

DECISION 48/2021 (Department) Athens, 14-10-2021 Prot. No.: 2322 The Personal Data Protection Authority met in a composition of the Department via video conference on 15-09-2021 at 12:00, following the invitation of its President , in order to examine the case referred to in the present history. Georgios Batzalexis, Deputy President, in opposition to the President of the Authority Konstantinos Menoudakos, members Spyridon Vlachopoulos, Charalambos Anthopoulos and Konstantinos Lambrinoudakis were present as rapporteur. The meeting was attended, by order of the President, by George Roussopoulos, expert scientist - auditor as assistant rapporteur and Irini Papageorgopoulou, employee of the Authority's administrative affairs department, as secretary. Complaints were submitted to the Authority by three different complainants concerning the activity of the company KAPA LAMDA OMEGA ADVERTISING COMMERCIAL SOLE REPRESENTATIVE LIMITED LIABILITY COMPANY (hereinafter KLO). Specifically: C/EIS/5686/19-08-2019, a) A submitted the documents with the original number C/EIS/5071/19-07-2019, C/EIS/5151/23-07- C/EIS /6170/12-09-2019, 2019, C/EIS/5308/31-07-2019, C/EIS/1274/17-02-2020, C/EIS/6318/19-09-2019, C/EIS /4747/09-07-2020, C/EIS/6129/10-09-2020 complaints. The Authority initially sent to KLO the letter No. C/EX/5071-

1/10-09-2019 document with which he informed the company about the four (4) C/EIS/5589/11-08-2020 C/EIS/275/14-01-2020, and first complaints and that the complainant was called, through the telephone numbers ... and ..., with the aim, in many cases, of promoting cosmetic products. The telephone number of the complainant had been included in the register of article 11 of Law 3471/2006 of the provider in a time earlier than thirty days from the making of the calls. From the information provided to the Authority by the provider of the caller's telephone numbers (Forthnet) with his document no. ' original number C/EX/5644/13-08-2019 of the Authority's document), it was found that these numbers belong to the KLO company. With documents No. C/EX/6170-1/27-09-2019 and C/EX/6318-1/07-10-2019, the Authority forwarded the two (2) following complaints, while the KLO responded to the Authority with her document No. C/EIS/525/22-01-2020 in which she states the following: Her client, B (complainant's wife) after her own call from the landline ... both in C's show and in D's show he expressed interest and proceeded to order KLO's advertised products. Two purchases were made on ...-2018 and ...-2019, as can be seen from the relevant documents. The complainant states that he was harassed for the promotion of cosmetic products while the company, considering the sale made, states that it attempted to contact the customer to find out if she was satisfied with her purchase. In all of these calls, the communication was with her client's husband, so it would not be possible to refer to the purchases made. The objective of the calls was not to promote new products but to ascertain the level of

customer satisfaction. Despite the Authority's document and the provision of the company's opinions, the complainant proceeded with five (5) new complaints, while with his document No. C/EIS/526/22-01-2020 he stated that the calls concerned promoting products and not ascertaining the level of customer satisfaction. The aforementioned data were sent to the Ministry of Internal Affairs with the Authority's document No. G/EXE/921/24-03-2021, which with No. C/EIS/2465/09-04- 2021 her document stated that the complainant's wife, at the time of the first order, 2 was informed of the possibility of her number remaining in the KLO records and provided consent, while being fully informed of her right to be deleted. KLO maintains that all of this was also reported to the complainant, who was also informed in every communication that he can request that his information be deleted, but he did not do so. b) With the original numbers C/EIS/1602/05-03-2021, C/EIS/8466/09-12-2020, C/EIS/64/05-01-2021, C/EIS/198 /12-01-2021, C/EIS/452/18-01-2021 and C/EIS/603/25- 01-2021 his documents, E complained to the Authority that he was called for the purpose of promoting products and services related to KLO . According to the complainant, his telephone numbers have been included in the register of article 11 of Law 3471/2006 of the respective provider in a time earlier than thirty days from the making of each call. In the complaint it is stated that in the past, the complainant's father had made a purchase of a KLO product and that during the calls the respective called users have many times stated their opposition to receiving further communications, without this being respected. The Authority sent to KLO its document numbered prot. C/EXE/919/24-03-2021 in which it informed the company about the complaints and asked for its opinions. The company responded with its document No. C/EIS/2464/09-04-2021, in which it claims that the telephone number of the complainant is in their records after an order, that the calls were made to verify the level satisfaction of the customer, and that the customer at the time of the order was informed about the possibility of his number remaining in KLO's records and provided consent, while he was fully informed of his right to be deleted. KLO maintains that all of this was also reported to the complainant, who was also informed in every communication that he can request that his data be deleted, without doing so, while furthermore, no entry was made in the register no. 11 of Law 3471/2006. c) With his complaint No. C/EIS/2548/13-04-2021, ST complained to the Authority that he was summoned for the purposes of promoting products and services. Based on the details of the call as well as the number ..., which 3 is reported to have been used by KLO in a similar case, for which the company was informed with reference number C/EXE/919/24-03- 2021 document of the Authority, it appears that the call in question has been made to promote the products and services of KLO, or a cooperating third company. According to the complainant, his telephone number had been included in the register of article 11 of Law 3471/2006 of his

provider at a time earlier than thirty days from the making of the call. The Authority requested the opinions of KLO with the letter No. C/EXE/1112/21-04-

2021 document, while KLO responded with the original number C/EIS/2974/06-05-

2021 her document. She hereby states that the complainant's telephone number is in their records after ordering, that the calls were made to ascertain the level of customer satisfaction, and that her customer was informed at the time of ordering of the possibility of his number remaining in KLO's records and provided consent, while being fully informed of his right to be deleted.

KLO maintains that there was no entry of the number in the register of no. 11 of Law 3471/2006 and states that it has now deleted the said number from its records. Following this response, the complainant, with his document No.

G/EIS/3062/10-05-2021, stated that he had never placed an order from the company, that he had not given his consent and that the call was made for the purpose of promoting products and services. The Authority, with its document No.

C/EXE/1209/12-05-2021, invited KLO to provide, within a period of fifteen days from the receipt of the document, any information it has at its disposal regarding the complainants, such as orders, product sales receipts, copy of consent data, other records from an electronic system, so as to determine the origin of his personal data. Following the above and after the lapse of fifteen days, the Authority proceeded to summon the company for the meeting of the department on 30-06-2021, with document No. C/EX/1492/14-06-2021 her. During this meeting, which was conducted by teleconference, the company was present through the lawyer of Athens, Georgia Christodoulou, while, after receiving a deadline, it filed the memorandum No. In it he summarizes the following: All the complainants are customers of the company and have verbally given their consent for their telephone number to be recorded and have not contacted the company to withdraw this consent. Their information was gathered in the file legally and admissibly, with their consent, for the purpose of implementing and completing the transactions (purchase of products) with the company. The company is required to keep records of commercial transactions for 5 years for tax purposes. KLO maintains that it is not required to obtain approval from the complainants, since, according to article 11 of Law 3471/2006, telephone advertising calls with human intervention are allowed, unless the called party has declared that he does not want them (system "opt-out"). He points out that it is practically impossible to obtain the written consent of the persons for all kinds of consents and approvals, due to the nature of the transactions carried out in the context of the specific telesales method, without presence in a physical store or using an online store, but with a sale after a telephone conversation.

The company had no intention of making unsolicited calls, as it had not been informed of their later first order wish to no longer

receive calls. Furthermore, it states that it respects the institutional framework of the GDPR and that shortly after its implementation (on 21/8/2019 as appears from the documents attached to the memorandum) it commissioned a specialized company to provide relevant consulting services. A relevant contract is provided while it is stated that the project (which according to the contract has a delivery time of 6 months from the start) is in the implementation phase extending to all the departments and not having been completed yet. It also states that it has deleted from its files the telephone numbers of the complainants and all communication with them has been stopped, while none of the employees in the relevant department is charged with fraud and as soon as they were informed by the Authority about the complaints, they acted to remedy the violation . 5 The company produces business records from its accounting records showing purchases related to the three complainants up to the year 2020. These records include the telephone numbers called. She also mentions that she has not committed an offense in the past, while she states that she is not charged with fraud. The Authority, after examining the elements of the file, after hearing the rapporteur and the clarifications from the assistant rapporteur, who was present without the right to vote and left after the discussion of the case and before the conference and decision-making, following a thorough discussion , CONSIDERED IN ACCORDANCE WITH THE LAW 1. The issue of telephone calls, for the purposes of direct promotion of products or services and for any kind of advertising purposes, is regulated in article 11 of Law 3471/2006, which defines the matters related to unsolicited communications (see . par. 1 and 2). It is noted that in article 11 par. 1 of Law 3471/2006 it is defined that: "The use of automatic calling systems, in particular using facsimile (fax) or e-mail devices, and in general the making of unsolicited communications by any means of electronic communication, without human intervention, for the purposes of direct commercial promotion of products or services and for any kind of advertising purposes, is allowed only if the subscriber expressly consents in advance", while paragraph 2 of the same article states that: "It is not allowed to make unsolicited communications with human intervention (calls) for the above purposes, as long as the subscriber has declared to the provider of the service available to the public, that he generally does not wish to receive such calls. The body is obliged to register these statements free of charge in a special list of subscribers, which is available to anyone interested". Consequently, telephone calls with human intervention, in view of the above purposes, are allowed, unless the called party has declared that he does not wish them ("opt-out" system). The 6 natural or legal persons can address their objections, regarding the processing of their data, either specifically directly to the controller (i.e. the advertiser) by exercising the right to object to the processing of personal data based on article 21 of the General Protection Regulation Data (Regulation EU 2016/679 -

hereinafter "GDPR") or generally through their registration in the special list of subscribers of the provider provided for in article 11 par. 2 of law 3471/2006. The law provides for the creation of registries ("opt-out") with each provider and the subscriber can declare, free of charge, to his own provider of electronic communications services that he does not wish to receive telephone calls for direct marketing. Advertisers, as long as they carry out telephone promotions with human intervention, must receive from all providers updated copies of the registries of art. 11 of Law 3471/2006 and ensure that they have available the statements of the subscribers made up to thirty days before the telephone call was made (see also no. 62-67/2016 Decisions of the Authority).

2. Furthermore, the telephone number of a natural person is personal data, since it can function as an element of indirect identification of its owner (cf. article 4 par. 1 of Regulation (EU) 2016/679 hereinafter GDPR), allowing communication with him. It should be noted that, according to Opinion 4/2007 of the working group of Article 29 of the E.U. on the concept of personal data, especially in the operation of electronic services, indirect identification elements, can in some cases sufficiently distinguish a person from others within a certain set, even if his name has not been verified.

3. In article 4 par. 11 of the GDPR, the "consent" of the data subject is defined as "any indication of will, free, specific, explicit and with full knowledge, with which the data subject manifests that he agrees, by statement or by clear positive action, that the personal data concerning him be the subject of processing". For a consent to be considered valid, the conditions of 7 no. 7 GDPR, i.e. among other things that "...the controller is able to prove that the data subject consented to the processing of the personal data". Further, Based on the principle of accountability as defined in no. 5 para. 2 of the GDPR "The data controller bears the responsibility and is able to demonstrate compliance with paragraph 1 ("accountability")."

4. In no. 21 GDPR it is defined that "1. The data subject has the right to object, at any time and for reasons related to his particular situation, to the processing of personal data concerning him, which is based on Article 6 paragraph 1 letter e) or f), including profiling under the provisions in question. The controller no longer processes the personal data, unless the controller demonstrates compelling and legitimate reasons for the processing which override the interests, rights and freedoms of the data subject or for the establishment, exercise or support of legal claims claims. 2. If personal data are processed for the purposes of direct marketing, the data subject has the right to object at any time to the processing of personal data concerning him for such marketing, including profiling, if related to it direct marketing...." Furthermore, based on Article 12 para. 2 of the GDPR "The data controller shall facilitate the exercise of the data subjects' rights provided for in Articles 15 to 22."

5. Article 6 para. 1 of the GDPR states that "Processing is lawful only if and as long as at least one of the following conditions applies: a) the data

subject has given consent to the processing of personal data for one or more specific purposes (...) f) the processing is necessary for the purposes of the legal interests pursued by the controller or a third party, unless these interests are overridden by the interest or the fundamental rights and freedoms of the data subject whose nature requires protection of personal data, in particular if the data subject is a child. (...)" In relation to the processing for a purpose other than that for which the personal data have been collected which is not based on the consent of the data subject or on the law of the Union or the law of a Member State in par. 4 of the same article a number of criteria are listed which the controller must take into account, in order to ascertain whether the processing is compatible with the purpose for which the personal data is initially collected. 6. From the data in the case file, and according to what the data controller states in his original memorandum, it follows that the processing of the data of the complainants (at least the telephone number but also the other data that have been kept after the customer's transaction with the KLO company) for the purpose of promoting products is based, according to the controller's statement, on the subject's consent, which was obtained after a telephone purchase. Although in these cases it appears that a purchase was made in the context of which the personal data in question was granted to KLO, there is no evidence to prove that consent was given. The controller makes reference to "verbal consent" in his memorandum. Therefore, in the absence of evidence, consent cannot be accepted as a legal basis for processing. Furthermore, with its latest memorandum, KLO states that it uses for the promotion products and services the data collected after purchase products and that now, based on the provision of art. 11 of Law 3471/2006 could call its customers in question. Essentially, KLO supports that for the processing of the data (phone number) of the existing of its customers for promotional calls may have as a legal basis the superior its legitimate interest (article 6 par. 1 GDPR). This claim could to be accepted, as already the legislation on electronic communications recognizes a precedence in the controller who in the context transaction acquires customer contact data (see article 11 par. 3 of Law 9 3471/2006). But as it is essentially about using data for something else purpose from that for which the personal data was originally collected

character, the criteria of article 6 par. 4 GDPR should be ensured and to satisfy the processing principles of Article 5 of the GDPR. In this case, to ensure the principle of transparency of the GDPR (no. 5 par. 1 a') he should, at least, be properly informed data subject during the data collection stage, so it knows that its data will be used for an additional different purpose, while at the same time giving him the possibility of expression opposition. Also, the controller should ensure that respects the objections of his clients, either when they are expressed individually to him same or when they are generally expressed through the register of article 11 of n. 3471/2006. The data controller has not proven that it has complied with these conditions to ensure legality, as it should based on the principle of accountability (art. 5 par. 2 GDPR). For example, he did not provide a document policy in relation to information about the (further) processing of customer data for advertising purposes nor has it proven that it receives at regular intervals copies of the register of article 11 of the law. 3471/2006. Also, he should have respected the objections of the invitees data subjects who exercise during the call or, at least, to have a procedure for exercising the right to object and to inform about it. These actions should have been taken immediately, from the customer's first call and objection and in any case after the intervention of the Authority. In fact, in relation to the principle of transparency, it is pointed out that as it appears from the complaints, in which it is done reference to products, is not made clear to data subjects either even the identity of the controller. Therefore, it follows that processing the personal data of existing customers for the purpose of

the advertising calls were made in violation of Article 6 thereof

GDPR. It is pointed out that the initially declared purpose of the call by KLO

(verifying the level of customer satisfaction) is also disputed by them

three complainants. As it does not arise from any evidence (eg policy

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company's data protection) and is not confirmed by them

complainants, it should not be accepted. After all, this claim does not

shown with the company's latest memorandum

7. In relation to the non-satisfaction of the right to object, in the first two

cases, it appears that the complainants have exercised verbally and against

during the opposition calls, which were not accepted. This should

be accepted as it refers to all the complaints while the person in charge

processing did not provide a written policy or instructions to staff

of in relation to the satisfaction of the rights of the subjects of

data during calls. In fact, in one case (a') it is proven that the

opposition was not accepted even after the intervention of the Authority, as the

complainant came back with newer complaints after her original document

Authority to KLO and the company's response. Therefore, it follows that

satisfaction of objection rights in violation of Article 21 of the GDPR

but at the same time not facilitating the exercise of rights (violation

of article 12 par. 2 GDPR), which also results from the complete absence

information in relation to the exercise of rights. It is pointed out that in the third

case, although the complainant denies the previous transaction, KLO

provides evidence of this. But, as the complainant has registered in the

register of article 11 of Law 3471/2006, there is also a violation in relation to

with the summons to him, as the complainant has made a general objection.

8. Based on the above, the Authority considers that there is a case to exercise the v
the article 58 par. 2 of the GDPR corrective powers in relation to
found violations. The Authority also considers that, based on the circumstances
that were established, must be imposed, in accordance with its provision
article 58 par. 2 sec. i of the GDPR effective, proportional and deterrent
administrative fine according to article 83 of the GDPR both for restitution
of compliance, as well as for the punishment of illegal behavior.

9. Furthermore, the Authority took into account the criteria for measuring the fine which
are defined in article 83 par. 2 of the GDPR, paragraph 5 item a' and b' of
of the same article that apply to the present case and the
guidelines for implementing and setting administrative

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of fines for the purposes of GDPR¹, as well as the actual data
of the case under consideration and in particular:

- a) The duration and intensity of the violation, especially in the first two
cases, where complainants have received multiple calls for large
time intervals (more than a year in the first case, about six months in the second case),
while constantly stating their objections.
- b) The non-stopping of the nuisances even after the intervention of the Authority especially
in the first case.
- c) That it is not personal data of articles 9 and 10
of the GDPR.
- d) That the purpose of the controller is to make a financial profit.
- e) That although since 2019 there is a contract for the provision of consultancy
services for the GDPR, almost two years later none has been provided
document, nor was it proved that the contract was implemented.

f) That no administrative sanction has been imposed by the Authority in the past

to the controller

g) The fact that the aforementioned violations of the GDPR do not

it is proved beyond doubt that they are attributable to the fraud of the person responsible processing.

h) From the data available at GEMI2 it appears that the company has a circle

operations for the year 2019 €4,979,261.88 and its gross profits amount to

€2,577,606.13.

10. Regarding the complaints of natural persons referred to in

principle of the present, the Authority finds that the complaints are well-founded. The

corrective measure of the administrative fine, as it was analyzed in

previous consideration, is imposed for the whole offense, in which

included are the cases of the complainants who are

recipients of the decision.

1 <https://ec.europa.eu/newsroom/article29/items/611237/en> - wp253

2 <https://www.businessregistry.gr/publicity/show/132503501000>

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FOR THOSE REASONS

COMPANY

LIMITED

The beginning

It imposes on the controller CAPA LAMDA OMEGA ADVERTISING

COMMERCIAL ENTITY

the

effective, proportionate and dissuasive administrative fine which

appropriate in the specific case, according to the special circumstances

thereof, in the amount of twenty thousand (20,000) euros for violation of Article 6 of the GDPR,
in relation to what is mentioned in paragraph 6 and for a violation of article 21 thereof
GDPR and Article 12 paragraph 2 of the GDPR in relation to what is mentioned in paragraph 7,
according to articles 58 par. 2 item i' and 83 par. 5 item a' and b' GDPR.

RESPONSIBLE

The president

The Secretary

George Batzalexis

Irini Papageorgopoulou