

# Swedish Code of Statutes

## SFS 2008:486

Published: 16 June 2008

### The Marketing Act;

issued on 5 June 2008.

In accordance with a decision<sup>1</sup> by the Riksdag, the following is enacted<sup>2</sup>.

#### Introductory provision

##### Section 1

The purpose of this Act is to promote the interests of consumers and business in connection with the marketing of products and to prevent marketing that is unfair to consumers and traders.

Provisions concerning marketing can be found in

- the Aviation Act (1957:297),
- the Consumer Credit Act (1992:830),
- the Package Tours Act (1992:1672)
- the Tobacco Act (1993:581),
- the Alcohol Act (1994:1738),
- the Deposit Guarantee Act (1995:1571)
- the Radio and Television Act (1996:844),
- the Act on the Obligation to Give Notice of Certain Financial Operations (1996:1006),
- the Marketing of Crystal Glass Act (1996:1118),

<sup>1</sup> Government Bill 2007/08:115, Report 2007/08:CU21, Riksdag Communication 2007/08:222.

<sup>2</sup> Cf Directive 2006/114/EC of the European Parliament and the Council of 12 December 2006 concerning misleading and comparative advertising (OJ L 376, 27.12.2006, p. 21, Celex 32006L0114), Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by Law, Regulation or Administrative Action in Member States concerning the pursuit of television broadcasting activities (OJ L 298, 17.10.1989, p. 23, Celex 389L0552), Directive 97/7/EC of the European Parliament and the Council of 20 May 1997 on the protection of consumers in respect of distance contracts (OJ L 144, 4.6.1997, p. 19, Celex 31997L0007), Directive 1999/44/EC of the European Parliament and Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees (OJ L 171, 7.7.1999, p. 12, Celex 31999L0044), Directive 2000/31/EC of the European Parliament and Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the internal market (OJ L 178, 17.7.2000, p. 1, Celex 32000L0031), Directive 2002/58/EC of the European Parliament and Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (OJ L 201, 31.7.2002, p. 37, Celex 32002L0058), Directive 2002/65/EC of the European Parliament and Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC (OJ L 271, 9.10.2002, p. 16, Celex 32002L0065) and the Directive 2005/29/EC of the European Parliament and Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC and Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and the Council and Regulation (EC) No 2006/2004 of the European Parliament and the Council (OJ L 149, 11.6.2005, p. 22, Celex 32005L0029).

<sup>3</sup>\* Swedish Code of Statutes SFS 2008:484–519

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- the Act on Consumer Protection in Timeshare Contracts (1997:218),
- the Act on Cross-Border Payments within the European Economic Area (1999:268),
- the Investor Compensation Act (1999:158)
- the Act on Electronic Commerce and other Information Society Services (2002:562),
- the Deposits Business Act (2004:299),
- the Price Information Act (2004:347),
- the Distance and Doorstep Selling Act (2005:59),
- the Insurance Contracts Act (2005:104),
- the Insurance Mediation Act (2005:405), and
- the Franchise Disclosure Act (2006:484)

### **Scope of the Act**

#### **Section 2**

The Act applies when traders market or seek to acquire products as part of their business activity.

The Act also applies to television broadcasts by satellite that are governed by the Radio and Television Act (1996:844).

The Act also applies when the Consumer Ombudsman fulfils his obligations as competent authority under Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws.<sup>3</sup>

### **Definitions**

#### **Section 3**

For the purposes of this Act the following terms have the meaning set out below

*transaction decision*: a decision made by a consumer or a trader concerning whether, how and under what conditions a product is to be bought, if all or part of the purchase sum is to be paid, if the product is to be retained or transferred, or if a contractual right in connection with the product is to be exercised, regardless of whether the consumer or trader decides to make a transaction or refrain from making a transaction,

*electronic mail*: an addressed or otherwise individualised electronic message in the form of text, voice, sound or image, sent via a public communications network and which can be stored on the network or in the recipient's terminal equipment until the recipient retrieves it,

*good marketing practice*: generally accepted business practices or other established norms aimed at protecting consumers and traders in the marketing of products,

*consumer*: a natural person who makes a transaction mainly for purposes that fall outside business activity,

*marketing*:

advertising and other measures in the course of business activities which are intended to promote the sale of and access to products including a trader's actions, omissions or other measures or behaviour before, during or after sale or delivery of products to consumers or traders,

<sup>3</sup> OJ L 364, 9.12.2004, p. 1 (Celex 32004R2006).

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*trader*: a natural or legal person who makes a transaction for purposes connected with that person's own business activity,

*products*: goods, services, real property, employment opportunities and other commodities.

### **Unfair marketing**

#### **Annex to the Directive**

##### **Section 4**

Annex I to Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council<sup>4</sup> shall have the force of law in Sweden. The Government has published the relevant annex in the Swedish Code of Statutes.

In an examination of a matter in accordance with any of the provisions of Annex I to the Directive this Act shall be applicable.

The provisions of points 1–31 of Annex I to the Directive shall be applicable even if the marketing in question is directed towards traders.

The provisions of point 14 of Annex I to the Directive shall be applied to measures that have been taken in breach of this point unless the measure is covered by the Lotteries Act (1994:100).

#### **Good marketing practice**

##### **Section 5**

Marketing shall be consistent with good marketing practice.

##### **Section 6**

Marketing that contravenes good marketing practice under Section 5 is to be regarded as unfair if it appreciably affects or probably affects the recipient's ability to make a well-founded transaction decision.

#### **Aggressive marketing**

##### **Section 7**

A trader may not use aggressive marketing.

Marketing is to be regarded as aggressive if it involves harassment, coercion, physical violence, threats or other aggressive ways of bringing pressure to bear.

Aggressive marketing is to be regarded as unfair if it appreciably affects or probably affects the recipient's ability to make a well-founded transaction decision.

Aggressive marketing as specified in points 24–31 of Annex I to Directive 2005/29/EC are always to be regarded as unfair.

#### **Misleading marketing**

##### **Section 8**

Marketing that is misleading under any of the provisions of Sections 9, 10 or 12-17 is to be regarded as unfair if it affects or probably affects the recipient's ability to make a well-founded transaction decision.

<sup>4</sup> OJ L 149, 11.6.2005, p. 22 (Celex 32005L0029).

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Misleading marketing as specified in points 1-23 of Annex I to Directive 2005/29/EC are always to be regarded as unfair.

### *Identification of advertising*

#### **Section 9**

All marketing shall be formulated and presented in such a way that it is clear that it is a matter of marketing.

The party responsible for the marketing shall also be clearly indicated. However, this does not apply to representations whose sole purpose is to attract attention ahead of follow-up representations.

### *Prohibition of misleading marketing*

#### **Section 10**

In the course of marketing a trader may not make any incorrect statement or other representation that is misleading with respect to the trader's own or another person's business activity.

The first paragraph applies in particular to representations which concern 1. the product's existence, nature, quantity, quality and other distinguishing characteristics, 2. the product's origin, uses and risks such as impact on health or environment, 3. customer service, processing of complaints and method and date of manufacture or supply, 4. the product's price, basis for calculating the price, special price advantages and payment terms, 5. the qualifications, position on the market, commitments, trademarks, trade names, distinctive symbols or other rights of the trader or of another trader, 6. awards or distinctions awarded to the trader, 7. terms of delivery for the product, 8. service needs, spare parts, exchange or repairs, 9. the trader's commitment to comply with codes of conduct, and 10. the consumer's rights under law or other regulation.

Further, a trader may not omit material information when marketing his own or another person's business activity. Misleading omission also refers to cases where the material information is provided in an unclear, incomprehensible, ambiguous or other inappropriate manner.

### *Limitations in the means of communication etc.*

#### **Section 11**

When assessing whether a representation is misleading under Section 10, third paragraph, the limitations in time and space of the means of communication used may be taken into account, as well as the measures taken by the trader to provide the information in some other way.

### *Invitations to purchase*

#### **Section 12**

Marketing is misleading if in a representation the trader offers consumers a specific product with a stated price without clear presentation of the following material information:

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1. the product's distinguishing characteristics to the extent appropriate to the media and product,
2. price and unit price stated as stipulated in Sections 7-10 of the Price Information Act (2004:347),
3. the identity and geographical address of the trader,
4. terms and conditions of payment, delivery, performance and processing of complaints if these deviate from normal practice in the industry or for the product in question,
5. information concerning the right of withdrawal or the right to cancel a purchase which must be supplied to the consumer by law.

Marketing is also misleading if the trader in a representation offers consumers several specific products at a common price, without the offer containing material information under points 1-5 of the first paragraph.

### *Misleading packaging dimensions*

#### **Section 13**

A trader may not in the course of marketing, use packaging which, through its dimensions or other aspects of its outer appearance is misleading as to the product's quantity, size or form.

### *Misleading copies*

#### **Section 14**

A trader may not, in the course of marketing, use copies that are misleading in that they can easily be confused with another trader's known and distinctive products. This does not, however, apply to copies the design of which is primarily intended to render the product functional.

### *Bankruptcy sales (konkursutförsäljningar)*

#### **Section 15**

A trader, in the course of marketing, may only use the expression "bankruptcy", by itself or in conjunction with another expression, where the products are offered for sale by the estate in liquidation/bankruptcy or on its behalf.

### *Clearance sales (Utförsäljningar)*

#### **Section 16**

A trader, in the course of marketing products, may only use the expressions "slutförsäljning" (final sale), "utförsäljning" (clearance sale) or another expression with the equivalent implication if

1. it relates to a final sale of the trader's entire stock or a clearly defined part of that stock,
2. the sale takes place during a limited period, and
3. the prices are significantly lower than the trader's normal prices for equivalent products.

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### *Discount sales (Realisationer)*

#### **Section 17**

A trader, in the course of marketing products, may only use the expression “realisation” (discount sale) or another expression with the equivalent implication if

1. the products offered for sale form part of the trader's ordinary range,
2. the sale takes place during a limited period, and
3. the prices are significantly lower than the trader's normal prices for equivalent products.

#### **Comparative advertising**

#### **Section 18**

A trader may, in its advertising, directly or indirectly refer to another trader or such trader's products provided that the comparison

1. is not misleading,
2. refers to products which fulfil the same needs or are intended for the same purpose,
3. objectively refers to material, relevant, verifiable, and distinguishing characteristics of the products,
4. does not give rise to confusion between the trader and another trader or between their products, trademarks, business names, or other distinctive marks,
5. does not discredit or disparage another trader's business, circumstances, products, trademarks, business name or other distinctive marks,
6. in respect of goods bearing a designation of origin, at all times pertains to goods of the same designation,
7. does not take unfair advantage of the reputation associated with another trader's trademark, business name, or other distinctive marks or the designation of origin of the goods, and
8. does not present a product as an imitation or copy of a product with a protected trademark or business name.

#### **Unsolicited advertising**

#### **Section 19**

A trader may, in the course of marketing to a natural person, use electronic mail, a telefax or automatic calling device or any other similar automatic system for individual communication that is not operated by an individual, only if the natural person has consented to this in advance.

Where a trader has obtained details of a natural person's electronic address for electronic mail in the context of a sale of a product to that person, the consent requirement stipulated in the first paragraph shall not apply, provided that,

1. the natural person has not objected to the use of the electronic address for the purpose of marketing via electronic mail,
2. the marketing relates to the trader's own similar products and
3. the natural person is clearly and explicitly given the opportunity to object, simply and without charge, to the use of such details for marketing purposes, when they are collected and in conjunction with each subsequent marketing communication.

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### **Section 20**

In marketing via electronic mail the communication shall at all times contain a valid address to which the recipient can send a request that the marketing cease. This also applies to marketing to a legal person.

### **Section 21**

A trader may use methods for individual distance communication other than those referred to in Section 19, unless the natural person has clearly objected to the use of such methods.

### **Warranty information**

#### **Section 22**

A trader who, in the course of marketing, offers to accept liability for a product or a part of a product or for some feature of a product for a specified period by means of a warranty or similar commitment shall, at the time of sale, provide the buyer with clear information concerning the content of the commitment and such information as is necessary for the buyer to bring a claim under it. The buyer shall also be informed that his legal rights are not affected by the commitment.

The commitment and information shall be provided in a document or some other readable and permanent form that is accessible to the buyer.

### **Prohibitions and orders**

#### **Prohibition of certain marketing**

##### **Section 23**

A trader whose marketing is unfair may be prohibited from continuing with that or other similar practices.

A prohibition under the first paragraph may also be issued against 1. an employee of the trader, 2. another person acting on behalf of the trader, and 3. any person who has otherwise materially contributed to the marketing in question.

#### **Order to provide information**

##### **Section 24**

A trader who, in the course of marketing, neglects to provide material information may be ordered to provide such information.

Such an order may also be issued against 1. an employee of the trader, and 2. another person acting on behalf of the trader.

An order under the first paragraph may include an obligation to provide information 1. in advertisements or other representations that the trader uses in the course of marketing, 2. through labelling of the goods or in some other form at the point of sale, or 3. in a certain form to consumers who so request.

#### **Order to provide technical aids**

##### **Section 25**

A service provider under the Act on Electronic Commerce and other Information Society Services (2002:562) who, in contravention of Section 10 of that Act, fails to provide such technical aids as are referred to there may be ordered to provide such aids.

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### **Conditional financial penalty**

#### **Section 26**

A prohibition under Section 23 or an order under Section 24 or 25 shall be subject to a conditional financial penalty, unless there are particular grounds rendering this unnecessary.

### **Interim orders**

#### **Section 27**

The court may order that a prohibition under Section 23 or an order under Section 24 or 25 shall apply until further notice if

1. the applicant demonstrates probable cause for his claim, and
2. it can be reasonably assumed that the defendant, by taking or by omitting to take a specific action, can reduce the effectiveness of a prohibition or order.

The provisions of Chapter 15, Section 5, second to fourth paragraphs and Sections 6 and 8 of the Code of Judicial Procedure apply to orders under the first paragraph. The decision may be implemented with immediate effect.

### **Orders and injunctions**

#### **Section 28**

In cases of minor importance, the Consumer Ombudsman may issue orders and injunctions concerning

1. prohibitions as referred to in Section 23 (injunctions),
2. orders as referred to in Section 24 (information orders), or
3. orders as referred to in Section 25.

The order or injunction shall be subject to a conditional financial penalty.

In order for it to be valid, the trader must accept the order or injunction immediately or within a certain period. If the order has been accepted it applies as a final and non-appealable judgment.

Acceptance after the stipulated period is not valid.

### **Market disruption charge**

#### **Grounds for imposing a charge**

#### **Section 29**

A trader may be ordered to pay a special charge (market disruption charge) if the trader, or a person acting on behalf of the trader, intentionally or negligently contravenes

- Section 7,
- Section 8 and any of the provisions of Sections 9, 10, 12–17,
- Section 18,
- Section 20 or
- any of the provisions of Annex I to Directive 2005/29/EC.

The same applies if a trader intentionally or negligently contravenes any of the provisions of

- Section 14, first paragraph, point 2 or 3 or Section 14 a, first paragraph, point 2 or 3 of the Tobacco Act (1993:581),
- Chapter 4, Section 10 of the Alcohol Act (1994:1738),
- Chapter 7, Section 3, 4 or 10, first or third paragraph of the Radio and Television Act (1996:844),



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– Section 11 of the Deposit Guarantee Act (1995:1571) or Section 8 of the Deposits Business Act (2004:299) as regards an offer that is not directed solely to persons other than consumers.

The provisions of the first and second paragraphs also apply to a trader who intentionally or negligently contributes materially to the infringement.

The charge accrues to the State.

### **Section 30**

A market disruption charge may not be imposed on a person for infringement of a prohibition or failure to comply with an order issued subject to a conditional financial penalty under this Act.

### **Amount of the charge**

#### **Section 31**

The market disruption charge shall be fixed at no less than five thousand kronor and no more than five million kronor.

The charge may not exceed ten per cent of the trader's annual turnover.

The annual turnover shall refer to the turnover for the immediately preceding financial year.

If the infringement occurred during the trader's first year of business or if information concerning the annual turnover is otherwise not available or is incomplete, the amount of annual turnover may be estimated.

If an action is brought against more than one trader, the charge shall be separately determined for each of them.

#### **Section 32**

In determining the market disruption charge, particular attention shall be given to the seriousness and duration of the infringement.

In minor cases, no charge shall be imposed. The charge may be waived if there are exceptional grounds for doing so.

### **Payment of the charge**

#### **Section 33**

The market disruption charge shall be paid to the Legal, Financial and Administrative Services Agency within thirty days of the judgment becoming final and non-appealable, or such later date as specified in the judgment.

If the charge has not been paid within the period stipulated in the first paragraph, the Legal, Financial and Administrative Services Agency shall submit the unpaid charge for collection. The Act on the Collection of Debts to the State (1993:891) contains provisions on collection.

### **Statutory limitation**

#### **Section 34**

A market disruption charge may only be imposed if the application to institute proceedings has been served on the party to whom the claim is addressed within five years of cessation of the infringement.

#### **Section 35**

A market disruption charge shall lapse if the judgment has not been executed within five years of the date on which it became final and non-appealable.

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### **Attachment**

#### **Section 36**

In order to secure a claim relating to a market disruption charge the court may order attachment. In that case the provisions of Chapter 15 of the Code of Judicial Procedure concerning attachment to secure a claim shall apply.

### **Damages**

#### **Section 37**

A person who intentionally or negligently violates a prohibition or an order issued under Section 23, 24 or 25, or Section 7, Section 8 or any of the provisions of Sections 9, 10, 12–17, or any of the provisions of Sections 18–22 or any of the points in Annex I to Directive 2005/29/EC, shall compensate any consumer or other trader for any damage arising from this violation.

When determining compensation to a trader, account may be taken of circumstances other than of an economic nature.

#### **Section 38**

Entitlement to damages is forfeited if proceedings are not instituted within five years from the time the damage arose.

### **Erasure**

#### **Erasure etc. of misleading representations**

#### **Section 39**

In the event of an infringement of a prohibition subject to a conditional financial penalty under Section 23 or of the provisions of Sections 9, 10, 12–17 or of Section 18 or of any of points 1–23 in Annex I to Directive 2005/29/EC, the court may, where reasonable, order that any misleading representation on goods, packaging, printed matter, business documents or similar shall be erased or altered so that it is no longer misleading. If this objective cannot be achieved by other means the court may order that the property be destroyed.

### **Security measures**

#### **Section 40**

If the applicant demonstrates probable cause for the granting of an application under Section 39 and it can be reasonably assumed that the defendant, by taking or by omitting to take a specific action, will reduce the effectiveness of an order for erasure, the court may order appropriate measures to apply until further notice. The provisions of Chapter 15, Section 3, second paragraph, Section 5, second to fourth paragraphs and Sections 6 and 8 of the Code of Judicial Procedure apply to such measures. The order may be implemented with immediate effect.

If an application is presented under Section 39 in proceedings for the imposition of a conditional financial penalty pursuant to this Act, instead of the provisions of the first paragraph, the property may be seized. In that case the provisions of Chapter 27 of the Code of Judicial Procedure concerning seizure in criminal cases shall be applied. The order may be implemented with immediate effect.

#### **Section 41**

Orders concerning erasure of misleading representations under Section 39 and orders concerning security measures under Section 40 shall be made on the application of a party to the court where proceedings concerning the application for a prohibition under Section 23, a market disruption charge under Section 29 or damages under Section 37 are pending.

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Orders to erase representations due to infringement of a prohibition subject to conditional financial penalty under Sections 23 and 26 may be made on the application of a party to the court where proceedings concerning the imposition of the conditional financial penalty are pending.

### **Obligation to provide information etc.**

#### **Section 42**

At the request of the Consumer Ombudsman: 1. any party so requested shall give a statement and provide necessary information in proceedings concerning the application of this Act, 2. a trader shall provide such documents, samples of goods and suchlike which may be of significance for the investigation of a matter where a prohibition or order under Section 23, 24 or 25 can be assumed to be at issue.

#### **Section 43**

A person who is subject to a prohibition or order under Section 23, 24 or 25 shall be obliged, at the request of the Consumer Ombudsman, to provide any information, documentation, samples of goods and suchlike as are necessary in order to verify compliance with the prohibition or order.

#### **Section 44**

Where necessary for supervision in a matter referred to in Section 42, point 2 or Section 43, the Consumer Ombudsman may request the trader to make available for inspection such premises or corresponding locations, with the exception of dwellings, where the business activities are conducted.

#### **Section 45**

In the event of non-compliance with a request under Section 42, 43 or 44, the Consumer Ombudsman may order the person concerned to fulfil his or her obligation, subject to a conditional financial penalty.

#### **Section 46**

If there are particular grounds, the Consumer Ombudsman may pay compensation for samples or suchlike referred to in Sections 42 and 43.

The Government or an agency appointed by the Government may issue regulations concerning the obligation of a trader to reimburse the Consumer Ombudsman for expenses incurred in taking and examining samples in cases referred to in Section 43.

### **Where and by whom proceedings may be instituted**

#### **Prohibitions and orders**

#### **Section 47**

Proceedings in respect of a prohibition or order under Section 23, 24 or 25 shall be instituted at the Market Court. If the same applicant, or another applicant in consultation with that applicant, institutes concurrent proceedings concerning a market disruption charge under Section 29 or damages under Section 37 with reference to the marketing in question, proceedings concerning a prohibition or order shall, however, be instituted at Stockholm District Court.

Proceedings in respect of a prohibition or order may be instituted by 1. The Consumer Ombudsman, 2. a trader affected by the marketing in question, or 3. a group of consumers, traders or employees.

An interim order under Section 27 shall be ordered by the court where proceedings under the first paragraph are pending.

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### **Market disruption charge**

#### **Section 48**

Proceedings in respect of a market disruption charge under Section 29 shall be instituted at Stockholm District Court by the Consumer Ombudsman.

If the Consumer Ombudsman decides in a particular case not to commence proceedings for the imposition of a market disruption charge, an individual trader affected by the marketing in question or a group of traders may institute such proceedings.

An attachment order under Section 36 shall be issued by the court before which proceedings for a market disruption charge are pending. If proceedings have not yet been instituted, the provisions of the first paragraph concerning court of jurisdiction shall apply.

### **Imposition of conditional financial penalty**

#### **Section 49**

Proceedings for imposition of a conditional financial penalty which have been ordered pursuant to this Act shall be instituted at a district court that is competent under Chapter 10 of the Swedish Code of Judicial Procedure. Such proceedings may always be instituted at Stockholm District Court.

Proceedings may be instituted by the person who requested the order subject to a conditional financial penalty and by the Consumer Ombudsman.

### **Damages**

#### **Section 50**

Proceedings in respect of damages under Section 37 shall be instituted at Stockholm District Court. Such proceedings may also be instituted at a district court that is competent under Chapter 10 of the Swedish Code of Judicial Procedure.

### **Appeals**

#### **Section 51**

Decisions of the Consumer Ombudsman under Sections 42–44 and concerning orders subject to a conditional financial penalty after such requests may be appealed to Stockholm District Court.

The same applies to decisions on compensation under Section 46 or under regulations issued pursuant to that Section.

#### **Section 52**

Judgments and decisions of a district court in cases and matters under this Act can be appealed to the Market Court. Judgments and decisions in cases concerning imposition of conditional financial penalties ordered pursuant to this act shall, however, be made to the court of appeal in accordance with the provisions of the Conditional Financial Penalties Act (1985:206).

Decisions in the course of proceedings on matters referred to in Section 27 and Section 40, first paragraph, may be appealed separately. Decisions in proceedings handled by the Market Court shall be deemed to concern measures under Chapter 15 of the Swedish Code of Judicial Procedure.

### **Legal force**

#### **Section 53**

A judgment in which the issue of prohibition under Section 23 or order under Sections 24 and 25 has been adjudicated, shall constitute a bar to initiating new proceedings under Sections 23, 24 or 25 with reference to the marketing in question. Such a judgment does not, however, prevent the same issue being heard again as a result of a change in circumstances.

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### **Composition of the court etc.**

#### **Section 54**

At the main hearing of a case under this Act Stockholm District Court shall be composed of four members, two of whom shall be legally trained judges and two financial experts. One of the legally trained judges shall be president of the court.

If, after the main hearing has started, one of the members of the court is prevented from attending, the court is nevertheless competent.

Unless otherwise provided in Section 55, the district court shall be composed of one legally qualified judge

1. at a main hearing in cases referred to in Chapter 1, Section 3 a, second and third paragraphs of the Swedish Code of Judicial Procedure,
2. at determination of cases without a main hearing, and
3. at proceedings that do not take place at a main hearing.

In cases referred to in the third paragraph a financial expert may also be a member of the district court.

#### **Section 55**

When determining cases without a main hearing and when considering issues which are part of the proceedings, Stockholm District Court may be composed as stipulated in Section 54, first paragraph, if there are particular grounds with regard to the nature of the case or issue.

#### **Section 56**

In cases that only concern damages under Section 37 Stockholm District Court may be composed as follows from Chapter 1, Section 3 a, 3 c and 3 d of the Swedish Code of Judicial Procedure.

#### **Section 57**

At proceedings concerning matters referred to in Section 51, Stockholm District Court shall be composed of one legally qualified judge or one legally qualified judge and one financial expert. However, if there are particular grounds with regard to the nature of the matter, the district court may be composed as stipulated in Section 54, first paragraph.

#### **Section 58**

The Government shall appoint for a specified period persons to serve as financial experts under Section 54. Should circumstances arise while a financial expert is participating in the processing of a case or matter which entail the termination of his or her appointment, the appointment shall be regarded as continuing to be valid for the case or matter in progress.

A person who is to serve as a financial expert shall be a Swedish citizen and may not be a minor or an undischarged bankrupt or have an administrator appointed for them by a court under Chapter 11, Section 7 of the Children and Parents Code.

### **Procedural provisions**

#### **Proceedings heard at Stockholm District Court and the Market Court**

#### **Section 59**

Unless otherwise provided in this Act, the provisions of the Swedish Code of Judicial Procedure concerning civil cases in which out-of-court settlement of the matter is not permitted shall be applied to cases of prohibitions or orders under Sections 23, 24 or 25 and cases concerning a market disruption charge under Section 29.

In cases concerning damages under Section 37, the provisions of the Swedish Code of Judicial Procedure concerning civil cases in which out-of-court settlement of the matter is permitted are applicable.

In matters referred to in Section 51 the Act on the Examination of Non-Contentious Matters (1996:242) is applicable, unless otherwise provided in this Act.

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### **Section 60**

When the Market Court hears cases and matters following an appeal under Section 52, the provisions of Chapters 49, 50 and 52 of the Swedish Code of Judicial Procedure and of Section 39, first paragraph of the Act on Non-Contentious Matters (1996:242) concerning the court of appeal shall instead apply to the Market Court. Leave to appeal is not required, however, for the Market Court to examine a decision of the district court.

### **Section 61**

If proceedings are brought under this Act by a person other than the Consumer Ombudsman, the court shall notify the Consumer Ombudsman of the proceedings.

When proceedings are brought concerning a market disruption charge or damages the district court shall notify the Market Court of the proceedings.

### **Consolidation**

#### **Section 62**

Proceedings for damages under Section 37 may only be consolidated in the district court with other proceedings under this Act.

### **Intervention**

#### **Section 63**

In proceedings concerning prohibitions or orders under Sections 23, 24 or 25, the person entitled to take legal action under Section 47, second paragraph is entitled to participate in the proceedings as an intervenor under Chapter 14 of the Swedish Code of Judicial Procedure.

### **Litigation costs**

#### **Section 64**

In proceedings under this Act, Chapter 18 of the Swedish Code of Judicial Procedure applies with respect to litigation costs. The provisions of Chapter 18, Section 16 of the Swedish Code of Judicial Procedure shall not, however, be applicable in proceedings concerning prohibitions or orders under Sections 23, 24 or 25. In such proceedings the court may determine that each of the parties shall bear its own litigation costs.

### **Non-attendance**

#### **Section 65**

The provisions of the Swedish Code of Judicial Procedure concerning prosecutors shall apply to the Consumer Ombudsman as a party in cases and matters under this Act, with respect to orders addressed to parties and non-attendance of parties.

### **Other provisions**

#### **Section 66**

The Government may, with reference to a foreign state, provide as follows.

As regards goods bearing an incorrect or misleading designation of origin, by which the goods, directly or indirectly, are indicated to have been produced or manufactured in the foreign state or in a region or place in the foreign state, measures may be adopted under Section 39 in cases other than those referred to there. However, this is not applicable if the designation in accordance with trade practice only serves to indicate the nature of the goods or if it is accompanied by a clear statement that the goods were not produced or manufactured in the state or place mentioned.

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Proceedings concerning measures under the second paragraph shall be instituted in Stockholm District Court by the Consumer Ombudsman or, where the Consumer Ombudsman has decided not to institute proceedings, by any person who conducts business in goods of the same nature as the goods to which the proceedings relate.

1. This Act enters into force on 1 July 2008, at which time the Marketing Act (1995:450) shall cease to apply and the Act amending the Marketing Act (2005:706) shall be repealed.
2. The provisions of Sections 4–22 and 29–36 shall also be applicable to marketing started before the Act enters into force, unless the measure was permitted under older regulations.
3. Prohibitions and orders and injunctions and information orders issued under older regulations shall continue to apply.
4. The provisions concerning damages in Section 29 of the Marketing Act (1995:450) shall continue to be applicable as regards infringements occurring before the new Act enters into force.
5. The provisions of Section 49 shall also be applicable as regards imposition of conditional financial penalties ordered pursuant to the Marketing Act (1995:450).

On behalf of the Government

FREDRIK REINFELDT

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