



Australian
Competition &
Consumer
Commission

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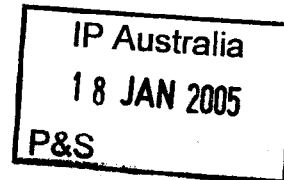
1) R
2) R.Tasker.

Our Ref: C2003/1390
Your Ref: TM150
Contact Officer: Liam Stewart
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17 January 2005

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



Dear Registrar


**Certification Trade Mark Applications 931414, 931415, 931416 & 931417 lodged by
Benchmark Certification Pty Ltd**

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

A certificate detailing the ACCC'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 Liam Stewart on (02) 6243 1275.

Yours sincerely


Susan Philp
Acting Director
Adjudication Branch





**Australian
Competition &
Consumer
Commission**

**Final Assessment of Certification Trade Mark applications 931414, 931415, 931416,
931417 lodged by Benchmark Certification Pty Ltd.**

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) applications.

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

- (a) the approved certifiers are competent to certify the Certification Terms and Conditions (the rules) in respect of which the CTMs are to be registered
- (b) the rules governing the use of the CTMs would not be to the detriment of the public and
- (c) the rules governing the use of the CTMs 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.....*J. McMillan*..... (Commissioner)

Date.....*15 DECEMBER 2004*.....

Part 4
Terms and Conditions

Please read these terms and conditions before signing the Application and Agreement Form.

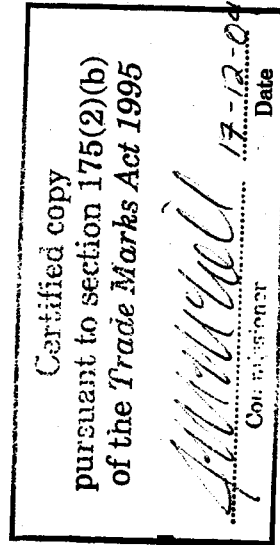
1. CERTIFICATION AGREEMENT TERMS AND CONDITIONS

1. Responsibilities

- 1.1. As a party to this Agreement, the Client shall provide Benchmark Certification with all documents, information and facilities as necessary to enable Benchmark Certification to provide the services under this Agreement.
- 1.2. As a party to this Agreement, Benchmark Certification shall provide Document Reviews, Business Reviews and, if satisfactory, Certification in accordance with Benchmark Certification Procedures. Please note that, in pursuit of its policy of constant improvement, Benchmark Certification reserves the right to modify its Procedures.

The Client hereby warrants and covenants with Benchmark Certification that it will at all times during the life of the Agreement comply with all reasonable requirements necessary for the issuance of the Certificate including (but without prejudice to the generality thereof) all statutes, rules, regulations issued by any statutory or other competent authority all recommendations, codes or similar matters issued by any authority pursuant to which in compliance of which or for the purpose of which Certification is issued or such other reasonable requirements of Benchmark Certification as are necessary to enable Certification to be issued and maintained.

- 1.3. The Client hereby warrants the completeness and accuracy of all documents and information supplied to Benchmark Certification for the purposes of this Agreement. The Client also undertakes to notify Benchmark Certification in writing of any conditions, which would or could affect Benchmark Certification's decision to issue or maintain Certification (this includes major complaints, product recalls or failures). Benchmark Certification shall also be given access to all material in relation to the above.
- 1.4. Benchmark Certification shall not be liable in any respect should it be prevented from discharging such obligations as a result of any matter beyond its control, which could not be reasonably foreseen.



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Our Terms and Conditions

1.5. If any of the terms and conditions of this Agreement are determined to be invalid or unenforceable by any court such determination and consequential severance (if any) shall not invalidate the rest of the Agreement which shall remain in full force and effect as if such terms and provision had not been made a part thereof.

1.6. Should any clause of this Agreement conflict with any requirement of the Trade Practices Act, Fair Trading Act or other as applicable, then that clause should be severed from the Agreement but the remainder of the Agreement shall remain in force.

2. Terms of Payment

2.1. All fees are defined, or referred to, in the 'Application Form and Certification Agreement' signed by both parties. It indicates the basic charges for the services requested on the assumption that the information supplied by the Client was accurate and complete. Any service supplied beyond those set out in the form shall be charged at current rates.

2.2. Benchmark Certification reserves the right to increase these charges, which will be reviewed on a regular basis. The Client will be given prior written notice of any proposed increase.

2.3. Special Surveillance Reviews will be charged at the rate applicable at that time.

2.4. Travel costs and expenses, unless agreed otherwise, are inclusive of transport within Sydney, Canberra, Melbourne, Brisbane, Adelaide and Perth metropolitan areas. Other travel costs and expenses will be charged as per quotation.

2.5. Should the Client postpone or cancel mutually agreed arrangements, Benchmark Certification shall reserve the right to charge a fee equivalent to 15% of the total of the fee chargeable for the agreed arrangement. This sum may not be discounted off future chargeable amounts.

The Application or Membership fees and Post Certification fees (which are charged in advance) are not refundable.

2.6. Payment becomes due within 14 days of the date of invoice. Thereafter, the outstanding unpaid amount may accumulate interest at the rate of 4% above the official current Short Term Rate.

Please note that the Certificate(s) of Approval cannot be released until all due payments have been received.

3. Termination of the Agreement

3.1. Either party may terminate this Agreement by giving three months written notice to the other party.

3.2. Termination may also be by default

↳ Immediately upon either party being notified by the other of any material breach of this Agreement.

↳ If either party goes into liquidation or a receiver or administrator is appointed for all or part of the undertaking thereof. The receiver or administrator should notify Benchmark Certification of its intentions not to terminate the Agreement.

↳ If either party ceases to trade whether in whole or in part.

3.3. In the event of this Agreement being terminated the Certificate of Approval and Mark issued pursuant hereto shall forthwith become invalid and the Client shall cease to use the same and return to Benchmark Certification all documentation and other matters issued pursuant thereto or bearing an indication of such Certification.

4. Liability

4.1. Except in the case of deliberate neglect on the part of Benchmark Certification, its employees, servants or agents, Benchmark Certification shall not be liable for any loss or damage sustained by any person due to any act of omission or error whatsoever or howsoever caused during the performance of its Document Reviews, Business Reviews and certification or other services.

4.2. In the case of neglect as aforesaid the limit of any loss, damage or otherwise for which Benchmark Certification shall be liable will be limited to an amount not exceeding the maximum fee (if any) charged by Benchmark Certification for the particular service in respect of which the neglect arose. While the restrictions on liability herein contained are considered by the parties to be reasonable in all the circumstances, if such restrictions taken together or any one of them shall be judged to be unlawful or unenforceable then the said restriction shall apply with such words deleted or amended or added.

4.3. The provision of this clause shall not apply to any death or personal injury but the Client shall maintain at all times adequate insurance sufficient to cover all liability that may arise as a result of any matter done pursuant to this Agreement.

4.4. Benchmark Certification shall not be liable for any other warranties other than those expressly set out in the Agreement.

5. Indemnity

The Client shall fully and effectually indemnify Benchmark Certification against all costs, claims, actions and demands arising from:

- ↳ The services provided by Benchmark Certification save to the extent only that such claims arise from the neglect of Benchmark Certification, its employees or agents.
- ↳ The use or misuse by the Client of any Certificate, licence, Mark of conformity provided by Benchmark Certification in accordance with this Agreement.
- ↳ Any breach of this Agreement.

6. Confidentiality

Except as may be required by Law, Benchmark Certification and the Client will treat as strictly confidential and will not disclose to any third party without prior written consent of the other, any information which comes into their possession, the possession of their employees, agents or others by virtue of this Agreement.

7. Law

This Agreement is governed by the Laws of the Commonwealth of Australia and the parties submit to the jurisdiction of the High Court of Australia and all notices and proceedings served will be deemed to be duly served if sent by pre-paid registered mail to the address of the party as herein above appearing or as may be subsequently notified by the other.

8. Arbitration

Any disputes or differences arising between the parties other than as to the payment of fees should be referred to the Australian Commercial Disputes Centre.

In the event of the parties being unable to resolve the dispute within 90 days of it being referred to the Australian Commercial Disputes Centre, or within such longer period as may be agreed between parties, then the matter shall be referred to arbitration for resolution.

An arbitrator shall effect arbitration:

- ↳ Agreed upon in writing by the parties within twenty eight days after a notice is received by Benchmark Certification requesting arbitration; or
- ↳ Appointed in accordance with the provisions of the Commercial Arbitration Act.

2. CONDITIONS OF USE OF MARK AND CERTIFICATE OF APPROVAL

1. General

- 1.1. Variations in the use of the Certificate and Mark may be granted in writing by Benchmark Certification upon receipt of a written request from the Client.
- 1.2. The Certificate and Mark shall remain the property of Benchmark Certification although the Client is charged for the cost of production of duplicates. Permission to continue using Certificates and Mark may be withdrawn in which cases it is agreed that the Client shall return them when requested.
- 1.3. Certificate, Mark, or reference to Benchmark Certification shall only be used or made during the Certification period.
- 1.4. The issuance by Benchmark Certification in no way exempts the Client from his obligations by law with respect to the supply of goods or services.
- 1.5. Certification by Benchmark Certification does not imply and shall not be used in any instance by the Client as Certification of a product or service by Benchmark Certification, the Accreditation Council or the appropriate Australian or New Zealand Government Ministers. The Client shall not be permitted to do so in any advertising, promotional material or other documentation used by the Client.
- 1.6. Electronic Certificates of Approval are issued or re-issued once successful completion of Business Review(s) and payment of relevant fees. These Certificates are valid for 14 months from the month of Certification or the anniversary month of Certification.

Use of the Certificate of Approval

- 2.1. The Certificate may be reproduced entirely and unchanged in original colours or in black and white, ensuring that all details are clearly legible.
- 2.2. Reference to a Certificate shall always be made with mention of the Standard against which certification was granted.
Example: Client XYZ has been approved by Benchmark Certification (ISO 9001).
- 2.3. The Client shall be entitled to display the Certificate at the place of work, web site or in any promotional or advertising material.
- 2.4. Certificates of Approval cannot be amended and can only be issued by Benchmark Certification.

3. Use of Benchmark Certification and JAS-ANZ Marks

Notes: This clause only applies to Marks covered by Benchmark Certification's Accredited activities. Please check with our office if you are in doubt.

3.1. Clients having achieved Certification under an Accredited Program may use either the:

- ↳ Benchmark Certification's Mark or
- ↳ Benchmark Certification and the JAS-ANZ Marks

Should both, Marks be used, they shall remain adjacent to one another, identically proportional to the artwork supplied. The Client's name or its own Mark shall be visible whenever either of the Marks is used.

The JAS-ANZ logo is not to be used for non-accredited programs.

3.2. Certification Mark(s):

- ↳ May be used on stationery, literature or other publicity material;
- ↳ Shall not be used on a product, or in any way that may be interpreted as denoting product environmental conformity, performance, or quality level;
- ↳ May be placed on product packaging, on labels and affixed to the product providing the label contains the following text in a manner that makes it obvious that the text and Mark(s) are linked; 'manufactured under a management system certified as complying with <<Standard>>.

3.3. Marks shall be reproduced in their entirety (including the Standard to which certification is granted) and shall not be changed in any way without written consent of the Managing Director of Benchmark Certification.

Notes:

1. There will be borderline cases where there is reasonable doubt as to what activities an ordinary consumer would understand by the word "manufactured". In such cases of doubt, rather than use the word "manufactured", a more explicit term, appropriate to the process, could be used to describe the activities covered by the Certification eg: assembled, packaged, bottled, blended etc.
2. Labels include documents relating to the product that accompany or are attached to the product. The means of attachment should be temporary in nature.
3. In some cases it may be appropriate to add words to the effect that the certification does not relate to any technical requirements.

4. Colours

The Benchmark Certification and JAS-ANZ (when appropriate) Marks shall only be printed using either of the following colour codes:

4.1. Monocolour

Any one colour for monocolour versions.

4.2. Colour

- ↳ All Benchmark Certification Marks (and JAS-ANZ when approved)
PMS Reflex Blue and PMS 485 Red.
- ↳ *SafetyMAP Certification (Initial, Transition and Advance Level) Mark*

Once Clients have been recommended for Certification (new Certification or upgrade), Benchmark will issue the SafetyMAP Certification Marks appropriate to the achievement level reached. The logos will be issued by our Back Office with the Certificate of Approval and must be used accordance with the instructions issued.

Note: The artwork will be supplied with the original issue of the Certificate of Approval is issued.

3. APPEALS PROCEDURE

1. General

- 1.1. Any Client or Third Party has the right to appeal against decisions of Benchmark Certification on the following grounds:
 - ↳ Refusal of an application for Certification
 - ↳ Refusal to recommend Certification
 - ↳ Withdrawal or suspension of Certification
 - ↳ Non acceptance of the scope, or part of the scope, of Certification of the Client.
 - ↳ Third Party appeal against Benchmark Certification's decision to grant Certification to a Client.
- 1.2. The appeal shall at all stages be treated by all parties as strictly confidential.
- 1.3. The cost of the appeal shall be borne by the Appellant should the appeal fail.

2. Preliminary Actions

- 2.1. An Appellant shall convey the appeal in writing to the Managing Director of Benchmark Certification. Such an appeal shall explain all reasons and be supported by all available documented evidence. It shall be signed by the Appellant's Management Representative.
- 2.2. Upon receipt, the Managing Director shall acknowledge receipt in writing, and seek written explanations from the Benchmark Certification Client Manager or Officer involved. These explanations should provide all reasons and be supported if possible by all available documents. It shall also be signed by the Client Manager or Officer involved.
- 2.3. Upon receipt, the Managing Director shall pass the submissions to an independent Area Manager who shall review both submissions and decide on whether the appeal is justified or not. His/her decision shall be conveyed in writing to the Managing Director:
 - ↳ Should the appeal be successful, ie in favour of the Appellant, the Managing Director shall confirm in writing that the Appeal has been successful. The letter shall explain reasons why the appeal was successful. A copy of the letter shall be sent to the Client Manager or Officer involved. The Managing Director shall also ensure that internal corrective action is taken;
 - ↳ Should the appeal be unjustified, ie in favour of Benchmark Certification, the Appellant shall be informed in writing and

given the opportunity to pursue the matter further via the Appeals Committee. The Appellant shall convey his/her decision in writing to the Managing Director.

- 2.4. The Appellant shall be afforded the right to withdraw the appeal at any stage of the appeal process.

3. Subsequent Actions

3.1. Constitution of the Appeals Committee:

- ↳ Chairman of the Committee: A Director of Benchmark Certification.
- ↳ Three members (minimum) independent from Benchmark Certification and having no interest past or present with the Appellant. Committee members shall be required to sign Confidentiality Statements.
- ↳ Appeals Committee Members shall always be independent from the Appellant. Should this not be the case an independent Member or Chairperson shall be appointed.

- 3.2. The Chairman shall be responsible for the selection of the Appeals Committee members and the constitution of an Appeals Committee.

- 3.3. The Appellant shall be informed of the constitution of the committee, and has the right to reject any chosen member on the basis of conflict of interest only, in which case, an independent replacement shall be agreed between Benchmark Certification and the Appellant.

- 3.4. Copies of the submissions shall be presented to the Members who shall vote. The Members shall be offered the right to consult specialists in the relevant field. Submissions and voting may be provided and undertaken by correspondence.

- 3.5. The decision of the Appeals Committee shall be unanimous and final. It shall be communicated to the Appellant in writing with all supporting evidence attached.

Note: If the Managing Director was the Client Manager involved with the Appellant, his/her involvement in the above procedure shall be fully substituted by an independent Manager.