

Kluwer Trademark Blog

Denmark: The heat is on – the battle about ØRSTED

Louise Thorning Ahle (Zacco Advokatanpartsselskab) · Tuesday, June 25th, 2019

Recently, the Danish Commercial and Maritime High Court balanced the legal interest in the family name Ørsted against the commercial interest in the name of Ørsted by ruling on the right to register and use several trademarks and domains including or consisting of ØRSTED. This is the second blog on the [use of family names as trademarks in Denmark](#).

The dispute started in October 2017 when the energy company DONG Energy A/S decided to change their name to ØRSTED, using the mark figuratively as



To give you an idea of the **commercial interest** in the new name for the energy company, you must know that Ørsted is the largest power producer in Denmark with a group revenue of DKK 76.9 billion (EUR 10.7 billion). Furthermore, Ørsted is the largest offshore wind farm company in the world with a market share of 16%. The ambition of Ørsted is to expand globally by offering green energy to the world.

The ambition to expand globally did not go well together with the former name DONG. DONG was an abbreviation for 'Dansk Olie og Naturgas' – Danish Oil and Natural gasses, which after the oil and gas business was sold off, leaving only the green energy sources in the remaining company, no longer suited the profile of the energy company. Additionally, as a serious drawback for global ambitions 'dong' can in English be perceived as vulgar slang for male genitals. After having reviewed approximately 2,000 potential new names, the energy company ended up choosing ØRSTED.

The energy company Ørsted motivated the choice of ØRSTED as a tribute to the Danish scientist Hans Christian Ørsted. Hans Christian Ørsted (a personal friend of the author Hans Christian Andersen) was brighter than most and discovered, *inter alia*, electromagnetism in 1820. He is considered one of Denmark's best-known scientists and innovators.

Seven of the people carrying the **family name** Ørsted (descendants of either Hans Christian Ørsted or his brother) filed a lawsuit against the energy company Ørsted. The purpose of the lawsuit was to prevent the use of the name ØRSTED as a trademark, domain name and company name of the energy company.

Names, especially family names can – to the people holding the name – be a personal and touchy topic, particularly when the family name is used by less than 450 people in Denmark (out of a population of 5.7 million).

The **legal ground** for the plaintiffs' claim is section 14(4) of the (previous) Danish trademarks Act stating that family names are excluded as trademarks both on absolute and relative grounds unless the name/trademark refers to a famous deceased person. Case law has stated that the famous deceased person must have passed away at least two generations (70 years) ago for the trademark to pass through to registration or to uphold the registration during opposition or cancellation proceedings without the consent of the successors of the famous deceased person.

The Court found that reference to Hans Christian Ørsted's name was commonly used in a Danish scientific context, such as the Ørsted satellite, Ørsted's rule, the measurement unit Ørsted and 'Ørsted lectures' at the Technical University of Denmark. Considering Hans Christian Ørsted's close connection with the basis for electricity generation, which is the defendants' main business area, the Court found that the defendants are not excluded from using ØRSTED as a trademark, domain name or company name. Additionally, the Court mentioned that Hans Christian Ørsted died more than 166 years ago. Consequently, there was no ground for refusing the registration of ØRSTED, and the plaintiffs must tolerate the use of ØRSTED as a trademark, domain name and company name by the energy company. Please note that the plaintiffs have appealed the decision.

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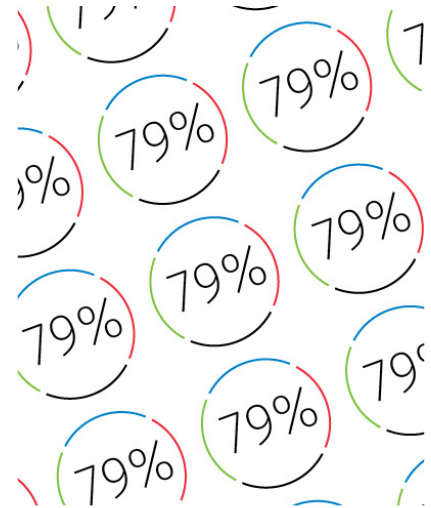
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