



Protection of State Emblems under Article 6ter of the Paris Convention for the Protection of Industrial Property of 1883

Article 6ter of the Paris Convention for the Protection of Industrial Property of 1883 (which is amended and revised time to time), was introduced into the convention by the Revision Conference of The Hague in 1925. The purpose of Article 6ter of the Paris Convention is to offer a degree of legal protection to armorial bearings, flags and other state emblems as well as official signs of States and hallmarks indicating control and warranty adopted by them who are party to the Paris Convention. This protection extends towards the registration or use of trademarks that are in whole or in part identical to such emblems, abbreviations, and names of International Intergovernmental organizations of which one or more countries are members with the exception of armorial bearing, flags and other state emblems, emblems, abbreviations, and names which are already the subject of International Agreements, in force intended to ensure their protection, but also trademarks that fall within a specific sphere of similarity, namely imitation “from a heraldic point of view”.

As per the Guidelines for the Interpretation of Article 6ter (1) (b) and (3) (b) any program or institution established by an international intergovernmental organization, and any convention constituting an international treaty may, under certain conditions, stand to benefit from the protection offered under Article 6ter.

In accordance with this provision, member countries of the Union are required to refuse or invalidate such trademark registrations and to prohibit by appropriate measures the use of such marks. The protection of State emblems falling under Article 6ter (1) (a) extends to any imitation “from a heraldic point of view”. The provision excludes State emblems from registration or use as trademarks or as elements of trademarks.



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A D V O C A T E S

In accordance with Article 6ter (3) (a), the countries of the Paris Union communicate reciprocally, through the intermediary of the International Bureau, the lists of emblems and signs for which protection is requested under Article 6ter (1). The same procedure applies in respect of international intergovernmental organizations under Article 6ter (3) (b). Thus, the International Bureau enables such communication by transmitting the relevant notifications to the members of the Union as well as to the Members of the WTO not party to the Paris Convention.




The purpose of this protection is the indication of control and warranty of certification that a State or an organization duly appointed by the State has checked the standards and quality of the goods under their banner. These marks exist in many States with respect to products such as butter, cheese, meat, electrical equipment, etc. In principle, official signs and hallmarks indicating control and warranty may also apply to services, for instance those relating to education, tourism, etc.

Country names and identities often function as brands which indicate the origin of the goods and services so advertised, as a result of which the country's name, flag, emblem or coat of arms can be said to be a signal to the public that there is a relationship between the nation and the products and services in respect of which it is being used. Not only does this become problematic for a nation, which may or may not have control over the goods being distributed using its identity and goodwill, it may also damage the reputation and brand value which a nation has very tediously built.

The spirit of this article is followed thoroughly in international circles. However, there are certain exceptions where few companies register trademarks that resemble or infringe upon member states. United States of America has on several occasions refused marks that seem to be replicating foreign flags, an example of which would be *In re Certa ProPainters, Ltd.*, 2008, where the Logo was refused registration because the applied-for mark “contains a simulation of a flag of a foreign nation, specifically Canada, and/or displays the official national insignia of Canada, namely the Canadian maple leaf.”

However, there are some registered trademarks resembling State emblems. These registrations can have been done due to negligence. Some examples of these type of marks are:



Sr. No.	Mark	Holder	Country it Resembles	Date of Application	Registration No.	Country	Status
1.		Roger Blue Jays Partnership	Canadian Logo (Maple Leaf)	06.20.2016	4981315	USA	Registered
2.		Roger Blue Jays Partnership	Canada Logo (Maple Leaf)	11.03.2000	2619938	USA	Registered
3.		Victorinox AG	Switzerland Flag	01.01.2017	709147	Switzerland	Registered

India is one of the few countries that seems severely against the practice of registering trademarks resembling State emblems protected under Article 6ter of Paris Convention, to the extent of having serious consequences for those who try to replicate the flag and/or national emblems onto commercial items. In addition to the prohibition under Article 6ter of the Paris Convention, India has codified specific legislations, which prohibit the use of flag and/or national emblems. These legislations are:



- ❖ *Emblems and Names (Prevention of Improper Use) Act, 1950*: This Act prevents the improper use of any emblem, seal, flag, insignia, coat-of-arms or pictorial representation and names, mentioned in the Schedule of the Act, for professional and commercial purposes.
- ❖ *Prevention of Insults to National Honor Act, 1971*: This Act prohibits the desecration of or insult to the country's national symbols, including the National Flag, The Constitution, and the National Anthem.
- ❖ *Trade Marks Act, 1999*: Section 9 of the Trade Marks Act, 1999 specifically prohibits trademark registration of any mark whose use is prohibited under the Emblems and Names (Prevention of Improper Use) Act, 1950
- ❖ Several *Central and State Government notifications* prohibiting the use of emblems, national symbols, national flag.

However, in a time of changing value and increased commercialization, it becomes essential to examine ones position and determine whether association of local brands and companies with the national flag would really harm the country, or would it have the country benefit from such association.

Globally, to get the benefits of trademark registration, many state official authorities got their logos registered as trademarks. Below are some examples of existing registered trademarks owned by official state authorities of different countries:

Sr. No.	Mark	Date of Application	Registration No.	Holder	Status	Country
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ADVOCATES

1.		December 30, 2009	77903018	U.S. Bureau of Industry and Security	Registered	USA
2.		January 31, 2008	77385034	International Trade Administration	Registered	USA
3.		December 3, 2010	85189981	U.S. Marine Corps	Registered	USA
4.		September 15, 2011	85423396	U.S. Department of Health and Human Services	Registered	USA



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ADVOCATES

5.		October 20, 2017	87654272	Department of Defense	Registered	USA
6.		January 27, 2017	87316409	Bureau of Economic Analysis	Registered	USA
7.		September 1, 2017	87593333	Texas Department of Agriculture	Registered	USA
8.		September 21, 2017	87617914	Department of Defense	Registered	USA
9.	UNITED STATES CENSUS BUREAU	May 23, 2017	87460240	U.S. Bureau of the Census	Registered	USA



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ADVOCATES

10.		September 25, 2009	UK000025 27209	Cabinet Office	Registered	UK
11.	 MINISTRY OF DEFENCE	February 25, 2010	UK000025 40062	The Secretary of State for Defence	Registered	UK
12.	 BRITISH TRANSPORT POLICE	September 01, 2014	UK000030 70614	British Transport Police	Registered	UK
13.	 ΜΑΚΕΔΟΝΙΚΟ ΠΡΑΚΤΟΡΕΙΟ ΕΙΔΗΣΕΩΝ MACEDONIAN PRESS AGENCY AGENCE MACEDOINE PRESSE	October 11, 1991	565105	Ministry of the Government General- Secretariat of Press and Information	Registered	Australia
14.	 AGS	June 16, 2003	957969	Australian Government Solicitor	Registered	Australia



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ADVOCATES

15		December 14, 2007	1216475	Government of South Australia - Department of Health	Registered	Australia
16.		June 04, 2010	1365194	The Commonwealth of Australia	Registered	Australia
17.	 <p>Standard Emergency Warning Signal stop & listen</p>	May 24, 2010	1361275	Australian Government - Attorney- General's Department - National Security Capability Development Division	Registered	Australia
18.	 <p>Regional Development Australia</p>	February 06, 2009	1283919	Department of Infrastructure	Registered	Australia



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ADVOCATES

19.		September 21, 2005	1077454	Department of Education & Training (State Government of Victoria)	Registered	Australia
20.		October 22, 1998	776290	Crown in right of the State of Queensland C/- Department of Natural Resources	Registered	Australia

Therefore, the member states of Paris Convention follow Article 6ter of the Convention to legally protect their armorial bearings, flags and other state emblems as well as official signs of States and hallmarks.

For further information please contact at S.S Rana & Co. email: info@ssrana.in or call at (+91-11 4012 3000). Our website can be accessed at www.ssrana.in