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Trade Marks & Copyright 2026

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Luxembourg: Law and Practice

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LUXEMBOURG

Law and Practice

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ELVINGER HOSS
LUXEMBOURG LAW

1. Trade Mark and Copyright Law

1.1 Governing Law

In Luxembourg, two systems apply for trade marks:

- the EU trade marks system governed by Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark; and
- the Benelux trade mark system governed by the Benelux Convention on Intellectual Property (Trademarks and Designs) of 25 February 2005 ("Benelux Convention"), which establishes a regional trade mark for Luxembourg, Belgium and the Netherlands. There is no Luxembourg trade mark.

Only registered trade marks are recognised in Luxembourg, except for trade marks that are well known within the meaning of Article 6bis of the Paris Convention for the Protection of Industrial Property ("Paris Convention") – namely non-registered trade marks that are renowned in the Benelux territory ("well-known trade marks").

Authors' rights are governed in Luxembourg by the amended Law of 18 April 2001 on authors' rights, related rights and databases (the "Authors' Rights Law"). The law of 22 May 2009 transposed Directive 2004/48/EC on the enforcement of intellectual property rights into Luxembourg law, and concerns both trade marks and authors' rights (among other intellectual property rights). The law of 25 April 2018 transposed Directive 2014/26/EU on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market into Luxembourg law.

1.2 Conventions and Treaties/Rights of Foreign IP Holders

Luxembourg is a member of several conventions and treaties, including:

- the Berne Convention for the Protection of Literary and Artistic Works;
- the WIPO Copyright Treaty;
- the Benelux Convention;
- the Paris Convention;
- the Trademark Law Treaty;
- the Singapore Treaty on the Law of Trademarks;
- the Madrid Agreement Concerning the International Registration of Marks and the Protocol relating to the Madrid Agreement;
- the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks ("Nice Classification"); and
- the Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks.

Luxembourg is also a member of the World Trade Organization and has therefore been a party to the Agreement on Trade-Related Aspects of Intellectual Property Rights since 1995.

As a matter of principle, all foreign authors enjoy the rights guaranteed by the Authors' Rights Law in Luxembourg (in accordance with the fundamental principle of national treatment enshrined in the Berne Convention). There are some specific provisions regarding the protection period and the artist's resale rights. Only Benelux, EU or international trade marks designating EU or Benelux are protected in Luxembourg. However, under certain conditions, owners of foreign trade marks may benefit in the Benelux from a right of priority (ie, the possibility to rely on an earlier date of filing in a country when applying for a trade mark in another country) provided for by the Paris Convention.

2. Trade Mark Ownership, Protection and Rights

2.1 Types of Trade Marks

Benelux trade marks can be:

- trade marks designating goods or services, filed by natural or legal persons;
- collective trade marks – ie, trade marks filed by public entities or by associations that have the capacity in their own name to have rights and obligations, to make contracts or accomplish other legal acts, and to sue and be sued; or
- certification trade marks – ie, trade marks capable of distinguishing goods or services that are certified by the owner in respect of material, the mode of manufacture of goods or performance of servic-

es, quality, accuracy or other characteristics, with the exception of geographical origin, from goods and services that are not so certified.

A trade mark may consist of any signs, in particular words (including personal names) or designs, letters, numerals, colours, the shape of goods or of the packaging of goods, or sounds, provided that such signs are capable of being represented on the register in a manner that enables the competent authorities and the public to determine the clear and precise subject matter of the protection afforded to its owner.

It is not currently possible to apply for an olfactory or taste trade mark as a Benelux trade mark.

The distinctive symbols or insignia consisting of the five interlaced Olympic rings and the Olympic motto "citius, altius, fortius" are protected by grand ducal regulation in Luxembourg, as are the emblems of the Luxembourg Olympic and Sports Committee approved by the International Olympic Committee. The unauthorised use of the coat of arms of the Grand Ducal House, those of the State and of the communes, the national flag, the waterway and aviation pavilion and the national anthem, as well as all badges, emblems and symbols used by the authorities and by public entities, is also criminally sanctioned.

Luxembourg protects famous trade marks (ie, trade marks that are registered but not for the goods and services for which protection is sought) or well-known trade marks to the extent they have a reputation in Luxembourg.

2.2 Essential Elements of Trade Mark Protection

Any sign can qualify for trade mark protection if it is capable of:

- distinguishing the goods or services of one undertaking from those of other undertakings (distinctiveness); and
- being represented on the register in a manner that enables the competent authorities and the public to determine the clear and precise subject matter of the protection afforded to the owner.

Grounds for the refusal of an application or the invalidity of a registration may include:

- signs that cannot constitute a trade mark;
- trade marks that are devoid of distinctive character;
- trade marks that are contrary to public policy or morality;
- trade marks that are liable to mislead the public (eg, as to the nature, quality or geographical origin of the product or service); and
- trade marks that are identical or similar to an earlier trade mark.

The distinctive character of a sign is a relative concept that must be assessed on a case-by-case basis, in relation to the goods and services for which the trade mark is applied for.

If a sign does not, in itself, have distinctive character, it may acquire it through use. Acquired distinctive character means that, as a consequence of its use, the sign is now perceived by the relevant section of the public as being a trade mark that distinguishes the goods or services of the applicant. As indicated on the website of the Benelux Office for Intellectual Property (BOIP), supporting documents may concern the sign's market share or the intensive, geographically widespread and long-standing nature of the use of the sign, statements from trade and professional associations or opinion polls.

Finally, the exclusive rights granted to the owner of a Benelux trade mark are subject to the registration of the trade mark (except for well-known trade marks).

2.3 Trade Mark Rights

A trade mark owner is granted exclusive rights, and is entitled to prevent any third party from using a sign in the course of trade without their consent when:

- the sign is identical to the earlier trade mark and the goods or services at stake are also identical; or
- the sign is identical or similar to the earlier trade mark, the goods or services at stake are identical or similar and there is a likelihood of confusion on the part of the public between the sign and the earlier trade mark.

The owner of a Benelux trade mark that has a reputation in the Benelux territory is also entitled to prohibit the use of a sign which, without due cause, takes unfair advantage of, or is detrimental to, the distinctive character or the reputation of the trade mark (regardless of whether or not the sign is used in relation to goods or services that are identical or similar to those for which the earlier trade mark is registered).

Even if the sign is not used as an indicator of the origin of goods or services, the owner of an earlier Benelux trade mark can prohibit the use of the sign in the course of trade, without due cause, that would take unfair advantage of or be detrimental to the distinctive character or the reputation of the earlier trade mark.

2.4 Use in Commerce

Under the Benelux Convention, five years after the date on which a trade mark is registered, the trade mark owner can be requested to demonstrate that the trade mark has been put to genuine use in the Benelux territory for the goods or services for which it is registered. Use of the trade mark by a licensee is of course considered as use of a trade mark. Use of a trade mark in a form that differs in elements that do not alter its distinctive character from the form in which it was registered is also considered as genuine use of the trade mark.

Supporting documentation includes invoices, screen prints of websites or advertising brochures showing the trade mark.

Most of the time it is necessary to establish that the defendant has used the sign as a trade mark (but see also **2.3 Trade Mark Rights**). A trade mark owner may also prohibit the use of a subsequent sign as a trade or company name if such use infringes its exclusive rights (see **2.3 Trade Mark Rights**).

2.5 Notices and Symbols

Under the Benelux Convention, there is no requirement to use a symbol denoting that a trade mark is registered. The use of a symbol like ® does not provide any protection and has no legal value in Luxembourg.

2.6 Related Rights

A trade mark can also be protected by copyright or related rights – eg, in the case of logos. The corresponding legislation will apply independently.

A trade mark owner cannot prohibit the use by an individual of his/her name in the course of trade if such use is made in accordance with honest practices in industrial or commercial matters.

3. Copyright Ownership, Protection and Rights

3.1 Types of Copyrightable Works

Pursuant to the Authors' Rights Law, "authors' rights protect original literary and artistic works, whatever their type, form or expression, including photographs, databases and computer programs". To mention just a few examples, musical works, choreography and architectural works may therefore be protected under authors' rights. Industrial designs are also entitled to authors' rights protection to the extent they are original. The protection will be automatic (as for all original works).

3.2 Essential Elements of Copyright Protection

A work must be original and must be fixed in a tangible medium (which can be digital or dematerialised) in order to qualify for authors' rights protection. The originality criterion is not defined by the Authors' Rights Law, but is defined by case law. A work is original when it bears the imprint of its author's personality and goes beyond technical know-how. This is a subjective notion, different from novelty, and is assessed by the courts on a case-by-case basis. The originality of a work must not be confused with its artistic value, which should be irrelevant.

3.3 Copyright Authorship

Pursuant to the Authors' Rights Law, authorship belongs to the person or persons under whose name the work is disclosed, in the absence of proof to the contrary.

The Authors' Rights Law provides that where a computer program is created by an employee in the per-

formance of their duties or on the instructions of their employer, the employer alone shall be entitled to exercise all economic rights in the computer program so created. Parties may provide otherwise by contract.

The Luxembourg courts have not yet given a ruling (at least published) on the question of whether someone may claim authorship of a work that was not created by a human (eg, works created by artificial intelligence software or an animal).

Joint Authorship

Joint authorship may arise in the context of collaboration projects to which several authors contribute. There is no specific requirement for joint authorship of an original work, except that individual contributions of two or more authors can be traced within a joint work.

The rights of joint authors over a joint work must be organised by contract. In the absence of a contract, joint authors cannot exert their rights over the joint work, except in the following cases provided for by the Authors' Rights Law:

- where the contribution of the joint authors to a joint work may be individualised, each of the joint authors may exploit their personal contribution separately, unless otherwise agreed, provided that such exploitation is not carried out in conjunction with that of another joint author and is not prejudicial to the joint work; and
- each of the joint authors remains free to sue in their own name and without the intervention of the others, for any authors' rights infringement of the joint work and to claim damages for their share, provided that the other joint authors are implicated in the judicial proceedings.

There is no statutory rule to determine ownership percentage for works created by joint authors. Joint authors must find an agreement if they consider that their individual contributions are not equal.

Directed Works

Joint works should not be confused with "directed works", as defined under the Authors' Rights Law as a "work created by several authors on the initiative and under the direction of a natural or legal person who publishes or produces it and discloses it under his/her/its name, and in which the contribution of the authors participating in its development is designed to be integrated into the whole".

Authors' rights over a directed work are not joint (as for joint works). The Authors' Rights Law provides that, unless otherwise specified in the contract, the natural or legal person under whose name the directed work has been disclosed is vested with the original economic and moral authors' rights over the directed work.

Directed works are frequently referred to as collective works.

3.4 Copyright Rights

Under the Authors' Rights Law, the holders of authors' rights are granted a variety of exclusive economic rights over their original works, as follows:

- reproduction right (including adaptation right, translation right and the right to integrate and extract one's work in or from a database);
- public communication right (including making works available in an on-demand format);
- public distribution right;
- rental right; and
- lending right.

The authors of works of graphic or plastic art (such as paintings, drawings, engravings, lithographs, sculptures or photographs) also have an inalienable and unwaivable resale right. This means they have a right to benefit to a certain extent from the proceeds of any resale of their work when a professional of the art market is involved as seller, buyer or intermediary in the resale. This resale right is subject to the various conditions laid down in the Authors' Rights Law and a grand ducal regulation.

Under the Authors' Rights Law, the holders of authors' rights are also granted the following exclusive moral rights over their original works:

- the right to disclose their works;

- the right to claim (or not to claim) authorship of their works; and
- the right to object to any distortion, mutilation or other modification thereof, or to any other infringement of their works, that would be prejudicial to their honour or reputation.

3.5 Term of Protection and Termination

In principle, authors' rights are protected during the author's life and for 70 years after the author's death (for the benefit of the author's heirs or successors in title). The term of protection starts on January 1st following the operative event.

The Authors' Rights Law provides for a number of adjustments for certain works. For example, where the work is the product of collaboration such that the contributions of the authors are inseparable, authors' rights exist for the benefit of all successors in title for 70 years after the death of the last surviving author.

The protection of a musical composition containing lyrics ends 70 years after the death of the author of the lyrics or the composer of the musical composition, whoever is the last to survive, provided that their contributions were created especially for the musical composition containing the lyrics concerned.

The protection of an audiovisual work ends 70 years after the death of the last of the principal director or the authors of the screenplay, the dialogue and the musical compositions, with or without lyrics, especially created for use in the work.

In Luxembourg, economic and moral rights are limited in time. All rights over any original work are eligible for termination.

3.6 Collective Rights Management Systems

In 2018, Luxembourg transposed Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market into national law.

Four collective management organisations are authorised in Luxembourg.

- SACEM Luxembourg (*Société Des Auteurs, Compositeurs et Éditeurs de Musique Luxembourg*/Luxembourg Society of Authors, Composers and Music Publishers) represents and defends the rights of authors and creators of musical works in connection with authors' rights relating to public performance, public representation or reproduction. Its missions include the collection of royalties (from broadcasters, organisers of shows and major phonogram and videogram producers) arising from the exercise of these rights in order to redistribute them to the rights-holders, cultural promotion and raising awareness about the respect for authors' rights.
- LUXORR (Luxembourg Organization For Reproduction Rights) manages copyrights on behalf of its author and publisher members in relation to protected textual and pictoral works, such as reproduction rights and public lending rights. Its missions include in particular the collection of royalties and rights generated by works, the redistribution thereof to the rights-holders, the granting of licences to users who request them (provided that the association has received the mandate to do so), cultural promotion and raising awareness about respect for authors' rights.
- ALGOA (*Association Luxembourgeoise de Gestion des Œuvres Audiovisuelles*/Luxembourg Association for the Management of Audiovisual Works) tracks and distributes royalties essentially on the retransmission of the products of independent producers represented by AGICOA in Luxembourg.
- AGICOA EUROPE (*Association pour la Gestion Collective des Œuvres Audiovisuelles en Europe*/Association for the Collective Management of Audiovisual Works in Europe) negotiates, collects and distributes royalties from the use of audiovisual works (via cable, satellite, mobile or any other similar means), and assists with the resolution of conflicts with other rights-holders.

The collective management organisations may also have the power to:

- negotiate licences;
- represent rights-holders; and
- defend the interests of their members, including in court (under certain conditions).

3.7 Copyright Registration

In Luxembourg, authors' rights protection is automatic as long as the work created is original. Authors' rights protection is not subject to registration, so there is no authors' rights register in Luxembourg.

In Luxembourg, a special notice of authors' rights ownership is not required for an original work to be protected. The copyright symbol © may be used to draw the attention of the public to the existing authors' rights protection over a particular work, but such use is made on a voluntary basis.

3.8 Copyright Application Requirements

This is not applicable in Luxembourg.

3.9 Refusal of Registration

This is not applicable in Luxembourg.

3.10 Related Rights

A work protected by authors' rights (such as a logo) may also be protected by trade mark or drawing/design, provided that the respective conditions for protection are met.

4. Trade Mark Registrations and Applications

4.1 Trade Mark Registration

Pursuant to the Benelux Convention, the exclusive rights granted to the owner of a Benelux trade mark are subject to registration of the trade mark (except for well-known trade marks).

4.2 Trade Mark Register

A trade mark register listing Benelux trade marks registered with the BOIP, EU trade marks and international trade mark applications designating the Benelux is publicly available via the BOIP website.

It is recommended (but not mandatory) to search the BOIP register for prior Benelux trade marks before applying to register a trade mark.

4.3 Term of Registration

Registration of a Benelux trade mark lasts for ten years (as of the date of filing), and may be renewed for further periods of ten years (indefinitely if not cancelled or revoked in the meantime).

Renewal will take place upon the payment of the renewal fees, which should be paid within the six months immediately preceding the expiry of the registration or of the subsequent renewal thereof. Failing that, the fees can be paid within a further six months immediately following the expiry of the registration or of the subsequent renewal thereof, if an additional fee is paid simultaneously. The payment of the fees is the only step required to renew a trade mark (no proof of usage is required). Failing to pay these fees within the time allowed would result in the expiry of the trade mark and lapse of the right.

4.4 Application Requirements

An application for the registration of a Benelux trade mark should contain the following in particular:

- the applicant's name and address (and its legal form if it is a legal entity);
- where applicable, the representative's name and address, or the correspondence address in the EEA;
- the trade mark (graphic representation or any relevant file, such as mp3);
- a list of the goods and services for which trade mark protection is sought, including the numbers of the classes in which these goods and services are grouped in conformity with the Nice Classification (multi-class trade mark applications are allowed);
- a specification of the trade mark describing whether it is a word trade mark, a figurative trade mark, a complex trade mark, a three-dimensional (form) trade mark or another type of trade mark;
- where applicable, the colour codes of the trade mark; and
- the signature of the applicant or their representative.

The fees for registering an individual Benelux trade mark in one class start from EUR244. The second class costs EUR27 and the addition of other classes costs EUR81 per class. The fees are higher for collective or certification trade marks. Accelerated reg-

istration is possible, subject to the payment of a supplement.

Trade marks can be registered by individuals or legal entities. Collective trade marks can be registered in the name of a trade body or association.

When a representative is appointed, its place of residence or registered office should be located in the EEA. Any party that does not have a place of residence or registered office in the EEA and has not appointed a representative must provide a correspondence address in the EEA.

4.5 Use in Commerce Prior to Registration

The Benelux Convention does not require the use of a trade mark prior to its registration.

4.6 Consideration of Prior Rights in Registration

Prior rights are not considered by the BOIP when examining trade mark applications. The BOIP only takes absolute grounds for refusal into consideration, such as if a trade mark is devoid of any distinctive character or contrary to public policy.

4.7 Revocation, Change, Amendment or Correction of an Application

If the filing requirements are not all met, the BOIP must inform the applicant in writing; the applicant then has the opportunity to rectify the application.

It is not possible to amend the trade mark after publication of the trade mark application, except for information such as the address or name of the applicant or the list of goods and services, which can be limited (and not extended). Otherwise, a new application must be filed.

4.8 Dividing a Trade Mark Application

It is not possible to divide a Benelux trade mark application, as such. However, the owner of a Benelux trade mark may limit the list of goods or services of the trade mark or assign the trade mark for only some of the goods and services for which it is registered. See also **6.1 Assignment Requirements and Restrictions**.

4.9 Incorrect Information in an Application

Please see **4.7 Revocation, Change, Amendment or Correction of an Application**.

4.10 Refusal of Registration

Absolute grounds for the refusal of a registration by the BOIP relate to:

- signs that cannot constitute a trade mark;
- trade marks that are devoid of any distinctive character;
- trade marks that consist exclusively of signs or indications that may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin or time of production of the goods or of rendering of the service, or other characteristics of the goods or services;
- trade marks that consist exclusively of signs or indications that have become customary in the language;
- signs that consist exclusively of a characteristic that results from the nature of the goods themselves or that is necessary to obtain a technical result, or that gives substantial value to the goods;
- trade marks that are contrary to public policy or to accepted principles of morality; and
- deceiving trade marks.

If the examiner finds absolute grounds to refuse the registration, the applicant is notified by the BOIP – in writing and without delay – of the intention to wholly or partially refuse the registration, and is informed of the grounds for refusal. The applicant is then allowed to respond to such notification, stating all the facts and arguments and providing supporting documentation proving that the trade mark application should be registered.

4.11 The Madrid System

Luxembourg (along with Belgium and the Netherlands) is a party to the Madrid system. The filing of international trade marks shall therefore take place in accordance with the provisions of the Madrid Agreement and the Madrid Protocol.

An application for international registration based on a Benelux application may only be filed at the BOIP, located in The Hague.

5. Trade Mark Procedure for Inter Partes Proceedings

5.1 Timeframes for Filing an Opposition or Cancellation

Opposition

An opposition against the registration of a Benelux trade mark application must be filed before the BOIP within two months from the publication of the trade mark application. A potential opponent cannot request extensions of time to file an opposition.

The applicant and the opposing party may suspend the opposition proceedings to reach an amicable resolution. They can do so at any time by submitting a joint request to suspend the proceedings, but the suspension will be free of charge only before the start of the opposition proceedings (during the so-called "cooling-off period") and for the first three suspensions. Several suspensions of four months can be requested.

Revocation and Cancellation

The Benelux Convention does not provide any timeframe for filing a revocation or cancellation action.

However, the owner of an earlier trade mark who has tolerated the use of a later registered trade mark for a period of five consecutive years with knowledge of such use may no longer request invalidity, on the basis of this earlier trade mark, for the goods or services for which the later trade mark was used, unless registration of the later trade mark was applied for in bad faith.

There is no revocation/cancellation action for authors' rights (as there is no registration thereof under Luxembourg law).

5.2 Legal Grounds for Filing an Opposition or Cancellation

Opposition

The owner of an earlier trade mark has the following grounds for filing an opposition against the registration of a trade mark application.

- Preventing identical reproduction of the earlier trade mark: the contested application is identical to an earlier trade mark, and the goods or services for which the trade mark is applied for are identical to the goods or services for which the earlier trade mark is protected.
- Preventing the imitation of the earlier trade mark leading to a risk of confusion for the public: due to the contested application's similarity to the earlier trade mark and the similarity of the goods or services covered by the trade marks at stake, there is a likelihood of confusion on the part of the public (which includes the likelihood of association with the earlier trade mark).
- Preventing the dilution of the earlier trade mark: the contested application is identical or similar to an earlier trade mark, regardless of whether the goods or services for which it is applied or registered are identical or similar to or not similar to those for which the earlier trade mark is registered, where the earlier trade mark has a reputation in the Benelux territory and the use of the later trade mark without due cause would take unfair advantage of or be detrimental to the distinctive character or reputation of the earlier trade mark.

Cancellation

The reasons for cancellation of a Benelux trade mark are the same as:

- those for the refusal of registration (please see **4.10 Refusal of Registration**); and
- the legal grounds for filing an opposition against a trade mark application.

In addition, a Benelux trade mark can be cancelled when:

- an agent or representative of the owner of the trade mark has applied for registration in his/her own name without the owner's authorisation (unless justified);
- an application for a protected designation of origin (PDO) or a protected geographical indication (PGI) had already been submitted (in some cases); or
- there is a risk of dilution of a well-known trade mark.

Revocation

A Benelux trade mark can be revoked when:

- after its registration, the trade mark has become the common name in the trade of a good or service in respect of which it is registered, because of the owner's activity or inactivity;
- it may mislead the public as to the nature, quality or geographical origin of such goods or services by reason of the use made of the trade mark; or
- the trade mark has not been put into genuine use in the Benelux territory within five years following the registration date of the trade mark, in connection with the goods or services in respect of which it is registered, or if such use has been suspended for a continuous five-year period.

5.3 Ability to File an Opposition or Revocation/Cancellation

Opposition

The owner (or a licensee authorised to act as such and whose licence is recorded on the BOIP register) of a trade mark valid in the Benelux territory can oppose an application for a Benelux trade mark. This includes a Benelux trade mark, an EU trade mark, an international trade mark protected in the Benelux or in the EU, or a well-known trade mark that has a reputation in the Benelux.

Holders of rights over PDO and PGI may also file an opposition under certain conditions.

The opponent is not obliged to be represented but a correspondence address within the EEA must be provided if the opponent's domicile or its corporate seat is not located in the EEA.

The BOIP fees for an opposition start at EUR1,045. Surcharges may apply if more than three rights are invoked (EUR105 per right after the third right).

Revocation and Cancellation Before the Courts

Invalidity on absolute grounds may be requested by any interested party, including the Public Prosecutor.

Invalidity on relative grounds may be invoked by any interested party where the owner of the earlier trade mark or the person entitled to exercise the rights related to PDO and PGI is a party to the proceedings.

Any interested party may invoke the revocation of a trade mark.

Revocation and Cancellation Before the BOIP

Invalidity or revocation based on absolute grounds may be initiated by any natural or legal person and any group or body set up for the purpose of representing the interests of its members (such as consumers or traders), as long as it has the capacity to sue in its own name and to be sued.

Depending on the case, invalidity or revocation based on relative grounds may be initiated by:

- the owners of earlier trade marks and the licensees authorised by those owners;
- the owners of a trade mark registered by an agent or representative in its own name and without authorisation; or
- the parties authorised to defend PDO and PGI and to exercise the rights in relation to the defence of such identifiers.

5.4 Opposition or Revocation/Cancellation Procedure

The opposition procedure is as follows.

- Checking the minimal legal requirements: the BOIP checks the accuracy and completeness of the information provided, and provides the parties with a notification of admissibility.
- Cooling-off period: there is a two-month period from the notification of admissibility, during which the parties are invited to reach an amicable settlement.
- Exchange of arguments: after the end of the cooling-off period and if the parties did not reach an amicable settlement, each party has one round to submit arguments and supporting documents, starting with the opponent. Where applicable, the applicant may request proof of use of the earlier trade mark. If the BOIP deems it necessary, it may request the submission of more arguments or documents for the purpose of hearing both sides of an argument.
- Hearing: this is ex officio or at the request of the parties (provided that a hearing is considered necessary by the BOIP).

- Decision reached by the BOIP: if the opposition is held to be justified or partially justified, the BOIP will refuse to register the trade mark in whole or in part. Otherwise, the opposition will be rejected.

Revocation and cancellation actions related to trade marks can be brought before either the BOIP or the courts. However, the procedure will be suspended before the BOIP if the contested trade mark is the subject of a legal action for invalidity or revocation before a court. These actions may be requested in respect of all or some of the goods and/or services designated by the trade mark.

5.5 Legal Remedies Against the Decision of the Trade Mark Office

The opposition decision rendered by the BOIP may be appealed to the Benelux Court of Justice within two months from the notification of the decision.

5.6 Amendment in Revocation/Cancellation Proceedings

Before the BOIP, the claimant may amend or extend the grounds on which the request for invalidation or revocation is based in the course of the procedure, no later than the submission of its arguments.

5.7 Combining Revocation/Cancellation and Infringement

If revocation or cancellation is invoked with infringement, the means of action will be heard together.

5.8 Measures to Address Fraud

A trade mark is liable to be declared invalid if the registration was made in bad faith by the applicant. This will be the case when the trade mark application was made with the knowledge that the sign belongs to a third party, or when the application was made for punitive or blocking purposes.

6. Assignments and Licensing

6.1 Assignment Requirements and Restrictions

Trade Marks

Benelux trade marks may be assigned for all or some of the goods and services for which they are registered. The assignment will become opposable against third parties only after its recordal on the BOIP register and the payment of the fees due. In practice, most transfers are put in writing. Assignment between living persons must be in writing; otherwise it will be null and void.

If the assignment is not made for the whole Benelux, it will also be null and void.

Trade mark rights are transmissible upon death, as they are considered movable assets (*bien meuble*).

It is possible to assign an application for a Benelux trade mark. However, enforcing such title would be difficult while the application is pending.

Authors' Rights

The Authors' Rights Law provides that, vis-à-vis the author, the assignment of economic rights must be proved in writing and is interpreted restrictively in the author's favour. This requirement does not exist for moral rights.

The assignment of modes of exploitation unknown at the date of the assignment contract is only authorised if it is subject to specific remuneration. In the context of the transposition into Luxembourg law of Directive (EU) 2019/790 of 17 April 2019 on copyright and related rights in the Digital Single Market, it has been specified since April 2022 that authors are entitled to appropriate and proportionate remuneration when they license or transfer their exclusive rights for the exploitation of their works.

The partial assignment of authors' rights is permitted to the extent that the holder of the authors' rights may decide to assign specific economic rights or moral rights and not others to a third party.

Authors' rights are transmissible upon death.

6.2 Licensing Requirements or Restrictions

Trade Marks

Benelux trade marks may be licensed for some or all of the goods or services for which they are registered. Licences can cover the whole or part of the Benelux territory, and can be exclusive or non-exclusive. The

licence will become opposable against third parties only after its recordal on the BOIP register and the payment of the fees due. In practice, most licences are put in writing.

It is possible to license an application for a Benelux trade mark. However, enforcing such title would be difficult while the application is pending.

Authors' Rights

The legal regime provided for the assignment of economic rights also applies to the licensing of economic rights. Therefore, vis-à-vis the author, the licensing of economic rights must be proved in writing and is interpreted restrictively in the author's favour. Since April 2022, the Authors' Rights Law has also provided that authors are entitled to appropriate and proportionate remuneration when they license their exclusive rights for the exploitation of their works.

The licensing of authors' rights may be granted on an exclusive basis or a non-exclusive basis. Licences cannot be perpetual, since authors' rights are limited in time. Licences can be granted for the whole legal period of protection.

6.3 Registration or Recording of an Assignment or Licence

If opposability against third parties is sought, a trade mark assignment or licence will have to be registered on the BOIP register. The assignment or licence remains valid between the parties in the absence of registration.

Assignments or licences of authors' rights do not need to be registered or recorded since there is no register of authors' rights in Luxembourg.

7. Initiating Trade Mark and Copyright Lawsuits

7.1 Timeframes for Filing Infringement Lawsuits

The Benelux Convention does not lay down any specific time limit for bringing an action for trade mark infringement, nor does Luxembourg law provide that authors' rights infringement actions must be brought within a specific time limit.

However, infringement claims are subject to limitation periods for civil actions, of ten years as from the knowledge of the infringement acts between merchants or between merchants and non-merchants, or 30 years between non-merchants.

7.2 Legal Claims for Infringement Lawsuits and Their Standards

Trade Marks

Before the civil courts, the owner of a registered Benelux trade mark may take action against any infringer, in particular on the grounds listed in Article 2.20 of the Benelux Convention.

The trade mark owner can challenge the violation of any of the exclusive rights conferred by the Benelux Convention to a trade mark owner, such as:

- the use, in the course of trade, of a sign identical to the trade mark for goods or services identical to those for which the trade mark is registered; or
- the use of an identical or similar sign for goods or services identical or similar to the goods or services for which the trade mark is registered, if there is a risk of confusion on the part of the public.

The owner of a well-known trade mark renowned in the Benelux can only request the invalidity of a trade mark application or a trade mark in accordance with the provisions of the Benelux Convention.

The Benelux Convention also provides legal claims to the trade mark owner where the earlier trade mark has a reputation and the subsequent sign is used (in relation to goods and/or services, or not) without due cause and takes unfair advantage of, or is detrimental to, the distinctive character or reputation of the trade mark.

Authors' Rights

An authors' rights-holder benefits from two legal avenues in case of infringements of their authors' rights: civil actions and criminal actions. In practice, civil actions are much more common to pursue infringement.

Authors' rights infringement is constituted when a third party uses the monopoly (ie, exclusive rights) granted to the authors' rights-holder over an original work without any authorisation from the authors' rights-holder, and no exception to authors' rights may apply.

An infringement of authors' rights exists even if it was unintentional. Infringement occurs when the elements, or even a single element, that make up the originality of a work are reproduced in another work, even if there is no danger of confusion between the two works.

Specific authors' rights claims may also be brought before the criminal courts, as follows.

- If a third party does not comply with the ban on removing or altering any rights management information in electronic form, or on the distributing, broadcasting, communicating to the public or making available to the public of works whose rights management information in electronic form has been removed or altered without authorisation and knowingly. "Rights management information" refers to any information provided by authors' rights-holders that identifies the work, the author or any other right-holder but also, as the case may be, the terms and conditions of use of the work, and any number or code representing that information.
- If a third party does not comply with the ban on circumventing any effective technological measure by a third party, knowingly. The prohibition provided for by the Authors' Rights Law extends to the manufacturing, importation, distribution, sale or lease of devices, products, components or services aiming at circumventing any effective technological measure. The Authors' Rights Law also provides for exceptions in order to guarantee legitimate access to the works. "Technological measure" refers to any technology, device or component which, in the normal course of its operation, is intended to prevent or limit, in relation to protected works (except computer programs), acts that are not authorised by the holder of authors' rights. Access codes, encryption, scrambling and copy control mechanisms achieving their protection objective are defined as technological measures that are deemed effective.

The above-mentioned offences are sanctioned by criminal fines of between EUR251 and EUR250,000 if the offender is not acting for strictly private purposes.

7.3 Factors in Determining Infringement

Trade Marks

As indicated in **7.2 Legal Claims for Infringement Lawsuits and Their Standards**, the following legal conditions must be met in order for infringement to be established:

- the earlier trade mark and the subsequent sign must be identical or similar;
- the goods and services covered by the trade mark and the sign must be identical or similar; and
- the sign must have been used in the course of trade.

Where the earlier trade mark and the subsequent sign and/or the goods and/or services at stake are only similar, the trade mark owner must also demonstrate a risk of confusion in the public's mind.

The factors taken into consideration by the courts are greatly inspired by EU case law. Therefore, the courts must globally assess the risk of confusion, and such assessment implies a certain interdependence between the factors taken into account.

The reputation of the trade mark on the market is also a relevant factor in the likelihood of confusion, as it gives the trade mark a special distinctive character and offers it greater protection.

Lastly, another element taken into consideration by the courts is the distinctive character of the trade mark, which influences the extent of protection to be granted.

It is settled case law that the good faith of the infringer is irrelevant to the characterisation of the infringement.

Authors' Rights

Infringement is assessed on the basis of similarities with the original work and not on the basis of differences. This factor was established by case law. The absence of confusion between the original work and the copy or the price difference between them are

not taken into consideration when assessing infringement.

7.4 Prerequisites and Restrictions to Filing a Lawsuit

There is no prerequisite to filing a trade mark or an authors' rights lawsuit, but the prior sending of a formal demand letter is common and recommended.

Initiating abusive or vexatious proceedings can be sanctioned.

7.5 Lawsuit Procedure

Before judicial courts, the *Tribunal d'arrondissement* has jurisdiction to hear trade mark matters and authors' rights matters at first instance for civil actions in the merits. In certain circumstances involving authors' rights, the matter can be brought before the judge presiding over the *Tribunal d'arrondissement* (in which case, no damages can be claimed, only cessation measures and the publishing or posting of the judgment). The Court of Appeal will have jurisdiction at second instance. Finally, the *Cour de cassation* (Supreme Court) would have jurisdiction at third instance.

It is recommended to prepare well before filing a lawsuit for trade mark or authors' rights infringement. The gathering of evidence (bailiff's report, seizure) and the sending of warning letters will incur costs. Representation by a lawyer in trade mark and authors' right litigation matters is mandatory (before the *Cour de cassation*, the Court of Appeal and the *Tribunal d'arrondissement* when the civil procedure is applicable).

Only the owners of EU or Benelux trade marks may bring infringement claims in Luxembourg (regardless of their nationality). Foreign authors' rights-holders may bring infringement claims in Luxembourg if the infringement occurs in Luxembourg and the defendant is domiciled in Luxembourg.

7.6 Declaratory Judgment Proceedings and Other Protections for Potential Defendants

Declaratory judgments exist in Luxembourg, but Luxembourg law does not recognise a "pure" declaratory action – ie, one whose purpose is simply to ask the courts for advice and which would be totally disconnected from the concept of having an interest in taking legal action (*intérêt à agir*).

Therefore, for a declaratory action to be admissible, it must meet two cumulative conditions:

- there must be a serious and severe threat to a party's right to the extent of creating a specific disturbance; and
- the judicial declaration must be of such a nature as to provide the claimant with a concrete and specific benefit.

The Benelux Convention and the Authors' Rights Law do not provide for declaratory judgment proceedings, but case law has recognised the admissibility of a claim aimed at having the judge declare whether the use of a trade mark was lawful considering the existence of earlier rights. The court has underlined that "the plaintiff has a clear economic interest in obtaining the judicial declaration it is seeking, which will enable it (if the court finds in its favour) to continue to exploit the trade mark it has registered in complete safety".

7.7 Small Claims

Luxembourg does not provide an alternative avenue to resolve small trade mark or authors' rights claims, except for the possibility for the parties to settle if they wish to do so.

7.8 Effect of Trade Mark and Copyright Office Decisions

Case law has ruled that a trade mark infringement action must be suspended pending a final decision on the application for revocation or cancellation of the trade mark concerned (which is the basis for the infringement action), which would be pending before the BOIP. This is in the interests of the proper administration of justice, because the owner of the trade mark concerned will no longer be able to bring an infringement action on the basis of this trade mark if it is cancelled or revoked by the BOIP.

However, in this case the stay of proceedings is optional and the judge has discretionary power in this regard.

7.9 Counterfeiting and Bootlegging

Trade Marks

Counterfeiting can trigger criminal liability. Pursuant to Article 173 of the Luxembourg Criminal Code, trade mark infringement can constitute a criminal offence and be enforced through criminal channels.

The counterfeiter would incur fines of up to EUR75,000 and imprisonment of between three months and five years. The act of "counterfeiting, altering or falsifying seals, stamps, hallmarks or trademarks, or using counterfeit, altered or falsified seals, stamps, hallmarks or trademarks" can be characterised in particular as a criminal offence (Article 173 of the Luxembourg Criminal Code).

In addition and depending on the exact act, the counterfeiter could also be found guilty of a breach of customs legislation by importing goods requiring special authorisations that the counterfeit goods would not have obtained. This could lead to up to one year's imprisonment and a fine calculated according to the amount of customs duties fraudulently evaded.

Authors' Rights

Under the Authors' Rights Law, any malicious or fraudulent infringement of authors' rights constitutes the offence of counterfeiting, which is subject to criminal sanctions. Counterfeiting may take different forms (sale, importation, reproduction, communication to the public, etc), but the intentional nature of the violation is essential.

The offence of counterfeiting is punished by criminal fines of between EUR251 and EUR250,000, or by confiscation or destruction of the infringing works and their carriers, moulds, utensils, etc. Any repeat offence is punished by imprisonment of between three months and two years or a fine of between EUR500 and EUR500,000, or both. The court may also order (in addition) the closure of the establishment operated by the convicted person, either permanently or temporarily for a period specified by the court (not exceeding five years). The sentence can also be published and posted.

In the case of counterfeiting, legal entities are jointly and severally liable for any fines, confiscations and penalties imposed on their directors, representatives and agents.

8. Litigating Trade Mark and Copyright Claims

8.1 Special Procedural Provisions for Trade Mark or Copyright Proceedings

Luxembourg law includes special procedural provisions for trade mark and authors' rights proceedings regarding the measures for preserving evidence, such as the infringement seizure (*saisie contrefaçon*). Before any proceedings on the merits, the rights-holder may request from the presiding judge of the court of first instance the authorisation to carry out (through experts), in any place, a description of all objects, elements, documents or processes likely to establish the alleged infringement, as well as the origin, destination and extent thereof. The authorisation from the judge may extend to the seizure of samples of the alleged infringing goods and of the materials and instruments used to produce or distribute these infringing goods.

During the court proceedings, if the court finds that there has been an infringement, it may, at the request of the rights-holder, order the infringer to provide the rights-holder with all the information in its possession concerning the origin and distribution networks of the infringing goods and services (such as names and addresses of the producers, manufacturers, distributors and other previous holders of the goods or services, and information on the quantities at stake and on the price obtained), provided that this is a justified and proportionate measure.

The order may also be issued against anyone who is in possession of the infringing goods on a commercial scale, who has used the infringing services on a commercial scale or who has provided, on a commercial scale, services used in infringing activities.

Special procedural provisions can also include provisional and precautionary measures (please see **10.1 Injunctive Remedies**).

Luxembourg does not have specialised intellectual property courts for IP cases, which are not determined

by technical judges but by the same judges as for civil and commercial matters (with the help of technical experts if needed).

The parties do not have an influence on who is the decision-maker. If the holder of the authors' rights decides to request cessation measures only, the matter may be referred to the presiding judge of the civil chamber of the *Tribunal d'arrondissement* (please see **7.5 Lawsuit Procedure**).

8.2 Effect of Registration

Except for well-known trade marks, the assertion of trade mark rights before the courts is subject to the registration of the trade mark.

During the first five years of existence of the trade mark (as of its registration), the defendant in infringement proceedings cannot invoke the non-use of the trade mark and request the revocation of the opposing trade mark on that ground.

The trade mark owner is entitled to prohibit the use of a subsequent sign or trade mark even if the goods and services at stake are only similar. Under certain circumstances (including a risk to the reputation of the earlier trade mark), use of the subsequent sign as an indicator of origin for goods and services is not even a condition for requesting the cessation of the use of the subsequent sign (please see **2.3 Trade Mark Rights**).

8.3 Costs of Litigating Infringement Actions

The costs related to infringement actions may vary depending on several factors, including:

- the costs incurred to build up evidence (eg, infringement seizures);
- the costs incurred to gather evidence showing the reputation of the earlier trade mark; and
- the complexity of the case and the nature of the arguments opposed by the defendant or the existence of counterclaims.

9. Defences and Exceptions to Infringement

9.1 Defences to Trade Mark Infringement

In trade mark infringement actions, the following may be available means of defence for the defendant, depending on the circumstances:

- the absence of genuine use of the opposing trade mark (and therefore requesting the revocation of the earlier trade mark via a counterclaim) (please see **5.2 Legal Grounds for Filing an Opposition or Cancellation**);
- the fact that the owner of the earlier trade mark has tolerated, for a period of five successive years, the use of the subsequent trade mark that is challenged, while being aware of such use (this means of defence will not apply if the alleged infringer has registered the subsequent trade mark in bad faith); and
- the trade mark rights are exhausted (please see **9.3 Exhaustion**).

The Benelux Convention also provides several exceptions to the exclusive rights of a trade mark owner. For example, a trade mark owner cannot prohibit the following uses, in the course of trade, to the extent such uses are made in accordance with honest practices in industrial or commercial matters:

- use by an individual of his/her name or address;
- use by a third party of signs or indications that are not distinctive or use thereof in a descriptive way (as a reference to the kind, quality or quantity of the goods or services); or
- use by a third party of the trade mark as a necessary reference to indicate the intended purpose of a good or service (for accessories or spare parts compatible with the goods or services bearing the trade mark).

9.2 Defences to Copyright Infringement (Fair Use/Fair Dealing)

The Authors' Rights Law does not provide for a general fair use exception, but lists all the exceptions that limit the prerogatives of the holder of authors' rights when the work has been lawfully made available to the public. Moreover, the exercise of an exception must

not conflict with the normal exploitation of the work and must not unreasonably prejudice the legitimate interests of the holder of the authors' rights.

For example, the holder of authors' rights is not entitled to prohibit caricature, parody or pastiche for the purpose of mocking the work being parodied, on the condition that such caricature, parody or pastiche complies with good practice in this field (ie, only the elements strictly necessary for the caricature must be borrowed, and the caricature must not denigrate the work).

The Authors' Rights Law provides for a short quote exception, which is largely regulated. The holder of authors' rights cannot prohibit short quotations from the protected work if they are justified by the critical, polemical, educational, scientific or informative nature of the work in which the quotations are incorporated. However, this exception will only apply if these short quotations:

- are in line with good practice in this field;
- are not profit-making;
- are justified by the aim pursued;
- do not prejudice the work or its exploitation; and
- mention the name of the author and the title of the work reproduced or quoted if this information appears in the source.

9.3 Exhaustion

A trade mark owner is not entitled to prohibit use of the mark for goods that have been put on the market in the EEA under that trade mark by the owner or with their consent, unless there are legitimate grounds for the owner to oppose further distribution of the goods.

Luxembourg follows the doctrine of first sale regarding the distribution right granted to the holder of authors' rights. The distribution right is exhausted within the EU once the holder of authors' rights has consented to the first sale of the protected work (original or copies) within the EU.

10. Remedies

10.1 Injunctive Remedies

Injunctive remedies in the form of summary proceedings available for a trade mark owner or the holder of authors' rights are provided for by the Law of 22 May 2009, which allows the judge to order one of the following:

- measures intended to prevent any imminent trade mark or authors' rights infringement;
- measures intended to forbid, on a provisional basis, the continuation of the alleged infringement acts;
- that the continuation of the alleged infringement acts be made subject to the lodging of guarantees intended to ensure the compensation of the claimant;
- the seizure of the goods suspected of infringing an IP right, so as to prevent their entry into the channels of commerce; or
- the freezing of bank accounts (if additional conditions are met).

These orders may target the alleged infringer or intermediaries whose services are used by a third party to commit infringement acts.

In order to assess whether the remedy must be ordered, the judge will take into account whether:

- the existence of the IP right concerned is validly established;
- the infringement or threat of infringement cannot be validly challenged; and
- in the case of a seizure, the facts and the evidence are such as to reasonably justify the seizure, also taking all the interests at stake into consideration, including the general interest.

These injunctive remedies shall be followed by the initiation of proceedings on the merits within a deadline determined by the judge ordering the measures, or within one month from the notification of the order.

A preliminary injunction is not necessarily subject to the posting of a bond but the bond or an equivalent guarantee may be requested from the claimant by the

judge to guarantee the possible compensation for any loss suffered by the defendant in the event a decision on the merits concludes that there was no infringement. The bond amount would be determined by the judge.

Injunctive remedies may also be requested in an action on the merits (cessation of the infringement, recall of infringing goods, destruction of the goods infringing the earlier trade mark, destruction of the materials and tools used in the creation or manufacture of infringing goods, etc).

10.2 Monetary Remedies

The trade mark owner or the holder of authors' rights (the "Injured Party") may claim damages for any loss suffered as a result of the infringement. When setting the damages, the court will take into account all appropriate aspects, such as:

- the negative economic consequences, including lost profits suffered by the Injured Party;
- any unfair profits made by the infringer; and
- in appropriate cases, elements other than economic factors, such as the moral prejudice caused to the Injured Party by the infringement.

As an alternative, if requested by the Injured Party, the court may set a lump-sum damages award based on at least the amount of royalties or fees that would have been due if the infringer had requested authorisation to use the IP right in question.

In addition to the action for damages, or in place thereof, the Injured Party may bring an action for transfer of the profit made as a result of the infringement. However, the court will dismiss the request if it is not demonstrated that the infringer acted in bad faith or if the circumstances of the case do not justify the profit transfer.

The amount of damages requested must be documented.

10.3 Attorneys' Fees and Costs

A distinction is made between judicial costs and attorneys' fees.

In principle, judicial costs must be paid by the party that loses the case. The amount of these costs is relatively low, as they generally only cover the costs for the notification of the claims or expert costs, if applicable. A procedural indemnity may also be awarded (based on Article 240 of the New Civil Procedure Code), which exists in the interests of fairness to cover certain costs not included in the judicial costs.

In principle, each party pays its own attorneys' fees. However, the judge may award damages to cover (part of) attorneys' fees in the event of misconduct on the part of the opposing party, particularly where the claimant has abusively sued the defendant.

10.4 Ex Parte Relief

Where any delay would cause irreparable prejudice to the trade mark owner or the holder of authors' rights, the provisional and precautionary measures listed in **10.1 Injunctive Remedies** can be ordered at the request of the rights-holder without notifying and hearing the defendant.

10.5 Customs Seizures of Counterfeits or Parallel Imports

Customs seizures of counterfeits in Luxembourg are based on Regulation (EU) No 608/2013 of 12 June 2013 concerning customs enforcement of intellectual property rights.

The rights-holder must submit an application requesting the intervention of the customs authorities for goods suspected of infringing its IP rights. The application is made using the form annexed to Commission Implementing Regulation (EU) No 1352/2013. The rights-holder provides the customs authorities with information enabling them to authenticate the genuine goods (position of the trade mark on the product, distinctive features) as well as useful information for assessing the risk of infringement.

When customs authorities identify goods suspected of infringing an IP right covered by a decision granting an application, they suspend the release of the goods or detain them. Beforehand, they may ask the rights-holder to provide any relevant information with respect to the goods.

The holder of the goods is notified within one working day of the suspension of the release of the goods or the detention of the goods by the customs authorities.

Both the rights-holder and the declarant have the possibility to inspect the goods.

Several scenarios can then take place, including the destruction of the goods if the rights-holder has confirmed in writing within ten working days (or three working days in the case of perishable goods) that an IP right has been infringed and that they agree to the destruction of the goods, and if the holder of the goods has also agreed, within the same deadline, on the destruction of the goods or remained silent.

If the conditions for destruction of the counterfeits are not met, the rights-holder must initiate proceedings to determine whether an IP right has been infringed, within ten working days of notification of the suspension of the release or the detention of the goods. Otherwise, the goods will be released.

Customs authorities can also act without an express request from the rights-holder if they identify goods suspected of infringing an IP right. In such case, they endeavour to locate the rights-holder or the person or entity potentially entitled to submit the application. If no application is submitted, the goods are released.

11. Appeal

11.1 Appellate Procedure

Trade mark and authors' rights infringement decisions can be appealed to the Court of Appeal.

With respect to trade marks, decisions rendered by the BOIP can be appealed to the Benelux Court of Justice.

11.2 Timeframes for Appealing Trial Court Decisions

An appeal to the Court of Appeal must, in principle, be lodged within 40 days from the day of notification of the judgment. This timeframe is increased by a distance delay for those domiciled abroad. Indeed, persons residing abroad benefit from a distance period when legal proceedings are brought against them before a Luxembourg court. This period varies from 15 to 35 days, depending on the place of residence of the defendant.

An appeal may be lodged against the summary order within 15 days of notification.

The timeframe for filing an appeal to the Benelux Court of Justice is two months from notification of the BOIP final decision.

12. Additional Considerations

12.1 Emerging Issues

As of December 2025, Luxembourg courts have not yet rendered any published decisions on the impact of trade mark and authors' rights laws on the use of artificial intelligence.

12.2 Trade Mark and Copyright Use on the Internet

The Authors' Rights Law was modified in 2022 to transpose the new Copyright Directive (EU Directive 2019/790), creating an authorisation mechanism and a new liability regime regarding specific uses of protected content by online content-sharing service providers. Certain providers of services are not affected by these new rules, such as online marketplaces and providers of electronic communications services.

The Digital Services Act (EU Regulation 2022/2065) also greatly impacts providers of digital services (online intermediaries and platforms), since illegal content is defined broadly and encompasses illegal products, services and activities. Therefore, the sale of counterfeit goods and the non-authorised use of material protected under authors' rights are targeted by the new rules set out in the Digital Services Act.

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