

Lovens tittel:

Lov om kontroll med markedsføring og avtalevilkår.

Lovhjemmelens dato og nummer:

16. juni 1972 nr. 47

Lovens fulle tittel og evt. korttittel på engelsk:

Act no. 47 of 16 June 1972 relating to control of
marketing and contract terms and conditions

The Marketing Control Act

Opplysninger om når loven sist ble endret:

20. juni 1991 nr. 34

Dato for oversettelsen:

~~xxxx~~ 16. september 1991
xxxx

Institusjonen som er ansvarlig for oversettelsen:

~~Barn- og familiedepartementet (B)~~
Oversettelseskontoret, UD

Eventuelle bemerkninger:

Oversetter: Peter Bilton

Act

no. 47 of 16. June 1972

to Control of Marketing and Contract Terms and Conditions
most recently amended

by Act. no. 34 of 20 June 1991

(Short title: The Marketing Control Act)

Chapter 1. Control of Marketing.

§ 1. General provision.

In the conduct of business no act may be preformed which runs counter to good business practice in the relationship between entrepreneurs or which is unreasonable in relation to consumers.

The advertiser and anyone who creates advertising shall ensure that the advertisement does not conflict with the inherent equality between the sexes and that it does not imply any derogatory judgment of either sex or portray a man or a woman in an offensive manner.

§ 2. Misleading business methods.

It is prohibited in the conduct of business to apply an incorrect or otherwise misleading representation which is likely to influence the demand for or supply of goods, services or other performances.

The same applies to any other procedure which may have such influence on the demand or supply, if as a result of its form or other circumstances it is likely to mislead consumers.

Use of the term guarantee or similar expression in the sale of goods and services is regarded as misleading in all cases where such use does not give rights in addition to, or if it limits the rights which the recipient would have had without the guarantee etc.

Publication or any other announcement of seasonal sale, clearance sale or other forms of sale in retail trade at reduced prices may only be employed where the prices for the goods offered have in actual fact been reduced.

§ 3. Insufficient guidance etc.

It is prohibited in the conduct of business to make use of any representation which is likely to influence the demand for or supply of goods, services or other performances, when the representation does not provide adequate or sufficient guidance or introduces irrelevant matter and therefore should be deemed unreasonable.

The same shall apply to any other procedure which may have such influence on the demand or supply, if it exploits the lack of experience or knowledge of consumers and therefore should be deemed unreasonable.

§ 4. Premiums.

It is prohibited in the conduct of business to seek to promote the sale of one or more goods, services or other performances (the main performance) by offering a premium or letting a premium be offered to the consumer.

A premium shall be understood as any additional performance (article of merchandise, service etc.) which, without there being a natural connection between the performances, is connected with the sale of the main performance. Payment of money shall, however, be considered a premium only where a natural connection with payment for the main performance is lacking, or where stamps, coupons or similar documents are employed which have as their primary function to serve as evidence for the right to the money payment. It shall be considered a premium also where a particular low price is charged for the additional performance.

The provisions of § 5, final paragraph, shall apply correspondingly.

§ 5. Lotteries.

It is prohibited in the conduct of business to seek to promote the sale or purchase of one or more goods, services or other performances by initiating lotteries or other arrangements where it is decided, wholly or in part, by chance who shall receive benefit (prize, reward, premium or other).

The provision shall not apply to offers of rewards or prizes which publishers of periodicals present in their magazine or paper for solutions of puzzles, participation in competitions or similar achievements by the readers. The value of the prize and the size of the reward may not exceed limits stipulated by the Ministry*.

§ 6. Gifts etc. to employees.

It is prohibited in the conduct of business to offer or present any gift or similar benefit to someone employed by or acting for another, when this is done without the knowledge of the latter, and the gift or benefit is intended to and likely to mislead the recipient in the performance of his duties or in his position of trust or service into giving the donor or another an unjustified advantage.

This prohibition shall apply correspondingly to any gift or similar benefit which is given after the disloyal act has been committed, if the gift or benefit must be regarded as an unreasonable reward.

§ 7. Business secrets.

A person who has gained knowledge of or possession of a business secret in connection with employment, a trusted position or a business relationship, may not use the secret unlawfully in the conduct of business.

*) Ministry of Children and Family affairs

The same shall apply to anyone who has received knowledge of or possession of a business secret through another person's breach of his pledge of secrecy or through some other person's unlawful act otherwise.

§ 8. Technical aids.

A person who has been entrusted with technical drawings, descriptions, formulas, models or similar technical aids in connection with employment, a trusted position or a business relationship, may not use these unlawfully in the conduct of business.

The same shall apply to a person who has obtained possession of technical drawings, descriptions, formulas, models or similar technical aids through the unlawful act of another person.

§ 9. Copy of another's product.

It is prohibited in the conduct of business to make use of copied marks of identification, products, catalogues, advertising material or other production in such a manner and under such circumstances as to make it an unreasonable exploitation of efforts or results of another person and create a risk of mistakes as to identify.

Chapter II. Supervision of contract terms and conditions.

§ 9 a. Unreasonable contract terms and conditions.

Terms and conditions which are used or are meant to be used in the conduct of business with consumers may be prohibited if the terms and conditions are deemed unreasonable in relation to consumers and if general considerations call for such prohibition.

When evaluating whether a contract's terms and conditions are unreasonable, emphasis shall be placed upon the balance between the parties' rights and obligations, and whether the terms and conditions are clearly defined.

§ 9 b. Scope of application.

This chapter does not apply to labour and wage conditions between employer and employee. The King may decide that the rules in this chapter shall not apply to other special contractual obligations.

Chapter III. The Market Council and the Consumer Ombudsman

§ 10. Administration, organization etc.

The Market Council and the Consumer Ombudsman shall assist in the implementation of the provisions of this Act.

The King may issue further regulations regarding the organization and activity of the Market Council and the Consumer Ombudsman.

§ 11. The Market Council.

The Market Council shall have 9 members with personal deputies, appointed by the King. The period of service for the members is four years, however in such a way that the first appointment of the Council a shorter period may be stipulated for some of the members. The King shall appoint the chairman and the vice-chairman.

§ 12. Decisions by the Market Council.

The Market Council may prohibit an act which the Council deems a violation of a provision laid down in our pursuant to Chapter I, if it finds that such intervention is necessary in the interests of the consumers or, pursuant to § 1, second paragraph in the interest of equality of the sexes. The Market Council may also forbid the party for the Market Council to use terms and conditions as mentioned in Chapter II or to engage in actions aimed at such use. The Market Council may also prohibit an action which it finds to be contrary to rules, which the Consumer Ombudsman has the surveillance of, according to Regulations issued pursuant to the third paragraph of § 3 of Act no. 77 of 21 December 1990 relating to Advertising in Broadcasting, when this is called for in the interests of consumers or in the interests of equality between sexes. The Market Council may order such measures as it deems necessary to ensure that the actions come to an end and the prohibition is respected.

The Market Council forms a quorum when the chairman or the vice-chairman and at least 4 other members or deputies are present. Decisions are made by simple majority. In the event of a tie, the chairman shall have the casting vote.

The Market Council shall state reasons when adopting a decision. There is no administrative appeal against the decisions of the Market Council.

§ 13. The Consumer Ombudsman

The Consumer Ombudsman shall in the interest of the consumers seek to prevent market abuses that infringe the provisions prescribed by or pursuant to Chapter I of this Act. Further, the Consumer Ombudsman shall, in the interests of equality between the sexes, with particular emphasis on how women are portrayed, ensure that the provisions in § 1, second paragraph, are not violated. The Consumer Ombudsman shall, acting on own initiative, or on the basis of communications from others, urge all entrepreneurs to conduct their operations in conformity with the provisions of this Act.

The Consumer Ombudsman shall also ensure that such terms and conditions as mentioned in Chapter II are not used in any way injurious to consumers, and through negotiations with the entrepreneurs or their organisations, contribute to this.

The Consumer Ombudsman shall also monitor advertising according to Regulations issued pursuant to the third paragraph of § 3 of Act. no

77 of 21 December 1990 relating to Advertising in Broadcasting, when this is called for respectively in the interests of consumers and in the interests of equality between the sexes.

In cases where voluntary compliance is not obtained, the Consumer Ombudsman may submit the case to the Market Council for decision in accordance with § 12.

With the consent of the chairman of the Market Council, the Consumer Ombudsman may lay before the Market Council cases of principle concerning violations of §§ 1-5. This applies irrespective of whether an amicable settlement has been reached or the person conducting the business declares that the marketing measure has been terminated.

The Market Council may refrain from dealing with a case submitted according to the fifth paragraph if it finds that it has insufficient information on the matter to reach a decision.

Where the Consumer Ombudsman decides not to submit a case to the Market Council, it may be submitted by an entrepreneur or a consumer who is affected by the act or by the terms and conditions, or by an association of entrepreneurs, consumers or wage-earners.

§ 14. Decisions by the Consumer Ombudsman.

Where the Consumer Ombudsman cannot obtain a voluntary arrangement and in case pursuant to Chapter I or Chapter II, or which is the Ombudsmans responsibility according to Regulations issued pursuant to the third paragraph of § 3 of the Act no. 77 of 21 December 1990 relating to Advertising in Broadcasting, he deems that inconvenience or harmful effects would result from waiting for a decision by the Market Council, the Consumer Ombudsman may lay down a prohibition as mentioned in § 12, sentence 1, 2 and 3. The same applies for a case pursuant to Chapter II if the Consumer Ombudsman deems the term and condition to be essentially similar to a term and condition which the Market Council previously has deemed unreasonable.

The Consumer Ombudsman shall give his grounds at the same time as he makes a decision. He shall notify the Market Council of his decision.

The decision may be appealed to the Market Council.

The Market Council may request the Consumer Ombudsman to submit specific cases to the Market Council.

Chapter IV. Obligations of disclosure and secrecy.

§ 15. Disclosure.

Everyone is obliged to furnish the Market Council or the Consumer Ombudsman with the information which these authorities may require to be able to perform their legally prescribed duties, including information necessary to evaluate whether a representation is incorrect or misleading. The information may be requested in writing or orally within a stipulated time-limit.

The above-mentioned authorities may conduct such examination and inspection including the demand to be given such documents, objects, samples of goods etc. as they deem necessary to be able to perform their legally prescribed duties. If necessary, assistance may be requested from the police.

The Market Council and the Consumer Ombudsman may request that information shall be given to or examination shall be undertaken by other authorities which have been specifically charged with a duty to assist in the implementation of this Act.

§ 16. Pledge of secrecy.

With the exceptions necessitated by legally prescribed duties everyone shall maintain secrecy about all matters of which he has gained knowledge in connection with a job or appointment under this Act, to the extent that such information concerns technical devices or procedures, as well as operation or business conditions which it is important to keep secret from the point of view of competition, out of regard for the person whom the information concern. Without the consent of the person concerned, nobody may copy devices or procedures which he has gained knowledge of in the performance of said functions.

Chapter V. Penal provisions etc.

§ 17. Punishment.

Anyone who intentionally violates §§ 2-9 of this Act or descisions made pursuant to this Act or is an accomplice thereto, shall be punishable by fines or imprisonment up to 3 months.

Negligent violation of §§ 2 and 3 complicity therein is punishable by fines.

Punishment shall not be imposed on a salesman, clerk, or similar subordinate for a violation primarily resulting from his dependent position vis-à-vis the entrepreneur.

Punishment shall not be imposed in cases of violation of § 7 when knowledge of or possession of the business secret has been acquired in a position of service or trust or through a breach of duty in a position of this kind if more than 2 years have lapsed since the position came to an end.

Where the violation was perpetrated by a person acting on behalf of a corporation, a foundation or an organization, fines may be imposed on the corporation, foundation or organization, provided the violation has been perpetrated to promote its interests, or if the corporation, foundation or organization may be assumed to have gained a substantial benefit from the violation. § 28 of the Penal Code is not applicable to fines imposed pursuant to the previous sentence.

Unlawful disclosure under § 16 is punishable under § 121 of the Penal Code of 22 May 1902, even if the offender is not a civil servant.

§ 18. Rules of Penal Procedure.

Violation of §§ 7, 8 or 9 of this Act will not be proceeded against by the State unless so requested by the injured party. The same applies to violations of §§ 2 or 3 when the act consists of injurious statements about another entrepreneur or about circumstances which concern him specially.

The public prosecutor may in connection with the criminal proceeding request a judicial injunction to ensure that the unlawful act shall come to an end and to prevent a repetition thereof.

Chapter VI. Definitions and relation to the Price Act.

Entry into force.

§ 19. Definitions.

Under this Act, an act shall be considered as performed «in the conduct of business» whether it has been performed by the entrepreneur himself or by someone acting on his behalf. Business enterprises come under the Act even if the unit (company, institution, establishment etc.) which conducts the operations is a non-profit organization.

Under this Act «a representation» shall be understood as any announcement or statement made orally, in writing or otherwise, including also descriptions, pictures, demonstrations, the form, size or lay-out of the packaging etc.

§ 20. Relation to the price Act.

§ 1 of this Act shall not be applicable to the content of the offers, demands or agreements entrepreneurs make regarding prices and terms of business. Nor does the provision apply to the establishment or implementation of agreements to restrain competition or refusal to sell or deal.

The provision in § 9 a of this Act does not apply to the content of prices, discounts, bonuses and profits.

The provisions of this Act do not restrict the powers that are prescribed in, or pursuant to, the Act of 26 June 1953, on Control of Prices, Profits and Restraints of competition.

If a business operation which is subject to this Act also comes in under the rules on regulation and control of other Acts, the King may issue specific rules concerning the mutual restriction of the scope of operations of the authorities concerned, and of the cooperation between them.

§ 21. Entry into force

This Act enters into force on the date stipulated by the King¹⁾

¹⁾ From 1 January 1973 pursuant to Royal Decree of 15 December 1972. The most recent amendment, Act no. 20 of June 1991, entered into force 1 of August 1991.