

HVORNÅR ER DER OVERHOVEDET TALE OM REKLAME?

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REKLAMEIDENTIFIKATION

- **§ 4. En reklame skal fremstå således, at den klart vil blive opfattet som en reklame uanset dens form og uanset, i hvilket medium den bringes.**
 - Reklame skal forstås i overensstemmelse med reklamedefinitionen i direktiv 84/450/EØF (jf. lovforslaget)
 - Ingen, der ser en reklame eller bliver udsat for reklamepåvirkning, må være i tvivl om, at der er tale om reklame (jf. FO)

ADVERTISING

(84/450/EEC [2006/114/EEC])

- **The making of a representation in any form in connection with a trade, business, craft or profession**
 - in order to promote the supply of goods or services, including immovable property, rights and obligations.





MISLEADING OMISSION

(2005/29/EC)

- **[...] fails to identify the commercial intent of the commercial practice if not already apparent from the context, and where [...] this causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise.**



THE BLACKLIST

- **11. Using editorial content in the media to promote a product where a trader has paid for the promotion without making that clear in the content or by images or sounds clearly identifiable by the consumer (advertorial).**
- **22. Falsely claiming or creating the impression that the trader is not acting for purposes relating to his trade, business, craft or profession, or falsely representing oneself as a consumer.**



COMMERCIAL PRACTICE

(2005/29/EC)

- **Any act, omission, course of conduct or representation, commercial communication including advertising and marketing, by a trader, directly connected with the promotion, sale or supply of a product to consumers**



COMMERCIAL COMMUNICATION

(2000/31/EC AND 2006/123/EC)

- **Any form of communication designed to promote, directly or indirectly, the goods, services or image of an undertaking, organisation or person engaged in commercial, industrial or craft activity or practising a regulated profession.**
 - Excluding ('in themselves'):
 - [...] a domain name or an electronic-mailing address
 - Communications [...] compiled in an independent manner, particularly when provided for no financial consideration

C-119/09, SOCIÉTÉ FIDUCIAIRE NATIONALE D'EXPERTISE COMPTABLE

- **33 [...] commercial communication covers not only traditional advertising but also other forms of advertising and communications of information intended to obtain new clients.**
- **38 [...] canvassing involves personal contact between the provider and a potential client, in order to offer the latter services. It can, therefore, be classified as direct marketing. Consequently, canvassing comes within the concept of 'commercial communication' [...]**



AUDIOVISUAL MEDIA SERVICES (2010/13/EU)



- **Audiovisual commercial communication**
 - Images with or without sound which are designed to promote, directly or indirectly, the goods, services or image of a natural or legal entity pursuing an economic activity [...]

AUDIOVISUAL MEDIA SERVICES (2010/13/EU)



- **Surreptitious AV commercial communication**
 - The representation in words or pictures of goods, services, the name, the trade mark or the activities of a producer of goods or a provider of services in programmes when such representation is intended by the media service provider to serve as advertising and might mislead the public as to its nature.
 - Shall, in particular, be considered as intentional if it is done in return for payment or for similar consideration.



COMMISSION INTERPRETATIVE COM. (TWF DIRECTIVE) (2004/C 102/02)

- **Surreptitious advertising**
 - It must be intended by the broadcaster, it must be done to serve advertising and it must be capable of misleading the public as to its nature. (31)
- **'Undue prominence'**
 - For example, the fact that a good is displayed prominently is [...] a sign of surreptitious advertising when such a display is not warranted on [editorial grounds], is the result of an influence on the content thereof for commercial purposes or is likely to mislead the public on the nature of such a presentation. (34)



TOBACCO DIRECTIVE (2003/33/EC)

- **Advertising**
 - Any form of commercial communication with the aim or direct or indirect effect of promoting a tobacco product.
- **Sponsorship**
 - Any form of public or private contribution to any event, activity or individual with the aim or direct or indirect effect of promoting a tobacco product.

NUTRITION AND HEALTH CLAIMS MADE ON FOODS (REGULATION 1924/2006)



• **Recital 4:**

- Apply to all nutrition and health claims made in commercial communications, including generic advertising of food and promotional campaigns, such as those supported in whole or in part by public authorities.
 - It should not apply to claims which are made in non-commercial communications, such as dietary guidelines or advice issued by public health authorities and bodies, or non-commercial communications and information in the press and in scientific publications.
 - Also apply to trade marks and other brand names which may be construed as nutrition or health claims

MEDICINAL PRODUCTS FOR HUMAN USE (2001/83/EC)



- **Advertising of medicinal products**

- Any form of door-to-door information, canvassing activity or inducement designed to promote the prescription, supply, sale or consumption of medicinal products
- Including, inter alia
 - Advertising to the general public
 - Advertising persons qualified to prescribe or supply
 - Visits by medical sales representatives and supply of samples
- Excluding, inter alia
 - Information relating to human health or diseases
 - Provided no reference, even indirect, to medicinal products



WHAT IS COMMERCIAL?

- **How to determine a commercial practice**
 - Nature (capacity) of the sender (commercial)
 - His intention (to promote)
 - Neutral information v. consideration
 - Nature of the product
 - Its purpose (the relevant market)
 - Manifestation (content, context, and media)
 - Its effect (influencing purchase decisions)
 - Nature of the receiver (consumer [group/individual])
 - His perception



WHO IS A TRADER?

- **Unfair Commercial Practices Directive**
 - Any natural or legal person who, in commercial practices covered by this Directive, is acting for purposes relating to his trade, business, craft or profession and anyone acting in the name of or on behalf of a trader
- **General observation in consumer law**
 - Profit motive is irrelevant
 - Nature of ownership is irrelevant (e.g. public)
 - National variations



C-391/12, RLVS

- **36 This is so where the practices in question form part of an operator's commercial strategy and are directly connected with the promotion and sale of its products or services, in which case they do indeed constitute commercial practices [...]**
- **37 Although Directive 2005/29 gives a particularly broad definition of 'commercial practices' [...] the fact remains that the [practice] must originate from traders, and they must be directly connected with the promotion, sale or supply of their products to consumers.**

DANSK ERHVERVSLIV STÅR SAMMEN OM DANMARKS INDSAMLING

Se her, hvordan din virksomheds bidrag bliver markeret

Mindst 1.000.000 kr.

- **BESØG I AFRIKA, LATINAMERIKA ELLER ASIEN:** Deltagelse i rejse til et projekt i verden i efteråret 2015. Her opleves, hvordan pengene fra Danmarks Indsamling gør stor nytte. Der vil blive vist klip fra rejsen på tv.

500.000 – 999.999 kr.

- **TV-SHOW:** Vælg mellem:
 1. Virksomheden markeres gennem et **særligt forproduceret indslag** tilrettelagt i samarbejde med virksomheden.
 2. **Udvidet markering** hvor en repræsentant for virksomheden kan deltage i showet efter på forhånd aftalte vilkår.

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250.000 – 499.999 kr.

- **TV-SHOW:** Virksomheden markeres gennem et **indslag**, der produceres og tilrettelægges i samarbejde med virksomheden.

100.000 – 249.999 kr.

- **OMTALE:** Virksomhedens navn fremhæves særligt under showet.

- **ANNONCE:** Virksomhedslogo placeres i **fælles avisannonce** for Danmarks Indsamling i Børsen.

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50.000 – 99.999 kr.

- **DR TEKST-TV:** Virksomhedens navn og bidrag vises på **DR Tekst-tv**.

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10.000 – 49.999 kr.

- **CRAWL:** Virksomhedens navn og bidrag vises som **crawl-tekst** på tv-skærmen under showet.

- **LOGO CRAWL:** Virksomhedens navn og bidrag vises i **crawl-tekst med logo** på tv-skærmen under showet.

- **LOGO CRAWL:** Virksomhedens logo, navn og bidrag vises i crawl-tekst med logo på tv-skærmen under showet.

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- **INFOPAKKE:** Ret til brug af Danmarks Indsamling materialer – eksempelvis pressemeddelelse, e-mail signatur og støttelogo.

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Op til 9.999 kr.

- Ingen markering, men stor taknemmelighed.

- **WWW: Kreditering af virksomheden** på Danmarks Indsamling hjemmeside.

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- **WWW:** Kreditering af virksomheden **inkl. virksomhedslogo** på Danmarks Indsamling hjemmeside.

- **WWW:** Kreditering af virksomheden inkl. virksomhedslogo på Danmarks Indsamling hjemmeside.

- **WWW: Udvidet og markant kreditering af virksomheden** inkl. virksomhedslogo på Danmarks Indsamling hjemmeside.

- **WWW:** Udvidet og markant kreditering af virksomheden inkl. virksomhedslogo på Danmarks Indsamling hjemmeside.

Det kan pengene blandt andet bruges til:

- 66 unge kan modtage en startpakke med værktøj og materialer, så de kan forsørge sig selv i flygtningelejre i Kenya.
- 100 drenge kan få kursus i, hvordan man forebygger vold og konflikter for at mindske volden i Nicaragua.

Det kan 10.000 kr. bruges til

- 600 børn kan få materialer til et helt års skolegang på Madagaskar.
- 1.200 fattige indere kan blive testet for insulinresistent tuberkulose.

Det kan 100.000 kr. bruges til

- 5.000 børn kan få en fødselsattest og dermed en identitet, som er et krav for at kunne uddanne sig i Togo.
- 10.000 af de fattigste pensionister kan få 4 kg. ris eller 6 kg. mel, så de kan overleve temperaturer helt ned til -30 grader i Kirgisistan.

Det kan 250.000 kr. bruges til

DANMARKS INDSAMLING

LØRDAG DEN 31. JANUAR PÅ DR1



C-59/12, BKK MOBIL OIL

- **Public law body; statutory health insurance fund; considered a 'trader'**
 - 33 'trader' must be determined in relation to the related but diametrically opposed concept of 'consumer'
 - Which refers to any individual not engaged in commercial or trade activities
 - 26 the classification, legal status and specific characteristics under national law are irrelevant
 - 37 BKK's members are consumers
 - Could be deceived by the misleading information [...] as envisaged by Article 6(1)



INTERMEDIARIES; DISCLOSURE OF MATERIAL CONNECTIONS

- **Marketing 'on behalf of the trader'**
 - The quality and nature of the relationship
 - Agreement, payment or similar benefits
 - The Press Ethical Rules of Guidance
- **When is the trader's practice aggressive?**
 - Psychological effects of presents (undue influence?)
 - The trader's obligation to ensure/encourage disclosure of material connections
- **Cf. FTC Guides on endorsements etc. (Oct. 15, 2009)**



CASE C-19/15 , VERBAND SOZIALER WETTBEWERB (AG HENRIK ØE)

- **Article 1(2) of Regulation 1924/2006 on nutrition and health claims made on foods must be interpreted as meaning that the provisions of that regulation apply to nutrition and health claims made in commercial communications on foods to be delivered as such to the final consumer if those communications are addressed exclusively to the professional sector but are intended to be targeted indirectly at consumers, via the professional sector.**

THANK YOU FOR YOUR ATTENTION

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