

THE MARKETING PRACTICES ACT

The Danish Marketing Practices Act (in Danish: "Markedsføringsloven") sets the rules of the interrelationship between business owners. The act stipulates that business owners must always act in accordance with bona fide and established practices of the trade with reference to consumers, other businesses and the public interest. The Act also contains several detailed clauses, many of which focus on implementing parts of the EU directive concerning unfair business-to-consumer commercial practises on the European market.

To whom does the Marketing Practices Act apply?

The Act applies to the activity of private business and to public activity to the extent that products and services are offered to the market with a business purpose. The term "marketing" also encompasses competitive and market-related business activities.

What is the main content of the Marketing Practices Act?

Amongst other provisions, the Act contains the fundamental principle of good marketing practices according to which all marketing activities by persons and companies subject to the Act must be performed in accordance with bona fide and established practices of the trade or "good marketing practices".

The term "good marketing practices" is linked to the development of the market and society in general and is thus not a static term, but a dynamic term which develops over time. However, at any certain time, it is determined with reference to consumers, other traders and public interests.

Despite its rather indefinable nature, theory and case law presumes that the term certainly covers cases of derogative comment of other traders, unfairly profiting from another's reputation, product replicas, general detrimental behaviour and utilisation and unreasonableness.

Besides the general rule of good marketing practices, the Act contains several special provisions regulating concrete sales promotion such as misleading and undue marketing, advertising identification, unsolicited communication with specific customers, consumer protection, guarantees and price information among others.

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Who enforces the rules of the Marketing Practices Act?

The Consumer Ombudsman is an independent regulator appointed by The Ministry of Economic and Business Affairs who is authorised to observe and control the observance of the Act. In order to ensure that trade and business complies with the Act, including the general principle of good marketing practice, the Consumer Ombudsman may act on his own initiative or as a reaction to claims from business owners or consumers. Traders and consumers who are not based in Denmark are also entitled to file a complaint to the Consumer Ombudsman in cases in which they for instance experience misleading marketing activities emerging from Denmark.

However, business owners as well as consumers may also plead infringements of the Act and thus bring the violating business owner directly to the ordinary courts.

What are the consequences of infringements?

The nature of the infringements will often lead to an injunction being an appropriate remedy. This could, for example, be the case if the infringement consists of misleading or parasitic behaviour.

Also, economic sanctions including claims for damages, penalties and claims of refund may be appropriate remedies against infringements.

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