

Full title of law or regulation	The Marketing Act; SFS 2008:486 Marknadsföringslag (2008:486) https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/marknadsforingslag-2008486_sfs-2008-486
Note	This translation is comprised of a translation of the 2008 Act, that is published on the Swedish Government website, as linked below, with the addition of two clauses from amendments after the date of the original translation (7a and 20a) http://www.government.se/contentassets/747603b3d1a04351b1773524c7de3c84/2008486-marketing-act
Title of relevant section	Sections 2-20a. These are the sections most relevant to marketing/ advertising
Section 2 Scope	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. ³
Section 3 Definitions	For the purposes of this Act the following terms have the meaning set out below <i>Transaction decision</i> : 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 <i>Electronic mail</i> : 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 <i>Good marketing practice</i> : generally accepted business practices or other established norms aimed at protecting consumers and traders in the marketing of products <i>Consumer</i> : a natural person who makes a transaction mainly for purposes that fall outside business activity <i>Marketing</i> : 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 <i>Trader</i> : a natural or legal person who makes a transaction for purposes connected with that person's own business activity <i>Products</i> : goods, services, real property, employment opportunities and other commodities.

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 shall have the force of law in Sweden. The Government has published the relevant annex in the Swedish Code of Statutes.
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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).

Note: the referenced Annex I of the UCPD is linked here:

<http://www.g-regs.com/downloads/EUDirective2005-29AnnexI.pdf>

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.

Section 7a When assessing whether the marketing is aggressive, its timing, location nature or persistence should be taken into account, as will be:

1. Use of threatening or abusive language or behaviour
2. The exploitation by the trader of any specific misfortune or circumstance of such gravity as to impair the consumer's judgement, of which the trader is aware, to influence the consumer's decision with regard to the product
3. Any onerous or disproportionate non-contractual barriers imposed by the trader where a consumer wishes to exercise rights under the contract, including rights to terminate a contract or to switch to another product or another trader
4. Any threat to take any action that cannot be legally be taken.

From Law (2016: 22).

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.

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. (Note – this is a reference to ‘teaser’ advertising)

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:

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.
<i>Misleading copies</i>	
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.
<i>Bankruptcy sales (konkursutförsäljningar)</i>	
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.
<i>Clearance sales (Utförsäljningar)</i>	
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 <ol style="list-style-type: none"> 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.
<i>Discount sales (Realisationer)</i>	
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 <ol style="list-style-type: none"> 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 <ol style="list-style-type: none"> 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.

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 20a

In the promotion of information society services by electronic mail, the recipient may not be invited to visit websites whose marketing is contrary to Section 9 or Section 10, third paragraph.

From Law (2011: 591).

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.
