



EASA Cross-Border Complaints

Quarterly Report N° 59 (January - March 2013)



January - March 2013

This report contains the details of 24 cross-border complaints about 21 advertisements coordinated by EASA's cross-border complaints system and closed during the period January to March 2013. 20 complaints concerned allegedly misleading advertising and 4 complaints concerned potentially offensive advertising¹. The media involved are the Internet (9 complaints), direct marketing (10 complaints), television (3 complaints), and email and print (both 1 complaint). The German self-regulatory organisations (DW, 2) and WBZ, 3) processed 5 cross-border complaints; the French SRO, ARPP, 5; the Spanish and the British SRO both processed 3 complaints, while the Dutch SRO, SRC, processed 2 complaints. Finally, the Luxembourgish, Suisse, Portuguese, Slovenian and Slovakian organisations dealt with 1 complaint each. With regards to the different sectors complained about, the publications sector received the most cross-border complaints, 8 in total; all of them contact scheme scams targeting companies via direct mailings.

Allegedly misleading advertising

2450 - Flug24

Complaint from a Dutch travelling association to the Dutch SRO, SRC, about the German airline Flug 24 webpage. The complainant found out that the ticket prices on the website were presented with an opt-out insurance option. The complainant stated that this was in contradiction with art. 1008/2008 of the EU Regulation that stated "Optional price supplements shall be communicated in a clear, transparent and unambiguous way at the start of any booking process and their acceptance by the customer shall be on an opt-in basis". Therefore, the complainant found the webpage to be misleading. As the company was based in Germany, SRC transferred the complaint to the German SRO, WBZ, under the cross-border procedure. After investigation, WBZ took the case to court. The advertiser was found guilty and required to reimburse the complainant. Moreover, the advertiser was obliged to remove the opt-out option and make the booking process more transparent to users. Complaint upheld, case closed.

2566 - The European Medical Directory

Complaint from a British consumer to the British SRO, ASA, about a direct mail from a Portuguese company offering a free updating of data on a "medical directory". The mail invited the consumer to confirm the information the guide already had by filling out and returning a printed form. However, the complainant found out that by signing the form, the company automatically requested a payable insertion into the directory, without being sufficiently informed of this. Therefore, the complainant found the advertisement to be misleading. As the company was based in Portugal, ASA transferred the complaint to the

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.

Portuguese SRO, ICAP, under the cross-border procedure. After investigation, the ICAP jury found that the conditions of the payable insertion into the directory were clearly stated in the fine print. The jury deemed the font size as sufficiently readable and pointed out that the form contained a formula clearly indicating the complainant was ordering a service: "Carefully verify and update this form, only then your order can be fulfilled correctly". In addition, the space for the signature at the end of the document clearly identified it as "Seal/legally binding signature". Therefore, ICAP did not find the ad to be misleading. Complaint not upheld, case closed.

2586 - Vitamail

Complaint from a British consumer, via his local MP, to the British SRO, ASA, regarding a direct mailing from a French company. The complainant challenged whether the mailing was misleading as it implied that the recipient had won a cheque for £15,000, whereas he was only entitled to a voucher of £1.50. The £15,000 mentioned in the direct mailing were actually the final prize of a draw. As the advertiser was based in France, ASA transferred the complaint to the French SRO, ARPP, under the cross-border procedure. Despite several attempts to contact the advertiser, the company did not reply to the SRO. ARPP then forwarded the complaint to the French anti-fraud authorities. Complaint transferred to appropriate authorities, case closed.

2596 - Biotonic

Complaint from a British consumer to the British SRO, ASA, about a direct mailing from a French company stating that the consumer had won £20,500. The complainant found the advertisement to be misleading because it implied that recipients were official prize winners, while in reality they were only entered into a prize draw. As the advertiser was based in France, ASA transferred the complaint to the French SRO, ARPP, under the cross-border procedure. After several unsuccessful attempts to reach the advertiser, ARPP ultimately transferred the complaint to the French anti-fraud authorities. Complaint transferred to appropriate authorities, case closed.

2608 - Health Broadcast

Complaint from an Irish consumer to the Irish SRO, ASAI, regarding a direct mail from a UK company offering 'Detox Foot Patches'. The advertiser offered one free item per item bought ("Buy 1, get 1 Free"), but after buying two boxes of this product, the complainant was told that at least three boxes had to be purchased in order to receive one free box. Therefore, the complainant found the ad to be misleading. As the advertiser was based in the UK, ASAI transferred the complaint to the British SRO, ASA, under the cross-border procedure. After communicating the provisions of the relevant code to the advertiser, ASA was guaranteed that future similar ads would state the minimum spend that applies to the offer. As the advertiser had agreed to amend its future advertising, ASA saw no need to initiate a formal investigation, which would achieve that same outcome. Complaint resolved informally, case closed.

2620 - Ivisa Company

Complaint from a Belgian consumer to the Belgian SRO, JEP, regarding an advertisement for a British website offering an American ESTA visa, seen on top of Google search results. The ad promised: "Apply now online for your ESTA visa and receive authorisation today". The complainant claimed this was a phishing website and that the ad therefore was unethical advertising. As the advertiser was based in the UK, JEP transferred the complaint to the British SRO, ASA, under the cross-border procedure. ASA requested more information about

the advertisement from the complainant in order to assess the complaint. As the complainant never followed up on this request, the complaint was not treated further. Complaint not pursued, case closed.

2621 - Sainsbury's

Complaint from an Irish consumer to the Irish SRO, ASAI, regarding a British TV ad for a supermarket chain, showing parents wrapping a Christmas gift for their child. The complainant found that advertising should not set the expectation that Father Christmas does not exist, as children might see the ad if it were recorded. 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 no reference to Father Christmas is made, the ad would not lead children into losing their belief in Santa Claus. ASA stated that children are generally aware that, at Christmas, gifts are also exchanged between loved ones and not only given by Santa. Complaint not upheld, case closed.

2623 - HBD Services LTD

Complaint from a French consumer to the French SRO, ARPP, about a direct mailing from a Swiss company advertising a book that offered a cure to arthritis. The complainant found this health claim suspicious and, after investigation on the internet, found out that a similar ad, also originating from Switzerland, had already been banned. The complainant, therefore, concluded this was a repeated breach of the Code. As the advertiser was based in Switzerland, ARPP transferred the complaint to the Suisse SRO, SLK, under the cross-border procedure. SLK's procedures require for the SRO of the country of origin of the complainant to adjudicate the case themselves, with that decision being implemented by SLK. Despite several attempts from ARPP, the complainant could not be contacted anymore, and the necessary additional information to investigate the complaint could not be obtained. Complaint not pursued, case closed.

2624 - Fleshlight International SL

Complaint from a British consumer to the British SRO, ASA, about claims made on a Spanish sex toy manufacturer's website. The advertised product, a special powder, was said to help return a sex toy, by the same manufacturer, to its original state of softness. The complainant found this claim to be misleading, as the powder would not restore the toy to its original state, but merely temporarily masked its wear, until washed off by pre and post use. As the advertiser was based in Spain, ASA transferred the complaint to the Spanish SRO, Autocontrol, under the cross-border procedure. After investigation, Autocontrol determined that the ad said the product would bring the product back to its original state 'every time' it was used. This implied that the effects of the product were not lasting. Therefore, the ad was not found to be misleading. The complainant appealed, but in appeal Jury reached the same verdict and did not find the advertisement misleading. Complaint not upheld, case closed.

2626, 2642 - European City Guide

Complaint from a British company to EASA concerning a direct mailing from a Spanish based company. The advertiser offered to publish information about the company in a French 'Commerce and Industry' guide, inviting the consumer to confirm details already printed on the form. The complainant was consequently being 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 was based in Spain, the complaint was forwarded to the Spanish SRO, Autocontrol. After investigation, Autocontrol concluded that the activities of this company had already been considered misleading by the competent

statutory authorities, and actions were being undertaken. Complaint transferred to appropriate authorities, case closed.

2633 - Tulp Solutions

Complaint from a British consumer to the British SRO, ASA, regarding a leaflet from an Dutch based company promoting an offer for cheap international calls. The advertisement claimed that calls to 0844 mobile numbers in India 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 advertiser was based in the Netherlands, ASA transferred the complaint to the Dutch SRO, SRC, under the cross-border procedure. After investigation, SRC, judged the advertisement to be in breach of the Dutch Advertising Code, because not all the costs of phoning were clearly mentioned in the leaflet. SRC asked the advertiser to make sure that, in future communications, all costs are clearly mentioned. Complaint upheld, case closed.

2645 - Paypal

Complaint from a British consumer about an e-commerce site from a company based in Luxembourg allowing payments and money transfers to be made through the Internet. On the company's website, it stated the service offered was "the safer, faster way to pay". The complainant had used the service to order an item from another company's website. This company, however, never provided the purchased item and failed to respond to several inquiries from the complainant, who then found the company had gone bankrupt and he would not receive the item. Moreover, the complainant learned he was an 'unsecured creditor' and would not be refunded. The complainant then asked for a refund from the advertiser whose online payment service he had used to purchase the item, but the advertiser refused. The complainant stated that, had he used his credit card for the transaction, he would have received a full refund. The complainant claims the payment service offered by the advertiser was, contradictory to what was claimed on the company's website, not 'safer' and therefore, found the ad to be misleading. As the company was based in Luxemburg, ASA transferred the complaint to the Luxembourgish SRO, CLEP, under the cross-border procedure. After investigation, CLEP stated that the expression used in the company's slogan, "the safer way to pay", was not put in comparison with another method of payment. Moreover, the word 'safer' made reference to the principle that the client did not need to give his bank details when paying and would thereby protect against instances of fraud. Cases of 'non-delivery' were also covered by the company's terms and conditions. Because of the above, CLEP concluded that the company's slogan was not misleading and that the no refund policy was clearly mentioned in the terms and conditions. Complaint not upheld, case closed.

2646 - Clinlife

Complaint from a Belgian consumer to the Belgian SRO, JEP, about an advertisement on a website by a company based in Germany offering remunerations for people volunteering to be to subject to clinical trials. The website stated "Without you, there would be no new drugs". The complainant found this to be misleading, as the company seemed to present the fact of getting a remuneration for clinical testing as a charitable action. As the advertiser was based in Germany, JEP transferred the complaint to the German SRO, WBZ, under the cross-border procedure. After investigation, WBZ found that the company clearly stated on

its website that it was a commercial enterprise. WBZ therefore concluded the ad was not misleading. Complaint not upheld, case closed.

2647, 2653 - Constrict Data Publishers a.s.

Complaint from an American consumer to EASA, concerning a direct mail from a company based in Slovakia 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 back to the advertiser. However, the complainant found out that by signing the form, the company automatically requested a payable insertion in the guide, without the consumer 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 decision against its advertising by the SRPR, and therefore transferred the case to the competent statutory authorities. Complaint transferred to appropriate authorities, case closed.

2651 - Fleslight International SL

Complaint from a British consumer to the British SRO, ASA, regarding a Spanish sex toy manufacturer's website. The complaint was twofold. Firstly, the complainant challenged whether the claim "Now 20% off" about a promotion found on the website was misleading. It appeared alongside the site's "15% Site-wide sale", which so far had remained a permanent sale. The complainant believed that customers were only really receiving 5% off, due to the site-wide sale being excluded when using the "20% off" instead of receiving 35% off. Secondly, the complainant challenged whether the ad stating "Buy a RED CASE; we'll Donate \$5 to UNAIDS" was misleading, because it continued to appear even though the promotion had already ended. As the advertiser was based in Spain, ASA transferred the complaint to the Spanish SRO, Autocontrol, under the cross-border procedure. The Autocontrol jury believed it was sufficiently clear that there was only a 20% discount, as the website also mentioned the prices before deduction of this 20%, making it possible for the customer to see whether there was a discount of 35% or 20%. Therefore, Autocontrol concluded the ad was not misleading. Regarding the UNAIDS donation, Autocontrol made clear that the burden of proof in such a case lies with the complainant. As the complainant could only present a screenshot of the UNAIDS ad, without being able to prove whether this screenshot was made after the promotion had ended, the jury could not uphold the complaint, because of lack of evidence. Complaint not upheld, case closed.

2652 - European Trade Register

Complaint to EASA from a Belgian consumer, concerning a direct mail from a Dutch based company. The advertiser offered to publish information about the company in a 'European Trade Register"', inviting the consumer to confirm details about his company already printed on the form. The complainant was consequently being chased for payment. The complainant considered the offer to be misleading because the form featured the statement 'Updating is free of charge' and the fact that it was in fact a paid subscription was only mentioned in small print at the bottom of the letter. As the advertiser was located in the Netherlands, the complaint was forwarded to the Dutch SRO, SRC, under the cross-border procedure. After investigation, SRC found that 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.

2660 - Xing AG

Complaint from a British consumer to the British SRO, ASA, concerning an online business network website based in Germany. On the website, the advertiser offered a 3 month contract. It was not mentioned, however, that, unless cancelled, the contract would be automatically renewed without the client's consent and the company would not allow for any refunds. The complainant, therefore, found the offer to be misleading. As the advertiser was based in Germany, ASA transferred the complaint to the German SRO, Wettbewerbszentrale, under the cross-border procedure. The Zentrale found that it was clearly mentioned in the terms and conditions of the advertiser's website that a 3 month contract would continue in a rolling contract, unless cancelled by the customer. Wettbewerbszentrale therefore concluded that the ad was not misleading. Complaint not upheld, case closed.

2664 - The Channel Tunnel Group LTD

Complaint from a Belgian consumer to the Belgian SRO, JEP, regarding two e-mails from the company which is based in the UK offering tickets at a reduced price. The complainant received an e-mail in Dutch and in French. He noticed that the prices in both offers were not the same and found this to be discriminating on basis of language. In addition, he claimed that on the website no tickets were to be found at the advertised prices. He therefore found the offers discriminating and misleading. As the advertiser was based in the United Kingdom, JEP transferred the complaint to the British SRO, ASA, under the cross-border procedure. After scrutinizing the offers, ASA found the tickets offered in both e-mails were not equivalent one to the other, which explained why there were different prices advertised. ASA also found that in fact, tickets were available at the advertised prices. ASA therefore decided not to take any further action. Complaint not pursued, case closed.

Possible Offensive Advertising

2618 , 2619 - Guerlain

Complaint from a Belgian consumer to the Belgian SRO, JEP, regarding a perfume advertisement from a French cosmetics company, seen on a French TV station distributed by cable in Belgium. The ad showed a young naked woman spraying perfume lustfully on her body, then laying herself on a sofa, swooning and looking very seductively into the camera. The complainant found this advertisement to be offensive, especially since the girl looked to be underage. As the advertiser was based in France, JEP transferred the complaint to the French SRO, ARPP, under the cross-border procedure. After investigation, ARPP found that the model, although being portrayed very sensually, did not adopt a provocative posture. The SRO considered that the portrayal of women was that which is common in advertising for luxury and beauty products. Therefore, ARPP, did not find this ad in breach its code and the provisions on the portrayal of human beings. Complaint not upheld, case closed.

2650 - Roco

Complaint to EASA from a Swedish consumer regarding an online catalogue of a German miniature train manufacturer. The complainant found the catalogue, featuring images of scarcely dressed women and a slogan saying "It's a man's world", to be sexist and offensive. As the advertiser was based in Germany, EASA transferred the complaint to the German SRO, DW, under the cross-border procedure. After investigation, DW concluded that the picture was in no way obscene, discriminating or pornographic. Furthermore, it did not go beyond the level of similar images in other media contributions that can be regarded as

generally accepted in our present society. In addition, the design of the catalogue can be explained as an attempt to depict the contradictory fact that model trains, even though a toy, are mainly used and bought by adult men. Complaint not upheld, case closed.

2659 - Saturn Online GMBH

Complaint from a British consumer to the British SRO, ASA, regarding an online video advertisement by a company based in Germany for a coffee machine. The advertisement showed an accident happening in a bar, filled with Jamaican people, causing a Jamaican flag to catch fire. When the Jamaican people try to put out the fire by stomping on the flag, the combination of the burning flag and the stomping causes a riot. As someone of Jamaican descent, the complainant took offence with the flag being burned and stomped on, and also took offence to the depiction of those of Jamaican descent as hot headed and rioters. As the advertiser was based in Germany, ASA transferred the complaint to the German SRO, DW, under the cross-border procedure. DW informed ASA immediately that the advertiser had already pulled the ad and had made a public apology to the Jamaican community. Complaint not pursued, case closed.