

□ Procedure No.: PS/00104/2021

RESOLUTION OF PUNISHMENT PROCEDURE

In sanctioning procedure PS/0104/2021, instructed by the Spanish Agency for Data Protection, to the entity, MAF.COM ESQUI CLUB, with CIF.: G24595647, holder website: <https://www.mafesquiclub.com/> (hereinafter, "the entity claiming mada), for alleged infringement of Regulation (EU) 2016/679, of the European Parliament and of the Council, of 04/27/16, regarding the Protection of Natural Persons in regarding the Treatment of Personal Data and the Free Circulation of these Data cough (GDPR); Organic Law 3/2018, of December 5, on the Protection of Personal Data nals and guarantee of digital rights, (LOPDGDD) and based on the following:

BACKGROUND

FIRST: On 10/15/19, you have entered this Agency, filed a complaint by A.A.A., (hereinafter, "the complaining party") in which it indicated, among others, the following: following:

"The ski club has published a video in which their underage daughter appears in your website. The affected party states that she has not given her consent to do so and that opposes said treatment, as well as has transferred the person in charge without receiving res- put. Apparently, it was the father who consented to such publication, being amused. both divorced. It also indicates that the club's privacy policy provides that for to register, such a document must be accepted, and the acceptance of this implies that feels the treatment of images and she has not given it at any time because she violates the principle of limitation of the purpose since, if it points to the girl to learn skiing, that should be the purpose of the treatment, and not something else like the treat- imaging performed".

Along with her claim, the claimant provides a CD with supporting documentation

of everything manifested.

SECOND: On 11/26/20, this Agency sent an in-depth request training to the claimed entity, in accordance with the provisions of article 65.4 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights, (LOPDGDD).

THIRD: On 01/04/21, the entity claims, sent a written response to the request made by this Agency, in which, in essence, it alleged the following: "On the publication of the images, the person in charge points out that they enjoy feeling since it is a necessary condition to enroll in the club.

Regarding the communication made by the claimant to the person in charge on August 17, 2020 reporting that she has not given her consent for the taking of photographs of the minor or its publication on social networks, the person in charge states that the claimant at no time has proven that she is the parent of the minor or

There was also no evidence that the email sent for this purpose was authentic. co. However, on August 18 the image is removed from the publication.

In response to the burofax sent by the claimant to the person in charge on August 20, 2020, an email is sent on the 21st informing that, despite having authorization tion for the treatment of images of the minor by the father, the images are they had withdrawn. This same communication is sent by burofax.

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On August 25, the claimant requested the exercise of the right of access, to which responds on August 28 that her daughter's data has been provided by her father.

dre, through the club, to the Winter Sports Federation of Castilla León.

Among the measures adopted are those of requesting consent to process any type of data. A link to the registration form is provided. is added- also the text that is accessed in the link that is in the acceptance box of consent. In addition, it ensures that the images of the minor of the social network where it was published”.

FOURTH: On 03/01/21, by the Director of the Spanish Agency for Data Protection, an agreement is issued for the admission of the complaint filed. given by the claimant, in accordance with article 65 of the LPDGDD, when considering that the response given by the respondent to this Agency in relation to the facts claimed does not prove its legitimacy for the treatment of the data.

FIFTH: On 03/06/21, and in view of the exposed facts, the General Subdirectorate General Data Inspection proceeded to carry out actions for its clarification, carrying out the pertinent checks on the privacy policy and the treatment processing of personal data on the website, <https://www.mafesquiclub.com/>, observe leaving the following:

1.- There is a contact form at the url: <https://www.mafesquiclub.com/info-y-contact.html> , accessible through the link <<contact>>, located at the top bottom of the main page, where you can enter personal data such as name name, email and message of web users.

There is a message in the form that indicates: "The sending of this form supposes the acceptance of the privacy policy and the processing of personal data of the website (required)". The box is pre-checked in the "accept" option.

2.- If the "Privacy Policy" is accessed through the existing link in the form, Lario or through the existing link at the bottom of the main page of the web, <<legal notice>>, a new page is displayed where information is provided

about the identity of the data controller; about the purpose of processing the data; about legitimation; the conservation of the data and on the rights of users regarding the processing of their personal data and how to exercise them.

3.- If you access the form to register for the courses offered by the entity,

<https://www.mafesquicclub.com/nuestro-club/inscripcion.html> , it is observed that, it is de-

It is mandatory to enter the personal data of the athlete, the parent or guardian and of the mother or guardian: (name, surname, address and telephone).

To send the registration form, you must compulsorily accept the clauses those of treatment of personal data and the images that can be recorded during sports activity, this box being pre-marked in the "accept" option.

The clauses of the processing of personal data and the use of images of the privacy policy, inform of the following:

"AUTHORIZATION OF TREATMENT ASSIGNMENT AND INSERTION IN THE FILE OF THE CLUB MAF.COM SKI CLUB OF PERSONAL DATA AND AUTORIZATION FOR THE USE OF THE IMAGE

In compliance with the provisions of Organic Law 3/2018, of December 5, of Protection of Personal Data and guarantee of digital rights, we inform you

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that, for the provision of the services offered by this Club, it is necessary that you and/or your minor child, provide certain personal data, to

whose treatment and introduction in the Club file lends its formal and express authorization
curling

These data will be incorporated into an automated file that is the responsibility of Don Manuel Astorgano Feo, with address for notification purposes at ***ADDRESS.1.

However, if you do not want the data provided by you to be processed automatically- mind you can communicate it to the Club staff. You have the opportunity to exercise the rights of access, rectification, cancellation and opposition in the terms established cided in the current legislation, being able to contact this Club for this purpose. Likewise, it warns that such data may be transferred and communicated to those Administrations Public entities, Courts, Tribunals, and any other entities or persons, public cas or private, which require such data for the provision of sports services of the Club that were entrusted or that, in accordance with a norm with rank of Law, have the right to them. Likewise, the signatories are informed and feel the sending of communications of any services or activities that they organize. nice the Club, personalized or not, this shipment may be made by any means, correspondence, telephone, SMS, fax, email or any other means.

By sending this registration, the sender authorizes the use by the Club of the photographs in which he and his minor or adult children intervene in the sports activity that is the object of the Club or in activities that have its cause, directly or indirectly, in that activity, and the Club may use said photographs and the image that is reflected in them in any image reproducing medium. The Authorization does not have a specific geographic scope, so the Club and other people physical or legal entities to which the Club may assign said photographs, or parts of them. tas, in which the sender or his minor children intervene in those activities, may use these photographs, or parts thereof, in all countries of the world without license. imitation.

The authorization refers to the totality of uses that the photographs may have, or parts of these, using the technical means currently known and those that

could be developed in the future, and for any application. All this with the only exception and limitation of those uses or applications that could threaten the right to honor in the terms provided in LO 1/85, of May 5, Protection Civil to the Right to Honor, Privacy and Own Image.

The authorization does not set any time limit for its granting, so the authority authorization is considered granted for an unlimited period of time, although as has been stated above, there is always the possibility of exercising cancellation rights. tion and opposition”.

SIXTH: On 05/14/21, the Director of the Spanish Agency for the Protection of Data agreed to initiate sanctioning proceedings against the claimed entity, by virtue of the established powers, for the following infractions:

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“Warning” for the infringement of article 6 of the RGPD, by preventing the user gives their consent unequivocally, as the boxes are destined for it pre-marked in advance.

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5,000 euros (five thousand euros), for violation of article 7 of the RGPD, for enable the user to offer free consent to the processing of their personal data for purposes other than those that were actually offered.

5,000 euros (five thousand euros) for infringement of article 7 of the RGPD, for the illicit processing of personal data (images) of a minor, without the express consent of both parents.

5,000 euros (five thousand euros), for violation of article 15 of the RGPD, by not diligently manage the request for access made by the mother.

SEVENTH: Notification of the initiation agreement to the entity claimed, the latter in writing dated 06/08/21, made, in summary, the following allegations:

“MAF is a non-profit sports entity based in León dedicated to the en-teaching of alpine skiing, the promotion of basic sports in school age and the participation participation in federated competitions of said activity. Despite having resources limited, currently participate in the activities organized by MAF, in its different modalities, more than one hundred athletes throughout the year. Among the people who cipan in the activities organized by MAF, is the daughter of the complainant.

She has been enrolled in the activities carried out by the club since the season 2018/2019, without any evidence from the MAF, until the moment that the facts of this proceeding occur, of the mother's refusal to participation. On the contrary, to date, their recurring participation has elapsed normally by attending the twelve consecutive Saturdays for which you signed up.

On the occasion of the participation of MAF in the project organized by the web, www.e-lassondeaqui.com, whose purpose was to encourage, promote, encourage and support the sport female, professional, amateur and amateur base whose bases are attached as

DOCUMENT NUMBER TWO, a video was published that included two images, of two seconds long, of the complainant's daughter. The video, now removed, was published on August 15, 2020 on the project website. It is not until 08/17/20 when in the club there is evidence of the complainant's opposition to her images being object of use by MAF.

In any case, it should be noted that in the video that originated the claim,

Only two images were included within the sports field, two seconds

of duration, of the complainant's daughter, did not have a commercial or advertising purpose.

but to participate in an action aimed at promoting the participation of girls, adolescents,

men and adult women in sports activities. This image was included because,

previously, his father had given his consent, as he had given the year

above, in order to be able to participate, for all purposes, in the activities of the club,

as he had been doing regularly. Although the complainant had

As is logical, knowledge of your participation in the activities of the club, is not

until the date on which the claim is filed, August 2020, when he expresses his

opposition to the publication of their images on the occasion of their participation in the course.

If at any time, prior to the claim, knowledge of

the mother's opposition to a publication of the images, the

necessary measures aimed at its withdrawal. This was done, when requested by the

complainant and made a statement to the Spanish Data Protection Agency on the occasion

of the brief sent on January 4, 2021 and appears in these records. In spite of

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the limited resources that MAF has, it has always been a willingness to deal with the

personal data entrusted to you with the maximum guarantees. Therefore, the next day

that the complainant expressed her opposition to the use of the image of her

daughter, for the benefit of the minor, to attend to the will of the mother and in compliance with the

regulations in force, it was withdrawn, as was duly communicated to through a burofax that is incorporated as DOCUMENT NUMBER THREE.

However, despite the fact that it was made known to him in a convincing manner, this circumstance has been unknown by the mother. The complainant does not have account that, as it was, the authorization granted was revoked at the time that your request was produced, as established by Organic Law 1/1982, of 5 of May, civil protection of the right to honor, personal and family privacy and the image itself. Given the lack of evidence, up to that moment, of the opposition of the complainant and for the benefit of the minor, the father maintained his participation in club activities in the same situation as the rest of the participants.

MAF followed the instructions given by the father at all times. who registered it and authorized the publication of images of his daughter so that she could have a treatment identical, in this respect, as the rest of his colleagues and avoid possible damages. tions that this situation could entail. MAF was unaware of the status of the relationship. relationship between both parents. A posteriori, it has been known of the existence of a judicial procedure directed, among other aspects, to clarify this situation.

As a result of this, the Court of First Instance Number 10 of León (Family) has ruled with car number 00224/202.1 dated May 7, 2021 (DOCUMENT NO.

MERO FOUR), in which the following is resolved in this regard:

“It is attributed to B.B.B. the power to decide the ski club in which his daughter Inés should to be registered and enrolled, in this case the so-called “Maf” ski club, authorized also issuing the corresponding license or federative card, auto-making those responsible for it the dissemination or limited publication of images of the minor that are strictly related to competitions in which the minor participates. cipe as federated in said club (...))” Said resolution, although after the claim

The information raised comes to validate the action carried out by the father at the time of

enroll your daughter and set the tone for the future.”

Once the club has become aware of this resolution, they have adopted

taken the necessary measures aimed at adapting the criteria to be followed by the

Club regarding the publication of images of the complainant's daughter that was limited

exclusively to their participation in federated competitions in which they represent

present to MAF that will be fully applicable during the next winter season mo-

Moment in which the sporting events of the RFEDI calendar will begin.

Together with the claim raised, a procedure was initiated for the exercise of rights

rights that were duly attended to. As was stated to him, he did not exist in power

of MAF any personal information related to the complainant, as long as

that he had not participated in the registration of his daughter in the activities organized

by MAF, nor did the registration form contain any information about this person. It is attached

ta as DOCUMENT NUMBER FIVE, record of the registration of the daughter of the

announcer. All of this, without prejudice, as it was made known to him, that the de-

complainant had not effectively proven his identity by not providing documents

to any that would allow verification. In the following, it will be analyzed, in particular

each of the situations that have given rise to the sanction proposal.

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SECOND.- OF THE INCLUSION OF PRE-MARKED BOXES The form that fi-

gured on the web included a box for the provision of consent to the treatment

of your data by the people who participated in the courses that you had

been completed beforehand. In no case has it been the intention of MAF to induce

error to the participants in their activities, conditioning this to the transfer of their rights.

image rights. The main activity of the club and thus appears in article two of the

MAF Statutes that appear in these acts and that are reproduced below-

tion: "Article 2. The purposes of the Sports Club are: a) Develop physical-sports activities

tives. b) Encourage, promote and disseminate the idea of physical exercise and sports in

general. c) Encourage its associates and students in sports, mainly in

its initial stages. d) Participate in federated competitions." In no case, the

publication of these images has been made to take advantage of the name or the

fame of people who participate in MAF activities.

Its sole purpose is to document the activity of the club and its publication on social networks.

Although open, they have a quantitatively reduced real audience. Just like

was done in the case at hand, any permit revoked, either at the time

registration, or later, would have been treated in the same way and,

in no case would he have been prevented from participating in club activities. The use-

tion of images of the participants is an accessory activity. In no case, the

assignment of image rights conditions participation in activities.

MAF has been aware of the error that this situation entails, it has proceeded to correct

manage this situation in such a way that it meets the requirements established by the regulations

of data protection and, consequently, to be able to treat with the greatest guarantees the

data of the people who trust them, as has always been the intention of MAF.

In fact, at the same time that the complainant proceeded to

express their opposition, proceeded to withdraw, as was stated to the applicant

in the burofax dated August 21, 2021 and to the Spanish Procurement Agency itself.

Data protection in its letter of December 31, 2020, In order to avoid in the future

ture, situations such as the one we are dealing with, we have proceeded to modify the text and the

registration form used so that it is the user who voluntarily decides

if you wish to grant your consent, by completing the box with

responding to each purpose, registration in the activities. Doc.5

THIRD.- CONSENT FOR OTHER PURPOSES Notwithstanding,

that as it has proven, the desire of MAF has always been to serve, in the first place

in the interest of the affected minors, all requests aimed at modifying the

sentiment previously granted, in order to guarantee their rights,

has proceeded to clarify the conditions under which the collection is managed

of the different authorizations requested by MAF on the occasion of the

registration in the different activities that they organize.

Aware that in a single act proceeded simultaneously to grant the consent

sentiment for different purposes, the clauses and the text that

is included in the forms so that each of the purposes for which

authorization is required to be collected separately. (DOCUMENT NUMBER SIX).

FOURTH.- THE CONSENT OF BOTH PARENTS At the time when

that the registration is carried out by the father, as he had already done in previous years.

superiors, there is no evidence that the mother proceeded to oppose her, despite

that, as has been proven subsequently, it was dissatisfied with

her daughter's participation in activities organized by MAF. Even though that him

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section corresponding to the mother's authorization had not been completed, if-

Following the indications of the parent, we proceeded to register and process the data of the

athlete in accordance with the provisions of this. You did not complete it when sending the inscription.

the athlete, so MAF lacked neither information about the mother nor knowledge of his acceptance or opposition to the registration of his daughter, nor of the transfer of images.

MAF has acted at all times in good faith, to the extent that, being unknown to the relationship between both parents followed the instructions that the father of the student studied them, proceeding to process her registration, processing her data and images in accordance with the conditions set forth in the clause then in force. From knowing that the mother was not satisfied with the decisions she had made as the father, specifically his opposition to the assignment of the image rights of his daughter, the corresponding measures would have been taken.

At the same time that the complainant showed her opposition to the treatment of the images in the video that originates the claim that was published around a week and in which two images of it appear for two seconds are provided, MAF gave in to its withdrawal in response to the request made, as well as in the interest of the child and not when expressed by one of the persons in charge of parental authority.

Bearing in mind that the procedure used at that time did not guarantee with total certainty the collection of parental consents have intensified measures to prevent these situations from occurring, such as the requirement of consent of both parents and, where appropriate, the obligation to justify the measures documented that only the consent of one of the parties is necessary.

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In fact, as mentioned before, it has been known that the court order authorizing the student's father to give his consent for the treatment of their images, without the need for the collaboration of the mother, in the terms provided in the car, that is, when it comes to competition of a federated nature, as occurs in the frame in which it appears in the video

published that gives rise to this sanctioning procedure.

Likewise, in order to avoid that in the future images of people who

have not transferred them, this protocol has been created, which appears in full as DO-

CUMENT NUMBER SEVEN which consists of the following: "a) When you are discharged

a person in one of the activities organized by MAF, it will be reviewed if he has yielded

or not the image rights, as well as the conditions in which it has been carried out and

will be included in the attached table. Likewise, if he had expressed any

jection about it as that he only wants pictures of the internal activities and not of

competitions or vice versa, will be reflected in the comments section. b) This table is

will be updated each time you sign up for an activity, taking into account what

arranged in the last form. c) In the case of minors under fourteen years of age, only

Mind images of these will be published in the event that the authorization of

both parents/guardians. In the event that only the authorization of one of the

them, supporting documentation will be requested. d) In the event that he showed his opposition

publication, new images will not be published and existing ones will be withdrawn.

try. e) Prior to publication, it will be checked whether the people who appear

cen have given their consent. f) Every time an image is published

nes, the circumstances of this will be documented."

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FIFTH.- OF THE MANAGEMENT OF THE PROCEDURE FOR THE EXERCISE OF DE-

RIGHTS This part shows its disagreement with the statements made

in relation to the management of the exercise of rights. First, the complainant

authenticated his identity in a reliable way, he sends an email in which he identifies as the mother of one of the people participating in the organized activities zed by MAF. Specifically, it stated the following:

COMPANY NAME OF THE RESPONSIBLE FOR THE TREATMENT: Maf Esquí Club ADDRESS-
IOL: Av. Padre Isla 36, 6º Dcha. León

"In accordance with the provisions of Regulation (EU) 2016/679 regarding the protection of natural persons with regard to the processing of personal data and the free circulation of said data, I REQUEST: I be informed of the categories of my personal data that your company is currently processing, the purpose of the treatment, the basis of legitimacy and the recipients of my personal information. In case of transferring my data to a third country or international organization, so-
It is lawful to provide me with information on the adequate guarantees related to said transfer.
international data conference. The requested information must be sent to this address.
email tion. Sincerely"

Three days after requesting your exercise, you are promptly informed that you will not
It is possible to provide you with any information in this regard, because as already mentioned,
no data had been provided in this regard. Specifically in the mail sent on 28
of August 2020, which is attached as DOCUMENT NUMBER EIGHT, you are informed
ma:

"In relation to personal data, we inform you that we do not have any data
about your person and, therefore, is not processed or transmitted to any
person or entity"

The mother of the registered person had never provided any information in this regard, so
that it is impossible to make any information available to you. In the second lu-
gar, all cancellations that have been requested by the complainant have been
attended as has been accredited.

In any case, with a view to improving in the future the way in which requests are handled of exercising rights, the protocol for managing requests for rights provided as DOCUMENT NUMBER NINE. For this reason, in the the day in which the requests made by the de-advertiser and in accordance with the provisions of the RGPD, it is understood by this part that it is not The sanction proposed in this regard is appropriate, so it is requested to be archived.

SIXTH.- MEASURES ADOPTED WITH A VIEW TO IMPROVING THE TREATMENT OF

PERSONAL DATA BY MAF. In order to improve the conditions

in which the personal data entrusted to them are processed, the following

following measures: a) Modification of the registration form in the activities that

organizes the club so that the boxes relating to each of the purposes of the treatment

ment are completed by users. (DOCUMENT NUMBER SIX) b) Modification

cation of the data collection form to collect the authorizations in an

independently for each of the purposes for which data is processed by MAF,

registration in club activities and treatment of image rights (DO-

PAPER NUMBER SIX). c) Protocol to determine which participants have yielded

do their image rights and those who do not (DOCUMENT NUMBER SEVEN). d) improvement

of the procedure established for the management of the exercise of rights (DOCUMENT

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NUMBER NINE) In relation to the complainant, it will proceed, in the event that

published in the future, in accordance with the provisions of the Order of the Court of

First Instance Number 10 of León.

SEVENTH.- GRADING OF THE PROPOSED PENALTY Subsidiary to

the allegation made previously, in the event that the Spanish Agency for

Data Protection determines the existence of an infringement in the terms ex-

posed in the Agreement to Start the Sanctioning Procedure, this party states

your requests that you proceed to the file of the agreement by which it is determined to the opening

of the sanctioning procedure against her and, instead, is warned to prove

the adoption of the measures it deems appropriate in the circumstances

provided for in Considering 148 of the RGPD that establishes: "CONSIDERING 148

RGPD In order to reinforce the application of the rules of this Regulation, any-

Any violation of this must be punished with sanctions, including administrative fines.

additionally to adequate measures imposed by the authority of

control under this Regulation, or in substitution of these.

In the event of a minor offence, or if the fine likely to be imposed constituted

a disproportionate burden on a natural person, rather than sanction by

fine, a warning may be imposed. However, special attention must be paid

tion to the nature, seriousness and duration of the infringement, to its intentional nature, to

the measures taken to mitigate the damages and losses suffered, to the degree of responsibility

bility or any relevant prior violation, to the manner in which the enforcement authority

control has been aware of the infraction, to the fulfillment of ordered measures

against the person in charge or person in charge, adherence to codes of conduct and any

any other aggravating or mitigating circumstance. In this case, all the pre-

assumptions required in this insofar as the infractions are minor and the

sanction would entail a disproportionate burden that would jeopardize the fu-

ture of the entity. MAF is a sports club, a non-profit organization that does not

generates any kind of economic benefit. The income generated by the activities

organized by MAF, cover the costs they generate such as travel

to the ski resorts or the monitors who teach the classes. In case that

If any profit is generated, it is used to renew the sports equipment needed.

necessary to carry out the activity of the club.

The imposition of a sanction such as the one proposed would cause such damage to the economy

of the club that would inevitably cause its disappearance. Thus abandoning the

movement of grassroots sport at a time when it is the only safe way to

make school-age children aware of assimilating a life project with habits

healthy, healthy eating avoid a sedentary lifestyle and educate them in a team setting.

Once the facts that are the subject of the complaint are known, to adopt in implanting

within its processes the following measures to guarantee respect for the rights

The rights of the people affected by the processing of personal data

carried out by the entity in order to be done within the greatest guarantees.

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In any case, this party wishes to make it clear to the Agency that, detected

the error has proceeded to act with the maximum diligence required, proceeding to adopt

immediately take the necessary measures to regularize the situation and deal with

Try to avoid identical or similar errors as much as possible.

In order to graduate the initially proposed sanction, it is requested that they be taken into account

the following circumstances that occur in this proceeding and that relate to

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we mention below: a. Only one person has been affected, without prejudice to

that he acted in accordance with the indications that appeared in the authorization granted

by the father. b. There has never been any intention on the part of MAF to break the law, they had procedures and forms in which they reported the conditions of the treatment and the cession of the images. c. The infringement, if it occurred, it occurred in a timely manner and was not continuous. There is no evidence that they have produced similar incidents before or after. Moreover, in the moment in which knowledge has been known, the considerations have been adopted following corrective measures to prevent it from happening again. d. The offense has ne its origin in the publication of a video in which the daughter of the complainant appears two seconds, which was published for six days and which was immediately released duced the mother's opposition, it was eliminated. and. The publication of image has not generated any benefit to MAF. F. There has been no intention ity on the part of MAF of violating data protection regulations.- g. MAF is not recidivist. It has never been sanctioned by the AEPD for infractions related to the processing of personal data without the consent of the affected party in its 12 years of existence h. The complainant has not proven any damage derived from the publication tion of the image of his daughter. i. At all times, MAF has shown its willingness to collaborate, both with the Spanish Agency for Data Protection, by answering to the requirements made within the framework of this procedure, such as with the complainant, when responding to the requests made j. Regularization of the situation irregular diligence.- MAF has implemented the corresponding di- rigid to correct and prevent similar situations from occurring. k. The consequences ences that for an entity like MAF the imposition of this could suppose, in con- creto, the disappearance of the club, as well as the cessation of activities.

For all of the above, MAF considers it appropriate that, where appropriate, and subsequently daily to the assessment of absence of guilt, by virtue of the ex- put –which suppose a qualified reduction of the unlawfulness of the act and of

their guilt and that prove the regularization of the irregular situation in a diligent manner.

people—, if the Agency does not conclude in the non-existence of the infraction or understands that

Circumstances are given for the figure of the warning to be applied to the

least it should be taken into consideration that the fact that it cannot be expected

a different action from her, entails that the corresponding sanction must be imposed.

tooth to a minor infraction IN ITS MINIMUM DEGREE In view of all the above,

I REQUEST, that this document be admitted and considered formulated in a timely and

forms the previous allegations and, by virtue of this, prior to the appropriate procedures,

agree: i. The filing of the file without imposition of any sanction. ii. Subsidiary-

mind is appropriate, in the event that it is understood that there has been an infraction,

upon your warning iii. Subsidiarily, in the event that the conduct of MAF

constitutes an a, the sanction corresponding to a minor infraction is imposed in its

minimum degree, NINE HUNDRED EUROS for each of the offences.

OTHERWISE I SAY that in accordance with the provisions of the procedural regulations,

proposes as DOCUMENTARY evidence that will consist of the contribution, at the time

timely procedural, of all those documents, including files in format

email, which support the assertions made by my client. Equally

REQUESTS that you admit the proposed evidence arbitrating all the necessary means.

EIGHTH: On 06/16/21, the test practice period began, agreeing-

se: a).- consider reproduced for evidentiary purposes the complaint filed by the de-

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advertiser and its documentation, the documents obtained and generated that form

part of file E/09054/2020 and b).- consider reproduced for evidentiary purposes, the allegations to the initiation agreement of PS/00104/2021, presented by the entity de-announced.

NINTH: On 08/14/21, the respondent entity is notified of the proposed resolution, in which, it is proposed that, by the Director of the Spanish Agency of Data Protection is sanctioned to the entity MAF.COM ESQUI CLUB, with CIF.: G24595647, owner of the website <https://www.mafesquiclub.com/>, for the following:

- Warn the entity claimed for the infringement of article 6 of the RGD, by prevent the user from giving consent freely and unequivocally for as long as the acceptance box was pre-ticked.
- With a fine of 5,000 euros, for the infringement of article 7 of the RGD, by not enable the user to offer free consent to the processing of their personal data for other purposes other than those that were actually offered, that is, for the use of the images obtained during the activity sporty.
- With a fine of 5,000 euros for the infringement of article 7 of the RGD, for the illicit treatment of personal data, in this case, the images taken of the claimant's daughter, a minor, without the express consent of both parents, for the purposes to which they were dedicated, that is, to participate in an action aimed at promoting the participation of girls, adolescents and adult women in sports activities, activity incompatible, according to the Judge's Order, without having previously obtained the consent of both parents.
- Proceed to FILE, to the entity, the sanctioning procedure for the infringement of article 15 of the RGD, in relation to article 12 of the aforementioned norm, having verified a diligent management in the performance of the

entity when removing the images of the girl from social networks.

TENTH: Notified of the resolution proposal, it has not had input in this Agency

no written arguments to the same, in the time granted for this purpose.

Of the actions carried out in this procedure, of the information and do-

documentation presented by the parties, the following facts have been accredited:

boys:

PROVEN FACTS

A.- In the present case, the claimant indicates in her writing that the entity MAF.COM

ESQUI CLUB, dedicated to carrying out ski learning courses, has used

illegitimate of the images of his daughter, a minor, while taking the course, since

has broadcast them on different social networks without their consent, even if they had the

permission of the father, who was the one who registered his daughter in the course.

In addition, you have tried to exercise your data protection rights before the entity

and they have not been taken care of. It also indicates that the privacy policy of the page

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entity's website, <https://www.mafesquiclub.com/>, does not comply with the regulations

in force, regarding the protection of user data.

B.- Of the documentation and information presented by the parties during the

process, the following aspects have been verified:

- On the pre-marked box, forcing users to accept

compulsorily all the stipulations indicated in your policy of

Privacy:

This Agency was able to verify, on 03/06/21, that there was a contact form at the url: <https://www.mafesquiclub.com/info-y-contacto.html>, where you could enter personal data of users. In this form there was the following message-
heh:

“X Sending this form implies acceptance of the privacy policy and the processing of personal data on the website (mandatory)”.

The box was pre-marked, which implied mandatory acceptance of the transaction. treatment of the personal data that the entity could obtain, without guaranteeing that the user had given their consent in an informed and unequivocal manner.

On 07/28/21, after initiating this sanctioning procedure-
dor, this Agency has been able to verify that, in the indicated contact form, the message compulsorily accepting the privacy policy had been modified, removing the pre-ticked box and including the following:

_ I have read and accept the <<privacy policy>> and the processing of personal data. web sonals”.

- On the treatment of the images obtained while the students enrolled practice skiing:

This Agency was able to verify, on 03/06/21, that, in the registration form in the sports club, it was indicated:
“(…) By sending this registration, the sender authorizes the use by the Club of the photographs in which he and his children under or over age intervene in the sports activity that is the object of the Club or in activities that have their cause, directly or indirectly, in that activity, the Club being able to use said photographs and the image contained in them embodied in any reproducing medium of the image. authorization does not have geographical area determined by what the Club and other individuals or

legal entities to which the Club may assign said photographs, or parts thereof,
in which the sender or his minor children intervene in those
activities, they will be able to use those photographs, or parts of them, in all
countries of the world without geographical limitation of any kind.

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The authorization refers to the totality of uses that the
photographs, or parts of these, using the technical means known in the
present and those that may develop in the future, and for any
application. All this with the sole exception and limitation of those uses
or applications that could violate the right to honor in the terms
foreseen in the Organic Law 1/85, of May 5, of Civil Protection to the
Right to Honour, Personal and Family Intimacy and Own Image.

The authorization does not set any time limit for its granting, so the
Authorization is considered granted for an unlimited period of time, although
As indicated above, there is always the possibility of exercising the
cancellation and opposition rights.

On 07/28/21, after the initiation of this sanctioning proceeding,
dor, this Agency has been able to verify that, on the page <https://www.mafesquiclub.com/nuestro-club/inscripcion.html> , intended for the registration of students in the activities
sports activities of the entity, there is the possibility of accepting or not voluntarily
volunteer, the following questions:

- Data processing authorization:

☐ I have read and accept the clauses of <<treatment of personal data>>.

- Authorization transfer of images:

☐ I have read and accept the <<transfer of image rights>> clauses.

- Admission and behavior regulations:

☐ I have read and accept the admission regulations, as well as the behavior regulations club lie.

From the information provided in the link <<transfer of image rights>>, you can read:

“INFORMED AUTHORIZATION FOR THE USE OF IMAGE RIGHTS
OF THE PARTICIPANTS IN THE ORGANIZATIONAL TRAINING STAGES
ZONES BY THE MAF.COM SKI CLUB

This document establishes the terms and conditions for which it will be proceed to the treatment of the image and voice of the participants in the Stages of Trainings organized by MAF.com Esquí Club.

The right to one's own image is recognized in article 18.1 of the CE and re-regulated by Organic Law 1/1982, of May 5, on the protection of the right to honour, to personal and family privacy and to one's own image, and the Regulation (EU) 2016/679 of the European Parliament and of the Council, April 27, 2016, on the protection of natural persons with regard to processing of personal data and the free circulation of these data (RGPD).

MAF.COM ESQUI CLUB, requests authorization for the participant in the training stages give the image rights on the photographs and/or audiovisual works obtained from it during its celebration. bliss

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Authorization can be revoked at any time. In that case, MAF.COM

ESQUI CLUB will proceed to delete the images that have been published and

You agree not to use them in the future.

The participant gives his authorization to MAF.COM ESQUI CLUB to make

use of the images taken and the voice of the minor, distributing and communicating

them to the public, always within the aforementioned purpose, especially through

by publication in the following media:

a) The website and profiles on social networks of MAF.COM ESQUI CLUB

b) Websites and magazines or publications where the activity of

MAF.COM SKI CLUB.

- On the dissemination of images of the daughter, a minor, without the

consent of one of the parents:

The dissemination of the images of the student, a minor, on social networks had

only the consent of the father, who enrolled his daughter in the ski course and

gave consent so that the images of her daughter, taking the course, could be

be disseminated on social networks. This situation was denounced by the mother, who

indicated to this Agency that, despite having the father's consent, she had never

given hers so her daughter could be recorded doing the exercises.

Regarding this issue, the entity claimed, in the period of allegations to the in-

co-initiation of this sanctioning procedure, the Judge has presented a copy of the order

Court of First Instance Number 10 of León (Family), number 00224/2021, dated

May 7, 2021 referring, as indicated in the first point of the "facts" to

that, "the claimant had submitted a document in order to resolve the discrepancy

or disagreement between her and her ex-husband in relation to the decision to be adopted

tar by him on the registration of his daughter in a certain ski club”.

Well, in the second paragraph of the AUTO agreement the following is indicated:

“(…) It is attributed to B.B.B. the power to decide the ski club in which your daughter must be registered and enrolled, in this case the so-called sports club here “Maf”, also authorizing the issuance of the corresponding license or federative card, authorizing those responsible for the dissemination or publication limited cation of images of the minor that are strictly related to competitions in which the minor participates as a member of said club, but refraining from making promotional videos with images of the girl and thousands without the consent of both parents.

The following was indicated in the claim filed with this Agency by the mother:

“(…) FIRST: Since 2019, the Maf Esquí Club, in which my 10-year-old daughter has registered for two seasons to learn to ski, spread without my authorization your image in various social networks. I have been aware of these publications on August 11, 2020 when the Maf published a advertising video with which they participated in a contest organized by the platform They are from here. Said video, in which close-ups appear

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of my daughter for several seconds, has been spread through the official website of the Maf Esquí Club, www.mafesguiclub.com, as well as in the following Networks Social: Facebook, YouTube, Twitter and Instagram. Attached as Doc. No.

3 the aforementioned video published by the club and individuals, as well as

captures of this in which my daughter appears (...)."

However, according to the respondent entity:

"(...) the video that is the one that originated the claim, only included

two images within the sports field, lasting two seconds, of the

daughter of the complainant, did not have a commercial or advertising purpose, but rather

participate in an action aimed at promoting the participation of girls, adolescents

and adult women in sports activities (...)."

C.- From the documentation and information presented by the parties, it has been possible

note the following events:

1°.- On 08/17/20 the claimed entity receives an email from the mother where

states the following: "At no time have I given my consent to

record my daughter, nor to take any type of photograph, much less to spread

your image through social networks. I order you to REMOVE IMMEDIATELY

all videos and photos from Facebook, Instagram or any other social network in

which appears the image of my daughter "

2°.- On 08/18/20, according to the claimed entity, the image of the

publication of the club and the organizers of the contest are informed,

"They are from Here", so that they remove the aforementioned video from their platform.

3°.- On 08/20/20, the claimant sends a burofax to the claimed entity in which

requests again the withdrawal of images of his daughter.

4°.- On 08/21/21 the claimed entity sends an email and a burofax to the

claimant announcing, among other things, that the steps had been taken

opportune for the withdrawal of the images of his daughter from social networks and in the

platforms where the images were: "(...) Notwithstanding all of the above, since

that we have no interest in any boy or girl in the first place, not even

course any of their parents or guardians, feel harmed by any

action or omission carried out by our club, we have proceeded to withdraw today, the day August 21, 2020, well before the deadline mentioned in your burofax, the images of his daughter from the video posted on social media (...)"

5º.- On 08/23/20 the "Ellas son de aqui" contest platform is withdrawn, the publication with the mentioned image.

6º.- On 08/24/20 it is launched again on the contest platform, "Ellas son de here", the publication without the images of the claimant's daughter.

7º.- On 08/25/20 the claimant sends a new email to the entity claimed in which the following is stated: "(...) I REQUEST: I be informed of the categories of my minor daughter's personal data that your company is processing in

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the actuality, the purpose of the treatment, the basis of legitimacy and the recipients of your personal information. If you are transferring your data to a third country or international organization, I request that you provide me with information on the guarantees relating to such international transfer of data. Information requested must send it to this email address. Sincerely."

8º.- On 08/28/20 the claimed entity sends an email to the claimant where the following is indicated: Good morning: Regarding your daughter, the only data that have been transferred by their father, through the club, to the Sports Federation of Winter of Castilla y León, are those that appear in the registration application that we attach hereto. These data are neither processed by this club nor kept in any database. The only transfer of these is the indicated, received and

authorized by his father (...)."

FOUNDATIONS OF LAW

I.- Competition.

II

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 re-reflected in the facts declared proven above reported:

a).- On the pre-marked box on the website, forcing users to compulsorily accept all the stipulations indicated in its policy of Privacy:

This Agency has been able to verify that, in the contact form included on the page web page, www.mafesquiclub.com, the initially pre-marked message, accepting the privacy policy and the other options in the treatment of personal data, had been modified after having started this pro-sanctioning procedure, eliminating the pre-marked boxes in the option to accept, now allowing its acceptance voluntarily.

In this sense, as indicated in recital (32) of the RGPD: "The consent must be given through a clear affirmative act that reflects a manifestation of free, specific, informed, and unequivocal will of the interested party to accept the processing of personal data concerning you, such as a statement in writing, including by electronic means, or an oral statement. This could include checking a box on an internet website, choosing technical parameters for the use of information society services, or any other

statement or conduct that clearly indicates in this context that the data subject accepts the proposal for the processing of your personal data. Therefore, the silence pre-ticked boxes or inaction should not constitute consent.”

For its part, article 4.11 of the RGPD defines the “consent of the interested party for the processing of your personal data”, such as: “any manifestation of free will, especially cific, informed and unequivocal by which the interested party accepts, either through a

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declaration or a clear affirmative action, the treatment of personal data that concern”.

Article 6 of the RGPD, details in section 1 the cases in which the processing of third-party data is considered lawful: “1. The processing will only be lawful if at least one of the following conditions is met: a) the interested party gave his consent to the processing of your personal data for one or more purposes specific; b) the treatment is necessary for the execution of a contract in which the interested party is a party or for the application at the request of the latter of measures pre-contractual; c) the treatment is necessary for the fulfillment of a legal obligation applicable to the data controller; d) the treatment is necessary to protect the vital interests of the data subject or another natural person; e) treatment is necessary for the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the data controller; f) the treatment is necessary for the satisfaction of legitimate interests pursued by the responsible for the treatment or by a third party, provided that said interests are not

the interests or the fundamental rights and freedoms of the interested party prevail that require the protection of personal data, in particular when the interested party be a child (...)"

In turn, article 6.1 of the LOPDGDD, indicates, on the processing of personal data based on the consent of the affected party that: "1. In accordance with the established in article 4.11 of Regulation (EU) 2016/679, consent is understood affected person, any manifestation of free, specific, informed and inappropriate will. equivocal by which he accepts, either through a statement or a clear action affirmative, the processing of personal data that concerns you (...)"

Therefore, the fact that the privacy policy acceptance boxes and treatment of personal data were pre-marked did not guarantee that the user gave informed consent.

These facts are constitutive of an infraction, attributable to the defendant, for violation of article 6 of the RGPD, by preventing users from giving their consent unequivocally and informed in advance, for as long as boxes were active.

Article 72.1.b) of the LOPDGDD, considers very serious, for prescription purposes, "The processing of personal data without the concurrence of any of the conditions of legality of the treatment established in article 6 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 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) sanction any person responsible or in charge of the treatment with a warning when

treatment operations have violated the provisions of this

Regulation; (...); i) impose an administrative fine pursuant to Article 83,

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in addition to or instead of the measures mentioned in this section, depending on the circumstances of each particular case.

For all these reasons, it is considered necessary to warn the entity claimed for the infringement of article 6 of the RGPD, for the time that the boxes were pre-marked in the option to "accept", for the processing of personal data, for other purposes different from those initially requested.

b).- On the treatment of the images obtained from the students enrolled in the courses:

In the present case, at first it was observed by this Agency that, before being able to send the form for registration in the ski courses, which offered by the entity, it was necessary to accept the treatment clauses of personal data and the treatment of the images that were obtained when recording the sports activity, its acceptance being mandatory.

Once the procedure was initiated due to the indicated irregularity, it was verified that the boxes that were pre-marked, their acceptance being mandatory by the user were modified, in such a way that at present there is the possibility of accept, voluntarily, the following data processing: a).- the processing of personal data indicated in the clauses of the privacy policy; b).- the treatment of the images obtained during the sports activity and c).- and the regulations

of the club.

In the information offered on the treatment of the images that can be recorded

It can be read that: (...) With the sending of this registration, the sender authorizes the

use by the Club of the photographs in which he and his minor or older children

of age intervene in the sports activity that is the object of the Club or in

activities that have their cause, directly or indirectly, in that activity, and the

Club use said photographs and the image that is reflected in them in any

image reproducing medium. The authorization has no geographical scope

determined by what the Club and other natural or legal persons to whom the Club

may assign said photographs, or parts thereof, in which the sender or their children

minors participate in those activities, they may use these photographs, or parts

of these, in all the countries of the world without geographical limitation of any kind.

The authorization refers to the totality of uses that the photographs may have, or

parts of these, using the technical means currently known and those that

could be developed in the future, and for any application. All this with the only

exception and limitation of those uses or applications that could threaten the

right to honor in the terms provided in Organic Law 1/85, of May 5, of

Civil Protection of the Right to Honour, Personal and Family Privacy and Image.

The authorization does not set any time limit for its granting, so the

authorization is considered granted for an unlimited period of time, although as

has indicated above, there is always the possibility of exercising the rights of

cancellation and opposition.

For its part, in the "Privacy Policy" of the entity, you can read:

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“PURPOSE OF DATA PROCESSING: The collection and processing of data personal has as its exclusive purpose the management, provision, expansion and improvement of the services requested at any time by the user, the sending of information, notices and alerts, as well as the monitoring of queries raised by users (...).”

Well, regarding the processing of personal data, it must be addressed, in a principle, as stipulated in article 6.1.b) of the RGPD, since it establishes that the processing of personal data will be lawful if necessary for the execution of a contract to which the interested party is a party. In the present case, as indicated In the privacy policy of the entity, this treatment would be for, "the management, provision, expansion and improvement of the services requested at any time by the user, the sending of information, warnings and alerts, as well as the follow-up of queries raised by users. All this, in accordance with the provisions of said Article.

However, for any other data processing not related to that purpose main, as it would be in this case, the use of the recorded images of the students doing the activity to publish or upload them to social networks, would be as stipulated in article 6.1.a) of the RGPD, where it is established that, "the treatment will only be lawful if the interested party gave their consent for the treatment of your personal data for one or more specific purposes”,

While article 7 of the RGPD indicates the following about consent:

"one. When the treatment is based on the consent of the interested party, the person in charge You must be able to demonstrate that you consented to the processing of your data personal.

2. If the data subject's consent is given in the context of a written statement

that also refers to other matters, the request for consent will be presented in

in such a way that it is clearly distinguishable from other matters, in an intelligible and

easy access and using clear and simple language. No part will be binding

of the statement that constitutes an infringement of this Regulation.

3. The interested party shall have the right to withdraw their consent at any time. The

Withdrawal of consent will not affect the legality of the treatment based on the

consent prior to withdrawal. Before giving their consent, the interested party

will be informed of it. It will be as easy to withdraw consent as it is to give it.

4. When assessing whether the consent has been freely given, it will be taken into account in the

greatest extent possible whether, among other things, the performance of a contract,

including the provision of a service, is subject to consent to the processing of

personal data that is not necessary for the execution of said contract”.

In relation to the two cited articles, recital (32) must be taken into account.

of the RGPD, since it indicates that:

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“Consent must be given through a clear affirmative act that reflects a

free, specific, informed, and unequivocal manifestation of the interested party's

accept the treatment of personal data that concerns you... Therefore, the

silence, pre-ticked boxes, or inaction should not constitute consent. The

Consent must be given for all processing activities carried out with the

same or the same ends. When the treatment has several purposes, the

consent for all of them...”

Likewise, article 6.2 of the LOPDGDD indicates, on the treatment based on the consent, that: “2. When it is intended to base the treatment of the data on the consent of the affected party for a plurality of purposes, it will be necessary that it is specifically and unequivocally stated that said consent is granted for all of them.

Well, in accordance with everything stated above, the processing of data personal requires the existence of a legal basis that legitimizes it, as it is, in this case, the existing contractual relationship. But if, in addition, the entity wishes to carry out a processing of personal data, in this case, the recorded images of the students for other unrelated purposes, as it is, its publication on social networks must collect your consent given validly and expressly. not valid, because

Therefore, it is mandatory to check the acceptance box on the registration form without giving the user the option to give free and individualized consent for each one of the purposes other than the main one.

The known facts about the processing of personal data, during the time that were executed, are constitutive of an infraction, attributable to the claimed, for violation of article 7 of the aforementioned RGPD, by not allowing the user to carry out a Free consent to the processing of personal data for other purposes unrelated to those that were actually offered.

Article 72.1.c) of the LOPDGDD considers it very serious, for prescription purposes, “Breach of the requirements demanded by article 7 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 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.

In accordance with the precepts indicated and for the purpose of setting the amount of the penalty impose in the present case, it is considered appropriate to graduate the sanction according to with the following aggravating criteria established in article 83.2 of the RGPD:

- Due to the seriousness and duration of the infraction, taking into account that the entity forced users to accept a treatment of personal data, in this case, recorded images of underage students, for others purposes other than those initially intended, such as publishing on networks of their sports activities carried out, having to mark obligatorily the acceptance box in the registration form without giving the option for the user to give free and individualized consent for each one of the purposes unrelated to the main one, (section a).

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The intentionality in the infraction, by not allowing the user to carry out a Free consent to the processing of personal data for other purposes unrelated to those that were actually offered, since they had to mark the boxes for these purposes are mandatory (publications of images in social networks), if they wanted to be admitted to the ski courses, (section b).

The balance of the circumstances contemplated in article 83.2 of the RGPD and 76.2 of the LOPDGDD, with respect to the infraction committed, by violating what is established in the Article 7 of the RGPD, makes it possible to set a penalty of 5,000 euros (five thousand euros).

c).- On the dissemination of the images of the daughter, a minor, without the

consent of one of the parents:

The order of the Court of First Instance Number 10 of León (Family) number

00224/2021, dated May 7, 2021 referring to the discrepancy or disagreement

existing between the claimant and her ex-husband in relation to the decision adopted

by this, on the registration of his daughter in the ski club, it is clearly indicated that:

“(...) authorizing those responsible for this limited dissemination or publication of images

genes of the minor that are strictly related to competitions in which the minor

participate as a federated member in said club, but refraining from carrying out images

of the girl promotional videos and the like without the consent of both parents.

bulls”.

However, as acknowledged by the respondent entity According to the claim filed

in this Agency on 10/15/20, the following is stated verbatim, among others:

(...) the video that is the one that originated the claim, only two images were included.

genes within the sports field, lasting two seconds, of the daughter of the de-

advertiser, did not have a commercial or advertising purpose, but to participate in an action

aimed at promoting the participation of girls, adolescents and adult women in activities

sports data (...)”.

Therefore, attending in this case to what is indicated by the Judge's Order, the images

obtained from the minor could only be used for those purposes for which:

“(...) are strictly related to competitions in which the minor participates as a fe-

dedicated to said club (...)” and not to make: “(...) promotional videos and the like without

the consent of both parents (...)”, as it was done.

As recognized by the claimed entity, the images of the girl were used to:

“(...) participate in an action aimed at promoting the participation of girls, adolescents,

women and adult women in sports activities (...)”, activity not allowed, according to the

Order of the Judge, without having previously obtained the consent of both parents.

Article 5 RGPD establishes the principles that must govern the processing of data and mentions among them that of "legality, loyalty and transparency". This precept provides that: "Personal data will be processed lawfully, loyally and transparent with the interested party.

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For its part, article 6 of the RGPD establishes the necessary requirements to considers the processing of personal data lawful while article 7 of the aforementioned RGPD, establishes the conditions for the treatment of personal data when this is based on the consent of the interested party, as specified in the foundation (V) above.

In the case at hand, since it is a treatment of personal data of a minor, we must bear in mind the provisions of article Article 92 of the LOPDGDD when it indicates, on the protection of data of minors on the Internet, that: "Educational centers and any natural or legal persons that develop activities in which minors participate will guarantee the protection of the best interest of the minor and their fundamental rights, especially the right to the protection of personal data, in the publication or dissemination of your personal data through services of the society of the information. When such publication or dissemination were to take place through social network services or equivalent services must have the consent of the minor or their legal representatives, in accordance with the provisions of the article 7 of this organic law".

Thus, the known facts are constitutive of an infraction, attributable to the claimed, for violation of article 7 of the RGPD, for the illicit treatment of the personal data (images) of a minor, without the express consent of both parents.

Article 72.1.c) of the LOPDGDD classifies as very serious, for prescription purposes:

“The breach of the requirements demanded in article 7 of the RGPD, for the validity of consent”.

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

In accordance with the precepts indicated and for the purpose of setting the amount of the penalty impose in the present case, it is considered appropriate to graduate the sanction according to with the following aggravating criteria established in article 83.2 of the RGPD:

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The seriousness of the infraction, taking into consideration that a illicit processing of images of underage students, without the express consent of both parents as established by the judgment of the Court of First Instance Number 10 of León, No. 00224/2021, of date May 7, 2021, previously stated, (section a).

The negligence in the infringement, by using only the consent of one of the parents to carry out a treatment of the personal data of the underage students, unrelated to the purpose for which they had been obtained, in this case, the use of images obtained from sports activities made, to post them on social networks with the aim of promoting

said activity, (section b).

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The balance of the circumstances contemplated in article 83.2 of the RGPD and 76.2 of the LOPDGDD, with respect to the infraction committed by violating what is established in the Article 7 of the RGPD, allows a penalty of 5,000 euros (five thousand euros) to be set.

d).- On the lack of diligence in the management of the rights of the users in

Regarding your personal data:

From the documentation and information presented by both parties throughout the procedure, it has been verified that, on 08/17/20, the entity claimed received an email from the claimant where she states that she had not given her consent feeling so that images of his daughter, a minor, were published and that, for Therefore, they should immediately remove them from any platform where they were hanging. gadas.

Well, by all indications, on 08/18/20, one day after the request for the claimant, the images of the girl were removed from the entity's website and from the social networks and the organizers of the contest were notified, "They are from here", so that they remove the aforementioned video from their platform. Situation that occurred on 08/23/20, (5 days after being notified).

Therefore, it is considered that the actions of the entity complained against in relation to

The management of the rights of users regarding their personal data is not contradicts the provisions of article 15 of the RGPD.

In view of the foregoing, the following is issued:

:

RESOLVE

FIRST: IMPOSE, on the entity, MAF.COM ESQUI CLUB, with CIF.: G24595647,

owner of the website <https://www.mafesquiclub.com/>, the following sanctions:

- Fine of 5,000 euros, for the infringement of article 7 of the RGD, by not allowing

the user to offer free consent to the processing of their personal data

for other purposes unrelated to those that were actually offered, that is, for the

use of the images obtained during sports activity.

- Fine of 5,000 euros for the infringement of article 7 of the RGD, for the treatment

illicit of personal data, in this case, the images taken of the daughter

of the claimant, a minor, without the express consent of both

parents, to allocate them to carry out a campaign aimed at promoting the

participation of girls, adolescents and adult women in activities

sports, without having previously obtained the consent of both

parents.

SECOND: ADDRESS a Warning to the entity, MAF.COM ESQUI CLUB, for the

infringement of article 6 of the RGD, by preventing the user from carrying out the

consent freely and unequivocally during the time that the checkbox was

pre-marked acceptance in the "I accept" option

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THIRD: FILE, to the entity MAF.COM ESQUI CLUB, the procedure

sanctioning party for the infringement of article 15 of the RGD, in relation to article 12

of the aforementioned norm, having verified a diligent management in the action of the entity when removing the images of the girl from social networks.

FOURTH: NOTIFY this resolution to the entity, MAF.COM ESQUI CLUB and the claimant about the outcome 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 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

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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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