

Denmark: Only the Queen's signature is missing now

Kluwer Trademark Blog

November 30, 2018

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Please refer to this post as: Louise Thorning Ahle, 'Denmark: Only the Queen's signature is missing now', Kluwer Trademark Blog, November 30 2018, <http://trademarkblog.kluweriplaw.com/2018/11/30/denmark-only-the-queens-signature-is-missing-now/>

The Danish Parliament, Folketinget, passed a new Danish Trademark Act (TMA) on 20 November 2018. The TMA implements the harmonisation of the relevant EU directive (Directive (EU) 2015/2436 of 16 December 2015). The new TMA will implement a number of changes, including:

- It becomes optional whether or not to have earlier rights cited during the examination procedure. If you wish for the DKPTO to cite earlier (registered) rights, it will cost DKK 700 per application.
- The criterion of graphic representation of the trademark applied for disappears and a sign is therefore permitted to be represented in any appropriate form using generally available technology (as long as the representation is in line with the Sieckmann criteria).
- New identifications of marks: Until now, the DKPTO has – for administrative purposes – been operating with ‘word mark’ and ‘device mark’ only. This will change with the new TMA (and the new IT system). Thus, we will get used to seeing expressions such as ‘position mark’, ‘sound mark’, ‘3D mark’, etc. Contrary to previous practice, the identification of the mark is also decisive for the scope of protection of the mark when registered.
- For applications filed after 1 January 2019, the renewal period will run for 10 years from the application date (and not from the registration date).
- The basic fee will cover only one class — (not 3 classes).
- The basic fee will be lowered to DKK 2,000 for one class, DKK 2,200 for two

classes and DKK 600 for every additional class above two classes.

- After implementation of the new TMA, it will be possible to request 'fast-track' examination on condition that (i) the application is national (not IR), (ii) the DKPTO will not cite earlier rights, (iii) the application is filed electronically and that (iv) the specification only includes TMClass terms.
- The opposition period will be before registration of the mark (and not after as previously).
- It will no longer be possible to claim non-distinctive character of the contested trademark during the opposition procedure. (Instead, a cancellation request must be filed when the contested trademark has become final). However, it is still possible to file an objection - free of charge - letting the DKPTO know that the mark applied for lacks distinctive character).
- The opponent is only required to file proof of use if the grace period has lapsed prior to the application date/priority date of the contested trademark. Previously, it was possible to request that the opponent file proof of use if the earlier right became subject to proof of use also during the proceedings.

Fortunately, it is still possible to establish a trademark right based on use. This practice (which has not changed) is explicitly stated in the TMA.

Read the new TMA (in Danish) here: https://www.ft.dk/ripdf/samling/20181/lovforslag/l49/20181_l49_som_vedtaget.pdf

The Queen is expected to sign the TMA in mid-December. The TMA will come into force on 1 January 2019.