



## **EASA Cross-Border Complaints**

### **Quarterly Report N° 58** (October - December 2012)



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## October - December 2012

This report contains the details of 15 cross-border complaints about 12 advertisements coordinated by EASA's cross-border complaints system and closed during the period October to December 2012. 12 complaints concerned allegedly misleading advertising and 3 complaints concerned potentially offensive advertising<sup>1</sup>. The media involved are the internet (8 complaints), direct marketing (6 complaints) and television (one complaint). The Slovakian self-regulatory organisation (RPR) processed 4 cross-border complaints; the British SRO 3; the Spanish SRO processed two complaints, while their Luxembourgish, Polish, Italian, Swedish, Dutch and Irish counterparts dealt with one complaint each. With regards to the different sectors complained about, the publications sector received the most cross-border complaints, 4 in total; in particular, a Slovakian company's direct marketing campaign which targeted the Israeli market.

### Allegedly misleading advertising

#### 2389 - Paypal

Complaint from a British consumer to the British SRO, ASA, about an e-mail from a Luxembourgish company featuring an online competition to win a tablet. The ad stated that "All you have to do to be in with a chance of winning one tablet is 'Like' us on Facebook". The complainant found the ad to be misleading because it implied that participants simply had to 'like' the competition, when in fact they needed to fill in further forms to take part in the competition and have a chance of winning. As the advertiser was based in Luxembourg ASA transferred the complaint to the Luxembourgish SRO, CLEP under the cross-border procedure. CLEP stated that participating in a competition implies supplying some basic personal data (i.e. name, physical address and/or e-mail address) so that if the participant wins, they can be notified and provided with details of how to claim the prize. CLEP decided that the ad for the competition was therefore not misleading. **Complaint not upheld, case closed.**

#### 2569 - Paddy Power

Complaint from a British consumer to the British SRO, ASA, regarding an email from an online betting platform. The email stated "It's a win win situation! 100% refund bonus just for you! We would like to offer you up to 100% cash back on any losses over the weekend" but when the complainant placed a bet of £X and lost, he only received £20 back. After contacting the advertiser, the complainant was informed that the under the offer a maximum of £20 cash back was provided, as stated in the terms and conditions linked at the bottom of the e-mail. The

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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.

consumer found the advertisement to be misleading as the conditions of the offer should have been directly included in the e-mail and not just linked to an external page. As the company was based in Ireland, ASA transferred the complaint to the Irish SRO, ASAI, under the cross-border procedure. The defendant offered the complainant compensation, stating there was no intention to mislead. After investigation, ASAI decided that, since the offer suggested that 'any' losses would be refunded, the limit of £20 on the potential refund was a very significant condition that should have been mentioned in the e-mail, together with the offer. It also stated that the reference and link to "Terms and Conditions Apply" was not sufficiently prominent. **Complaint upheld, case closed.**

#### **2571 - Scandinavian Airlines (SAS)**

Complaint from a British consumer to the British SRO, ASA, against an airline based in Sweden, advertising certain benefits to be awarded to customers who participated in a membership awards scheme run by the company. The complainant objected to the claim "Priority baggage handling" as the airline had failed to honour this for the past several years. Therefore the complainant considered the ad to be misleading. As the advertiser was based in Sweden, ASA transferred the complaint to the Swedish SRO, Ro, under the cross-border procedure. After investigation, Ro concluded the complainant was mistakenly not delivered said service. After ASA had confronted SAS with this, the airline acknowledged its mistake and consequently compensated the complainant. **Complaint resolved informally, case closed.**

#### **2575 - Booking.com**

Complaint from a British consumer to the British SRO, ASA, regarding an advertisement on a website offering hotel reservations. The complainant challenged that the images in the advertisement were misleading because they were not representative of the apartment that she had rented via the website. As the advertiser was based in the Netherlands the ASA transferred the complaint to the Dutch SRO, SRC, under the cross-border procedure. In order to process the complaint the SRO asked the complainant to provide more information about the ad but she did not respond. Therefore, SRC did not pursue the complaint further. **Complaint not pursued, case closed.**

#### **2581 - Die schlanke silhouette versand sl**

Complaint from a British consumer to the British SRO, ASA, about a direct mail received from a Spanish company stating "You are the confirmed winner of a cheque for £15,000". The complainant found the e-mail to be misleading because it implied that the recipient had already won a cheque for £15,000, when actually he had only been entered into a prize draw. The complainant also believed that the company was taking advantage of elderly and vulnerable people. As the company was based in Spain, ASA transferred the complaint to the Spanish SRO, Autocontrol, under the cross-border procedure. After investigation, Autocontrol concluded the advertisement was misleading, communicated this to the advertiser, and requested it to stop using this ad. The company agreed to the SRO's request. **Complaint upheld, case closed.**

#### **2601 - Tipama srl**

Complaint from a British consumer to the British SRO, ASA, regarding a website claiming to provide official American visas. The complainant considered the website to be misleading because it appeared to be an official government website, but actually did not ask the questions necessary to obtain a visa and failed to provide the visa after the consumer paid. Moreover, the advertiser also refused to refund the consumer for a service he had paid for, but was never delivered. As the advertiser was based in Italy, ASA transferred the complaint to the Italian SRO, IAP under the cross-border procedure. IAP concluded after investigation that there is sufficient communication on the company's website to clearly distinguish it from the official US Government site. Nevertheless, to be even more prudent, the advertiser agreed to put an extra warning in the footer of its homepage, clearly stating it is a private, unofficial website, independent from and unrelated to the official US site. Other issues claimed by the consumer are related to the contract itself and did not fall under the competence of IAP. **Complaint not upheld, case closed.**

#### **2608 - Pixmania**

Complaint from a Spanish consumer to EASA, regarding an online offer for a camera on a British website. The complainant, a British subject officially registered in Spain, tried to purchase a camera from the website using his Visa card. He was unable to do this, as the online form required the customer to have a Visa card registered to a UK address, while the complainant's credit card was registered to his address in Spain. The complainant found this to be discriminatory to non UK residents and claimed that the condition was not mentioned in the online information. As the advertiser was based in the UK, EASA transferred the complaint to the British SRO, ASA, under the cross-border procedure. After investigation ASA concluded there was an issue with the company's' trading practices, rather than its advertising. Therefore, ASA decided that the complaint fell out of remit of the code and redirected the complainant to the relevant British consumer organisation. **Complaint out of remit, case closed.**

#### **2610 -2611-2612-2613 - 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", an online directory listing fairs and exhibitors. The mailing invited the consumer to confirm the information the guide already had about his company by completing a printed form and returning by post. However, the complainant found out that by signing the form, their company was automatically requested to pay to be added to the guide, without being sufficiently informed of this. Therefore the complainant found the advertisement to be misleading. As the advertiser was based in Slovakia, EASA transferred the complaint to the Slovakian SRO, SRPR, under the cross-border procedure. SRPR noted that the advertiser has persistently disregarded decisions against its advertising by the SRPR, and therefore transferred the case to the appropriate authorities. **Complaint transferred to appropriate authorities, case closed.**

#### **2615 - European City Guide**

Complaint from a British citizen (managing a French company) to EASA, concerning a direct mail from a Spanish company. The advertiser offered to publish information about the company in a French 'Commerce and Industry' guide, by inviting the consumer to confirm details already printed on the form. After having done so, the complainant found that they were then harassed

for payment. The complainant considered the mail to be misleading because the request seemed to come from an official government department. As the advertiser is located in Spain, EASA forwarded the complaint to the Spanish SRO, Autocontrol, under the cross-border procedure. The activities of this company had already been considered misleading by the competent authorities, and actions were being undertaken. **Complaint transferred to appropriate authorities, case closed.**

## **Possible offensive advertising**

### **2603 - Sevi Ltd**

Complaint from a British consumer to the British SRO, ASA, about a Polish website promoting an energy drink called ADHD. The complainant considered the name of the drink as offensive and immoral because it refers to the serious medical condition known as "Attention deficit hyperactivity disorder". As the advertiser was based in Poland, ASA transferred the complaint to the Polish SRO, RR, under the cross-border procedure. After investigation the Polish SRO decided that the complaint fell out of remit of the code because the complaint was related to packaging. **Complaint out of remit, case closed.**

### **2604 - L'Oréal**

Complaint from an Irish consumer to the Irish SRO, ASAI, regarding an advertisement for mascara on Facebook. The complainant considered the ad to be offensive because it showed an unrealistic portrayal of female beauty through an over edited and airbrushed picture of a woman. Therefore, it was considered to be potentially damaging to the self esteem of women viewing the ad. As the advertiser was based in the UK, ASAI, transferred the complaint to the British SRO, ASA, under the cross-border procedure. After investigation, ASA concluded the use of post-production techniques in this ad not likely to "provoke serious or widespread offence, causing significant harm or misleading consumers to their detriment". **Complaint not upheld, case closed.**

### **2614 - Red Bull**

Complaint from an Irish consumer to the Irish SRO, ASAI, regarding a TV and internet advertisement for an energy drink. The advertisement used childish characters to present the characteristics of the product to a child speaking with his father. The consumer considered the advertisement to be targeting young people and therefore believed it could cause irresponsible consumption of energy drinks. As the advertiser was based in the UK, ASAI, transferred the complaint to the British SRO, ASA, under the cross-border procedure. After investigation, ASA concluded that, as the ad was not aimed at children, nor being broadcasted during children's programmes, it was unlikely to cause harm. **Complaint not upheld, case closed.**