



Update from Norway

Anne Marie Sejersted

XXXV Nordic NIR Meeting

Fierholm

Introduction

- Several decisions since 2018, also from the Supreme Court:
 - HR-2018-2191-A (Rimfrost – patent)
 - HR-2019-1743-A (Popcorn Time – copyright/domain name)
 - HR-2019-1725-A (Rettspraksis.no – copyright/database protection)
 - HR-2019-2213-A (Appear – trademark/domain name)
 - HR-2020-2017-A (employee's invention)
 - HR-2020-1142-A (Apple – trademark)
 - HR-2021-2479-A (Bank Norwegian – trademark)
 - HR-2021-2480-A (Stortorvet Gjæstgiveri – trademark)
 - HR-2022-1113-A (Rogstad – copyright)
- Only a few selected cases will be discussed



HR-2020-1142-A (Apple) (1)

- Importation of unoriginal iPhone screens with Apple logo
 - Logo covered with black marker pen, not permanent
- The Court of Appeal had ordered destruction of 62 screens
- Question: Did the covered logo imply **use** of the trademark?
 - SC looked to the Mitsubishi case (C-129/17): Logo on original trucks removed and replaced with importer's own logo → infringement
 - The situation at hand could not be less protected under trademark law



HR-2020-1142-A (Apple) (2)

- SC concluded with infringement
 - Risk of removal of the markers
 - In any case; risk of confusion of origin due to the markers itself
- Possible questions to the judgement:
 - The relevant part of the public were repairers and professionals
 - Really a risk of confusion about the originality for this group?
 - With regards to the topic for this conference: Was the sustainability perspective sufficiently considered?
 - How to avoid destruction if covering is not accepted?



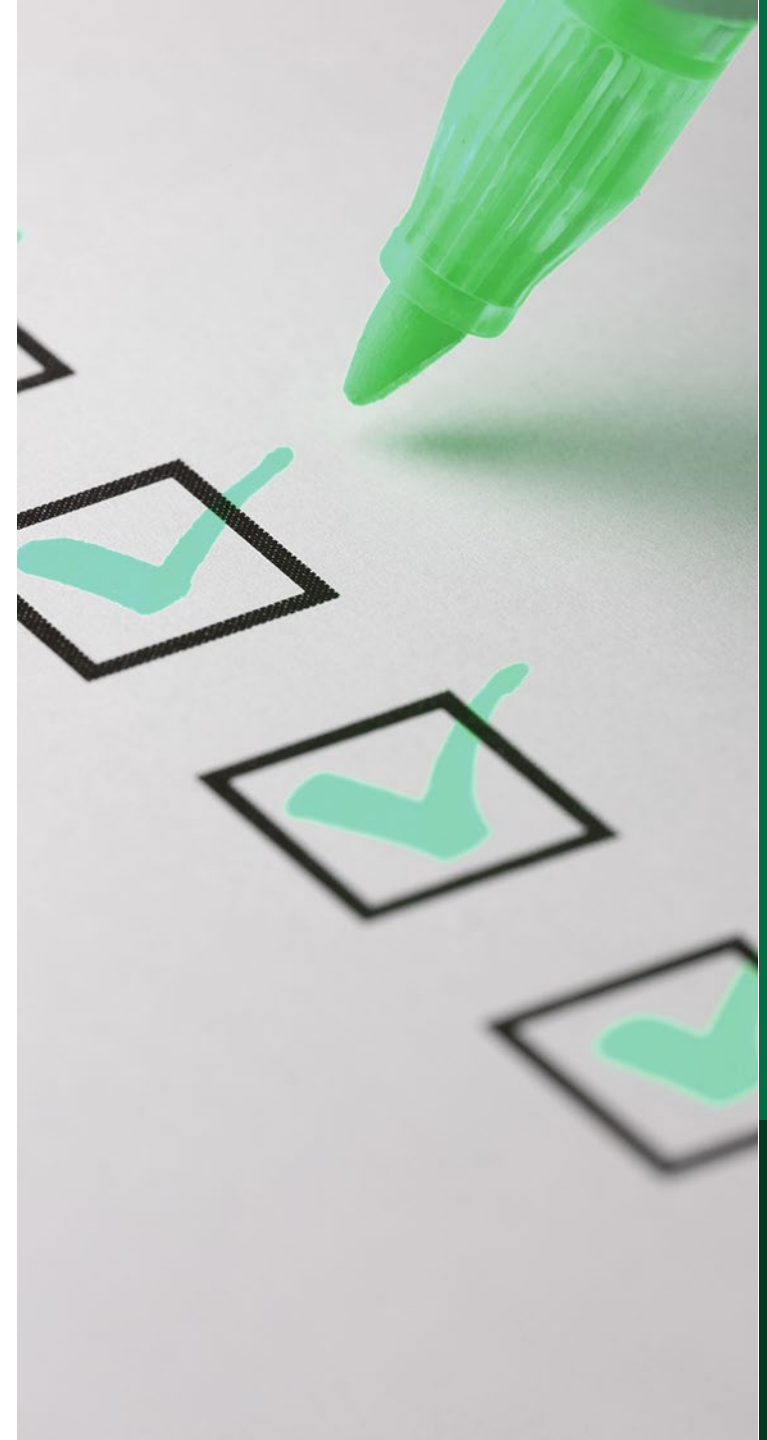
HR-2021-2479-A (Bank Norwegian) (1)

- Use of trademarks as keywords in Google AdWords
- ECJ: No trademark infringement
- Question before the Supreme Court: Violation of **Section 25** of the Norwegian Marketing Control Act?
 - *"No act shall be performed in the course of trade which conflicts with good business practice among traders."*
- SC: Section 25 may in principle apply to acts that are lawful according to trademark law
 - Requires circumstances not captured by the IP provision



HR-2021-2479-A (Bank Norwegian) (2)

- ECJ had already carried out a balancing of interests
- Supreme Court:
 - A new assessment of the same interests in relation to Section 25 can hardly lead to a different conclusion
 - Not necessary with an independent assessment if the keywords implied *disloyal behavior*
- What is left of Section 25 on the trademark area?
 - Still applicable
 - But the room for the provision is narrow, maybe narrower than before the judgement



LB-2021-140047 (Audi)

- Imported rims claimed to infringe Audi's design rights
- Design registration for imported rims invalidated by EUIPO
 - No individual character over Audi's design
 - Decision under appeal, Norwegian case not stayed
- Norwegian CoA: No infringement
 - Limited opportunity for variation, many rims on the market
 - Not considered by EUIPO due to lack of evidence
 - Crowded sector + design trends → informed user more attentive to differences
 - Marketing Act can supplement design law, but not here



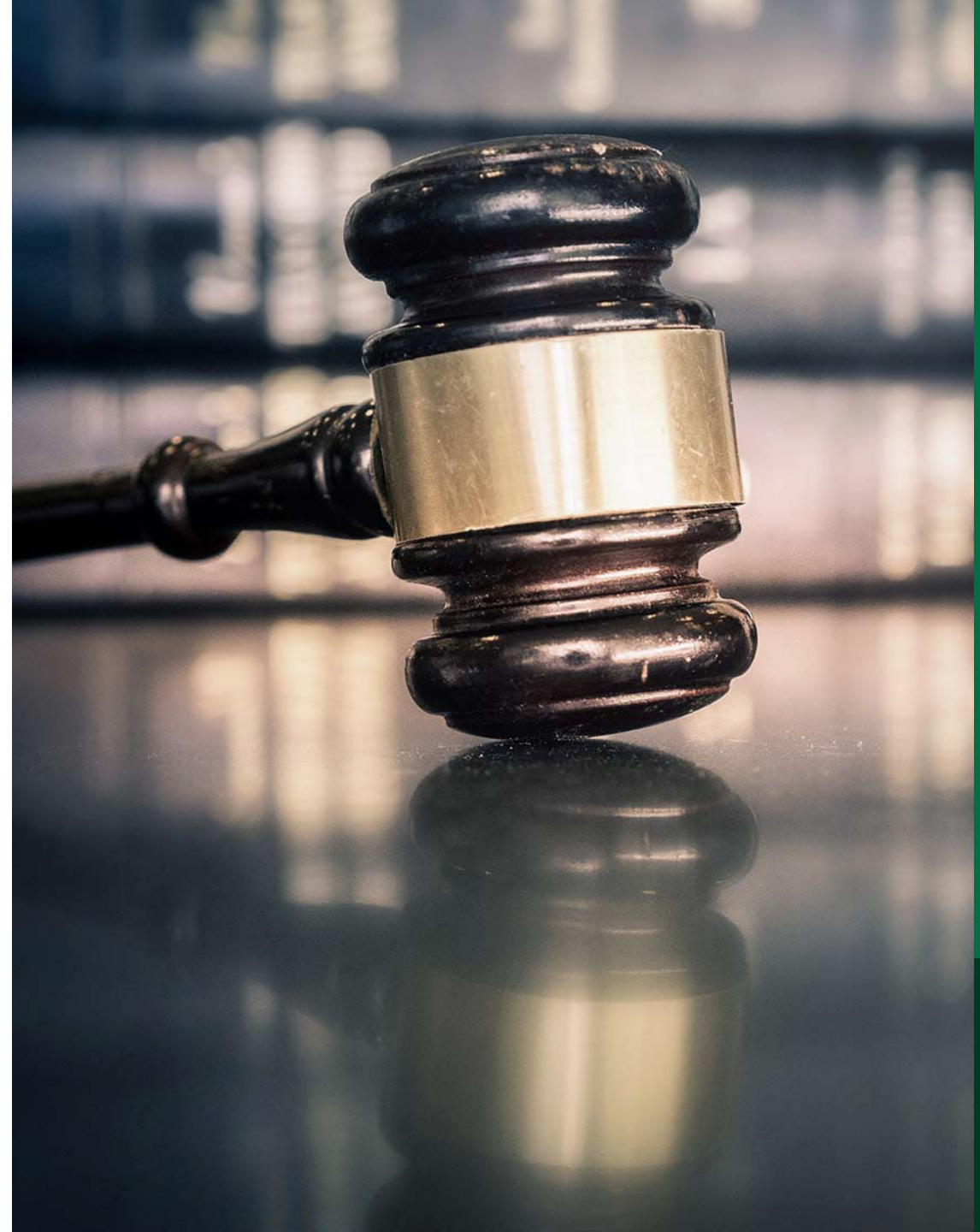
LB-2018-72158 (2019) (Norcape)

- Administrative revocation of a patent
- The asserted prior art: An oral presentation at a seminar
- The main evidence: An undated PPT allegedly used in the presentation. Disputed by the patentee.
- Did a stricter standard of proof to apply?
 - Norwegian law vs. EPO's practice
- The Court of Appeal:
 - No obligation to apply the same standard of proof in Norway as in EPO
 - Regular standard of proof applied



HR-2022-1113 (Rogstad)

- Copyright case
- A newspaper published critical articles about a lawfirm
 - Photos from the lawfirm's website and Facebook-profile used in the articles, without consent
- Right to quotation did not apply
- Rule on current events applicable
 - The events took place several months earlier
 - But of substantial public interest
 - Right to freedom of speech highly relevant



Increasing number of lawsuits about climate

- Principled case in Norway
 - What are the constitutional rights for our and future generations?
 - Supreme Court "plenum" decision in 2021 (HR-2020-2472-P)
- Pending before the European Court of Human Rights



Every person has the right to an environment that is conducive to health and to a natural environment whose productivity and diversity are maintained

- Norwegian constitution, Article 112

New legislation

Mainly implementation of EU directives:

- New Act on the protection of trade secrets (LOV-2020-03-27-15)
- New Act relating to collective management of copyright (LOV-2021-05-28-49)
- New rules on the import of goods infringing intellectual property in the Norwegian Customs Act (LOV-2007-12-21-119)
- Amendments to the Norwegian Trademarks Act (LOV-2010-03-26-8)

