

All Things IP



Eshwars | House of Corporate & IPR Laws

4, Aishwarya, 12B/177, 6th Street, Kumaran Colony,
Vadapalani, Chennai - 600026, India T +91-44-4204 8335 | F +91-44-4204 8235

AllThings IP Newsletter – December 2020

AN INDIAN PERSPECTIVE ON CERTIFICATION TRADEMARK

A Trademark in its broad sense, as we all know, is a very effective source indicator that helps brand owners establish a strong nexus between their brands and the consuming public or the target audience. While on one side, the growth of trade and commerce has helped in consumers being presented with multiple brands and choices for any given kind of goods or services, it also on the other hand led to a risk of consumers being presented with goods and services of inferior quality. In order to help brand owners gain the confidence of the consumers while purchasing or availing goods or services, the concept of certification and maintenance of standards for marketing and selling a particular kind of offering of goods and services became essential. This also consequentially led to the birth and origin of a specific and special kind of trademarks known as **“Certification Trademarks”**.

Certification Trademark is a special type of trademark which shows the consumers that the proprietor of the mark has certified the origin, material, mode of manufacture of goods or performance of services, quality, accuracy, or other characteristics thereof that vouches for the authenticity and standards of the particular offering being sold.

Some common examples of Certification Trademarks are:

- Certification standards of Bureau of Indian Standards (BIS) such as BIS Hallmark for certification of purity of gold jewellery
- Food Safety and Standards Authority of India (FSSAI),
- WOOLMARK, used on pure wool products that meet quality standards set by The Woolmark Company
- The India Organic certification mark accredited by the Agricultural and Processed Food Products Export Development Authority (APEDA) used on organically farmed food products to certify that the products conform to the specifications of National Standards for Organic Products, 2000.
- Bluetooth mark for certification of wireless technology standards compliance managed by the Bluetooth Special Interest Group.

The Indian Trademarks Act, 1999 and the Trademarks Rules, 2017 (the “Act”) provides for specific provisions and procedures for registration of Certification Trademarks in India. The provisions contained in sections 69 to 78 of the Act deal with the registration of Collective Trademarks

The application for registration of a Certification trademark can be filed on Form TM- A along with a statement of case setting forth the grounds on which the Applicant places reliance in support of his application and draft regulations that governs the grant of a certification and the use of a certification mark. Such regulations may inter- alia contain the following particulars:



- a. a description of the applicant and its business;
- b. the particulars of infrastructure like Research and Development, technical manpower support;
- c. the applicant's competence to administer the certification scheme and its financial arrangement;
- d. an undertaking from the applicant that there will be no discrimination of any party if they meet the requirements set down in the regulations;
- e. the characteristic, which the trademark will indicate in the certified goods or in relation to the rendering of certified services;
- f. the manner of monitoring the use of the trademark in India; and
- g. such other relevant particulars as may be called for by the Registrar.

It is also pertinent to note that the provisions related to examination, hearing, opposition, registration, and renewal of regular trademarks shall apply mutatis mutandis in respect of certification trademarks.

The draft regulations may also be modified by the proprietor at a later date by filing an application on Form TM-M along with the prescribed official fee to alter the deposited regulations. If the Registrar allows such alteration, it shall be published in the Trademarks Journal.

As already explained hereinabove, the main purpose of the regulations and the use of a Certification Trademark is to protect consumers against misleading practices and also help manufacturers and service providers vouch for the quality and standards of their offerings that helps consumers in making an informed and dependable decision while purchasing the goods or availing the services respectively.

We at Eshwars advise clients in strategizing their trademark registration in India as well as in other countries for obtaining comprehensive statutory protection. For more information please write to us at saisunder@eshwars.com.