

well-known or as a use mark which entails a more favourable priority than a registered mark would do.<sup>766</sup>

## 5.8 Use

### 5.8.1 The Law in General

In Europe, the proprietor has the obligation to use the trade mark in trade or commerce within five years after registration. Additionally, he may not suspend the use of the trade mark at any time during its lifetime for an uninterrupted period of five years or more, unless there are proper reasons for doing so.<sup>767</sup> In case of failure to use the trade mark as described, the mark does not instantly become invalid. However, once the proprietor legally enforces it vis-à-vis others, these persons may hold the lack of use against him.<sup>768</sup> In addition, any natural or legal person may submit an application for revocation to OHIM, Artt. 55(1)(a) and 50(1)(a) CTMR.

Correct use must be “genuine” as opposed to a mere pseudo- or token use. This means that the proprietor is obliged to utilise the trade mark on the market with its product- or service-related functions and not merely in order to maintain the mark.<sup>769</sup>

### 5.8.2 Findings – Relation to Brand Value

Like registration, correct trade mark use is a yes or no issue. Failing use after lapse of the grace period or for any period of more than five years during the lifetime of the trade mark does not automatically render the mark invalid yet jeopardises it. Hence, it must be assessed in a given case whether others have already taken action against the mark. In this context, again, the negative side has stronger adverse effects on brand value than the positive side (correct use) has beneficial ones. Affirmed genuine trade mark use is no more than an enabler for brand value generation.

766 *Marx*, Deutsches, europäisches und internationales Markenrecht, at no. 385.

767 Art. 15 CTMR.

768 Art. 43(2) CTMR; Art. 56(2) CTMR; Artt. 95(3) and 92(a) and (c) CTMR; Artt. 50(1)(a), 95(1) CTMR.

769 *Marx*, Deutsches, europäisches und internationales Markenrecht, at no. 1348.