CERTIFICATION MARKS

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CERTIFICATION MARK

♦ A certification mark certifies the nature or origin of the goods or services to which it has been applied.

♦ This includes the region or location or origin, materials of construction, method or mode of manufacture or provision, quality assurance, accuracy of the goods or services or any definable characteristic of the goods or services.

♦ It can also certify manufacture or provision of services by members of a union or other organization to certain standards.

♦ The sole purpose of a certification mark is to indicate that certain standards have been met.
The function of a certification mark is not to indicate trade origin but to certify that the goods or services in relation to which it is applied are certified by the proprietor of the mark as to certain characteristics of the goods or services.

The presence of a certification mark on a product or service will give the consumer guidance and the resulting confidence in deciding whether to make a particular purchase or not.

A certification mark is nowadays used by various merchants to indicate that their products and services have certain characteristics, such as a specific level of product quality or a certain geographic origin.

Despite the fact that a geographic term cannot be used as a general trademark or service mark if it merely serves to indicate geographic origin, the same restriction does not apply to certification marks.
Section 2(1) (e) of Indian Trade Marks Act defines a certification mark as "a mark capable of distinguishing the goods or services in connection with which it is used in the course of trade which 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 from goods or services not so certified".
CERTIFICATION MARKS & WIPO

♦ Certification marks are usually given for compliance with defined standards, but are not confined to any membership.

♦ They may be used by anyone who can certify that the products involved meet certain established standards.

♦ Famous certification marks include “WOOLMARK” which certifies that the goods on which it is used are made of 100% wool.

♦ The main difference between collective marks and certification marks is that the former may only be used by a specific group of enterprises, e.g., members of an association, while certification marks may be used by anybody who complies with the standards defined by the owner of the certification mark.
An important requirement for certification marks is that the entity which applies for registration is considered "competent to certify" the products concerned.

Certification marks may be used together with the individual trademark of the producer of a given good. The label used as a certification mark will be evidence that the company's products meet the specific standards required for the use of the certification mark.
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The existence of a product certification agreement between the manufacturer and an organization with national accreditation for both testing and certification.

Legal evidence that the product was successfully tested in accordance with a nationally accredited standard; Legal assurance that the accredited certification organization has ensured that the product that was successfully tested is identical to that which is being offered for sale.

Legal assurance that the successful test has resulted in a certification listing, which is considered public information and sets out the tolerances and conditions of use for the certified product, to enable compliance with the law through listing and approval use and compliance.

Legal assurance that the manufacturer is being regularly audited by the certification organization to ensure the maintenance of the original process standard that was employed in the manufacture of the test specimen that passed the test.
The registration procedure of trademark in India are evenly applicable to certification marks except that draft regulations governing use of the certification mark approved by the Registrar must be deposited at the Indian Trade Marks Registry.

A certification mark must be capable of distinguishing the certified goods or services but the issue of distinctiveness may be decided in a different way as the most important part for consideration is whether the certification trade mark is capable of distinguishing the certified goods or services from those not so certified, rather than distinguishing the goods or services of one business from the similar goods or services of another business.

An application for a Certification mark can be filed as a single or a multi-class application in the prescribed form with the Indian Trade Marks Registry.
The form must be submitted along with draft regulations governing the certification mark. The regulations must specify:

a) Description of the Applicant;
b) The nature of the Applicant’s business;
c) Particulars of infrastructure like R&D, technical manpower support;
d) Applicants’ competence to administer the certification scheme;
e) Applicants’ financial arrangement;
f) An undertaking from the Applicant that there will be no discrimination against any party if it meets the requirements set down in the regulations;
g) The characteristics of the mark which will be indicated by the certified goods or in relation to rendering of certified services;
h) The manner of monitoring the use of the mark in India;
i) The people authorized to use the certification mark
j) The characteristics to be certified by the certification mark
k) How the certifying or standards tests these characteristics and supervises the use of the mark
l) Dispute resolution procedures

In addition to the above, the applicant is required to submit a statement of case, along with the application, setting out grounds on which it relies, in support of the application.
The Registrar is not allowed to refuse, amend, modify, etc. an application, without giving the Applicant an opportunity to be heard.

If the Applicant complies with the requirements of the Indian Trade Marks Act, the mark will be accepted in due course.

The Trade Marks Registry thereafter advertises the certification mark in the Trade Marks Journal. The mark remains open to opposition by a person interested to oppose the application for registration.

If there is no opposition against the proposed registration or the opposition proceedings have been decided in favor of the Applicant, the Trade Marks Registry will proceed to grant the Registration.

Assignment or transmission of certification marks is possible but only with the prior consent of the Registrar of Trade Marks, for which an application has to be made in the prescribed manner. This ensures that the new owner is competent to be the approved certifier.
EXAMPLES

- “ISI” mark used for industrial products which certifies that the products conform to a set of standards laid by the Bureau of Indian Standards

- “FPO” mark used for processed fruit products in India which certify that the products were manufactured in a hygienic 'food-safe' environment.

- The Non Polluting Vehicle mark used on motor vehicles to certify conformity to the Bharat Stage Emission standards. (EG: BS-VI)

- “BIS” Hallmark used to certify the purity of gold jewelry.

- The ”Indian Organic” certification mark used on organically farmed food products to certify that the products conform to the specifications of National Standards for Organic Products, 2000.

- “Ecomark” used on for various products issued by the Bureau of Indian Standards.

- “AGMARK” on agricultural products in India, assuring that they conform to a set of standards approved by the Directorate of Marketing and Inspection, an agency of the Government of India.

Presence of certification mark known as Standard Mark on a product is an assurance of conformity to certain specifications.
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