Spam claim canned!

By ,

The Privacy Act 1988 (Cth) and the Spam Act 2003 (Cth) do not give rise to personal actions for damages flowing from a contravention of the provisions of those Acts. What they do provide is for an aggrieved person to lodge a complaint with a government body that can investigate the complaints, and in some instances seek compensation for the complainant.

This proposition was recently confirmed by Judge Vasta in the Federal Circuit Court of Australia in Curtis Poyton v Retailworld Resourcing Australia Partnership Limited (Case No. BRG73/2016) and later by Justice Logan in the Federal Court of Australia in Poyton v Retailworld Resourcing Australia Limited Partnership [2016] FCA 494

That matter was a novel one. Retailworld Resourcing Australia Partnership Limited Retailworld Resourcing) carries on business as a franchisor of an employment recruiting chain. Dr Curtis Poyton, despite having limited experience in working in a retail environment applied for a number of positions in the nature of assistant store manager. Those applications were made to one of the franchisees within the Retailworld franchise chain Dr Poyton' was unsuccessful with those job applications.

The franchisee emailed Dr Poyton (using the email that Poyton had nominated on his job applications) to enquire whether or not he knew of anyone else that was looking for jobs in the retail sector and that the franchisee offered an incentive for successful referrals.

Dr Poyton responded by email to the franchisee alleging that it had, by sending Dr Poyton the email, infringed the Privacy Act and the Spam Act. The franchisee rang to speak to him about his email, but Dr Poyton did not accept the phone calls but did take screen shots to evidence that the franchisee had attempted to call him.

Dr Poyton then sent a five-page letter to the franchisee demanding, amongst other things, $4,500 as compensation for breaches of the Privacy Act and Spam Act. The claimed compensation was not paid and Dr Poyton commenced proceedings in the Federal Circuit Court of Australia, not against the franchisee but against the franchisor, claiming damages (which seemed in the nature of a personal injuries claim, flowing from a claimed exacerbation of a pre-existing medical condition, namely agoraphobia).

Retailworld Resourcing engaged Broadley Rees Hogan to assist with the proceedings. A summary disposal application was filed shortly thereafter, and at that hearing Judge Vasta found:

1. Dr Poyton had commenced proceedings against the wrong party, as the franchisee was not the agent of and could not bind Retailworld Resourcing;
2. The sending of the email to him by the franchisee did not infringe the Privacy Act or Spam Act; and
3. Even if there had been a breach of those acts, the proceedings were doomed to fail as there was no statutory cause of action (right to sue) created in those Acts and the apposite thing would have been for Dr Poyton to lodge a complaint with the relevant government body.

Dr Poyton's application was disposed of summarily, Dr Poyton then filed an application in the Federal Court of Australia seeking an extension of time within which to appeal the decision of Judge Vasta. Justice Logan dismissed that application and in doing so held that that application the application for leave to appeal, even if made in time, was always one which was without any reasonable prospect of success at all.

Should you wish to discuss any matters arising out of this article, please contact the author:

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