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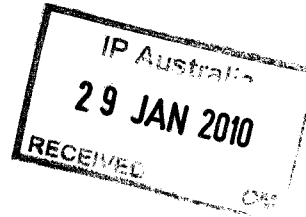
Australian  
Competition &  
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Our Ref: C2009/303  
Contact Officer: Simon Mitchell  
Contact Phone: 03 9290 6909

27 January 2010

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

Dear Registrar

**Certification Trade Mark Applications No 1136502, 1136504 and 1136505 – lodged by  
FM Approvals LLC**

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 the above Certification Trade Mark applications

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 Simon Mitchell on (03) 9290 6909 ([simon.mitchell@acc.gov.au](mailto:simon.mitchell@acc.gov.au)).

Yours sincerely

David Hatfield  
Director  
Adjudication Branch



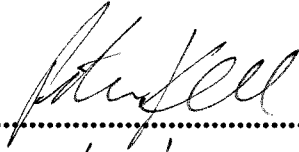
**Australian  
Competition &  
Consumer  
Commission**

**Final Assessment of Certification Trade Mark applications 1136502, 1136504 and  
1136505 lodged by FM Approvals LLC**

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) applications.

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

- (a) the approved certifier demonstrates the attributes necessary to competently certify the goods and services 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..... 22/1/10 .....

**Rules Governing the Use of Certification Trade Mark**

FM Approvals LLC

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

*[Handwritten Signature]*

22/1/10

Commissioner

Date

## **Background – FM Approvals LLC**

FM Approvals LLC (“FM Approvals”) activities include evaluation of materials, services, products, and processes. These evaluations may result in FM Approvals and Specification Listings and the right to use the FM Approvals marks accordingly. FM Approvals may also conduct third party evaluations, i.e. contract tests, in given areas of expertise, which may result in a report, FM Approval or Specification Listing.

FM Approvals approves and certifies products and services with a unique focus on:

- (1) Objectivity testing loss prevention products and certifies those that meet rigorous loss prevention standards; and,
- (2) Encouraging the development and use of Approved products and services that improve and advance property loss prevention practices.

FM Approvals is an ISO 9000 Registrar, accredited by Raad voor Accreditatie (RvA) in the Netherlands.

The Trade Marks are to be used by FM Approvals to assure to customers that a product has been objectively tested and conforms to the highest international standards.

## **RULES**

### **1. Definitions and Interpretation**

#### **1.1 Definitions**

In these Rules:

“**Act**” mean the Trade Marks Act 1995 (Cth);

“**Approved User**” means a person, company or organisation which satisfies FM Approvals that, pursuant to clause 4, it meets the FM Approvals Process;

“**Licence**” is a non-exclusive licence granted by FM Approvals to an Approved User to use the Trade Marks and on substantially similar terms and conditions as set out in Appendix A.

“**Trade Marks**” means the certification trade marks which are the subject of Australian Trade Mark Application Nos. 1136502, 1136504 and 1136505.

#### **1.2 Interpretation**

In these Rules:

- (a) headings are inserted for convenience only and do not affect the interpretation of these Rules; and,

unless the context otherwise requires:

- (b) words importing singular include the plural and vice versa;
- (c) a word importing a gender includes the other gender;
- (d) a reference to a person includes the individual, a partnership, a body corporate, a joint venture, an association (whether incorporated or not), a government and a governmental body or agency;
- (e) a reference to a clause is a reference to a clause of these Rules;
- (f) a reference to these Rules includes the Rules and any schedules, annexures, exhibits or attachments to these Rules;
- (g) a reference to legislation includes any statutory modification or replacement and any subordinate or delegated legislation issued under such legislation; and,
- (h) if the day on which anything is done is not a Business Day it shall be done on the next Business Day.

## **2. Property of the Trade Marks**

The Trade Marks are the absolute property of FM Approvals and shall not be used by any other person other than with the express written authority of FM Approvals.

## **3. Use of the Trade Marks**

- 3.1 Only FM Approvals or Approved Users may use the Trade Marks.
- 3.2 FM Approvals may use the Trade Marks in accordance with these Rules.
- 3.3 Pursuant to clause 4, a person may apply to become an Authorised User and may be authorised by the grant of a Licence by FM Approvals to use the Trade Marks in accordance with these Rules and the Licence.
- 3.4 The Trade Marks shall only be used by the Approved Users on products or services that have been approved by FM Approvals.
- 3.5 The Trade Marks shall only be used by the Approved User in the manner as prescribed by the FM Approvals Certification Marks Usage Guidelines which are appended these Rules under Appendix A.
- 3.6 Section 26 of the Trade Marks Act 1995 does not apply.

#### **4. Application for Approved User Status**

- 4.1 Application for Approved User Status is a five-step process as outlined in the FM Approvals Process Document, appended to these Rules under Appendix B.
- 4.2 An Application to FM Approvals for Approved User status is made in writing via letter, facsimile or email to FM Approvals.
- 4.3 An Application made pursuant to clause 4.1 shall include written material giving information about the applicant and details of the applicant's product or assembly, including scope of work, model numbers, specifications and applicable sales literature.
- 4.4 A proposal letter is subsequently sent by FM Approvals with scope of work, costs estimates, schedule, required tests and sample needs to the applicant.
- 4.5 Where the applicant is a new applicant, a one-time contractual agreement is also sent to the applicant for execution. The applicant then authorises the proposal in writing and submits all required materials and evidence to FM Approvals for verification.
- 4.6 Upon receipt of the aforementioned information, drawing or specification to product comparisons are made by FM Approvals. If all required information and documentation is received, testing is scheduled by FM Approvals and conducted.
- 4.7 If the applicant is a new applicant, an investigator visits the applicant's facilities to review the quality control procedures prior to Approved User status being confirmed.
- 4.8 Once testing is complete, a report is prepared and reviewed for technical accuracy and quality. Samples of the applicant's product is retained and archived if necessary or returned to the applicant or disposed of upon the applicant's instructions.
- 4.9 FM Approvals sends the final report to the applicant. Approval is effective as of the date of the final report.
- 4.10 If FM Approvals is satisfied that the applicant meets the Approved User Requirements:
- (a) FM Approvals shall grant a licence to the applicant;
  - (b) the applicant shall be deemed to be an Approved User; and,
  - (c) the Approved User may use the Trade Marks in accordance with the Licence and the FM Approvals Certification Marks Usage Guidelines in accordance with clause 3.5.
- 4.11 Follow up audits of manufacturing facilities are required in order to maintain Approved User status. The frequency of audits is determined in accordance with authorities having jurisdiction over the installed product.

**5. Monitoring and Auditing the Use of the Trade Mark**

- 5.1. Upon giving reasonable notice to an Approved User, FM Approvals or its representatives may, from time to time and during the term of the Licence, conduct random inspections to ensure that an Approved User is using the Trade Marks in accordance with the FM Approvals Certification Marks Usage Guidelines.
- 5.2. If FM Approvals is not satisfied that the Trade Marks are being used in accordance with the FM Approvals Certification Marks Usage Guidelines, FM Approvals shall notify the Approved User of the result of its inspection and the Approved User shall, within 14 days of such notification, ensure to the satisfaction of FM Approvals, that the Trade Marks are being used in accordance with the FM Approvals Certification Marks Usage Guidelines.
- 5.3. Where FM Approvals is still not satisfied that the Trade Marks are being used in accordance with the FM Approvals Certification Marks Usage Guidelines and/or in accordance with the Licence (as the case may be), the Licence may be terminated by FM Approvals at any time by FM Approvals giving written notice to that effect to the Approved User and the Approved User shall cease being an Approved User.

**6. Termination or Expiry of Licence**

Upon termination or expiry of a Licence, the former licensee shall

- (a) cease to use the Trade Marks in any way (including, but not limited to, ceasing to distribute or sell its products under the Trade Marks); and,
- (b) either destroy or return to FM Approvals all relevant packaging bearing the Trade Marks, including, but not limited to all marketing material and stationary bearing the Trade Marks.

**7. Approval Guide**

A list of Approved Users and the approved products and services are published in the *Approval Guide*. The *Approval Guide* is updated once or twice annually (May and/or September) and is available for purchase at [www.finglobalcatalog.com](http://www.finglobalcatalog.com).

**8. Amendment to Rules**

Subject to the Act, FM Approvals may alter these Rules at any time and at its absolute discretion.

**9. Complaints Procedure**

- 9.1. Complaints from Approved Users shall be recorded and addressed in an efficient and businesslike manner and adhere to the FM Complaints Procedure, appended to these Rules under Appendix C.

- 9.2 The FM Approvals Complaints Procedure applies to complaints from Approved Users and/or others relating to the Approval Process.

## **10. Warranties and Certification**

- 10.1 FM Approvals warrants that, to the best of its knowledge and belief, that its testing, auditing and certification activities meet the requirements of IEC/ISO International Standards.
- 10.2 FM Approvals shall, to the maximum extent permitted by law, not be liable to the Approved User or any other third party for damage, loss or injury caused as a result to the use of any product approved or certified by FM Approvals.

## **11. Jurisdiction**

These Rules shall be governed by and construed in accordance with the laws of New South Wales and the parties hereby submit to the exclusive jurisdiction of New South Wales Courts and any courts which have jurisdiction to hear appeals from any of these courts.

## **12. Severability**

If any provision of these Rules is invalid or not enforceable in accordance with its terms in any jurisdiction, it is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable and shall otherwise be capable of being severed to the extent of the invalidity or unenforceability without affecting the remaining provisions of these Rules or affecting the validity or enforceability of that provision in any other jurisdiction.

## **13. Further Assurances**

The Approved User shall sign, execute, deliver and do and shall procure that each of its officers, employees, successors, assignees, associated companies and agents sign, executes, delivers and does, all deeds, documents, instruments and acts reasonably required of it or them by notice from another party to effectively carry out and comply with these Rules and the rights and obligations of the parties under it.

## **14. Costs**

FM Approvals and the Approved User shall pay their own costs and expenses in respect of any negotiation, preparation, execution, delivery and stamping of any documents and for any service or obligation contemplated by these Rules. In particular, the Approved User shall be responsible for all costs and expenses associated in any way with the testing, auditing and approval of the Approved User's products or services.



**Appendix A**

# FM Approvals Certification Marks

## Usage Guidelines

- All FM Approvals certification marks are the sole property of FM Approvals LLC ("FM Approvals") and are registered or the subject of applications for registration in the United States and many other countries. They are for use only according to these guidelines.
- FM Approvals certification marks may be used only on FM Approved products and related product packaging, in advertising material, catalogs and news releases. Use of FM Approvals certification marks on such material is not a substitute for use of the complete FM Approvals certification mark on FM Approved products and/or product packaging.
- No FM Approvals certification mark or aspect thereof may be incorporated as part of a business name, Internet domain name, or brand name/trademark for products/product lines. This includes both design aspects (the FM Approvals "diamond," etc.) and word aspects ("FM," "Approved," etc.). The use of any FM Approvals certification mark as a trademark is strictly prohibited.
- The Approval Standard number or class number may not be incorporated as part of a business name, Internet domain name, or brand name/trademark for products/product lines. For example, a company may not say "ABC Company's 4100 Fire Door is FM Approved"; the proper terminology is, "ABC Company's Fire Door is FM Approved per Approval Standard 4100."
- FM Approvals certification marks, except for the FM Approvals Quality System Registration mark, may not be used on business stationery/cards/signage because this could mischaracterize the relationship with FM Approvals. Additionally, these items should not reference any FM Approvals certification mark.
- Products or services may not be marketed under any mark or name similar to "FM Global," "FM Approvals" or any of the FM Approvals certification marks. Further, products or services may not be marketed to imply a relationship beyond the scope of any Approval made by FM Approvals.
- When an FM Approvals certification mark is used in advertising material or on product packaging, all material must reflect the specific circumstances under which the product was FM Approved. The material must clearly differentiate between products that are FM Approved and those that are not, and may not, in any way, imply a more substantial relationship with FM Approvals.
- A company may not reference the intent to submit a product for Approval or the expectation that a company will have a certain product FM Approved in the future. For example, a company may not state, "Approval by FM Approvals pending" or "Approval by FM Approvals applied for."
- FM Approvals certification marks should not be preceded or followed by a qualifier that indicates a degree of certification or acceptability. For example, "exceeds," "first" or "only" may not be used to qualify any FM Approvals certification mark.
- Only original artwork issued by FM Approvals should be used. The FM Approvals certification marks should not be altered in any way other than to resize the artwork proportionately. Unacceptable uses of the marks include, but are not limited to, adding/deleting wording or artwork, reducing the artwork to an illegible size, animation or distortion.
- The text of the FM Approvals certification marks may not be translated into any language other than English.
- FM Approvals certification marks must appear in a size and location that is readily identifiable, but less prominent than the name of the owner of the certification or the manufacturer/seller/distributor of the certified products.



Member of the FM Global Group

**Appendix B**



## How to Obtain Approval: *The Process*

FM Approvals offers worldwide certification and testing services of industrial and commercial property loss prevention products. Recognized and respected across the globe, FM Approvals' certification process assures customers a product has been objectively tested and conforms to the highest international and most national standards. Outlined below is the five-step process to becoming FM Approved:

### Step 1: Manufacturer Request

The manufacturer submits a letter, fax or e-mail to FM Approvals requesting Approval for a product or assembly and provides location, scope of work, model numbers, specifications and applicable sales literature.

### Step 2: Proposal Issue and Manufacturer Authorization

A proposal letter is sent by FM Approvals with scope of work, cost estimates, schedule, required tests and sample needs to customer. For new customers, a one-time contractual agreement is also mailed for signature (Master Agreement). The manufacturer then authorizes proposal in writing and submits all requested material and information identified in the proposal.

### Step 3: Review, Testing and First Audit

Drawing or specification to product comparisons are made by FM Approvals. If all necessary items are received, testing is scheduled and conducted. The investigator visits the client's facility (if first-time client or new manufacturing location) to review quality control procedures prior to product Approval by FM Approvals.

### Step 4: Report, FM APPROVED Mark and Listing

Once testing has been completed successfully, a report is prepared and reviewed for technical accuracy and quality. Samples are retained and archived as necessary, returned to the client or disposed of per client's instructions. FM Approvals sends the final report to the manufacturer. Approval is effective as of date of report. The manufacturer may then label the product as FM Approved and the product is listed in the *Approval Guide*, a resource of FM Approvals, at [www.approvalguide.com](http://www.approvalguide.com). FM Approved roofing assemblies are entered into RoofNav, our Web-based tool at [www.roofnav.com](http://www.roofnav.com).

### Step 5: Follow-Up Audits

Follow-up audits of manufacturing facilities are required in order to maintain FM Approved status. The frequency of audits is determined in accordance with authorities having jurisdiction (AHJs) over the installed product.

For more information, please visit  
FM Approvals' Web site:  
[www.fmapprovals.com](http://www.fmapprovals.com)

or contact:

**Ellen Bowers**

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**Appendix C**

APPROVED BY: \_\_\_\_\_  
DATE APPROVED: 05/18/04

## PROCEDURE: COMPLAINTS

### 1. Policy

Complaints from Approvals customers shall be recorded and addressed in an efficient and businesslike manner.

### 2. Scope

This procedure applies to complaints from Approvals customers and/or others relating to the Approval process.

### 3. Complaint Form

Written complaints shall be recorded on an FM Approvals Complaint Form. This form shall be the basis of tracking and recording the complaint and its resolution.

Upon receiving a substantial verbal complaint, an FM Approvals employee shall offer a complaint form to the complainant. Complaints shall be forwarded to the Quality Assurance Manager, who shall monitor and expedite their resolution.

In all cases, the complaint form shall be signed by the appropriate Technical Team Manager upon receipt, and upon resolution of the complaint.

#### Complaint Form

### 4. Resolution of Complaint

Resolution of a complaint shall be timely and appropriate. Unresolved complaints shall be escalated to a managerial level. Complaints that continue to be unresolved shall be escalated to the next managerial level, until a solution is reached. When necessary, the Vice President of FM Approvals shall make a final decision regarding a complaint (see para. 9).

*Continued on next page*

## PROCEDURE: COMPLAINTS, Continued

- |   |   |
|---|---|
| <b>5. Complaints that Raise Widespread Issues</b> | When a complaint raises an issue that affects other customers or other areas of FM Approvals activity, the issue shall be brought to the attention of the QA Manager. It shall be the responsibility of the QA Manager to communicate with the appropriate parties for a resolution of the issue.   |
| <b>6. Complaints that Show Noncompliance</b>      | In the event that a complaint reveals a noncompliance by FM Approvals operations and personnel to a standard or policy, the complaint and its resolution shall be referred to the QA Manager. It shall be the responsibility of the QA Manager to resolve the noncompliance in the individual case and to see if the non-compliance has affected other customers. |
| <b>7. Maintaining Record of Complaint</b>         | After a complaint is resolved, the complaint form, along with all supporting documentation such as letters, faxes, meeting notes and telephone conversations, and evidence of resolution shall be consolidated and filed in the TIC Complaint File.   |
| <b>8. Appeals and Disputes</b>                    | An appeal or dispute about an Approval or listing decision shall be designated and handled as a complaint. The appeal or dispute shall be recorded on a complaint form.   |
| <b>9. Final Appeal to SCC</b>                     | Appeals relating to products that bear the FM Approvals Canadian Mark are subject to a possible final level of appeal to the Standards Council of Canada (SCC) as it pertains to conformance with accreditation criteria. In these matters, FM Approvals will abide by all SCC decisions pertaining to the accreditation criteria.                                |
| <b>10. Final Appeal to IECEX Board of Appeals</b> | Appeals relating to products certified, or to be certified, under the scope of the IECEX Scheme are subject to a possible final level of appeal to the IECEX Board of Appeals whereas an appeal pertains to conformance with certification criteria. Appeals shall be made in accordance with IECEX 02 Rules of Procedure, Section 10.5, "Appeals".               |