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15/06/2017

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Registrar of Trademarks
IP Australia
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WODEN ACT 2606

Dear Registrar

Application to vary the rules governing Certification Trade Mark Nos. 454762, 591319, 591320, 586567 by Australian Building Codes Board

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 the application to vary the rules governing Certification Trade Mark (CTM) No. 454762, 591319, 591320 & 586567.

Since the gazettal of this variation, some clarifications were made to the language in the Rules by the applicant. The ACCC is satisfied that these clarifications make no substantive change to the Rules.

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 Kaitlin Hanrahan on 03 9290 1917.

Yours sincerely

Jaime Martin
A/g Director
Adjudication Branch



**Australian
Competition &
Consumer
Commission**

Final Assessment of application to vary the rules governing Certification Trade Mark Application[s] CTM454762, CTM591319, CTM591320, CTM586567 lodged by the Australian Building Codes Board

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 application.

Since the initial assessment, some clarifications were made to the language by the applicant. The ACCC is satisfied that these clarifications make no substantive change to the Rules.

The ACCC's Final Assessment is that it is satisfied that:

- (a) the rules governing the use of the CTM[s], as proposed to be amended, would not be to the detriment of the public; and
- (b) the rules governing the use of the CTM[s], as proposed to be amended, would be 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 (the *trade practices test*).

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

Date.....07 June 2017.....

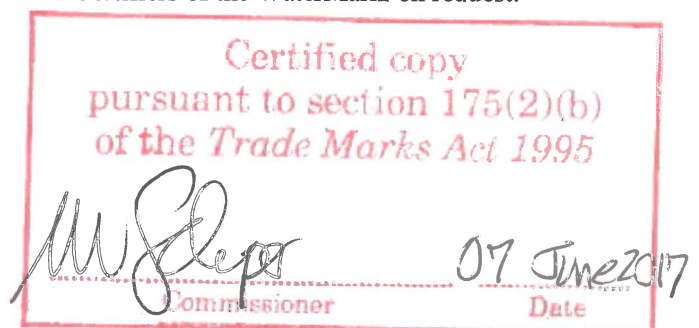
RULES FOR THE WATERMARK CERTIFICATION SCHEME

1. INTRODUCTION

- (a) The WaterMark is a certification trade mark owned by the Commonwealth of Australia acting on behalf of the Commonwealth of Australia, the State of New South Wales, the State of Queensland, the State of Victoria, the State of South Australia, the State of Tasmania, the State of Western Australia, the Australian Capital Territory, and the Northern Territory (**Scheme Owner**).
- (b) On behalf of the Scheme Owner, pursuant to an intergovernmental agreement between the participating governments as amended from time to time, the Australian Building Codes Board (**ABCB**) has responsibility for the management and oversight of the WaterMark Certification Scheme.
- (c) The WaterMark is used in relation to water supply, sewerage, plumbing and drainage goods ("**Plumbing Products**" or "**Products**"). The National Construction Code Volume Three requires certain Products to be certified and authorised for use in a plumbing or drainage installation. These Products are certified and authorised for use through the WaterMark Certification Scheme, as set out in these Rules for the WaterMark Certification Scheme ("**Rules**"), and can be identified by the application of the WaterMark on the Product. The WaterMark Certification Scheme is a mandatory national scheme to ensure plumbing products are fit for purpose.
- (d) Use of the WaterMark is not limited to goods manufactured in Australia. Subject to these Rules, it may be used on goods that are manufactured both in and outside Australia.
- (e) The Scheme Owner does not grant licenses for the use of the WaterMark directly to users (including manufacturers) of the WaterMark (each an "**Approved User**"). Instead, it enters into an agreement ("**Approved Certifier Agreement**") with certifiers who have been approved by the Scheme Owner (an "**Approved Certifier**") and grants them the right to enter into licence agreements directly with Approved Users for the use of the WaterMark in accordance with the terms of the Approved Certifier Agreement (which also sets out minimum terms that must be included in the agreement between Approved Certifiers and Approved Users ("**Approved User Agreement**") and these Rules.

2. APPLICABLE SPECIFICATIONS

- (a) "**Applicable Specifications**" means those documents (including standards, industry schemes and codes) that contain specifications and requirements for Plumbing Products that the Scheme Owner allows certified compliance with, which are to be signified by use of the WaterMark. These include the Plumbing Code of Australia, ABCB Manual for the WaterMark Certification Scheme (which contain the Procedures for Certification of Plumbing and Drainage Products, Procedures for Development of Product Specifications and the Procedures for Assessment of Risks of Plumbing Products) and product specifications listed on the WaterMark Schedule of Products.
- (b) Applicable Specifications will be made available for public inspection during business hours at the ABCB Office and by each of the Approved Certifiers of the WaterMark. on request.



3. APPROVED CERTIFIERS

- (a) The Scheme Owner will approve certifiers and grant Approved Certifiers the right to grant licences for the use of the WaterMark if satisfied that the certifier:
 - (i) is capable of granting licences for the use of the WaterMark and ensuring that the WaterMark is used by Approved Users in accordance with these Rules, the terms of the Approved User Agreement and any reasonable directions that may be given by the Scheme Owner in relation to the WaterMark from time to time;
 - (ii) is able to pay all fees to the Scheme Owner by the due dates;
 - (iii) has, and will maintain, accreditation for the certification of Plumbing Products with the Joint Accreditation System for Australia and New Zealand ("JAS-ANZ") or an accreditation body that has a mutual recognition arrangement, or other agreement with JAS-ANZ; and
 - (iv) will enter into and comply with the terms of the Approved Certifier Agreement and these Rules.
- (b) All Approved Certifiers must enter into and comply with an Approved Certifier Agreement with the Scheme Owner.
- (c) The Scheme Owner will keep and maintain a list of all Approved Certifiers of the WaterMark. The Scheme Owner will provide details of Approved Certifiers of the WaterMark on request or make a list of all Approved Certifiers of the WaterMark available for public inspection during business hours at the ABCB Office.

4. APPROVED USERS

- (a) Any person who wishes to be an Approved User of the WaterMark may apply to an Approved Certifier of the WaterMark, in accordance with the procedures of the Approved Certifier.
- (b) An Approved Certifier will grant an applicant the right to use the WaterMark if it is satisfied that the applicant:
 - (i) is capable, in relation to Plumbing Products in connection with which use of the WaterMark is sought, of providing such Products certified as complying with Applicable Specifications;
 - (ii) is able to pay all fees to the Approved Certifier by the due dates; and
 - (iii) will enter into, and comply with the terms of, the Approved User Agreement and these Rules.
- (c) All Approved Users must enter into and comply with an Approved User Agreement with an Approved Certifier.
- (d) Each Approved Certifier must keep and maintain a list of all current users approved by the Approved Certifier, any identification number of the Approved User and details of licensed Plumbing Products, and make this list available for public inspection during business hours at the office of the Approved Certifier, on request.
- (e) The WaterMark must be displayed together with information, including a licence or reference number, that will enable the Scheme Owner to determine the identity of the Approved User who applied the WaterMark.

5. CONDITIONS OF USE

- (a) As noted above, the WaterMark is important and the Scheme Owner is committed to safeguarding the integrity, validity and its ownership of the WaterMark. The Scheme Owner is not a user of the WaterMark and does not intend to use the WaterMark on Plumbing Products.
- (b) It would be contrary to the public interest and to the interests of the Scheme Owner, Approved Certifiers and Approved Users if licensing of the WaterMark by Approved Certifiers and use by Approved Users put at risk the integrity, validity and the Scheme Owner's ownership of the WaterMark.
- (c) The Scheme Owner may, for the purpose only of maintaining the integrity, validity or its ownership of the WaterMark, by written notification, public notice or otherwise, direct any Approved Certifier or Approved User (or all or any group of them) as to the manner of licensing or use of the WaterMark. Approved Certifiers and Approved Users must comply with any directions given to them within the time period specified in those directions.

6. DISPUTE SETTLEMENT

- (a) If an applicant or Approved User is dissatisfied with a decision of an Approved Certifier to refuse to certify Products or to refuse to allow the use of the WaterMark, the applicant or Approved User may request a reconsideration of the decision in accordance with the review procedures of the Approved Certifier.
- (b) If an applicant or Approved User is dissatisfied with the reconsideration decision of the Approved Certifier, the applicant or Approved User may, after the applicant or Approved User has exhausted all rights of review under the Approved Certifier's (or the applicable JAS-ANZ's) review procedures, appeal the decision of the Approved Certifier to the Scheme Owner.
- (c) The Scheme Owner will publish the procedure for such appeals from time to time on the ABCB website (www.abcb.gov.au). The procedure will allow a reasonable time for parties to provide relevant information and documents and to respond to material the Scheme Owner may take into account, to inform itself about the issues by any means including commissioning tests or reports and for the Scheme Owner to notify the parties of its decision in writing. The parties must comply with the Scheme Owner's decision.

7. NOTICES

- (a) Any notice or other communication to be given under these Rules (other than a public notice) must be given in writing and is deemed to be effected:
 - if delivered by hand – upon delivery to the relevant address.
 - if sent by post – upon delivery to the relevant address; and
 - if transmitted electronically – upon actual receipt by the addressee.
- (b) Any public notice must be given by publication on the ABCB website (www.abcb.gov.au) or in The Australian or any other national newspaper.

8. MISCELLANEOUS

- (a) All information provided by any applicants, Approved Users or Approved Certifiers of the WaterMark may be disclosed to the Scheme Owner, whether that information is of a confidential nature or otherwise, and such information may be used or disclosed by the Scheme Owner if the use or disclosure is necessary to comply with the law or to maintain the integrity, validity or the Scheme Owner's ownership of the WaterMark.
- (b) All rights granted to Approved Certifiers or Approved Users in relation to the WaterMark are non-exclusive and non-transferable.
- (c) The Scheme Owner may amend these Rules from time to time provided the amended Rules are not materially inconsistent with these Rules.

DATE:

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