

Sweden

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1. Legal framework

Sweden is party to the following international conventions and treaties:

- the EC Treaty;
- the Paris Convention for the Protection of Industrial Property (Stockholm Act);
- the Convention Establishing the World Intellectual Property Organisation 1967;
- the Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents 1961;
- the General Agreement on Tariffs and Trade and the World Trade Organisation Agreement on Trade-Related Aspects of Intellectual Property Rights;
- the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks 1989;
- the Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Trademarks (as revised); and
- the Vienna Agreement Establishing the International Classification of the Figurative Elements of Marks.

The following national laws govern trademarks:

- the Trademark Act 1960 (1960:644);
- the Collective Marks Act (1960:645); and
- the Trademark Regulation (1960:648).

A new Trademark Act (2010:1877) has been passed by the legislature and will come into force on July 1 2011, replacing not only the Trademark Act 1960, but also the Collective Marks Act. Important amendments in relation to current law will be clearly indicated in this chapter, where relevant. The following points are of interest:

- The period of opposition, which runs from the date of registration, will be extended from two to three months, in harmony with EU legislation;
- A new administrative action for removal will be available, where an application for removal of a trademark from the register can be granted if the proprietor does not protest against the removal (in which case the applicant can request to transfer the

matter to the district court); and

- Although the existence of the *ex officio* examination on relative grounds of refusal was debated during the pre-legislative process, it has been finally decided that this part of the examination process will be maintained.

2. Unregistered marks

Protection for unregistered trademarks is available under Swedish law. The founding requirement is that the mark in question be established in the Swedish market. An unregistered mark is considered to be established if there is sufficient recognition on the part of the relevant consumers of the mark in question for goods and/or services for which it applies. If the mark has been established only in limited parts of Sweden, unregistered protection is restricted to those parts only.

Whether or not a mark is to be considered established within the meaning of the law is dependent upon the specific circumstances concerning the mark in question. Factors that are considered are the type of goods and/or services and the distinctiveness of the mark. In essence, the mark has to be recognised by a significant part of the relevant consumers in order to be considered established. Indications of such recognition include long-term use and marketing of the mark, and factual evidence of consumer recognition in the form of consumer surveys. There is no fixed percentage requirement on consumer recognition. Case law suggests that sole reliance upon consumer surveys is not recommendable as they are seen as unreliable. It is therefore recommended to file substantial evidence of use and marketing, possibly with consumer surveys as supporting evidence.

An unregistered trademark will enjoy the same protection as a national registered trademark. However, considering the uncertain nature of unregistered marks and the requirement of proof when invoking rights in such mark, it is advisable to register a mark instead of relying upon unregistered protection.

3. Registered marks

Anyone who has legal capacity can apply for trademark protection. An applicant may file the application itself or through a representative. The Swedish Patent and Registration Office (SPTO) does not require a power of attorney at the application stage.

A trademark may consist of any sign capable of being represented graphically, such as words, designs, letters, numerals, or the shape or the ornamental aspects of goods or their packages. Every application is examined against both absolute and relative grounds for refusal.

The absolute grounds for refusal relate to the trademark itself. A trademark may be registered only if it is considered distinctive. A mark that exclusively, or with only minor changes or additions, indicates the kind, quality, quantity, use, price or geographical origin of the goods or services shall not in itself be deemed to be distinctive. Registration of such mark is available if it is proved that the mark has acquired distinctiveness through use prior to the filing of the application. The exclusive right in a trademark does not include parts that do not function as a sign, but rather fulfils some other aspect than that of a trademark.

Other absolute grounds include a prohibition against trademarks that:

- constitute or include a state emblem, international emblem or a local authority coat of arms under existing laws or regulations, or any sign that may be easily confused therewith;
- are likely to deceive the public; and
- are otherwise contrary to law, public order or are likely to cause offence.

Besides absolute grounds for refusal, objections may be raised on relative grounds (which concern rights held by third parties). The most important relative grounds for refusal relate to:

- marks containing or consisting of elements that are likely to convey the impression of being another's trade name, family name, artistic name or similar, or another person's portrait – unless the name or the portrait in question without doubt

- concerns a person who is long deceased;
- marks containing an element that is likely to convey the impression of being the distinctive title of another person's protected literary or artistic work, or that would violate the copyright to a literary or artistic work, or the right to a photographic picture or design;
- marks that are confusingly similar to a name or a trade name which is being used in the course of trade, an earlier registered trademark (national trademark, community trademark or international trademark with effect in Sweden) or an earlier unregistered trademark; and
- marks applied for in bad faith.

4. Procedures

A trademark application may be filed in writing with the SPTO. The application must contain the name or trade name and address of the applicant, the name of the representative, if any, along with a clear indication of the mark itself and the goods and/or services for which protection is sought.

Examination

An application will be examined in relation to both absolute and relative grounds for refusal. The SPTO conducts an *ex officio* examination against earlier national Swedish trademark registrations, Community trademarks, international trademarks with effect in Sweden, Swedish registered trade names and family names. Where necessary, the SPTO issues an office action against the application, providing the applicant with at least one opportunity to overcome any bar to registration. Extensions to deadlines are possible but discretionary.

Registration

A trademark application will be registered once approved by the SPTO. No registration fee applies. The registration will be entered in the official trademark register, from which date oppositions may be filed.

Opposition

The opposition period is two months (three

months from July 1 2011) from the date of publication of the trademark. The time limit is absolute and cannot be extended. Extension during the opposition procedure is possible but discretionary. An opposition may be directed at only part of the concerned goods and/or services. The final decision of the SPTO can then be appealed to the Court of Patent Appeals and the Supreme Administrative Court.

Removal from register

A registered mark may be removed from the register for a number of reasons. The two main reasons concern circumstances where the mark has become deceptive or generic, or where the mark has not been put to genuine use (within five years of the date of registration or five consecutive years, save legitimate reasons for non-use). Use during the three months preceding the date when an action for cancellation is filed is not considered genuine use if the registration holder was aware that such action could be filed. A mark must be used in its registered form. If a mark is used in an altered form (other than insignificant alterations), it is not considered genuine use of the registered mark. Use of the mark for export purposes only is considered genuine use. A registered mark may also be removed from the register on the ground that it is in conflict with absolute or relative grounds for refusal.

Under the Trademark Law 1960, an action for cancellation must be filed with the competent district court. However, from July 1 2011 such actions can be brought before the SPTO as an alternative to the district court. Note, however, that the SPTO will remove a trademark from the register only if the proprietor does not protest against the removal. If the proprietor opposes the removal, the applicant for the action may request that the action be transferred to the competent district court for due process.

Renewal

Trademarks must be renewed every 10 years. Renewal shall normally be made on or before the last day of the trademark's validity. However, a grace period of six months from the last day of the trademark's validity is available (an increased fee applies).

5. Enforcement

Actions for infringement may be brought before the competent district court in the first instance. Hearings are before a single (legally educated) judge or three (legally educated) judges, depending on the nature of the case and requests by the parties. The competent court is usually decided in relation to the place of residence of the infringer. Typically, judges are not specialised in IP matters. Appeals are made to the Court of Appeal and further to the Supreme Court. Leave of appeal is required in both instances.

The remedies available in case of infringement are injunctions, compensation and damages. In rare cases, imprisonment and fines may apply. Interlocutory injunctions are available if certain conditions are met.

The timeframe in infringement matters varies depending on the specifics of the case. Typically, however, an infringement action will take between 12 to 18 months to proceed from the application for summons to trial.

6. Ownership changes and rights transfers

A trademark may be assigned with or without the goodwill attached to it. An assignment may concern the entire right to the mark or be partial (a separate application for partial assignments is necessary). Proof of assignment may be in the form of certified copies of an assignment agreement, although specific confirmations of assignment signed by the assignor are preferred (considering that all documents filed with the SPTO become public). Proof that the person signing the document is authorised to sign on behalf of the relevant party is also needed. However, no legalisation is required. The registered holder of a trademark is presumed to be its true owner.

7. Related rights

Registered designs, unregistered designs and copyrights may be used against the registration of a trademark. Accordingly, the proprietor of such a right may prohibit an application or registration of a trademark

that constitutes an infringement of that right.

A trademark may in some circumstances be protectable as a design or copyright. Protection as a design may be awarded if the trademark is visual or tactile – that is, if it possesses a figurative or three-dimensional character and meets the requirements for protection as a design (notably, novelty and individual character). As concerns protection under copyright law, the mark must be figurative or made up of a series of words (eg, slogans), or consist of sounds or three-dimensional shapes that can be considered to have a certain, unique character. The main concern is to assess whether the design is sufficiently original to constitute work protected by copyright. The scope of protection for designs and copyrights is normally more limited than for trademarks. Contrary to design and copyright protection, trademark protection is not limited in time.

8. Online issues

Use of a domain name is not considered trademark use in and by itself. However, use of the domain name in the course of trade in relation to certain goods and/or services would normally be considered trademark use. In such circumstances the standard of evaluation in infringement matters applies. The use of the domain name in such circumstances must be related to Sweden. It is not sufficient that the website in question is accessible from Sweden: it must be aimed at the Swedish market. Whether this is the case will be decided upon the circumstances of the case at hand.

Swedish courts have referred in their decisions to the World Intellectual Property Organisation Recommendation Concerning Provisions on the Protection of Marks and Other Industrial Property Rights in Signs on the Internet.

Unregistered rights Protection for unregistered rights?	
Specific/increased protection for well-known marks?	
Examination/registration Representative requires a power of attorney when filing? Legalised/notarised?	
Examination for relative grounds for refusal based on earlier rights?	
Registrable unconventional marks	Any distinctive sign capable of being represented graphically (eg, 3-D, colours, sounds)
Opposition Opposition procedure available? Term from publication?	2 months from registration (3 months from July 1 2011)
Removal from register Can a registration be removed for non-use? Term and start date?	5 years' non-use from end of registration procedure
Are proceedings available to remove a mark that has become generic?	
Are proceedings available to remove a mark that was incorrectly registered?	
Enforcement Specialist IP/trademark court?	For Community trademark matters only
Punitive damages available?	
Interim injunctions available? Time limit?	
Ownership changes Is registration mandatory for assignment/licensing documents?	
Online issues National anti-cybersquatting provisions?	
National alternative dispute resolution policy for local ccTLD available?	ATF
	