

Collective Marks: Possibilities and Problems in the United States and Latin America

Doris Estelle Long
Professor and Chair, Intellectual Policy,
Information Technology and Privacy Group
The John Marshall Law School, Chicago, USA
7long@jmls.edu

Despite a history that dates from at least the guilds of the Middle Ages, and an international existence codified in diverse international treaties,¹ collective marks provide a realistic potential to enhance the marketing of locally produced goods and services to the global marketplace. Although as discussed more fully below, precise definitions may vary under local laws, “collective marks” can generally be described as “strictly speaking ... marks which are used to indicate that the goods or services so identified have been produced, distributed or performed by members of a certain group of persons.”² This collective identity can provide significant competitive advantages where the members of the group are experts in the production of a particular good who can create and, more importantly, monitor specifications to assure a marketable quality for the goods (or services) provided under the collective mark.

In the era of “long tail” markets,³ where niche goods can be successfully produced and marketed on a global scale, collective marks are often over-looked in favor of their more well-known “relatives” – geographic indications,⁴ appellations of origin⁵ and

¹ See Paris Convention for the Protection of Industrial Property, Article 7bis (providing for the protection of “collective marks belonging to associations the existence of which is not contrary to the law of the country of origin, even if such associations do not possess an industrial or commercial establishment”); General Inter-American Convention for Trademark and Commercial Protection, Article 6 (providing for the protection of “collective marks and marks of associations, the existence of which is not contrary to the laws of the country of origin, even when such associations do not own a manufacturing, industrial, commercial or agricultural establishment”).

² AIPPI's ANNUAIRE 1994/II. Resolution on Question 118, pages 409-410.

³ See, e.g., Chris Anderson, *THE LONG TAIL: WHY THE FUTURE OF BUSINESS IS SELLING LESS OF MORE* (Hyperion Press 2006).

⁴ I am using the term “geographic indications” in its broad term as defined under Article 22 of TRIPS as “indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.”

⁵ I am using the term “appellations of origin” in its broad term as defined under Article 2 of the Lisbon Agreement for the Protection of Appellations of Origin and Their International Registration as “the geographical name of a country, region, or locality, which serves to designate a product originating therein, the quality and characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors.” These same basic features are contained in the definition of a “designation of origin” under the EC Regulation on the Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs and are intended to be broadly included within the term for purposes of this paper. See Regulation 510/2006 at Article 2 (defining a “designation of origin” as the name of a region, a specific place or, in exceptional cases, a country, used to describe an agricultural product or a foodstuff originating in that region, specific place or country, and the quality or characteristics of which are essentially or exclusively due to a particular geographical environment with its

certification marks.⁶ Yet collective marks may provide special economic benefits that may not be available under these other “geographically based” designators. Unfortunately, they also provide special problems.

Collective Marks: A Variable Definition

Presently most countries in Latin America⁷ and the United States permit the registration and subsequent protection of “collective marks” (“*marcas colectivas*”). Even Chile, which does not appear to have a particular section directed to the protection of collective marks per se, under its domestic trademark laws expressly permits the registration of marks “to be used collectively.”⁸ Yet despite nearly universal acceptance of the concept of “collective marks” in the relevant territory,⁹ the statutory definitions for qualifying mark differs at least facially. These distinctions are based on the primary focus of collective entities by which the mark is defined and are divisible into two categories: those definitions that focus on the collective nature of the *owner* of the mark and those that focus on the collective nature of the *users* of the mark.

In the United States, collective marks are defined as “a trademark or service mark used by the members of a cooperative, an association, or other collective group or organization... and includes marks indicating membership in a union, an association, or other organization.”¹⁰ The Andean Community (presently comprised of Bolivia, Columbia, Ecuador and Peru) similarly focuses on the collective nature of the holder of a mark, defining such mark as “any sign that serves to distinguish the origin or any other characteristic common to goods or services from different businesses that use the sign under the owner’s control.”¹¹ The special collective nature of the mark is underscored in Article 181 which limits ownership of such collective marks to “legally established associations of producers, manufacturers, service providers, organizations, or groups of

inherent natural and human factors, and the production, processing and preparation of which take place in the defined geographical area”).

⁶ I am using the term “certification mark” in its broad sense to refer to a trademark which is used to certify another’s goods or services as having a particular quality or characteristic. See generally 15 USC 1127 (defining a certification mark as one used “to certify regional or other origin, materials, mode of manufacture, quality, accuracy, or other characteristics of such person’s goods or services or that the work or labor on the goods or services was performed by members of a union or other organization”.) Such certification marks may serve to authenticate locally sourced goods or services but do not have to be so limited.

⁷ For purposes of this paper, I have defined the countries of “Latin America” as comprising those countries in the Western Hemisphere from Mexico southward, and in the Caribbean, whose principle language is Spanish. Because of its size and integration with the rest of South America, I have also included Brazil. The analysis of the domestic provisions governing the protection of collective marks are based on publicly available versions of present trademark laws in the respective countries, with a primary focus on those documents filed with the World Intellectual Property Organization and available through on-line depositories.

⁸ Trademark Law of Chile, Art. 19bis.

⁹ Those countries which do not presently have laws specifically regarding the protection of collective marks include Argentina, Chile, and Uruguay.

¹⁰ 15 USC §1127.

¹¹ Decision 486, Article 180.

persons” who seek to use a collective trademark “in order to distinguish in the market the goods or services of their members.”¹²

Panama also emphasizes the collective nature of the association allowed to use a collective mark. Domestic law defines the categories of potential associations broadly, including “every association of producers, manufacturers, businesses or providers of services, or any other non-profit association” seeking to use a collective mark “to differentiate members goods and services from those of non-members.”¹³

Brazil similarly emphasizes the collective nature of mark ownership by specifically providing under Article 153 of its domestic trademark law that registration for a collective mark shall be forfeited “if the collective mark is not used by more than one authorized person.”¹⁴ It further specifically prohibits renunciation of the registration of a collective mark unless such renunciation is “in accordance with the social contract or statutes of the entity itself, or in accordance with the regulations for utilization.”¹⁵

Costa Rican trademark law emphasizes the collective nature of the *users* of a “marca colectiva,” defining such mark under Article 2 of its domestic trademark law as a “sign or combination of signs whose title is held by a collective entity that aggregates people authorized to use the mark.”¹⁶ The laws of the Dominican Republic reflect a similar focus on the collective nature of users in describing the scope of a collective mark, defining a collective trademark as one “whose holder is a collective entity which groups together persons authorized to use the trademark.”¹⁷

Despite facial dissimilarities, these particular variations do not appear to significantly reduce the availability of collective marks for qualifying organizations. Yet there are other countries whose definition of collectivity expressly limits the nature of the use of the mark. These limitations may impact the utility of a collective mark as a tool for the creation of local business clusters designed to promote local industry, even in the absence of unique qualities arising from geographic or environmental factors. Mexico, for example, limits collective members to “legally incorporated associations of *producers, manufacturers, merchants or providers of services*” who use the mark “to distinguish in the market the products or services of their members from products or services of non members.”¹⁸ Facially, the list of entities seems in accordance with the listing of collective mark holders in other countries. It appears strongly similar to the listing of the types of organizations which may qualify for a collective mark under regulations governing Community Trademarks in the European Union. Article 64 of EU Regulation 40/94 defines potential holders of a Community collective mark as “associations of manufacturers, producers, suppliers of services, or traders which, under the terms of the law governing them, have the capacity in their own name to have rights and obligations

¹² Id. at Article 181.

¹³ Trademark Law of Panama, Article 113.

¹⁴ Trademark Law of Brazil, Article 153.

¹⁵ Id. at Article 152.

¹⁶ Trademark Law of Costa Rica, Article 2.

¹⁷ Trademark Law of Dominican Republic, Article 70(b).

¹⁸ Trademark Law of Mexico, Article 96 (emphasis added).

of all kinds, to make contracts or accomplish other legal acts and to sue and be sued, as well as legal persons governed by public law.”¹⁹ While the utility of a collective mark may most often be fully realized by the producers, sellers or providers of locally sourced goods, and services, other countries, including the United States do not provide similar limits on collective marks, at least on their face.

Beyond the facial differences in collectivity established under Mexican trademark law, for example, and the more broadly defined collectivity of the United States and other countries, there are actually two kinds of collective marks which can be protected under domestic collective mark regimes. As explained in a case arising under US trademark law, *Aloe Creme Laboratories, Inc. v. American Society for Aesthetic Plastic Surgery, Inc.*:

A collective trademark or collective service mark is a mark adopted by a “collective” (i.e., an association, union, cooperative, fraternal organization, or other organized collective group) for use only by its members, who in turn use the mark to identify their goods or services and distinguish them from those of nonmembers. The “collective” itself neither sells goods nor performs services under a collective trademark or collective service mark, but the collective may advertise or otherwise promote the goods or services sold or rendered by its members under the mark. *A collective membership mark*, by contrast, is a mark adopted for the purpose of indicating membership in an organized collective group, such as a union, an association, or other organization. Neither the collective nor its members uses the collective membership mark to identify and distinguish goods or services; rather, the sole function of such a mark is to indicate that the person displaying the mark is a member of the organized collective group.²⁰

Despite the distinctive nature of the types of uses covered by the collective mark and the collective membership mark, both can serve a fundamental role in promoting the goods and services provided by members. Whether displayed on shop windows (to denote the owner is a member of a collective) or on the goods to indicate their production by members of the collective, both types of collective marks provide unique opportunities to promote and protect locally sourced goods and services. Consequently, for purposes of this paper, I will use the term “collective marks” to refer generally to both kinds of marks.

The Benefits of Collective Marks

The benefits of collective marks exist largely in their ability to allow the costs of marketing a new good or service, or at least popularizing that good or service, to be spread over a larger number of interested parties. Although legally, collective marks, geographic indications and the like may be protectable upon use, in reality, goods and services bearing such indications are only successfully marketed if the consuming public

¹⁹ EC Regulation on Community Trademark, 40/94, Article 64(1).

²⁰ 192 USPQ 170, 173 (TTAB 1976).

is made aware of the special value which goods bearing such indications provide. For example, while “champagne” maybe a protectable geographic indication for sparkling wine from the Champagne region of France, the term itself has gained a certain cachet among consumers in the United States as a result of a *concerted advertising campaign* designed to encourage them to choose French sparkling wine over local equivalents.

In the real world marketplace, simply attaching a geographic indication (or a collective mark) does not generate sales. Informing consumers of the desirable nature of the good bearing such indication does. The costs of advertising, however, can be prohibitive for smaller or locally based industries. Collective marks, or more specifically the organizations which own such marks, provide the immediate potential for both the creation of necessary advertisements to promote the new collective “brand” and the spreading of costs among the members of the collective organization who will be the direct beneficiaries of such advertising. They also provide a critical basis for the development of investment clusters which can be used to organize and promote local handicraft and tourist industries. For example, the village of Cumbe in Peru sought to promote the Chirimoya fruit raised by the villagers through the registration of the collective mark “Chirimoya Cumbe.” According to a report on the issue by Luis Alonso Garcia Muñoz-Najar, the village chose a collective mark as opposed to an appellation of origin because the village itself wanted to be the owner of the mark and in control of its use, including the rules governing the application of the mark to the Chirimoya.²¹

While the definition of a collective mark may vary among those countries which recognize this type of mark, at the heart of a collective mark is the collective organization that is the owner of the mark. Quite simply, a collective mark, by its very definition, cannot exist without such an organization. The need for such a collective organization makes the ownership of a collective mark essentially a four step process. First, the organization to own the mark must be created. Since this organization has to be an association, by-laws and other legal documents are a necessary condition precedent to its existence. Second, once the organization is established, a collective mark must be selected. While such mark may be as simple as the name of the organization itself, it may also contain images or symbols designed to enhance its attractiveness to potential consumers. Third, advertising to enhance the use of the collective mark as an authenticator of desirable goods or services is required. Finally, registrations to protect the new collective mark to be featured prominently in such advertisements must be filed in appropriate countries. Despite these initial start-up costs, collective marks can serve as a critical component in marketing handicrafts, tourism and other local goods and services.

The Unique Collectivity of “Collective Marks”

There is no question that geographic indications, appellations of origin and certification marks can serve the role of recognizable consumer “brands” to support geographically sourced goods and services. Similar to collective marks, these indications

²¹ See Chirimoya Cumbe - The Value of a Name, http://www.wipo.int/sme/en/case_studies/chirimoya.htm.

can authenticate geographically sourced goods and services and can be used by all qualifying producers/sellers/providers of such goods and services. Similarly, many holders of appellations of origin have the potential ability to spread the costs of brand advertising over potential users of the mark. Yet such “licensing” fees may run counter to local laws governing the use of such geographic indications. By contrast, collective marks, by their very nature, are held by collective entities composed of members who can be charged membership fees, portions of which can be targeted for brand marketing. Moreover, such collective organizations can serve a vital commercial development role by helping to bring together clusters of related businesses who can use their expertise to create a chain of value with the potential to enhance the market placement of their goods and services. By bringing together experts in a given field, the collective organization has the potential to organize competitive groups that can craft valuable production standards for the associated goods or services provided by their membership. More importantly, such a collection of experts potentially has the ability to assure that any such rules are enforced so that branded goods and services retain their market value. Absent specific legal prohibitions against such activities under domestic association laws, collective organizations provide a ready source of both expertise and funding to create and promote new brand identities.

Theoretically geographic indications provide consumers information about the geographic source of the associated goods, and, consequently, the unique qualities or characteristics of such goods. For example, the term “tequila” tells consumers that the clear liquid that they are drinking came from the tequila region of Mexico and has a slightly smoky taste. By contrast, a collective mark may not necessarily be a “brand” mark per se, although most countries, including the United States, allow collective marks to be used by members on goods. At its heart, a collective mark is a mark of association. It authenticates the associated goods because they are affiliated with a collective entity which itself certifies (through membership) the quality or characteristic of the goods. Thus, a collective mark assures consumers of the quality of the good *because the collective entity authenticates the goods through its membership qualifications and use regulations for control of its mark.*

Like any trademark, the quality represented by the collective mark must be protected. But beyond the traditional need to control the distinctiveness of the mark, is the critical need to assure that use of the mark is limited to members of the collective, who use the mark in the manner necessary to retain its authenticating nature. Most countries that recognize collective marks require the filing of by-laws and other documentation to describe the members of the association and how the mark will be used by those members. Specifically, trademark office require evidence of how the collective entity will control its members’ use. Thus, according to US Trademark Office regulations an application for registration of a collective mark “must specify the class of persons intended to be entitled to use the mark, indicating what their relationship to the applicant will be, and the nature of the control the applicant intends to exercise over the use of the mark.”²² The most common method for specifying the manner of control to be exercised

²² US Trademark Manual of Examining Procedure (TMPE) §1303.02(c). *See also* 37 C.F.R. §2.44(b).

over a collective mark is through appropriate language in the association's bylaws or similar written provisions.²³

Panama similarly requires applicants to file rules of use for the mark, including the conditions for membership in the association and the basis on which members can be denied use of the mark.²⁴ The Dominican Republic and Guatemala further require that filed regulations governing the use of the mark include sanctions for uses which are contrary to the association's rules.²⁵ The Andean Community also requires that a membership list be provided with the application.²⁶ Many countries also impose a continuing obligation to advise the Trademark Office of any changes to membership or trademark use rules. Thus, meeting the registration obligations of various countries to protect a selected collective mark requires careful pre-planning. Where the collective mark is used in connection with the promotion of locally sourced or tourist goods and services, such pre-planning necessarily requires careful crafting of specifications for qualifying goods and services. Where the collective mark is designed to promote tourist goods and services, handicrafts or other geographically sourced goods, such special provisions should include detailed specifications regarding the types of goods or services that must be provided for entities to become members. As anyone who has been engaged in crafting specifications required for geographic indications and certification marks can testify, such actions themselves require careful drafting to avoid foreseeable problems in over or under-inclusiveness.

Collective Marks versus Traditional Geographic Indications and Certification Marks

With the existence of other forms of "branding" for geographically sourced goods and services, including geographic indications and certification marks, creating another category of trademark protection may seem redundant. By their nature such marks require a careful combination of membership rules for the collective organization – to assure that only companies who provide goods and services of the requisite quality and characteristics are members who can display the collective mark – and trademark control to avoid the loss of distinctiveness of the mark. In some countries such loss, may include the inadvertent conversion of the collective mark into a certification mark with the potential subsequent loss of economic support for the collective organization. As noted above, collective organizations are composed of members who can be required to pay fees to help support the advertising efforts of the organization to create a recognizable "brand" for members' goods. Certification marks by contrast may not provide such an economic base; neither may geographic indications or appellations of origins.²⁷

Furthermore, collective marks are not limited to the narrow "uniqueness" that may be imposed on certification marks or geographic indications. Briefly, appellations of origin are limited to certifying qualities or characteristics that arise from environmental factors

²³ Id.

²⁴ Trademark Law of Panama, Article 114.

²⁵ Trademark Law of Dominican Republic, Article 99(2); Trademark Law of Guatemala, Article 49.

²⁶ Decision 486, Article 182.

²⁷ While entities that test goods to determine if they qualify for certification may charge for the reasonable costs of such tests, it is not clear if they can charge additional fees beyond such testing costs since these costs might be considered an abuse of the certification authority.

due to the geographic source of the good.²⁸ Geographic indications are similarly restricted although they may be applied to goods who have achieved a certain reputation based on geographic location without the need for any particular environmentally-based quality or characteristic.²⁹ Similarly, certification marks are generally required to certify some aspect of the good that is quantifiable. For example, in the United States, certification marks must be used “to certify regional or other origin, material, mode of manufacture, quality, accuracy, or other characteristics of such person’s goods or services or that the work or labor on the goods or services was performed by members of a union or other organization.”³⁰

Collective marks by contrast can create a brand identity from the simple banding together or clustering of producers and sellers who have decided to create a market based on their collectivity alone. Subject to the limits of unfair competition and related laws, a collective organization can create a market demand for a product even if the only unique aspect of that product is that it was produced by a member of the organization. It is thus the only one of the geographically-based designators that can be used to create a market demand based on a reputation for quality, potentially without the need for any particular unique geographically based characteristic. In essence a collective mark can be used to gain an economic and market advantage for the collective based on its ability to signify that goods bearing such marks are *of a particular quality because they are produced by the collective according to its regulations*, even if such quality is not otherwise locally derived.

Collective Marks in the United States and Latin America

Despite their utility in promoting local goods and services, including in the critical handicraft and tourist industries, the protection of collective marks is inconsistent through-out the United States and Latin America. While countries such as the United States, Mexico, Brazil, and the Andean Community protect collective marks (“*las marcas colectivas*”),³¹ other countries, such as Argentina and Uruguay appear to provide no such special protection. This lack of protection may be the result of a perceived lack of need for such marks in light of similar protection regimes under certification marks and geographic indications (appellations of origin). It may also result from limitations under association and other laws in the ability of a legal person to engage in the activities necessary to create and monitor a collective mark.

Even in those countries which provide protection for collective marks, there is a great deal of variety in the types and limitations of collective marks allowed. In the United States, collective marks may be owned by any collective organization. The focus in the examination for registration focuses largely on the ability of the mark holder to control the use of the mark among its membership. While marks may be used for similar

²⁸ See notes 4&5.

²⁹ See generally TRIPS, Article 22 (definition set forth in note 4 of this paper).

³⁰ United States Trademark Law, 15 USC § 1127.

³¹ For purposes of this analysis, I have limited my discussions to countries which specifically protect “collective marks” or “*marcas colectivas*.” Countries may provide similar types of protection under other source indicators, such as “appellations of origin” but unless the relevant legislation specifically refers to “*marcas colectivas*,” it is not covered.

purposes to those of certification marks, or other geographically sourced identifiers, collective marks in the United States cannot be used per se as a certification mark. Since the purpose of the mark is primarily to identify the user as a member of a collective and only secondarily to authenticate delivered goods and services any attempt to create a certification mark per se, results in the loss of the collective mark. Consequently, the United States Trademark Office does not concern itself with the specifications regarding qualifying goods. It also does not assume any role in monitoring compliance with those specifications.

By contrast, the Dominican Republic, Guatemala, Mexico, the Andean Community and Panama (among others) specifically require, not merely the submission of by-laws and other organizational documents demonstrating the legal existence of the collective entity, but also the information regarding the common characteristics or qualities in common of the products or services that will carry the mark.

Crafting a Collective Mark for the Western Hemisphere

In considering the scope of protection and obligations required for collective organizations there are four key questions which each legislature must answer. These four questions underscore the differences between the various systems currently established under domestic law and provide guideposts for countries which are currently trying to create a workable collective mark, or perfect current practices.

1. Defining the Holder of the Mark

First, at the heart of collective mark protection is the issue of who the holder of the mark is. One of the reasons a collective mark can prove so useful, and yet so problematic, is that the nature of the mark itself requires it be held by a collective entity. An individual or corporation cannot generally hold the mark. If it does, such mark is generally not a collective mark. Consequently, the determination of the appropriate legal entity to hold the mark will depend strongly on laws that are not precisely governed by trademark law. To the contrary, laws regarding unions, associations and other collective entities may limit the availability of a collective mark by limiting the entities that can legally exist and hold trademark rights.

The question of the identity and composition of a collective mark is significant for another reason. Creating a successful collective mark for purposes of protecting, for example, locally produced goods, and enhancing their desirability in the marketplace, requires forethought; it requires the establishment of the appropriate collective organization to be able to hold the rights to the mark and ultimately to exercise control over the use of that mark to assure that the reputation of the goods provided are consistent. I would suggest the organization also has to have the ability, both legally and economically, to promote the branded goods or services the members will provide. Specifically, one of the values of a collective mark, as opposed to an appellation of origin or some other mark, is precisely the ability to create a viable brand while spreading the costs of such creation among interested members.

2. *The Critical Issue of Membership*

Second, and closely related to the question of collective ownership of the mark, is the critical issue of who gets to be a member of any such association. Or to put the issue more precisely, what are the membership limitations imposed by the association? If membership in the association truly helps enhance the sales of a good or service, then membership not only provides a powerful pro-competitive benefit, it also presents an equally powerful potential for anti-competitive practices. Collective marks pose the greatest threat of abuse; because membership obligations can be created that prevent competitors from becoming members and consequently enjoying the benefits the mark provides. Where the collective mark serves as a guarantor of quality or authenticity, similar to an appellation or origin or a certification mark, such abuse can have severe anti-competitive effects.

The filing of by-laws and other documents related to membership regulations theoretically allow trademark offices to review facial irregularities. Anti-competitive conduct, however, will most likely be apparent in the actual application of any such rules. Consequently, it is critical that third parties have the ability to challenge the validity of any collective mark based on anti-competitive practices in membership admissions. Whether such anti-competitive actions result in the forfeiture of the mark, or in an injunction against such illegal acts, is a difficult policy question. Brazilian trademark law imposes a five year moratorium on the use of a cancelled collective mark by a third party.³² This recognition of the powerful role collective marks can play in the psyche of the marketplace underscores the need to deal with abuses of such marks swiftly, but with sensitivity to the value of the mark to members' marketing efforts.

For countries who seek to tie collective marks more firmly to the promotion of geographically sourced goods and services, a further decision must be made as to the types of producers, sellers, etc who will be allowed to use the mark. An overly restrictive membership definition could prevent smaller enterprises from being included, with the subsequent failure to extend the benefits of collectivity to those who may be most in need of such support.

3. *Limits on Third Party Uses of the Collective Mark*

Third, the question of the conditions placed on the use of the mark is perhaps most critical in countries such as the United States which expressly reject the use of collective marks as certification marks per se. Prior to 1989, US law expressly forbid trademark owners from using collective marks. This rule has been eliminated but any use by the collective entity must be carefully monitored so that the authenticating role of the mark *for the goods and services of the members* is not harmed. The mark should represent the quality of the members' goods and services to the consumers. Any uses by the collective entity itself which confuse this critical message should be avoided as a practical matter.

³² Trademark Law of Brazil, Article 154.

While the anti-owner use rule for collective marks was eliminated under US law, it remains in effect for certification marks.³³ The owner of a certification mark by definition certifies other entities. It cannot use the mark itself or use it to certify its own goods. This restriction is largely designed to reduce anti-competitive uses of certification marks. Where a collective mark is being used as a certification mark, such as in the case of the geographic collective mark, a similar restriction should be considered for the same reasons.

4. *What to do about Use Regulations?*

Closely related to the critical question of authorized third party users of the collective mark is the issue regarding the creation and supervision of any specifications established for goods or services allowed to carry the mark. Like membership qualifications, use regulations can be established or applied in an anti-competitive fashion designed to exclude otherwise-qualified competitors from enjoying the benefits of the collective mark. The same issues with regard to the impact on the validity of the collective mark of abuse of use regulations requires the same delicate determinations with regard to the cancellation or forfeiture of such marks.

Finally, to the extent that collective marks are used as a type of certification mark, the same issue regarding the extent to which the Trademark Office or some other governmental body is required to monitor compliance with use conditions arises. The United States does not require such monitoring, even for certification marks. By contrast, many other countries require the establishment of oversight boards to monitor compliance with use regulations. Such boards and authenticating organizations can increase the cost of collective mark protection, but may also assure the viability of such marks to promote geographically sourced and tourist goods and services.

Conclusion

More than any other commercial symbol, collective marks can form the lodestone for new efforts to promote local goods and services in the global economy. Appropriately crafted, the collective organizations that hold such marks can be composed of clusters of experts who can create, promote and monitor brand identities for locally sourced handicrafts, tourist industries and the like. The United States and Latin America provide a variety of approaches to the use of the collective marks which should serve as guideposts in creating more effective domestic collective mark protection for today's long tail market. Carefully crafted collective marks regimes can form a critical part of national economic development plan.

³³ United States Trademark Law, 15 USC §1127 (defining a certification mark as one "used by a person other than its owner").