



**Australian
Competition &
Consumer
Commission**

**Final Assessment of Certification Trade Mark Application 872652 lodged by the
Belgian State**

The Australian Competition and Consumer Commission (the Commission), 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 Commission's Final Assessment is that it is satisfied that:

- (a) the approved certifiers are competent to certify the goods 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 *Trade Practices Act 1974* (the Act); the principles relating to unconscionable conduct set out in Part IVA of the Act; and the principles relating to unfair practices, product safety and product information set out in Part V of the Act.

Signed.......... (Commissioner)

Date..... 23 JANUARY 2004

General Regulations for the use and inspection
of the collective trademark
"AMBAO"

Aim

Article 1.

The collective trademark "AMBAO", hereafter called TRADEMARK, of which these regulations stipulate the use, has the purpose to inform the chocolate consumer about the special quality of chocolate of this TRADEMARK.

The definitions, composition criteria and elements of the production process for chocolate to be considered for the application of the TRADEMARK are described in the specifications (appendix 1).

The graphic of the TRADEMARK can be found in appendix 2.

The principles relating to the management and inspection are stipulated in these regulations. The modalities for the execution are drawn up by the owner of the trademark.

Property and management

Article 2.

The Belgian State is the owner of the TRADEMARK and can transfer the management, inspection and all granted rights and obligations defined in these regulations to a non-profit association, hereafter called NPA, for the duration of the association.

Conditions for use

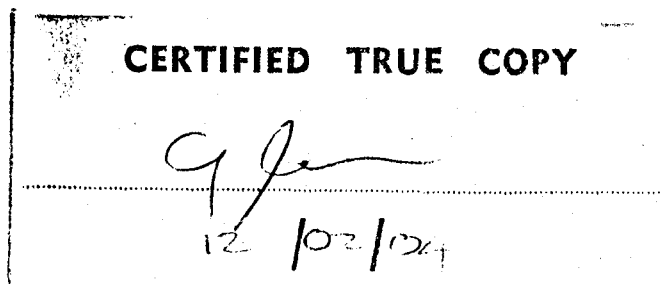
Article 3.

Apart from the regulations the conditions for use, formats, measurements and possible colours of the trademark or the combination with other symbols or mentions are stipulated by the NPA.

Users

Article 4.

Any physical or legal person concerned with the production, processing, finishing of chocolate (hereafter called USER) can acquire permission to use the TRADEMARK. The NPA can grant permission for the use of the TRADEMARK to other persons whose activities can contribute to promote the distribution of quality chocolate that meets the criteria of the specifications.



Agreement

Article 5.

The permission to use the TRADEMARK is subject to an agreement, written and signed by the applicant, by which he submits himself to the stipulations of the present regulations.

The USER of the TRADEMARK cannot transfer nor convey this permission to a third party.

Article 6.

The agreement by which permission to use the TRADEMARK is granted is concluded for a three-year term. The first agreement, however, takes effect after the signature and comes to an end on 31 December of the current year.

Failing another agreement, the agreement shall be silently renewed every year subject to cancellation served by one party to the other, three months prior to the end of the civil year.

In case of suspension of the agreement the products made in accordance with the specifications and still available in the shops can still be sold until depletion of supplies.

Article 7.

The permission to use the TRADEMARK does in no case procure the USER the right to the industrial or intellectual ownership.

Specifications

Article 8.

The composition and the specific requirements for the ingredients determine the special quality of the chocolate that applies to the TRADEMARK. These requirements are included in the specifications, appendix 2 to these regulations.

Inspection

Article 9.

The NPA is charged with inspecting the observance of these regulations.

The inspection is put under the care of an inspection body appointed by the NPA to which it has to report. The inspection body that is chosen as subcontractor shall prove its competence by submitting an accreditation certificate delivered by a recognised accreditation body.

Financial conditions

Article 10.

The NPA obliges the USER to pay a once-only contribution the amount of which is determined by the NPA.

The NPA shall also collect a pro rata contribution that it shall determine every year. Adaptations will be communicated to the USER twelve months before they are put into force.

Sanctions

Article 11.

In case of a violation of the stipulations of the present regulations, the specifications, the conditions for use of the TRADEMARK and of all agreements signed by the parties in the scope of these regulations, the NPA has the right to suspend or cancel the permission to use the TRADEMARK completely or partly.

The NPA can require an additional inspection (e.g. a new sampling and analysis by another laboratory) at the expense of the USER.

Moreover, and without prejudice to the sanctions provided for in common law and patent and trade mark law, every USER whose permission has been suspended or canceled completely or partly and who nevertheless abuses the TRADEMARK will be obliged to pay the NPA damages for the costs.

The decision to cancel the permission can be made public by the NPA at the expense of the USER.

The sanctions provided for in this article shall only be imposed after hearing the parties concerned.

Disputes

Article 12.

The owner of the TRADEMARK can authorize the NPA to take legal action to protect the TRADEMARK. The NPA can also permit the USER to take legal action, to join the action or to intervene in the case instituted by or against the owner.

The USER is expected to inform the NPA of any abuse of the TRADEMARK.


Article 13.

The parties are expected to submit any dispute concerning the TRADEMARK to the arbitration board of the "World Intellectual Property Organisation" (WIPO) in Geneva.

All unsolved disputes will be treated according to the Belgian legislation.

The Brussels Court of Commerce is competent.

Done at Brussels on 16 October 2000



For the Belgian State,
Charles Picqué
Minister for Economy and Scientific Research,
charged with Urban policy

2 appendices: - Appendix 1: Specifications
- Appendix 2: TRADEMARK

Specifications ambao chocolate

Framing and definitions

Chocolate products as mentioned in the European Directive 2000/36/EC of the European Parliament and the Council of 23 June 2000 – annexe 1 A sections 3.4.6.7 and 10 (O.J. L197 of 3/8/2000)

Criteria for chocolate

1. No addition of vegetable fats other than cocoa butter.
2. The chocolate must contain the following minima of cocoa and milk solids:
 - 2.1. ambao chocolate (= plain chocolate)
 - dry cocoa solids: $\geq 43\%$;
 - dry non-fat cocoa solids: $\geq 16\%$;
 - cocoa butter: $\geq 28\%$;
 - 2.2. ambao milk chocolate
 - dry cocoa solids: $\geq 30\%$;
 - dry non-fat cocoa solids: $\geq 2.5\%$;
 - dry milk solids: $\geq 18\%$;
 - milk fat: $\geq 4.5\%$.
 - 2.3. ambao white chocolate
 - dry milk solids: $\geq 18\%$;
 - cocoa butter: $\geq 22\%$;
 - milk fat: $\geq 4.5\%$.
3. Optional invisible ingredients
No addition of optional invisible ingredients with the exception of:
 - milk fat, natural or natural identical flavourings and lecithin;
 - hazelnut paste in gianduja chocolate and gianduja milk chocolate.
4. Technical criteria
 - 4.1. fineness: maximum 7 % of the dry fat-free matter is > 30 micron;
 - 4.2. moisture content $< 1\%$.
5. Additives: no addition of:
 - E 476 Polyglycerol polyricinoleate;
 - E 442 Ammonium fosfatide;
 - E 322 Lecithin with GMO features.

Criteria for filled chocolate (slabs, bars) and chocolates/pralines

1. All used chocolate must meet the criteria of amba chocolate. It has to be clear that the 'collective brand' refers only to the chocolate part.
2. Weight % chocolate part of filled slabs and bars: minimum 30 %.
3. Prepacked assortments of chocolates/pralines: minimum 75 % of the assortment have to be chocolates.
4. The filling
 - 4.1. can contain vegetable fats;
 - 4.2. cannot contain:
 - synthetic flavours;
 - animal fats other than milk fats;
 - an ingredient, additive, flavour,... for which a GMO indication is needed.
5. Nut chocolate
Cannot contain peanuts together with other nuts such as hazelnuts.