

Rättspraxis**Uppgifter om ärendet**

Nationellt id-nummer: Svea Court of Appeal, Patent and Market Court of Appeal, Judgement PMT 11216-17

Medlemsstat: Sverige

Vedertaget namn: N/A

Beslutstyp: Domstolsbeslut överklagat

Beslutsdatum: 13/03/2019

Domstol: Svea Hovrätt, Patent- och marknadsöverdomstolen

Ämne:

Kärande:

Svarande:

Nyckelord: Right of withdrawal, information obligation, promotional sales

Direktivartiklar

Unfair Commercial Practices Directive, [Chapter 2, Section 1, Article 6](#) Consumer Rights Directive, [Chapter 3, Article 6](#)

Huvudanmärkning

1. A trader providing call centre services promoting products of third parties has to provide information related to the consumer's right of withdrawal in a clear and understandable way, before the conclusion of a contract and also directly after that the conclusion, in a manner that is appropriate for the communication channel used by the trader according to the Distance and Off-Premises Contracts Act (2005:59). This information should include under what conditions this right exists, the period within which the consumers may exercise this right, how to exercise this right, and if there is a standard form for it, where to find this form. Not providing information at all, or only part of the information after the consumer's initiative leads to the application of the Marketing Act, namely the omission of information is misleading. Additionally, the telephone seller must also always provide information in regard to their name, reason for calling, the trader's identity, and the seller's relation to the trader according to the Distance and Off-Premises Contracts Act (2005:59).

Relevance: The information obligations related to the right of withdrawal were defined by the Court of First Instance, but the Court of Appeal did not discuss and change this part of the decision. Since it is a final judgement, there is no possibility for appeal to the Supreme Court.

2. A trader providing call centre services promoting products of third parties has to provide relevant and true information related to its identity, the identity of the trader on behalf of which the call is made, and the reason of the call. A fine for the distortion of the market can be imposed by the national authorities in this case if the unfair practice is proven to be deployed extensively.

Relevance: This is a final judgement without possibility for appeal to the Supreme Court.

Omständigheter

1. TW Kundservice AB (defendant), a call centre company, was promoting telephone subscriptions and hardware to consumers. In these promotions, it called consumers who were registered in a do-not-call registry, without mentioning the right to withdrawal and when it did, it only did so after the consumer asked for it and in a quite incomplete way, meaning it was not clear on behalf of which company the call was being made, namely who is the trader advertised. For these reasons, The Consumer Ombudsman asked the First Instance Court to prohibit the defendant from acting in the abovementioned manner. The Court accepted the claims of the Consumer Ombudsman and judged that these practices constitute unfair commercial practices and should be prohibited. With regards to the information related to the right of withdrawal, the trader is obliged to leave such information in a clear and understandable manner before a contract is concluded and directly after that the conclusion. The Consumer Ombudsman filed an appeal asking for a fine to be imposed on the defendant as well.

2. TW Kundservice AB (defendant), a call centre company, was promoting telephone subscriptions and hardware to consumers. In these promotions, the trader called consumers who were registered in a do-not-call registry, without mentioning the right to withdrawal and when the trader did, they did so after consumers asked for it and in a quite incomplete way, not making clear on behalf of which company they were calling from, namely the trader advertised. For this reason, The Consumer Ombudsman asked the First Instance Court to prohibit the defendant from acting in an abovementioned manner. The Court accepted the claims of the Consumer Ombudsman and judged that these practices constitute unfair commercial practices. However, the Consumer Ombudsman filed an appeal asking for the defendant to be imposed a fine for the distortion of the market as well.

Juridisk fråga

1. Should the information related to the right of withdrawal be provided to consumers by a trader in the case of telephone sales, and if so, when and how?

2. What statements constitute unfair commercial practices when a trader promotes products of third parties by telephone?

When can a fine for the distortion of the market be imposed on a trader?

Beslut

1. A trader must always provide in a clear and understandable way on their own accord, and without the initiative of a consumer, information related to the right to withdrawal both before a contract is concluded between the parties and directly after the conclusion.

2. Practices, such as the omission of information related to the identity of the trader for which a promotion activity takes place, or information that gives the impression that the defendant calls on behalf of or works with the operator which a consumer already uses, are unfair. However, considering a lack of evidence that this has happened in more than just some isolated cases, no fine for the distortion of the market can be decided.

URL: <https://www.domstol.se/globalassets/filer/domstol/patentochmarknadsoverdomstolen/avgoranden/2019/pmt-11216-17.pdf>

Hela texten: [Hela texten](#)

Ärendesamband

Inga träffar

Doktrin

Inga träffar

Resultat

1. The Court of Appeal upheld the First Instance Court's judgement.
2. The Court of Appeal upheld the judgement of the First Instance Court that the practices constitute unfair commercial practices, and that the practice was not of such a scale that a fine for the distortion of the market can be imposed.