

Vanuatu: New Trade Mark Law

26/07/2011 by Penny Catley, and Kate Giddens

Vanuatu has new trade mark laws. *Trademarks Act 2003* (“the Act”) finally came into effect on 8 February 2011 in Vanuatu. The Act provides for a new trade mark registration system.

Previously, registration could only be obtained by providing a certified copy of a United Kingdom Trade Mark Registration, a European Union (CTM) Registration, or a registration obtained under any treaties to which a member state of the European Union may be a party, in relation to goods or services.

The new trade mark registration system now provides for local registration for goods and/or services.

The Act also creates the ability to apply for a collective mark, and recognises applications that contain indigenous culture. Any “indigenous” applications will be referred to the National Council of Chiefs for consideration.

The Act sets out the grounds for which an application can be rejected. These include trade marks which:

- are not capable of being represented graphically;
- contain certain signs (to be prescribed through regulation);
- are not capable of distinguishing the applicant’s goods or services;
- are scandalous or contrary to law;
- are likely to deceive or confuse; or

- are identical to another trade mark (the codified test for “identical” extends to substantially identical or deceptive similar).

The Act also establishes the ability to oppose an accepted application.

Registrations may be amended and/or removed by the Court or on application by an aggrieved person, on the grounds that a trade mark has become descriptive of, or is the name of, an article, substance or service within a relevant trade.

Trade marks registered under, the now repealed *Registration of United Kingdom Trademarks Act* [Cap. 81], remain in force under the Act.

A great deal of uncertainty still exists around how this new registration system will work.

The Regulations have yet to be published. These Regulations will set out the prescribed form of an application, provide information as to “signs” that are not registrable, and detail the fee schedule.