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Denmark: Citations of case law considered trademarks

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In December 2015 the Danish Maritime and Commercial High Court granted a preliminary injunction against citations and the use of metatags in a remarkable case between Karnov (Thomson Publishing) and Schultz – two providers of online databases of Danish case law. The case is an example of how metatags used together with citations of case law can be trademark infringement.

Since 1867 Karnov has used a format for naming and identifying cases in their weekly journal, *Ugeskrift for Retsvæsen* (often abbreviated as UfR). The format consists of the abbreviation UfR, the year for which the Court has ruled in the case and a page number. Since 1867 Karnov has used the UfR-format intensively and has established a trademark right to the UfR-format through use. The cases published in the UfR-format are edited by Karnov. The most notable additions are the inclusion of summaries of previous rulings in the case by subordinate courts, notes and extracts of the featured cases.

The matter at hand centred on the use by a competitor, Schultz of the UfR-format in two respects. Firstly, Schultz attached a metatag to the cases also published by Karnov to allow their users to find cases by searching for the name given to them by Karnov. Secondly, the search result displayed the UfR-format on the screen for end-users to see. Approximately 15 % of the cases in Schultz's database were also published by Karnov.

Karnov claimed that Schultz violated Karnov's exclusive right to the trademark UfR. Schultz argued that due to the widespread use of the UfR-format, also as a general reference to case law, it was necessary to include the UfR-format and allow for searches based upon this format. According to Schultz an omission of the format would force users into subscribing to Karnov's services.

The court found that Schultz violated Karnov's trademark right to UfR and the UfR-format, as Schultz was not only using the UfR-format as a metatag, but only displaying the UfR-format in the search result for end-users. Hence, the relevant professionals would perceive the UfR-format as a

reference to the edition of a case published by Karnov. Furthermore, the court found it plausible that Schultz's use of the UfR-format interfered with the fundamental function of the trademark, i.e. to distinguish goods and services originating from different sources.

For these reasons, the court found it plausible that Karnov's trademark had been infringed by Schultz. The court took the view that the infringement by Schultz would attract users by exploiting Karnov's trademark UfR-format. Consequently, the court ruled in favour of Karnov and granted the preliminary injunction against Schultz's use of metatags and the disputed citations.

The case is under appeal and pending before the Eastern High Court.

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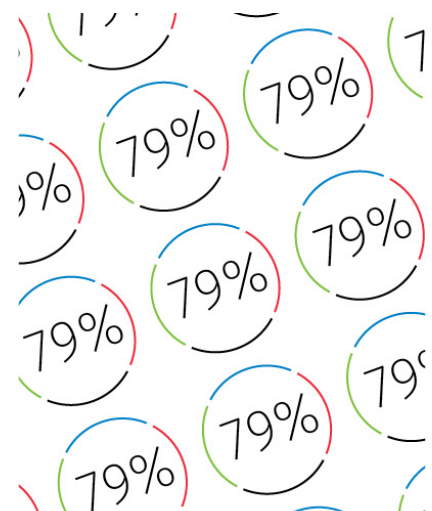
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