

UOOU-04773/21

The inspection at this company was initiated on the basis of six complaints about the sending of commercial messages. The commercial messages were sent via e-mail messages and contained an offer of men's cosmetics with a link to a website where the offered products could be purchased. Sending e-mail addresses, or domain names are either directed to unknown persons or it is not apparent to which specific entity they are registered, also from the sending IP addresses it is not possible to determine exactly who is the actual sender of the commercial messages in question. However, all commercial communications were sent for the benefit of websites operated by the controlled company. The inspected person did not comment in any way on the notification of the start of the inspection, nor did he respond to the sent request for comments. A disciplinary fine was imposed on the controlled person for this non-cooperation. Thus, the audited person did not prove that they disseminated the commercial messages in question either on the basis of a customer relationship or to the addressees on the basis of their consent. Both the actual sender and the entity on whose behalf the commercial messages were sent are responsible for the dissemination of commercial messages. Public liability for this offense (Section 11(1) of Act No. 480/2004 Coll.) is formulated as objective liability, i.e. liability for the consequences, and therefore in relation to the legal person there is no need to examine the culpability of the illegal situation, the controlled person was recognized responsible for the dissemination of commercial communications without the prior demonstrable consent of the addressees. At the same time, a violation of the obligation not to hide and not to conceal the identity of the sender, on whose behalf the communication is carried out, was also noted, as only a link to a website where the offered goods can be purchased was provided in the sent commercial communications. Considering the fact that after the inspection, the Office received additional 17 complaints about the sending of business communications in favor of this entity, administrative proceedings will be initiated in the near future, the subject of which will be both the initiatives dealt with in the control proceedings and those newly filed.

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