

[Ski resort facilities' restricting the right of data subject taking advantage of published personal data]

Facts

Claimant posted a message that he intended to sell his ski vouchers on the bulletin board of a snowboard club and an online cafe in January 2013. A few days later, Respondent sent a short message to Claimant that his ski vouchers would be suspended for 30 days as a warning of unlawful transactions of ski vouchers.

The next day Claimant protested the suspension of ski vouchers and demanded to withdraw from the ski resort membership only to fail. Claimant pointed out the prohibition-of-ski-voucher-trading clause of the terms and conditions of ski resort facilities had been declared invalid by the Korea Fair Trade Commission, and the ski resort's denial of customer's withdrawal demand was groundless. Also Claimant claimed that Respondent had collected and used his personal data without consent and beyond the original purpose. So Claimant filed a petition for damages with the PIDMC.

Mediation Decision

Though Respondent belongs to ISPs regulated by the Network Act, the Personal Information Protection Act applies to the personal information being available publicly in this case.

It should be noted that Claimant applied for free seasonal ski vouchers exclusively for condominium users and consented to sponsor's collection and use of his personal information for such purposes as identifying resort facilities membership and providing guidance to such facilities, lost and found service, emergency services and notification. Also it is to deliver ski vouchers in time and to perform contractual duties.

However, under Article 12(1) of the Personal Information Protection Act and its commentary guideline, the personal information collected from open networks or websites should be used within the scope of the apparent or explicit consent of the data subjects who allowed publication of their personal data, or the presumed consent in view of the contents of the website concerned or being recognizable in a common sense.

In this case, Respondent used the said personal information of Claimant for the purpose of monitoring any breach of contract, which could be certainly opposed by Claimant.

Furthermore, Respondent suspended Claimant's use of ski vouchers without any proof that Claimant was actually in breach of contract. Respondent's action could not be justified by the fact that Respondent's legitimate interest apparently prevails over Claimant's right.

Therefore, the decision was made for Respondent to pay damages up to 200 thousand won, and to take necessary measures to provide an educational program to employees dealing with customers' personal data with regard to privacy awareness and data protection regulations.