

External Guidelines Amicus Curiae

The Benelux Association for Trademark and Design Law (**BMM**) provides expertise in intellectual property law, in particular through its *Amicus Curiae Committee* (hereinafter: **Committee**), which provides independent legal advice to courts and trademark and design offices.

1. Role of BMM	BMM is a professional association of Benelux legal specialists in the field of intellectual property, which ensures high-quality practice among its members working as design, trademark and/or patent attorneys, in the legal profession, or in (university) education. BMM protects the interests of its members and aims, among other things, (i) to be active in promoting optimal protection and enforcement of trademark and design rights in the Benelux and (ii) to protect, support and promote the common professional interests of all those professionally involved with trademarks and designs within the Benelux.
2. Committee	The Committee submits independent opinions on legal issues relating to trademark law, design law, trade name law, and other related regulations (e.g. copyright, misleading advertising, domain names), applicable in the Benelux, or procedural issues relating to such matters (e.g. procedural competence, jurisdiction, evidence rules, use of market searches, remedies), in order to inform and assist national and international courts and trademark and design offices in their decision-making.
3. Independent Stance	Unlike the parties involved in a case, BMM has an independent stance, focusing exclusively on legal issues rather than the specific facts of a case. It provides courts and trademark and design offices with an independent perspective and extensive knowledge and experience of trademarks, designs, trade names and other related regulations.
4. Scope of Matters	BMM can intervene in generally complex and important matters concerning, relating to or potentially affecting trade mark law, design law, trade name law, copyright law and other related regulations applicable in the Benelux, or procedural issues relating to such matters.
5. Types of Intervention	BMM may intervene to legal or administrative proceedings referred to under Article 2 above: (i) ex officio, (ii) at the request of a party, or (iii) at the request of judicial and administrative bodies. Intervention may be through various means (referred to in these guidelines as “ <i>amicus briefs</i> ”) such as letters, testimonies, expert reports, legal memoranda and other statements, depending on the procedural rules of the relevant authority. BMM prefers the filing of <i>amicus briefs</i> during the appeal stage, but may consider filing at other stages when the circumstances warrant it (such as

	cases of significant importance, cases involving predominantly legal issues, or when in a particular jurisdiction the filing of an <i>amicus brief</i> is only allowed at first instance).
6. Request for Intervention	Individuals or legal entities can request BMM's intervention in relevant cases by submitting a request with detailed information about the case and supporting materials. Membership of BMM is not required.
7. Suitable Matters	<i>Amicus Curiae</i> interventions are suitable for generally complex and important matters in which courts or trademark and design offices render decisions on the interpretation or application of legislation applicable in the Benelux in relation to the areas of law listed above in Article 2 (such as infringement cases, opposition proceedings and cancellation proceedings), but not for legislative matters (such as arguments about the introduction of new laws, rules or regulations) or matters based primarily on factual arguments. Cases that are more likely to be considered legislative in nature may be referred to the other relevant BMM committee if appropriate.
8. Criteria for Submission	<p>A matter must meet at least one of the following criteria:</p> <ul style="list-style-type: none"> • the court specifically requests the views of BMM; • the matter directly affects the purpose of BMM; or • the matter relates to, is connected with, or potentially affects trade mark law, design law, trade name law, copyright and other related regulations applicable in the Benelux, or procedural issues relating to such matters, where an intervention by BMM would reasonably further the strategic aims and objectives of BMM.
9. Content of the Request	Requests for intervention should preferably be concise and include a summary of the issue and the underlying questions, as well as important details such as the name and number of the case, the subject matter, the identity of the court or trademark and design office, the parties involved and their counsel, and a summary of the procedural history. The request should describe – as far as possible - the issues the petitioner believes the BMM should address, the position defended by the petitioner, references to supporting case law and/or legal doctrine, and a possible broader impact on other parties, related laws and industries. The request also discusses why certain issues are important to BMM and its members, and how BMM's participation may have a significant impact on the decision. Finally, the request highlights potential risks, such as the possibility of cost orders if the request to intervene is rejected, and sets out the full procedural calendar, including the deadline for filing the <i>amicus brief</i> . Requests can be submitted in Dutch, French or English, preferably in the procedural language.

10. Additional Documentation	<p>Electronic copies of decisions of lower courts, relevant case law and/or legal doctrine, correspondence and supporting evidence that may be relevant or useful for the Committee's assessment, a full description of the <i>amicus</i> or other procedure(s) allowed by the relevant court or trademark and design office, and any rules applicable to such filings should also be attached if available.</p>
11. Relevant Factors	<p>The Committee will take into account, inter alia:</p> <ul style="list-style-type: none"> - the relevance of the case to trade mark or design law, trade name law or other related legislation applicable in the Benelux, - whether the dispute is primarily legal in nature rather than factual - the importance of the outcome of the legal issue for trade mark and design right holders as well as the public interest, and the potential precedent value of the case in light of the current state of jurisprudence, - the stage of the legal or administrative proceedings, - the quality of submissions made by parties and other <i>amici</i>, - whether an application was filed in accordance with the procedures and guidelines of the BMM and in sufficient time to prepare a high-quality <i>amicus brief</i>, - whether the proposed <i>amicus brief</i> is consistent with the values and the strategic objectives of the BMM.
12. Excluded Factors	<p>The Committee generally does not take into account factors such as BMM membership of the parties, the lack of a BMM policy or position, whether the relevant court or trademark and design office ordinarily receives <i>amicus briefs</i> (unless the Committee determines that there is no mechanism to submit BMM's position) or the possible rejection of BMM's position. The Committee expressly reserves the right to recommend positions that differ from those sought by the parties, regardless of whether a party is a member of BMM.</p>
13. Discretionary Authority	<p>The submission of a request does not create a right to intervention by BMM. At all times, the BMM retains full discretion to determine the matters in which it intervenes and/or the manner in which it publishes on a position to be taken by the BMM.</p>
14. Conflict of interest	<p>Committee members must refrain from discussing and voting on requests relating to a case in which they have a conflict of interest, such as direct or indirect involvement in a case or a financial interest, or any other interest in (the outcome of) the case.</p>

15. Submission deadline	<p>The assessment of issues and preparation of <i>amicus briefs</i> require considerable effort and time from volunteers, who contribute their time and expertise <i>pro bono</i>. Therefore, to allow sufficient time for assessment and preparation, requests for <i>amicus briefs</i> should be submitted electronically to BMM at the email addresses president@bmm.eu and secretariaat@bmm.eu as early as possible, and at least 60 days before the deadline for submission of the requested <i>amicus brief</i>, setting out the background and reasons for the request and accompanied by all relevant documents in support of the request as explained in Articles 9 and 10 (with a translation into the procedural language, if appropriate).</p>
16. Electronic Submission	<p>Requests should in principle be submitted electronically. Where this is not possible for technical reasons, the applicant may contact the aforementioned e-mail address to arrange an alternative method of submission (such as providing a sufficient number of paper copies for distribution to Committee members).</p>
17. Copy to the Parties	<p>The Committee will send a copy of the application, to the exclusion of other documents, to (counsel for) the opposing party(ies), who will have five working days to submit a response to the Committee (e.g. arguments against the involvement of BMM or for the defence of a different position). Except in exceptional circumstances, parties should not provide further substantive information to the Committee unless specifically requested by the Committee. However, the party requesting the <i>amicus brief</i> should keep the Committee informed of significant developments in the case, both on the substance and the procedural calendar. In the event of an ex officio intervention by the BMM, the BMM may, at its own discretion, decide whether or not to inform and/or consult the parties concerned in advance about the BMM's intention and the content of an <i>Amicus Curiae</i> intervention.</p>
18. Confidentiality	<p>The <i>amicus</i>-process is confidential and the Committee does not disclose the deliberations or reasons for acting or not acting on a request or consult with parties on the issues in the case. All documents and information submitted will be kept confidential and used solely for the purpose of drafting and submitting the <i>amicus brief</i>. If it concerns an external request that is rejected, the Committee will communicate that decision to the parties concerned in neutral terms. Parties are generally only informed of BMM's position after the submission of the <i>amicus brief</i> or other contribution. Only when in a particular jurisdiction BMM may not file an <i>amicus brief</i> or other submission itself (e.g. because the court only considers evidence or arguments submitted by the parties), BMM may</p>

	consult with the party concerned to coordinate the filing of the <i>amicus brief</i> or other submission. In such circumstances, it may be necessary for the affected party to be informed of BMM's position and to receive a copy of BMM's proposed submission in advance, in which case the consultation will concern only the form of BMM's submission and not its content.
19. Costs	The petitioner or applicant accepts that it will bear any order for costs of litigation in full and will in no event recover litigation or other costs relating to the case (including attorneys' fees) from BMM.
20. Publication	If an <i>amicus brief</i> has actually been submitted to the relevant authority, the Committee will ensure that it is published on the BMM website. The final decision on the procedure will also be communicated.