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[doc. web n. 9738356]

Order injunction against Runwhip s.r.l. - November 25, 2021

Record of measures

n. 414 of 25 November 2021

THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

IN today's meeting, which was attended by Professor Ginevra Cerrina Feroni, vice president, dr. Agostino Ghiglia and the lawyer Guido Scorza, members, and the cons. Fabio Mattei, general secretary;

GIVEN the Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27 April 2016, concerning the protection of individuals with regard to the processing of personal data, as well as the free circulation of such data and which repeals Directive 95/46 / EC (General Data Protection Regulation, hereinafter the "Regulation");

GIVEN the Code regarding the protection of personal data (Legislative Decree 30 June 2003, n.196), as amended by Legislative Decree 10 August 2018, n. 101, containing provisions for the adaptation of national law to the aforementioned Regulation (hereinafter the "Code");

NOTING that the Office, with deed no. 13225/21 of 9 March 2021 (notified by the Guardia di Finanza on 4 May 2021), which must be understood as fully reported here, has initiated, pursuant to art. 166, paragraph 5, of the Code, a procedure for the adoption of the measures referred to in art. 58, par. 2, of the Regulation towards Runwhip s.r.l. (hereinafter "Runwhip" or "the Company"), in the person of the pro-tempore legal representative, with registered office in Verolanuova (BS), via Zanardelli 5 / bis, C.F. 03605920986;

NOTING that, from the examination of the documents of the administrative procedure, it emerged, in summary, the following:

- with a complaint of 22 February 2019, submitted to this Authority pursuant to art. 77 of the Regulation, the lawyer XX, representing having received numerous unwanted text messages with the sender "Dorelan", complained about the inability to fully exercise their data access and opposition rights;
- the lawyer XX reconstructed, attaching relevant documentation, the exchanges that took place with B&T S.p.A. (hereinafter, B&T), owner of the Dorelan brand and subject identified by the link at the bottom of the text messages. From these interlocutions it emerged that B&T had declared itself unrelated to the material for sending text messages, which a third party

(not mentioned) would have provided on its behalf, and had invited the complainant to enter his telephone number at the link <https://www.smsspot.it/privacy-cancellation/> or to write to support@smsspot.it. Precisely from this last address, inserted for information in the exchanges, a further reply was received to the complainant in the name of the Company Aimon S.r.l. which qualified as an “external manager, as... it is aimed at database suppliers”. Aimon also did not provide information on the owner of the database, which she qualified as the data controller, but limited herself to informing the complainant that her requests would be forwarded to privacy@runwhip.com. From the documentation on file, it does not appear that the latter address has ever received a reply to the complainant;

- the Office, with a note dated 7 November 2019, forwarded the complaint to all the parties involved (B&T, Aimon and Runwhip S.r.l.) asking them to provide comments on what was represented; Runwhip has never provided feedback to this request, the sending of which was therefore reiterated by certified e-mail, pursuant to art. 157 of the Code, with note prot. 45160/19 of 24 December 2019;

- since no response was received to this last request, the Office communicated to Runwhip the start of the administrative procedure aimed at the adoption of the corrective and sanctioning measures provided for by art. 58, par. 2, of the Regulations, inviting the same company to submit defensive writings or a request for hearing before the Guarantor within thirty days; given the previous omitted findings to the communications notified by certified e-mail, the act of initiating the procedure was notified by the Guardia di Finanza on May 4, 2021;

- from the contractual documentation produced by Aimon (see contract between Aimon and Runwhip signed on 5 October 2018) it emerged that the agreement between the two companies provided for Runwhip to act as an "intermediary" between Aimon itself and the list provider Blade Consulting Sagl for the acquisition of a list of potential recipients of promotional activities;

NOTING that the violation of art. 157 of the Code, from which the application of the sanction provided for by art. 83, par. 5 of the Regulations, referred to by art. 166, paragraph 2, of the Code, and the initiation of the procedure for the adoption of the related corrective measures was also communicated;

NOTING that the Company has not presented defensive writings or requested to be heard by the Authority;

NOTING that the repeated non-responses of the Company did not allow the acquisition of a complete picture of information, significantly aggravating the investigation activity;

NOTING that already in a previous proceeding initiated by the Authority, for similar complaints, the Company had held the same omissive conduct, consequently having to adopt the prescriptive and sanctioning provision no. 12 of 23 January 2020 (in www.garanteprivacy.it, web doc 9284622);

CONSIDERING that the need to obtain a response to the request for information from the Guarantor of 24 December 2019 has now been superseded, as the proceeding started with the complaint has been closed, but reserving any further investigation regarding the lawfulness of the treatments carried out by the Company itself;

NOTING that the failure to reply to the request for information referred to in the previous point, configuring the violation of art. 157 of the Code, requires the adoption of an injunction order, pursuant to Articles 166, paragraph 7, of the Code and 18 of law no. 689/1981, for the application to Runwhip of the pecuniary administrative sanction provided for by art. 83, par. 5, of the Regulations;

GIVEN the articles 166, paragraph 2, of the Code and 83, par. 5, of the Regulation which, for the aforementioned violation, provides for the application of the administrative sanction of the payment of a sum of up to € 20,000,000 or, for companies, up to 4% of the annual worldwide turnover of the previous year, if superior;

CONSIDERING that, for the purpose of determining the amount of the pecuniary sanction, it is necessary to take into account the elements indicated in art. 83, par. 2, of the Regulations;

CONSIDERING that, in the case in question, the following are relevant:

to. the seriousness of the violation (Article 83, paragraph 2, letter a) of the RGPD), due to the repeated, non-response to the requests of the Guarantor (in particular, the invitation to adhere of 7 November 2019, the request for information of the December 24, 2019 and to the notice of initiation of the procedure notified on May 4, 2021);

b. the grossly negligent, and apparently also malicious, nature of the conduct (Article 83, paragraph 2, letter b) of the Regulations), since the Company did not take into account the consequences that could derive from the failure to respond to the requests of the Guarantor , also from the point of view of the complete instruction of the complaint procedure;

c. the failure to adopt measures to mitigate or eliminate the consequences of the violation (Article 83, paragraph 2, letter c) of the RGPD), since even following the initiation of the sanctioning procedure, Runwhip has not taken any initiative;

d. the existence of a previous relevant violation which was acknowledged with the provision of 23 January 2020 (Article 83, paragraph 2, letter e) of the RGPD);

And. failure to comply with this provision, since, to date, it does not appear that the Company has provided feedback on the fulfillment of the orders given by the Authority (Article 83, paragraph 2, letter i) of the RGPD)

d. the lack of cooperation with the Authority (Article 83, paragraph 2, letter f) of the Regulation);

And. the economic conditions of the offender (Article 83, paragraph 2, letter k) of the Regulations), taking into account the value of production and profit for the year with reference to the abbreviated financial statements for the year 2017;

CONSIDERING that, based on the set of elements indicated above, and the principles of effectiveness, proportionality and dissuasiveness indicated in art. 83, par. 1, of the Regulations, the administrative sanction of the payment of a sum of € 90,000.00 (ninety thousand) must be applied to Runwhip;

CONSIDERING also that the ancillary sanction of the publication on the website of the Guarantor of this provision, provided for by art. 166, paragraph 7 of the Code and art. 16 of the Guarantor Regulation n. 1/2019, taking into account the conduct of the Company and the high number of subjects potentially involved in the treatments carried out by the same;

NOTING that the conditions set out in art. 17 of Regulation no. 1/2019 concerning internal procedures with external relevance, aimed at carrying out the tasks and exercising the powers delegated to the Guarantor;

GIVEN the documentation in the deeds;

HAVING REGARD to the observations made by the Secretary General pursuant to art. 15 of the regulation of the Guarantor n. 1/2000;

SPEAKER Attorney Guido Scorza;

WHEREAS, THE GUARANTOR

ascertained against Runwhip s.r.l., in the person of the pro-tempore legal representative, with registered office in Verolanuova (BS), via Zanardelli 5 / bis, C.F. 03605920986, the violation of art. 157 of the Code for the reasons described in the introduction

ORDER

a Runwhip s.r.l., in the person of the pro-tempore legal representative, with registered office in Verolanuova (BS), via Zanardelli 5 / bis, C.F. 03605920986, to pay the sum of € 90,000.00 (ninety thousand) as a fine for the violation indicated in the motivation, representing that the offender, pursuant to art. 166, paragraph 8, of the Code, has the right to settle the dispute by paying, within thirty days, an amount equal to half of the sanction imposed.

INJUNCES

to the aforementioned Company, in the event of failure to settle the dispute pursuant to art. 166, paragraph 8, of the Code, to pay the sum of € 90,000.00 (ninety thousand), according to the methods indicated in the annex, within 30 days of notification of this provision, under penalty of the adoption of the consequent executive acts pursuant to art. . 27 of the law n. 689/1981.

HAS

a) pursuant to art. 17 of the Guarantor Regulation n. 1/2019, the annotation in the internal register of the Authority, provided for by art. 57, par. 1, lett. u) of the Regulations, violations and measures adopted;

b) pursuant to art. 166, paragraph 7, of the Code, the full publication of this provision on the website of the Guarantor.

Pursuant to art. 78 of Regulation (EU) 2016/679, as well as art. 152 of the Code and 10 of Legislative Decree 1 September 2011, n. 150, an opposition to this provision may be proposed to the ordinary judicial authority, with an appeal filed with the ordinary court of the place where the data controller is resident, or, alternatively, to the court of the place of residence of the person concerned. , within thirty days from the date of communication of the provision itself, or sixty days if the applicant resides abroad.

Rome, November 25, 2021

THE VICE-PRESIDENT

Cerrina Feroni

THE RAPPORTEUR

Peel

THE SECRETARY GENERAL

Mattei