

AIPPI 2023 – Proving Trade Mark Use

Working group: Denmark

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Questions

I) Current law and practice

Please answer all questions in Part I on the basis of your Group's current law.

Evidence to Prove Trade Mark Use

1) Is there any quantitative or temporal threshold (minimum level) on evidence requirement to prove genuine use?

Please answer YES or NO. Please comment.

No formulated threshold, quantitative or temporal, exists.

The evidence of use must prove that the trade mark owner has - through genuine use - tried to acquire or maintain a commercial position in the relevant market. However, there is no absolute requirement as regards the length of use, frequency of use or intensity of use. Even minimal use can be sufficient, depending on the relevant market. The specific threshold depends on the circumstances of each case, but evidence of the place, time, extent, and nature of the use must be provided.

2) If there is a minimum level on evidence requirement to prove genuine use, is that minimum level different for well-known/famous/commonly known marks from a quantitative, temporal or any other perspective?

Please answer YES or NO. Please comment.

No. Owners of well-known and famous trade marks must, in principle, comply with the same requirements for proving genuine use.

Protection for well-known trade marks in accordance with Paris Convention Article 6 bis does not require proof of use.

3) Could evidence of one single advertisement likely to be sufficient to prove genuine use and if so, in what circumstances?

Please answer YES or NO. Please comment.

In most cases no.

The evidence of use must prove that the trade mark owner - through genuine use - has tried to acquire or maintain a commercial position in the relevant market, and evidence of the place, time, extent, and nature of the use must be provided. It is unlikely that one single advertisement can, in itself, satisfy these requirements. Provided a single advertisement is launched in the end of the 5 years grace period to launch inter alia a campaign which, subsequently, encompasses use which is not insubstantial, of the trade mark in question, such single advertisement might suffice as genuine use.

4) When considering genuine use, are there specific types of evidence (A) always excluded, (B) always included, or (C) given weight according to the circumstances? Please consider the following types of evidence, and select category A, B or C for each of them and explain in each type why that category applies:

a) declarations by or on behalf of the trade mark owner (e.g., corporate representatives) (c)

This will be given some weight but only if supported by independent evidence.

b) declarations by unconnected and unpaid third parties (b)

This is considered reliable and independent evidence.

c) declarations by unconnected but paid third parties (c)

This will be given weight when supported by independent evidence.

d) copies of current web pages (c)

Website printouts shall be submitted with records relating to internet traffic and records showing the countries from which the web page has been accessed.

e) copies of web pages from Wayback Machine (including entries from Wikipedia which cannot any longer be modified) (c)

In the absence of any serious and substantiated allegations that the evidence has been manipulated with, Wayback Machine will be presumed reliable, in particular when supported by independent evidence. Wikipedia cannot be treated as a reliable source of information, as Wikipedia can be amended by Wikipedia's users, including when shown by Wayback Machine evidence. Wikipedia's printouts must therefore be supported by accompanying and supplementary evidence.

f) unpaid consumer surveys (no payment to the respondents) (b)

This is considered reliable and independent evidence.

g) paid consumer surveys (in which the respondents are paid in some means) (c)

This will – if conducted by an independent survey agency of high standards – be considered reliable and independent evidence.

h) copies of invoices, bills, and accounts accounts (b)

This is considered reliable and independent evidence showing actual sales.

i) copies of advertising materials materials (b)

This is considered reliable and independent evidence showing a commercialized aim for the particular goods and/or services. Evidence of extent, duration and place of use must, however, also be provided.

j) copies of distribution contracts (c)

The copies must be supported by evidence of actual distribution i.e. sale and marketing efforts encompassing the trade mark in question.

k) evidence admitted by the adverse party in case of an *inter partes* proceeding proceeding (c)

This will be given weight when further supported by reliable and independent evidence.

Inter partes agreement of evidential value of documentation submitted in *inter partes* proceedings is, however, not binding for either authorities, third parties or courts.

l) anything else: please name and explain.

Use of the Mark in Forms Different from the Registered One and the Allowed Form Variation

5) What are the criteria when assessing the genuine use of a trade mark if the mark in actual use is in a form different from the trade mark as registered? In other words, how much form variation of the mark can be accepted in proving its genuine use?

Use of a mark in a form differing from the form in which it was registered is acceptable, provided that the differing elements do not alter the distinctive character of the mark and regardless of whether or not the trade mark in the form as used is also registered in the name of the proprietor.

The assessment of whether an alteration affects the mark's distinctive character or not, will always be discretionary and based on the specific circumstances of the mark, including its dominant and distinctive elements, the goods and/or services in question, etc.

6) What factors are considered when judging whether the use of a variation of the mark can be accepted as valid use of a registered trade mark in your jurisdiction? Please select one or more answers from the following choices and provide explanations as appropriate:

a) the distinctiveness of the registered trade mark and the variation; **X**

A highly distinctive mark will have more room for variations compared to a mark with a lower degree of distinctiveness, as the variations must maintain the distinctive character of the registered mark.

b) whether such a variation alters the distinctive character of the registered trade mark; **X**

The differing elements between the mark as used and the mark as registered must not alter the distinctive character of the mark in the form in which it is registered. For example, use is accepted if a non-dominant and descriptive element is removed or added to the mark, or if a color in the mark is changed, as colors – as a rule – do not possess distinctive character.

If a figurative mark is used in combination with a distinctive word, the variation will usually be accepted, as long as this does not change the distinctive character of the figurative mark.

A word mark can usually be used with any figurative element, without affecting the distinctive character of the mark, as the word element will appear as an independent element of the composite mark. However, this presupposes that the word is perceived as identical to the word as registered. If the word element is given a new meaning, the variation will not be accepted as proving genuine use of the mark. If a mark is used together with other distinctive word elements, the variation will be accepted, if the word mark appears as an independent element.

If a trade mark consists of several individually distinctive elements, use of only one single element cannot constitute use of the mark as a whole.

c) whether consumers view them as the same mark; **X**

If customers would still recognize the used mark as the registered mark, regardless of the minor differences and the added elements, use of the variation is accepted.

d) whether the variation of the mark is also registered;

e) other, please name _____. **X**

If two trade marks are used in combination, it must be clear that they are two separate trade marks, e.g., by using the ® symbol or TM for each registered trade mark.

7) Which of the following variations may be viewed as not altering the distinctive character of the registered trade mark in your jurisdiction?

Please choose one or more answers from the following choices:

a) in which the typeface, size, and/or colour of the registered trade mark is changed, partially or wholly; **X**

b) in which distinctive elements are added to the registered trade mark; **X**

c) in which non-distinctive elements are added to the registered trade mark; **X**

d) in which part of the distinctive element is omitted from the registered trade mark; **X**

e) in which the non-distinctive element is omitted, partially or wholly, from the registered trade mark; **X**

f) in which the word of the registered trade mark has been changed other than adding or omitting words but constitutes similar mark to the registered trade mark;

g) in which the layout of the different elements in the registered mark is changed, for instance, changing the up-and-down arrangement into left-and-right arrangement;

h) in which one composite element is omitted in case of a combined trade mark, for instance, the figurative element is omitted in use when it is a word/figurative combined trade mark;

i) in which the registered mark is used in conjunction with another mark; **X***

(* Only if the marks can be separated from each other, e.g. by using the ® symbol, TM, etc.

j) others, please name and explain _____.

Trade Mark Use on the Internet and Virtual World

8) Is the use of a mark on the internet/on a website taken into account for genuine use, and if so, what are the criteria?

Please answer YES or NO and explain.

Yes.

The standard applied when assessing evidence from the internet is no stricter than when evaluating other forms of evidence. The presence of the trade mark on a website can thus show - inter alia - the nature of its use or the fact that products or services bearing the mark have been offered to the public. However, the mere presence of a trade mark on a website is, in itself, not sufficient to prove genuine use, unless the website also shows the place, time and extent of use or this information is otherwise provided.

The evidential value of internet extracts can be strengthened by submitting supporting evidence that the specific website has been visited by a certain number of users or that orders for the relevant goods and services have been made through the website by a certain number of customers in the relevant period. Evidence in this regard could be records that are generally

kept when operating a business web page, e.g., data from Google Analytics or copies of order confirmations, although there are no requirements for actual sales to have happened for genuine use to be found.

9) Can a single use of a mark on the internet/on a website be attributed only to a specific single class of goods/services, or can it be attributed across a range of goods/services?

- a) only a specific single class of goods/services
- b) can be across a range of goods/services – please explain **X**
- c) other answer: please explain

Use of a mark on the internet/on a website is attributed to all imaginable goods and services, for which the mark is used, as long as the internet page/website shows the place, time and extent of use; the mere presence on the internet is not sufficient.

10) What is the effect (in terms of genuine use) by the use of a mark in the virtual world (such as in a Metaverse), and in particular does the use of a mark in the virtual world also signify use of the mark on physical goods/real-world services?

To the Groups' knowledge, the issue has not been subject of litigation in Denmark nor the EU yet, nor has any official guidelines or opinions been published. However, in Denmark, NFT's and virtual goods are classified in class 9, cf. 12th edition of the Nice Classification from 2023.

Considering this, it is the Group's view that use of a mark in a virtual world (such as the Metaverse) for a purely virtual product would only signify use of the mark in Nice class 9. If a real life/physical product is marketed in a virtual world with the use of a trade mark, this constitutes use of the mark for said non-virtual product and its corresponding classes.

11) What factors are taken into account when assessing whether the use of a trade mark in a virtual world (such as the metaverse) can be accepted as use in your jurisdiction in terms of the geographical coverage? Please select one or more answers from the following choices and provide explanations as appropriate:

To the Group's knowledge, the issue has not been subject to litigation in Denmark or EU yet, nor has any official guidelines or opinions been published. However, considering the guidelines and case law related to use on the internet, similar factors may apply to virtual worlds (such as the Metaverse).

- a) whether the consumers in your jurisdiction can access the virtual world; **X**

The virtual world, and the use of the trade mark, must be accessible to the relevant public of the goods or services in question before it can be taken into account when considering genuine use. The relevant public may be limited – e.g., to a certain profession or to users fulfilling certain requirements – as long as the virtual world is not entirely private.

- b) whether there are users or participants from your jurisdiction in the virtual world; **X**

- c) whether the virtual world provides the option of using a local language of your jurisdiction; **X**

- d) whether the virtual world provides the option of using a local currency of your jurisdiction; **X**

- e) whether the virtual world provides an environment mimicking the local real environment of your jurisdiction;

As this has not been relevant when assessing use on the internet, we have no basis for assessing whether it would be relevant for use in a virtual world.

- f) whether the organization who created or provides the virtual world is located in your jurisdiction;

g) whether any physical facilities used to provide the virtual world are located in your jurisdiction;

h) whether there are any promotional activities targeting consumers in your jurisdiction by the user of the trade mark or the provider of the virtual world; **X**

It is a requirement that a connection between the virtual world and the promotional activities in the real world can be established.

i) other, namely

Justification of Non-use

12) What can be the justification of non-use in your jurisdiction? Please select one or more answers from the following choices and provide explanations as appropriate:

a) None;

b) Force majeure; **yes**

c) Policy restriction in your jurisdiction; **yes**

d) Policy restriction in other jurisdictions, for instance in the jurisdiction of the trade mark proprietor if it is out of your jurisdiction; **yes**

e) Bankruptcy/insolvency of the trade mark proprietor; **no**

f) The trade mark proprietor being in financial difficulty (but not insolvent); **no**

g) Requirement of a license or marketing authorization which takes long time to obtain; **yes**

h) A still-pending trade mark transfer; **yes**

i) A still-pending trade mark dispute regarding ownership, validity, etc.; **no**

j) A sufficiently high existing reputation of the trade mark, such that further use is commercially pointless/futile because it would not significantly increase or enhance that reputation; **no**

k) Others, please name _____.

Justification of non-use in Denmark mainly relates to circumstances which are external and unconnected to the trade mark owner. These may be matters that affect the industry as a whole, for example import restrictions, legislative prohibitions and restrictions or matters that can be characterized as force majeure, such as acts of war.

13) Would the burden of proof to prove the justification be reduced if it relates to a widely known event, such as the COVID 19 pandemic?

Please answer YES or NO and explain.

Yes, probably.

There is, however, no case-law or official guidelines from the Danish authorities in relation to Covid.

II) Policy considerations and proposals for improvements of your Group's current law

14) Do you consider your Group's current law or practice relating to genuine use and proving trade mark use adequate or do you consider that the law should be changed? Please explain.

We consider the current law and practice to be adequate, yet more harmonization within the EU would be beneficial for predictability and transparency for trade mark owners.

15) Are the rules regarding genuine use and proving use adequate for the issue arising in relation to the use of trade marks in the virtual world? If not, what changes should be made? Please explain.

We consider the rules adequate, but please see below under 16 and 17.

16) If there are specific reasons for disqualifying online/internet use in your Group's law so that it does not count as genuine use of a mark, please explain those reasons.

No specific reasons, reference is made to answer and explanation to question 8)

17) Are there any other policy considerations and/or proposals for improvement to your Group's current law falling within the scope of this Study Question?

Residual protection should under certain circumstances fall under the rules of the Marketing Practices Act.

A two-step procedure is proposed for improving current law, cf. Answer to question 19)

III) Proposals for harmonisation

18) Do you believe that there should be harmonisation in relation to issues regarding genuine use and proving use? Please answer YES or NO.

Yes

If YES, please respond to the following questions without regard to your Group's current law or practice. Even if NO, please address the following questions to the extent your Group considers your Group's current law or practice could be improved.

Evidence to Prove Trade Mark Use

19) Should there any quantitative or temporal threshold (minimum level) on evidence requirement to prove genuine use?

Please answer YES or NO. Please comment.

No.

However, a two-step procedure when submitting proof of use could be beneficial. As no specific threshold applies, it is not always certain how much evidence a trade mark owner must submit to comply with the requirement to provide evidence of genuine use of a trade mark. Consequently, the trade mark owner may in some cases file a larger amount of evidence than necessary.

A two-step procedure, where the trade mark owner will be given an opportunity to file additional evidence if this is found necessary by the examiner, could prevent both the trade mark owner and the examiner from spending unnecessary resources.

Furthermore, an access to file further evidence is sometimes granted on an informal basis. It would strengthen the legal certainty and ensure equal treatment if a formal two-step procedure is applied.

20) When considering proof of genuine use, should there be specific types of evidence (A) always excluded, (B) always included, or (C) given weight according to the circumstances? If yes, please give the types of evidence for A,B and C above and explain why they should be treated differently.

Yes cf. question 21 below.

21) Please consider the following types of evidence, and select category A, B or C for each of them and explain for each type why that category should apply:

a) declarations by or on behalf of the trade mark owner (e.g. corporate representatives) (affidavits) (c)

This should be given weight when supported by independent evidence.

b) declarations by unconnected and unpaid third parties (b)

This should be considered reliable and independent evidence.

c) declarations by unconnected but paid third parties (c)

This should be given weight when supported by independent evidence.

d) copies of current web pages (c)

This should be given weight when supported by independent evidence. Website printouts shall be submitted together with records relating to internet traffic and records showing the countries from which the web page has been accessed.

e) copies of web pages from Wayback Machine (including entries from Wikipedia which cannot any longer be modified) (c)

In the absence of any serious and substantiated allegations that the evidence has been manipulated with, Wayback Machine should be presumed reliable, in particular when supported by independent evidence. Wikipedia cannot be treated as a reliable source of information, as Wikipedia can be amended by Wikipedia's users, including when shown by Wayback Machine evidence. Wikipedia's printouts should therefore be supported by accompanying and supplementary evidence.

f) consumer surveys (c)

This should – if conducted by an independent survey agency of high standards – be considered reliable and independent evidence.

g) copies of invoices, bills, and accounts (b)

This should be considered reliable and independent evidence showing actual sales.

h) copies of advertising materials materials (b)

This should be considered reliable and independent evidence showing a commercialized aim for the particular goods and/or services.

i) catalogues materials (b)

This should be considered reliable and independent evidence showing a commercialized aim for the particular goods and/or services.

j) copies of distribution contracts (c)

The copies must be supported by evidence of actual distribution i.e., sale and marketing efforts encompassing the trade mark in question.

k) witness evidence (c)

This should be given weight but only when supported by other independent evidence.

l) private documents, including private opinions (c)

This should be given weight but only when supported by other independent evidence.

m) anything else: please name and explain.

22) Should reputable/well known/famous/historical trade marks be treated differently in terms of proof? If so, in what respects?

No.

All trade marks, also reputable/well-known/famous/historical trade marks, should comply with the requirements for proving genuine use. If a historical trade mark is no longer being used, and the trade mark owner is therefore unable to comply with the requirements, the same terms should apply, as the trade mark registers must reflect the reality of which trade marks are being used.

23) Please explain what should be probative value of the following:

a. a single use of a mark on the internet/on a website

The probative value of this should be low, as it does not show a genuine attempt to acquire or maintain a commercial position in the relevant market.

b. mere advertising (real commercial advertisement rather than just advertising the ownership or information of the trade mark) – with no sales

The probative value depends on the circumstances. If it is a very specialized product with very limited sales channels, it could be sufficient if the trade mark owner proves the attempt to acquire or maintain a commercial position on the relevant market.

24) Please explain if evidence of use should include specific information, for example place, time, extent or nature of use? If yes, should all the evidence show all of the above information or whether this is not necessary and the evidence should be considered and assessed as a whole?

Evidence to prove genuine use should include information about the place, time, extent, and nature of use to validate that the evidence is proving use for the correct time period, the correct goods/services, the correct geographical place etc. A separate assessment of the various relevant factors, each considered in isolation, is not suitable but should be assessed as a whole.

25) Should evidence of use be the same or different in courts and IP offices/administrative tribunals?

The requirements for proving genuine use should be the same in courts and administrative tribunals, as the purpose of the requirements for proving use remains the same. Within the court system, there are additional types of evidence which can

be presented, e.g., witness evidence. The Group believes this difference is acceptable, as witness evidence in administrative tribunals are usually written witness statements, which are harder for the IP offices to assess, as they do not have the witness in front of them.

Use of the Mark in Forms Different from the Registered One and the Allowed Form Variation

26) What should be the criteria when assessing the genuine use of a trade mark if the mark in actual use is in a form different from the trade mark as registered? In other words, how much form variation of the mark should be accepted in proving its genuine use?

The assessment should always be discretionary and based on the specific circumstances of the mark, including its dominant and distinctive elements and the variation used, but also the goods and/or services concerned as well as the relevant public and their level of attention. Considering this, the Group believes that the current national law and practice is fair, as it allows the trade mark owner to make certain changes necessary to adapt to an ever-evolving market, without damaging the possibility of proving genuine use.

Notwithstanding the above, and regardless of the relevant factors to consider listed in question 6, it should – as a minimum – be possible for the relevant consumer to perceive the original mark and the altered mark as originating from the same undertaking. Furthermore, the Group believes that the relevant consumer must perceive the altered mark at least as a variation of the original mark and not as a different mark.

27) What factors should be considered when judging whether the use of a variation of the mark can be accepted as valid use of a registered trade mark? Please select one or more answers from the following choices and provide explanations as appropriate:

a) the distinctiveness of the registered trade mark and the variation; **X**

Highly distinctive marks should leave more room for variations compared to marks with a low degree of distinctiveness. It should factor in that a mark with a low degree of distinctiveness might not have been approved for registration by the trade mark office if the variation had been applied instead of the registered mark, as the registered mark may have just barely made the threshold for distinctiveness.

b) whether such a variation alters the distinctive character of the registered trade mark; **X**

c) whether consumers view them as the same mark; **X**

This should be one of the most important factors to consider as the basic function of a trade mark is to communicate commercial origin. If a variation of a trade mark is perceived as the registered trade mark by the relevant public despite their differences, this factor should be giving a high relevance in the overall assessment.

d) whether the variation of the mark is also registered;

e) the features of the industry in which the trade mark is used and the business customs of the industry in relation to trade mark use; **X**

Certain industries may have a habit or tradition of using their marks in a certain way, including variations of the mark. If the entire industry uses variations of their marks, and there is a common understanding hereof, it should be a factor in the assessment of use.

f) other, please name _____.

28) Which of the following variations should be viewed as not altering the distinctive character of the registered trade mark?

Please choose one or more answers from the following choices:

a) in which the font, size, and/or colour of the registered trade mark is changed, partially or wholly; **X**

Provided that the changes do not affect the overall perception of the mark; e.g. the main word element in a mark being perceived as a tagline due to smaller size and the tagline being perceived as the main word element due to bigger size.

b) in which distinctive elements are added to the registered trade mark;

c) in which non-distinctive elements are added to the registered trade mark; **X**

d) in which part of the distinctive element is omitted from the registered trade mark;

e) in which the non-distinctive element is omitted, partially or wholly, from the registered trade mark; **x**

f) in which the word of the registered trade mark has been changed other than adding or omitting words but constitutes similar mark to the registered trade mark;

g) in which the layout of the different elements in the registered mark is changed, for instance, changing the up-and-down arrangement into left-and-right arrangement;

h) in which one composite element is omitted in case of a combined trade mark, for instance, the figurative element is omitted in use when it is a word/figurative combined trade mark; **x**

This could be the case, but it depends on the actual change.

i) in which the registered mark is used in conjunction with another mark; **X**

Provided that it is clear to the relevant public that they are two separate marks.

j) others, please name and explain _____.

Trade Mark Use on the Internet and Virtual World

29) Should the use of a mark on the internet/on a website be taken into account for genuine use, and if so, what should be the criteria?

Please answer YES or NO and explain.

Yes. The technological development requires that use on the internet/on a website is taken into account when considering genuine use. Today, many businesses only use their marks on the internet/on a website and trade mark regulation must account for this for the trade mark system to maintain its practical value.

However, when assessing the use of a mark, the trade mark offices must be aware that it is easy to manipulate a website and that such manipulation – in many cases – does not require in-depth technological knowledge but is achievable for everyday users of the internet. Therefore, the evidence must be properly dated (e.g., from an independent media as the Internet Archive) and supported by documentation from third parties (e.g., Google Analytics or similar).

30) Should a single use of a mark on the internet/on a website be attributed only to a specific single class of goods/services, or should it be attributed across a range of goods/services?

a) only a specific single class of goods/services

b) should be possibly across a range of goods/services – please explain **X**

Websites often offer more than just one range of goods/services and the use of the mark should therefore be attributed to all the goods/services which the mark is used for on the website, as long as the use is clearly related to the specific goods/services.

c) other answer: please explain

31) What should be the effect (in terms of genuine use) by the use of a mark in the virtual world (such as in a Metaverse), and in particular should the use of a mark in the virtual world also signify use of the mark on physical goods/real-world services?

As stated above, it is the Group's view that use of a mark in a virtual world (such as the Metaverse) for a purely virtual product only signifies the use of the mark in Nice class 9. However, if a real life/physical product is marketed in a virtual world with the use of a trade mark, this would constitute use of the mark for said non-virtual product in its corresponding classes.

An example of this could be a banner ad in a virtual world promoting a product being sold in the real world in the relevant jurisdiction. One could also imagine the possibility of someday ordering physical goods, like takeaway food, through a virtual world. In that case, use of the mark in the virtual world – as it is related to a real-life good or service – should constitute use of the physical good/service as well.

32) What factors should be taken into account when assessing whether the use of a trade mark in a virtual world (such as the metaverse) can be accepted as use in a jurisdiction in terms of the geographical coverage? Please select one or more answers from the following choices and provide explanations as appropriate:

a) whether the consumers in your jurisdiction can access the virtual world; **X**

The relevant public must be able to access the virtual world.

b) whether there are users or participants from the jurisdiction in the virtual world; **X**

Given that proof of use in the form of websites must be accompanied by records from e.g. Google Analytics showing the countries from which the website has been accessed, proof of use in a virtual world must also require supporting evidence showing that the virtual world has in fact been accessed by users in the relevant jurisdiction.

c) whether the virtual world provides the option of using a local language of the jurisdiction; **X**

The option of using a local language should affect the assessment positively, as this indicates the mark owner's intention of marketing the mark to local consumers. Lack of the option for a local language should, however, not necessarily affect the assessment negatively, as use in English or another language widely understood by the relevant consumers should be efficient (as is the case today with use in the physical world).

d) whether the virtual world provides the option of using a local currency of the jurisdiction; **X**

This should affect the assessment positively, but lack of local currency should not affect the assessment negatively.

e) whether the virtual world provides an environment mimicking the local real environment of the jurisdiction;

f) whether the organization who created or provides the virtual world is located in the jurisdiction;

g) whether any physical facilities used to provide the virtual world are located in the jurisdiction;

h) whether there are any promotional activities targeting consumers in the jurisdiction by the user of the trade mark or the provider of the virtual world; **X**

i) other, namely

Justification of Non-use

33) What should be valid justifications of non-use? Please select one or more answers from the following choices and provide explanations as appropriate:

- a) none;
- b) force majeure; **yes**
- c) policy restriction in the jurisdiction where the trade mark is registered; **yes**
- d) policy restriction in other jurisdictions, for instance in the jurisdiction of the trade mark proprietor if it is out of trade mark registration jurisdiction; **yes**
- e) bankruptcy/insolvency of the trade mark proprietor; **no**
- f) the trade mark proprietor being in financial difficulty **no**
- g) requirement of a license or marketing authorization which takes long time to obtain; **yes**
- h) in the process of a trade mark transfer; **no**
- i) in the process of a trade mark dispute regarding ownership, validity, etc.; **yes**
- j) a sufficiently high existing reputation of the trade mark, such that further use is commercially pointless/futile because it would not significantly increase or enhance that reputation; **no**
- k) others, please name _____.

Valid justifications should only be circumstances arising independently of the will of the owner of the trade mark that constitute an obstacle to the use of the trade mark.

34) Should the burden of proof to prove the justification be reduced if it relates to a widely known event, such as the COVID 19 pandemic?

Please answer YES or NO and explain.

Yes.

It is reasonable that the burden of proof to prove the justification could be reduced in case of a widely known event as regards providing evidence of the existence of the event. However, the owner must prove that the event has had an impact on the ability to prove use but not the event in itself.

Others

35) Please comment on any additional issues concerning any aspect of trade mark use you consider relevant to this Study Question.

International harmonization of the time-period of non-use of a trade mark before vulnerability for cancellation due to non-use.

36) Please indicate which industry/cultural sector views provided by in-house counsel are included in your Group's answers to Part III.

Life-science / Pharma