



CONSUMER OMBUDSMAN
Norway

September 2009

Guidelines on Sexist Advertising

Marketing Control Act section 2, second paragraph

“The marketer and the designer of the marketing shall ensure that the marketing does not conflict with the equality of the sexes and that it does not exploit the body of one of the sexes or convey an offensive or derogatory appraisal of women or men.”

1. Preamble

The Consumer Ombudsman enforces the Act relating to the Control of Marketing and Contract Terms and Conditions, etc. (the Marketing Control Act) of 9 January 2009.

The Consumer Ombudsman's guidelines has a twofold objective. They shall ensure consistency and equality in the Consumer Ombudsman's handling of cases and also be an important supplier of information to the business world. This overview is not exhaustive, but by following its recommendations in their marketing strategies, traders may reasonably presume that their marketing will not be contrary to the law.

In its assessment of the advertisement, the Consumer Ombudsman uses the practice of the Market Council as a basis in areas where relevant cases are available. The Market Council is the administrative appeal body with respect to the decisions made by the Consumer Ombudsman.

The monitoring of section 2, second paragraph is done "*on the consideration of equality between the sexes*"; see also MCA section 34, second paragraph.

2. Prohibition of sexist advertising

The Marketing Control Act section 2, second paragraph prohibits advertising which is contrary to the equality of the sexes, exploits the body of one of the sexes or conveys an offensive or derogatory appraisal of women or men. The provision is a direct continuation of the MCA of 16 June 1972 section 1, second paragraph; see also Proposition No. 55 to the Odelsting, p. 46. Practice that is specified below will therefore refer to section 1 rather than section 2.

The prohibition of sexist advertising was included in the Marketing Control Act as soon as the Gender Equality Act was passed (9 June 1978). The objective of this law is to promote equality between women and men, and in particular to improve the position of women. The provision was changed effective from 1 April 1997, when the terms "offensive" and "exploit" were included in the law. This change was intended as a sharpening of the law's former criterion of "objectionable portrayal". While a certain tightening was intended, this was not meant as a substantial change to the law.

The term "offensive" is discussed in the legislative history as denoting a lower and more objective threshold for reactions than the previous term, "objectionable". The term will cover those cases that harm the woman or man's sense of pride or general feeling of worth. The provision does *not* regulate whether some marketing practice is too "bold" or inappropriate, but whether the *perspective on humanity* portrayed in the advertisement is in line with the criteria of equality, respect and non-exploitation of the male and female body listed in the law. Advertising that is not seen as offensive in the sense of MCA section 2, second paragraph may, depending on the circumstances, still be seen as unreasonable or contrary to good marketing practice; see also MCA section 2, first paragraph. For more details, see Point 8.

The criteria of the law overlap to a certain extent, without clear boundaries. Both the terms "offensive" and "exploitation" would be applicable to an exploitative focus on the female body and using it solely to grab attention. The overriding principle is that the advertisement shall not be contrary to the equality of the sexes. The other criteria must be interpreted in light of this. For instance, a portrayal that is not contrary to the criteria of "exploit" and

“offensive” may still be contrary to this principle of equality. The same applies to the criterion of “derogatory appraisal”.

It may often be the case that it is the sum of individual advertisements that is questionable with regard to gender equality. However, the assessment according to section 2, second paragraph applies to the individual ad or advertisement campaign.

2.1 Particularly intrusive advertising

According to MCA section 2, third paragraph, emphasis is placed on whether the advertisement, due to its design, format, scope or other features, stands out as particularly intrusive. An intensive ad campaign that is wide-ranging and long-term may therefore be assessed more strictly than advertising of more moderate means. In this regard, the particular means used to spread the message of the advertisement may be significant.

2.2 Discrimination of men

MCA section 2, second paragraph protects against the sexist portrayal of both women and men. However, the threshold for this provision's applicability is higher for the use of men in advertising than for the use of women. This is because the provision is primarily intended to improve the position of women, since the role of the male has had, and still has, a stronger position in society than that of the female. Although there has been an increase in the use of the male body in advertising, it is the female body that usually has been, and still is, exploited for the purposes of advertising. These conditions will also be reflected in the account given below. For further details, see MR cases 23/1998, 20/1998, 15/1997 and 19/1995.

2.3 Use of humour

Humour has been invoked as an argument that advertising should not be taken seriously, and hence cannot be judged as contrary to the Marketing Control Act. According to practice, the use of humour will be considered as a factor in the overall assessment of whether a marketing measure is illegal; however, humour in itself is not a decisive factor for whether the advertisement is legal. The limit of what is considered illegal must be determined for each individual case. For details, see MR cases 16/2002, 15/1997 and 19/1995.

3. Contrary to equality between the genders

The overriding principle in MCA section 2, second paragraph is that the advertisement shall not be contrary to equality between the sexes. The portrayal of gender roles in advertising is one area in which this principle of equal worth is particularly relevant.

The legislature's intent was to strike down certain forms of gender role portrayal. A description of existing gender roles would in itself not be perceived as contrary to the provision. However, it may be contrary to the idea of equality when portrayals of gender role patterns are highlighted in a particularly biased or derogatory manner, when for example the advertisement places the woman and/or the man in stereotypical situations from which society has distanced itself. Advertising which may be affected by this criterion include for instance portrayals where the man appears as dominant, responsible for the family's finances, etc. while the woman is shown in a correspondingly secondary role, where her self-esteem and identity are directly linked to her choice of commodities and equipment for the home, or ads that express the view that the chief considerations in a woman's life are her clothing and appearance.

The Consumer Ombudsman is occasionally contacted by people who react negatively to gender-stereotypical portrayals in toy catalogues which clearly differentiate between “boys’ toys” and “girls’ toys” in their use of fonts, colours and images. Such advertisement usually does not present a derogatory image of either gender, and is therefore not affected by section 2, second paragraph.

MR case no. 11/1981 – Norsk Philips A/S

In a brochure for Philips dictaphone equipment, there was a series of pictures showing men and women in work situations.

In the Market Council, the majority stated that this ad material did not go beyond an essentially correct description of the current situation in most offices. The portrayal in this leaflet was balanced and could not be said to convey an impression of a gender role pattern that could seem derogatory for women in the work force and thus contrary to the equality between the genders. Dissent.

4. Derogatory appraisal

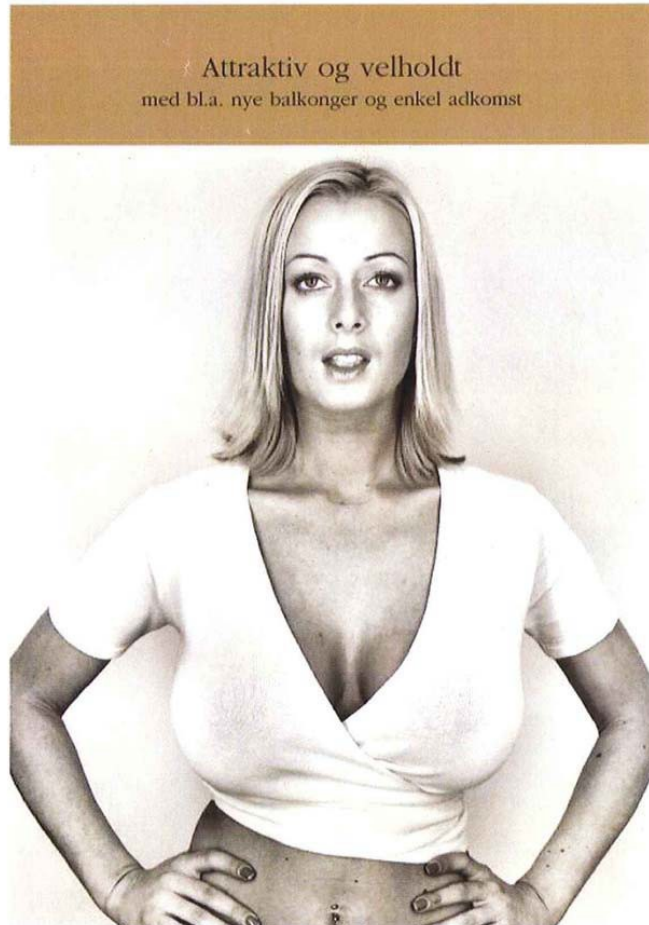
About “derogatory appraisal”, the legislative history states that this is an advertisement that ascribes to one gender qualities that are perceived as unfavourable, and reference is made for instance to statements that women are impractical or that men are inconsiderate. The determining factor is not what the advertisement expresses in isolation, but how it is perceived by the general public, bearing in mind widespread perceptions of gender roles. While an advertisement showing a man who does not know how to use a gadget might be perceived as funny, the same advertisement showing a woman could convey that the woman is impractical.

MR case no. 16/2002 – OBOS (photo insert)

An advertisement from OBOS showing a busty woman wearing a very low-cut top exposing her midriff had the following words across the top: “Attractive and well-kept, with new balconies and easy access”.

While the Market Council did not find the image in the advertisement offensive in itself, in combination with the text, the advertisement gives the impression of an offensive or derogatory appraisal of women, contrary to the provision. Particular emphasis was placed on the fact that the wording “easy access” gives the advertisement a sexualised content of a particularly degrading nature.

The fact that the advertisement had a humorous and satirical manner about it did not exempt the advertiser from responsibility.





**MR case no. 14/1997 –
Macks Ølbryggeri AS (Macks Beer
Brewery)**

In an ad campaign for Mack Light Beer, one of the advertisements showed a man holding a woman with the following text: “Men have bigger hands. Men have stronger fingers. They squeeze harder. They lift heavier. They have stronger arms. Ladies like that.”

The Market Council emphasised that this individual ad had to be seen in the same context as the other ads in the campaign that addressed physiological differences between women and men. The Market Council discerned that the advertisement had an erotic undertone, but that a specific interpretation of the picture was required in order to see anything violent in it, as had been indicated in the complaint. There may have been reason to question some of the formulations in the text which had to be perceived as unfavourable, since they expressed a stereotypical view of the relationship between women and men.

After a comprehensive assessment, however, the Market Council concluded that the advertisement had to be perceived as pointing

to objective, functional differences between women and men, and that it did not ascribe any negative qualities to either women or men. The advertisement was therefore not seen as being contrary to MCA section 1, second paragraph. Neither was the advertisement seen as contrary to good marketing practice (cf. section 1, first paragraph).

The Market Council found that the advertisement, based on a general interpretation, did not express anything other than purely objective differences between men and women.

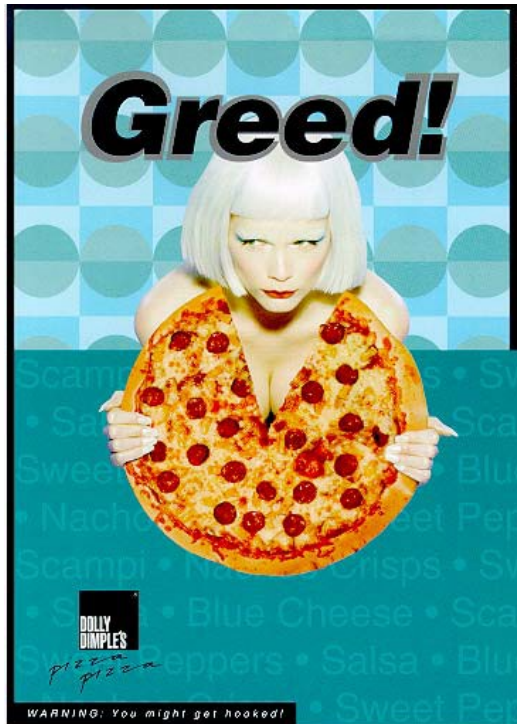
5. Exploiting one gender’s body

It is not necessarily illegal to portray naked/partially clothed people in advertising. The provision prohibits the *exploitation* of one gender’s body. “Exploitation” may occur when the body is the focus of attention or portrayed in a posing position. “Exploitation” in the legal sense will occur when the body becomes the central aspect of the advertisement, due for instance to being posed in an unnatural way in relation to the natural use of the product. The body is then used to attract attention to the marketing in a way that diminishes general human dignity. The person is portrayed without any worth beyond being an attractive object due to his/her appearance.

Pursuant to legal history and practice, an important factor in this assessment will be whether the portrayal has a factual relevance to the product being advertised (product relevance). In the presence of product relevance, there is a higher threshold for establishing proof of violation of MCA section 2, second paragraph than in its absence. Even though the advertisement is product relevant, it may still be assessed as offensive. The determining factor will be the overall impression given by the advertisement. Posing, movement, camera angle and focus are factors that are always considered in the assessment.

5.1 Cases in which product relevance is absent

If the product is shown in an unnatural situation and the body is emphasised greatly over the product and its function, it is likely that the legal boundaries have been overstepped.



MR case no. 23/1998 – Dolly Dimple

Two advertisements for Dolly Dimple's pizza had the headings "Greed!" and "Pizz off!" and showed a woman and a man, respectively, partially covered by a pizza. The advertisements were part of a campaign that also consisted of two other ads with the headlines "Hunger!" and "Luzt!".

The Consumer Ombudsman had on its own volition addressed the advertisement with the headline "Hunger!" after being made aware of this, and regarded the advertisement as offensive and exploiting the female body, contrary to MCA section 1, second paragraph.

The Consumer Ombudsman subsequently received complaints about all the advertisements in the campaign based on MCA section 1, first and second paragraphs, and asked the defendant to inform whether the other advertisements would also be withdrawn. The defendant confirmed that the advertisements with the headlines "Hunger!" and "Luzt!" would not be used, but did not rule out the possibility that the two others would be used again.

The advertisements with the headings "Greed!" and "Pizz off!" were brought before the Market Council. The Market Council did not find the advertisements to be contrary to MCA section 1, second paragraph. However, the Market Council did find that the advertisement with the headline "Greed!" was contrary to MCA section 1, second paragraph. Emphasis was placed on the fact that there was absolutely no product relevance. The combination of image and text was furthermore regarded as involving a clearly exploitative focus on the female body. The advertisement with the text "Pizz off!" was not perceived to be contrary to MCA section 1, second paragraph on the basis that it is still the case that what is perceived as discrimination may be different in relation to each of the two genders, even though both genders in principle have the same protection under the law. There was still considered reason to place special emphasis on a desire to combat a sexist attitude towards women, which was the background for the provision in MCA section 1, second paragraph.

MR case no. 15/1997 – AS Norske Shell

The video advertisement showed a man cycling in just a jacket and underwear to the petrol station in the morning to buy fresh bread. He went naked into the bedroom to surprise his girlfriend with breakfast in bed. In the meantime, a female friend had come to visit his girlfriend, and the two girls laughed at the man.

The Market Council referred to the fact that it is not necessarily illegal to depict naked/partially clothed people in advertising. The Market Council did not consider the body as being the focal point of the advertisement and the man could not be said to be portrayed as a sexual object without human dignity.

In the Market Council's view, the portrayal was not offensive or demeaning in relation to the man's sense of pride. The Market Council also stated that on the whole, the video's scenario must be seen as playing on a humorous everyday situation.



MR case no. 19/1995 – Hjemmet Mortensen AS

Posters for the magazine *Det Nye* depicted a male body without the head divided into sections with dotted lines, with the following text: “Choose a real chunk. Girls, now it is your turn to pick and choose”.

The Market Council stated that both genders have the same protection under the provision, but what is considered sexist may be different for each of the two genders. The Market Council found that this portrayal was neither demeaning nor expressive of a derogatory appraisal of the man, and perceived the portrayal as a humorous contrast to similar advertisements in which the female body is used.

MR case no. 17/1990 – Aktuell Elektriske A/S

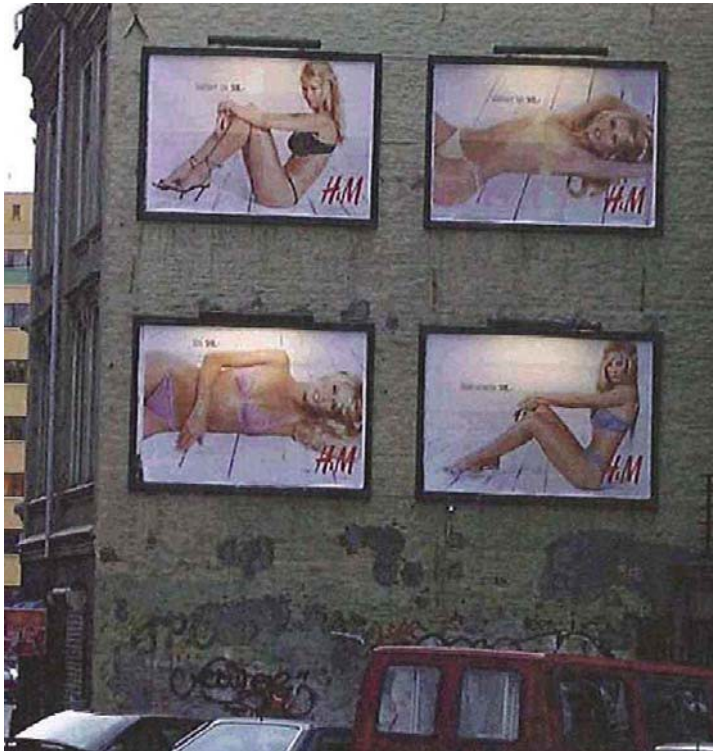
In a catalogue for Normende television equipment, etc., women were depicted in tight-fitting, partially transparent outfits.

The Market Council found that the catalogue made use of the female body as a passive sexual object. The female body was the prominent element of the advertisement. Attention was drawn towards her; her body and curves were the eye-catcher, not the product being advertised. Her clothing underscored the woman's function as a sexual object, and was designed to focus attention strictly on female attributes. The Market Council found it difficult to discern any product relevance when the woman was portrayed as she was here. The Market Council found these portrayals offensive and contrary to MCA section 1, second paragraph.



5.2 Cases in which product relevance is present

There is a higher threshold for determining violation of the law when product relevance is present; however, here too there is a limit on the extent to which the portrayals may focus on the body.



MR case no. 16/2001 – Hennes & Mauritz

A marketing campaign for underwear showed a woman wearing underwear. The campaign used superboards and illuminated glass cases at street level. The Market Council made reference to the fact that according to previous practice, there is a high threshold for advertising to be deemed unreasonable according to MCA section 1, first paragraph, and assessed the ad as showing such little fixation on the body that it could not be seen as contrary to this provision. In relation to section 1, second paragraph, the Market Council found that there was a high degree of relevance between the images used and the product being advertised, that the woman was not posing in a particularly provocative way, and that the images were not particularly body-fixed. Even though the advertisement was very attention-grabbing, the

Market Council concluded that it was not contrary to section 1, second paragraph.

MR case no. 21/1995 – Hennes & Mauritz

Marketing of bathing suits on boards, superboards and postcards showed a woman wearing a bathing suit. The Market Council found it quite beyond doubt that it is possible to intervene based on individual images in a campaign. The Market Council stated that there is a higher threshold for demonstrating a violation of the law given the presence of product relevance, but that even then a limit exists as to how women may be portrayed.



The Market Council unanimously found one of the images to be contrary to the Marketing Control Act section 1, second paragraph. The picture was very body-fixed and the woman was posing in a way that went beyond what was necessary in order to advertise the given product.

MR case no. 16/1994 – Midelfart & Co. A/S

A TV advertisement for Natusan body lotion showed a woman coming out of the bathroom and putting on body lotion.

The Market Council referred to the fact that it is not necessarily illegal to depict naked/partially clothed people in advertising and that in this case there was a clear connection between the product and the situation portrayed in the advertisement.

The Market Council could not see that the portrayal was done in a way that was unacceptable in terms of the product being advertised, or that the video portrayed women in a demeaning way, or that it expressed attitudes of such a nature that the message of the advertisement in legal terms was contrary to the equality among the genders. Neither could the Market Council see that the advertisement was contrary to MCA section 1, first paragraph.



MR case no. 26/1993 – Hennes & Mauritz

Large billboards advertising underwear showed a female model (Mrs. Smith) wearing underwear.

The Market Council stated that when product relevance is present, there is a higher threshold for determining violation of MCA section 1, second paragraph. The majority in the Market Council pointed out that some of the portrayals were more problematic in relation to MCA section 1, second paragraph than others, but nonetheless did not find any basis for prohibiting the campaign as a whole.

Neither did the Market Council find that the campaign approached the borderline of MCA section 1, second paragraph in such a way that there was reason to find the campaign illegal due to format and scope. Dissent.

MR case no. 8/1992 – Hennes & Mauritz

Large billboards advertising underwear and pyjamas showed a female model (Cindy) wearing these items. The Market Council stated that the advertisement was for women's underwear and pyjamas, normal clothing without a particularly "sexy" look.



The Market Council found that the advertisement was product relevant and that the images in themselves were not contrary to MCA section 1, second paragraph. When it came to the format of the campaign, the Market Council stated that there is a high threshold for deeming a campaign illegal based on its physical design.

It is, however, assumed that an advertisement which is on the borderline of what can be tolerated according to MCA section 1, second paragraph can be deemed illegal if it is presented in a particularly invasive and disproportionate manner. After an overall assessment, the Market Council concluded that this campaign was not contrary to MCA section 1, first paragraph either.

MR case no. 7/1992 – Hennes & Mauritz

This TV advertisement for underwear and pyjamas showed a female model moving around to music. The Market Council found that the videos were extremely body-fixated in a way that overshadowed the merchandise being advertised. The Market Council made reference to the fact that the camera focused strongly on parts of the woman's body, and that this bodily focus was underscored by the woman stroking her own shoulders, belly, chest and thighs in a sensual, inviting manner. This sort of focus on the body had to be seen as exaggerated in relation to the product and offensive in relation to MCA section 1, second paragraph. Dissent.

5.3 Sexist products and services

On the other hand, the advertiser must show seriousness and caution with respect to gender equality in the marketing of products or services which in themselves may be considered sexist, such as certain magazines, videos, erotic underclothes and telephone services.



MR case no. 27/1994 – Nordic Blue Publishing

In an advertisement in the newspaper *Dagbladet* for the magazine *Cats*, several of the magazine's front covers were depicted.

The Market Council determined that covers of printed periodicals used in advertising must be subjected to an assessment according to the Marketing Control Act and that neither section 100 of the Constitution nor Art. 10 of ECHR prevent this. The Market Council found that the magazine *Cats* is a product which in itself may be perceived as sexist and therefore requires particular seriousness and loyalty with respect to the design of its advertisement.

The Market Council found it beyond doubt that the portrayal of women on these front covers was offensive in the legal sense of the word. Even though the assessment could vary a bit from picture to picture, the overall impression was that the women on the front covers were used as sexual objects and attention-grabbers in a way that was demeaning to women's general reputation and sense of pride. The advertisement was thus seen as contrary to MCA section 1, second paragraph.

MR case no. 3/1993 – Polar Video A/S

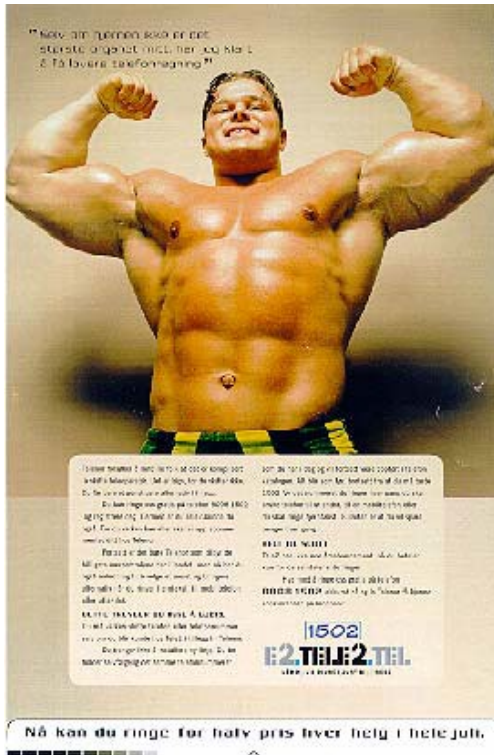
In a catalogue for erotic underclothes, several women were depicted wearing the products. The Market Council stated that although the advertisement may give a complete description of the product being advertised, this fact is not decisive. The Market Council made reference to the fact that erotic underclothes are a product for which the use of models requires caution, in order to avoid the advertisement being sexist.

The Market Council found it beyond doubt that the catalogue depicted women in an offensive way and was contrary to MCA section 1, second paragraph.



6. Combination of text and image

A printed advertisement may express a derogatory appraisal while also exploiting one gender's body. It may be a question of individual judgement whether the advertisement does either of these things, or both.



MR case no. 20/1998 – Tele2 Norge AS

A full-page newspaper advertisement showed a partially clothed, muscular man. The accompanying text read: "Even though my brain is not my largest organ, I've managed to get a lower phone bill". The advertisement was part of a campaign which also contained an advertisement with a partially clothed woman in a bra/bikini top, with equivalent accompanying text. The Consumer Ombudsman had on its own initiative assessed both of these advertisements according to MCA section 1, second paragraph. The Consumer Ombudsman concluded that the advertisement with the woman exploited the female body in a way that was contrary to gender equality and gave the impression of a derogatory appraisal of the woman, contrary to MCA section 1, second paragraph.

The Consumer Ombudsman concluded that the advertisement with the man was not illegal, and this decision was brought before the Market Council, which in turn indicated that what is understood as discrimination depends on the joint effect between the message in the advertisements and the attitudes prevalent in society. The man's role has traditionally not been subjected to the same stereotyping connected to a focus on the body and

appearance at the expense of intelligence.

According to the Market Council's perception, the advertisement did not express a stereotypical male image that would come across as demeaning or offensive to men in general in today's society. The Market Council concluded that the advertisement with the man was not contrary to MCA section 1, second paragraph.

7. Use of printed periodical covers

Printed periodicals are granted freedom of the press and freedom of expression according to section 100 of the Constitution and are not affected by the Marketing Control Act. However, if the covers/jackets are used in direct marketing, they may be affected by the Marketing Control Act. Nonetheless, this assessment may be less stringent for covers of printed periodicals used in advertising.

MR case no. 26/1994 – Hjemmet Mortensen Forlag AS

This case concerned the question of whether three different advertisements for the magazine *Vi Menn* in the newspaper *Dagbladet* depicting magazine covers were contrary to MCA section 1, second paragraph, namely the criterion of “demeaning portrayal”.

The Market Council determined that it must be possible to subject covers of printed periodicals used in advertisement to an assessment according to the Marketing Control Act and that neither section 100 of the Constitution nor Art. 10 of ECHR prevent this. The Market Council stated that even though product relevance is present, the advertisement must be designed according to the provisions of the Marketing Control Act on gender equality.

The Market Council did not, however, perceive *Vi Menn* as the type of sexist product mentioned specifically in the legislative history, and for which it is required that the advertiser be particularly cautious in designing the advertisement. In a concrete assessment of the three advertisements, the Market Council found that two of them did not present women in a manner offensive to women’s general pride and human dignity. In the decision, a certain emphasis was placed on the fact that reference was made to articles about the depicted women inside the magazine, and the fact that caution should be exercised in intervening in cases of covers of printed periodicals used in advertising. The Market Council therefore unanimously found that these two advertisements were not contrary to MCA section 1, second paragraph.

Regarding the third advertisement, however, the Market Council found that a smaller picture in the top corner was placed there as an attention-grabber, where the female body was emphasised in an unnecessary way and had no necessary connection with the content of the article inside the magazine. This advertisement was thus found to be contrary to MCA section 1, second paragraph.

Dissent.

See also MR case no. 27/1994 – Nordic Blue Publishing under Point 5.3.



8. Unethical advertising

According to the Marketing Control Act section 2, first paragraph, marketing must not be contrary to good marketing practice. In the assessment of this, emphasis is placed on whether the marketing is an affront to general ethical and moral perceptions, or whether it uses offensive tactics.

The provision in MCA section 2, first paragraph is a continuation of the legal standard of “good marketing practice”, in the previous Act section 1, first paragraph; see also Proposition No. 55 to the Odelsting (2007-08), pp. 40-43.

The term “good marketing practice” was included in the Marketing Control Act of 1972 in a legislative amendment in 1997. The main purpose of this was to clarify that unethical marketing could also be stricken down by the Marketing Control Act. This may be marketing that uses tactics which are an affront to the moral norms or ethical norms considered generally applicable in Norwegian society; in other words, these are tactics that the majority will find offensive when used for the purpose of advertising. The legislative history states that it is not sufficient that a number of people perceive the advertisement as “unfortunate”,

“immoral”, “in bad taste”, etc. It is in other words the graver violations that are affected (Proposition No. 20 to the Odelsting [1995-96] and Norwegian Public Report (NOU) 1995:2).

Marketing with a strong emphasis on the body and/or sex may also be contrary to MCA section 2, first paragraph because the portrayal may, based on a general perception, be seen as offensive or derogatory. For example, cases in which the advertisement is widely exposed in the public arena, or where the advertisement is directly addressed to someone who has not requested it, may be seen as contrary to good marketing practice. There is a lower threshold for advertising to be seen as contrary to good marketing practice if it is targeted at children and youth, or when children and youth can easily be exposed to it (see also. MCA section 21, and particularly MCA section 21, sub-paragraph [d]).

MR case 12/2002: N.N. – Cederroth AS

TV advertisement for Asan *Intimvask* (Intimate Wash) showed a young woman at a gynaecological examination. As the doctor examined her, several medical students came in to watch, and an awkward situation arose where one of the students and the woman apparently knew each other from before.

The Market Council referred to the fact that based on earlier practice, there is a relatively high threshold for an advertisement to be found contrary to “good marketing practice”. They also referred to the fact that the number of complaints was relatively low (10 complaints), that the video had been through a separate professional assessment, and that the video was not body-fixated.

The Market Council’s view was also that the use of humour in the video was balanced in a reasonable way. The ad was not found to be contrary to MCA section 1, first paragraph.

MR case no. 4/1997 – Nordisk Video Distribusjon ApS and Per Svein Finsrud

This case concerned the marketing of pornographic films.

The Market Council found it clear that this marketing approach was likely to offend or arouse disgust in relation to widespread societal norms, when the material was distributed directly to addressees without prior request. The marketing was found to be contrary to the Marketing Control Act section 1, first paragraph. According to the view of the Market Council, the unreasonableness of the ad was augmented by the fact that even children were listed as recipients of the material. The Market Council also stated that the company’s advertisements in the newspaper *Søndag Søndag* must be seen as unreasonable and illegal, since *Søndag Søndag* is a regular newspaper sold at newsstands and the advertisements contained clearly explicit pornographic portrayals.

The images in the marketing material were also found to be contrary to MCA section 1, second paragraph.

The Market Council approved coercive fines of NOK 500,000 and 100,000 against Nordisk Video Distribusjon ApS and Per Svein Finsrud, respectively.