BOIP

Benelux Office for Intellectual Property

Annual Overview 2025

Decisions from the Benelux Court of Justice and BOIP

Focus on bad faith

11 December 2025 – Camille Janssen & Eline Schiebroek

Agenda

1. **Benelux Court of Justice**
   - Boerentrots van Plus
   - Elixir d'Anvers
   - Speedway
   - Nutt's Original
   - SEX en Provence
   - Procedural matters
   - **Questions part 1**
2. **Bad faith**
   - Legal framework
   - Eiffel decision Benelux Court of Justice
   - Discussion of Bad Faith decisions
   - **Questions part 2**
3. **Reputation decisions**
4. **Final remarks**



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Boerentrots van Plus (BX 1438354)

BOIP decision (Opposition 2017081)

- Signs are **aurally and conceptually similar.**
- Visually: **(certain degree) similarity**
- Milk & Cheese vs Meat – **low degree of similarity**

The element that is similar (Boerentrots) has a low degree of distinctiveness

Increased distinctiveness was not demonstrated.

No likelihood of confusion

Oppositie gebaseerd op:	Oppositie gericht tegen:
BOER'N TROTS	Boerentrots VAN PLUS

BenCJ 9 July 2025, C 2024/1)

When assessing similarity of the signs:

- The distinctive character of the mark itself must not be taken into account,
- **However**, the **distinctiveness** of **the individual components** must be taken into account.

Descriptive elements carry less weight, meaning that a figurative element can be decisive for the overall image.

The element 'boerentrots' is not sufficiently distinctive to cause confusion with the consumer.

No risk of confusion

Oppositie gebaseerd op:	Oppositie gericht tegen:
 BOER'N TROTS	Boerentrots VAN PLUS

- Visually similar
- Aurally similar to a certain degree
- Conceptually: “Boerentrots” causes similarity, although the public understands that the goods originate from “PLUS”
- Goods: low degree of similarity
- Enhanced level of distinctiveness not proven.

Poll: Question

Considering Equivalenza, what do you think of the apparent Benelux Court's view that non-distinctive elements (may) influence the comparison of signs?

A. I agree, it is in line with Equivalenza

B. I do not agree, it is not in line with Equivalenza

C. I don’t know

D. It does not matter, because it will not make any difference for the outcome



Elixir d'Anvers

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CP 18: Descriptiveness of geographical indications

BOA (10 September 2025)

- No **proven link** between Antwerp and liqueur.
- Antwerp not shown to have a **reputation for liqueur**.
- Mere **possibility of production** in Antwerp is **insufficient**.



BenCJ (15 October 2025)

- Trademarks that **may serve** to indicate geographical origin are prohibited.
- Applies **not only to famous places** but also those reasonably expected to be associated with the goods in the future.
- **Antwerp's size** makes "Anvers" **clearly descriptive** and non-distinctive

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Speedway (IR 1724762)



	Goods & Services (summarized)
Class 9	Helmets; visors; gloves; protectors; holders; chargers, sunglasses.
Class 11	Lighting apparatus for vehicles; lighting accessories; light bulbs.
Class 12	Motorcycles; scooters; bicycles; parts & accessories.
Class 25	Clothing; shoes; caps.
Class 28	Saddle covers.
Class 35	Retails services for vehicles, helmets, clothing, vehicle parts etc.

BenCJ, 30 September 2025 (C 2024/33)

Assessment of descriptiveness.

- Objective of 2.2bis, lid 1, sub c: a trademark should not block competitors from using descriptive signs necessary to describe or promote their goods or services.
- No quantitative component
- No actual use necessary: ***may serve***
- Existence of several meanings not relevant

*This concerns signs and indications which, in the context of **normal** use, **may serve**, from the point of view of the relevant public, to designate – **either directly or by indicating one of the essential characteristics** – the goods or services for which registration is sought.*

Speedway (IR 1724762)



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Nutt's Original

- TM Registered



- TM Used





- Circle with words NUTTS ORIGINAL replaced by orange circle
- Black/White reversal

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Nutt's Original







Genuine use when used in a different form? **BenCJ, 3 December 2024**

- Article 2.23bis, par 5 BCIP
- Okay if the sign used differs only in negligible respect from the form in which it is registered
- Reversal of black and white/ replacement by an orange circle: no impact on distinctive character.
- Removing the circled NUTTS ORIGINAL changes the distinctive character. NUTTS (TT) is distinctive.
- Despite being dominated by the squirl, leaving out the distinctive words changes the TM's distinctive character.

- **Use of the dominating element is not necessarily enough**

SEX en Provence (BX 1466730)



Regulation (EU) No 1308/2013, article 103, paragraph 2:



[GI/PDO], (…), shall be **protected** against:

a) any direct or indirect commercial **use** of that protected name:
   i. by comparable products (…); **or**
   ii. in so far as such use **exploits the reputation** of a [GI/PDO];

b) any misuse, imitation or **evocation**, (…)

c) any other false or **misleading indication** as to the provenance, origin, nature or essential qualities of the product, (…) to convey a false impression as to its origin;

d) any other practice liable to mislead the consumer as to the true origin of the product.

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SEX en Provence

Coteaux d'Aix-en-Provence	SEX en Provence
Wine	Cl 33 Wines with protective designations of origin "Côtes de Provence", "**Coteaux d'Aix-en Provence**", "Coteaux varois en Provence", "Les Baux de Provence".

1. Is 'SEX en Provence' use of the PDO?
2. Does 'SEX en Provence' evoke the PDO?
3. Is there any other false or misleading indication?

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BenCJ 30 September 2025, C 2024/22

1) The sign ‘SEX en Provence’ **does not constitute use** of ‘Coteaux d’Aix-en-Provence’

- Use means either **identical** or a particularly high degree of similarity between the conflicting signs**, bordering on identity**.
- The PDO must be **assessed as a whole**, because only the full name indicates the origin and quality guarantee.
- The sign “SEX en Provence” corresponds only to a **limited** extent, as the part **“Coteaux d”' is missing**.

2) ‘SEX en Provence’ **does not evoke** ‘Coteaux d’Aix-en-Provence’

- The average consumer will at most **associate** the sign with the **Provence region**, but not with the specific PDO.
- The element "Coteaux d’’ is essential to establish **the link with the product** ‘wine’ and its quality characteristics.

3) **No other false or misleading indication**

- Many wines come from the Provence.
- The word “SEX” does not refer to product characteristics of wine.
- Any specific **marketing rules** on alcohol and sexuality are **not relevant.**

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Procedural matters

Humbee (15 October 2025, C 2024/20 & 21)

- Trademark attorney
  - **Filing** an appeal/ response **implies asking** for permission to act before the BenCJ.
  - The Court **accepting** pieces means having granted **permission** to act before the BenCJ.

Débouchage Bruxsel (15 October 2025, C 2024/13)

- Claimant filed cancellation at BOIP, but **did not substantiate** the grounds invokes.
  - Only referred to other proceedings between parties
- BOIP rejected cancellation and **ordered claimant** to pay the **costs**.
- In appeal, **claimant did substantiate**, and the BenCJ granted the cancellation.
- However, the Court **explicitly upholds** the BOIP decision on **costs** of the procedure
  - Defendant loses his application but receives some compensation from opponent for the costs in the BOIP procedure

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Questions part 1

11-12-2025

Bad faith – legal framework

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CP13: Trade mark applications made in bad faith

➢ Definition & Interpretation

- No explicit definition in BCIP or TM Directive
- Autonomous EU concept → uniform interpretation
- CJEU Guidance: "Bad faith" = dishonest attitude or intention

➢ Filing not to compete fairly, but:

- Harm third-party interests contrary to honest practices
- Obtain exclusive rights for purposes beyond trademark functions

➢ Assessment of Applicant's intent

- Subjective verdict, proven by objective indicators
- Global assessment of all relevant facts

➢ Relevant Factors

- Knowledge of earlier rights
- Degree of protection of earlier rights
- Similarity of marks
- Goods/services involved
- Risk of confusion
- Prior relationship between parties
- Origin and use of contested mark
- Chronology of events
- Commercial logic behind filing
- Requests for financial compensation
- Pattern of applicant's behaviour

➢ Burden of Proof

- Claimant must substantiate with arguments & evidence
- Presumption of Good faith until proven otherwise
- If presumption is undermined, applicant must show legitimate commercial strategy

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Eiffel

BOIP cancellation (3000382)

- **Conflict** between ADGE and Philippe Eiffel for many years regarding **protection of the name of Gustave Eiffel.**
- Court **cancelled** trademarks in France.
- **After** court decision, the Benelux trademark **Eiffel** (1386899) **was filed (2018) by Philippe.**
- The defendant **knew** that registering the name Eiffel would **not be approved** by ADGE.
- The defendant has **not shown any use** of the sign.

Bad faith



BenCJ 30 September 2025, C 2024/03

- There is **no specific law in the Benelux** that **protects a surname** (which is different in France)
- **No prior authorization of ADGE necessary** for a Benelux trademark registration.
- ADGE is **not known or active** in the Benelux.
- The fact that defendant **first agreed** with ADGE that – under French law – **authorization was necessary f**or TM registration, **does not create such a requirement for the Benelux**.
- **Non-use not a relevant factor** in this case.

No bad faith

NWC (appealed)

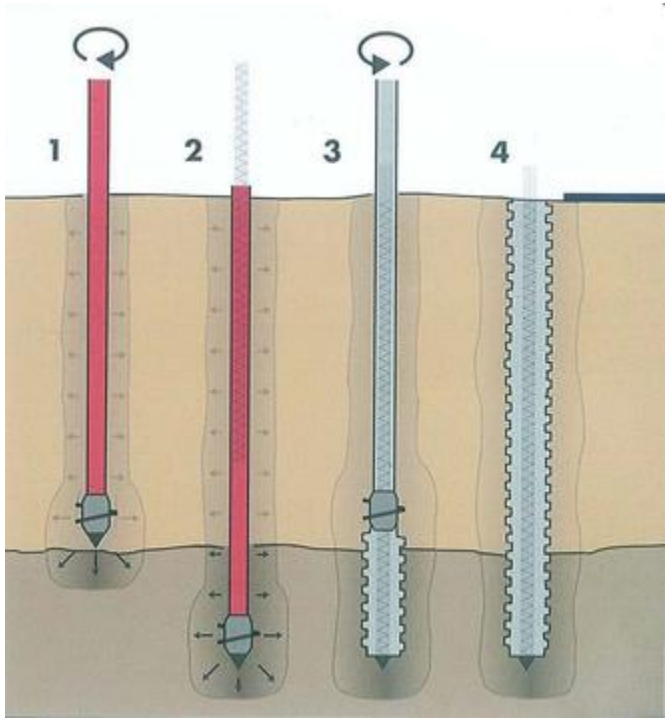


BOIP cancellation 3000720:

- Proven **knowledge** of the use by claimant at the date of application
- **Application after lost administrative appeal** (Raad van State) in which a report by claimant played a role
- Proven that **clients/relations** of claimant were **approached by defendant**
- **No plausible explanation** of the intention with the application
- **No intenton to use** expressed by defendant.
- **Circumstances after application** may serve as indicators for applicant's intentions (ECJ: CeramTec)

Olivierpaal

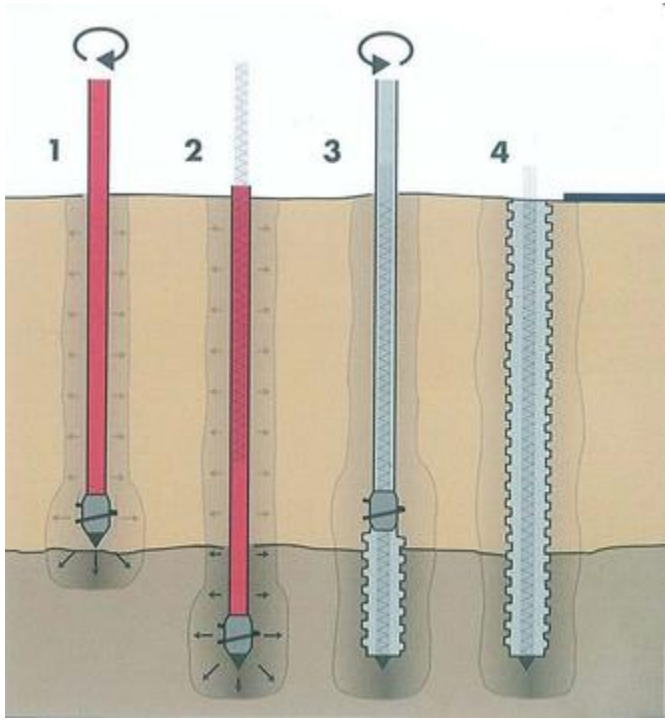
- Claimant **uses OLIVIER as tradename/nonregistered TM** for family business since 1987.
- Claimant had a **patent** on specific **piling technology.**
- Claimant had **sold** the **patent** and **shares of its company in 2010**.
- Defendant (former) **client** of claimant and **registered OLIVIERPAAL** in **2011**.
- Defendant states that claimant **had no more right to the name Olivier** after the transfer or shares. Claims to have **permission** from the current patent owner.
- Several **oppositions/ cancellations** between parties (BOIP and EUIPO)



Olivierpaal

BenCJ 26 November 2025, C 2024/4

- Claimant has **proven use** of OLIVIER since 1987 and **on the date of the registration**, which gives claimant a certain level of protection (ECJ: Lindt)
- **Permission** (if any) by current patent owner **not sufficient**, because it was not for them to give permission.
- Defendant effectively tried to **block** claimant from **using/ applying** for OLIVIER/ OLIVIERPAAL, also considering **oppositions** that were started.
- Confirmation of Bad Faith



Roode Bioscoop (appealed)

BOIP Cancellation 3000753:

- Claimant is a foundation and **leased premises** to run a **theatre** under the name Roode Bioscoop.
- **After termination** (April 2023) of the lease of claimant, the defendant, the **owner** of the building, **filed TM** Roode Bioscoop (August 2023).
- Defendant **shows intention** to keep **using the building** as a theatre, **now by himself**.
- Earlier trade name and leasing dispute **decided in favour of defendant**.
- Claimant has **used** ROODE BIOSCOOP **earlier**.
- **However**, trademarks: **First to file**, not first use principle
  - Unless Bad Faith
- **Bad intention not shown, legitimate strategy plausible**



Croky bag

BOIP Cancellation (3000721)

- Chips battle between **former business** partners
- Claimant considers himself as the creator of the bag with floating ring-shaped chips on it ; Finds **too much similarity** with the **bag used earlier** in different relationship between parties
- Defendant is **allowed** to produce and market **ring-shaped chips** after ending distribution agreement under his own brand
- The **distinctive elements** are **Croky and the parrot**
- **Acceptable and normal** to apply for a **trademark** to **secure market position**
- No bad faith



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Questions part 2

11-12-2025

Reputation – interesting decisions

Oppositie gebaseerd op:	Oppositie gericht tegen:
APPLE	OPPLE

Opposition basée sur :	Opposition dirigée contre :
FRUIT OF THE LOOM	LE FRUIT DEFENDU

Opposition basée sur :	Opposition dirigée contre :
NIVEA	NYMPEA

Oppositie gebaseerd op:	Oppositie gericht tegen:
JUST DO IT	JUST ZEN IT

Oppositie gebaseerd op:	Oppositie gericht tegen:
Ingeroepen merk 1 (IR 1625192) RE. UNIQLO Ingeroepen merk 2 (EM 1663749) UNIQLO	UNIFLO

Opposition basée sur :	Opposition dirigée contre :
Merci	Rien merci

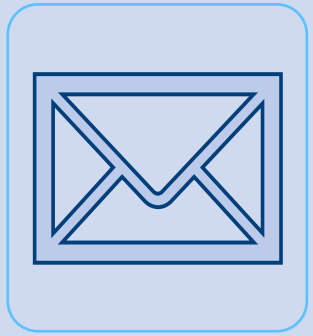
- METALLICA for class 31 (plants/roses) - Claim justified
- POLO for class 25 (clothing) - Claim not justified

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CP 19: Trade Marks with a reputation

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Final remarks



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Quality session

Again next year



No 2026 New Years reception



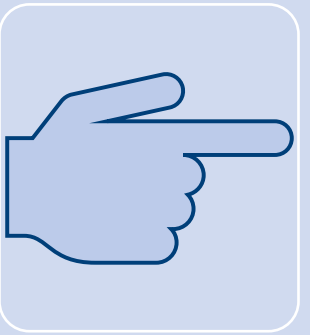
Codeword

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Cocktail



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How to get the BMM Point ->

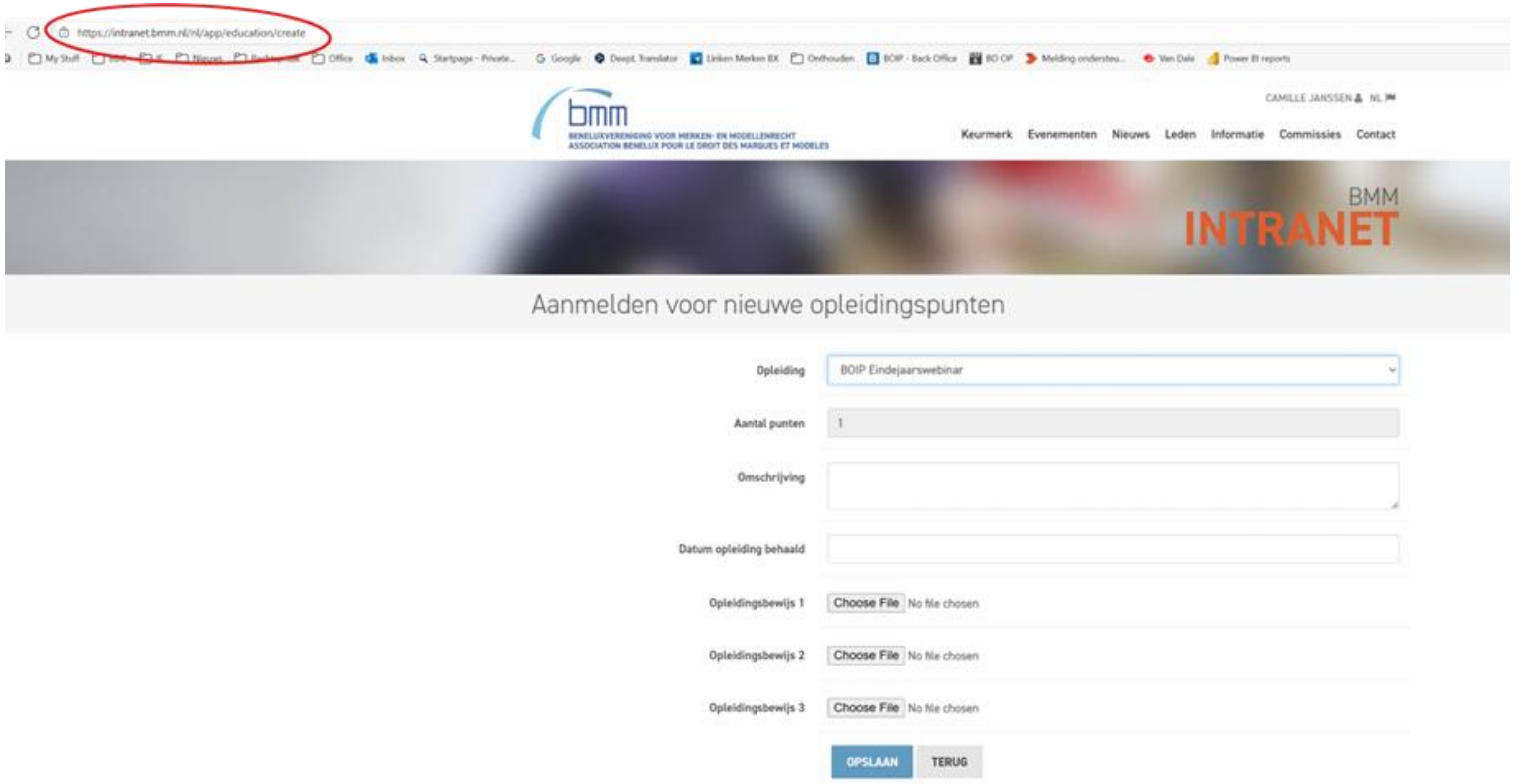
How to get the PE Point

Apply through the **BMM website**

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- Confirmation e-mail
- Codeword = Cocktail

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