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Denmark: The Supreme Court finds no infringement of the “TREK” trademark

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In October 2023, the Danish Supreme Court ruled in a trademark case concerning the trademark “TREK”. In recent years the Danish Supreme Court has rarely dealt with trademark disputes (due to the relatively strict requirements of leave from the Appeals Permission Board to appeal a decision to the Supreme Court), making this case particularly interesting.

The case centered around T. Hansen Gruppen A/S (“T. Hansen”), a Danish retail entity, accused of infringing the trademark “TREK” owned by the American bicycle and cycling components manufacturer, Trek Bicycle Corporation (“TBC”).

TBC is the holder of several trademark registrations of “TREK” for bicycles and bicycle frames, clothing for cycling and various cycling gear. Since 2003 TBC has marketed bicycles, cycling gear, including clothing, shoes and accessories under the trademark “TREK” in Denmark.

The alleged infringer, T. Hansen, had been selling various items, including cycling apparel (excluding bicycles), shoes, helmets for cycling and skating, running gear, and ski clothing, under the trademarks “OUTTREK” and “OUTTREK TECHNOLOGY” since 2010.

As part of their arguments TBC claimed that “TREK” should be afforded an extended protection on the basis of the reputation of the trademark. However, since T. Hansen started using the “OUTTREK” and “OUTTREK TECHNOLOGY” trademarks in 2010, TBC was required to show that the TREK trademark had acquired a reputation before 2010. A requirement which was not easy to fulfil.

The Supreme Court ruled that it was not proven that “TREK” had the status of a reputed trademark in Denmark (or any other member state) before 2010. Consequently, the mark did not enjoy the extended protection afforded to reputed trademarks.

Furthermore, based on an overall assessment, the Supreme Court ruled that there was no likelihood of confusion between TBC’s “TREK” trademark and T. Hansens trademarks “OUTTREK” and “OUTTREK TECHNOLOGY”.

In this respect the Supreme Court emphasized the distinction between the target audiences for the two brands. The Supreme Court underlined that TBC’s products, marketed under the “TREK” brand, targeted professional and semiprofessional athletes and bicycle enthusiasts with

considerable brand knowledge. In contrast, T. Hansen's products, labeled as "OUTTREK" and "OUTTREK TECHNOLOGY", were sold exclusively in the company's own stores and through its website. These items were marketed alongside a range of other low-priced goods and were promoted solely through T. Hansen's catalogs and TV advertisements.

The Supreme Court, therefore, considered the target audience a crucial factor in determining whether there was a risk of consumer confusion or an assumption of a connection between the professional cycling brand and the budget-friendly T. Hansen brand.

Interestingly, the Supreme Court did not explicitly address the relatively limited scope of protection afforded to the trademark "TREK" due to its frequent use as a descriptive or weak term within outdoor activities. The lower courts, i.e. both the Maritime and Commercial Court and the Eastern High Court had stressed that the word "TREK" must be considered a weak (or even non-distinctive) element in relation to the goods in question, and that this combined with the fact that the marks were not identical would lead to the marks not being confusingly similar.

Instead, it appears that the Supreme Court gave the different target audiences of TBC (professional and semiprofessional athletes) and T. Hansen (people buying budget friendly), a significant weight in the overall assessment of the likelihood of confusion and finding no likelihood of confusion, even if it could be argued that the goods in themselves (cycling gear etc.) were actually identical or highly similar.

Furthermore, the decision is also interesting as it shows that it may be quite difficult to establish that a trademark had acquired a reputation before a specific point in time more than 10 years ago.

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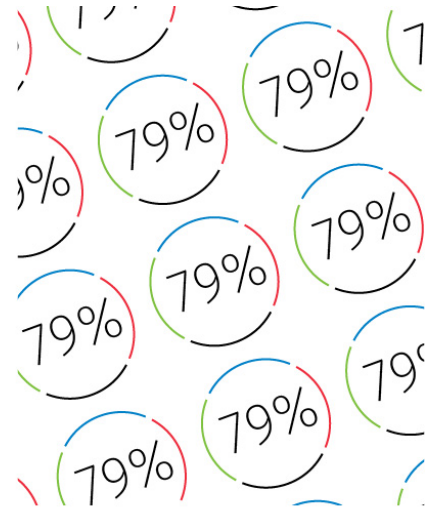
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