

Case law

Case Details

National ID: MD 2009:8

Member State: Sweden

Common Name: link

Decision type: Court decision in appeal

Decision date: 29/04/2009

Court: The Swedish Market Court (Stockholm)

Subject:

Plaintiff: The Consumer Ombudsman

Defendant: Fordonsvärderingen i Skåne AB

Keywords: information obligation, internet, misleading omissions, price information, right of cancellation, right of withdrawal

Directive Articles

Unfair Commercial Practices Directive, [Chapter 2, Article 5, 1](#). Unfair Commercial Practices Directive, [Chapter 2, Article 5, 2](#). Unfair Commercial Practices Directive, [Chapter 2, Article 5, 4., \(a\)](#) Unfair Commercial Practices Directive, [Chapter 2, Section 1, Article 6, 1](#).

Headnote

(1) It is not sufficient to display information about pricing and about the right of withdrawal on a separate web page, that is only accessible through a hyperlink that is printed in a small font.

(2) Information about the right of withdrawal is considered essential information. Failing to make this information easily available, constitutes a misleading omission.

(3) It is misleading to offer a consumer the possibility to cancel his/her right of withdrawal during the execution of the agreement.

Facts

The defendant marketed and sold valuation services of vehicles to consumers (i.e., providing consumers with the possibility to receive an assessment of the current value of their car) through a webpage. The marketing was made through two different websites, where the consumers also placed their orders.

The defendant's website did not explain that the consumer was entitled to a right of withdrawal (To consult information about the right of withdrawal, the consumer had to find the hyperlink "prices and terms", which was set forth in a very small font). However, the website nevertheless provided the consumer with the opportunity to cancel his right of withdrawal before the valuation had been started (i.e., to allow the consumer to indicate on the website that he/she wants to waive his/her legal right to exercise the right of withdrawal).

The plaintiff requested the defendant to be ordered to provide information on price and on the right of withdrawal.

The plaintiff further argued that the defendant must be prohibited to mislead consumers regarding their ability to cancel the right of withdrawal.

Legal issue

The court stated that it had in several of its earlier cases concluded that it is of high importance for the evaluation of marketing campaigns how such marketing is perceived by the recipients at first glance.

(1) For the case at hand, the court stated that it was evident that the consumer had to observe the website for some time, in order to fill out the information required and start the valuation. However, according to the court, this circumstance should not be interpreted as if the consumer would be scrutinising the marketing material on the website, as the consumer's attention was focused on the text boxes to be filled out. Consequently, it could not be assumed that the consumer would pay any special attention to the contents of the marketing.

(2) The court also stated that in order to provide information on price in a clear way on the Internet, the price information should be easy to locate and easy to grasp.

At the defendant's web site, the price information was provided at the top of the start page of the web page. There was no price information indicated in connection to the text boxes, and neither was there any clear information explaining that the consumer, by pressing the "OK" button, committed to pay any fee. The web page that appeared after the order had been made was similar to the start page, but did not set forth any information on price.

The only indication of such information was the existence of a small link labeled "prices and terms" which was displayed at the web site. According to the court, most consumers would likely not have noticed this link.

Consequently, according to the court, the consumer was not informed about any applicable price or payment terms when filling out the text boxes.

(3) The defendant's website did not explain that the consumer was entitled to a right of withdrawal. To consult information about the right of withdrawal, the consumer had to find the hyperlink "prices and terms", which was set forth in a very small font.

The court pointed out that any consumer not grasping the fact that there was a charge for the valuation, would naturally not even look for any information regarding the right of withdrawal. Neither was the consumer informed about the existence of this right when filling out the text boxes. Accordingly, the court found that the information on right of withdrawal had not been provided in accordance with Swedish law.

The court additionally pointed out that Swedish legislation considers the right of withdrawal to be essential. Since this assumption is made by law, the court stated, it is generally considered to be an unfair commercial practice when neglecting to inform the consumer about the right of withdrawal. The court thus found the defendant guilty of a misleading omission.

(4) Finally, the court also evaluated the fact that the website provided the consumer with the opportunity to cancel his/her right of withdrawal before the valuation has been started. Because information about the right of withdrawal had not been provided in accordance with Swedish law, the court found the possibility to cancel the right of withdrawal to be non-compliant with Swedish law: "The incorrect information concerns the right of withdrawal which is a central part of the consumer protection regulation. Since the consumers have been misled regarding the conditions of the right of withdrawal, it is likely that the misleading information is affecting the consumers' transactional decisions." Hence, the information that was provided was considered to be misleading and unfair.

Decision

(1) Is it sufficient on a website to display price information on a separate web page that is only accessible through a small-font hyperlink at the bottom of the page?

(2) Is it sufficient on a website to display information about the right of withdrawal on a separate web page that is only accessible through a small-font hyperlink at the bottom of the page?

(3) Is it possible for a consumer to cancel his/her right of withdrawal during the execution of the agreement?

URL: <http://www.marknadsdomstolen.se/avgoranden/avgoranden2009/Dom2009-8.pdf>

Full text: [Full text](#)

Related Cases

No results available

Legal Literature

No results available

Result

The plaintiff's requests were granted.