

Issued by: Riigikogu
Type of Act or document: Act
Type of text : original text
Date of entry into force : 12.12.2007
This version valid until:

Promulgated
by Decision No 182 of the President of the Republic dated 7
October 2007

ACT AMENDING THE CONSUMER PROTECTION ACT AND THE LAW OF OBLIGATIONS ACT

Passed on 11 October 2007

I. The Consumer Protection Act (RT I 2004, 13, 86; 2005, 71, 547) is amended as follows:

§ 1. Sections 2(3) and (4) are amended and worded as follows:

“3) “goods” means an article or a right offered, sold or marketed in any other manner by a trader;

4) “service” means a benefit offered, sold or marketed in any other manner by a trader which does not consist of goods;”.

§ 2. Section 4 is amended by adding subsection (9) worded as follows:

“(9) The provisions laid down in Sections 5–7 of this Act shall be applicable for goods offered as movable property.”

§ 3. Section 8(4) is repealed.

§ 4. In Section 9:

1) subsection (2) is amended and worded as follows:

“(2) Requirements for the safety of goods and services, and the obligations and liability of producers and traders thereof are laid down in the Product Safety Act and other legislation.”;

2) subsection (3) is repealed.

§ 5. Section 10 is amended and worded as follows:

“§ 10. Warranty on goods or services

The word “*garantii*” [warranty] or any other word with the same meaning may be used in any form or any word combination when offering goods or services only if the meaning of the word is in compliance with the provisions concerning warranties against defects or the contractor’s guarantee as laid down in the Law of Obligations Act or the construction guarantee as laid down in the Building Act.”

§ 6. Section 11 is amended by adding subsection (5) worded as follows:

“(5) The provisions laid down in this Section shall be applicable to goods which are offered as movable property.”

§ 7. The title of Division 2 of Chapter 3 of this Act is amended and worded as follows:

**“Division 2 Commercial practices related to the transactions
between trader and consumer”.**

§ 8. Section 12 is amended and worded as follows:

“§ 12. Commercial practices

(1) For the purposes of this Act, “commercial practices” means any activities or action, any absence of action or manner of presentation, commercial announcement which includes advertising, and marketing which are directly related to the advertising, offering, sale or delivery of goods and services to the consumer.

(2) The provisions laid down in this division regarding commercial practices shall not affect the application of legal acts regulating private law. Violation of the unfair commercial practice prohibition shall not in itself signify the cancellation of this transaction.

(3) The provisions regarding commercial practices as laid down in this division shall not affect the application of these legal acts which establish first and foremost the following:

- 1) health protection or safety requirements for goods or services or the provision and marketing of goods or services;
- 2) the requirements for the verification of the assay of precious metal or precious metal products and marking thereof;
- 3) the foundation requirements for an undertaking, the procedure for granting and registering licences which are required for operating in certain fields of activity, and the requirements laid down for professions.”

§ 9. Sections 12¹–12⁵ are added to the Act worded as follows:

“§ 12¹. Prohibition on the use of unfair commercial practices

(1) The offering and sale of goods and services to consumers, or the marketing of such goods or services in any other manner, shall follow good trade practice and be honest with regard to consumers. The offering of goods or services shall be planned and carried out in such a manner whereby the commercial purpose of the offer is clear to consumers.

(2) The use of dishonest trading methods shall be prohibited before, during and after the performance of the transaction related to the goods or services.

§ 12². Unfair commercial practices

(1) A commercial practice shall be deemed to have acted in an unfair manner if it contradicts the requirements for diligence normally followed by the trader’s business or professional activities (hereinafter referred to as professional diligence) and materially distorts or is likely to materially distort economic behaviour with regard to the product of the average consumer whom the goods or products reach or to whom it is directed.

(2) The average consumer mentioned in subsection (1) of this Section shall be a consumer who is reasonably well-informed and reasonably observant and circumspect, taking into account social, cultural and linguistic factors. If a commercial practice is aimed at a certain group of consumers, the average consumer shall be an average member of that consumer group.

(3) A commercial practice that is only likely to materially distort the economic behaviour of such consumer groups who, due to their age, physical or mental infirmity or credibility, are particularly susceptible to a commercial practice or to the underlying goods or services in such a way that the trader can reasonably foresee, should be assessed from the point of view of the influence of the practice on an average member of that group.

(4) The provisions of subsection (3) of this Section shall not be applicable for the general and legal tradition of advertising in presenting exaggerated statements or statements that are not to be taken literally.

(5) In the case of the professional diligence of a trader as mentioned in subsection (1) of this Section, the level of skills and care the use of which for consumers may be reasonably expected from the trader and which is in compliance with the principles of good trading practice and good faith, shall be taken as a basis.

(6) Upon assessing due conformity with the requirements for the professional diligence of a trader, the codes of conduct followed in the trader’s business or professional activities may be used. A code of conduct is a certain set of rules or an agreement describing the behaviour of a trader in business or professional activities that has not been established by a legal act, and which the trader who has joined such a code is obliged to follow. The compiler of a code of conduct, including any individual trader or group of traders, may foresee the necessity to control the activities of traders who have undertaken to observe a code of conduct and assist in setting claims which are related to their activities.

(7) Material distortion of the economic behaviour of consumers shall be considered as the use of a commercial practice which significantly decreases the consumer’s opportunities to make a conscious choice and thereby influence the consumer in making a decision which involves a transaction which they would otherwise not have made.

(8) The decision to make a transaction as mentioned in subsection (7) of this Section shall be a decision which has been made by a consumer regarding whether to perform a transaction or withdraw from it. The decision shall also cover under which conditions the transaction should be performed, including: whether to buy and under which conditions; whether to pay for the purchase in full or in instalments; whether to keep the goods or services or surrender them; or whether to use contractual rights with regard to the goods or services.

(9) First and foremost, unfair commercial practises shall be deemed to be any commercial practice which misleads the consumer or is aggressive towards them.

§ 12³. Misleading commercial practices

(1) A misleading commercial practice shall be both a misleading action and any inaction which is also misleading.

(2) A commercial practice shall be deemed to have been misleading if the information presented with it is incorrect or if the manner of presentation for factually correct information deceives or is likely to deceive an average consumer and due to this influence an average consumer takes the decision to make a transaction that they would not have otherwise made. Information shall be deemed to be incorrect if it includes false information regarding one or several of the following circumstances:

- 1) the existence or nature of the goods or services;
- 2) the main characteristics of the goods or services;
- 3) the extent of the trader’s commitments, the motives for the commercial practice and the nature of the sales process, any statement or

symbol in relation to direct or indirect sponsorship, or the approval of the trader or the goods or services;

4) the price, or the manner in which the price is calculated, or the existence of a specific price advantage;

5) the need for a service, part, replacement or repair;

6) the nature, attributes and rights of the trader or their agent, including the trader's name and legal status, their assets, qualifications, status, approval, affiliation or connection and ownership of industrial, commercial or intellectual property rights, or their awards and distinctions;

7) the consumer's rights, including the right to request a replacement or reimbursement pursuant to the Law of Obligations Act.

(3) The main characteristics of goods or services mentioned in indent 2) of subsection (2) of this Section shall, among other things, cover the following:

1) availability;

2) the benefits arising from such goods or services;

3) the risks attached to such goods or services;

4) the execution of such goods or services, and their composition and accessories;

5) their method and time of manufacture or provision;

6) the purpose and manner of their use;

7) their amount;

8) their description and origin;

9) the benefits expected from using such goods or services;

10) the results and material features of tests or checks which have been carried out on the goods;

11) the conditions for delivery;

12) the after-sales services and the procedure for settling possible claims.

(4) A commercial practice shall also be deemed to be misleading if, due to its impact in a specific situation, and considering all the circumstances of the commercial practice, an average consumer makes, or is likely to make, a decision to make a transaction which they would not have otherwise made, and where the following is related to such a commercial practice:

1) the manner in which goods and services are marketed, including the use of comparative advertising, which may cause confusion in relation to the goods or services, trademarks, business names and other distinctive characteristics of a competitor;

2) failure to perform an obligation which is included in the code of conduct by a trader who is obliged to follow the code, if the trader refers to their affiliation with the code of conduct.

(5) The provisions of indent 2) of subsection (4) of this Section shall not be considered as misleading commercial practices if an obligation which is included in the code of conduct cannot be followed precisely but is an aspiration and the following of it cannot be established.

(6) A commercial practice is also deemed to be misleading when, considering all the circumstances of the commercial practice and limitations in the means of communication, it does not reveal in a specific situation important information that an average consumer needs in order to make an informed decision on making a transaction if significant information has been concealed or has been presented unclearly, incomprehensibly, ambiguously, at an incorrect time, or if the commercial purpose of the commercial practice has not been mentioned, if the latter is not revealed by the context and due to its influence an average consumer makes or is likely to take the decision to make a transaction which they would not have otherwise made.

(7) If the means of communication which is used for disseminating information sets limitations as to the location or time, only a part of the important information can be disseminated through this means, provided that the trader shall make the information which has not been disseminated available for the consumer in another manner.

(8) The following commercial practices shall always be considered misleading and are prohibited:

1) falsely claiming that the trader is a signatory to the code of conduct;

2) falsely claiming that the code of conduct has been approved by a public law institution or any other institution;

3) displaying a trust mark, quality mark or equivalent without having obtained the necessary authorisation;

4) falsely claiming that a trader, their commercial practices, or the goods or services offered by them have been approved, endorsed or authorised by a public or private body or making such a claim without complying with the terms of the approval, endorsement or authorisation;

5) making an invitation to purchase goods or services at a specified price without disclosing the existence of any reasonable grounds the trader may have for believing that he will not be able to offer for supply or to procure another trader to supply those goods or services or equivalent goods or services at that price for a period that is, and in quantities that are, reasonable having regard to the product, the scale of advertising for the product and the price offered (bait advertising);

6) making an invitation to purchase goods or services at a specified price and then refusing to show the advertised item to consumers or demonstrating a defective sample of such an item, or refusing to take orders for such an item or deliver it within a reasonable time with the intention of promoting a different product (bait and switch);

7) falsely stating that goods or services will only be available for a very limited time, or that they will only be available on particular terms for a very limited time, in order to elicit an immediate decision and deprive consumers of sufficient opportunity or time to make an informed choice;

8) undertaking to provide after-sales service to consumers with whom the trader has communicated prior to a transaction in a foreign language and then making such a service available only in another language without clearly disclosing this to the consumer before the consumer is committed to the transaction;

9) stating or otherwise creating an impression that the goods or services can be legally sold when they cannot;

10) presenting rights given to consumers in law as a distinctive feature of the trader's offer;

11) using editorial content in the media to promote the sales of goods or services when the trader has paid for the promotion without making that clear in the content or by images or sounds clearly identifiable by the consumer (advertorial);

12) materially inaccurate claims regarding the nature and scope of such a risk that threatens safety of the consumer or their family if the consumer is not purchasing the goods or services;

13) promoting a product which is similar to another product which itself is manufactured by a rival manufacturer in such a manner as to deliberately mislead the consumer into believing that the product is made by that same manufacturer when it is not;

14) establishing, operating or developing such sales schemes which require the consumer to pay for the possibility of gaining benefits, mainly through drawing other consumers into the system by means other than via the sale or consumption of goods or services (pyramid sales scheme);

15) claiming that the trader is about to cease trading or move premises when they are not;

- 16) claiming that the goods or services are able to facilitate the winning of games of chance;
- 17) falsely claiming that a product is able to cure illnesses, dysfunction or malformations;
- 18) passing on materially inaccurate information on market conditions or on the possibility of finding the goods or services with the intention of inducing the consumer to acquire the goods or services at conditions which are less favourable than normal market conditions;
- 19) claiming to offer prizes without actually passing over the prizes described or prizes which are reasonably equal;
- 20) describing goods or services as "free", "without charge", or any similar phrase if the consumer has to pay anything other than the unavoidable costs involved in responding to such a commercial practice and collecting or paying for the delivery of the item;
- 21) Including an invoice or similar document in marketing materials which seeks payment, therefore giving the consumer the impression that they have already ordered the goods or services that were marketed when this is clearly not the case;
- 22) falsely claiming or creating the impression that the trader is not acting for purposes relating to his trade, business, craft or profession, or falsely representing oneself as a consumer;
- 23) creating the false impression that after-sales service in relation to the goods or services is available in another member state as well as in Estonia.

§ 12⁴. Material information on an invitation to purchase

- (1) An "invitation to purchase" means a commercial communication forwarded by the trader which indicates the characteristics of the goods and services and the price in a way which is appropriate to the means of the commercial communications used and thereby enables the consumer to make a purchase.
- (2) The material information mentioned in Section 12³(6) of this Act, in the case of an invitation to purchase, the following information shall be material, if not already apparent from the context:
 - 1) the main characteristics of the goods or services, to an extent appropriate to the medium and the goods or services;
 - 2) the geographical address and the identity of the trader, such as their trading name and, where applicable, the geographical address and identity of the trader on whose behalf they are acting;
 - 3) the price of the goods or services, including tax, or the bases for the calculation of the price if the price cannot be calculated in advance due to the nature of the goods or services;
 - 4) transportation, postage or delivery costs which are not included in the price or information that such costs cannot be calculated in advance;
 - 5) the procedure for the payment of goods or services;
 - 6) the procedure for the delivery of goods or the fulfilling of orders and settling of claims if this differs from the requirements of the professional diligence of the trader;
 - 7) a reference to the availability of the respective rights in the case of a transaction from which it is possible to withdraw or which can be cancelled.
- (3) In addition to the information laid down in subsection (2) of this Section, information materials are established by a European Union legal act for an invitation to purchase which shall also be classed as information where it bears such requirements in its presentation when marketing or advertising goods or services.

§ 12⁵. Aggressive commercial practices

- (1) A commercial practice shall be regarded as aggressive if, in its factual context and taking into account all its features and circumstances, it significantly impairs or is likely to significantly impair the average consumer's freedom of choice or conduct by means of harassment, coercion, including the use of physical force, or undue influence with regard to goods or services and thereby causes the consumer or is likely to cause them to take a decision on making a transaction that they would not otherwise have taken.
- (2) The undue influence mentioned in subsection (1) of this Section is classed as the abusing of a stronger position on behalf of the trader in forcing the consumer in a way that significantly restricts the consumer's opportunity to make an informed choice. Forcing the consumer in such a manner can also take place without using physical force or without using a threat to apply such force.
- (3) In determining whether a commercial practice uses harassment, coercion - including the use of physical force, or undue influence, account shall be taken of the following:
 - 1) the timing, location, nature or persistence of the commercial practice;
 - 2) the use of threatening or abusive language or behaviour;
 - 3) exploitation by the trader of any specific misfortune or circumstance of such gravity as to impair the consumer's judgement, of which the trader is aware, in order to influence the consumer's decision in regard to the goods or services;
 - 4) any onerous or disproportionate non-contractual barriers imposed by the trader where a consumer wishes to exercise their rights under the contract, including their rights to terminate a contract or to switch to other goods or services or to another trader;
 - 5) any threat to take any action that cannot be legally taken.
- (4) The following commercial practices shall always be considered aggressive and are prohibited:
 - 1) Creating the impression that the consumer cannot leave until a contract is formed;
 - 2) conducting personal visits to the consumer's home, ignoring the consumer's request to leave, or not to return except in circumstances and to the extent justified under national law, or to enforce a contractual obligation;
 - 3) making persistent and unwanted solicitations by telephone, fax, e-mail or other remote media except in circumstances and to the extent justified under national law in order to enforce a contractual obligation;
 - 4) requiring that a consumer who wishes to claim on an insurance policy to produce documents which could not reasonably be considered to be relevant as to whether the claim was valid, or failing systematically to respond to pertinent correspondence, in order to dissuade a consumer from exercising their contractual rights;
 - 5) including in an advertisement a direct exhortation to children to buy advertised products or persuade their parents or other adults to buy advertised products for them;
 - 6) demanding immediate or deferred payment for, or the return or safekeeping of, goods or services which are supplied by the trader, but not solicited by the consumer except where the product is a substitute supplied pursuant to Section 99(3) of the Law of Obligations Act (the sale of goods not ordered);
 - 7) explicitly informing a consumer that if they do not buy the goods or services, the trader's job or livelihood will be in jeopardy;
 - 8) creating a false impression that the consumer has already won, will win, or will win upon the carrying out of any particular act, a prize or other equivalent benefit, when in fact either there is no prize or other equivalent benefit, or the taking of any action in relation to claiming such

a prize or other equivalent benefit is subject to the consumer paying money or incurring a cost.”

§ 10. Section 17(2)8 is amended and worded as follows:

“8) demand through the county courts that the application of standard terms and dishonest trading methods which cause unfair harm to the collective interests of consumers be prohibited and that any other activities which violate consumer rights be terminated.”

§ 11. Section 29(1) is amended and worded as follows:

“(1) The committee has the right to terminate proceedings concerning a complaint if any of the following apply:

- 1) it becomes evident during the hearing of the complaint that settlement of the complaint does not fall within the competence of the committee;
- 2) it is not possible to settle the complaint on the basis of the evidence submitted as it requires thorough investigation and the hearing of witnesses;
- 3) the parties which are in dispute with one another achieve an agreement before a meeting of the committee takes place, during such a meeting, or the period between the meetings;
- 4) the consumer surrenders the claim.”

§ 12. Subsection (3¹) is added to Section 41 worded as follows:

“(3¹) The Director General of the Consumer Protection Board or an official authorised by them may issue precepts and require a trader to halt a dishonest method of trading, or if the method of trading has not yet been used but is planned to be used, to require them to avoid using such a method.”

§ 13. Sections 43 and 44 are repealed.

§ 14. Section 47¹ is added to the Act worded as follows:

“§ 47¹. Violation of the prohibition to use unfair commercial practices

(1) The violation of the prohibition to use unfair commercial practices by a trader is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal entity, is punishable by a fine of up to 50,000 kroons.”

§ 15. Section 48 is amended and worded as follows:

“§ 48. Procedure

(1) The provisions of the General Area of the Penal Code and of the Code of Misdemeanour Procedure apply to those misdemeanours provided for in Sections 45–47¹ of this Act.

(2) The following bodies shall conduct extra-judicial proceedings concerning the misdemeanours provided for in Sections 45–47¹ of this Act:

- 1) the Consumer Protection Board;
- 2) the Health Protection Inspectorate;
- 3) rural councils and city authorities.

(3) The body which conducts extra-judicial proceedings concerning the misdemeanours provided for in

Section 47¹ shall be the Consumer Protection Board.”

§ 16. A draft note worded as follows is added to the Act:

“¹ Directive 2005/29/EC of the European Parliament and the Council dated 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and the Council and Regulation (EC) No 2006/2004 of the European Parliament and the Council (“Unfair Commercial Practices Directive”) (OJ L 149, 11.06.2005, p 22–39).”

II. § 17. Amendment of the Law of Obligations Act

A second sentence is added to Section 99(1) of the Law of Obligations Act (RT I 2001, 81, 487; 2005, 61, 473) worded as follows:

“The silence or inaction of the consumer is not taken as a basis for the consent of the consumer.”

III. § 18. Entry into force of the Act

This Act enters into force on 12 December 2007.

