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Denmark: colour mark registrations – what does it take?

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No doubt that it is difficult to come by a registration to a single colour – especially in Denmark. Only two existing registrations for a single colour are in effect currently. One owned by Grundfos

Management A/S to  for *circulating pumps* in Class 7 and the other, the most recent single colour registration is from 2022, is owned by A.P. Møller-Mærsk A/S to  for *sea freight transport* in Class 39.

Over the years, several large companies such as Mars Incorporated, Post Danmark and N.V. Masterfoods SA, Toms Group, *inter alia*, have tried to obtain registrations to a single colour at the Danish Trademark and Patent Office – but failed.

What does it take to obtain a registration to a single colour?

First of all, obtaining a colour registration *per se* is next to impossible. Thus, an application for a single colour should be filed only after the colour has been used on the market and evidence of acquired distinctive character through use has been collected. Before any applicant should get their hopes up, the following issues are key to obtaining a registration based on prior use:

Long term use

The registrations owned by Grundfos Management A/S and A.P. Møller-Mærsk A/S have been in use since 1959 and 1955, respectively. Thus, the applied for colours had been in use continuously for 49 and 63 years, respectively, at the time of filing of the applications. Such long-term use rules out most companies and, taking into consideration the rapid changes in brands, branding strategies and logos, it takes considerable perseverance to use an identical colour for 49 years +. Is it really necessary to apply such long-term use to obtain registration for a single colour? Maybe a shorter term of use should be considered sufficient by the Danish TMO in order for it to approve an application for a single colour?

Limited specification


Normally, when wording a specification for clients, it is often a good idea to go for a broad specification taking into consideration the possible expansion of the business – at least within, the next five years. But for a single colour application, it is advisable to focus on the core business and be specific when wording the specification. Furthermore, a limited specification will also help limit


the relevant public for the goods and services applied for, which will come in handy when the applicant has to lift the burden of proof for acquired distinctive character through use. Both the current registrations to a single colour limited the specification during the examination process.

Market survey

Evidence of acquired distinctive character through use can consist of brand catalogues, marketing evidence in general – both online and printed, pictures of how the colour is used on the goods/packing, sales figures, marketing figures, market share, etc. However, a market survey showing the percentage of the relevant public that recognises the colour as being related to the applicant is the key form of evidence when proving acquired distinctive character through use. Basically, apply for a single colour trademark registration only if the client is willing to perform a market survey.


The brand awareness for the only two colours that have obtained registration in Denmark is

significantly high – bordering on impressive. The  coloured *circulation pumps* enjoy a 96 % awareness in the professional part of the relevant public. The applicant argued that the relevant part of the public should be limited to only the professional part of the public as, according to the laws of Denmark, only professionals are allowed to install circulation pumps. Consequently the applicant successfully argued that the general public should be excluded despite the fact that all people owning a house must be considered to be end-users as everybody needs a circulation pump for the heating system installed in any house in Denmark (due to the cold weather). Limiting the relevant public to professionals properly helped obtain a brand awareness of 96 %.

As far as , applied for by A.P. Møller-Mærsk A/S, is concerned, the unaided brand awareness is 88 % for people above 18 years old, which the Danish TMO considered to be significantly high. It is difficult not to be impressed by the significantly high percentages of brand awareness that include about 90 % of the population.

Unusual colour for the goods and services

Before deciding to apply for a single colour mark, it is worth considering whether the colour can be considered to be usual or unusual for the goods/services applied for. The fight for a usual colour is more of an up-hill battle than the fight for an unusual colour. A usual colour for *chocolates* is gold for example; a usual colour for sea transport is blue as the sea.

The Danish TMO also commented on whether a trademark registration to the sign applied for by A.P. Møller-Mærsk A/S would unduly restrict competitors in the sea-freights transportation business, but the TMO considered that this was not the case. It might have helped that the colour  is called ‘Pantone Maersk Blue’.

To sum up, it indeed appears to be unreasonably difficult to obtain a registration to a single colour in Denmark. As the number of colours is limited – and therefore the number of single colour registrations are, too – it seems reasonable that there is a certain threshold for brand awareness to be passed before a registration can be obtained – but is there really a need for 49+ years of prior use and brand awareness of 88%+? Maybe less would do.

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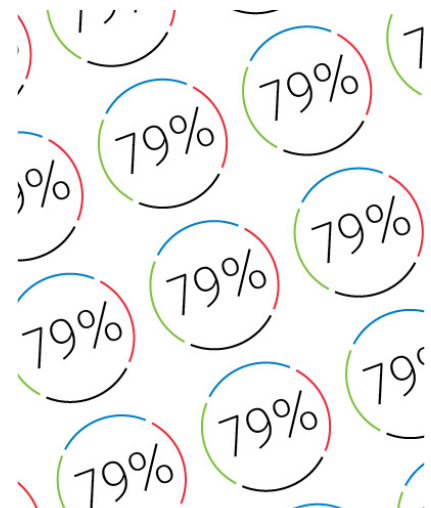
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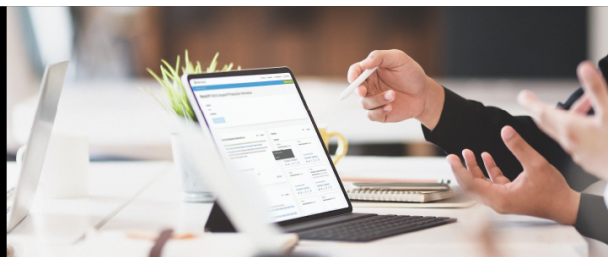


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