

□ Procedure No.: PS/00196/2020

938-0419

RESOLUTION OF PUNISHMENT PROCEDURE

In sanctioning procedure PS/00196/2020, instructed by the Spanish Agency for Data Protection, to the entity DERDIX 5000 SL, with CIF.: B66773599, (in hereinafter, "the claimed entity"), by virtue of a complaint filed by, Ms. A.A.A. Y Ms. B.B.B., (hereinafter, "the claimants") and based on the following:

BACKGROUND

FIRST: On 10/17/19, you entered this Agency in writing, submitted by the claimants, in which, among others, it indicated:

"That dated ***DATE.1 in the publication number ***NUMBER.1 of your magazine

***MAGAZINE.1, on page ***PAGE.1 the activity ***ACTIVI-

DAD.1 (with photo and text of activity that was also plagiarized). This activity is

advertises in its magazine with photos of our underage daughters, in

bathroom, makeup and at the edge of a pool. In these photos it is perfectly recognizable-

mind our daughters. We have not been consulted or informed, nor have we

we have given any consent for the publication of the same. We have

contacted four times with different workers of this publication

requesting information in this regard, that they seek advice on the rights of

minors whose photos they publish, but from this magazine they assure us in a rude way

and arrogant that they have obtained the photo from the internet, that this is the usual procedure and

They do not have to assume any responsibility in this fact. A copy is attached

of the journal page where the denounced publication appears.

SECOND: In view of the facts set forth in the claim and the documents

provided by the claimant, the General Subdirectorate for Data Inspection proceeded

to carry out actions for its clarification, under the investigative powers

tion granted to the control authorities in article 57.1 of the Regulation (EU)

2016/679 (General Data Protection Regulation, hereinafter RGPD). A) Yes,

dated 11/06/19, an information request is addressed to the entity SIERRA MOLE-

RO S.L., entity advertised by the image of the girls and on 11/08/19 to the entity KIO-

SKO Y MAS MANAGEMENT COMPANY OF THE TECHNOLOGICAL PLATFORM S.L, publi-

cation denounced by the publication of the photograph.

THIRD: On 12/30/19, the entity SIERRA MOLERO S.L, sends this

Agency, written, in which it informs, among others, of the following:

"One of the mothers who made the claim, worked in the Encanto del Valle del

Lozoya from 2015 to 09/10/18. Among other tasks, he was in charge of the

promotion of the ***ACTIVITY.1 Experience, which we carried out in the Encanto del

Valley (Lozoya Choker). Until that date, apart from the employment relationship, we were united

a relationship of friendship and between both we develop and promote the activity.

During that time there was consent on the part of the claimants for the

publication of the photo referred to and was used voluntarily by the

own mother for the promotion of the activity while working on the Enchantment of the

Valley. Below, we attach photos that show evidence of consent

www.aepd.es

C/ Jorge Juan, 6

28001 – Madrid

sedeagpd.gob.es

2/7

for the diffusion of the photo for the activity in El Encanto del Valle. We don't know the

reason why the journal has made the publication referred to in

the claim. We received the news of the publication on 07/24/19 at

through a WhatsApp of an acquaintance who sees the magazine. Attached screenshots showing our surprise at the publication.

A few days later, the claimant received news of the publication and asked us she. We inform you of our ignorance and surprise. The magazine was not put on contact us at any time and of course if you had known, obviously we would not have used that image, just as we have not published no other pictures of the girls since the mother doesn't work with us.

The mother asks us at that time to remove the photo from our website (which is originally hung up at the launch of the activity in the Encanto del Valle to have its authorization as has been seen in the screenshots shown above). Y

as soon as we could the photo has been removed as can be seen in our web, because as we have already indicated we have no interest in using it. They can verify the non-existence of the photos on our website: ***URL.1, but the two mothers, To this day, they continue to share the photo on their social networks.

We are not clear where the magazine took the information from. It cannot be assured that the magazine will take the photo of the Encanto del Valle website since since the claimant began to carry out the activity in Aravaca, its publications on social networks have been wrong and very confusing, so much so that at the time customers called us and they did not know where the activity was taking place, whether in El Encanto or in Aravaca (one of the places where the claimant currently carries out the activity). In the Enchantment of the Valley we were unaware of the publication of the article in the magazine in which the photo is used object of the claim. If we had known, we would not have provided that photo if we had not others more innovative and renewed that we currently use in our networks.

Both claimants were aware of the use that was being made of the image and they approved it as it is demonstrated in the captures provided where they

They share and promote the activity in El Encanto. To avoid any

type of misunderstanding in the future we have eliminated the photo object of the claim in our website, as we have no interest in using photography”.

FOURTH: On 12/05/19, the entity KIOSKO Y MÁS S.L., sends a letter to this

Agency, in which, among others, it indicates:

“KIOSKO Y MÁS is an entity dedicated to the distribution and marketing to the public

content through a digital service, such as online newspapers or magazines.

ne. These contents are the exclusive property of the publishing companies (hereinafter,

the Editors), so KIOSKO Y MÁS has no connection with the content

of the publications carried out by the Editors, since they are the same, those who hold

as full ownership of all intellectual property rights. After

receive this notification, at KIOSKO Y MÁS the pertinent ve-

internal verifications about the magazine in question “***REVISTA.1” and it has not been located

the same as content distributed through KIOSKO Y MÁS.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

3/7

An Internet search has been carried out on the entity that owns said journal, with

in order to verify if with the company name something could be found in the systems

more from KIOSKO AND MORE. In this way, on the website of the Official Property BO

intellectual property, it has been found that the journal in question is owned by the publishing entity

DERDIX 5000, S.L.“, with which KIOSKO Y MÁS does not have and has not had any relationship.

With all of the above, we understand that the claim made by the Interested Parties

against KIOSKO Y MÁS, is due to an error in them when associating the review

ta “*** REVISTA.1” with KIOSKO Y MÁS, for having a partial coincidence in the name

name and probably because when entering certain keywords in Internet search engines, internet. such as "magazine" and "more", the first matches from searches correspond to put KIOSKO AND MORE. On the other hand, in relation to the claim of the Interested das, in which they indicate that they contacted the magazine, in KIOSKO Y MÁS It has been verified that at no time has any communication been received from the themselves, so it is understood that the Interested Parties contacted the entity titular entity of the magazine".

FIFTH: In view of the facts exposed, the Subdirector General for Inspection of Data proceeded to carry out actions for its clarification, under the protection of the investigation rights granted to the control authorities in article 57.1 of the.

Thus, on 12/17/19 and 04/14/20, two requests are addressed to DERDIX 5000 SL.

SIXTH: On 06/12/20, the entity DERDIX 5000 SL., presents a written allegation tions in this Agency, in which, among others, it indicates:

"1. The photograph referred to in the request was indeed published in the nº ***NUMBER.1 of the Magazine ***REVISTA.1", as indicated in the request. ***RE-VISTA.1 is the only weekly periodical published by DERDIX 5000 S.L. I know distributed only in printed format (it is not marketed through the internet), and is Due to its main theme, it falls within the sector of the so-called "press of the heart". It also has other sections on various subjects, of a complementary nature. mental. One such complementary section is "More Leisure", included in each issue of the magazine, and which deals with cultural, sports and/or recreational activities do in free time.

It is in said section "More leisure", within the nº ***NUMBER.1 of the magazine, pages. -***PAGE.1, in which the photograph referred to in the request was published that I answer; section that was dedicated, given its publication in the week of

***DATE.1, to typically summer activities, mostly outdoors, in which parents and children could participate jointly during the summer vacations. them, and that were considered, therefore, then, of evident informative interest and of more than manifest actuality at that time.

All those listed above are ordinary editorial content, that is, strictly informative and non-advertising purpose, to the extent that the company that present has not received, for the publication of any of them, not a single cent of Euro; in particular, for the information on the activity Escuela de ***ACTIVI-DAD.1 offered by the rural house El Encanto del Valle de Lozoya. There is no

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

4/7

commission contract or diffusion, such as the one that requests its exhibition in the required I lie.

All the editorial contents cited were elaborated from pre-previously published by third parties on the internet and social networks, without any restriction of access. As far as the photograph referred to in the requirement of information, it was publicly accessible at the internet address

***URL.1 whose screenshot, taken between the days ***DATE.2, I accompany this writing, as doc. no. 3

If this photograph is observed with a minimum of attention, it is perceived that it does not has been taken in a spontaneous moment of rest of two girls who were participating in the activity, which would have been captured by the photographer inadvertently mind by them and their families. On the contrary, it is a photograph

carried out with the evident purpose of disseminating the offer of said activity, as re-ensure unequivocally, and without prejudice to other extremes -which will be credited in the future course, if necessary- the following:

In short, said in journalistic language, it is not a question of a "stolen" image but of an authentic "posed" made for the web of a service activity, which is unthinkable that it has been carried out without the consent of the holders of the testad, and which, due to its evident originality, was echoed in its day by the media communication that I represent. Especially if you take into account that other images of the same girls have been spread on the internet and social networks, as I credit with the impressions of the sites that I attach, grouped, as doc. No. 4".

SEVENTH: On 08/11/20, the Director of the Spanish Agency for the Protection of Data agreed to initiate sanctioning proceedings against the claimed entity, by virtue of the established powers, for failing to comply with the provisions of article 6.1 of the RGPD, sanctionable in accordance with the provisions of art. 83 of the aforementioned RGPD, with an initial sanction of 2,000 euros.

EIGHTH: Notified of the initiation agreement, the claimed entity has not submitted any pleadings written in this Agency, in the period of time granted to the effect.

PROVEN FACTS

1º.- The publication, in the magazine "****REVISTA.1", of a photograph with two girls, minors accompanying the news of a youth leisure activity offered in Valle del Lozoya (Madrid), without the express consent of their parents.

2º.- The entity SIERRA MOLERO S.L., responsible for the entertainment activity offered in the denounced publication, states that one of the claimants previously worked for a time in his entity promoting this activity, which is why his daughter appeared in that photo with a friend of hers,

published on the entity's website, with the consent of both parents, but

they were unaware of the publication of the activity in the reported magazine. Nevertheless,

On the other hand, they affirm that the claimants themselves make public use, in the networks

social, of that same photograph, promoting the same leisure activity, in its

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

5/7

new job and location (Aravaca-Madrid) and end by indicating that, not being able to

determine if the girls' photo was taken from their website or social networks

society, to avoid future misunderstandings, have eliminated photography from their own

Web page.

3º.- For its part, the editor of the magazine that published the photo, DERDIX 5000, S.L.,

states that the ad referred to in the claim was actually published in the

section, "More Leisure", but they allege that all the contents of this section are

elaborated from information previously published by third parties on the internet and

social networks, without any restriction of access, as is the case of photography

reported, which was published on the website ***URL.1, from where they obtained it.

In addition, they indicate that the photograph has been publicly disseminated in more places, in

internet and social networks.

4º.- It is verified, by this Agency, that currently the image claimed

is published widely on the internet publicly, through the result

obtained in the image search engine "***BUSCADOR.1".

FOUNDATIONS OF LAW

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

Data Protection, in accordance with the provisions of art. 58.2 of the RGPD in the art. 47 of LOPDGDD.

The joint assessment of the documentary evidence in the procedure brings to awareness of the AEPD, a vision of the denounced action that has been reflected gives in the facts declared proven above related.

Yo

II

The processing of personal data, such as in this case, the images of people taken in photographs, it will only be lawful if at least one of the conditions marked in article 6.1 of the RGPD: "a) the interested party gave his consent to the processing of your personal data for one or more purposes specific; b) the treatment is necessary for the execution of a contract in which the interested party is a party or for the application at the request of the latter of measures pre-contractual; c) the treatment is necessary for the fulfillment of a legal obligation applicable to the data controller; d) the treatment is necessary to protect the vital interests of the data subject or another natural person; e) treatment is necessary for the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the data controller; f) the treatment is necessary for the satisfaction of legitimate interests pursued by the responsible for the treatment or by a third party, provided that said interests are not the interests or the fundamental rights and freedoms of the interested party prevail that require the protection of personal data, in particular when you are a child. It provided for in letter f) of the first paragraph shall not apply to the processing carried out by public authorities in the exercise of their functions.

On the other hand, although the complaint indicates that the images used, without the mandatory consent of the parents, they are of two minor girls, it is not

specifies in it, his real age, but we can remember here, that article 7 of

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

6/7

The LOPDGDD establishes, regarding the consent of minors, that: "1. He tries-

The processing of the personal data of a minor may only be based on

your consent when you are over fourteen years of age. The cases are excepted in

that the law requires the attendance of the holders of parental authority or guardianship for the celebration

creation of the legal act or transaction in the context of which consent is obtained to

the treatment. 2. The treatment of the data of minors under fourteen years of age, founded

in the consent, it will only be lawful if the consent of the holder of parental authority or guardianship is recorded.

the, with the scope determined by the holders of parental authority or guardianship.

Well, taking into account the above, when processing data

personal, as in this case, the publication of images of people taken in

photograph that have not been provided by themselves or by their parents if they were

Under 14 years of age, the provisions of article 6 of the RGPD must be applied.

Therefore, the publication of the images, in the magazine "****REVISTA.1", by the entity

DERDIX 5000 S.L., even if they had been obtained from previously published publications.

published by third parties on the internet and social networks, without any restriction on their access,

must be treated, observing the provisions of article 6.1 of the RGPD, on con-

stakeholder sentiment.

In view of the foregoing, the following is issued:

:

RESOLVE

FIRST: TO IMPOSE the entity DERDIX 5000 SL, with CIF.: B66773599, a sanction

2,000 euros (two thousand euros), for violation of article 6 of the RGPD

SECOND: NOTIFY this resolution to the entity DERDIX 5000 SL, and IN-

TRAIN the claimant on the outcome of the claim.

THIRD: Warn the sanctioned party that the sanction imposed must make it effective

Once this resolution is executed, in accordance with the provisions of art.

Article 98.1.b) of Law 39/2015, of October 1, of the Administrative Procedure Co-

Public Administrations (LPACAP), within the voluntary payment period that

points out article 68 of the General Collection Regulations, approved by Royal De-

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 number ES00 0000 0000 0000 0000

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

CAIXABANK, S.A. or otherwise, it will be collected in the executable period.

crop.

Received the notification and once executed, if the date of execution is

between the 1st and 15th of each month, both inclusive, the term to make the payment

will be until the 20th day of the following month or immediately after, and if

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

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

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

bre, of fiscal, administrative and social order measures, this Resolution is

will make public, once it has been notified to the interested parties. The publication is made

will be in accordance with the provisions of Instruction 1/2004, of December 22, of the Agency

Spanish Data Protection on the publication of its Resolutions.

C/ Jorge Juan, 6

28001 – Madrid

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

Finally, it is pointed out 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 interested party do states its intention to file a contentious-administrative appeal. Of being

In this case, the interested party must formally communicate this fact in writing addressed to the Spanish Agency for Data Protection, presenting it through the Re-Electronic Registry of the Agency [<https://sedeagpd.gob.es/sede-electronicaweb/>], or to through any of the other registers provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. You must also transfer to the Agency the documentation that proves the effective filing of the contentious-administrative appeal. If the Agency was not aware of the filing of the contentious-administrative appeal tive within two months from the day following the notification of this resolution, would end the precautionary suspension.

Sea Spain Marti

Director of the Spanish Data Protection Agency

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es