

Case Details

Case Details

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| National ID | MD 2009:3 |
| Member State | Sweden |
| Common Name | link |
| Decision type | Court decision in appeal |
| Decision date | 17/02/2009 |
| Court | The Market Court |
| Subject | |
| Plaintiff | The Consumer Ombudsman |
| Defendant | Abitur AB |
| Keywords | advertising, package, unfair commercial practices |

Directive Articles

Package Travel Directive, [Article 2, 1.](#) Package Travel Directive, [Article 2, 1., \(a\)](#) Package Travel Directive, [Article 2, 1., \(b\)](#) Package Travel Directive, [Article 2, 1., \(c\)](#) Package Travel Directive, [Article 2, 1.](#) Package Travel Directive, [Article 7](#)

Headnote

The omission to provide security when marketing packages, constitutes unfair marketing practices.

Facts

The defendant markets and sells packages to consumers. The marketing takes place on the internet via the defendant's website.

The defendant had for a long time failed to provide the necessary security, as required by the Legal, Financial and Public Procurement Agency (Sw. Kammarkollegiet), and had twice been ordered to provide security under the penalty of a fine.

Pursuant to the plaintiff's claim, the court has ordered a preliminary prohibition under the penalty of a fine, against the defendant's marketing of packages without security, which applies up until the final judgement by the court.

Legal issue

The court prohibits the defendant, under the penalty of a fine, to market packages without providing security under the Travel Guarantees Act.

The court finds that the investigation in the case show that the defendant markets packages pursuant to the Act on Package Tours. As such, the defendant is obliged to provide security in accordance with the Travel Guarantees Act.

The court states that the court in previous judgement has found that the marketing of packages, when omitting to provide security for the said packages, constitute unfair marketing practices.

Pursuant to item 9 in the so called black list to the Marketing Act, giving or creating the impression that it is legal to

sell a product when this is not the case, is always considered to be unfair marketing practices (despite the fact whether or not it impacts or is likely to impact the recipient). This is also in accordance with the preparatory work to the Marketing Act.

The court finds that the average consumer would generally presume that products or businesses which are marketed openly are legal and that all necessary licenses and similar exist. Therefore, the marketing of packages without the required security, creates a false impression of legality.

Decision

Does the marketing of packages, when omitting to provide security for such packages, constitute unfair marketing practices?

URL: http://avgoranden.domstol.se/Files/MD_Public/Avgoranden/Domar/Dom2009-3.pdf

Full Text: [Full Text](#)

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Result

The court ruled in favour of the plaintiff.
