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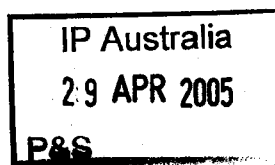
**Australian
Competition &
Consumer
Commission**

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Our Ref: C2005/75
Your Ref: TM 172
Contact officer: Cameron Martin
Contact phone: 02 6243 1107

28 April 2005

The Registrar of Trade Marks
IP Australia
PO Box 2000
WODEN ACT 2606



Dear Registrar

**Certification Trade Mark application 1012318 lodged by
the Australian Animal Health Council Limited**

The Australian Competition and Consumer Commission (the ACCC), in accordance with the provisions of the *Trade Marks Act 1995*, has completed its final assessment of Certification Trade Mark (CTM) No. 1012318.

A certificate detailing the ACCC's assessment is attached, as well as a certified copy of the rules. The applicant has been notified.

If you have any queries on this matter, please contact Cameron Martin on 02 6243 1107.

Yours sincerely

Susan Philp
Acting Director
Adjudication Branch





Final Assessment of Certification Trade Mark Application 1012318 lodged by the Australian Animal Health Council Limited

The Australian Competition and Consumer Commission (the ACCC), in accordance with the requirements of the *Trade Marks Act 1995*, has completed its Final Assessment of the above Certification Trade Mark (CTM) application.

The ACCC's Final Assessment is that it is satisfied that:

- (a) the approved certifiers are competent to certify the goods in respect of which the CTMs are to be registered;
- (b) the rules governing the use of the CTMs would not be to the detriment of the public;
and
- (c) the rules governing the use of the CTMs are satisfactory having regard to the principles relating to restrictive trade practices set out in Part IV of the *Trade Practices Act 1974* (the Act); the principles relating to unconscionable conduct set out in Part IVA of the Act; and the principles relating to unfair practices, product safety and product information set out in Part V of the Act.

Signed.......... (Deputy Chair)

Date.....28/04/2005.....

Certified copy
pursuant to section 175(2)(b)
of the *Trade Marks Act 1995*

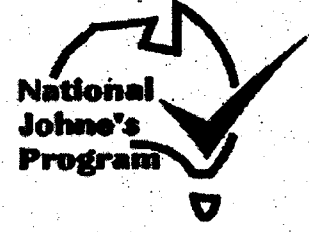
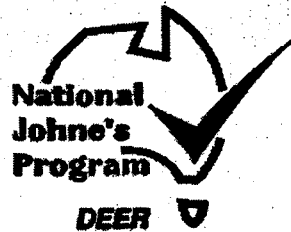
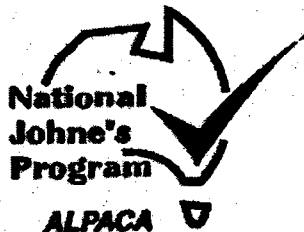
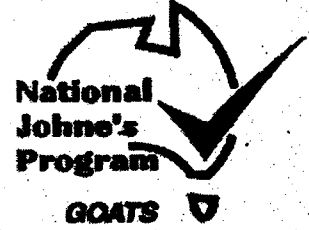
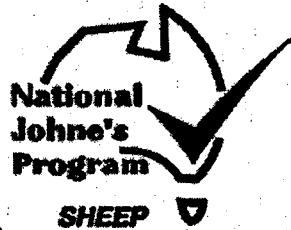
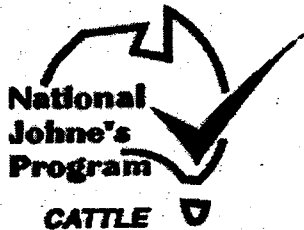
**RULES GOVERNING THE USE OF THE ANIMAL HEALTH AUSTRALIA
CERTIFICATION TRADE MARKS SERIES NO. 1012318**

Commissioner

32/10/2005
Date

1 Introduction

- 1.1 These Rules govern applications for, and use of, the following series of certification trade marks:



- 1.2 These Rules have been approved by the Australian Competition and Consumer Commission and they have been lodged with IP Australia. They are available for public inspection during the hours that IP Australia is open for business. They are also available on the Animal Health Australia web site at www.aahc.com.au.

2 Interpretation

- 2.1 In these Rules, unless a contrary intention appears:

'AHA' means Australian Animal Health Council Limited (ABN 86 071 890 956) trading as Animal Health Australia;

'APAV' means the Accreditation Program for Australian Veterinarians managed by AHA on behalf of its members whereby veterinarians are approved by a CVO to participate in animal health operational programs conducted by or on behalf of the Commonwealth, State or Territory governments;

'Applicant' means a person who has made an application to become an Authorised User;

'Assessed Livestock' means a flock or herd (as the case may be) of Prescribed Animals which has received a certificate that the flock or herd has returned negative test results for JD as described in Rule 7.4;

'Authorisation' means an authorisation permit issued by AHA to an Authorised User pursuant to Rule 9.4 in respect of Assessed Livestock;

'Authorised User' means a person who has been approved to use the Marks in accordance with these Rules and who holds a valid and current Authorisation;

'CVO' means the Chief Veterinary Officer of a State or Territory ;

'JD' means *Mycobacterium paratuberculosis*, commonly known as Johne's Disease;

'MAP' means an AHA Johne's Disease Market Assurance Program;

'Market Assurance Program Certificate' means a Market Assurance Program Certificate issued pursuant to a MAP;

'Marks' means one or more of the certification trade marks set out in Rule 1.1;

'Prescribed Animals' means live cattle, sheep, goats, alpaca and/or deer;

'Qualified Veterinarian' means a veterinarian who is an APAV-accredited, MAP-approved veterinarian qualified to conduct tests for JD for the purposes of the relevant MAP (see Rule 7.6); and

'Rules' means these Rules, as amended from time to time.

2.2 In these Rules:

2.2.1 the plural includes the singular, and the singular includes the plural;

2.2.2 a reference to 'law' includes a statute, regulation or ordinance, including that statute, regulation or ordinance as amended; and

2.2.3 a reference to 'persons' includes natural persons, bodies corporate and government entities.

3 Owner of the Marks

3.1 The sole owner of the Marks is AHA. At the date of application for approval for these Rules, AHA was a public trading company, with 24 Members comprising the Commonwealth Government, the government of each State and mainland Territory, 13 livestock representative organisations, the Australian Veterinary Association and the CSIRO.

3.2 AHA's objectives include demonstrating national leadership in achieving:

3.2.1 a shared vision of the national animal health system;

3.2.2 auditable national animal health performance standards;

3.2.3 risk based national animal health priorities; and

3.2.4 enhanced national information management capability.

4 Use of the Marks by AHA

4.1 AHA will not itself use the Marks, other than:

4.1.1 in connection with the general promotion of:

- (a) AHA; or**
- (b) the Marks; or**
- (c) JD-related programs or activities; or**

4.1.2 for the purposes of public education or dissemination of information in respect of the above.

5 Approved certifier

5.1 AHA is the only entity that may authorise use of the Marks.

6 Meaning of the Marks

6.1 The Marks shall be used by Authorised Users in connection with Assessed Livestock to indicate that the Assessed Livestock have a relatively lower risk of having JD than other livestock owing to the participation of the Authorised User in one or more MAPs.

7 Market Assurance Programs

7.1 AHA co-ordinates MAPs in respect of Prescribed Animals in conjunction with livestock industries, governments and the veterinary profession.

7.2 All Applicants to use the Marks must be current participants in one or more MAPs.

7.3 Participants in MAPs must meet various criteria regarding the monitoring and protection of their livestock including ensuring that periodic screening tests (whether blood tests or faecal tests) for JD are undertaken on their livestock by a Qualified Veterinarian.

7.4 Where a certificate is issued by a Qualified Veterinarian that a flock or herd of Prescribed Animals of a MAP participant have tested negative for JD in accordance with, and for the purposes of, a MAP, that flock or herd will be deemed 'Assessed Livestock' for the purposes of these Rules.

7.5 Where there is any doubt as to whether test results are negative or positive for JD, a decision by the CVO of the jurisdiction in which the relevant livestock are kept will be deemed conclusive evidence of the result for the purposes of these Rules, unless the contrary is proven.

7.6 Information regarding JD and MAPs is available on AHA's web-site at www.aahc.com.au or on request from AHA.

8 Application for use of the Marks

- 8.1** An Applicant may apply for permission to use the Marks in association with one or more types of Assessed Livestock owned or managed by the Applicant.
- 8.2** Applications may only be made in respect of Assessed Livestock located within the Commonwealth of Australia.
- 8.3** An application must be in the manner and form specified from time to time by AHA.
- 8.4** An application must specify the information reasonably required by AHA, and, in addition, must:
- 8.4.1** contain a warranty that the Assessed Livestock has a current certificate evidencing that it has no symptoms of JD, as described in Rule 7.4;
 - 8.4.2** specify information reasonably required by AHA to identify the Assessed Livestock and its location;
 - 8.4.3** specify the current MAP accreditation details of the Livestock including accreditation expiry date/s;
 - 8.4.4** specify the purpose for and the manner in which the Applicant intends to use the Marks, including the proposed date/s and nature of the use.

9 Authorisation

- 9.1** AHA must grant permission to use the Marks only if it is reasonably satisfied that the Applicant meets the requirements of these Rules and agrees to be bound by them.
- 9.2** Where AHA refuses to approve an application, it will provide notice of its decision to the affected Applicant as soon as practicable.
- 9.3** An Applicant becomes an Authorised User from the date the AHA approves the Applicant's application to use the Marks.
- 9.4** AHA must issue a Authorisation to Authorised Users, and may specify on each Authorisation the purpose for, and manner in which, the Authorised User may use the Marks in accordance with these Rules.
- 9.5** Each Authorisation remains the property of AHA and must be promptly returned to AHA if AHA's authorisation of the Authorised User is revoked or suspended in whole or in part in accordance with these Rules.
- 9.6** Authorised Users must notify AHA of any change to the details set out in a Authorisation, preferably in advance, but no later than 7 days after the change.
- 9.7** Authorisations may not be transferred or assigned under any circumstances.
- 9.8** In the event an Authorised User transfers, loses or disposes of the Livestock in respect of which a current Authorisation is held then:

- 9.8.1 Authorised User status is immediately revoked in respect of that Assessed Livestock; and
- 9.8.2 the Authorisation issued in respect of that Assessed Livestock is immediately revoked; and
- 9.8.3 the Authorised User must notify AHA as soon as practicable.

10 Duration of Authorisation

- 10.1 Each Authorisation will remain valid for a period of one calendar year, subject to earlier termination or suspension, or renewal, in whole or in part, in accordance with these Rules.
- 10.2 Authorised Users must apply to renew an Authorisation in whole or in part, no later than 30 days prior to the expiry of their Authorisation to ensure that there is no lapse in their status as an Authorised User.

11 Disclosure of Authorised Users and Assessed Livestock

- 11.1 AHA will make available to any interested persons, the name and contact details of Authorised Users and their Assessed Livestock.

12 Use of the Marks by Authorised Users

- 12.1 An Authorised User may use the Marks, and may publicise that it is authorised to use the Marks:
 - 12.1.1 only in connection with the Assessed Livestock in respect of which a Authorisation was granted;
 - 12.1.2 only in accordance with these Rules; and
 - 12.1.3 only in the Commonwealth of Australia.
- 12.2 An Authorised User must not use the Marks in a way which:
 - 12.2.1 is likely to infringe any intellectual property rights of any person;
 - 12.2.2 constitutes misleading or deceptive conduct;
 - 12.2.3 is offensive or scandalous, or which misrepresents, denigrates or brings the Marks or AHA into disrepute; or
 - 12.2.4 (without limiting the foregoing) is, or is likely to be, contrary to law.

12.3 An Authorised User must:

- 12.3.1 comply with these Rules at all times;
- 12.3.2 ensure that all employees, contractors and representatives of the Authorised User are aware of, and comply with, these Rules at all times;
- 12.3.3 establish and maintain policies and systems as are reasonably necessary to meet their obligations under these Rules;
- 12.3.4 immediately notify AHA if it knows or reasonably suspects that it is no longer eligible to be an Authorised User in respect of any or all of its Assessed Livestock;
- 12.3.5 immediately notify AHA if it knows or reasonably suspects that any Assessed Livestock has contracted JD;
- 12.3.6 only reproduce the Marks in black and white as registered;
- 12.3.7 not alter or amend the design elements or relative proportions of the Marks in any way (although the size of the Marks may be altered); and
- 12.3.8 not use any of the Marks which pertain to a particular species of Assessed Livestock in respect of another species of Assessed Livestock.

13 No representations that livestock is 'JD-free'

- 13.1 Due to the long incubation period of JD, it is not possible to conclusively determine that any animals are 'JD-free'. Authorised Users must not, whether expressly or impliedly, represent that their Assessed Livestock are 'JD-free'.

14 Liability and indemnity

- 14.1 All liability arising out of or in connection with an Authorised User's use of the Marks will rest solely with the Authorised User. AHA excludes all liability which may arise out of or in connection with the Authorised User's use of the Marks including, without limitation, where AHA or its officers, employees or agents have been negligent. Each Authorised User must indemnify, and by using the Marks will be taken to have indemnified, AHA for any loss (however described) AHA suffers as a direct or indirect consequence of the Authorised User's use of the Marks.
- 14.2 Notwithstanding Rule 14.1, if AHA is found to have any liability in connection with any supply of goods or services in connection with these Rules, then such liability will be limited to:
 - 14.2.1 in the case of goods, replacing or repairing the goods, as AHA in its discretion elects; or
 - 14.2.2 in the case of services, resupplying the services.

15 Audits, testing and inspections

15.1 AHA may undertake such processes as it reasonably considers appropriate to ensure the Authorised Users comply with these Rules and that Assessed Livestock continue to exhibit no symptoms of JD.

15.2 Authorised Users must provide all reasonable assistance to AHA in carrying out any audits, testing and inspections in accordance with these Rules, including, without limitation:

15.2.1 maintaining all documents necessary to substantiate that they have at all times complied with these Rules; and

15.2.2 upon demand by AHA:

(a) providing to AHA, and any auditor appointed by AHA, access to the Authorised User's premises and to all relevant documents necessary to determine whether the Authorised User has complied, and is complying, with these Rules;

(b) enabling those persons to take copies of all relevant documents; and

(c) providing any additional information reasonably requested by those persons.

16 Revocation of Authorisation and other sanctions

16.1 If:

16.1.1 an Authorised User breaches any term or condition of these Rules; or

16.1.2 an Authorised User's Assessed Livestock return a positive test for JD,

AHA may impose one or more of the following sanctions:

16.1.3 require the Authorised User to publish, in the manner and form reasonably directed by AHA (and if the Authorised User does not comply with the requirement within 14 days of receiving notice from AHA, AHA may publish and recover the cost of doing so from the Authorised User):

(a) withdrawals of representations;

(b) corrective statements;

(c) details of any positive test for JD; and/or

(d) non-compliance with these Rules,

16.1.4 name the Authorised User and publish details of any reason for imposition of a sanction in its annual report;

- 16.1.5 require that an Authorised User conduct, or permit the conduct of, an investigation into the presence of JD in its Assessed Livestock;
 - 16.1.6 require the Authorised User to immediately stop using the Marks in connection with some or all of the Assessed Livestock;
 - 16.1.7 require (as AHA directs) the Authorised User to destroy or forfeit all packaging, advertising and promotional material (in whatever form) featuring the Marks, or obscure the Marks on such material; or
 - 16.1.8 immediately revoke the Authorised User's Authorisation in whole or in part.
- 16.2 An Authorised User may continue to use the Marks in relation to Assessed Livestock that has returned a positive result for JD while a second test for JD is undertaken, only:
- 16.2.1 where the Authorised User undertakes to notify prospective purchasers of the risk of JD; and
 - 16.2.2 with the written permission of AHA.
- 16.3 The Authorised User must immediately comply with any sanction imposed by AHA to the satisfaction of AHA. Failure to comply will constitute a breach of these Rules.
- 16.4 Sanctions will be deemed to be imposed once written notice is served on an Authorised User.

17 Notices

- 17.1 Service of any notices required by these Rules to be served by AHA will be deemed to have occurred:
- 17.1.1 if sent by facsimile, upon receipt of confirmation of successful transmission by the sender's fax machine;
 - 17.1.2 if sent by post, 5 days after posting;
 - 17.1.3 if given in person, immediately; or
 - 17.1.4 if sent by email, upon receipt of an apparently human generated confirmation that the email has been successfully delivered to the person to whom the email is sent.

18 Right to independent review

- 18.1 If AHA:
- 18.1.1 refuses to approve an application to use the Marks; or
 - 18.1.2 imposes a sanction under Rule 16;

the affected Applicant or Authorised User (Appellant) may require that the decision be reviewed by an independent reviewer, by giving written notice to AHA. Such notice shall be sent by post or facsimile to:

Suite 15
26-28 Napier Close
Deakin ACT 2600

Attn: Manager, Johne's Disease and Training Services

and will only be valid if received by AHA within 14 days of the date written notice of the decision was served on the Appellant.

18.2 The independent reviewer will be:

18.2.1 the person or organisation agreed by the Appellant and AHA; or

18.2.2 if the Appellant and AHA are unable to agree within 14 days of the request for review (or such longer time as agreed by the parties), the independent reviewer will be:

(a) the Chair of Animal Health Committee (a sub-committee of the Primary Industries Standing Committee), formerly VetComm; or

(b) if there is any actual or potential conflict of interest in the Chair fulfilling the role of the independent reviewer, another member of the Animal Health Committee who does not have any actual or potential conflict of interest.

18.3 Both AHA and the Appellant may make submissions to the independent reviewer, in the manner and form, and in accordance with any timetable, determined by the independent reviewer.

18.4 After considering the submissions, the independent reviewer will determine whether the decision of AHA was correct, having regard to the requirements of these Rules.

18.5 The independent reviewer must provide reasons for his or her determination to both parties in writing.

18.6 The decision of the independent reviewer is binding on both parties.

18.7 All fees and all reasonable expenses of the independent reviewer will be borne equally by the parties to the review, unless the Appellant is unsuccessful, in which case they will be borne by the Appellant.

19 Third party complaints and dispute resolution

19.1 AHA and all Authorised Users must comply with the following procedures for resolving complaints about the use of the Marks.

19.2 Where AHA receives a complaint about the use or misuse of the Marks, within 14 days of receiving the complaint, AHA must:

19.2.1 advise the complainant in writing whether the complaint concerns an Authorised User;

19.2.2 if the complaint concerns an Authorised User:

(a) advise the complainant in writing of the name and contact details of the Authorised User;

(b) provide the complainant with a copy of these Rules; and

(c) advise the complainant in writing that the complainant should contact the Authorised User in the first instance to resolve the dispute in accordance with these Rules; and

19.2.3 if the complaint does not concern an Authorised User, advise the complainant in writing of the steps it proposes to take to investigate the matter further.

19.3 Where an Authorised User receives a complaint about their use of the Marks, the Authorised User must:

19.3.1 within 7 days of receiving the complaint, confirm receipt of the complaint with AHA;

19.3.2 within 14 days of receiving the complaint, respond to the complainant in writing, stating what corrective action will be taken to remedy the complaint, if any, and the timeframe in which this will occur (and send a copy of the response to AHA); and

19.3.3 acting in good faith, take all reasonable steps to resolve the complaint directly with the complainant.

19.4 If, after the procedure in Rule 19.3 has been undertaken, a complainant still considers that the complaint has not been resolved and notifies AHA accordingly, AHA may take such action as it considers reasonably necessary to resolve the complaint.

20 Privacy and use of information

20.1 Authorised Users acknowledge that it is a condition of their authorisation to use the Marks that all information disclosed to AHA regarding themselves or their Assessed Livestock may be disclosed to interested persons, including, without limitation, government or commercial organisations, for purposes relating to:

- 20.1.1** the implementation or administration of these Rules;
- 20.1.2** verifying the Authorised User's compliance with these Rules;
- 20.1.3** the furtherance of animal health objectives;
- 20.1.4** seeking professional advice; or
- 20.1.5** complying with applicable laws.

21 Amendment and inspection of Rules

21.1 AHA may amend these Rules at any time.

21.2 Any amendment of these Rules will not be effective until it has been approved by the Australian Competition and Consumer Commission (or any successor body which has responsibility for approval of amendments to these Rules) and lodged with IP Australia.

21.3 AHA must take reasonable steps to notify all Authorised Users of any change to the Rules as soon as is practical, and will publish a revised copy of the Rules on its web site at www.aahc.com.au.

21.4 Authorised Users must continue to comply with these Rules as amended from time to time.

21.5 Any person may inspect the Rules during normal business hours at AHA's registered office at Suite 15, 26-28 Napier Close, Deakin in the Australian Capital Territory, or by other means permitted by AHA.