Benelux (BX)

Belgium, The Netherlands, and Luxembourg are treated as a common area with a uniform trademark law and a trademark office. Since the adoption of the Benelux Trademark Act in 1971, there has been no national trademark law in any of the Benelux countries.

1. Use for trademark registration

In Benelux, use is not required in order for a trademark to be registered.

2. Use for trademark renewal

In Benelux, use is not required for trademark renewal.

3. Use in order to preserve rights in a trademark

In Benelux, a trademark may be subject to cancellation before the Benelux IP Office (BOIP) or a court of justice if the mark has not been genuinely used on Benelux territory for a continuous period of five years from its registration date, or has subsequently not been genuinely used during the last five years in relation to the goods/services covered.

Revocation may no longer be invoked where, during the interval between the expiry of the five-year period and the submission of the claim for revocation, genuine use of the trademark has commenced or resumed. However, commencement or resumption of use within a period of three months prior to submission of the claim for revocation shall be disregarded where preparations for the commencement or resumption have been made only after the holder became aware that a claim may be filed.

As of June 1, 2018, non-use cancellation action procedures are possible at the Benelux IP Office (BOIP) as well as before the courts. The subject of the two procedures is the same, but they are different procedures. The administrative procedure is more restricted in its proceedings and the possible decision which is being taken. The administrative procedure is furthermore a completely written procedure, whereas hearings are part of a court procedure. During a court procedure other circumstances can be taken into account and the trademark cancellation procedure could be combined with e.g. an infringement procedure. Also, the costs and possible cost rewards are different. Finally, during a court procedure parties have to be represented by a solicitor. Any interested party may invoke revocation of the right to a trademark. The declaration of invalidity or revocation shall be limited to one or more of the goods/services in respect of which the trademark is registered if the grounds for invalidity or revocation affect only some of the goods/services.

3.1 Burden of proof

The claimant must base its claim on a presumption of non-use. The courts or BOIP will then place all or part of the burden of proof of use on the holder of the trademark.

3.2 Nature and extent of use

Genuine use is required on Benelux territory in connection with the goods/services in respect of which the trademark is registered. There is ‘genuine use’ of a trademark where the mark is used in accordance with its essential function, which is to guarantee the identity of the origin of the goods/services for which it is registered in the market; genuine use does not include token use for the sole purpose of preserving the rights conferred by the mark.

The question whether use is sufficient to maintain or create market share for the goods/services protected by the mark depends on several factors, such as the characteristics of the goods/services and of the relevant market. Large sales volumes are common in for instance the food and beverages industry. In such instance the quantity use requirement will be more strict than in a market where small volumes of sales are common such as the luxury goods industry, e.g. yachts or swimming

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pools. The length of the period of use will also be taken into account.

Use of a trademark in a form differing in elements, which do not alter the distinctive character of the mark in the form in which it is registered, shall also constitute use. Also, use of the mark as part of a combined mark or together with another mark may be considered genuine use, provided that the relevant public continues to still perceive the mark as an indication of the origin of the relevant goods/services. Affixing of the trademark to goods or to the packaging thereof in Benelux solely for export purposes will also be deemed genuine use of the mark in Benelux.

Use of the mark for goods/services other than those covered by the challenged registration will not remedy the non-use of the mark for the goods/services in respect of which it is registered. Use of the trademark by a third party with the consent of the holder will be deemed genuine use by the holder.

3.3 Means of demonstrating use

All relevant documents proving use of the mark can be submitted, including invoices, advertisements, catalogues, market research reports, etc. The evidential material should contain sufficient information on the nature of the goods/services, the volumes of sales realised within the relevant period, the market share of the goods/services provided under the mark, etc.

3.4 Circumstances and time periods for excusable non-use

Non-use may be excused if there are ‘proper reasons’ for non-use of the mark. Obstacles which make use of the trademark impossible or unreasonable and which are independent of the will of the proprietor of that mark may constitute such ‘proper reasons’.

4. Further relevant aspects or legal provisions with regard to use of a trademark

None

International Registrations

There is no difference between use obligations of Benelux registrations and International Registrations designating Benelux. The five-year period of International trademarks having effect in the Benelux territory shall be calculated from the date when the mark can no longer be subject to refusal or opposition. Where an opposition has been lodged or when a refusal on absolute grounds has been notified, the period shall be calculated from the date when a decision terminating the opposition proceedings or a ruling on absolute grounds for refusal became final or the opposition was withdrawn.

The registration date applicable to International Registrations designating Benelux is the date on which the International Bureau publishes the declaration sent by the Office as referred to in Rule 17 (6) (a) and (i) of the Common Implementing Regulations under the Madrid Agreement and the Madrid Protocol.

Latest update

Jan 15, 2024
Landmark Trademark Protection, Amersfoort, Netherlands