

EASA Cross-Border Complaints

Quarterly Report N° 57 (July - September 2012)



July - September 2012

This report contains the details of 22 cross-border complaints about 16 advertisements coordinated by EASA's cross-border complaints system and closed during the period July to September 2012. 19 complaints concerned allegedly misleading advertising and 3 complaints concerned potentially offensive advertising¹. The media involved are the internet (12 complaints), direct marketing (9 complaints) and print (one complaint). The Slovakian self-regulatory organisation (RPR) handled 8 cross-border complaints; the Irish SRO 3; the British, Spanish and Dutch SROs processed two complaints each, while their French, German, Italian, Belgian and Turkish counterparts dealt with one complaint each. The majority of cross-border complaints, 8 in total, regards the publications sector and in particular a direct marketing campaign of a Slovakian company targeting the Israeli market.

Allegedly misleading advertising

2426 - Star Shopping

Complaint from a British consumer to the British SRO, ASA, about a direct mailing from France stating that the consumer had won £20,500. The mailing encouraged the consumer to place an order in order to receive the prize. The complainant objected that the claims "Official Declaration" and "Certificate of Confirmed Win" used for a prize draw were misleading because they implied that recipients were official prize winners. As the advertiser originated in France, the British SRO, ASA, transferred the complaint to the French SRO ARPP, under the cross-border procedure. The French SRO, ARPP, informed the advertiser about the concerns of the complainant but the advertiser did not reply. **Complaint not pursued, case closed.**

2454 - 123BMT.com

Complaint from a British consumer to the British SRO, ASA, about a Spanish webpage promoting an infrared central heating system. The complainant challenged the claims that the advertiser heating system could save consumers up to 74% on the fuel bills and that a normal air conditioning unit removed oxygen from the air and caused problems such as dry throats, headaches and drowsiness when in heating mode. Therefore, the complainant found the webpage to be misleading for costumers. As the company was based in Spain the British SRO, ASA, transferred the complaint to the Spanish SRO, Autocontrol, under the cross-border procedure. After investigation the Spanish SRO discovered that the advertiser was no longer

¹ 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.

using that campaign or promoting the product that had been complained about. **Complaint resolved informally, case closed.**

2570 - Paddy Power

Complaint from a British consumer to the British SRO, ASA, regarding an e-mail from an online betting platform. The complainant received an offer for a free bet to be placed by mobile phone. However, after placing a bet via the general service on the advertiser website the money was refused without further clarifications. Only after contacting the Customer Support the complainant discovered that the offer was valid only through the advertiser's mobile application and not via the general website. The complainant believed that the conditions were not clearly stated on the email and, therefore, he found the advertisement to be misleading. 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 advertiser after been contacted by the Irish SRO, ASAI, decided to add the line "Does not apply to bets placed via Dial-A-Bet" to their terms and conditions in order to avoid confusion. Moreover, the advertiser decided to give to the complainant a free bet corresponding to the value of the bet he placed at the time. **Complaint upheld, case closed.**

2572 - Tulp Solutions

Complaint from a British consumer to the British SRO, ASA, regarding a leaflet promoting an offer for cheap international calls. The advertisement claimed that calls to 0844 mobile numbers in South Africa would cost 5p per minute. However, after using the service and having received another confirmation that the cost would be 5p per minute the complainant found out that he had been charged 15p per minute. Therefore, the complainant found the advertisement 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. The Dutch SRO, SRC, judged the advertisement to be in breach with the Dutch Advertising Code, because not all the costs of phoning were clearly mentioned in the leaflet. **Complaint upheld, case closed.**

2576 - Quizshuttle/Everneo

Complaint from a British consumer to the British SRO, ASA, concerning an online quiz to enter a prize draw for an iPad. The advertisement claimed "92,9% of British men can't get it right". The complainant challenged whether the advertisement was genuine as any answer entered was classed as correct and, therefore, the claim about the "92,9%" of the British male population failing the quiz was misleading. In addition the number of people shown as having taken the quiz never changed. As the advertiser was based in Ireland the British SRO, ASA, transferred the complaint to the Irish SRO, ASAI, under the cross-border procedure. The Irish SRO contacted the advertiser and the advertisement in question was removed from the website. On that basis no further action was taken and the complainant was informed accordingly. **Complaint resolved informally, case closed.**

2577 - Vueling Airlines SA

Complaint from a British consumer to the British SRO, ASA, about an advertisement for an airline company. The complainant challenged whether the claim "Price per flight, ALL INCLUSIVE" was misleading because several additional costs, such as the cost of the luggage, the seat allocation and the credit/debit card charges were excluded. On these grounds the complainant found the advertisement to be misleading. As the advertiser was based in Spain the British SRO, ASA, transferred the complaint to the Spanish SRO, Autocontrol, under the cross-border procedure. After being contacted by the SRO the advertiser accepted the claim and decided to definitively stop the circulation of the advertisement. **Complaint resolved informally, case closed.**

2578 - ESAS Holding/Pegasus

Complaint from a British consumer to the British SRO, ASA, regarding an advertisement for an airline company. The complainant challenged whether the cancellation policy of the company was misleading. The ad claimed that there were no refund costs up to 72 hours after booking, however, after cancelling the tickets he had bought, the complainant was charged 50% of the cost of the flight. Therefore, he found the ad to be misleading. As the company was based in Turkey the British SRO, transferred the complaint to the Turkish SRO, ROK, under the cross-border procedure. After investigation the Turkish SRO discovered that the consumer misinterpreted the expression "No" on the "General Rules" section of the website as "No refund costs" when in fact it meant "No refund" as clearly stated in the term and conditions of the website. The advertisers decided to change the expression "No" to "No refund" in order to avoid future misinterpretations. **Complaint not upheld, case closed.**

2579-2585-2588-2594-2598-2599-2600 - Construct Data Publishers a.s.

Complaint from a legal representative of an Israeli consumer to EASA, concerning a direct mail offering a free updating of data on a "fair guide". The mailing invited the consumer to confirm the information the guide already had about his company by filling up and sending a printed form. However, the complainant found out that by signing the form, the company automatically requested a payable insertion in the guide, without being sufficiently informed of this. Therefore the complainant found the advertisement to be misleading. EASA transferred the complaint to the Slovakian SRO, SRPR, under the cross-border procedure. SRPR noted that the advertiser has persistently disregarded decision against its advertising by the SRPR, and therefore transferred the case to the appropriate authorities. **Complaint transferred to appropriate authorities, case closed.**

2582 - Paddy Power

Complaint from a British consumer to the British SRO, ASA, regarding an advertisement for an Irish online betting platform. The complainant challenged whether the offer "Winner & top goal scorer doubles" was misleading as after placing two separate bets on this section he found out it was an impossible bet to win because the advertiser did not pay for tied top goal scorers. At the

time the complainant placed the bet the football player he had chosen was already out of the competition and tied with two other players so it was impossible to win this bet. For these reasons the complainant found the advertisement to be misleading. 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 the Irish SRO, ASAI, discovered that dead heat was standard practice in betting if the bet clearly refers to a top goal scorer that footballer must score the most goals in the competition. Therefore, the SRO decided not to continue the investigation. **Complaint not upheld, case closed.**

2583 - McDoe & Jones

Complaint from a French association to the French SRO, ARPP, regarding an e-mail from a British website promoting a European driving license. The consumer believed the e-mail to be misleading as it was offering a driving license working without points and valid for life. The complainant also challenged the existence of a real institution called “Cour Europeenne de Justice du Luxembourg” as the advertiser was using a logo really similar to the one of the “Court of Justice of the European Union”. As the advertiser was based in the UK the French SRO, ARPP, transferred the complaint to the British SRO, ASA, under the cross-border procedure. ASA contacted the advertiser to ask for clarification and he was unable to provide evidences to demonstrate that they were entitled to use the CURIA logo or that the exchange of a French driving license to a clean European one was legal. Therefore, the ad resulted in breach of the code. **Complaint upheld, case closed.**

2587 - Debt Consolidation Ireland

Complaint from an Irish consumer to the Irish SRO, ASAI, regarding the website of a debt consolidation company. The complainant considered the claim “clear 75% of debts today” to be misleading because the advertiser service actually meant that debts would have been reduced by up to 75% and not cleared. Changing to a lower monthly payment, over a longer time period and at a higher interest rate would increase the rates rather than “clear” them. Therefore, the complainant challenged the veracity of the statement. As the advertiser was based in the UK the Irish SRO, ASAI, transferred the complaint to the British SRO, ASA, under the cross-border procedure. The complainant, contacted by ASA, stated that consumers were required to pay back debts and so the amount owed could not be reduced. However, by consolidating the debt, consumers had the benefit of reducing interest payments on individual repayments. The British SRO, also noted that the ad claimed that debt could be reduced “by up to” 75%, and no reference was made to a complete “clear” of the debt. Therefore, the ad was not considered to be misleading. **Complaint not upheld, case closed.**

2591 - K-active Europe GmbH

Complaint from a British consumer to the British SRO, ASA, regarding the website of a German company producing medical tape. The ad claimed that the tape was “modelled on the skin’s characteristics and thus able to transmit positive sensory information to the body”. The consumer suggested that the advertiser had no clinical evidences to support this claim. The complainant also believed that the advertiser was using a name and historical background similar to another medical technique in order to cause confusion to consumers and, by doing so, increase the sale of products. As the advertiser was based in Germany the British SRO, ASA,

transferred the complaint to the German SRO, ZEN, under the cross-border procedure. After investigation the German SRO, ZEN, decided that the description of the product was not likely to mislead consumers and induce them to take a decision that otherwise they would not have taken. Moreover, the name used by the advertiser was a general term that could not be protected by trade mark law. **Complaint not upheld, case closed.**

2597 - Patent Trademark Register

Complaint from a British consumer to the British SRO, ASA, regarding a direct mail from a company advertising a register for international trademarks. The complainant found the mail to be misleading as it looked like a genuine invoice and requested a payment for services rendered. The complainant, therefore, paid the requested amount, only later finding out that it actually was an advertisement for services and not a real invoice. As the advertiser was based in Slovakia, the British SRO, ASA, transferred the complaint to the Slovakian SRO, RPR, under the cross-border procedure. After investigation RPR decided that the advertisement was in breach of the Slovak Ethical Principles. Therefore, they encouraged the advertiser to change, edit or stop the advertisement. **Complaint upheld, case closed.**

Possible offensive advertising

2464 - AAPP NOTT Film

Complaint from a French consumer to the French SRO, ARPP, regarding an internet commercial for a Dutch advertising agency. The video showed a family during Christmas while opening presents in front of a tree. Due to a mistake of the father, the mother received a plastic toy phone while the child got a sex toy. As the ad associated childhood and sexuality the complainant found it really offensive and possible to shock to the public. As the company was based in the Netherland the French SRO, ARPP, transferred the complaint to the Dutch SRO, SRC, under the cross-border procedure. After investigation, the Dutch SRO, SRC, decided that, since it did not include an endorsement of goods or services, the video on the website of the defendant could not be considered as an advertisement as stated in article 1 of the Dutch Advertising Code. **Complaint not upheld, case closed.**

2580 - European Union

Complaint from a British consumer to the British SRO, ASA, regarding an advertisement promoting water saving on the YouTube channel of an institution. The complainant believed the advertisement to be offensive to people who suffer from mental health issues because the patient undergoing therapy in the advertisement was described as a "maniac". As the advertiser was based in Belgium the British SRO, ASA, transferred the complaint to the Belgian SRO, JEP, under the cross-border procedure. After investigation JEP decided that it was sufficiently clear from the commercial that the expression used did not refer to mental health issues in an official medical sense and was not of an offensive or disregarding nature with regard to those suffering from such mental health issues. Therefore, the advertisement could not be misleading for the average consumer. **Complaint not upheld, case closed.**

2584 - A.P.A. spa

Complaint from a German consumer to the German SRO, DW, about a website of a company specialized in adhesive foils. The complainant complained about a 3D animation of a woman that was depicted very realistically. The image was used in a way to promote the product as she was wearing adhesive foils intended for cars. The complainant found the advertisement offensive and sexist because it depicted a female body as an object. As the company was based in Italy, the German SRO transferred the complaint to the Italian SRO, IAP, under the cross-border procedure. IAP contacted the advertiser to report the improper use of the image of the woman and the advertiser promptly responded that, while not sharing the opinion on the offence, would “cover up the woman” to avoid any possible future complaint from the public. The Italian SRO decided to continue the investigation as the ad was offensive not only because of the amount of nudity, but also because of the obvious link between the advertised product and the image of the woman. However, the advertiser reiterated that the only intervention that they were willing to do, was to put more “clothes” on the body to make it more “graceful and decent”. **Complaint upheld, case closed.**