

MAIN DEDICATED INTELLECTUAL PROPERTY LAWS AND REGULATIONS
NOTIFIED UNDER ARTICLE 63.2 OF THE AGREEMENT

Sweden

The present document reproduces¹ the text of the following laws and regulations, as notified by Sweden under Article 63.2 of the Agreement (see document IP/N/1/SWE/1):

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¹In English only

THE MINISTRY OF JUSTICE
Stockholm

THE TRADEMARKS ACT

(Act 1960:644 of December 2, 1960, as last amended by Law No 1510 of December 16, 1994)

General Provisions

Article 1. By means of registration in accordance with this Act, an exclusive right is acquired in a trademark as a special symbol for the purpose of distinguishing goods which are made available in the course of a business activity.

A trademark may consist of any sign capable of being represented graphically, in particular, words, including personal names, as well as designs, letters, numerals or the shape or the ornamental aspects of goods or their packages, provided that such signs are capable of distinguishing goods which are made available in one business activity from those which are made available in another one.

The provisions of this Act in respect of goods apply also to services.

Special provisions apply in respect of collective marks.

Article 2. An exclusive right in a trademark is acquired also without registration when the mark has been established on the market.

By the establishment on the market an exclusive right is acquired also in other special symbols for goods which are being used in a business activity.

A sign shall be considered to have become established on the market when it is, in this country, within a significant portion of the circle for which it is intended, known as a symbol for the goods which are being made available under it.

Article 3. Provided that he uses them in accordance with honest practices in industrial or commercial matters, anyone is entitled to use, in the course of his business activity, as a symbol for his goods

- his own family name, address or trade name,
- indications concerning the kind, quality, quantity, intended purpose, value, geographical origin, the time of their production, or other characteristics of the goods.

A person conducting business activities also is protected under this Act against other persons' unauthorized use of his family name, address or trade name as a symbol for goods.

Article 4. The right in a trade symbol granted under Articles 1 to 3 shall imply that no person other than the owner is entitled to use, in the course of business activities, a symbol which is confusingly similar to the protected one for his goods, whether on the goods or on their packages, in advertising or on business documents or in any other way, including also oral use thereof. This shall apply regardless of whether the goods are offered for sale or intended to be offered for sale in this country or abroad or are imported here. Where the right in a symbol is based on Article 2 and the symbol has not been established on the market in the entire country, the right is valid only in the territory where it is established on the market.

As unlawful use under the first paragraph shall be deemed also when anyone in connection with the sale of spare parts, accessories or the like which are suitable for use together with the goods of another

person, makes reference to the symbol of that other person in such a way as to create an impression that what is being offered for sale originates from the owner of the symbol, or that the owner has consented to the use of that symbol.

If goods have been offered for sale under a certain symbol and have thereafter been changed or impaired, the symbol may not be used when the goods are again offered for sale in the course of business activities in this country unless the change is clearly indicated or is otherwise clearly evident.

Article 5. The exclusive right in a trade symbol does not extend to such parts of the symbol which mainly serve at making the goods or their packaging more practical or otherwise serves purposes other than that of being a trade symbol.

Article 6. Symbols shall be deemed to be confusingly similar under this Act only if they relate to goods of the same kind or a similar kind.

Confusing similarity may be invoked also for the benefit of a symbol which has a reputation in this country if the use of another similar symbol would take unfair advantage of, or would be detrimental to, the distinctive character or reputation of the symbol having the reputation.

Article 7. In the settlement of a dispute concerning rights in trade symbols which are confusingly similar to each other, the symbol which can invoke the earlier legal basis shall prevail, subject to the provisions of Articles 8 or 9.

Article 8. The right in a registered trademark may, as regards goods for which it has been used, exist side by side of an earlier right in a confusingly similar symbol, if the registration was applied for in good faith and the owner if the earlier right was, for a period of five years, aware of, and accepted, the use of the registered trademark in this country.

Article 9. If a symbol is established on the market, the right in the said symbol may exist side by side with an earlier right in a confusingly similar symbol, if the owner of the earlier right has not, within a reasonable time, taken action against the use of the later symbol.

Article 10. In the cases provided for in Articles 8 and 9, it may, according to what is considered reasonable, be ordered that either of the symbols, or both of them, may be used only in a special manner, for instance, in a particular form, with the addition of the name of a place or with some other distinguishing feature.

Article 11. Authors, editors and publishers of dictionaries, manuals and other similar printed works shall, at the request of the owner of a registered trademark, ensure that the trademark is not reproduced in the said work unless there is a clear indication that what is reproduced is a registered trademark.

Anyone who fails to meet the obligation under the first paragraph, shall be liable to cooperate in the publication of a rectification in such a manner and to such an extent that is deemed reasonable, and to pay for such a rectification.

On the Registration of Trademarks

Article 12. Trademarks are registered in the trademark register, which, for the entire country, is kept by the Patent and Registration Office.

Article 13. A trademark may be registered only if it is distinctive. A mark which, exclusively or with only minor changes or additions, indicates the kind, quality, quantity, use, price or geographical origin

of the goods or the date of their production shall not in itself be deemed to be distinctive. In the assessment of whether a mark is distinctive consideration shall be given to all circumstances and in particular to the scale and the time of the use of the mark.

A symbol consisting exclusively of a shape which results from the nature of the goods or of a shape which is necessary to obtain a technical result or of a sign which gives a substantial value to the goods may not be registered as a trademark.

Article 14. A trademark may not be registered:

1) if the mark contains such a State emblem or international emblem or such a local authority coat of arms which under existing laws or regulations may not be used, without permission, as a trademark, or anything that may be easily confused therewith;

2) if the mark is likely to deceive the public;

3) if the mark is otherwise contrary to laws or regulations or public order or is likely to cause offence;

4) if the mark contains or consists of elements which are likely to convey the impression of being another person's trade name or the family name, artistic name or similar name of another person, or another person's portrait, unless the name or the portrait obviously relates to a person who is long deceased;

5) if the mark contains an element which is likely to convey the impression of being the title of another person's protected literary or artistic work, where the title is distinctive, or which would violate another person's copyright in a literary or artistic work or another person's right in a photographic picture or in a design;

6) if the mark is confusingly similar to a name or a trade name which is being used in the course of another person's business activities or to another person's trademark which is registered on the basis of an earlier application, or to another person's trade symbol which is established on the market when the application for registration is filed;

7) if the mark is confusingly similar to a trade symbol which, at the time of the application, is being used by another person and the applicant had knowledge about that use at the time of the application and had not used the mark before the other symbol was first used;

8) if the mark is confusingly similar to a trademark covered by an international registration with effect in Sweden and for which the date referred to in Article 55, second paragraph, precedes the date of the application.

In cases referred to in items 4), 5) 6) 7) and 8) the registration may nevertheless be effected if the person whose right is involved gives his consent and there are no other obstacles according to the provisions of the first paragraph.

Article 15. An exclusive right in a trademark acquired through registration does not include such elements of the mark which cannot by themselves be registered.

Where a mark contains such an element and there are special reasons to assume that the registration of the mark may cause uncertainty about the scope of the exclusive right, this element may be explicitly excluded from the registration.

Where it is later shown that an element of a mark which has been excluded from the protection, has become eligible for registration, a new registration may be effected of this element of the mark or of the entire mark without such an exception.

Article 16. Trademarks are registered in one or more classes. The classification of goods is established by the Patent and Registration Office.

Article 17. Anyone who wants to register a trademark shall file an application in writing to that effect with the Registration Authority. The application shall indicate the name or the trade name of the applicant and the goods for which the mark is intended and the classes to which those goods belong; in addition, the mark shall be clearly indicated.

Article 18. If anyone applies for registration of a trademark which he has used for the first time for goods exhibited at an international exhibition and the application is filed within six months from the day when the goods were first exhibited, the application shall, under the conditions prescribed by the Government, in relation to other applications and to the use of other trade symbols, be deemed to have been filed on that day.

Article 19. If the applicant has not complied with the requirements prescribed for the application, or if the Registration Authority considers that there are otherwise obstacles to the approval of the application, the applicant shall be requested to, within a certain period of time, either file a statement or make a correction, failing which the application shall be deemed to have been abandoned.

If the Registration Authority also after the filing of a statement considers that there is an obstacle to approving the application, the application shall be rejected, unless there is a reason for issuing a new request to the applicant.

Article 20. If the application documents are complete and there are no obstacles to effecting the registration, the trademark shall be entered into the register and a notice of the entry be published.

Anyone who wants to oppose the registration shall do so in a written communication to the Registration Authority within two months from the date of the publication.

The Registration Authority shall notify the owner of the mark about the opposition and give him an opportunity to make observations.

Even if the opposition is withdrawn, the opposition procedure may be completed, if special reasons therefore exist.

Article 21. Following an opposition, the Registration Authority shall invalidate the registration if there is an obstacle to it. If there is an obstacle only in respect of part of the goods listed in the registration, the Registration Authority shall, instead, if the trademark owner so desires, invalidate the registration only as regards those goods.

The Registration Authority shall refuse the opposition if there is no obstacle to the registration.

A notice shall be published when the decision of the Registration Authority concerning the opposition has taken legal force. If the decision implies that the registration is invalidated wholly or in part, this fact shall be recorded in the register.

Article 22. A registration is valid from the day on which the application was filed until ten years have elapsed from the date of the registration.

The registration may be renewed following an application by the owner, each time for a period of ten years from the expiry of the previous registration period.

Article 23. Applications for renewals shall be filed in writing with the Registration Authority not earlier than one year before and not later than six months after the date of the expiry of the registration.

If the application concerns solely a renewal of the registration, the payment of the renewal fee shall be considered as an application for renewal.

The provisions of Article 19 shall apply correspondingly to applications for renewal.

Article 24. Upon the application of the owner of a registered trademark, insignificant alterations of the mark may be entered into the register, provided that they do not affect the overall impression of the mark.

On the Termination of Registration

Article 25. If a trademark has been registered contrary to the provisions of this Act and the ground for refusing the registration still exists, the registration may be invalidated in the manner stated below, unless the right in the mark may nevertheless be allowed to continue to exist under Articles 8 and 9. If a trademark is confusingly similar to another person's trademark, the registration of the former mark may, however, not be invalidated on this ground, if that other trademark does not fulfil the requirements as to its use under Article 25 a.

The registration may be invalidated also

- 1) if the mark is deceptive,
- 2) if it is no longer distinctive,
- 3) if it is contrary to public order, or
- 4) if it is likely to cause offence.

Invalidation in case of non-use is provided for in Article 25 a.

Article 25 a. If, within five years from the completion of the registration procedure, the owner of a registered trademark has not put the trademark to genuine use in this country in connection with the goods for which it has been registered or if such use has been suspended for an uninterrupted period of five years, the registration may be terminated, unless there are proper reasons for the non-use.

The following shall also constitute use within the meaning of the first paragraph

- 1) the use of the trademark in a form differing from the registered one, where the difference concerns only insignificant elements and do not alter the distinctive character of the mark, and
- 2) the affixing of the trademark to goods or to the packaging thereof in this country solely for export purposes.

The use of the trademark by someone else with the consent of the owner shall be deemed to constitute use by the owner.

The registration may, however, not be invalidated where the trademark has been put to genuine use during the interval between the expiry of the five-year period and the application for invalidation of the registration. Use which has commenced or has been resumed after the expiry of the five-year period but within three months preceding the filing of the application shall, however, be disregarded where the preparations for the commencement or the resumption occur only after the owner becomes aware of the fact that an application for invalidation may be filed.

Article 25 b. Where grounds for invalidation exist only in respect of part of the goods for which a trademark has been registered, the registration shall be invalidated only as regards those goods.

Article 26. Anyone who suffers injury from a registration is entitled to bring an action in Court for the invalidation of the registration. An action based on the provisions of Article 13, Article 14, items 1) to 3), Article 25, second paragraph, Article 25 a or Article 25 b may be brought also by a Public Authority as decided by the Government or by an association of persons conducting business activities in the sector concerned.

With regard to the competence of the Court in a case concerning the invalidation of a registration the Stockholm City Court (Stockholms tingsrätt) shall be competent where the owner of the registration does not have his domicile in Sweden.

Article 27. When a decision on the invalidation of a registration has taken legal effect, the mark shall be removed from the register.

The provisions of the first paragraph shall apply also where the registration is not renewed or where the owner of the mark requests in to be removed from the register.

Special Provisions Concerning the Registration of Foreign Trademarks.

Article 28. Where a person who does not conduct business activities in Sweden applies for the registration of a trademark, he shall be required to show that the mark is registered for him in his country of origin in respect of the goods covered by the application in Sweden.

On condition of reciprocity, the Government may prescribe that the provisions of the preceding paragraph shall not apply in respect of a specified foreign State.

Article 29. On condition of reciprocity, the Government may prescribe that a trademark which is registered in a foreign State may, on the conditions set out in the order, be registered in Sweden as it is registered in the foreign State. As regards a trademark which would otherwise not be registrable here, such a registration shall have no wider scope nor be valid for a longer time than in the foreign State.

Article 30. In respect of cases where an application for the registration of a trademark has earlier been filed outside this country, the Government may prescribe that, on the conditions set out in the order, the application shall, in relation to other applications and to the use which has occurred of other trade symbols, be considered to have been filed at the same time as the application in the foreign country.

Article 31. The owner of a registered trademark who does not have his domicile in Sweden shall have an attorney resident here who is empowered to represent him in all matters relating to the mark. An entry of this fact shall be made in the trademark register.

Where no such empowered attorney is recorded in the register, the Registration Authority shall request the owner, under his last available address, to rectify the matter within a determined period, failing which the mark shall be removed from the register.

On Assignments and Licenses

Article 32. Where the business activity to which a trademark or a trade symbol as indicated in Article 2, second paragraph, belongs is transferred, the mark of the symbol shall, unless otherwise agreed, be deemed to be included in the transfer.

Article 33. Where a registered trademark has been assigned, an entry about this fact shall, upon request, be made in the trademark register. Such an entry shall, however, not be made where the mark has

been assigned without the transfer of the business activity to which the mark belongs and the use of the mark by the new owner is obviously deceptive to the public.

As the owner of a trademark shall, for the purpose of lawsuits and other legal cases relating to the mark, be considered the person who has last been entered into the register in this capacity.

Article 34. The owner of a trademark may grant to someone else the right to use the trademark (license) for all, or part of, the goods for which the trademark is registered and for the entire, or part of, the country. The license may be exclusive or non-exclusive.

The owner of a trademark is entitled to invoke the rights conferred to the trademark against a licensee who contravenes a provision in the license agreement relating to the duration of the license, the form under which the trademark may be used, the scope of goods for which the license is granted, the territory in which the trademark may be used, or the quality of the goods manufactured by the licensee.

The license shall, upon request, be recorded in the trademark register. Such a recordal shall, however, not be made where the use of the trademark by the licensee would be obviously deceptive for the public. Where it is shown that the license has expired, the entry shall be removed.

Unless otherwise agreed, the licensee is not entitled to assign his right to another person.

The right in a trademark or in a symbol as mentioned in Article 2, second paragraph, may not be sequestered for debt. If the owner is bankrupt and his property taken over by a receiver, the right shall, however, be included in the bankruptcy estate.

On the Prohibition of the Use of Deceptive Trade Symbols.

Article 35. Where a trade symbol, after it has been assigned or has been the subject of a license, is deceptive in the hands of the new owner or the licensee, the Court may, to the extent necessary, prohibit him from using the symbol.

Such a prohibition may be issued also in other cases where a trade symbol is deceptive or where a trademark owner, or, with his consent, someone else, uses the symbol in such a way as to deceive the public.

Actions under this section may be brought by an Authority as decided by the Government and by anyone injured by the use of the symbol or by an association of persons conducting business activities in the field concerned.

Article 36. When imposing a fine the Court may, to the extent reasonable under the circumstances, order that a trade symbol which has, contrary to a prohibition under Article 35, been affixed on goods or their packaging, advertising material, business documents or the like shall be removed or altered in such a way as not to be deceptive. Unless measures to this effect can be accomplished otherwise, it may be ordered that the property bearing the trade symbol be destroyed or altered in a specified manner.

Property of the kind mentioned in the preceding paragraph may be seized pending the order referred to there; the provisions on seizure in criminal cases shall apply accordingly.

Sanctions and Damages

Article 37. Where a person commits an infringement of the right in a trade symbol as referred to in Articles 4 to 10 (trademark infringement) shall, where the infringement is committed wilfully or with gross negligence, be punished by fines or imprisonment for not more than two years. A person who has violated a prohibition under the penalty of a fine under Article 37 a may not be adjudicated to criminal liability for the infringement covered by the prohibition.

Attempts to commit an infringement under the first paragraph as well as the preparation of such acts shall be punishable according to the provisions of Chapter 23 of the Criminal Code.

A public prosecutor is entitled to bring an action for a violation as mentioned in the first and second paragraphs only if there is a complaint from the injured party and such an action is called for in the public interest.

Article 37 a. At the request by the owner of a trade symbol according to Articles 1 to 3 or a person who, on the basis of a license, has the right to use a trade symbol, the Court may issue an injunction prohibiting, under penalty of a fine, a person who commits an act constituting an infringement to continue that act.

If the plaintiff shows a probable case that an act constituting an infringement takes place and it can reasonably be assumed that the defendant, through the continuation of the act, diminishes the value of the exclusive right in the trade symbol, the Court may issue an injunction for the time until the case has been finally adjudicated or otherwise is decided. No injunction may be issued before the defendant has been given an opportunity to respond, unless a delay would entail a risk for injury.

An injunction as mentioned in the second paragraph may be issued only if the plaintiff deposits a security with the Court for the injury which may be caused to the defendant. If the plaintiff is not capable of depositing such a security, the Court may liberate him from making a deposit. As regards the type of security, the provisions of Chapter 2, Article 25, of the Enforcement Code shall apply. The security shall be examined by the Court unless the defendant has accepted it.

When the case is adjudicated, the Court shall decide whether a prohibition under the second paragraph shall continue to apply.

The provisions on appeal against decisions provided for in Chapter 15 of the Code on Judicial Procedure shall apply as regards appeals against decisions under the second and third paragraphs and as regards proceedings in higher Courts.

A request for the imposition of a fine may be made by the person who has requested the injunction. In connection with such an imposition, a request may be made for a new injunction to be issued under penalty of a fine.

As regards the contents of wireless broadcasts and broadcasts by wire, the provisions of the Radio Act (1966:755) shall apply.

Article 38. Anyone who wilfully or with negligence commits a trademark infringement shall pay an equitable compensation for the use of the trademark and compensation for the further damage caused by the infringement. In the determination of the amount of the compensation consideration also the right owner's interest that a trademark infringement not be committed and to other circumstances of other than purely economic importance shall be taken into account.

Anyone who without intention or negligence commits a trademark infringement shall pay a compensation for the use of the trademark, if and to the extent that this is considered reasonable.

Article 39. Where an action relating to a trademark infringement is based on a registration under this Act, Article 37 shall not apply as regards the time prior to the date of the registration. Furthermore, as regards the time prior to the publication under Article 20, Article 38 shall not apply unless the infringement was committed wilfully.

Article 40. An action for compensation under Article 38 may relate only to injuries suffered during the last five years before the action was brought. As regards injury for which an action was not brought within the said period, the right to compensation shall be lost.

Notwithstanding the provisions in the preceding paragraph, an action may, where a claim is based on a registration under this Act, be brought for infringement before the date of the registration, provided that the action is brought within one year from that date.

Article 41. At the request of a person who has suffered injury from a trademark infringement, the Court may, to the extent considered reasonable in order to prevent the continuation of the infringement, decide that a trade symbol which, without permission, appears on goods, packages, advertising material, business documents, or any other object, shall be removed or altered. Where such a measure can not be undertaken without the destruction or the alteration in a specified manner of the goods on which the symbol appears, the Court may issue an order to this effect. In such a case the Court may also, upon request, order the property to be surrendered, against compensation, to the injured party.

Upon request by the person who has suffered the infringement, the Court may, to the extent considered reasonable in order to prevent the continuation of the infringement, decide that property whose use would constitute a trademark infringement shall be destroyed or altered in a specified manner.

Property as referred to in the first and second paragraphs may be seized, where it can reasonably be assumed that a violation under Article 37 has been committed. As regards such seizure, the provisions on seizure in criminal cases in general shall apply.

The provisions of the first to third paragraphs apply also in respect of attempts and preparations under Article 37, second paragraph.

Article 42. Where the registration of a trademark has been invalidated through a decision or a judgement that has taken legal force, the Court may not adjudicate a sanction or decide on other measures under Articles 37 to 41.

In cases concerning such an infringement, the Court shall, at the request of the defendant, order the proceedings in the case to be suspended until the question of the invalidation of the registration has been finally decided. Where proceedings for the invalidation have not been initiated, the Court shall, in connection with the order for suspension, allow the defendant a certain period within which such an action shall be brought.

Article 43. A person who holds a license in respect of a trade symbol and who intends to bring an action for infringement shall notify the owner of the symbol of this fact, failing which his action shall not be taken into consideration.

Article 44. An action relating to whether or not a right exists in a trade symbol or whether or not a certain act constitutes infringement in such a right shall be heard by the Court where an uncertainty exists in these respects and the uncertainty causes injury to the plaintiff.

The provisions of Article 43 shall apply correspondingly in such cases.

Article 45. The Court shall transmit copies to the Patent and Registration Office of judgements in cases relating to trademark infringements and in cases referred to in Articles 26, 35 and 44.

On Publication, Appeals, etc.

Article 46. In addition to the acts of publication mentioned in Articles 20 and 21, a notice shall be published concerning the renewal of a registration under Article 22, the alteration of a registered mark under Article 24, the removal of a registration under Articles 27 and 31 and the recordal in the registry of an assignment under Article 33 or of a license under Article 34.

Article 47. A final decision by the Registration Authority relating to an application for registration of a trademark may be appealed against by the applicant where the decision goes against him. A final decision relating to an opposition against a registration may be appealed against by the owner of the trademark and the opponent where it goes against the person who wants to lodge an appeal. Even if the opponent withdraws his appeal, the case may still be brought to a decision where special reasons therefore exist.

Appeals under the first paragraph shall be lodged with the Court of Patent Appeals (Patentbesvärsträtten) within two months from the date of the decision.

A final decision by the Court of Patent Appeals may be appealed against with the Supreme Administrative Court (Regeringsrätten) within two months from the date of the decision. As regards appeals to the Supreme Administrative Court the provisions of Articles 35 to 37 of the Act on Administrative Proceedings (Act 1971:291) shall apply. The decision of the Court of Patent Appeals shall contain an indication of the fact that a special permission has to be obtained in order for the case to be brought to the Supreme Administrative Court and of the grounds on which such permission may be granted.

Article 48. The Government or, to the extent decided by the Government, the Registration Authority, shall issue detailed regulations concerning what the applicant for a registration has to observe, concerning the publication of notices mentioned in Articles 20, 21 and 46 and other proceedings in such matters, and concerning the proceedings in appeal cases as well as concerning the keeping of the trademark register.

A fee to an amount decided by the Government shall be paid for applications for registration of trademarks, for alterations in registered trademarks under Article 24 and for recordal in the register of assignments and licenses. A higher fee shall be prescribed where applications for renewal are filed after the expiry of the registration period.

Provisions on the Entry into Force and Transitional Provisions

Article 49. This Act shall enter into force on January 1, 1961.

On the International Registration of Marks

Article 50. An "international registration" of a trademark means a registration of a trademark effected by the International Bureau of the World Intellectual Property Organization under the Protocol of June 27, 1989, Relating to the Madrid Agreement Concerning the International Registration of Marks of April 14, 1891.

The Patent and Registration Office is the National Trademark Authority in matters relating to the international registration of marks.

Article 51. Anyone who wants to obtain an international registration of a trademark and who, in Sweden, owns, or has applied for, a registration of a trademark and who is, furthermore, a Swedish citizen or has his domicile here or has a real and effective industrial or commercial establishment here, shall file an application to this effect with the National Trademark Authority.

If an application for an international registration of a trademark has been filed with the National Trademark Authority under the first paragraph and the applicant or the owner has his address in Sweden, also subsequent requests for territorial extension of that registration shall be filed with to the National Trademark Authority.

Article 52. Any application shall be in writing in the English language and contain the indications specified by the Government or by the Authority as decided by the Government.

Article 53. The National Trademark Authority shall verify that the indications in the application for the international registration of the mark correspond to the indications in the trademark registration which the applicant owns, or has applied for, in Sweden.

If the indications do not correspond, the applicant shall be requested to correct, within a certain period of time, the indications in the international application, failing which the application shall be rejected.

If there is such a correspondence as referred to in the first paragraph, the National Trademark Authority shall, together with the application, transmit a certificate about this fact to the International Bureau not later than one month from the date of the receipt of the application by the Authority or, if a request has been issued under the second paragraph, not later than one month from the expiry of the period of time prescribed for compliance with that request.

Article 54. If the National Trademark Authority receives a notification from the International Bureau to the effect that a person other than one referred to in Article 51 has requested an extension of the territorial effect of an international registration of a mark to Sweden, the Authority shall examine whether there is an obstacle to admitting such an effect.

Such an obstacle exists if the trademark referred to in the international registration does not fulfil the requirements under Article 13 or if an obstacle to a national registration would have existed according to Article 14.

Article 55. If there is an obstacle to the registration according to Article 54, second paragraph, the National Trademark Authority shall, within 18 months from the date of the notification referred to in Article 54, first paragraph, notify the International Bureau that the international registration can not have effect in Sweden and state the grounds therefore.

If there is no obstacle according to Article 54, second paragraph, a notice of the notification from the International Bureau shall be published. The notice shall state the date which the International Bureau has indicated as the date of the international registration.

Anyone who wants to oppose the effect of the international registration in Sweden shall file a written communication with the National Trademark Authority within two months from the date of the publication.

Article 56. After the expiry of the time limit indicated in Article 55, third paragraph, the National Trademark Authority shall, if there is no obstacle to it, decide that the international registration shall have effect in Sweden. When that decision has taken legal effect, the trademark shall be entered into the register and a notice of this fact be published.

If there is an obstacle to admitting the effect in Sweden of the international registration, the National Trademark authority shall decide that the international registration shall not have any effect in this country. The decision shall indicate the grounds which have determined the result. If the National Trademark Authority has not previously transmitted a notification under Article 55, first paragraph, it shall communicate the decision to the International Bureau within 18 months from the date of the notification referred to in Article 54, first paragraph, or, if the time period indicated in Article 55, third paragraph, expires later, within one month from the expiry of that period. In the latter case, the National Trademark Authority shall, within 18 months from the date of the notification referred to in Article 54, first paragraph, notify the International Bureau that a decision as just referred to may be communicated later. When the decision that the international registration shall not have any effect in Sweden has taken legal force, a notice of this fact shall be published.

Article 57. A decision that an international registration shall have effect in Sweden shall be valid as from the date which the International Bureau has indicated as the date of the international registration. The provisions of Article 1, third paragraph, Articles 3 to 11, 25 to 27 and 32 to 45 shall apply to such registrations. The provisions in those Articles referring to a registration shall instead apply to a decision that an international trademark registration shall have effect in Sweden.

Article 58. If a trademark which is the subject of a national registration in Sweden also becomes the subject of an international trademark registration with effect in this country, the international registration shall replace the Swedish one, without prejudice to any rights which may have been acquired by virtue of the registration in this country and provided that the owner is the same and that all the goods listed in the registration in this country are also listed in the international registration.

An indication of the replacement referred to in the first paragraph shall, upon request by the owner, be entered into the trademark register and a notice be published.

Article 59. If an international registration of a trademark with effect in Sweden loses its effect, wholly or in part, also its effect in this country shall cease correspondingly. An indication of this fact shall be entered into the trademark register and a notice be published.

Article 60. If an international registration of a trademark with effect in Sweden ceases within five years from the date referred to in Article 55, second paragraph, on the ground that the national registration, or the application for such a registration, can no longer form the basis for an international registration and the owner of the mark thereafter applies for a registration of the same mark in Sweden, this application shall be deemed to have been filed on the date referred to in Article 55, second paragraph, provided that

1. the application is filed within three months from the date of the termination of the international registration,
2. the goods listed in the Swedish application were also covered by the effect of the international registration in Sweden, and
3. the application also otherwise complies with the requirements for a registration as set out in this Act and the prescribed fees are paid.

An indication of the termination of the international registration or of the application referred to in the first paragraph shall be entered into the trademark register and a notice be published.

Article 61. If an international registration of a trademark with effect in Sweden ceases because a Contracting Party to the Protocol mentioned in Article 50 has denounced the Protocol and the owner of the mark thereafter applies for a registration of the same mark in Sweden, this application shall be deemed to have been filed on the date referred to in Article 55, second paragraph, provided that

1. the application is filed within two years from the date when the denunciation took effect,
2. the goods listed in the Swedish application were also covered by the effect of the international registration in Sweden,
3. the application also otherwise complies with the requirements for registration under this Act and the prescribed fees are paid.

An indication of the termination of the international registration or about the application referred to in the first paragraph shall be entered into the trademark register and a notice be published.

Article 62. A notice shall be published of renewals of registration periods, of removals under Articles 57 and 27 of decisions that an international registration of a mark shall have effect in Sweden and of entries made of assignments or licenses relating to rights derived from an international registration.

Article 63. A final decision by the National Trademark Authority in a matter relating to an international registration of a mark may be appealed against by the person who has applied for such an international registration and by the person who has requested a territorial extension of the effect of such a registration to this country, if the decision goes against him.

A decision that an international registration shall have effect in this country in spite of an opposition may be appealed by the opponent. Even if he withdraws his appeal the case may still be brought to decision if special reasons therefore exist.

The provisions of Articles 47, second and third paragraphs, shall apply to appeals referred to in the first and second paragraphs.

Article 64. The Government or the Authority as decided by the Government may issue regulations regarding the publication of notices under Articles 55, 56 and 58 to 62 and regarding other procedures to be applied in cases concerning the international registration of marks.

A fee to an amount specified by the Government shall be paid in respect of any application for an international registration of a mark, in respect of any examination of whether such a registration shall have effect in Sweden and in respect of any request that an entry shall be made in the register of an assignment or a license or of matters referred to in Articles 58, 60 or 61.

Note

The Act entered into force on January 1, 1961.

Article 14, first paragraph (8) and second paragraph, as amended by Law No 1510 of December 16, 1994, and Articles 50 to 64, will enter into force on the date decided by the Government.

THE MINISTRY OF JUSTICE
Stockholm

ACT
AMENDING THE TRADEMARKS ACT (1960:644)
(Act No 1995:1277, of December 7, 1995).

In accordance with the decision by the Parliament it is hereby, as regards the Trademarks Act (1960:644), prescribed

that Articles 1, 14, 34, 43 and 48 shall read as follows,

that the headline immediately before Article 32 shall read "On Assignments, Licenses and Pledges", and

that in the Act shall be inserted 13 new Articles, numbered 34 a - 34 j and 65 - 67, and, immediately before Article 65 a, a new headline, reading as follows.

Article 1. By means of registration in accordance with this Act, an exclusive right is acquired in a trademark as a special symbol for the purpose of distinguishing goods which are made available in the course of a business activity.

A trademark may consist of any sign capable of being represented graphically, in particular, words, including personal names, as well as designs, letters, numerals or the shape or the ornamental aspects of goods or their packages, provided that such signs are capable of distinguishing goods which are made available in one business activity from those which are made available in another one.

The provisions of this Act in respect of goods apply also to services.

Special provisions apply in respect of collective marks.

The notion "Community trademarks" means trademarks under the Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark.

Article 14. A trademark may not be registered:

1) if in the mark has, without authorization, been included such a State emblem or international emblem or such a local authority coat of arms which under existing laws or regulations may not be used, without authorization, as a trademark, or anything that may be easily confused therewith;

2) if the mark is likely to deceive the public;

3) if the mark is otherwise contrary to laws or regulations or public order or is likely to cause offence;

4) if the mark contains or consists of elements which are likely to convey the impression of being another person's trade name or the family name, artistic name or similar name of another person, or another person's portrait, unless the name or the portrait obviously relates to a person who is long deceased;

5) if the mark contains an element which is likely to convey the impression of being the title of another person's protected literary or artistic work, where the title is distinctive, or which would violate another person's copyright in a literary or artistic work or another person's right in a photographic picture or in a design;

6) if the mark is confusingly similar to a name or a trade name which is being used in the course of another person's business activities or to another person's trademark which is registered on the basis of an earlier application, or to another person's trade symbol which is established on the market when the application for registration is filed;

7) if the mark is confusingly similar to a trade symbol which, at the time of the application, is being used by another person and the applicant had knowledge about that use at the time of the application and had not used the mark before the other symbol was first used;

8) if the mark is confusingly similar to another person's Community trademark which is registered on the basis of an earlier application.

If the mark is confusingly similar to a Community trademark which is registered on the basis of a later application, an obstacle to registration exists if the holder of the Community trademark may, as regards that mark, claim the priority of an earlier trademark according to the Council Regulation on the Community trademark and the earlier trademark is registered on the basis of an earlier application. This applies even where the earlier trademark has not been maintained or renewed.

In cases referred to in the first paragraph, item 8), confusing similarity may, even where the marks do not refer to goods or services of the same kind or a similar kind, be invoked for the benefit of a Community trademark having a reputation within the Community, where the use of another similar trademark would take unfair advantage of, or would be detrimental to the distinctive character or reputation of, the Community trademark having the reputation.

In cases referred to in the first paragraph, items 4) to 8) and the second and third paragraphs the registration may nevertheless be effected if the person whose right is involved gives his consent thereto and there are no other obstacles according to the provisions of the first paragraph.

Article 34. The owner of a trademark may grant to someone else the right to use the trademark (license) for all, or part of, the goods for which the trademark is registered and for the entire, or part of, the country. The license may be exclusive or non-exclusive.

The owner of a trademark is entitled to invoke the rights conferred to the trademark against a licensee who contravenes a provision in the license agreement relating to the duration of the license, the form under which the trademark may be used, the kind of goods for which the license is granted, the territory in which the trademark may be used, or the quality of the goods manufactured by the licensee.

The license shall, upon request, be recorded in the Trademark Register. Such a recordal shall, however, not be made where the use of the trademark by the licensee would be obviously deceptive for the public. Where it is shown that the license has expired, the entry shall be removed.

Unless otherwise agreed, the licensee is not entitled to assign his right to another person.

The right in a trade symbol as mentioned in Article 2, first or second paragraph, may not be sequestered for debt. If the owner is bankrupt and his property taken over by a receiver, the right shall, however, be included in the bankruptcy estate.

Article 34 a. The right in a registered trademark or in an application for registration of a trade mark may be pledged under the provisions contained in Articles 34 b - 34 j.

Article 34 b. A pledge in a property as referred to in Article 34 a comes into being through the registration of a written contract concerning the pledge in the property. The application for registration shall be filed with the Registration Authority.

The transfer of a registered pledge to another person shall, upon application, be recorded in the Trademark Register or in the diary of the Trademark Authority.

If a pledge has been made for the benefit of each one of several persons, priority shall, unless otherwise agreed, be accorded to the pledge concerning which an application for recordal first was received by the Registration Authority.

If several applications for recordal are made on the same day, priority between them shall, unless otherwise agreed, be given according to the time sequence in which they are made. Where the applications are filed simultaneously, or where the sequence can not be determined, they shall be considered to have equal validity.

Article 34 c. An application for recordal according to Article 34 b shall be made by the person who has the right in the trademark or in the trademark application or to whom a pledge has been granted. The applicant shall prove the right of the pledger in the trademark or the trademark application.

The person who is indicated in the Trademark Register as the owner of a registered trademark shall be considered to hold the right in the mark, unless otherwise follows from the circumstances in the case. If the application for recordal relates to an application for registration of a trademark, the person who has, in the diary of the Trademark Authority, been recorded as the applicant shall be considered to hold the right in the application for registration of the trademark, unless otherwise follows from the circumstances in the case.

The application shall not be approved where the pledger, when the application for recordal is filed, is not entitled to dispose of the property pledged, due to legal seizure, bankruptcy, minority, measures to ensure payment, provisional attachment or any other reason.

Article 34 d. A contract relating to a pledge may be registered when the trademark has been registered or, where the contract relates to an application for registration of a trademark, when the application has been recorded in the diary of the Registration Authority.

If an application for the registration of a trademark which has been pledged results in the registration of the mark, the right in the registered trademark is thereafter to be considered as the object pledged.

Article 34 e. Even where a pledge has been registered, the pledge in the property pledged is valid only where the contract relating to the pledge has been concluded by someone who is the real owner of the property pledged and is entitled to dispose of it, and the contract is not null and void for any other reason.

Article 34 f. The pledge becomes invalid where the right in the trademark or the application for the registration of the trademark is no longer valid on the basis of the provisions in this Act.

Article 34 g. The registration of a pledge shall be removed from the Trademark Register where the pledge has been declared null and void through a judgement having legal effect, or the pledge has become invalid or otherwise has ceased to exist.

Article 34 h. A pledge is, as against a person who later acquires a proprietary right or another right in the property, valid as from the time of the application for registration under Article 34 b.

A license contract is valid as against the pledgee, where the contract has been concluded before the application for registration of the pledge contract.

Article 34 i. Other legal provisions on rights in pledges in case of legal seizure or in the case of bankruptcy apply also to the right in pledges relating to a trademark or an application for the registration of a trademark. When an application for registration under Article 34 b is filed with the Registration

Authority, this results in the same legal effects as when a pledgee takes possession of an item of movable property.

Where a pledged trademark or a pledged application for the registration of a trademark has been sold in connection with a legal seizure or a bankruptcy, such license agreements as referred to in Article 34 h, second paragraph, continue to be valid.

Article 34 j. The pledgee is entitled to sell the pledge and cover his claim from the sum obtained by the sale only where he has, before, informed the debtor and other known persons concerned about the sale and they have been given a reasonable period of time to take care of their interests.

License contracts as referred to in Article 34 h. continue to be valid also after a sale referred to in this Article.

Article 43. A licensee who intends to bring an action for infringement in respect of a trade symbol shall notify the owner of the symbol of this fact, failing which his action shall not be taken up for consideration.

The same applies where a pledgee intends to bring an action in relation to an infringement in the property pledged.

Article 47. A final decision by the Registration Authority relating to an application for registration of a trademark may be appealed against by the applicant where the decision goes against him. A final decision relating to an opposition against a registration may be appealed against by the owner of the trademark and the opponent where it goes against the person who wants to lodge an appeal. Even if the opponent withdraws his appeal, the case may still be brought to a decision where special reasons therefore exist.

Appeals under the first paragraph shall be lodged with the Court of Patent Appeals (Patentbesvärsrätten) within two months from the date of the decision.

A final decision by the Court of Patent Appeals may be appealed against with the Supreme Administrative Court (Regeringsrätten) within two months from the date of the decision. As regards appeals to the Supreme Administrative Court the provisions of Articles 35 to 37 of the Act on Administrative Proceedings (Act 1971:291) shall apply. The decision of the Court of Patent Appeals shall contain an indication of the fact that a special permission has to be obtained in order for the case to be brought to the Supreme Administrative Court and of the grounds on which such permission may be granted.

Article 48. The Government or, to the extent decided by the Government, the Registration Authority, may issue detailed regulations concerning what the applicant for a registration has to observe, concerning the publication of notices mentioned in Articles 20, 21 and 46 and other proceedings in such matters, and concerning the proceedings in appeal cases referred to in Article 47 as well as concerning the keeping of the Trademark Register.

A fee to an amount decided by the Government shall be paid for applications for registration of trademarks, for alterations in registered trademarks under Article 24, for the registration of pledges, and for registration in the Register of assignments and licenses. A higher fee shall be prescribed where applications for renewal are filed after the expiry of the registration period.

On Community Trademarks

Article 65. Anyone who files, with the Registration Authority, an application for the registration of a Community trademark for transmittal under Article 25.2. of the Council Regulation on the Community Trade Mark shall pay a fee to an amount decided by the Government. The same applies to anyone who requests the transformation of a Community trademark, or of an application for a Community trademark, to an application for a registration of a trademark, or who requests a certificate under Article 89.3. of the Council Regulation.

Article 66. The provisions of Article 37 on liability for trademark infringements apply also to infringements in respect of a Community trademark. The provisions of Articles 37 a to 41 apply to the extent that otherwise not follows from the Council Regulation on the Community Trade Mark. In this respect what is said about trademark infringement shall apply to the infringement of a Community trademark.

Article 67. The District Court of Stockholm shall have jurisdiction in cases referred to in Article 66 of this Act and in Article 92 of the Council Regulation on the Community trade mark.

This Act enters into force on January 1, 1996.

THE MINISTRY OF JUSTICE

Stockholm

ACT

AMENDING THE ACT (1994:1510) AMENDING THE TRADEMARKS ACT (1960:644).

(Swedish Statute Book 1995:1278, of December 7, 1995).

In accordance with the decision by the Parliament it is hereby prescribed that Articles 14 and 57 of the Trademarks Act (1960:644) in their wording under the Act (1994:1510) Amending the Act mentioned shall read as follows

Article 14. A trademark may not be registered:

1) if in the mark has, without authorization, been included such a State emblem or international emblem or such a local authority coat of arms which under existing laws or regulations may not be used, without authorization, as a trademark, or anything that may be easily confused therewith;

2) if the mark is likely to deceive the public;

3) if the mark is otherwise contrary to laws or regulations or public order or is likely to cause offence;

4) if the mark contains or consists of elements which are likely to convey the impression of being another person's trade name or the family name, artistic name or similar name of another person, or another person's portrait, unless the name or the portrait obviously relates to a person who is long deceased;

5) if the mark contains an element which is likely to convey the impression of being the title of another person's protected literary or artistic work, where the title is distinctive, or which would violate another person's copyright in a literary or artistic work or another person's right in a photographic picture or in a design;

6) if the mark is confusingly similar to a name or a trade name which is being used in the course of another person's business activities or to another person's trademark which is registered on the basis of an earlier application, or to another person's trade symbol which is established on the market when the application for registration is filed;

7) if the mark is confusingly similar to a trade symbol which, at the time of the application, is being used by another person and the applicant had knowledge about that use at the time of the application and had not used the mark before the other symbol was first used;

8) if the mark is confusingly similar to a trademark covered by an international registration with effect in Sweden and for which the date referred to in Article 55, second paragraph, precedes the date of the application;

9) if the mark is confusingly similar to a Community trademark owned by another person which is registered on the basis of an earlier application.

If the mark is confusingly similar to a Community trademark which is registered on the basis of a later application, an obstacle to registration exists if the holder of the Community trademark may, as regards that mark, claim the priority of an earlier trademark according to the Council Regulation on the Community trademark may and the earlier trademark is registered on the basis of an earlier application. This applies even where the earlier trademark has not been maintained or renewed.

In cases referred to in the first paragraph, item 9), confusing similarity may, even where the marks do not refer to goods or services of the same kind or a similar kind, be invoked for the benefit of a Community trademark having a reputation within the Community, where the use of another similar trademark would take unfair advantage of, or would be detrimental to the distinctive character or reputation of, the Community trademark having the reputation.

In cases referred to in the first paragraph, items 4) to 9), and the second and third paragraphs, the registration may nevertheless be effected if the person whose right is involved gives his consent and there are no other obstacles according to the provisions of the first paragraph.

Article 57. A decision that an international registration shall have effect in Sweden shall be valid as from the date which the International Bureau has indicated as the date of the international registration. The provisions of Article 1, third paragraph, Articles 3 to 11, 25 to 27 and 32 to 45 shall apply to such registrations. The provisions in those Articles referring to a registration shall instead apply to a decision that an international trademark registration shall have effect in Sweden.

The provisions on trademark applications in Articles 34 a to 34 j shall apply also to requests under Article 54, first paragraph, that an international trademark registration shall have effect in Sweden.

This Act enters into force on January 1, 1996.