

The Trademarks Act

(Law No. 644 of December 2, 1960, as last amended by Law No. 234 of May 7, 1986)*

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General Provisions

1. By means of registration in accordance with this Act a trader shall be entitled to acquire an exclusive right in a trademark as a special symbol for the purpose of distinguishing the goods which he offers for sale in his business from those offered by others.

A trademark may consist of devices, words, letters or numerals, or of the distinctive get-up of the goods or their packaging.

The provisions of this Act made in respect of goods shall, insofar as applicable, also apply to services.

Separate provisions have been made in respect of collective marks.¹

* *Swedish title:* Varumärkeslag.

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** Added by WIPO.

¹ See *Industrial Property Laws and Treaties*, SWEDEN — Text 3-002 (*Editor's note*).

2. Even though unregistered, a trademark shall be the exclusive property of a trader when it has become established on the market.

By establishing them, the trader shall also acquire an exclusive right in slogans or any other special trade symbols used in his business.

A symbol shall be considered to have become established on the market if, in Sweden, it is generally known to those to whom it is addressed as the symbol of the goods of the proprietor of the mark.

3. Any person engaged in a commercial activity shall be entitled to use his surname or his trade name as a symbol on his goods, provided such use is not likely to cause confusion with the protected trade symbol of another party. Moreover, a trader shall be protected under this Act against the unauthorized use of his name or trade name as a trade symbol by another party.

4. The right in a trade symbol granted under [Sections 1 to 3](#) shall imply that any person other than the proprietor shall be excluded from using, in a commercial activity, a confusingly similar symbol for his goods, whether it be on the goods or on their packaging, or in advertising or in documents or in any other way, including also the verbal use thereof. This provision shall apply whether the goods are offered for sale or intended to be offered for sale in this country or abroad, or are imported here. If the right in a symbol is based on the provisions of [Section 2](#) and the symbol has not become established in the whole of Sweden, the right shall be valid only in the region where it has become established.

Unlawful use under the first paragraph of this Section shall be regarded as the reference by anyone, in connection with the sale of spare parts, accessories or the like adapted for use together with the goods of another party, to the symbol of that party in such a way as to create a false impression that what is thus being offered for sale originates with the proprietor of the symbol, or that the proprietor has consented to its being so used.

If an article has been offered for sale under a certain symbol and someone other than the proprietor has substantially altered it by reconditioning, repair or the like, the symbol may not be used when the article is again offered for sale in the course of business in Sweden, unless the alteration is clearly indicated or is otherwise clearly evident.

5. Exclusive rights in a trade symbol shall not be extended to such parts of the symbol as mainly serve to make the goods or their packaging more practical, or otherwise serve to fulfill some function other than that of being a trade symbol.

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

Nevertheless, the possibility of confusion may also be pleaded by way of exception, in other cases, *viz.*:

- (a) in favor of a symbol which has become exceedingly well established on the market and is publicly known in wide circles in Sweden, where, in view of

this fact, the use of another similar symbol would involve an improper exploitation of the goodwill of the former; or

- (b) in favor of a symbol which has become established on the market, where, with regard to the special character of the goods in question, the use of another similar symbol would obviously lessen the goodwill of the former.

7. In settling disputes over the rights in trade symbols which are confusingly similar to each other, the earlier title shall prevail unless the provisions of [Section 8](#) or [9](#), below, apply.

8. If a registered trademark has been used to a not inconsiderable extent, the right in the said mark, insofar as relating to goods of the same or a similar kind as those in respect of which the mark has been used, shall be permitted to exist side by side with an older right in a confusingly similar symbol, provided the registration was applied for in good faith and existed for five years from the date of registration before action was brought against its validity.

9. If a symbol has become established on the market, the right in the said symbol shall be permitted to exist side by side with an older right in a confusingly similar symbol, provided the proprietor of the older right has not, within a reasonable time, taken measures against the use of the more recent symbol.

10. When the provisions of [Section 8](#) or [9](#) are applied, there shall be a discretion to order that either of the symbols, or both, may be used in a special manner only, for example, in a particular form, with the addition of a place name or some other distinguishing feature.

11. At the request of the proprietor of a registered trademark authors, editors and publishers of dictionaries, manuals or similar printed works shall ensure that the trademark is not reproduced in the said works unless it is clearly indicated that the mark reproduced is a registered trademark.

Anyone who fails to fulfill his obligation laid down in the preceding paragraph shall be liable to assist in publishing a notice of rectification in such manner and to such extent as may be deemed reasonable, and to defray the cost of such notice of rectification.

Registration of Trademarks

12. A trademark register for the whole of Sweden shall be kept in Stockholm by the Patent and Registration Office.

13. In order to be registrable a trademark must be adapted to distinguish the goods of the proprietor from those of others. A mark which, exclusively or with no more than minor changes or additions, indicates the kind, quality, quantity, use, price or geographical origin of the goods, or the date of its production, shall not in itself be deemed distinctive. In assessing the distinctive capacity of a mark, however, all the factual circumstances shall be taken into consideration and in particular the length of time during which, and the scale on which, the mark has been in use.

A trademark which merely consists of letters or numerals and which cannot be regarded as a device mark may be registered only if the mark has been proved to possess distinctiveness as a result of its becoming established on the market.

A symbol merely consisting of what is likely to give the impression of being the applicant's surname, or his surname and first names, initials, title or the like, or his trade name, shall not be registrable as a trademark.

14. A trademark may not be registered:

(1) if the mark contains such State or international emblems or such local authority coats of arms as, by law, shall not be used without permission as a trademark, or anything that might easily be confused therewith;

(2) if the mark is obviously deceptive;

(3) if the mark is otherwise contrary to law and order or is likely to cause offense;

(4) if the mark contains or consists of an element which is likely to give the impression of being the trade name of another party, or the surname, artist's name or a similar name, or the portrait of another party, unless it obviously refers to a person long deceased;

(5) if the mark contains an element which is likely to give the impression of being the title of the protected literary or artistic work of another party, where the title is distinctive, or which infringes the copyright of another party in a literary or artistic work, or the photography or design rights of another party;

(6) if the mark is confusingly similar to the name or trade name of another party, or to the trademark of another party registered on the basis of an earlier application, or to the trade symbol of such party, which was already established on the market when the application was made; or

(7) if the mark is confusingly similar to a trade symbol which, at the time of the application, was being used by another party and the applicant was aware thereof when he filed his application and had not used his mark before the other symbol was first used.

Notwithstanding the provisions of [items \(4\)](#), [\(5\)](#), [\(6\)](#) and [\(7\)](#), above, registration may be granted if the person whose right is involved gives his consent and there are no other obstacles under the provisions of the present Section.

15. The exclusive right acquired through the registration of a trademark does not include such elements of the mark as cannot, apart from the mark, be registered by themselves.

If a mark contains any such elements and if there are special reasons to presume that the registration of the mark may cause uncertainty as to the scope of the exclusive right, the said elements may be expressly disclaimed from protection in the act of registration.

Where it is later shown that an element thus disclaimed has become registrable, a new registration of that element or of the whole mark without a disclaimer may be granted.

16. A trademark may be registered in one or more classes of goods. The classification of goods shall be established by the Patent and Registration Office.

17. Anyone desiring to have a trademark registered shall lodge a written application therefor with the Registration Authority, giving the applicant's name or trade name and specifying the business and the goods or classes of goods for which the mark is intended; in addition, the mark shall be clearly indicated.

18. If anyone applies for registration of a trademark which was used the first time to designate goods exhibited at an international exhibition, and if the application was filed within six months of the day when the goods were first exhibited, the application shall, under the further conditions prescribed by the Government, in relation to other applications or in relation to the use of other trade symbols, be considered to have been made on that day.

19. If the applicant has not complied with the requirements regarding the application, or if the Registration Authority otherwise finds other obstacles to approval of the application, the applicant shall be required within a given time to file a statement or to make the necessary corrections, failing which the application shall be considered to have been abandoned.

Where the applicant has submitted a statement, but the Registration Authority nevertheless finds that there is still some obstacle to granting the registration, the application shall be rejected, provided there is no reason for issuing a new official action to the applicant.

20. When the application forms are complete and there are no obstacles to registration, the Registration Authority shall publish the application.

Anyone who desires to lodge an opposition to the application must do so in a written communication addressed to the Registration Authority within two months from the day when the application was published.

21. After the expiry of the period stated in [Section 20](#) the Registration Authority shall continue its examination of the application.

If the application is granted, the mark shall be entered on the register and a notice of the entry shall be published, after the decision to that effect has become legally valid.

If the application is rejected or abandoned, after having been published in accordance with [Section 20](#), the decision to that effect shall be published after it has become legally valid.

22. A registration is valid from the day when the application was filed until 10 years have elapsed from the date of registration.

The registration may be renewed at the registrant's request for 10 years at a time from the date of expiry of the previous period of registration.

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

With regard to the handling of applications for renewal, the provisions laid down in [Section 19](#) shall apply.

24. At the request of the proprietor of a registered trademark, minor alterations of the mark may be entered in the register, provided they do not affect the impression of the mark as a whole.

Termination of Registration

25. If a trademark has been registered contrary to the provisions of this Act and the reason barring registration still exists, the registration may be cancelled in the manner stated below, unless the rights in the mark can be allowed to remain under [Section 8](#) or [9](#).

The registration may also be cancelled if the registrant is no longer a trader, or if the mark is deceptive, or has lost its distinctive character or has become contrary to public order or morality, or has not been in use for the last five years and the registrant does not show any reasons for his failure to use the mark.

26. An action in a court of law for the cancellation of a registration may be brought by anyone to whom the registration is detrimental. Where the provisions of [Section 13](#), [Section 14\(1\) to \(3\)](#) or [Section 25](#), second paragraph, form the grounds for an action, such action may be brought by a public authority appointed by the Government or by an association of traders in the industry concerned.

With regard to the competence of the courts in actions for the cancellation of a registration, it is stipulated, without prejudice to the ordinary rules of competence, that the Stockholm Court (*Stockholms tingsrätt*) shall have jurisdiction when the registrant is not domiciled in Sweden.

27. When a decision to cancel a registration has taken legal effect the mark shall be struck off the register.

The same shall apply if the registration is not renewed, or if the registrant requests that the registration be removed from the register.

Special Provisions Regarding the Registration of Foreign Trademarks

28. Where anyone who is not established as a trader in Sweden applies for the registration of a trademark, he shall be required to show that in his country of origin the mark is registered in respect of the goods covered by the application in Sweden.

For reasons of reciprocity, the Government may decree that the preceding paragraph shall not apply to certain foreign States.

29. For reasons of reciprocity, the Government may decree that trademark registered in a foreign State may, subject to the reservations that are set out in the decree, be registered in Sweden as it is registered in the foreign State. With regard to trademarks which would not otherwise have been registrable here the registration shall have no wider scope nor be valid any longer than in the foreign State.

30. For reasons of reciprocity, the Government may decree that, where an application for the registration of a trademark has previously been filed in a foreign State, the application for registration in Sweden shall, subject to the further conditions that are set out in the decree, be considered, in relation to other applications as well as to the use of other trade symbols, to have been made at the same time as the application was filed in the foreign State.

31. The proprietor of a registered trademark who is not domiciled in Sweden shall have an attorney resident here who is empowered to represent him in all matters concerning the mark. An entry regarding such attorney shall be made in the trademark register.

If the name of a competent attorney is not so entered, the Registration Authority shall send to the proprietor at his last available address a notice requiring him to rectify the matter within a certain specified time. If such requirement is not complied with, the mark shall be removed from the register.

Assignments and Licenses

32. Where the business to which a trademark or a trade symbol, such as is mentioned in [Section 2, second paragraph](#), belongs is assigned to another party, the mark or symbol shall be deemed to be included in the assignment, unless the parties have agreed otherwise.

33. If a registered trademark has been assigned, an entry to that effect shall, upon request, be made in the trademark register. Such entry may not be made, however, where the mark has been assigned without the transfer of the business to which the trademark belongs and where its use by the new proprietor is obviously deceptive.

In lawsuits and other legal cases concerning a trademark the person who has last been entered in the register as its proprietor shall be regarded as such.

34. If the proprietor of a registered mark grants another party permission to use his mark in business (license), an entry may not be made, however, where the use of the mark by the licensee is obviously deceptive. If it is shown that the license has expired, the entry shall be removed from the register.

Unless the contrary has been agreed on by the parties, the licensee shall not be entitled to assign his right to a third party.

The right in a trademark or symbol mentioned in [Section 2, second paragraph](#), may not be sequestered for debt. If the registrant is declared bankrupt and his property is taken over by the receiver, the said right shall be included in the bankruptcy estate.

Deceptive Use of Trade Symbols

35. Where a trade symbol, after it has been assigned or a license to use it has been granted, is deceptive when used by the new proprietor or the licensee, a court of law may, to the extent necessary, issue an injunction against his using the symbol, on pain of a fine.

Such injunctions may also be issued in other cases where a trade symbol is deceptive, or the proprietor of a trade symbol or, by his permission, any other person uses the symbol in such a way as to deceive the general public.

Actions under this Section may be brought by a public authority appointed by the Government or by anyone injured by the use of the symbol or by an association of traders in the industry concerned.

36. When imposing a fine the court may order, to the extent reasonable in the circumstances, that a trade symbol which has been applied on a commodity, packaging, advertising material, business documents or the like, contrary to the provisions of [Section 35](#), shall be deleted or altered in such a way as not to be deceptive. Unless such measures can be accomplished in an alternative way, it shall be ordered that the property bearing the trade symbol in question shall be destroyed or changed in a specific manner.

Property of the kind mentioned in the preceding paragraph may be seized pending the execution of the orders mentioned; for that purpose, the provisions on seizure in criminal cases shall apply.

Remedies

37. If anyone infringes the right to which the proprietor of a trademark is entitled under [Sections 4 to 10](#) (trademark infringement), and if such infringement is committed deliberately, he shall be punished with a fine or by imprisonment for a period not exceeding six months.

An indictment for this offense may be brought by the Public Prosecutor only at the instance of the aggrieved party, and provided that such prosecution is deemed justified in the public interest.

38. Any person who, deliberately or through carelessness, commits trademark infringement shall be liable for the damage suffered by the aggrieved party. If there is only minor carelessness, the compensation may be adjusted accordingly.

39. In an action for trademark infringement based on a registration under this Act, [Section 37](#) shall not be applied as far as concerns the time prior to the date of registration. With respect to the time prior to publication under [Section 20](#), [Section 38](#) shall be applied provided the infringement was not committed deliberately.

40. An action for damages under [Section 38](#) may only cover injury suffered during the last five years before the action was brought. For injury in respect of which no action has been brought within the said period the right of redress shall be lost.

Notwithstanding the provision of the preceding paragraph, action may be brought on the ground of a registration under this Act for infringement committed prior to the date of registration, provided it is instituted within a year from that date.

41. Where trademark infringement has been committed, the court may, on a motion by the injured party, order, to the extent reasonable in the circumstances, that a trade symbol which has been applied without permission on labels, packaging, advertising material, business documents, or any other object, shall be deleted or altered in such a

way that improper use thereof cannot take place. Unless such a measure can be taken in an alternative way, it may be ordered that the property bearing the trade symbol in question shall be destroyed or altered in a specific manner. In such cases, the court may also order, on request, that the property shall be surrendered to the injured party against payment of its value.

When an offense as indicated in [Section 37](#) may reasonably be deemed to have been committed, the property in question may be seized, in which case the provisions on seizure in criminal cases shall be applied.

42. If a trademark registration is cancelled by a judgment that has taken legal force, the remedies stipulated in [Sections 37 to 41](#) shall not have effect.

In cases of infringement the court shall, at the defendant's request, stay the proceedings until the question of the cancellation of the registration has been finally decided upon. If cancellation proceedings have not been instituted, the court shall allow the defendant, in connection with the stay of proceedings, a certain period within which such action shall be brought.

43. A licensee who intends to bring a suit for infringement shall notify the proprietor of the trademark thereof failing which his plea shall not be given a hearing by the court.

44. Civil action may be taken before a court of law to secure a judgment as to whether or not a right in a trademark subsists, or whether certain acts do or do not constitute an infringement of such right, provided that uncertainty exists on these points and such uncertainty is detrimental to the plaintiff.

In such suits the provisions of [Section 43](#) shall be correspondingly applicable.

45. Copies of judgments in cases of trademark infringement, and in cases mentioned in [Sections 26, 35](#) and [44](#), shall be sent by the court to the Patent and Registration Office.

Publication, Appeals, etc.

46. In addition to the acts of publication referred to in [Sections 20](#) and [21](#), a notice shall be published of the renewal of a registration under [Section 22](#), of the alteration of a registered mark under [Section 24](#), of the removal of a registration under [Sections 27](#) and [31](#), and of the entry in the register of an assignment under [Section 33](#) or a license under [Section 34](#).

47. Appeals against final decisions of the Registration Authority in accordance with this Act may be lodged by the applicant if the decision goes against him. Regarding decisions where an application for registration has been granted in spite of opposition having been duly entered against it, the opponent may lodge an appeal. Even if the opponent withdraws his appeal, the case may still be brought up for decision if special reasons exist.

Appeals shall be lodged with the Board of Patent Appeals within two months from the date of the decision.

Final decisions of the Board of Patent Appeals may be appealed by the applicant if the decision goes against him. Such appeals shall be lodged with the Supreme Administrative Court within two months from the date of the decision. In this case, the provisions of [Sections 35 to 37](#) of the Law on Administrative Proceedings (Law No. 291 of 1971) concerning appeals against decisions of the court (*kammarät*) are applicable. The decision of the Board of Patent Appeals shall indicate the obligation to obtain special permission from the Supreme Administrative Court in order to bring the appeal before it and the grounds on which the permission may be granted.

48. The Government or the Registration Authority, to the extent authorized by the Government, may issue rules which registration applicants shall observe regarding the publication of notices under [Sections 20, 21](#) and [46](#), the procedure to be followed in these cases, the appeals procedure according to [Section 47](#) and the keeping of the trademark register.

Upon application for a trademark registration, for renewal of a registration, for the alteration of a registered trademark under [Section 24](#), or for the entry in the register of an assignment or a license, as well as for the lodging of an appeal under [Section 47](#), first paragraph, a fee shall be paid in an amount decreed by the Government. A higher fee shall be required for renewal applications which are filed after the expiry of the registration period.