

# **REGULATIONS**

**For**

## **CERTIFICATION MARK**

**United Kingdom: UK00003294236**

**Australia: 1964305**

**New Zealand: NZ1105618**

**in Class 31**

Original Lodged: 6/5/2018

Original Accepted: 3/8/2018

Revision v1 Lodged: 12/10/2018

Revision v1 Accepted: 12/12/2018

Revision v2 Lodged: 01/01/2019

Revision v3 Lodged: 24/08/2019

**Regulations under**  
**United Kingdom: The Trade Marks Act, 1994 (as amended),**  
**Australia: The Trade Marks Act 1995,**  
**New Zealand: The Trade Marks Act 2002**  
**for**  
**Certification Trade Mark Nos.**  
**United Kingdom: UK00003294236**  
**Australia: 1964305**  
**New Zealand: NZ1105618**  
**of**  
**the Native Angus® Preservation Society.**

**DEFINITIONS**

For the purpose of these Regulations the words

**"Mark of Certification"** shall mean the Mark allowed to be registered by

- United Kingdom under the provisions of The Trade Mark Act 1994 (as amended) as Certification Trade Mark No. **UK00003294236**,
- Australia under the provisions of The Trade Marks Act 1995 as Certification Trade Mark No. **1964305**
- New Zealand under the provisions of The Trade Mark Act 2002 as Certification Trade Mark No. **NZ1105618**

being the words: "Native Angus®".

**"The Society"** shall mean the Native Angus® Preservation Society.

**"Person"** shall mean any individual, firm or body corporate or unincorporate.

“**Certificate**” shall mean any certificate, for which the Regulations provide, issued or renewed by the Society.

“**Certificated Users**” shall mean all persons who are authorised by the Society to use the Mark of Certification.

“**Goods**” shall mean any goods falling under the heading: -

<b>Class of the Trade Mark Classification</b>	<b>Goods</b>
31	beef cattle

satisfying the requirements of these Regulations Section 3 paragraph a.

“**Native Angus®**” shall mean beef cattle that are either original Angus cattle or the direct descendants of original Angus cattle.

“**Original Angus cattle**” shall mean beef cattle that –

- have been registered as Angus cattle in herdbooks published by the Aberdeen-Angus Cattle Society and given the designation “native bred”,

OR

- are ancestors of cattle that have been registered as Angus cattle in herdbooks published by the Aberdeen-Angus Cattle Society and given the designation “native bred”,

OR

- were born in the UK, and
- have no ancestors in their pedigree that were not born in the UK, and
- have been registered as Angus cattle in herdbooks published by the Aberdeen-Angus Cattle Society.

“**Direct descendants of original Angus cattle**” shall mean beef cattle that –

- have both parents who are original Angus cattle or direct descendants of original Angus cattle, and
- have no ancestors in their pedigree that are not original Angus cattle or direct descendants of original Angus cattle, and
- have been registered as Angus cattle in herdbooks published by a Recognized Angus Society and,

- have been parent verified by the registering society based on DNA testing.

**“Aberdeen-Angus Cattle Society”** shall mean the body with that name established in 1879 in Scotland.

**“Recognised Angus Society”** shall mean Angus breed societies that are members of the World Angus Secretariat and conduct regular publications of a herd book.

**“World Angus Secretariat”** shall mean the body with that name established in 1969 to facilitate the sharing of information between the various Angus Societies/Associations of the world with a Code of Practice which includes, inter alia, protocols for the maintenance of genetic purity and exchange of genetic information.

## **REGULATIONS**

### **MARK OF CERTIFICATION ABSOLUTE PROPERTY OF SOCIETY**

1. The Mark of Certification is the absolute property of the Society and shall not be used by any person except under and by virtue of a certificate issued in accordance with these Regulations.

### **POWER OF ISSUING CERTIFICATES, ETC**

2. The power of issuing, renewing and cancelling a Certificate is vested in the Society. An applicant whose application for use of the Mark of Certification is denied may appeal against such denial under Regulation 9.

## **CONDITIONS TO BE MET BY PERSONS USING THE MARK OF CERTIFICATION**

3. Any person who is a breeder of beef cattle or a trader in beef cattle may be granted permission to use the Mark of Certification.

Each Certificated User must agree to comply with all the conditions governing the use of the Mark of Certification, that is to say: -

- a) That they shall use the Mark of Certification only in relation to live animals which have been certified as by the Society as Native Angus<sup>®</sup>.
- b) That they shall establish and maintain records of births, purchases and sales in accordance with Schedule I hereto, and make to the Society or their appointed agents, the returns required therein.
- c) That they shall pay to the Society the fees referred to in Regulation 4 below.
- d) It is a condition of registration that the mark will always be used in conjunction with a clear indication that it is a certification mark.
- e) That in the event of any change of their address, they shall at once inform the Society thereof.

Use of the certification trademark will be permitted to any person who complies with the these regulations, and trades in the specified goods and services.

## **FEEES**

- 4.
- a) The Society shall be entitled to charge fees at a level to be determined from time to time by the Society, which shall not exceed the level required to cover the administrative expenses of the Society in relation to the Mark of Certification and to enable the scheme to be administered and operated satisfactorily in the interests of the Certificated Users.
  - b) Application for use of the Mark of Certification may be made by any Person who is the owner of beef cattle which he claims are Native Angus<sup>®</sup>.
  - c) There is no requirement that a Person applying for use of the Mark of Certification be a member of the Society.

- d) The level of fees charged shall vary according to the specific registration society of the animal for which certification is requested. The amounts currently applicable are set out in Schedule II. The fees are to be determined from time to time by the Society and lodged with the Registrar of Trade Marks with these Regulations.
- e) On each occasion that fees are altered, approval of the change shall be obtained from the Registrar of Trade Marks and notified on the Society's website three months before the new fees become effective.

## **RECORDS**

- 5. A record shall be kept at the registered address of the Society, Kingston Farm, Kingston PI, FORFAR, ANGUS, DD8 2RU, SCOTLAND and shall contain the names, addresses and trade descriptions of Certificated Users, the date of issue and particulars of Certificates. The Society shall record therein without delay any new or altered address of which they are notified by a Certificated User. The record shall be open for inspection by the public.

## **EXPIRY AND LOSS OF CERTIFICATE**

- 6.
  - a) A Certificate for a Certificated User shall continue in force until the expiration of one year following the date of issue thereof, unless cancelled by the Society under the provisions of Regulation 7 or Regulation 8.
  - b) A Certificate for an animal shall continue in force in perpetuity, unless cancelled by the Society under the provisions of Regulation 7 or Regulation 8.
  - c) On proof to the satisfaction of the Society of the loss or destruction of any Certificate that is in force, the Society may issue a duplicate thereof.

## **CONDITIONS AS TO CANCELLATION OF CERTIFICATES**

- 7. The Society may cancel a Certificate if
  - a) the Certificated User is no longer the owner of Native Angus<sup>®</sup> cattle, or

- b) the Certified User has committed a breach of these Regulations or has refused to comply herewith.

In the event of the Society cancelling a Certificate under Regulation 7 or Regulation 8 and of the determination of an appeal (if any) under Regulation 9 against the applicant or in the event of a Certificated User dying, all media in or upon which the Mark of Certification appears shall thereupon be surrendered to or held at the disposal of the Society as the Society may direct pending, in the last mentioned case, the issue of a new Certificate on an application by the legal representatives, or successors in business of the deceased Certificated User, and until such new Certificate shall be deemed to have been cancelled. If a body corporate which is a Certificated User goes into liquidation or is dissolved otherwise than for the purpose of re-construction the Certificate shall be deemed to be cancelled.

- c) A Certificated User whose Certificate has been cancelled may appeal against such cancellation under Regulation 9.

## **PENALTY FOR MISUSE OF MARK OF CERTIFICATION**

- 8. If a Certificated User commits any breach of these Regulations or is convicted of any offence tending to the discredit of his reputation and good faith as a breeder or trader, his Certificate will be liable to be cancelled.

## **DISPUTE RESOLUTION**

- 9. In the event of a dispute arising due to the refusal of the Society to grant a Certificate to use the Mark of Certification or to renew a Certificate or due to the decision of the Society to cancel a Certificate whereby in substance the Society would refuse to certify the goods of a party by means of the Mark of Certification, or due to any party aggrieved by any action of the Society which would result in his goods not being certified by means of the said Mark of Certification, a single independent arbitrator shall be appointed by agreement between the Society and the aggrieved party, or failing agreement within fourteen days after either party has given to the other a written request to concur in the appointment of an arbitrator, by an arbitrator to be appointed by the Scottish Arbitration Centre on the written application of either party.

The seat of arbitration shall be Scotland. The language to be used in the arbitral proceedings shall be English. Both parties to the dispute will agree to present the case for settlement to the appointed arbitrator, and to be bound by his decision.

## **POWER TO AMEND OR MAKE NEW REGULATIONS**

10. The Society may from time to time amend these Regulations or create new ones wholly or partly in lieu thereof. An amendment of the Regulations governing the use of a registered certification mark is not effective unless and until the amended Regulations are accepted by the Registrar of Trade Marks. No such amendment or new Regulations shall affect the use of the Mark of Certification unless and until he has received three months' notice in writing of such amendment or new Regulations.

## **NOTICE**

11. Any notice given to a Certificated User by the Society in pursuance of any of these Regulations shall be deemed to have been duly given if forwarded through the post by prepaid letter addressed to him at his address on the Society's record.



# **SCHEDULE I**

## **SYSTEM OF CONTROL**

### **CERTIFICATION**

1. Application for Certification must be made by the owner of the animal to be certified on the form shown in Appendix I.
2. The application must be accompanied by a registration certificate for the animal to be certified showing animal and owner details.
3. Where both the dam and sire have previously been certified as Native Angus<sup>®</sup> by the Society, certification of the animal will be granted automatically.
4. Where either the dam or sire (or both) have not previously been certified as Native Angus<sup>®</sup> by the Society, the application must be accompanied by registration certificates for all ancestors and/or references to publication in official herdbooks as sufficiently necessary so that the Society can establish that all the animal's ancestors are Native Angus<sup>®</sup>.
5. All registration certificates must be from a Recognized Angus Society.
6. All registration certificates must have been issued during the lifetime of the animals to which they apply.
7. The Society will base its determination solely on the official herdbooks published by Recognized Angus Societies and the registration certificates issued by those societies.
8. The Society will maintain a list of all animals previously certified by the Society as Native Angus<sup>®</sup>. This list will be available on the Society's website.
9. Where certification is granted, the Society will issue a certificate (in electronic form) designating the applicant animal as a Native Angus<sup>®</sup> and a certificate (in electronic form) designating the owner as a Certificated User.

## **REPORTING**

10. Certificated Users must submit an annual report showing all Native Angus<sup>®</sup> which they currently own and details of any deaths or sales of their Native Angus<sup>®</sup>.

## **SCHEDULE II**

### **THE NATIVE ANGUS® PRESERVATION SOCIETY**

**Certification Trade Mark Nos.**

**United Kingdom: UK00003294236**

**Australia: 1964305**

**New Zealand: NZ1105618**

### **SCHEDULE OF FEES**

The fees in respect of the MARK OF CERTIFICATION scheme are as follows –

- a) The initial licence fee for the issue of a certificate to a Certificated User authorised by the Society to use the Mark of Certification is £20. This is subject to VAT.
  
- b) The annual Certificated User licence renewal fee is £10. This is subject to VAT.
  
- c) The licence fee for the issue of a certificate for each animal is:
  - a. for animals registered with a society which maintains a designation for Native Angus® - £5.
  - b. for animals registered with other societies - £10.

This is a once-only fee and is subject to VAT.

- d) The above fees are included in annual fees for members of the Society.

# APPENDIX I

Form NAPS/100

## THE NATIVE ANGUS® PRESERVATION SOCIETY

Certification Trade Mark Nos.  
United Kingdom: UK00003294236  
Australia: 1964305  
New Zealand: NZ1105618

Application for Certification Form

**Owner:**

Name:

Address:

Native Angus® Preservation Society  
Membership No. (if applicable)

**Animal for Certification**

Angus Society where registered:

Name of Animal:

Identification No.

Date of Birth:

Sex:

**Sire**

Angus Society where registered:

Name of Sire:

Identification No.

**Dam**

Angus Society where registered:

Name of Dam:

Identification No.

**Declaration**

*The information I have given on this form is correct and complete to the best of my knowledge and belief.*

Signed

Date

**Applications for certification must be accompanied by a valid registration certificate.**

# Issues raised under Section 177 of the Trade Marks Act 1995.

## A. Your IRDA is refused because your trade mark is not capable of distinguishing the specified goods.

### Response:

The certification mark, as used or intended to be used by persons authorized by the certifier, certifies or is intended to certify that the goods provided have the purity in breeding of either original Angus cattle or the direct descendants of original Angus cattle.

I refer to Article 3 of the Memorandum of Association of the Aberdeen-Angus Cattle Society, which states –

*The objects for which the Society is established are:*

- (a) To maintain unimpaired the purity of the breed of cattle known as Aberdeen-Angus, and to promote the breeding of these Cattle.*
- (b) To collect, verify, preserve, and publish the pedigrees of the said Cattle, and other useful information relating to them.*
- (c) To further the above objects by continuing the issue of the publication called “The Aberdeen-Angus Herd Book,” under its present or any other name, and for that purpose to acquire the copyright and absolute property in the said publication, and sundry documents relating thereto or connected therewith.*
- (d) To receive subscriptions and other payments in return for or consideration of the issue of copies of the publications of the Society, and the entry in any such publication of the names and pedigrees of Aberdeen-Angus Cattle.*
- (e) To make Bye-laws for conducting the business, and regulating the proceedings of the Society, and to enforce the same by fines or otherwise.*

**That the Society failed to achieve its objectives in verifying pedigrees and maintaining unimpaired the purity of the breed is not disputed by Angus breeders or the various Angus societies worldwide.** The attitude they adopt is perhaps best summed up in correspondence with Mr Bob Anderson, a past secretary of the Aberdeen-Angus Cattle Society, who wrote –

“Breeders have to continually adapt to meet their own particular market and the more choice they have available, the better. There was absolutely no inference that cattle with imported bloodlines were inferior. Without imported genetics the breed in the UK would not be in the dominant position that it is in today.”

September 2018

In recognition of the fact that the vast majority (>99%) of cattle registered by the Aberdeen-Angus Cattle Society no longer were of “unimpaired purity”, the Society introduced a designation to

recognize those cattle that could be **proven** to be of unimpaired purity. The designation of “Native Bred” was added to the pedigrees of those cattle and the term “Native Angus” was coined to describe them.

**Thus, the term “Native Angus” is not merely a feature of Angus cattle and indeed functions as a source-identifier of Angus cattle.**

- These are the true, original Angus cattle – the blueprint of the breed.
- They are genetically and phenotypically different to modern Angus cattle.
- Native Angus are arguably the only cattle entitled to be registered by Angus societies worldwide, by virtue of the obligation of those societies to verify pedigrees and maintain the purity of the breed. However, practical considerations dictate that this is an argument now best avoided.
- Use of the mark “Native Angus” does not merely convey information concerning a feature, quality, or characteristic of Angus cattle, it states unequivocally that the cattle are the true Angus cattle, not some variant. In fact, the reverse is true – modern Angus are a variant of Native Angus.

The Native Angus cattle must be preserved. They are the carriers of the original Angus genetics, which are likely to be urgently needed as consumer demand for sustainable grass-fed beef production increases. Despite efforts to date, they are but a short step from extinction (refer to Further Background below).

The Certification Trademark sought by the Native Angus Preservation Society seeks to protect and expand the Native Angus population by identifying them as the bearers of the original Angus genetics and by ensuring the integrity of the designation “Native Angus”. While the pedigree designation of “Native Bred” conferred by the Aberdeen-Angus Cattle Society is helpful, it is of limited use (being applicable only to Native Angus registered with that society) and does not have the force of trademark protection.

The definition adopted by the Native Angus Preservation Society implements the test for “Native Bred” used by the Aberdeen Angus Cattle Society and extends it so that it can include Native Angus born and registered in other countries. The definition used is as follows –

**“Native Angus<sup>®</sup>”** shall mean beef cattle that are either original Angus cattle or the direct descendants of original Angus cattle.

**“Original Angus cattle”** shall mean beef cattle that –

- have been registered as Angus cattle in herdbooks published by the Aberdeen-Angus Cattle Society and given the designation “native bred”,

OR

- are ancestors of cattle that have been registered as Angus cattle in herdbooks published by the Aberdeen-Angus Cattle Society and given the designation “native bred”,

OR

- were born in the UK, and
- have no ancestors in their pedigree that were not born in the UK, and

- have been registered as Angus cattle in herdbooks published by the Aberdeen-Angus Cattle Society.

**“Direct descendants of original Angus cattle”** shall mean beef cattle that –

- have both parents who are original Angus cattle or direct descendants of original Angus cattle, and
- have no ancestors in their pedigree that are not original Angus cattle or direct descendants of original Angus cattle, and
- have been registered as Angus cattle in herdbooks published by a Recognized Angus Society and,
- have been parent verified by the registering society based on DNA testing.

**This is not a definition of a feature, quality, or characteristic of Angus cattle. It is a definition of a unique class of cattle which are the original Angus cattle and are now (distantly) related to modern Angus cattle.**

## **B. Other traders should be able to use NATIVE ANGUS in connection with goods or services similar to yours.**

**Response:**

***As stated in Section 3 of the Regulations, “Use of the certification trademark will be permitted to any person who complies with these regulations, and trades in the specified goods and services.”***

There can be no in-between measures with Native Angus. If “almost” Native Angus cattle are allowed to be represented as Native Angus, then Native Angus will in time be understood by the wider community to mean “almost” Native Angus. And “almost” Native Angus will in time be almost anything you want. And genuine Native Angus – the blueprint of the breed – will once again be headed towards extinction.

A Certification Trademark is essential for the preservation of these animals and the genetics that they carry. The Certification Trademark which we propose is intended to be available for the widest possible use, subject only to conformance with purity in breeding of the animals to which the mark is applied.



## Further Background

The Aberdeen Angus Cattle Society in Scotland has produced a herd book every year since 1862, recording the parentage of every Angus animal born that year, thus producing a record of Angus since the beginning of the breed.

These were the unique animals that populated the world, from the frozen North of Canada to the jungles of South America in the late 19th century. The phenotype of the Angus was radically altered in the 1970s with the introduction of North American Angus, which had been infused with other breeds of cattle. These original Angus are now recognised by the Aberdeen Angus Cattle Society and the Rare Breeds Survival Trust (RBST) in the UK as the "Native Angus", and the difference from the modern Angus is marked by an annotation of "Native Bred" being on the animal's pedigree and by inclusion in the specially allocated section in the more modern Angus herd books.

In 1967 there were 98 different Native cow families, but by 1995 there were only 9 families with no imported bloodlines left in existence. The RBST recognised this by placing the Native Angus on their Critical Watchlist (fewer than 150 registered breeding females) - one category before extinction. They are now (2017-2018 RBST Watchlist) on the Endangered Watchlist (150 to 250 registered breeding females).

In the early 1990s Mr Bob Anderson, long time Secretary of the Aberdeen Angus Cattle Society in Scotland and the leading authority on Angus bloodlines, recognised that the Native Angus were on the brink of extinction and so compiled a list of the few remaining cows. Bob enlisted the help of Geordie and Julia Soutar to locate genuine Native Angus animals and to maintain and increase their numbers.

It took over 10 years of diligent searching to acquire all 9 remaining cow families and begin the process of halting the decline. The Rare Breeds Survival Trust worked with Geordie and Julia in their mission to secure the future of Native Angus cattle and released old semen from their archives for use with Native Angus cattle.

In 2012 Geordie and Julia were invited to London to the RBST's 40th AGM to meet Prince Charles, where it was publicly acknowledged that Geordie and Julia had succeeded in breeding Native Angus cattle to such an extent that they could be removed from the RBST's Critical Watchlist (although they still remain on the RBST's Endangered Watchlist).

The historical and genetic significance of Native Angus cattle is well documented and understood in the UK. However, worldwide demand for healthy, grass fed beef has led to these Native Angus genetics once again being exported throughout the world, but this time from a base population which is still endangered.

To put their situation in context, with fewer than 250 registered breeding females Native Angus cattle are at higher risk than Mountain Gorilla, Giant Panda and Black Rhino ...

Recognition of this precarious position has led to the formation of the Native Angus Preservation Society.

Trademark certification is an essential means of –

- preventing a repeat of the threat of extinction which previously occurred as a result of the infusion of other breeds,

- preserving a unique and still rare symbol of British national heritage, and
- extending a guarantee of authenticity to Native Angus cattle bred and registered in countries other than the United Kingdom.

**If “almost” Native Angus cattle are allowed to be represented as Native Angus, then Native Angus will in time be understood by the wider community to mean “almost” Native Angus. And “almost” Native Angus will in time be almost anything you want. And genuine Native Angus – the blueprint of the breed – will once again be headed towards extinction.**