

**TRANSSCRIPT
OF
THE COURT RECORD OF THE MARITIME AND COMMERCIAL COURT
(IN COPENHAGEN)**

On 20 September 2005 at 10:00 the President of the Court Jens Feilberg was presiding the Court.

In the matter of:

H-45-03

Carl Bro as

(Attorney Torben Steffensen)

versus

Keros represented by Ole Rahbek Christensen

(Attorney Knud Ove Christensen)

and

Dynatest International A/S

(Attorney Knud Ove Christensen)

Nobody was summoned or appeared.

The Court will decide the case as follows:

According to the addendum of 24 April and 1 May 2001, referred to as Proposal for extended cooperation about sale and marketing of PRIMA 100, to the parties' agreement of 14 and 24 July 2000, Keros, which according to the agreement of 14 and 24 July 2000 was responsible for the production of the falling weight deflectometer PRIMA 100, should be responsible for marketing activities and contribute to active sales promotion as described in detail in the addendum.

The addendum concerning sale of PRIMA 100 in Denmark, was valid for 2 years from the signature of both parties, this means as of 1 May 2001. It must be deemed that the agreement resulted in a real extension of the cooperation for Keros, which in this way was given access on specific terms to sell and market the product in Denmark. According to the wording of the agreement and the addendum it cannot be deemed that the period of notice of 6 months valid according to the agreement of 2000 continued to be valid for the addendum, as such acceptance would result in the fact that the well-considered termination clause of the addendum would lose its substance.

Thus Keros did not have the right to terminate the addendum by the end of 2001 as it was done with the letter of 28 June 2001.

Carl Bro is entitled to damages for the loss that the company has suffered due to the unjustified termination of the agreement. In accordance with the provisions as to prices and commissions of the addendum and as the Court applies the essentially undisputed statement of sold products, Carl Bro shall be entitled to damages amounting to DKK 144,000, which shall carry interest as of 28 April 2003 when the case was brought in action, as it was submitted in Carl Bro's Claim 1 against Keros.

According to the information present on the origin of the name PRIMA 100 and on Carl Bro's use of it, the Court finds it indisputable that Carl Bro has under all circumstances started using it as a trademark as of 1998 and has thus obtained the right to it as a trademark. Carl Bro's claim 3 against Keros shall thus be upheld.

On the basis of the present drawings and the statements given the court shall apply that Carl Bro during a period of more than a year developed the falling weight deflectometer PRIMA 100, which in the form of a prototype was presented in 1998. After further development work the falling weight deflectometer was in all essentials fully developed in the spring of 1999, as it appears from drawings dated from April to May 1999. The falling weight deflectometer was constructed on the basis of present products, and was improved on a number of points regarding mechanics and construction in relation to the existing falling weight deflectometers and was adapted to the intended function as a mini falling weight deflectometer. The construction happened by applying commonly known techniques and partly by using purchased standard products. Keros contributed to the development and finishing especially by supplying electronics and software, which was essential for the functionality of the product, and so that, as was explained by Anders Sørensen, when presented as a prototype in Trondheim in 1998, it represented a technological improvement as regards electronics and software.

As per the representations made by Ole Rahbek Christensen, it must be deemed that Keros also contributed to the development of the falling weight deflectometer in 1998-1999, hereunder handle, adaptation of the sensor and the shaft. These modifications are not of such crucial character as regards design that they should – without any special agreement hereon – result in Carl Bro not having the rights as regards technique and design to the products as it was presented in the spring of 1999.

In accordance with this opinion of the product development it was stated in ss 2.4 in the agreement of 14 and 24 July 2000 that the PRIMA falling weight deflectometer “was developed as a development project established between [Carl Bro] and Keros during 1998 on the basis of known technology. The rights to the electronic and software parts shall belong to Keros”. It does not appear from this agreement or other documentation in the case, including the preparatory work for the provisions in ss 2.4, that Keros has during the cooperation between the parts until the termination claimed rights, apart from the rights to the electronic and software parts, as regards the design and the technical form of the falling weight deflectometer.

In pursuance of the expert opinion of the Court it cannot be deemed that the falling weight deflectometer mechanically, as regards construction, or with a view to design, in single elements or as a whole, had such special character that it can be protected according to the Danish Marketing Practices Act against other than entirely slavish copies.

Keros was by virtue of the parties' cooperation and agreements about the production of the falling weight deflectometer handed over the drawings for the product and has produced and sold the falling weight deflectometer on this basis, also after the unjustified termination of the parties' cooperation. As it appears from the drawings and the given statements, the development of the PRIMA 100 has represented a considerable contribution from Carl Bro. After having been handed over the production, Keros made some modifications to the products, but in the opinion of the Court, these modifications are not crucial marked relevant in relation to the falling weight deflectometer developed by Carl Bro – either in technical nature or, which is in this case essential, in the nature of design or appearance.

Under these circumstances, Keros' production of the falling weight deflectometer must to a certain extent, as appears from appendix 40 and with the in appendix 42 stated characteristics, be regarded unjustified. However, the Court cannot without further notice uphold Carl Bro's primary claim 2 or alternative claim 2 as this would have the consequence that Keros without limits, including time limits, would be prevented from producing falling weight deflectometers similar to PRIMA 100. Hence, the Court finds that Carl Bro's primary claim 2 shall only be

upheld for a period of three years from a possible legitimate termination of the parties addendum of 24 April and 1 May 2001, this means until 30 April 2006 in pursuance of the Danish Marketing Practices Act S 10.

As the legal position of Dynatest is in all respects secondary to the legal position of Keros in relation to Carl Bro, the claims of Carl Bro against this company shall be upheld to the same extent.

In accordance with the statements Kero's counterclaims towards Carl Bro shall not be upheld.

The Court will thus decide as follows:

1. Keros represented by Ole Rahbek Christensen shall pay DKK 144.000 to Carl Bro including interests as of 28 April 2003.
2. Keros represented by Ole Rahbek Christensen shall in the period up to 30 April 2006 cease the production, marketing and distribution of mini falling weight deflectometers as indicated in appendix 40 with characteristics as stated in appendix 42.
3. Keros represented by Ole Rahbek Christensen shall cease using the name of PRIMA and/or PRIMA 100 in connection with production, marketing and distribution of mini falling weight deflectometers.
4. Dynatest International A/S shall in the period up to 30 April 2006 cease the production, marketing and distribution of mini falling weight deflectometers as indicated in appendix 40 with characteristics as stated in appendix 42.
5. Dynatest International A/S shall cease using the name of PRIMA and/or PRIMA 100 in connection with production, marketing and distribution of mini falling weight deflectometers.
6. As regards costs Keros represented by Ole Rahbek Christensen and Dynatest International A/S shall in solidum pay to Carl Bro DKK 50,000 and DKK 4,640 to cover court fees.

The Court is of the opinion that the parties in this case should settle the case in pursuance to the provisions hereinbefore set out.

The parties attitude to the proposed settlement is asked for within 14 days.

Court adjourned.

Jens Feilberg

(Sign.)

**This is certified to be a true copy
On behalf of the Maritime and Commercial Court, 19 September 2005**

**[Signature]
Hanne Sattrup**