

Kluwer Trademark Blog

Denmark: No likelihood of confusion between trademarks based on the same fictional character

Lasse Skaarup Christensen (Gorrissen Federspiel) · Tuesday, January 11th, 2022

On 5 November 2021, the Danish Maritime and Commercial High Court (the Court) issued a [ruling](#) between Kejser Sausage ApS ('Kejser Sausage') and Keyser KBH ApS among others ('Keyser').

The case concerned Kejser Sausage's gourmet hot dog stand in Copenhagen, which used the trademark '*Kejser Sausage*'. Elsewhere in Copenhagen, Keyser used the name '*Keyser Social*' for its restaurant. The question at hand was whether '*Keyser Social*' infringed Kejser Sausage's trademark right.

First, the Court concluded that the trademark '*Kejser Sausage*', although the element "sausage" was descriptive (given that the hot dog stand sold sausages), in its entirety was distinctive and consequently protectable under the Danish Trademark Act and the Danish Marketing Practice Act. In this regard it should be noted that under Danish law, a trademark can be established either by registration or by commencement of use, provided that the extent of the use has more than mere local significance.

To answer the question of infringement, the Court assessed the likelihood of confusion. In doing so, the Court first looked at the services, which the parties provided. '*Kejser Sausage*' was a gourmet hot dog stand, serving food outdoor, whereas '*Keyser Social*' was an indoor restaurant with a 'social' concept. The Court found that the services had significant conceptual differences (even though one might argue that both fall within the main category of providing food and drinks).

Secondly, the Court looked at the first part of the names and found that '*Kejser*' and '*Keyser*' had significant visual similarities despite the differences from the use of 'j' and 'y', respectively. Upon evaluating the second part of the names, '*Sausage*' and '*Social*', the Court found that there were significant differences. Although both words started with the letter 's' and the first parts of the words were phonetically similar, the Court found that the last parts of the marks were phonetically different and that the visual differences were prominent. Also the conceptual differences between '*sausage*' and '*social*' were emphasised by the Court.

Based upon this, the Court found that there was no likelihood of confusion between '*Keyser Social*' and '*Kejser Sausage*' and thus no trademark infringement.

In the case it was revealed, that both Kejser Sausage and Keyser were inspired by the character ‘Keyser Söze’ from Bryan Singer’s movie classic ‘*The Usual Suspects*’ from 1995. In the movie, Keyser Söze is a mystical, legendary crime lord and is only described through flashbacks. No one has ever met the character and the movie leaves it open to the viewer to decide, whether the legend is in fact real. On Kejser Sausage’s website it was for instance stated that the ‘name [was] inspired by the movie *The Usual Suspects*’. The hotdog stand also had a ‘*The Usual Suspects*’ menu, including dishes such as ‘*The Usual*’ and ‘*The Unusual*’.

An interesting question arising from the case is how the identical inspiration of the name ‘Keyser Söze’ will influence on the risk of confusion. The Court mentioned this aspect, but rejected it, as the Court stated that the common inspiration from the fictional character ‘Keyser Söze’ and the movie ‘*The Usual Suspects*’ was not immediately and easily recognised in the names ‘Kejser Sausage’ and ‘Keyser Social’. However, it could be argued that in the eyes of most people, there is a clear and obvious connection between the two names and ‘Keyser Söze’. As stated above, the trademarks themselves may have certain visual and phonetic differences while the mutual source of inspiration certainly is a link creating obvious similarities and perhaps even a likelihood of confusion.

Another interesting question which the case does not raise, is whether both trademarks infringes Bryan Singer’s copyright to the character Keyser Söze. Both the Trademark Directive and the Trademark Regulation, contain provisions regarding copyright as a relative ground of refusal or invalidity. In Denmark, a cleaning company called ‘Pinocchio Cleaning’, attempted to trademark a picture of the Walt Disney’s character ‘Pinocchio’ alongside its name. This was rejected as the trademark was infringing Walt Disney’s copyright. In the case regarding ‘Kejser Sausage’ and ‘Keyser Social’ the names are only inspired by the character Keyser Söze, and thus the case may not be quite as clear as the Pinocchio case. Still it may be worth a thought.

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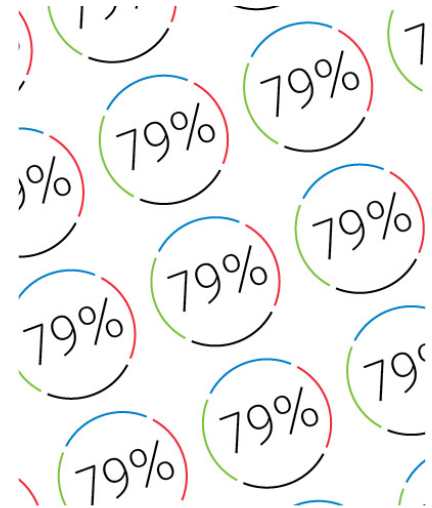
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