

AVSLAGSBESLUT

Internationell registrering ska delvis inte gälla i Sverige
IR 1041836

Kanzlei Caro, Adriel Caro
Scheideggstrasse 73
CH-8038 Zürich
Switzerland

INNEHAVARE

comparis.ch AG
Stampfenbachstrasse 48
CH-8006 Zürich
Schweiz

BESLUT

Patent- och registreringsverket (PRV) beslutar med stöd av 5 kap. 9 § varumärkeslagen (2010:1877) att den under ovanstående nummer angivna internationella registreringen delvis inte ska gälla i Sverige. Den internationella registreringen ska inte gälla för följande tjänster:

Klass 35: Business management; business administration; office functions; electronic commerce services (e-commerce) namely on-line services providing intermediary services for canvassing of new potential customers for the purchase of goods and services of all types; intermediary services in the field of commercial contacts and economic contacts over the Internet; e-commerce services (e-commerce), namely provision of information and data on goods and services of all types via telecommunication networks (the Internet) for the purpose of price comparison, advertising and purchasing; presenting and bringing together via telecommunication networks (the Internet) for others of various services and goods enabling consumers to conveniently view them, compare them and purchase them; economic forecasting; marketing studies and analysis; provision by means of electronic global computer networks (the Internet) of information and data on the selection of goods and services of all types; online price comparison services for goods and services of all types; comparison of services for monitoring company procedures of all types (benchmarking); provision of information and data of all types for enabling the calculation of the price and value of goods and services of all types; provision via telecommunication networks (the Internet) of information and data of all types in the insurance, financial, monetary and real estate fields for the purpose of comparing different goods and services in these fields; provision via telecommunication networks (the Internet) of information and data of all types on service sectors in the fields of construction, repair and installation services for the purpose of comparing different goods and services in these fields; provision via telecommunication networks (the Internet) of information and data of all types in the field of telecommunications for the purpose of comparing different goods and services in this field; provision via telecommunication networks (the Internet) of information and data of all types on service sectors in the fields of transport, packaging and warehousing of goods and travel organization for the purpose of comparing different goods and services in these fields; provision via telecommunication networks (the Internet) of information and data of all types in the field of treatment of materials for the purpose of comparing different goods and

services in these fields; provision via telecommunication networks (the Internet) of information and data of all types on service sectors in the fields of teaching, training, entertainment and sporting and cultural activities for the purpose of comparing different goods and services in these fields; provision via telecommunication networks (the Internet) of information and data of all types on all the services included in class 42 for the purpose of comparing different goods and services in these fields; provision via telecommunication networks of information and data of all types in the fields of food and drink and accommodation, enabling the comparison of different goods and services; provision via telecommunication networks (the Internet) of information and data of all types concerning medical services, veterinary services and services in the field of hygienic and beauty care for human beings or animals for the purpose of comparing different goods and services in these fields; provision via telecommunication networks (the Internet) of information and data of all types on sectors concerning agriculture, horticulture and forestry services for the purpose of comparing different goods and services in these fields; provision via telecommunication networks (the Internet) of information and data of all types on all services included in class 45 for the purpose of comparing different goods and services in these fields.

Klass 42: Scientific and technological services and research and design relating thereto; design and development of computer hardware and software; design and development of computer hardware and software; provision of information and data of all types for the purpose of quality control and comparing the quality of goods and services of all types.

ÄRENDET

Ärendet avser giltighet i Sverige av den internationella varumärkesregistreringen COMPARIS registrerad för advertising; business management; business administration; office functions; provision of advertising space on a website for others, on-line advertising on a computer network; electronic commerce services (e-commerce) namely on-line services providing intermediary services for canvassing of new potential customers for the purchase of goods and services of all types; intermediary services in the field of commercial contacts and economic contacts over the Internet; e-commerce services (e-commerce), namely provision of information and data on goods and services of all types via telecommunication networks (the Internet) for the purpose of price comparison, advertising and purchasing; presenting and bringing together via telecommunication networks (the Internet) for others of various services and goods enabling consumers to conveniently view them, compare them and purchase them; economic forecasting; marketing studies and analysis; provision by means of electronic global computer networks (the Internet) of information and data on the selection of goods and services of all types; online price comparison services for goods and services of all types; comparison of services for monitoring company procedures of all types (benchmarking); provision of information and data of all types for enabling the calculation of the price and value of goods and services of all types; provision via telecommunication networks (the Internet) of information and data of all types in the insurance, financial, monetary and real estate fields for the purpose of comparing different goods and services in these fields; provision via telecommunication networks (the Internet) of information and data of all types on service sectors in the fields of construction, repair and installation services for the purpose of comparing different goods and services in these fields; provision via telecommunication networks (the Internet) of information and data of all types in the field of telecommunications for the purpose of comparing different goods and services in this field; provision via telecommunication networks (the Internet) of information and data of all types on service sectors in the fields of transport, packaging and warehousing of goods and travel organization for the purpose of comparing different goods and services in these fields;

provision via telecommunication networks (the Internet) of information and data of all types in the field of treatment of materials for the purpose of comparing different goods and services in these fields; provision via telecommunication networks (the Internet) of information and data of all types on service sectors in the fields of teaching, training, entertainment and sporting and cultural activities for the purpose of comparing different goods and services in these fields; provision via telecommunication networks (the Internet) of information and data of all types on all the services included in class 42 for the purpose of comparing different goods and services in these fields; provision via telecommunication networks of information and data of all types in the fields of food and drink and accomodation, enabling the comparison of different goods and services; provision via telecommunication networks (the Internet) of information and data of all types concerning medical services, veterinary services and services in the field of hygienic and beauty care for human beings or animals for the purpose of comparing different goods and services in these fields; provision via telecommunication networks (the Internet) of information and data of all types on sectors concerning agriculture, horticulture and forestry services for the purpose of comparing different goods and services in these fields; provision via telecommunication networks (the Internet) of information and data of all types on all services included in class 45 for the purpose of comparing different goods and services in these fields, class 35, insurance; banking; monetary affairs; real estate affairs, klass 36, telecommunication; provision of remote access to data; provision of access to databases and on-line databases via telecommunication networks (the Internet); provision of access to search engines and hyperlinks for the purpose of consulting data and information by means of global networks (the Internet), klass 38, och scientific and technological services and research and design relating thereto; economic and industrial research and analysis services; design and development of computer hardware and software; design and development of computer hardware and software; provision of information and data of all types for the purpose of quality control and comparing the quality of goods and services of all types; rental of access time to a database server centre by means of global networks (the Internet), klass 42.

PRV har som hinder för märkets giltighet i Sverige anfört att innehavarens märke är förväxlingsbart med följande kännetecken:

Varumärket COMPARIAS, med registreringsnummer 408833, som registrerats för prisjämförelser; konsumentinformation on-line; kommersiell information och rådgivning för konsumenter (konsumentrådgivningsbutik), klass 35.

Varumärket COMPARIS, som omfattas av den internationella registreringen 895244, som registrerats för computer programs for use in the selection and design of floor systems, in connection with residential building construction, klass 9.

Gemenskapsvarumärket COMPARIO, med registreringsnummer 5606413, som registrerats för programvara, inklusive programvara för databehandling, programvara för skapande, hantering, uppdatering av databaser, programvara för skapande av Internetportaler, alla nämnda varor, men ej inom området för optik, speciellt linser och tillbehör inom området för fotografisk optik och det klassiska området för projektorer för biografer, industriell optik, inklusive mekaniska, elektriska och elektroniska komponenter, linser för digital inspelning och digitala projektorer, optiska produkter, optiskt arbetande filter för fotografisk och industriell användning, klass 9, och datorprogrammering, utformning av programvara; ingenjörsarbeten; nyhetsrapporttjänster, alla förutnämnda tjänster, men ej tjänster avseende

optik, särskilt räknelinser, optiska inspelnings-, överförings- eller återgivningsystem för användare, klass 42.

Firman COMPARIS AB, med organisationsnummer 556735-8824, som under firman ska bedriva konsultverksamhet avseende organisationsutveckling, interimchefskap, rekrytering, outplacement, coaching, projektledning och därmed förenlig verksamhet. Verksamheten består även av medicinska utbildningsuppdrag och tjänster och därmed förenlig verksamhet.

SKÄL

Av 5 kap. 8–9 §§ varumärkeslagen framgår att PRV ska besluta att den internationella varumärkesregistreringen helt eller delvis inte ska gälla i Sverige, om hinder föreligger enligt i 2 kap. 4–11 §§.

Enligt 2 kap. 8 § första stycket 2 varumärkeslagen får ett varumärke inte registreras om det är identiskt med eller liknar ett äldre varukännetecken för varor eller tjänster av samma eller liknande slag, om det finns en risk för förväxling inbegripet risken för att användningen av varumärket leder till uppfattningen att det finns ett samband mellan den som använder varumärket och innehavaren av varukännetecknet.

Enligt 2 kap. 9 § 1 varumärkeslagen gäller de hinder för registrering som anges i 8 § första stycket 2 på motsvarande sätt i fråga om en registrerad firma som används i näringsverksamhet.

PRV gör följande bedömning.

Beträffande känneteckenslikheten konstateras att det särskiljande ordet i innehavarens märke är likt såväl uttalsmässigt som visuellt de mothållna kännetecknen, varför känneteckenslikhet föreligger.

Det föreligger vidare varu- och tjänsteslagslikhet mellan de varor/tjänster som föreliggande internationella registrering omfattar och de varor/tjänster som de motanförda varumärkena omfattar som följer:

Det föreligger likhet mellan tjänsterna *electronic commerce services (e-commerce) namely on-line services providing intermediary services for canvassing of new potential customers for the purchase of goods and services of all types; intermediary services in the field of commercial contacts and economic contacts over the Internet; e-commerce services (e-commerce), namely provision of information and data on goods and services of all types via telecommunication networks (the Internet) for the purpose of price comparison, advertising and purchasing; presenting and bringing together via telecommunication networks (the Internet) for others of various services and goods enabling consumers to conveniently view them, compare them and purchase them; economic forecasting; marketing studies and analysis; provision by means of electronic global computer networks (the Internet) of information and data on the selection of goods and services of all types; online price comparison services for goods and services of all types; comparison of services for monitoring company procedures of all types (benchmarking); provision of information and data of all types for enabling the calculation of the price and value of goods and services of all types; provision via telecommunication networks (the Internet) of information and data of all types in the insurance, financial, monetary and real estate fields for the purpose of comparing different goods and services in these fields; provision via telecommunication*

networks (the Internet) of information and data of all types on service sectors in the fields of construction, repair and installation services for the purpose of comparing different goods and services in these fields; provision via telecommunication networks (the Internet) of information and data of all types in the field of telecommunications for the purpose of comparing different goods and services in this field; provision via telecommunication networks (the Internet) of information and data of all types on service sectors in the fields of transport, packaging and warehousing of goods and travel organization for the purpose of comparing different goods and services in these fields; provision via telecommunication networks (the Internet) of information and data of all types in the field of treatment of materials for the purpose of comparing different goods and services in these fields; provision via telecommunication networks (the Internet) of information and data of all types on service sectors in the fields of teaching, training, entertainment and sporting and cultural activities for the purpose of comparing different goods and services in these fields; provision via telecommunication networks (the Internet) of information and data of all types on all the services included in class 42 for the purpose of comparing different goods and services in these fields; provision via telecommunication networks of information and data of all types in the fields of food and drink and accommodation, enabling the comparison of different goods and services; provision via telecommunication networks (the Internet) of information and data of all types concerning medical services, veterinary services and services in the field of hygienic and beauty care for human beings or animals for the purpose of comparing different goods and services in these fields; provision via telecommunication networks (the Internet) of information and data of all types on sectors concerning agriculture, horticulture and forestry services for the purpose of comparing different goods and services in these fields; provision via telecommunication networks (the Internet) of information and data of all types on all services included in class 45 for the purpose of comparing different goods and services in these fields, klass 35, och provision of information and data of all types for the purpose of quality control and comparing the quality of goods and services of all types, klass 42, och det första märkets tjänster i form av prisjämförelser; konsumentinformation online; kommersiell information och rådgivning för konsumenter (konsumentrådgivningsbutik), klass 35.

Det föreligger likhet mellan tjänsterna *design and development of computer hardware and software; design and development of computer hardware and software*, klass 42, och det andra märkets varor i form av *computer programs for use in the selection and design of floor systems, in connection with residential building construction*, klass 9.

Det föreligger likhet mellan tjänsterna *scientific and technological services and research and design relating thereto; design and development of computer hardware and software; design and development of computer hardware and software*, klass 42, och det tredje märkets varor och tjänster i form av *programvara, inklusive programvara för databehandling, programvara för skapande, hantering, uppdatering av databaser, programvara för skapande av Internetportaler, alla nämnda varor, men ej inom området för optik, speciellt linser och tillbehör inom området för fotografisk optik och det klassiska området för projektorer för biografer, industriell optik, inklusive mekaniska, elektriska och elektroniska komponenter, linser för digital inspelning och digitala projektorer, optiska produkter, optiskt arbetande filter för fotografisk och industriell användning, klass 9, och datorprogrammering, utformning av programvara; ingenjörsarbeten; alla förutnämnda tjänster, men ej tjänster avseende optik, särskilt räknelinser, optiska inspelnings-, överförings- eller återgivningssystem för användare, klass 42.*

Det föreligger slutligen likhet mellan tjänsterna *business management; business administration; office functions*, klass 35, som föreliggande internationella registrering omfattar och den verksamhet i form av *konsultverksamhet avseende organisationsutveckling, interimchefsskap, rekrytering, outplacement, coaching, projektledning och därmed förenlig verksamhet*, som bedrivs under firman.

Vid en helhetsbedömning finner PRV därmed att de motstående kännetecknen är förväxlingsbara.

Med hänsyn till de skäl som ovan anförts ska den internationella registreringen delvis inte gälla i Sverige.

Beslutat den

Sara Dahlberg

Hans Nordlund

HUR BESLUTET ÖVERKLAGAS

Den som vill överklaga beslutet ska göra det skriftligt. Skrivelsen ska vara ställd till Patentbesvärsrätten, men sändas till Patent- och registreringsverket, Box 530, 826 27 Söderhamn. I skrivelsen ska anges det beslut som överklagas och den ändring av beslutet som begärs. Skrivelsen ska ha kommit in till verket inom två (2) månader från beslutsdagen.

NOTIFICATION

You have received a decision from the Swedish Patent and Registration Office. The decision states *inter alia* that the international registration 1041836 partially has no effect in Sweden. If you wish to appeal the decision you shall lodge an appeal with the Court of Patent Appeals (Patentbesvärsrätten) within 2 (two) months from the date of the decision. The communications between the Court and the holder must be in Swedish. The appeal should be sent to:

The Swedish Patent and Registration Office
Box 530
S-826 27 Söderhamn
Sweden