

PATENT, TRADE MARKS AND DESIGNS OFFICES

M I N U T E

In Reply  
Please Quote:

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**SUBJECT:** APPLICATION NO. 388988 (CLASS 29) FOR THE REGISTRATION OF A  
CERTIFICATION TRADE MARK BY THE CANOLA COUNCIL OF CANADA

**TO:** SENIOR ASSISTANT REGISTRAR

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1. I submit hereunder my report on Application No. 388988 in Class 29 for the registration of a Trade Mark in Part C of the Register by the Canola Council of Canada.
2. The Canola Council of Canada is incorporated under the laws of Canada and changed its name from the Rapseed Association of Canada.
3. The following documents have been filed in support of the application:
  - (a) Letters Patent of the Rapseed Association of Canada.
  - (b) Supplementary Letters Patent of the Rapseed Association of Canada on change of name.
  - (c) Copy of By-Law No. 3/80.
  - (d) Copy of Rules governing certification of Oilseed and/or oilseed products.
  - (e) Copy of licence (Schedule).
4. The Canola Council of Canada does not carry on a trade in any of the specified goods of this application.
5. The competence of the Canola Council of Canada to certify goods and to authorise the certification of goods is inherent from the Letters Patent and Supplementary Letters Patent lodged and from the Rules under which it proposes to regulate the use of the mark.
6. The right conferred by the Rules to the use of the mark for certification purposes, or to have goods certified is non-discriminatory and licenses to use the mark will be granted to all persons where goods comply with the standards set out and who are otherwise willing to comply with the Rules governing the use of the mark.

7. There do not appear to be any hidden terms in the Rules (such as unspecified contingency fees etc) which could be used to prevent the participation of persons in the certification scheme, who are otherwise qualified to participate in accordance with the Rules.

8. Rules 20, 21, 22, 23 and 24 cover the conditions relevant for an appeal to the Registrar.

9. Rule 11(2) provides that, if the Registrar of Trade Marks consents, the Council may, from time-to-time, <sup>alter</sup> after these Rules wholly or in part in lieu thereof.

10. The certification scheme envisaged by this application would appear to satisfy the provisions of Section 86(c) of the Trade Marks Act, that registration would be to the public advantage.

11. The Register of Licensed Users and the Rules of the Certification Scheme of the mark will be located at the applicant's head office, 301-433 Main Street, Winnipeg, Manitoba, Canada and at Phillips Ormonde & Fitzpatrick, 367 Collins Street, Melbourne, Australia.

12. The application is submitted for your acceptance.



I. FORNO  
Acting Senior Examiner

18 June 1985



**Alteration of the Rules Governing the Use of a Certification Trade Mark** 25 21-9-89

Leave has been granted under section 87 of the Trade Marks Act 1955 to Canola Council of Canada, the registered proprietor of Trade Mark No C388988 registered as a certification trade mark in Part C of the register to alter the rules governing the use of the trade mark, in accordance with the application advertised in the Official Journal Vol 3 No 18.

PT 1955 the rules governing the use of a Par  
to add to or alter a Trade Mark

Trade Mark No. C388988

Canola Council of Canada, the registered proprietor of Trade Mark No C388988 registered as a certification trade mark in Part C of the Register in class 29, has applied to alter the schedule of the rules governing the use of the trade mark. The Application is available for inspection at the Trade Marks Office.

87(2) to be effected  
terms of Section 21(2) is desirable.

[Signature] Assist. Registrar  
Examiner, Cd. 2

Advertisement

1. Application advertised in Official Journal of. 1-6-89
2. Bring up on 1-9-89

J. Givan OIC Exam. Services 17-5-8

Report on Amendment

As required by the conditions of Registration, the Registrar is to be informed of any amendments to the Rules. The amendment proposed is to para. 13 and relates to standard (a) in that para. Standard (a) refers to seed which contains "less than 5% erucic acid" & the proposed amendment reads "less than 2% erucic acid."

C.P. Variation (if any) —

[Signature] Assist. Registrar  
Examiner, Cd. 2

Proposed Register Endorsement

Amendment of the Rules governing the use of the mark allowed under the provisions of Section 87 of the Trade Marks Act, 1955. The application to amend the Rules was advertised in the Official Journal of

Direction of Assistant Registrar

1. Endorsement approved.
2. Leave granted

[Signature] Assistant Registrar  
24/1/90

Action

1. OIC Services Unit
  - a) Amend documents
  - b) Advertised in Journal of 05 21-9-89.

OIC Services Unit  
/ /

2. Indexer

- a) Amend Card

APPLICATION TO ALTER THE RULES GOVERNING  
THE USE OF A CERTIFICATION TRADE MARK  
SECTION 87

Notice is given that any person may, within three months from the date of this Journal, give Notice of Opposition to the undermentioned application pursuant to the provision of Regulation (30)(2) of the Regulations Notice, so given, must be served on the Registrar who will direct the practice and procedure to be followed.

Canola Council of Canada, the registered proprietor of Trade Mark C388988, registered as a Certification Trade Mark in Part C of the Register in Class 29 has applied to alter the schedule of the rules governing the use of the Trade Mark. The application is available for inspection at the Trade Marks Office.

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## INTRODUCTION

In the interest of oilseed product consumers it is an object of the Canola Council of Canada to improve the production of oilseed and oilseed products and to promote the distribution, production and sale of products which at least comply with approved standards of

- (1) quality and
- (2) material.

It is an object of the Canola Council of Canada that so that such product may be distinguished they alone may bear the certification mark CANOLA which is the subject of Australian trade mark application 388,988.

## DEFINITIONS

In these rules, unless the contrary intention appears;

- "Person" includes a body of persons, whether corporate or unincorporate;
- "Council" means the Canola Council of Canada;
- "Licensee" includes collectively joint licensees and any qualifications of any joint licensee shall be deemed to be held by all persons who are licensees or applicants for a license jointly with such person.

## LICENCES

1. (i) The Council shall grant a Licence to each Licensee of the Council.
- (ii) Upon the grant of a Licence a certificate thereof in accordance with the form scheduled in these Rules shall be issued to the Licensee. Such Licence Certificate shall at all times remain the property of the Council and is merely loaned by the Council to the Licensee. The Council is the owner of the copyright in the Licence Certificate and the same shall not be copied or reproduced without the written authority of the Council.
- (iii) A Licence shall be automatically cancelled if a Licensee ceases to be a Licensee of the Council.
- (iv) A Licensee whose Licence is or becomes cancelled or suspended shall forthwith surrender his Licence Certificate to the Council for cancellation or retention as the case may be.

## THE COUNCIL

2. (i) The Council shall from time to time arrange for the following:
  - (a) The approval of laboratories whether conducted by Licensees or other persons to which Licensees may send samples as provided

by these Rules. Registration of laboratories by the Australian Oilseed Federation or the National Association of Testing Authorities (Australia) shall constitute sufficient qualification for such approval;

- (b) The appointment and dismissal of a person as an Inspector, as required from time to time;
- (c) The adoption of a Certification Mark as provided for by these Rules and if practicable its registration and maintenance as a certification trade mark;
- (d) The publication of advertisements for the purpose of publicising the nature, objects, functions or benefits of the Certification Scheme, the meaning of the Certification Mark, or the identity of the persons holding current unsuspended Licences under the Certification Scheme, or for the purpose of increasing the market for Standard Quality products or for such other purposes as the Council may consider to be in the interests of Licensees generally. Provided that in the case of any advertisement identifying persons holding current unsuspended Licences the names of all such persons shall be included and the same shall be set out in alphabetical order and without distinction between them.



LICENSEE AND THEIR QUALIFICATIONS

1. The number of licensees shall be unlimited.
2. Any person who has the qualifications set out below shall be eligible to be admitted to licensee membership:

Qualifications

- (a) That the applicant is engaged in oilseed or oilseed product production in Australia or has demonstrated an intention to engage in oilseed or oilseed product production in Australia and is considered to be qualified to hold a licence because of the applicant's knowledge of the oilseed and/or oilseed product production processes, position in the industry or overseas affiliation;
  - (b) that the organisation and supervision of the applicant's property and/or production facilities is considered to be such that the applicant should be able to comply with the obligations of a licence; and
  - (c) that the applicant has fully complied with the requirements of article 6.
3. Application for a Licence shall be made in writing in such a form as the Council may from time to time require or accept and the applicant shall in any event fully and truly state therein all particulars required to be stated therein by or pursuant to the rules of the Certification Scheme.  
"Including (a) full name of the applicant; (b) full post office address of the applicant; (c) proof that the applicant has the qualifications set out above."
4. The partners in a firm may apply for a licence

only as joint partners and if so admitted shall be jointly and severally liable for such obligations as may be incurred by the partners.

5. An applicant for a licence shall not be required by the Council to pay any entrance fee.

6. The applicant shall on request by the Council make available to the Council such records, documents and information and give such explanations as may be reasonably required for the purpose of investigating the applicant's qualifications.

7. If the Council is satisfied that an applicant for a licence has the requisite qualifications therefor the Council shall direct that the applicant be granted a licence.

8. If the applicant is granted a licence a person authorised in that behalf shall cause his licence to be recorded in the Register of Licensees.

9. A licensee shall be deemed to have submitted himself to the provisions of the Certification Scheme and subject to the provisions aforesaid shall be entitled to all the advantages and privileges of a licence.

#### The Register of Licensees

10. The Council shall keep at their head office and also at the address for service

(i) a Copy of those Rules of the Certification Scheme, and

(ii) a Register of Licensees

and shall cause to be entered therein with respect to each member:

(a) the full name and address of the member;

- (b) the date upon which the name of the member was entered in the Register as a member;
- (c) the date upon which any person who ceased to be a member during the previous seven years so ceased to be a member;
- (d) dates and particulars of any changes which are required by these Rules of the Certification Scheme to be entered in the Register.

11. While the Council is registered as a holder of a Certification Trade Mark under the Trade Marks Act the Council shall

- (i) make available for inspection by the Registrar of Trade Marks on request such portion of the Register as relates to Licensees and shall when requested furnish to the Registrar of Trade Marks copies of all or any entries contained in such portion,
- (ii) advise the Registrar of Trade Marks of any alteration, amendment, addition or deletion from the Rules of the Certification Scheme.

#### Obligations of Licensees

12. (1) Each Licensee shall have the following obligations:
- (a) To organise and supervise all operations in each of the Licensee's Establishments in such manner as may be necessary to ensure that the products proposed will comply with the Designated Standard of Quality and Material;

- (b) to ensure that the provisions of Rules 15 (a), (b) and (c) with regard to the use of the Certification Mark are strictly adhered to;
- (c) to retain until their destruction is authorised by the Council all invoices and other documents relative to the purchase by the Licensee of any seed;
- (d) to permit Inspector on production of his credentials to enter immediately upon any premises occupied by the Licensee for the purpose of carrying out any of his functions as provided by these Rules and to give him all information and assistance reasonably required by him for the purpose of his functions;
- (e) to comply promptly with any direction which the Council is authorised by these Rules to give;
- (f) to comply in all other respects with all obligations imposed on Licensees by these Rules.

Designated Standards of Quality and Material

13. The use of the certification mark is intended to indicate that the specific wares listed in the application (hereinafter referred to as "oilseed products") and in association with which it is used are of the

following defined standards:



- (a) the vegetable oil shall be the oil extracted from oilseed which is seed of the species Brassica Napus or Brassica Campestris the oil component of which seed contains less than <sup>2</sup>/~~7~~% erucic acid, and the solid component of which seed contains less than 3 milligrams of glucosinolate per gram of solid (GLC Method-MacGregor);
- (b) the edible oils and fats shall include oils extracted from the oilseed defined in (a);
- (c) the oilseed protein concentrate shall be the protein concentrate extracted from the oilseed defined in (a).

The Certification Mark

- 14.
- (a) The Certification Mark shall be the sole property of the Council;
  - (b) The Certification Mark shall not be used by any person in any manner except as is authorised by these Rules;
  - (c) the Licence granted to a Licensee shall

confer upon the Licensee the right to use the Certification Mark in the manner and subject to all the conditions and restrictions provided by these Rules but only so long as such Licence is suspended and uncancelled.

Application of the Certification Mark to Seed

15. (a) The Certification Mark shall not be used in relation to any goods except oil seed products which are produced by a Licensee who is the holder of a current unsuspended Licence under the Certification Scheme;
- (b) The Certification Mark shall be used in relation to all seeds to which its application is authorised by this Rule;
- (c) Every application of the Certification Mark in relation to oil seed products shall be an accurate, clear and legible representation of the Certification Mark applied by such means as the Council may authorise and it shall be sufficient if an accurate clear legible and permanent representation of the Certification Mark is applied to a label attached to a container containing the oil seed products.

Inspector

16. The Inspector designated pursuant to these Rules

shall have the following powers:

- (a) to visit each establishment of each Licensee unannounced and at irregular intervals and otherwise as may be directed by the Council;
- (b) to select samples at random and to tag or otherwise identify them and to forward them to an approved laboratory for analysis to determine the quality and material of the samples;
- (c) to require production of, inspect and, if thought fit, take copies of or take away for copying any record which the Licensee is required by Rule 21(1)(c) to keep and if the Council so directs to require production of, inspect and, if thought fit, take copies of or take away for copying any invoices or other documents relative to the purchase by the Licensee of any oil seed products and any other documents which the Licensee is required by these Rules to keep or retain;
- (d) to report to the Council in writing if the Inspector is of opinion that the organisation or method of supervision of operations is in any respect inadequate to ensure that the products produced will be of the standard of quality required by these Rules or that the

Licensee has committed any breach of the obligations imposed on the Licensee by these Rules.

Misconduct Inquiries and Appeals

17. In making any inquiry or decision authorised by these Rules of the Certification Scheme the Council may determine the matters at issue or in question upon such information and material and in such manner as it thinks fit. It may rely on the knowledge, belief or expert opinion of any members of the Council. In the event of any licensee applicant, producer of oilseed and/or oilseed product or other person failing or refusing to produce any document required by the Council and which the Council reasonably believes may be relevant or to allow the Council to inspect any premises or to make any other reasonable investigations of such licensee, applicant, producer of oilseed and/or oilseed product or other person the Council may treat such failure or refusal as conclusive evidence against or to the disfavour of such licensee, applicant, producer or oilseed and/or oilseed product or other person on all matters the subject of such inquiry.

18. For the purposes of these Rules "misconduct" means all or any of the following:

- (a) the breach of any provision of the Rules of the Certification Scheme;

Nothing in sub-section (b) of this Rule shall be taken as



limiting by implication the generality of sub-section (a).

- (b) the breach of the undermentioned obligations of a Licensee
  - (i) omission or mis-statement of any material particular required by these Rules or by the Council to be stated in the Licensee's Application for a Licence;
  - (ii) application for Certification Mark to any seed at a time when the Licence of the Licensee is suspended;
  - (iii) refusal or failure to comply with any obligation imposed on the Licensee by these Rules if such failure is considered to be one which could be seriously detrimental to the objects or reputation of the Association or the Certification Scheme or to the validity reputation or standing of the Certification Mark.
- (c) acting in a manner incompatible with any of the objects of the Council;
- (d) conduct injurious to the interest or reputation of the Council
- (e) any act omission matter or thing which in the opinion of the Council renders it desirable

that a licensee should cease to be a licensee of the Council.

19. Subject to the provisions of the Rules of the Certification Scheme any meeting of the Council at which the alleged misconduct of a licensee is dealt with under Rule 17 may impose all or any of the following penalties:

- (a) caution the licensee;
- (b) suspend the licensee from all or any of the privileges for a definite or an indefinite period but in either case not exceeding twelve months;
- (c) impose upon the exercise by the licensee of all or any of the privileges of the licensee such conditions or restrictions as are thought fit for a definite or an indefinite period but in either case not exceeding twelve months;
- (d) cancel the licence.

20. A member upon whom a penalty is imposed for misconduct shall have the right of appeal to the Registrar of Trade Marks as provided by Rule 21.

21. Subject to the provisions of these Rules an appeal shall lie to the Registrar of Trade Marks if the Council is for the time being the proprietor of the Certification Trade Mark under Section 83 of the Trade Marks Act and if appeal is against a refusal to certify goods or to authorise the goods of the said mark in accordance with

the Rules of the Certification Scheme and without prejudice to the generality of the foregoing if the Council is the proprietor of a certification trade mark as aforesaid the following appeals shall lie to the Registrar of Trade Marks:

- (a) appeal against rejection of an application for a Licence;
- (b) appeal against a penalty of suspension of a Licensee imposed pursuant to Rule 19;
- (c) appeal against a penalty of conditions or restrictions upon the exercise of the privileges of a Licensee under the Certification Scheme imposed pursuant to Rule 19;
- (d) appeal against cancellation of a Licensee imposed pursuant to Rule 19;
- (e) appeal authorised by the Rules of the Certification Scheme.

22. No appeal shall be made to the Registrar of Trade Marks unless not later than thirty clear days after the giving to him of notice in writing of the decision or matter to be appealed against the member or person appealing delivers to the Registrar of Trade Marks and to the Council notice in writing signifying his intention to appeal and the grounds of his appeal.

23. The procedure for any appeal to the Registrar of Trade Marks shall be such as may be laid down by law or as may be required by the Registrar of Trade Marks.

24. On an appeal to the Registrar of Trade Marks otherwise than against a penalty for misconduct if the

Registrar of Trade Marks after due inquiry finds there were no grounds for the decision appealed from the Registrar of Trade Marks may give such directions as he thinks appropriate and the Council and all officers of the Council shall be bound to comply therewith.

following defined standards:

- (a) the oilseed shall be seed of the species Brassica Napus or Brassica Campestris the oil component of which seed contains less than 5% erucic acid, and the solid component of which seed contains less than 3 milligrams of glucosinolate per gram of solid (GLC Method-MacGregor);
- (b) the vegetable oil shall be the oil extracted from the oilseed defined in (a);
- (c) the oilseed meal shall be the solid extracted from the oilseed defined in (a);
- (d) the oilseed protein concentrate shall be the protein concentrate extracted from the oilseed defined in (a);
- (e) the oilseed flour shall be flour made from the oilseed defined in (a);
- (f) the oilseed hull shall be hull of the oilseed defined in (a).

The Certification Mark

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confer upon the Licensee the right to use the Certification Mark in the manner and subject to all the conditions and restrictions provided by these Rules but only so long as such Licence is suspended and uncanceled.

Application of the Certification Mark to Seed

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- (c) Every application of the Certification Mark in relation to oil seed and/or oil seed products shall be an accurate, clear and legible representation of the Certification Mark applied by such means as the Council may authorise and it shall be sufficient if an accurate clear legible and permanent representation of the Certification Mark is applied to a label attached to a container containing the oil seed and/or oil seed products.

Inspector

16. The Inspector designated pursuant to these Rules

shall have the following powers:

- (a) to visit each establishment of each Licensee unannounced and at irregular intervals and otherwise as may be directed by the Council;
- (b) to select samples at random and to tag or otherwise identify them and to forward them to an approved laboratory for analysis to determine the quality and material of the samples;
- (c) to require production of, inspect and, if thought fit, take copies of or take away for copying any record which the Licensee is required by Rule 21(1)(c) to keep and if the Council so directs to require production of, inspect and, if thought fit, take copies of or take away for copying any invoices or other documents relative to the purchase by the Licensee of any oil seed and/or oil seed products and any other documents which the Licensee is required by these Rules to keep or retain;
- (d) to report to the Council in writing if the Inspector is of opinion that the organisation or method of supervision of operations is in any respect inadequate to ensure that the products produced will be of the standard of quality required by these Rules or that the

