IP WARNING LETTERS: LESSONS FROM PMT 10686-25

A Swedish court has clarified when warning letters may constitute marketing, confirming that the key question is whether they serve a sales-promoting purpose, explains **Maria Zamkova** of Fenix Legal.

IMAGE: SHUTTERSTOCK.COM / SIRTRAVELALOT

Swedish IP practice has long recognised warning letters as a legitimate and often necessary part of enforcing patent and trademark rights.

Yet a warning letter may, in certain circumstances, fall within the scope of the Swedish Marketing Act (MFL 2008:486). Once that threshold is crossed, statements in the letter may be scrutinised as potentially misleading marketing.

The latest and most important development is the Patent and Market Court of Appeal's (PMÖD) judgment of May 12, 2026 in *PMT 10686-25,* concerning Power Stow International and Lifts All.

The PMÖD reversed the first-instance judgment, holding that two patent warning letters did not constitute marketing. The decision is significant because it draws a particularly clear distinction between two questions that should not be conflated:

(1) Does such communication constitute marketing at all?

(2) If it does, are the statements contained in it misleading or otherwise unfair?

The distinction is more than semantic. In *PMT 10686-25,* the warning letters contained incorrect information concerning Swedish patent protection.

Nevertheless, PMÖD held that the letters were not marketing. Consequently, the court did not proceed to assess whether the incorrect statements were misleading under the MFL.

TAKEAWAYS

- PMÖD issued significant judgment
- Classification precedes content review
- Legal function needs to be identified

What makes a warning letter 'marketing'?

Under Swedish law, a communication does not become 'marketing' merely because it concerns commercial activity or is sent by a business to another business.

The relevant measure is whether the action is of a distinctly commercial nature, including whether it is undertaken in commercial activity, concerns purely commercial circumstances and has a commercial, or sales-promoting, purpose. This last element is particularly important in warning-letter cases.

The starting point is that a warning letter is normally part of dispute resolution rather than sales promotion. The courts have repeatedly acknowledged that warning letters are a natural and accepted feature of civil litigation, including IP disputes. The fact that the dispute concerns competing products does not, by itself, transform legal correspondence into marketing.

In *PMT 13795-22*, the Court of Appeal held that three warning letters relating to a patent dispute were not marketing measures. The court emphasised that correspondence which contains factual and nuanced information about a party's position in a dispute will normally not have a sales-promoting purpose.

PMT 10686-25 now strengthens that principle. The dispute concerned Power Stow's allegation that Lifts All's E-CUS baggage-handling product infringed Power Stow's European patent.

The facts of *PMT 10686-25*

Power Stow's lawyers sent two warning letters to Lifts All. The letters demanded that Lifts All cease commercial activities connected with the allegedly infringing product, remove the product and marketing material from specified jurisdictions and provide documentation concerning sales and manufacturing.

The problem was that the letters incorrectly stated that the patent enjoyed protection in Sweden and that Lifts All infringed the patent there.

The Patent and Market Court (PMD) considered the letters to constitute marketing. Among other things, it attached importance to the categorical nature of the allegations, the absence of sufficiently developed legal analysis and the fact that the asserted Swedish patent protection did not exist.

The PMD considered these circumstances capable of weakening the impression that the letters constituted genuine legal correspondence and strengthening the inference of a sales-promoting purpose.

PMÖD focuses on the purpose of the letters

However, the PMÖD disagreed. It accepted that the measures had been taken in commercial activity and concerned commercial circumstances.

The decisive question was whether they had been undertaken with a sales-promoting purpose. On that point, the court found that the letters presented Power Stow's position in an IP dispute in a factual and sufficiently nuanced manner. Their content did not itself indicate a sales-promoting purpose.

The recipient was also decisive. Both letters were addressed exclusively to the alleged infringer. There was no evidence that they had been sent to customers, distributors or other third parties. The court also accepted evidence from Power Stow's counsel that an important purpose of the letters was to put Lifts All on notice of the alleged infringement—in other words, to establish bad faith—rather than to promote Power Stow's own sales.

The court therefore concluded that the letters formed part of legal correspondence and were not marketing.

Classification comes before content review

The most important doctrinal point in *PMT 10686-25* is that classification precedes content review. Lifts All's case was based substantially on the incorrect statements concerning Swedish patent protection.

But the PMÖD expressly held that those inaccuracies did not affect the assessment of whether the letters constituted marketing. The court accepted that the statements had been included by mistake and found no evidence that the error had a sales-promoting purpose.

The consequence was decisive: because the letters were not marketing, the court did not assess whether the incorrect statements were misleading under the MFL.

This should not be misunderstood as judicial approval of inaccurate IP assertions.

Rather, it establishes that the MFL is not engaged merely because a warning letter contains an incorrect statement. The question of whether the communication is marketing is conceptually distinct from the question of whether a marketing communication is misleading.

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>
> Maria Zamkova, Fenix Legal

Earlier case law

That distinction is also visible in *PMT 13795-22,* where PMÖD held that the warning letters themselves were not marketing, while a separate email inviting recipients to a trade fair was marketing.

The court then assessed the claims in that email and found them not to be misleading. By contrast, a statement on the company's website about the development of a seed-treatment machine was marketing and was found to be misleading.

The older case law demonstrates that the protection afforded to legal correspondence is not unlimited.

In *MD 2009:27,* warning letters were sent to customers of a competitor in a dispute concerning music-download services. The letters alleged that the competitor's service infringed copyright and threatened legal consequences. Crucially, the recipients were not the alleged infringer.

The letters also offered the recipients an opportunity to enter into an agreement with the sender instead. The Market Court held that the letters had a commercial purpose because their object was to persuade the recipients to stop doing business with the competitor and instead purchase the corresponding service from the sender. The court subsequently found several of the infringement allegations excessively categorical and far-reaching.

Forcefulness vs marketing

The cases demonstrate why recipient and commercial effects are so important. However, the case law does not require warning letters to be neutral or tentative.

In *MD 2004:14,* the Market Court stressed that warning letters are a natural part of civil disputes and that the uncertainty inherent in a dispute means that the same assessment cannot simply be applied as would be applied to conventional advertising.

The court nevertheless acknowledged that excessively unqualified and far-reaching allegations may constitute unfair marketing. In that case, however, the letters were sufficiently supported and contextualised, including through references to an earlier arbitration proceeding. The court therefore did not consider the statements so unqualified or far-reaching as to be unlawful.

The lesson is important: forcefulness is not the same as marketing.

Practical takeaways

The relevance of warning letters extends beyond the MFL. In trademark litigation, a warning may establish that the alleged infringer was aware of the rights asserted against it. That may become relevant to questions of intent, negligence and compensation.

The warning therefore has a legitimate litigation function: it identifies the right, communicates the alleged infringement and gives the recipient an opportunity to modify its conduct before proceedings are commenced.

To summarise, here are six short recommendations:

- Identify the legal function of the letter.
- Keep the audience narrow.
- Separate facts from legal conclusions.
- Verify territorial rights with particular care.
- Avoid unnecessary sales-oriented language.
- Preserve the evidentiary function. ip

Maria Zamkova is CEO at Fenix Legal and a registered EUIPO trademark and design attorney as well as a patent attorney. She can be contacted at info@fenixlegal.eu