

TRADEMARK AND NAME

In 1978, Richard Goldstein, an American doctor registered MSF as a trademark in the USA without informing the MSF France CDC. Eventually, MSF France and Goldstein made a compromise: the US administration would be informed that MSF American-registered trademark would be the property of MSF France. In return, MSF France would grant the use of the trade-mark to a possible future MSF US section of MSF in the USA, while reserving the right to withdraw it in the event of breach of the statutes or ethics.



Minutes from the MSF France Collegial Management Committee meeting, 24 November 1978 (in French).

Extract:

MSF USA: Claude Malhuret distributed a copy of the 4 November letter he sent Richard Goldstein, along with Mr Goldstein's response. The May 1978 General Assembly about changing MSF's statutes and designing an international structure asked the Secretariat to call for an Extraordinary General Assembly. This was not held, but Mr Goldstein went ahead and established a MSF-USA section. He didn't provide the draft statutes or a list of its Secretariat members, but simply sent a telegram informing us that registration had been filed in the US. The president of MSF considers this a serious breach of confidence. He does not support rushing into international expansion when regionalisation still raises many problems. He also believes that if this is to occur, it should start in countries closer to France so that MSF can exercise closer oversight – not in the US, where we all know that anything is possible. He is particularly concerned about how the US group chose to proceed, that is, by presenting MSF with a *fait accompli*. In addition, the MSF trademark is about to be registered in the US, and the existence of an MSF section could call everything into question. Mr Goldstein's response is both curt and unsatisfactory. He says the Secretariat had approved the suggested founding of MSF USA in December 1977 and again at the General Assembly of April 1978. However, the report from the Secretariat's December 1977 meeting notes states that this proposal was not taken into consideration. In addition, as everyone knows, the April 1978 General Assembly did not authorise the foundation of an MSF USA group. The Secretariat asked the president to write again to Mr Goldstein, firmly stating our position and asking for details about this association (statutes, offices, etc.). Everyone hopes that this is just a misunderstanding due to language barriers, rather than bad faith.



Minutes from the MSF France Collegial Management Committee's meeting, 20 December 1978 (in French).

Extract:

MSF USA: Richard Goldstein, representing MSF-USA, was in Paris for the 21 December Extraordinary General Assembly to amend MSF's statutes to provide for new national sections' creation. Claude Malhuret attacked the MSF USA section on several counts:

1. Having been created before the amendment of MSF's statutes;
2. Having been created before submitting its statutes to MSF Secretariat's, as agreed;
3. Having been created before we could register the MSF trademark in the USA to protect our name; and
4. Having notified us after the fact, and not having invited one of us.

Richard Goldstein and other members of the office responded:

1. At the last conference they were encouraged to create an MSF American section;
2. In the past the Americans were criticised for lacking energy, and now they are being attacked for pushing things along; and
3. They agree to MSF France's request to protect our name in the USA. A compromise was reached: MSF USA will tell the American government that MSF France holds the name MSF and grants MSF USA the right to use the name. This permission may be withdrawn if MSF USA violates the association's statutes or ethics.

On 20 December 1978, the extraordinary General Assembly of MSF France voted in favour of the new statutes, allowing the internationalisation. The MSF France Collective Management Committee maintained its right to withdraw its agreement from a national section which would not respect the charter's principles.



Médecins Sans Frontières Newsletter, No. 1, January 1979 (in French).

Extract:

Amendment to the statutes

The Extraordinary General Assembly, held on 20 December 1978, slightly amended our statutes in response to wishes expressed at the last MSF conference to enable our movement to expand internationally and to develop new national sections. The amendments are as follows.

Article 2, paragraph 5:

This replaces paragraph 5:

With an ongoing view to expand its mission and activities internationally, as well as the opportunities for intervention it seeks, the association will encourage the creation, in Europe and, subsequently around the world, of national MSF sections.

Adding to paragraphs 6 and 7:

6 – A national section of MSF may be created in any country, state or territory with the consent of the Collegial Board of Directors of Médecins Sans Frontières-France. To be recognised, a national section must:

- a) Use the French name 'Médecins Sans Frontières,' followed by [country], with, eventually, a translation into the local language, in agreement with the MSF France CDC;
- b) Submit its statutes to the MSF France CDC;

c) Be registered as such with the Secretariat of the MSF France CDC; and

d) Pay an annual fee to be decided by the MSF France General Assembly.

7 – National sections cannot take action in areas that are not included in the goals as determined by Médecins Sans Frontières and the principles of its charter. National sections may not be set up as for-profit civil or commercial companies. [...]

Article 13: Authority of the Collegial Board of Directors

A new paragraph 2:

A majority of the Collegial Board of Directors may withdraw its approval for a national section if it does not comply with the principles established by the statutes and the charter, and the obligations incumbent upon national sections, as defined in Article 2, paragraphs 6 and 7, and may withdraw that section's authorisation to use the MSF acronym. This withdrawal would mean the section's expulsion. If the section expelled so requests, this decision will be submitted for review at the next Ordinary General Assembly, which makes the final decision.

Article 18: Vote Numbers

The following paragraph is added:

The representative of a national section has one vote (or a quota of votes, to be determined by an Extraordinary General Assembly), but the total number of votes assigned to national sections may not exceed 25% of the total number of votes of the members. (This is a requirement under the 1901 Law of Associations).

In 1980, a group of Belgian doctors, led by the MSF coordinator for the refugee camps in Thailand, Philippe Laurent, proposed to create a section in Belgium and was tasked by MSF France to do so. On 25 November 1980, MSF Belgium was formally created and became the first MSF section outside of France.

The statutes of the MSF Belgium association were almost identical to those of MSF France. The statutes acknowledged MSF France's ownership of the MSF Belgium association name. Thus, in the MSF France leaders' minds, MSF Belgium was considered a foreign equivalent of the French regional antennas, a sort of 'branch office.'



Speech at the MSF Belgium inaugural celebration, by Philippe Laurent, 3 December 1980 (in French).

Extract:

Belgian Section

It's not obvious to start a national section with the same spirit and objectives as the original MSF. It's hard to create a section with people who haven't worked with the parent organisation because they won't have the spirit. Things frequently go off the rails. So while it now appears that the Belgian section was off to a good start, there were setbacks because the people who started it weren't members of the MSF team. That's why we tried to get as many Belgian doctors as we could to go on missions, in Thailand, and to other camps. Twenty have been or are currently on a mission. One year later, we felt we had a core group familiar both with the spirit of MSF and with its methods of fieldwork. We felt the time had come to create the Belgian

section officially, with the same statutes and charter as MSF. The main principles of this charter are:

- Volunteerism
- An absence political affiliation
- Discretion about events.

These are basically the same principles as in the Hippocratic oath.

How will the Belgian section incorporate into the French organisation?

1/ Statutorily

I have reread the relevant main articles: Article 5§1-2-3 The Belgian section is fully autonomous financially and administratively, but is linked to the name 'MSF France.' It must respect the MSF France charter. Although the contents are clearly stated in the charter, it is easy to misinterpret them and stray from the original message.

2/ At a practical level

The Belgian section will have its own missions. At first, it will go on small missions that will include doctors, nurses, and paramedical workers.



Minutes from the MSF France Collegial Management Committee meeting, 21 February 1981 (in French).

Extract:

Creating new national sections: P. Sergeant introduced Médecins Sans Frontières Belgium, which has based its charter and statutes on those of its French counterpart, apart from articles specific to the Belgian Law of 1921 (referring to fees, terminology of membership categories, etc). He noted that, as set forth in the MSF France statutes, a special clause is about the use of the MSF name (subject to the agreement of MSF France), and that one member of the MSF France CDC (Sergeant) is also in the MSF Belgium Board of Directors to ensure close ties between the associations.



Report of the MSF Belgium General Assembly, May 1981 (in French).

Extract:

President's Annual Report

We learned a great deal from our first effort [to create MSF Belgium] in 1979. It showed that the MSF spirit cannot be artificially recreated simply by bringing a bunch of people together. Second, it taught us that it is risky for an ill-prepared group to stray from the basic principles spelled out in the charter and the statutes. Drawing on this experience, we developed the section using a different model. Doctors and nurses were first incorporated into other MSF sections. In the field, they learned about MSF and developed friendships there. In the second phase, after they had returned to Belgium, some of these doctors and nurses drew up a structure. They were keen and their approach was the right one. The MSF Belgium section was created almost by osmosis, a graft onto the parent organisation. The Belgian section gradually developed its autonomy. During this phase, after the founding General Assembly, the statutes were formally registered and the Belgian section became a not-for-profit, the same as a French non-profit. We adopted the French statutes, adapted to Belgian law. The article that defines the relationship

between France and Belgium stresses the autonomy of the Belgian section. We are bound to the French section by our name, Médecins Sans Frontières, and this reflects the ideas in the charter and the statutes. The French section has oversight. If MSF Belgium does not respect MSF's views, the French section can withdraw use of its name.

In 1983, MSF France registered the brands MSF International and MSF Europe in Geneva and modified its own statutes in order to integrate the possible creation of an MSF international structure. However, the commission tasked to make proposals on the final shape stagnated and never delivered any proposal. In 1984, the MSF France General Assembly considered that this issue must be treated by the CDC 'according to the needs of the moment.'



Letter from MSF France Authorising MSF USA to Use the MSF Name in the Process of Creation, 19 November 1987 (in French).

Extract:

The Médecins Sans Frontières International and Europe brand was registered on 17 December 1983 in Geneva.



Statutes of MSF France, 1983 (in French).

Extract:

As part of the ongoing efforts to become international, Médecins Sans Frontières France will encourage the worldwide creation of national sections.

6. National sections will not be allowed to intervene in areas that do not comply with MSF goals, and the principles stated in its charter. National sections are not to be commercial companies or for-profit civil-law partnerships.

7. Médecins Sans Frontières France will work with other MSF national sections to create an International MSF association. The purpose of this association will be:

- a) To ensure national associations comply with the charter;
- b) To coordinate and implement operations by national associations, where these operations require the participation of national associations, or are likely to interest them;
- c) To coordinate the promotion of missions led by national associations, and the purpose of these associations;
- d) To assist any national association with any mission it undertakes;
- e) To ensure the worldwide protection of the Médecins sans Frontières brand and the MSF acronym. In particular, to supervise the creation of national sections, which must submit their statutes, and register with the MSF International office before they can operate;
- f) Should the funds raised by Médecins Sans Frontières International prove insufficient, the various national associations will contribute.

In 1985, as the Liberté Sans Frontières debate was raging, MSF Belgium launched operations in Angola and Nicaragua, making contacts with parties to the conflicts without informing MSF France. MSF France felt this challenged the security of its teams. To protect the name of MSF, which they considered as weakened by these actions, the MSF France board decided to file a lawsuit against MSF Belgium, demanding the return of the MSF name.



'Relationships Between MSF France and MSF Belgium,' Minutes from the MSF France Collegial Management Committee Meeting regarding the MSF Belgium General Assembly, 3 May 1985 (in French).

Extract:

Rony Brauman reported on the MSF Belgium General Assembly, held on 27 and 28 April. The General Assembly, which included only the members appointed by the Board of Directors (111 people), voted (43 in favour, 3 against and 2 abstaining) to accept the President's annual report, which included the break with MSF France and associated responsibilities of the MSF Belgium directors. A lively discussion took place on Sunday, during which MSF France officials presented their arguments, including the significance of human rights as part of MSF's image and activity, the need to deliberate and debate about the Third World, non-interference with field activity, and to recognise those who support our approach. [...] In fact, Brauman explained, this break [with MSF Belgium] had occurred several months ago and there were already many problems. MSF's uniqueness is based on that fact that we work in areas of high conflict. Contacts with various parties to such conflicts require both caution and coordinated efforts, which is especially the case in southern Africa and Central America. Some time ago, MSF Belgium has, without consulting MSF France, taken certain initiatives that could pose very serious security problems for people in the field. For example, I am referring to the Angola problem: - MSF has been working alongside UNITA [União Nacional para a Independência Total de Angola/National Union for the Total Independence of Angola] for two years. Recently, MSF Belgium has contacted, and begun the process of working with, the government via the MPLA. MSF Belgium has not notified UNITA, placing MSF France and the people in the field in a very delicate and dangerous position. - The Nicaragua problem: [MSF Belgium mission] the teams have become extremely involved, threatening the stability of a very fragile framework that MSF has built over five years, by establishing contact with all parties to the Central American conflicts. The Guatemala expulsion may well have been the result, partially, of contacts that MSF Belgium had with certain parties without consulting MSF France. The CDC [Collegial Management Committee] was very concerned about the dangers resulting from actions that could threaten team security and adopted the following motion: 'In light of the difficulties and risks created in the field and in Europe as a result of the increasingly hostile and distant attitude of the Belgian section of MSF, a distancing leading to the MSF Belgium General Assembly's decision to cease all cooperation between the two organisations, the MSF France Board of Directors has unanimously voted to pursue any initiative, consultation, and procedures necessary to protect its name throughout the world. This includes the possibility of taking action to strip the Belgian section of the Médecins Sans Frontières' name, which it borrowed from the

original French section when the Belgian section was created in 1981.’

On 11 May 1985, the MSF France General Assembly decided to support the board’s decision to sue the Belgian section.



Report of the MSF France General Assembly, 11 May 1985 (in French).

Extract:

On the pretext of the creation of Liberté Sans Frontières, the Belgian section has decided to split with Médecins Sans Frontières France and end all cooperation. Given the gravity of the decision, the board of MSF has decided unanimously to embark on proceedings to protect its name, and may even withdraw the five-year-old agreement allowing MSF Belgium to work with us. Dr Brauman reminded them of this option, saying that it is not conceivable that groups appearing under the same emblem intervene in a dispersed order.



Minutes from the MSF France Collegial Management Committee Meeting, 31 May 1985 (in French).

Extract:

Relations between MSF Belgium and MSF France:

- MSF France has requested that MSF Belgium change its name; interim relief measures will be sought if they refuse to do so.
- The Mali mission coordinated by MSF Marseille will continue.
- MSF France has asked MSF Holland to modify its bylaws to refer to the fact that its name is borrowed from MSF France.

On 15 July 1985, the Belgian court decided that MSF Belgium could keep its name. The MSF France leaders, considering they were unlikely to win the appeal and fearing to difficulty explaining their position to the media, decided not to go any further with legal action.



Court of First Instance, Brussels. **Emergency public hearing**, 15 July 1985. MSF France claimant. MSF Belgium defendant. Decision of the court (in French).

Extract:

It was enough to know the topics addressed during this symposium (Liberté Sans Frontières symposium of 23 and 24 January 1985) to realise that the aim pursued by Médecins Sans Frontières was entirely separate from the concerns and aims of Liberté Sans Frontières. Whereas the defendant (MSF-Belgium) opts for a temporary interruption in its cooperation with Médecins Sans Frontières France, until the latter distances itself from its decision to form part of the foundation Liberté Sans Frontières, an option it has pursued from every point of view, including: a campaign

run by Liberté Sans Frontières with funds belonging to MSFFrance; a head office shared by MSF-France and Liberté Sans Frontières; a management team [...] Whereas, having familiarised ourselves with all the elements submitted for our examination, it appears to us that the cornerstone of the dispute is the charter common to both parties; whereas this dispute must be looked at in the light of the text of said charter; whereas this clear and precise text clearly lays out the principles the doctors have signed up to. Whereas, by comparing this text with the aims pursued by the LSF foundation, of which the claimant (MSF-France) has agreed to become a part (see page 16 of its manifesto), the judge ruling in emergency proceedings may, without overstepping his authority, state that there is a clear divergence between the philosophy and goals of MSF on the one hand, and the philosophy and goals of Liberté Sans Frontières on the other. Whereas, we believe that the probable upcoming debate on the fundamental issue, which is to establish whether MSF France can or could join Liberté Sans Frontières, is separate from the present problem, set in its proper context by the defendant (MSF-Belgium). [We] Declare the claim admissible but unfounded, reject the claim made by the complainant (MSF-France). [We] Order the claimant to pay costs.



Editorial for Members of MSF Belgium, Philippe Laurent, Director of MSF Belgium, July 1985 (in French).

Extract:

In a world shaken by war and cataclysms, we look after the victims, whether or not they understand what is happening to them, whether they are ‘wrong’ or ‘right’. As eyewitnesses, we obviously think about what we see. And each of us has his or her version of the truth. As eyewitnesses, we have also seen the tragedies these different truths can cause. We don’t trust them. Should we have followed Paris and the latest fashionable version of truth? Our response was to say no: the creation of the Liberté Sans Frontières foundation by MSF France is neither in the spirit nor the letter of the charter. We have taken our distance. Should we have given in when threatened with a court case and dropped our name, as MSF France wanted us to do? Again, we said ‘No’ the name is ours. We are proud of it: hundreds of doctors and nurses have worked hard within MSF Belgium to establish its reputation for generosity and efficiency. The judge agreed. We could have kept all this quiet from you (a court case is never a moment of glory: you never come out of it with your reputation enhanced). But we thought it was better to play fair, as we have always done. After all, it’s when you have problems that you find out who your friends are. We are doctors and there is no shortage of work for us. There are still more than a hundred of us fighting famine. We want to continue our work as doctors free of ideological barriers and political hijacking.




‘MSF Belgium is Entitled to its Name’, **Le Soir** (Belgium), 17 July 1985 (in French).

Extract:

Having rejected the support provided by Médecins Sans Frontières France to the Liberté Sans Frontières foundation, MSF Belgium was summoned to an emergency hearing at the Brussels court by the French association, accused of ‘rebellion’ and a ‘refusal


of allegiance' to the 'parent organisation' and told to abandon their joint acronym. The Belgian court found in favour of MSF Belgium: not only did the emergency ruling find that MSF France's claim was unfounded but in addition, the judge ruled on the fundamental issue at stake, namely respect for the organisation's founding charter, which MSF Belgium accuses MSF France of having violated by engaging with the debate instigated by Liberté Sans Frontières. Citing article 3 of the charter, which states that members of MSF, who work on the basis of strict neutrality and complete independence, undertake not to get involved in the internal affairs of states, governments, or parties, the judge ruling in an emergency hearing stated that there was a clear divergence between the philosophy and goals of MSF on the one hand, and those of Liberté Sans Frontières on the other; he also believed that a debate would probably be had on the fundamental issue, to establish whether or not MSF Belgium could make common cause with Liberté Sans Frontières, but that this was separate from the present problem, which was stripping MSF Belgium of its acronym on the grounds of its 'rebellion.' The judge therefore ruled that the claim was admissible, but unfounded. In other words, Médecins Sans Frontières Belgium's position was legitimate, and a debate on the fundamental issue, i.e. the politicisation of so-called independent humanitarian organisations and the operation of such associations will no doubt soon take place, in either Paris or Brussels. The game is not over, but the Belgians have won the first round.

 **Minutes** from the MSF France Board of Directors 18, 29 July 1985 (in French).

Extract:


The MSF Belgium problem: Judgment has been given in the emergency hearing, our claim was rejected because the court took the view that since MSF Belgium hadn't infringed on the charter, we could not forbid them from using the name. For the moment, unless there are further developments, Claude Malhuret [Member of MSF France Management Team] recommends dropping the case for the following reasons:

- Waste of energy and money,
- Potential problems with the media,
- Not likely we'd win; a judge would find it difficult to rule against a humanitarian organisation with projects under way in the field, compared with any injury to MSF France, which it would consider small in comparison.

 *Malhuret, Brauman, and Charhon [members of MSF France, management team] said, 'If you split off, you have to give up the name.' We said, 'No, we're keeping it.' So, there was a lawsuit here in Belgium. But they really regretted it because it turned into a trap that collapsed on them and it was quite severe. They went for a summary judgment, telling themselves: 'with a summary judgment, you can get a suspension, they're trapped, they spent a year or two on the content, time goes by and then they're dead.' They brought an intellectual property lawyer who deals with brand ownership. Our lawyer was the President of Amnesty International and we prepared a case on the merits, even in a summary judgment proceeding. We spent days and nights preparing our defense. We produced a whole series of documents and got a very interesting decision. The judge said*

that even if it was unusual for her to address the content, she had read the documents and concluded that MSF Belgium was observing the charter, while MSF France was clearly not. So, she dismissed the French. Normally, they should have requested a trial on content after that, but they didn't go to the content.

Dr Philippe Laurent, MSF Belgium Co-founder, President 1981-1984, General Director 1981-1986, in *Famine and Forced Relocations of Population in Ethiopia: 1984-1986 - MSF Speaking Out Case Studies* (in French)

 *Malhuret contacted a lawyer who convinced him, after examining the statutes and trademark, that MSF France owned the trademark and we could withdraw it if that suited us. And so, in the rotten atmosphere of the relationship between Brussels and Paris, Malhuret decided to do just that. I let myself be convinced, because according to the statutes, the President had to file the complaint. But it was Malhuret who pushed for it – and he was the one who went to trial because I wasn't comfortable with the whole thing. I was sceptical, but I had no legal knowledge, so I told myself legal truth and common sense aren't the same. But in the end, that's how it was, common sense won the day because the Belgian judges didn't rule against a Belgian humanitarian organisation that actually wasn't at fault. MSF Belgium was very clever. For one thing, their lawyer was the President of Amnesty International in Belgium. Later, he even joined the board of MSF Belgium. He was certainly smarter than us. We were just big oafs, and their game was very subtle. They talked about the children who'd be out on the streets with no food or medical care if MSF lost its name, since the name was the guarantor of its relationship with donors, etc. They also mentioned MSF's political drift away from the apolitical organisation it had once been, devoted to emergency assistance and care for the most vulnerable. In short, they played their cards very well and won hands down.*

The whole episode with the Belgians was only conclusive in one respect: when a section exists and more to the point is completely in line with MSF's charter or framework, we need to forget the idea of ownership... They are the de facto owners in the sense that it will be a local court that will judge on any dispute regarding the trademark, and the local court won't sentence the local association. That's exactly what happened with the Belgians. However, this means nothing for a country in which MSF does not yet exist but where people want to appropriate it for one purpose or another. And so we entrusted the case to a specialised firm - it was Malhuret and Charhon that took care of it. I dealt with all this shooting from the hip, I didn't feel very responsible over these issues. Françoise [Bouchet-Saulnier] took over all that in her own way.

Dr Rony Brauman, MSF France President 1982-1994 (in French)

In late June 1985, while suing MSF Belgium on the trademark issue, the MSF France Board of Directors, in efforts to ensure its ownership on the MSF name in Holland, proposed to grant MSF Holland a license to use the MSF name. In a letter dated 25 November 1985, drafted by the lawyer of MSF Belgium,

the MSF Holland board answered that they would not sign any contract regarding a brand license of the MSF name. Indeed, according to them the proposed contract was that of a license to exploit a product trademark. Now, the law on product trademarks in use in all the Benelux countries was applicable to industrial and commercial firms only. Therefore, given the not-for-profit status of MSF, the MSF France proposal did not comply with this law. They renewed their proposal to set up an international structure in charge of safeguarding the MSF name.



Copy of the 25 November 1985 letter from MSF Holland to MSF France, sent by Amand d'Hondt, MSF Belgium's Lawyer, to Philippe Laurent, Director General of MSF Belgium, on 3 December 1985 (in French).

Dear Philippe,

I have attached a copy of the 25 November 1985 letter from Artsen zonder Grenzen Netherlands/[MSF Holland] to MSF France. It is consistent with the draft we had prepared. This letter will undoubtedly arrive at an opportune moment, psychologically speaking, given the extensive media coverage of Ethiopia's expulsion of MSF France.¹⁹ I am available if you need me. Again, it was a pleasure to work with you last Saturday, 30 November. I also hope that the second General Assembly of 18 December will approve the suggested amendments to the statutes. Please keep me informed. With warm regards, Amand D'Hondt

Dear Friends, Our Board of Directors has conducted an in-depth review of the proposal put forward in your letter of 28 June 1985 that seeks to establish an agreement between our two associations to grant us the license to use the MSF trademark. We have concluded that we cannot sign this agreement, which is like a license to operate a product brand. Our two associations find this incompatible with the provisions of the Uniform Benelux Law on product trademarks, under the Treaty signed on 19 March 1962, between Holland, Belgium, and Luxembourg. This law applies only to industrial and commercial companies. We are not such a company. Furthermore, the uniform Benelux law excludes 'service' trademarks from its scope of application; that is, trademarks that involve services, not 'products.' Even more fundamentally, we don't believe that the relationship between our two associations, which pursues humanitarian goals, can be subject to commercial law. In addition, Article 2.7, the last paragraph of the statutes of the French association, expressly prohibits the adoption of commercial, for-profit forms. Thus, although we cannot accept your proposal in its current form, we are committed to pursuing collaboration with the other national Médecins sans Frontières associations, yours in particular. We believe that close and continued collaboration among all of national associations is critical to achieving our shared goal. Your statutes (Articles 2.4 and 2.7), as donors (Article 2), refer to the Médecins sans Frontières charter, adopted on 20 December 1971, as the foundation and the basis of all of our activities. We believe that working together, and with our Swiss and Belgian friends, we should be able review the possibility of creating an international entity. This entity could, for example, protect our shared name in consideration of the five principles set forth in the charter and would act in our name and in like manner for each of our associations. We believe that this consultation is in the spirit of Articles 2.4 – 2.7 of your statutes. If you so wish, we would be happy to discuss this with you at greater length and in greater

detail. We are well aware of the importance of this issue for the future of our associations. We are prepared to work with you and the other associations in our organisation to identify a constructive and satisfactory solution for all.

In 1992, the lawyer Françoise Bouchet-Saulnier was tasked by the International office to address the trademark issue, starting with a review of all the registered MSF trademarks. Eventually, the six first sections were allowed to keep their trademark in their home countries, providing they would release their trademarks in other countries to the International office.



Minutes from the MSF International Council Meeting, 10 January 1992 (in French).

Extract:

5. Logo, trademark [...]

e) Legal problems involving the International offices.

Regarding the legal problems involving the International offices, please note that MSF has filed for its name in many countries. There is a risk of trademark dilution when filed for by several sections. The International Board has thus asked the International Secretariat, that is, Alain Destexhe, to analyse how to standardise the sections' statutes in order to determine whether MSF's statutes can be filed in new countries in the name of MSF International to create consistency among the trademarks already filed [...]

9. Use of the names 'Médecins Sans Frontières' and 'Médicos Sin Fronteras.' This question was addressed at point 4-1-5 (logos and trademarks), page 6.



'Presentation: Structure of the MSF Movement', Françoise Saulnier, 16 March 1992 (in French).

Extract:


To address the growth of the organisation, Médecins Sans Frontières, its operational expansion in Europe, and the increasingly international nature of its funding, while preserving the authenticity and specificity of the spirit of this movement, the relationships among the MSF entities will be governed, going forward, by the following principles: The International Secretariat will manage the Médecins Sans Frontières trademark in the spirit of movement cohesion and in the interest of simplification. The six founding sections retain the right to the trademark within their countries. For the other countries, the offices or sections must assign the MSF trademark back to the International Secretariat, which will oversee international protection overall. The trademark will be filed in Belgium in the form of a bloc of text to include:

- MSF, Médecins Sans Frontières
- Doctors Without Borders, DWB
- Artsen zonder Grenzen,
- AZG
- Médicos Sin Fronteras

- And, the Russian and Arab translations (or I don't know what at this point).

This all will be filed and protected at one time. The protected class numbers will be standardised (a model letter of reassignment will be provided to the sections, with a model procedure to follow). A budget will be drawn up in the next few weeks. This procedure can be undertaken only after the MSF International statutes are finally registered (currently in process). The statutes of all of the 'offices' without an operational component will be revised in the interest of consistency within the movement; that is, these offices will operate under a system of 'controlled autonomy.' They will participate in promoting MSF's work overall, and no longer on behalf of one section. Model statutes will be provided for the new offices, based on the MSF Japan model. In any event, three model articles must be included in the statutes of the existing offices by vote of their board of directors. These articles will be protected against any later amendment by the unanimity requirement. The protected provisions concern:

- The composition of the board: five people, including three selected by the MSF International Board, thus ensuring a clear majority for MSF International: (article 7§2 of the Japanese statute).
 - The use of the Médecins Sans Frontières name will be granted by MSF International to the national office, which may use it only for the benefit of MSF International and in compliance with the MSF charter (this right may thus be withdrawn under certain circumstances) (Art 11).
 - The fact that certain articles of the statutes may be amended only by unanimous vote of the board. That is, with the agreement of the MSF International representatives. (Article 12).
- This should provide reassurance and an acceptable framework for the largest number of MSF members. It should also provide a way to entrust the protection of MSF's principles to a restricted group (the International Board).

 **Minutes** from the MSF International Council Meeting, 10 April 1992 (in French).

Extract:

2. International offices

2.3 Protection of the Médecins Sans Frontières name:

Françoise Saulnier carried out an inventory of the procedures that had already been effected. We then met up with a lawyer specialising in trademark law. The current situation is confusing:

- Trademark application made by MSF France essentially, but by other sections too (MSF H in Canada);
- Applications made under the name 'Médecins Sans Frontières' as well as 'Médecins Sans Frontières Europe' and 'MSF International';
- The classes registered are not identical in all countries; MSF USA registered the name in the US;
- Doctors Without Borders is protected in the US, but not in Canada;
- No protection in the UK.

Proposal (drawn up with F. Saulnier).


Two options:

1. Keep the current system with several urgent amendments (protection in the UK, handover from USA to France). Simplest and least expensive solution.


2. Harmonise applications and protection from the International office:

- The six sections retain the right to use the trademark in their national territory;
- For the other countries, handover to the International office which assumes all international protection responsibilities;
- The trademark will be registered in Belgium as a bloc composed of 'Médecins Sans Frontières, MSF, Doctors Without Borders, Medicos Sin Fronteras', and possibly others. The entire bloc will be protected;
- Harmonisation of classes to protect;
- The 'offices' may be able to use the name on the authority of the International office;
- Protection will be requested for the following countries:
 - o All countries in the EC
 - o USA, Canada [...]
 - o Countries of Scandinavia
 - o Countries of Eastern Europe (TBD)

The second proposal was adopted. A budget of 25,000 ECU (European Currency Unit) was voted in for international protection. Françoise Saulnier is tasked with overseeing this project.

 *When MSF France lost its case against MSF Belgium, they tried to get around the problem by registering trademarks all over the place. I wonder even whether MSF Belgium didn't at one point try and counter MSF France's initiative, by registering trademarks too. The proof of this new-found trust, at some point or other, was that they all accepted the logical decision made by the International council that the International office act as the depository of the trademark. One of the first tasks of the International office, led by Françoise Bouchet-Saulnier, was to protect the trademark everywhere, by registering the trademark at the international level, and in a whole series of fields. It was possible to register an international trademark, but it didn't yet offer the same type of protection. Some countries accepted the international recognition, but others required national protection still. So, we had to write some letters to say that we didn't agree. At one point we also tried to protect 'Sans Frontières.' But that didn't work, because there was already Pharmaciens Sans Frontières [Pharmacists without Borders], Vétérinaires Sans Frontières [Veterinarians without Borders], etc., who we obviously didn't want to go after.*

Dr Alain Destexhe, MSF International General Secretary
1991-1995 (in French)

 *When I joined MSF, I didn't know that MSF France and MSF Belgium had been involved in legal action. MSF France lost the case for neglecting the fact that a trademark is something that needs to be protected and there are very precise rules in place regarding its usage. For example, to 'constitute' a trademark, you must, while complying with the visual guidelines, be using what was registered as the trademark and take action each time someone tries to use it without consent. In Paris, Claude Malhuret (who was no longer in charge of MSF, but whom I contacted to get the full story) and Rony Brauman told me that protection by registering trademarks didn't work. The proof, in their opinion, was that they'd successfully managed to frustrate the International Committee of the Red Cross for years, and when*

the managers at MSF Belgium wanted to frustrate them too, they'd managed to do it. I told them that trademarks did provide protection, provided they were well defended. I added that it would also have another effect, i.e. internally it would structure the rules of all those bearing that name and would therefore become a matter of internal governance. I told them that what was important was to create a brand identity that we could protect as a trademark, since we didn't have an international agreement in place that protected us like the ICRC [International Committee for the Red Cross]. Their response was that they didn't think that was the case, but since it was the International office's role to handle it, I could put forward my recommendations. At that time, Alain Destexhe had already registered lots of trademarks on behalf of the International office. There was already a portfolio, but no real policy behind it. I explained that the trademark wasn't an explorer's flag that made whoever planted it on virgin territory the owner. It implies a legal act, but also effective and compliant usage. So I suggested we streamline the portfolio, to ensure the trademarks in our possession within the territory, had legal worth, since they had to be correctly registered, managed, used, and protected. I therefore proposed a coherent policy that we could test as we went along to protect MSF's visual and institutional identity through this trademark and make consistent applications. We offered the six sections the chance to do in the collective interest what they hadn't managed to do in their own interests. The aim was to test the trademark application as a tool for internal goodwill and external branding. At the time, we registered a multilingual bloc in a certain number of fields, which created economies of scale. This gave us the power to act in the event of any problem in countries protected by this multilingual bloc.

Françoise Bouchet-Saulnier, MSF Legal Advisor then Director from 1991 (in French)

Over the following years, as the new MSF entities were mushrooming, the protection of 'Médecins Sans Frontières' name/trademark became a real concern for the movement. It was decided to bolster this protection and recall that the International office should become the sole owner of the name as a mean for the internal unification of the movement.



Minutes from a Meeting on Protection of the MSF International Trademark, 21 November 1995 (in French).

Extract:

Introduction

Françoise Saulnier was hired by MSF four years ago for an international role in the field of humanitarian law. Given the non-operational nature of the International office, she resigned a year later and was hired in Paris where legal affairs hadn't been addressed for a long time. Françoise suggested working on a legal policy for the offices; it would be more effective, in practice, to have an internal policy (which would allow us to settle problems in advance) rather than spend our time settling disputes. In principle, it would be the International Secretary who oversaw this; the GDs [General Directors] have done a number of things. Today, things are ticking along, but decisions have to be made. At the beginning, Françoise was based at the International

council; later, she stopped. The work entailed a lot of correspondence. The GDs and representatives of the DOs [Directors of Operations] are involved, and following and responding to the linguistic sensitivities of everyone is no easy feat (Françoise has no authority over S. Solomonoff or J.-P. Luxen) [...]

III. Protection of the MSF name = patent/trademark registration + use of this trademark (otherwise protection is lost); (e.g. the French wanted to register the trademark in Belgium: stupid because it would then have been used by the Belgians [...])

Today all the statutes have been filed; they provide for control over the non-operational side and justify that the trademark belongs to MSF. We need to get hold of the minutes from the governing bodies and make sure that the decisions respect the general balance of the agreement. [...]

C. Usage agreements

The International office must now sign a usage agreement with the Delegate Offices who say that the Delegate Offices' use the MSF trademark to the benefit of MSF International. Today, signing with Canada and if all goes well, with Italy (on standby).

Signed by the President/Representative of the Delegate Offices and International Secretary.

Trademark usage agreements: this kind of agreement is important for MSF to give authority to the Delegate Offices ; this authority can be withdrawn should the Delegate Offices become operational.

Remark: the status of 'international NGO' does not exist; the status of 'international association' does. Giving the Delegate Offices USA the idea that, for example, it will start a programme in the Bronx one day isn't honest. We need to take a position and we need to be open about our intentions. In a first instance, the International council could say that the decision must come from the International council not the Delegate Office. In the case where the Delegate Offices crosses over into the non-operational side of things, it is conceivable we could attack them from a financial perspective, for misuse of the MSF name, and cancel the board's decision authorising the operation [...]

American jurisdictions will examine whether there has been an abuse of the associative dimension.

Remark: politically speaking, after Chantilly, not the right moment; As most of our trademarks have been filed but not registered, no need to panic: [...]

Conclusion

1) Regarding the statutes: the technical specs still need to be drawn up;

2) Regarding the trademarks: Françoise is finishing up;

Regarding the agreements: International office.

The trademark licence agreement is in place to protect operational cohesion (in relation to the Delegate Offices); in the long term, it should forge links between the sections. To link the sections, we might imagine a 'federation of trademarks' kind of system: possibility of MSF B[elgium], F[rance], and H[olland] accepting the existence of an identical/common trademark and adopting a common charter (current Charter + 'MSF is not...' + penalties/sanctions). Currently, the Charter is not legally protected; the charter is included in the statutes, but differently.



'Questions Related to the Protection of MSF Name,' 29 April 1997 (in English).

Extract:

1) Brief overview of the situation regarding the protection of the name

There are currently six owners of the MSF trademarks within the movement:

- International office
- MSF France
- MSF Holland
- MSF Spain
- MSF Greece
- MSF USA

We are sometimes faced to situations where the name is protected more than once. At the same time, there is no protection at all in some countries (e.g.: in Africa).

2) Which name should be protected?

Because the name of our association is composed of words of common use, we not only use Médecins Sans Frontières and MSF but also its local translations. In the USA only 'Doctors without Borders' is used.

Question: *We have to be clear on which name we want to protect around the world. Do we only want to focus our protection on the logo + the French name or (possibilities that problems with local translations arise)? on the logo + MSF? This decision is linked to with which name we want to communicate.*

3) The protection of the name and the legal structure of MSF

The protection of the name seems to be a good way of organizing internal control within MSF

At the last International council (31 January 97), it was decided that: 'The IC shall have a specific responsibility to control the use of the MSF name. It delegates exclusive ownership of the MSF name to the International office.'

Here, there are examples of organizing internal protection of the MSF name within the association:

- Transfers of the trademarks to the International office (MSF International). But it could be expensive for fiscal reasons,
- To register a collective trademark in the name of MSF International (which would be the property of all sections) and to define the respective rights and obligations of the MSF entities. However, that would not solve the problem of old brands. This solution does not exclude the above one.
- We can also study the possibility of MSF International being the owner of all trademarks but without usufruct. This would be very close to the present situation where each MSF entity uses the name.
- Each MSF entity would have the property of the MSF name on its territory and MSF International would only be the owner of the brands in all other countries. However, there are perhaps other solutions...

Question: *do we really want to use the protection of the name as an instrument of control and cohesion within MSF? In the case of an internal conflict within the movement, you must decide whether you would find it acceptable for one MSF entity to leave MSF but to continue to use the name. Technical solutions will be studied afterwards.*

4) External protection

An international policy regarding the protection of 'Sans Frontières'

Until now, no policy has been decided internationally. In Holland, there is a policy in force. The Dutch section has decided to sue other organizations which use the name 'Zonder Grenzen'. In

other countries and, especially in France, nothing has been done, and it would appear that it is perhaps too late to initiate such a strong policy. This situation has started to become problematic as there are already several organizations using the name. This particularly sensitive with regards to 'Pharmaciens Sans Frontières': MSF Holland has asked them to change their name, and at the same time, PSF was authorized to use the name 'Sans Frontières' a long time ago in France and elsewhere. They have asked us to come up with a solution. At the same time, EURO RSCG (an advertising conglomerate) has asked MSF whether they could use the name 'Sans Frontières' or not for one of their advertising agencies. We have presented them with legal arguments, urging them to find another name.

Question: *Do you want to define an international policy regarding the protection of 'Sans Frontières'? Furthermore, do you want to follow the Dutch policy regarding the use of the MSF trademarks?*



Minutes from the MSF International Restricted Council Meeting, 1 May 1997 (in French).

Extract:

8) Protection of the name

A clear policy for the protection of the name is urgently needed, as we manage it in a confused way, as we are spending more and more money in it, and as there are more and more cases we have to defend the brand name.

The International office is in charge of implementing the policy and asks several questions. Which name do we want to protect first? The answer of the RC is to protect first 'Medecins Sans Frontieres', and the logo in a second priority. The translation of Medecins Sans Frontieres has a lower level of priority and must be examined case by case. We must defend our name when it is misused.

Where? It should be done first in the countries at risk, e.g. where there is a possibility that a section might be created, and where the potential for growth is high, as it would create more problems to the international movement. Do we really want to use the protection of the name as an instrument of control and cohesion within MSF? The ownership should be transferred to MSF International, e.g. to all, to use it as tool for internal cohesion. The license contract between MSF International and each section will have then to be settled. Management of the name would be centralized at the International office. The protection of 'by-products' (sans frontières, some translations...) could be done by each section according to its specific situation, and would be done in the framework of the license contract.

The International office will present an estimate for the expenses necessary for this policy. The IC will have to approve this policy.



Minutes from the MSF International Council Meeting, 19 September 1997 (in French).

Extract:

6) Protection of the name

The IC confirmed the decisions approved by the select committee in May 1997:

- To protect the name 'Médecins Sans Frontières' and the logo, the translation to be done on a case by case basis in the languages used in each country; this protection will be given priority

in countries where there is the greatest potential for setting up and developing a section.

- To use the protection of the name to promote internal cohesion.

It has been decided to transfer ownership of the name to MSF International, for all the sections that still have ownership to date, and to establish licence contracts between MSF International and each section to set forth the terms of use of the name. In the event of sanctions or expulsion, rather than applying a list of criteria, it has been decided to hand the matter over to the wise counsel of the IC which will make the necessary decisions by studying each case on its own merits, on the condition that the decision has a very large majority. These decisions were unanimously agreed and the appropriate budgets for their implementation also approved.


 **Minutes** from the MSF France Board Meeting, 28 August 1998 (in French).

Extract:

Transfer of trademark

The following proposal was unanimously adopted by the members of the Board: Médecins Sans Frontières France and Médecins Sans Frontières International are two not-for-profit associations operating on behalf of the same internationally-recognised humanitarian organisation, Médecins Sans Frontières. The Board of Directors of Médecins Sans Frontières France, owner of the 'Médecins Sans Frontières' trademark in the USA, authorises Médecins Sans Frontières International to file the said trademark in the United States in the following international classes:

- 35 for the recruitment of medical personnel,
- 36 for the collections of donations,
- 42 for the services pertaining to emergency medical aid, assistance to victims of natural disasters and conflicts, awareness campaigns for vulnerable populations, services for which the trademark is not yet protected – the original filing in 1981 only relates to and protects the trademark for medical and surgical services (class 42).

 *The United States was a challenge because US legislation, as with any legislation, is complex and protects national entities. So, US law operates within some tight legal constraints. These constraints are even tighter insofar as the US private donations collections sector is obliged, in terms of fiduciary responsibility, to ensure funds collected are not at risk. It must therefore observe the obligations of American law as scrupulously as possible. In particular, it must not create the illusion of being a 'money guzzler' used to take money out of the pockets of Americans to be sent any old where in Europe.*

MSF USA isn't an association, it's MSF USA Inc. The MSF USA trademark was part of their heritage and, for a fundraising organisation, that holds a huge amount of currency. So, for ages they argued that they couldn't give up the trademark because it had to stay linked to the legal entity in charge of collecting money. If its trademark wasn't owned by us, then it was all the more obvious that we lacked autonomy in the area of fundraising.

Françoise Bouchet-Saulnier, MSF Legal Advisor then Director from 1991 (in French)

In the beginning of 1999, two-thirds of sections still owned their trademarks, despite previous International council decisions. Therefore, the process of handing over the trademark to the International office was relaunched, and triggered a lot of debates and reluctances. Some sections feared that by owning the trademark the International movement could force sections to comply with any decision under threat of withdrawal of the right to use the MSF name or expulsion from the movement.

 **Minutes** from the MSF France Board Meeting, 26 February 1999 (in French).

Extract:

Protection of the MSF logo and name

Protection of the logo is 'usually' entrusted by each section to the International office in Brussels, which handles this matter for the whole group. The International Secretary presented a mitigated report in the sense that two-thirds of sections (including MSF France) have not yet handed over the trademark to the International office.

Philippe Biberson explained his position by stressing that there is a great deal of ambiguity surrounding this issue and that, as things stand, it's difficult to know if the aim of this measure is to improve the collective protection of the name against external 'attacks' or to bring sections into line with an internal code of conduct (excluding sections that don't follow certain rules).


Philippe raised questions on:

- 1) What rules: financial independence, for example, or the 'crime' of refusing témoignage?
- 2) With what power of coercion? He feels it would be better to give up this 'police-like' and specious objective and concentrate on defending MSF from 'plagiarisers' outside the movement.

While this wasn't laid out as such, some sections feel it's legitimate not to hand over their trademark because one interpretation has given rise to the concern that, as soon as the trademark is given over to the IO, the office can decide to take it back at any moment from any section. They therefore disagree with the idea of going ahead with expulsions.

Conclusion

This discussion raises a fundamental question that goes beyond merely the conduct of the group. It is a political debate that mustn't be rushed through without going over the legal aspects. Thus, it seems appropriate to take the time to mull the issue over. While awaiting clarifications, the Board supports Philippe's position.

 **Update** on MSF trademarks in preparation of the select committee, 5 and 6 March 1999 (in English).

Extract:

2.Licensing contracts

A licensing agreement has been signed with each partner section (Japan is the last one pending)

MSF Greece first needs to assign its trade mark (registered on its own initiative in November 1996) to the IO, before we can sign a license).

MSF USA: ditto (for 'Doctors without Borders')

N.B.: The licensing agreement signed with the partner sections stipulates that the contract will be automatically and immediately terminated in the event that:

a) The licensee loses its status as a member of MSF International,

*cf article 7 of MSF International's statutes: non-payment of the annual contributions, resignation or exclusion for serious misdemeanour – the section concerned having been given notice by the IC to explain its actions.

b) The licensee contravenes its contractual obligations* and does not remedy the situation within 30 days from receipt of a registered letter from the IO.

* acknowledge that the name/brand/trademarks are the exclusive property of MSF International, refrain from registering similar or identical trademarks, make good use of them by respecting and by promoting MSF's good reputation, ask the IO for authorisation prior to granting any trade mark sublicense, inform the IO in case of counterfeiting of the trade marks in its country.

c) the section becomes insolvent or undergoes involuntary liquidation.

3. Commitment of the operational centres.

At the IC meeting of September 1997, those sections who had already registered their trademark, voted unanimously and committed themselves

1) To transfer their trademark to the International office

2) To sign an exclusive licensing agreement.

To date, the assignment has not been made and this meeting is the opportunity to settle any difference or remaining obstacles and move on.

Situation of each OC [Operational Centre] re: trademarks:

- MSF France: assignment (transfer the ownership) of the trademarks that were registered abroad (e.g.: Austria, Italy, Benelux, Switzerland, the USA) and in France pending.

- MSF Belgium & Luxembourg: never registered the trade mark ('Médecins sans Frontières' et 'Artzen zonder Grenzen' in the Benelux belong to MSF France, MSF Holland and MSF Intl)

- MSF Switzerland: ditto -> not personally concerned by the assignment issue.

Belgium, Luxembourg & Switzerland should be granted a license by the IO as soon as the registrations made in these countries by other sections have been transferred to the IO.

- MSF Holland: agreement pending

- MSF Spain: OK to transfer the ownership of its trade marks to the IO, but, in order to respect the specificities of its bylaws, asks that this IC decision be confirmed by a General Assembly vote

Special Cases:

- * MSF Greece: pending – specific request to keep the name even if excluded from the IC.

- * MSF USA: pending.

4. Proposal:

Voting procedure to exclude a section from the International council

Further to the request of several sections regarding the possibility of exclusion from MSF International, the following definition & voting procedure is submitted for approval:

All members of MSF International and the IC are committed to participating in, developing and strengthening MSF's international organisation/movement.

Therefore, should a section:

- * commit a serious ethical fault or

- * contravene MSF International rules and regulations which had been decided by an IC vote

- and that its action/behaviour were deemed by the International council to be unquestionably detrimental to the movement's good standing or cohesion,

The IC will hold an extraordinary meeting (within the next x days upon reception of IC's registered letter requesting explanations) and call for an exclusion vote.

The majority should be 17/19 sections, or 89.5% of the votes.



Minutes from the MSF France Board Meeting, 27 August 1999 (in French).

Extract:

Transfer of trademarks to the International office (J. M. Kindermans [International Secretary])

At the last Board meeting on 25 June 1999, management thought they lacked information to be able to rule on the decision to hand over to the International office the Médecins Sans Frontières trademarks filed overseas a few years ago and of which MSF France does not have usage, with a view to protecting the association's name internationally. Jean-Marie Kindermans has attended to provide all the technical information on the matter. He summed up the document he proposes:

Jean-Marie Kindermans: The aim is to make arrangements to defend the shared trademark from outside the movement and manage the trademark in a centralised fashion supported by licence contracts. While historically MSF France initiated the movement and filed the trademark virtually here, there and everywhere, other sections also filed it, which has resulted in a problem of multi-filings. To prevent this kind of situation and promote observance of the collective rules in our Charter, the trademark needs to be centralised and effective means to protect it implemented.

Denis Pingaud [Director of Communication, MSF France]: How will transferring the trademarks increase the effectiveness of their protection? In fact, transferring the trademark for it to be co-owned by 18 members doesn't seem to me to be any easier than it being managed by the section that owns it. The transfer of the trademark seems to be closer to a political act than an operational issue.

Jean-Marie Kindermans: This would, for example, enable us to centralise the monitoring of counterfeits and to take action, because to manage a trademark, you need to own it, otherwise you have no grounds to take action. As regards the United States, and secondarily Austria and other countries, France's transferring the trademark to the International office is a key argument for securing the name of the trademark and guaranteeing it through a system of licence contracts [...] but this is a more sensitive and longer discussion. From a strategic point of view, the moment is opportune: two years ago, MSF USA signed a contract agreeing to hold a licence as soon as France had transferred its trademark to the IO and in exchange MSF USA would transfer DWB [Doctors Without Borders] to us. Licensing is a framework to remind us how to use Médecins Sans Frontières.

Philippe Claverie [MSF France Board member]: This argument aside, I'm still doubtful [...] We're removing a power relation, which is in our favour in relation to the USA, for the benefit of an authority in which we are only one voice among 18 [...] No one can tell us how the IO is going to behave exactly in the

future? And under what conditions will licences be withdrawn?

Jean-Marie Kindermans: There are just three conditions under which licences will be withdrawn:

- a section is expelled from the International council
- fraudulent or poor use of the trademark
- a section is declared bankrupt

To be expelled from the IC is when it decides (unanimously less two votes) that a serious breach of our principles has been committed.

The Board voted, with 10 in favour and 3 abstentions, and adopted the proposal for the transfer to the International office of the trademarks filed overseas a few years ago and of which MSF France does not have use. This concerns the following trademarks:

- Médecins Sans Frontières, filed in Austria, Benelux, Monaco, Portugal, Switzerland and USA
- Médecins Sans Frontières International, filed in Italy and in Portugal
- Médecins Sans Frontières Europe, filed in Italy and in Portugal
- MSF, filed in Benelux
- Médecins Sans Frontières and Doctors Without Borders filed in Ireland.



From 1992 to 1999 it's the same process: we ask sections to return to the International office all the trademarks which are not justified in the context of fundraising in a national market.

For political reasons, we can't ask the long-standing sections to do this, as it would be tantamount to taking away their right to exist under this name in their own country. So, we'll hold off on them returning their trademark to the International office for later. However, all the trademarks filed in the country are done in the name of the International office. Then it's only fair to give the sections the means to defend their portfolio. For example, the managers of MSF USA feel they are more in a position to protect their trademark in the USA than the International office. So, in their territory they have kept something in reserve to be able to start legal proceedings when their lawyers tell them that in the interests of the efficiency of collecting funds, they cannot let such and such do whatever they're doing.

So, we left room for small arrangements at the national level for the purposes of collecting money. I recommended that the International office protect the trademark against limited criteria: the risks of confusion in the field for any activities that looked like relief. If there were people calling MSF for corporate mediation, that wouldn't get anyone killed in the field. But if we're talking humanitarian relief or political activity or whatever, that could have a knock-on effect in the field of intervention, so we act.

Françoise Bouchet-Saulnier, MSF Legal Advisor then Director from 1991 (in French)

MSF Greece was one of the two non-operational sections that had never returned its trademarks to the IO. By the end of 1999, the Greek section was on the way to being expelled from the movement, which automatically entails losing the

right to use the MSF name. As MSF Greece challenged every International council expulsion vote, the IO sued it to deprive it of its name.

Eventually, the Greek Trademark Administrative Committee denied MSF Greece the right to use the Médecins Sans Frontières name and logo, but authorised the use of the Greek translation.



Minutes from the MSF International Council Meeting, 27 November 1999 (in English).

Extract:

Without prejudice, the members of the current assembly are formally confirming the informal cc-mail [MSF internal email network] vote of 16 September 1999, establishing the exclusion of the Greek section of Médecins Sans Frontières, based on the issues discussed and resolution passed at the MSF International council on 12 June 1999. The 16 September 1999 MSF International council cc-mail [internal email system] resolution reads: 'Because of non-compliance with the 12 June 1999 MSF International council resolution, the MSF International council expels the Greek section from the MSF International council and association. The MSF International council consequently demands that the former Greek section:

- a) Immediately ceases use, in any way whatsoever, of the logo and name of 'MSF/Médecins Sans Frontières' and of any related distinctive sign, publicly or privately in or out of Greece and
- b) Refrain from making any misleading representation that they are affiliated, in any way whatsoever, with MSF International or the MSF movement generally. Finally, the former Greek section is required to immediately withdraw the trademark 'MSF/Médecins Sans Frontières,' which was filed in the Greek Trade Mark Office in bad faith, without MSF international's express or implicit consent.

The number of votes for: 17

The number of votes against: 0

The number of abstentions: 0

The total votes cast: 17

The number of absent International council members: 1 (MSF Australia).

The resolution was adopted.



Update on MSF Greece by Jean-Marie Kindermans, MSF International Secretary, 7 December 1999 (in English).

Extract:

2) Trademark issue in Greece

Last week we submitted a memorandum with evidence to the Greek Trademark Administrative Committee. We are asking for a cancellation of MSF Greece's registration of the trademark logo + Médecins Sans Frontières + the Greek translation which was done in bad faith. It is the first step before going to the Administrative Court of First Instance. At this stage, we do not have much chance, as the three members of the Trademark Administrative Committee are appointed by the government. That is why we tried to distinguish very clearly this issue from the one in Belgium related to the exclusion procedure. We should expect an answer between three weeks' and four months' time.



Minutes from the MSF International Council Meeting, 10 June 2000 (in English).

Extract:

The Former MSF Greece Section

The International Secretary briefly summarised the stage we've reached regarding the legal proceedings on the exclusion of the former MSF Greece section from the MSF movement. The Greek Trademark Administrative Committee accepted that the MSF name had been registered by the former MSF Greece section in bad faith and decided that they were no longer entitled to use the logo or the name 'Médecins Sans Frontières'. The former Greek section of MSF can still, however, according to the ruling of the Greek Trademark Administrative Committee, use only the Greek translation of the name 'Médecins Sans Frontières'. However, this decision cannot be applied until the time available for an appeal procedure has come to an end. The former MSF Greece section has not yet appealed, and there is still time to appeal for the moment. It will expire at the end of July 2000. Regarding the case brought by the former Greek section of MSF against the MSF movement in Belgium: the Belgian court ruled on 30 March 2000 against the Greek application for 'provisional measures' to be applied against MSF while the case is pending. The original case is still active, and the court will likely take up to two years to rule. Since the case is brought against us, and the Belgian court has accepted it, we have no control over whether it will continue or not.



Our lawyers told us that the International council couldn't exclude us from the MSF family, that we had the name, the logo, and that we were keeping the lot. This approach had been used in Greece where the courts said we could keep the name, but not the logo.

Dr Sotiris Papaspyropoulos, MSF Greece Co-founder, President 1990-1996, Honorary President 1996-2000 (in French)

In 2002, the IC set as a condition for the reinstatement of the former Greece section to the movement that they returned the Greece trademark to the IO.

In 2004, the former Greece section General Assembly accepted this condition. In February 2005, the international office and MSF Greece signed an agreement 'granting MSF Greece the licence to use all MSF trademarks and related distinctive signs, thus reintegrating the Greek section in the MSF movement'.



Minutes from the MSF International Council Meeting, 22-24 November 2002, Barcelona, (in English).

Extract:

Resolution on the former MSF-Greece section

The IC recognizes a positive spirit and change in the former MSF Greece section. Concerns continue to exist with respect to the former section's appreciation of humanitarian principles and the public positioning in Greece.

The IC decides to open up a dialogue with the former MSF-Greece section to look into the possibility of a future reintegration of the former section as a member of MSF-International. The IC states the following clear non-negotiable conditions for a future membership in the movement:

- 1) *The former MSF-Greece must share with the movement a thorough and critical analysis of their actions in Kosovo during spring 1999, and their position on other major crises.*
- 2) *The operations carried out by the former MSF-Greece section, if to be continued, must be fully incorporated in one of the current 5 operational directorates of MSF as stated in the IC resolution on future growth and operationality of MSF.*
- 3) *The former MSF Greece must accept that the legal ownership of the name Médecins Sans Frontières, the acronym MSF, its Greek translation and the logo both inside Greece and internationally belongs exclusively to MSF-International, which is a common obligation of the partner sections*.*

The IC asks the International office and the executive to appoint two people from MSF to discuss a possible reintegration of the former MSF-Greece section. The commission should report back to the IC no later than November 2003.

** NB: re. 3), the legal implications of this paragraph are: The former MSF Greece should withdraw its Greek trademark application no. 132649/12.11.96, waive any and all claims arising thereof and undertake to refrain in the future from registering in Greece or elsewhere, any trademark incorporating any of the above mentioned distinctive elements.*

The resolution was unanimously accepted.



Minutes from the MSF International Council Board Meeting, 8-9 October 2004, Paris (in English, edited).

Extract:

MSF Greece reintegration process

Update on the reintegration process:


The ICB members had no question re the progress report circulated by Emilia before the ICB meeting.

Specific point on the transfer of the trademark and logo:

Emilia reminded that the transfer of the trademark and logo was a precondition to the reintegration of the section in the movement. At their AGM last June, members of MSF Greece unanimously voted to give both back. Everything is being put in place for this transfer but MSF Greece now wants to make the transfer after the November IC meeting where the final decision for the reintegration will be made.

Decision:

As the transfer has already been accepted at the AGM, and as long as there is no political problem, the ICB agrees for both trademark and logo to be transferred after the IC decision. ICB therefore proposes that the reintegration is validated by the IC on the understanding that both trademark and logo will be given back right after the IC decision in November.

 **Minutes** from the MSF International Council Board Meeting, 19-21 November 2004 (in English).

Extract:

1. MSF Greece (with Manuel Lopez – re-integration coordinator MSF-Spain; Dino Astropoulos – GD ad interim and re-integration coordinator MSF Gr(eece))

[...] Conclusion of the discussion and resolution (voted on 21 November 2004):

After a presentation on the developments of the integration process the IC recognises a very positive outcome of this process and of the work done by MSF GR[eece] and MSF S[pain]. Because of irregularities in MSF GR regarding the purchasing of databases in the past and the hiding of this information to MSF S and recently unveiled, and in the light of the severity of these irregularities the IC adopted the following resolution:

Reintegration will be effective as for 15 of January 2005, provided that there will be a positive recommendation from the board of MSF S, after studying the resolutions and recommendations from a committee consisting of members of MSF S board, members of the reintegration team and a member of the International council that will monitor and evaluate the evolutions of MSF GR during the next months, especially those concerning the unacceptable irregularities discovered during the last days or related ones.

If the decision of MSF E board at that time (15th of January) were to not recommend reintegration, the decision will be postponed to the IC meeting in June 2005.

Unanimously approved by voting members present (16) – 2 absents (HK, Austria)

Update since the meeting:


Moreover, on 09 February 2005, representatives from the International office and from MSF Greece have signed an agreement granting MSF Greece the license to use all MSF trademarks and related distinctive signs, thus reintegrating the Greek section into the International Movement of MSF. As a result, MSF Greece is back to being one of the 19 sections of the movement, having agreed to share, with all other sections around the world, MSF's humanitarian and operational principles.

The protection of the MSF name and trademark was part of the La Mancha agreement endorsed in June 2006.

In September 2007, a state of play on the trademark, ordered by the ICB in an effort to try and build a consistent trademark policy, pointed out that there were still irrelevant or redundant trademarks used in the movement.


The ICB reinforced the international office in its role of managing the trademark issue, following three main criteria: the risk of confusion at field level, the acronyms (MSF and DWB) and the medical and humanitarian domains.

Outside these criteria, the sections remain entitled to protect their marks. This proposal was then endorsed by the ExDir in June 2008.

 **La Mancha Agreement**, 25 June 2006 (in English, in French, in Spanish).

Extract:

Art. 1.11: We strive to prevent the work we do and our assets, both symbolic (i.e. our trademark and image) and material, from being diverted or co-opted for the benefit of parties to conflicts or political agendas.

 **Minutes** from the MSF International Council Board Meeting, 26 September 2007 (in English).

Extract:

Emmanuel Tronc's [Interim International Secretary General] update on trademark.

Françoise Saulnier [MSF legal director] was appointed four months ago to assess the current situation of the trademark issue and provide an 'état des lieux' [overview] of what we are doing and if we are doing it correctly. She was able to point out the main priorities and criteria as well as specify the issues with the budget and the logic behind the defence of our portfolio of trademarks.

Considering the amount of money we spent on that particular issue (around 150,000 -> potentially for 2007), it is essential to build a coherent trademark policy, which will enable us to define priorities (internally and externally) and rationalise our catalogue (qualitative and efficient portfolio, better use of alerts, avoid redundancy of marks...).

The three main criteria identified regarding the issue are:

- 1) The risk of confusion at field level, regarding security and operational aspects
- 2) The acronyms (MSF, DWB)
- 3) The medical & humanitarian domains

If the IO will give space to the sections to defend trademarks outside those criteria, it will need a real follow-up that has not been done adequately in the previous years. The reality is that we defend trademarks that are not pertinent or are redundant in our catalogue.

Some IC members thought that the issue was supposed to be treated by each section (Paula [Farias, MSF Spain president]), Jean-Hervé [Bradol, MSF France president] and wonder if it is was possible to have some guidance from the IO (Joanne [Liu, MSF Canada president]).

The IO doesn't always have the idea of what is done in each section and having an overview is important in order to have a coherent approach to the issue and to rationalise the cost. It is also important to clarify who decides and how to organise the follow-up of that dossier.

Françoise won't have time to handle the trademark issue alone therefore she will need an assistant based in Paris for one year. France seems the appropriate place, as 80% of the trademark cases are linked to MSF F[rance] or MSF US[A]. There has been a huge increase in the invoicing from Casalonga [the legal firm appointed by MSF] for the past two years, consequently it will be cheaper to have someone with a legal background based in

Paris and supervised by Françoise to overview the trademark issue and continue the research within the movement. Françoise is preparing an updated framework and ToR that will be presented to the ExDir in November and if needed to the IC in December.

Jean-Hervé made the point that, even if not appropriate now, we'll need a lawyer at the IO in the near future.

Decision:

The ICB acknowledges a need for more coherence regarding the trademark issue and reconfirms Françoise Saulnier in her responsibility to centralise the expertise. Christopher Stokes [MSF International secretary general] is the signatory and has the final responsibility.



Trademark International Policy: Assessment, November 2007 (in English, edited).

Extract:

Objectives of the trademark policy:

1. Inside the movement: maintain coherence within MSF movement about the use of the name by each section (e.g. MSF Greece is denied the right to use the name MSF after breaching operational discipline in Kosovo).
2. Outside MSF: defend the name from intentional or non-intentional confusion with other trademarks (association names, domain names) [...]

II. Concrete proposals for a better trademark policy management

a. Rationalisation of MSF trademark registration

• Avoid unnecessary costs:

MSF has proceeded to many registrations worldwide and to many extensions (international trademark and/or European trademark) during the past without putting the whole thing into coherent shape.

For instance:

1. 'Médecins Sans Frontières Europe' is registered in Canada, Italy and Portugal though this trademark is not used as such. On the other hand, the MSF trademark is protected in these countries through national and/or EU protection.
2. 'M.S.F.' [i.e.: with stops between the letters] is registered in Benelux although this trademark has never existed as such [however, in the French statutes, MSF is defined as M.S.F.].
3. In Antigua we have made an international extension of the Benelux registration which may not be very justified.
4. In Austria we have made an international extension of the Benelux trademark in addition to a national registration.
5. In Montenegro we have registered twice..., etc.

• Increase efficient protection:

Examples :

1. 'Médecins Sans Frontières' is not protected with regard to medicines and pharmaceutical products at EU level (i.e. Classes 5 & 10);
2. There is no 'WB' registered in Great Britain or at EU level. We are registered mainly in headquarters countries and poorly in countries of operations. E.g.: emergency registration in Uganda in July 2007 linked with the use of our name by a private national body...

• Have a coherent policy

1. Get rid of some useless or redundant trademarks (keep the oldest registration in order to be able to prove precedence).
 2. Decide what is most cost efficient. E.g.: prefer a national registration in local language rather than an international multi-language registration?
 3. Check the appropriate country coverage.
- Check the exact content of the MSF trademark portfolio

We have an exact view of the trademark owned by the international office. But it is not clear which trademarks are still held by national sections. This inventory could help rationalise the portfolio and save money. Each MSF section should retrocede its own trademark to the IO in order to rationalise the process and so that we know exactly what MSF has registered and where, and to avoid multi-registration.

-> the cost of the registration/renewal could be reduced. This cost represents about half the expenses related to the trademark, the other half consisting of alerts and trademark opposition activities.

b. Assess, strengthen and increase coherence of the MSF trademark protection policy

The existing MSF trademark policy needs to be assessed and evaluated. The number of cases dealt make it difficult for people:

- to have a global view of what is really done
- to assess the success and limits of each actions and
- to identify the trends to follow and direction to move forward.

This policy must be adapted to technical (legal) constraints and possibilities

The number of cases is disheartening. But looking more closely at all those cases, it appears:

- 1) that MSF trademark is real and we win more cases than we lose
- 2) that MSF cannot subcontract this activity to a legal firm because we need to adapt it to our own needs and we need to capitalise on our success to adapt our response to new case
- 3) that MSF cannot give up the defence of its name and trademark. We could live with some confusion in most countries, but we need to be able to defend ourselves legally in specific situations. This implies keeping our trademark alive.

We also need to harmonise and link the trademark policy with the web domain issue.

Annex: MSF web domain management/ protection policy



MSF ExDir decision on MSF Trademark, June 2008 (in English).

Extract:

- The ExDir endorses the report, shares the concerns regarding incoherent approaches between sections and the need to get the spiralling legal fees under control and approves the project of using the report as a basis for a guideline.
- The ExDir endorses the extension of the MSF identification (trademark) position and will evaluate this position a year from now.
- Several GDs invite Ondine to go and meet the lawyers contracted by their sections to brief them on the MSF policy.

In June 2009, the MSF legal team submitted to IC the issue of MSF's identification in the field, which though crucial for the safety of the teams, still did not have clear rules.

They advocated for the use of a clear and coherent use of the MSF name in all missions so that MSF be perceived as a single organisation. This approach would also provide a better legal ground to protect the trademark.

The question of the French name, Médecins Sans Frontières, part of the international logo, was once again raised, some advocating for a local translation.

Eventually, the IC decided that all MSF missions in the field should use the international logo with the French name. If needed, a local translation could be added 'outside of the logo exclusion zone so that the translation does not interfere with the registered trademark'.



Minutes from the MSF International Council Meeting, 26 June 2009 (in English, edited).

Extract:

MSF Identity: trademark protection in the field

Françoise [Saulnier] and Ondine [Ripka] (IO legal officers) joined the IC meeting by videoconference and presented the MSF identity issues in the field.

Following the presentation of the issues related to the protection of the MSF identification in the field, here are the main outcomes of the discussion:

- There are two main concerns for the MSF identification in the field: internal (coherence for the use of the name of MSF within the movement) and external (for security and communication purposes – ability to distinguish ourselves from possible intentional or non-intentional confusion).
- The only way to protect MSF's name legally is by using an MSF registered trademark. Several cases occurred in the past. One of them is an entity which was created in Chad by a state health office with the name 'MSF Chad'. MSF Chad was not affiliated nor coordinated with MSF activities in Chad and there was no intention on the part of MSF to create it. Thanks to the registered trademark, MSF legal office was able to put a stop to the use of the name of 'MSF Chad'.
- It is clear we have to distinguish MSF from other humanitarian organisations.
- In order to safeguard MSF identity (name and logo), MSF should have a clear and coherent use of MSF name in all MSF missions.
- Various variations exist in the usage of MSF name, which creates a visual confusion and weakens the protection of MSF identity.
- As stated, the only way to protect the MSF name and logo is by using the MSF registered trademark. Trademark should remain identical and unchangeable. If each section uses different ways of identification in the same country of MSF mission, it will be difficult to protect our trademark.
- We need to be perceived as one organisation and if we want to use the legal protection we are entitled to, we need to have one trademark.
- The use of one trademark in the field is the best and the cheapest option.

- Currently the MSF international logo is being registered in most of the countries. This registration and follow-up is managed by the IO.

- Dual sectional logo (logo + international name + national/sectional translation) is used in the field up to now. It creates confusion and MSF does not have capacity (time and resources) to efficiently protect such multiple trademarks.

- Exceptions in the field might include a translation into local language, when required for operational reasons (security, perception, etc). In these cases, a local translation should be kept outside of the logo and MSF international name – it will be in an exclusion space, which enables us to protect our identification/trademark. Common templates (with translation spaces) will be provided when needed.

- The directors of operations agreed with this recommendation of using the MSF international logo in the field, as it is clear that the legal imperatives are stronger than the national flag planting.

Discussion

- Which logo and names are currently used in most of the MSF field missions? (Marie-Pierre) > Today we do not have a clear picture of the situation, as no clear rules exist. However we can confirm that no harmonisation of MSF identification is present in our missions. It can be explained that MSF sections have their stocks available and, therefore, when they arrive in the field they bring their own materials that are prepared in advance. Therefore identification materials vary from section to section.

- Do we have to keep the French name of Médecins Sans Frontières? Could we have just an abbreviated option – MSF International? (Satoru) > The MSF international logo is the one in the French language. The denomination in French language is part of the history. In the beginning MSF was created in France. If we maintain nationalistic ways of presenting MSF in national languages as we do up to today, we have to admit that we will not be able to protect it correctly. We could create MSF in the Esperanto language and change this trademark registration everywhere again, but we have to be aware that this will be a costly process not only linked with the trademark, but also with expensive communication about it.

- Did multiple logos/names cause any security problems? (Satoru) > Yes, the multiple logos and names used in the field caused security problems.

- Why did the mission in Myanmar have its name registered in Dutch? (Tankred) > For operational reasons it was decided that the best registration at that time was under the name of AZG (Pim).

- How can we distinguish different operational centres in the field, if we will have only one MSF identification? (Tankred) > The operational directors' platform themselves feel that they do not want to be perceived as different sections. Therefore, there will not be a need to distinguish if this is an MSF France or MSF Belgium vehicle.

- Are full name-logo (Médecins Sans Frontières and Logo) and acronym (MSF) protected everywhere? (Pim) > The name + logo are protected everywhere, the acronym is protected in the majority of the countries, but not all. In general, trademark protection is valid for 10 years. When trademark registration is renewed, the acronym (MSF) is automatically added. If an external party wishes to use either logo/acronym or a full name – we have the legal ground to defend ourselves.

- Does the field identification concern all MSF items/materials? Does it include T-shirts? (Jacqui) > Yes, field identification is linked with all MSF identification materials including T-Shirts. If in the field MSF staff use another MSF T-shirt (made for FR purposes, etc), what shall we do? (Jacqui) > We have to distinguish the fashion and the legal protection. T-shirts in the field should be unified and considered as MSF identification material, thus have to have only MSF international name and logo.
- Are we undermining the power of identity? Are we something like Coca-Cola? What we do in the field has a meaning, right? Why do we have to stick to the international MSF logo? (Paula) > MSF is not Coca-Cola. By seeing the MSF logo and name, people identify and associate MSF with humanitarian aid. Having several sections in a particular country with their sectional name creates confusion. However, if there is a need to have a local translation for security reasons, it should be possible.
- Having the MSF name in the French language was a problem in Rwanda. In particular contexts it will be wiser to have only local translation. (Hakon) > In particular cases leaving the MSF international name and logo could be dangerous. Hiding the MSF international name is not appropriate and might be even more risky than having the MSF international name and logo. People might think that this organisation is trying to hide something. Needless to say, if there is a need for whatever reasons to take away the French translation, the directors of operations should come with that request to the ICB.
- Keeping only the French denomination of MSF may be seen as a western approach. (Matt Spitzer) > It is not a western approach, but rather history related fact.
- Having considered that this change will require time and costs, it will be wise to check with logistic department and see how to implement new rules (Tankred).
- The national sectional logo discussion will be presented later.

Due to the urgent need for MSF to safeguard the means to defend its identification in the field; namely, its international trademark, the IC agrees that:

For field operations: a united and clear identification system must be established across the entire organisation.

All MSF sections will use only the MSF international logo in the field.

Section/dual language logos will no longer be used in the field. If circumstances require a local translation of the name, this can be added outside the logo exclusion zone so that the translation does not interfere with the registered trademark.

The executive is tasked with communicating, developing and rolling out an implementation of this decision on the field in an appropriate timeframe and taking costs into account.

*18 in favour, 1 against (MSF Spain),
1 abstention (MSF UK) - PASSED*