

# **STATES OF JERSEY**



## **“JERSEY ROYAL/JERSEY ROYALS” AND THE JERSEY ROYAL LOGO: INTRODUCTION OF CHARGES FOR THE USE OF THE CERTIFICATION (TRADE) MARK**

---

**Lodged au Greffe on 1st August 2008  
by the Minister for Economic Development**

---

**STATES GREFFE**

## **PROPOSITION**

**THE STATES are asked to decide whether they are of opinion –**

to introduce an application fee and an annual licence fee for the use of the certification (trade) mark for the use of the words “Jersey Royal/Jersey Royals” and the Jersey Royal Logo.

MINISTER FOR ECONOMIC DEVELOPMENT

# REPORT

## Introduction

The Jersey Royal potato was granted a Protected Designation of Origin in 1996 under article 17 of Council Regulation (EEC) No. 2081/92. This protected the Islands (growers') interests by establishing that the name could only be used by producers in a clearly defined area (Jersey) who comply with specified rules of production.

In order to further protect the brand image, the Department of Agriculture and Fisheries, on behalf of the States of Jersey, applied to the UK patent office to register the Jersey Royal logo, "Jersey Royal" and "Jersey Royals" words in 2002 following an application to use the words on potato vodka.

The importance of this was highlighted by recent proposed developments in seed production which would not comply with the terms and conditions laid out under the PDO and would potentially undermine the brand image of Jersey Royal potatoes.

In addition there has been an approach to use the trademarked words "Jersey Royal" on non-potato goods, and whilst the trademarks are registered in the UK and in Jersey there is no formal mechanism in place to deal with any such applications.

## Trademark and Certification Marks

The Jersey Royal (Logo) and "Jersey Royal/Jersey Royals" (words) have been registered as a Certification Mark in the UK and Jersey. This was done in the name of States of Jersey, Department of Agriculture and Fisheries (Jersey). Both (logo and words) were filed with the UK patent office on 21st June 2002 and registered in respect of the following classes and granted on 2nd June 2006. They were also registered under the Trade Marks (Jersey) Law 2000 on 23rd July 2007.

Class 16: Paper, cardboard and non-printed goods made from these materials, not included in other classes; stationery

Class 25: Clothing, footwear, headgear

Class 29: Preserved, dried and cooked fruits; ready-to-eat snack foods made wholly or principally of nuts, other fruits or combinations thereof

Class 31: (i) Fresh fruits; seeds for growing flowers for display; fruit plants and plants for growing flowers for display

Class 33: Alcoholic beverages (except beers)

Class 43: Services for providing food and drink

In addition, both (logo and words) were filed with the UK patent office on 21st June 2002 and registered in respect of the following classes and granted on 8th June 2007.

Class 29: Preserved, dried and cooked potatoes

Class 31: (ii) Potatoes; seed potatoes

## Definitions

It is important to differentiate between a Trademark and a Certification (Trade) mark.

A Trademark is any sign capable of being represented graphically which is capable of distinguishing goods or services of one undertaking from those of other undertakings, a collective mark or a certification mark; and may,

in particular, consist of words (including personal names), designs, letters, numerals or the shape of goods or their packaging.

A Certification (Trade) mark is a mark indicating that the goods or services in connection with which it is used are certified by the proprietor of the mark in respect of origin, material, mode of manufacture of goods or performance of services, quality, accuracy or other characteristics.

To summarise, a Trademark is used by the owner/producer of the goods, whereas a Certification (Trade) mark is used by others who the owner allows to use provided the goods meet the required specifications and that they, the owner, does not trade in the goods and services themselves.

The Jersey Royal (Logo) and “Jersey Royal/Jersey Royals” (words) are registered Certification (Trade) marks because in effect the States of Jersey are the proprietor of the mark and ensure that any Jersey Royals Potatoes sold meet their criteria and that any other goods also meet the prescribed quality standards.

## **Regulation**

The Certification Marks “Jersey Royal” and “Jersey Royals” are the property of the States of Jersey, Department of Agriculture and Fisheries (now Economic Development) and such goods i.e. Jersey Royal Potatoes, produced under the Certification marks shall correspond to the quality standards (specifications) as laid down by the Certification Authority. Permission to use the marks is granted by the Certification Authority and permission can be revoked whenever the mark is not used in accordance with the terms and conditions laid down by the Certification Authority.

The Department of Agriculture and Fisheries (for this purpose now the Economic Development Department) as the Certification Authority can authorise the use of the logo and words within all the classes outlined above provided they are satisfied that the use of the logo meets their criteria.

## **Mechanism**

Before a decision can be made to allow the use of the Certification (Trade) mark –

- an application panel of officers will assess applications for the use of the Certification (Trade) mark and make a recommendation to the Minister through the Ministerial Decision process.

If approved –

- a “Certificate of Entitlement” is issued which authorises the use of the appropriate Certification (Trade) mark (see Appendix 1).
- a formal licence or registered user agreement is signed by both parties to allow the use of the Certification (Trade) marks and for the Department to be able to withdraw their permission for using such marks, should the need arise.

The agreement covers –

- whether the licence is exclusive or non-exclusive;
- the conditions (if any) attached to the use of the Certification (Trade) mark;
- the terms of termination of the agreement and the length of any fixed period for the licence to remain in force;
- the applicable law.

## **Charging**

In order to cover administration costs, and on the recommendation of our trade mark lawyers, a charge should be

introduced for the use of the Certification (Trade) mark in all classes.

It is proposed to introduce a £150 application fee with an annual licence fee of £100 to be reviewed annually.

Businesses should be granted permission to use the Certification (Trade) mark if they satisfy the specified criteria and pay the appropriate fees. This will then form a licence agreement between the Economic Development Department (“*Licensor*”) and the applicant (see Appendix 2).

**Recommendation**

To introduce a £150 application fee with an annual licence fee of £100 to be reviewed annually.

**Financial/manpower implications**

There are no financial or manpower implications for the States arising from this proposition.



To Whom It May Concern

We, the States of Jersey, as the registered owners of the United Kingdom certification marks “2303425A JERSEY ROYAL/JERSEY ROYALS” and “2303423A JERSEY ROYAL Logo” do grant to:

[Insert name of user here]

The right to use the certification marks in Jersey Royal Potatoes, duly grown, harvested and sold in accordance with the conditions laid down by this body from time to time.

This permission to use our certification marks is conditional on compliance with the guidelines issued by the department from time to time and may be revoked at any time by the department for breach of the conditions.

SIGNED for and on behalf of:

SIGNED for and on behalf of:

**Planning and Environment Department**  
**Environment Division**  
Howard Davis Farm, La Route de la Trinité  
Trinity, Jersey, JE3 5JP  
Tel: +44 (0)1534 441600  
Fax: +44 (0)1534 441699

[Insert name and company here]



THIS

AGREEMENT IS MADE the \_\_\_\_\_ day of \_\_\_\_\_ 2007 BETWEEN of The States of Jersey, (hereinafter called “the Licensor” which expression where the context so admits shall include its successors and assigns) of the one part

AND

(hereinafter called “the Licensee” which expression where the context so admits shall include its successors and assigns) of the other part.

WHEREAS the “Licensor” is the proprietor in United Kingdom and Jersey of the trade mark, short particulars of which are set out in the Schedule hereto (hereinafter called “the said trade mark”)

AND WHEREAS it is the desire and intention of the parties that the Licensee be permitted to use the said trade mark of the Licensor in United Kingdom and Jersey (hereinafter called “the Territory”) subject to the terms and conditions hereinafter set out.

NOW IT IS HEREBY AGREED AS FOLLOWS:-

1. The Licensor hereby grants the Licensee the [non-] exclusive licence and the [non-] exclusive right to use the said trade mark in the Territory upon and in relation to the goods set out as part of the Schedule hereto (hereinafter referred to as “the said goods”) PROVIDED that
  - a. the said goods and related marketing activities comply at all times with such specifications, formulae and standards of quality as the Licensor or the Licensor’s duly authorised representatives may from time to time prescribe, approve or agree and with all applicable laws, regulations and best practice guidelines; and
  - b. the licensee keeps records sufficiently detailed to enable an audit trail to be carried out from seed material through to market outlet
  - c. the said trade mark is used and displayed in such a manner that its distinctiveness, validity and reputation is not impaired; and
  - d. the Licensee shall permit the Licensor or the duly authorised representatives of the Licensor to enter at all reasonable times the premises of the Licensee giving normal prior notice for the purposes of
    - i. inspecting the said goods or activities upon and in relation to which the said trade mark is used or displayed and shall at the request of the Licensor or the duly authorised representatives of the Licensor furnish such samples of the said goods for inspection as may reasonably be required; and

- ii. inspecting the manner and context of the use of the said trade mark

AND PROVIDED THAT the Licensee shall state clearly on all product literature, leaflets, advertisements, packaging and trade show and exhibition stands and any other item relevant hereto the following wording;

“JERSEY ROYAL/JERSEY ROYALS” is a trade mark of the States of Jersey and is used under licence by [name of the Licensee].

2. The right granted in Clause 1 hereof shall be non-divisible and shall not be assignable or transferable except with the prior express consent of the Licensor. In the event that such consent is granted, the terms of this agreement shall apply mutatis mutandis
3. a [No royalty or other sums shall be payable by the Licensee to the Licensor during the term of this agreement.]  
  
b [The Licensee shall pay the Licensor a Royalty in respect of the use of the said trade mark in terms and in the manner prescribed in the second Schedule hereto and forming part hereof.]
4. The Licensee shall not conduct the whole or any part of its business under a name or trading style which in the opinion of the Licensor might impair the validity, reputation or distinctiveness of the said trade mark and, without limitation, shall not use and shall not seek to register as a company name or business name any name which includes the said trade mark or any part of the said trade mark unless the Licensor shall have given prior written consent to the Licensee so to do.
5. The Licensee hereby agrees if so requested by the Licensor to provide to the Licensor reasonable assistance including, without limitation, information or specimens of use, for the purpose of obtaining or maintaining registration of the said trade mark in the Territory.
6. The Licensor shall be responsible for the registration and maintenance of the said trade mark during the term of this agreement. The Licensee agrees to join with the Licensor both now and as may be necessary or advisable from time to time to record the permission herein granted to the Licensee against the registration or registrations of the said trade mark.
7. The Licensee hereby acknowledges that the Licensor is the sole and rightful owner of the said trade mark and the Licensee agrees that during the continuance of this agreement it will not claim any rights in and to the said trade mark other than the permission to use the said trade mark as specifically provided herein nor dispute or assist others to dispute the validity or ownership of the said trade mark in relation to any goods whatsoever or wheresoever. The Licensee further agrees that all use of the said trade mark shall inure to the benefit of the Licensor. The Licensee further agrees to forthwith notify the Licensor of any variation of the trade mark which the Licensee intends to use and Licensor shall be responsible for applying for registration of said variation of the trade mark for which the terms of this agreement shall apply mutatis mutandis.
8. The Licensee will indemnify and hold harmless the Licensor against any claim, demand, action or proceeding arising from the Licensee’s use of the said trade mark upon or in relation to the said goods and brought against the Licensor by any third party.
  - a. Upon becoming aware of:-
    - i. any infringement or suspected infringement of the said trade mark, or
    - ii. any application for registration of a trade mark which is identical or similar to the said trade mark and which the Licensee believes should be objected to, or
    - iii. any registration of a trade mark which is identical or similar to the said trade mark and which the Licensee believes should be revoked or cancelled by opposition or otherwise, or

iv. any matter or circumstance of whatsoever nature which in the opinion of the Licensee might affect the interests of the Licensor under this agreement the Licensee shall forthwith notify the Licensor thereof but the Licensee shall not have the right to institute any action for infringement, opposition, revocation or otherwise or take any other steps for the protection of the said trade mark unless requested or agreed to by the Licensors

b. If in any case (whether pursuant to notification received by the Licensor under sub-section a) of the Clause or otherwise) the Licensor shall desire to institute any action or proceeding or take any other steps for the protection of the said trade mark, the Licensee shall, if requested by the Licensor, join with the Licensor in all and any action proceeding or step which the Licensor in its sole discretion determine to take and the Licensor shall reimburse the Licensee in such part of the costs thereof as shall from time to time be mutually agreed.

9. This agreement shall take effect from [date] and shall remain in force [“indefinitely” or for a renewable fixed period to be inserted here] but shall wholly cease and determine subject as provided in Clauses [ ] and [ ] hereof on the Licensor giving to the Licensee not less than one year’s prior written notice expiring on 31st December of any year PROVIDED HOWEVER that the Licensor may terminate this agreement without prejudice to its other right herein on giving notice to the Licensee of the occurrence of any one or more of the following events:-

a. all sales of the said goods under the said trade mark in the Territory by the Licensee shall have ceased for a period of six months;

b. that the Licensee is in breach of any of its obligations under this agreement and shall have failed to remedy such breach within thirty days of receiving notice to do so from the Licensor;

c. the Licensee going into liquidation (other than a voluntary liquidation for the purposes of a reconstruction or amalgamation the terms of which have been approved by the Licensor)

d. the Licensee disposing of its business or any substantial part thereof

e. the Licensee being unable, by reason of any political act or measure or any other cause outside the control of the parties, to fulfil the terms and conditions of the Agreement hereby agreed to be performed, observed and complied with.

10. Upon termination of this agreement for any reason whatsoever, the Licensee will take all proper steps at the request of the Licensor to assist the Licensor in cancelling recordal (if any) of this agreement in relation to the registration of the said trade mark.

11. The addresses of the Licensor and Licensee are as identified in the preamble to this agreement and notices and written statements hereunder shall be deemed to have been duly given upon the sending thereof by registered or recorded postal delivery service to the party entitled thereto at its aforementioned address or at such other address as may from time to time be designated in writing to the other party.

12. In addition to the said trade mark the terms of the Agreement shall apply mutatis mutandis to any and all other trade marks which may be devised or adopted by the Licensor and which the Licensor may designate and the Licensee accept in writing as trade marks to which they desire the terms of this Agreement to extend.

13. This Agreement contains a complete statement of all the arrangements among the parties with respect to its subject matter, cannot be changed or terminated orally and will be binding upon the parties’ respective successors and assigns, if any and if permitted under this Agreement. The failure of a party to insist upon strict adherence to any term of this Agreement on any occasion will not be considered a waiver or deprive or limit that party of the right thereafter to insist upon strict adherence to that term in the particular instance or that term or any other term of this Agreement in any instance. Any waiver must be in writing.

14. This Agreement shall be governed and constructed according to the laws of [Jersey and/or the UK] and any dispute or other matters relating to this Agreement shall be heard before the competent courts in [Jersey and/or the UK ].

AS WITNESS WHEREOF the parties hereto have caused these presents to be executed as of the day and year first above written.

SCHEDULE

United Kingdom	Trade Mark	Classes
2303423B	JERSEY ROYAL LOGO	16, 25, 29, 31, 33, 43
2303425B	JERSEY ROYAL/JERSEY ROYALS	16, 25, 29, 31, 33, 43
8797	JERSEY ROYAL/JERSEY ROYALS	16, 25, 29, 31, 33, 43

SIGNED for and on behalf of:

SIGNED for and on behalf of:

**Planning and Environment Department**  
**Environment Division**  
Howard Davis Farm, La Route de la Trinité  
Trinity, Jersey, JE3 5JP  
Tel: +44 (0)1534 441600  
Fax: +44 (0)1534 441699

[Insert name and company here]