

# Kluwer Trademark Blog

## Sweden: registration of company names – a small light at the end of a very dark tunnel?

David Leffler (Cirio Law Firm) · Monday, February 17th, 2020

On 16 December 2019, the Swedish Patent- and Market Court delivered a judgment on the registration of the company name GDL AB, reversing a long-standing practice of the Swedish Companies Registration Office (“**Bolagsverket**”) when it comes to the assessment of distinctiveness of company names.



Why is the above relevant on a trademark blog one may think? Well, this is due to the Swedish concept of reciprocal protection between company names (trade names) and trademarks. A registered company name entails a sole right for the proprietor in relation to the use of a sign in the course of trade that is identical, confusingly similar or infringes the repute of the company name. To balance this, company names that lack distinctiveness cannot be registered.

The fact that company names have protection as signs is a source of both joy and frustration (mostly frustration to be honest) among trademark professionals in Sweden. The reason being that Bolagsverket for many years have developed their own internal practice when it comes to the assessment of company names. The main reason is due to the procedural rules whereby one has the possibility to come up with new names if the first one is deemed non-distinctive or confusingly similar to another company name or a trademark. Therefore, the refusals were never really appealed.

In the present case (PMÄ 10269-19), the company GDL Transport AB (where AB stands for Aktiebolag = limited liability company) applied to change its name to GDL AB. Bolagsverket refused this application on the basis that GDL was a three letter combination without meaning and as such lacked distinctiveness. The applicant appealed the decision to the Swedish Patent and Market Court (“**PMD**”) which, since 2016, handles all IP cases in Sweden.

In its judgment, PMD stated that the assessment of whether a company name is distinctive shall be made in the same way as trademarks are assessed. There is no reason that the threshold should be higher for company names. In relation to the case at hand, PMD reiterated old Swedish trademark

practice confirming that signs that consist of at least three letters or numbers have sufficient distinctiveness. As such, and taking into account that GDL has no meaning, PMD concluded that it had distinctiveness and that GDL AB could be registered as a company name.

It is much welcomed that the PMD is now the appeal body for company name registrations. One hopes that refusals will be more appealed in order to align the company name registration practice more with that of EU trademark law. Nevertheless, the largest diversion from trademark practice is in most cases the opposite as Bolagsverket in many other ways allows for the registration of pure descriptive marks from a trademark perspective, which is challenging when it comes to infringement proceedings. An interesting note is that PMD stated that at least three letter or numbers have sufficient distinctiveness. One can only hope that this was because of the applied name being a three-letter combination and that PMD has not forgotten the ?-case (C?265/09 P) clearly stating that also a single letter or symbol can be distinctive.

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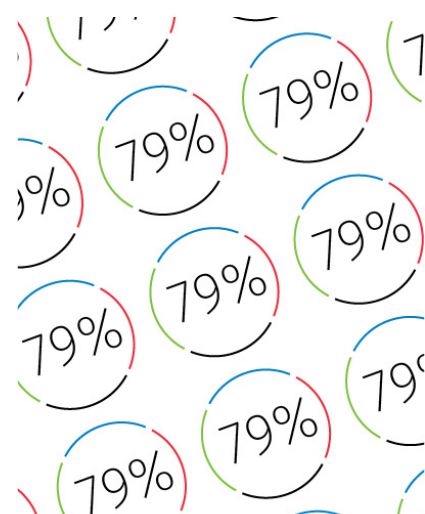
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