

TGAC
TGXB

**Australian
Competition &
Consumer
Commission**

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: C2004/1125
Your Ref: TM 163
Contact officer: Claire Woods
Contact phone: 02 6243 1236

9 May 2005

The Registrar of Trade Marks
IP Australia
PO Box 2000
WODEN ACT 2606

Dear Registrar

Certification Trade Mark Application No 998593

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. 998593.

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 Claire Woods on 02 6243 1236.

Yours sincerely

David Hatfield
Director
Adjudication Branch



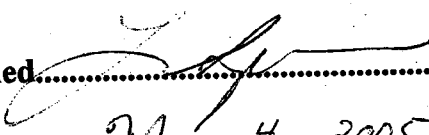


Final Assessment of Certification Trade Mark Application 998593 lodged by Tea Board India

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..... May 4, 2005

998593

Regulations for the use of the certification mark DARJEELING logo
In Class 30 in respect of tea

DEFINITIONS

1 For the purpose of these Regulations, unless the context otherwise requires, the following definitions shall apply:

(A) "the Proprietor" means Tea Board of India, 14 Biplabi Trailokya Maharaj Sarani (Brabourne Road), PO Box No 2172, Calcutta 700001, India;

(B) "Certification Mark" means the Certification Mark DARJEELING applied for under application No. _____ in Class 30 in respect of tea;

(C) "person" shall include any company or association or body of individuals, whether incorporated or not;

(D) "Register" means the Register of authorised users of the Certification Mark maintained by the Proprietor;

(E) "authorised user" means any person for the time being issued with a subsisting Licence;

(F) "Licence" means a licence issued by the Proprietor in accordance with these Regulations;

(G) "licensed goods" means tea cultivated, grown and produced in conformity with these Regulations;

(H) "packet tea" means tea packed in unit packs or containers of the types which are ordinarily put up for the purposes of retail sale under a brand name and includes packages known as "Jota" of two packs packed together in which the net weight of tea contained in the basic pack unit does not exceed one kilogram;

(I) "Packer" means an authorised user who packs tea in the packets as described in paragraph (H) above;

(J) "Producer" means an authorised user who cultivates, grows and produces tea within the geographic areas listed in the attached Schedule I;

(K) "Commission" means the Australian Competition and Consumer Commission established under the Trade Practices Act 1974 of the Commonwealth of Australia.

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

Commissioner

4/05/05
Date

OWNERSHIP OF CERTIFICATION MARK

- 2 The Certification Mark is the absolute property of the Proprietor and shall not be used by any person except an authorised user.
- 3 The power of issuing and cancelling a Licence is vested in the Proprietor.

PERSONS AUTHORISED TO USE THE CERTIFICATION MARK

- 4 The Certification Mark shall be applied to or used in relation to such tea –
 - (i) as has been cultivated, grown or produced in the tea gardens in the geographic areas listed in the attached Schedule I and which have been registered with the Proprietor in accordance with the provision of the Indian Tea Act, or any relevant law which may replace that Act;
 - (ii) as has been cultivated, grown or produced in tea gardens which the Proprietor considers capable of producing tea that meets the requirements of these Regulations;
 - (iii) as has been processed and manufactured in a factory located in the aforesaid areas; and
 - (iv) as, when tested by expert tea tasters on behalf of the Proprietor, is determined to have the distinctive and naturally occurring organoleptic characteristics of taste, aroma and mouth feel typical of tea cultivated, grown and produced in the aforesaid areas. Tea tasters are considered competent to evaluate these characteristics as a result of many years of practical training and experience in the assessment of tea and their highly refined sensory perception, in particular, in relation to the sensations of smell, taste and mouth feel of different types of tea. This enables them to easily recognise the distinctive characteristics associated with a particular type of tea and thereby accurately analyse the nature and quality of the tea.

The current list of tea gardens cultivating, growing or producing Darjeeling tea is set out in Schedule II hereto, which schedule may be amended from time to time by the Proprietor.

The Certification Mark may be used in relation to a blend of Darjeeling teas drawn from more than one tea garden, listed in Schedule II, only if each tea constituting the blend is capable of being described by reference to the Certification Mark, in accordance with these Regulations. The Certification Mark may not be used in relation to a mixture of Darjeeling tea with teas of other origin and/or countries, even in phrases incorporating the word "blend" such as "DARJEELING Blend" or "Blended DARJEELING".

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 - (iii) as has been processed and manufactured in a factory located in the aforesaid areas; and
 - (iv) as, when tested by expert tea tasters on behalf of the Proprietor, is determined to have the distinctive and naturally occurring organoleptic characteristics of taste, aroma and mouth feel typical of tea cultivated, grown and produced in the aforesaid areas. Tea tasters are considered competent to evaluate these characteristics as a result of many years of practical training and experience in the assessment of tea and their highly refined sensory perception, in particular, in relation to the sensations of smell, taste and mouth feel of different types of tea. This enables them to easily recognise the distinctive characteristics associated with a particular type of tea and thereby accurately analyse the nature and quality of the tea.

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5 The Proprietor will grant a Licence to the applicant in the form at Schedule III hereto. Every applicant for a Licence to use the Certification Mark undertakes that the tea in respect whereof it will use the Certification Mark shall conform to paragraphs 4(i) to 4(iv) hereinabove. The applicant, in addition, undertakes that:

(a) The Proprietor or its authorised representatives shall be entitled to inspect, prior to and after the grant of the Licence, as and when desired by the Proprietor, the applicant's) authorised user's premises and/or land for the purpose of inspecting the same and/or taking samples of tea and/or packaging used by the applicant/authorised user.

(b) As and when required by the Proprietor, prior to or after the grant of the licence, the applicant/authorised user shall supply samples of the tea in relation to which it uses or intends to use the Certification Mark for testing by the Proprietor or its authorised representatives to determine that the tea, in respect of which the Certification Mark is used or will be used, still conforms to the standards prescribed by it; and that the applicant will maintain adequate systems of control and inspection, including books and records, to ensure that the tea in respect of which the Certification Mark is proposed to be used will continue to conform to the standards prescribed by the Proprietor.

6 Upon execution by the Proprietor and the applicant of a Licence, the applicant shall become entitled to use the Certification Mark upon the terms and conditions of such Licence and these Regulations and shall remain so entitled during the subsistence of such Licence.

REGISTER

7 The Proprietor shall keep at its offices a Register wherein shall be entered the names, addresses and trade descriptions of each authorised user, the date of his registration, particulars concerning the cancellation of any previous Licence, and such other particulars as may from time to time be prescribed or deemed necessary by the Proprietor. The Register will be available for inspection at Director of Tea Promotion, Tea Board, 5th Floor, 14, B.T.M. Sarani (Brabourne Road), P O Box No 2172, Calcutta 700 001, India and other overseas offices of the Proprietor. Any person wishing to inspect the Register should give reasonable notice of the same to the Proprietor or, in the case of inspection at an overseas office, the relevant overseas office of the Proprietor.

CHARACTERISTICS CERTIFIED BY THE MARK

8 The characteristics certified by the mark are that the tea conforms with paragraph 4 above.

HOW THE PROPRIETOR IS TO TEST THOSE CHARACTERISTICS

- 9 The Proprietor will test the characteristics in accordance with paragraph 5 above.

HOW THE PROPRIETOR IS TO SUPERVISE THE USE OF THE MARK

- 10 An authorised user shall use the Certification Mark only upon and in relation to tea, which conforms to the Regulations and is subject to the right of the Proprietor to control the standards and specifications as stipulated in these Regulations and/or Licence.

- 11 The Proprietor or its authorised representatives shall be entitled at any reasonable time, during business hours, to enter upon any premises or land where the tea in relation to which the authorised user uses the Certification Mark is being cultivated, grown, processed, manufactured, packed or stored, for the purpose of ensuring that the standards laid down by the Proprietor are being adhered to and complied with. The Licence will be conditional on the Proprietor being so satisfied. Where such land or premises is not the property of the authorised user, the authorised user shall ensure that the Proprietor or its authorised representatives has the right to so enter upon the land or premises.

LICENCE FEE

- 12 In consideration of the rights of licensed use, the Proprietor may charge licence fees towards its costs in managing the Certification Mark scheme including, without limitation, costs incurred in promoting the Certification Mark. The Schedule of Licence Fees is attached as Schedule IV.

- 13 Packers will pay an annual licence fee on a flat fee basis or based on the weight of tea sold under the Certification Mark as determined by the Proprietor from time to time.

- 14 Producers will pay an annual licence fee on a flat fee basis or based on the volume of tea sold under the Certification Mark as determined by the Proprietor from time to time.

CONDITIONS AS TO USE OF THE MARK

- 15 The Certification Mark shall be applied to packaging for the tea so that it is clearly visible.

- 16 The authorised user shall prominently and clearly display his User Licence Number on his packet and packaging material.

- 17 The authorised user will provide the Proprietor with quarterly reports detailing the volume and/or quantity of tea sold under the Certification Mark.

- 18 Nothing in these Regulations shall interfere with the separate use, by an authorised user, of his own trade mark, trade name or some other identification upon or in relation to the licensed goods.
- 19 The authorised user shall not use, or cause or assist any person to use, any sign which could be regarded as a colourable imitation or infringement of the Certification Mark.
- 20 The Proprietor shall decide the way in which the Certification Mark may be represented including specifications as to colour, size and lettering of the Certification Mark and what matter of any description may be used in close association with the Certification Mark and in what relationship. In the event of any representation of the Certification Mark being considered unsuitable by the Proprietor, the authorised user shall terminate such use.
- 21 A Licence is granted on the condition that the authorised user will not use the Certification Mark in any printed advertisements or printed publicity matter without indicating that, once registration is achieved, it is a certification mark, or, before registration is achieved, that application for a certification mark has been made.

DURATION AND CONDITIONS AS TO DURATION OF LICENCE

- 22 This Agreement shall come into force from the date hereof and shall continue for one year, subject to automatic renewals from time to time. Either party may terminate this Agreement without prejudice to its other remedies forthwith by notice in writing to the other if that other commits a breach of this Agreement, provided that if the breach is capable of remedy the notice shall only be given if the party in breach shall not have remedied the same within one month of having been given notice in writing specifying the breach and requiring it to be remedied. Either party may terminate this Agreement by notifying its decision in writing served on the other party two months before the anniversary date of the conclusion of this Agreement.

BREACH OF REGULATIONS

- 23 If an authorised user commits any breach of these Regulations, or in any way uses the Certification Mark in an unauthorised, misleading or deceptive manner, or is convicted of any offence leading to the discredit of his reputation or good faith as a trader, or is adjudicated bankrupt, or goes into liquidation (other than voluntary liquidation for the purpose of amalgamation or reconstruction), or has a receiver appointed over his assets, the Licence issued to him shall be liable to be cancelled.

- 24 In the event of the Proprietor cancelling a Licence, all items bearing or indicating the Certification Mark, and all blocks for making the same, shall forthwith be delivered to the Proprietor for the purpose of being destroyed, or else satisfactory proof (in the opinion of the Proprietor) shall be given of this having been done. After the cancellation, the authorised user shall not sell or expose for sale, any goods bearing the Certification Mark except with the consent of the Proprietor.
- 25 If the mark has been used by the authorised user on goods which do not conform with the requirements of these Regulations or in relation to which the authorised user has not complied with paragraph 11, the Proprietor shall have the right to demand that the authorised user remove the Certification Mark from such goods, or withdraw such goods from trade, or exchange such goods for similar goods that comply with the Regulations.
- 26 The authorised user shall be responsible for the consequences of any breach of these Regulations on his part, and shall be fully liable for any damages that may result from such breach of these Regulations.

PROCEDURE FOR RESOLVING DISPUTES

- 27 In the event of the issue of a Licence being refused or a Licence being cancelled by the Proprietor, the person concerned shall, during the period of sixty days immediately succeeding the date of such refusal or cancellation, have the right to appeal against such refusal or cancellation to the Central Government of India, provided that he at the same time gives notice of such appeal to the Proprietor. The decision of the Central Government of India on such appeal (after submission to him of such written and/or oral representations as the parties desire to make or as he shall require) shall be final and binding on the Proprietor and the person concerned. Provided, however, that in cases of misuse of the Certification Mark by any authorised user which infringes the rights of any buyer and/or importer of such licensed goods and written complaint thereof has been received by the Proprietor, the Proprietor after giving opportunities to such authorised user to explain his position may cancel his licence. The decision of the Proprietor in such cases shall be final and binding upon such defaulting authorised user.

POWER TO AMEND

- 28 Subject to the consent of the Indian Central Government and the Commission, the Proprietor may alter these Regulations in accordance with the provisions of the Trade Marks Act 1995 or any other law for the time being in force in the Commonwealth of Australia.

DELEGATION OF POWERS

- 29 The Proprietor may authorise such persons as deemed appropriate by it to make tests and inspections in pursuance of paragraphs 5, 10 and 11 of these Regulations on its behalf. Such persons may include, for example, expert tea tasters, public analysts or such other persons or bodies deemed competent under the relevant food laws and regulations in force in India from time to time. The Proprietor may require that an authorised user obtain a certificate from such a person in order to be entitled to use the Certification Mark.
- 30 For the purpose only of making tests and inspections, the Proprietor may from time to time delegate its powers to a Management Committee duly appointed by a Resolution of the Proprietor, and/or its Board who may be appointed and selected to represent the Proprietor, subject always to such conditions as the Proprietor may from time to time impose.
- 31 Any notice given by the Proprietor in pursuance of these Regulations to an authorised user shall be deemed to have been duly given if forwarded through the post by prepaid letter addressed to such authorised user at his address in the Register. Any notice given by the authorised user to the Proprietor shall be deemed to have been duly given if forwarded through the post by prepaid letter addressed to the Proprietor at Director of Tea Foundation, Tea Board, 5th Floor, 14, B.T.M. Sarani (Brabourne Road), PO Box NO 2172, Calcutta 700 001, India.

SCHEDULE I

The following areas within the District of Darjeeling in the State of West Bengal, India;

- (i) hilly areas of Sadar sub-division
- (ii) hilly areas of Kalimpong sub-division
- (iii) Kurseong sub-division excluding the areas in the District of Darjeeling Authority's Jurisdiction List numbered 20, 21, 23, 24, 29, 30 and 33. These areas are non-hilly areas of the Kurseong.

SCHEDULE II

1. Alloobari
2. Ambiok (Hilton)
3. Arya
4. Avongrove
5. Ambootia
6. Badamtam
7. Barnesbeg
8. Bannockburn
9. Balasun
10. Chongtong (Sirisi)
- Chamong
12. Castleton
13. Dhajea
14. Dooteriah
15. Dilaram
16. Edenvale

17. Ging
18. Gielle
19. Glenburn
20. Gopaldhara
21. Goomtee
22. Giddapahar
23. Gyabaree & Millikthong
- Happy Valley
25. Jogmaya
26. Jungpana (Jungpapa
Upper)
27. Kalej Valley
28. Kumai (Snowview)
29. Lingia
30. Liza Hill
31. Longview (Highlands)
32. Lopchu

33. Margaret's Hope
34. Marybong
35. Mim
36. Mission Hill
37. Moondakottee
38. Mohan Majhua
39. Makaibari
40. Mullotar
41. Mahalderm
42. Monteviot
43. Nagri
44. Nagri Farm
45. North Tukvar
46. Narbada Majhua
47. Nurbong
48. Namring & Namring
(Upper)
49. Oaks
50. Okayti
51. Orange Valley
52. Pandam
53. Pashok
54. Phoobsering
55. Poobong
56. Pussimbing (Minzoo)
57. Phuguri
58. Rangaroon

59. Ringtong
60. Risheehat
61. Rohini
62. Runglee Rungliot
63. Rungmook/Cedars
64. Rungneet

65. Samabeong
66. Selimbong (Rongbong)
67. Soom
68. Singtom
69. Steinthal
70. Sungma
71. Selim Hill
72. Singbulli
73. Sivitar
74. Springside
75. Soureni
76. Singell
77. Sepoydhoorah (Chamling)
78. Seeyok (Spring Valley)
79. Tukvar (Puttabong)
80. Tumsong

81. Turzum
82. Tindharia
83. Thurbo
84. Tukdah
85. Teesta Valley
86. Upper Fagu
87. Vah Tukvar

SCHEDULE III

CERTIFICATION MARK LICENCE AGREEMENT

CERTIFICATION MARK LICENCE AGREEMENT

This Agreement is made the _____ day of _____ between TEA BOARD, INDIA, 14, B.T.M. Sarani (Brabourne Road), P O Box No 2172, Calcutta of the first part (herein called "the Proprietor") and _____ of _____ (herein called "the Licensee") of the second part.

WHEREAS the Proprietor is the owner of a trade mark (hereinafter called "the Mark") relating to tea (hereinafter called "the licensed goods"), particulars of which Mark are set out in Appendix 1 of this Agreement and has applied for registration of the Mark as "a Certification Trade Mark" in accordance with the provisions of the Trade Marks Act 1995 and the regulations, as amended from time to time (hereinafter called the "Regulations"), governing use of the Mark.

WHEREAS the Licensee has applied to the Proprietor for a licence entitling him to use the Mark subject to his compliance with the said Regulations or any modification thereof.

NOW THIS AGREEMENT WITNESSETH that in consideration of the terms and conditions hereinafter contained, the Proprietor hereby agrees to permit the Licensee authorising him to use the Mark in respect of the licensed goods.

- 1 The Licensee hereby undertakes to observe the Regulations in using the Mark upon or in relation to the licensed goods and to observe the standards of quality laid down by the Proprietor, and to submit samples for testing as and when required by the Proprietor.
- 2 The Licensee shall only use the Mark upon or in relation to the licensed goods as defined in the Regulations.
- 3 The Mark shall not be used in a manner which is deceptive or which would bring it into disrepute and its use generally shall be subject to the reasonable requirements of the Proprietor (including a requirement that any representation of the Mark be accompanied by an indication that it is or is subject to an application to become a certification trade mark).

- 4 (1) the Licensee hereby acknowledges that any and all rights created by the registration and use of the Mark are the sole property of the Proprietor.
- (2) the Licensee hereby acknowledges the Proprietor's ownership of the Mark and shall refrain from:
- (A) registering a trade mark identical with or similar to the Mark in respect of any goods;
 - (B) using for any purpose a trade mark identical with or similar to the Mark, except as permitted by the Proprietor in this Agreement;
 - (C) opposing the use and the registration of a trade mark identical with or similar to the Mark or contesting the validity of any such registration;
 - (D) causing or assisting any person to do any of the things mentioned in the above sub-clauses (A), (B) and (C).
- (3) the obligations set out in the above Clauses 4 (1) and (2) shall survive termination of this Agreement for whatsoever reason.

5 The Licensee hereby covenants with the Proprietor that he will not at any time during the subsistence of this Agreement or thereafter claim or cause permit, suffer or assist others to claim any interest in the Mark or any of the rights aforesaid.

6 The Licensee will not claim in relation to the licensed goods bearing the Mark, that they possess any characteristic not specified in the specifications prescribed for such goods by the Proprietor so as to suggest that such claim is certified by the Mark or in any way controlled by the Proprietor.

- 7 (a) In consideration of the rights of licensed use granted hereunder, the Licensee shall pay to the proprietor a licence fee in accordance with the Regulations.
- (b) The Licensee undertakes to bring to the notice of the Proprietor all cases of wrongful use or infringement of the Mark, registration or attempted registration of a trade mark identical with or similar to the Mark. In the event of the Proprietor undertaking any opposition to or any action to restrain or punish such act or acts, the Licensee agrees to co-operate fully and freely with the Proprietor and undertakes to do all such acts and things as the Proprietor shall reasonably require to assist the Proprietor in any legal proceedings in respect of infringement or use or registration of the Mark or any mark similar thereto.

**SCHEDULE IV
SCHEDULE OF LICENCE FEE**

Schedule Gardens as per Schedule II (87)

Large Gardens (gardens with tea area above 200 ha)	=	43
Medium Gardens (gardens with tea area between 100 & 200 ha)	=	33
Small Gardens (gardens from tea area below 100 ha)	=	11

Annual Licence Fee' for above categories will be as under:

Large Gardens Rs.10,000 x 43	=	Rs.4,30,000
Medium Gardens Rs.8,000 x 33	=	Rs.2,64,000
Small Gardens Rs.5,000 x 11	=	Rs 55,000

" May be revised upwards depending on fluctuations in WPI, CPI and other market economic factors.

**Indian Exporters of bulk Darjeeling Tea
(other than the Producers & Producer-Exporters)**

1. Up to 10,000 kg	=	Rs. 5,000
2. Up to 10,001 to 1,00,000 kg	=	Rs.10,000
3. Above 1,00,000 kg	=	Rs.20,000

Licence Fee shall be at current rate of one kilogram of unit price of Darjeeling Tea.

**Packeteers – both domestic & export
(other than producers & producer-exporters)**

4. Up to 50,000 packets or up to 1,00,000 kgs whichever is higher		
(a) 100 gm packs	=	Rs. 3,000
(b) 125 gm packs	=	Rs. 5,000
(c) 250 gm packs	=	Rs.10,000

(d) 500 gm packs = Rs.15,000

5. Above 1,00,000 kgs

(a) 100 gm packs = Rs. 5,000

(b) 125 gm packs = Rs. 7,500

(c) 250 gm packs = Rs.15,000

(d) 500 gm packs = Rs.20,000

Overseas Wholesale Buyers & Retailers

Bulk Up to 10,000 kg = \$ 500

Above 10,000 kg = \$1,000

Packets (100/125/250/500 gms)

Weight up to 10,000 kgs = \$1,000

Weight above 10,000 kgs = \$1,500

Licence fee may also be paid in local currencies equivalent to US Dollars.

Licence fee shall be at current rate of one kilogram of unit price of Darjeeling Tea.

Licence fee should be paid to the Proprietor at the beginning of each year in anticipation of the expected quantities to be sold by the authorised user. A requisition shall occur at the end of each year to adapt the amount of paid fees based on expected quantities to the due amount of fees based on actually sold quantities.

Licence Fee may be revised upwards depending on fluctuations in international currencies and Whole Sale Price Index and Consumer Price Index in India.