

*NEW LEGISLATION AND CASE LAW in the Nordic countries*

**DENMARK**

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# New legislation – Denmark 1/4

- **The High Court new appeal court for EU Community trademarks and EU Community designs**
  - **Act no. 670 of 8 June 2017**
  - Previously the Danish Supreme Court was the nominated appeal court for cases concerning EU Community trademarks and EU Community designs,
  - This has now been changed, so the appeal court is the High Court,
  - First instance court is the Maritime and Commercial High Court



# New legislation – Denmark 2/4

## ➤ New act on trade secrets

- **Act no. 309 of 25 April 2018**
- As the rest of the EU we have got a new act on Trade Secrets in Denmark (entered into force on 8 June 2018),
- *Much more about this exciting new act later in the conference...*



# New legislation – Denmark 3/4

## ➤ Witness exclusion – European Patent Attorneys

### ➤ Act no. 157 of 17 May 2018

- A much sought-after change to the Danish Administration of Justice Act, whereby "**patent advisors**", i.e. European Patent Attorneys, enjoy the same **legal privilege** as attorneys-at-law,
  - Not possible to force testimony on matters a European Patent Attorney has learned through his/her engagement (against the will of the person entitled to secrecy),
  - Not possible to force testimony from a European Patent Attorney in situations where the nature of the matter would otherwise entitle the court to force testimony, if the testimony concerns information relating to legal proceedings, where the European Patent Attorney's advice has been sought.





# New legislation – Denmark 4/4

- **Special unit with the DKPTO on enforcement and counterfeiting**
  - **Act no. 1548 of 13 December 2016**
  - Amendments i.a. in the Trade Marks Act, the Designs Act, the Patents Act, the Utility Models Act,
  - Strengthened measures to combat counterfeiting,
  - Formation of a special unit with the DKPTO that can advise consumers and SMV's in relation to enforcement of their IP rights and counterfeiting in general,
  - The unit will provide advice on whether rights have been infringed, the right holder's options in that regard and certain preventive measures that the right holder can take to prevent future infringements.



# New case law – trademarks

- ***Individual, distinct name for real property***
  - **The Bramstrup Estate case** (High Court and Supreme Court)
  - **The Hotel Prindsen case** (High Court)
    - Both cases establish that the owner of a real property which bears an *individual, distinct name* enjoys certain rights: i.e. a right to use the name for business activities conducted from that property and the right to enjoin others from using the name within the *"area where the property is known"*.
  - **Benedicte Utzon case** (Supreme Court)
    - The designer Benedicte Utzon had transferred ownership to all IPR in her design business to the company Benedicte Utzon ApS, including the trademark rights to the name "Benedicte Utzon". Therefore, Benedicte Utzon could not subsequently use that name for her new designer business. She had used her own name as a trademark and had sold it off.



# New case law – patents (all Maritime and Commercial High Court)

## ➤ **Record damages for unfounded PI**

- **Teva** awarded DKK 100,000,000 in damages for an unfounded PI, where the patent had subsequently been revoked in its entirety
- **Orifarm** awarded DK 13,000,000 in damages for an unfounded PI, where the patent had subsequently been revoked in its entirety

## ➤ **Not possible to branch off a national DK patent application from a European patent application**

- *Mink papir A/S vs the Appeal Board(s) for Patents and Trademarks*

## ➤ **Patent and utility models revoked due to added matter**

- First Danish decision revoking a patent for lack of basis

## ➤ **PI refused for lack of inventive step**

- First Danish decision refusing a PI (in the first instance) with reference to lack of inventive step of the asserted patents (EPO OD had said there was no i.e.)



# New case law – copyright

- **PI/PO blocking websites with copyright infringing content**
  - The Maritime and Commercial High Court issued a preliminary injunction/preliminary order against Telia Danmark A/S (a large telecom company) **requiring Telia to block access** to a number of websites with copyright infringing content,
  - The court found that it would be uncomplicated and associated with less cost to block the users' access to the internet service that the domain names gave access to (*compared to instigating proceedings against each of the websites, I suppose...*)





# New legislation and case law in the Nordic countries - **Denmark**

