

□ Procedure No.: EXP202100876 (PS/00136/2022)

## RESOLUTION SANCTION PROCEDURE

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

## BACKGROUND

FIRST: Dated 07/02/21, you have entered this Agency, writing presented by D.A.A.A. (hereinafter, "the complaining party"), against the entity, AD735 DATA MEDIA ADVERTISING S.L. with CIF.: B87781795, (hereinafter, "the claimed party") by the alleged violation of data protection regulations: Regulation (EU) 2016/679, of the European Parliament and of the Council, of 04/27/16, regarding the Protection of Natural Persons with regard to the Processing of Personal Data and the Free Circulation of these Data (GDPR), Organic Law 3/2018, of December 5, Protection of Personal Data and Guarantee of Digital Rights (LOPDGDD) and based on the following facts:

"After exercising my rights of access, opposition and limitation of the treatment for receiving a commercial communication by SMS on my phone from the MÁSMOVIL identification without my having requested or authorized it, File a claim with the AEPD for lack of response.

The AEPD resolved in RESOLUTION R/00155/2021 (PS/161/2021) that, in the Within 10 business days, a certification will be sent to me attends to the right exercised or is denied with reasons indicating the causes, and that it be communicated to the Agency within the same period.

After that, I received a response from the claimed entity indicating that they had obtained my data through the form to participate in the raffle of a trip for two people published on the website

sales.es, which is absolutely false.

After telling them that I had not entered my personal data through that form, and therefore did not have my consent, the claimed is limited to answering that it does not have the necessary technology to be able to certify the identity of the people who send the data through the forms enabled on their websites.

In addition, this is a recurring strategy of the one claimed, since it was also used in PS/00281/2018: I have never provided my data to the website [www.premium-sales.es](http://www.premium-sales.es) or to participate in a raffle or for my data was used for commercial purposes, or anything else to website [www.premium-sales.es](http://www.premium-sales.es), adding that the company AD735 DATA MEDIA ADVERSITING, S.L. You cannot prove something that has not happened. I have never provided my data to your website.

This entity was already sanctioned in PS/00283/2018, (fine 2,000) and is involved in other procedures in which non-compliance is verified of the data protection regulations (E/10918/2019,

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TD/00143/2019,

TD/00035/2021).

TD/00320/2019,

TD/00269/2020,

TD/00003/2021,

SECOND:

Dated 08/06/21 and 08/18/21, in accordance with the provisions of the Article 65.4 of the LOPDGDD Law, this Agency sent two separate letters to the claimed party requesting information regarding what is stated in the claim.

THIRD: On 10/13/21, a response letter was received from the entity claimed to the request for information made by this Agency, in which, among others, indicates that:

“On 03/01/21, a response to the Transfer of Claim and Request for Information number E/07541/2020 originated by a Transfer of claim and request for information EXP202100876: As and As has been proven in this proceeding, the request for access of the user and the response was transferred to the affected person on the day 03/01/21.

Subsequently, the affected person informs AD735 that he did not participate in the draw organized by AD735. On the same day 03/01/21, you will be answered in the following terms: "As the claimant has already been answered, AD735, like the rest of the companies in the digital marketing sector and other sectors, do not can guarantee with absolute certainty that the data received is correct.

In this sense, sometimes records are received indicating names false, aliases or some misindicated data. Sometimes records are received from minors who indicate an erroneous date of birth to prove an age of majority that they do not have and thus be able to qualify for the prizes promoted.

It is for this reason that AD735 warns users, in the privacy policy privacy, the need to provide accurate and truthful data, in addition to, in

In the case of providing data from third parties, have the express consent of the latter, through the following text: "Also, at the press the "PARTICIPATE" button, or equivalent, included in the registration form registration, you declare that the information and data that you have provided in them are exact and truthful.

So that the information provided is always updated and does not contain errors, you must communicate, as soon as possible, the modifications of

your personal data that is produced, as well as the

rectifications of erroneous data in case you detect any. In it

context of the treatments that, described in this Privacy Policy, is

You may provide personal data relating to third parties. In this

sense, it is your responsibility to inform third parties of such circumstance whose

data will be transferred to us, as well as, if necessary, obtain your

express consent to provide us with such information".

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Since the claimant has stated to AD735 that he has not provided their

data, AD735, in its capacity as file manager, proceeded to the

deletion of these, thus guaranteeing the full exercise of rights

fundamentals of the claimant in the digital reality.

This is not an exceptional measure, but AD735, adopting in all

moment a proactive attitude, before any evidence or suspicion about the veracity and/or ownership of the data received, in guarantee of the rights recognized in articles 15 to 22 of the General Regulations for the Protection of Data, proceeds to the limitation and/or deletion of all the data that configure the registry on which there is doubt, as well as the exclusion of the sweepstakes or promotion to which the record is associated.

We understand that AD735 has not breached the existing regulations regarding data protection, not only because it has made available to the user the consent received, but because it has adopted the necessary measures and his scope to satisfy the claimant's request.

Establishes article 65.3 of Organic Law 3/2018, of December 5, of Protection of Personal Data and guarantee of digital rights:

Likewise, the AEPD may reject the claim when the person in charge or person in charge of the treatment, prior warning formulated by the Agency Spanish Data Protection Agency, would have adopted corrective measures aimed at putting an end to possible non-compliance with the legislation of data protection and any of the following circumstances occur: a) That no harm has been caused to the affected party in the case of infringements provided for in article 74 of this organic law. b) That the right of the affected party is fully guaranteed through the application of the measures”.

We believe that it has been demonstrated that AD735 DATA MEDIA ADVERTISING, S.L. has taken corrective measures aimed at put an end to the possible and alleged breach of the protection legislation of data, and, in addition, we understand that no damage has been caused to the affected. Thus, we are interested in issuing a resolution agreeing on the

dismissal and filing of this proceeding, without imposition of any sanction.

AD735 DATA MEDIA ADVERTISING, S.L. has been working with the maximum diligence to comply with current regulations on protection of personal data, and respecting the principles of good faith and proactive responsibility.

Proof of this is that, in addition to the organizational and technical measures suggested by that Agency, and adopted by AD735 for the treatment of personal data in marketing activities, and which is later

indicate, AD735 DATA MEDIA ADVERTISING, S.L. has gone progressively adopted the following measures: 1.- On October 31, 2018, AD735

DATA MEDIA ADVERTISING, S.L. creates the figure of the Protection Delegate

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of Data within the company, and proceeds to the communication of the

appointment to the AEPD. 2.- Frequently review and adapt all the

communication protocols of users with AD735 DATA MEDIA

ADVERTISING, S.L. to facilitate and optimize the exercise of rights

recognized in the GDPR, making mechanisms available to them for this

simple, free, effective and fast to obtain satisfaction to your

demands. 3.- The text of the mailbox has been configured

[bajas@ad735.es](mailto:bajas@ad735.es). Mailbox text has been configured

[dpo@ad735.es](mailto:dpo@ad735.es) in this way all users are provided with the possibility of

exercise your rights in a simple, fast, free and effective way. These texts are reviewed periodically, and modified when necessary, always seeking to improve customer service, and keep up-to-date the legal regulations indicated.

4.- The link [www.ad735.es/derechosRGPDAD735.pdf](http://www.ad735.es/derechosRGPDAD735.pdf) has been enabled, and facilitates the same in all the communications that it maintains with those affected, whether automatic or personalized, to inform them clearly and comprehensible description of the procedures and channels for the exercise of their rights.

5.- The email box has been made available to those affected [dpo@ad735.es](mailto:dpo@ad735.es), for, and following the established legal procedures, provide users with answers to their doubts, and ensure the exercise of their GDPR rights.

6.- Periodic reviews have been established between the person in charge and those in charge of the treatment, in order to attend to all the rights exercised by the users and avoid that there are users who do not see their requests satisfied.

7.- The website [www.ad735.es/bajas](http://www.ad735.es/bajas) has been enabled so that users who use it wish they can, in an effective and automatic way, exercise their rights of suppression/opposition. Once a user has exercised his right to deletion, he immediately receives the confirmation in his email electronic.

8.- AD735, in his daily work, continues to make a serious effort to update personal data management and processing systems included in their files so that, respecting security measures established, users can exercise the rest of the rights recognized in the RGPD of an effective and immediate.

AD735 DATA MEDIA ADVERTISING, S.L. has implemented the following organizational and technical measures, which are known and applied by all your staff: 1.- Organizational Measures. 2. Paper documents and supports electronics will be stored in a safe place (cabinets or access rooms restricted) 24 hours a day. 3. Documents or electronic supports (cd, pen drives, hard drives, etc.) with personal data without guaranteeing its destruction. 4. No personal data will be communicated or any personal information to third parties, special attention will be paid not to disclose protected personal data during telephone inquiries, emails

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electronics etc 5. The duty of secrecy and confidentiality persists even when the employee's employment relationship with the company ends.

B.- Rights of the owners of the data. AD735 MEDIUM DATA

ADVERTISING, S.L. you have informed all your staff about the procedure to attend to the rights of the interested parties, clearly defining the mechanisms by which rights can be exercised (electronic means, reference to the Data Protection Officer, if any, postal address, etc.)

AD735 DATA MEDIA ADVERTISING, S.L. has informed everyone with access to personal data about compliance terms

to attend to the rights of the interested parties, the form and procedure in

That



will address those rights.

C.- Personal data security violations. When

produce security violations OF PERSONAL DATA,

such as theft or improper access to personal data AD735

DATA MEDIA ADVERTISING, S.L. will notify the Spanish Agency of

Protection of Data in term of 72 hours about said violations of

security, including all the information necessary for the clarification of

the facts that would have given rise to improper access to personal data.

The notification will be made by electronic means through the headquarters

email address of the Spanish Agency for Data Protection at the address:

<https://sedeagpd.gob.es>

Technical Measures: 1. When the same computer or device is used to

the processing of personal data and purposes of personal use will be available

several different profiles or users for each of the purposes.

keep professional and personal use of the computer separate. 2. It

You will have profiles with administration rights for installation and

system configuration and users without privileges or access rights

administration for access to personal data. This measure aims

ensure that in the event of a cybersecurity attack, information can be obtained

access privileges or modify the operating system. 3. The

existence of passwords for access to stored personal data

in electronic systems. The password will have at least 8 characters, mix

of numbers and letters. 4. When personal data is accessed by different

people, for each person with access to personal data, there will be

of a specific username and password that allow identification

unequivocal. 5. The confidentiality of passwords will be guaranteed, avoiding

that are exposed to third parties. In no case the staff of AD735 DATA MEDIA ADVERTISING, S.L. will not share passwords or leave notes same in a common place and with access by people other than the user. Duty of safeguard: updating of computers. malware. Firewall. encryption of data. Backup.

FOURTH: On 10/25/21, by the Director of the Spanish Agency for Protection of Data, an agreement is issued to admit the processing of the claim

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presented, in accordance with article 65 of the LPDGDD, when assessing possible rational indications of a violation of the rules in the field of competences of the Spanish Data Protection Agency.

FIFTH: On 02/02/22, this Agency issued a request information to the claimed party, under the investigative powers granted to the control authorities in article 58.1 of the GDPR.

SIXTH: On 02/17/22, a response letter was received from the entity claimed to the information request made by this Agency, in which, among others, indicates:

"Proof of the origin of the claimant's telephone number collected from through the website <https://www.premium-sales.es>:

That, in response to the requirement made by that Agency, we come to contribute to this procedure accreditation of the origin of the data of the affected, consisting of the following documents: 1. DOC 1.- Log file

justifying the personal data received from the affected party, through the

form enabled on the website <https://www.premium-sales.es>. 2. DOC 2.-

Screenshot of the form from which the data was received

personal of the affected".

SEVENTH: On 03/11/22, this Agency has been able to verify the

following characteristics in the existing forms on the website

<https://www.premium-sales.es>:

Before you can submit any existing forms on the web page

<http://prb.premium-sales.es/sorteos/.../> must necessarily accept the privacy policy

website privacy:

About Screenshot of registration form:

Checked the operation of this form on the website

<https://www.premium-sales.es> it is verified that it is necessary to select the following

conditions:

-

☐ I have read and accept the privacy policy AD735 Data Media Advertising SL.

There is also the possibility of offering consent to receive communications

commercial and/or transfer personal data to related third-party companies:

-

-

☐ I agree to receive commercial communications from AD735 about

services and products related to the sectors of activity reflected in

AD735's privacy policy

☐ I accept that AD735 transfers the processing of my data to third-party companies

related to the sectors of activity that are detailed in the policy of

privacy of AD735

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\_ MARK ALL THE ABOVE OPTIONS

Following each of the first three conditions is an icon with a

“i”, which, when clicked on, opens a pop-up information window. In it

In the first case, a summarized version of the privacy policy is shown, in both

subsequent cases, inform of the sectors to which the data of the

user.

Regarding the documentation presented by the claimed party on 02/17/22, the log file

justifying the personal data received from the affected party, through the form

enabled on the website <https://www.premium-sales.es>, it is observed that it is a

extract from the registry file in which the following data of the claimant is recorded:

name, surname, telephone number, full address, session IP address, date and time of

high. It is verified that the name, surname, and telephone number coincide with the

of the claimant.

The data registration date is July 23, 2019. Given the age of the

use of the IP address for this registration procedure in the draw, it is not

can carry out investigation actions on this data since it exceeds the

mandatory conservation of this as established in article 5.1 of the

Law 25/2007, of October 18, on the conservation of data related to the

electronic communications and public communications networks.

EIGHTH: On 06/10/22, by the Board of Directors of the Spanish Agency for

Data Protection, a sanctioning procedure is initiated against the claimed entity, at appreciate reasonable indications of violation of the provisions of article 7.1 GDPR, not being able to corroborate that the claimant's data was lawfully obtained from the form included in the website <https://www.premium-sales.es>, with a penalty initial amount of 5,000 euros (five thousand euros).

NINTH: Notified the initiation agreement to the claimed party, the latter in writing dated 06/29/22 formulated, in summary, the following allegations:

FIRST. - In this procedure it is agreed "PROCEDURE

SANCTIONER to the entity, AD735 DATA MEDIA ADVERTISING S.L. with

CIF.: B87781795, for the infringement of article 7.1 GDPR, by not being able to

corroborate that the claimant's data was lawfully obtained from the form included in the website <https://www.premium-sales.es> ”.

Thus, it is considered that, from the simple declaration of the affected party alleging that has completed the form and participated in the contest indicated by the responsible for the file, "there is not enough evidence to be able to determine with certainty whether or not it was the claimant who provided their data in the mentioned sweepstakes website."

We consider that the opening of this disciplinary procedure, based solely on a statement by the affected party in which he affirms that he does not completed a form or participated in a contest, without providing evidence any rationale for the existence of an infringement, supposes a clear violation of the

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principle of presumption of innocence recognized in our text

constitutional.

The right to the presumption of innocence, in the administrative sphere, entails:

Start Sanctioning Procedure PS/00136/2022; - that the sanction is

based on acts or evidence of charge or incriminating of the

reproached conduct; - that the burden of proof (onus probandi) corresponds

whom he accuses, without anyone being obliged to prove his own innocence; and -

that any insufficiency in the results of the tests carried out,

freely assessed by the sanctioning body, must be translated into a

acquittal pronouncement.

Thus, Section 1 of the Administrative Litigation Chamber of the Hearing

Nacional has indicated in its most recent Judgment dated February 22,

2022, (rec. 26/2020) that "Lack of provision of rational evidence of the

existence of an infraction, which is what happened in this case, according to

derives from the considerations of the contested resolutions, which reason

that the plaintiff substantiates the alleged violation of the protection regulations

of data in mere manifestations, without providing evidence that proves that

has committed an offence. Adding the AEPD that, being applicable, to the

sanctioning administrative law, with some qualification, the principles

inspirers of the penal order, the full potentiality of the principle of

presumption of innocence, in accordance with the provisions of article 53.2.b)

of the LPACAP".

On the other hand, in article 65 of LO 3/2018, of December 5, of

Protection of Personal Data and Guarantee of Digital Rights, which has

adapted the Spanish legal system to Regulation (EU) 2016/679 of the

European Parliament and the Council, of April 27, establishes that "The Agency

Spanish Data Protection will not admit the claims presented

when they do not deal with issues of data protection of a

personal, manifestly unfounded, abusive or not

provide rational evidence of the existence of an infringement”.

In relation to this article, Section 1 of the Contentious Chamber

Court of the National Court, in the same judgment reviewed,

indicates that this precept "contemplates an inadmissibility a limine, that is, of

oficio, without analyzing the merits of the possible controversy raised and without the need

of any other action, in the cases, among others, in which the matter

raised does not provide rational evidence of the existence of an infringement”,

as we understand what has happened in this case, in which the affected party

limited to denying their participation in a raffle without providing rational evidence of the

existence of an infringement by AD735 DATA MEDIA ADVERTISING,

even when it provided you with a certificate of obtaining your personal data.

The same Section 1, in its judgment of January 31, 2022 (rec.

2058/2019), indicates that when there is no proof of any violation

of the LOPD, the principle of presumption of innocence must prevail.

Regarding the Principle of Presumption of Innocence, it is included as

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fundamental right in article 24.2 of our Constitutional Text.

Configured as a right of the penal system, the

jurisprudence, by affinity, has made it extensible to the procedure

sanctioning administrative

The Principle of Presumption of Innocence guarantees not to suffer sanction in the order sanctioning administrative, without prior probative activity. It also guarantees a probationary period resulting in proof of charge, which in the this procedure does not exist. By virtue of this principle, it corresponds to the claimant, prove the certainty of the alleged facts, and in no case is forced the filer to prove his innocence, by coming protected by the constitutional presumption of innocence.

Without it being enough a complaint that initiates a disciplinary file, but that does not constitute proof of infringement.

On the principle of presumption of innocence, our Constitutional Court, has had the opportunity to pronounce itself and establish doctrine regarding the period evidence, considering that [Judgment 76/90 of April 25 (FJ.8º)] “any insufficiency in the results of the tests carried out, freely valued by the sanctioning body, must be translated into a pronouncement acquittal”.

SECOND.- On behalf of AD735 DATA MEDIA ADVERTISING, the user's request and a certificate of access to their personal data and the requirement made by that Spanish Data Protection Agency.

In addition to providing the data collection certificate personal information and response to the request made, attached to this document the following documentation is provided, accrediting the obtaining of the consent of the affected party as a basis of legitimacy for the treatment of your personal data for direct marketing purposes:

Documents One, Register Table Certificate issued by the person in charge of the processing of personal data, with the description of the activity record



collected in the log of the web page and actions carried out by the IP associated with the Claimant's telephone record.

We understand that with the contribution of the new documentary the existence of any reasonable doubt about obtaining consent of the claimant or a third party for the treatment, despite the repeated manifestations of the former in the sense of not having lent his consent to the processing of data that gave rise to this sanctioning procedure, and, consequently, the judgment of subjective reproach as a subjective element for the imposition of administrative sanctions.

As this Agency has already had the opportunity to pronounce, the foregoing must connect with the validity of our sanctioning Administrative Law of the principle of innocence recognized in article 24.2 of the Constitution

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Spanish, so that the exercise of the sanctioning power of the State, in its various manifestations, is conditioned to the test game and to a adversarial procedure in which they can defend their own positions. The principle of presumption of innocence prevents imputing a administrative infraction when proof has not been obtained and verified of charge that proves the facts that motivate the imputation or the intervention in the same of the alleged offender.

The Constitutional Court (SSTC 131/2003 and 242/2005, for all) has

pronounced in this sense when indicating that one of the inherent requirements of the right of presumption of innocence is that the sanction is based on acts or means proving the charge or incriminating the imputed conduct and that rests on the acting public administration the burden of proof of the commission of the administrative crime and the participation in it of the defendant.

For its part, article 28.1 of Law 40/2015, of October 1, on the Regime of the Public Sector establishes as one of the principles of legal authority sanctioning that of "Responsibility" and determines in this regard that:

"They may only be penalized for acts constituting an infringement administrative authority for natural and legal persons, as well as when a Law recognize the capacity to act, the affected groups, the unions and entities without legal personality and independent estates or self-employed, who are responsible for them by way of fraud or negligence".

Likewise, what is established in article 53.2 of the Law must be taken into account. 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations, which establishes that:

"In addition to the rights provided for in the previous section, in the case of administrative procedures of a punitive nature, the presumed responsible, they will have the following rights: (...) b) to the presumption of not liability exists until proven otherwise.

All of this, we understand, must have as a consequence that the allegations made by AD735 DATA MEDIA ADVERTISING, and, in Consequently, a resolution is issued agreeing to the filing of this procedure against the entity for the infringement of article 7.1 GDPR.

THIRD.- For all the above, we understand that, with the documentation provided by the data controller, it is sufficiently

demonstrated that AD735 DATA MEDIA ADVERTISING has made a correct treatment of the personal data of the affected person under the protection of the legitimizing cause contained in article 6.1.a) of the GDPR, and has carried out it in a respectful way with the regulations on data protection of a personal nature in force at all times.

Otherwise, nothing is alleged by the claimant, beyond the non-completion of the form indicated by the defendant, nor of its participation in the contest, a circumstance that is not enough to

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undermine the principle of presumption of innocence that protects the person responsible of the treatment. At no time is any rational indication of the existence of an infringement by AD735 DATA MEDIA ADVERTISING.

FOURTH.- AD735 DATA MEDIA ADVERTISING works to guarantee the exercise of the rights of its users, and the legal and ethical use of their data personal nature and implement the necessary measures for it”

Together with the pleadings, the "Registration Board Certificate" issued by the person responsible for the processing of personal data of the entity, with the description of the activity record collected in the web page log, <https://www.premium-sales.es> and certificate of the actions carried out through the IP associated with the phone \*\*\*PHONE.1:

“REGISTRATION TABLE CERTIFICATE

D. B.B.B., of legal age, with D.N.I. (...), address at \*\*\*ADDRESS.1,

authorized as legal representative of the company AD735 DATA MEDIA

ADVERTISING, S.L., Madrid and C.I.F. B8871795

CERTIFIES

This document presents the data recorded when accessing the page

website of the Draw for a Football Subscription belonging to AD735 DATA MEDIA

ADVERTISING, S.L. of the phone on which access to the data is requested

of your record.

This document presents the activity record collected in the log of

the web page and actions carried out by the IP associated with the registration of this

phone.

Phone for which access is requested: \*\*\*PHONE.1

Registration URL: <http://www.prb.premium-sales.es>

Registration Draw: <http://prb.premium-sales.es/sorteos/futbol/>

The registration data and the activity carried out by the user are shown below.

user with their times and the details of the actions carried out:

» Server: preiumspn1w1.mysql.db > Database: premiumspnnew1 >

Table: raffles 3. SELECT \* FROM raffles\_3 WHERE phone =

\*\*\*TELEPHONE 1

id

name

surnames

gender

e-mail

phone

fechnac

dateinsertion

(...)

A.A.A.

(...)

\*\*\*TELEPHONE 1

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communication

envlerceros

IP

address

location

province

codepost

reference

S

S

(...)

\*\*\*ADDRESS.2

(...)

(...)

(...)

NULL

TENTH: On 11/14/22, the instructor of the file issued a proposal for resolution where it was proposed that, by the Director of the Spanish Agency of Data Protection proceed to ARCHIVE this procedure disciplinary action against the entity claimed in accordance with the provisions of articles 63.3 of Law 39/2015, of October 1, on the Common Administrative Procedure of Public Administrations (LPACAP), for the alleged violation of article 7.1 of the GDPR, considering that there was no violation of said precept in this case, since presented as evidence the "log of the form of the website [www.premium-sales.es](http://www.premium-sales.es)", obtained on 07/23/19 at 4:44 p.m., where the name, surname and telephone number, coincided with the data of the claimant provided in his letter of claim.

ELEVENTH: On 01/24/23, by the Director of the Agency for the Spanish Agency for Data Protection notifies the party claimed the granting sion of a period of fifteen days, in accordance with article 90.2 of the LPACAP, to that he could allege whatever he considered in his defense for the alleged infraction of the Article 7.1 of the GDPR, considering, in this case, that the person in charge only certifies that someone registered and entered the data of the claimant, but does not prove that it was the the claimant himself who registered or carried out with his permission, therefore, it is considers that there is a violation of article 7.1 GDPR, by not being able to corroborate that the data Claimant's coughs were provided by himself.

TWELFTH: On 02/21/23, the respondent entity submits a written allegations in which it indicates the following:

"FIRST.- It is indicated in the resolution that is now being answered that "In In this case, the person in charge only certifies that someone registered and entered the data of the claimant, but it does not prove that it was the claimant who gave up high". However, in this disciplinary proceeding, it has been proven

the traceability of the consent of the affected party, the absence of any proof of charge that justifies the proposed sanction and therefore the violation of the principle of presumption of innocence that should govern the sanctioning power of the Administration, the violation of the principle of interdiction of the arbitrariness of the Administration and, we understand, that an erroneous assessment of the practical test each, as we have come to detail in the following ordinals.

SECOND.- In this case, it is agreed to impose a sanction on AD735 DATA MEDIA ADVERTISING separating from the proposed resolution issued by the instructor of the file, as well as the criteria followed in previous matters, eg File No.: EXP202101XXX, in which in its reso-

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resolution dated August 29, 2022, it is agreed to file the procedure

since, as indicated in its legal foundations:

In relation to the above, it is considered that although initially there was evidence

indications that the data processing of the person who supposedly Pro-

Sanctioning procedure PS/00136/2022 (EXP202100XXX) filled out the form

of the raffle and its transfer to third parties, object of this claim, would have been made

without a legitimizing cause of those included in article 6 of the GDPR, the

contribution of new documentation by the defendant makes such evidence

if they are not completely refuted if they are at least questioned, which

makes it impossible to reach certainty about the commission of the infringement The GDPR

applies to personal data, which is defined as “personal data”:

any information about an identified or identifiable natural person ("the subject") resado»); An identifiable natural person shall be considered any person whose identity can be determined, directly or indirectly, in particular by means of a identifier, such as a name, an identification number, data location, an online identifier or one or more elements of the physical, physiological, genetic, psychological, economic, cultural or social identity of said person. BICLAMEDIA contributes as accreditation of obtaining the consent for the performance of treatment activities, to which refers to the claim, new documents (log files and certificate of the table registration) which could imply the verification of activities of obtaining of the consent of the people who access the web page object of the claim.

Therefore, in accordance with the applicable legislation and assessed the criteria of graduation of sanctions whose existence has been accredited, the Directora of the Spanish Data Protection Agency RESOLVES FIRST: ARCHIVE procedure PS/00578/2021, initiated at the entity BICLAMEDIA, S.L., with NIF B87022117".

This party is surprised that in the present case a doctrine of the National Court of the year 2006 and a different criterion to the one applied in the previous resolution, when the proven facts and the evidentiary activity developed in both procedures keep an unquestionable similarity. Understand- We believe that this difference in criteria when resolving two similar issues entails a clear violation of the constitutional principle included in the article 9.3 that guarantees the prohibition of arbitrariness.

THIRD.- It is indicated in the resolution of January 23, 2023 that "In these cases, the defendant can establish procedures to verify that the



registration is made by the owner of the data, such as sending an SMS or

make a commit call, especially when the main object of

The activity of the controller is to obtain data for advertising purposes". One of

these means used by AD735 DATA MEDIA ADVERTISING to verify

test the validity of registrations is the traceability of the data with the tools of

management of data used and that have allowed to demonstrate the origin and legality of the

data, keep proof of it and that, in addition, makes it possible to detect leads

incorrect (repeated, identical IPs, consecutive registration date and time,

etc.).

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On the other hand, the solutions proposed by that Agency, sending SMS or calling

confirmation call, do not guarantee with absolute certainty the fact that

who registers on a website, in a promotion, in a commercial action,

etc., be its owner. Thus, if several data are required, eg. email and

telephone number or postal address, one of them, by mistake and/or voluntarily, may be

entered incorrectly and miss that test. A clear example of

this is the lower than to participate in any promotion in which it is required

reflect a contact telephone number, enter the data of one of the parents,

but your own email for the purpose of confirming participation. In

In this case, the owner of the data is the parent, however, who has manifested

given the consent by filling in the form, but without knowledge of the

third party holder, is the minor who, a posteriori, confirms the participation through

a check included in the email you received, hoping to that if he is awarded in the promotion he can convince his father to receive the prize.

Nor is it guaranteed with absolute certainty that whoever completes a formulario is the owner of the personal data entered when this action is done through a public computer or shared use by several people.

Even when we relate to the Administration, the consent of the owner is also not guaranteed, for example, when a person accesses a notification with a digital certificate from a third party that you have, initially with consent, but at the time of access to the notification, no.

It is therefore evident that there are numerous situations, even of the proposed by that Agency, in which it is impossible to ensure with absolute certainty that a person, natural or legal, has obtained consent for the treatment of the personal data of its owner.

FOURTH.- We believe that this disciplinary proceeding, based only in a statement by the affected party in which he states that he does not comply submitted a form or participated in a contest, without providing reasonable evidence of the existence of an infringement, supposes a clear violation of the principal principle of presumption of innocence recognized in our constitutional text, especially when AD735 DATA MEDIA ADVERTISING, following the doctrine of the National Court outlined in the resolution dated January 23, 2023, has obtained the consent of the affected party, has kept proof of compliance compliance with its obligation and has accredited it before that Agency through the reliability of the data obtained.

The right to the presumption of innocence in the administrative sphere, which is understood

demos violated, entails: - That the sanction is based on acts or means probative or incriminating charges of the reproached conduct; - that the burden of proof (onus probandi) corresponds to the accuser, without anyone being forced to prove his own innocence; and - that any insufficiency in the result of the tests carried out, freely assessed by the sanctioning body, must be translated into an acquittal.

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Thus, Section 1 of the Administrative Litigation Chamber of the Hearing Nacional has indicated in its most recent Judgment dated February 22, 2022 (rec. 26/2020), therefore, much later than the doctrine that supports the resolution solution that we come to answer, that "Lack of contribution of rational evidence of the existence of an infraction, which is what happened in the present case, derives from the considerations of the contested resolutions, which reason that the actor bases the alleged violation of the protection regulations on the production of data in mere manifestations, without providing evidence that proves that an offense has been committed. Adding the AEPD that when applicable, to the sanctioning administrative law, with some qualifications, the main purpose inspiring of the penal order, it is clear the full virtuality of the principle of presumption of innocence, in accordance with the provisions of article 53.2.b) of the LPACAP".

On the other hand, in article 65 of LO 3/2018, of December 5, Protection of Personal Data and Guarantee of Digital Rights, which has adapted

the Spanish legal system to Regulation (EU) 2016/679 of Parliament

European Parliament and the Council, of April 27, establishes that "The Agency Es-

The Data Protection Department will not admit the claims presented when

do not deal with issues of protection of personal data,

are manifestly unfounded, abusive or do not provide evidence

reasons for the existence of an infringement".

In relation to this article, Section 1 of the Administrative Litigation Chamber

court of the National Court, in the same sentence reviewed, indicates

that this precept "contemplates an inadmissibility a limine, that is, ex officio, without

analyze the merits of the possible dispute raised and without the need for any

any other action, in the cases, among others, in which the question raised

does not provide rational indications of the existence of an infringement", as understood-

Let us know what has happened in this case, in which the affected party merely denies his

participation in a raffle without providing rational evidence of the existence of

an infringement by AD735 DATA MEDIA ADVERTISING, even if

This provided you with a certificate of obtaining your personal data.

The same Section 1, in its judgment of January 31, 2022 (rec.

2058/2019), indicates that when there is no proof of any violation

of the LOPD, the principle of presumption of innocence must prevail.

Regarding the Principle of Presumption of Innocence, it is included as

fundamental right in article 24.2 of our Constitutional Text. Confi-

gured as a right of the penal system, jurisprudence, for

affinity, has made it extensible to the administrative procedure sanctioned

swimmer.

The Principle of Presumption of Innocence guarantees not to suffer sanction in the order

sanctioning administrative, without prior probative activity. It also guarantees

a probationary period resulting in proof of charge, which in the  
this procedure does not exist. By virtue of this principle, it corresponds to the  
claimant, prove the certainty of the alleged facts, and in no case is

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forced the filer to prove his innocence, by coming protected by the pre-  
presumption of constitutional innocence.

Without it being enough a complaint that initiates a disciplinary file, but  
that does not constitute proof of infringement.

On the principle of presumption of innocence, our Constitutional Court,  
has had the opportunity to pronounce itself and establish doctrine regarding the pro-  
batorio, considering it resolved that [Judgment 76/90 of April 25 (FJ.8º)]  
“any insufficiency in the results of the tests carried out, freely  
valued by the sanctioning body, must be translated into a pronouncement  
acquittal”.

FIFTH.- We understand that with the evidentiary activity incorporated in the present  
disciplinary file eliminates the existence of any reasonable doubt  
on obtaining the consent of the claimant for the treatment of  
your personal data, despite the repeated statements of the one in which  
sense of not having given their consent for the treatment of the data  
events that gave rise to this disciplinary proceeding, and, consequently,  
mind, the judgment of subjective reproach would decline as a subjective element  
for the imposition of administrative sanctions.

We also understand that the evidentiary activity provided by the claim called, as indicated by the Instructor of the procedure, and thus it has served in the past. previous issues settled by that Spanish Agency for Data Protection, is sufficient evidence to be able to determine that the data of the claimant were included in the AD735 DATA MEDIA ADVERTISING web form to through the claimant's mobile phone, or at least, that if there is any Evidence that the processing of the data of the person supposedly re-filled out the draw form, object of this claim, it would have been carried out without legitimizing cause of those included in article 6 of the GDPR, these at least are questioned, making it impossible to reach certainty about the commission of a possible offence.

As this Agency has already stated repeatedly, the foregoing must be be connected with the validity of our Administrative Law sanctioning the principle of innocence recognized in article 24.2 of the Spanish Constitution so that the exercise of the sanctioning power of the State, in its different various manifestations, is conditioned to the test game and to a process contradictory mode in which one's positions can be defended. He principle of presumption of innocence prevents imputing an administrative offense goes when proof of charge has not been obtained and verified that accredits the facts that motivate the imputation or the intervention in them of the pre-suspected offender Proof of charges that does not exist in the present case, since that the only evidence provided to the disciplinary procedure is Procedure the one that has practiced the claimed proving the traceability of the obtaining of consent.

As we have already had occasion to state, the Constitutional Court (SSTC 131/2003 and 242/2005, for all) has ruled in this sense to the

indicate that one of the requirements inherent to the right of presumption of innocence is that the sanction is based on acts or means of proof of charge or incriminators of the imputed conduct and that falls on the Administration acting public the burden of proof of the commission of the illegal administrative and of the defendant's participation in it.

For its part, article 28.1 of Law 40/2015, of October 1, on the Regime of the Public Sector establishes as one of the principles of legal authority sanctioning that of "responsibility" and determines in this regard that: "Only possible will be penalized for acts constituting an administrative infraction physical and legal persons, as well as, when a Law recognizes them as capable to act, the groups affected, the unions and entities without personal legal entity and independent or autonomous patrimonies, which result responsible for them by way of fraud or negligence".

Likewise, what is established in article 53.2 of the Law must be taken into account.

39/2015, of October 1, of the Common Administrative Procedure of Ad-Public administrations, which establishes that: "In addition to the rights pre-seen in the previous section, in the case of administrative procedures of sanctioning nature, the alleged perpetrators will have the following rights: (...) b) to the presumption of non-existence of administrative responsibility treatment until proven otherwise.

For all of the above, in line with the foregoing, and since there is no

proof of charge, that the defendant has accredited obtaining the consent  
consent of the affected party in this proceeding and that its action does not  
cannot be classified as fraudulent or culpable since it has adopted the measures  
necessary to guarantee compliance with the obligation established in the  
Article 7.1 of the GDPR, we understand that the consequence can only be  
that the allegations made by the AD735 DATA MEDIA AD-  
VERTISING, and, by virtue, a resolution is issued agreeing to the file of the pre-  
proceedings against the entity claimed for the infringement of article  
7.1 of the GDPR.

By virtue of the foregoing, I REQUEST THE DIRECTOR OF THE SPECIAL AGENCY  
PAÑOLA DE PROTECCIÓN DE DATA, which considers that this writing has been presented  
and its attached documents, admits them, considers them evacuated, on time and for-  
ma, the procedure conferred, and, by virtue of the allegations made in the body  
of this document, serve to issue a resolution agreeing to the dismissal  
and file of the Disciplinary Procedure PS/00136/2022, without imposition of  
any sanction, also expressing the absence of any responsibility  
by AD735 DATA MEDIA ADVERTISING, S.L., for having been its actu-  
according to current regulations on the protection of personal data  
and that the rights recognized in the Regulations have not been infringed.  
(UE) 2016/679 of April 27, 2016 (GDPR) and other applicable regulations  
tion, as well as everything else that is appropriate in Law.

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: As indicated by the claimant in his claim document dated 07/02/21, he never participated in the raffle that was held through the website of the claimed entity ([www.premium-sales.es](http://www.premium-sales.es)) because, according to him, he had never lent his personal data to that entity for any purpose.

Second: In the document presented by the entity claimed in this Agency, the 10/03/21, acknowledges that it does not have the necessary technology to be able to certify the identity of the people who send the data through the forms enabled on their websites and confirms to the claimant himself that "(...) In cases like yours, and before any evidence or suspicion about the veracity and/or ownership of the data received through any of the enabled forms, AD735 DATA MEDIA ADVERTISING, S.L., as a guarantee of the rights recognized in articles 15 to 22 of Regulation (EU) 2016/679 of April 27, 2016 (GDPR), proceeds to the limitation and/or deletion of all the data that make up the registry(...)"

Third: Once the disciplinary procedure has begun, the entity claimed, in the writ of allegations to the initiation of the file presented, together with the brief of allegations, a Record Table certificate issued by the data controller of personal data, with the description of the activity record collected in the log of the web page and actions carried out by the associated IP, as declared by the claimed, to the claimant's telephone record.

The data presented in the DPD certificate of the claimed entity, obtained on 07/23/19 at 4:44 p.m., such as first name, last name and telephone number coincide with the data of the claimant provided in his claim document.

Given the age of use of the IP address for this registration procedure

in the draw, it has not been possible to verify the information on this data since it exceeds the obligatory nature of its conservation as established in article 5.1 of the Law 25/2007, of October 18, on the conservation of data related to the electronic communications and public communications networks.

## FUNDAMENTALS OF LAW

YO-

Competence.

In accordance with the powers that article 58.2 of the RGPD grants to each authority of control and as established in articles 47, 48.1, 64.2 and 68.1 of the LOPDGDD,

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

Likewise, article 63.2 of the LOPDGDD determines that: "The procedures processed by the Spanish Data Protection Agency will be governed by the provisions in the GDPR, in this organic law, by the regulatory provisions dictated in its development and, as long as they do not contradict them, with a subsidiary character, by the general rules on administrative procedures."

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Summary of the events that occurred:

II-

According to the respondent entity, it had obtained the personal data of the claimant through the participation form in the raffle for a trip for two people published on the website [www.premium-sales.es](http://www.premium-sales.es), which, according to the claimant, was not

true because he had never included his personal data on said page nor had he lent your personal data to said entity.

Information requested by this Agency from the entity claimed on what indicated in the complaint, it recognized that it could not guarantee with absolute certainty that the data received in the form were really provided by the claimant because, sometimes records are received indicating the names false, aliases or some incorrectly entered data.

For this reason, proceedings are initiated for the alleged violation of article 7.1 GDPR, since the entity claimed cannot guarantee that the personal data of the the claimant entered in the form on his website, carried out by him himself or with his consent, and he acknowledges this in the email he sent to the claimant himself, where he stated the lack of the necessary technology to be able to certify the identity of the people who send the data through the forms enabled on their websites, and therefore if they are introduced with the consent of the affected.

Once the disciplinary procedure had begun, the defendant entity presented, together with the brief of allegations to the initiation of the file, a "Registration Board Certificate", with the activity record collected in the log of said web page and the actions made through the IP, and that, according to the certificate presented by the entity, was associated with the phone \*\*\*PHONE.1. Phone number that matches the of the claimant.

III.

Response to the allegations

Throughout the entire procedure, the requested entity states that the "Certificate Registration Table", issued by the person responsible for the processing of personal data of the entity, where the activity record collected in the page log is described

website [www.premium-sales.es](http://www.premium-sales.es) where the personal data of the claimant appears (the name, surname and telephone number), are sufficient proof to be able to determine note that the claimant's data was included in the AD735 web form

DATA MEDIA ADVERTISING through the mobile phone of the claimant, or when me- us, there is evidence that the processing of the claimant's personal data was made with your consent, as has happened in other cases, such as example the one followed in PS/00578/2021 in this Agency.

Well, to indicate that, in the disciplinary procedure referred to by the re- called, PS/00578/2021, followed in this Agency against the entity BICLAMEDIA, it was considered that this entity had processed the personal data of the claimant without no legitimizing basis, subsequently assigning them to third parties and therefore opened

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the file for the alleged infringement of article 6 of the GDPR, that is, for lack of legitimacy in the processing of personal data.

During the process of said file, the claimed entity (BICLAME- DIA) contributed new documents to the file, such as the log files with registration data and activity at the time of browsing the web, as well as a registration table certificate issued by the person responsible for the personal data file sonales. These documents reflected that the claimant's IP was used to visit the website of the claimed party, entering the personal data of the claimant and appearing in conditions c1, c2, c3 and c4 the value "1" (which would mean acceptance of the conditions). tions of data processing, according to explanatory note), in the "Registration Table of the

User and IP Activity Log.

Therefore, it was considered by this Agency that the contribution of this new dossier documentation, in file PS/00578/2021: "(...) it introduced a reasonable doubt on the existence of a valid obtaining of the consent of the claimant or of a third party for treatment (...)".

A different situation is followed in this proceeding (PS/136/2022), since in this file, what is being clarified is whether the claimed entity, AD735 DATA MEDIA ADVERTISING S.L., can confirm that the person who entered the data information in the form on its website was precisely the claimant or was it made with your consent. Situation that the claimant himself denies in his writing. claim.

This is because the accreditation of the identity of the user who is entering the data on the draw website <https://www.premium-sales.es> is not carried out with the sufficient guarantees, so that any person who had knowledge of the name name, surnames and telephone number of a citizen, or even using random data, may introduce personal data of third parties on the website.

The claimed party, in its reply email to the claimant, which consists of stated in the brief of allegations to the transfer of the claim, confirms the indisposition of the technology necessary to be able to certify the identity of the people who send have the data through the forms enabled on their websites or that such data could be obtained with the consent of the affected.

This argument, to which the defendant agrees, lacks foundation since that there are well-known mechanisms that could be used, such as example, sending a verification code by SMS, a confirmation call, etc., which could corroborate that the data entered in the form were provided by the interested party himself or with his consent.

In addition, the defendant entity states, in the response it made to the affected that, like the rest of the companies in the digital marketing sector and other sectors, cannot guarantee with absolute certainty that the data received is consistent with correct because sometimes records are received indicating false names, aliases or some incorrectly indicated data and sometimes, records of minors are received that include indicate an erroneous date of birth to prove an age of majority that does not have and thus be able to opt for the promoted prizes and that for this reason AD735 ad-

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conveys to users, in its privacy policy, the need to indicate exact data honest and truthful, in addition to, in the case of providing data from third parties, with have the express consent of the latter to be able to introduce them

Well, in this sense, recital (42) of the GDPR indicates that:

When the treatment is carried out with the consent of the interested party, the controller must be able to demonstrate that the controller has given your consent to the processing operation (...)

And in application of this, article 7.1 of the RGPD, on the "conditions for the consent", states the following:

"When the treatment is based on the consent of the interested party, the person responsible must be able to demonstrate that he consented to the treatment of his personal information".

In this sense, the Judgment of May 5, 2021, of the Contentious Chamber-ad-Ministry, Section 1, Rec.1434/2020), in its F.D. 6º affects the obligation of the

responsible for the treatment of being able to prove how the consent has been obtained

I lie:

"This Chamber has repeatedly indicated (SAN of April 23, 2015, Rec.

97/2014, for all) that corresponds to the person who performs the treatment to prove

who has obtained the consent of the data subject when – as happens here –

denies having granted it, and to this end it must arbitrate the necessary means to

it...

Therefore, in these cases, to demonstrate that the interested party provided their personal data,

or consented to their treatment, the person in charge can establish procedures to

verify it and demonstrate it where they can be cited, as simple examples, send a

SMS or make a call to confirm the operation and that, according to the

proactive responsibility of the entity, it must determine which is the best system

ma to comply with its obligations and be able to demonstrate that the interested parties

consented to the processing of their personal data, and this was included in the agreement of

start of this procedure:

" (...) This is because the accreditation of the identity of the user who is

entering the data on the raffle website <https://www.premium-sale->

s.es is not carried out with sufficient guarantees, so any person

with knowledge of the name, surname and telephone number of a citizen, or even

using random data, you could enter this personal data on the site

web and these be assigned by the claimed party to other entities for the purpose of

marketing. The claimed party, in his reply email to the

claimant, which is recorded in the brief of allegations to the transfer of the claim-

tion, manifests the indisposition of the necessary technology to be able to certify

the identity of the people who send the data through the forms

enabled on their websites. This argument, to which the part

claimed, lacks foundation since there are mechanisms known, such as sending a verification code by SMS, or

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a confirmation call, etc., which could minimize possible treatment unlawful use of the personal data provided through the form (...)”.

Regarding the principle of presumption of innocence alluded to by the defendant, it should be indicated note that, in the field of data protection, it is qualified by the concurrence of the of proactive responsibility that, in the supposed object of this file, implies necessarily the diligent action of the data controller who has not only to obtain prior consent for the processing of the data, but also must have the essential means to be able to verify and prove that said consent was duly given.

Therefore, the principle of proactive responsibility assumes that the person responsible for the Data processing must be able to prove the correctness of the treatment and, in In this case, the documentation provided ceases to be a unilateral declaration of part that is not accompanied by any verification measure that corroborates that the one who provided the data is really who he claims to be.

III.

administrative infraction

In accordance with the available evidence, it is considered that the facts exposed suppose the violation of article 7.1 RGPD, since it is not possible to corroborate that the claimant's data was obtained directly from him or with his



consent.

In accordance with the provisions of article 83.5.a) of the GDPR, this infringement may be sanctioned with a fine of €20,000,000 maximum or, in the case of a company, of an amount equivalent to a maximum of 4% of the total annual turnover of the previous financial year, opting for the highest amount.

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

The duration of the infringement, taking into account that in PS/0161/2021, of the which part of this claim reported that the claimant had requested the access to personal data that was in the possession of the claimant entity given on 10/15/20, (section a).

The balance of the circumstances contemplated in article 83.2 of the GDPR and 76.2 of the LOPDGDD, with respect to the offense committed, by violating the provisions of the article Article 7.1 of the GDPR, makes it possible to set the amount of the sanction at 5,000 euros (five thousand euro).

RESOLVES:

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FIRST: IMPOSE the entity AD735 DATA MEDIA ADVERTISING S.L. with CIF.:

B87781795, for the violation of article 7.1 GDPR, with a penalty of 5,000 euros

(five thousand euros).

SECOND: NOTIFY this resolution to the entity AD735 DATA MEDIA

ADVERTISING S.L.

Warn the penalized party that the sanction imposed must make it effective once it is

enforce this resolution, in accordance with the provisions of article 98.1.b)

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

Public Administrations (LPACAP), 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.

In accordance with the provisions of article 82 of Law 62/2003, of 30

December, of fiscal, administrative and social order measures, the present

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

publication will be made in accordance with the provisions of Instruction 1/2004, of 22

December, from the Spanish Agency for Data Protection on the publication of their

Resolutions.

Against this resolution, which puts an end to the administrative process, and in accordance with the established in articles 112 and 123 of the LPACAP, interested parties may file, optionally, an appeal for reinstatement before the Director of the Agency Spanish Data Protection Agency within a period of one month from the day following the notification of this resolution, or, directly, a contentious appeal before the Contentious-Administrative Chamber of the National Court, in accordance with the provisions of article 25 and paragraph 5 of the provision additional fourth of Law 29/1998, of 07/13, regulating the Jurisdiction Contentious-administrative, within a period of two months from the day following to the notification of this act, as provided in article 46.1 of the aforementioned text legal.

Finally, it is noted that in accordance with the provisions of art. 90.3 a) of the LPACAP, may provisionally suspend the firm resolution in administrative proceedings if the The interested party expresses his intention to file a contentious-administrative appeal. If this is the case, the interested party must formally communicate this fact through writing addressed to the Spanish Data Protection Agency, presenting it through of the Electronic Registry of the Agency [<https://sedeagpd.gob.es/sede-electronicaweb/>], or through any of the other records provided for in art. 16.4 of the aforementioned Law

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39/2015, of October 1. You must also transfer the documentation to the Agency proving the effective filing of the contentious-administrative appeal. if the Agency was not aware of the filing of the contentious appeal-

administration within a period of two months from the day following the notification of the present resolution, would terminate the precautionary suspension.

Mar Spain Marti

Director of the Spanish Data Protection Agency.

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