



Berliner Beauftragte
für Datenschutz
und Informationsfreiheit

521.12076
631.271
CR 52519
DD 163890
RDD 173453
FD 177476

Final Decision

OUTFITTERY GmbH
Management Board
Ms [redacted]
Leuschnerdamm 31
10999 Berlin

For your information:
ISiCO Datenschutz GmbH
Ms [redacted]
Am Hamburger Bahnhof 4
10557 Berlin

Reprimand

Complainant: [redacted]

Your letters of 09 April 2020 and 23 June 2020 (Your ref IS-0472-10)

Dear Ms [redacted],

We hereby issue a reprimand to your company for a violation of the General Data Protection Regulation (GDPR)

This decision is based on the following considerations

I.

The Berlin DPA has established the following facts:

By e-mail dated 23 September 2019, Curated Shopping GmbH, with the address team@modomoto.de, informed the above-mentioned complainant about the merger with Outfittery GmbH, which was entered in the commercial register on 27 June 2019, and the transfer of his data to Outfittery GmbH's system, unless he objected within two weeks of receipt of the notification. In an e-mail dated 30 September 2019 sent to team@modomoto.de, the complainant requested the erasure of his data. On 10 October 2019, you informed the complainant of the successful creation of his profile by e-mail. On the same day, the complainant sent you another e-mail reminding you of his objection to the transfer of his data. On 21 October 2019, you sent the complainant an advertising e-mail from the address stylist-team@e-outfittery.de.

Berlin Commissioner for Data Protection and Freedom of Information

Friedrichstr. 219
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Visitors' entrance:
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The building is fully accessible to disabled members of the public.

Contact us

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Use our encrypted contact form for registering data protection complaints:
www.datenschutz-berlin.de/beschwerde.html

For all other enquiries, please send an e-mail to:
mailbox@privacy.de

Fingerprint of our PGP-Key:

D3C9 AEEA B403 7F96 7EF6
C77F B607 1D0F B27C 29A7

Office hours

Daily from 10 am to 3 pm,
Thursdays from 10 am to 6 pm
(or by appointment)

How to find us

The underground line U6 to Kochstraße / Bus number M29 and 248

Visit our Website

<https://privacy.de>

In your comments of 9 April 2020 and 23 June 2020, you acknowledged that, due to an error on the part of the member of staff responsible, you had incorrectly not included the complainant's request for erasure of 30 September 2019 in the objection process and that you had deleted his data on 22 October 2019.

II.

Legally, we assess the facts of the case as follows. Outfittery GmbH has infringed the GDPR.

According to Article 5(1)(a) GDPR, personal data must be processed in a lawful manner. For processing to be lawful, Article 6(1) sentence 1 GDPR prescribes that personal data must be processed either with the effective consent of the data subject or on the basis of a legal authorisation.

In his request for erasure according to Art. 17(1) GDPR dated 30 September 2019, which is considered to be an objection to the transfer of his data to Outfittery GmbH's systems, the complainant has expressed that he is not interested in continuing the customer relationship with Outfittery GmbH. Further processing of his data for Outfittery GmbH's business purposes was therefore no longer necessary.

Due to an internal employee error at Outfittery GmbH, the complainants' objection to the data transfer was not taken into account. Rather, the complainant's data was re-used on 10 October 2019 by creating a profile in Outfittery GmbH's systems, the subsequent information about it and the subsequent sending of an advertising e-mail to the complainant on 21 October 2019 by Outfittery GmbH, although the complainant's data should not have been transferred due to his timely objection.

The fact that Outfittery GmbH did not assign the complainant's request for erasure of 30 September 2019, which is to be regarded as an objection, to the objection process provided for this purpose due to an internal employee error is irrelevant in this context, as Outfittery GmbH must ensure compliance with its obligations under data protection law through appropriate technical and organisational measures in accordance with Article 24(1) GDPR. In any case, Outfittery GmbH could also be reasonably expected to ensure that the objections against the transfer of customer data were processed correctly in terms of content by means of internal organisational measures.

The use of the complainant's data and its continued storage until erasure on 22 October 2019 was thus without legal grounds.

Outfittery GmbH thus violated Article 5(1)(a), Article 6(1), Article 17(1), Article 21(3) and Article 24(1) GDPR.

III.

As a result, we have decided not to take any further supervisory measures due to the violation, but to leave it at a reprimand.

The reprimand is based on Article 58(2)(b) GDPR.

Taking into account the specific circumstances of the case under investigation, we consider a reprimand to be appropriate after completion of our investigation. We have again established a violation on your part.

In the safe expectation that you will comply with the data protection regulations in the future, we consider the matter closed.

Kind regards,

[redacted]