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## RULES ON THE USE AND ADMINISTRATION OF CERTIFICATION TRADEMARK

### AUSTRALIA

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#### 1. Introduction

- 1.1. Abalone Council of Australia is the peak industry body for the wild catching of abalone in Australia which invests in market research and promotion of wild-caught abalone products, research and development projects, open communication channels and collaboration of industry knowledge. Its mission is to create a healthy fishery resource managed for the benefit of the industry and the Australian community. As part of this mission, it has created certification trade marks to assist consumers to identify wild-caught Australian abalone that meets certain set standards.
- 1.2. The following rules ("*Rules*") govern the use of the certification trade marks set out in item 1 of the Schedule ("*Trade Marks*").
- 1.3. In these Rules:
  - (a) "*Administration Fee*" means the administration fee determined by the Owner from time to time;
  - (b) "*Applicant*" means a person who applies for approval to use the Trade Marks in accordance with Article 4;
  - (c) "*Application Fee*" means the application fee determined by the Owner from time to time;
  - (d) "*Certifier*" means a person authorised to be a certifier in accordance with Article 7;
  - (e) "*Goods*" means the goods set out in item 2 of the Schedule;
  - (f) "*License Agreement*" means an agreement between the Owner and a Licensee in relation to the Licensee's use the Trade Marks;
  - (g) "*Licensee*" means a person who is authorised to use the Trade Marks in accordance with Article 4.5;
  - (h) "*Renewal Fee*" means the renewal fee determined by the Owner from time to time;
  - (i) "*Services*" means the services set out in item 3 of the Schedule;
  - (j) "*Owner*" means the owner of the Trade Marks, as set out in item 4 of the Schedule;
  - (k) a reference to a law, regulation, code or policy includes any subordinate instruments made under it and any amendments, consolidations, re-enactments or replacements of any of them as made from time to time.

#### 2. General Provisions

- 2.1. These Rules are made in order:
  - (a) to promote and support the supply of quality, wild-caught Australian abalone and derivative products;
  - (b) to improve the quality of the Goods and Services;
  - (c) to increase consumer awareness of the Goods and Services;

- (d) to build a distinctive, iconic brand for the Goods and Services;
  - (e) to maintain the reputation of the Trade Marks in the global market;
  - (f) to encourage strong consumer preference for Goods and Services bearing the Trade Marks;
  - (g) to ensure consistently high quality in the Goods and Services;
  - (h) to increase demand for high-quality Goods and Services;
  - (i) to reduce uncertainty from price fluctuations in comparable Goods and Services;
  - (j) to enhance consumer confidence in the Goods and Services; and
  - (k) to protect the interests of consumers.
- 2.2. These Rules are made according to the laws, regulations and measures applying to certification trade marks.
- 2.3. The Trade Marks are approved by and registered with the relevant statutory body and used for proving the special quality of the Goods and Services.
- 2.4. The Owner is the owner of the Trade Marks and enjoys the exclusive rights to the Trade Marks.
- 2.5. Any person who intends to use any of the Trade Marks must first be approved by the Certifier according to these Rules.

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

- 3.1. The quality, consistency and integrity of the Goods and Services are maintained by ensuring that the Trade Marks are only applied to Goods and Services which meet the criteria set out in this Article 3 and in accordance with these Rules.
- 3.2. The Trade Marks may only be applied to Goods that meet the following criteria:
- (a) *Australian*: the Goods are, or are derived from, abalone which has been fished from the coastal waters of New South Wales, Victoria, Tasmania, South Australia or Western Australia, namely:
    - (i) "coastal waters of the State" as defined in the *Interpretation Act 1987* (NSW);
    - (ii) "State waters" as defined in the *Marine Safety Act 2010* (Vic);
    - (iii) "coastal waters" as defined in the *Coastal and Other Waters (Application of State Laws) Act 1982* (Tas);
    - (iv) "coastal waters of the State" as defined in the *Marine Parks Act 2007* (SA);
    - (v) "coastal waters of the State" as defined in the *Off-shore (Application of Laws) Act 1982* (WA).
  - (b) *Wild Caught*: the abalone constituting or contained in the Goods must be caught in open waters in accordance with the Quality Assurance Code of Practice and Code of Conduct as published by the Owner from time to time;
  - (c) *Purity*: the Goods must not contain or be combined with any abalone which does not comply with both (a) and (b);
  - (d) *Supply Chain*: the supply chain of the Goods from fishing to the end consumer must be transparent;

- (e) *No Tampering*: where the Goods are packaged for sale, the packaging must be in a form that is tamper-evident and cannot be re-packed in the same packaging prior to sale using NanoTag security protection technology;
  - (f) *AQIS Approved*: the Goods must only be exported by an exporter that is approved by the Australian Quarantine and Inspection Service (AQIS);
  - (g) *Legal Compliance*: the Goods must comply with all relevant State/Territory, Commonwealth and foreign laws and regulations pertaining to the production, labelling, exporting, importation, trade and customs clearance of the Goods for human consumption.
- 3.3. The Trade Marks may only be applied to Services that relate to Goods which meet the criteria in Article 3.2.
- 3.4. Licensees must not use the Trade Marks in a way which is likely to mislead or cause confusion. Licensees must only use the Trade Marks in connection with Goods which meet the criteria in Article 3.2 and Services which meet the criteria in Article 3.3 ("*Approved Goods/Services*"). A Licensee must not supply or provide services in relation to abalone or abalone-derived products which are not approved in accordance with these Rules ("*Unapproved Goods/Services*") unless the Licensee clearly distinguishes, to the satisfaction of the Certifier, between Approved Goods/Services and Unapproved Goods/Services in the provision of the goods and services. For example, if a restaurant is approved to use the Trade Marks in relation to Approved Goods (e.g., dishes containing Australian wild-caught abalone) and also serves Unapproved Goods (e.g., dishes containing abalone from other countries or reserve stocks which do not meet the criteria in Article 3.1), the restaurant must clearly distinguish between dishes containing Approved Goods and those containing Unapproved Goods in marketing and serving the dishes to consumers.

#### 4. **Procedures for Application on the Use of the Trade Marks**

- 4.1. An Applicant may submit a written application for use of the Trade Marks ("*Application*") to the Owner. The Application must be submitted in a form approved by the Owner, accompanied by payment of the Application Fee (if any), and sent to the address as specified by the Owner for the receipt of applications.
- 4.2. Applications submitted in accordance with Article 4.1 will be referred to a Certifier for review. The Certifier will review each Application for compliance with these Rules. In order to assess the Application, the Certifier will review the Application and conduct an audit in accordance with Article 6.2.
- 4.3. Following review of each Application, the Certifier will send a written report to the Owner setting out the Certifier's decision whether the Application passed the examination process. The Owner will notify the Applicant in writing of the result of the Application.
- 4.4. If an Application passes the above examination process:
- (a) The Applicant and Owner must both sign a Licence Agreement regarding the Applicant's use of the Trade Marks; and
  - (b) The Applicant shall pay the Administration Fee (if any).
- 4.5. Upon fulfilment of the process in Article 4.4, the Applicant will become a Licensee and will be licensed to use the Trade Mark, subject to these Rules, for a period of one (1) year. A Licensee may submit a written application to renew its licence to the Owner, in a form approved by the Owner, accompanied by payment of the Renewal Fee (if any), and send to the address as specified by the Owner for the receipt of applications, at least one (1) month prior to the expiration of its current licence term. A renewal Application will be assessed in accordance with Articles 4.2–4.4. If a renewal Application is not received and approved in accordance with this Article 4.5:

- (a) the licence will be automatically terminated at the end of the prior licence term;
- (b) the former Licensee must stop all use of the Trade Marks by the end of the prior licence term; and
- (c) if the former Licensee wishes to use the Trade Marks again, it must submit a new Application in accordance with Article 4.1.

**5. Rights and Obligations of the Licensee of the Trade Mark**

- 5.1. A Licensee who is approved in accordance with Article 4 will have the rights to use the Trade Marks in connection with its Approved Goods/Services, subject to these Rules and the terms of any Licence Agreement, during the term of its licence.
- 5.2. Each Licence must, during the term of its licence, as a condition of its licence to use the Trade Marks:
  - (a) maintain the standards applicable to Approved Goods/Services in accordance with these Rules;
  - (b) designate specific people to account for the administration and use of the Trade Marks and compliance with these Rules by the Licensee;
  - (c) maintain and promote the reputation of the Trade Marks;
  - (d) not disparage the Trade Marks or the Goods or Services to which the Trade Marks are to be applied;
  - (e) allow Certifiers to conduct audits in accordance with Article 6 at any time during the term of its licence;
  - (f) comply with the terms of its Licence Agreement.
- 5.3. If a Licensee breaches any aspect of these Rules or fails in an audit, the Owner may, in its discretion:
  - (a) require the Licensee to take corrective action in order to ensure compliance with the Rules;
  - (b) suspend the Licensee's licence to use the Trade Marks until it is satisfied that the Licensee has taken corrective action as necessary to ensure compliance with the Rules;
  - (c) terminate the Licensee's licence to use the Trade Marks immediately.

**6. Auditing**

- 6.1. A Certifier may, at any time during the term of a Licensee's licence, at the direction of the Owner, conduct an audit to ensure the Licensee's compliance with these Rules. Following an audit, the Certifier will send a written report to the Owner setting out the Certifier's decision whether the Licensee is complying with the Rules.
- 6.2. As part of an audit, the Certifier may, in its discretion:
  - (a) inspect the Applicant's/Licensee's premises and facilities used (or to be used) for dealing in the Goods and/or Services;
  - (b) review the Applicant's/Licensee's processes for dealing in the Goods and/or Services;

- (c) inspect the Goods produced or supplied (or proposed by be produced or supplied) by the Applicant/Licensee;
- (d) request the Applicant/Licensee to provide documentation in connection with the Goods/Services; and
- (e) make such further enquiries and investigations as the Certifier deems appropriate.

## **7. Certifiers**

- 7.1. The Owner may appoint Certifiers to review Applications and conduct audits in accordance with these Rules.
- 7.2. The Owner must be satisfied that a Certifier has the necessary qualifications, skill and knowledge to perform the Certifier's duties in accordance with the Rules.
- 7.3. The Owner may revoke the appointment of a Certifier at any time.



## **8. Disputes: Reviews and Appeals**

- 8.1. In the event that an Applicant or Licensee directly affected by a decision under these Rules, that person ("*Complainant*") may request a review of the decision by a written request to the Owner within twenty-eight (28) days of the decision, setting out the reasons for its objection.
- 8.2. Within twenty-eight (28) days of receiving a Complaint in accordance with Article 8.1, the Owner will take steps to undertake a review of the decision and notify the Complainant that the review is being undertaken. As soon as reasonably possible, the Owner will take such further action that it deems appropriate to review the decision, which may include a further audit, and notify the Complainant in writing of the outcome of the review.

## **9. Administration**

- 9.1. The Owner is responsible for the administration of the Trade Marks and for making and implementing these Rules, including overseeing compliance with the Rules by Licensees.
- 9.2. The Owner will maintain a register that identifies the authorised Licensees, the term of each Licensee's licence, and any other information that the Owner deems appropriate.
- 9.3. The Trade Marks remain the property of the Owner and are protected by law. Nothing in these Rules transfers or assigns ownership of the Trade Marks to any other person.
- 9.4. In the event of suspected or alleged counterfeiting, infringement or unauthorised use of the Trade Marks or non-compliance with the Rules, upon the reasonable request of the Owner, Licensees will be required to assist in providing evidence to assist the Owner to pursue such action as may be appropriate.

**SCHEDULE**

<p><b>1. Trade Marks:</b></p>	<p>1.</p>  <p>2.</p> 
<p><b>2. Goods:</b></p>	<p>seafood (not live); abalone products, including but not limited to frozen abalone products, individual quick frozen abalone, deep frozen abalone, dried abalone, preserved abalone, processed abalone, smoked abalone, canned abalone, tinned abalone, vacuum pouched abalone, modified atmosphere packaged abalone, high pressure processed abalone, edible abalone oil, food products made from abalone; fish (not live); fish products, including but not limited to frozen fish products, individual quick frozen fish, deep frozen fish, dried fish, preserved fish, processed fish, smoked fish, canned fish, tinned fish, vacuum pouched fish, modified atmosphere packaged fish, high pressure processed fish, edible fish oil, food products made from fish; mollusca; snails (prepared); snail eggs (for consumption); live seafood; live abalone; abalone for animal consumption; fishmeal for animal consumption</p>
<p><b>3. Services:</b></p>	<p>advertising; marketing; promotional services; publicity services; wholesale services; retail services; the bringing together, for the benefit of others, of a variety of goods (excluding the transport thereof) enabling customers to conveniently view and purchase those goods; business management, planning, research and consultancy services; business administration; office functions; association services being the promotion of the interests of members of the association; advisory and consultancy services in relation to the foregoing; the provision of all such services through a computer network or other electronic or wireless means</p>
<p><b>4. Owner:</b></p>	<p>Abalone Council of Australia Ltd 262 Argyle Street, Hobart, Tasmania, 7000, Australia</p>