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What are Guarantee and Collective Trademarks?

Guarantee and collective trademarks do not seem widely used (or maybe even known), possibly because the administrative burden is higher and the same goal of allowing others to use a trademark can be achieved by granting a license to an individual trademark. This article give a brief overview of the guarantee and collective trademark, and advocates why using them might add value.

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[1] A trademark is a sign capable of distinguishing the goods or services of one person/entity from those of other persons/entities (art. 1 Trade Mark Protection Act (TmPA)). The most commonly used trademark type is the individual trademark. Alongside that trademark type exist also the *guarantee* trademark and the *collective* trademark. They are similar to the individual trademark in that they also distinguish the goods and/or services of one person/entity from those of another entity/person.¹ But they differ from the individual trademark:

1.1. Material differences

- The guarantee trademark is used by *several* (non-affiliated) entities under the supervision of the trademark owner to *guarantee quality, geographical origin, method of manufacture* or other characteristics common to goods or services of these entities (art. 21 TmPA).

An example is the trademark GRAN CRU² owned by the Community for Wine Quality Salgesch, or the VEGAN logo³ owned by V-Label GmbH (known from goods in grocery stores); and

- The collective trademark is used to distinguish harmonized marking of goods and services of *members* of a manufacturing, trading or service *association*⁴ from those of other persons/entities (art. 22 TmPA).

An example is BIO SUISSE⁵ owned by the Bio Suisse, Swiss Association of Biological Agriculture (known from goods in grocery stores), or KANTONALBANK⁶ owned by the Association of Swiss cantonal banks.

1.2. Formal differences

[2] Both the guarantee and collective trademarks require filing a *regulation* stipulating the criteria for eligibility of use (quality characteristics for the guarantee trademark and designation of undertakings for the collective trademark; art. 23 TmPA). This results in elevated administration of, and maintenance for, the trademark(s) because the regulation might need to be adapted to changing criteria for eligibility of use.

[3] It is important to note that whereas the owner of the guarantee trademark herself is *not* entitled to use the trademark (art. 21 para. 2 TmPA), any interested party fulfilling the requirements of the regulation is *legally* entitled to use the guarantee trademark. Hence, the use right is statutory, not a contractual right, albeit against a reasonable fee (art. 21 TmPA).⁷ Both, guarantee and collective trademarks, cannot be licensed; the latter at least not without registration.⁸

[4] So what might be the advantage of a guarantee or collective trademark if a very similar setup can be achieved by registering an individual trademark for certain goods and services and then licensing⁹ such individual trademark to third parties? First, it is the legal purpose of the guarantee and collective trademarks to «vouch» for a certain continuity vis-à-vis the customer. Trademark

¹ IGE/IPI, Richtlinien in Markensachen, 1. Januar 2024, part 5, section 10.1.

² TM No. 608124; tinyurl.com/bdzr3em.

³ TM No. 730409; tinyurl.com/3heb8mw4.

⁴ Interpreted broadly.

⁵ TM No. P-564135; tinyurl.com/ddwf48m2.

⁶ TM No. 2P-415196; tinyurl.com/2fbf4fk4.

⁷ IGE/IPI, Richtlinien in Markensachen, 1. Januar 2024, part 5, section 10.3.

⁸ IGE/IPI, Richtlinien in Markensachen, 1. Januar 2024, part 5, section 10.1.

⁹ IGE/IPI, Richtlinien in Markensachen, 1. Januar 2024, part 3, section 4.4.

law provides for a specific trademark type and instrument, so actually using it might increase the credibility of the trademark designating the goods and services. Second, given the elevated administration and maintenance, the actual amount of these trademarks registered at the trademark office is (very) low compared to the registration of individual trademarks. This scarcity might emphasize their importance/significance (USP) («not everyone has one»). And lastly, individual license agreements are not necessary (or even permitted) as the criteria are stipulated in the regulation (pre-negotiated).

[5] The disadvantage might be controllability because fulfilment of the criteria stipulated in the regulation is an enforceable right. Hence, close evaluation of the purpose, description and effort is recommended prior to filing a guarantee or collective trademark.