

□ Procedure No.: PS/00173/2022 (EXP202105347)

RESOLUTION OF THE SANCTION PROCEDURE

Of the actions carried out by the Spanish Data Protection Agency before the entity UNIQUEDESIGN & DECOR, S.L., with CIF.: B87754438 owner of the page website <https://www.uniquedesigndecor.com/>, (hereinafter "the claimed party"), under of the claim presented by D^a. A.A.A., for the alleged violation of the data protection regulations: Regulation (EU) 2016/679, of the Parliament European Union and of the Council, of 04/27/16, regarding the Protection of Physical Persons regarding the Processing of Personal Data and the Free Movement of these Data (GDPR) and Organic Law 3/2018, of December 5, Protection of Personal Data and Guarantee of Digital Rights (LOPDGDD), and against the Law 34/2002, of July 11, on Services of the Information Society and Commerce Electronic (LSSI), and attending to the following:

BACKGROUND

FIRST: On 10/20/21, a document submitted by the claimant, in which she indicated, among other things, the following:

"1) On October 22 at 4:45 p.m. it was published by the user "****USER.1" on the website (***URL.1), presumably (...) of UNIQUE DESIGN & DECOR S.L, B.B.B., a message accessible to the public in which Said user published the name and surname "AAA.", claiming that the same had made a previous publication "slandering" said entity, not said publication having been made by my client, but by part of some other user.

2) That additionally, the website of said company (<https://www.uniquedesigndecor.com>) does not have a privacy policy

accessible in which the obligations set forth in article 13 are reported

GDPR,

online form

(<https://www.uniquedesigndecor.com/contact>) in which data is requested

personal (name, email, subject and message).

to dispose

of a

despite

3) That the website of the aforementioned company installs a total of 5 cookies not

essential, without prior express consent and whose purposes are

tracking of accessing users.

A screenshot of the chat in question is provided to the claim document, where you can

read the following comments:

User comment "***USER.1".- 2021-10-22 16:45 @C.C.C.:

"Good afternoon (deleted by administrator), first you hide your identity

and the second thing you write false things about the company because you do not publish the photo

of your finished pool to see what you think??? I will proceed to put

complaint for slander.

User response "A.A.A."- 2021-10-22 17:30 @C.C.C.:

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"Good afternoon, ***USER.1. I will not allow you to use my name

about something I have nothing to do with. So go ahead and put the

demands that you consider, that I will be waiting for them. Let's see who is the one slander whom."

SECOND: On 12/27/21, in accordance with the provisions of article 65.4 of the LOPDGDD Law, said claim was transferred to the claimed party, to proceed with its analysis and inform this Agency within a month of the actions carried out to adapt to the requirements established in the regulations of Data Protection.

THIRD: On 01/23/22, by the Director of the Spanish Agency for Protection of Data, an agreement is issued to admit the processing of the claim presented, in accordance with article 65 of the LPDGDD Law, when assessing possible rational indications of a violation of the rules in the field of competences of the Spanish Data Protection Agency

FOURTH: On 01/27/22, the claimed entity presents before this Agency, written response to the request made where, among others, it indicates the following:

"As responsible for data processing, once the facts have been analyzed Given the claim of the aforementioned client, we have proceeded to request the corresponding company the annulment of any personal data, proceeding later to the verification it has been possible to verify that Said data has been eliminated, informing the interested party via email of said facts and issuing the corresponding documentation of information and consent to the processing of personal data to return it signed, since the invoice is pending.

The cause of said event was an error on the part of the company when issuing response regarding an unfavorable comment about my company does not neither respecting data protection by alluding to me and writing my name on an unreliable page since it has multiple complaints

by companies in relation to false comments and in which it is possible to

It should be noted that the claimant answered me on that same page...

The company has the implementation of data protection of character

personal, also counting the web page with said implantation and the cookies

corresponding implementation is renewed annually and has its

corresponding quality controls.

FIFTH: On 06/08/22, this Agency accesses the website

www.gowork.com and <https://www.uniquedesigndecor.com> being aware of the

following extremes, with respect to the processing of personal data, its privacy policy

privacy and cookies policy:

a).- Regarding the publication of the personal data of the claimant without her

www.gowork.com,

by the defendant:

consent on the website,

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When accessing the page: ***URL.1, in which the claimant indicates that they have published

your personal data without your consent dated 10/22/21, in a comment of the

chat, it can be checked as of today (05/20/22), the comments posted

by the defendant and by the claimant are the following:

***USER.1, 2021-10-22 16:45, @C.C.C.: Good afternoon (deleted by the

administrator), the first you hide your identity and the second you write things

false about the company because you do not post the photo of your finished pool to

see what you think ???, I will proceed to file a complaint for slander.

A.A.A., 2021-10-22 17:30 @C.C.C.: Good afternoon, ***USER.1. I'm not going

to consent that you use my name on something that I have nothing to do with.

So, go ahead, put the demands that you consider, I will be

expecting. Let's see who is slandering whom.

Therefore, in the comment that the user "****USER.1" makes at 4:45 p.m.

10/22/21, it can be verified as much, in the claim presented on the day

10/20/21, as in the verification carried out by this Agency on 05/20/22, the name

of the recipient of the comment has been deleted by the administrator (...Good afternoon,

(removed by administrator), first thing...).

b).- About the "Privacy Policy" on the claimed website

<https://www.uniquedesigndecor.com>

:

1º.- When the indicated web page is accessed for the first time, at the bottom

A banner appears on the page with the following information:

We use cookies on our website to see how you interact with it. To the

If you accept them, you agree to our use of these cookies. <<Policy

privacy>>

If you try to access the "Privacy Policy" of the web, clicking on the option,

The website does not display any document that contains information on the privacy policy.

privacy. Only the contact form indicated in the section is displayed

former. There is no other link on the page to a possible "Policy of

Privacy".

c).- About

<https://www.uniquedesigndecor.com>

:

the Cookies Policy in

the claimed web

1.- When entering the web for the first time, once the history terminal equipment has been cleaned

navigation and cookies, without accepting cookies or taking any action on the

web page has been verified, through the tool "inspect" application

from the Google Chrome browser, which does not use any third-party cookies. The

Own cookies that are used on the web are: "svSession"; "hs" and "XSRF-TOKEN", no

being able to detect if these cookies are technical and/or necessary or not.

2.- There is an information banner about cookies on the main page with the

following message: "We use cookies on our website to see how you interact

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with her. By accepting them, you agree to our use of these cookies. Policy

privacy": <<Options>>

<<Accept>>.

3.- If the cookies control panel is accessed through the link <<Options>>, the

web displays a page or control panel verifying that the groups of cookies

are pre-marked in the "NOT accepted" option:

- Essential Cookies:

-Marketing Cookies:

- Functional Cookies:

- Analytical Cookies:

Off ☐ On.

Off ☐ On.

Off ☐ On.

Off ☐ On.

<<Save>>

If you choose to "Save" the configuration without having accepted any group of cookies,

It is checked how the web continues without using third-party cookies.

4.- If you choose to "accept" all cookies in the banner on the main page, you will

Check how the web continues without using third-party cookies and continues using the

Same own cookies as at the beginning together with the new cookie: "consent".

SIXTH: On 06/08/22, by the Board of Directors of the Spanish Agency for

Data Protection, a sanctioning procedure is initiated against the claimed entity, at

assess reasonable evidence of violation of the provisions of article 13 of the

GDPR, lacking, on its website, a "Privacy Policy" in accordance with the

stipulated in the article indicated, with an initial penalty of 5,000 euros.

In turn, it was verified that the claimant's personal data had been

deleted by the administrator of the web page ***URL.1, so it could not be

to verify the existence of an illegal treatment of the same.

It was also verified that the own cookies used by the web, being

presumably technical or necessary, would be excluded from the scope of application

of article 22.2 of the LSSI, and, therefore, it would not be necessary to inform or obtain the

consent to its use, considering, therefore, that the "Cookies Policy", of

the website <https://www.uniquedesigndecor.com>, does not contradict what is stipulated

in article 22.2 of the LSSI.

SEVENTH: Once the start-up agreement has been notified to the claimed party, the latter in writing

dated 06/22/22 formulated, in summary, the following allegations:

"As *** POSITION 1 of the company Uniquehouse & Decor I am writing to you

in relation to the initiation of the Sanctioning procedure No: PS/00173/2022 where

The company is penalized for not having a privacy policy in its

Web page; As you could already see in the previous letter, what was claimed was

corrected everything correctly so the intention of the company is not

bad, please take this fact into consideration in the procedure since

we resorted to an internet platform called "WIX" that offered us the

creation of a web page by not having computer knowledge for the

realization of the same, with an annual payment of which I attach proof of

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payment for which I consider that the responsibility would correspond to the

wix platform for not having done it correctly and not warning me

of said fact , this sanction supposes a gap for our company as

how things are today and the work that is costing us to leave

forward we pay for all LDP, WEB PAGE hoping that everything is

correct and in the end they do not do things correctly and the responsibility is

referred to the company, in case of having to abide by said sanction, which I hope will not

Be it so, we pray for some kind of facility. I don't want to have any debt and we

it is impossible to cope with it, thanking them in advance".

EIGHTH: On 07/14/22, this Agency accessed the website,

<https://www.uniquedesigndecor.com>

having knowledge of the following

ends, regarding the processing of personal data and its privacy policy:

If you try to access the "Privacy Policy" of the web, clicking on the option indicated, the website does not display any document that contains information about the Privacy Policy. Only the contact form is displayed. does not exist in the page no other link to a possible "Privacy Policy".

NINTH: On 07/19/22, the respondent entity is notified of the proposed resolution in which it was proposed that, by the Director of the Spanish Agency for Protection of Data proceed to sanction the entity, in accordance with the provisions of Articles 63 and 64 of Law 39/2015, of October 1, on the Procedure Administrative Committee of Public Administrations (LPACAP), a sanction of 5,000 euros for the non-existence, on its website, of a "Privacy Policy" and that, order it, as a measure, in accordance with the provisions of art. 69 of the LOPDGDD, the inclusion of the necessary information on its website, which must provide to the users of the page, in accordance with the provisions of article 13 of the GDPR.

TENTH: Notified the proposed resolution to the complainant, dated 07/29/22, receives in this Agency a written statement of allegations to the proposal, in which it is indicated:

"As *** POSITION 1 of the Uniquehouse & Decor company, I am writing to you in relation to the initiation of the Sanctioning procedure No: PS/00173/2021 where the company is sanctioned for not having a privacy policy in its Web page ; As you could already observe in the previous writing, an attempt has been made correct everything correctly by requiring the Wix platform to correct it not receiving a response from you or from the company in charge of the data protection reiterating to me that the intention of the company is not bad, we have proceeded to hire another company with the corresponding disbursement that this takes committing to solve everything for me as soon as possible Please take this fact into consideration as I already commented on it.

previous writing, this sanction supposes a gap for our company as
how things are today and the work that is costing us to leave
forward we pay for all LDP, WEB PAGE hoping that everything is
correct and in the end they do not do things correctly and the responsibility is
referred to the company, in case of having to abide by said sanction, which I hope will not
Be it like that, we pray for some kind of facility. I don't want to have any debt and it is

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impossible to deal with it, otherwise we will be forced to close said
company, thanking you in advance, receive a cordial greeting”.

ELEVENTH: On 08/03/22, a new letter was received from the defendant
in which he states the following:

"As a result of the alarming requirements made by the AEPD, the
proceeded to hire a professional service in terms of data protection
as it is our intention to review and correct any possible incident not
detected by the former Data Protection company.

The website should have been supervised and updated by the company
which at the time was hired for aspects of data protection and
apparently they have not given the timely follow-up. In view of the
claim we have proceeded to hire a professional firm in this
matter through whose advice is proceeding to the revision and
Correction of any possible incident. We will be available shortly
to report on the new measures adopted to comply with the

General Data Protection Regulation on the website in particular and in the company in general”.

TWELFTH: On 09/26/22, this Agency accessed the

Web page,

having knowledge of the

following extremes, with respect to its privacy policy:

<https://www.uniquedesigndecor.com>

If you access the "Privacy Policy" of the web, clicking on the option located

At the top of the main page, the website displays a document that

contains the following information about the privacy policy:

“We receive, collect and store any information you enter on

our website or otherwise provide to us. In addition, we collect

Internet Protocol (IP) address used to connect your computer to

Internet; login details, email address, password,

computer and connection information and purchase history.

We may use software tools to measure and collect information from

session, including page response times, duration of

visits to certain pages, the information of interaction of the page and the

methods used to navigate away from the page. We also collect

personally identifiable information (including name, email,

password, communications), payment details (including account information,

credit card), comments, suggestions, product reviews,

recommendations and personal profile.

When you make a transaction on our website, as part of the

process, we collect personal information that you provide to us, such as your

name, physical address and email address. Your information

personal will be used only for the specific reasons indicated

previously.

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We collect such personal and non-personal information for the following

Purposes: To provide and operate the Services; To provide to

our users ongoing customer support and technical support; To

contact our visitors and users with general notices and

personalized service-related and promotional messages; For

create aggregated statistical data and other aggregated non-personal information or

deducted, that we or our business partners can use to

provide and improve our respective services; To comply with the

applicable laws and regulations

Our company is hosted on the Wix.com platform. wix.com us

provides the online platform that allows us to sell our products to you

products and services. Your data may be stored through the

Wix.com data storage, databases and applications

Wix.com overviews. They store your data on secure servers behind

from a firewallAll direct payment gateways offered by Wix.com and

used by our company adhere to the standards established by

PCI-DSS are administered by the PCI Security Standards Council, which is a

joint effort of brands such as Visa, MasterCard, American Express and

discover. PCI-DSS requirements help ensure the secure handling of

credit card information from our store and its

Service providers.

We may contact you to notify you about your account, to troubleshoot your account, resolve a dispute, collect fees, or money owed, to probe your opinions through surveys or questionnaires, to send updates about our company, or when as necessary to contact you to enforce our User Agreement, applicable national laws and any agreements we may have with you. For these purposes, we may contact you by email, email, phone, text messages and postal mail. If you don't want that process your data, contact us at uddecor.sl@gmail.com or send us an

Mail to: C/ De la Dehesa Vecinal 6, 28694 Chapineria

We reserve the right to change this privacy policy at any time, so check back often. The changes and Clarifications will take effect immediately after their publication in the Web page. If we make material changes to this policy, we will we will notify you that it has been updated, so that you know what information we collect, how we use it, and under what circumstances, if any, we use or disclose the information.

If you want to: access, correct, modify or delete any information information we have about you, you are invited to contact us at uddecor.sl@gmail.com or send us an email to: C/ De la Dehesa Vecinal 6, 28694 Chapineria".

PROVEN FACTS.

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Of the actions carried out in this procedure and of the information and

documentation presented, the following facts have been accredited:

First: In the checks carried out by this Agency on the website [https://](https://www.uniquedesigndecor.com)

www.uniquedesigndecor.com, both on 06/08/22 and on 07/14/22 after

that the person responsible for the page indicate to this Agency that they have corrected the

defects in it, it continues to be verified that if you try to access the "Policy of

Privacy" of the web, clicking on the option, the web does not display any document

containing information about the privacy policy. It only displays the

Contact Form. There is no other link on the page to a possible

"Privacy Policy".

Second: After notification of the resolution proposal and having received the written

of allegations of the claimed party indicating the rectification of the deficiencies in

the "Privacy Policy" of the web page, it was accessed by checking the

following irregularities: There is no identification of the person in charge of the web; No

there is information about the consent given by web users; No

there is information on the legitimacy of the processing of personal data; No

there is information about the possible recipients with whom they will share the data; No

there is information about the time of conservation of personal data; Does not exist

information on the possibility of filing a claim with the AEPD.

FUNDAMENTALS OF LAW

I.- Competition:

The Director of the Spanish Agency is competent to resolve this procedure

of Data Protection, by virtue of the powers that article 58.2 of the GDPR recognizes

each Control Authority and, as established in arts. 47, 64.2 and 68.1 of the Law

LOPDGDD.

II.- About the "Privacy Policy" of the web <https://www.uniquedesigndecor.com>:

Regarding the information that the person responsible for the processing of personal data

should be proportional to the users, recital 61) of the GDPR indicates that:

"Stakeholders must be provided with information on the treatment of their

personal data at the time it is obtained from them or, if obtained

from another source, within a reasonable time, depending on the circumstances of the

case. If the personal data can be legitimately communicated to another

addressee, the interested party must be informed at the time the

communicated to the recipient for the first time. The data controller who

plans to process the data for a purpose other than that for which they were collected

must provide the data subject, prior to such further processing,

information about that other purpose and other necessary information. when the origin

of personal data cannot be provided to the interested party because it has been used

various sources, general information should be provided.

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For its part, article 13 of the GDPR details the information that must be

provide the interested party when the data is collected directly from him,

establishing the following:

"1. When personal data relating to him or her is obtained from an interested party, the

responsible for the treatment, at the time they are obtained,

will provide: a) the identity and contact details of the person in charge and, where appropriate, of his representative; b) the contact details of the data protection officer data, if applicable; c) the purposes of the processing for which the data is intended personal data and the legal basis of the treatment; d) when the treatment is based in article 6, paragraph 1, letter f), the legitimate interests of the controller or a third; e) the recipients or categories of recipients of the data personal, if applicable; f) where appropriate, the intention of the person responsible for transferring personal data to a third country or international organization and the existence or absence of an adequacy decision from the Commission, or, in the case of transfers indicated in Articles 46 or 47 or Article 49(1), second paragraph, reference to the adequate or appropriate guarantees and the means to obtain a copy of these or the fact that they have been provided.

2. In addition to the information mentioned in section 1, the person responsible for the processing will provide the interested party, at the time the data is obtained personal data, the following information necessary to guarantee a fair and transparent data processing: a) the period during which will keep the personal data or, when this is not possible, the criteria used to determine this term; b) the existence of the right to request the responsible for the treatment access to 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 data portability; c) when the treatment is based on article 6, paragraph 1, letter a), or the Article 9(2)(a), the existence of the right to withdraw the consent at any time, without affecting the legality of the treatment based on 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 legal or contractual requirement, or a requirement necessary 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 the elaboration of profiles, referred to in article 22, sections 1 and 4, and, when least in such cases, significant information about the applied logic, as well as well as the significance and expected consequences of such processing for the interested".

Therefore, the fact that the website in question can obtain personal data from the users and that there is NO, in its "Privacy Policy" the information that is required, as established in article 13 of the GDPR, constitutes an infringement of the same.

In this sense, 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 GDPR"

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This infraction can be sanctioned with a fine of a maximum of €20,000,000 or, in the case of a company, an amount equivalent to a maximum of 4% of the total annual global business volume of the previous financial year, opting for the of greater amount, in accordance with article 83.5.b) of the GDPR.

In accordance with the precepts indicated, for the purpose of setting the amount of the sanction to imposed 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 GDPR:

- Section a), the duration of the offence. Taking into account the time that the claim is filed with this Agency on 10/20/21 and already then

denounced that the web page in question lacked a Privacy Policy.

Pursuant to the foregoing, the Director of the Spanish Agency for

Data Protection,

RESOLVES:

FIRST: IMPOSE the entity UNIQUEDESIGN & DECOR, S.L., with CIF.:

B87754438, owner of the website <https://www.uniquedesigndecor.com/>, a

penalty of 5,000 euros (five thousand euros) for violation of article 13 of the GDPR,

regarding the lack of information provided to the interested parties at the time of obtain your personal data through its website

SECOND: ORDER the entity UNIQUEDESIGN & DECOR, S.L to modify,

within a month, the information provided in the "Privacy Policy" of your

web page <https://www.uniquedesigndecor.com> adapting it to the provisions of the

article 13 of the RGPD, as well as to inform this Agency within the same period of the measures taken.

THIRD: NOTIFY this resolution to the entity UNIQUEDESIGN &

DECOR, S.L.

FOURTH: Warn the penalized party that the sanction imposed must be made effective by

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

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

Common of Public Administrations, within the voluntary payment period indicated in the

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 17

December, by depositing it in the restricted account No. ES00 0000 0000 0000

0000 0000, opened in the name of the Spanish Data Protection Agency in the

Banco CAIXABANK, S.A. or otherwise, it will proceed to its collection in

executive period.

Once the notification has been received and once executed, if the execution date 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 or immediately following business month, and if

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

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

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In accordance with the provisions of article 50 of the LOPDGDD, this

Resolution will be made public once the interested parties have been notified.

Against this resolution, which puts an end to the administrative procedure (article 48.6 of the

LOPDGDD), and in accordance with the provisions of articles 112 and 123 of the Law

39/2015, of October 1, of the Common Administrative Procedure of the

Public Administrations, interested parties may optionally file

appeal for reversal before the Director of the Spanish Agency for Data Protection

within a month from the day following notification of this

resolution or directly contentious-administrative appeal before the Chamber of

contentious-administrative of the National Court, in accordance with the provisions of the

article 25 and in section 5 of the fourth additional provision of Law 29/1998, of

July 13, regulating the Contentious-administrative Jurisdiction, within the period of

two months from the day following the notification of this act, according to what

provided for in article 46.1 of the aforementioned legal text.

Finally, it is noted that in accordance with the provisions of art. 90.3 a) of Law 39/2015,

of October 1, of the Common Administrative Procedure of the Administrations

Public, the firm resolution may be temporarily suspended in administrative proceedings if

The interested party declares his intention to file a contentious-administrative appeal.

If this is the case, the interested party must formally communicate this fact through

writing addressed to the Spanish Data Protection Agency, presenting it through

of the Electronic Registry of the Agency [[https://sedeagpd.gob.es/sede-electronica-](https://sedeagpd.gob.es/sede-electronica-web/)

web/], or through any of the other registries 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 proceedings within a period of two months from the day following the

Notification of this resolution would terminate the precautionary suspension.

Mar Spain Marti

Director of the Spanish Data Protection Agency.

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