consumption milk to be supplied to market or fed to calves when it should be withheld.