

Haiti

*Trade Marks. Law of July 17, 1954, Effective
November 16, 1954*

PAUL E. MAGLOIRE, *President
of the Republic*—

Considering Articles 57 and 79
of the Constitution;

Considering the laws of Decem-
ber 18, 1922, and March 1, 1937,
for the registration and assign-
ments of Trade Marks (Marks of
Manufacture and Marks of Com-
merce);

Considering the requirements of
the Conventions and Accords for
the protection and international
registration of Trade Marks rati-
fied by the Republic of Haiti;

Considering that it is necessary
to place the Haitian legislation
regulating this matter in harmony
with the requirements of the said
"Accords and Conventions" and
to supply certain deficiencies
which experience has revealed;

Considering that, in order to
promote Commerce and Industry,
it is necessary to organize in a
rational manner the protection of
industrial property and control
unfair competition;

Considering that in the interests
of Public Health it is necessary
that the Competent Authority ex-
ercise control of the Importation
and sale of medicinal and pharma-
ceutical substances;

On the proposition of the Sec-

retaries of State, of Commerce, of
Justice, of Finance and of Public
Health, and on the advice of the
Council of the Secretaries of
State;

Has Proposed

*And the Legislative Body has
voted the following Law:*

Article 1.—Any manufacturer,
merchant or company has the
right to designate its merchandise
or products by means of a trade
mark. It is also possible to desig-
nate by special trade marks the
hiring or advertising of services
which are offered to the public.
These marks, called service marks,
are similar as hereinafter stated
to trade marks. There can be reg-
istered as service marks, especially
the titles of radio and television
programs, the names of characters
although the programs themselves
advertise for others.

Considered as trade marks are:
names in a distinctive form, em-
blems, impressions, stamps, ca-
chets, vignettes, reliefs, letters,
ciphers, monograms, labels, par-
ticular combinations of colors, sig-
natures, ornamental designs, fab-
ricated words or names, portraits
in general, all special signs or ap-
pellations adopted or applied by
the said manufacturers, indus-

trialists, merchants, or companies to their products with the object of indicating their industrial, commercial, or agricultural activity, and of distinguishing it from others of the same kind. The same privilege of registration shall apply to titles or inscriptions which, without being those of salable articles, are particular appellations adopted by business houses, Services and Companies.

Article 2.—The following items cannot be adopted or used as trade marks: national or municipal flags or escutcheons, immoral or scandalous figures, distinctive signs already registered or which would lead to confusion with other marks, unauthorized pictures or names of living persons, phrases, names or devices which constitute the commercial name, or one of its essential parts, or characteristic of a person who trades in or manufactures articles or merchandise of the same nature as those covered by the mark.

In determining whether two marks are likely to cause confusion, it will be especially considered whether they create a doubt as to the identity of the manufacturer and whether they present a similarity when applied to products of the same nature. The possibility of confusion will be determined from the similarities rather than from the differences which exist between the marks; it will not be appropriate to place the marks side by side but rather to permit them to be viewed successively and to determine whether the impression produced by the first recalls that produced by the second, by reason of the general overall appearance.

Registration will also be refused or cancelled for marks which are without distinctive character or

which consist exclusively of words, symbols or signs which serve in commerce to designate the kind, nature, quality, quantity, usage, place of origin of the products, time of production or which are or have become, at the time of filing the application for registration, generic or usual terms whether in the current language or in commercial usage.

In order to determine in this case the distinctive character of a mark, there shall be taken into consideration all existing circumstances, particularly of the duration of use of the mark and the question whether the generic term has, in fact, acquired a secondary significance and identifies in the mind of the consumer only the products or merchandise of the applicant.

Article 3.—Registration of trade marks is voluntary except for medicinal and pharmaceutical products, for which registration is obligatory. The proprietor of a mark covering medicinal and pharmaceutical products must present visibly, in an appropriate manner, a legend which indicates that the mark is registered in Haiti, in the absence of which the said products will be seized by the agents of the Public Health Service. Products designated as "Sample" or its equivalent are not subject to the requirements of this article.

Registration, Oppositions, Renewal and Requests for Cancellation

Article 4.—To obtain registration of a trade mark, the interested party or his representative must apply to the Department of Commerce. The application is to be made on stamped paper of G. 10.00 and is to be accompanied by three facsimiles of the mark. It

should contain the name, profession, domicile or place of business of the petitioner, a detailed description of what constitutes the mark as well as the designation of the class of products in connection with which the mark is used. A cliché must be furnished if the mark does not consist of a word, a number or a simple combination of the two.

An extract of the application containing the name of the petitioner, the designation of the mark and the class of products will be published in the "Moniteur" upon payment of a sum of Twenty-Five Gourdes (G. 25.00) to the Official Journal.

If, within a period of two months counting from the date of publication, no opposition to the registration has been received, and if no identical or similar mark has already been registered, a proces-verbal of filing will be issued by the Department of Commerce which will inscribe it in a special register. Such proces-verbal will be signed by the Secretary of State of Commerce or an official delegated by him. The document will be delivered upon production of a receipt by the B.N.R.H. showing payment to the Public Treasury of a tax of One Hundred Fifty Gourdes (G. 150.00) for each mark in each class. An extract of the proces-verbal will be published in the "Moniteur".

If an opposition is received, the Department of Commerce will immediately inform the applicant or his representative by registered letter. Such communication will be accompanied by a certified copy of the notice of opposition and of all documents in support thereof. Such documents will be furnished by the opposer.

The applicant will present his

defense within a period of one month if he is domiciled in Haiti, within two months if he is established abroad. These periods may be extended for a month by the Department of Commerce upon applicant's request.

In the case where the parties do not come to an agreement, the opposition will be disposed of by the Commercial Chamber of the Civil Tribunal of Port-au-Prince.

If the party who has filed opposition loses, he will not be able to file the same opposition again and will be liable for damages. In every case the party who loses the judgment of opposition will be liable for the expenses of procedure and others which have been occasioned by the opposition.

However, the opposition will not be accepted if the opposer does not at the same time file application to register the litigated mark where it has not already been registered.

Article 5.—Trade mark registration in Haiti will be valid for a period of ten years, counting from registration, at the expiration of which it may be renewed for similar periods of ten years, according to the formalities of the preceding article.

In the case of renewals, no opposition will be accepted. Consequently, there will be no publication of the extract of the application. There will only be published an extract of the proces-verbal of renewal.

Article 6.—In order to keep a registration in force, the proprietor of the mark must, within the first three months of the sixth year of registration or of renewal, submit to the Department of Commerce "all documents establishing" that the mark is still in use, or a declaration made before a Notary

establishing that the temporary non-use of the mark is due to special circumstances and not to the fact that the proprietor has abandoned the same. In default of which the mark will be considered abandoned and may be registered by any other party who desires the same, at the expiration of the period provided in the following article. A notation will be made without charge by the Department of Commerce in the margin of the proces-verbal of filing to indicate that the documents provided for in the present article have been submitted to him. No certificate will be issued. But an acknowledgment of receipt will be sent.

There will be no necessity to fulfill the above formality when the date thereof coincides with that of the renewal.

Article 7.—If a registration ceases to be in force by virtue of non-renewal or failure to present documents provided for in the preceding article, the mark referred to therein cannot be registered by a third party before the expiration of three months. This period will be waived if the new applicant has the authorization of the former proprietor.

Article 8.—If several persons apply simultaneously for the registration of identical or similar marks, priority will be accorded to the party who establishes the first use of the mark and the certificate of registration will be delivered to him with the reservation of all rights to cancellation by the losing party in accord with the general law.

Article 9.—The exclusive right of possession and use of trade marks belongs to the person who registers the same in conformity with this law.

However, any interested party

domiciled or having its place of business in Haiti who, before the registration of a trade mark by a third party, has used the same in his business and still uses it actively will be able to request the cancellation of the registration from the competent tribunal.

Application for cancellation will be rejected immediately if it is made more than five years after the registration. It will also be rejected if the applicant for cancellation does not prove that the merchandise covered by his own mark is manufactured or sold by him on a commercial basis.

It will be sufficient if the applicant proves that he has used the mark before the other party has used or registered it and that the merchandise or products covered by his mark have been circulated in the country prior to the use or registration of the mark under attack. A notice of cancellation will be published in "The Moniteur" at the expense of the applicant and an explicit notation thereof will be made in the margin of the proces-verbal of registration.

The same action may be exercised by the nationals of States which accord similar rights to the nationals of Haiti.

Assignments, Corrections and Subsequent Dispatches

Article 10.—The ownership of a trade mark includes benefits conferred thereby and the right to assign that mark in whole or in part. It confers especially the right to grant to third parties licenses to exploit the said marks.

Such licenses must be registered as herein provided for pure and simple assignments.

In order to be valid, the license must provide that the party giving the same has the right to con-

trol the quality of the products sold under the mark and that he must effectively exercise such control.

If the assignment is made abroad, the document which constitutes the same must be legalized by the Consul of Haiti.

Article 11.—The application for registration of the assignment or transfer must be made on stamped paper of G. 10.00 and accompanied by the document of assignment itself.

The assignment will be registered in a special register and mention will be made in the margin of the proces-verbal of filing as provided in article 4. The proces-verbal of assignment will be issued and a document will be delivered to the applicant on the presentation of a receipt by the B.N.R.H. attesting to the payment to the Public Treasury of a tax of G. 100.00.

Article 12.—The assignor of a trade mark will not be able to obtain damages for infringements which take place prior to the registration of the assignment.

Article 13.—Every application for modification or rectification of a certificate of registration for error or omission attributable to the applicant must be made on stamped paper of G. 0.70 and the applicant must pay a tax of Gdes. 30.00. Mention of this modification or rectification will be made in the margin of the proces-verbal as provided in articles 4 and 11 of the present law.

Article 14.—The delivery of each further copy of the proces-verbal of registration of a trade mark or of an assignment will take place upon payment of a tax of Gdes. 30.00 payable to the Public Treasury.

Article 15.—Registrations ob-

tained in accordance with the requirements of the law of December 18, 1922, may be, at the date of their expiration, renewed for successive periods of ten years, in accord with art. 5 of the present law. If these registrations have been granted for more than five years, the formality concerning the same, provided for in article 6 above must be fulfilled within the year of promulgation of the present law.

Article 16.—When the proprietor of a registered trade mark changes its address, it must give notification thereof to the Department of Commerce and the new address will be registered upon payment of a tax of Gdes. 15.00. The change of address must be registered before any renewal, assignment, change of name or presentation of the documents provided for in article 6.

Article 17.—The registers provided for in articles 4 and 12 of the present law are public and may be consulted at the office of the Secretary of State of Commerce any day it is open by any interested person.

Article 18.—There will be maintained a special register of trade marks registered at the International Bureau in accord with the arrangement of Madrid.

If a mark registered at the International Bureau of Berne is in conflict with another mark registered in Haiti subsequent to the ratification by the Republic of Haiti of the arrangement of Madrid, questions of priority will be determined counting from the date of deposit in the country where the first application has been made.

Classification of Goods

Article 19.—The registration of

trade marks will be accorded to 34 classes of products, each class being made the object of a registration. These classes are enumerated in the table annexed to the present law.

The list and classification attached hereto may be supplemented or modified by Presidential Decree taken in council of the Secretaries of State as experience shall show necessary.

Infringements and Penalties

Article 20.—There will be subject to a penalty of 500 Gourdes payable to the Public Treasury upon decision of the Correctional Tribunal:

1) Anyone who uses without authorization a mark of which he is not the owner;

2) Anyone who reproduces a registered trade mark wholly or in part, in any manner whatsoever, so as to mislead the consumer, the similarity of the marks being determined by their resemblances rather than by their differences;

3) Anyone who uses an imitation or counterfeit trade mark.

Article 21.—There will also be subject to a penalty of 500 Gourdes payable to the Public Treasury:

1) Anyone who uses as a mark or as a part of the same the insignia or device of a public, official character, national or foreign;

2) Anyone who uses trade marks offending public morals or decency.

Article 22.—The fabrication, imitation or illicit use of a trade mark will be prosecuted whether by the Public Minister or upon the complaint of the interested party. The matter will be decided as an urgent affair, without remission. Interested party includes all

producers, manufacturers or merchants who are concerned with the production, manufacture or trading of the product.

Article 23.—Prosecutions will be exercised by the Public Minister before the Civil Tribunal in the jurisdiction in which the products are found, without prejudice to the damages which will be due to the interested party.

Article 24.—Fraud once established, the products bearing the falsified or counterfeit trade mark will be seized and sold at public auction, either during the examination, if they are susceptible of damage or deterioration, or during execution of the judgment. They constitute the guarantee of payment of damages and indemnity due to the injured party.

Article 25.—The seizure will be made on application of the interested party, and in the case of article 20, on application of the Government Commissioner in the jurisdiction where the merchandise or products have been found.

The competent Tribunal is that of the domicile of the guilty party or of the place where the merchandise or products have been found.

Commercial Name

Article 26.—The commercial name of persons or companies established in a State according the same rights to nationals of Haiti will be protected in Haiti without the necessity of registration or deposit, whether or not that commercial name forms a part of a trade mark.

Article 27.—There will be considered as commercial names the names of individuals, families and trade styles employed by manufacturers, merchants or growers to designate their trade or industry, as well as the names of their

firms, the names or titles adopted and used by associations, corporations or societies, civil, industrial, commercial or agricultural.

Article 28.—Nationals of countries other than those mentioned in article 24 (should be article 26) will be able to protect their commercial names by inserting them in Haiti in a special register which will be opened by the Department of Commerce for that purpose. Such register will be public and may be consulted whenever open by all interested.

Article 29.—In order to obtain registration of a commercial name, the applicant or his representative must file with the Department of Commerce a request on stamped paper of Gdes. 5.00 which will mention the name of the applicant, his domicile or place of business, the kind of commerce in which he is engaged, the nature of the articles which he produces or sells, and the commercial name which he desires to register.

To such application must be annexed the titles or documents justifying the right of the applicant to use the commercial name which he desires to register. Such titles or documents must be legalized by the Consul of Haiti.

Article 30.—If, after examination, the application is accepted, a proces-verbal of deposit will be issued. It will be signed by the Secretary of State of Commerce or an official delegated by him. A document will be issued to the applicant upon the production of a receipt by the B.N.R.H., showing payment to the Public Treasury of a tax of Gdes. 150.00.

Article 31.—The registration of a commercial name will be refused if it has already been registered by another or if, to the knowledge of the Department of Commerce,

it is the property of a person exempt from registration by virtue of article 24 (should be article 26) of the present law.

Article 32.—The protection accorded to a commercial name by the present law is as follows:

1) The prohibition to third parties to employ or register, for the same kind of business, a commercial name identical or so similar as to lead to confusion with that registered or exempt from registration by virtue of article 24 (should be article 26).

2) The prohibition to third parties to employ or to register a trade mark the distinctive elements of which resemble all or an essential part of a commercial name registered or exempt from registration by virtue of article 24 (should be article 26) when that mark is applied to the same kind of products or merchandise.

Article 33.—Every person or company domiciled or having its place of business in one of the states which have signed the said Convention of Washington and the arrangement of April 14, 1891, or in a unionist Country, as well as any other person or company whose commercial name shall be registered in Haiti, will be able to request and obtain the cancellation of the registration of a trade mark or of a commercial name when such name or mark is intended to refer to the manufacture and sale of articles or merchandise of the same nature by proving:

1) that the name or the mark the cancellation of the registration of which is requested is identical or so similar as to lead to confusion with its commercial name already legally adopted and previously em-

ployed in one of the States which have signed the Convention of Washington, the arrangement of April 14, 1891, or in a unionist Country, or already registered in Haiti in the manufacture or sale of articles of the same kind.

2) that previous to the use or registration by a third party of the commercial name or trade mark the cancellation of the registration of which is requested, he made use of the same and continues to use it in Haiti.

The proprietor of the mark or commercial name infringed will be notified by registered letter addressed to him or his representative if he is established abroad, to furnish his defense within a period of one month if he is domiciled in Haiti, within two months if he is domiciled abroad. Such period may be extended for one month by the Department of Commerce on the application of the defendant.

After the expiration of the above periods, the Department of Commerce will decide the same on examination of the papers of the parties, or by default if the defendant fails to submit any.

Article 34.—The action for cancellation provided for above expires after five years. In all cases and before any protest the original proprietor will be obliged to prove that he is manufacturing a similar product or that he utilized the commercial name the priority of which is in dispute.

Article 35.—Registration of a commercial name must be renewed every ten years. This renewal will be effected upon the simple request of the applicant or his representative without the necessity of presenting titles and upon sight

of the receipt by the B.N.R.H., attesting to the payment to the Public Treasury of the tax provided for in article 28 of the present law.

Article 36.—The Department of Commerce will maintain an index or alphabetical file of registered trade marks, one of registered commercial names and a third of decisions rendered in cases of opposition or requests for cancellation.

(The official classification, consisting of 34 classes, is identical with the international classification and as now used in France.)

Unfair Competition

Article 37.—The following shall be considered as acts of unfair competition:

a) Acts which tend directly or indirectly to present the merchandise or business of one manufacturer, merchant or grower as the merchandise or business of another manufacturer, merchant or grower, whether by appropriation or counterfeiting a trade mark, symbol of distinctive appellation, or by imitation of labels, packages, commercial appellation or other means of identification;

b) The use of false indications of origin or of geographic source of merchandise with the help of words or other symbols or means which tend to deceive the consumer;

c) The use of false descriptions of merchandise, of words, symbols or other means which tend to deceive the public with regard to the nature, quality, or utility of the products;

d) The sale or putting on public sale of an article, product or merchandise in a form which gives the appearance or leaves

the impression, notwithstanding the mark of origin or source by engraving, ornamentation, or the language employed in the text, of being a product, article, or merchandise fabricated in a place other than in the place in which it was actually manufactured.

e) The use of containers which bear imprinted in the material of which they are made the names of their manufacturer or the person who caused them to be manufactured for the requirements of his trade, his trade mark, or his commercial name.

f) All acts or actions contrary to the good commercial faith or to the normal and honorable development of industrial, commercial, or agricultural activities.

Article 38.—All interested parties may prosecute the repression of acts of unfair competition. The competent Tribunal will be the Civil Tribunal exercising its commercial jurisdiction. Damages will be charged against the perpetrator of the act who will be obliged to publish in a daily journal at his own expense the condemnatory judgment, under penalty of arrest.

In the case of a repetition of the offense, the dealer's license will be revoked.

Article 39.—The present law will enter into force three months after promulgation, on which date the laws of December 18, 1922, and March 1, 1937, will cease to be in force.

Article 40.—The present law abrogates all laws or dispositions of laws which are contrary and will be executed with dispatch by the Secretaries of State for Commerce, Finance, Public Health and Justice, each as it may concern.

Done at the Chamber of Deputies, at Port-au-Prince, the 16th of July, 1954, 151st Year of Independence.

President:

ADELPHIN TELSON

Secretaries:

L. JEAN,

D. B. LAMOTHE

Done at the Senate of the Republic, at Port-au-Prince, the 17th of July, 1954, 151st Year of Independence.

President:

CHARLES FOMBRUN

Secretaries:

W. SANSARICQ,

E. JONASSAINT