

SCHEME RELATING TO
CERTIFICATION MARKS 998592 and 998593 FOR
"DARJEELING" WORD AND THE "DARJEELING LOGO"
IN CLASS 30 IN AUSTRALIA

CERTIFICATION MARK 998592:

DARJEELING

and

CERTIFICATION MARK 998593:



Darjeeling Logo

**Principal Address of Tea Board of India: 14 Biptabi Trailokya Maharaj Sarani,
(Brabourne Road), PO Box No 2172, Calcutta 700001, India.**

1. INTRODUCTION TO THE CERTIFICATION MARKS LICENCE PROGRAM

A. The Tea Board of India

All teas produced in the tea growing areas of India are administered by the Tea Board, India ("the Board") under the Tea Act, 1953 (hereinafter, the Tea Act).

The Board was established by the Indian Government in 1953 for the purposes of controlling the Indian tea industry. The constitution of the Board is diverse and its members represent the Indian Parliament, owners of tea estates, growers of tea, the Governments of the principal tea growing states of India, employees of tea estates and gardens, exporters of tea, internal traders of tea, tea manufacturers and tea consumers.

The objects of the Board are, *inter alia*, to regulate the production and cultivation of tea in India, to encourage research, to regulate the sale and export of tea, to provide training in tea testing and fixing grade standards of tea, and improving the marketing of tea in India and elsewhere. The Board has numerous statutory duties and functions under the Tea Act and its various enabling Orders which govern production, marketing and export of teas.

The Board is not involved in the manufacture or trade of tea and is run on a non-profit making basis.

B. Tea From The District of Darjeeling, India

The District of Darjeeling is situated in the state of West Bengal, India. Since about 1835, tea has been cultivated, grown and produced in certain tea gardens geographically located in the areas within the State. Due to the unique and complex combination of agro-climatic conditions prevailing in the region and the production regulations imposed by the Board, such tea has a distinctive and naturally occurring quality and flavour which has won the patronage and recognition of discerning consumers all over the world. Consequently, such tea, known worldwide as DARJEELING tea, has acquired both domestic and international reputation. Any member of the trade or public in India or abroad ordering or purchasing DARJEELING tea will expect the tea to be the tea

cultivated, grown and produced in the defined region of the District of Darjeeling and to have the special characteristics associated with such tea.

Since its establishment, the Board has had sole control over the growing and exporting of Darjeeling tea. It is that control which has given rise to the reputation enjoyed by Darjeeling tea.

C. The Licensing Program

The Licensing Program is necessary in order to ensure that the reputation of DARJEELING tea is maintained and that use of the DARJEELING certification marks continues to guarantee that tea sold under the marks is produced in the defined regions of the District of Darjeeling and meets the criteria laid down by the Board. The Board has therefore applied for/registered "DARJEELING" (the word mark) and "DARJEELING Logo" as certification marks in Australia (Nos. 998592 and 998593 respectively). It is in the interest of both the tea trade and the tea consumer that the Board decided to register the two marks as certification marks as the Board is run on a non-profit making basis.

The Board has put in place a licensing program to ensure the supply chain integrity for DARJEELING tea so that the tea leaving the shores of India and claimed as Darjeeling tea in Australia is genuine DARJEELING tea. A Licence to use the certification marks will be granted without discrimination to anyone who applies, provided the tea meets the required criteria.

All Licences to use the Certification Marks incorporate these Regulations by reference, in order to put in place a system that meets the dual objective of ensuring that (a) tea sold as DARJEELING tea in Australia is genuine DARJEELING tea and (b) all sellers of genuine DARJEELING tea are duly licenced. This Licence program affords the Board the necessary information and control over the Australian tea industry to ensure that tea sold in Australia under the Certification Marks adheres to the standards for DARJEELING tea as set forth in these Regulations.

2. GENERAL DEFINITIONS

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

- (a) "Proprietor" means Tea Board of India, 14 Biplabi Trailokya Maharaj Sarani (Brabourne Road), P O Box No 2172, Calcutta 700001, India;
- (b) "Certification Marks" means the certification marks "DARJEELING" (word), under No. 998592 and the Darjeeling Logo, under No. 998593 depicted in Schedule I hereto;
- (c) "Person" shall include any company or association or body of individuals, whether incorporated or not;
- (d) "Licence" means a licence issued by the Proprietor in accordance with these Regulations;
- (e) "Licencee" means any person with a subsisting Licence from the Proprietor to use the Certification Marks;
- (f) "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 the Certification Mark/s.
- (g) "Commission" means the Australian Competition and Consumer Commission established under the Trade Practices Act 1974 of the Commonwealth of Australia.

3. DEFINITION OF "DARJEELING TEA"

"DARJEELING tea" is tea that:

- (a) is cultivated, grown or produced in the tea gardens in the geographic areas listed in the attached Schedule II and which have been registered with the Proprietor in accordance with the provisions of the (Indian) Tea Act, 1953 or any relevant law which may replace this Act;

- (b) has been cultivated, grown or produced in one of the tea gardens listed in Schedule III (which may be amended from time to time by the Proprietor);
- (c) has been processed and manufactured in a factory located in the geographic areas listed in the attached Schedule II as aforesaid; and
- (d) 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 region of Darjeeling, India. 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.

4. OWNERSHIP OF CERTIFICATION MARKS

The Certification Marks are the absolute property of the Proprietor and shall not be used by any person except a Licencee. The power of issuing and terminating a Licence is vested in the Proprietor. The decision to issue and/or cancel a Licence is dependent solely on conformance with the criteria set forth herein.

5. USE OF THE CERTIFICATION MARKS

- 5.1. So as to ensure that the Certification Marks are only used by a Licencee pursuant to the standards set forth in this section, all Licencees will be required to execute a Licence attached as Schedule IV governing their use of the Certification Marks. In consideration of the rights of Licenced use of the Certification Marks granted to the Licencees, the Proprietor shall charge Licencees Licence fee in terms of schedule attached as Schedule V. Every applicant for a Licence to use the Certification Marks undertakes that the tea in respect whereof it will use the Certification Marks conforms to these Regulations and the terms of the Licence.
- 5.2 The Certification Marks shall be applied to or used only in relation to such tea that satisfies the characteristics of DARJEELING tea as set forth in

Section 3 of these Regulations. Specifically, except as set forth in Sections 5.3 and 5.4 below, the Certification Marks, whether used in conjunction or isolation, shall always be used to certify that 100% of the tea derives from a single tea garden in Darjeeling, India, as such gardens are listed in Schedule III.

- 5.3 The Certification Marks may be used in relation to a blend of DARJEELING tea drawn from more than one tea garden in Darjeeling, India, as listed in Schedule III, only if each tea constituting the blend has been derived from a single tea garden in Darjeeling, India, as such gardens are listed in Schedule III. In such case, the packaging for the tea must clearly indicate that the tea is a blend of DARJEELING tea with prominent use of the term “blend” or the term “blended.”
- 5.4 The Certification Marks may not be used in relation to a mixture of DARJEELING tea with teas of origin other than Darjeeling, India. If DARJEELING tea is one of the components of a tea mixture that includes some portion of tea that does not conform to the characteristics defined in Section 3, the tea mixture must not be named or referred to as “DARJEELING Tea” and the word “Darjeeling” may only be used and must be used on the packaging to accurately set forth the proportion of DARJEELING tea in the tea mixture (e.g., in a list of ingredients). In such cases, the term “Darjeeling” must appear in a font, design and size that does not misrepresent to the consumer the content and origin of the mixture.
- 5.5 The Certification Marks shall be applied to packaging for DARJEELING tea so that they are clearly visible to purchasers / consumers. All representations of the Certification Marks shall be accompanied by an indication that they are certification marks of the Proprietor. Subject to these Regulations, the Licencee shall decide the way in which the Certification Marks may be represented including specifications as to colour, size and lettering of the Certification Marks (with the exception of the DARJEELING Logo, which must appear as presented in Schedule I hereto) and what matter of any description may be used in close association with the Certification Mark and in what relationship, except that the Certification Marks must appear in a different size or font than the Licencee’s trademarks and company name. In the event of any representation of the Certification Mark being considered unsuitable by the Proprietor, the Licencee shall terminate such use.
- 5.6 Licencees may not use or seek to register the Certification Marks as a trademark, or as part of a trademark or trade name, for the goods or services of the Licencee.

6. HOW THE SCHEME WILL BE POLICED / MONITORED

- 6.1 To help ensure the integrity of the supply chain of DARJEELING tea and so that the Proprietor may monitor the quantity of DARJEELING tea imported to and sold in Australia, and for the purpose of ensuring that tea other than tea described in Section 3 of these Regulations is not being sold as DARJEELING tea, for each calendar year, all Licencees shall submit to the Proprietor an annual report of purchases, sales and inventory of DARJEELING tea, in the form of Schedule VI (the "Annual Report"). The Annual Report for each calendar year shall be due to the Proprietor immediately on the expiration thereof.
- 6.2 So that the Proprietor may monitor the legitimacy and quality of DARJEELING tea sold in Australia, at the Proprietor's request, Licencee shall submit to the Proprietor a sample of tea sold by the Licencee and/or packaging used by the Licencee. Licencee shall submit any samples requested pursuant to this paragraph to the Proprietor within two (2) weeks of receipt of such request from the Proprietor.
- 6.3 So that the Proprietor may monitor the legitimacy and quality of DARJEELING tea sold in Australia, the Proprietor shall be entitled to inspect, prior to and after the grant of a Licence, during business hours and with reasonable notice to applicant/Licencee, any premises where DARJEELING tea is being processed, packed or stored, for the purpose of ensuring that the standards laid down by the Proprietor are being adhered to and complied with. Any Licence will be conditional on the Proprietor being so satisfied.

7. REGISTER OF LICENCEES

- 7.1 The Proprietor shall keep at its offices a Register wherein shall be entered the names, addresses and trade descriptions of each Licencee, 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.
- 7.2 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, Kolkata 700 001, India and other offices of the Proprietor. Any person wishing to inspect the Register shall give reasonable notice to the appropriate office of the Proprietor where such inspection is to take place.

8. BREACH OF LICENCE

- 8.1 These Regulations are incorporated into all Licences by reference. The Proprietor and/or Licencees may terminate a Licence without prejudice to their other remedies forthwith by notice in writing to the other if the other party commits a breach of the Licence; 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.
- 8.2 If a Licencee uses the Certification Marks in an unauthorized, misleading or deceptive manner, or in any manner that defames or causes disrepute to DARJEELING tea, or if Licencee is convicted of any offense 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 Proprietor may terminate the Licence.
- 8.3 Except as otherwise set forth herein, and specifically subject to Sections 8.1 and 8.2, the Proprietor may not terminate a Licence.
- 8.4 If the Proprietor terminates a Licence pursuant to the provisions of the Licence and these Regulations, the former Licencee may not use the Certification Marks for any purpose. This provision survives termination of a Licence by the Proprietor.

9. PROCEDURE FOR RESOLVING DISPUTES

In the event of the issue of a Licence being refused or a Licence being terminated by the Proprietor, the person concerned shall, during the period of sixty days immediately succeeding the date of such refusal or termination, have the right to appeal against such refusal or cancellation to the Office of the Consulate General of India at Sydney, provided that he at the same time gives notice of such appeal to the Proprietor. The decision of the Consulate General of India on such appeal (after submission to it of such written and/or oral representations as the parties decide to make or as it shall require) shall be final and binding on the Proprietor and the person concerned.

10. NOTICES

Any notice given by the Proprietor to a Licencee pursuant to the Licencee's Licence shall be deemed to have been duly given if forwarded through the post by prepaid letter addressed to the Licencee set forth in its Licence. Any notice given by an Licencee 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 2172, Kolkata 700 001, India.

11. POWER TO AMEND

Subject to the consent of the Indian Central Government and the Commission, 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. Licencees will be given six months' notice of any proposed amendments.

12. DELEGATION OF POWERS

The Proprietor may authorise such persons as deemed appropriate by it to make tests and inspections in pursuance of paragraph 5.3 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 such authorised user obtain a certificate from such a person in order to be entitled to use the Certification Marks. 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.