

# Kluwer Trademark Blog

## Sweden: Battle of the Berglofs Box – a Swedish bad faith judgment

David Leffler (Cirio Law Firm) · Thursday, February 11th, 2016

**The Swedish Court of Patent Appeals invalidated the registration of BERGLÖFSLÅDAN and BERGLÖFSLÅDAN ORIGINAL (in English the “BERGLOF BOX”) based on bad faith because of the trademark proprietor’s knowledge of the common use of these terms by other parties in Sweden.**

The case concerns the Swedish trademark registrations BERGLÖFSLÅDAN and BERGLÖFSLÅDAN ORIGINAL (in English the “BERGLOF BOX”), applied for in 2011, and was delivered by the Swedish Court of Patent Appeals in December of last year (the combined cases 14-063 and 14-064). To follow the terminology, it should be noted that oppositions are post-registration in Sweden whereby successful oppositions lead to invalidation of the contested trademark.

The opponent claimed that the contested trademarks were (i) not distinctive, (ii) confusingly similar to the opponent’s unregistered trademark, and (iii) applied for in bad faith as the proprietor’s sole intention when applying for the mark was to prohibit competitors from using this well-known designation. Both (i) and (ii) were dismissed by the court as unfounded and the court therefore assessed the claim of bad faith. An interesting aspect of this case is the fact that the proprietor also holds another trademark BERGLÖFSLÅDAN CUSTOM registered in 2004. As such, the proprietor had argued that the contested trademarks only followed a natural progression of the proprietor’s normal business practices and could therefore not be have been applied for in bad faith. In relation to this, it should be known that the BERGLÖFSLÅDAN designates a special type of container used for heavy materials and was invented in the 1950’s.

In Sweden it is possible to oppose a trademark registration on the ground of bad faith. However, the Swedish bad faith provision is somewhat different from that of the provisions existing in the CTMR (later EUTM) and the EU Trademark Directive. Instead of simply allowing prohibiting the registration of trademarks applied for in bad faith, Article 8 (4) of the Swedish Trademark Act states as follows:

“A trademark shall not be registered if it 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.”

The Swedish provision is therefore treated more as a relative ground and oppositions based on bad faith can lead to a partial refusal of a registration, i.e. only in respect of similar and identical goods. Something contrary to how the bad faith is dealt with under the CTMR (see T-321/10, para. 48).

In the present case, the court referred to the Lindt case (C-529/07) as well as the BIGAB and SIMCA cases from the General Court (T-33/11 and T-327/12) stating that bad faith exists if the proprietor knew of a third party's use of a sign and the proprietor's sole intention with the trademark registration has been to prohibit such third party's continued use. The court confirmed that it was proven that the opponent, at the time of the application for the contested trademarks, was using, in the course of trade, the confusingly similar sign BERGLÖFSLÅDAN, and that the proprietor knew of such use.

In relation to the legitimate interests of the proprietor, the court stated that BERGLÖFSLÅDAN has been used for over 50 years in relation to the relevant goods by various companies long before the proprietor even applied for its first trademark registered in 2004. This is further something that the proprietor had knowledge of. In addition, it has not been proven that the proprietor had acquired any rights to the name from the original inventor. Therefore, it cannot be concluded that the proprietor had any rights to the name BERGLÖFSLÅDAN at the time of the application for the earlier trademark BERGLÖFSLÅDAN CUSTOM. Thus, this registration cannot be used to derive any legitimate interests on the part of the proprietor for the contested registrations BERGLÖFSLÅDAN and BERGLÖFSLÅDAN ORIGINAL.

Considering all relevant aspects of the case and particularly the absence of any proven legitimate interests on the part of the proprietor, the court concluded that the intention of the proprietor must have been to benefit from the knowledge and recognition of the designation BERGLÖFSLÅDAN in relation to the relevant goods. The applications were consequently considered made in bad faith and the contested trademarks partially invalidated.

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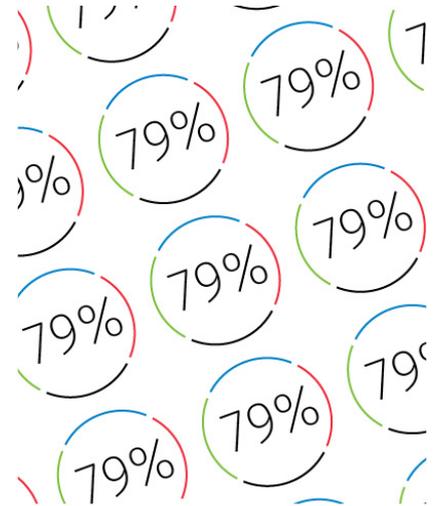
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