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Important changes to BENELUX trade mark law as per June 1, 2018

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The Benelux trade mark system will undergo two important changes as per June 1, 2018.

Appeals from decisions of the Benelux Office for Intellectual Property (BOIP)

Until now appeals from decisions of the BOIP in opposition cases were brought before the courts of appeal of The Hague, Brussels or Luxembourg (with further appeals on questions of law to the respective supreme courts). This resulted in some quite different results. For example, in cases of refusal on absolute grounds, the Court of Appeal of The Hague tended to confirm absolute grounds refusal decisions, whereas the Court of Appeal of Brussels was inclined to squash refusal decisions and to accept the trade marks.

As per June 1, 2018, all appeals from decisions of the BOIP (refusals, oppositions etc.) have to be brought before the Benelux Court of Justice (BCJ). This Court established a new chamber consisting of judges from national courts of the Member States of the Benelux. This will result in a more consistent and harmonious case law. So far, the BCJ only played a role where national courts had doubts as to the interpretation of matters of Benelux law. In the past years this role was not very big, since questions of interpretation of substantive trade mark law were referred to the Court of Justice in Luxembourg (CJEU). So, mainly procedural issues were brought before the BCJ. As before, the BCJ can refer questions of interpretation of Union law to the CJEU.

Revocation and invalidation actions can be brought before the BOIP

The second important novelty concerns the possibility to request revocation or invalidation of the registration of a trade mark in an administrative procedure before the BOIP, just as is the case with EU trade marks, and the new procedure shows similarities with the procedure before EUIPO. This is done in anticipation of implementation of art. 43 and 45 of Directive 2015/2346, the new Trade Marks Directive.

So far, prior rights holders, those who wish to invoke lapse of rights based on non-use or those who wish to argue that a trade mark for example lacks distinctiveness could

only do so before the courts. This will still be possible, but the new system offers the alternative of an administrative revocation or invalidation procedure, which can be attractive, since it will involve less costs. Again, appeals from decisions of the BOIP in such administrative proceedings can only be brought before the BCJ.

Comments

The new system should be welcomed. Until now it was generally felt that the differences in the decisions of the courts of appeal in the Benelux countries were not acceptable. We can now expect a more consistent case law, the quality of which will probably be very good because the BCJ's new chamber consists of judges with experience in IP matters. Also, the new administrative revocation and invalidation procedure will be faster and less expensive than court proceedings. It is up to the claiming party to carefully develop a strategy which proceedings would be better in his case.

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