

A REVIEW OF THE DANISH RULES CONCERNING SPAM

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In Denmark, certain rules must be observed, if a company wants to turn to customers by electronic means to promote or to sell products and services.

Basically, the company must have the customers consent before the company can send out marketing. If there is no consent marketing through electronic means as text messages or e-mail would be categorized as spam.

The spam rules do not apply if the messages sent has only a service content. However, the message must not contain any other information that may increase sales or awareness of the company. In practice newsletters, and invitations to competitions or events have been categorized as spam.

A company who has received a customer's e-mail address from the sale of goods or services to the customer has also the opportunity to market "own similar products or services" via e-mail without consent. After practice, the product must be the same type of goods or services.

Both exceptions to the spam rule were tested in a recent decision by the court. By a judgment of 30 November 2016, a taxi company was convicted of violating the spam ban. The taxi company was fined 250,000 DKK.

The taxi company had a corporation with a taxi-ordering-app. When a customer ordered a taxi through the app, the customer's name, geographic placement and telephone number was forwarded to the taxi company which then stood for the task of driving.

The taxi-ordering-app terminated the cooperation early than expected. Therefore, the taxi company sent out 27.283 text messages to telephone numbers received from the taxi-ordering-app. The text messages began with the heading "service info" and informed that there was no longer a cooperation between the parties and customers in the future could book a taxi through the taxi company's own app if they still wanted the company to do the task of driving. None of the customers had requested such messages from the taxi company.

The court ruled that this was marketing, in order to gain more driving tasks and that the customers had not previously consented to such marketing. The fact that the text messages header said "service info" was according to the court therefore not relevant. The court did further not find that there had been no customer relationship, this was due to the fact that the customers had not given their phone numbers directly to the taxi company but to the taxi-ordering-app. Moreover, there was no easy way for the customers to decline future communications. On that ground, the court ruled that this was spam.

The decision is in line with earlier rulings and further clarifies what should be considered as marketing. Moreover, it is now clearly established that a company must have received the information directly from the customer before there can be stated as a customer relationship.

A new Danish Marketing act is on the way

From the 1 of July 2017 a new Marketing Act shall apply in Denmark. The reason for the amendment to the Marketing Act is to ensure good and uniform consumer relationship, to update the law for technological developments in society and partly to ensure that the Danish marketing law has properly implemented the EU legal regulations especially in the area of the directive on unfair commercial practices. In addition to the proper implementation of EU rules, the new Act shall ensure that Denmark does not go further than other countries in the implementation.

The main changes in relation to the spam rule are as follows:

- An easing of the rule of unsolicited electronic mail: The amendment opens for a new interpretation of the provision so that the company can also market its other product ranges via e-mail, if known to the customer.
- New access for e-mail marketing between companies: The amendment makes it possible for a company to market themselves by e-mail directed to a specific person from another company, if there is a customer relationship between the two companies, or if the person has received the e-mail address directly from the other person in connection to an occupational contact between the two people. However, it is a requirement that marketing must be relevant for the recipient's work function.

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