



## Trellis Legal, LLC

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### Understanding Certification Marks

***DISCLAIMER: This outline is a general guide. Be sure to contact an attorney if you have questions or specific issues that need to be addressed.***

Consumers come to rely on specific food product certifications as an indication of product quality and standards. Producers/farmers are able to use the trust associated with specific certification marks for growing brand loyalty and as marketing tools to indicate heightened product standards, whether that's quality, safety, or from an ethical/environmental standpoint. This brief guide explains what a certification mark is and how you might better understand them, register them (if you have a certification business), and use them on your products as a producer! .

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A certification mark is a type of trademark used by authorized producers of a particular good or service that indicates that the good or service meets certain standards. The purpose of certification marks is simply to certify that the goods or services meet the set standards.

Below are examples of certification marks:

#### PROUDLY WISCONSIN



What people may not know though-is that certification images can be trademarked! The process to secure registration for a certification mark is similar to [a standard trademark](#), except that applicants must submit a certification statement and a copy of certification standards. For example, the [certification statement](#) for PROUDLY WISCONSIN reads:

The certification mark, as used or intended to be used by persons authorized by the certifier, certifies or is intended to certify that the goods/services provided have originated in the State of Wisconsin and have met the quality and ingredient standards as established by the certifier.

The [certification standards](#) determine who is authorized to use the certification mark. These standards must cover the full scope of the goods or services identified in the application. The standards may also establish how, when, and where the certification mark can be used on product packaging, websites, social media, and promotional materials. Standards can be created by the applicant or another party such as a government agency or a private research organization.

### **The Purpose of Certification Marks**

Understanding that certification marks establish a standard for the goods or services under the mark, the mark can communicate a certain quality, characteristic, or process to consumers. The United States Department of Agriculture (“USDA”) owns a registration for the USDA ORGANIC emblem in connection with providing organically grown foods as well as foods and products that contain organic ingredients. This means that any goods that have the USDA ORGANIC emblem are required to meet the certification standards set by the USDA and the National Organic Program. Only producers that actually meet these standards, and have permission from the certifying entity (business or government) can put these labels on their products.

Owning a registration for a certification mark means that the owner can enforce trademark rights against unauthorized users-those that do not meet the standards and/or do not have permission from the certifying entity. Enforcement efforts could take the form of sending a cease-and-desist letter to anyone using the certification mark (or an imitation) without prior authorization. Others may also face civil and financial penalties for unauthorized use. These enforcement efforts are especially important for certification marks because they can communicate to consumers that the goods or services have met established standards, which in turn builds consumer trust. Using a mark without meeting the certification standards is not only an infringement of trademark rights but can also be deceptive or harmful to consumers. Take the CERTIFIED GLUTEN-FREE logo for example. This mark tells consumers with celiac disease and other gluten sensitivities that CERTIFIED GLUTEN-FREE products are safe for their consumption. The safety and well-being of consumers is as much a business and legal consideration as it is an ethical one. Even where consumers simply have preferences (e.g., purchasing IDAHO potatoes), certification marks are important to maintaining consumer recognition, trust, and brand loyalty. Overall consumer satisfaction is a valuable business asset that certification marks can be helpful in protecting and growing.

### **Certification Marks, Labeling, and Product Claims**

It is important to note that the standards under a certification mark do not replace or come before standards set by relevant government agencies and industry organizations. Certification standards under trademark law might not always meet what is required under laws and regulations. When it comes to advertising and product labeling, making claims about the quality, characteristic, or manufacturing process carries business and legal risks if the claims are not true or misleading to consumers. Both the Food and Drug Administration (“FDA”) and the USDA have strict requirements about what claims can be made about the products you are

selling. For example, the USDA requires that products be appropriately labeled based on the processing method (e.g., “smoked” or “ground”), include the name of the manufacturer, and list major food allergens among other agency requirements. Making environmental claims about your processes or products (e.g., labeling a product as “environmentally friendly”) must also meet strict requirements under the federal “Green Guides.” See <https://www.ftc.gov/news-events/topics/truth-advertising/green-guides>. Mislabeling a product as meeting these established standards or being endorsed by governing agencies is a violation of these rules that can carry financial penalties.

## **Certification Marks Are for Everyone**

While certification marks are often used by industry leading organizations and federal agencies, anyone can obtain a registration for a certification mark. This is provided that there is a mark being used in commerce and in connection with set standards and criteria. Not every certification mark has nationwide reach, but that does not mean that they are not protectable. Some certification marks may be regional or only apply to a niche area of business. If you are using a certification mark or have plans to develop one, please contact us. We would be happy to discuss the steps toward establishing use and securing registration.

## **Key Takeaways**

Businesses that have certification standards under a particular mark or logo can get protection under trademark law. Only products and/or services that meet these requirements can use the certification mark, which protects the integrity of the business offerings as well as the overall brand. Consider whether you are providing a product or service under specific standards and whether a certification mark is right for your business.