

## Case law

### Case Details

**National ID:** MD 2016:13

**Member State:** Sweden

**Common Name:** link

**Decision type:** Court decision in appeal

**Decision date:** 15/08/2016

**Court:** The Swedish Market Court

**Subject:**

**Plaintiff:** The Consumer Ombudsman (KO)

**Defendant:** Malmö Dansakademi AB

**Keywords:** information obligation, right of withdrawal, service contract

### Directive Articles

Consumer Rights Directive, [Chapter 3, Article 6, 1., \(h\)](#) Consumer Rights Directive, [Chapter 3, Article 8, 1.](#) Consumer Rights Directive, [Chapter 3, Article 9, 1.](#) Consumer Rights Directive, [Chapter 3, Article 9, 2., \(a\)](#) Consumer Rights Directive, [Chapter 3, Article 16, \(l\)](#)

### Headnote

(1) Dancing courses are not covered by an exception from the right of withdrawal, as a service relating to leisure activities.

(2) Omission to provide full information regarding the consumer's right of withdrawal constitutes misleading omission as it is likely to cause the consumer to take a transactional decision he or she would not have taken otherwise.

### Facts

The defendant provides dancing courses to people in all ages on beginner and advanced levels. The dancing courses are marketed through the defendant's website and consumers may apply for the courses online. The application is binding and after the consumer receives a confirmation email from the defendant, a binding agreement has been entered into between the parties, and the consumer is then obligated to pay the price for the dancing course in question.

The defendant does not include any information on the consumer's right of withdrawal prior to the conclusion of an agreement with a consumer.

### Legal issue

(1) The court finds that the exception from the right of withdrawal provided in Chapter 2, Section 11, Paragraph 1, Item 12 in the Distance and Off-Premises Contracts Act cannot be applied. The exception for services relating to leisure activities is limited to sport arrangements, cultural arrangements and other types of services relating to leisure activities, where the trader will provide the service at a specific date or during a specified period of time. Based on the purpose of the provision in question, pursuant to recital (49) of the Directive 2011/83, the scope of exceptions from the right of withdrawal must be considered limited. Thus, the mere fact that the service refers to a leisure activity provided during a specified period of time is not sufficient for the exception to apply. Furthermore, the defendant has not stated any circumstances that imply that a consumer's use of his or her right of withdrawal would generally affect the defendant economically, which would not be proportionate to the importance of the right of withdrawal for the consumer. Thus, the defendant is obligated to provide information regarding the right of withdrawal.

(2) The Court orders the defendant, under the penalty of a fine, to provide information concerning: (i) how the period of the right of withdrawal is calculated, (ii) the procedure to use the right of withdrawal, (iii) that a standard form for the right of withdrawal exists and where the consumer can find the standard form, and (iv) the consequences for the consumer if he or she invokes the right of withdrawal.

The Distance and Off-Premises Contracts Act provides that a trader shall provide information regarding the right of withdrawal prior to an agreement is entered into. If the information is not provided clearly and intelligibly and in a manner which is adapted to the means for distance communication used, the Marketing Act's provisions regarding misleading marketing will apply (see Chapter 2, Section 6 of the Distance and Off-Premises Contracts Act). A trader must not use false or misleading representations regarding the consumer's right under law (see Section 10 of the Marketing Act (2008:486)). Furthermore, misleading marketing is to be considered unfair if it influences or is likely to influence the consumer's ability to take a well-founded commercial decision (see Section 8 of the Marketing Act (2008:486)).

### Decision

(1) Are dancing courses covered by any exceptions from the right of withdrawal as a service relating to leisure activities?

(2) Does the omission to provide full information of the consumer's right of withdrawal constitute a misleading omission?

URL: <http://www.marknadsdomstolen.se/Filer/Avg%C3%B6randen/Dom2016-13.pdf>

Full text: [Full text](#)

### Related Cases

No results available

### Legal Literature

No results available

### Result

The court approved the plaintiff's claims