

□ Procedure No.: PS/00482/2020

## RESOLUTION OF PUNISHMENT PROCEDURE

In sanctioning procedure PS/0482/2020, instructed by the Spanish Agency for

Data Protection, to D.A.A.A. with NIF: \*\*\*NIF.1, and based on the following,

### BACKGROUND

FIRST: Dated 06/22/20 and 06/23/20, they have entered this Agency writings of

claim filed by D. B.B.B. and by D. C.C.C., (hereinafter, "persons

claimants"), in which they indicated, among others, the following: "On 03/23/20, the

claimed sent a massive email to customers, suppliers and sponsors, where

indicated that I was disassociating myself from the company revealing my name and my ID without my authorization".

A copy of the e-mail, among other things, was attached to the written claims.

sent on 03/23/20, from the address <<\*\*\*ADDRESS.1>> to the address: \*\*\*DI-

RECTION.2, where the following text could be read: "Dear Customers, Suppliers

and Sponsors: (...) I am obliged to report that Messrs. B.B.B. \*\*\*NIF.2 and C.C.C.

\*\*\*NIF.3, are not linked to the DNC Spain project. Therefore, they are not

authorized to use neither the name nor the logo for any purpose. In the supposed case that

If they did, I would ask them to get in touch with us."

In view of the facts set forth in the claim and the

### SECOND:

documents provided by the claimant, the Data Inspection SG proceeded to

carry out actions for its clarification, under the powers of

investigation granted to the control authorities in article 57.1 of the Regulation

(EU) 2016/679 (GDPR). Thus, on 07/06/20, an informative request is addressed to

the person claimed.

According to a certificate from the State Post and Telegraph Society, the request sent to the claimed person, through the SICER service, was returned to origin with the message of "absent" and "not removed from the office", on 11/20/20.

THIRD: In view of the facts denounced and the documentation presented by the claimants, dated 03/05/21, the Director of the Spanish Protection Agency of Data, agreed to initiate a sanctioning procedure against the person claimed, by virtue of the established powers, due to non-compliance with the provisions of article 5.1.c) of the RGPD with a "warning" sanction, regarding the processing of personal data. excessive costs for the purposes pursued.

FOURTH: Once the initiation agreement has been notified, the person claimed, by means of a written dated 03/25/21, it made, in summary, the following allegations:

"The agreement to initiate sanctioning proceedings makes the mistake of considering me employer and considers the claimants as my subordinates, when actually it was the other way around, until the time I was fired.

From that dismissal a judicial process has been derived that is underway in which it is- the claimants here are being sued. Contribution as doc. 1 the claim together with its

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documents that prove that I am not an entrepreneur, but that those claimed here are. blankets.

The claimants (entrepreneurs) in this proceeding have been using the fraudulent the brand and logo uploaded by me without my consent, and without giving me no consideration, before its suppliers, clients and sponsors.

The RGPD establishes in its article 1 its object, which is none other than the protection of Physical persons. not those who act as entrepreneurs, as is the case, in the development development of your business activity.

Neither the infraction foreseen in article 72.1 a) LOPDGDD, nor the graduation tion of the sanction by way of art. 83.5 b) RGPD for escaping the assumption of the object of the European Regulation”.

FIFTH: On 04/15/21, the proposed resolution is notified in which the It was stated that, by the Director of the AEPD, the person claimed for in- section of article 5.1.c) of the RGPD for the use of excessive personal data with re- relation to the intended purposes.

EIGHTH: Notification of the proposed resolution to the person claimed, no pre- No writing of allegations to the same, in the period granted for this purpose.

#### PROVEN FACTS

1.- In the documents submitted by the claimants, it was indicated that the a mass mail "revealing name and ID without my authorization", and it was attached, among others, a copy of the email sent on 03/23/20, from the address

<<\*\*\*ADDRESS.1>>, to the address: \*\*\*ADDRESS.2, with the text: “Dear

Clients, Suppliers and Sponsors: (...) I am obliged to inform that the gentlemen

BBB \*\*\*NIF.2 and C.C.C. \*\*\*NIF.3, are not linked to the DNC Spain project. By

therefore, they are not authorized to use either the name or the logo for any purpose. In the Supposed case that they did, I would ask them to get in touch with us”.

2.- According to the allegations of the defendant, the agreement to initiate the sanction tioner makes the mistake of considering him an entrepreneur and considering the people claiming subordinates as his subordinates, when in reality it was the other way around, until the time He was fired. The claimants had fraudulently used the trademark and the logo of your property without your consent and therefore informed customers and suppliers

dors of this circumstance.

On the other hand, it alleges that the purpose of the RGPD is the protection of natural persons, not those who act as entrepreneurs, as is the case, in the development of their activity

Therefore, neither the foreseen infraction nor the graduation of the offense is applicable.

penalty for escaping the GDPR object assumption.

Notwithstanding the foregoing, the respondent does not present any document that substantiates that the claimants acted as self-employed entrepreneurs in the contractual relationship alleged, as it could be, the signed contract or pre-contract, personal income tax withholdings, or the TC1 or TC2 presented.

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FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of Regulation (EU) 2016/679, of the Parliament-European Act and of the Council, of 04/27/16, regarding the Protection of Natural Persons regarding the Processing of Personal Data and the Free Movement of es-Data (RGPD) recognizes each Control Authority and, as established in the art. 47, 64.2 and 68.1 of Organic Law 3/2018, of December 5, on the Protection of Personal Data and Guarantee of Digital Rights (LOPDGDD), the Director of the Spanish Data Protection Agency is competent to resolve this procedure.

I lie.

The joint assessment of the documentary evidence in the procedure brings to knowledge of the AEPD, a vision of the denounced action that has been re-

reflected in the facts declared proven above reported.

II

In the present case, the dissemination of personal data of third parties, through of the email, supposes a treatment of personal data and, therefore, it should rely on any of the legitimating causes indicated in the RGPD.

In the present case, it is alleged that the claimants are businessmen and that, therefore, the RGPD is not applicable in this case, as established in its article 1, that is, when people act as entrepreneurs, in the development of their business activity, presarial and to justify it I enclose the demand that, according to what he states, proves that is the employer, but rather that the employers are the claimants and that they acted as such.

In said lawsuit with the title of, "recognition of employment relationship and guardianship of fundamental rights", mentions Don B.B.B. with \*\*\*NIF.2 and Don C.C.C. with \*\*\*NIF.3. However, no document is presented to substantiate that the claims parties will act as self-employed entrepreneurs in the alleged contractual relationship.

Regarding the alleged illicit use of the personal data of the claimants by the claimed party when he/she proceeds to inform, by means of an electronic mail mass communication to customers, suppliers and sponsors, that both people are unrelated to the "DNC Spain" project and therefore are not authorized to use neither the name nor the logo, it is considered, in accordance with the "principle of data minimization", contained in article 5.1.c) of the RGPD that re-disclosure of personal data such as your ID number, is excessive in relation to tion to the intended purposes.

Article 72.1.a) of the LOPDGDD considers it very serious, for prescription purposes, "The processing of personal data violating the principles and guarantees established in article 5 of the RGPD".

This infraction can be sanctioned with a maximum fine of €20,000,000 or,  
in the case of a company, an amount equivalent to a maximum of 4% of the

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

However, the art. 58.2) of the RGPD provides that: "Each supervisory authority  
will have all the following corrective powers indicated below: b)

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

Regulation; (...); i) impose an administrative fine pursuant to Article 83,  
in addition to or instead of the measures mentioned in the paragraph, according to the  
circumstances of each particular case", therefore, the sanction that must correspond  
in the present case it is "warning".

In view of the foregoing, the following is issued:

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RESOLVE

NOTICE: to D. A.A.A. with NIF: \*\*\*NIF.1 for the infraction of article 5.1.c) of the  
RGPD, regarding the use of excessive personal data in relation to the purposes perse-  
guides.

NOTIFY: this resolution to D. A.A.A..

In accordance with the provisions of article 50 of the LOPDPGDD, this Re-

The solution will be made public once it has been notified to the interested parties.

Against this resolution, which puts an end to the administrative procedure in accordance with art. 48.6 of the LOPDPGDD, and in accordance with the provisions of article 123 of the LPACAP, the Interested parties may optionally file an appeal for reconsideration before the Director of the Spanish Agency for Data Protection within a month from the date of the day following the notification of this resolution or directly contentious appeal before the Contentious-Administrative Chamber of the National High Court, in accordance with the provisions of article 25 and section 5 of the additional provision Final fourth of Law 29/1998, of July 13, regulating the Contentious Jurisdiction-administrative, within a period of two months from the day following the notification of this act, as provided for in article 46.1 of the aforementioned Law.

Sea Spain Marti

Director of the Spanish Agency for Data Protection.

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