

Swedish jurisdiction in national trademark cases

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Introduction

Facts

Decision

Comment

Introduction

The Supreme Court⁽¹⁾ recently clarified the scope of jurisdiction of the Swedish courts in infringement actions involving Swedish trademarks where the infringer is domiciled outside the European Union or European Economic Area. Due to the territorial character of nationally registered trademarks, there is a legal interest for the country of registration to hear cases where a national trademark right has been invoked. Under Swedish law, the national courts should therefore have jurisdiction in cases relating to trademarks registered in that country, based on the mere allegation by the claimant that an infringement has taken place in Sweden.

Facts

Two Swedish companies with licences to market and sell certain products under trademarks registered in Sweden brought an action for trademark infringement before the Stockholm District Court against a company established in Hong Kong. The defendant claimed that the Stockholm District Court lacked jurisdiction to hear the case since all its business was conducted from Hong Kong, the server was located in Hong Kong, the domain name was owned by the Hong Kong-based company and the alleged infringement had not taken place in Sweden.

Decision

The question before the Supreme Court was whether the Swedish courts have jurisdiction over a claim for infringement of a Swedish trademark when the defendant is domiciled and the infringing acts have taken place outside the European Union or European Economic Area.

The court stated that no provision under Swedish or EU law governs the situation, since neither the EU Brussels I Regulation nor the Lugano Convention applies when the defendant is domiciled outside the European Union or European Economic Area. Instead, the court highlighted the territorial character of trademarks and that the registration of a trademark under Swedish law is effective in Sweden only. Thus, the exclusive right to a trademark covers use that can be deemed to have occurred in Sweden as the country of registration.

As a result of the territorial limitation of trademarks, the court held that Sweden has a legal interest, and thereby jurisdiction, to hear cases relating to Swedish trademarks. Accordingly, the court found that the Swedish courts have jurisdiction in cases concerning the infringement of Swedish trademark rights based on the mere allegation that infringement has taken place in Sweden.

The court did not proceed to assess whether infringement had occurred in Sweden, but referred the case back to the district court.

Comment

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The decision confirms that Swedish courts have jurisdiction to hear cases concerning Swedish trademarks if the claimant claims that infringement has taken place in Sweden. This means that instead of the court dismissing the case on procedural grounds due to lack of jurisdiction, the case should be tried on the merits. It is thus possible for a Swedish rights holder to enforce its trademark rights in Sweden even though the infringing party is domiciled and conducts its business outside the European Union or European Economic Area.

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Endnotes

(1) Ö 3223-13.

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