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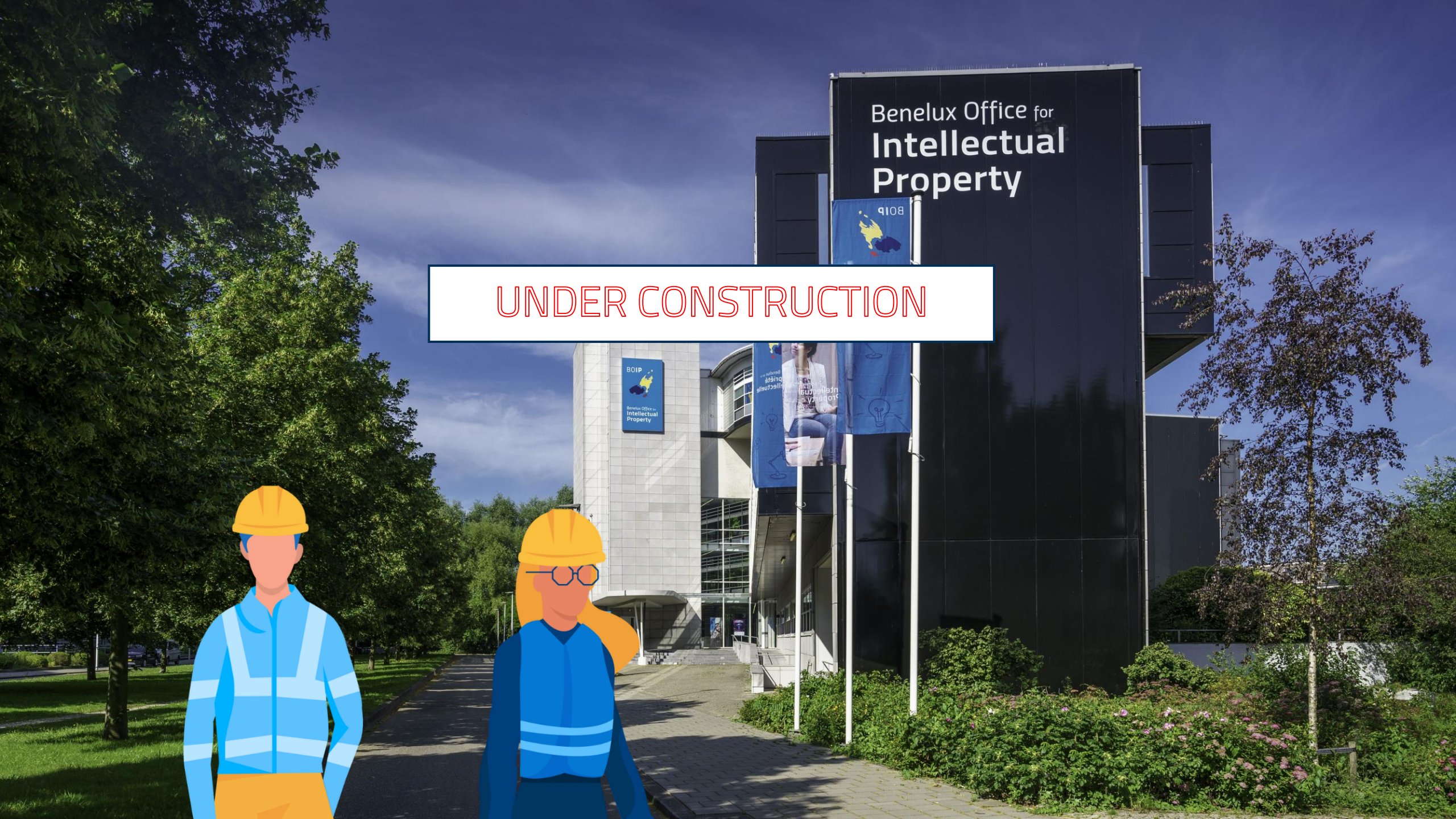
Benelux Office for Intellectual Property

Interesting decisions by BOIP

Coffee break webinar



21 May 2026 - Eline Schiebroek
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Benelux Office for
Intellectual
Property
UNDER CONSTRUCTION

Agenda

1. **Fitted**
   Cancellation (descriptive character)

2. **Shape mark chocolate chips**
   Cancellation (Genuine Use)

3. **KitchenAid vs The Kitchenary**
   Opposition (risk of confusion and reputation)

4. **Bonus**



Fitted, 20 April 2026 (3000801)

- Cancellation against word mark ***Fitted*** (1518664) for classes 18 and 25.
- Grounds: **descriptiveness** and lack of **distinctive character**.
- Claimant argues that the word "Fitted" means "**tailored**" or "**made to fit the shape of someone or something**".
- Claimant filed **evidence** of the meaning of the word "Fitted" in dictionaries and use in the fashion industry.
- Defendant argues that it is **not customary** in the Benelux to use the term. Expressions such as "slim fit", "regular fit", and "wide fit" are far more common.

Legal framework assessment descriptive character:

- No quantitative requirement – *Postkantoor* (CJEU, C-363/99) and BE BIOPHARMA (BenCJ, C-2025/4).
- It is not necessary that the sign is actually used descriptively for goods or services or their characteristics.
- A sign must be refused if, in at least one of its possible meanings, it designates a characteristic of the goods or services concerned – *Doublemint* (CJEU C -91/01).
- Perception of the relevant public has to be taken into account – *Postkantoor*.

- Relevant assessment date is the filing date of the mark: **30 January 2025**

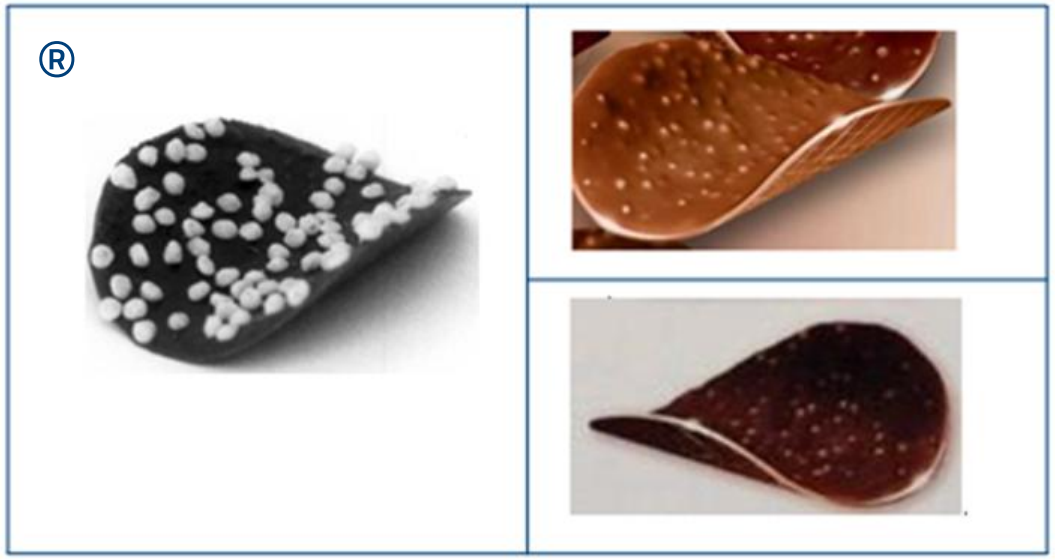
Fitted - Decision BOIP

- The relevant public is the general public in the Benelux with an **average level of attention.**
- The **meaning** of the English word *Fitted* has been **established** by the claimant.
- English is understood in the Benelux.
- It is also relevant that the word **“fit” is commonly used** in relation to **clothing** in the Benelux.
- The term *fitted* is also used to indicate a **type of fit** for clothing, as demonstrated by screenshots of webshops targeting the Benelux.
- BOIP found “Fitted” **descriptive** for clothing with a fit that follows the natural lines of the body or is tailored.
- No descriptive meaning demonstrated for bags.
- **Cancellation is partially awarded.**



Shape mark Chocolate Chips, 29 January 2026 (3000760)

- Cancellation against **shape mark chocolate chips** (677693, 22 June 2000) for classes 5, 29 and 30.
- Grounds: **No genuine use**.
- Defendant submits **evidence** including **invoices, images of labels, packaging, and promotional material.**
- Claimant argues that evidence does **not correspond to the contested mark**. Differences include colour, thickness, flatness, sharper edges, and the absence of puffed rice pieces, **creating a different overall impression.**
- Defendant replies that **the essential shape**, namely chocolate in chip form, **remains unchanged and minor variations are due to ingredients.**



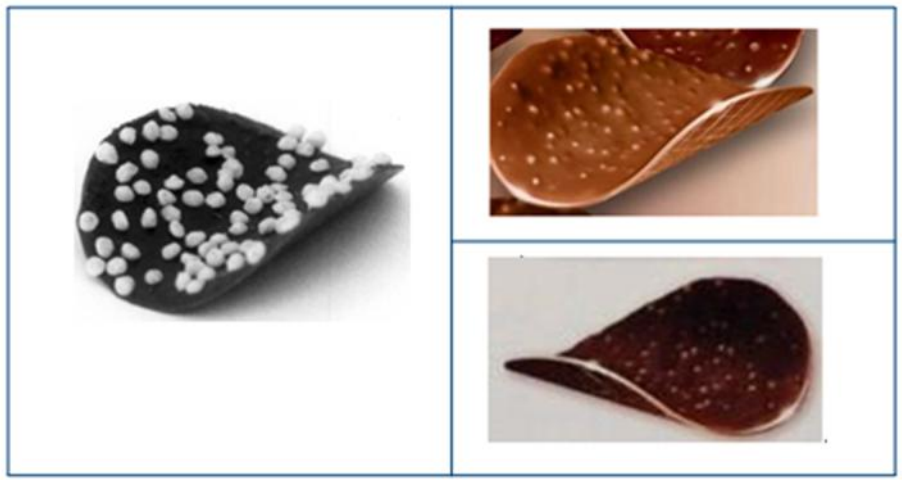
- Use does **not** necessarily mean using **the exact same sign.**
- The sign must be **overall equivalent** to the registered mark, differing only in immaterial respects - *Nutts Original* (BenCJ, C-2023/16).
- Also -> **CP 8** (Use of a Trade Mark in a Form Differing from the one Registered)

Chocolate Chips – Decision BOIP

- No evidence for goods in classes 5 and 29.
- Evidence only relates to chocolates (class 30).

- The distinctiveness of the mark lies in the overall shape, with two essential features:

1. The curved chip shape
2. Randomly distributed spherical white pieces on the surface



Comparison:

- The spherical pieces are absent.
- The surface contains only small specks that are less visible, embedded, and not individually distinguishable.
- The difference significantly alters the distinctive character.

Conclusion: No genuine use.

The mark is fully revoked.

No appeal.

THE KITCHENARY, 26 March 2026 (2020424)

KitchenAid KITCHENAID	The Kitchenary
Class 8 Hand tools and instruments, operated by hand	
Class 21 Household and kitchen utensils	Class 21 Household and kitchen utensils.



Opposition based on:

- Likelihood of confusion
- Reputation

Likelihood of confusion

- Signs share the word “kitchen”, which is **descriptive** and has weak distinctive character.
- Visual and aural **differences** beginning and end.
- Public understands the **meaning** of the words “**Kitchen**” and “**Aid**”.
  - KITCHENAID = “help in the kitchen”
  - THE KITCHENARY = no clear meaning
- Visual, aural and conceptual **similarity lies in the word “Kitchen”, which is descriptive**.
- **Certain degree of similarity** of the signs.
- **Goods** are **identical** or similar.

KitchenAid KITCHENAID	The Kitchenary
Class 8 Hand tools and instruments, operated by hand	
Class 21 Household and kitchen utensils	Class 21 Household and kitchen utensils.

- Also: *Boerentrots* (BenCJ, C-2024/01).
- Also: **CP 5** (Likelihood of Confusion - Impact of Non-Distinctive/Weak Components)

Likelihood of confusion

Global assessment

- Relevant public has a **normal degree of attention**.
- Kitchenaid has a **normal degree of distinctive character** for goods in class 8 and 21.
- **Similarity** that lies in the descriptive word Kitchen followed by letter A is **not enough**. In addition, Kitchenaid has **a clear meaning** and The Kitchenary does not.
- **No likelihood of confusion**.

KitchenAid KITCHENAID	The Kitchenary
Class 8 Hand tools and instruments, operated by hand	
Class 21 Household and kitchen utensils	Class 21 Household and kitchen utensils.

Reputation

- **Reputation** established **only for kitchen appliances**

- **No link** between the signs, because:
  - Kitchen is a **generic and descriptive** term.
  - **Higher standard of proof** to demonstrate that the term will evoke the trademark – *PUMA* (General Court EU, T-4/22).
  - The public sees it as **referring to kitchens, not origin.**
  - No substantiation by the opponent why public would think of Kitchenaid.
  - **Conceptual differences** increase the distance.

Conclusion:

No link and therefore no unfair advantage or detriment

Opposition rejected.

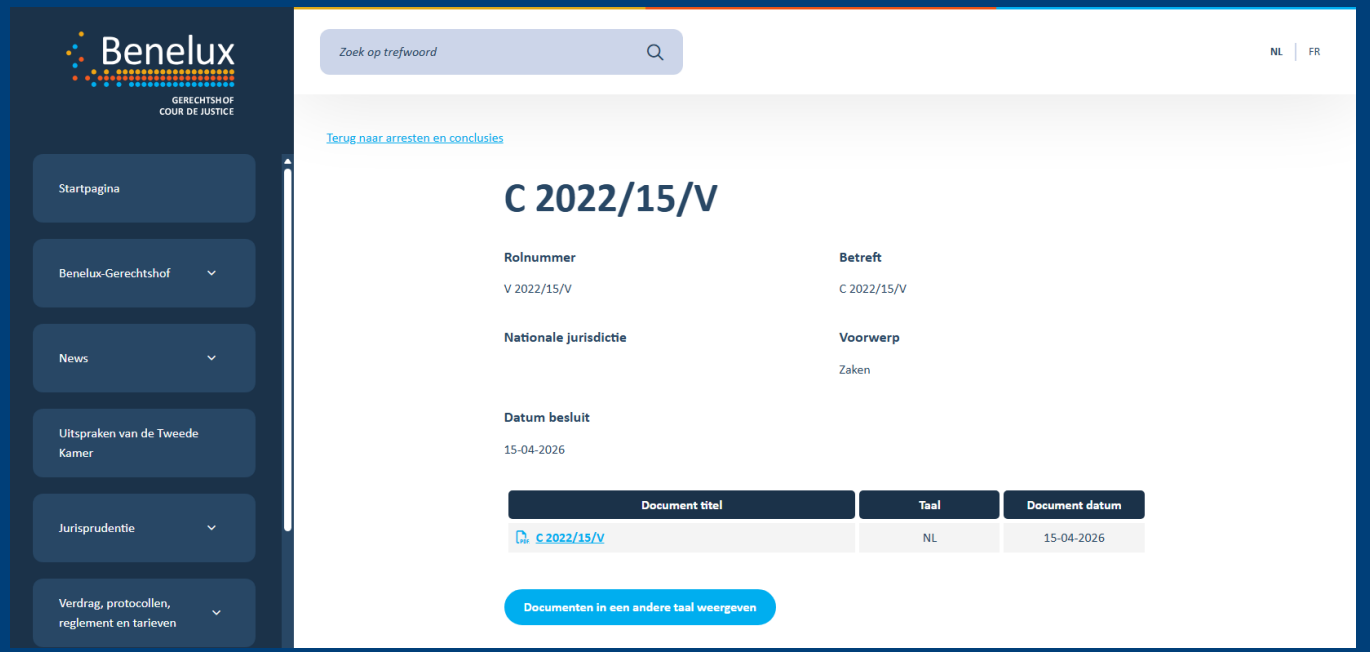


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Bonus





Proposed questions Dr. Martens – First Chamber

Available at:
https://www.courbeneluxhof.int/arrest/airwair-international-limited-van-haren-schoenen-b-v/

Proposed questions:

1. Must Article 4(4) of the Trade Mark Directive be interpreted as meaning that a position mark such as the one at issue here, which has only one form of use but different variants of appearance, can acquire distinctiveness through use only if this has been demonstrated for all of its variants, or is it sufficient that this has been demonstrated for only some of its variants?
2. Must Article 7 of the Trade Mark Directive be interpreted as meaning that partial invalidity of a mark should also apply where a position mark such as the one at issue here has different variants of appearance and the ground for invalidity concerns only some of those variants?

The Court invites the parties to comment and suspends further decision.



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