

No. 10108

**BELGIUM, NETHERLANDS
and
LUXEMBOURG**

**Benelux Convention on trade marks (with annex). Signed at
Brussels on 19 March 1962**

Authentic texts: French and Dutch.

Registered by Belgium on 23 December 1969.

**BELGIQUE, PAYS-BAS
et
LUXEMBOURG**

**Convention Benelux en matière de marques de produits (avec
annexe). Signée à Bruxelles le 19 mars 1962**

Textes authentiques : français et néerlandais.

Enregistrée par la Belgique le 23 décembre 1969.

[TRANSLATION — TRADUCTION]

BENELUX CONVENTION¹ ON TRADE MARKS

His Majesty the King of the Belgians,

Her Royal Highness the Grand Duchess of Luxembourg,

Her Majesty the Queen of the Netherlands,

Desiring to revise their legislation and to establish uniformity of the law relating to trade marks in their countries,

Have decided to conclude a Convention for this purpose and have appointed as their plenipotentiaries:

His Majesty the King of the Belgians:

His Excellency Mr. H. Fayat, Deputy Minister for Foreign Affairs;

Her Royal Highness the Grand Duchess of Luxembourg:

His Excellency Mr. E. Schaus, Minister for Foreign Affairs;

Her Majesty the Queen of the Netherlands:

His Excellency Mr. J. M. A. H. Luns, Minister for Foreign Affairs;

Who, having exchanged their full powers, found in good and due form, have agreed as follows:

Article 1

The High Contracting Parties shall incorporate into their domestic legislation, in one or both of the original texts, the Benelux Uniform Law on Trade Marks annexed to this Convention and shall establish an administration common to their countries under the name "Benelux Trade Marks Bureau".

¹ Came into force on 1 July 1969, the first day of the month following that in which the third instrument of ratification was deposited with the Government of Belgium, in accordance with article 13, as follows:

<i>State</i>	<i>Date of deposit of the instrument</i>
Netherlands	30 September 1963
Luxembourg	19 August 1968
Belgium	30 June 1969

Article 2

Implementation of the Uniform Law shall be effected through regulations drawn up by agreement between the High Contracting Parties after consultation with the Board of Administration of the Benelux Trade Marks Bureau referred to in article 3 and through rules drawn up by the said Board.

The regulations and rules shall have obligatory force in each country, in accordance with the provisions of its domestic legislation.

The regulations and rules shall be published in the Official Gazette of each of the High Contracting Parties.

Article 3

The Benelux Trade Marks Bureau shall be responsible for the implementation of the Uniform Law of the regulations and rules.

The work of the bureau shall be directed by a Board of Administration, composed of members appointed by the High Contracting Parties; there shall be one administrator and one alternate administrator for each country.

The Board of Administration shall elect its Chairman annually.

Article 4

The Board of Administration shall decide on all matters connected with the general work of the Benelux Trade Marks Bureau.

It shall draw up the rules of procedure and financial regulations of the Bureau as well as the implementation rules.

It shall offer advice and suggestions concerning the implementation regulations.

It shall appoint the Director of the Bureau, who must be a national of one of the High Contracting Parties, and shall determine his functions.

It shall draw up the annual budget of receipts and expenditure and such amending or additional budgets as may be necessary and shall lay down in the financial regulations the procedures by which control is to be exercised over budgets and over budget administration. It shall approve the Director's accounts.

Decisions of the Board shall be unanimous.

Article 5

One half of the costs of establishing the Benelux Trade Marks Bureau shall be borne by the Kingdom of the Netherlands and one half by the Belgo-Luxembourg Economic Union.

The Board of Administration may request a contribution from the High Contracting Parties to cover extraordinary expenses; one half of the said contribution shall be paid by the Kingdom of the Netherlands and one half by the Belgo-Luxembourg Economic Union.

Article 6

The working expenses of the Bureau shall be defrayed out of its receipts, comprising:

- (1) Fees collected pursuant to the Uniform Law;
- (2) Income accruing to the High Contracting Parties from the application of the Agreement of Madrid for the International Registration of Trade-marks, signed on 14 April 1891;¹
- (3) Payments in respect of searches for anticipation;
- (4) Income from the sale of publications and copies.

If necessary, a contribution shall be made to the Bureau by the High Contracting Parties; one half shall be paid by the Kingdom of the Netherlands and one half by the Belgo-Luxembourg Economic Union.

Article 7

A percentage of the fees collected for operations carried out through national administrations shall be paid to the said administrations to cover the costs of such operations; the percentage shall be fixed by regulation.

No national fee for such operations may be established by domestic legislation.

The international fee in respect of applications for the international registration of trade marks shall be paid to the Benelux Trade Marks Bureau, which shall transfer it to the International Bureau established by the Paris Convention for the Protection of Industrial Property, signed on 20 March 1883.²

¹ *British and Foreign State Papers*, vol. 96, p. 837.

² *Ibid.*, vol. 74, p. 44.

Article 8

The Benelux Trade Marks Bureau shall be under the protection of the Government of the Netherlands and its headquarters shall be situated at The Hague.

Article 9

The authority of judicial decisions rendered in any one of the three States pursuant to article 14 or article 27 of the Uniform Law shall be recognized in the other two States, and cancellations under court orders shall be effected by the Bureau on the responsibility of the Board of Administration at the request of the party who instituted the proceedings, provided that:

- (1) Under the laws of the country in which the decision was rendered, the copy of the decision which is produced fulfils the conditions necessary for authenticating it;
- (2) The decision is no longer liable to a motion for reconsideration or to appeal on facts or on law.

Article 10

As soon as a Benelux Court of Justice is set up, it shall have jurisdiction over questions of interpretation of the Uniform Law.

Article 11

This Convention shall apply only to the territories of the High Contracting Parties in Europe.

Article 12

This Convention shall be ratified. The instruments of ratification shall be deposited with the Government of the Kingdom of Belgium.

Article 13

This Convention shall enter into force on the first day of the month following the deposit of the third instrument of ratification.

The Uniform Law shall enter into force 18 months after the entry into force of this Convention.

Article 14

This Convention is concluded for a period of 50 years. Thereafter it

shall remain in force for consecutive periods of 10 years unless one of the High Contracting Parties notifies the other Contracting Parties one year before the expiration of the current period of its intention to terminate it.

Any proposals for revision made after the expiration of a period of 10 years, from the date of the entry into force of this Convention which have not gained the approval of all the High Contracting Parties must be submitted to the Benelux Consultative Interparliamentary Council.

Any one of the High Contracting Parties whose proposals for revision have obtained from the Benelux Consultative Interparliamentary Council a favourable opinion which has not gained the approval of one or both of the other Contracting Parties shall have the right to denounce the Convention. This right must be exercised within a reasonable period.

The denunciation may not take effect until five years have elapsed from the date of notification thereof to the other two Contracting Parties.

IN WITNESS WHEREOF the plenipotentiaries have signed this Convention and have thereto affixed their seals.

DONE at Brussels, on 19 March 1962, in triplicate, in the Dutch and French languages, both texts being equally authentic.

For Belgium:

H. FAYAT

For Luxembourg:

E. SCHAUS

For the Netherlands:

J. M. A. H. LUNS

ANNEX

BENELUX UNIFORM LAW ON TRADE MARKS

CHAPTER I

INDIVIDUAL MARKS

Article 1

The following shall be deemed to be individual marks: names, designs, stamps, seals, letters, numerals, forms of goods or of packaging and any other signs used to distinguish the goods of an enterprise.

However, forms which are determined by the nature of the goods, which affect their intrinsic value or which have industrial consequences shall not be deemed to be marks.

Article 2

Without prejudice to the provisions of the general law, a surname may be used as a mark.

However, the proprietor of such a mark may in no case oppose the use of the name in question by persons bearing the same name, solely for purposes of identification and without giving it the appearance of a mark.

Article 3

Without prejudice to the rights of priority provided for in the Paris Convention for the Protection of Industrial Property or in the Agreement of Madrid for the International Registration of Trademarks, the exclusive right to a mark shall be acquired through the first deposit effected in Benelux territory (Benelux deposit) or resulting from a registration with the International Bureau for the Protection of Industrial Property (international deposit).

In determining the priority status of the deposit, regard shall be had to rights, existing at the time of the deposit and maintained at the time of the legal action, to:

- (a) Similar individual marks deposited for similar goods;
- (b) Similar collective marks deposited for any goods whatsoever.

Article 4

Within the limits laid down in article 14, the right to a mark shall not be acquired through:

1. The deposit of a mark which, irrespective of the use made of it, is contrary to morality or public policy in any of the Benelux countries or the refusal or cancellation of which is provided for in article 6 *ter* of the Paris Convention;
2. A deposit in respect of goods for which the use of the mark would be of such a nature as to deceive the public;
3. The deposit of a mark resembling a collective mark which was deposited for any goods whatsoever and to which was attached a right which has lapsed during the three years preceding the deposit;
4. The deposit of a mark resembling an individual mark which was deposited by a third party for similar goods and to which was attached a right which during the three years preceding the deposit has lapsed through the expiration of the registration, unless the third party has given his consent or, as specified in article 5 (3), the last mentioned mark has not been used.

5. The deposit of a mark which is capable of creating confusion with a well-known mark, within the meaning of article 6 *bis* of the Paris Convention, belonging to a non-consenting third party;
6. A deposit effected in bad faith, including:
 - (a) A deposit effected by a person who knows or ought to know that normal use has been made in good faith within the last three years in Benelux territory of a similar mark for similar goods by a non-consenting third party;
 - (b) A deposit effected by a person who knows as a result of his direct relationship with a third party that normal use has been made in good faith by the third party within the last three years outside Benelux territory of a similar mark for similar goods, unless the third party has given his consent or the knowledge in question was acquired only after the person effecting the deposit had begun to use the mark in Benelux territory.

Article 5

The right to the mark shall lapse:

1. Through voluntary cancellation or expiration of the Benelux deposit;
2. Through cancellation or expiration of the international registration, or through renunciation of protection in Benelux territory, or, in accordance with the provisions of article 6 of the Agreement of Madrid, as a result of the fact that the mark no longer enjoys legal protection in the country of origin;
3. Where, without reasonable cause, no normal use has been made of the mark in Benelux territory, either by the proprietor or by a licensee, within the three years following the deposit or during an uninterrupted period of five years; in case of legal action, the court may place the whole or a part of the burden of proof of use on the proprietor of the mark; however, non-use more than six years prior to the date of the summons must be proved by the person alleging it;
4. Where a mark, having been duly acquired, has through the actions of the proprietor become the customary name of a product in common parlance.

Article 6

A. Benelux deposits of marks shall be effected either with national administrations or with the Benelux Trade Marks Bureau, in such manner and on payment of such fees as shall be laid down by regulation. The authorities responsible for accepting deposits shall ascertain whether the documents submitted are in due form and shall draw up the instrument of deposit, indicating the date on which the deposit was effected.

B. Acceptance of the deposit of a mark may, by regulation, be made conditional upon compliance with one of the following formalities, at the option of the applicant:

1. The production of a document certifying that search for anticipation has been made by the Benelux Bureau within the three months preceding the deposit, in accordance with the provisions laid down by the regulation, or
2. The submission at the time of deposit, through the authority responsible for accepting the deposit, of a request for a search.

In the latter case, the instrument of deposit shall be drawn up in provisional form. It shall become final only if, after receipt of the results of the search for anticipation and within a period to be laid down by regulation, the applicant or his agent has confirmed his wish to maintain the deposit. On becoming final, the instrument of deposit shall retain its original date.

C. The deposit of a mark shall not be subjected to any examination of its substance the findings of which might be adversely employed against the applicant by the Benelux Bureau.

D. Any claim to priority based on article 4 of the Paris Convention shall be made in the instrument of deposit or by special declaration to the Benelux Bureau, in such manner and on payment of such fees as shall be laid down by regulation, within the month following the deposit. Failure to make such a claim shall entail forfeiture of the right of priority.

Article 7

A. International deposits shall be effected in accordance with the provisions of the Agreement of Madrid. The fee provided for in article 8, paragraph (1), of the Agreement of Madrid shall be fixed by regulation.

B. However, if acceptance of Benelux deposits is, by regulation, made subject to the conditions referred to in article 6 (B), the regulation in question may also provide that international deposits shall be subject to *ex officio* searches for anticipation.

Article 8

The Benelux Bureau shall register without delay instruments of Benelux deposit in respect of the goods indicated by the applicant and shall deliver a certificate of registration to the proprietor of the mark; it shall also register notifications of international registrations in respect of the goods indicated by the applicants, where the applicants have requested that the validity of the registrations should extend to Benelux territory.

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

The registration shall indicate the date of and basis for any priority that may be claimed.

Article 9

The Benelux Bureau shall, at the request of persons effecting the deposit of marks or third parties and on payment of a fee, undertake searches for anticipation among marks in the Benelux register.

In addition, the Bureau shall undertake searches for anticipation among marks in the Benelux register in the cases provided for in article 6 (B) and article 7 (B).

It shall transmit the result of a search to the applicant without stating any grounds or conclusions.

In order to facilitate searches, registered marks shall be classified according to a system to be laid down by the Benelux Bureau.

Article 10

The registration of a Benelux deposit shall be for a period of 10 years from the date of the deposit.

The sign constituting the mark may not be altered either during the period of the registration or at the time of renewal.

The registration may, upon application, be renewed for further periods of 10 years, in such manner and on payment of such fees as shall be laid down by regulation.

Applications for renewal must be submitted during the six months preceding the expiration of a registration. The renewal shall take effect upon the expiration of that period.

Six months before the expiration of the registration, the Benelux Bureau shall, by notice in writing, remind the proprietor of the mark and the agent, if any, named in the instrument of deposit of the exact date of expiration.

Reminders from the Bureau shall be sent to the last known address of the persons concerned. Failure to send such notice or non-receipt thereof, shall not relieve the said persons of their obligation to apply for renewal within the prescribed period; it may not be relied on either in legal proceedings or vis-à-vis the Bureau.

The Bureau shall register renewals.

Article 11

A. The exclusive right to a mark shall, independently of the transfer of all or part of the enterprise, be transmissible or licensable in respect of all or some of the goods for which the mark has been deposited.

The following shall be void:

1. Assignments *inter vivos* and licences which are not in written form;
2. Assignments or other transfers which are not effected for the whole of Benelux territory.

B. Any limitation of a licence other than a limitation in time or in respect of some of the goods for which the mark has been deposited shall be without effect for the purposes of the application of the present Law.

C. An assignment or other transfer, or a licence, shall be legally valid *vis-à-vis* third parties only after registration of the deposit, in such manner and on payment of such fees as shall be laid down by regulation, of a true copy of the instrument evidencing it or of a declaration pertaining thereto, signed by the parties concerned.

D. A licensee may take joint action with the proprietor of the mark for the recovery of compensation for any damage suffered by him as a result of the unlawful use of the mark by a third party.

Article 12

A. Irrespective of the type of action brought, no person may claim legal protection for a sign deemed to be a mark within the meaning of article 1 unless he has duly effected the deposit thereof and, if necessary, has renewed the registration.

The court may *ex officio* declare an action inadmissible. It shall become admissible if deposit or renewal is effected during the proceedings.

Damages may in no case be awarded for acts prior to the deposit.

B. The provisions of the present Law shall in no way affect the right of users of a sign not deemed to be a mark within the meaning of article 1 to rely on the general law, in so far as the latter enables them to oppose the unlawful use of the sign.

Article 13

A. Without prejudice to the application of the general law in the matter of civil liability, the exclusive right to a mark shall entitle the proprietor to oppose:

1. Any use of the mark or of a similar sign for goods in respect of which the mark is registered or for similar goods;
2. Any other use of the mark or of a similar sign, in the course of trade and without reasonable cause, in such circumstances as may result in damage to the proprietor of the mark.

Subject to the same conditions, the said right shall entitle the proprietor to claim compensation for any damage suffered by him as a result of such use.

However, the exclusive right to the mark shall not include the right to oppose the use of the mark for goods which the proprietor or his licensee has placed in circulation under the said mark, unless the condition of the goods has been altered.

B. The administrative classification employed for the registration of marks shall be disregarded in evaluating the similarity of goods.

C. The exclusive right to a mark worded in one of the national or regional languages of the Benelux territory shall automatically extend to translations into other such languages. It shall be for the court to evaluate similarity resulting from translations into one or more languages foreign to the aforementioned territory.

Article 14

A. Any interested party, including the Public Prosecutor, may sue for avoidance of:

1. (a) The deposit of a sign which is not deemed to be a mark, in accordance with article 1, including any sign which totally lacks the distinctiveness required under article 6 *quinquies* (B) (2) of the Paris Convention ;
(b) A deposit the priority status of which is inferior to that of the deposit of a similar collective mark, as provided for in article 3, second paragraph;
(c) A deposit through which the right to a mark is not acquired, in accordance with article 4 (1) and (2);
2. A deposit through which the right to a mark is not acquired, in accordance with article 4 (3), provided that the action for avoidance is brought within five years of the date of the deposit.

Where the action for avoidance is brought by the Public Prosecutor, the courts at Brussels, The Hague and Luxembourg shall have sole jurisdiction in the cases referred to above. The institution of any action by the Public Prosecutor shall have the effect of suspending any other action instituted on the same grounds.

B. Where the person who effected the previous registration or the third party referred to in article 4 (4), (5) and (6) is a party to the action, any interested party may sue for avoidance of:

1. A deposit the priority status of which is inferior to that of the deposit of a similar collective mark, as provided for in article 3, second paragraph;
2. A deposit through which the right to a mark is not acquired, in accordance with article 4 (4), (5) and (6); actions for avoidance on the grounds provided for in article 4 (4) must be brought within three years of the date of expiration of the previous registration, and action for avoidance on the grounds provided for in article 4 (5) and (6) must be brought within five years of the date of the deposit.

C. Any interested party may sue for a ruling that the right to the mark has lapsed in the cases referred to in article 5 (3) and (4).

D. The courts shall have sole power to adjudicate upon actions brought on the basis of the present Law; they shall *ex officio* order the cancellation of the registration of deposits which are declared void or through which rights declared to have lapsed were acquired.

Article 15

A. The person who effected the registration of a Benelux deposit may at any time request cancellation of his registration. However, if a licence has been registered, any request for cancellation of the registration of the mark or of the licence must be made jointly by the person who effected the registration and by the licensee.

B. The cancellation shall take effect for the whole of Benelux territory.

C. Renunciation, restricted to a part of Benelux territory, of the protection resulting from an international deposit shall take effect for the whole of the said territory, notwithstanding any declaration to the contrary by the registered proprietor.

Article 16

Avoidance of a deposit, a declaration that the right to a mark has lapsed, or voluntary cancellation of a registration must apply to the sign constituting the mark in its entirety.

Avoidance or a declaration that a right has lapsed must be restricted to one or more of the products for which the mark is registered if the grounds for avoidance or lapse of the right apply to only a part of those products.

Voluntary cancellation may be restricted to one or more of the products for which the mark is registered.

Article 17

A. In addition to the functions assigned to it in the preceding articles, the Benelux Bureau shall:

1. Incorporate in registrations any alterations requested by the proprietor or resulting from notifications by the International Bureau for the Protection of Industrial Property or from judicial rulings, where necessary informing the International Bureau accordingly;
2. Publish a monthly journal in the Dutch and French languages reporting registrations of Benelux deposits and containing any other notices prescribed by regulation;

3. Issue copies of registrations upon the request of any interested party.

B. The scale of fees to be collected for the operations referred to in paragraph A of this article, the price of the journal and the charge for copies shall be fixed by regulation.

Article 18

Nationals of Benelux countries, and nationals of countries not forming part of the Union constituted by the Paris Convention who are domiciled or have real and effective industrial establishments in Benelux territory, may by virtue of the present Law claim the benefit of the application of the provisions of the said Convention and of the Agreement of Madrid in respect of the whole of the said territory.

CHAPTER II COLLECTIVE MARKS

Article 19

The following shall be deemed to be collective marks: all signs so designated at the time of deposit and used to distinguish one or more common characteristics of goods originating from different enterprises, which affix the mark under the supervision of the proprietor.

The proprietor may not use the mark for goods originating from his own enterprise or from enterprises in whose management or control he participates either directly or indirectly.

Article 20

Except where otherwise provided individual and collective trade marks shall be subject to a common régime.

Article 21

The exclusive right to a collective mark shall be acquired only if the deposit of the mark is accompanied by regulations governing the use and supervision thereof.

However, in the case of an international deposit the applicant may deposit such regulations at any time within a period of six months from the notification of the international registration provided for in article 3, paragraph (4), of the Agreement of Madrid.

Article 22

The regulations for the use and supervision of a collective mark must indicate the common characteristics of the goods which the mark is intended to certify.

It must also specify the procedures for exercising thorough and effective supervision of the said characteristics, accompanied by adequate penalties.

Article 23

Article 4 (3) shall not apply to the deposit of a collective mark effected by the former proprietor of a similar collective mark or by his successor in title.

Article 24

Without prejudice to the application of article 6, the Benelux Bureau shall not register the Benelux deposit of a collective mark unless the regulations for the use and supervision of the mark are deposited in the manner provided for in article 21.

Article 25

Proprietors of collective marks shall be required to notify one of the three national administrations or the Benelux Bureau of any change in the regulations for the use and supervision of the mark. The notification shall be registered by the Benelux Bureau.

No such change shall enter into effect prior to notification as provided for in the preceding paragraph.

Article 26

The right to institute legal proceedings for the protection of a collective mark shall belong exclusively to the proprietor of the mark.

Without prejudice to the provisions of article 13, the exclusive right to a collective mark shall entitle the proprietor to oppose any use of the mark or of a similar sign for any goods whatsoever, except in the case of a person who can assert a prior right to a similar individual mark.

Subject to the same conditions, the said right shall entitle the proprietor to claim compensation for any damage suffered by him as a result of such use.

However, the regulations for use and supervision may specify that persons authorized to use the mark shall be entitled to bring an action jointly with the proprietor or to become a party to or intervene in any proceedings instituted by or against him.

The regulations for use and supervision may likewise specify that the proprietor acting alone may assert the particular interests of the users of the mark and may include in his application for compensation the particular damage suffered by one or more of them.

Article 27

A. Without prejudice to the provisions of article 14, any interested party, including the Public Prosecutor, may sue for a ruling that the right to a collective mark has lapsed if the proprietor uses the mark in the manner referred to in article 19, second paragraph, or authorizes or tolerates any use thereof contrary to the provisions of the regulations for use and supervision.

Where the action for a ruling that the right to a mark has lapsed is brought by the Public Prosecutor, the courts at Brussels, The Hague and Luxembourg shall have sole jurisdiction.

The institution of an action by the Public Prosecutor shall have the effect of suspending any other action instituted on the same grounds.

B. The Public Prosecutor may sue for avoidance of the deposit of a collective mark where the regulations for use and supervision are contrary to public policy or are not in accordance with the provisions of article 22. The Public Prosecutor may likewise sue for avoidance of any changes in the regulations for use and supervision which are contrary to public policy or to the provisions of article 22 or which have the effect of weakening the guarantees afforded to the public by the regulations.

The courts at Brussels, The Hague and Luxembourg shall have sole power to adjudicate upon such cases; they shall *ex officio* order the cancellation of the registration of deposits or changes which are declared void.

Article 28

Collective marks which have lapsed or been declared void or cancelled, and collective marks which have neither been renewed nor reinstated in accordance with article 23, may not be used in any manner during the three years following the date of registration of the lapse, avoidance or cancellation or the date of expiration of the unrenewed registration, except by a person who can assert a prior right to a similar individual mark.

CHAPTER III
TRANSITIONAL PROVISIONS

Article 29

Subject to the provisions of article 30, exclusive rights to individual and collective marks which were acquired pursuant to domestic law in any of the Benelux countries prior to the date of the entry into force of the present Law and which have not lapsed as at the said date shall be maintained. As from the aforementioned date, the present Law shall be applicable to such rights.

An exclusive right shall also be deemed to have been acquired through the first use of a sign, used to distinguish the goods of an enterprise, which would have constituted a mark if articles 1 and 2 of the present Law had been applicable. However, the exclusive right thus deemed to have been acquired may not be relied on *vis-à-vis* persons who used the said sign prior to the entry into force of the present Law, unless the use in question was followed by an uninterrupted period of five years of non-use.

Article 30

The acquired right to a mark shall terminate, with retroactive effect to the date of the entry into force of the present Law, if upon the expiration of a period of one year from the said date there has not been effected a Benelux deposit of the mark claiming the existence of the acquired right and indicating, for information purposes, the nature and time of occurrence of the circumstances which gave rise to it and the deposits and registrations, if any, effected in respect of the mark. Such deposit shall supersede deposits of the mark in one or more of the Benelux countries, without prejudice to rights acquired as a result of the latter deposits. However, if the applicant claiming an acquired right knows or ought to know of the non-existence of the said right, the deposit shall be deemed to have been effected in bad faith.

Where, as at the date of the entry into force of the present Law, the right to a mark results from an international deposit based on a registration of origin effected outside Benelux territory, the said right shall be maintained without regard to the conditions laid down in the preceding paragraph.

In addition, the acquired right to a collective mark shall terminate, with retroactive effect to the date of the entry into force of the present Law, if at the time of the Benelux deposit referred to in the first paragraph no regulations for use and supervision have been deposited. Articles 22, 24 and 27 (B) shall apply.

Where the right to a collective mark results from an international deposit based on a registration of origin effected outside Benelux territory, the said right shall terminate, with retroactive effect to the date of the entry into force of the present Law, if upon the expiration of a period of one year from the said date the proprietor of the collective mark has not deposited regulations for use and supervision. Articles 22 and 27 (B) shall apply.

Article 31

Notwithstanding the provisions of article 10, the first registration of Benelux deposits, as referred to in article 30, shall be for a period of 1 to 10 years. It shall expire on the anniversary of the Benelux deposit, in the year the date of which has the same unit digit as the year in which the acquired right which is claimed originated.

The first renewal of the registration of such deposits, for the period specified in article 10, may be applied for at the time of the deposit.

Article 32

The exclusive right to a mark maintained pursuant to articles 29 and 30 shall extend to the whole of Benelux territory as from the date of the entry into force of the present Law.

However, the said right shall not extend to the territory of any Benelux country where:

- (a) It would conflict with a right acquired by a third party and maintained pursuant to articles 29 and 30;
- (b) A ground for avoidance, as referred to in article 14 (A) (1) (a) and (c) and (2), article 14 (B) (2) or article 27 (B), is found to exist.

Where two persons are holders of acquired rights to the same mark in two of the Benelux countries respectively, extension to the third country shall operate in favour of the person who, prior to the entry into force of the present Law, made the first normal use of the mark in that country. If no use has been made of the mark in that country at the time of the entry into force of the present Law, the extension shall operate in favour of the person who has the prior acquired right.

Article 33

If, in accordance with article 32, a mark belongs to different proprietors in two or three of the Benelux countries, the proprietor of the mark in one of the said countries may not oppose the importation of goods bearing that same mark from another Benelux country, nor claim compensation for such importation, where the mark has been affixed by or with the consent of the proprietor of the mark in that other country and where a business relationship exists between the two proprietors with respect to the exploitation of the goods concerned.

Article 34

A. The Benelux register shall be open for deposits on the day following the date of the entry into force of the present Law. National deposits shall no longer be receivable as from the date of such entry into force.

B. Benelux deposits, as referred to in article 30, shall not be subject to the payment of any fee and shall be effected in the manner laid down by regulation. The registration of such deposits shall indicate any claim to an acquired right and the particulars thereof.

C. International deposits based on a registration of origin effected outside Benelux territory which exist on the date of the entry into force of the present

Law shall be entered *ex officio* and free of cost in the Benelux register, unless the proprietor has renounced the protection resulting therefrom in respect of all the Benelux countries.

Article 35

Benelux deposits, as referred to in article 30, irrespective of the actual date thereof, and international deposits entered in the Benelux register as provided for in article 34 (C), shall, for the purpose of determining their priority status in relation to Benelux deposits which include no claim to an acquired right, be deemed to have been effected on the date of the entry into force of the present Law.

The priority status of rights acquired in a Benelux country, within the meaning of article 29, shall be determined in that country in accordance with the domestic law applied prior to the entry into force of the present Law.

CHAPTER IV GENERAL PROVISIONS

Article 36

In the present Law, the expression "Benelux territory" means the aggregate of the territories of the Kingdom of Belgium, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands in Europe.

Article 37

A. Unless otherwise expressly agreed, territorial judicial competence in respect of trade marks shall be determined by the domicile of the defendant or by the place where the obligation which is the subject of litigation originated, was performed or is to be performed.

The place of deposit or registration of a mark shall in no case constitute in itself the basis for determining competence.

Where the rules set forth above are inadequate for the purpose of determining territorial competence, the plaintiff may bring the action before the court of his domicile or place of residence or, if he has no domicile or place of residence in Benelux territory, before the court of his choice at Brussels, The Hague or Luxembourg.

B. The courts shall *ex officio* apply the rules set forth in paragraph A and shall expressly establish their competence.

C. The court before which the principal claim referred to in paragraph A is pending shall take cognizance of claims for the performance of a guarantee,

applications for intervention and incidental pleadings, as well as counter-claims, unless it is incompetent *ratione materiae*.

D. The courts of any one of the three countries shall, if one of the parties so requests, refer disputes before them to the courts of one of the other two countries, where the disputes in question are already pending before the latter courts or are related to other disputes submitted to the latter courts. Such referral may be requested only when actions are pending at the first degree of jurisdiction. The dispute shall be referred to the court before which the case was first brought by an order instituting the proceedings, unless another court has rendered a decision on the case other than a procedural order, in which event it shall be referred to that other court.

Article 38

Nothing in the present Law shall affect the application of the Paris Convention, the Agreement of Madrid and any provisions of Belgian, Luxembourg or Netherlands law which might result in the prohibition of the use of a mark.
