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**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



Art 2.2bis (3) BCIP: *"A trademark shall not be refused [...] if, before the date of application for registration, following the use which has been made of it, it has acquired a distinctive character. A trademark shall not be declared invalid [...] if, before the date of application for a declaration of invalidity, following the use which has been made of it, it has acquired a distinctive character."*



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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If you have any more questions: legal@boip.int