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TRADE MARK LAW

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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



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Trade Marks



What is a trade mark?

Coca Cola



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The Functions of a Trade Mark

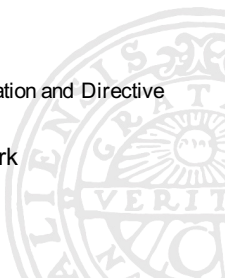
- Origin function (the essential function)
- Quality function
- Advertising function
- Investment function



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Trade Mark Protection

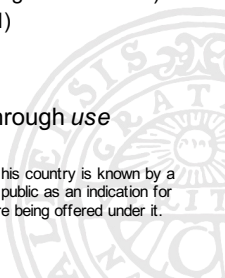
- National framework
 - Trade Marks Act
- EU framework
 - EU Trade Mark Regulation and Directive
- International framework
 - The Madrid System



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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 in this country 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

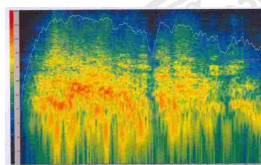


Absolute Grounds for Refusal

- 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



[Youtube](#)

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Distinctive Character?

BABY DRY




Have a break, have a KitKat.[®]




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Relative grounds for refusal

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

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Risk of confusion



ENCO

- 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 / ALREX = similar
ARCOL / CAPOL = not similar




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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 know trade mark



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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.

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Exemptions and limitations

- Non-commercial use



- Descriptive use



- Comparative advertising

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Exhaustion of Rights

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

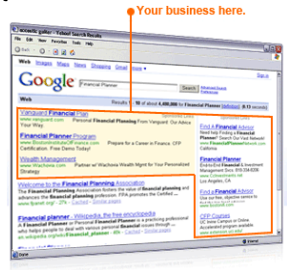


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Online Use of Trade Marks

- 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?



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Sanctions

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



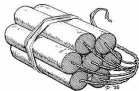
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Term of Protection

- Registered trade marks
 - 10 years
 - infinite protection
- Generic marks

 Thermos

 Escalator

 Dynamite



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THANK YOU!

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