

Case law**Case Details****National ID:** MD 2012:3**Member State:** Sweden**Common Name:**link**Decision type:** Court decision in appeal**Decision date:** 13/04/2012**Court:** The Market Court**Subject:****Plaintiff:** Media-Saturn Nordic Shared Services AB**Defendant:** Elgiganten Aktiebolag**Keywords:** injunction, misleading advertising**Directive Articles**Injunctions Directive, [link](#)**Headnote**

A court may not try a case for an injunction to prohibit a marketing action, when said marketing is already subject to an injunction under the penalty of a fine, although the fine has not yet been imposed.

Facts

The plaintiff previously applied for an injunction against the defendant to prohibit the defendant from continuing with certain marketing activities. In 2009, the Market Court ordered an injunction, under the penalty of a fine, against the defendant to cease certain marketing activities that breached the Swedish Marketing Act. In 2011, the plaintiff sued the defendant in the District Court to impose the fines, and the District Court imposed the fines of SEK 2,000,000. The defendant appealed the District Court's judgment and the case was, at the time of the case in question, awaiting the Supreme Court's assessment.

In the current case, the plaintiff requested that the Market Court prohibits the defendant, under the penalty of fines, to use the same marketing as the Market Court prohibited in the previous case. The marketing has taken place on the same advertising places as before but during a later time.

Legal issue

The court initially states that according to the Swedish Marketing Act, a judgement, in which an injunction has been tried, prevents that a new claim for an injunction is made for the same marketing activities.

The court states that it follows from preparatory work that the binding effect of the old case is limited to the marketing which the old case concerned. In this regard, it shall be considered whether the new marketing is made for the same business as before, if it is the same products and also considering the design of the marketing. Furthermore, it does not matter whether or not the marketing is made by the trader or an advertising agency, employee or similar. Under these circumstances, the court finds that it is to be considered as the same marketing when a trader, inter alia, continues with the same campaign, despite an injunction.

An injunction may be conditional upon fines. If this is the case and the injunction is breached, the judgement will be the basis for imposing the fines. When the fines have been imposed, and such judgement becomes legally binding, the judgement with the injunction will then lose its legal meaning. The legal force of the injunction can thereafter not hinder a later claim for an injunction concerning subsequent marketing, even if it should be the same marketing under the Marketing Act.

The marketing in question in this case concerns the same marketing. However, as there is no legally binding judgement regarding the imposing of fines from the previous injunction, the court dismisses the plaintiff's claim.

Decision

Can a court try a case for an injunction to prohibit a marketing action, when said marketing is already subject to an injunction under the penalty of a fine, although the fine has not yet been imposed?

URL: http://avgoranden.domstol.se/Files/MD_Public/Avgoranden/Domar/Beslut2012-3.pdf

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Result

The Court dismissed the claim.