



## **EASA Cross-Border Complaints**

### **Quarterly Report N° 60** (April- June 2013)



## April - June 2013

This report contains the details of 27 cross-border complaints about 26 advertisements coordinated by EASA's cross-border complaints system and closed during the period April to June 2013. 25 complaints concerned allegedly misleading advertising, one complaint concerned violence and one non-fulfilment of services<sup>1</sup>. The media involved are the Internet (16 complaints), direct mail (6 complaints) and email (5 complaints). The French self-regulatory organisations (ARPP) processed 6 cross-border complaints; the Irish SRO (ASAI) 5 complaints; the German and Dutch SROs (WBZ and SRC) each processed 3 complaints. The Turkish SRO (ROK) and the Belgian (JEP) processed 2 complaints and the SROs from the UK, Luxembourg, Switzerland, Portugal, Spain and Cyprus each processed one complaint. With regards to the different sectors complained about, the transport sector received the most cross-border complaints, 6 in total.

### Allegedly misleading advertising

#### 2589 STAR SHOPPING

Complaint from a British consumer to the British SRO, ASA, about a direct mailing from a French company, Star Shopping, stating that the consumer had won £15500. The mailing encouraged the consumer to place an order to receive the prize. The complainant objected that the claims "Designated Winner" and "Guaranteed Cheque" used for a prize draw were misleading because it implied that recipients were official prize winners. As the advertiser was based in France the British SRO, ASA, transferred the complaint to the French SRO ARPP, under the cross-border procedure. After having sent several letters informing the advertiser of the complaint and inviting him to formulate a reply, the advertiser refused to comment. Therefore, ARPP transferred the complaint to the French fraud administration. **Complaint transferred to appropriate authorities, case closed.**

#### 2592 PIXMANIA

Complaint from a British consumer to the British SRO, ASA, regarding an email from a French company, Pixmania. The advertisement stated "100% cash back on your TV" but after reading the terms and conditions the complainant found out that the offer was actually for a prize draw for cash back. Therefore, the complainant considered the advertisement to be misleading. As the advertiser was based in France the British SRO, ASA transferred the complaint to the French SRO, ARPP, under the cross-border procedure. After having sent several letters informing the advertiser of the complaint and inviting him to formulate a reply, the advertiser refused to comment. Therefore, ARPP transferred the complaint to the French fraud administration. **Complaint transferred to appropriate authorities, case closed.**

#### 2602 STAR SHOPPING

Complaint from a British consumer to the British SRO, ASA, about a direct mailing from a French company, Star Shopping, stating that the consumer had won £20500. The mailing encouraged the consumer to place an order to receive the prize. The complainant objected that the advertisement was misleading because it implied that recipients were official prize

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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.

winners when they were actually just entering a prize draw. As the advertiser originated in France, the British SRO, ASA, transferred the complaint to the French SRO ARPP, under the cross-border procedure. After having sent several letters informing the advertiser of the complaint and inviting him to formulate a reply, the advertiser refused to comment. Therefore, ARPP transferred the complaint to the French fraud administration. **Complaint transferred to appropriate authorities, case closed.**

### **2607 ETRAWLER**

Complaint from a British consumer to the British SRO, ASA, regarding an Irish online car hire company, Etrawler. The complainant noted that the advertiser offered a free driver deal on bookings in Portugal until 31st October 2012. However, when enquiring about this with the advertiser, the complainant was informed that the offer would not be honoured, even though it was still shown on the website. The complainant thus found the ad to be misleading. As the advertiser was based in Ireland the British SRO, ASA transferred the complaint to the Irish SRO, ASAI under the cross-border procedure. Upon receiving the complaint, the advertiser argued that the offer was only valid for certain locations/dates. However, ASAI stated that this was not clearly mentioned on the website and it was contrary to the website's claim "Pick up at any of the following locations...". ASAI concluded that the offer was misleading and the advertiser was asked not to use the advertising in the same format again. **Complaint upheld, case closed**

### **2609 STAR SHOPPING**

Complaint from a British consumer to the British SRO, ASA, about a direct mailing from a French company, Star Shopping, stating that the consumer had won £20500. The mailing encouraged the consumer to place an order to receive the prize. The complainant objected that the advertisement was misleading because it implied that recipients were official prize winners when they were actually just entering a prize draw. As the advertiser originated in France, the British SRO, ASA transferred the complaint to the French SRO ARPP, under the cross-border procedure. After having sent several letters informing the advertiser of the complaint and inviting him to formulate a reply, the advertiser refused to comment. Therefore, ARPP transferred the complaint to the French fraud administration. **Complaint transferred to appropriate authorities, case closed.**

### **2617 PADDY POWER**

Complaint from a British consumer to the British SRO regarding an advertisement from an online Irish betting platform, Paddy Power. The complainant received an e-mail advertising a partial compensation of betting losses. Although the advertisement stated that up to 20% of losses could be reimbursed, the terms and conditions specified that any compensation would be in the form of free bets, and not in cash or money. Moreover, the compensation of losses was only possible up to the amount of £200. The complainant claimed that the hyperlink on the company's website to these terms and conditions was not clearly marked, making it difficult for consumers to learn the actual compensations. 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 advertisement was found to be partially misleading. The SRO decided that the link to the terms and conditions was sufficiently prominent and adjacent to the body of the offer and, therefore, this part of the complaint was not upheld. However, the SRO , decided that the limit of up to £200 compensation claimed inside the ad was not clear enough as it stated that there are refunds for losses on wages of "£1.000 to £5.000" and loses on wagers of "£5.000 or more" without a maximum limit. This part of the complaint was upheld and, therefore, the advertisement must not appear in the same format again. **Complaint partially upheld, case closed.**

## 2625 MUSIKHAUS THOMANN

Complaint from a British music industry trade body to the British SRO, ASA, regarding a German website selling CD's and DVD's, Musikhaus Thomann. All prices of the goods advertised on the website were shown in GBP on the UK section of the website, but were then converted to Euros at the point of sale. The complainant found this to be misleading, as this might allow the website to charge extra without the customer's awareness. As the advertiser was based in Germany, the British SRO, ASA transferred the complaint to the German SRO, WBZ, under the cross-border procedure. After investigation, WBZ found no discrepancy between GBP prices and euro prices and therefore decided that the advertisement was not misleading. Moreover, the SRO informed the complainant that it was possible to undertake action only if such a discrepancy was clearly demonstrated. **Complaint not upheld, case closed.**

## 2635 REBETEL SERVICES

Complaint from a British company to the British SRO, ASA, regarding an online advertisement for long distance phone calls by a Luxembourgish mobile operator, Rebetel Services. The advertisement claimed the cost of the call was 8.7p/min, but after clicking and being redirected to the company's website, the complainant discovered that the actual price was 8.69p/min excluding VAT. Therefore, the complainant found the advertisement to be misleading. As the advertiser was based in Luxembourg, the British SRO, ASA transferred the complaint to the Luxembourgish SRO, CLEP, under the cross-border procedure. After investigation, CLEP stated that, although normally VAT must be included in all offers advertised to consumers, this was not mandatory for deals being offered to both consumers and companies. Therefore, as this offer was for both consumers and companies, CLEP concluded that the advertiser did not breach the code. **Complaint not upheld, case closed.**

## 2638 TOM TOM INTERNATIONAL

Complaint from a British consumer to the British SRO, ASA, regarding e-mails from a Dutch company, Tom Tom International, offering a GPS upgrade. The advertisement contained a description of a feature that alarmed the driver when approaching a speed camera. The complainant stated that the software has not had this feature for over a year and, therefore he found the advertisement to be misleading. As the advertiser was based in The Netherlands, the British SRO, ASA referred the complaint to the Dutch SRO, SRC, under the cross-border procedure. Upon being informed about the complaint, the advertiser explained how there was indeed a problem of functionality between the software and the newer versions of the navigation system. The advertiser therefore removed the incorrect information from the company's website and offered compensation to the complainant, who accepted the proposal. **Complaint resolved informally, case closed**

## 2655 SWOGGI

Complaint from a Belgian consumer to the Belgian SRO, JEP, regarding an article on the website of a British organisation, Swoggi. The article gave a review of an online auction system that allowed people to save up to 95% when bidding for products such as mobile phones and tablet computers. The article also contained hyperlinks to the auction's website, very positively reviewed in the article. The consumer claimed that the article was misleading and that the organisation was not real, but a way to lure people into partaking in the auctions. He also claimed that, by bidding, the consumer could lose money if he did not win the auction. 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 company guaranteed that it would ask their partners running the website, to remove the content. Therefore, ASA did not start a formal investigation. **Complaint solved informally, case closed.**

## 2657 TRANSATEL

Complaint from a British consumer to the British SRO, ASA, regarding the website of a French mobile operator, Transatel. Several months after becoming a customer and having charged the SIM card with credit, the complainant found that his account had been deleted and his credit lost. The advertiser informed the consumer that the account had been deleted because of the inactivity of his SIM card as mentioned in the company's terms and references. The complainant however, found this to be contrary to the claim made on the company's website, advertising 'Unlimited Validity'. Therefore, he found the advertisement to be misleading. As the advertiser was based in France, the British SRO, ASA transferred the complaint to the French SRO, ARPP, under the cross-border procedure. After been contacted, the advertiser explained that there was a distinction (which could be found in the terms and conditions) between the validity of the credit (unlimited) and the validity of the SIM card. Therefore, ARPP did not find the advertisement to be misleading. **Complaint not upheld, case closed.**

## 2658 AER LINGUS

Complaint from a British consumer to the British SRO, ASA, regarding an e-mail from an Irish airline company, Aer Lingus. The e-mail offered cheap flights to the USA during the summer. However, when clicking the links in the e-mail, the complainant was redirected to the airline's website, where he found that the offer was only valid in April and May. Therefore, the complainant found the advertisement to be misleading. As the advertiser was based in Ireland, the British SRO, ASA transferred the e-mail to the Iris SRO, ASAI, under the cross-border procedure. As the complainant could not provide the SRO with a copy of the e-mail and the date of the promotion had been changed on the company website ASAI saw no reason to investigate further and concluded that the case could not be pursued. **Complaint not pursued, case closed.**

## 2661 AFIBEL SAS

Complaint from a British consumer to the British SRO, ASA, about a direct mail from a French company, Afibel Sas, offering a free gift to their usual customers. After buying an item from the catalogue, condition mandatory to take advantage of the offer and receive the gift, the customer was confirmed that the prize had been reserved for him. However, the complainant was doubtful that he would eventually receive the free gift, due to the delay of the response from the advertiser. Therefore, he found the ad to be misleading. As the advertiser was based in France, the British SRO, ASA transferred the complaint to the French SRO, ARPP under the cross-border procedure. After investigation, ARPP found that the company's terms and conditions stated that a reservation voucher had to be sent back together with the customer's order. The complainant had not done this immediately. Furthermore, the terms and conditions stated that once the reservation was recorded, the customers will be informed of the conditions of the delivery at a later date. Therefore, ARPP did not find the ad to be misleading. **Complaint not upheld, case closed.**

## 2663 MIRIALE

Complaint from a Dutch consumer organisation to the Dutch SRO, SRC, regarding a brochure from a Swiss company, Miriale. The brochure claimed that the customer, once having made a purchase, would start receiving a new brochure every two months without obligation to buy. However, after the first order, the customer started receiving products without making any order and with an obligation to pay for items he did not ask for. The consumer found the advertisement to be misleading as the brochure never mentioned that subsequent orders would be sent and that this service could only be stopped by paying a fee. As the advertiser was based in Switzerland, the Dutch SRO, SRC transferred the

complaint to the Swiss SRO, SLK/CSL, under the cross-border procedure. After investigation, the Swiss jury concluded that the advertisement was misleading as the advertiser failed to provide to the consumers essential information. **Complaint upheld, case closed.**

#### **2665 HERBAL-H.COM**

Complaint from a British consumer to the British SRO, ASA, regarding an online advertisement for a cosmetic product from Cypriot company, Herbal-h.com. The advertisement contained several claims, described scientifically proven, such as "Not only prevents hair loss, but promotes re-growth". The complainant asked the advertiser for scientific proof that could substantiate these claims, but only received a very limited study and was told that none of the advertisers proof had been published in scientific journals. The complainant therefore considered the advertisement to be misleading. As the advertiser was based in Cyprus, the British SRO, ASA transferred the complaint to the Cypriot SRO, CARO, under the cross-border procedure. After investigation, CARO determined that the advertiser was in breach of the Code, in particular with regards to the articles about substantiation, truthfulness, use of technical/scientific data and terminology. Therefore, CARO decided that none of the claims should appear again in the same form. **Complaint upheld, case closed.**

#### **2666 BOOKING.COM BV**

Complaint from a British consumer to the British SRO, ASA, regarding an advertisement on a Dutch website for hotel reservations, Booking.com.Bv. The website offered the same room at two different rates: a non-refundable offer was advertised at £56 and a "free cancellation" at £81. The complainant argued that the price of the second offer was inflated because of the cancellation option. The complainant argued that the cancellation was not free, but was included in the higher rate. Therefore, the complainant found the claim 'free cancellation' to be 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 advertisement was found not to be in breach of the Code, as the word 'free' was used in the meaning of 'included in price'. **Complaint not upheld, case closed**

#### **2667 BRUSSELS AIRLINES**

Complaint from a British consumer to the British SRO, ASA, regarding the website of a Belgian airline company, Brussels Airlines. Firstly, the complainant challenged whether there were actually fares available for £89, as stated on the website, because the minimum price found was £93,14. Secondly, if there were some £89 fares, the complainant challenged whether a sufficient amount was made available. Thirdly, the complainant also challenged whether the prices were misleading, because they did not include the booking fee, which was non-optional. As the advertiser was based in Belgium, the British SRO, ASA transferred the complaint to the Belgian SRO, JEP, under the cross-border procedure. Regarding the first issue, the advertiser told the SRO that due to a technical problem, the minimum prices advertised were in fact lower than the real minimum prices. The SRO jury informed the advertiser that the advertisement had to be changed or removed from the website. Regarding the second issue, JEP determined there were in fact enough tickets available, and therefore the advertisement was not misleading. Finally JEP took note of the fact that both Maestro and PayPal were mentioned as payment methods without transaction fees available to UK consumers. Therefore, the third issue was no breach of the Code. **Complaint upheld, case closed.**

## 2669 DOYOUSPAIN INTERNET HOLIDAYS SL

Complaint from a British consumer to the British SRO, ASA, regarding the website of a Spanish car rental company, Doyouspain Internet Holidays Sl. At the time when the consumer saw the advertisement, the actual conversion was approximately €1.18 to £1. The website, however, applied a ratio of €1.31 to £1. The complainant challenged whether comparison conversions shown from Euro to GDP were 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. Upon investigating the website, AUTOCONTROL found that it was mentioned that the working unit of the company was Euros and that the GDB prices showed on the website were an approximation, only intended as a guide. Moreover, the exchange rate used and advertised on the website was weekly updated following the official data of Banco de España. The SRO therefore concluded that the website was not misleading. **Complaint not upheld, case closed.**

## 2670 BOOKING.COM BV

Complaint from a British consumer to the British SRO, ASA, regarding an advertisement on a Dutch website for hotel reservations, Booking.com.Bv. The complainant challenged whether the images in the advertisement were misleading because they were not representative of the room that he rented. As the advertiser was based in The Netherlands the British SRO, the British SRO, ASA, transferred the complaint to the Dutch SRO, SRC, under the cross-border procedure. Upon being informed about the complaint, the advertiser explained they were not legally responsible for misleading pictures put on their website by the hotels, but did immediately remove the pictures, to the complainant's satisfaction. **Complaint resolved informally, case closed.**

## 2672 TURKISH AIRLINES

Complaint from an Irish competitor to EASA about the website of a Turkish airline company, Turkish Airlines. The complainant found the tagline "Fly with the Best" to be untrue and unsubstantiated. In his complaint, the competitor mentioned several reasons why the services of the Turkish company were inferior to their services. As the complainant was based in Ireland, EASA transferred the complaint to the Irish SRO, ASAI, which in turn, after determining the advertiser was based in Turkey, transferred the complaint to the Turkish SRO, RÖK, under the cross-border procedure. After investigation, RÖK found that the advertiser had in fact been awarded as "The Best Airline in Europe" in both 2011 and 2012, by an authority in the field of airline and airport reviews. Moreover, the claim of the advertisement was used by referring to these awards and therefore concluded that it was not in breach with the code. The complainant was not satisfied with this answer and appealed, questioning the credibility of the organisation handing out the awards. RÖK, however, determined that the organisation represented 238 airlines and 148 airports, leaving no doubt about its credibility. Moreover, the advertiser had clearly referred to these awards, by depicting the award symbol clearly in the advertisement. **Complaint not upheld, case closed.**

## 2673 NOURISHLIFE LLC

Complaint from a British consumer protection group to the British SRO, ASA, concerning claims made on the website of a Portuguese company, Nourishlife Llc, offering pharmaceutical products. On a specific product, the advertiser claimed that the "patented formula" contained certain nutrients that "have been shown to benefit speech". The complainant argued that the formula had not been patented and that the claim could not be substantiated. As the advertiser was based in Portugal, the British SRO, ASA referred the case to the Portuguese SRO, ICAP, under the cross-border procedure. After informing the advertiser, ICAP established that the advertiser could not substantiate the claims made on

his website. Therefore, ICAP decided that the advertisement could no longer be shown in its present version. **Complaint upheld, case closed.**

#### **2676 ENERGETIX WELLNESS GMBH**

Complaint from a British consumer to the British SRO, ASA, concerning a German website, Energetix Wellness Gmbh, offering magnetic jewellery. The complainant challenged if certain claims made by the advertiser, regarding the "improvement of the sensory system" and the "healing effects", could be substantiated. As the company was based in Germany the British SRO, ASA transferred the complaint to the German SRO, WBZ, under the cross border procedure. After being contacted by the SRO, the advertiser signed a declaration of forbearance and changed the wording of the claims on the website. **Complaint upheld, case closed.**

#### **2677 ELECTRONIC ARTS**

Complaint from an Irish consumer to the Irish SRO, ASAI, regarding the website of a British computer game company, Electronic Arts. The website offered the possibility to consumers to buy extra game characters for the football game. These players were to be bought in 'packs'. The consumer argued that pictures illustrated on these packs, were misleading, as they did not match the content of the packs. 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. After investigation, ASA concluded that the players represented on the front of the pack only give an indication of what level of players to expect and was not a definitive statement as to which exact players were in the pack. Therefore, ASA found this ad not to be in breach of the Code. **Complaint not upheld, case closed.**

#### **2678 TURKISH AIRLINES**

Complaint from an Irish consumer to the Irish SRO, ASAI, regarding an advertisement from a Turkish airline company, Turkish Airlines, on a social media platform. The advertisement offered flights from Dublin to the Maldives at a low rate. However, when clicking the advertisement and getting redirected to the company's website, the complainant found that these flights were not available at the advertised rates. After contacting the company to check which dates were still available at the low rate, the complainant found out that, even if the rates were still displayed on the social media platform, the flights were all sold out. Therefore, the complainant considered the advertisement to be misleading. As the advertiser was based in Turkey ASAI transferred the complaint to the Turkish SRO, RÖK, under the cross-border procedure. After investigation, ROK decided that the advertisement was not misleading because it stated that the fares started from a certain price and it explained that that price was available only for limited seats. **Complaint not upheld, case closed.**

#### **2684 EXPEERTEER GMBH**

Complaint from a British consumer to the British SRO, ASA, concerning an email from a German headhunting company, Experteer Gmbh. The subject heading of the email claimed that a headhunter was interested in the profile of the complainant. The complainant found the advertisement to be misleading because after signing up to the service, no headhunters had actually been trying to contact him. As the advertiser was based in Germany the British SRO, ASA, transferred the complaint to the German SRO, WBZ, under the cross-border procedure. After investigation, the advertisement was found not to be misleading because it was easily noticeable that the advertisement was not personalized. **Complaint not upheld, case closed.**



## Violence

### 2674 PADDY POWER

Complaint from a British consumer to the British SRO, ASA, regarding an advertisement from an Irish betting company, Paddy Power. The advertisement showed a doll representing the North Korean leader, Kim Jong-un giving a speech about the reasons why he wanted a certain British football team to prevail in an upcoming game. The complainant found the advertisement to be offensive because of bad language, violence and racist references towards North Korea. As the advertiser was based in Ireland, ASA transferred the complaint to the Irish SRO, ASAI, under the cross-border procedure. After investigation, it has been established that the advertisement was aimed at persons over 18 years old. Because the complainant had logged in from an IP address that allowed such content, the advertisement was served. Therefore, after establishing that the advertisement was not targeted at children, ASAI found no further need for investigation. **Complaint not upheld, case closed.**

## Non fulfilment

### 2643 OUR DIGITAL UNIVERSE

Complaint from a British consumer to the British SRO, ASA, regarding an online competition from an Irish company, Our Digital Universe. The prize was an autographed album cover of a singer songwriter. The complainant, despite winning the prize, did not receive the album and the company did not answer to his emails inquiring about it. As the advertiser was based in Ireland, the British SRO, ASA transferred the complaint to the Irish SRO, ASAI, under the cross-border procedure. Upon contacting the complainant, ASAI was informed that he did in fact receive the album cover, but it was in a poor state. ASAI invited the complainant to provide the SRO with a picture, making it possible to confront the advertiser, but the complainant never responded. ASAI therefore decided to close the case. **Complaint not pursued, case closed.**