

(Text as applicable on: 18-10-2011)

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## **Trademarks Act for the BES Islands<sup>1</sup> [*Wet Merken BES*]**

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### **Chapter I. General**

#### **Article 1**

For the purposes of this Act and the provisions based upon it, the term "Our Minister" shall be defined as: Our Minister of Economic Affairs, Agriculture and Innovation [*Economische Zaken, Landbouw en Innovatie*];

#### **Article 2**

All documents directed to and issued by Our Minister, as well as the accompanying powers of attorney and pieces of evidence, are exempt from stamp duty and the formality of registration.

#### **Article 3**

If the office of Our Minister is closed on the last day of a term duly imposed by or duly applicable to Our Minister, then, pursuant to this Act, said term shall be extended until the end of the next day on which the offices are open again.

#### **Article 4**

If the provisions of the Code of Civil Procedure for the BES Islands [*Wetboek van Burgerlijke Rechtsvordering BES*] do not designate a court to which a rightholder may submit a claim to establish his trademark or allege a breach of said trademark, the defendant may invoke his right to have said claim heard in the court of first instance in Curaçao.

### **Chapter II. Individual trademarks**

#### **Article 5**

1. Names, designs, stamps, seals, letters, numbers, shapes of goods or of packaging, as well as all other signs to distinguish the goods or services of a company shall be considered individual trademarks.
2. Shapes that are determined by the nature of the good, that influence the essential value of the good or that achieve a technical result cannot be considered as trademarks.

#### **Article 6**

Without prejudice to the provisions of general law, a surname may be used as a trademark.

#### **Article 7**

1. Without prejudice to the rights of priority established in the Paris Convention for the Protection of Industrial Property of 20 March 1883 [*Verdrag van Parijs tot*

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<sup>1</sup> At present also known as Caribbean Netherlands

*bescherming van de industriële eigendom van 20 maart 1883*] and the Protocol of 27 June 1989 (Treaty Series [Trb.] 1990, 44) to the Madrid Agreement Concerning the International Registration of Marks of 14 April 1891 [*Overeenkomst van Madrid betreffende de internationale inschrijving van merken van 14 april 1891*] or the right of priority pursuant to the Agreement on Trade-Related Aspects of Intellectual Property Rights of 15 April 1994 [*Overeenkomst inzake de handelsaspecten van de Intellectuele Eigendom van 15 april 1994*]; Appendix 1C to the Agreement to Establish the World Trade Organization [*Overeenkomst tot oprichting van de Wereldhandelsorganisatie*], the exclusive right to a mark shall be granted to the first filing submitted to Our Minister or pursuant to a registration with the International Bureau for the Protection of Intellectual Property [*Internationaal Bureau voor de bescherming van de industriële eigendom*], which is designated as an international filing.

2. In determining the order of priority of filings, account shall be taken of the following rights existing at the time of filing and being enforced at the time of the litigation:
  - a. identical trademarks filed for identical goods or services;
  - b. identical or similar trademarks filed for identical or similar goods or services where it is possible that the public will associate the trademarks with one another and where there may be a similarity between services and goods;
  - c. similar trademarks filed for goods or services that are not similar, which enjoy a reputation in Bonaire, Sint Eustatius or Saba, where use without due cause of the later trademark would take unfair advantage of, or be detrimental to, the distinctive character or the reputation of the earlier trademark.

## **Article 8**

No right in a trademark shall be acquired by:

- a. the registration of a trademark which, regardless of the use made thereof, is contrary to morality or public order or in respect of which refusal or nullity is provided for by Article 6 ter of the Paris Convention for the Protection of Industrial Property of 20 March 1883;
- b. the registration of a trademark for goods or services if the use of that mark for those goods and services is likely to mislead the public;
- c. the registration of a trademark resembling a collective trademark registered for similar goods or services which benefited from a right which lapsed during the three years preceding the filing;
- d. the registration of a trademark resembling an individual trademark registered by a third party for similar goods or services which benefited from a right which lapsed during the two years preceding filing as a result of expiry of the registration, unless that third party consents or there has been a failure to use the trademark as provided for in Article 9(2)(a);
- e. the registration of a trademark which might give rise to confusion with a well-known trademark, within the meaning of Article 6 bis of the Paris Convention for the Protection of Industrial Property of 20 March 1883, belonging to a non-consenting third party;
- f. the registration of a trademark which was filed in bad faith, including:
  - 1°. filing with the knowledge, or inexcusable ignorance, of normal use in good faith of a similar trademark for similar goods or services within the last three years by a non-consenting party in Bonaire, Sint Eustatius or Saba;
  - 2°. filing with knowledge, resulting from direct relationships, of the

- normal use in good faith of a similar trademark for similar goods or services within the last three years by a third party outside Bonaire, Sint Eustatius or Saba, unless that third party consents or said knowledge was acquired only after the start of the use which the applicant would have made of the trademark in Bonaire, Sint Eustatius or Saba;
- g. the registration of a trademark for wines which includes a geographical indication identifying wines or which comprises such indication, or the registration of a trademark for spirits which includes a geographical indication identifying the spirits or which comprises such indication, in respect of wines or spirits which do not have that origin, unless the filing leading to such registration was made in good faith before:
- 1°. the present provision entered into effect; or
  - 2°. the relevant geographical indication was protected in the country of origin.

## **Article 9**

1. The right to a trademark shall lapse:
  - a. through voluntary cancellation or expiry of the trademark's registration;
  - b. through cancellation or expiry of the international registration, or through renunciation of protection in Bonaire, Sint Eustatius and Saba, or, in accordance with the provisions of Article 6 of the Protocol of 27 June 1989 (Treaty Series 1990, 44) to the Madrid Agreement Concerning the International Registration of Marks of 14 April 1891, as a result of the fact that the trademark no longer benefits from legal protection in the country of origin.
2. The right to a trademark shall be declared as lapsed within the limits laid down in Article 25(4) if:
  - a. there has been no normal use of the trademark in Bonaire, Sint Eustatius or Saba for the goods or services in respect of which the trademark is registered, without due cause, for an uninterrupted period of five years; in the event of litigation, the court may place all or part of the burden of proof on the owner of the trademark;
  - b. the trademark has become the name used in normal language use to refer to a product or service for which it is registered as a result of the activity or inactivity of its owner;
  - c. as a result of the use made of it by the owner or with his consent, in respect of the goods or services for which it is registered, the trademark is likely to mislead the public, particularly as regards the nature, quality or geographical origin of these goods or services.
3. For the purposes of applying paragraph (2)(a), use of the trademark shall also be understood to mean:
  - a. the use of the trademark in a form including deviating elements, without changing its distinctive character in the form in which it has been registered ;
  - b. the affixing of the trademark to goods or their packaging for the sole purpose of export;
  - c. use of the trademark by a third party with the consent of the owner of the trademark.

## **Article 10**

- 1.** Trademarks shall be filed with Our Minister, with due observance of the requirements and against payment of the fees due as established by or pursuant to an order in council. Our Minister shall investigate whether the documents submitted satisfy the conditions for fixing the filing date and shall fix the filing date. The applicant shall be informed, without delay and in writing, of the filing date or, where applicable, the grounds for rejection of a date of deposit.
- 2.** If other provisions of order in council are not complied with at the time of filing, Our Minister shall inform the applicant, without delay and in writing, of which conditions have not been satisfied and the applicant shall be afforded the opportunity to respond to this notification within the relevant term established in the order in council.
- 3.** The filing shall have no further effect if the provisions of the order in council are not complied with within the aforesaid term.
- 4.** Our Minister shall prepare the deed of deposit, stating the date on which this is done, and, without prejudice to the provisions of Articles 18 and 19, shall immediately enter this deed into the register for the goods or services for which the application was made, and shall provide proof of such entry to the owner of the trademark.
- 5.** The legal registration date shall be the same as the filing date.
- 6.** If the case arises, the registration shall state the date and the basis for the right of priority being claimed.
- 7.** The substantiated claim of priority referred to in Article 4 of the Paris Convention for the Protection of Industrial Property of 20 March 1883 or the Agreement on Trade-Related Aspects of International Property Rights of 15 April 1994; Appendix 1C to the Agreement to Establish the World Trade Organization shall be made by way of submitting a filing, or a special statement to Our Minister in the month after the filing, with due observance of the requirements and against payment of the fees due as established by or pursuant to an order in council. If no such claim is made, the right of priority shall lapse.

## **Article 18**

International filings shall take place in accordance with the provisions of the Protocol of 27 June 1989 (Treaty Series 1990, 44) to the Madrid Agreement Concerning the International Registration of Marks of 14 April 1891. The national fees referred to in Article 8(1), as well as the fees referred to in Article 8(7)(a) of the aforesaid Protocol, shall be determined by or pursuant to an order in council.

## **Article 19**

Our Minister shall register international filings in respect of which application has been made for the extension of protection to Bonaire, Sint Eustatius and Saba.

## **Article 20**

- 1.** Registration of a trademark shall be valid for a period of 10 years with effect from the filing date.
- 2.** The sign constituting the trademark may not be modified either during the period

of registration or at the time of its renewal.

3. Registration shall be renewed on request for further periods of 10 years in the manner, and against payment of the fees, specified by or pursuant to an order in council.
4. Renewals must be requested and fees paid during the six months preceding expiry of the registration. Renewals may still be requested and the fees paid during the six months following the expiry date of the registration, subject to simultaneous payment of an additional fee.
5. Renewals shall take effect from the date of expiry of the registration.
6. Our Minister shall register renewals.

#### **Article 21**

1. Notwithstanding the transfer of all or part of a company, a trademark may be assigned or be the subject of a license regarding all or some of the goods or services for which the trademark was filed.
2. The following shall be null and void:
  - a. assignments between living persons if said assignments are not laid down in writing;
  - b. assignments or other transfers not made with regard to Bonaire, Sint Eustatius and Saba.
3. The owner of a trademark may claim the exclusive right to a trademark against a licensee who contravenes the clauses of the licensing contract in respect of its term, the form covered by the registration in which the trademark may be used, the goods or services for which the license is granted, the territory in which the trademark may be affixed or the quality of the goods or services brought into circulation by the licensee.
4. The assignment or other transfer or the licence shall become actionable against third parties only after the filing of an extract from the document establishing the assignment or licence or a corresponding statement signed by the parties involved has been registered in the manner, and against payment of the fees, specified by or pursuant to an order in council. The provision in the preceding sentence shall apply to rights of pledge and attachments.
5. In order to obtain redress for a loss directly incurred or to be allocated a proportion of a profit made by a defendant, a licensee shall have the right to intervene in a claim instituted by the owner of the trademark as defined in Article 23(3) and (4). A licensee may institute an independent claim as referred to in the preceding sentence only if he has obtained the permission of the trademark owner for that purpose.

#### **Article 22**

1. Regardless of the claim he institutes, no party may invoke legal protection for a sign that is considered a trademark within the meaning of Article 5, unless he has filed that trademark in the ordinary manner and has renewed the registration of that filing as necessary. A judgment of non-admissibility may be rendered ex officio by the court. Such judgment may be nullified by a filing or renewal that occurs during the course of the litigation. In no case shall damages be awarded in

relation to facts that occurred prior to the filing.

2. The provisions of this Act shall not in anyway prejudice the rights that the user of a sign which is not regarded as a trademark within the meaning of Article 5, to invoke general law insofar as this permits an objection to be lodged in respect of the unlawful use of such sign.

### **Article 23**

1. Without prejudice to the application of general law regarding liability for an unlawful act, the trademark owner may assert its exclusive right against:
  - a. using in business a sign that is identical to the trademark for goods or services for which the trademark is registered;
  - b. using in business the trademark or a similar sign for the goods or services for which the trademark is registered or for similar goods or services if there is a risk of the public associating the sign and the trademark;
  - c. using in business without due cause a sign which is identical or similar to the trademark for goods or services which are not similar to those for which the trademark is registered, where the trademark enjoys a reputation in Bonaire, Sint Eustatius or Saba and where use of the sign would take unfair advantage of or be detrimental to the distinctive character or reputation of the trademark;
  - d. using in business without due cause a trademark or sign for purposes other than those of distinguishing the goods or services, where use of the sign would take unfair advantage of or be detrimental to the distinctive character or reputation of the trademark.
2. For the purposes of the first paragraph, use of a trademark or similar sign shall mean in particular:
  - a. affixing the sign to the goods or their packaging;
  - b. offering or marketing, or stocking goods for these purposes, under the sign;
  - c. importing or exporting goods under the sign, except when the situation involves importing the goods for the apparent purpose of re-exporting them;
  - d. using the sign for business purposes and in advertising.
3. Subject to the same conditions as in the first paragraph, the trademark owner may claim damages for any loss he suffers as a result of the use defined in the first paragraph.
4. In addition to or instead of the claim for damages, the trademark owner may also institute a claim for the forfeit[ure] to the trademark owner of the profit resulting from such use, as well as for the production of accounts in this regard; the court shall reject the claims if it considers that the use is not being made in bad faith or if the circumstances of the case do not justify such an order.
5. The trademark owner may institute a claim for damages or for the forfeiture of profit on behalf of a licensee, without prejudice to the standing granted to the latter pursuant to Article 21(5).
6. As far as there is question of fair customs in industry and trade the exclusive right shall not imply the right to challenge a third party regarding the use in industry and trade of:

- a. his name and address;
  - b. indications relating to the kind, quality, quantity, intended purpose, value, geographical origin or time of manufacture of goods or services or other characteristics thereof;
  - c. the trademark, where it is necessary in order to indicate the purpose of a product or service, particularly as an accessory or spare part.
7. The exclusive right to a trademark shall not imply the right to challenge the use in business of a similar sign which derives its protection from a prior right of only local scope, if and insofar as such right is recognised by general law.
  8. The exclusive right shall not imply the right to challenge use of the trademark for goods which have been marketed under that trademark by the owner or with his consent, unless there are legitimate grounds for the owner to object to further marketing of the goods, in particular where the condition of the goods has been altered or adversely affected after they have been marketed.
  9. If a trademark is owned by different owners in different States, the trademark owners in Bonaire, Sint Eustatius, or Saba cannot object to the import of goods that bear that same trademark or a similar sign and that originate from another State or claim damages for this import if the trademark was affixed in that other State by the trademark owner or with his consent or if there are links of an economic nature between the trademark owners with regard to the exploitation of the relevant goods.
  10. The administrative classification adopted for the registration of trademarks shall not be taken into account in assessing the similarity of goods or services.
  11. The exclusive right to a trademark drafted in Dutch or English shall extend to translations into the other of these languages *ipso jure*. Evaluation of the similarity arising from translations into one or more foreign languages shall be a matter for the courts.

#### **Article 24**

1. The trademark owner shall have the authority to claim ownership of movables which have infringed its right or assets which have been used for the production of those goods or to require that they be destroyed or put out of use. Such a claim may also be made in respect of sums of money which are presumed to have been collected following infringement of that trademark right. Claims shall be rejected if the infringement was not a product of bad-faith conduct.
2. The provisions of general law regarding the steps to preserve rights and the enforcement of judgments and officially recorded acts shall apply.
3. The courts may order that enforcement authority shall only be granted upon the claimant's payment of a sum to be fixed by the courts.
4. A licensee is entitled to exercise the authority referred to in the first paragraph to the extent that this authority regards the protection of the rights he is entitled to exercise, provided that he has obtained the trademark owner's permission to that effect.
5. At the request of the trademark owner, the court may order that the party that has infringed that right should inform the trademark owner of everything that the infringing party knows regarding the origin of the goods used in perpetrating the infringement, together with all data relating thereto.

## **Article 25**

- 1.** Any interested party, including the Public Prosecutor, may invoke the nullity of:
  - a. the registration of a sign that does not correspond to the description of the mark described in Article 5, particularly when it is devoid of any distinctive character as meant in Article 6 quinquies (B)(2) of the Paris Convention for the Protection of Industrial Property of 20 March 1883;
  - b. the registration under which no trademark right is acquired pursuant to Article 8(a), (b) and (g);
  - c. the registration under which no trademark right is acquired pursuant to Article 8(c), provided that nullity is claimed within a term of five years following the registration date.
- 2.** When proceedings claiming nullity are instituted by the Public Prosecutor, all other proceedings based on that same ground shall be suspended.
- 3.** Provided that the owner of the prior registration or the third party referred to in Article 8(d), (e) and (f) is a party to the action, any interested party may claim the nullity of:
  - a. the registration of a trademark which ranks after that of a similar trademark in the circumstances provided for in Article 7(2);
  - b. the registration under which no trademark right is acquired pursuant to Article 8(d), (e) and (f);
  - c. nullity under Article 8(d) must be claimed within a period of three years following the date of expiry of the prior registration; nullity under Article 8(e) and (f) must be invoked within a period of five years following the registration date.
- 4.** Any interested party may claim lapse of the right to a trademark in the cases provided for in Article 9(2). Lapse of the right to a trademark subject to the provisions of Article 9(2)(a) may no longer be claimed if the trademark has been the subject of the commencement or resumption of normal use between expiry of the period of five years and submission of the claim that it has lapsed. However, commencement or resumption of use within a period of three months prior to submission of a claim for lapse shall not be taken into consideration when the preparatory steps for commencement or resumption of use occur only after the proprietor has learned that a claim for lapse may be submitted.
- 5.** The owner of the trademark whose lapse can no longer be claimed under the fourth paragraph may not, on the basis of the third paragraph, claim the nullity of a filing that occurred during the period during which the older trademark could have been declared as lapsed under Article 9(2)(a), nor may that trademark owner contest the use of the aforesaid registered trademark under Article 23(1)(a) and (b).
- 6.** The courts have exclusive jurisdiction to render decisions in proceedings brought pursuant to this Act; the courts shall order ex officio the cancellation of the registration of trademarks that have been declared null and void, as well as the registration of trademarks that have conferred the rights that have been deemed to have lapsed.
- 7.** The following provisions are applicable for the purposes of applying the fourth paragraph to the use of trademarks to which rights were acquired prior to 1 January 1998:



- a. the exclusive right to use a trademark to distinguish one's industrial or trade goods from those of another party shall be allocated to the party that first used that trademark in the Kingdom for the purpose described, but only for the type of goods for which the party used it and no longer than three years after the most recent use, although the right holder may give another party permission to use the mark; such use shall be considered to be use by the right holder,
- b. subject to proof to the contrary and the provisions of paragraphs (c) and (d) of this Article, the first party to request registration of the trademark shall be considered to be the first user of that trademark,
- c. the party who has requested registration of a trademark within six months after the date on which he has first filed such request in one of the States that is party to the Paris Convention for the Protection of Industrial Property of 20 March 1883 shall be considered to have made use of that trademark in Aruba, Curaçao, Sint Maarten, Bonaire, Sint Eustatius and Saba upon the commencement of that term, and
- d. the party that has requested registration of a trademark under which his industrial or trade goods have been exhibited at an official or officially recognised international exhibition in the territory of one of the States that is party to the Paris Convention for the Protection of Industrial Property of 20 March 1883 in accordance with Article 10 within six months of the day on which the exhibition opened shall be considered to have made use of that trademark in Aruba, Curaçao, Sint Maarten, Bonaire, Sint Eustatius and Saba on the day on which he used that trademark to distinguish his goods at the exhibition; Our Minister may require proof of his presence on that date to be submitted in the form of a sworn statement from the managers of the exhibition or from another authority, at Our Minister's discretion.

#### **Article 26**

1. The holder of an exclusive right to a trademark who has tolerated the use of a later-registered trademark for a period of five consecutive years may no longer object to the use of the later trademark under Article 25(3)(a) or object to the use of the later-registered trademark pursuant to Article 23(1)(a) and (b) with regard to the goods and services for which the trademark was used, unless the later trademark was filed in bad faith.
2. Tolerance of the use of a later-registered trademark as defined in the first paragraph does not entitle the holder of the later-registered trademark to object to the use of the prior trademark.

#### **Article 27**

The holder of a registered trademark may request cancellation of that registration at any time. However, if a license has been recorded, the registration of the trademark or the licence may only be cancelled at the joint request of the trademark owner and the licensee. The provisions of the second sentence regarding the cancellation of a trademark registration are applicable *mutatis mutandis* to a recorded right of pledge or attachment.

#### **Article 28**

1. Declaration of the nullity of a registration, declaration of the lapse of the right to a trademark or the voluntary cancellation of a registration must regard the entire sign constituting the trademark.
2. A declaration of nullity or lapse must be limited to one or more of the goods or

services for which the trademark is registered if the grounds for nullity or lapse regards only a portion of the goods or services.

3. Voluntary cancellation may be limited to one or more of the goods or services for which the trademark is registered.

#### **Article 29**

1. In addition to the tasks entrusted in the preceding articles, Our Minister shall be responsible for:
  - a. making amendments to registrations upon the owner's request or pursuant to court orders;
  - b. publishing registrations and renewals of registrations, as well as all other reports required by or pursuant to an order in council;
  - c. providing written information, as well as copies or extracts from the register, to any interested party upon request.
2. The amount of the fees to be collected for the work and for the copies and extracts referred to in the first paragraph of this Article shall be determined by or pursuant to an order in council.
3. The register referred to in Article 10 may be examined free of charge.

### **Chapter III. Collective Trademarks**

#### **Article 30**

1. All signs which are so designated at the time of filing and which are used to distinguish one or more common features of goods or services originating from different companies using the trademark under the control of the owner shall be regarded as collective trademarks.
2. The owner may not use the trademark for goods or services that originate from his own business or from businesses in whose management or supervision he is directly or indirectly involved.
3. Any signs so designated at the time of filing and used to designate the geographical origin of goods or services in business shall also be regarded as collective marks. Such trademarks shall not authorise the owner to prevent a third party from using these signs in business in accordance with honest practice in industrial or commercial matters; in particular, such a trademark may not be invoked against a third party who is entitled to use such a geographical name.

#### **Article 31**

Unless provided otherwise, individual and collective trademarks shall be subject to the same rules.

#### **Article 32**

The exclusive right to a collective mark shall be acquired only if regulations on use and control thereof accompany the filing of the mark.

#### **Article 33**

1. The regulations on use and control relating to a collective mark must indicate the

common characteristics of the goods or services which the mark is intended to safeguard.

2. They shall also specify the manner in which proper and efficient control of those characteristics shall be exercised, together with appropriate sanctions.

#### **Article 34**

Article 8(c) shall not apply to the registration of a collective mark made by a former owner of the registration of a similar collective mark or by his agents.

#### **Article 35**

Without prejudice to the application of Articles 10 and 19, Our Minister shall not register the filing of a collective mark if the regulations on use and control relating to that mark have not been filed in accordance with the conditions laid down in Articles 32 and 33.

#### **Article 36**

1. The owners of collective marks must notify Our Minister of any amendments to the regulations on the use and control of a trademark. This notification shall be registered by Our Minister.
2. The amendments shall not enter into effect prior to the notification specified in the first paragraph.

#### **Article 37**

1. The right to institute proceedings to claim the protection of a collective mark shall be reserved to the owner of the mark.
2. However, the regulations on use and control may grant persons permitted to make use of the mark the right to institute the claim jointly with the owner or to join or intervene in the action brought by or against the owner.
3. Likewise, the regulations on the use and control may specify that, when acting alone, the owner may establish the special interest of those using the mark and include in its claim for redress any particular loss incurred by one or more of them.

#### **Article 38**

1. Without prejudice to the provisions of Article 25, any interested party, including the Public Prosecutor, may invoke the lapse of a right in a collective mark if the owner makes use of the mark contrary to the conditions specified in Article 30(2) or authorises or tolerates use contrary to the provisions of the regulations on use and control.
2. The Public Prosecutor may invoke the nullity of the registration of a collective mark, where the regulations on use and control are contrary to public order or where they fail to comply with the provisions of Article 33. The Public Prosecutor may also invoke the nullity of amendments to the regulations on use and control which would be contrary to public policy or to the provisions of Article 30 or which would lead to undermining the safeguards the regulations provide to the public.

#### **Article 39**

Collective marks which have lapsed, have been declared null and void or have been cancelled, as well as those in respect of which no renewal has taken place and no restoration pursuant to Article 34 has been made, shall on no account be used during the three years following the date of the registration of the lapse, nullification or cancellation or the expiry of the non-renewed registration, except by a party who can rely on a prior right to a similar individual mark.

## **Chapter IV. Additional Provisions Regarding International Trademark Law**

### **Article 40**

The provisions of this law regarding international filings submitted pursuant to the Madrid Agreement Concerning the International Registration of Marks of 14 April 1891 shall likewise apply to international filings submitted pursuant to the Protocol of 27 June 1989 to the Madrid Agreement Concerning the International Registration of Marks of 14 April 1891.

### **Article 41**

Nationals of Bonaire, Sint Eustatius or Saba and nationals of countries that are not members of the Union established by the Paris Convention for the Protection of Industrial Property of 20 March 1883, (Treaty Series 1969,44) who are resident in or who have real and effective industrial or commercial establishments in Bonaire, Sint Eustatius or Saba may, pursuant to this Act, claim application of the provision of the Protocol of 27 June 1989 (Treaty Series 1990, 44) to the Madrid Agreement Concerning the International Registration of Marks of 14 April 1891 for their benefit throughout the territories.

## **Chapter V. Transitional Provisions**

### **Article 42**

Without prejudice to the provisions in Article 43, the exclusive rights to trademarks that were also acquired in Bonaire, Sint Eustatius and Saba pursuant to the Trademarks Ordinance 1995 [*Merkenlandsverordening 1995*] prior to the date this Act entered into effect that have not lapsed as of the aforesaid effective date shall be maintained. The assessment determining the order of priority of these acquired rights shall be made with due observance of the law that applied prior to this Act entering into effect.

### **Article 43**

- 1.** The acquired right to a trademark shall terminate, with retroactive effect to the effective date of this Act, if a confirmatory filing of that mark has not been submitted, with due observance of the requirements laid down by an order in council, within a term of one year from the aforesaid effective date. The registration of this filing shall state the invocation of an acquired right and what information has been provided regarding that right. This confirmatory filing shall supersede the filing of the mark that was submitted pursuant to the law that applied before this Act entered into effect. If, however, the applicant invokes an acquired right that he knows or should have known does not exist, the filing shall be considered as having been submitted in bad faith.
- 2.** Moreover, the acquired right to a collective trademark also terminates with retroactive effect to the effective date of this Act if the confirmatory filing referred to in the first paragraph is unaccompanied by regulations on use and control. Articles 25, 33 and 38(2) shall apply.
- 3.** Article 10 shall apply to the filings referred to in the first and second paragraphs.

4. Contrary to the provisions of Article 20, all of the confirmatory filings referred to in Article 42 that are submitted in accordance with this Act between 10 October 2010 and 10 October 2011 shall be valid for a term of one to ten years. This lapses in the month and on the day of the confirmatory filing, in the year of which the final figure is the same as the final figure of the year in which the oldest acquired right, which is being invoked, was created. The first renewal of the registration of these filings may be requested on the date of the confirmatory filing for the duration of the term referred to in Article 20(3) and against payment of the fees established by or pursuant to an order in council.

#### **Article 44**

A ministerial regulation shall provide for the registration, renewal, amendment or other actions regarding international marks as defined in the Protocol of 27 June 1989 (Treaty Series 1990, 44) to the Madrid Agreement Concerning the International Registration of Marks of 14 April 1891 during the period that commences on the effective date of this Act and ends on the date on which Bonaire, Sint Eustatius and Saba may be designated as territories pursuant to the aforesaid Protocol.

#### **Article 45**

[Repealed]

#### **Article 46**

[Repealed]

### **Chapter VI. Final Provisions**

#### **Article 47**

The provisions of this Act shall not derogate from the provisions of the Paris Convention for the Protection of Industrial Property of 20 March 1883, the Protocol of 27 June 1989 (Treaty Series 1990, 44) to the Madrid Agreement Concerning the International Registration of Marks of 14 April 1891 and the valid statutes of Bonaire, Sint Eustatius and Saba that impose a prohibition on using a mark.

Article 48 [Repealed with effect from 01-01-2011]

#### **Article 49**

This Act shall enter into effect on a date to be established later by an order in council; the effect may be made retroactive for the various articles or parts thereof as necessary.

#### **Article 50**

This Act shall be cited as: BES Trademarks Act.

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