

Kluwer Trademark Blog

Denmark: Do you envy the power of ENVIPOWER AS? – how close can you go?

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A recent decision of the Danish Trademark and Patent Office (hereafter DKPTO) shows the narrow scope of protection of company names under Danish law. It is possible to base an opposition before EUIPO on Article 8 (4) EUTMR which include 1) non-registered trademarks and 2) other signs used in the course of trade. Other signs used in the course of trade include, for example, trade names and company names (corporate names), other business designations like establishment or store names, titles of publications or similar works, as well as any other similar exclusive right falling within the same category or type of right. In this blog contribution we will have a look at the national Danish requirements when it comes to company names.

As regards company names national law applies in order to determine whether a particular right is provided for under the national law, whether its holder is entitled to prohibit the use of a subsequent trade mark, and what the conditions are for the existence of company names.

In Denmark company names are protected under Section 14(4) of the Danish Trademarks Act (hereafter TMA). The term “company name” is to be given an extensive interpretation and covers not only private companies such as private firms, limited liability companies, other commercial companies, secondary trade names but also foundations, unions, associations, museums and public institutions.

Even though registration is not a requirement for a company name to enjoy protection, DKPTO always conducts a search in the Danish central government register containing primary data on all businesses in Denmark (the CVR-register), and no other searches are performed to locate non-registered company names. The CVR-register contains data on all businesses in Denmark except personally owned companies with an annual turnover of less than 50,000 Danish Kroner. When registering a company at the CVR register, the owner of the company needs to specify the line of business within which the business operates. The stated line of business can be very broadly worded, which often makes it difficult to determine whether or not the owner of the company and the subsequent trademark applicant are in the same line of business. Often evidence of actual use of the company name needs to be provided.

The provision on the protection of company names in Section 14(4) TMA originates from the right to company names through different Company Acts. Name protection in the Companies Act is based on practical and competitive factors, thus the scope of protection of company names forms

the basis for the DKPTO's assessment of a possible violation of a company name under Section 14(4) TMA. Therefore, it is important to note that the comparison between a company name and trademark differs significantly from the evaluation of likelihood of confusion between two trademarks.


In assessing whether a trademark constitutes a violation of a company name the following criteria are applied:

- The dominant element in the company name must have distinctive character.
- The mark applied for must be identical or nearly identical to the dominant element in the company name.
- Both the owner of the company name and the trademark applicant must operate within the same line of business.

These criteria have inter alia given rise to the following practice at DKPTO:

Decision VR 2010 00553 from DKPTO dated 29 July 2015 relates to the possibility of the earlier company name VALUA ApS to prohibit final registration of the trademark EVALUA. Both the company name VALUA ApS and the trademark related to the same line of business, and despite of this DKPTO found that the company name VALUA could not prohibit the final registration of the trademark EVALUA, as the younger trademark was not identical or nearly identical to the company name VALUA ApS. In a comparison ApS and A/S are disregarded, as ApS and A/S only indicate the type of company, so DKPTO has based its comparison on VALUA and EVALUA only, and because the names differ from each other through one letter, the names are not considered nearly identical.

Contrary to the decision cited above DKPTO finds in decision VR 2009 03267 dated 16 February

2012 that the company name ENVIPOWER AS – always reproduced as  is considered nearly identical to the trademark ENVIPOWER, and as the earlier right and the applicant of the trademark are active in the same line of business, the holder of the company name is entitled to prohibit the use and final registration of the subsequent trademark ENVIPOWER. Again AS is disregarded in the comparison of the two signs.

To answer the initial question on how close you as a trademark applicant can go to an earlier company name, the short answer is: very close as practice shows that a difference of one letter only is enough to differentiate the later trademark from the company name.

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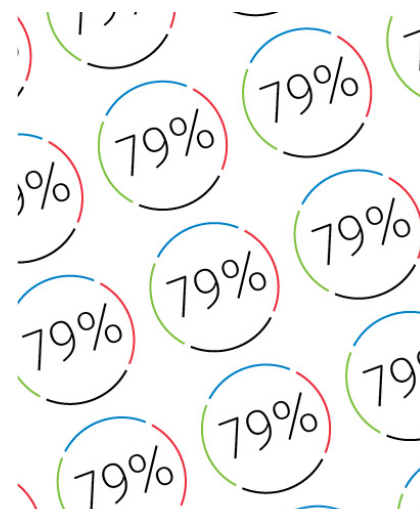
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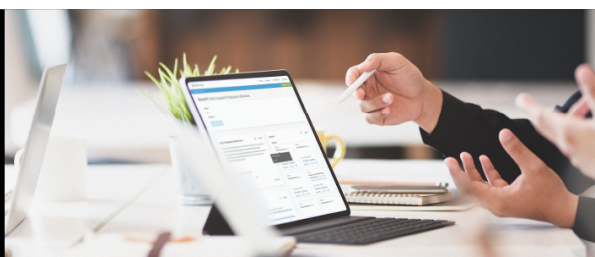


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