

# 九五年商標法修正各主要國家使用規範書、著名產地保護 相關立法例參考資料

議 題	國 別	相 關 立 法 例
證明標章使用規範書	澳洲	<p><i>Rules to be available for inspection</i></p> <p><b>179.</b> Rules governing the use of a registered certification trade mark must be available for inspection at the same time and in the same manner as the Register.</p> <p><b>177.</b></p> <p>(1) In addition to any other ground on which:</p> <p style="padding-left: 40px;">(a) an application for the registration of a certification trade mark may be rejected; or</p> <p style="padding-left: 40px;">(b) the registration of a certification trade mark may be opposed;</p> <p style="padding-left: 40px;">the application must be rejected or the registration may be opposed if the trade mark is not capable of distinguishing goods or services certified by the applicant or an approved certifier from goods or services not so certified.</p>

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		<p>(2) In deciding whether or not the certification trade mark is capable of so distinguishing goods or services certified by the applicant or an approved certifier, the Registrar must take into account:</p> <p>(a) the extent to which the certification trade mark is inherently adapted so to distinguish those goods or services; or</p> <p>(b) the extent to which, because of its use or of any other circumstances, the certification trade mark has become adapted so to distinguish those goods or services.</p>
證明標章使用規範書	英國	<p>7.-</p> <p>(1) A certification mark shall not be registered unless-</p> <p>(a) he regulations governing the use of the mark-</p> <p>(i) comply with <a href="#">paragraph 6(2)</a> and any further requirements imposed by rules, and</p> <p>(ii) <b><u>are not contrary to public policy or to accepted principles of morality,</u></b> and</p> <p>(b) the applicant is competent to certify the goods or services for</p>

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證明標章使用規範書	英國	<p>which the mark is to be registered.</p> <p>(2) Before the end of the prescribed period after the date of the application for registration of a certification mark, the applicant must file the regulations with the registrar and pay the prescribed fee.</p> <p>If he does not do so, the application shall be deemed to be withdrawn.</p> <p>9. The regulations shall be published and notice of opposition may be given, and observations may be made, relating to the matters mentioned in <a href="#">paragraph 7(1)</a>.</p> <p>This is in addition to any other grounds on which the application may be opposed or observations made.</p> <p style="text-align: center;"><i>Regulations to be open to inspection</i></p> <p>10. The regulations governing the use of a registered certification mark shall be open to public inspection in the same way as the register.</p>

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團體使用規範書	英國	<p style="text-align: center;"><i>Approval of regulations by registrar</i></p> <p>6.-</p> <p>(1) A collective mark shall not be registered unless the regulations governing the use of the mark-</p> <p>(a) comply with <a href="#">paragraph 5(2)</a> and any further requirements imposed by rules, and</p> <p>(b) <b><u>are not contrary to public policy or to accepted principles of morality.</u></b></p> <p>(2) Before the end of the prescribed period after the date of the application for registration of a collective mark, the applicant must file the regulations with the registrar and pay the prescribed fee.</p> <p>If he does not do so, the application shall be deemed to be withdrawn.</p> <p>8. The regulations shall be published and notice of opposition may be given, and observations may be made, relating to the matters mentioned in <a href="#">paragraph 6(1)</a>.</p> <p>This is in addition to any other grounds on which the application may be opposed or observations made.</p>

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<p style="text-align: center;"><b>團體使用規範書</b></p>	<p style="text-align: center;"><b>歐盟</b></p>	<p><b>Article 66: Refusal of the application</b></p> <p>1. In addition to the grounds for refusal of a Community trade mark application provided for in Articles 36 and 38, an application for a Community collective mark shall be refused where the provisions of Article 64 or 65 are not satisfied, or <u>where the regulations governing use are contrary to public policy or to accepted principles of morality.</u></p> <p><b>Article 67: Observations by third parties</b></p> <p>Apart from the cases mentioned in Article 41, any person, group or body referred to in that Article may submit to the Office <u>written observations</u> based on the particular grounds on which the application for a Community collective mark should be refused under the terms of Article 66.</p>

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團體使用規範書	歐盟	<p><b>Article 72: Grounds for invalidity</b></p> <p>Apart from the grounds for invalidity provided for in Articles 51 and 52, a Community collective mark which is registered in breach of the provisions of Article 66 shall be declared invalid on application to the Office or on the basis of a counterclaim in infringement proceedings, unless the proprietor of the mark, by amending the regulations governing use, complies with the requirements of those provisions.</p>
	德國	<p style="text-align: center;"><b>Regulations Governing Use of the Mark</b></p> <p><i>Sec. 102.</i></p> <p>(1) The application for a collective mark must be accompanied by regulations governing use of the mark.</p> <p>(2) The regulations governing use of the mark shall at least specify:</p> <ol style="list-style-type: none"> <li>1. the name and the seat of the association,</li> <li>2. the purpose and representation of the association,</li> </ol>

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團體使用規範書	德國	<p>3. the conditions of membership,</p> <p>4. information on the group of persons having authority to use the collective mark,</p> <p>5. the conditions of use of the collective mark,</p> <p>6. the rights and obligations of the parties concerned in the event of infringement of the collective mark.</p> <p>(3) If the collective mark consists of an indication of geographical origin, the regulations governing use of the mark must provide that any person whose goods or services originate in the geographical area concerned and fulfill the conditions for use set out in the said regulations shall be authorized to become a member of the association and shall be admitted to the group of persons who have authority to use the mark.</p> <p>(4) Anyone may <b><u>inspect</u></b> the regulations concerning use of the mark.</p> <p style="text-align: center;"><b>Examination of the Application</b></p> <p><i>Sec. 103.</i></p> <p>In addition to refusal under <a href="#">Section 37</a>, the application for a collective mark shall also be refused if it does not satisfy the</p>

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團體使用規範書	德國	<p>collective mark shall also be refused if it does not satisfy the requirements of <a href="#">Sections 97, 98</a> and <a href="#">102</a> or <b><u>if the regulations governing use of the mark are contrary to public policy or to accepted principles of morality</u></b>, unless the applicant amends the regulations concerning use of the mark in such a way that the ground for refusal ceases to exist.</p> <p style="text-align: center;"><b>Nullity Because of Absolute Grounds for Refusal</b></p> <p><i>Sec. 106.</i></p> <p>In addition to the grounds for nullity provided for in <a href="#">Section 50</a>, the registration of a collective mark shall upon request be cancelled on the ground of nullity if it has been registered in breach of the provisions of <a href="#">Section 103</a>. If the ground for nullity relates to the regulations concerning use of the mark, the registration shall not be cancelled if the proprietor of the collective mark amends the said regulations in such a way that the ground for nullity ceases to exist.</p>



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團體商標保護產地的規定	英國	<p><i>Indication of geographical origin</i></p> <p>3.-</p> <p>(1) Notwithstanding <a href="#">section 3(1)(c)</a>, a collective mark may be registered which consists of signs or indications which may serve, in trade, to designate the geographical origin of the goods or services.</p> <p>(2) However, the proprietor of such a mark is not entitled to prohibit the use of the signs or indications in accordance with honest practices in industrial or commercial matters (in particular, by a person who is entitled to use a geographical name).</p>
	歐盟	<p><b>Article 64: Community collective marks</b></p> <p>2. In derogation from Article 7 (1) (c), signs or indications which may serve, in trade, to designate the geographical origin of the goods or services may constitute Community collective marks</p>

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團體商標保護產地的規定	德國	<p>within the meaning of paragraph 1. A collective mark shall not entitle the proprietor to prohibit a third party from using in the course of trade such signs or indications, provided he uses them in accordance with honest practices in industrial or commercial matters; in particular, such a mark may not be invoked against a third party who is entitled to use a geographical name.</p> <p style="text-align: center;"><b>Registrability of Indications of Geographical Origin as Collective Marks</b></p> <p><i>Sec. 99.</i></p> <p>In derogation from <a href="#">Section 8(2), No. 2</a>, signs or indications which may serve, in trade, to designate the geographical origin of the goods or services may constitute collective marks.</p> <p style="text-align: center;"><b>Restrictions on Protection; Use</b></p> <p><i>Sec. 100.</i></p> <p>(1) In addition to the restrictions of protection resulting from <a href="#">Section 23</a>, registration of an indication of geographical origin as</p>

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團體商標保護產地的規定	德國	<p><a href="#">Section 23</a>, registration of an indication of geographical origin as a collective mark shall not entitle the proprietor to prohibit a third party from using such indications in the course of trade, provided such use is in accordance with the accepted principles of morality and does not contravene <a href="#">Section 127</a>.</p> <p style="text-align: center;"><b>Regulations Governing Use of the Mark</b></p> <p><i>Sec. 102.</i></p> <p>(1) The application for a collective mark must be accompanied by regulations governing use of the mark.</p> <p>(2) The regulations governing use of the mark shall at least specify:</p> <ol style="list-style-type: none"> <li>1. the name and the seat of the association,</li> <li>2. the purpose and representation of the association,</li> <li>3. the conditions of membership,</li> <li>4. information on the group of persons having authority to use the collective mark,</li> <li>5. the conditions of use of the collective mark,</li> <li>6. the rights and obligations of the parties concerned in the event of infringement of the collective mark.</li> </ol> <p>(3) <u>If the collective mark consists of an indication of</u></p>

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團體商標保護產地的規定	德國	<p><u>geographical origin, the regulations governing use of the mark must provide that any person whose goods or services originate in the geographical area concerned and fulfill the conditions for use set out in the said regulations shall be authorized to become a member of the association and shall be admitted to the group of persons who have authority to use the mark.</u></p> <p>(4) Anyone may <b><u>inspect</u></b> the regulations concerning use of the mark.</p>