

UOOU-04863/21

The inspection at this company was initiated on the basis of complaints directed against the sending of unsolicited commercial messages, both in the form of e-mail messages and in the form of SMS messages.

The commercial messages included offers of discounted Thai massages, season ticket offers, along with a link to a website where these services could be ordered and purchased.

The inspection revealed that the inspected person uses phone numbers and a server rented from another company to send commercial messages. This company provides the controlled person with a fully automated system and server solution, through which the controlled person himself creates and sends both SMS campaigns and e-mail campaigns. The sender of the business communications in question is thus the controlled person himself, while the other company only technically ensures the delivery.

The audited person stated that he only sends commercial messages to e-mail addresses or phone numbers obtained when purchasing a massage in a store, or online on a website, or by purchasing a voucher through a discount portal, based on consent.

However, at the time of sending the business communications in question and carrying out the inspection, the inspected person had information about the consent thus granted only in the document "business conditions" and "processing of personal data", and if the customer in question wanted to purchase the service of the inspected person, he had to agree to these conditions. From the point of view of the general regulation (GDPR), only such consent is valid, which was collected in a transparent way and was freely given by the person concerned. In the case of the commercial communications in question, the inspector found a violation of Section 7, paragraph 2 of Act No. 480/2004 Coll., as the commercial communications were sent by the inspected person without prior valid consent.

In the course of the procedure, the inspected person added the possibility of a check box for granting consent to the sending of commercial messages, so that the customer, when purchasing the service, has the opportunity to freely decide whether he wishes to receive commercial messages or not.

Furthermore, it was found that the audited person did not respect the previous refusal to send commercial communications that the complainants (addressees of the commercial communications in question) sent to them. Some complainants reported

that they had been trying to opt out of this mailing for over 2 years.

The inspectors also noted a violation of the conditions under which it is possible to send commercial communications referred to in § 7 paragraph 4 letter a), b) and c) of Act No. 480/2004 Coll. In the case of commercial messages sent using SMS messages, it was found that the given commercial messages were not clearly and clearly marked as commercial messages, nor was the unambiguous identification of the sender on whose behalf the commercial messages are being sent, and the possibility to reject the sending of commercial messages was not indicated either. In the case of commercial communications sent by e-mail, only the condition of marking the commercial communications was met, however, the identification of the sender was also missing here, and even though a click-through link for unsubscribing was provided, it was without any effect, as the controlled person did not register these methods of unsubscribing.

As a result of these violations, appropriate administrative proceedings are conducted with the inspected person.

ContextLocation: Document folders > Site map > Main menu > Supervisory and decision-making activities > Completed inspections > Inspections for the year 2022 > Unsolicited commercial communications – 2nd half-year > Business companyView current documents | document archive | documents including the archive