



Tesla Motors Norway AS

Bekkenstenveien 15
0976 OSLO

Deres ref.

Vår ref.

Dato:

Sak nr: 19/841-1

04.04.2019

Saksbehandler: Marie Linga Slåke

Dir.tlf: 907 79 261

Marketing and contract terms for driver assistance services in cars

1. Background and introduction

The Consumer Authority oversees that traders' contract terms and marketing directed at consumers do not violate the Marketing Control Act.

We have noted the marketing of the Autopilot service from Tesla. In our assessment, the marketing raises questions in relation to the Marketing Control Act Sections 7 and 8, cf. Section 6, which prohibit misleading and unfair commercial practices.

It follows from the Marketing Control Act Section 6, fourth paragraph, that a commercial practice shall always be unfair if it is misleading pursuant to Section 7 or Section 8. A commercial practice is considered misleading if it contains false information and is therefore untruthful, or if it is otherwise likely to deceive consumers in relation to, among other things, 'the main characteristics of the product'.

Section 8 of the Marketing Control Act regulates misleading omissions. A commercial practice is considered misleading pursuant to this provision if it omits or hides material information. By material information is meant information that consumers require in the context to be able to make an informed transactional decision.

The Marketing Control Act also prohibits unfair contract terms, cf. the Marketing Control Act Section 22. In addition to the questions raised by the marketing, we therefore ask Tesla to explain what contract terms and conditions apply to the use of Autopilot.

Further grounds for this follow below.

2. Marketing of features in cars from Tesla

The Consumer Authority has considered the marketing of the 'Autopilot' feature on Tesla's website. Autopilot is an optional feature that can be selected when ordering a car on Tesla's website.¹ This additional feature is marketed with claims such as that Autopilot '*enables the Tesla to steer, accelerate and brake automatically for other vehicles and pedestrians within its lane*' (Appendix, page 1)).²

One overriding question is whether Autopilot's actual functionality corresponds with the consumer's impression that is created by the marketing of what the feature can do. If this is not the case, the marketing could be in violation of the Marketing Control Act Section 6, cf. Sections 7 and 8.

If a product or a service under development is marketed as a complete product or service, this can also be misleading.

In the following, we will give some concrete examples of how, in our opinion, the marketing of Autopilot may mislead the consumer. Our point of departure is one the processes for ordering Autopilot from Tesla on your website. Please note that our assessment applies in all cases where the same claims and terms are used.

2.1 About the marketing of 'Autopilot' in general

It is important that the consumer has a correct picture of the product's functionality and limitations. The trader must ensure that the impression the consumer is left with due to the marketing matches the product's actual functionality. This particularly applies when the average consumer may find the advertised product difficult to understand, and to new technology if the functionality is not general knowledge.

On www.tesla.com/no_NO, under the tab MODEL 3, you can scroll down to the picture showing the text 'Autopilot – Future of Driving' (Appendix, page 2). The name 'Autopilot' in itself creates an expectation on the part of the customer that the service is intended to be an alternative to driving the car yourself. In our opinion, without clear information about the possibilities and limitations of the service, 'Autopilot' can create an incomplete picture for the consumer of what the service is actually suitable for.

By clicking 'Learn more', the consumer has access to information on Autopilot's different abilities. The abilities are illustrated by short animations. For the different abilities, terms such as 'automatically' are used. Examples include '*Automatic parking*', '*Automatic lane change*' and '*Registers objects and automatically applies the brakes to prevent a collision*' (Appendix,

¹ https://3.tesla.com/no_NO/model3/design#autopilot

² All quotes have been translated from Norwegian

page 3 and 4). This contributes to strengthening the impression that the Tesla drives of its own accord, without the driver having to intervene.

On the same page, it says that Autopilot is 'designed to assist you with the most burdensome parts of driving,' (Appendix, page 5). In our opinion, it is unclear what this quote means when the marketing emphasises the fact that several functions are automatic. Based on the marketing, it is therefore also unclear what is actually required of the driver of the vehicle in the situations that the additional functions are said to be capable of handling. This way, the marketing can contribute to create a false sense of security by using Autopilot.

The order page also states that 'Autopilot' is divided into two packages with different prices, 'Autopilot' and 'Full Self-Driving Capability'. However, it is emphasised for both packages that the features entail that the vehicle can do several things automatically (Appendix, page 6). In our assessment, the name of the latter optional package to an even stronger extent than 'Autopilot' gives the impression that the car will be capable of doing the marketed manoeuvres entirely on its own.

At the bottom of the order page, a reservation is made:

'The applicable features require active driver supervision and do not make the Tesla autonomous. Future use of these features without supervision is dependent on achieving reliability far in excess of human drivers, as demonstrated by billions of kilometers of experience, as well as approval required by law, which may take longer in some jurisdictions. Your Tesla will be continuously upgraded through OTA-updates under the development of these self-driving capabilities.' (Appendix, page 7).

This is written in small print at the bottom of the page and does not appear until the consumer has navigated to the order page. It is also possible to overlook the reservation if you do not scroll all the way down to the bottom of the page. We also question whether the average user understands the practical implications of this reservation.

We therefore believe that this reservation does not constitute sufficiently clear information, particularly seen in light of the descriptions of 'Autopilot' and 'Full Self-Driving Capability', which clearly strengthen the impression that the features mean that the vehicle is self-driving. The same applies to the marketing of the driver assistance features elsewhere on Tesla's website and earlier in the order process, where, as far as we can see, no reservation is made at all.

In our assessment, the reservations are so important to the consumers' assessment of the features that they should have been clearly presented in connection with all marketing that may give the impression that the functions are automatic and something the car does of its own accord.

The owner's manual also includes several reservations concerning the use of Autopilot.³ Among other things, a list is included of the limitations that may impact the performance of the Autopilot components, rendering them unable to function as intended. The owner's manual also states *'You should never trust one hundred percent in these components. It is the driver's responsibility to be alert, drive safely, and be in control of the vehicle at all times.'*

The information in the owner's manual stands in contrast to the impression the marketing gives of what Autopilot can be used for. This strengthens our impression that claims in the marketing of Autopilot may be misleading.

On the basis of the above, it is our assessment that the limitations concerning the use of the feature, and particularly what is required of the driver of the vehicle in that connection, are under-communicated. Based on the marketing of Autopilot, the consumer could be left with an immediate impression that the features in many situations will function as an alternative to driving the car yourself. The marketing is therefore capable of giving consumers an incorrect impression of the autopilot feature's limitations, which may in turn influence consumers to make a transactional decision they would otherwise not have made. It is therefore the Consumer Authority's assessment that the marketing of Autopilot is misleading pursuant to the Marketing Control Act Section 6, cf. Sections 7 and 8.

2.2 The parking service 'Summon'

Through an article in the Norwegian newspaper *VG*, the Consumer Authority was made aware that a consumer has warned others against using one of Autopilot's parking features, called Summon.⁴

The case concerned a consumer whose vehicle sustained damage when he used the feature. The function is controlled via a mobile phone app, and the driver does not therefore need to be in the car when Summon is used. The consumer did not manage to prevent the vehicle from crashing when he used the parking function.

According to the *VG* article, the vehicle's owner was dissatisfied with Summon's functionality and therefore complained to Tesla. He received a reply stating that he was responsible for the vehicle also when using Summon, and that the consumer could abort the Summon feature if necessary.

The feature is marketed on Tesla's website with claims such as: *'Park and retrieve your vehicle automatically'*, combined with an animated video showing a person steering a Tesla out of a garage using a mobile phone app. Based on the marketing, it would therefore appear that Summon automatically parks and retrieves your vehicle (Appendix, page 8).

³ https://www.tesla.com/content/dam/tesla/Ownership/Own/model_3_owners_manual_europe_no.pdf, page 71

⁴ <https://www.vg.no/forbruker/bil-baat-og-motor/i/21aPKx/advarer-alle-mot-aa-kjoepe-tesla-funksjon-helt-ubrukelig>

The marketing also gives the impression that Summon is suitable for garages, where such a function indeed is useful. Tesla also seems to emphasise this in their statement to VG that the function is practical when the parking space makes it difficult to get in and out of the car when it is parked.

The owner's manual, however, states that the driver must continuously monitor the vehicle and that parking in a narrow space limits the accuracy and increases the risk of damage.⁵ We cannot find the same information in the marketing of Summon, which is questionable since this constitutes important limitations on the use of the function. It also illustrates the discrepancies between the information provided in the marketing and the owner's guide, respectively. Such information must be provided before the consumer orders the feature, so that the marketing does not mislead the consumer.

On this basis, it is the Consumer Authority's assessment that the marketing of Summon is misleading and in violation of the Marketing Control Act Section 6, cf. Sections 7 and 8.

3. Contract terms and conditions for the use of Autopilot

In the VG article, Tesla states that the driver is responsible when using Summon. The Marketing Control Act Section 22 on unfair contract terms and conditions authorises the Consumer Authority to prohibit unfair contract terms and conditions. In the assessment of fairness, emphasis is given to the balance between the rights and obligations of the parties, and to the clarity of the contractual relationship. Terms and conditions that to a great extent limit liability for faults and damage can raise questions of unfairness. We therefore ask Tesla to explain what contract terms and conditions apply to the use of Autopilot and to send us a copy of the company's complete set of terms and conditions that apply to consumers.

4. The Internet of Things and connected products

The increasing availability of connected products and services made possible through the Internet of Things creates several new and popular possibilities for consumers and traders. In our supervision of compliance with the Marketing Control Act, however, the Consumer Authority sees that the development, marketing and sales of connected products to consumers also challenge consumer protection.

Connected products are often developed for the purpose of being able to meet practical needs in the consumers' everyday lives and are marketed as such. The consumers want to purchase such products, but often do not know enough about the technology that makes them possible. This gives traders an extended duty to provide information, so that the

⁵ https://www.tesla.com/content/dam/tesla/Ownership/Own/model_3_owners_manual_europe_no.pdf, page 85

consumer has a correct picture of the product's functionality and limitations. This is particularly important in areas where technology is under rapid development. Consumers must in any case be able to make informed decisions. If not, the consumer will be misled in violation of the Marketing Control Act. In the worst case, this could also entail harm to life or health.

The marketing of connected products also raises several other issues, for example that the products concerned are under development and that their functionality may change after software updates. The responsibility for unfinished products must be managed in a balanced manner.

Based on the consumer challenges raised by connected products, the Consumer Authority has created a webpage with advice to traders on how the law we supervise can be applied to connected products. The goal is to inform traders about the regulations that apply to such products and to prevent consumer problems and disputes.

5. Summary

As stated above, our assessment is that key limitations of the functionality of Autopilot and Summon are only marketed in the small print, several clicks away from the main message of the marketing, or in the owner's manual. In light of the issues raised by connected products and the fact that Autopilot is an additional cost when purchasing a Tesla, it is important that the consumer is given correct information in a clear and plain manner. As stated in the above account, the Consumer Authority finds that the marketing of Autopilot and Summon is misleading and in violation of the Marketing Control Act Section 6, cf. Sections 7 and 8.

We ask that Tesla change its marketing to ensure that it complies with the requirements of the Act as we have described in this letter. We ask that you send us confirmation of this as well as an account of the changes by 1 May 2019.

If you, contrary to what the Consumer Authority has found, believe you are not in violation of the Act, we request an explanation of the grounds for this by the same deadline.

We also ask Tesla to send us a copy of its contract terms and conditions that apply to consumers.

Best regards
The Norwegian Consumer Authority

Bente Øverli
Deputy Director General

Appendix: Screenshots of marketing page 1-8