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IPR & Life Science News

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A new design tribunal emerges in Denmark



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It is now a reality – Denmark will get a new design tribunal which is expected to launch at the beginning of 2021.

The core focus of the tribunal is, in a simple and easy manner, to handle disputes regarding infringements of architectural designs, arts and crafts, and designs in general.

What?

The Danish Design Tribunal (*Designnævnet*) is a voluntary administrative solution and may be opted for prior to or instead of initiating litigation proceedings before the courts. The tribunal will be independent of the parties. Within each of the subject areas of architecture, design and crafts, experts with the professional expertise to decide in matters of copyright infringement will be engaged. If there is need for additional competencies, the tribunal can be supplemented to ensure a broad and competent case processing. The aim is for the quality of the tribunal's opinions to be at such a high level that the cases can be decided definitively by this body to ensure that the parties do not bring the issues of dispute before the ordinary courts after an opinion has been issued by the Design Tribunal.

Who?

Behind the Design Tribunal is an association founded by a number of organisations within architecture, design and crafts as well as the Confederation of Danish Industry (*Dansk Industri*) and the Danish Chamber of Commerce (*Dansk Erhverv*). Moreover, the industry organisations behind the tribunal have together with the Dreyer Foundation, the Danish Arts

Foundation (*Statens Kunstfond*) and the Danish Committee for Protection of Scientific Work (*Udvalget til Beskyttelse af Videnskabeligt Arbejde (UBVA)*) granted financial support and contributions.

How?

Upon filing a complaint, a fee must be paid which is expected to be DKK 30,000. Although the fee may seem at the higher end of the scale, it is less expensive than having to defend your rights in court. The possibility of this administrative complaint option via the tribunal therefore means that many more artists, entrepreneurs and small and medium-sized companies will be able to make use of this conflict resolution model to get a good and impartial decision when their rights appear violated.

The tribunal has been established with inspiration from the Swedish "opinionsnämnd" (i.e. the Svensk Form Copyright Panel), which has existed with great success since the 1920s and where the courts are generally seen to respect and recognise the decisions made. So expectations for this Danish initiative are high and it is the hope that it will ensure that everyone have access to a fair and judicial assessment of their copyright disputes.

Further details on the code of practice of the tribunal are yet to be disclosed.

Accura's dedicated team of IP & Life Science experts will follow the initiation of the Danish Design Tribunal closely.

Food for Thought

for Food Influencers and Companies

Influencer marketing has proved itself to be a wondrous marketing instrument capable of precisely targeting selected segments coupled with a high degree of persuasive effect.

However, there is a fine line between compliant and non-compliant influencer marketing campaigns, and both the law and public sentiment must be considered to avoid punitive measures and public criticism.

This has recently been highlighted by the marketing of food products via influencers.

In Denmark, recent examples of influencers being reported to the authorities and/or publicly criticised have emerged from influencers' marketing of food products.

Legal pitfalls in food marketing

When marketing foodstuffs, you need to be aware of the special rules applicable to these products, particularly the rules on nutrition and health claims. These special rules apply in addition to the general rules on marketing practices, to which notable issues in relation to influencer marketing also present themselves, see [Accura's previous newsletter](#) on such issues.

The field of food products presents additional legal pitfalls due to the added layer of regulation and the ensuing need to be vigilant in relation to any nutrition and health claims used in the presentation or marketing of foodstuffs. In this regard, a company must generally refrain from referring to its products in exaggerated praising terms when advertising. The field also puts companies in a position where they are prone to be the subject of a sudden public outcry due to the interests at stake, i.e. a high level of protection for the safety and health of consumers.

DVFA guidelines

The Danish Veterinary and Food Administration (DVFA) has recently issued guidelines for companies engaging influencers for the purpose of marketing food products. Below you will find 5 key pieces of advice from the guideline:

TAKEAWAY 1:

5 pieces of advice from the DVFA

1. Introduce the influencer to the concept of nutrition and health claims.
2. Produce a list of the specific nutrition and health claims that the influencer may use in relation to the product.
3. Provide examples of permitted phrasing of such nutrition and health claims.
4. Point out relevant pitfalls.
5. Provide a person of contact for the influencer to reach out to in case of doubt.





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Choosing the right influencer

Additionally, Accura recommends that consideration is given to personal characteristics when selecting a suitable influencer. In addition to the general considerations of how a specific influencer fits within the brand and storytelling of a company, it would be expedient to also give due consideration to the following personal characteristics, which may be beneficial in terms of ensuring both a clearly conveyed marketing message as well as a compliant marketing campaign:

When marketing food products, the company behind the product is ultimately responsible for the compliance of any post or other marketing element containing such products from an influencer. Having due regard to the above takeaways will mitigate some of the risks associated with influencer marketing in this heavily regulated field.

Feel free to contact Accura's dedicated team of IP & Life Science specialists if you wish to know more about food marketing and the use of influencers.

TAKEAWAY 2:
 Important personal characteristics of an influencer

1. Great communication skills.
2. Consistent communication.
3. Knowledgeable of the topic and product.
4. Capable of inspiring trust and connections.
5. Able to link the above when conveying messages via their social media platforms (whether by posting images or videos).

How to use Google Ads and avoid lawsuits from competitors

Google Ads, also known as Google AdWords, has gradually grown to be a widespread and popular marketing tool for many businesses. As tech giants develop products at lightning speed and the advertising solutions become smarter and more user-friendly, most businesses have put "search engine optimisation" at the top of the agenda.

However, several businesses still are not aware that Denmark has imposed restrictions on what keywords they can lawfully add in Google Ads. Did you know that you are not allowed to create Google Ads for your competitors' trademarks and distinctive marks?

Use of competitors' names and marks

The advantages of Google Ads tempts many businesses into creating such ads using their competitors' names and distinctive marks to capture the customers searching for the competitors and their products. However, Danish case law has become quite clear; the use of competitors' trademarks and distinctive marks in Google Ads may contribute to the risk of confusion and may constitute an infringement of the competitors' trademark and marketing rights.

Purchasing other businesses' trademarks as Google Ads is not an infringing activity per se, but the actual use of the trademark in your advertisement normally constitutes an infringement of the most important features of the trademark, namely the guarantee of origin which enables the customers to connect the products and services to a particular trademark and thereby to the business. In other words, the trademark is the link between a business and its customers. When a business uses a competitor's trademark or distinctive mark to get to the top of the search results, doubts will arise about the origin and there will be a risk of confusion between that business and its competitor.

In potential legal proceedings concerning the use of competitors' trademarks in Google Ads, the Danish courts will make a specific assessment and include all the facts of the case, including whether there is similarity between the businesses' products and services, whether there is a risk of confusion between the businesses' trademarks and distinctive marks, the market conditions in general, whether the parties are considered to be competitors and the specific use of the trademark as well as the advertisement design.

Google Ads is an online advertising solution that businesses can use to **promote their products and services on Google Search and other Google services**. Google Ads works by displaying the advertisements that best match the products and services consumers search for online. If you have added relevant and correct keywords in Google Ads, you will **better reach potential customers** when they search for the exact products and services that you offer.

It is also important to remember that business operators in Denmark enjoy additional protection of their marketing efforts and distinctive marks by virtue of the Danish Marketing Practices Act (*markedsføringsloven*). Even though the use of a competitor's trademark or distinctive mark is not an infringement of that competitor's trademark rights, the use will, in the vast majority of cases, be contrary to sections 3, 5(2) no. 10 and 22 of the Danish Marketing Practices Act concerning fair trading practices, risk of confusion and the unauthorised use of the distinctive marks of others, respectively.

It appears from Danish case law that business operators must be very careful when creating and using Google Ads constituting trademarks and distinctive marks of other businesses. If you are uncertain of how to navigate within the framework of legislation, our good advice on how to use Google Ads can help you.





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Good advise on how to use Google Ads

1. Be careful about adding keywords in Google Ads if you already know that the keywords you want to add are your competitors' trademarks and distinctive marks.
2. If the keywords you want to add in Google Ads are generic and describe the products and services that you offer, you will be permitted to add them in Google Ads even though the keywords are part of your competitors' trademarks or distinctive marks. Example: Your competitor's name is "Shoes & Clothes Ltd", and you create a Google Ads advertisement for "shoes and clothes" because you are a shoe and clothing manufacturer. This use is not an infringing activity as "shoes and clothes" describes the products that you sell and market. However, if you add "Ltd" or in some other way makes it look as if you are responsible for the advertisement or financially connected with the trademark, there is a risk that such use will be an infringing activity.
3. If you sell and market accessories and spare parts for the products and services of another business, you will be permitted to add the trademark and distinctive mark of that business to show that you offer accessories and spare parts for those exact products and services. Example: If you sell and market jewellery clasps for certain jewellery models or a particular jewellery brand, you will be permitted to add keywords in Google Ads for the products for which your clasps may be used. However, such use must always be fair dealing and consistent with fair commercial practices. One way to ensure this is by including "fits with" in the advertisement.

4. Generally, you should be careful about using the trademarks or distinctive marks of others in a way that may cause doubts about the origin of the products and services or otherwise cause a risk of confusion between your business and the businesses of others. One example could be if the customers may confuse your and another business's trademarks or distinctive marks (as a result of their pronunciation or appearance) because you offer products and services within the same or a closely related industry.
5. You also may elect to protect your trademarks by using Google's own tool for Google Ads. By submitting your trademark registrations, you ensure that Google will prevent others from using your trademarks in Google Ads advertisements.

Naturally, we recommend that you create Google Ads for your own business name, trademarks and distinctive marks and other related terms on Google. This will help you ensure that the customers who are searching for your business or products will succeed in finding you.

Feel free to contact Accura's dedicated team of IP specialists if you have any questions or are interested in learning more about how to ensure that you use Google Ads without infringing any third-party rights.

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”Very good legal and industry knowledge. Focuses on the relevant items”

”Great team of engaging and hard-working lawyers.”

“Always pragmatic, commercial yet diligent and fun to work with.”

“Highly recommendable.”

Legal 500