

Legal Extranet



Denmark

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National Association
 General Legal Overview
 Basic Guide to Intellectual Property rights in the Territory
 Self Regulatory Bodies
 Statutory Bodies
 Specific Legislation

National Association: Danske Reklame-og Relationsbureauers Brancheforening (DRRB)
 Web link: <http://www.drrb.dk/>

General Legal Overview: Most advertising is covered by the Danish Marketing Practices Act (MPA). The Danish Consumer Ombudsman handles the enforcement of the act. He has the power to request an injunction against a marketing activity within 24 hours. The Consumer Ombudsman also has the power to issue Advance Interpretation of the law, issue guidelines and instructions on the understanding of the various provisions of the MPA.

Basic Guide to Intellectual Property rights in the Territory:

Copyright

Copyright exists in an original artistic, literary or musical composition. Copyright in that original work belongs to the creator of that work, and subsists for his/her lifetime and a period of 70 years after their death.

It is a breach of copyright to make an exact or substantial copy, of the original. Whether a copy is substantial or not is based on a qualitative interpretation. Copyright to titles of film, books, songs etc. does exist. The title shall be original and a personal development.

Trademarks

Trade marks can consist of words, letters, logos, devices and 3-D shapes. Sounds, smells and colours are as well possible to register as trade marks, but the requirements to be specific are very high. The Danish trade mark law complies with the European Directives. Trade marks can be registered at the Danish Patent and Trademark Office, or at the European Registration Office - OHIM. They are registered within certain categories according to the product or services to which the trademark relates.

It is also possible to establish a trademark through commencement of use. The use of the trademark must take place continuously in the Danish territory, and must be through extern marketing measures. It is a breach of a trademark to use a sign or a logo which is identical to a registered or established trademark in the same category. Use of similar trademarks may also be a breach of trademark law.

Whether there is a breach or not depends on the likelihood of confusion or association for the relevant customers/buyers.

Unfair Trade Practices, Unfair Competition etc.

Marketers in Denmark must act in accordance with fair trade in all trade relations. This is spelled out in MPA's general clause. This includes any improper use of competitors' trademarks, piracy, denigrating etc. Since it is a general clause, it covers all kind of unfair trade practices and unfair competition between marketers.

Danish Consumer Council
 Fiolstraede 17 P.O. Box 2188 DK-1017 Copenhagen K Denmark Phone: +45 77 41 77 41 Fax: +45 77 41 77 42
 Web link: www.fbr.dk

Danish Radio and TV authority

National Consumer Agency of Denmark

Amagerfaelledvej 56 DK-2300 Copenhagen S Denmark Phone: +45 32 66 90 00

Web link: www.forbrug.dk

The Danish Consumer Ombudsman

Amagerfaelledvej 56 DK-2300 Copenhagen S Denmark Phone: +45 32 66 90 00

Web link: <http://www.forbrug.dk/om/organisering/fo/>

The Danish Medicines Agency

Collateral Gifts	18 November 2004
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E-mail	18 November 2004
Sponsorship	07 April 2006

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Activity	Collateral Gifts	
Country	Denmark	
General legal framework	The subject is regulated by The Danish Marketing Practices Act (MPA).	
General self-regulatory framework	Furthermore the Consumer Ombudsman has delivered Guidance on Collateral Gifts and Competitions. The ICC Code on Advertising Practice also applies.	
The subject of the rules	In Denmark the use of collateral gifts is prohibited. This also applies to marketing measures. The receiving of a gift must not be dependent on buying a product at the same time. The only possibility is when the gift has a substantial association with the main product, e.g. free installation when buying a computer. Also "buy one - get one free" is allowed, as long as the two products are identical. If the gift has an insignificant value it will be outside the scope of the rules. Both an absolute level of a few Dkr. (app. 0,5 Euro) as well as a relative level depending on the value of the main object applies.	
Restrictions to the media	<i>Cinema</i>	Marketing measures containing collateral gifts is prohibited in all media.
	<i>Direct Mail</i>	Same
	<i>E-mail</i>	Same
	<i>Web</i>	Same
	<i>Outdoor</i>	Same
	<i>Press</i>	Same
	<i>Radio</i>	Same
	<i>SMS</i>	Same
	<i>TV</i>	Same
Upcoming changes	There are movements, especially in the EU, to lift the ban on collateral gifts, prize promotions etc.	
Last updated	18 November 2004	

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Subject	Gaming & Betting	
Country	Denmark	
General legal framework	The Marketing Practices Act, Act of Totalizator Gaming, The Casino Act, The Act of Certain Gaming, Lotteries and Betting	
The subject of the rules	Unless specifically permitted advertising for gaming and betting (including bookmakers, betting companies, tipsters etc.) is prohibited. Advertisements for gambling should be socially responsible and should not exploit the young. Advertising of casinos can only be by licensed casinos and by way of classified advertisements. Such advertisements should also comply with certain conditions. Advertisements should contain nothing that is likely to lead people to adopt styles of gambling that are unwise. They should also be socially responsible and should not encourage excessive gambling. In order to avoid exploiting of the young and socially vulnerable, advertisements should not be directed at people under 18. People portrayed should not be under 25. No medium should be used if more than 25% of its audience is under 18.	
Restrictions to the media	<i>TV</i>	Advertising in TV must be socially responsible. Exploiting of the young, encouraging gambling is not permitted. The TV-audience covers all kinds of people, and advertisements must be focused on the social responsibility.
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Activity	Prize Promotions
Country	Denmark
General legal framework	Prize Promotions are covered under the Danish Marketing Practices Act art. 9.
General self-regulatory framework	Furthermore the Consumer Ombudsman has delivered Guidance on Collateral Gifts and Competitions. The ICC Code on Advertising Practice also applies.
The subject of the rules	According to the MPA prize promotions are prohibited, as long as there is a random outcome. This only applies if participation is depending on simultaneously buying a product. The winning of the prize must be subject to the skills of the participants. The advertising of a lottery, where the outcome is unpredictable in any way will be illegal. If the value of the gifts is below certain limits, these rules do not apply. The total value of the measure must be below Dkr. 1.000,- (App. 145 Euro), and the value of each individual prize must not exceed Dkr. 100,- (App. 14,5 Euro). When addressing children special care has to be taken. Promotions addressed to or targeted at children should not encourage excessive purchases in order to participate, should make it clear that adult permission is required if prizes and incentives might cause conflict, should clearly explain the number and type of any additional proofs of purchase needed to participate, should contain a prominent closing date, and should not exaggerate the value of the prize or the chances of winning. Furthermore the economic limits for measures addressed to children are lower. The total value of the measure must be below Dkr. 50,- (App. 7 Euro), and the value of each individual prize must not exceed Dkr. 5,- (Less than one Euro). These limits apply of the measure is addressed for children younger than 15 years. Any prizes should be socially responsible, and may not consist of tobacco, alcohol etc.
Upcoming changes	There are movements, especially in the EU, to lift the ban on collateral gifts, prize promotions etc.
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Activity	Direct Marketing
Country	Denmark
General legal framework	The simple gathering of customer information and the registration of this is covered by the Act of Processing Personal Data. The approach itself is covered by the Marketing Practices Act, and the Act of Door-to-Door Sales.
General self-regulatory framework	The ICC Code of Advertising Practice also applies.
The subject of the rules	The general rule is that direct marketing is prohibited, unless the consumer has previously accepted to be contacted. The consumer's consent must be clear and explicit. This applies to all kinds of electronic information, i.e. e-mail, phone, fax etc. It should be noted that ordinary letters are permitted - except under special circumstances mentioned below. In all circumstances the receiver of the information should easily be able to decline any further contacts. An exception exists to insurance companies, newspapers, book clubs and rescue service companies. These professions are permitted to contact the consumer by telephone without prior consent. In addition a marketer may contact existing customers via e-mail with information/marketing communication about similar products and services. But the consumer must easily be able to decline further information. The individual consumers may on request be registered on a quarterly updated list of people who decline to be contacted. Declining to be contacted also includes ordinary letters addressed for the specific consumer if the content is marketing communication. If the consumer wants to decline ordinary marketing matters delivered to the door, the postal service should be contacted.
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Subject	Alcohol	
Country	Denmark	
General legal framework	The Danish Marketing Practices Act art. 1 sets out standards for fair trade in all trade relations. EU Directive 89/552 about the pursuit of TV broadcasting activities. The Act of Radio and Television Communication, Statutory Order on Advertising in TV and Radio.	
General self-regulatory framework	Over the years the sector has adopted a number of agreements. Also the ICC Code of Advertising Practice applies.	
The subject of the rules	The MPA art. 1 is a general clause and sets out the legal standards, in general terms, for advertising of alcohol products. The basic principle is that advertising of alcohol products must not appear intrusive, provoking or persuasive. In addition the advertising must contain information about the ill effects of the product. Moderate consumption of alcohol must not be presented in a negative way.	
Restrictions to the media	Radio	See TV
	TV	There has previously been legislation prohibiting advertising of alcohol with more than 2.8 % alcohol in radio and television. These rules have been now revoked, but the advertisements must be social responsible. That is, no combination of driving and drinking, no exploiting of the young, no focusing on the alcoholic content of the beverage, not giving the impression that alcohol will improve chances of social and sexual success, not giving the impression that alcohol has therapeutic qualities etc. These ethical rules are also spelled out in EU Directive 89/552 about the pursuit of TV broadcasting activities.
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Subject	Tobacco	
Country	Denmark	
General legal framework	The Tobacco Advertising Act of 2001	
The subject of the rules	All advertising of cigarettes, cigars and tobacco products is prohibited. Certain advertising (signs, prices etc.) is permissible at the point of sale, i.e. in the store right next to the tobacco products. All kinds of sponsoring are prohibited. Advertising in the shop front of a cigarette vendor is not permissible, unless the retailer is a specialist tobacconist.	
Restrictions to the media	<i>Cinema</i>	Prohibited
	<i>Direct Mail</i>	Prohibited
	<i>E-mail</i>	Prohibited
	<i>Web</i>	Prohibited
	<i>Outdoor</i>	Prohibited
	<i>Press</i>	Prohibited
	<i>Radio</i>	Prohibited
	<i>SMS</i>	Prohibited
	<i>TV</i>	Prohibited
	<i>Others</i>	Prohibited
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Activity	Data Protection/Privacy	
Country	Denmark	
General legal framework	Act on Processing of Personal Data (APPD) covers the collection, storing and any passing on of data. The Marketing Practices Act (MPA) covers the actual use of the data in certain relations.	
The subject of the rules	APPD distinguishes between sensitive personal data, and ordinary data. Sensitive information is data about private relationships, i.e. ethnic, religious and political background etc. Collection and use of sensitive information requires explicit consent from the registered person. Ordinary information, i.e. name, address, age, customer relationship etc., does not require consent, as long as they are necessary for the company's activities. The registered person should always be informed of any collection of his/her data. This even if his/her consent is not required. Passing on of collected information to other companies for marketing aims, does not necessarily require the registered consent. As long as it is ordinary information, or general customer data, the consent is not required. But detailed information about the customer's consumption habits may not be passed on.	
Restrictions to the media	<i>Direct Mail</i>	MPA covers the issue of using the collected information. Direct mailing is only permitted if with the explicit consent of the receiver, and one shall easily be able to decline future approaches.
	<i>E-mail</i>	See Direct Mail
	<i>SMS</i>	See Direct Mail
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Subject	Motors	
Country	Denmark	
General legal framework	The Marketing Practices Act	
General self-regulatory framework	The ICC Code of Advertising Practice.	
The subject of the rules	Generally advertisements for motor vehicles, fuel or accessories should avoid portraying or referring to practices that encourage or condone illegal, dangerous, anti-social or irresponsible behaviour. Speed or acceleration claims should not be the predominant message of the advertisement. However it is legitimate to give general information about a vehicle's performance such as acceleration and mid-range statistics, braking power, road-holding and top-speed. Advertisers should not portray speed in a way that might encourage motorists to drive irresponsible or to break the law and should not condone irresponsible driving. If the advertisement brings environmental claims the marketer must be able to provide convincing evidence. Prices quoted should correspond with the model shown in the advertisement.	
Restrictions to the media	<i>Cinema</i>	In medias with moving images special care should be taken. Especially images of excessive speed should be avoided, and compliance with the Danish speed limits is required, and drivers must use safety belt.
	<i>TV</i>	See Cinema
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Subject	Health & Beauty	
Country	Denmark	
General legal framework	The Marketing Practices Act (MPA), The Medicines Act, Act of Marketing of Healthcare Services.	
General self-regulatory framework	ICC Code on Advertising Practice.	
The subject of the rules	Any health and beauty product should comply with the MPA's general clause about fair marketing custom. The marketing of health and beauty products must be distinguished from marketing of medicines and pharmaceuticals. See detailed information about this. Any claims of benefit to health or beauty, should be supported by convincing evidence. Marketers should not imply that health products can prevent illness, elevate mood or enhance normal performance. Without well-established proof, no marketing communications should suggest that there is widespread vitamin or mineral deficiency or that it is necessary to supplement a well-balanced diet. The advertising may not use false, misleading or unreasonable insufficient information. The conditions are also covered by the MPA, but are also spelled out specifically for health products and services in the Act of Marketing of Healthcare Services. Advertisements should not be addressed to children and adolescents.	
Restrictions to the media	<i>Cinema</i>	See TV
	<i>TV</i>	Marketing in TV is prohibited. This also includes teletext, video etc.
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Activity	Comparative advertising
Country	Denmark
General legal framework	The Danish Marketing Practices Act (MPA) art. 2a covers the matter of comparative advertising. Furthermore the issue is covered by the general clause in art. 1. Art. 2 about misleading and derogatory marketing measures cover the issue. In addition art. 5 about the misuse of others trademarks.
General self-regulatory framework	The Consumer Ombudsman has issued Guidance of Comparative advertising. Further more the ICC Code of Advertising Practice applies.
The subject of the rules	Comparative advertising is permitted. It is in the interest of public information and a vigorous competition In the MPA there are certain criteria to be fulfilled for comparative advertising to be legal. First of all the comparison should not be misleading. Furthermore the comparison should objectively compare one or more material, relevant, verifiable and representative features of the product, which may include price. It should not create confusion between marketers and competitors or between marketer's products, trade marks, trade names or other distinguishing marks and those of competitors. In addition it is a requirement that one does not discredit or denigrate the branding of a competitor. In general the demands to comparative advertising are very strong. On the matter of loyalty and fairness the advertising comparing products must be very careful. All together, comparative advertisements are very rare in Denmark.
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Subject	Financial products and services
Country	Denmark
General legal framework	The Credit Agreements Act, The Marketing Practices Act, Statutory Order on Fair Custom for Financial Service Companies
The subject of the rules	The field is covered by the MPA if not issued specific legislation on specific subjects. Offers of financial products should be set out in a way that allows them to be understood easily by the addressed audience. Marketers should ensure that they do not take advantage of people's inexperience or credulity. Marketing communications should state the nature of the contract being offered, any limitations, expenses, penalties and charges and the terms of withdrawal. If the marketing communication is short or general in its content, free explanatory material giving full details of the offer should be provided before entering into a binding contract. The basis used to calculate any rates of interest, forecasts or projections should be apparent immediately. Marketing communications should make clear that the value of investments is variable and, unless guaranteed, can go down as well as up. Advertisement for credit agreements must always give profound information about the costs for consumer. This includes information about the total expenses for the debtor, the size of any payout, a specification about the annual costs in percentage terms and the size of the individual rates, the number of these and due date of payment.
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Subject	Pharmaceuticals	
Country	Denmark	
General legal framework	The Pharmaceuticals Act covers the specific issues concerning the marketing of medicines. The Marketing Practices Act covers the marketing measures in general terms.	
General self-regulatory framework	ICC Code on Advertising Practice	
The subject of the rules	Medicine must have a marketing authorization from the Danish Medicines Agency and any claims made for products must conform with the authorization. It is a general rule that advertising to the public of medicine only available on prescription is prohibited. If the manufacturer is only addressing doctors, dentists, pharmacists etc. advertising of prescriptive medicine is permitted. But issues of side-effects, indications, contraindications etc. must be dealt with in the marketing communication. Furthermore the media used must be specifically designed for professionals. Advertisements may not claim to be relieving or curing illness unless the product has been approved as medicine. This applies to both prescriptive and non-prescriptive medicine. Marketers must not use fear or anxiety to promote medicines and should not suggest that using or avoiding a product can affect normal good health. Illustrations of the effect or the action should be accurate.	
Restrictions to the media	<i>Cinema</i>	See TV
	<i>Radio</i>	See Tv
	<i>TV</i>	Advertising of non-prescriptive medicine in TV is permitted. The advertising must be in compliance with the Medicines Act
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Activity	Coupons
Country	Denmark
General legal framework	The Danish Marketing Practices Act art. 8.
General self-regulatory framework	The Consumer Ombudsman has issued Guidance on Quantity Limits and Discounts. The ICC Code of Advertising Practice also applies.
The subject of the rules	The use of coupons in advertising flyers etc. is not permitted, if these coupons provide you with a discount. Coupons providing a discount may not be issued prior to the purchase. This also covers clip cards, where you can get a discount after a certain number of purchases. Coupons providing a discount must be handed out, or be available at the point of sale. They must be available right next to the product, or printed on the very same product. Furthermore coupons providing a discount handed out after the purchase are permissible. What is important is that the coupon must not be the decisive factor when deciding whether to buy or not. Coupons issued after the purchase with the possibility a later redemption is legal. But the coupon must give clear information about the value of it in Danish currency, and have a clear designation of the issuer. If the total value of the coupons or clips excess Dkr. 5,- (App. 0.8 Euro) the customer is justified to redeem the value of it. Special care should be taken when issuing coupons to children.
Last updated	18 November 2004

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Sandel, Løje & Wallberg is a Law Firm specialised in Industrial Property Law, Internet Law and Unfair Competition law. We assist companies with registration and enforcement of trademarks, designs and domain names around the world. We have an in-depth knowledge of trademark and design law and practice in particular in Scandinavia and within the Community Trademark and Design system. We also offer availability searches and surveillances of trademarks.

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Activity	E-mail
Country	Denmark
General legal framework	The Danish Marketing Practices Act art. 6a sets out obligations and requirements for marketing by e-mail. The Act of E-Commerce also applies.
General self-regulatory framework	The Consumer Ombudsman has issued Guidance on Unsolicited Marketing. ICC Code on Advertising Practice applies in addition.
The subject of the rules	Marketing communication must not be sent to consumers by e-mail without their prior consent to receive such e-mails. There is an exception if the marketer is marketing similar products to existing customers, so long as an opportunity is given for them to object to any further such marketing. It is important that any e-mail to existing customers containing marketing communication, is clearly identified as such commercial communication. It shall always be possible for the receiver of marketing communication by e-mail, to object further marketing. Also the advertiser must live up to the obligations in the Danish Act of Processing Personal Data. See specific information about data protection/privacy. If the advertising is issued from outside the European Union it has to comply with the Danish rules. What is important is the country where the advertising actually has an effect. If the issuer specifically addresses the advertising to Denmark he must comply with the MPA. If issued from within the EU it will be the laws of the country where the sender is located that applies.
Last updated	18 November 2004

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Activity	Sponsorship
Country	Denmark
General legal framework	The Act of Radio and Television Communication.
General self-regulatory framework	ICC Code on Advertising Practice
The subject of the rules	The basic principle is that it must be clear if a program is sponsored. The sponsors name/trademark must be presented at the beginning of the program and at the end. During the programme such statements is prohibited. Furthermore, the sponsors product may be shown, as well as moving images are permitted. However, the sponsor may only be identified by one element, leaving it to be prohibited to present something similar to a TV-commercial. The sponsor must not have influence on the content of the programme in a way that affects the editorial independence and responsibility of the broadcaster. News and current affairs programmes may not be sponsored. Tobacco manufactures may not sponsor programmes. This includes any company whose name is chiefly known to the public through its tobacco business, even though it may sell other non-tobacco products and services. Pharmaceutical manufactures may not refer in their credits to brands that are only available on prescription. Labour unions, political parties and religious movements may not sponsor programmes. This does not apply to programmes only broadcasted on local radio.
Last updated	07 April 2006

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