Norway

“ENSILOX”

Decision of the Supreme Court

17 January 2017 – Case No. HR-2018-110-A (2017/1490)

Addcon Nordic AS v. Halfdan L. Solberg AS

Trademarks Act, Sec. 4

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Keywords Risk of confusion · Trademark functions · Guarantees of quality and origin · Infringement · Double-identity of trademark and product · Adverse effect

1. Under subsection 1a of Section 4 of the Trademarks Act, the risk of confusion is not the issue, as opposed to subsection 1b. When the signs are identical and linked with the same product (double-identity), the protection under subsection 1a is absolute.
2. Section 4 subsection 1a of the Trademarks Act must be interpreted only to protect the proprietor if the use has an adverse effect on the trademark's functions, such as the guarantees of origin and quality. As such, only the use that may affect the proprietor's interests in the trademark's functions is unlawful.
3. The original buyer's knowledge that the use of the trademark does not mean that the goods come from the trademark proprietor is not decisive as there is always a risk that one of the trademark's functions is affected (for example, in the event of incidental borrowing of goods).
4. The use of a third person's trademark on one's own products is not permitted, even when the products are equal; not even after the sale has been completed.
5. The use of trademarks on business documents is indeed comprised by Section 4 subsection 3d of the Trademarks Act. However, the use, by mistake, of a third person's trademark on invoices constitutes in and of itself a too remote risk of affecting the trademark's functions.