

COLLECTIVE TRADEMARK

ARGENTINA

The collective trademark is expressly defined by Argentine law as any distinctive sign of products or services generated by actors of the social economy. The article 1 of Law 26355 expressly states that “collective trademark is any sign that distinguishes goods or services produced or provided by the forms of association for the development of social economy.”

Argentine collective trademarks can be of three types: (a) denominative, (b) figurative or (c) mixed. They are denominative the ones consisting entirely of words, letters or numbers or combinations thereof, without claiming graphic features or specific colors. They are figurative the symbols, pictures, forms and / or logos. They are mixed when consist of a combination of denominative and figurative elements at once, or of nominative elements with a special form. In this sense the law 26355 follows the traditional methodology and terminology.

Following the traditional classification, collective trademarks in Argentina can be of two major classes: (a) products and (b) services. Also, in this aspect the law 26,355 follows the Traditional International Classification.

Main features of the collective trademark

The collective trademark is a very particular figure of trademark law. In Argentina, its main features are the following:

- a) No backgrounds in the national law.
- b) Its owner is a “clustering” or “associative form” of the social economy.



- c) Its users are members of said group who meet the conditions established by law and its regulations.
- d) It may be “collective trademarks of products” or “collective service marks.”
- e) They can be transferred to another cluster that meets the legal requirements.
- f) A cluster can be owner of more than a “collective trademark.”
- g) The procedures relating to collective marks are expressly exempted from the payment of any kind of fees.
- h) Acting agencies must act “expeditiously” in the procedures for collective marks.
- i) The National Institute of Industrial Property must resolve the “oppositions” that arise during the application. Its decision is appealable to the Federal Court.
- j) The “oppositions” derived against collective trademark applications are charged double the fee set by the National Institute of Industrial Property for the oppositions to traditional marks.
- k) In case of doubt about the applicable law, the National Institute of Industrial Property must choose for that one that is more favorable to the grouping of the social economy.
- l) Its purpose is twofold:
 - To increase the marketing value of goods and services generated by the social economy actors.
 - To encourage the creation and sustainability of the “clusters” or “forms of association” of the social economy.

Specific functions

Collective trademarks play, in general, the same functions as the individual marks, however t because it is a trademark that is used in a special way by several persons (other than its owner) have some subtle differences in regard to that use, namely:



1. The collective trademark does not distinguish the goods or services of (pooling) the owner, but the products or services of members belonging to the owner cluster of the mark.

2. The distinctive feature can be accomplished in various ways. The collective trademark is not subject to stand out in a specific way, for example by the geography, topography, quality of products or other forms that are typical of certification marks or geographical indications.

3. A collective trademark indicates the ownership to the grouping by the manufacturer.

4. It is applicable the principle of specialty of individual marks.

5. Advertising is developed both by the users as by the owner, since both are directly interested in the development and strengthening of good reputation (goodwill) of the collective trademark in commerce.

Collective trademarks, geographical indications and appellations of origin

The geographic indication is one that identifies a product as originating from the territory of a country or a region or locality in that territory, where a given quality or other characteristics of the product are essentially attributable to its geographical origin. In our country they are only regulated by law 25.380.7

The appellation of origin is the name of a region, province, department, district, city or area of the country, duly registered, used to designate a product originating therein, the qualities or characteristics of which are due exclusively or essentially to the geography, including natural factors and human factors. In our country they are only regulated by law 25,380.



Geographical indications and denominations of origin are protected by designating them as “qualities” of products or services referred to, being then a clear signal for their identification.

Unlike of them, collective marks do not necessarily design the names or characteristics of a country, region or territory. They can do it as a mere reference to the origin of the goods or services but, in that case, there is no direct relationship between the product or service and the “special features” that said country, region or territory may assign them.

COLLECTIVE TRADEMARK IN MERCOSUR

In the context of Mercosur it is expressly established the protection of collective trademarks of the member countries. This is guaranteed by the Harmonization Protocol of Rules on Intellectual Property of Mercosur on Trademarks, Indications of Source and Appellations of Origin, which seeks to match precisely the rules of the States Parties on Industrial Property.

The Harmonization Protocol states that “State Parties shall protect service trademarks and collective trademarks and may also provide protection for certification marks.”

Although that protocol does not define the collective trademark, it defines the mark, which is the definition applied to all types of trademarks, including collective ones.

In this regard, the international document states that “the marks may include, among others, invented words, names, pseudonyms, slogans, letters, numbers, monograms, figures, portraits, labels, badges, stickers, borders, lines and stripes , combinations, arrangements of colors, and shape of the products, their containers or fittings, or the means or sale premises of products or services.”



It accepts trademarks and geographical indications but not indications of source or appellations of origin. At this point it should be clarified what the protocol calls “indications of source” is what the WIPO and comparative literature often calls “geographical indications.” Adjusting said rule of the Protocol to our domestic law it should be understood that “geographical indications” or “appellations of origin” cannot be registered as trademarks.

In turn, Argentina’s legislation does not consider “trademarks” to the appellations of origin and expressly prohibits their registration as such. Please recall that geographical indications and appellations of origin are defined in Argentine law by the law 25,380 as amended by Law 25,399 related to food.

However, the Protocol imposes a limitation on defining the mark since it states that any State Party has the faculty to require as a condition of registration, that the sign be visually perceptible. This limitation does not exist in Argentine law, which allows all types of sign, visible or not.

However, the Brazilian law establishes the need that the marks are “visible” signs “visible” or “visually perceptible”, excluding the distinctive smell, hearing signs and other signs that are not seen.

The three-dimensional trademark may be protected for being “visible”, but its protection in the practice has some limitations, as the requirement (unlike what happens with the industrial designs), does not admit the filing of different views or perspectives of the object. Furthermore, Brazilian law does not provide anything in this regard and there is no registration cases.

COLLECTIVE MARK IN THE ANDEAN COMMUNITY

In the Andean Community level governed by Decision No 486 of the Cartagena Agreement Commission, which regulates collective marks for Colombia, Ecuador, Peru and Bolivia. Venezuela, when it retired from the Andean Community, applies this rule as internal law, having been expressly incorporated by an international treaty.

Article 180 of Decision 486 defines it as: “[...] any sign that serves to distinguish the origin or any other common characteristic of goods or services belonging to different companies and that use it under the owner's control.”

In conclusion, the collective trademark is the tool used by associations of producers, manufacturers, service providers, organizations or persons legally established to distinguish the goods or services of their members with regard to those that are not part of such organizations.

COLLECTIVE TRADEMARK IN THE EUROPEAN UNION

The European Union defines the Union's collective trademarks (“Community collective trademarks) in a comprehensive manner by referring to them as those marks with ability to distinguish the goods or services of members of the association who is the owner of the mark regarding the products or services of members of other associations. The applicant must be a partnership with the capacity to acquire rights and obligations under the rules of the State party. The definition is very broad and explicitly includes the possibility that the Community collective trademark is requested by an entity of state public law.

It adds that signs or indications which may serve in trade to designate the geographical origin of products or services may constitute Community collective trademarks.

However, it clarifies that a collective trademark shall not entitle the holder to prohibit a third party from using in the trade of such signs or indications, provided that such

use is in good faith (fair use) in industrial or commercial matters. And adds that, in particular, such trademark may not be invoked against a third party who was entitled to use a geographical denomination.

This rule is a rich background of our law 26,355 since it establishes two requirements that also appear in our legislation:

1. The applicant for a Community collective trademark must submit regulations governing its use within the established term.
2. The use regulations shall specify the persons authorized to use the trademark, the conditions of membership to the association and, when available, the terms of use of the trademark, including sanctions.

However, European legislation is more strict and states the obligation of authorizing the use of the collective trademark to any person whose goods or services originate from the geographical area to which the mark could be referred.

It is reasonable to take into account this valuable background as interpretative guidance of Article 6 of Law 26,355.

COLLECTIVE TRADEMARK IN THE PARIS CONVENTION

The oldest international instrument for the protection of industrial property expressly provides for protection of collective marks in accordance with the rules adopted by each signatory member of the Convention. This allows each Member State to decide the conditions of protection and establishes the so-called “national treatment” that is the obligation to protect collective marks belonging to associations established in other member countries whose protection does not contravene national legislation in force.



The Paris Convention expressly states that:

1) The countries of the Union²⁰ undertake to accept for filing and to protect collective marks belonging to associations whose existence is not contrary to the law of the country of origin, even if these associations do not hold an industrial or commercial establishment.

2) Each country will decide on the specific conditions under which a collective trademark is to be protected and may refuse the protection if this trademark is contrary to the public interest.

3) However, the protection of these marks shall not be refused to any community whose existence is not contrary to the law of the country of origin, because it is not established in the country where protection is claimed or is not incorporated under the legislation of the country.

We must recall that the Paris Convention was incorporated into Argentine law by Law 17,011.

