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Court clarifies level of protection of business names in relation to trademarks

Sweden - MAQS Law Firm

**Examination/opposition
National procedures**

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On March 11 2011 the Swedish Supreme Administrative Court has issued its decision in a case concerning the likelihood of confusion between **Gucci's** well-known GG monogram and the company name of sole trader GG Sömnadsindustri.

In 2006 the **Swedish Patent Office** refused to register two international trademarks consisting of Gucci's device mark GG due to the perceived likelihood of confusion with the company name GG Sömnadsindustri (GG Sewing Industry), despite Gucci's earlier rights. Gucci appealed, but the decision was upheld in 2009 by the Court of Patent Appeal, without any explanation. Gucci appealed.

The Supreme Administrative Court clarified that:

- two-letter combinations used as business names have a limited scope of protection; and
- consumers were unlikely to believe that the goods of the parties had the same commercial origin.

The court also pointed out that Gucci's stylised monogram, with two intertwined Gs, was visually different to the two Gs in GG Sömnadsindustri's name.

Furthermore, the court referred to the recent decisions of the Court of Justice of the European Union in **Céline SARL** (Case C-17/06) and **Medion AG** (Case C-120/04), which concerned the level of protection of business names in relation to trademarks - according to these decisions, there must be a chance that consumers might believe that the goods come from the same commercial origin or that the two entities are economically linked. This was not likely in the present case.

Therefore, Gucci's trademark registrations for its GG monogram are now in force in Sweden.

The decision is important in that it clarifies the court's position regarding the relationship between business names that lack distinctiveness on the one hand, and well-known trademarks on the other. It is also likely that, in the future, the Court of Patent Appeals will be forced to explain its decisions (rather than just uphold the Patent Office's decisions), as the Supreme Administrative Court highlighted the lack of explanation in the lower court's decision.

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