

## Case Details

### Case Details

National ID	MD 2015:3
Member State	Sweden
Common Name	link
Decision type	Court decision in appeal
Decision date	09/03/2015
Court	The Swedish Market Court
Subject	
Plaintiff	The Consumer Ombudsman
Defendant	Swedish Online Services SOS AB (previously First Date International FD AB)
Keywords	B2C, cancellation of contract, terms and conditions, unfair terms

### Directive Articles

Unfair Contract Terms Directive, [Article 3, 1](#). Unfair Contract Terms Directive, [Article 3, 3](#).

### Headnote

The following standard contractual terms, when used in relation to consumers, are considered unfair:

- 1) applying formal requirements on how to terminate a service, and
- 2) applying a notice period which is exceeding 30 days.

### Facts

The defendant markets and sells online dating services, inter alia, on the defendant's website. The dating services are offered through three types of subscription memberships and different promotions, which are limited in time, apply from time to other.

In order to use the service, the consumer must become a member. A membership is free but the defendant also offers, inter alia, a Gold membership, which has been offered in promotional campaigns. The defendant's terms and conditions which apply provide for formal requirements of cancellation of a membership and a notice period which exceeds 30 days.

### Legal issue

The court prohibits the defendant, under the penalty of a fine, to apply the following contractual terms:

- "If you purchase a campaign where the termination period in 60 days, you will pay for the current period plus 60 days.", or
- substantially similar terms which entails a longer notice period than 30 days.
- "you may at any time cancel your membership by the following options. You may either let your profile remain non-active in which your membership/profile automatically will be deleted in twelve (12) months, or you can choose to unregister yourself by accessing "my settings" and choose the tab "options". Please note that upon unregistering or if your profile remains non-active, any remaining balance will not be paid back.", and
- "if you do not wish that your membership shall be prolonged, please follow the instruction under the tab "questions & answers" in the left menu on the website. Please note that upon cancellation of your membership any remaining balance will not be paid back." or

- substantially similar terms in which there are requirements that the agreement shall be terminated in a specific procedure.

The court firstly states, that the assessment to be made concerns whether or not the terms in question are generally unfair against consumers. This may be the case, *inter alia*, if the term is contrary to mandatory or non-mandatory laws, gives the trader a benefit or deprives the consumer a right and thereby causes an imbalance between the parties' rights and obligations in a sense that a reasonable balance between the parties no longer exists. The fact that a contractual term is contrary to a general principle of law can also entail that it is unfair. The list under Directive 93/13/EEC includes terms that are generally considered unfair, according to the preparatory work to the Act (1994: 1512) on Contract Conditions in Consumer Relationships (implementing the Directive 93/13/EEC).

As the contractual terms in question are part of the defendant's user terms and conditions, they cannot be presumed to be individually negotiated and thus, they shall be assessed by the court.

#### 1) Formal requirements for termination

The defendant applies terms for how the membership can be cancelled, applying formal requirements for the termination of the agreement.

The court states that there is no legislative regulation on how these types of agreements shall be terminated. Certain guidance can however be found in e.g. other consumer protection regulations and in case law.

In preparatory works to consumer protection legislation, it has been stated, *inter alia*, that a trader cannot demand that the consumer must make a complaint in writing or withdraw from a distance contract in writing. This view is also confirmed by previous case law, stating that such terms shall be considered unfair.

The court cannot find any reason to assess the contractual term at hand in any other way than previous case law. The contractual term is thus considered unfair.

#### 2) The notice period

The defendant applies terms that provides for a notice period of 60 days.

The court states that as regard this contractual term as well, there are no legislative regulations regarding what constitutes a reasonable notice period. Thus, the question needs to be assessed based on legal provisions concerning comparable contractual relationships and case law. Upon reviewing several consumer protection laws, the court finds that notice periods are generally 30 days.

The court states that as regard this agreement, the consumer has no interest of a notice period, particularly when considering that the service at hand is not a service that consumers are dependent upon in their daily lives, and that the consumer easily can obtain new online dating subscriptions if he or she so wishes. The general principles found in consumer protection laws regarding the right to terminate the contract during the current agreement term and the notice period of one month, shall, according to the court, be the basis for the assessment of the contractual term in question.

The defendant has not shown any circumstances which implies that a longer notice period is reasonable in this case. Moreover, the court observes that many other dating service providers do not apply notice periods at all.

The court finds that a notice period of 60 days implies an imbalance between the parties, to the disadvantage of the consumer, meaning that a reasonable balance between the parties no longer exists. The contractual term is thus considered unfair.

### Decision

Whether the following standard contractual terms, which are used in relation to consumers, are considered unfair:

- 1) applying formal requirements on how to terminate the service, and
- 2) applying a notice period which is exceeding 30 days?

URL: <http://www.marknadsdomstolen.se/Filer/Avgöranden/Dom2015-3.pdf>

Full Text: [Full Text](#)

**Related Cases**

No results available

**Legal Literature**

No results available

**Result**

The plaintiff's requests were granted.

---