

FINLAND



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1. Topic:	Market Court's jurisdiction and violation of good business practice
Who:	The Supreme Court
When:	January 2004
What Happened:	<p>The Finnish Market Court has recently undergone a reform and handles, as from 1 March 2002, the functions of the old Market Court, as well as those of the Competition Council. The jurisdiction of the Market Court extends at present to matters in the fields of market law (such as unfair business practices), competition law and public procurement. Disputes related to intellectual property rights are, as a rule handled by the District Court of Helsinki as an exclusive forum and the Market Court is not competent to deal with these issues. The reform introduces a remarkable change in declaring Market Court decisions appealable, which was earlier not the case. The appellate instance is the Supreme Court and the appeal is subject to leave to appeal. The Supreme Court has now rendered decisions in the two first cases and both resolutions can be categorized as landmark decisions altering the previous practice on application of Finnish marketing law.</p> <p>In February 2003, the Market Court rendered a decision in a matter where two previous business partners had used similar packaging for the same product. Both parties claimed they had a right to use said packaging and both claimed the other party violated good business practices. The Market Court found that one of the companies violated good business practices by copying the packaging and prohibited the company from marketing its products by using the infringing packaging. The Market Court found some of the claims based on infringement of intellectual property rights, namely trademark and copyright legislation, inadmissible stating that it is not within Market Court's jurisdiction to consider issues of trademark and copyright legislation or interpret the contracts between the parties.</p> <p>The Supreme Court agreed with the Market Court on the issue of unfair business practices and upheld the marketing prohibition rendered by the Market Court. However, in this first Supreme Court ruling dealing with an appealed Market Court resolution the Supreme Court elaborated on the jurisdiction of the Market Court. The Supreme Court found, that the Market Court may, without exceeding its jurisdiction, take notice of such facts that are based on intellectual property legislation or contract law, when assessing unfair business practices. Accordingly, upholding the ruling on the substance matter, the Supreme Court revoked the Market Court's decision to the extent the claims had been found inadmissible, and considered also these claims when rendering its ruling.</p>
Comments:	The Supreme Court's preliminary ruling specified the scope of the Market Court's jurisdiction. Regardless of the fact that the Market Court is not authorized to resolve intellectual property matters, it is allowed to take notice of the facts related thereto as preliminary questions when assessing the issue

	on unfair business practices.
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2. Topic:	The Market Court's competence to prohibit the sale of the products under the Unfair Business Practices Act
Who:	The Supreme Court
When:	March 2004
What Happened:	<p>LEGO Companies initiated proceedings before the Market Court against Biltema Suomi Oy claiming that Biltema was violating good business practices by marketing building blocks that created risk of confusion with the LEGO – building blocks. The blocks were on display for sale in Biltema's store and they were marketed also through a mail-order catalogue and Biltema's web pages. The Market Court found that there was confusing similarity between the blocks and prohibited Biltema from continuing to market the blocks in its mail-order catalogue. The Market Court found that it is under the Unfair Business Practices Act authorized to prohibit the marketing, but not the sale of a product. Consequently the Market Court dismissed LEGO's claims as regards the prohibition to sell the blocks stating that selling of the product as such did not constitute marketing.</p> <p>LEGO was granted a leave of appeal and appealed to the Supreme Court, which found that the concept of marketing shall be interpreted broadly and the Market Court should not have assessed differently the sale and the so-called active sales promotion of the product. Contrary to the Market Court's decision the Supreme Court found, that also the selling can be considered marketing and, accordingly, it can be prohibited under the Unfair Business Practices Act. The Market Court should, thus, not have dismissed LEGO's claims on the grounds stated in its decision. The Supreme Court returned the matter to the Market Court for reconsideration to the extent LEGO's claims had not been accepted.</p> <p>Comments: The definition of marketing under the Unfair Business Practices Act should be interpreted broadly, including both the active sales promotion as well as the sale of the products. This Supreme Court ruling defines the scope of the Market Court's jurisdiction and makes available more effective tools for the Market Court for purposes of preventing unfair business practices.</p>

3. Topic:	The new guidelines on marketing to children
Who:	The Consumer Ombudsman
When:	June 2004
What Happened:	<p>Marketing directed to Finnish consumers is subject to the Finnish Consumer Protection Act, which contains a general rule prohibiting the use of marketing methods that are contrary to good marketing practice or otherwise unfair from the consumers' point of view. Said provision is open to various interpretations and good marketing practice is, consequently, defined on the basis of the interpretations of the Finnish Consumer Ombudsman, as further considered by the Market Court and the Supreme Court, as a final instance.</p> <p>The Finnish Consumer Protection Act does not contain special provisions regarding marketing directed at children. The Finnish Consumer Ombudsman has issued guidelines on a number of topics, including the guidelines on marketing directed toward children. The guidelines are not legally binding, but evaluation of good marketing practice is in fact based on these guidelines and they are, accordingly, advised to be followed. If a marketing campaign is</p>

	<p>contrary to the guidelines, one can expect that the Consumer Ombudsman will take action.</p> <p>New guidelines on marketing to children and young people were published in June 2004. The new guidelines aim to answer to the new challenges brought out by the present-day information and communication society, where the children are constantly exposed to influences from growing number of different marketing medias. Accordingly the new guidelines contain more detailed provisions on <i>inter alia</i> marketing on the Internet and via mobile phones, as well as using marketing competitions as a marketing tool. Probably the most significant amendment in the guidelines is the establishment of a clear age limit of 18 years for the application of the guidelines. The guidelines will thus be applied only to the marketing to children and young people under age of 18 years, which at the same time is the age when the age of majority is reached under Finnish legislation.</p>
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4. Topic:	The Consumer Agency reports that many mobile phone operators are crossing the line of good marketing practices
Who:	The Consumer Agency
When:	August 2004
What Happened:	In August 2004, the Consumer Agency stated in its press release, that the Agency is receiving clearly more reports about marketing of the mobile phone subscriptions than about any other category of matters. The competition between the operators is hard and the Consumer Ombudsman has interfered with several cases where <i>inter alia</i> the prices have been stated unclear or the pricing structure of subscriptions is so complex that the consumer is not able to make price comparisons between the subscriptions of different operators. In some of the cases the Consumer Ombudsman and the advertiser have been able to reach an agreement and the litigation has been avoided, but at the same time there are also several cases pending before the Market Court.

5. Topic:	Consumer Ombudsman's definition of policy as regards advertiser's responsibility
Who:	The Consumer Ombudsman
When:	May 2004
What Happened:	<p>The Consumer Ombudsman has as a result of significant changes in the business environment published guidelines on the consequences in a situation where the information in advertisements is not correct or the product on special offer is not available in the store. Previously, the typical purchase situation was such that the seller and the buyer met in a store face-to-face. The buyer had a possibility to ask questions and the seller a possibility to provide information before concluding the purchase. Nowadays a typical purchase is made in a self-service supermarket, where the customer's need to be able to rely on the information given in the advertising is emphasized.</p> <p>The new guidelines state, <i>inter alia</i>, than an advertiser must act with care when arranging special offer campaigns. If the special offer product has run out during the offer period, the advertiser may in some cases be liable to compensate consumers for their traveling expenses or, when the campaign has been deliberately planned without due care, even the price difference between the special offer product's price and the price of the equivalent product.</p>