



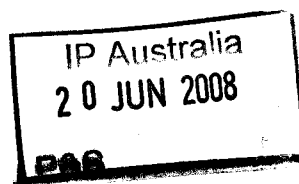
Australian  
Competition &  
Consumer  
Commission

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Our Ref: C2008/218  
Contact officer: Ilona Balint  
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19 June 2008

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



Dear Registrar

### **Certification Trade Mark Application No 1183378**

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. 1183378.

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 Ilona Balint on (02) 6243 1113.

Yours sincerely

David Hatfield  
Director  
Adjudication Branch

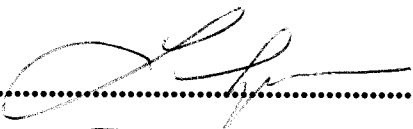


**Final Assessment of Certification Trade Mark application 1183378 lodged by the Waler Horse Owners and Breeders Association Australia Inc.**

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 demonstrate the attributes necessary to competently certify the goods 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..... June 19, 2008 .....

## Waler Horse Owners and Breeders Association Australia Inc.

### Rules Governing the Use of the Trade Mark.

#### Definitions.

In this document,

"The Association" shall mean the Waler Horse Owners and Breeders Association Australia Inc.

"The Certifier" shall mean the Stud Book Committee of the Waler Horse Owners and Breeders Association Australia Inc.

"Waler" shall mean a horse approved by the Stud Book Committee of the Waler Horse Owners and Breeders Association Australia Inc. for Registration as a Waler horse and so Registered with the Association.

"Trade Mark" shall mean the Waler Horse Owners and Breeders Association Australia Inc. Certification Trade Mark.

#### Preamble.

The primary Aim of the Association is to preserve the Waler horse as defined by The Association.

This is achieved to a large extent by Registering those horses that comply with the criteria as documented in The Association Rules and Regulations Governing the Registration of Waler Horses.

The Certification Trade Mark in effect guarantees that the "method of manufacture" and quality of the horse to which it is applied conforms with the criteria of The Association, and so differentiates such horses from others which may adopt the same breed name but apply different criteria.

The application of a Trade Mark to qualifying horses is in order to visually indicate that those horses are recognised as Walers by The Association, have been judged to qualify for Registration by virtue of their qualities and characteristics as described in the above mentioned Rules and Regulations which Members of the Association may obtain from the Secretary.

#### Certifier qualifications.

The Stud Book Committee of the Waler Horse Owners and Breeders Association Australia Inc. as elected by the Committee Management of the Waler Horse Owners and Breeders Association Australia Inc. is the approved certifier for the Association.

#### Application of the Trade Mark.

The Trade Mark may only be applied to the near (left) shoulder of a Registered Waler in the form of a freeze or fire brand not exceeding 6 cm by 6 cm in size.

Subject to any other conditions herein, the Trade Mark may be applied by the owner of the Waler and must not be altered or interfere with or be interfered by any other brand.

#### Qualification for application of the Trade Mark.

To qualify for application of the Trade Mark, a horse must comply with all of the following conditions...

a) The horse must comply with the Standards as documented in the Rules and Regulations Governing the Stud Book and Register of the Waler Horse Owners and Breeders Association Australia Inc. or any replacement document as authorised by The Certifier, and

b) The horse to which the Trade Mark is applied must be Registered with the Association as a Waler Horse.

#### Authority to apply the Trade Mark.

Authority to apply the Trade Mark will be issued by the Association Stud Book Keeper on behalf of the Certifier in the form of Waler Registration Papers and Certificate of Waler Registration.

Authority to apply the Trade Mark will be issued only to a Member of The Association.

#### Disputes.

An aggrieved Applicant for permission to apply the Trade Mark or any other issue regarding the Trade Mark may apply in the first instance to Certifier for review.

In the absence of satisfactory resolution in the first instance, the Applicant may apply to the Committee of Management of The Association for further consideration of the dispute.

Both Applications should be made in writing via the Secretary of The Association.

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

Commissioner

Date

19/06/08

Criteria for Registering Waler horses .....

**PUREBRED WALERS.**

To be classed as a Purebred Waler, a horse must satisfy at least one of the following criteria:

- a) be progeny of two Registered Purebred Walers, and/or
- b) have a definable, verified history that meets the Association's Standard, and/or
- c) be from station bred horses whose history can be validated or reliably interpreted according to the Stud Book Committee.

As determined by the Stud Book Committee, no horse so classed may be descended from any Breed of horse that was not *traditionally* associated with the term Waler, must *not be known* to have genetic links to breeds other than those that contributed to the *traditional* breeding of the Waler horse as researched, defined, recorded / documented by the Association nor from any horse of the same Breed as those contributing to the Waler being a modern derivative or import not containing or displaying the characteristics of those horses traditionally used in Waler breeding.

A Purebred Waler must *not* exhibit characteristics to indicate the *predominance* (a limited degree of *influence* of such being acceptable) of any one breed other than Waler to the extent that the phenotype of this horse resembles that breed.

A Purebred Waler must not be known to contain the genetic influence of less than three contributing breeds as determined to be acceptable by the Stud Book Committee.

A Purebred Waler must conform to the Society Standards, with consideration given to "captured" horses from unmanaged situations with regard to injury, deprivation suffered prior to being obtained, and potential as breeding stock.

For horses of unknown background, which show Waler characteristics, the Stud Book Committee may consider registration into a relevant section. All horses are judged on their own merit.

**A Purebred Waler must at some stage in its past be descended from at least one 'station bred' or 'station raised' horse, that is, a horse which has survived, unaided by human management or interference, to a breeding age, under harsh and natural conditions.**

**STUDBOOK SECTIONS**

**Purebred**

a). Waler mares and stallions, domestically bred or first obtained and / or located, identified by the Stud Book Committee as Waler types with acceptable breed influence that meets the Association's Standard and where the station or unmanaged situation that has a history of breeding horses for the remount trade and / or for the domestic market, that meet the Association Standards. Note that if successive progeny of such horses are not of an acceptable quality the Stud Book Committee reserves the right to remove the horse/s from the Studbook section.

Horses registered in this section are eligible for inclusion in the WHOBAA Studbook. This Studbook includes pedigree, description, type, and registration number, owner of the horse and contact details and breeder of the horse if applicable.

All horses recorded in this Section will have their classification recorded at the same time. (i.e. Heavy, Medium, Light, Pony). It is to be noted that progeny from 2 studbook parents will not automatically be entered into the Studbook.

b). Horses of Waler type and breeding not conforming to the Association Standards due to injury or debilitation or similar factors such as a result of injury or malnutrition, yet considered to otherwise comply with these Rules and be of potential genetic value to the future of the Waler may be considered for Registration.

The progeny of such horses, when bred to Walers and not exhibiting apparent genetic faults, shall be eligible to be classed as Stud Book Walers upon successful Classification in the appropriate section. Horses that show the *obvious* phenotype of the traditional type of a breed accepted by the Association as contributing to Waler breeding and being now endangered, *may* under special circumstances as judged by the Stud Book Committee be eligible to be classed as Purebred Walers in order to preserve old genes so present; upon successful Classification in the appropriate section.

*Members should keep in mind that horses Registered under sub section (b) above should not be shown or otherwise exhibited to the public until such a time that they conform to the acceptable Standards. These horses are Registered in order to preserve their genetic potential for producing Walers.*

### **Part Bred.**

Any horse that is the progeny of one Registered Purebred Waler and any other breed is a Part Bred Waler and will be Registered only as such.

The progeny of any Part Bred horse shall not be eligible for entry in the Studbook as a Purebred. The progeny of any Part bred Waler horse may be eligible for registration if the Part bred is joined with a Purebred Waler or another Part Bred.

## **STANDARD OF EXCELLENCE.**

### **General Appearance**

To give an overall impression of balance, both stationary or in motion. Specific and approved breed influences may be apparent, however should not dominate to the extent that the horse could be seen as of that breed or first cross of that breed.

An occasional exception may be considered in the case of a Foundation horse of excellent quality showing the obvious influence of a contributing breed which is deemed by the stud Book Committee and Classifiers to be scarce or endangered.

### **General Character and Temperament.**

A strong warm-blooded type, free from any hereditary defects which would lead to unsoundness. Versatile and adaptable with the qualities of hardiness, frugality and intelligence, with inherent potential for stamina, kindness and confidence.

### **Height.**

Ten hands high and over - preferred height range 14.2hh - 16hh.

### **Head.**

In proportion to size of body, preferably tending to large. Eyes large to medium and set wide apart. Nose not concave. Ears alert when active.

### **Neck.**

In proportion to, and in keeping to type.

### **Shoulder.**

Sloping shoulders are preferable in light and medium types - but slightly straighter in heavy type.

### **Legs.**

Strong, short cannons, plenty of bone, large flat knee, tending to sloping pasterns. Cow hocks can be seen to some degree in medium and heavy types. Fetlock hair and/or feathering is preferable in heavies and permissible in others.

### **Hindquarters and Tail.**

Short coupled back is preferable in comparison to height. Sloping croup and low set dock and tail.

### **Girth and Ribs.**

Deep girth and well sprung ribs.

### **Hooves.**

Hard and well shaped in keeping with type.

### **Colour.**

All solid colours - except albinos, cremellos and perlinos.

### **General.**

It is unknown in some cases what qualities are environmental or due to hereditary factors. The above points of conformation are pertaining to the Waler in particular and in addition to good conformation points in common with all breeds. Obvious hereditary conformation faults are therefore undesirable.

Research into foundation breed influences is a continuing process and it is impossible to precisely nominate such. Each horse is considered individually with regard to presently accepted information or verification of that presented.

Process for determining whether a horse meets the criteria.....

### **STEPS TO REGISTERING PUREBRED and PARTBRED WALERS..**

- i. Foal recorded status expires at three (3) years, when Application for Registration is made. Application for Registration may be applied for when the horse reaches 2 years of age.
- ii. The application for Registration must include 3 photos and Application for Registration fee (as determined from time to time by the Stud Book Committee). Forms for Application for Registration can be obtained from the Studbook Keeper or Secretary of the Association and must be sent back to the Studbook Keeper. Application for foal recording is as above but the photos must include the dam. Foal Registrations should be sent to the Studbook Keeper with payment. When applying for a Part bred Registration or Foal Registration the other breed's Registration Number from it's appropriate Society should also be included.
- iii. Classification is arranged between the Studbook Keeper, the owner, and the Classifier. Horses previously Classified and/or Registered with another Breed organization by means acceptable to the Stud Book Committee may be approved without the need for repeat Classification.
- iv. The Association Committee of Management is advised of the Stud Book Committee decision for comment. Once the application has been processed the owner will be advised accordingly. If passed, a Registration Certificate will be mailed to the owner by the Studbook Keeper or the Secretary upon receipt of the Registration fee provided a period of not more than 6 months has elapsed after the horse was Classified.
- v. The Application for Registration fee is non refundable.
- vi. Transfer of ownership of any Purebred or Part bred Waler. A Transfer of Ownership form, obtained from the Studbook Keeper should be filled out and returned to the Studbook Keeper. There is no fee for transfer of ownership.

The Stud Book Committee reserves the right to overrule Classifier recommendations in accordance with registration requirements as set out here and other constitutional powers.

## CLASSIFYING.

Classification may be done by one of the following:

- A. 2 Association Registered Classifiers usually classifying at the same time (individually without conferring).
- B. 1 classifier and a video prepared in accordance with the Association's guidelines (held by the Secretary). The video to be sent to the Studbook keeper. The Committee and the Studbook keeper reserve the right to ask for the video to be re done if it does not meet the requirements for classifying the horse properly.
- C. 1 classifier and one Vet. or Judge. The Stud Book Committee must approve the Vet and Judge and both must read the Waler information sent to them before classifying. The Studbook Keeper and Stud Book Committee reserve the right to ask for re classification if the classifying by the Vet or Judge does not appear to be correct.
- D. By other means as determined by the Stud Book Committee from time to time.

All classifiers must sit and pass a classifier's test. Classifiers are selected jointly by the Stud Book Committee and existing Classifiers. Once passed the classifier's name is added to the Classifier's Register, which is a numbered list held by the Studbook Keeper and Secretary. The classifier will then receive an Association classifiers certificate and classifier's card, which must be presented to the owner of each horse before classifying. Classifiers must include their registered number on the classification forms. Classifiers must not confer with each other or the owner of the horse whilst classifying, unless it is to the handler to request a specific move etc.

Honorary classifiers such as judges and Vets will receive a temporary classifier's card. Which must also be presented to the owner before classifying any horse.

Classifiers should also note if a horse has been station bred or raised.

All classifiers are issued with a classifier's manual and standard of excellence, which should always be carried when classifying any horse. If the classifier fails to present a classifier's card, classifier's manual or the standard of excellence the owner/s have the right to request the classifier to not classify a horse or classification to be re done. Any such instances should be reported immediately (phone) to the Studbook Keeper followed by a written report also to the Studbook Keeper.

Any extenuating circumstances regarding classification should be put in writing to the Committee.

Classification papers are sent directly to the Classifier, including photos, before classifying.

Classification papers **must** be sent directly back to the Studbook Keeper, by the classifier, within 14 days. At no time should the owner be given the classification papers.

Classifiers are required to pass a practical and test as set by the Stud Book Committee, which may vary according to the knowledge, history and experience of the Applicant. A working knowledge of the Association Classifiers Manual must be demonstrated. The manual consists of 83 pages under 8 Chapters dealing with such matters as the conduct of Classifiers, horse requirements including temperament, conformation, Markings, Action, history, problems, genetics.

This manual is the result of a lifetime association with horses and horse breeds by the Stud Book Committee, 22 years of which in all cases have been directed toward researching and documenting evidence defining the Waler horse. There are three Members of the Stud Book Committee, aged between 41 and 58 years, supported by independent advisors with relevant expertise regarding contributing breeds.

There are no ongoing requirements regarding certification as once the horse has been accepted and branded then the brand is permanent. Should the horse subsequently be proven to fail to comply due to, for example, false information having been presented which resulted in the horse being Registered in the first instance then the Association would note this on the Registration Papers and make such information available to prospective purchasers of the horse.

Conversely, if information were to be presented which would enable a previously rejected horse to comply with the certification criteria, the horse would be objectively re-considered.

Regarding the Stud Book Committee as the approved Certifier and future Certifiers .....

The present Stud Book Committee has been acknowledged by the Association in its Constitution as the authority to set, manage and enforce the requirements of the Stud Book and eligibility of horses to be Registered with the Association as Walers.

The Association accepts that the individuals within that Committee possess a combined knowledge in excess of any other available with regard to the Waler horse and have proven to act in a fair and objective manner with the best interests in the preservation of the Breed as a priority.

The 3 members of this Committee and their advisors were responsible for the first attempts to recognise, define and re-authenticate the breed in 1986 as a result of personal contact with the Waler in some instances as far back as the 1950s.

The Stud Book Committee is responsible for appointing new Members to this Committee upon demonstration of ability for the task. There will be no Certifier. Any future members of THE Stud Book Committee are to be elected by that Committee as authorised by the Association Committee of Management.

Regarding Membership and other requirements for CTM users . .....

All Membership Applications must be approved by the Association Committee of Management.

This is necessary to protect the reputation of both the Association and the Breed. For instance were an applicant for Membership to have a proven history of neglect or abuse of horses he/she would be refused Membership and therefore also Registration of any such horse, both as a matter of humane principle and to protect the Association from being judged as condoning such treatment. Membership requirement also helps protect against such an owner seeking Registration via a 3<sup>rd</sup> party.

Such situations have occurred in the past. In all instances where the owners addressed the problems to the satisfaction of the Committees they were then accepted as Members and their horses Registered.

A Member may only apply the Association brand (Trade Mark) to a horse Registered with the Association, such Registration being proof and record of compliance with the Association criteria and standards.

There are no other criteria for Membership relating to the use of the Trade Mark.

Member

Fee \$ 25.00 per year.

Junior (under 18 years ).

Fee \$ 15.00 per year.

Others Partner Member to either of above,

Fee \$ 10.00 per year.

Additional immediate family Member, each,

Fee \$ 5.00 per year

Regarding dispute resolution .....

There is no form of independent review envisaged due to the fact that there is no other known resource that could identify and make informed judgement with regard to the acceptability or otherwise of a horse. Any other known resource could potentially endanger the future of the Breed as the Association is attempting to preserve.

It is in the best interests of the Association and its Aims consider any horse objectively and without prejudice, the Committees are committed to act accordingly.