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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



*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](mailto:legal@boip.int)