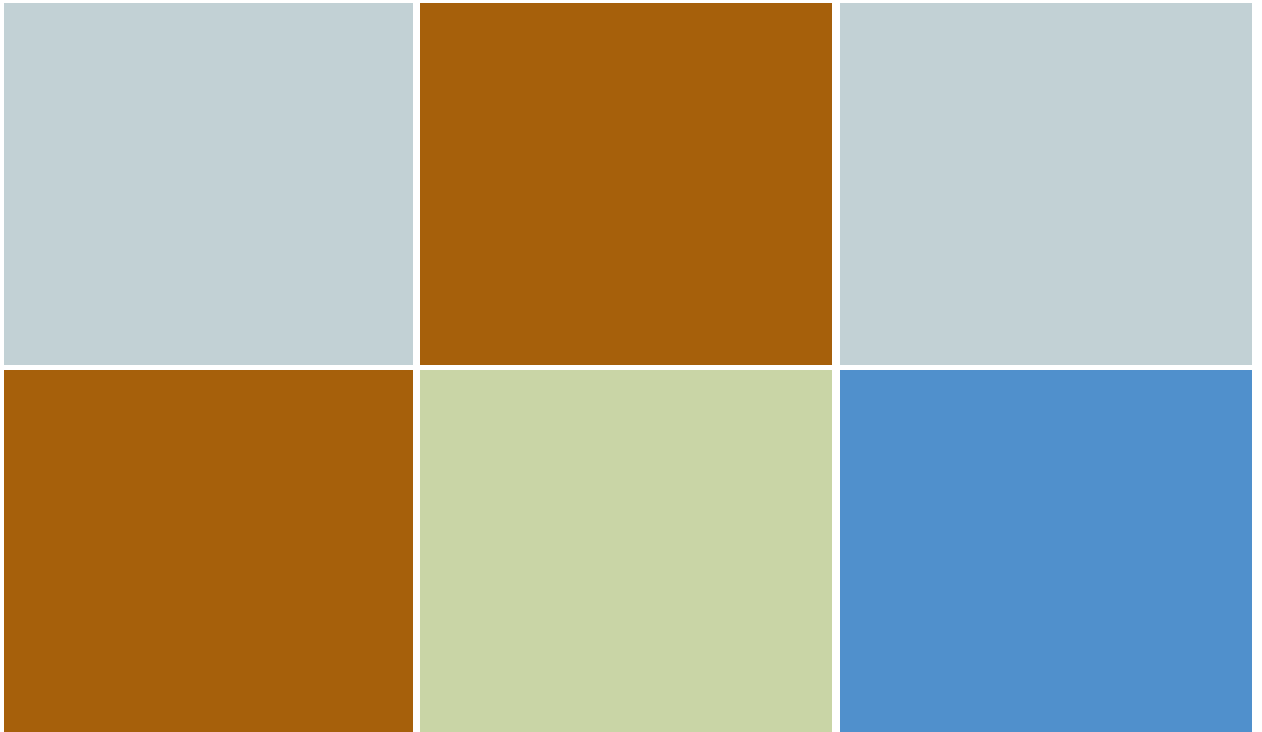


The Marketing Act



Unofficial translation from Swedish into English of
Marknadsföringslagen (1995:450)



REGERINGSKANSLIET

Government Offices
Sweden

Swedish Code of Statutes No: 1995:450
Responsible Ministry: Ministry of Agriculture, Food and Consumer Affairs
Promulgated on 27 April 1995
Amendments up to and including Swedish Code of Statutes No: 2004:315
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Object of the Act

Section 1

The object of this Act is to promote the interests of consumers and of trade and industry in connection with the marketing of products and to counteract marketing that is unfair to consumers and businessmen.

Scope of the Act

Section 2

The Act applies when a businessman markets or is he seeking to acquire products as part of his business.

The Act also applies to those television broadcasts by satellite subject to the Radio and Television Act.

Definitions

Section 3

In this Act:

products: means goods, services, real property, job opportunities and other utilities.

marketing: means advertisements and other measures taken in the course of business intended to promote sales and availability of products.

good marketing practice: means good commercial practice or other established standards aimed at protecting consumers and businessmen when marketing products.

electronic mail: means an electronic message that is addressed or in another way individualised in the form of text, voice, sound or image sent over a public communications network and which can be stored in the network or in the recipient's terminal equipment until it is collected by the recipient.

Requirements concerning marketing

General requirements

Section 4

Marketing must be compatible with good marketing practice and also in other respects be fair towards consumers and businessmen.

When marketing businessmen must provide such information as is of particular importance from the consumer perspective.

Advertising identification

Section 5

All marketing shall be designed and presented so that it is clearly indicated to be a matter of marketing.

It shall also be clearly indicated who is responsible for the marketing.

Misleading advertising

Section 6

When marketing a businessman may not make claims or other statements which are misleading as regards the businessman's own or another businessman's business operations.

This applies especially to statements relating to:

1. the nature, quantity, quality or other properties of the product
2. the origin use and environmental and health effect of the product
3. the product's price, basis of pricing and conditions for payment
4. the businessman's own or another businessman's qualifications, market position, distinguishing marks and other rights
5. prices and awards given to the businessman.

Misleading packaging sizes

Section 7

When marketing a businessman may not use packages that by reason of their size or external design generally are misleading as regards the quantity, size or form of the product.

Misleading imitations

Section 8

When marketing a businessman may not use imitations that are misleading as they can easily be confused for another businessman's known and characteristic products. However, this does not apply to imitations, the design of which primarily serves to make the product functional.

Comparative advertising

Section 8a

A businessman may in his advertisement directly or indirectly identify another businessman or businessmen's products, only if the comparison

1. is not misleading
2. relates to products that correspond to the same need or are intended for the same purpose,
3. in an objective manner relates substantially, relevant, verifiable and characteristic properties of the products,
4. does not involve confusion between the businessman and another businessman or between their products, trademarks, business names or other characteristic signs,
5. does not discredit nor is derogatory of another businessman's operations, circumstances, products, trademarks, business name or other characteristic signs,
6. as regards products with a designated origin, always relates to goods with the same designation,
7. does not take unfair advantage of the reputation of another businessman's trademark, business name or characteristic sign or the designation of origin of the goods, and
8. does not present a product as an imitation or copy of a product that has a protected trademark or business name.

When making comparisons relating to a special offer, it shall in a clear manner be indicated when the offer ceases to apply or, if the special offer is dependant upon the availability of the product, the limitations which then apply to it. If the special offer has not yet started to apply, this shall also be indicated clearly when the special price or the other special terms begin to apply.

Bankruptcy sales

Section 9

When marketing a businessman may only use the expression "bankruptcy", whether alone or in association with another expression, if the product is offered for sale by a bankruptcy estate or for its account.

Clearance sales

Section 10

When marketing a businessman may only use the expression "final sale", "clearance sale" or "closing" or another expression with a corresponding implication, if

1. it relates to a final sale of the whole of the businessman's stocks or a clearly defined part of them
2. the sale takes place during a limited period of time, and
3. the prices are significantly lower than the businessman's usual prices for corresponding products.

Bargain sales

Section 11

When marketing products a businessman may only use the expression "sale" or another expression with a corresponding implication, if

1. the sale relates to products included in the businessman's usual trade lines
2. the sale takes place during a limited period of time and
3. the prices are significantly lower than the businessman's usual prices for corresponding products.

Unsolicited products etc.

Section 12

When marketing products a businessman may not deliver products to anyone who has not expressly ordered them and, in connection with this, mislead the recipient concerning his obligation for payment.

Nor may a businessman in other cases when marketing products present a person with invoices, paying-in slips or similar documents relating to products that have not been expressly ordered and, in connection with this, mislead the recipient concerning his obligation for payment.

Sales Promotion Offers

Section 13

When marketing products a salesman who offers purchasers the acquisition of further products without payment or to an especially low price or offers the purchaser other special benefits must provide clear information concerning the

1. conditions for utilization of the offer,
2. the nature and value of the offer, and
3. the time limitations and other restrictions applicable to the offer.

Section 13a

A business operator, who in connection with marketing offers through a warranty or similar undertaking for a particular period to be responsible for a product or a part thereof or for a property of the product, shall at the time of the sale provide the buyer with clear information about the substance of the undertaking and the information that is necessary for the buyer to be able to

seek to rely on it. Information shall also be provided that a buyer's rights according to law are not affected by the undertaking.

The undertaking and information shall be provided in a document or some other readable and permanent form that is available for the buyer.

Unsolicited advertising

Section 13b

A businessman may, when marketing to a natural person, use electronic mail, telefax or other such call automation or other similar automatic systems for individual communication that is not attended by any individual, only if the natural person has consented to this in advance.

If a businessman has obtained the natural person's electronic contact details for electronic mail in the context of a sale of a product to the person, the requirement for consent in accordance with the first paragraph does not apply, provided

1. the natural person has not objected to the electronic contact details being used for the purposes of marketing with the use of electronic mail,
2. the marketing relates to the businessman's own similar products and
3. the natural person is clearly and distinctly given the opportunity to object, free of charge and in an easy manner, to the use of such details when they are collected and on the occasion of each subsequent marketing message.

Section 13c

When marketing with electronic mail, the message shall always contain a valid address to which the recipient can send a request that the marketing should cease. This also applies in connection with marketing to a legal person.

Section 13d

A businessman may use other methods for individual communication at a distance than those referred to in Section 13 b, provided the natural person has not clearly objected to the use of the method.

Prohibitions and orders

Prohibitions against continuing certain kinds of marketing

Section 14

A businessman whose marketing violates good market practice or is in another way unfair to consumers or businessmen may be prohibited from continuing with the marketing or taking any similar measure.

A prohibition under the first paragraph may also be issued to

1. an employee of the businessman
2. another person acting on behalf of the businessman and
3. any person who otherwise has materially contributed to the marketing.

Orders to provide information

Section 15

A businessman who in his marketing omits to provide such information that is especially important from the consumer perspective, may be ordered to provide such information.

Such an order may also be issued to

1. an employee of the businessman, and
2. another person acting on behalf of the businessman.

Section 16

An order under Section 15 may impose an obligation to provide information

1. in advertisements or other statements used by the businessman when marketing
2. by labelling on the goods or in another form at the sales point, or
3. in certain form to consumers who request it.

Order to provide technical aids

Section 16a

A service provider according to the Electronic Commerce and other Information Society Services Act (2002:562) who, in violation of Section 10 of the said Act, neglects to provide such technical aids as referred to there may be ordered to provide the aids.

Unfit products

Section 17

A businessman who markets products which are intended to be used by consumers for private use and which are manifestly unfit for their primary purpose may be prohibited from continuing with it.

If necessary in order to counteract a market practice referred to in the first paragraph a businessman who manufactures, imports or otherwise markets the product to other businessmen may also be prohibited from continuing with it.

A prohibition under the first and second paragraphs may also be issued

1. to an employee of the businessman and
2. another person acting on behalf of the businessman.

Section 18

A prohibition under Section 17 may not be issued if by an enactment or other decision made by a public authority special regulations have been issued concerning the product having the same objective as the prohibition would meet.

Default fines

Section 19

A prohibition under Sections 14 or 17 or order under Section 15 shall be made subject to a default fine unless special reasons render this unnecessary.

Interim Decisions

Section 20

The court may issue a prohibition under Sections 14 or 17 or order under Section 15 to apply until otherwise decided if

1. the applicant shows probable cause for his action and
2. it may reasonably be expected that the defendant by taking or omitting to take a certain act reduces the importance of a prohibition or order.

In relation to decisions under the first paragraph Chapter 15, Section 5, second and fourth paragraphs, Section 6 and Section 8 of the Swedish Code of Judicial Procedure apply. The decisions may be enforced immediately.

Prohibition and information orders

Section 21

In cases which are not of great importance the Consumer Ombudsman may issue an order concerning

1. prohibition referred to in Sections 14 or 17 (prohibition orders), or
2. order referred to in Section 15 (information orders).

The order shall be issued subject to a default fine.

In order to be valid the businessman shall approve the order immediately or within a certain period. If the order has been approved it applies as a judgment of the court which has entered into final force. An approval made after the prescribed time does not apply.

Market disruption fee

Prerequisites for the fee

Section 22

A businessman may be ordered to pay a special fee (market disruption fee) if the businessman or a person acting on his behalf intentionally or by carelessness violates any of the provisions of Sections 5 to 13 and 13 c.

The same also applies if a businessman or a person acting on his behalf intentionally or by carelessness violates any of the provisions of Section 14, first paragraph, second and third sentences or Section 14 a, first paragraph, item 2 of the Tobacco Act (1993:581), Chapter 4, Section 10 of the Alcohol Act (1994:1738) or Chapter 7, Section 3, 4 or 10 of the Radio and Television Act (1996:844) or, when it relates to an offer that is not only aimed at others than consumers, Section 11 of the Act on Deposit-Guarantee Scheme (1995:1571) or Section 8 of the Act on Deposit Operations.

That stated in the first and second paragraphs also applies to a businessman who intentionally or carelessly contributes to the violation.

The fee belongs to the State.

Section 23

A market disruption fee may not be imposed on a person in respect of a violation of a prohibition or an omission to observe an order issued subject to a default fine under this Act.

The Amount of the Fee

Section 24

The market disruption fee shall be determined to be at least five thousand crowns and at most five million crowns.

The fee may not exceed ten percent of the businessman's annual turnover. Annual turnover shall relate to the turnover of the immediately preceding financial year. If the violation has occurred during the businessman's first year of operations or if information concerning annual turnover is otherwise not available or inadequate the annual turnover may be estimated.

If an action is directed towards several businessmen, the fee shall be determined specifically for each and every one of them.

Section 25

When determining the market disruption fee special regard shall be taken to the seriousness of the violation and its duration.

In petty cases a fee shall not be imposed. The fee may be remitted if there are extraordinary reasons.

Limitation of time

Section 26

A market disruption fee may only be imposed if the summons application has been served on the person against whom the claim is directed within five years after the cessation of the violation.

Section 27

A market disruption fee lapses if the judgment has not been enforced within five years from the time when it entered into final legal force.

Provisional attachment

Section 28

In order to provide security for a claim for a market disruption fee the court may decide on provisional attachment. In that event the provisions of Chapter 15 of the Code of Judicial Procedure relating to provisional attachment for debts apply.

Damages

Section 29

A person who intentionally or by carelessness violates a prohibition or an order issued under Section 14, 15 or 16 a or violates a provision in Sections 5 to 13 d, shall pay compensation for the damage thereby arising to a consumer or another businessman.

When determining the compensation to businessmen regard may also be taken to circumstances other than those of an economic nature.

Section 30

An entitlement to damages lapses if the action is not instituted within five years of the damages being incurred.

Elimination of misleading statements

Section 31

If a prohibition subject to a default fine under Section 14 or a provision of Sections 5 to 13 is violated, the court may according to what is reasonable decide that a misleading statement found on goods, packages, printed matter, commercial documents or the like shall be eliminated or changed so that it is

not longer misleading. If this objective cannot be achieved by other means the court may order destruction of the property.

Measures for Security

Section 32

If the applicant shows probable cause for the approval of his claim in accordance with Section 31 and it may reasonably be expected that the defendant by taking or by omitting to take a certain act reduces the importance of a decision for elimination, the court may decide on appropriate measures to apply until otherwise decided. Chapter 15, Section 3 second paragraph, Section 5 second and fifth paragraphs, Section 6 and Section 8 of the Code of Judicial Procedure apply in relation to such measures. Decisions may be enforced immediately.

If a claim is presented under Section 31 in a case concerning the judicial confirmation of a default fines prescribed pursuant to this Act, instead of the provisions in the first paragraph applying, the property may be seized. In that event the provisions of Chapter 27 of the Code of Judicial Procedure concerning seizure in criminal cases apply. Decisions may be enforced immediately.

Section 33

A decision to eliminate misleading statements under section 31 and decisions for measures to provide security under Section 32 are issued on the application of a party by the court where proceedings concerning a prohibition under Section 14, a market disruption fee under Section 22 or damages under Section 29 are pending.

Decisions to eliminate statements on account of violations of a prohibition subject to a default fine under Sections 14 and 19 may be issued on the application of a party by the court where the proceedings concerning the confirmation of the default fine are pending.

Duty to provide information etc.

Section 34

A businessman is obliged, on the direction of the Consumer Ombudsman, to

1. express his views and provide the information necessary in a case concerning application of this Act.
2. make available those documents, samples of goods and the like which may be of importance to the investigation in a matter where a decision concerning a prohibition or order under Sections 14, 15 or 17 may be assumed to arise.

Section 35

A person who has been issued with a prohibition or order under Sections 14, 15 or 17 is obliged on the direction of the Consumer Ombudsman to make available the information, documents, samples of goods and the like which are necessary to supervise compliance with the prohibition or order.

Section 36

If a direction under Section 34 or 35 is not observed the Consumer Ombudsman may prescribe a default fine for the person concerned to satisfy his obligations.

Section 37

The Consumer Ombudsman may pay compensation for such samples of goods and the like referred in Sections 3 and 35 if there is special reason for so doing.

The Government or the authority designated by the Government may prescribe rules concerning the duty of a businessman to pay the Consumer Ombudsman's expenses for taking samples and examination of samples in cases referred to in Section 35.

Where and by whom may proceedings be instituted

Prohibitions and Orders

Section 38

Actions concerning prohibition or orders under Sections 14, 15 or 17 are instituted in the Market Court. However, if the same plaintiff, or another plaintiff in consultation with him, simultaneously commences an action for a market disruption fee in accordance with Section 22 or damages in accordance with Section 29 as a result of the marketing, an action for prohibition or order shall be instituted in the Stockholm City Court.

Actions for prohibitions or orders may be instituted by

1. the Consumer Ombudsman
2. a businessman affected by the marketing and
3. an association of consumers, businessmen, wage or salary earners.

An interim decision under Section 20 is issued by the court where the proceedings under the first paragraph are pending.

Market disruption fee

Section 39

An action concerning a market disruption fee under Section 22 is instituted in the Stockholm City Court by the Consumer Ombudsman.

If, in a particular case, the Consumer Ombudsman decides not to present an application for a market disruption fee a private businessman affected by the marketing and an association of businessmen may institute such an action.

A decision for provisional attachment under Section 28 is issued by the court where proceedings concerning a market disruption fee are pending. If the action has not yet been commenced the provisions of the first paragraph apply to the issue of competent court.

Confirmation of default fine

Section 40

Actions concerning the continuation of default fines prescribed pursuant to this Act are instituted at a district court that is competent in accordance with Chapter 10 of the Code of Judicial Procedure. Such an action may always be instituted at Stockholm City Court.

The action may be instituted by a person who has requested the imposition of a default fine and by the Consumer Ombudsman.

Damages

Section 41

Actions for damages under Section 29 are instituted at Stockholm City Court. Such an action may also be commenced at a district court competent in accordance with Chapter 10 of the Code of Judicial Procedure.

Appeals

Section 42

The Consumer Ombudsman's decisions under Section 34 item 1 and concerning orders subject to default fines following such a direction may not be appealed against.

The Consumer Ombudsman's decisions under Section 34 item 2 and Section 35 and also concerning orders subject to default fines following such a direction may be appealed against to Stockholm City Court. This also applies to compensation under Section 37 or under provisions issued pursuant to the said section.

Section 43

Judgments and decisions of the district court in cases and matters under this Act are appealed against to the Market Court. Judgments and decisions in cases concerning the confirmation of default fines prescribed pursuant to this Act are, however, appealed against to a Court of Appeal in accordance with the provisions of the Act concerning Default Fines.

Decisions in the course of proceedings or matters referred to in Section 20 and Section 32, first paragraph, may be appealed against independently. When being dealt with in the Market Court decisions shall be considered to relate to measures in accordance with Chapter 15 of the Code of Judicial Procedure.

Legal Force

Section 44

A judgment dealing with matters concerning prohibition under Section 14 or 17 or orders under Section 15 prevents a new action under Section 14, 15 or 17 being instituted by reason of the marketing. However, such a judgment does not prevent a new determination of the same issue when changed circumstances give cause for so doing.

Composition of the Court etc

Section 45

At the main hearing of matters under this Act the Stockholm City Court shall be constituted by four members, of which two shall be legally qualified judges and two financial experts. One of the legally qualified judges shall be the chairman of the court.

If after the main hearing has commenced legal excuse for absence of one of the members arises, the court is nevertheless competent.

At the main hearing of cases referred to in Chapter 1, Section 3a second and third paragraphs of the Code of Judicial Procedure and on determination of cases without a main hearing and similarly with procedures not conducted by a main hearing, the district court shall be constituted by one legally qualified judge, unless otherwise provided by Section 46. However, in such cases a financial expert may also participate in the court.

Section 46

When determining cases without a main hearing and when considering issues, which are part of the proceedings the Stockholm City Court may be composed as stated in Section 45, first paragraph, if there is special cause for so doing having regard to the nature of the case or issue.

Section 47

In cases only relating to damages under Section 29, Stockholm City Court may be composed as provided by Chapter 1, Sections 3a, 3c and 3d of the Code of Judicial Procedure.

Section 48

When dealing with matters referred to in Section 42, second paragraph. Stockholm City Court shall be composed of a legally qualified judge or by a legally qualified judge and a financial expert. However, if there is special cause, taking into account the nature of the matter, the City Court may have the composition referred to in Section 45, second paragraph.

Section 49

The Government shall appoint for a certain time persons to serve as financial experts under Section 45. Notwithstanding that while a financial expert is participating in a case or matter circumstances arise whereby the appointment must cease to apply, the appointment shall be considered valid as regards the case or matter pending.

A person serving as a financial expert must be a Swedish national and may not be a minor, in a state of bankruptcy or have an administrator under Chapter 11, Section 7 of the Code on Parents Guardians and Children.

Regulations concerning litigation

Procedure in the Stockholm City Court and the Market Court

Section 50

Unless otherwise provided by this Act, the provisions of the Code of Judicial Procedure concerning civil disputes where settlement is not permitted apply to cases concerning prohibitions or orders under Sections 14, 15 and 17 and cases concerning market disruption fees under Section 22.

In cases concerning damages under Section 29 the provisions laid down in the Code of Judicial Procedure concerning civil disputes where settlement of the matter is permitted apply.

In matters referred to in Section 42, second paragraph, the Procedure in Judicial Matters Act applies unless otherwise provided by this Act.

Section 51

The provisions of Chapters 49, 50 and 52 of the Code of Judicial Procedure concerning courts of appeal shall in cases and matters under this Act apply instead to the Market Court.

Section 52

If an action under this Act has been instituted by any other than the Consumer Ombudsman the court shall notify the Consumer Ombudsman about the proceedings.

When a case concerning market disruption fee or damages is instituted, the City Court shall notify the Market Court of the proceedings.

Jointer

Section 53

In the district court cases concerning damages under Section 29 may only be amalgamated with other cases under this Act.

Intervention

Section 54

In cases concerning prohibitions or orders under Section 14, 15 or 17 the person entitled to sue in accordance with Section 38, second paragraph, is entitled to participate in the litigation as intervener under Section 14 of the Code of Judicial Procedure.

Litigation Costs

Section 55

In cases under this Act the provisions of Chapter 18 of the Code of Judicial Procedure apply to issues concerning litigation costs. However, the regulations in Chapter 18, Section 16 of the Code of Judicial Procedure shall not be applied in cases concerning prohibitions or orders under Section 14, 15 and 17. In such cases the court may decide that each party bears their own litigation costs.

Non-attendance

Section 56

The provisions laid down in the Code of Judicial Procedure concerning public prosecutions apply in respect of the Consumer Ombudsman as a party to a case or matter under this Act in issues concerning orders for parties and the non-attendance of parties.

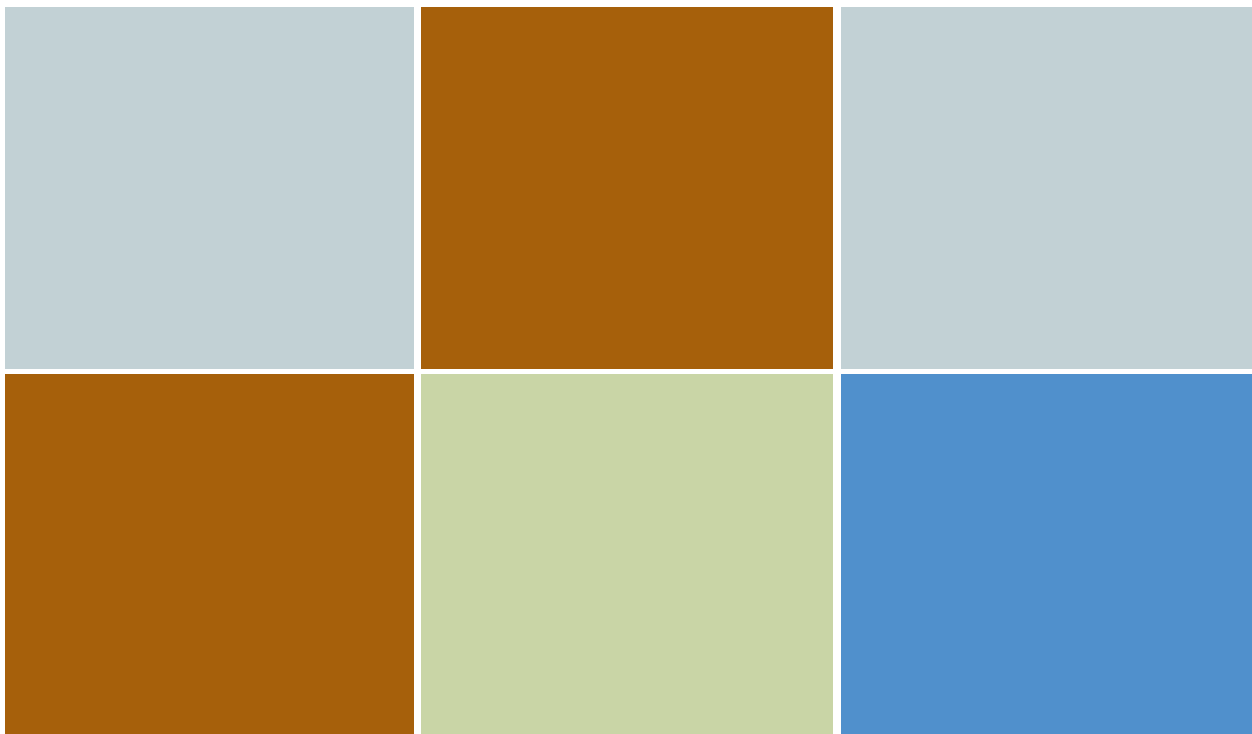
Other Provisions

Section 57

The Government may with reference to a foreign State decide that the following shall apply.

As regards goods provided with an incorrect or misleading indication of origin, by which the goods are directly or indirectly indicated to be produced or manufactured in the foreign State or in a region or district of the foreign State, measures under Section 31 may also be decided in cases other than those referred to there. However, this does not apply if the designation, in accordance with trade custom only serves to denote the kind of goods or if it is accompanied by information clearly stating that the goods have not been produced or manufactured in the State or district mentioned.

Actions concerning measures under the second paragraph are instituted in the Stockholm City Court by the Consumer Ombudsman or if he has decided not to issue proceedings, by a person conducting business in goods of the same nature as the goods to which the action relates.



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**Ministry of Agriculture,
Food and Consumer Affairs
Sweden**