GLEN WRIGHT AND ELEANOR BROWNE

SUBMISSION TO THE ACCC

CERTIFICATION TRADE MARK APPLICATION NO. 1435347

FAO: MR. DAVID JONES, DIRECTOR, ADJUDICATION BRANCH

We appreciate the opportunity to provide input to the Australian Competition and Consumer Commission (ACCC) consultation regarding Certification Trade Mark Application No. 1435347, and thank the ACCC for kindly extending the deadline for making a submission to this consultation.

We understand that the Australian Poultry Industries Association (APIA) seeks to register a certification trade mark (CTM) that would cover a range of industry standards, including standards for free range chicken and turkey meat production (APIA Proposed Standard).

As an academic and a lawyer respectively with an interest in consumer welfare, and vegans with a concern for animal welfare, we wish to express our serious concerns with the APIA Proposed Standard.

In summary, we oppose the APIA Proposed Standard and urge the ACCC to reject this application in order to protect consumers. We oppose APIA's application on the basis that the APIA Proposed Standard is:

- 1. Unacceptably low from an animal welfare perspective; and therefore
- 2. Misleading for consumers who hold high expectations in relation to terms such as 'free range'.

FREE RANGE IN AUSTRALIA

Consumers are making the switch to free range and other ethical products in record numbers. While free range represented just 2% of the total market for chicken meat a decade ago, it now accounts for 15%. These figures show that Australian consumers are increasingly willing to pay a premium for free range products, suggesting that animal welfare is of real concern to Australian consumers.

The ACCC will recall the outcry regarding the treatment of Australian livestock exported for slaughter overseas. An overwhelming majority of Australians were concerned that Australian animals were treated poorly overseas. Australian consumers likewise expect that all animals raised in Australia have their welfare protected.

We submit that any standard for free range must ensure that high animal welfare standards are imposed in order to satisfy consumers' concerns for the welfare of Australian animals.

¹ Australian Chicken Meat Federation Inc., 'The Australian Chicken Meat Industry: An Industry in Profile' (2011) available at

http://www.chicken.org.au/industryprofile/downloads/The Australian Chicken Meat Industry An Industry in Profile.pdf.

THE NEED FOR CLEAR LABELLING

While the trend toward free range can beneficial to both consumers and animals, there is a need to ensure that consumers are clear about what 'free range' means in order to guarantee they are getting what they pay for. Unfortunately, the lack of a clear standard for free range makes this difficult, and the APIA Proposed Standard will simply entrench deceptive labelling, in an already ambiguous regulatory landscape.

We urge the ACCC to protect consumers by ensuring that the definition of free range is clear and accords with expectations, rather than simply allowing existing labelling, already confusing and imperfect, to be further weakened.

THE APIA PROPOSED STANDARD

If approved, the APIA Proposed Standard would allow for chickens housed at a density of more than 140,000 per hectare to legitimately be described as free range. This is approximately one sheet of A4 paper per animal.

Research carried out for the Australian Egg Corporation Ltd (AECL) found that consumers were "shocked" to learn that birds were being stocked at a density of 100,000 per hectare and nothing had been done to improve this situation.² The APIA Proposed Standard would not only allow for a density that Australian Consumers find shocking, but would allow such poor welfare to be considered 'free range'.

We believe that APIA's application seeks to exploit the growing trend toward free range, to the detriment of:

- Consumers, who will pay a premium in return for a product which will not meet their high expectations;
- Genuinely ethical farmers that seek a premium price to cover significant investment in welfare improvement; and
- Animals, whose welfare will be seriously jeopardised.

APIA producers should raise the standard of animal welfare in their operations to be in line with best practice, at rather than attempt to impose their low standards on consumers.

EU STANDARDS

The EU has had an equivalent regulation to the APIA Proposed Standard in place since August 2001. ⁴ The EU regulation provides a far stronger standard for free range, and there is no reason to believe that Australian consumers expect lower welfare standards than European consumers.

The EU standards specify that chickens certified as free range must, inter alia:

- · Have continuous daytime access to open-air runs mainly covered with vegetation; and
- Be stocked at a density no greater than 2,500 per hectare, or one per 4m2.

² Brand Story, 'Project Equilibrium: Qualitative research to determine consumer perceptions of free-range stocking densities', Final report of National findings prepared for Australian Egg Corporation Ltd, available at http://www.aecl.org/system/attachments/536/original/Consumer%20research%20results%20free%20range%20stocking%20density.pdf?1339972916.

³ E.g. The Australian Model Code of Practice for Free Range or the Certified Organic Standards for Free Range.

⁴ Commission Regulation (EC) No 1651/2001 of 14 August 2001, available at <a href="http://eurlex.europa.eu/LexUriServ/L

We submit that the ACCC should not accept any standards for free range certified products that do not provide the same, or better, level of welfare than equivalent EU standards.

RECOMENDATIONS

We respectfully request that the ACCC reject the APIA Proposed Standard and ensure that any CTM for 'free range':

- Imposes high animal welfare standards in line with consumers' concern for animal welfare;
- Protects consumers by providing a clear definition that accords with consumers' expectations, rather than clouding the existing regulatory landscape;
- Requires APIA producers, and other large-scale producers, improve their operations, rather than lowering the standard; and
- Mandates the same, or better, level of welfare than equivalent EU standards.

We invite the ACCC to contact us with any queries regarding this submission.

Yours sincerely,

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Admitted as a Practitioner of the Supreme Court of New South Wales