Why Trade Mark Protection?

- Name

- Strategic tool

- What is a trade mark?
  - A sign which serves to distinguish the goods and services of one organisation from those of another
The Functions of a Trade Mark

- Origin function (the essential function)
- Quality function
- Advertising function
- Investment function

Trade Mark Protection

- National framework
  - Trade Marks Act

- EU framework
  - EU Trade Mark Regulation and Directive

- International framework
  - The Madrid System

Forms of Protection

- Registration
  - National (Patent and Registration Office)
  - EU Trade Mark (OHIM)
  - International (WIPO)

- Protection acquired through use
  (Sweden)
  - Protection through use if it is known by a significant part of the relevant public as an indication for the goods or services which are being offered under it.
Prerequisites for Protection

- Trademark registration
  - Can be represented graphically
  - No grounds for refusal
    - Absolute
    - Relative
  - Classifying goods and services

Absolute Grounds for Refusal

- Absolute grounds for refusal, if the sign:
  - Cannot be represented graphically
  - Lacks of distinctiveness
  - Consist exclusively of signs or indications which are descriptive
  - Contrary to public policy or morality
  - Contains specially protected emblems
  - three-dimensional trade marks, e.g. technical shapes

Graphic Representation
Distinctive Character?

<table>
<thead>
<tr>
<th>BABY DRY</th>
<th>Pampers</th>
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<tbody>
<tr>
<td></td>
<td>Have a break, have a KitKat.</td>
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<td></td>
<td>Milka</td>
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Relative grounds for refusal

- Likelihood of confusion
- Extended protection for well known trade marks

Risk of confusion

- A trade mark may not be registered if there exists a likelihood of confusion
  - Identity or similarity of signs/goods
  - For example – create the impression that there is a commercial link between the parties
  - Visual, aural and conceptual similarities

ARTEX J. ALREX = similar
ARCOL J. CAPOL = not similar
Well Known Trade Marks

- A trade mark may not be registered if it takes unfair advantage of or without due cause is detrimental to the distinctive character or the repute of a well-known trade mark.

Exclusive Right

- The right to prevent use of the trade mark (in the course of trade):
  - If there is a likelihood of confusion
  - If it takes unfair advantage of or is detrimental to the trade mark
- What does trademark protection afford the right holder?
  - Exclusive right
    - Labelling, offering, supplying, stocking, importing/exporting, advertising, etc.

Exemptions and limitations

- Non-commercial use
- Descriptive use
- Comparative advertising
Exhaustion of Rights

- Exhaustion
  - Put on the market
  - Parallel importing
  - EEA (European Economic Area) exhaustion
- Right to market goods that are exhausted

Online Use of Trade Marks

- Trade marks are protected also in the online environment

Does the use of AdWords create the impression that there is a connection with the trade mark owner?

Sanctions

- Injunction
- Border measures
- Damages
- Destruction (of the infringing goods)
- Publication of court decisions
- Penal sanctions
Term of Protection

• Registered trade marks
  – 10 years
  – infinite protection

• Generic marks

Thermos
Dynamite

Thank you!

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