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## Denmark: Yummy is not similar to yummi ... and it rhymes with gummy

Louise Thorning Ahle (Zacco Advokatanpartsselskab) · Tuesday, August 2nd, 2022

On 26 November 2021, in BS-10861/2021-SHR, the Danish Maritime and Commercial Court found no likelihood of confusion between the EU-registrations to VITAYUMMY (used as



) and . Both for *chewy vitamins* in Class 5.

The Court found that *chewy vitamins* should be considered to be a sub-category of *dietary supplements in the form of fruit gum* in Class 5.

The general public in Denmark is (rightly) considered to have a very good knowledge of English. Therefore, the Court took into consideration that the relevant public knows that the English word “yummy” is a laudatory expression for something highly attractive or pleasing. Additionally, the Court considered it likely that the relevant consumer would recognise that the word YUMMI in the later mark was a misspelling of “yummy”. Thus, both words were considered to be non-distinctive for the goods sold under the signs.

This decision shows us that it is not possible to win – based on likelihood of confusion – when the term in common could be considered non-distinctive for the goods sold. For further information on the importance of obtaining trademark registration for weak word elements in trademarks, see a previous blog [here](#). This is also applicable when the term has no meaning in Danish. Thus, this Danish decision confirms case law from the EU that the Danes are considered to have a good understanding of English.

The dissimilarity of the signs is based on the differences between VITA and GUMMI. GUMMI is considered by the Court to be short for “*vingummi*” which is the Danish word for “*fruit gum*”. Thus this part of the trademark is considered weak for *dietary supplements* in the form of fruit gum, and VITA is considered by the Court to mean “life” in Latin so the word elements differ conceptually.

The decision also touches on the topic of estoppel by laches (“*passivitet*” in Danish). The Court found that it is acceptable to wait 14 months from sending the first warning letter to initiating the court action. Thus, the claimant was entitled to take (at least) 14 months to reconsider whether or not to pursue the conflict in Court and – as is the reasoning in this case – to gather sufficient funds to start and carry through legal actions before the Court. Fair to say, court actions are quite

expensive in Denmark.

The 14 months leave the claimant sufficient time to reconsider whether they are willing to co-exist and live with the possible revenue decline or whether they should pursue the conflict in Court and bear the legal costs and the risk of losing at court.

For more details on estoppel by laches in Denmark please confer to a previous blog [here](#).

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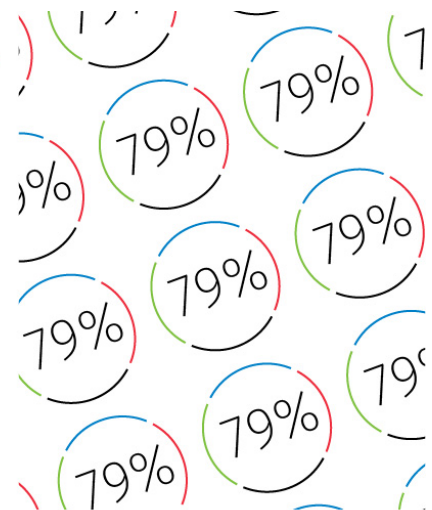
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This entry was posted on Tuesday, August 2nd, 2022 at 4:28 pm and is filed under [Denmark](#), [descriptive elements](#), [Weak elements in trademarks](#)

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