

# HAITI: IPO Director Ends Grace Periods with No Written Notice

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Haiti’s Director of the Legal Service of the Ministry of Commerce and Industry unilaterally eliminated grace periods for declarations of use and renewals after decades of availability. The policy was first adopted for declarations of use in January 2021 and extended to renewals in January 2022. While initially loosely administered, since January 2022, the policy has been strictly enforced. Though the decision was not published in writing, word began to spread through conversations between firms and with the director.

Previously, a six-month grace period applied. While no additional fees applied, marks could not be enforced until the late filing was made. Even without the grace periods, mark owners can still utilize a three-month period of exclusivity to refile a mark after a lapse.

Haiti is a party to the Paris Convention. Article 5*bis* of the Convention specifies that: “A period of grace not less than six months shall be allowed for the payment of the fees prescribed for the maintenance of industrial property rights, subject, if the domestic legislation so provides, to the payment of a surcharge.”

Haiti holds the position that the previous grace periods were not protected by the Convention because they do not implicate “maintenance.” This position is supported to an extent by the *Guide to the Application of the Paris Convention for the Protection of Industrial Property*, as distributed by WIPO, which states that fees related to acquisition or renewal of marks are not “maintenance.” For declarations of use, a fee must be paid simultaneously to maintain existing marks for the second half of their terms. The declaration will not be accepted without the fee, so the elimination of grace for the filing may serve as a de facto elimination of the required grace period for the fee, which is arguably for “maintenance.”

The sudden implementation of the new policy raises serious concerns about the trademark system in Haiti. While the new policy may prove legally valid, it will likely damage Haiti’s reputation among trademark owners and practitioners. Most importantly, the oral revocation will likely cause grave concerns regarding what process the Haitian registry will afford to mark owners.

*Although every effort has been made to verify the accuracy of this article, readers are urged to check independently on matters of specific concern or interest. Law & Practice updates are published without comment from INTA except where it has taken an official position.*

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