

Haiti

Contributing firm

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1. Legal framework

National

Trademarks in Haiti are governed by the Law of July 17 1954, as amended by:

- the Law of July 15 1956;
- the Decree of August 28 1960;
- the Decree of September 13 1965, adopting the eight classes of service;
- the Decree of September 24 1970; and
- the Law of December 1992 on Patents and Industrial Designs, as modified by the Law of July 3 1994.

International

Haiti is a signatory to the following international agreements:

- the Paris Convention for the Protection of Industrial Property (1883);
- the Lisbon Agreement on Appellations of Origin and their International Registration (1958);
- the Buenos Aires Convention on Patents and Industrial Designs (1910), ratified by the Haitian government in October 1918;
- the Santiago Convention on the Protection of Trademarks and Trade Names (1923); and
- the Washington Inter-American Convention on the Protection of Trademarks (1929).

2. Unregistered marks

Protection

The owner of an unregistered mark may request the cancellation of a subsequent registration of the mark by a third party. The provisions of Article 6bis of the Paris Convention regarding well-known trademarks also apply.

Use requirements

The law does not provide a specific timeframe for use. However, the mark must be used continuously and in good faith.

3. Registered marks

Ownership

Any natural or legal entity can apply for and own a mark as stated in Article 1 of the 1954 law: “Any manufacturer, merchant or company has the right to designate its merchandise or product by means of a trademark.” Foreign nationals and foreign companies must be represented by a local attorney.

Scope of protection

To be registrable a mark must be distinctive, novel and not forbidden. Article 1 considers the following to be registrable marks:

- marks in a distinctive form;
- emblems;
- impressions;
- stamps;
- cachets;
- vignettes;
- reliefs;
- letters;
- ciphers;
- monograms;
- labels;
- particular combinations of colours;
- signatures;
- all special signs or appellations adopted or applied by manufacturers, industrialists, merchants or companies to their products;
- ornamental designs;
- fabricated words or names; and
- portraits in general.

Unauthorized trademarks consist of the following:

- generic and descriptive marks (ie, “marks which are without distinctive character or which consist exclusively of terms, symbols

or signs which are used in commerce to designate the kind, nature, quality, quantity, purpose or origin of the product or the time of production”);

- deceptive marks;
- marks that are already registered or are similar to an earlier mark (ie, “distinctive signs already registered or which would lead to confusion with other marks”);
- marks that are immoral or contrary to public order; and
- national or municipal flags and escutcheons.

4. Procedures

Examination

Article 4 of the 1954 law specifies the legal requirements for filing a trademark application in Haiti. The interested party or its representative must file an application with the Department of Commerce containing:

- the name, profession and domicile or place of business of the petitioner;
- a description of the mark; and
- the designation of the class of products to which the mark applies.

The application is examined for distinctiveness, novelty and possible conflict with previous registrations. Once this examination is complete, and if the mark complies with the requirements of the 1954 law, 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 *Le Moniteur* (the official gazette).

Opposition

Within two months of the date of publication of the mark, interested parties may file an opposition on the following grounds:

- prior use, registration or application; or
- similarity to a previously registered mark.

When an opposition is received, the Department of Commerce informs the applicant or its representative by registered letter. The opponent is given one month to file a rejoinder if it is domiciled in Haiti and two months if it is established abroad. These periods may be extended for a further month at the applicant’s request.

If a trademark owner has not already registered its trademark in Haiti and is opposing a new application, its opposition will not be accepted if it does not file an application to register the mark in dispute at the same time.

Article 4 of the 1954 law specifies that if the petitioner files no plea against the opposition within the deadline, it will be assumed to have acquiesced to the opposition and the registration request will not be considered. Similarly, the Department of Commerce will ignore any opposition filed after the deadline.

It is possible to file an appeal with the Commercial Chamber of the Civil Tribunal of Port-au-Prince within 90 days of the rejection of an opposition. Action is taken by the Ministry of Commerce upon the court’s final decision.

Registration

Article 4 of the 1954 law states that if no opposition to the registration is received within a period of two months of the date of publication, and if no identical or similar mark has already been registered, a process-verbal of filing will be issued by the Department of Commerce, which will register the trademark. The certificate of registration is delivered upon payment of the registration fees. The entire procedure takes between six and 12 months.

According to Article 5 of the 1954 law, mark registrations in Haiti are valid for a period of 10 years from registration and this may be renewed for further 10-year periods. Renewal is granted on payment of the renewal fees, provided that

the trademark has been well maintained in the registers (ie, there is proof of use or of non-use as allowed by the law). Renewal certificates can be obtained within two to four months.

Removal from register

A trademark can be removed from the register in the following cases:

- A court may order that a mark be removed from the register. Under Article 9 of the 1954 law, a cancellation action may be brought before the Commercial Chamber of the Civil Tribunal of Port-au-Prince. A court decision can prescribe removal from the register after a cancellation action. Cancellation may be applied for on the grounds of prior registration, application or use. A cancellation action will not be heard if it is filed more than five years after registration. A notice of cancellation will be published in *Le Moniteur* and an explicit notation thereof will be made in the margin of the process-verbal of registration.
- The owner may request the removal of the mark from the register.
- The mark may be removed if the owner of a mark has not submitted to the Department of Commerce within the first three months of the sixth year of registration documents establishing that the mark is still in use or a notarized declaration establishing that the temporary non-use of the mark is due to special circumstances. The Paris Convention applies to allow an additional period of six months to prove use.

In the case of a merger or a change of company name, upon payment of the appropriate fee a renewal certificate can be obtained in a period of two to four months.

Searches

The following searches are available in regard to marks that have been validly registered for at least 10 years:

- searches for an identical trademark;

- searches for similar trademarks;
- searches by class; and
- searches across all classes.

Searches cannot be carried out for trade names, slogans, traditional graphic marks or non-traditional graphic marks.

5. Enforcement

Cancellation actions for unregistered trademarks are handled by the courts and the trademark is cancelled if the court so orders. In the case of infringement of a mark, actions can be lodged by the owner of the trademark before the courts. In such cases, the court can order punitive damages and monetary compensation.

In the case of counterfeiting, any products bearing falsified or counterfeit trademarks can be seized and sold to provide the funds for damages and indemnity due to the other party. The competent tribunal is at the domicile of the counterfeiter or where the merchandise or products were found.

Once proof of counterfeiting is established, the trademark is seized and sold, either during the examination (if the products are perishable) or during the execution of the court judgment.

6. Ownership changes – legalization requirements

For the assignment or licensing of a mark, both parties must sign the agreement by hand or seal and the signatures must be notarized and legalized. Article 10 of the 1954 law states that in order to be valid, the licence must provide that the party awarding the licence has the right to control the quality of the products sold under the mark and it must effectively exercise such control.

The recording of changes to names or addresses is also required to allow the owner of the mark to carry out all actions under its current name. Documents must be in French or filed with a translation.

Documents must be notarized and legalized by the Haitian consul in the mark owner's country of residence and by the Ministry of Foreign Affairs in Haiti. A French translation is required by the Haitian Trademark Office, although bilingual documents are also accepted.

7. Areas of overlap with related rights

A logo can be protected by trademark law or as an industrial design, provided that it complies with the provisions of the Patent Law.

Commercial names are also protected by the 1954 law, and use or registration of a mark is prohibited if the distinctive elements of that mark resemble all or an essential part of a commercial name and the mark is used for the same type of product or merchandise.

8. Online issues

At present, there are no legal provisions relating to the online use of registered and unregistered marks.

