

# BELGIAN CHOCOLATE CODE

Agreement between the contracting parties

on

**the protection of the indication of the origin of Belgian products<sup>1</sup> and against the misleading of the consumers concerning the country of origin and the quality of such products**

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Based on the fact

- that products<sup>1</sup> manufactured by the contracting parties enjoy a high reputation of quality of long standing in Belgium and abroad,
- that the reputation of high quality associated with “Belgian Chocolate” frequently induces competitors to mislead consumers by using texts or illustrations referring to Belgium,
- that toleration of such misleading references entails the danger of a transformation of the designation “Belgian Chocolate” and similar ones into a generic term and this would jeopardize or even entirely prevent an intervention in cases of misuse,
- that to ensure the success of interventions in cases of misuse it is essential to avoid the use of any directly or indirectly misleading references either in texts or illustrations by the contracting parties to this agreement,
- that on the other hand the contracting parties only want to accept for themselves such restrictions as are necessary for achieving the previously described objective,

the contracting parties agree as follow:

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<sup>1</sup> See definition under point IV.1

## **I. Behaviour of the contracting parties, their subsidiaries and licensees**

1. The contracting parties undertake not to use for their products<sup>1</sup> manufactured outside of Belgium any indications contrary to good faith which could create among the consumers either by texts or illustrations the misleading impression that the finished chocolate product was manufactured in Belgium. This applies to the packaging as well as to advertising.

If the packaging or the advertising for a product<sup>1</sup> manufactured abroad contains references to Belgium, the Belgian parent company or a Belgian licensor, such reference must be made or supplemented in such manner as to exclude any doubt in the mind of the average consumer or buyer concerning the manufacture of the product outside Belgium.

The contracting parties agree for their products<sup>1</sup> manufactured in Belgium that a reference to Belgian chocolate or Belgian pralines can only be made if all the chocolate used is Belgian (only the chocolate used for the couverture in the case of filled chocolate and pralines; cfr definition of "Belgian chocolate" in IV.1)".

2. Non-compliance by a contracting party with these obligations shall be reported in writing and with original proofs to the Secretariat of Choprabisco who will inform the contracting party concerned in the particular case. If an understanding within the spirit of this agreement cannot be reached and if the Secretary General of Choprabisco takes the view that the particular case constitutes a violation of this agreement then he has to notify the case to the Board of Directors.
3. The contracting parties undertake not only to comply themselves with the conditions laid down in this agreement but to arrange also for compliance through the companies with whom they are linked according to Article 11 of the Belgian company law of 6/08/1999<sup>2</sup> and their licensees. Where necessary, the contracting parties will supplement or adjust existing agreements contrary to this agreement at the earliest possible date and endeavour to obtain right away compliance with the terms of this agreement.
4. The principles laid down in this chapter I are only applicable in so far as they can be imposed against third parties in each country. The Board of Directors will decide on the basis of the proposition received from the parties about exceptions from the principles laid down in this agreement either with regard to certain countries or concerning certain textual or pictorial ways of expressing.

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<sup>2 2</sup> For the application of the Belgian company law one should understand by " a company linked with other companies " :

- a) the companies she controls
- b) the companies that are controlled by the company;
- c) the companies with whom she forms a consortium;
- d) the other companies who are, according the Board of the company, controlled by the companies referred to in a), b) and c)

## **II. Interventions against third parties**

5. The contracting parties undertake to intervene jointly against third parties who use in Belgium or in foreign countries on their packaging or in their advertising for products<sup>1</sup> texts or illustrations which constitute a misleading reference to Belgium as the country of origin. Such measures shall be taken through Choprabisco or through one of the contracting parties if an intervention by Choprabisco is not legally possible.
6. Investigations of the acts made by third parties will be entrusted to the Secretary General of Choprabisco. Before introducing a legal proceeding the Secretary General must submit specific proposals to the Board of Directors which will decide about the measures to be taken. The expenses for the investigations and the legal proceedings are to be paid by Choprabisco, even if the legal proceedings were introduced by one of the contracting parties provided a preliminary agreement by the Board of Directors (cfr point 5) for such an action.

## **III. General Dispositions**

7. To adapt their existing packaging or advertising material to the conditions of this code, the contracting parties are granted a transitional period ending September 1, 2008. Under special circumstances the Board of Directors can extend the transitional period provided a request is made before June 1, 2008. If the Board of Directors grants such a request for extending the transitional period it must immediately inform in writing all contracting parties.
8. The terms of this code can be changed within the frame of the objectives described in the preamble if three-quarters of all contracting parties give their consent.
9. This code is concluded for an indefinite period of time. It can be terminated by any contracting party by giving 6 months notice, at the earliest the 31<sup>st</sup> of December 2009. The corresponding notification must be addressed by registered letter to the Secretariat of Choprabisco who will inform the other contracting parties. The other contracting parties can then decide to maintain the agreement among them.

#### **IV. Definitions, principles, examples**

##### **1. Definitions**

The term “product” comprises all food products consisting of or containing one or more components defined in the EU chocolate directive 2000/36 on cocoa and chocolate products intended for human consumption.

“Belgian chocolate” : is chocolate of which the complete process of mixing, refining and conching are done in Belgium.

The attached overview table gives definitions and criteria of use for the mention “Belgian Chocolate” and variations. This table is integrally part of the Convention.

“Belgian products” are foods made in Belgium with Belgian Chocolate as defined in this article.

Following categories are defined :

- *products exclusively made of chocolate (with possible decoration and/or inclusions)*

Examples : hollow figures, chocolate tablets/bars without filling, napolitains ...

These products are considered Belgian if they are manufactured in Belgium with Belgian chocolate as defined in this article.

- *filled products and chocolates (pralines)*

Examples : chocolates, seashells, filled chocolate tablets/bars, filled eggs ...

These products are Belgian if they are manufactured in Belgium and the cover consists is made from Belgian chocolate as defined above. The filling – whether or not having chocolate as a basic ingredient – has no bearing on the definition of the product.

- *selection of products (from the preceding categories)*

The selection of products being sold in prepack or in bulk (categories stated above) can have the label of “Belgian chocolate” if at least 90% of the selection is in line with one or more of the above mentioned categories.

The contracting parties are the parties that have signed this Agreement.

## 2. Principles

The use of the denomination "Belgian Chocolate" **in Belgium and abroad** must always be in line with the following principles:

- Principle of origin  
"Belgian Chocolate" is an indication of origin according to the definition under IV 1.
- Principle of truth  
Any reference must correspond to reality.

## V. Written references and images allowed and not allowed

The implementation provisions regarding references to Belgium, the Belgian parent company or the Belgian licensor on the packaging of the products not in agreement with the Code (manufactured abroad or manufactured in Belgium with chocolate of non-Belgian origin) and the publicity concerning this (interpretation of the obligation following paragraph I.1. of the code) are specified below accompanied by some non-exhaustive examples.

### 1. Company names and trademarks

Company names and brands which contain or represent Belgian geographical names, Belgian locations (Brussels, Aalst ...), typical Belgian symbols (flags/coat of arms etc), typical Belgian sceneries (Atomium, well-known locations, etc.) or typical Belgian public figures/personalities (e.g. Manneken Pis, Royal Family, unmistakable recognizable Belgian residents) are **not permitted for products that are not manufactured in Belgium or manufactured in Belgium with chocolate of non-Belgian origin.**

### 2. Textual References

A direct or indirect reference to Belgium is **only permitted if all the following requirements are complied with:**

- the reference must always include the name (may be in its short version) of the Belgian parent company or the Belgian licensor,
- the entire reference must be in the same-size typeface
- the reference must be located on the backside (resp. the information panel) of the packaging
- the country of origin must be clearly visible and in easily readable writing on the same side of the packaging

### Permitted references

References to chocolate with the wordings "Belgian style", "Belgian collection,", "Belgian recipe", "Belgian tradition", "Belgian heritage", "Belgian flavour", ... are only authorized on the front of the packaging if all the chocolate used is of Belgian origin (cfr. Definition IV.1).

If the historical origins of the company can be proven to be Belgian, a reference to its “Belgian style”, “Belgian collection,”, “Belgian recipe”, “Belgian tradition”, “Belgian heritage”, “Belgian flavour”, ... may be included in a written text on the back of the packaging providing that the text does not suggest to the average consumer that the product is of Belgian origin.

### **3. Other pictorial references**

If products<sup>1</sup> do not comply with the definition of Belgian chocolate, illustrations which the average consumer does not perceive as typically Belgian are acceptable. On the contrary are not permitted :

- typical Belgian symbols (flag/coat of arms, etc.)
- typical Belgian sceneries (Atomium, well-known locations, etc.)
- typical Belgian public figures/personalities (Manneken Pis, Royal Family, unmistakable recognizable Belgian residents etc.)

### **4. Advertisement**

The foregoing provisions apply also, by analogy to advertisement and publicity.

## BELGIAN CHOCOLATE CODE

### Definitions and criteria for the use of the declarations “Belgian chocolate” and “Chocolate from Belgium”

INGREDIENTS			PRODUCTION <sup>2</sup>	DECLARATION Front of Pack (FOP)	DECLARATION Back of Pack (BOP)
CHOCOLATE <sup>1</sup>	CHOCOLATE USED FOR THE FILLINGS	NON- CHOCOLATE			
100% Belgian	all origins	all origins	in Belgium	Belgian chocolate / chocolat belge Belgische chocolade  <i>examples</i> <i>Belgian chocolates (Belgian pralines)</i> <i>Belgian chocolate with nuts</i> <i>Belgian chocolate biscuits</i>	
			not or partially in Belgium	... with chocolate from Belgium / with Belgian chocolate <sup>3</sup> ... avec chocolat de Belgique / avec chocolat belge <sup>3</sup> ... met chocolade van België / met Belgische chocolade  <i>examples<sup>3</sup></i> <i>Bar with chocolate from Belgium / with Belgian chocolate</i> <i>Chocolates (pralines) with chocolate from Belgium / with Belgian chocolate</i> <i>Chocolate with nuts with chocolate from Belgium / with Belgian chocolate</i> <i>Biscuits with chocolate from Belgium / with Belgian chocolate</i>	made in X (country)
not 100% Belgian				Reference to “Belgian chocolate” is not possible	

1: All chocolate used as an ingredient is 100% Belgian when all the processes of mixing, refining and conching have been done in Belgium.

2: Production of the final product is 100% Belgian if all operations, including the moulding, is taking place in Belgium (90% if it is a selection; ref. point IV.1 definitions of the Convention)

3: The size, letter type and colour used for the words “ ... with chocolate from Belgium / with Belgian chocolate” should be the same and not larger than the product denomination (e.g. bar, cake, snack, biscuit etc.) or brand name of the product concerned