



31 July 2020

David Hatfield
Adjudication Director
Australian Competition and Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

Via email: ctms@accc.gov.au

Dear Mr Hatfield

RE: Certification Trade Mark Application No 1914662 – Humane Farm Animal Care

The National Farmers' Federation (NFF) welcomes the opportunity to provide a submission to the Australian Competition and Consumer Commission (ACCC) public consultation on the revised certification trade mark (CTM) application 1914662 lodged by Humane Farm Animal Care (HFAC).

The NFF was established in 1979 as the national peak body representing farmers and the agriculture sector more broadly across Australia. The NFF's membership comprises all of Australia's major agricultural commodities across the breadth and the length of the supply chain. Operating under a federated structure, individual farmers join their respective state farm organisation and/or national commodity council. These organisations form the NFF.

The NFF supports the right of producers to use methods such as trade marks to differentiate and market their product. It is critical that trade marks are not misleading, and are based on rules that are appropriate to Australia's production systems and regulatory environment.

The NFF understands that following the ACCC's decision not to approve HFAC's initial application, HFAC has amended the proposed CTM rules in response to concerns raised in public submissions. While the NFF did not provide comment into the initial consultation, after consideration of the CTM rules (version 2) and broader consultation with members, the NFF recommends that the ACCC does not approve the application from HFAC to register the CTM no. 1914662. The reasons for this recommendation are outlined below.



Potential for consumer misinterpretation

HFAC's proposal to use a trade mark to identify products as 'Certified Humane' is of significant concern to the NFF and our members. There is a high risk of misleading consumers, as the inference is that all unbranded product is not produced humanely. In Australia, all livestock producers are required by law to meet minimum welfare standards including as specified in the Australian Animal Welfare Standards, Model Codes of Practice and state legislation. Industry assurance programs serve to reinforce industry commitment to minimum and higher standards of welfare. This provides consumers with confidence in the production of Australian animal products.

The proposed HFAC CTM standards do not appear to provide for a higher standard of livestock welfare than what is already required by law in Australia. The NFF's view is that to support their claims the HFAC welfare standards would need to be considerably higher than what is legally required or used by existing assurance programs. Failing this, the only difference between HFAC and non-HFAC products would be branding. The branding would likely lead a consumer to believe a HFAC CTM product is of higher value. Given the need to recover costs associated with attaining the HFAC CTM, consumers are likely to pay a higher price for a branded product, which would serve to reinforce the misconception that these products are produced in a more humane manner (and therefore at a higher cost) than unbranded products.

Relevance to Australian production systems and animal welfare regulation

The NFF understands that in response to consultation on the initial CTM application, HFAC amended various sections of their rules to include reference to the Australian Animal Welfare Standards and Guidelines. However, these references are somewhat ad hoc, the application is still significantly US-centric, and HFAC has not appropriately translated their rules to accommodate the Australian operating environment. Without referring to specific sections of the CTM rules (version 2), the NFF is concerned about the following:

- The CTM Rules (version 2) “are based on the Royal Society for the Prevention of Cruelty to Animals (RSPCA) [UK] guidelines.” The production requirements for livestock in the UK differ significantly from those in Australia.
- HFAC has retained language specific to US production systems, references practices unknown to Australian producers, uses imperial measurements and consistently uses North American vernacular and spelling.
- HFAC refers in its standards to quality measures that are not used in Australia.
- HFAC has included just one Australian representative on their Scientific Committee, which informs the development of animal care standards that underpin the CTM application.



The amendments made in response to industry concerns in the initial consultation are inadequate. For this reason and for the reasons outlined above, the NFF recommends that the ACCC does not approve the application from HFAC to register CTM no. 1914662. The NFF also offers its support for the submissions made by its member organisations - Australian Pork Limited, Cattle Council of Australia, Sheep Producers Australia and WoolProducers Australia - which highlight some commodity-specific concerns regarding the proposed HFAC rules.

The NFF has no objections to this submission being made publicly available on the ACCC's public CTM Register.

Thank you again for the opportunity to provide comment. Should you require any further information in relation to this submission, please contact Adrienne Ryan, General Manager Rural Affairs at the National Farmers' Federation, on 02 6269 5666 or aryan@nff.org.au.

Yours sincerely

TONY MAHAR
Chief Executive Officer