

Ajankohtaista

KULUTTAJAOIKEUDESTA

18 June 2010

6/10

From the Editor

Opticians under the lens

Articles

[From the Editor] Opticians under the lens	2
Jewellery retailers' discount campaign marketing found to be in breach of the law	3
Eco-design Act to contain a provision on the Consumer Ombudsman's universal jurisdiction	5
Market Court's resources must be secured in developing the division of duties between courts.	6
K-16 classification must be retained in reforming the Act on the Classification of Audiovisual Programmes	7
Limits to fixed-term agreements for communications services.....	9
Policy tools must be in line with actual consumer behaviour	11
Consumer Agency and the optical industry sat down to discuss rules	13

[From the Editor]

Opticians under the lens

The Consumer Agency and the optical industry have been working together for quite some time: the fundamentals of appropriate marketing have been reviewed in training and discussion events, most recently in May 2010. Despite the considerable number of hours spent on these efforts, the results are not satisfactory.

Opticians have a strong advertising presence in media, with small print and one-euro offers to draw customers into the stores apparently still the norm.

The objective of the most recent round of negotiations we held with industry representatives was to have businesses in the field finally follow the jointly agreed rules and reduce misleading marketing to a minimum. This is a perfectly realistic goal: The optical industry has been one of the few successful fields in the current recession. The businesses therefore can't appeal to financial difficulties as a justification for their inappropriate marketing activities. Industry members don't deny that there are problems with advertising in the field, but for some reason actual change has been difficult to accomplish. It is clear that the problem can be resolved with lower costs through co-operation instead of taking legal action through the Market Court against individual businesses.

All this is not to say that the industry isn't doing anything right. For instance, package pricing and price calculators on opticians' websites are moves in the right direction. Now we need more of that!

The Union of Finnish Opticians has an excellent opportunity to bring the businesses in the industry in line. By acting now it can prevent the industry from becoming mired in the same combination of problems that telecom operators are currently struggling with.

Anja Peltonen
Director

Jewellery retailers' discount campaign marketing found to be in breach of the law

The Consumer Agency recently intervened in the marketing of two companies selling expensive jewellery, Kulta-Aika Oy and Oulun Koru Oy. The retailers' continuous discount sales and the practice of calculating discounts off suggested retail prices were found to be in breach of the Consumer Protection Act.

Legislation applied in the case

According to Chapter 2 of the Consumer Protection Act, marketing may not be contrary to good practice or unfair to consumers. The prohibition of unfair practices also extends to the customer relationship. A business may not communicate false or misleading information in marketing or in the customer relationship. Information that is likely to lead the consumer to making a purchase or other decision related to a consumption good that he or she would otherwise not have made is deemed misleading. When indicating a discounted price, the basis of the discount must be an actual price previously charged by the business for the same product.

Market Court has prohibited continuous discount sales

Kulta-Aika Oy advertised discounted prices for five months during a seven-month period in 2009.

As the company had marketed its products continuously for over five months during a seven-month period, the Consumer Agency deemed the practice to be in breach of the Consumer Protection Act.

The Consumer Agency's based this on a decision handed down by the Market Court in a matter related to continuous discount sales. In that particular case, a company was ordered to refrain from advertising discount prices continuously for over two months at a time, or in a recurring manner for over three months in a year. The Market Court based its decision on the view that when a discount campaign continues for an extended time, the discount prices become permanent prices and consumers are thus conveyed a misleading impression of the product being sold at an unusually low price.

The Consumer Agency also noted that the base price used in expressing a discount must be the price normally charged by the company in question rather than competitors' prices or the general price level. In other words, a company's permanently low prices cannot be marketed as a discount campaign.

Market Court has prohibited the expression of a discounted price based on the suggested retail price

In both cases the companies' advertising materials indicated that the discount is based on suggested retail prices. In the case of Oulun Koru, the products in question were jewellery items that the chain had not previously sold in any of its stores. The company was unable to provide reliable evidence of the jewellery items in question having been sold at a "normal price" at any point in time prior to the discount campaign.

As the reference prices used by the companies in their discount campaign communications were not prices they had previously charged for those products, the Consumer Agency deemed their marketing misleading. The practice they engaged in was likely to lead to a situation where consumers are conveyed a false impression of the magnitude of the discount.

The Consumer Agency based its views on a previous Market Court decision prohibiting a company from expressing information related to discount campaigns by comparing the price of the product to the suggested retail price or any other price that has never been charged for the product in question at that particular shop.

Kulta-Aika Oy responded to the Consumer Agency, indicating its commitment to make the required changes to its marketing. The Consumer Ombudsman imposed a marketing injunction on Oulun Koru Oy on 3 June 2010.

KUV/3831/41/2009
KUV/6253/41/2009

Legislation applied in the case: The Consumer Protection Act, Chapter 2, Sections 3, 6 and 11

Eco-design Act to contain a provision on the Consumer Ombudsman's universal jurisdiction

The Ministry of Employment and the Economy is proposing an amendment to the Act on Eco-design and Energy Labelling of Products. The Consumer Agency has proposed that the Act should include a provision describing the Consumer Ombudsman's universal jurisdiction as the authority in charge of supervising marketing and business practices in the customer relationship.

The working group preparing the draft bill has proposed that the unlicensed use of energy labels be prohibited. Energy labels used in the marketing of products should also indicate their energy efficiency class. The Safety Technology Authority would have the responsibility for requesting more detailed information on the energy label, product specifications or technical information when there is reason to suspect that they do not meet the legal requirements. The working group further proposes that the Act's scope of application would be extended from products that use energy to cover all products related to energy.

The proposed Act is the national implementation of two amended EU directives: the Eco-design Directive and the Energy Labelling Directive.

Product labels used in the marketing of goods, such as packaging labels, product specifications and energy labels, are part of the marketing of the product. As such, they can be assessed against the Consumer Protection Act's provisions concerning marketing and practices in the customer relationship. Therefore, the Consumer Agency finds it justified to have the Act include a mention of the Consumer Ombudsman's universal jurisdiction.

This could be worded similarly to the equivalent clause in the Communications Market Act: "When undertaking its statutory duties under this Act, the Safety Technology Authority shall co-operate with the Consumer Agency / Ombudsman as necessary." This wording would leave the nature of the co-operation at the discretion of the Safety Technology Authority while recognising the universal jurisdiction of the Consumer Ombudsman as the authority supervising marketing and business practices in the customer relationship.

The Consumer Agency issued a statement on the amendment to the Eco-design Act to the Ministry of Employment and the Economy on 17 May 2010.

KUV/3149/48/2010

More information:

[Eco-design Directive](#) (EurLex)

[Energy Labelling Directive](#) (EurLex)

Market Court's resources must be secured in developing the division of duties between courts.

A Ministry of Justice working group is proposing that the Market Court would be responsible for handling cases related to industrial and intellectual property rights. The Consumer Agency is concerned over the extent to which the Market Court's resources will be sufficient for handling consumer protection cases if the court's workload increases as a result of the proposed change.

The Market Court handles, among other things, injunctions sought in response to inappropriate marketing and unfair contract terms at the Consumer Ombudsman's request. According to law, the Market Court must assign a high priority to handling such cases. This reflects the legislator's intent to both minimise disruptions to business operations and ensure the protection of consumers' legal rights.

Among the range of measures the Consumer Ombudsman has at its disposal, petitioning the Market Court for an injunction and a conditional fine is the strongest method of intervention in illegal activity. For businesses, the mere possibility of being taken to the Market Court over illegal activity frequently has the effect of keeping marketing and the wording of contract terms fair and appropriate.

Market Court rulings are precedents by nature: a decision concerning one company can generally be interpreted as a guideline for the entire industry.

In the view of the Consumer Agency, the provision in the version of the Act currently in force that calls for cases related to the Consumer Protection Act to be assigned a high priority in the Market Court is not satisfactorily realised at present. With this in mind, it is important to ensure sufficient resources for the Market Court going forward if its workload is set to increase.

Statistical data presented in the working group's report indicate that in 2006 and 2007, for instance, the average processing time of consumer protection cases in the Market Court was two years. Prior to the years 2006-2007, the average processing time has generally been one to two years. These processing times are too long from the viewpoint of effective consumer protection.

The consumer as a party to an intellectual property rights case in a court of law

The working group's report suggests that intellectual property rights cases be handled by the Market Court.

In intellectual property rights cases the consumer's role is primarily that of the end user of content protected by various intellectual property rights such as copyright. A private individual's involvement in such legal proceedings as the plaintiff would primarily be limited to cases pertaining to inventions protected by patent or the utility model or employee invention cases. A private individual may also become involved as either plaintiff or defendant in a copyright dispute. From the consumer's perspective it is important to ensure that there is sufficiently broad expertise in handling such a case. From that viewpoint assigning intellectual property rights cases to one court that has special expertise in the area, that being the Market Court is recommended.

The Consumer Agency issued a statement to the Ministry of Justice on the proposal to assign industrial and intellectual property rights cases to the Market Court on 12 May 2010.

KUV/2929/41/2010

K-16 classification must be retained in reforming the Act on the Classification of Audiovisual Programmes

A Ministry of Education working group has prepared a proposal for reforming the legislation governing the classification of audiovisual programmes. In the Consumer Agency's view the key issue in the proposal is that the K-16 age restriction should not be changed to a recommendation rather than a restriction. Furthermore, online service providers have an obligation to implement the necessary systems to identify the counterparty to an agreement and ensure that minors only make purchases they are allowed to make.

The working group proposes that the advance screening of audiovisual programmes for classification purposes would be discontinued. At present advance screening applies to films, recordings, certain Internet-based subscription programme services and a small proportion of video and computer games.

The system of age restrictions would be retained. Audiovisual programmes offered in Finland would be classified on a consistent basis. Classification would apply to all types of programmes, i.e. films, television programmes and games and all methods of delivering programming including cinematic release, television broadcasting and subscription services. Programmes would be classified as appropriate for all ages or they would be assigned an age restriction of 7, 12, 16 or 18 years. Programmes would also need to feature a symbol indicating the content of the programme.

K-16 restriction must be retained

In the draft bill concerning the classification and labelling of audiovisual programmes, only the K-18 classification is proposed as a prohibitive restriction. The other age limits would be merely recommendations. Criminalisation would thereby not apply to offering audiovisual programmes other than those classified K-18.

The Consumer Agency is not in favour of this proposal as it finds it to be contrary to the Act's objective of protecting minors from harmful content. The auxiliary working group proposal attached to the draft bill is based on the approach that the proposal meets the *minimum* requirements of the Audiovisual Media Services Directive, under which children must be protected from content that *seriously* compromises their healthy development. In wording the proposal in its current form the working group is indirectly admitting that effective protection from *harmful* content will not be fully accomplished.

The Consumer Agency's view is that the K-16 age restriction should not be turned into merely a recommendation. Failing to comply with age restrictions should also be a punishable act. Choosing a recommendation instead of a restriction is an implementation that is weaker than the current policy and indicates that both parents and the authorities have less interest in supervising compliance with the recommendations, even if the Act made it possible to impose sanctions after the fact.

Service provider must identify a child as counterparty to an agreement

The working group proposes that providers of subscription programme services need only ensure that children under the age of 18 are not offered K-18 classified programmes. Two-factor electronic identification would only be required in those cases. In other situations the need for two-factor identification would be merely a recommendation.

Under the Guardianship Act a minor or otherwise incompetent person does not have the right to enter into agreements or undertake other legal acts unless otherwise stipulated by law. As a rule, minors need their guardian's consent to undertake legal acts. Children may not be marketed, offered or sold goods that compromise their development or are otherwise inappropriate for them. One of the basic principles of contractual law is that the counterparty to an agreement must be identified. Under these two premises service providers have an obligation to adopt the necessary systems to identify the counterparty to an agreement and prevent minors from making purchases they are not allowed to make. This obligation cannot be shifted to the parents.

Free Internet-based services broadcasting TV programmes may not undermine the age restriction system

The Consumer Agency is drawing attention to the need to prevent free Internet-based services broadcasting TV programmes from undermining age restrictions. Children must be protected from harmful content by implementing restrictions or effective identification mechanisms in online services.

As children today go to bed later than before, the Consumer Agency proposes that programmes unsuitable for those under the age of 16 should not be broadcast before 10 p.m. rather than 9 p.m. as currently is the case. These times should also apply both on weekdays and weekends. Many parents work on the weekends and thereby can't supervise their children's television viewing habits. Consistent rules in that regard would also make it easier for families to get used to the relevant daily routines.

The Consumer Agency supports the proposal to complement age restrictions and recommendations with symbols indicating the content of programmes as well as a specific symbol for coarse language. This has already been implemented in the PEGI system (Pan European Game Information). Age restrictions and symbols should be displayed in all advertising for audiovisual programmes, including trailers. The broadcasting of advertisements should be governed by the same rules regarding the time of day as the actual programmes are. In other words, advertisements directed at adult viewers should not be shown during children's shows or before 10 p.m.

The Consumer Agency issued a statement to the Ministry of Education on the reform of the Act on the Classification of Audiovisual Programmes on 28 April 2010.

KUV/2565/48/2010

Limits to fixed-term agreements for communications services

The Ministry of Transport and Communications has prepared a proposal on amending the Communications Market Act. The Consumer Agency supports the Ministry's proposal to set a limit to fixed-term agreements for communications services, but considers the proposed 24 month term to be excessively long. Another key issue is linking agreements to one another, which is a practice the Consumer Agency would like to see prohibited altogether.

In mobile phone marketing consumers are offered long bundled agreements and fixed-term bonus contracts that, in effect, turn the agreement for the connection itself to a fixed-term agreement. Long fixed contracts of 18 and 24 months also dominate broadband service provision.

These types of long fixed-term contracts are problematic for consumers and in conflict with the goals of the development of the information society. Consumers' life circumstances and needs change. Comparing prices does not help and changing to a more suitable service is impossible when contracts cannot be terminated before the end of their term. As the information society develops, new services are continuously created. Long fixed-term contracts have a negative effect on effective competition and restrict consumers' freedom of choice. Consumer mobility needs to be promoted to ensure genuine competition on the markets.

Consumers must also be offered a 12-month option

The Government's draft bill for amendment of the Communications Market Act includes a provision limiting the maximum duration of a fixed-term contract to 24 months and states that consumers must also be offered the option of a 12-month term.

In other Nordic countries the duration of fixed-term contracts has been restricted more than in Finland: In Norway the maximum duration of a fixed-term contract is 12 months, while in Denmark and Iceland it is only 6 months.

The Consumer Agency is in favour of the proposal for 12-month contracts, but fears that the provision will have little practical effect in terms of improving the consumer's position. Companies may price 12-month contracts in a way that makes them unattractive to consumers and effectively leads them to conclude a two-year contract anyway. Companies can also emphasise longer contracts in their marketing efforts, which could lead to consumers not even realising that the option of a shorter contract exists.

This has already been seen in practice in the context of bundled offers. One-year bundled contracts haven't even been offered in all distribution channels. The industry has admitted that few one-year contracts are concluded, which reflects the poor position of short contracts as an actual, viable option for consumers.

Automatic linking of fixed-term contracts must be prohibited

The Consumer Agency supports the proposal to prohibit the automatic linking of fixed-term contracts when the consumer is passive. This refers to the practice of extending a fixed-term contract for a non-fixed period, until further notice, if the consumer remains passive at the time when the fixed-term contract expires. Operators consider fixed-term contracts to automatically continue as non-fixed term contracts upon expiry of the initial time period unless the customer actively terminates it.

The Consumer Agency has received numerous complaints regarding the matter. A particular problem is the fact that consumers have unknowingly become committed to the automatic linking of contracts. This indicates that advertising has failed to mention the linking of contracts or has presented it in a misleading manner. There is also a very recent Market Court decision on the matter. In May 2010 the Market Court prohibited TeliaSonera from using an ambiguous and misleading clause in their agreement related to the automatic extension of the contract term. Customers were not told, in sufficiently clear and unambiguous terms, that the fixed term contract would be extended automatically unless the customer specifically refuses it.

One of the goals of the EU Universal Services Directive is to make it easier to switch service providers. The Consumer Agency's view is that the automatic linking of fixed-term contracts specifically prevents that goal from being fulfilled.

Notice of termination and billing at the time of expiration

The Consumer Agency considers it important to set a two-week notice period for all contracts for communications services. Also important is the aspect of billing at the time expiration or termination of the contract. Consumers at present have found themselves having to pay for two different connections concurrently at the time of terminating one service and beginning to use another, or in some cases having to pay for the entire month or billing period despite the notice period having expired. Under general principles of contract law, a contractual relationship is terminated upon the end of the notice period and consumers may not be charged fees thereafter. This also applies to proportional monthly fees and package charges.

The Consumer Agency is also in favour of having the new Act include provisions to improve the position of the disabled as users of basic communications services.

The Consumer Agency issued a statement on the Government proposal for amendments to the Communications Market Act and related legislation on 12 May 2010.

KUV/2961/48/2010

Policy tools must be in line with actual consumer behaviour

In July 2010 the OECD will publish its Consumer Policy Toolkit. One of the new tools introduced is a step-by-step decision making model that may make consumer policy more organised.

In practice the question is how decision makers can identify and assess problems in consumer protection and determine whether damages suffered by consumers call for public action. Consumer policy tools should be in line with consumer's actual decision-making behaviour. Until now, legislation and other measures in industrialised countries have been based on the illusion that consumers always act rationally.

The step-by-step decision making model has already been adopted in various ways, including consumer protection legislation in the UK.

Changing markets, changing consumers

The first chapter of the toolkit describes how the markets have changed fundamentally in the past 20 years. Regulation has been reformed, markets have become globalised, new technologies have been introduced and consumer services have become commonplace.

While the development of markets has primarily been positive, it has also brought with it challenges for consumers and decision makers. Products are more complex than before and there is a broader range of products available. There are a number of different goods in the same category of products or services, which makes it difficult for consumers to make comparisons and assess the products and services on offer. With increasing international trade and online retailing come new opportunities, but also an increased risk of fraud. Fighting fraud calls for alertness and active international co-operation from consumer authorities.

Consumers have also changed. There are more and more children and young adults operating on the markets, with little or no experience of acting in the role of a consumer. The problem is perhaps not so much the fact that consumers lack information, but rather the fact that there are consumer groups that do not have the "literacy" required to operate in complex markets.

A better understanding of markets and consumer decision-making

The second chapter is focused on the fact that research in behavioural science offers a more appropriate perspective on consumer behaviour than classical economics.

That basic premise of economic theory, that the market system solves consumers' problems, has not been entirely reflected in reality. One example of this is markets where there is no competition. Markets also fail when consumers do not receive sufficient information on the goods on offer and their prices, or are unable to receive and make use of that information for one reason or another. For instance, consumers may be unable to make purchase decisions due to there being too much information, or the information being hard to understand or misleading.

The science of behavioural economics has indicated that the assumption of the rational consumer who compares products and their prices and ends up making a sensible purchase decision does not reflect reality. According to a report by the OECD credit card contracts used to be one page in length in the 1980s but now commonly reach 30 pages. There is little time and too much information. Under such circumstances the consumer rationalises his or her purchase decision by seeking support from peers, from customer loyalty programs, personal beliefs etc. Studies indicate that the manner in which information is presented can have a significant effect on consumer choices.

Measuring consumer losses

Chapter three discusses how consumer losses should be defined and assessed as well as possible methods of intervening in the markets in this regard. The key is to recognise the fact that dishonest markets result in consumers losing not only money, but also time. The discussion must also take into consideration losses faced by weaker consumer groups and find ways to diminish or eliminate them.

Consumer policy tools

Chapter four presents the tools of consumer policy, including consumer education, regulation of contract terms, standards, market disruption penalties, injunctions and the dissemination of information. The model proposed by the toolkit aims to give decision makers the ability to better decide what the most effective measures are for solving a particular problem.

For instance, a consumer who has signed a long-term membership agreement with a fitness club may end up regretting it due to having overestimated his own ability to sustain interest in that hobby, or perhaps the situation is the result of aggressive selling by the fitness club. In these types of situations corrective action could be taken by requiring that contracts have a cancellation period and/or advertising be restricted.

Read more:

[Consumer Policy Toolkit](#) (OECD website)

Consumer Agency and the optical industry sat down to discuss rules

Discussions between the Consumer Agency and representatives of the optical industry resulted in an agreement on rules. The goal is to eliminate misleading marketing by companies in the industry.

The Consumer Agency has issued guidelines to the industry through correspondence and training events in 2004, 2007 and 2009, but there are still problems in marketing in the industry. The problematic situation is also reflected in the large number of complaints still received by the Consumer Agency on this matter.

Discount and campaign marketing

The key restrictions of a discount must be clearly disclosed in all marketing; they may not be hidden in small print. If an advert states "All frames -50%", this must be true in practice. If the offer has any restrictions in terms of the specifications of the lenses, they must also be disclosed. The industry suggests that marketing eyewear is difficult due to the individual nature of the products. Nevertheless, the Consumer Protection Act must be complied with and eyewear is no exception.

Price indication

There is intense price competition in the optical industry, which calls for special attention to how prices are expressed.

In recent advertisements lenses or glasses have been advertised with a package price - for instance, regular non-multifocal lenses for EUR 55 when choosing frames from a selection of 250 models, or multifocals for EUR 595. This type of package pricing conveys a relatively accurate impression of prices - assuming that the "starting from" prices used are indicative of typical purchases. The discount price of lenses or frames may not, however, dominate an advert. The different price components and the total price must be displayed equally clearly.

Instru's website has a price calculator tool that lets consumers calculate the prices of different glasses. The Consumer Agency finds these types of tools a good way to increase consumers' price awareness and recommends other companies to adopt similar solutions. While a price calculator tool can increase pricing transparency, it cannot replace the pricing information that is required by law to be displayed on the advert.

Some businesses are still engaging in advertising where lenses are marketed as costing EUR 0. If a consumer is required to purchase frames, an advert may not contain expressions like "EUR 0" or "for free". Instead, the advert may use the expression "free with a purchase of..."

Instru recently marketed free eye examinations quite aggressively. The small print on the advert stated that a written prescription for glasses would cost EUR 35. This took many consumers by surprise. According to Instru, the examination was free but the written prescription would not be given to consumers free of charge. As such, the eye examination could only be used for making purchases at Instru. The Consumer Agency found this type of marketing to be misleading. Instru did not perceive the advert in question as illegal due to the fact that consumers were indeed given a free eye examination as promised. Nevertheless, the company promised to take the matter into consideration in future marketing efforts.

"Two-year interest-free consumer credit"

When a company markets two-year interest-free consumer credit, the consumer may not be charged any expenses or fees such as processing fees.

The Union of Finnish Opticians promised to remind its members of the matters agreed on in the negotiations. The Consumer Agency will continue to monitor marketing in the industry. The Consumer Agency, the Union of Finnish Opticians and representatives of major players in the industry met on 3 May 2010.



The task of the Finnish Consumer Agency is to safeguard and strengthen consumers' position in society. The Director General of the Consumer Agency also acts as the Consumer Ombudsman, and the Ombudsman's tasks are included in the activities of the Agency.

The Ombudsman's responsibilities are to monitor and enhance the legal position of consumers, and to ensure that marketing and contractual terms comply with the rules. Matters concerning warranties and collections from consumers are also within the Ombudsman's jurisdiction. The Ombudsman may also assist consumers in court.

Additional information: www.kuluttajavirasto.fi

Ajankohtaista VERKKOLEHTI
KULUTTAJAOIKEUDESTA

**Tilaa verkkolehti tuoreena sähköpostiisi osoitteesta:
www.kuluttajaoikeus.fi**

Samassa osoitteessa voit myös lukea verkkolehden aikaisempia numeroita. Verkkolehti on maksuton.

Ajankohtaiskatsaustamme seuraamalla pysyt ajan tasalla

- kuluttajan aseman edistämisestä
- Kuluttajaviraston /kuluttaja-asiamiehen kannanotoista ja ratkaisuksista
- vireillä olevista lainsäädäntöhankkeista
- kuluttajaoikeuden kansainvälisistä virtauksista