Position of the Nordic Consumer Ombudsmen on Marketing in Social Media

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On 3 May 2012 the Nordic Consumer Ombudsmen presented a Joint Position regarding marketing in social media. These kinds of guidelines are not legally binding, but are generally well regarded and relied upon by Swedish courts when determining good market practices.

In the Joint Position, the Nordic Consumer Ombudsmen confirmed that Marknadsföringslagen (the Swedish Marketing Practices Act - MPA) is technology neutral and applies in full to social media. The Joint Position deals among other things with issues such as (i) unsolicited commercial messages, especially relating to Facebook as this was acknowledged as being the most commonly used social media today, as well as (ii) identification of commercial messages.

With regard to unsolicited commercial messages on Facebook, the MPA prescribes as a general rule that advertising by electronic mail (for example e-mail and SMS) requires that the recipient has given his or her prior consent to such advertising from the sender (opt-in).

The Nordic Consumer Ombudsmen noted that given how some social media are technically designed there are doubts as to whether certain messages can be considered to require opt-in.

The Nordic Consumer Ombudsmen found that messages to Facebook’s inbox and timeline (profile) fall within the definition of electronic mail, which requires prior consent from the user (opt-in) accordingly.

Moreover, a Facebook user can also receive messages on Facebook under his or her “News Feed”. These messages may include “status updates” from traders whom the user has “liked”. A user may also receive messages indicating that the user’s friends “like” a particular trader, information received because one of the user’s friends has “shared” information about a trader, or messages indicating that a friend has participated in a competition. The Nordic Consumer Ombudsmen found that it is uncertain whether such messages from traders appearing under “News Feed” fall within the definition of electronic mail. Until greater clarity has been achieved on this matter, the Nordic Consumer Ombudsmen established that such communications would be considered “other unsolicited communications”, and that recipients must subsequently be able to opt out of receiving advertising

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through the “News Feed”. The Nordic Consumer Ombudsmen mentioned that they will discuss this matter with the European Commission and the European enforcement authorities in order to find out how these rules are to be interpreted.

Concerning marketing messages, the MPA provides that a message that involves marketing must be clearly indicated as commercial communication. This means among other things that traders must not falsely create the impression that they are not acting for purposes related to their trade and it must also be made clear if a private individual has received payment or other benefits for promoting a product or service. A trader will be obligated to inform the private individual of the duty.

Position of the Nordic Consumer Ombudsmen on Marketing in Social Media

http://www.konsumentverket.se/Global/Konsumentverket.se/St%c3%a5ndpunkt%20version-eng.pdf

Appendix 1

http://www.konsumentverket.se/Global/Konsumentverket.se/Bilaga%201-eng.pdf

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