

IP Australia
03 MAY 2005



TRCM



Australian
Competition &
Consumer
Commission

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Our Ref: C2003/758
Your Ref: TM 145
Contact Officer: Bronwyn Davis
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28 April 2005

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

Dear Registrar

Certification Trade Mark Application No. 944189

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 Mark (CTM) No. 944189.

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 Bronwyn Davis on (02) 6243 1363.

Yours sincerely

A handwritten signature in black ink that reads "Sue Murphy".

Sue Murphy
Director
Adjudication Branch





Australian
Competition &
Consumer
Commission

Final Assessment of Certification Trade Mark Application 944189 lodged by B-Qual Australia 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) 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..... 28/04/2005

B-QUAL AUSTRALIA PTY LIMITED - RULES OF CERTIFICATION

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1. INTRODUCTION

- 1.1 The letters and numerals forming B-Qual and the logos depicted in Annexure 1 and 2 are collectively referred to, in these rules, as the B-Qual Australia Certification Trade Marks.
- 1.2 The B-Qual Certification Trade Marks are owned by B-Qual Australia Pty Limited.
- 1.3 B-Qual, being an industry programme of the Australian honeybee industry, administers the certification programmes and either grants licences which includes the right to use the B-Qual Certification Trade Marks or otherwise approves the use of the Certification Trade Marks in accordance with these rules. The Licence referred to in these rules means the person holding such a licence.
- 1.4 The B-Qual Certification Trade Marks are governed by these Rules. The Rules protect the integrity of the B-Qual Certification Trade Marks and enhance the value of the B-Qual Certification Trade Marks to Licencees.
- 1.5 To protect the B-Qual Certification Trade Marks, applications have been filed with the Australian Industrial Property Organisation and with Intellectual Property organisations in countries where the company wishes to have Licencees.
- 1.6 Only those who have been granted a licence by the Secretary of B-Qual Australia Pty Limited authorising them to use the Certification Trade Marks may use the Certification Trade Marks. The use of the Certification Trade Marks is governed by this document.
- 1.7 B-Qual may delegate any or all of its functions described herein to an agent.

2. CONDITIONS FOR THE USE OF THE CERTIFICATION TRADE MARKS**2.1 The Licencee may use B-Qual Certification Trade Marks -**

- (a) only
 - (i) in accordance with the registration schedule issued to them by B-Qual after passing an audit by an appropriately qualified person duly nominated by B-Qual to certify its standards;
 - (ii) after being granted a licence or other authorisation by B-Qual to use the B-Qual Certification Trade Marks; and
 - (iii) in accordance with this document; or

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- (b) as described in the relevant licence or contract arrangement.
- 2.2 B-Qual may revoke a Licence or suspend a Licence if the Licencee –
- (a) commits a breach of or does not comply with these Rules; or
- (b) does not use the B-Qual Certification Trade Marks in accordance with the Schedule to the Licence; or
- (c) uses the B-Qual Certification Trade Marks in a way that, in the opinion of B-Qual might be misleading to the public; or
- (d) is found, during an audit by a B-Qual approved licenced auditor, to have a major system failure which is not rectified within the time agreed to by B-Qual; or
- (e) fails to pay any fees, costs or charges payable under the licence; or
- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors or makes any arrangement or composition with its creditors, or, if a company enters into liquidation (whether compulsory or voluntary, but not including voluntary liquidation for the purposes of reconstruction) or has a receiver appointed of its business.
- 2.3 The licence shall remain suspended until the licensee can satisfy B-Qual that the breach of clause (2.2) has been rectified.
- 2.4 If after 30 days of receipt of notice of suspension the licensee is unable to satisfy B-Qual that the breach of clause (2.2) has been rectified, B-Qual may revoke the licence.
- 2.5 ANY DECISION MADE UNDER THIS CLAUSE IS FINAL AND BINDING
3. RIGHT OF APPEAL
- 3.1 Applicants or Licensees seeking to appeal a decision made under Clause 2.4, shall advise B-Qual in writing within 14 days of receipt of any written notification of such decision.
- 3.2 The person or organisation who will hear and determine the appeal ("the adjudicator") shall be agreed to by the parties within 30 days of B-Qual receiving written notification of the Applicants or Licensees intention to appeal as stated above in paragraph 3.1.
- 3.3 The procedure of the appeal shall be determined by the adjudicator and the parties shall comply with that procedure.

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4. OBLIGATION OF LICENCEE***A Licencee shall -***

- (a) Comply in all respects with the relevant sections of the B-Qual Quality Code and Licence as issued by B-Qual, as amended from time to time.
- (b) Provide evidence that
 - (i) their quality system has passed a Certification Audit conducted by an approved auditor;
- (c) Submit to B-Qual any form in which it is proposed to use or make reference to the B-Qual Certification Trade Marks or to the B-Qual Quality Code prior to using that form.
- (d) Discontinue any use of the B-Qual Certification Trade Marks to which B-Qual objects.
- (e) Withdraw any statement concerning the authority of the Licencee to use the B-Qual Certification Trade Marks if B-Qual advises the licencee that it considers the statement misleading.
- (f) Notify B-Qual of any change to the Licencee's business which may affect its certification such as change in the scope of business activities.
- (g) Notifying in writing any person who has purchased any goods and services from the licencee which were produced or provided outside the certification scope.
- (h) Give agents of B-Qual reasonable access to examine processes, records or other material which in the opinion of B-Qual, are relevant to the Licence.
- (i) Pay within 30 days from the date of invoice:
 - (i) any fees set by B-Qual in relation to administering the Licence and in relation to any services provided in assessment, auditing, supervising, inspecting or testing.
 - (ii) Any royalties set by B-Qual for the use of the B-Qual Certification Trade Marks

NOTE: The Licencee shall not be entitled to any refund of fees paid or costs incurred in the event of any relinquishment, revocation, non-renewal, alteration or suspension of the Licence.

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- (i) Upon determination of the Licence (however determined), immediately discontinue all use of the B-Qual Certification Trade Marks and all advertising material and other matter which contains B-Qual Certification Trade Marks, or any reference to the Certification Trade Marks. Any material not already disposed of by the licensee which bears the B-Qual Certification Trade Marks shall if B-Qual so requires, be treated at the licensee's expense so as to erase the B-Qual Certification Trade Marks.

5. RELINQUISHMENT OF LICENCE

A Licence may be relinquished by a Licensee at any time by notice in writing to B-Qual and upon the return of the Licence. The Licence (including its Schedule) shall remain the property of B-Qual and shall be returned to B-Qual in the event of its being relinquished, revoked, not renewed, altered or suspended.

6. NOTICES

Any notice or other communication to be given or sent to the applicant or Licensee shall be deemed to be duly given or sent if sent by post, telex or facsimile transmission to the address last known to B-Qual. Notice shall be deemed to be given at the time when it would ordinarily have been received if using the method employed.

7. MISCELLANEOUS

- 7.1 The identity of applicants shall be treated by B-Qual as confidential. All information of a confidential nature given by applicants or Licensees to B-Qual shall be treated a confidential unless B-Qual has received written permission from the applicant or Licensee that any such information may be divulged.
- 7.2 A Licence is non-exclusive and non-transferable.
- 7.3 A list of licensees for the time being shall be kept by B-Qual and open to inspection.
- 7.4 In these Rules words importing the singular import the plural and vice versa. Also, words importing the gender, infers both male and female.

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ANNEXURE 1**USE OF THE B-QUAL CERTIFICATION TRADE MARKS****1. Introduction**

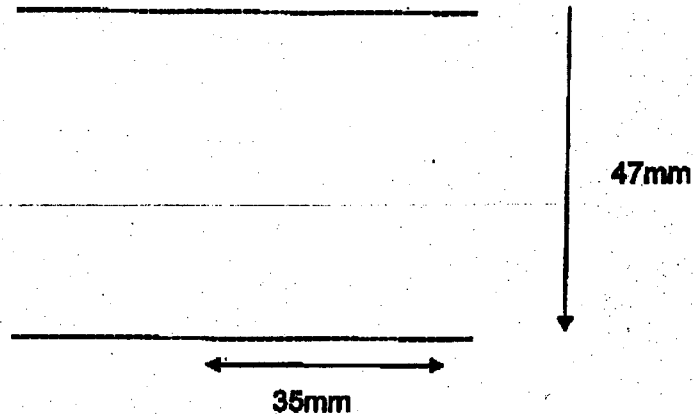
- 1.1 The B-Qual Certification Trade Marks are only to be used by an individual company who has been Certified to the B-Qual Quality Code. The B-Qual Certification Trade Marks are granted under licence to those companies who have obtained certification of their Quality System by Third Party auditor recognised by B-Qual. All certified companies are entitled to use the variations of the B-Qual Certification Trade Marks provided certain conditions are met.
- 1.2 The rationale behind these conditions is that when the mark is used that its dimensions as stated be maintained and that when the marks are used on product for public display or on material for promotional purposes that the full colour reproduction is used in the correct PMS colour format.

2. Using the Certification Trade Marks

- 2.1 The Certification Trade Mark in Annexure 2 may be applied to stationery and publicity material, product or its immediate packaging or outer packaging in accordance with the company's Scope of Registration. This can include brochures, business cards, advertisements, etc and may also cover items such as company flags and vehicles.
- 2.3 Where a business' Scope of Registration does not cover controls necessary to maintain product integrity, the B-Qual Certification Trade Mark shall not be applied to product or packaging. E.g. A market agent receiving packaged produce from a supplier not certified to the B-Qual Quality Code.
- 2.4 If there is doubt regarding the intended use of the B-Qual Certification Trade Marks, B-Qual Certified companies should contact B-Qual prior to printing. Third Party Auditors will check advertising material on every Surveillance Visit. Misuse of the Certification Trade Marks could result in the issue of a Corrective Action Request and an order to discontinue using the offending items.
- 2.5 The company's Scope of Registration is detailed on the Registration Schedule that accompanies the Certificate of Registration. The Registration Schedule also gives information regarding the company name and registration address. Any subsidiary companies and site addresses not included on the Registration Schedule are not covered by the registration and must not be treated as such.

B-QUAL AUSTRALIA PTY LIMITED - RULES OF CERTIFICATION**6/7****3. Reproducing the B-Qual Certification Trade Marks**

Every effort should be taken to ensure that the reproduction of the B-Qual Certification Trade Marks are exact and of the highest standard. The following guidelines should be followed for full colour reproduction. See Annexure 2



Any variation in the above dimensions of the Certification Trade Marks must remain clear and legible and must be proportional to the above dimensions.

4. Certification Numbers

The individual Certification Number issued by B-Qual to businesses that have achieved certification must be included on each use of the Quality Certification and Quality Assured Certification Trade Mark.

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ANNEXURE 2

THE B-QUAL CERTIFICATION TRADE MARK

Black & White version



Full colour version



B-Qual logo pantone matching system (PMS) colours

Green	PMS 355
Orange	PMS 021
Yellow	Process Yellow
Black	PMS Black