

BOIP



Benelux Office for
**Intellectual
Property**

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Use part II – Genuine use



Useful insights for demonstrating 'genuine use'



Pieter Veeze

Acquired distinctiveness
26 March 2024



Yvonne Noorlander

Genuine use
13 June 2024



Tineke Van Hoey

Reputation
September 2024



How many cases involve 'genuine use'?



A. 20 %



B. 40 %



C. 60 %





Newsflash

- BIG MAC
- Initially revoked in its entirety
- Partly upheld
- ~~Fact of common knowledge~~





Why?

- Clean register
- Limit number of conflicts
- Not ex officio
- Low threshold





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Ready, steady, go

- Two months deadline
- Relevant period
- Ask for proof of use first





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Practical requirements

- Separate request
- 110 pages
- Describe what each piece proves





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Legal requirements I

- Use to create or preserve an outlet
- No token use
- Real commercial use





Legal requirements I

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Legal requirements I

- Use to create or preserve an outlet
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- Real commercial use





Legal requirements II

- Place
- Duration
- Extent
- Manner of use





Examples

- Invoices
- Sales figures
- Catalogues
- Advertising material
- Press releases
- Social media





Assessment as a whole

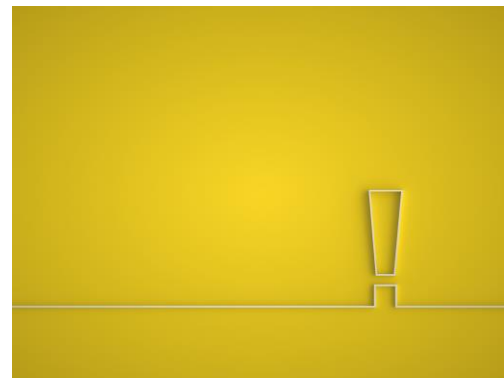
- Connect individual pieces of evidence
- No probabilities or assumptions





Key takeaways

- Common knowledge not enough
- Save proof of use over a long period
- Request proof of use first
- Make a separate request
- Describe what each piece proves
- Connect individual pieces of proof





Sources

- General Court EU 5 June 2024, T-58/23, ECLI:EU:T:2024:360 (BIG MAC)
- BIOP cancellation 7 June 2022, no. 3000189 (TANKS IN TOWN (fig.))
- BOIP opposition 29 February 2024, no. 2018523 (#UPYOURGAME (fig.))
- BOIP opposition 11 June 2024, no. 2018465 (ECONY)
- BOIP opposition 31 May 2024, no. 2018436 (humbee (fig.))
- BOIP cancellation 31 May 2024, no. 3000561 (HUMBEE)
- BOIP opposition 31 October 2023, no. 2017632 (PLAXEL PLASMA PEN)
- BOIP cancellation 27 November 2023, no. 3000410 (PLAXEL+ (fig.))
- BOIP cancellation 30 May 2024, no. 3000476 (Knaus (fig.))
- BOIP cancellation 30 May 2024, no. 3000477 (Knaus (fig.))
- BOIP opposition 2 July 2021, no. 2015354 (Roomer)



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