

# Marketing of gambling bonuses

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### Introduction

In a recent judgment, the Patent and Market Court (PMC) ruled on the issue of marketing of bonus offers pertaining to gambling services in light of the requirement of sufficient information and moderate marketing under Swedish market law. The judgment, which also concerns the issue of sufficient disclosure of age limits and other undue marketing measures, is important as it is the second judgment to deal with gambling marketing since the deregulation of the Swedish gambling monopoly.

In short, the court issued a list of injunctions against a gambling company due to its failure to sufficiently display the material conditions of the bonus offer. Moreover, the judgment also puts the court's previously adopted definition of the targeted average gambling consumer on its head as it departs from the view that this person has gambling problems or runs a risk of developing such problems.

### Background

Following the deregulation of the Swedish gambling monopoly in January 2019, an authorised Maltese gambling company launched an online marketing campaign pertaining to various bonus offers aimed at the Swedish market. Based on the requirement that all gambling marketing must be moderate under the Gambling Act, the Swedish Consumer Ombudsman (SCO) issued a remark against the gambling company. In addition, the SCO also issued remarks on:

- an automatic notification that aimed to convince registrants to proceed if the registration procedure on the company's website was not completed; and
- the lack of information on age limits.

While the gambling company remedied some of these issues, the SCO launched an action against it at the PMC on the basis of misleading marketing.

### Decision

The court initiated its reasoning by elaborating on the definition of the average consumer targeted by the ads. In this part, the PMC departed from its previous case law by dismissing the SCO's argument that the ad targeted consumers that had or ran a risk of developing gambling problems. By contrast, the court held that the marketing was targeting consumers in general and thus should be perceived on this basis.

The PMC then turned to assess the bonus offers at issue in light of the requirements that the marketing should be moderate and that essential information must not be omitted from the marketing and concluded that the full conditions of the bonus offers were not presented in the ads but only on access via a small text link at the bottom of the defendant's web page. While the court stated that it is not necessary to display the full conditions of a bonus offer in each ad, it emphasised that it must anyhow be clarified that the bonus is subject to additional conditions which are easily accessible and that it is impossible to access the bonus before reviewing these conditions. In the court's view, the marketing lacked sufficient information in this regard. The court therefore enjoined these measures.

As regards the registering function on the defendant's website, the court noted that if such procedure was cancelled, the registrant received an automatic notice that stated "Wait, the chance to win big is waiting for you, complete the registration and start gambling!". With reference to guidance from a branch organisation that included clear prohibitions of strongly oppressive messages, the court held that this marketing measure

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was not moderate within the meaning of the Gambling Act and issued an injunction.

The PMC also held that the lack of information on the age limit to gamble violated the Marketing Act and issued an injunction relative to this measure as well.

## Comment

While the judgment includes some obvious and less surprising conclusions, it also includes a number of important statements that are useful from a compliance perspective for the gambling industry. In this regard, an important take away is that it should be made clear from all marketing of bonus offers whether the bonus is subject to any conditions. Such marketing must not include the full conditions but these must be easily available and impossible to disregard before accessing an offer. Moreover, special care must be adopted when using pop-up notifications within online registration procedures since statements that aim to convince a customer that wishes not to proceed run a high risk of being considered immoderate.

From a legal perspective, the judgment also includes fundamental statements such as the court's view on the definition of the average consumer. In this part, it is noteworthy that the court's conclusion contradicts its judgment in the non-appealed *Ninja Casino* case rendered earlier in 2020, where the average consumer was defined as a person that runs the risk of developing a gambling addiction. While the PMC's new position on the average consumer was not decisive in this case, it is nonetheless important as it will dictate the assessment of the moderate requirement. The court's revised conclusion is sound as there was nothing in the marketing at issue, and neither in the previous case, that indicated that it was specifically targeting risk consumers.

Considering the extensive launch of gambling marketing that followed the deregulation of the Swedish gambling monopoly and the fact that gambling marketing is subject to strict restrictions, it is somewhat surprising that this is only the second case concerning marketing of gambling before the Swedish courts. It remains to be seen whether the SCO will increase its supervision on the Swedish gambling market, but it would nonetheless be desirable for the industry if the higher courts were to establish case law on the concept of moderate marketing. Unfortunately, this will have to wait as the judgment was not appealed and has become final.

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