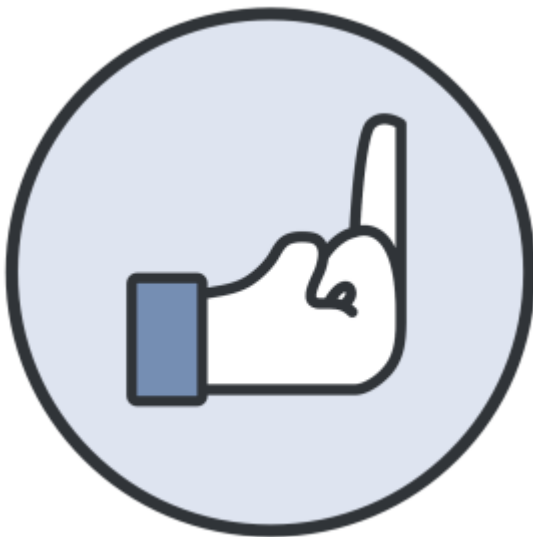


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Sweden: “the finger” not received well by the Swedish Office

David Leffler (Cirio Law Firm) · Friday, December 9th, 2016

On November 15, 2016, the Swedish Patent and Registration Office (“PRV”) rejected an application for trademark protection of the a figurative mark consisting of a hand giving the middle finger on the ground that it was contrary to accepted principles of morality in accordance to Chapter 2, Article 7 of the Swedish Trademark Act. The case is interesting as this is a ground rarely used in relation to Swedish trademark applications.



The figurative mark, depicted above, was filed on June 23, 2016 in relation to various consumer information services in class 35. The applicant had argued that (i) it is not evident that the finger pointing upwards in the mark is the middle finger, (ii) there is no law against giving the finger (iii) the act of giving the finger can no longer be seen as offensive but instead a common way of expressing discontent, and (iv) a refusal of the registration would be contrary to the applicant’s freedom of speech.

The applicant’s arguments fell for deaf ears as the PRV, in its very brief decision, coldly stated that the figurative mark consisted of a hand giving the finger and that this motive is considered offensive. As such the application is contrary to accepted principles of morality in accordance to Chapter 2, Article 7 of the Swedish Trademark Act. The application was consequently refused.

Refusals under this ground is, in this author's opinion, always interesting as they are an attempt to reflect the morality of the current time. Something that was refused ten years ago could be accepted today. Other notable refusals in recent times by the PRV include the word *pensionärsjävlar* (meaning "devil pensioners") and *horunge* (meaning "bastard") whereas the word *Opium* in relation to perfumes, which was refused in the 70's, was accepted after appeal in 1993. *Opium* is still registered in Sweden.

What is considered against accepted principles of morality, of course, differs widely from country to country. It is therefore important that the examining office does not take an overly sensitive stance. The EUIPO, representing the average mind of all Europeans, has set the bar at the standards of a reasonable person with normal levels of sensitivity and tolerance (see the decision of the Grand Board of July 6, 2006, R 495/2005-G, "Screw You"). In that decision, it was explicitly stated that signs which contain slightly rude words or mild sexual innuendo might not be refused, but signs which contain manifestly profane language or depict gross obscenity have no place on the register. Further, marks which are only likely to offend a small minority of exceptionally puritanical citizens should not be refused. Similarly, marks should not be accepted simply because it would not offend an equally small minority at the other end of the spectrum who find even gross obscenity acceptable. As the Grand Board laid it out – some people are easily offended; others are totally unshockable.

The refusal by the PRV, therefore, seems to be in line with the practice of the EUIPO. It is easy to presume that a given finger is something that would not be pleasantly received by most people.

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