

Guidelines on good marketing
practice in relation to distribution
of mail without a named addressee

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The Danish Consumer Ombudsman

Carl Jacobsens Vej 35

DK-2500 Valby

Tlf.: +45 41 71 51 51

E-mail: forbrugerombudsmanden@kfst.dk

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Introduction

On the basis of negotiations with the Danish Consumer Council, the trade association of Danish distributors (Brancheforeningen af Danske Distributionsvirksomheder), the Danish association of newspaper, mail and advertising distributors (Danske Avis-, Post- og Reklamedistributører), the Danish Chamber of Commerce, the Confederation of Danish Industry, Creativity and Communication, the Association of Danish Advertisers, the Association of Danish Media, Post Danmark A/S, FK Distribution, the Danish Bankers Association, the Danish Insurance Association and idényt a-s (as observer) and with participation of the Danish Ministry of Business and Growth and the Danish Ministry of Transport as observers, the following guidelines were prepared pursuant to section 24(1) of the Danish Marketing Practices Act. See Consolidating Act no. 1216 of 25 September 2013.ⁱ

These guidelines should be seen as a reflection of the Danish Consumer Ombudsman's general view of what may be deemed to be good marketing practice in the market for distribution of mail as defined in these guidelines (see 1 below), and all participants in the market are required to observe the guidelines.

Guidelines on good marketing practice in relation to distribution of mail without a named addressee

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Section 1

Delimitations

Distribution comprises handling of mail in relation to opt-out schemes.

For the purpose of these guidelines, "mail" means mail of any kind which is in the nature of a business activity and which does not designate the name of the recipient and is distributed free of charge to the recipient. The recipient may be a specific individual, a business or an institution, etc. See also 2 below.

According to the definition, the guidelines cover both unaddressed mail and mail on which an address but no name has been provided.

It is only possible to opt out of receiving mail falling under the scope of the Marketing Practices Act. Accordingly, the definition includes a condition that the relevant mail must be in the nature of a business activity because the Marketing Practices Act regulates any activity with a commercial purpose (section 2(1) of the Act). The guidelines thus comprise any form of advertising, whether in the form of actual exhortation or the mere branding of a business.

Such advertising may consist of circulars, sales catalogues, brochures on evening classes, local directories and telephone directories, local and regional weekly newspapers, free daily newspapers and magazines. The list is not exhaustive.

These guidelines do not apply to mail not falling under the scope of the Marketing Practices Act, i.e. mail which is not in the nature of a business activity, e.g. government, municipal or regional information (printed material concerning taxation and local development plans, for example), material from political parties, material on collections or information material from charities or disease-fighting organisations and material from religious institutions such as local church newsletters. Necessary information in the public interest is similarly exempted, even if provided in connection with a business activity. Such information may, for example, be in the form of information from municipal or private water works concerning a temporary disconnection of the water supply.

For the purpose of these guidelines, newspapers and other publications mean publications which are distributed periodically to recipients without charge and whose editorial content is not insignificant relative to the proportion of advertising.

Such publications must have a content so diverse as would typically characterise daily and weekly newspapers, magazines, periodicals and similar publications and deriving from different sources. The editorial content must furthermore cover a wide range of subjects and include, for example, news and opinion-shaping content from the area of publication. There must be no direct association between the editorial content and the advertisements, and the publication may not be aimed at promoting the sale of one or more specific products or marketing a specific business. The main purpose of the publication may not be commercial advertising.

Generally, a publication published by a trader about the trader's business will be deemed to be an advertisement whether or not the publication is published periodically and has a certain editorial content.

If newspapers/publications are distributed with so-called inserts, such inserts will only be deemed to form part of the newspaper/publication if the insert effectively forms part of the main product, or the insert is expressly stated to be a supplement to the newspaper/publication. In case of such association, the insert will be included in the overall assessment of whether the newspaper/publication meets the conditions for not being deemed an advertisement.ⁱⁱ If not, the insert will be deemed to be ordinary mail and may individually be deemed to be an advertisement. Product samples will not be deemed to be inserts.

While telephone directories, local directories and brochures on evening classes, etc. are deemed to be advertising within the meaning of the Marketing Practices Act, they are subject to special regulation under these guidelines. See 2 below for additional information.

For the purpose of these guidelines, telephone directories and local directories mean traditional telephone directories and directories for the local area/region with a content as would typically characterise such publications. Such content may be business listings, advertisements, telephone listings by name, maps of the local area/region and information material from public authorities and other key information.

Brochures on evening classes etc. mean catalogues and similar from liberal adult education associations etc. comprised by the Danish Act on Liberal Adult Education.ⁱⁱⁱ

The delimitations in relation to the opt-out schemes are set out in 2 below.

Section 2

Options for opting out of receiving mail

Two opt-out schemes will be established. See 2.1 and 2.2 below. A label will be produced for each scheme to be provided in connection with registration for the schemes.

Any address may be registered for the opt-out schemes (see below) if a mail delivery point is established at the address, i.e. a mail slot, a letter box or a letter box system.

Whether the address is registered to private individuals, traders, institutions, associations, clubs or authorities, etc. is not relevant, nor is the purpose thereof.

A private address, for example, may be registered for the scheme regardless of whether it is used as a principal private residence or is temporarily unoccupied, in connection with a sale, for example, or if it is a second home. A private individual may, for example, register for an opt-out scheme for the address at which he or she is registered in the Danish central national (CPR) register as well as for any addresses without a residence requirement of which the individual has disposal.

Similarly, traders etc. may register all addresses of which they have disposal, regardless of whether the address is used for business or other purposes.

It must always be possible to register for an opt-scheme for mail delivery points used for distribution of mail.

2.1 "No ads please"

The sender and the distributor must respect the registration indicated on the relevant label and fully refrain from delivering advertisements etc. They may, however, distribute telephone directories, local directories, brochures on evening classes, etc., newspapers and other publications. See the delimitation provided in 1 above.

When registering for this scheme, delivery of information material from public authorities etc. should also be expected. See 1, paragraph 6, above.

Because some addressees do not wish to receive local newspapers etc., it will be possible to register an address for the extended opt-out scheme, "No ads or free newspapers please".

2.2 "No ads or free newspapers please"

The sender and the distributor must respect the registration indicated on the relevant label and fully refrain from distributing advertisements etc., including telephone directories, local directories, brochures on evening classes, etc., and newspapers and other publications. See the delimitation provided in 1 above.

When registering for this scheme, only information material from public authorities etc. will be delivered. See 1, paragraph 6, above.

2.3 Registration

Both registration and deregistration for an opt-out scheme must be easy and secure for the person receiving/opting out of receiving mail.

Administrative procedures for registration must be established to ensure that clear and unambiguous information is provided about the practical procedure and about

- » The consequences of each of the two schemes;
- » The design of the label for each scheme and the obligation to affix it on the mail delivery point at the relevant address;
- » The possibilities of deregistration;
- » Updating of the registration, when such updating will take place and any changes in the design of the label in connection with the update;
- » Disclosure of information on registration (address information) to other distributors;^{iv}
- » The possibility of making complaints or enquiries and the expected response time. See 3.1 below.

Registrations are entered in a database (see the applicable provisions of the Danish Postal Services Act), and a label is sent to the person making the registration for the "No ads please" scheme or the "No ads or free newspapers please" scheme, respectively. The person is informed of his duty to affix the label onto the letter box, letter box system or by the door mail slot.

The opt-out schemes must be widely marketed to inform about the type of mail which will not be delivered to the address under each of the schemes, how to register and identification requirements. Attention must be drawn to the fact that the registration for the opt-out schemes does not apply to government, regional, municipal and similar information material. Senders of such type of mail are thus not obliged to respect registration for the opt-out schemes according to these guidelines.

Procedures for deregistration must also be established.

2.4 Updating of registration

In order to ensure the correctness of data recorded about an address, the database records are updated at intervals as deemed appropriate. Expectedly, updates will take place approximately every other year. The person responsible for the database must send a letter to the person that registered the address for the scheme. The letter must describe the two opt-out schemes and inform the person making the registration that the address will continue to be registered for the scheme chosen, unless the address is actively deregistered or registered for the alternative opt-out scheme. Different options for deregistration or a change in registration must be offered.

In connection with the update, new labels for the next period must be produced. The new label assigned to the scheme for which the address has been registered so far must be enclosed in the letter to the person making the registration, and the label must be affixed on the letter box etc. within a specific time limit in order for the registration to take effect. If the label is not affixed as designated, there is a risk that the registration for the scheme will be cancelled. If the alternative scheme is chosen, the label for that scheme must be used.

The person responsible for the database must delete the registration for an address in the event of knowledge of or notification that the correct label is not used. The specific practical procedures may be established by the person responsible for the database, the distributors who participated in the negotiations on these guidelines and the Consumer Ombudsman.

Senders and distributors may distribute any type of mail to addresses which are not registered for either of the schemes.

Section 3

Monitoring of guideline compliance

3.1 Distributors' obligations

Distributors must establish a simple and effective complaints system to process any complaints concerning non-compliance with these guidelines. In the event that several complaints bodies are established to deal with the distribution of only a few of the distributors, any complaints body which cannot process a complaint received must immediately forward such complaint to the proper complaints body for processing. In any circumstances, a complaint should be answered within seven days. It is not sufficient only to send the complainant an auto-generated reply. The same applies to general enquiries.

It must be possible to complain in different ways, e.g. electronically, by letter or by telephone.

Enquiries concerning opt-out schemes must be matched against the database records and the conditions at the mail delivery point.

The individual distributor must within his organisation ensure:

- » That systems are implemented setting out procedures to ensure proper distribution of mail in accordance with these guidelines. This includes adequate training of delivery staff, establishment of monitoring systems for continuous assessment of the distribution and procedures for handling complaints and follow-up on errors identified through the distributor's own monitoring;
- » That systems/procedures work as intended, whether in respect of errors identified in connection with the distributor's own monitoring or reported errors to the effect that any issues identified may be solved as specifically and quickly as possible and within a reasonable time period. Issues must be solved in relation to both delivery staff and mail recipients.

3.2 Evaluation of the guidelines

These guidelines will be subject to evaluation in the second half of 2015.

Section 4

Commencement

These guidelines will enter into force on 1 January 2014. At the same time, the guidelines on good marketing practice in relation to distribution of mail without a named addressee of 21 December 2011 are repealed.

ⁱ See Consolidating Act no. 1216 of 25 September 2013.

ⁱⁱ Reference is also made to the Media Liability Act, Consolidating Act no. 85 of 9 February 1998 as amended.

ⁱⁱⁱ Consolidating Act no. 854 of 11 July 2011 on support to liberal adult education, voluntary liberal adult education associations and adult day schools and university extension courses.

^{iv} Pursuant to Danish Act no. 429 of 31 May 2000 on Processing of Personal Data as amended.