

# Denmark: Don't mess with a trademark that has been around for more than 240 years!

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Royal Copenhagen, the Danish porcelain company, claimed infringement by Porsgrund AS (hereafter Porsgrund) as it considered the Norwegian porcelain dinner service company's dinner service sets called 'MaxiStrå blå' to constitute a violation of Royal Copenhagen's rights to the porcelain dinner service sets called 'Blue Fluted Mega'. Royal Copenhagen claimed infringement under the Danish Trademark Act, Copyright Act and Marketing Practices Act before the Maritime and Commercial High Court (hereafter the Court).

In 1775 Royal Copenhagen introduced the porcelain sets called Blue Fluted which is a porcelain sets of blue hand-painted blue flowers namely a stylised

chrysanthemum, a cinquefoil and a third flower called a nutflower. 225 years later Blue Fluted was modernised by the designer Karen Kjældgård-Larsen who created the sets called Blue Fluted Mega. Both sets enjoy a great deal of recognition in Denmark and around the world.



The picture to the left shows the coffee cup of Royal Copenhagen to the left and the coffee cup of Porsgrund to the right. One of the reasons for the difference in the quality of the decorations is the different techniques used for applying the blue colour to the porcelain. Royal Copenhagen's porcelain is

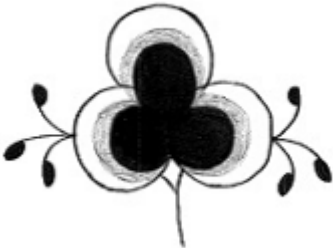

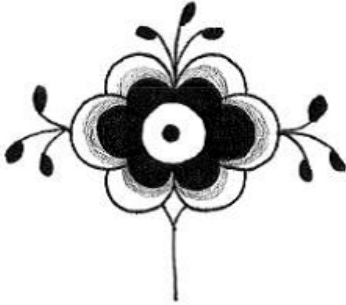
hand-painted whereas the porcelain from Porsgrund is a silk screen print.

Even though Porsgrund - correctly - claimed that Royal Copenhagen's Blue Fluted Mega is never sold without the icon trademark for Royal Copenhagen, namely the three Royal Copenhagen waves which represent the three Danish straits: the Øresund, the Great Belt and the Little Belt, Blue Fluted Mega has obtained separate trademark status through use as an individual trademark. Thus, the Court rejected Porsgrund's claim as being unfounded and stated that the flowers of Blue Fluted and Blue Fluted Mega both enjoy trademark status based on use and EUTM registration.



Porsgrund's strongest argument - especially considering recent practise of EUIPO in the cases concerning the distinctive character of the figurative trademarks from Burberry and Louis Vuitton inter alia EUTMs 8423841, 8423501 and 370445 - was that it is commonplace to decorate porcelain with flowers. Furthermore it is commonplace to modernise old decorations and therefore Blue Fluted Mega does not qualify for trademark protection. The Court did not repeat this argument in its decision, and - at least from a Danish perspective - the flower decoration also differs from the patterns applied by Burberry and Louis Vuitton.

Porsgrund made the counterclaim that Royal Copenhagen's three figurative trademarks (see below) are invalid according to Article 100 EUTMR due to (among other things) lack of distinctiveness. Also this claim was rejected by the Court as being unfounded.

EUTM 10423713	EUTM 10423606	EUTM 10423465
		

Porsgrund also claimed that Royal Copenhagen has lost the right to prohibit Porsgrund's use of the flower decorated porcelain named MaxiStrå blå due to acquiescence on the Norwegian market. When Porsgrund started using MaxiStrå blå on the Norwegian market in 2004, Royal Copenhagen contacted Porsgrund requesting them to cease use of the MaxiStrå blå decoration and again in 2011. Neither request was followed up with a lawsuit. The Court stated that supposed acquiescence on the Norwegian market did not have any effect on the Danish market.

Royal Copenhagen submitted two market surveys showing that Blue Fluted Mega is reputed in Denmark. The latest survey shows unaided awareness of Blue Fluted Mega as a trademark belonging to Royal Copenhagen to be around 70-77 percent. The Court stated that even without considering the reputation of Blue Fluted Mega there is a likelihood of confusion between the MaxiStrå blå and the Blue Fluted Mega porcelain sets.

Luckily, based on the above-mentioned facts the Court arrived at the correct decision as they found that Porsgrund had infringed Royal Copenhagen's copyright and trademark rights and furthermore had violated the Marketing Practices Act by marketing porcelain named MaxiStrå blå with flower decorations similar to Royal Copenhagen's Blue Fluted Mega on the Danish market.