

# CERTIFICATION MARKS AND GREEN LABELLING

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	Individual TM*	Collective TM	Certification TM
Definition	Distinguishing the goods or services of <u>one undertaking</u> from those of other undertakings	Distinguishing the goods or services of <u>the members of an association</u> from those of other undertakings	Distinguishing goods or services <u>certified by the proprietor</u> from those not so certified
Essential Function	Commercial Origin	<i>Collective</i> Commercial Origin	Compliance with Certification Scheme
Right To Use	Proprietor and Licensees	Association Members Bona Fide Third Parties	Certified Users Bona Fide Third Parties* Not the Proprietor

\*Green EU trade marks – European Observatory on Infringements of Intellectual Property Rights

## COLLECTIVE MARKS



C-143/19 P

Together with their individual marks to indicate that undertakings belong to a certain association.

Regulations of Use

## Certification rights for a variety of purposes

## Art. 83 (1) EUTMR

is capable of distinguishing G&S which are certified by the mark proprietor in respect of:

- material
- mode of manufacture of goods
- performance of services
- quality
- accuracy
- other characteristics → **environmental, sustainable, organic**, social, etc.,



from goods or services which are not so certified

## Regulations governing use ('RoU') requirements

A **declaration** of the applicant - not carry on a business involving the supply of goods or services certified

The representation of the mark and G&S covered

The **characteristics** of the goods and services for which certification is requested

The conditions governing use of the EU certification mark, including sanctions

The persons authorised to use the EU certification mark

How to **test those characteristics** and to **supervise the use of the mark**

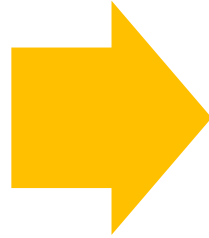
Office assesses if RoU contain obligatory information, **without any evaluation of the effectiveness** of the measures contained.

But checks **no obvious contradiction** between characteristics/standards and G/S.

- Environmental claims reflected in the representation and RoU.



Registration



Use

## European Green Deal

### Instruments - regulate environmental claims:

- facilitate better informed **sustainable decisions**;
- tackle **greenwashing** ('eco-posture');
- help consumers to play an active role in the **ecological transition**.

#### 1. Directive (EU) 2024/825 (adopted 28 Feb 2024) - *lex generalis*

Changes '**Unfair Commercial Practices Directive**' that regulates misleading practices. General provisions that can be applied to environmental claims (case-by-case) and black list



#### NEW DEFINITIONS:

- 'Sustainability label'
- 'Certification scheme'



## UPC Directive:

... **unfair commercial practice to** 'Display... a **sustainability label** ... not based on a **certification scheme** (or not established by **public** authorities)'

**certification scheme** must have *inter alia*:

- a) requirements developed by scheme owner in consultation with relevant experts/ stakeholders;
- b) monitoring of compliance with scheme's requirements is subject to **objective procedure** and **carried out by a third party whose competence and independence from both the scheme owner** and the trader.

## EUTMR:

- a) does not require EU certification applicants/owners to meet point (a) but they are free to do so
- b) as regards (b) monitoring required, independence from trader required, can be carried out by third party but not necessary.

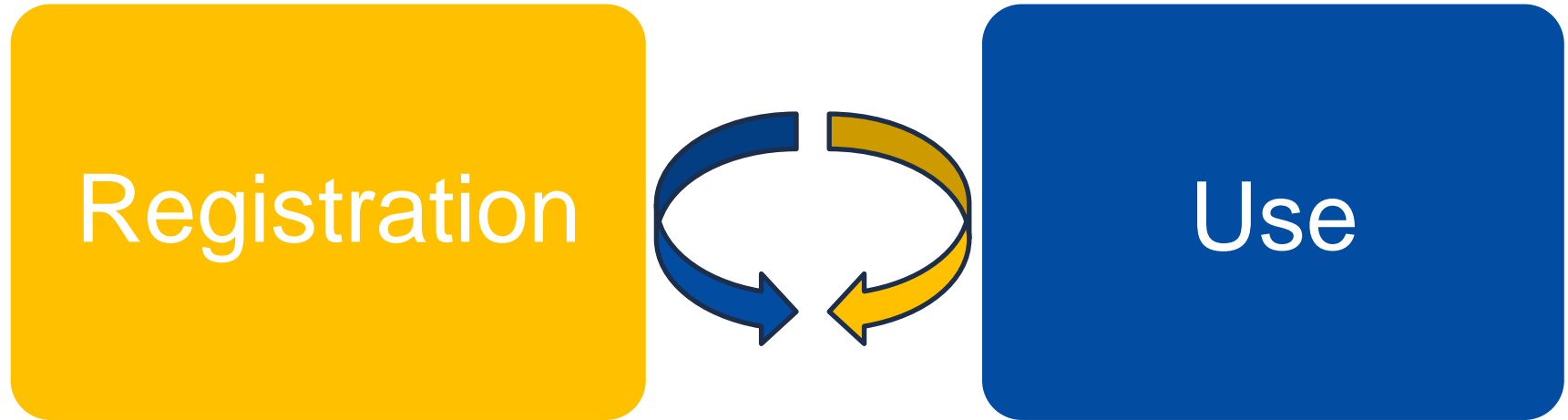
- Rules relating to the registration process for TMs distinct from rules to the use of those EUTMs (Fédération Cynologique; ‘Covidiot’ (R 260-2021-G))
- Article 7 EUTMR - list of AG for refusal; enumerates other laws to be taken into account in AG:

Articles 7(1): letters (j), (k), (l) and (m) – relating to prior: GIs, TTWs, TSG and PVDs

Articles 76 and 85: **specific grounds** for refusal of **collective & certification marks**

## EUTMR some protection against ‘misleading’ claims:

1. Non-distinctive trade marks and descriptive trade marks containing “environmental claims” are refused registration (irrelevant of the veracity of their environmental claim) - Article 7(1)(c)&(b) EUTMR (see case T-253/22, ‘Sustainability through Quality’)
2. Albeit limited, the rules on deceptive marks apply within the registration process context Article 7(1)(g) EUTMR
3. ‘obvious contradiction’ check Article 85(2) EUTMR.
4. A mark can be **revoked** after its registration if it **has become misleading as a result of the use** made of the mark by the proprietor or with its consent - Article 58(1)(c) EUTMR
5. Article 7(1)(f) EUTMR on public policy and morality - EU rules on green-washing do not meet the threshold of a ‘fundamental interest’.





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**THANK YOU**

**Presentation**

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