

The Danish Marketing Practices Act

(Act No. 428 of 1st June, 1994)

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We Margrethe The Second, by the Grace of God Queen of Denmark, hereby make known: Folketinget has passed and We have provided the following Act with Our Royal Assent:

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.

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 actual facts.

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

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 a 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 EU Member 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 Industry and Coordination 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.

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 Industry and Coordination 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 Industry and Coordination. 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, co-operating 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 Industry and Coordination 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 Industry and Coordination 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 Industry and Coordination may, after consultation with the central organizations of Danish trade and industry and with the consumer organizations, by regulations provide-

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

(ii) 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 Industry and Coordination 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 Industry and Coordination 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

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

(ii) 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.

(3) The Consumer Ombudsman shall possess the qualifications and fulfil the general conditions necessary for appointment as 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 Industry and Coordination 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.

Advance Statement

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 Industry and Coordination 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) 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 paragraph (1) of section 648 (1), sections 648 (2), 649, 650 and 651 of the Danish Administration of Justice Act shall apply correspondingly and the provisions of sections 628 (1), 629, 633, 634 (2) and (5), 636 (1), 639 and 640 (1) shall apply with the necessary modifications.

(2) Where judgment 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 expiry 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 expiry 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) 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) 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) Where the offence is committed by a limited liability company, co-operative society or other corporate entity, the company, society or corporate entity as such shall be liable to a fine. Where the offence is committed by a central government or local authority or corporation, the central government or local authority or corporation shall be liable to a fine.

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 Industry and Coordination 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 Industry and Coordination 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 1st October, 1994. At the same time the Danish Marketing Practices Act, cf. Consolidated Act No. 594 of 27th June, 1992, shall be repealed.

The Faroe Islands and Greenland

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

Given at Christiansborg Palace on 1st June 1994

Under Our Royal Hand and Seal

Margrethe R.