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Denmark: Use of a family name as trademark was not allowed due to prior registered trademarks

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On 4 March 2021, the Danish Maritime and Commercial High Court (the Court) issued a decision between Mads Heindorf Jewellery (Mads Heindorf) and the company Heindorf Diamonds.

The dispute regarded the jeweler Mads Heindorf's trademark for the word "Heindorf", which was asserted infringed by Heindorf Diamonds' use of the name "Heindorf Diamonds" in relation to sale and marketing of jewelry in Denmark and Europe.

Mads Heindorf has been in the jewelry business for more than 18 years and is well known for his handmade and luxury design. His company name had been "Mads Heindorf Jewellery" for 10 years. In September 2021 it was changed and shortened to "Heindorf".

Mads Heindorf is the owner of the Danish trademark registration "Mads Heindorf Jewellery" and the EU-trademark registration "Heindorf".

The other party in the dispute, Heindorf Diamonds, is a company owned by the Sanne Heindorf whom under the name "Heindorf Diamonds" had been offering services in relation to the sale of diamonds and diamond jewelries.

The main question in this matter related to Sanne Heindorf's right to use her family name for sale and marketing of her products and services, since "Heindorf" was her surname.

According to the Danish Trademark Act art. 10 (1) a trademark right does not entitle the proprietor to prohibit a third party from using its family name in the course of trade. However, this only becomes relevant if the commercial use by the third party is in accordance with the principles of honest practice.

The Court assessed the likelihood of confusion between the two names to decide whether trademark rights were infringed and whether Heindorf Diamonds acted in violation of marketing practice.

In this respect the Court stated that the distinctive part of both parties' names was the word "Heindorf", since the words "Jewellery" and "Diamonds" were only considered descriptive elements in relation to the jewelry business. Furthermore the Court examined the services provided by the parties and found that both parties undisputedly operated in the jewelry business.

This led the Court to the conclusion that there was a likelihood of confusion between the parties' names.

Because the services were considered identical and the distinctive elements of the names were identical, the court found that the commercial use of the name "Heindorf Diamonds" was not in accordance with the principle of honest practice. This use was therefore considered an infringement of Mads Heindorf's trademark rights. Thus, the application of art. 10 (1) of the Danish Trademark Act regarding the right to use your own family name was excluded, since the use of the family name by Sanne Heindorf was not in accordance with the principle of honest marketing practice.

Based on this, the Court ruled in favor of Mads Heindorf's submission and issued an injunction against the use of the name "Heindorf Diamonds" in relation to manufacturing, sale and marketing of jewelry.

The judgement by the Danish Court ultimately underline that the right to use a family name is not absolute, but must be in consistence with honest marketing practice.

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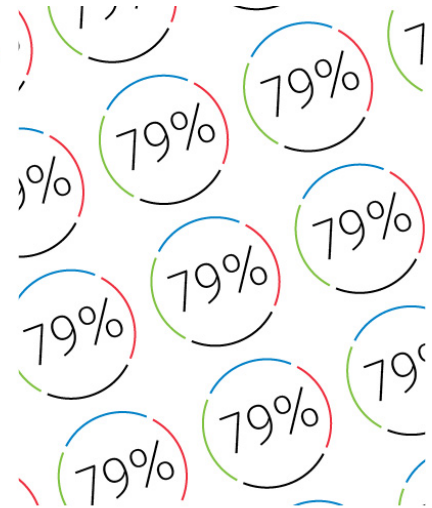
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