

Question Q210

National Group: Sweden

Title: **The Protection of Major Sports Events and associated commercial activities through Trademarks and other IPR**

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I) Analysis of the current legislation and case law

The Groups are invited to answer the following questions under their national laws:

- 1) Does your national law provide specific protection for trademarks or other designations relating to Major Sports Events?**

No, there are no such laws in Sweden; we will therefore not answer questions 2 and 3 below.

- 2) If so, please explain whether - and in the affirmative in what way - the following trademark law requirements differentiate from the corresponding requirements in general rules of trademark law:**

- a) Requirement of distinctiveness**
- b) Use requirement**

- 3) Also, please explain whether – and in the affirmative in what way - the following differentiate from the general rules of trademark law:**

- a) Is the scope of protection of trademarks which relate to Major Sports Events narrowed or extended compared to the scope of protection of other trademarks?**
- b) Does use as a mark constitute a precondition for infringement of trademarks which relate to Major Sports Events or is the requirement of use as a mark not applied in relation to infringement of those trademarks?**
- c) Is the protection period for trademarks which relate to Major Sports Events the same as the protection period for other trademarks?**
- d) Is the determination of third party traders' legitimate interest in fair use different for trademarks which relate to a Major Sports Event than for other trademarks?**

- 4) Does your national law provide for a specific registration procedure for trademarks relating to Major Sports Events?**

No, there are no such rules in Sweden.

- 5) **What are the possible remedies in respect of infringements of trademarks relating to Major Sports Events? Do they differ from the remedies applicable to other trademark infringements?**

No, the remedies available are the same as the remedies applicable to ordinary trademark infringements.

- 6) **What are the possibilities under your national law of reacting against non-official sponsors' use or registration of trademarks which take place before a Major Sports Event and which relate to the Major Sports Event?**

The trademark law includes rules on for example interim injunctions which can be used in these types of cases in the same manner as in ordinary infringements.

The Marketing Act could be invoked against marketing which is misleading or which takes undue advantage of the trademarks of a Major Sports Event ("MSE") or a third party. The Act also includes rules on interim injunctions. However, one should be aware that requests for interim injunctions are seldom granted by the Market Court unless the case is very clear..

- 7) **Does your national law provide for protection against Ambush Marketing? In the affirmative, is such protection set out in the law protecting trademark rights, in the laws against unfair competition, or both?**

Both the Trade Marks Act (trademark infringement) and the Marketing Act (see above) can be relevant in this context.

- 8) **Does your national law provide for specific trademark protection or protection against unfair competition relating to other major events, such as film, art or music festivals, World Expos and other similar events?**

No, Swedish law does not include such rules either.

II) Proposals for substantive harmonisation

The Groups are invited to put forward their proposals for adoption of uniform rules, and in particular consider the following questions:

- 1) **Are particular rules on trademark protection desirable for trademarks or signs which relate to Major Sports Events? In the affirmative, why is that the case?**

The majority of the group is of the opinion that, speaking from a strictly legal view point, the existing legislation, i.e. the Trade Marks Act, the Marketing Act and the Copyright Act, should be sufficient also in connection with trademarks which relate to MSE. The main objection towards particular rules on MSE is that such could easily lead to a conflict between the interests of the organiser and the official sponsors on one side and the interests of non sponsoring companies not to be unduly restricted in marketing of their products on the other. As a practical example can be referred to the specific legislation, which is or will be in effect during the Olympic games in London 2012: It has been decided that the combination of one of the words "games", "Twothousandandtwelve", "2012", or "Twentytwelve" with one of the words "Summer", "Sponsors", "Medals", "London", "Bronze", "Silver" or "Gold" establishes an

assumption of infringement. Notwithstanding the dependency of how a specific advertising campaign is presented, the group is of the opinion that under current Swedish legislation it would be difficult to establish an infringement as in accordance with the above without specific legislation. At least in theory, it will be difficult to successfully argue that such use of common words or digits would constitute an infringement.

The group is fully aware of the fact that it has been a requirement from the organiser that the hosting country will in fact implement specific legislation to be ready for use in time for the MSE starting with the European Championship in football in Portugal 2004. Consequently, it would in practise be extremely unlikely that Sweden would be allowed to host such an event if Sweden would refuse to implement specific legislation. In the following responses, the group has thus worked under the assumption that a specific legislation to some extent must be adopted if Sweden were to host a MSE. Alternatively, the group has tried to explain why present legislation is sufficient. On the practical side it can also be mentioned that the specific requirements just mentioned only concern the hosting country. When, however, considering the fact that a MSE is a worldwide television event, the practical value of specific legislation requirements for one single country must be questioned when the rest of the world remains unaffected.

2) What would be desirable for trademarks and signs which relate to Major Sports Events in respect of the registration of such trademarks?

a. Would it be reasonable to adopt a registration procedure which is shorter than the general registration procedure?

No, there is no reason for treating such trademarks and signs differently than trademarks and signs not related to MSE. The difference does not relate to their function as marks and signs but to the circumstances under which they are used, the effect of which cannot be overcome by differences in the registration process.

b. Would it be reasonable to change the classification system in respect of registration of trademarks which relate to Major Sports Events?

Yes, insofar as it may be necessary. In other words, it would be reasonable to amend or complement the classification systems so as to facilitate classification of trademarks for a MSE or similar non-sport-related events. Many trademarks held by the Olympic Committee are registered in all classes. The trademarks are used for many products and services – taking all sponsors into consideration – but not in all classes and for all goods and services. An adjustment of the classification system to cover not only organising sports events but also all other activities and marketing material which are of interest to MSE would be an appropriate measure to facilitate for MSE and other events without having a negative effect on society or third parties.

c. Would it be reasonable to adopt a narrowed requirement of distinctiveness for trademarks which relate to Major Sports Events or alternatively not to require distinctiveness at all?

No, see 2)a above.

- 3) What would be desirable for trademarks and signs which relate to Major Sports Events in respect of the use requirement?**
- a. Would it be reasonable to adopt a use period of e.g. 8 or 10 years for trademarks which relate to Major Sports Events?**

Since the location of MSE is often announced early in advance, there are legitimate interests for undertakings which are entitled to use the sign to remedy trade in e.g. merchandise by undertakings which are not. However, an extended use period would promote warehousing and reduce the incentive to trade under the mark to the detriment of the overall turn over from the event in question. If the entitled undertakings realise their business opportunities there is no need for such an extension, and if they do not, the proprietor may rely on general tort law. It could further be noted that the principle that a trademark shall not be revoked due to non-use if the owner has legitimate reasons for not using the trademarks naturally applies also in relation to these types of trademarks.

- b. Would it be reasonable to apply a use period of e.g. 8 or 10 years if the period from registration of the trademark to the actual event is shorter than 8 or 10 years?**

See the answer to question 3 (a).

- 4) What would be desirable for trademarks and signs which relate to Major Sports Events in respect of the scope of protection? Would it be reasonable to give trademarks which relate to Major Sports Events a broader scope of protection than the scope of protection given to other trademarks, and in particular in relation to other trademarks which have a low degree of distinctiveness?**

It is the group's view that the same principles should apply for trademarks related to MSE as for other types of trademarks. As to the scope of protection, many trademarks related to MSE are or will quickly become well known considering the attention such events have. Therefore, these types of trademark will, according to Swedish trademark law, naturally have an extended scope of protection. As for distinctiveness, the group has above explained that some of the words connected to the Olympic Games in London will most likely be considered not to be distinctive as such under Swedish law. However, the group sees no need for protection of these types of words; they should be open for all to use, see below under 5 a). As explained above, this does not contradict the possibility to issue specific such rules in Sweden in the case of a MSE.

- 5) What would be desirable for trademarks and signs which relate to Major Sports Events in respect of infringements of those trademarks?**
- a. Should the requirement of use as a mark as a precondition for trademark infringement apply to alleged infringements of trademarks which relate to Major Sports Events or should it be possible to infringe such trademarks even when the use in question can not be characterised as use as a mark? Why is that the case?**

The group's view is that only use as a mark as defined by the consumers' appreciation according to the case law of the ECJ should be ground for infringement also in relation to MSE. Precluding companies to neutrally in advertising explain that a certain product will be available during a MSE e.g. a specific year or in a place will unnecessarily restrict companies' possibility to freely market their products and businesses. This would only to a small extent affect the incomes for sponsors of the events and will therefore also only to a small extent affect the MSE's possibilities of attracting sponsors. It could not lie in society's interest at large to adopt such special rules for trademarks related to MSE.

b. Should the remedies available against infringements of such trademarks be different from the remedies available against infringements of other trademarks? In the affirmative: Why is that the case?

The Group's view is that the remedies available in Swedish law are sufficient also for trademarks related to MSE.

6) Are specific measures protecting against Ambush Marketing relating to Major Sports Events necessary or justified? In the affirmative, why is that the case and what should the contents of such measures be?

No, according to the the group no measures against ambush marketing specifically relating to MSE are needed.

Article 15 of the ICC Consolidated Code of Advertising and Marketing Communication Practice, regulating exploitation of goodwill, is applicable to Ambush Marketing. Exploitation of goodwill is not considered to be in compliance with good marketing practice according to the Swedish Marketing Act. It should be mentioned however that since 1 July 2008, when the new Marketing Practices Act entered into force, the possible prohibition of such marketing practices are dependent on a transaction test, unless they are used in comparative advertising; is the consumer likely to make a different commercial decision due to this marketing?. There is no illustrative case law presently. As ambush marketing normally would just aim at attracting attention, and might not typically affect a consumer's commercial decisions, the Court might come to the conclusion that ambush marketing is not unlawful under the Act. This could, in turn, lead to that changes in the Act need to be seriously considered.

7) Are other measures protecting against unfair competition relating to Major Sports Events necessary? In the affirmative, why is that the case?

As said, the group believes that the existing rules are sufficient. Should Sweden organise a MSE, it could be questioned which resources to take into consideration. Courts need to be prepared to decide on interim injunctions within a short notice. Furthermore, the police need education to be able to take action quickly and efficiently. This will need planning and organisation from the Swedish government and authorities.

The group also notes that according to Swedish law there is a possibility to register certification marks according to The Collective Marks Act. The purpose of said Act is to provide a possibility for various associations and societies to register trademarks which are intended to be used by all members or entities, which fulfil the requirements

and standards set out in the regulations for the association. This possibility can be used instead of the normal trademark protection which affords only one trader the right to dispose of the reputation vested in such a sign. Thus, the responsible Committee may in Sweden register the sign as a certification mark and thereafter decide which traders shall be entitled to jointly use the sign.

8) Does your group have any other views or proposals for harmonisation in the area?

See 7) above.

Summary

Swedish law provides neither specific protection, nor specific registration procedures for trademarks or other designations relating to Major Sports Events or other major events. Swedish trademark law and unfair competition law (the Marketing Practices Act) do not contain express provisions aimed at Ambush Marketing, but the provisions of both acts are applicable in this context.

The Swedish group does not propose the adoption of uniform rules, as relevant Swedish law is considered sufficient. It is the group's view that the same principles should apply to trademarks and signs related to Major Sporting Events. It would, however, be reasonable to amend or complement the classification systems for trademarks to facilitate classification of trademarks for such events.

Zusammenfassung

Schwedisches Gesetz stellt weder konkreten Schutz noch konkrete Ausrichtungsverfahren für Warenzeichen oder andere Kennzeichnungen in Bezug auf „Major Sports Events“ (große Sportveranstaltungen) oder andere große Veranstaltungen zur Verfügung. Schwedisches Warenzeichengesetz und das Gesetz des unlauteren Wettbewerbs (das Marketing Gesetz) enthält nicht ausdrückliche Bestimmungen gegen „Ambush Marketing“ (Hinterhalt-Marketing), aber die Bestimmungen beider diesen Gesetzen sind in dieser Zusammenhang anwendbar.

Die schwedische Gruppe schlägt nicht die Annahme von einheitlichen Richtlinien vor, mit Rücksicht darauf daß relevante schwedische Gesetze genügend sind. Die Gruppe ist der Meinung daß dieselben Prinzipien für Warenzeichen und Zeichen verbunden mit Major Sports Events gelten sollen. Es wäre aber angemessen die Klassifikationssysteme für Warenzeichen abzuändern oder ergänzen, damit die Klassifikation von Warenzeichen für solche Veranstaltungen erleichtert wird.

Sommaire

Le droit suédois ne prévoit pas de protection spécifique, ni les procédures d'enregistrement des marques ou autres appellations concernant Grands Événements Sportifs ou autres Grands Événements.

Le droit des marques suédoise et la loi contre la concurrence déloyale (la loi sur la commercialisation) ne contient pas de dispositions expresses visant à Ambush Marketing, mais les dispositions des deux lois sont applicables au contexte.

Le groupe suédois ne propose pas l'adoption de règles uniformes, que les lois suédoises sont considérées comme suffisantes. C'est l'avis de groupe que les mêmes principes doivent s'appliquer aux marques et signes liés aux Grands Événements Sportif. Il serait cependant raisonnable de modifier ou de compléter les systèmes de classification pour les marques de manière à faciliter le classement des marques pour de tels événements.