

Procedure No.: PS/00391/2018

RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection before

V.B.GRUPO DE ATRACCIONES S.L., by virtue of a claim filed by A.A.A. (in

hereinafter, the claimant) based on the following:

BACKGROUND

FIRST: The claim filed by the claimant has an entry dated 6

June 2018 at the Spanish Data Protection Agency. The claim is directed

against V.B.GRUPO DE ATRACCIONES S.L. with NIF B91779694 (hereinafter, the

reclaimed). The reasons on which the claim is based are the treatment of the image of your

five-year-old daughter in a fairground attraction without her consent.

Along with your written complaint, provide the following documentation:

☐ Claim presented for these facts, before the Arbitration Board of Consumption of Andalusia, June 3, 2018.

☐ Copy of the photograph taken by a worker of V.B GRUPO DE

ATTRACTIONS S.L.

SECOND: In view of the facts denounced in the claim and the documents

provided by the claimant, as well as the facts and documents of which he has had

knowledge of this Agency, the Subdirectorate General for Data Inspection proceeded to

carrying out preliminary investigative actions to clarify the facts

in question, in accordance with the provisions of Regulation (EU) 2016/679

(General Data Protection Regulation, hereinafter RGPD), requiring V.B

GRUPO DE ATRACCIONES S.L, with NIF B91779694, the following information:

☐ Clear specification of the causes that have motivated the incidence that has given place to claim.

☐ Detail of the measures adopted by the person in charge to solve the incident

and to avoid the occurrence of new incidents such as the one exposed. To this

In this regard, you can obtain, through www.aepd.es, additional information on the

obligations, provided for in the data protection regulations, for those responsible

and treatment managers.

☐ If applicable, supporting documentation that, in accordance with the provisions of the

article 12 of the RGPD, the appropriate measures have been taken to facilitate the

affected the exercise of their rights under articles 15 to 22, including

full copy of the communications sent in response to the requests that

would have been made by the claimant.

On July 13 and October 8, 2018, V.B GRUPO DE ATRACCIONES S.L, receives

letter from this Agency through which you are informed of the claim filed by

the claimant against said entity to proceed with its analysis, respond to the

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claimant and within a month to inform this Agency of the actions carried out

carried out to adapt to the requirements set forth in the data protection regulations.

Despite this, there is no record in this Agency of a reply from V.B.GRUPO DE

ATRACCIONES S.L., to the aforementioned requirement, for which reason it is appropriate to admit the

this claim, without prejudice to what is determined in the course of processing.

THIRD: On December 13, 2018, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimant, for the

alleged infringement of article 6.1 a) of the RGPD, in relation to article 8.1 of the RGPD

by treating the image of a 5-year-old girl, without the consent of the person who holds her country power, infringement typified in article 83.4 a) of the RGD and qualified as serious in the Article 73 a) of the LOPDGDD.

In view of everything that has been done, by the Spanish Agency for the Protection of Data in this procedure are considered proven facts the following,

PROVEN FACTS

FIRST: The treatment of the image of the five-year-old daughter of the claimant, in a fairground attraction without your consent.

SECOND: V.B GRUPO DE ATRACCIONES S.L, has not responded to the request for information from the Spanish Agency for Data Protection, nor has it presented allegations to the agreement to initiate this proceeding, despite the repeated transfer of the request made by this Agency on July 13 and October 8, 2018.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGD recognizes to each authority of control, and according to what is established in art. 47 of the Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights (in what hereinafter LOPDGDD), the Director of the Spanish Data Protection Agency is competent to resolve this procedure.

II

Article 6.1 of the RGD establishes the assumptions that allow the legalization of the processing of personal data, specifically in section 1.a) it is indicated that

The processing of personal data will be understood as lawful if they gave their consent.

In this sense, and in application to the present case, where the right to protection of the image of a minor under five years of age, note that article 8 of the RGD regulates the conditions applicable to the consent of the child in relation to the services

of the information society, indicating that:

“1- When article 6, section 1, letter a) is applied in relation to the offer

directly to children of services of the information society, the processing of data

personal property of a child shall be considered lawful when he or she is at least 16 years old. If the child

is under 16 years of age, such treatment will only be considered lawful if the consent

It was given or authorized by the holder of parental authority or guardianship over the child, and only to the extent

that was given or authorized.

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Member States may establish by law a lower age for such purposes,

provided that this is not less than 13 years.

2. The controller will make reasonable efforts to verify in such

cases in which the consent was given or authorized by the holder of parental authority or

guardianship over the child, taking into account the available technology.

3. Paragraph 1 shall not affect the general provisions of contract law

of the Member States, such as the rules relating to the validity, formation or effects of

contracts in relation to a child.”

Therefore, for the processing of the minor's personal data to be lawful

of five years that is the object of this case, the consent of the person who holds his title will be required.

parental authority or guardianship.

III

According to the evidence currently available,

It is considered that the known facts are constitutive of an infraction, attributable to the

claimed, for the processing of personal data, regulated in art. 6.1 a) of the RGPD, in relation to article 8.1 of the RGPD when treating the image of a 5-year-old girl, without the consent of the person with parental authority.

IV

Article 58.2 of the RGPD provides the following: "Each supervisory authority shall have all of the following corrective powers listed below:

b) sanction any person responsible or in charge of the treatment with a warning when the treatment operations have violated the provisions of this

Regulation;

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

i) impose an administrative fine under article 83, in addition to or instead of the measures mentioned in this section, according to the circumstances of each case particular;

The art. 83.4 a) of the RGPD establishes that infractions that affect:

"a) the obligations of the person in charge and the person in charge pursuant to articles 8, 11, 25 to 39, 42 and 43".

V

In the present case, it is a situation that affects the claimant because

It deals with the right to protection of the image of a minor under five years of age.

This infraction can be sanctioned with a fine of €10,000,000 maximum or,

in the case of a company, an amount equivalent to a maximum of 2% of the volume

of total annual global business of the previous financial year, opting for the one with the highest

amount, in accordance with article 83.4 of the RGPD.

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Without prejudice to the provisions of article 83.4, section a) of the RGPD, in its art.

58.2 b) establishes the possibility of sanctioning with a warning, in relation to what is indicated in Recital 148:

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

would constitute a disproportionate burden for a natural person, rather than a sanction

A warning may be imposed by means of a fine. However, special attention must be paid

attention to the nature, seriousness and duration of the infraction, to its intentional nature, to

the measures taken to alleviate the damages suffered, to the degree of

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

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

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

any other aggravating or mitigating circumstance.”

According to what was stated,

SAW

By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

1.- NOTICE V.B GRUPO DE ATRACCIONES S.L, in accordance with the provisions of the article 58.2º letter b) RGPD, in relation to the complaint for violation of article 5.1 d) in relation to articles 12 and 14 of the RGPD, typified as serious in article 83.5 of the aforementioned Organic Law.

2.- REQUEST V.B GRUPO DE ATRACCIONES S.L, so that within one month

from this act of notification:

-the adoption of all reasonable measures to ensure that the photographs taken

in their attraction they have the consent of their clients, and in the case of being

minors, who have the consent of those who hold their country

authority, in accordance with the provisions of art. 6.1 a) of the RGPD in relation to art. 8.1

of the GDPR.

3.- NOTIFY this Agreement to V.B GRUPO DE ATRACCIONES S.L.

Against this resolution, which puts an end to the administrative procedure (article 48.2 of the

LOPD), and in accordance with the provisions of articles 112 and 123 of Law 39/2015,

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

Public, the interested parties may optionally file an appeal for reconsideration before

the Director of the Spanish Agency for Data Protection within a period of one month from

from the day following the notification of this resolution, or, directly appeal

contentious-administrative before the Contentious-administrative Chamber of the High Court

National, in accordance with the provisions of article 25 and section 5 of the provision

additional fourth of Law 29/1998, of July 13, regulating the Jurisdiction

Contentious-Administrative, within a period of two months from the day following the

notification of this act, as provided in article 46.1 of the aforementioned legal text.

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Director of the Spanish Data Protection Agency

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