

□ Procedure No.: PS/00355/2019

938-051119

## RESOLUTION OF PUNISHMENT PROCEDURE

In sanctioning procedure PS/00355/2019, instructed by the Spanish Agency for Data Protection, to D. A.A.A., owner of the website [www.antifawear.com](http://www.antifawear.com), ("the claimed person"), for alleged infringement of Regulation (EU) 2016/679, of the Parliament European and Council Document of 04/27/16, regarding the Protection of Physical Persons with regard to the Processing of Personal Data and the Free Circulation of these Data (RGPD), and based on the following,

## BACKGROUND

FIRST: dated 09/23/18, D. B.B.B. (hereinafter, "the claimant"), presented written before the Spanish Agency for Data Protection, in which, among others, denounced ciaba:

The website [www.antifawear.com](http://www.antifawear.com), dedicated to the online sale of diverse products sos, does not comply with the current regulations on Data Protection since, among other possible circumstances that must be inspected by this Agency, lacks a Privacy Policy according to what is regulated in the RGPD; uses a contact form in which data is collected without including any information on the aspects contemplated in the current regulations on Pro-Data protection, not containing a link to the Privacy Policy and lacking c of the checkbox; explicitly requesting that the user accept the Privacy Policy Privacy. Likewise, it is not possible to know the transfer of these to third parties; and yes all these third parties have signed with the owner of the web the corresponding contracts for the provision of services in the field of Data Protection".

SECOND: Dated 07/02/19, in view of the facts set forth in the claim

and the documents provided by the claimant, the Subdirector General for Inspection of Data proceeded to carry out actions for its clarification, under the protection of the powers of investigation granted to the control authorities in article 57.1 of Regulation (EU) 2016/679 (General Data Protection Regulation, (RGPD), an information request is addressed to Dinahosting S.L. to report to this Agency on the owner of the domain that corresponds to the denounced web page.

On 07/15/19, Dinahosting sends a letter to this Agency, indicating that the person

The person responsible for said domain is, D. A.A.A., with DNI \*\*\*NIF.1 and address at \*\*\*ADDRESS 1.

THIRD: Checked the website [www.antifawear.com](http://www.antifawear.com), dated 10/10/19,

notes that to place an order for the products it advertises, you must enter the personal data of the interested party, lacking any type of banner or link to the "privacy policy" of the page.

FOURTH: On 11/19/19, 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 alleged infringement of article 13 of the RGPD and considered very serious in 72.1.h) of the LOPDGDD for the purposes of [www.aepd.es](http://www.aepd.es)

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23

prescription, setting an initial sanction of "Warning", without prejudice to what is will result in the course of the instruction of the procedure, and requiring the entity

that: "Take the necessary measures contemplated in article 13 of the RGPD, in order to do facilitate the users of the portal, at the moment in which the personal data is collected them through the forms on their page, the information required in the aforementioned precept, for which it must take into account the provisions of art. Article 6 of the RGPD in relation to the legality of the treatment".

SIXTH: On 11/15/19, the initiation of the file was notified to the claimant entity. demanded, who has not filed before this Agency, any brief or allegation, within the the period granted for this purpose.

#### PROVEN FACTS

1.- Checked the website [www.antifawear.com](http://www.antifawear.com), dated 10/10/19, it is observed that to place an order for the products you advertise, you must enter the data of the interested party, lacking any type of banner or link to the "policy privacy" on the page.

#### FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and as established in art. 47 of Organic Law 3/2018, of December 5, bre, Protection of Personal Data and guarantee of digital rights (in the successive LOPDGDD), the Director of the Spanish Data Protection Agency is competent to resolve this procedure.

Sections 1) and 2), of article 58 of the RGPD, list, respectively, the investigative and corrective powers that the supervisory authority may provide to the effect, mentioning in point 1.d), that of: "notifying the person in charge or in charge of the treatment of alleged infringements of these Regulations" and in 2.i), that of:

"impose an administrative fine under article 83, in addition to or instead of the measures mentioned in this section, according to the circumstances of each case."

In the present case, it has been found that, on the website [www.antifawear.com](http://www.antifawear.com), to place an order for the products it advertises, you must enter the personal data of the interested party, lacking any type of banner or link to the "privacy policy" of the page.

All of the above could imply an infraction for violation of article 13) of the RGPD, considered in article 72.1.h), of the LOPDGDD as "very serious" for prescription cough.

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 of total annual global business of the previous financial year, opting for the greater amount, in accordance with article 83.5.a) of the RGPD.

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3/3

The sanction to be imposed must be graded according to the criteria established article 83.2 of the RGPD, and with recital 148 of the RGPD itself, which provides for the possibility of punishing with a warning in certain circumstances.

In view of the aforementioned precepts and others of general application, the Director of the Agency Spanish Data Protection.

RESOLVE

WARN: D. A.A.A., owner of the website [www.antifawear.com](http://www.antifawear.com), for infringement

of article 13 of the RGPD, typified in Article 83.5 of the RGPD.

REQUEST: D. A.A.A., so that, within one month from this act of notification-tion, proceed to take the appropriate measures to adapt your privacy policy to the current regulations, (requirements contemplated in article 13 of the RGPD), and must provide users and/or patients, at the time the personal data is collected, them, through the forms, the information required in the aforementioned pre-concept, for which you must take into account the provisions of article 6 of the RGPD in relation to the legality of the treatment.

NOTIFY this resolution to D. A.A.A.

In accordance with the provisions of article 50 of the LOPDPGDD, this Re-

The solution 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. 48.6 of the

LOPDPGDD, 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 month from the date of

the day following the notification of this resolution or directly contentious appeal

before the Contentious-Administrative Chamber of the National High Court,

in accordance with the provisions of article 25 and section 5 of the additional provision

Final fourth of Law 29/1998, of July 13, regulating the Contentious Jurisdiction-

administrative, within a period of two months from the day following the notification

tion of this act, as provided for in article 46.1 of the aforementioned Law.

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Director of the Spanish Agency for Data Protection.

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