

# Kluwer Trademark Blog

## Norway: Ridicule as a response to claims of trade mark infringement

Thomas Hvammen Nicholson (Protector IPC) · Thursday, October 18th, 2018

**A trade mark infringement matter which has been making the headlines in Norway the last week concerns the small Norwegian beverage producer O. Mathisen's product JALLASPRITE, which is a lemon flavoured soft drink. Coca-Cola, being the proprietor of the registered and probably reputed trade mark SPRITE, are none too happy about this.**



O.Mathisen is a local beverage producer in Oslo, mainly known for their product TØYEN COLA. Tøyen is a reference to a multi-cultural part of Oslo. The mark JALLASPRITE is supposedly a mark composed in a similar vein; although JALLA does not have any particular meaning in Norwegian, the term is often associated with immigrant slang. However, whereas COLA in TØYEN COLA is a generic term, SPRITE is not.

The row between Coca Cola and O. Mathisen has apparently gone on for a while, and O.Mathisen recently backtracked, and agreed to stop using JALLASPRITE. So far, so good, one should have thought.

They have now relabelled the product as JALLAXXXXXX. Apparently, they feel censored, and seem to want to get one back at Coca Cola.

Coca Cola are not particularly amused, and have now sued O.Mathisen. Citing the prehistory with JALLASPRITE, Coca Cola claim that the new name JALLAXXXXXX makes it look like they have censored O. Mathisen when enforcing their trade mark rights. According to Coca Cola, this is in breach of good business practice under the Marketing Control Act. They're not citing trade mark

infringement any more, for obvious reasons.

This reaction is not the first time in Norway (or anywhere else for that matter) that a David when faced with having to give in to a claim of trade mark infringement from a Goliath, tries to get in some shots against Goliath.

In 2005, the Northern Norwegian brewery Mack were forced to change the name of their soda beverage «Frukt champagne» (Fruit champagne) by farmers in France. They changed it first to «Fruktchamp», but this was not enough. They ended up with the name «Frukt sjimpanse» («Fruit Chimpanzee»), with the label containing a drawing of a chimp dressed in a red and white striped shirt and a French-style beret.

In 2016, the Norwegian dairy producer Synnøve Finden launched a new cheese under the trade mark «Kongsgård». The problem was that they labelled it «Jarlsberg-type cheese». According to Synnøve Finden, Jarlsberg cheese goes back 150 years and is a generic term for a type of cheese. According to Tine Meierier, the biggest dairy producer in Norway by far, JARLSBERG is their registered trade mark. The matter never made it to the courts, the parties settled instead. After the settlement however, Synnøve Finden relabelled the already packaged cheese with a black and white censored sign, disguising the disputed term. Needless to say, the change gave them extensive media coverage.



Foto: Heiko Junge / NTB Scanpix

These examples suggest how smaller companies may revert to ridicule in the face of claims of trade mark infringement from multi nationals or large domestic companies. Whether or not such a strategy will bring them good- or badwill would probably depend on the specific matter; however it will obviously give them extensive media coverage, and in the case of O.Mathisen, may even become a useful marketing ploy to attract new customers. It also illustrates one potential pitfall for multinationals when enforcing their marks.

One may also sympathize with Coca Cola in this matter. The unfair advantage taken in JALLASPRITE was rather obvious, and ridiculing them by changing the name to JALLAXXXX is obviously something that could grind them.

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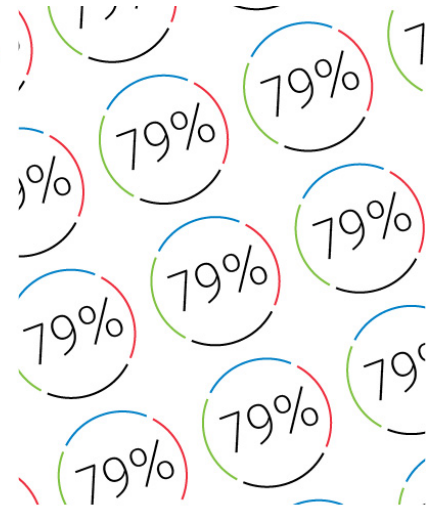
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