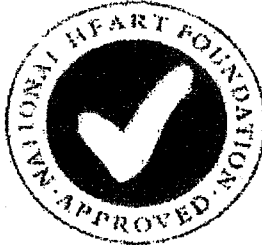


RULES
for the use of
THE TICK RETAIL CERTIFICATION TRADE MARKS
of the
NATIONAL HEART FOUNDATION OF AUSTRALIA



THE TICK RETAIL CERTIFICATION TRADE MARK

1. The Trade Mark is the mark shown above, which is Australian registered trade mark numbers 498188, 498189, 498190 and 506334.
2. The Trade Mark is used to indicate that an Approved Product meets the Guidelines for Tick Approval and has been Included in Tick Retail by the Foundation because it is a healthier choice compared to other foods within the same category.
3. These Rules apply to:
 - (1) all Applicants applying to use the Trade Mark after the date of approval of these Rules by the Registrar; and
 - (2) all Licensees whose Licences are executed by the Foundation after the date of approval of these Rules by the Registrar; and
 - (3) all sublicensees whose sublicense agreements to use the Trade Mark are entered into after the date of approval of these Rules by the Registrar.

DEFINITIONS

4. In these Rules:
 - (1) "Analysis" means chemical analysis of a Proposed or Approved Product undertaken by an independent, National Association of Testing Authorities (NATA) accredited laboratory to Association of Official Analytical Chemists (AOAC) standards, or to similar standards approved by the Foundation for the purposes of these Rules;
 - (2) "Applicant" means a party in the process of applying to use the Trade Mark;
 - (3) "Approved Product" means a product that has been approved for inclusion in Tick Retail on the basis of its Analysis and size;
 - (4) "Business Day" means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed;
 - (5) "Eligible Organisation" means an organisation that is eligible to apply to use the Trade Mark under the Foundation's Policy on fees as amended from time to time;

- (6) "Foundation" means National Heart Foundation of Australia ABN 98 008 419 761 whose business address is Level 3, 80 William Street, Sydney, New South Wales 2011, Australia;
- (7) "Foundation Policies" means the policies, procedures and guidelines developed and maintained by the Foundation as amended from time to time;
- (8) "Guidelines for Tick Approval" means the nutrition criteria that Proposed and Approved Products are required to meet to be, and to continue to be, Approved Products included in Tick Retail, developed and maintained by the Foundation as amended from time to time;
- (9) "Licence" means a written agreement with the Foundation licensing the use of the Trade Mark in connection with an Approved Product;
- (10) "Licence Fee" means the fee payable by the Licensee to the Foundation for the grant of a Licence, calculated in accordance with the Foundation's Policy on fees as amended from time to time;
- (11) "Licensee" means a party who has been authorised by the Foundation under a Licence to use the Trade Mark;
- (12) "Promotion" means marketing of an Approved Product in any presentation material, broadcasts, recordings and transmissions, including, but not limited to, packaging, posters, brochures, health professional resources, merchandise, editorials, demonstrations, educational material, media releases and print, radio, telephone, television, website and email advertising;
- (13) "Proposed Product" means a product that is submitted to the Foundation for evaluation as to suitability for inclusion in Tick Retail;
- (14) "Registrar" means the Registrar of Trade Marks;
- (15) "Rules" means the rules herein provided as amended from time to time;
- (16) "Tick Marketing Guidelines" means the marketing style guidelines for use of the Trade Mark, developed and maintained by the Foundation as amended from time to time;
- (17) "Tick Program" means the food information program conducted by the Foundation through the use of the Trade Mark and which includes Tick Retail as a component;
- (18) "Tick Retail" means the retail component of the Tick Program; and
- (19) "Trade Mark" means the certification trade marks described in Rule 1 of these Rules.

5. In these Rules where the context permits or requires:

- (1) words in the singular include the plural, words in the plural include the singular, and words importing the masculine gender include the feminine and neuter;
- (2) where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning;
- (3) a statute, regulation or provision of a statute or regulation ("**Statutory Provision**") includes:
 - (a) that Statutory Provision as amended or re-enacted from time to time;
 - (b) a statute, regulation or provision enacted in replacement of that Statutory Provision; and

- (c) another regulation or other statutory instrument made or issued under that Statutory Provision;
 - (4) a reference to an entity, group or association includes that entity's, group's or association's successors or assigns;
 - (5) a reference to money is to Australian dollars.
6. In these Rules "including" and similar expressions are not words of limitation.

PROPERTY IN THE TRADE MARK

7. The Trade Mark is the absolute property of the Foundation and must not be used in Australia by any person except with the authority of the Foundation.

USE OF THE TRADE MARK BY THE FOUNDATION

8. The Foundation may use the Trade Mark for administrative, educational, advertising and promotional purposes.

APPLICATION AND PROCEDURES FOR OBTAINING PERMISSION TO USE THE TRADE MARK

9. An application for a Licence may be made to the Foundation, in the manner permitted by the Foundation from time to time.
10. If the Foundation requires, the Applicant must submit for Analysis samples of the Proposed Product in respect of which a Licence is sought. The results of the Analysis must be promptly provided by the Applicant to the Foundation for its consideration.
11. The samples submitted by the Applicant must be accompanied by all the information, data, and details required by the Foundation to demonstrate the Analysis has been undertaken to the Foundation's satisfaction.
12. The laboratory conducting the Analysis may require the Applicant to pay a fee for the Analysis, in which case, the fee is to be paid by the Applicant and will not be refunded under any circumstances.
13. If the Foundation is satisfied that all samples of a Proposed Product meet the Guidelines for Tick Approval, the Foundation will notify the Applicant of such and consider the other conditions for grant of a Licence set out in Rule 15.
14. If the Foundation is satisfied that one or more of the samples of a Proposed Product do not meet the Guidelines for Tick Approval, the Foundation will refuse to grant a Licence to the Applicant in connection with that Proposed Product, and will notify the Applicant of its refusal to grant a Licence.

GRANT OF A LICENCE TO USE THE TRADE MARK

15. The Foundation will grant a Licence to Applicants who make an application for such a Licence in accordance with these Rules, provided:
- (1) the Proposed Product of the Applicant meets the Guidelines for Tick Approval;
 - (2) the Applicant is an Eligible Organisation;
 - (3) the Applicant demonstrates that it will comply with the requirements of these Rules, the Tick Marketing Guidelines and any other Foundation Policies which the Foundation deems relevant; and

- (4) the Foundation is satisfied that both the use of the Trade Mark on the Proposed Product and the supply or Promotion of the Proposed Product will not mislead the public or offend the provisions of the *Trade Practices Act 1974* or the guidelines on misleading conduct set out by the Australian Competition and Consumer Commission from time to time.
16. Persons who do not have a current Licence are not permitted to use the Trade Mark.
17. A Licence will normally be granted for periods of either twelve or thirty six months, but a Licence for another period may be granted when, in the opinion of the Foundation, the circumstances are appropriate. In such circumstances, the Licence Fee for use of the Trade Mark will be calculated in accordance with the Foundation's Policy on fees.

POLICIES, PROCEDURES AND GUIDELINES

18. The Foundation may make Foundation Policies not inconsistent with these Rules on all matters relevant to the Trade Mark including, without limitation
 - (1) methods and processes for the administration of the Tick Program;
 - (2) Licensees or Licences;
 - (3) use of the Trade Mark;
 - (4) Promotions of Approved Products; and
 - (5) any matters that may bring the Foundation into disrepute or affect the integrity or reputation of the Trade Mark.
19. Licensees must comply with:
 - (1) the Foundation's Policies current as at the commencement of their Licences;
 - (2) any changes to the Foundation's Policies which are required by law; and
 - (3) any new Foundation Policies or any changes to existing Foundation Policies in the next applicable Promotions print run or within 6 months (whichever is earlier), after notice from the Foundation.
20. Upon request from a Licensee, the Foundation may in its absolute discretion grant a Licensee an extended period of time in which to implement any changes required by a new Foundation Policy or a change to an existing Foundation Policy.
21. Subject to Rule 19(3), the Licensee must immediately comply with any directions or instructions from the Foundation, in relation to remedying any non-compliance with the Foundation's Policies.

REPUTATION OF THE TRADE MARK

22. The Foundation is concerned to ensure that the reputation and integrity of the Trade Mark is maintained and therefore:
 - (1) Licensees must respect the aims and objectives of the Foundation and must not:
 - (a) act in a manner that is likely to adversely affect the interests of the Foundation in the Trade Mark or may bring the Trade Mark, Tick Program or Foundation into disrepute; or
 - (b) engage in any passing off, misleading or deceptive conduct in relation to the Trade Mark, the Tick Program or Foundation; and

- (2) organisations that manufacture tobacco or tobacco products are not eligible to use the Trade Mark.

SUBLICENSING

23. The Foundation may, in its discretion, permit sublicensing of the Trade Mark where, in the opinion of the Foundation:
 - (1) it is expedient to do so;
 - (2) the sublicense will not, or is not be likely to be, detrimental to the existence, reputation or standing of the Foundation, the Trade Mark or the Tick Program; and
 - (3) the sublicense is in accordance with any sublicensing guidelines of the Foundation.
24. The Foundation may require a sublicensee:
 - (1) to provide to the Foundation the results of an Analysis for its Approved Product to verify compliance with the Guidelines for Tick Approval; and
 - (2) to demonstrate that it will comply with the requirements of these Rules, the Tick Marketing Guidelines and any other Foundation Policies which the Foundation deems relevant to the sublicensee;
 - (3) to satisfy the Foundation that both the use of the Trade Mark on the Approved Product and the supply or Promotion of the Approved Product will not mislead the public or offend the provisions of the *Trade Practices Act 1974* or the guidelines on misleading conduct set out by the Australian Competition and Consumer Commission from time to time;

before permitting the Trade Mark to be used by a sublicensee in relation to an Approved Product.

25. Sublicensees must, to the fullest extent possible, comply with the Rules as if they were a Licensee and the sublicense was a Licence.

LICENCE FEES AND INTEREST

26. It will be a condition of each Licence that the Licensee pays to the Foundation the Licence Fee.
27. Licence Fees may be calculated on the basis of the actual gross revenue of an Approved Product during the term of the Licence or such other basis set out in the Foundation's Policy on fees. In order for the Foundation to calculate and/or verify the Licence Fee, the Applicant or Licensee must (as applicable) provide a certified statement as to the past, projected or actual gross revenue for each Proposed or Approved Product (including any revenue for a Proposed or Approved Product received by sublicensees) in the manner and form and for the time period required by the Foundation.
28. Where the Licence Fee has been calculated on the basis of a certified statement as to the past or projected gross revenue for a Proposed or Approved Product and the actual gross revenue for the Approved Product is shown to be greater, the Licence Fee will be recalculated by the Foundation using the actual gross revenue for the Approved Product and any additional amount will become payable on written notice to the Licensee.
29. The Foundation may charge Licensees interest on any payments pursuant to these Rules that are overdue, in accordance with the terms of the Licence.

USE OF THE TRADE MARK

30. Licensees must comply with the terms and conditions of their Licence in using the Trade Mark.

31. Licensees must submit samples of all Promotions for an Approved Product bearing the Trade Mark to the Foundation for approval prior to use or distribution. Approval will be based on compliance with these Rules, and in particular the Tick Marketing Guidelines.
32. The Foundation may, from time to time, review:
- (1) an Approved Product and any related materials;
 - (2) Promotions and/or the manner in which the Trade Mark is being used by the Licensee; and
 - (3) any other matter or thing connected with compliance with these Rules;
- to ensure that the Licensee continues to comply with the requirements of these Rules.
33. In the event that any one or more of these Rules is found to have been breached, the Foundation will notify the Licensee of the breach and the Licensee must, within such reasonable time as the Foundation directs, either:
- (1) rectify the breach;
 - (2) withdraw an Approved Product from Tick Retail and deal with any Promotions for the withdrawn Approved Product as though the Licence for the Approved Product has been surrendered; or
 - (3) surrender the Licence granted and cease using the Trade Mark.

ACTION BY A LICENSEE ON EXPIRY OR TERMINATION OF A LICENCE

34. Upon expiry, termination or surrender of a Licence, the Licensee:
- (1) agrees not to use the Trade Mark in its Promotions; and
 - (2) as the Foundation directs, must:
 - (a) destroy; or
 - (b) deliver up; or
 - (c) otherwise deal with;
all Promotions bearing the Trade Mark, or
 - (d) modify all Promotions so as to completely obscure the Trade Mark.

AMENDMENT OF THE RULES

35. Subject to the *Trade Marks Act 1995* (Cth), the Foundation may vary these Rules at any time and at its absolute discretion. The Foundation will give written notice to all Licensees and Applicants of any variation of the Rules and the date from which the variation will have effect. Licensees must notify their sublicensees accordingly.
36. The Foundation will provide to the Registrar on request, and will make available to the public by appointment on a confidential basis, copies of the Guidelines for Tick Approval, Tick Marketing Guidelines and any other Foundation Policies relevant to Tick Retail including any amendments made from time to time.

INSPECTION OF RULES AND REGISTER OF AUTHORISED USERS

37. The Foundation will keep at its principal office a copy of these Rules, and that copy will be open for inspection by the public by appointment.
38. The Foundation will establish and maintain a register containing details of all Licensees. Details of Licensees will be available for inspection by the public by appointment.

DISPUTE RESOLUTION

39. If a dispute arises in relation to any matter or thing connected with these Rules, the parties to the dispute must co-operate with each other and do all things reasonably necessary to confer with each other within 7 days of a party to the dispute giving notice to the other parties of the dispute.
40. If a matter is not resolved in accordance Rule 39, a party may give to the other party notice specifying the dispute and requiring its resolution under this Rule 40 (**Notice of Dispute**). Once a Notice of Dispute has been given, the parties to the dispute will act in accordance with the following process:
 - (1) the principal executive officers, or their nominee, of each party must confer within 7 Business Days after the Notice of Dispute is given to try to resolve the dispute (**First Period**);
 - (2) if the dispute is not resolved within 7 Business Days after the Notice of Dispute is given to the other party or parties, the dispute is by this Rule 40 submitted to determination by an Expert (**Hearing**). The Hearing must be conducted in New South Wales. The provisions of the "Rules for Expert Determination of Commercial Disputes" as published by the Institute of Arbitrators and Mediators Australia apply, except to the extent that they are inconsistent with this Rule 40;
 - (3) if the parties have not agreed upon the Expert and the Expert's remuneration within 7 Business Days after the First Period:
 - (a) the Expert is the person appointed by; and
 - (b) the remuneration of the Expert is the amount or rate determined by, the President of the Law Society of New South Wales (**President**) or the President's nominee, acting on the request of any party to the dispute;
 - (4) after considering such evidence as the parties may submit, including evidence requested by the Expert, and after each party has had an opportunity of being heard, the Expert shall decide the matter;
 - (5) the parties must pay the Expert's remuneration in equal shares. Each party must pay its own costs of the Hearing; and
 - (6) in this Rule 40, "Expert" has the same meaning given in the Rules for Expert Determination of Commercial Disputes as published by the Institute of Arbitrators and Mediators Australia, as amended from time to time.
- 40.2 Rules 39 and 40 do not prevent any party from obtaining any injunctive, declaratory or other interlocutory relief from a court which may be urgently required.