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DRAFT REPORT

on combating misleading advertising by business-directory companies
(Petitions 0045/2006, 1476/2006, 0079/2003, 0819/2003, 1010/2005,
0052/2007, 0306/2007, 0444/2007, 0562/2007 and others)
(2008/2126(INI))

Committee on Petitions

Rapporteur: Simon Busuttil

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on combating misleading advertising by business-directory companies (Petitions 0045/2006, 1476/2006, 0079/2003, 0819/2003, 1010/2005, 0052/2007, 0306/2007, 0444/2007, 0562/2007 and others) (2008/2126(INI))

The European Parliament,

- having regard to Petitions 0045/2006, 1476/2006, 0079/2003, 0819/2003, 1010/2005, 0052/2007, 0306/2007, 0444/2007, 0562/2007 and others,
- having regard to previous deliberations of the Committee on Petitions on petition 45/2006 and others,
- having regard to Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising (codified version)¹ which replaced Directive 84/450/EEC² as amended by Directive 97/55/EC³,
- having regard to Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive')⁴,
- having regard to Regulation (EC) 2006/2004 of the European Parliament and of the Council of 27 October 2004 on co-operation between national authorities responsible for the enforcement of consumer protection laws (the Regulation on consumer protection cooperation)⁵,
- having regard to Directive 98/27/EC of the European Parliament and of the Council of 19 May 1998 on injunctions for the protection of consumers' interests⁶,
- having regard to Rule 192(1) of its Rules of Procedure,
- having regard to the report of the Committee on Petitions (A6-0000/2008),

A. whereas Parliament has received more than 400 petitions, mainly from small businesses, who claim to have fallen victim to misleading advertising by business-directory

¹ OJ L 376, 27.12.2006, p. 21.

² Council Directive 84/450/EEC of 10 September 1984 relating to the approximation of the laws, regulations and administrative provisions of the Member States concerning misleading advertising, OJ L 250, 19.9.1984, p. 17.

³ Directive 97/55/EC of European Parliament and of the Council of 6 October 1997 amending Directive 84/450/EEC concerning misleading advertising so as to include comparative advertising, OJ L 290, 23.10.1997, p.18.

⁴ OJ L 149, 11.6.2005, p.22.

⁵ OJ L 364, 9.12.2004, p.1.

⁶ OJ L 166 of 11.6.1998, p.51.

companies and consequently suffered financial loss,,

- B. whereas these complaints reflect a widespread practice of misleading business practices applied by some business directory companies affecting thousands of businesses in the European Union and beyond, with a significant financial impact on businesses,
- C. whereas the business practices complained of typically consist of an approach made by a business-directory company, usually by mail, to businesses inviting them to complete or update their business name and contact details, giving them the false impression that they would be listed in a business directory free of charge, whereas signatories later discover that they had, in fact, unintentionally signed up to a contract, normally binding them for a minimum of three years, to be listed in a business directory at a yearly charge of some €1,000,
- D. whereas the forms used in such practices are usually ambiguous and difficult to understand, inducing the erroneous idea of a free listing in a business directory but in fact entrapping businesses into unwanted contracts for advertising in business directories,
- E. whereas Directive 2006/114⁷ also applies to business-to-business transactions and defines “misleading advertising” as “any advertising which in any way, including its presentation, deceives or is likely to deceive the persons to whom it is addressed or whom it reaches and which by reason of its deceptive nature, is likely to affect their economic behaviour or which, for those reasons, injures or is likely to injure a competitor”,
- F. whereas Directive 2005/29/EC⁸ on unfair business-to-consumer commercial practices does not apply business-to-business misleading practices and therefore, in its current form, cannot be relied upon to help the petitioners,
- G. whereas Regulation (EC) 2006/2004⁹ on co-operation between national authorities responsible for the enforcement of consumer protection laws defines “intra-Community infringement” as “any act or omission contrary to the laws that protect consumers’ interests ... that harms, or is likely to harm, the collective interests of consumers residing in a Member State or Member States other than the Member State where the act or omission originated or took place, or where the responsible seller or supplier is established, or where evidence or assets pertaining to the act or omission are to be found”,
- H. whereas most petitioners name the business directory known as “European City Guide”, which is based in Valencia, Spain, but other business-directory companies such as “Construct Data Verlag”, “Deutscher Adressdienst GmbH” and “NovaChannel” are also mentioned, whereas, however, other business-directory companies engage in legitimate business practices,
- I. whereas the targets of these misleading business practices are, in the main, small businesses but also include professionals and even non-profit-making entities, such as schools, libraries and local social clubs, such as band clubs,

⁷ OJ L 376 of 27.12.2006. p. 21–27.

⁸ OJ L 149 of 11.06.2005, p.22-39.

⁹ OJ L 364, 9.12.2004, p.1-11.

- J whereas the business-directory companies are often established in a Member State other than the victim's, making it difficult for the victims to seek protection from national authorities, whereas victims also often find no redress from national consumer protection authorities because they are told that the law is intended to protect consumers and not businesses, whereas being small businesses, most victims often lack the resources to pursue an effective remedy,
- K whereas victims of these practices are rigorously pursued to pay up by the business-directory companies themselves or even by debt collection agencies engaged by them, whereas victims complain that they feel distressed and threatened by these approaches and many of them often end up paying unwillingly in order to avoid further harassment,
- L whereas victims who refuse to pay have seldom been pursued in court, with a few exceptions,
- M whereas a number of Member States have adopted initiatives, notably of an awareness-raising nature, to tackle this problem,
- N whereas Austria has changed its national Unfair Commercial Practices Law, since 2000 and Section 28a thereof now states that "It shall be prohibited to advertise, in the scope of business and for the purpose of competition, for registration in directories, such as yellow pages, telephone directory or similar lists, by way of payment form, money order form, invoice, offer of correction or similar manner or to offer such registrations directly without unequivocally and also by clear graphical means pointing out that such advertisement is solely an offer for a contract",
- O whereas such practices have been applied for a number of years, creating a large number of victims and a significant financial impact across the internal market,
1. Expresses its concern at the problem raised by the petitioners which appears to be widespread, of a cross-border nature and which has a significant financial impact, notably on small businesses;
 2. Considers that the cross-border nature of this problem places responsibility on the Community institutions to provide an adequate remedy to victims, such that the validity of contracts concluded on the basis of misleading advertising could be effectively contested and annulled and that victims could be able to obtain a reimbursement of the money that they paid;
 3. Urges victims to report cases of business scams to national authorities and to seek appropriate advice before they settle fees demanded from them by misleading business-directory companies;
 4. Regrets that, despite the widespread nature of these practices, EU and national legislation does not appear to be adequate in providing an effective remedy or is not being adequately enforced at national level; regrets that national authorities also seem to be unable to provide a remedy;
 5. Welcomes the efforts made by European and national business organisations to raise

awareness among their members and calls on them to intensify their efforts so that fewer people become victims of misleading business directories in the first place;

6. Welcomes the action taken by certain Member States such as Italy, Spain, Netherlands, Belgium and the United Kingdom, but most notably by Austria, in trying to prevent business-directory companies from following misleading practices; considers, however, that these efforts remain insufficient;
7. Calls on the Commission and on Member States to step up their efforts, in full co-operation with national and European business representative organisations, to raise awareness of this problem so that more people are informed and empowered to avoid misleading advertising which can lure them into unwanted advertising contracts;
8. Calls on the Commission to address the problem of business scams in the context of its “Small Business Act” initiative;
9. Regrets that Directive 2006/114/EC¹⁰ concerning misleading and comparative advertising which applies to business-to-business transactions as in this case, appears to be either insufficient in providing an effective remedy or inadequately enforced by Member States;
10. Recalls that, whereas the Commission has no power to enforce the Directive directly against individuals or companies, it does have the duty, as the guardian of the Treaty, to ensure that the Directive is adequately implemented by Member States;
11. Calls on the Commission to step up its monitoring of the implementation of this Directive, most notably in those Member States where misleading business-directory companies are known to be based, but in particular in Spain, where the business directory company that is most often named by petitioners is established, and in the Czech Republic where a court judgement has been delivered against victims in a manner which calls into question the implementation of this Directive in that country; calls on the Commission to report back to Parliament on its findings;
12. Regrets that Directive 2005/29/EC¹¹ on unfair practices does not cover business-to-business transactions and that Member States appear reluctant to extend its scope; notes, however, that Member States may unilaterally extend the scope of their national consumer legislation to business-to-business transactions and actively encourages them to do so;
13. Welcomes the example set by Austria which has introduced a specific prohibition in its national legislation on misleading business directories, and calls on the Commission to consider, in the light of the cross-border nature of this problem, a new legislative initiative, based on the Austrian model, which specifically prohibits advertising in business directories unless prospective clients are unequivocally and by clear graphical means informed that such advertisement is solely an offer for a contract against payment;
14. Notes that national legislation is often inadequate to pursue remedies against business-directory companies that are based in other Member States and therefore urges the

¹⁰ OJ L 376 of 27.12.2006. p. 21–27.

¹¹ OJ L 149 of 11.06.2005, p.22-39.

Commission to facilitate more active cross-border co-operation among national authorities in order to enable them to provide a more effective remedy to victims;

15. Regrets that Regulation (EC) 2006/2004¹² on co-operation between national authorities responsible for the enforcement of consumer protection laws has not been sufficiently used, and calls on the Commission to step up its monitoring of the implementation of this Regulation and to ask national authorities to make more frequent use of this legal instrument which could provide a remedy in cases of intra-Community infringements;
16. Welcomes the example of Belgium where all those affected by misleading practices are able to take legal action in their country of residence;
17. Urges Member States to ensure that victims of misleading advertising have a clearly identifiable national authority to which they can make a complaint and seek a remedy even in cases, such as these, where the victims of misleading advertising are businesses;
18. Calls on the Commission to develop best-practice guidelines for national enforcement agencies which may be followed when cases of misleading advertising are brought to their attention;
19. Calls on the Commission to pursue international co-operation with third countries and with the competent international organisations so that misleading business directories based in third countries do not cause harm to businesses based in the European Union;
20. Instructs its President to forward this resolution to the Council, the Commission and the Member States.

¹² OJ L 364, 9.12.2004, p.1.

EXPLANATORY STATEMENT

Introduction

Many enterprises, often small businesses, fall victim to scams operated through misleading advertising. A common scam is one whereby victims unwillingly sign up to an advertisement in a business directory after having been led to believe that this would be free of charge.

Victims typically receive forms from misleading business directory companies inviting them to complete, correct or update their business details. They are often told that updating the information is free-of-charge. This entices them to update it and send off the form. But they do not realise that by signing the form they are also signing up to a contract binding them to place an advertisement in a business directory for a minimum period of three years and at an annual cost of around €1,000. Victims realise the scam when they receive a letter from the business-directory company informing them that they had actually placed an advert in the directory, along with an invoice requesting payment. Those who do not pay up are often harassed and even threatened with legal action by the directory companies or their debt collection companies. Many simply give in and pay up in order to avoid further harassment.

Thousands of businesses have been affected across the European Union. Considering that the contract costs around €1,000 per year and lasts for a minimum of three years, the financial impact across the EU is considered to be significant.

While it is clear that there is an element of misleading business practice, which is usually illegal, it is not entirely clear whether EU law provides a remedy and if it does, whether this is being adequately enforced at national level in different Member States. So misleading directory companies often exploit grey zones in the law or weak enforcement at national level to push the scam. A common element is that misleading business directories are normally established in a country which is different from the country of the victim. This makes it difficult for victims to use national law and national authorities to stand up for them in another Member State. Moreover, businesses often find that national authorities responsible for consumer protection tend to brush off their complaints on the basis that consumer law applies to consumers and not to businesses. This leaves them without an effective remedy and opens the door to business scams of this nature to thrive.

Not all business directories are based on misleading advertising and many business-directory companies are perfectly legitimate. Indeed, they even operate on the basis of a Code of Conduct which makes it clear that orders must be clearly identifiable as an order and that free advertising cannot be mixed with advertising against payment. Yet, some business directories rely on misleading business practices. Most complaints received by the European have singled out the business directory known as the “European City Guide” which is based in Valencia, Spain but others, such as “Construct Data Verlag”, “Deutscher Adressdienst GmbH” and “NovaChannel” have also been mentioned. Some misleading business directories are also web-based. According to representatives of the European City Guide, some 6.5 million forms are issued this company alone every year.

Objectives of this report

The Petitions Committee and of the European Parliament received more than 400 petitions

from small businesses across the European Union and even from some third countries, who claim to have fallen victims. Moreover, several Members of the European Parliament have written to the European Commission about these complaints and a number of written and oral questions were also tabled by MEPs. On its part, the European Parliament authorised this report in order to investigate this problem further and propose ways forward. Consequently, through this report, your rapporteur wants to:

- Raise awareness on this issue so that fewer businesses fall victim to business scams;
- Urge EU countries to tighten national laws and ensure that existing EU law on misleading advertising and unfair commercial practices is adequately enforced;
- Urge the Commission to step up its monitoring of the implementation of EU law and to improve existing EU law where it is established that it is not adequate to stop these scams once and for all, and
- Provide support and guidance for those who have already fallen victim.

EU legislation

At Community level, there are three EU laws which are most relevant. These are the:

- Directive 2006/114/EC of the European Parliament and of the Council concerning misleading and comparative advertising which replaced Directive 84/450/EEC¹³ as amended by Directive 97/55/EC¹⁴;
- Directive 2005/29/EC¹⁵ of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market (the Unfair Commercial Practices Directive);
- Regulation (EC) 2006/2004¹⁶ of the European Parliament and of the Council on co-operation between national authorities responsible for the enforcement of consumer protection laws (the Regulation on consumer protection co-operation);

Consultation prior to the drawing up of the report

Prior to completing this report your rapporteur engaged in various consultation meetings, including with European Commissioner for Consumers Meglena Kuneva and with several MEPs who are interested in the issue because of several complaints that they received from their constituents. The rapporteur also had consultation meetings with business organisations representing businesses, especially small businesses in Europe, such as Eurochambres and UEAPME as well as the European Association of business Directories and of course, victims themselves.

A public workshop was organised by the Petitions Committee on Thursday, 11 September, 2008 in the European Parliament entitled “Stop the Scam: Combating Misleading Business Directories”. The session provided an opportunity for MEPs to listen to petitioners as well

¹³ OJ L 250, 19.9.1984, p. 17-20.

¹⁴ OJ L 290 of 23.10.1997, p.18-23.

¹⁵ OJ L 149 of 11.06.2005, p.22-39.

¹⁶ OJ L 364, 9.12.2004, p.1-11.

as representative organisations, Commission representatives and also representatives from the European City Guide business-directory which is the single most important company identified by the petitioners.

Findings of the report

Your rapporteur considers that the petitioners do indeed raise a serious problem which appears to be widespread, of a cross-border nature and which has a significant financial impact, notably on small businesses. Moreover, your rapporteur feels that the cross-border nature of this problem places a clear responsibility on Community institutions to provide an adequate remedy to victims. This remedy should enable victims to contest the validity of contracts concluded on the basis of misleading advertising and it should also enable victims to obtain a reimbursement of the money that they paid as a result of misleading practices.

The report regrets that existing national authorities seem to be unable to provide an adequate remedy to victims and also considers that despite the widespread nature of these misleading business practices, EU and national legislation also do not seem to be adequate to provide an effective remedy or are not being properly enforced.

Guidance for victims

The report urges victims to report cases of business scams to national authorities and to seek appropriate advice before settling fees demanded by misleading business-directory companies. Moreover, victims should bring their case to the attention of business and consumer associations as well as their representative in the European Parliament so that the action to combat misleading business directories can be strengthened at European level.

Raising awareness

The report welcomes the efforts made by European and national business organisations to raise awareness among their members and calls on them to intensify their efforts so that fewer people become victims of misleading business directories in the first place. It also welcomes the action taken by certain Member States such as Italy, Spain, Netherlands, Belgium, the United Kingdom but most especially Austria, in trying to prevent business-directory companies from undertaking misleading practices. However it notes that these efforts remain insufficient.

On awareness, the report calls on the European Commission and on Member States to step up their efforts, in full co-operation with national and European business representative organisations, in order to raise awareness about this problem so that more people are informed and empowered to avoid misleading advertising which can lure them into unwanted contracts.

The report also calls on the European Commission to address this complaint in the context of its “Small Business Act” initiative.

Directive 2006/114/EC¹⁷ concerning misleading and comparative advertising

¹⁷ OJ L 376 of 27.12.2006, p. 21–27.

The report notes that Directive 2006/114/EC¹⁸ concerning misleading and comparative advertising applies to business-to-business transactions and therefore applies to the problem faced by victims of misleading business-directories. This Directive has been transposed in all Member States and provides for the use of cessation orders and other legal proceedings to prohibit the continued use of misleading advertising. However it appears to be either insufficient in providing an effective remedy or inadequately enforced by Member States.

The report therefore calls on the European Commission to step up its monitoring of the implementation of Directive 2006/114/EC¹⁹. This should be done most notably in Member States where misleading business directories are known to be based, but most especially in Spain where the business directory company which is most identified by the petitioners is established. Particular attention must also be paid to the Czech Republic where a court judgement has recently been delivered against the victims in a manner which appears to call into question the effectiveness of the implementation of this Directive in that country.

The report calls on the Commission to report back to the European Parliament on its findings.

Directive 2005/29/EC²⁰ on unfair practices

The report notes with regret that Directive 2005/29/EC²¹ on unfair practices does not cover business-to-business transactions and that Member States appear reluctant to extend its scope. On the other hand, Member States may unilaterally extend the scope of their national consumer legislation to business-to-business transactions and therefore those that wish to provide protection in their national legislation can freely do so without waiting for a Commission legislative initiative to change EU law.

The best model for combating misleading business directories appears to be Austria which, since 2000, changed its national Unfair Commercial Practices legislation. Section 28a of this law now states that "It shall be prohibited to advertise, in the scope of business and for the purpose of competition, for registration in directories, such as yellow pages, telephone directory or similar lists, by way of payment form, money order form, invoice, offer of correction or similar manner or to offer such registrations directly without unequivocally and also by clear graphical means pointing out that such advertisement is solely an offer for a contract."

Your rapporteur feels that the Austrian model sets a good example and should be followed. Thus, the report calls on the European Commission to consider, in the light of the cross-border nature of this problem, bringing forward a new legislative initiative, based on the Austrian model, which specifically prohibits advertising in business directories unless prospective clients are unequivocally and by clear graphical means informed that such advertisement is solely an offer for a contract against payment.

Regulation (EC) 2006/2004²² on co-operation between national authorities responsible for the enforcement of consumer protection laws

¹⁸ OJ L 376 of 27.12.2006, p. 21–27.

¹⁹ OJ L 376 of 27.12.2006, p. 21–27.

²⁰ OJ L 149 of 11.06.2005, p.22-39.

²¹ OJ L 149 of 11.06.2005, p.22-39.

²² OJ L 364, 9.12.2004, , p.1-11.

The report also notes that national legislation is often inadequate to pursue remedies against business-directory companies that are based in other Member States and therefore urges the Commission to facilitate more active cross-border co-operation among national authorities in order to enable them to provide a more effective remedy to victims.

In Belgium, for instance, all those affected by misleading practices are able to take legal action in their country of residence and a case had indeed been won by the victims of one of the misleading business directories (a fine was imposed on the latter), although at the time of writing this case still appears to be *sub judice* at the appeal stage.

In Austria, there is evidence of court cases successfully brought by victims against business-directory companies.

On the other hand, in the Czech Republic victims appear to have lost a case brought against them by the directory company and this particular case raises serious questions on whether the Czech Republic is adequately implementing the provisions of Directive 2006/114/EC²³.

In Spain, one of the most mentioned business directory companies, the European City Guide, was fined three times by the *Generalitat de Catalunya* when it was based in Barcelona and its temporary closure for one year was ordered. It eventually moved to Valencia where it now continues to operate under somewhat stricter conditions. For instance, victims are now informed of their right to cancel the order within seven days. However, they normally only become aware of what they truly signed up to after this period has lapsed. A so-called “Defensor del cliente” (ombudsman) was also set up by the company to receive complaint from clients. However, this office does not appear to be independent from the business-directory company itself and therefore does not inspire sufficient confidence. Your rapporteur therefore feels that this business-directory company has not done enough to ensure that its prospective clients are not misled into signing an advertising contract that they never wanted.

Moreover, there is no evidence of national authorities from other Member States seeking a remedy directly in Valencian courts on the basis of Regulation (EC) 2006/2004²⁴ on co-operation between national authorities responsible for the enforcement of consumer protection laws.

In the United Kingdom, the Office of Fair Trading (OFT) is reported to have used the provisions of Regulation (EC) 2006/2004²⁵ on co-operation between national authorities responsible for the enforcement of consumer protection laws. The OFT, which is also responsible for consumer protection, appears to have used this regulation successfully to seek an injunction against companies in Belgium and in the Netherlands which were found to be sending out unsolicited and misleading offers to British consumers. Although a positive step in the right direction, this case did not concern misleading business directories.

Other than this case there is little evidence that Regulation 2006/2004²⁶ has been sufficiently used by national authorities to seek a remedy, such as an injunction, for complaints which owe their origin in other Member States. This appears to be due to the cost of bringing action, to the complexity and the length of procedures and to the limited scope of the injunction.

²³ OJ L 376 of 27.12.2006, p. 21–27.

²⁴ OJ L 364, 9.12.2004, , p.1-11.

²⁵ OJ L 364, 9.12.2004, , p.1-11.

²⁶ OJ L 364, 9.12.2004, , p.1-11.

The need to strengthen national authorities

The report urges Member States to ensure that businesses who are victims of misleading advertising have a clearly identifiable national authority with which they can make a complaint and seek a remedy. Currently, this is often not the case since national consumer protection authorities often do not cater for complaints from businesses, limiting themselves to complaints from consumers. The report also calls on the European Commission to develop best-practice guidelines for national enforcement agencies which may be followed when cases of misleading advertising are brought to their attention.

Misleading business-directories based in third countries

Finally, the report calls on the Commission to pursue international co-operation with third countries and with the competent international organisations so that misleading business directories based in third countries do not cause prejudice to businesses based in the European Union.