



BROCHURE TRADENAMES

In this brochure:

1. What is tradename law?

Obtaining a trade name right

Distinction between a trademark and a trade name

Regional protection

2. Availability search

3. Protection of the trade name

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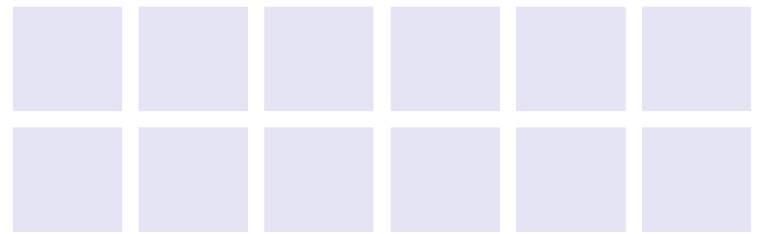
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Vriesendorp & Gaade specialises in intellectual property. Giving legal assistance to parties involved in trade name disputes is one of the main jobs of our specialists.

1. What is tradename law?

Article 1 of the Dutch Trade Names Act describes a trade name as the name under which a company is run.

Obtaining a trade name right

The right to a trade name arises as a result of the use of that name as an indication for a company. This requires a certain degree of continuity in the use of the name and the use has to be noticeable to the public. The name has to be actually used to distinguish the company (to the outside world), for instance on stationery, invoices, on the façade, etc.

A foreign trade name that is also well-known in the Netherlands, can for that matter also be eligible for protection on the basis of the Dutch Trade Names Act.

Distinction between a trademark and a trade name

Legally it is important to make a distinction between trade names and trademarks, as the requirements for the creation and maintenance of the rights (in a trade name and a trademark) are different.

In economic intercourse trademarks are signs used to distinguish goods or services of a company. A trade name distinguishes the company as a whole. Trademarks are covered by the Benelux Convention for Intellectual Property (BCIP) and the right in a trademark can only be obtained by filing a trademark application with the Benelux Office for Intellectual Property (BOIP). The Office examines the application on possible grounds for refusal, such as insufficient distinctive power and/or a descriptive character. When there are no objections, the trademark is entered in the Benelux Trademarks Register. The owner acquires an exclusive right in the three Benelux countries in the trademark for the goods and/or services stated (in

the application) for 10 years (each time to be extended by another 10 years).

Trade name rights exist from the moment that a name is used as a trade name. The right arises without any formalities; the use of the name suffices (registration in the commercial register is not decisive). As soon as the use stops, the right ends as well. Less strict demands are made on the distinctive power of a trade name than is the case with distinctive power of a trademark. Highly descriptive names can be valid trade names, although the scope of protection will usually be restricted to taking action against an identical name.

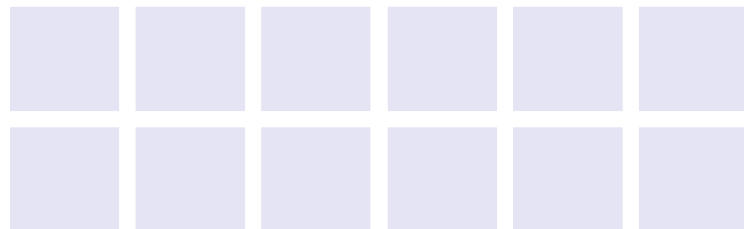
In practice a trade name is also often used as (service-) trademark. In that case it is advisable to file a trademark application, as the protection possibilities of the Benelux Convention for Intellectual Property (BCIP) are broader.

Regional protection

Based on the Dutch Trade Names Act a company only obtains protection in the area where they are known (for instance regionally or all over the Netherlands at the most). A Benelux trademark registration immediately affords protection in the entire Benelux. The BCIP also provides broader grounds to take action against infringement, for instance –in some situations- against someone who uses their trademark for other goods and/or services or in a different way. The Dutch Trade Names Act does not have such a broad infringement stipulation. The Dutch Trade Names Act moreover does not afford protection for visual elements (logos and/or stylistic elements).

2. Availability search

Prior to introducing a new trade name it would be wise to investigate whether a name is actually available. In case you do not, you as an entrepreneur run the risk that at a later stage you are as yet forced to change your name as it infringes the senior (trade name- and/or trademark-) rights of another party.



3. Protection of the trade name

Trade name law intends to prevent confusion and deception. The majority of conflicts about trade names regards the risk of confusion.

The pivotal article in the Dutch Trade Names Act is article 5: the article that forbids using a trade name “that is already lawfully used by another or that differs from their trade name to a minor degree only, all this insofar as in connection with the nature of both companies and the location where they are established, confusion may arise with the public between those companies”.

The infringement criterion therefore is the risk of confusion and it is also defined on the basis of the nature of the company (do the parties’ activities have anything in common?), the business address (the right to a trade name is restricted to the area within which the trade name is used) and the degree of similarity of the names.

Vriesendorp & Gaade attorneys

Vriesendorp & Gaade may among others be of service to you by conducting availability searches and assessing whether or not something may potentially be a problem, advise you on adequate protection of your name, for instance by filing an additional trademark application and moreover we are able to represent you in court and in case of a conflict/infringement for instance conduct interlocutory proceedings and/or proceedings on the merits on your behalf.

Do you want advice or do you need an attorney? We will be happy help you.