



COLLECTIVE MARKS: A SPECIES OF TRADEMARK LAW

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ABSTRACT

Collective marks are typically characterized as signs which distinguish the geographical beginning, material, method of manufacture, or other normal characteristics of goods or services of various ventures utilizing the collective mark. The proprietor might be either an association of such ventures who are individuals or some other element. All in all, a collective Trade Mark or collective mark is a Trade Mark claimed by an association or an association), utilized by its individuals to identify themselves with a degree of quality or exactness, geographical beginning, or different characteristics set by the association. This paper discusses collective Trade Marks vis-a-vis laws related to collective trademarks and its advantages.

In the light of the same, this paper aims to study the following things: -

- 1. What is a Collective Trademark?*
- 2. Legal Provisions for Collective Trademark.*
- 3. Advantages of Collective Trademark.*
- 4. Case laws related to trademark.*

Keywords: Collective Mark, Trademark, Geographical Indication.

Introduction

The protection of collective marks is covered by the intellectual property laws of the majority of nations. Generally speaking, collective marks are indicators that identify the geographical origin, material, method of manufacture, or other shared qualities of goods or services provided by several businesses utilizing the collective mark.³ The proprietor might be either a relationship of such enterprises who are individuals or some other substance. In other words, a collective Trade Mark or collective mark is a Trade Mark claimed by an association or an

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³ Prachi Gupta, Collective trademarks: An Overview, Manupatra (June 14, 2022, 10:45 AM), <http://docs.manupatra.in/newsline/articles/Upload/7991B723-EB64-495C-B323-A9D15B1DFCAD.pdf>.

affiliation), utilized by its individuals to distinguish themselves with a degree of value or precision, geographical origin, or different qualities set by the association.⁴

Collective Trademarks are special cases for the hidden guideline of Trademarks in that most Trademarks act as "badges of origin"; they show the singular wellspring of the labor and products. A collective Trademark, in any case, can be utilized by different traders, as opposed to only one individual concern, provided that the trader has a place with the association who owns the collective trademark.⁵ Collective trademarks are frequently used to advance products that are normal for a given district. In such cases, the formation of a collective mark not just assists with marketing such products domestically and sometimes internationally, yet additionally gives a structure for participation between nearby makers.

The formation of the collective trademark, truth be told, should remain closely connected with the improvement of specific norms and rules and a typical methodology. In this sense, collective trademarks become useful assets for the nearby turn of events. The capability of the collective trademark is to illuminate general society about specific highlights of the item for which the collective trademark is utilized and the proprietor of the collective trademark is liable for guaranteeing the consistency with specific principles (normally fixed in the regulations concerning the utilization of the collective mark) by its individuals. Most wards expect that an application for a collective mark is joined by a duplicate of the regulations which oversee the utilization of the collective mark.

Collective Trademarks come into play when products that might have specific qualities well defined for the makers in a given region are connected to the area's verifiable, social, and social states. A collective trademark might be utilized to epitomize such highlights and as the reason for the marketing of the said products, in this manner helping all makers. A collective trademark might be utilized to embody such features and as the reason for the marketing of the said products, in this way helping all makers. Associations of small and medium enterprises register collective marks to mutually market their product(s) and upgrade item acknowledgment. Collective trademarks might be utilized along with the singular Trade Mark of the maker of a given decent. This permits organizations to separate their products from those of contenders, while simultaneously profiting from the certainty of the consumers in products or administrations presented under the collective trademark. Collective may accordingly address helpful instruments for SMEs helping them to defeat a portion of the difficulties related

⁴ Karan Singh, What is collective Mark? A complete guide, Sawarit Advisors (June 26, 2022, 11: 10 AM), <https://swaritadvisors.com/blog/what-is-a-collective-mark/>.

⁵ Aishwariya Parameshawara, All you need to know about Trademark and its types, Blog iPleader (June 24, 2022, 11:00 AM), <https://blog.ipleaders.in/everything-you-need-to-know-about-trademark-and-its-types/>.

to small size and disengagement in the marketplace.⁶

The term 'Collective mark' is characterized under Section 2(1)(g) of the Trade Marks Act, 1999 as a trademark that recognizes the labor and products of individuals from an association of people who isn't being a partnership with the importance of the Indian Partnership Act, 1932 and which is the importance of the trademark those of others.⁷ It is dealt with under Chapter VIII of the Act from Sections 61 to 68 and Part II of the Trade Mark Rules, 2002 arrangements with significant provisions for collective marks.

Article 7B⁸ of the Paris Convention for protection of Industrial Property provides for the mandatory provision for the member country to accept the security and to protect the collective marks of associations and associations of producers, distributors, manufacturers, and sellers by the relevant laws of the state. India is a member of the Paris Convention for the protection of Industrial Property. Indian Trademarks Act complies with the convention. Section 61 of this act gives that the provisions will apply to collective marks subject to the provisions contained in Chapter VIII of this specific act.

Corresponding to the collective mark to recognize the goods or administrations of one individual from those of others will have alluded as a manual for recognizing the goods or administrations of individuals from an association of people which is the owner of the trademark, from those of others. Accordingly, the whole meaning of 'trademark' is relevant to collective trademark subject to the arrangements contained in Chapter VIII of this act.⁹

Relevant Legislation of Collective Mark

The term 'Collective mark' is defined under Section 2(1)(g) of the Trade Marks Act, 1999 as a trademark that distinguishes the goods or services of members of an association of persons who is not being a partnership with the meaning of the Indian Partnership Act, 1932 and which is the

⁶ *Supra* Note 3.

⁷ Trademark work Manual, IPIndia, Writers Adda (June 24, 2022, 11: 20 AM), <https://ipindia.gov.in/writereaddata/images/pdf/proposed-tm-manual-for-comments.pdf>.

⁸ 77 Article 7bis, Paris Convention reads as follows: "Marks:

Collective Marks

(1) The countries of the Union 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.

(2) 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.

(3) 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.

⁹ Sakshi Shairwal and Priya Singh, An Introduction to Collective Marks under Trademark Law, Lexology (June 14, 2022, 11:00 AM), <https://www.lexology.com/library/detail.aspx?g=668edffa-72cd-4292-9e05-b05a6ef3aba3>.

importance of the trademark those of others.¹⁰

Chapter VIII (section 61-68) of the Trademark Act, 1999 deals with the collective trademark.

- **Section 61-** This section says that the provisions of this Act shall apply to collective marks subject to the provisions contained in this Chapter.¹¹
- **Section 62-** This section of the trademark act mandate that the —A collective mark shall not be registered if it is likely to deceive or cause confusion on the part of the public in particular if it is likely to be taken to be something other than a collective mark and in such case, the Registrar may require that a mark in respect of which application is made for registration comprise some indication that it is a collective mark.¹²
- **Section 63-** This section of the Trademark Act mandates that an application for collective mark registration shall be accompanied by the regulations governing the use of the collective mark.¹³
- **Section 64-** This section of the Trademark Act provides that if it appears to the Registrar that the requirements for registration are satisfied, he shall accept the application together with the regulations, either unconditionally or subject to such conditions including amendments of the said regulations, if any, as he may deem fit or refuse to accept it and if accepted shall notify the regulations.¹⁴
- **Section 65-** This section of the Trademark Act provides that the regulations referred to in sub-section (1) of section 63 shall be open to public inspection in the same way as the register as provided in section 148.¹⁵
- **Section 67-** This section of the Trademark Act provides that in a suit for infringement instituted by the registered proprietor of a collective mark as plaintiff the court shall take into account any loss suffered or likely to be suffered by authorized users and may give such directions as it thinks fit as to the extent to which the plaintiff shall hold the proceeds of any pecuniary remedy of such authorized users.¹⁶
- **Section 68-** This section of the Trademark Act provides the grounds for removal of registration of the collective mark.¹⁷

¹⁰ The Trade Marks Act, 1999 (Act 57 of 1999), s. 2(1)(g).

¹¹ The Trade Marks Act, 1999 (Act 47 of 1999), s. 61.

¹² The Trade Marks Act, 1999 (Act 47 of 1999), s. 62.

¹³ The Trade Marks Act, 1999 (Act 47 of 1999)

¹⁴ The Trade Marks Act, 1999 (Act 47 of 1999)

¹⁵ The Trade Marks Act, 1999 (Act 47 of 1999)

¹⁶ The Trade Marks Act, 1999 (Act 47 of 1999)

¹⁷ The Trade Marks Act, 1999 (Act 47 of 1999), s. 68.

The distinction between Collective Trademark and Ordinary Trademark

Trademark Act characterizes a collective mark as "a sign used, or planned to be utilized, comparable to goods or administrations managed or provided throughout trade by individuals from an association to separate those goods or administrations from goods or administrations so managed or given by people who are not members of the association". An important feature of a collective mark is that it is used to signify it as a badge of origin to indicate the goods and services produced or originate from a particular association. It is somewhat similar to an ordinary mark because they are both used as a badge of origin.

Collective marks are specifically used as their marks to indicate the company's membership in an association. It does not necessarily use to certify the quality of products (Sometimes it is used to indicate the quality of goods/services). An important difference between the collective trademark and ordinary trademark is that the collective trademark does not depend on the signs per se rather than other factors such as ownership and its use.¹⁸

Mark not to be misleading as to the character of Significance

Collective marks shall not be eligible for registration if it is liable to be misleading concerning the character of the mark if the mark is applied for some other purpose than the purpose required for registration of the collective mark. This implies that an objection will be raised assuming the mark is probably going to be taken as some different option from the genuine designation of the mark, for example, that it is bound to be taken as an "ordinary" trademark mark rather than a collective mark.¹⁹

Position in the USA

In the USA, a collective mark is a kind of Trade Mark that might be registered and protected under the Lanham Act. Two distinctly various sorts of the collective mark are incorporated under the Lanham Act as collective marks and collective membership marks.

The expression "collective mark" incorporates both Trade Marks and administration marks. The Lanham Act portrays a "collective" as a helpful, affiliation, or other collective gathering or association; friendly associations and associations are both viewed as collectives. The mark taken on by a specific collective is just accessible for use by its individuals. The individuals

¹⁸ Istinaf Abdullah, Categories of Trademark: Certification Marks, Collective Marks, Well-known Marks and Non-Conventional Marks, Law Bhumi (June 24, 2022, 01:00 PM), <https://lawbhoomi.com/categories-of-trademark/>.

¹⁹ Section 62 – Collective mark not to be misleading as to character or significance, Trademark Act, 1999, Iplaw (June 25, 2022, 09:00 PM), <https://www.iplaw.in/section-62-collective-mark-not-to-be-misleading-as-to-character-or-significance/>.

from a collective utilize its mark to recognize their goods and services and distinguish them from those of non-individuals.

The actual collective doesn't offer goods or services under the mark, yet may publicize or in any case advance goods and services bearing its mark. If a collective offers its goods and services under the mark, it isn't viewed as a collective mark; it is a Trade Mark for the goods and services presented by the coordinated collective. The second kind of collective/local area mark perceived as a collective mark under the Lanham Act is the "collective enrollment mark." The collective participation mark is special among those marks protected under the Lanham Act in that it isn't utilized in trade to distinguish the source or beginning of goods or services; its only design is to recognize the individual showing the mark as an individual from the organized collective.²⁰

Advantages of Collective Mark

Some significant advantages of collective marks are given below:

- I. **The distinctiveness of Products:** Regarding competition, trademark registration of a good service can help in making a service distinct from others and also helps in its advertisement. The trademark signifies the idea and quality of the brand which helps in uniting the business with it.
- II. **Symbol of Product:** An incorporated Trademark can use the symbol on its logo to let others know that it is a part of a registered Trademark & everyone else is barred from using this symbol.²¹
- III. **10 Years of Validity Period:** The registration of a trademark is valid for 10 years and it can be renewed after the expiration of 10 years. It is very cost-effective and helps businessmen to create and maintain a distinctive identity.
- IV. **Build Reputation and Goodwill:** A product with a trademark helps in building goodwill and the reputation of a brand. It helps the customer to recognize the product and hence enables a set of loyal customers who will always choose a product of a particular brand for their daily use.
- V. **Exclusive Trademark Right:** In the case of collective trademark, the owner of the business has the exclusive right over the trademark use. The owner of the business can use the trademark for all the products produced and services rendered by its business.

²⁰ Collective Marks, Legal Information Institute, Cornell law University (June 24, 2022, 11:00 AM), https://www.law.cornell.edu/wex/collective_mark.

²¹ Karan Singh, What is a Collective Mark? – A Complete Guide, Swarit Advisors, (June 25, 2022, 3:36 PM), <https://swaritadvisors.com/blog/what-is-a-collective-mark/>.

This exclusive right of the owner barred others from using the trademark.

- VI. **Attracts Leading Personalities:** A good brand helps in attracting leading personalities and celebrities as its brand ambassador. Because of their popularity among common people, such leading personalities help in increasing business and also help in building brand image.
- VII. **Recognizes Values:** One of the important advantages of trademarking a product is that it helps in attaching identity to the value furnished by the products or service. It helps in creating a distinctiveness of the product in eyes of the customer and hence attracts new customers.²²

Why Registration of Collective Trademark is Necessary for India?

Website Name: Registration of a collective trademark helps in protecting the trademarked business name as well as the name of the website.

Express Business Offers: As a business is concerned, a trademark must identify what its business offers, and a collective mark help in explaining what its company offers. Helps in Recognizing the Trademark Class: There is a total of 45 sectors in Trademark and each sector is called a class. Registration of a trademark decides in which class that product will fall and after registration, the trademark offers the owner to sell the product under a particular brand name within a specific sector of the economy.²³

List of Documents Required for Registration of Collective Trademark in India

Following are the important documents required for the registration of a collective trademark in India:

In the case of an individual applicant, the name of the individual, his address, and nationality have to be given. If the applicant is a company, then the documents supporting its registration with the full address of the company have to be furnished. In the case of Partnership, the documents supporting all the partners have to be furnished.

- The list of products has to be given which requires the registration of the trademark.
- Copy of trademark which is to be registered has to be submitted.
- If the application has already been submitted in another nation for registration then it can be used in India for applying for the registration by giving details like date of filing, application number, goods or service, name of the country, etc. for this kind of

²² Id.

²³ Karan Singh, What is a Collective Mark? – A Complete Guide, Swarit Advisors, (June 25, 2022, 3:36 PM), <https://swaritadvisors.com/blog/what-is-a-collective-mark/>.

application, a certified document or the notarized copy of the same has to be furnished within two months in the trademark office.

- If the trademark is already in use then the proof of the same has to be submitted with the date. An affidavit testifying its use has to be attached with the trademark application.²⁴

Procedure for Registration of Collective Trademark

- **Step 1- Trademark Search:** A trademark search is necessary to ensure that the name to be registered is not already taken.
- **Step 2- Filing a Trademark Application:** After ensuring that the name is not taken, one can proceed with the filing of the application in any trademark office or on the online website of the trademark registry. After completion of the application process, a receipt will be issued which can be used to check the status of the trademark application.
- **Step 3- Examination of Trademark application:** After filing the trademark application successfully the trademark examiner will examine it within 12 to 18 months. After the trademark examiner accepts the application unconditionally only then it will get published in the journal. If there is any objection raised or condition required in the application then the examiner will mention it in the examination report and it will send back to the candidate and he will get 1 month time to fulfill those conditions or reply to the objection raised. If, acceptance of those replies by the examiner, the trademark will get published in the journal. In case, where reply has not been accepted by the examiner, then the candidate can request hearing where he can again reply to the condition and objection raised.
- **Step 4- Certificate of Registration (COR):** After successful registration of a trademark, a Certificate of Registration with the trademark office seal is issued to the candidate.
- **Step 5- Renewal of Trademark:** The validity of a registered trademark is 10 years after which it can be renewed indefinitely.²⁵

²⁴ Id.

²⁵ *Supra* Note 20

Case laws related to Collective trademark

International Society for Krishna Consciousness (ISKCON) vs. Iskcon Apparel Pvt. Ltd and Ors.²⁶

The High Court of Bombay recently declared ISKON which is a registered trademark of the International Society for Krishna Consciousness as a well-known trademark in India. The matter of the case is related to trademark infringement and passing off a suit against an apparel company using the brand name ISKON. When the original ISKON files a suit against the said brand for infringement of trademark for using the name ISKON.

The court examines the contention that whether "ISKON" qualifies as a well-known trademark within the meaning of section 2(1) (zg) of the Trademark Act, 1999. The Judicature of Bombay held that serious steps should be taken against ISKON Apparel for misleading and misusing the brand name in the name of ISKON. To support their argument, ISKON proved that they are the first creator of a trademark that was established in the year 1966 in New York. With time, ISKON has created a global brand, including India. They have also proved that the prominence of the ISKON is not restricted to only a particular product but a diverse range of products.

In this case, the court was satisfied that the ISKON has fulfilled all the requirements of Trademark under the trademark Act and it qualifies to be recognized as a valid trademark.²⁷

NESTLE INDIA LIMITED VS. MOOD HOSPITALITY PVT. LTD²⁸

This is one of the famous cases related to trademarks. It is also known as YO! China V Masala Yo! and Chilly Chow Yo! Case. Yo is a plain and formal expression used to signify excitement among customers that have been subject to a trademark war in India. Moods Hospitality is a service brand that runs a chain of Chinese food restaurants across India under the name YO! China. YO! China has filed a suit in the Delhi High Court seeking interim relief against the expression used by Nestle India for their recently launched products called Maggie Chupa Maggie in two flavors—Chilly Chow Yo! and Masala Yo!. Moods Hospitality claims rights over the name YO for noodles. They argued that YO China has its distinctive popularity in India. On the other hand, Nestle India puts forth its argument that Yo

²⁶ International Society for Krishna Consciousness (*ISKCON*) v. *ISKCON* Apparel Pvt. Ltd. & Anr. (2020) SCC Online Bom 729.

²⁷ Mohd Rameez Raza & Shereen Abdin, *ISKCON vs. ISKCON Apparel Pvt. Ltd. & Anr. Analysing the Four Major Commandments of Trademark Law*, Nyayshartram (June 24, 2022, 08: 15 AM), <https://www.nyayshastram.com/post/iskcon-vs-iskcon-apparel-pvt-ltd-anr-analysing-the-four-major-commandments-of-trademark-law>

²⁸ Nestle India Limited vs. Mood Hospitality Pvt. Ltd. 2010 (42) PTC 514 (Del.) (DB)

China lacks trademarks and popularity.

Setting aside the request for the single bench judge, wherein Nestle was limited to utilizing the saying "YO!", the Appellate Court saw that pretty much nothing remained to be proposed that "Yo" in "Masala YO!" and "Cilly Chow Yo!" would create an association in the personalities of the customers with a respondent similar to the source of the item. On the contrary, YO is used for requesting attention or as an exclamation. Whereas Maggie is prominently displayed on the appellant's Chupa Mania products.

The court held that the YO! and YO China! It cannot be confused with Yo. Both are different. Hence, there is no trademark infringement in the present case.

Conclusion

From the above-detailed discussion about collective marks, it is clear that a collective trademark is one of the species of trademark for goods or services which are owned by organizations or associations. In general terms, collective marks are indicators that identify the geographical origin, material, method of manufacture, or other shared qualities of goods or services provided by several businesses utilizing the collective mark.²⁹

In the current market trend, consumers use the collective mark as an instrument to differentiate between various companies or brands that are dealing with goods and services of similar nature. Collective mark helps the companies in building goodwill and reputation in terms of quality, accuracy, etc., in the market. Collective marks are very useful for organizations and associations as it gives exclusive trademark right to the owner which is valid for 10 years and can be renewed indefinitely.

It is also a very important tool for promoting products of a particular region that is distinctive and belongs to that particular region only. It enhances the sales and production of that particular product which ultimately helps the dealer of that product.

Therefore, one can say that a collective trademark is an incarnation of all the goods or services of a particular region which helps the local producers in marketing those goods. It is a cost-saving tool that cuts down on the cost of mark development and its advertising and marketing. Thus, a collective mark gives a unique identity to the goods or services belonging to the association by making them marketable and popular.

²⁹ Vijay Pal Dalmia, India: Indian IPR Decisions, Vaish Associates, Mondaq (June 22, 2022, 09: 45 AM), <https://www.mondaq.com/india/trademark/113148/indian-ipr-decisions>.