

## Article 14

This Convention is entered into for a period of 50 years. It shall remain in force thereafter for successive periods of 10 years, unless one of the High Contracting Parties, within one year prior to the expiration of a given period, notifies the other Contracting Parties of its intention to terminate the said Convention.

Any proposals for revision made after the expiration of a period of 10 years from the entry into force of this Convention which have not secured the agreement of all of the High Contracting Parties shall be submitted to the Benelux Interparliamentary Advisory Council.

The right to denounce this Convention shall be conferred upon the High Contracting Party on whose proposals for revision the Benelux Interparliamentary Advisory Council has expressed a favorable opinion with which the two other Contracting Parties, or one of them, does not concur. Such right must be exercised within a reasonable period of time.

Denunciation shall not take effect until five years have elapsed from the date of the notice thereof given to the two other Contracting Parties.

*In witness whereof* the Plenipotentiaries have signed this Convention and affixed their seals thereto.

*Done* in Brussels this 25<sup>th</sup> day of October 1966, in triplicate in the Dutch and French languages, both texts being equally authentic.

## II Uniform Benelux Designs Law\*

### Chapter I Designs

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#### Article 1

The new appearance of a product having a utility function may be protected as a design.

#### Article 2

1. Anything indispensable for the achievement of a technical result shall be outside the protection under this Law.

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\* *French title:* Convention Benelux en matière de dessins ou modèles.

*Entry into force* (as between Belgium, Luxembourg and the Netherlands) of the Convention: January 1, 1974; entry onto force of the Uniform Law: January 1, 1975.

*Source:* Communication from the Benelux Design Office.

*Note:* For the Executive Rules under the Uniform Benelux Design Law and the Administrative Regulations thereunder, see *Industrial Property Laws and Treaties*, MULTILATERAL TREATIES—Text 4/004 and 4/005, respectively.

\*\* Added by WIPO.

2. The appearance of certain categories of products to which the application of the law would give rise to major difficulties may be permanently or temporarily excluded, by the Rules, from the protection under this Law.

### Article 3

1. Without prejudice to the right of priority under the Paris Convention for the Protection of Industrial Property, the exclusive right to a design shall be acquired by the first deposit made within Benelux territory and registered with the Benelux Designs Office (Benelux deposit), or registered with the International Bureau for the Protection of Industrial Property (international deposit).

2. Where two or more deposits are made for the same design, if the first deposit is not followed by the publication provided for in Article 9.3 of this Law or in Article 6(3) of the Hague Agreement for the International Deposit of Industrial Designs, the succeeding deposit shall acquire the status of first deposit.

### Article 4

A design deposit shall not be constitutive of an exclusive right where:

(1) the design is not new, that is, where:

(a) at any time during the 50 years preceding the date of deposit or the date of priority under the Paris Convention, a product identical in appearance with the deposited design or differing only in minor respects has enjoyed a *de facto* notoriety in the relevant industrial or commercial circles in Benelux territory;

(b) a design identical with the deposited design or differing only in minor respects has been the subject of an earlier deposit followed by the publication provided for in Article 9.3 of this Law or in Article 6(3) of the Hague Agreement;

(2) the design is contrary to morality or public order in one of the Benelux countries;

(3) the deposit does not sufficiently disclose the characteristics of the design.

### Article 5

1. During the five years following publication of a deposit, the creator of the design or the person deemed under Article 6 to be the creator may claim the Benelux deposit, or the rights in Benelux territory deriving from an international deposit, of that design if the deposit has been effected by a third party without the creator's consent; he may on the same ground and at any time invoke the nullity of the deposit or of the rights referred to. The action to claim the deposit or the rights shall be registered with the Benelux Office on the plaintiff's request, in the manner prescribed by the Rules and on payment of the fees fixed therein.

2. If the applicant making the deposit, referred to in the preceding paragraph, has requested the total or partial cancellation of the Benelux deposit or has renounced the rights in Benelux territory deriving from the international deposit, such cancellation or renunciation shall, subject to paragraph 3, not be binding on the creator or the person deemed under Article 6 to be the creator, provided that the deposit has been claimed within one year from the date of publication of the cancellation or renunciation and before the expiration of the five-year period referred to above.

3. If, during the interval between the cancellation or renunciation referred to in paragraph 2 and the registration of the action to claim the deposit or the rights, a third party, acting in good faith, has exploited a product identical in appearance, that product shall be considered to have been lawfully placed on the market.

### Article 6

1. Where a design has been created by a worker or employee in the course of his employment, the employer shall be deemed to be the creator, unless otherwise agreed.

2. Where a design has been made pursuant to a commission, the person commissioning the design shall be deemed to be the creator, unless otherwise agreed, provided that the commission was made with a view to the commercial or industrial use of the product embodying the design.

## Article 7

Subject to Article 5.2, the exclusive right to a design shall lapse:

- (1) on the voluntary cancellation or expiration of the registration of the Benelux deposit;
- (2) on the expiration of the registration of the international deposit, or the renunciation of the rights in Benelux territory deriving from an international deposit, or the *ex officio* cancellation referred to in Article 6(4)(c) of the Hague Agreement.

## Article 8

1. Benelux design deposits shall be made either with the national offices or with the Benelux Designs Office, in the manner prescribed by the Rules and on payment of the fees fixed therein. The deposits must include a photographic or graphic representation of the appearance of the product, and the means of reproduction used to make the representation; the deposits may, where applicable, also include a claim as to colors and a statement giving the name of the true creator of the design. The representation may be accompanied by a description of the characteristics of the design, within the limits to be determined by the Rules.

2. Benelux deposits may include one or more designs (respectively, simple or multiple deposits) and shall be subject to the procedure and fees prescribed in the Rules.

3. The authorities responsible for receiving deposits shall ascertain that the documents submitted meet the requirements as to form and shall draw up the instrument of deposit, indicating the date on which the deposit was effected and the existence of any color claim or description referred to in paragraph 1.

4. A priority claim under Article 4 of the Paris Convention shall be made in the instrument of deposit or by way of a special declaration filed with the Benelux Office within the month following the deposit, in the manner prescribed in the Rules and on payment of the fees fixed therein. The absence of such a claim shall cause forfeiture of the right of priority.

## Article 9

1. Deposits of designs may not be the subject, as far as substance is concerned, of any examination giving rise to findings which could be held against the applicant by the Benelux Office, without prejudice, in the case of Benelux deposits, to the application of paragraph 3.

2. The Benelux Office shall register without delay instruments of Benelux deposit and shall issue a certificate of registration to the proprietor; the Office shall also register publications of registered international deposits which have been published in the *International Design Gazette–Bulletin international des dessins ou modèles* where the applicants have requested an extension of their effects to Benelux territory.

The legal date of registration shall be that of the Benelux deposit or of the international deposit.

Where priority is claimed, the registration shall state the date of priority and the basis therefor.

3. The Benelux Office shall publish, as promptly as possible, registrations of Benelux deposits, in accordance with the Rules. Such publication shall include a representation of the product embodying the design and, where priority is claimed, the date of priority and the basis therefor as well as any color claim or description provided for in Article 8.1.

Publication shall be postponed if the applicant avails himself of the right provided for in Article 11 or if the Office feels that the design falls within Article 4.2. In the latter case the Office shall inform the applicant accordingly and shall invite him to withdraw his deposit within two months. If the applicant has not done so by the end of that period, the Office shall, as promptly as possible, invite the Public Prosecutor to institute an action for the nullity of the deposit. If the Public Prosecutor feels that there is no cause to institute such an action or if the action is dismissed by a court decision having force of law, the Office shall publish the registration of the design without delay.

4. If the publication does not sufficiently disclose the characteristics of the design as rendered by the means of reproduction referred to in Article 8.1, the applicant may request the Office, within a period to be determined by the Rules, to make another publication without charge.

5. As from the publication of the design, the public may inspect the registration and the documents submitted at the time of the deposit.

## Article 10

International deposits shall be effected in conformity with the provisions of the Hague Agreement.

## Article 11

At the time of a Benelux deposit, the applicant may request the postponement of publication of the registration for a period not exceeding 12 months from the date of deposit or, when the applicant has invoked Article 4 of the Paris Convention, from the date of the deposit which gave rise to the right of priority.

## Article 12

1. The registration of a Benelux deposit shall be for a term of five years counted from the date of deposit. The design covered by the deposit may not be modified either during the term of the registration or at the time of its renewal.

2. The registration may be renewed for two successive terms of five years simply by payment of the renewal fee to the Benelux Office. The amount of the fee and the modes of payment shall be fixed in the Rules.

Payment must be made during the year preceding the expiration of the registration. Subject to payment of a surcharge fixed in the Rules, a period of grace of six months shall be allowed for renewals.

In all cases renewal shall take effect as from the expiration of the registration.

3. Renewal may be limited to part only of the designs included in a multiple deposit.

4. Six months prior to the expiration of the first and second terms of registration, the Benelux Office shall remind the proprietor of the design of the exact expiration date by notice sent to him at his residence or address for service and to third parties who claim rights in the design, insofar as their names appear in the Register.

5. The Office shall dispatch the reminders to the last known address of the parties concerned. Failure to dispatch or to receive such notices shall not exonerate the said parties from effecting the renewal within the prescribed time limits; no reliance can be placed on such failure either before the courts or before the Office.

6. The Office shall record the renewals and publish them in accordance with the Rules.

## Article 13

1. The exclusive right to a design may be transferred or may be the subject of a license. The following shall be null and void:

- (a) assignments *inter vivos* which are not evidenced in writing;
- (b) assignments or other transfers which are not made for the entire Benelux territory.

2. No limitation of a license, other than a restriction as to its duration, shall have any effect regarding the application of this Law.

3. An assignment or other transfer or a license shall be binding on third parties only after an abstract of the instrument evidencing such transfer or license, or a statement relating thereto signed by the parties concerned, has been recorded in the manner prescribed in the Rules and on payment of the fees fixed therein.

4. A licensee may, jointly with the proprietor of the deposit, claim compensation for any damage sustained by him as a result of the infringement of the exclusive right referred to in Article 14.

## Article 14

1. By virtue of his exclusive right to a design, the proprietor may prevent any of the following acts, performed for industrial or commercial purposes: the manufacture, importation, sale, offering for sale, hire, offering for hire, display, delivery or use, or the holding for any of these objects, of a product identical in appearance with the design as deposited or differing only in minor respects.

2. A claim to compensation, by virtue of the exclusive right, for the acts listed in paragraph 1 may be made only where such acts are performed after the publication under Article 9, sufficiently disclosing the characteristics of the design, unless the person performing such acts was aware of the deposit's existence.

3. The exclusive right to a design shall not, however, include the right to prevent any acts referred to in paragraph 1 performed in relation to products which have been brought into circulation in Benelux territory either by the proprietor or by any other person with his consent or by the persons referred to in Article 17.

4. The action may not relate to products which have been brought into circulation in Benelux territory prior to the deposit.

5. Acts which would only constitute infringement of a design may not be the subject of an action under the legislation against unfair competition.

#### Article 15

Any interested party, including the Public Prosecutor, may invoke the nullity of a Benelux deposit or of the rights in Benelux territory deriving from an international deposit where the deposit does not satisfy the requirements of Articles 1 and 2 or is not constitutive of a right to the design, pursuant to Article 4.

When the action for nullity is instituted by the Public Prosecutor, the courts of Brussels, The Hague and Luxembourg shall have exclusive jurisdiction. The institution of an action by the Public Prosecutor shall stay any other suit instituted on the same grounds.

#### Article 16

The civil courts shall have exclusive competence to give judgment in proceedings based on this Law; they shall *ex officio* order the cancellation of registrations of deposits declared null and void.

#### Article 17

1. A right of personal possession, whose content is defined hereunder, shall be recognized in favor of any third party who, prior to the date of the deposit of a design or to the date of priority under Article 4 of the Paris Convention, where such priority is claimed, has manufactured in Benelux territory products identical in appearance with the deposited design or differing in minor respects.

2. The same right shall be recognized in favor of anyone who, in the same conditions, has started to carry out his intention to manufacture.

3. This right shall not, however, be recognized in favor of a third party who has copied the design concerned without the creator's consent.

4. By virtue of the right of personal possession, the owner thereof may continue or, in the case of paragraph 2, may proceed with the manufacture of the products and, notwithstanding the rights deriving from the deposit, may perform all the other acts referred to in Article 14.1 with the exception of importation.

5. The right of personal possession may be transferred only together with the establishment in which the acts giving rise to it took place.

#### Article 18

1. The proprietor of the registration of a Benelux deposit may at any time request the cancellation of his registration, except where third-party rights exist under a contract or on the basis of court proceedings and have been notified to the Benelux Office.

In the case of a multiple deposit, cancellation may relate to only some of the designs included therein.

If a license has been recorded, cancellation of the registration of the design or of the license may only be requested jointly by the proprietor of the registration and the licensee.

The cancellation shall be effective throughout the Benelux territory notwithstanding any statement to the contrary.

2. The rules set out in paragraph 1 shall apply also to the renunciation of the protection in Benelux territory resulting from an international deposit.

#### Article 19

Declaration of nullity, voluntary cancellations or renunciations must relate to the entire design.

## Article 20

1. In addition to the duties conferred on it by the preceding Articles, the Benelux Office shall:
  - (a) make changes in registrations, either at the request of the proprietor, or as a result of notifications by the International Bureau for the Protection of Industrial Property or of court decisions and, where applicable, inform the International Bureau thereof;
  - (b) publish a monthly publication in the Dutch and French languages in which registrations of Benelux deposits shall appear and which shall contain all other entries prescribed by the Rules;
  - (c) provide copies of registrations at the request of any interested party;
  - (d) supply information on registered designs.
2. The fees to be charged for the services provided for in paragraph 1 and the price of the publication and the copies shall be fixed in the Rules.

## **Chapter II**

### **Designs of a Marked Artistic Character**

## Article 21

1. A design having a marked artistic character may be protected both by this Law and by the copyright laws if the conditions for the application of both such legislation are met.
2. Designs having no marked artistic character shall be outside the protection under copyright law.
3. Where the deposit of a design having a marked artistic character is declared null and void or the exclusive right resulting from the deposit of such a design has lapsed, the copyright in that design shall lapse at the same time insofar as both rights belong to the same proprietor; such right shall not lapse, however, if the proprietor of the design makes a special declaration in accordance with Article 24 for the maintenance of his copyright.

## Article 22

1. The authorization given to a third party by the creator of a work protected by copyright to effect a deposit of a design in which his work is embodied shall entail the assignment of the copyright in that work to the extent of its embodiment in the design.
2. The applicant in the case of a design having a marked artistic character shall be presumed to be also the owner of the copyright therein; this presumption shall not, however, apply to the true creator or to persons acting under his authority.
3. The assignment of the copyright in a design having a marked artistic character shall entail the assignment of the design right, and vice versa, without prejudice to the application of Article 13.

## Article 23

Where a design having a marked artistic character is created in the conditions referred to in Article 6, the copyright in that design shall belong to the person deemed to be the creator in accordance with that Article.

## Article 24

1. The declaration under Article 21.3 must be made, in the manner to be prescribed by the Rules and on payment of the fee to be fixed therein, during the year preceding the lapse of the exclusive right to the design. In the case of the annulment of the right, the declaration must be made within the three months following the date on which the court's declaration of nullity takes on force of law.
2. The declaration under Article 21.3 shall be recorded and the corresponding entry shall be published.

## **Chapter III**

### **Transitional Provisions**

#### Article 25

Subject to Article 26, designs which prior to the entry into force of this Law enjoyed protection, in any form, under the national law in any one of the Benelux countries shall continue to enjoy the same protection in that country.

#### Article 26

Deposits of industrial designs effected in Belgium prior to the entry into force of this Law shall cease to have effect as from the date of such entry into force if, by the end of the year following that date, no confirmatory deposit has been made with the Belgian Industrial Property Office.

Such confirmatory deposits shall not be the subject of any fee.

#### Article 27

When the exclusive right to a design, maintained in accordance with Articles 25 and 26, belongs to different proprietors in two or three Benelux countries, the proprietor of the right in any one of those countries may not prevent the importation of a product embodying that design, and originating in another Benelux country, or claim compensation for such importation, where the product has been manufactured or brought into circulation by the proprietor of the right to the design in such other country, or with his consent, and where there are economic links between the two proprietors with respect to the exploitation of the product concerned.

## **Chapter IV**

### **General Provisions**

#### Article 28

In this Law, the expression “Benelux territory” refers to the whole of the territories of the Kingdom of Belgium, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands in Europe.

#### Article 29

1. Unless otherwise expressly stipulated by contract, jurisdiction in respect of design cases shall be determined by the domicile of the defendant or by the place where the obligation giving rise to the litigation originated or was or is to be performed.

The place where a design was deposited or registered may on no account serve in itself as a basis for the determination of jurisdiction.

Where the criteria laid down hereinabove are insufficient for the determination of jurisdiction, the plaintiff may bring the action before the court of his domicile or residence or, if he has no domicile or residence in Benelux territory, before the Court of Brussels, The Hague or Luxembourg, at his option.

2. The courts shall apply the rule set forth in paragraph 1 *ex officio* and shall explicitly establish and record their competence.

3. The court before which the principal claim referred to in paragraph 1 is pending shall take cognizance of requests that the plaintiff put up security, requests for intervention, incidental claims and counterclaims, except where it is incompetent *ratione materiae*.

4. The courts of any one of the three countries shall, at the request of one of the parties, transfer disputes brought before them to the courts of one of the other two countries if such disputes are already pending before the latter courts or are fundamentally related to other disputes submitted to the said latter courts. Such transfer may only be requested if the causes are pending in first instance. It shall be made to the court before which the case was first brought by a declaration instituting action, unless another court has

given an earlier judgment in the matter concerned—and such judgment does not merely relate to internal procedure—, in which case the transfer shall be made to such other court.

#### Article 30

1. The provisions of this Law shall be without prejudice to the application of the Paris Convention and the Hague Agreement.

2. Nationals of the Benelux countries and nationals of countries not members of the Union established by the Paris Convention who are domiciled or have real and effective industrial or commercial establishments in Benelux territory may, in the context of this Law, claim the application in their favor, for the entire Benelux territory, of the provisions of the Paris Convention and the Hague Agreement.