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New transparency requirements for online marketing

On 28 May 2022, several new provisions in the Danish Marketing Practices Act enter into force imposing stricter transparency requirements upon traders conducting online marketing activities.

The purpose of the new requirements is to ensure increased transparency for consumers in connection with online transactions.

The three new transparency requirements, that are described in more detail in the ensuing sections, are:

- Disclosure of parameters determining product and service rankings in online searches (Article 6a)
- Disclosure of whether the authenticity of consumer reviews is checked (Article 6b)
- Disclosure of sellers' status as traders or non-traders (Article 6(2)(7))

The new disclosure requirements in the Marketing Practices Act are implemented to comply with the Unfair Commercial Practices Directive (2005/29) which was recently amended through the Better Enforcement and Modernisation Directive (2019/2161).

Disclosure of parameters determining product and service rankings in online searches

Several online marketplaces offer consumers to conduct searches across different providers of products and services, such as searches for travels, accommodation or electronics. The marketplaces provide search results by comparing and ranking the respective products or services.

From 28 May 2022, providers of online marketplaces are required to enable consumers to understand the main parameters used for determining the ranking of products and services within a search result. Only providers of online marketplaces comparing offers from third parties (and not only the provider's own products/services) are covered by the new provision. Further, a similar disclosure requirement already applies to providers of online search engines.

The new transparency requirement entails that providers of online marketplaces must, in an easily accessible and direct way (for example via hyperlinks or pop-up texts), provide consumers with general information about the most important parameters that determine the ranking of products and services.

Moreover, it is a requirement that the provider of the online marketplace makes it clear to consumers if a search result is "paid content promotion" or if a trader has directly or indirectly paid the provider of the online marketplace to obtain a higher ranking in the search results.

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Disclosure of whether the authenticity of consumer reviews is checked

Another new requirement is that traders providing access to consumer reviews of products or services must inform consumers whether processes and procedures have been implemented to ensure that published reviews originate from consumers who have actually used or purchased the product or service reviewed.

The requirement does not obligate traders to ensure that reviews in fact originate from consumers as it only requires traders to disclose whether the authenticity of consumer reviews has been checked and, if so, how such checks have been carried out.

Together with this requirement, two types of commercial practices related to consumer reviews are added to the so-called "black-list" (Annex 1 to the Marketing Practices Act) cataloguing certain types of commercial practices that are always prohibited. As a consequence, from 28 May 2022, it will (always) be considered misleading if product and service reviews are marked as consumer reviews if due process and procedures to ensure the authenticity of such has not been observed. Further, the action of submitting or obtaining fake reviews is added to the black-list alongside with activities that wrongfully portray or manipulate consumer reviews, e.g. by only publishing positive reviews and deleting negative reviews.

Disclosure of sellers' status as traders or non-traders

From 28 May 2022, providers of online marketplaces must provide information to consumers on whether third parties offering products or services at the online marketplace are traders or non-traders (i.e. private sellers). Fulfilment of the requirement rests with the provider of the online marketplace who must obtain trader status declarations provided by each third party using its online marketplace to offer products or services.

Providers of online marketplaces may not mislead consumers in respect of such information or present it in an unclear, incomprehensible, or ambiguous way.

Increased level of fines

The importance of complying with the Marketing Practices Act and the new, stricter requirements mentioned above is underlined by the fact that the level of fines in general for violating the Act was recently amended to warrant higher fines.

The level of fines is calculated on the basis of the gravity of the violation and the trader's turnover based on set rates. As examples, a company with a (global) annual turnover of up to DKK 5 million can expect fines in the range of DKK 40,000-80,000, while a company with a turnover of between DKK 50 and 100 million can be met with fines in the order of DKK 400,000 to DKK 1 million. The level of fines can be increased (or decreased) depending on the extent of the violation and the intended gain from the illegal marketing activity.

Along with the new rules for online marketing coming into force on 28 May 2022, additional rules on fines will also take effect, according to which violations that may harm the collective interests of consumers in at least two EU Member States in addition to Denmark can be punished with fines ranging up to 4% of the company's annual turnover. If there is no information available on the turnover, fines in these types of cases may range up to EUR 4 million.

Accura comments

With the implementation of the new transparency requirements and the recently amended level of fines, the requirements for online marketing are increased considerably. The requirements are of particular importance to providers of online marketplaces, but all traders who provide products and services online should familiarise themselves with the new rules and inform online marketplaces, on which they are present, of their status as traders.

If you have any questions regarding the new provisions or would like to know more about the Danish Marketing Practices Act and online marketing, feel free to reach out to Accura's team of IP and marketing law experts.

Proposal for a European Health Data Space Regulation

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The European Commission has proposed a European Health Data Space ("EHDS") Regulation for the creation of a genuine single market for digital health services and products. The EHDS Regulation creates a framework for both the primary and secondary use of electronic health data ("EHD") and aims at strengthening the rights of individuals in relation to the availability and access to their EHD, as well as enabling cross-border use of data for research and development purposes.

EHDS has been on the Commission's agenda for the period 2019-2025 with the aim of creating a strong European Health Union. The proposal for the EHDS Regulation has proven even more eminent in the wake of the COVID-19 pandemic, during which it became clear that cross-border access to health data is imperative in the response to health emergencies, for example by enabling the implementation of the digital EU COVID Certificate and cross-border contact tracing during the recent pandemic.

Access to own EHD

A key feature of EHDS is to make individual's personal EHD more accessible to them, and to increase European citizens' control over their data for the delivery of health care services, so called primary use of data. With the proposal, individuals will, among other things, have a right to receive electronic copies of their EHD, add data to their files and restrict access to, as well as request rectification of their EHD under the principles of the GDPR.

Cross-border use of EHD

The EHDS Regulation also allows for better cross-border cooperation between healthcare professionals (HCPs), meaning that a patient's health data will be increasingly accessible to HCPs across European borders. Such framework presents a significant benefit to both patients and HCPs by allowing for immediate access to a patient's health data records, for example in a situation where a patient is being treated in another EU Member State.

Harnessing the Potential of European Health Data

The proposed EHDS Regulation also supports better secondary use of EHD. Secondary use of EHD includes research, innovation, policymaking, patient safety, personalised medicine, official statistics, regulatory activities and activities for reasons of public interest in the area of public and occupational health.

For researchers, the Regulation means easier access to health data in the entire EU via the EHDS, which includes benefits for the development of e.g. new medicinal products, including vaccines, and other potentially life-saving treatments.

Securing easier access to health data, while simultaneously upholding a high level of protection of the personal data of the European citizens poses a great challenge, both for primary and secondary use. The EHDS Regulation will build upon other rules such as the GDPR and include different security criteria for the electronic health record systems in which the different types of data will be stored. Further, access to electronic data is restricted to specific and limited purposes with strict prohibitions and restrictions for the use of health data for other purposes than what follows from the Regulation.

The proposed Regulation is currently open for feedback until 11 July 2022 and will afterwards be presented to the EU Parliament and Council. It is currently uncertain when the proposed Regulation is expected to enter into force.

Accura will continue to monitor the development and possible implementation of the European Health Data Space Regulation. If you have any questions regarding the EHDS, feel free to contact Accura's team of Life Science specialists.

The European Commission proposes directive amendments to fight greenwashing

Recently, the European Commission set forth a proposal to amend the Unfair Commercial Practices Directive and the Consumer Rights Directive to enable consumers to make environment-friendly choices on an informed basis when purchasing products and services. With these changes, the Commission aims at banning greenwashing and commercial practices that mislead consumers regarding the environmental and/or social impact of products and services.

The main features of the proposal are:

Transparency and clarification of terms

The Commission's proposal adds several central definitions to the Unfair Commercial Practices Directive, including terms such as ”environmental claim” and ”sustainability label”.

”Environmental claim” is defined as any claim (message or representation) that states or implies that a product or trader has a positive or no impact on the environment or is less damaging to the environment than other products or traders.

Extension of the ban on misleading commercial practices

The Commission's proposal adds new activities that are considered as misleading commercial practices.

It is clarified that a company is only allowed to make environmental claims regarding future environmental performance and goals (for example by stating that the company will be climate-neutral in the future) if there are clear, objective, and verifiable commitments and targets and an independent monitoring system.

Extension of the so-called ”black-list”

The Unfair Commercial Practices Directive contains a ”black-list” with certain types of commercial practices that are prohibited. The Commission's proposal includes adding, among other things, the following types of commercial practices to the list:

- Making generic, vague environmental claims such as ”environmentally friendly”, ”eco” and ”green” that cannot be demonstrated.
- Making environmental claims about an entire product when the claim really concerns only certain aspects of the product.
- Displaying a voluntary sustainability label not originating from an official certification scheme (third-party verification scheme or established by public authorities).

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Accura comments

It is to be expected that the above-mentioned initiatives will ensure increased transparency in regards to what constitutes legal – and in particular illegal – green marketing. Certain of the Commission's proposals are already applicable law in Denmark but the amendments will nonetheless provide welcomed clarity to the European legal framework.

The Commission's proposal is yet an example of the significant focus on green marketing and on eliminating greenwashing. In recent years, there has likewise been an increased focus on green marketing in Denmark – the last example being the 2022 budget agreement granting the Danish Consumer Ombudsman DKK 7 million a year towards 2025 to strengthen the effort on, among other things, combatting greenwashing. The Consumer Ombudsman also recently published a quick guide on environmental marketing as a supplement to the full guide on the use of environmental and ethical claims from 2014.

Accura's IP & Life Science team is monitoring the legislative process of the Commission's proposal. If you have any questions on green marketing, you are always welcome to contact us.

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Design protection in China just got easier

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On 5 May 2022, China entered into the Hague system. This means that it has now become even more easy to centrally apply for international design protection in the big markets.

China is Denmark's fifth largest export market but also the breeding ground for numerous fake goods. China's entry into the Hague system is therefore expected to have a significant positive impact for Danish design companies.

China's former absence from the Hague system has probably discouraged many companies from applying for design protection through the system.
The new possibility of choosing multiple key countries such as China, the U.S., Canada, Japan, Norway and others through a single application is expected to result in an increased demand for protection via the Hague system.

Hongkong and Macao continue to not be part of the Hague system following China's entry on 5 May 2022.

The Hague system

The Hague system ensures fast access to international design protection and makes it possible to obtain design protection in up to 94 countries through a single application.

The system is administered by the UN bureau World Intellectual Property Organization (WIPO). It resembles the popular Madrid system for the international registration of trademarks in multiple jurisdictions by way of one basic application (basic mark) through designation of individual countries with the application fee depending on each designated country and its guidelines.

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”Great team of engaging and hard-working lawyers.”

“Always pragmatic, commercial yet diligent and fun to work with.”

“Highly recommendable.”

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