

# Collective and Certification Marks

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# Trademark Basics

- 15 US Code § 1127
  - The term “trademark” includes any word, name, symbol, or device, or any combination thereof ... to identify and distinguish his or her goods, including a unique product, from those manufactured or sold by others and to indicate the source of the goods
- EU Trademark Directive (2015/2436)
  - Any signs capable of distinguishing the goods or services of one undertaking from those of other undertakings ...

# What does a trademark do?

- A protected means of valuable communication
- Identify one seller's goods or services from another's
- Signify that all goods or services bearing the same mark come from or are controlled by the same source
- Signify that all goods or services bearing the trademark are of an equal level of 'quality' or contain the same desired attributes
- A prime instrument in advertising and marketing
- A symbol of goodwill built up by an entity

# Trademark Species

- Basic Types of Trademarks (or trademark like protections)
  - Trademarks / Service Marks
  - Collective Marks
  - Certification Marks
  - Geographic Identifiers

# Certification Marks

- owned by one party who certifies the goods or services of others when those goods or services meet certain standards.

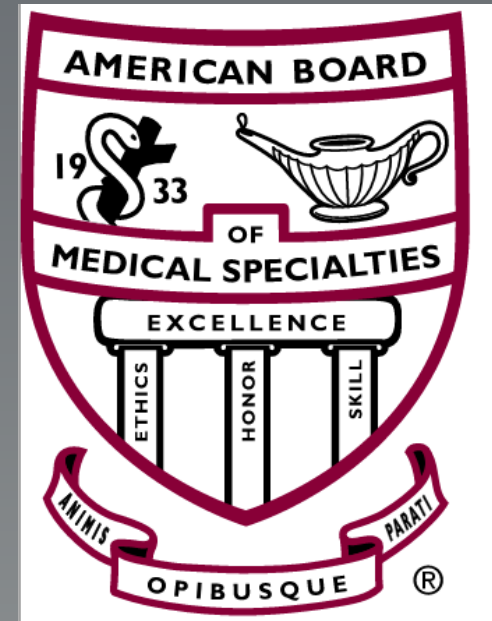
# Certification Examples



# Collective Marks

- owned by an entity which allows its members to use the mark to indicate membership in the entity.

# Collective Mark Example



American Board of Medical Specialties -  
US Reg. No. 1018322



# Certification Marks, and Collective Marks

- Certification Marks
  - Protect the '*how*'
- Collective Marks
  - Protect the '*by whom*'

# Certification and Collectives

- Certification marks concern themselves with the end result. This end result is controlled by the standard by which it is judged.
  - Necessity for a clear and objective standard
  - Subjective elements are difficult to incorporate into an objective standard - 'quality', 'sustainability'. They must be translated into objective elements.
- Collective marks concern themselves with the creator of goods or provider of services. It is through membership in a collective that the creator or provider is controlled
  - Do not necessarily guarantee a certain end result.
  - Subjective elements can more easily be addressed through membership requirements
  - There must be a definable collective

# Subjective v Objective

- Aspirational terms such as 'quality' and 'sustainability' are subject to personal and societal interpretation
  - Ask, 'what do these terms mean to the collective, people, or mark holder?'
- Too much subjectivity can lead to politicization of protection
- Too much objectivity can lead to stifling of development

# Uses in Context

- Certification and Collective marks do not directly prevent inauthentic or non-genuine products or services
- They provide the information to the consumer necessary to make a decision
- Can be established to address very specific or very broad concerns
  - Traditional products generally or specifically, food, music, travel services and experiences, teaching and education
- They are not a solution in themselves and require support, maintenance, and oversight

# Uses in Context

- They can be free-standing, or within a more comprehensive system



# Alaska Silver Hand



- Established by the State of Alaska through statute - currently AS 45.65.010
- ‘An ***Alaskan Native person*** who creates or crafts an ***original article*** of authentic Alaska Native ***art*** in ***the state*** may obtain an identification seal ... to identify the article. The identification seal may be affixed only to ***original*** articles of authentic Alaska Native art ***created or crafted in the state.***

# Native Made in Montana



- System includes 'Made in Montana' and 'Grown in Montana' marks
- The 'Native Made' element of this system requires that mark users fulfill the requirements of the system and in addition be an enrolled member of tribe in Montana and resident in Montana

Conclusion