

2015

Cross-Border Complaints
Quarterly Report no. 70
October - December

EASA

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

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

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

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

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1 Key Findings

Scope

This report contains the details of 34 cross-border complaints about 30 advertisements coordinated by EASA's cross-border complaints system, adjudicated by local Self-Regulatory Organisations (SROs) and closed during the period from October to December 2015.

Issues

The issues complained about were misleading advertising (24 complaints), taste and decency (8 complaints) and privacy and data protection (2 complaints).

Media

The media involved were Digital Marketing Communications (30 complaints), Audio-Visual Media Services (2 complaints) and Direct Marketing (2 complaints).

Sectors

With regards to the different sectors complained about, the leisure sector received the most cross-border complaints (13 complaints), followed by the gambling sector (6 complaints) and transport sector (5 complaints).

Countries concerned

The Dutch SRO (SRC) handled seven complaints; the Irish SRO (ASAI) six complaints; the French (ARPP) and the Spanish (AUTOCONTROL) SROs four complaints each, the UK (ASA), the Italian (IAP) and both the German SROs (DWR and WBZ) two complaints each, whereas SROs from Poland, India, Cyprus, Canada and South Africa each handled one complaint¹.

¹ In cases involving EU member states, advertisements are required to comply with the rules in the country of origin of the media in which the advertisement appears or, in the case of direct mail, e-mail or Internet advertising, the country where the advertiser is based. Switzerland, as a non-member of the EU, requires advertisements addressed by Swiss-based advertisers to consumers in other countries to comply with the rules in those countries (country of destination). Consequently, in such cases, the self-regulatory organisation (SRO) in the complainant's country assesses the complaint on the basis of its own national rules before passing it to the Swiss SRO, which communicates the decision to the advertiser.

2 Complaints Resolved October – December 2015

Table 1: Complaints resolved per issue between October and December 2015

Issue	Advertiser complained about	Complaint N°	Page
Misleading Advertising	A's Holiday Beach Resort	2952	p.4
	Fibar Group SA	2982	p.4
	Booking.com BV	3011	p.4
	Booking.com BV	3016	p.5
	Booking.com BV	3017	p.5
	Booking.com BV	3018	p.5
	Uber BV	3024	p.6
	SNCF	3025	p.6
	Vacaciones eDreams SL	3026-7	p.7
	Booking.com BV	3037	p.7
	Booking.com BV	3038	p.8
	Booking.com BV	3039	p.8
	Doyouspain Internet Holidays SL	3044	p.8
	Doyouspain Internet Holidays SL	3045	p.9
	Ducati Motor holding Spa	3046	p.9
	Vivre Le Japon	3049	p.9
	Nero AG	3052	p.10
	Plentyoffish Media Inc	3054	p.10
	Therme Eins	3060	p.11
	WGM Services Ltd.	3063	p.11
Yoox Spa	3065	p.11	
Bitgans Ltd.	3067	p.12	
Sports Direct Inc. Plc	3068	p.12	
Privacy and Data Protection	The ADEX GmbH	3020	p.13
	Eyeota	3021	p.13
Social Responsibility			
Taste and Decency	Paddy Power	2998	p.15
	Paddy Power	3007-10	p.15
	Bet at Home Internet Ltd.	3033	p.15
	Thai Airways International Public Ltd.	3059	p.16
	Women's Aid Ltd.	3064	p.16

Source: EASA Cross-Border Complaints Report No. 70 - October - December 2015

2.1 Misleading Advertising

2952 A's Holiday Beach Resort

Complaint from a UK consumer to the UK SRO, ASA, regarding an online advertisement for A's Holiday Beach Resort in Goa, an Indian holiday facility. The complainant challenged several items like manned reception, on-call doctor, welcome drink on arrival, water filter, in-house restaurant, internet café, sea view and money exchange and balcony awnings, that were part of the offer but actually did not exist or were not provided. Therefore, the complainant found the advertisement to be misleading. As the advertiser was based in India, the UK SRO, ASA, transferred the complaint to the Indian SRO, ASCI, under the cross-border procedure. After review, the Jury considered the advertisement to be in breach of the Chapter I.1 of the ASCI Code because the advertiser did not provide proof of his beach resort having "In house restaurant" and "sea view". Regarding the other services, the Jury considered these claims not to be false. This part of complaint was considered not in breach of the Indian Code. **Complaint upheld, case closed.**

2982 Fibar Group SA

Complaint from an Irish consumer to the Irish SRO, ASAI, regarding an online advertisement for Fibar, a Polish tech company offering smart home automation systems like smoke, flood and motion sensor. The complainant objected to the fact that all the products advertised had the wireless update of devices, which was actually not available. Therefore, the complainant found the advertisement to be misleading. 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 filing the complaint, the advertiser confirmed that these features were not yet available even though the product's marketing materials have been available for two years. Therefore the Jury concluded that the ad breached the Code of Ethics in Advertising, in particular Art. 8 (not abuse the trust of the recipient or exploit his lack of experience or knowledge) and Art. 10 paragraph 1a (Misleading Advertising). In the opinion of the Jury the ad abused consumers' trust and exploited their lack of knowledge. Moreover, the ad mislead the recipients, with regard to important characteristics of the product. **Complaint upheld, case closed.**

3011 Booking.com BV

Complaint from a South African consumer to the South African SRO, ASASA, regarding an online advertisement on Booking.com BV, a Dutch website for hotel reservations. The complainant used the website to book three rooms for a one night stay. The complainant challenged several items like towels, cleaning products, WiFi, etc. that were part of the offer but actually did not exist or were not provided. Therefore, the complainant found the advertisement to be misleading. As the advertiser was based in the Netherlands, the South African SRO, ASASA, transferred the complaint to the Dutch SRO, SRC, under the cross-border procedure. Following contacts with SRC, the advertiser replied that the information they disclosed was based on the information provided by the accommodators, so they could not guarantee that all information was accurate, complete or correct, nor could they be held responsible for any error. After review, the SRC's Jury explained that the activities of Booking.com were not be limited to the mere passing on of

information from third parties. Booking.com had an independent commercial practice. This implied that Booking.com should be considered responsible with respect to the information displayed on its website. Nevertheless, under the circumstances in which there was a lack of information to substantiate a complaint which was expressly contested by the advertiser and the fact that similar complaints about this specific hotel had failed in the past, the Jury had no reason to decide that the complaint was justified. **Complaint not upheld, case closed.**

3016 Booking.com BV

Complaint from a UK consumer to the UK SRO, ASA, regarding an online advertisement for Booking.com BV, a Dutch website for hotel reservations. The complainant downloaded the advertiser's Chrome app. The app included the claim "unlock an extra 10% discount on Booking.com". However, after making a booking and not receiving the discount, the complainant was informed that this was only available when customers had made five or more bookings via the app. The complainant found the advertisement to be misleading, because this was not made clear within the advertisement. As the advertiser was based in the Netherlands, the UK SRO, ASA, transferred the complaint to the Dutch SRO, SRC, under the cross-border procedure. Following contacts with SRC, the advertiser replied that the discounted rate was available only for certain rooms at specific properties and, after downloading the app, one was notified that the aforementioned discount did not apply to all rooms. After review, the SRC's Committee considered that the information which was lacking was essential in order for the average consumer to make an informed transactional decision. Therefore the Committee considered the ad misleading and unfair within the meaning of article 7 of the Dutch Advertising Code (Misleading Advertising). The advertiser was advised not to run the ad in its current form. **Complaint upheld, case closed.**

3017 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 of £115 for a three-night stay. However, having made the booking the complainant found out that this was an approximate price and customers were charged in Euros with a conversion discrepancy. The complainant claimed that this information only appeared after the booking. Therefore, the complainant found the advertisement to be misleading. As the advertiser was based in the Netherlands, the UK SRO, ASA, transferred the complaint to the Dutch SRO, SRC, under the cross-border procedure. Following contacts with SRC, the advertiser replied that before, during and after the reservation process the consumer had been repeatedly notified that the hotel would need to be paid in the local currency, i.e. in this case in Euros. Furthermore, the consumer had been repeatedly notified throughout the process that the displayed amount was indicative and based on today's exchange. SRC attempted to contact the complainant requesting a copy of the original ad but the complainant did not reply. Under the circumstances, SRC was not able to further investigate the complaint. **Complaint not pursued, case closed.**

3018 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 Cesar Suites at Greene in Jersey City, NJ, included a pop-up with the claim “Book now, pay when you stay! With FREE cancellation on most rooms”. However, having made the booking the complainant realised that they were charged for it straight away. Moreover, the complainant cancelled the booking, but up until the time of the complaint, the money was not yet refunded. 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’s explanation was two-fold. Firstly, for the claim “Book now, pay when you stay”, the advertiser replied that the complainant was fully aware of the terms and conditions of payment and reservation both during and after the booking process, in fact the site also mentioned “Cancellation and prepayment policies vary according to room type. Please check the room conditions when selecting your room above”. Secondly, for the claim “With FREE cancellation on most rooms” the advertiser had demonstrated that its website highlighted the fact that the cancellation policy varied per "room type" and that one could consider per "room type" what this policy entailed. After review, regarding the first point the SRC’s Committee considered this to be an essential information that the average consumer needs to make an informed transactional decision. This information or a reference to it was not included in the contested ad. For the second point the text “With FREE cancellation on most rooms” offered no basis for complainant’s conclusion that in case you wish to cancel a booking the amount, which was already paid, should be refunded immediately. Therefore, based on the consideration under the point one, the Committee considered the advertisement in contravention of the provisions of Article 7 of the Dutch Advertising Code (Misleading Advertising). It recommended advertiser not to advertise in such a manner. For the rest, the Committee dismissed the complaint. **Complaint upheld, case closed.**

3024 Uber BV

Complaint from a UK consumer to the UK SRO, ASA, regarding an online advertisement for Uber BV, a Dutch counterpart of an American transportation network company. The complainant used the advertiser’s website to estimate fares for routes in London. Taking into account the cost per mile as well as the routes distance, the complainant challenged the way Uber calculated the cost of journeys. 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 contact with SRC, the advertiser explained that the complainant based his calculation on the route shown in Google maps while the actual calculation made by Uber BV was not based on this type of route, even if a route from Google Maps is displayed in the advertisement. After investigation the SRC’s Committee considered that showing a route using Google Maps in the advertisement, while the actual calculation did not take place on the basis of that route, could have easily created confusion about the estimated price featured in the advertisement. Therefore, SRC considered the advertisement to be misleading for the average consumer and 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. **Complain upheld, case closed.**

3025 SNCF

Complaint from a UK consumer to EASA, regarding an online advertisement for SNCF, a French train transportation company. The company's claim was that it would "find your train ticket at the best price" and for some tickets that they were "exchangeable and refundable". However, the complainant believed that cheaper tickets could have been bought at SNCF stations in France. Moreover, SNCF ticket offices in France refused to exchange or refunded the tickets being sold. Therefore, the complainant found the advertisement to be misleading. As the advertiser was based in France, EASA transferred the complaint to the French SRO, ARPP, under the cross-border procedure. After initial assessment ARPP communicated that the complaint was not in their remit because the Jury was competent to rule only on the content of an advertising, while the issue itself concerned train tickets and the conditions, in which consumer could exchange or refunded them, which were a contractual matter and had to be seen at the light of the contract law. **Complaint not upheld, case closed.**

3026–7 Vacaciones eDreams SL

Complaint from a UK consumer to the UK SRO, ASA, regarding an online advertisement for Vacaciones eDreams SL, a Spanish website for hotel and flight reservations. The complainant objected that, after searching for offers on flight tickets, a "Final Price" was offered and the text "taxes and management fees included" was shown below. However, the complainant has stated that, during the purchasing process, additional services were charged and, thus, the price was higher than the one the web page previously referred to as "Final Price". The complainant challenged whether the information on the website was misleading because it did not make clear that a non-optional service charge was added and that the "final price" was not the actual "final price". Therefore, the complainant found the advertising to be misleading. As the advertiser was based in Spain, the UK SRO, ASA, transferred the complaint to the Spanish SRO, AUTOCONTROL, under the cross-border procedure. Following contacts with AUTOCONTROL, the advertiser replied that the aforementioned prices featured throughout the booking process, unless the consumer added any other optional and additional services. In this case, the consumer added an optional insurance fee, and therefore the final price of the ticket differed from the one initially shown in the search results page. After review, the AUTOCONTROL's Jury concluded that the sentence "Final Price. Taxes and management fees included" was truthful and the advertisement did not breach with the Code of Advertising Practice of Autocontrol. **Complaint upheld, case closed.**

3037 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 Anavadia Hotel on Rhodes Island in Greece referred to the hotel as a 4* one, whereas it turned out to be a 3* standard. Therefore, the complainant found the advertisement to be misleading. As the advertiser was based in the Netherlands, the UK SRO, ASA, transferred the complaint to the Dutch SRO,

SRC, under the cross-border procedure. Following contacts with SRC, the advertiser replied that the information they gave was based on information provided by the accommodation and the hotels themselves determined the number of stars they had. The SRC's Jury had no information why the complainant considered that Anavadia Hotel was classified incorrectly. There was no further substantiation of this complaint and Anavadia Hotel had disputed the veracity of the complaint and stated that it had a "four star rating". Under these circumstances, with a complaint that was expressly contested by the advertiser, not substantiated with additional documents and because there were no similar complaints about Anavadia, SRC was not able to further investigate the complaint. **Complaint not upheld, case closed.**

3038 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 Four Seasons Hotel in Aberystwyth, UK, which included photos promising a high standard of service. The complainant stayed for two nights at a cost of £150 for the first night and £110 for the second night in a Triple Room, but he challenged if the photos of the advertised rooms matched his own experience as he stayed in a small attic room. After complaining to the management, the complainant was moved to one of the advertised rooms for the second night and the manager described this as an "upgrade to a superior room", even though this was the image used for the Triple Room that the complainant booked. 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 complainant decided to withdraw the complaint, therefore SRC did not pursue the case. **Complaint withdrawn, case close.**

3039 Booking.com BV

Complaint from a UK consumer to the UK SRO, ASA, regarding an online advertisement for Booking.com BV, a Dutch website for hotel reservations. The advertisement featured on the Booking.com app included the claim "Book Now, Pay When You Stay!" Nonetheless, the complainant was charged immediately for a stay in two months' time. Therefore, the complainant found the advertisement to be misleading. As the advertiser was based in the Netherlands, the UK SRO, ASA, transferred the complaint to the Dutch SRO, SRC, under the cross-border procedure. Following contacts with SRC, the advertiser replied that the website mentioned that "Cancellation and prepayment policies vary according to room type. Please check the room conditions when selecting your room above" and that the complainant was fully aware of the terms and conditions of payment and reservation during and after the booking process. After review, the SRC's Committee stated that this information was not included in the ad and there was a concealment of essential information that the average consumer needs to make an informed transactional decision. Therefore the SRC's Committee considered the advertisement in contravention of the provisions of Article 7 (Misleading Advertising) of the Dutch Code and

recommended advertiser not to run the ad in its current form again. **Complaint upheld, case closed.**

3044 Doyouspain Internet Holidays SL

Complaint from a UK consumer to the UK SRO, ASA, regarding an online advertisement for Doyouspain Internet Holidays SL, a Spanish car rental company. The complainant challenged whether the various references that customers “can cancel or modify their car hire free at any time prior to the commencement of the actual hire” was misleading. In fact, after cancelling a booking in order to re-book for a better offer, the complainant was informed that no refund would be received, that the hire was through “Thrifty Car Hire” and that the voucher stated the conditions of the hire with “no refunds”. The complainant objected that this explanation was contradictory to the claims stated in the ads. Therefore, the complainant found the advertising to be misleading. As the advertiser was based in Spain, the UK SRO, ASA, transferred the complaint to the Spanish SRO, AUTOCONTROL, under the cross-border procedure. After review, the AUTOCONTROL’s Jury stated that the advertiser offered the possibility to cancel or amend the rental agreement with no additional charge prior the commencing date. However, the complainant accredited that the free cancellation was not always offered. The Jury concluded that the advertisement breached rule 14 (Misleading Advertising) of the Code of Advertising Practice of Autocontrol, as well as article 3.1 (Loyalty) of the Ethical Code of Confianza Online, the latter since the advertisement had been broadcasted on the Internet. **Complaint upheld, case closed.**

3045 Doyouspain Internet Holidays SL

Complaint from a UK consumer to the UK SRO, ASA, regarding an online advertisement for Doyouspain Internet Holidays SL, a Spanish car rental company. The complaint was two-fold. Firstly, the complainant objected that the website’s claims “Brand New Cars” and “Unlimited Mileage” were misleading because they received an old damaged car and also found that there was a mileage limit of 200kms per day. Secondly, the complainant found the website misleading because the fuel policy was not made clear, and they had to pay 35 euros for fuel. Therefore, the complainant found the advertising to be misleading. As the advertiser was based in Spain, the UK SRO, ASA, transferred the complaint to the Spanish SRO, AUTOCONTROL, under the cross-border procedure. Following contacts with AUTOCONTROL, the advertiser accepted the complaint and amended its website removing the references ‘Brand New Cars’ and ‘Unlimited Mileage’. **Complaint resolved informally, case closed.**

3046 Ducati Motor holding Spa

Complaint from a UK consumer to the UK SRO, ASA, regarding an online advertisement for Ducati Motor Holding Spa, an Italian company. The complainant challenged whether the claim “The most powerful Ducati naked ever” in regards to the Monster 1200 R was misleading, because the complainant noted that the advertisers own figures stated that the bike developed 160hp- but the Ducati Diavel developed 162hp. Therefore, the complainant found the advertising 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 replied that the declaration “The most powerful Ducati naked ever” was absolutely true

because the Monster 1200 R bike was the most powerful in the “naked” range. The Diavel bike mentioned by the complainant got up to 162hp, instead of 160hp as per the Monster 1200 R, was not a “naked” bike but a “cruiser” bike. After review the IAP’s Committee concluded that the information given by the advertiser was acceptable and the ad did not breach the Code of Advertising Practice of IAP. **Complaint not upheld, case closed.**

3049 Vivre Le Japon

Complaint from a UK consumer to the UK SRO, ASA, regarding an online advertisement for Vivre Le Japon, a French company offering information and services dedicated to travel. The complainant objected that the claim “free delivery with FedEx” was misleading, because it did not make clear that it only applied to purchases over €450, and the complainant felt that there were not any individual purchases which cost this amount. 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 investigation, ARPP explained that they couldn’t fully answer to this complaint because there was some information missing. Nevertheless, they noted that there was a little star which appeared after the claim and they presumed that it referred to a note explaining what the conditions were. Moreover, in the website the word “free” disappeared and they also did a simulation of a purchase and noticed that the delivery was effectively free with Royal Mail, and was 7euros with FedEx. ARPP stated that pursuant to Article 2 of the French Jury’s rules and regulation, the Jury was competent to rule only on the content of the advertising. Under the circumstances, ARPP was not able to further investigate the complaint. **Compliant not pursued, case closed.**

3052 Nero AG

Complaint from a UK consumer to the UK SRO, ASA, regarding an email advertisement for Nero AG, a German computer software company. The complainant objected that the claims “Huge Sale on Nero 2015 Classic!” and “BIG BLOW-OUT SALE! £69.99 £15.99 GET IT NOW” were misleading because they implied that consumers could purchase the full Nero 2015 Classic version worth £69.99 for only £15.99. However, in the website, the offer was available for the update version only and would have worked only if the customer already had the full version. Therefore, the complainant found the advertisement to be misleading. As the advertiser was based in Germany, the UK SRO, ASA, transferred the complaint to the German SRO, WBZ, under the cross-border procedure. Following contacts with WBZ, the advertiser was asked to sign a declaration of cease and desist. **Complaint upheld, case closed.**

3054 Plentyoffish Media Inc.

Complaint from a UK consumer to the UK SRO, ASA, regarding a direct email from Plentyoffish Media Inc., a Canadian date service’s company. The complainant objected that the claim “Someone wants to meet you! Click below to view their profile” was misleading, because it didn’t make clear that in order to see the profile you had to upgrade to the advertisers service. The complainant believed the ad was designed to trick people into thinking they could see the profile for free with a click, when in fact they had no way of seeing it unless they paid (the payment was not suggested anywhere in the email). Therefore, the complainant found the advertisement to be

misleading. As the advertiser was based in Canada, the UK SRO, ASA, transferred the complaint to the Canadian SRO, ASC, under the cross-border procedure. After review ASC's Council concluded it would have been clearer and, therefore, preferable if the advertising had stated "Click here to upgrade and view profile". On the other hand, Council noted that in the Help Centre section of the advertisement, the FAQs contained information about the features that were included in an upgraded membership. Furthermore, Council believed that generally the consumers, would understand that there was an additional cost to upgrade a service. Under these circumstances, ASC's Council found that, overall, the advertising was not contrary to the Code. **Complaint not upheld, case closed.**

3060 Therme Eins

Complaint from a UK consumer to the UK SRO, ASA, regarding an online advertisement from Therme Eins, a German thermal hotel. The complainant challenged whether the images on the advertiser's website misleadingly represented the hotel's clientele, as they felt that all the other guests were significantly older than themselves, which they hadn't expected from looking at the website. Therefore, the complainant found the advertisement to be misleading. As the advertiser was based in Germany, the UK SRO, ASA, transferred the complaint to the German SRO, WBZ, under the cross-border procedure. After review, WBZ explained that the promotional movie, which the complainant referred to, was meant to give a positive impression about the facility; it was not meant to guarantee that Therme Eins was visited only by costumers of a certain age. WBZ considered the ad not to have been misleading because costumers knew that spas are frequently visited by retirees. **Complaint not pursued, case closed.**

3063 WGM Services Ltd.

Complaint from a UK consumer to the UK SRO, ASA, regarding an online advertisement for WGM Services Ltd., a Cypriot company. The complainant responded to an ad for a working from home opportunity which made various claims about being able to earn "about £7,000-£8,000 a month working from home" by signing up to the advertisers searching profits scheme. The complainant paid £200, and has found that this was a scam and he has lost his money. Therefore, the complainant found the advertising to be misleading. As the advertiser was based in Cyprus, the UK SRO, ASA, transferred the complaint to the Cypriot SRO, CARO, under the cross-border procedure. Following the receipt of the complaint, CARO attempted to contact the complainant requesting more clarifications, but the complainant did not reply to any enquiry. Under the circumstances, CARO was not able to further investigate the complaint. **Complaint not pursued, case closed.**

3065 Yoox Spa

Complaint from a UK consumer to the UK SRO, ASA, regarding an online advertisement for Yoox Spa, an Italian company. The complainant challenged whether the countdown promotion offering discounts for a limited time were misleading. The complainant saw a 25% discount for purchases made between 10am on 2nd of September and 10am on 3rd of September. However, on the 2nd September the ad stated "AN EXTRA 25% OFF. TODAY ONLY" which implied that the offer would expire on 2nd September, thereby rushing customers into making a purchase. However,

the offer actually ended on the 3rd September. Additionally, on the 3rd September before 10am the same ads were displayed. Therefore, the complainant found the advertising 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 replied that the promotion was a four-day countdown, each day the discount decreased (from 30% the first day to 15% the last day) and the promotion would be automatically applied in the consumer shopping bag. Moreover the advertiser explained that the term “today” was not intended as a calendar day, but a 24-hour period, starting at a precise time indicated to the public and that the information about the promotion was given via newsletter and before purchasing an item. After review the IAP’s Committee concluded that the information given by the advertiser was acceptable and the ad did not breach the Code of Advertising Practice of IAP. **Complaint not upheld, case closed.**

3067 Bitgans Ltd.

Complaint from an Irish consumer to the Irish SRO, ASAI, regarding an online advertisement for Bitgans Ltd/Funky Clock, a UK company. The complainant objected that the ad and the claim “How British residents buy the new Apple iPhone 6 for only £1” were misleading because they suggested that user could win an iPhone6 after paying 1€. The complainant stated that in addition to 1€ which was deducted, a further 89€, as monthly subscription, was deducted from her account. Therefore, the complainant found the advertising to be misleading. As the advertiser was based in UK, the Irish SRO, ASAI, transferred the complaint to the UK SRO, ASA, under the cross-border procedure. Following contacts with ASA, the advertiser replied that the first condition for accessing and using the website was the checkbox agreement for their term and condition. On the first page before any payment page, the user had to agree to those terms and conditions, which explained the associated costs and payment conditions, as well as their cancellation and refund policies. Moreover, the advertiser said that the user was notified about associated costs and conditions of entry to the competition. After review, the ASA’s Jury considered that the text “How British residents buy the new Apple iPhone 6 for only £1”, implied that the product was available to purchase for £1. However, they understood that actually this was not the case and the iPhone was not available to purchase for £1. Rather, consumers were given the opportunity to win it by participating in a game of skill. Furthermore, the ASA’s Jury noted that the terms and conditions stated that members could start to play all the competitions within the trial period, but in order to receive any prizes, they would have needed to continue the subscription for at least one month. That meant that the minimum outlay for consumers allowing to win the phone would have been a monthly subscription fee. The ASA’s Jury considered that the ad was misleading and it breached the CAP Code rules 3.1 (Misleading advertising) and 3.17 (Prices). **Complaint upheld, case closed.**

3068 Sports Direct Inc. Plc

Complaint from an Irish consumer to the Irish SRO, ASAI, regarding an online advertisement for Sports Direct, a UK company. The complainant objected that the website offered 12€ voucher for every 60€ spent. Despite spending over 300€, she has never received any voucher. Therefore, the complainant found the advertising to be misleading. As the advertiser was based in UK, the Irish SRO, ASAI, transferred the complaint to the UK SRO, ASA, under the cross-border

procedure. Following contacts with ASA the advertiser replied that the offer advertised was genuine and they stated that this must have been a technical issue, or an issue with the customer service you received. The advertiser took responsibility and was happy to discuss the issue directly with the complainant. Under the circumstances ASA was unable to take any action with regards to customer service issues. **Complaint resolved informally, case closed.**

2.2 Privacy and Data Protection

3020 The ADEX GmbH

Complaint from a UK consumer to the UK SRO, ASA, regarding the opt-out mechanism from OBA advertisements by ADEX GmbH, a third party OBA provider based in Germany. The complainant raised concerns that they had continually been unable to opt out of OBA data collection and use by the ADEX GmbH. 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. After investigation, DDOW found out that there had been a technical problem and therefore contacted the company and the problem was resolved accordingly. **Complaint resolved informally, case closed.**

3021 Eyeota

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 raised concerns that they had continually been unable to opt out of OBA data collection and use by Eyeota Ltd. 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. After investigation, DDOW explained that they had examined the Eyeota performance for the relevant time period and had informed us that they could not find any issues with regard to the opt-out mechanism. **Complain not pursued, case closed.**

2.3 Social Responsibility

No complaints have been received regarding the issue of social responsibility in the period of Q4 (October-December) of the 2015.

2.4 Taste and Decency

2998 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 read: “Africa’s richest man, Nigerian Aliko Dangote, is interested in buying Arsenal. He makes a compelling case... #AFC”. Along with the aforementioned text, the advertiser posted an image of what was supposed to be an email from Aliko Dangote to Arsenal FC, a UK football club. The email resembled the so-called “Nigerian email scams”. The complainant considered that the advertisement implied that all Nigerian people were fraudsters and that it sought to create racial hatred towards Nigerians. Therefore, the complainant found the advertisement to be offensive and to be against social responsibility 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. After review, the Complaints Committee considered the detail of the complaint and the advertiser’s response. The Committee noted that phishing scams have commonly been referred to as ‘Nigerian’. In this case, however, they considered that the advertising was making fun of the scams themselves, and was not in any way ridiculing the people of Nigeria nor was it likely to create racial hatred or intolerance. In the circumstances the Committee did not consider that the advertising was in breach of the Code provisions. **Complaint non upheld, case closed.**

3007–10 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 photos of lorries sent to Calais in France with the slogan “Immigrants, jump in the back! (But only if you’re good at sport)” with images of five famous and non-British sportsmen representing British or English national teams. The complainant considered that the advertisement inflamed negative attitudes towards immigrants and 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. Following contacts with ASAI, the advertiser replied that they sought to promote advertising campaigns that were edgy, humorous and engaging and it had never been their intention to cause offence with their advertising. After review, the ASAI’s Committee considered that the advertiser had targeted their followers on Facebook and Twitter with its advertisement and stated that the Code provided that, in assessing compliance, particular attention was paid to the media by means of which the marketing communication was communicated. In this case the Committee accepted that while the majority of Paddy Power followers on Social Media and Twitter would probably be aware of their ‘edgy’ sense of humour, it was nevertheless inappropriate for advertisers to refer to vulnerable groups in marketing communications in a manner that highlighted their current high profile difficulties merely to attract attention. The Committee upheld the complaints under Sections 2.15, 2.16 and 2.18 of the Code. The advertisement should not appear in the same form again. **Complaint upheld, case closed.**

3033 Bet at Home Internet Ltd.

Complaint from a UK consumer to the UK SRO, ASA, regarding a TV advertisement for Bet At Home Internet Ltd., a Maltese online gambling and sports betting company. The complainant felt that the advertisement mocked the Christian faith. The complainant noted that the advertisement focused on gambling and cheating, which are both considered to be against Christian values, and it also took place in a monastery. The complainant also objected to the advertisement for gambling services being shown before 9pm. Therefore, the complainant found the advertisement to be against taste and decency. As the medium was based in France, the UK SRO, ASA, transferred the complaint to the French SRO, ARPP, under the cross-border procedure. After investigation, ARPP's Jury considered the ad was not offending religious beliefs because it was humorous and in most part of the people could have understood the humor and the exaggeration of the scene and did not find any violation of the ARPP Code. **Complain not upheld, case closed.**

3059 Thai Airways International Public Ltd.

Complaint from a UK consumer to the UK SRO, ASA, regarding a TV advertisement for Thai Airways International Public Ltd. broadcasted on Eurosport, a TV channel which is licensed in France. The complainant objected that the ad was offensive because it showed a lady floating in the ocean. The complainant felt that this was insensitive considering all the people that have died as a result of plane crashes. Therefore, the complainant found the advertising to be offensive and against of the good taste. As the medium 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 Jury considered the ad was compliant since the image of the young woman bathing was clearly a reference to a pleasant, peaceful moment and not a reference to a plane crash or Syrian refugees. **Complaint not pursued, case closed.**

3064 Women's Aid Ltd.

Complaint from a UK consumer to the UK SRO, ASA, regarding an online advertisement for Women's Aid Ltd., an Irish company. The ad featured information on spotting danger signs in relationships, and directed women to their website. The complainant objected that the ad was offensive to women and perpetuated negative stereotypes of men. 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, the ASAI's Committee stated that as the advert was intended to influence a matter of public opinion they were unable to pursue the complaint under the Code. The complainant and advertiser have been informed. **Complaint out of remit, 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

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