

B E N E L U X - O F F I C E
F O R
I N T E L L E C T U A L
P R O P E R T Y

To: WIPO *Datum:* 16 January 2013

From: BOIP, on behalf of Belgium, the Netherlands and Luxembourg

Re: **Protection of country names
Benelux**

- the legal basis of such protection (whether trademark or non-trademark law):

1) Country names will, in general, be considered as descriptive and (thus) lacking distinctive character. Reference is made to article 2.11, par 1, sub c of the Benelux Convention on IP and the CHIEMSEE decision of the European Court of Justice (C-108/97-109/97, 4 May 1999). If a geographical indication (such as a country name) may serve in trade to indicate (characteristics) of the goods/service indicated (such as their origin), the indication should remain available to all entrepreneurs to be used in a descriptive way or as part of a trademark.

2) If combined with a non-descriptive word (such as a company name or a invented word) or a distinctive logo, registration as a trademark will in general be allowed. The sign as a whole will be distinctive and not descriptive.

3) Under general law (wrongful act) the abuse of a country name might be prevented by a party whose rights are compromised. This party may claim damages. This type of procedure is governed by private law.

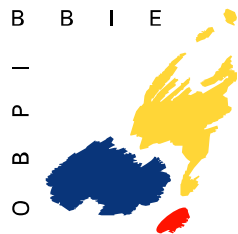
- the applicable procedures (pre-registration, post-registration, other) :

All trademark applications are checked for their admissibility on absolute grounds before registration.

- the scope of protection accorded to country names in the field of registration of trademarks (the sign applied for registration as a trademark is a country name, or the country name forms part of the sign):

All trademarks are protected on the basis of the assessment of the risk of confusion between trademark and sign.

- protection is granted for the official name of the country only or also for variations of those names, such as common names, adjectives or abbreviations.



1) As set out before, country names will in general not be admitted as trademarks because they are descriptive. The same principle applies to their variations in broad sense. Of course, if a variation is used in an application, it must be considered whether the relevant public (as defined by the ECJ in the GUT SPRINGENHEIDE case C-210/96, 16 July 1998) in the Benelux is aware of the descriptive meaning of that variation.

2) As set out before when discussing the approach concerning the official country names, registration as a trademark of a variation of the country name combined with a non-descriptive word (such as a company name or a invented word) or a distinctive logo, will in general be allowed. The sign as a whole will be distinctive and not descriptive.

3) Article 6ter of the Paris convention prevents the registration of certain of those variations.

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