The Consumer Authority's monitoring pursuant to the Marketing Control Act:

User reviews in marketing

Guidelines, March 2016
1. Introduction

The Consumer Authority shall monitor to ensure that traders’ marketing, commercial practices and contract terms are in compliance with the Marketing Control Act.¹

User reviews² and consumer involvement in marketing can be positive for both traders and consumers. If user reviews are misleading or give a false impression, however, consumer problems occur, and if consumers cannot place trust in reviews they’re not of use to serious traders either. With these guidelines, the Consumer Authority aims to give traders an overview of the most important requirements that follow from the Marketing Control Act when it comes to collecting, processing and publishing user reviews.

The guidelines are divided into three main parts. First, we explain the purpose and scope of the guidelines (Section 2). We then give a practical description of the requirements pertaining to traders’ collection, processing and publication/presentation of user reviews (Sections 3.1, 3.2 and 3.3). Finally, we explain the legal background, along with the Consumer Authority’s monitoring and enforcement authority (Section 4 and 5).

The guidelines use the words “shall”, “must” or “may not” when describing requirements from the Consumer Authority’s pursuant to the Marketing Control Act. If such requirements are broken, the marketing method is likely to be in conflict with the ban on misleading and/or hidden advertisements. The word “should” and the like express a recommendation. We have not taken a position on whether failure to follow such a recommendation will conflict with the law in all cases, but will consider this on a case-by-case basis.

2. Scope, purpose and background

2.1. Scope

The guidelines are aimed at traders³ that have systems to obtain, process and publish/present user reviews through channels the trader operates and controls. As a rule such systems give consumers a justified expectation that the reviews come from consumers who wish to share their experiences—negative or positive—with other consumers.

¹ Act relating to the Control of Marketing and Contract Terms and Conditions, etc. (The Marketing Control Act) LOV-2009-01-09-2. An English translation of the act is available on the website of the Consumer Authority

² User review here refers to an expression of opinion or customer assessment from a consumer who has tested, used, purchased or had an intention to purchase a good or service, which has been submitted or published with the intention of informing other consumers of the consumer’s assessment.

The definition is taken from the Danish Consumer Ombudsman’s “Guidelines on publication of user reviews, 1 May 2015”, page 7.

³ A trader is defined in the Marketing Control Act, Section 5, sub-paragraph (b): a natural or legal person who is acting for commercial purposes, and anyone acting in the name of or on behalf of that person.
The document also gives traders suggestions on how to communicate truthfully about user reviews in channels not operated by the trader, such as social media. The principles described in the guidelines may also apply to comparison services and platforms, which, however, may raise further questions that the Consumer Authoritys has not yet taken up.

2.2. Purpose and background
Consumers’ experiences and assessments of a product, trader or service have become an important competitive parameter in the age of the interactive Internet. At the same time, the potential to be misled is great if consumers place trust in inaccurate representations of others’ experiences. Traders that want to take charge of their online reputation by allowing for user reviews must therefore follow the rules in the Marketing Control Act. This means, among other things, that they must work to prevent consumers from being misled or getting a wrong impression of goods, services or traders marketed through user reviews.

Consumer authorities in many countries have prioritised the monitoring of user reviews. User reviews as a means of marketing are a phenomenon that transcends national borders, and the basic considerations are generally the same in different countries’ consumer legislation. The EU and EEA, moreover, have common legislation. Legal questions around marketing that pertain to user reviews should therefore be treated the same across jurisdictions as far as possible. In international forums, the Consumer Authority advocates for an international consensus regarding the principles traders must follow when they use user reviews in their trade activities.4

These guidelines may be updated as needed in order to stay abreast of e.g. new Norwegian and international enforcement practice.

3. Practical guidelines: Collecting, processing and publishing/presenting user reviews

User reviews shall give a sufficiently informative picture of users’ views on the product or trader under discussion. This applies regardless of the manner in which the trader has arranged its systems or practices for collecting, processing and publishing/presenting user reviews.

If the trader has had an influence on the content in user reviews and/or has influenced the manner in which reviews are presented, people who read the reviews to navigate the market may get a wrong impression of the trader or the main properties of the product/service. To

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4 The authorities in several countries have released guidelines and contributed to discussions on user reviews. See for example:

(in Danish) http://www.forbrugerombudsmanden.dk/Love-og-regulering/Retningslinjer-og-vejledninger/Markedsforingsloven/Brugeranmeldelser
https://www.gov.uk/government/publications/online-reviews-and-endorsements-advice-for-businesses
follow the Marketing Control Act, the trader must therefore avoid undue influence on the kinds of assessments user reviews convey.

The trader must also be aware that even if it is usually not liable, from the perspective of marketing legislation, for factual claims that are made by reviewers in the user reviews themselves, the trader may be liable if the trader has had an influence on the content of the review, or if it chooses to include and emphasise a user review in marketing.

A more detailed account of the requirements that apply to traders when they employ user reviews is given below. These requirements concern:

- Collection (Section 3.1)
- Moderation (Section 3.2)
- Publication/presentation (Section 3.3).

### 3.1. Collecting user reviews

#### 3.1.1. Genuine user reviews

The trader must not allow anyone other than real consumers to write user reviews. This means that the trader must not purchase fake reviews or have employees or anyone else write reviews that do not reflect real user experiences.

- A trader may not write or allow anyone to write reviews on its behalf that appear to come from a consumer.

#### 3.1.2. Neutral requests for reviews

Requests to consumers to submit user reviews must be neutral with respect to the kinds of assessments being sought. Such calls must not solely go out to customers who may be expected to be particularly satisfied.

- The trader must ensure that its system for collecting user reviews does not steer the assessments in any particular direction, as with e.g. a template for user reviews that sets the scene for a positive review.

- It will give a misleading impression if a trader prevents consumers from leaving negative reviews of a product by depriving them of the opportunity to do so at the point when user reviews are obtained.

#### 3.1.3. Rewards and compensation for writing user reviews

If the customer receives rewards, compensation and the like for writing a review, this can influence how he or she talks about the product. Strong incentives, such as payment or free
products, will likely cause the review to be considered an advertisement instead of an ordinary user review.

- If the trader distributes free products to consumers in return for reviews, the publication of such reviews as ordinary user reviews will be misleading and conflict with the ban on hidden advertisements. For more on receiving benefits and the duty of labelling, see Section 3.3.2.

A reward scheme must not give the consumer the impression that there is a greater chance of winning if he or she writes a positive review. Promising prizes to consumers who write positive reviews will influence the assessments they give, and the reviews will be likely to mislead the consumers reading them.

- Whether or not the consumer receives a reward shall have no connection to the assessment of the product. The call for reviews must make it plain that the consumer is just as likely to receive a reward if the review is positive or negative.

- The terms and conditions for receiving a reward must therefore be stated clearly and explicitly in the call for reviews.

3.1.4 Verifying users

- The trader must consider the need for systems that can ensure the user reviews are real. It may be necessary, for example, to implement measures to ensure that customers who review a product or trader have actually used the product or service the trader provides.

In this connection, it may be necessary to monitor the reviews to uncover any indications of reviews that are not real, such as a sudden spike in the number of special categories of reviews, reviews that are automatically generated, duplicates or reviews submitted by someone with a connection to the trader.

- The trader must consider what information should be logged when user reviews are written, in order to be able to document and monitor the senders of reviews.

This information may for instance consist of names or usernames, IP addresses or logging in with the same account that was used to make a purchase.

The requirements regarding verification/monitoring systems related to collecting user reviews will have to be assessed on a case-by-case basis. Relevant criteria in such assessments will include the risk of cheating and the amount of reviews in question.

3.2. Processing/moderation
3.2.1 Monitoring the content of user reviews

The trader is responsible for all marketing through its channels, including in the form of user reviews.

- The trader must have satisfactory procedures for handling user reviews, from collection to publication.

The trader may have legitimate reasons to not publish certain user reviews, such as when they are defamatory or false. When a trader allows for user reviews in its marketing, therefore, it also needs to monitor them and decline to publish certain ones if necessary.

3.2.2 Moderation and suppression must not give a misleading impression

Any moderation of user reviews must intervene as little as possible. This is important not only to prevent the general impression given by user reviews from being misleading, but also to ensure that user reviews are helpful to potential customers. If moderators intervene in customers’ reviews excessively, the reviews will no longer be credible, to the detriment of consumers and the trader alike.

The requirements for processing and moderation are therefore strict, both during and after the publication of consumer reviews.

- A trader may not delete negative user reviews and only publish positive ones.

- For a trader to suppress or reject reviews that it itself determines to be irrelevant is also problematic.

When one allows for user reviews, a clear main rule is that it is the consumers themselves who must assess the relevance of the reviews others have written.

- Traders may not reject or delete reviews solely on the basis that they include complaints or criticism, even if the trader believes customer service could have handled the matter. The trader may choose to answer the review in a comment linked to the review.

Editorial choices made by the trader may require clear, explicit information about the presentation of user reviews, in order to avoid any misleading impressions.

- The trader must give a sufficiently clear and explicit explanation of the kinds of user reviews that are published and may not be published. See also Section 3.3 on publishing and presentation.
The Consumer Authority recommends that traders introduce mechanisms to ensure that customers receive feedback on reviews that are not approved, so that they have the chance to write a new one if they so wish.

3.2.3 The trader’s responsibility for claims made in user reviews

It is our assessment that consumers reading reviews can generally be expected to understand that the trader cannot be held responsible for incorrect claims about factual properties or functions in an individual review. As a rule, factual claims are misleading in the sense of the law if the trader can be identified with the factual claims. Such identification may occur if the trader has had an influence on the claims, or if the trader makes use of claims in marketing.

3.3. Publishing and presentation

3.3.1 Real picture of users’ assessments

The trader must have systems in place to ensure that all user reviews that get published are presented neutrally and objectively, e.g. in chronological order.

- It may give a misleading impression of the product or the trader if only positive reviews are presented, or if positive reviews are particularly emphasised.

Star ratings, the use of symbols or similar visual presentations of users’ assessments must be organised in a way that is reflective of the reviews themselves.

- In order to give a sufficiently informative picture of the object of reviews, the number of consumers who have submitted reviews should be stated. The number should be given in close proximity to the specific product and the place where consumers submit their rating.

If other editorial choices are made concerning the representation of consumers’ assessments, it is important that the presentation not give a misleading impression of the assessments. Consumers must understand what the presentation of users’ individual and aggregated assessments means.

3.3.2 Reviews written for pay or a reward: the boundaries with advertising

If a trader pays consumers or gives them other benefits for writing user reviews, this may cause the object of the review to be assessed more positively than it would have in the absence of payment or a reward. Other consumers may get the wrong impression if they are not made aware of the fact that the person writing is on assignment from the trader.
If a review has been written for a reward, such as free products, payment, discounts or the like, then depending on circumstances the review may be considered to be advertising on behalf of the trader. The Consumer Authority will consider such factors as the value of the reward, the neutrality of the call for reviews, and how the reward scheme as a whole is likely to influence the reviews in its assessment of whether such reviews are to be considered advertising. If the incentive is weak, and is offered to all customers regardless of whether they write a positive or negative review, the reviews may be considered ordinary user reviews and not advertising.

- One example of this may be when all customers who have purchased a good or service are notified that they may take part in a drawing for a gift card of a relatively low amount if they write a review—and at the same time that a positive or negative review will not affect their chances of winning.

- If a trader asks consumers to voluntarily sign up to receive a product or service for free in exchange for writing a review, any reviews from those who received the product or service without paying for it will be considered advertising.

In such cases as the latter, the trader must ensure that it is clearly stated that the content is advertising and not an ordinary user review.

### 3.3.3 Identification of advertising when reviews are paid or written for a reward

User reviews are presented as a channel for consumers’ real assessments. If a trader’s advertisements are published in a manner that makes them appear to be genuine assessments from average consumers, this constitutes infringement of the ban on hidden advertising. It shall therefore be clearly and explicitly stated to consumers which reviews have been bought and which have not. Consumers must be aware that content is marketing before or at the same time they see/read the review.

If the trader favours user reviews of certain products on the basis of a commercial partnership with certain actors, this must be stated clearly and explicitly to consumers. Such reviews must be presented as advertising, and any commercial partnership must be explained so as to prevent any misleading impressions.

- Blurring the lines between genuine user reviews and advertising must be avoided. If paid reviews are linked to a system for presenting ordinary user reviews, there are strict requirements for separation.

- Paid reviews may not be included in aggregations of consumers’ assessments, such as in star ratings and the like.
Reviews that are to be considered advertisements must follow the same rules as other marketing. This means that in addition to the requirement of being clearly presented as advertising and separation from ordinary user reviews, the trader may be liable if misleading claims are advanced in such reviews.

4. Legislation

4.1. The Marketing Control Act

The Marketing Control Act came into effect on 1 June 2009. The act implements the EU Unfair Commercial Practices Directive.\(^5\)

As explained above, user reviews and systems for collecting, processing and publishing/presenting them can infringe several provisions in the Marketing Control Act. There may be a sliding transition between the assessments pursuant to the various provisions.

Traders that employ user reviews to market themselves or their products through their own channels must follow the requirements on marketing in the Marketing Control Act. This involves a general requirement that the marketing measure shall not conflict with good business practice and constitute an unfair commercial practice (MCA, Section 6), and that consumers shall not be misled with respect to the object being assessed in user reviews (MCA, Section 7). It is also a basic principle of marketing law that marketing shall be designed and presented in such a way that it is clear that it is marketing (Section 3). A more detailed account of relevant legal provisions in the Marketing Control Act is given below.

4.1.1. Misleading and unfair commercial practices

Section 7, first paragraph, sub-paragraph (b) of the Marketing Control Act establishes that a commercial practice is misleading if it is “likely to deceive consumers in relation to […] the main characteristics of the product.” The provision goes further to list examples of the main characteristics of the product, including “benefits or risks, […] usage or fitness for purpose, results to be expected from its use, tests or checks carried out on the product” and so on. Further on, sub-paragraph (f) deals with misleading practices related to the nature or attributes of the trader.

The provision says nothing about the manner in which a commercial practice must be misleading when it comes to the above types of information. The Consumer Authority must therefore assess whether a specific marketing measure is likely to give a false impression to consumers with respect to the conditions listed in the provision. When it comes to systems

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for collecting, processing and publishing user reviews, the trader must ensure that users’ assessments are not represented in a misleading manner.

When it comes to ordinary user reviews that neutrally portray users’ experiences and views, the trader will not as a rule be responsible for claims made by a user in the review. However, if the trader has had an influence on the content, or puts forth reviews written by consumers in marketing, the review may be considered advertising for the trader. The trader will then have a duty to document factual claims in the review as well as liability for any misleading claims, just as with any other type of marketing.

According to the second paragraph of the provision, the commercial practice must also be “likely to cause consumers to make an economic decision that they would not otherwise have made.” It is clear that consumers place importance on other consumers’ recommendations. Many consumers read user reviews to navigate the market when they are buying new products or services. User reviews thus help shape the economic behaviour of consumers. Hence, as a rule, the condition that the commercial practice shall be likely to influence consumers will be fulfilled.

If the conditions in Section 7 are fulfilled, the commercial practice is unfair pursuant to section 6, fourth paragraph. Section 6, first paragraph establishes that “unfair commercial practices shall be forbidden.”

Moreover, according to Section 6, second paragraph, a commercial practice will be unfair if it “conflicts with good business practice towards consumers and is likely materially to distort the economic behaviour of consumers, causing them to make decisions they would not otherwise have made.” The provision may impact the practices for collecting, processing and presenting/publishing user reviews that are not affected by Section 7’s provisions on misleading commercial practices, but nevertheless do not meet the requirements for professional diligence that the trader can reasonably be expected to meet. A trader that administers user reviews can hence be held accountable for breaching the Marketing Control Act if sufficient measures are not taken to prevent cheating with user reviews.

4.1.2. Hidden advertising

Section 3 of the Marketing Control Act establishes that marketing shall be designed and presented in such a way that it is clear that it is marketing. This means that marketing shall not be difficult to recognise and identify.

The ban on hidden advertising also finds expression in special rules laid down in regulations on particular forms of commercial practice that are always to be considered unfair and hence forbidden under the Marketing Control Act, Section 6, fifth paragraph; see also first paragraph. The Regulation on Unfair Commercial Practices, Section 1, no. 22 establishes that “to falsely claim or give the impression that the trader is not acting for purposes related
to its business [...] or professional activities, or to falsely represent oneself as a consumer” is an unfair commercial practice.

Since user reviews as a rule give the impression of expressing other consumers' assessments, there are strict requirements on clearly identifying marketing in connection with the presentation of user reviews.

5. Infringement and sanctions

When traders infringe the Marketing Control Act, the Cancellation Act, the Financial Agreements Act or other pieces of legislation that the Consumer Authority enforces, the Consumer Authority may prohibit this conduct (MCA § 40) and impose administrative fines (MCA §§ 42 and 43). Natural or legal person that are accessories to infringements, may also be the subject of decisions by the Consumer Authority. The Consumer Authority’s decisions may be appealed to the Market Council (MCA § 37).