

ZLS	FAQ 08-02 Rev. 2	2014-01-28
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### **Holders of GS Mark Certificates**

Based on § 20 clause 1 of the Product Safety Act (ProdSG) the GS mark can only be granted by a GS mark issuing body following an application of the **Manufacturer** or his **representative**.

§ 2 number 14 of the Product Safety Act (ProdSG) gives additional definitions for the term “manufacturer” (following statements of the Product Safety Directive 2001/95/EC or the Regulation (EC) n° 765/2008). A manufacturer is therefore any natural or legal person, who manufactures a product or has a product designed or manufactured, and markets that product under his name or trademark.

**Additionally** anyone is deemed as manufacturer, in case he is attaching his name, trademark or any other differentiating mark to a product, thus acting as if he was the manufacturer, or in case he reconditions a product or determines the safety properties of a consumer product and subsequently makes it available on the market. Practically, this means the following concerning the use of the GS Mark:

#### **Case 1:**

A company 1 manufactures a product and places it on the market under the name of the own company 1. This company may now obtain the GS Mark for the product from a GS Mark issuing body following the relevant requirements as described in the ProdSG.

#### **Case 2:**

The company 1 manufactures a product without applying for a GS Mark. This product is placed on the market under the name of the company 2. According to § 2 number 14 of the ProdSG the company 2 is now deemed to be the manufacturer of the product (so-called quasi-manufacturer). The company 2 may now apply for the GS

Mark from a GS Mark issuing body following the relevant requirements as described in the ProdSG.

Furthermore, the company 2 has to conclude a contractual agreement with the company 1 concerning the compliance with the requirements to fulfil in the manufacturing process of the product including the acceptance of inspections according to § 22 clause 1 of the ProdSG.

### **Case 3:**

The company 1 manufactures a product for which it already obtained a GS Mark itself, whereas the product is placed on the market under the name of the company 2. According to § 2 number 14 of the ProdSG the company 2 is deemed to be the manufacturer of this product. For this product the company 2 may now additionally obtain a GS Mark from a GS Mark issuing body following the relevant requirements as described in the ProdSG. Consequently, this means that the company 2 may affix the GS Mark (as its “own”) at the product only if it was granted a GS Mark certificate by a GS Mark issuing body. The GS Mark certificate granted to the company 1 is legally not sufficient for doing so.

If the company 2 uses the GS Mark without a GS Mark certificate granted by a GS Mark issuing body, it commits GS Mark misuse which is a regulatory offense as described in the ProdSG.

In reverse conclusion it can be noted that the “quasi-manufacturer” (in this case: company 2) only needs an own GS Mark certificate if the producing manufacturer being simultaneously owner of the GS Mark certificate (in this case: company 1) is not sufficiently identified directly next to the GS Mark. The identification shall include the name of the company which must be clearly readable. In this case the product must be identical with the GS certified product, that means, labelled with the respective data specified in the GS Mark certificate (type designation, colour, performance details etc.) and be in compliance with the corresponding performance details in the GS Mark certificate (1500 watts etc.). The respective details have to be included also in the user’s manual if one is required.

Generally, it should be noted that the requirements concerning identification have to be followed additionally (see § 6 clause 1 sentence 1 number 2 ProdSG) when placing consumer products on the market. This means that in those cases where the manufacturer is not located in the European Economic Area the **name of the representative** or **importer** as well as their address have to be displayed on the consumer product or its packaging.

The procedure frequently applied by GS bodies in former times to add the product name and name of the company 2 onto the GS Mark certificate of the company 1 (= **GS co-license**), **is no longer possible** and was already prohibited by a Basic Decision of the ZEK of 1998. These GS co-licenses are **no longer valid** (new reference ZEK-GB-2006-01 letter B) 5.).

Basically it should be pointed out that the **GS Mark** is a **voluntary but legally regulated mark** as well as accordingly **protected**. The GS Mark is awarded to a product that is in compliance with all the requirements by a public notified GS body. The owner of the GS Mark certificate is then authorized to affix the GS Mark to the product. For doing so, there exists an agreement (license agreement) between the GS body and the owner of the certificate concerning the use of the GS Mark. This agreement provides the required details to be met (as f.i. design of the GS Mark, minimum size of the GS Mark, further obligations pursuant to § 21 clause 5 ProdSG (appropriate measures to monitor the manufacturer), annual fees etc.) Simultaneously, the **GS Mark certificate** attests the adjudication of the GS Mark according to § 21 clause 2 ProdSG.

Therefore, it can be concluded that the GS Mark is awarded **product-related** (concerning the **affixing**) as well as **manufacturer-related** (concerning the **possibility of use**) (certificate owner of the GS Mark certificate) according to the legal provisions. The use of the GS Mark without corresponding authorization (certificate owner of the GS Mark certificate) does not fulfil the legal requirements.

In order to **protect the GS Mark** the GS bodies, among other things, are committed to implement **appropriate measures for monitoring the lawful use of the GS Mark** according to § 21 clause 5 ProdSG. Natural or legal persons who use the GS

Mark of a GS body without appropriate contractual agreements with the body according to §§ 20 ff. ProdSG commit a **misuse of the GS Mark**. This will be punished under private law according to the BGB by the GS body concerned i.e. seeking claims for injunctive relief and damages. Competitors can proceed under the act against unfair competition. To ensure this legal provision the GS bodies carry out spot checks on the products being on the market. Furthermore, the above mentioned intentional or negligent use of the GS Mark by a natural or legal person without respecting the prerequisites for the award represents a **regulatory offence** as defined in § 39, clause 1 number 9 of the ProdSG. The respective market surveillance authorities are responsible to enforce this regulatory offence taking measures in this matter under their own responsibility. The respectively responsible market surveillance authorities initiate the proceedings for the regulatory offences. In the case of persistent repetitions of the misuse or certain hazards a criminal offence pursuant to § 40 ProdSG that will be prosecuted by the Public Prosecutor may be given.