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Decision

Decision of the Netherlands Authority for Consumers and Markets regarding the imposition of a fine on TRENDX B.V.

Our reference : ACM/UIT/576920
Case number : ACM/22/177397
Date : 10 November 2022

Summary

- 1 Consumers must be able to navigate online markets with confidence. The Netherlands Authority for Consumers and Markets (hereafter: ACM) commits itself to the protection of consumers against the risks associated with online purchases.
- 2 TRENDX B.V. (hereafter: TrendX) harmed that confidence as well as the interests of consumers with its online commercial practices on the websites www.trendx.nl and www.klooo.nl. On these websites, TrendX was not clear about the delivery times of the products purchased by consumers. In addition, TrendX on these websites published positive reviews that it had created itself, while not publishing the majority of the negative reviews of customers.
- 3 With these actions, TrendX has misled consumers. For these reasons, ACM imposes a fine of 100,000 euros on TrendX. When setting the amount of the fine, ACM took into account the circumstances (financial or otherwise) of TrendX.

1. Course of the procedure

- 4 Since early 2020, ACM through its consumer information portal ACM ConsuWijzer has received reports from consumers regarding TrendX.¹ These reports were reason for ACM to look into TrendX's commercial practices, and to urge it to adjust its commercial practices in some areas.² When TrendX had failed to do so to a sufficient degree, ACM conducted a further investigation, which on 22 April 2022 resulted in a statement of objections.³
- 5 TrendX has informed ACM that it did not want to take advantage of the opportunity to respond orally to the statement of objections.⁴ However, TrendX did submit a written opinion about the statement of objections.⁵ Furthermore, TrendX has answered questions⁶ that ACM posed following the written

¹ File document 124 (ACM/INT/440917) and file document 159 (ACM/INT/442499). These file documents also contain reports that TrendX generated on other complaints boards, such as Radar Forum, www.meldnu.nl, www.klacht.nl and www.klachtenkompas.nl.

² File document 161 (ACM/UIT/559727), section 1.1.

³ File document 161 (ACM/UIT/559727).

⁴ ACM/INT/448513 and ACM/IN/695618.

⁵ ACM/IN/695286.

⁶ ACM/IN/701102.

opinion.⁷ In addition, TrendX has also provided financial information at the request of ACM.⁸

2. The statement of objections

- 6 The statement of objections concerns the commercial practices of TrendX. This legal entity was founded on 12 October 2018, and has as its sole shareholder and executive TRENDX Holding B.V.⁹ The holding is owned by Ms. [CONFIDENTIAL], born on [CONFIDENTIAL]. She is executive, and, as such, has sole and independent authority.¹⁰
- 7 The statement of objections reveals that, in any case between 27 May 2020 through 26 August 2021, TrendX offered various consumer products on the website www.trendx.nl.¹¹ From August 2021 through 18 November 2021, TrendX's commercial practices were continued on a new website www.klooo.nl. That website was a copy of the website www.trendx.nl.¹² In the statement of objections, various violations have been established on both websites, including multiple unfair commercial practices.

3. Assessment

- 8 ACM is charged with enforcement of compliance with Section 8.8 of the Dutch Act on Enforcement of Consumer Protection (hereafter: Whc).¹³ Section 8.8 Whc prohibits traders to engage in unfair commercial practices within the meaning of section 3A of title 3 of book 6 of the Dutch Civil Code (hereafter: BW). In the below sections, ACM assesses whether the conduct established in the statement of objections qualify as such commercial practices. In that context, ACM also takes into consideration TrendX's opinion.

3.1. Misleading practices with regard to delivery times

- 9 On the websites www.trendx.nl and www.klooo.nl, approximately 90% of the products on offer were handled using 'dropshipping'.¹⁴ When a consumer ordered a product through these websites,¹⁵ the product was subsequently ordered by the trader from a supplier outside the EU (such as AliExpress).¹⁶ This supplier delivered the product directly to the consumer.¹⁷
- 10 Between 20 May 2021 through 26 August 2021, the following information with regard to the applicable delivery times was shown on the website www.trendx.nl:
- o On the product pages, the delivery times for each of the individual products were shown with each product. The indicated delivery time for the majority of products was 5-10 days.¹⁸ In addition, several phrases were presented in a green font on the product pages. One of those phrases was 'delivery time' (in Dutch: 'levertijd'). This phrase contained a hyperlink, but was not visually different from the other phrases presented in green that did not contain hyperlinks.¹⁹ If the consumer did click on that link, they would see on a separate webpage called 'Delivery time' (in Dutch: 'Levertijd') an explanation to the delivery time of 5-10 workdays²⁰, which said (among other

⁷ ACM/UIT/578688.

⁸ ACM/IN/695618.

⁹ File document 68 (ACM/IN/638871).

¹⁰ File document 142 (ACM/UIT/567769).

¹¹ File documents 1 (ACM/UIT/539116), 13 (ACM/UIT/540797), 24 (ACM/INT/412307), 41 (ACM/UIT/549660 & ACM/UIT/549659) and 42 (ACM/UIT/553435).

¹² File document 108 (ACM/UIT/564021), annex p. 6.

¹³ Under Section 2.2 Whc and annex part a of the Whc.

¹⁴ File document 108 (ACM/UIT/564021), p. 2.

¹⁵ With which the consumer signed a contract with TrendX, paid the amount due to TrendX, and received an order confirmation from TrendX per email.

¹⁶ File document 108 (ACM/UIT/564021), p. 2.

¹⁷ File document 108 (ACM/UIT/564021), p. 2. See also, for example, file document 10 (ACM/IN/522055), p. 2.

¹⁸ File document 74 (ACM/UIT/559939), as recorded in the period from 17 June 2021 through 19 August 2021, for example 2021-06-17_10_39_01.400181_https___trendx.nl_collections_speelgoed-hobby_products_muskietennet-2-persoons-wit.png, File document 42 (ACM/UIT/553435), as recorded on 20 May 2021, for example p. 34, spoke however of '7-15 workdays'.

¹⁹ For example File document 42 (ACM/UIT/553435), p. 37-40.

²⁰ When ACM recorded the webpage 'Delivery time' (in Dutch: 'Levertijd') on 20 May 2021 (see File document 42 (ACM/UIT/553435), p. 26), the longest delivery time mentioned was '7-15 workdays'. In recordings from 17 June 2021, the longest delivery time mentioned was '5-10 workdays'.

- things) *“the order will be shipped directly to you from our supplier’s distribution center in Hong Kong. (...) In some cases, delivery times may take up to one week longer”* (in Dutch: *“De bestelling wordt vanuit het distributiecentrum van onze leverancier in Hong Kong (HK), direct naar je toe verzonden. (...) Levertijd kan in sommige gevallen, tot één extra week bedragen.”*)²¹
- In the footer of each webpage, there was a heading called ‘Customer service’ (in Dutch: ‘Klantenservice’). Underneath this heading, the word ‘Contact’ was written, which was recognizable as a hyperlink to more information on another webpage. On that webpage ‘Contact’, there was a subtitle ‘shipping and delivery’ (in Dutch: ‘verzending en levering’), which read: *“[packages] usually arrive within approximately 15 workdays except for holidays. This concerns a delivery time of approximately 8-13 workdays excluding a processing time of approximately 1-3 workdays. In some cases, shipping can take approximately 20 workdays. This is related to the logistical status of the shipping company and customs, and falls completely outside our power.”* (in Dutch: *“[pakketten] arriveren gewoonlijk binnen circa 15 werkdagen m.u.v. feestdagen. Dit betreft een verzendtijd van circa 8-13 werkdagen exclusief een verwerkingstijd van circa 1-3 werkdagen. In enkele gevallen kan de verzending circa 20 werkdagen in beslag nemen. Dit heeft te maken met de logistieke status van de verzendmaatschappij en douane en is geheel buiten ons bereik.”*)²²
 - Underneath the heading ‘Customer service’ (in Dutch: ‘Klantenservice’), there was also the phrase ‘Delivery time’ (in Dutch: ‘Levertijd’), which was recognizable as a hyperlink to more information on another webpage. On that webpage called ‘Delivery’ (in Dutch: ‘Levering’), the following information was found, among other things: *“7-15 workdays – your order will be shipped directly to you from our supplier’s distribution center in Hong Kong”* (in Dutch: *“7-15 werkdagen - Je bestelling wordt vanuit het distributiecentrum van onze leverancier in Hong Kong (HK), direct naar je toe verzonden.”*)²³
 - On the webpage ‘General terms and conditions’ (in Dutch: ‘Algemene Voorwaarden’), the following text could be found in article 11 ‘Delivery and processing’ (in Dutch: ‘Levering en uitvoering’) with regard to the delivery time: *“Taking into account paragraph 4 of this article regarding this topic, the company will process all accepted orders with haste yet within no more than 30 days, unless the consumer agreed to a longer delivery time” and “all delivery times are estimates.”* (in Dutch: *“Met inachtneming van hetgeen hierover in lid 4 van dit artikel is vermeld, zal het bedrijf geaccepteerde bestellingen met bekwame spoed doch uiterlijk binnen 30 dagen uitvoeren, tenzij consument akkoord is gegaan met een langere leveringstermijn.” and “Alle levertermijnen zijn indicatief.”*)²⁴
- 11 After the consumer had placed an order on the website www.trendx.nl, they received a standardized email, which included, among other information: *“We wish to remind you that the delivery time is 13-15 days. As our orders come from abroad, this may sometimes lead to delays in the delivery of your order. We apologize for any inconvenience.”* (in Dutch: *“We willen u eraan herinneren dat de levertijd 13-15 dagen is. Omdat onze bestellingen uit het buitenland komen, veroorzaakt dit soms vertragingen bij het bezorgen van de bestelling. Onze excuses voor het ongemak dat dit voor u kan veroorzaken.”*)²⁵

²¹ File document 42 (ACM/UIT/553435), p. 26 and File document 74 (ACM/UIT/559939), recorded between 17 June 2021 through 19 August 2021, for example 2021-06-17_11_14_03.173292_https___trendx.nl_pages_levertijde.png.

²² File document 42 (ACM/UIT/553435), p. 9, and File document 74 (ACM/UIT/559939), recorded on 26 August 2021, 2021-08-26_11_15_33.635440_https___trendx.nl_pages_contact.png.

²³ File document 74 (ACM/UIT/559939), recorded between 17 June 2021 through 26 August 2021, for example 2021-06-17_11_12_06.827898_https___trendx.nl_pages_levertijd.png.

²⁴ File document 42 (ACM/UIT/553435), p. 19-20 and File document 74 (ACM/UIT/559939), recorded between 17 June 2021 through 26 August 2021, for example 2021-06-17_11_23_19.982404_https___trendx.nl_pages_algemene-voorwaarden. The articles in the General terms and conditions do not contain any paragraphs [translator’s note: paragraph as in ‘subdivision of an article’]. It is assumed that ‘paragraph 4’ refers to the fourth paragraph [translator’s note: paragraph as in ‘part of a text’], which starts with the text “All delivery times are estimates.” (in Dutch: “Alle levertermijnen zijn indicatief”). See also File document 1 (ACM/UIT/539116), p. 9, where Article 11 of the General terms and conditions also contains said excerpts, and does contain paragraphs.

²⁵ For example File document 100 (ACM/IN/666245), p. 3.

- 12 On the website www.klooo.nl, from 5 November 2021 through 18 November 2021, consumers were informed in the same manner as on the website www.trendx.nl.²⁶ The product pages contain the same phrases in a green font, including the phrase 'Delivery' (in Dutch: 'levering'). In this instance too, it was not visible that it was a hyperlink to a webpage with the same text as on the www.trendx.nl under this link. On the webpages 'Delivery' (in Dutch: 'levering') and 'contact', the same information was visible as on the website www.trendx.nl on the webpages with the same names.
- 13 With the aforementioned information on both websites, consumers were not informed in a transparent and unequivocal manner about the applicable delivery times on the websites www.trendx.nl and www.klooo.nl. ACM considers this to be misleading.²⁷ As a result of the contradictory information about delivery times in different locations on the websites and in the confirmation mail after a purchase with www.trendx.nl, it was not clear to consumers what the delivery time for the purchased product was. Consumers could thus make a decision about the contract that they would not have made otherwise. If the consumer had known that the product had a longer delivery time than what they expected on the basis of the website, they could have decided not to make a purchase with www.trendx.nl or www.klooo.nl.
- 14 ACM sees that many consumers have filed complaints about the delivery times of products purchased on www.trendx.nl and on www.klooo.nl.²⁸ For example, consumers said it was unclear when the purchased product would be delivered. And that the ordered product was delivered much later than indicated beforehand, and, in some situations, was not delivered at all.²⁹
- 15 Taking everything together, ACM establishes that, from 20 May 2021 through 26 August 2021, consumers were misled on the website www.trendx.nl, and, from 5 November 2021 through 18 November 2021, they were misled on the website www.klooo.nl with regard to the delivery times of the products on offer. This violation on these websites with, by definition, a significant reach causes harm (or may cause harm) to the collective interests of consumers.³⁰ ACM thus establishes a violation of Section 8.8 Whc in conjunction with Section 6:193c, paragraph 1, preamble, and under b, BW.
- 16 The fact that, according to its opinion³¹, TrendX did not have the intention to mislead consumers does not take anything away from the above. After all, intent is not part of the offense description. Furthermore, the argument that TrendX did have some information about delivery times on its website does not alter the above. After all, it did not inform the consumer in such a way that they knew where they stood.

3.2. Misleading practices with regard to online reviews

- 17 On the website www.trendx.nl, from 27 May 2020 until 26 August 2021, reviews were displayed that appeared to come from consumers that have purchased the product in question from this website.³² The reviews were displayed on the product pages underneath the picture of the selected product using a number of stars (1 through 5) and a short paragraph. At the top of the paragraph, there was the name of the one that had written the review.

²⁶ File document 108 (ACM/UIT/564021), annex, p. 6 and File document 148 (ACM/UIT/566493), annex 1, p. 9. Also evidenced by the automated recordings of both websites, see File document 74 (ACM/UIT/559939), see for example 2021-06-17_11_14_03.173292_https___trendx.nl_pages_levertijde.png and File document 144, see for example 2021-11-05_20_40_27.534200_https___klooo.nl_pages_levertijde.png (ACM/UIT/567773).

²⁷ Within the meaning of Section 6:193c, paragraph 1, preamble, and under b, BW.

²⁸ See File document 124 (ACM/INT/440917) and File document 159 (ACM/INT/442499).

²⁹ In 12 of the 34 orders investigated by ACM, TrendX delivered the ordered products later than indicated beforehand, or it failed to deliver them at all. See File document 151 (ACM/UIT/567174). See also File documents 96 through 104 (Consumer statements) and File document 108 (ACM/UIT/564021), annex, p. 3 and 5.

³⁰ This constitutes a violation within the meaning of Section 1.1, preamble and under 1, Whc.

³¹ ACM/IN/695286.

³² See for example File document 1 (ACM/UIT/539116), p. 17.

- 18 Not all of these reviews were authentic.³³ For example, 184 reviews were posted using the email address [CONFIDENTIAL].³⁴ This email address belongs to Mr. [CONFIDENTIAL].³⁵ He worked for TrendX and was responsible for the reviews of the company.³⁶ Mr. [CONFIDENTIAL] stated that he had written all 184 reviews, and that he had posted them on the website www.trendx.nl using the nickname 'Tiel79'. As such, Mr. [CONFIDENTIAL], on behalf of TrendX, pretended to be a consumer whereas the reviews were not based on actual experiences of real consumers.
- 19 In addition, Mr. [CONFIDENTIAL] states that he, on behalf of TrendX, had ordered someone in Venezuela to post hundreds of reviews by copying these from other websites (for example, from the product's manufacturer or from another supplier of the products) and posting these on the website www.trendx.nl.³⁷ Virtually all visible reviews on www.trendx.nl were posted in Venezuela,³⁸ while they do not come from consumers that have actually placed orders with TrendX. The statistically improbable patterns in names and email addresses confirm this.³⁹
- 20 On top of that, practically all reviews with a single star were kept hidden on the website www.trendx.nl in the aforementioned period.⁴⁰ Reviews with more stars which nevertheless also included negative remarks, too, were often not shown to the public.⁴¹ Mr. [CONFIDENTIAL] stated in this regard that, when it turned out that many negative reviews were posted in which TrendX was accused of fraud, the reviews with one, two or three stars were automatically hidden with the intent of checking these before publishing them. However, that combined check and publication often did not take place. As a result thereof, consumers saw predominantly positive reviews on the product pages of TrendX.
- 21 On the website www.klooo.nl, too, this practice was visible. From 16 September 2021 through 18 November 2021, the website www.klooo.nl featured copies of the reviews from the website www.trendx.nl.⁴² The reviews' texts, the number of stars, senders and the dates were all the same. Mr. [CONFIDENTIAL] stated that the reviews that were on www.klooo.nl were the same as those on www.trendx.nl.⁴³ Ms. [CONFIDENTIAL] confirmed this.⁴⁴
- 22 This means that, on the website www.klooo.nl too, not all reviews were authentic, for example, the reviews that were written by Mr. [CONFIDENTIAL] himself⁴⁵ as well as the reviews that came from a hired individual in Venezuela. The fact that the majority of the displayed reviews was written before the date that www.klooo.nl⁴⁶ was founded confirms even more so that the reviews are not authentic. In addition, the copying of reviews means that, on the website www.klooo.nl too, negative reviews were kept hidden in a similar way as on the website www.trendx.nl.
- 23 The aforementioned general display of reviews on the product pages of the websites www.trendx.nl and www.klooo.nl resulted in a more positive picture of the trader and the products that they sold than was the case in reality. The reviews failed to give an accurate picture of the experiences of consumers with products that were delivered through the abovementioned websites. It was basically advertising for the trader and the products they offered. The consumer immediately saw the reviews (predominantly positive ones) with the product on offer, which could give the impression that it was a

³³ As evidenced by information of TrendX (File document 111, ACM/INT/667557), of Judge.me – the facilitator of the review software that TrendX uses (File document 55, ACM/IN/635752, annexes) and of Shopify – the e-commerce platform used by TrendX (File document 69, ACM/IN/639790, annex). See also the analysis that ACM performed in File document 146 (ACM/INT/439811), see for example p. 3.

³⁴ File document 55 (ACM/IN/635752), annexes. In only 9 cases, the reviews could be linked to an order made on the website.

³⁵ File document 148 (ACM/UIT/566493), annex 1, p. 30.

³⁶ File document 108 (ACM/UIT/564021), annex, p. 7.

³⁷ File document 148 (ACM/UIT/566493), annex 1, p. 13-14.

³⁸ File document 146 (ACM/INT/439811), p. 5.

³⁹ File document 146 (ACM/INT/439811), p. 6-10.

⁴⁰ File document 146 (ACM/INT/439811), among other pages p. 7 and 13.

⁴¹ File document 146 (ACM/INT/439811), p. 13.

⁴² File document 148 (ACM/UIT/566493), annex 12. See also File document 111 (ACM/IN/667557).

⁴³ File document 148 (ACM/UIT/566493), annex 1, p. 12 and 13.

⁴⁴ File document 108 (ACM/UIT/564021), annex, p. 6.

⁴⁵ This is also evidenced by File documents 140 (ACM/UIT/567578), see for example 2021-09-16_01_03_53.852163_https___klooo.nl_products_led-clothes-gafas-led-for-party-30pc-lot-luminous-ring-party-gift-christmas-toys-strawberry-so and 148 (ACM/UIT/566493), annex 1, p. 37.

⁴⁶ File document 86 (ACM/UIT/561589), annex, p. 3 in relation with file document 140 (ACM/UIT/567578), see for example 2021-09-16_01_00_40.564293_https___klooo.nl_products_600000-flash-professional-permanent-ipl-epilator-laser-hair-removal-electric-photo-women-painl.png.

good product with which people only had positive experiences. However, many of the reviews were not based on genuine customer experiences following purchases of products bought on the websites www.trendx.nl and www.klooo.nl. The negative experiences of consumers that had purchased items on these websites could not be accessed.

- 24 This commercial practice is misleading.⁴⁷ Reviews play an increasingly large role in the decision-making process of consumers.⁴⁸ Consumers take into account product reviews made by other customers of the seller in their purchase decisions. If someone leaves a good review about a product delivered by a seller, it may suggest trustworthiness and quality, and that may be the final push to get another consumer to make a purchase decision.⁴⁹ As a result of the posting of non-authentic reviews or of having such reviews posted, consumers were misled about the key characteristics of the products on offer (such as the benefits thereof or the results that can be expected when using the products) and about the recognition of the trader or the product. The non-publication of negative reviews, too, misled consumers, which meant they could decide to buy a product on the aforementioned websites, which they would not have done otherwise.
- 25 Taking everything together, ACM, based on the foregoing, establishes that, between 27 May 2020 until 26 August 2021, consumers were misled on website www.trendx.nl, and, between 16 September 2021 until 18 November 2021 on the website www.klooo.nl with regard to the online reviews posted on those websites. These violations on websites with, by definition, a significant reach causes harm (or may cause harm) to the collective interests of consumers.⁵⁰ ACM thus establishes a violation of Section 8.8 Whc in conjunction with Section 6:193c, paragraph 1, preamble, and under b and c, BW, and Section 6:193g, preamble and under v, BW.
- 26 The assertion, as made by TrendX in its opinion⁵¹, that only 1% of the online reviews were negative cannot be backed up by the facts. 17% of the reviews about the website www.trendx.nl have one star⁵², and, on top of that, there are also reviews with more stars that are negative. Moreover, the argument does not take anything away from the identified violations. The argument, too, that changes have been implemented to the websites www.trendx.nl and www.klooo.nl with regard to the displayed reviews does not alter the foregoing. These changes were implemented relatively late and did not prevent the violations, nor did they undo the violations.

3.3. Other identified practices in the statement of objections

- 27 With regard to the other practices identified in the statement of objections, ACM does not establish any violations. ACM therefore does not address TrendX's opinion with regard to this point.

4. Violator

- 28 Section 8.8 Whc stipulates that a trader⁵³ cannot engage in the above unfair commercial practices. ACM designates TrendX as trader, and, as such, as violator committing the violations established in recitals 15 and 25, and, in that context, considers the following.
- 29 In the Dutch Business Register of the Netherlands Chamber of Commerce (KVK), the website www.trendx.nl is registered under Meow (sole proprietorship) of Ms. [CONFIDENTIAL] (who is also the sole shareholder of TrendX via TrendX Holding B.V.).⁵⁴ However, the established violations on the website took place in the vein of TrendX, and can thus be attributed to TrendX. It is TrendX that, in the online sale of products to consumers, traded as legal entity through this website when engaging in her

⁴⁷ Within the meaning of Section 6:193c, paragraph 1, preamble and under b and c, BW and Section 6:193g, preamble and under v, BW.

⁴⁸ See: <https://www.acm.nl/nl/publicaties/publicatie/17216/Onderzoek-onder-consumenten-naar-het-gebruik-van-online-reviews-bij-aankopen> and <https://www.acm.nl/nl/publicaties/publicatie/17218/Richtlijnen-voor-ondernemers-voor-gebruik-online-reviews>.

⁴⁹ Compare Abdul Talib, Yurita Yakimin & Mat Saat, Rafeah (2017), *Social proof in social media shopping: An experimental design research*. SHS Web of Conferences. 34. 02005. 10.1051/shsconf/20173402005.

⁵⁰ As a result of which, a violation has been committed within the meaning of Section 1.1, preamble and under 1, Whc.

⁵¹ ACM/IN/695286.

⁵² File document 146 (ACM/INT/439811), p.4.

⁵³ As referred to in Section 6:193a, paragraph 1, under b, BW.

⁵⁴ File document 154 (ACM/UIT/569409).

business's operations. This can be evidenced from, among other facts, the name of the website, the applicable general terms and conditions that can be found on the website (where TrendX is mentioned under the heading 'Identity of the business owner', in Dutch: 'identiteit van de ondernemer'), the footer on the website ('copyright TrendX B.V.' and 'online store TrendX is part of TRENDX B.V.', in Dutch: 'Trendx.nl webshop is onderdeel van TRENDX B.V.') and the contact details on the website.⁵⁵

- 30 The website www.klooo.nl is registered under Ms. [CONFIDENTIAL],⁵⁶ co-owner of Poqlo B.V.⁵⁷ This legal entity trades via the website www.klooo.nl, as evidenced by, among other things, the general terms and conditions that can be found on the website (where Poqlo B.V. is mentioned under the heading 'identity of the business owner', in Dutch: 'identiteit van de ondernemer'), and the footer on the website ('copyright Poqlo B.V.' and 'online store Klooo.nl is part of POQLO B.V.', in Dutch: 'Klooo.nl webshop is onderdeel van POQLO B.V.').⁵⁸
- 31 The actions of Poqlo B.V. on the website www.klooo.nl can be reasonably attributed to TrendX.⁵⁹ This website appeared in August 2021, and is practically an identical copy of the website www.trendx.nl (same product selection, identical reviews, identical texts about delivery, returns, and review policy).⁶⁰ One of the executives of Poqlo B.V. (Mr. [CONFIDENTIAL]) stated "*Poqlo is TrendX, but then with a different look*" (in Dutch: "*Poqlo is TrendX maar dan met andere jas*").⁶¹ On the basis of a statement of another executive of Poqlo B.V. (Ms. [CONFIDENTIAL]), it can be concluded that the online store www.klooo.nl was created in order to continue the commercial practice TrendX without the burden of the bad reputation of TrendX.⁶² Both legal entities are registered on the same address in the same office building,⁶³ for which TrendX pays the rent.⁶⁴
- 32 In the file, ACM also sees other clues for the conclusion that the actions of Poqlo B.V. have been performed in the vein of TrendX. For example, the actions at Poqlo B.V. were performed by individuals that were also employed with TrendX.⁶⁵ These actions were in line with the regular operations of TrendX. This is evidenced by, among other things, the fact that the orders of both legal entities were mixed together in the same ordering system,⁶⁶ that the emails that were sent to info@trendx.nl and info@poqlo.com were delivered to the same inbox⁶⁷ and that the email address klantenservice@trendx.nl [translator's note: *klantenservice* means customer service] was used on both www.trendx.nl and www.klooo.nl.⁶⁸ In addition, the actions of Poqlo B.V. were of service for TrendX; the bills of TrendX were paid with money of Poqlo B.V.⁶⁹ Taking everything together, TrendX was able to control the actions of Poqlo B.V.

⁵⁵ See for example File document 13 (ACM/UIT/540797), p.3 (footer and contact details), p.6 (footer and contact details), and p.8 (general terms and conditions – identity of the business owner), and File document 24 (ACM/INT/412307), p.3 (footer, contact details and copyright), p.5 (general terms and conditions – identity of the business owner).

⁵⁶ File document 86 (ACM/UIT/561589), p. 3.

⁵⁷ See File document 143 (ACM/UIT/567770). The other co-owners of Poqlo B.V. are Ms. [CONFIDENTIAL] (owner of TrendX Holding B.V., who, in turn, is sole shareholder of TrendX) and Mr. [CONFIDENTIAL] (brother of Ms. [CONFIDENTIAL], employee with TrendX).

⁵⁸ For example File document 144 (ACM/UIT/567773), Annex 2, 2021-11-12_01_02_02.011574_https___klooo.nl_pages_levertijde.png (footer with copyright and name of undertaking), and 2021-11-12_01_06_11.758542_https___klooo.nl_pages_algemene-voorwaarden.png (general terms and conditions with identity of the undertaking).

⁵⁹ HR 23 October 2003, ECLI:NL:HR:2003:AF7983 (*Drijfmest*).

⁶⁰ File document 144 (ACM/UIT/567773) compared with for example File document 13 (ACM/UIT/540797) and File document 24 (ACM/INT/412307). Compare also recital 55 and 58.

⁶¹ File document 148 (ACM/UIT/566493), annex 1, p. 9.

⁶² File document 108 (ACM/UIT/564021), annex, p. 4, 5 and 8.

⁶³ File documents 68 (ACM/IN/638871) and 143 (ACM/UIT/567770).

⁶⁴ File document 44 (ACM/IN/631325).

⁶⁵ At Poqlo B.V., apart from the three owners (executives), no other employees were employed (see File document 143 (ACM/UIT/567770)). Two of the three owners of Poqlo B.V. (Mr. and Ms. [CONFIDENTIAL]) were also active with TrendX (see File document 108 (ACM/UIT/564021), annex p.4 and File document 152 (ACM/UIT/569400)).

⁶⁶ See File document 108 (ACM/UIT/564021), p.2.

⁶⁷ Idem.

⁶⁸ See for example File document 144 (ACM/UIT/567773), annex 2, 2021-11-12_01_07_33.422513_https___klooo.nl_pages_klachten.png.

⁶⁹ File document 108 (ACM/UIT/564021), annex p.3 and 4.

5. Fine

- 33 For the violations established in recitals 15 and 25, ACM can impose administrative fines on the violator.⁷⁰ In this case, ACM finds that appropriate and proportional. ACM finds it important that consumers are able to make online purchases with confidence. If that confidence is harmed, ACM finds it necessary to take action. The fact that, on multiple occasions, ACM to no avail urged TrendX to adjust its practices,⁷¹ means that a less far-reaching instrument was not obvious, and that a punitive sanction that affects TrendX's assets is justified.
- 34 The fine that ACM imposes on TrendX is determined in accordance with Sections 3:4 and 5:46 of the Dutch General Administrative Law Act (Awb), Sections 2.9 and 2.15 Whc and by applying the 2014 ACM Fining Policy Rule⁷² (hereafter: Fining policy rule).
- 35 ACM establishes that the identified violations can be fully attributed to TrendX. TrendX has its own responsibility to comply with the relevant regulations. It should have known that the identified practices were irregular, especially since, prior to the launch of the investigation, ACM pointed that out to it.⁷³ In addition, ACM on its website provided clear information about the relevant regulations regarding online sale of products to consumers.⁷⁴ TrendX failed to make a plausible case that it had done everything that was reasonably possible to prevent or undo the violations. It received complaints about its commercial practices,⁷⁵ but did not properly address these. The changes that, as instructed by ACM, it implemented to its website⁷⁶ were relatively late, and did not prevent the violations nor did they undo the violations.
- 36 The Whc and the regulations regarding unfair commercial practices in the BW aim to set a high level of consumer protection. Non-compliance with these rules by misleading consumers in multiple ways with regard to their online purchases may harm individual consumers but also consumer confidence in general. This is what ACM saw in the complaints that it had received through ACM ConsuWijzer. In this context, ACM finds the fact that, after a bad reputation had been created, TrendX continued its commercial practices on another website of the same owner without any changes,⁷⁷ particularly disgraceful.
- 37 ACM finds the established misleading practices with regard to the delivery times serious. Although the information with regard to the delivery times was contradictory and unclear, TrendX did give consumers some indication. In that context, ACM sees a limited violation period of four months. Taking everything together, ACM sets the basic fine for this violation at 150,000 euros.⁷⁸
- 38 ACM finds the established misleading practices with regard to the online reviews serious, too. TrendX in various ways pretended to be better than it really was, as a result of which consumers could decide to purchase something from TrendX sooner. The self-created reviews were a small part of the total number of reviews⁷⁹ and the copied reviews did concern actual reviews of the products on offer. At the same time, virtually all visible reviews on the websites were copied, and, as such, not authentic. In addition, these misleading practices (as well as the misleading practice to hide negative reviews)

⁷⁰ Under Section 2.9, under b, Whc.

⁷¹ File document 161 (ACM/UIT/559727), section 1.1.

⁷² Policy rule of the Minister of Economic Affairs of 4 July 2014, no. WJZ/14112617, on the imposition of administrative fines by the Netherlands Authority for Consumers and Markets (2014 ACM Fining Policy Rule, amended on July 1, 2016).

⁷³ File documents 4 (ACM/INT/426865), 25 (ACM/INT/412979), 26 (ACM/UIT/543003), 28 (ACM/UIT/544083), 33 (ACM/UIT/544678), 35 (ACM/UIT/546779), 37 (ACM/INT/418918) and 40 (ACM/UIT/549667).

⁷⁴ See for example <https://www.acm.nl/nl/onderwerpen/verkoop-aan-consumenten/verkoop-aan-consumenten/checklist-verkoop-via-internet>, <https://www.acm.nl/nl/publicaties/publicatie/17218/Richtlijnen-voor-ondernemers-voor-gebruik-online-reviews> en <https://www.acm.nl/sites/default/files/documents/2020-02/acm-leidraad-bescherming-online-consument.pdf>.

⁷⁵ See, among other things, File document 148 (ACM/UIT/566493), annex 1, for example p. 4, File document 97 (ACM/IN/666242), p. 1 and File document 102 (ACM/IN/666268).

⁷⁶ File documents 26 (ACM/UIT/543003), 28 (ACM/UIT/544083), 33 (ACM/UIT/544678), 35 (ACM/UIT/546779), 37 (ACM/INT/418918), 40 (ACM/UIT/549667).

⁷⁷ File document 108 (ACM/UIT/564021), p.1-2.

⁷⁸ This basic fine sits at the lower limit of the range, which, under Article 2.5, paragraph 1 of the Fining Policy Rule, goes from 150,000 euros to 600.000 euros.

⁷⁹ 184 of the 20,016 reviews visible on the website were created by Mr. [CONFIDENTIAL] himself. See File document 55 (ACM/IN/635752), annexes.

lasted for a long period of time, and, as such, affected many consumers. Taking everything together, ACM sets the basic fine for the combination of these violations at 400,000 euros.⁸⁰

- 39 In addition, ACM in its assessment takes into account the financial circumstances of TrendX. In the documents provided by TrendX⁸¹, it is insufficiently clear to ACM whether TrendX has the financial strength to pay the above fine. After all, it is not clear (among other things), what the financial result is of the commercial practices of TrendX over the past few years, and whether the parent company TRENDX Holding B.V. has sufficient financial capacity to pay the fine.⁸² However, the documents do show that [CONFIDENTIAL].
- 40 Taking these facts into consideration, ACM mitigates the total amount of basic fines of 550,000 euros to a total amount of 100,000 euros. With this fine for the entire complex of activities, it is clear that online misleading practices are not permissible. The fine does justice to the seriousness of the violations that are partially intertwined, and to the culpability of TrendX, but it also takes into account the circumstances (financial or otherwise) of TrendX.

6. Decision

The Netherlands Authority for Consumers and Markets:

Imposes a fine of 100,000 euros on TRENDX B.V., with its registered office in Arnhem, for violation of Section 8.8 Whc in conjunction with Section 6:193c, paragraph 1, preamble and under b and c, BW and Section 6:193g, preamble and under v, BW.

The Hague, 10 November 2022

The Netherlands Authority for Consumers and Markets,
on its behalf:

[was signed]

C.M.L. Hijmans van den Bergh
Member of the Board

*Anyone whose interest is directly affected by this decision can file an objection against this decision with the Netherlands Authority for Consumers and Markets **within six weeks** after the publication date of this decision. The objection must be sent to the following address: P.O. Box 16326, 2500 BH, The Hague, the Netherlands. In your statement of objection, you may request the Netherlands Authority for Consumers and Markets to agree to filing an appeal with administrative court directly.*

⁸⁰ This basic fine sits in the middle of the ranges that, under Article 2.5, paragraph 1 of the Fining Policy Rule, go from 150,000 euros to 600,000 euros (category III) and from 300,000 euros to 650,000 euros (category IV).

⁸¹ ACM/IN/695618.

⁸² Despite repeated requests by ACM, TrendX failed to provide a concrete overview of its current financial situation.