

Technical and procedural aspects relating to the registration of certification and collective Marks

Under our Trade Marks Act, a certification mark refers to any sign capable of being represented graphically and 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.

With regard to a collective mark, our Trade Marks Act defines it as a sign, used or intended to be used in relation to goods or services dealt with or provided in the course of trade by members of an association to distinguish those goods or services from goods or services so dealt with or provided by persons who are not members of the association.

An applicant for registration of a certification or collective mark must file with the Registrar regulations governing use of the mark via the relevant form and fees within 9 months from the date of application. The relevant contents of the regulations are stated in the Trade Marks Act and summarized below:-

Regulations	
Collective Mark	Certification Mark
(a) the persons authorized to use the mark (b) conditions of membership of the association (c) conditions of use of the mark (if any) (d) sanctions against misuse (if any)	(a) the persons authorized to use the mark (b) characteristics to be certified by the mark (c) how the certifying body is to test those characteristics and to supervise the use of the mark (d) fees (if any) to be paid in connection with the operation of the mark (e) procedures for resolving disputes

A certification or collective mark shall not be registered unless the regulations comply with the above requirements, do not offend any other provisions and are not contrary to public policy or accepted principles of morality. In addition for certification marks, the applicant must be competent to certify the goods or services for which the mark is to be registered.

Notwithstanding provisions in the Trade Marks Act against the acceptance of an ordinary mark containing a geographical significance, a collective or certification mark may be registered even though it consists of signs or indication which may serve in trade to designate the geographical origin of the goods or services. However, the proprietor of such a mark is not entitled to prohibit the use of the signs or indications in accordance with honest practices in industrial or commercial matters, in particular by a person who is entitled to use a geographical name.

With regard to a certification mark, there is an additional statutory prohibition that it shall not be registered if the proprietor carries on a business involving the supply of goods and services of the kind certified.

The Registrar shall examine the regulations for conformity and if necessary, may direct the applicant to make representations or file amendments to regularize the regulations. If the applicant fails to do so, the application shall be treated as withdrawn. If the application and the regulations are in order, the Registrar shall accept the application which will be subject to the usual pre-registration opposition period of two months. If there is no opposition, the mark will proceed to registration.

The Trade Marks Act further provides that the regulations governing use of a registered certification or collective mark are not effective unless and until the amended regulations are filed with the Registrar accepted by him. All regulations are open to inspection by the public.