



Berliner Beauftragte  
für Datenschutz  
und Informationsfreiheit

Berlin DPA: 521.1255 / 631.186.3  
Austrian DPA: D155.023

Novum Import GmbH  
Address unknown

Berlin, 1 October 2021

## FINAL DECISION

In line with Article 60(8) GDPR the Berlin DPA adopts the following Final Decision that has previously been submitted by the LSA, the Austrian DPA, as Draft Decision. This Final Decision has been slightly edited for clarity.

### R U L I N G

The Data Protection Authority decides on the data protection complaint of [redacted] (complainant) dated 12. December 2019 against Novum Import GmbH (opponent) for violation of the right to deletion as follows:

- The complaint is dismissed.

Legal basis: Articles 51(1), 57(1)(f) and 77(1) of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter: GDPR).

### R E A S O N S

#### A. Claims of the parties and proceeding

1. The complainant alleged in his complaint of 12. December 2019 with the Berlin Commissioner for Data Protection and Freedom of Information, which initiated the proceedings, that the opponent had violated his right to erasure, as well as by unlawful processing, by not responding to his multiple requests to delete his e-mail addresses from the advertising mailing list. The complainant received advertisements from the opponent several times a day without having registered his two e-mail addresses [email 1] and [email 2] for this purpose. The same advertising with changed sender address for toe spreaders had already been sent to the complainant about 100 times. It was not possible to unsubscribe, neither could the complainant unsubscribe himself directly through a link (unsubscribe link) on the newsletter, nor did the opponent, which had been contacted via a contact form on the website <<http://zehen-abstandhalter-de>, complied with the multiple requests for deletion. In the legal notice, the opponent was indicate with its registered office in Vienna and the tax number: 24728164-2-42. The complainant is almost not able to use his own webshop anymore, as he needs the two e-mail addresses for this purpose.

The complainant stated on 7 February 2020 that he received six to twelve advertising e-mails per day from the opponent under the subject "Team for

#### **Berlin Commissioner for Data Protection and Freedom of Information**

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Health Tips". In addition, further e-mails for other products (solarlights, drain cleaners, mouth-nose protection masks) have been sent.

In his statement of 23. April 2020, the complainant stated that he continues to receive advertising e-mails from different websites (www.solar-lampe-mit-bewegungsmelder.com, http://professioneller-messerschleifer1-de.com/index.php?page=contact and https://masken-infos-de.com/media/tac.php), all operated by the opponent. Despite multiple clicks on the "Unsubscribe link", advertising messages were still sent by e-mail.

The complaint attached a set of screenshots of the website, footage of the received advertising, as well as the request for deletion by the contact form on the opponent's homepage as well as a copy of the police report against the opponent.

2. The Berlin Commissioner for Data Protection and Freedom of Information uploaded the case in the "Internal Market Information (IMI) System", which is used in the context of the consistency mechanism to handle cross-border procedures under the provisions of GDPR. The imprint of the opponent indicated, that the headquarters are in Vienna.

3. The Austrian Data Protection Authority has not been able to send the request to the opponent because the address of Novum Import GmbH is unknown and a Company Registry consultation was also negative. This means that in the course of the check of the Company Registry on 30. June 2021, no company under this name is or was registered in the Company Register. Likewise, the query of <[REDACTED]> on June 30, 2021 did not lead to any search results. In addition to these data given in the imprint, the specified tax number <24728164-2-42> is also incorrect. Such a number is not awarded in Austria. Also, a "Whois" domain query has been carried out by the website addresses <http://zehen-abstandhalter-de> and <http://www.v9-laser-detector-de.com/index.php?page=rules>. The website <http://zehen-abstandhalter-de> is not active anymore.

The documented investigation steps of the Data Protection Authority are as follows:

Checking the website <http://zehen-abstandhalter-de>:



Imprint from the page < <http://www.v9-laser-detector-de.com/index.php?page=rules>>:

**Entwickler und Betreiber dieses Online-Webshops (im Folgenden: Webshop) ist:**

**NOVUM IMPORT GMBH – Herr** [REDACTED]  
WIEN - AUSTRIA  
Steuernummer: 24728164-2-42



Company Registry query of < Novum Import GmbH>:

**Suchbegriff**  
eingetragene und gelöschte Firmen (keine Zweigniederlassungen) eingeschränkt auf  
Firmenwortlaut: Novum Import GmbH

**Suchergebnis**  
Zu den oben angeführten Suchbegriffen wurde kein Ergebnis gefunden.

erstellt vom Bundesministerium für Justiz \*\*\*\*\* HA031B  
für den Amtsgebrauch \*\*\*\*\* 30.06.2021 14:02:06,019 26619859 \*\* ZEILEN: 0

Company Registry person query of < [REDACTED]>:

**Suchbegriff**  
natürliche Person eingeschränkt auf  
Zuname: [REDACTED]  
Vorname: [REDACTED]

**Suchergebnis**  
Zu den oben angeführten Suchbegriffen wurde kein Ergebnis gefunden.

erstellt vom Bundesministerium für Justiz \*\*\*\*\* HA035  
für den Amtsgebrauch \*\*\*\*\* 30.06.2021 14:00:48,181 02302183 \*\* ZEILEN: 0

Whois query <<http://www.v9-laser-detector-de.com>>:

## Whois Ergebnisse zu Ihrer Domain

Aktueller Besitzer  
Domain Administrator  
See PrivacyGuardian.org  
1928 E. Highland Ave. Ste F104 PMB# 255  
Phoenix  
AZ

### B. Subject of appeal

The object of the appeal is whether the complainant has been infringed in his right to deletion.

### C. Findings of facts

The Austrian Data Protection Authority shall base its decision on the facts set out in point A and documented in the files.

The opponent's name, as well as the imprint, could not be assigned to any natural or legal person.

Assessment of evidence: The findings are based on the complaint initiating the proceedings of 12 December 2019, as well as the complainant's supplements dated 7 February 2020 and 23 April 2020 and the official research dated 30 June 2021 (Company Registry, query of persons in the Company Registry, Whois query).

D. From a legal point of view, it follows:

In accordance with Article 77(1) GDPR, without prejudice to any other administrative or judicial remedy, each data subject shall have the right to lodge a complaint with a supervisory authority if the data subject considers that the processing of personal data concerning him or her infringes this Regulation.

In accordance with Article 57(1)(f) GDPR, the supervisory authority must deal with a complaint and examine the subject-matter of the complaint to an appropriate extent. In Recital 141 in the second sentence, it is stated in more detail that the investigation following an appeal should go as far as is appropriate in individual cases.

The opponent could be identified by the complainant by the information contained in the imprint of the website (name). Despite a search in the Company Registry, a person query in the Company Registry and a Whois query, the controller could not be determined.

Although all conceivable investigations have been carried out, however, it has not been possible to locate the opponent. A further investigation of the complaint is not possible. The Data Protection Authority has fulfilled its obligation under Article 57(1)(f) GDPR and investigated the complaint to the appropriate extent.

It was to be decided according to the ruling.