Benelux (BX)

Belgium, The Netherlands, and Luxembourg form a single unified jurisdiction under the Benelux Convention on Intellectual Property (BCIP) and have one Benelux Office for Intellectual Property (BOIP). Individual national trademark registrations do not exist for Belgium, the Netherlands, or Luxembourg.

1. Use for trademark registration

In Benelux, use is not required in order for a trademark to be registered. However, evidence of use may be required where the applicant relies on acquired distinctiveness to overcome an objection to registration.

2. Use for trademark renewal

In Benelux, use is not required for trademark renewal. Renewal does not remedy non-use or restart the five-year period for use.

3. Use in order to preserve rights in a trademark

In Benelux, a trademark may be subject to revocation before BOIP or a competent court if the mark has not been genuinely used in Benelux territory for the goods/services for which it is registered within five years following completion of the registration procedure, or if such use has subsequently been suspended for a continuous period of five years, unless there are proper reasons for non-use.

The five-year period does not invariably start on the registration date. In particular, special rules apply to accelerated registrations and International Registrations designating Benelux where refusal or opposition remains possible or proceedings are pending.

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 the three months preceding submission of the claim shall be disregarded where preparations for such use began only after the proprietor became aware that a claim for revocation might be filed.

Since June 1, 2018, proceedings for revocation on grounds of non-use may be brought before BOIP as well as before the courts. The substantive grounds are the same, but the procedures differ. The administrative procedure before BOIP concerns the continued protection of the registration and does not provide for infringement injunctions or damages. It is principally a written procedure, although an oral hearing may be held.

Court proceedings are governed by the applicable national procedural rules. Where permitted, a claim for revocation may be combined with, for instance, infringement proceedings. The costs and possible costs awards also differ. Requirements for representation by a lawyer depend on the court and the applicable procedural rules.

Any interested party may invoke revocation before the courts. An application for revocation before BOIP may be filed by any natural or legal person, or a qualifying representative body entitled to sue and be sued. Where the grounds for revocation affect only some of the goods/services for which the trademark is registered, revocation shall be limited to those goods/services. Non-use does not automatically result in removal of the registration from the register.

3.1 Burden of proof

The claimant must identify the registration and the goods/services challenged and invoke non-use as the ground for revocation. The claimant is not required to prove non-use by carrying out market investigations.

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The proprietor bears the burden of proving genuine use of the trademark or establishing proper reasons for non-use. In proceedings before BOIP, the proprietor will be invited to submit evidence of use or to substantiate the reasons for non-use.

3.2 Nature and extent of use

Genuine use is required in Benelux territory in connection with the goods/services in respect of which the trademark is registered. There is genuine use where the trademark is used in accordance with its essential function, which is to indicate the commercial origin of the goods/services, in order to create or maintain a market for them. Genuine use does not include token use for the sole purpose of preserving trademark rights.

Whether use is genuine depends on all relevant circumstances, including the characteristics of the goods/services and the relevant market, the geographical extent of use, the sales volumes and the duration and frequency of use. There is no fixed minimum sales volume or turnover. For instance, limited sales may be commercially justified for high-value goods, whereas different trading conditions may apply to everyday consumer goods. The evidence must therefore be assessed as a whole.

Use need not take place in all three Benelux countries, provided that the use in Benelux territory is genuine in the circumstances.

Use of a trademark in a form differing in elements which do not alter the distinctive character of the mark as registered shall also constitute use. Use of the mark as part of a combined mark or together with another mark may qualify, provided that the relevant public continues to perceive the registered mark as an indication of commercial origin.
Affixing the trademark to goods or their packaging in Benelux solely for export purposes may also constitute qualifying use.

Use for goods/services outside those covered by the registration will not remedy non-use for the registered goods/services. Where use is established for only part of a broad specification, protection may be maintained only for the goods/services or appropriate independent subcategories supported by that use.

Use of the trademark by a licensee or another third party with the proprietor’s consent shall be deemed use by the proprietor. Such use must nevertheless satisfy the requirements for genuine use.

3.3 Means of demonstrating use

Relevant evidence of use may be submitted, including invoices, sales records, packaging, labels, advertisements, catalogues, dated website material, market research reports and supporting statements.
The evidence should provide sufficient information on the place, period, extent and nature of use and should connect the trademark with the relevant goods/services. The documents should, where possible, be dated and demonstrate use directed at the Benelux market during the relevant period.

The evidence is assessed as a whole. Sales volumes, turnover and market-share figures may be relevant, but market-share evidence is not invariably required.

3.4 Circumstances and time periods for excusable non-use

Non-use may be excused where there are proper reasons for non-use. Obstacles directly connected with the trademark which make its use impossible or unreasonable and which are independent of the proprietor’s will may constitute proper reasons.

Whether such reasons exist must be assessed in the circumstances of the case. Ordinary commercial

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difficulties or a voluntary decision not to market the goods/services do not automatically justify non-use. The proprietor must substantiate the obstacle and its effect during the relevant period. There is no fixed additional grace period applicable to all cases of excusable non-use.

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

Non-use may also affect the proprietor's ability to rely on the trademark in opposition, infringement or invalidity proceedings. Where the applicable five-year conditions are met and proof of use is properly requested, the proprietor may be required to establish genuine use or proper reasons for non-use. Failure to provide sufficient evidence may prevent reliance on the trademark for all or some of the goods/services concerned. This does not, in itself, amount to revocation of the registration.

International Registrations

The same substantive use requirements apply to Benelux registrations and International Registrations designating Benelux.
For International Registrations having effect in Benelux, the five-year period shall be calculated from the date on which the mark can no longer be subject to refusal or opposition. Where an opposition has been lodged or a refusal on absolute grounds has been notified, the period shall be calculated from the date on which the relevant decision became final or the opposition was withdrawn, in accordance with Article 2.23bis(3) BCIP.

Under Rule 1.8 of the Implementing Regulations, the applicable Benelux registration date is generally the date on which the International Bureau publishes BOIP's statement granting protection. Where objections have been notified, the relevant date is the publication of BOIP's statement lifting those objections. If different objections are lifted at different times, the last relevant publication applies.

Special rules apply to accelerated registration. An accelerated registration date does not bring forward the starting date of the use period. The date of the International Registration itself should therefore not automatically be used to calculate the five-year period applicable in Benelux.

Latest update

Oct 15, 2026
Landmark Trademark Protection, Amersfoort, Netherlands

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