

Abstract

In the modern marketplace, characterised by a profusion of signs and labels, Community collective marks seem rather absent. Although provided for in the European trade mark legislation, they are underutilised in practice and quite neglected in legal theory. In those cases of commentaries where the section dedicated to Community collective marks exceeds simple statements, the impression given is one of vagueness and uncertainty. At the same time, the ambiguity of the respective provisions and the lack of sufficient jurisprudence offer few tools to solve the conundrum, which goes as far as suggesting that Community collective marks incorporate certification marks.

This paper concludes that Community collective marks in their present form are intended to also accommodate marks certifying a product's or service's certain characteristics, but only in cases where the applicant of the mark is an association of traders conditioning use of the mark upon membership in that union. This situation has arisen out of necessity and not due to systematic overlap. However, from a doctrinal point of view, collective and certification marks should be distinguished from one another. The fact that the proposal for a new European Trade Mark Regulation goes towards this direction is thus an encouraging development.

Geographical Indications (GIs) are the principle counterpart of collective and certification marks, because the way they have developed, their structure and partly their functions are similar to the ones of trade marks. The rationale of market efficiency underscoring trade mark law, however, only partly covers the GI considerations, so accommodation of GIs in the trade mark system would be a compromise.

Despite not being able to efficiently accommodate GIs, Community collective marks can still be a valuable alternative in cases where registration for non-agricultural goods or services is sought, where the sign is not a word mark or where reputation or connection to a place cannot be established. They can also be helpful where time is an issue, where international protection or protection as a domain name are a priority or where the circumstances require flexibility regarding possibilities for transfer, licensing, relocating, changing production modes or trial of innovative techniques.

