

2015

Cross-Border Complaints
Quarterly Report no. 69
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.

EASA Editorial Team

Justina Raižytė
Development and Policy Adviser

Sara Haghshenas
Project Assistant

Lucas Boudet
Director General

Copyright

The complete or partial reproduction of this publication is forbidden without the prior express written permission from EASA. Please contact Justina Raižytė for further information.

EASA Contact Information

Justina Raižytė
0032 (0)2 513 78 06
justina.raizyte@easa-alliance.org

Table of Contents

1 Key Findings	2
2 Complaints Resolved July – September 2015	3
2.1 Misleading Advertising	5
2.2 Privacy and Data Protection.....	14
2.3 Social Responsibility	16
2.4 Taste and Decency	17
Annex A: How the EASA Cross-Border Complaints System Works.....	19

List of Tables

<i>Table 1: Complaints resolved per issue between July and September 2015.....</i>	<i>3</i>
--	----------

1 Key Findings

Scope

This report contains the details of 42 cross-border complaints about 36 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 2015.

Issues

The issues complained about were misleading advertising (26 complaints), taste and decency (9 complaints), privacy and data protection (5 complaints) and social responsibility (2 complaints),

Media

The media involved were Digital Marketing Communications (33 complaints), Direct Marketing (6 complaint), Audio-Visual Media Services (2 complaints) and Outdoor (1 complaint).

Sectors

With regards to the different sectors complained about, the gambling sector received the most cross-border complaints (10 complaints), followed by the telecommunications sector and leisure service (8 complaints) and the clothing, footwear and accessories sector (6 complaints).

Countries concerned

The Irish SRO (ASAI) handled twelve complaints; the Dutch SRO (SRC) seven complaints; the French SRO (ARPP) six complaints, the Spanish SRO (AUTOCONTROL) four complaints; the UK (ASA) three complaints, the German (WBZ) two complaints, whereas SRO's from Luxembourg, Portugal, Poland, Italy, Austria, Hungary, Australia and Belgium 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 2015

Table 1: Complaints resolved per issue between July and September 2015

Issue	Advertiser complained about	Complaint N°	Page
Misleading Advertising	eBay INTERNATIONAL AG	2697	p.5
	Forex	2897	p.5
	Paddy Power	2956	p.5
	DJGer.com	2959	p.6
	Portucel Soporcel	2961	p.6
	Frankonia	2964	p.6
	Booking.com BV	2969	p.7
	Booking.com BV	2970	p.7
	Global Barcodes SL	2973	p.7
	Gotogate.com	2985	p.8
	BT Group plc	2987	p.8
	CD Projekt SA	2988	p.9
	Booking.com BV	2992	p.9
	Etrawler Ltd.	2993	p.9
	Formula E Holdings Ltd.	2994	p.10
	Luxottica Group Spa	2995	p.10
	Mango On-Line SA	2996	p.10
	Healthways Distribution Ltd.	2999	p.11
	Slim Wise Ketone	3012	p.11
	Wolford AG	3013	p.11
	FC-moto GmbH & Co. KG	3014	p.12
	Booking.com BV	3015	p.12
	Wizz Air Hungary Airlines Ltd.	3019	p.12
AFIBEL SAS	3031	p.12	
Transatel – LeFrenchMobile	3051	p.13	
Social Point SL	3058	p.13	
Privacy and Data Protection	Next Performance	2963	p.14
	Next Performance	2966	p.14
	Paddy Power	2979	p.14
	Paddy Power	2997	p.15
	Next Performance	3022	p.15

Social Responsibility	Victorian Hearing	2978	p.16
	BSH Home Appliances SA	2989	p.16
Taste and Decency	Suitsupply	2953	p.17
	Little Creative Factory	2971	p.17
	Paddy Power	3000-6	p.18

Source: EASA Cross-Border Complaints Report No. 69 - July - September 2015

2.1 Misleading Advertising

2697 eBay INTERNATIONAL AG

Complaint from a UK consumer to the UK SRO, ASA, concerning the email advertisements from eBay Europe S.à.r.l., a Luxembourg-based counterpart of the American e-commerce company. The advertisements included offers for items that were advertised as being delivered “free” of charge (“Free P & P”), whereas the final price of the products included the delivery fee. The complainant found the advertisement to be misleading, because instead of offering ‘free’ delivery, eBay included cost of delivery in the price itself. As the advertiser was based in Luxembourg the UK SRO, ASA, transferred the complaint to the Luxembourgish SRO, CLEP, under the cross-border procedure. Following contacts with CLEP, the advertiser explained that they did not control the prices listed by the sellers for the item or P&P. The advertiser further clarified that they were not retailers themselves and that the items are priced, sold and shipped by the vendors. The vendors are responsible for setting prices and it is their decision whether to charge for postage and packaging or to offer it free of charge and what overall margin they would make on the transaction. Finally, the advertiser pointed out that the final price for an item, including any cost for delivery, is made clear to buyers upfront and there are no extra charges for delivery at a later stage. If an item listed as having “Free P&P” is ordered, the price will not fluctuate when the delivery method is alternated from postage to collection, which supports the statement that the postage and packaging is complimentary. Taking into account the position of the advertiser, CLEP did not find the advertisement to be in breach of the Code of Advertising Practice of CLEP. **Complaint not upheld, case closed.**

2897 FOREX

Complaint from an Irish consumer to the Irish SRO, ASAI, regarding a TV advertisement for Forex.com broadcast on Euronews, a TV channel which is licensed in France. The advertisement was for Forex.com which is an online provider of services regarding foreign exchange market, operated by a US provider of online trading services GAIN Capital. The complainant objected to the fact that the financial risk involved in foreign exchange investments was not adequately stated and found the terms and conditions included in the advertisement to be illegible. Therefore, the complainant found the advertisement to be misleading. As the medium was based in France, the Irish SRO, ASAI, transferred the complaint to the French SRO, ARPP, under the cross-border procedure. However, due to the fact that neither the complainant nor ASAI had provided a copy of the advertisement, ARPP was not in a position to pursue the investigation. **Complaint not pursued, case closed.**

2956 Paddy Power

Complaint from a UK consumer to the UK SRO, ASA, regarding an email advertisement for Paddy Power, an Irish online betting company. The e-mail promoted an offer of 50% cashback on losses. However, the terms and conditions connected to the offer stated that a player would need to wage either £6500 on table games, or £1500 on slots in order to get a maximum of £50 cashback on losses. The complaint therefore found the offer to be misleading, because 50% of £6500 and 50% of £1500 would be much more than £50. 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 ad was not misleading because all the detailed information was available on the section Terms and Conditions. After review, the ASAI's Committee considered that the information given by the advertiser in the section Terms and Conditions was not sufficient. In fact, the Committee noted that while the headline of the offer had referred to "Clobbering 50% Cashback" and the body of the offer had referenced "50% Cashback on losses", neither had referenced the fact that cashback was only available up to a specified amount and that minimum wagering requirements were also applicable to the offer. The Committee noted that these requirements had to be included in the terms and conditions and reminded the advertisers that it was not sufficient to make a headline offer if it was subsequently meaningfully restricted by their terms and conditions. The Committee upheld the complaint under Sections 2.22, 2.24, 3.12 and 3.16 of the Code. The Committee noted that the advertisers had agreed to amend their advertising and no further action was required in this case. **Complaint upheld, case closed.**

2959 DGJer.com

Complaint from a UK consumer to the UK SRO, ASA, regarding an online advertisement on the Facebook page of DJGer.com, an Irish DJ/MC performer. The complaint concerned a Facebook competition. The complainant won a prize but he never received the prize. 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. ASAI attempted to contact the advertiser but the advertiser did not reply to any enquiry. The ASAI's Committee noted that more time had passed and the complainant had yet to receive her prize. In the circumstances the Committee upheld the complaint under Sections 2.7 and 3.33 of the Code. The Committee asked the advertiser to ensure that competition entrants of future promotions receive their prizes as per the requirements of the Code. The advertiser was also advised not to run the advertising in its current form. **Complaint upheld, case closed.**

2961 Portucel Soporcel

Complaint from a UK consumer to the UK SRO, ASA, regarding an online advertisement for Navigator Paper, stationary brand belonging to Portucel Soporcel Group, a Portuguese pulp and paper company. The complainant entered a competition that was promoted on packs of Navigator paper, for a prize of an iPad mini, which closed on 31 January 2015. The complainant entered via the 'no purchase necessary route' given, and on entering the code received a 'Congratulations' notification stated that they had won. Since that time the complainant tried to resolve the matter with the advertiser who stated that they would not accept him as a winner. The complainant felt that the competition was administered unfairly. Therefore, the complainant found the advertisement to be misleading. As the advertiser was based in Portugal, the UK SRO, ASA, transferred the complaint to the Portuguese SRO, ICAP, under the cross-border procedure. In the course of investigation, ICAP liaised with the communications agency that worked with the advertiser on the campaign. Following analysis of the records regarding the competitions, it was confirmed that the complainant's email addresses had not been awarded with any prize. To compensate for the inconvenience, the advertiser offered the complainant an iPad mini. **Complaint resolved informally, case closed.**

2964 Frankonia

Complaint from a Dutch consumer to the Dutch SRO, SRC, regarding an online advertisement on Frankofonia.de, a German online shop. The complainant purchased a jacket via the website of the advertiser. The website did not explain terms and conditions for shipping costs, delivery time, and payment conditions, and did not provide neither a correct phone number for customer service nor the exact information about expected delay in delivery. Moreover, the website did not inform consumers that for the delivery to postal addresses outside Germany a prepayment was required. Therefore, the complainant found the advertisement to be misleading. As the advertiser was based in Germany, the Dutch SRO, SRC, transferred the complaint to the German SRO, WBZ, under the cross-border procedure. After review, the WBZ summoned advertiser not to require prepayment without informing consumers about the payment conditions and not to inform of - delivery in 14 day-time until the consumer put product into the basket. **Complaint upheld, case closed.**

2969 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 advertisement quoted a rate of £55 for a double room without breakfast at the Dolby Hotel in Liverpool, the UK. The advertisement showed that it had been discounted from £59 under 'Today's value deal' with a lightbulb icon which, when hovered over, stated - 'outstanding value for money'. The complainant decided to visit the hotel's website directly and found that £55 was in fact the standard price for exactly the same room with the same terms and conditions on that date. The complainant found the advertisement to be misleading, because there was in fact no discount at Booking.com as claimed. 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 Advertising Code Committee considered it plausible that the bargain rate of £55 in the advertisement indeed represented a discount if compared to the formerly published price (£59). The Committee noted that the fact that the same room was offered for £55 by the hotel itself did not mean that the rate on the Booking.com was not a discount price. **Complaint not upheld, case closed.**

2970 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 advertisement displayed a price for rooms “up to 26% off” and “23% off”. In particular, a double room was advertised as being discounted from £149.01 to £116.01. However, the hotel’s website was advertising exactly the same room, with same terms and conditions, on the same date, for £116, which was their standard rate and not a discount. The complainant found the advertisement to be misleading, because there was in fact no discount at Booking.com as claimed. 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 Advertising Code Committee considered it plausible that this the bargain rate of £116.01 in the advertisement indeed represented a discount if compared to the formerly published price (£149.1). The Committee noted that the fact that the same room was offered for £116.01 by the hotel itself did not mean that the rate on the Booking.com was not a discount price. **Complaint not upheld, case closed.**

2973 Global Barcodes SL

Complaint from a New Zealand company to EASA, regarding the online advertisements of a competitor, Global Barcodes SL, a Spanish company selling barcodes. The complaint was three-fold and challenged advertisements featured in the websites, including www.thebarcodesshop.co.uk and www.laboutiquedesbarres.com, owned by and/or associated with the advertiser. Firstly, the complainant questioned if the claim "The Barcodes Shop, Inc. is an authorized reseller of EAN numbers issued by the US companies that joined the Uniform Code Council (now GS1-US) prior to August 28, 2002" could be substantiated. Secondly, the complainant challenged the claim "We sell UK EAN barcodes" as it was contradicted by the claims that the advertiser sold barcodes issued by US companies. Thirdly, the complainant challenged the truthfulness of the logos featured at the bottom of the page that implied that the advertiser was a member of, or approved by, some certified organisations (like ISO9001 Company, Barcode Numbers Trade and Verisign). As the advertiser was based in Spain, EASA 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 evidences in order to prove the truthfulness and the accuracy of the advertisement, but the advertiser did not replay to any enquiry. In the circumstances the Jury concluded that the advertisement was misleading and breached the rule 14 (Truthfulness) of the Code of Advertising Practice. Likewise, as the advertisement was broadcasted on the Internet, it also breached the Article 3.1 (Honesty and Truthfulness) of the Ethical Code of Confianza Online. **Complaint upheld, case closed.**

2985 Gotogate.com

Complaint from a Dutch consumer to EASA regarding an online advertisement on Gotogate.co.uk, operated by Gotogate, an online travel agent. The complainant purchased a flexi airline ticket using the advertiser’s website, for which the complainant paid £79 on top of the normal fare. The complainant then made several attempts, via email and phone, to make amendments to the flight. Despite reassurances about getting back, the advertiser would not respond to the queries. Finally, the complainant was informed that no changes could be made as the ticket was non-transferable

and non-flexi one. The complainant asked the advertiser for a refund of £79 paid for the flexi airline ticket, but was informed that this was not possible. Therefore, the complainant found the advertisement to be misleading. As the advertiser was based in the UK, EASA transferred the complaint to the UK SRO, ASA, under the cross-border procedure. After review, ASA noted that the full terms of the service were available prior to booking, making the conditions of rebooking clear and that this was a subject of availability and additional charges for seats at a higher price class. ASA considered that consumers were likely to understand from the information presented on the website, that the 'flexible ticket' service was offered by the advertiser and that this allowed customers to request a change to the date/time of their flight, which was subject to availability of seats on a new flight, and that there may be additional charges where the rebooked flight involved a seat in a higher price class than the original booking. Therefore, ASA did not consider there were sufficient grounds to pursue the complaint. **Complaint not pursued, case closed.**

2987 BT Group plc

Complaint from an Irish consumer to the Irish SRO, ASAI, regarding a TV advertisement for BT Sport Europe broadcasted on Dave HD, a TV channel which is licensed in the UK. The advertisement stated that the European Football was now free to BT Sports customers. The complainant disagreed with the word 'free' as European football is additional programming to the subscription service. Therefore, the complainant found the advertisement to be misleading. As the medium was based in the UK, the Irish SRO, ASAI, transferred the complaint to the UK SRO, ASA, under the cross-border procedure. After review, ASA noted that on-screen text in the TV advertisement stated "Free for existing BT TV customers when you re-contract TV and broadband for 18 months". As such, ASA considered that viewers were generally likely to understand that they would only be able to obtain BT Sport Europe for free if they renew their existing BT TV and broadband contract for 18 months. Therefore, ASA did not consider that the advertisement was likely to mislead viewers in the way the complainant suggested. ASA did not propose any further action. **Complaint not pursued, case closed.**

2988 CD Projekt SA

Complaint from an Irish consumer to the Irish SRO, ASAI, regarding an online advertisement for CD Projekt Red, a Polish video game developer. The online video posted on YouTube was a promotional advertisement for the game "The Witcher 3: Wild Hunt". The complainant noted that the game did not reach the quality of graphical fidelity as advertised. Moreover, the complainant noted that the developers acknowledged this fact themselves in the press. The complainant found the advertisement to be misleading, because the warning from the developers came only after the game was released. As the advertiser was based in Poland, the Irish SRO, ASAI, transferred the complaint to the Polish SRO, Rada Reklamy, under the cross-border procedure. After review, Rada Reklamy noted that the article referred to by the complainant had been already corrected with regards to the information concerning game performance and software development patches. Moreover, further graphics improvements for the game were announced. Rada Reklamy also made a remark that the Jury was not in a position to verify the quality of graphical fidelity, since the latter was based on PC configuration and software available. **Complaint not pursued, case closed.**

2992 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 used the website to book the Moevenpick Hotel Cairo pyramids in Cairo, Egypt. The advertisement stated that the offer had "half board included". However, having made the booking, the complainant received an email hotel confirmation saying "meal plan: there is no meal option with this room". The complainant contacted the advertiser who confirmed that the advertisement was incorrect, but they would still have to pay an extra £154.00 to upgrade to half board. 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. Having filed the complaint, the complainant was contacted again by the advertiser. The advertiser apologised for the inconvenience. Moreover, the advertiser offered a refund of \$245 which corresponded to the half board cost of the reservation. The complainant was satisfied with the offer which they accepted and consequently withdrew the complaint. **Complaint withdrawn, case closed.**

2993 Etrawler Ltd.

Complaint from a UK consumer to the UK SRO, ASA, regarding HolidayAutos.com, a website of an online Irish car hire company, Etrawler. The complainant sought to rent an Opel Corsa or a similar car through Firefly, operating as a supplier. The website quoted £18.92 for five days. However, having read the Terms and Conditions, the complainant noted that a non-optional fuel administration charge was levied. 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 noted that that a genuine human error occurred in this case which the advertiser had already addressed to prevent similar happenings in the future. Therefore, ASAI did not consider that there was a case for further investigation. **Complaint resolved informally, case closed.**

2994 Formula E Holdings Ltd.

Complaint from a UK consumer to the UK SRO, ASA, regarding an online advertisement for Formula E Rights BV, a Dutch counterpart administering FIA Formula e motor racing championship. The website fiaformulae.com featured the image of crossing Waterloo Bridge. The complainant challenged the image, because they understood that this location was not part of the London circuit route. 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 explained that the image in question had been removed as a result of a similar complaint (EASA Ref. 2877). Given the earlier case as well as the advertiser's action, SRC did not consider there were sufficient grounds to pursue the complaint. **Complaint not pursued, case closed.**

2995 Luxottica Group spa

Complaint from a UK consumer to the UK SRO, ASA, regarding an online advertisement for Ray-Ban, a brand of sunglasses and eyeglasses belonging to Luxottica Group Spa, an Italian eyewear

company. The website ray-ban.com featured an advertisement for a sunglasses' model "Clubmastergreen Classic G-15". The advertisement included the claim "Customise it. It's free!". However, the customization of engraving turned out to cost £10. The complainant emailed the advertiser who admitted that while the engraving was advertised as free, in fact it was not free of charge. Therefore, the complainant found the advertisement to be misleading. 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 claim was originally free of charge. However, since there had been an increase in the price for the product's customisation, the advertiser promptly modified their marketing communications to avoid any ambiguity. IAP accepted the explanation and closed the file. **Complaint resolved informally, case closed.**

2996 Mango On-Line SA

Complaint from a UK consumer to the UK SRO, ASA, regarding an online advertisement for Mango On-Line SA, a Spanish online clothing store. The website mango.com featured an advertisement for a leather jacket. The advertisement offered the item with a 33% discount ("£119 £79.99 (-33%)"). The complainant considered the advertisement to be misleading, because during prior sales the jacket was priced £99.99. As the advertiser was based in Spain, the UK SRO, ASA, transferred the complaint to the Spanish SRO, AUTOCONTROL, under the cross-border procedure. After review, the AUTOCONTROL's Jury concluded that the screenshots sent by the complainant were not enough to prove the advertisement was misleading. The screenshot showing a 33% reduced price was not dated. Therefore, it was impossible for the Jury to establish that the screenshot showing a £99 price was previous to the one in question. **Complaint not upheld, case closed.**

2999 Healthways Distribution Ltd.

Complaint from a Polish consumer to the Polish SRO, RR, regarding an online advertisement for Men's Strong, a website promoting supplements for the muscle-building and operated by Healthway Distribution Ltd., a UK company. The advertisement depicted two men with the so-called 'before' and 'after' images and the claim was: "The change in only two weeks! Don't you believe in it? Learn how he did it and you will change your mind." The complainant considered the claim that a person can change their looks within two weeks to be false. Therefore, the complainant found the advertisement to be misleading. As the advertiser was based in UK, the Polish SRO, RR, transferred the complaint to the UK SRO, ASA, under the cross-border procedure. Following the receipt of the complaint, ASA attempted to contact the advertiser requesting additional comment but he did not reply to any enquiry. In the circumstances the Jury concluded that the advertisement was misleading and breached the rules 3.1 (Misleading Advertising), 3.7 (Substantiation) and 13.1 (Weight Control and Slimming) of the UK Advertising Code. The advertiser was advised not to run the advertisement in its current form again and not to make claims relating to their products unless they were supported by robust evidence. **Complaint upheld, case closed.**

3012 Slim Wise Ketone

Complaint from a UK consumer to EASA regarding an email advertisement for TrySlimWise.com, a website operated by Slim Wise Ketone, a Dutch company. The email included an invoice for a product which complainant claimed not to have bought. Moreover, while the invoice amounted to £157, the complainant claimed that he was charged double (£314). The complainant claimed that the payment was unauthorised. Therefore, the complainant found the advertisement to be misleading and illegal. As the advertiser was based in the Netherlands, EASA transferred the complaint to the Dutch SRO, SRC, under the cross-border procedure. As the advertiser was based in the Netherlands, EASA transferred the complaint to the Dutch SRO, SRC, under the cross-border procedure. After review, SRC considered that the complaint concerned unauthorised payment/fraud, rather than the content of the advertisement in question. Therefore, SRC decided to transfer the complaint to The Fraud Help Desk. **Complaint transferred to the appropriate authority, case closed.**

3013 Wolford AG

Complaint from a UK consumer to the UK SRO, ASA, regarding an email advertisement for Wolford AG, an Austrian clothing company. The advertisement included the claim: "40% off orders over £120" which also said that the discount would apply automatically at checkout. The complainant ordered over £120 worth of products but the discount did not apply. The complainant contacted the advertiser who said that the offer was only on selected lines. The complainant found the advertisement to be misleading, because the fact that the availability of the offer was limited was not made clear within the advertisement. As the advertiser was based in Austria, the UK SRO, ASA, referred the complaint to the Austrian SRO, ÖWR, under the cross-border procedure. After investigation, ÖWR attempted to contact the advertiser but they did not respond to any enquires. Under the circumstances, ÖWR transferred the complaint to the competent Austrian consumer association - VKI – that was responsible for misleading cases like this one. **Complaint transferred to appropriate authority, case closed.**

3014 FC-moto GmbH & Co. KG

Complaint from a UK consumer to the UK SRO, ASA, regarding an online advertisement on FC-Moto.de, a website operated by FC-Moto GmbH & Co. KG, a German motorcycle company. The advertisement for the helmet “Scorpion Exo 100 Padova II” included the claim: “an extra smoke shield is supplied free with each helmet”. The complainant ordered the product, but did not receive the free smoke shield. Therefore, the complainant found the advertisement to be misleading. As the advertiser was based in Germany, the UK SRO, ASA, referred the complaint to the German SRO, WBZ, under the cross-border procedure. Following contacts with WBZ, the advertiser decided to take the product out of the shop and made sure that certain helmet was not offered anymore. Under the circumstances, WBZ decided to close the case. **Complaint resolved informally, case closed.**

3015 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 advertisement for the Washington Paradise in Washington, DC, the US displayed a price of £132 for a two-night stay. However, the advertisement did not make clear that the price quoted excluded 14.50% tax and \$120 cleaning fee. 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. Before any actions were taken by the SRC, the complainant decided to withdraw the complaint. **Complaint withdrawn, case closed.**

3019 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 website with information about WIZZ FLEX Service (that allowed to change the date, time and routing of the flight) included the claim: “The change fee will not be charged however any fare difference must be paid”. According to the complainant, even if they booked for a cheaper ticket it would still charge them an additional £10-15 minimum. 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 highlighted that all information was available clearly on their website, before approving any transaction. Moreover, the advertiser declared that it did not submit itself and did not accept the procedure of the SRO. This meant that ORT did not ask for extra information, as the complaint could not be solved that way. Under the circumstance, ASA was not able to further investigate the complaint. **Complain not pursued, case closed.**

3031AFIBEL SAS

Complaint from a UK consumer to the UK SRO, ASA, regarding a direct mail by Afibel SAS, a French company specialising in mail order selling of women's clothing. The complainant claimed that the advertisement was designed to trick consumers into believing that they had already won the £5,000 prize draw, in order to convince them to place an order. The complainant, whose grandmother was the original recipient of the advertisement, believed that it made the elderly

particularly vulnerable. Therefore, the complainant found the advertisement to be misleading. As the advertiser was based in France, the UK SRO, ASA, referred the complaint to the French SRO, ARPP, under the cross-border procedure. Following contacts with ARPP, the advertiser replied that the claim was not misleading since the indication “If the number that has been allocated to you has been designated as a winning number, we can then declare...” was always present next to the prize. The ARPP’s Secretary therefore decided not to write again to AFIBEL since the presentation was the same as in the previous cases, and has already been assessed as compliant. **Complaint not upheld, case closed.**

3051 Transatel – LeFrenchMobile

Complaint from a UK consumer to the UK SRO, ASA, regarding an online advertisement for Transatel-LeFrenchMobile, a French phone company. The complainant challenged whether the ad was misleading, because they purchased the French SIM advertised with the following items: ‘2 hrs of calls + 85 texts or 1 hr of calls + 40 texts + 1 GB’. The complainant purchased two cards and made two calls from each, and only 100Mb of data was used (having actively followed data usage on their phones). They then found that the cards no longer worked for them. The leaflet received with the cards stated that the sims were already activated and ready to use, however, they’ve been informed the usage information provided was just an example of what customers could receive. Therefore, the complainant found the advertisement 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 review the ARPP’s Secretary decided the ad was not misleading since it was written that the indications were only examples of use. Moreover, the Secretary indicated that the issue between the plaintiff and LE FRENCH MOBILE was a contractual matter and for this reason was out of the JDP’s remit. **Complaint out of remit, case closed.**

3058 Social Point SL

Complaint from the UK Competition and Markets Authority (CMA) regarding an online advertisement from Social Point SL, a Spanish company. The ad was broadcasted in the mobile application of the game “Dragon City” (a children’s game). The complainant objected that the ad breached the Advertising Codes and the consumer law by directly encouraging children to buy, or ask their parents to buy, extra game features. The game offered various time limited offers which were displayed as a countdown clock on the main game screen throughout. Therefore, the complainant found the advertising to be against social responsibility rules. As the advertising was based in Spain, the UK SRO, ASA, transferred the complaint to the Spanish SRO, AUTOCONTROL, under the cross-border procedure. Following contacts with AUTOCONTROL, the advertiser replied that the ad was not directed to minors and the countdown represented the validity of the offer. After review the AUTOCONTROL’s Jury concluded that the information given by the advertiser was acceptable and the ad did not breach the Code of Advertising Practice of AUTOCONTROL. **Complaint not upheld, case closed.**

2.2 Privacy and Data Protection

2963 Next Performance

Complaint from a UK consumer to the UK SRO, ASA, regarding the opt-out mechanism from OBA advertisements by the Next Performance, a third party OBA provider based in France. The complainant raised concerns that they had continually been unable to opt out of OBA data collection used by Next Performance. The complainant's preference changed from 'X' to '?' which appeared to indicate that a user has not turned cookies either on or off. The complainant stated that opt-outs had been attempted via Your Online Choices (YOC). Moreover, the complainant challenged the fact the opt-out contained within the advertisement was not clear and that the opt-out was contained at least three clicks away. As the OBA provider had declared their competent decision making location for OBA as France with the European Digital Advertising Alliance, the UK SRO, ASA, transferred the complaint to the French SRO, ARPP, under the cross-border procedure. Following contacts with ARPP, the advertiser explained that the problem appeared to be of a technical nature. The issue was further discussed between the advertiser and the European Interactive Digital Advertising Alliance. The advertiser communicated that the opt-out was working again, which concluded the investigation. **Complaint resolved informally, case closed.**

2966 Next performance

Complaint from a UK consumer to the UK SRO, ASA, regarding the opt-out mechanism from OBA advertisements by the Next Performance, a third party OBA provider based in France. The complainant raised concerns that they had continually been unable to opt out of OBA data collection used by Next Performance. 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 France with the European Digital Advertising Alliance, the UK SRO, ASA, transferred the complaint to the French SRO, ARPP, under the cross-border procedure. Following contacts with ARPP, the advertiser explained that the problem appeared to be of a technical nature. The issue was further discussed between the advertiser and the European Interactive Digital Advertising Alliance. The advertiser communicated that the opt-out was working again, which concluded the investigation. **Complaint resolved informally, case closed.**

2979 Paddy Power

Complaint from a UK consumer to the UK SRO, ASA, regarding a SMS advertisement for Paddy Power, an Irish online betting platform. The complainant received the unsolicited SMS messages from the advertiser. The complainant stated that they had never consented to receiving marketing material from the advertiser, nor had they opted-in to having their details shared with third-parties for the purposes of SMS marketing. Therefore, the complainant found the advertisement to be against privacy and data protection rules. 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 initial assessment, ASAI contacted the complainant and explained that data protection issues were not covered under the ASAI Code. ASAI further explained that the Irish Data

Protection Commissioner has responsibility for enforcing legislation which deals with unsolicited marketing. ASAI forwarded the complaint to the Commissioner on behalf of the complainant. **Complaint transferred to the appropriate authority, case closed.**

2997 Paddy Power

Complaint from a UK consumer to the UK SRO, ASA, regarding an SMS advertisement for Paddy Power, an Irish online betting platform. The complainant received the unsolicited SMS messages from the advertiser. The complainant stated that they had never consented to receiving marketing material from the advertiser, nor had they opted-in to having their details shared with third-parties for the purposes of SMS marketing. Therefore, the complainant found the advertisement to be against privacy and data protection rules. 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 initial assessment, ASAI contacted the complainant and explained that data protection issues were not covered under the ASAI Code. ASAI further explained that the Irish Data Protection Commissioner has responsibility for enforcing legislation which deals with unsolicited marketing. ASAI forwarded the complaint to the Commissioner on behalf of the complainant. **Complaint transferred to the appropriate authority, case closed.**

3022 Next Performance

Complaint from a UK consumer to the UK SRO, ASA, regarding the opt-out mechanism from OBA advertisements by the Next Performance, a third party OBA provider based in France. The complainant raised concerns that they had continually been unable to opt out of OBA data collection used by Next Performance. As the OBA provider had declared their competent decision making location for OBA as France with the European Digital Advertising Alliance, the UK SRO, ASA, transferred the complaint to the French SRO, ARPP, under the cross-border procedure. Following contacts with ARPP, the advertiser explained that the problem appeared to be of a technical nature. The issue was further discussed between the advertiser and the European Interactive Digital Advertising Alliance. The advertiser communicated that the opt-out was working again, which concluded the investigation. **Complaint resolved informally, case closed.**

2.3 Social Responsibility

2978 Victorian Hearing

Complaint from a UK consumer to the UK SRO, ASA, regarding an online advertisement for Victorian Hearing, an Australian hearing aid company. The complainant saw a poster campaign for the advertiser on social media. The advertisement showed a woman's face from the right hand side. Around her ear, there was some sort of sea creature which resembled a hearing aid. The advertisement included the following claims: "HEARING AIDS can be UGLY."; "Ours are INVISIBLE!" and "The world's first 100% INVISIBLE, 24/7 wearable, sweat-proof, shower-proof hearing solution." The complainant believed it would have a massive impact on young children's, teenagers' and adults' self-esteem who did not have the option but to wear 'ugly' hearing aids that resembled sea creatures, e.g. cochlear implants, baha's, etc. The complainant believed it encouraged judgemental and bullying behaviour and would have a detrimental impact on a vast range of people. Therefore, the complainant found the advertisement to be against social responsibility rules. As the advertiser was based in Australia, the UK SRO, ASA, transferred the complaint to the Australian SRO, ASB, under the cross-border procedure. Following the receipt of the complaint, the advertiser replied that the advertisement published on their Facebook page was clearly not a media that was directed to children, as Facebook was not a media intended for use by children. Moreover, the advertiser explained that the advertisement in question had been used in many forums since 2013 and had not, as far as we were aware, been subject to any negative response until the receipt of the complaint. However, the advertiser had voluntarily withdrawn the ad in response to the complaints received. After review, the ASB's Board considered that linking the word 'ugly' to a product used by people with hearing disabilities did incite contempt or ridicule as it suggested that people who wore traditional hearing aids, either by choice or by necessity, were wearing something which was ugly and this was likely to cause offense and distress. The Board understood the advertiser's intent was to promote an alternative hearing aid product but considered that the overall message of the advertisement was vilifying of a person or a section of the community on account of disability. In the circumstances, the Board determined that the advertisement breached Section 2.1 (Vilification) of the Code. **Complaint upheld, case closed.**

2989 BSH Home Appliances SA

Complaint from a French consumer to the French SRO, ARPP, regarding an outdoor advertisement for BSH Home Appliances S.A., a Belgian counterpart of a German company producing household appliances. The advertisement showed a Bosch food processor and included a claim: "Our robot is pretty and can do everything. Just like your mum." The advertisement was displayed on the occasion of Mother's Day. The complainant objected that the ad was offensive and denigrating for the women. As the advertiser was based in Belgium, the French SRO, ARPP, transferred the complaint to the Belgian SRO, JEP, under the cross-border procedure. After review, the Jury noted that the claim did not imply a negative connotation with regard to the mothers or with regard to women in general. The Jury was of the opinion that the advertisement was neither sexist, nor discriminating or denigrating with regard to women. Therefore, the Jury decided that the advertisement did not breach the JEP's rules on the depiction of persons and did not formulate negative remarks on this point. **Complaint not upheld, case closed.**

2953 Suitsupply

Complaint from a UK consumer to the UK SRO, ASA, regarding an online advertisement for Suitsupply, a Dutch counterpart of a men's fashion brand. The website displayed an image of a woman and a man swimming. The woman wore only bikini bottom, while the man wore a suit. The complainant found the advertisement to be against taste and decency principles, because by showing an almost naked woman next to a fully clothed man was offensive and sent out an irresponsible message to young people. 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. The Chairman of the Dutch Advertising Code Committee referred to the previous decisions of the Board of Appeal in reference to the complaints about the same advertisement and did not find it contrary to good taste and decency. In the advertisement the woman was pictured sideways and reached her right hand to the man who seemed to respond to it and this interaction did not give the impression of a sexually oriented contact. Furthermore, their poses did not indicate sexuality. **Complaint not upheld, case closed.**

2971 Little Creative Factory

Complaint from a German consumer to the German SRO, DWR, regarding online advertisements for Little Creative Factory, a Spanish online clothing company. The advertiser published images of young girls in one-piece swimsuits on their Facebook page and Instagram account. The first image showed a girl wearing a yellow swimsuit. The second group of photographs featured the minor's face and the girl holding onto the wall. In the third photograph the minor appeared laying down on a couch wearing a black bathing suit, glasses and a hat. The complainant objected that the ad was offensive because it sexualised girls in a not appropriate way. Therefore, the complainant found the advertisement to be against taste and decency rules. As the advertiser was based in Spain, the German SRO, DWR, transferred the complaint to the Spanish SRO, AUTOCONTROL, under the cross-border procedure. The Jury considered that the discussion of the advertisement should be made taking into account the different photographs. In this regard, the Jury understood that both the first picture and the second group of photographs were not reprehensible as there were no elements in the photographs that could be either considered harmful for minors nor imply an excessive sexualisation of the minor. However, the Jury concluded that the third picture breached the Rule 28 of the Code of Advertising Practice. The Jury understood that there were certain elements in the composition of the photograph that clearly implied a sexualisation of the minor and therefore were beyond a mere modelling of children swimsuits. The Jury considered that the minor's pose, her expressiveness, the furniture chosen and the perspective of the picture were circumstances which derived an inappropriate representation and a certain sexualisation of the minor. **Complaint upheld informally, case closed.**

3000–6 Paddy Power

Complaint from a UK consumer to the UK SRO, ASA, regarding an online advertisement for Paddy Power, an Irish online betting platform. The tweet posted by the advertiser featured an image depicting a dog squeezed in a bun and Taylor Swift, an American singer and actress, with a slogan resembling a call for action: “For dog's sake, Do something Taylor!” The complainant considered that the advertisement made light of animal cruelty by using the Yulin Dog Eating Festival. During the annual event taking place in Yulin, an autonomous region of China, about 10,000 dogs are tortured, slaughtered and consumed. Therefore, the complainant found the advertisement to be offensive. 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, explained that the complaints made under the Code’s decency and propriety provision present special difficulty because what was acceptable to one person may offend another. ASAI initially considered whether an advertisement offended the majority of people who had seen it or whether it offended the minority so deeply that it was reasonable for their interests to prevail against the rights of the advertiser to freedom of expression. In the end, the lack of complaints about this particular advertisement suggested that it was not causing serious or widespread offence. **Complaint not pursued, 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.

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.

2015

European Advertising Standards Alliance

Rue des Deux Églises 26
1000 Brussels, Belgium
info@easa-alliance.org
www.easa-alliance.org
[@advertisingEASA](https://twitter.com/advertisingEASA)

