

Procedure No.: PS/00362/2018

RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection before

PALMA OCIO Y BARES S.L., by virtue of a claim filed by D. A.A.A. and in

based on the following:

BACKGROUND

FIRST: On 06/08/2018 you have entered this Agency in writing from D.A.A.A. (in

successively the complainant), in which he denounces PALMA OCIO Y BARES S.L. (in

successive POB), for the following facts:

POB collects personal data through its Facebook website:

www.facebook.com/bckstgpalma and by Whatsapp for the sale and reservation of tickets.

Likewise, it exposes the photographs it obtains from Facebook of consumers and the

exposes by the same medium.

In

the web pages of

the company www.palmaocio.com and

<https://backstagepalma.com> where you make the sale and reservation of tickets, it is not

informs about the use and purpose, about the person responsible for the treatment, about who

Access the data and how it is stored.

Nor does it have the consent of the affected party for the treatment of the data.

data they provide or verify that the data has been provided by the owner of the data.

themselves.

On 05/28/2018, you have learned that the company has disseminated

your personal data of name and surnames and photograph so that the workers

can identify you as a consumer when you visit the establishment. (does not contribute

no information about the means by which your data has been disseminated).

Provides a Facebook screenshot of the Backstage Palma profile, dated 19

May and June 2 in which an event is reported on Fridays and Saturdays and invites

to sign up for the BCKSTG list and indicate a contact telephone number.

On July 11, the complainant provides a copy of the complaint filed

before the Court of First Instance of Palma de Mallorca, in which he claims damages

and damages for violation of the Right to Honor, Privacy and Image against the

reported company.

SECOND: On 08/20/2018 POB, at the request of the Agency, provided the following

information in relation to the facts denounced:

- The website <https://www.facebook.com/bckstagepalma> is not owned by the company, so they cannot provide documentation related to it or carry out any treatment of the data, nor facilitate the complainant the exercise of their rights.

- This information has already been communicated to the complainant by burofax that

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attach.

On 09/04/2018 a new letter was received from the complainant in which he

manifest that:

- You have received the burofax sent by the reported company and according to states that it is not true that the aforementioned web page is not its property.

- In

the website

Figure as

contact information

info@backstagepalma.com, and the address <http://www.backstgepalma.com>.

- On the contact web page that appears, it appears as an email

info@palmaocio.com.

It is verified that the domain www.backstagepalma.com has been registered to through the company EPAG Domainservices GmbH, based in Germany.

On 10/10/2018 the following checks have been carried out through from Internet.

- It is verified that the profile "Backstage Palma" exists on Facebook, in the address <https://www.facebook.com/bckstagepalma>, which in any of its publications refers to the website [backstagepalma.com](http://www.backstagepalma.com), not

However, no evidence is obtained that personal data is collected in the same, except for the publications of photographs that users can include.

There is also no evidence that tickets are sold on this profile.

- On the website <http://www.backstgepalma.com>, they appear as addresses contact info@backstagepalma.com and info@palmaocio.com. The page has in the "Contact" section a form where you can provide the name and email information. There is no evidence that they provide Any information.

- The website www.palmaocio.com offers a message with the content "We are working on the new website", however, it has links to four establishments, one of them is Backstage. There is also a link to "Ticket sales", which redirects to the address datos.palmaocio.com.

- In the address datos.palmaocio.com it appears as a contact address info@palmaocio.com and has a "PRIVACY" section.

THIRD: On 12/03/2018, the Director of the Spanish Protection Agency of Data agreed to initiate a sanctioning procedure for the presumed infraction of the article 13 of the RGPD, considering that the sanction that could correspond would be WARNING, without prejudice to what may result from the investigation.

FOURTH: On 12/10/2018, D. B.B.B. as a POB manager

I present a brief of allegations, formulating, in summary: that the domains backstagepalma.com and palmaocio.com are owned by the entities Leisure and Events Palma, S.L. and Restoration and Leisure Investments S.L.; that POB was constituted with the company name Buddha Ocios y Bares, S.L. on 05/25/2006 changing to his current denomination on 07/08/2008; that the three entities are owned by two of the POB partners with the same administrator, but it is about three

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differentiated companies with differentiated activities and partners; It's about entities different having no relationship POB with the previous domains, so in

In no case can this disciplinary proceeding be directed against POB for not being said company owner of the aforementioned domains; that despite being the claimant administrator of the three previous companies and having knowledge of the violation of the RGPD has proceeded to adapt the privacy policy of the contact addresses info@backstagepalma.com and info@palmaocio.com to the new regulations as well as the legal notice adopted to the RGPD.

However, it has subsequently been observed that on the entry page.

palmaocio.com privacy tab has been rectified adapting it to the RGPD.

FIFTH: Of the actions carried out in this proceeding, they have been

accredited the following:

PROVEN FACTS

FIRST: On 06/08/2018 there is a written entry in the AEPD from the claimant in which among other things, it states that on the company's web pages www.palmaocio.com and <https://backstagepalma.com> where the sale and reservation of tickets is made, it is not adapted to the new RGPD in relation to the use and purpose of the treatment, responsible for the treatment, about who accesses the data and how it is conserve, etc.

SECOND: The website www.palmaocio.com has links to four establishments, one of them is Backstage. There is also a link to "Sale of tickets", which redirects to the address tickets.palmaocio.com. On this website there is as a contact address info@palmaocio.com and has a section for "PRIVACY" that refers to the LOPD, not being adapted to the new regulations on data protection, the RGPD.

THIRD: On 12/10/2018, the POB administrator submitted a letter indicating that the domains backstagepalma.com and palmaocio.com are owned by the Ocio entities and Events Palma, S.L. and Restoration and Leisure Investments S.L.; that POB does not have any relationship with the above domains; who is nonetheless administrator of the three previous companies and having knowledge of the infraction to the RGPD has proceeded to adapt the privacy policy of the contact addresses info@backstagepalma.com and info@palmaocio.com to the RGPD.

The privacy policy of the website has been accessed. palmaocio.com and consists which has been adapted to the GDPR.

FOUNDATIONS OF LAW

By virtue of the powers that article 58.2 of the RGPD recognizes to each

control authority, and as established in art. 47 of the Organic Law 3/2018, of

December 5, Protection of Personal Data and guarantee of rights

(hereinafter LOPDGDD), the Director of the Spanish Agency for

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Data Protection is competent to resolve this procedure.

POB is charged with the violation of article 13 RGPD, “Information that

must be provided when the personal data is obtained from the interested party”, which

provides the following:

II

1. When personal data relating to him is obtained from an interested party, the

responsible for the treatment, at the time these are obtained, will provide

all the information indicated below:

a) the identity and contact details of the person in charge and, where appropriate, of their representative;

b) the contact details of the data protection delegate, if any;

c) the purposes of the treatment to which the personal data is destined and the basis

legal treatment; 4.5.2016 L 119/40 Official Journal of the European Union

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d) when the treatment is based on article 6, paragraph 1, letter f), the

legitimate interests of the person in charge or of a third party;

e) the recipients or categories of recipients of the personal data,

in your case;

f) where appropriate, the intention of the controller to transfer personal data to a third country or international organization and the existence or absence of a adequacy decision of the Commission, or, in the case of transfers indicated in articles 46 or 47 or article 49, paragraph 1, second paragraph, reference to adequate or appropriate safeguards and means of obtaining a copy of these or the fact that they have been loaned.

2. In addition to the information mentioned in section 1, the person responsible for the treatment will facilitate the interested party, at the moment in which the data is obtained personal, the following information necessary to guarantee data processing fair and transparent

a) the period during which the personal data will be kept or, when not possible, the criteria used to determine this period;

b) the existence of the right to request from the data controller access to the personal data related to the interested party, and its rectification or deletion, or the limitation of its treatment, or to oppose the treatment, as well as the right to data portability;

c) when the treatment is based on article 6, paragraph 1, letter a), or the Article 9, paragraph 2, letter a), the existence of the right to withdraw the consent at any time, without affecting the legality of the treatment based on consent prior to its withdrawal;

d) the right to file a claim with a supervisory authority;

e) if the communication of personal data is a legal or contractual requirement, or a necessary requirement to sign a contract, and if the interested party is obliged to provide personal data and is informed of the possible consequences of not providing such data;

f) the existence of automated decisions, including profiling, to
referred to in article 22, sections 1 and 4, and, at least in such cases,

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significant information about the applied logic, as well as the importance and
anticipated consequences of said treatment for the interested party.

3. When the person in charge of the treatment projects the subsequent treatment of
personal data for a purpose other than that for which it was collected,
will provide the interested party, prior to said further treatment, information
for that other purpose and any additional information relevant to the meaning of paragraph 2.

4. The provisions of sections 1, 2 and 3 shall not apply when and in
to the extent that the interested party already has the information.

The facts denounced were specified in that the information offered by POB
did not make any reference to compliance with the provisions of article 13 RGD
mentioned, having to determine the identity of the person in charge, the purposes for which
will assign the data and the rights that the interested party can exercise before the
responsible, etc., and was ordered to provide supporting documentation that
accredit the correct compliance with those indicated in the RGD, including the
information referred to in article 13.

However, it has been proven that the privacy policy included on the page
entra.palmaocio.com has been rectified adapting it to the principles contained in
Article 13 of the GDPR; the web contains the adaptation and new configuration of the
privacy policy on data protection.

Article 83.5 b) of the RGPD considers that the infringement of “the rights of those interested in accordance with articles 12 to 22”, is punishable, in accordance with the “with fines

section 5 of the aforementioned article 83 of the aforementioned Regulation, administrative fees of €20,000,000 maximum or, in the case of a company, a amount equivalent to a maximum of 4% of the total global annual turnover of the previous financial year, opting for the highest amount.

The LOPDGDD in its article 72 indicates: “Infringements considered very serious:

"1. Based on the provisions of article 83.5 of the Regulation (EU)

2016/679 are considered very serious and the infractions that suppose a substantial violation of the articles mentioned in that and, in particularly the following:

(...)

h) The omission of the duty to inform the affected party about the treatment of their personal data in accordance with the provisions of articles 13 and 14 of the Regulation (EU) 2016/679 and 12 of this organic law.

(...)”

However, article 58.2 of the REPD provides the following: "Each authority of control will have all the following corrective powers indicated below:

continuation:

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(...)

b) sanction any person responsible or in charge of the treatment with warning when the processing operations have violated the provisions of this Regulation;

(...)

Therefore, the RGPD, without prejudice to the provisions of its article 83, contemplates in its article 58.2 b) the possibility of going to the warning to correct the processing of personal data that do not meet your expectations. About when it is appropriate to opt for one or the other route, the application of article 83 of the RGPD or the corrective measure of warning of article 58.2.b), the rule itself in its Recital 148 of Regulation 2016/679, which establishes the following:

“In the event of a minor offence, or if the fine likely to be imposed would constitute a disproportionate burden for a natural person, rather than sanction by means of a fine, a warning may be imposed. must however Special attention should be paid to the nature, seriousness and duration of the infringement, its intentional nature, to the measures taken to alleviate the damages suffered, the degree of liability or any relevant prior violation, the manner in which that the control authority has been aware of the infraction, compliance of measures ordered against the person responsible or in charge, adherence to codes of conduct and any other aggravating or mitigating circumstance.”

IV

As previously indicated, the facts denounced took the form of that the information offered by POB through its privacy policy was not adopted to the new regulations on data protection, with reference to the LOPD, without being informed about the requirements demanded in article 13 of the RGPD cited, without determining the identity of the person in charge, the purposes, rights that the

The interested party can exercise before the person in charge, etc.

In the present case, the adoption of no specific measure is not urged to take, as the new privacy policy settings have been credited included on the entry.palmaocio.com page, adapting it to the provisions of the Article 13 and 14 of the RGPD.

To conclude, taking into account the absence of intentionality, the absence of damages, the behavior and the measures adopted by the person in charge of the treatment further attenuate their culpability, so it is appropriate to sanction with the warning.

Therefore, in accordance with the applicable legislation and having assessed the criteria for graduation of sanctions whose existence has been proven,

The Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE PALMA OCIO Y BARES S.L., with NIF B57424525,

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for an infringement of article 13 of the RGPD, typified in article 83.5.b) of the RGPD

and qualified as very serious in article 72.1.h) of the LOPDGDD, a sanction of

WARNING.

SECOND: NOTIFY this resolution to PALMA OCIO Y BARES

S.L., with NIF B57424525 and, in accordance with art. 77.2 of the RGPD, INFORM the claimant D.A.A.A. about the outcome of the claim.

In accordance with the provisions of article 50 of the LOPDGDD, the

This Resolution will be made public once it has been notified to the interested parties.

Against this resolution, which puts an end to the administrative procedure in accordance with art.

114.1 c) of the LPACAP, and in accordance with the provisions of article 123 of the

LPACAP, the interested parties may optionally file an appeal for reconsideration

before the Director of the Spanish Agency for Data Protection within a period of

month from the day following the notification of this resolution or directly

contentious-administrative appeal before the Contentious-Administrative Chamber of the

National Court, in accordance with the provisions of article 25 and section 5 of

the fourth additional provision of Law 29/1998, of July 13, regulating the

Contentious-administrative jurisdiction, within a period of two months from the

day following the notification of this act, as provided in article 46.1 of the

aforementioned Law.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the

LPACAP, the firm resolution may be provisionally suspended in administrative proceedings if

the interested party expresses his intention to file a contentious-administrative appeal.

If this is the case, the interested party must formally communicate this fact by

writing addressed to the Spanish Agency for Data Protection, presenting it through

Electronic Register of the Agency [[https://sedeagpd.gob.es/sede-electronica-](https://sedeagpd.gob.es/sede-electronica-web/)

[web/](https://sedeagpd.gob.es/sede-electronica-web/)], or through any of the other registers provided for in art. 16.4 of the

aforementioned Law 39/2015, of October 1. You must also transfer to the Agency the

documentation proving the effective filing of the contentious appeal-

administrative. If the Agency was not aware of the filing of the appeal

contentious-administrative within a period of two months from the day following the

notification of this resolution would end the precautionary suspension.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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