

Sweden: James Bond, tobacco and the reputation of 007

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In a decision of June 15, 2016 the Swedish Court of Patent Appeals rejected the application for the word mark “007” in relation to tobacco and smoker’s articles on the basis that it would take unfair advantage of the reputed James Bond trademark “007” owned by Danjaq, LLC.



The decision concerned the validity in Sweden of the international registration “007”, Reg. No. 1066094 in respect of the goods *tobacco; smoker’s articles; matches* in class 34 (the “IR”). The Swedish Patent and Registration (“PRV”) performs an ex official examination on relative grounds and had partially allowed the validity of the IR for the above mentioned goods.

Following the registration and publication of the IR, Danjaq, LLC, the holder of the James Bond rights, filed an opposition based on four EUTM’s consisting of either the word marks 007 or the figurative mark depicted above. As none of the earlier rights were registered for class 34, the opponent based its opposition on the extended protection offered in Chapter 2, Section 8, first paragraph, subsection 3 (corresponding to Article 5(3)(a) of the Trademark Directive). The opponent argued that 007 is reputed as the code number for the most famous agent in the world, James Bond. The trademark has furthered been licensed to numerous other

products and famous trademarks. The IR would therefore be detrimental to, and take unfair advantage of, the repute of the opponent's trademarks.

PRV rejected the opposition concluding that the opponent had not proven reputation. The opponent subsequently appealed to the Court of Patent Appeals who overturned PRV's decision. The court's decision is, in this author's opinion, a good pedagogical rundown of how the assessment of unfair advantage of reputed marks is made.

The court initially noted that the sign 007 had been used regularly since 1962 and had turnover figures of around SEK 40 billion in total and around SEK 600 million in Sweden alone. The sign had further extensive marketing and licensing to companies in vastly different product categories, not only with products associated with the motion pictures. The court therefore concluded that the earlier trademark 007 was reputed and that this reputation also would extend to other products associated with the famous movie character James Bond.

The court continued in analysing the link where it concluded that the consumers' knowledge of the trademark 007 together with the vast exposure of the trademark in different product categories would cause a risk of confusion between the IR and the earlier rights. A possible link therefore existed.

The court finally assessed the risk of the IR taking an unfair advantage of the earlier trademarks. After citing the appropriate case law from the CJEU, the court established that taking into account the specific mystique that is associated with the earlier rights through their connection with the James Bond motion pictures and the code number 007, the consumers are likely to be specially appealed by the tobacco products sold under the identical IR. The holder of the IR would therefore, without paying any economic compensation, take advantage of the commercial efforts made by the opponent to create and establish the image related to the trademark 007.

The opponent has therefore proven that there is a real risk that the use of the IR would take an unfair advantage of the distinctiveness and repute of the earlier rights. The validity of the IR in Sweden should therefore be refused.