

New Zealand Miniature Horse Association Inc



Stud Prefix Approval Policy

Purpose

- The purpose of this statement is to record the policies adopted in deciding whether or not to approve a request for a Stud Prefix or Suffix.

Rules

- Article 26 of the Constitution provides that;

".. all prefixes and brands must be approved by and registered with the Society"

- Rule 22 of the General Rules and Regulations provides that:

(2) "...The name of a horse cannot be a duplication of any other name recorded on the records of the registry, and must be distinguished by a prefix or suffix which has not been used by another farm or breeder."

And:

(3) "..Prefixes and Suffixes must be reserved and registered by request and the payment of the required fee..."

- The rules are therefore very broad, requiring only that the desired prefix has not been "used" before (potentially by anyone, not just a miniature horse owner), and that it be "approved" by this society. Given the breadth of their potential impact, it is appropriate to record in this statement the manner in which the rules are presently applied.

Policy

An application for a stud prefix or suffix name will not be approved if any of the following apply:

1. It is the same as an existing name registered with NZMHA or with a known name in another miniature horse registry;
2. It is different, but by only a single letter or character from an existing name;
3. It is spelled differently, but is pronounced in a manner so similar to an existing name that it is likely to be confused with the existing name;

Explanation and application of the policy

1. **A name will not be approved if it is the same as an existing name registered with NZMHA or with a known name in another miniature horse registry.**
 - As noted above, the rules potentially require that the name should not have been used before by any farm (anywhere) or by any breeder (of anything). Clearly, it would be unreasonable to apply the rule in this way, as it would be unreasonable to require that the society make enquiries sufficient to determine whether a particular name had been used elsewhere;



- Furthermore, there is a limit on the number of words available to be used, such that strict adherence to the rule might require that new words would have to be invented;
- In practice, it is NZMHA policy to limit enquiry to other known miniature horse registries, and that enquiry is in turn limited to a general knowledge of the names of horses and studs around New Zealand and the world. There are at present no practical means by which a formal enquiry can be made of, for instance, the AMHA, but a prefix will not be approved if it is known to duplicate a name used on their register of horses.

It is not NZMHA policy to make any enquiry of the registries of other breeds of horses or of other types of animal, but where a request is known to duplicate a name used elsewhere in the equine world, it will be declined.

2. **A name will not be approved if it is different, but by only a single letter or character from an existing name.**

- The aim of this policy is to ensure that there is a reasonable chance of the avoidance of confusion by minor typographical error. A single letter different may not seem to be much, and may result in names being apparently very similar. Some of the “legal” aspects of this are discussed below.

In assessing the letter count, pluralisation will be ignored, as it is common for studs to use both the singular and plural forms of their names. For instance:

- MARMITE and MARMITES would be considered to be identical
- MARMITE and MARMUTES would be considered to differ by only one letter (the ‘S’ being ignored) and would be rejected.

Spaces or other non-alphabetical characters would usually be ignored in assessing the letter count test. For instance:

- MARMITE and MAR-MUTE would be considered to differ by only one letter.

3. **A name will not be approved if it is spelled differently, but is pronounced in a manner so similar to an existing name that it is likely to be confused with the existing name.**

The issue of pronunciation is often more difficult, since different forms of pronunciation can lead to the same word sounding very different, and names that are spelled differently sounding the same. Standard, correct New Zealand-English pronunciation will be considered the baseline. For instance:

- MARMIGHT and MARMITE would be considered to be pronounced identically.
- MARMIGHTY and MARMITE LEA would be considered to be pronounced in such a similar way as to cause significant confusion.

Comment – references to other names

An overall effect of this policy is that it is possible for names to be approved even though they contain reference to another name. For example, if MARMITE had already been approved (or was used), an application for MARMITE TOPS would also be approved. Similar concepts would also be approved – eg MARMITE and VEGEMITE.

These types of cases do not offer the potential for confusion in the strict typographical sense, or in the spoken word and are therefore able to be approved. However, they may open up the possibility for one to suggest that a horse is bred by another breeder or related by breeding to a certain breeder’s stock. For instance:

- The owner of a “MARMITE DOWNS” horse might attempt to “trick” a buyer into thinking that his horse was in fact sourced from the famous “MARMITE” stud. In a legal sense, this type of action is called “misrepresentation” or “passing off”. If the MARMITE stud became aware that MARMITE DOWNS was effectively trading on their name, they would have a legal course of action against the latecomer. This type of action is common in the business world, and the horse world is potentially no different.

However, it is not the place of the registry of NZMHA to deal with the potential for such confusion since it would be impossible to police or administer, given the complexity of the legal issues. Wherever possible, the attention of applicants will be drawn to the potential for confusion with an invitation to reconsider their application in order to avoid that confusion.

Another aspect arises that is potentially even more serious. The rules require only that the “prefix” applied for has not been “used” by anyone else, which raises the question of what the policy should be where there is an application for a prefix, being a word that is another part of the name of a registered horse. Does the wording refer to a prefix not having been used before as a prefix, or in any capacity? The wording is not definitive. For instance:

- Imagine there is a famous stallion called “WINDY TOPS MARMITE”, known to all and sundry as “MARMITE” (“Windy Tops” being the registered prefix). An applicant applies for the prefix “MARMITES”.

Clearly, any horse registered with this new prefix may seem to be related to the famous stallion – buyers could easily be misled, whether innocently or not.

Again, the remedy of the owner of the stallion is a legal one involving the “passing off” type of action. Again, it is not the place of NZMHA to police or administer the avoidance of such confusion. Wherever possible, the attention of the applicant (for “MARMITES”) will be drawn to the possibility that by using the name, they risk contravening the common law rights of the owner of the famous stallion.

Indeed, these same issues can arise in all other aspects of the naming of horses. As the number of horses continues to grow, it is increasingly likely that innocent forms of confusion will arise. Wherever possible, the registry office will endeavour to alert those affected of the problem before the name and prefix registration is finalised.