

Case law

Case Details

National ID: Forbrugerombudsmandens afgørelse i sag 10/07422

Member State: Denmark

Common Name: The Consumer Ombudsman's decision in case 10/07422

Decision type: Administrative decision, first degree

Decision date: 01/01/2010

Court: The Consumer Ombudsman

Subject:

Plaintiff: Unknown

Defendant: Unknown

Keywords: consumer, information requirements, misleading commercial practices, right of withdrawal

Directive Articles

Unfair Commercial Practices Directive, [Chapter 1, Article 2](#), (i) Unfair Commercial Practices Directive, [Chapter 2, Article 5, 2.](#), (a) Unfair Commercial Practices Directive, [Chapter 2, Article 5, 2.](#), (b) Unfair Commercial Practices Directive, [Chapter 2, Section 1, Article 6, 1](#). Unfair Commercial Practices Directive, [Chapter 2, Section 1, Article 6, 1.](#), (b) Unfair Commercial Practices Directive, [Chapter 2, Section 1, Article 7, 2](#). Unfair Commercial Practices Directive, [Chapter 2, Section 1, Article 7, 4.](#), (e)

Headnote

(1) It is misleading to market a product as "free" if it requires any purchase in order to enjoy it.

(2) An online store is considered an invitation to purchase.

(3) It is a violation of good marketing practices to include a term allowing a trader to keep the account details of a consumer in order for the consumer to make a purchase without using a code in the trader's terms and conditions.

Facts

An online game store marketed several games (primarily to children and adolescents) as "free" even though the customers had to purchase additional programmes for as much as 700 kr. each in order to play them. Furthermore, the game store did not inform the customers of their right of withdrawal but had included a term in their 42-page terms and conditions in English that stated that the game store kept the account details of the customer so that the customer could make a purchase within 15 minutes without using a code.

Legal issue

The Consumer Ombudsman stated that products marketed as "free" have to be completely free and that it is an aggravating circumstance if the product is marketed to children and adolescents. Furthermore, the online store had to be considered an invitation to purchase, which required the trader to inform the consumers of their right of withdrawal in accordance with Section 12(a)(1)(5) (now Section 6(2)(5)) of the Good Marketing Practices Act.

Moreover, the term that allowed the trader to keep the account details of a consumer in order for the consumer to make a purchase without using a code within 15 minutes in the trader's terms and conditions was such a significant term that it required express, informed consent in order to be valid. Consequently, it was a violation of good marketing practices to include it in a 42-page document in English.

Decision

(1) Is it misleading to market a product as "free" if it requires a purchase in order to enjoy it?

(2) Can an online store be considered as constituting an invitation to purchase?

(3) Is it a violation of good marketing practices to include a term allowing a trader to keep the account details of a consumer in order for the consumer to make a purchase without using a code in the trader's terms and conditions?

URL: <http://www.forbrugerombudsmanden.dk/Find-sager/Markedsfoeringsloven/Sager-efter-markedsfoeringsloven/boernogunge/Boerns-koe-b-af-spil-via-mobiltelefon>

Full text: [Full text](#)

Related Cases

No results available

Legal Literature

No results available

Result

The trader changed its terms and conditions to require a code in order to make the first purchase of an additional service in relation to a game and highlighted the term in the terms and conditions. Additionally, the trader created a "parent guide", which provided the parents with information on how to avoid unintended purchases, and reimbursed about 450.000 kr. to approximately 85 parents of children who had made purchases using their parents credit cards.