New specialist intellectual property courts have started operating in Sweden, as Petter Rindforth of Fenix Legal reports.

In an important development in Sweden, the new Patent and Market Court and its Court of Appeal, specialist intellectual property courts, came into force on September 1, 2016.

The Court of Patent Appeals and the Market Court ceased to exist on the same date. Essentially, all adjudication of cases and matters relating to IP and marketing law originating from the general courts and administrative courts has been centralised at the new courts.

Before September 1, 2016, cases and matters relating to IP, competition and marketing law were dealt with by the general courts, general administrative courts, the Court of Patent Appeals and the Market Court. By centralising hearings, the court will set a uniform law and strengthen the quality of verdicts while increasing the efficiency of judicial reviews.

As a court of first instance, the Patent and Market Court is a division of the Stockholm District Court. Judgments reached by the Patent and Market Court can be appealed to the Patent and Market Court of Appeal.

The new court deals with a wide range of cases and matters, such as those involving damages and injunctions deriving from trademark infringement, patent nullification, information injunctions, and infringement investigations under the Copyright Act and other acts.

It also deals with registration of trademarks and granting of patents, criminal cases relating to IP, unfair or misleading marketing practices, and cases involving anti-competition (antitrust) fines.

There are currently 35 employees at the new court, 17 of whom are judges (five of those being special patent/technical judges).

Trademark applications are still handled by the Swedish Patent and Registration Office, but all appeal matters will now be handled in the new court. For trademark and design cases, it will normally be a single judge if there are no special reasons determined for three judges (compared with patent cases, which will always be handled by three judges).

The court has decided 25 trademark cases, ten of them by three judges. However, this is probably more of a start-up procedure and by 2017 it is expected that single-judge decisions will be standard.

**Chocolate fight**

In other important news, there was a trademark dispute between two confectionery companies.

In one corner was Marabou, originally a Swedish company established in 1916, and today owned by Mondelēz International via Kraft Foods. Since 1956, the company has used the slogan “Mmm… Marabou” and the single ‘m’ trademark.

In the other corner is Mars, with its well-known M&M’s trademark (also used in lower case).

For many years, Marabou and Mars had a co-existence agreement for their trademarks. Marabou could not market its ‘m’ trademark outside Scandinavia, and Mars could use M&M’s all over the world except Scandinavia. In 2009, Mars decided to use the M&M’s brand on the Swedish market.

Marabou sued Mars, and on June 2, 2016 the Svea Court of Appeal decided (case T 5406-15) that Mars’ use of ‘m’ and M&M’s was confusingly similar to Marabou’s trademark for ‘m’.

The Court of Appeal paid particular attention to the signs used for the goods, deciding that Marabou’s trademark for ‘m’ and Mars’ mark for the same letter were virtually identical, and that there is a prominent visual similarity between Marabou’s ‘m’ mark and Mars’ for m&m’s.

The appeals court also stated that Mars’ use of the trademark M&M’s does not infringe Marabou’s exclusive rights to the trademark ‘m’.

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