

The Ministry of Justice
Stockholm

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TRADE MARKS ACT
(Swedish Statute Book, SFS, 2010:1877)

Unofficial translation

CHAPTER 1. General Provisions

Scope of Application

Trade marks and other trade symbols

Article 1. This Act contains provisions on trade marks and other trade symbols for goods and services which are offered in the course of trade and to which anyone may acquire exclusive rights.

This Act also contains provisions on special indications for agricultural products and foodstuffs which are protected within the European Union.

Collective marks, guarantee marks and certification marks

Article 2. An association, an undertaking or any other organisation may acquire exclusive rights for its members to use common trade marks (collective marks) and other trade symbols in the course of trade.

Any public authority issuing regulations concerning, or exercising control of, goods or services may acquire exclusive rights in trade marks (*guarantee or certification marks*) and other trade symbols for use in respect of the goods or services subject to the regulations or the control. The same applies to foundations, associations, undertakings and other organisations establishing conditions for, or exercising control of, goods or services.

Community trade marks

Article 3. This Act also contains certain provisions on Community trade marks.

Community trade marks are trade marks pursuant to the Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark.

Subject matter liable to constitute a trade mark

Article 4. A trade mark may consist of any signs capable of being represented graphically, particularly words, including personal names, figurative elements,

letters, numerals, and the shape of goods or of their packaging, provided that the signs are distinctive.

Distinctiveness

Article 5. A trade symbol is deemed distinctive provided that it is capable of distinguishing goods or services of one business activity from those of another.

A trade symbol can be devoid of distinctive character, if it consists exclusively of signs or indications which

1. may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin or other characteristics, or the time of production of the goods or rendering of the services, or
2. have become customary in the current language or in the bona fide and established practices of the trade.

In the assessment of whether a trade symbol is distinctive, it should be taken into account that it may acquire distinctiveness through use.

Acquisition of exclusive rights

Exclusive rights through registration

Article 6. Exclusive rights in trade marks may be acquired through registration in the Trade mark Register pursuant to Chapter 2. The Register is kept by the Patent and Registration Office.

Exclusive rights in trade marks may be acquired also by international registration pursuant to Chapter 5.

Exclusive rights by establishment on the market

Article 7. Exclusive rights in a trade symbol may, without registration, be acquired by establishment on the market.

A trade symbol is deemed established on the market, if it in this country is known by a significant part of the relevant public as an indication for the goods or services which are being offered under it. If the trade symbol is established on the market only within a part of the country, the exclusive rights apply only within that territory.

Exclusive rights in trade names and names as trade symbols

Article 8. The proprietor of a trade name or another trade sign has exclusive rights in the trade name or trade sign as a trade symbol. If the trade sign is protected only within a part of the country, the exclusive rights apply only within that territory.

A party using his or her name as a trade symbol has exclusive rights in the symbol as a trade symbol, provided that the name is distinctive for the goods or services for which it is used. If the name is used only within a part of the country, the exclusive rights apply only within that territory.

Symbols not liable to be subject of exclusive rights

Article 9. No exclusive rights may be acquired in symbols that consist exclusively of a shape which results from the nature of the goods themselves, a shape of goods which is necessary to obtain a technical result, or a shape which gives substantial value to the goods.

Implication of exclusive rights

Article 10. Exclusive rights in a trade symbol pursuant to Articles 6–8 imply that unless having the proprietor's consent no one but the proprietor is entitled to use in the course of trade a symbol which is

1. identical with the trade symbol, for identical goods or services,
2. identical with or similar to the trade symbol, for identical or similar goods or services, if there exists a likelihood of confusion, including the likelihood of association between the user of the symbol and the proprietor of the trade symbol, or
3. identical with or similar to a trade symbol which in this country is known by a significant part of the relevant public, if the use concerns goods or services and takes unfair advantage of or without due cause is detrimental to the distinctive character or the repute of the trade symbol.

To be 'use' is deemed

1. affixing the sign to the goods or to the packaging thereof,
2. offering the goods, putting them on the market, stocking them for these purposes or offering or supplying services thereunder,
3. importing or exporting goods under the symbol, or
4. using the symbol on business papers and in advertising.

Limitation of exclusive rights

Article 11. Exclusive rights in a trade symbol do not give independent protection for an element of the symbol which lacks distinctiveness.

Exclusive rights in a trade symbol do not prevent a third party from using, in accordance with honest practices in industrial or commercial matters, in the course of trade

1. his or her trade name, name or address,
2. indications concerning the kind, quality, quantity, intended purpose, value, geographical origin or other characteristics of the goods or service, or the time of production of the goods or rendering of the service,

3. the trade symbol, if it is necessary to indicate the intended purpose of the product or service, in particular as accessories or spare parts.

Exclusive rights in a collective, guarantee or a control mark do not prevent a third party from using in the course of trade signs or indications indicating geographical origin, provided that the use accords with honest practices in industrial or commercial matters. Such exclusive rights do not prevent a third party entitled to use a geographical name to do so.

Exhaustion of exclusive rights

Article 12. Exclusive rights in a trade symbol do not prevent a third party from using the symbol in relation to goods which have been put on the market in the European Economic Area under that trade symbol by the proprietor or with the proprietor's consent.

The first paragraph does not apply when the condition of the goods is changed or impaired after they have been put on the market or when there exist legitimate reasons for the proprietor to oppose the use.

Conflicting rights

Priority rights

Article 13. Where several parties claim exclusive rights in trade symbols which are identical or similar in the way provided for in Article 10, priority shall be given to the party who has the earlier legal basis of his or her claim, unless otherwise ensues from Article 14 or 15.

Consequence of passivity (registered trade marks)

Article 14. The rights in a registered trade mark shall coexist with earlier rights in a trade symbol which is identical or similar in the way provided for in Article 10, if

1. the application for registration was made in good faith, and
2. the proprietor of the earlier rights has been aware of and acquiesced in the use in this country of that trade mark for a period of five successive years after the date of registration of the later trade mark.

If the trade mark has been used only for part of the goods or services for which it is registered, the rights shall apply only to those goods or services.

Consequence of passivity (trade symbols established on the market)

Article 15. The rights in a trade symbol which has been established on the market shall coexist with earlier rights in a trade symbol which is identical or similar in the way provided for in Article 10, if the proprietor of the earlier rights has not within a reasonable time taken action to prevent the use of the later symbol.

Coexistence

Article 16. In the cases referred to in Article 14 and 15, the rights in the later trade symbol do not prevent the use of the earlier one.

At the request of one of the parties, a court may, in the cases referred to in Article 15, where it is reasonable, decide that one of the symbols, or both, may be used only in a specific manner, such as in a particular form or with the addition of a name of a place or the name of the proprietor. Such a decision may not, however, concern a registered trade mark.

Obligation to provide information

Article 17. Authors, publishers or editors of dictionaries, manuals and other similar printed publications shall, at the request of the proprietor of a registered trade mark, ensure that the trade mark is not reproduced in the publication unless it is clearly indicated that the trade mark is protected by registration. The same applies, if such a publication is made available electronically by a party referred to in Chapter 1, Article 9 of the Fundamental Law on Freedom of Expression.

A party failing to comply with a request pursuant to the first paragraph is obliged to take part in the publication of a rectification, in a manner and to an extent which is reasonable, and to pay for such rectification.

CHAPTER 2. National registration of trade marks

Application for registration

Contents of the application

Article 1. A party wishing to register a trade mark shall apply for it before the Patent and Registration Office. The application shall contain

1. information as to the name or trade name and address of the applicant,
2. information as to the name and address of any representative,
3. a clear representation of the trade mark,
4. a list of the goods or services for which the trade mark is intended and the classes they belong to (list of goods or services).

An application for a collective, guarantee or certification mark shall, in addition, contain particulars of the conditions under which the trade mark may be used.

The applicant shall pay the prescribed application fee.

The Government or the public authority appointed by the Government issues more detailed regulations concerning the application procedure.

Alterations of the application

Article 2. The applicant may make such insignificant alterations of the trade mark applied for which do not affect the overall impression of the mark. The applicant may also restrict the list of goods or services in the application.

Division of the application

Article 3. An application which includes several goods or services may be divided into two or more applications to which the goods or services are allocated. The applications are deemed to have the same filing date and priority as the original application.

General conditions for registration

Article 4. A trade mark shall not be registered, if it consists exclusively of a shape which results from the nature of the goods themselves, a shape of goods which is necessary to obtain a technical result or a shape which gives substantial value to the goods.

Article 5. A trade mark must be capable of distinguishing the goods or services concerned in order to be registered.

Article 6. Signs or indications which may serve in the course of trade to designate the geographical origin of the goods or services may be registered as collective, guarantee or certification marks, even if they lack distinctiveness pursuant to Chapter 1, Article 5, second paragraph, item 1.

Public interests as grounds for refusal of registration

Article 7. A trade mark shall not be registered, if it

1. is contrary to law or regulations or to principles of morality or public policy,
2. is of such a nature as to deceive the public concerning the nature, quality, geographical origin or any other circumstance related to the goods or services, or
3. includes, without permission, such a State or international emblem or such a municipal escutcheon which, under law or regulations, may not be used unauthorised as a trade mark, or something that can easily be confused with such an emblem or such an escutcheon.

A trade mark shall neither be registered, if it contains or consists of something which is liable to be conceived as a geographical indication for wines or spirits and relates to wines or spirits of a different origin.

Other rights as grounds for refusal of registration

Article 8. A trade mark shall not be registered, if it

1. is identical with an earlier trade symbol for identical goods or services,

2. is identical with or similar to an earlier trade symbol for identical or similar goods or services, if there exists a likelihood of confusion, including the likelihood of association between the user of the trade mark and the proprietor of the trade symbol as a result of the trade mark use,

3. is identical with or similar to an earlier trade symbol which is known by a significant part of the relevant public, and the use of the trade mark would take unfair advantage of or without due cause be detrimental to the distinctive character or repute of the trade symbol, or

4. can be confused with a symbol which, at the time of the application, was being used by a third party in this country or abroad and is still in use, if the applicant was acting in bad faith at the time of the application.

‘Trade symbol’ pursuant to the first paragraph, items 1–3 means

1. a trade mark which is registered pursuant to this Chapter,

2. a trade mark which is registered on the basis of an international trade mark registration the protection of which is extended to Sweden pursuant to Chapter 5,

3. a trade symbol which is established on the market, if the protection based on the establishment on the market is valid within a substantial part of the country, and

4. a Community trade mark.

Article 9. The grounds for refusal of registration of trade marks pursuant to Article 8, first paragraph, items 1–3 apply equally to

1. a registered trade name which is being used in the course of trade,

2. such a name or such a trade sign other than a registered trade name which is protected pursuant to Chapter 1, Article 8, if the protection applies within a substantial part of the country.

Article 10. A trade mark shall not be registered, if it contains or consists of

1. an element which is liable to be conceived as another party’s trade name,

2. an element which is liable to be conceived as another person’s characteristic surname, generally known artistic name or similar name, if the use of the trade mark would be to the disadvantage of the bearer of the name, and if the name obviously does not relate to a person who is long deceased,

3. a picture of another person that obviously does not relate to a person who is long deceased, or

4. an element which infringes another party’s copyright in a literary or artistic work or another party’s rights in a photographic picture or in a design.

Article 11. The provisions of Articles 8–10 do not constitute grounds for refusal of registration, if the proprietor of the earlier right consents to the registration.

Exemption from protection for a trade mark element

Article 12. If a trade mark contains an element which may not be registered by itself, and if there exists an obvious risk that the registration of the mark can cause

uncertainty about the scope of the exclusive rights, this element may be explicitly exempted from protection at the registration.

If the element later meets the conditions for registration, this element or the trade mark in its entirety is liable to registration following a new application without such an exemption as referred to in the first paragraph.

Classes of goods and services

Article 13. Trade marks are registered in one or more classes of goods or services. The Government or the public authority appointed by the Government issues more detailed regulations concerning the classification of goods and services.

Priority

Article 14. An application for registration of a trade mark in Sweden is, in relation to other applications or to use of other trade symbols, deemed to have been filed at the same time as an application for registration of the trade mark which was first filed in another state by the applicant or by a party who has transferred the rights to the applicant, provided that the conditions in the second–fourth paragraphs are met.

The earlier application must have been filed in

1. another state party to the Paris Convention for the Protection of Industrial Property of March 20, 1883,
2. a state or a territory party to the Agreement Establishing the World Trade Organisation, or
3. another state or territory, where a corresponding priority from a Swedish application is accorded, and where the legislation in force essentially corresponds to the Paris Convention.

The application for registration of the trade mark in Sweden shall be filed within six months from the filing of the application in the other state or territory.

An applicant wishing to claim priority shall make a request to that effect before the trade mark has been registered. The applicant shall indicate

1. who filed the earlier application,
2. where and when the earlier application was filed, and
3. as soon as possible, the number of the earlier application.

Article 15. The Patent and Registration Office may direct the applicant to prove, within a specified period of time, the right to priority by filing

1. a certificate indicating the name of the applicant and the filing date, issued by the authority which received the earlier application,
2. a copy of the application certified by the same authority and, where applicable, a representation of the trade mark.

The time indicated in the directive may not expire earlier than three months from the filing of the application for registration of the trade mark in Sweden.

If the applicant fails to comply with the directive, the right to priority does not apply. The applicant shall be informed about this in the directive.

Article 16. An application for registration of a trade mark is, in relation to other applications or to use of other trade symbols, deemed to have been filed the first time the trade mark was used for displayed goods or services at an international exhibition pursuant to the Convention on International Exhibitions signed in Paris on 22 November 1928, if the conditions pursuant to the second and third paragraphs are met.

The application for registration of the trade mark shall be filed within six months from the date of the first use of the trade mark at the exhibition.

An applicant wishing to claim priority shall make a request to that effect before the trade mark has been registered and prove when the trade mark was used at the exhibition. The applicant shall at the same time file the documents which the applicant wishes to invoke in order to prove that the exhibition was of the kind indicated in the first paragraph.

Registration procedure

Examination of the application

Article 17. If the application fails to meet the requirements pursuant to Article 1, first and second paragraphs, and to Article 2, or if there are any impediment to registration pursuant to Articles 4–10, the Patent and Registration Office shall direct the applicant to cure the deficiencies or to file a statement within a specified period of time. The directive shall contain information about that the application might be removed from the files, if the applicant fails to respond in due time. If the applicant fails to pay the application fee, the Office shall direct the applicant to pay the fee. The directive shall contain information about that the application might be removed from the files, if the applicant fails to pay in due time.

If the applicant fails to respond in due time to a directive pursuant to the first paragraph, or if the applicant fails to pay the application fee following a directive to do that, the Patent and Registration Office may remove the application from the files.

Article 18. If there is still a deficiency or an impediment to registration pursuant to Article 17, first paragraph, first sentence after the applicant has filed a statement, the application shall be rejected, wholly or in part, unless there is a reason to issue a new directive to the applicant.

Removal following withdrawal

Article 19. If the applicant withdraws the application, the matter shall be removed from the files.

Reinstatement of an application that has been removed from the files

Article 20. The Patent and Registration Office shall reinstate an application which has been removed from the files pursuant to Article 17, second paragraph, if the applicant within two months from the expiry of the prescribed period of time supplements or amends the application.

The applicant shall pay the prescribed reinstatement fee.

Transfer of an application on account of better title

Article 21. If a party claims, before the Patent and Registration Office, to have a better title to the trade mark than the applicant and the matter is uncertain, the Office may direct the party to institute proceedings before a court within a specified period of time. If no such proceedings are instituted in due time, the claim may be disregarded in the course of the further examination of the application. The directive shall contain information about this.

If a case concerning better title in the trade mark is pending before a court, the Patent and Registration Office may declare the registration procedure suspended until the case has been finally decided.

Article 22. If a party proves, before the Patent and Registration Office, that he or she has a better title to the trade mark than the applicant, the Office shall, upon request, transfer the application to the party. The party whom the application is transferred to shall pay a new application fee.

The application may not be amended, removed from the files, rejected or approved before the claim has been finally considered.

Registration

Article 23. If the application for registration meets the requirements pursuant to Article 1, first–third paragraphs, and to Article 2, and there is no ground for refusing the registration pursuant to Articles 4–10, the Patent and Registration Office shall enter the trade mark into the Trade mark Register. The decision shall be published.

If an application has been rejected in part, the trade mark shall, when the decision has acquired legal force, be entered into the Trade mark Register and published as regards the remaining goods or services.

When a collective, guarantee or certification mark is being registered, information about the conditions under which the trade mark may be used shall also be entered into the Register and published.

Opposition

Time limit for opposition and contents of the opposition

Article 24. When the Patent and Registration Office has published a registration of a trade mark, an opposition to it may be filed. The opposition shall be filed with the Office within three months from the date of the publication. If the opposition has not been filed in due time, it shall be dismissed.

The opposition shall contain

1. information as to the name or trade name and address of the opponent,
2. information as to the name and address of any representative,
3. information as to the registration to which the opposition relates, and
4. information as to the facts invoked as the ground for the opposition.

The Government or the public authority appointed by the Government issues more detailed regulations concerning the opposition procedure.

Deficiencies in the opposition

Article 25. If the opposition is so defective it cannot be used as basis of an examination of the matter, the Patent and Registration Office shall direct the opponent to cure the deficiencies within a specified period of time. If the directive is not observed, the opposition shall be dismissed. The opponent shall be informed about this in the directive.

Communication of the opposition

Article 26. The Patent and Registration Office shall inform the trade mark registration proprietor of the opposition and give the proprietor an opportunity to file a statement within a specified period of time.

If the opposition is obviously unfounded, it shall be rejected immediately.

Examination of an opposition that has been withdrawn

Article 27. When the opposition is withdrawn the opposition procedure may, nevertheless, be completed, if there are particular reasons. The opposition procedure may not, however, be completed, if the only bases invoked for the opposition are grounds pursuant to Articles 8–10.

Decision on the opposition

Article 28. When an opposition has been filed the Patent and Registration Office shall revoke the registration, wholly or in part, if it exists any impediments to registration pursuant to Articles 4–10.

An opposition which is based, wholly or in part, on a ground for refusal pursuant to Articles 8–10 shall to the same extent be rejected, if it has been filed by a party who does not oppose in his or her own interest and the proprietor of the registered trade mark so requests.

If the registration has, wholly or in part, been revoked as a result of an opposition, the registration shall to the same extent be removed from the Trade mark Register when the decision has acquired legal force. The decision shall be published.

Alteration of a registered trade mark

Insignificant alterations of a registered trade mark

Article 29. At the request of the proprietor of a registered trade mark, insignificant alterations of the trade mark which do not affect the overall impression may be made in the Trade mark Register.

A party applying for a trade mark alteration shall pay the prescribed fee.

When a registered trade mark is altered, it shall be recorded in the Trade mark Register and published.

Division of a registration

Article 30. A registration of a trade mark concerning several goods or services may be divided into two or more registrations to which the goods or services are allocated. The registration is deemed to have the same filing date and priority as the original registration.

Alterations of the conditions under which collective, guarantee or certification marks may be used

Article 31. If the conditions under which a collective-, guarantee or certification mark may be used are altered after the registration, the Patent and Registration Office shall be notified by the proprietor.

The altered conditions shall be entered into the Trade mark Register and published.

Duration of the registration

Article 32. The registration has effect from the date of the filing of the application for registration with the Patent and Registration Office and ten years from the date of the registration.

Renewal of a registration

Article 33. The registration can be renewed, each time for a period of ten years from the expiry of the previous registration period. An application for renewal shall be filed with the Patent and Registration Office no earlier than one year before, and no later than six months after, the expiry of the registration period.

A party applying for renewal shall pay the prescribed renewal fee. A payment of the renewal fee in due time pursuant to the first paragraph is deemed to be an application for renewal.

A decision to renew a registration shall be entered into the Trade mark Register and published.

Article 34. If it is not clear which trade mark registration an application for renewal refers to, or if the renewal fee has not been paid, the Patent and Registration Office shall direct the applicant to cure the deficiencies. The directive shall contain information about that the application may be removed from the files, if the applicant fails to respond in due time.

If the applicant fails to respond in due time to a directive pursuant to the first paragraph, or if the applicant fails to pay the renewal fee following a directive to do that, the Patent and Registration Office may remove the application from the files. If there still exists a deficiency pursuant to the first paragraph after the applicant has filed a statement, the application for renewal shall be rejected, unless there is a reason to issue a new directive to the applicant.

The Patent and Registration Office shall reinstate an application which has been removed from the files pursuant to the second paragraph, if the applicant within two months from the expiry of the prescribed period of time supplements the application. The applicant shall pay the prescribed reinstatement fee.

Removal of a registration

Article 35. If the proprietor does not renew the registration, or requests that it be removed wholly or in part, the registration shall be removed from the Trade mark Register to the same extent. The decision shall be published.

CHAPTER 3. Revocation of a registration

Grounds for revocation

General grounds

Article 1. A trade mark registration may be revoked, if

1. the mark has been registered in violation of this Act,
2. the registration is still in violation of this Act, and

3. the rights in the mark may not persist anyhow pursuant to Chapter 1, Article 14 or 15.

A registration may also be revoked, if

1. the trade mark, in consequence of acts or inactivity of the proprietor, has become a common name in the trade for goods or services in respect of which it has been registered,
2. the trade mark has come to conflict with law or regulations or principles of morality or public policy, or
3. the trade mark, in consequence of the use made of it by the proprietor or with the proprietor's consent in respect of the goods or services for which it is registered, has become liable to deceive the public concerning the nature, quality, geographical origin or any other circumstance related to the goods or services.

In cases referred to in the first paragraph, the registration may not be revoked on the basis of the existence of a ground for refusal pursuant to Chapter 2, Article 8, if the ground for refusal consists of an earlier registered mark and the earlier mark does not meet the requirements of use pursuant to Article 2.

Failure to Use

Article 2. A trade mark registration may be revoked, if the proprietor has not, within five years from the final decision on the registration matter, or within a consecutive period of five years, made genuine use of the mark in Sweden in respect of the goods or services for which it has been registered. The registration may not, however, be revoked on grounds of failure to use, if there are proper reasons for the non-use.

To be 'use' pursuant to the first paragraph is also deemed

1. when the trade mark is used in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered, and
2. when the trade mark is affixed to goods or the packaging thereof in this country solely for export purposes.

To be trade mark use by the proprietor is deemed trade mark use by someone else with the proprietor's consent.

The registration may not be revoked, if the trade mark has been used during the interval between the expiry of the five-year period and the filing of the application for revocation. Use that is commenced or resumed after the expiry of the five-year period and within three months preceding the filing of the application for revocation shall, however, be disregarded, if the preparations for the commencement or resumption occurred only after the proprietor becoming aware that the application for revocation might be filed.

Collective marks, guarantee marks and certification marks

Article 3. A registration of a collective, control or guarantee mark may be revoked on the grounds pursuant to Article 1 or 2, and if

1. the conditions under which the mark may be used has been altered, and the proprietor has failed to notify the Patent and Registration Office pursuant to Chapter 2, Article 31, or
2. the mark has been used in a manner that is not compatible with the conditions under which the mark may be used, and the proprietor has not taken reasonable steps to prevent that use.

Partial revocation

Article 4. Where grounds for revocation of a registration exist in respect of only some of the goods or services for which that trade mark has been registered, the revocation of registration shall cover only those goods and services.

Procedure

Article 5. A party wishing to initiate a procedure to revoke a registration may initiate proceedings before a court, or apply for revocation of the registration before the Patent and Registration Office pursuant to Articles 6–19 (administrative revocation). Chapter 2, Article 28 contains provisions laying down that the registration of a trade mark may be revoked as a result of party's opposition to the registration.

Proceedings to revoke a registration pursuant to Article 1, second paragraph, item 2, to Article 2, 3 or 4, or to Chapter 2, Article 4, 5 or 7 may be initiated also by a public authority. The Government issues regulations concerning which public authority is competent to do that.

Administrative revocation

Contents of the application

Article 6. An application for administrative revocation shall contain

1. information as to the parties, to the extent laid down in Chapter 33, Article 1 of the Code on Judicial Procedure,
2. a claim for revocation, and an indication as to the registration being the object of the claim, and
3. an account of the facts invoked as a ground for the claim for revocation.

The applicant shall pay the prescribed application fee.

The Government or the public authority appointed by the Government issues more detailed regulations concerning what other contents the application shall have.

Deficiencies in the application

Article 7. If the application is so defective it cannot form the basis of a disposal of the matter, the Patent and Registration Office shall direct the applicant to cure the deficiencies within a specified period of time. The same applies if the applicant has failed to pay the application fee.

If the applicant fails to comply with the directive, the application shall be dismissed. The applicant shall be informed about this in the directive.

The application shall also be dismissed, if it aims at measures other than revocation of a registration, or if the matter may not proceed on account of another impediment.

Removal following withdrawal

Article 8. If the applicant withdraws the application, the matter shall be removed from the files.

Unfounded application

Article 9. If it can be assumed that the application is unfounded, it shall be treated as if the proprietor has opposed it. In such a case, Article 13 shall apply.

Direction of the proprietor to respond

Article 10. If the Patent and Registration Office admits the application, the Office shall direct the registration proprietor to respond within a specified period of time counting from the serving of the application upon the proprietor.

In the directive, the proprietor shall be requested to

1. indicate whether the application is admitted or contested and, if it is contested, the basis for the contestation, and
2. provide such information about him- or herself which is indicated in Chapter 33, Article 1, first–third paragraphs of the Code of Judicial Procedure, to the extent that the information in the application is insufficient or incorrect.

Information shall be given in the directive about that the matter may be decided, even if the proprietor fails to respond to the directive. The Government or the public authority appointed by the Government issues more detailed regulations concerning the further content of the directive.

Serving of the directive

Article 11. The directive referred to in Article 10 shall be served upon the proprietor. The serving shall be made in the way provided for in the Code of Judicial Procedure for the serving of a summons in a civil case.

A copy of the application documents shall be attached to the directive, when the documents contain something in addition to what is expressed by the directive.

If it is the applicant who shall see to that the serving be made, Chapter 32, Article 2 of the Code of Judicial Procedure applies.

Article 12. If the Patent and Registration Office has not been able to serve the directive, the Office shall consider whether the serving efforts shall continue or whether the applicant shall be afforded to see to the serving him- or herself. Consideration shall be given to the work and the costs that have so far been put into the serving, to the chances that further efforts will be successful, and to the other circumstances. If the applicant does not accept the offer, the application shall be dismissed.

If it is the applicant who shall see to that the serving be made, Chapter 32, Article 2 of the Code of Judicial Procedure applies.

Transfer to a district court

Article 13. If the proprietor in due time contests the application, wholly or in part, the Patent and Registration Office shall inform the applicant accordingly. If the applicant wishes to maintain the claim, he or she may request that the matter or, if the contestation concerns only a part of the claim, the matter in the contested part, be transferred to a district court.

A request for transfer shall be filed with the Patent and Registration Office within one month from the date when the information concerning the contestation was sent to the applicant. In the request, the applicant shall indicate the circumstances invoked as well as the means of evidence offered and what shall be proven by each means. The applicant shall at the same time file the written evidence and other documents offered.

If the applicant has requested a transfer in due time, the Patent and Registration Office shall transfer the matter to a district court which, based on the indications of the documents, is competent. If the applicant has failed to request transfer in due time, the contested parts of the matter shall be removed from the files.

Article 14. A notification of a proprietor's contestation pursuant to Article 13, first paragraph shall contain information concerning

1. that the applicant may request transfer to a district court,
2. the deadline for the filing of such a request,
3. what contents such a request shall have, and
4. what else is laid down in Article 13.

Revocation of the registration

Article 15. If the proprietor has failed to contest in due time, the Patent and Registration Office shall revoke the registration in accordance with the application. If the proprietor has contested only a part of the application, the Office shall revoke the registration in the uncontested part.

Reopening

Article 16. The proprietor of a registration which has been revoked pursuant to Article 15 may apply for reopening of the matter. Such an application shall be filed with the Patent and Registration Office within one month from the date of the decision.

If the proprietor has applied for reopening in due time, the Patent and Registration Office shall transfer the matter to a district court which, based on the indications of the documents, is competent.

Notifications

Article 17. A notification of revocation shall be sent to the applicant and to the proprietor.

If an application for revocation is dismissed, the Patent and Registration Office shall notify the applicant of this. If an application for reopening is dismissed, the Office shall notify the proprietor of this. If the Office makes any other decision implying adjudication of the matter, both the applicant and the proprietor shall be notified of the decision, unless it is obviously unnecessary.

Legal force

Article 18. When the time for applying for reopening of the matter has expired, a decision of revocation pursuant to Article 15 has legal force in the same way as a civil case judgement which has acquired legal force.

Further processing in the district court

Article 19. If a matter has been transferred to a district court, the proceedings are deemed instituted when the application for administrative revocation was filed with the Patent and Registration Office. The documents filed by the applicant are deemed to be an application for a summons. A summons is deemed issued when the court decides on the processing of the case.

Article 20. When a district court receives a case from the Patent and Registration Office or from another district court, and finds that it is not clear from the documents that it is competent to process the case, the court shall transfer the case to a district court which can be competent. The decision of the district court to transfer the case may not be appealed against.

Removal of a registration

Article 21. When a trade mark registration has been revoked, wholly or in part, by the Patent and Registration Office pursuant to Article 15 or by a court, the registration shall, to the same extent, be removed from Trade mark Register when the decision has acquired legal force. The decision shall be published.

CHAPTER 4. Registration as in the country of origin and representatives of foreign applicants and proprietors

Registration as in the country of origin

Article 1. When the applicant's country of origin is a state party to the Paris Convention for the Protection of Industrial Property of March 20, 1883, or a state or a territory party to the Agreement Establishing the World Trade Organization, a trade mark which is registered for the applicant in the country of origin shall be registered in Sweden as it is registered there, if there exists no impediment pursuant to Article 2.

When the applicant's country of origin is a state or a territory other than those indicated in the first paragraph, a trade mark which is registered for the applicant in the country of origin shall be registered in Sweden as it is registered there, if

1. corresponding rights are given in relation to a Swedish registration in that state or territory,
2. the legislation in force in that state or territory in the main corresponds with the Paris Convention, and
3. there exists no impediment pursuant to Article 2.

An applicant requesting registration pursuant to this Article shall prove that the trade mark is registered for the applicant in the country of origin for the goods or services covered by the request. The same applies to renewal of a trade mark registration which has been registered pursuant to this Article.

Article 2. A trade mark may not be registered pursuant to Article 1, if it is devoid of any distinctive character, or if there exists an impediment to registration pursuant to Chapter 2, Article 4, Article 5, second paragraph, and Articles 6–11.

A trade mark registered pursuant to Article 1 which under other circumstances would not have been eligible for registration in this country, has a scope and time of protection on account of the registration which does not exceed the protection it enjoys in the proprietor's country of origin.

Representatives and serving

Representative of a trade mark registration applicant

Article 3. The Patent and Registration Office may direct an applicant, who has neither a domicile nor a real and effective industrial or commercial establishment in Sweden, to engage a representative who is authorised to accept service in the matter and who has a domicile in this country, and to notify the Office of the assignment.

If the applicant fails to comply with the directive, service may be made by sending the documents to the applicant by ordinary mail to his or her last known address. Service is deemed to be effected when this is done. The applicant shall be informed in the directive about the consequences of non-compliance with the directive.

Representative of a trade mark registration proprietor

Article 4. A trade mark registration proprietor, who has neither a domicile nor a real and effective industrial or commercial establishment in Sweden, shall be represented by a representative who has a domicile in this country. The representative shall be authorised to accept, on behalf of the proprietor, service of summons, of summons to attend a hearing, and of other documents in cases and matters concerning the trade mark, with the exception of a summons in a criminal case, and of directives to appear in person. The assignment of the representative shall be notified to the Patent and Registration Office and recorded in the Trade mark Register.

If the proprietor has failed to notify assignment of a representative, service may instead be effected through the sending of the document to be served to the proprietor's address as recorded in the Trade mark Register. If no complete address is recorded in the Register, service may be effected through the keeping of the document available at the Patent and Registration Office and the publication of a notice of this keeping and of the main contents of the document. Service is deemed to be effected when this is done.

CHAPTER 5. International trade mark registration

What is meant by international trade mark registration

Article 1. An international trade mark registration is a registration of a trade mark which the International Bureau of the World Intellectual Property Organization (the International Bureau) has made in the International Register pursuant to 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 public authority in Sweden responsible for matters relating to international trade mark registrations.

Application for international trade mark registration

Who is entitled to apply for an international registration

Article 2. A proprietor of, or an applicant for, a Swedish trade mark registration who is a Swedish national, who has a domicile in Sweden, or who has a real and effective industrial or commercial establishment here, may apply for an international registration of the trade mark.

Where the application is filed and its contents

Article 3. An application for an international trade mark registration shall be directed to the International Bureau but filed with the Patent and Registration Office. The application shall be written in English and contain

1. information as to the name or trade name and address of the applicant,
2. information as to the name and address of any representative,
3. information as to the number and date of the Swedish registration or application for registration upon which the international application is based,
4. a distinct reproduction of the trade mark,
5. a list of the goods or services in respect of which registration of the trade mark is claimed and the corresponding classes (list of goods or services),
6. an indication of the countries to which the protection resulting from the international registration shall extend, and
7. any additional information as to the reproduction of the trade mark, to the applicant's connection to Sweden, or to other circumstances which the application shall contain pursuant to regulations issued by the Government or the public authority appointed by the Government.

The applicant shall pay the prescribed application fee.

The Government or the public authority appointed by the Government issues more detailed regulations concerning the application procedure.

Processing of the application

Article 4. The Patent and Registration Office shall verify whether the application meets the requirements pursuant to Article 3, and whether the particulars appearing in the application correspond to the particulars appearing in the basic trade mark registration held, or applied for, by the applicant in Sweden.

If the application fails to meet the requirements pursuant to the first paragraph, the Patent and Registration Office shall direct the applicant to cure the deficiencies within a specified period of time. The same applies if the applicant has failed to pay the application fee. If the applicant fails to comply with the directive, the application shall be removed from the files. The applicant shall be informed about this in the directive.

If the application meets the requirements, the Patent and Registration Office shall send to the International Bureau a certificate to that effect along with the application.

Article 5. If the applicant withdraws the application before the Patent and Registration Office have sent the certificate and the application to the International Bureau, the matter shall be removed from the files.

Reinstatement of an application which has been removed from the files

Article 6. The Patent and Registration Office shall reinstate an application which has been removed from the files pursuant to Article 4, second paragraph, if the applicant within two months from the expiry of the prescribed time supplements or amends the application.

The applicant shall pay the prescribed reinstatement fee.

Application for extension of the protection resulting from an international trade mark registration to additional countries

Article 7. A proprietor of an international trade mark registration based on a Swedish registration or application for registration may apply for extension of the protection resulting from an international trade mark registration to additional countries.

Applications pursuant to the first paragraph shall be filed with the International Bureau.

If the applicant has a domicile in Sweden, an application pursuant to the first paragraph may be filed with the Patent and Registration Office instead. Such an application shall be written in English. The Government or the public authority appointed by the Government issues more detailed regulations concerning the contents of the application.

Application for extension of the protection resulting from an international trade mark registration to Sweden

Examination of the application

Article 8. If the Patent and Registration Office receives a notification from the International Bureau to the effect that a party has applied for extension of the protection resulting from an international trade mark registration to Sweden, the Office shall examine whether it exists any impediment to that.

Such an impediment exists, if an impediment to a national registration would have existed pursuant to Chapter 2, Articles 4–11.

If the Patent and Registration Office finds that an impediment exists pursuant to the second paragraph, the Office shall notify the International Bureau that the protection resulting from the international trade mark registration may not, wholly

or in part, be extended to Sweden. Such a notification shall be given within 18 months from the date of the notification referred to in the first paragraph and contain the reasons why the protection resulting from the registration may not be extended to Sweden.

Decision that the protection resulting from the international trade mark registration shall not extend to Sweden

Article 9. If the Patent and Registration Office has notified the International Bureau pursuant to Article 8, third paragraph, the Office shall, no earlier than three months after the notification, decide that the protection resulting from the international trade mark registration shall not, wholly or in part, extend to Sweden, provided that an impediment pursuant to Chapter 2, Articles 4–11 then still exists.

Entry of the trade mark into the Trade mark Register

Article 10. If there exists no impediment pursuant to Chapter 2, Articles 4–11, the Patent and Registration Office shall enter the trade mark into the Trade mark Register and publish that the protection resulting from the international trade mark registration is extended to Sweden.

If the Patent and Registration Office has decided that the protection resulting from the international trade mark registration is, in part, not extended to Sweden, the trade mark shall be entered into the Trade mark Register and published for the remainder of the goods and services when the decision has acquired legal force.

Opposition

Article 11. When the Patent and Registration Office has published that the international trade mark registration is extended to Sweden, an opposition may be filed to its extension here. The opposition shall be filed with the Office within three months from the date of the publication. If the opposition is not filed in due time, it shall be dismissed.

The opposition shall contain

1. information as to the name or trade name and address of the opponent,
2. information as to the name and address of any representative,
3. information as to the international trade mark registration to which the opposition relates, and
4. information as to the facts invoked as the ground for the opposition.

The Government or the public authority appointed by the Government issues more detailed regulations concerning the opposition procedure.

Article 12. If the opposition is so defective it cannot be used as basis of an examination of the matter, the Patent and Registration Office shall direct the opponent to cure the deficiencies within a specified period of time. If the directive is

not complied with, the opposition shall be dismissed. The opponent shall be informed about this in the directive.

Article 13. The Patent and Registration Office shall inform the international trade mark registration proprietor of the opposition and give him or her an opportunity to file a statement within a specified period of time.

If the opposition is obviously unfounded, it shall be rejected immediately.

Article 14. When the opposition is withdrawn, the opposition procedure may, nevertheless, be completed, if there exists particular reasons. The opposition procedure may not, however, be completed, if the only bases invoked for the opposition are grounds pursuant to Articles 8–10.

Article 15. When an opposition has been filed the Patent and Registration Office shall, if it exists any impediment pursuant to Chapter 2, Articles 4–11 to the extension of the protection resulting from the international trade mark registration to Sweden, decide that the protection shall not, wholly or in part, extend to here. Otherwise, the opposition shall be rejected.

An opposition which is based, wholly or in part, on a ground for refusal pursuant to Chapter 2, Articles 8–10 shall to the same extent be rejected, if it has been filed by a party who does not oppose in his or her own interest and the proprietor of the registered trade mark so requests.

A decision that the protection resulting from the registration shall not extend to Sweden may be based only on a fact which is communicated to the International Bureau within 18 months from the date of the notification referred to in Article 8, first paragraph. If the time for opposition pursuant to Article 11 has expired after this time limit, the decision may, nevertheless, be based on facts which have been communicated to the International Bureau within one month from the expiry of the time limit for opposition. This applies under condition that the Patent and Registration Office within the 18-month time limit has informed the International Bureau about that a communication concerning such a decision might be sent later.

If the Patent and Registration Office as a consequence of an opposition decides that the protection resulting from the registration shall not, wholly or in part, extend to Sweden, the registration shall to the same extent be removed from the Trade mark Register when the decision has acquired legal force. The decision shall be published.

Effects of a decision that the protection resulting from an international trade mark registration shall extend to Sweden

Article 16. A decision that the protection resulting from an international trade mark registration shall extend to Sweden has effect from the date the International Bureau has, in the notification referred to in Article 8, first paragraph indicated as

borne by the international trade mark registration or by a later request for extension of the protection to Sweden.

An international trade mark registration the protection of which is extended to Sweden has the same effect as a national trade mark registration. The provisions of Chapter 4 shall, however, not apply.

The provisions of Chapter 7 on pledging of an application for trade mark registration shall apply also to an application referred to in Article 8, first paragraph for the extension of the protection resulting from an international trade mark registration to Sweden.

A decision that the protection resulting from an international trade mark registration shall extend to Sweden may be revoked pursuant to Chapter 3. The provisions of Chapter 3 relating to registration of a trade mark shall then, instead, bear upon the decision that the protection resulting from the international trade mark registration shall extend to Sweden.

Article 17. If an international trade mark registration has been renewed, it shall be recorded in the Trade mark Register and published.

Replacement of a national trade mark registration by an international trade mark registration

Article 18. When an international trade mark registration the protection of which is extended to Sweden and a Swedish registration of the same trade mark both stand in the same name of the same person, the international registration replaces the Swedish registration, provided that the extension takes effect after the date of the Swedish registration and that all the goods and services listed in the Swedish registration are also listed in the international registration. This does not imply any limitation to the rights that may have been acquired on account of the Swedish registration.

At the request of the proprietor, the Patent and Registration Office shall record and publish that the international trade mark registration replaces the Swedish registration.

Consequence when an international trade mark registration ceases to have effect

Article 19. If an international trade mark registration the protection of which is extended to Sweden ceases to have effect, wholly or in part, its effect in this country ceases correspondingly.

Transformation of an international trade mark registration into a national trade mark registration

Article 20. If an international trade mark registration the protection of which is extended to Sweden ceases to have effect, wholly or in part, within five years from the date the International Bureau has indicated as borne by the registration in the notification referred to in Article 8, first paragraph, because the original registration or the application for registration can no longer constitute the basis for an international trade mark registration, and the proprietor thereafter applies for registration of the same trade mark in Sweden, this application is deemed to have been filed on the date the International Bureau has indicated as borne by the international trade mark registration. This applies under condition that

1. the application is filed within three months from the date when the international trade mark registration was cancelled, and
2. the goods and services listed in the application were in fact covered by the protection in Sweden resulting from the international trade mark registration.

Information as to the cancellation of an international trade mark registration or to the filing of an application pursuant to the first paragraph shall be recorded in the Trade mark Register and published.

Article 21. If an international trade mark registration the protection of which is extended to Sweden ceases to have effect as a result of a denunciation of the Protocol of June 27, 1989 Relating to the Madrid Agreement Concerning the International Registration of Marks of April 14, 1891, and the proprietor thereafter applies for registration of the same trade mark in Sweden, this application is deemed to have been filed on the date the International bureau has indicated as borne by the international trade mark registration. This applies under condition that

1. the application is filed within two years from the date when the denunciation became effective, and
2. the goods and services listed in the application were in fact covered by the protection in Sweden resulting from the international trade mark registration.

Information as to the ceasing of effect of an international trade mark registration or to the filing of an application pursuant to the first paragraph shall be recorded in the Trade mark Register and published.

CHAPTER 6. Transfer and license

Transfer

Transfer generally

Article 1. A trade symbol pursuant to Chapter 1, Article 6 and 7 may be transferred separately or in connection with a transfer of the business activity where it is used.

Where a business activity is transferred, a trade symbol pursuant to the first paragraph belonging to the business activity is included in the transfer, unless otherwise agreed.

Recording of transfer of a registered trade mark

Article 2. A transfer of a registered trade mark shall, upon request, be recorded in the Trade mark Register and published. Recording and publishing shall be effected also upon request by a party who, through a judgement which has acquired legal force, holds a declared superior right in a registered trade mark.

A party requesting recording pursuant to the first paragraph shall pay the prescribed fee.

Effect of a recording of proprietor

Article 3. In a case or matter concerning a national registered trade mark, the party recorded in the Trade mark Register as proprietor is deemed proprietor of the trade mark.

In a case or matter concerning an international registered trade mark, the party recorded in the International Register as proprietor is deemed proprietor of the trade mark.

License

License generally

Article 4. The proprietor of a trade symbol related to in Chapter 1, Article 6 and 7 may grant another party the right to use the symbol (license) for a part or all of the goods and services for which it is registered or established on the market and for a part or all of the country. The license can be exclusive or non-exclusive. A licensee may not sub-license his or her right without consent from the symbol proprietor.

The trade symbol proprietor may invoke the exclusive rights vis-à-vis a licensee who infringes a term or condition of the license agreement concerning

1. the term of the license,
2. the form in which the symbol may be used,
3. the nature of the goods or services for which the license is issued,
4. the geographical territory within which the symbol may be used, or
5. the quality of the goods produced or services provided by the licensee.

License recording

Article 5. A license concerning a registered trade mark shall, upon request, be recorded in the Trade mark Register and published. A license concerning a trade mark subject to an application for registration shall, upon request, be recorded in the Diary of the Patent and Registration Office. A party requesting recording of a license shall pay the prescribed fee.

If it is proven that the license has ceased to apply, the recording shall be removed. A decision to remove a recording from the Register shall be published.

CHAPTER 7. Pledging of a registered trade mark

Emergence of a right of pledge

Article 1. A registered trade mark or an application for registration of a trade mark may be pledged pursuant to this Chapter.

Article 2. A right of pledge in a registered trade mark or an application for registration of a trade mark emerges through registration of a written contract of pledge concerning the property. Registration is carried out in the Trade mark Register or, if the contract concerns an application for registration of a trade mark, in the Diary of the Patent and Registration Office. A party applying for registration shall pay the prescribed fee.

If a right of pledge has been transferred to another party it shall, upon request, be recorded in the Trade mark Register, if it concerns a registered trade mark, or in the Diary of the Patent and Registration Office, if it concerns an application for registration of a trade mark. A party requesting recording shall pay the prescribed fee.

Preference in case of multiple grants of a right to pledge

Article 3. If a right of pledge has been granted to more than one party separately, the grant subject to the application for registration first filed with the Patent and Registration Office is given the preference, unless otherwise agreed.

If more than one application for registration of a grant is filed on the same day, the grants are among themselves given preference according to the chronological order of their taking place, unless otherwise agreed. If the grants are simultaneous, or if the chronological order of their taking place may not be established, they convey the same rights.

Who is entitled to apply for registration

Article 4. An application for registration pursuant to Article 2 may be filed by the proprietor of the trade mark or the application for trade mark registration, or by the pledgee. The applicant shall prove the pledger's right to the trade mark or the application for trade mark registration.

When applying the first paragraph, the party recorded in the Trade mark Register as proprietor of a registered trade mark is deemed entitled to the mark, unless the matter discloses otherwise. If the application for registration concerns pledging of an application for registration of a trade mark, the party recorded in the Diary of the

Patent and Registration Office is deemed entitled to the application for registration of a trade mark, unless the matter discloses otherwise.

Impediment because of lacking entitlement

Article 5. An application for registration pursuant to Article 2 may not be approved of, if the pledger is, at the time of registration, not entitled to dispose over the pledged property as a result of attachment, bankruptcy, payment security, provisional attachment or any other cause.

When the grant of a right of pledge is liable to registration

Article 6. A contract of pledge may be registered when the trade mark is registered or, if the contract concerns an application for registration of a trade mark, when the application is recorded in the Diary of the Patent and Registration Office.

If a pledged application for registration of a trade mark leads to registration of the trade mark, the registered trade mark then becomes the pledged property.

Invalid contracts of pledge

Article 7. Even though a right of pledge is registered, it applies to the pledged property only if the contract of pledge has been concluded by the rightful proprietor entitled to dispose of the property, and if the contract is not invalid for any other reason.

Lapse of the right of pledge

Article 8. The right of pledge is lapsed, if the application for registration of a trade mark has been transferred to a third party, or if the rights in the trade mark or the application for trade mark registration shall, pursuant to the provisions of this Act, no longer apply.

Removal of a registration

Article 9. The registration of a right of pledge shall be removed, if the right of pledge has, through a judgment which has acquired legal force, been declared invalid, or if the right of pledge is lapsed or has otherwise ceased to apply.

Pledged property being subject of rights in rem

Article 10. The pledge applies from the date of the application for registration pursuant to Article 2 vis-à-vis a party who subsequently acquires proprietorship or any other right to the property.

A license agreement applies vis-à-vis the pledgee, if the agreement is concluded prior to the application for registration of the contract of pledge.

Article 11. Provisions in other laws on the right of pledge, in a case of attachment or bankruptcy, in movable property not requiring registration apply also to a right of pledge in a registered trade mark or an application for registration of a trade mark. The filing with the Patent and Registration Office of an application for registration pursuant to Article 2 entail the same legal effects as the pledgee's taking of possession of movable property.

If the right of pledge in a registered trade mark or an application for registration of a trade mark is sold following attachment or bankruptcy, license agreements pursuant to Article 10, second paragraph still apply.

Sale of the pledged property

Article 12. The pledgee may sell the pledged property and collect the debt from the purchase-sum only if the pledgee has subsequently informed the debtor and other known property rights' holders about the sale and these parties have had reasonable time to look after their rights.

License agreements pursuant to Article 10, second paragraph still apply after a sale pursuant to the first paragraph.

Chapter 8. Criminal Liability, Prohibitions on Penalty of a Fine, Damages, etc.

Criminal liability

Article 1. If someone infringes the right in a trade symbol (trademark infringement) and if such infringement is committed wilfully or with gross negligence, he or she shall be punished by fine or imprisonment for not more than two years. A party that has violated a prohibition issued on penalty of a fine under Article 3, may not be held liable for the infringement that is covered by the prohibition.

Attempts, or preparations, to commit acts implying violations under the first Paragraph are punishable under Chapter 23 of the Criminal Code.

The public prosecutor may bring an act of prosecution for offences referred to in the first or second Paragraph only if the injured party calls for a prosecution of the offence and prosecution is, for specific reasons, called for in the public interest.

Forfeiture of property and implements used in connection with a violation

Article 2. Property in relation to which a violation has occurred under Article 1 shall be forfeited, if this is not obviously unreasonable. Instead of the property itself, its value may be declared forfeited. Also profits from such a violation shall be declared forfeited, if this not obviously unreasonable. The same applies to what someone has received as a compensation for costs related to such a violation, or the value of what has been received, if the reception constitutes a violation pursuant to Article 1.

Property that has been used as an implement in connection with a violation under Article 1 may be declared forfeited, where this is needed in order to prevent violations or where there are otherwise special reasons. The same applies to property that has been intended to be used as an implement in connection with a violation under Article 1, where the violation has been carried out, or has constituted a punishable attempt or a punishable preparation. Instead of the property itself, its value may be forfeited.

Prohibition on penalty of a fine.

Article 3. Upon a petition by a party that owns a trade symbol pursuant to Chapter 1, Articles 6 to 8, or by a party that, on the basis of a license, has the right to exploit a trade symbol, the Court may issue an injunction prohibiting, on penalty of a fine, a party that commits, or contributes to, a trademark violation to continue that act.

If the plaintiff shows a probable cause that an act implying a trademark infringement, or a contribution to an infringement, is taking place and if it can reasonably be expected that the defendant, through the continuation of that act, or the contribution thereto, diminishes the value of the exclusive right in the trade symbol, the Court may render an injunction, on penalty of a fine, for the time until the case has been finally adjudicated or otherwise is decided. Before the injunction is rendered, the defendant shall be given an opportunity to respond, unless a delay would entail a risk for damage.

The provisions under the first and second Paragraphs apply also to acts constituting attempts, or preparations, in respect of infringements.

An injunction as mentioned in the second Paragraph may be rendered only if the plaintiff deposits a security with the Court for the damage that may be caused to the defendant. If the plaintiff is not capable of depositing such a security, the Court may liberate him or her from making such 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 approved it.

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

As regards appeals against decisions under the first or fourth Paragraph and as regards the proceedings in higher Courts, the provisions in Chapter 15 of the Code of Judicial Procedure shall apply.

A petition for the imposition of a fine may be filed by the party that requested the prohibition. The action shall be dealt with in accordance with the provisions in the Code of Judicial Procedure in respect of prosecution for offences for which a higher penalty than fines is not prescribed. In connection with such an imposition, a petition may be filed for a new injunction to be rendered on penalty of a fine.

Damages

Article 4. Anyone who wilfully or with gross negligence commits a trademark infringement, shall pay a reasonable compensation for the exploitation of the trade symbol and compensation for the further damage that the infringement has caused. When the amount of the compensation is decided, particular consideration shall be given to

1. lost profit,
2. profit that has been made by the party that committed the infringement,
3. damage caused to the reputation of the trade symbol,
4. moral damage, and
5. the interest of the right-holder in that infringements are not committed.

Anyone who without intent or negligence commits a trademark infringement shall pay a compensation for the exploitation of the trade symbol if and to the extent that this is reasonable.

Limitation of criminal liability and liability for damages in certain cases

Article 5. If a petition related to a trademark infringement is based upon a registration under this Act, Articles 1 and 2. shall not apply to the time before the registration date. Nor shall Article 4, in these cases, apply to the time before the registration date if the infringement has not been committed wilfully.

Statutory limitation relating to the right to damages

Article 6. The right to compensation for damages shall be statute-barred, if an action has not been initiated within five years from the time when the damage was caused. The right to compensation for an infringement of a trademark that is protected only on the basis of a registration, shall, however, in no case become statute-barred earlier than one year from the registration date.

Measures for prevention of continuation of infringements

Article 7. Upon a petition by a party that has suffered a trademark infringement, the Court may, in so far as is reasonable, decide that property on which a trade symbol appears without authorization shall be recalled from the channels of commerce, be altered or destroyed or that some other measure shall be taken in respect of it. The same applies to implements that have been, or have been intended to be, used in connection with the infringement.

Property referred to in the first Paragraph may be seized if it can reasonably be assumed that an offence pursuant to Article 37 has been committed. As regards such seizures, the provisions on seizure in criminal cases in general shall apply.

The provisions in the first and second Paragraphs apply also to acts constituting attempts, and to preparatory acts, relating to infringements.

A decision on a measure pursuant to the first Paragraph must not imply that the party that has suffered a trademark infringement will be ordered to pay a compensation to the party against which the measure is directed.

Any measures pursuant to the first Paragraph shall be paid for by the defendant where there are no specific reasons against it.

A decision referred to in this Article shall not be rendered, if forfeiture or a measure for the prevention of wrongful acts shall be decided pursuant to Article 2 or the Criminal Code.

Dissemination of information about judgements in cases relating to trademark infringements

Article 8. Upon petition by the plaintiff, the Court may, in trademark infringement cases, order the party that has committed, or contributed to, the infringement to pay a pecuniary compensation for appropriate measures to disseminate information about the judgement in the case.

The provisions in the first Paragraph apply also to acts constituting attempts, and preparatory acts, relating to an infringement.

Chapter 9. Orders to Provide Information and Infringement Investigations

Orders to provide information

Basic provisions

Article 1. If an applicant shows a probable cause that someone has committed a trademark infringement, the Court may order, on penalty of a fine, that one or several of the parties referred to in the second Paragraph shall provide information to the applicant concerning the origin and distribution networks in relation to the goods or services in respect of which the infringement has been committed (*order to provide information*). Such an order may be rendered upon a petition by the holder of the trade symbol pursuant to Chapter 1, Articles 6 to 8, or by of a party that, on the basis of a license, has the right to exploit it. It may be rendered only if the information can be assumed to facilitate the inquiry into an infringement relating to the goods or service.

The obligation to provide information relates to any party that

1. has committed, or contributed to, the infringement,
2. has on a commercial scale been exploiting the goods that the infringement concerns,

3. has on a commercial scale been exploiting the service that the infringement concerns,
4. has on a commercial scale made available an electronic communication service or another service that has been used in connection with the infringement, or
5. has been identified by a party referred to in items 2 to 4 as being involved in the production or distribution of the goods, or the making available of the service, that the infringement concerns.

The information on the origin or distribution network of a goods or service may, in particular, include

1. the names and addresses of producers, distributors, suppliers and others who have previously held the goods or made available the services,
2. the names and addresses of intended wholesalers and retailers, and
3. information on how much has been produced, delivered, received or ordered and the price obtained of the goods or services.

The provisions in the first to third Paragraphs apply also to acts constituting attempts, and to preparatory acts, relating to infringements.

Article 2- An order to provide information may be issued only if the reasons speaking in favour of the measure outweigh the inconvenience or other harm that the measure would cause to the party against which it is directed or to any other opposite interest.

The obligation to provide information under Article 1 does not include information the revelation of which would disclose that the provider of the information or any person closely related to him or her as referred to in Chapter 36, Article 3, of the Code of Judicial Procedure has committed a criminal offence.

The Act (1998:204) on Personal Data contains provisions that limit the use that may be made of personal data received.

Processing of matters relating to orders to provide information

Article 3. A decision on an order to provide information may be rendered by the Court where a trial on the infringement is pending. In other respects, the issue of the competence of the Court is governed by the provisions in Chapter 10, Article 6, in respect of cases referred to there, and by the provisions for civil cases in the Code of Judicial Procedure in respect of other cases related to infringements. The provisions in the Code of Judicial Procedure relating to limitation of the competence of a Court in disputes that have to be brought initiated in a way other than before a Court shall, however, not apply.

If the application for an order to provide information is directed against the applicant's opposing party in a case related to an infringement, the provisions on court procedures for that case apply. Decisions on orders to provide information may be appealed separately.

If the petition for an order to provide information is directed against a party other than the one referred to in the second Paragraph, the provisions in the Act (1996:242) on Court Matters shall apply. For the purpose of the consideration of the issue, also an oral hearing may be held pursuant to Chapter 37 of the Code of Judicial Procedure. The Court may decide that each party shall bear its own litigation costs.

An action for the imposition of a fine may be brought by the party that has applied for the order and shall be processed in accordance with the provisions in the Code of Judicial Procedure on prosecutions in criminal cases for which a higher penalty than a fine is not prescribed. In connection with such an action, an action may be brought for a new order to provide information.

Right to compensation and notification obligations

Article 4. Anyone who pursuant to Article 1, second Paragraph, items 2 to 5, has been ordered to provide information pursuant to the first Paragraph of the same Article, has a right to a reasonable compensation for the costs and inconvenience caused. The compensation shall be paid by the party that has applied for the order to provide information.

Anyone who makes available an electronic information service and who has, pursuant to an order to provide information, delivered information referred to in Chapter 6, Article 20, of the Act (2003:389) on Electronic Communication, shall send a written notification on this fact to the party whom the information concerns not earlier than one month and not later than three months from the delivery of the information. Costs for the notification shall be compensated in accordance with the first Paragraph.

Infringement investigation

Basic provisions

Article 5. If it can reasonably be assumed that someone has committed, or contributed to, an infringement, the Court may, for the purpose of preserving evidence relating to the infringement, order that an investigation be undertaken in respect of that party in order to search for objects or documents that can be assumed to be of importance for the inquiry into the infringement (*infringement investigation*). Such an order may be rendered upon a petition by the holder of the trade symbol pursuant to Chapter 1, Articles 6 to 8, or by the party which, on the basis of a license, has the right to exploit it. If legal proceedings have not been initiated, the petition shall be submitted in writing.

An order for an infringement investigation may be issued only if the reasons speaking in favour of the measure outweigh the inconvenience or other harm that the measure would cause to the party against which it is directed or to any other opposite interest.

The provisions in the first and second Paragraphs apply also to acts constituting attempts, and to preparatory acts, relating to an infringement.

Processing of matters relating to an infringement investigation

Article 6. An order for an infringement investigation may be rendered by the Court where the trial relating to the infringement is pending. Where a trial has not yet been initiated, the issue of the competence of the Courts is governed by the provisions in Chapter 10, Article 6, in respect of cases referred to there, and by the provisions for civil cases in the Code of Judicial Procedure in respect of other cases related to infringements. The provisions in the Code of Judicial Procedure relating to limitation of the competence of a Court in disputes that have to be initiated otherwise than before a Court shall, however, not apply.

Before an order for an investigation is rendered, the opposite party shall be given an opportunity to respond. Where a delay would entail a risk that objects or documents of importance for the inquiry into the infringement would be removed, destroyed or distorted, the Court may, however, immediately render an order to be valid until otherwise decided.

In other respects, any issue relating to an infringement investigation which arises before legal proceedings have been initiated shall be processed in the same way as if the issue had arisen in the course of legal proceedings.

Posting of a security, and appeals against decisions

Article 7. An order for an infringement investigation may be rendered only where the applicant posts a security at the Court for the damage which may be caused to the opposite party. Where the applicant is not able to post such a security, the Court may liberate the applicant from it. 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 opposite party has approved it.

As regards appeals against the decision by the Court relating to an infringement investigation and as regards the proceedings in higher Courts, the provisions concerning appeal against decisions prescribed in Chapter 15 of the Code of Judicial Procedure apply.

The contents of a decision on an infringement investigation

Article 8. An order for an infringement investigation shall contain information about

1. the purpose of the investigation,

2. the objects and documents that may be searched for, and
3. which premises may be searched.

Where necessary, the Court shall set also other conditions for the execution of the order.

Execution of an order for an infringement investigation.

Article 9. An order for an infringement investigation is immediately enforceable. If an application for its execution has not been filed within one month from the order, the order becomes invalid.

Article 10. An order for an infringement investigation is executed through the Local Enforcement Authority in accordance with the conditions prescribed by the Court and in applying Chapters 1 to 3, Chapter 17, Articles 1 to 5, and Chapter 18, of the Enforcement Code. The applicant's opposite party shall be informed about the execution only if the order for an infringement investigation has been issued after hearing the opposite party. The Authority has the right to take photographs and to make video and sound recordings of such objects for which it is authorised to search. The Authority also has the right to make copies of, and extracts from, such documents for which it is authorised to search.

An infringement investigation must not concern written documents referred to in Chapter 27, Article 2 of the Code of Judicial Procedure.

Legal assistance and right to attend the infringement investigation

Article 11. The opposite party has the right to summon an attorney when an order for an infringement investigation is to be executed. The execution must not begin before the attorney has arrived. This does, however, not apply if

1. the investigation is thereby unnecessarily delayed, or
2. there is otherwise a risk that the purpose of the measure will not be achieved.

In the course of the execution the Enforcement Authority is authorised to engage, if necessary, the services of an expert.

The Authority may permit the applicant or a representative of the applicant to attend the investigation in order to provide information. If such a permission is granted, the Authority shall see to it that the applicant or the representative is not being informed about the findings at the investigation more than can be justified by the execution.

Invalidation of a measure taken at an infringement investigation

Article 12. if the applicant does not, within one month from the conclusion of the execution, file an action or in some other manner initiates a proceeding relating to the issue, any measure which has been undertaken in the context of the execution shall

immediately be invalidated to the extent possible. The same applies if an order for an infringement investigation is invalidated after the execution has been concluded.

Processing of material from the infringement investigation

Article 13. The Enforcement Authority shall list photographs and video and sound recordings of objects as well as copies of, and extracts from, documents from the Infringement investigation. The material shall be held available for the applicant and the opposite party.

Chapter 10. Other Provisions

Prohibition against adjudication of sanctions

Article 1. If the registration of a trademark has been invalidated through a decision or a judgement that has obtained legal force, the Court may not adjudicate a sanction or decide on compensation or another measure pursuant to Chapters 8 or 9.

Opposition relating to invalidity

Article 2. If an action is brought for infringement of a registered trademark and the party against whom the action is brought asserts that the registration is invalid, the question of invalidity may be considered only after the action for invalidation has been brought. The Court may order the party asserting the invalidity of the registration to bring such an action within a specified period of time.

The provisions of the first Paragraph shall apply also if, in a case involving a petition for a decision whether a specific legal situation exists or not which relates to a registered trademark, it is asserted that the registration is invalid.

Processing of personal data

Article 3. Notwithstanding the prohibition in Article 21 of the Act (1998:204) on Personal Data, personal data relating to violations of the law that constitute offences pursuant to Chapter 8, Article 1, may be processed if this is necessary in order for a legal claim to be established, asserted or defended.

Special Provisions on Community Trademarks

Fees for applications transmitted, etc.

Article 4. A prescribed fee shall be paid by anyone who

1. files an application for registration of a Community Trademark to the Patent and Registration Office for transmittal pursuant to Article 25.2 of the Council Regulation (EC 207/2009) on the Community Trade Mark,

2. requests the transformation of a registration of a Community Trade Mark or an application for the registration of a Community Trade Mark into an application for the national registration of a trademark, or
3. requests a certificate pursuant to Article 93.3 of the Council Regulation.

Provisions applicable to Community Trademarks

Article 5. In the case of an infringement of a Community Trade Mark, the provisions of Chapter 8, Article 1, on liability for trademark infringement apply. To the extent that otherwise does not follow from the Council Regulation (EC 207/2009) on Community Trade Marks also Article 3, Chapter 8, Articles 2 to 8, and Chapter 9 apply. In those cases the provisions on trademark infringement shall apply to infringement of a Community Trade Mark,

Competent court

Article 6. If the Code of Judicial Procedure does not assign a Court competent to entertain a case concerning revocation of a trade mark registration, trade mark infringement or a declaration whether certain legal relations exist or not, proceedings are initiated at Stockholm District Court.

Actions referred to in Article 5, and in Article 96 of the Council Regulation (EC) No 207/2009 of 26 February on the Community trade mark, are instituted in Stockholm District Court.

Special indications for agricultural products and foodstuffs

Article 7. The provisions in Article 3, Chapter 8, Articles 3–8, and Chapter 9 shall apply to an infringement of the rights in an indication laid down in

1. Council Regulation (EC) No 509/2006 of 20 March 2006 on agricultural products and foodstuffs as traditional specialities guaranteed,
2. Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs,
3. Council Regulation (EEC) No 1576/89 of 29 May 1989 laying down general rules on the definition, description and presentation of spirit drinks,
4. Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No 1576/89,
5. Council Regulation (EC) No 1493/1999 of 17 May 1999 on the common organisation of the market in wine, or
6. Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation).

Obligation for licensees and others to notify the proprietor

Article 8. The proprietor of a trade symbol, or a special indication pursuant to Article 7, shall be notified prior to the initiation of an action concerning trade mark infringement. This applies, however, only if the party wishing to initiate the action is

1. a licensee,
2. a pledgee wishing to initiate an action on account of an infringement in the pledged property,
3. a party entitled to use a trade symbol pursuant to Chapter 1, Article 2, or
4. a party entitled to use a special indication pursuant to Article 7 wishing to institute an action pursuant to Chapter 8, Article 4 or 7.

A notification pursuant to the first paragraph shall be given also when a licensee or a pledgee wishes to initiate an action for a declaration whether certain legal relations exist or not concerning a trade symbol.

If a notification pursuant to the first or second paragraph is not given, the action shall be dismissed.

Prohibition against attachment of trade symbols established on the market

Article 9. The rights in a trade symbol pursuant to Chapter 1, Article 7, may not be subject to attachment. If the proprietor is declared bankrupt, though the rights are included in the bankruptcy estate.

Appeal

Article 10. A final decision by the Patent and Registration Office pursuant to this Act may be appealed to the Court of Patent Appeals within two months from the date of the decision.

A final decision in a matter concerning registration of a trade mark may be appealed against only by the applicant. The same applies to a final decision in a matter concerning extension of the protection resulting from an international trade mark registration to Sweden.

A final decision on account of an opposition to a registration may be appealed against only by the proprietor of the trade mark registration and by the opponent. A final decision on account of an opposition to an extension of the protection resulting from an international trade mark registration to Sweden may be appealed against only by the proprietor of the international trade mark registration and by the opponent. When the opposition is withdrawn, the opposition procedure may, nevertheless, be completed, if there exists particular reasons. The claim may not be considered, though, if the only bases invoked for it are grounds pursuant to Chapter 2, Articles 8–10.

A final decision by the Court of Patent Appeals may be appealed to the Supreme Administrative Court within two months from the date of the decision. For an appeal

to the Supreme Administrative Court, Articles 35–37 of the Administrative Court Procedure Act apply. The decision by the Court of Patent Appeals shall contain information about that the review of the Supreme Administrative Court requires leave to appeal, and about the grounds upon which such a leave is granted.

This Article does not apply to decisions in matters concerning administrative revocation of a registration.

Article 11. A decision pursuant to Chapter 3, Article 15, concerning administrative revocation of a trade mark registration may not be appealed against. The same thing applies to a decision by which a matter has been transferred to a district court or removed from the files pursuant to Chapter 3, Article 13, third paragraph. Other decisions in matters concerning administrative revocation may be appealed to a District Court within three weeks from the date of the decision. Decisions during the proceedings of such a matter may not be appealed separately.

Article 12. An appeal pursuant to Article 11 is lodged with the District Court which, based on the indications of the documents and pursuant to Chapter 10 of the Code of Judicial Procedure, is competent to consider the issue of revocation of the registration. If the Code of Judicial Procedure does not assign a court competent to entertain the appeal, the decision shall be appealed to Stockholm District Court.

The appeal is filed with the Patent and Registration Office.

In court proceedings, the Court Matters Act applies. The Patent and Registration Office shall, however, not be a party in the court.

Publication

Article 13. Publications pursuant to this Act shall be made in a particular publication brought out by the Patent and Registration Office. The Government or the public authority appointed by the Government issues more detailed regulations concerning publications pursuant to this Act.

Authorization

Article 14. The Government may issue regulations concerning fees pursuant to this Act.

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1. This Act enters into force on 1 July 2011, when the Trade Marks Act (SFS 1960:644) and the Collective Marks Act (SFS 1960:645) are repealed.
 2. The Act shall apply also to trade symbols which are established on the market, trade marks which are registered, or trade mark registrations which are applied for prior to the entry into force of this Act, unless otherwise ensues from item 3–5.

3. A trade mark which has been registered prior to the entry into force of this Act cannot be revoked on the basis of a violation of Chapter 2, Article 7, second paragraph.
 4. The provisions in Chapter 8, Article 8, and Chapter 9, Articles 1 to 4, shall not be applied when the infringement, or the attempt or preparation in respect of the infringement, has been committed before April 1, 2009.
 5. Earlier regulations still apply concerning measures taken or rights acquired prior to the entry into force of this Act.
 6. National and international trade marks which, through registration, have been granted protection in Sweden pursuant to earlier regulations are deemed trade symbols pursuant to Chapter 2, Article 8, second paragraph, items 1 and 2.
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