

BOIP



Benelux Office for  
**Intellectual  
Property**

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# Flags in trademarks: What do you need to know?



## BOIP coffee break webinar

26 September 2023  
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## Article 6ter Paris Convention

A trademark containing/consisting of flags, armorial bearings and other official emblems of states or international organisations can only be registered in the Benelux with the consent of the state or organisation concerned.



Rijksoverheid





Poll: How many possible 6ter refusals can you spot on this slide?



A. 3



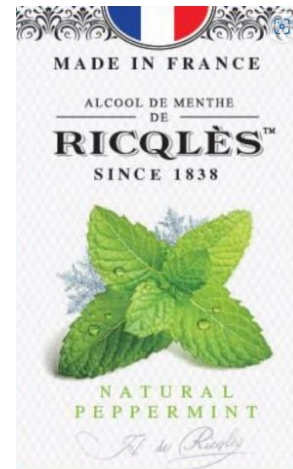
B. 4

C. 5



**xpat**  
in Amsterdam

**Onu**



**Hollandia**  
Dakkapellen

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Old policy...





# Legal framework



## Article 2.2bis BCIP Absolute grounds for refusal or invalidity

1 “The following shall not be registered or, if registered, shall be liable to be declared invalid: (...)

(h) trademarks which have not been authorised by the competent authorities and are to be refused or invalidated pursuant to Article 6ter of the Paris Convention”

## Article 6ter Paris Convention

1 (a) “The countries of the Union agree to refuse or to invalidate the registration, and to prohibit by appropriate measures the use, without authorization by the competent authorities, either as trademarks or as elements of trademarks, of armorial bearings, flags, and other State emblems, of the countries of the Union, official signs and hallmarks indicating control and warranty adopted by them, and any imitation from a heraldic point of view.

(b) The provisions of subparagraph (a), above, shall apply equally to armorial bearings, flags, other emblems, abbreviations, and names, of international intergovernmental organizations (...)





# Article 6ter 1(a) Paris Convention - symbols of countries



- Flags automatically, state emblems control marks etc. must be registered (WIPO 6ter express database)
- Both as a trademark or as an element thereof (if visible)
- Symbol itself or "heraldic imitation"
- Absolute protection (unless approval competent authority)





## Article 6ter 1(b) Paris Convention - symbols of international organisations

- Protection emblems, abbreviations, and names never automatically, must always be notified (WIPO 6ter express database)
- Both as a trademark or as an element thereof
- Symbol itself or "heraldic imitation"
- No absolute protection... Only in case of a connection between trademark and Organisation (unless approval of the Organisation)





# What is an “heraldic imitation”?



## EUIPO



- Size is irrelevant, but legible and perceivable.



- Sufficient that the average consumer, despite some differences in heraldic details, can see in the mark an imitation of the ‘emblem’. (see also 16/07/2009, C-202/08 RW Maple leaf, EU:C:2009:477, § 50) The fact that the emblem in question is stylised or that only part of the emblem is used does not necessarily mean that there is no imitation from a heraldic point of view (21/04/2004, T-127/02, ECA, EU:T:2004:110, § 41).



- Word elements can never withhold applicability of 6ter but may strengthen the link.





## Heraldic imitation: BOIP's rules of thumb

1. A flag is a flag.
2. For a flag containing distinctive elements, other than just colours, the adoption of those (dominant) elements makes a heraldic imitation more likely.
3. Additional elements referring to the country can help with recognizing the flag (can be decisive).



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6ter?



**MOET IK  
NAAR DE  
DOKTER?**





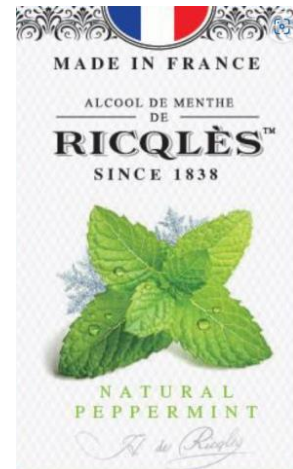
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**xpat**  
in Amsterdam

Answer = 3

**Onu**



**Hollandia**  
Dakkapellen



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Do you have any questions?

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Thank you for sharing your coffee  
break with BOIP!

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## Sources

- 1392500 expat in Amsterdam – Refused (6ter + sub b/c)
- 1456720 Race across Belgium – Accepted
- 1468894 Onu – Withdrawn (Originally partially refused for cl 5 and 44)
- 1413713 Ricqlès – Accepted
- 1463406 Hollandia dakkappellen – Accepted
- 1326925 FAWAKA – Refused 6ter
- 1389316 Slutte – Refused 6ter
- 1392881 Mobility Era – Refused 6ter
- 1413743 Forever Vintage – Refused 6ter
- 1380819 Lasagnaschijf - Accepted
- 1432005 English Royal Mattress – Refused (6ter + sub b/c)
- 1476526 Nyck de Vries – Accepted
- 1245604 Moet ik naar de dokter – Refused (sub b/c/f)

