



**Australian
Competition &
Consumer
Commission**

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21 September 2016

The Registrar of Trade Marks
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Dear Registrar

Certification Trade Mark No. 1736957 and 1736972

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. 1736957 and 1736972 lodged by the Organic Industry Standards and Certification Council.

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 me on 03 9290 1475.

Yours sincerely

Gavin Jones
Director
Adjudication



**Australian
Competition &
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**Final Assessment of Certification Trade Mark Applications 1736957 & 1736972
lodged by the Organic Industry Standards and Certification Council 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 and/or 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 *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.......... (Deputy Chair)

Date..........

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


Commissioner


Date

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1 INTRODUCTION

- 1.1 Organic Industry Standards and Certification Council Inc ABN 050 611 642 (**OISCC**) owns the certification trade mark known as the Organic Mark (the **Mark**) registered under the *Trade Marks Act 1995* (Cth) (the **Act**) as Trade Mark No. 1736972 and set out in Schedule 2.
- 1.2 Subject to these Rules, an Applicant may be granted a non-exclusive Licence to use the Mark on a Product (as defined in these Rules) where businesses authorised by OISCC certifies that the Product conforms to The National Standards for Organic and Biodynamic Produce.
- Use of the Mark is not limited to Products provided or originating in Australia. Subject to these Rules, the Mark may be used on Products that are manufactured or distributed outside Australia
- 1.3 OISCC will not undergo certification activities, nor grant any licences to use the Mark on a product (as defined by these rules).
- 1.4 OISCC has filed a copy of these Rules with the Trade Marks Office in accordance with s173 of the Act.

2 DEFINITIONS

The Dictionary in Schedule 1 defines some of the terms used in these Rules.

3 INTERPRETATION

In these Rules, unless the contrary Intention appears:

- (a) a reference to a rule or subrule is a reference to a rule or subrule of these Rules;
- (b) a reference to a rule is a reference to all its subrules;
- (c) a reference to a schedule is a reference to a schedule of these Rules;
- (d) words in the singular include the plural and vice versa;
- (e) words importing a gender include any other gender;
- (f) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings; and
- (g) a reference to using the Mark "on a Product" is deemed a reference to displaying the Mark on the Product itself or on packaging used for delivering the Product or on any drawings, designs, reports, brochures or advertising associated with the Product.

4 AUTHORISED CERTIFIERS

- 4.1 Within the meaning of s173(2)(a) of the Act, OISCC may authorise one or more organisations to act as an Organic Certifiers to grant Licences allowing Licensees to use the Mark in accordance with the Licence Terms.
- 4.2 From time to time and subject to the terms of agreements with Certifiers, OISCC may:
- (a) appoint additional Certifiers;
 - (b) revoke its authorisation of a Certifier to grant Licences.

5 ADMINISTRATION OF THE MARK

- 5.1 Each Certifier must administer an Organic Certification Scheme that:
- (a) provides Certification that a Person provides Products conforming to the requirements of The National Standards For Organic and Biodynamic Produce.
 - (b) is promoted and conducted in a manner that complies with the *Competition and Consumer Act 2010 (Cth)*;
 - (c) does not mislead or deceive third parties as to the nature, scope or extent of Certification offered under the Certification Scheme.

5.2 A Certifier must maintain contemporaneous documentation that describes the processes and procedures used to administer its Certification Scheme and must make such documentation available to any Person requesting it.

5.3 A Certifier must:

- (a) be authorised, or approved or accredited to act as an Organic Certification Body under Australian laws and/or Australian/International standards, and/or overseas country's standard or laws administered by a government authority; and
- (b) maintain written contractual terms (**Certifier's Terms**) consistent with these Rules and under which the Certifier contracts with Persons for the provision of Certification and the granting of Licences to use the mark; and
- (c) keep OISCC informed of the Certifier's Terms and any changes to them.

5.4 If there is any inconsistency between the Certifier's Terms and these Rules, then these Rules will prevail.

5.5 A Certifier must keep detailed records in relation to:

- (a) each Applicant requesting a Licence to use the Mark;
- (b) the Licensees granted a Licence to use the Mark, the Certification undertaken to grant each such Licence, the Terms under which the Licence was granted and any restrictions on the Licence;
- (c) those Applicants refused a Licence to use the Mark; and

- (d) any renewal, revocation, alteration, suspension, termination, surrender or restoration of a Licence to use the Mark.

5.6 A Certifier may operate a Certification Scheme under which the Mark is used in combination with other Organic Certification logos.

5.7 The Mark must appear in either black or Green PMS 348.

5.8 The Mark will be allowed for use on products / goods containing 95% and above certified organic ingredients.

5.9 The use of the Mark will include a compulsory statement of Country of Origin to the bottom left of the mark in a font not less than one 15th of the size of the logo. The statement will read "Made in (insert Country)" or "Produce of (insert country)".

5.10 Upon the termination of the Licence (however the Licence is terminated) the Licensee must immediately discontinue all use of the Mark and all advertising material, packaging and other matter which contains the Mark or any reference to it. Any Products not already disposed of by the Licensee which bear the Mark must, if the Certifier so requires, be dealt with at the Licensee's expense so as to erase the Mark.

5.11 Restriction on Use of Mark

A Licensee must only use the Mark or claim by implication an entitlement to use the Mark in relation to the Products which are covered by the operator's Licence and which comply with the National Standards For Organic and Biodynamic Produce.

6 RECONSIDERATION OF CERTIFIER DECISIONS

6.1 An Applicant or Licensee (**Claimant**) may apply for review of a decision by the Certifier under subrule 5.1 or any other issue relating to the Certification Trade Mark (**the Decision**) by written request (**the Request**) to OISCC. The Request must:

- (a) be made within 21 days of receipt of the Decision; and
- (b) include all the grounds on which review of the Decision is sought.

6.2 Within 21 days of receipt of the Request and unless the Certifier has amended the Decision to the satisfaction of the Claimant, OISCC must:

- (a) consider the Request, and, in doing so, may refer to or appoint any other person as OISCC sees fit to assist in reviewing the Decision;
- (b) make a determination on whether the Decision is substantially correct or whether the Decision should be changed pursuant to the Request (**the Determination**); and
- (c) record the Determination in writing including the reasons for the Determination.

6.3 Within 7 days of making the Determination, OISCC must provide a copy of the Determination and the reasons for the Determination to the Certifier and the Claimant.

6.4 Subject to Rule 7 below and within 21 days of receipt of the Determination, the Certifier must take the necessary steps to implement the Determination and must inform the Claimant of the steps taken to implement the Determination.

7 MEDIATION AND ARBITRATION

7.1 If the Determination confirms the Decision and the Claimant is not satisfied with the Determination, the Claimant may apply for independent mediation (**Mediation**) of the matter by written notice to OISCC (the **Mediation Request**) within 14 days of receipt of the Determination by the Claimant.

7.2 If the Claimant has made a Mediation Request the Claimant and OISCC will use their best endeavours to resolve the dispute by Mediation. Any agreement reached by Mediation will be final and binding on the parties.

8 AMENDMENT OF RULES

8.1 OISCC may apply for variation of these Rules (**Variation**) provided that it provides all Certifiers with written notice of any proposed amendments and also allows Certifiers reasonable time to comment on proposed amendments.

8.2 Any amendment of the Rules will become effective when the Regulator approves the Variation.

9 NOTICES

9.1 A party giving notice or notifying under these Rules must do so in legible writing and in English:

- (a) directed to the recipient's address for correspondence (being a street address, facsimile number or email address) as nominated in accordance with the Certifier's Terms or varied by any notice; and
- (b) hand delivered or sent by prepaid post, facsimile or email to that address.

9.2 A notice given in accordance with clause 9.1 is taken to be received:

- (a) if hand delivered, on delivery of the notice to the addressee or on delivery to an offer, employee or agent of the addressee;
- (b) if sent by prepaid post, three business days from and including the date of posting;
- (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the notice; or
- (d) if sent by email, when the sender receives an email receipt notice acknowledging delivery of the email to the addressee,

subject to any receipt on a day which is not a Business Day or which occurs after 4:00 pm (addressee's time) being deemed to be received at 9:00 am on the next Business Day.

9.3 If required by OISCC, a Certifier must within five Business Days forward notices provided by OISCC to any Licensee or Applicant or to any group of the Licensees and/or Applicants identified by OISCC.

SCHEDULE 1

DICTIONARY

In these Rules, unless contrary intention appears:

Act means the *Trade Marks Act 1995 (Cth)*.

Applicant means a Person that applies to a Certifier requesting a Licence to use the Mark.

Business Day means a day other than a Saturday or Sunday or an Australian public holiday.

Certificate means the documentation issued to the Licensee under the Certifier's Certification Scheme as evidence that the Licensee has been granted both Certification and the Licence to use the Mark.

Certification Scheme means a service or Certification administered by a Certifier and accepted by OISCC for the purpose of licensing the Mark.

Certifier means a Person authorised by OISCC to administer a Certification Scheme under which Applicants may be granted Licences to use the Mark.

Certifier's Terms has the meaning given in subrule 5.3.

Claimant has the meaning given in Rule 6.

Licence means a licence allowing a Person to use the Mark in accordance with the Licence Terms.

Licence Terms means all terms and conditions under which a Person is permitted to use the Mark and includes these Rules (as amended from time to time), the Certifier's Terms and any special condition, qualification or restriction set out in the Certificate.

Licensee means a Person that is granted a Licence to use the Mark in accordance with the Licence Terms.

Mark means the trade mark set out in Schedule 2.

Person includes a body of persons whether incorporated or not.

Product means goods or services or a combination of goods and services provided or dealt with by a Person in the course of trade.

Regulator means the Australian Competition and Consumer Commission (ACCC) and any successor thereto having the exercise of powers to approve rules governing the use of certification trade marks registered under the Act.

Rules means these rules governing the use of the Mark.

Sign means a sign as defined in the *Trade Marks Act 1995 (Cth)*.

Site means the location from which a **Product** is provided.

Standard means The National Standard For Organic and Biodynamic Produce.

SCHEDULE 2

THE TRADE MARK

