

CERTIFICATION MARKS IN PRACTICE

Part 2: Governance of Use

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Part 1 of this two-part article provided empirical evidence on the use of the registered certification marks regime. Among other findings, it revealed that registered marks rarely indicate their status as certification marks. Building on these findings, Part 2 analyses how use conditions are implemented in the regulations governing certification marks. It finds that use conditions ensuring clear identification of certification marks are largely absent from the regulations, and that the broad discretion granted to authorised users further contributes to inconsistencies in their practical use. The article recommends a stricter and more consistent approach to requiring specific use conditions, thereby promoting the clear identification of certification marks and reducing the potential for confusion with ordinary trade marks.

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I. Introduction

1 Certification marks serve a distinct function by signaling that the characteristics of goods or services have been independently certified to meet specific standards and other criteria. However, as demonstrated in Part 1 of this article, it is not always immediately apparent from the mark itself that it is

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a certification mark. Trade mark law and policy aim to prevent certification marks from being misleading regarding their nature or significance.² Under the Intellectual Property Office of Singapore (“IPOS”) policy, the Registrar has the discretion to require that a condition be included in the regulations to certify that a mark is a certification mark. Despite this provision, there is limited understanding of how consistently IPOS enforces such use conditions, and whether current regulatory practices effectively aid in consumer recognition of certification marks.

2 This article explores the implementation of use conditions within the regulations governing certification marks. Specifically, it focuses on conditions that, when applied, explicitly identify the mark as a certification mark, including those imposed by IPOS, as well as broader use conditions that may contribute to the perception of the mark as a certification mark. The scope of this analysis does not extend to provisions required by law that do not directly affect how the mark is presented to the public, such as certification criteria, applicable fees, or dispute resolution mechanisms.

II. Certification marks’ identifiability problem

3 There are no specific requirements for certification marks to take a particular form or include certain words or images. As a result, it can often be unclear who is responsible for certifying the goods or services, what characteristics are being certified, or even whether the mark is a certification mark. In fact, as discussed in Part 1 of this article, 79% of certification marks that achieved registration lacked features that may indicate their status as certification marks or that they serve an assurance function.³

2 Trade Marks Act 1998 (2020 Rev Ed), Second Schedule, para 5(1); *Work Manual: Certification Marks* (Intellectual Property Office of Singapore, Version 4.2, 2024) <[https://www.ipos.gov.sg/docs/default-source/resources-library/trade-marks/infopacks/16-certification-marks-\(legislative-amendments-only\)-\(nov-2022\).pdf](https://www.ipos.gov.sg/docs/default-source/resources-library/trade-marks/infopacks/16-certification-marks-(legislative-amendments-only)-(nov-2022).pdf)> (accessed 8 September 2025) (“Work Manual”) at p 14.

3 Bram Van Wiele, “Certification Marks in Practice – Part 1: Applications and Registrations” [2025] SAL Prac 29.

4 This lack of clear identification becomes particularly concerning in light of the widespread practice of traders using ordinary, unregistered marks to perform certifying functions. This practice is observed globally, with examples in jurisdictions such as New Zealand, Australia, the UK and Canada.⁴ Even within Singapore, there are cases where marks that imply certification – and may be perceived as certification marks in a legal context – are registered as ordinary trade marks. Examples include “Certified Sustainable Alaska RFM”,⁵ “Sustainable Winegrowing Australia Certified”,⁶ and “Certified Free Range Grain & Grass Fed”.⁷ When consumers cannot distinguish between ordinary trade marks and certification marks, confusion may arise regarding the mark’s meaning, ultimately undermining the value and trust associated with genuine certification marks.

5 Under the Trade Marks Act 1998⁸ (“TMA”), a certification mark must not be registered if it is likely to mislead the public about the character or significance of the mark, particularly if it may be mistaken for something other than a certification mark.⁹ The key question is whether a significant proportion of the relevant public would recognise the mark as indicating that the goods or services are certified by the body applying for the mark in a relevant respect. Where a mark is likely to be perceived as an ordinary trade mark rather than a certification mark, the Registrar may raise an objection and require that the mark include an indication that it is a certification mark.¹⁰

4 See Jessica C Lai, “Hijacking Consumer Trust Systems: Of Self-Declared Watchdogs and Certification Trade Marks” (2021) 52(1) *International Review of Intellectual Property and Competition Law* 34; Alexandra Mogyoros, “Attestation Marks and Pseudo-Certification Marks: A Divergence of Roles in Trademark Law” (2021) 43(4) *European Intellectual Property Review* 219.

5 SG TM Number 40202022282T filed on 21 August 2020 (registered 17 September 2021); SG TM Number 40202021694X filed on 21 August 2020 (registered 6 August 2021).

6 SG TM Number 40202015939V filed on 25 June 2020 (registered 9 June 2021).

7 SG TM Number 40201810666R filed on 15 January 2018 (registered 4 July 2019).

8 2020 Rev Ed.

9 Trade Marks Act 1998 (2020 Rev Ed), Second Schedule, para 5(1).

10 Trade Marks Act 1998 (2020 Rev Ed), Second Schedule, para 5(2).

6 The IPOS Work Manual: Certification Marks (“Work Manual”) provides two options to address this issue. The first is to amend the mark’s representation to include the term “certification mark”.¹¹ However, as noted in Part 1 of this article, none of the certification marks that were registered included the term “certification mark”, and only two included the abbreviation “CM”.

7 The second option is for the Registrar to impose a use condition in the regulations governing the mark’s use. According to the Work Manual, the following statement can be included in the regulations:¹²

It is a condition that the mark shall not be used in Singapore in any manner including use in advertisement or any form of publicity in Singapore without indicating that it is a certification mark.

8 However, the manual does not specify what qualifies as an indication that a mark is a certification mark. As such, the effectiveness of this condition will depend on its implementation in the regulations and its application in practice.

III. Regulations that govern the use of marks

9 During the examination process for the registration of certification marks, the Registrar at IPOS evaluates additional requirements to ensure these marks serve as reliable indicators of certified characteristics and are not used to gain an unfair competitive advantage. For example, the proprietor must possess the necessary competence to certify the goods or services for which the mark is registered,¹³ and the proprietor is prohibited from using the mark themselves.¹⁴

10 Applicants are also required to file a copy of the regulations governing the use of the mark within nine months of submitting

11 Work Manual at p 14.

12 Work Manual at p 14.

13 Trade Marks Act 1998 (2020 Rev Ed), Second Schedule, para 7(1)(b).

14 Trade Marks Act 1998 (2020 Rev Ed), Second Schedule, para 4.

their application. These regulations outline how the mark is to be governed, controlled, and maintained. By making these regulations publicly available, consumers, prospective users, and authorised users can verify what the mark signifies and the criteria for its use.

11 Under para 6(2) of the Second Schedule to the TMA, the regulations must specify several key details: who is authorised to use the mark, what characteristics the mark certifies, how the certifying body will test and monitor those characteristics, any applicable fees, and the procedures for resolving disputes. The TMA does not mandate the inclusion of use conditions, and unless required by the Registrar, including them is at the discretion of the proprietor. However, it is common for proprietors to include use conditions in the regulations, such as geographical restrictions or conditions regarding the placement, size, and alterations of the mark. The Registrar must ensure that all mandatory provisions are included and that the regulations are not contrary to public policy or morality.¹⁵

IV. Data and method

12 The dataset of regulations that govern the use of certification marks was collected from IPOS. The author identified certification marks filed between 15 January 1999 and 31 December 2024 that held a “registered” status as of 8 January 2025, yielding a total of 181 marks. The corresponding regulations were manually retrieved from the IPOS register. After removing duplicates – where multiple marks shared identical regulations – we identified 118 unique regulations for analysis.¹⁶

13 The regulations were coded according to two main themes: (a) use conditions that explicitly require the mark to be identified as a certification mark; and (b) use conditions that,

15 Trade Marks Act 1998 (2020 Rev Ed), Second Schedule, para 7(1)(a).

16 Identical regulations were identified for identical trade marks registered separately in different classes for goods and services, as well as for separate registrations for different variations of marks, including different colour or layout variations.

when enforced, may indirectly imply the mark’s certification status. The coded data were analysed using both quantitative and qualitative methods. Quantitatively, the analysis examined how frequently specific types of use conditions appeared across the regulations, highlighting common patterns and trends. Qualitatively, the focus was on the substance and framing of these conditions, assessing how they were articulated and the extent to which they were likely to be implemented in practice.

V. Findings and analysis

A. Indication that the mark is a certification mark

14 Out of the regulations examined, 13 (11%) include a condition aimed at indicating that the mark is a certification mark. Two regulations explicitly require the mark to be used with the term “Certification Mark”. Among the remaining 11, six state that “the mark shall not be used without indicating that it is a certification mark”, while five adopt a variation of the model statement provided in the Work Manual,¹⁷ *ie*, the mark “shall not be used in Singapore in any manner, including use in advertisements or any form of publicity in Singapore, without indicating that it is a certification mark”.

15 However, these regulations offer little clarity on what constitutes a sufficient or acceptable form of such an indication. This ambiguity suggests that compliance may be assessed based on contextual factors such as the mark’s size, placement, or its presentation alongside other marks or explanatory statements. One regulation provides further guidance by stating that an explicit indication may not be required where the certification function is apparent from “the size of the reproduction of the mark and/or the use of the mark alongside other certification marks and/or the positioning of the mark, for example, on a product label”.¹⁸

17 Work Manual at p 14.

18 See regulations for SG TM Number T9910218B filed on 16 September 1999 (registered 9 November 2004).

16 To add to the uncertainty, three regulations were identified that require the certification mark to be used together with the “TM” or registered trade mark “®” symbol – designations traditionally associated with ordinary trade marks rather than certification marks.¹⁹

B. Other use conditions

17 Authorised users are often granted broad discretion in how they apply certification marks to products, particularly with respect to its size and placement. For example, one regulation explicitly states that:²⁰

The Licensee shall decide the way in which the Certification Mark may be represented on any retail packaging including specifications as to colour, size and lettering of the Certification Mark and what matter of any description may be used in close association with the Certification Mark and in what relationship, except that the Certification Mark must appear in a different size or font than the Licensee’s trademarks and company name.

18 Instructions regarding the size of the mark appear in 22 regulations (19%). Among these, 15 impose absolute requirements – 11 specify a minimum size (two of which also set a maximum or preferred size), and the remaining four allow users to determine the size so long as the mark remains clear and legible. Additionally, six regulations establish relative size requirements, requiring proportionality between the certification mark and other elements such as the product name, company name, or trademarks. Three regulations provide multiple versions of the mark to accommodate varying size constraints across packaging types.

19 Placement instructions are included in 17 regulations (14%). Six specify a precise location for the mark, typically on the front or exterior of packaging, though none of them go so far

19 See regulations for SG TM Number T0204569C filed on 10 April 2002 (registered 12 July 2005); SG TM Number T0210313H filed on 13 July 2002 (registered 17 August 2007); and SG TM Number T1301305D filed on 23 January 2013 (registered 30 June 2016).

20 See regulations for SG TM Number 40201904052Q filed on 25 February 2019 (registered 17 June 2021).

as to designate a specific area, such as the top-right corner of the packaging. Eleven regulations specify the placement of the mark relative to other elements, including two requiring proximity to the name of the certified person or entity. Nine regulations further mandate the use of clear space around the mark to ensure visual distinction from surrounding text or images.

20 Colour use is addressed in 20 regulations (17%), which often specify acceptable colour formats, such as RGB, CMYK, or Pantone, depending on the medium. Of these, six permit only one colour option, nine allow two, two permit three, and three offer four or more. Where multiple options are provided, the choice often depends on printing method or material type. Black-and-white versions are typically permitted to enhance usability. Some regulations also allow the use of “reverse logos” (*ie*, white-on-dark versions) to improve adaptability in diverse design contexts.

21 Finally, a few regulations impose additional presentation requirements that further support identification. One requires the certification mark to be used together with the European Union Protected Designation of Origin (PDO) symbol. Two others mandate that the mark appear alongside the licensee’s licence number, with one of these also requiring a statement that identifies the mark as a certification mark and names the proprietor of the mark. Another regulation requires that the mark be accompanied by a statement acknowledging its status as a registered trade mark, along with a descriptive sentence explaining that the certification is part of an “industry-wide, vendor-neutral program”.²¹

VI. Conclusion

22 Building on the empirical analysis in Part 1, this article finds a consistent lack of effective use conditions in the regulations governing certification marks – conditions that would ensure these marks are clearly identifiable as such. The majority of registered certification marks do not inherently

21 SG TM Number T0203923E filed on 18 March 2002 (registered 19 October 2004).

indicate their certification status, and IPOS rarely imposes requirements in the regulations to address this gap. Only 11% of regulations include a use condition that explicitly requires the mark to be identified as a certification mark, and just five adopt the model statement suggested in the Work Manual.

23 While some marks may be identifiable through contextual elements such as size and placement, few regulations include corresponding use conditions. Even when such conditions are present, they often grant authorised users wide discretion, resulting in inconsistent application. This undermines the ability of consumers to distinguish certification marks from ordinary trade marks and weakens the credibility and signaling function that certification marks are intended to serve. Despite the intention of trade mark law and policy to prevent misleading marks, current practices fall short of achieving this goal. A more rigorous and consistent approach by IPOS is needed to ensure that certification marks are clearly identifiable and not misleading in practice.