



Australian
Competition &
Consumer
Commission

Our Ref: C2003/621
Your Ref: CTM 905111
Contact Officer: Susan Sullivan
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14 December 2004

The Registrar of Trade Marks
IP Australia
PO Box 200
WODEN ACT 2606

IP Australia
16 DEC 2004

Dear Registrar

Certification Trade Mark Application 905111 – Copper Development Centre Australia Limited

The Commission, in accordance with the provisions of the *Trade Marks Act 1995*, has completed its final assessment of the above Certification Trade Mark.

A certificate detailing the Commission'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 the writer on 02 6243 1354.

Yours sincerely

Susan Sullivan
A/g Director
Adjudication Branch





**Final Assessment of Certification Trade Mark Application 905111 lodged by the
Copper Development Centre Australia Limited**

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 Certification Trade Mark (CTM) application.

The ACCC'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..... 8 DECEMBER 2004

CERTIFIED TRUE COPY

COPPER DEVELOPMENT CENTRE SEAL OF QUALITY

CERTIFICATION RULES

08 / 12 / 24

1. COPPER DEVELOPMENT CENTRE AND THE SEAL OF QUALITY

The Copper Development Centre Australia Limited (ACN 067 486 300) (CDC) is the peak for the copper industry in Australia, representing some of Australia's more prominent companies in mining, manufacturing, production and recycling. The Seal of Quality is a trade mark that was developed to enable the protection of genuine copper products by way of a national certification system for the authentication of copper products. It also highlights consumer recognition of copper products for use in Australia. Any manufacturer, plumber, building or construction company who meets the standards set by these Rules may be entitled to use the Seal of Quality in relation to the copper products that they use.

2. DEFINITIONS

2.1 The following words and phrases will have the following meanings when used in these Rules unless the context otherwise dictates:

'Annual Fee' means the fee payable on application for renewal of certification as set out in Annexure C to these Rules.

'Application Fee' means the fee payable on application for certification as set out in Annexure C of these Rules.

'CDC' means the Copper Development Centre Australia Limited ACN 067 486 300) of Suite 1 Level 7 Westfield Towers 100 William Street Sydney NSW 2011.

'Certified User' means a company or person that has been certified by CDC to use the Seal of Quality.

'Products' means the genuine copper products which conform to the standards set out in Annexure D of these Rules and are the subject of the Seal of Quality.

'Register' means the Register kept by CDC and available for inspection during normal business hours to record the following:

- (a) name and address of each Certified User;
- (b) each Product for which the Certified User is entitled to use the Seal of Quality; and
- (c) the respective dates on which the licence for the use of the Seal of Quality was granted, renewed, expired or terminated.

'Rules' means these Rules as amended from time to time, those amendments being effective after any necessary Australian Competition and Consumer Commission or other approval has been obtained by CDC.

'Seal of Quality' means the trade mark which is the subject of Australian Trade Mark Application number 905111 as depicted in Annexure A to these Rules.

In this Agreement, unless the context requires another meaning:

A reference to:

- (a) The singular includes the plural and vice versa;
- (b) Legislation is a reference to that legislation as amended, consolidated, supplemented or replaced.

3. WHO CAN USE THE SEAL OF QUALITY ?

3.1 The Seal of Quality can be used in accordance with these Rules only by the following companies / persons:

- (a) manufacturers that produce copper tubing in Australia and have current membership with CDC;
- (b) building and/or constructions companies that use and promote copper plumbing in Australia in accordance with the standards set out in Annexure D of these Rules; and
- (c) plumbers who have trained at any Technical and Further Education (TAFE) institutions within Australia and are accredited by that TAFE institution.

3.2 An Application for the use of the Seal of Quality may be made in the form attached as Annexure B to these Rules or in such other form as CDC may reasonably require or allow, and be accompanied by:

- (a) the Application Fee; and
- (b) any further documents or information reasonably required by CDC in order to decide whether or not the applicant can use the Seal of Quality.

3.3 An applicant must specify the Products in respect of which it intends to use the Seal of Quality and request CDC to consider the inclusion of any other products from time to time in writing in order for CDC to keep the Register accurate and to assist CDC in monitoring use of the Seal of Quality. Certified Users are not required to file a new application for additional Products to be used under the Seal of Quality.

3.4 If CDC is satisfied that an applicant is eligible to be a Certified User with regard to the Seal of Quality, it will provide written confirmation that the applicant is a Certified User and will enter the applicant's name on the Register.

3.5 If CDC is not satisfied that an applicant is entitled to be a Certified User, it will issue a written notice of its decision giving reasons for its refusal to certify the applicant.

3.6 CDC will, within one month of the date of an application in an approved form issue to the applicant either:

- (a) written confirmation that the applicant is a Certified User;
- (b) request further evidence that the products intended to be the subject of the Seal of Quality satisfy the technical requirements for a Copper product; or
- (c) a written notice refusing to certify the applicant.

3.7 Upon receiving written confirmation as a Certified User, a Certified User is authorised to use the Seal of Quality in accordance with these Rules for a period of two years from the date of such confirmation. Upon the expiry of two years, a Certified User who wishes to continue to use the Seal of Quality must apply in writing to the CDC for a renewal for use. If:

- (a) the Certified User's right to use the Seal of Quality has not been terminated in accordance with clause 8 of these Rules;
- (b) a written request for renewal of use of the Seal of Quality has been received by CDC no earlier than six months prior to the expiry of the initial two year term; and
- (c) the Annual Fee has been paid,

then CDC shall provide written confirmation to the Certified User that the use of the Seal of Quality by that Certified User has been renewed for a further two year term.

3.8 If CDC refuses to authorise the Certified User to use the Seal of Quality for a further two year period, it must provide the Certified User with reasons for refusal in writing.

4. USE OF THE SEAL OF QUALITY

4.1 The Seal of Quality will only be used in connection with Products that comply with the requirements as set out in Annexure D to these Rules.

4.2 The Seal of Quality must always be represented in the manner in which it has been registered or applied for as a trade mark without change to its features, colours, proportions or other characteristics. Other trade marks, features, stickers or other matter may be used with the Seal of Quality provided that the Seal of Quality is not obliterated or obscured in whole or part.

- 4.3 The Seal of Quality must not be used in a way which is misleading or deceptive or otherwise contrary to any applicable law or regulation. Without limitation, any use must not be accompanied by any claim or representation that the Certified User enjoys the sponsorship, approval or endorsement of CDC

5. OWNERSHIP AND ENFORCEMENT OF THE SEAL OF QUALITY

- 5.1 CDC owns the Seal of Quality and the Certified Users who are authorised to use it by and under these Rules acquire no property or other rights in the Seal of Quality. CDC derives and owns all goodwill and reputation created in the Seal of Quality through its use.
- 5.2 The Seal of Quality comprises a logo, the copyright in which is owned by CDC. It is of the utmost importance to CDC and to the protection of the Seal of Quality that all reproductions of the Seal of Quality be consistent, of the highest quality and conform with the specifications for the Seal of Quality as prescribed by CDC from time to time. Nothing in these Rules is intended to confer upon a Certified User the right to reproduce the Seal of Quality in any form. The Seal of Quality can only be reproduced by CDC or by and on behalf of a Certified User with the express written permission of CDC.
- 5.3 No application to register the Seal of Approval or any similar trade mark, or any mark (brand or logo) which incorporates the Seal of Quality or any similar mark, will be filed or made by a Certified User.
- 5.4 No Certified User will claim ownership or any other right or interest in the Seal of Quality other than the right to use the Seal of Quality pursuant to and in accordance with these Rules, or challenge the ownership of the Seal of Quality by CDC.
- 5.5 If any Certified User becomes aware of any unauthorised use of the Seal of Quality or any similar mark, it will bring this to the attention of the CDC which will take such action as it decides is appropriate to enforce or protect its rights in that mark. No Certified User may commence any infringement or other action in connection with the use of the Seal of Quality or any similar mark, name or brand by other persons but will provide any co-operation or assistance that is reasonably requested by CDC, at its expense, in support of any infringement or other such action that it decides to bring.

6. COMPLIANCE

- 6.1 Within fourteen days of receiving a request from CDC, a Certified User must provide information concerning their use of the Seal of Quality on any Product or in relation to any Product, including information on the creation or production of that Product, details of where it is being sold or presented, how the Seal of Quality has been used in connection with the Product and any other information reasonably necessary to enable

CDC to check that the Seal of Quality is being used in accordance with these Rules.

- 6.2 A Certified User must, upon the written request of CDC giving not less than forty eight hours notice:
- (a) provide samples of its use of the Seal of Quality on its Products;
 - (b) permit a representative of CDC to enter its premises to inspect the use of the Seal of Quality on its Products; and
 - (c) provide any other access reasonably necessary to enable CDC to be satisfied that the Seal of Quality is being used in accordance with these Rules.

7. CDC's POWERS

- 7.1 CDC has the right to delegate any one or more of its powers under these Rules to an appropriately qualified and independent nominee appointed in writing. The decision of such delegate shall be binding and effective under these Rules in the same way as if it had been made by the CDC.
- 7.2 CDC or its delegate must give reasons in writing for any decision that an applicant is not a Certified User or that a company's or person's rights or status as a Certified User is terminated pursuant to and in accordance with these Rules. All other powers, decisions, actions and notices can be given or made under these Rules without the need to give reasons.

8. TERMINATION OF RIGHTS TO USE THE SEAL OF QUALITY

- 8.1 If any Certified User makes any use of the Seal of Quality in breach of these Rules, then in addition to any other rights or remedies that it might have whether arising under statute, common law or otherwise, CDC may give notice of the breach requiring that where possible the breach be remedied within fourteen days or, if that is not possible, requiring that a written undertaking be given not to repeat that breach.
- 8.2 If the breach is not remedied or the written undertaking given (as the case may be) within fourteen days, or any past undertaking given by that Certified User is breached, then CDC may give a written notice to the Certified User immediately terminating their right to use the Seal of Quality on any Products after the date of the notice. From that date, that entity/ person will cease to be a Certified User for the purposes of these Rules.
- 8.3 CDC may immediately terminate a Certified User's right to use the Seal of Quality if the Certified User:
- (a) is no longer properly accredited in relation to clause 3.1 (c);

- (b) any trustee in bankruptcy, liquidator or receiver enters into possession of any of the assets of a Certified User;
 - (c) if a Certified User goes into bankruptcy or liquidation whether voluntary or compulsory (otherwise for the purpose of amalgamation or reconstruction) or makes any composition with its creditors; or
 - (d) if for any reason the Certified User ceases to provide the Products in Australia for one full year or ceases to carry on the manufacture and/or sale of the Products.
- 8.4 If the right of a Certified User to use the Seal of Quality is terminated in accordance with these Rules, CDC may require the Certified User to deliver up, destroy or dispose of, in a manner approved by CDC, any coins, labels, tags, bags, or other items or materials on which the Seal of Quality is affixed or otherwise appears.
- 8.5 CDC is not bound to accept any later application by any entity/person whose right to use the Seal of Quality has been terminated, to be recognised or reinstated as a Certified User.
- 8.6 The rights of CDC under clause 8.1 are in addition to any right that it may have to bring an action for trade mark infringement or any other action in respect of any use of the Seal of Quality other than in accordance with these Rules and to seek or obtain injunctions, damages, an account of profits or other remedies in respect of that infringement or other action.
9. DISPUTE RESOLUTION
- 9.1 A Certified User or applicant for use of the Seal of Quality may request reconsideration of any decision of CDC which relates to any act or application by them in connection with these Rules, by written notice to CDC.
- 9.2 Within fourteen days of receiving a written notice, one or more representatives of CDC will meet with the complainant in a genuine attempt to resolve the dispute at the offices of CDC.
- 9.3 If the dispute is not resolved at a meeting between the Certified User/applicant and the representatives of CDC, the parties agree to appoint, within one month of the meeting referred to in clause 9.2, an appropriately qualified independent person to determine the dispute. In the event that the parties are unable to agree on a person to determine the dispute the matter will be referred to conciliation, administered by the Australian Commercial Disputes Centre Limited. The cost of any resolution or conciliation shall be borne equally by the parties. The parties agree that any decision made either by the appropriately qualified independent person or under conciliation pursuant to this clause will be confidential and binding.

10. MISCELLANEOUS

- 10.1** Nothing in these Rules is intended or shall be used to suggest that the Products in respect of which the Seal of Quality is not used necessarily involve any misrepresentation as to their authenticity as a genuine copper product or that their quality or worth is necessarily inferior to Products in connection with which the Seal of Quality is used pursuant to and in accordance with these Rules. CDC does not authorise or condone the making of any such representations, statements or suggestions whether by Certified Users or other third parties.
- 10.2** CDC does not warrant or represent that the use of the Seal of Quality is guaranteed to confer any financial or other benefit on the user and to the full extent allowed by law excludes any liability for any loss, damage or liability suffered or incurred by any person who uses the Seal of Quality under these Rules, however that loss, damage or liability is caused (whether by the negligence of CDC or its servants or agents or otherwise). To the extent that any liability of CDC is not excluded by this clause, it is limited, to the full extent allowed by law, to an obligation to supply the relevant services that it has provided under these Rules.
- 10.3** Whilst CDC will use its reasonable best efforts to ensure that all uses of the Seal of Quality are in accordance with these Rules it will not be responsible for any damage caused to any one Certified User by the breach of these Rules by any other Certified User or by any other person.
- 10.4** Certified Users who use the Seal of Quality pursuant to these Rules do not do so as agents of CDC. CDC accepts no responsibility for the acts and omissions of those Certified Users.

ANNEXURE A – SEAL OF QUALITY

Trade Mark Seal of Quality

Trade Mark number 905111

Goods

Class 6 Building materials of metal; cable joints of metal (non-electric); collars of metal for fastening pipes; non electric cables and wires of common metal; pipes and tubes of metal; ducts and pipes of metal for central heating installations, ventilating and airconditioning installations; copper wire (not insulated); copper rings; drain pipes of metal; main folds of metal for pipelines; elbows of metal for pipes; junctions of metal for pipes; linkages of metal (cable) (non-electric); clips of metal for cables and pipes; pipes and tubes of metal including copper; pipework of metal; reinforcing materials of metal for pipes; valves of metal (other than parts of machines); water pipes and water pipe valves of metal; tiles of metal for building; tubes of metal; wire of common metal alloys (except fuse wires)

ANNEXURE B – APPLICATION FORM

APPLICATION FOR PRODUCT ENDORSEMENT

Please refer to Rules attached

COMPANY NAME:

COMPANY ADDRESS:

PHONE NO.: _____

FAX NO.: _____

Email: _____

CONTACT PERSON: _____

PRODUCTS FOR ENDORSEMENT BY THE SEAL OF QUALITY–

brief description:

SIGNED: _____ per Applicant Company

DATED: _____

ANNEXURE C – FEES

APPLICATION FEE: NIL

ANNUAL FEE: NIL
(not payable on initial application)

**ANNEXURE D – STANDARDS FOR COMPLIANCE OF PRODUCTS FOR
USE OF SEAL OF QUALITY**

TO be eligible to use the Seal of Quality, all copper products must contain a minimum of 99.90% copper.