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**Australian
Competition &
Consumer
Commission**

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Our Ref: C2004/1431 & 1432
Your Ref: CTMs 922014 & 943669
Contact officer: Siobhán O'Gara
Contact phone: 08 9325 0608

22 September 2005

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

IP Australia
26 SEP 2005

Dear Registrar

Certification Trade Mark Applications Nos. 922014 & 943669

The Australian Competition and Consumer Commission (the ACCC), in accordance with the provisions of the *Trade Marks Act 1995*, has completed its final assessment of Certification Trade Marks (CTMs) No. 922014 & 943669.

Certificates detailing the ACCC's assessments are attached, together with a certified copy of the rules. The applicant has been notified.

If you have any queries on this matter, please contact Siobhán O'Gara on 08 9325 0608.

Yours sincerely

Scott Gregson
A/g General Manager
Adjudication Branch





Australian
Competition &
Consumer
Commission

**Final Assessment of Certification Trade Mark Application 922014
lodged by the Australian Foil Insulation Manufacturers' Association**

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.

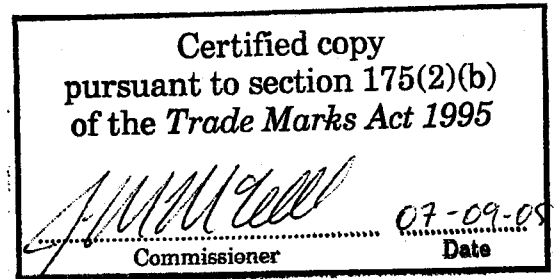
The ACCC's Final Assessment is that it is satisfied that:

- (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..... 7 SEPTEMBER 2005

RULES GOVERNING THE USE OF CERTIFICATION TRADE MARK 922014



BY:

**AUSTRALIAN FOIL INSULATION MANUFACTURERS ASSOCIATION INC.,
ABN 47 424 310 085 ("AFIMA")**

1. List of Approved Certifiers

Only AFIMA may certify the use of the trade mark.

2. Cases in which goods are to be certified

Goods will be certified to use the trade mark after AFIMA is satisfied that all conditions, as outlined in paragraph 3 below, have been met.

3. Conditions under which an approved use is allowed to use the trade mark

3.1 In order to be certified, goods shall achieve a pass for each of the test protocols as outlined by:

- "AS/NZA 4040.4 Modification Document, Methods of testing sheet roof and wall cladding Method 4: Resistance to impact (sandbag) for sheet roof materials. Test for Fall Arrest by Sarking" (attached as Annex 1). This testing is to be performed by an independent testing laboratory as recognised by AFIMA.
- "UL2218 Modification Document, Impact Resistance of Prepared Roof Covering Materials. Test for Hail Resistance by Sarking" (attached as Annex 2). This testing is to be performed by an independent testing laboratory as recognised by AFIMA.

3.2 Companies seeking to use the trade mark shall submit to AFIMA;

- a copy of all test reports, certified by a testing authority registered by the National Association of Testing Authorities (NATA) for the purposes of conducting tests on roof sarking materials.
- a sample of the product accompanied by a full description of materials and product name.
- payment of the first year of an annual licensing fee equivalent to the AFIMA annual membership fee. AFIMA members are exempt from the annual licensing fee. The payment of the fee is required at the time of sample and test report submission. The fee covers one manufacturer for one or multiple product certification to use the trade mark.

4. Details of the use of the trade mark by any approved user

4.1 Only products that satisfy the above conditions shall be permitted to display the trade mark.

4.2 The trade mark must be printed onto the product, its label and associated literature. Samples of the product and all literature displaying the trade mark shall be submitted to AFIMA prior to release of the product.

4.3 the product shall be re-tested after:
- a period of 5 years, or

- any modification to the raw materials or properties of the product, or
- alteration or addition to either test procedure.

5. Dispute Resolution

5.1 All Disputes, other than Disputes to which clause 5.2 applies, shall be dealt with in the following manner:

- (a) a notice setting out nature of the Dispute ("Dispute Notice") shall be sent to the other party by the party asserting the existence of a Dispute;
- (b) the matter shall first be discussed by representatives of each of the parties;
- (c) if the parties cannot resolve the Dispute within 28 days of receipt of the Dispute Notice, the Dispute shall be referred to mediation;
- (d) if the parties cannot agree on a mediator within 35 days of receipt of the Dispute Notice, a mediator shall be nominated by the President of the Australian Institute of Arbitrators;
- (e) the mediation shall be conducted in Melbourne, Australia;
- (f) the parties shall share the costs of the mediation equally and shall each bear their own costs and expenses incurred in connection with the mediation;
- (g) if mediation is unsuccessful, or in substitution for mediation, the parties may agree to submit the dispute to arbitration in accordance with *Commercial Arbitration Act* (Vic) 1984;
- (h) arbitration pursuant to paragraph (g) shall be conducted by a single arbitrator;
- (i) if the parties cannot agree on an arbitrator within seven days of agreeing to submit the dispute to arbitration, the President of the Australian Institute of Arbitrators shall nominate the arbitrator;
- (j) the arbitration shall be held in Melbourne, Australia. The decision and award of the arbitrator shall be final and binding, and the arbitrator's award may be entered in any court having jurisdiction in relation to the award, as a judgement of the court;
- (k) the parties shall co-operate to ensure that the procedures set out in this clause are carried out expeditiously;
- (l) a party must not commence legal proceedings against the other party in relation to a Dispute until the procedure set out in clause 5.1 (a) – (f) has been complied with;
- (m) the parties submit to the exclusive jurisdiction of the courts of the State of Victoria and the federal courts of the Commonwealth of Australia.

5.2 Either party may take proceedings against the other in any court of competent jurisdiction without complying with the procedure set out in clause 5.1 if the relief sought by the party includes the grant of urgent equitable relief.