

Kluwer Trademark Blog

Denmark: FOCUS and FOKUS in focus

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In February this year a dispute between the law firm FOCUS Advokater (“FOCUS Lawyers” in English) and the accounting firm Beierholm was decided by the Danish Maritime and Commercial High Court (BS-40894/2019 SHR).

The case concerned the use of the name BEIERHOLM FOKUS which FOCUS Advokater found to be an infringement of their trademark rights to the name FOCUS.

The accounting firm Beierholm has existed under the name BEIERHOLM since 2008 and in November 2018 Beierholm presented a new online service, which they had named BEIERHOLM FOKUS (“fokus” is the Danish translation of “focus”). The BEIERHOLM FOKUS product was primarily meant as an online tool for the management of documents for accounting purposes and for facilitating a dialogue between the users and the accountants at Beierholm.

The law firm FOCUS Advokater is the owner of several trademarks, including the registration of the word mark FOCUS in relation to among others *legal services* in class 45.

FOCUS Advokater argued that even though the parties were different types of companies, namely an accounting firm and a law firm respectively, the services provided by them in the form of consultancy regarding for instance tax, were overlapping. It was further argued that following the argumentation from the Thomson Life decision (C-120/04), the use of FOKUS (which was argued to be distinctive) in the combined name BEIERHOLM FOKUS in relation to the consultancy services in question, would be an infringement of the similar trademark FOCUS.

The other party, Beierholm, argued that when deciding whether there is a likelihood of confusion, it should especially be taken into consideration that the word “focus” (and the Danish translation “fokus”) are easily understandable words, which are commonly used by other business. It was also argued that in relation to the services in question, the relevant public must be considered to have a high level of attention, as a certain level of purchase involvement, when purchasing consultancy services in relation to taxes, mergers and acquisitions etc., must be expected, since these services concern the private and economic affairs of the buyer.

The court found in favor of FOCUS Advokater and noted that the consultancy services provided by the accounting firm and the law firm were in fact overlapping, especially in relation to consultancy services in the areas such as tax, mergers and acquisitions and consultancy services which targeted start-ups.

In relation to the common and easily understandable element, FOCUS/FOKUS, the court concluded that since FOCUS Advokater was the proprietor of a trademark right to the wordmark FOCUS, which was almost identical to the FOKUS element in the combined name BEIERHOLM FOKUS, there would be a likelihood of confusion. The court explicitly stated that in their opinion the FOKUS element in BEIERHOLM FOKUS maintained an independent distinctive role in the combined name.

The decision shows that the Danish Maritime and Commercial High Court is willing to afford weak elements, such as FOCUS, a rather broad protection – even in cases where the contested sign is not identical to the weak element and where the services, even though overlapping in their nature as the court pointed out, in the actual market are offered from to different kinds of companies (an accounting firm and a law firm respectively), and where the level of attention of the relevant public must be considered to be high.

It will be interesting to see whether Beierholm will appeal the decision, which might then provide us with further guidance from the Danish courts in relation to the weighing of factors in the overall assessment of the actual likelihood of confusion.

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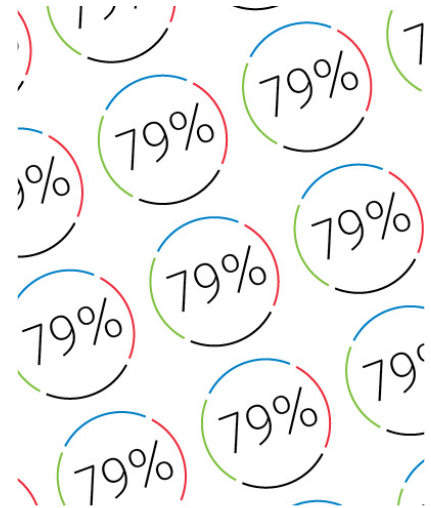
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