

Case law

Case Details

National ID: MD 2010:14

Member State: Sweden

Common Name: link

Decision type: Court decision in appeal

Decision date: 18/05/2010

Court: The Swedish Market Court

Subject:

Plaintiff: The Swedish Consumer Ombudsman

Defendant: TeliaSonera Aktiebolag (publ) and TeliaSonera Sverige Aktiebolag

Keywords: advertisement, price information, transactional decision, unfair commercial practices

Directive Articles

Unfair Commercial Practices Directive, [Chapter 1, Article 2, \(k\)](#) Price Indication Directive, [Article 3, 1](#). Price Indication Directive, [Article 3, 2](#). Price Indication Directive, [Article 3, 2.](#), - Price Indication Directive, [Article 5, 1](#). Unfair Commercial Practices Directive, [Chapter 2, Section 1, Article 6, 1](#). Unfair Commercial Practices Directive, [Chapter 2, Section 1, Article 6, 1., \(d\)](#)

Headnote

(1) It is misleading and unfair commercial practice to use terms and statements in advertisements that falsely give the average consumer the impression that a mobile phone subscription can be used unlimitedly for a fixed price, when certain limitations apply, as the statements are likely to affect the average consumer's ability to take an informed transactional decision.

(2) Providing necessary price information on several sub-pages and tabs under a website, to which the average consumer can navigate, is sufficient in order to provide price information in a clear, easy and understandable manner.

(3) Providing information about the responsible trader under a "contact" tab on a website is sufficient in order to inform the recipient of the responsible trader of the marketing.

Facts

The defendant is a phone company selling, inter alia, mobile phone subscriptions. In 2008 the plaintiff was contacted by consumers regarding the marketing of one of the defendant's subscriptions which the consumers considered misleading. In the marketing the defendant used the terms "fixed price", "call as much as you can!" and other similar statements. The marketing was made through the defendant's website.

The defendant's website consisted of a complex tab structure. On the tab where the so called "fixed price"-subscription was advertised, the price information stated the monthly fee for the subscription, the maximum fee for browsing as well as a non-existing fee for phone calls, text messages and multimedia messages. This gave the impression that the subscription could be used unlimitedly for a fixed price without limitation. From this page the consumer could either click on the link "read more" which lead to a page containing additional price information, or click on the tab "prices and conditions" which was constantly shown on the website frame regardless of which tab the consumer was currently on, where certain limitations of the subscription was stated.

The information about who was responsible for the marketing on the website was provided under the tab "Contact".

The plaintiff made essentially the same claims against both defendants. After assigning TeliaSonera Sverige Aktiebolag as the lawful defendant, the court continued the proceedings.

Legal issue

(1) The court prohibits the defendant, under the penalty of a fine, to use the following statements, or other statements with the essentially same meaning, when marketing mobile phone plans:

"Fixed price",

"Call as much as you can!"

"You no longer need to think about for how long or how often you are calling, to whom, or how many text or multimedia messages you have sent this month", which all give the impressions that the mobile phone subscription can be used unlimitedly for a fixed price, when in fact certain limitations apply.

The court established that the target group of the marketing is consumers with a high mobile phone usage. The marketing shall therefore be assessed based on how an average consumer of the target group would perceive the marketing. How the marketing is perceived by the target group when read at a glance, is crucial when assessing the marketing.

The court states that misleading marketing is considered unfair if it affects or is likely to affect the recipient's ability to take an informed transactional decision. The term "transactional decision" shall be construed broader than only a decision to purchase, or not to purchase, a product. Any further action that a consumer takes based on a commercial advertisement, such as visiting a store or a website to gather more information, is thus a transactional decision.

By using statements such as "fixed price" and other similar statements as listed above, the defendant has strongly emphasized an unlimited usage of the subscription to a certain stated price, which gives the impression that no additional cost to the monthly fee could arise. The court is of the opinion that, for a consumer in the defined target group, this must be very important, if not essential, for the wish to seek further information about the offer and ultimately purchasing the service, i.e. taking a transactional decision. The statements and the marketing are misleading and likely to have affected the consumer's ability to take an informed transactional decision. The misleading statements therefore constitute unfair commercial practice.

(2) The second claim concerned the question whether or not the defendant had fulfilled its price information obligations. The court firstly states that price information shall be provided clearly and correct. However, price information provided on the Internet needs to be adapted for the medium on which it is presented. For price information to be clearly and correctly provided on the Internet, it must be easily found when reading the information shown upon ordering a subscription. This may entail that the consumer can obtain the price information by following links or clicking on tabs in connection to the ordering page. In the current situation, the price information could be found on several tabs and pages and in a context which made it easy to find. The court therefore finds that the consumer in a sufficiently clear way could obtain the required price information.

(3) The third claim concerned how information should be provided about the trader that is responsible for the marketing. The court firstly states that it shall be clear who is responsible for the marketing. The recipient should easily be able to identify who is responsible for an advertisement. In consideration of the medium of communication, the court finds it sufficiently simple, clear, understandable and permanent to provide the information under the tab "Contact" on the defendant's website.

Decision

(1) Is it misleading and unfair commercial practice to use terms and statements in advertisements that falsely give the average consumer the impression that a mobile phone subscription can be used unlimitedly for a fixed price, when certain limitations apply?

(2) Is it sufficiently clear, easy and understandable to provide all necessary price information on several sub-pages and tabs under a website, to which the average consumer can navigate?

(3) Is it sufficient to inform the recipient about the responsible trader of the marketing by providing information about the responsible trader under a "contact" tab on a website?

URL: <http://www.marknadsdomstolen.se/Filer/Avgöranden/Dom2010-14.pdf>

Full text: [Full text](#)

Related Cases

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Legal Literature

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Result

The court approved the first of the plaintiff's claims and rejected the following two.