

Total- og Sanoma-dommen

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1



Dagens program

- 15:00-15:20 Velkomst og introduktion til afgørelsen
- 15:20-16:00 Harmoniseringsmetoder
 - Martin Bresson, Økonomi- og erhvervsministeriet
- 16:00-16:25 Afgørelsens betydning for detailbranchen
 - Lars Bay, Dansk Erhverv
- 16:25-16:40 Pause med kaffe og kage
- 16:40-17:05 Afgørelsens betydning for leverandørerne
 - Lars William Wesch, Dansk Industri
- 17:05-17:20 Opsamling og oplæg til debat
- 17:20-18:00 Diskussion efterfulgt af uformel networking

2



Opgøret med specialbestemmelserne

- Særligt
 - Rabatmærker o.lign. (mfl. § 10)
 - Købsbetingede tilfældighedskonkurrencer (mfl. § 11)
- Indførelsen af § 9 (1. januar 2007)
- Implementeringen af servicedirektivet (28. december 2009)

3



Afgørelsen

- Total og Sanoma (forenede sager)
 - VTB-VAB NV (C-261/07) v Total Belgium NV,
 - Galatea BVBA (C-299/07) v Sanoma Magazines Belgium NV
 - Afgørelse af 23. april 2009
- Er handelspraksisdirektivet til hinder for belgisk forbud mod kombinationstilbud?

4

Betragtning 50

- »[C]ombined offers constitute ... commercial practices within the meaning of Article 2(d) of the Directive and, consequently, fall within its scope.«

5

Betragtning 51

- »[T]he Directive is intended to establish ... uniform rules on unfair business-to-consumer commercial practices in order to contribute to the proper functioning of the internal market and to achieve a high level of consumer protection.«

6

Betragtning 52

- »Thus, the Directive fully harmonises those rules at the Community level. Accordingly, as Article 4 thereof expressly provides ...«
- »Member States may not adopt stricter rules than those provided for in the Directive, even in order to achieve a higher level of consumer protection.«

7



Handelspraksisdirektivet

- Article 4 - Internal market:
 - »Member States shall neither restrict the freedom to provide services nor restrict the free movement of goods for reasons falling within the field approximated by this Directive.«

8



Forslag til direktiv om forbrugerrettigheder

- Article 4 - Full harmonisation
 - »Member States may not maintain or introduce, in their national law, provisions diverging from those laid down in this Directive, including more or less stringent provisions to ensure a different level of consumer protection.«

9



E-handelsdirektivet

- Article 3(2) - Internal market
 - »Member States may not, for reasons falling within the coordinated field, restrict the freedom to provide information society services from another Member State.«

10



Betragtning 54

- »Thus, in accordance with Article 5(2), a commercial practice is unfair if it is contrary to the requirements of professional diligence and materially distorts or is likely materially to distort the economic behaviour of the average consumer with regard to the product.«

11



Betragtning 56

- »Annex I to the Directive also establishes an exhaustive list of 31 commercial practices which, in accordance with Article 5(5) of the Directive, are regarded as unfair 'in all circumstances'.«
- »... are the only commercial practices which can be deemed to be unfair without a case-by-case assessment under the provisions of Articles 5 to 9 of the Directive.«



Det harmoniserede område

- Forbrugernes økonomiske rettigheder
 - Hvad med generalklausulen?
- Direktivets betragtning 7
 - »... It does not address legal requirements related to taste and decency ... Commercial practices such as, for example, commercial solicitation in the streets, may be undesirable in Member States for cultural reasons. ...«


