

**THE DANISH INSTITUTE FOR HUMAN RIGHTS' REPLY TO  
QUESTIONNAIRE ON THE IMPACT OF ADVERTISING AND  
MARKETING PRACTICES ON THE ENJOYMENT OF CULTURAL  
RIGHTS**

J. NR. 540.10/30397/DERA

1. *Has your country adopted specific regulations on advertising and marketing methods and contents aimed at protecting human rights? If so, please specify the content of such regulation. Does the regulation apply both to off-line and on-line advertising?*

27. FEBRUAR 2014

The Consumer Ombudsman uses the ICC code in connection with the general clause on good marketing practice, section 1 of the Marketing Practices Act.<sup>1</sup> The general clause on good marketing practice is interpreted wide and has by the Consumer Ombudsman also been interpreted to cover discrimination on the ground of age<sup>2</sup>, gender<sup>3</sup> and racial or ethnic origin<sup>4</sup> both in regards to off-line and on-line advertising.

The protection, cf. section 6 of the Danish Marketing Practices Act of consumers in respect of unsolicited communication reflects the principles set out in Articles 8 and 10 of the European Convention on Human Rights; whereas the consumer's right to privacy, particularly as regards to freedom from certain particularly intrusive means of communication, should be recognized. Section 6 only stipulates that a trader must not approach possible consumers using electronic mail, automated calling system or telefax for the marketing of goods etc.

Violation of some the provisions of the Danish Marketing Practices Act are punishable by fine, although a more severe penalty may be imposed for the same act under other laws. Violations of section 3 on misleading information as well as section 4 on covert advertising and section 8 concerning marketing targeted to children and young people are punishable by fine.

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<sup>1</sup> Consolidated Marketing Practices Act no. 1216 of 25 September 2013 (Bekendtgørelse af lov om markedsføring).

<sup>2</sup> The Consumer Ombudsman, "Credit rating- discrimination because of age", case no. 09/04136 and 09/04174. Available in Danish at: [www.forbrugerombudsmanden.dk/Sager-og-praksis/Markedsfoeringsloven/Sager-efter-markedsfoeringsloven/diskrimination/Kreditvurdering--spoergsmaal-om-diskrimination-som-foelge-af-alder](http://www.forbrugerombudsmanden.dk/Sager-og-praksis/Markedsfoeringsloven/Sager-efter-markedsfoeringsloven/diskrimination/Kreditvurdering--spoergsmaal-om-diskrimination-som-foelge-af-alder)

<sup>3</sup> The Consumer Ombudsman, "Underwear Advertising crossed the line", case no. 08/02166. Available in Danish at: [www.forbrugerombudsmanden.dk/?SC\\_itemid=fcc6f922-cd07-49b5-87ee-626e32a0dda3#](http://www.forbrugerombudsmanden.dk/?SC_itemid=fcc6f922-cd07-49b5-87ee-626e32a0dda3#)

<sup>4</sup> The Consumer Ombudsman, "Now there are no wogs..", case no. 2000-989/5-578. Available in Danish at: [www.forbrugerombudsmanden.dk/?SC\\_itemid=fe99ecb8-65a8-4883-9b9c-cb088ff45f43#](http://www.forbrugerombudsmanden.dk/?SC_itemid=fe99ecb8-65a8-4883-9b9c-cb088ff45f43#)

According to section 9 paragraph. 2 of Executive Order No. 801 of 21 June 2013 on advertising and sponsorship of programs on radio, television and on-demand audiovisual media services and in partnerships (Advertising Order) must advertising on radio and television not undermine the respect for human dignity or include or promote any discrimination on the basis of racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation.

Spamming has since June 2000 been forbidden under the Marketing Practices Act.<sup>5</sup> The implementation of Article 13 of the EU Privacy and Electronic Communications Directive,<sup>[35]</sup> transposed to Danish legislation on June 10, 2003, changed Denmark's legal data protection framework on spam. According to the Directive, people who have already given their address to companies can now be spammed with advertisements for "similar services" ("soft opt-in"), which the Marketing Practices Act had not previously allowed.

The Danish Consumer Ombudsman has published guidelines for industry regarding the Marketing Practices Act Section 6a and spamming. Furthermore, The Danish Consumer Ombudsman has established e-mail addresses, where consumers can file complaints regarding spam.<sup>6</sup>

*2. Please indicate whether specific categories of the population are protected by such regulation, such as children, women, minorities and indigenous peoples.*

Section 8(1) of the Danish Marketing Practices Act requires businesses targeting children and young people to take special care not to exploit the natural credulity of children and young people, and their lack of experience and critical sense which makes them very susceptible to influence.

This provision means that a violation of any of the other provisions is all the more aggravating when it comes to children and young people.

Marketing concepts should not employ means such as unrealistic and distorted beauty or body ideals. The use of such means in commercial communication directed at children and young people is likely to have a very negative influence on their self-confidence and self-respect. Display of sex and sexual undertones must also be avoided. It may affront the natural modesty of these age groups and introduce them to a whole new social world, which they are not qualified to navigate.

The provision in section 8 (2) is aimed at eliminating aggravating and intrusive forms of marketing. Visual marketing media depicting children and young people playing on railway tracks or leaping on a carriage at

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<sup>5</sup> Consolidated Marketing Practices Act no 1216 of 25 September 2013 (Bekendtgørelse af lov om markedsføring) Section 6a(1).

<sup>6</sup> The Guidelines can be downloaded (in Danish) at: [www.forbrug.dk](http://www.forbrug.dk).

full speed is not legal. Such depictions could inspire children and young people to do similar or other dangerous things.

Magazines whose primary target group is children and young people should not contain advertisements featuring alcohol; nor should alcoholic beverages be promoted in connection with children's films in the cinema. Finally, alcohol should not appear in conjunction with marketing campaigns for other products. Alcohol is not an acceptable means to boost the sales of e.g. youth travels.

Section 8 of the Marketing Practices Act does not establish an absolute definition regarding age criteria and children and young people. The explanatory notes refer to children and young people as a group of people below 18 years of age. The trader must assess the scope and target group of individual marketing campaigns: commercial communication directed to small children is subject to a different evaluation that advertising targeted at teenagers.

Article 14 of the International Code of Advertising Practices remains a suitable vantage point when determining the scope of the principles of good marketing practices with regard to children.

*3. Is advertising covered by the general provisions on freedom of expression and/or does your country differentiate between commercial speech and non-commercial speech? Do specific regulations distinguish between advertising and other contents, and if so, which are the criteria used to make this distinction?*

Freedom of expression also applies to advertising and other commercial purposes.

The authorities can regulate advertising, but control with advertising copies must be carried out subsequently. It would be a violation of the Danish Constitution's prohibition against censorship if an authority demanded that advertising copies had to be subject to previous approval.

Section 266 b) of the Danish Criminal Code<sup>7</sup> provides that: 1) Any person who, publicly or with the intention of wider dissemination, makes a statement or imparts other information by which a group of people are threatened, insulted or degraded on account of their race, colour, national or ethnic origin, religion or sexual inclination shall be liable to a fine or imprisonment for any term not exceeding two years; 2) when the sentence is meted out, the fact that the offence is in the nature of propaganda activities shall be considered an aggravating circumstance.

According to section 9 paragraph 2 of Executive Order No. 801 of 21 June 2013 on advertising and sponsorship of programs on radio, television and on-demand audiovisual media services and partnerships (the Advertising Order) must advertising on radio and television not undermine the respect for human dignity or include or promote any discrimination on the basis of racial or ethnic origin, nationality, religion

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<sup>7</sup> The Danish Criminal Code no. 1028 of 22 August 2013 (Bekendtgørelse af straffeloven).

or belief, disability, age or sexual orientation. Identification of advertisement must be clearly recognizable as an advertisement in whatever form and medium in which it appears.<sup>8</sup>

Act on Radio and Television Broadcasting bans advertising on trade unions, religious movements, political parties, political movements as well as elected members or candidates for political gatherings in the television.<sup>9</sup> Outside the ban is advertising on television for books, newspapers, magazines etc. as long as the advertisement does not use a political message in the marketing.

*4. Please provide a brief summary of any important decisions relating to advertising/ marketing/ sponsoring and human rights adopted by judicial authorities in your country over the last ten years.*

In March 2005, the Danish Maritime and Commercial court convicted the mobile phone company Debitel Denmark for spamming. The company was imposed a fine of € 269,000 (DKK 2.000.000) for sending out unsolicited advertising material. In Denmark, this is the largest fine ordered up till now for spamming. Debitel Denmark had sent between 12.000 text messages and 36.000 e-mails advertising for products. The level of the fine was also based on other violations of the Marketing Practices Act.

*5. Which authority (governmental and/or self-regulatory body) monitors the advertising sector? Are specific mechanisms in place to receive complaints from citizens on advertising methods and content?*

#### Danish Consumer Ombudsman institution

The Danish Consumer Ombudsman institution (DCO) was founded in 1975. The Consumer Ombudsman is appointed for a period of 6 years by the minister responsible for business and consumer affairs. The institution is an independent authority, which means that the Ombudsman can prioritise the institution's work and activities according to resources and needs in accordance with the Danish Marketing Practices Act.

The DCO also supervises compliance with the Danish Act on Payment Services, the Act on Legal Counselling, the E-commerce Act, the Ban on Tobacco Advertising Act as well as a number of civil law provisions following from other consumer protection legislation.

The DCO investigates specific and individual complaints as well as cases of a wider public importance concerning marketing activities and

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<sup>8</sup> Consolidated Marketing Practices Act no 1216 of 25 September 2013 (Bekendtgørelse af lov om markedsføring) section 4.

<sup>9</sup> Act on Radio and Television Broadcasting no. 1188 of 23 September 2013 (Bekendtgørelse af lov om radio- og fjernsynsvirksomhed).

advertisement. The DCO does not, however, settle individual disputes between consumers and traders, but can negotiate settlements on behalf of consumers.

Most complaints and enquiries come from consumers, but interest organisations, traders, law firms etc. also make up a substantial part of the incoming queries.

When investigating complaints, the DCO takes the following aspects into consideration: the relevancy of the complaint, i.e. does the core of the problem affect many consumers, and has it resulted in many complaints; the gravity of the case for the individual consumer and the generality of the problem, i.e. whether the problem cuts across different trades or sectors.

In 2012 the DCO received a total of approximately 6,000 written complaints and enquiries. The number of complaints in 2013 is not yet available.

The DCO also issues guidelines and guidance papers concerning specific or more general marketing issues on a regular basis, and traders can obtain an advance indication concerning the legality of contemplated marketing activities.

The DCO is invested with legal powers to handle infringements in court.

The DCO is authorised by law to bring civil and criminal actions on behalf of complainants, but he may also request the police to initiate investigation and prosecution to bring a charge against a trader. Further, the DCO has the authority to issue an interim injunction in situations where it is crucial to sustain a case against a trader as awaiting a court order would otherwise make the whole purpose of bringing an action for injunction fail.

Finally, the DCO has access to bring collective redress actions on behalf of groups of consumers.

### The Danish Competition and Consumer Authority

The Danish Competition and Consumer Authority is responsible for enforcing a number of consumer protection laws. The Authority supports the interaction between consumers and businesses in order to make markets work well and to create growth and high consumer welfare. The Authority contributes to the development of new consumer policy and regulation, considers consumer complaints, analyse markets and communicate information regarding consumers to consumers and businesses.

The Danish Competition and Consumer Authority act as secretariat for the Consumer Ombudsman.

### The Radio and Television Board

The Radio and Television Board is the independent regulatory authority in charge of supervising the implementation of the Danish broadcasting legislation. The Radio and Television Board monitor whether private and public broadcasters are fulfilling their legal obligations and also handles individual complaints.

*6. Has your country adopted legislation on certain advertising or marketing practices such as neuromarketing or behavioural targeting? What challenges have been encountered in doing so?*

The ordinary rules on conventional marketing also applies to neuromarketing and behavioural targeting etc.

*7. Is the use of private data for commercial purposes regulated in your country? If so, please describe briefly such regulation.*

The Act on Processing of Personal Data (Act No. 429 of 31 May 2000) entered into force on 1 July 2000.

The act implements Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

Since the Act on Processing of Personal Data entered into force in 2000, the Act has been amended several times - most recently on 12 July 2013.

When it comes to the use of personal information for unsolicited marketing, the law distinguish between direct marketing to a person and disclose of data concerning a consumer to a third company.

As the main rule personal data may be processed only, if the consumer has given his explicit consent. A company may not disclose data concerning a consumer to a third company for the purpose of marketing or use such data on behalf of a third company for this purpose, unless the consumer has given his explicit consent. The consent shall be obtained in accordance with the rules laid down in section 6 of the Danish Marketing Act. Without the explicit consent the company may only disclose anonymous information.

*8. Does your country have regulations on marketing research standards? How is this sector regulated in particular for marketing research involving human beings?*

There are special rules for the collection, recording and disclosure of personal information in connection with research and statistics.

In connection with research and statistics only the necessary processing of personal data for the particular project is allowed.

When the processing include information on purely private matters must the Data Protection Agency be notified and grant a license containing a number of conditions aimed to protect the information.

Information that is part of a scientific or statistical study, may not subsequently be used for other purposes.

Information from the study - except for anonymous information - may only be disclosed if the Data Protection Agency has given permission to do so. Disclosure must then only be used for other scientific or statistical studies. The Data Protection Agency will in such cases provide procedures for disclosure.

*9. Please describe rules regulating outdoor advertising including the use of billboards or screens in your country. Have enforcement mechanisms been established in this respect? Please indicate whether other forms of communication, such as public interest messages and artistic creation, can also be displayed outdoors, including on billboards and screens, and how these are regulated.*

The Protection of Nature Act<sup>10</sup> section 21 stipulates that advertising and propaganda billboards is prohibited in the open country. The rules apply only in the open country and not in the cities.

The ban on billboards includes posters, neon signs and other devices, for example. anchored balloons, flags, vehicles developed for advertising or propaganda purposes.

The prohibition is absolute and applies in principle, whether the billboard disfigure the countryside - e.g. because there is already disfiguring technical devices.

It is the municipal councils that ensures that the rules are followed. In the cities are all forms of signage and advertising subject to the municipal councils approval.

*10. Does national legislation regulate advertising, sponsoring and commercial practices in public and private schools (including on school buses and within the school's immediate surroundings)? Do companies engaging in sponsorship of schools enjoy a tax deduction?*

The ordinary rules on marketing also applies to advertising, sponsoring and commercial practices in public and private schools. Sponsorships do enjoy tax deduction.

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<sup>10</sup> The Protection of Nature Act no. 951 of 30 July 2013 (Bekendtgørelse af lov om naturbeskyttelse).

*11. Does national legislation regulate advertising in Universities as well as cooperation between research institutes / universities and business, in particular regarding research sponsorship?*

The ordinary rules on marketing also applies to advertising at universities as well as cooperation between research institutes / universities and business. Sponsorships in general do enjoy tax deduction.

*12. Are there specific measures such as inter alia, tax incentives to encourage private sponsorship of artistic creation? Please provide a brief description of these measures. Is the private sponsorship for cultural institutions receiving public funding regulated and if so please provide details. Do such regulations also apply to monuments and national heritage buildings?*

Danish culture is becoming increasingly dependent on private funding. Cultural state institutions such as the Danish National Museum and the Royal Theatre depends more and more on private funding.<sup>11</sup>

The most relevant law applying to foundations is the Danish Act on Commercial Foundations.<sup>12</sup>

As stipulated by the Danish Act on Commercial Foundations, Denmark's Ministry of Justice, represented by the Danish Civil Affairs Agency as the agency supervising commercial foundations, and the Danish Commerce and Companies Agency supervise the Foundation, ensuring that it is managed responsibly and that it operates in accordance with the law and its Articles of Association.

The Danish Act on Commercial Foundations also includes detailed provisions on such matters as management, auditing, awarding grants and the use of research results. Sponsorships/funding in general do enjoy tax deduction.

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<sup>11</sup> Berlingske Tidende, "Markant flere private penge til kulturen", 26 July 2013. Available in Danish at: [www.b.dk/kultur/markant-flere-private-penge-til-kulturen](http://www.b.dk/kultur/markant-flere-private-penge-til-kulturen)

<sup>12</sup> The Danish Act on Commercial Foundations no. 938 of 20 September 2012 (Bekendtgørelse af lov om fonde og visse foreninger).