

UOOU-00388/21

The inspection at this company was initiated on the basis of four complaints. Its subject was compliance with the obligations arising from Act No. 480/2004 Coll., on certain services of the information society, when disseminating commercial communications by electronic means, specifically by e-mail. Commercial messages contained favorable offers of goods incl. discount together with a link to the website and to download the relevant application. Furthermore, evaluation questionnaires were sent in connection with the purchase, which also referred to the relevant website and application. The owner of the domain name from which the commercial communications were sent and also the operator of the website to which the commercial communications were linked is the controlled person. The inspectors verified how the process of obtaining personal data actually takes place, incl. subsequent sending of commercial messages or evaluation questionnaires and possible rejection, namely by trial unfinished purchase, then registration to a user account (without purchase and with purchase) and also by entering the individual clubs offered by the controlled company, incl. testing refusal to send commercial messages sent on the basis of attempted registrations or purchases. As part of the inspection, the company was asked to document the legal titles to the investigated mailings and statements on individual inspection points. The inspected person communicated with the Office and always provided the necessary cooperation during the inspection. In this case, the sending of a commercial message based on the consent granted during registration to the e-shop, which was checked in advance, and therefore in these cases did not meet the requirements for consent according to the general regulation, as the requisite of freely and knowingly granted consent can be characterized as misconduct in this case . The Office found further misconduct in the case of sending its own satisfaction questionnaires, when Act No. 480/2004 Coll. by the fact that the company did not allow the sending of commercial messages to be rejected in advance, neither in the process of the order being made, nor in the evaluation questionnaires themselves. There were no other violations in relation to other legal requirements in the dissemination of commercial communications by the company. She did not object to these conclusions. With regard to the finding of a violation, administrative proceedings will be initiated against the inspected person. Recommendation: If companies obtain personal data in connection with the purchase of their goods or services and subsequently send commercial communications to these contacts, they do so on the basis of a legitimate interest (i.e. without the need to obtain consent), in accordance with the provisions of Section 7, Paragraph 3 of the Act No. 480/2004 Coll. In this case, however, it is also

necessary to comply with another condition stated in this provision, namely to enable the buyer to refuse the sending of commercial communications to the electronic data provided by him in advance. This can be done, for example, by creating a separate field for refusing the use of contact data for the purpose of sending commercial communications in the order process. By ticking the box created in this way, the will would be shown to refuse this sending in the future. Re-purchasing does not change this situation. If the customer would like commercial messages to be sent to him again, he must give his consent.

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