



E-Commerce Law and Mobile Marketing: The European Perspective

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Issues

1. Advertising / commercial practice
2. Contract formation and delivery
3. Miscellaneous

[Privacy]

International issues

Self-regulation

Focus on:

Unfair commercial practices directive (2005/29)

E-commerce directive (2000/31)

Distance selling directive (1997/7)

Mobile commerce

Features

- More personal means of communication

- SIM-based (contracts between user and CP)

- Limited user-interface

Distinction between

- Message-based commerce

- Browser-based commerce

Developments

- Wider bandwidths

- Larger screens

- Converging with traditional computers and Internet

1. Advertising / commercial communication and practices

Unfair commercial practices

Business-to-consumer; during and after a commercial transaction

Without prejudice to contract law

The misleading advertising directive

Unfair commercial practices are prohibited

1) contrary to the requirements of professional diligence and 2) impair the ability to make an informed decision

Vulnerable groups (mental or physical infirmity, age or credulity)

Misleading and aggressive practices

Annex I practices

Misleading actions

False information

Is likely to deceive the average consumer
Even if the information is factually correct

Regarding

Nature, main characteristics, or price of the product
The motives for the commercial practice
Rights, qualifications, status affiliation etc.
The consumer's rights

Causes or is likely to cause consumers to take
a transactional decision that he would not
have taken otherwise

Misleading omissions

Omits material information that the average consumer needs to take an informed transactional decision

Unclear, unintelligible, ambiguous or untimely presentation of material information

Fails to identify the commercial intent

Information requirements under Community law

Including 'invitation to purchase'

Causes or is likely to cause consumers to take a transactional decision that he would not have taken otherwise

Limitations of space or time

Article 7(3): 'Where the medium used to communicate the commercial practice imposes limitations of space or time, these limitations and any measures taken by the trader to make the information available to consumers by other means shall be taken into account in deciding whether information has been omitted.'

Misleading practices

Examples (Annex I)

9. Stating or otherwise creating the impression that a product can legally be sold when it cannot
10. Presenting rights given to consumers in law as a distinctive feature of the trader's offer
11. Using editorial content in the media to promote a product where a trader has paid for the promotion without making that clear (advertorial)
20. Describing a product as 'gratis', 'free', 'without charge' or similar if the consumer has to pay anything other than the unavoidable cost of responding and/or delivery

Aggressive practices

Harassment and coercion that is likely to significantly impair the average consumer's freedom of choice or conduct

With regard to:

- Timing, location, nature or persistence

- Threatening or abusive language or behavior

- Exploitation of specific misfortune or circumstance

- Barriers to the exercise of rights under a contract

- Threat to take any action that cannot be taken

Causes or is likely to cause consumers to take a transactional decision that he would not have taken otherwise

Aggressive practices

Examples (Annex I)

- 26. Making persistent and unwanted solicitations by telephone, fax, e-mail or other remote media
- 28. Including in an advertisement a direct exhortation to children to buy advertised products or persuade their parents or other adults to buy advertised products for them

Direct marketing

Article 13 of directive 2002/58/EC

Starting point: Prior consent

Aut. calling machines, fax and electronic mail

Address obtained in relation to a sale

Opportunity to object at collection and use

Disguising or concealing the identity of the sender
or lack of valid sender-address

Article 7 of e-commerce directive

Identifiable as commercial when received

Article 9 of distance selling directive

Supply of goods or services without their being
ordered combined with demand for payment

2. Contract formation and delivery

Prior information

In good time prior to conclusion

Identity of the supplier

Main characteristic of the product

The price including all taxes

Delivery costs

Details on payment, delivery and performance

Existence of right of withdrawal

Possible cost for using means of communication

The period, the offer is valid

In a clear and comprehensible manner

Written confirmation of information

A durable medium available to the consumer

'Prior information'

Conditions and procedures for right of withdrawal

Where to send complaints

After-sales-services and guaranties

In good time during the performance and at latest at delivery

Exception for services supplied on only one occasion and are invoiced by the operator of the means of distance communication

Right of withdrawal

Seven working days (Denmark: 14 days)

From delivery of goods, conclusion of contract (services) or fulfillment of information requirements

No longer than 3 months

Consequences of withdrawal

No charge for withdrawing

Cost of returning the goods

Exception for the provision of services if performance has begun, with the consumer's agreement

E-Commerce directive

Contracts concluded by electronic means

Not deprive legal validity

Information to be provided

The different technical steps

Whether the contract will be available

Technical means for correcting input errors

The languages offered for conclusion of contracts

Acknowledge receipt of order

Electronically and without undue delay

Not 'e-mail-contracts'

International issues

The Internal Market

Free movement of goods and service

Country of origin principle

E-commerce directive

Unfair commercial practices directive

Enforcement

The injunction directive

Self-regulation

Misleading commercial practices (Annex I)

1. Falsely claiming to be a signatory to a code of conduct
2. Displaying a trust mark, quality mark or equivalent without necessary authorization
3. Falsely claiming that a code of conduct has an endorsement from a public or other body

Trustmarks are well-known as concept

Must be above legal requirements

Review, monitoring, consumer redress, collective consumer protection and children

Thank you for your attention!

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