

## **REVISED GUIDELINES ON PRICE MARKETING**

After negotiating with a number of trade organizations, the Danish Consumer Ombudsman has issued a revised set of guidelines on price marketing which entered into force on 1 July 2013.

The purpose of the guidelines on price marketing is to protect the consumers against any misrepresentation associated with price marketing while ensuring a more real and loyal competition amongst traders. Further, traders may use the guidelines as guidance on marketing to the consumer.

The new guidelines contain a new provision on marketing of future prices, instructions for the use of the word "free", a new provision on the use of discount vouchers, and a new rule on price guaranties.

### **The Marketing of future Prices**

Pursuant to the new guidelines, the traders can in future market their product with the information that the price will increase in the near future.

However, in order to market the product with the information that the price will increase in the near future, it is a condition that the marketing is not misleading. The guidelines provide that, as an example, the marketing would be misleading if the future price does not develop as stated. Only conditions resulting from external circumstances which the trader could not reasonably foresee can justify a lacking price increase in line with the content of the marketing.

### **The Use of the Word "free"**

In principle, the revised guidelines include a relaxation as regards the use of terms such as "free", "cost-free" or "free of charge" because the traders can now basically use these terms despite charging the inevitable costs connected to responding to the offer, including collection or delivery of the product.

Conversely, traders may not use the term "free" and the like if payment is required for anything other than these expenses. Any costs associated with responding to the commercial practice in question, such as standard telephone call charges for calling the trader or the payment of postage for sending a coupon from a coupon book, are considered to be inevitable costs.

Pursuant to the new rules, it will be possible to advertise with information such as "Free - only pay postage", provided that the payment only relates to the actual postal expense and that the marketing is not in any other way misleading.

## **Discount Vouchers**

The ban on the use of discount vouchers was repealed on 1 July 2011 and consequently, discount vouchers may now be used for marketing purposes. In this connection, the Danish Consumer Ombudsman has seen a need to issue guidelines on the matter.

A voucher is a physical or electronic piece of evidence entitling the consumer to a price reduction on a product or a subsequent refund against redemption of the voucher.

According to the new provision on discount vouchers, the saving message associated with the discount vouchers must not be misleading. When assessing whether the saving message is misleading, it will among other things be examined whether or not the marketing really is comparable with a reduction of the standard price of the product, in which case the price without the discount voucher is considered to be the "standard price" of the product, and the price with the discount voucher is considered to be "the special price" after which the trader must comply with the rules on offers to consumers.

## **Price Guaranties**

Henceforth, it is a condition for the use of the term price guaranty that the price guaranty can be invoked both before and after the purchase. Furthermore, it is a condition that the price guaranty has a real content. It is a condition that the trader has an objective justification if one or more sales arrangements are to be exempted from the price guaranty, just as the price guaranty cannot be used on products which are only marketed by the respective traders. The period of validity connected to the guaranty must be reasonable so as to give the consumer a practical possibility to assert his right to the trader.

The demand for the consumer's documentation of the competitor's price is simply that the consumer must be able to render his right probable, for instance by presenting an advertisement that indicates the lower price of the product in another store.

## **Our Opinion**

In recent years, several forms of marketing have been allowed, including the use of discount vouchers and granting premiums. This creates opportunities for new and modern forms of marketing and the revised guidelines from the Danish Consumer Ombudsman are important for the understanding of the new possibilities for the traders and the arrangement of future marketing. It is important that the trader is attentive to the marketing being in compliance with the provisions in the Danish Marketing Act and related guidelines since failure to do so may result in fines.

Should you have any questions or wish further information on the above, please contact partner, Pernille Nørkær (pno@mwblaw.dk) or Senior Associate Henrik Syskind Pedersen (hsp@mwblaw.dk).

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