

Intellectual Property - Sweden

Third Time Around in 3 Case

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On September 25 2006 the Supreme Court granted leave to appeal in a trademark case involving Swedish television company TV3 AB and Swedish mobile phone operator HI3G Access AB, a joint venture between Hong Kong-based conglomerate Hutchison Whampoa and Swedish investment company Investor AB. The district court (and the court of appeal which upheld the district court's judgment) found that the trademarks at issue were not confusingly similar.

Facts

TV3 operates a television channel with scheduled television broadcasts in Sweden. HI3G offers a wide range of mobile telephony services.

TV3 sued HI3G, claiming, among other things, that HI3G's trademark (see picture 1) infringed TV3's registered and well-known trademarks 3 (see pictures 2 and 3) and/or word TRE for services covering news, sports, showbusiness, entertainment and other information in connection with motion pictures.



Picture 1



Picture 2



Picture 3

The district court had to determine whether:

- a one-digit number can be protected as a trademark;
- TV3's trademarks were well known; and
- the marks in question were confusingly similar.

Decision

The district court found that the possibility of protecting a number as such is limited, especially when the number in question is one of the cardinal numbers (ie, one to nine). The court also found that the number 3 was descriptive of the business and services of the company, since it is one of several television channels which are characterized by the word 'TV' and a number. The court did not find that the single-digit trademark 3 or the word TRE was well known for TV3's services in Sweden. However, the court found that TV3's figurative marks were well known for news, sports, showbusiness, entertainment and other information in connection with motion pictures and had

thus acquired distinctiveness.

In its assessment of the risk of confusion, the court first ruled on the similarity of the parties' services. HI3G supplies motion pictures (not television programmes) which consumers can download to their mobile phone after paying for a subscription and buying a mobile phone. On the other hand, TV3 has no direct agreements with consumers. The court stated that the services of the two companies were not replaceable or competing. It found that, even though HI3G offers "motion pictures for mobile phones", there were obvious differences between the services.

With regard to the similarity of the figurative marks at issue, the court stated that the comparison should be made regardless of the number 3, since TV3 had no exclusive right to it. Because the services of the two companies differed, the marks would have to be almost identical in order to cause confusion. Following an overall assessment, the court found that this was not the case.

Comment





The Supreme Court will answer important and interesting questions. For example, the court will rule on whether the following elements can obtain trademark protection:

- single-digit numbers;
- single digits that are part of well-known trademarks (eg, TV3); and
- graphically 'clean' figurative marks (eg, TV3's trademark represented in picture 2).

It will be interesting to see how the court will assess the similarity of the services of the two companies and whether it will take into consideration technological advances, which are likely to increase the similarities between the services during the course of the proceedings.

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