

ITMA review

The Journal of The Institute of Trade Mark Attorneys

Issue no. 383 March 2011

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scope of patent attorney
litigators rights

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ITMA BUSINESS

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MEDIA WATCH

There have been quite a few stories involving trade marks in the press over the last few weeks. Several featured "personalities" applying to register their names. Sarah Palin received most coverage with reports that her application - together with that of her daughter Bristol - was refused by the USPTO because they had personally failed to sign the application which was to cover 'motivational speaking services'. Most reports also mentioned the fact that in the US politicians do not generally register their names as trade marks, with the notable exception of Ronald Reagan who had registered his name whilst still an actor. Some say he never gave up that career!

Staying abroad, alleged Russian spy Anna Chapman, who of course had a UK connection before being deported from the US back to Russia as part of a spy swap deal, has, according to Reuters, applied to register her name for Russian Spy Vodka. But staying closer to home, Ringo Starr has, according to gamespot.com, applied to register RINGO for video game software and downloadable computer games. My last recollection was that he was withdrawing from public life and refusing to sign autographs. Maybe he's short of a penny or two!

One of the more interesting cases that received extensive coverage concerned the rejection by OHIM of the application from UKTV to register the name DAVE for its Freeview channel which launched in October 2007. Opposition had come from brand consultancy DAVE who had set up in business three years earlier. I have a feeling this story has further to



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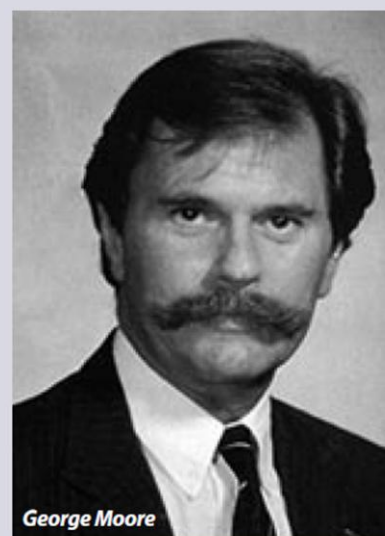
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All change in the Antilles

The birth of Curaçao, Sint Maarten and BES Islands as new Caribbean jurisdictions - and succession to trade marks in the now-defunct Netherlands Antilles.

The world of IP protection welcomes the birth of three new trade mark jurisdictions in the Caribbean – Curaçao, Sint Maarten and the BES Islands (also known as the Caribbean Netherlands). Reminiscent of Aruba's breakaway from the Netherlands Antilles in 1986, the emergence of these three new island jurisdictions flows from the wake of the now-dissolved Netherlands Antilles.

George C J Moore and **Katherine Van Deusen** report.



George Moore

On 10 October 2010, the Netherlands Antilles ceased to exist and simultaneously Curaçao, Sint Maarten and BES were constituted as separate jurisdictions – all with provisions, of course, for succession to and establishment of intellectual property rights.

Any or all of the three new jurisdictions may now concern trade mark owners, because their trade mark registrations in the Netherlands Antilles have become a nullity. At the same time, however, all marks registered in the Netherlands Antilles are deemed automatically continued in both Curaçao and Sint Maarten for the duration of their terms and indeed will carry their same registration numbers.

On the other hand, in the BES Islands (consisting of Bonaire, Sint Eustatius and Saba) Netherlands Antilles registrations can, upon application and for no government fee, be officially confirmed and thus deemed continued in BES — likewise for the duration of their terms and with their same registration numbers.

Geographic location

All of the new jurisdictions are situated within the Caribbean. Made famous nearly half a century ago in international legal circles by its "Dutch Sandwich", a tax reduction device, the Netherlands Antilles was comprised of five islands: Curaçao, Sint Maarten, Bonaire, Sint Eustatius and Saba. Two

of the islands, Curaçao and Bonaire, are located just off the coast of Venezuela, and the other three are southeast of the Virgin Islands in the northeast Caribbean. Although BES consists collectively of Bonaire, Sint Eustatius (commonly known as 'Statia') and Saba, Bonaire is situated more than 500 miles south of Sint Eustatius and Saba, which are only 17 miles apart.

Constitutional realignment

Following a series of public referenda, the acts of the Netherlands Parliament integrating the BES islands into the Netherlands were given royal assent on May 17, 2010, and after ratification by the Netherlands on 6 July 2010 and the Netherlands Antilles on 20 August 2010, the constitutional reform was signed by all parties at The Hague on 9 September 2010. Thus, on 10 October, both Curaçao and Sint Maarten became independent states within the Kingdom of the Netherlands, a status identical to that of Aruba, while, conversely, the BES Islands reverted to the Kingdom of the Netherlands as "special municipalities" – or, insofar as the European Union is concerned, as "overseas territories". In five years, the constitutional status of BES vis a vis Europe is to be re-examined.

Trade mark law and administration

Each jurisdiction is to have its own trade mark law, while temporarily the

Netherlands Antilles statute continues to apply. The administration of intellectual property has likewise been fractured and reassigned, with Curaçao now having, and Sint Maarten in the future to have, its own IP office. Meanwhile, for both Curaçao and Sint Maarten, the intellectual property office in Curaçao, which previously served the entire Netherlands Antilles, continues to administer the still applicable Netherlands Antilles law for both Curaçao and Sint Maarten — across the same desks of the same administrators in the same office in the same building.

BES intellectual property, on the other hand, is being administered from Europe, in the Benelux Office for Intellectual Property (BOIP) under the authority of the Rijksdienst Caribisch Nederland (Department of the Caribbean Netherlands).

Out with the old, In with the new! – Succession to trade marks of the Netherlands Antilles

Curaçao, the largest and most populated of the island territories with some 142,000 inhabitants, was the seat of the government of the former Netherlands Antilles, situated in Willemstad, now the capital of this new nation. The trade mark records of the now defunct Netherlands Antilles have passed to the government of Curaçao and official administration of trade marks will continue as before,

now under the new IPO for Curaçao, in accord with the former Netherlands Antilles' 1995 National Trademark Ordinance (National Gazette 1996, No 188) and National Trademark Decree (National Gazette 2000, No. 147). Applications filed in the Netherlands Antilles prior to 10 October 2010 will be processed by the Curaçao IPO and will result in Curaçao registrations.

Sint Maarten has approximately 37,000 inhabitants and is not to be confused with St Martin, which occupies the northern half of the island and is a "collectivity" of France to which French trade mark registrations are deemed to extend.

The two-nation island is the smallest island in the world occupied by two countries and for over 350 years the two sides have co-existed peacefully, each maintaining its somewhat distinctive culture. Today the border is almost imperceptible.

Until establishing its own IPO, Sint Maarten will rely upon Curaçao to administer its trade marks, with Sint Maarten records being kept separately from those of Curaçao. As indicated, there is no action necessary by owners of Netherlands Antilles trade mark registrations since they will be confirmed automatically in both Curaçao and Sint Maarten.

Applications filed in the Netherlands Antilles prior to October 10, 2010 will likewise be processed by the Curaçao IPO on behalf of Sint Maarten and will result in Sint Maarten registrations.

The BES Islands, consisting of Bonaire and the tiny islands of Sint Eustatius and Saba, have a total population of under 20,000 – the latter two islands having a combined population of fewer than 5,000.

Trade mark owners have until the deadline of 10 October 2011 to apply for confirmation of their Netherlands Antilles registrations in BES. Application is made to the Office for Intellectual Property for the Caribbean Netherlands in the Benelux Office of Intellectual Property — whose administration of trade marks for BES may well persist indefinitely, since the practicalities and costs of governing BES trade marks cannot easily be borne by the islands' relatively tiny population. Registration

in the BES register extends to all three BES islands. Requests for renewal may be submitted simultaneously with an application for confirmation.

New Registrations in the three new jurisdictions

Any new trade mark application must be filed separately in each of the three new jurisdictions. In Curaçao, new trade mark applications may be filed directly with the Curaçao IPO. Registrations are valid for a period of 10 years and may be renewed for like periods of 10 years. Until Sint Maarten assumes administration of its own intellectual property, new trade mark applications will be governed in effect by the same law as applies in Curaçao and filed for Sint Maarten at the Curaçao IPO. Registrations are likewise for periods of 10 years and may be renewed for like periods of 10 years. Applicants must file separate applications for registration in each jurisdiction and submit separate powers of attorney and fees for each jurisdiction.

For the BES islands, new trade mark applications are filed with the Benelux Office for Intellectual Property. Registrations are likewise valid for 10 years and are renewable for periods of 10 years.

In all three jurisdictions, Paris Convention priority may be claimed and goods and services are classified according to the Ninth Edition of the Nice Classification. The official fees to register a mark vary greatly: for up to three classes, Curaçao charges US\$429, Sint Maarten US\$214, and BES US\$310.

International registrations

As announced by WIPO in Information Notice No 14/2010, International Registration and application designations that were filed for the Netherlands Antilles before 10 October 2010 will automatically be extended to Curaçao, Sint Maarten and BES. Any International applications filed subsequently can designate any or all three of the new jurisdictions. Also, owners of existing International Registrations may designate any of the three new jurisdictions.

Renewals and the recording of other transactions

Any renewal application filed after October 10, 2010 must be addressed separately to each of the three new jurisdictions — a single renewal application will not suffice — and each jurisdiction requires a separate fee and power of attorney. To renew a registration in BES, the mark must first be confirmed, as above, by an application filed prior to 10 October 2011. The register of existing trade marks may be updated by the recording of changes of name and address, assignments, licenses, mergers and other transactions — also by separate application to each jurisdiction.

The official fees to renew a registration also vary greatly: Curaçao charges US\$429, Sint Maarten US\$214, and BES US\$335.

Courts and currency

The former Joint Court of Justice of the Netherlands Antilles and Aruba has been reconstituted as the Joint Court of Justice of Aruba, Curaçao, Sint Maarten and of Bonaire, Sint Eustatius and Saba, and the Supreme Court of the Netherlands, sitting in The Hague, will continue to exercise ultimate jurisdiction over all these territories.

The new Caribbean guilder will next year replace the Netherlands Antilles guilder in both Curaçao and Sint Maarten, while already the BES Islands have commenced using the US dollar as their official currency — much like nearby British Virgin Islands, a British "overseas territory" that 50 years ago adopted the US dollar as its official currency.

Language: Dutch, English and Papiamentu

Multi-culture prevails in all the new jurisdictions. In 2007, after a decades-long debate, both English and Papiamentu were made official languages, alongside Dutch.

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