

□ Procedure No.: PS/00407/2020

RESOLUTION OF PUNISHMENT PROCEDURE

In the sanctioning procedure PS/00407/2020, instructed by the Spanish Agency for Data Protection, to D. A.A.A., (VERSUS TECHNOLOGIES SL), with NIF.: ***NIF.1 owner of the website <https://sunsy.shop>, (hereinafter, "the claimed party"), and in based on the following,

BACKGROUND

FIRST: On 09/20/20, they have entry in this Agency, written claims- tion presented by D. B.B.B., (hereinafter, "the claimant party"), in which it indicates, among others, the following:

"I registered on the referenced website to make a purchase of some sandals.

After almost a month of waiting we finally received the order with a very low quality and missing their delivery deadlines. There is no delivery note, no invoice, no data corporate. I request to make the return and they refuse, despite having the right to withdrawal. Reviewing your website at URLs: <https://sunsy.shop/policies/privacy-policy> They do not have information related to their corporate data, nor to the rights of RGPD".

SECOND:

In view of the facts set forth in the claim and the documents provided by the claimant, the Data Inspection SG proceeded to carry out actions for its clarification, in accordance with article 65.4 of the Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (LOPDGDD). Thus, on 10/06/20, access to the web page denounced, verifying that, in its privacy policy, it exists, among others, information about the purpose of processing personal data; how they obtain consent and the transfer of data to third parties. Nevertheless,

On the identification of the person responsible for the processing of web data, it is indicated:

“Our store is hosted on Shopify Inc. They provide us with the online e-commerce platform that allows us to sell you our products and services. Your data is stored through data storage of Shopify, databases, and the general Shopify application. Your data is stored on a secure server behind a firewall (...). If you want to access, correct, amend or delete any personal information we hold about you, register a complaint, or If you simply want more information, contact our Compliance Officer. Privacy sunsy.ocial@gmail.com or by mail to Sunsy”.

THIRD: On 10/15/20 by the Director of the Spanish Agency for Data Protection agreement is issued to admit the processing of the complaint filed by the claimant, in accordance with article 65 of the LPDGDD.

FOURTH: On 10/15/20, it is verified that the reported website <https://sunsy.shop/> , had been closed. However, using the tool internet WHOIS checks that it has been used as the domain registration holder of the website, the intermediary company WhoisGuard INC. based in the Republic of Panama and given that, according to the privacy policy, obtained from the website, mentions that he uses the company's SHOPIFY e-commerce platform

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

2/5

SHOPIFY INTERNATIONAL INC, a request for information is made about the ownership of the claimed website, receiving on 11/02/20, reply from SHOPIFY, identifying the claimed party as the owner of the website

FIFTH: Once the agreement to initiate the disciplinary proceedings has been notified, the entity claiming
The respondent, by means of a letter dated 01/25/20, formulated allegations to the same, reproduced
given in the draft resolution proposal.

SIXTH: On 03/17/21, by this Agency, the website is re-accessed
indicated, <https://sunsy.shop> proving that it no longer exists, offering
instead a banner with the following information: "The site cannot be accessed
Web".

SEVENTH: On 04/09/21, the proposed resolution is notified to the complaining party.
mada, in which, it is proposed that, by the Director of the Spanish Agency for Protection
tion of Data is sanctioned with "warning" to the person claimed, for the infraction
violation of article 13 of the RGPD, regarding the lack of information in the policy
privacy policy on your web page, during the time the indicated page was active.
each until it was closed.

EIGHTH: After notification of the proposed resolution, it has not been received in this
Agency, no letter of allegations to it, within the period granted for this purpose.

PROVEN FACTS

1º.- According to the claim presented, on 09/20/20, in this Agency, the pages
website, <https://sunsy.shop/policies/privacy-policy> had no information regarding your data
corporate rights, nor to the rights of RGPD".

2.- This Agency was able to verify, on 10/06/20, that on said website they could
obtain personal data of users, through the existing form for the
online purchase of the products offered.

It was also verified that, in its privacy policy, there was, among other information,
about, the purpose of processing personal data; how do they obtain consent
storage and transfer of data to third parties. However, regarding the identification of the
responsible for data processing, only the following was indicated:

“Our store is hosted on Shopify Inc. They provide us with the online e-commerce platform that allows us to sell you our products and services. Your data is stored through data storage of Shopify, databases, and the general Shopify application. Your data is stored on a secure server behind a firewall (...).”

If you want to access, correct or delete personal information we have about you, register a complaint, or simply want more information contact our Official of Privacy Compliance sunsy.ocial@gmail.com or by mail to Sunsy”.

3.- On 10/15/20, it is verified that the reported website <https://sunsy.shop/>, had already been closed. However, as in the privacy policy of the website it is mentioned that he used the e-commerce platform SHOPIFY of the company SHOPIFY INTERNATIONAL INC, addressed an information request to this entity to identify the person responsible for the website in question.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

3/5

4.- On 11/02/20, a reply is received from the SHOPIFY entity identifying the owner of the website reported as: A.A.A..

5.- On 03/17/21, by this Agency, they check again that the site denounced website no longer exists, so it is not possible to corroborate what is stated by the re-claimed in his pleadings brief.

FOUNDATIONS OF LAW

It is competent to resolve this procedure, regarding the privacy policy and the treatment of the personal data of the users of the websites, the Director of the

Spanish Agency for Data Protection, in accordance with the provisions of art.

58.2 of the RGPD in art. 47 of LOPDGDD.

Yo

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 re-reflected in the facts declared proven above reported.

II

In the present case, according to the claimant's statements made on 09/20/20, the reported website <https://sunsy.shop>, would not comply with the privacy protection regulations data, in relation to the non-existence of the necessary information of your data corporate, nor of the rights collected in the RGPD.

On the part of this Agency, on 10/06/20, it was verified that, in the policy of privacy of its website <https://sunsy.shop/policies/privacy-policy> existed, between another, information on the purpose of the processing of personal data; What obtained consent and information about the transfer of data to third parties.

However, in said privacy policy there was no information on the identification of the data controller and on the possibility of exercising the rights recognized in the RGPD, it was only indicated that "an email could be sent to the address sunsy.ocial@gmail.com".

Consulting the indicated page, on 10/15/20 and 03/17/21, it has been verified that the reported website <https://sunsy.shop/>, no longer exists.

Article 13 of the RGPD establishes the information that must be provided to the interested at the time of collection of your personal data:

III

"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: 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 officer, in his case; c) the purposes of the treatment to which the personal data is destined and the basis legal treatment; 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 the categories of recipients of personal data, if any; f) where appropriate, the

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

4/5

intention of the controller to transfer personal data to a third country or international organization and the existence or absence of an adequacy decision of the Commission, or, in the case of the transfers indicated in articles 46 or 47 or Article 49, paragraph 1, second paragraph, reference to adequate guarantees or appropriate and the means to obtain a copy of them or the fact that have lent.

2. In addition to the information mentioned in section 1, the person in charge of 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 this is not possible, the criteria used to determine this period; b) the existence of the right to request access to data from the data controller 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 the portability of the data; 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 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 control authority; e) if the communication of personal data is a requirement legal or contractual, or a necessary requirement to enter into a contract, and if the 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 decisions you automate, including profiling, referred to in article 22, paragraphs 1 and 4, and, at least in such cases, significant information about the logic applied, as well as the importance and expected consequences of said treatment for the interested party”.

On the part of this Agency, on 10/06/20, it was verified that, in the policy of privacy of its website <https://sunsy.shop/policies/privacy-policy> existed, between another, information on the purpose of the processing of personal data; What obtained consent and information about the transfer of data to third parties.

However, in said privacy policy there was no information on the identification of the data controller and on the possibility of exercising the rights recognized in the RGPD, it was only indicated that “an email could be sent to the address sunsy.ocial@gmail.com”.

Checking the page once again, on 10/15/20, it is verified that the website denounced <https://sunsy.shop/>, it had already been closed.

The known facts constitute an infraction, attributable to the defendant, for violation of art. 13 of the RGPD, which establishes the information that must be provide 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,
in the case of a company, an amount equivalent to a maximum of 4% of the

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

5/5

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

However, Article 58.2) of the RGPD provides that: "Each supervisory authority
will have all the following corrective powers indicated below: b)

Send a warning to any person responsible or in charge of the treatment when the
treatment operations have violated the provisions of this Regulation;
(...); i) impose an administrative fine under article 83, in addition to or instead of
of the measures mentioned in this section, depending on the circumstances of
each particular case, therefore, the sanction that could correspond would be
warning.

In accordance with the foregoing, by the Director of the Spanish Agency for
Data Protection,

:

RESOLVE

FIRST: NOTICE D. A.A.A., (VERSUS TECHNOLOGIES SL), with NIF.:

***NIF.1, owner of the website, <https://sunsy.shop>, for the infringement of 13 of the RGPD,

Regarding the lack of information in the privacy policy on its website, during
during the time it was active.

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.

Sea Spain Marti

Director of the Spanish Agency for Data Protection.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es