

## Protection of IP

### Belgium

#### **I. TRADE MARKS**

##### **I.1 INTRODUCTION**

The Benelux countries unified their national trade mark legislation by the introduction of the uniform Benelux trade mark law which came into effect on 1 January 1971. This law required only slight adaptation to be brought into conformity with Directive 89/104/EEC, in particular by amending the protocols of 2 December 1992 and 11 December 2001.

##### **I.2 REGISTERED TRADE MARKS**

The following are regarded as trade marks: denominations, drawings, prints, seals, letters, figures, product or packaging forms and any other graphic representation that can be used to distinguish a company's products. The right to a Benelux trade mark is acquired by the registration of the mark.

To be valid, a mark must meet certain criteria. It must be:

- distinctive i.e. it must enable a company's products or services to be distinguished from those of another company; and
- available, i.e. it must not infringe any earlier right such as another trade mark, a commercial name or copyright work.

Trade mark registrations last for an initial period of 10 years and can be renewed for periods of 10 years thereafter.

##### **I.3 UNREGISTERED TRADE MARKS**

An unregistered trade mark has no protection. A company name is only used to indicate a company and can, in theory, be freely acquired provided that it does not create confusion with an existing denomination or commercial name and that it has not been filed as a trade mark by another entity. This denomination is protected by the common law of Articles 1382 and 1383 of the Civil Code, the Act of 14 July 1991 on trade practices and the Act of 26 June 2003 relating to abusive domain name registrations.

#### **2. PATENTS**

##### **2.1 INTRODUCTION**

The main legislation in Belgium is the Act of 28 March 1984 on patents and its implementing decrees, amended in particular on 28 April 2005 with regard to the patentability of biotechnological inventions and the Act of 20 May 1975 on the protection of vegetal obtentions.

A patent enables its owner to prohibit third parties during a certain period (a maximum of 6 years for a Belgian patent without a research report and a maximum of twenty years for a Belgian patent with a research report) from manufacturing, using or marketing the invention without their permission.

A patent may only be granted if an invention is:

- new in that it has not already been published or publicly used. An invention is deemed to be new if it is not included in the state of the art;
- not obvious to a person skilled in the art; and
- suitable for industrial application.

The following are not regarded as inventions:

- scientific discoveries and theories and mathematical methods;
- aesthetic creations;
- plans, principles and methods in the exercise of mental activities in relation to economic activities including computer programmes; and
- the presentation of information.

## **2.2 DISTANCE SELLING AND E-COMMERCE**

The Act of 14 July 1991 on trade practices, consumer information and protection regulates remote contracts.

The Act of 11 March 2003 (on certain legal aspects of information society services) governs e-commerce. It defines the fundamental concepts underlying electronic commerce, sets out obligations for information and transparency (in particular with regard to consumers), regulates advertising on the networks (for example as regards unsolicited advertising sent by e-mail), raises obstacles to entering into contracts electronically and determines the responsibility and obligations of intermediaries, such as website hosts and access suppliers.

The Act of 17 July 2000 relating to transactions carried out by means of instruments for transferring electronic funds also contributes to the advent of the information society, in particular of e-commerce.

The Act of 12 May 2003 concerning the legal protection of: (a) conditional access services; and (b) conditional access services relating to information society services, seeks to provide adequate legal protection against the marketing of illicit devices which could be used to circumvent any technical measure taken to protect the remuneration of a protected information society service.

## **2.3 DRAWING AND MODEL RIGHTS (IE REGISTERED DESIGNS)**

Uniform Benelux law concerning drawings or models came into effect on 1 January 1975.

The appearance of a product or of part of a product is considered to be a drawing or a model. Features such as lines, contours, colours, shape, texture or materials of the product itself or of its ornamentation can be protected. A product can be any industrial or artistic item.

The exclusive Benelux right to a drawing or model is acquired by registration. The registration lasts for an initial 5 year period and can be renewed for successive 5 year periods up to a maximum of twenty-five years.

To be protected, the drawing or model must:

- be new as at the filing date i.e. no identical drawing or model can have been revealed to the public; and
- have individual character i.e. the overall impression that the drawing or model produces on the user must differ from that which is produced on such a user by any drawing or model that has been revealed to the public before the filing date.

#### **2.4 CONFIDENTIALITY AND KNOW-HOW**

Know-how is information which has a value in relation to the manufacturing or development process of a product or service. It can relate to an invention, area of expertise, information enabling a technique or a product to be improved or the implementation of an invention. Know-how can be protected by secrecy, which can be ensured by means of confidentiality agreements.

It should be noted that labour law prohibits employees from revealing the “business or trade secrets” of which they would become aware in the exercise of their professional activities.

#### **2.5 COPYRIGHT**

The law relating to copyright was amended by the Act of 22 May 2005 which implemented the European Directive 2001/29/EC of 22 May 2001 on the harmonisation of certain aspects of copyright and neighbouring rights in the information society.

A work is protected by copyright if it is original and has been recorded in a document or otherwise. Protection by copyright is automatic and does not depend on meeting certain criteria/formalities.

The author has a monopoly in relation to the exploitation of his rights. He can authorise or prohibit exploitation, except in exceptional cases. Copyright lasts for 70 years from the death of the author or of the last surviving co-author.

#### **2.6 DESIGN RIGHT**

An unregistered design right benefits from copyright protection providing it meets the conditions thereof.

## **3. PROTECTION OF IP RIGHTS**

### **3.1 REGISTRARS**

#### **3.1.1 Patents**

The Intellectual Property Office (IPO) at the Ministry of Economic Affairs has jurisdiction to investigate Belgian patent applications.

Any person or entity, regardless of nationality, can apply for a Belgian or European patent. However, only persons with a legal entity having Belgian nationality or a place of residence or establishment in Belgium, can file an international patent application (IPA) with the IPO. At the time of the filing a patent application, a filing fee will have to be paid as well as other possible fees (in respect of a novelty search, for example). In order to maintain a patent, fees will be payable from the beginning of the third year from the application filing date.

#### **3.1.2 Trade Marks**

The Benelux Trade Mark Office deals with registrations.

Applications must be made to the Benelux Trade Mark Office. The application must contain:

- a filing form;
- a list of the products or services to which the application refers;
- a reproduction of the trade mark; and
- a search of the Trade Mark Register (if the applicant had requested the Benelux Trade Mark Office to carry out a search).

#### **3.1.3 Registered Designs**

The Benelux Drawing and Model Office deals with applications.

To file an application for a drawing or a model, the applicant must complete the required forms and pay the prescribed fees. The application must set out the specific characteristics of the drawing or model.

Benelux law in respect of models does not require an anteriority search in relation to substance and the Benelux Office only checks whether the application satisfies the prescribed formalities.

Once all the conditions are met, the application is recorded in the Benelux register and a registration certificate is sent to the applicant. The drawing or model is published in the Office's official monthly bulletin.

## 3.2 COURTS

### 3.2.1 Competence

Depending on the intellectual property right in issue and on the remedy sought (e.g. suspension, damages, transfer of profits, publication of the judgment) either the Commercial Courts, ruling “as in summary procedure”, or the Court of First Instance will be competent *rationae materiae* to hear and determine any litigation in these matters.

New material and territorial competences have been created in the matter of the protection of the intellectual property rights:

<b>Patents</b>	Action in counterfeiting	Commercial Court situated in the place of a Court of Appeal
<b>Complementary certificate of protection</b>	Action in counterfeiting	Commercial Court situated in the place of a Court of Appeal
<b>European Trade Mark</b>	Action in counterfeiting	Commercial Court of Brussels
<b>Drawing and Model Rights</b>	Action in counterfeiting	Commercial Court of Brussels
<b>Benelux Trade Mark</b>	Action in counterfeiting	Commercial Court situated in the place of a Court of Appeal
<b>Benelux Drawing and Model Rights</b>	Action in counterfeiting	Commercial Court situated in the place of a Court of Appeal

### 3.2.2 Peculiar procedure of the “counterfeiting-seizure” (also named “description-seizure”)

The Act of 10<sup>th</sup> April 2007 on the judicial law aspects on the intellectual property rights protection brings modifications to the Belgian Judicial Code.

A new article 1369bis relating to the “description seizure” in cases of counterfeiting has been inserted in the Judicial Code. This article introduces new procedure modalities, from which is it important to highlight the following:

- The president of the Court may oblige the requiring party to provide an appropriate guarantee in order to ensure compensation to the potential prejudice of the opponent party;
- The president of the Court may, before allowing measures of seizure, hear under the secret the person aimed by these measures, in the presence of the requiring party;

- The description made on the basis of the seizure ordered must be followed by an assignation before the competent Court for indemnification in a delay which does not exceed 20 open days or 31 days if the delay is longer according to the reception of the report. Otherwise, the rulings set out in the judgment will end and the requiring party may not use the content of the report or publish it, without prejudice of a claim for loss and damages from the defendant.

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