

# THE BENELUX TRADEMARK

A trademark is a symbol which allows your products and services to be readily identifiable and distinguishable over those of your competitors. It may consist of a word or different words, a design (logo), or a combination of those. In principle, you can also apply for protection of a three-dimensional shape, a combination of colors or even a sound. Your trademark can also consist of other distinguishable symbols such as your company or trade name or even your domain name.

## RIGHTS OF THE OWNER

The owner of a registered trademark:

- enjoys the exclusive use of his trademark;
- can forbid a third party to use his trademark or a similar sign;
- can defend himself against misleading use by a third party;
- can transfer his right, or allow a third party to use the trademark under certain conditions by means of a license contract.

## OBLIGATIONS OF THE OWNER

Besides the rights, the owner also has some obligations in order to maintain his right, namely:

- to use the trademark like it has been registered;
- to use the trademark within 5 years after registration and not to interrupt this use for a period of 5 years or more;
- to renew the registration every 10 years;
- to watch that the trademark does not become generic: the success of a trademark can incite the public to use it as a common word, which would take away the essence of the trademark, i.e. to be a distinctive sign.

## USE OF A TRADEMARK IN THE BENELUX

### OBJECT OF PROTECTION

A registered trademark protects the symbol which identifies a product or a service. The speciality principle is being applied: you ask protection for e.g. non-alcoholic beverages, leather or information technology services, according to an International Classification which comprises 45 classes.

### LEGAL CONDITIONS

To be legally protected, a trademark must fulfil the following basic conditions:

- › it must be a distinctive sign;
- › it cannot be descriptive for the specified products and services, or their characteristics, for which registration is sought;
- › it must be suitable for graphical design;
- › it must be available and must not infringe prior third parties' rights;
- › it cannot be misleading.

In addition, the trademark must not be contrary to good morals and public policy, or corresponding with a flag, symbol, etc. which are protected by the Paris Convention.

### TERRITORIAL SCOPE

The Benelux Trademark exists since 1971: each registration covers Belgium, The Netherlands and Luxembourg. It corresponds with the criteria for a Community registration (European Union) and can also be the basis for an international registration.

### TERM OF PROTECTION

A trademark is registered for 10 years. It can be renewed indefinitely.

### OWNERSHIP

The applicant can be a physical or moral person, alone or in co-ownership.



# REGISTRATION PROCEDURE

The procedure consists of both administrative formalities and juridical counselling.  
The registration procedure for a trademark is the following:

## ■ 1 The formal examination

The Office examines if the basic data are mentioned in the application, examines the list of goods and services, the classification and the payment of the fees.

## ■ 2 The examination on absolute grounds for refusal for the registration of the trademark

In particular the Office verifies whether the sign has distinctive power, whether or not it is descriptive for the goods and services or their characteristics, whether or not it is misleading and whether or not it is contrary to public policy.

## ■ 3 The publication

The application is being published.

## ■ 4 The opposition

Within a certain term (2 months after the publication of the trademark), the owner of a prior right can introduce an opposition at the Office to object to the registration of the trademark. To know about the publication of new trademark applications which can infringe your existing rights, and to make sure that you introduce an opposition within the legal terms, you can subscribe to a trademark watch.

## ■ 5 The registration

If the trademark passes all the above mentioned hurdles, it will be registered. A registered trademark is usually marked by the sign ®. Only the registration offers a complete protection.

There is also the possibility to file for an accelerated registration, upon payment of an extra fee. This entails that the trademark will be registered after the formal examination. This procedure can be completed within a few days. However, the other aforementioned steps are assessed after the registration and thus remain in force.

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