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2 February 2007

The Registrar of Trade Marks  
IP Australia  
PO Box 200  
WODEN ACT 2606

Dear Registrar

**Certification Trade Mark Application No 1019436**

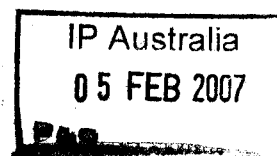
The Australian Competition and Consumer Commission (the ACCC), in accordance with the provisions of the *Trade Marks Act 1995*, has completed its final assessment of Certification Trade Mark (CTM) No. 1019436.

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 Tim Scott on 02 6243 1221.

Yours sincerely

David Hatfield  
Director  
Adjudication Branch





**Australian  
Competition &  
Consumer  
Commission**

**Final Assessment of Certification Trade Mark Application 1019436 lodged by the  
Whitsunday Charter Boat Industry Association**

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:

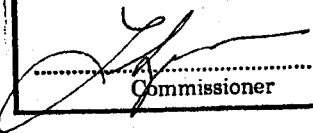
- (a) the approved certifiers are competent to certify the services in respect of which the CTM is to be registered;
- (b) the rules governing the use of the CTM would not be to the detriment of the public;  
and
- (c) the rules governing the use of the CTM are satisfactory having regard to the principles 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.....*30 January 2007*.....

**Certification Rules**  
Whitsunday Charter Boat Industry Association

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

  
.....  
Commissioner

30/01/07  
.....  
Date

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## Rules governing use of certification trade marks

### 1 Introduction

These Rules govern the use of the certification trade mark described in rule 2.1.7 (WCBIA Trade Mark) and the rights and obligations of those persons and other entities who are approved and subsequently licensed to use the WCBIA Trade Mark.

References in these Rules to legal requirements are for general business purposes. These Rules do not interpret, duplicate or over-ride any legal requirements.

These Rules have been assessed by the Australian Competition and Consumer Commission for competition concerns and they are 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 Whitsunday Charter Boats Industry Association website at <http://www.wcbia.com>.

### 2 Definitions

2.1 For the purposes of these Rules:

2.1.1 **Applicant** is a person, association or entity that applies to become a Member of the Proprietor in accordance with Rule 10 (and any other criteria which the Proprietor imposes under its constitution);

2.1.2 **Member** is a person, association or entity accepted as a Member of the Proprietor in accordance with Rule 10 (and any other criteria which the Proprietor imposes under its constitution);

2.1.3 **Proprietor** means Whitsunday Charter Boat Industry Association (ABN 47 323 613 763);

2.1.4 **Rules** means the rules set out in this document, that govern the use by Members of the WCBIA Trade Mark including any amendments to the Rules and further rules made from time to time in accordance with the Rules;

2.1.5 **Services** means those services set out in paragraph 3.1;

2.1.6 **Standards** means the technical or other standards, specifications and rules regarding the manner of use of the WCBIA Trade Mark and the quality of the services in respect of the WCBIA Trade Mark is used, from time to time prescribed by the Proprietor in accordance with the Rules.

2.1.7 **WCBIA Trade Mark** means the trade mark illustrated in the Schedule.

### 3 Proprietorship

3.1 The Proprietor has registered the WCBIA Trade Mark in respect of the following services

*Promotion, advertising including tourism promotion and advertising, organisation and advice on marine park standards including best management practices for marine safety, maintaining marine environment, waste management, reduction, reuse and recycling, fish feeding, marine wildlife, marine recreation including snorkelling and diving, fishing, maintaining coastal and island national park and marine park environments, coastal area management; promotion and advice on coastal and marine tours including organising management, description and transport of sailing and power driven charter services, travel tours and cruises; advice, organisation and liaison with federal, state and local governments and departments in relation to the promotion, management and representation of marine tourism industry; promoting, developing and monitoring marine tourism industry codes of practice and compliance measures.*

- 3.2 The WCBIA Trade Mark is the absolute property of the Proprietor and shall not be used by any person except by authorisation granted in accordance with the Rules.

#### **4 Application for Certification of Services**

- 4.1 Any person, company or organisation wishing to have their services certified by use of the WCBIA Trade Mark must become a Member.
- 4.2 The Proprietor is the only entity that may approve an applicant to become a Member.
- 4.3 All Members are granted a licence to use the WCBIA Trade Mark.

#### **5 Primary evaluation**

- 5.1 The Proprietor is to evaluate the Services of any Applicant.
- 5.2 If, after testing, examination and other evaluation deemed appropriate to the Proprietor, the Proprietor is satisfied that the Services of the Applicant (relative to the proposed usage of the WCBIA Trade Mark) conform to the standards set out in Rule 8, and, after inspection of the Applicant's facilities, staff and systems of control in relation to the Services, the Proprietor is satisfied that the facilities, staff and systems of control are such that they will enable the Applicant at all times to ensure that the Services conform to standards set out in Rule 8, the Proprietor will grant the Applicant a non-exclusive licence to use the WCBIA Trade Mark for the term of the Applicant's Membership.

#### **6 Right of Appeal**

- 6.1 If the Proprietor decides not to grant a licence to an Applicant under Rule 5, it shall inform the Applicant in writing of its decision.
- 6.2 If the Proprietor does not grant a licence to an Applicant under Rule 5, the unsuccessful Applicant may, within 28 days of receiving written notice of the refusal, in accordance with Rule 6.1, request that submission be made by the unsuccessful Applicant and the decision be reviewed by the Proprietor.

- 6.3 If the Proprietor does not grant a licence to the Applicant following a review of its initial decision, the Applicant may appeal a decision of the Proprietor pursuant to these Rules by submitting the decision to arbitration by an independent Arbitrator agreed between the parties, or failing agreement, an arbitrator nominated by the President for the time being of the Institute of Arbitrators & Mediators Australia. The arbitration shall be conducted in accordance with and subject to the rules of the Institute of Arbitrators & Mediators Australia for the conduct of commercial arbitration. The award made by such arbitrator will be binding on both parties, including any award for reasonable legal costs.

## **7 Standards**

- 7.1 The Proprietor may from time to time prescribe Standards and alterations to Standards.
- 7.2 The Proprietor shall give notice in writing to all Members of any alterations to the Standards, specifying a date from which the alterations shall have effect.
- 7.3 The Proprietor shall supply to each Member copies of all such Standards.

## **8 Use of WCBIA Trade Mark**

### **Manner of use**

- 8.1 Members shall only use the WCBIA Trade Mark:
- 8.1.1 in accordance with the Rules;
  - 8.1.2 in respect of the Services; and
  - 8.1.3 as depicted in the Schedule or as otherwise approved in writing by the Proprietor.
- 8.2 Members shall:
- 8.2.1 comply with the Standards;
  - 8.2.2 not represent in any way that they own the WCBIA Trade Mark or are entitled to use it otherwise than as a Member of the Proprietor.
- 8.3 Use of the WCBIA Trade Mark shall primarily be in the form of promotional material, advertisements, stationery or other trade literature relating to the Services.
- 8.4 In reproducing the WCBIA Trade Mark, the Member may, and may authorise another to, enlarge or reduce the WCBIA Trade Mark photographically but shall not, nor authorise another to, alter or use the WCBIA Trade Mark in any way.
- 8.5 If, and as, requested by the Proprietor, a Member shall supply the Proprietor with a sample of all use or, part use, or proposed use by the Member of the WCBIA Trade Mark.

### **Application of the WCBIA Trade Mark**

- 8.6 The WCBIA Trade Mark may only be used by the Members in relation to the Services where those Services are provided by a Member;
- 8.7 The WCBIA Trade Mark may only be used by the Members upon or in relation to the Services where those Services are offered by operators who:
- 8.7.1 are current, fully paid up financial Members;
  - 8.7.2 hold relevant Marine Park tourism permissions for conducting tourism operations and activities in the Great Barrier Reef Marine and Islands Park;
  - 8.7.3 abide by the standards and guidelines put forward by the Great Barrier Reef Marine and Islands Park Authority for all marine park permit holders as published by the Authority from time to time;
  - 8.7.4 ensure that vessels owned and operated by the Member are staffed by trained personnel;
  - 8.7.5 uphold a high standard of maritime practice;
  - 8.7.6 ensure promotion and presentation of the Great Barrier Reef World Heritage Area Values as defined by Great Barrier Reef Marine Park Authority from time to time to all visitors;
  - 8.7.7 use "environmentally sustainable" products when feasible (eg. products that are biodegradable, recycled, that do not contain phosphate, ammonia or chlorine);
  - 8.7.8 ensure that recreational diving and snorkelling is carried out in accordance with the Compressed Air Recreational Diving & Recreational Snorkelling Code of Practice published by the Queensland Department of Industrial Relations (or that equivalent measures are taken to reduce risks);
  - 8.7.9 only access National Park islands within the Great Barrier Reef World Heritage Area if the operator holds a Commercial Activities Permit or Commercial Activities Agreement issued by the Queensland Parks and Wildlife Service;
  - 8.7.10 report any changes in animal behaviour, numbers or condition in the Great Barrier Reef Marine and Islands Park area detected by staff or visitors, to the Queensland Parks and Wildlife Service or the Great Barrier Reef Marine Park Authority;
  - 8.7.11 assist whenever possible with the collection of data for research and monitoring initiatives for the purpose of increasing the level of understanding of the Great Barrier Reef environment and monitoring its health;
  - 8.7.12 support and participate in research initiatives, such as those involving Crown of Thorns starfish, irukandji, dugong and seagrass; and
  - 8.7.13 abide by rostering systems at Luncheon Bay and other regularly visited locations; and



- 8.7.14 abide by Blue Pearl Bay Operation Procedures as they exist from time to time.
- 8.8 The WCBIA Trade Mark may only be used by the Members upon or in relation to the Services where those Services are offered by Members using vessels which:
- 8.8.1 meet and set standards over and above the Unified Shipping Law (USL);
  - 8.8.2 meet Maritime Safety Queensland and Department of Workplace Health and Safety legislative requirements;
  - 8.8.3 are maintained in survey; and
  - 8.8.4 meet the minimum standards under the Applicant's Vessel Rating System at the time of that vessel's annual audit.
- 8.9 The WCBIA Trade Mark may only be used by the Members in relation to the Services where the staff employed by Members to provide those Services:
- 8.9.1 are correctly paid and receive conditions as set down under the appropriate awards such as the Whitsunday Charter Boat Industry Award 2005;
  - 8.9.2 have opportunities to gain current and accurate information to ensure an understanding of and compliance with the Rules;
  - 8.9.3 have opportunities to undertake professional development training;
  - 8.9.4 have the appropriate skills, qualifications and experience to fulfil their roles and duties in a manner of best practice in marine tourism. For deckhands and hostesses, including:
    - (a) the Generic Industry Induction Program (to be undertaken prior to employment);
    - (b) the Practical Vessel Induction ( to be undertaken prior to or immediately upon employment);
    - (c) Practical Deckhand Course, including Elements of Shipboard Safety (to be undertaken within three months of employment);
  - 8.9.5 are selected in part for having high level interpersonal, communication and interpretive skills;
  - 8.9.6 carefully handle undersized or unwanted fish prior to returning them to the water; and
  - 8.9.7 advise users of the services that:
    - (a) marine mammals are protected under the *Whale Protection Act* (Cth)1980 and the *Nature Conservation Act* (Qld)1992 and Regulations thereto;

(b) that the Acts and Regulations referred to at (a) above prohibit the killing, taking, injuring, harassing, chasing and herding of whales and other cetaceans;

(c) all persons, including users of the Member's services, are bound by the *Nature Conservation Act (Qld) 1992*.

8.10 The WCBIA Trade Mark may only be used by a Member in relation to the Services where the Member:

8.10.1 monitors and regulates the behaviour and presentation of their staff when aboard and when representing the Member, or other Members, on shore;

8.10.2 maintains a nil tolerance alcohol and drug policy for staff on board vessels;

8.10.3 incorporates a nil tolerance alcohol and drug policy for staff on board vessels into employment contracts and operational procedures; and

8.10.4 ensure that staff are aware of a nil tolerance alcohol and drug policy for staff on board vessels.

8.11 The WCBIA Trade Mark may only be used by a Member in relation to the Services where, in using those Services, Members provides to users of the Services:

8.11.1 an opportunity to gain greater awareness of the Great Barrier Reef to encourage responsible behaviour and an ongoing interest in the reef environment;

8.11.2 information sufficient to ensure that snorkellers and/or divers are well briefed about the snorkelling and/or diving site and plan, and have read best practice guidelines before entering the water;

8.11.3 information to snorkellers and/or divers about collecting restrictions for fish, shellfish, coral and any other marine items;

8.11.4 instructions that snorkellers and/or divers should avoid disturbing sediment and contacting the reef environment with their fins;

8.11.5 instructions not to interfere with marine organisms by handling them, poking them, chasing them or blocking their path;

8.11.6 instructions as to the dangers of fish feeding;

8.11.7 advice and encouragement to take from the natural environment only what they personally need; and

8.11.8 advice as to what legislation (including regulations) they must observe in relation to fish catches.

#### **Use of the WCBIA Trade Mark in Promotional Material**

8.12 Where Members use the WCBIA Trade Mark in advertising and promotional material (including websites) that material must:

- 8.12.1 comply with industry standards (as adopted by the Proprietor) with regards to boat size and description, duration of cruise etc;
  - 8.12.2 reflect the Great Barrier Reef World Heritage values; and
  - 8.12.3 have accurate content;
  - 8.12.4 include an information table or section that clearly outlines:
    - (a) the length of the vessel;
    - (b) the vessel description;
    - (c) the trip duration;
    - (d) the number of crew; and
    - (e) the number of passengers; and
  - 8.12.5 include an information table or section that clearly outlines all additional charges that passengers will incur.
- 8.13 Any use of the WCBIA Trade Mark by Members for advertising and promotional material (including websites) may include references to these Rules and may assert that Members provide high quality, safe and environmentally responsible programs.
- 8.14 Any Member using the WCBIA Trade Mark for advertising and promotional material (including websites) must, when describing vessels,:
- 8.14.1 state the length of vessels in the form specified on survey certificates. Length Overall (L.O.A.) including bowsprits and davits is not considered an accurate measure for the purpose of consumer information; and
  - 8.14.2 state the displacement as in the form specified on survey certificates. The displacement may also be included as an indication of vessel volume.
  - 8.14.3 describe the style or category of the vessel, in accordance with the following criteria:
    - (a) A Maxi is a vessel that complies or at any time in the past has been rated a Maxi under the International Offshore Rating Council (IOR)
    - (b) A Pocket Maxi is a vessel that complies or at any time in the past has been rated a Pocket Maxi under the IOR
    - (c) A Tallship is a multi masted vessel with a traditional rig-design including gaffs, topsails and/or square sails.
- 8.15 Any Member using the WCBIA Trade Mark for advertising and promotional material (including websites) must use the following descriptions for the duration of trips:

(a)	½ Day Trip	0 nights with a trip duration of up to 4 hours
(b)	Day Trip	0 nights with a trip duration of more than 4 hours
(c)	Overnight	1 night with a trip duration of 18 hours or less
(d)	1 Day / 1 Night Trip	1 night with a trip duration of more than 18 hours and less than 28 hours
(e)	2 Day / 1 Night Trip	1 night with a trip duration of more 28 hours
(f)	1 Day / 2 Night Trip	2 nights with a trip duration of 40 hours or less
(g)	2 Day / 2 Night Trip	2 nights with a trip duration of more than 40 hours and less than 52 hours
(h)	3 Day / 2 Night Trip	2 nights with a trip duration of more 52 hours
(i)	2 Day / 3 Night Trip	3 nights with a trip duration of 64 hours or less
(j)	3 Day / 3 Night Trip	3 nights with a trip duration of more than 64 hours and less than 76 hours
(k)	4 Day / 3 Night Trip	3 nights with a trip duration of more than 76 hours
(l)	3 Day / 4 Night	4 nights with a trip duration of 86 hours or less

8.16 Any Member using the WCBIA Trade Mark for advertising and promotional material (including websites) must use the following descriptions for the accommodation available on trips:

- |     |                              |   |
|-----|------------------------------|---|
| (a) | Overnight Sailing Trip       | is a trip where all passengers stay overnight on the boat   |
| (b) | Sail & Stay                  | is a trip where all or some passengers stay ashore. If this is the case, the trip has to be advertised at all times as a "Sail & Stay"  |
| (c) | "sailing and/or diving trip" | may offer stay ashore accommodation. In this case that trip must be advertised as such to enable consumers to make an informed decision on their choice of trip. In cases where guests are to "stay ashore" overnight, this must be clearly |

specified in headlines as well as body copy

8.17 Any Member using the WCBIA Trade Mark for advertising and promotional material (including websites) must:

8.17.1 use the following descriptions for the activities available on trips:

(a) Sail / Dive is a trip offering its customers diving and operating as a self-contained dive vessel with its own dive equipment and qualified dive crew on board

(b) Rendezvous Dive is a trip which offers its customers diving and doesn't qualify for "Sail / Dive". The diving is operated either by another vessel or a resort dive facility

8.17.2 state clearly, and qualify inside the brochure, if the vessel is meeting up with another dive boat or going to a resort dive facility and that there is no guarantee to offer the dive to the customer. Prices of scuba dives also have to be advertised;

8.17.3 state clearly, and qualify inside the brochure, if introductory dives are to be offered that the minimum length of a dive is 20 minutes.

8.18 Any Member using the WCBIA Trade Mark for advertising and promotional material (including websites) must ensure that where additional fees and charges are advertised, consumers can readily identify the correct components.

8.19 Any Member using the WCBIA Trade Mark for advertising and promotional material (including websites) must ensure that all staff promoting and representing the Member:

8.19.1 are provided with relevant information concerning the WCBIA and the Rules;

8.19.2 conduct themselves and represent the Member (and its products) in accordance with Rules;

8.19.3 do not denigrate the products of other operators in the marketplace to agents, wholesalers or consumers;

8.19.4 report any known or suspected dishonest activities or breaches of the Rules by other Members. The Proprietor will treat such reports as confidential.

8.20 Members will refer any requests by the media or its representatives for information relating to the Proprietor to the secretary of the Proprietor.

## **9 Register of Members and copies of Rules**

9.1 The Proprietor shall maintain a register of Members authorised to use the WCBIA Trade Mark at its normal place of business and such register shall be made available for public inspection during normal office hours.

- 9.2 The Proprietor shall keep at its head office and on its website located at [www.wcbia.com.au](http://www.wcbia.com.au) a copy of the Rules and of the Standards, and of any amendments thereto, and such copies (held at the Proprietors head office) shall be open to the inspection of the public during normal business hours.

## **10 Membership**

- 10.1 Members agree to abide by the Rules and Standards of the Proprietor as amended from time to time.
- 10.2 Members must supply the Proprietor with up-to-date membership information (including the removal or addition of vessels) and notify the Proprietor of any changes in membership details within 30 days.
- 10.3 Members will report any misconduct or unsafe practice by any operator on any part of the Great Barrier Reef to the relevant Authority or the Proprietor and offer any reasonable assistance in the apprehension and prosecution of the offender.
- 10.4 Members will meet with the Compliance Committee to discuss progress and effectiveness of the Rules and review it if necessary.
- 10.5 A programme of staff education and participation will be undertaken to ensure that staff of Members understand and comply with the Rules.

## **11 Enforcement and mediation**

- 11.1 An alleged breach of the Rules will result in the Proprietor officially requesting the Member to respond to the allegations made, either in writing or in person, at the next scheduled Compliance Committee meeting.
- 11.2 If a Member is found by the Compliance Committee to have acted in breach of the Rules, an official warning may be issued. Repeated failure to abide by the Rules will result in loss of Membership. On cessation of a membership, the relevant regulatory authorities will be notified.
- 11.3 The WCBIA Compliance Committee may recommend that the Management Committee terminate the membership of a Member that has proven to have failed to comply with the Rules.
- 11.4 Termination of Membership may be advertised in the relevant media to enable consumers to make an informed decision on their choice of vessel.
- 11.5 The WCBIA Compliance Committee is empowered to mediate in cases of dispute between Members, and between customers and Members.
- 11.6 The Proprietor shall also be entitled to terminate any licence forthwith by written notice to a Member if:
- 11.6.1 the Member becomes bankrupt; or
  - 11.6.2 the Member goes into liquidation; or

11.6.3 the Member has a receiver or administrator or similar appointed in respect of the whole or any part of its assets; or

11.6.4 if it is placed under official management or enters into any arrangement or composition with any of its creditors.

11.7 A Member whose Membership is terminated will no longer be licensed to use the WCBIA Trade Mark and accordingly will not be entitled to display the WCBIA Trade Mark on their advertising and promotional materials and must immediately withdraw from circulation all material containing the WCBIA Trade Mark or reference to certification under these Rules.

## **12 Maintenance of the WCBIA Trade Mark**

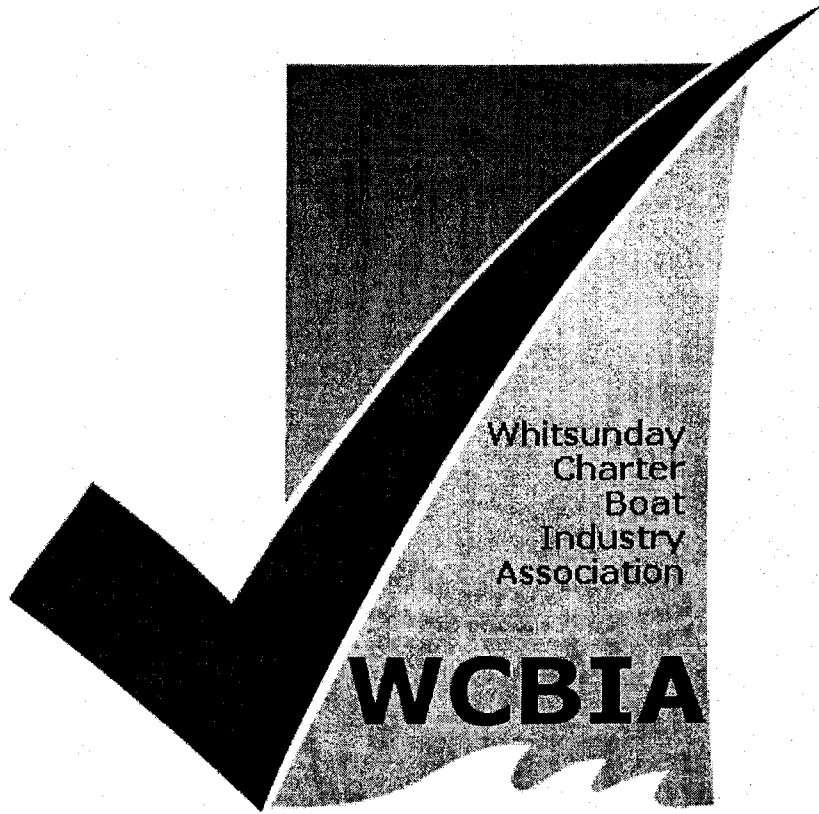
12.1 The Proprietor undertakes that it will be responsible for the payment of all renewal or other maintenance fees in relation to the WCBIA Trade Mark.

## **13 Alteration of these Rules**

13.1 The Proprietor may from time to time amend these Rules, but no proposed changes shall have effect until such has been assessed by the Australian Competition and Consumer Commission for competition concerns and advertised by the Registrar in accordance with Section 178 of the Trade Marks Act.

13.2 No waiver by the Proprietor of any breach, default or omission by a Member in the performance or observance of any of the Rules shall be deemed to be a waiver of any other or subsequent breach, default or omission of the same or a different kind under the Rules.

SCHEDULE



Whitsunday  
Charter  
Boat  
Industry  
Association

**WCBIA**