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**ADVOKATFIRMAN FÖR MARKNADSRÄTT**



**Advokat Cecilia Torelm Tornberg**  
Cecilia.torelm@marlaw.se

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# Question B

*“On what legal grounds could or should commercial practices, i.e. manufacturing, marketing, distribution or advertisements, of items produced or services rendered in violation of standards, statements, commitments or CSR voluntarily issued or adopted by an undertaking, be sanctioned or prevented?”*

International Rapporteur : Guy Tritton  
[GTritton@hogarthchambers.com](mailto:GTritton@hogarthchambers.com)

# CSR- Corporate social responsibility

*CSR is a form of corporate self-regulation integrated into a business model. CSR policy functions as a built-in, self-regulating mechanism whereby a business monitors and ensures its active compliance with the spirit of the law, ethical standards, and international norms. In some models, a firm's implementation of CSR goes beyond compliance and engages in "actions that appear to further some social good, beyond the interests of the firm and that which is required by law."*





# LAWS AND REGULATIONS

*Directive on Unfair Business practice 2005/29/EC -  
The Marketing Act*

**Section 5 Good Marketing Practice**

**Aggressive marketing/  
Misleading marketing**

**Black List**

**Ethics/Self-  
regulation**

# The Marketing Act

## Definitions Section 3

*Marketing; advertising and other measures in the course of business activities which are intended to promote the sale of and access to products including a trader's actions, omissions or other measures or behavior before, during or after sale or delivery of products to consumers or traders.*

The Market Court:

*“press releases ,annual reports and news articles can not be said to constitute marketing.”*

Vattenfall's websites; *“it is rather a matter of general information with the purpose to inform about the company's operations and its views on measures that should be taken in respect of climate change. Such information can not be said to be of a distinctive commercial nature.”*

*Directive on Unfair Business practice 2005/29/EC -*  
**The Marketing Act**



# The Black List

## Misleading commercial practices

1. Claiming to be a signatory to a code of conduct when the trader is not.
2. Displaying a trust mark, quality mark or equivalent without having obtained the necessary authorisation.
3. Claiming that a code of conduct has an endorsement from a public or other body which it does not have.
4. Claiming that a trader (including his commercial practices) or a product has been approved, endorsed or authorised by a public or private body when he/it has not or making such a claim without complying with the terms of the approval, endorsement or authorisation.

# Section 10 misleading marketing-

## Section 8 The Transactional Test

*Does the advertisement have any impact on the average consumer's ability to make an informed business decision?*

*“it is therefore a transactional decision if the consumer decides to take further action as a result of an advertisement, such as visiting a store or a website to gather more information. Hence, in the present case it is sufficient that Volvo's assertion "the safest in the world" is likely to affect the average consumer's interest and lure him into giving consideration to further product information on the XC60”*

# Good marketing practice

## Definitions

### Section 3

*good marketing practice: generally accepted business practices or other established norms aimed at protecting consumers and traders in the marketing of products,*

# Good marketing practice

## Good business practice

- Consolidated ICC Code of Advertising and Marketing Communication Practice
- Sector ethical norms
- Decisions by The Swedish Advertising Ombudsman (RO) and the RO Jury (RON) (partially)

## Other recognized standards

- Special legislation/other legislation
- Case law
- Guidelines, instructions from The Swedish Consumer Agency and other authorities
- Internationally recognized standards

The complainant meant that the commercial and the message that Lantmännen takes responsibility from the soil to the dining table and their green seed (the company's trademark) indicates that grocery products are produced with responsibility and are to be considered as "good food". Lantmännen confuse consumers as to believing that the green seed is a certificate that the food is produced responsibly in the same way as food marked with the Fairtrade-symbol or the KRAV-label. In the commercial Lantmännen's products are presented as being responsibly produced and being better than other products.

RON finds that the average consumer is likely to perceive the commercial and the message "Responsibility throughout the chain from the soil to the dining table," as that Lantmännen has control and influence over the entire supply chain. The RO Jury does not question the advertiser's evidence that so is the case. The green seed symbol used in the commercial is Lantmännen's trademark, hence, Article E5 of the ICC code is not directly applicable. Furthermore, The RO Jury does not find that the symbol gives the impression of being an eco-label. The commercial is not in any way misleading and is not in violation of Article 5 of the ICC Code.

# Resolution

1. Where an undertaking commits a breach of a CSR provision that it has used in connection with the promotion or advertisement of its goods or, services, such shall be actionable as an unfair commercial practice if it is

- unfair;
- the CSR provision would materially influence the average consumer's decision to buy those goods or services of the undertaking.

2. Where an undertaking which supplies goods or services, breaches a published CSR policy, a

- a) Consumer
- b) Manufacturer
- c) Supplier

of the undertaking's goods or services or (in the case of the manufacturer or supplier, the undertaking's goods or services or competing goods or services) *[who has suffered or is likely to suffer damage] [is materially and adversely affected]* has standing to bring an action for unfair competition against that undertaking if that breach amounts to unfair competition

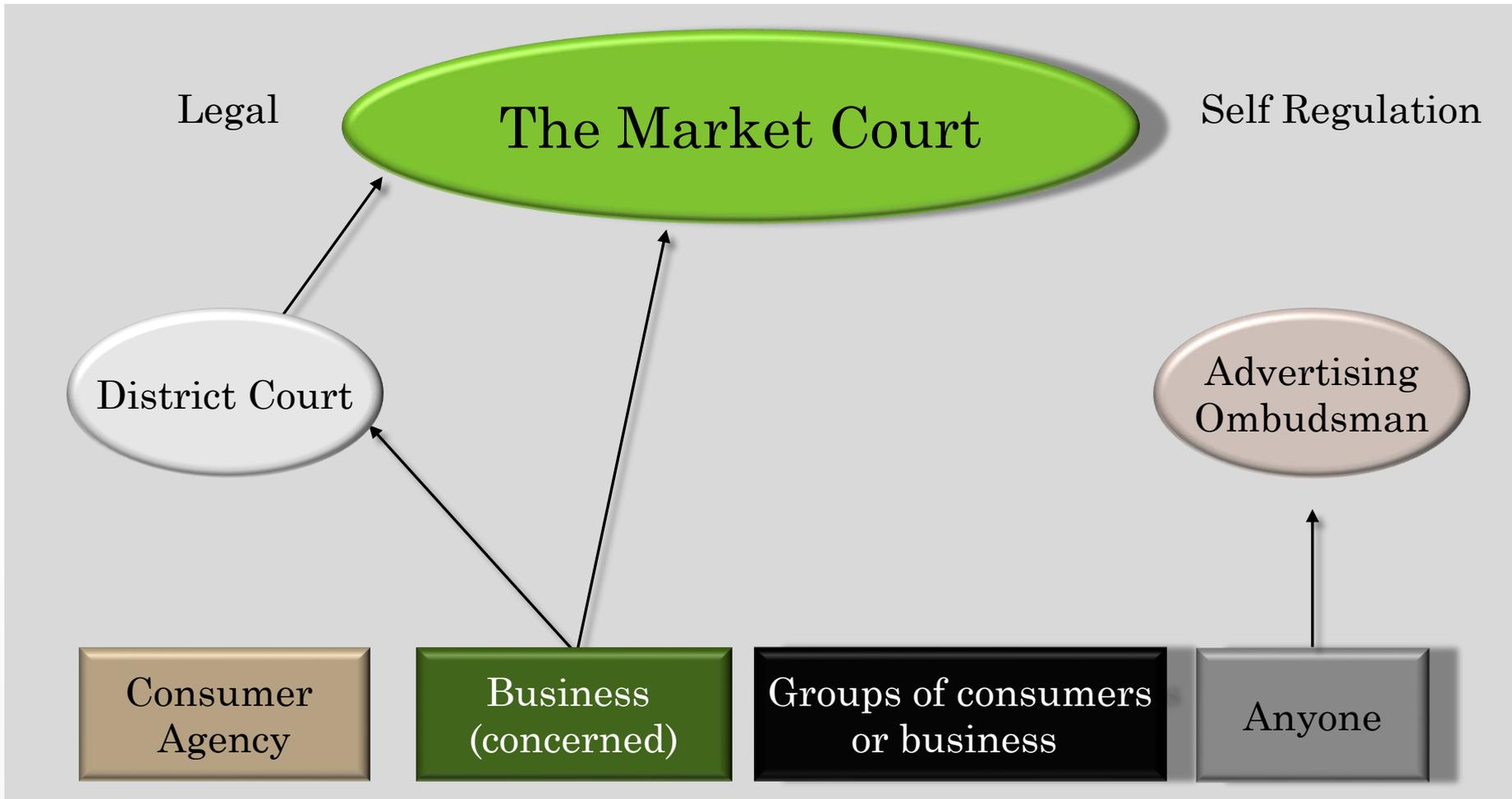
# Resolution

3) *In principle*, class actions of consumers should be permitted where an undertaking has breached a published CSR policy.

4) Where a *(prima facie) [arguable]* case is made out / *[there are reasonable grounds for believing]* that an undertaking has breached a published CSR policy, a court shall have the power to order that the undertaking provide information which is relevant to the allegation which is in its possession and which can be located by the undertaking conducting a reasonable search

5) In considering the application of competition laws to CSR policies, the beneficial effect on the environment and social working conditions shall be taken into account

# Standing to bring proceedings



# Frågor?



**Cecilia Torelm Tornberg**

*Advokat*

**Kontaktinformation**

Telefon: +46 73 359 50 68

[cecilia.torelm@marlaw.se](mailto:cecilia.torelm@marlaw.se)

Advokatfirman MarLaw AB

Sveavägen 31

P.O. Box 3079

103 61 Stockholm

Tel: +46 8 23 07 35

Fax: +46 8 796 75 33