



Benelux Office for Intellectual Property

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Use part I – acquired distinctiveness

Why? - What? - When? - Where? - How?



Pieter Veeze

Acquired distinctiveness 26.03.2024



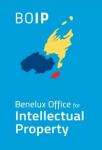
Yvonne Noorlander

Genuine use June 2024



Tineke Van Hoey

Reputation September 2024





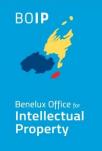


The threshold is the highest for

- 1. Acquired distinctiveness
- 2. Genuine use
- 3. Reputation













Acquired distinctiveness - why?

- Only relevant if ab initio non distinctive / descriptive
- Exception to the rule
- Sets aside public interest
- High threshold













What?

- Change of public perception (secondary meaning)
- Normally informed, reasonably observant and circumspect
- Relevant consumer for G&S concerned
- Normally long & intensive use
- Exceptions possible





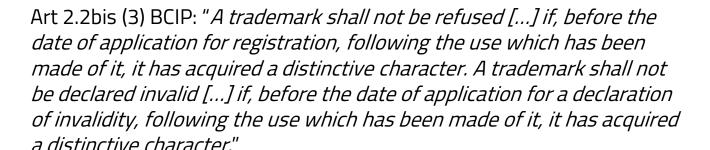
When?

- Examination: prior to filing date
- Cancellation (AG): prior to date of claim

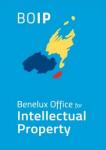
















Where?

- Validity = all or nothing
- Throughout the relevant territory
- Extrapolation possible
- Exception: relevant linguistic area
- Exception: relevant public is located in specific area
- EUROPOLIS
- KITKAT













How?

- CHIEMSEE criterion:
 Sales figures, market share, advertising investments, free publicity, market surveys or opinion polls ...
- Overall assessment
- DG rule on evidence
- Practical tip: don't wait... (can even be with filing)









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