

A Telecommunications Service Provider Convicted of an Offence under the New Direct Marketing Regulatory Regime, September 2015

(Extracted from a press statement of the Privacy Commissioner dated 9 September 2015)

Hong Kong Broadband Network Limited ("HK Broadband") was convicted, after trial, of failure to comply with the request by a data subject to cease to use his personal data in direct marketing, contrary to section 35G(3) of the Personal Data (Privacy) Ordinance (the "Ordinance") on 9 September 2015 at the Tsuen Wan Magistrates' Court. HK Broadband was fined HK\$30,000. This is the first conviction after the penalty level of the offence was raised under the new direct marketing regulatory regime which took effect on 1 April 2013 under the Personal Data (Privacy) (Amendment) Ordinance 2012.

The Law

Under section 35G(3) of the Ordinance, a service provider who receives a request for cessation of using the customer's personal data in direct marketing must, without charge to the data subject, comply with the request.

Case Background

The complainant is a customer of HK Broadband. In April 2013, he made his opt-out request to HK Broadband via email and mail. In response, HK Broadband acknowledged receipt of the complainant's opt-out request in writing. However, a staff member of HK Broadband still left a voice message through the complainant's mobile phone number in May 2013, informing the complainant of the termination of his service contract and at the same time promoting to him their services.

Points of Note

To ensure compliance, service providers have to maintain an "Opt-Out List" of all customers and cease to use their personal data for direct marketing. Failure to comply with the requirements is an offence.