



The Hamburg Representative for Data protection and freedom of information

With postal delivery certificate

The Hamburg Commissioner for Data Protection and Freedom of Information
Ludwig-Erhard-Str. 22, 20459 Hamburg

Peppermint GmbH
for the attention of Mr. [REDACTED]
Schwanenvik 14
22087 Hamburg

Ludwig-Erhard-Str. 22, 7th floor
20459 Hamburg
Phone: 040 - 428 54 - 40 51
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Contact person: [REDACTED]

E-Mail: mailbox@datenschutz.hamburg.de

Ref: M1/1388/2021

Hamburg, 01.10.2021

Reprimand pursuant to Art. 58 (2) (b) GDPR

Dear Mr. [REDACTED],

Pursuant to Art. 58 (2) (b) of the General Data Protection Regulation (GDPR), I hereby issue the following

REPRIMAND

1. Peppermint GmbH has infringed Article 12(3) and (4) of the GDPR by failing to provide information in accordance with Article 15(1) of the GDPR within one month and by the late provision being incomplete.
2. Peppermint GmbH is hereby formally **reprimanded** pursuant to Art. 58 (2) (b) GDPR on the basis of the violations referred to under 1.
3. Peppermint GmbH shall bear the costs of the proceedings. A separate decision will be issued on the amount of the costs.

After examination of the factual and legal situation, there is a processing operation that violates the GDPR. Pursuant to Article 58 (2) (b) of the GDPR, the controller may be reprimanded in the event of an infringement.

Website:
www.datenschutz-hamburg.de

E-mail collective mailbox:
mailbox@datenschutz.hamburg.de

Public Transportation:
S-Bahn S1, S2, S3 (Stadthausbrücke station)
Underground U3 (St. Pauli station), buses 6 and 37

I. Facts

On 29.12.2020 as well as on 4.1.2021 the complainant Mr. [REDACTED] (hereinafter: Bf.) received one e-mail each from the sender address noreply@peppermynnt.de, in which the products of Peppermynnt GmbH "Wunder Box" and "Gold Oase" were advertised. The e-mails contained individualised links, including the phrase "why did I get this?". The website called up via this gave the indication that the e-mail address was assigned to a "Peppermynnt player".

On 21.1.21 the complainant sent a request for information pursuant to Art. 15 GDPR to Peppermynnt GmbH by registered mail from Vienna. In this letter, the complainant requested information on which of his personal data Peppermynnt GmbH was processing, information on the processing, whether a transfer to a third country was taking place and a copy of his personal data (Art. 15 (1)-(3) GDPR). Peppermynnt GmbH did not reply to the complainant's letter.

On 26 February 2021, the complainant filed a data protection complaint with the Austrian data protection authority. The latter forwarded the complaint to the HmbBfDI on 10 March 2021.

By letter dated 18.5.2021, the HmbBfDI heard Peppermynnt GmbH on the proceedings. In this letter, reference was made to the one-month period for the processing of data protection requests by data controllers under Article 12 (3) sentence 1 of the GDPR.

On 4 June 2021, the [REDACTED] of Peppermynnt GmbH, [REDACTED], contacted the HmbBfDI on behalf of the company. He stated that Peppermynnt GmbH, as a young company, had no experience in responding to data protection requests and asked for support. The HmbBfDI informed the complainant that the personal data processed would have to be made available.

In an e-mail dated 21.6.2021, Peppermynnt GmbH informed the complainant that no "user" with the complainant's e-mail address existed and that accordingly no personal data of the complainant was stored.

Upon inquiry by the HmbBfDI with reference to the e-mails that the complainant had previously received, Peppermynnt GmbH explained that the complainant's e-mail address had been included in Peppermynnt GmbH's database due to an incorrect migration of the external service "Mailchimp", but had now been deleted. The complainant would not receive any further e-mails from Peppermynnt GmbH in future.

II. Legal assessment

The prerequisites for a reprimand to be issued to Peppermynnt GmbH pursuant to Art. 58 Para. 2 lit. b GDPR are met.

1. Infringement of Art. 12 (3) sentence 1 GDPR

There is an infringement of Article 12 (3) sentence 1 of the GDPR. According to the provision, information about requests pursuant to Art. 15-22 of the GDPR must be provided without delay, but in any case within one month. Peppermynnt GmbH did not respond to the complainant's request pursuant to Art. 15 of the GDPR within one month.

2. Infringement of Article 15(1) of the GDPR

There is an infringement of Article 15 (1) of the GDPR. According to the provision, data subjects have the right to request information about their personal data processed. The controller must provide this or provide negative information.¹ It is therefore not up to the data subjects to communicate in which system of the controller the data might be stored.

In its information, Peppermynnt GmbH informed the complainant that it did not process any of his personal data. In deviation from this information, Peppermynnt GmbH had, however, stored the complainant's email address-. The email address is personal data in the sense of Art. 4 No. 1 GDPR. The e-mail address is information which refers to the complainant as an identified person. The negative information was therefore issued incorrectly.

3. Decision-making and discretion

There are infringements of the GDPR, so that corrective powers pursuant to Art. 58 (2) GDPR are to be taken. There are no reasons not to make use of these. This is the first finding by the HmbBfDI that Peppermynnt GmbH has violated the GDPR, so that the reprimand is to be chosen as the mildest possible means.

With kind regards

██████████

Remedies:

An action against this decision may be brought before the Hamburg Administrative Court (Lübecker-tordamm 4, 20099 Hamburg) within one month of notification.

¹ *Franck*, in: Gola, Datenschutz-Grundverordnung, 2nd ed. 2018, Art. 15 Rn. 5.