



# Curaçao

## Trademark registrations 2022

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## General information

Prior to October 2010, the Netherlands dependent territories consisted of Aruba and the Netherlands Antilles. The Netherlands Antilles were dissolved on 10 October 2010. Before the dissolution, the Netherlands Antilles comprised the Caribbean islands of Curaçao, Sint Maarten (Dutch side), Bonaire, St. Eustatius and Saba. The Netherlands Antilles, Aruba and the Netherlands were already independent countries within the Kingdom of the Netherlands. As a result of the dismantling process of the Netherlands Antilles, Sint Maarten and Curaçao became also separate independent countries in the Kingdom of the Netherlands and obtained a status similar to the status the island of Aruba already had since 1986. The islands Bonaire, St. Eustatius and Saba, hereinafter referred to as the “BES islands”, transformed into public entities (similar to a municipality) within the Netherlands. The constituent islands of the former Netherlands Antilles now all have their own distinctive trademark legislation and administration. Aruba already has its own trademark legislation since 1989.

All former Netherlands Antilles trademark registrations and applications which were filed before October 2010 have automatically been converted into trademark registrations for the territories Curaçao and Sint Maarten. For the moment, the Bureau for Intellectual Property of Curaçao will act as the Bureau for Intellectual Property for both Curaçao and Sint Maarten.

With respect to the BES islands, the former Netherlands Antilles trademark registrations and applications had to be maintained by filing a confirmative depot before 10 October 2011. All former Netherlands Antilles trademark registrations that have not been confirmed have lapsed as of 10 October 2010.

Curaçao, Sint Maarten, Aruba and the BES islands are not a member of the European Union and consequently Community trademark legislation does not apply on these islands.

## Trademark legislation in Curaçao

### National

On a national level, trademark protection in Curaçao is now governed by the National Trademarks Ordinance 1995 (the ‘Trademark Act’), the Trademark Decree 1995 and the Regulation of the Bureau for Intellectual Property of Curaçao (“BIP”).

### International registration

As a result of the dismantling process, international registrations which contained a designation of the former Netherlands Antilles continued to have effect in the three new territorial entities (Curaçao, Sint Maarten and the BES islands). Furthermore, international applications containing a designation of the Netherlands Antilles, which were pending, and which were registered with a date prior to 10 October 2010, were registered with respect to the three new territorial entities. In each case, the applicable legislation will be the corresponding legislation for the territorial entity concerned.

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 Curaçao, Saint Maarten and/or the BES islands.





### **International**

The relevant trademark conventions where Curaçao is party are as follows:

- Paris Convention for the Protection of Industrial Property (International Union);
- the Madrid Protocol concerning the International Registration of Trademarks;
- the Agreement on Trade-Related Aspects of International Property Rights (TRIP's);
- Nice agreement Concerning the International Classification of Goods and Services;
- Trademark Law Treaty; and
- the Singapore Treaty on the Law of Trademarks.

Curaçao is a member of the World Trade Organization ("WTO") and the world Intellectual Property Organization ("WIPO").

### **Trademark registration**

A trademark owner can only claim exclusive rights to a trademark in Curaçao if the concerned trademark is duly registered with the BIP. Protection of a trademark lasts for ten years following the date of application and is valid in the country Curaçao. After ten years a trademark registration is renewable for a successive ten-year period.

Under Curaçao law, the exclusive right to a trademark is obtained by registration, which confers exclusive proprietary rights. Accordingly, without prejudice to priority rights, the proprietary rights to a trademark belong to the party who was the first to file an application for registration of the trademark concerned.

The exclusive rights to a trademark do not include the right to prevent the use in the course of trade of a similar sign which is protected on the basis of a prior right which only has local significance, if such prior right is recognized under the law of Curaçao.

### **Registrable trademarks**

As trademarks may be registered words, including personal names, drawings, prints, seals, letters, numerals, shapes of goods or their packaging and all other signs that may serve to distinguish the goods or services of an enterprise, provided they are not excluded from protection and registration by law.

Shapes determined by the nature of the goods, that influence the actual value of the goods, or that yield a result in the industrial field, cannot be regarded as trademarks.

Trademarks may be registered in relation to goods and services. In principle, the provisions relating to trademarks for goods apply to service marks as well. An application for the registration of a trademark may be both for goods and services. Multiclass applications are accepted.

### **Non registrable trademarks**

The following trademarks are not registrable:

1. trademarks that lack any distinctive character;
2. trademarks consisting exclusively of signs or indications which may serve in trade to designate the kind, quality, quantity, intended purpose, value, geographical origin or time of production of the goods or of rendering of the services, or which have become customary in a current language of Curaçao, being Papiamentu, Dutch, English and Spanish, or in the bona fide and established practices of the trade in Curaçao;
3. trademarks being contrary to morality or public order irrespective of the use that is made thereof;



4. trademarks consisting of or containing without authorization by the competent authorities, armorial bearings, flags or any other state emblems of any of the countries which are party to the Paris Convention,
- or official signs and hallmarks indicating control and warranty adopted by those countries, provided the trademark is intended to be used for goods or services identical or similar to those in respect of which control and warranty is indicated, or any imitation of these from a heraldic point of view;
5. trademarks consisting of or containing without authorization by the competent authorities, armorial bearings, flags, other emblems, abbreviations and names of international intergovernmental organizations of which one or more countries which are party to the Paris Convention are members, or any imitation thereof from a heraldic point of view; and
6. trademarks of which the registration is applied for in respect of goods or services for which the use thereof could lead to deceit of the public.

Furthermore, the law provides that, notwithstanding registration in the Trademark Register of Curaçao, no protective rights will be acquired in respect of the following trademarks:

7. trademarks similar to a collective trademark registered for similar goods or services, in respect of which proprietary rights existed which lapsed less than three years ago;
8. trademarks similar to an individual trademark, registered on behalf of a third party for similar goods or services, in respect of which the registration expired less than two years ago, unless such third party gave his/her consent or did not fulfill the use requirement in respect of such trademark;
9. trademarks liable to be confused with a trademark that is a well-known trademark within the meaning of Article 6bis of the Paris Convention, owned by someone else, unless the owner of such trademark gave his/her consent;
10. trademarks for wines or spirits consisting of or containing geographical indications for the designation of wines or spirits, with respect to wines or spirits not originating from the geographical place so indicated, or if deposited in good faith before the geographical indication concerned became protected in the country of origin; and
11. trademarks whose registration was applied for in bad faith. A trademark is deemed to have been applied for in bad faith, in any of the following instances:
  - a. if the trademark has been applied for by an applicant who knew or ought to know that, within the preceding three years, that a third party has used, in good faith and in a normal manner, within Curaçao, a similar trademark in respect of similar goods or services, and the said third party has not given his/her consent; or
  - b. if the trademark has been applied for by an applicant who, as a result of direct relations with a third party, knew that within the preceding three years the said third party has used, in good faith and in a normal manner, outside Curaçao a similar trademark in respect of similar goods or services, unless such third party has given his/her consent or the said knowledge about the use of the trademark was acquired only after the applicant had started to use the trademark within Curaçao.

#### **Applicant**

Any person, either individual or legal entity, may apply for and obtain registration of a trademark. It is not a requirement that the applicant for registration has an enterprise to which the trademark relates, and so it is possible, for instance, that a trademark is registered by a holding company, and is used by its subsidiary. Use of a trademark or even a bona fide intention to use a trademark is not a prerequisite for its registration. However, the right to a trademark may lapse in case of non-use, without valid reasons, during an uninterrupted period of five years. Foreigners may apply for and obtain registration of trademarks to the same extent as parties being a national of or domiciled in Curaçao.



### **Requirements for filing**

An application must be filed on prescribed form in duplicate, in Papiamentu, Dutch, English or Spanish, signed by the applicant (if signed on behalf of a corporate body, name and capacity of the signatory must be mentioned below the signature), or signed by an agent who is authorized thereto.

Letters and evidence originating from abroad may be written in another language. Documents written in another language must be submitted along with a translation into Papiamentu, Dutch, English or Spanish.

An application must comprise:

1. the last name, given names (in full) and street address of the interested party, if the latter is a natural person. If a corporate body is involved, please state the name under the articles of incorporation, including the corporate structure, and also the street address and the principal place of business;
2. a statement of the categories of goods and services (11th edition Nice Agreement);
3. in case a collective trademark or a shape mark is involved, an indication that a collective mark or a shape mark is concerned, and, with respect to the collective trademark, a copy of the regulations concerning the use and control of the trademark are also required to obtain a filing date;
4. if a word mark is involved, the word mark in print. If the trademark is designed in special typographical letters or in a special style of writing or if the trademark involved is a logo, a picture of the trademark in colors or in black and white. If the trademark consists in full or in part in the shape of the goods or the packing, a picture of it in black print, rich in contrast, within the space indicated on the form;
  - a. three pictures or a copy in .jpg need to be enclosed;
  - b. the dimensions of the pictures are 8 x 8 cm; and
  - c. when colored trademarks are concerned, a copy of the logo in jpg and an indication of the color(s) which are claimed. The mentioning of the color codes is not required. In this respect, please note that if the trademark logo is registered in black and white, client would then be able to use the concerned trademark in the future in every possible color combination, without having to apply for a new registration for the concerned trademark if the colors may change in the future. Registrations in black and white provides protection of the trademark/logo in all color combinations no matter the colors it is used in;
5. when priority based on the Paris Convention is claimed, a certified copy of the basic application needs to be filed (at the latest within one month after the filing date);
6. a list of goods and/or services for which registration is desired, namely a description of the goods and/or services, with indication of the international class(es). The 11th edition of the Nice Classification applies in Curaçao;
7. an application may relate to goods or services of more than one class of the International Classification (Nice, 11th edition), provided that an additional class fee is due for each class over the third. Registration of a trademark for both goods and services may be applied for in one application;
8. payment of the required fees (and proof thereof in case the payment has been made by means of transfer or deposit); and
9. if the trademark is filed by a representative, an original duly signed power of attorney stating the full name and address of the applicant. No legalization or notarization of the power of attorney is required.

### **Filing by fax**

The application for registration, as well as the application for renewal of a registration, and other documents which are signed may be sent by telefax to BIP. A document sent by fax will be considered filed on the date that it was received completely, provided that the original has been filed within fourteen days after it has been sent by fax.





### **Appointment of Representative**

Applicants that have no seat nor are domiciled in Curaçao must appoint an agent, who is either a trademark agent admitted by and registered at the BIP, or an attorney at law practicing within Curaçao. Applicants must elect domicile with that agent.

### **Power of attorney**

The power of attorney, if applicable, must comply with the following requirements:

1. the power of attorney must be signed by the applicant. Neither legalization nor notarization is necessary;
2. the Power of Attorney must be dated upon signing. It may be filed within two weeks after filing of the application; and
3. if the applicant is a corporate body, the name and capacity of the signatory must be mentioned below the signature.

The filing of a general power of attorney is allowed and may be filed with the BIP. It shall be valid for all future applications of the concerned applicant for two years. After two years a new signed power of attorney should be submitted to the BIP. If a general power of attorney has been filed, it is in principle sufficient to refer to that power.

### **Filing authority**

Applications for registration of a trademark are to be filed and dealt with by the BIP Curaçao, under the authority of the Ministry of Justice.

### **Classification**

The classification of goods and services, applied in Curaçao in respect of the registration of trademarks, is the International Classification established under the Nice Agreement Concerning the International Classification of Goods and Services for the Purpose of the Registration of Marks (10th edition). The goods and/or services for which registration is desired must be described precisely and in accordance with the International Classification of Nice.

### **Availability search**

The carrying out of an availability search is not required. Nevertheless, it is recommended that the applicant, before filing an application for registration, conducts an availability search among prior registrations in Curaçao as a preliminary search on a voluntary basis, in order to evaluate the possibility of conflicts with prior rights. An availability search may be requested on payment of the required fee by any party. A search will normally take at least one month or longer. It is possible to request an accelerated availability search which will take approximately two weeks after payment of the required extra fee.

## **Examination for registration**

### **A. Formal examination**

The BIP will first examine whether the requirements for obtaining a filing date have been complied with. Within two months from filing, the applicant will be notified of the filing date or of the grounds explaining why a filing date could not be established. After a filing date has been accorded, it will be examined whether the other formal requirements have been met. If the application doesn't comply with one or more of those requirements, the applicant will be informed thereof with indication of the requirements concerned, and will be given three months to comply with those requirements. This term may be extended on request or ex officio, provided that it cannot be extended beyond six months from the date of dispatch of the first notification. If the requirements are not met within the prescribed term, the application will lapse.



#### **B. Examination as to registrability per se / Examination on formal grounds.**

Applications for registration are also examined as to registrability per se. The BIP shall examine whether:

1. the trademark applied for is eligible for registration;
2. the trademark has a distinctive character and is not exclusively descriptive;
3. the trademark is contrary to morality or to public order;
4. the trademark is a trademark of which registration is allowed in view of Article 6ter of the Paris Convention;
5. the registration of the trademark is applied for goods or services in respect of which use of the trademark may not lead to deceit of the public; and
6. the trademark is not a trademark for wines or spirits containing or consisting of geographical indications, for wines or spirits not originating from the geographical area so indicated. Registration of such trademark may be allowed if applied for in good faith before 1 January 2001, or if applied for in good faith before the geographical indication concerned is protected in the country of origin.

In case it is established by the BIP that the trademark is not registrable per se, registration will be provisionally refused. Before final refusal of the registration, the BIP will inform the applicant within two months from the filing of the application of its intention to refuse the registration. The applicant will be given the opportunity to file a reply in order to overcome the refusal within three months, which period may be extended on request or ex officio, provided that it cannot be extended beyond six months from the date of the first notification on the intention of refusal. If no reply is filed within said term, or if the reply is not sufficient, registration will be totally or partially refused and the applicant shall be notified thereof. The notification shall contain the grounds for refusal. The refusal must relate to the entire trademark, but may be limited to only one or some of the goods or services for which registration is applied for.

If the decision to either entirely or partially refuse registration has become definitive, the deposit of the trademark will be null in so far as registration is refused.

#### **Term**

If during the last day of any term, the BIP is closed, the relative term is automatically extended until the end of the first day on which the BIP is open again.

#### **Registration**

Registration of a trademark in the Trademark Register of Curaçao cannot be refused based on anticipations. If an application meets the formal requirements, and the trademark is not found non registrable per se, the registration of the trademark will be effected. The legal date of registration of a trademark in the Trademark Register of Curaçao shall be the same as the official date of filing, irrespective of the actual date on which the registration is accepted. Registration will take place in the language of the application.

#### **Appeal**

Within two months from the notification of final refusal, the applicant may lodge an appeal against the decision of the BIP. The appeal is to be lodged with the Joint Court of Justice of Aruba, Curaçao, Sint Maarten, and of Bonaire, St. Eustatius and Saba, and may be lodged on applicant's behalf by an authorized trademark agent in Curaçao.

#### **Opposition**

Ex parte opposition proceedings are not provided in Curaçao. After registration, the cancellation of a trademark on both relative and absolute grounds may be demanded in proceedings on the merits before the Court of First Instance. In these proceedings is a possibility to request for an injunction and/or damages.



### **Alteration after registration**

The picture, sign or figure of which a registered trademark consists may not be modified, nor during the duration of the registration, nor at the occasion of the renewal thereof.

### **Certificate of registration**

As soon as the registration has been affected a certificate of registration will be provided to the applicant.

### **Publication**

Upon registration, all particulars thereof are published in the Trademarks Review ('Merkenblad'). Publication will be done in the language of the registration. At present, there is no publication of the application prior to registration.

All particulars regarding registrations of trademarks in Curaçao including renewal, amendment, assignment, grant or cancellation of licenses, pledge or seizure, nullity are published in the official Trademarks Review ('Merkenblad').

## **Renewal of trademarks**

If a trademark owner wishes to renew his registration, after the previous registration period of ten years has been expired or will expire soon, the owner has to apply for renewal and pay the renewal fee(s) within a period of six months prior to the expiration of the running period of protection. Renewal may still be applied for and the required renewal fee(s) be paid during a grace period of six months after expiration of the registration period, provided that an extra fee is due for payment of the renewal fee(s) during the grace period. The renewal period runs from six months before until six months after the date of expiration.

### **Requirements**

The requirements for renewal are as follows:

1. an application on a prescribed form, signed by the applicant or agent, shall contain:
  - a. the full name and address of the owner of the registration;
  - b. the name and address of the agent;
  - c. if the list of goods and services has been limited since the last publication, mentioning the goods and/or services for which the registration must be renewed, as far as possible, in the terms of the alphabetical list appertaining to the Nice International Classification and, at all events, grouped according to the classes and in the order of sequence of the classes of the International Classification;
  - and d. the number and date of the last registration.
2. a power of attorney, signed by the applicant for renewal (without legalization or notarization). If the applicant for renewal is a corporate entity, the name and capacity of the signatory must be mentioned below his signature. If a general power of attorney already has been filed that is still valid, the applicant/agent may refer to that general power of attorney when filing the renewal application;
3. representations of the trademark, in principle, are to be filed only if it was deemed necessary by the Director of the BIP in case of:
  - a. figurative trademarks;
  - b. trademarks comprising particular typographical characters;
  - c. trademarks executed in a special form of writing;
  - d. trademarks in color(s); and
  - e. three-dimensional trademarks (shape marks).





4. evidence of payment of the renewal fee and of the additional class (above the third class) fees due (if any); and
5. if applicable, evidence of payment of the fee for the publication of the description of the elements of the trademark to which the colors relate, and for the publication of the description of the distinctive elements of the trademark.

When the documents for the renewal of the registration appear to be incomplete, the applicant will be informed thereof as soon as possible and will be given an opportunity to comply with the requirements within six months after filing the application for renewal. When the application for renewal is not brought in order within that period, renewal shall not be affected.

## **Recordal of amendments**

### **Change of name and/or address**

#### **Requirements**

Recordal of a change of name and/or address requires an original power of attorney signed by or on behalf of the trademark owner (stating the new name and/or address). No legislation or notarization of the power of attorney is required.

### **Recordal of assignment**

Assignment of a registered trademark is possible either with or without the goodwill of the business concerned and either for all of the goods and/or services, for which the trademark is registered, or for only part of these goods and/or services. The assignment must be in writing. The assignment of a registered trademark may not be restricted to a part of Curaçao, but must always apply to the whole territory of Curaçao. If not, the assignment will be subject to nullification. The assignment of a trademark must be recorded in the Trademark Register in order to be valid against third parties.

#### **Requirements**

The requirements for the recordal of assignment are:

1. an original Deed of Assignment (or a certified copy thereof) or any original document proving the assignment, such as an original declaration signed by both parties confirming the existence of the said assignment; and
2. an original power of attorney signed on behalf of the assignee. Neither the assignment nor the power of attorney needs to be notarized or legalized.

### **Recordal of license**

Both exclusive and non-exclusive licenses under a registered trademark may be recorded against the concerned trademark registration. A license may be restricted to part of the goods or services for which the trademark is registered. Likewise, a license under a trademark may be restricted as to its duration and/or the territory within which the trademark may be affixed by the licensee.

As applies for assignments, a license under a trademark must be recorded in the Trademark Register in order to be effective against third parties.



For the purpose of fulfilling the requirements for use of a trademark, the use by a licensee is equivalent to use by the owner of the trademark. Although the license, strictly speaking, probably does not have to be recorded in order to attribute the use by the licensee to the trademark owner, it is nevertheless strongly recommended that the license will be recorded against the trademark registration.

If a license is recorded, the registration of the trademark can be cancelled voluntarily only upon the request made by the owner of the registration and the licensee jointly.

#### **Requirements**

The requirements for the recordal of license are:

1. a certified copy of an executed license agreement or any original document proving the license, such as an original declaration signed by both parties confirming the existence of the license; and
2. an original power of attorney signed by or on behalf of the licensee.

Neither the license agreement nor the power of attorney needs to be notarized or legalized.

#### **Recordal of pledge or seizure**

A registered trademark may be the object of a pledge or seizure. Pledge and seizure are to be recorded in the Trademark Register in order to be effective against third parties. If a pledge or seizure is recorded, the registration of the trademark can be cancelled voluntarily only upon the request made by the owner of the registration and the pledgee or creditor jointly.

#### **Requirements**

The requirements for recordal of pledge are as follows:

1. a certified copy of an executed pledge agreement or any original document proving the pledge, such as an original declaration signed by both parties confirming the existence of said pledge; and
2. an original power of attorney signed by or on behalf of the pledgee.

Neither the pledge agreement nor the power of attorney needs to be notarized or legalized.

#### **Recordal of merger**

##### **Requirements**

The requirements for the recordal of merger are as follows:

1. a certified copy of the documents evidencing the merger, such as an excerpt of the Chamber of Commerce; and
2. an original power of attorney signed by or on behalf of the trademark owner; the signature does not need to be legalized. No legalization or notarization of the power of attorney is required.

#### **Use requirement**

A registered trademark should be normally used in order to prevent the lapse of the exclusive rights to the trademark. The exclusive rights to a trademark could be declared null and void by the court if, without a valid reason, the trademark is not used in a normal manner for the goods and/or services for which the trademark has been registered during any uninterrupted period of five years.

However, it is possible to avert revocation by (timely) resumption of use. In a lawsuit, the Court may place the burden of proof as to use, wholly or partly upon the owner of the trademark.



The question whether the use of a trademark can be classified as 'normal use' shall be determined by considering all the circumstances of the case. Generally, the use of a trademark constitutes normal use if it was performed for the purpose of acquiring a sale of the products concerned. A more nominal use, for instance by 'token sales', will not be sufficient.

The use of a registered trademark by another person with the consent of the owner will accrue to the owner. Use of a trademark in a form differing in elements which do not alter the distinctive character of the trademark in the form in which it was registered may be considered sufficient use. Affixing in Curaçao, a trademark on goods destined solely for export out of Curaçao or on the packaging of such goods is considered relevant use.

## **Loss of trademark rights**

### **Nullity of a trademark**

The nullity of the registration of a trademark may be invoked, either in an action for nullification before the competent Court, or as a defense against any action taken by the registered owner of the trademark, by any of the following:

1. by any interested party, including the Public Prosecutor, and at any time, if the registered trademark:
  - a. consists of a sign which, according to its nature, cannot be considered to constitute a trademark in the sense of the law; or
  - b. falls under any of the categories mentioned above, under 'non registrable trademarks', items 1, 2, 3, 4, 5, 6 or 11.
2. by any interested party, including the Public Prosecutor, during five years from the date the application for registration of the trademark was filed; in case the filing of a trademark corresponds to a collective trademark, filed for similar goods or services to which a right that lapsed in the course of the three years preceding that filing, was attached;
3. by the owner of the older trademark concerned, or by any interested third party jointly with the said owner:
  - a. at any time (but see provision on forfeiture of rights in case of acquiescence), if the registered trademark is:
    - I. identical to a trademark, filed by a third party at an earlier date and for the same goods or services and to which rights existed at the time of filing of the later trademark are still in force;
    - II. identical or similar to a trademark, filed by a third party at an earlier date for the same or similar goods or services to which rights existed at the time of filing of the later trademark which are still in force, where there exists in the public mind a likelihood of association of the trademarks; or
    - III. similar to another trademark registered for non-similar goods or services which has a reputation in the territory of Curaçao to which rights existed at the time of filing of the later trademark which are still in force, where use without due cause of the younger trademark takes unfair advantage of, or is detrimental to, the distinctive character of the repute of the older trademark.
  - b. during three years from the date of lapse of an earlier registration, if the registered trademark is similar to an individual trademark, filed by a third party at an earlier date for similar goods or services; which registration of the trademark has lapsed by expiration of its term of protection less than two years before filing of the later trademark, except if the third party has given his/her consent or the use requirement for the earlier trademark has not been complied with;
  - c. during five years from the date of the application for registration, if the registered trademark is confusingly similar to a trademark being well-known in the sense of article 6bis of the Paris Convention and belongs to a third party who has not given his/her consent, even if the trademark is not registered in Curaçao; or
  - d. during five years from the date of the application for registration if the registered trademark has been filed in bad faith.





The nullification of the registration of a trademark in any of the above cases has a retrospective effect from the date of filing of the trademark. Nullification must, if the grounds for the lapse relate only to a part of the goods or services, be restricted to the part of the goods or services concerned. However, it shall always relate to the entire sign constituting the trademark.

The Public Prosecutor may invoke the nullity of the registration of a collective trademark if the regulations for use and control of the trademark are contrary to public order, or do not contain the provisions prescribed by law. Furthermore, the Public Prosecutor may invoke the nullity of any amendments to the regulations for the use and control of a collective trademark, if these are contrary to public order or the provisions of the law, or if these would lead to a weakening of the guarantees offered to the public by the regulations.

The Court will ex officio order the cancellation of the registration of nullified trademarks.

#### **Lapse of a trademark**

In the following instances, the exclusive rights to a trademark may be declared lapsed by the competent Court, upon the request of an interested party, even though the registration is maintained:

1. in so far as the trademark, without legitimate reasons, has not been normally used within five years from the filing of the application for registration, within the territory of Curaçao for the goods or services for which it is registered, or if such use of the trademark, without legitimate reasons, has been discontinued for five consecutive years or longer. However, the lapse can no longer be invoked, if the required normal use of the trademark has been commenced or resumed between expiration of the five-year period of non-use and the bringing of a claim for a declaration of lapse because of non-use, except when the late use or renewed use has been started only within three months preceding the bringing of such claim and the preparations for the start of such use or renewed use were made only after the owner of the trademark had become aware that such claim might be brought;
2. in so far as the trademark, as a consequence of the behaviour (activity or inactivity) of the owner of the trademark, has become in the normal use of language the common name (generic name) of a product or service (for instance where the owner himself/herself uses the trademark as a generic name for the product or service in question, or when he/she fails, to a reasonable extent, to act against misuse of the trademark); and
3. in so far as the trademark, as a consequence of the use made thereof for the goods or services for which it is registered, is liable to mislead the public, in particular with regard to the nature, quality or geographical origin of those goods or services.

The lapse in all the above cases is retrospective from the date on which the actual conditions for the lapse of the rights to the trademark were fulfilled. The lapse must be restricted to the part of the goods or services concerned, if the grounds for the lapse relate to a part of the goods or services only. Lapse shall, however, always relate to the entire sign constituting the trademark.

If lapse of the exclusive rights to a trademark on account of non-use can no longer be invoked due to late use or resumed use, the owner of the trademark cannot invoke the nullity of a registration of another younger trademark whose registration was applied for during the period that the rights to the older trademark could be declared lapsed on account of non-use, nor take action against use of such younger trademark for identical or similar goods or services. This implies that in such case, two identical or similar trademarks may exist side by side.



The exclusive rights to a trademark will lapse automatically in any of the following events:

1. voluntary cancellation of the registration; or
2. expiration of the term of the registration of the trademark where the same is not renewed.

The owner of the registration of a trademark may at any time request the cancellation of his/her registration. If a license, pledge or seizure has been recorded, however, the owner of the trademark can request cancellation only jointly with the licensee, the pledgee or the creditor respectively. The cancellation shall always be effective for the whole territory of Curaçao. However, it may be restricted to one or some of the goods or services for which the trademark is registered.

In addition to the grounds mentioned above, the exclusive rights to a collective trademark may also be declared lapsed on request by any interested party including the Public Prosecutor if the owner of the collective trademark uses the trademark himself for goods or services originating from his/her own enterprise or from enterprises in the control or supervision of which he/she participates directly or indirectly, or consents to or tolerates a use of the trademark in contravention of the provisions of the regulations for use and control of the trademark.

In case The Court declares that the exclusive rights to a trademark have lapsed, it will also ex officio order the cancellation of its registration.

Collective trademarks which have lapsed, been declared null or cancelled, or whose registration has not been renewed and which have not been registered a new collective trademark in the name of the owner of the lapsed registration on application filed within three years from expiration of the registration period, may not be used under any circumstances during three years after recordal of the lapse, the nullity declaration or the cancellation, or within three years from expiration of the term of registration respectively, except by a party who is entitled to invoke an older right to a similar individual trademark.

When the registration of an individual trademark has lapsed because it has expired, during two years thereafter, the same or a similar trademark cannot be legally registered by a third party for similar goods or services, unless the owner of the lapsed registration gave his/her consent.

## **Infringement**

### **Infringing acts**

The following acts performed by a third party without the consent of the owner of a registered trademark are considered trademark infringement:

1. any use in the course of trade, consisting of a sign identical to the registered trademark in respect of the goods and/or services for which the trademark is registered;
2. any use in the course of trade, consisting of a sign identical or similar to the registered trademark in respect of goods or services identical or similar to those for which the trademark is registered, where there exists a likelihood of association on the part of the public between the sign and the trademark;
3. any use in the course of trade, without due cause, consisting of a sign being identical or similar to the trademark, in respect of goods or services which are not identical or similar to those for which the trademark is registered, if the trademark has a reputation in the territory of Curaçao and where use of such sign takes unfair advantage of, or is detrimental to, the distinctive character or the repute of the trademark; or



4. any use in the course of trade, without due cause, made of a sign being identical or similar to the registered trademark, other than for the purpose of distinguishing goods or services, where such use of such sign takes unfair advantage of, or is detrimental to, the distinctive character or the repute of the trademark.

The following acts, performed by a party with a sign, under any of the conditions mentioned above without the consent of the owner of the registered trademark, are, among others, considered infringing use:

1. affixing the sign to goods or their packaging;
2. offering or exposing goods for sale, putting goods on the market, or stocking goods for those purposes under the sign;
3. importing or exporting goods under the sign, except where importation is concerned with the apparent purpose of re-exportation; or
4. using the sign on business papers or in advertising.

The exclusive rights to a trademark which is worded in one of the current languages of Curaçao shall extend by right to its translation into any other of these languages. The judgment whether similarity results from translation into one or more foreign languages belongs to the Court.

Similarity may exist between goods and services. On judging the matter of similarity of goods and/or services, the classification applied on the registration of trademarks will not be taken into consideration.

#### **Non-infringing acts**

The following are non-infringing acts:

1. exhaustion: not considered as infringement is use of a registered trademark for goods which have been brought into the trade under that trademark by the owner or with his/her consent, except if there are legitimate grounds which justify that the owner of the trademark opposes the further commercialization of the goods, in particular, if the condition of the goods has been altered or deteriorated after they were brought into the trade. Furthermore, the law provides that, if a trademark in different States belongs to different owners, the owner of the trademark in Curaçao cannot prevent the importation of goods bearing the trademark or a similar trademark originating from another State, nor claim compensation of damages in respect of such importation, if the trademark has been affixed to the goods in that other State by or with the consent of the owner;
2. the exclusive rights to a trademark do not include the right to prevent a third party from using in commerce:
  - a. his/her own name and address;
  - b. any indication concerning the kind, quality, quantity, intended purpose, value, geographical origin, time of production, or any other characteristics of the goods or services; or
  - c. the trademark itself, if this is necessary to indicate the intended purpose of a product, in particular as an accessory or spare part, provided in all three cases, however, that such use is in accordance with honest practices in industrial and commercial matters.
3. prior rights: the exclusive rights to a trademark do not include the right to prevent the use in the course of trade of a similar sign which is protected on the basis of a prior right which has local significance only, if and in so far as such prior right is recognized under the civil law of Curaçao.





### **Remedies**

In case of infringement of the exclusive rights to a registered trademark the owner thereof may request an injunction, and may claim compensation for all damages sustained by the infringing use. In addition to or instead of a claim for compensation of the damages, the owner of the trademark may claim the surrender of the profits obtained by the infringing use and the rendering of an account in relation thereto. However, such claim will be refused, if the Court finds that the infringing use was not made in bad faith or that in view of the circumstances of the case, such claim should not be accepted.

The owner of the registered trademark is entitled to claim as his/her property, any movable goods that have infringed upon his/her exclusive trademark rights, or goods having been used in producing such goods, or to demand that these goods will be destroyed or rendered unfit for use. The Court may order that the surrender of the goods can take place only against payment by the plaintiff of compensation as established by the Court. The owner of the registered trademark may also claim the payment of the amounts of money likely to have been obtained by the infringement. In the cases referred to in this paragraph, the claim will be refused, if the infringement was not made in bad faith.

The Court may, if so requested by the owner of the registered trademark, order the defendant in infringement proceedings, to inform the owner of the trademark of all what is known to him/her with regard to the origin of the goods with which infringement has been committed and to furnish to the owner all data relating thereto, to protect the rights to the execution of which the licensee is entitled. Any claim referred to in the foregoing sentence will be refused, if the infringement was not made in bad faith.

The owner of a licensed trademark may institute an infringement action against a licensee who acts contrary to the provisions in the license agreement concerning the duration of the license, the form covered by the registration in which the trademark may be used, the goods or services for which the license has been granted, the territory within which the trademark may be affixed, or the quality of the goods or services brought into the trade or rendered by the licensee. This also implies that goods brought into the trade under the trademark by a licensee contrary to any of said provisions, for instance goods brought into the trade outside the licensed territory, or after expiration of the term of the license, would not be considered brought into the trade by or with the consent of the owner of the (registered) trademark.

No infringement action can be based on a trademark which is not registered, and no compensation of damages can be obtained with regard to acts done before the filing of the application for registration. Nothing in the trademark law, however, is deemed to affect rights of action of the person entitled to a sign not being considered as a trademark against illegal use of that sign.

### **Tolerance of a younger identical or similar trademark (acquiescence)**

The owner of exclusive rights to a trademark who during five consecutive years has tolerated the use of a trademark that was filed later, while being aware of that use, can no longer on the basis of his/her older right, with regard to the goods or services for which the younger trademark was used, invoke the nullity of the registration of the younger trademark or prevent use of the younger trademark for identical or similar goods or services, unless the application for registration of the younger trademark was filed in bad faith. If the right to invoke nullity and to take infringement action has been thus forfeited, the owner of the younger trademark will not be entitled to prevent the use of the older trademark. So, the result in such case may be that two identical or similar trademarks will exist side by side. It is therefore important that in case of infringement or of registration of an identical or similar trademark action is taken in due time, in order to avoid forfeiture of the right to take action.



## Well-known and reputed trademarks

If a trademark could be considered well-known in Curaçao, then pursuant to article 6bis of the Paris Convention the rights to the well-known trademark may be invoked against third parties.

## Trademarks and trade names

### Trademark vs. trade name

The law stipulates that the exclusive right to a trademark shall not include the right to oppose the use, in economic traffic, of a concurrent symbol (trade name) that derives its protection from an older right of local significance only, if and insofar as such right is recognized pursuant to ordinary civil law.

### Trade name vs. trademark

There is no separate law in Curaçao which applies to the protection of trade names, neither is it legally required to register a trade name with the trade register of the Chamber of Commerce. However, to a large extent protection can be claimed based on the law of tort.

## Trademarks and domain names

The law stipulates that without prejudice to the application of ordinary civil law concerning liability in respect of unlawful acts, the trademark holder, based on his exclusive right, can oppose any use, made without a valid reason in economic traffic, of a trademark or a corresponding symbol other than for distinguishing goods or services (e.g. a domain name), if through such use unjustified benefit can be derived from the distinguishing ability or the reputation of the trademark, or its distinguishing ability or reputation can thus be harmed.

## Specific aspects of local trademark registration

Curaçao does not form part of the European Community (European Union), Community Trademarks which extend to The Netherlands and the other member countries of the European Union do not extend to Curaçao. To obtain trademark protection in Curaçao, local trademark registration must be sought in Curaçao. The same applies for Benelux registrations.

Vice Versa; (European) Community trademark registration and Benelux registrations do not extend to Curaçao and therefore do not provide trademark protection in Curaçao.

**For more information about trademark registrations on Curaçao, please contact:**



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