



Final Assessment of Certification Trade Mark Applications 2068812 and 2120782 lodged by MyMicrobiome Aktiengesellschaft

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 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) of the Act.

Signed..... (Deputy Chair)

Date.....
12 November 2021

Regulations of Use of the Certification Mark

1. Applicant / Owner of the Mark

MyMicrobiome Aktiengesellschaft
Alte Churerstrasse 45
FL-9496 Balzers
Liechtenstein
(hereinafter referred to as “MyMicrobiome”)



2. Declaration

MyMicrobiome hereby declares that it does not carry on a business involving the supply of goods of the kind certified.

3. Representation of the Certification Mark (hereinafter referred to as “the Certification Mark”)



4. The Goods Covered by the Certification Mark

Class 3:

Soaps, shower soaps, in particular deodorizing soaps; hand cleanser and hand washing agents; cosmetics; perfumery, in particular fragrances; cosmetics, in particular creams, exfoliants, balms, serum, oils, in particular eye creams, eye gels, eye fluids, eye serum, eye roll-on, fascial cream, fascial masks, fascial emulsions, fascial fluids, fascial oil, fascial care preparations, fascial washes, body creams, body oil, body lotion, lotions for the body, fascial serum, body serum, hand creams, hand lotion, foot cream, foot care products, lip care preparations, lip balm, balms for lips, deodorants, antiperspirants, washing preparations, in particular shower gel, washing lotion, shower oil, cleansing milk, cleansing oil, cleansing foam, cleansing tissues, washing powder, washing lotion, fascial wipes, make-up removing preparations, cleansing fluid, fascial cleansing gel, sunscreen creams and lotions and sun-tanning creams and lotions, in particular sunscreen, sun oil, sun creams, sun lotions; hair care and hair washing preparations, in particular hair shampoos, hair masks, conditioners, scalp care preparations, shampoos, expedite hair masks, hair oil, dry shampoos; mouth care preparations, not for medical purposes, in particular oral hygiene preparations, mouth sprays, dentifrices in the form of chewing gum, mouthwash, mouth rinse; dentifrices, in particular tooth whitener, toothpaste, tooth cream.

Class 5:

Sanitary preparations for medical purposes, in particular anti-microbial mouth washing preparations, skin disinfectants and antiseptics, skin and hair care preparations for medical purposes; medicated and sanitizing soaps and detergents; disinfectants; dietetic foods and dietetic substances adapted for medical and veterinary purposes; infant formula; dietary supplements and dietetic preparations for humans and animals; dental preparations and articles and medicated dentifrices; deodorizers and air purifying preparations; pharmaceuticals and natural remedies; medical dressings and plasters.

Class 29:

Meat and meat products, in particular meat spreads and sausages and meats; fish, seafood and mollusks, not living; poultry and game, not living; meat extracts; tofu; processed, preserved, frozen, dried, cooked and fermented fruit and vegetables, in particular Sauerkraut, tempeh, kimchi and miso; jellies, jams, compotes, fruit and vegetable spreads; eggs; milk and milk products, in particular cheese, yoghurt, kephir [milk beverage], quark and their substitutes, in

particular soya milk, rice milk, almond milk and coconut milk; milk ferments for culinary purposes; edible oils and fats.

5. Ownership of the Certification Mark

The Certification Mark is the property of MyMicrobiome and cannot be used by any person except under and by virtue of a Certificate issued under these Regulations.

6. Administration of the Certification Mark

6.1 The power of administrating, issuing, renewing, withdrawing and cancelling a Certificate is vested in MyMicrobiome.

6.2 MyMicrobiome's contact details are:

Attention: Dr. Kristin Neumann
Address: Alte Churerstrasse 45
Telephone: +423 384 18 85
Email: info@microbiome-friendly.com
Website: www.mymicrobiome.info

6.3 Application for a Certificate

Any entity seeking to use the Certification Mark (hereinafter referred to as an "Applicant") shall make a request to MyMicrobiome in writing in the manner described at paragraph 10.

6.4 Amendment to the Regulations

MyMicrobiome may amend and review these Regulations from time to time to determine its efficiency and effectiveness in guiding the correct usage of the Certification and the efficiency and effectiveness with which the Regulations are administered.

7 The Characteristics of the Goods to be Certified by the Certification Mark

The Certification Mark certifies that the goods upon which the Certification Mark is used are microbiome friendly, in particular do not have a negative impact on the microbiome of the relevant body area, are not endogenously contaminated, do not have a negative impact on the vitality and biodiversity of the microbiome.

8 The Conditions Governing the Use of the Certification Mark, including Sanctions

8.1 The Certification Mark may only be used for goods:

- (a) which have been certified as microbiome friendly due to the laboratory tests described at paragraph 10; and
- (b) for which MyMicrobiome has granted the right to use the Certification Mark in writing.

8.2 Any entity seeking to use the Certification Mark acknowledges and agrees that:

- (a) they are solely responsible (at their own expense) to ensure that the goods on which the Certification Mark is used complies with the above conditions and these Regulations; and
- (b) they will not use the Certification Mark for any goods which do not comply with the above conditions and these Regulations.

8.3 Violations against these Regulations and unauthorised use of the Certification Mark will be sanctioned with the withdrawal of the right to use the Certification Mark and damage claims.

9 The Persons Authorised to Use the Certification Mark

The Certification Mark may only be used by such entities (hereinafter referred to as an "Authorised User") for the goods manufactured by them (including contract manufacturing):

- (a) which have been certified by MyMicrobiome's laboratory tests in accordance with paragraph 10; and
- (b) for which MyMicrobiome has granted the right to use the Certification Mark in writing.

10 Method of Testing, Reviewing of the Requirements for the Use of the Certification Mark and the Supervision of the Use of the Certification Mark

10.1 The laboratory tests with respect to the microbiome friendliness will be conducted by authorised laboratories in the name of, and for, MyMicrobiome under the supervision and control of MyMicrobiome and the respective Certificate will be issued by MyMicrobiome as follows:

- (a) MyMicrobiome has established laboratory test standards (hereinafter referred to as “MyMicrobiome Standards”) in order to evaluate various goods, including but not limited to consumer end products as well as additives and ingredients thereto, that come into contact with the human body either outside or inside, in particular with respect to the human skin, scalp, mucous membrane, vaginal tract and/or digestive tract, in terms of their influence on the key microorganisms of the microbiome located at or in that specific body area, body part and/or inner organ (e.g. digestive tract).

An intact microbiome has fundamental influence on the human health. Goods which are to be friendly to the respective body area, body part and/or inner organ (e.g. digestive tract) must be microbiome-friendly in order not to unbalance the respective body area / body part / inner organ of the user of said goods.

The laboratory tests according to the MyMicrobiome Standards evaluate the influence of goods on the microbial key players of a specific human body area / body part / inner organ, respectively. Although the human microbiome is individual from person to person, each human body area / human inner organ, however, harbors a characteristic composition of bacteria, viruses and fungi. The laboratory tests examine the goods’ influence on the key microorganisms typical for each specific human body area / body part / inner organ (e.g. digestive tract) applying specific standardized laboratory test procedures, i.e. the MyMicrobiome Standards.

- (b) The laboratory tests will be performed only by authorised laboratories, that specialize in microbiological tests and that are specially selected and contracted by MyMicrobiome to perform the laboratory tests in the name of and for MyMicrobiome in accordance with the MyMicrobiome Standards. The laboratory tests will be performed by authorised laboratories under direct supervision of a qualified microbiologist, a qualified biologist and/or a medical doctor specializing in microbiology in strict accordance with the MyMicrobiome Standards. Compliance with the MyMicrobiome Standards in performing the laboratory tests by the authorised laboratories will be monitored and reviewed by the test director at MyMicrobiome being a qualified microbiologist, a qualified biologist and/or a medical doctor specializing in microbiology.
- (c) The test results obtained by the authorised laboratory in the performance of the laboratory tests in accordance with the MyMicrobiome Standards will be evaluated by MyMicrobiome under the supervision of MyMicrobiome’s test director (“Test Director”), being a qualified microbiologist, a qualified biologist and/or a medical doctor specializing in microbiology. Based on the evaluated test results, the grading will be made by MyMicrobiome under the supervision of MyMicrobiome’s Test Director in accordance with the MyMicrobiome Standards. The grading will be made on several aspects of the evaluated test results separately with grades from 1 to 3, with grade 1 being the best possible result. Based on the gradings awarded on the individual aspects, an overall grade will be made by MyMicrobiome under supervision of MyMicrobiome’s Test Director. The tested goods have passed the laboratory tests with an overall grade up to grade 2,0 (hereinafter referred to as “Successfully Tested”) and will be granted with a certificate (hereinafter referred to as “Certificate”) by MyMicrobiome confirming that the tested good is microbiome-friendly (hereinafter referred to as “Certified”).
- (d) Use of the Certification Mark is only permitted for respectively Successfully Tested and Certified goods as set forth above and only under the terms and conditions of this Regulations and under the terms and conditions of the Testing and Seal of Quality License Agreement between the Applicant and the manufacturer.
- (e) MyMicrobiome may amend and review the MyMicrobiome Standards from time to time to determine its up-to-datedness and compliance with the newest scientific state of the art with respect to the human microbiome.

- 10.2 Use of the Certification Mark is only permitted for respectively Successfully Tested and Certified goods subject to the following: Any Applicant wishing to obtain a certificate to use the Certification Mark should contact MyMicrobiome in writing, via e-mail or phone to MyMicrobiome's contact details set forth above in paragraph 6.2:
- (a) informing MyMicrobiome of its intention to obtain a certificate to use the Certification Mark;
 - (b) seeking laboratory testing of its goods for Certification according to the MyMicrobiome Standards, the cost of which will be borne by the Applicant;
 - (c) seeking grant of use of the Certification Mark for its Successfully Tested goods on payment of a Certification Mark licensing fee; and
 - (d) entering into a Testing and Seal of Quality License Agreement with MyMicrobiome further specifying the procedures, requirements and details for the laboratory tests and the use of the Certification Mark.
- 10.3 The Certification Mark may only be used for goods having the exact formula / composition and field of use as the respective Successfully Tested and Certified good. In case of any changes to formula / composition or field of use of these goods, the Authorised User is obliged to refrain from using the Certification Mark for such changed goods.
- 10.4 MyMicrobiome may randomly test if the goods marked with the Certification Mark have been Successfully Tested with respect to their microbiome friendliness and have been Certified as being microbiome friendly.
- 10.5 MyMicrobiome will pursue information about non-compliance with the requirements and unauthorised use of the Certification Mark. All Authorised Users of the Certification Mark agree to cooperate with MyMicrobiome and to inform MyMicrobiome of any infringements, imitations or other illegal use or misuse of the Certification Mark which comes to the Authorised Users' attention.
- 10.6 MyMicrobiome keeps a list of all Successfully Tested goods and monitors these goods continuously with respect to the compliance with the requirements and authorised use of the Certification Mark. In particular, MyMicrobiome continuously surveys goods which have been Successfully Tested and Certified and bearing the Certification Mark for any changes to the formula / composition and/or the field of use (e.g. for vaginal tract instead for face). This will be made by checking the list of ingredients printed on the outer packaging and/or the field of use indicated on the outer packaging of goods bearing the Certification Mark and/or advertised using the Certification Mark. Such listing, monitoring and surveying will be made by MyMicrobiome under the responsibility and supervision of MyMicrobiome's Test Director.
- 10.7 Further, MyMicrobiome may randomly test goods available on the market which are bearing the Certification Mark with respect to their conformity with the formula / composition of the respective Successfully Tested and Certified good. Such laboratory tests will be performed by authorised laboratories selected and contracted by MyMicrobiome in accordance with the MyMicrobiome Standards. Evaluation of the test results and compliance of the tested goods with the formula / composition of the Successfully Tested and Certified goods will be made by MyMicrobiome under the supervision of MyMicrobiome's Test Director.
- 10.8 In addition, MyMicrobiome will pursue information received by third parties about non-compliance with the requirements and unauthorised use of the Certification.
- 10.9 The use of the Certification Mark by an Authorised User is subject to the Authorised User's self-responsibility and mutual market surveillance.

11 Termination of the Use of the Certification Mark

- 11.1 The right to use the Certification Mark for the Successfully Tested and Certified goods will be valid for an unlimited period of time. However, the Authorised Users have agreed to that the

Certification Mark may only be used with at least incorporating or otherwise referencing to the respective test date (month / year).

- 11.2 MyMicrobiome may terminate the right to use the Certification Mark immediately on written notice to the Authorised User where an Authorised User breaches these Regulations or the Testing and Seal of Quality Licensing Agreement between MyMicrobiome and the Authorised User, including where:
- (a) the Certification Mark is not used in accordance with these Regulations or the terms of the Testing and Seal of Quality Licensing Agreement between MyMicrobiome and the Authorised User; or
 - (b) the Authorized User fails to pay the Certification Mark licensing fee set out in the Testing and seal of Quality Licensing Agreement between MyMicrobiome and the Authorised User, and the Authorised User fails to remedy the breach within a reasonable period of receipt of notice from MyMicrobiome requiring the breach to be remedied.
- 11.3 Either Party may terminate the right to use the Certification Mark by giving at least three months prior notice to the other Party at the end of each 12-months licensing period in writing.
- 11.4 Use of the Certification Mark must immediately cease upon cancellation or termination of the right to use the Certification Mark.

12 Disputes

- 12.1 In case MyMicrobiome determines an unauthorised use of the Certification Mark, the possible measures and sanctions by MyMicrobiome are inter alia: (i) inquiry on the basis of which circumstances the user considers himself to be entitled to lawfully use the Certification Mark, (ii) request the user to provide information of the scope of the unauthorised use of the Certification Mark, (iii) request the user to cease and desist from any unauthorised use of the Certification Mark, and (iv) request damages relating to any unauthorised use of the Certification Mark.
- 12.2 All Applicants and Authorised Users agree to settle all disputes arising out of or in connection with the laboratory testing, the laboratory test results obtained and/or the use of the Certification Mark (hereinafter referred to as "Relation") exclusively before the ordinary courts. All Applicants and Authorised also agree that their Relation shall be governed and construed in accordance with the laws of Switzerland without regard to the application of the principles of conflict of law. All Applicants and Authorised Users agree that exclusive place of jurisdiction for all disputes arising out of or in connection with their Relation shall be Zurich, Switzerland.