



**Australian
Competition &
Consumer
Commission**

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16 October 2015

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

By email: FEP@ipaustralia.gov.au

Dear Registrar

**Marine Stewardship Council – applications to register certification trade marks
1402409 and 1403172 – final assessment**

The Australian Competition and Consumer Commission (ACCC), in accordance with the provisions of the Trade Marks Act (the Act), has completed its final assessment of the certification trade mark applications noted above.

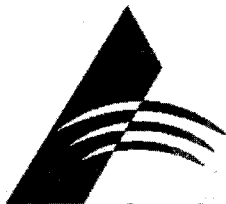
The ACCC considers that the application satisfies the requirements in section 175(2) of the Act. A certificate detailing the ACCC's assessment is attached, as well as a certified copy of the rules.

The applicant will be notified.

If you have any questions, please contact John Rouw on (03) 9290 1402.

Yours sincerely

Lyn Camilleri
Director
Adjudication



Australian
Competition &
Consumer
Commission

**Final Assessment of Certification Trade Mark Applications 1402409 and
1403172 lodged by Marine Stewardship Council**

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 certifiers demonstrate the attributes necessary to competently certify the goods and/or 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 *Competition and Consumer Act 2010* (the Act) and the principles relating to unconscionable conduct (Part 2-2), unfair practices (Part 3-1), and safety of consumer goods and product related services (Part 3-3) in Schedule 2 (Australian Consumer Law) of the Act.

Signed.....*Michael Scoper*..... (Deputy Chair)

Date.....*15 October 2015*.....

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

Michael J. G. G. G. 15 October 2005
Commissioner Date



PATENTS
TRADE MARKS
& LAW

CERTIFICATION TRADE MARK RULES

MARINE STEWARDSHIP COUNCIL

Australian Trade Mark Application No. 1402409

Mark:



Classes: 29, 31, 40

Australian Trade Mark Application No. 1403172

Mark:



Classes: 29, 31, 40

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1 DEFINITIONS

For the purpose of these Rules, the relevant definitions, together with any definitions given in other instruments published by the MSC, apply:

- (a) **"Applicant Fishery"** is a fishery that has applied for certification against the *MSC Fishery Standard: Principles and Criteria for Sustainable Fishing* or has been certified against the *MSC Fishery Standard: Principles and Criteria for Sustainable Fishing*.
- (b) **"Applicant Supplier"** is a party that has applied for certification against the *MSC Chain of Custody Standard* or has been certified against the *MSC Chain of Custody Standard*.
- (c) **"Certifier"** means an organisation accredited by Accreditation Services International GmbH to conduct certification assessments against the *MSC Fishery Standard: Principles and Criteria for Sustainable Fishing* and the *MSC Chain of Custody Standard*.
- (d) **"Ecolabel"** means the MARINE STEWARDSHIP COUNCIL fish tick logo, set out in Schedule 1, and any trade mark, copyright or design rights related thereto and in respect of the goods and services set out in Schedule 1.
- (e) **"The Ecolabel Licensing Agreement"** means a licensing agreement between MSCl and a Licensee, providing the Licensee with a licence to use the Ecolabel, and setting out terms and conditions of the licence and use of the Ecolabel. The Ecolabel Licensing Agreement is attached as Schedule 2.
- (f) **"Licensee"** is any organisation that has entered into the Ecolabel Licensing Agreement with MSCl.
- (g) **"The MSC"** means the Marine Stewardship Council, a United Kingdom Charity registered at the Central Register of Charities under number 1066806.
- (h) **"MSCl"** means Marine Stewardship Council International Limited, being a wholly owned trading subsidiary of the MSC and authorised by the MSC to issue licences in respect of use of the Ecolabel and associated intellectual property rights on its behalf in respect of seafood goods and services sourced from certified sustainable fisheries, and incorporated in the United Kingdom under number 3486485.

2 INTRODUCTION

- 2.1 The MSC is the owner of the Ecolabel and various trade marks, copyright and design rights relating thereto, which it has devised to promote sustainability and enhance awareness of the marine ecosystem and to certify that seafood products in respect of which the Ecolabel is used have been obtained from an ecologically sustainable source.
- 2.2 The MSC manages certification regimes concerning sustainable fishing and seafood traceability. In performing this role, the MSC has developed standards for sustainable fishing and seafood traceability, codified in the *MSC Fishery Standard: Principles and Criteria for Sustainable Fishing* and the *MSC Chain of Custody Standard*. Certification against the *MSC Fishery Standard* and the *MSC Chain of Custody Standard* is conducted by third-party Certifiers.
- 2.3 Through its trading subsidiary, MSC1, the MSC provides the Ecolabel Licensing Agreement, which grant licences to use the Ecolabel to Licensees.
- 2.4 To protect the Ecolabel, the MSC has registered and applied to register the Ecolabel as a trade mark with intellectual property bodies around the world.
- 2.5 Use of the Ecolabel is governed by these Rules, the Ecolabel Licensing Agreement, and any other instruments published by the MSC or MSC1.
- 2.6 These Rules apply to:
 - (a) The MSC;
 - (b) MSC1;
 - (c) Organisations who apply for certification against the *MSC Fishery Standard: Principles and Criteria for Sustainable Fishing* and the *MSC Chain of Custody Standard*;
 - (d) Licensees;
 - (e) Certifiers;
 - (f) Any other organisations or persons involved in certification regimes managed by the MSC, or use of the Ecolabel.
- 2.7 Licensees will have the right to use the Ecolabel by virtue of the Ecolabel Licensing Agreement.
- 2.8 Licensees must use the Ecolabel in accordance with these Rules, the Ecolabel Licensing Agreement, and any other instruments published by the MSC and MSC1 concerning use of the Ecolabel.

2.9 Licensees obtain no proprietary rights in the Ecolabel, and the granting of a licence to use the Ecolabel does not transfer any intellectual property rights.

2.10 The latest published version of an instrument referred to in these Rules applies to the application of the Rules.

3 OWNERSHIP OF ECOLABEL

3.1 The MSC is the owner of the Ecolabel, the name MARINE STEWARDSHIP COUNCIL, the name MSC, and any trade mark, copyright or design rights related thereto.

3.2 Nothing in these Rules, the Ecolabel Licensing Agreement, or any other instruments published by the MSC or MSCI, shall be taken as transferring ownership of the Ecolabel or any rights therein.

3.3 Where MSCI and a Licensee enter the Ecolabel Licensing Agreement, and the Licensee is granted a licence to use the Ecolabel, the entering into of the Ecolabel Licensing Agreement and subsequent granting of a licence does not transfer any intellectual property rights.

4 CERTIFICATION

4.1 The MSC has developed standards for sustainable fishing and seafood traceability, which define the characteristics and performances needed for fisheries to be certified as sustainable and for businesses to be certified as trading in seafood products sourced from sustainable fisheries.

4.2 Applicant fisheries may apply to be assessed against the standards contained in the *MSC Fishery Standard: Principles and Criteria for Sustainable Fishing*; if successful they are certified as meeting these standards.

4.3 Organisations may apply to be assessed against the standards contained in the *MSC Chain of Custody Standard*; if successful they are certified as meeting these standards

4.4 Certification assessments are to be performed by third-party Certifiers duly accredited by Accreditation Services International GmbH, in accordance with these Rules and the *MSC Certification Requirements*.

MSC Fishery Standard: Principles and Criteria for Sustainable Fishing - Certification

- 4.5 The *MSC Fishery Standard: Principles and Criteria for Sustainable Fishing* is attached as Schedule 3.
- 4.6 The *MSC Fishery Standard: Principles and Criteria for Sustainable Fishing* establishes three overarching principles that applicant fisheries must satisfy:
- (1) Sustainable fish stocks;
 - (2) Minimising environmental impact;
 - (3) Effective management.
- 4.7 These principles are supported by more detailed criteria, set out in the *MSC Fishery Standard: Principles and Criteria for Sustainable Fishing*.
- 4.8 In order to be certified as meeting the *MSC Fishery Standard: Principles and Criteria for Sustainable Fishing*, applicant fisheries are assessed by a Certifier against performance requirements contained primarily in Annex CB of the *MSC Certification Requirements*.
- 4.9 Applicant fisheries that satisfy the requirements in Annex CB et segue of the *MSC Certification Requirements* will be deemed to have satisfied the *MSC Environmental Standard for Sustainable Fishing*, and will be certified as doing so by their Certifier and issued a fishery certificate.
- 4.10 Certification against the *MSC Fishery Standard: Principles and Criteria for Sustainable Fishing* is valid for five years.
- 4.11 The *MSC Certification Requirements* is attached as Schedule 5.

MSC Fishery Standard: Principles and Criteria for Sustainable Fishing - Certification Assessment Process

- 4.12 The assessment process for certification against the *MSC Fishery Standard: Principles and Criteria for Sustainable Fishing* shall be conducted in accordance with these Rules and Part A and Part C of the *MSC Certification Requirements*.
- 4.13 Applicant fisheries can apply for certification in accordance with the *MSC Certification Requirements* and rules and requirements of individual Certifiers.
- 4.14 The assessment process may include Pre-Assessment procedures as outlined in the *MSC Certification Requirements*.

4.15 The assessment process shall include Full Assessment, which shall include the following steps, in accordance with the *MSC Certification Requirements*:

- (1) Step one: Announcing full assessment and forming the assessment team;
- (2) Step two: Defining the assessment tree;
- (3) Step three: Gathering information, meeting stakeholders and scoring the fishery;
- (4) Step four: Client and peer review;
- (5) Step five: Public review of the draft assessment report;
- (6) Step six: Final report and determination;
- (7) Step seven: Public certification report and issuing of certificate.

MSC Chain of Custody Standard - Certification

4.16 The *MSC Chain of Custody Standard* is attached as Schedule 4.

4.17 Certification against the *MSC Chain of Custody Standard* ensures that seafood products bearing the Ecolabel come from fisheries that have been certified as being obtained from an MSC certified source.

4.18 The *MSC Chain of Custody Standard* contains four principles that applicant organisations must satisfy:

- (1) The organisation shall have a management system;
- (2) The organisation shall operate a traceability system;
- (3) There shall be no substitution of certified products with non-certified products;
- (4) There shall be a system to ensure all certified products are identified.

4.19 In order to be certified as meeting the *MSC Chain of Custody Standard*, applicant organisations must be assessed by a Certifier against the *MSC Chain of Custody Standard* and Annex BD et segue within the *MSC Certification Requirements*.

4.20 Applicant organisations that satisfy the *MSC Chain of Custody Standard* and Annex BD et segue of the *MSC Certification Requirements* will be deemed to have satisfied the *MSC Chain of Custody Standard*, and will be certified as doing so by their Certifier.

4.21 *MSC Chain of Custody Standard* certification is valid for three years.

MSC Chain of Custody Certification - Assessment Process

4.22 The assessment process for certification against the *MSC Chain of Custody Standard* shall be conducted in accordance with these Rules and Part A and Part B of the *MSC Certification Requirements*.

4.23 Organisations can apply for certification in accordance with the *MSC Certification Requirements* and rules and requirements of individual Certifiers.

5 LICENSING OF ECOLABEL

- 5.1 Organisations that have been certified as meeting the *MSC Fishery Standard: Principles and Criteria for Sustainable Fishing* or the *MSC Chain of Custody Standard* may apply for a licence to use the Ecolabel.
- 5.2 Organisations that wish to apply for a licence to use the Ecolabel shall apply for a licence by submitting the application form attached as Schedule 6.
- 5.3 Once an organisation's application for a licence to use the Ecolabel is approved, the MSC will provide the Ecolabel Licensing Agreement for the organisation to enter into with MSC.
- 5.4 The Ecolabel Licensing Agreement will set out terms and conditions for use of the Ecolabel by Licensees.
- 5.5 Organisations that do not hold a current licence from MSC are not permitted to use the Ecolabel.

6 MSC APPROVAL OF ECOLABEL USE AND PACKAGING DESIGN

- 6.1 Licensees shall not commence use of the Ecolabel until their proposed design of packaging, promotional materials and other materials which will bear the Ecolabel have been approved by the MSC.
- 6.2 Licensees must design their packaging, promotional materials and other materials which will bear the Ecolabel in accordance with the *MSC Ecolabel User Guide*.
- 6.3 Prior to commencing use of the Ecolabel, Licensees must provide draft designs to the MSC for approval.
- 6.4 Licensees intending to use the Ecolabel on packaged products must submit a Product Approval Form to the MSC for approval.
- 6.5 Licensees intending to use the Ecolabel on menu items or fish counter products must submit a Seafood Approval Form to the MSC for approval.
- 6.6 Once approval of design of packaging, promotional materials and other materials which will bear the Ecolabel has been provided by the MSC, products or materials bearing the Ecolabel may be offered for sale or be published.

- 6.7 The Product Approval Form is attached as Schedule 7.
- 6.8 The Seafood Approval Form is attached as Schedule 8.

7 USE OF ECOLABEL

- 7.1 Use of the Ecolabel by Licensees shall be in accordance with these Rules, the Ecolabel Licensing Agreement, and any other instruments published by the MSC and MSCI, including:
 - (a) *MSC Ecolabel User Guide*;
 - (b) *Rules for the Display of the MSC Ecolabel – Menu Use*.
- 7.2 Licensees must ensure that all goods, packaging, advertising materials and other materials bearing the Ecolabel, and use of the Ecolabel in relation to the provision of services, comply with these Rules, the Ecolabel Licensing Agreement, and any other instruments published by the MSC and MSCI.
- 7.3 Licensees must not use the Ecolabel in a manner that fails to comply with these Rules, the Ecolabel Licensing Agreement and any other instruments published by the MSC and MSCI, including instruments governing use of the Ecolabel.
- 7.4 Licensees must not use the Ecolabel in a manner which is detrimental to, or brings into disrepute, the MSC, MSCI, the Ecolabel, or the certification regime operated by the MSC.
- 7.5 The *MSC Ecolabel User Guide* is attached as Schedule 9.
- 7.6 The *Rules for the Display of the MSC Ecolabel – Menu Use* is attached as Schedule 10.

8 POST-CERTIFICATION AUDITS

MSC Fishery Standard: Principles and Criteria for Sustainable Fishing - Certification Audits

- 8.1 Applicant fisheries that are certified as meeting the *MSC Fishery Standard: Principles and Criteria for Sustainable Fishing* must develop a programme of surveillance audits with relevant Certifiers.

- 8.2 Audits are required to be carried out in accordance with Part A and Part C of the *MSC Certification Requirements*.
- 8.3 Audits are required to be carried out annually during the five year certification period.
- 8.4 Certifiers retain the right to conduct unannounced audits and schedule more frequent audits if circumstances indicate the need to do so.
- 8.5 Audits shall include the auditing of any matters considered necessary by the Certifier, including any significant changes in the physical environment of the fishery or the management of the fishery.

MSC Chain of Custody Standard - Certification Audits

- 8.6 Organisations certified as meeting requirements of the *MSC Chain of Custody Standard* must develop a programme of surveillance audits with relevant Certifiers.
- 8.7 Audits are required to be carried out in accordance with Part A and Part B of the *MSC Certification Requirements*. Audits shall be carried out annually, however the Certifier may in its discretion carry out audits more or less frequently as it sees fit.
- 8.8 Certifiers retain the right to conduct unannounced audits and schedule audits if circumstances indicate the need to do so.
- 8.9 Audits shall include the auditing of any matters considered necessary by the Certifier, including any significant changes in the physical environment of the certified organisation.

9 **CERTIFIERS**

- 9.1 Third-party Certifiers are used in the certification process to ensure that a robust, impartial and credible certification scheme is in place.
- 9.2 The MSC has contracted Accreditation Services International GmbH to accredit and manage Certifiers to conduct MSC fisheries assessments and chain of custody assessments. Accreditation Services International GmbH monitors Certifier compliance with the *MSC Fishery Standard: Principles and Criteria for Sustainable Fishing* and the *Chain of Custody Standard*, and other relevant rules and procedures.
- 9.3 Certifiers are to be accredited by Accreditation Services International GmbH in accordance with norms, requirements and procedures of Accreditation Services International GmbH, and in accordance with Part A of the *MSC Certification Requirements*.

- 9.4 Certifiers are responsible for conducting and managing fishery assessment teams, issuing fishery certificates, and conducting surveillance audits and evaluations, in relation to fisheries assessments and chain of custody assessments.
- 9.5 Fees incurred by organisations applying for certification against the *MSC Fishery Standard: Principles and Criteria for Sustainable Fishing* and the *Chain of Custody Standard* are payable to the Certifier who conducts the certification. Certification fees are to be set by Certifiers, and are subject to the control and discretion of Certifiers.
- 9.6 Organisations may apply to Accreditation Services International GmbH to be accredited as Certifiers. In order to be accredited as Certifiers, organisations must meet the requirements of Part A of the *MSC Certification Requirements*, as well as any requirements set by Accreditation Services International GmbH.

10 DISPUTE RESOLUTION

- 10.1 Any disputes or complaints which may arise under or in relation to the use, certification or licensing of the Ecolabel shall be dealt with in accordance with these Rules, the Ecolabel Licensing Agreement, and any other instruments published by the MSC and MSCl.

Disputes Concerning Certification Against *MSC Fishery Standard: Principles and Criteria for Sustainable Fishing*

- 10.2 An applicant fishery may object to the Final Report and Determination issued by a Certifier.
- 10.3 Such objections must be in the form required by the MSC Technical Advisory Board document TAB D-023 v3, *Revised Fisheries Certification Methodologies Objections Procedure*.
- 10.4 The dispute shall be considered and decided in accordance with the MSC Technical Advisory Board document TAB D-023 v3, *Revised Fisheries Certification Methodologies Objections Procedure*.

Disputes Concerning Certification Against *MSC Chain of Custody Standard*

- 10.5 An organisation applying for certification against the *MSC Chain of Custody Standard* may raise a complaint with the relevant Certifier.

- 10.6 The complaint is to be heard and determined in accordance with the complaint procedure of the Certifier. Complaint procedures of Individual Certifiers are available upon request from Certifiers.
- 10.7 If an organisation is not satisfied with a Certifier's response, a complaint can be raised with Accreditation Services International GmbH.
- 10.8 Complaints raised with Accreditation Services International GmbH are to be heard and determined in accordance with the Accreditation Services International GmbH complaints procedure. The procedure may be viewed on the website of Accreditation Services International GmbH, www.accreditation-services.com.

Disputes Concerning Rules, Guidelines, Licences or Other Matters

- 10.9 Any disputes arising under these Rules, the Ecolabel Licensing Agreement, or any other matter, must be resolved in accordance with these Rules and the Ecolabel Licensing Agreement.
- 10.10 In accordance with the terms of the Ecolabel Licensing Agreement, any dispute should first be escalated to the current account managers. If the dispute remains unresolved for at least 14 days, it shall be referred to the senior management of each party who shall attempt resolution through negotiations. If the dispute remains unresolved for a further 14 days, either party may refer the dispute to the courts.

11 REGISTERS

- 11.1 The MSC will maintain publicly available registers on its website www.msc.org, of applicant fisheries that have applied for certification against the *MSC Fishery Standard: Principles and Criteria for Sustainable Fishing*, fisheries that have been certified as meeting the *MSC Fishery Standard: Principles and Criteria for Sustainable Fishing* certification, organisations that have been certified as meeting the *MSC Chain of Custody Standard*, and Certifiers.

12 AMENDMENTS TO RULES

- 12.1 The MSC may at any time alter these Rules.
- 12.2 If the MSC wishes to alter these Rules, it will apply to the Registrar of Trade Marks for permission to make such an alteration. No alteration of these Rules shall have effect until the Registrar has made such an alteration in accordance with the provisions of section 178 of the *Trade Marks Act 1995* (Cth).

13 FEES

Certification Fees

- 13.1 Fees incurred by organisations applying for certification against the *MSC Fishery Standard: Principles and Criteria for Sustainable Fishing* and the *MSC Chain of Custody Standard* are payable to the Certifier who conducts the certification.
- 13.2 Certification fees are to be agreed upon by organisations and applicant fisheries applying for certification, and Certifiers.
- 13.3 The MSC shall not receive any payments in respect of certification.

Licensing Fees and Royalties

- 13.4 Fees and royalties payable by Licensees in respect of use of the Ecolabel are to be charged and paid in accordance with the Ecolabel Licensing Agreement and the MSCI instrument *Ecolabel Licensing System – Categories of Ecolabel Use and Charges*, and any other applicable instruments published by the MSC and MSCI.
- 13.5 Licensees who trade as certified fisheries, non-commercial organisations without foodservice operations, the media, and accredited education institutions, do not incur any fees or royalties to use the Ecolabel.
- 13.6 Licensing fees and royalties are subject to the control and discretion of the MSC and MSCI in accordance with the Ecolabel Licensing Agreement, the MSCI instrument *Ecolabel Licensing System – Categories of Ecolabel Use and Charges*, and any other applicable instruments published by the MSC and MSCI.
- 13.7 The instrument *Ecolabel Licensing System – Categories of Ecolabel Use and Charges* is attached as Schedule 11.