

□ File No.: PS/00431/2021

- RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection and based on
to the following

BACKGROUND

FIRST: On 02/19/2021, it had entry in the Spanish Protection Agency
of Data a brief presented by A.A.A. (hereinafter, the complaining party),
through which he makes a claim against B.B.B. with NIF ***NIF.1 (hereinafter, the
claimed party), for not adapting the Privacy Policy of the website
www.estyloaddicted-shop.com to Regulation (EU) 2016/679 of the European Parliament
and of the Council, of April 27, 2016, regarding the protection of natural persons
regarding the processing of personal data and the free circulation of these
data (hereinafter, RGPD).

The claim indicates the following, in relation to the data protection regulations

Personal data:

"Second-. That to date the aforementioned order for the shoes, I have not received it
despite being paid and having claimed it repeatedly through the only
means that the website can: via telephone ***TELEFONO.1 and via email
***EMAIL.1.

Third-. That in no section of the website, that is, neither in legal notice, nor in
privacy nor in conditions of purchase does the owner of the same appear, nor the address, nor the
CIF so it is impossible for the citizen-consumer to contact
the seller in case of discrepancy as is my case.

[...]"

Attached to the claim, among others, the following documents:

- A copy of the order that the claimant made on the website www.estyloadaddicted-shop.com and proof of payment dated 11/23/2020.

- "WhatsApp" conversations and emails sent by the claimant to telephone number and email that appears on the website, requesting information about the status of the order. The claimant has only received response to one of the whatsapp, where you are sent to the web to know How many days does shipping take?

SECOND: On 04/15/2021, the Director of the Spanish Protection Agency Data agreed to admit the claim for processing.

THIRD: The General Subdirectorate for Data Inspection proceeded to carry out of previous investigative actions to clarify the facts in matter, by virtue of the investigative powers granted to the authorities of

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control in article 57.1 of Regulation (EU) 2016/679 (General Regulation of Data Protection, hereinafter RGPD), and in accordance with the provisions of the Title VII, Chapter I, Second Section, of the LOPDGDD.

These investigative actions have revealed the following facts:

"As of April 15, 2021, it is verified that the website is still active and both on the "Privacy Policy" page as well as in "Terms and Conditions" it is stated as responsible BRANDS TECHNOLOGY with address in Ronda de atocha 47, 28004 MADRID (MADRID). A search has been made in the Central Mercantile Registry, in the AXESOR database and the Internet without finding any data from

this merchant.

It is verified that neither the person responsible for the website nor the

Responsible for processing the data provided in the purchase process.

It is verified that an email address appears at the bottom of the page and a

Spanish numeral phone number. A search is made for the

operator of this telephone number on the website of the National Commission for

Markets and Competition (hereinafter, CNMC), obtaining that this number of

telephone is operated by DIGI SPAIN TELECOM, S.L. (hereinafter, the Operator).

Made request to the Operator about the ownership of this number of

telephone, dated April 20, 2021, this Agency receives a letter from

answer informing the name, surnames and NIF of the owner of the telephone. add

that as it is a prepaid card, they do not have non-address billing data.

The National Institute of Statistics is requested for the address of registration of

this headline. Made a request for information to this owner about the person in charge

of the claimed website and the data of the company that operates this website, although the

requirement has been delivered at destination on April 29, 2021, as of

This Agency has not received a written response to this report.

During these investigative actions, dated June 3, 2021,

it is verified that the claimed website has closed, and dated July 5,

2021, it is verified that the domain has expired and has not been renewed.

FOURTH: On 11/05/2021, the Director of the Spanish Protection Agency

of Data agreed to initiate a sanctioning procedure against the claimed party, for the

alleged infringement of Article 13 of the RGPD, typified in Article 83.5 of the RGPD.

FIFTH: The opening agreement was notified by mail to the

claimed on 11/19/2021, as stated in the Notice issued by Correos. to day of

Today, this Agency has not received any reply.

Article 64.2.f) of Law 39/2015, of October 1, on Administrative Procedure

Common Public Administrations (hereinafter LPACAP) -provision of which

the party claimed was informed in the agreement to open the proceeding-

establishes that if allegations are not made within the stipulated period on the content of the

initiation agreement, when it contains a precise statement about the

imputed responsibility, may be considered a resolution proposal.

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In the present case, the agreement to initiate the disciplinary proceedings determined the

facts in which the imputation was specified, the infraction of the RGPD attributed to the

claimed and the sanction that could be imposed. Therefore, taking into account that

the party complained against has made no objections to the agreement to initiate the file and

In accordance with the provisions of article 64.2.f) of the LPACAP, the aforementioned agreement of

beginning is considered in the present case resolution proposal.

SIXTH: The agreement to open the procedure agreed in the fourth point of the

operative part “INCORPORATE to the disciplinary file, for the purposes of evidence, the

claims submitted by claimants and the information and documentation

obtained by the Subdirector General for Data Inspection in the phase of

information prior to the agreement for admission to processing of the claim”.

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

In this proceeding, the following are considered proven facts:

FACTS

FIRST: At the time the claim that gives rise to the

this sanctioning procedure,

the claimed,

www.estyloadaddicted-shop.com, lacked an adequate Privacy Policy when

article 13 of the RGPD. It has been verified that the respondent has proceeded to close the

Web.

website of

the

SECOND: The Spanish Data Protection Agency has notified the respondent

the agreement to open this sanctioning procedure, but has not

presented allegations or evidence that contradicts the facts denounced.

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 arts. 47 and 48.1 of the LOPDGDD, the Director of

The Spanish Agency for Data Protection is competent to resolve this

process.

Article 63.2 of the LOPDGDD determines that: "The procedures processed by the

Spanish Agency for Data Protection will be governed by the provisions of the

Regulation (EU) 2016/679, in this organic law, by the provisions

regulations issued in its development and, as long as they do not contradict them, with a

subsidiary, by the general rules on administrative procedures.

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II

Article 4 of the GDPR, under the heading "Definitions", provides that:

"For the purposes of this Regulation, the following shall be understood as:

- 1) "personal data": any information about an identified natural person or identifiable (the interested party); An identifiable natural person shall be deemed to be any person whose identity can be determined, directly or indirectly, in particular by an identifier, such as a name, an identification number, location, an online identifier or one or more elements of the identity physical, physiological, genetic, psychic, economic, cultural or social of said person;
- 2) "processing": any operation or set of operations carried out on personal data or sets of personal data, whether by procedures automated or not, such as the collection, registration, organization, structuring, conservation, adaptation or modification, extraction, consultation, use, communication by transmission, broadcast or any other form of enabling of access, collation or interconnection, limitation, suppression or destruction;"

In accordance with the above definitions, the collection of personal data with reason for the formalization of a contract for the provision of services included in a web page constitutes data processing, for which the controller of the treatment must comply with the provisions of article 13 of the RGPD.

In relation to this matter, it is observed that the Spanish Agency for the Protection of Data is available to citizens, the Guide for the fulfillment of duty to inform (<https://www.aepd.es/media/guias/guia-model-clausula-informativa.pdf>) and, in case of low-risk data processing, the free tool Facilitates (<https://www.aepd.es/herramientas/facilita.html>).

III

Article 13 of the RGPD, a precept that determines the information that must be

provided to the interested party at the time of collecting their data, indicates that:

"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 legal basis of the treatment;

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d) when the treatment is based on article 6, paragraph 1, letter f), the interests legitimate 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 party country or international organization and the existence or absence of a decision to adequacy of the Commission, or, in the case of transfers indicated in the Articles 46 or 47 or Article 49, paragraph 1, second paragraph, reference to the adequate or appropriate warranties and the means to obtain a copy of these or to the fact that they have been borrowed.

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 it is 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 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 portability

of the data;

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 in

any time, without affecting the legality of the treatment based on the

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

provide such data;

f) the existence of automated decisions, including profiling, to which

referred to in article 22, sections 1 and 4, and, at least in such cases, information

about applied logic, as well as the importance and consequences

provisions of said treatment for the interested party.

3. When the data controller plans further data processing

personal data for a purpose other than that for which they were collected, you will provide the

interested party, prior to such further processing, information on that other purpose

and any additional information relevant under paragraph 2.

4. The provisions of sections 1, 2 and 3 shall not apply when and in the

to the extent that the interested party already has the information.”

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For its part, article 11 of the LOPDGDD, provides the following:

"1. When the personal data is obtained from the affected party, the person responsible for the treatment may comply with the duty of information established in article 13 of Regulation (EU) 2016/679, providing the affected party with the basic information to referred to in the following section and indicating an electronic address or other medium that allows easy and immediate access to the rest of the information.

2. The basic information referred to in the previous section must contain, at less:

- a) The identity of the data controller and his representative, if any.
- b) The purpose of the treatment.
- c) The possibility of exercising the rights established in articles 15 to 22 of the Regulation (EU) 2016/679.

If the data obtained from the affected party were to be processed for the preparation of profiles, the basic information will also include this circumstance. In this

In this case, the affected party must be informed of their right to oppose the adoption of automated individual decisions that produce legal effects on him or her significantly affect in a similar way, when this right concurs in accordance with the provisions of article 22 of Regulation (EU) 2016/679.”

IV

By virtue of the provisions of article 58.2 of the RGPD, the Spanish Agency for

Data Protection, as a control authority, has a set of corrective powers in the event of an infraction of the precepts of the GDPR.

Article 58.2 of the RGPD provides the following:

"two. Each supervisory authority will have all of the following corrective powers listed below:

a) (...)

b) send a warning to any person responsible or in charge of treatment when the treatment operations have violated the provisions of this Regulation;

(...)

d) order the person responsible or in charge of treatment that the operations of treatment comply with the provisions of this Regulation, where appropriate, in a certain way and within a specified period;

(...)

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i) 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 particular case".

Article 83.5 b) of the RGPD establishes that:

"The infractions of the following dispositions will be sanctioned, in accordance with the section 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, an amount equivalent to a maximum of 4% of the

global total annual turnover of the previous financial year, opting for the largest amount:

b) the rights of the interested parties pursuant to articles 12 to 22;"

In turn, article 72.1 h) of the LOPDGDD, under the heading "Infringements considered very serious" provides:

"They are considered very serious and the infractions that suppose a substantial violation of the articles mentioned in that and, in particular the following:

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

v

In this case, the respondent has not presented arguments or evidence that contradict the facts denounced within the period given for it.

This Agency has confirmed that the actions of the respondent were not in accordance with the data protection regulations, since it did not inform users of all the issues listed in article 13 of the RGPD indicated in the foundation of right III.

Note that the fine for the processing of personal data continues to be maintained made by the claimed party without adequately informing customers with prior to the closing of the web page, which constitutes an infringement of the personal data protection regulations. However, a fine without the need to adopt measures by the claimed party, since it is no longer the website is available and, therefore, no further data will be collected personal.

SAW

In order to determine the administrative fine to be imposed, the provisions of article 83, sections 1 and 2 of the RGPD, a provision that states:

"1. Each control authority will guarantee that the imposition of fines administrative actions under this article for violations of this

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Regulation indicated in sections 4, 9 and 6 are in each individual case effective, proportionate and dissuasive."

2. Administrative fines will be imposed, depending on the circumstances of each individual case, in addition to or as a substitute for the measures contemplated in the Article 58, paragraph 2, letters a) to h) and j). When deciding to impose a fine administration and its amount in each individual case will be duly taken into account:

- a) the nature, seriousness and duration of the offence, taking into account the nature, scope or purpose of the processing operation in question as well such as the number of interested parties affected and the level of damages that have suffered;
- b) intentionality or negligence in the infringement;
- c) any measure taken by the controller or processor to alleviate the damages suffered by the interested parties;
- d) the degree of responsibility of the person in charge or of the person in charge of the treatment, taking into account the technical or organizational measures that they have applied under of articles 25 and 32;
- e) any previous infringement committed by the person in charge or the person in charge of the treatment;

- f) the degree of cooperation with the supervisory authority in order to remedy the infringement and mitigate the possible adverse effects of the infringement;
- g) the categories of personal data affected by the infringement;
- h) the way in which the supervisory authority became aware of the infringement, in particular whether the person in charge or the person in charge notified the infringement and, if so, in what measure;
- i) when the measures indicated in article 58, section 2, have been ordered previously against the person in charge or the person in charge in question in relation to the same matter, compliance with said measures;
- j) adherence to codes of conduct under article 40 or mechanisms of certification approved in accordance with article 42, and
- k) any other aggravating or mitigating factor applicable to the circumstances of the case, such as financial benefits obtained or losses avoided, directly or indirectly, through the infringement.”

Regarding section k) of article 83.2 of the RGPD, the LOPDGDD, article 76,

“Sanctions and corrective measures”, provides:

"two. In accordance with the provisions of article 83.2.k) of Regulation (EU) 2016/679 may also be taken into account:

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- a) The continuing nature of the offence.
- b) The link between the activity of the offender and the performance of treatment of personal information.

- c) The profits obtained as a result of committing the offence.
- d) The possibility that the conduct of the affected party could have induced the commission of the offence.
- e) The existence of a merger by absorption process subsequent to the commission of the infringement, which cannot be attributed to the absorbing entity.
- f) Affectation of the rights of minors.
- g) Have, when not mandatory, a data protection officer.
- h) Submission by the person in charge or person in charge, on a voluntary basis, to alternative conflict resolution mechanisms, in those cases in which there are controversies between them and any interested party.”

In accordance with the precepts indicated, in order to set the amount of the penalty to impose in the present case, it is appropriate to grade it according to the following criteria aggravating factors established in article 83.2 of the RGD:

- Negligence in the infringement. To date, the respondent has not answered the requirements made by the claimant in which she requests to know the status of the order.
- The way in which the control authority became aware of the infraction. The shape in which the AEPD has been aware has been due to the filing of the complaint for part of the claimant.
- The degree of cooperation with the AEPD in order to remedy the infringement.

After having requested information from the respondent, as well as notifying the agreement of opening, the AEPD has not received any response.

The balance of the circumstances contemplated, with respect to the infraction committed by violating the provisions of article 13, it allows setting as an initial assessment a fine of 2,000 euros (two thousand euros).

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 B.B.B., with NIF ***NIF.1, for an infraction of article 13 of the RGD, typified in article 83.5 of the RGD, a fine of €2,000 (two thousand euros).

SECOND: NOTIFY this resolution to B.B.B..

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THIRD: Warn the sanctioned party that he must make the imposed sanction effective once

Once this resolution is enforceable, in accordance with the provisions of the

art. 98.1.b) of Law 39/2015, of October 1, on Administrative Procedure

Common Public Administrations (hereinafter LPACAP), within the payment term

voluntary established in art. 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, through its entry, indicating the NIF of the sanctioned and the number

of procedure that appears in the heading of this document, in the account

restricted number ES00 0000 0000 0000 0000 0000, opened on behalf of the Agency

Spanish Department of Data Protection in the banking entity CAIXABANK, S.A.. In case

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

voluntary 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 50 of the LOPDGDD, 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. 48.6 of the

LOPDGDD, 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

counting 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,

may provisionally suspend the firm resolution in administrative proceedings if the

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.

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