

# World Trademark Review Daily

**Dispute over mark for traditional tobacco product still smouldering  
Sweden - MAQS Law Firm**

**Examination/opposition  
National procedures**

February 12 2010

In *Swedish Match North Europe AB v JTI Snus AB* (December 17 2009), in a dispute over the registration of the trademark GROV for a Swedish niche tobacco product called snus (or snuff), the Swedish Court of Patent Appeals has set aside the decision of the [Patent and Registration Office](#).

[JTI Snus AB](#) opposed the registration of the word mark GROV by well-known tobacco company [Swedish Match North Europe AB](#) on the grounds that:

- the mark was not sufficiently distinctive with regard to the relevant goods due to its purely descriptive nature; and
- the word 'grov' should be kept available for use by other undertakings.

The Swedish word 'grov' may be translated as 'rough' or 'coarse'. Therefore, JTI argued that it was descriptive of the actual characteristics of coarse-grained products. Swedish Match contested the opposition, claiming that the GROV mark:

- was suggestive, rather than descriptive; and
- had acquired distinctiveness through use.

The Patent and Registration Office ruled in favour of the opponent, concluding that the word 'grov' was descriptive in respect of the relevant goods. Further, the office stated that there were no known synonyms of the word 'grov' in the Swedish language. Therefore, it would be impossible to explain the nature of the goods for marketing purposes without resorting to cumbersome descriptions. Consequently, the office ruled that there was an absolute perceived importance of keeping the word available for use.

On appeal, the Court of Patent Appeals agreed that the mark lacked the required distinctive character when applied to the goods at issue. However, referring to [Chiemsee](#) (Joined Cases C-108/97 and C-109/97), in which the European Court of Justice (ECJ) had concluded that Article 3(3) of the [First Trademarks Directive](#) (89/104/EEC) does not "permit any differentiation as regards distinctiveness by reference to the perceived importance of keeping the geographical name available for use by other undertakings", the court stated that the ECJ's statement was also valid for other descriptive marks.

The court set aside the decision of the office on the grounds that:

- there was no absolute perceived importance of keeping certain indications available for use by all undertakings; and
- the office had not considered Swedish Match's claim that the mark had acquired distinctiveness through use.

The dispute was thus remitted to the office for a new adjudication.

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