

Obligation to Use, Sec. 25, 26 MarkenG

The purpose of the obligation to use is twofold:

- Protection of the trade mark cannot continue if the trade mark loses its commercial purpose to create or secure an outlet (ECJ GRUR 2003, 425 para. 37 - *Ansul*)
- Clean the register from unused marks (“non-active members” [= “Karteileichen”], cf. BGH GRUR 2007, 321 para. 30 - *COHIBA*).

Required is "*serious use*"

Trend towards low requirements

=> A few sales to a single customer on a non-substantial part of the territory of a member state may be sufficient (ECJ GRUR Int. 2006, 735 - *Vitafruit*)

Legitimate reasons for non-use:

If the application without exception would be an unjustified hardship for trade mark owners or would lead to economically unreasonable results

=> Weighing of interests

Use *in a deviating form* is harmless if the deviation does not change the distinctive character of the mark, Sec. 26 (3) MarkenG.