

2015

Cross-Border Complaints  
Quarterly Report no. 68  
April - June

## **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](http://www.easa-alliance.org).

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# 1 Key Findings

## Scope

This report contains the details of 31 cross-border complaints about 27 advertisements coordinated by EASA's cross-border complaints system, adjudicated by local Self-Regulatory Organisations (SROs) and closed during the period from April to June 2015.

## Issues

The issues complained about were misleading advertising (17 complaints), privacy and data protection (11 complaints), taste and decency (two complaints) and social responsibility (one complaint).

## Media

The media involved were Digital Marketing Communications (19 complaints), Audio-Visual Media Services (three complaints), Direct Marketing (one complaint) and Outdoor (one complaint).

## Sectors

With regards to the different sectors complained about, the telecommunications sector received the most cross-border complaints (12 complaints), followed by the leisure services sector (six complaints).

## Countries concerned

The UK SRO (ASA) handled ten complaints; the Irish SRO (ASAI) five complaints; the Belgian (JEP) and Dutch (SRC) SROs four complaints each; whereas SROs from Germany, Greece, Hungary, Italy, Luxembourg, Slovakia, Spain and Switzerland each handled one complaint<sup>1</sup>.

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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, 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 April – June 2015

Table 1: Complaints resolved per issue between April and June 2015

Issue	Advertiser complained about	Complaint N°	Page
<b>Misleading Advertising</b>	Smart City SA	2636	<a href="#">p. 4</a>
	Aer Lingus Ltd.	2900	<a href="#">p. 4</a>
	Glengarriff Handcraft Centre Ltd.	2901	<a href="#">p. 4</a>
	Aer Lingus Ltd.	2913	<a href="#">p. 5</a>
	Aer Lingus Ltd.	2943	<a href="#">p. 5</a>
	Economycarrentals.com	2946	<a href="#">p. 5</a>
	EuroFlorist Europe BV	2947	<a href="#">p. 6</a>
	Select Mediation Services	2955	<a href="#">p. 6</a>
	Wizz Air Hungary Airlines Ltd.	2962	<a href="#">p. 7</a>
	Booking.com BV	2965	<a href="#">p. 7</a>
	Style Genie	2974	<a href="#">p. 7</a>
	Online Product Service	2975	<a href="#">p. 8</a>
	Metagenics Europe	2980	<a href="#">p. 8</a>
	Apotheek Newpharma bvba	2981	<a href="#">p. 9</a>
	Biovad SPRL	2983	<a href="#">p. 9</a>
	Breitling SA	2984	<a href="#">p. 9</a>
Construct Data Publishers A.S.	3023	<a href="#">p. 10</a>	
<b>Privacy and Data Protection</b>	Rubicon Project	2914-5	<a href="#">p. 11</a>
	AudienceScience	2916-7	<a href="#">p. 11</a>
	Captify	2918-9	<a href="#">p. 11</a>
	Infectious Media	2920-1	<a href="#">p. 12</a>
	Xaxis	2922-3	<a href="#">p. 12</a>
	Eyeota Ltd.	2968	<a href="#">p. 12</a>
<b>Social Responsibility</b>	Heinken	2950	<a href="#">p. 14</a>
<b>Taste and Decency</b>	Prada S.p.A.	2958	<a href="#">p. 15</a>
	Magnitude	2972	<a href="#">p. 15</a>

Source: EASA Cross-Border Complaints Report No. 67 - January - March 2015

## 2.1 Misleading Advertising

### 2636 Smart City SA

Complaint from a UK consumer to the UK SRO, ASA, regarding an online advertisement for Natural Thyro Formula available on supersmart.com owned by Smart City SA, a Luxembourgish company. The complaint was two-fold. Firstly, the product listing for Natural Thyro Formula lists differing levels of selenium and iodine. Secondly, the complainant pointed out that the levels of selenium stated (100 mg), which is 240 times the acceptable level of usage in the US. Therefore, the complainant found the advertisement to be misleading and against health and safety principles. As the advertiser was based in Luxembourg, the UK SRO, ASA, referred the complaint to the Luxembourgish SRO, CLEP, under the cross-border procedure. After investigation, CLEP did not find any evidence suggesting that different levels of selenium and iodine were included in the product listing. Following contacts with CLEP, the advertiser explained that since the products are distributed worldwide, the dosages are engineered according to reliable health studies. The advertiser also clarified that a safe dosage of selenium amounts to 400 mg per day for an adult which is below the level of selenium included in the Natural Thyro Formula. The advertiser stressed that no safety concerns or cases of intoxication have been reported. After review, CLEP did not find any violations of the SR Code. **Complaint not upheld, case closed.**

### 2900 Aer Lingus Ltd.

Complaint from a UK consumer to the UK SRO, ASA, regarding an online advertisement for Aer Lingus Ltd, an Irish airline company. The website featured a claim: 'Guaranteed 50% off fares to Ireland. Travel December-March. Guaranteed 50% off every seat.' The complainant booked two tickets, but only received 98 pence off the booking. 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 the receipt of the complaint, ASAI attempted to contact the complainant requesting a copy of the email they received from the advertiser, but the complainant did not reply to any enquiry. Under the circumstances, ASAI was not able to further investigate the complaint. **Complaint not pursued, case closed.**

### 2901 Glengarriff Handcraft Centre Ltd.

Complaint from a UK consumer to the UK SRO, ASA, regarding an online advertisement for Glengarriff Handcraft Centre Ltd., an Irish producer of Aran sweaters and Irish knitwear. The website AranSweaterMarket.com stated that the size of a sweater in size S was 40-25-64. However, the product received by the complainant was in fact in size S was 40-23-29. Having contacted the advertiser, the complainant was told that the dimensions of the sweater he received was correct. 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 communication with ASAI, the advertiser said that the measurements provided were for guideline purposes only. The advertiser said that they had stated on their website that "sizes can vary slightly, especially on hand-knits and that wool does stretch naturally to fit the body" The advertiser also said that they had tried to contact the complainant to find a resolution to the problem but they had been unable to resolve the issue. The advertiser offered the complainant a refund if the complainant returned the item. The ASAI

Complaints Committee considered the detail of the complaint and the advertisers' response. The Committee accepted that while both parties had been unable to resolve the issue, the onus lay with the advertisers to ensure that the advertising on their website correctly described the product. While noting the statement that 'sizes can vary slightly' the Committee considered a two inch difference was a significant variance for this type of garment. In the circumstances the Committee upheld the complaint under Sections 2.22 (Honesty), 2.24 (Truthfulness) and 2.45 (Availability of Products) of the ASAI Code. The advertiser was advised not to run the advertisement in its current form again. **Complaint upheld, case closed.**

### 2913 Aer Lingus Ltd.

Complaint from a UK consumer to the UK SRO, ASA, regarding an online advertisement for Aer Lingus Ltd, an Irish airline company. The website promoted a sale on flights from Britain to North America, which included flights from Leeds Bradford to San Francisco from £299. The complainant searched for flights on every day of the promotional period, but found no flights at £299. The cheapest available was £348. 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. After investigation, ASAI noted that the advertised fare was advertised on an each way basis to be purchased as a return trip. It appeared that the complainant was attempting to book a one way fare and the fare was not available as a one way fare. The advertisement was not considered to be misleading and no further action was taken. **Complaint not pursued, case closed.**

### 2943 Aer Lingus Ltd.

Complaint from a UK consumer to the UK SRO, ASA, regarding an online advertisement for Aer Lingus Ltd, an Irish airline company. The complainant explained that they tried to make a booking for a return flight from London Gatwick to Belfast City departing Saturday 21st February 2015, and it advertised the cheapest fare outward as £29.18, and the returning cheapest fare advertised as £21.79 on Sunday 22nd February 2015. On clicking through to book and select flights, the cheapest fares advertised were not available, and the higher prices quoted did not match the fare summary on the right hand side (lower than the original fare advertised). 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. After review, ASAI's Complaints Committee considered that the offer page that featured the graph showing the cheapest available fares for each date had given the complainant an expectation of the availability of the fares at a particular price. In view of the fact that the fares were then not available to the complainant and the advertiser had not provided any substantiation that the fares had been available, the Committee considered that the advertisement was in breach of Sections 2.9 (Substantiation) and 2.24 (Truthfulness) of the Code. The Committee advised the advertiser to ensure that they can show that seats are available at the price advertised. **Complaint upheld, case closed.**

### 2946 Economycarrentals.com

Complaint from a UK consumer to ASA, regarding an online advertisement for Economycarrentals.com, a Greek-based car rental website operated by Emm.Kokologiannis and Sons SA. The website included the claims "No hidden extra charges" and "No surprises at the desk!", whereas the e-voucher stated "we always include all additional charges in our hire rates",

and “no mandatory extras! Final price!”. The complainant made a booking for a car between 13 to 17 September 2014 and was quoted a price of Can\$683.29. However, at the arranged drop off the complainant was asked to pay Can\$788.71 as the options they had chosen were "optional extras". Therefore, the complainant found the advertisement 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 explained that the issue occurred due to the fact that the local taxes on the extras the complainant ordered were not included in the price which was quoted. In some cases, and in particular bookings from Canada and the US, when ordering extras, the taxes for these extras cannot be pre-calculated and added to the booking fees due to the fact that taxes vary from city to city or state to state. This is the reason why the price of the extras the complainant ordered was added to the booking fee, but the taxes for those extras were not included. In such cases, customers would be notified that the taxes could not be added to the extras. The advertiser referred to the provisions of the terms and price details which read: “Local taxes and fees may be applied on the extras by the car rental partner locally. The price of the extras Economy Car Rentals offers is the price without any local taxes or fees”. After investigation, SEE decided that the information regarding the charges for these taxes as mentioned in the Terms and Price details was not easily accessible and therefore this relevant information was not clearly stated to the consumers. SEE advised the advertiser to clearly communicate the information to consumers. The advertiser amended their website information in order to comply with this recommendation by adding on the car selection page (for bookings regarding Canada and the United States) that “taxes and fees may be applied on the extra services or equipment (baby seats, add. Drivers, GPS, etc.) by our car rental partner locally”. **Complaint resolved informally, case closed.**

### 2947 EuroFlorist Europe BV

Complaint from a UK consumer to the UK SRO, ASA, regarding an email advertisement for eFlorist.co.uk, operated by EuroFlorist Europe BV, a Dutch company. The complainant stated that the advertisement clearly showed 50 roses for £39.95, but this product did not exist and the link said no matching products. On contacting the advertiser, the complainant was advised that this was just an example, but the price was actually over £150. 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 investigation, the Chairman of the Dutch Advertising Code Committee decided that the advertisement did not make it clear that the roses could be sold out at any moment and that thereafter the offer could no longer be used. Therefore, the Chairman found the advertisement to be in breach of Article 7 of the Dutch Advertising Code (Misleading advertising). The advertiser was advised not to run the advertisement in its current form again. **Complaint upheld, case closed.**

### 2955 Select Mediation Services

Complaint from a UK consumer initiative group to the UK SRO, ASA, regarding online advertisements for Select Mediation Services, a Spanish company offering legal advice. The website included testimonials which the complainant challenged as not being genuine. In the case of the first advertisement, the complainant noted that the same testimonials appeared on another solicitor’s website. In the case of the second advertisement, the complainant noted that the text had been copied from another solicitor’s website. Therefore, the complainant found the



advertisement 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. AUTOCONTROL attempted to contact the advertiser several times, but the advertiser did not reply to any enquiry. Under the circumstances and with no response from the advertiser, AUTOCONTROL could not pursue the complaint. **Complaint not pursued, case closed.**

### 2962 Wizz Air Hungary Airlines Ltd.

Complaint from a UK consumer to the UK SRO, ASA, regarding an online advertisement by Wizz Air Hungary Airlines Ltd., a Hungarian airline company. The complainant was booking flights on the advertiser's website and was prompted as to whether he would like to add a 'Reserved seat: Guaranteed seat in the 3 front rows!' option to his booking, which he did. The complainant believed that he would then be able to reserve specific seats later on in the booking process, and no other information was supplied to state otherwise. The complainant later found that this was not the case. Therefore, the complainant found the advertisement to be misleading. As the advertiser was based in Hungary, the UK SRO, ASA, transferred the complaint to the Hungarian SRO, ORT, under the cross-border procedure. Following contacts with ORT, the advertiser replied that the 'reserved seat' service was not misleading because the detailed information was clearly and effortlessly available for consumers who were familiar with the Internet. After review, the ORT's Jury considered the information given by the advertiser on the website sufficient and acceptable. The consumer had the possibility to gain all the relevant information about the service prior to the online purchase with two clicks. This meant that the detailed description of the service was available and easily reachable for any potential consumer. **Complaint not upheld, case closed.**

### 2965 Booking.com BV

Complaint from an Irish consumer to the Irish SRO, ASAI, regarding an online advertisement on Booking.com BV, a Dutch website for hotel reservations. The advertisement quoted a room rate at the Carlton Hotel Kinsale & Spa in Cork, Ireland for £699. Having checked the advertiser's website, the complainant found out that on the date in question the highest room rate amounted to £200. The complainant concluded that the advertisement suggested that savings of up to 82% could be made by booking with them. Therefore, the complainant found the advertisement to be misleading. As the advertiser was based in the Netherlands, the Irish SRO, ASAI, transferred the complaint to the Dutch SRO, SRC, under the cross-border procedure. After filing the complaint, the complainant was contacted by the advertiser. The advertiser took responsibility for the error and explained it to the complainant while also taking the steps to prevent it from happening in the future. The complainant was satisfied with the outcome and did not wish to pursue the investigation. **Complaint resolved informally, case closed.**

### 2974 Style Genie

Complaint from a Dutch consumer to the Dutch SRO, SRC, regarding an online advertisement for Amazing Shoes UK, an Irish online clothing shop. The advertiser administers a Facebook page "Style Genie". Viewers of the Facebook page were asked to like the Facebook post, leave a comment and share it in order to be able to win a complete clothing outfit. However, according to the complainant nobody ever won. Therefore, the complainant found the advertisement to be misleading. As the advertiser was based in Ireland, the Dutch SRO, SRC, transferred the complaint to the Irish SRO, ASAI, under the cross-border procedure. Upon the receipt of the

complaint, ASAI contacted Facebook and asked them to review the page to determine if it breached their policies. Facebook advised ASAI that the issue raised by the complainant, not providing details of winners, is not a violation of their policies, however, the method of administering these contests is a promotion violation. According to their terms, pages might not incentivise Page Likes or Post Shares and this page is in violation of this. Facebook enrolled the page in an educational checkpoint and pointed them to their Page Terms. This meant that the next time they logged onto their page they would see this message. If they persisted in violating their policies there would be further consequences. Facebook also advised ASAI that according to their privacy policy they do not disclose contact details for advertisers. Under the circumstances, ASAI could not pursue the investigation. **Complaint not pursued, case closed.**

### 2975 Online Product Service

Complaint from a Belgian consumer to the Belgian SRO, JEP, regarding an online advertisement for Online Product Service, a Dutch company. The advertiser's Facebook page linked to the website gratis-condooms-aanvragen.be offered "10 free Durex condoms". However, after the complainant agreed to receive the condoms, it turned out that he has to pay €14. Therefore, the complainant found the advertisement to be misleading. As the advertiser was based in the Netherlands, the Belgian SRO, JEP, transferred the complaint to the Dutch SRO, SRC, under the cross-border procedure. The Dutch Advertising Code Committee noted that the general conditions applicable to the offer stipulated that the trial package containing ten Durex condoms was only offered for free if the consumer also wanted to receive at least one more shipment of ten condoms for the amount of €12.95. If one did not want to receive any further shipment, then €12.95 for the trial package must be paid or the trial package, containing a minimum of eight unopened condoms, must be returned within 14 days. Therefore, it was not possible to get a sample pack of ten Durex condoms sent home for free (excluding the unavoidable delivery costs of €1.95. The Committee remarked that According to paragraph 19 of Appendix 1 to the Dutch Advertising Code, a product in advertising may only be described as "free" if consumers do not have to pay anything other than the unavoidable costs in order to respond to the offer and collect the product or have it sent for. The Committee also found the advertisement to be in breach of Article 7 of the Dutch Advertising Code (Misleading advertising). The advertiser was advised not to run the advertisement in its current form again. **Complaint upheld, case closed.**

### 2980 Metagenics Europe

Complaint from a Dutch consumer to the Dutch SRO, SRC, regarding an online advertisement for Metagenics Europe, a Belgian counterpart of an American producer and distributor of food supplements. The advertisement for "Wild Yam Max 120C" product included the claim: "For more information, ask your doctor or pharmacist". The complainant noted that the advertiser recommended consulting the doctor or pharmacist, but failed to explain why and when the product should be applied. Therefore, the complainant found the advertisement to be misleading. As the advertiser was based in Belgium, the Dutch SRO, SRC, transferred the complaint to the Belgian SRO, JEP, under the cross-border procedure. After review, JEP noted that advertisement was not within JEP's remit. Therefore, JEP could not pursue the investigation. The complainant was advised to address the competent Belgian governmental body, AFMPS – Agence fédérale des médicaments et des produits de santé (FAMHP – Federal Agency for Medicines and Health Products. **Complaint transferred to appropriate authority, case closed.**

### 2981 Apotheek Newpharma bvba

Complaint from a Dutch consumer to the Dutch SRO, SRC, regarding an online advertisement on Newpharma.be, operated by Apotheek Newpharma bvba, a Belgian company. The advertisement for "Wild Yam Max 120C" product included the claim: "Wild Yam Max can help both men and women to boost energy, improve sleep and make you less susceptible to stress." The complainant noted that the product was recommended to boost energy, promote sleep and be less susceptible to stress. This effect was not confirmed by the MedLine Plus of the US National Library of Medicine, which according to the complainant was a very reliable source. The Wild Yam contains diosgenin that through long-term operation in a laboratory helps to produce estrogen, progesterone and DHEA. This does not apply to the human body. If one wants to use those substances, these have yet to be added to the Wild Yam Max. The complainant found the advertisement to be misleading, because it could encourage consumers to take a transactional decision that they would not have taken otherwise. As the advertiser was based in Belgium, the Dutch SRO, SRC, transferred the complaint to the Belgian SRO, JEP, under the cross-border procedure. After review, JEP noted that advertisement was not within JEP's remit. Therefore, JEP could not pursue the investigation. The complainant was advised to address the competent Belgian governmental body, AFMPS – Agence fédérale des médicaments et des produits de santé (FAMHP – Federal Agency for Medicines and Health Products). **Complaint transferred to appropriate authority, case closed.**

### 2983 Biovad SPRL

Complaint from a UK consumer to the UK SRO, ASA, regarding a direct mail from Biovad SPRL, a Belgian company. The direct mail included the 'prize winning' claims, but no winnings could actually be claimed, despite definitive statements that a recipient was a winner. The advertiser then asked for £25 for the prize cheques to be released. The advertiser was also masquerading as a UK company by including the return address in the UK, while in reality the advertiser was not operating from the country. 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 initial assessment JEP communicated that the complaint could not be pursued as consumer scams and fraud were not in their remit. The complainant was advised to address the competent Belgian government body, SPF Economie - Service public fédéral Economie (FPS Economy - Federal Public Service Economy). **Complaint transferred to appropriate authority, case closed.**

### 2984 Breitling SA

Complaint from a UK consumer to the UK SRO, ASA, regarding an online advertisement for Breitling SA, a Swiss watchmaker. The advertisement included information about the "complete overhaul" service offered by the advertiser's authorised maintenance centres. The complainant found the advertisement to be misleading, because the "complete overhaul" included a compulsory hand set replacement at an additional cost of £50. As the advertiser was based in Switzerland, the UK SRO, ASA, transferred the complaint to the Swiss SRO, CSL/SLK, under the cross-border procedure. Having been contacted, the advertiser made assurances that they would include in the advertisement information about compulsory charges associated with replacing the watches' handsets. **Complaint resolved informally, case closed.**

### 3023 Construct Data Publishers A.S.

Complaint from a legal representative of an Israeli consumer to EASA, regarding a direct mail from Construct Data Publishers A.S., a Slovakian company. The advertisement offered free update of data on a 'fair guide'. The mail invited the consumer to confirm the information the guide already had about his company by filling up and sending a printed form. However, the complainant found out that by signing the form, the advertiser automatically requested a payable insertion in the guide, without being sufficiently informed of this. Therefore, the complainant found the advertisement to be misleading. As the advertiser was based in Slovakia, EASA transferred the complaint to the Slovakian SRO, SRPR, under the cross-border procedure. SRPR noted that the advertiser had persistently disregarded decision against its advertising by the SRPR, and therefore transferred the case to the appropriate authorities. **Complaint transferred to appropriate authority, case closed.**

## 2.2 Privacy and Data Protection

### 2914-5 Rubicon Project

Complaint from a German consumer to the German SRO responsible for OBA, DDOW, regarding the opt-out mechanism from OBA advertisements by Rubicon Project, a third party OBA provider based in the UK. The complainant raised concerns that they had continually been unable to opt out of OBA data collection and use by Rubicon Project. The complainant stated that opt-outs had been attempted via Your Online Choices (YOC). As the OBA provider had declared their competent decision making location for OBA as the UK with the European Digital Advertising Alliance, the German SRO, DDOW, transferred the complaint to the UK SRO, ASA, under the cross-border procedure. ASA contacted the advertiser to highlight the poor performance and failure to opt-out from YOC. ASA further indicated that it was therefore a breach of CAP Code rule 31.1.1 (OBA). However, ASA also informed that since the complaint had been submitted, further monitoring showed an improvement in performance in relation to the relevant opt-out, indicating that the problems experienced by the complainant were corrected and that the opt-out functions are compliant. Therefore, no further action was taken on this occasion. **Complaint upheld, case closed.**

### 2916-7 AudienceScience

Complaint from a German consumer to the German SRO responsible for OBA, DDOW, regarding the opt-out mechanism from OBA advertisements by AudienceScience, a third party OBA provider based in the UK. The complainant raised concerns that they had continually been unable to opt out of OBA data collection and use by Rubicon Project. The complainant stated that opt-outs had been attempted via Your Online Choices (YOC). As the OBA provider had declared their competent decision making location for OBA as the UK with the European Digital Advertising Alliance, the German SRO, DDOW, transferred the complaint to the UK SRO, ASA, under the cross-border procedure. ASA contacted the advertiser to highlight the poor performance and failure to opt-out from YOC. ASA further indicated that it was therefore a breach of CAP Code rule 31.1.1 (OBA). However, ASA also informed that since the complaint had been submitted, further monitoring showed an improvement in performance in relation to the relevant opt-out, indicating that the problems experienced by the complainant were corrected and that the opt-out functions are compliant. Therefore, no further action was taken on this occasion. **Complaint upheld, case closed.**

### 2918-9 Captify

Complaint from a German consumer to the German SRO responsible for OBA, DDOW, regarding the opt-out mechanism from OBA advertisements by Captify, a third party OBA provider based in the UK. The complainant raised concerns that they had continually been unable to opt out of OBA data collection and use by Rubicon Project. The complainant stated that opt-outs had been attempted via Your Online Choices (YOC). As the OBA provider had declared their competent decision making location for OBA as the UK with the European Digital Advertising Alliance, the German SRO, DDOW, transferred the complaint to the UK SRO, ASA, under the cross-border procedure. ASA contacted the advertiser to highlight the poor performance and failure to opt-out from YOC. ASA further indicated that it was therefore a breach of CAP Code rule 31.1.1 (OBA).

However, ASA also informed that since the complaint had been submitted, further monitoring showed an improvement in performance in relation to the relevant opt-out, indicating that the problems experienced by the complainant were corrected and that the opt-out functions are compliant. Therefore, no further action was taken on this occasion. **Complaint upheld, case closed.**

### 2920-1 Infectious Media

Complaint from a German consumer to the German SRO responsible for OBA, DDOW, regarding the opt-out mechanism from OBA advertisements by Infectious Media, a third party OBA provider based in the UK. The complainant raised concerns that they had continually been unable to opt out of OBA data collection and use by Rubicon Project. The complainant stated that opt-outs had been attempted via Your Online Choices (YOC). As the OBA provider had declared their competent decision making location for OBA as the UK with the European Digital Advertising Alliance, the German SRO, DDOW, transferred the complaint to the UK SRO, ASA, under the cross-border procedure. ASA contacted the advertiser to highlight the poor performance and failure to opt-out from YOC. ASA further indicated that it was therefore a breach of CAP Code rule 31.1.1 (OBA). However, ASA also informed that since the complaint had been submitted, further monitoring showed an improvement in performance in relation to the relevant opt-out, indicating that the problems experienced by the complainant were corrected and that the opt-out functions are compliant. Therefore, no further action was taken on this occasion. **Complaint upheld, case closed.**

### 2922-3 Xaxis

Complaint from a German consumer to the German SRO responsible for OBA, DDOW, regarding the opt-out mechanism from OBA advertisements by Xaxis, a third party OBA provider based in the UK. The complainant raised concerns that they had continually been unable to opt out of OBA data collection and use by Rubicon Project. The complainant stated that opt-outs had been attempted via Your Online Choices (YOC). As the OBA provider had declared their competent decision making location for OBA as the UK with the European Digital Advertising Alliance, the German SRO, DDOW, transferred the complaint to the UK SRO, ASA, under the cross-border procedure. ASA contacted the advertiser to highlight the poor performance and failure to opt-out from YOC. ASA further indicated that it was therefore a breach of CAP Code rule 31.1.1 (OBA). However, ASA also informed that since the complaint had been submitted, further monitoring showed an improvement in performance in relation to the relevant opt-out, indicating that the problems experienced by the complainant were corrected and that the opt-out functions are compliant. Therefore, no further action was taken on this occasion. ASA also advised that the advertiser did not have a link to YOC on their website and it would be advisable for them to include such a link. **Complaint upheld, case closed.**

### 2968 Eyeota Ltd.

Complaint from a UK consumer to the UK SRO, ASA, regarding the opt-out mechanism from OBA advertisements by Eyeota Ltd., a third party OBA provider based in Germany. The complainant stated that opt-outs had been attempted via Your Online Choices (YOC). Despite selecting the “Off” mode, the website kept on reverting to “On” mode. As the OBA provider had declared their competent decision making location for OBA as Germany with the European Digital Advertising

Alliance, the UK SRO, ASA, transferred the complaint to the German SRO, DDOW, under the cross-border procedure. DDOW verified the company's performance on YoC on the specific date with the YoC technical provider. No malfunctions were detected. DDOW concluded that the problem lied with the complainant: their technical device, privacy setting or Internet connection. DDOW considered the complaint as unsubstantiated and could not pursue the investigation. **Complaint not pursued, case closed.**

## 2.3 Social Responsibility

### 2950 Heineken

Complaint from a UK charity to the UK SRO, ASA, regarding an online advertisement for Heineken, a Dutch brewing company. The YouTube advertisement promoting a Facebook app 'Hink Cities' told a story about how the advertiser's consumers were asked a set of questions about how well they know their city. Those who scored best were challenged to discover unexplored places in the city. The advertisement showed them going to a bar resembling a plane, a cabaret, a molecular cuisine restaurant as well as at a party. First, the complainant noted that the characters in the advertisement drank at least three alcoholic drinks in the two-minute advertisement, which is over the recommended daily limit of alcohol unit intake. Second, the complainant noted that one of the male characters was shown dragged on stage and then performing with skilled cabaret acts. According to the complainant, it implied that alcohol could contribute to an individual's popularity or confidence and that it also implied how alcohol can enhance personal qualities. Third, the complainant found the advertisement to imply that alcohol can change your behaviour. Therefore, the complainant found the advertisement to be against social responsibility principles. 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 Chairman of the Dutch Advertising Code Committee noted that in the ad beer was portrayed being poured and consumed, however, not in inappropriate quantities. Moreover, the Chairman noted that the advertisement did not go beyond the limits of the permissible. **Complaint not upheld, case closed.**



## 2.4 Taste and Decency

### 2958 Prada S.p.A.

Complaint from a UK consumer to the UK SRO, ASA, regarding online advertisements for Prada S.p.A., an Italian clothing company. The Miu Miu brand website displayed several images as part of the Miu Miu Spring/Summer 2015. Three of them showed a woman wearing the advertiser's products in different poses on a bed. The complainant found the advertisement to be against taste and decency rules, because they seemed to show pre-pubescent girls that appeared to have been trafficked. As the advertiser was based in Italy, the UK SRO, ASA, transferred the complaint to the Italian SRO, IAP, under the cross-border procedure. Following contacts with IAP, the advertiser explained that the model was 22 years old and was not an adolescent as well as that the images did not cause widespread reaction in the media. IAP Complaint Committee reviewed the complaint and asked the advertiser to remove the image that featured a young girl reclining on a bed while looking straight into the camera. The advertiser complied with this and removed the image from the website and social media. **Complaint upheld, case closed.**

### 2972 Magnitude

Complaint from a German NGO to the German SRO, DWR, regarding online advertisements for Magnitude, a Belgian handmade bedding manufacturer. The advertisement showed a naked woman being surrounded by a pack of wolves. The complainant found the advertisement to be against the taste and decency and gender stereotyping rules, because there was no clear link between the advertised product and the naked woman. As the advertiser was based in Belgium, the German SRO, DWR, transferred the complaint to the Belgian SRO, JEP, under the cross-border procedure. Following contacts with JEP, the advertiser explained that the advertisement should be seen in context that it referred; in this particular case it referred to the range of bedding promoted. After review, the Jury considered the advertisement to carry a connotation of sensuality, but not sexuality. Therefore, the Jury considered the advertisement to be connected with the product, i.e. a luxury range of upholstered bedding. Taking into account societal evolution, the Jury was also of the opinion that the advertisement was not contrary to current decency norms and did not come across as shocking. The Jury also found the advertisement neither contrary to human dignity nor demeaning to women. **Complaint not upheld, case closed.**

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

### **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 2.785 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](http://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](http://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.

2015

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