

The Client is King

Summary

Increasingly often companies are recording the customer information they collect. It allows these companies to accurately gain a detailed picture of their (potential) customers on which to base their sales and/or advertising strategy. It is thus possible to approach certain groups of customers, and even individuals, personally with special offers attuned to their behaviour, preferences and/or lifestyle. There are several ways to realise this: by post, telephone, via e-mail or with the help of in-store information terminals. This form of direct marketing reduces advertising costs on the one hand (after all, only a limited group of people receive a special offer), while on the other hand the chance of a higher response to a special offer is increased (only those people who are probably interested receive a special offer).

Modern technology allows us to record large quantities of information in databases which, via analysis, is relatively simple to convert into valuable information (reducible to individuals). This has led to the introduction of these possibilities on an increasingly large scale. The data processor responsible for collecting and using this data processing must comply with the right of respect for personal privacy, embedded in the Constitution. This fundamental right is worked out in greater detail in the Personal Data Protection Act. Rules are included in this act for a just and lawful processing of personal data. The basic premises of these rules are as follows:

- 1 The personal data must be collected for specific, expressly defined and justifiable purposes;
- 2 The processing must have a lawful basis;
- 3 Furthermore, the processing must not be incompatible with the purpose for which the personal data has been collected.

The processing of so-called sensitive or special data is prohibited unless expressly permitted by law. Those concerned must also be made aware of planned data processing and have the right to object to a certain processing method (right of objection). In the case of direct-marketing activities objections should always be complied with.

Parties involved must be aware of the planned data processing and the rights they have must be respected.

The most privacy-friendly manner to do business is the direct transaction between supplier and customer which involves a cash payment. In general none of the customer's personal details are collected and recorded. The situation is different if the customer can either secure a guarantee on the purchased product by filling in a coupon or receive a discount on the purchase price (discount coupon). As the guarantee or the discount is not personal but product-related, it is often unnecessary to process the customer's personal data in those cases. A shopkeeper who does request personal data generally wishes to build up a customer database (usually for specific marketing purposes). This is only possible after the customer has given approval to record and use these details. This approval is restricted to certain requirements however.

The recording of personal details is logical if the customer orders goods for home delivery; delivery is not possible without a name and address, after all. This data may be saved and used to personally approach customers in the future with special offers or information, which fits in with the supplier's business. The supplier does have to pay attention to maintaining the data and to take the time limit on data storage into account. Customers must also be made aware of the use of this data, so they have the opportunity to object.

Personal details must also be recorded for more sustained relations between customer and supplier (bank, insurance company and telecom provider, for example) so that the desired products and/or services can be offered. In most cases this is based on an agreement between

supplier and customer. Such agreements are not always a fiat allowing recorded data to be used to personally approach the customers however. This is authorised when the supplier has a justifiable interest in informing customers on a more or less regular basis on related products or services also. The supplier does have to weigh the customer's interests against his own. Furthermore the use of data may not be incompatible with the purpose for which it has been collected. In assessing this the content of the information, the selection criteria for sending the information and the kind of data used play a part in this. Here too, customers must be aware of the use of this data, so they have the opportunity to object.

The loyalty or savings programme is a form of marketing in which customer details are collected and recorded on a large scale. Here the detailed (purchasing) information of cardholders is usually recorded via a customer card. The question of whether the recording of the personal details of the cardholders is necessary and therefore authorised depends on the objectives of the loyalty programme. Personal details may only be recorded, if they are actually used - to inform cardholders by post and/or send them special offers for example. It has become clear from the organisation and operation of the customer card system that the customer needs provide no personal data to participate in the system (anonymous cards).

Some of the savings programmes use the so-called in-store information terminals to make personal offers to cardholders. From the point of view of privacy this has proven to be the most ideal form: the cardholder has only an 'anonymous' card number without the need for further personal details.

A satisfactory basis for honest and lawful data processing which occurs within the context of the loyalty programme is formed by the following two things. The combination of an agreement between supplier and cardholder (for the recording and use of data for the savings programme) and the explicit approval of the cardholder (for analysing the data and using the results for its operational ends and to personally approach cardholders).

Just what data processing is necessary for the justified (business) interest of the card issuer, depends in the first place on the programme's objective. If the data is solely used to improve operational management, then collecting and recording personal data is unnecessary; this is also possible via aggregated data or even via anonymous cards. The situation changes again however, as soon as special offers come into the picture. Depending on how this occurs, personal data may be needed. In any case an approach to the customer is in the company's and operational management's interest, but the customer can also receive certain benefits by participating in the loyalty programme. The more benefits and/or better service the card applicant receives by participating in the programme, the less this interest will stand in the way of the intended processing. The card applicant must be clearly informed of course, the motivation for processing must be sound and the possibility of opting out must be made known. The formulation of the objective must also be sufficiently clear. One objective description frequently occurring in practice, such as 'a responsible exercise of the commercial and administrative business processes' is insufficient.

The relation between the supplier of the products and services and the customer determines when and in which way the processing of customer information is authorised for marketing purposes. In building up a customer database the supplier will have to ask himself which data is necessary to realise the intended goal. This demands a reserved attitude from the supplier. If the customer information has been recorded in a customer database in a lawful way, the supplier can often use it to personally approach registered customers, even without approval from those customers. Such use will generally be compatible with the purpose for which the data has been collected. One demand is that customers are aware of the use of their details so they can exercise their rights.