

□ Procedure No.: PS/00375/2020

938-0419

RESOLUTION OF PUNISHMENT PROCEDURE

In the sanctioning procedure PS/0375/2020, before the entity, HEREDAD DE UREÑA, S.L., with CIF.: B47604210, (hereinafter, "the claimed entity"), owner of the page web page, <http://www.heredaduruena.es>, by virtue of a complaint filed by Mr. A.A.A., (hereinafter, "the claimant"), and based on the following:

BACKGROUND:

FIRST: On 04/24/20, you have entered this Agency, filed a complaint by the claimant in which he indicated, among others, the following:

"The claimant states that on April 23, 2020, he receives an email advertising email from HEREDAD DE UREÑA with the subject: "#QuedateEnCasa-Heredad de Urueña", when he has not had any type of relationship or contact with this company nor has it given its consent for the sending of commercial communications cial or advertising. Likewise, the complainant indicates that there is no electronic link automatic to unsubscribe from the communication received, but the possibilities unsubscribe that they offer are through postal mail or email".

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 investigative powers tion granted to the control authorities in article 57.1 of the Regulation (EU) 2016/679 (GDPR). Thus, on 06/02/20 and 08/05/20, two separate requests are directed informative information to the requested person.

THIRD: On 10/15/20, this Agency verified that the page na web <http://www.heredaduruena.es>, has the following characteristics regarding

your privacy policy and your cookie policy:

a).- There is no link that redirects to the "privacy policy" on the website.

However, at the top of the home page, through the link, <<contact-

to>>,

page,

<http://www.heredaduruena.es/es/contacto/sec/8/> , where it is possible to collect personal data

users' personal information, such as name, phone number, or email.

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redirects

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Web

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In addition to the form, this page provides information on the identification

tion of the person responsible for the page, the contact details, the location of the vineyards

and of the cellars; the contact details of the management, the administration and the area

of the Group, as well as the data of the management team.

b).- There is no banner on the home page about the use or not of cookies by

part of the website. There is also no link on this page that redirects to the "policy".

ca de cookies", having proof of the use by the website of cookies

not necessary and whose domain belongs to heredaduruena.es: (_utmz; _utmc; _utma;

_utmb, among others)

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FOURTH: In view of the reported facts, the Director of the Spanish Agency of Data Protection, dated 10/21/20, agreed to initiate sanctioning procedure to the claimed entity, by virtue of the powers established, for non-compliance with the stipulated in the articles, a penalty of 2,000 euros for violation of article 13) of the RGPD, by not having adapted its personal data processing policy to the new regulations in force and regarding the non-existence of a privacy policy in its website, verifying that there is the possibility of personal data processing.

user profiles. A sanction of "warning" for violation of article 21 of the LSSI, for sending advertising emails without the consent of the interested. A penalty of 2,000 euros, for violation of article 22.2) of the LSSI, regarding the non-existence of "Cookies Policy" of the web page of its ownership.

FIFTH: Notification of the initiation agreement to the person claimed, it has not been received in this Agency, no brief of allegations at the beginning of the file, in the period granted for the purpose.

PROVEN FACTS

1º.- In the present case, as reported, the claimant has received an email email with an advertising message without your consent from the entity claimed. The complaint is accompanied by a copy of the mail sent from the address, bodega@heredaduruena.com, with the advertising message.

2º.- This Agency has verified the following aspects regarding the "Privacy Policy" of the website, <http://www.heredaduruena.es>:

- On this website there is the possibility of collecting personal data from users. users, through the existing link on the home page: <<contact>>, <https://www.heredaduruena.es/es/contacto/sec/8/>. Within this page

contact there is the following information: "The sending of this form implies the acceptance of the following legal terms: In accordance with the provisions in the Organic Law 15/1999 on the Protection of Personal Data, We inform you that your personal data will be processed "automatically", in order to respond to your request. For the exercise of their rights of access, rectification, cancellation and opposition should be addressed to responsible for the file.

3º.- On the part of this Agency, the following aspects have been verified with respect to the "Cookies Policy" of the website <http://www.heredaduruena.es>,

- When accessing it, on the home page, there is no banner or information on the use or not of cookies, there is also no link that redirects to the "Cookies Policy", having proof of the use of Cookies not necessary by the web and whose domain belongs to heredaduruena.es: (_utmz; _utmc; _utma; _utmb, among others).

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FOUNDATIONS OF LAW

Yo

Competition:

About the "Privacy Policy":

By virtue of the powers that article 58.2 of Regulation (EU) 2016/679, of the Parliament-European Act and of the Council, of 04/27/16, regarding the Protection of Natural Persons regarding the Processing of Personal Data and the Free Movement of es-

Data (RGPD) recognizes each Control Authority and, as established in the art. 47, 64.2 and 68.1 of Organic Law 3/2018, of December 5, on the Protection of Personal Data and Guarantee of Digital Rights (LOPDGDD), the Director of the Spanish Agency for Data Protection is competent to resolve this problem.

transfer.

About sending spam and about the "Cookies Policy":

In accordance with the provisions of art. 43.1, second paragraph, of the Law 34/2002, of July 11, on Services of the Information Society and Commerce Electronic System (LSSI), is competent to resolve this Sanctioning Procedure, the Director of the Spanish Agency for Data Protection.

In the present case, as reported, the claimant has received an email co with an advertising message without having given your consent. At the complaint accompanies

the direction

bodega@heredaduruena.com, on 04/23/20.

received from

the copy of

mail

II

The exposed facts, consisting of the sending of commercial communications do not consented by the interested party, constitute an infringement, as established in article 21 of the LSSI, where it is established that:

"1. The sending of advertising or promotional communications by co-electronic mail or other equivalent means of electronic communication that previously have not been requested or expressly authorized by the recipients of the themselves.

2. The provisions of the preceding section shall not apply when there is a relationship prior contractual agreement, provided that the provider had legally obtained the contact details of the recipient and will use them to send communications such as commercials referring to products or services of your own company that are similar those who were initially contracted with the client.

In any case, the provider must offer the recipient the possibility of opposing the processing of your data for promotional purposes through a simple procedure and free, both at the time of data collection and in each of the co-commercial communications directed to you.

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When the communications have been sent by email, said means

This must necessarily consist of the inclusion of an email address

unique or other valid electronic address where this right can be exercised, remain-

Sending communications that do not include said address is prohibited.”

The aforementioned infraction is typified as minor in art. 38.4.d) of said regulation

ma, which qualifies as such, "The sending of commercial communications by electronic mail

single or other equivalent means of electronic communication when in said shipments

the requirements established in article 21 are not met and it does not constitute an infringement serious".

Pursuant to the provisions of article 39.1.c) of the LSSI, minor infractions may

sanctioned with a fine of up to €30,000, establishing the criteria for its

duration in article 40 of the same norm.

Pursuant to these criteria, and considering that the controller is a natural person, ca, it is considered appropriate to impose a "warning" sanction for the infraction of the Article 21 of the LSSI, regarding the sending of advertising emails without consent. feeling.

Regarding the privacy policy of the website <http://www.heredaduruena.es>, it is check that, in the information collected on the contact page, it is still being done-reference to the repealed Organic Law 15/1999, of December 13, on Protection of Personal Data.

III

According to article 99 of the RGD, the entry into force and application of the new RGD was, "Twenty days after its publication in the Official Journal of the European Union (05/25/16)" and would be applicable as of May 25, 2018." Therefore, as of 05/25/18, we-the LO was repealed. 15/1999, (LOPD), applying compulsorily, from that date, the current RGD and as of 12/07/18 the new LOPDGDD.

On the other hand, it has been verified that personal data can be collected on said website. users, but there is no link that redirects to the "privacy policy". dad" or "legal notice".

Article 13 of the RGD establishes the information that must be provided to the interested party. sado at the time of collection of your personal data. information that should appear in the "privacy policy" of the website in question:

1. When personal data relating to him or her is obtained from an interested party, the person responsible treatment, at the time these are obtained, will provide you with all the information information indicated below: a) the identity and contact details of the person responsible ble and, where appropriate, his representative; b) the contact details of the project delegate data protection, if any; c) the purposes of the treatment for which the data is intended personal and the legal basis of the treatment; d) when the treatment is based on the

article 6, paragraph 1, letter f), the legitimate interests of the person in charge or of a third party;

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

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 decision to

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adequacy of the Commission, or, in the case of the transfers indicated in the articles

46 or 47 or article 49, paragraph 1, reference to adequate or appropriate guarantees

and the means of obtaining a copy of them or the fact that they have been

borrowed.

2. In addition to the information mentioned in section 1, the data controller

will provide the interested party, at the time the personal data is obtained,

them, the following information necessary to guarantee fair data processing and

transparent: a) the period during which the personal data will be kept or, when

where this is not possible, the criteria used to determine this term; b) existence

the right to request access to personal data from the data controller

relating 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 article 9,

paragraph 2, letter a), the existence of the right to withdraw consent at any

moment, without affecting the legality of the treatment based on the consent

prior to its withdrawal; d) the right to lodge a complaint with a law enforcement authority

control; 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 make provide personal data and is informed of the possible consequences of not provide such data; f) the existence of automated decisions, including the preparation of profiles, referred to in article 22, sections 1 and 4, and, at least in such cases, significant information about the applied logic, as well as the importance and consequences foreseen consequences of said treatment for the interested party.

The known facts constitute an infraction, attributable to the defendant, for violation of article 13 of the RGPD, which establishes the information that must be provided be provided to the interested party at the time of collecting their personal data.

For its part, article 72.1.h) of the LOPDGDD considers it very serious, for the purposes of prescription, “the omission of the duty to inform the affected party about the treatment of your personal data in accordance with the provisions of articles 13 and 14 of the RGPD”

This infraction can be sanctioned with a maximum fine of €20,000,000 or, alternatively, being from a company, of an amount equivalent to a maximum of 4% of the volume overall annual total turnover of the previous financial year, opting for the greater amount, in accordance with article 83.5.b) of the RGPD.

In accordance with the precepts indicated, and without prejudice to what results from the instruction of the procedure, in order to set the amount of the sanction to be imposed in the present case, it is considered appropriate to graduate the sanction to be imposed in accordance with the following aggravating criteria established in article 83.2 of the RGPD:

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The category of personal data affected by the infringement,
(paragraph g).

The way in which the supervisory authority became aware of the infringement: the way in which this AEPD has been aware has been by complaint of a

particular, (section h).

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The balance of the circumstances contemplated in article 83.2 of the RGPD, with res-

Regarding the infraction committed by violating what is established in article 13, it allows establishing a penalty of 2,000 euros, (two thousand euros), regarding the non-existence of "policy of privacy", on the web page denounced, proving that it can be obtained have information about personal data of users.

In relation to the "Cookies Policy", of the website, it is verified that, when accessing to the main page of the web, there is no banner or information about the use tion or not of cookies, there is also no link that redirects to the "policy of cookies".

IV

The exposed facts suppose, on the part of the claimed entity, the commission of a violation of article 22.2 of the LSSI, according to which:

“Service providers may use storage and retrieval devices ration of data in terminal equipment of the recipients, provided that the same we have given their consent after information has been provided to them clear and complete about its use, in particular, about the purposes of the treatment of the data, in accordance with the provisions of Organic Law 15/1999, of December 13, protection of personal data.

Where technically possible and effective, the recipient's consent to

Accepting the processing of the data may be facilitated through the use of the parameters

from the browser or other applications.

The foregoing will not prevent the possible storage or access of a technical nature to the sole purpose of effecting the transmission of a communication over a communications network electronic or, to the extent that is strictly necessary, for the provision of an information society service expressly requested by the recipient river".

This Infraction is typified as "minor" in article 38.4 g), of the aforementioned Law, which considers as such: "Use data storage and retrieval devices when the information has not been provided or the consent of the recipient has not been obtained. user of the service in the terms required by article 22.2.", and may be sanctioned nothing with a fine of up to €30,000, in accordance with article 39 of the aforementioned LSSI. After the evidence obtained, it is considered appropriate to graduate the sanction to be imposed in accordance with the following aggravating criteria, established by art. 40 of the LSSI:

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The existence of intentionality, an expression that must be interpreted as equivalent to a degree of guilt according to the Judgment of the National High Court of 11/12/07 relapse in Appeal no. 351/2006, corresponding to the denounced entity the determination of a system of Obtaining informed consent that is in accordance with the mandate of the LSSI.

- Period of time during which the infraction has been committed, as it is the claim for the month of April 2020, (section b).

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Pursuant to these criteria, it is considered appropriate to impose on the defendant entity a penalty of 2,000 euros (two thousand euros), for the infringement of article 22.2 of the LSSI, regarding the non-existence of a "cookie policy" on the website of your ownership, having proof of the use by the web, of cookies not necessary caesarians.

Therefore, according to these criteria, the total penalty would be 4,000 euros (four thousand euros), for violations of articles 13 of the RGPD (2,000 euros) and 22.2 of the LSSI (2,000 euros), and "warning" for the infringement of article 21 of the LSSI.

In view of the foregoing, the following is issued:

RESOLVES:

FIRST:

IMPOSE the entity, HEREDAD DE UREÑA, S.L., with CIF.:

B47604210, owner of the website, <http://www.heredaduruena.es> the sanctions

following:

- A penalty of 2,000 euros (two thousand euros) for infraction of article 13) of the RGPD, by not having adapted its personal data processing policy to the new regulations in force and regarding the non-existence of a privacy policy on its website, verifying that there is data processing users personal.
- A sanction of "warning" for infraction of article 21 of the LSSI, for the sending an advertising email without consent.
- A penalty of 2,000 euros (two thousand euros) for infraction of article 22.2) of the LSSI, regarding the non-existence of "Cookies Policy" on the website of its ownership.

SECOND: REQUEST: the entity HEREDAD DE UREÑA, S.L., so that, in the period of one month, counting from the notification of this resolution, adapt the page

website owned by you for:

- Update and adapt the privacy policy of the website of its ownership

to the provisions of article 13 of the RGPD.

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Include in the web page of its ownership information regarding the use or

no of cookies and adapt, where appropriate, the cookie policy to what is stipulated in the regulations in force.

THIRD: NOTIFY this resolution to the entity HEREDAD DE UREÑA,

S.L., and to the claimant about the result of the claim.

Warn the sanctioned party that the sanction imposed must be made effective once it is

enforce this resolution, in accordance with the provisions of article 98.1.b)

of Law 39/2015, of October 1, of the Common Administrative Procedure of the Ad-

Public Administrations (LPACAP), within the voluntary payment period indicated in article

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68 of the General Collection Regulations, approved by Royal Decree 939/2005,

of July 29, in relation to art. 62 of Law 58/2003, of December 17, me-

upon deposit in the restricted account N° ES00 0000 0000 0000 0000 0000, opened

on behalf of the Spanish Agency for Data Protection at CAIXABANK Bank,

S.A. or otherwise, it will be collected in the executive period.

Received the notification and once executed, if the date of execution is

between the 1st and 15th of each month, both inclusive, the term to make the payment

will be until the 20th day of the following month or immediately after, and if

between the 16th and last day of each month, both inclusive, the payment term

It will be until the 5th of the second following month or immediately after.

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

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
tive within two months from the day following the notification of this
resolution, would end the precautionary suspension.

Sea Spain Marti

Director of the Spanish Agency for Data Protection.

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