

Decision

Subject: Complaint against Mediacube Worldwide Ltd

The owner of the email address xxx@xxx.xxx (hereinafter the «complainant») submitted a complaint to my office regarding the receipt of marketing /advertising emails from Mediacube Worldwide Ltd (hereinafter «Mediacube»), even though I had issued a warning to Mediacube regarding his previous complaint against Mediacube.

Facts & Investigation

2.1 In his previous complaint that was filed on 24/6/2022, the complainant had stated that he had received various marketing emails from Mediacube. He informed me that he had no relationship with Mediacube and that he replied to most of the emails, mentioning that he does not want to receive any emails from Mediacube and requesting not to be contacted again.

2.2. On 4 July 2022, I had sent Mediacube an email asking for its views and specifically the reason that the complainant kept receiving marketing emails from Mediacube despite the various requests he made to stop receiving them.

2.3 On the same date, MediaCube in its reply stated among others, that:

- (a) it will make changes to their internal processes to prevent such a situation in the future.
- (b) it will not disquiet the complainant anymore and it won't offer him cooperation.
- (c) it sincerely apologizes for the inconvenience caused to the complainant.
- (d) it respects the laws of the EU and Cyprus and fully complies with the GDPR.

2.4. On 8 July 2022, I had issued a warning to Mediacube that it should ensure that messages are sent only to its customers and persons from whom Mediacube obtains prior consent and that any such messages should give the recipient an opportunity for free and easy objection. I also mentioned that in the event that a similar complaint is submitted to my Office in the future, this warning will be considered an aggravating factor.

3.1. Despite the above warning, the complainant informed me that he received marketing emails from Mediacube again, on 5/10/2022 from xxx@mediacube.network, on 10/10/2022 from xxx@mediacube.network and on 21/10/2022 and 24/10/2022 from xxx@mediacube.network.

3.2. With my emails dated 13/10/2022 and 16/11/2022 I requested Mediacube to provide me with its views regarding the new emails sent to the complainant.

3.3. With its replies dated 13/10/2022 and 29/11/2022, Mediacube stated among others, the following:

- a) It understands that email marketing is currently only allowed with the consent of the parties concerned (Art. 13(1) of Directive 2002/58/EC).
- b) Based on Article 13, part 2, in the context of a sale of a good or service, an organization, may use these electronic contact details for direct marketing of its own similar products or services provided that customers clearly and distinctly are given the opportunity to object, free of charge and in an easy manner,
- c) The complainant is not Mediacube's client at the moment, however, since on his website he describes the possibilities of commercial cooperation (<https://www...>), the emails sent, were connected with the purpose of possible cooperation.
- d) Mediacube's business model doesn't imply the sale of goods or services, and in its emails, it only indicates the possibility of mutually beneficial cooperation.
- e) Mediacube takes all possible measures to prevent mailing to the complainant and is extremely sorry that the notifications have been received by the complainant again and will try to identify the causes of this situation.
- f) The last two emails were sent by a new employee as a mistake. Mediacube has taken all measures necessary to prevent the sending of new emails to the complainant.

4. Despite all of the above, the complainant informed me that he received another marketing email from Mediacube again, on 15/2/2023 from xxx@mediacube.io.

5.1. With my letter dated 22/2/2023 I informed Mediacube about the above email received by the complainant and I pointed out the following with regards to its replies:

- a) Mediacube states that the complainant is not its client at the moment but it did not provide any evidence showing that the complainant was its customer in the past.
- b) Mediacube states that its business model doesn't imply the sale of goods or services, and that in its emails it only indicates the possibility of mutually beneficial cooperation. In any case, the emails that Mediacube sent are considered to be marketing/advertising/promotional emails as they are promoting the interests of the company, even if there may be a mutually beneficial cooperation.

5.2. With the above letter I also informed Mediacube that that **on first sight it has violated the provisions of Section 106 of the Law**, as it sent marketing emails to the complainant even though he has requested Mediacube to stop sending him marketing emails / without fulfilling his requests to stop receiving emails from Mediacube.

I requested Mediacube to provide me by the 24th of March 2023 with its views/positions on all of the above, and inform me about any reasons for which it believes that a sanction should not be imposed.

6. In its reply dated 23/3/2023. Mediacube informed me among others, about the following:

- a) This situation has developed for the reason that the complainant's email is available on his website (<https://www...>) where it is specified as a contact for the purposes of commercial offers. The letter referred to the direction of Mediacube's economic activity that is not related to MCN, and the Company's business model doesn't involve the provision of services to third party. As a rule, the Company buys exclusive rights to third-party Content in order to monetize

it on various Internet platforms, and pays royalties to such persons. In this regard, Mediacube has not advertised its services in any way.

b) The company has implemented additional procedures to prevent their employees from sending any emails to persons who opted out the processing of their personal data,

c) Additionally, the company has communicated with third-party consultants to improve the processes within the company related to the processing of personal data. It will try and undertake to avoid future violations completely and operate in strict accordance with the laws of Cyprus and the EU.

d) It understands that its violation is unacceptable, but based on the measures taken, it deems that a warning with directions/recommendations may be a suitable remedy.

Legal Framework

7.1. Based on Article 95 of the General Data Protection Regulation (EU) 2016/679, the “Regulation shall not impose additional obligations on natural or legal persons in relation to processing in connection with the provision of publicly available electronic communications services in public communication networks in the Union in relation to matters for which they are subject to specific obligations with the same objective set out in Directive 2002/58/EC.”

7.2. Section 106 of the Regulation of Electronic Communications and Postal Services Law of 2004 as amended (Law 112 (I)/2014), (henceforth the Law), transposes Article 13 of the Directive 2002/58/EC in Cyprus legal framework.

7.3 Based on section 106 (1) of the Law, the sending of messages with electronic means for direct marketing purposes is only allowed with the prior consent of the recipients.

Based on section 106 (2) of the Law, the sending of messages for direct marketing purposes to customers, is allowed for direct marketing of the senders’ own similar products or services, provided that customers clearly and distinctly are given the opportunity, in each message, to object, free of charge and in an easy manner, to their use of their contact details for this purpose.

7.4 Based on section 107 of Law, as amended, the Commissioner for Personal Data Protection has powers to examine complaints regarding possible breaches of section 106 by using the power provided to her by Section 107A.

7.5 Based on Section 107A of the Law, the Commissioner can impose the sanctions provided for in Section 107B:

(a) Warning with directions and/or recommendations for the correction of the violation or prevention of a possible violation:

(b) reprimand

(c) order for the cessation of the violation, where appropriate within a specified period;

(d) temporary or final ban of the processing

(e) administrative fine up to two hundred thousand euro (€200,000).

Assessment

8. I observe that the complainant's email address can be found on the website (<https://www...>) where it appears that he lists various purposes for which one could contact him and various purposes for which one should not contact him. In any case, regardless of whether the purposes for which Mediacube contacted the complainant fall within the list of purposes for which the website mentions that one could contact him, Mediacube **has violated the provisions of Section 106 of the Law**, by the sending of marketing emails to the complainant without fulfilling the complainant's requests to stop receiving emails from Mediacube. As I have explained in my email dated 22/2/2023, the emails that Mediacube sent are considered to be marketing/advertising/promotional emails as they are promoting interests of the company, even if there may be a mutually beneficial cooperation.

9.1. Taking into account all of the above, while assessing the case, the following alleviating factors were also taken into account:

- a) Mediacube's cooperation with my office and its prompt replies,
- b) Mediacube's admittance that it has violated the legislation, and its assurance that it has taken additional measures so that this violation will not happen again.

9.2 At the same time the following aggravated factors were also taken into account:

- a) I had previously addressed a warning to Mediacube,
- b) the complainant received 5 marketing emails from Mediacube after the addressing of the warning to Mediacube, in spite the assurances of Mediacube that he will not be contacted again.

10. Taking into account all of the above, based on Article 107B of the law, I decided to impose Mediacube an administrative fine of 3500 euro for the above violation.

Irene Loizidou Nicolaidou
Commissioner for
Personal Data Protection

29 May 2023

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