

SWEDEN'S PATENT AND MARKET COURT IMPOSES 11 MILLION IN DAMAGES AGAINST NESTLE FOR INFRINGING ORKLA'S TRADEMARK

In the Patent and Market Court, Sweden a trademark infringement action by Orkla against Nestlé, has become the most expensive trademark dispute in Swedish history [Nestlé v Orkla (Case T17771-13 and B 12549-15)]. The dispute pertains to the use of the name "Felix" for its cat food products in the Nordic countries. Nestle therefore used other marks such as PUSSI, LANTZ and PURINA.

In the between Nestlé's use of "Felix" and final judgment in Orkla's trademark infringement suit, there was an arbitral award which had ruled against Nestlé's use of the aforesaid mark due to the existence of a prior agreement between the two companies. The suit for trademark infringement was filed after the arbitral award. To defend itself, Nestle relied on the fact that the mark was used for cat food products while Orkla was marketing food items meant for human consumption. So as per Nestle there was no question of any confusion regarding the source of the respective products which were in entirely separate markets. Thus there was no question of any trademark infringement.

In an assessment of the use of the mark by Nestle the court found that Nestle had infringed the trademark of Orkla. Due to the high risk of confusion for an average consumer in believing there was connection between the goods. Nestlé's use of the mark harmed the distinguishing nature of the reputation enjoyed by the Felix trademark. The most significant aspect of the entire trial was that evidence from comprehensive market research presented to the court which showed that many consumers genuinely believed that the goods came from the same company. The court has awarded Orkla 11 million Swedish Krona in damages against Nestle, a Swedish record in a trademark dispute.

Now, the case is being considered for appeal by the appeals court which is yet to issue a leave to appeal in Nestlé's favour.