

## Question Q218

**National Group:** Hungary

**Title:** **The requirement of genuine use of trademarks for maintaining protection**

**Contributors:** Dr. Vilmos BACHER, Dr. István GÖDÖLLE, Dr. Bálint HALÁSZ, Dr. Judit LANTOS, Dr. Áron Márk LÁSZLÓ, Dr. Éva ULVICZKI, Dr. Éva SZIGETI, Dr. Emília ZUBORNYÁK

**Reporter within Working Committee:** Dr. Áron Márk LÁSZLÓ

**Date:** 1 April 2011

### Questions

#### I. Analysis of current law and case law

The Groups are invited to answer the following questions under their national laws:

1. Is genuine use a requirement for maintaining protection? What is the purpose of requiring genuine use? Is it to keep the register uncluttered and to thereby allow for new proprietors to make use of a "limited" supply of possible marks? Is the purpose of requiring genuine use to protect consumers from confusion as to the source of origin of the goods or services? Or are there multiple purposes?

Yes, genuine use is a requirement for maintaining the protection of trademarks in Hungary. According to Article 18 of the Act XI of 1997 on the Protection of Trademarks and Geographical Indications (hereinafter: **TMA**) *if, within a period of five years following the date of registration, the proprietor has not commenced actual use of the trademark in the domestic territory in connection with the goods or services for which it is registered, or if such use has been suspended during an uninterrupted period of five years, the trademark protection shall be subject to the sanctions provided for in this Act [Article 4(3); Article 5(2)(b); Article 30(d); Article 33(2)(a); Article 34; Article 61/E; Article 73(2)], unless the proprietor duly justifies non-use.*

The sanctions under the TMA include revocation and non-consideration as prior trademark in opposition and cancellation proceedings.

As regards the purposes of the use requirement, the ministerial reasoning to Article 18(1) TMA sets forth that "taking into consideration the present market relations and the sharp increase in trademark registration activity due to the increase of foreign business interests in Hungary, the introduction of more unambiguous, in particular cases stricter use requirements is necessary in the new act".

This can be interpreted that it is getting more and more difficult for new economic operators to find suitable available trademarks for introduction, because of the large number of unused

trademarks existing in different registers. The clearance of unused trademarks from the registers is therefore necessary. The registers should be kept transparent, updated and uncluttered, in order to reduce and manage the conflicts (infringement, revocation, opposition and invalidity actions). Genuine use means that the trademark must be present on the market in the territory where it is protected, exercising its essential function, which is to identify and guarantee the commercial origin of the goods or services for which it is registered, thus protecting consumers against confusion.

## 2. What constitutes genuine use of a trademark?

Article 18 TMA quoted above requires “actual use” of the trademark in order to maintain protection. The concept of “actual use” is not defined in the TMA, however, it seems that what is considered as “genuine use” in the international literature, is considered “actual use” in Hungarian case law and literature. Therefore, we will use the term “genuine use” for what is stipulated as “actual use” in the TMA.

According to Article 12 TMA, on the basis of the exclusive right of use, the trademark proprietor shall be entitled to prevent any person not having his consent from using the trademark in the course of trade.

While the proprietor’s exclusive right relates to any use in the course of trade, except uses falling under the provisions on limitations of trademark protection, it is though that the scope of genuine use is somewhat narrower. It follows from the purpose of the use requirement discussed under Question 1 that the genuine use shall not include “token use” for the sole purpose of maintaining the trademark protection. Otherwise, trademark proprietors could easily circumvent the sanctions of non-use.

We are not aware of any Hungarian case law where the concept of genuine use was defined or a token use was established.

The use requirement of the TMA is in harmony with that of the European Trademark Directive (Article 10). The ECJ established in *Ansul BV v. Ajax Brandbeveiliging BV* (Case C-40/01) that “genuine use therefore means actual use of the mark” (paragraph 35) and that “genuine use must therefore be understood to denote use that is not merely token, serving solely to preserve the rights conferred by the mark” (paragraph 36).

## 3. Is use “as a mark” required for maintaining protection? Is use as a business name, use in advertising or use on the Internet sufficient? Is use of a mark in merchandising genuine use for the original products? (For instance, is use of the movie title *Star Trek*, registered for clothing and used on the front of a T-shirt, genuine use of the mark for clothing?)

For maintaining protection genuine use in the course of trade is necessary. Private use or internal use within the undertaking concerned, or any use outside the course of trade taken in a broad sense, would not fulfil the functions of a trademark. Therefore, we think, such use cannot be deemed genuine use necessary for maintaining trademark protection.

The use as a business name or in advertising may qualify as “genuine use”, depending on the circumstances of the case.

The use of a trademark as a domain name primarily identifies the proprietor of the website. In case of commercial activity under the domain, e.g. E-commerce, such use may constitute genuine use of the trademark depending on the circumstances.

We are of the opinion that the use of a trademark in merchandizing may also qualify as “genuine use”. In this respect we refer to the judgment of the ECJ in *Arsenal Football Club plc v Matthew Reed* (C-206/01) establishing that the use of a trademark if perceived as a badge of support for or loyalty or affiliation to the trademark proprietor shall be deemed as a use in the course of trade, therefore, it may constitute trademark infringement.

We are not aware of any Hungarian case law on these specific issues.

4. What degree of use is required for maintaining protection? Is token use sufficient? Is minimal use sufficient?

The TMA requires genuine use of a trademark in connection with goods or services for which it has been registered.

As discussed under Question 2, a token use cannot be considered sufficient use for maintaining protection. Nevertheless, we are not aware of any Hungarian case law in this regard.

The issue, whether minimal use is sufficient, depends on the circumstances of the case. The Metropolitan Court of Appeal in the CARRERA case (No. 8. Pkf. 26.369/2008/3) examined whether relatively low sale figures could constitute genuine use. In this case, the trademark was registered for bicycles in class 12. The price of the bicycles marketed was relative high. The trademark proprietor sold “only” eight pieces of bicycles in a period of two and a half years. However, the Court established that even this relative low amount of products sold constituted genuine use.

In another case, the Metropolitan Court accepted a single use of the trademark Château LAFITE ROTHSCHILD for wines in class 33 for maintaining protection. It was taken into account that the wine marketed under this trademark is a very expensive wine of high repute (No. 3.Pk.27.369/1999).

5. Is use in the course of trade required? Does use by non profit-organisations constitute genuine use? Does use in the form of test marketing or use in clinical trials constitute genuine use? Does use in form of free promotional goods which are given to purchasers of other goods of the trademark owner constitute genuine use? Does internal use constitute genuine use?

For genuine use a use in the course of trade is required. The Metropolitan Court of Appeal in the FILM+ case (No. 8.Pkf.26.148/2008/12) ruled that flyers made for marketing purposes per se are not sufficient to prove genuine use. In this case the flyers also contained a date which, according to the trademark proprietor, proved that they were printed and distributed on a particular day or period of time. However, the Court stressed that the trademark proprietor should have evidenced that the flyers had been actually distributed to business partners or consumers in order to prove genuine use. The Court also noted that the mere fact that there is a date printed on the flyer does not sufficiently prove that the flyer was actually produced or distributed on that particular date or within a particular period of time.

As regards the use by non-profit organizations, there is no Hungarian case law. Nevertheless, non-profit organizations are allowed to participate in the trade of goods and services, and if a non-profit organization uses the trademark in the course of its normal activity even for goods or services provided free of charge, we believe that such use would be accepted as genuine use by the Court. Otherwise, beneficial associations and church organizations could not maintain their trademarks for such services. The CJEU (ECJ) established guiding principles in *Verein Radetzky-Orden v. Bundesvereinigung Kameradschaft ‘Feldmarschall Radetzky’* (C-442/07) for genuine use by non-profit-making associations.

As regards test marketing or use in clinical trials, the TMA requires genuine use of the trademark in connection with the goods or services for which it has been registered. Therefore, it is likely that use in the form of test marketing or use in clinical trials constitute genuine use, if a trademark is able to fulfil its main functions. Please note, however, that there is no case law in this respect.

Concerning free promotional goods, there is no Hungarian case law on use in form of free promotional goods, which are given to purchasers of other goods of the trademark proprietor. It is likely, that Hungarian courts would follow the argumentation of CJEU (ECJ) in *Silberquelle GmbH v. Maselli-Strickmode GmbH* (C-495/07) in a case, where the circumstances are identical with or highly similar to this CJEU case. This means that it is likely that Hungarian courts would not consider use of a trademark in respect of the free

promotional items as genuine use. On the other hand, a case has been reported, where the use of promotional perfume testers was held to infringing on a trademark.

There is no case law in Hungary on internal use either. We are of the view that Hungarian courts would follow the argumentation of CJEU (ECJ) in *Ansul BV v. Ajax Brandbeveiliging BV* (C-40/01) in a case, where the circumstances are identical with or highly similar to the CJEU case. Therefore, it is likely that Hungarian courts would not accept purely private or internal use as genuine use.

6. What is the required geographic extent of use? Is use only in one part (or a state in the case of confederation) of the country sufficient? Is use of the CTM in only one EU member state sufficient? Is use only in relation to goods to be exported sufficient? Is use in duty free zones considered to be genuine use?

In accordance with Article 18(1) TMA, the trade mark shall be used "*in the domestic territory*" which means that a Hungarian trademark shall be used in the territory of Hungary.

Hungary is a centrally organised country, not a confederation. The issue of the geographical extent of the use within Hungary is adjudged on a case by case basis, no general rule can be established. It shall be noted, however, that in a case concerning acquired distinctiveness, the Court has not accepted the yearly four-week long use of a sign in only one square of the capital city (Vörösmarty tér, Budapest).

As regards the use of a CTM in only one EU country, there was an opposition case where the Hungarian Intellectual Property Office (*HIPO*) did not accept the use of a CTM in a single country, i.e. in the UK, as genuine use (Case No. M0900377 "C City Hotel"). There was no appeal to the Metropolitan Court, so the decision has become final.

As far as exported goods are concerned, on the basis of Article 18(2)(b) TMA "*the placement of the trademark on goods or on their packaging within the domestic territory exclusively for the purpose of export*" shall also be deemed genuine use in the domestic territory.

We are aware of a pending case where the first instance Court has accepted use in a duty free zone, however, the first instance decision has been appealed. Although it is a trade mark infringement case, the Case C-495/09- Nokia Corporation/Her Majesty's Commissioners of Revenue and Customs currently pending before the ECJ could affect the case law.

7. Does genuine use have to take place in the exact form in which the mark is registered? Is use in a different form sufficient? What difference is considered permissible? What if (distinctive) elements are added or omitted? Is use of a mark in black and white instead of colour sufficient (in case of marks with a colour claim) and vice versa?

According to Article 18(2)(a) TMA "*the use of the trademark in a form differing from the registered form only in elements which do not alter the distinctive character*" shall also be deemed genuine use of the trademark in the domestic territory.

The courts in Hungary take into consideration all the relevant factors when they apply the above rule, they examine the trademark in question to what extent it differs from the registered form of the trademark.

In case of a combined word and device trademark, the dominant element of such a trademark has to be used. In a recent case (CARRERA, No. 8.Pkf.26.369/2008/3) the Metropolitan Court of Appeal established that *the trademark shows the word element "CARRERA" with bold capital letters on a black background of an irregular square shape having a peak at the right bottom angle. The device element which is the dark coloured background of the word element, does not have distinctive character, as the word element "CARRERA" written with capital letters without the use of the irregular trapezoid shape gives the same impression to the consumers as it was used in the form of the registration. Therefore, in the given case the word element "CARRERA" written with capital letters has distinctive character within the trademark itself, whereas the other element – the device*

*element – of the trademark that is the dark coloured background of irregular shape, does not affect the distinctive character of the trademark.* In this case, the genuine use of the trademark was accepted.

In another case (MacCoffee, No. 3.Pk.20.681/2009/6.) the Metropolitan Court did not accept the proof of use. In this case both the word and the device elements were dominant and the trademark proprietor could not prove the use of the device element in the registered form, further the trademark was used in a different colour as registered. The Metropolitan Court established that *the referred Articles of the TMA do not require the use of similar designations but that of identical designations; it allows for minimal differences based on necessity, but not for making significant modifications due to individual decisions and taste. This interpretation is in accordance with the strict practice of the European Court of Justice and OHIM [...]. On the basis of this, the modifications applied by the trademark proprietor affecting the shape and size of the packaging are far beyond what is allowed by the law. It has not been evidenced and is not viable that the packaging, and promotional materials or the advertising board – by their nature – would limit the use of the trademark in the registered form so that the trademark proprietor should repeatedly distract from the corporate identity offered by the trademark e.g. to delete the device element or to handle it as secondary element and to use the word element “MacCoffee” in a dominant position.*

If a trademark is registered in black and white, the use requirement is fulfilled if the trademark is used in any colour. The Metropolitan Court stated in a recent decision (MULTIKID vs MULTIBIC coloured device, No. 1.Pk.22.796/2008/5.) that *the court finds it necessary to emphasize that the yellowish and orangeish colours of the sign are dominant, meanwhile the colour of the opponent's trademark is black and white; this means that the opponent can use its trademark in any colour – including yellow -, in which case the colour difference will not provide enough distinctive character.* In our interpretation, according to the current case law, if a trade mark is registered in a specific colour, the use requirement is fulfilled if it is used in that colour in which it was registered or in a similar colour. It means it does not cover the black and white version. On the other hand, if the trademark is registered in black and white, the use requirement is fulfilled by use in any colour.

8. Does the mark have to be used in respect all of the registered goods and services? What if mark is used in respect of ingredients and spare parts or after sales services and repairs, rather than registered goods and services? What is the effect of use which is limited to a part of the registered goods or services? What is the effect of use limited to specific goods or services?

As a principle, the trademark has to be used with respect to all of the registered goods and services.

We are not aware of any case law concerning use in respect of ingredient and spare parts, or after sales services and repairs rather than registered goods and services.

As regards the effect of genuine use which is limited to a part of the registered goods or services or to specific goods or services, according to Article 34(1) TMA, the trademark protection may terminate due to lack of use for the other part of the goods or services for which the trademark has not been used, or the trademark will not be considered for the other part of the goods or services in opposition or cancellation proceedings.

The decision T-483/04 (Armour Pharmaceutical/OHIM - Teva Pharmaceutical Industries) of the CFI addresses this issue. In a recent decision of the HIPO, genuine use for axles and cross-country military vehicles was accepted to maintain protection for the entire class 12, however, this decision is not final.

9. Evidence of use: How does one prove genuine use? Is advertising material sufficient? Are sales figures sufficient? Is survey evidence required? Are the acceptable specimens for proving genuine use different for goods and services? Who has burden of proof for genuine use?

According to Article 75(2) TMA, in revocation proceedings for lack of use “*the burden of proof that the trademark was used in accordance with the requirements of Article 18 shall be on the proprietor of the trademark.*” If the trademark proprietor opposes a trademark application or attacks a registered trademark in cancellation proceedings, the onus of proof that his trademark was genuinely used lies with him [Articles 61/E(1) and 73(2) TMA].

Theoretically, any means of evidence can be helpful for the proof of use. In practice, mostly documentary evidences are provided. The trademark proprietor shall present documents that demonstrate the nature of the goods or services for which the trademark was used, the place and time of the use, and the extent of the use.

Generally, the means of evidence are specimens, brochures, sales data, invoices, business correspondence and/or advertising material. It is not common to use survey evidences for this purpose. For service marks, the use of the mark can be proven by brochures, business papers and advertising material.

10. If the trademark owner has a proper reason for not having put his mark to genuine use, will he be excused? What constitutes a proper reason for non-use? If the non-use is excusable, is there a maximum time limit? If so, is the time limit dependant upon the nature of the excuse?

Yes, in accordance with the national legislation the failure to put the trademark into genuine use can be excused (Article 18(1) TMA “[...] *unless the proprietor is able to demonstrate due cause for such failure to use the trademark.*”)

The case law is rather limited in connection with the proper reason for non-use.

In the FILM+ case (Metropolitan Court of Appeal, FILM+, No. 8.Pkf.26.148/2008/12), the trademark was registered for telecommunication and related services (entertainment, broadcasting, creation of movies and television programs etc.). The trademark proprietor intended to apply the trademark as a name of a thematic television channel planned to be launched later. During the five-year grace period, however, the same sign was registered as a name of a television channel on behalf of a third party before the National Radio and Television Commission (licensing and registration body of broadcasting services). Since Article 14 of the Act I of 1986 on Media Activities, and Articles 90, 96 and 113 of Act I of 1996 on Radio and Television Broadcasting ruled that only one medium may operate under a given name to avoid confusion on the part of the public, the Metropolitan Court of Appeal held that this rendered the use of the trademark by the trademark proprietor legally impossible and accepted the excuse for non-use.

11. Within which period of time does use have to take place?

Under Article 18(1) TMA, the trademark shall be revoked if it is not used within a period of five years from the date of registration, or for a period of five consecutive years.

The trademark shall be cancelled if it has not been used for a period of five consecutive years preceding the filing date of the request for revocation.

12. Does use of the mark by licensee or distributor constitute genuine use for maintaining protection? If so, does the license have to be registered? If so, are there any requirements to be met by the trademark holder (the licensor) to maintain the trademark (e.g. quality controls, inspections or retaining a contractual right to control or inspect)?

Yes, Article 18(3) TMA stipulates that “*...use of the trademark with the consent of the proprietor shall be considered as use by the proprietor.*”

The registration of the trademark proprietor's license is not required by the law and also not necessary according to the available case law. Nevertheless, the Metropolitan Court of Appeal (Metropolitan Court of Appeal, FILM PLUS, 8.Pkf.26.492/2008/10.) did not accept the unilateral declaration of the trademark proprietor, ongoing negotiations between the parties on license agreement, as proper proof for the existence of a trademark license, as well as it

did not find duly verified the license on the basis of the evidenced implied conduct of the parties.

There are no requirements established by either TMA or case law to be met by the trademark proprietor in connection with the maintenance of the trademark.

13. What are the consequences if a mark has not been put to genuine use? Who may apply for a cancellation and in what circumstances? Is a defendant in opposition proceedings entitled to challenge the opponent and demand proof of genuine use of the earlier mark? If so, under what circumstances?

If a trademark has not been put to genuine use, it may be subject of revocation. Revocation proceedings may be started by anybody with the HIPO. Revocation has retroactive effect to either the filing date of the request or to the date of priority of a conflicting later trademark, whichever is earlier. Either party to the proceedings may request that the revocation should have retroactive effect to any earlier date on which non-use can be evidenced. The entity requesting revocation does not have to provide evidence, the trademark proprietor has to prove that the trademark was in fact used [Article 75(2) TMA].

Lack of genuine use may also result in revocation of the trademark in respect of some or all of the goods or services for which the trademark is registered, depending on whether non-use exists in respect of all or some of the goods or services for which the trademark is registered.

If a request for revocation of a trademark due to non-use is rejected by a final ruling, this precludes third parties to request revocation on the same grounds in respect of the same trademark, unless new facts are referred to.

In opposition proceedings, the applicant is entitled to challenge the opponent and demand proof of genuine use of the earlier mark. There are no special circumstances for this kind of challenge, nevertheless the applicant has to submit this request in due course in the opposition proceedings. During the proceedings, the opponent has to prove that its trademark, on which the opposition is based, was put to genuine use in the period of five years before the date of the publication of the trademark application. Should the opposing party fail to submit reasonable evidence on genuine use, the opposition will be rejected.

14. Assuming a trade mark owner has not made genuine use of his mark within the prescribed period, can he cure this vulnerable position by starting to use in a genuine way after this period and will he then be safe against requests for cancellation or revocation? Is it allowed to re-register a trade mark that has not been genuinely used in the prescribed period of time?

As regards so-called "dormant trademarks", under Article 34(2) TMA, the termination of trademark due to lack of use cannot be established, if, following the period of time specified in Subsection (1) of Article 18, but prior to the filing of the revocation of trademark protection due to lack of use, genuine use of the trademark begins or resumes. This provision shall not apply if the proprietor only begins or resumes genuine use of the trademark within a period of three months preceding the filing of the request for revocation for lack of use after becoming aware that such a request will be filed.

In other words, if the trademark proprietor commences the genuine use of a previously non-used trademark, the trademark cannot be revoked until it is used. This also means that, if the use of such a "dormant" trademark is commenced, the proprietor can successfully request the revocation of a third party trademark, which was applied for at the time when the dormant mark would have been susceptible for revocation for non-use. This rule of the Hungarian Trademark Act is different from the "double use" requirement of the Community Trademark Regulation.

The re-registration of non-used trademarks is not forbidden by law. As regards practice, we are not aware of any decision on the acceptability of the re-registration of a trademark that has not been genuinely used.

## II. Proposals for adoption of uniform rules

The Groups are invited to put forward proposals for adoption of uniform rules as concerns the requirement of genuine use for maintaining protection. More specifically, the Groups are invited to answer the following questions:

15. What should the purpose of the uniform rules be? Should the rules address either or both purposes of protecting the consumers from confusion and of keeping the register uncluttered for new/potential trademark registrants?

We advocate the importance of both purposes, bearing in mind that the one does not exclude the other.

16. Should there in your opinion be a threshold to the “genuine use”, such as a *de minimis rule* for a trade mark? If so, what would be suitable threshold? Should the rule be construed differently for large co-operations than for small businesses?

Each case should be examined on a case by case basis.

17. To what extent should it be possible to use a mark that differs from the representation in the register and maintain protection? Should it even be possible to add or omit elements of a registered figurative mark and maintain the trademark? How should the system ensure that registers are reliable for third parties and yet provide some flexibility for the trademark holder when using the mark in commercial activities?

Each case should be examined on a case by case basis. We do not agree that non-used elements of a registered figurative mark be omitted and maintained in the non-affected part, since this contradicts the principle that the sign protected by trademark cannot be altered following registration. Applicants should take careful consideration on what sign they intend to register.

18. Should the requirement of genuine use deemed to be met if the use is limited to one product or service out of several registered? Is it in your opinion reasonable that a trademark holder can “block” an entire product category by using the mark for only one type of product within the category? If not, what kind of standard should be adopted?

We believe that genuine use proven for certain products cannot be sufficient to maintain protection for the entire specification of goods, or the entire class of goods or services. We agree with the standard established by the ECJ in T-483/04 (Armour Pharmaceutical/OHIM - Teva Pharmaceutical Industries). The ECJ held that "if a trade mark has been registered for a category of goods or services which is sufficiently broad for it to be possible to identify within it a number of sub-categories capable of being viewed independently, proof that the mark has been put to genuine use in relation to a part of those goods or services affords protection only for the sub-category or subcategories to which the goods or services for which the trade mark has actually been used belong. However, if a trade mark has been registered for goods or services defined so precisely and narrowly that it is not possible to make any significant sub-divisions within the category concerned, then the proof of genuine use of the mark for the goods or services necessarily covers the entire category." (para 27.)

19. What would be a suitable grace period for genuine use?

We currently see no reason for the current 5-year period to be amended. However, the acceleration of business processes could make a decrease to a 3-year period, the minimum time period stipulated by the TRIPS Agreement, conceivable.



20. What circumstances should justify non-use? Should different criteria apply for different industry sectors (e.g. pharmaceuticals and other industries where authorities typically require particular market approvals which could delay the use of a trademark)? Should the criteria be more stringent the longer the period of non-use is?

The justification of non-use can be examined on a case by case basis, also taking into account the particular industry sector in which the trademark has not been used.

21. Should any use of a trademark by entitled third parties be attributed to the proprietor? Should there be a difference between licensees and independent distributors and will registration of a license be necessary?

Yes, the use of a trademark by entitled third parties is to be attributed to the proprietors.

No differentiation between licensees and independent distributors should be made.

The registration of a license should not be necessary in this respect.

22. Should there be an exception from the genuine use requirement in some cases?

We do not think that exceptions should be made apart from the present excuse provisions.

23. Should there be uniform rules addressing the issue whether the cancelled trademark should be eligible for re-registration immediately upon the cancellation decision? Should other parties' interests than those of the new registrant be taken into account, e.g. consumers' interests in avoiding confusion as to the nature and quality of goods and services that might be expected under a particular mark?

The concept of bad faith application could be used for bad faith re-applications.

## Summary

In Hungary, genuine use is a requirement for maintaining trademark protection. Many questions relating to genuine use have been clarified in Hungarian case law, e.g. what constitutes genuine use, is token use sufficient, is use in the course of trade required, is use in a different form accepted. Moreover, the jurisdiction of the CJEU has a considerable effect on Hungarian case law, as well.

The provisions relating to genuine use and the legal consequences of non-use are mostly in conformity with the relevant EU rules. Maybe the mostly debated issue is currently the geographical extent of the use of a Community trademark. According to a decision of the Hungarian Intellectual Property Office, use in one EU member state does not necessarily constitute genuine use in the Community. Another interesting issue is the discrepancy of the Community trademark system and the Hungarian trademark system regarding the so-called dormant trademarks.

We believe that the current provisions are for the most part appropriate and practically acceptable. Proposing uniform rules is very difficult, since many issues are to be examined on a case by case basis.

## Zusammenfassung

In Ungarn ist die ernsthafte Benutzung einer Marke nötig, um den Markenschutz aufrechtzuerhalten.

Viele Fragen über ernsthafte Benutzung wurden in der ungarischen Rechtsprechung bereits geklärt, z.B. was wird als ernsthafte Benutzung angesehen, reicht die symbolische Verwendung aus, ist Benutzung im geschäftlichen Verkehr erforderlich, wird die Benutzung

in verschiedener Form angenommen. Auch die Rechtsprechung des Gerichtshofs der Europäischen Union wirkt sich auf die ungarische Rechtsprechung aus.

Die Regeln der ernsthaften Benutzung und die Rechtsfolgen der Nichtbenutzung stimmen hauptsächlich mit den einschlägigen europäischen Normen überein. Vielleicht ist die meistdiskutierte Frage die geografische Ausbreitung der Benutzung einer Gemeinschaftsmarke. Das Ungarische Amt für Geistiges Eigentum hat in einer neuerlichen Angelegenheit festgestellt, die Benutzung einer Gemeinschaftsmarke in einem EU Mitgliedstaat stelle nicht unbedingt die ernsthafte Benutzung der Marke in der Gemeinschaft dar. Eine andere interessante Frage betrifft den Unterschied in der rechtlichen Behandlung der sogenannten ruhenden Marken im ungarischen Recht im Gegensatz zum Gemeinschaftsrecht.

Wir sind der Ansicht, die jetzigen Rechtsnormen sind größtenteils angemessen und praktisch annehmbar. Einheitliche Normen vorzuschlagen ist schwierig, denn die meisten Fragen sind im Einzelfall zu überprüfen.

### Résumé

En Hongrie l'usage sérieux est une condition essentielle pour maintenir de la protection des marques. Concernant d'usage sérieux beaucoup de questions ont été clarifiées dans la jurisprudence hongroise, par exemple que constitue l'usage sérieux, si un usage symbolique est suffisant, si l'usage au cours du commerce est essentiel, si l'usage d'une marque sous une forme différente est suffisant etc. De plus, la pratique de la Cour de justice de l'Union européenne exerce aussi un effet considérable sur la jurisprudence hongroise.

Les dispositions concernant l'usage sérieux et les conséquences légales du non-usage sont pratiquement en conformité avec les dispositions communautaire concernées. Actuellement la question la plus débattue est l'étendue géographique d'usage d'une marque communautaire. Selon une décision de l'Office hongrois de la propriété intellectuelle, l'usage dans un État membre d'UE ne constitue pas nécessairement l'usage sérieux dans la Communauté. Un autre problème intéressant est l'anomalie du système des marques communautaires et du système hongrois des marques concernant les soi-disant marques dormantes.

Nous croyons que les dispositions actuelles soient presque appropriées et pratiquement acceptables. Proposer des règles uniformes est très difficile, puisque beaucoup des problèmes doivent être examinées au cas par cas.