

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

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

Article 1 These Measures are 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 collective marks and certification marks shall be conducted in accordance with the relevant provisions of the Trademark Law, the Implementing Regulations for the Trademark Law of the People's Republic of China (hereinafter referred to as the Implementing Regulations) and these Measures.

Article 3 The provisions of these Measures concerning 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 geographical indication as a collective mark shall furnish documents certifying the qualification of the subject and submit the detailed information of the professionals and special testing equipments of its own or of any other organization authorized by it to show its capability of supervising the particular quality of the goods to which the said geographical indication applies.

A society, an association or any other organization applying for the registration of a geographical indication as a collective mark shall be composed of members from within the region indicated by the geographical indication.

Article 5 Any party applying for the registration of a certification mark shall furnish documents certifying the qualification of the subject and submit detailed information of the professionals and special testing equipments of its own or of any other organization authorized by it to show its capability of supervising the particular quality of the goods to which the said certification mark applies.

Article 6 Any party applying for the registration of a geographical indication as a collective mark or a certification mark shall also furnish the approval documents issued by the people's government which has jurisdiction thereover or the competent authority of the industry.

Any foreign person or enterprise applying for the registration of a geographical indication as a collective mark or a certification mark, he or it shall furnish documents certifying that the geographical indication in question, 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 geographical indication as a

collective mark or a certification mark shall present the following information in the application documents:

- (i) the given quality, reputation or any other characteristic of the goods indicated by the geographical indication;
- (ii) the correlation between the given quality, reputation or any other characteristic of the goods and the natural and human factors of the region indicated by the geographical indication;
- (iii) the boundary of the region indicated by the geographical indication.

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

The region referred to in the preceding paragraph is not required to be fully consistent with the name or boundary of the current administrative division.

Article 9 Where several geographical indications for wines constitute homonyms and these geographical indications can be distinguished from one another and do not mislead the public, each geographical indication may be applied for the registration as a collective mark or certification mark.

Article 10 The regulation governing the use of a collective mark shall include:

- (i) the purpose of using the collective mark;
- (ii) the quality of the goods to which the collective mark applies;
- (iii) the procedures for using the collective mark;
- (iv) the rights and obligations entailed in the use of the collective mark;
- (v) the liability the members shall bear for breaching the regulation;
- (vi) the registrant's system for the inspection and supervision of the goods to which the collective mark applies.

Article 11 The regulation governing the use of a certification mark shall include:

- (i) the purpose of using the certification mark;
- (ii) the particular quality of the goods certified by the certification mark;

- (iii) the conditions for using the certification mark;
- (iv) the procedure for using the certification mark;
- (v) the rights and obligation entailed in the use of the certification mark;
- (vi) the liability a user shall bear for breaching the regulation;
- (vii) the registrant's system for the inspection and supervision of the goods to which the certification mark applies.

Article 12 Where any party uses another party's registered geographical indication for wines or spirits as a collective mark or certification mark to identify wines or spirits not originating in the place indicated by the geographical indication in question, even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like, Article 16 or the Trademark Law shall apply.

Article 13 The content of the publication of a collective mark or certification mark after the preliminary examination shall include the full text or abstract of the regulation governing the use of the mark in question.

Any amendment made by the registrant of a collective mark or certification mark to the regulation governing the use of the mark shall be submitted to the Trademark Office for examination and approval, and the amendments shall come into effect on the date of publication.

Article 14 If a change occurs in the membership of the registrant of a collective mark, the registrant shall apply to the Trademark Office for the modification of the registered matters and the Trademark Office shall publish it.

Article 15 where the registrant of a certification mark allows another party to use his or its mark, he or it shall report to the Trademark Office for record, and the Trademark Office shall publish it.

Article 16 When an application is filed for the assignment of a collective mark or a certification mark, the assignee shall have the relevant qualification as a subject and shall comply with the provisions of the Trademark Law, the Implementing Regulations and these Measures.

Where a transfer of a collective mark or a certification mark occurs, the transferee of the right shall have the relevant qualification as a subject and comply with the provisions of the Trademark Law, the Implementing Regulations and these Measures.

Article 17 The collective members of the registrant of a collective mark may use the collective mark after going through the procedure under the regulation governing the use

of the mark.

Article 18 Any party eligible for the conditions stipulated in the regulation governing 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.

The fair use of a geographical indication under paragraph two of Article 6 of the Implementing Regulations shall refer to the fair use of the geographical name of the said geographical indication.

Article 19 To authorize the use of a collective mark, the registrant shall issue the user a Collective Mark Use Permit. To authorize the use of a certification mark, the registrant shall issue the user a Certification Mark Use Permit.

Article 20 The registrant of a certification mark shall not use the certification mark on goods provided by him or itself.

Article 21 Where the registrant of a collective mark or a certification mark fails to exercise effective governing of, or control on, the use of the mark and, as a result, the goods to which the said mark applies fail to meet the requirements of the regulation governing the use of the mark, causing damages to consumers, the administrative authority for industry and commerce shall order him or it to rectify the situation within a time limit. If the registrant refuses to do so, he or it shall be imposed a fine of three times of the illicit income, but not exceeding RMB30,000 Yuan; in the absence of any illicit income, a fine of RMB10,000 Yuan shall be imposed.

Article 22 Where the provisions of Article 6 of the Implementing Regulations and Article 14,15,17,18 and 20 of these Measures are violated, the administrative authority for industry and commerce shall order him or it to rectify the situation within a time limit. If he or it refuses to do so, a fine of three times of the illicit income shall be imposed, but not exceeding RMB30, 000 Yuan; in the absence of any illicit income, a fine of RMB10,000 Yuan shall be imposed.

Article 23 These Measures shall come into force on June 1, 2003. The Regulation for the Registration and Administration of Collective Marks and Certification Marks issued by the State Administration for Industry and Commerce on December 30, 1994 shall be abrogated simultaneously.

(Source: State Administration for Industry and Commerce of the P.R.C.)