

# World Trademark Review Daily

## Court of Patent Appeals refuses to extend protection of international mark Examination/opposition Sweden - MAQS Law Firm National procedures

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The Swedish Court of Patent Appeals has held that there was a likelihood of confusion between the international trademark CASCADE and the Community trademark (CTM) CASCADE BIOLOGICS (Case PBR 09-029).

US company [Cascade Medical Enterprises](#) applied to extend protection to Sweden of its international trademark CASCADE. The trademark was registered for autologous systems, namely biological material, transfer devices for medical purposes having at least one cannula and kits comprised of a transfer device, container with coagulation activator and a container with or without an anti-coagulant, in Class 10 of the [Nice Classification](#).

In November 2008 the [Swedish Patent and Registration Office](#) decided that Cascade's international trademark should not have effect in Sweden. It found that there was a likelihood of confusion between CASCADE and the CTM CASCADE BIOLOGICS, registered by [Life Technologies Corporation](#), for reagents in Class 1, and culture medium and reagents, among others, in Class 5.

The office found that there were similarities between the goods covered by both trademarks. In particular, the office found that the goods:

- had the same distribution channels; and
- were purchased at the same point of sales - namely, hospitals' central purchasing organisations.

Therefore, the goods had overlapping customer bases, which were made up of hospital personnel.

Having found that the goods were similar, the office turned to the assessment of the likelihood of confusion between the marks. It found that:

- both trademarks contained the word 'cascade'; and
- the fact that the applicant's trademark also contained the word 'biologics' did not outweigh the similarities between the marks.

Based on an overall assessment, the trademarks were thus considered to be confusingly similar.

Cascade Medical appealed to the Court of Patent Appeals, arguing that the Patent and Registration Office's finding regarding the customer bases of both marks was erroneous. Cascade Medical stated that their customers consisted of hospitals and clinics (and, more specifically, the hospital departments that work directly with patients). On the other hand, the cited trademark CASCADE BIOLOGICS was used mostly for cell cultures and reagents used in laboratory research. Therefore, the customers were mainly research companies and institutions; moreover, even assuming that the customer base included hospitals, it did not include the hospital departments that deal directly with patients.

The Court of Patent Appeals upheld the decision of the Patent and Registration Office, finding that the goods covered by both trademarks were intended for use in the medical field and could be used by medically trained personnel who are in contact with patients. Additionally, medical personnel in charge of purchasing medical equipment and pharmaceutical products could come in contact with the goods covered by both trademarks. Therefore, the customer bases overlapped and the goods were similar.

Further, the court agreed with the assessment of the Patent and Registration Office regarding the likelihood of confusion between the marks. The court concluded that there was a likelihood of confusion between the marks, notwithstanding the fact that the cited trademark also included the word 'biologics'. The appeal was not granted.

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