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CONVENTIONS AND TREATIES

European Convention relating to the Formalities required for Patent Applications

Ratification by France

The following communication has been received from the Council of Europe:

(Translation)

"I have the honour to inform you that on the 18th January, 1962, the Permanent Representative of the French Government to the Council of Europe deposited with the Secretary General the instrument of ratification in respect of the *European Convention relating to the Formalities required for Patent Applications*, as signed in Paris on 11th December, 1953.

The instrument deposited by France is the twelfth ratification of the Convention. The Convention, which came into force on 1st June, 1955, has already been ratified by Denmark, German Federal Republic, Greece, Ireland, Italy, Luxemburg, Netherlands, Norway, Sweden, Turkey and Great Britain and Northern Ireland; South Africa and Switzerland have adhered to it.

In accordance with Article 8, paragraph 3, the Convention will come into force in respect of France on 1st February, 1962.

The present notification is made in accordance with Article 10 of the said Convention."

LEGISLATION

(Translation)

SWEDEN

I

Trade Marks Act

(No. 644 of December 2, 1960)

General Provisions

Section 1

By means of registration in accordance with this Act a trader shall be entitled to acquire an exclusive right in a trade mark as a special symbol for the purpose of distinguishing the goods which he offers for sale in his business from those so offered by others.

A trade mark may consist of devices, words, letters or numerals, or of the distinctive get-up of the goods or their packaging.

The provisions of this Act made in respect of goods, shall, insofar as applicable, also apply to services.

Separate provisions have been made in respect of collective marks.

Section 2

Even though unregistered, a trade mark shall be the exclusive property of a trader when it has become established on the market.

By establishing them, the trader shall also acquire an exclusive right in slogans or any other special trade symbols used in his business.

A symbol shall be considered to have become established on the market if, in Sweden, it is generally known to those to whom it is addressed as the symbol of the goods of the proprietor of the mark.

Section 3

Any person engaged in a commercial activity shall be entitled to use his surname or his trade name as a symbol of his goods, provided such use is not likely to cause confusion with the protected trade symbol of another party. Moreover, a trader shall be protected under this Act against the unauthorized use of his name or trade name as such symbol by another party.

Section 4

The right in a trade symbol granted under Sections 1 to 3 shall imply that any person other than the proprietor shall be excluded from using, in a commercial activity, a confusingly similar symbol for his goods, whether it be on the goods or on their packaging, or in advertising or in documents or in any other way, including also the verbal use thereof. This provisions shall apply whether the goods are offered for sale or intended to be offered for sale in this

country or abroad, or are imported here. If the right in a symbol is based on the provisions of Section 2 and the symbol has not become established in the whole of Sweden, the right shall be valid only in the region where it has become established.

As unlawful use under the first paragraph of this Section shall be regarded the reference by anyone, in connection with the sale of spare parts, accessories or the like adapted for use together with the goods of another party, to the symbol of that party in such a way as to create a false impression that what is thus being offered for sale originates with the proprietor of the symbol, or that the proprietor has consented to its being so used.

If an article has been offered for sale under a certain symbol and someone other than the proprietor has substantially altered it by reconditioning, repair or the like, the symbol may not be used when the article is again offered for sale in the course of business in Sweden, unless the alteration is clearly indicated or is otherwise clearly evident.

Section 5

Exclusive rights in a trade symbol shall not be extended to such parts of the symbol as mainly serve to make the goods or their packaging more practical, or otherwise serve to fulfil some function other than that of being a trade symbol.

Section 6

Symbols shall be deemed to be confusingly similar under this Act only if they relate to goods of the same or similar kinds.

Nevertheless, the possibility of confusion may also be pleaded by way of exception, in other cases, viz.,

- (a) in favour of a symbol which has become exceedingly well established on the market and is publicly known in wide circles in Sweden, where, in view of this fact, the use of another similar symbol would involve an improper exploitation of the goodwill of the former; or
- (b) in favour of a symbol which has become established on the market, where, with regard to the special character of the goods in question, the use of another similar symbol would obviously lessen the goodwill of the former.

Section 7

In settling disputes over the rights in trade symbols which are confusingly similar to each other, the earlier title shall prevail, unless the provisions of Section 8 or 9 below shall apply.

Section 8

If a registered trade mark has been used to a not inconsiderable extent, the right in the said mark, insofar as relating to goods of the same or a similar kind as those in respect of which the mark has been used, shall be permitted to exist side by side with an older right in a confusingly similar symbol, provided the registration was applied for in good faith and has existed for five years from the date of registration before action was brought against its validity.

Section 9

If a symbol has become established on the market, the right in the said symbol shall be permitted to exist side by side with an older right in a confusingly similar symbol, provided the proprietor of the older right has not, within a reasonable time, taken measures against the use of the younger symbol.

Section 10

When the provisions of Section 8 or 9 are to be applied, it may be ordered, discretionarily, that either of the symbols, or both, may be used in a special manner only, e. g. in a particular form, with the addition of a place-name or some other distinguishing feature.

Section 11

At the request of the proprietor of a registered trade mark authors, editors and publishers of dictionaries, manuals or similar printed works shall ensure that the trade mark is not reproduced in the said works unless it is clearly indicated that the mark reproduced is a registered trade mark.

Anyone who fails to fulfil his obligation laid down in the preceding paragraph shall be liable to assist in publishing a notice of rectification in such manner and to such extent as may be deemed reasonable, and to defray the cost of such notice of rectification.

Registration of Trade Marks

Section 12

A trade mark register for the whole of Sweden shall be kept in Stockholm by the Patent and Registration Office.

Section 13

In order to be registrable a trade mark must be adapted to distinguish the goods of the proprietor from those of others. A mark which, exclusively or with no more than minor changes or additions, indicates the kind, quality, quantity, use, price or geographical origin of the goods, or the date of its production, shall not in itself be deemed distinctive. In assessing the distinctive capacity of a mark, however, all the factual circumstances shall be taken into consideration and in particular the length of time during which, and the scale on which, the mark has been in use.

A trade mark which merely consists of letters or numerals and which cannot be regarded as a device mark may be registered only if the mark has been proved to possess distinctiveness as a result of its becoming established on the market.

A symbol merely consisting of what is likely to give the impression of being the applicant's surname, or his surname and Christian names, initials, title or the like, or his trade name, shall not be registrable as a trade mark.

Section 14

A trade mark may not be registered:

- (1) if the mark contains such state or international emblems or such local authority coats of arms as, by law, must not be used without permission as a trade mark, or anything that might easily be confused therewith;
- (2) if the mark is obviously deceptive;

- (3) if the mark is otherwise contrary to law and order or is likely to cause offence;
- (4) if the mark contains or consists of an element which is likely to give the impression of being the trade name of another party, or the surname, artist's name or a similar name, or the portrait of another party, provided it does not obviously refer to a person long deceased;
- (5) if the mark contains an element which is likely to give the impression of being the title of the protected literary or artistic work of another party, where the title is distinctive, or which infringes the copyright of another party in a literary or artistic work, or the photography or design rights of another party;
- (6) if the mark is confusingly similar to the name or trade name of another party, or to the trade mark of another party registered on the basis of an earlier application, or to the trade symbol of such party, which was already established on the market when the application was made, or
- (7) if the mark is confusingly similar to a trade symbol which, at the time of the application, was being used by another party and the applicant was aware thereof when he filed the application and had not used his mark before the other symbol was taken into use.

Notwithstanding the provisions made in (4), (5), (6) and (7), registration may be granted if the person whose right is involved gives his consent and there are no other obstacles under the provisions of the present Section.

Section 15

The exclusive right acquired through the registration of a trade mark does not include such elements of the mark as cannot, apart from the mark, be registered by themselves.

If a mark contains any such elements and if there are special reasons to presume that the registration of the mark may cause uncertainty as to the scope of the exclusive right, the said elements may be expressly disclaimed from protection in the act of registration.

Where it is later shown that an element thus disclaimed has become registrable, a new registration of that element or of the whole mark without disclaimer may be granted.

Section 16

A trade mark shall be registered in one or more classes of goods. The classification of goods shall be established by The Patent and Registration Office.

Section 17

Anyone desiring to have a trade mark registered shall lodge a written application therefor with the Registration Authority, giving the applicant's name or trade name and specifying the business and the goods or classes of goods for which the mark is intended; in addition, the mark shall be clearly indicated.

Section 18

If anyone applies for registration of a trade mark which was used the first time to designate goods exhibited at an

international exhibition, and if the application was filed within six months of the day when the goods were first exhibited, the application shall, under the further conditions prescribed by the King in Council, in relation to other applications or in relation to the use of other trade symbols, be considered to have been made on that day.

Section 19

If the applicant has not complied with the requirements regarding the application, or if the Registration Authority otherwise finds other obstacles to approval of the application, the applicant shall be required within a given time to file a statement or to make the necessary corrections, on pain of the application being otherwise considered to have been abandoned.

Where the applicant has submitted a statement, but the Registration Authority nevertheless finds that there is still some obstacle to granting its approval, the application shall be rejected, provided there is no reason for issuing a new official action to the applicant.

Section 20

When the application forms are complete and there are no obstacles to registration, the Authority shall publish the application.

Anyone who desires to lodge opposition to the application must do so in a written communication addressed to the Registration Authority within two months from the day when the application was published.

Section 21

After the expiry of the time stated in Section 20 the Registration Authority shall continue its examination of the application.

If the application is granted, the mark shall be entered in the register and a notice of the entry shall be published, after the decision to that effect has become legally valid.

If the application is rejected or abandoned, after having been published in accordance with Section 20, the decision to that effect shall be published after it has become legally valid.

Section 22

A registration is valid from the day when the application was filed until ten years have elapsed from the date of registration.

The registration may be renewed at the registrant's request for ten years at a time from the date of expiry of the previous period of registration.

Section 23

Applications for renewal shall be lodged in writing with the Registration Authority not earlier than one year before and not later than three months after the date of expiry of the period of registration.

With regard to the handling of applications for renewal, the provisions laid down in Section 19 shall correspondingly apply.

Section 24

At the request of the proprietor of a registered trade mark, minor alterations of the mark may be entered in the register, provided they do not affect the impression of the mark as a whole.

Termination of Registration

Section 25

If a trade mark has been registered contrary to the provisions of this Act and the reason against registration still exists, the registration may be cancelled in the manner stated below, unless the right in the mark can be allowed to remain under Section 8 or 9.

The registration may also be cancelled if the registrant is no longer a trader, or if the mark is deceptive, or has lost its distinctive character or has come to offend against public order or decency, or has not been in use for the last five years and the registrant does not show any reasons for his failure to use the mark.

Section 26

Action in a court of law for the cancellation of a registration may be brought by anyone to whom the registration is detrimental. Where the provisions of Section 13, Section 14 (1) to (3) or Section 25, second paragraph, form the grounds for an action, such action may be brought by a public authority appointed by the King in Council or by an organization of traders in the branch concerned.

With regard to the competence of the courts in actions for the cancellation of a registration, it is stipulated, without prejudice to the ordinary rules of competence, that the City Court of Stockholm shall have jurisdiction when the registrant is not domiciled in Sweden.

Section 27

When a decision to cancel a registration has taken legal effect the mark shall be struck of the register.

The same shall apply if the registration is not renewed, or if the registrant requests that the registration be removed from the register.

*Special Provisions**regarding the Registration of Foreign Trade Marks*

Section 28

Where anyone who is not established as a trader in Sweden applies for the registration of a trade mark, he shall be required to show that in his country of origin the mark is registered in respect of the goods covered by the application in Sweden.

On condition of reciprocity, the King in Council may decree that, in respect of a certain foreign State, the provision of the preceding paragraph shall not apply.

Section 29

On condition of reciprocity, the King in Council may decree that a trade mark registered in a foreign State may, subject to the reservations that are set out in the decree, be registered in Sweden as it is registered in the foreign State.

With regard to trade marks which would not otherwise have been registrable here the registration shall have no wider scope nor be valid any longer than in the foreign State.

Section 30

On condition of reciprocity, the King in Council may decree that, where an application for the registration of a trade mark has previously been filed in a foreign State, the application for registration in Sweden shall, subject to the further conditions that are set out in the decree, be considered, in relation to other applications as well as to the use of other trade symbols, to have been made at the same time as the application was filed in the foreign State.

Section 31

The proprietor of a registered trade mark who is not domiciled in Sweden shall have an attorney resident here who is empowered to represent him in all matters appertaining to the mark. An entry regarding such attorney shall be made in the trade mark register.

If the name of a competent attorney is not so entered, the Registration Authority shall send to the proprietor at his last available address a notice requiring him to rectify the matter within a certain specified time. If such requirement is not complied with, the mark shall be removed from the register.

Assignments and Licences

Section 32

Where the business to which a trade mark or a trade symbol, such as is mentioned in Section 2, second paragraph, belongs is assigned to another party, the mark or symbol shall be deemed to be included in the assignment, unless the parties have agreed otherwise.

Section 33

If a registered trade mark has been assigned, an entry to that effect shall, upon request, be made in the trade mark register. Such entry may not be made, however, where the mark has been assigned without the transfer of the business to which the trade mark belongs and where its use by the new proprietor is obviously deceptive.

In lawsuits and other legal cases concerning a trade mark the person who has last been entered in the register as its proprietor shall be regarded as such.

Section 34

If the proprietor of a registered mark grants another party permission to use his mark in business (*licence*), an entry to that effect shall, upon request, be made in the trade mark register. Such entry may not be made, however, where the use of the mark by the licensee is obviously deceptive. If it is shown that the licence has expired, the entry shall be removed from the register.

Unless the contrary has been agreed on by the parties, the licensee shall not be entitled to assign his right to a third party.

The right in a trade mark or symbol mentioned in Section 2, second paragraph, may not be sequestered for debt. If the registrant is declared bankrupt and his property is taken over by the receiver, the said right shall be included in the bankruptcy estate.

On Deceptive Use of Trade Symbols

Section 35

Where a trade symbol, after it has been assigned or a licence to use it has been granted, is deceptive in the hand of the new proprietor or the licensee, a court of law may, to the extent necessary, issue an injunction against his using the symbol, on pain of a fine.

Such injunction may also be issued in other cases where a trade symbol is deceptive, or the proprietor of a trade symbol or, by his permission, any other person uses the symbol in such a way as to deceive the general public.

Action under this Section may be brought by a public authority appointed by the King in Council, and also by anyone who is injured by the use of the symbol, and by an organization of traders in the branch concerned.

Section 36

When imposing a fine the court may order, to the extent reasonable in the circumstances, that a trade symbol which has been applied on a commodity, packaging, advertising material, business documents or the like, contrary to the provisions of Section 35, shall be deleted or changed in such a way as not to be deceptive. Unless such measure can be taken in another way, it shall be ordered that the property bearing the trade symbol in question shall be destroyed or changed in a specific manner.

Property of the kind mentioned in the preceding paragraph may be seized pending the stipulation mentioned; for that purpose the provisions on seizure in Criminal matters shall apply.

Remedies

Section 37

If anyone infringes the right to which the proprietor of a trade mark is entitled under Sections 4 to 10 (*trade mark infringement*), and if such infringement is committed deliberately, he shall be punished with a fine or by imprisonment for a period not exceeding six months.

An indictment for this offence may be brought by the Public Prosecutor only at the instance of the aggrieved party.

Section 38

Any person who, deliberately or from carelessness, commits trade mark infringement shall be liable for the damage suffered by the aggrieved party. If there is only minor carelessness, the compensation may be adjusted accordingly.

Section 39

In an action for trade mark infringement, brought on the ground of a registration under this Act, Section 37 shall not be applied as far as concerns the time prior to the date of

registration. Nor, as far as concerns the time prior to publication under Section 20, shall Section 38 be applied, provided the infringement was not committed deliberately.

Section 40

An action for damages under Section 38 may only cover injury suffered during the last five years before the action was brought. For injury in respect of which no action has been brought within the said period the right of redress shall be lost.

Notwithstanding the provision of the preceding paragraph, action may be brought on the ground of a registration under this Act for infringement committed prior to the date of registration, provided it is instituted within a year from that date.

Section 41

Where trade mark infringement has been committed, the court may, on a motion by the injured party, order, to the extent reasonable in the circumstances, that a trade symbol which has been applied without permission on labels, packaging, advertising material, business documents, or any other object, shall be deleted or altered in such a way that improper use thereof cannot take place. Unless such a measure can be taken in another way, it may be ordered that the property bearing the trade symbol in question shall be destroyed or changed in a specific manner. In such cases the court may also order, on request, that the property shall be surrendered to the injured party against payment of its value.

When an offence as indicated in Section 37 may reasonably be deemed to have been committed, the property in question may be seized, in which case the provisions on seizure in Criminal cases shall be correspondingly applied.

Section 42

If a trade mark registration is cancelled by a judgment that has taken legal force then the remedies stipulated in Sections 37 to 41 shall not have effect.

In cases of infringement the court shall, at the defendant's request, declare the case in abeyance until the question of the cancellation of the registration has been finally decided upon. If cancellation proceedings have not been instituted, the court shall allow the defendant, in connection with the declaration of abeyance, a certain period within which such action shall be brought.

Section 43

A licensee who intends to bring a suit for infringement shall notify the proprietor of the trade symbol thereof on pain of his plea otherwise not being given a hearing by the court.

Section 44

Civil action may be taken before a court of law to secure a judgment as to whether a right in a trade symbol subsists or does not subsist, or whether certain acts do or do not constitute an infringement of such right, provided that uncertainty exists on these points and such uncertainty is detrimental to the plaintiff.

In such suits the provisions of Section 43 shall be correspondingly applicable.

Section 45

Copies of judgments in cases of trade mark infringement, and in cases mentioned in Sections 26, 35 and 44, shall be sent by the court to the Patent and Registration Office.

Publication, Appeals, etc.

Section 46

Besides the cases referred to in Sections 20 and 21, a notice shall be published of the renewal of a registration under Section 22, of the alteration of a registered mark under Section 24, of the removal of a registration under Sections 27 and 31, and of the entry in the register of an assignment under Section 33 or a licence under Section 34.

Section 47

Appeals against final decisions passed by the trade mark division of the Patent and Registration Office in accordance with this Act may be lodged by the applicant and, in cases where an application for the registration of a trade mark has been granted in spite of opposition having been duly entered against it, by the opponent. Appeals shall be lodged with the Board of Appeals of the Patent and Registration Office within two months from the date of the decision.

Decisions passed by the Board of Appeals may be appealed by the applicant alone. Such appeals shall be lodged with the Supreme Administrative Court within two months from the date of the decision.

Section 48

The King in Council may issue rules as to what applicants in cases of trade mark registration shall have to observe, as to the publication of notices under Sections 20, 21 and 46 and, in other respects, as to the procedure to be followed in the said cases, and in cases of appeal under Section 47, and also regarding the composition of the Board of Appeals of the Patent Office at the examination of trade mark cases appealed to the Board, as well as regarding the keeping of the trade mark register.

Upon application for a trade mark registration, for renewal of a registration, for the alteration of a registered trade mark under Section 24, or for the entry in the register of an assignment or a licence, as well as for the lodging of an appeal under Section 47, first paragraph, a fee shall be paid at an amount decreed by the King in Council. A higher fee shall be payable for a renewal, the application for which is filed after the expiry of the period of registration.

Transitional Provisions

Section 49

This Act shall take effect on January 1st, 1961; prior thereto, however, regulations may be issued by the King in Council and by the Patent and Registration Office in accordance with what is stipulated in the Act in that respect.

Section 50

This Act cancels the following statutes:

- (1) The Act of July 5, 1884 (No. 29) on Protection for Trade Marks; and
- (2) the Decree of November 28, 1884 (No. 63) on the Application of Brands to Swedish Iron and Steel.

Section 51

With the exceptions stated below, the new Act shall be applicable also to trade marks registered under the old Trade Marks Act.

Section 52

If anyone makes unlawful use in business of the surname or trade name of another party as trade symbols and the new Act does not contain any provisions against this, the Court shall, at the request of the party whose surname or trade name has been so used, issue an injunction against the said use, on pain of a fine.

In cases concerning the imposition of fines, Section 36 shall be correspondingly applicable.

Section 53

The period of five years stipulated in Section 8 shall, with regard to trade marks registered under the old Trade Marks Act, run from the time when the new Act took legal effect.

Section 54

If an application for the registration of a trade mark was filed before the new Act took effect but has not been finally decided upon prior to that date through a decision which has taken legal effect, the stipulations in the old Act corresponding to Sections 13 and 14 in the new Act shall be applicable unless the applicant request that Sections 13 and 14 shall be applied to the application.

Section 55

The registration in classes mentioned in Section 16 shall not be carried out with regard to trade marks registered under the old Act until the registration is renewed under the new Act.

Section 56

A registration which has been renewed under the old Act shall be valid until the date which would have been the final date of the period of registration if the manner of calculating the period of validity stipulated in Section 22 has been applied at each renewal. However, if the period of registration expires later under the old Act, the final date thus defined shall apply; if the registration is then renewed under the new Act, the period of registration shall be calculated in the manner stipulated in the first sentence above.

Where, after the present Act has taken legal effect, the renewal of a registration which has previously been renewed is for the first time applied for, the application may be made, notwithstanding the provisions of Section 23, one year before the current period of registration would have expired under provisions of the old Act.

Section 57

Registration granted under the old Act may be cancelled under Section 25, first paragraph, of the new Act only if the registration could also be cancelled under Section 10 of the old Act.

Action for cancellation under Section 25, second paragraph, of a registration granted under the old Act may not be brought prior to the end of 1962 in case the action is based on non-use of the mark during the last five years.

Section 58

With regard to claims for damages in respect of trade mark infringement which took place before the new Act took legal effect, the right to bring an action shall be considered to have been lost if no action is brought prior to 1965; this provision shall apply in addition to what is stipulated on ten-year prescription.

The provisions of Section 42 shall correspondingly apply with regard to infringement mentioned in the first paragraph.

II

*(Translation)***Collective Marks Act**

(No. 645 of December 2, 1960)

Section 1

Associations of traders may, in the same manner as provided for in the Trade Marks Act for individual traders, acquire through registration or establishment the sole right in a trade mark or other trade symbol that is used by a member in respect of goods or services which he offers for sale in his business.

Public authorities, foundations or other corporate bodies exercising control of goods and services may also acquire the sole right in a trade mark or other trade symbol for use in respect of goods and services which are the subject of control.

Trade marks covered by the provisions of this Act shall be called collective marks.

Section 2

The appropriate sections of the Trade Marks Act relating to trade marks and other trade symbols shall apply in respect of trade symbols as indicated in Section 1 except where otherwise stipulated below.

Section 3

An application for registration of a collective mark shall contain, in addition to the particulars required under Section 17 of the Trade Marks Act, particulars of the rules under which the mark may be used. If the application is granted, the said particulars shall be entered in the Trade Marks Register.

If the rules are subsequently altered the proprietor of the trade mark shall be responsible for revising the wording to be entered in the register.

Section 4

In the case of registered collective marks an entry in the Register concerning the assignment of the mark will be permitted on condition that in the hands of the new proprietor the mark is not obviously deceptive.

Section 5

Apart from the grounds indicated in Section 25 of the Trade Marks Act, the registration of a collective mark may be cancelled if the appropriate rules for the use of the mark have not been properly notified to the Registrar or if the mark is used in such a manner that the public is deceived. Proceedings may be instituted by the authority designated by the King in Council as well as by anyone to whom the registration or use of the mark is detrimental and also by associations of traders concerned therewith.

Section 6

In cases concerning infringement of rights in a trade symbol such as is mentioned in this Act only the proprietor of the symbol shall be regarded as the plaintiff. He is entitled to sue for compensation in respect of damage incurred by others who are entitled to use the symbol.

This Act shall enter into force on January 1, 1961. The transitional provisions contained in the Trade Marks Act shall apply where appropriate.

III

*(Translation)***Act relating to the Protection for Coats of Arms and other Official Insignia**

(No. 646 of December 2, 1960)

Section 1

In trading activities no person may, without due permission, use in a trade mark or other symbol of goods or services, the national coat of arms, the national flag or other national emblems of any State, marks or symbols of state control or guarantee, or any other device, which by reference to the Swedish State gives the symbol an official character, or Swedish local authority coats of arms.

Nor may the national coat of arms of any State in any other manner be used for trading purposes without due permission.

The provisions of this section also apply to symbols which may easily be confused with symbols thus protected.

Section 2

Anyone intentionally or through gross carelessness infringing the provisions of Section 1 shall be punishable by fine unless heavier punishment is provided for such offence under other legislation.

Section 3

The King in Council is authorized to issue rules regarding the procedure for submitting applications for permits under this Act.

This Act shall enter into force on January 1, 1961; any person before that date lawfully using a mark or symbol may, however, without special permission continue to do so until the end of 1965.

This Act cancels the Act of March 23, 1934 (No. 63) on Protection for Coats of Arms and other Official Insignia.

IV

(Translation)

Law

amending the Decree on Patents of Invention

(No. 132 of 31st May, 1961)¹⁾

The Decree of 16th May, 1884²⁾, on Patents of Invention is amended as follows:

Article 8

The Appeals Section of the Patent Office is composed of the Head of the Office (President), at least three members who are technical experts, nominated by the King, and at least one legal member also nominated by the King. The President may be replaced, in the manner prescribed by the King, by one of the members. The decisions taken by the Appeals Section shall be valid when two at least of the technical members are present in addition to the President or his substitute. Nevertheless, one legal member must take part in the examination and decision if it concerns matters the nature of which calls for his participation. The opinion receiving the majority of votes shall be considered to constitute the decision of the Appeals Section or, in case of an equal division, the opinion of the President. The Appeals Section may, to obtain evidence in matters within its competence, follow the procedure of the common law Courts in the hearing of witnesses. The regulations dealing with the activities of the Appeals Section will be made by the King.

The law entered into force on the 1st July, 1961.

(Article 8 includes several other paragraphs which remain unchanged.)

¹⁾ Communication from the Swedish Administration.

²⁾ See *La Propriété Industrielle*, 1945, p. 36.

JURISPRUDENCE

(Translation)

GREECE

Trade mark deposited in bad faith. Cancellation. Conception of bad faith. Use of another person's name as a trade mark. Injunction. Assimilation of the trade name of a corporate body to the name of an individual. Applicability of this regulation in favour of foreign companies not established in Greece.

(Athens, Trade Marks Tribunal, Second Court, No. 301/1961)¹⁾

Summary of the case

The firm "S" in Athens deposited the mark "TRICOSA" in respect of knitted wear which was finally accepted for registration. The above-mentioned mark constituted (with a few insignificant differences) an imitation of the mark previously deposited in France by the firm TRICOSA S. A., Paris, for similar articles. The Paris firm applied for the cancellation of the said mark on the twofold grounds (a) that the deposit had been made in bad faith, and (b) that there had been an illegal appropriation of the French trade name.

According to the provisions of Article 3, paragraph (2) of the 1998/1939 Law on Trade Marks, and with the exception of those cases referred to in paragraph 1, no trade mark deposited in bad faith will be accepted for registration. Following the provisions of Article 15, paragraph (1), letter (g) of the same law, as amended by Article 8 of Law 3205/1955, a trade mark is cancelled by decision of the Trade Marks Tribunal, when it has been deposited in bad faith.

On the true sense of these provisions, in the case of a trade mark deposited in compliance with Article 3, paragraph (2) of the 1998/1939 Law, good faith, which also implies honest trade practices, is considered objectively and not in relation to the possibly improper intentions of the depositor. In the case, however, of a request for the cancellation of a mark already deposited, according to Article 15, paragraph (1), letter (g) of the Law 1998/1939, as amended by Article 8 of Law 3205/1955, apart from opposition to the deposit in objective good faith, subjective bad faith is furthermore required, that is to say, an illicit intention of the depositor.

Such meaning of the above mentioned provisions derives both from their literal and logical interpretation; this meaning also proceeds from the explanatory comments of Law 3205/55, which also refers to the subjective element in bad faith.

Similarly, according to Article 3, paragraph (1), letter (f) of the above-mentioned Law, as amended by Article 1 of Law 3205/1955, names and portraits of third persons even with their consent, are not accepted as registrable trade marks. This prohibition to use also applies to trade names of cor-

¹⁾ The text of this decision was kindly communicated to us by M. Pierre Mamopoulos, Advocate at the Court of Appeal, 41, rue Solonos, Athens.

porate bodies which are assimilated to physical persons. Furthermore, according to Article 58 of the Civil Code, if a person makes illicit use of a certain name and thereby the name of a corporate body, the owner of that name may bring an action for the suppression of such an infringement and the discontinuance of such use in the future — the name of a foreigner, whether physical person or corporate body, being protected under Article 4 of the Civil Code (see Balis, *Principes généraux du Droit civil*, 25; Vallindas, under Article 58, No. 1; Caravas, *Droit commercial*, 1947, paragraph 244, p. 559, paragraph 246, p. 562-3).

Whereas, in the present case, on the basis of the evidence produced, both parties' Counsels' oral arguments and written conclusions, the following has been established. As appears from Certificate No. 90,375 of 25th February, 1960, given by the French Institute of Industrial Property, the appellant had duly deposited in France in the year 1947, as a trade mark, the name "Tricosa" contained in an oval design with a triangular design containing a letter "T" with a small crown above in the top right hand corner.

In this case, "Tricosa" is also the firm's trade name. The defendant, with a full knowledge of the above, deposited as his own mark in respect of the same products as those of the appellant, an almost identical symbol, the only difference being that the letter "T", contained in an identical triangular form with a small crown above, is placed on the bottom right hand corner of the oval design; the printed characters of both trade marks are of a special type similar to Gothic print. It is generally recognised, however, that the use by the defendant of so similar a mark is manifestly contrary to good faith and to honest trade practices and moreover, the deposit was made in bad faith. It is of no consequence that the appellant is established in a foreign country and that his mark had not been deposited in Greece nor his products circulated in that country, in view of the fact that these products had been in circulation in other countries and that they were to be imported into Greece, as was subsequently the case, all such circumstances being known to the defendant.

Furthermore, the use, as a mark, of the trade name of another corporate body, in this case that of the appellant, is not allowed by law, as it is contrary to the provisions quoted in detail above. The intensive publicity undertaken by the defendant cannot lead to a different solution because it does not eliminate his bad faith, or the violation of the provisions of Article 3, paragraph (1), letter (f) of the above-mentioned law as amended.

The first judgment having been pronounced in the opposite sense, had on the one hand held wrongly that the conditions of deposit of a mark made contrary to good faith were not fulfilled, and moreover that the contested deposit was not made in bad faith; on the other hand, the decision did not take into consideration the fact that the defendant's mark represented the appellant's trade name.

For these reasons: the Court reverses the judgment and orders the cancellation of the defendant's mark and accepts for registration the mark "Tricosa" deposited by the appellant firm according to deposit No. 25,051.

GENERAL STUDIES

(Translation)

Some Comments on «International Immunities»

By C. W. JENKS 1)

G. R. WIPF

CORRESPONDENCE

(Translation)

Letter from Venezuela

By Dr. Boris Bunimov PARRA, Attorney, Caracas
