

Actual use of company names

15 March 2021 | Contributed by [Westerberg & Partners Advokatbyrå Ab](#)

Facts

Decision

Comment

Trademark and company name holders must make actual use of a sign to keep exclusive rights to it. In a recent judgment, the Patent and Market Court of Appeal examined the actual use undertaken by both a parent company, which used the sign in its company name, and a subsidiary company, which used a different company name.

Facts

A company was registered to conduct, among other activities:

- building consultancy;
- forestry; and
- property and security ownership and management.

However, its actual business was limited to owning and managing shares in its subsidiary, which operated under a different name but offered similar services as those covered by the parent company's registered objects.

The claimant requested that the parent company's right to the registered name be revoked since it had not made actual use of the name in relation to the registered business objects. The defendant contested the claim, asserting mainly that it had used the company name in certain documents and contact with a bank, an audit company and the Companies Registration Office. The defendant also asserted that it had conducted actual business in the form of actively managing its subsidiary.

Decision

The Patent and Market Court of Appeal reiterated that for the actual use of a company name to have taken place, a company must have used it for the business for which it is registered and not only in other contexts. That is, a company must have conducted actual business using the company name. However, where a company is registered as having different business objects, it is sufficient for the name to have been used for any of the registered objects. The court also noted that any decisions and actions taken by a limited liability company, both internally and in relation to external parties, constitute the management of that company.

The court then turned to the issue of whether the parent company in this case had actively owned and managed shares in the subsidiary to the extent required to fulfil its registered objects. In this regard, the claimant objected that the parent company had had no turnover or employees during the relevant period. However, the court noted that the parent company had booked a profit and accrued and distributed dividends that originated from the subsidiary, which constituted actual business in accordance with the company's objects.

Concerning the actual use of the company name, the court considered that the name had been used, for example, in insurance documents and contact with a bank and auditors. In particular, the court considered a bank guarantee that had been issued with the company name. Consequently, the court found that the activities that were presented were sufficient to fulfil the actual use requirement and dismissed the revocation action.

The Patent and Market Court of Appeal did not grant leave to appeal the judgment to the Supreme Court, making the judgment final.

Comment

While there is plenty of case law relating to the actual use of trademarks, this judgment is a welcome addition to the scarce case law relating to the actual use of company names. The fact that the Patent and Market Court of Appeal upheld a company name based on a limited use, for a company whose business was primarily

AUTHOR

[Siri Alvsing](#)



channelled through a subsidiary that used an entirely different sign, can be interpreted as a step towards a much lower threshold of use.

This judgment appears to differentiate between the assessment of the actual use of company names and that of trademarks. Both the courts and trademark offices have recently required more substantial evidence on the actual use of trademarks; the most debated recent decision perhaps being the EU Intellectual Property Office's revocation of the trademark BIG MAC for sandwiches. Even if trademarks and company names often overlap, the court's differentiation may be explained by the slight difference between the interests that are protected by trademarks and company names, respectively. While trademarks identify products and their commercial origin, company names – even in cases where a company conducts different types of business under the same name – intend to protect the company's business as a whole.

For further information on this topic please contact [Siri Alvsing](mailto:siri.alvsing@westerberg.com) at Westerberg & Partners Advokatbyrå Ab by telephone (+46 8 5784 03 00) or email (siri.alvsing@westerberg.com). The Westerberg & Partners Advokatbyrå Ab website can be accessed at www.westerberg.com.

The materials contained on this website are for general information purposes only and are subject to the [disclaimer](#).