

# Kluwer Trademark Blog

## Riding on the coat-tails of Pandora – what is acceptable in Denmark?

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In the affordable luxury segment one finds the highest growth rate within the Class 14-goods at the moment. As a result we see a lot of new starts-ups in this business – one of them trying to stand out by riding on the coat-tails of the market leader in the affordable luxury segment: Pandora A/S.

Pandora designs, manufactures and markets hand-finished jewelry, including the well-known charms made of precious materials. The jewelry is sold in more than 90 countries through 9,900 dealers, including approximately 1,400 concept stores. Pandora was founded in 1982 by the Danish Enevoldsen family. The name Pandora was registered in 2007 as a Community trademark in Class 14.

In a recent case before the Maritime and Commercial High Court Pandora had sued a former business partner Jesper Nielsen and his company Amazing Jewelry A/S for unlawful use of the trademark PANDORA.

Already back in 2014 the trouble started between the parties but the injunction case started by Pandora was closed with a settlement where Mr. Nielsen accepted not to use PANDORA as a trademark for his new business.

Even though the Settlement Agreement was concluded in December 2014, Pandora found reason to voice their concern towards Mr. Nielsen's continuous use of PANDORA again in the spring of 2015, and in June 2016 Pandora obtained a default judgment.

During the recent case Pandora wanted the Court to rule on new allegations of unlawful use of PANDORA by Mr. Nielsen and Amazing Jewelry. The claimed unlawful use of PANDORA included i.a. quotes by Mr. Nielsen such as the following: "I am still known as Mr. Pandora in Germany... When our product is an add-on on Pandora's DNA, then it is obvious that the German market is open to us" and "We call the company and the product Endless (later on the company name was changed to Amazing Jewelry A/S), but basically you should think of it as if the old Pandora is back. It is the vision. Endless builds on the DNA that Pandora has recently moved away from, says Jesper Nielsen" (our translations and addition in brackets).

Mr. Nielsen's business card is shown below:



Furthermore Mr. Nielsen posted on his facebook profile – which he undoubtedly uses for promotion of his company Amazing Jewelry – a picture of a PANDORA shop with the following text: “...we have built 300-400 of these...”.

To get the whole picture one needs to know that Pandora and Mr. Nielsen’s former collaboration ended on bad terms in 2010 when Mr. Nielsen claimed more than DKK 1 billion from Pandora as part of the shareholders’ agreement. The collaboration between Pandora and Mr. Nielsen was formalized in a company – Pandora CWE – set-up to distribute Pandora jewelry on the central European market where Mr. Nielsen owned 49 % of Pandora CWE and Pandora A/S the rest. Through the shareholder’s agreement Pandora A/S bought Mr. Nielsen’s entire share in the company.

To establish that the brand PANDORA is reputed Pandora presented a market survey which showed that aided brand awareness of PANDORA among women aged 18 years or more in 2015 was 92 % (UK), 76 % (Germany), 80 % (Italy) and 51 % (France), while aided brand awareness in Denmark was 94 %. According to the company Brand Finance PANDORA was No. 7 on the list of most valuable brands in Denmark in 2015.

The Court found that reproducing a picture of a PANDORA shop on Mr. Nielsen’s facebook profile constituted a violation of Article 9(2)(a) and (c) EUTMR, as this use amounted to taking unfair advantage of the reputation of the PANDORA brand. Additionally the Court considered the use to be misleading.

Based on the evidence put forward in the case the Court found that Mr. Nielsen and Amazing Jewelry had violated Pandora’s trademark rights and that the violation had been comprehensive and continuous. The Court granted Pandora DKK 50,000 (app. Euro 6,700!) as compensation and damages for disturbance in the market.

The Court ruled in favour of Pandora and found the comprehensive and continuous use of Pandora’s trademark unacceptable, but one can only ask if a compensation of DKR 50,000 will

change Mr. Nielsen's behavior.

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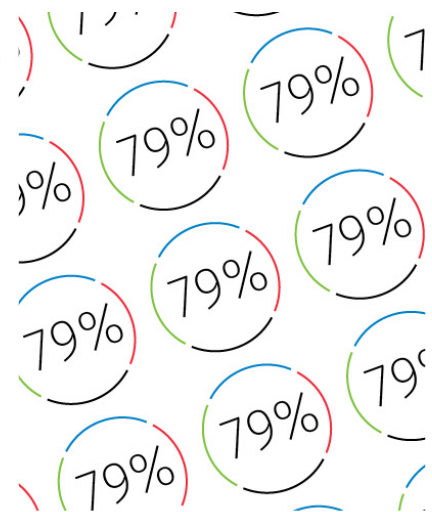
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