



#### Use part II – Genuine use

Useful insights for demonstrating 'genuine use'

Benelux Office for Intellectual Property

www.boip.int



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 %

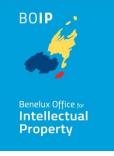


B. 40 %



C. 60 %





#### Newsflash



**BIG MAC** 



Initially revoked in its entirety

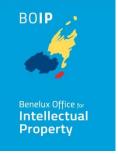


Partly upheld



Fact of common knowledge











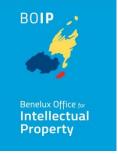
Limit number of conflicts



Not ex officio











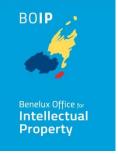


• Limit number of conflicts















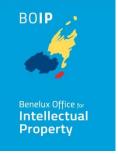
Limit number of conflicts



Not ex officio





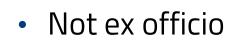






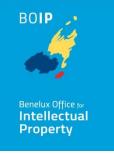


Limit number of conflicts









## Ready, steady, go

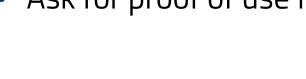






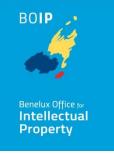
Relevant period











## Ready, steady, go





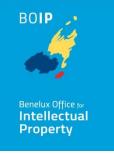


Relevant period









## Ready, steady, go



Two months deadline



Relevant period



Ask for proof of use first







#### Practical requirements







110 pages



Describe what each piece proves





#### Practical requirements



Separate request



110 pages



Describe what each piece proves







#### Practical requirements





Separate request



110 pages



• Describe what each piece proves







## Legal requirements I

Use to create or preserve an outlet





No token use









## Legal requirements I







No token use









## Legal requirements I

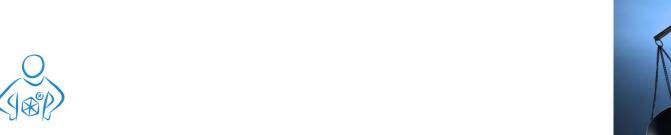






No token use

Real commercial use



Use to create or preserve an outlet





# Legal requirements II



Place



Duration



Extent



Manner of use





#### Examples

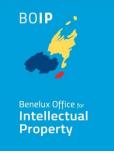




- Invoices
- Sales figures
- Catalogues
- Advertising material
- Press releases
- Social media







#### Assessment as a whole





Connect individual pieces of evidence









#### 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)



### Thank you for watching our webinar!

Please fill in the **survey** and help us improve our services.

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