

# 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 (1960:744), 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 [34a 34j](#) 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 34a.** The right in a registered trademark or in an application for registration of a trademark may be pledged under the provisions contained in [Articles 34b 34j](#).

**Article 34b.** A pledge in a property as referred to in [Article 34a](#) 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 34c.** An application for recordal according to [Article 34b](#) 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 34d.** 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 34e.** 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 34f.** 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 34g.** 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 34h.** 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 34b](#).

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 34i.** 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 34b](#) 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 34h](#), second paragraph, continue to be valid.

**Article 34j.** 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 34h](#), 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.