



Statutes

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Section I - General

Article 1 - Name

The name of the Association is:

"BENELUXVERENIGING VOOR MERKEN- EN MODELLENRECHT (BMM)" in Dutch and "ASSOCIATION BENELUX POUR LE DROIT DES MARQUES ET MODELES (BMM)" in French.

The official languages of the Association are French and Dutch.

All official announcements, minutes, convocations and decisions by or on behalf of the Association or its bodies addressed to all the members are therefore issued in French and Dutch.

Article 2 - Duration

The Association was founded on 6 September 1974 in Brussels, and will continue to exist for an indefinite period of time.

Article 3 - Headquarters

The Association has its registered office in The Hague, but its effective headquarters shall be at the address where the Secretary's tasks are fulfilled or at another address in the Benelux countries to be specified by the Association's Committee.

Article 4 - Objective and Means

1. The objectives of the Association are:

- a) to be active in the promotion of optimal protection and implementation of trademark and design rights in the Benelux countries;
- b) to protect, support and promote the collective professional interests of everyone who is professionally involved with trademarks and designs within the Benelux countries;
- c) to be active in the Benelux countries and internationally as a link between government and the stakeholder groups in trade and industry;
- d) where possible, to provide guarantees as to the quality of the professional services provided by its members and their integrity;
- e) to maintain friendly relations with other organisations in the Benelux countries and beyond in the field of intellectual property.

2. The Association tries to realise these aims by:

- a) promoting the knowledge of trademark and design law and of related areas of law, as well as giving advice on the legislation in that area;
- b) organising training courses and lectures, discussions, study meetings and symposiums on subjects related to trademark and design law and related areas of law;
- c) providing information to the public;
- d) consulting with organisations that represent the stakeholder groups of trade and industry in the Benelux countries and elsewhere;
- e) maintaining regular contacts with the Benelux Office for Intellectual Property;
- f) promoting the publication of a periodical which, besides providing information on the Association, will also include literature and case law in the area of trademark and design law and related areas of law;
- g) testing the subject knowledge of those who wish to be admitted as authorised BMM Association members;
- h) where possible, creating rules to promote a good, principled and collegial exercising of the profession by its members;
- i) establishing disciplinary measures for the application of these rules for those members who will be subject to such measures;
- j) all other legal means that may promote the objective of the Association.

Section II – Membership

Article 5 – Members

1. The Association consists of:

- a) ordinary members
- b) authorised BMM members
- c) foreign members
- d) honorary members

2. Ordinary members

A private individual who is professionally involved with trademark and design law in one of the Benelux countries may be an ordinary member.

3. Authorised BMM members

An authorised BMM member is an ordinary member who:

- a) has successfully passed the BMM examination or any other examination recognised by the Committee, and
- b) has at least three years' work experience within the Benelux countries as a trademark and design attorney.

4. Foreign members

A private individual who is professionally involved with trademark and design outside the Benelux countries may be a foreign member.

5. Honorary members

Honorary members may be natural persons appointed by the General Meeting of Members as such due to their special merits for the Association, following a proposal by the Committee. An honorary member may also be an ordinary member, authorised BMM member or foreign member. An honorary member does not have to pay the contribution to the Association in any capacity.

Article 6 - Admission as a member

1. The Committee decides on the admission of members as quickly as possible after receiving the request for admission.
2. The request for admission as an ordinary member or a foreign member must be accompanied by a written declaration from two members of the Association, of whom at least one is an authorised BMM member, in support of the application.
3. The Committee will refuse admission if:
 - a) the request is not accompanied by the document named in the second part of this article;
 - b) the applicant does not meet the requirements set for membership;
 - c) there is a justified fear that the applicant will engage in any action or negligence that is inappropriate in a member of the Association.
4. A decision as described in the third part will only be taken after a hearing or proper convocation of the applicant. There is a possibility to appeal against this decision at the subsequent General Meeting of Members by sending a registered letter to the Committee within two months of the decision being brought to the attention of the applicant by registered letter.
5. The Committee admits an ordinary member as an authorised BMM member:
 - a) following receipt of written proof that the member has successfully passed the BMM examination or any other examination recognised by the Committee, and
 - b) following receipt of a written declaration from the employer of the person concerned that s/he has at least three years' work experience within the Benelux countries as a trademark and design attorney. If the person involved does not have an employer or has not obtained a declaration from him/her, this declaration must be signed by two members of the Association, of whom at least one is an authorised BMM member.

Article 7 - Registry of members

The members are obliged to inform the Secretary of their address and any changes to it in writing. The Committee shall create an official registry in which it will record each member with a statement of the membership type.

Article 8 - Obligations of the members - Titles

Membership entails the responsibility to comply with the terms of the Statutes, Code of Honour and Internal Regulations, and moreover with all decisions taken by the body authorised to do so. The members are permitted to make themselves known to the outside world as members of the Association. Only authorised BMM members have the right to make themselves known to the outside world with the use of the designation "authorised by the BMM".



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Article 9 - End of membership

Membership ends:

- a) upon death;
- b) upon notice given by letter to the Committee by the thirty-first of December of any year, observing a notice period of three months;
- c) upon refusal of membership by the Committee, in accordance with the terms of article 14 under item 9.

Article 10 - Voting rights

All the members of the Association mentioned in article 5, item 1, a), b) and d) have the right to vote.

Section III - Code of Honour and Internal Regulations

Article 11- Code of Honour and Internal Regulations

There are a Code of Honour and a set of Internal Regulations, which are defined in further detail in a separate document. The Code of Honour is set down and amended in the manner described in article 19 item 1. The Internal Regulations are set down and amended by the General Meeting of Members by a simple majority vote.

The Code of Honour applies to all the members mentioned in article 5, except for the foreign members mentioned under item c) of that article.

Section IV - Bodies

Article 12 - Bodies

1. The Association has the following bodies:
 - a) the General Meeting of Members;
 - b) the Committee;
 - c) the Supervisory Board.
2. The bodies mentioned under b) to c) will be composed in such a way that the nationalities of the three Benelux countries are equally represented to the extent that this is possible.
3. Only ordinary members and authorised BMM members can be part of the bodies named under b) and c). At least one authorised BMM member shall be part of the bodies named under b) and c).
4. All the members of the Association can be appointed to serve in commissions set up by the Committee, on the understanding that, unless a waiver is granted by the Committee, at least one authorised member of the BMM shall be part of such a commission.

Article 13 - The General Meeting of Members

1. The General Meeting of Members is the main body of the Association. In the General Meeting of Members, the attending ordinary members, authorised BMM members and honorary members who have not been suspended have the exclusive right to vote, whereby each person entitled to a vote may only exercise one proxy vote in addition to their own vote. Unless specified otherwise, the General Meeting of Members makes decisions by means of a simple majority of the votes validly cast. The General Meeting of Members appoints, dismisses or suspends all members of the bodies named in article 12.1 under b) to c). At least once a year, the Committee will be held accountable to the General Meeting of Members, taking into account the terms of article 14 under 10; the General Meeting of Members will decide on whether to provide discharge.

2. The Committee convenes the General Meeting of Members as often as it sees fit, but at least once a year before the first of July. Convocation is done by letters sent to the addresses given to the Secretary. At the written request of at least one tenth of the members, the Committee is obliged to convene a General Meeting of Members within a period of no more than four weeks. If there is no response to the request within fourteen days, the applicants themselves may convene the meeting in the manner that the Committee convenes the General Meeting of Members.

3. Every General Meeting of Members must be convened at least four weeks prior to the date of the meeting. The Committee sets the agenda. General Meetings of Members are held within the Benelux countries, as determined by the Chair. No valid decision can be made by the meeting that was not stated in the agenda sent to the members beforehand.

Article 14 - The Committee

1. The Committee manages the Association. It has the power to set up commissions on an ad hoc basis and to appoint the members who will sit in these commissions; non-members of the Association can also be appointed to serve in such commissions as experts, but only in exceptional situations; a non-member can never be the chair of a commission. The Committee decides in all cases not covered by the Statutes or Regulations.

2. There is an odd number of Committee members, and this number will be at least five. A Committee member shall resign from this position as soon as s/he reaches the age of sixty-five years.

3. The Chair, Vice Chair, Secretary and Treasurer are nominated by the General Meeting of Members. The other positions are divided within the Committee in mutual consultation.

4. The Chair leads the General Meeting of Members and the Committee meetings.

5. The Secretary or a third party authorised by the Committee deals with correspondence, keeps the minutes of the meetings and manages the archive.

6. The Treasurer manages the Association's funds and its other assets. S/he may have access to the balances of bank and post office accounts. For amounts above ten thousand EUR, s/he requires the cooperation of the Chair or Secretary. A bank account can be opened for each Benelux country.

7. The Chair, Secretary and Treasurer can have themselves substituted by the Vice Chair, an Assistant Secretary and an Assistant Treasurer respectively.

8. The Association is represented by the Chair and the Secretary together or by their substitutes.

9.

- a) The Committee has the authority to expel a member as described in article 5 under items 2 to 5 or to suspend them for a maximum of one year, if, despite being warned, this member continues to fail to meet the obligations contained in the Statutes, Internal Regulations or a decision made by the body authorised to do so, or has harmed the interests or the reputation of the Association to a serious degree;
- b) a decision to suspend or expel a member, other than on the Supervisory Board's instructions, can only be taken if the proposal to do so was put on the agenda of the Committee meeting in question and the member has been heard verbally or in writing;
- c) unless the Committee suspends or expels a member at the Supervisory Board's instructions, the member in question has the opportunity to appeal before the General Meeting of Members within one month of being informed in writing of the Committee's decision by the Secretary;
- d) if the member makes use of this opportunity, the Secretary shall ensure that this appeal is put on the agenda of the next General Meeting of Members; expulsion will only take effect after the end of the appeal period or at the time when the General Meeting of Members upholds the Committee's decision. Suspension shall take immediate effect. During the appeal period and pending the decision by the General Meeting of Members, the expelled member is automatically suspended. The member has the right to attend the General Meeting of Members and contest the Committee's decision there;

- e) the Committee is obliged to take a decision to expel or suspend a member if it is instructed to do so by the Supervisory Board in accordance with the terms of article 16;
- f) if the Committee has expelled or suspended a member, this will be noted in the registry described in article 7.

10. The Committee shall present its annual report at a General Meeting of Members, to be held annually before 1 July unless this deadline is extended by the General Meeting of Members, and shall account for and justify its management over the past calendar year by submitting the necessary documentation. It presents the balance sheet and the statement of income and expenditure for approval by the meeting. The annual accounts are accompanied by the accountant's declaration described in this item. The Association shall ensure that the annual accounts issued and the annual report are sent to the members at the same time as the convocation to the General Meeting of Members. The annual accounts and the annual report are also made available for inspection at the Association secretariat's office from the day of convocation onwards.

Endorsement by the General Meeting of Members of the documents described in item 10 shall result in the Committee being granted discharge for its management, unless the meeting expresses a reservation. If the annual accounts are adopted in amended form, a copy of the amended annual accounts shall be made available to the members free of charge.

The Association shall entrust an accountant, as described in article 2:393 of the Dutch Civil Code, with the task of auditing the annual accounts issued by the Committee in accordance with the terms of part 3 of that article. The General Meeting of Members is authorised to award the mandate or, if it does not, the Committee may do so. The mandate entrusted to the accountant can be revoked at any time by the General Meeting of Members or the Committee if the latter has awarded the task.

The accountant reports on his/her audit to the Committee and presents the outcome of the audit in the form of a statement.

Article 15 - The Supervisory Board

1. The Supervisory Board monitors compliance with the Code of Honour.
2. The Supervisory Board consists of an odd number of people, of whom there are at least three. They are elected by the General Meeting of Members upon the Committee's recommendation. The Board has as many substitute members as there are members. They are elected in a similar manner.
3. The Supervisory Board elects its Chair and Secretary who will act as such for the duration of their membership of the Board.
4. The sessions of the Supervisory Board will comprise the members of the Board presided over by the Chair. All members have the duty to excuse themselves from handling a complaint if they have a special relationship with the defendant. If this should be the case with respect to the Chair, the Chair shall appoint a substitute Chair from among the remaining members. If a member is unable to participate in the session for one reason or another, the Chair shall appoint a substitute member. The Chair shall likewise appoint one substitute member. The Chair shall also appoint one of the members at the session to act as a clerk for the duration of handling the complaint in question.
5. The Supervisory Board meets at least once a year. During this meeting, it attends to the following points:
 - a) the provision, in an instructive manner and without stating the names of the parties involved, of an overview of decisions taken by the Supervisory Board for publication by the Committee;
 - b) reviewing the existing Code of Honour against practical experience and the development and proposal of improvements and/or additions if necessary.

Article 16 - Treatment of Complaints by the Supervisory Board

1. Anyone who wishes to complain about an action by a BMM member due to infringement of the Code of Honour shall address a letter to the Secretary of the Association in which the complaint is explained. Anyone, whether or not they are a BMM member, who believes that his/her interests are harmed by an infringement of the Code of Honour by a BMM member can make an admissible complaint. The Secretary shall send any complaint received to the Chair of the Board without delay. The latter will confirm receipt to the Secretary and the claimant.
2. The Supervisory Board can also decide to conduct an investigation at its own initiative. In that case, the Board shall appoint one or more reporters from among its members to conduct the investigation and report to the Board. The Board can decide to initiate disciplinary proceedings in response to the report, in accordance with the rules provided below for dealing with complaints. In this case, the reporter(s) will not participate in the consultation and decision making.
3. The Chair of the Supervisory Board sends a copy of the complaint received to the defendant without delay, informing the defendant of the way in which the complaint will be dealt with. S/he sends a copy of this letter to the claimant and the members of the Board. If, in the Chair's opinion, the content of the complaint justifies this, s/he can contact the claimant and defendant in an attempt to settle the matter amicably. If the Chair initiates the complaint procedure, s/he will first consult the members of the Board to determine which three members will handle the case. If the Chair has to excuse him/herself from handling the case, the members who handle the case will appoint a Chair from among themselves to handle the case. If the Chair then gives the parties the opportunity to handle the complaint in writing, the defendant shall always be allowed to submit his/her arguments last. If, following the written exchange of arguments, the parties indicate that they have no need of a session for the verbal handling of the case, and neither does this need exist among the handling members of the Board, the Chair shall close the debate between the parties and the Council will make its judgement on the complaint as soon as possible. The defendant and the claimant can be supported by legal counsel.
4. If the defendant does not respond to the complaint filed, within the reasonable period set by the Chair, the Board is authorised to make a decision on the basis of the complaint as it was lodged with the Board. This decision is sent by the Chair to the Secretary of the BMM, who will inform the defendant by registered letter about the fact that s/he has the opportunity to lodge a written and substantiated appeal against this decision within fourteen days. If the defendant makes use of this opportunity, the Secretary will pass on that letter without delay to the Chair of the Board, who will subsequently send the letter of appeal to the claimant and set the latter a reasonable deadline for sending his/her written response. Next, s/he will give the defendant the opportunity to react to this in writing within a reasonable period that s/he shall determine. The terms of item 3 are to be applied correspondingly to the extent that this is possible.
5. The session is not public. The date of the session is set by the Chair after receiving the days on which the parties are unable to attend. The defendant and the claimant can (also) be supported by legal counsel when the case is handled verbally. If a session is confirmed and (one of) the parties do not attend, the Board is authorised to act as it sees fit and possibly to decide on the basis of information obtained at the session from the party that did attend. If the session was not preceded by a written explanation by the claimant and defendant, the claimant who did not appear at the session shall be declared in default and action will be taken in accordance with the terms of item 4.
6. The Board will not make decisions on the basis of documents that the defendant has not been able to view unless the latter has explicitly declared that s/he has no objection to this. The Board is only able to impose penalties if a violation of the Code of Honour by the member in question is proved. In this respect, the Board and/or the defendant may have witnesses heard. No witness shall be heard without the defendant being given the opportunity to attend the hearing and put questions to the witness.
7. All decisions by the Supervisory Board are taken with a simple majority of votes, are substantiated and are not enforceable without the right to appeal. They are sent in triplicate by the Chair of the Supervisory Board to the Secretary of the Association, who will send them without delay to the claimant and defendant, stating the possibility to lodge an appeal.
8. The claimant and defendant can lodge an appeal with the Committee within two months of the decision being sent by registered letter, following which the enforceability of the decision is suspended. The Committee is exclusively

authorised to assess whether the Supervisory Board was able to arrive at its decision in a reasonable manner (known as the 'marginal review'), without prejudice to the initiation of legal proceedings before the competent court.

9. The Supervisory Board shall judge in accordance with any rules established by the Board itself. Such rules shall only apply if and insofar as they have been made known to the members of the Association.

10. The Board can impose the following penalties:

- a. reprimand;
- b. suspension for a maximum of one year;
- c. expulsion;
- d. publication of the decision in the BMM Bulletin.

11. The Board can determine in the decision that the claimant and/or the defendant will have to pay an amount to be set by the Board to the Treasury of the Association as a payment for the costs of the proceedings to the Board, such as the costs of renting a room, translations and investigation by experts. The parties' costs are not included in these costs.

12. An appeal against a decision by the Supervisory Board can only be lodged with the Committee in accordance with the terms of item 7 of this article.

Article 17 - Appeal Board (revoked) - Transitional Measure

The Appeal Board shall finish handling all ongoing cases that were pending on 28 March 2013 when the amendment came into effect.

Article 18 - Organisation of the professional training course and the BMM examination

1. The Committee is entrusted with organising a Professional Training Course for Trademark and Design Attorneys and can delegate this power to the Beneluxstichting Beroepsopleiding voor Merken- en Modellenrecht [*Benelux foundation for the professional training of trademark and design attorneys*] and/or another third party.

2. The Committee is entrusted with the organisation of the BMM examination or any other examination recognised by the Committee and can delegate this power to the Beneluxstichting Beroepsopleiding voor Merken- en Modellenrecht and/or another third party.

Section V - Amendment of the Statutes and Dissolution of the Association

Article 19 - Amendment of the Statutes and Dissolution of the Association

1. The Statutes can only be amended by a two-thirds majority of the votes cast at a General Meeting of Members by the members present or represented by proxy who are entitled to a vote. The Secretary shall ensure that the convocation to the General Meeting of Members in question is accompanied by a substantiated proposal to amend the Statutes.

An amendment adopted by the General Meeting of Members shall not detract from the rights obtained by virtue of the Statutes as they existed before the amendment.

2. The Association can only be dissolved by a two-thirds majority of the votes cast at a meeting where at least half of all the members entitled to a vote are personally in attendance. If an insufficient number of members entitled to a vote are present at the first meeting, a new meeting on the same matter will be held after a repeated convocation, in which a decision will be made with a two-thirds majority of the votes, regardless of the number of members entitled to a vote who are present. The Committee is entrusted with liquidation. Any positive balance is to be transferred to an institution with the same aim, which may be considered the successor. In the absence of a successor, the balance shall be transferred to a charitable institution.



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Section VI - Transitional Clauses

Article 20 - Transitional Clauses

1. In derogation from the terms of these Statutes, the following shall apply from the date on which these Statutes come into effect with respect to the terms of article V under item 1 of the Statutes dating from 1976.
2. Those who have already successfully passed the BMM examination before the date described in the first point, are entered in the registry of members as “authorised BMM members” in the sense of these Statutes. The other “ordinary members” and “associated members” registered before that day will be registered as ordinary members in the sense of these Statutes, unless they inform the Secretary of the Association in writing within six months of the aforesaid date that they wish to be “authorised BMM members”. They will then be included as such in the registry of members.
3. Those who wish to become members on the date described in the first point are entered in the registry as ordinary members.
4. Article 5 item 3 and Article 6 item 5 are not applicable to the members of the Association who were admitted to the Association on or before 1 April 2004 as authorised BMM members.

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