

Original Paper

Research on the Legal Problems of Official Marks of Proof Attributes in China

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Abstract

Since the introduction of Measures for the Protection of Official Marks (Draft for Opinion), the attention to official marks has increased in China, but the concept, nature, classification and relationship between official marks and trademarks have not been sorted out clearly. This paper starts from the classification of official signs, selects the official signs with certification attributes as the main research object, clarifies the relationship between such official marks and other related signs, analyses the current situation of their use and management, and puts forward suggestions to improve the laws and regulations on official marks.

Keywords

official marks, certification marks, national propriety certification marks, trademark law, public interest

1. Introduction

In recent years, with the development of public services and the promotion of international cooperation and exchanges, the frequency of the use of official marks and related researches have been gradually increasing. Official marks not only represent the content and characteristics of the public service of government agencies and other public institutions, but also their activity concepts and cultural characteristics, which is a concrete symbol of the spirit of public institutions, and it can be said that the public's recognition of official marks is the recognition of public institutions. However, the scope of official marks is very wide, and different categories of official marks have different theoretical origins, setting purposes and protection methods, so they should be studied categorized.

2. Scope of Definition of Official Marks

2.1 Theoretical Origins of Official Marks

Article 6 ter of the Paris Convention: [Trademarks: Prohibition of State Emblems, Official Seals of Inspection and the Emblems of Intergovernmental Organizations] provides a certain degree of legal protection for the State emblems, flags and other State emblems of the member States of the Paris Convention as well as for official symbols and seals of inspection used to indicate supervision and guarantee. This article is considered to be the direct legal source of the official mark system, which has undergone a series of developments since 1925, when the content of Article 6 ter was first incorporated into the Paris Convention at the Hague Revision Conference (See Table 1).

Table 1. Legal Origins of the System of Official Marks

1925	Incorporation of Article 6 ter into the Paris Convention at the Hague Revision Conference
1934	The London Revision Conference made some minor changes to the form of this provision
1958	Lisbon Revision Conference, Protection Extended to the Emblems, Flags, Other Emblems, Initials and Names of International Intergovernmental Organizations of which at Least One Member State is a Member of the Paris Union
1992	The Paris Union Assembly adopted the Guidelines for the Interpretation of Article 6 ter (1) (b) (the 1992 Guidelines), and the protection afforded by the application of Article 6 ter is also available to programmes or agencies established by any international intergovernmental organization and to any convention constituting an international treaty.
1994	Article 2.1 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (known as the TRIPS Agreement), article VI ter, may be applied to States parties to the Paris Convention, as well as to all members of the World Trade Organization (WTO). Whether or not they are party to the Paris Convention
1995	Trademark Law Treaty (TLT), article 15, any contracting party shall comply with the provisions of the Paris Convention relating to trademarks.
2006	Singapore Treaty on the Law of Trademarks, article 15, any contracting party is bound by the Paris Convention on trademarks.

2.2 Classification of Official Marks

In addition to the provisions of Article 6 ter of the Paris Convention, China's Trademark Law and Measures for the Protection of Official Marks (Draft for Opinion) (hereinafter referred to as the Draft for Opinion) also define official marks (Note 1, see Table 2), and it can be seen that China's official marks include two major categories, one with indicative attributes marks, including the visual signs of the state/intergovernmental organization, representing the state/intergovernmental organization's spirit and image, which are national flag, national emblem, military flag, military insignia, medals, emblems,

etc.; and governmental authoritative signs, which include signs, badges, seals, buildings, etc. of the central government and its constituent departments. The second category is marks with proof attributes, including official marks and inspection marks indicating control and guarantee (hereinafter referred to as signs with proof attributes/second category signs), which are specifically applied in areas related to national economy and people's livelihood, and whose main function is to identify, supervise and control specific areas, with control and marketability (value).

Table 2. Legal Provisions for Official Marks

standardize	content
Article 6 ter of the Paris Convention	<p>The coats of arms, flags and other emblems of the States members of the Union, the official symbols and emblems used by each State to indicate its authority and mandate; and the coats of arms, flags, other emblems, abbreviations and names of international intergovernmental organizations of which more than one member State of the Union is a member.</p> <p>The prohibition on the use of official symbols and inspection seals indicating supervision and guarantee should apply only to the use of trademarks containing such symbols or seals on identical or similar goods.</p>
Article 10 of the Trademark Law, not to be used as a trademark	<p>(a) The same or similar to the national name, national flag, national emblem, national anthem, military flag, military emblem, military anthem, and medals of the People's Republic of China, as well as the same as the name, logo, name of a specific place of the location of the central state organs, or the name or graphic of a landmark building;</p> <p>(ii) The same or similar to the national name, flag, coat of arms, military flag, etc. of a foreign country, except with the consent of the government of that country;</p> <p>(c) Is identical with or similar to the name, flag or emblem of an international intergovernmental organization, except with the consent of the organization or if it is not likely to mislead the public;</p> <p>(iv) Identical or similar to official marks or inspection seals indicating the exercise of control or the giving of assurances, except when authorized to do so. (e);</p>
Article 2 of the Measures for the Protection of Official Signs (Draft for Opinion)	<p>(a) The name of the State of the People's Republic of China, the national flag, the national emblem, the national anthem, the military flag, the military emblem, the military anthem and the medals;</p> <p>(ii) The names, symbols, names of specific places where the central state organs are located or the names and graphics of landmark buildings;</p> <p>(iii) Names of foreign countries, national flags, emblems, military flags, etc;</p> <p>(iv) Names, flags, emblems, etc. of international intergovernmental organizations;</p> <p>(v) Official signs, test marks, etc., indicating that control is exercised and guaranteed.</p>

The first type of official marks with indicative attributes is the manifestation of public power in the strict sense, and its quantity basically will not change, and its form is mostly known to the public, and it basically will not cause misrecognition of domestic and foreign subjects in daily identification; secondly, the state's protection of these two types of official symbols is also more strict, with the Flag Law, the National Emblem Law and other laws for its protection; Moreover, in the existing civil legal disputes, there are basically no practical cases in which the two types of symbols are the object of disputes, and even if there are a few cases, they are all guaranteed by the exact laws as the basis. However, the second type of marks are used in various fields of national economy and people's livelihood, and with the development of the society, new marks will be produced and old marks will be abolished, and their contents are not fixed.

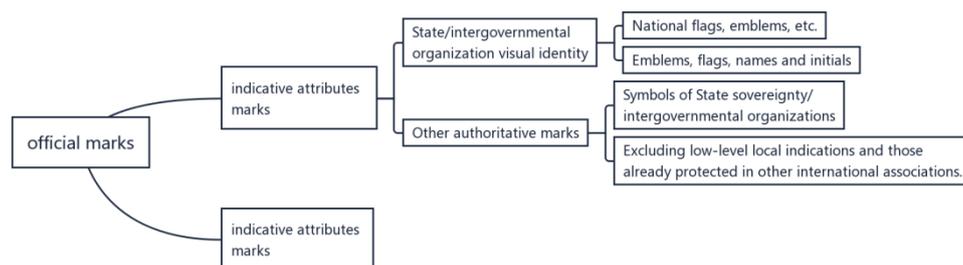


Figure 1. Classification of Official Marks

2.3 Official Marks of Control, Guarantee, Inspection and Quarantine, etc.

According to the Trademark Law and the Draft for Opinion on the normative expression of such signs, we can understand the second type of marks with certification attributes as the official institutions of the quality of goods, performance, composition, raw materials, etc. to implement the control, be guaranteed, or inspection of the signs or marks, is the government to perform its duties to the supervision of the matters of the recognition and guarantee, with the national credibility. In other words, this kind of mark is carrying the national credibility and government authority of the official body of the commodity certification and recognition of a logo to reflect the will of the state, to convey the attitude of the government, to protect the quality of goods, with control and market value. (Here the official agencies should be the State Council department level and above the government agencies, commissions and their official authorization of the certification body), such as: State Administration for Industry and Commerce Trademark Office of China Geographical Indications special mark “GI”, the State Food and Drug Administration Drug GMP certification mark , the State Administration of Quality Supervision, Inspection and Quarantine of China Compulsory Certification Mark , the State Administration of Quality Supervision, Inspection and Quarantine of Food Quality and Safety Certification Mark. Food Quality and Safety Certification Mark , National Inspection-free Product Mark Seal  and so on. It is also because of the high relevance of the second category of marks to daily life and trade, the content of its “mark pool” is subject to greater social development, and there

are more disputes over the use and protection of the interests arising from the use of this category of marks. Therefore, compared with the indicative attributes official marks, the problems to be solved in the use and protection of regulatory marks are more obvious, and a more detailed and systematic legal study should be carried out to distinguish them from the first category marks.

In the process of doing a separate study on the second type of marks, this paper notices that there is an overlap between the official marks with certification attributes and the certification marks, so the following will be from the perspective of the certification marks into the study of the legal protection of the second type of official marks.

3. The Origin, Meaning and Classification of Certification Marks

3.1 The Origin and Meaning of the Certification Marks

3.1.1 Origin of the Certification Marks

The certification mark is a visual symbol of the certification system and certification behavior, the modern third-party quality certification system began in 1903 in the United Kingdom, when the British Board of Technical Standards used the first quality mark - the kite mark to prove that the certified products comply with the standards of the British Standards Institution (BSI). Since the 1930s, the certification mark has been vigorously developed, and in the 1950s, the certification mark was basically popularized in all industrially developed countries. The former Soviet Union and Eastern European countries in the 1960s launched quality certification activities, in addition to India and a few other countries earlier implementation, other third world countries generally from the 1970s in the implementation of the use of certification marks. In addition to the UK's BS certification, France's NF national mark, Germany's DIN inspection and supervision mark, the German Electrical Engineers Association's VDE mark, Japan's JIS mark, the United States Underwriters Laboratory's UL mark, and later the European CE mark, are the world's very reputable and authoritative product certification mark. The reason why the certification mark has received great attention and importance since the beginning of the 20th century is because in the era of the development of the commodity economy, product certification can bring many benefits to the government, enterprises and customers in trade, which is also the same today, for example:

- 1) The government may effectively monitor and manage the quality of commodities as an effective measure to implement the standards and relevant safety regulations, through product certification to standardize the production activities of enterprises, improve the level of manufacturing, which greatly reduces the product caused by personal injury and property losses, from the source to ensure that the interests of customers and the community
- 2) Manufacturers through product certification, so that the manufacturer's products get a certain amount of publicity and government quality endorsement, more likely to gain the trust of consumers, to create more output value.

3) As certified products are affixed with the certification mark, indicating that the customer's products have been recognized by the government of a third party certification body in accordance with specific procedures for scientific evaluation can be assured of purchase. Even if there are problems with the product, the certification body will be in accordance with national laws and regulations and its own responsibilities to accept consumer complaints, responsible for resolving product quality disputes to protect consumer interests.

4) As a generally accepted and used in international trade means of proof, the use of internationally accepted or national internal internationally renowned certification mark is conducive to the manufacturer's products in the hearts of customers around the world to establish credibility, and to get the international market in the recognition.

Table 3. Beneficiaries of the Certification Marks

main body	interest
governments	Effective supervision of certification activities and the use of the logo to protect the public interests of society
Manufacturers	Getting government endorsement, gaining consumer trust, and creating more production value
consumers	Buy with confidence, with open channels for rights protection
international market	Favorable to obtaining international market recognition

3.1.2 Meaning of the Certification Marks

Certification and Accreditation Regulations of the People's Republic of China (Revised in 2020), Article 2, paragraph 1, provides that "the certification in these regulations, refers to the product, service, management system in line with the relevant technical specifications, the mandatory requirements of the relevant technical specifications, or the standard of conformity assessment activities proved by the certification bodies." Which certification bodies need to be certified by the State Council Certification and Accreditation Administration to accept applications and make approval of the acquisition of qualifications, and subject to its supervision and management. "Certification and Certification Marks Management Measures (2022 Revision)" (Note 2) Article 2, paragraph 2 provides that: the certification mark in these measures refers to the combination of proprietary symbols, patterns or symbols, patterns and words that prove the certified products, services and management systems. Certification mark includes product certification mark, service certification mark and management system certification mark.

3.2 Classification of Certification Marks

Certification mark is divided into mandatory certification mark and voluntary certification mark, voluntary certification mark, including the national unity of the voluntary certification mark and

certification bodies to develop their own certification mark. Compulsory certification mark and the national unified voluntary certification mark belongs to the national proprietary certification mark, the certification body to develop its own certification mark is the certification body's proprietary certification mark. According to the above provisions for the certification mark and certification bodies can be seen (Note 3), the national proprietary certification mark refers to the central state organs or their direct leadership of the organization issued, authorized and regulated by the certification mark, in line with the official logo for the sign of the corresponding subject requirements, in addition, the national proprietary certification mark in the national scope of the unified effect, has a high symbolic significance and protection value. At the same time, Beijing Intellectual Property Court in the case of global standard non-profit organization and the State Administration for Industry and Commerce Trademark Review and Adjudication Board of the case also made it clear that the purpose of the legislation of the official sign is to prevent the commercial use of the sign that indicates the performance of the government's duties, to avoid the impairment of the national credibility, so the official sign should be limited to indicate the sign of the government's regulatory matters (Note 4). Therefore, this type of certification mark should belong to the second category of official signs with certification attributes as stated in Article 10 of the Trademark Law and the Draft for Opinion, and can be the subject of research on official signs.

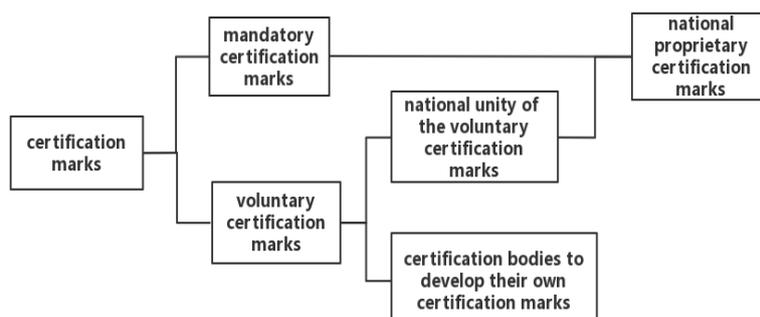


Figure 2. Classification of Certification Marks

4. Core Legal Issues of National Proprietary Certification Marks

4.1 Legal Attributes of National Proprietary Certification Marks

The function of the certification mark is a simple pattern to refer to the certification object should comply with a series of complex standards system, to distinguish between different categories of certification business (Note 5). In other words, the function of the certification mark is essentially a symbol of the certification business itself, not in simple words, but in a logo to simply state that the labeled product or service meets a series of complex certification standards. For example in the food sector (see Table 4).

Table 4. Analysis of the Selection of Certification Marks in the Food Sector

name of logo	Logo Style	Certification Standards
pollution-free agricultural product		There are two types of grades, AA and A. The main difference is that in the production process, AA grade does not use any pesticides, fertilizers and synthetic hormones; A grade allows limited use of limited pesticides, fertilizers and synthetic hormones.
green food (registered trademark)		Green food is divided into two types: Grade A and Grade AA. Grade A refers to the limited use of limited chemical synthetic substances in the production process in the place of origin where the quality of the ecological environment meets the specified standards; Grade AA green food (equivalent to organic food) refers to the production process in the place of origin where the quality of the ecological environment meets the specified standards without the use of any harmful chemical synthetic substances. The products are produced, processed, and the quality of products and packaging are tested and inspected to meet specific standards according to specific production procedures, and are certified by specialized agencies to be permitted to use Grade A and AA green food labels.
organic product		The use of synthetic substances such as pesticides, fertilizers, hormones, etc. is absolutely prohibited during production and processing, and the use of genetic engineering techniques is not permitted (Note 6)

It is not difficult to find, which green food certification mark is a registered trademark, according to “Trademark Law” Article 10 and the provisions of the Draft for Opinions, the official mark can not be registered trademarks, not protected by the trademark law, but the above also mentioned part of the certification mark belongs to our second category of proof of attributes of the official mark of the scope of that we are very easy to produce doubts, What is the relationship between the certification mark system, the trademark system and the official mark system?

First, certification marks and trademarks. What kind of certification mark can apply for trademark? Certification mark is a symbol of the name of the certification business, certification business is a

service, the service name can constitute a service mark, just as the name of the commodity constitutes a commodity trademark. Commodity name has the difference between commodity common name and commodity proprietary (unique) name. “The proprietary name of a commodity is the name used by a particular operator alone, and is a mark by which a commodity is distinguished from similar commodities of other operators” (Note 7). Commodity proprietary name constitutes a trademark, registered with the exclusive right to trademark (Note 8), some scholars believe, then the corresponding, belonging to the unique service name of the certification mark can constitute a service mark (Note 9). Visible, whether by a single certification body to provide certification services is to determine the certification mark is a common name service or unique service name of the core, which is a factual judgment. For example, in China’s pollution-free food and organic products certification services can be recognized by a number of commission accredited certification bodies to carry out (Note 10), so the “pollution-free agricultural products” logo, “organic products” logo belongs to the generic service name; and green food certification can only be carried out by the China Green food certification can only be carried out by the China Green Food Development Center (Note 11), “green food” logo belongs to the unique service name, about which this paper has reservations. Generally speaking, the national proprietary certification mark belongs to the general service name, can not constitute a trademark, while the certification body and other subjects of the proprietary certification mark belongs to the unique service name, can apply for trademark registration. This paper focuses on the national proprietary certification marks belonging to the second category of official signs, so in the research process, care should be taken to exclude the certification marks belonging to the scope of trademark protection, even the high-profile certification mark, such as the Ministry of Agriculture and Rural Affairs, which issued the Green Food Mark Management Measures (2022 Revision), does not belong to our research category.

Second, trademarks and official marks. Trademark rights are typically intellectual property rights and are private. Official marks, on the other hand, are used for public functions with the purpose of serving the interests of the general public, improving the efficiency of social operation and regulating the development of social life. If official marks become private rights like trademarks, it will be a great distortion of the official mark system and will lead to the abuse of public power (Note 12). Therefore, official signs should exercise a management right with public attributes. But ownership is a property right, meaning that the right holder can freely dispose of the property without infringing on the rights of others, constituting a private interest (Note 13), In intellectual property, at its core is the ownership of property (Note 14). Although it is undeniable that the publishing agency enjoys the copyright of the logo itself, in the purpose and use of the official logo, it should be believed that the power of the official logo should be a right of management, rather than ownership, which means that the use of the official logo must conform to the public function and must be beneficial to the public. From the point of view of the national proprietary certification mark, the mark issued by the central departments and institutions, by the certification body approved by the certification, certification business can label the

sale of the whole chain, the role of the official mark is authorized behavior and government endorsement, are a significant symbol of management power.

Furthermore, the certification mark and the official mark. In the process of the above analysis, in fact, the relationship between the two can already be a glimpse of one or two, simply put, the national proprietary certification mark belongs to the second category of proof of attributes of the official marks (See Figure 3).

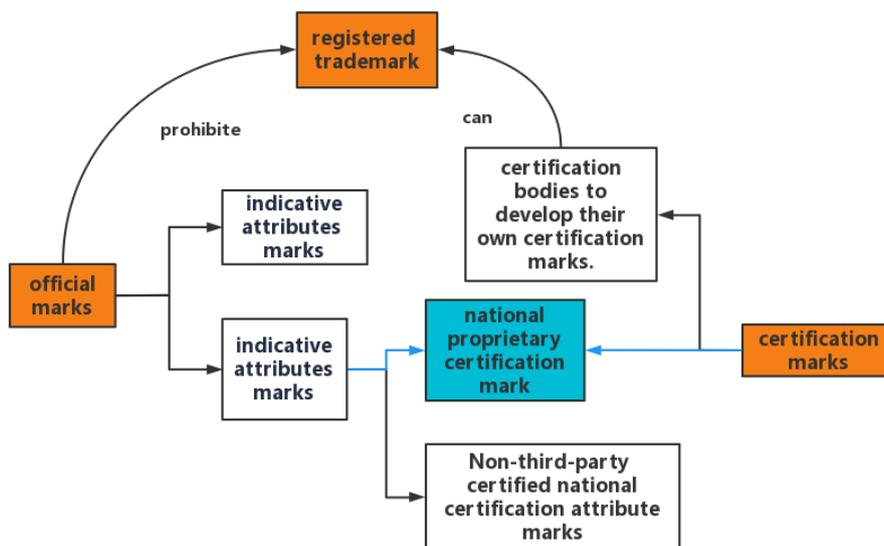


Figure 3. Relationship between Official and Certification Marks

4.2 Modes of Use and Regulation

4.2.1 Normative Dimension

China’s national proprietary certification mark there are many kinds of, in addition to the General Administration of Market Supervision and Administration of the release of the direct provisions of the certification mark with the certification mark, most of the certification mark is also in the management of the certification activity has relevant provisions. We take the organic product logo as an example:

Table 5. Norms for the Use and Supervision of Certification Marks

	Usage	Regulatory approach	penalties
Measures for the Administration of Certification Certificates	Developed and used by the State Administration of Market Supervision and Regulation in accordance with the law, and to be published (Note 15).	The State Administration of Market Supervision and Administration of the organization of local market supervision and management departments at or above the county level on the use of certification marks	Confusing use of the certification mark, the local market supervision and management departments at or above the county level shall order it to make

<p>and Certification Marks (Revision 2022)</p>	<p>Certification body shall establish a certification mark management system, the certification requirements can not be met, it should be made in a timely manner to suspend or stop the use of its certification mark of the decision, and shall be published (Note 16).</p>	<p>to implement supervision and inspection of counterfeiting, fraudulent use, transfer and illegal trading of certificates of authentication and certification marks of illegal acts shall be investigated and dealt with according to law (Note 17).</p>	<p>corrections within a certain period of time, and if it fails to do so, impose a fine of 20,000 yuan.</p> <p>Certification body found that its certification of products, services, management systems can not continue to meet the certification requirements, not in a timely manner to suspend the use of its certification mark, or not in a timely manner to stop the use of its certification mark, in accordance with the provisions of Article 59 of the regulations shall be punished (Note 18).</p> <p>Counterfeiting, fraudulent, illegal trading of certification marks, in accordance with the “Product Quality Law” and “Import and Export Commodity Inspection Law of the People’s Republic of China” and other relevant laws and administrative regulations shall be punished.</p>
<p>Administrative Measures for the Certification of Organic Products (Revision</p>	<p>Organic product certification mark for China organic product certification mark (Note 19). National implementation of a unified organic product certification system, the implementation</p>	<p>Certification bodies in the issuance of certification marks before the certification mark should be certified, organic code of the relevant information uploaded to the information system. Supervision and Inspection of Local Market</p>	<p>Counterfeiting, fraudulent, illegal trading of certification marks, above the county level, the local market supervision and management departments in accordance with the “People’s Republic</p>

2022)	<p>of a unified certification mark (Note 20). State Administration of Market Supervision is responsible for the development of organic product certification mark of the style, numbering rules (Note 21).</p> <p>In the certificate of certification limited to the product category, scope and quantity of use, and in the product of the smallest packaging to impose the marking (Note 22).</p>	Supervision and Administration Departments Above the County Level (Note 23).	of China Product Quality Law”, “People’s Republic of China Import and Export Commodity Inspection Law” and its implementing regulations, and other laws, administrative regulations and penalties.
Circular on Further Strengthening the Management of National Organic Product Certification Marks 2011	CNCA will establish a certification mark filing information database, the certification body should be issued by each certification mark code and certification mark using the “... National organic product certification mark code filing information requirements” and other aspects of information transmitted to the database in a timely manner.	Each certification body should be regularly or irregularly every year through the market sampling, verification of relevant organizations legitimate, standardized use of certification marks. For violation of the use of certification marks, should be suspended in a timely manner, the revocation of the certification of the organization; the situation is serious, it should be promptly reported to the local certification and supervision departments, so that the relevant regulatory authorities to further trace the legal responsibility of the relevant parties.	Counterfeiting, fraudulent, overdue, over the scope of the use of certification marks, should be in accordance with the “Certification and Accreditation Regulations”, “Organic Certification Management Measures” and “Certification and Certification Marks Management Measures” and other regulations, rules and regulations to deal with.

This table summarises the provisions of the three main regulatory documents on the use and supervision of the organic certification mark. According to the above provisions, the organic certification mark is the China Organic Certification Mark, the implementation of a unified national certification mark, which indicates that the China Organic Certification Mark is an official mark, which

is issued and published by the General Administration of Market Supervision and Administration under the State Council, and also meets the requirements of the level of the official mark release body, the third-party certification bodies in the use of the process does not hinder the transfer of the official nature of the organic certification mark, but instead to establish a management system. Instead, it establishes a management system and uses mature anti-counterfeiting and tracking technologies to help the market supervision and management authorities better regulate the use of organic certification marks.

However, the nature of the organic certification mark as an official mark is not clearly stated, and there is no official mark for the record; in addition, its relevant provisions are scattered in different normative documents, which not only makes the administrative work of various departments, law enforcement, and producers applying for the mark to be accessed and followed by too much content, which is inefficient, but also leads to confusion among all parties; in which different normative documents make different expressions for the same content. Make different expressions of the same content, such as penalties, issued by the Certification and Accreditation Administration of the “on further strengthening the management of national organic product certification mark notice” (hereinafter referred to as “Organic Notice”) is on the counterfeiting, fraudulent, overdue, over the scope of the use of certification mark of the act of making penalties, while the State Administration of Market Supervision and Administration of the Organic Certification Management Measures issued by the State Administration of Market Supervision and the “Certificate of certification”, and Certification Mark Management Measures” is to forge, fraudulent use, illegal trading of certification mark of the act of penalties.

Moreover, the organic product certification mark is widely used in China, and the degree of public recognition is higher.

Higher degree of public awareness of the certification mark, with the frequency of revision of social development is also higher, in the development of specifications is also relatively perfect and specific, and there are still so many problems, not to mention other countries do not have such treatment of proprietary signs.

For example, China’s agricultural machinery product quality certification mark and its related management methods were issued in 1998, without revision, the content is rough and simple, the practical operation is not high; another example is the “Green Food Logo Management Measures (Revised in 2022)”, which clearly points out that the green food logo is a registered trademark, however, no matter its release, use and supervision of the green food logo are in line with the conditions of becoming an official mark. As mentioned above, it serves the purpose of serving the public interest and has the nature of management right, so it should not be registered as a trademark for this kind of logo which has the function of government endorsement.

It can be seen that at present, China has not sorted out the relationship between the national proprietary certification mark and the official mark at the level of legal norms, and attaches less importance to the national proprietary certification mark, the norms are rough in content, and there are inconsistencies

between different norms of the same mark, and these problems have caused greater trouble and inconvenience to the development and protection of China's official mark, which should be solved as soon as possible..

4.2.2 Practical (Judicial) Demension

First, about the record. Certification and Accreditation Administration of the Certification and Accreditation Committee on the certification mark for the record notice" in the certification mark for the record for the certification body to develop their own certification mark style (including the use of symbols), text and name, that is, excluding the national proprietary certification mark. Article 3 of the draft for opinions provides that "the relevant departments of the State Council and other departments or organisations using the official mark need to obtain protection under the Trademark Law, you can to the State Intellectual Property Office for the official logo for the record, but the laws and administrative regulations have clearly stipulated that the official logo, except." The reason for the filed protection of official signs, this paper argues that the state and the government prohibit the registration of official signs as trademarks and restrict the use of official marks, essentially weighing the public and private interests, and that the social public value that can be gained by protecting the rights and interests of registered trademarks is much lower than the social significance of protecting the national sovereignty and government authority from infringement brought about by the regulated use of official signs.

Therefore, this paper believes that the record protection is of great significance for official marks. However, in the official website of the State Intellectual Property Office, there are basically no national proprietary certification marks, but "Geographical Indications" (Note 24),"China's Official Logo for Medical Protection", "Logo of the State Administration of International Development Cooperation", "Logo of Foreign Aid" and other indicative official marks (Note 25). It can be seen that at present, China's official logo record protection work has not been well implemented, the significance of the record protection is not clear enough, in the national proprietary certification mark in the cognition of the competent department has become optional operation, which leads to the national proprietary certification mark although there is an official logo of the real, but not the name of the official logo. At the same time, this also left some authorities "exploit the loopholes" of the opportunity, such as green food certification mark applied for registered trademarks, which has left more thorny historical problems for the construction of China's official mark protection system, and also hindered the use of the national proprietary certification mark publicity, reducing its control as an official mark and the social value of the degree of control.

In addition, administrative procedures. According to the provisions of the Draft for Opinion, the procedure for filing and protection of official signs in China is that the competent authority for filing submits the information sheet of official signs, the description of official signs, the drawings of official signs, the administrative measures for the use of official signs, the description of the official signs that need to obtain international protection and other relevant supporting documents, and then the State Intellectual Property Office makes a decision on whether to file or not (See Figure 4).

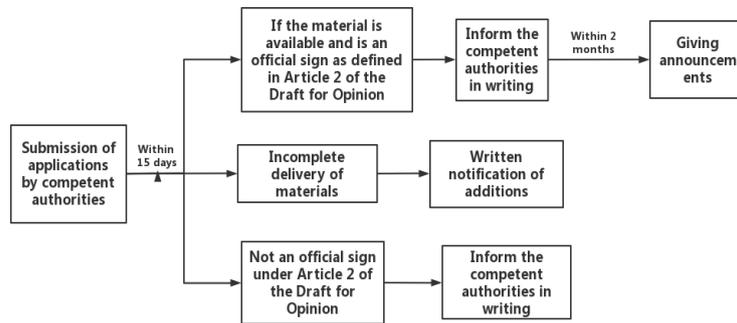


Figure 4. Domestic Official Logo Filing Procedures

In accordance with Article 6 ter of the Paris Convention, the competent authorities of the State send to the International Bureau of WIPO a draft application for submission and a draft drawing of the emblem or symbol for which protection is sought. Once the draft application and the drawing have been found to be in conformity with the requirements, the International Bureau of WIPO transmits the application for protection in the form of a circular letter to the Ministries of Foreign Affairs of the Paris Union Member States and to WTO Members not party to the Paris Convention, together with a copy of the draft drawing of the emblem or symbol for which protection is requested. At the same time, the International Bureau of WIPO transmits a copy of the circular letter to the industrial property office of that country. In this regard, the provisions of the Paris Convention are also elaborated and provided for in the Draft for Opinion (See Figure 5).

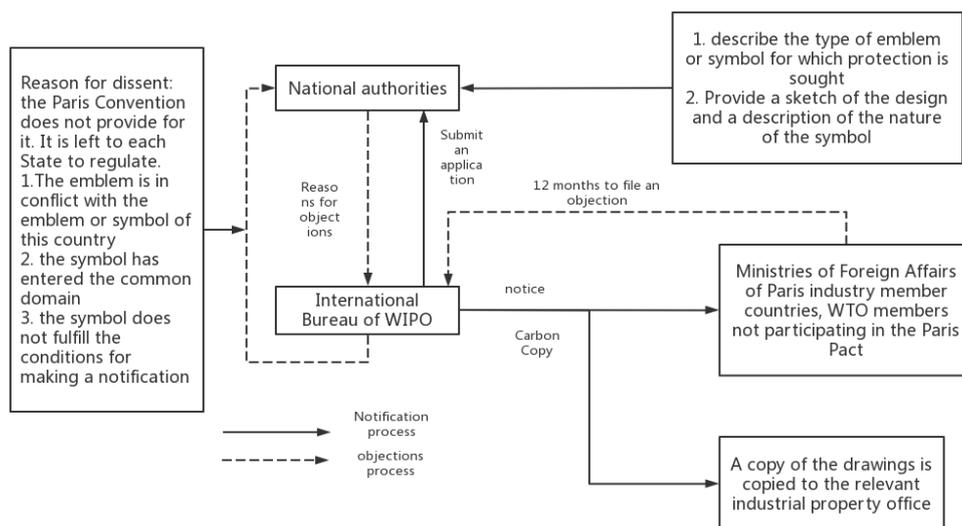


Figure 5. Administrative Procedures under Article 6 ter of the Paris Pact

But on the contrary, the national proprietary certification mark is not so detailed provisions, “Certification and Accreditation Regulations” is more concerned about the accreditation of certification bodies and review the qualifications, and listed in a single chapter. How to protect the national proprietary certification mark itself basically rely on the invocation of the “Product Quality Law of the

People's Republic of China," such as the punitive mode of protection, rather than the preventive mode of protection. Therefore, to clarify the national proprietary certification mark official sign attributes, to encourage the competent units to actively take the official sign of the record protection, whether in the domestic or international have a more mature administrative system to protect, more conducive to the protection of its national proprietary certification mark and the actual use.

Finally, judicial practice. With "national proprietary certification mark", "official mark" and other expressions as keywords, the full text search in the legal big data platforms such as the magic weapon of Peking University, Wolters Kluwer, the number of administrative penalties and judgement instruments are few, which can be seen in the improper use of a single sign of law enforcement. The number of administrative penalties and judgements is very few, and it can be seen that in the improper enforcement of the use of a single sign, the nature of the sign as an official sign or a national exclusive certification mark is seldom mentioned in the judgement; moreover, the three cases that are candidates for the voting connection of the typical cases of administrative protection of official signs in the year 2022 by the State Intellectual Property Office (SIPO) are all the unauthorised use of the special sign for GI (Note 26). It can be seen that the value and significance of the so-called official mark of the national proprietary certification mark has been seriously neglected in the society, both in the law enforcement and judgement at the grassroots level and in the overall layout of the State Intellectual Property Office.

5. Improvements and Solutions

China does not have a perfect, systematic official mark protection system for official signs, the current Trademark Law, Article 10 of the provisions of the general, the Draft for Opinion has not been formally introduced, which makes the official marks of the substantive attributes of the specific scope of the definition and protection of the specific program is not clear, the second type of proof of the positive value of the mark is difficult to play a role, it is therefore desirable to build a more complete official mark protection program to break through the existing dilemma. Therefore, a more comprehensive official mark protection program should be constructed to break through the existing dilemma. In the following article, we will propose a perfect program for the construction of the whole official mark system from the perspective of the national proprietary certification mark which belongs to the second category of certificative official signs.

5.1 Clarify the Significance of Official Mark Record Protection

Each national proprietary certification mark authority should be made aware of the protections available to its mark after the filing. The legal effect of the filing should be that the national intellectual property office may, on the basis of the filing, reject an application for registration of a trade mark received after the date of publication of the filing that is identical or similar to the official sign and that is sufficiently likely to cause confusion or misidentification among the public. If an application for registration of a trademark is filed after the publication date but has already been approved for registration, the Intellectual Property Office may take the initiative to revoke the registration, and the person who filed

the record of the official mark may also apply to the State Intellectual Property Office for revocation. Any unauthorised use by another person of a trade mark that is identical or similar to the official mark of the national exclusive certification mark and is sufficient to cause confusion or misidentification by the public shall be stopped and punished with reference to Article 52 of the Trademark Law.

In addition, at present, China's Draft for Opinion only official marks on the trademark registration of the objection, but there is no prior opposition to the official marks of the situation, this paper believes that, in order to avoid unnecessary disputes in the future, should be added to the official marks to be filed link: the State Intellectual Property Office shall be filed for the official marks for the record of the publicity, the publicity includes the composition of the marks (drawings, etc.), the mark's right holder, etc., the signs The publicity period shall be two months, and any person or unit may submit written objections to the State Intellectual Property Office (Note 27). If the objection is based on other reasons that do not meet the filing conditions, the State Intellectual Property Office will directly review the objections and put forward opinions on the handling of the objections. If the objector is not satisfied with the processing result, he may apply for administrative reconsideration to the relevant administrative department.

5.2 Actively Promoting the Formalization of the Measures for the Protection of Official Marks

Before the formal introduction of "Measures for the Protection of Official Marks", China's certification mark through the "Trademark Law", Article 3 and Article 10, respectively, in order to certify the identity of trademarks and certification of official marks to be protected, that is, at present, China's certification mark mainly exists in two kinds of protection mechanisms, but for the specific difference between the two protection mechanisms did not make specific and detailed provisions, which leads to the protection of the certification mark in China's current practice This leads to insufficient standardization and unification of the protection of certification marks in China's current practice, and there are many historical problems, such as the green food certification mark should be used as an official mark to reflect the public value of the society, but it has been registered as a trademark. In this regard, the Measures for the Protection of Official Marks can be issued, in which it is clear that the national proprietary certification mark belongs to the official mark, and define the criteria for classifying whether the certification mark is an official mark or not.

5.3 Formulation of the Implementation Program for the Official Mark Protection Project

The use and supervision of official signs should be carried out at the grassroots level, and neither the State Intellectual Property Office nor the authorities in charge of the issuance of signs are able to do it all. Therefore, in conjunction with the implementation programme of the official sign protection project, different protection priorities should be formulated, and pilot projects for the protection of different signs should be set up in regions with high usage rates, so as to gather the wisdom of localities across the country and seek the best solutions for the protection of official signs. It can also make use of big data, electronic monitoring and other emerging regulatory methods to improve the strength and efficiency of official sign protection.

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Notes

Note 1. Article 10 of the Trademark Law.

Article 2 of the Measures for the Protection of Official Signs (Draft for Comment).

Note 2. See “Certification and Accreditation Regulations of the People’s Republic of China (2020 Revision)” Chapter II Certification Body.

Note 3. See Certification and Certification Marks Management Measures (Revision 2022), Article 13

Note 4. Beijing Intellectual Property Court (2015) Jing Zhi Xing Chu Zi No. 5747 Administrative Judgment.

Note 5. Cited in Chen Chen. On the Protection of Trademark Right of Certification Marks. *Social Scientist*, 2011(11), 93.

Note 6. The development of standards for organic products in China has gone through a process from decentralization to standardization, before 2004, there was no unified standard for organic products in China, and each organization developed its own organic certification standards. With the development of China’s organic industry and the establishment of China National Certification and Accreditation Administration (CNCA), in 2004 CNCA issued and implemented a pilot standard - “Code for Organic Food Certification”, which was implemented on a nationwide pilot basis. After a year of exploration and practice, on the basis of “Organic Food Certification Code”, the commission officially released the implementation of the national standard for organic products “GB19630.1-4 - 2005”. So far, the standard has become the only standard for the production, operation and certification of organic products in China.

<https://baike.baidu.com/item/%E6%9C%89%E6%9C%BA%E9%A3%9F%E5%93%81%E8%AE%A4%E8%AF%81/5723651?fr=aladdin>

Note 7. Guo Shoukang, Chen Xia. Some Thoughts on the Case of “Harbin Beer”-Annotation on the Legal Nature and Protection of Unique Trade Names. *Politics and Law*, 2005, (5).

Note 8. Qi Aimin. General Introduction to Intellectual Property Law. Beijing: Peking University Press, 2010, p. 208.

Note 9. Chen Chen. On the Protection of Trademark Right of Certification Marks. *Social Scientist*, 2011(11), 94.

Note 10. See Measures for the Administration of the Marking of Pollution-Free Agricultural Products, Measures for the Administration of Organic Product Certification (Revised in 2022)

Note 11. See Measures for the Administration of Green Food Labeling (Revised in 2022).

Note 12. Davis D L, “Too much protection, too little gain: how official marks undermine the legitimacy

of intellectual property law”. Appeal Review of Current Law & Law Reform, Vol.14, 2009, pp.1

Note 13. Justin Hughes, “The philosophy of intellectual property”, Intellectual Property Law & Policy Journal, Vol. 37, 1998, pp. 91-123.

Note 14. Feng Xiaoqing, “Property Rights, Intellectual Property Rights and Their Benefit Value Orientation in the Theory of Property Rights--An Introduction to the Function of the Principle of Balance of Interests and Its Application”, Journal of Hunan University (Social Science Edition), No. 4, 2007.

Note 15. Article 14

Note 16. Article 17

Note 17. Article 21

Note 18. Article 59 of the Certification and Accreditation Regulations (Revised in 2020): order correction, impose a fine of 50,000 yuan or more than 200,000 yuan, and if there is any illegal income, confiscate the illegal income; if the circumstances are serious, order the suspension of business and rectification until the revocation of the approval documents, and publish the

Note 19. Article 31 of the Administrative Measures for the Certification of Organic Products (Revised in 2022)

Note 20. Article 5 of the Administrative Measures for the Certification of Organic Products (Revised in 2022)

Note 21. Article 24 of the Administrative Measures for the Certification of Organic Products (Revised in 2022)

Note 22. Articles 32 and 33 of the Administrative Measures for the Certification of Organic Products (Revised in 2022)

Note 23. Articles 39 and 38 of the Administrative Measures for the Certification of Organic Products (Revised in 2022)

Note 24. This paper believes that its nature should also be recognised as a national proprietary certification mark of the certification mark, but now China's geographical indications of the special sign of its own school, the nature of its difficult to do the final definition. Therefore, put aside for the time being, even if its essence for the national proprietary certification mark, the official website only one of its signs have a large number of records, while other signs are not involved in the situation, but also enough to prove the point of view argued in this paper.

Note 25. <https://www.cnipa.gov.cn/col/col2089/index.html?uid=669&pageNum=2> Last retrieved on 2023.8.29

Note 26. <https://mp.weixin.qq.com/s/qo305AkKHCEA7dTLJF3YYg>

Note 27. It should be noted that in order to protect the authority of the official sign from being infringed upon, the objector should submit the objection in real name, and anonymous objections will not be accepted.