

The Marketing Practices Act

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Compilation

– Notice of the consolidated Act No. 699 of 17 July 2000 on Marketing Practices

Act

– Section 18 of Act No. 428 of 6 June 2002

- Section 4 of Act No. 450 of 10 June 2003

Good Marketing Practices ➡

1. This Act shall apply to private business activities and to similar activities undertaken by public bodies. Such activities shall be carried on in accordance with good marketing practices.

(2) Subsection (1) shall not apply to financial business in so far as the Minister of Economic and Business Affairs has issued rules about fair practices in the field concerned. Misleading Information, Derogatory Statements, etc.

2. -(1) It shall be an offence to make use of any false, misleading, or unreasonably incomplete indication or statement likely to affect the demand for or supply of goods, real or personal property, and work or services.

(2) The provisions of the preceding subsection shall apply also to indications or statements which, because of their form and reference to irrelevant matters, are improper in relation to other persons carrying on a trade or business or to consumers.

(3) It shall be an offence to make use of any misleading practices affecting demand or supply in the manner stated in subsection (1) hereof or practices of corresponding effect, if, because of their special form or reference to irrelevant matters, such practices are improper in relation to other persons carrying on a trade or business or to consumers.

(4) It shall be possible to substantiate the correctness of indications or statements on real facts.

(5) Subsection (1-4) shall not apply to financial business in so far as the Minister of Economic and Business Affairs has laid down rules about the matters mentioned in subsection (1-4).

Comparative advertising 1

2 a. -(1). Comparative advertising means any advertising, which explicitly or by implication identifies a competitor or goods or services offered by a competitor.

(2) Comparative advertising, cf. subsection (1) above, shall be permitted under this Act provided that the comparison

1) is not misleading,

2) compares goods or services which meet the same needs or are intended for the same purpose,

3) objectively compares one or more material, relevant, verifiable and representative features of these goods or services, which may include their price,

4) does not create confusion in the market between the advertiser and a competitor or between the advertiser's trade marks, trade names, other distinguishing marks, goods or services and those of a competitor,

5) does not discredit or denigrate the trade marks, trade names, other distinguishing marks, goods, services, activities or other circumstances of a competitor,

6) for goods with a designation of origin, relates in each case to products with the same designation,

7) does not take unfair advantage of the reputation of a trade mark, trade name or other distinguishing mark of a competitor or of the designation of origin of competing goods and

8) does not present goods or services as imitations or replicas of goods or services, which bear a protected trademark or trade name.

(3) Any comparison referring to a special offer shall indicate in a clear way the date on which the offer ends or, where appropriate, that the special offer is subject to the availability of goods and services, and where the special offer has not yet begun, the advertising shall indicate the date of the start of the period during which the special price or other specific conditions shall apply."

Instructions ➡

3. At the time of the making of an offer, the conclusion of a contract or, where appropriate, the delivery of goods or the supply of services, proper information or instructions shall be provided according to the nature of the goods or services, where such information or instructions are of importance in the evaluation of the nature or quality of the goods or services, especially including fitness for purpose, durability, the nature of any risks involved, and information as to maintenance.

Guarantees ➡

4. -(1) A guarantee, warranty or declaration of a similar nature shall be given to consumers only when such guarantee, warranty or declaration affords the consumer a considerably better legal position than otherwise provided by existing legislation.

(2) Where a guarantee or warranty is given, the person carrying on trade or business shall in a clear and unambiguous manner inform the consumer of the contents of the guarantee or warranty and provide the information necessary to make the guarantee or warranty valid.

Furthermore, the person carrying on trade or business shall in a clear and unambiguous manner state that the consumers indispensable rights according to the legislation will not be affected by the guarantee or warranty.

Upon request the person carrying on trade or business shall hand out the guarantee or warranty in writing. Written guarantees or warranties shall be in the Danish language. 2

Distinctive Business Marks ➡

5. No person carrying on a trade or business shall make use of any trade mark or other distinctive business mark to which he is not legally entitled or make use of his own distinctive business marks in a manner likely to cause such marks to be confused with those of other traders.

Collateral Gifts ➡

6. -(1) Where a person carrying on a trade or business sells goods or real property to consumers or performs work or provides services for consumers, he shall not provide any collateral gift or similar inducement, unless such gift or inducement is of negligible value. The advertising of any such gift or inducement other than a gift or inducement of negligible value shall similarly be prohibited.

(2) A benefit of exactly the same kind as the principal benefit rendered shall be deemed not to be a collateral gift or similar inducement.

(3) Notwithstanding the provision of subsection (1) hereof, a person carrying on a trade or business subject to a licence granted pursuant to section 75 (1) and (2) of the Danish Aviation Act may provide a collateral gift or inducement upon sale of flights and services related hereto provided that this is done in connection with an air bonus scheme as referred

to in subsection (5) hereof. Other persons carrying on a trade or business may provide a collateral gift or inducement in the form of free trips, hotel accommodation and car rental provided that this is done in connection with an air bonus scheme.

(4) A holder of such permission or other persons carrying on a trade or business may provide a collateral gift or inducement in connection with an air bonus scheme without being subject to the restrictions referred to in subsection (3) hereof if another holder of such permission who is competing with the former holder of permission grants such a gift or inducement in his air bonus scheme. Where collateral gifts or inducements are provided pursuant to the 1st paragraph of this subsection, this shall be notified to the Consumer Ombudsman.

(5) The air bonus scheme shall be offered internationally and shall by a holder of permission be established as part of his usual business or trade. The most important element of the scheme in this country shall be the provision of a collateral gift or inducement upon sale of flights. If the holder of permission cooperates with other persons carrying on a trade or business, the scheme shall also cover the provision of collateral gifts or inducements upon sale of hotel accommodation and car rental.

(6) The provisions laid down in subsections (3)-(5) hereof relating to holders of permission shall also apply to persons carrying on a trade or business with a licence issued by a EUMember State pursuant to Council Regulation (EEC) No. 2407/92 of 23rd July, 1992 on licence to air carriers or by a country which upon agreement with the EU has acceded to this regulation.

(7) The Minister of Trade and Industry may permit that other enterprises, subject to similar international competition, may provide a collateral gift or inducement to a specified extent. The permission may be granted for a limited period of time.

Unsolicited calls to certain customers 3 ➡

6 a. -(1) Where a supplier sells goods, immovable or movable property or work or services to customers, he shall not be allowed to make calls to anybody using electronic mail, automated calling systems (automatic calling machines) or facsimile machines (fax) for the purposes of such selling unless the particular customer has made a prior request for such calls.

(2) 4 Without regard to subsection (1), at supplier having received a customer's electronic address in connection with sale of a good or a service may market his own similar goods or services to that customer electronically. This implies, however, that the customer can easily and with no extra charge object to this, both when handling over his mail address to the supplier and by subsequent calls.

(3) A supplier may not call a specific natural person using other means of distance communication for the purposes of selling goods or services as referred to in subsection (1) above, if that person has asked the supplier not to make such calls, if a list made on a quarterly basis by the Civil Registration System (CPR) includes an indication that the person concerned has objected to receiving calls made for such marketing purposes, or if the supplier has become aware by a search of the Civil Registration System that the person concerned has objected to receiving such calls. Moreover, telephone calls to consumers are subject to the rules on unsolicited calls set out in the Act on Certain Consumer Agreements.

(4) Subsection (3) above shall not apply where the person concerned has made a prior request for the call from the supplier.

(5) The first time a supplier makes a call as described in subsection (3) above to a specific natural person whose name is not included in the CPR list, the supplier shall inform that person in a clear and comprehensible manner of the right to object to calls from suppliers as described in subsection (3) above. At the same time the person concerned shall be given easy access to object to such calls.

(6) No payment may be charged for receiving or registering a withdrawal of a request made as referred to in subsection (1) above or an objection to unsolicited calls as described in subsection (3).

(7) The Minister for Industry may lay down more specific rules on the duty of suppliers to give information according to subsection (5) and the duty to provide access to objecting to unsolicited calls as referred to in subsection (3).

Quantitative Restrictions ➡

7. -(1) A retail business shall not be entitled to set any ceiling on the number of goods which any individual customer is allowed to buy. Moreover, sale to specific buyers may not be denied.

(2) The provisions laid down in subsection (1) hereof shall not apply to goods sold on bargain sales.

Trading Stamps, etc.

8. -(1) No discount must be allowed nor any other benefit be provided in the form of stamps, coupons or the like, which have been made available by persons carrying on a trade or business prior to the purchase of an article or on performing work or providing services.

(2) Notwithstanding the provisions of the preceding subsection, persons carrying on a trade or business may upon sale of goods and on performing work and providing services allow a discount or provide any other benefit in the form of stamps, coupons or the like for encashment at a later date, provided that each stamp is provided with a clear indication of the identity of the issuer and of its value in Danish currency. The issuer of such stamps, coupons or the like shall exchange them for cash in this country at their nominal value at the time when stamps in an amount to be determined by the Minister of Trade and Industry are required to be exchanged for cash.

(3) Subsections (1) and (2) hereof shall not apply in connection with the air bonus schemes referred to in section 6 (3)-(6) of this Act or in connection with the permissions referred to in section 6 (7) of this Act.

Drawing of Lot and Prize Competitions ➡

9. -(1) No attempts shall be made to promote sale to consumers of goods or services offering them the possibility of a prize if they participate in the drawing of lot, prize competition or any other arrangement where the results are wholly or partly dependent on chance, provided that such participation is conditional upon purchase.

(2) The provision laid down in subsection (1) hereof shall not apply if the amount of the individual

prize and the total value of prizes are within the limits as fixed by the Minister of Trade and Industry. Such limits may be fixed according to product and group of recipients.

(3) The publisher of a periodical shall be permitted to arrange for the drawing of lots for the distribution of prizes awarded in connection with prize competitions.

Trade Secrets and Technical Drawings ➡

10. -(1) No person employed by, cooperating with, or performing work or providing services for a commercial enterprise shall, in an improper manner, acquire or attempt to acquire knowledge or possession of the trade secrets of such enterprise.

(2) Where such person has lawfully acquired knowledge or possession of the trade secrets of the enterprise, he shall not, without proper authority, disclose or make use of such secrets.

This provision shall apply for a period of three years after the termination of the employment or of the period of co-operation or the completion of the work or of the provision of the services, as the case may be.

(3) Where a person for the purpose of performing work or for any other business purpose has been entrusted with technical drawings, descriptions, formulae, patterns, models or other information, he shall not, without proper authority, make use of or allow others to make use of such knowledge, information or material.

(4) No person carrying on a trade or business shall make use of a trade secret where knowledge or possession of such trade secret

has been acquired in contravention of the preceding provisions of this section.

Labelling and Packaging ➡

11. -(1) The Minister of Trade and Industry may, after consultation with the central organizations

of Danish trade and industry and with the consumer organizations, by regulations provide that certain goods sold by retail (sale to consumer) shall be sold or offered for sale only where it is stated whether the goods are Danish or foreign or where the goods bear an indication of the place of origin or production.

The Minister of Trade and Industry may specify the manner in which the said indication or statement shall be affixed to or marked on the goods and how the expression "place of origin or production" shall be interpreted in each case.

(2) The Minister of Trade and Industry may, after consultation with the central organizations of Danish trade and industry and with the consumer organizations, by regulations provide

1) that certain trade descriptions or symbols shall be reserved for or applied to goods that comply with certain specified requirements; and

2) that certain goods shall be sold or offered for sale only where such goods or their wrapping or packaging are, in a manner prescribed by the Minister, provided with information relating to the contents and composition of the goods, their durability, directions for use and other properties.

12. The Minister of Trade and Industry may, after consultation with the central organizations of Danish trade and industry and with the consumer organizations, by regulations provide restrictions of the right to purchase, sell, and use such packaging or parts thereof as are, in a prescribed manner, either marked with the name or trade mark of any commercial enterprise registered in this country or are marked in a manner reserved exclusively for the packaging of goods of a specific kind. The Minister of Trade and Industry may similarly prohibit wilful destruction of or damage to such packaging.

Injunctions, Orders and Liability for Damages ➡

13. -(1) The court may issue injunctions prohibiting acts done in contravention of the provisions of this Act. In this connection or at a later date the court may make such orders as it considers necessary to ensure

1) that an injunction is complied with, including a decision to the effect that agreements concluded in contravention of an injunction shall be void;

2) restoration of the conditions existing prior to the illegal act, including destruction or withdrawal of products and publication of information or correction of indications or statements.

(2) Any person acting in contravention of the provisions of this Act shall be subject to liability for damages pursuant to the general provisions of Danish law to this effect.

The Maritime and Commercial Court

14. -(1) Civil proceedings for the decision of which the application of this Act is of material importance shall be brought before the Copenhagen Maritime and Commercial Court, unless otherwise agreed by the parties.

(2) Public prosecution for an offence under this Act shall be brought before the Copenhagen Maritime and Commercial Court unless detailed knowledge of marketing practices is considered to be of immaterial importance to the decision of the case.

The Consumer Ombudsman ➡

15. -(1) It shall be the duty of the Consumer Ombudsman to see that the provisions of this Act are not contravened, especially considering the interests of the consumers.

(2) The Consumer Ombudsman may require all such information as he considers necessary for the performance of his functions including information considered necessary to decide whether a matter falls within the scope of this Act. In the case of comparative

advertising or if such a requirement appears appropriate on the basis of the circumstances, the advertiser may be required to provide such evidence in a short period of time.

(3) The Consumer Ombudsman shall be appointed by the Minister for Trade and Industry for a period of six (6) years and may only be discharged without an application therefor if the discharge is based on health conditions or if the person concerned due to a punishable offence, a violation of service duties or irregularities is unfit continuously to hold the position. The appointment shall expire automatically at the end of the month in which the person concerned attains the age of 70 years.

Extension or re-appointment may not take place. The Consumer Ombudsman shall fulfil the general conditions to become a judge.

(4) Decisions made by the Consumer Ombudsman under this Act cannot be made the subject of an appeal to any other administrative authority.

(5) The Minister of Trade and Industry shall be empowered to make regulations specifying the functions of the Consumer Ombudsman.

Principle of Negotiation ➡

16. -(1) The Consumer Ombudsman shall by negotiation endeavour to induce persons carrying on a trade or business to act in accordance with the principles of good marketing practices and with the provisions of this Act in general.

(2) If a person carrying on a trade or business fails to fulfil a commitment given to the Consumer Ombudsman after negotiations conducted pursuant to subsection (1) hereof, the Consumer Ombudsman may issue such orders to the person concerned as may be deemed necessary for ensuring the fulfilment of such commitment.

Guidelines

17. After conducting negotiations with the relevant trade and consumer organizations, the Consumer Ombudsman shall endeavour to influence the conduct of the persons carrying on a trade and business by drawing up and publishing marketing guidelines within specified areas considered important, especially to the interests of the consumers.

(2) Guidelines according to subsection (2) that are approved by the relevant trade and consumer organisations, may according to agreement with such organisations form the basis of orders issued by the Consumer Ombudsman, cf. section 19(2), 2nd sentence.

Such an order may only be imposed on persons carrying on trade or business who are members of an organisation that has made an agreement according to the first sentence hereof.

(3) An organisation may terminate an agreement according to subsection (2) subject to agreed notice.

(4) The Consumer Ombudsman shall announce entry into force and termination of an agreement according to subsection (2). In case of termination according to subsection

(3), the Consumer Ombudsman shall announce from which date the guidelines are no

longer comprised by subsection (2) and shall give notice of which guidelines are maintained according to subsection (1) or which shall lapse.

(5) Notwithstanding subsection (1-4) the Danish Consumer Ombudsman cannot issue rules addressed exclusively to financial business.

5

Advance Statements ➡

18. -(1) The Consumer Ombudsman shall, upon request, give his opinion on the legality of contemplated marketing initiatives unless such opinion gives rise to any particular doubt or special circumstances exist. An advance statement shall not imply that an actual decision has been taken with respect to the legality of the initiative concerned.

(2) Where the Consumer Ombudsman has given an advance statement to a person carrying on a trade or business to the effect that a contemplated initiative will be legal in the opinion of the Consumer Ombudsman, the Consumer Ombudsman may not on his own initiative intervene with respect to an initiative covered by the advance statement and implemented within a reasonable time after the issue of such advance statement.

(3) The Minister of Trade and Industry may lay down specified rules governing fees for the issue of advance statements.

Legal Proceedings, etc. ➡

19. -(1) Any person with a legal interest herein may institute legal proceedings with respect to injunctions, orders or liability for damages pursuant to section 13 of this Act. The Consumer Ombudsman may institute legal proceedings with respect to injunctions and orders pursuant to section 13 (1) of this Act.

(2) The Consumer Ombudsman may issue orders if an act is in clear contravention of the Act and cannot be changed by negotiation. In case of violation of guidelines, cf. section 17(2) and (4), orders may be issued without any prior negotiations.

(3) The party against whom an order is issued may demand that the order be brought before the courts of law. An application for such a step shall be filed in writing with the Consumer Ombudsman within four weeks of the issue of the order to the party concerned. Within one week of receipt of the application the Consumer Ombudsman shall bring the matter before the court as a civil action.

(4) The application according to subsection(3) will not act as a stay of the proceedings, but the court may by an order decide that the party concerned may continue the act, which the order concerns during the process of the matter.

(5) If an appeal is made of a judgement under which an order is not found lawful, the court that has passed the judgement or the court to which the matter was referred, may decide that during appeal proceedings the party concerned may not carry out the act which the order concerns.

(6) If a charge is brought against a person for contravention of this Act, the execution of such charge shall be left to the Consumer Ombudsman if he so requests.

Actions for Damages ➡

20. If, in connection with a contravention of the provisions of this Act, a plurality of consumers has uniform claims for damages, the Consumer Ombudsman may, upon request, recover the claims collectively.

Interlocutory Injunction

21. -(1) The Consumer Ombudsman may issue an interlocutory injunction where there is a reasonable possibility that the object of an injunction referred to in section 13 (1) of this Act may not be achieved if the decision of the court has to be awaited. An action to confirm the injunction shall be brought not later than the next following weekday. The provisions of sections 642(ii), 643, 645 (1)-(3), and 651 shall apply correspondingly, and the provisions of sections 636, 638, and 648(2) shall apply with the necessary modifications.

(2) Where judgement in a case to confirm an injunction under the provisions of subsection (1) hereof cannot be given before the expiration of five weekdays after the institution of proceedings, the court may, in the course of the preparatory stages of the case before the expire of the said period, order that the injunction shall continue. Before such a decision is made, the court shall, as far as possible, give the parties an opportunity to make representations.

If the injunction is not confirmed before the expire of the said period, it shall lapse.

Prosecutions and Penalties ➡

22. -(1) Any person guilty of breach of an injunction or non-compliance with an order issued by the court or by the Consumer Ombudsman pursuant to section 16 (2) or section 19(2) hereof shall be liable to a fine or to mitigated imprisonment. However, non-compliance with an order to repay money received shall not be subject to penalty.

(2) Any person who fails to give such information as is required of him under section 15 (2) of this Act or, in matters falling within the scope of this Act, gives false or misleading information to the Consumer Ombudsman shall be liable to a fine, unless the offence carries a more severe penalty under any other enactment.

(3) Any person who is guilty of an offence under sections 2 (1)-(3), section 2 a, or 6-9 of this Act or who wilfully contravenes the provisions of section 5 of this Act shall be liable to a fine, unless the offence carries a more severe penalty under any other enactment. Offences under subsections (2) and (3) of section 2 of this Act consisting in injurious statements made in respect of a person carrying on a trade or business or in respect of any other matters particularly relating to such person shall be a cause for private prosecution.

(4) Any person guilty of an offence under section 10 of this Act shall be liable to a fine or to mitigated imprisonment or to ordinary imprisonment for a term not exceeding 2 years. Proceedings may be instituted only at the request of the injured party.

(5) In regulations made under sections 11 and 12 of this Act, fines may be prescribed as

the penalty for offences committed under these regulations.

(6) Criminal liability may be imposed on corporations, etc., (legal persons) pursuant to the rules of Part 5 of the Danish Criminal Code.

Free Legal Aid ➡

23. Consumers who comply with the provisions laid down in section 330 (1) (item 2) of the Danish Administration of Justice Act shall be granted free legal aid in cases of repayment of money covered by an order issued by the court or the Consumer Ombudsman.

Delegation of Powers ➡

24. The Minister of Trade and Industry may delegate his/her powers under this Act to the National Consumers Agency of Denmark. This shall not apply to the powers laid down in section 15 (5) of this Act. If the Minister of Trade and Industry delegates his/her powers to the National Consumers Agency of Denmark, the Minister may lay down rules governing the access to make complaints, including rules to the effect that complaints may not be brought before another administrative authority.

Commencement ➡

25. This Act shall come into operation on 1 October 1994. At the same time the Danish Marketing Practices Act, cf. Consolidated Act No. 594 of 27 June, 1992, shall be repealed.

The Faroe Islands and Greenland 26. This Act shall not extend to the Faroe Islands and Greenland.

Act No. 342 of 2 June, 1999 contains the following commencement provisions:

This Act shall come into operation on 1 July 1999.

Act No. 164 of 15 March, 2000 contains the following commencement provisions:

Section 2

This Act shall come into operation on 1 April 2000.

Act No. 442 of 31 May, 2000 contains the following commencement provisions:

Section 5

(1) ---.

(2) This Act shall enter into force on 1 July 2000.

(3) -(6) ---.

1 This section includes provisions to implement Directive 97/55/EC of 6 October 1997 of the European Parliament and the Council amending Directive 84/450/EEC concerning misleading advertising so as to include comparative advertising, OJ 1997 No. L 290 page 18.

2 This subsection includes provisions to implement Article 6 of Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees, OJ 1999 No. L 171 page 13-16.

3 This section includes provisions to implement Article 10 of Directive 97/7/EC of the European Parliament and

of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts (the Distance Contracts Directive, OJ 1997 No. L 144 page 19-27; and Article 12 of Directive 97/66/EC of the European Parliament and of the Council of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector (the ISDN Directive), OJ 1998 No. L 24, page 1-8).

4 This subsection includes provisions to implement part of Directive 2002/58/EC of the European Parliament and the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications), OJ 2002 No. L 201, page 37-47 .

5 Section 68 in Act on Financial Services got the following wording when amended in 2002: "The Consumer Ombudsman may institute legal proceedings with respect to injunctions and orders pursuant to actions contrary to fair dealing and good practice, see section 3, section 3 a and 3 b. Sections 13.-(1) and 14.-(1) in the Marketing Practices Act shall apply correspondingly in cases brought by the Consumer Ombudsman according to this provision. The Financial Supervisory Authority can give orders to correct matters contrary to section. 3-(1) and sections 3 a and 3 b."