

**REGULATIONS GOVERNING USE OF THE DARJEELING
CERTIFICATION MARKS:**



U.S. REGISTRATION NO. 1,632,726

AND

**DARJEELING (word mark), U.S. REGISTRATION NO. 2,685,923
IN RESPECT OF TEA IN THE UNITED STATES OF AMERICA**

1. INTRODUCTION TO THE CERTIFICATION MARK LICENSE 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 registered the "DARJEELING Logo" and "DARJEELING" (the word mark) as certification marks in the United States (U.S. Registration Nos. 1,636,726 and 2,685,923, respectively). It is in the interests 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 the United States is genuine DARJEELING tea. A license to use the certification marks will be granted without discrimination to anyone who applies, provided the tea meets the required criteria.

Although all licenses 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 the United States is genuine DARJEELING tea and (b) all sellers of genuine DARJEELING tea are duly licensed, the licensing program is divided into two tiers of licensees: (1) Importers and (2) Non-Importers. This license program affords the Board the necessary information and control over the U.S. tea industry to ensure that tea sold in the United States 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), U.S. Registration No. 2685923 and the Darjeeling Logo, U.S. Registration No. 1636726, depicted in Schedule A hereto ;
- (c) "Person" shall include any company or association or body of individuals, whether incorporated or not;
- (d) "Licensee" means any person with a subsisting License from Proprietor to use the Certification Marks;
- (e) "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.
- (f) "Importer" means a person that imports tea into the United States from outside the United States.
- (g) "Regulations" means this document, which shall be Exhibit A to the License Agreement.

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 B 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 C (which may be amended from time to time by proprietor);
- (c) has been processed and manufactured in a factory located in the geographic areas listed in the attached Schedule B; 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 Licensee. The power of issuing and terminating a license is vested in the Proprietor. The decision to issue and/or cancel a license 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 Licensee pursuant to the standards set forth in this section, all Licensees will be required to execute a license governing their use of the Certification Marks. Every applicant for a license to use the Certification Marks undertakes that the tea in respect whereof it will use the Certification Mark conforms to these Regulations and the terms of the appropriate license.

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 C.

- 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 Exhibit C, only if each tea constituting the blend has been purchased from an Authorized Seller and derives from a single tea garden in Darjeeling, India, as such gardens are listed in Exhibit C. In such case, the packaging for the tea must clearly indicate that the tea is a blend of DARJEELING tea by 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, even if the terms ‘blend’ or “blended” are used. 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 to accurately set forth that there is 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 Provided that Licensee does not violate these Regulations, nothing herein shall preclude Licensee from using the term DARJEELING to refer to DARJEELING tea generally, the Darjeeling region of India or any specific tea that is in compliance with these Regulations and licensed by Licensor, including in connection with marketing and advertising any such tea.
- 5.6 When used, the Certification Marks shall be applied to outer retail packaging (but is not required on individual packets, packaging or teatab tabs) for DARJEELING tea so that they are clearly visible to purchasers / consumers. All presentations of the Certification Marks shall be accompanied by an indication that they are certification marks of Proprietor. Subject to these Regulations, the Licensee 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 A 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 Licensee's trademarks and company name. In the event of any representation of the Certification Mark being reasonably determined by the Proprietor to be unacceptable, the Licensee shall terminate such use.

- 5.7 Licensees may not use or seek to register the Certification Marks as a trademark, or as part of a trademark, for the goods or services of the Licensee.

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 Proprietor may monitor the quantity of DARJEELING tea imported to and sold in the United States, 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 Licensees shall submit to Proprietor an annual report of purchases, sales and inventory of DARJEELING tea, in the form of Schedule D hereto (the "Annual Report"). The Annual Report for each calendar year shall be due to Proprietor no later than March 1 of the following calendar year.
- 6.2 So that Proprietor may monitor the legitimacy and quality of DARJEELING tea sold in the United States, at Proprietor's request, Licensees shall submit to Proprietor a sample of tea sold by the Licensee and/or packaging used by the Licensee. Licensees shall submit any samples requested pursuant to this paragraph to Proprietor within thirty (30) days of receipt of such request from Proprietor. The total amounts for any submission shall not be required to exceed one hundred (100g) in the aggregate.
- 6.3 So that Proprietor may monitor the legitimacy and quality of DARJEELING tea sold in the United States, Proprietor shall be entitled to inspect, prior to and after the grant of a license, during business hours and with reasonable notice to applicant / Licensee, any premises where DARJEELING tea is being processed, manufactured, packed or stored, for the purpose of ensuring that the standards set forth in these Regulations

are being adhered to and complied with. Any License will be conditional on the Proprietor being reasonably so satisfied.

7. REGISTER OF LICENSEES

7.1 The Proprietor shall keep at its offices a Register wherein shall be entered the names, addresses and trade descriptions of each Licensee, the date of his registration, particulars concerning the cancellation of any previous License, and such other particulars as may from time to time be prescribed or deemed necessary by 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 at Proprietor's New York office at 350 5th Avenue, Empire State Building, Suite No. 607, New York, New York 10118. Any person wishing to inspect the Register shall give reasonable notice to the appropriate office of Proprietor where such inspection is to take place.

8. BREACH OF LICENSE

8.1 These Regulations are incorporated into all licenses by reference. Proprietor and/or Licensees may terminate a License without prejudice to their other remedies forthwith by notice in writing to the other if the other party commits a breach of the License; 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 (1) month of having been given notice in writing specifying the breach and requiring it to be remedied.

8.2 If a Licensee 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 Licensee 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, Proprietor may terminate the License.

8.3 Except as otherwise set forth herein, and specifically subject to Sections 8.1 and 8.2, Proprietor may not terminate a License.

8.4 If Proprietor terminates a License pursuant to the provisions of the License and these Regulations, subject to Section 11 hereof, the former Licensee may not use the Certification Marks for any purpose. This provision survives termination of a License by Proprietor.

9. PROCEDURE FOR RESOLVING DISPUTES

In the event of the issue of a License being refused or a License being terminated by the Proprietor, the person concerned shall have the right to appeal against such refusal or cancellation to the Ministry of Commerce, Government of India, provided that he at the same time gives notice of such appeal to the Proprietor. Alternatively, any claim, controversy or other issue arising out of or relating to these Regulations or the License Agreement must be submitted to the American Arbitration Association (“AAA”) in New York, New York. Any such proceeding submitted to AAA shall be governed by the laws of New York, and Proprietor and Licensee submit to jurisdiction in New York for the purposes of such proceeding. The determination of said arbitrator shall be in writing and shall be final and binding upon delivery to the Proprietor and Licensor.

10. NOTICES

Any notice given by Proprietor to a Licensee pursuant to the Licensee’s license shall be deemed to have been duly given if forwarded through the post by prepaid letter addressed to the Licensee set forth in its license. Any notice given by an Licensee to Proprietor shall be deemed to have been duly given if forwarded through the post by prepaid letter addressed to 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 MODIFY REGULATIONS / LICENSEE SELL-OFF RIGHT

Subject to the consent of the Indian Central Government and the United States Trade Marks law, the Proprietor may modify these Regulations in accordance with the provisions of the law for the time being in force in the United States of America. The effective date of any such modification must not be prior to the date Proprietor gives notice of the modification to Licensee. In the event of such modification by Proprietor Licensee shall continue to have the right to use the

Certification Marks and packaging, in the same manner as prior to such modification, from the effective date of the modification until six (6) months from such date.

12. DELEGATION OF POWERS

The Proprietor may authorise such persons as deemed appropriate by it to make tests and inspections in pursuance of paragraph 6.3 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 an authorised user obtain a certificate from such a person in order to be entitled to use the Certification Mark. 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.