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INDUSTRIAL DESIGNS AND GEOGRAPHICAL INDICATIONS**

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TECHNICAL AND PROCEDURAL ASPECTS RELATING TO  
THE REGISTRATION OF CERTIFICATION AND COLLECTIVE MARKS

*Document prepared by the Secretariat*

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ANNEX: EXAMPLES OF COLLECTIVE AND CERTIFICATION MARKS

## I. INTRODUCTION

1. At its twentieth session, the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT) requested the Secretariat to prepare a working document for discussion at its twenty-first session concerning technical and procedural aspects relating to the registration of certification and collective marks. Members of the SCT were invited to present submissions for that working document by February 15, 2009 (see document SCT/20/4, paragraph 12).

2. Accordingly, the Secretariat has prepared document SCT/21/3, based on the findings contained in document WIPO/Strad/INF/1 entitled “Summary of Replies to the Questionnaire on Trademark Law and Practice (SCT/11/6)”, which reproduces the information provided by 76 Member States and three international intergovernmental organizations. Document SCT/21/3 is also based on submissions of the following members of the SCT: Australia, Belarus, Czech Republic, Finland, France, Japan, Mexico, Norway, Pakistan, Republic of Korea, Republic of Moldova, Russian Federation, Singapore, Slovenia, Sweden, United Kingdom, United States of America and the European Community. In addition, the African Intellectual Property Organization (OAPI) has presented a submission. All the submissions were posted on the SCT Electronic Forum webpage.

3. At its twenty-first session (Geneva, June 22 to 26, 2009), the SCT requested the Secretariat to prepare a revised working document on technical and procedural aspects relating to the registration of certification and collective marks, taking into consideration the comments made by delegations during the twenty-first session. After reconsideration of the document by the twenty-second session of the SCT, the document would be made available on the WIPO webpage for reference purposes (see document SCT/21/8 Prov.). The Secretariat has thus prepared the present document, which incorporates into document SCT/21/3 the comments made by the SCT when discussing that document.

## II. PRELIMINARY CONSIDERATIONS

### (a) Collective Marks

4. As early as 1911, the protection of collective marks was introduced into the Paris Convention for the Protection of Industrial Property (Paris Convention). Article 7*bis*, which was introduced by the Revision Conference of Washington in 1911 and further elaborated by the Revision Conference of London in 1934 provided that the countries of the Union<sup>1</sup> undertake to accept for filing and to protect collective marks belonging to associations, the existence of which is not contrary to the law of the country of origin, even if such associations do not possess an industrial or commercial establishment.

5. The provision also establishes that each country shall be the judge of the particular conditions under which a collective mark shall be protected and may refuse protection if the mark is contrary to the public interest. Nevertheless, the protection of these marks shall not be refused to any association the existence of which is not contrary to the law of the country of origin, on the ground that such association is not established in the country where protection is sought or is not constituted according to the law of the latter country<sup>2</sup>.

6. Collective marks are not defined in Article 7bis of the Paris Convention. However, the article covers only collective marks “belonging to associations” which will generally be associations of manufacturers or sellers of goods produced in a certain country or region or having certain common characteristics or qualities. Collective marks of States or other public bodies are not covered by the provision<sup>3</sup>.

7. The States party to the Paris Convention are free to establish or apply the particular conditions under which they will agree to protect collective marks, which conditions should then apply both to national marks and to those covered by the Paris Convention. The conditions for protection may relate to the character of the association that claims protection. The conditions may also relate to the character of the collective mark and the guarantee given by the association concerned as to the proper use of the mark.

8. States may refuse the protection of a collective mark if it is contrary to the public interest. In fact, common characteristics of certain goods or services indicated by a collective mark generally suggest a guarantee of quality. There may be a public interest in the correct indication of such characteristics. If acceptance of the mark would be against such public interest, its regulation and protection may be refused<sup>4</sup>.

#### *Collective marks in national systems*

9. To ensure consistency with Article 7bis of the Paris Convention, States party to the Paris Convention which did not already have provisions concerning the protection of collective marks enacted the corresponding legislation. Subsequently, Members of the World Trade Organization (WTO) were also required to provide protection for such marks by virtue of Article 2 of the Agreement on Trade Related Aspects of Intellectual Property Rights (the TRIPS Agreement)<sup>5</sup>. Currently collective marks are widely protected at the national and regional levels, as illustrated by the Summary of Replies to the Questionnaire on Trademark Law and Practice (SCT/11/6), which is reproduced in document WIPO/Strad/INF/1, hereinafter referred to as “the Questionnaire”<sup>6</sup>.

10. Collective marks are not defined in the same way by the various national legislations, but they can be said to be signs which serve to distinguish the goods or services of members of the association which is the proprietor of the mark from those of other undertakings. The main feature of a collective mark is that it is used as an indication to the relevant public that goods or services originate from a member of a particular association. Additional features may include common quality or accuracy, geographical origin or other characteristics set by the association<sup>7</sup>.

11. National legislation may provide for more than one type of collective mark<sup>8</sup>, to which the present document will not refer in detail. However, it should generally be noted that these marks differ from individual trademarks<sup>9</sup> because the latter are used to distinguish the goods and services of one particular trader (a single trade source) from those of other traders. A collective mark may be used by several traders, provided that they belong to the association and comply with the use regulations.

#### (b) Certification Marks

12. Certification marks are not specifically regulated by the Paris Convention or its subsequent revisions. They have nevertheless existed for a long time in national systems, alongside collective marks and sometimes even pre-dating their introduction. It seems that during the preparatory

work of the TRIPS Agreement there was a proposal to specifically mention service marks, collective [and] [or] certification marks in the definition of subject matter suitable for protection as a trademark<sup>10</sup>. This proposal was not retained as part of the current text of Article 15 of the TRIPS Agreement but its formulation indicates that collective and certification marks have several common elements, as it will be discussed later.

#### *Certification marks in national systems*

13. According to the Questionnaire, an important number of States provides for the protection of certification marks (48 out of 79 replies)<sup>11</sup>. Member State submissions provide some information on registration statistics<sup>12</sup>. Sometimes, the numbers include both collective and certification marks<sup>13</sup>. Although such numbers appear modest as compared to the total number of trademark registrations, they seem to be on the rise at the national and international level<sup>14</sup>.

14. Similar to collective marks, certification marks have been regulated in different ways across jurisdictions. A certification mark may be said to constitute a sign which is used or intended to be used to distinguish goods or services dealt with or provided in the course of trade and certified by the proprietor of the certification mark in relation to origin, material, mode of manufacture of goods or performance of services, quality, accuracy or other characteristics, from other goods or services dealt with or provided in the course of trade but not so certified.

15. As defined in certain national statutes the holder of a certification mark is not the end-user of the mark. Instead, the holder is that party responsible for the certification or seal of approval that is ultimately conveyed to consumers by the mark<sup>15</sup>. In other words, the holder of a certification mark is the certifier, who exercises legitimate control over the use of the certification mark regardless of the type of certification.

16. Therefore, in most systems, the typical feature of a certification mark is that it is used not by the holder of the mark<sup>16</sup> but instead by its authorized users for the purpose of guaranteeing to the relevant public that goods or services possess a particular characteristic. The presence of that characteristic needs to be demonstrated by anyone seeking authorization to use the mark. However, at least in one national system, the requirement of non-use by the holder has recently been repealed<sup>17</sup>.

#### (c) Common and Specific Features

17. Collective and certification marks have a number of features in common, namely the fact that they may both be used by persons different than the holder of the mark, as long as they comply with the use regulations and standards established by the holder<sup>18</sup>. In certain cases, regulations may be given by existing laws or regulations, and standards may be established by a third party competent to certify a specific subject matter. Reference to such instruments is generally allowed.

18. In most countries which provide for protection for both collective and certification marks, the main difference between them lies in the fact that the former may only be used by a specific group of traders, for example, the members of an association, while certification marks may be used by anybody who complies with defined standards, without being confined to any membership.

19. A certification mark is said to perform a guarantee function while a collective mark would perform an identification function. It seems, however, that such a distinction may be largely porous. It is clear that fixing a certification mark on its products means claiming a certain quality, but also distinguishing such products from competing products not having the certified quality. On the other hand, using a collective mark allows the consumer to recognize a product to which it attributes certain qualities. In fact, the purpose of the guarantee provided by the collective mark is limited to establishing a link between the trademark and the collective group that uses it, while a certification mark cannot guarantee such a link, because any person can use that mark as long as it complies with the use regulations<sup>19</sup>.

### III. APPLICATION PROCEDURE

20. Application requirements concerning collective and certification marks are basically the same as for individual trademarks; however, additional indications and supporting documents may be requested at filing or later in the registration procedure. Depending on the type of examination and opposition system that the office has in place, applications for collective and certification marks will be published for opposition. National law may provide for additional procedures, such as intervention by entities in charge of verifying compliance with certain requirements<sup>20</sup>. In several countries, applications concerning collective and certification marks will be charged a higher fee, or additional fees may be payable during examination<sup>21</sup>.

21. As individual trade marks, certification and collective marks will be examined against the grounds for refusal available in national law. The objective of examination here too is ensuring that the mark is capable of carrying out its essential distinguishing function. When considering the distinctiveness of collective and certification marks it is important to appreciate that the distinguishing function of certification and collective marks differs from that of ordinary trade marks.

22. The distinguishing function of a collective mark may be defined as distinguishing goods or services of members of the association which is the proprietor of the mark from those of other undertakings, and the distinguishing function of a certification mark may be construed as a reference to distinguishing goods or services which are certified from those which are not<sup>22</sup>. As an exception to usual grounds for refusal of ordinary marks, it may be possible that signs which may serve in trade to designate the geographical origin of the products or services may constitute collective or certification marks<sup>23</sup>.

23. An additional ground for refusal applies to collective and certification marks, which is not applicable to individual trademark applications. The former applications may be refused if the public is liable to be misled as regards the character or significance of the mark, in particular if it is likely to be taken as something other than a collective or certification mark.

#### (a) Status and Competence of the Applicant

24. It is generally accepted that the applicant for a collective mark should be an association. The term “association” is not always defined in national statutes but it is generally construed as a group or organization composed of members<sup>24</sup>. The persons who compose an association may be either natural or legal persons. When determining whether an applicant qualifies as an association, it might be considered whether the claimed association has a form of membership<sup>25</sup>. Such associations are usually composed of manufacturers, producers, suppliers of services or

traders. Although in certain systems unincorporated associations may qualify as applicants<sup>26</sup>, the opposite seems to be the general rule, as it is considered that unincorporated associations do not normally have the capacity to hold property rights on their own<sup>27</sup>. In some cases, it may be an application requirement to provide a copy of the instrument of incorporation or any other document showing the legal personality of the applicant<sup>28</sup>.

25. Associations may apply for collective marks which consist of signs or indications that may serve in trade to designate the geographical origin of the goods or services. This constitutes an exception to the general rule which prevents those signs or indications from being registered as individual marks. The holder of a collective mark which consists of geographical signs or indications is not authorized to oppose use of such signs by a person who is entitled to use the geographical name<sup>29</sup>. In one jurisdiction, the mark regulations should state an authorization for any person whose goods and services originate in the geographical area concerned to become a member of the organization<sup>30</sup>.

26. The requirement that the applicant for the registration of a collective mark be an association may lead to problems for owners of certification marks, who do not fulfill such a condition and who, in the absence of certification mark legislation, seek to register their certification mark as collective mark. One way of overcoming such difficulty may be to register the certification mark as individual mark for the specific service that consists of certifying compliance with the standard that is certified by the certification mark.

27. Applications for certification marks may originate from various sources: private individuals, companies, municipalities, government organizations, or any other legal entity who exercises legitimate control over the use of the mark<sup>31</sup>. However, individuals may also be excluded from holding a certification mark. It should be noted that the conformity of products and services with established standards may be certified by so-called certification bodies or organizations and while it seems that these could also apply for certification marks<sup>32</sup>, they may be statutorily prevented from doing so and should apply for individual marks only<sup>33</sup>.

28. In some jurisdictions, individuals or private organizations may apply for and own certification marks used to certify geographic origin. It is considered that while a governmental entity is often in the best position to establish and regulate standards for certification marks used to indicate geographic origin, there is no statutory requirement that a governmental entity should be the holder of the mark. Trade associations, individuals or other private entities may register such marks provided that they comply with all of the certification mark application requirements<sup>34</sup>. Nevertheless, under such systems, when a certification mark consists solely, or essentially, of a geographical term, the office will inquire as to the authority of the applicant to control the use of the term<sup>35</sup>, if such authority is not obvious from the application record. In many jurisdictions, however, the holder of a certification mark designating geographical origin is not entitled to prohibit the use of those signs in accordance with honest practices in industrial or commercial matters<sup>36</sup>.

#### (b) Content of the Application

29. The application for a collective or certification mark will include the elements of an individual trademark application, with certain particularities. Most of the following indications or elements are included in trademark applications<sup>37</sup>:

- (i) a request for registration;
- (ii) the name and address of the applicant;
- (iii) the name of the State of which the applicant is a national if he/she is the national of any State, the name of a State in which the applicant has his/her domicile, if any, and the name of a State in which the applicant has a real and effective industrial or commercial establishment, if any;
- (iv) where the applicant is a legal entity, the legal nature of that legal entity and the State, and, where applicable, the territorial unit within that State, under the law of which the said legal entity has been organized;
- (v) where the applicant has a representative, the name and address of that representative;
- (vi) where the applicant wishes to take advantage of the priority of an earlier application, a declaration claiming the priority of that earlier application, together with indications and evidence in support of the declaration of priority;
- (vii) a representation of the mark;
- (viii) where applicable, a statement indicating the type of mark, as well as any specific requirements applicable to that type of mark;
- (ix) where applicable, a statement indicating that the applicant wishes that the mark be registered and published in the standard characters used by the office;
- (x) where applicable, a statement indicating that the applicant wishes to claim color as a distinctive feature of the mark;
- (xi) a transliteration of the mark or of certain parts of the mark;
- (xii) a translation of the mark or of certain parts of the mark;
- (xiii) the names of the goods and/or services for which the registration is sought, grouped according to the classes of the Nice Classification, each group preceded by the number of the class of that Classification to which that group of goods or services belongs and presented in the order of the classes of the said Classification; and
- (xiv) where applicable, a declaration of intention to use the mark or of actual use of the mark.

30. It seems that element number (viii), namely an indication that the application concerns a collective or certification mark may be achieved by ticking the appropriate box of the application form, if this indication is provided for or by including an indication by words. A commonly observed element is to require the applicant to enclose, together with the application, regulations concerning use of the mark<sup>38</sup>. In many cases, if those regulations are missing, defective or incomplete, the applicant will be granted adequate relief to file, complete or amend them.



31. The representation of collective and certification marks may consist of words only, designs only, or a combination of wording and design. There is usually no requirement that these marks appear in any particular format or include any specific wording. However, there may be, as with any trademark, a claim for standard characters and a claim of color as a feature of the mark.

32. In certain systems, it is necessary to include additional documentation, such as an excerpt from the association, trade or institution register or a report on the applicant's field of activities, the association's bylaws or a document certifying that the applicant is a legal person, as indicated above<sup>39</sup>. In some cases, it may be that the association's bylaws specify how the holder controls or intends to control the use of the mark (e.g. in the case of a collective mark). In such cases, the applicant may indicate this fact in the application.

33. It may be that the applicant is required to state separately the characteristics, standards or other features of the goods or services that are certified or intended to be certified (e.g. in the case of a certification mark). All of the characteristics or features that the mark certifies should be included in the statement and explained in reasonable detail<sup>40</sup>. A separate statement may also be required to the effect that the applicant is not engaged in or will not engage in the production or marketing of the goods or services to which the mark is applied.

34. The requirement to file regulations governing the use of collective and certification marks exists in most jurisdictions for a number of reasons. There is a need that regulations governing the use of marks are clear and accessible so that anyone intending to make use of the mark can easily access the relevant information and can understand the requirements that must be met before an authorized user can make use of it<sup>41</sup>. The regulations should preferably consist of a self-standing document providing the required information. However, it is acceptable to annex further documents to them, which can be cross referenced. The regulations are usually open for public inspection once the application is published<sup>42</sup>.

35. Although use regulations concerning collective and certification marks have a common objective, namely to norm the conditions of use of these marks, they present a number of differences, which justify dealing with them separately.

(c) Collective Mark Regulations

(i) *Time and manner of filing*

36. In general, collective mark regulations are filed together with the application. If that is not the case, relief is provided to allow compliance with this requirement, usually in the form of extensions of the initial time limit<sup>43</sup>. However, in some systems, the office does not require the applicant to file the rules governing use of collective marks<sup>44</sup>, or that requirement is replaced by a general reference to the particulars of the rules. Sometimes, the rules are not required at filing, but later in the procedure, for example, for publication purposes<sup>45</sup>.

(ii) *Content of Regulations*

37. The list of possible contents of collective mark regulations, which is presented in the following paragraphs, is not exhaustive. Rather, it describes the contents which may be considered "standard" in most jurisdictions. It seems clear that countries which provide for more

than one type of collective mark will also provide for specific contents of the regulations governing use of those marks. The regulations are subject to examination and if there is any objection, they may be amended or revised until they seem acceptable to the office.

#### *Details concerning the applicant*

38. As mentioned above (Section III(a)), the applicant for a collective mark is usually an association of manufacturers, producers, suppliers of services or traders, which has legal personality to hold rights in its own name. The regulations would normally identify the name of the association, the address of its office, its object and the bodies authorized to represent the organization<sup>46</sup>.

#### *Persons authorized to use the mark*

39. The category of persons authorized to use the mark should be explained under this heading. It could be that every member of the applicant association may use the mark or that such use is limited to certain sub-categories of membership, namely those members who possess a certain qualification, in which case, the specific requirements should be clearly indicated. Some offices require that the regulations identify the exact persons who at any given time are authorized users<sup>47</sup>. However, it could also be possible to make reference to the existence of a register of authorized users and its location<sup>48</sup>.

#### *Conditions of membership of the association*

40. Associations will usually have conditions of membership that must be met before a member can be admitted to it. For example, it may be a condition of membership that a person must have worked in the particular field for a set period of time before being permitted to join. All the conditions of membership of the association must be indicated in order that would-be users of the collective mark can clearly and objectively see what conditions they must fulfill before being allowed to join the association and to subsequently use the collective mark<sup>49</sup>. Similarly, if the collective mark is to be used to identify only certain members of the association, the conditions that apply to these members should also be detailed.

#### *Conditions of use of the mark*

41. Members of the association may use a collective mark on their products and in relation to their services in exchange for compliance with rules defined by the association itself. Thus, the association may determine how the mark should be used. For example, the association may decide that the collective mark can only be used on printed matter in a specific size. Such conditions of use or any similar indications should be specified in the regulations.

#### *Sanctions against misuse of the mark*

42. If the association intends to impose any sanctions against a member who misuses the mark, these should be indicated under this heading<sup>50</sup>. Misuse of the mark would include using it in a manner that does not meet the conditions of use or using the mark when not permitted to do so. They might also include using the mark in advertising that misleads the consumer or any other breach of industrial property, unfair competition or consumer protection laws. Sanctions may include a temporary or definitive suspension of the authorization to use the mark or even expulsion from the association.

(d) Certification Mark Regulations

(i) *Time and manner of filing*

43. It is also generally accepted that certification mark regulations should be filed together with the application or as soon as practicable after filing. National legislation normally contemplates relief measures to allow compliance with this requirement. Extensions of the initial time limit are the usual form of relief<sup>51</sup>.

(ii) *Content of the Regulations*

44. The following list of contents of the regulations concerning certification marks attempts to summarize the most important elements which are provided in most systems. Even where the Regulations may be filed as a separate document, they will be subject to examination, and objections may be raised if the office is not satisfied with one or more elements submitted. According to one Member State submission, the standards established to determine whether others may use the certification mark on their goods and/or in connection with their services do not have to originate from the applicant. These may be established by another party, such as specifications promulgated by a government agency, or standards developed through research of a private research organization<sup>52</sup>.

*Details concerning the applicant*

45. Unless otherwise stated in national law<sup>53</sup>, there seems to be no limitation as to who may apply for a certification mark, as long as the applicant has legal personality. As mentioned in Section III(a) above, applications for certification marks may originate from a number of sources: private individuals, companies, municipalities, government organizations, or any other legal entity who exercises legitimate control over the use of the mark. It is important to note that the applicant and later holder of the certification mark cannot be engaged in the supply of the goods being certified. An additional element is that the applicant must be competent to certify the goods and services for which the mark is to be registered<sup>54</sup>.

*Persons authorized to use the mark*

46. The regulations will indicate the requirements that an approved user must meet to use the certification mark on its goods or in relation to the services it provides. Most certification marks are available for use by any person whose goods or services demonstrate the relevant characteristic being certified<sup>55</sup>. It is possible, however, that due to the nature of the goods/services being certified, the mark is only available to certain types of users, for example only to those with particular qualifications. Such a limitation should be indicated. Although the general rule is that a certification mark should be used by a person other than its owner, it is possible at least in one jurisdiction that the holder be allowed to use the certification mark on the goods or services which it is selling<sup>56</sup>.

*Characteristics to be certified by the mark*

47. This is the key element of a certification mark. The presence of specific characteristics of the goods or services that the holder of the mark is certifying. The applicant must identify those specific qualities or characteristics of the goods or services that are certified under the mark. The regulations should not simply list the goods and services being certified, or provide general

indications which do not reveal the actual nature of the certification. The aim of the regulations on this aspect is to provide a clear and objective statement that would allow anyone reading them to know precisely what characteristic is being certified<sup>57</sup>.

#### *Testing and supervision of use of the mark*

48. The regulations normally include an explanation of how the holder will test the presence of the characteristic. Testing does not need to be carried out by the holder itself, but if this is the case an explanation of who will carry out the testing on its behalf and how will be needed. An explanation should be given as to how the holder will subsequently supervise the use of the mark. The purpose of the regulations on this point is two-fold. Firstly anyone wishing to use the certification mark will be able to see what testing regime they will be subject to. Secondly, the office, from a public interest point, needs to be satisfied that adequate testing takes place to ensure that the public can have confidence that the mark and its proprietor is truly carrying out a certification process<sup>58</sup>. At least in one system, the regulations must contain an item concerning the obligations of the mark user to submit to the control of the mark owner and pay any fees related to the certification<sup>59</sup>.

49. While in most systems, the manner in which the applicant exercises control over the use of the mark is a matter to be stated in the regulations, at least in one system<sup>60</sup>, the applicant may state under oath or declaration that it is exercising or has a *bona fide* intention to exercise legitimate control over the use of the certification mark. Such statement is accepted unless the office has knowledge of facts indicating that it should not be accepted.

#### *Fees connected with operation of the mark*

50. The fees, if any, charged in connection with the certification scheme are regularly listed in the regulations or attached as an annex to them<sup>61</sup>. This information not only allows potential users to have clear access to the fees information, but the office, from a public interest point, can ensure that fees are not excessively high so as to prevent potential users from accessing the scheme. In most systems, there is no requirement that the certification scheme should be operated on a “not for profit” basis. The fees should however be proportionate to the nature of certification necessary, particularly where the holder’s mark is the *de facto* standard for the goods and services concerned.

#### *Dispute settlement procedures*

51. The regulations usually include procedures for resolving disputes. Disputes may arise between the proprietor of the mark and an authorized user or potential user about whether the goods or services meet the certification requirements, which may result in the holder’s decision not to allow use of the mark. However, disputes may also arise about any issue relating to the certification mark. It seems important that an appeal mechanism against the holder’s decision is in place to ensure fairness and equality. Such a mechanism should allow an ultimate view on the matter to be taken by an independent person or body such as a specialist arbitrator or tribunal<sup>62</sup>.

#### (e) Amendment of Regulations

52. Once a mark and its regulations have been accepted and published for opposition purposes, the applicant may request that the regulations governing use of the mark be amended. Some offices provide for a specific form to present such a request. Amendments will not be recorded

automatically but will be subject to examination in the same way as newly filed regulations. Amended regulations will have no effect unless approved by the office<sup>63</sup>. If the office considers it appropriate, the amended regulations will also be published for opposition purposes. Most amendments will be published as they could potentially affect the accessibility of current and prospective users of the mark. Publication is not required for minor amendments, such as changing the applicant's address.

#### IV. POST REGISTRATION MATTERS

##### (a) Change in Regulations after Registration

53. In most systems, a change to the regulations governing the use of registered collective or certification marks will not be effective unless and until the amended regulations are filed with the office and accepted by it. Before accepting any amended regulations, the office will examine them and if necessary, will cause them to be published. If the office does so, a notice of opposition may be given, and observations may be made. Once accepted, changes may need to be recorded in the register. Amended regulations will also be open to inspection by the public<sup>64</sup>.

##### (b) Licensing

54. It is common practice for trademark owners to license third parties to use their trademarks. Like individual trademarks, collective and certification marks may, in principle, be licensed and under the law of certain countries, license agreements need to be recorded with the office if they are to be effective<sup>65</sup>. National law may, however, contemplate specific limitations preventing holders of these kinds of marks to conclude licensing agreements. Some Member State submissions indicated that under national law, it is not possible to license collective marks, given that the use of these marks is reserved to the members of the association of producers, traders or suppliers of services<sup>66</sup>.

##### (c) Assignment of Registration

55. Certification and collective marks may be assigned to a new holder in the same way as individual trademarks. However, national law may state that in respect of certification marks, an assignment is not effective without the approval of the office<sup>67</sup>. This is to ensure that the new holder has the necessary competence to run the certification scheme<sup>68</sup>. Consequently, the assignee will need to meet the requirements applicable for the holder of a collective or certification mark before the assignment will be validated.

56. A change in ownership of either a collective or certification mark will also imply an amendment to the regulations. The amendments will need to reflect the new name of the holder together with any other amendments that may be required to reflect the new entity owning the mark, for example, amended conditions of membership, etc. The request to amend should be made in the manner required for amendments prior to registration and should be filed at the same time as the request to record the assignment.

57. It should nevertheless be noted that according to some Member State submissions, the rights over a collective<sup>69</sup> mark may not be assigned or transferred<sup>69</sup>, while in other Member States, certification marks cannot be assigned or given as a security<sup>70</sup>.

(d) Invalidity of Registration

58. Like an individual mark, a collective or certification mark may be declared invalid if it was registered in breach of any registration requirements. However, there may be additional grounds of invalidity concerning a certification mark, where the applicant was carrying on a business of the kind of goods or services certified or the applicant was not competent to certify the goods and services sought. Further potential grounds for invalidity for both collective and certification marks may include the fact that the public is liable to be misled as to the character or significance of the mark, that the regulations did not contain the required information or were against public policy or morality<sup>71</sup>. Invalidation actions may be filed with the office.

(e) Revocation of registration

59. Grounds for revocation of individual marks apply equally to certification and collective marks. However, certification and collective marks may be revoked on the following additional grounds: (i) in the case of certification marks, that the holder of the mark has begun to carry on a business in the supply of the goods or services certified; (ii) that the manner in which the mark is used has caused it to become misleading as regards its character or significance; (iii) that the proprietor has failed to observe or secure the observance of the regulations governing the use of the mark<sup>72</sup>, (iv) that an amendment has been made to the regulations so that they no longer comply with the required content of the regulations governing use of the mark<sup>73</sup>, or that the amended regulations are contrary to public policy or accepted principles of morality, in the case of certification marks, and (v) that the holder is no longer competent to certify the goods or services for which it is registered<sup>74</sup>.

## V. CONCLUSION

60. This document presents an overview of technical and procedural aspects relating to the registration of certification and collective marks, mainly on the basis of the preliminary findings contained in the Replies to the Questionnaire on Trademark Law and Practice, and additional information provided by members of the SCT in their individual contributions, as agreed at the twentieth session of the Standing Committee.

61. While systems present considerable variations in the detail of office rules and procedures, there seems to be a common understanding of the functions of these types of marks in the marketplace. Collective marks are generally perceived as favoring cooperative arrangements of collaboration, allowing for the syndication of economic activity and pooling of resources. Viewed as an organizational principle of economic activity, collective marks may help a community to promote its market position, build its reputation, protect that reputation against unfair competition, and better organize its collective economic activity<sup>75</sup>.

62. Certification marks are registered for a public interest objective to guarantee the nature, properties or qualities of the designated products or services. The presence of a certification mark on a product or service will give the consumer guidance and resulting confidence in deciding whether to make a particular purchase or not. Certification marks are commonly applied to goods or services in conjunction with individual trademarks.

63. Promoting a better understanding of collective and certification marks in different jurisdictions may contribute to greater efficiencies in the use of those intellectual property rights, as well as increased access to protection and registration systems across the world. A closer analysis of the pertinent legal provisions and administrative procedures may also contribute to disseminating information about the protection possibilities offered in potential markets.

64. In view of the above, the SCT may wish to consider pursuing its work on collective and certification marks, in order to further clarify the issues presented in this document, or address additional issues suggested by SCT Members.

65. *The Standing Committee is invited to consider the present document and:*

*(i) comment the technical and procedural aspects relating to collective and certification marks dealt with in the document;*

*(ii) consider any further aspects concerning collective and certification marks that it may wish to address, and*

*(iii) consider any further course of action with regard to items (i) and (ii).*

[Annex follows]

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<sup>1</sup> That is, the Union established under the Paris Convention for the Protection of Industrial Property.

<sup>2</sup> Article 7*bis* (2) and (3).

<sup>3</sup> A proposal to enlarge it in this respect was not accepted by the revision Conference of London in 1934. *Actes de Londres*, pp. 193/4, 409, 467 and 517. See “Guide to the Application of the Paris Convention for the Protection of Industrial Property” by Professor G.H.C. Bodenhausen, WIPO Publication No. 611(E), p. 130.

<sup>4</sup> Reference is made to the commentary contained in Bodenhausen *ibid*, p. 129.

<sup>5</sup> Article 2 of the TRIPS Agreement provides “In respect of Parts II, III and IV of this Agreement, Members shall comply with Articles 1 through 12 and Article 19 of the Paris Convention (1967)”. See WIPO Publication No. 223(E), 1996, p. 16.

<sup>6</sup> Section II, Registrable Signs, Sub-section 5, Special Types of Marks, D. Collective Marks, pp. 36 and 37, available at <http://www.wipo.int/sct/en/>. Document WIPO/Strad/INF/1 has been completed with additional replies received after the date of its first publication.

<sup>7</sup> See, in particular, the submissions by the Delegations of Belarus, Norway and the Russian Federation, published at <http://www.wipo.int/sct/en/comments/>.

<sup>8</sup> See, in particular, the submissions by the Delegations of France, Japan, Norway, Sweden and the United States of America.

<sup>9</sup> The term “individual” trademarks is used to refer to “trademarks for goods and services”, “standard trademarks”, “ordinary trademarks”, etc., as mentioned by the Member States in their submissions.

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- 10 Reference is made to C. Draft of July 23, 1990 (W/96) "... 1.A.3 The term "trademark" shall include  
service marks, as well as collective [and] [or] certification marks..." See GERVAIS, Daniel "The  
11 TRIPS Agreement: Drafting History and Analysis", Sweet & Maxwell, London, 1998, p. 104.  
Section II, Registrable Signs, Sub-section 5, Special Types of Marks, E. Certification Marks, pp. 39  
and 40.
- 12 Over 480 registered or pending certification marks in Australia. See submission by the Delegation  
of Australia.
- 13 80 to 100 certification and collective marks filed in the United Kingdom per year. See submission  
by the Delegation of the United Kingdom. 66 registered collective marks in the Czech Republic.  
See submission by the Delegation of the Czech Republic. Less than 50 collective certification marks  
in the period 2005-2008 in France. See submission by the Delegation of France.
- 14 Reference is made to the statement by the Delegation of Spain, contained in paragraph 306 of  
document SCT/20/5 Prov., Report of the Twentieth Session of the SCT. By February 2009,  
1,122 collective and/or certification marks were registered with the International Bureau of WIPO  
under the Madrid System for the International Registration of Marks (ROMARIN database).
- 15 See submission by the Delegation of the United States of America.
- 16 See submissions by the Delegations of Finland, France, Singapore, United Kingdom, the United  
States of America and Viet Nam. See also Article 188 of Andean Community Decision  
No. 486/2000 "Common Provisions on Industrial Property".
- 17 Because of the involvement of an independent government organization which ensures that  
application rules are consistent with competition principles and in the public interest, namely the  
Australian Competition and Consumer Commission (ACCC). See submission by the Delegation of  
Australia.
- 18 See LANCRENON Thibault "*Ballade dans la brume des marques collectives*", in *Propriétés  
Intellectuelles*, October 2004, No. 13, p. 848.
- 19 *Ibid*, p. 847.
- 20 In Australia, the registration of certification marks requires that competition and public interest  
issues be tested by the ACCC to ensure that the rules do not unfairly exclude those qualified to use  
the mark and that the certification authorities are competent (see submission by the Delegation of  
Australia).
- 21 See, in particular, the submissions by the Delegations of Finland, Norway, Slovenia and the United  
States of America.
- 22 See submission by the Delegation of the United Kingdom.
- 23 See submissions by the Delegations of Australia, Japan, Norway, Pakistan, Republic of Moldova,  
Singapore, United Kingdom, United States of America, Viet Nam and the European Community.
- 24 In some systems, however, applicants for collective marks may also include: State authorities,  
public law organizations, unions or associations of unions (see submission by OAPI).
- 25 Indications present in any form of association with members include payment of membership fees,  
issuing of membership cards/numbers, membership meetings and conditions of membership (see the  
submission by the Delegation of United Kingdom).
- 26 See the submission by the Delegation of Australia.
- 27 See, in particular, the submissions by the Delegations of Japan, Mexico, Republic of Moldova,  
Slovenia, the United Kingdom, the United States of America, Viet Nam and the European  
Community.
- 28 See the submission by the Delegation of the Czech Republic.
- 29 See, in particular, the submissions by the Delegations of Republic of Moldova and Singapore.
- 30 See the submission by the Delegation of the European Community.
- 31 Owners of geographical indications may also apply for certification marks in Australia  
(see submission by the Delegation of Australia).

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- 32 See, in particular, the submission by the Delegation of Republic of Moldova.  
33 See the submissions by the Delegations of the Czech Republic and the European Community.  
34 See, in particular, the Submission by the Delegation of the United States of America.  
35 See the submission by the Delegation of Viet Nam.  
36 See, among others, the submissions by the Delegations of Pakistan, Singapore and the United Kingdom.  
37 A general reference is made to Article 3 and Rule 3 of the Singapore Treaty on the Law of Trademarks and the Regulations Thereunder, concluded at Singapore on March 22, 2006. See WIPO Publication No. 259(E) and <http://www.wipo.int/treaties/en/ip/singapore/>.  
38 All submissions indicated the need to provide regulations concerning use of the mark.  
39 See, in particular the submissions by the Delegations of Finland, Japan and the United States of America.  
40 See submission by the Delegation of the United States of America.  
41 See submission by the Delegation of the United Kingdom.  
42 See, in particular, the submissions by the Delegations of Pakistan, Singapore and the United Kingdom.  
43 In some systems, extensions may be granted for two months and in others, up to nine months from the date of filing, with the possibility of further extensions. For these later submissions, the applicant may be required to file special forms or pay additional fees. See, in particular, the submissions by the Delegations of Mexico, Republic of Moldova, Singapore, United Kingdom and the European Community.  
44 See submission by the Delegation of Australia.  
45 See submission by the Delegation of France.  
46 See, in particular, the submissions by the Delegations of Belarus, Norway, Slovenia, Russian Federation, Viet Nam, and the European Community.  
47 See the submissions by the Delegations of Belarus, Czech Republic, Norway, Republic of Moldova, Russian Federation, Viet Nam and the European Community. Article 182 of Andean Community decision No. 486/2000 requires that the actual list of the association's members be provided.  
48 See the submission by the Delegation of the United Kingdom.  
49 *Idem.*  
50 See, in particular, the submissions by the Delegations of Belarus, Norway, Republic of Moldova, Russian Federation, Slovenia, United Kingdom, Viet Nam and the European Community.  
51 Time limits vary from two to nine months or a reasonable time limit to be fixed by the office (see, in particular, the submissions by the Delegations of Republic of Moldova, Pakistan, Singapore and United Kingdom).  
52 See submission by the Delegation of the United States of America.  
53 According to the national law of Finland, an application for a certification mark can only be made by an authority, association or institution whose duty is to check or supervise goods or services or to issue directions regarding them (see submission by the Delegation of Finland and the submission by the Delegation of Republic of Moldova).  
54 See, in particular, the submissions by the Delegations of Pakistan, Singapore, United Kingdom and the United States of America.  
55 See, in particular, the submissions by the Delegations of Australia and United Kingdom.  
56 See submission by the Delegation of Australia.  
57 See, in particular, the submissions by the Delegations of United Kingdom and the United States of America.  
58 See the submissions by the Delegations of Pakistan, Singapore, United Kingdom and Viet Nam.  
59 See submission by the Delegation of Viet Nam.  
60 See submission by the Delegation of the United States of America.  
61 See submissions by the Delegations of Pakistan, Singapore, United Kingdom and Viet Nam.  
62 See, in particular, the submissions by the Delegations of Australia, Singapore and United Kingdom.

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- <sup>63</sup> See, in particular, the submissions by the Delegations of Pakistan and the United Kingdom.
- <sup>64</sup> See, in particular, the submissions by the Delegations of Pakistan, Republic of Moldova, Russian Federation, Singapore, Slovenia and Sweden (see also Article 187 of Andean Community Decision No. 486/2000).
- <sup>65</sup> Regarding collective marks, see Article 183 of Andean Community Decision No. 486/2000, and regarding certification marks, see the submission by the Delegation of Viet Nam.
- <sup>66</sup> See, in particular, the submissions by the Delegations of the Czech Republic and Mexico.
- <sup>67</sup> See, in particular, the submissions by the Delegations of Pakistan, United Kingdom and OAPI.
- <sup>68</sup> In Australia, permission of the ACCC must be granted before the assignment of a registered certification trademark can be carried out (see the submission by the Delegation of Australia).
- <sup>69</sup> See, in particular, the submissions by the Delegations of Australia, Czech Republic, Mexico and Russian Federation.
- <sup>70</sup> See submission by the Delegation of Moldova.
- <sup>71</sup> For example, rules which discriminate on the grounds of sex, creed or race would be unacceptable (see submission by the European Community).
- <sup>72</sup> In addition, if a member of the collective organization holding a collective mark has allowed a non-member to use the collective mark in contravention of the articles of incorporation of the organization (see the submission by the Delegation of the Republic of Korea).
- <sup>73</sup> Also, if the particulars of the rules have been amended but not notified (see submission by the Delegation of Sweden).
- <sup>74</sup> Additionally, that the holder permits use of the certification mark for purposes other than to certify or discriminately refuses to certify or to continue to certify the goods or services of any person who maintains the standards or conditions which such mark certifies (see submission by the Delegation of the United States of America).
- <sup>75</sup> See GHAFELE, Roya, “Creating the missing link: Applying collective marks to create clusters”, *Journal of Intellectual Property Law and Practice*, 2009, Vol. 4, No. 1, pp. 58 and 59.

ANNEX

EXAMPLES OF COLLECTIVE AND CERTIFICATION MARKS

This Annex contains examples of collective and certification marks that were provided by SCT members in their individual submissions.

EXAMPLES OF REGISTERED COLLECTIVE MARKS:

EXAMPLE No. 1

Australia (Reg. No. 679462)



Registered from November 29, 1995.

Owned by Industry Funds Forum, Australia, in relation to superannuation services.

EXAMPLE No. 2

Australia (Reg. No. 800879)

CA PERFORMANCE VIEW

Registered from July 20, 1999.

Owned by The Institute of Chartered Accountants in Australia, in relation to business consulting services, including services in the field of measurement and monitoring key business indicators to assess progress toward strategic goals.

EXAMPLE No. 3

Australia (Reg. No. 873103)

AFAQ

Registered from April 19, 2001.

Owned by AFAQ (*Association française pour la certification par tierce partie des systèmes d'assurance de la qualité des entreprises*), France, in relation to business management of certification of quality management systems; personal management; providing business information; inquiries and business statistical information and certification and evaluation of quality of management systems as quality control and quality testing services in the field of administration, business management, manufacturing, marketing, finance, organization of management, personal management; providing service of third parties for certification and evaluation of environmental management system with a view to establishing if the concerned companies are in respect with the required standards.

EXAMPLE No. 4

Australia (Reg. No. 1179932)



Registered from May 31, 2009.

Owned by International Accreditation Forum Inc., USA, in relation to Services of an international association of organizations composed of accreditation and accepted bodies, associates and entities, namely the provision of education and training to accreditation bodies to harmonize and provide for the consistent application of conformity assessment activities to international standards, which allows the harmonization and consistency of standards in order to benefit public health, safety and welfare and to facilitate international and domestic trade, and also arranging and conducting conferences and special working groups where information relating to accreditation can be exchanged and criteria for consensus guidelines can be established and administrated.

EXAMPLE No. 5

Norway (No Reg. No. given): Collective mark for an association.



The Consortium for the Preservation of Grana Padano can grant to firms producing, seasoning or prepackaging cheese products with designation of origin Grana Padano or of quality GRANA PADANO, the right to use the collective mark GRANA PADANO. The right is subject to submission of a request, after acceptance of compliance of their production with specific requirements set forth in "*REGOLAMENTO PER L'USO DEI MARCHI COLLETTIVI DEL CONSORZIO PER LA TUTELA DEL FORMAGGIO GRANA PADANO*". The requirements refer to raw materials, processing, production, hygienic and sanitary conditions and any other physical-chemical, organoleptic or productive requirement.

Controls and supervision may be carried out whenever deemed suitable by personnel working for the Consortium.

In case of non-fulfillment or infringement of the Regulation, the Executive Committee of the Consortium shall decide sanctions according to the seriousness of the act. The sanctions can consist of written warning, money sanctions, suspension of the grant, and definitive repeal of the grant as well as judicial or administrative court action.

EXAMPLE No. 6

Norway (International Registration No. 655337), class 32: Collective mark for an association.

MÜNCHNER BIER

The holder of the mark is *Verein Münchener Brauereien e.V., München*, Germany. The mark was registered for beer in class 32.

The published Trademark Regulations governing the geographic collective mark Münchner Bier are the following:

1. Trade Mark proprietor

1.1 The Association which owns the Trade Mark bears the name *Verein Münchener Brauereien e.V. München* is the head office, place of jurisdiction and place of performance for claims derived from these regulations.

1.2 According to § 7 of its Statutes, the Association is legally represented by the Chairman and, in his absence, by the Vice-chairman.

1.3 The object of the Association is, among other things, to protect the name Münchner Bier which has a geographic origin and to safeguard trade mark rights at home and abroad.

2. Aim of the trade mark

2.1 The trade mark is to identify Münchner Bier

2.2 The trade mark is to prove that the product identified by it originates from a business located within the municipal boundaries of the city of Munich and complies with the definition of beer (§ 9 Preliminary Beer Law) applicable to the official inspection of foodstuffs.

2.3 According to the certificate from the Munich Chamber of Trade and Industry dated 28.2.1972, the place of origin extends to the municipal boundaries of the city of Munich.

3. Configuration and formation of the trade mark

3.1 The trade mark consists of the words Münchner Bier

3.2 The trade mark is recognized by the RAL as a guarantee of German geographic origin and is administered by it (RAL-RG 0172).

4. Rights attached to the trade mark

4.1. The trade mark proprietor derives rights from registration of the trade mark, in particular in the case of unlawful use or other interference in the trade mark or in use of the trade mark.

5. Authorized users

5.1 Any manufacturer of Münchner Bier which meets the conditions of section 2.2 has the right to use the trade mark.

5.2 Authorized users may use the trade mark only for products which satisfy the conditions for Münchner Bier according to section 2.2. Only with the consent of the Association do traders have the right to use the trade mark for products of the above-mentioned type brought on the market by manufacturers without previous trade mark identification. The Association may refuse or revoke consent if the respective trader does not guarantee or no longer guarantees that he will observe the conditions mentioned in section 2.2

5.3 The trade mark regulations concerning the circle of users may not be amended. The German Patent Office must be advised of amendments to the conditions mentioned in section 2.2. The Association is obliged to backdate the amendment if the German Patent Office or the Federal Cartel Authority considers this necessary to ensure that the authorized user is kept free or owing to a resultant unauthorized restriction to competition.

## 6. Rights and duties of members

6.1 The trade mark proprietor is entitled and obliged 6.1.1 to monitor compliance with the provisions of these regulations by the authorized users and the use of the trade mark in the uniform design to be established by the Association;

6.1.2 to proceed against any unauthorized or incorrect use of the trade mark and against interference in or infringement of the authorized use of the trade mark;

6.1.3 if appropriate, to register the trade mark as a collective mark or control mark in other states and internationally.

## 6.2 Trade mark users are obliged

6.2.1 to use the trade mark in compliance with regulations and correctly;

6.2.2 to inform the trade mark proprietor of any use which violates the Law or the regulations;

6.2.3 to do everything in their power to enhance and protect the good reputation of the trade mark, in particular to promote its purpose as a guarantee of geographic origin. If permitted by the Association, the trade mark user is also entitled himself to take legal action against misuse and to claim compensation for damages.

6.3 Trade mark users are responsible for use of the trade mark in identifying their products. The trade mark proprietor, his agencies or authorized representatives are not liable for third parties.

## 7. Final clause

7.1 The collective mark for Münchner Bier is administered by the RAL as a guarantee of German geographic origin.

7.2 These trade mark regulations are recognized by the RAL.

7.3 The Association is obliged to submit amendments to the trade mark regulations to the RAL for expert comments before advising the German Patent Office in compliance with section 5.3.

EXAMPLE No. 7

Norway (No Reg. No. given): Collective mark as a control mark for a public authority.



A collective mark registered for the Directorate for Nature Management (DN) shows a symbol that shall be used on, for example, public documents relating to the Hunter's Exam, and only by authorized instructors and those who have passed the mentioned exam.



EXAMPLES OF REGISTERED CERTIFICATION MARKS:

EXAMPLE No. 1

Australia (Reg. No. 498188), class 29



Owned by the National Heart Foundation, in relation to: “Meat, fish, poultry and game; meat extracts; preserved dried and cooked fruits and vegetables; prepared nuts; jellies, jams; milk and milk products; edible oils and fats; preserves, salad dressings; egg products; peanut butter; soups and vegetable juices for cooking”.

Rules for use of this mark identify the characteristics that must be present in the prepared food before the mark can be used on its packaging when being sold.

In this case it stipulates allowed levels of content for various substances including saturated fat, trans fat, fiber levels, salt content, sugar and energy.

The Heart Foundation must monitor the use of the mark to ensure that it is only used under agreed arrangements in relation to foods that meet requirements.

EXAMPLE No. 2

Australia (No Reg. No. given)



certifies goods of pure new wool



certifies goods of wool blend

Registered since 1964, 1974 onwards.  
Owned by the Woolmark Company Pty Ltd., in relation to a wide range of goods including clothing, textiles, cleaning products.

EXAMPLE No. 3

Australia (Reg. No. 283819)

LIEBFRAUENMILCH

Registered from December 9, 1974.  
Owned by Wine Stabilization Fund, *HAUS DES DEUTSCHEN WEINES*, WEST GERMANY, in relation to wines.

EXAMPLE No. 4

Australia (Reg. No. 883669)



Registered from July 26, 2001.  
Owned by Hilltops Incorporated, NSW, Australia, in relation to wines.

EXAMPLE No. 5

Australia (Reg. No. 909889)

ASTI

Registered from April 18, 2002.

Owned by *Consorzio per la Tutela dell'Asti*, Italy, in relation to wines and sparkling wines.

EXAMPLE No. 6

Australia (Reg. No. 1091788)

MONTEFALCO SAGRANTINO

Registered from September 19, 2005.

Owned by *Consorzio Tutela Vini Montefalco*, Montefalco, Italy, in relation to wines.

EXAMPLE No. 7

Australia (Reg. No. 815585, International Registration No. 869991)



Registered from November 29, 1999.

Owned by *Consorzio Del Prosciutto di Parma*, Parma, Italy, in relation to ham.

EXAMPLE No. 8

Australia (Reg. No. 852577)



Registered from October 6, 2000.  
Owned by Coffee Marks Ltd., Kingston, Jamaica, in relation to coffee and coffee beans.

EXAMPLE No. 9

Australia (Reg. No. 998593)



Registered from April 20, 2004.  
Owned by Tea Board, India, in relation to tea.

EXAMPLE No. 10

Australia (Reg. No. 1239072, International Registration No. 959458)



Lodgment Date March 31, 2008.

Owned by Yunnan Province Pu'er Tea Association, Yunnan Province, China, in relation to tea.

EXAMPLE No. 11

France (No Reg. No. given), classes 5, 29, 30, 31, 32 and 33



Registered from February 2, 1997, renewed on September 17, 2007.

Semi-figurative mark, filed by the Ministry of Agriculture and Fisheries, Directorate General of Food.

EXAMPLE No. 12

United Kingdom (No Reg. No. given)



The applicant claims the colors red and blue as elements of the mark.

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