



26 November, 2001

DOI/51992

Mr Tim Grimwade

The Australian Competition & Consumers Commission
PO Box 1199
DICKSON ACT 2602

839361

Dear Mr Grimwade,

**Re: Australasian Furnishing Research & Development Institute Limited
Australian Trade Mark No. 839361
Our Reference: IRN 619113 (MNB:MR)**

We refer to our letter of 6 September 2001. The applicant wishes to make a further change to the application. This change consists of amending the word "accreditation" and variations thereof used in the application with "certification", which it considers better reflects the process it undertakes.

A replacement document follows, which includes the appropriate changes.

If you have any queries regarding these changes, please let me know.

Yours faithfully,
PHILLIPS ORMONDE & FITZPATRICK

Malcolm Bell

(Malcolm Bell)
malcolm.bell@pof.com.au

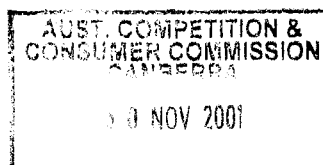
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cc. Trade Marks Office

CERTIFIED TRUE COPY

J.R. (p. the Acc)

12/9/02



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BLUE TICK PRODUCT CERTIFICATION SCHEME

Introduction

The Australasian Furnishing Research & Development Institute Limited (trading as Furntech) is an independent not-for-profit technical organization, serving buyers and sellers in Australia and in New Zealand, operating in those countries a system of quality certification for furniture components and related manufactured products and materials through its Blue Tick Product Certification Scheme.

Under its Blue Tick Scheme Furntech certifies products which meet certain standards to Furntech's satisfaction. The assessment of the products is based on the results of performance, function and safety tests, coupled with an evaluation of the quality and finish of a representative sample of product provided to Furntech by the supplier.

Suppliers of products certified by Furntech under the Blue Tick scheme are licensed by Furntech (pursuant to a licence agreement between the supplier and Furntech) to promote those products as Blue Tick certified products by use of certain Furntech certification trade marks on swing tags, brochures and in advertising.

The terms and conditions of the Blue Tick Product Certification Scheme are set out in the Rules and Certification Agreement which follow.

Rules

1. An application for certification under the Blue Tick Product Certification Scheme may be made by any supplier of furniture to the Australian or New Zealand market.
2. Furntech shall not certify (nor issue a licence to) any applicant who does not satisfy Furntech that it is of good repute and good financial standing.
3. An applicant for certification must:
 - a) provide Furntech with a sample of goods sought to be certified for the purpose of testing by Furntech;
 - b) pay to Furntech a sum in respect of the costs of the testing, such sum as set out in Appendix 1 of these Rules; and
 - c) satisfy any other certification conditions, which Furntech may from time to time prescribe.
4. Furntech shall prescribe and publish minimum technical or other standards or specifications of performance, safety and quality which it requires to be met for particular products and product categories to gain certification (the "Certification Criteria"). Furntech shall provide a copy of the Certification Criteria to the Registrar of Trade Marks, upon request.
5. In the event that Furntech determines to its satisfaction that one or more products of an applicant for certification meet the Certification Criteria, Furntech shall agree to license the supplier in accordance with an certification agreement, as set out in Appendix 2 to these Rules (the "Certification

Agreement"). For the duration of the Certification Agreement the supplier shall be a certified user ("User").

6. The form and terms of the Certification Agreement set out in Appendix 2 hereof may be amended by Furntech as it deems fit.
7. Furntech may amend or alter the Certification Criteria as it deems fit. Any amendment or alteration of the Certification Criteria shall be published by Furntech and Furntech shall notify in writing all Users having certified products which are subject to the Certification Criteria so amended. The amendments to the Certification Criteria shall apply from a date to be agreed upon between Furntech and the User, or in the absence of agreement, six months after notification of the amendment to the User concerned.
8. Furntech shall establish and maintain a register containing:
 - a) the name, address and trade description of all Users;
 - b) the date of registration and number allotted to each User; and
 - c) such other particulars as Furntech considers necessary or desirable.

The Register of Users can be inspected at the premises of Furntech during normal business hours.

9. Furntech shall keep at its principal office a copy of:
 - a) these Rules; and
 - b) the Certification Criteria, including any amendments;

which documents shall be available for inspection by the public during normal office hours.

10. In the event of a dispute between Furntech and an applicant for certification the dispute is to be referred to a third party acceptable to both Furntech and the applicant. In the event that Furntech and the applicant cannot agree to a mutually acceptable arbitrator, an arbitrator shall be appointed by the President of the Institute of Arbitrators and Mediators Australia.

APPENDIX 1

SCHEDULE OF FEES

APPENDIX 2

CERTIFICATION AGREEMENT

This Agreement is made the date set out in Schedule 1 between the AUSTRALASIAN FURNISHING RESEARCH & DEVELOPMENT INSTITUTE LIMITED, which is a company limited by guarantee incorporated in Tasmania having its office at Newnham Drive, Newnham, Tasmania 7248 and which in this agreement is called "Furntech" and the "User" named in Schedule 2.

WHEREAS:

- A. Furntech is the owner in Australia and New Zealand of the trade marks AFRDI and AFRDI Logo, the particulars of which are set out in Australian Trade Mark numbers 535812 and 839361, collectively the AFRDI Trade Marks, which have been and are now used by Furntech in Australia, New Zealand and beyond to advertise and promote certain items of furniture or furniture components as having been certified by Furntech.
- B. The User supplies furniture or furniture components or furniture materials including timber, manufactured products or related products as listed in Schedule 3 which products meet certain standards of performance, safety and quality as prescribed by Furntech ("Certification Criteria") and wishes to advertise those goods for sale or to promote and sell those goods in association with the AFRDI Trade Marks.
- C. Furntech is willing to grant the User a licence to use the AFRDI trade marks upon the terms set out in this Agreement.

IT IS AGREED THAT:

Use of the AFRDI Trade Marks

- 1. Subject to this Agreement, upon the User paying to Furntech the fee(s) specified in Schedule 4, Furntech grants to the User a licence to use the AFRDI Trade Marks in the colour Blue Pantone 286 (or approximation thereto) or Black.
- 2. The User may use the AFRDI Trade Marks only on or in relation to the products and for the periods set out in Schedule 3. Subject to this Agreement, all products produced or sold by the User and listed in Schedule 3 shall at all times conform to the Certification Criteria, as amended from time to time.
- 3. In the event that the User wishes to have products certified in addition to those listed in Schedule 3, the User shall provide Furntech with sufficient representative samples of the product for testing by Furntech.
- 4. The User shall be liable for costs incurred by Furntech in testing a product provided by the User pursuant to clause 3 herein.

5. Subject to this Agreement, in the event that a further product tested meets the applicable Certification Criteria of Furntech, that product is to be added to Schedule 3 as a certified product.
6. The User shall use the AFRDI Trade Marks only in a manner as authorised by Furntech in writing.
7. If the User proposes to use one or more of the AFRDI Trade Marks in a manner not previously authorised by Furntech pursuant to clause 6 herein, the User shall notify, and provide details to, Furntech of the proposed use.
8. Upon receipt of notification from the User pursuant to clause 7 herein, Furntech shall advise the User expeditiously, whether it authorises the use proposed.
9. Upon request the User shall provide Furntech with samples of its use of the AFRDI trade marks and/or with such information regarding its use or proposed use of the AFRDI Trade Marks as Furntech may from time to time require.

Duration of Agreement

10. Unless otherwise terminated, this Agreement shall remain in force for the period for which the applicable fees have been paid in respect of products listed in Schedule 3.
11. Furntech may, at its discretion, amend the forms and terms of this Agreement. Furntech shall notify each User of any such amendment, which amendment shall take effect as from the payment of the certification fees next following the amendment. By payment of such certification fees the User agrees to be bound by the Certification Agreement, as amended.
12. The licence provided by this Agreement is not transferable to any other person (which term includes company) without the written permission of Furntech, which permission shall not be unreasonably withheld in the event of a proposed transfer to a reputable, responsible and solvent assignee, which assignee otherwise satisfies the criteria for certification by Furntech.

Requirement to Notify Changes in Products

13. If the design, material or means or place of manufacture of any of the products listed in Schedule 3 changes from that which applied at the commencement of this Agreement or from those which the User has subsequently informed Furntech applied, the User shall advise Furntech of the change(s) within one calendar month of the first sale of the product incorporating such change(s) ("changed product") and if required by Furntech shall submit a sample of the changed product to Furntech for testing.

Samples for Quality Monitoring

14. Upon request by Furntech the User shall supply to Furntech up to one sample per year of each of the products listed in Schedule 3, for testing. If requested by Furntech such samples are to include or consist of particular individual specimens from the User's stock, including that displayed for sale, as may be selected by Furntech.
15. Where Furntech forms the view, on reasonable grounds, that any of the products listed in Schedule 3 do not comply with those previously tested and

certified by Furntech, the User shall supply to Furntech upon request a further sample or samples of such products for testing by Furntech.

16. In the event that products supplied to Furntech pursuant to any of clauses 13, 14 or 15 herein are tested by Furntech and found to not comply with those previously tested and certified, the User is to be liable for the costs of testing of those products.
17. Notwithstanding clauses 13 to 15 herein, Furntech may require any of the products listed in Schedule 3 to be supplied to Furntech for retesting at least every three years, at the User's cost. In exercising its discretion under this clause, Furntech shall have regard to the number of products that have been randomly tested pursuant to clauses 13, 14, or 15 and the results of those tests, if any, and to the number and nature of complaints made, if any, arising from the sale of the products.

Complaints Register

18. The User agrees to maintain a register of complaints from consumers arising from the sale of products listed in Schedule 3 and to provide copies of the register and of records of complaints and any action taken to Furntech within 30 days of receiving a written request from Furntech.

Retention of Tested Samples

19. Where a sample which has been tested or assessed by Furntech is returned to the User, the User shall retain the sample in a place where the tested sample can be compared with products being sold as the same model as the tested sample. If the User cannot produce a tested sample for the purposes of comparison, Furntech may require that the product be retested at the User's cost.

Changes in Certification Criteria

20. Upon request by the User, Furntech shall issue to the User a statement setting out the Certification Criteria or other necessary information in relation to certification in respect to the product concerned.
21. In the event that Furntech amends the Certification Criteria, Furntech shall inform the User of the amendment in writing notifying the User of a date by which the amendment is to take effect.
22. Upon receipt of a notification from Furntech pursuant to clause 21 herein, the User shall inform Furntech within 30 days if it does not consent to being bound by the amendment to the Certification Criteria by the date specified in the notice. In the absence of the User's agreement the amendment shall take effect as of six months from the date of the notification to the User given under clause 21 herein.

Improper Use of Logos by Others

23. In the event that Furntech becomes aware of any instance of improper use of one or more of the AFRDI Trade Marks, whether through notification by a User or otherwise, Furntech shall investigate and take whatever action in respect of that use, as it considers appropriate.

Product Liability Insurance Cover

24. The User shall maintain a product liability insurance policy covering all of the products in Schedule 3. Such product liability insurance policy shall be with a reputable insurance company with the conditions and amount of such cover to be in line with normal industry practice, to the satisfaction of Furntech. Upon request by Furntech, the User shall provide details of its product liability insurance policy to Furntech.

Breaches of Agreement by User

25. In the event that:
- a) it appears to Furntech that the use of the AFRDI Trade Marks or any of them by the User or by authorised agents of the User may mislead purchasers or intending purchasers;
 - (i) that products not included in Schedule 3 are endorsed or certified by Furntech; or
 - (ii) as to the nature of Furntech's endorsement of products listed in Schedule 3;
 - b) the User fails to submit products already in Schedule 3 for reassessment as required by this Agreement within 30 days or a written request by Furntech to so do;
 - c) products purporting to answer the description of those listed in Schedule 3 are found by Furntech to be different from the samples originally submitted for testing or are tested by Furntech and found not to comply with the Certification Criteria applicable at that time;
 - d) the User fails to pay the fees set out in Schedule 4 within 60 days of becoming due;
 - e) it appears to Furntech that the User is no longer of good repute;
 - f) the User becomes bankrupt, is made the subject of winding up proceedings or it appears to Furntech that the User is no longer of good financial standing;
 - g) the User is otherwise in breach of this Agreement;

Furntech may suspend, restrict or revoke the licence to use the trade marks in respect of any or all of the products listed in Schedule 3.

26. In the event that Furntech considers any of the grounds (a) to (g) of clause 25 herein apply and that the suspension, restriction or revocation of the licence provided by this Agreement may be warranted, Furntech shall first notify the User of its concerns, setting out details of the ground or grounds which it considers may apply and allow the User at least 28 days from receipt of that notice to take remedial action, or otherwise address Furntech's concerns.

Where Use of Certification Marks are Restricted or Terminated

27. Any restriction to the licence to use the AFRDI Trade Marks, made pursuant to clause 25 herein is to be in writing notified to the User and is, from the date of receipt by the User, deemed to be part of this Agreement.

28. In the event that Furntech imposes written restrictions on the use of the AFRDI Trade Marks pursuant to this Agreement, the User shall upon request deliver to Furntech all promotional material upon which the AFRDI Trade Marks appear where the use by the User of such material would be in breach of such written restrictions.
29. Upon termination of this Agreement or the removal of products from Schedule 3 the User shall upon request deliver to Furntech all promotional material upon which one or more of the AFRDI Trade Marks appear.

Notices

30. Any notice or other communication by Furntech given or made under this agreement shall be deemed to be duly given or made if posted in a pre-paid letter addressed to the User at the address of the User shown in Schedule 2 or as subsequently notified by the User to Furntech.

Disputes

31. In the event of a dispute between Furntech and the User the dispute is to be referred to a third party acceptable to both Furntech and the User. In the event that Furntech and the User cannot agree to a mutually acceptable arbitrator, an arbitrator shall be appointed by the President of the Institute of Arbitrators and Mediators Australia.

SCHEDULE 1 Starting date

SCHEDULE 2 Name and address of User

SCHEDULE 3 List of certified products

SCHEDULE 4 Certification Fees

Discrete Products

\$138 per year (plus GST) per product (or product family) listed in Schedule 4, payable every three years in advance.

Systems (such as customisable kitchens)

\$1,000 per year (plus GST)

IN WITNESS whereof the parties have executed this agreement.

SIGNED for and on behalf of
Australasian Furnishing Research
and Development Limited

Name and Position

In the presence of

Witness

SIGNED for and on behalf of
(insert name of User)¹

Name and Position

In the presence of

Witness