



Australian
Competition &
Consumer
Commission

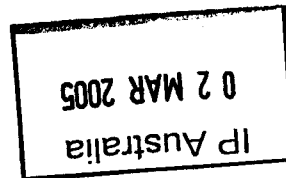
1) R
2) R. Tasker

PO Box 1199
Dickson ACT 2602
470 Northbourne Ave
Dickson ACT 2602
ph (02) 6243 1111
fax (02) 6243 1199
www.accc.gov.au

Our Ref: C2002/1438
Your Ref: CTM 916199
Contact Officer: Susan Sullivan
Contact Phone: 02 6243 1354

24 February 2005

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



Dear Registrar

Application for certification trade mark number 916199 lodged by King Island Council

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 enclosed, 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





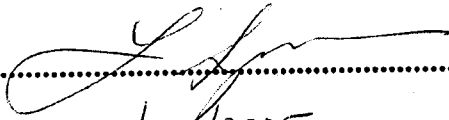
**Australian
Competition &
Consumer
Commission**

**Final Assessment of Certification Trade Mark Application 916199
lodged by the King Island Council**

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.....  (Deputy Chair)

Date..... 23/02/2005

COMMONWEALTH OF AUSTRALIA

Certified copy
pursuant to section 175(2)(b)
of the *Trade Marks Act 1995*

TRADE MARKS ACT 1995

IN THE MATTER OF Certification Trade Mark

Registration Number [.....], in the name of

King Island Council

Commissioner

Date

23/02/05

RULES GOVERNING THE USE OF THE CERTIFICATION MARK

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

Applicant means any person who applies to the Owner for a Licence to use the Trade Mark.

Approved Certifier means the Owner, or an Officer or a duly authorised representative of the Owner acting on behalf of the Owner, familiar with the Rules and their method of application able to make inquiries about and investigate the origin, manufacture or production of the Goods to be Licensed.

Goods means the goods in respect of which the Trade Mark is registered or such of them as the Licensee is licensed to apply the Trade Mark.

Licence means a Licence to use the Trade Mark granted by the Owner in accordance with these Rules and documented in a licence agreement.

Licence Fee means the fee charged by the Owner for a Licence.

Licensee means any person for the time being holding a Licence.

Owner means King Island Council, Council Chambers, George Street, Currie, King Island.

Primarily Processed means being substantially transformed on King Island and with 50 per cent or more of the costs of production having been incurred on King Island.

Register means the Register of Licensees maintained by the Owner.

Rules means these Rules.

Trade Mark means the certification trade mark registered number [.....], details of which are contained in Appendix A.

1.2 Interpretation

Unless the context otherwise requires:

- (a) Words importing the singular include the plural and vice versa;
- (b) Words importing a gender include any gender;

- (c) Other parts of speech and grammatical forms of a word or phrase defined in these Rules have a corresponding meaning;
- (d) An expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate;
- (e) A reference to:
 - (i) an appendix is a reference to an appendix of these Rules;
 - (ii) any thing (including, but not limited to, any right) includes part of that thing;
 - (iii) an agreement or law includes all amendments or replacements of that agreement or law;
 - (iv) a party to a document includes that party's successors and permitted assigns.

2 PURPOSE OF THE TRADE MARK

The Trade Mark is to be used to indicate that goods bearing the Trade Mark have been certified by the Owner as originating from King Island.

3 PROPRIETORSHIP

The Owner is the registered Owner and proprietor of the Trade Mark. The Trade Mark may not be used by any person otherwise than in accordance with these Rules and subject to a Licence issued under these Rules.

4 REGISTER

- 4.1 The Owner will keep a Register of Licensees at its office and will make the Register available for public inspection during normal business hours.
- 4.2 The Register will record the name and address of each Licensee and the date of entry onto the Register.
- 4.3 Each Licensee must notify the Owner of any changes to the details recorded in the Register. The Owner is responsible for amending the Register accordingly.
- 4.4 A copy of these Rules, and any amendments to them, will be kept with the Register and will be made available for inspection at the same time as the Register.

5 CONDITIONS FOR USE OF THE CERTIFICATION TRADE MARK

In order to be licensed to use the Trade Mark and to be permitted to continue to use the Mark, each Applicant must establish, to the satisfaction of the Owner, that:

- (a) if the Goods are a product of agriculture or nature they are grown or produced in King Island; or
- (b) if the Goods are manufactured or processed they are made or Primarily Processed on King Island;

and

- (c) the goods are of a consistently high quality and comply with the relevant Government or industry standards; and
- (d) the use of the Trade Mark on the Goods must:
 - (i) enhance the standing of the Owner and the Trade Mark;
 - (ii) not bring the Trade Mark into disrepute; and
 - (iii) not mislead or deceive the public.

6 APPLICATIONS TO BECOME A LICENSEE

- 6.1 Any person may apply to the Owner for a Licence to use the Trade Mark on its Goods. An application to become a Licensee must be in writing in the form contained in Appendix B and supported by documentation or evidence as follows:
- (a) samples of current packaging and promotional material for the Goods;
 - (b) samples of proposed packaging and promotional material for the Goods showing the intended use of the Trade Mark;
 - (c) evidence of origin of the Goods such as the Owner's or an Approved Certifier's report following a site visit to the location on King Island where the Goods are grown or produced, or where the Goods are manufactured or processed;
 - (d) documentation including, but not limited to invoices or other business records confirming that the Goods are grown or produced on King Island, or manufactured or processed on King Island;
 - (e) documentation relating to the quality of the Goods including but not limited to analysis and testing reports relevant to the Goods and compliance with legal and regulatory standards or other industry standards applicable to the Goods.
- 6.2 In order to decide whether or not to offer an Applicant a Licence the Owner may in its absolute discretion:
- (a) require that further information be furnished by the Applicant;
 - (b) make such enquiries as its sees fit to verify any information provided by the Applicant.
- 6.3 If the Applicant can satisfy the Owner that the Trade Mark will only be used in accordance with the Rules and the Licence, then the Owner may offer the Applicant a Licence on such conditions as it considers appropriate.
- 6.4 The Owner is entitled to impose a Licence Fee. The frequency of payment and the amount of the Licence Fee will be as prescribed by the Owner, in its absolute discretion, from time to time.
- 6.5 Upon execution of a Licence by the Applicant and the Owner, and payment of the Licence Fee by the Applicant, the Applicant:
- (a) will become a Licensee;

- (b) is entitled to use the Trade Mark in accordance with the Rules and the Licence; and
- (c) will be entered on the Register.

6.6 Until the Applicant is accepted as a Licensee and the Owner has approved all packaging and promotional material associated with the use of the Trade Mark on or for the Goods, the Applicant is not entitled to use the Trade Mark on or in relation to the Goods, but may state that an application is pending.

7 WARRANTY BY AUTHORISED LICENSEE

Each Applicant warrants to the Owner that:

- (a) any and all information or statements given by it to the Owner are true and correct.
- (b) the Applicant has the legal authority or standing to enter into the Licence and to contract to be bound by the Rules.
- (c) the Applicant will, if accepted as a Licensee:
 - (i) comply with its obligations under the Rules, the Licence Agreement and any conditions reasonably imposed by the Owner; and
 - (ii) pay the Licence Fee in accordance with Rule 6.4.

8 LICENSEE'S INDEMNITY

Each Licensee indemnifies the Owner against any actions, suits, claims, proceedings, demands, damages, losses, compensation, sums of money, costs (including solicitor/client costs), charges and expenses claimed, made against or suffered by the Owner arising out of or in connection with:

- (a) the promotion, sale, supply or use of the Goods bearing the Trade Mark applied by the Licensee;
- (b) any breach of the Licence Agreement by the Licensee; and/or
- (c) any breach of the Rules by the Licensee.

9 WARRANTY AND INDEMNITY BY OWNER

9.1 The Owner warrants that it:

- (a) is the registered owner of the Trade Mark; and
- (b) has the authority to grant the Licence.

9.2 The Owner indemnifies each Licensee against any actions, suits, claims, proceedings, demands, damages, losses, compensation, sums of money, costs (including solicitor/client costs), charges and expenses claimed, made against or suffered by it arising out of or in connection with a breach of Rule 9.1.

10 COMPLIANCE WITH THE RULES AND CONDITIONS OF USE

10.1 During the term of the Licence the Owner may:

- (a) at least once a year on reasonable written notice, require each Licensee to demonstrate (in any form that the Owner reasonably

requires) continuous compliance with the Rules and the Licence by submitting documentation such as that set out in clause 6.1 showing compliance with the Rules including but not limited to payment of fees, continuing to meet criteria for grant of Licence set out in clause 5, continuing to meet specified standards, continuing to use approved packaging and promotional material and compliance with an annual audit in relation to sales; and

- (b) make such inquiries as it considers necessary, in its absolute discretion, to verify any information provided under Rule 10.1(a);

10.2 During the term of the Licence each Licensee must:

- (a) maintain reasonable records as to the use of the Trade Mark in relation to the Goods the subject of the Licence. Records include, but are not limited to, information on: the origin of the goods or any ingredients or materials from which the goods are made, quality control and compliance with applicable government or industry standards, sales figures, methods of distribution and samples of packaging and promotional material;
- (b) use the Trade Mark only in relation to the Goods and in a manner that is not misleading or deceptive or is likely to mislead or deceive; and
- (c) permit the Owner or its duly authorised representative, access to all records relating to the used the Trade Mark in relation to the Goods in order to verify that the use of the Trade Mark is in accordance with the Rules and the Licence. The Owner undertakes to minimise any inconvenience caused to the Licensee.

11 TERMINATION

11.1 Termination by the Owner

- (a) The Owner may, by written notice to the Licensee, immediately terminate the Licence if:
 - (i) it is satisfied that the Licensee has not used the Trade Mark for a continuous period of twelve months;
 - (ii) it considers the use of the Trade Mark to be in breach of the Rules or the Licence;
 - (iii) the use of the Trade Mark does, or may, infringe any applicable law or regulation or any third party rights; or
 - (iv) the Licensee is unable to pay its debts as and when they fall due or is in jeopardy of, threatens to, resolves to or enters any form of insolvency administration, liquidation, bankruptcy or arrangement with its creditors.
- (b) If the Owner is satisfied that any of the conditions for termination of the Licence apply only to some of the Goods the Owner may, in its discretion, partially terminate the Licence. The Licensee will, in that instance, be required to comply with the Licence and the Rules for the remaining Goods, and enter another Licence and any other conditions of use that the Owner may, as a result of the partial termination, deem fit.

11.2 Termination by Licensee

The Licensee may notify the Owner that it has ceased using the Trade Mark and may request termination of the Licence. The Owner will agree to terminate the Licence provided that the Owner is satisfied that Licensee has ceased using the Trade Mark.

11.3 Consequences of Termination

Upon termination under clause 11.1 or 11.2:

- (a) the Licensee must, if it has not already done so, immediately cease use of the Trade Mark.
- (b) the Owner will remove the Licensee from the Register.
- (c) the Owner may require the Licensee to provide warranties and indemnities as it deems appropriate.

12 APPEALS

12.1 Any person who is aggrieved by a decision of the Owner to:

- (a) refuse to grant a Licence;
- (b) refuse to renew in whole or part a Licence;
- (c) terminate in whole or part a Licence, or
- (d) amend the rules or the Licence.

may seek reconsideration of the decision by the Owner within 30 days of receiving notification of the decision of the Owner. A request for reconsideration is to be made in writing with supporting documentation. The person aggrieved can request a meeting with the Owner to discuss the written request for reconsideration and supporting documentation prior to the reconsideration of the Owner.

12.2 Any person who is aggrieved by a decision of the Owner or a reconsideration of the Owner may mediate any dispute with an independent Mediator nominated and agreed to by both parties. An agreement to mediate must be made within 30 days of receiving notification of the decision from the Owner. The mediation must take place within a further 30 days of the agreement to mediate unless otherwise agreed to by both parties.

12.3 In the absence of an agreement to mediate or failure to settle any dispute at mediation, then an appeal may be made to the Australian Commercial Disputes Centre (ACDC), within 30 days thereof (or such other time as may be allowed by law).

12.4 Notice of the appeal must be given to the Owner and a copy given to the ACDC. The appeal will be conducted in accordance with the Rules of the ACDC.

12.5 The decision of the ACDC is to be made after each party has had an opportunity to make oral or written submissions, and will be final and binding on all parties.

13 NOTICES

13.1 Any notice, demand, consent, statement or other communication ("Notice") to be given or made under the Rules:

- (a) must be in writing;
- (b) must be signed by an authorised officer of the party giving or making it or its solicitor or attorney;
- (c) may be given by being left at or sent by prepaid ordinary post (or, if the address is outside Australia, by prepaid airmail) or by facsimile to the intended recipient's address or facsimile number as most recently advised.

13.2 A Notice if:

- (a) posted will be deemed served 2 Business Days after posting by registered post;
- (b) sent by facsimile will be deemed served on satisfactory conclusion of transmission.

14 SEVERABILITY

If any term or provision of the Rules are deemed or judged to be invalid for any reason, such invalidity shall not affect the validity or operation of any other term, clause or provision of the Rules, except to the extent necessary to give effect to such invalidity.

15 DURATION OF PROVISIONS

The covenants, conditions, provisions and warranties contained in the Rules and the Licence will not merge or terminate upon completion of the transactions contemplated but to the extent that they have not been fulfilled and satisfied or are capable of having effect will remain in full force and effect.

16 MODIFICATION

16.1 The Rules may be altered or modified by the Owner from time to time. Any such amendment will be notified by the Owner to each Licensee in writing. The notification will detail:

- (a) the proposed amendments to be made; and
- (b) the date the proposed amendments become effective.

16.2 The proposed amendments must be approved by the Australian Competition and Consumer Commission.

16.3 If the Licensee wishes to object to the proposed amendments it must do so within 30 days of receiving notification under Rule 16.1. The Appeals procedure set out in Rule 12 will apply in this instance.

Appendix A

Details of the Trade Mark

Appendix B

Application for a Licence to use the Trade Mark

I,.....(Insert Name)
(Insert Address)

hereby apply for permission/renewal of permission to use the Registered Certification Trade Mark No..... of King Island Council.

1 PERSONAL/CORPORATE DETAILS

Full Name of Applicant:	
Address/Registered Office:	
ABN:	
Phone Number:	
Facsimile Number:	
Email Address:	

2 INFORMATION RELATING TO THE GOODS

Details of The Goods	(Please include samples of packaging and promotional material, if available)
Evidence of Origin and Quality of Goods (Rule 5.1(a) & (b))	Please provide details of the origin and quality of the goods (information may be attached to this application, if necessary)

<p>How does the Applicant propose to ensure that requirements relating to the use of the Trade Mark are met?</p> <p>(Rules 5.1 (c))</p>	<p>Please provide details.</p>
---	--------------------------------

3 UNDERTAKING BY APPLICANT

I hereby undertake to comply with the Rules from time to time governing the use of the Trade Mark (a current copy of the Rules having been received by me and read and understood) and I agree to enter a licence to use the trade mark if this application is approved.

I warrant that the information provided in this Application is true and correct.

Signature

Name:

Position:

Date