

## Your trademark and the introduction of EU certification marks

On 1 October 2017, the European Union introduced a new kind of EU trademarks. Apart from individual and collective EU trademarks, trademark applicants now have the possibility to register EU certification marks. This change has considerable consequences for present and future trademark holders, which are required to make a thorough evaluation of the effective use of their (EU) trademarks in order to opt for the most appropriate protection.

### *EU certification marks*

**EU certification marks**, also called quality marks, guarantee the conformity of certain goods and services with certain objective characteristics or standards, regardless of the identity of the undertaking. They are held and administered by an independent certifying body. Consequently, consumers may depend on the certified goods and services being evaluated by an independent organisation on the basis of written objective criteria, such as the production on the basis of a specific industrial process, the use of a certain amount of qualitative resources or the compliance with certain ecological or safety norms. In this way, EU certification marks attribute an independent quality label to certain goods and services which comply with predetermined standards.

### *Difference with other kinds of EU trademarks*

**Collective EU trademarks** are trademarks that are used to indicate that the user of the mark is a member of a certain association. That association will determine which undertakings can become a member and under which conditions. Although membership of the association may also depend on the fulfilment of certain quality standards, the principal function of the collective EU trademarks is to distinguish the goods or services originating from members of the association with those from non-members.

**Individual EU trademarks** are trademarks that indicate the origin of certain goods or services coming from an individual undertaking. In this way, the consumer can distinguish these goods or services from those originating from another undertaking, without any possibility of confusion.

### *Consequences for present and future trademark holders*

Because quality marks did not exist in the European Union in the past, present trademark holders have often registered their quality marks as individual or collective EU trademarks. However, it is important to make a clear distinction between the use of the different kinds of EU trademarks. After all, an incorrect use can not only mislead the consumer but can also lead to a possible revocation of the EU trademark after five years because of the absence of a genuine use. Accordingly, the EU Court of Justice decided on 8 June 2017 that the sole use of an individual trademark as a quality mark, without meeting the essential function as an indication of origin, does not constitute genuine use of an individual EU trademark.

### *Call for action*

Consequently, trademark holders must carefully evaluate the use of their present and future trademarks in order to not only guarantee the most fitting and extensive protection of their marks, but also to ensure an effective and genuine use which complies with the essential function of the chosen trademark. Quality mark holders which have previously registered their trademark as an individual or collective EU trademark are therefore recommended to file a new application for an EU certification mark.

**PETILLION** advises and guides you with respect to the evaluation of your trademark portfolio, the application for an EU certification mark (as well as individual and collective EU trademarks) and the further defence of your interests. Contact us at [info@petillion.law](mailto:info@petillion.law).