

New trademarks act

Parliament has decided to introduce a new trademarks act which is to replace the existing Trade Marks Act (1960:644) and the existing Collective Marks Act (1960:645). Parliament's decision is based on the government bill 2009/10:225. The new act also involves some amendments to the Trade Names Act (1974:156). The act takes effect 1 July 2011.

The new trademarks act is a modernization of the trademark system and an adaptation to international rules, particularly those within the EU. The act has been made easier to overview and the formality provisions have been harmonized in order for Sweden to accede to the Singapore Treaty on the Law of Trademarks¹.

The existing Trade Marks Act was drafted over 50 years ago. The market, and the way in which companies use trademarks, have changed substantially in this time. To a greater extent, companies operate on the international market. Trademarks are used, as before, as a means of individualizing goods and services. The difference is that companies nowadays spend more resources on, and make greater investments in, their trademarks. Today, trademarks are often an independent asset which represents the company's image and goodwill. The value of the trademark can represent substantial amounts and in certain companies the trademark constitutes the greatest asset. It is of great importance that these assets can be protected adequately. The purpose of the new trademarks act is to make it easier to register trademarks in order to safeguard the value which trademarks represent. The simplification of trademark registration is also in line with the Government's overall aim to make it easier to start and run companies. Further, the purpose of the legislative amendments is to harmonize trademark law within the EU, which is beneficial to the establishment of trademarks on the international market.

The changes of the new act within trademark law

Below follows a description of the overall changes which are introduced by the new trademarks act.

The Collective Marks Act is incorporated into the Trade Marks Act. However, the amalgamation does not entail any changes to the Collective Marks Act's area of application.

It will become easier to cancel and annul registered trademarks which are not being used. In addition to the possibility of bringing an action to cancel a registration of a trademark before a court of law, a possibility of applying to the Swedish Patent and Registration Office for an administrative cancellation of a registration is introduced in the new trademarks act. The grounds for cancellation of a registered trademark remain materially unchanged in the new act. For example, as before it is possible to request cancellation of a trademark which has not been used for an uninterrupted period of five years. The difference is that the request can now be made through an administrative procedure by applying to the Swedish Patent and Registration Office instead of bringing an action before a court of law.

The administration rules are clarified to provide improved conditions for more effective administration of trademark registrations. It will also be possible to decide more rapidly upon objections which have serious and obvious shortcomings, by way of a section being introduced which regulates the handling of objections which are so inadequate that they

¹ Singapore Treaty on the Law of Trademarks 2006. The purpose of the treaty is to harmonize the formalities provisions and to promote simplified handling procedures.

cannot form a basis for trying the matter.

An express rule is introduced to the effect that the Swedish Patent and Registration Office may reject an application in part. Furthermore, the applicant is entitled to make minor changes to the trademark, to which the application pertains, if the changes do not alter the overall impression of the trademark. The period for lodging objections to granted registration is extended from two to three months from the announcement of the trademark registration. The Trade Names Act is changed so that it corresponds, as far as possible, with the new trademark act. There was a proposal to bring the Trade Names Act within the trademarks act, but it was not successful.

New Act criticised

The new trademarks Act has been criticised from several perspectives, inter alia, because it did not introduce sufficient simplification to the trademark registration process. The criticism also targets the fact that current rules on official review of trade name and trademark registrations has been retained unchanged despite previous proposals to drop the official review of relative registration obstacles. Such a change would have entailed that it was up to the holder of registered trademark to object to new registrations if these were deemed to be too close to the existing registered trademark. In such a manner, the registration process would have become more effective and administration times reduced. The Swedish Patent and Registration Office and the Swedish Companies Registration Office stated, however, that the change would involve higher costs because the objection procedure would be prolonged. Thus no changes were made to the pre-review system.

Another drawback which was put forward is that the opportunity to get partial annulment of a registration does not comprise a trade name.

The new trademarks act has been given a completely new structure and section layout, but despite that it involves no great material changes. The value of making such a comprehensive restructuring without really tackling trademark law from a holistic perspective can be questioned.

Conclusion

The new Act involves no revolutionary differences in the trademark area. The changes which have been introduced are primarily practical in character and concern registration and administration processes. The new Act is easy to overview and easier for a layman to follow, which is positive. The modernization and adjustment to international rules which the new Act entails is nevertheless welcome, even if many people look forward to a more comprehensive review of trademark law.

The change in law is effective from 1 July 2011.



Jur. kand. Siri Mårtensson

Siri Mårtensson is an associate at Delphi's Göteborg office and works primarily with IP, IT & telecom and contract law.