

Birth of Curaçao, St. Maarten and BES as Caribbean Jurisdictions

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The world of IP protection welcomes the birth of three new trademark 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.

On October 10, 2010, the Netherlands Antilles ceased to exist and simultaneously Curaçao, St. 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 trademark owners because their trademark 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 with 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 July 6, 2010 and the Netherlands Antilles on August 20, 2010, the constitutional reform was signed by all parties at The Hague on September 9, 2010. Thus, on October 10th, both Curaçao and Sint Maarten became autonomous 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 reexamined.

Trademark Law and Administration

Each jurisdiction is to have its own trademarks 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 Trademarks 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 trademark records of the now defunct Netherlands Antilles have passed to the government of Curaçao and official administration of trademarks 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 October 10, 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 trademark 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 trademarks, with Sint Maarten records being kept separately from those of Curaçao. As indicated, there is no action necessary by owners of Netherlands Antilles trademark 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 less than 20,000 – the latter two islands having a combined population of fewer than 5,000.

Trademark owners have until the deadline of October 10, 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 trademarks for BES may well persist indefinitely since the practicalities and costs of governing BES trademarks 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 trademark application must be filed separately in each of the three new jurisdictions. In Curaçao new trademark 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 trademark 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 trademark 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 October 10, 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 October 10, 2011. The register of existing trademarks 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 & 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 U.S. dollar as their official currency – much like nearby British Virgin Islands, a British “overseas territory” that fifty years ago adopted the U.S. 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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