

Executive Rules under the Uniform Benelux Law on Marks*

TABLE OF CONTENTS **

	<i>Articles</i>
Chapter I: Benelux Filing	1 to 7
Chapter II: Registration.....	8 to 10
Chapter III: Renewal	11 to 13
Chapter IV: International Filing	14 and 15
Chapter V: Application for International Registration and for Renewal of International Registration	16
Chapter VI: Administrative Provisions.....	17 to 27
Chapter VII: Fees and Remuneration.....	28 to 31
Chapter VIII: Transitional Provisions Relating to Trademarks.....	32

Chapter I Benelux Filing

Article 1

1. The Benelux filing of a mark shall be effected in Dutch or French by the submission of a document containing:

- (a) the name and address of the applicant;
- (b) a reproduction of the mark;
- (c) a statement of the color or colors where the applicant claims them as distinctive elements of the mark;
- (d) where appropriate, a statement that the mark or a part of the mark is in three dimensions (plastic mark), constituted *inter alia* by the shape of the product or of its packaging;
- (e) a list of the goods and services for which the mark is intended;
- (f) where appropriate, a statement that the mark is a collective mark;
- (g) the signature of the applicant or of his representative.

2. The applicant shall be required to use a form of which the model and the number of copies shall be laid down in the Administrative Regulations.

3. Where appropriate, the name and address of the representative or the service address referred to in Article 18.3 shall be stated on the form.

4. The reproduction of the mark shall satisfy the requirements of the Administrative Regulations.

5. The goods and services shall be designated in precise terms, using as far as possible those of the alphabetical list of the International Classification of Goods and Services established by the Nice Agreement of June 15, 1957; in any event, the goods and services shall be grouped according to and in the order of the classes of the above-mentioned Classification.

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Note: For the Benelux Convention Concerning Trademarks/Uniform Benelux Law on Marks and the Administrative Regulations thereunder, see *Industrial Property Laws and Treaties*, MULTILATERAL TREATIES - Texts 3-002 and 3-009, respectively.

**Added by WIPO

6. Where colors are claimed as a distinctive element of the mark, the applicant may state the elements of the mark to which the colors relate. Such statement shall not exceed 50 words.

Article 2

The filing shall be accompanied by the following documents:

- (a) either a request for an anticipation search, of which the model and the number of copies shall be specified in the Administrative Regulations, or a certificate from the Benelux Office confirming that an anticipation search has been carried out or requested during the three months preceding filing;
- (b) in the case of a collective mark, the regulations for use and control, of which the number of copies shall be specified in the Administrative Regulations;
- (c) the powers of attorney, where the filing has been made by a representative;
- (d) proof of payment of the fees or remuneration referred to in Article 28.1(a), (c), (e) or (k);
- (e) the reproductions of the mark as required by the Administrative Regulations.

Article 3

1. The date of filing shall be the date of receipt, either by the Benelux Office or by a national office, of all documents on condition that they satisfy the requirements of Articles 1, 2, 17 and 18.

2. Where those provisions are not complied with on filing, the authority with which the filing has been effected shall notify the person concerned thereof without delay and set a time limit for complying therewith, for submitting any observations or for limiting the list of goods and services. Such time limit may be extended on request or *ex officio*, but may not exceed four months as from the date of dispatch of the first notification. The request for legalization referred to in Article 17.4 shall be assimilated to such notification.

3. Where the requirements of the Articles referred to in paragraph 1 are not met within the set time limit, the documents received shall be filed without processing and any fees or remuneration received shall be refunded, less F920 or f50, with the exception of those referred to in Article 28.1(e) where anticipation searching has been put in hand.

4. In the case referred to in paragraph 2, the filing date shall be that of receipt of the documents referred to in Article 1.1 and Article 2(a) and (b), and (d) as regards basic fees or remuneration, on condition, however, that the other requirements of Articles 1, 2, 17 and 18 have been met within the set time limits.

5. However, lack of regularization of the statement referred to in Article 1.6 or failure to pay the fee referred to in Article 28.1(k) shall have as sole effect that the statement shall be deemed not to have been filed.

Article 4

1. Where the priority right referred to in Article 4 of the Paris Convention for the Protection of Industrial Property is claimed on filing, the country, date, number and owner of the filing on which the priority right relies shall be stated. Where the person who has filed the mark in the country of origin is not the same as the person who effects the Benelux filing, the latter must attach to his filing a document proving his entitlement.

2. The special declaration of priority right referred to in Article 6.D of the Uniform Law shall include the name and address of the applicant, his signature or that of his representative, where appropriate, the name and address of the representative or the service address referred to in Article 18.3, a reference to the mark, together with the particulars referred to in paragraph 1. Proof of payment of the fee referred to in Article 28.1(f) shall be attached.

3. An applicant who claims a priority right shall be required to submit a certified copy of the documents proving such right.

4. Where the requirements of paragraphs 1, 2 and 3 and of Articles 17 and 18 are not met, the competent authority shall notify the person concerned thereof without delay and shall set a time limit for complying therewith. Such time limit may be extended on request, but may not exceed four months as from the date of dispatch of the notification. The request for legalization referred to in Article 17.4 shall be assimilated to such notification.

5. If the requirements of paragraphs 1, 2 and 3 and of Articles 17 and 18 are not met within such time limit, the priority right shall lapse.

Article 5

The competent authority shall record in the instrument of filing:

- (a) the particulars referred to in Article 1 and, where appropriate, the claim to priority right together with the particulars referred to in Article 4.1;
- (b) submission of the documents referred to in Article 2;
- (c) the amount of fees and remuneration;
- (d) where appropriate, the fact that the file is provisional as a result of Article 6.B.2 of the Uniform Law;
- (e) the date and number of the filing;
- (f) maintenance or non-maintenance of the filing within the time limit referred to in Article 7.1;
- (g) where appropriate, limitation of the list of goods and services referred to in Article 6.

Article 6

On receipt of the results of the anticipation search and for as long as the instrument of filing is provisional, the applicant may request free of charge a limitation of the list of goods and services. The request shall be submitted in writing to the Benelux Office.

Where such limitation means that surcharges under Article 28.1(a)2 or (c)2 have been paid in excess, such amount shall be refunded.

Article 7

1. The time limit referred to in the second paragraph of Article 6.B of the Uniform Law, during which the applicant may confirm his wish to maintain the filing, shall be four months as from the date of dispatch of the results of the anticipation search. Confirmation must be given in writing to the Benelux Office.

2. If confirmation that the deposit is maintained is not received within such time limit, the fees referred to in Article 28.1(a) or (c) shall be refunded after deduction of F920 or f50.

Chapter II Registration

Article 8

1. Once the instrument of filing is final, the Benelux Office shall enter it in the Register with the following particulars:

- (a) the serial number of the registration;
- (b) the date and number of the filing;
- (c) the particulars referred to in Article 1 and, where appropriate, the claim to priority right and the particulars referred to in Article 4.1;
- (d) the date on which the registration expires;
- (e) the numbers of the classes of the International Classification of Goods and Services established by the Nice Agreement of June 15, 1957, in which have been classified the goods and services of the filed mark;
- (f) where appropriate, references of the Classification under the Vienna Agreement of June 12, 1973, Establishing an International Classification of the Figurative Elements of Marks.

2. Where a priority right has been claimed under Article 4.2, the Benelux Office shall register such claim and enter the country, the date, the number and owner of the filing on which the claimed priority right is based.

Article 9

A registration certificate, containing the particulars referred to in Article 8, shall be sent by the Benelux Office to the applicant without delay.

Article 10

1. Modifications to the situation of the mark after registration of the instrument of filing shall be recorded at the request of the owner. However, in the case referred to in Article 15.A of the Uniform Law, the owner may only act jointly with the licensee.

2. Any request for modifications to the Benelux Register shall be addressed to the Benelux Office and shall contain the registration number, the name and address of the owner of the mark, his signature or that of his representative and, where appropriate, the name and address of the representative or the service address referred to in Article 18.3. If so required by the Benelux Office, the request shall be accompanied by documentary evidence.

3. The extract from the instrument attesting to an assignment, other transfer or a license, referred to in Article 11.C of the Uniform Law, shall be duly certified, where appropriate, by the contracting parties.

4. Cancellation of a registration following a final court decision shall be effected at the request of the earliest petitioner.

5. The date of registration by the Benelux Office of notifications of any modification to the utilization and control regulations of collective marks referred to in Article 25 of the Uniform Law shall be that of their reception either at the Benelux Office or at one of the national offices.

Chapter III Renewal

Article 11

1. The request for renewal of the registration of a Benelux filing shall be filed with the Benelux Office, preferably by returning a copy of the reminder referred to in Article 10 of the Uniform Law, signed by the requester or, failing that, by a form signed by the requester and containing the following particulars:

- (a) the name of the owner of the mark;
- (b) his address and, where appropriate, the name and address of the representative or the service address referred to in Article 18.3;
- (c) if it is limited with respect to the last publication, the list of goods and services drawn up in precise terms using wherever possible those of the alphabetical list of the International Classification of Goods and Services established by the Nice Agreement of June 15, 1957; in any event, the goods and services must be grouped in accordance with the classes and in the order of classes of the above-mentioned Classification;
- (d) the number of the last registration;
- (e) in the case of a rectification or of additional particulars relating to a filing, referred to in Article 30 of the Uniform Law, the particulars referred to in Article 32 of these Rules.

2. The model and number of copies of the form, referred to in paragraph 1, shall be laid down in the Administrative Regulations.

3. The request shall be accompanied by the following documents:

- (a) proof of payment of the fees referred to in Article 25.1(b), (d) or (k);
- (b) powers of attorney, if renewal is requested by a representative;
- (c) the number of reproductions of the mark required by the Administrative Regulations, where the Benelux Office deems necessary.

Article 12

1. If the request for renewal does not meet the requirements of Articles 11, 17 and 18, the Benelux Office shall inform the requester thereof without delay and give him the possibility of complying within six

months at the latest from the date of expiry of the registration. The request for legalization referred to in Article 17.4 shall be assimilated to such notification. However, if payment is made in whole or in part after the expiry date of the registration, the surcharge referred to in Article 28.4 shall be due.

2. If the request for renewal is not regularized within the above-mentioned time limit, the requester shall be advised that the registration will not be renewed and the fees received shall be refunded to him, less F920 or f50.

Article 13

1. The Benelux Office shall enter the renewals in the Register with the following particulars:

- (a) the serial number of the registration;
- (b) the date of renewal and number of the filing;
- (c) the particulars referred to in Article 1, taking into account the particulars referred to in Article 11.1 and, where appropriate, the claimed priority right and the particulars referred to in Article 4.1;
- (d) the date on which the registration expires;
- (e) the numbers of the classes of the International Classification of Goods and Services established by the Nice Agreement of June 15, 1957, in which are classified the goods and services shown on the list of goods and services of the filed mark;
- (f) where appropriate, the references of the Classification under the Vienna Agreement, of June 12, 1973, Establishing an International Classification of the Figurative Elements of Marks.

2. A registration renewal certificate containing the particulars entered in the Register shall be issued without delay to the owner by the Benelux Office.

Chapter IV International Filing

Article 14

1. In the case of international filings for which the applicants have requested that they should have effect on the Benelux territory, the Benelux Office shall record the notifications from the International Bureau for the Protection of Industrial Property referred to in Articles 8 and 17 of the Uniform Law.

2. In addition, decisions on cancellation or expiry and licenses shall be entered in the Register where they concern the Benelux territory.

3. If the international filing of a collective mark is not accompanied by regulations for use and control, the Benelux Office shall notify the requester without delay of his obligation to submit such regulations within the time limit referred to in Article 21.2 of the Uniform Law.

4. The submission, the failure to submit and any modifications to the regulations for use and control in respect of collective marks shall be entered in the Register.

Article 15

The international filings for which the applicants have requested effect on the Benelux territory shall be subject *ex officio* to an anticipation search. The results of such examination shall be communicated to the owner of the mark.

Chapter V

Application for International Registration and for Renewal of International Registration

Article 16

1. Any person meeting the requirements laid down by the Madrid Agreement Concerning the International Registration of Marks who wishes to obtain protection for his mark in other countries party to the Agreement shall submit to the Benelux Office an application for international registration or for territorial extension of protection. The renewal of an international registration may be applied for through the Benelux Office or directly to the International Bureau.

2. The application shall be effected by submitting a form of which the model and number of copies shall be laid down by the Administrative Regulations. The form shall contain all particulars required by the Regulations under the Madrid Agreement and shall be accompanied, where necessary, by the documents required by those Regulations.

3. Articles 17 and 18 of these Rules shall apply to such applications and also to requests for modification of an international registration.

4. Such applications and requests shall be accompanied by proof of payment of the fees laid down by the Madrid Agreement where such fees have not been paid directly to the International Bureau for the Protection of Industrial Property, together with proof of payment of the fee referred to in Article 28.3(e), where such fee is due.

5. The date of an application meeting the requirements of this Article shall be that of its receipt by the Benelux Office. If the application does not entirely meet the requirements, that date shall still be enjoyed by the applicant if he regularizes the application within a time limit to be laid down by the Benelux Office in accordance with Article 21. Under no circumstances can the date of the application be earlier than the date of the Benelux filing of the mark.

6. The Benelux Office shall immediately communicate to the International Bureau any application or request under this Article which meets the requirements thereof.

Chapter VI

Administrative Provisions

Article 17

1. All documents submitted to the Benelux Office or to the national offices shall be legible and drawn up in Dutch or French. However, documents proving a priority right, a change of name, extracts from instruments recording assignment, other transfer or a license or relevant declarations, together with the regulations for use and control and any amendments thereto, drawn up in another language shall be accepted if accompanied by a translation in Dutch or French.

The Benelux Office may, however, waive the requirement to supply such a translation if the above-mentioned documents are submitted in English or German or are accompanied by a translation in one of those languages.

2. The documents to be submitted to the Benelux Office or the national offices may be communicated by telegraph, telex or other similar means of communication by which printed or handwritten documents may be reproduced.

A document reproduced in this manner shall be deemed to have been notified in compliance with the requirements of these Rules on the day of its transmission by one of the above-mentioned means if its contents are notified, in compliance with those same requirements, before the expiry of 14 days as from the above-mentioned transmission; failing that, the document shall be deemed not to have been notified.

3. Where a document submitted for entry in the Benelux Register or in the register of international registrations kept by the International Bureau for the Protection of Industrial Property is signed on behalf of a legal person, the name and capacity of the signatory shall be stated.

4. No legalization is required for the signature of documents submitted for entry, except where the Benelux Office or a national office deems necessary.

Article 18

1. All transactions with the Benelux Office or a national office may be effected through a representative. Such representative must have his place of residence or headquarters on the Benelux territory and must submit powers of attorney. Where general powers of attorney have been filed with the Benelux Office or with a national office, it shall suffice to make reference to such powers.

2. In those cases where a representative has been appointed, all communications concerning transactions covered by the powers shall be addressed to him.

3. Persons who have neither headquarters nor a place of residence on the Benelux territory and who have not appointed a representative shall state a service address in those cases stipulated by these Rules.

Article 19

1. A request for the anticipation search not accompanying the filing shall contain:

- (a) the name and address of the requester;
- (b) a reproduction of the mark and, where appropriate, a statement of the color or colors and a statement that the mark or a part of the mark is three-dimensional (plastic mark) constituted, *inter alia*, by the form of the product or of its packaging;
- (c) an exact list of the goods and services;
- (d) where appropriate, a statement that it is a collective mark.

2. Where such request refers to a registered mark, it shall contain the name and address of the requester together with the registration number.

3. The requester may ask for urgent execution of the anticipation search referred to in paragraph 1. In such case, the request shall be accompanied by proof of payment of the surcharge referred to in Article 8.1(e).

Article 20

The results of the anticipation search, whether compulsory or optional, shall not be available to the public.

Article 21

1. Where the requirements of these Rules relating to a request for amendments to the Benelux Register or a request for the anticipation search under Article 19 or applications and requests referred to in Article 16 or if the due fees and remuneration have not been paid, or not fully paid, the Benelux Office shall inform the person concerned thereof without delay and shall give him a time limit for compliance.

2. Where the requirements of paragraph 1 are not met within the stipulated time limit, the documents received shall be filed without processing and the fees and remuneration received shall be refunded, less one quarter.

Article 22

1. The responsible authority shall confirm receipt of any document, whether submitted directly or by post, intended for entry in the Benelux Register or the register of international registrations kept by the International Bureau for the Protection of Industrial Property.

2. On receipt by the responsible authority, each document shall be dated by means of a stamp comprising the hour, day, month and year of receipt.

3. Documents that arrive after closing time shall be deemed, unless proved to the contrary, to have been received at midnight of that same day and shall bear the stamp of that hour.

Article 23

1. The time limits laid down by these Rules and expressed in months shall begin with the day on which the relevant event took place and shall expire, within the month concerned, on the day of which the date corresponds with the day on which the period of the time limit starts; however, where the month concerned does not have a corresponding day, the time limit shall expire on the last day of that month.

2. Where the premises of the responsible authority are closed on the last day of a time limit laid down in the Uniform Law or in these Rules, the time limit shall be extended to the end of the first day of opening of the premises.

3. Where normal postal distribution is disturbed in a Benelux country during at least one of the five working days preceding expiry of the time limit referred to in Articles 3.2, 4.4, 7.1, 12.1, 17.2 and 21.1, the documents received by the responsible authority after expiry of the time limits laid down in the above-mentioned Articles may be dealt with by that authority as if they had been submitted within the time limits, on condition that it may be reasonably assumed that the disturbance in the normal postal distribution was the reason for which the documents were received after expiry of the above-mentioned time limits.

4. As regards the acts affecting the date of the Benelux filing, the Benelux Office and the services of the national offices shall be open on the same days and at the same times.

Article 24

1. On the basis of the Benelux Register, the Benelux Office shall provide to those concerned information and copies against payment of the remuneration laid down in Article 28. The national offices, acting in the name and on behalf of the Benelux Office, shall supply the same information and copies where available.

2. The priority documents referred to in Article 4D(3) of the Paris Convention shall be issued to those concerned by the Benelux Office or, where appropriate, by the national offices on payment of the fee laid down in Article 28.3(d). Such document can only be issued if the filing meets the requirements of Articles 1.1 and 2(a), (b) and (d) as regards the basic fees or remuneration.

Article 25

The Benelux Office and the national offices shall make available to those concerned the forms referred to in these Rules.

Article 26

1. The Benelux Register shall comprise two parts:

- (a) the register of Benelux filings;
- (b) the register of international filings.

2. The Benelux Register, together with the documents submitted as proof of the recorded entries, may be consulted free of charge at the Benelux Office.

3. The Benelux Register may likewise be consulted free of charge at the Belgian and Luxembourg national offices.

Article 27

1. The publication referred to in Article 17 of the Uniform Benelux Law shall have the title *Recueil des Marques Benelux-Benelux-Merkenblad*.

2. This publication shall contain, in the language of registration only:

- (a) all particulars recorded in relation to Benelux filings, as referred to in Articles 8, 10 and 13;
- (b) all particulars recorded in relation to international filings, as referred to in Article 14.2 and .4.

Chapter VII Fees and Remuneration

Article 28

1. The amount of the fees or remuneration in respect of Benelux filings shall be fixed, as regards the various transactions mentioned below:

- (a) filing of an individual mark:
 - 1. basic amount of F3,901 or f212;
 - 2. supplementary amount of F699 or f38 for each class of goods and services after the third class of the International Classification in which the goods and services are placed;
- (b) renewal of the registration of a filing of an individual mark:
 - 1. basic amount of F4,306 or f234;
 - 2. supplementary amount of F773 or f42 for each class of goods and services after the third class of the International Classification in which the goods and services are placed;
- (c) filing of a collective mark:
 - 1. basic amount of F7,102 or f386;
 - 2. supplementary amount of F1,776 or f96.50 for each class of goods and services after the third class of the International Classification in which the goods and services are placed;
- (d) renewal of the registration of a filing of a collective mark:
 - 1. basic amount of F7,838 or f426;
 - 2. supplementary amount of F1,960 or f106.50 for each class of goods and services after the third class of the International Classification in which the goods and services are placed;
- (e) examination referred to in Article 6.B or in Article 9, first paragraph, of the Uniform Law:
 - 1. basic amount of F1,840 or f100, increased by a surcharge of F5,520 or f300 in the case referred to in Article 19.3;
 - 2. supplementary amount of F368 or f20 in the case of a collective mark, increased by a surcharge of F1,104 or f60 in the case referred to in Article 19.3;
 - 3. a supplementary charge of F184 or f10 for each class of goods and services after the third class of the International Classification in which the goods and services are placed, increased by a surcharge of F552 or f30 in the case referred to in Article 19.3;
- (f) recording of the special declaration relating to the priority right referred to in Article 6.D of the Uniform Law: F368 or f20 for each mark;
- (g) recording of an assignment or transfer: F736 or f40; where such recording concerns more than one mark: F368 or f20 for each following mark;
- (h) recording of a license or of its cancellation: F736 or f40; if the recording or cancellation concerns more than one mark for which a license is granted to the same person: F368 or f20 for each following mark;
- (i) recording of a change of representative, a change of name or address of the owner, of the licensee or of a change in the service address: F276 or f15; if the recording concerns more than one mark: F138 or f7.50 for each following mark;
- (j) recording of a limitation to the list of goods and services, except on renewal of registration: F736 or f40;
- (k) supplementary amount of F920 or f50 for publication of the statement referred to in Article 1.6;
- (l) recording of a change of name or address of the representative: F276 or f15 up to 100 marks; if the change concerns more than 100 marks, a supplementary amount of F276 or f15 for each group or fraction of a group of 100 marks.

2. The amounts of the fees relating to international filings in respect of the transactions referred to below shall be:

recording of a license or of its cancellation: F736 or f40; if the recording or cancellation concerns more than one mark for which the license has been granted to the same person; F368 or f20 for each following mark.

3. For the acts mentioned below, a fee or remuneration shall be payable as follows:

- (a) information referred to in Article 24.1: F534 or f29, increased by F920 or f50 per hour where searching for or formulating the information takes more than one hour;
- (b) copies of a registration: F74 or f4 per registration and for all other copies F55 or f3 per page;
- (c) certified copies of a registration: F368 or f20 per registration and for all other certified copies F184 or f10 per page;
- (d) priority documents referred to in Article 24.2: F368 or f20;
- (e) applications for international registration or renewal of an international registration: F1,233 or f67;
- (f) correction after recording of an error in writing of the owner at his request: F276 or f15; if the correction concerns more than one filing belonging to the same owner: F138 or f7.50 for each following filing.

4. The surcharge due under Article 12.1 shall be F368 or f20.

5. Payment shall be made according to the methods laid down in the Administrative Regulations.

Article 29

The price of the *Recueil des Marques Benelux-Benelux-Merkenblad* shall be F368 or f20 per issue.

The price of the yearly subscription shall be F3,680 or f200.

These prices shall be increased by F37 or f2 per issue or F368 or f20 for subscriptions outside the Benelux territory.

The method of payment shall be laid down in the Administrative Regulations.

Article 30

In execution of Article 7 of the Benelux Convention Concerning Trademarks, the Benelux Office shall remit to the national offices 20% of the amount of fees levied for acts carried out through their intermediary.

Article 31

1. The Executive Board may adjust the schedule of fees laid down in these Rules to allow for increases in the operating expenses of the Benelux Office. Adjustment may only be made once a year.

2. If the official parities of the Belgian franc, the Luxembourg franc or the florin are changed with respect to each other, the Executive Board shall adjust the schedule of fees laid down in these Rules as a function of such change. The decision may be taken following an emergency procedure laid down in the Rules of the Executive Board.

3. The new schedules of fees shall be published in the Official Gazette of each of the Benelux countries and in the *Recueil des Marques Benelux- Benelux-Merkenblad*; they shall enter into force on the date laid down by the Executive Board and, at the earliest, on the date of last publication in an Official Gazette.

Chapter VIII **Transitional Provisions Relating to Trademarks**

Article 32

The owners of the Benelux filings referred to in Article 30 of the Uniform Law shall have the faculty of rectifying or supplementing the following particulars:

- (a) the nature and time of the events that have generated the acquired right,

(b) if earlier filings or registrations have taken place: the dates and numbers thereof, and of adding elements of proof.

These particulars shall have no influence on the already determined expiry date of the registration.