

## DENMARK



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<b>1. Case Report:</b>	Different Cases
<b>Topic:</b>	Violation of the Marketing Practices Act (MPA)
<b>Where:</b>	The Maritime and Commercial Court
<b>When:</b>	February – October 2003
<b>What happened:</b>	<p><u>19 February 2003:</u> Newsbooster offered a web news service, which would non-stop collect information from more than 4000 news media on the internet. Against payment of a fee, users would access a search facility. Entering a search word would result in a personal news summary listing headlines containing the search word. This service of listing headlines from and creating deep links to other news media was held to be a violation of MPA § 1.</p> <p><b>This decision is a landmark decision on the use of deep links. The Newsbooster case is in fact the first real case in Denmark interpreting the legal use of deep links to material made legally available to the public.</b></p> <p><u>11 March 2003:</u> Was the defendant's sale of skirts and women's trousers a violation of the plaintiff's rights pursuant to the MPA. The Court found that the plaintiff's designs were sufficiently distinctive to enjoy protection under the MPA. As the defendant's articles only differed insignificantly from the plaintiff's designs, the Court held that the sale constituted a breach of the MPA. The defendant was prohibited from selling, manufacturing, marketing, importing and exporting the articles in question. Destruction of the articles and DKK 500,000 in damages.</p> <p><b>A rather large sum for a Danish court on the subject of violation of the MPA.</b></p> <p><u>1 May 2003:</u> On approximately 150 occasions, the defendant contacted consumers, businesses and others by telefax with a view to selling goods and services. None of the contacted people had consented in advance to being contacted. The Court considered this a breach of the MPA § 6. Damages of DKK 15,000, taking into consideration of the defendant's financial situation.</p> <p><b>This is the first decision relating to breach of § 6 a (which prohibits spamming), but the size of damages were considerably below the expected. Legislation has been changed after this decision.</b></p>

<b>2. Case Report:</b>	The Consumer Ombudsman vs. Jensen Finans K/S
<b>Topic:</b>	Was an agreement to lease covered by the Consumer Credit Act (CCA)
<b>Where:</b>	Østre Landsret (The Eastern High Court)
<b>When:</b>	3 September 2003
<b>What happened:</b>	Jensen Kredit K/S rented out music systems for a period of 3 years, upon which the customer could repurchase the system for DKK 1.- The Eastern High Court held that - given that the objective of the agreement was for the hirer to become owner of the product after 3 years - this was a credit agreement rather than a lease, and should therefore be subject to the strict duty of disclosure. One of the consequences being that Jensen Kredit K/S was not allowed to claim higher interest than the pre-judgment interest.
<b>Comments:</b>	This decision harmonizes with the practice developed in this field and the practice and attitude of the Consumer Ombudsmand.

<b>3. Topic:</b>	Use of consumer guarantees in advertising and contract terms
<b>Who:</b>	The Danish Ombudsmand
<b>When:</b>	June 2003
<b>What happened:</b>	The Guidelines replaces and develops the previous guidelines of 1987 on the same subject. The objective of the Guidelines is to ensure that the MPA § 4 is observed. § 4 states that a guarantee is only legal if it improves considerably the consumer's legal position in comparison with the position granted by the legislation, in other words if the guarantee is real. A violation of this must be considered to be a breach of the general clause in § 1 and § 2 on misleading advertising.
<b>Comments:</b>	The Guidelines only codifies current practice and does not change recent practice and attitude of the Consumer Ombudsman.

<b>4. Legislation:</b>	Changes to the MPA § 6a – Implementation of set of directives "99-review"
<b>Who:</b>	The Consumer Ombudsmand
<b>When:</b>	July 2003
<b>What happened:</b>	As a consequence of a EU directive, Denmark has been forced to alter the MPA. Thus it will in future be legal in certain cases to distribute advertising material to the consumers by means of electronic mail. The distribution of electronic mail will only be legal under certain circumstances, e.g. mail shall only be forwarded to addresses furnished voluntarily by the consumer, and furthermore, it must be easy and free of charge for the consumer to unsubscribe. Previously, the consumer was actively to accept receiving advertising material – the change means that the consumer is now to actively reject receiving such material. Violation of this directive will be punished with a fine.
<b>Comment:</b>	This is an obvious change in relation to previous practice of the Consumer Ombudsman as well as of the legislation relating to electronic mail to consumers. The Consumer Ombudsman, who has been forced to change his practice on this field, finds that the legislation prejudices the consumer's rights.

<b>5. Diverse:</b>	
<b>Topic:</b>	Different cases relating to the MPA

<b>Who:</b>	The Consumer Ombudsmand
<b>When:</b>	2003
<b>What happened:</b>	<p>The Consumer Ombudsman has been at the tele companies, who have forwarded overcharged SMS services without giving the recipient a possibility to decline the reception of further SMS'.</p> <p>Furthermore, the Consumer Ombudsman has been at the oil companies because they have marketed porno magazines and other material at eye-level, which is contrary to the given guidelines directions.</p> <p>The Consumer Ombudsman has contacted youth traveling agencies as a result of their sale of vacations consisting only of drinking orgies. The Ombudsman requested the traveling agencies to observe their social responsibility.</p>
<b>Comments:</b>	The Consumer Ombudsman strictly observes that current marketing legislation is obeyed. He usually takes the matters up for consideration after they have been brought forward by the media, however hemay also enter matters on his own initiative.