

INDUSTRIAL CERTIFICATION MARKS IN INDIA

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Abstract

The Article draws attention of the readers toward Industrial Certificate, the Bureau of Indian Standards, Indian standards for international trade, Government legislative needs to initiate the establishment of different legislatures (AGMARK, ISI MARK, GI, BSES, ECOMARK SCHEME, BIS HALLMARK, FSSAI, ETC.) for issuance of such certificate as per the category of the commodity are discussed lucidly. The article further delves/investigate with penal provisions in case of falsification of industrial standard marks.

The article encourage the Indian stand on global standardisation of products, the manuscript comprehensively discuss the 1997-2002 EXIM Policy for setting parameters of cross border trade. Further the article indulges on how *Bureau of Indian Standards* as a parent member of *International Organisation for Standardisation(ISO)* and as a member of ISO Council participate in policy making. Establishment of Technical Information Service Centre in association with World trade Organisation- Technical Barriers to Trade(WTO-TBT) to revert to all national and international request about information on Indian standards, assessment rules and technical rules are coherently discussed.

We proclaim that this manuscript is original, has not been published before, and is not currently being considered for publication elsewhere.

Introduction

Imposition of standards encourages/promotes improvement in living quality and has a major stake to public safety and environment protection. The Indian Standards Institution is such bureau, which guarantees the quality and compatibility of product. Earlier Indian Standards Institution's ultimate role was to *set standards* but after the amendments brought, Indian Standards Institution was renamed to *Bureau of Indian Standards*, herein referred to as BIS

which later became a statutory body for formulating standards through *manufacturers and technical expertise*.

Till date, BIS has composed *18,000 standards* diversifying from basic standards to codes of practise and product specifications. With the object to *satisfy consumer* with regards to product quality. BIS has set various quality certifications failure/violation of which is punishable under the Bureau of Indian Standard Act, 2016.

BIS as a parent member of *International Organisation for Standardisation (ISO)* and as a member of ISO Council participate in policymaking. The movement for installation of *Quality Management System* is in conformity with *ISO 9000 series*. Similarly, *ISO 14000* series of standard was developed for the growing concern of *environment friendly industries*. *IS 15000 : 1998* is BIS's *internationally acknowledged codex standard*.

Implemented on Oct. 12, 2017 being a National Standard Body of India working under the aegis of *Ministry of Consumer Affairs, Food and Public Distribution, Government of India* it is responsible for proportioned development of activities and matters incidental to. With the current Union Government initiatives of *Digital India, Make in India* BIS has assisted in setting standards for technological changes, advancements, hallmarking of precious metal articles, compensating the consumers and more rigid/stringent provisions.

'*Indian Standards*' has been coined in *Section 2(17)* of Bureau of Indian Standards Act, 2016 which is referred as any tentative or provisional standards issued by Bureau in relation to goods and there specifications, process, system, article and includes any standard adopted by bureau in lieu with Sec. 2(10) viz. stopper, cask, bottle, vessel, box, crate or other container and include any standards published, established or recognised by BIS under Bureau of Indian Standards Act, 1986 and was in force immediately before commencement of this Act.

For instance, The Government of India issues Food Safety and Standard Authority of India (FSSAI) food *import clearance certificate* for all food articles. National Accreditation Board for testing and Calibration Laboratories (NABL) under Department of Science and Technology provides accreditation to *laboratories*.

Indian Standards for International Trade

To match up the pace of world economy and facilitate international trade. In the year 1962 the then Government of India to enhance the trade of export and import guided EXIM Policy. For harmonious trade relations it was the heat felt to have some standards set up for *upgradation of quality for export of goods*. The EXIM Policy of 1997-2002 entitled exporters to increase holding ISO 9000 series certification from 2% to 5%. The policy also encouraged Research and Development to upgrade the quality of product in accordance to the standards set by World Trade Organisation with the penultimate aim to *subdue the sub-standard import* from the markets of United Kingdom and United States of America.

Nonetheless, the Indian parameters have *not matched* international parameters, which has hampered and posed challenges to extensive exports to United States in some specific sectors.

The Ministry of Commerce has designed a Technical Information Service Centre in association with World trade Organisation- Technical Barriers to Trade(WTO-TBT) to revert to all national and international request about information on Indian standards, assessment rules and technical rules.

For acceptance of Indian standards with WTO-TBT Regulations. NABL is a member of multilateral organisation as International Laboratory Accreditation Co-operation (ILAC) and Asia Pacific Laboratory Accreditation Co-operation (APLAC).

Industrial Certification Mark

The Central Government has created some certification standard marks for every product to protect the consumer's right and monetary interest of residents.

AGMARK

The *Agricultural Procedure (Grading and Marking) Act, 1937* embodies Central Government with the power to create regulations, which determine the *grade, quality of the article* with main intention to provide rating of *products relating to agriculture*. The Act empowers to *confiscate* the agricultural products with respect to articles which are misgraded i.e. lack quality for obtaining grade¹ and penalised with an imprisonment of term not exceeding 6 months and fine of not more than Rs. 5,000/-. In case of counterfeiting the grade marks² the penalty exceeds

¹ The Agricultural Procedure (Grading and Marking) Act, 1937; §.4

² The Agricultural Procedure (Grading and Marking) Act, 1937; §.5

to imprisonment of 3 years and fine of Rs 5,000/-. Further, whoever sells any misgraded article³ shall mete out punishment with imprisonment of 6 months or fine of Rs. 5,000/-

In *Shri Balaji Trading Company vs. The State of Maharashtra* (Writ Petition No. 12863 of 2018). The Government of India submits policies, which enumerates tender of food items called by tenderers for Governmental Schemes related to agricultural products, having AGMARK approved by government for validating the quality of goods. If the tenderer does not abide by the specifications and FSSAI regulations, the tender of the tenderer could be rejected.

BIS HALLMARK

The fineness of a jewellery can only be declared if the Hallmarking Department of Bureau of Indian Standards hallmarks the jewellery. The term 'Hallmark' is referred under Section 2(17) of Bureau of Indian Standards Act, 2016 that defines a proportionate amount of valuables in that article.

The need for hallmark department was felt to curb the illicit trade of gold and silver and to evaluate whether that particular ornament is acceptable of international purity standards. The Assaying and Hallmarking Centre (AHC) is set up to be in accord with specifications of IS 15820:2009 for accurate determination of precious metal.

If AHC found incorrect hallmarking, the penalty for failure are:

1. **1st Failure:** (Contradiction in fineness observed) x (weight of gold/silver article) x (gold/silver rate of present day) x 2;
2. **2nd Failure (within 6 months of 1st failure):** (Contradiction in fineness observed) x (weight of gold/silver article) x (gold/silver rate of present day) x 5;
3. **3rd Failure (within 12 months of 2nd failure):** (Contradiction in fineness observed) x (weight of gold/silver article) x (gold/silver rate of present day) x 10.

ECOMARK SCHEME

The Environment Protection Act, 1948 empowers Government of India to implement measures and choose those product which considerably *reduces the harm to environment* after usage and

³ The Agricultural Procedure (Grading and Marking) Act, 1937; §.5A

disposal are graded as environmental friendly products. Such scheme, *ECOMARK* Scheme, was initiated by the Ministry of Environment and Forest on national basis inviting participation of common citizens *voluntarily*.

The scheme had specific objectives to *provide incentives* for importers and manufacturers, to encourage every citizen to purchase environment friendly products and to ultimately improve the environment.

The *ECOMARK* Scheme operates through *Steer Committee* wherein the products are categorised, strategies are promoted. The *Technical Scheme* governs awarding of *ECOMARK* and *BIS* is the authority which certifies the product. In total presently there are *16 categories* listed for *ECOMARK* labels. For instance, detergent, aerosols, propellants, food items, paper and many more. '*EZEE*', a godrej product was awarded first *ECOMARK*. '*Bharat Papers Limited, Bilaspur*' was rewarded *ECOMARK* for manufacturing 2 kinds of printing paper and writing paper.

The *ECOMARK* Scheme is a non-starter. India has seen some factors for its uncertainty. *ECOMARK* is a self-financing program and adds up to the burden for manufacturers for application, licensing fees, cost of renewal⁴. Secondly, only that product can apply for *ECOMARK*, which adhere to *BIS*'s grading standards. Lastly, the lack of awareness about the scheme on the website about certifying agency is another obstacle.

ISI MARKS

Issued by Bureau of Indian Standards referred as 'standard mark' in Bureau of Indian Standards Act, 1986 is a mandatory and voluntary standard mark. Established to create uniformity in industrial production and growth effective from 1955, which also ensure safety and quality of industrial goods, viz. cement, stove, electrical appliance, clinical thermometer and many more.

The manufacturer who is fully contented about his product can apply for certification of product. Either the manufacturer can provide for reports to *BIS* after getting the commodity tested from *BIS* certified laboratory or the manufacturer can directly submit an application to nearest *BIS* office.

⁴ A P Singh, N S Rama, U P Waghe, *Ecomark Scheme In India*, International Journal of Pharma Medicine and Biological Sciences(October 2012.), www.ijpmbs.com/uploadfile/2015/0412/20150412030122401.pdf.

In total BIS has issued 19000 standards for 16 headings ranging from packaged water to electronics and windshield wipers of automobiles. Certification Advisory Committee based on recommendation of experts and NGO's formulates the standards.

To reduce the efflux of complaints on unscrupulous manufacturers using ISI marks which are of criminal nature contained under Code of Criminal Procedure, 1973 (imprisonment and fine in accordance with Section 33 of Bureau of Indian Standards Act, 2016) and using ISI marks not in conformity with Indian standards, hefty penalty and enforcement raids are conducted by BIS⁵.

In, *D. Thillairaj vs. Bureau of Indian Standards* (CrI. R. C No. 106 of 2015 and M. P. No. 1 of 105) the complainant contended that the accused was carrying manufacturing activity of steel bar without having a valid ISI monogram license further the ISI mark was printed and sticker on the container under the name 'SABARI'. The accused was booked under Sections 11,12,14,15 and as per Section 33 of Bureau of Indian Standard Act,1986 liable for penalty of Rs. 15,000/- and simple imprisonment of 1 month.

BHARAT STAGE EMISSION STANDARDS (BSES)

To regulate the air pollution and to curb down the ill effects from air pollution mostly *respiratory and cardiovascular diseases*. The Government of India through BSES guided standards for internal combustion engines and spark ignition engines since 2000's.

On the basis of European Regulations, The *Central Pollution Board* under Environment and Forest Ministry rolled out Bharat Stage norms. The *Ministry of Petroleum* in accordance with oil marketing companies were made to decide to bring BS-VI grade fuel. Indian Government notified norms to adopt BS-VI by 2020. The apex court judgment disarray the sale, registration of all motor vehicles which do not confront with the standards of BS-VI from April 1, 2020. The BS-VI norm carries out better crash test norms, more airbags and anti-lock braking system.

Highest Court in *M.C. Mehta v. Union of India & ORS* passed an order debarring complete sale of 2 wheelers, 3 wheelers, 4 wheelers and commercial vehicle on and from April 1, 2017 by dealers and manufacturers due to increase in health hazards of men and women.

⁵ Nirav Pankaj Shah, Falsification of "ISI Mark" on Products-How to Effectively, [Lawyersclubindia.com](http://www.lawyersclubindia.com/mobile/articles/details.asp?mod_id=1419)(July17,2009)
http://www.lawyersclubindia.com/mobile/articles/details.asp?mod_id=1419.

The Motor Vehicle Act, 1988 further punishes the person for pollution control with Rs. 1,000/- for 1st offence and Rs. 2,000/- from subsequent offences.

GEOGRAPHICAL INDICATION (GI)

As per World Intellectual Property Rights (WIPO), "Geographical Indication is sign embedded on product that originate and possess quality of specific geographical area"

In, 1994 India became a member/signatory of Trade-Related Aspects of Intellectual Property Rights (TRIPS) and enacted. *The Geographical Indications of Goods (Registration and Protection) Act, 1999* with the objective to ensure that only legitimate users⁶ who reside inside the territory are allowed to use the popular *product name*. If the user make sell of goods on which untrue GI is applied be punishable under section 40 of Act with an imprisonment of 6 months to 3 years and fine of Rs. 50,000/- which may extend to rupees two lakhs.

Even though the Act does make GI obligatory but, it is suggested to do so. As per Section 20(1) of the Act, an unregistered GI is not entitled to *recover damages for infringement*. The term for GI is 10 years and can be renewed after expiry of same. Registration of GI impose restrictions/limitations for instance, it cannot be further pledged, mortgaged or transmitted.

Tirumala Tirupati Devasthanam applied for GI registration of famous '*Tirupati Laddu*'. The growing demand of laddu resulted an increases in sale of laddus by hawkers. various search raid were conducted by Devasthanam Security and Vigilance Department but all were futile. Later the GI tag of Tirumala Tirupati Devasthanam was granted on September, 2009 and violators were made subject to *punishment and penalty*.

FOOD SAFETY AND STANDARD AUTHORITY OF INDIA (FSSAI)

A food edible and acceptable for human consumption according to Section 2(q) of Food Safety and Standard Act, 2006 is termed as '*food safety*'

With the change in fooding habit of public development of technology and multifarious food department. The Indian Government decided to enact a new law, Food Safety and Standard Act, 2006 to consolidate all previous food relating laws w.e.f 2011 and established Food Safety

⁶ Siddharth Dalmia, India: Geographical Indication Law in India- Everything You Must Know, Vaish Associates Advocates (Dec.14,2017), <http://www.mondaq.com/india/x/655394/Trademark/Geographical+Indications+Law+In+India+Everything+Yo+u+Must+Know>.

and Standard Authority of India with the objective to prescribe standards which rely on scientific measures and regulate production, storage, stocking, distribution, sale of food for human consumption. On August 5, 2011 the Acts, Rules, Regulations came into force replacing The Prevention of Food Adulteration Act, 1954; Essential Commodities Act, 1955 and many more.

To oversee proper implementation of Act it provides a host of penalties for offences under Act.

Offence	Penalty
Selling food not of demanded nature	Not exceeding fine of upto Rs.5,00,000/-
Sub-standard Food	fine upto Rs.5,00,000/-
Misbranded Food	fine upto Rs.3,00,000/-
Misleading Advertisement	fine upto Rs. 10,00,000/-
Food containing extraneous matter	Fine upto Rs. 1,00,000/-
Running business without license	6 months imprisonment and fine upto Rs. 5,00,000/-
Failure to comply with directions of Food Safety Officer.	Fine upto Rs. 2,00,000/-
Obstructing food safety officer	3 months imprisonment and fine upto Rs. 1,00,000/-
Processing/manufacture food under an unhygienic condition	Fine upto Rs. 1,00,000/-
Processing Adulterant	Fine upto Rs.2,00,000/- if adulterant not injurious to health. Fine upto Rs.10,00,000/- if adulterant injurious to health.

Unsafe Food	<p>Not injurious- 6 months of imprisonment and fine upto Rs.1,00,000/-</p> <p>Non grievous injury- 1year of imprisonment and fine upto Rs. 3,00,000/-</p> <p>Grievous injury- 6year of imprisonment and fine upto Rs. 5,00,000/-</p> <p>Results in Death- 7years of imprisonment which may extend to life imprisonment and fine not less than Rs. 10,00,000/-</p>
False Information	3 months imprisonment and fine upto Rs. 2,00,000/-
Interfering with seized item	6 months imprisonment and fine upto Rs. 2,00,000/-

OTHER CERTIFICATION MARKS

Any food packaged and sold in India is required to be mandatory labelled. The red Circle indicates *non-vegetarian mark* and green circle signifies *vegetarian mark*. To assure the textile is 100% silk, wool and handloom the Union Government has issued *silk mark, wool mark and handloom mark* respectively to collectively identify the product. The *Recycling and Hologram mark* internationally depicts the reusability and authentication of product. To provide electrical appliance that consume less electricity the government initiated star rating label commonly called *BEE Label* to reduce economic bunch on citizens.

Conclusion

The Union Government provides plethora of industrial certification and standards to look after the economic interest of end users and to protect the consumers' right. The procedure of setting standards keep a check on the quality, specifications of goods and is helpful for trade of the

country. The increase in checkpoints helps to keep vigilance on the production of goods and prevent them from black market hoarding, misapplication and to establish the authenticity of product.

