

NEWSLETTER # 1

Paramaribo, January 5, 2004

SUBJECT:

- **THE INTELLECTUAL PROPERTY RIGHTS SYSTEM IN SURINAME**

This newsletter contains (historical) facts of the Intellectual Property Rights System in Suriname and Suriname's membership with regard to International Bodies. We wish to thank the Ministry of Justice in Suriname and Reggy M. Nelson.

THE INTELLECTUAL PROPERTY RIGHTS SYSTEM

Legal System

The legal system is patterned along the lines of the Dutch legal system and is therefore a civil law system based on Roman law and the Napoleonic Codes.

Members of the judiciary are appointed by the President of the Republic. There is a court of first instance and a court of appeals.

In Suriname the following Acts fall under the heading of the Intellectual Property Rights System:

- Trade Mark Act ("Merkenrecht")
- Patent Act ("Patent Recht")
- Trade Name Act ("Handelsnaam")
- Copy Rights ("Auteursrecht")

1. TRADE MARK ACT

The present Suriname legislation on Trademark is based on a Royal Order from 1912 (Regulations on the Factory and Trade Marks in the Colonies and the Aid Office for Industrial property). This Law had been modified by the decree C-81 of August 31, 1984. The original Law refers to the Old Dutch Trademark Law ("Merkenrecht") of 1893.

The present Trademark law for Suriname is highly similar to the trademark statute that was in force in the Netherlands before the Benelux Trademark law was adopted in 1969. Surinam has no provision for registration of service marks.

Owners of service marks will therefore often file for registration of their mark to cover goods associated with the services they provide in Suriname. A restaurant for example might file for napkins, tableware, china, etc.

Suriname has its own Trademark Bureau. The Government is planning to revise the present trademark law and will probably introduce a statute on intellectual property, which will cover trademarks, patents, copyright and trade names.

Overview modifications of the Trade Mark Act:

- Law No. 1893, June 1946, Industrial Property Regulations of 1912, as amended.
- Regulation on Industrial Property for Suriname 1912, Bulletin of Acts.
- Decree 1912 No. 87 as amended last by Bulletin of Acts.
- Law of March, 1931, containing provisions on trade names, as amended in June, 1936 and by Law of October, 1937.
- Decree 1984 No. 55, referred to as the Trademark Act.
- Decree C-81, August 1984, amending Industrial Property Regulations of 1982.

1.1 First use of a trademark

Under Surinamese law the exclusive right to use a trademark belongs to the party who has made first use of a mark in Suriname to distinguish his goods from those of others. First use can be based on sales of or use of or providing of the goods in the local market.

First use can also be based on advertising of the goods in local or international media which are published or sold in Suriname or of which broadcasts can be received in Surinam. It is advisable that advertisements should contain a clear indication as to the origin of the goods or services.

The law contains a non-use provision pursuant to which the proprietor of a mark is only protected for a period of 3 years since his last use of the mark in Suriname.

1.2 Registrations of trademarks

Registration of a trademark as such does not give the registrant the exclusive right to use the mark. Pursuant to the law however, registration of the mark creates a presumption that the registrant is the first user of the mark.

This presumption places the burden of proof as to who is the first user of the mark on the registrant's opponent, who claims to have the exclusive right to use the mark. The presumption that the registrant is also the first user of the mark can of course be rebutted by evidence to the contrary.

The above presumption is one reason why it may be advisable for the proprietor of a mark to register his mark. Another reason to register a mark is that, once a mark has been registered, the trademark bureau will not register other marks which are identical or so similar that it might create confusion in the mind of the public as to the origin of the goods.

Proof of first use or intent to use is not required for registration of a mark. Registration of a mark can, in short, serve defensive purposes.

To file an application, the trademark agent requires a power of attorney from the proprietor of the mark. It is preferable to submit an original power. After filing of the application, the Trademark Bureau investigates whether or not there are any objections to the application. If none exists, the mark is registered and a certificate of registration is issued. The registration process may take some months.

All registrations are published in the Trademark Gazette. Oppositions against registrations can be filed within 6 months after publication of the registration in the Trademark Gazette.

The Trademark should not exist of words or representations which are against the manners and customs through which the use of the Trademark could be against the public order. It is also forbidden that the Trademark, even with a small modification, contains the Code of arms or the seal of a public Law frame.

1.3 Litigation seal of corporation or public body

If a third party infringes upon the Trademark of another person, the party concerned may take the following actions:

1. He who uses the Trademark first and or has it registered, can legally claim for the annulment of the registration at the Court of Justice. A period of nine months is required for the annulment.
2. The prejudiced can apply to the Justice of Peace, based on article 1386 of the Suriname Civil Code. This claim is not bound by time.

1.4 Duration

Registrations are valid for 10 years. Renewals are valid for 10 years.

The right on a registered Trademark can be delegated under the conditions that either the Company of which the commodity the Trademark, is appropriated for, is delegated to or has been passed to the same person. The public should rely on the fact that a given Trademark bearing article is always produced by the same Company.

2. PATENT ACT

The Suriname Patent Right is based on a Patent Act of the Government of November 7, 1910. Registrations of patents are on hold, due to revision of the Patent Act. Modifications on the Patent Act:

- Law on Patents, November 1910, in force in Suriname by the Rules Concerning the Right on Industrial Property, September 1969.
- Decree No. 43 of 1969.

With the independence of Suriname in November 1975, this Governmental Patent Act became enforceable under the "Suriname Law".

2.1 Application

In compliance with the Law the patent right is an exclusive right granted to the inventor of a novel product, method or an improvement of a product in an Industry. The right will not be granted if at the moment of application a description or in other way the above mentioned were already known to exist or produced, or applied by an expert or Scientist. It is to be noted that Patent Right is issued on the method of production and not for the material. The objective of the Patent Right is to provide the inventor exclusive exploitation rights to the benefits of his creation during a number of years. The idea behind this is to stimulate individuals to invent. If the improvement of a product or inventions or work method has been derived through mutual deliberations by several persons, they jointly own the Patent Rights determined by separate agreement. It is also possible to apply for protection of a Patent under the Civil Code. The Patent Council should hand over the necessary arguments to the applicant.

2.2 Rights

A patent, once granted gives the patent holder the exclusive right:

1. To bring into circulation, sell, lease, deliver or stock a product for which (purpose) the patent was granted or a product with the patent improvement.
2. To bring into practice for on in his Company a patent method or the patent improvement, to bring the material into circulation, to sell, lease, deliver or to stock for others or to make use of it according to the method or produced through appliance of the improvement.

By license agreement the patent holder can relinquish the above mentioned right to another. The duration and the royalty to be paid should be stipulated in the license agreement.

2.3 Duration and sub sealing

Three years after the patent had been acquired, the patent holder is obliged to give license which is in the interest of the Industry or for other reasons in general interest.

Furthermore, the patent holder is obliged to permit license every time that may be necessary for the application of a later patent invention. If the patent holder refuses to permit license in the above mentioned matters, then the Patent Council can permit this license if there are grounds for it.

A patent is valid for 20 (twenty) years. The transgression of the patent right of another is obliged to indemnification.

3. TRADE NAME ACT

The Trade Name Act of Suriname has been introduced on March 13, 1931, modified on May 17, 1935, June 2, 1936 and for the last time on October 19, 1937.

In Suriname the trade name is defined as the name under which a Company, is being managed and or in which a person practices a trade or profession. The trade name is used to designate the Company.

An applicant (for a trade name) has to comply with the following requirements:

- a. The trade name should be trustworthy.
- b. The requested trade name should not give a wrong impression about the legal status under which the Company is to be operated.
- c. The requested trade name, which is already being used legitimately, is not allowed to be used by a third person in case this usage causes confusion to the public.
- d. The trade name may not be the same as or have strong resemblance to the brand name of another holder or party.

The right on a trade name exists by the use of the name and it offers a twofold protection:

- a. It protects the holder against the objections which could arise as a consequence of the use of the name by another party.
- b. It protects the public against the objection in case when the trade name is misleading.

It is worth mentioning that two persons and or institutions are entitled to use the same trade name, in as far as it does not lead to any confusion of the general public. The nature and seat of both Companies will be used as a criterion.

4. COPY RIGHTS

In Suriname Copyright is enforceable under a Law Copyright 1913 which lately had been modified on September 5, 1959. The modifications were related with the intention of to enter into the revised Berne Convention concluded in July 1948 in Brussels for the protection of literature and art. Other modifications took place in 1981 (Decree 1981 No. 3).

The creator of a work of Art or Scientist has the exclusive right to publish and duplicate the production. If the creator of a work of literature or Science is a married woman, the husband is not allowed to take actions related with the copyright unless his wife gives him the permission.

4.1 Scope of products

To establish the Copyright, the following categories of products are qualified:

1. Books, brochures, news papers, magazines and all other printed material.
2. Theatrical productions and drama, musical productions.
3. Verbal recital.
4. Choreographic productions and performing arts of which the way of performance are determined down by writing or other wise.
5. Musical productions with or without a text.
6. Designs, paintings, buildings and sculptures, lithographs, engravings and other books of picture reproductions.
7. Geographical maps.
8. Designs, sketches, plastic works related to engineering, geography, the topography or other sciences.
9. Photography and cinematographic productions and manufactured works according to similar methods.
10. Productions of applied art.
11. Translations, music compositions, films of another version or other duplications in a modified way of a production of literature science or art as collection of various productions undiminished the copyright on an original product will be protected as independent production.

4.2 Duration and punishment

If one or more persons are eligible for mutual copyright, the maintenance of this right can take place by anyone, unless otherwise agreed.

Copyrights expire after fifty years. Infringement of the copyright of another will be punished with maximum two years of imprisonment and a fine.

INTELLECTUAL AGREEMENTS RELATED TO INTELLECTUAL PROPERTY RIGHTS

Suriname is party to:

1. Convention Establishing the World Intellectual Property Organization. WIPO Convention (1967), amended in 1979. Suriname became a member of the WIPO on November 25, 1975.
2. Paris Convention for the Protection of Industrial Property. Paris Convention (1883), revised at Brussels (1900), Washington (1911), The Hague (1925), London (1934), Lisbon (1958) and Stockholm (1967) and amended in 1979. Suriname became party to the Convention and to the Stockholm Act on November 25, 1975.
3. Berne Convention for the Protection of Literary and Artistic Works. Berne Convention (1886), completed at Paris (1896), revised at Berlin (1908), completed at Berne (1914), revised at Rome (1928), at Brussels (1948), at Stockholm (1967) and at Paris (1971), and amended in 1979. Suriname became party to the Convention and the Paris Act on February 23, 1977.
4. Hague Agreement Concerning the International Deposit of Industrial Designs. The Hague Agreement (1925), revised at London (1934) and The Hague (1960), supplemented by the Additional Act of Monaco (1961), the Complementary Act of Stockholm (1967) and The Protocol of Geneva (1975) and amended in 1979. Suriname became party to the Agreement on November 25, 1975. Suriname became party to the London Act on November 25th, 1975. Suriname became party to the Hague Act on August 1, 1984. Suriname became party to the Complementary Act of Stockholm on February 23, 1977.
5. Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks. Nice Agreement (1957), revised at Stockholm (1967) and at Geneva (1977) and amended in 1979. Suriname became party to the Agreement and to the Geneva Act on December 16, 1981.
6. Strasbourg Agreement Concerning the International Patent Classification. Strasbourg Agreement Concerning the International Patent Classification. Strasbourg Agreement 1971, amended in 1979. Suriname became party to the Agreement in November 1975.
7. Member and Signatory to the TRIPS Agreement, since January 1, 1995. Agreement on Trade Related aspects of Intellectual Property Rights.

5. OTHER COUNTRY-SPECIFIC LEGISLATION OR ACTIVITIES

Unfair Competition:

- Articles 390 and 400 the Penal Code.

Miscellaneous:

- The Civil Code amended by Act of December 1995, Bulletin of Acts and Decrees 1995 No. 101, introducing provisions relating to product liability and misleading advertisements.

###