



O F F I C I A L G A Z E T T E

NATIONAL ORDINANCE of December 16th 1996 laying down new rules in respect of the trademark law (" Trade Marks National Ordinance 1995").

IN THE NAME OF THE QUEEN!

THE GOVERNOR of the Netherlands Antilles,

Whereas:

it is expedient to lay down new rules as regards the trademark law, that also go to replace those lay down with the Trade Marks National Ordinance (Official Gazette 1961, no. 191);

Now, therefore We have thought fit, by and with the advice of the Advisory Council and in consultation with Parliament, to lay down the following national ordinance:

Chapter 1 General

Article 1

1. There shall be a Bureau for the Intellectual Property, to be called the Bureau in this national ordinance.

2. The Bureau shall have the task of performing the activities prescribed by or pursuant to:

- a. Chapter 8 of the Kingdom Patent Act 1995 (O.G. 1995, no. 75);
- b. this national ordinance; and
- b. any other national ordinance.

3 The Bureau falls under the Minister of Justice and is established on the island of Curacao. The organization of the Bureau shall be regulated by national decree containing general measures.

4. By national decree containing general measures, sub-offices may be instituted on other islands of the Netherlands Antilles, at which sub-offices filing for registration as referred to in article 10 can likewise be effected. The time when documents are filed for registration at a sub-office shall be the time of filing for registration pursuant to article 10.

For written discussions with Parliament see documents Session 1995-1996-1747

The sub-office shall send the documents received forthwith on to the Bureau in Curacao, where the further processing of the Registration shall take place.

Article 2

All documents addressed to and issuing from the Bureau, together with the proxies and documentary evidence pertaining thereto, shall be exempt from stamp duty and from the formality of registry.

Article 3

If the office of the Bureau or sub-office is closed during the last day of any term to be reckoned with by or as against the Bureau or sub-office, the term shall be extended for the application of this national ordinance up to the end of the next following day on which the Bureau or sub-office shall be opened again.

Article 4

In the event that the provisions of the Netherlands Antilles Code of Civil Procedure do not designate a judge before whom the party entitled to a mark may be summoned for the determination of his right or by reason of violation thereof, the defendant may be summoned to appear before the court of first instance at Curacao.

Chapter II Individual marks

Article 5

1. As individual marks shall be regarded the designations, designs, prints, seals, letters, figures, shapes of goods or of packaging and all other symbols that serve to distinguish the goods or services of an enterprise.

2. However, 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 marks.

Article 6

Without prejudice to the ordinary civil law stipulations, a family name can serve as a mark.

Article 7

1. Without prejudice to the rights of priority laid down in the Paris Convention for the Protection of industrial property or the Madrid Agreement Concerning the International Registration of Marks, the exclusive right to a mark shall be acquired by the initial filing for registration, effected at the Bureau, or shall result from a registry with the International Bureau for the protection of industrial property, which shall be designated as international filing for registration.

2. When determining the order of priority of filing, the rights existing at the time of filing and upheld at the time of

the lawsuit, shall be reckoned with, which rights give title to:

- a. like marks, filed for the same goods or services;
- b. like or concurrent marks, filed for the same or similar

goods or services, if the possibility exists that an association between the marks will be created with the public, whereby also similarity between services and goods can exist;

- c. concurrent marks, filed for non-similar goods or services, which are known in the Netherlands Antilles, if through the use of the younger mark, without valid reasons, unjustified benefit can be derived from the distinguishing ability or reputation of the older mark, or the distinguishing ability or reputation of the older mark can be harmed.

Article 8

Within the limits set in articles 11, 12 first paragraph, and 23, no right to a mark shall be acquired by:

- a. the filing for registration of a mark that, regardless of the use that is made thereof, is in contravention of good morals or public order, or in respect whereof article 6ter of the Paris Convention provides for refusal or nullification;
- b. the filing effected for goods or services for which the use of the mark might result in the public being misled;
- c. the filing of a mark that corresponds to a collective mark filed for similar goods or services, to which was attached a right that lapsed in the course of the three years preceding the filing;
- d. the filing of a mark that corresponds to an individual mark filed by a third party for similar goods or services, to which a right was attached that lapsed in the course of the two years preceding the filing by the expiration of the validity of the registry, unless such third party has given his consent, or no use was made of this mark in accordance with article 9, second paragraph section a.;
- e. the filing of a mark that can lead to confusion with a generally known mark in terms of article 6bis of the Paris Convention, and that belongs to a third party who has not given his consent;
- f. filing made in bad faith, among others:
 - 1^o filing effected while the depositor knows or should know that a third party has used a corresponding mark for similar goods or services in good faith and in the normal manner in the Netherlands Antilles within the last three years, and such third party has not given his consent;
 - 2^o filing effected while, based on his direct relations to a third party, the depositor knows that such third party has used a corresponding mark for similar goods or services in good faith and in a normal manner outside the Netherlands Antilles within the last three years, unless such third party has given his consent, or this knowledge is not obtained until after the depositor had initiated usage of the mark in the Netherlands Antilles.

Article 9

1., The right to the mark shall lapse:

- a through the voluntary cancellation or the expiration of the validity of the registration of the filing;
- b through the cancellation or the expiration of the validity of the international registry, or through renunciation of the protection in the Netherlands Antilles, or in accordance with the provisions of article 6 of the Madrid Agreement, through the fact that the mark no longer enjoys legal protection in the country of origin.

2 The right to the mark shall be declared null and void within the limits set in article 25, fourth paragraph:

- a insofar as, without valid reasons, during an uninterrupted period of five years no normal use was made of the mark in the Netherlands Antilles for the goods or services for which the mark has been registered; in a lawsuit, the judge can order the mark holder, in whole or in part, to prove the use;
- b insofar as, after having been duly acquired, the mark has become the common designation of a product by the mark holder's doing or through his omission;
- c insofar as the mark, as a result of the use being made thereof for the goods for which it has been registered, can mislead the public, particularly as regards the nature, the capacity or the geographic origin of these goods or services.

3. For the application of the second paragraph, section a., use of the mark shall also mean:

- a the use of the mark in a form that deviates as per item, without thereby modifying the distinguishing characteristics of the mark in the form in which it has been registered;
- b the affixing of the mark on goods or the packaging thereof, exclusively with a view to export;
- c the use of the mark by a third party with the consent of the mark holder.

Article 10

1 Filing for the registration of a mark shall be effected at the Bureau, with due observance of the requirements and against payment of the duties, laid down by national decree containing general measures. The Bureau shall determine whether the documents filed meet the requirements set for the determination of a date of filing, and shall fix the date of filing. As soon as possible, or at least within two months from the receipt of the filing, the depositor shall be given written notice of the date of filing as fixed, or of the grounds based on which no filing date has been granted.

2 If when filing for registration, any other requirements, laid down in the national decree containing general measures, have not been met, the Bureau shall give written notice hereof to the depositor as soon as possible, or at least within two months from receipt of the filing, stating the requirements that were not met and giving the depositor the opportunity still to comply

with same within a term set by national decree containing general measures.

3. Filing for registration shall lapse if the stipulations of the national decree containing general measures have not been met within the period of time prescribed for this.

4. The Bureau shall draw up the instrument of filing, stating the time when such was effected, shall forthwith enter this instrument, without prejudice to the provisions of articles 11, 18 and 19, in the register for the goods or services stated by the depositor, and shall furnish the mark holder with a certificate of registration.

5. The legal date of registry shall be the date of filing.

6. As the occasion arises, the registry shall state the date and the basis of the right of priority invoked.

7. The claim to priority based on article 4 of the Paris Convention shall be made at the filing, or through a special declaration to be made to the Bureau, in the month following the filing, with due observance of the requirements as to form and against payment of the duties laid down by national decree containing general measures. The absence of any such claim shall cause the right of priority to be forfeited.

Article 11

1. The Bureau shall refuse to register a filing for registration of a mark, if in its view:

- a. the symbol filed does not correspond with the description of a mark, laid down in article 5, specifically if it should lack every distinguishing ability in terms of article 6 quinquies B, second paragraph of the Paris Convention;
- b. the filing relates to a mark as referred to in article 8, sections a. and b.

2. The refusal to proceed to registration shall concern the symbol that constitutes a mark in its entirety. It may be limited to one or more of the goods or services for which the mark is intended.

3. As soon as possible, or at least within two months from its receipt of the filing, the Bureau shall give to the depositor written notice of its intention to refuse the registration in whole or in part, while stating the reasons, and shall give the depositor the opportunity to reply to this within a period of time to be laid down by national decree containing general measures.

4. If the Bureau's objections to the registration have not been removed within the term set, the registration of the filing shall be refused in whole or in part. The Bureau shall give the depositor written notice of the refusal forthwith, thereby stating its reasons, as also the legal remedy against such decision as laid down in article 12.

5. The refusal, in whole or in part, to register the filing shall invalidate the filing in whole or in part. Such invalidation shall only take effect after the term set for the institution of the legal remedy referred to in article 12 shall have lapsed without the depositor having availed himself of same, or after the request for an order for registration to be given shall have been irrevocably denied.

Article 12

1. Within two months from the notification referred to in article 11, fourth paragraph, the depositor may apply by petition to the Common Court of Justice of the Netherlands Antilles and Aruba.
2. The presentation of the petition may be effected by an attorney, established in the Netherlands Antilles, as referred to in article 15.

Article 13

The clerk of the court shall inform the Bureau in writing of the request referred to in article 12 within three days.

Article 14

1. The Common Court of Justice of the Netherlands Antilles and Aruba shall decide in chambers.
2. The decision on the request made pursuant to article 12 shall only be given after the applicant shall have been given the opportunity to defend orally his right to the registration of the mark, and the Director of the Bureau to defend orally the refusal of registration before the court of first instance. The request and the simple appointment for stipulation of the day for the hearing, given for the purpose by the Common Court of Justice of the Netherlands Antilles and Aruba, shall be served upon the Director on behalf of the applicant within fourteen days from the date of such appointment.
3. Prior to the closing of any hearing as prescribed in this article, the Common Court of Justice of the Netherlands Antilles and Aruba shall stipulate the day on which it shall render the decision.
4. The decision of the Court of Justice shall state the reasons, on pain of nullity.

Article 15

When filing for the registration of a mark, applying for the renewal thereof, presenting a petition as referred to in article 12, and for any request for the effecting of an entry in the register, a party having no seat or domicile in the Netherlands Antilles shall elect domicile at an attorney. The latter shall be resident or domiciled in the Netherlands Antilles. As an attorney in terms of this national ordinance, in addition to lawyers conducting a practice within the Netherlands Antilles, shall be admitted only natural persons established in the Netherlands Antilles engaged in the profession of rendering mediation in mark affairs and recognized as such by and registered with the Bureau.

Article 16

1. Notice of the decision of the Common Court of Justice of the Netherlands Antilles and Aruba shall be given in writing to the Bureau by the clerk of the court within three days.
2. In accordance with the final and conclusive decision of the Common Court of Justice of the Netherlands Antilles and Aruba, the Bureau shall enter in the register of marks the deed of filing for the goods or services stated.

Article 17

1. Upon request and for a consideration to be determined by national decree containing general measures, the Bureau shall

examine the register of marks and conduct a provisional examination as to the possibility of registering a mark.

2. With a view to the examination, the registered marks shall be listed in categories according to the international classification of goods and services referred to in the Nice Agreement of June 15 1957 (Convention Memorandum 1958, no. 76), for the last time revised at Geneva on May 13 1977 (Convention Memorandum 1978, no. 60).

Article 18

International filing for the registration of marks shall be effected in accordance with the stipulations of the Madrid Agreement of April 14 1891 (Convention Memorandum 1969, 143 and 1970, 186) and the Protocol of June 27 1989 (Convention Memorandum 1990, 44) to the Madrid Agreement. The national fees referred to in article 8, first paragraph, of the Madrid Agreement and the Protocol to the Madrid Agreement, as also the fees referred to in article 8, seventh paragraph, section a., of the Protocol to the Madrid Agreement, shall be laid down by national decree containing general measures.

Article 19

1. The Bureau shall register the international filings, in respect whereof protection has been requested to be extended to the Netherlands Antilles. Article 11, first and second paragraphs, shall apply analogously.

2. The Bureau shall give written notice, without delay, of its intention to refuse the registration, stating the reasons, to the International Bureau referred to in article 11 of the Madrid Agreement, by means of a provisional total or partial refusal of protection of the mark, and shall thereby give the depositor the opportunity to reply to this in accordance with the provisions laid down by national decree containing general measures. Article 11, fourth paragraph, shall apply analogously.

3. Articles 12 up to and including 16 shall apply analogously.

4. The Bureau shall forthwith give written notice, stating the reasons, of the decision from which there no longer is an appeal, to the International Bureau, referred to in article 11 of the Madrid Agreement.

Article 20

1. The registration of a filing for registration of a mark shall have a validity of 10 years, to be reckoned from the date of the filing.

2. The symbol constituting the mark may not be altered, neither during the registration nor at the renewal thereof.

3. The registration shall be renewed upon request, for further periods of 10 years, with due observance of the requirements as to form and against payment of the duties stipulated by national decree containing general measures.

4. Renewal shall be applied for within the six months preceding the expiration of the validity of the registration. However, renewal applied for within the six months following the date of the expiration of the validity of the registration, can take place against payment of certain additional duties stipulated by national decree containing general measures.

5. The renewal shall become operative as from the date of the expiration of the validity.

6. The Bureau shall register the renewals.

Article 21

1. Independent of the transfer of the enterprise or any part thereof, the exclusive right to a mark may pass over to or be the object of a license for all or any part of the goods or services for which the mark has been registered.

2. Invalid shall be:

- a. any transfer inter vivos, not laid down in writing;
- b. any transfer or other conveyance that does not relate to the entire territory of the Netherlands Antilles;

3. The exclusive right to a mark may be invoked by the mark holder against a license holder who acts in contravention of the stipulations of the license agreement in respect of the duration thereof, the form covered by the registration, in which form the mark may be used, the goods for which the license has been granted, the territory within which the mark may be affixed, or the quality of the goods marketed by the license holder.

4. The transfer or other conveyance or the license may be invoked as against third parties only after the registration of the filing of an extract of the deed evidencing such conveyance or such license, or of a declaration relating thereto, signed by the parties concerned, provided such filing be effected with due observance of the requirements laid down as to form and against payment of the duties stipulated by national decree containing general measures. The provisions laid down in the preceding sentence shall apply analogously in respect of possessory liens and attachments.

5. The license holder shall be competent to intervene in a claim instituted by the mark holder as referred to in article 23, third and fourth paragraphs, in order to obtain compensation for any damage suffered directly by him, or to cause a proportionate part of the profit, earned by the defendant, to be assigned to him. An independent claim as referred to in the preceding sentence may be instituted by the license holder only if he has obtained the power to do so from the mark holder.

Article 22

1. Nobody, irrespective of any claim instituted by him, may judicially invoke protection for a symbol regarded as a mark in terms of article 5, unless he duly filed the same for registration and, if necessary, has caused the registration thereof to be renewed. Inadmissibility may be pronounced ex officio by the judge. The same shall be revoked by filing or by renewal effected during the proceedings. In no event can indemnification be given for facts preceding the filing.

2. The provisions of this national ordinance shall leave

intact the right of the user of a symbol that is not regarded as a mark in terms of article 5, to invoke the stipulations of ordinary civil law insofar as the same shall allow opposition to the unlawful use of such symbol.

Article 23

1. Without prejudice to the application of ordinary civil law concerning liability in respect of unlawful acts, the mark holder, based on his exclusive right, can oppose:

- a. any use, made in economic traffic, of the mark for the goods or services for which the mark has been registered;
- b. any use, made in economic traffic, of the mark or a corresponding symbol for the goods or services for which the mark has been registered, or for similar goods or services if as a result thereof the possibility exists for the public to make an association between the symbol and the mark;
- c. any use, made without a valid reason in economic traffic, of a mark known within the Netherlands Antilles or a corresponding symbol for goods or services, that are not similar to those for which the mark has been registered, if through such use unjustified benefit can be derived from the distinguishing ability or reputation of the mark, or its distinguishing ability or reputation can thus be harmed;
- d. any use, made without a valid reason in economic traffic, of a mark or a corresponding symbol other than for distinguishing goods or services, if through such use unjustified benefit can be derived from the distinguishing ability or the reputation of the mark, or its distinguishing ability or reputation can thus be harmed.

2. For the application of the first paragraph, the use of a mark or a corresponding symbol shall mean specifically:

- a. the affixing of the symbol on the goods or on the packaging thereof;
- b. the offering, marketing, or for such purpose keeping stocks of goods under the symbol;
- c. the import and export of goods under the symbol; except when involving import, with the obvious purpose of re-exporting;
- d. the use of the symbol in documents for business purposes and in advertising.

3. On the same terms as referred to in the first paragraph, the mark holder may claim damages for any loss suffered by him through the use as referred to in the first paragraph.

4. Next to, or in lieu of, a claim for damages, the mark holder may institute a suit for the payment of any profit earned in consequence of such use, as also for accounts to be rendered in respect thereof; if the judge is of the opinion that such use is not in bad faith, or that the circumstances of the case do not give cause for any such condemnation, he shall dismiss the claim.

5. The mark holder may institute the claim for damages or for payment of profits on behalf of the license holder, without prejudice to the powers accorded to the latter under article 21, fifth paragraph.

6. Insofar as there is a question of honest use in trade and industry, the exclusive right shall not include the right to oppose the use in economic traffic by a third party:

- a. of his name and address;

- b. of designations concerning kind, quality, quantity, destination, value, geographic origin, time of manufacture of the goods or services or other characteristics thereof;
- c. of the mark, if this is necessary to state the destination of goods or services, specifically as accessory or component part.

7. The exclusive right to a mark shall not include the right to oppose the use, in economic traffic, of a concurrent symbol 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.

8. The exclusive right shall not include the right to oppose the use of the mark for goods marketed under the mark by the holder or with his consent, unless there are valid reasons for the holder to oppose further dealings in the goods, specifically when the condition of the goods, after their having been marketed, was altered or has deteriorated.

9. If a mark belongs to different mark holders in different States, the mark holder in the Netherlands Antilles cannot oppose the import of goods bearing the same mark or a concurrent symbol and originating from another State, nor can he claim any damages for such import if the mark was affixed in such other State by the mark holder or with his consent, or if between the two mark holders there exist relations of an economic nature in respect of the exploitation of the goods concerned.

10. The administrative classification, applied for the registration of marks, shall not be reckoned with when evaluating the similarity of goods or services.

11. The exclusive right to a mark, stated in any one of the languages frequently spoken in the Netherlands Antilles, by law shall extend to include the translation thereof into any other of these languages. The judge shall evaluate the conformity, resulting from the translation into one or more foreign languages.

Article 24

1. The mark holder shall have the power to claim the ownership of movable property with which his right is violated, or things used at the production of such property, or to demand that such property be nullified or rendered unusable. Like powers to claim and demand shall exist in respect of moneys, of which it can be assumed that the same were acquired in consequence of any violation of the right to the mark. The claim shall be dismissed, if violation was not made in bad faith.

2. The provisions of the ordinary civil law concerning remedies for the preservation of his right and concerning the judicial execution of judgments and authentic deeds shall apply.

3. The judge may order that delivery be made only against a consideration to be determined by him, to be paid by the claimant.

4. The licensee shall have the right to exercise the powers referred to in the first paragraph insofar as these serve to protect the rights, to the exercise of which he has been authorized, if he has obtained the mark holder's approval for this.

5. On demand of the mark holder, the judge may order the

party who violated the mark holder's right, to inform the mark holder of everything known to the violator concerning the origin of the things with which he committed the violation, and to provide the mark holder with all relevant data.

Article 25

1. Any interested party, including the Public Prosecution, may invoke the nullity:

- a. of the filing for registration of a symbol that does not correspond to the description of the mark given in article 5, specifically if it should lack every distinguishing ability in terms of article 6quinquies B, section 2, of the Paris Convention;
- b. of the filing as a result of which, pursuant to article 8, sections a. and b. of this national ordinance, no trademark right is acquired;
- c. of the filing as a result of which, pursuant to article 8, section c., no trademark right is acquired, on condition that the nullity shall be invoked within a term of five years, to be reckoned from the date of the filing.

2. Action commenced by the Public Prosecution shall stay any and all other proceedings instituted on the same grounds.

3. If the holder of the earlier registration or the third party referred to in article 8, sections d., e. and f., is a party to the suit, any interested party may invoke the nullity:

- a. of the registration that, in the order of priority, follows that of a concurrent mark, in accordance with the provisions of article 7, second paragraph;
- b. of the registration, as a result of which, pursuant to article 8, sections d., e. and f., no trademark right is acquired; nullity based on the stipulations of article 8, section d., shall be invoked within a term of three years, to be reckoned as and from the date on which the validity of the earlier registration expires, and nullity based on the stipulations of article 8, sections e. and f. shall be invoked within a term of five years, to be reckoned as and from the date of the filing.

4. Any interested party may invoke the nullity of the trademark right in the cases stated in article 9, second paragraph. The nullity of a trademark right based on article 9, second paragraph, section a., can no longer be invoked if in the interval between the expiration of the five-year period and the institution of the claim for nullification, the mark is used for the first time or is again used. Initial use or renewed use within three months preceding the institution of the claim for nullification, however, shall not be taken into consideration if preparation for the initial use or the renewed use is made only after the mark holder has taken cognizance of the fact that a claim for nullification might be instituted.

5. The holder of the trademark right, in respect whereof the nullity pursuant to the fourth paragraph can no longer be invoked, cannot in accordance with the stipulations of the third paragraph invoke the nullity of a filing made during the period in which the older trademark right could be nullified on the grounds of article 9, second paragraph, section a., nor can he oppose, pursuant to article 23 first paragraph, sections a. and

b., the use of the mark thus registered.

6. only the judge shall be competent to render a decision in lawsuits based on this national ordinance; he shall ex officio order the cancellation of the, registration of nullified filings, as also that of the filings through which the nullified rights have been acquired.

Article 26

1. The holder of the exclusive right to a mark, who during five consecutive years has tolerated the use of a mark subsequently registered, can no longer, on the strength of his older right, invoke the nullity of the subsequent registration pursuant to article 25, third paragraph, section a., nor can he oppose the use of the mark subsequently registered pursuant to article 23, first paragraph, sections a. and b., with regard to the goods and services for which that mark is used, unless the filing for such registration was done in bad faith.

2. Tolerating the use of a mark subsequently registered, as referred to in the first paragraph, shall not entitle the holder of the mark subsequently registered to oppose the use of the mark previously registered.

Article 27

The holder of the registration of a filing may at all times request that his registration be cancelled. If, however, a license has been registered, cancellation of the registration of the mark or of the license may be requested only by the holder of the registration and the license holder jointly. The provision of the second sentence in respect of the cancellation of the registration of the mark shall apply analogously in the case of a possessory lien or an attachment having been registered.

Article 28

1. The nullification of a filing, the cancellation of the right to a mark or the voluntary cancellation of a registration shall relate to the entire symbol constituting the mark.

2. Nullification or cancellation shall be limited to one or more of the goods or services for which the mark has been registered, if the grounds for nullification or cancellation concern only part of the goods or services.

3. Voluntary cancellation may be limited to one or more of the goods or services for which the mark has been registered.

Article 29

1. Next to the tasks conferred on it under the preceding articles, the Bureau shall be charged with:

- a. the introduction of modifications in registrations, at the request of the holder or based on court decisions;
- b. the issue of a publication listing the registrations and renewals of filings, and containing all other notifications as prescribed by national decree containing general measures;
- c. on request, providing any interested party with written information, as also copies of or extracts from the registers.

2. By national decree containing general measures, the

amount of the duties to be collected for the services referred to in the first paragraph of this article, as also the prices of the publication and of the copies and extracts, shall be determined.

3. The register referred to in article 10 shall be available at the premises of the Bureau for inspection by all parties, free of charge.

CHAPTER III Collective Marks

Article 30

1. As collective marks shall be regarded all symbols designated as such at the time of filing, and which serve to distinguish one or more common characteristics of goods or services originating from different enterprises that affix the mark under the supervision of the holder.

2. This holder may not use the mark for goods or services originating from his own enterprise or from enterprises, in the management or supervision of which he participates, be this directly or indirectly.

3. As collective marks shall likewise be regarded all symbols designated as such at the time of filing, and which serve in economic traffic to designate the geographic origin of the goods. Such mark shall not entitle the holder to oppose the use by a third party of such symbols in economic traffic in conformity with honest practices in trade and industry; specifically, no such mark may be invoked as against a third party who is entitled to use the geographic designation concerned.

Article 31

Unless otherwise stipulated, collective marks and individual marks shall be subject to the same rules.

Article 32

1. The exclusive right to a collective mark shall be acquired only if at the time of filing, the mark is accompanied by regulations as regards its use and control.

2. in case of an international filing for registration, however, the depositor may still file such regulations during a period of six months, reckoned from the notification of the international registration referred to in the Madrid Agreement in article 3, fourth paragraph.

Article 33

1. The regulations pertaining to a collective mark, as regards the use and control thereof, shall state the common characteristics of the goods or services, for the protection of which the mark is intended.

2. The regulations shall also stipulate the manner in which proper and effective control shall be exercised on these characteristics, along with the proper sanctions pertaining thereto.

Article 34

Article 8, section c., shall not apply in respect of the

filing of a collective mark, effected by the previous holder of the registration of a concurrent collective mark or by his successor in title.

Article 35

Without prejudice to the application of articles 10, 11 and 19, the Bureau may not register the filing of a collective mark if the regulations pertaining to such mark, as regards its use and control, have not been filed in accordance with the terms laid down in article 32.

Article 36

1. The holders of collective marks shall be bound to notify the Bureau of any amendment to the regulations as to use and control, pertaining to the mark. Such notification shall be registered by the Bureau.

2. The amendment shall not take effect prior to the notification referred to in the first paragraph.

Article 37

1. The right to institute legal proceedings for the protection of a collective mark shall belong exclusively to the holder of such mark.

2. The regulations as to use and control, however, may grant to persons, to whom the use of the mark has been granted, the right to institute a claim jointly with the holder, or to join or intervene in any proceedings instituted by or against the holder.

3. The regulations as to use and control may also stipulate that the holder, acting alone, may cause the special interests of the users of the mark to be asserted, and he can include in his claim for damages any special loss suffered by any one or more of them.

Article 38

1. Without prejudice to the provisions of article 25, any interested party, including the Public Prosecution, may invoke the nullity of the right to a collective mark, if the holder uses the mark in contravention of the stipulation of article 30, second paragraph, or agrees to any use in contravention of the stipulations of the regulations as to use and control, or tolerates any such use.

2. The Public Prosecution may invoke the nullity of the filing of a collective mark if the regulations as to use and control should be in contravention of public order, or if such regulations do not conform to the provisions of article 33. The Public Prosecution may likewise invoke the nullity of amendments to the regulations as to use and control, if the same are contrary to public order or to the provisions of article 30, or if such amendments should lead to impairment of the guarantees given to the public under the regulations.

Article 39

The collective marks that have lapsed, have been nullified or have been cancelled, as also those in respect whereof no renewal has taken place, and no restoration as referred to in

article 34 has been made, shall not be capable of being used under any circumstances during the three years following upon the date of the registration of the lapse, nullification, cancellation or the expiration of the validity of the non-renewed registration, except by the party who is capable of invoking an older right to a concurrent individual mark.

Chapter IV

Supplementary stipulations concerning international trademark law

Article 40

The provisions of this national ordinance concerning international filings for registration, effected pursuant to the Madrid Agreement, shall apply analogously in respect of international filings effected pursuant to the Protocol of June 28 1989 to the Madrid Agreement.

Article 41

Subjects of the Netherlands Antilles, as also residents of countries that are not a party to the Union set up by the Paris Convention for the protection of industrial property of March 20 1883 (Convention Memorandum 1969, 144), whose residence is established in the Netherlands Antilles or who conduct a real and actual industrial or commercial enterprise there, may invoke for their benefit, pursuant to this national ordinance, the application, for this entire territory, of the stipulations of the aforesaid Convention and the Madrid Agreement.

Chapter V

Transitional Provisions

Article 42

1. without prejudice to the provisions of article 43, the exclusive rights to goods marks, acquired in the Netherlands Antilles prior to the date of the coming into operation of this national ordinance and not expired on such date, shall be maintained. As and from the aforesaid date, this national ordinance shall apply in respect of such rights. The evaluation of the order of priority of these acquired rights shall be effected with due observance of the laws applicable prior to the coming into operation of this national ordinance.

2. An exclusive right shall also be considered acquired through the initial use of a symbol that serves to distinguish the goods of an enterprise or to distinguish one or more common characteristics of goods, and that would have constituted a mark, if article 5 or, as the case may be, article 30 of this national ordinance would have been applicable. However, the exclusive right thus acquired may not be invoked as against those who used this symbol prior to the coming into operation of this national ordinance, unless the use invoked was followed by non-use during an uninterrupted period of five years.

Article 43

1. The acquired right to a goods mark shall terminate, with retrospective force to and including the date of the coming into

operation of this national ordinance, if at the expiration of a term of one year, reckoned from that date, a confirming filing of that mark was not made with due observance of the requirements as to form and against payment of the duties laid down by national decree containing general measures, invoking the existence of the acquired right and stating, for purposes of information, the nature and time of the facts that brought it into existence and, if applicable, of the filing and the registration made with regard to this mark. The registration of this filing shall state the invocation of an acquired right and any statement made in this respect. If the occasion arises, this filing shall take the place of the filing of the mark that may have been effected under the laws applicable prior to the coming into operation of this national ordinance. If, however, the depositor invokes an acquired right, while he knows or should know that this right does not exist, the filing shall be deemed to have been made in bad faith.

2. The right acquired on a collective goods mark furthermore shall terminate with retrospective force to and including the date of the coming into operation of this national ordinance, if at the confirming filing referred to in the first paragraph no regulations as to use and control were submitted. Articles 33, 25 and 38, second paragraph, shall apply.

3. on the filings referred to in the first and second paragraphs, articles 10 up to and including 16 shall apply. The provision of the preceding sentence shall not apply if a filing of a goods mark is involved, whereby an acquired right is invoked with statement of the registration, made with regard to this mark.

4. In deviation from article 20, the initial registration of filings, referred to in the first paragraph, shall have a validity of one to ten years. The same shall expire in the month and on the day of the filing in the year, comprising the same final digit as that of the year in which the right, acquired and being invoked, came into existence. The initial renewal of the registration of these filings may be applied for at the time of filing, for the duration of the term stated in article 20, third paragraph.

Article 44

1. For anyone who, on the date of the coming into operation of this national ordinance, makes normal use of a service mark in the Netherlands Antilles and who, within a term of one year reckoned as and from such date, effects a confirmation-filing of this mark) for the determination of the order of its priority the said date of coming into operation shall apply as its filing date. As and from the aforesaid date, this national ordinance shall apply in respect of those marks.

2. In respect of those having made normal use of a service mark in the Netherlands Antilles, the provisions of this article shall not alter the rights to be derived from such use.

3. The nullity of a filing as referred to in the first paragraph cannot be invoked on the simple ground that the order of priority of such filing is subsequent to that of a concurrent goods mark.

4. With the filing referred to in the first paragraph, that

shall be effected with due observance of the requirements as to form, to be laid down by national decree containing general measures, and against payment of the duties thereby laid down,

moreover the existence of the acquired right shall be invoked and statement shall be made of the year of the initial use of the service mark, in order to Comply with the objective referred to in article 43, fourth paragraph. The registration of the filing shall state the invocation of an acquired right and the statements made in respect thereof. If, however, the depositor invokes an acquired right of the mark, while he knows or should know that such right does not exist, the filing shall be considered to have been made in bad faith.

5. Articles 10 up to and including 16 and article 43, fourth paragraph shall apply in respect of the filing referred to in the first paragraph. Article 43, second paragraph, shall apply analogously.

Article 45

if an acquired right exists on a goods mark as referred to in article 43, and if on the date of coming into operation of this national ordinance in the Netherlands Antilles the same party entitled with respect to the acquired right, referred to in article 43, makes normal use of a service mark as referred to in article 44, which service mark in all respects is identical to the aforesaid goods mark, the confirmation-filings, referred to in articles 43 and 44, may be made in one and the same confirmation-filing, without prejudice to the other provisions laid down in this national ordinance. Article 43, fourth paragraph, shall apply, it being understood that the time of expiration of the validity shall be determined on the basis of the time on which the oldest acquired right, being invoked, came into existence.

Article 46

1. As from the day following that of the coming into operation of this national ordinance, the register shall be open for filings other than those referred to in articles 43, 44 and 45. As from the day of this coming into operation, no filing whatsoever based on the laws applicable prior to the coming into operation of this national ordinance, shall be admissible any longer.

2. For the filings referred to in articles 43 up to and including 45, regardless of their actual date, for the evaluation of their order of priority in respect of filings made without invocation of any rights acquired, the date of the coming into operation of this national ordinance shall be the date on which these filings were made.

Chapter VI Final provisions

Article 47

The provisions of this national ordinance shall not affect the stipulations of the Paris Convention, the Madrid Agreement and the stipulations of the laws applicable in the Netherlands An-

tilles, from which a ban on using a mark arises.

Article 48

The Trade Marks National ordinance (O.G. 1961, no. 191) shall be repealed.

Article 49

This national ordinance shall take effect as and from a time to be laid down by national decree, which may be made to vary for the various articles or parts thereof, if necessary with retrospective effect.

Article 50

This national ordinance may be cited as: Trade Marks National Ordinance 1995.

Given at Willemstad, December 16 1996

J.M. SALEH.

The Minister of Justice,
P.J. ATACHO

Issued on December 27 1996
The Minister of General Affairs,
M.A. POURIER
