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INFORMATION BULLETIN NO. 5

Constitutional reform of the Kingdom of the Netherlands, as per October 10, 2010

As a result of the constitutional reform of the Kingdom of the Netherlands, the Netherlands Antilles has ceased to exist on October 10, 2010, and with it the register of marks of the Netherlands Antilles.

On that same date, under the new Charter of the Kingdom of the Netherlands, country Curacao and country St. Maarten came into existence, whereas the island territories of Bonaire, Saba and Statia became overseas parts of the Netherlands, and, these 3 islands together are now referred to as the BES islands.

Country Curacao

Since October 10, 2010, country Curacao has taken over the staff, the data (read: the former Netherlands Antilles register of marks) and all other assets of the former Bureau for Intellectual Property (BIP) of the Netherlands Antilles (NA). Since BIP NA was residing and with office in Curacao only, this take over was to be expected.

Country Curacao by means of its Bureau for Intellectual Property (BIP) from 10-10-2010 onwards in practice accepts without need for confirmation or the payment of extra charges all requests by the BIP Curacao registered trademark attorneys and agents for renewals, assignments, changes of address, changes of attorney, etcetera, concerning marks formerly registered in the NA register of marks.

So clearly country Curacao in practice has chosen for the recognition by operation of law of the formerly NA registered marks, even though this recognition by operation of law - in as far as we have been informed correctly - has not yet been confirmed by the appropriate lawmaking.

All trademarks formerly registered with BIP NA in the NA register of marks are thus by operation of law, and at no extra charge, assumed registered in the Curacao register of marks for the remaining duration of their former Netherlands Antilles term of registration.

Country St. Maarten

Contrary to country Curacao, country St. Maarten still has to build up its own BIP St. Maarten from scratch. For this reason it is assumed that country St. Maarten will not amend its national Trade Mark Act 2010 the way country Curacao is assumingly doing, in the sense that recognition of formerly NA registered marks takes place by operation of law, as is now in practice the case in country Curacao.

The owners of marks formerly registered in the NA register of marks can only protect these marks in country St. Maarten by filing these marks by means of first registration with the St. Maarten register of marks.

This first registration with BIP St. Maarten is not to be considered a re-application, but a first application since it concerns registration in the new territory St. Maarten, with its own register of marks, while (i) the Netherlands Antilles, (ii) the NA register of marks and (iii) BIP NA have all ceased to exist on October 10, 2010

The BIP St. Maarten is expected to become operational in the first quarter of 2011, and, before its opening, is to inform the public of the fees that will be charged for all the different sorts of filings with BIP St. Maarten.

BES Islands

In contrast, the BES islands Trade Mark Act 2010 explicitly does provide for a revalidation filing for the remainder of the 10 year registration period with the NA register. This revalidation filing is to be filed before October 10, 2011.

As such, the BES islands register of marks, until October 10, 2011, by operation of law recognizes the rights of a mark formerly registered in the NA register, and to that date offers the opportunity for the owner of these marks, through a revalidation filing, to have his former NA registered marks registered with the BES register for the remainder of their NA registration term.

International Registrations – WIPO Information Notification No. 14/2010

On September 30, 2010, the Government of the Kingdom of the Netherlands deposited with the Director General of the WIPO a declaration with regard to the Protocol relating to the Madrid Agreement concerning the International Registration of Marks (the Madrid Protocol), and its application in certain parts of the territory of the Kingdom, resulting from the constitutional reform of the internal constitutional relations within the Kingdom of the Netherlands.

As a result of the aforementioned declaration, international registrations containing a designation of the Netherlands Antilles will continue to have effect in the three new territorial entities (country Curacao, country St. Maarten and the BES-islands), as from October 10, 2010.

Furthermore, international applications containing a designation of the Netherlands Antilles, which are pending, and which are registered with a date prior to October 10, 2010, will be recorded with respect to the three new territorial entities.

In each case, the applicable legislation will be the corresponding legislation for the territorial entity concerned.

The International Bureau of WIPO will undertake the necessary steps to record these changes in the International Register.

As from October 10, 2010, international applicants and holders of international registrations may individually designate, or subsequently designate, under the Madrid Protocol, the territorial entities of Curacao, St. Maarten and/or the BES islands.

We refer to the [WIPO Information Notice No. 14/2010](#) for more details on the subject.

DISCLAIMER AND FURTHER REMARKS

With this Information Bulletin No. 5, to the best of our knowledge we only intent to generally inform our international clients on the present status of the protection of marks in country Curacao, country St. Maarten and the BES islands.

The Trade Mark Act BES islands has been enacted and published, including a clear transition provision. Based on this enacting and publishing, the protection of marks in the BES islands as of 10-10-10 is clearly stated and fully in force.

For country Curacao and country St. Maarten this is not yet the case, since the further enacting and publication of the implementation regulations of their respective Trade Mark Acts 2010 are still to take place.

Until this further enacting and publication have taken place, the information in this Bulletin No. 5 is under reservation of all rights as to the (final) trade mark legislation of country Curacao and country St. Maarten, and all liability arising there from is disclaimed.

Clients are requested to contact us directly by email with their specific questions for their marks concerned before undertaking any binding action, and not to take the general information in this bulletin as their personal advice.

In the mean time clients are advised to prepare the necessary documentation required for application for first registration country St. Maarten, and for a confirmative filing in the BES islands. The required respective Powers of Attorney for these 2 new registers will be emailed to you upon request.

FURTHER INFORMATION:

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End of Information Bulletin No. 5.
