



Benelux (BX)

Trademark Law

Belgium, the Netherlands and Luxembourg are treated as one common area with a uniform trademark law and one trademark office. Since the adoption of the Benelux Trademarks Act in 1971, there are no national trademark laws in any of the Benelux countries anymore.

Legal basis is the Benelux Treaty for Intellectual Property (trademarks and designs) which replaced the Benelux Trademarks Act on September 1, 2006. Trademark protection is created by registration. The Benelux countries are members of the Madrid Agreement, of the Madrid Protocol and of the European Union.

Classification

Nice classification, 11th edition

What is Registrable as a Trademark

Registrable as trademarks are word marks, device marks, three-dimensional marks, colour marks, slogan marks and sound marks and any other symbols which serve to distinguish the goods or services of an enterprise. Holograms are registrable when capable of being represented graphically. With the implementation of the Trade Mark Directive (EU) 2015/243 as per March 1, 2019, the criteria for registration will no longer include a requirement for "graphic representation". This will make it easier to register signs that cannot be seen and/or that are difficult to capture in a 2D image (such as sounds, holograms, motion marks, as long as they can be represented in a manner that is clear and precise.

The following trademark types are registrable: trademarks, service marks, collective marks and (as of March 1, 2019) certification marks.

Proceeding of Trademark Registration

The application is filed at the Benelux Office for Intellectual Property in The Hague.

Multiple-class applications are possible.

Foreign applicants do not need a local trademark attorney as long as they have an address for service in a member state of the European Union (EU) or the European Economic Area (EEA).

There is no requirement for a power of attorney anymore.

Foreign applicants do not need a domestic registration.

There is only examination on absolute grounds; the official search has been abandoned. Signs not deemed distinctive in the examination can be registered if distinctiveness has been acquired by use. After the examination on formalities and absolute grounds, the application is published in the online Benelux Bulletin for opposition purposes. The whole procedure takes between 3 and 4 months if there are no complications. There also exists an expedited registration procedure. In this case the mark is registered and published after the formalities check. The mark could in this case still be refused on absolute grounds or due to a successful opposition.

Opposition Period

The opposition period is 2 months from the date of publication of trademark application.

Trademark Duration

A trademark registration is valid for 10 years from the application date and is renewable for the same period.

Use Requirements

If the trademark has not been used within 5 years from registration or has later not been genuinely

used during the last 5 years, it may be subject to cancellation by way of a cancellation procedure before BOIP or a court action. Subsequent use of the trademark can restore protection.

Trademark Application Fees

As of January 1, 2019, the official fee for filing a trademark application is EUR 244 for the first class, EUR 27 for the second class and EUR 81 for each additional class.

Latest update: January 31, 2019

SAMPLE