

2016

Cross-Border Complaints
Quarterly Report no. 73
July - September

EASA

EASA - the European Advertising Standards Alliance is the single authoritative voice on advertising self-regulation. EASA promotes high ethical standards in commercial communications by means of effective self-regulation, for the benefit of consumers and business in Europe and beyond.

Effective advertising self-regulation helps ensure responsible advertising, meeting consumers' demand for honesty and transparency, regulators' demand for responsibility and engagement and businesses' demand for freedom to operate responsibly. EASA and its members have developed a robust and coherent system of advertising self-regulation that can respond effectively to new challenges.

EASA is not a Self-Regulatory Organisation (SRO) in itself, but acts as a co-ordination point for best practice in the implementation of self-regulation, as well as operational standards for its national SRO members. Part of EASA's role involves coordinating the cross-border complaint mechanism, EASA also collects and analyses top line statistical data on received and resolved complaints, as well as on copy advice requests and pre-clearance from its SRO members each year.

EASA was set up in 1992 to represent national self-regulatory organisations in Europe, in 2004 it developed into a partnership between national advertising SROs and organisations representing the advertising industry. Today, EASA is a network of 54 organisations committed to making sure advertising is legal, decent, honest and truthful. EASA's membership is made up of 38 SROs from Europe and beyond, and 16 advertising industry associations, including advertisers, agencies and the media. EASA is a not-for-profit organisation with a Brussels-based Secretariat. For further information please visit www.easa-alliance.org.

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1 Key Findings

Scope

This report contains the details of 40 cross-border complaints about 39 advertisements coordinated by EASA's cross-border complaints system, adjudicated by local Self-Regulatory Organisations (SROs) and closed during the period from July to September 2016.

Issues

The issues complained about were misleading advertising (35 complaints), taste and decency (3 complaints) and privacy and data protection (2 complaints).

Media

The media involved were Digital Marketing Communications (29 complaints), Direct Marketing (10 complaints) and Audio-Visual Media Services (1 complaints).

Sectors

With regards to the different sectors complained about, the leisure sector received the most cross-border complaints (12 complaints), followed by the telecommunications sector and the transport service (5 complaints each) and health and beauty sector (4 complaints).

Countries concerned

The Dutch SRO (SRC) handled ten complaints; the Irish SRO (ASAI) seven complaints; the French (ARPP), the UK (ASA), the Swedish (Ro.) and the Polish (Rada Reklamy) SROs three complaints each, the Canadian (ASC) and the German SRO (WBZ) two complaints each, whereas SROs from Spain, Belgium, Greece, Bulgaria, Luxembourg, Cyprus and India each handled one complaint¹.

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, e-mail 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.

2 Complaints Resolved July – September 2016

Table 1: Complaints resolved per issue between July and September 2016

Issue	Advertiser complained about	Complaint N°	Page
Misleading Advertising	Akloma Tinnitus AB	2960	p.5
	Rebtel Service SARL	3055	p.5
	Travellink AB	3061	p.5
	Trademark and Patent Publications	3089	p.6
	Booking.com BV	3093	p.6
	Henley Stoves	3094	p.6
	Qweerty Ltd.	3103	p.6
	Dedsert Ltd.	3116	p.7
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	Booking.com BV	3124	p.7
	Paddy Power	3125	p.8
	TomTom International BV	3135	p.8
	Displate	3136	p.9
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	Mercedez-Benz Ltd.	3146	p.9
	SNCF	3158	p.10
	Bombardier Recreational Products Inc.	3160	p.10
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	SNCF	3167	p.11
	SurfEasy Inc.	3169	p.11
	Uber BV	3170	p.12
	Topcret Tecnologia en Revestimientos SL	3171	p.12
	Booking.com BV	3172	p.12
	Ultrapurwildraspberryketone.com	3173	p.13
	ZDCL Digital Conversion Ltd.	3175	p.13
	SNCF	3177	p.13
	Booking.com BV	3178	p.14
	Booking.com BV	3182	p.14
	Booking.com BV	3186	p.14
Pangosmio Car Rental	3187	p.15	
Olympus Europa SE & Co KG	3194	p.15	

	TRCB-Neckermann	3195	p.15
	AppleiTunes	3201	p.16
	Booking.com BV	3203	p.16
Privacy and Data Protection	Google	3149	p.17
	Facebook/Atlas Solution LLC	3150	p.17
Social Responsibility			
Taste and Decency	Harvey Nichols	3144	p.19
	GAA Store	3164	p.19
	SCA Hygiene Products Dublin Inc.	3176	p.19

2.1 Misleading Advertising

2960 Akloma Tinnitus AB

Complaint from a UK consumer to the UK SRO, ASA, regarding an online advertisement for Akloma Tinnitus AB, a Swedish company providing technologies for medical devices and for the food and beverage industries. The complainant challenged whether the following claims on the advertiser's website were misleading and could be substantiated: "Clinically proven medical device patch to treat tinnitus ... Clinically proven and EU approved", "The Antinitus patches have secured regulatory approval in the EU with a medical device CE mark & studies at Karolinska Institute", "Antinitus patches have 90% success rate and are EU approved". Therefore, the complainant found the advertisement to be misleading. As the advertiser was based in Sweden, the UK SRO, ASA, transferred the complaint to the Swedish SRO, RO., under the cross-border procedure. After review, RO. noted that advertisement was not within RO. remit. Therefore, RO. could not pursue the investigation. The complainant was advised to address the competent governmental body - Medical Products Agency – which was the Swedish national authority responsible for regulation and surveillance of the development, manufacturing and marketing of drugs and other medicinal products. **Complaint transferred to appropriate authority, case closed.**

3055 Rebtel Service SARL

Complaint from a UK consumer to the UK SRO, ASA, regarding an online advertisement for Rebtel Services SARL, a Swedish phone company. The complainant objected that the claim "cheap international calls" was misleading, because it was not clear to consumers what the call charge list included under their headings. In fact, the complainant had found that free phone numbers had fallen under this heading. Therefore, the complainant found the advertisement to be misleading. As the advertiser was based in Sweden, the UK SRO, ASA, transferred the complaint to the Swedish SRO, RO., under the cross-border procedure. After investigation, Ro. noted that the advertiser was not based in Sweden but seemed to be located in Luxembourg. Under the circumstances, Ro. was not able to further handle the complaint. **Complaint not pursued, case closed.**

3061 Travellink AB

Complaint from a UK consumer to the UK SRO, ASA, regarding an online advertisement for Travallink AB, a Swedish company for hotel reservation. The complainant challenged whether the advertiser could substantiate the claim that there were 3 day hotel packages available from Budapest to London from EURO 78. On clicking the link in the ad the landing page stated Budapest from EUR228 with 3 days hotel. Therefore, the complainant found the advertisement to be misleading. As the advertiser was based in Sweden, the UK SRO, ASA, transferred the complaint to the Swedish SRO, RO., under the cross-border procedure. After investigation, Ro. noted that the advertiser was not based in Sweden but seemed to be located in Hungary. Under the circumstances, Ro. was not able to further handle the complaint. **Complaint not pursued, case closed.**

3089 Trademark and Patent Publications

Complaint from the UK Intellectual Property Office, regarding a direct mail from Trademark and Patent Publications, a Polish company. The complaint was three-fold. Firstly, the ad implied that the mailing was from a legitimate organisation. Secondly, the ad was not obviously identifiable as a marketing communication and, thirdly, the ad implied that the recipient must comply with the request inside, rather than making clear that payment was optional. Therefore, the complainant found the advertisement to be misleading. As the advertiser was based in Poland, the UK SRO, ASA, transferred the complaint to the Polish SRO, Rada Reklamy, under the cross-border procedure. After review, the Jury considered the ad to be in breach of the art. 2.1 (diligence, standards of decency, sense of social responsibility, fair competition) and 8 (not abuse the trust of the recipient or exploit his lack of experience or knowledge) of the Code. The Jury also notified the Polish Law Enforcement bodies about the outcome of investigation. **Complaint upheld, case closed.**

3093 Booking.com BV

Complaint from a UK consumer to the UK SRO, ASA, regarding an online advertisement on Booking.com BV, a Dutch website for hotel reservations. The complainant made a booking, but when he arrived, the room was not as it had appeared on the website. In fact the room that he received was old, cold and grubby. The complainant believed that the photos on Booking.com did not represent the true quality of the room. Therefore, the complainant found the advertisement to be misleading. As the advertiser was based in the Netherlands, the UK SRO, ASA, transferred the complaint to the Dutch SRO, SRC, under the cross-border procedure. Following contacts with SRC, the advertiser replied that the guest did not complain to the host upon check in, during the stay or on check out. However, the advertiser offered a refund to the guest in order to resolve the complaint and to honour the relationship with the consumer but the complainant did not respond to the advertiser's proposal. **Complaint resolved informally, case closed.**

3094 Henley Stoves

Complaint from a UK consumer to the UK SRO, ASA, regarding an online advertisement for Henley Stoves, an Irish company. The complainant objected that the claim "DEFRA EXEMPT" used on all pages was misleading and could not be substantiated. The complainant stated that it was illegal to use non Exempt appliances in Smoke Control areas and whilst doing his research found these to be listed incorrectly. As the advertiser was based in Ireland, the UK SRO, ASA, transferred the complaint to the Irish SRO, ASAI, under the cross-border procedure. Following contacts with ASAI, the advertiser replied that they had used the term "Exempt" on stoves in their previous brochures, which they said were being processed by DEFRA at the time, to save them from having to re-print their brochure. They said that as they were not finalised, they had removed the term from their brochure, which at the time of their correspondence, was being sent to print. In the circumstances, ASAI did not consider to pursue the complaint further. **Complaint resolved informally, case closed.**

3103 Qweerty Ltd.

Complaint from a UK consumer to the UK SRO, ASA, regarding an online advertisement on the QWERTEE Ltd.'s facebook page, an Irish company. The claim stated "Every design in our "Tee Shop" is at least 50% off for 24 hours!" but above it stated that actually the discount was 33%. Therefore the complainant found the advertisement to be misleading. As the advertiser was based in Ireland, the UK SRO, ASA, transferred the complaint to the Irish SRO, ASAI, under the cross-border procedure. Following contacts with ASAI, the advertiser took responsibility for the error and also taking the steps to prevent it from happening in the future. Under the circumstances, ASAI did not wish to pursue the investigation. **Complaint resolved informally, case closed.**

3116 Dedsert Ltd.

Complaint from a UK consumer to the UK SRO, ASA, regarding a direct email advertisement from Dedsert Ltd., an Irish online betting platform. The complainant explained that the claim stated ""£5 risk free bet", but he objected it was not risk free as if he lost he would receive a free £5 as opposed to a refund. Therefore, the complainant found the advertisement to be misleading. As the advertiser was based in Ireland, the UK SRO, ASA, transferred the complaint to the Irish SRO, ASAI, under the cross-border procedure. Following contacts with ASAI, the advertiser replied that the term "Risk Free Bet" was widely used in the industry but they had not provided evidence to substantiate the claim. After review, the ASAI's Committee considered that the body copy of the email had made it clear that, the "Risk Free" element was that if the first bet was not successful, the advertiser would provide the user with a £5 free bet tomorrow. But the Committee were concerned, however, that the phrase "Risk Free" could be understood by some consumers to be that if they lost their initial bet, their stake would be refunded to them. The ASAI's Committee considered that the claim "Risk Free" to be misleading and in breach of the Sections 4.1 (Truthfulness), 4.4 (Honesty) and 5.5 (Promotional Marketing Practises – Presentation) of the Code. The advertiser was advised not to run the ad in the same form again. **Complaint upheld, case closed.**

3119 Dedsert Ltd.

Complaint from a UK consumer to the UK SRO, ASA, regarding a direct email advertisement from Dedsert Ltd., an Irish online betting platform. The complainant explained that the claim stated ""£5 risk free bet", but he objected it was refused the bonus. Therefore, the complainant found the advertisement to be misleading. As the advertiser was based in Ireland, the UK SRO, ASA, transferred the complaint to the Irish SRO, ASAI, under the cross-border procedure. Following contacts with ASAI, the advertiser replied that the term "Risk Free Bet" was widely used in the industry but they had not provided evidence to substantiate the claim. After review, the ASAI's Committee considered that the body copy of the email had made it clear that, the "Risk Free" element was that if the first bet was not successful, the advertiser would provide the user with a £5 free bet tomorrow. But the Committee were concerned, however, that the phrase "Risk Free" could be understood by some consumers to be that if they lost their initial bet, their stake would be refunded to them. The ASAI's Committee considered that the claim "Risk Free" to be misleading and in breach of the Sections 4.1 (Truthfulness), 4.4 (Honesty) and 5.5 (Promotional

Marketing Practises – Presentation) of the Code. The advertiser was advised not to run the ad in the same form again. **Complaint upheld, case closed.**

3124 Booking.com BV

Complaint from a UK consumer to the UK SRO, ASA, regarding an online advertisement on Booking.com BV, a Dutch website for hotel reservations. The website stated “Pay Later: No prepayment needed”. However, when the complainant booked the room he had £180 taken from his account. Therefore the complainant found the advertising to be misleading. As the advertiser was based in the Netherlands, the UK SRO, ASA, transferred the complaint to the Dutch SRO, SRC, under the cross-border procedure. Following contacts with SRC, the advertiser replied that the complaint was based on a misunderstanding because there had been no prepayment in fact the credit card was pre-authorized and subsequently cancelled. The complainant did not respond to the advertiser’s explanation. **Complaint resolved informally, case closed.**

3125 Paddy Power

Complaint from a UK consumer to the UK SRO, ASA, regarding an email advertisement from Paddy Power, an Irish online betting platform. The ad stated “BET 20 ON THE PREMIER LEAGUE TOP GOALSCORER AND GET A 2 QUID FREE BET EVERY TIME HE SCORES”. The complainant placed a bet but had since stopped receiving the free bets from Paddy Power and was told that it was Paddy Power’s decision whether to pay out or not. Therefore the complainant found the advertising to be misleading. As the advertiser was based in Ireland, the UK SRO, ASA, transferred the complaint to the Irish SRO, ASAI, under the cross-border procedure. Following contacts with ASAI, the advertiser replied that, as written in their Terms and Conditions section, they reserved the right, as its discretion, to withdraw this promotion from certain customers and to change the terms or availability of this offer at any time. After review, the ASAI’s Committee did not consider that the action taken by Paddy Power in relation to a small number of their customers and in line with their advertised terms and conditions, constituted false advertising. **Complaint not upheld, case closed.**

3135 TomTom International BV

Complaint from a UK consumer to the UK SRO, ASA, regarding an online advertisement for TomTom International BV, a Dutch company specialized in sat-navigators for car. The complainant challenged whether the ad was misleading because it made reference to “lifetime maps” and “Lifetime speed cameras”, where lifetime did not in fact mean “lifetime” as duration of the life. Therefore, the complainant found the advertising to be misleading. As the advertiser was based in the Netherlands, the UK SRO, ASA, transferred the complaint to the Dutch SRO, SRC, under the cross-border procedure. After investigation, SRC noted that, according to the definition of "Lifetime" on the advertiser's website, this concept meant: “the useful life of the device, which means the period of time that TomTom continues to support the device with software updates, services, content or accessories. A device will have reached the end of its life when none of these are available any more”. After review, the SRC’s Committee considered that the average consumer could not be assumed to be known with this specific meaning. For that reason the advertiser should have clearly explained the concept of "Lifetime" in the contested ad, for example

by using an asterisk as an explanation of the term "Lifetime". The SRC's Committee considered the advertisement to be contrary to article 7 (Misleading Advertising) of the Dutch Advertising Code and recommended the advertiser to discontinue this way of advertising. **Complaint upheld, case closed.**

3136 Displate

Complaint from a UK consumer to the UK SRO, ASA, regarding an online advertisement for Displate.com, a Polish website that sold posters made out of metal. The complainant objected to the claim “free returns”, because he was in fact told he would have to send the products back to an address in Poland which would cost approximately £60. Therefore, the complainant found the advertising to be misleading. As the advertiser was based in the Poland, the UK SRO, ASA, transferred the complaint to the Polish SRO, Rada Reklami, under the cross-border procedure. After investigation, Rada Rekalmy noted that the advertiser was not based in Poland. Under the circumstances, Rada Reklamy was not able to further investigate the complaint. **Complaint not pursued, case closed.**

3139 Sticker Bazar

Complaint from two UK member of the public to the UK SRO, ASA, regarding an online advertisement on Facebook and on web for Sticker Bazar, a Polish company. The advertiser’s Facebook page and website featured a teeth corrector, teeth whitening trays, a magnetic wrist band and a magnetic back support. The claims stated “Change your smile for better! Use whitening trays to whiten your teeth without much effort. ORDER NOW”, “Easy pain treatment with magnetic wrist belts. They will help you to get rid of any joints pain. Just wear them 1-2 hours a day. ORDER NOW”, “simple practical way of improving your jaw shape. Beautiful straight teeth without any effort. Can be worn while sleeping. ORDER NOW” and “The magnet back corrector helps to keep straight posture. It has 12 magnetic energy points that help provide therapeutic relief. Shop now.” Both complainants objected that these ads were misleading and the claims could not be substantiated. One has also raised concerns that the teeth corrector could be harmful as it may encourage parents to use this product rather than encouraging their children to seek orthodontic advice. Therefore, the complainants found the advertising to be misleading and harmful. As the advertiser was based in the Poland, the UK SRO, ASA, transferred the complaint to the Polish SRO, Rada Reklamy, under the cross-border procedure. After investigation, Rada Rekalmy noted that the complaint concerned the product itself, not the ad, thus the case was closed because it did not fall within "the advertisement" definition. **Complaint out of remit, case closed.**

3146 Mercedes-Benz Ltd.

Complaint from a UK consumer to the UK SRO, ASA, regarding an online advertisement for Mercedes-Benz Ltd., a German company. The complainant objected that he saw a car on the website for £13,708.33 but when he rang up was told that the price was £17,995. The complainant was told this was because he needed to add the VAT, but it would appear to be substantially more than he expected. Therefore, the complainant found the advertisement to be misleading. As the advertiser was based in Germany, the UK SRO, ASA, transferred the complaint to the German SRO, WBZ, under the cross-border procedure. After investigation, WBZ needed from the complainant additional proof but he could not provide it. Under the circumstances, WBZ was not able to further investigate the complaint. **Complaint not pursued, case closed.**

3158 SNCF

Complaint from a UK consumer to the UK SRO, ASA, regarding a direct mail from SNCF, a French train transportation company. The email stated “Paris and beyond with Eurostar from £29”. The complainant objected that this was misleading because the price was for each way, as opposed to a return. Therefore the complainant found the advertising to be misleading. As the advertiser was based in France, the UK SRO, ASA, transferred the complaint to the French SRO, ARPP, under the cross-border procedure. After investigation, ARPP noted that there was a little number close to the price claim, referring to specific conditions relating to the offer. In the ARPP’s opinion, the website made this clear and the complainant was told that the restrictive conditions were explained on the website. Under the circumstances, ARPP was not able to further handle the complaint. **Complaint not pursued, case closed.**

3160 Bombardier Recreational Products Inc.

Complaint from a UK consumer to the UK SRO, ASA, regarding an online advertisement for Bombardier Recreational Products Inc., a Canadian company. The website stated “Get 20% off on the Ready to go package” which was an offer until 30 June. The complainant called a number of local dealers but was unable to get the offer. After asking the company they said they did not know why this was unavailable. Therefore the complainant found the ad to be misleading. As the advertiser was based in Canada, the UK SRO, ASA, transferred the complaint to the Canadian SRO, ASC, under the cross-border procedure. Following contacts with SRC, the advertiser replied that they were not involved in any way in the creation of this advertising. In fact the advertiser was BRP European Distribution SA, which was based in Switzerland. Under the circumstances, ASC was not able to further handle the complaint. **Complaint out of remit, case closed.**

3165 Booking.com BV

Complaint from a UK consumer to the UK SRO, ASA, regarding an online advertisement on Booking.com BV, a Dutch website for hotel reservations. The complainant objected that the website was misleading because she booked a room on the understanding that her credit card would not be charged, but then found out that the hotel had tried to charge her credit card but the payment was declined. Therefore the complainant found the advertising to be misleading. As the advertiser was based in the Netherlands, the UK SRO, ASA, transferred the complaint to the Dutch SRO, SRC, under the cross-border procedure. Following contacts with SRC, the complainant was asked to provide a picture of the ad which claimed falsely that a reservation could be made without prepayment, but the complainant did not respond to any enquiry. Under the circumstances, SRC was not able to further investigate the complaint. **Complaint not pursued, case closed.**

3166 The Australia Travel Guide

Complaint from a UK consumer to the UK SRO, ASA, regarding an online advertisement for The Australia Travel Guide, a Bulgarian website. The complainant searched on Google the words “Australia visa” and was taken to the website austravel.eu, and then clicked a drop-down page where he filled out a VISA form and was charged £67.50. Later he found out that the VISA should have been free of charge. The complainant objected that the website was misleading because it did not make clear that it was not an official site. As the advertiser was based in Bulgaria, the UK SRO, ASA, transferred the complaint to the Bulgarian SRO, NCSR, under the cross-border procedure. After investigation, NCSR attempted to look into the website but it did not seem to work any longer. Under the circumstances, NCSR was not able to further investigate the complaint. **Complaint not pursued, case closed.**

3167 SNCF

Complaint from a UK consumer to the UK SRO, ASA, regarding an online advertisement for SNCF, a French train transportation company. The complainant was trying to book a return ticket for Poitiers to London, and was shown a price of £37 each way. However, on the booking screen he was told there was an error and was unable to book tickets. The same happened when he called via telephone to book instead, and was only offered the tickets at a much higher price. The complainant objected that the website was misleading and challenged whether tickets were in fact available at that price. As the advertiser was based in France, the UK SRO, ASA, transferred the complaint to the French SRO, ARPP, under the cross-border procedure. After investigation, the ARPP’s Committee noted that the issue concerned a pre-contractual matter and had to be seen at the light of the contract law. In fact, pursuant to Article 2 of the French Jury’s rules and regulation, the Jury was competent to rule only on the content of an advertising. Under the circumstances, ARPP was not able to further investigate the complaint. **Complaint not pursued, case closed.**

3169 SurfEasy Inc.

Complaint from a UK consumer to the UK SRO, ASA, regarding an online advertisement for SurfEasy Inc., a Canadian company. The website stated “Get it free” but when the complainant clicked through there were only paid-for options. Therefore the complainant found that claim “free” was misleading. As the advertiser was based in Canada, the UK SRO, ASA, transferred the complaint to the Canadian SRO, ASC, under the cross-border procedure. Following contacts with ASC, the advertiser replied that the “Get It Free” button was previously linked to an option for a free version of the SurfEasy VPN that was no longer available on its website. The advertiser inadvertently omitted to update the “Get It Free” button that was now pointing to its paid only versions. After receiving the complaint, the advertiser appropriately changed its webpage and updated the “Get It Free” button to “Get SurfEasy”. Given that the appropriate corrective action was taken by the advertiser, ASC did not wish to pursue the investigation. **Complaint resolved informally, case closed.**

3170 Uber BV

Complaint from a UK consumer to the UK SRO, ASA, regarding a direct email and an in-app advertising from Uber BV, a Dutch counterpart of an American transportation network company. The complainant challenged whether the in-app claim “save 25%” (which could be obtained using uberPOOL instead of UberX) and the claim “you saved £1.87” in the email were misleading, because he understood that the savings claim was based on a comparison with a similar trip, rather than a saving of 25% each time. Therefore, the complainant found the advertising to be misleading. As the advertiser was based in the Netherlands, the UK SRO, ASA, transferred the complaint to the Dutch SRO, SRC, under the cross-border procedure. After review, the SRC’s Jury considered the ad to be in breach of the Dutch Advertising Code (NRC). Regarding the in-app claim, the Jury explained that advertiser had provided no clear information about the benefits of the advertised service (uberPOOL) and regarding the claim "You saved £ 1.87 by riding UberPOOL Share your savings" the email did not make it clear that this calculation was hypothetical, because after all, it was based on what the complainant would have saved by historical calculations by advertiser. In the circumstances, the SRC’s Jury upheld the complaint under the Article 7 (Misleading Advertising) of the SRC Code. **Complaint upheld, case closed.**

3171 Topcret Tecnologia en Revestimientos SL

Complaint from a UK consumer to the UK SRO, ASA, regarding an online advertisement for Topcret Tecnologia en Revestimientos SL, a Spanish company. The complainant challenged whether the reference to the floor being “indestructible” was misleading, because they purchased the floor but had found that dropping cutlery on it has caused a lot of dents. Therefore the complainant found the advertising to be misleading. As the advertiser was based in Spain, the UK SRO, ASA, transferred the complaint to the Spanish SRO, AUTOCONTROL, under the cross-border procedure. Following the receipt of the complaint, AUTOCONTROL attempted to contact the advertiser requesting comments and proofs in this regard, but the advertiser did not reply to any enquire. Under the circumstances, the AUTOCONTROL’s Jury of Advertising, had issued the opinion that if the advertiser had submitted sufficient proof, the publicity would have been considered truthful. On the contrary, in case of lack of evidence, the advertisement would have to be considered misleading and, consequently, in breach of the article 3 of the Ethical Code of Confianza Online and the rule 14 of the Code of Advertising Practice of Autocontrol. **Complaint upheld, case closed.**

3172 Booking.com BV

Complaint from a UK consumer to the UK SRO, ASA, regarding an online advertisement on Booking.com BV, a Dutch website for hotel reservations. The complainant booked a stay at a hotel, but was later told that in fact the hotel could not honour the booking. The complainant had already booked a non-refundable car hire at this point, and was told by the hotel that booking.com were advertising rooms without their consent. Therefore the complainant found the advertising to be misleading. As the advertiser was based in the Netherlands, the UK SRO, ASA, transferred the complaint to the Dutch SRO, SRC, under the cross-border procedure. Following contacts with SRC, the complainant was asked to provide, in addition to the confirmation of the reservation

already provided, the original ad on which he had decided to book a room, but he no longer had a copy of the ad. Under the circumstances, SRC was not able to further investigate the complaint. **Complaint not pursued, case closed.**

3173 [Ultrapurwildraspberraketone.com](#)

Complaint from a UK consumer to the Cypriot SRO, CARO, regarding an online advertisement on [journalonline.space](#), promoting [ultrapurwildraspberraketone.com](#), a Cypriot website commercialising slimming products. The complaint was four-fold. Firstly, the bottom of the page said the date on which the promotion ended, but the complainant objected this was misleading because the date changed every day. Secondly, the complainant objected that the page was misleading as it looked like a news article and did not make clear that it was advertising. Thirdly the complainant challenged whether the testimonials were real, because when he clicked them he was taken to the ultrapure website. Fourthly, the complainant also challenged whether the ultrapure website was misleading as it did not make clear that there was a subscription service. Therefore, the complainant found the advertising to be misleading. As the advertiser was based in Cyprus, the UK SRO, ASA, transferred the complaint to the Cypriot SRO, CARO, under the cross-border procedure. Following the receipt of the complaint, CARO attempted to contact the advertiser requesting additional information, but was not able to contact the advertiser. Under the circumstances, CARO was not able to further investigate the complaint. **Complaint not pursued, case closed.**

3175 [ZDCL Digital Conversion Ltd.](#)

Complaint from a UK consumer to the UK SRO, ASA, regarding an online advertisement for ZDCL Digital Conversion Ltd., an Indian company. The complainant objected that the list of available packages for subscription showed platinum access pack for GBP 9.99. However, on subscribing to the platinum access pack and paying by Paypal, he had been charged GBP 12.02. On making a complaint about it, the complainant was told that this was because DittoTv charged in USD and Paypal converted the amount to GBP which was higher than advertised. Therefore, the complainant found the advertising to be misleading. As the advertiser was based in India, the UK SRO, ASA, transferred the complaint to the Indian SRO, ASCI, under the cross-border procedure. Following contacts with ASCI, the complainant was asked to provide additional details but the complainant did not respond to any enquiry. Under the circumstances, ASCI was not able to further investigate the complaint. **Complaint not pursued, case closed.**

3177 [SNCF](#)

Complaint from a UK consumer to the UK SRO, ASA, regarding an online advertisement for SNCF, a French train transportation company. The complainant challenged whether the website was misleading, because he wanted to purchase a return ticket Paris-Nimes, and was quoted £75.50. However, when he tried to complete the purchase his payment was rejected, and when he called up he was told that the price was in fact double, so he was unable to purchase the tickets for £75.50. Therefore, the complainant found the advertising to be misleading. As the advertiser was based in France, the UK SRO, ASA, transferred the complaint to the French SRO, ARPP, under the cross-border procedure. After investigation, the ARPP's Committee noted that

the issue concerned a pre-contractual matter and had to be seen at the light of the contract law. In fact, pursuant to Article 2 of the French Jury's rules and regulation, the Jury was competent to rule only on the content of an advertising. Under the circumstances, ARPP was not able to further investigate the complaint. **Complaint not pursued, case closed.**

3178 Booking.com BV

Complaint from a UK consumer to the UK SRO, ASA, regarding a direct mail advertisement from Booking.com BV, a Dutch website for hotel reservations. The complainant, after having booked a holiday to Orlando, received an email from Booking.com stated that they would be 0.2 miles away from local amenities, but when they got there they found that they were in fact 40 miles away. Therefore the complainant found the advertising to be misleading. As the advertiser was based in the Netherlands, the UK SRO, ASA, transferred the complaint to the Dutch SRO, SRC, under the cross-border procedure. Following contacts with SRC, the complainant was asked to provide a picture of the original ad on which the decision was taken to make the reservation but the complainant did not respond to any enquiry. Under the circumstances, SRC was not able to further investigate the complaint. **Complaint not pursued, case closed.**

3182 Booking.com BV

Complaint from a UK consumer to the UK SRO, ASA, regarding an online advertisement on Booking.com BV, a Dutch website for hotel reservations. The complainant booked a hotel and it was advertised at £973 as the final price. However, he was then charged £1,132. He therefore objected that the website was misleading because it did not display the correct price, in fact there was no the final price in the website but just a * showing that the consumer would pay the room in the property's currency (US dollar instead GBP). As the advertiser was based in the Netherlands, the UK SRO, ASA, transferred the complaint to the Dutch SRO, SRC, under the cross-border procedure. Following contacts with SRC, the complainant was asked to provide the relevant documents that substantiated the complaint that the original ad showed an amount of £973 as the final price, while another amount was charged. The complainant could provide only the credit card account that showed that the amount was charged. After review, SRC could not further investigate this complaint because the copy of complainants credit card account only showed that this amount was charged, but did not show what was included in this amount and did not explain any price difference from the original price that was offered. **Complaint not pursued, case closed.**

3186 Booking.com BV

Complaint from a UK consumer to the UK SRO, ASA, regarding an online advertisement on Booking.com BV, a Dutch website for hotel reservations. The complainant challenged whether the claim "Best price guaranteed" was misleading because they paid £476 for the three star accommodation, but felt that in fact it was not worth that much money, and was not in fact a three star apartment. Therefore, the complainant found the advertising to be misleading. As the advertiser was based in the Netherlands, the UK SRO, ASA, transferred the complaint to the Dutch SRO, SRC, under the cross-border procedure. After review, the SRC's Jury considered that the words "Best Price Guaranteed" were not intended to indicate a ratio of price and quality

(value for money), but were only aimed at informing the consumer that advertiser guaranteed that the consumer could not book elsewhere for a 'better' price. In the opinion of the SRC's Jury, the fact that the complainant was disappointed with the quality of the accommodation, could therefore not lead to the conclusion that the advertisement was false or misleading. **Complaint not upheld, case closed.**

3187 Pangosmio Car Rental

Complaint from a UK consumer to the UK SRO, ASA, regarding an online advertisement for Pangosmio, a Greek car-rental company. The complaint was three-fold. The complainant objected that the website was misleading because firstly, he paid 18 euros which he thought was a deposit, but it was actually a charge, and he therefore objected that the website misleadingly stated that there were no hidden fees. Secondly, the complainant said that there was no address for where he could pick up the car and thirdly, he did not get the model of car that he booked. Therefore, the complainant found the advertising to be misleading. As the advertiser was based in the Greece, the UK SRO, ASA, transferred the complaint to the Greek SRO, SEE, under the cross-border procedure. Following contacts with SEE, the advertiser replied that all charges were clear mentioned on the website, and just before asking the payment details of the customer the website showed the price break down with all charges, in fact all charges and fees were clearly stated and shown on the website. For the second issue the advertiser explained that the exact address, including phone number and meeting point information were sent to the complainant on her Voucher. Finally, the bookings did not guarantee a specific car model but only the car category. This information was stated in the Terms and Conditions of the advertiser's site where it reads "Bookings are confirmed according to vehicle categories and not according to individual models". After review, SEE considered the information provided by the advertiser on their website not misleading or in breach of the Greek Advertising Code. Under the circumstances, SEE did not proceed with any further formal investigation of the matter. **Complaint not pursued, case closed.**

3194 Olympus Europa SE & Co KG

Complaint from a UK consumer to the UK SRO, ASA, regarding an online advertisement for Olympus Europa SE & CO KG, a German company. The complainant bought a camera and a lens which he said qualified for the cashback offer of £75. When he tried to claim this he was told he did not qualify because he had not purchased them through an authorised dealer, but was then told that it was because there was a VAT requirement. He argued that the promotion was not administered in accordance with the terms and conditions. Therefore, the complainant found the advertisement to be misleading. As the advertiser was based in Germany, the UK SRO, ASA, transferred the complaint to the German SRO, WBZ, under the cross-border procedure. After investigation, WBZ explained that the ad was not misleading regarding the terms and conditions of the cashback advertisement because in it, it was stated very clearly that the cashback offer applies only to "qualifying purchases" which were described in the sales promotions. WBZ stated that the terms and conditions were not misleading the consumer. **Complaint not upheld, case closed.**

3195 TRCB–Neckermann

Complaint from a UK consumer to the UK SRO, ASA, regarding a direct mail from TRCB-Neckermann, a Belgian company. The complainant objected that the claim “Vacances en cours. Liquidation totale – Réservez jusqu’au 7/8 inclus” was misleading because he did not think that Neckermann have gone into liquidation. Therefore, the complainant found the advertisement to be misleading. As the advertiser was based in Belgium, the UK SRO, ASA, transferred the complaint to the Belgian SRO, JEP, under the cross-border procedure. After review, the JEP’s Jury noted firstly that the provision of the Belgian Code of Economic Law limiting the use of the term “liquidation” was only applicable to tangible movable objects and, thus, did not apply to the provision of services at hand. The JEP’s Jury was also of the opinion that the advertisement as a whole made sufficiently clear for the average consumer that it pertained to a temporary promotional action for Last Minute travels of a tour operator. The Jury was of the opinion that the ad was not misleading in this regard and did not formulate negative remarks. **Complaint not upheld, case closed.**

3201AppleiTunes

Complaint from a UK consumer to the UK SRO, ASA, regarding an online ad for AppleiTunes, an online music and multimedia store based in Luxembourg. The complainant had purchased a bundle consisting of ten movies in HD, but when he received the movies, they were all in SD. The complainant, therefore, found the advertisement to be misleading. As the advertiser was based in Luxembourg, ASA transferred the complaint to the Luxembourgish SRO, CLEP, under the cross-border procedure. After investigation, CLEP decided not to handle the complaint because the issue was a contractual matter and for this reason was out of the CLEP’s remit. **Complaint out of remit, case closed.**

3203 Booking.com BV

Complaint from a UK consumer to the UK SRO, ASA, regarding an online advertisement on Booking.com BV, a Dutch website for hotel reservations. The complainant objected to the claim “parking available” as they noted there was no parking available. The complainant was told by the hotel that there was a car park but it wasn’t located next to the hotel and it came at a high price. Therefore, the complainant found the advertisement to be misleading. As the advertiser was based in the Netherlands, the UK SRO, ASA, transferred the complaint to the Dutch SRO, SRC, under the cross-border procedure. After investigations, the SRC’s Jury explained that the complaint implied that the ads erroneously mention "car parking" because the hotel did not have this. The Jury noted that the ad mention "Public parking is possible at a location nearby". It also appeared from the ad that there were costs related to the parking. Therefore it cannot be concluded from the ad that the hotels themselves had a "car parking", but that you had to make use of public parking near the hotel. In conclusion, the Jury did not find the ad to be misleading and dismissed the case. **Complaint not pursued, case closed.**

2.2 Privacy and Data Protection

3149 Google

Complaint from a UK consumer to the UK SRO, ASA, regarding the opt-out mechanism from OBA advertisements by Google, a third party OBA provider based in Ireland. The complainant stated that opt-outs mechanisms on youronlinechoices.com/uk for Google was unresponsive and did not opt-out when clicked. As the OBA provider had declared their competent decision making location for OBA as Ireland with the European Digital Advertising Alliance, the UK SRO, ASA, transferred the complaint to the Irish SRO, ASAI, under the cross-border procedure. Following the receipt of the complaint, ASAI attempted to contact the complainant requesting additional information, but the complainant did not reply to any enquire. Under the circumstances, ASAI was not able to further investigate the complaint. **Complaint not pursued, case closed.**

3150 Facebook/Atlas Solution LLC

Complaint from a UK consumer to the UK SRO, ASA, regarding the opt-out mechanism from OBA advertisements by Facebook, a third party OBA provider based in Ireland. The complainant stated that opt-outs mechanisms on youronlinechoices.com/uk for Facebook was unresponsive and did not opt-out when clicked. As the OBA provider had declared their competent decision making location for OBA as Ireland with the European Digital Advertising Alliance, the UK SRO, ASA, transferred the complaint to the Irish SRO, ASAI, under the cross-border procedure. Following the receipt of the complaint, ASAI attempted to contact the complainant requesting additional information, but the complainant did not reply to any enquire. Under the circumstances, ASAI was not able to further investigate the complaint. **Complaint not pursued, case closed.**

2.3 Social Responsibility

No complaints have been received regarding the issue of social responsibility in the period of Q3 (July-September) of the 2016.

2.4 Taste and Decency

3144 Harvey Nichols

Complaint from an Irish consumer to the Irish SRO, ASAI, regarding a direct mail from Harvey Nichols, a UK online shop for women. The complainant challenged whether the claim “F**K Flowers – She brought you up in style, it’s time to return the favour” was offensive. As the advertiser was based in UK, the Irish SRO, ASAI, transferred the complaint to the UK SRO, ASA, under the cross-border procedure. After investigation, ASA noted that, although the meaning of the word “F**K” was clear, they considered that the targeted audience of a Harvey Nichols ad were likely to be adults and this ad was generally unlikely to particularly appeal to or be seen by children. While ASA understood that some consumers could be surprised by this ad, ASA considered that the use of the word “F**K” was unlikely to breach the Code for the reasons suggested. ASA therefore concluded there were no grounds to take any further action. **Complaint not upheld, case closed.**

3164 GAA Store

Complaint from an Irish consumer to the Irish SRO, ASAI, regarding a direct mail from GAA Store, a UK website specialized in sportswear. The ad featured an airplane up in the sky among the clouds alongside the claim “MAY DAY MAY DAY Crash Bottom Prices...from as little as 99p!” The complainant found the advertising to be extreme bad taste and offensive making a pun about an air crash. As the advertiser was based in UK, the Irish SRO, ASAI, transferred the complaint to the UK SRO, ASA, under the cross-border procedure. After investigation, ASA noted that the ad encouraged GAA customers to visit the advertiser’s website and to take part in GAA’s sales promotion. The advertiser had chosen a theme to their ad, and while the complainant found this to be in bad taste, it was a risk the advertiser has taken. Ultimately, it was a choice which may have excluded or alienated potential customers, and that was the advertiser’s own loss. In this case, while ASA acknowledged that some readers could find the way that the advertisers had chosen to target the ad objectionable, they did not consider that the content of the ad itself was likely to cause a degree of offence that would breach the Code. ASA therefore concluded that there were no grounds to take any further action. **Complaint not upheld, case closed.**

3176 SCA Hygiene Products Dublin Inc.

Complaint from an Irish consumer to the Irish SRO, ASAI, regarding a TV advertisement for SCA Hygiene Products Dublin Ltd., on More4, a TV channel which is licensed in UK. The advertising showed a lady who lifted her dress to show the pad. The complainant felt this was not necessary as women of a certain age were not the only people to suffer incontinence. Therefore, the complainant found the advertising to be offensive. As the medium was based in UK, the Irish SRO, ASAI, transferred the complaint to the UK SRO, ASA, under the cross-border procedure. After investigation, ASA explained that complaints about offence often required difficult judgements but they did not intervene where advertising was simply criticised for being in poor taste. Under the circumstances ASA could not reasonably argue that the ad was likely to cause

serious or widespread offence and consequently, there did not seem to be in breach of the Code.
Complaint not pursued, case closed.

Annex A: How the EASA Cross-Border Complaints System Works

3 EASA Cross-Border Complaints System

EASA Cross-Border Complaints (CBC) system has been in operation since 1992. With the increase of media travelling across borders, the CBC system was established to provide people Complaint from a UK company to the UK SRO, ASA, regarding a direct mail from Net Company 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 3.216 cross-border complaints.

Basic Principles of EASA Cross-Border Complaints System

The first principle is the 'country of origin', a concept enshrined in EU law to facilitate the growth of the Single Market. With regards 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.

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 Cross-Border Complaints

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 may be 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.

Ad-Alerts

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 an Ad-Alert, which notifies concerned parties of the advertisers' activities. Ad alerts are published on the EASA website: www.easa-alliance.org.

Publications

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

Outcomes of Complaints

Upheld

Complaints that are investigated by the SRO and adjudicated by the SRO jury are upheld if the jury decides that the marketing communication does breach the advertising codes. Subsequently the advertiser is asked to withdraw or change the advertisement to ensure it complies with the rules.

Not upheld

Complaints that are investigated by the SRO and adjudicated by the SRO jury are not upheld if the jury decides that the marketing communication does not breach the advertising codes. No further action is taken.

Not pursued/not investigated

A complaint is not pursued if the SRO considers that there is no basis for investigation (e.g. the concern of the complainant would not be shared by most people) and subsequently dismisses the complaint; or where not enough information was provided by the complainant or the requirements of complaint submission were not met.

Resolved informally

When a minor or clear-cut breach of the self-regulatory codes has been made, the SRO may decide to resolve the complaint informally, i.e. the marketer agrees to change or withdraw its marketing communication straight away.

Transferred to appropriate authority

For example, complaints that have been transferred to the appropriate legal backstop.

Out of remit

A complaint falls out of remit if either the complaint or the marketing communication falls outside the scope of the self-regulatory code (e.g. the complaint is about the product advertised and not the advertisement as such). However, the SRO might decide to forward the complaint to another complaint handling body for action.

2016

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