



PHD House, 4th Floor, Ramakrishna Dalmia Wing
4/2, Siri Institutional Area, August Kranti Marg, New Delhi – 110016,
Tel# 9599665859 E-mail: ajafari@mait.com □ Website:
<http://www.mait.com>

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November 10, 2022

Shri Navindra Gautam
Head (Registration)
Bureau of Indian Standards,

Subject: Operational discrepancy in the process for granting BIS Registration on the Brand Name vis-à-vis on the Brand logo

Respected Sir,

Greetings from MAIT!

At the outset, MAIT thanks the Bureau of Indian Standards (BIS) as the National Standard body of India for doing tremendous work in the testing and certification work under the MeitY notified "Electronics and Information Technology Goods (Requirement for Compulsory Registration) Order, 2012" and various amendments. MAIT highly acknowledges the role of the Hon'ble BIS in making the existing Compulsory Registration Scheme efficient and streamlined, ensuring that the industry does not face any hurdles in the certification process.

MAIT would like to draw Hon'ble BIS' kind attention to an operational discrepancy that occurs during the process of granting BIS registration for a product under the Compulsory Registration Scheme and results in challenges for the industry/brand owners. Before a grant of BIS registration for electronics products, the following are steps required to be completed by any brand owner and mentioned below for ease of reference:

Steps for BIS registration for a product:

1. The applicant initiates a test request at the BIS portal for the product to be tested with a relevant product category, IS standard. Along with the Brand name, Model Name and select one of the accredited laboratories.
2. Selected third-party testing laboratory completes the test & uploads the test report in a pre-defined format in the BIS Portal.
3. Applicant submits a request for a BIS number under the brand name along with the following details:
 - a. Model and Brand information
 - b. Brand details
 - c. Trademark Registration Certificate-document
 - d. Brand Authorisation Letter-document
4. The certificate is issued by Hon'ble BIS after evaluating the 3rd party laboratory test report and brand's application.

MAIT would like to draw Hon'ble BIS' attention to step 2, which requires a pre-defined format for 3rd party laboratory test reports. It does not have any provision for the brand's or applicant's name and provides only the logo/trademark owned by the brand; instead of the brand name/applicant name itself.

Since the 3rd party laboratory test report is issued only with the logo/trademark, BIS registration is issued on the logo/trademark (by converting the logo/trademark into the alphabetical/numerical phonically equivalent word) instead of the applicant/brand name.

MAIT would further like to draw attention to the fact that the logo/wordmark is not a juristic entity or a natural person but instead is a trademark that is an asset of the brand/applicant. It is important to note that the trademark registration process in India is made available under the provisions of the Trademarks Act, 1999, which does not make the registration of a trademark mandatory. Additionally, an unregistered trademark can be enforced under the law of passing off as India is a common law jurisdiction, and statutory relief can be sought by the brand owner against violations of a trademark, as passing off claim under the provisions of Section 27 of the Trademarks Act, 1999. It is emphasized that since India is a common law jurisdiction, rights in an unregistered trademark can be acquired by virtue of goodwill and reputation arising out of the use of the mark.

As the brand/applicant applies for the BIS registration and logos/trademarks are merely shown in application documents to indicate or to represent the brand, it is our opinion that Brands are legally entitled to use any of their logos/trademarks interchangeably on their products. Also, it is entirely at the discretion of the brand owner to use either the Logo or wordmark on its product since both of them are registered trademarks held by the brand owners.

Hence, in our opinion, granting BIS Certificate/Registration in favour of the "logo or trademark" based on the 3rd party test report and not to the applicant bring anomalies in the BIS registration process. Thus, the BIS Certificate needs to be granted in the name of a juristic entity, i.e. in the name of the applicant/brand name.

Industry Recommendation: Therefore, MAIT requests BIS to kindly include the Brand name provided in the application by Brand instead of Logos/trademarks provided in the test report in the BIS registration certificate. Alternatively, MAIT humbly requests Hon'ble BIS to add the brand name/applicant name along with the trademark/logo in the final BIS certificate.

We again thank Hon'ble BIS for this opportunity and look forward to engaging in subsequent interactions with Hon'ble BIS on behalf of the industry on issues of mutual interest.

Warm regards,



Col. AA Jafri, Retd.
Acting Director General, MAIT

CC: Shri Pramod Kumar Tiwari, IAS, Director General, Bureau of Indian Standards

CC: Smt. Chitra Gupta, DDG (Regn. Dept.), Bureau of Indian Standards

Enclosures:

1. Annexure-1: Brand Details (Test Request)
2. Annexure-2: Model and Brand information
3. Annexure-3: Brand Registration Certificate
4. Annexure-4: BIS Certification showing Brand name