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Denmark: Elvis Presley's Graceland – is that in Memphis or in Randers?

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In a decision dated 21 September, 2016 the Danish Maritime and Commercial High Court decided that use of the name 'Graceland Randers' is an infringement of the reputed trademark 'Graceland' owned by GL SPE LLC, the official owner of the Elvis Presley trademarks.

Graceland Randers



Graceland Memphis



<http://memphismansion.dk/museum/>

<https://dk.pinterest.com/>

The company owned by Henrik Knudsen applied for the trademark 'Graceland' in Class 41 in 2006 and for the trademark 'Graceland Randers' in Classes 16, 35, 41 and 43 in 2010. GL SPE

LLC filed oppositions against both marks based on relative grounds, namely i) Graceland being the name of another man's property, namely the property Graceland where Elvis Presley lived until his death in 1977 and ii) the earlier and reputed trademark rights to 'Graceland' owned by GL SPE LLC.

Adding 'Randers' to 'Graceland' does not alter the distinctive character of the mark, as 'Randers' is non-distinctive for the services applied for. 'Randers' is the 6th largest city in Denmark and is perceived as nothing but a geographical origin.

Under Danish law it is possible – even without a trademark registration – to claim an earlier and thereby better right to the name of real property – the so-called natural trademarks, cf. Danish Trademark Act Articles 2(1)(1) and 14(1)(IV). According to these articles it is possible to prohibit later trademarks which contain a distinctive name of or a picture of the real property of another party.

Henrik Knudsen is chair of the fan club called 'The Official Elvis Presley Fan Club of Denmark' and calls himself the greatest Elvis fan ever. Furthermore, Henrik Knudsen owns the company which in 2011 built the house called 'Graceland Randers' (see above for a picture of the house) located on Graceland Randers Vej and registered the domain names www.gracelandranders.dk and www.graceland-randers.dk. Under 'Graceland Randers' Henrik Knudsen manages an Elvis Presley museum, sells merchandise and runs a diner ('Highway 51') with a yearly turnover of approximately DKK 16 m (approximately EUR 2.1 m.). The museum has approximately 130,000 visitors per year and is included in the top 50 museums in Denmark.

In 2015 the parties concluded a settlement agreement to which the domains were transferred to Elvis Presley Enterprises, Inc. (the other plaintiff in the case) and the name of the building Graceland Randers was changed to Memphis Mansion.

Despite the settlement agreement the parties continued to disagree, as the company owned by Henrik Knudsen presumably sells un-licensed merchandise with Elvis Presley's portrait, signature and photos. The plaintiffs bought 15 of the 600 different kinds of products offered by Henrik Knudsen and it turned out that 7 out of the 15 products were un-licensed. So the two plaintiffs representing Elvis Presley engaged in a court case against Henrik Knudsen and his company. The dispute mainly concerned the questions whether use of the name 'Graceland Randers' is an infringement of the reputed trademark 'Graceland'.

There is no doubt that the natural person Henrik Knudsen is a great Elvis Presley fan who has made a business out of his passion for rock'n'roll. Even the local municipality got allured by Henrik Knudsen's persuasive powers and renamed the street where the building Graceland Randers (now called Memphis Mansion) is located Graceland Randers Vej ('vej' means 'street' in Danish). Even after the decision of the Maritime and Commercial High Court the name of the street remains the same.

The company Henrik Knudsen was ordered to acknowledge that the use of Graceland Randers constituted an infringement of GL SPE LLC's earlier rights to 'Graceland' and the company was ordered to pay DKK 520,000 (approximately EUR 70,000) to the two plaintiffs GL SPE LLC. and Elvis Presley Enterprises, Inc.

Cases based on rights to names of properties are rare, but in 2016 there has been one more which concerned the right to the name of a privately owned Danish island called 'Fænø'.

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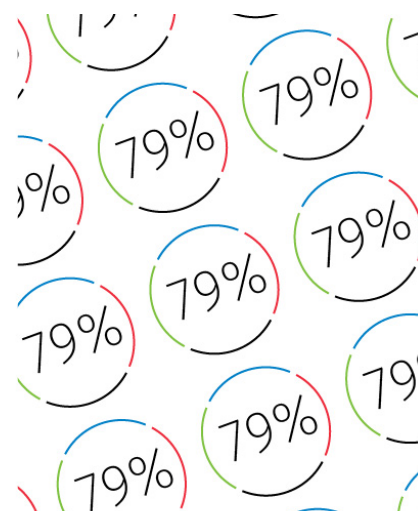
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