

Rättspraxis**Uppgifter om ärendet****Nationellt id-nummer:** Supreme Court, Judgment T 2286-18**Medlemsstat:** Sverige**Vedertaget namn:** N/A**Beslutstyp:** Beslut av högsta domstolen**Beslutsdatum:** 22/11/2018**Domstol:** Supreme Court**Ämne:** Information requirements and right of withdrawal**Kärande:** Consumer Ombudsman**Svarande:** INT Förbrukningsartiklar HB i likvidation, LK**Nyckelord:** right of withdrawal, information requirements, misleading statements, promotional sales, telephone, model withdrawal form, withdrawal period**Direktivartiklar**Consumer Rights Directive, [Chapter 3, Article 6, 1.](#) Consumer Rights Directive, [Chapter 3, Article 8, 4.](#) Consumer Rights Directive, [Chapter 3, Article 9, 2., \(a\)](#)**Huvudanmärkning**

A trader must leave correct and complete information about the right of withdrawal with regards to the withdrawal period, the model withdrawal form as well as to the effects of withdrawal for the consumer.

Omständigheter

The defendants were promoting some products (dental products, safety razors and key fobs) to consumers through the telephone.

The Consumer Protection Agency received a number of complaints by consumers in 2015 and 2016 with regards to the products which the defendants were marketing. Because of the number of complaints, the Agency referred the complaints to the Consumer Ombudsman (plaintiff).

The plaintiff asked from the first instance court (Patent and Market Court) to oblige the defendants under penalty of fine - among other things related to unfair commercial practices - to inform the consumers properly about their right of withdrawal with correct, clear and comprehensible information according to the Distance and Off-Premises Contracts Act (2005:59) (which implements the Directive) since wrong or misleading information about the right of withdrawal constitutes misleading advertising under the Marketing Act (2008:486).

The first instance court ruled that, under penalty of a fine of one million SEK for every 7 days period the order is not followed, the defendants, when promoting their products and before entering the agreement through telephone, and as soon as possible after that, have to provide consumers with correct, clear and comprehensible information about the right of withdrawal with regards to how the withdrawal period is calculated, the existence of a model withdrawal form which consumers can use in order to exercise their right of withdrawal and where to find it, as well as about the effects for the consumer of exercising this right.

The plaintiff filed an appeal at the Patent and Market Court of Appeal for a broader meaning of the above order in order to include cases not only where the defendants promote the products in question but also in other similar cases, namely when the defendants also promote security services as well as subscriptions related to these products or similar products.

The court of appeal ruled that, under penalty of a fine of 400 000 SEK for every 30 days the order is not followed, the defendants, when promoting the dental products, safety razors and key fobs, or subscriptions for dental products and safety razors or subscription to a service related to key fobs and before entering the agreement through telephone, and as soon as possible after that, have to provide the consumers with correct, clear and comprehensible information about the right of withdrawal with regards to how the withdrawal period is calculated, the existence of a model withdrawal form which consumers can use in order to exercise their right of withdrawal and where to find it, as well as about the effects for the consumer of exercising this right.

The plaintiff appealed again in the Supreme Court asking for an order where the defendants, under penalty of a fine of one million SEK for every 30 days the order is not followed, have to provide the above-mentioned information before entering the agreement by telephone, and as soon as possible after that, when promoting their dental products, safety razors or security services as well as subscriptions of these products or similar products.

Juridisk fråga

How a prohibition and an order provided for by the Marketing Act can be formulated and how a fine related to them will be decided with regards to the time and the amount. Also, what information about the right of withdrawal should the traders provide according to the Distance and Off-Premises Act.

Beslut

The Supreme Court affirmed the decision of the court of appeal ruling that, under penalty of a fine of 400.000 SEK for every 30 days the order is not followed, the defendants, when promoting their products, namely dental products, safety razors and key fobs, or subscriptions to dental products and safety razors or subscriptions to a service related to key fobs, and before entering the agreement through telephone, and as soon as possible after that, have to provide the consumers with correct, clear and comprehensible information about the right of withdrawal with regards to how the withdrawal period is calculated, the existence of a model withdrawal form which consumers can use in order to exercise their right of withdrawal and where to find it, as well as about the effects for the consumer of exercising this right.

URL: <https://www.konsumentverket.se/globalassets/artikel/pagaende-mal-domar-och-forelagganden/domar/dom-dental-clean.pdf>

Hela texten: [Hela texten](#)

Ärendesamband

Inga träffar

Doktrin

Inga träffar

Resultat

The court affirmed the decision of the court of appeal.