

## EASA Cross-Border Complaints

### Quarterly Report N° 56 (April - June 2012)



## April - June 2012

This report contains the details of 118 cross-border complaints about 17 advertisements coordinated by EASA's cross-border complaints system and closed during the period April to June 2012. 13 complaints concerned allegedly misleading advertising and 105 complaints concerned possibly offensive advertising<sup>1</sup>. The media involved are internet for 116 complaints and direct marketing for two complaints. The Irish self-regulatory organisation (SRO) handled 106 cross-border complaints, the Dutch SRO six and the Austrian, Czech, Germany, French, Finnish and British SRO dealt with one complaint each. The majority of cross-border complaints, 103 in total, regards the gambling industry and in particular an advertisement of an Irish online betting platform.

### Allegedly misleading advertising

#### 2407 - Booking.com

Complaint from a British consumer to the British SRO, ASA, against the content of a Dutch website for hotel reservations. On the website the rooms were advertised as discounted from £176 to £89 with a consequent saving of 50%. The complainant objected that the pricing claims on the website are misleading as £89 was actually the regular price of a room on the hotel's own website. The complainant, therefore, challenged whether the discount was genuine. As the advertiser was based in the Netherlands the British SRO, ASA transferred the complaint to the Dutch SRO, SRC under the cross-border procedure. After investigation the Dutch SRO discovered that the cheapest price was in fact the actual price of the room and not a special tariff. Therefore, they believed the advertisement to be misleading for consumers. **Complaint upheld, case closed.**

#### 2420 - Worldwide database of trademarks and patents

Complaint from an Italian company to the Italian SRO, IAP, regarding a direct mail from the Czech Republic. The mailing invited the recipient to pay for the registration of its trade mark in an electronic source of brands and patents, making the format appear like a free offer. However, the complainants found out that by signing the form, the companies automatically requested a payable insertion in the guide. Therefore the complainants found the advertisement to be misleading. As the advertiser was based in Czech Republic, the Italian SRO, IAP, transferred the complaint to the Czech SRO, CRPR under the cross-border procedure. After investigation the Czech SRO, CRPR, declared that the advertisement was in breach of the Code and that the practice used for its content was not ethical. Therefore, they decided to transfer the complaint to the appropriate authority. **Complaint transferred to appropriate authority, case closed.**

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<sup>1</sup> In cases involving EU member states, advertisements are required to comply with the rules in the country of origin of the media in which the advertisement appears or, in the case of direct mail, email or Internet advertising, the country where the advertiser is based. Switzerland, as a non-member of the EU, requires advertisements addressed by Swiss-based advertisers to consumers in other countries to comply with the rules in those countries (country of destination). Consequently, in such cases, the self-regulatory organisation (SRO) in the complainant's country assesses the complaint on the basis of its own national rules before passing it to the Swiss SRO, which communicates the decision to the advertiser.

#### **2424 - Booking.com**

Complaint from a British consumer to the British SRO regarding an advertisement on a website for hotel reservations. The complainant challenged whether one of the hotels displayed was really a 4 star hotel. Furthermore, the ad stated "Breakfast is included" but when the consumer contacted the hotel, he found out that the breakfast was not included in the price. Moreover, the complainant challenged whether the "55% savings on the price of the room" advertised was misleading. As the advertiser was based in the Netherlands the British SRO, ASA, transferred the complaint to the Dutch SRO, SRC under the cross-border procedure. After investigation the Dutch SRO discovered that the qualification of 4 stars of the hotel was justified but the claim of a "free breakfast" was actually misleading. In addition it resulted impossible to certify the real price of the room so the claim of a "55% saving on the price" was also misleading. **Complaint upheld, case closed.**

#### **2431 - Valkee Ltd**

Complaint from a British consumer to the British SRO, ASA, regarding a Finnish web page which advertised a medical device. The web page implied that channelling a safe bright light directly into the ear canal could provide relief from a number of serious medical conditions. The complainant challenged whether the advertiser could substantiate the efficacy claims of the product that it could cure depression. As the company was based in Finland the British SRO, ASA, transferred the complaint to the Finnish SRO, MEN, under the cross-border procedure. After further investigation the Finnish SRO, MEN, considered the advertisement to be highly misleading for consumers and asked to the advertiser to change the content or withdraw it. **Complaint upheld, case closed.**

#### **2435 - Leisuregrow products Ltd**

Complaint from a British consumer to the British SRO, ASA, about an Irish advertisement promoting an eco mushroom growing kit "made from 100% recycled and sustainable resources". The complainant considered the ad to be misleading because although the packaging was 100% sustainable the internal part of the product included materials such as peat which for the consumer was not environmentally friendly. As the advertiser was based in Ireland the British SRO, ASA, transferred the complaint to the Irish SRO, ASAI, under the cross-border procedure. After investigation the Irish SRO discovered that there were a number of different items in the kit, one of which was the eco-friendly pot and the other the mushroom compost and casing. Therefore, ASAI considered the advertisement not to be misleading. **Complaint not upheld, case closed.**

#### **2438 - Easy to book holding BV**

Complaint from a British consumer to the British SRO, ASA, regarding a Dutch website for hotel reviews. The complainant believed that the review procedures were misleadingly presented because it was only possible to rate a hotel from five to ten, which made the final scores appear more favourable than what they really were. As the company was based in the Netherlands, the British SRO, ASA, transferred the complaint to the Dutch SRO, SRC, under the cross-border procedure. After reviewing the advertisement the Dutch SRO considered it misleading as it did not show objective opinions. **Complaint upheld, case closed.**

#### **2443 - Djugo.com**

Complaint from a British consumer to the British SRO, ASA, about an ad from a Dutch company that claimed to be looking for iPhones testers. The complainant found out that after signing up and giving personal details, including the phone number, an unknown company started to send him texts at a charge of £1.50 each but no possibility for iPhone testing was offered. Therefore, the complainant found the ad to be misleading. As the company was based in the Netherlands the British SRO, ASA, transferred the complaint to the Dutch SRO, SRC under the cross border procedure. After investigation the Dutch SRO discovered that the complainant's mobile provider had given incorrect information about the service subscribed by the complainant and therefore, it resulted impossible to contact the right advertiser. **Complaint not pursued, case closed.**

#### **2444 - Afibel Sas**

Complaint from a British consumer to the British SRO, ASA, about a direct mail from a French company offering a free gift (a digital camera) to their usual customers. After further scrutiny of the mailing, the complainant found a sentence in the terms and conditions stating that the "free" gift was only for the two customers who placed the highest orders. Therefore, the complainant found the mail to be misleading. As the company was based in France, the British SRO, ASA, transferred the complaint to the French SRO, ARPP under the cross-border procedure. After contacting the advertiser ARPP found out that all customers who returned their voucher together with an order received a gift (a cheap digital camera) and the two customers who placed the highest orders received a more expensive prize (a more elaborate digital camera). The term "free gift" meant that a gift would be sent free of charges to every customer who placed an order. Therefore, the French SRO considered the advertisement not to be misleading. **Complaint not upheld, case closed.**

#### **2451 - Ciderazijn**

Complainant from a Belgian consumer to the Belgian SRO, JEP, regarding an email promoting a weight loss product. The email stated "Discover all the details about this EXPRESS-WEIGHT LOSS CURE, which guarantees you a RAPID weight loss of 1 kilo per day and is completely FREE for you!" and "Do not forget to enter the following promotional code with your order to obtain the reduction that has been reserved for you: (...)". The complainant tried to put an order for the free product but it resulted to be impossible. Moreover, after trying to order the product, he received a phone call from the company inquiring why he did not complete the order he started. Therefore, the complainant found the ad to be misleading. As the company was based in the UK the Belgian SRO, JEP, transferred the complaint to the British SRO, ASA, under the cross-border procedure. After contacting the advertiser the British SRO found out that the products were covered by a "satisfied or refund" guarantee that allowed the consumers to purchase and test the product and, in case of no satisfaction, obtain 100% money back. The advertiser also stated that consumers were made aware of the offer via their website, under the section "guarantee". **Complaint not investigated, case closed.**

#### **2467 - Mobile Minded BV**

Complaint from a British consumer to the British SRO, ASA, regarding an on-line banner that stated "CONGRATULATIONS! You are today's iPhone 4s winner! Click on the "Yes" button below to try to win before time runs out". The complainant found the ad to be misleading because it claimed that they could win an instant prize just by answering a question. However, after clicking through to the competition and feeling pressured into entry, they found out that this was simply an entry into a prize draw at a cost of £3. The complainant also challenged the

authenticity of the testimonials of previous winners shown in the advertisement. As the company was based in the Netherlands the British SRO, ASA, transferred the complaint to the Dutch SRO, SRC, under the cross-border procedure. The Dutch SRO contacted the advertiser and discovered that the content of the banner was actually owned by an affiliate of the company who had been using his own advertisement materials without approval of the advertiser. Therefore, the advertiser, after reviewing the advertisement, decided it was in breach of their internal code and asked the affiliate to withdraw it. As action had already been taken by the advertiser the SRO decided not to pursue the investigation. **Complaint not upheld, case closed.**

#### **2468 - Harmonia Ltd**

Complaint from a British consumer to the British SRO, ASA, regarding a competition on the advertiser Facebook page. The ad stated "It's giveaway time! If we reach 4,000 friends by Friday morning - we'll pick five new friends and five old friends and send out goodies bags packed to the brim with treats. It's time to get liking people". The complainant was chosen as a winner in the competition but she only received a brown envelope with three items inside, and not a bag as stated in the ad. Therefore, the complainant found the ad to be misleading. As the company was based in Ireland the British SRO, ASA, transferred the complainant to the Irish SRO, ASAI, under the cross-border procedure. The Code of ASAI did not apply to marketing communications posted on social media platforms. Therefore, the complaint fell outside its remit. **Complaint out of remit, case closed.**

#### **2567 - Qantas Airways Ltd**

Complaint from a British consumer to the British SRO, ASA, regarding an email from an Australian airways company that stated "more options for flights to Australia... we have enhanced a longstanding relationship giving you more options to fly to Australia". The consumer challenged whether the advertisement was misleading because after looking at the recent changes in the flight schedule he discovered that the number of flights, routes and connections had actually been reduced. Therefore, he found the advertisement to be misleading. As the company was based in Australia, the British SRO, ASA, transferred the complaint to the Australian SRO, ASB, under the cross-border procedure. ASB was not able to pursue the case as it concerned misleading advertising and, therefore, fell outside its remit. However, the SRO notified the Australian Competition and Consumer Commission of the complaint. **Complaint transferred to appropriate authority, case closed.**

#### **2573 - Star alliance services GMBH**

Complaint from a British consumer to the British SRO, ASA, regarding a network of airlines based in Germany which offered benefits to its members. The complainant who was a member of the company objected to the claim "Priority baggage handling" as the company had failed to honour this for the past four years. Therefore, the complainant considered the ad to be misleading. As the advertiser was based in Germany, the British SRO, ASA, transferred the complaint to the German SRO, ZENT, under the cross-border procedure. The German SRO considered that due to the complexity of the baggage handling system at airports it was impossible to prove the inefficiency of the advertiser and, therefore, was not possible to pursue the complaint further. **Complaint not pursued, case closed.**

## Possible offensive advertising

### 2456/2463 - Paddy Power

Complaint from a British consumer to the British SRO, ASA, regarding an ad broadcasted on the website of an online betting platform. The ad featured women, some of whom were apparently transgender, during a horse race and invited the viewer to “spot the trans-women from the normal women” referring to them as “stallions and mares”. The complainant found the ad to be offensive because it ridiculed transgender individuals and could also lead to harassment or violence. As the company was based in Ireland the British SRO, ASA, transferred the complaint to the Irish SRO, ASAI, under the cross-border procedure. After investigation ASAI noted that the advertisement had not respected the dignity of transgender persons and was in breach of the Code section 2.16 “marketing communications should respect the dignity of all persons...” Therefore, the advertisement should not be broadcasted again. **Complaint upheld, case closed.**

### 2469 - Ondeugend-daten

Complaint from a Belgian consumer to the Belgian SRO, JEP, regarding an ad for a dating website. The complainant believed that the girl presented in the ad was under 18. He contacted the company and they replied that for all their advertisements they bought pictures with legal paid image rights so, according to the law, all the models concerned have to be over 18. However, the complainant was not convinced by the response and believed that this type of ads should show older models. As the company was based in the Netherlands, the Belgian SRO, JEP, transferred the complaint to the Dutch SRO, SRC, under the cross-border procedure. The Dutch SRO investigated the case and discovered that the girl was actually 21 years old. Therefore, they decided that the advertisement was not offensive. **Complaint not upheld, case closed.**

### 2470/2565 - Paddy Power

Complaint from a British consumer to the British SRO, ASA, regarding an ad broadcasted on the Facebook and YouTube pages of an online betting platform. The ad featured women, some of whom were apparently transgender, during a horse race and invited the viewer to “spot the trans-women from the normal women” referring to them as “stallions and mares”. The complainant found the ad to be offensive because it ridiculed transgender individuals and could also lead to harassment or violence. As the company was based in Ireland the British SRO, ASA, transferred the complaint to the Irish SRO, ASAI, under the cross-border procedure. The Code of ASAI did not apply to marketing communications posted on social media platforms. Therefore, the complaint fell outside its remit. **Complaint out of remit, case closed.**

### 2569 - Yelp Ireland Ltd

Complaint from a British consumer to the British SRO, ASA, about an e-mail from an Irish website providing restaurants reviews. The consumer believed the content of the advertisement and the use of imagery to be offensive, sexist and derogatory to women. Especially the expressions “Pulled!” and “We will make you click in all the right places” written across a woman’s backside. As the company was based in Ireland the British SRO, ASA, transferred the complaint to the Irish SRO, ASAI, under the cross-border procedure. After reviewing the advertisement the Irish SRO, ASAI, considered that it had not caused grave or widespread offence. Therefore, ASAI informed the complainant accordingly and no further action has been taken. **Complaint not upheld, case closed.**