

L3894:SM:DF

By email: adjudication@acc.gov.au

Dear Review Officer

Certification Trade Mark Application No 1784876
Pastured PROOF – Pasture Raised on Open Fields - Submission

We refer to your letter dated 3 May 2017 inviting comment in relation the "Pastured PROOF- Pasture Raised on Open Fields" certification trade mark application (**PROOF CTM**).

Baiada wishes to raise the following issues with respect to the PROOF CTM insofar as it relates to broiler (meat) chickens.

PROOF CTM misleading

The PROOF CTM is likely to mislead some consumers for the following reasons:

1. Consumers might believe, incorrectly, that a meat chicken product that bears the PROOF CTM is the only meat chicken that has been raised under a program that prescribes a standard of livestock production/husbandry practices where there is independent assessment or auditing component when that is clearly not the case.
2. The use of the word "PROOF" (depicted prominently and intended to be the focus of attention) conveys the representation that meat chickens sold under the PROOF CTM have been "proven" (through a process endorsed by the ACCC) to be "pasture raised on open fields". The necessary inference is that any other "free range" or "outdoor system" meat chicken products (including those endorsed by other accreditation standards by bodies such as FREPA or RSPCA) are not "proven" to be "raised on open fields" and/or do not carry the imprimatur of the ACCC.
3. While it may be clear to some consumers that "PROOF" is an acronym for "Pasture Raised On Open Fields" (the problems with this phrase are addressed separately below) this is unlikely to detract from the immediate and primary message being conveyed: being that *only* those meat chickens bearing the PROOF mark meet the standards necessary to be qualified as proven to be raised on open fields.
4. The word "*pastured*" and the phrase "*pasture raised on open fields*" convey misleading representations that the meat chickens bearing the PROOF CTM:
 - a. have not been fed any supplementary feed¹ and they have sourced all of their nutritional requirements by foraging on "open fields". The pasture will not be the major source of nutrition for the birds;
 - b. have been "raised" solely on an "open field" (that is, never housed in a barn);
 - c. infers that the scheme ensures (provides proof of) the fact that birds do actually use the pastured range area where the scheme does not actually ensure any such thing (in contrast

¹ Meat chicken feed may contain "non-pasture" ingredients, such as protein, soybeans and grains.

- to having access to a pastured range area or the actual propensity of the chickens to access the outdoor range area); and
- d. are raised on 'open fields' without perimeter fencing (which will not be the case).

Pastured PROOF CTM Certification Rules & Poultry Standards 2017

The PROOF CTM rules and standards make a series of inconsistent, contradictory and vague statements which undermine the principles that you would expect to underpin the claim 'Pasture Raised on Open Fields'. These include:

1. Pastured is defined in the Standards immediately after the Introduction as *"All animals are born and raised outdoors with continuous and unconfined access to pasture throughout their life time..."*. This definition is wholly or partially contradicted by inconsistent later statements such as:
 - a. the exception appearing in the asterix footnote that *"with the exception of young birds that are not sufficiently feathered and poultry that must be protect from predation at night"*. [this contradicts the primary claim of the PROOF CTM]
 - b. in para 3.3 *"animals will have access to paddocks and pastures for a minimum of 8 hours each day"*. [the reality is that the chickens do not have continuous and unconfined access as the definition claims]
 - c. in para 3.6 *"Meat birds shall be raised on farm from chicks"*. [The baby chicks are neither born or raised outdoors (until fully feathered) as the definition claims]
 - d. in para 3.8 *"meat chicks must have unrestricted access to the range as soon as they are sufficiently feathered or before 28 days of age"* [this contradicts the primary claim of the PROOF CTM]
 - e. in paras 3.9, 3.10 and 3.11 the references to *"purchased point of lay pullets"* [usually such pullets are purchased at 16 weeks of age which again contradicts the primary claim of the PROOF CTM that the birds have been pasture reared and raised outdoors]
 - f. in para 8 *"Egg producers must endeavour to purchase point of lay pullets that have not had their beaks trimmed"*. However para 8.2 says the de-beaking is not permitted. [Which is correct?]
 - g. In para 7.6 *"The routine use of antibiotics is prohibited. Antibiotics may be used to treat disease only under veterinary supervision"* [there is no mentioned of anti-coccidials medications, which most veterinarians would classify as antibiotics and which are routinely used]
2. The "Core Values" state that *"densely confined production systems and feed lotting are not permitted"*. It is however the reality that the indoor maximum stocking density in para 5.8.2 of 10 birds per square metre is, in our view, equivalent when the birds are fully grown to 30kg per square



metre. This is comparable to other mainstream certified production systems (eg FREPA free range) which refer to densities not exceeding 30kg per square metre (where there is mechanical ventilation).

3. Paragraph 3.7 and 3.9 both refer to rearing chickens (in facilities) under conditions ... *“that will be encountered in a free range environment, as soon as practicable”*. Paragraph 5.9 refers to ensuring adequate “free ranging”. This is confusing and in our view potentially misleading by the reference to “free range”. We are left unsure whether the application of the PROOF CTM is intended to be a “proven” case which is tantamount to a description of free range? As the ACCC is well aware from case law and other announcements, there are a number of interdependent factors as to whether a chicken (or egg layer) can be properly described as free range. If the ACCC were to approve the PROOF CTM, then ACCC would effectively be endorsing a set of minimum requirements that will be confused with “free range” chicken farming.
4. The Standards are stated to be complementary and additional to other health, agricultural, environmental, food and production related requirements at federal, state, territory and other relevant levels. Reference is then made various Codes of Practice, Guidelines and Manuals that all refer to poultry production in some way. There is no provision in the PROOF CTM Standard as to where there is priority in interpretation when there are conflicting provisions. It is our submission that PROOF CTM Standard combined with all other relevant laws related to poultry produces an ambiguous and uncertain outcome.
5. Our concern as expressed in paragraph 4 as to the uncertain meaning of the application of the PROOF CTM is compounded by the fact that there is minimal requirement for independent auditing. Farms are required to complete a self-assessment before a desktop audit of the application is completed and farms are certified. Only 20% of certified farms are audited annually.

Finally, it is our view that the words and phrase “Raised on Open Fields” which form part of the PROOF CTM should not be permitted to be trade marked as they are descriptive words which should be available for others to use and which have not developed their own uniqueness to describe the livestock farming system as proposed.

It is Baiada's submission, that the ACCC should not approve the PROOF CTM.

Yours faithfully



Scott Murray
General Manager – Legal & Corporate Affairs

