



Protecting drawings and designs in the Benelux region

Information for entrepreneurs



BENELUX
OFFICE FOR
INTELLECTUAL
PROPERTY

Registration: the first step
towards a successful business

A man with long, dark hair and a checkered shirt stands in a doorway, looking directly at the camera with his arms crossed. The scene is dimly lit, with a blue tint. The background shows a doorway leading to another room where a bicycle is visible. The overall mood is serious and contemplative.

Taking out insurance on your design

'Why do I register my drawings and designs? Let me answer that question by asking you one in return: why do you take out insurance on your car or house? It's because you don't want to lose your car or house. The same is true of your design. Your own creation deserves to be protected. Registering your creation allows you to take action against anyone who is trying to steal your product. It ensures that you don't lose out on any of the financial benefits from your design.'

Products are imitated - that's just the way it is, and it's not just major fashion houses' clothing designs that get copied either. It even happens with cheap ballpoint pens, even though in Europe they cost almost nothing.

Protecting the outward appearance of a product is like taking out car insurance: it costs a little bit of money but if something does go wrong, the insurance is a godsend. It means that you have something you can use to take action via the judicial system to prevent the improper use of your design.'



The Benelux Office for Intellectual Property is the official office for registering trademarks, drawings and designs in the Benelux region. More than 16,000 drawings and designs are currently registered with the Office.

When you are a designer or entrepreneur, you will often develop your own products. Of course you want to keep your designs exclusive and prevent others from copying them. You can do this by registering your drawings or designs. In the Benelux region, the office responsible for this is the Benelux Office for Intellectual Property.

Why register a drawing or design?

When you launch a new product in the marketplace, you endeavour to ensure that it sells well and brings in a good return. These plans may come to nought if someone else launches another product that resembles yours closely in outward appearance. It may even be that your competitor is able to sell his product more cheaply, as he has not had to pay the development costs that you had to pay.

In order to prevent imitations, you can register your design as a drawing or design with the Benelux Office for Intellectual Property. This will not only allow you to take action against the manufacturing of any product that has the same outward appearance as yours - you will also be able to lodge an objection against the importing, offering for sale, sale, offering for rent, renting, displaying, supplying and use of the product in question.

Registration gives you the weapon you need to prevent improper use of your designs.

What is a drawing or design?

What is meant by a 'drawing' and a 'design'? The law says that the outward appearance of a product or part thereof may be deemed to be a drawing or design, and that the drawing or the design must be new and have its own distinctive character.

The Benelux Office for Intellectual Property registers both two-dimensional and three-dimensional products. We call two-dimensional forms 'drawings', a term that also covers designs or patterns on fabrics, materials and paper. Three-dimensional forms such as (household) appliances, furniture and clothing are called 'designs'. For convenience's sake, in this brochure we will talk about design protection instead of about the protection of drawings or designs.

The design must be new, although there is a so-called 'grace period', under which a design can still be called 'new' if you have made the design public not more than twelve months prior to registration. You cannot register designs for forms or shapes that are needed to achieve a technical effect, as in this case we are really talking about inventions and patents.

You may register a single design. This is known as a single filing. However, you can jointly register up to fifty designs in one go, for example if you want to register a table, chair and lamp at the same time. This is known as a multiple filing.



Is copying simply paying homage?

'Twenty years ago, markets were still local. These days, however, we operate in a global market, and this is especially true of the clothing industry, where unauthorised copying is a real danger. Someone can take a photo of your product and before you know it he has distributed it all over the world via the Internet. That's why it's so important to register your design with the Benelux Office for Intellectual Property. It's something that will become even more important in the future, for both big and small companies.'

"Copying is paying homage to your trademark," said top fashion designer Coco Chanel. That may well be true, but the practice can cause you major financial loss. That's why you should use registration, both to protect your drawing or design and because it also allows you to take action if you discover someone pirating your design.'

Is the design available?

By consulting the Benelux Designs Register you can find out whether a design is already registered. However, a design is only valid if it is new and has its own distinctive character. It is therefore just as important to find out whether the design already exists. You can do this by researching the specialist literature, magazines or the Internet. You can carry out that research yourself (you probably know your own sector best) or subcontract the work to an expert.

The online Benelux Designs Register is the official publication medium for designs registered in the Benelux and is available for free on www.boip.int. This database contains only drawings and designs that have been registered in the Benelux. Consult the help text that accompanies the register for further details.

You can search for Community and international designs in the registers of the Office for Harmonisation in the Internal Market (www.oami.europa.eu) or the World Intellectual Property Organisation (www.wipo.int).



New designs and variations on existing designs

'We are active in the market for household appliances and are constantly developing new designs and variations on existing designs that have already proved their worth. We always register these designs.'

For how long, and where, is a design protected?

If you register a design with the Benelux Office for Intellectual Property, your registration will be valid in the Netherlands, Belgium and Luxembourg. In other words, such a registration will not permit you to take action outside the Benelux region to prevent improper abuse of your design. Your registration is valid for five years. Six months before this period expires, you will be notified accordingly and can extend your registration for another five years. You can renew your registration up to four times, for a period of five years each time.

In other words, the maximum total registration period is 25 years.

If you want to sell your products outside the Benelux region, you can protect your design there too. You can choose to protect your product's outward appearance within the European Union only or to also protect your design in a great many other countries that have signed an international treaty to this end. This includes many countries outside the European Union, from Switzerland and North Korea to Ivory Coast.

If you want to register your design in all European Union countries simultaneously, you should register your design with OHIM, the Office for Harmonization in the Internal Market, which is located in Alicante, Spain. Its website: oami.europa.eu. We will be happy to provide you with details of OHIM procedures.

If you wish to register your design for a number of countries within the European Union, or for countries outside it, you can register your design with WIPO, the World Intellectual Property Organisation, in Geneva, Switzerland, which organisation is also known as 'OMPI'. Its website address: www.wipo.int. We can provide you with details of the procedure followed.

How is a registered design protected?

You can protect your design by taking action against its improper use. If you discover that your products are being copied, you can take legal action. Your registration at the Benelux Office for Intellectual Property is a powerful weapon in this battle.

If you want to know whether a particular design has already been registered, you can search the online Designs Register or mandate a designs agent or a lawyer who specialises in intellectual property to look after your interests.

Who can register a design?

Anybody can register a design, either in a private capacity or as an organisation. Naturally, a combination of such parties is possible too, if a single design is registered in the name of different people.

You can register your design yourself or leave the formalities to a designs agent or to a lawyer who specialises in intellectual property.

What is the procedure for registering a design?

You can register your design directly on our website. Of course, you can also visit the Benelux Office for Intellectual Property or the 'Nationale Diensten' (National Offices) in Belgium and Luxembourg in person and submit your application that way.

Before we register your design, we check that your application complies with all legal requirements. We do not check whether a particular design has already been registered or whether your design is actually new and has its own distinctive character.

The procedure is quick and simple. When we have received your application, we will assign it a date of receipt. After completion of all formalities, your design will be officially registered. This means it is now protected too. You will receive proof of registration, and you can also order additional copies of your registration from us.

After registration, your design will be published in the online Benelux Designs Register, available for free on www.boip.int. If you are not quite ready to launch your product in the marketplace yet, you may want to keep your product a secret to prevent your competitors from finding out about it.

If this is the case, then in certain circumstances you can ask us to delay publication of your design. Only when it has been published will others be able to view your registration. Its publication can be delayed for up to twelve months starting from the date of your application or date of priority. You may have to deal with priority dates when undertaking registrations in a number of countries at once.

The Benelux Office for Intellectual Property can provide you with all the information you need on the procedures to be followed, but do remember that the Benelux Office for Intellectual Property is only permitted and able to inform you, not to advise you. Naturally you can arrange all the work you need to do for the design yourself but again, remember that design law is a specialist field and that most companies do not have this specialist knowledge in-house. This is why it makes sense to seek advice from a designs agent or from a lawyer who specialises in intellectual property. They know all the ins and outs of design law and of the case law and literature based on it. They can advise you on whether a previously registered design could pose a problem for your new design. They will also advise you on all legal aspects of design protection and will arbitrate in the event of disputes.

Design specialists have joined forces in the BMM, the Benelux Association of Trade Marks and Design Law. Addresses of their offices can be found on the websites www.bmm.nl and www.bmm.be.

The world of drawings and designs

In addition to designs, there are other intellectual property rights and related fields. Which institution should you contact in respect of which rights?

In the Netherlands

Trade name

A company's trade name is the name it uses to do business in the market. You have the right to a certain trade name if you are the first to use it as a trade name for your business. It is sensible, therefore, to register your trade name with the Chamber of Commerce. The right to a trade name is limited to the country where you trade your products or services, and encompasses the whole area where you actually use that name or where that name is known in the market. Under the Netherlands Trade names Act (Handelsnaamwet), companies are not allowed to use a trade name that incorporates or is very similar to the name of another company.

Trademarks

You have given your products and services names and in many cases logos too. These are your trademarks. In order to be able to take action against anybody making improper use of your trademark, it makes sense to register it. This too can be done by contacting the Benelux Office for Intellectual Property: www.boip.int.

Patents

A patent gives you exclusive rights to an invention for a specific relatively short period of time. In the Netherlands, it is the 'Octrooiencentrum' ('Patent Centre') that grants patents: www.octrooiencentrum.nl. If you want to protect your invention abroad too, then you can contact the European Patent Office: www.european-patent-office.org, for example.



Original designs

'As a furniture manufacturer, we naturally register the designs for our new furniture products or light fittings. After all, we do want to be the only people profiting from our original designs. We also regularly collaborate with furniture designers, which are often fairly small companies. They have to remember to make room in their hectic day-to-day schedule to register and thus protect their wonderful designs.'

Copyright

If you write a book or create a work of art, for example, you won't want someone else publishing or otherwise duplicating your work without your permission. Copyright comes into force automatically as soon as the work is created.

Related laws protect performances by performing musicians. For more information, go to www.auteursrecht.nl.

Plantbreeders' rights

If for example you have bred a new variety of plant, you can apply for plantbreeders' rights. The Board for Plant Varieties regulates the granting of plantbreeders' rights and other matters. For more info, go to: www.plantenrassen.nl. You can also apply for European plantbreeders' rights, by contacting the Community Plant Variety Office: www.cpvo.europa.eu.

Domain names

A domain name ensures that your company and/or your products and services can be accessed via the Internet. You can apply for an '.nl' domain name from SIDN, the Foundation Internet Domain Registration the Netherlands: www.sidn.nl.

Ideas

Everyone is entitled to have an idea. In principle, therefore, it is impossible to protect ideas. However, it often makes sense to record a creation date, for example to prove that you are the author of a copyright-protected work or that you are the person who devised a format for a TV gameshow (NB. Such format protection is only possible under certain circumstances).

Another example is where you are creating a design or invention and, during the initial phase prior to design protection or copyright protection, you are concerned that someone might steal your idea. You can record a creation date at the Benelux Office for Intellectual Property, using the so-called 'i-DEPOT'. For more info, go to www.boip.int.

In Belgium

Trade name

A company's trade name is the name it uses to do business in the market. You have the right to a certain trade name if you are the first to use it as a trade name for your business. It is sensible, therefore, to register your trade name with the Kruispuntbank. The right to a trade name is limited to the country where you trade your products or services, and encompasses the whole area where you actually use that name or where that name is known in the market. Under the Belgian Trade Practices (Consumer Information and Protection) Act (Wet betreffende de handelspraktijken en de voorlichting en bescherming van de consument), companies are not allowed to use a trade name that incorporates or is very similar to the name of another company.

Trademarks

You have given your products and services names and in many cases logos too. These are your trademarks. In order to be able to take action against anybody making improper use of your trademark, it makes sense to register it. This too can be done by contacting the Benelux Office for Intellectual Property: www.boip.int.

Patents

A patent gives you exclusive rights to an invention for a specific relatively short period of time. In Belgium, the Belgian Office for Intellectual Property (part of the Federal Public Service Economy, SMEs, Self-Employed and Energy) handles the granting of patents: mineco.fgov.be/intellectual_property/home_nl.htm. If you want to protect your invention abroad too, then you can contact the European Patent Office: www.european-patent-office.org, for example.

Copyright

If you write a book or create a work of art, for example, you won't want someone else publishing or otherwise duplicating your work without your permission. Copyright comes into force automatically as soon as the work is created.

Related laws protect performances by performing musicians. For more information, go to mineco.fgov.be.

Plantbreeders' rights

If for example you have bred a new variety of plant, you can apply for a plantbreeders' certificate. You can apply for a Belgian plantbreeders' certificate at the Belgian Office for Intellectual Property (part of the Federal Public Service Economy, SMEs, Self-Employed and Energy): mineco.fgov.be/intellectual_property/home_nl.htm.

You can also apply for European plantbreeders' rights, by contacting the Community Plant Variety Office: www.cpvo.europa.eu.

Domain names

A domain name ensures that your company and/or your products and services can be accessed via the Internet. You can apply for a 'be' domain name from DNS Belgium: www.dns.be.

Ideas

Everyone is entitled to have an idea. In principle, therefore, it is impossible to protect ideas. However, it often makes sense to record a creation date, for example to prove that you are the author of a copyright-protected work or that you are the person who devised a format for a TV gameshow (NB. Format protection is only possible under certain circumstances). Another example is where you are creating a design or invention and, during the initial phase prior to design protection or copyright protection, you are concerned that someone might steal your idea. You can record a creation date at the Benelux Office for Intellectual Property, using the so-called 'i-DEPOT'. For more info, go to www.boip.int.

Contact

For general information, forms, price lists, and to request services, click to our website: www.boip.int

You can also phone our Information Centre

- from the Netherlands: 070 349 12 42
- from Belgium: 070 244 2 42
- from Luxembourg: 8002 5383

General address and National Offices ('Nationale Diensten')

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Belgian Office for Intellectual Property
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