

Names, Descriptive Indications, Referential Use, Sec. 23 MarkenG

Sec. 23 MarkenG contains three important protective barriers that limit the trade mark owner's right to prohibit a trade mark

1. Requirements

a) Name or Address, Sec. 23 (1) No. 1 MarkenG

Name or address of *only one natural* person

Name = civil name

Address = state, province, city, street, house number

b) Descriptive Indications, Sec. 23 (1) No. 2 MarkenG

Lack of any distinctive character; characteristics, properties, in particular nature, quality, intended purpose, value, geographical origin or time of production or rendering

c) Referential Use, Sec. 23 (1) No. 3 MarkenG

Inserted by 2015 reform in Art. 14(1)(c) MRL:

"identification or reference to goods ... as those of the proprietor of that mark."

Ex: - Comparative advertising

- Keyword Advertising

- Product criticism

Especially accessories or spare part

Ex.: ECJ GRUR Int. 2005, 479 - *Gillette*

BGH GRUR 2005, 423 - *Vacuum cleaner filter bags*

2. Honest Practices, Sec. 23 (2) MarkenG

Dishonest e.g.

- Use of a word and *figurative* mark instead of a pure word mark (BGH GRUR 2011, 1135 Rn. 25, 27 - *GROSSE INSPEKTION FÜR ALLE*).
- Use of a well-known trade mark in a domain name instead of website text (BGH WRP 2019, 200 marginal no. 30 - *Keine-Vorwerk-Vertretung*).