

1 ARTICLE 17



that Article 17 creates an exception to the rights conferred by a trademark, the 'legitimate interests' of the trademark owner must be something different from full enjoyment of those legal rights. The 'legitimate interests' of the trademark owner are also compared with those of 'third parties', who have no rights conferred by the trade mark. Therefore, the 'legitimate interests', at least of third parties, are something different from simply the enjoyment of their legal rights. This is confirmed by the use of the verb 'take account of', which is less than 'protect'." <sup>5</sup>

1.5 "take account of the legitimate interests of the owner of the trademark"

5. In EC – Trademarks and Geographical Indications the Panel found that an EC Regulation took account of the legitimate interests of the owner of the trademark because it took account of the owner's interests



exceptions" and "legitimate interests" under Article 30 of the TRIPS Agreement, it expressed caution in referring to these other provisions when interpreting Article 17:

"The structure of Article 17 differs from that of other exceptions provisions to which the parties refer. It can be noted that Articles 13, 26.2 and 30 of the TRIPS Agreement, as well as Article 9(2) of the Berne Convention (1971) as incorporated by Article 9.1 of the TRIPS Agreement, also permit exceptions to intellectual property rights and all contain, to varying degrees, similar language to Article 17. However, unlike these other provisions, Article 17 contains no reference to 'conflict with a [or the] normal exploitation', no reference to 'unreasonabl[e] prejudice' to the legixto[7 (to )0.46 (to )00.006-9.7 (2)