

Policy for the Registration and Administration of Collective Marks and Certification Marks

(Issued by the State Administration for Industry and Commerce on 17 April 2003)

Article 1 This Policy is hereby formulated in accordance with the provision of Article 3 of the Trademark Law of the People's Republic of China (hereinafter referred to as the Trademark Law).

Article 2 The registration and administration of the collective marks and certification marks shall proceed in accordance with the relevant provisions of the Implementing Regulations of the Trademark Law of the People's Republic of China (hereinafter referred to as the Implementing Regulations) and this Policy.

Article 3 The provisions of this Policy relating to goods shall apply to services.

Article 4 Any party applying for the registration of a collective mark shall furnish documents certifying the qualification of the subject and indicate in detail the names and addresses of the members of the collective; any party applying for the registration of a geographic indication as a collective mark shall furnish documents certifying the qualification of the subject and present the detailed information of the professionals and special testing equipment in his possession or in the possession of the organisation appointed thereby to show his capability of supervising the particular quality of the goods in relation to which said geographic indication is used.

A body, association or any other organization applying for the registration of a geographic indication as a collective mark shall be composed of members from within the area of region indicated by said geographic indication.

Article 5 Any party applying for the registration of a certification mark shall furnish documents certifying the qualification of the subject and present the detailed information of professionals and special testing equipment in his possession or in the possession of the organisation appointed thereby to show his capability of supervising the particular quality of the goods in relation to which said geographic indication is used.

Article 6 Any party applying for the registration of a geographic indication as a collective mark or a certification mark shall also furnish the certifying document issued by the people's government or the competent department of the industry having the jurisdiction over the region.

If a foreign person or enterprise applies for the registration of a geographic indication as a collective mark or a certification mark, the applicant shall furnish certificate stating that said geographic indication, in his or its name, is under the legal protection in the country of origin.

Article 7 Any party applying for the registration of a geographic indication as a collective mark or a certification mark shall present the following information in the application document:

(i) the particular quality, good will or any other feature of the goods indicated by said geographic indication;

(ii) the correlation of the particular quality, good will or any other feature of said goods with the natural factors and cultural factors associated with the region indicated by said geographic indication; and

(iii) the geographic area of the region indicated by said geographic indication.

Article 8 A geographic indication in respect of which an application is filed for registration as a collective mark or a certification mark may be the name of the region indicated by said geographic indication, or any other visible indication capable of indicating that a goods originated from said region.

The region mentioned in the preceding paragraph is not required to be fully consistent with the name and area of the current administrative division.

Article 9 Where several geographic indications for wines constitute a homonym and these geographic indications can be distinguished from each other and do not mislead the public, application may be filed for the registration of each geographic indication as a collective mark or certification mark.

Article 10 The rules for the administration of the use of a collective mark shall include:

(1) the purpose of using the collective mark;

(2) the quality of the goods using said collective mark;

(3) the procedure for using said collective mark;

(4) the rights and obligations entailed in the use of said collective mark;

(5) the liability the members shall bear for breaching the rules; and

(6) the system of an applicant for the inspection and supervision of the goods in relation to which said collective mark is used.

Article 11 The rules for the administration of the use of a certification mark shall include:

(1) the purpose of using the certification mark;

(2) the particular quality of the goods certified by said mark;

(3) the conditions for using said certification mark;

(4) the procedure for using said certification mark;

(5) the rights and obligation entailed in the use of said certification mark;

(6) the liability a user shall bear for breaching the rules; and

(7) the system of an applicant for the inspection and supervision of the goods in relation to which said collective mark is used.

Article 12 Article 16 of the Trademark Law shall apply where an geographic indication for a wine, liqueur or spirit another person has registered as a collective mark or certification mark is used as a representation for a wine, liqueur or spirit that does not originate from the region as indicated by said geographic indication even if the place of origin of the goods is simultaneously indicated or a translation thereof is used or it is accompanied with an expression of so and so "category", so and so "type", so and so "form" or so and so "class".

Article 13 The contents of the publication of a collective mark or certification mark after the preliminary examination shall include the full text or abstract of the rules for the administration of the use of said mark.

Any amendment made by an applicant of a collective mark or certification mark to the rules for the administration of the use of said mark shall be submitted to the Trademark Office for examination and approval, and the amended rules for the administration of the use of said mark shall come into effect as of the date of publication.

Article 14 If a change occurs in the members of the registrant of a collective mark, the applicant shall apply to the Trademark Office for a change in matters of the registration, and the Trademark Office shall publish the change.

Article 15 If a registrant of a certification mark allows another person to use his or its mark, the registrant shall report to the Trademark Office for filing, and the Trademark Office shall publish the matter.

Article 16 In application for the assignment of a collective mark or certification mark, the assignee shall possess the relevant qualification as a subject and comply with the provisions of the Trademark Law, the Implementing Regulations and this Policy.

In a transfer of a collective mark or certification mark, the transferee of the right shall possess the relevant qualification as a subject and comply with the provisions of the Trademark Law, the Implementing Regulations and this Policy.

Article 17 The collective members of the registrant of a collective mark may use said collective mark after going through the procedure under the rules for the administration of the use of said mark.

A collective mark shall not be licensed to non-collective member.

Article 18 Any party fulfilling the conditions stipulated in the rules for the administration of the use of a certification mark may use the mark after going through the procedure prescribed therein, and the registrant shall not refuse the party to go through the procedure.

Fair use of a geographic indication under Article 6, paragraph two of the Implementing Regulations shall refer to the fair use of the geographic name of said geographic indication.

Article 19 To authorise the use of a collective mark, the applicant shall issue the user a Collective Mark Use Permit; to authorise the use of a certification mark, the applicant shall issue the user a Certification Mark Use Permit.

Article 20 The registrant of a certification mark may not use the certification mark on goods provided thereby.

Article 21 Where the registrant of a collective mark or certification mark fails to exercise effective administration of, or control on the use of said mark so that the goods in relation to which said mark is used fail to meet the requirements of the rules for the administration of the use of the mark, causing injury to consumers, the Administrative Department for Industry and Commerce shall order him or it to rectify the situation within a time limit. If the applicant refuses to rectify the situation, he or it shall be imposed a fine of an amount three times the illicit benefit, but not exceeding RMB 30,000 yuan; in the absence of any illicit benefit, a fine of RMB 10,000 yuan shall be imposed.

Article 22 Where a party contravenes the provisions of Article 6 of the Implementing Regulations and Articles 14, 15, 17, 18 and 20 of this Policy, the Administrative Department for Industry and Commerce shall order him or it to rectify the situation within a time limit; If the party refuses to rectify the situation, he or it shall be imposed a fine of an amount three times the illicit benefit, but not exceeding RMB 30,000 yuan; in the absence of any illicit benefit, a fine of RMB 10,000 yuan shall be imposed.

Article 23 This Policy shall come into effect on 1 June 2003. The Policy for the Registration and Administration of Collective Marks and Certification Marks issued by State administration for Industry and Commerce on 30 December 1994 shall be simultaneously abrogated.