

# Swedish Supreme Court on Jurisdiction and Trademark Infringements

The Swedish Supreme Court (Högsta Domstolen) recently rendered a decision on rejection to refer a case to the ECJ for a preliminary ruling on the proper interpretation of Article 5.3 of the Council Regulation no 44/2001 of 22 December 2000 (hereinafter “the Brussels I Regulation”). The decision rendered 27 April 2007 with case no. Ö 210-07 can be retrieved [here](#).

## **Parties, facts, conclusions, legal basis for appeal, contentions before the court**

The plaintiff, Aredal Foam Systems HB, a company domiciled in Sweden, served the defendant, MSR Dosiertechnik GmbH, a company domiciled in Germany, with a subpoena in a Swedish court of First Instance (tingsrätten), asking that Court to force the defendant to discontinue infringing the plaintiff’s trademark “FireDos” in Sweden, Spain, Great Britain, the Benelux-countries and France, where the plaintiff had the exclusive right to that trademark, and furthermore, to recompense the economic loss occurred in those States. The judgment of the First Instance was appealed to the Swedish Court of Second Instance (Svea Hovrätt), who attributed adjudicatory authority to Swedish courts, but only to the extent the defendant had infringed the plaintiff’s Swedish trademark. The judgement of the Court of Second Instance prompted the plaintiff to appeal to the Swedish Supreme Court (Högsta Domstolen). Before the Swedish Supreme Court, the plaintiff’s object of action was to ask that Court, first, to refer the case to a new trial before the Court of First Instance based on the contention that Swedish courts were competent to adjudicate claims of the plaintiff relating to infringement and economic loss in all the said States, second, to refer the case to the ECJ for a preliminary ruling on the proper interpretation of Article 5.3 of the Brussels I Regulation, and, third, to render a decision that the defendant pay the plaintiff’s procedural costs before the Swedish Supreme Court. This case note will solely venture into the question of adjudicatory authority.

## **Ratio decidendi of the Swedish Supreme Court**

First, the Swedish Supreme Court identified the legal basis for conferring, delimiting and thus both attribute and exclude adjudicatory authority to Swedish courts. Since the defendant was domiciled in an EU State, the legal basis for determining the attribution of jurisdiction to Swedish courts was the Brussels I Regulation.

Second, the Swedish Supreme Court identified the relevant provisions for the case, which were the main rule of jurisdiction in Article 2 and the exception to the main rule contained in Article 5.3 of the Brussels I Regulation.

Third, the Swedish Supreme Court identified the legal question in issue. With reference to the wording of the Brussels I Regulation Article 5.3, the Swedish Supreme Court stated that the plaintiff can sue the defendant “at the place where the harmful event occurred or may occur”. That wording was according to the Swedish Supreme Court, with reference to the case law of the ECJ, to be understood as meaning the place giving rise to the damage as well as the place where the damage occurred, where upon the place where the damage occurred does not encompass the place where the plaintiff alleges to have suffered an economic loss as a consequence of a direct damage initially suffered and occurred in another Member State. Therefore, the Swedish Supreme Court reasoned, the legal question in issue was where the place of the event initially causing tortious, delictual or quasi-delictual liability to incur directly produced its harmful effects upon the person who is the victim of that event.

Fourth, in answering that question, the Swedish Supreme Court stated, with reference to legal theory, when a trademark is infringed, the direct damage occurs (beyond doubt) in the State where the trademark is registered or incorporated (*lex loci protectionis*). Against this background, and with the legal relationship not involving claims that MSR in Sweden had acted so that the foreign trademarks of Aredal had been infringed, the Swedish Supreme Court concluded it could not attribute and extend the adjudicatory authority of Swedish courts more than the Swedish Court of Second Instance could ground Swedish jurisdiction in accordance with the Brussels I Regulation Article 5.3. By consequence, the Swedish Supreme Court established there was no legal ground to send the case to the ECJ for a preliminary ruling on the proper interpretation of the Brussels I Regulation Article 5.3.