

Objectives and basic requirements

These guidelines have been issued against the background of the increasing interest shown by trade and industry in individualizing consumers for the purpose of marketing and of the development in the use of so-called loyalty or customer-binding programmes in consumer matters.

A loyalty programme is characterized by the differentiated treatment afforded to certain consumers (members) and to consumers that visit a variety of retail outlets. Larger and more sophisticated customer-binding programmes are subject to several provisions, of which only the most important will be touched upon below. Persons carrying on trade or business are not permitted to act in conflict with good marketing practice. Similarly, incorrect, misleading or unreasonably inadequate information must not be used in marketing.

In order for a loyalty programme to live up to the principles of good marketing practice, the individual programme must be sufficiently transparent, provide a reasonable decision basis for the consumer and at the same time comply with special legislation. Moreover, the conditions of an agreement must be reasonable, which means that they must not involve unacceptable commitments.

In these guidelines the Consumer Ombudsmen in Denmark, Finland, Norway and Sweden wish to address companies or associations of persons carrying on trade or business who wish to make use of loyalty concepts in consumer matters, including customers' clubs, bonus schemes and similar memberships. But the same considerations apply to the producer who markets his products directly to consumers and who at the same time wishes to live up to the requirements of good marketing practice.

These guidelines express the Consumer Ombudsmen's general interpretation of marketing legislation in this area.

Conditions of enrolment and withdrawal

Rights and obligations shall be clearly represented in advertisements for and other forms of marketing of the concept. Application for membership shall be at the consumer's own initiative. Thus, enrolment in programmes that contain obligations for the consumer may not take place as the result of passivity or negative acceptance. Consent is only valid to the extent that the consenting party is aware of what he consents to and how far-reaching the consequences are. Rights and obligations should therefore be stated clearly and in writing prior to entering into an agreement. The supplier of the loyalty programme must be properly identified.

It must clearly appear who are the physical or legal persons undertaking the registration of data, who is the owner of the property right and right of use of the registered data, and whom the registered person can contact with a view to gaining access to information and requesting deletion of data. Enrolment in a loyalty programme should not be conditional on participation in competitions.

Registration and use of information

Collection, registration and use of neutral and personally sensitive information must not violate the integrity of the individual and shall observe current legislation on data protection and the Marketing Act. The person carrying on trade or business must not exhibit a behaviour that can be regarded as aggressive, obtrusive or as a nuisance. Registered information must be administered in an ethically proper manner.

Requirement of transparency

The principle of transparency in connection with price information is an all-pervading requirement in Nordic marketing legislation. There are a number of elements that may make it difficult to determine the actual price of a product. To a large extent these difficulties have been dealt with by the requirements made of price labelling and discounts, the prohibition against purchase-conditioned participation in competitions, collateral gifts and inducements (collateral gifts and inducements are prohibited in Denmark apart from air bonus schemes) and, generally, a prohibition against making incorrect, misleading or unreasonably inadequate statements.

As part of the price information, the value of benefits should therefore be stated and otherwise be clearly represented in connection with the conclusion of an individual purchase agreement. Bonus systems using progressive criteria for earning points and strongly differentiated discounts have an obscuring effect.

Other factors, such as the requirement of a minimum purchase before attributing bonus, earnings and time limits on earned bonuses, also have a price-concealing effect. Commitments under a bonus scheme that make it difficult or illusory for members to make sensible use of the earned points will basically be in conflict with good marketing practice.

Offers concerning children

Loyalty concepts in marketing areas that are primarily aimed at children under the age of 16 must not be addressed directly to the child.

Customer payment and credit cards

If, as part of the loyalty programme, discount schemes, etc., are associated with payment cards, the cash-paying customer should be able to obtain the same discounts or similar advantages. In other words, the benefits must not be reserved for payment and credit card customers. In the same manner, advertisements and brochures should mention that the discount is obtainable regardless of the mode of payment. Besides, it must not be unnecessarily difficult to get one's discount or other benefits when paying cash. The situation that a discount, etc., may be attached to a payment card does not mean that information registered in connection with use of the card can be freely used for drawing up consumer profiles, etc.

The information must only be used for calculating discounts, dividends or the like. (In Denmark the full discount without deductions should accrue to the person entitled to the discount as member shops are not allowed to contribute financially to the operation of a payment card system). Price signs Retailers have an obligation to clearly indicate the price of the goods offered for sale. The price stated should be the net cash price, that is the amount which the customer has to pay at the cash register.

In shops operating with a loyalty programme, with access for non-members, the goods must as a minimum be marked with the non-member price. (In Denmark purchases and special offers cannot be reserved for members. But the trader may display the product for sale in the shop with an alternative price). Nor is it permitted to make statements that obscure the basis for comparing the price with other prices by offering benefits. When informing about savings and similar statements it should be clearly stated that the price is compared with the retailer's own prices for non-members. Requirements to be met by loyalty programmes.

Summing up, it is possible to formulate a set of criteria that should be observed when drafting a loyalty programme: enrolments must be voluntary rights and obligations must be stated clearly and in writing on conclusion of an agreement information registered must be administered in an ethically proper manner proportional and undifferentiated earning of bonus no rules should be established concerning expire limits prize competitions should not be offered