

□ Procedure No.: PS/00221/2019

938-0419

RESOLUTION OF PUNISHMENT PROCEDURE

In sanctioning procedure PS/00221/2019, instructed by the Spanish Agency for

Data Protection, to the entity PIZZERIA LA RUSTICA, owner of the website:

***URL.1, (hereinafter, "the entity claimed"), in view of the complaint filed by

A.A.A., (hereinafter, "the claimant"), and based on the following,

BACKGROUND

FIRST: on 11/17/18, the claimant submitted a document to this AEPD, in the

which, among others, indicated: "The website ***URL.1 has not only illegally located me at

through cookies or by tracking my IP, but also does not contain ANY KIND OF

PRIVACY POLICY, in accordance with current legislation".

SECOND: In view of the facts set forth in the claim and the documents

provided by the claimant, the General Subdirectorate for Data Inspection proceeded

to carry out actions for its clarification, under the powers of

investigation granted to the control authorities in article 57.1 of the Regulation

(EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD). A) Yes,

On 02/01/19, an information request is addressed to the entity claimed.

According to a certificate from the Postal Service, the request sent to the entity

claimed was returned to origin, dated 02/12/19, with the annotation "absent from the

delivery" and "not picked up from the list service".

THIRD: Consulting the website ***URL.1, dated 09/06/19, it is observed that

To place an order you must enter the personal data of: "name and/or email",

There is no type of banner or link to the "privacy policy", where

report on the processing of personal data that the entity carries out in accordance with

stipulated in the GDPR.

FOURTH: On 09/25/19, the Director of the Spanish Agency for the Protection of Data agreed to initiate sanctioning proceedings against the claimed entity, by virtue of the powers established in art. 58.2 of the RGPD and in articles 47, 64.2 and 68.1 of the Organic Law 3/2018, of December 5, on the Protection of Personal Data and Guarantee of Digital Rights (LOPDGDD), for the infringement of article 13 of the RGPD, considered very serious, for prescription purposes, in 72.1.h) of the LOPDGDD.

FIFTH: Once the initiation agreement has been notified, the entity claimed, by means of a written dated 10/09/19, made, in summary, the following allegations:

“That due to problems with the company that designed the Web page, they had omitted the inclusion in the Web page ***URL.1 of the clauses of the Policy of Privacy, Legal Notice, Cookies Policies and General Conditions of Hiring, as indicated by current regulations Law 34/2002 of July 11,

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services of the information society and electronic commerce and that

To meet this requirement, the actions carried out are detailed:

1.- The website ***URL.1 has been updated, according to the regulation mentioned above, incorporating on its website, the Notice Legal, clauses of Privacy Policy, General Conditions of Contracting and Cookie Policies.

2- We have proceeded to comply according to the instructions of the A.E.P.D. with it

stipulated in Art. 13 of the RGPD.

3- That the URL of the Web address is provided so that they can verify that the web page ***URL.1, complies with what is indicated in the previous points exposed”.

SIXTH: On 11/22/19, the respondent entity was notified of the proposed resolution in which it is proposed that, by the Director of the Spanish Protection Agency of Data proceed to the FILE of this sanctioning procedure as there is no violation of the provisions of the RGPD, having verified that on the website of the claimed entity ***URL.1, there is a link to its "privacy policy" where it is informed information to the client of the data controller, his identity and contact details, the purposes of the treatment to which the personal data is destined and the legal basis of the treatment-treatment, as well as the rights of access, rectification, limitation of treatment, portability, opposition to the treatment and deletion of the data, before whom to do it and how to do it.

SEVENTH: Once the resolution proposal has been notified, the entity complained against does not present allegations to the proposal in the period granted for this purpose.

In view of everything that has been done, by the Spanish Data Protection Agency

In this proceeding, the following are considered proven facts:

PROVEN FACTS

1.- On 11/11/19, it is verified that on the website ***URL.1, in a link to the policy of privacy the following information is offered:

“In compliance with the General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016 and the Organic Law 3/2018 of December 5, Protection of Personal Data and Guarantee of the Digital Rights we inform you that the data you provide will be processed by B.B.B. with NIF ***NIF.1, with

address at ***DOMICILIO.1, in order to provide the requested service

and/or contracted, billing the same.

The legal basis for the treatment of your data is the execution of the service by

you hired and requested. The prospective offer of products and services

is based on the consent that is requested, without in any case the

Withdrawal of this consent conditions the execution of the contract. The data

provided will be kept as long as the commercial relationship is maintained or

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during the years necessary to comply with legal obligations. Them-

These will not be transferred to third parties except in cases where there is an obligation

legal.

You have the right to obtain confirmation as to whether B.B.B. is treating your

personal data and therefore you have the right to exercise your rights of access,

rectification, limitation of treatment, portability, opposition to treatment and

deletion of your data as well as the right to file a claim with

the Control Authority by writing to the postal address above

mentioned or electronic ***EMAIL.1, attaching a copy of the DNI in both

you are Likewise, we request your authorization to offer you products and services.

services related to those requested, provided as marketed by

our entity and thus be able to treat you as a client”

FOUNDATIONS OF LAW

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The Director of the Spanish Agency is competent to resolve this procedure.

Data Protection, in accordance with the provisions of art. 58.2 of the RGPD in the art. 47 of LOPDGDD.

The joint assessment of the documentary evidence in the procedure brings to knowledge of the AEPD a vision of the denounced action that has been reflected in the facts declared proven above reported.

In the present case, it has been found that the claimed website ***URL.1 has a link to its "privacy policy" where the client is informed of the person responsible for the treatment, your identity and contact information, the purposes of the treatment to which the personal data and the legal basis of the treatment, as well as the rights of access, rectification, treatment limitation, portability, opposition to treatment and deletion of data, before whom to do it and how to do it.

In short, from the information provided by the entity to this Agency in the allegations at the initiation of the file, it follows that the facts reported are not are contrary to the provisions of article 13 of the RGPD, in relation to the data processing.

In accordance with what was indicated, by the Director of the Spanish Agency for the Protection of Data,

HE REMEMBERS:

FILE: procedure PS/00221/2019, initiated at the entity PIZZERIA LA

RUSTICA, owner of the website ***URL.1, for alleged violation of article 13 of the GDPR.

NOTIFY: this Agreement to the entity, PIZZERIA LA RUSTICA.

In accordance with the provisions of article 82 of Law 62/2003, of December 30, bre, of fiscal, administrative and social order measures, this Resolution is

will make public, once it has been notified to the interested parties. The publication is made

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will be in accordance with the provisions of Instruction 1/2004, of December 22, of the Agency

Spanish Data Protection on the publication of its Resolutions.

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

established in articles 112 and 123 of the LPACAP, the interested parties may interpose

have, optionally, an appeal for reconsideration before the Director of the Spanish Agency

of Data Protection within a period of one month from the day following the notification

fication of this resolution, or, directly contentious-administrative appeal before the

Contentious-administrative Chamber of the National High Court, in accordance with the provisions

placed in article 25 and in section 5 of the fourth additional provision of the Law

29/1998, of 07/13, regulating the Contentious-administrative Jurisdiction, in the

two months from the day following the notification of this act, according to

the provisions of article 46.1 of the aforementioned legal text.

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

may provisionally suspend the firm resolution in administrative proceedings if the interested party

do states its intention to file a contentious-administrative appeal. Of being

In this case, the interested party must formally communicate this fact in writing

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

Electronic Registry of the Agency [<https://sedeagpd.gob.es/sede-electronicaweb/>], or to

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

that proves the effective filing of the contentious-administrative appeal. If the Agency was not aware of the filing of the contentious-administrative appeal within 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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