

COLLECTIVE MARKS

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1. INTRODUCTION

This chapter deals with collective marks – what they are, how they differ from “ordinary” trade marks and how they would be examined and processed at the Registry.

2. RELEVANT LEGISLATION

Trade Marks Act (Cap. 332, 2005 Rev. Ed.)

Collective marks

60. (1) A collective mark is 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.

(2) The provisions of this Act shall apply to collective marks subject to the provisions of the First Schedule.

[UK Trade Marks Act 1994, s. 49; Aust. Trade Marks Act 1995, s. 162]

First Schedule

General

1.—(1) The provisions of this Act shall apply to collective marks subject to the following provisions.

(2) For the purposes of this Schedule, “published” means made available to the public (whether in Singapore or elsewhere), and a document shall be taken to be published if it can be inspected as of right at any place in Singapore by members of the public, whether on payment of a fee or not.

Signs of which a collective mark may consist

2. In relation to a collective mark, the reference in the definition of “trade mark” in section 2(1) to distinguishing goods or services dealt with or provided in the course of trade by a person from those so dealt with or provided by any other person shall be construed as a reference to distinguishing goods or services dealt with or provided in the course of trade by members of an association which is the proprietor of the mark from those so dealt with or provided by persons who are not members of the association.

Indication of geographical origin

3.—(1) Notwithstanding section 7(1)(c), a collective mark may be registered which consists of signs or indications which may serve, in trade, to designate the geographical origin of the goods or services.

(2) 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).

Mark not to be misleading as to character or significance

4.—(1) A collective mark shall not be registered if the public is liable to be misled as regards the character or significance of the mark, in particular if it is likely to be taken to be something other than a collective mark.

(2) The Registrar may accordingly require that a mark in respect of which application is made for registration include some indication that it is a collective mark.

(3) Notwithstanding section 14(3), an application may be amended so as to comply with any such requirement.

Regulations governing use of collective mark

5.—(1) An applicant for registration of a collective mark must file with the Registrar regulations governing the use of the mark.

(2) The regulations must specify the persons authorised to use the mark, the conditions of membership of the association and, where they exist, the conditions of use of the mark, including any sanctions against misuse.

(3) Further requirements with which the regulations have to comply may be imposed by rules made under this Act.

Approval of regulations by Registrar

6.—(1) A collective mark shall not be registered unless the regulations governing the use of the mark —

- (a) comply with paragraph 5(2) and any further requirements imposed by rules; and
- (b) are not contrary to public policy or to accepted principles of morality.

(2) Before the end of the prescribed period after the date of the application for registration of a collective mark, the applicant must file the regulations with the Registrar and pay the prescribed fee.

(3) If the applicant does not comply with sub-paragraph (2), the application shall be treated as withdrawn.

7.—(1) The Registrar shall consider whether the requirements mentioned in paragraph 6(1) are met.

(2) If it appears to the Registrar that those requirements are not met, he shall inform the applicant and give him an opportunity, within such period as the Registrar may specify, to make representations or to file amended regulations.

(3) If the applicant responds within the specified period but fails to satisfy the Registrar that those requirements are met, or to file regulations that have been amended so as to meet those requirements, the Registrar may refuse the application.

(3A) If the applicant fails to respond within the specified period, the application shall be treated as withdrawn.

(4) If it appears to the Registrar that those requirements, and the other requirements for registration, are met, he shall accept the application and shall proceed in accordance with section 13.

8. The regulations shall be published and notice of opposition may be given relating to the matters mentioned in paragraph 6(1), in addition to any other grounds on which the application may be opposed.

Regulations to be open to inspection

9. The regulations governing the use of a registered collective mark shall be open to public inspection in the same way as the register.

Amendment of regulations

10.—(1) An amendment of the regulations governing the use of a registered collective mark is not effective unless and until the amended regulations are filed with the Registrar and accepted by him.

(2) Before accepting any amended regulations the Registrar may in any case where it appears to him expedient to do so cause them to be published.

(3) If he does so, notice of opposition may be given relating to the matters mentioned in paragraph 6(1).

Infringement: rights of authorised users

11. The following provisions shall apply in relation to an authorised user of a registered collective mark as in relation to a licensee of a trade mark:

- (a) section 27(5);
- (b) section 82.

12.—(1) The following provisions (which correspond to the provisions of section 44) have effect as regards the rights of an authorised user in relation to infringement of a registered collective mark.

(2) An authorised user is entitled, subject to any agreement to the contrary between him and the proprietor, to call on the proprietor to take infringement proceedings in respect of any matter which affects his interests.

(3) If the proprietor —

- (a) refuses to do so; or
- (b) fails to do so within 2 months after being called upon,

the authorised user may bring the proceedings in his own name as if he were the proprietor.

(4) Where infringement proceedings are brought by virtue of this paragraph, the authorised user may not, without the leave of the Court, proceed with the action unless the proprietor is either joined as a plaintiff or added as a defendant.

(5) Sub-paragraph (4) does not affect the granting of interlocutory relief on an application by an authorised user alone.

(6) A proprietor who is added as a defendant as mentioned in sub-paragraph (4) shall not be made liable for any costs in the action unless he takes part in the proceedings.

(7) In infringement proceedings brought by the proprietor of a registered collective mark, any loss suffered or likely to be suffered by authorised users shall be taken into account; and the Court may give such directions as it thinks fit as to the extent to which the plaintiff is to hold the proceeds of any pecuniary remedy on behalf of such users.

Grounds for revocation of registration

13. Apart from the grounds of revocation provided for in section 22, the registration of a collective mark may be revoked on the ground —

- (a) that the manner in which the mark has been used by the proprietor has caused it to become liable to mislead the public in the manner referred to in paragraph 4(1); or
- (b) that the proprietor has failed to observe, or to secure the observance of, the regulations governing the use of the mark; or
- (c) that an amendment of the regulations has been made so that the regulations —
 - (i) no longer comply with paragraph 5(2) and any further conditions imposed by rules; or
 - (ii) are contrary to public policy or morality.

Grounds for invalidity of registration

14. Apart from the grounds of invalidity provided for in section 23, the registration of a collective mark may be declared invalid on the ground that the mark was registered in breach of the provisions of paragraph 4(1) or 6(1).

Trade Marks Rules

Application of Rules to collective marks and certification marks

62.—(1) Except as provided in this Part, the provisions of these Rules shall apply in relation to collective marks and certification marks as they apply in relation to ordinary trade marks.

(2) In case of doubt in applying the provisions of these Rules, any party may apply to the Registrar for directions.

(3) The address of the applicant for the registration of a collective mark or certification mark shall be deemed to be the trade or business address of the applicant for the purposes of rule 9(4)(o).

Filing of regulations

63. Within 9 months after the date of the application for the registration of a collective mark or certification mark, the applicant must file with the Registrar —
- (a) Form TM 10; and
 - (b) a copy of the regulations governing the use of the mark.

Filing of amended regulations

- 64.—(1) The filing of amended regulations pursuant to paragraph 7(2) of the First Schedule to the Act in relation to a collective mark or paragraph 8(2) of the Second Schedule to the Act in relation to a certification mark shall be made in Form TM 10.
- (2) Form TM 10 shall be accompanied by a copy of the amended regulations with the amendments shown in red.

Opposition to registration

- 65.—(1) Any person may, within 2 months after the date of the publication of an application for registration of a collective mark or certification mark, give written notice to the Registrar in Form TM 11 opposing the registration; and rules 29 to 40 shall apply, with the necessary modifications, to the proceedings thereon.
- (2) [Deleted by S 852/2005]
- (3) In case of doubt, any party may apply to the Registrar for directions.

Amendment of regulations

- 66.—(1) An application for the amendment of the regulations governing the use of a registered collective mark or certification mark shall be filed with the Registrar in Form TM 10.
- (2) The application shall be accompanied by a copy of the amended regulations with the amendments shown in red.
- (3) Where it appears expedient to the Registrar that the amended regulations should be made available to the public, the Registrar may publish a notice indicating where copies of the amended regulations may be inspected.

Opposition to amendment of regulations

- 66A.—(1) Any person may, within 2 months after the date of the publication of the notice referred to in rule 66(3), file with the Registrar —
- (a) a notice of opposition to the amendment to the regulations in Form TM 11; and
 - (b) a statement indicating why the amended regulations do not comply with the requirements of paragraph 6(1) of the First Schedule to the Act, or paragraph 7(1) of the Second Schedule to the Act, as the case may be.
- (2) The person filing the notice and statement under paragraph (1) shall, at the same time, serve copies of the notice and statement on the proprietor.

(3) Rules 29(3) to (7) and 31 to 40 shall, with the necessary modifications, apply to the proceedings thereon as they apply to an opposition to an application for registration of a trade mark.

(4) For the purposes of the application of the rules referred to in paragraph (3) —

(a) references in those rules to the applicant shall be treated as references to the applicant for the amendment of the regulations;

(b) references in those rules to the application shall be treated as references to the application for the amendment of the regulations;

(c) references in those rules to the date of the publication of the application for registration shall be treated as references to the date of the publication of the notice referred to in rule 66(3);

(d) references in those rules to the notice of opposition shall be treated as references to the notice and statement referred to in paragraph (1); and

(e) references in those rules to the opponent shall be treated as references to the person who filed the notice and statement referred to in paragraph (1).

3. DISTINCTION BETWEEN COLLECTIVE MARKS AND "ORDINARY" TRADE MARKS

Section 60 of the Act defines a collective mark 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".

The main feature of a collective mark is that it serves as a badge of origin, to indicate that the goods or services originate from members of a particular association. In this way, it is similar to an "ordinary" trade mark as they both function as badges of origin.

A collective mark is typically used by companies alongside their own trade marks to indicate their membership in a certain association.

Collective marks do not necessarily certify the quality of the goods/services, although this is sometimes the case.

Sometimes, the same sign could be applied for either as a collective mark or an "ordinary" trade mark. Differences between them do not depend on the signs per se, but rather on other factors such as ownership and use of the mark.

Collective Mark	"Ordinary" Trade Mark
<ul style="list-style-type: none"> • Serves as a badge of origin to distinguish goods or services of members of a particular association from those who are not members of the association 	<ul style="list-style-type: none"> • Serves as a badge of origin to distinguish goods or services of one trader (i.e., a single trade source or entity) from those of other traders

4. EXAMINATION OF COLLECTIVE MARKS

4.1 Distinctiveness

Collective marks must be examined for distinctiveness just like in the case of “ordinary” trade marks. When considering the distinctiveness of a collective mark it is important to appreciate that the distinguishing function of collective marks differs from that of “ordinary” trade marks.

Paragraph 2 of Schedule 1 of the Act provides:

"In relation to a collective mark, the reference in the definition of "trade mark" in section 2(1) to distinguishing goods or services dealt with or provided in the course of trade by a person from those so dealt with or provided by any other person shall be construed as a reference to distinguishing goods or services dealt with or provided in the course of trade by members of an association which is the proprietor of the mark from those so dealt with or provided by persons who are not members of the association."

Unlike an “ordinary” trade mark, which, distinguishes the origin of goods or services of one trader from those originating from another trader, collective marks serve to distinguish the origin of goods or services of members of a particular association from the goods or services of non-members.

A mark which is purely descriptive of a characteristic of the goods or services or which is already in common usage by more than one organisation would not be able to distinguish goods or services provided by suppliers of the goods/services belonging to a particular association from those of other suppliers of the goods/services not belonging to the association. As such, they would be objected to under section 7(1)(b), (c) and/or (d) of the Act.

Not Acceptable

“Professional Photographers”

Example 4.1.1

For example, a collective mark which merely reads “Professional Photographers”, would be objected to under section 7(1)(b) and section 7(1)(c) of the Act. First, the mark is purely descriptive of the quality of photographers generally, and secondly, the mark does not distinguish the services of photographers who are members of an association from those rendered by other photographers who are not members of the association. Thus, such marks are generally not acceptable, even if the name has not been used by one or more other associations.

4.2 Geographical names

Geographical names (and other such signs or indications) are usually not registrable as "ordinary" trade marks and would be objected to under section 7(1)(c) of the Act if it is likely to be required by other traders to designate the geographical origin of the goods or services sought for registration.

(Reference should be made to the Trade Marks Work Manual’s section on Geographical Names for general guidelines on when a geographical name is registrable as a trade mark.)

However, paragraph 3(1) of Schedule 1 of the Act provides:

"Notwithstanding section 7(1)(c), a collective mark may be registered which consists of signs or indications which may serve, in trade, to designate the geographical origin of the goods or services."

This means that the Registrar has a discretion (note that this is not an automatic right of acceptance) to accept geographical names as collective marks. In general, the Registrar will accept geographical name only if it is capable of distinguishing goods or services of members of an association from those of non-members. In exercising this discretion, the Registrar will look at existing practices in the market and consider whether due to custom and practice, the geographical name is capable of performing this distinguishing function.

It should be noted that paragraph 3(2) of the First Schedule provides that if a geographical name is accepted for registration, the proprietor of such a mark is not entitled to prohibit the use of the name in accordance with honest practices, in particular, by a person who is entitled to use the geographical name.

4.3 Geographical indications (GIs)

An application to register an "ordinary" trade mark which consists solely of a GI would face insurmountable objections as GIs should not be monopolised by any single trader. Furthermore, the function of a GI is to guarantee geographical origin and not trade origin. However, GIs are registrable as collective marks where for example, the applicant association is the association of producers of the goods protected by the GI.

4.4 Evidence of acquired distinctiveness

Section 7(2) of the Act provides that a trade mark shall not be refused registration by virtue of section 7(1)(b), (c) or (d) of the Act, if, before the application date for registration, it has in fact acquired a distinctive character as a result of the use made of it.

This provision applies to applications for collective marks as well.

In proving acquired distinctiveness, the applicant needs to show that the mark has become capable of distinguishing goods or services of members of an association from those of non-members, by the date of application. It is not essential that the mark should have been used that way prior to the relevant date.

In other words, the test is whether consumers have been educated as to the distinguishing function of the mark and not whether consumers have been educated who is providing the goods or services in the course of trade.

(Reference should be made to the Trade Marks Work Manual's section on Evidence of Distinctiveness Acquired Through Use for general guidelines on the determination of acquired distinctive character through prior use made of the mark.)

4.5 Other absolute grounds of refusal

The other absolute grounds of refusal applicable to collective marks include the following:

- That the collective mark consists exclusively of certain shapes (thus objectionable under section 7(3) of the Act);
- That the collective mark is contrary to public policy or morality (thus objectionable under section 7(4)(a) of the Act);
- That the collective mark which is of such a nature as to deceive the public (for instance as to the nature, quality or geographical origin of the goods or service) (thus objectionable under section 7(4)(b) of the Act);
- That the use of the collective mark is prohibited in Singapore (thus objectionable under section 7(5) of the Act);
- That the collective mark was applied for in bad faith (thus objectionable under section 7(6) of the Act); and
- That the collective mark in question is the subject of a national emblem protected under section 56 and section 57 of the Act (thus objectionable under section 7(11) of the Act).

4.6 Existence of prior conflicting mark(s)

The process of examination of collective marks also involves a search of the register to ascertain if there are any earlier marks (certification, collective or "ordinary" trade marks) which conflict with the subject application.

4.6.1 Where there is an earlier identical certification or "ordinary" trade mark for the same goods or services

In the event that the search reveals the existence of an earlier identical certification or "ordinary" trade mark for the same goods or services, this would be taken as prima facie evidence that the mark cannot serve the function of distinguishing goods / services of members of an association from those of non-members (thus objectionable under section 7(1)(b) of the Act) and is liable to mislead the public as regards the character or significance of the mark (thus objectionable under paragraph 4 of the First Schedule of the Act).

These objections cannot be overcome with consent from the proprietor of the earlier conflicting mark. The fact that the proprietor of the earlier conflicting mark is the owner of the subject collective mark is also irrelevant.

If the prior conflicting mark and the subject collective mark belong to the same proprietor, it is possible to convert the mark type of the subject mark or to voluntarily cancel the prior conflicting mark in order to overcome the objection.

Further, the existence of the prior conflicting mark may also give rise to an objection under section 8(1) or section 8(2) of the Act, depending on the facts of the case and the likelihood of confusion or deception resulting from the use of the mark under consideration.

(Reference should be made to the Trade Marks Work Manual's section on Relative Grounds for Refusal of Registration for more details on the assessment of similarity of marks, similarity of goods and services and the likelihood of confusion.)

4.6.2 Where there is an earlier identical or similar collective mark for identical or similar goods or services in the name of a different owner

In the event that the search reveals the existence of an earlier identical or similar collective mark for the identical or similar goods or services, the subject collective mark may be objectionable under section 8(1) or section 8(2) of the Act, depending on the facts of the case and the likelihood of confusion or deception resulting from the use of the mark under consideration.

(Reference should be made to the Trade Marks Work Manual's section on Relative Grounds for Refusal of Registration for more details on the assessment of similarity of marks, similarity of goods and services and the likelihood of confusion.)

4.6.3 Where there is an earlier similar certification or "ordinary" trade mark and the goods or services are only similar in the name of a different owner

Where there is an earlier similar certification or "ordinary" trade mark and the goods / services are only similar, acceptance of the mark for registration may be possible.

The key factors for consideration by the Examiner are the degree of similarity between the respective marks and the goods or services covered by the respective marks.

The Examiner must be satisfied that there is no real likelihood of confusion or deception resulting from the use of the mark under consideration.

(Reference should be made to the Trade Marks Work Manual's section on Relative Grounds for Refusal of Registration for more details on the assessment of similarity of marks, similarity of goods and services and the likelihood of confusion.)

4.7 Correcting the nature of the mark

Applicants may change the nature of the trade mark application, for example from an "ordinary" trade mark to a collective mark or vice versa. This is not considered a correction that materially alters the meaning or scope of the application and will therefore be allowed.

5. **MARK NOT TO BE MISLEADING AS TO CHARACTER OR SIGNIFICANCE**

A collective mark shall not be registered if the public is liable to be misled as regards the character or significance of the mark, in particular if the mark applied for is likely to be taken as something other than a collective mark (see paragraph 4 of the First Schedule to the Act).

This means that an objection will be raised if the mark is likely to be taken as something other than the true designation of the mark, i.e. that it is more likely to be taken as an "ordinary" trade mark as opposed to a collective mark.

To overcome this objection the Registrar may require that the mark include some indication that it is a collective mark (paragraph 4(2) of First Schedule of the Act). This may be made in one of the following ways:

- Include the following statement in the regulations:
"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 collective mark."
- Amend the representation of the mark to include the words "collective mark" within the representation of the mark. This form of amendment is permissible notwithstanding section 14(3) of the Act.

6. SPECIFICATION OF GOODS AND/OR SERVICES FOR COLLECTIVE MARKS

As with "ordinary" trade marks, collective marks must be filed in respect of specific goods and/or services in the appropriate classes under the International Classification of Goods and Services (ICGS).

The specification for collective marks should denote the goods and services being provided by members of the applicant association users (as opposed to the goods and services of the applicant). This is because when in use, the collective mark would appear on the goods and services of members of the association.

All applicants are reminded that failure to use a collective mark in the appropriate manner may render it vulnerable to revocation for non-use.

7. STATUS OF THE APPLICANT

The applicant/proprietor of a collective mark must be an association (paragraph 2 of the First Schedule of the Act). This could be an association of manufacturers, producers, suppliers of services, or traders which, under the terms of the law governing them, have legal capacity to hold property in their own name.

If it is apparent from the applicant's name or from the content of the regulations that the applicant is not an association or has no legal personality, then the Examiner may raise an objection on this ground.

8. EXAMINATION OF THE REGULATIONS

8.1 Requirement of regulations

An applicant seeking registration of a collective mark must file a copy of the regulations governing the use of the collective mark with the Registry within 9 months after the date of the application (see rule 63 of the Trade Marks Rules), failing which, the application shall be treated as withdrawn (paragraph 7(3A) of the First Schedule of the Act).

The applicant may apply for an extension of time if more time beyond 9 months from the date of application is required to compile the regulations. As with any extension of time applied for under the Act, the application for extension of time is made by way of filing Form CM5 together with the requisite fee (if any), and the request should be accompanied by adequate reasons explaining why the extension of time is required (if applicable).

For ease of reference and clarity, the regulations should be incorporated in a single document providing the required information (see below). An applicant may attach supplementary documents by way of annexure to the regulations and cross reference to them in the regulations but such documents cannot themselves constitute the regulations.

8.2 Content of regulations

Paragraph 5(2) of the First Schedule to the Act prescribes the content required in the regulations, namely:

- Who is authorised to use the mark;
- The conditions of membership of the association and, where they exist;
- The conditions of use of the mark; and
- Any sanctions against misuse
- The fees (if any) to be paid in connection with the operation of the mark

Annex A contains more details on what the regulations must minimally contain.

It is to be noted here that in examining the regulations, the Registrar has a role in ensuring that the regulations are not contrary to public policy or morality (paragraph 6(1)(b) of the First Schedule to the Act).

8.3 Amendment of regulations

If the regulations filed by the applicant do not meet the statutory requirements, the Examiner will inform the applicant and give the applicant an opportunity to make representations or file amended regulations, within a specified period.

If the applicant responds within the specified period but fails to satisfy the Examiner that those requirements are met, or file the regulations that have been amended so as to meet those requirements, the application will be refused (see paragraphs 7(2) and 7(3) of the First Schedule to the Act).

If the applicant fails to respond within the specified period, the application shall be treated as withdrawn (see paragraph 7(3A) of the First Schedule to the Act).

The filing of the amended regulations shall be made on Form TM10 with the requisite fee.

9. PUBLICATION OF COLLECTIVE MARKS

Once the examination process is complete, and the Examiner is satisfied that the application of the collective mark and the regulations meet the relevant criteria for registration, the Examiner will accept the mark and the regulations for publication.

Before accepting the mark, the Examiner should also ensure that the approved regulations (without unnecessary documents such as covering letters) are correctly attached, so that the regulations are correspondingly uploaded to the register when the mark is published.

Once published, the regulations governing the use of the collective mark can be viewed online and are open to public inspection in the same way that "ordinary" trade marks are open to public inspection. The regulations are open to opposition on the matters listed in paragraph 6(1) of the First Schedule to the Act.

After this point, any amendment of the regulations governing the use of the collective mark is not effective until and unless the amended regulations are filed with the Registrar and approved by the Registrar.

10. AMENDMENT OF REGULATIONS

Once a collective mark has been accepted and published for opposition purposes, any amendment of the regulations governing the use of a registered collective mark (including any schedules attached to it) is not effective unless and until the amended regulations are filed with the Registrar and accepted by him. This means that the Registrar has to examine the amended regulations in the same way as newly filed regulations.

Where the Registrar considers it appropriate, the amended regulations will be published for opposition purposes. In fact, this will be the case in most if not all cases, save where the amendment is insignificant or minor.

If no oppositions are received, the regulations will become effective.

11. ASSIGNMENT OF COLLECTIVE MARKS

Collective marks may be assigned to a new owner in the same way as "ordinary" trade marks. Unlike certification marks, the Registrar's prior consent to the assignment is not necessary. Usually, a change in ownership of a collective mark would necessitate the amendment of the regulations to reflect the new name of the owner. If so, the request should be made in the manner detailed in paragraph 10 and should be filed at the same time as the request to record the assignment.

ANNEX A - GUIDELINES FOR STRUCTURE & CONTENT OF REGULATIONS GOVERNING COLLECTIVE MARKS

Note: This guide is intended to assist applicants in preparing regulations to accompany applications for registration of collective marks.

General guidelines

1. The regulations may be titled "Regulations Governing the Use of Collective Mark [Trade Mark No.]"
2. Regulations should be incorporated in a standalone document so that it can be easily read and understood.
3. Annexures, if any, should be properly labelled and cross-referenced.
4. The Licensing Agreement is not the regulations governing the use of the collective mark.

The regulations should minimally deal with the following, and may be structured in the following manner:

(1) The conditions of membership of the association

Associations will normally have pre-qualifying conditions that must be met before one may be admitted as a member. For example, it may be a condition that a person must have certain academic qualifications or practical experience in a particular field for a period of time before being permitted to join.

Accordingly, the regulations should set out the conditions under which the applicant of the collective mark would accept any individual or entity to be its member.

These conditions should be set out clearly and objectively so that would-be users of the collective mark can clearly and objectively anticipate the conditions they will need to fulfil before being allowed to join the association, with the view to subsequently using the collective mark.

Example:

Membership of the [Applicant] is open to those persons meeting the requirements for membership as set out in paragraph 5 of the Charter of the [Applicant] annexed to these regulations.

(2) Persons authorised to use the mark

The regulations must indicate the persons who are authorised to use the mark. This does not mean to say that the applicant needs to identify the exact persons who at any given time are authorised users. It is sufficient for the applicant to state whether it is simply every member of the association or only a specified category of members. If there are any other requirements (apart from being a member of the association) that a would-be user must possess (e.g. certain qualification or a particular class of membership in the association) then these should also be detailed.

Example:

The use of the mark is strictly limited to insurance and financial services practitioners who have been granted Full or Candidate membership of [Applicant].

(3) Conditions of use of the mark (if any)

The regulations should indicate the conditions of use of the collective mark, if there are such restrictions. Such conditions usually relate to the manner in which the mark may be used, such as in a certain size. This is to ensure that the collective mark is used by authorised users in a consistent and uniform fashion.

Example:

The Member agrees that:

- (a) it will use the Mark only in the manner prescribed herein;
- (b) it will use the Mark only in relation to its membership in [Applicant];
- (c) it will use the Mark on its communication media in such a way as to create no confusion between matters of external quality assurance activities and other matters;
- (d) when posted on the Member's website, the Mark shall be used as a hypertext link from its website to the URL of [Applicant's] website <http://www.abc.com>
- (e) it will not, during the period of membership, register or attempt to register the Mark or any imitation thereof; make or assert any claim of ownership to the Mark; or dispute the right of [Applicant], or its successors, to authorise the use of the Mark as provided herein;
- (f) it will, upon withdrawal or termination of membership of [Applicant], discontinue the use of the Mark or any reference thereto, and will not thereafter use any copy or imitation thereof; and
- (g) In case of takeover of the Member, the new agency shall submit a membership application in accordance with the application procedure that will be provided by [Applicant] upon request.

(4) Sanctions against misuse of the mark (if any exist)

If the applicant association intends to impose any sanctions (such as expulsion from the association) against a member who misuses the mark, such sanctions must be provided for in the regulations.

Misuse of the mark would include using the mark in a manner that does not meet or violates the conditions of use or unauthorised usage of the mark.

Example:

In the event where the Member does not comply with the Conditions of Use, which represents a violation of the collective mark, [Applicant] may prosecute the Member on the basis of the present regulations and of trademark laws.

[Applicant] may forthwith suspend or withdraw the Member's right to use the Mark.

The Member may appeal this decision in accordance with the appeal procedure that will be provided by [Applicant] upon request. The Appeals and Complaints Committee will deal with all appeals.

If any person uses the Mark without authorisation, a sanction of up to S\$500 may be levied. If such person continues to use the Mark despite the initial sanction, [Applicant] reserves the right to take further legal action as is deemed necessary.

5) Optional: Fees to be paid for the use of the collective mark (if any)

If there are fees to be paid for the use of the collective mark, these fees may be included in the Regulations. Note however that the Regulations do not make it mandatory that these fees need to be indicated in the Regulations, even if they exist.

The structure and frequency of any fees stipulated should then be fully described in the regulations.

The Registrar would not require the actual amount of fees to be laid down in the regulations if the regulations state that the fees can be found on the applicant's website and the fees are so indicated at the point of examination.

If fees are not applicable, this may also be stated in the regulations.

Example:

Annual fees have to be paid by a member of the applicant association user to the [Applicant] of the mark in connection with the operation of the mark. The total amount of annual fees payable by each authorised user (an individual and/or an organisation) is [-----] per year.