Cross Border Complaints Report

EUROPEAN ADVERTISING STANDARDS
ALLIANCE
EUROPEENNE POUR L'ETHIQUE EN PUBLICITE

EASA

The European Advertising Standards Alliance (EASA) is the single authoritative voice of advertising self-regulation. Its mission is to promote responsible advertising through best practice in advertising self-regulation across the Single Market for the benefit of consumers and businesses.
As a non-profit organisation based in Brussels, EASA brings together national advertising self-regulatory organisations (SROs) and organisations representing the advertising industry in Europe.
As well as coordinating the cross-border complaint mechanism (for further explanation see the following page), EASA also collects and analyses each year top line statistical data from each European self-regulatory organisation (SRO) on received and resolved complaints, as well as on copy advice requests and pre-clearance. For further information and to download the annual EASA statistics report, please visit: **www.easa-alliance.org**.

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GENERAL INFORMATION

EASA's Cross-Border Complaints (CBC) system has been in operation since 1992. With the implementation of the Single Market in the EU and the subsequent increased circulation of media across the borders of EU Member States. With the increase of media travelling across borders, the CBC system was established to provide people who wished to make complaints against advertising featured in media or by advertisers originating from outside their home territory with the same redress available to consumers within the country of origin of the media or advertiser. Since 1992, EASA has coordinated 2.029 cross-border complaints.

The Basic Principles of the Cross-Border System: The first principle is the '**country of origin'**, a concept enshrined in EU law to facilitate the growth of the Single Market. With regard to the cross-border complaints system, an advertisement must abide by the rules of the country where the media is based that features the advertisement. In the case of direct marketing or online advertising, however, the advertisement will generally be expected to follow the rules of the country where the advertiser is based.

The second principle is **'mutual recognition'**. By this principle, EASA members agree to accept advertisements which comply with the self-regulatory rules in the country of origin of the media or advertiser, even if those rules are not identical to their own.

The Competent Body: Once the advertisement's 'country of origin' has been established, the complaint will be assigned to the local self-regulatory organisation (SRO). It is not possible to assign a complaint to more than one SRO.

Dealing with a Cross-Border Complaint: The complainant may not initially realise that his or her complaint lies outside the competence of his or her national SRO. Hence, the complainant's first point of contact maybe the local SRO. Once the SRO ascertains that a complaint is in fact a cross-border issue, it will first inform the complainant of the Cross-Border Complaints System and the measures that will be taken to handle the complaint. The complaint, along with any other relevant details, is then passed on to the relevant self-regulatory organisation (SRO) present in the country of origin of the media or the advertiser under investigation. The EASA Secretariat is included in all correspondence related to the case and will closely monitor its progress. Further, EASA may become involved in the process by, for instance, recommending the SRO to take certain actions, involving industry bodies where appropriate, and reporting on the outcome of cases once they have been closed.

Euro Ad-Alert: If an ad shows evidence of deliberate unethical, dishonest or criminal activity, the SRO will transfer the complaint to the relevant government authorities. In these circumstances, the EASA Secretariat may, after discussion with members involved, decide to issue a Euro Ad-Alert. As its name suggests, a Euro Ad-Alert notifies concerned parties of the advertisers' activities. It is sent to all EASA members, the advertising industry, consumer organisations as well as to the European Institutions.

Publication: Closed cross-border complaints are reported quarterly in CBC Reports, published on the EASA website: www.easa-alliance.org.

THE 2009 CROSS BORDER COMPLAINTS REPORT

In 2009, EASA received a total of 75 cross-border complaints.

Year	Total n° of complaints received
2009	**75**
2008	**120**
2007	**92**
2006	**128**
2005	**116**

Fig. 1 Total Number of Complaints received by the EASA Cross-Border Complaints System since 2005

Of the 75, 62 were closed over the course of 2009, leaving 13 still under investigation. The following report will focus exclusively on the 62 complaints that have been closed.

Complaints against 'rogue traders'[1]

25 of the resolved complaints were made against advertisers, which were identified as 'bogus' directory publishers and, therefore, as 'rogue traders'. The majority of complaints (20 out of 25) were, transferred to the appropriate authorities. The remaining complaints could not be pursued by the SROs, either because the advertisers were based in countries outside the EASA Cross-Border Complaints System or because the specific complaints were outside of the remit of the SROs.

There has been a drop in the number of complaints registered related to major rogue traders. This can be explained by the fact that major rogue traders were successfully prosecuted by national courts. Furthermore, EASA provides information on its website and advises complainants to send their complaints directly to the statutory authority or the Court handling the cases.

The country of origin

The EASA Cross-Border Complaints System requires that all advertisements comply with the advertising laws and codes in the relevant country of origin, that is to say, the country in which the medium carrying the advertisement is based or, in the case of direct mail and online advertising, the country in which the advertiser is based.

In 2009 the country of origin of the majority of cross-border complaints registered by EASA was the UK. This stands in contrast to 2008, when the majority of complaints had their origin in Austria. Indeed, over the last the last six years Austria has been the country of origin for the majority of cross border complaints. This large volume of complaints originating from Austria can be put down to the activities of the Austrian directory publisher Construct Data Verlag. In February 2008 Construct Data Verlag agreed to a settlement in court to stop sending mailings from Austria and from pursuing payment claims. It is likely that the decline in CBCs originating in Austria is due to this settlement.

The relatively high number of CBCs in 2009 with the UK as their country of origin is due to the fact that one single ad which had appeared in a British newspaper had caused nineteen complaints from consumers in neighbouring Ireland.[2]

[1] By rogue traders we refer to companies advertising in a manner where the company or consumer is deliberately misled to believe that the product or services are for free, or of a considerably higher quality than actually offered.

[2] The ad, which was promoting a soft-drink, featured a couple walking beside a shop called "Orphan Boutique", which advertised "This season's accessory: Malawian, Ethiopian, Cambodian". The complainants considered the ad offensive and insulting as it trivialised the adoption process. The British SRO, ASA, considered the ad and the complaints and concluded that

As many Irish watch British television and read British newspapers, consumers in Ireland are likely to file a CBC when they complain about an advertisement. Figure 4 shows that indeed the largest concentration of CBC complainants come from Ireland.

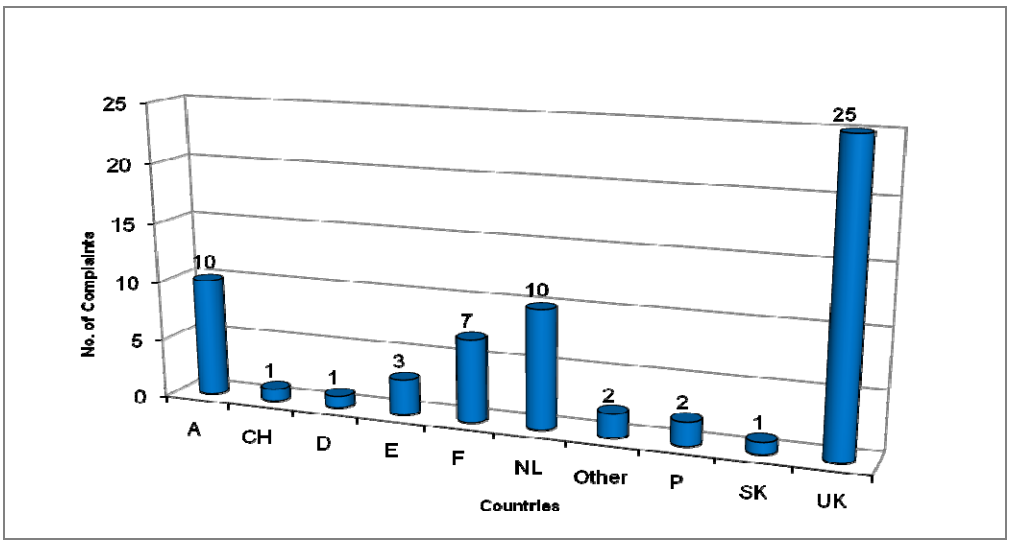

Fig. 2 The country of origin of the medium or advertiser complained about in 2009 (only resolved complaints)

Country	2007	2008	2009
Austria	61	30	10
Belgium	0	5	0
Switzerland	2	1	1
Czech Republic	0	0	0
Germany	0	7	1
Spain	4	1	3
France	3	16	7
Finland	0	0	0
Greece	0	1	0
Italy	0	0	0
Ireland	2	3	0
Netherlands	1	15	10
Poland	0	0	2
Slovak Republic	0	0	1
United Kingdom	10	17	25
Other	0	0	1
TOTAL	**83**	**96**	**62**

Fig. 3 Table showing CBCs resolved since 2007 until present divided according to the country of origin of the medium or advertiser.

the theme of the ad could be seen as distasteful by some, but was not likely to cause serious or widespread offence or particular offence to adopted children and their families. The ASA therefore did not propose any further action.

Country	2007	2008	2009
Belgium	2	9	4
Czech Republic	1	0	0
Finland	4	0	1
France	2	7	1
Germany	0	1	1
Greece	0	1	1
Ireland	9	20	24
Italy	0	0	2
Lithuania	0	0	1
Netherlands	0	0	1
Poland	4	2	1
Spain	0	2	0
Sweden	6	1	0
Switzerland	1	0	1
U. K.	9	23	13
U.S.A	0	1	0
Other (Israel, South Africa, Asia...)	45	29	11
TOTAL	**83**	**96**	**62**

Fig. 4 Table showing CBCs resolved since 2007 until present divided according to country of origin of the complainant.

Media that generate the most complaints

The majority of complaints (56%) that EASA received during the last year regarded direct mail, which is the predominant medium used by rogue traders. Direct mail from rogue traders has made up the bulk of CBCs EASA has dealt with since its establishment in 1992. Having said that the number of complaints EASA has received regarding direct mail has fallen consistently over the last the six years (this is apparent in fig. 6) and is consistent with the drop in complaint numbers against rogue traders (see page 3).

However, the number of CBCs regarding advertisements in the press has increased over this same period, mainly caused in 2009 by the large amount of complaints against one press ad that appeared in a British newspaper (see footnote 2).
Interestingly, advertising on the internet, despite increased use of the medium, has not generated a substantially higher number of CBCs over the last six years.

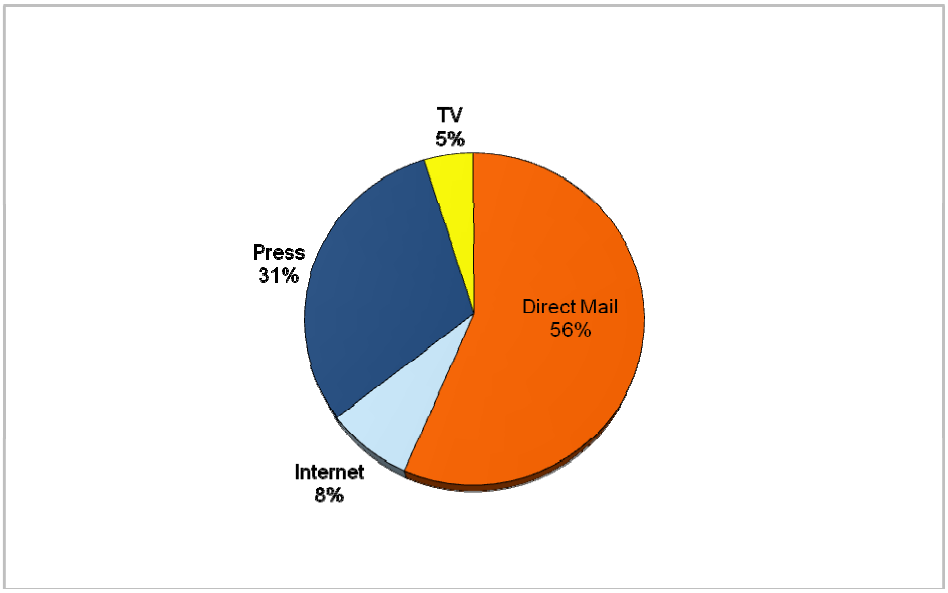

Fig. 5 Cross-border complaints resolved in 2009 divided by medium

Type of Media	2007	2008	2009
Direct Mail (including rogue trading)	69	65	35
Internet	3	4	5
Press	3	12	19
TV	8	10	3
Fax	0	0	0
Posters and Outdoor	0	5	0
Other	0	0	0
TOTAL	**83**	**96**	**62**

Fig. 6 Table showing the amount of closed CBCs from 2004 to 2009 divided according to medium

Products and services that elicit the most complaints

As in previous years, the single category of products or services that elicits the most CBCs is publishing, more precisely misleading directories. However, the margin of its dominance has declined significantly. This decline is unmistakably due to past adjudications against major rogue traders, such as Construct Data Verlag.

There has been a dramatic increase in the number of CBC's issued against advertising for food products in the last year. Aside from this instance, however, CBCs issued against advertising for other categories of products or services have either declined or remained stable over the last year (see fig. 7)

Product/Service Category	2007	2008	2009
Alcohol	1	2	**1**
Clairvoyance	0	1	**0**
Clothing	3	2	**0**
Collectors' items	0	0	**0**
Contact schemes	0	1	**0**
Cosmetics	0	0	**2**
Electronic equipment	1	2	**0**
Financial services	1	0	**0**
Food and non alcoholic beverages	2	6	**22**
Gambling	0	1	**0**
Health	0	5	**1**
Household	1	3	**1**
Internet services	0	1	**1**
Lotteries	2	10	**2**
Miracle Products	0	3	**0**
Motoring	1	1	**0**
Newspapers	1	1	**0**
Publications	66	42	**26**
Slimming	0	0	**1**
Tourism	0	2	**1**
Transport	1	9	**1**
Miscellaneous	3	1	**3**
TOTAL:	**83**	**96**	**62**

Fig. 7 Table showing closed CBCs from 2007-2009 divided into categories of products or services.

Issues complained about

As the majority of complaints related to rogue traders, the issue most complained about in 2009 was misleading advertising (55%). A further 32% of the advertisements complained about were deemed to be offensive. The majority of these complaints relate to the press ad which was published in the UK (see footnote 2).
The remaining cross-border complaints resolved in 2009 concerned the non-fulfilment of trading terms (5%) or advertising to children (3%). The category "other" includes complaints about unsolicited mailings (1 complaint), the portrayal of men (1 complaint) and claims regarding the availability of the promotion (1 complaint).

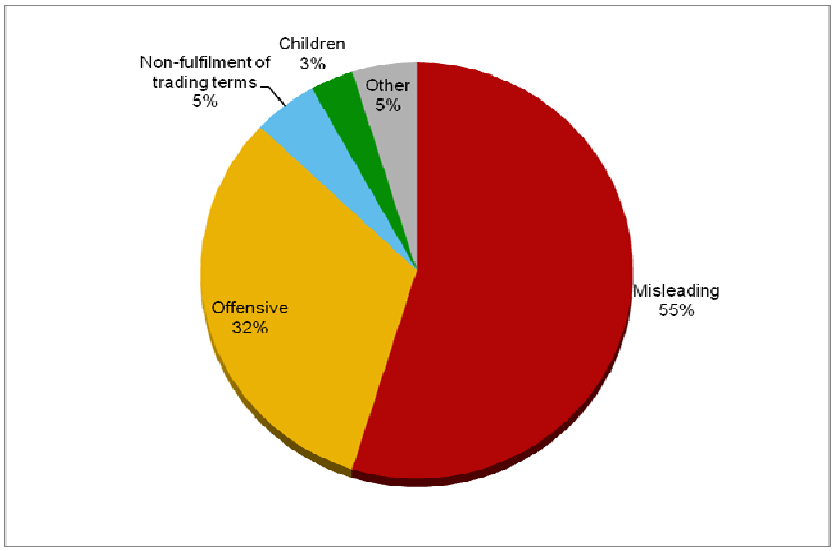

Fig. 8 Outcome of cross-border complaints resolved in 2009

Outcome of complaints

The majority of complaints (34%) closed in 2009 was not upheld by the relevant SRO, as no breach of the self-regulatory codes could be established. A further 32% of the complaints were transferred to the relevant government bodies for investigation. 18% of complaints were upheld in 2009, while the remaining complaints could not be pursued or were resolved informally.

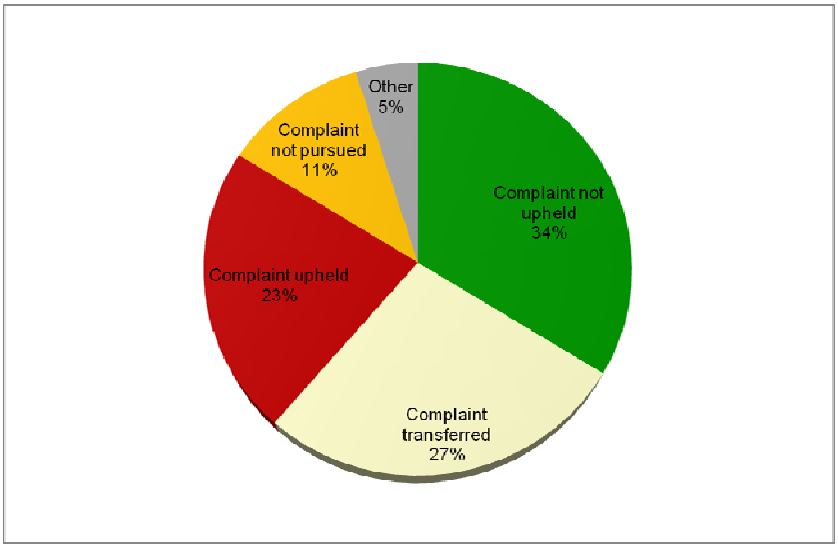

Fig. 9 Outcome of cross-border complaints resolved in 2009

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